File No. CT-2024-006

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the Competition Act, R.S.C. 1985, c. C-34 (the "**Act**");

**AND IN THE MATTER OF** an application by JAMP Pharma Corporation for an order pursuant to section 103.1 of the Act granting leave to bring an application under section 79 of the Act;

**AND IN THE MATTER OF** an application by JAMP Pharma Corporation for an order pursuant to section 79 of the Act;

**BETWEEN:**

**JAMP PHARMA CORPORATION**

Applicant

– and –

**JANSSEN INC.**

Respondent

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# BOOK OF AUTHORITIES OF THE APPLICANT

**(Pursuant to section 103.1 of the *Competition Act*)**

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# 1

Competition Tribunal Tribunal de la Concurrence

**PUBLIC VERSION**



Reference: *Audatex Canada, ULC v. CarProof Corporation,* 2015 Comp. Trib. 28
File No.: CT-2015-010
Registry Document No.: 078

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** an Application by Audatex Canada, ULC for an Order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*.

B E T W E E N:

**Audatex Canada, ULC**

(applicant)

and

**CarProof Corporation, Trader Corporation, and Marktplaats B.V.**

(respondents)

Decided on the basis of the written record.
Before Judicial Member: Gascon J. (Chairperson)
Date of Reasons for Order and Order: December 16, 2015

**REASONS FOR ORDER AND ORDER DISMISSING AN APPLICATION FOR LEAVE**

## I. OVERVIEW

**[1]** On October 1, 2015, Audatex Canada, ULC ("Audatex") applied to the Competition Tribunal, pursuant to section 103.1 of the *Competition Act*, RSC 1985, c C-34 (the "Act"), for leave to bring a refusal to deal application under section 75 of the Act. If leave is granted, Audatex seeks an order under subsection 75(1) of the Act directing CarProof Corporation ("CarProof"), Trader Corporation ("Trader") and Marktplaats B.V. ("Marktplaats") (collectively, the "Respondents") to accept Audatex as a customer and to supply Canadian automobile listings data to Audatex on usual trade terms.

**[2]** On November 6, 2015, each of CarProof, Trader and Marktplaats filed written representations in response to Audatex's leave application. Further to an order issued on October 29, 2015, the Tribunal granted leave to CarProof and Marktplaats to file affidavit evidence, along the terms and conditions set out in such order, as part of their representations in writing.

**[3]** On November 17, 2015, Audatex filed a reply, which included reply affidavit evidence as well as written representations. Audatex had not sought leave from the Tribunal to file additional affidavit evidence. The issue of the admissibility of that reply evidence will be dealt with below in Part II.D of these reasons.

**[4]** In support of its application for leave, Audatex submitted an affidavit sworn on October 1, 2015 by Mr. Gabor Toth, the Chief Financial and Operating Officer of Audatex (the "Toth Affidavit"). In its reply, Audatex also added affidavits sworn on November 17, 2015 by Mr. Jason Brady, the Senior Vice President, General Counsel and Secretary of Audatex's parent company Solera Holdings Inc. (the "Brady Affidavit") and by Mr. Alberto Cairo, Chief of Staff for North America of Solera (the "Cairo Affidavit"). With their respective responses, CarProof submitted an affidavit sworn on November 5, 2015 by Mr. Paul Antony, Chairman of the Board of CarProof (the "Antony Affidavit") and Marktplaats submitted an affidavit sworn on November 5, 2015 by Mr. Scott Neil, Director, Commercial Business with eBay GmBH (the "Neil Affidavit").

**[5]** Pursuant to subsections 103.1(1) and (6) of the Act, and subject to the ruling below, the Tribunal has relied on these affidavits and the written representations of the parties in deciding this application for leave.

**[6]** Audatex claims that it has provided sufficient credible evidence to satisfy the Tribunal that there is a reasonable possibility that its business is directly and substantially affected by the Respondents' refusal to deal, and that such refusal could be the subject of an order under section 75 of the Act. CarProof, Trader and Marktplaats collectively seek an order denying Audatex leave and dismissing the application, with costs, as Audatex has failed to provide sufficient credible evidence for each of the requirements set out in sections 75 and 103.1(7) of the Act. They further invite the Tribunal to exercise its discretion to refuse to grant leave, in accordance with subsection 103.1(7).

**[7]** For the reasons that follow, I am not satisfied that Audatex has met its burden under subsection 103.1(7) to apply for relief under the refusal to deal provision of the Act. Audatex's application for leave shall therefore be dismissed.

## II. BACKGROUND

### A. The Parties

#### a. Audatex

**[8]** Audatex is an Alberta corporation that provides data and software solutions to Canadian automobile insurance companies and automobile repair shops in order to streamline the accident claims process, both for estimating the cost of repairs and for calculating market values of automobiles. As part of the business Audatex describes as its "primary business", it offers two services to its customers: "total loss valuation" and "partial loss estimating". Audatex's affiliate, Audatex North America, Inc. ("Audatex North America"), provides similar services in the United States.



i. Total loss valuation services

**[9]** Audatex's total loss valuation services refer to the determination of the market values of damaged automobiles for its insurance company customers. In order to provide these services, Audatex relies on Canadian automobile listings data. These automobile listings data are information about an automobile that is contained in an advertisement listing an automobile for sale. Such advertisements almost always include the year, make and model of the automobile, as well as the asking price. Mileage, features, transmission type and colour of the automobile, amongst other details, are typically also included in automobile listings data. Automobile listings data is the product for which Audatex is seeking an order to supply.

**[10]** When an automobile is damaged in an accident, Audatex reviews automobile listings data for advertisements of automobiles that have similar characteristics as the damaged automobile and are within a close geographic proximity. Using proprietary algorithms, Audatex generates a total loss valuation for the damaged automobile. Audatex then prepares a report for the insurance company which includes information from the listings that underpin the total loss valuation (the "Valuation Report"). The total loss valuation generated by Audatex is a criterion by which insurers determine if it is preferable to make repairs to an automobile or, if the repair cost is greater than the market value of the automobile, to provide the policyholder with the total loss cash value.

ii. Partial loss estimating services

**[11]** Audatex's partial loss estimating services refer to automobile repair estimates offered to both its insurance company customers and its repair shop customers. The partial loss estimating services do not require the automobile listings data in question.

**[12]** In terms of revenues, the Toth Affidavit reports that approximately one-quarter of Audatex's revenues in its "primary business" originates from its total loss valuation services provided to insurance company customers. One-third comes from its partial loss estimating services sold to those insurance company customers. The remaining 45% of Audatex's revenues is generated by automobile repair shops purchasing its partial loss estimating services.

### b. The Respondents

**[13]** CarProof is headquartered in Ontario and its principal business is the sale of detailed vehicle-history reports (the "VHRs"). As stated in the Antony Affidavit, these VHRs are used by car sellers and buyers to obtain detailed information about a vehicle's past.

**[14]** In order to prepare its VHRs, CarProof uses various sources of data as inputs. These include "damage repair estimates" provided by repair shops following an accident. Audatex, HyperQuest, Inc. ("HyperQuest") (an American affiliate of Audatex) **[CONFIDENTIAL]** all collect this estimate repair data as part of their respective insurance business. CarProof purchases this estimate repair data through licenses obtained from Audatex North America **[CONFIDENTIAL]**.

**[15]** As a by-product of its VHR business and as an additional source of revenue, CarProof also sublicenses some of the data it sources to other industry participants.

**[16]** Another important source of data used by CarProof for its VHR business is automobile listings data. As it does for the estimate repair data, CarProof licenses automobile listings data from numerous sources in the United States and Canada, including Trader and Marktplaats. The Antony Affidavit states that **[CONFIDENTIAL]**. However, as it does with other sources of data, CarProof looks to use automobile listings data as an additional source of revenues through sublicensing some of this data to other industry participants. CarProof has never supplied automobile listings data to Audatex.

**[17]** Trader is based in Canada and owns the Canadian websites www.autotrader.ca and www.autohebdo.net (collectively "AutoTrader"). AutoTrader offers online automobile classified advertisements services that, for a fee, allow anyone to list an automobile for sale. In the course of its business, Trader has licensed certain automobile listings data to Audatex North America pursuant to an agreement called the "Data Licensing Agreement" (the "Trader Agreement"). The Trader Agreement terminated in August 2015 and is no longer in force.

**[18]** Marktplaats is headquartered in Amsterdam and operates the www.kijiji.ca website ("Kijiji"). Kijiji is an online classified advertisements service that allows dealers, for a fee, and anyone else, for free, to list an automobile for sale. Vehicle advertisements are live on Kijiji and publicly available for only a limited time. However, **[CONFIDENTIAL]**. The Neil Affidavit indicates that Marktplaats refers to that **[CONFIDENTIAL]** as the "Confidential and Proprietary Listing Data". Marktplaats has recently entered into a data licensing agreement with CarProof regarding its Confidential and Proprietary Listing Data. **[CONFIDENTIAL]**. The Neil Affidavit attests that Audatex has never been a customer of Marktplaats.

## B. The Relevant Facts

**[19]** Audatex complains that it no longer has access to the AutoTrader and Kijiji automobile listings data from Trader and Marktplaats. In September 2009, Audatex North America had entered into the Trader Agreement, pursuant to which Audatex received Canadian automobile listings data from Trader. It had a **[CONFIDENTIAL]**, which automatically renewed for additional **[CONFIDENTIAL]** terms unless either party gave at least **[CONFIDENTIAL]**

notice of termination prior to the end of the current term. On March 24, 2015, Trader sent Audatex North America a letter advising of its termination of the Trader Agreement, effective on August 31, 2015. Since that date, Audatex no longer receives automobile listings data from Trader. The Toth Affidavit states that the reason for terminating the Trader Agreement was because Trader had concluded a long-term, exclusive agreement to provide its Canadian automobile listings data to CarProof.



**[20]** With respect to the Kijiji automobile listings data, the Toth Affidavit indicates that Audatex had been using a computer script to access specific, relevant vehicle valuation information from Kijiji's online site. Audatex never had a formal supply agreement with Marktplaats. Starting in November 2014, Audatex unsuccessfully attempted to enter into an agreement with Marktplaats for access to Kijiji's Canadian automobile listings data. In July 2015, Kijiji requested that Audatex cease its practice of accessing data on Kijiji, which Marktplaats qualified in the Neil Affidavit as being "data scraping" and contrary to Kijiji's terms of use. The Toth Affidavit confirms that Audatex complied with Marktplaats' request. After that, and as discussed in more detail in the Brady Affidavit, Audatex continued discussions with CarProof for the possibility of an agreement to access Kijiji's automobile listings data. These were ultimately unsuccessful. The Toth Affidavit attests that, in August 2015, Audatex learned that Marktplaats had already entered into an exclusive supply agreement with CarProof with respect to Kijiji's automobile listings data.

**[21]** Audatex claims that access to AutoTrader's and Kijiji's Canadian automobile listings data is vital to its business. According to the Toth Affidavit, Audatex generated over **[CONFIDENTIAL]** Valuation Reports in the 2015 fiscal year and, since its algorithm requires at least **[CONFIDENTIAL]** comparable automobile listings in order to generate each Valuation Report, Audatex requires access to approximately **[CONFIDENTIAL]** Canadian automobile listings per month. Without access to either AutoTrader's or Kijiji's Canadian automobile listings data, Mr. Toth says that Audatex is not able to have a sufficient number of "new" listings per month, causing the Valuation Reports **[CONFIDENTIAL]**. This, according to Mr. Toth, severely restricts Audatex from continuing to provide its total loss valuation services.

**[22]** According to Mr. Toth, Audatex has recently procured Canadian automobile listings data from three different companies; **[CONFIDENTIAL]**. However, these listings combined fall **[CONFIDENTIAL]** short of the monthly new listings required by Audatex to continue to operate its total loss valuation services. In August 2015, Audatex also entered into negotiations with Boost Motor Group, but it was advised that Boost had entered into a long-term, exclusive agreement to provide automobile listing data to CarProof.

**[23]** Audatex tried to negotiate a satisfactory sublicense agreement with CarProof to have access to the AutoTrader and Kijiji automobile listings data but no agreement was reached. The Toth Affidavit, the Brady Affidavit, the Cairo Affidavit and the Antony Affidavit contain details on the exchanges between the parties, on the contractual terms discussed and on the areas of disagreement. There is no need to elaborate on those negotiations for the purpose of this application. Suffice it to say that CarProof was seeking some contractual conditions from Audatex, perceived by Audatex to be over and beyond the terms governing the simple sublicensing of the automobile listings data. CarProof viewed these as forming an integral part of

the agreement to be concluded with Audatex and reflective of the multifaceted nature of their business relationship. **[CONFIDENTIAL]**.

**[24]** I also note that, in August 2015, CarProof instituted legal proceeding against HyperQuest in the United States, seeking access to HyperQuest's estimate repair data and alleging that HyperQuest reneged on an agreement it had entered with CarProof in July 2014.



## C. The Parties' Arguments

**[25]** Audatex argues that the refusal of CarProof, Trader and Marktplaats to supply the AutoTrader and Kijiji automobile listings data directly and substantially affects its business. The Respondents dispute that.

**[26]** Audatex further claims that CarProof has purposefully and tactically concluded exclusive agreements with a number of suppliers of automobile listings data, including the key suppliers Trader and Marktplaats, and has thus eliminated competition in the supply of Canadian automobile listings data. These exclusive contracts have, despite Audatex's efforts, prevented it from negotiating access to such data going forward. While Audatex has been able to negotiate agreements for access to Canadian automobile listings data from a few smaller suppliers, it contends that it is unable to obtain adequate supplies of the product from other suppliers. Audatex pleads that it offered to meet and exceed CarProof's usual trade terms, but that CarProof was focused on extracting unconnected concessions from Audatex and its affiliates in the United States as a condition to providing Audatex with Canadian automobile listings data. Furthermore, Audatex submits that it is willing to obtain Canadian automobile listings data from Trader and Marktplaats on usual trade terms, in accordance with the range of market values attributed to such data. Finally, Audatex submits that, if it is not able to compete effectively, Mitchell, described in the Toth Affidavit as Audatex's only material competitor, will lose its most important competitive constraint. Competition will thus be adversely affected in the total loss valuation and partial loss estimating services, as this market would be reduced to only one major competitor. For those reasons, Audatex argues that an order could be issued under section 75.

**[27]** CarProof, Trader and Marktplaats respond that the product for which Audatex seeks relief is not the automobile listings data itself but a license to use the confidential and proprietary Trader and Marktplaats data. The Respondents only supply their automobile listings data through licenses and, based on the ratio in *Canada (Director of Investigation and Research) v Warner Music Canada Ltd.* (1997), 78 CPR (3d) 321 (Comp. Trib.), licenses are not products for the purposes of section 75 of the Act as they are not in "ample supply". Trader and Marktplaats further argue that Audatex's claimed inability to obtain adequate supplies is due to the allegedly anti-competitive conduct of CarProof, not a lack of competition among suppliers. CarProof says it has been more than willing to sublicense available automobile listing data to Audatex on fair and reasonable terms consistent with industry practice, and claims that its negotiations with Audatex reflect the complex relationship between the parties and the ubiquity of multi-faceted value exchanges in the industry. The Respondents also submit that Audatex does not provide information regarding the size of the downstream market which it claims will be affected by the refusal to deal, the size of Mitchell or its market power absent Audatex's participation, or the number and size of competitors in that market. Therefore, the Tribunal could not have reason to believe that an order could be issued under the refusal to deal provision.

**[28]** The Respondents finally argue that the Tribunal should in any event exercise its discretion not to grant leave. Marktplaats states that Audatex's conduct in scraping the Kijiji website should disentitle it from applying for an order under section 75, as it would compel Marktplaats to do business with a party that knowingly violated its rights by breaching the Kijiji terms of use. Marktplaats also claims that Audatex was the author of its own misfortune due to its apparent failure to act timely to secure a license from Marktplaats (and other licensors). In their view, the Tribunal should not permit the private application process under section 75 to be used as a mechanism for ineffective or unsuccessful competitors to interfere in the competitive process.



## D. The Reply Affidavit Evidence

**[29]** There is disagreement between the parties on the admissibility of Audatex's reply affidavit evidence as part of this application for leave.

**[30]** On behalf of the Respondents, CarProof requests that the Brady Affidavit and the Cairo Affidavit filed as part of Audatex's reply be struck from the record. CarProof claims that Rule 120 of the *Competition Tribunal Rules*, SOR/94-290 (the "Rules") only contemplates that a person may serve a reply, not a "reply record", at the leave application stage. Contrary to Rule 115 (which expressly allows an applicant to file affidavit evidence) or to Rule 119 (which allows a respondent to file such evidence with leave of the Tribunal), Rule 120 does not contemplate the filing of additional affidavit evidence as part of a reply by an applicant for leave. Relying on the order issued by Mr. Justice Blanchard in *Nadeau Poultry Farm Limited v Groupe Westco Inc et al*, 2008 Comp. Trib. 6 ("*Nadeau Reply Order*") at para 4, CarProof contends that a reply must be limited to legal argument, excluding additional affidavit evidence.

**[31]** Audatex replies that Rule 120 specifically provides for an applicant for leave under section 103.1 to serve a "reply" and that, unlike Rule 119, Rule 120 does not require the applicant to seek leave to include affidavit evidence in the reply. Audatex contends that the right of reply granted by Rule 120 would be meaningless if it did not permit an applicant, by way of reply evidence, to respond to factual allegations made by a respondent. Audatex states that the *Nadeau Reply Order* predates Rule 120 and refers to *B-Filer Inc v The Bank of Nova Scotia*, CT-2005-06, where the applicant was permitted to file reply affidavit evidence. Audatex pleads that no unfairness or injustice would be caused to CarProof by allowing the reply affidavit evidence and that the right of an applicant to file non-repetitive reply evidence responsive to factual allegations is well-established. Audatex also claims that striking the reply evidence would unfairly and unjustly deny Audatex the right to reply to the Respondents' factual representations, as well as depriving the Tribunal of valuable evidence on which to make its determination.

**[32]** I disagree in part with Audatex and conclude that some portions of the reply affidavit evidence cannot be allowed and must be struck.

**[33]** Rule 120 simply provides that "[the] person making an application for leave under section 103.1 of the Act may serve a reply on each person against whom an order is sought (…)". Contrary to the language used in Rules 115 and 119, no reference is made to affidavit evidence or even to the possibility of seeking leave for it in the context of a reply. Audatex's claim that Rule 120 provides for the right to file an entire reply record, encapsulating a reply affidavit, is

without merit. In the context of applications for leave, filing an affidavit in reply is contemplated neither explicitly nor implicitly by the Rules. In fact, given the express language found in Rules 115 and 119, the only reasonable interpretation of Rule 120 is that no reply affidavit evidence is to be submitted. This, in my view, is consistent with the nature of an application for leave under section 103.1 of the Act, which is meant to be a summary process (*Symbol Technologies Canada ULC v Barcode Systems Inc.*, 2004 FCA 339 ("*Barcode FCA*") at para 19). Audatex's unilateral filing of affidavit evidence with its reply is therefore not permissible under the Rules.

**[34]** I do, however, mention that Rule 2 permits the Tribunal to "dispense with, vary or supplement the application of any of [the] Rules in a particular case in order to deal with all matters as informally and expeditiously as the circumstances and consideration of fairness permit". Audatex could therefore have sought permission from the Tribunal, under Rule 2, to file reply affidavit evidence by way of a motion. Alternately, Audatex could have addressed a more informal letter to the Tribunal, as per the requirements of Rule 81. Audatex did not. It just decided to file a reply record.

**[35]** Audatex defends its position by invoking that the "general right of an applicant to file non-repetitive reply evidence which is responsive to the factual allegations of a respondent is well established". In the context of summary processes like an application for leave under section 103.1 of the Act, this is only partly correct. The exercise of such a "right" requires permission. By analogy, I refer to applications under Part V of the *Federal Court Rules*, SOR/98-106 (the "FCR"), where no "right" to file reply affidavit evidence is contemplated after parties submit their respective affidavits. Applications governed by Part V of the FCR are summary proceedings meant to be dealt with without delay. Pursuant to Rule 312 of the FCR, a party (whether an applicant or a respondent) needs to obtain leave of the Federal Court in order to file additional affidavits. In the exercise of its discretion, the Court will consider factors such as whether the evidence sought to be adduced was available when the party filed its initial affidavits or could have been available with the exercise of due diligence, whether the evidence will assist the Court and serve the interest of justice, and whether the evidence will cause substantial or serious prejudice to the other parties (*Forest Ethics Advocacy Assn v National Energy Board*, 2014 FCA 88 at para 6; *Rosenstein v Atlantic Engraving Ltd*, 2002 FCA 503 at paras 8-9). Since a party must put its best case forward at the first opportunity, the discretion of the Court to permit the filing of additional material should be exercised with great circumspection (*Mazhero v Canada (Industrial Relations Board)*, 2002 FCA 295 at para 5).

**[36]** In my view, in the context of a summary process like an application for leave under section 103.1 of the Act, these principles apply even more forcefully.

**[37]** That being said, it is important to step back and consider CarProof's request to strike Audatex's reply affidavit evidence in the context of this particular application for leave. In this matter, the Tribunal has allowed CarProof and Marktplaats to file affidavit evidence, as part of their respective responses, limited to certain specific and discrete facts meeting the exception contemplated by Rule 119(3) (*Audatex Canada, ULC v CarProof Corporation*, 2015 Comp. Trib. 13 ("*Audatex Affidavit Order*") at para 16). In the case of CarProof, it was in relation to "[the] alternative sources of data available to Audatex within the industry; the proprietary and confidential nature of the data that Audatex seeks to license; and the terms on which CarProof has made the data available to Audatex and Audatex' alleged unwillingness to meet the relevant

terms of trade" (*Audatex Affidavit Order* at para 28). In the case of Marktplaats, it was limited to "the confidential and proprietary nature of the data Audatex is seeking to license from Marktplaats; and the data licensing agreement between CarProof and Marktplaats" (*Audatex Affidavit Order* at para 29).

**[38]** In those circumstances, and bearing in mind the principles set out above, I believe that, pursuant to Rule 2, the Tribunal could have supplemented the application of Rule 120 and allowed Audatex to file reply affidavit evidence to respond to this specific factual evidence. While Audatex should have asked the Tribunal permission to do so prior to or at the time of filing its reply affidavit evidence, I am satisfied that the Tribunal can exercise its discretion to consider the application of Rule 2 at this stage. However, Audatex's reply affidavit evidence could only be allowed to the extent that it is responding to the factual evidence filed by CarProof and Marktplaats and for which specific, tailored leave has been granted by the Tribunal. This is what Audatex did for most of its reply evidence, but this is not the case for those paragraphs of the Cairo Affidavit dealing with Audatex's substantial harm and the effect of not having the listings data on Audatex's business. The Respondents made written representations about this issue but neither the Antony Affidavit nor the Neil Affidavit provide factual evidence on Audatex's business. I therefore cannot conclude that the portions of the Cairo Affidavit dealing with this matter constitute proper reply evidence in the context of these proceedings. I further note that the Cairo Affidavit does not specify whether this additional evidence of harm was available or could have been available to Audatex before it filed its application on October 1, 2015.

**[39]** As a result, the following portions of Audatex's reply evidence (and the corresponding portions of its Memorandum of Fact and Law relying upon such evidence) cannot be accepted on the record and will not be considered by the Tribunal: paragraphs 15 to 19 of the Cairo Affidavit. However, given that the remaining portions of the Cairo Affidavit, as well as the entire Brady Affidavit, respond to new factual evidence filed by CarProof and Marktplaats, I will exercise my discretion to allow that evidence to be part of the record in this proceeding.

**[40]** I have one final comment. In these proceedings, the request to file affidavit evidence in response was not made by way of a formal motion. Instead, CarProof and Marktplaats both sent letters to the Tribunal outlining the topics they wished to address in their affidavit evidence. Such a process is perfectly in line with Rule 2, and the Tribunal accepted it. However, by doing so, the Tribunal did not have much detail on the actual contents of the affidavits intended to be filed. Going forward, it would be helpful for the Tribunal if respondents seeking leave to file affidavit evidence in response to an application for leave file, along with their request, a draft of the affidavit evidence they seek to produce. In this case, that would have allowed the Tribunal to better and more quickly assess whether the contemplated evidence fell within the principles and guidance set out in the *Audatex Affidavit Order*. Similarly, if an applicant seeks leave or permission from the Tribunal, under Rule 2, to file reply affidavit evidence, it would be helpful for the Tribunal to have a draft of the affidavit evidence intended to be produced. Such reply affidavit evidence will typically have to be limited to the issues covered in the respondent's affidavit evidence.

## III. ANALYSIS

### A. The Leave Test

**[41]** Subsection 103.1(7) of the Act sets out the test for leave on an application under section 75 of the Act. It reads as follows:

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| **103.1**(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section. | **103.1**(7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles. |



**[42]** The test to be followed on an application for leave in refusal to deal cases was first articulated by Madam Justice Dawson in *National Capital News Canada v Milliken*, 2002 Comp. Trib. 41 ("*Milliken*") at para 14. It was subsequently adopted by the Federal Court of Appeal in 2004 in *Barcode FCA* when it considered an appeal of the Tribunal's decision to grant leave. The test has been followed since then by the Tribunal in section 103.1 matters. Pursuant to this test, the Tribunal must determine two elements: whether the application for leave is supported by sufficient credible evidence to give rise to a *bona fide* belief that 1) the applicant is directly and substantially affected in its business by the refusal to deal; and 2) the practice in question could be subject to an order under section 75. There is no dispute between the parties that this is the test to be applied in this leave application.

**[43]** In *Barcode FCA*, the Federal Court of Appeal further noted that leave applications are to be dealt with summarily and that, when determining whether to grant leave, the Tribunal's role is a screening function based on the sufficiency of evidence advanced (*Barcode FCA* at para 24). The evidence is looked at on a scale which is less than the balance of probabilities (*Barcode FCA* at para 17). However, it is not sufficient that the evidence shows a mere possibility that the business may be directly and substantially affected. The standard of proof requires the "existence of reasonable grounds for a belief" (*Milliken* at paras 9-10).

**[44]** While the test is a lower standard of proof than proof on a balance of probabilities, "it is important not to conflate the lower standard of proof on a leave application with what evidence must be before the Tribunal and what the Tribunal must consider on that application" (*Barcode FCA* at para 18). As Mr. Justice Rothstein said in that decision, the refusal to deal required is not "simply a refusal by a supplier to sell a product to a willing customer" (*Barcode FCA* at para 18). It has to meet the elements mapped out in section 75, and these must all be addressed by the Tribunal before granting leave.

**[45]** With respect to the first part of the test under subsection 103.1(7) (being "directly and substantially affected by a refusal to deal"), the terms "directly" and "substantially" should be given their ordinary meaning. For the "substantial" component, terms such as "important" are acceptable synonyms to considering whether there has been a "substantial" impact, which is

ultimately assessed by reviewing the circumstances at issue (*Canada (Director of Investigation and Research) v Chrysler Canada Ltd* (1989), 27 CPR (3d) 1 (Comp. Trib.), aff'd 38 CPR (3d) 25 (FCA) at para 64). In the *Nadeau* decision on the merits, Mr. Justice Blanchard specified that "the Applicant need not demonstrate that it is affected by the refusal to the point of it being unable to carry on its business. Rather, it is required to establish on a balance of probabilities that it is affected in an important or significant way" (*Nadeau Poultry Farm Limited v Groupe Westco Inc et al*, 2009 Comp. Trib. 6 ("*Nadeau Final Order*") at para 131, aff'd 2011 FCA 188). The "direct" component has not been interpreted, but its ordinary meaning calls for a close nexus between the refused supply and the impact on an applicant's business.

**[46]** Turning to the second part (whether the refusal "could be the object of an order"), all the elements of the refusal to deal set out in subsection 75 (1) of the Act must be addressed (*Barcode FCA* at para 18). In order to grant leave, the Tribunal must be satisfied that "each of the elements set out in subsection 75(1) could be met when the application is heard on the merits" (*B-Filer Inc v The Bank of Nova Scotia*, 2005 Comp. Trib. 38 ("*B-Filer Leave*") at para 53). The Tribunal may address each element summarily in keeping with the expeditious nature of the leave proceeding and, "[a]s long as it is apparent that each element is considered, the Tribunal's discretionary decision to grant or refuse leave will be treated with deference by [the Federal Court of Appeal]" (*Barcode FCA* at para 19).

**[47]** At the leave stage, the question of whether the reviewable conduct "could" be subject to an order is being considered in an application which is not supported by a full evidentiary record (*The Used Car Dealers Association of Ontario v Insurance Bureau of Canada*, 2011 Comp. Trib. 10 ("*Used Car Dealers*") at para 32). Madam Justice Simpson added in *Used Car Dealers* that, in applying this part of the test and considering if an order is possible, "hard and fast evidence" is not required on every point and that "reasonable inferences may be drawn where the supporting grounds are given and circumstantial evidence may be considered" (*Used Car Dealers* at para 34).

**[48]** Subsection 75(1) of the Act sets out five elements to be met for a refusal to deal under that provision. It reads as follows:

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| **75**.(1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that | **75**.(1) Lorsque, à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, le Tribunal conclut : |
| (*a*) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms, | *a*) qu'une personne est sensiblement gênée dans son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer un produit de façon suffisante, où que ce soit sur un marché, aux conditions de commerce normales; |
| (*b*) the person referred to in paragraph (*a*) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market, | *b*) que la personne mentionnée à l'alinéa *a*) est incapable de se procurer le produit de façon suffisante en raison de l'insuffisance de la concurrence entre les fournisseurs de ce produit |

(*c*) the person referred to in paragraph (*a*) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

(*d*) the product is in ample supply, and

(*e*) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

sur ce marché;

*c*) que la personne mentionnée à l'alinéa *a*) accepte et est en mesure de respecter les conditions de commerce normales imposées par le ou les fournisseurs de ce produit;

*d*) que le produit est disponible en quantité amplement suffisante;

*e*) que le refus de vendre a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché,

le Tribunal peut ordonner qu'un ou plusieurs fournisseurs de ce produit sur le marché en question acceptent cette personne comme client dans un délai déterminé aux conditions de commerce normales à moins que, au cours de ce délai, dans le cas d'un article, les droits de douane qui lui sont applicables ne soient supprimés, réduits ou remis de façon à mettre cette personne sur un pied d'égalité avec d'autres personnes qui sont capables de se procurer l'article en quantité suffisante au Canada.



**[49]** If there is insufficient evidence dealing with one of the elements of subsection 75(1), leave cannot be granted (*Brandon Gray Internet Services Inc v Canadian Internet Registration Authority*, 2011 Comp. Trib. 17 ("*Gray*")). In that case, a "bald statement of belief" about adverse impact on competition in the market (such as simply stating that the termination of supply will result in reduced competition), without any supporting evidence, was not considered sufficient by the Tribunal, and therefore leave was not granted (*Gray* at para 13). In brief, if an applicant for leave fails to provide some cogent evidence to demonstrate that each element of subsection 75(1) could be met, leave will be denied.

**[50]** I add one other remark. While sections 75 and 103.1 provide for a private right of action for refusals to deal, they are part of the Act and must be considered in the context of this legislation and what it aims to protect and accomplish. As Mr. Justice Rothstein said in *Barcode FCA*, "[the] basic purpose of the *Competition Act* as described in subsection 1.1 is 'to maintain and encourage competition in Canada' and the purpose of section 75 is in furtherance of that objective" (*Barcode FCA* at para 14). He elaborated on that point further in his reasons, restating the purpose of the Act to maintain and encourage competition and adding that "[i]t is not to provide a statutory cause of action for the resolution of a dispute between a supplier and a customer that has no bearing on the maintenance or encouragement of competition" (*Barcode FCA* at para 23).

**[51]** In *Barcode FCA*, Mr. Justice Rothstein was more specifically referring to the requirement of paragraph 75(1)(*e*) of an adverse effect on competition in a market. However, I note that the overarching concern about the competition and market-related dimension of the refusal to deal provision is also reflected in the language of paragraph 75(1)(*b*) requiring that the inability to obtain adequate supplies result from "insufficient competition among suppliers of the product in the market". Insufficient competition has been held to mean that the competitive conditions in the market for the supply of the product must be the "overriding reason" that adequate supplies are not available (*Canada (Director of Investigation and Research) v Xerox*, [1990] CLD 1146 at para 83; *Nadeau Final Order* at para 229; *Nadeau Poultry Farm Limited v Groupe Westco Inc et al*, 2011 FCA 188 at para 61).

**[52]** Both of these components of section 75 (i.e., paragraphs 75(1)(*b*) and (*e*)) reflect the fact that the provision is not there to arbitrate private contractual disputes relating to the supply of a product in circumstances where the refusal to deal does not result from insufficient competition and does not have a market impact.

### B. The Requirement of Direct and Substantial Effect

**[53]** I now turn to the first part of the test: whether the evidence before the Tribunal is sufficient to satisfy it that there is reason to believe Audatex's allegations that it is directly and substantially affected in its business by a practice referred to in section 75. There are two dimensions to this requirement: a direct and substantial effect on Audatex's business, and a causality link with the Respondents' alleged refusal to deal.

**[54]** It is well-established that the business to be considered on a leave application pursuant to section 75 of the Act is the entire business of the applicant, not simply the product line affected by the refusal to supply (*Sears Canada Inc v Parfums Christian Dior Canada Inc*, 2007 Comp. Trib. 6 ("*Sears*") at para 21). The substantiality of the effect must therefore be measured against that whole business. In addition, the case law developed by the Tribunal in applications for leave has also reflected the fact that the effect to be looked at and considered is the impact attributable or linked to those entities whose supply is being refused. Subsection 103.1(7) indeed refers to the applicant being directly and substantially affected "by the practice".

**[55]** I have assumed, for the purpose of this decision, that Audatex is "directly" affected in its business by the Respondents' refusal but, for the reasons that follow, I am not satisfied that Audatex has provided sufficient credible evidence to give rise to a *bona fide* belief that it is or may be substantially affected in its business by the Respondents' refusal to supply automobile listings data. I instead find that Audatex has failed to submit sufficient non-speculative, cogent evidence to give me reasonable grounds to believe that the impact of the refusal on its total loss valuation and partial loss estimating services could reasonably be considered to constitute a "substantial" effect, even if only its "primary business" were considered.

### a. Audatex's evidence

**[56]** Audatex claims that its business is directly and substantially affected now that it is not able to receive the AutoTrader and Kijiji automobile listings data from either CarProof, Trader or Marktplaats. The Toth Affidavit describes them as the only sufficiently large sources of data to enable Audatex to produce **[CONFIDENTIAL]** Valuation Reports for its customers. In essence, Audatex contends that the refusal to supply affects the entirety of its total loss valuation services where the automobile listings data is needed and that, as described in the paragraph below, it also impacts its partial loss estimating services and thus the totality of its "primary business".

**[57]** Paragraphs 42 to 45 of the Toth Affidavit summarize Audatex's allegation of substantial harm:

> **42** Given the need for current automobile listing data and the insufficiency of Audatex's other data sources, Audatex's total loss valuation service will soon begin to experience significant performance issues if access to sufficient Canadian automobile listings data is not restored.
>
> **43** As Audatex's performance dips below the accepted service levels in its customer agreements, its customers will be able to terminate their contracts. Additionally, the uncertainty of the situation will likely cause Audatex's customers who are in the contract renewal process to reconsider staying with Audatex. In fact, **[CONFIDENTIAL]**. Audatex is concerned that the current situation will negatively impact those negotiations.
>
> **44** Once Audatex can no longer provide the total loss valuation service, all revenues and profits generated from it will be lost. As set out in Exhibit "3", Audatex's total loss valuation service, which generates approximately one-quarter of its revenues and profits will rapidly decline to zero as Audatex can no longer meet the mandated service levels in its customer agreements. Given that Audatex's insurance company customers are able, and I believe will in all likelihood want, to cancel their partial loss estimating service upon cancelling or losing their total loss valuation service, I expect that a further one-third of Audatex's revenues and profits will also be severely impacted. Finally, without any insurance company customers themselves using or mandating automobile repair shops to contract with Audatex, I believe the remaining revenues and profits, derived from automobile repair shops, will also steadily shrink.
>
> **45** In other words, Audatex's entire business is in jeopardy.

**[58]** The Toth Affidavit specifies that access to sufficient Canadian automobile listings data is critical to Audatex's business, and that Audatex requires access to approximately **[CONFIDENTIAL]** Canadian automobile listings per month for its total loss valuation services (of which approximately **[CONFIDENTIAL]** would be new listings). The Toth Affidavit adds that its recently procured listings from **[CONFIDENTIAL]** together represent a monthly shortfall in the order of **[CONFIDENTIAL]** on new listings.

**[59]** According to Mr. Toth, Audatex's total loss valuation services represent approximately one-quarter of the revenues and profits from its "primary business", and the Respondents' refusal will affect all of this line of business. In addition, these services are said to be inextricably linked

to Audatex's partial loss estimating services. The Toth Affidavit describes the close link between these two services by saying that the vast majority of Audatex's insurance company customers use both services. **[CONFIDENTIAL]**, those who do not use both services use only the total loss valuation services. Referring to Audatex's agreements with two insurance company customers, the Toth Affidavit specifies that the customers purchasing both services do so pursuant to a single bundled contract which allows them to terminate the entire contract if Audatex fails to provide either of the services at the agreed upon service levels. As it is easier to deal with one service provider for both total loss valuation and partial loss estimating services, Mr. Toth expects that Audatex's insurance company clients can and would, in all likelihood, terminate use of Audatex's services altogether if it cannot provide a total loss valuation service. The Toth Affidavit attests that this will result in a further loss of approximately one-third of Audatex's revenues and profits.



**[60]** The Toth Affidavit then adds that, if an insurer drops Audatex as a supplier, the incentive for automobile repair shops dealing with that insurer to remain with Audatex is weakened, if not completely eliminated. Mr. Toth expects that, with the loss of insurer clients, Audatex's automobile repair shops will have less incentive to remain customers, thereby dissipating Audatex's remaining revenues and profits in its partial loss estimating services. The Toth Affidavit refers to Audatex's Repair Shop Template in that respect. As a result, the Toth Affidavit claims that the entirety of Audatex's "primary business" is directly and substantially affected by CarProof's refusal to deal. Mr. Toth further states that without automobile listings data from AutoTrader and Kijiji, insurance companies and their policy holders will question the legitimacy of the Valuation Reports, and have a lack of confidence in the Valuation Reports' conclusions. The Toth Affidavit refers to **[CONFIDENTIAL]** in relation to that issue.

**[61]** In essence, the Toth Affidavit asserts that Audatex will be directly and substantially affected in its business in two phases. First, the refusal will impact its total loss valuation services where the automobile listings data are directly used. Second, the detrimental impact will expand to its partial loss estimating services even though the automobile listings data are not needed for those. I will review these two claims in turn.

### b. The effect on Audatex's total loss valuation services

**[62]** The refusal to supply complained of by Audatex relates to one product, the automobile listings data. The Toth Affidavit indicates that this input is only used in Audatex's total loss valuation services, which is one of its lines of business. In order to determine whether there is sufficient credible evidence to have a *bona fide* belief that Audatex may be directly and substantially affected in its business by the alleged refusal to supply automobile listings data from the Respondents, the Tribunal must thus first consider the evidence on the magnitude of the supply being refused and the impact of the refusal on Audatex in the context of its overall business.

**[63]** The Toth Affidavit states that Audatex is engaged in the supply of "data and software solutions" to insurance companies and automobile repair shops. The Toth Affidavit then attests that:

> **13** 55% of Audatex's revenues from its automobile accident claims business are from insurance company customers, including independent appraisers, with revenues from the automobile repair shops making up the balance. 40% of Audatex's insurance company revenues are generated from its total loss valuation services. In other words, with respect to total revenues from Audatex's primary business, approximately one-quarter is made up of insurance company customers with respect to total loss valuation services, one-third is made up of insurance company customers with respect to partial loss estimating services, and 45% is made up of automobile repair shops with respect to partial loss estimating services […].
>
> (emphasis added)



**[64]** The financial figures referred to in the Toth Affidavit are limited to Exhibit 3 containing one page entitled "PnL By Line of Business" for the year ended June 30, 2015. It refers to total revenues of approximately **[CONFIDENTIAL]** from **[CONFIDENTIAL]**, and distinguishes between Partial Loss and Total Loss. The percentages mentioned in the Toth Affidavit are drawn from the figures in Exhibit 3. The Toth Affidavit speaks of Audatex's "primary business", but I observe that there is no indication as to what this "primary business" represents in Audatex's "data and software solutions" business, and what its share is in the overall business of Audatex. There is no other reference, in the Toth Affidavit (or in the Brady and Cairo Affidavits), to figures or financial statements relating to Audatex's total business.

**[65]** In other words, the Toth Affidavit does not provide clear evidence on the total business of Audatex or on the relative place of its "primary business" in Audatex's supply of data and software solutions. I further note that the "approximately one-quarter" reference used by the Toth Affidavit to reflect the proportion of its "total loss valuation" services is in fact 22% (i.e., 40% of 55%). This 22% figure indeed corresponds to the ratio of the total loss valuation business from its insurance company customers and independent appraisers to the total revenues of **[CONFIDENTIAL]** reported on the P&L statement attached to the Toth Affidavit at Exhibit 3. When the **[CONFIDENTIAL]** revenue stream is excluded, that proportion is identified as 23% in Exhibit 3. But there is no indication as to what this "approximately one-quarter" (or in fact 22-23%) of Audatex's "primary business" would actually be as a proportion of Audatex's overall business.

**[66]** Furthermore, I observe that "approximately one-quarter" (or 22-23%) represents the totality of Audatex's total loss valuation services. The Toth Affidavit does not provide information on the actual supply of AutoTrader and Kijiji automobile listings data lost by Audatex from Trader, Marktplaats and/or CarProof, or on the proportion of Audatex's total purchases of automobile listings data represented by the Respondents. The Toth Affidavit only states that, until recently, Audatex relied "primarily" on the AutoTrader and Kijiji listings data. The Toth Affidavit does not describe the total AutoTrader automobile listings data that was supplied by Trader (when Audatex had the Trader Agreement with it) and that it lost at the end of August 2015. As to the Kijiji automobile listings data, the Neil Affidavit states that Audatex never was a customer of Marktplaats, and there is also no information regarding the magnitude

of Kijiji automobile listings data that Audatex had access to with its "computer script" prior to the notice it received in July 2015 to cease using the Kijiji data. The only financial figures provided reflect Audatex's revenues for the entirety of its total loss valuation services. It is therefore not possible for the Tribunal to tell precisely what is the refused supply of AutoTrader and Kijiji automobile listings data actually required for Audatex's total loss valuation business.

**[67]** The Toth Affidavit however says that Audatex requires **[CONFIDENTIAL]** automobile listings data per month. It further estimates that AutoTrader posts 1.1 million listings per month and Kijiji 760,000 listings. Arguably, the Tribunal could deduct from these figures that supplies from the Respondents "could" account for about **[CONFIDENTIAL]** of Audatex's total supply of automobile listings data, assuming Audatex had indeed used all the potential supply available from these two sources. Based on this information, the lost supply of the AutoTrader and Kijiji automobile listings data could represent about **[CONFIDENTIAL]** of Audatex's total loss valuation business, which is itself only approximately one-quarter (22-23%) of the total revenues of its "primary business".



**[68]** I note that, in its reply submissions, Audatex did not clarify the issue of its "primary business" or the proportion represented by its total loss valuation services in its overall business, despite the arguments made by the Respondents in their responses and raising concerns about the information provided by Audatex on the magnitude of its business. This is evidence that only Audatex could have provided. I appreciate that there will inevitably be incomplete information on some topics at the application for leave stage (*Used Car Dealers* at para 32). However, sufficient and credible information on the applicant's own business and on the proportion represented by the suppliers refusing to supply are fundamental and basic elements needed by the Tribunal in order to be able to have a *bona fide* belief of a direct and substantial effect pursuant to subsection 103.1(7) of the Act.

**[69]** I pause to point out that this type of evidence was typically available to the Tribunal in those cases where it decided to grant an application for leave under section 103.1 of the Act. In *Nadeau Poultry Farm Limited v Groupe Westco Inc et al*, 2008 Comp. Trib. 7 (*"Nadeau Leave Order"*) for example, the evidence of substantial effect was found sufficient by the Tribunal. The applicant had provided figures showing that the exact supply held by the respondents represented 48% of the overall chicken processing business of the applicant. This allowed the Tribunal to have a reliable measure of the impact of the intended cut-off in supply, which had not yet occurred in that case. In the current case, the evidence does not clearly indicate to the Tribunal the proportion of the supply represented by the Respondents in Audatex's total loss valuation business, and what the total loss valuation business represents within Audatex's total business (over and above its "primary business"). The only figure the Tribunal has is the "approximately one-quarter" (in fact 22-23%) for Audatex's total loss valuation services.

### c. The effect on Audatex's partial loss estimating services

**[70]** Audatex also claims that, even though the automobile listings data supplied by the Respondents is only used for its total loss valuation services, and that these total loss valuation services only account for approximately one-quarter (22-23%) of its "primary business", the refusal will also impact its partial loss estimating services which account for the remaining 77-78% of its "primary business". These partial loss estimating services are sold to both insurance

company customers (33%) and to repair shops (45%). Since the automobile listings data refused to Audatex is not used as input for Audatex's partial loss estimating services, sufficient credible evidence needs to be adduced to illustrate how the refusal to supply may end up impacting this other line of business representing three times the revenues generated by Audatex's total loss valuation services.

**[71]** Relying on Audatex's Master Services Agreements with the **[CONFIDENTIAL]**, which both contemplate the provision of total and partial loss services as a single bundle, Mr. Toth states that all of Audatex's business with insurance companies, whether total loss valuation or partial loss estimating services, will be affected by the refusal to deal. The Toth Affidavit speaks of some insurance company customers purchasing both types of services through a single bundled contract which "allows them to terminate the entire contract" if Audatex fails to provide both services. Then, the Toth Affidavit adds that "frequently", its repair shop customers are mandated to deal with Audatex through the insurance company customers. So, if an insurer drops Audatex as a customer, Mr. Toth "expects that the automobile repair shops will begin providing notices of termination". The Toth Affidavit later refers to "automobile repair shops generally" selecting a service provider based on insurance company preferences. From that sequence of events, the Toth Affidavit draws the conclusion that "Audatex's revenue from both total loss and partial loss services is jeopardized if it can no longer access sufficient Canadian automobile listings data to provide total loss valuation services".

**[72]** Audatex relies on this evidence from the Toth Affidavit to claim that the refusal to supply will affect the totality of the partial loss estimating services provided to insurance company customers (representing one-third of its "primary business") as well as the totality of the partial loss estimating services provided to repair shop customers (representing 45% of its "primary business"). Repair shop customers do not use Audatex's total loss valuation services.

**[73]** I am not persuaded that this constitutes sufficient credible evidence to support a *bona fide* belief that Audatex may be "directly and substantially" affected in its other line of business of partial loss estimating services to insurance customers and even less so, to repair shops. I cannot find in the Toth Affidavit the elements to allow the Tribunal to have reasonable grounds to believe that the refusal to supply automobile listings data could have such an impact on a line of business which represents more than three-quarters of Audatex's "primary business" and where the refused automobile listings data are not required. Apart from the scenarios described by Mr. Toth, there are no examples or circumstantial evidence supporting the allegations being made.

**[74]** The Toth Affidavit states that "it is simpler and more efficient to deal with one service provider for both total and partial loss estimating services", but Mr. Toth does not offer credible supporting evidence on that connection. No evidence from insurance company customers has been adduced on this point. The Toth Affidavit only relies on the contractual language referring to the bundled package. There is also no reference to experiences of insurance company customers having terminated their whole contract or threatening to do so because of poor performance or other issues in one of the two services. Similarly, no evidence was provided with respect to past experiences of contract terminations by insurance company customers and their effect on the partial loss estimating services purchased by repair shops. Neither is there evidence adduced regarding the incentive for automobile repair shops dealing with a specific insurer to remain with Audatex only as long as such insurer deals with Audatex; or regarding situations

where repair shop customers have raised this prospect as a reason to terminate their business with Audatex.

**[75]** I agree with the Respondents that Audatex's allegations in respect of its partial loss estimating services are based on speculation. I find that the Toth Affidavit relies on a complex chain of cascading assumptions that are based on what might occur in the future with respect to Audatex's business other than total loss valuation services, with no credible evidence in support. The allegations are essentially based on an interpretation of certain contractual provisions. The Toth Affidavit contains no evidence from insurance company customers expressing concerns that the lack of AutoTrader or Kijiji automobile listings data could impact their partial loss estimating business. As CarProof pointed out in its submissions, Mr. Toth does not identify a single insurance customer (or repair shop customer) that has threatened to terminate its agreement with Audatex, despite the fact that Audatex no longer receives supplies of automobile listings data from AutoTrader and that it can no longer use its computer script to access the Kijiji automobile listings data. Similarly, with respect to the allegation that automobile repair shops generally select a service provider based on insurance company preferences, there is no specific evidence of a repair shop having such a practice or stating an intention to terminate on that basis.

**[76]** It is of note that the partial loss estimating services account for 77-78% of Audatex's "primary business" (according to Exhibit 3 of the Toth Affidavit), and the automobile listings data which form the basis of Audatex's complaint are not required as supply for that business. To support an allegation that the refusal to supply such data would affect this line of business to the point where it is substantially affected and that Audatex's whole business is in jeopardy would require more than the general assertions contained in the Toth Affidavit.

**[77]** It bears underscoring that, at the leave application stage, the evidence only needs to show a reasonable possibility that Audatex's business may have been directly and substantially affected. However, with respect to the effect on Audatex's partial loss estimating services, I find that the evidence adduced by Audatex only amounts to a mere possibility and is speculative. In a situation like this where the contemplated detrimental effect of the refusal to supply is through a series of indirect events affecting a line of business which accounts for the vast majority of Audatex's "primary business", I am not satisfied that Audatex's evidence is sufficient.

**d. Conclusion on direct and substantial effect**

**[78]** The Tribunal is essentially left with an alleged impact on Audatex's total loss valuation business. Even if the Tribunal were to accept that all of Audatex's total loss valuation services business can be considered to be directly affected by the Respondents' refusal to supply automobile listings data (despite the fact that these supplies only account for a portion of the automobile listings data used by Audatex in that business), and even if the Tribunal were to accept that Audatex's "primary business" represents its total business (despite unclear evidence about that), I am not persuaded that, overall, the figures and evidence provided constitute sufficient credible evidence to allow the Tribunal to reasonably believe that Audatex may be directly and substantially affected in its business.

**[79]** Audatex's own evidence indicates that the total loss valuation services at issue represent only about one-quarter (or in fact 22-23%) of Audatex's total revenues in its "primary business".

And, as mentioned above, the evidence on the effect on the remaining partial loss estimating services is at best speculative. This, in my opinion, is insufficient to establish that Audatex could be affected in an important or significant way by the alleged refusal. An effect of this magnitude does not rise to the level of substantial effect typically considered sufficient by the Tribunal to grant applications for leave under subsection 103.1(7).

**[80]** In the reasons allowing the application for leave in the *Barcode* case, evidence was provided that a receiver had been appointed for all the property, assets and undertakings of Barcode and 50% of employees had been laid off in the business directly affected by the refusal to supply (*Symbol Technologies Canada ULC v Barcode Systems Inc.*, 2004 Comp. Trib. 1 at paras 14-16). In *B-Filer Leave*, the Tribunal was satisfied with the applicants' evidence that they could be substantially affected in their business because 50% of their revenue was dependent on the banking services provided by the respondent (*B-Filer Leave* at para 54). In *Nadeau Leave Order*, the evidence showed that the supply of live chickens provided by the respondents accounted for 48% of the applicant's whole business and that the anticipated refusal to supply would have a direct impact on the applicant's production of processed chicken. In *Used Car Dealers*, the affidavit showed that the specific business at stake and supplied by the respondent accounted for more than 50% of the applicant's net income (at para 31).

**[81]** Conversely, in *Construx Engineering Corporation v General Motors of Canada*, 2005 Comp. Trib. 21 ("*Construx"*), leave was denied. Madam Justice Simpson concluded that "Construx' evidence did not provide sufficient information about its business and the impact of the Policies on its business" (at para 8), and that the Tribunal could not asses the significance of the sales of the product purchased from the respondent, even though there was a general statement that they accounted for 38% of total sales over a given period. Madam Justice Simpson noted several deficiencies, including an absence of evidence on the nature or volume of transportation products sold, total annual sales, and what the losses from the respondent meant for the whole enterprise (*Construx* at paras 5, 8).

**[82]** In *Broadview Pharmacy v Wyeth Canada Inc*, 2004 Comp. Trib. 22 ("*Broadway*"), leave was denied by Mr. Justice Blais as the losses claimed were "speculative and undocumented" (*Broadway* at para 21). In that case, the applicant feared a loss of customers because "they will not be able to fill multiple prescriptions including the respondent's products" (*Broadway* at para 21). But no figures were provided to show the impact or potential impact of the loss of the respondent's products and no evidence was presented to support the assertion that not filling all the prescriptions for a given patient will mean not filling any. The leave applications in *Mrs. O's Pharmacy v Pfizer Canada Inc*, 2004 Comp. Trib. 24 at paras 23-24, *Broadview Pharmacy v Pfizer Canada Inc*, 2004 Comp. Trib. 23 at para 18 and *Paradise Pharmacy Inc and Rymal Pharmacy Inc v Novartis Pharmaceuticals Canada Inc*, 2004 Comp. Trib. 21 at para 23 were all dismissed by Mr. Justice Blais for the same reasons: there was no direct and non-speculative evidence about the impact of the refusal on the applicant's business. In *Sears*, it was found that alleged harm such as the improved bargaining position of other brands was mere speculation, in the absence of evidence showing that it was based on the deponent's actual experience or comments to that effect made by personnel who worked for other brands (*Sears* at para 35).

**[83]** I agree with Audatex that it is only required to provide "sufficient credible evidence" to satisfy the Tribunal that there is a reasonable possibility that its business may be directly and

substantially affected by a refusal to deal. And I also agree with Audatex that it does not have to wait until harm actually occurs before bringing an application under subsection 103.1 of the Act (*Nadeau Leave Order* at para 25). But sufficient, cogent evidence is needed, even for anticipated harm. In *Nadeau Leave Order*, supply had not yet ceased, but there was nonetheless sufficient and measurable evidence of the anticipated effects of the refusal amounting to 48% of the business.



**[84]** In the current case, the supply of AutoTrader and Kijiji automobile listings data to Audatex has already ceased, but the harm alleged by Audatex continues to be anticipated. There is no evidence of lost sales or lost revenues (whether in the total loss valuation or in the partial loss estimating business) even though Audatex has no access to the Kijiji automobile listings data since mid-July 2015 and to the AutoTrader automobile listings data since the end of August 2015, which are said to be "critical" for its business. In these circumstances, I am not satisfied that the evidence provided by Audatex rises to the level of sufficient credible evidence required to give the Tribunal a *bona fide* belief that Audatex may be directly and substantially affected in its business due to its inability to obtain automobile listings data from Trader, Marktplaats and/or CarProof. The evidence presented by Audatex is not sufficient at this time to meet the burden it carries to show a substantial effect.

**[85]** I add that my conclusion would not have been different even if the struck paragraphs of the Cairo Affidavit had been admitted as part of Audatex's reply affidavit evidence. In my opinion, they would not have added sufficient credible evidence of harm to reach the "direct and substantial" threshold set forth in subsection 103.1(7) of the Act.

**[86]** This finding is fatal to Audatex's application.

### C. The Section 75 Factors

**[87]** Since Audatex has failed to meet the requirement of "directly and substantially affected in the applicant's business", this first element of the section 103.1 test is dispositive of the leave application. In view of this conclusion, it is therefore not necessary to consider whether Audatex has adduced sufficient evidence to meet the second part of the test for leave, namely whether each of the elements of subsection 75(1) could be met and an order could be issued under the refusal to deal provision.

## IV. CONCLUSION

**[88]** The Tribunal concludes that the leave application is not supported by sufficient credible evidence to give rise to a *bona fide* belief that Audatex may be or is directly and substantially affected in its business by the refusal to supply of the Respondents. Accordingly, Audatex's application for leave to apply under section 75 of the Act is denied.

**FOR THE ABOVE REASONS, THE TRIBUNAL THEREFORE ORDERS THAT**:

**[89]** Audatex's application for leave to apply under section 75 of the Act is denied.

**[90]** The Respondents are awarded costs.

DATED at Ottawa, this 16th day of December, 2015.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

**COUNSEL**

For the applicant:

Audatex Canada, ULC

Donald B. Houston
Julie K. Parla
Jonathan Bitran

For the respondents:

CarProof Corporation

Adam Fanaki

Trader Corporation

Michael Koch

eBay Canada Limited

Davit Akman

# 2

Competition Tribunal | Tribunal de la Concurrence

Reference: *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 1
File no.: CT2003008
Registry document no.: 0011

IN THE MATTER OF an application by Barcode Systems Inc., for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, granting leave to bring an application under section 75 of the Act.

B E T W E E N:

**Barcode Systems Inc.**
(applicant)

and

**Symbol Technologies Canada ULC**
(respondent)

Decided on the basis of the written record.
Member: Lemieux J. (presiding)
Date of reasons and order: 20040115
Reasons and order signed by: Lemieux J.

**REASONS AND ORDER REGARDING APPLICATION FOR LEAVE TO MAKE AN APPLICATION UNDER SECTION 75 OF THE *COMPETITION ACT***

**[1]** Barcode Systems Inc. ("Barcode") has applied to the Competition Tribunal (the "Tribunal") pursuant to subsection 103.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") for leave to make an application under section 75 of that Act.

**[2]** Barcode alleges Symbol Technologies Canada ULC ("Symbol"), a subsidiary of Symbol Technologies Inc. ("Symbol US"), is refusing to supply it with barcode scanners contrary to the provisions of section 75 of the Act and seeks an order, if leave is granted and appropriate findings are made by the Tribunal, that Symbol accept Barcode as a customer on the "usual trade terms" forthwith upon the issuance of such an order.

**[3]** This application for leave is only the second such application to the Tribunal brought under the recent amendments to the Act providing for what has been termed as "a private access action" because the Commissioner of Competition (the "Commissioner") does not initiate the proceeding.

**[4]** The first application for leave was decided by Justice Dawson in *National Capital News v. Milliken*, 2002 Comp. Trib. 41 ("National Capital News"), a decision which I endorse entirely.

**[5]** The test for the Tribunal granting leave is set out in subsection 103.1(7) of the Act. It provides as follows:

> The Tribunal may grant leave to make an application under section 75 or 77 *if it has reason to believe that the applicant is directly and substantially affected in the applicant[']s business by any practice* referred to in one of those sections that could be subject to an order under that section. (emphasis added)

[6] In this case, the practice that is complained of and that could be subject to an order under section 75 of the Act is Symbol's refusal to sell its products to Barcode after Symbol terminated its ten year relationship with Barcode in March 2003.

**[7]** I make the following points about the Tribunal's test for granting leave.

**[8]** What the Tribunal must have reason to believe is that Barcode is directly and substantially affected in its business by Symbol's refusal to sell. The Tribunal is not required to have reason to believe that Symbol's refusal to deal has or is likely to have an adverse effect on competition in a market at this stage.

**[9]** I make this observation because Symbol, in its vigorous opposition to leave being granted, described what, in its view, was a highly competitive marketplace and argued that Barcode had provided no evidence as to this requirement as described in paragraph 75(1)(*e*) of the Act.

**[10]** As I read the Act, adverse effect on competition in a market is a necessary element to the Tribunal finding a breach of section 75 and a necessary condition in order that the Tribunal make a remedial order under that section. It is not, however, part of the test for the Tribunal's granting leave or not.

**[11]** Justice Dawson in National Capital News, *supra*, described what kind of proof the Tribunal had to have before it in order to have "reason to believe". She concluded that

> . . . .the leave application [must be] supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in [its] business by a reviewable practice [the refusal to deal here], and that the practice in question could be subject to an order.

**[12]** What this standard of proof means is that the applicant Barcode must advance sufficient credible evidence supported by an affidavit to satisfy the Tribunal that there is a reasonable possibility that its business has been directly and substantially affected because of Symbol's refusal to deal.

**[13]** The Tribunal measures the evidence on a scale which is less than the balance of probabilities. It is not sufficient, however, that the evidence shows a mere possibility that Barcode's business has been directly and substantially affected by Symbol's refusal to supply.

**[14]** Barcode's evidence was to the effect Symbol's refusal to supply, either directly or by preventing Symbol distributors or Symbol resellers from doing so, has now caused a substantial loss of revenues to the point where it, if continued, would force Barcode out of business. On December 19, 2003, on petition from the Royal Bank of Canada, an interim Receiver was appointed of all the property, assets and undertakings of Barcode.

**[15]** Barcode states Symbol's actions also critically impacted its ability to perform its ongoing maintenance contracts.

**[16]** Barcode asserts that, as of the filing of its application, 50 percent of its employees have been laid off.

**[17]** Symbol filed written representations and affidavits to counter Barcode. Symbol outlines the reasons why it is not supplying Barcode with the Symbol products. Specifically it denies that Barcode's business has been substantially affected. It says Barcode has not been precluded from carrying on business by any actions attributable to Symbol.

**[18]** Symbol states, if Barcode suffered any loss, it is because it breached its contract with Symbol or because of factors which have nothing to do with Symbol such as declining market conditions generally, increased competition from suppliers, exchange rate changes and Barcode's failure to meet usual trade terms with its current suppliers.

**[19]** On an application for leave, it is not the function of the Tribunal to make credibility findings based on affidavits which have not been cross-examined. I note that the Act requires an applicant to support an application for leave by a sworn affidavit while, for a person opposing leave only written representations are contemplated.

**[20]** These provisions confirm that the Tribunal's role when granting leave is a screening function simply deciding on the sufficiency of evidence advanced.

**[21]** There may be situations, however, where it can be demonstrated that an applicant's evidence is simply not credible without engaging the Tribunal in weighing contested statements from opposing parties and the applicant. This is not the case here.

**[22]** I close on a procedural point. Both Symbol and Barcode have sought leave to file additional material as a result of the limited right of reply granted by the Tribunal to Barcode, as an exception in the interest of justice.

**[23]** In only exceptional circumstances will the Tribunal grant parties a right of reply in leave applications which are to be dealt with expeditiously.

**[24]** The Tribunal sees no need to have additional evidence before it as proposed by Barcode or Symbol.

FOR THESE REASONS THE TRIBUNAL ORDERS THAT:

**[25]** The application for leave is granted.

**[26]** The Tribunal is prepared to expedite the hearing of the application and invites the parties to communicate with the Deputy Registrar of the Tribunal for this purpose.

DATED at Ottawa, this 15th day of January, 2004.

SIGNED on behalf of the Tribunal by the judicial member.

(s) François Lemieux

REPRESENTATIVES

For the applicant:

Barcode Systems Inc.

David P. Church

For the respondent:

Symbol Technologies Canada ULC

Colin MacArthur, Q.C.

# 3

Competition Tribunal Tribunal de la Concurrence

Reference: *Broadview Pharmacy* v. *Pfizer Canada Inc.*, 2004 Comp. Trib. 23
File No.: CT-2004-006
Reference: Registry Document No.: 0006

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c.C34;

AND IN THE MATTER OF an application by Broadview Pharmacy (Broadview) for an order pursuant to section 103.1 of the *Competition Act* granting leave to bring an application under section 75 of the Act;

B E T W E E N:

**Broadview Pharmacy**
(applicant)

and

**Pfizer Canada Inc.**
(respondent)

Decided on the basis of the written record.
Presiding Member: Blais J.
Date of Reasons for Order and Order: September 20, 2004

**REASONS FOR ORDER AND ORDER**

**APPLICATION**

[1] The applicant is 1177057 Ontario Inc., carrying out business as Broadview Pharmacy (Broadview), a corporation incorporated under the laws of the Province of Ontario. Broadview has been operating at its Toronto address since 1960. Within a two block radius, there are six other retail pharmacies.

[2] The respondent, Pfizer Canada Inc. (Pfizer) is a corporation incorporated under the laws of Canada. Pfizer carries on business as a pharmaceutical manufacturer across Canada, including Ontario.

[3] The applicant has sold the respondent's products for many years; approximately 20 per cent of its pharmaceutical sales ($300,000 out of a total of $1.5 million in pharmaceutical sales) are from the sale of the respondent's products. A number of important patented medicines are available only from the respondent.

[4] The respondent has ceased supplying the applicant with its pharmaceutical products. In the past, Broadview sold some pharmaceutical products over the internet. It asserts that it has now ceased that practice, and is willing to sign an undertaking to that effect. It is also willing to agree to audits by the respondent to verify that it is not exporting Pfizer products outside of Canada. However, Broadview is not willing to agree to a cross-ownership clause, whereby none of its owners, directors or officers may hold any interest whatsoever in any Canadian pharmacy which may be exporting medical drugs out of Canada. This undertaking, according to the applicant, is "unnecessary, unreasonable and overreaching." The applicant found this clause to be applied in an arbitrary fashion, since other pharmacies held by one group of principals (the example given is Medicine Shoppe pharmacies) do not have to sign such a clause on cross-ownership.

[5] In its response, the respondent submits the following points:

[6] Broadview states that Pfizer products represent 20 per cent of its pharmaceutical sales, but presents no figures to support that statement.

[7] Two of the products attributed to Pfizer have been divested to another company.

[8] Broadview estimates the losses as a percentage of pharmaceutical sales, not as a percentage of its total sales. Yet the test under subsection 103.1(7) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act"), indicates that the substantial effect must be on the applicant's business, not part of it. The respondent argues that according to the annual survey of pharmacy owners and managers, sales of pharmaceutical products represent 78 per cent of sales for independent pharmacies. Taking into account that factor to calculate the impact of the loss of the respondent's products, as well as the figures according to IMS for 2002 (when there were no internet sales), the loss is around 11 per cent.

[9] As to the undertaking on cross-ownership, the respondent replies that in the case of Medicine Shoppe pharmacies, there is no cross-ownership. Rather, it is a franchise agreement where individual pharmacists are wholly owners of their own Medicine Shoppe franchise, so that cross-ownership considerations do not apply. The respondent considers the cross-ownership clause essential to ensure that further sales by Broadview to internet pharmacies do not occur.

**ANALYSIS**

[10] Section 103.1 of the Act is a new section which has been the basis of five decisions so far, which can be briefly summarized as follows:

[11] In *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41, Justice Dawson found that the refusal to grant the applicant full access to the Parliamentary Press Gallery was entirely within the privilege of Parliament, as vested in the Speaker, and thus could not be subject to an order under section 75 since the Competition Tribunal (the "Tribunal") did not have the jurisdiction, any more than the courts, to examine that particular exercise of the privilege. For this reason, the requirement of subsection 103.1(7) was not met.

[12] In *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 1, Justice Lemieux granted leave to Barcode, having found sufficient credible evidence to give the Tribunal reason to believe that the applicant may have been directly and substantially affected. There was evidence that on petition of the Royal Bank of Canada, an interim Receiver had been appointed for all property, assets and undertakings of Barcode. Barcode also asserted in its materials that it had laid off half of its employees.

[13] In *Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Ltd.*, 2004 Comp. Trib. 4 (Justice Lemieux), the applicant, Allan Morgan and Sons Ltd., filed an application under section 103.1 for leave to make an application under section 75, alleging that the respondent La-Z-Boy Canada Ltd., by terminating its right to act as representative of the respondent, had directly and substantially affected its business.

[14] The applicant presented various tables to show sales by category, gross profits and estimates of profit loss due to the respondent's restrictions which occurred before the contract was terminated. Based on these figures, Justice Lemieux found that there was sufficient credible evidence to satisfy himself that the applicant "may have been directly and substantially affected by the actions of La-Z-Boy." He then added: "Morgan's Furniture, at the leave stage, is not required to meet any higher standard of proof threshold."

[15] Madam Justice Simpson has recently rendered two decisions on section 103.1 applications, *Robinson Motorcycle Limited. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 13 and *Quinlan's of Huntsville Inc. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 15. In both cases, leave was granted. Justice Simpson indicated that leave requirements set in subsection 103.1(7) of the Act had been met; she then added that under section 75, an order could issue, because for each condition the Tribunal could conclude that the condition was satisfied.

[16] In this case, I believe the applicant has failed to meet the test of “directly and substantially affected in the applicant’s business.” It is therefore not necessary to consider whether an order could issue under section 75. The applicants must show sufficient credible evidence of a direct and substantial effect. In *Barcode*, for example, the company was in receivership and fifty per cent of the employees had been laid off. In *La-Z-Boy*, the applicant had figures showing a 46 per cent decrease in its sales. There was thus a credible basis as to substantial effect.

[17] The Tribunal has never defined specifically what was to be considered “substantial”; however, it stated as follows in *Canada (Director of Investigation and Research) v. Chrysler Canada Ltd.* (1989), 27 C.P.R. (3d) 1:

> The Tribunal agrees that "substantial" should be given its ordinary meaning, which means more than something just beyond de minimis. While terms such as "important" are acceptable synonyms, further clarification can only be provided through evaluations of actual situations.
>
> The cut-off resulted in a decline of over $200,000 in sales between 1986 and 1988. 1987 was a year of transition during most of which Brunet was able to obtain parts from Chrysler Canada dealers and Chrysler Canada continued to fill orders received by Brunet before October, 1986. The slight rise in 1988 sales of Chrysler U.S.-sourced parts suggests that some substitution may have occurred between Chrysler Canada and Chrysler U.S. sourced parts, perhaps because of the increasing difficulty of obtaining parts in Canada. If such substitution did occur, it was far too limited to alleviate the decline in sales and gross profits from Chrysler auto parts. The decline in profits between 1986 and 1988 from sourcing Chrysler parts in Canada was in excess of $30,000. Losses of the order of magnitude of $200,000 in sales and $30,000 in gross profits constitute a substantial effect for a small business such as Brunet's.

[18] The applicant has not established that it is substantially affected in its business, both in terms of percentage and sales figures.

[19] The cross-ownership issue which arises between the parties in this case is not relevant to the subsection 103.1(7) enquiry; it has to do with the usual terms of trade, which would have to be considered under section 75. The only consideration for now is the substantial effect which again, has not been sufficiently established to satisfy the Tribunal and enable it to grant leave.

[20] Unfortunately for the applicants, the evidence presented in support of the application is not sufficient to grant leave for an application under section 75 of the Act.

**THEREFORE THE TRIBUNAL ORDERS THAT:**

[21] The application for leave is dismissed.

DATED at Ottawa, this 20th day of September 2004.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Pierre Blais

REPRESENTATIVES

For the applicant:

Broadview Pharmacy

Mark Adilman
D.H. Jack

For the respondent:

Pfizer Canada Inc.

Philip Spencer, Q.C.
Emily Larose

# 4

Reference: *Broadview Pharmacy v. Wyeth Canada Inc.*, 2004 Comp. Trib. 22
File No.: CT-2004-005
Reference: Registry Document No.: 0009

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF an application by 1177057 Ontario Inc. c.o.b. as Broadview Pharmacy (Broadview) for an order pursuant to section 103.1 of the *Competition Act* granting leave to bring an application under section 75 of the Act;

B E T W E E N :

**1177057 Ontario Inc. c.o.b. as Broadview Pharmacy**
(applicant)

and

**Wyeth Canada Inc.**
(respondent)

Decided on the basis of the written record.
Presiding Member: Blais J.
Date of Reasons for Order and Order: September 20, 2004

**REASONS FOR ORDER AND ORDER**

**APPLICATION**

**[1]** The applicant is 1177057 Ontario Inc., carrying out business as Broadview Pharmacy (Broadview), a corporation incorporated under the laws of the Province of Ontario. The pharmacy operates in Toronto.

**[2]** The respondent is Wyeth Canada Inc. (Wyeth), a corporation incorporated under the laws of Canada, which carries on business as a pharmaceutical manufacturer across Canada, including Ontario.

**[3]** Broadview has been operating at its Toronto address since 1960. Within a two block radius, there are six other retail pharmacies.

**[4]** Broadview has sold Wyeth products for the past several years. The sale of Wyeth drugs represents a little more than 5 per cent of Broadview's total annual sales. Some of Wyeth's patented medicines include an anti-depressant (Effexor), a number of very popular birth control pills (Tripasil, Alesse, Minovral) and female hormone replacement drugs (Premarin and Premplus).

**[5]** In a letter dated April 26, 2004, Wyeth informed its Canadian distributors that they were not to sell any Wyeth products to purchasers appearing on a list of "unapproved purchasers." Broadview being on this list, it can no longer obtain pharmaceutical products from Wyeth.

**[6]** Broadview believes this refusal to deal is linked to the fact that Broadview has in the past supplied some pharmaceutical products through the internet pharmacy business. Broadview has ceased this practice. Despite assurances to this effect given by Broadview, Wyeth continues to refuse to supply or deal with Broadview.

**[7]** For now, Broadview has managed to obtain some short-term substitute supplies; however, this solution cannot be long-term. Without the supply coming directly from Wyeth, Broadview will not be able to serve its customers, which will have a significant negative impact on its business. Broadview argues that customers who cannot fill all their prescriptions in one location will take their business elsewhere.

**[8]** Broadview's alleges that its financial viability is threatened. Wyeth occupies a dominant position in the market place with respect to its patented pharmaceutical products. Wyeth's products are widely available in the Toronto area, including from Broadway's neighbouring competitors.

**RESPONDENT'S POSITION**

**[9]** Wyeth Canada Inc. (respondent) opposes the application on the grounds that there is no reason to believe the applicant will suffer direct and substantial effects from the alleged conduct of the respondent, and no reason to believe that the conduct could be subject to an order under section 75 of the *Competition Act,* R.S.C. 1985, c. C-34 (the "Act").

**[10]** The applicant had engaged in internet selling of pharmaceutical products. The applicant contends it has stopped doing so, but has given the respondent no assurance that it would abide by the usual terms of trade and refrain from selling products through the internet.

No direct and substantial effect

**[11]** Given the small percentage which the respondent's pharmaceutical products represent for the applicant, the first branch of the test under subsection 103.1(7), direct and substantial effect, would not be satisfied. As acknowledged in the applicant's affidavit, only 5 per cent of the applicant's sales of pharmaceutical drugs (not total sales) are from the sale of drugs manufactured by the respondent. At present, the applicant is able to obtain the respondent's pharmaceutical drugs from other sources. The applicant provides no figures to support its contention that it will suffer from loss of clientele because customers cannot fill multiple prescriptions.



Test under section 75

**[12]** The applicant states that there is significant competition among retail pharmacies in the area where it is located. The respondent contends that the test under section 103.1 must include an assessment of whether an order could be granted under section 75. Since all the conditions of section 75 are not met, namely paragraph 75(1)(e) (adverse effect on competition), an order could not be granted, according to the respondent.

**ANALYSIS**

**[13]** Section 103.1 of the Act is a new section which has been the basis of five decisions so far, which can be briefly summarized as follows:

**[14]** In *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41, Justice Dawson found that the refusal to grant the applicant full access to the Parliamentary Press Gallery was entirely within the privilege of Parliament, as vested in the Speaker, and thus could not be subject to an order under section 75 since the Competition Tribunal (the "Tribunal") did not have the jurisdiction, any more than the courts, to examine that particular exercise of the privilege. For this reason, the requirement of subsection 103.1(7) was not met.

**[15]** In *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 Comp. Trib. 1, Justice Lemieux granted leave to Barcode, having found sufficient credible evidence to give the Tribunal reason to believe that the applicant may have been directly and substantially affected. There was evidence that on petition of the Royal Bank of Canada, an interim Receiver had been appointed for all property, assets and undertakings of Barcode. Barcode also asserted in its materials that it had laid off half of its employees.

**[16]** In *Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Ltd.*, 2004 Comp. Trib. 4 (Justice Lemieux), the applicant Allan Morgan and Sons Ltd. filed an application under section 103.1 for leave to make an application under section 75, alleging that the respondent La-Z-Boy Canada Ltd., by terminating its right to act as representative of the respondent, had directly and

substantially affected its business.

**[17]** The applicant presented various tables to show sales by category, gross profits and estimates of profit loss due to the respondent's restrictions which occurred before the contract was terminated. Based on these figures, Justice Lemieux found that there was sufficient credible evidence to satisfy himself that the applicant "may have been directly and substantially affected by the actions of La-Z-Boy." He then added: "Morgan's Furniture, at the leave stage, is not required to meet any higher standard of proof threshold."

**[18]** Madam Justice Simpson has recently rendered two decisions on section 103.1 applications, *Robinson Motorcycle Limited. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 13 and *Quinlan's of Huntsville Inc. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 15. In both cases, leave was granted. Justice Simpson indicated that leave requirements set in subsection 103.1(7) of the Act had been met; she then added that under section 75, an order could issue, because for each condition the Tribunal could conclude that the condition was satisfied.

**[19]** In this case, I believe the applicant has failed to meet the test of "directly and substantially affected in the applicant's business." It is therefore not necessary to consider whether an order could issue under section 75. The applicants must show sufficient credible evidence of a direct and substantial effect. In *Barcode*, for example, the company was in receivership and fifty per cent of the employees had been laid off. In *La-Z-Boy*, the applicant had figures showing a 46 per cent decrease in its sales. There was thus a credible basis as to substantial effect.

**[20]** The Tribunal has never defined specifically what was to be considered "substantial"; however, it stated as follows in *Canada (Director of Investigation and Research) v. Chrysler Canada Ltd.* (1989), 27 C.P.R. (3d) 1:

> The Tribunal agrees that "substantial" should be given its ordinary meaning, which means more than something just beyond de minimis. While terms such as "important" are acceptable synonyms, further clarification can only be provided through evaluations of actual situations.
>
> The cut-off resulted in a decline of over $200,000 in sales between 1986 and 1988. 1987 was a year of transition during most of which Brunet was able to obtain parts from Chrysler Canada dealers and Chrysler Canada continued to fill orders received by Brunet before October, 1986. The slight rise in 1988 sales of Chrysler U.S.-sourced parts suggests that some substitution may have occurred between Chrysler Canada and Chrysler U.S. sourced parts, perhaps because of the increasing difficulty of obtaining parts in Canada. If such substitution did occur, it was far too limited to alleviate the decline in sales and gross profits from Chrysler auto parts. The decline in profits between 1986 and 1988 from sourcing Chrysler parts in Canada was in excess of $30,000. Losses of the order of magnitude of $200,000 in sales and $30,000 in gross profits constitute a substantial effect for a small business such as Brunet's.

**[21]** In this case, the losses are speculative and undocumented. From the applicant's affidavit, Wyeth products represent 5 per cent of its annual sales of pharmaceutical drugs. The applicant fears losing customers because they will not be able to fill multiple prescriptions including the respondent's products. No figures are provided to show the impact or potential impact of the loss of the respondent's products, and no evidence presented to support the assertion that not filling all the prescriptions for a given patient will mean not filling any. A loss of 5 per cent of

pharmaceutical sales, which does not represent the totality of the business of the pharmacy, cannot in good faith be considered a substantial impact.

**THEREFORE THE TRIBUNAL ORDERS THAT**:

**[22]** The application for leave is dismissed.

DATED at Ottawa, this 20th day of September, 2004.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Pierre Blais

REPRESENTATIVES

For the applicant:

Broadview Pharmacy

Mark Adilman
D.H. Jack

For the respondent:

Wyeth Canada Inc.

Neil Finkelstein
Jeff Galway
Matthew Horner

# 5

A-106-05
2006 FCA 233

**Commissioner of Competition** (*Appellant*)

*v.*

**Canada Pipe Company Ltd./Tuyauteries Canada Ltée** (*Respondent*)

***INDEXED AS: CANADA (COMMISSIONER OF COMPETITION) v. CANADA PIPE CO. (F.C.A.)***

Federal Court of Appeal, Desjardins, Létourneau and Pelletier JJ.A.—Ottawa, February 7, 9 and June 23, 2006.

*Competition — Appeal from Competition Tribunal's decision dismissing application by Competition Commissioner for order prohibiting respondent from engaging in certain acts, practices — Respondent offering loyalty rebate program — Appellant arguing this program constituting practice of exclusive dealing (Competition Act, s. 77(2)), anti-competitive acts leading to abuse of dominant position (Act, s. 79(1)) — Appeal allowed — With respect to abuse of dominant position, Tribunal erring as to test applicable under s. 79(1)(c) — Tribunal conducted analysis from narrow, absolute perspective of whether program prevented entry, competition when should have addressed whether competitiveness substantially lessened in presence of program — Tribunal also wrong to say s. 79(1)(b) (engaging in anti-competitive acts) requiring causal link between impugned act and decrease in competition — S. 79(1)(b) concerning narrower focus of impugned act's effects on competitors — Valid business justification for impugned act not established — As to question of exclusive dealing, Tribunal adopting same approach as under s. 79(1) — As such, findings re: errors of law made under s. 79(1) also applying under s. 77(2).*

This was an appeal from a decision of the Competition Tribunal dismissing an application by the Commissioner of Competition (Commissioner) under sections 77 and 79 of the *Competition Act* for an order prohibiting the respondent (Canada Pipe) from engaging in the practice of anti-competitive acts leading to an abuse of dominant position (section 79), and prohibiting the respondent from continuing to engage in the practice of exclusive dealing (section 77).

A-106-05
2006 CAF 233

**La commissaire de la concurrence** (*appelante*)

*c.*

**Tuyauteries Canada Ltée/Canada Pipe Company Ltd.** (*intimée*)

***RÉPERTORIÉ : CANADA (COMMISSAIRE DE LA CONCURRENCE) c. TUYAUTERIES CANADA LTÉE (C.A.F.)***

Cour d'appel fédérale, juges Desjardins, Létourneau et Pelletier, J.C.A.—Ottawa, 7 et 9 février et 23 juin 2006.

*Concurrence — Appel d'une décision par laquelle le Tribunal de la concurrence a rejeté la demande formée par la commissaire de la concurrence en vue d'obtenir une ordonnance interdisant à l'intimée de se livrer à certaines pratiques — L'intimée offrait un programme de fidélisation de sa clientèle — L'appelante affirmait que ce programme constituait une pratique d'exclusivité (art. 77(2) de la Loi sur la concurrence) ainsi qu'une pratique d'agissements anti-concurrentiels constituant un abus de position dominante (art. 79(1) de la Loi) — Appel accueilli — Pour ce qui concerne l'abus de position dominante, le Tribunal a commis une erreur dans son approche du critère juridique applicable sous le régime de l'art. 79(1)c) — Le Tribunal a effectué son analyse du point de vue étroit et absolu de la question de savoir si le programme avait empêché l'entrée et la concurrence lorsqu'il aurait dû orienter son attention vers la question de savoir si la concurrence se trouvait sensiblement diminuée avec le programme — Le Tribunal a également déclaré à tort que l'art. 79(1)b) (agissements anti-concurrentiels) exigeait un lien de causalité entre la pratique attaquée et une diminution de la concurrence — L'art. 79(1)b) est orienté vers les effets de l'agissement sur les concurrents — Il n'y avait pas de justification commerciale valable — Pour ce qui concerne la pratique d'exclusivité, le Tribunal a adopté la même approche que celle qu'il a appliquée à l'art. 79(1) — Ainsi, les conclusions quant aux erreurs de droit commises dans le contexte de l'art. 79(1) s'appliquaient aussi relativement à l'art. 77(2).*

Il s'agissait d'un appel d'une décision par laquelle le Tribunal de la concurrence a rejeté la demande formée par la commissaire de la concurrence (la commissaire) sous le régime des articles 77 et 79 de la *Loi sur la concurrence* en vue d'obtenir une ordonnance interdisant à l'intimée (Tuyauteries Canada) de se livrer à une pratique comprenant des agissements anti-concurrentiels et constituant un abus de position dominante (article 79), et lui interdisant de continuer à se livrer à la pratique de l'exclusivité (article 77).

The conduct at issue was a loyalty rebate program offered by the respondent (the Stocking Distributor Program or SDP). Under this program, distributors of the respondent's cast iron drain, waste and vent (DWV) products obtained significant rebates and discounts in return for stocking only cast iron products produced by the respondent. The Commissioner argued that the SDP constituted both a practice of exclusive dealing with exclusionary effects and a practice of anti-competitive acts, and was likely to have the effect of substantially lessening competition in the markets for DWV products by impeding the entry and expansion of competitors.

In dismissing the Commissioner's application, the Tribunal found that the requisite elements for the order requested were not met. The SDP did not qualify as an "anti-competitive act" (paragraph 79(1)(*b*)), the SDP had not substantially lessened or prevented competition (paragraph 79(1)(*c*)), and finally, while the SDP could be characterized as a practice of exclusive dealing, there was insufficient evidence to establish that it had impeded entry into or expansion of firms in a market, that it was having any other exclusionary effect on the market, or that it had caused or was likely to cause a substantial lessening of competition (subsection 77(2)).

*Held*, the appeal should be allowed.

On the question of abuse of dominant position, the Tribunal erred in law with respect to the legal test applicable under paragraph 79(1)(*c*). Pararaph 79(1)(*c*) permits the Tribunal to make an order prohibiting a practice which it finds "has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market." In order to achieve the inquiry dictated by the statutory language of paragraph 79(1)(*c*), the Tribunal must compare the level of competitiveness in the presence of the impugned practice with that which would exist in the absence of the practice, and then determine whether the preventing or lessening of competition, if any, is "substantial". This comparison must be done with reference to actual effects in the past and present, as well as likely future effects. One correct approach (but not necessarily the only correct one) is for the Tribunal to ask itself the following question: Would the relevant markets—in the past, present or future—be substantially more competitive but for the impugned practice of anti-competitive acts (the "but for" test)? This legal test reflects the plain meaning of the statutory language of paragraph 79(1)(*c*) and corresponds to the Tribunal's analysis in its previous decisions with respect to this provision. In the case at bar, the Tribunal's analysis was conducted from the narrow, absolute perspective of whether the SDP prevented entry and whether competition subsisted in

Le comportement en litige consistait en l'application par l'intimée d'un programme de fidélisation de sa clientèle (le programme des distributeurs stockistes ou PDS). Dans le cadre de ce programme, les distributeurs des produits d'évacuation et de ventilation en fonte de l'intimée avaient droit à des ristournes et à des abattements substantiels à condition de ne stocker que les produits en fonte fabriqués par l'intimée. La commissaire a affirmé que le PDS constituait à la fois une pratique d'exclusivité aux effets tendant à exclure et une pratique d'agissements anti-concurrentiels, et qu'il aurait vraisemblablement pour effet de diminuer sensiblement la concurrence sur les marchés des produits d'évacuation et de ventilation en faisant obstacle à l'entrée et au développement de la concurrence.

Lorsqu'il a rejeté la demande de la commissaire, le Tribunal a conclu que les conditions qui devaient être remplies pour que soit rendue l'ordonnance demandée ne l'avaient pas été. Le PDS ne remplissait pas les conditions nécessaires pour être qualifié d'« agissements anti-concurrentiels » (alinéa 79(1)*b*)), le PDS n'avait pas empêché ou diminué sensiblement la concurrence (alinéa 79(1)*c*)) et, enfin, même si le PDS pouvait être qualifié de pratique d'exclusivité, la preuve produite ne suffisait pas à établir que le PDS eût fait obstacle à l'entrée ou au développement de firmes, ni qu'il eût sur le marché quelque autre effet tendant à exclure, ni que la concurrence eût été ou serait vraisemblablement réduite sensiblement en conséquence de ce programme (paragraphe 77(2)).

*Arrêt* : l'appel doit être accueilli.

Pour ce qui concerne l'abus de position dominante, le Tribunal a commis une erreur de droit relativement au critère juridique applicable sous le régime de l'alinéa 79(1)*c*), qui permet au Tribunal de rendre une ordonnance interdisant à une personne de se livrer à une pratique qui « a eu, a ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché ». Pour mener à bien l'examen que dicte le libellé de l'alinéa 79(1)*c*), le Tribunal doit comparer le niveau de concurrence sur le marché caractérisé par la présence de la pratique attaquée au niveau qui existerait en l'absence de cette pratique, pour ensuite établir si la concurrence est empêchée ou diminuée « sensiblement », en supposant qu'elle le soit tant soit peu. Cette comparaison doit se faire en tenant compte des effets réels dans le passé et dans le présent, ainsi que des effets vraisemblables dans l'avenir. Selon une approche correcte, mais pas nécessairement la seule approche correcte, le Tribunal doit se poser la question suivante : est-ce que les marchés pertinents auraient été, ou seraient actuellement ou dans l'avenir, sensiblement plus concurrentiels en l'absence de la pratique attaquée d'agissements anti-concurrentiels (critère de l'« absence hypothétique »)? Ce critère juridique correspond à la fois au sens manifeste du libellé de l'alinéa 79(1)*c*) et à l'analyse effectuée par le Tribunal dans ses

its presence, when it should have turned its mind to the question of whether, in each of the relevant markets, competitiveness was substantially lessened in the presence of the SDP, as compared to the likely state of competition in the absence of this practice.

The second issue with respect to the question of abuse of dominant position was whether the Tribunal erred in concluding that the SDP did not constitute an "anti-competitive act" as required by paragraph 79(1)(*b*) before a prohibition order may issue. An anti-competitive act is identified by reference to its purpose. This requisite purpose is an intended, exclusionary or disciplinary negative effect on a competitor. As such, the paragraph 79(1)(*b*) inquiry is focused upon the intended effects of the act on a competitor. Relevant factors to be considered and weighed to determine the purpose of the impugned conduct include the reasonably foreseeable or expected objective effects of the act, any business justification, and any evidence of subjective intent. The Tribunal misdirected itself as to the applicable legal test and considered irrelevant factors in making its paragraph 79(1)(*b*) determination. The Tribunal's erroneous interpretation played a significant role in its analysis of the SDP. As such, it committed a reversible error of law. Particularly, it erred in requiring a causal link between the impugned act and a decrease in competition. Paragraph 79(1)(*b*) simply concerns whether the act displays the requisite intended effect on competitors; it is not directly concerned with the state of competition in the market or the general causes thereof. The Tribunal thus conflated the legal test for paragraph 79(1)(*c*) (which concerns the broader state of competition) with that applicable for paragraph 79(1)(*b*) (which focuses on the impugned act's effects on competitors). The Tribunal was also wrong to suggest that "detriment to the consumer" is an independently relevant consideration for the purposes of that paragraph. Finally, there was no valid business justification in the case at bar. Such a justification is properly relevant only in so far as it is pertinent and probative in relation to the determination required by paragraph 79(1)(*b*), i.e. whether the purpose for which the act was performed was a predatory, exclusionary or disciplinary negative effect on a competitor. It is properly employed to counterbalance or neutralize other evidence of an anti-competitive purpose, prior to making a determination under paragraph 79(1)(*b*), and must provide a credible efficiency or pro-competitive explanation, unrelated to an anti-competitive purpose, for why the dominant firm engaged in the conduct alleged to be anti-competitive. Here the justification was that the SDP makes possible the high-volume sales necessary to enable the respondent to maintain a full line of products. The Tribunal's reasons did not establish the

décisions antérieures pour l'application de cet alinéa. En l'espèce, le Tribunal a effectué son analyse du point de vue étroit et absolu de la question de savoir si le PDS avait empêché l'entrée et si la concurrence subsistait en sa présence lorsqu'il aurait dû orienter son attention vers le point de savoir si, sur chacun des marchés pertinents, la concurrence se trouvait sensiblement diminuée avec le PDS, en comparaison de l'état vraisemblable de la concurrence en l'absence de cette pratique.

La deuxième question en litige relative à l'abus de position dominante était celle de savoir si le Tribunal avait formulé une conclusion erronée lorsqu'il a déclaré que le PDS ne constituait pas un « agissement anti-concurrentiel » comme l'exige l'alinéa 79(1)*b*) avant de rendre une ordonnance d'interdiction. L'agissement anti-concurrentiel est défini par rapport à un but. Le but qu'il faut établir est un effet négatif sur un concurrent, qui doit être intentionnel, ou viser une exclusion ou une mise au pas. L'analyse à effectuer dans le cadre de l'alinéa 79(1)*b*) est donc orientée vers les effets intentionnels de l'agissement sur un concurrent. Parmi les facteurs pertinents à examiner et à apprécier pour établir le but du comportement attaqué, il faut mentionner les effets objectifs prévus ou raisonnablement prévisibles du comportement en question, la justification commerciale s'il y en a une, et tous éléments de preuve dont on dispose tendant à établir l'intention subjective. Le Tribunal s'est mépris sur le critère juridique applicable et a pris en considération des facteurs non pertinents pour rendre sa décision sous le régime de l'alinéa 79(1)*b*). L'interprétation erronée par le Tribunal a joué un rôle important dans son analyse du PDS. Il a donc commis une erreur de droit donnant lieu à révision. Plus particulièrement, il a commis une erreur en exigeant la preuve d'un lien de causalité entre la pratique attaquée et une diminution de la concurrence. L'alinéa 79(1)*b*) pose purement et simplement la question de savoir si le comportement considéré a sur les concurrents l'effet intentionnel de la nature requise; il n'a pas de rapport direct avec l'état de la concurrence sur le marché ou ses causes générales. Le Tribunal a donc fusionné le critère juridique applicable à l'alinéa 79(1)*c*) (qui porte sur l'état général de la concurrence) et le critère juridique applicable à l'alinéa 79(1)*b*) (qui vise les effets de la pratique attaquée sur les concurrents). Le Tribunal a également commis une erreur lorsqu'il a déclaré que le « préjudice aux consommateurs » était un facteur indépendant pertinent à prendre en considération pour l'application de cet alinéa. Enfin, il n'y avait pas de justification commerciale valable en l'espèce. Une telle justification ne peut être prise en considération que dans la mesure où elle est pertinente et probante par rapport à la décision qu'exige l'alinéa 79(1)*b*), soit celle du point de savoir si le comportement avait pour but un effet négatif sur un concurrent, effet qui doit être abusif, ou viser une exclusion ou une mise au pas. La justification commerciale est appliquée à bon escient pour contrebalancer ou neutraliser les éléments de preuve tendant à établir

requisite efficiency-related link between the SDP and the respondent, and hence did not supply a legitimate explanation for the latter's choice to engage in the impugned conduct, unrelated to an anti-competitive purpose. Self-interest was the only justification for the SDP. The Tribunal thus erred in concluding that the respondent had established a valid business justification for the SDP.

On the question of exclusive dealing (Act, subsection 77(2)), the first issue was whether the Tribunal erred in its determination with respect to whether the SDP had the result that competition was or was likely to be lessened substantially. Because of the parallel structure and logic between the requisite statutory elements for exclusive dealing under subsection 77(2) and abuse of dominant position under subsection 79(1), the parties simply referred the Court to their arguments in the context of subsection 79(1). Although the two subsections contain some differences in wording, it was not necessary to consider these differences in the present instance. To the extent that the Tribunal erred in law in the context of paragraph 79(1)(*c*) in its interpretation of the test for substantial lessening of competition, the same errors of law applied with respect to subsection 77(2). The same could be said with respect to whether the Tribunal erred in its conclusion that the SDP was not likely to impede entry or expansion of a firm or a product in a market or have any other exclusionary effect in a market. The Tribunal's analysis of the evidence concerning barriers to entry and the effects of the SDP was conducted from the narrow perspective of prevention, and not the broader perspective implied by the word "impede", and as such constituted a reversible error.

STATUTES AND REGULATIONS JUDICIALLY CONSIDERED

*Competition Act*, R.S.C., 1985, c. C-34, ss. 1 (as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 19), 1.1 (as enacted

l'existence d'un but anti-concurrentiel avant de prendre une décision sous le régime de l'alinéa 79(1)*b*), et elle doit être une explication crédible, fondée sur l'efficience ou de nature pro-concurrentielle, et sans lien avec un but anti-concurrentiel, des motifs qu'avait l'entreprise dominante de se livrer au comportement attaqué comme étant anti-concurrentiel. En l'espèce, l'intimée avançait comme justification commerciale le fait que le PDS rendait possible les ventes en grandes quantités dont elle avait besoin pour maintenir une ligne complète de produits. L'exposé des motifs du Tribunal n'établissait pas l'existence du lien nécessaire, fondé sur l'efficience, entre le PDS et l'intimée, et ne donnait donc pas une explication légitime, non liée à un but anti-concurrentiel, de la décision de l'intimée de se livrer au comportement attaqué. L'intérêt propre restait la seule justification du PDS. Le Tribunal a donc commis une erreur en concluant que l'intimée avait établi une justification commerciale valable du PDS.

Pour ce qui est de la pratique de l'exclusivité (paragraphe 77(2) de la Loi), la première question en litige était celle de savoir si le Tribunal avait formulé une conclusion erronée touchant le point de savoir si le PDS avait eu pour effet ou risquait vraisemblablement de diminuer sensiblement la concurrence. Compte tenu de l'existence d'un parallélisme structurel et logique entre, d'une part, les conditions prévues au paragraphe 77(2) concernant l'exclusivité, et, d'autre part, celles prévues au paragraphe 79(1) touchant l'abus de position dominante, les parties se sont plutôt contentées de renvoyer la Cour aux arguments qu'elles avaient avancés relativement à cet élément dans le contexte du paragraphe 79(1). Même si le libellé des deux paragraphes diffère quelque peu, la Cour n'avait pas à se demander si elle devait prendre ces différences en considération en l'espèce. Dans la mesure où le Tribunal avait commis des erreurs de droit dans son interprétation du critère de la diminution sensible de la concurrence dans le contexte de l'alinéa 79(1)*c*), il pouvait être dit avoir commis les mêmes erreurs de droit relativement au paragraphe 77(2). Ces considérations s'appliquaient à la question de savoir si le Tribunal avait formulé une conclusion erronée touchant le point de savoir si le PDS aurait vraisemblablement, sur un marché, soit pour effet de faire obstacle à l'entrée ou au développement d'une firme, ou encore au lancement ou à l'expansion des ventes d'un produit, soit quelque autre effet tendant à exclure. Le Tribunal a analysé la preuve concernant les obstacles à l'entrée et les effets du PDS du point de vue étroit qu'exprime le terme « empêcher » et non du point de vue plus large qu'appelle l'expression « faire obstacle » et l'adoption de ce point de vue constituait une erreur susceptible de révision.

LOIS ET RÈGLEMENTS CITÉS

*Loi sur la concurrence*, L.R.C. (1985), ch. C-34, art. 1 (mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 19), 1.1

*idem*), 77 (as am. *idem*, s. 45; S.C. 1999, c. 2, ss. 23, 37(*y*); c. 31, s. 52(F); 2002 c. 16, ss. 11.2, 11.3), 78 (as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 2000, c. 15, s. 13), 79 (as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1990, c. 37, s. 31; 1999, c. 2, s. 37(*z*); 2002, c. 16, s. 11.4), 96 (as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45).

CASES JUDICIALLY CONSIDERED

APPLIED:

*Canada (Director of Investigation and Research) v. NutraSweet Co.* (1990), 32 C.P.R. (3d) 1 (Comp. Trib.); *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; (1997), 144 D.L.R. (4th) 1; 50 Admin. L.R. (2d) 199; 71 C.P.R. (3d) 417; 209 N.R. 20; *Canada (Commissioner of Competition) v. Superior Propane Inc.*, [2001] 3 F.C. 185; (2001), 199 D.L.R. (4th) 130; 11 C.P.R. (4th) 289; 269 N.R. 109; 2001 FCA 204; *Canada (Director of Investigation and Research) v. Laidlaw Waste Systems Ltd.* (1992), 40 C.P.R. (3d) 289 (Comp. Trib.).

CONSIDERED:

*Canada (Commissioner of Competition) v. Canada Pipe Co.*, [2007] 2 F.C.R. 57; (2006), 268 D.L.R. (4th) 238; 49 C.P.R. (4th) 286; 350 N.R. 264; 2006 FCA 236; *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir. 2000); *Canada (Director of Investigation and Research) v. D & B Companies of Canada Ltd.* (1995), 64 C.P.R. (3d) 216 (Comp. Trib.); *Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) 1 (Comp. Trib.).

REFERRED TO:

*R. v. Proulx*, [2000] 1 S.C.R. 61; 182 D.L.R. (4th) 1; [2000] 4 W.W.R. 21; 142 Man. R. (2d) 161; 140 C.C.C. (3d) 449; 30 C.R. (5th) 1; 49 M.V.R. (3d) 163; 249 N.R. 201; 2000 SCC 5; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; (1998), 36 O.R. (3d) 418; 154 D.L.R. (4th) 193; 50 C.B.R. (3d) 163; 33 C.C.E.L. (2d) 173; 221 N.R. 241; 106 O.A.C. 1; *Gravel and Lake Services Ltd. v. Bay Ocean Management Inc.* (2002), 298 N.R. 369; 2002 FCA 465; *SMX Shopping Centre Ltd. v. Canada*, [2004] 2 C.T.C. 48; 2004 DTC 6013; (2003), 314 N.R. 365; 2003 FCA 479; *Naguib v. Canada*, [2004] 2 C.T.C. 215; 2004 DTC 6082; (2004), 317 N.R. 88; 2004 FCA 40; *The SS "Tordenskjold" v. The SS "Euphemia"* (1908), 41 S.C.R. 154; *Perka et al. v. The Queen*, [1984] 2 S.C.R. 232; (1984), 13 D.L.R. (4th) 1; [1984] 6 W.W.R. 289; 28 B.C.L.R. (2d) 205; 14 C.C.C. (3d) 385; 42 C.R. (3d) 113; 55 N.R. 1; *R. v. Keegstra*, [1995] 2 S.C.R. 381; (1995), 169 A.R. 50; 124 D.L.R. (4th) 289; 29 Alta. L.R. (3d)

JURISPRUDENCE CITÉE

DÉCISIONS APPLIQUÉES :

*Canada (Directeur des enquêtes et recherches) c. NutraSweet Co.*, CT-1989-002 (Trib. conc.); *Canada (Directeur des enquêtes et recherches) c. Southam Inc.*, [1997] 1 R.C.S. 748; *Canada (Commissaire de la concurrence) c. Supérieur Propane Inc.*, [2001] 3 C.F. 185; 2001 CAF 204; *Canada (Directeur des enquêtes et recherches) c. Laidlaw Waste Systems Ltd.*, CT-1991-002 (Trib. conc.).

DÉCISIONS EXAMINÉES :

*Canada (Commissaire de la concurrence) c. Tuyauteries Canada Ltée*, [2007] 2 R.C.F. 57; 2006 CAF 236; *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir. 2000); *Canada (Directeur des enquêtes et recherches) c. D & B Companies of Canada Ltd.*, CT-1994-001 (Trib. conc.); *Canada (Directeur des enquêtes et recherches) c. Télé-Direct (Publications) Inc.*, [1997] D.T.C.C. nº 8 (Trib. conc.) (QL).

DÉCISIONS CITÉES :

*R. c. Proulx*, [2000] 1 R.C.S. 61; 2000 CSC 5; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 R.C.S. 27; *Gravel and Lake Services Ltd. c. Bay Ocean Management Inc.*, 2002 CAF 465; *SMX Shopping Centre Ltd. c. Canada*, 2003 CAF 479; *Naguib c. Canada*, 2004 CAF 40; *The SS "Tordenskjold" v. The SS "Euphemia"* (1908), 41 R.C.S. 154; *Perka et autres c. La Reine*, [1984] 2 R.C.S. 232; *R. c. Keegstra*, [1995] 2 R.C.S. 381; *Bell ExpressVu Limited Partnership c. Rex*, [2002] 2 R.C.S. 559; 2002 CSC 42.

305; 98 C.C.C. (3d) 1; 39 C.R. (4th) 205; 29 C.R.R. (2d) 256; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559; (2002), 212 D.L.R. (4th) 1; [2002] 5 W.W.R. 1; 166 B.C.A.C. 1; 100 B.C.L.R. (3d) 1; 18 C.R.R. (4th) 289; 93 C.R.R. (2d) 189; 2002 SCC 42.

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DOCTRINE CITÉE

Bureau de la concurrence. *Lignes directrices pour l'application des dispositions sur l'abus de position dominante*. Industrie Canada : Ottawa, 2001.

Canada. Chambre des communes. *Procès-verbaux et témoignages du Comité législatif sur le Projet de loi C-91*, 1re Sess., 33e Lég., 1986.



APPEAL from a decision of the Competition Tribunal ((2005), 40 C.P.R. (4th) 453 (Comp. Trib.)) dismissing the Commissioner of Competition's application for an order against the respondent under subsections 77(2) (exclusive dealing) and 79(1) (abuse of dominant position) of the *Competition Act*. Appeal allowed.

APPEL d'une décision (CT-2002-006 (Trib. conc.)) par laquelle le Tribunal de la concurrence a rejeté la demande formée par la commissaire de la concurrence en vue d'obtenir une ordonnance d'interdiction contre l'intimée en vertu des paragraphes 77(2) (pratique d'exclusivité) et 79(1) (abus de position dominante) de la *Loi sur la concurrence*. Appel accueilli.

APPEARANCES:

*Randall Hofley* and *Leslie J. F. Milton* for appellant.
*Kent E. Thomson*, *James W. E. Doris* and *Charles E. Tingley* for respondent.

ONT COMPARU :

*Randall Hofley* et *Leslie J. F. Milton* pour l'appelante.
*Kent E. Thomson*, *James W. E. Doris* et *Charles E. Tingley* pour l'intimée.

SOLICITORS OF RECORD:

*Johnston & Buchan LLP*, Ottawa, and *Deputy Attorney General of Canada* for appellant.
*Davies Ward Phillips & Vineberg LLP*, Toronto, for respondent.

AVOCATS INSCRITS AU DOSSIER :

*Johnston & Buchan LLP*, Ottawa, et *le sous-procureur général du Canada* pour l'appelante.
*Davies Ward Phillips & Vineberg S.E.N.C.R.L., s.r.l.*, Toronto, pour l'intimée.

*The following are the reasons for judgment rendered in English by*

[1] DESJARDINS J.A.: This is an appeal from a decision of the Competition Tribunal (Tribunal), dated February 3, 2005, dismissing the application by the Commissioner of Competition (Commissioner or appellant) under sections 77 [as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1999, c. 2, ss. 23, 37(*y*); c. 31, s. 52(F); 2002, c. 16, ss. 11.2, 11.3] and 79 [as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1990, c. 37, s. 31; 1999, c. 2, s. 37(*z*); 2002, c. 16, s.

*Ce qui suit est la version française des motifs du jugement rendus par*

[1] LA JUGE DESJARDINS, J.C.A. : Il s'agit d'un appel de la décision en date du 3 février 2005, publiée sous la référence CT-2002-006, par laquelle le Tribunal de la concurrence (le Tribunal) a rejeté la demande formée par la commissaire de la concurrence (la commissaire ou l'appelante) sous le régime des articles 77 [mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 45; L.C. 1999, ch. 2, art. 23, 37*y*); ch. 31, art. 52(F); 2002, ch. 16, art. 11.2, 11.3] et 79 [édicté par L.R.C. (1985) (2e suppl.),

11.4] of the *Competition Act* [R.S.C., 1985, c. C-34, s. 1 (as am. by R.S.C., 1985 (2nd supp.) c. 19, s. 19)] (reported as (2005), 40 C.P.R. (4th) 453) (Comp. Trib.). The Commissioner sought an order against Canada Pipe Company Ltd. (Canada Pipe or respondent), to prohibit the respondent from engaging in the practice of several purported anti-competitive acts leading to an abuse of dominant position under section 79, as well as to prohibit the respondent from continuing to engage in the practice of exclusive dealing under section 77. This case also involves a cross-appeal by Canada Pipe, which is dealt with in separate reasons [[2007] 2 F.C.R. 57 (F.C.A.)].

[2] This is the first time this Court has the opportunity to consider the tests for exclusive dealing and abuse of dominant position established respectively by sections 77 and 79 of the Act. Both of these provisions, generally speaking, authorize the Tribunal to make orders prohibiting a dominant firm from engaging in conduct that has had, is having or is likely to have the effect of substantially lessening competition. While the Act has been in force since 1986, and the Tribunal has elaborated its perspective on the requirements of sections 77 and 79 in several cases, these provisions have not to date been interpreted by any Canadian court.

[3] The conduct at issue in this case consists of a "loyalty rebate" program offered by the respondent and known as the Stocking Distributor Program (SDP). Under the SDP, distributors of the respondent's cast iron drain, waste and vent (DWV) products obtain significant rebates and discounts in return for stocking only cast iron products produced by the respondent. These distributors are free to stock other companies' DWV products which are not made of cast iron.

[4] According to the Commissioner, Canada Pipe is a dominant firm with respect to the product markets relevant in this case. Furthermore, the Commissioner

ch. 19, art. 45; L.C. 1990, ch. 37, art. 31; 1999, ch. 2, art. 37*z*); 2002, ch. 16, art. 11.4] de la *Loi sur la concurrence* [L.R.C. (1985), ch. C-34, art. 1 (mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 19)]. La commissaire visait par cette demande à obtenir une ordonnance interdisant à Tuyauteries Canada Ltée (Tuyauteries Canada ou l'intimée) de se livrer à une pratique comprenant plusieurs agissements anti-concurrentiels supposés et constituant un abus de position dominante sous le régime de l'article 79, et lui interdisant en outre de continuer à se livrer à la pratique de l'exclusivité sous le régime de l'article 77. La présente affaire a aussi donné lieu à un appel incident, qui fait l'objet d'un exposé de motifs distinct [[2007] 2 R.C.F. 57 (C.A.F.)].

[2] C'est la première fois que notre Cour a l'occasion d'examiner les critères dont les articles 77 et 79 de la Loi font dépendre l'établissement de l'existence, respectivement, d'une pratique d'exclusivité et d'un abus de position dominante. Ces deux articles, considérés d'un point de vue général, habilitent le Tribunal à rendre des ordonnances interdisant aux entreprises qui occupent une position dominante de se livrer à un comportement qui a, a eu ou aura vraisemblablement pour effet de diminuer sensiblement la concurrence. La Loi est en vigueur depuis 1986 et le Tribunal a déjà développé dans plusieurs affaires son point de vue sur les conditions prévues aux articles 77 et 79, mais aucun tribunal judiciaire canadien n'avait jusqu'à ce jour interprété ces dispositions.

[3] Le comportement qui fait l'objet du présent litige consiste en l'application par l'intimée d'un programme de « fidélisation » de sa clientèle au moyen de ristournes et d'abattements, désigné « programme des distributeurs stockistes » (le PDS). Dans le cadre du PDS, les distributeurs des produits d'évacuation et de ventilation en fonte de l'intimée ont droit à des ristournes et à des abattements substantiels à condition de ne stocker que les produits en fonte fabriqués par cette dernière; il leur reste loisible de stocker les produits d'évacuation et de ventilation d'autres entreprises qui ne sont pas faits en fonte.

[4] Selon la commissaire, Tuyauteries Canada occupe une position dominante sur les marchés de produit pertinents en l'espèce. La commissaire affirme en outre

asserts, the SDP constitutes both a practice of exclusive dealing with exclusionary effects and a practice of anti-competitive acts, and it is likely to have the effect of substantially lessening competition in the markets for DWV products by impeding the entry and expansion of competitors. The respondent contends, by contrast, that it exercises no market power in relation to the relevant product markets, when the latter are properly defined. Moreover, according to the respondent, the SDP is neither exclusionary nor anti-competitive, but rather is a voluntary, non-exclusive, incentive-based program which encourages competition between DWV distributors, is compatible with competition on the merits between suppliers and is supported by valid business justifications.

[5] The Tribunal dismissed the Commissioner's application, based upon the following findings. With respect to the alleged abuse of dominant position under section 79, the Tribunal held that: (i) there are three relevant product markets, and six geographic markets, and the respondent substantially controls all these markets; (ii) the SDP is a practice, but does not qualify as an "anti-competitive act"; and (iii) the Commissioner had not demonstrated that the SDP had substantially lessened or prevented competition. With respect to the allegation of exclusive dealing contrary to section 77, the Tribunal found that: (i) the SDP can be characterized as a practice of exclusive dealing; (ii) the respondent is a major supplier of the products in the relevant markets; and (iii) there was insufficient evidence to establish that the SDP had impeded entry or expansion of firms, or that it is having any other exclusionary effect on the market, or that it has caused or is likely to cause a substantial lessening of competition.

[6] The Commissioner appeals from the Tribunal's decision.

[7] Broadly stated, the appeal challenges two aspects of the Tribunal's conclusions: first, the finding with respect to substantial lessening of competition for the purposes of both sections 77 and 79, and second, the

que le PDS constitue à la fois une pratique d'exclusivité aux effets tendant à exclure et une pratique d'agissements anti-concurrentiels, et qu'il aura vraisemblablement pour effet de diminuer sensiblement la concurrence sur les marchés des produits d'évacuation et de ventilation en faisant obstacle à l'entrée et au développement de concurrents. L'intimée soutient quant à elle qu'elle n'exerce pas de puissance commerciale sur les marchés de produit pertinents, s'ils sont définis comme ils doivent l'être. En outre, selon l'intimée, le PDS n'a pas d'effets tendant à exclure ni n'est anti-concurrentiel : il s'agit d'un programme volontaire, incitatif et non exclusif, qui favorise la concurrence entre les distributeurs de produits d'évacuation et de ventilation, est compatible avec la concurrence fondée sur l'efficacité entre les fournisseurs et s'appuie sur des justifications commerciales valables.

[5] Le Tribunal a rejeté la demande de la commissaire sur le fondement des conclusions suivantes. Pour ce qui concerne l'abus supposé de position dominante sous le régime de l'article 79, le Tribunal a conclu : i) qu'il y a trois marchés de produit pertinents et six marchés géographiques, et que l'intimée contrôle sensiblement tous ces marchés; ii) que le PDS est bien une pratique, mais ne remplit pas les conditions nécessaires pour être qualifié d'« agissements anti-concurrentiels »; et iii) que la commissaire n'avait pas démontré que le PDS eût empêché ou diminué sensiblement la concurrence. En ce qui a trait à l'allégation d'exclusivité formulée sous le régime de l'article 77, le Tribunal a conclu : i) que le PDS peut être qualifié de pratique d'exclusivité; ii) que l'intimée est un fournisseur important des produits en cause sur les marchés pertinents; et iii) que la preuve produite ne suffisait pas à établir que le PDS eût fait obstacle à l'entrée ou au développement de firmes, ni qu'il eût sur le marché quelque autre effet tendant à exclure, ni que la concurrence eût été ou serait vraisemblablement réduite sensiblement en conséquence de ce programme.

[6] La commissaire interjette appel de cette décision du Tribunal.

[7] On peut dire de façon générale que le présent appel met en cause deux aspects des conclusions du Tribunal : premièrement, la conclusion relative à la diminution sensible de la concurrence pour l'application

finding concerning exclusionary effects under section 77 or anti-competitive acts under section 79. The cross-appeal by Canada Pipe, which concerns the Tribunal's conclusions as to the definition of the relevant product markets and the issue of market power for the purpose of paragraph 79(1)(*a*), is discussed in separate reasons, as stated earlier.

[8] In order to facilitate the reading of these reasons, I include the following table of contents:



de l'article 77 aussi bien que de l'article 79; et deuxièmement, la conclusion concernant les effets tendant à exclure visés à l'article 77 ou les agissements anti-concurrentiels visés à l'article 79. Comme nous le disions plus haut, l'appel incident interjeté par Tuyauteries Canada, qui concerne les conclusions formulées par le Tribunal sur la définition des marchés de produit pertinents et la question de la puissance commerciale pour l'application de l'alinéa 79(1)*a*), fait l'objet d'un exposé de motifs distinct.

[8] Voici une table des matières destinée à faciliter la lecture du présent exposé.

I. FACTS

[9] The respondent is a Canadian company based in Hamilton, Ontario, which produces and sells through its Bibby Ste-Croix division (Bibby) cast iron drain, waste and vent products. DWV products are used in a wide variety of structures to carry waste and drain water, and to vent plumbing systems. There are three components to a cast iron DWV system: pipe, fittings and mechanical joint (MJ) couplings (collectively "DWV products").

[10] There are currently two domestic manufacturers of cast iron DWV products: Bibby and Vandem Industries (Vandem). Bibby manufactures cast iron DWV pipe and fittings, and imports MJ couplings from its sister companies in the United States. Vandem, which was founded in 1997 (according to the Tribunal; the respondent claims it was 1999, but little turns on this fact) by two former officers of Bibby, manufactures



I. LES FAITS

[9] L'intimée est une entreprise canadienne ayant son siège à Hamilton (Ontario), qui, par l'intermédiaire de sa division Bibby Ste-Croix (Bibby), fabrique et vend des produits d'évacuation et de ventilation en fonte. Les produits d'évacuation et de ventilation sont utilisés dans toutes sortes de bâtiments pour le transport des eaux usées et la ventilation des canalisations. Un système d'évacuation et de ventilation comprend trois éléments : les tuyaux, les raccords et les joints mécaniques (collectivement désignés ci-après « produits d'évacuation et de ventilation »).

[10] Il y a actuellement au Canada deux fabricants de produits d'évacuation et de ventilation en fonte : Bibby et Vandem Industries (Vandem). Bibby fabrique des tuyaux et des raccords en fonte, et importe les joints mécaniques de ses sociétés sœurs aux États-Unis. Vandem, fondée en 1997 (selon le Tribunal) par deux anciens cadres de Bibby, fabrique des tuyaux d'évacuation et de ventilation et importe les raccords et

DWV pipe and imports fittings and couplings. The only Canadian manufacturer of MJ couplings is Rollee Industrial Products (1987) Ltd., but it is not a major player. In addition, there are a limited number of other Canadian importers of cast iron DWV products, who generally import from the United States and the Far East (mainly China and India). Imports of cast iron DWV products for all of Canada, including imports by Bibby and Vandem, represented 5% of total sales in 2002. The respondent is the only company in Canada that manufactures and sells a full range of cast iron DWV products.

[11] Distributors buy DWV products from the suppliers (either manufacturers or importers), and in turn sell to the building, mechanical or plumbing contractors involved in construction or renovation projects. Distributors generally carry DWV pipe and fittings made of various materials; cast iron DWV products usually represent only a small proportion of their inventory and sales. In Canada, there are three major distributors, all with national presence: Wolseley Canada Inc., EMCO Ltd, and Crane Supply. There are also small distributors, some of whom are members of buying groups in order to improve their bargaining power and obtain volume discount advantages.

[12] Contractors buy DWV products from distributors for construction projects upon which they bid. The bidding process is highly competitive, and contractors will try to obtain the best price possible in order to make their bids attractive. Although contractors may have some leeway in deciding what material to use in construction they will generally buy the type of DWV product that has been specified by the architect or mechanical engineer.

[13] The SDP was introduced by Bibby in January 1998. In contrast to the volume-based rebate programs typical in the industry, the SDP is premised on

les joints (l'intimée soutient que Vandem n'a été fondée qu'en 1999, mais la question importe peu en l'espèce). Le seul fabricant canadien de joints mécaniques est Rollee Industrial Products (1987) Ltd., mais il n'est pas un acteur important du marché. Il existe en outre un nombre restreint d'importateurs de produits d'évacuation et de ventilation en fonte, qui importent en général des États-Unis et d'Asie (principalement de Chine et d'Inde). Pour l'ensemble du Canada, les importations, y compris celles de Bibby et de Vandem, représentaient en 2002 une proportion de 5 % des ventes totales de produits d'évacuation et de ventilation en fonte. L'intimée est la seule entreprise au Canada à fabriquer et à vendre une ligne complète de produits d'évacuation et de ventilation en fonte.

[11] Les distributeurs achètent les produits d'évacuation et de ventilation aux fournisseurs (fabricants ou importateurs) et les revendent aux entrepreneurs en bâtiment, en mécanique du bâtiment et en plomberie chargés de travaux de construction ou de rénovation. Les distributeurs stockent en général des tuyaux et des raccords d'évacuation et de ventilation faits de diverses matières : les produits en fonte ne représentent habituellement qu'une proportion restreinte de leurs stocks et de leurs ventes. On compte au Canada trois grands distributeurs, tous implantés à l'échelle nationale : Wolseley Canada Inc., EMCO Ltée et Crane Supply. Il y a aussi de petits distributeurs, dont certains ont formé des groupements d'achats afin d'accroître leur pouvoir de négociation et d'obtenir des remises sur volume.

[12] Les entrepreneurs achètent les produits d'évacuation et de ventilation aux distributeurs pour utilisation dans les travaux qu'ils soumissionnent. Les appels d'offres donnent lieu à une concurrence très vive, et les entrepreneurs essaient d'obtenir le meilleur prix possible afin de rendre leurs soumissions intéressantes. Ils disposent parfois d'une certaine latitude dans le choix des matériaux qu'ils utiliseront dans leurs travaux, mais ils doivent en général acheter les produits d'évacuation et de ventilation du type prescrit par l'architecte ou l'ingénieur mécanicien.

[13] Bibby a lancé le PDS en janvier 1998. Contrairement aux programmes de remises sur volume qui sont typiques dans ce secteur, le PDS est fondé sur

exclusivity, not the volume of purchases. Under the SDP, distributors of Bibby's DWV products obtain quarterly and yearly rebates as well as significant point-of-purchase discounts, in return for stocking only Bibby-supplied cast-iron DWV products. These distributors are free to stock other companies' DWV products which are not made of cast iron, but must purchase all three cast iron DWV products exclusively from the respondent. There are no signed contracts for the SDP: distributors can join at any time, and receive the quarterly and yearly rebates for each completed calendar quarter or year. Distributors who choose not to participate in the SDP are permitted to purchase products from Bibby, albeit at higher prices. There are no restrictions on the resale of cast iron DWV products purchased by distributors who participate in the SDP.

[14] The SDP discounts consist of point-of-sale discounts (for example, 55% of list price for stocking distributors, compared to 94% for non-stocking distributors), as well as quarterly and annual rebates (in 2002, the quarterly rebates were 7, 15 and 9 percent on pipe, fittings and MJ couplings respectively, and the annual rebate was 4 percent for all products). The point-of-sale discount and the rebates vary from one region to another. Any distributor can participate in the SDP, so long as a threshold minimum purchase is made; once this threshold is met, the rebates and discounts are the same for the given region, regardless of the size of the distributor's purchase. As a result, the SDP allows small- and medium-sized distributors to access the same prices as large distributors. The discount is applied at the time of purchase, so long as the distributor has committed to participating in the program, and is not reimbursable even if the distributor leaves the program. Except for losing the rebates, there are therefore no penalties attached to opting out of the SDP.

## II. LEGISLATIVE FRAMEWORK

[15] Three legislative provisions govern the issues to be decided in this appeal, namely sections 77, 78 [as

l'exclusivité et non sur le volume des achats. Les distributeurs des produits d'évacuation et de ventilation de Bibby qui adhèrent au PDS ont droit à des ristournes trimestrielles et annuelles, ainsi qu'à de substantiels abattements à l'achat, à condition de stocker seulement les produits d'évacuation et de ventilation en fonte fournis par Bibby. Ces distributeurs restent libres de stocker les produits d'évacuation et de ventilation d'autres entreprises qui ne sont pas faits en fonte, mais ils doivent acheter exclusivement à l'intimée l'ensemble des trois produits en fonte. Le PDS ne prévoit pas la signature de contrats : les distributeurs peuvent y adhérer n'importe quand et ils touchent les ristournes trimestrielles et annuelles pour chaque trimestre et chaque année calendaires de participation effective. Les distributeurs qui ne souhaitent pas participer au PDS peuvent néanmoins acheter des produits à Bibby, mais à des prix plus élevés. La revente des produits d'évacuation et de ventilation en fonte achetés par les distributeurs qui participent au PDS n'est soumise à aucune restriction.

[14] Les avantages du PDS consistent en abattements à l'achat (par exemple, les distributeurs stockistes ne paient que 55 % du prix de catalogue, contre 94 % pour les distributeurs non-stockistes), ainsi qu'en ristournes trimestrielles et annuelles (en 2002, les ristournes trimestrielles étaient de 7, 15 et 9 % respectivement pour les tuyaux, les raccords et les joints mécaniques, et tous les produits faisaient l'objet d'une ristourne annuelle de 4 %). Les abattements à l'achat et les ristournes varient d'une région à l'autre. Tout distributeur peut participer au PDS, à condition d'acheter le minimum requis; une fois ce seuil atteint, les abattements et les ristournes sont les mêmes pour l'ensemble de la région, quelles que soient les quantités que les distributeurs achètent. Il s'ensuit que le PDS permet aux petits et aux moyens distributeurs de bénéficier des mêmes prix que les grands. L'abattement est inscrit au moment de l'achat, à la seule condition que le distributeur se soit engagé à participer au PDS, et il n'est pas remboursable même si le distributeur se retire du programme. Mis à part la perte des abattements, l'abandon du PDS n'entraîne donc pas de pénalités.

## II. LE CADRE LÉGISLATIF

[15] Trois articles de la Loi régissent les questions à trancher dans le présent appel, soit les articles 77, 78

enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 2000, c. 15, s. 13] and 79 of the Act. These sections set out the various elements that must be proven by the Commissioner to establish exclusive dealing and abuse of dominant position, and provide some relevant statutory definitions.

[16] With respect to an alleged abuse of dominant position, the requisite elements for an order are described in subsection 79(1):

**79.** (1) Where, on application by the Commissioner, the Tribunal finds that

(*a*) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,

(*b*) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and

(*c*) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,

the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

[17] Subsection 79(4) further specifies that possible superior competitive performance must be considered in making the requisite determination under subsection 79(1) concerning competition:

**79.** . . .

(4) In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal shall consider whether the practice is a result of superior competitive performance.

[18] The term "anti-competitive act", which is a requisite element pursuant to paragraph 79(1)(*b*), is not defined in the Act. However, section 78 provides, under the heading "Definition", a non-exhaustive illustrative list of 11 anti-competitive acts:

[édicté par L.R.C. (1985) (2e suppl.), ch. 19, art. 45; L.C. 2000, ch. 15, art. 13] et 79. Ces dispositions énoncent les divers éléments que la commissaire doit prouver pour établir l'exclusivité et l'abus de position dominante, ainsi que certaines définitions pertinentes.

[16] Pour ce qui concerne l'abus supposé de position dominante, les conditions qui doivent être remplies pour que soit rendue une ordonnance d'interdiction sont énumérées au paragraphe 79(1) :

**79.** (1) Lorsque, à la suite d'une demande du commissaire, il conclut à l'existence de la situation suivante :

*a*) une ou plusieurs personnes contrôlent sensiblement ou complètement une catégorie ou espèce d'entreprises à la grandeur du Canada ou d'une de ses régions;

*b*) cette personne ou ces personnes se livrent ou se sont livrées à une pratique d'agissements anti-concurrentiels;

*c*) la pratique a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché,

le Tribunal peut rendre une ordonnance interdisant à ces personnes ou à l'une ou l'autre d'entre elles de se livrer à une telle pratique.

[17] Le paragraphe 79(4) précise que le Tribunal doit prendre en considération le point de savoir si la pratique résulte du rendement concurrentiel supérieur pour rendre la décision relative à la concurrence que prévoit le paragraphe 79(1) :

**79.** [. . .]

(4) Pour l'application du paragraphe (1), lorsque le Tribunal décide de la question de savoir si une pratique a eu, a ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, il doit évaluer si la pratique résulte du rendement concurrentiel supérieur.

[18] La Loi ne définit pas l'expression « agissement anti-concurrentiel », qui constitue une condition préalable à l'ordonnance selon l'alinéa 79(1)*b*). Cependant, l'article 78 donne à titre indicatif, sous le titre « Définition », une liste de 11 exemples d'agissements anti-concurrentiels :

**78.** (1) For the purposes of section 79, "anti-competitive act", without restricting the generality of the term, includes any of the following acts:

(*a*) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;

(*b*) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

(*c*) freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

(*d*) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

(*e*) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

(*f*) buying up of products to prevent the erosion of existing price levels;

(*g*) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

(*h*) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;

(*i*) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;

(*j*) acts or conduct of a person operating a domestic service, as defined in subsection 55(1) of the *Canada Transportation Act*, that are specified under paragraph (2)(*a*); and

**78.** (1) Pour l'application de l'article 79, « agissement anti-concurrentiel » s'entend notamment des agissements suivants :

*a*) la compression, par un fournisseur intégré verticalement, de la marge bénéficiaire accessible à un client non intégré qui est en concurrence avec ce fournisseur, dans les cas où cette compression a pour but d'empêcher l'entrée ou la participation accrue du client dans un marché ou encore de faire obstacle à cette entrée ou à cette participation accrue;

*b*) l'acquisition par un fournisseur d'un client qui serait par ailleurs accessible à un concurrent du fournisseur, ou l'acquisition par un client d'un fournisseur qui serait par ailleurs accessible à un concurrent du client, dans le but d'empêcher ce concurrent d'entrer dans un marché, dans le but de faire obstacle à cette entrée ou encore dans le but de l'éliminer d'un marché;

*c*) la péréquation du fret en utilisant comme base l'établissement d'un concurrent dans le but d'empêcher son entrée dans un marché ou d'y faire obstacle ou encore de l'éliminer d'un marché;

*d*) l'utilisation sélective et temporaire de marques de combat destinées à mettre au pas ou à éliminer un concurrent;

*e*) la préemption d'installations ou de ressources rares nécessaires à un concurrent pour l'exploitation d'une entreprise, dans le but de retenir ces installations ou ces ressources hors d'un marché;

*f*) l'achat de produits dans le but d'empêcher l'érosion des structures de prix existantes;

*g*) l'adoption, pour des produits, de normes incompatibles avec les produits fabriqués par une autre personne et destinées à empêcher l'entrée de cette dernière dans un marché ou à l'éliminer d'un marché;

*h*) le fait d'inciter un fournisseur à ne vendre uniquement ou principalement qu'à certains clients, ou à ne pas vendre à un concurrent ou encore le fait d'exiger l'une ou l'autre de ces attitudes de la part de ce fournisseur, afin d'empêcher l'entrée ou la participation accrue d'un concurrent dans un marché;

*i*) le fait de vendre des articles à un prix inférieur au coût d'acquisition de ces articles dans le but de discipliner ou d'éliminer un concurrent;

*j*) à l'égard des exploitants d'un service intérieur, au sens du paragraphe 55(1) de la *Loi sur les transports au Canada*, les agissements précisés à l'alinéa (2)*a*);

(*k*) the denial by a person operating a domestic service, as defined in subsection 55(1) of the *Canada Transportation Act*, of access on reasonable commercial terms to facilities or services that are essential to the operation in a market of an air service, as defined in that subsection, or refusal by such a person to supply such facilities or services on such terms.

[19] With respect to exclusive dealing, a statutory definition is provided in subsection 77(1):

**77.** (1) For the purposes of this section,

"exclusive dealing" means

(*a*) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

(i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

(ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

(*b*) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (*a*)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs;

[20] Subsection 77(2) sets out the elements required to be proven for an order to issue with respect to a practice of exclusive dealing:

**77.** . . .

(2) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

(*a*) impede entry into or expansion of a firm in a market,

(*b*) impede introduction of a product into or expansion of sales of a product in a market, or

*k*) le fait pour l'exploitant d'un service intérieur, au sens du paragraphe 55(1) de la *Loi sur les transports au Canada*, de ne pas donner accès, à des conditions raisonnables dans l'industrie, à des installations ou services essentiels à l'exploitation dans un marché d'un service aérien, au sens de ce paragraphe, ou de refuser de fournir ces installations ou services à de telles conditions.

[19] Quant au terme « exclusivité », il est défini au paragraphe 77(1) :

**77.** (1) Les définitions qui suivent s'appliquent au présent article.

« exclusivité »

*a*) Toute pratique par laquelle le fournisseur d'un produit exige d'un client, comme condition à ce qu'il lui fournisse ce produit, que ce client :

(i) soit fasse, seulement ou à titre principal, le commerce de produits fournis ou indiqués par le fournisseur ou la personne qu'il désigne,

(ii) soit s'abstienne de faire le commerce d'une catégorie ou sorte spécifiée de produits, sauf ceux qui sont fournis par le fournisseur ou la personne qu'il désigne;

*b*) toute pratique par laquelle le fournisseur d'un produit incite un client à se conformer à une condition énoncée au sous-alinéa *a*)(i) ou (ii) en offrant de lui fournir le produit selon des modalités et conditions plus favorables s'il convient de se conformer à une condition énoncée à l'un ou l'autre de ces sous-alinéas.

[20] Le paragraphe 77(2) énonce les éléments qui doivent être prouvés pour que le Tribunal puisse rendre une ordonnance relativement à une pratique d'exclusivité :

**77.** [. . .]

(2) Lorsque le Tribunal, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, conclut que l'exclusivité ou les ventes liées, parce que pratiquées par un fournisseur important d'un produit sur un marché ou très répandues sur un marché, auront vraisemblablement :

*a*) soit pour effet de faire obstacle à l'entrée ou au développement d'une firme sur un marché;

*b*) soit pour effet de faire obstacle au lancement d'un produit sur un marché ou à l'expansion des ventes d'un produit sur un marché;

(*c*) have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

[21] A parallel structure and logic is readily apparent between the requisite elements for exclusive dealing under subsection 77(2) and abuse of dominant position under subsection79(1). First, both provisions require an initial determination that the firm in question occupies a position of dominance: subsection 77(2) refers to a "major supplier of a product in a market", while paragraph 79(1)(*a*) requires that "one or more persons substantially or completely control . . . a class or species of business". Second, both provisions call for the identification of a particular type of conduct, namely a practice of exclusive dealing with an exclusionary effect in the case of subsection 77(2), and a practice of anti-competitive acts in the case of subsection 79(1). Third, both provisions require a finding of actual or likely substantial lessening of competition.

[22] While I would not conclude that the legal tests applicable under these two provisions would necessarily produce identical results in all cases, this parallel structure suggests that an overlapping analysis is to be expected.

III. ISSUES

[23] This appeal raises the following four issues:

(A) For the purposes of paragraph 79(1)(*c*), did the Tribunal err in its determination with respect to whether the SDP has had, is having or is likely to have the effect

*c*) soit sur un marché quelque autre effet tendant à exclure,

et qu'en conséquence la concurrence est ou sera vraisemblablement réduite sensiblement, le Tribunal peut, par ordonnance, interdire à l'ensemble ou à l'un quelconque des fournisseurs contre lesquels une ordonnance est demandée de pratiquer désormais l'exclusivité ou les ventes liées et prescrire toute autre mesure nécessaire, à son avis, pour supprimer les effets de ces activités sur le marché en question ou pour y rétablir ou y favoriser la concurrence.

[21] On constate un parallélisme évident de structure et de logique entre les conditions auxquelles sont subordonnés l'établissement d'une pratique d'exclusivité sous le régime du paragraphe 77(2) et l'établissement d'un abus de position dominante dans le cadre du paragraphe 79(1). Premièrement, les deux paragraphes exigent d'abord une première conclusion comme quoi l'entreprise en question occupe une position dominante : cette entreprise, selon le paragraphe 77(2), doit être « un fournisseur important d'un produit sur un marché », tandis que, selon l'alinéa 79(1)*a*), le Tribunal doit conclure qu'« une ou plusieurs personnes contrôlent sensiblement ou complètement une catégorie ou espèce d'entreprises ». Deuxièmement, les deux paragraphes exigent l'établissement d'un comportement particulier, soit, dans le cas du paragraphe 77(2), d'une pratique d'exclusivité qui aura vraisemblablement un effet tendant à exclure, et, dans le cas du paragraphe 79(1), d'une pratique d'agissements anti-concurrentiels. Troisièmement, les deux paragraphes exigent que le Tribunal conclue à l'existence effective ou à la vraisemblance pour l'avenir d'une diminution sensible de la concurrence.

[22] Je n'irais pas jusqu'à dire que les critères juridiques applicables sous le régime de ces deux paragraphes produiront nécessairement des résultats identiques dans tous les cas, mais ce parallélisme laisse prévoir une coïncidence partielle des analyses.

III. LES QUESTIONS EN LITIGE

[23] Le présent appel soulève les quatre questions suivantes :

A) Pour l'application de l'alinéa 79(1)*c*), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si le PDS a, a eu ou aura vraisemblablement

of preventing or lessening competition substantially?

(B) For the purposes of paragraph 79(1)(*b*), did the Tribunal err in its determination with respect to whether the SDP constitutes an "anti-competitive act"?

(C) For the purposes of subsection 77(2), did the Tribunal err in its determination with respect to whether the SDP has the result that competition is or is likely to be lessened substantially?

(D) For the purposes of subsection 77(2), did the Tribunal err in its determination with respect to whether the SDP is likely to impede entry or expansion of a firm or a product in a market or have any other exclusionary effect in a market?

[24] I will address each of these issues in turn. As the analysis of each issue depends heavily upon the Tribunal's particular findings and approach, I will summarize the Tribunal's decision in the context of my analysis of each question.

## IV. ANALYSIS

[25] Before proceeding to an analysis of the issues listed above, a preliminary observation concerning analytic methodology and evidentiary limitations in the competition law context might be helpful. Each of the legislative provisions governing this appeal define a series of elements that must be proven in order to ground the particular order that is sought; if any of these elements is not established, the Commissioner's application must fail. Both section 77 and section 79 specify three distinct elements, and each of these elements is at issue in the appeal or cross-appeal in this case.

[26] The multi-element structures of sections 77 and 79 suggest that the applicable legal tests consist of several discrete subtests, each corresponding to a different requisite element. Indeed, this interpretation appears necessary to give effect to the "well accepted

pour effet d'empêcher ou de diminuer sensiblement la concurrence?

B) Pour l'application de l'alinéa 79(1)*b*), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si le PDS constitue un « agissement anti-concurrentiel »?

C) Pour l'application du paragraphe 77(2), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si la concurrence est ou sera vraisemblablement réduite sensiblement en conséquence du PDS?

D) Pour l'application du paragraphe 77(2), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si le PDS aura vraisemblablement, sur un marché, soit pour effet de faire obstacle à l'entrée ou au développement d'une firme, ou encore au lancement ou à l'expansion des ventes d'un produit, soit quelque autre effet tendant à exclure?

[24] Je traiterai ces questions successivement. Comme l'analyse de chacune dépend dans une mesure considérable des conclusions et de l'approche correspondantes du Tribunal, je résumerai la décision de ce dernier dans le contexte de mon examen de chaque question.

## IV. ANALYSE

[25] Il ne serait peut-être pas inutile de proposer, avant d'entreprendre l'analyse des questions énumérées ci-dessus, quelques observations préliminaires sur la méthode d'analyse à suivre et les limites auxquelles la preuve est soumise dans le contexte du droit de la concurrence. Chacune des dispositions législatives applicables au présent appel définit une série d'éléments qu'il faut prouver pour justifier l'ordonnance souhaitée; si l'un ou l'autre de ces éléments n'est pas établi, la demande du commissaire doit être rejetée. L'article 77 aussi bien que l'article 79 spécifient trois éléments distincts, dont chacun est en question dans le présent appel et dans l'appel incident interjeté parallèlement.

[26] La pluralité des conditions prévues aux articles 77 et 79 donne à penser que les critères juridiques applicables doivent se décomposer en plusieurs sous-critères distincts, chacun correspondant à une condition distincte. En fait, cette interprétation paraît nécessaire

principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage" (*R. v. Proulx*, [2000] 1 S.C.R. 61, at paragraph 28; see also *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at paragraph 27). Each statutory element must give rise to a distinct legal test, for otherwise the interpretation risks rendering a portion of the statute meaningless or redundant.

[27] The difficulty arises, however, when the necessary distinct subtests are examined in light of the available evidence in a given case. In the abuse of dominance context, the economic concepts upon which the legal tests are based often cannot be readily extracted from the available evidence. For example, in many cases the foundational concept of market power cannot be established directly; instead, one must look to relevant indirect indicators. However, these indirect indicators are often relevant with respect to more than one element. As a result, the same evidence—for example, concerning barriers to entry, or market share—is potentially and unavoidably relied upon at several points in the analysis, in respect of different requisite elements. In its first abuse of dominance case, *Canada (Director of Investigation and Research) v. NutraSweet Co.* (1990), 32 C.P.R. (3d) 1 (*NutraSweet*), the Competition Tribunal noted that this difficulty "is pervasive in competition law because the relevant factors in the different statutory elements are rarely distinct and it is impossible not to draw on common factors whenever required" (page 28).

[28] However, it is important that the correct approach to the overlapping use of supporting evidence in the competition context be properly understood, so as to avoid the interpretive danger of impermissible erosion or conflation of the discrete underlying statutory tests. Although a particular piece of supporting evidence may be employed as an indirect indicator in respect of more than one element, the elements themselves must remain conceptually distinct. I will return to this point in my analysis of the questions at issue in the appeal at bar.

pour mettre en œuvre le « principe d'interprétation législative reconnu [suivant lequel] une disposition législative ne devrait jamais être interprétée de façon telle qu'elle devienne superfétatoire » : *R. c. Proulx*, [2000] 1 R.C.S. 61, au paragraphe 28; voir aussi *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 R.C.S. 27, au paragraphe 27. À chaque condition prévue par la loi applicable doit correspondre un critère juridique distinct, faute de quoi l'interprétation risque de priver de sens ou de rendre superflue une partie de cette loi.

[27] Il se pose cependant un problème lorsque les sous-critères distincts reconnus comme nécessaires sont examinés à la lumière de la preuve produite dans une affaire déterminée. Dans le contexte de l'abus de position dominante, il arrive souvent qu'on ne puisse extraire facilement de la preuve au dossier les concepts économiques sur lesquels se fondent les critères juridiques. Dans bien des cas, par exemple, l'élément fondamental qu'est la puissance commerciale ne peut être établi directement, mais doit l'être au moyen d'indicateurs indirects pertinents. Cependant, ces indicateurs indirects sont souvent pertinents à l'égard de plus d'un élément. Par suite, il se révèle possible et inévitable de se fonder sur les mêmes éléments de preuve—concernant par exemple les obstacles à l'entrée ou la part de marché—à divers moments de l'analyse et à l'égard de conditions différentes prévues par la loi. Dans sa première décision relative à l'abus de position dominante, *Canada (Directeur des enquêtes et recherches) c. NutraSweet Co.*, CT-1989-002 (*NutraSweet*), le Tribunal de la concurrence notait que ce problème « est courant dans le droit de la concurrence parce que les facteurs pertinents des différentes dispositions législatives sont rarement distincts et [que] l'on doit nécessairement se fonder sur des facteurs communs au besoin » (page 55).

[28] Il est toutefois important de bien comprendre quelle est la manière juste d'aborder cette difficulté de l'utilisation coïncidente des éléments de preuve dans le contexte de la concurrence si l'on veut éviter le danger que représente pour l'interprétation l'inacceptable érosion ou fusion des critères juridiques distincts qui doivent la guider. S'il est permis d'utiliser un élément de preuve donné comme indicateur indirect à l'égard de plus d'une condition prévue par la Loi, les conditions elles-mêmes doivent rester conceptuellement distinctes.

(A) For the purposes of paragraph 79(1)(*c*), did the Tribunal err in its determination with respect to whether the SDP has had, is having or is likely to have the effect of preventing or lessening competition substantially?

[29] I begin my analysis with the issue of substantial lessening of competition for the purposes of paragraph 79(1)(*c*), for it is on this question that I am most clearly convinced that this Court's intervention is required. My conclusion in this regard follows directly from an interpretation of the governing statutory language. In short, I have concluded that the Tribunal erred in law in its analytic approach with respect to the legal test applicable under paragraph 79(1)(*c*).

[30] Before this Court, the appellant argued that the Tribunal erred in law in its interpretation of paragraph 79(1)(*c*) and failed to apply the correct legal test. The appellant argued that the statutory language—and in particular the use of the relative concept "lessening"—mandates an assessment of the effect of the impugned practice on competition in the relevant markets, which can only be properly accomplished by comparing the competitiveness of the relevant markets in the presence and absence of the impugned practice. The appellant submitted that the correct legal test for assessing competitive effects therefore involves a "but for" analysis: would markets—in the past, present or future—be substantially more competitive but for the impugned practice? Or, in other words, but for the impugned practice, would markets be characterized by greater price competition, choice, service or innovation than exists in the presence of this practice? The Tribunal thus erred, the appellant contended, in that its assessment of substantial lessening of competition focussed virtually exclusively on the narrow question of whether the SDP prevented entry or switching of suppliers, or in other words, whether a substantial level of competition continued to exist in the relevant market. Rather, the Tribunal should have considered the broader question of whether the SDP impeded or hindered the competition that would otherwise exist if the program were absent from the market.

Je reviendrai sur ce point dans mon analyse des questions en litige dans le présent appel.

A) Pour l'application de l'alinéa 79(1)*c*), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si le PDS a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence?

[29] Je commence mon analyse par la question de la diminution sensible de la concurrence pour l'application de l'alinéa 79(1)*c*), parce que c'est sur cette question que je suis le plus convaincue que notre Cour doit intervenir. Ma conclusion à cet égard découle directement d'une interprétation du libellé des dispositions législatives applicables. Je dirai d'emblée que le Tribunal a commis une erreur de droit dans son approche analytique du critère juridique applicable sous le régime de l'alinéa 79(1)*c*).

[30] L'appelante soutient devant notre Cour que le Tribunal a commis une erreur de droit dans son interprétation de l'alinéa 79(1)*c*) et n'a pas appliqué le critère juridique qui convient. Elle fait valoir que le libellé de la Loi—en particulier par son emploi du concept relatif qu'exprime le verbe « diminuer »—commande une évaluation de l'effet de la pratique attaquée sur la concurrence dans les marchés pertinents, évaluation qu'on ne peut bien effectuer qu'en comparant les niveaux de ladite concurrence qui correspondent respectivement à la présence et à l'absence hypothétique de cette pratique. Selon l'appelante, le critère juridique qu'il faut appliquer à l'évaluation des effets sur la concurrence nécessite donc une analyse fondée sur l'« absence hypothétique » (*"but for" analysis*) : il convient de se demander si les marchés auraient été, ou seraient actuellement ou dans l'avenir, sensiblement plus concurrentiels en l'absence de (*but for*) la pratique contestée. Autrement dit, en l'absence de la pratique attaquée, les marchés se caractériseraient-ils par une plus grande concurrence des prix, un choix plus large, un meilleur service ou une tendance plus forte à l'innovation que dans le cas où cette pratique est présente? Le Tribunal s'est donc trompé, affirme l'appelante, en axant son évaluation de la diminution sensible de la concurrence à peu près exclusivement sur la question restreinte de savoir si le PDS empêchait l'entrée de concurrents (*competitors*)ou le changement

de fournisseurs, autrement dit sur la question de savoir si un niveau sensible de concurrence était maintenu sur le marché pertinent; il aurait plutôt dû se poser la question plus large de savoir si le PDS représentait un obstacle ou un frein pour la concurrence qui caractériserait le marché en l'absence de ce programme.

[31] In response, the respondent submitted two main arguments challenging the Commissioner's proposed "but for" test. First, the respondent argued that the "but for" test was a "novel approach", which the Commissioner had never before advocated before the Tribunal, either in this case or in prior proceedings under section 79. As a result, the respondent contended, the appellant is precluded from introducing this new argument at the appellate level. In this regard, the respondent cited this Court's comments in *Gravel and Lake Services Ltd. v. Bay Ocean Management Inc.* (2002), 298 N.R. 369, at paragraph 8; *SMX Shopping Centre Ltd. v. Canada*, [2003] 2 C.T.C. 48, at paragraph 32; and *Naguib v. Canada*, [2004] 2 C.T.C. 215, at paragraph 7 for the proposition that a new argument may not be raised for the first time on appeal if the responding party would be prejudiced by having had no opportunity to adduce evidence that could, if accepted, defeat the argument. In this case, the respondent maintained that the record contains little or no evidence to establish the likely characteristics of the necessary hypothetical "but for" market. Moreover, Canada Pipe would have argued its case very differently had it had notice at the Tribunal level of the Commissioner's new "but for" test; in particular, it would have retained experts to model the hypothetical comparator markets that would exist "but for" the SDP.

[31] L'intimée oppose deux arguments principaux au critère de l'« absence hypothétique » proposé par la commissaire. Premièrement, soutient-elle, ce critère constitue une [TRADUCTION] « approche inédite », que la commissaire n'a jamais invoquée devant le Tribunal, que ce soit dans la présente affaire ou dans d'autres relevant de l'article 79. Par conséquent, fait valoir l'intimée, il est interdit à l'appelante de présenter ce nouveau moyen en appel. À ce propos, l'intimée a invoqué, à l'appui de la thèse qu'un nouvel argument ne peut être avancé pour la première fois en appel dans le cas où la partie intimée en subirait un préjudice du fait de n'avoir pas eu la possibilité de produire des éléments de preuve qui, acceptés, eussent pu réfuter cet argument, les observations formulées par notre Cour : au paragraphe 8 de *Gravel and Lake Services Ltd. c. Bay Ocean Management Inc.*, 2002 CAF 465; au paragraphe 32 de *SMX Shopping Centre Ltd. c. Canada*, 2003 CAF 479; et au paragraphe 7 de *Naguib c. Canada*, 2004 CAF 40. Pour ce qui concerne la présente espèce, l'intimée soutient que le dossier ne contient pas, ou guère, d'éléments de preuve tendant à établir les caractéristiques probables du marché hypothétique qu'il faudrait décrire aux fins de comparaison. En outre, Tuyauteries Canada aurait fait valoir des moyens très différents si elle avait été informée au niveau du Tribunal du nouveau critère de l'« absence hypothétique » proposé par la commissaire; en particulier, elle aurait engagé des experts pour modéliser, aux fins de comparaison, le marché qui existerait hypothétiquement « en l'absence » du PDS.

[32] Second, or in the alternative, the respondent asserted that the Tribunal adopted the correct, well-established approach in its determination under paragraph 79(1)(*c*), and properly considered all relevant factors. The Tribunal reached its conclusion by carefully exercising its considerable expertise in appraising and weighing the relevant factors, and the respondent argued that since its conclusion on this question of mixed law and fact was not unreasonable, this Court should not

[32] Deuxièmement, ou subsidiairement, l'intimée soutient que le Tribunal a adopté l'approche qui convient, déjà bien établie, pour arriver à sa conclusion sous le régime de l'alinéa 79(1)*c*), et qu'il a régulièrement pris en considération tous les facteurs pertinents. Le Tribunal est arrivé à cette conclusion en exerçant avec soin son expertise considérable dans l'appréciation et la pondération des facteurs pertinents et, comme sa décision sur cette question mixte de droit

interfere.

[33] Although initially appealing, the respondent's first argument cannot be sustained, for several reasons. The legal principle cited by the respondent, with respect to the impropriety of an appellate court considering an entirely new argument which had not been raised below and in relation to which additional evidence is required, is indeed well established: see, for example, *The SS "Tordenskjold" v. The SS "Euphemia"* (1908), 41 S.C.R. 154; *Perka et al. v. The Queen*, [1984] 2 S.C.R. 232, at page 240; *R. v. Keegstra*, [1995] 2 S.C.R. 381, at paragraph 26; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, at paragraph 58. However, this principle is inapplicable in the instant case, for the appellant's argument is not in fact "entirely new" (*Perka*, at page 240). As I explain further below, although the Competition Tribunal has not used the "but for" wording in its previous cases, this wording appears in *Enforcement Guidelines on the Abuse of Dominance Provisions* issued by the appellant, and the substance of this legal test has been articulated and applied by the Tribunal in prior decisions. The respondent thus had ample notice of this argument. Moreover, the primary concern underlying the general prohibition—namely, that the evidentiary record is insufficient to support the new argument (*Keegstra*, at paragraph 26)—also does not apply in this case, for the Commissioner bears the burden of establishing each statutory element; if insufficient evidence exists to meet the "but for" test, no order will issue.

[34] As to the respondent's second argument, I am not persuaded that the Tribunal's error with respect to its determination under paragraph 79(1)(*c*) is one of mixed law and fact. The appellant's argument calls for an exercise of statutory interpretation, to determine whether the statutory language indeed mandates a particular analytic approach. As the Supreme Court of Canada noted in *Canada (Director of Investigation and*

et de fait n'est pas déraisonnable, la Cour ne devrait pas la remettre en cause.

[33] Bien que séduisant à première vue, le premier argument de l'intimée ne peut être retenu, pour plusieurs raisons. Le principe juridique invoqué par l'intimée, selon lequel il n'est pas permis à une cour d'appel de prendre en considération un argument entièrement nouveau qui n'a pas été avancé en première instance et à l'égard duquel de nouveaux éléments de preuve sont nécessaires, est effectivement bien établi; voir par exemple : *The SS "Tordenskjold" v. The SS "Euphemia"* (1908), 41 R.C.S. 154; *Perka et autres c. La Reine*, [1984] 2 R.C.S. 232, à la page 240; *R. c. Keegstra*, [1995] 2 R.C.S. 381, au paragraphe 26; et *Bell ExpressVu Limited Partnership c. Rex*, [2002] 2 R.C.S. 559, au paragraphe 58. Cependant, ce principe n'est pas applicable à la présente espèce, car l'argument de l'appelante n'est pas en fait « entièrement nouveau » (*Perka*, à la page 240). Comme je l'explique de manière plus détaillée ci-dessous, s'il est vrai que le Tribunal de la concurrence n'a pas employé la terminologie de l'« absence hypothétique » dans sa jurisprudence, l'expression « en l'absence de » figure textuellement à ce propos dans les *Lignes directrices pour l'application des dispositions sur l'abus de position dominante* publiées par l'appelante, et le Tribunal a formulé et appliqué la substance de ce critère juridique dans des décisions antérieures. L'intimée a donc été informée largement à l'avance de cet argument. En outre, la crainte principale qui sous-tend l'interdiction générale—à savoir celle que le dossier de la preuve ne suffise pas à étayer le nouvel argument (*Keegstra*, au paragraphe 26)—n'a pas lieu d'être dans la présente espèce, étant donné que la commissaire a la charge d'établir la réalisation de chacune des conditions prévues par la Loi; si la preuve produite ne suffit pas à remplir le critère de l'« absence hypothétique », il ne sera pas rendu d'ordonnance.

[34] Quant au deuxième argument de l'intimée, je ne suis pas persuadée que l'erreur commise par le Tribunal dans la conclusion qu'il a formulée sous le régime de l'alinéa 79(1)*c*) ait pour objet une question mixte de droit et de fait. L'argument de l'appelante nécessite une opération d'interprétation de la Loi, destinée à établir si le libellé de celle-ci prescrit effectivement un mode d'analyse déterminé. Comme la Cour suprême du

*Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at paragraph 36 (*Southam*), questions of statutory interpretation "are generally questions of law," as such questions have "the potential to apply widely to many cases". In the case at bar, the Tribunal's actual appraisal and weighting of different factors—that is, the question of mixed law and fact—is a secondary question, arising only once it has been determined whether the correct legal test was applied. While the Tribunal has economics and competition law expertise in relation to the determinations of fact and mixed law and fact required for the application of the correct legal test, this is not sufficient to displace the expertise of this Court with respect to statutory interpretation itself. As this Court has previously determined—and indeed, the parties do not dispute—the Tribunal's conclusions on questions of law are to be reviewed on the standard of correctness: *Canada (Commissioner of Competition) v. Superior Propane Inc.*, [2001] 3 F.C. 185 (C.A.) (*Superior Propane*), at paragraph 88.

(1) The legal test under paragraph 79(1)(*c*)

[35] In light of the appellant's argument, I must consider the correct statutory interpretation of paragraph 79(1)(*c*), which, for convenience's sake, I set out again:

> **79.** (1) Where, on application by the Commissioner, the Tribunal finds that
>
> . . .
>
> (*c*) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,

[36] Two aspects of the scope of paragraph 79(1)(*c*) are immediately evident from the wording. First, the effect on competition is to be assessed by reference to up to three different time frames: actual effects in the past or present, and likely effects in the future. Second, the effect on competition which must be proven to ground an order prohibiting an abuse of dominance is one of substantial preventing or lessening. The requisite

Canada le faisait observer au paragraphe 36 de *Canada (Directeur des enquêtes et recherches) c. Southam Inc.*, [1997] 1 R.C.S. 748 (*Southam*), les questions d'interprétation des lois « sont généralement des questions de droit », étant donné qu'elles sont « susceptible[s] de s'appliquer à un grand nombre de cas ». Dans la présente espèce, l'opération effective d'évaluation et de pondération de divers facteurs accomplie par le Tribunal—c'est-à-dire la question mixte de droit et de fait—est une question secondaire, qui se pose seulement une fois qu'on a établi si le Tribunal a appliqué le critère juridique qui convient. S'il est vrai que le Tribunal possède une expertise en science économique et en droit de la concurrence pour ce qui concerne les conclusions de fait et les conclusions mixtes de droit et de fait qu'exige l'application du critère juridique approprié, cette expertise ne suffit pas à remplacer celle de notre Cour en matière d'interprétation des lois. Or, comme notre Cour l'a déjà établi—et, en fait, les parties ne le contestent pas —, les conclusions du Tribunal sur des questions de droit doivent être contrôlées suivant la norme de la décision correcte : *Canada (Commissaire de la concurrence) c. Supérieur Propane Inc.*, [2001] 3 C.F. 185 (C.A.) (*Supérieur Propane*), au paragraphe 88.

1) Le critère juridique prévu à l'alinéa 79(1)*c*)

[35] L'argument de l'appelante m'oblige à examiner la question de l'interprétation correcte de l'alinéa 79(1)*c*), que je reproduis ici de nouveau pour la commodité du lecteur :

> **79.** (1) Lorsque, à la suite d'une demande du commissaire, il conclut à l'existence de la situation suivante :
>
> [. . .]
>
> *c*) la pratique a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché,

[36] Deux aspects de la portée de l'alinéa 79(1)*c*) ressortent immédiatement de son libellé. Premièrement, l'effet sur la concurrence doit être évalué par rapport aux trois divisions du temps : il faut prendre en considération l'effet réel dans le passé et dans le présent, et l'effet vraisemblable dans l'avenir. Deuxièmement, l'effet sur la concurrence qui doit être établi pour motiver une ordonnance d'interdiction d'abus de

assessment is thus a relative one: it is not the absolute level of competition in a market which must be substantial, but rather the preventing or lessening of competition that results from the impugned practice must be substantial.

[37] The test mandated by paragraph 79(1)(*c*) is not whether the relevant markets would or did attain a certain level of competitiveness in the absence of the impugned practice, or whether the level of competitiveness observed in the presence of the impugned practice is "high enough" or otherwise acceptable. These are absolute evaluations, while the statutory language of "effect of preventing or lessening . . . substantially" clearly demands a relative and comparative assessment. In order to achieve the inquiry dictated by the statutory language of paragraph 79(1)(*c*), the Tribunal must compare the level of competitiveness in the presence of the impugned practice with that which would exist in the absence of the practice, and then determine whether the preventing or lessening of competition, if any, is "substantial". This comparison must be done with reference to actual effects in the past and present, as well as likely future effects. Only through such a comparative approach can the Tribunal determine, as the statutory provision requires, whether the impugned practice "has had, is having or is likely to have the effect of preventing or lessening competition substantially".

[38] The comparative interpretation described above is in my view equivalent to the "but for" test proposed by the appellant. Apart from its arguments concerning the evidentiary difficulties involved in the application of such a test at the appeal stage in this case, the respondent did not advance any reasons of principle or statutory interpretation as to why this approach to paragraph 79(1)(*c*) is incorrect or inappropriate. I would therefore endorse the formulation of the legal test proposed by the appellant: the question that must be assessed for the purposes of paragraph 79(1)(*c*) is, would the relevant markets—in the past, present or future—be substantially more competitive but for the impugned practice of anti-competitive acts?

position dominante est le fait de l'empêcher ou de la diminuer sensiblement. L'évaluation prescrite revêt donc un caractère relatif : ce n'est pas le niveau absolu de la concurrence sur un marché qui doit être sensible, mais plutôt la mesure dans laquelle la concurrence est empêchée ou diminuée par suite de la pratique attaquée.

[37] Le critère dont l'alinéa 79(1)*c*) prescrit l'application ne consiste pas à se demander si les marchés pertinents atteindraient ou ont atteint un niveau déterminé de concurrence en l'absence de la pratique attaquée, ou si le niveau de concurrence observé sur le marché tel qu'il est déterminé par la présence de cette pratique est « suffisamment élevé » ou acceptable pour d'autres raisons. Ce sont là des évaluations dans l'absolu, alors que le libellé de la Loi (« pour effet d'empêcher ou de diminuer sensiblement ») commande à l'évidence une évaluation relative et comparative. Pour mener à bien l'examen que dicte le libellé de l'alinéa 79(1)*c*), le Tribunal doit comparer le niveau de concurrence sur le marché caractérisé par la présence de la pratique attaquée au niveau qui existerait en l'absence de cette pratique, pour ensuite établir si la concurrence est empêchée ou diminuée « sensiblement », en supposant qu'elle le soit tant soit peu. Cette comparaison doit se faire en tenant compte des effets réels dans le passé et dans le présent, ainsi que des effets vraisemblables dans l'avenir. Ce n'est que par cette approche comparative que le Tribunal peut établir, comme la disposition applicable l'exige, si la pratique attaquée « a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence ».

[38] Or, l'interprétation comparative que je viens de décrire est à mon sens équivalente au critère de l'« absence hypothétique » proposé par l'appelante. Mis à part ses arguments touchant les difficultés relatives à la preuve qu'entraîne l'application d'un tel critère à l'étape de l'appel dans la présente affaire, l'intimée n'a avancé aucun argument de principe ou d'interprétation des lois qui tendrait à démontrer le caractère erroné ou incorrect de cette manière d'aborder l'alinéa 79(1)*c*). En conséquence, je suis d'avis de souscrire à la formulation du critère juridique proposée par l'appelante : la question qui doit être examinée pour l'application de l'alinéa 79(1)*c*) est celle de savoir si les marchés pertinents auraient été, ou seraient actuellement ou dans

[39] It is important to note that the "but for" wording appears in the *Enforcement Guidelines on the Abuse of Dominance Provisions* issued by the appellant, which Guidelines are expressly intended to "help the general public, business people, and their legal and economic advisors to better understand . . . the general approach taken by the Competition Bureau . . . to enforce these provisions" (see *Enforcement Guidelines on the Abuse of Dominance Provisions*, section 1.1). In describing the Commissioner's approach to assessing the effects of anti-competitive acts for the purposes of paragraph 79(1)(*c*), the Guidelines employ the "but for" wording (see section 3.2.4).

[40] The expression "but for" has also appeared in American antitrust jurisprudence. In *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir. 2000), at page 1055, the Court referred to the difficulty of constructing a hypothetical market:

> Notwithstanding the complex nature of the conduct at issue, Dr. Hall was required to construct a hypothetical market, a "but for" market, free of the restraints and conduct alleged to be anticompetitive. The difficulty of such a task has long been recognized by courts in antitrust cases. [Emphasis added.]

[41] In substance, the "but for" interpretation of paragraph 79(1)(*c*) is also accordant with the Tribunal's interpretations in earlier abuse of dominance cases. Although the "but for" wording does not appear in the statutory provision or in previous Tribunal decisions, this legal test does not, as the respondent alleges, "amount . . . to an attempt by the Commissioner to re-write the Act at the appellate stage of this

l'avenir, sensiblement plus concurrentiels en l'absence de la pratique attaquée d'agissements anti-concurrentiels.

[39] Il est important de noter que les termes « en l'absence de » (*but for*) apparaissent à ce propos dans les *Lignes directrices pour l'application des dispositions sur l'abus de position dominante* publiées par l'appelante, lesquelles, expressément, « s'adressent au grand public, ainsi qu'aux gens d'affaires et à leurs conseillers juridiques et économiques » et ont été conçues « pour les aider à mieux comprendre l'objet des dispositions sur l'abus de position dominante, et l'approche généralement suivie par le Bureau de la concurrence [...] pour assurer leur application » (voir *Lignes directrices pour l'application des dispositions sur l'abus de position dominante*, section 1.1). Dans l'exposé que proposent les Lignes directrices de l'approche suivie par le commissaire dans l'évaluation des effets des agissements anti-concurrentiels pour l'application de l'alinéa 79(1)*c*), on retrouve textuellement les termes « en l'absence de » (*but for*) (voir la section 3.2.4).

[40] L'expression *but for* (« en l'absence de » ou « absence hypothétique ») apparaît aussi dans la jurisprudence antitrust américaine. On trouve ainsi à la page 1055 de *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039 (8th Cir. 2000), le passage suivant touchant la difficulté de construire un marché hypothétique :

> [TRADUCTION] Malgré la nature complexe du comportement en question, il a été demandé à M. Hall de construire un marché fondé sur l'« absence hypothétique » des restrictions et du comportement dont on affirme le caractère anti-concurrentiel. La difficulté d'une telle tâche est reconnue depuis longtemps par les tribunaux judiciaires appelés à statuer dans des affaires antitrust. [Non souligné dans l'original.]

[41] L'interprétation de l'alinéa 79(1)*c*) fondée sur le critère de l'« absence hypothétique » s'accorde aussi en substance avec les interprétations données par le Tribunal dans les affaires antérieures d'abus de position dominante. Bien que les expressions « en l'absence de » ou « absence hypothétique » ne figurent à ce propos ni dans la disposition législative applicable ni dans les décisions antérieures du Tribunal, ce critère juridique

proceeding" (respondent's memorandum of fact and law, paragraph 102). Rather, the "but for" test reflects the plain meaning of the statutory language of paragraph 79(1)(*c*), and corresponds to the Tribunal's analysis in its previous decisions with respect to this provision.

[42] The Tribunal's use of a comparative and relative test for paragraph 79(1)(*c*) is evident in its descriptions, in previous abuse of dominance cases, of the appropriate analytic approach for determining whether there exists an actual or likely substantial lessening of competition. In *Canada (Director of Investigation and Research) v. Laidlaw Waste Systems Ltd.* (1992), 40 C.P.R. (3d) 289 (Comp. Trib.) (*Laidlaw*), the Tribunal specifically endorsed an assessment based upon comparison of the competitiveness of the relevant markets with and without the impugned practice (at pages 344-346):

> Laidlaw argues that the Director has not demonstrated that there has been any substantial lessening of competition in the relevant markets. It is argued that no analysis has been done of the state of competition in the markets before Laidlaw entered compared to what exists now.
>
> . . .
>
> It is not just the number of competitors and comparative market shares which are relevant in considering whether a substantial lessening of competition has occurred. . . . [T]he substantial lessening which is to be assessed need not necessarily be proved by weighing the competitiveness of the market in the past with its competitiveness at present. Substantial lessening can also be assessed by reference to the competitiveness of the market in the presence of the anti-competitive acts and its likely competitiveness in their absence. [Emphasis added.]

Similarly, in *Canada (Director of Investigation and Research) v. D & B Companies of Canada Ltd.* (1995), 64 C.P.R. (3d) 216 (*D & B*), the Tribunal described as follows the appropriate approach to assessing the existence of a substantial lessening of competition (at page 267):

n'équivaut pas, comme l'affirme l'intimée, [TRADUCTION] « à une tentative de réécriture de la Loi par la commissaire à l'étape de l'appel de la présente affaire » (exposé des faits et du droit de l'intimée, paragraphe 102). Le critère de l'« absence hypothétique » correspond en effet à la fois au sens manifeste du libellé de l'alinéa 79(1)*c*) et à l'analyse effectuée par le Tribunal dans ses décisions antérieures pour l'application de cet alinéa.

[42] L'utilisation par le Tribunal d'un critère comparatif et relatif pour l'alinéa 79(1)*c*) ressort à l'évidence des définitions qu'il a proposées dans les affaires antérieures d'abus de position dominante du mode d'analyse à appliquer pour établir s'il y a eu, s'il y a ou s'il y aura vraisemblablement une diminution sensible de la concurrence. Ainsi aux pages 116, 118 et 119 de *Canada (Directeur des enquêtes et recherches) c. Laidlaw Waste Systems Ltd.*, CT-1991-002 (*Laidlaw*), le Tribunal a expressément souscrit à l'idée d'une évaluation fondée sur la comparaison des niveaux de concurrence des marchés pertinents selon que la pratique attaquée y est ou non présente :

> Laidlaw soutient que le directeur n'a pas fait la preuve qu'il y eu diminution sensible de la concurrence dans les marchés pertinents. Elle soutient qu'aucune analyse n'a été effectuée eu égard à l'état de la concurrence dans ces marchés avant et après l'entrée dans les marchés de Laidlaw.
>
> [. . .]
>
> Il ne faut pas s'en tenir seulement au nombre de concurrents et à leur part relative du marché pour établir s'il y a eu diminution sensible de la concurrence [...] [P]our établir qu'il y a eu diminution sensible de la concurrence, il n'est pas nécessaire de comparer, chiffres à l'appui, le niveau de concurrence qui régnait par le passé dans le marché avec celui qui y règne aujourd'hui. On peut également évaluer la diminution sensible de la concurrence en mesurant le niveau de compétitivité qui existe dans un marché dans lequel une entreprise se livre à des agissements anticoncurrentiels, et estimer le niveau probable de compétitivité en l'absence de ces agissements. [Non souligné dans l'original.]

De même, à la page 88 de *Canada (Directeur des enquêtes et recherches) c. D & B Companies of Canada Ltd.*, CT-1994-001 (*D & B*), le Tribunal décrivait comme suit la marche à suivre pour établir s'il existe une diminution sensible de la concurrence :

First, we must establish what the conditions of entry would be without the exclusives [the impugned practice of anti-competitive acts] and, then, determine how the anti-competitive acts altered the prospects for economically feasible entry.

The correspondence between these formulations and the "but for" test described above is readily apparent.

[43] The Tribunal's previous abuse of dominance decisions also highlight the centrality of relative comparison in the test mandated by paragraph 79(1)(*c*). The test for substantial lessening of competition articulated by the Tribunal in *NutraSweet*, *Laidlaw*, and *D & B*, in all cases depends upon this relative comparative aspect (*NutraSweet*, at page 47):

> The factors to be considered in deciding whether competition has been or is likely to be substantially lessened are similar to those that were discussed in concluding that NSC [NutraSweet Co.] has market power [that is, market share and entry barriers]. In essence, the question to be decided is whether the anti-competitive acts engaged in by NSC preserve or add to NSC's market power.
>
> The issue with respect to the contract terms associated with exclusivity and the use of the United States patent as leverage in competing for Canadian customers is the degree to which these anti-competitive acts add to the entry barriers into the Canadian market and, additionally therefore, into the industry. [Emphasis added.]

*Laidlaw*, at pages 347-348:

> There is no reason to doubt that based solely on the economics of lift-on-board service that these should be highly competitive markets. The evidence shows, however, that the effect of the contracts is to make entry sufficiently difficult so that it no longer effectively polices the market. The evidence demonstrates that a new firm can acquire a certain number of customers but that it cannot establish a customer base with sufficient rapidity to make entry attractive. In the markets in question there is no doubt that acquisition practices of Laidlaw buttressed by the creation of artificial barriers to entry through the contracts have resulted in a substantial lessening of competition. [Emphasis added.]

Premièrement, nous devons déterminer quelles seraient les conditions d'accès au marché en l'absence des clauses d'exclusivité [la pratique d'agissements anti-concurrentiels attaquée], puis dans quelle mesure les agissements anti-concurrentiels ont modifié la perspective d'une entrée économiquement viable sur le marché.

On constate une correspondance manifeste entre ces formulations et le critère de l'« absence hypothétique » défini plus haut.

[43] Les décisions antérieures du Tribunal en matière d'abus de position dominante font également ressortir le caractère central de la comparaison relative dans le critère dont l'alinéa 79(1)*c*) prescrit l'application. Le critère de la diminution sensible de la concurrence formulé par le Tribunal dans *NutraSweet*, *Laidlaw* et *D & B*, dépend dans tous les cas de cet aspect relatif et comparatif (*NutraSweet*, à la page 91) :

> Les facteurs à prendre en considération pour déterminer si la concurrence a été ou risque d'être diminuée sensiblement sont semblables à ceux qui ont été mentionnés au moment où il a été conclu que NSC [NutraSweet Co.] constitue une puissance sur le marché [ces facteurs sont la part de marché et les obstacles à l'entrée]. Essentiellement, il faut déterminer si les agissements anticoncurrentiels auxquels se livre NSC préservent ou augmentent son emprise sur le marché.
>
> Par rapport aux modalités des contrats relatives à l'exclusivité et à l'utilisation du brevet américain pour gagner les clients canadiens, la question est de savoir dans quelle mesure ces agissements anticoncurrentiels renforcent les obstacles à l'accès au marché canadien et, partant, à l'industrie [Non souligné dans l'original.]

*Laidlaw*, à la page 123 :

> Il n'y a pas lieu de douter qu'en se fondant seulement sur les réalités économiques du service de vidage de conteneurs sur place, il devrait régner une vive concurrence dans les marchés. Toutefois, les éléments de preuve révèlent que les contrats ont pour conséquence de rendre l'entrée dans le marché suffisamment difficile de sorte que l'arrivée de nouvelles entreprises ne s'avère plus un moyen efficace de contrôler les prix. La preuve révèle également qu'une nouvelle entreprise peut recruter un certain nombre de clients mais qu'elle ne peut y parvenir dans un délai suffisamment court pour faire de l'entrée dans un marché une perspective attrayante. Dans les marchés en cause, il n'y a aucun doute que les pratiques d'acquisition de Laidlaw, conjuguées à l'imposition d'obstacles artificiels à l'entrée dans le marché, obstacles que constituent les contrats, se sont traduites par une diminution sensible de la concurrence. [Non souligné dans l'original.]

*D & B*, at pages 266-267:

The central issue to be decided in determining whether the Director has satisfied this third element [of subsection 79(1)] is the effect of the exclusives with retailers and the long-term contracts with customers on the conditions of entry into the market. Or, to paraphrase the words of the Tribunal in *NutraSweet*, in essence, the question to be decided is whether the anti-competitive acts engaged in by Nielsen [D & B] preserve or add to Nielsen's market power. [Emphasis added.]

Clearly, the assessment envisaged and undertaken by the Tribunal in all these cases was not merely an absolute evaluation of the level of competition in the relevant markets, but rather a relative comparison: did the impugned practice result in a preventing or lessening of competition as compared to the conditions governing in the absence of the practice, and was this lessening of a degree sufficient to be considered substantial?

[44] Based upon the plain meaning of the statutory language, and supported by the interpretation advanced by the Tribunal in its earlier cases, I conclude therefore that paragraph 79(1)(*c*) mandates an approach that properly accentuates these comparative and relative aspects, and enables this analysis to be undertaken in respect of each of the three specified time frames (past, present and future). As I have explained, the "but for" test is one such approach. I must emphasize, however, as the Tribunal rightly implied in the passage from *Laidlaw* quoted in paragraph 39 above, that the "but for" test is not necessarily the only correct approach. I therefore expressly leave open the possibility that the Tribunal might in a future abuse of dominance case find evidence corresponding to a different test sufficient to discharge the burden placed upon the Commissioner by virtue of paragraph 79(1)(*c*). However, as the "but for" test describes an approach that corresponds to the requirements mandated by the statutory language of paragraph 79(1)(*c*), it is one that the Tribunal must consider in all cases—although it may in future cases choose to consider other appropriate tests as well.

*D & B*, à la page 88 :

La principale question à trancher lorsqu'il s'agit de décider si le directeur a fait la preuve de ce troisième élément [du paragraphe 79(1)] se rapporte à l'effet des clauses d'exclusivité liant les détaillants et des contrats à long terme conclus avec les clients sur les conditions d'entrée dans le marché. En se basant sur la décision du Tribunal dans l'affaire *NutraSweet*, il faut essentiellement déterminer si les agissements anti-concurrentiels de Nielsen [D & B] préservent ou augmentent son emprise sur le marché. [Non souligné dans l'original.]

Manifestement, l'examen envisagé et effectué par le Tribunal dans toutes ces affaires ne consistait pas simplement en une évaluation dans l'absolu du niveau de concurrence sur les marchés pertinents, mais plutôt en une comparaison relative : la pratique attaquée, se demandait-il, a-t-elle eu pour effet d'empêcher ou de diminuer la concurrence en comparaison de la situation définie par l'absence de cette pratique, et cette diminution, le cas échéant, était-elle suffisante pour être considérée comme sensible?

[44] Me fondant sur le sens manifeste du libellé de la Loi et, accessoirement, sur l'interprétation proposée par le Tribunal dans ses décisions antérieures, je conclus que l'alinéa 79(1)*c*) prescrit une approche mettant l'accent qui convient sur ces aspects comparatifs et relatifs et permettant l'application de cette analyse à chacune des trois divisions du temps visées par la Loi (passé, présent et futur). Comme je l'ai expliqué, le critère de l'« absence hypothétique » est une approche de cette nature. Je dois cependant souligner le fait que, comme le Tribunal le laisse entendre avec raison dans le passage de *Laidlaw* cité au paragraphe 39 du présent exposé, le critère de l'« absence hypothétique » n'est pas nécessairement la seule approche correcte. Je laisse donc expressément ouverte la possibilité que le Tribunal, dans une affaire ultérieure d'abus de position dominante, déclare la preuve correspondant à un critère différent suffisante pour acquitter le commissaire de la charge que prévoit l'alinéa 79(1)*c*). Cependant, comme le critère de l'« absence hypothétique » est une approche correspondant aux conditions qui doivent obligatoirement être remplies selon le libellé de l'alinéa 79(1)*c*), le Tribunal doit en envisager l'application dans tous les cas —encore que, dans des affaires ultérieures, il puisse

décider d'envisager également l'utilisation d'autres critères appropriés.

(2) Application of the statutory test for paragraph 79(1)(*c*)

[45] In practice, the application of the "but for" test, and in particular, determination of the appropriate methodology in any given case, is a matter for which the Tribunal is better qualified than this Court. This Court should not attempt to prescribe in the abstract the "correct" methodology, for "[s]uch a task is beyond the limits of the Court's competence" (*Superior Propane*, at paragraph 159). As the Supreme Court of Canada observed in *Southam*, at paragraph 52, for the questions of mixed law and fact involved in the application of the legal tests set out in the *Competition Act*, "what is required in the end is an assessment of the economic significance of the evidence; and to this task an economist is almost by definition better suited than is a judge".

[46] As suggested by the parties in the case at bar, application of the "but for" test could conceivably involve the construction of a hypothetical comparator model, a market identical to reality in all respects except that the impugned practice is absent. In appropriate circumstances, the "but for" test might also be applied by comparing the competitiveness of the market across time, and treating the market conditions before and after the introduction of the impugned practice as proxies for the market with and without the practice. However, I would not want to be seen to suggest that any particular type of evidence would necessarily be required. Ultimately, the Commissioner bears the burden of proof for each requisite element, and the Tribunal must be convinced on the balance of probabilities. The evidence required to meet this burden can only be determined by the Tribunal on a case-by-case basis.

2) L'application du critère prévu à l'alinéa 79(1)*c*)

[45] Du point de vue pratique, le Tribunal est plus qualifié que notre Cour pour appliquer le critère de l'« absence hypothétique » et, en particulier, pour établir la méthode qui convient à un cas déterminé. Notre Cour ne devrait pas essayer de prescrire dans l'abstrait la méthode « correcte », car « [c]ette tâche va au-delà des limites de sa compétence » (*Supérieur Propane*, au paragraphe 159). Comme le faisait observer la Cour suprême du Canada au paragraphe 52 de *Southam*, à propos des questions mixtes de droit et de fait que soulève l'application des critères juridiques prévus par la *Loi sur la concurrence*, « ce qui est nécessaire, en dernière analyse, c'est l'appréciation de l'importance de la preuve sur le plan économique, et, pour accomplir cette tâche, un économiste est, pratiquement par définition, mieux préparé qu'un juge ».

[46] Ainsi que l'ont fait remarquer les parties à la présente espèce, il se pourrait bien que l'application du critère de l'« absence hypothétique » comporte la construction d'un modèle hypothétique aux fins de comparaison, c'est-à-dire d'un marché identique au marché réel à tous égards, sauf que la pratique attaquée en serait absente. Dans le cas où le contexte s'y prêterait, on pourrait aussi appliquer le critère de l'« absence hypothétique » en comparant les niveaux de concurrence du marché dans le temps et en considérant les caractéristiques du marché avant et après l'introduction de la pratique attaquée comme des valeurs de remplacement des caractéristiques du marché avec et sans la pratique en question. Cependant, je ne voudrais pas qu'on croie que je laisse ici entendre que tel ou tel type de preuve devrait nécessairement être produit. En dernière analyse, c'est au commissaire qu'incombe la charge de la preuve de la réalisation de chaque condition prévue par la Loi, et il doit convaincre le Tribunal suivant la prépondérance de la preuve. La nature des éléments de preuve nécessaires pour s'acquitter de cette charge ne peut être établie que par le Tribunal, au cas par cas.

[47] The Act does, however, provide some guidelines which should be borne in mind in undertaking the assessment mandated by paragraph 79(1)(*c*). In this regard, I would adopt *mutatis mutandis* the advice provided by Evans J.A. in *Superior Propane* [at paragraph 160] with respect to the methodology appropriate for determining the anti-competitive "effects" of a merger under section 96 [as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45] of the Act:

> Whatever standard is selected (and, for all I know, the same standard may not be equally apposite for all mergers) must be more reflective than the total surplus standard [the methodology adopted by the Tribunal in that case] of the different objectives of the *Competition Act*. It should also be sufficiently flexible in its application to enable the Tribunal fully to assess the particular fact situation before it.

Similarly, whatever methodology the Tribunal chooses in any given case in its application of the "but for" analysis required under paragraph 79(1)(*c*) must be sufficiently flexible to allow a full assessment of all factors relevant in the particular fact situation at issue, and must be reflective of the different objectives of the Act.

[48] In *Superior Propane*, at paragraphs 104-112, this Court looked to the purposes provision of the Act, section 1.1 [as enacted *idem*, s. 19], to inform its analysis of the meaning of the word "effects" in section 96. Similarly, for the purposes of paragraph 79(1)(*c*), in undertaking its assessment of whether there is an actual or likely substantial preventing or lessening of competition, the Tribunal must ensure that the methodology chosen to apply the "but for" test reflects the multiple purposes or objectives set out in section 1.1. Four different purposes are described in section 1.1:

> **1.1** The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to

[47] La Loi, cependant, donne certaines lignes directrices qu'il convient de ne pas oublier lorsqu'on entreprend l'examen prescrit par l'alinéa 79(1)*c*). À ce propos, je reprends à mon compte, *mutatis mutandis*, les observations formulées par M. le juge Evans dans *Supérieur Propane* [au paragraphe 160], touchant la méthode appropriée pour établir les « effets » anti-concurrentiels d'un fusionnement sous le régime de l'article 96 [édicté par L.R.C. (1985) (2e suppl.), ch. 19, art. 45] de la Loi :

> Quel que soit le critère choisi (et, pour ce que j'en sais, il se peut que le même critère ne convienne pas également pour tous les fusionnements), il doit refléter, mieux que ne le fait le critère du surplus total, les différents objectifs de la *Loi sur la concurrence*. Il doit également être d'application suffisamment souple pour permettre au Tribunal d'apprécier pleinement la situation de fait particulière qui lui est présentée.

De même, quelle que soit la méthode que le Tribunal choisisse dans une affaire déterminée pour effectuer l'analyse fondée sur l'« absence hypothétique » qu'exige l'alinéa 79(1)*c*), elle doit être suffisamment souple pour permettre la pleine appréciation de tous les facteurs pertinents dans la situation de fait particulière qui lui est présentée et elle doit refléter les différents objectifs de la Loi.

[48] Aux paragraphes 104 à 112 de *Supérieur Propane*, notre Cour a examiné la disposition de déclaration d'objet (l'article 1.1 [édicté, *idem*, art. 19]) de la Loi pour éclairer son analyse de la signification du terme « effets » aux fins d'application de l'article 96. De même, pour l'application de l'alinéa 79(1)*c*), le Tribunal doit s'assurer, avant d'entreprendre son analyse pour établir si la concurrence a été, est ou sera vraisemblablement empêchée ou diminuée sensiblement, que la méthode choisie pour appliquer le critère de l'« absence hypothétique » reflète bien les objets ou objectifs multiples énoncés à l'article 1.1. Cet article énumère quatre objets distincts :

> **1.1** La présente loi a pour objet de préserver et de favoriser la concurrence au Canada dans le but de stimuler l'adaptabilité et l'efficience de l'économie canadienne, d'améliorer les chances de participation canadienne aux marchés mondiaux tout en tenant simultanément compte du rôle de la concurrence étrangère au Canada, d'assurer à la petite et à la moyenne entreprise une chance honnête de participer à l'économie

participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

All of these purposes must be reflected in the methodology adopted by the Tribunal to assess the existence of an actual or likely substantial lessening of competition for the purposes of paragraph 79(1)(*c*).

(3) The Tribunal's paragraph 79(1)(*c*) decision

[49] Having articulated the legal test for paragraph 79(1)(*c*), I turn now to an analysis of what the Tribunal actually did in the case at bar. The Tribunal's analysis directly concerning paragraph 79(1)(*c*) is brief, and I will therefore quote it in its entirety (at paragraphs 263-266):

The Tribunal, as stated above, is satisfied that Bibby does exercise market control. This can be traced to a number of factors and specifically to the fact that Bibby is the only Canadian supplier able to supply full product lines. The SDP is certainly an instrument that helps Bibby market its products, but the Tribunal is not satisfied that the SDP has been shown to be a practice of anti-competitive acts. If, however, the Tribunal has erred in this assessment, the Tribunal is also of the view that the SDP has not been shown to be a practice that has substantially lessened or prevented competition, for the reasons that follow.

The Tribunal has accepted the Commissioner's submission that there are three distinct product markets, and six geographic markets. Therefore, the Commissioner has the onus of establishing a substantial lessening or prevention of competition in eighteen separate markets. Yet the Commissioner has not established to the Tribunal's satisfaction that the SDP has led to substantial lessening or prevention of competition in any of these markets.

In Western Canada and in Ontario, which represent approximately 75 percent of Bibby's market, there is significant evidence of competitive pricing, notwithstanding the SDP. This competitive pricing is due to imports and to the emergence of a new manufacturer. Although imports still represent a relatively small portion of the cast iron DWV markets, they have been steadily increasing and have had a noticeable impact on prices of cast iron DWV products. In

canadienne, de même que dans le but d'assurer aux consommateurs des prix compétitifs et un choix dans les produits.

Tous ces objets doivent trouver leur expression dans la méthode qu'adoptera le Tribunal en vue d'établir, sous le régime de l'alinéa 79(1)*c*), si la concurrence a été, est ou sera vraisemblablement empêchée ou diminuée sensiblement.

3) La décision rendue par le Tribunal sous le régime de l'alinéa 79(1)*c*)

[49] Après avoir formulé le critère juridique applicable dans le cas de l'alinéa 79(1)*c*), j'aborderai maintenant l'examen des conclusions que le Tribunal a effectivement établies dans la présente affaire. L'analyse du Tribunal qui concerne directement l'alinéa 79(1)*c*) est brève, de sorte que j'en citerai ici l'intégralité (aux paragraphes 263 à 266) :

Le Tribunal, comme nous le disions précédemment, constate que Bibby exerce effectivement un contrôle sur le marché. Ce contrôle s'explique par plusieurs facteurs, notamment par le fait que Bibby est le seul fournisseur canadien capable d'offrir des lignes complètes. Le PDS aide certes Bibby à commercialiser ses produits, mais le Tribunal estime qu'il n'a pas été établi que ce programme constitue une pratique d'agissements anticoncurrentiels. Toutefois, pour le cas où cette conclusion serait erronée, le Tribunal conclut aussi qu'il n'a pas été établi que le PDS soit une pratique qui ait eu pour effet d'empêcher ou de diminuer sensiblement la concurrence, et ce, pour les motifs que nous allons exposer.

Le Tribunal a accepté la conclusion de la commissaire selon laquelle nous avons ici affaire à trois marchés de produit distincts et à six marchés géographiques. Par conséquent, il incombait à la commissaire de prouver que la concurrence est empêchée ou diminuée sensiblement sur 18 marchés distincts. Or, elle n'a pas convaincu le Tribunal que le PDS ait eu pour effet d'empêcher ou de diminuer sensiblement la concurrence sur aucun de ces marchés.

Des éléments de preuve convaincants établissent que, malgré le PDS, des prix concurrentiels ont cours dans l'Ouest canadien et en Ontario, qui représentent environ 75 pour 100 du marché de Bibby. Cette concurrence des prix est attribuable aux importations et à l'émergence d'un nouveau fabricant. Si elles ne forment qu'une proportion relativement restreinte du marché des produits d'évacuation et de ventilation en fonte, les importations progressent régulièrement et exercent un effet

addition, a new competing manufacturer has emerged for the first time in thirty years and has succeeded in capturing 10 percent of the market in Canada within four years, while the SDP was in effect. There is clearly effective entry in the market by Vandem, as evidenced by the lowering of prices for cast iron DWV products in Ontario. As discussed earlier, in these reasons, its viability remains to be determined. It is the Tribunal's view, however, that the evidence shows that a number of factors, unrelated to the SDP, will bear on Vandem's future. In consequence, the Tribunal is of the view that the SDP has not brought about a substantial lessening or prevention of competition for the Ontario and Western markets.

The Tribunal acknowledges that for Quebec and the Maritimes, which represent 25 percent of the market, prices appear not to have been constrained by competition. This, however, does not necessarily lead to a conclusion that the SDP has caused the lack of competition. The data provided by the Commissioner relate only to the period of time when the SDP was operating. Dr. Ross based his arguments concerning market power on pricing information covering the period of January 1998 to September 2003. The Tribunal has no historical data which would allow it to measure the state of competition before and after the SDP came into effect. Canada Pipe bought the assets of Canada's only manufacturer of cast iron DWV products, the Gooding foundries, a well-established player with no significant rivals. As well, Bibby has been and continues to be the only producer of a full line of products. The Tribunal therefore finds that there is insufficient evidence for it to conclude that the SDP is responsible for a substantial lessening or prevention of competition. [Footnote omitted.]

sensible sur les prix de ces produits. De plus, un nouveau fabricant est entré en lice pour la première fois en 30 ans et a réussi à s'emparer de 10 pour 100 du marché canadien en quatre ans, pendant que le PDS était en vigueur. L'entrée de Vandem sur le marché est manifestement productrice d'effet, comme le montre la baisse des prix des produits considérés en Ontario. Ainsi que nous le notions précédemment, la viabilité de Vandem reste à déterminer. Cependant, selon le Tribunal, la preuve montre que l'avenir de Vandem dépend de plusieurs facteurs, qui ne sont pas liés au PDS. En conséquence, le Tribunal conclut que le PDS n'a pas eu pour effet d'empêcher ou de diminuer sensiblement la concurrence sur les marchés de l'Ontario et de l'Ouest.

Le Tribunal reconnaît que, au Québec et dans les Maritimes, qui représentent 25 pour 100 du marché, les prix ne paraissent pas avoir subi l'effet de la concurrence. Mais ce fait ne mène pas nécessairement à la conclusion que l'absence de concurrence soit attribuable au PDS. Les renseignements produits par la commissaire ne portent que sur la période où le PDS était en vigueur. M. Ross a fondé son argumentation concernant la puissance commerciale sur des renseignements relatifs aux prix applicables à la période de janvier 1998 à septembre 2003. Le Tribunal ne dispose pas de données chronologiques qui lui permettraient de mesurer l'état de la concurrence avant et après l'entrée en vigueur du PDS. Tuyauteries Canada a acquis le capital des fonderies de Gooding, entreprise solidement établie et sans rivaux importants, qui était alors le seul fabricant canadien de produits d'évacuation et de ventilation en fonte. En outre, Bibby était et continue d'être la seule entreprise à produire une ligne complète. En conséquence, le Tribunal estime ne pas disposer d'une preuve suffisante pour conclure qu'il faille attribuer au PDS l'effet d'empêcher ou de diminuer sensiblement la concurrence. [Note de bas de page omise.]

[50] The Tribunal's substantive analysis for the purpose of paragraph 79(1)(*c*) is contained in two paragraphs, 265 and 266. Paragraph 265 considers the evidence with respect to the geographic markets of Western Canada and Ontario, and paragraph 266 considers that with respect to Quebec and the Maritimes. The Tribunal's stated reasons for concluding that substantial lessening of competition had not been established are very different for the two geographic groupings. In both cases, however, the Tribunal's reasoning evinces errors of law.

[50] L'analyse de fond du Tribunal, pour ce qui concerne l'alinéa 79(1)*c*), tient toute dans les paragraphes 265 et 266. Le paragraphe 265 examine la preuve en ce qui a trait aux marchés géographiques de l'Ouest canadien et de l'Ontario, et le paragraphe 266 fait de même pour le Québec et les Maritimes. Les motifs exposés par le Tribunal pour étayer sa conclusion qu'une diminution sensible de la concurrence n'a pas été établie sont très différents d'un groupement géographique à l'autre. Mais dans les deux cas, son raisonnement est entaché d'erreurs de droit.

[51] For Western Canada and Ontario, the reasons show that the Tribunal's conclusion was based upon its appreciation of three main factors: the existence of

[51] Pour ce qui concerne l'Ouest canadien et l'Ontario, l'exposé de ses motifs montre que le Tribunal fonde sa conclusion sur l'appréciation de trois facteurs

competitive pricing, the increasing presence of imported cast iron DWV products, and the effective entry of a new cast iron DWV manufacturer, Vandem. The Tribunal emphasized that these significant features have been observed "notwithstanding the SDP" and "while the SDP was in effect" (paragraph 265), and thus concluded that the SDP had not brought about a substantial lessening or prevention of competition in Western Canada or Ontario.

[52] The occurrence of entry, both by importers and a new manufacturer, was evidently the key consideration in the Tribunal's analysis with respect to the absence of substantial lessening of competition. In the context of its direct analysis of paragraph 79(1)(*c*), the Tribunal's explanation of its use, for the purposes of paragraph 79(1)(*c*), of the evidence concerning entry is very brief: it merely noted that "a new competing manufacturer has emerged for the first time in thirty years and has succeeded in capturing 10 percent of the market in Canada within four years, while the SDP was in effect", and concluded that "[t]here is clearly effective entry in the market by Vandem" (paragraph 265). The Tribunal also noted the "steadily increasing" presence of imports, which "[a]lthough imports still represent[ing] a relatively small portion of the cast iron DWV markets", are said to "have had a noticeable impact on prices" (paragraph 265).

[53] This analysis of the occurrence of entry in the Western Canada and Ontario markets provides no indication that the Tribunal considered expressly whether the SDP was responsible for a substantial increase in the difficulty of gaining entry in the market, and hence a substantial lessening of competition. The occurrence of entry and the consequent existence of a certain level of competition relate to an absolute evaluation of the state of the market in the presence of the SDP, which is neither an equivalent of nor a substitute for the relative and comparative assessment that is required by the statutory language of paragraph 79(1)(*c*). The fact that entry has been observed in the presence of the SDP, and that barriers to entry are

principaux : l'existence de prix concurrentiels, la progression des importations de produits d'évacuation et de ventilation en fonte, et l'entrée effective d'un nouveau fabricant de tels produits, Vandem. Le Tribunal souligne que ces caractéristiques importantes ont été observées « malgré le PDS » et « pendant que le PDS était en vigueur » (paragraphe 265), et il en conclut que le PDS n'a pas eu pour effet d'empêcher ou de diminuer sensiblement la concurrence sur les marchés de l'Ouest canadien et de l'Ontario.

[52] L'entrée effective de concurrents (*competitors*), à savoir d'importateurs aussi bien que d'un nouveau fabricant, est à l'évidence le principal facteur que le Tribunal a pris en considération dans l'analyse qui l'amène à conclure à l'absence d'une diminution sensible de la concurrence. Dans le contexte de son analyse directe de l'alinéa 79(1)*c*), le Tribunal n'explique que très brièvement son utilisation, pour l'application de cet alinéa, de la preuve concernant l'entrée : « un nouveau fabricant est entré en lice pour la première fois en 30 ans et a réussi à s'emparer de 10 pour 100 du marché canadien en quatre ans, pendant que le PDS était en vigueur », se contente-t-il de noter, pour ensuite conclure que « [l']entrée de Vandem sur le marché est manifestement productrice d'effet » (paragraphe 265). Le Tribunal note aussi que les importations « progressent régulièrement » et que « [s]i elles ne forment qu'une proportion relativement restreinte du marché des produits d'évacuation et de ventilation en fonte », elles « exercent un effet sensible sur les prix de ces produits » (paragraphe 265).

[53] Rien n'indique expressément dans cette analyse de l'entrée effective de concurrents sur les marchés de l'Ouest canadien et de l'Ontario que le Tribunal ait pris en considération le point de savoir si le PDS était la cause d'un accroissement sensible de la difficulté d'entrer sur le marché, et donc d'une diminution sensible de la concurrence. L'entrée effective de concurrents et l'existence qui s'ensuit d'un certain niveau de concurrence se rapportent à une évaluation dans l'absolu de l'état du marché où le PDS est appliqué, ce qui n'équivaut pas ni ne peut se substituer à l'appréciation relative et comparative que prescrit le libellé de l'alinéa 79(1)*c*). Le fait que l'entrée de concurrents ait été constatée alors que le PDS était en

therefore not total, does not by itself address the question of whether, in the absence of the SDP, there would be substantially more competition in the relevant markets, in the past, present or future. In short, the Tribunal's analysis with respect to these geographic markets does not address the "but for" question.

[54] The Tribunal provided different reasoning for its conclusion in this regard concerning the Quebec and Maritimes markets (at paragraph 266). In these geographic markets, the Tribunal acknowledged that competitive pricing is absent, but cautioned that this "does not necessarily lead to a conclusion that the SDP has caused the lack of competition," as the Commissioner had not led any evidence concerning the period before the SDP was in effect. Without "historical data which would allow it to measure the state of competition before and after the SDP came into effect," and in light of other market considerations (Canada Pipe's acquisition of the assets of another cast iron DWV manufacturer, and Bibby's status as the only full-line supplier), the Tribunal concluded that "there is insufficient evidence for it to conclude that the SDP is responsible for a substantial lessening or prevention of competition" (paragraph 266).

[55] The legal error inherent in this portion of the Tribunal's paragraph 79(1)(*c*) analysis is manifest. As the Tribunal itself recognized in *Laidlaw*, substantial lessening "need not necessarily be proved by weighing the competitiveness of the market in the past with its competitiveness as present", for "[s]ubstantial lessening can also be assessed by reference to the competitiveness of the market in the presence of the anti-competitive acts and its likely competitiveness in their absence" (page 346). For the purposes of paragraph 79(1)(*c*), it is insufficient to conclude that the Commissioner had not met her burden because no historical data was provided, for the Tribunal was required to also consider whether the evidence on record demonstrated that the SDP had the effect of substantially lessening competition in the past, present or future, as compared to the markets'

vigueur et que les obstacles à l'entrée ne soient donc pas absolus dans ce contexte ne répond pas à la question de savoir si, en l'absence du PDS, il aurait existé dans le passé, ou existerait dans le présent ou l'avenir, sensiblement plus de concurrence sur les marchés pertinents. Bref, l'analyse du Tribunal concernant ces marchés géographiques ne prend pas en considération la question de l'« absence hypothétique ».

[54] Le Tribunal fonde sur un raisonnement différent sa conclusion à cet égard pour ce qui concerne le Québec et les Maritimes (paragraphe 266). Le Tribunal reconnaît que les prix ne sont pas concurrentiels sur ces marchés géographiques, mais ajoute que ce fait « ne mène pas nécessairement à la conclusion que l'absence de concurrence soit attribuable au PDS », la commissaire n'ayant pas produit d'éléments de preuve concernant la période où le PDS n'était pas encore en vigueur. Ne disposant pas de « données chronologiques qui lui permettraient de mesurer l'état de la concurrence avant et après l'entrée en vigueur du PDS » et s'appuyant sur d'autres caractéristiques des marchés (l'acquisition par Tuyauteries Canada du capital d'un autre fabricant de produits d'évacuation et de ventilation en fonte et le fait que Bibby soit la seule entreprise à fournir une ligne complète), le Tribunal déclare « ne pas disposer d'une preuve suffisante pour conclure qu'il faille attribuer au PDS l'effet d'empêcher ou de diminuer sensiblement la concurrence » (paragraphe 266).

[55] Cette partie de l'analyse effectuée par le Tribunal sous le régime de l'alinéa 79(1)*c*) est entachée d'une erreur de droit manifeste. Comme le Tribunal l'a lui-même reconnu dans *Laidlaw*, « pour établir qu'il y a eu diminution sensible de la concurrence, il n'est pas nécessaire de comparer, chiffres à l'appui, le niveau de concurrence qui régnait par le passé dans le marché avec celui qui y règne aujourd'hui », car « [o]n peut également évaluer la diminution sensible de la concurrence en mesurant le niveau de compétitivité qui existe dans un marché dans lequel une entreprise se livre à des agissements anti-concurrentiels, et estimer le niveau probable de compétitivité en l'absence de ces agissements ». Pour l'application de l'alinéa 79(1)*c*), il ne suffit pas de conclure que la commissaire ne s'est pas acquittée de sa charge au motif qu'elle n'a pas produit

likely competitiveness in the absence of the practice. The failure to consider this possibility in this case constitutes an error of law.

[56] Can it be argued, as the respondent suggests, that the Tribunal implicitly took into account the relative and comparative considerations required under paragraph 79(1)(*c*)? In this vein, it could be argued that the Tribunal's paragraph 79(1)(*c*) reasoning depends implicitly upon its analysis undertaken in earlier sections of its decision, for the purposes of its determinations under paragraphs 79(1)(*a*) and (*b*), of the evidence concerning entry conditions and the effects of the SDP (paragraphs 141-156; and 204-254 and 260-261, respectively).

[57] However, the Tribunal's treatment in these earlier sections of its decision of the evidence concerning entry and effects reinforces my conclusion that it erred in law in its paragraph 79(1)(*c*) analysis. In general, this earlier analysis treats the question of entry in an absolute sense, and appears to be guided by such questions as, has entry been prevented completely, or is a certain level of competition observed in the presence of the SDP? The evidence of actual entry is explicitly accorded a dominant and even preeminent role in the Tribunal's analysis (see, for example, paragraphs 149, 156 and 161). Throughout the Tribunal's decision, evidence concerning entry or the effects of the SDP is considered against the standard of "prevention" in an absolute sense, rather than a more relative standard such as that implied by the words "impeding" or "lessening" (see paragraphs 150, 155, 207, 225, 226, 237, 241, 245, 254, 255, 260, 261). The decision does employ the words "impede" or "lessening" at several points (see paragraphs 2, 6, 53, 113, 162, 263-266, 280, 282), but these occur when the Tribunal is citing the text of the statutory provisions or paraphrasing the Commissioner's submissions, and not in the context of the Tribunal's own conclusions or analysis. In short, these earlier sections of the decision provide little if any support for the argument that the Tribunal implicitly took into account the relative and comparative considerations

de données chronologiques : il incombait au Tribunal de se demander également si la preuve au dossier établissait que le PDS avait eu, avait ou aurait pour effet de diminuer sensiblement la concurrence, par comparaison au niveau de concurrence qui caractériserait vraisemblablement les marchés en cause en l'absence de la pratique attaquée. Le fait de ne pas avoir pris cette possibilité en considération constitue une erreur de droit.

[56] Peut-on soutenir, comme l'intimée le laisse entendre, que le Tribunal a implicitement pris en considération les facteurs relatifs et comparatifs dont l'alinéa 79(1)*c*) prescrit l'examen? Dans cet ordre d'idées, on pourrait faire valoir que le raisonnement du Tribunal touchant l'alinéa 79(1)*c*) dépend implicitement de l'analyse, qu'il a effectuée dans les sections antérieures de sa décision pour l'application des alinéas 79(1)*a*) [paragraphes 141 à 156] et 79(1)*b*) [paragraphes 204 à 254, 260 et 261], de la preuve relative aux conditions d'entrée et aux effets du PDS.

[57] Cependant, l'utilisation que le Tribunal a faite dans ces sections antérieures de la preuve concernant l'entrée et les effets du PDS me conforte dans ma conclusion qu'il a commis une erreur de droit dans son analyse relative à l'alinéa 79(1)*c*). En général, ces analyses antérieures traitent le sujet de l'entrée dans l'absolu et paraissent être guidées par des questions telles que celles de savoir si l'entrée a été complètement empêchée ou si l'on observe un certain niveau de concurrence sur les marchés caractérisés par la présence du PDS. Le Tribunal attribue explicitement dans son analyse un rôle dominant, et même le rôle principal, à la preuve de l'entrée effective (voir par exemple les paragraphes 149, 156 et 161). Tout au long de sa décision, le Tribunal examine la preuve relative à l'entrée et aux effets du PDS en fonction du critère qu'exprime le verbe « empêcher » entendu au sens absolu, plutôt que d'un critère relatif tel que sous-entendu par l'expression « faire obstacle » ou le terme « diminuer » (voir les paragraphes 150, 155, 207, 225, 226, 237, 241, 245, 254, 255, 260 et 261). On trouve bien l'expression « faire obstacle » ou le terme « diminuer » dans certains passages de la décision (voir les paragraphes 2, 6, 53, 113, 162, 263 à 266, 280 et 282), mais c'est lorsque le Tribunal cite le texte des dispositions applicables ou paraphrase les conclusions de la commissaire, et non dans le contexte de sa propre

required under paragraph 79(1)(*c*). To the contrary, a careful reading of the Tribunal's reasons indicates that the analysis throughout was conducted from the narrow, absolute perspective of preventing entry and competition, and not from the broader, relative and comparative perspective of "impeding" or "lessening".

(4) Conclusion with respect to paragraph 79(1)(*c*)

[58] In summary, the Tribunal should have turned its mind to the question of whether, in each of the relevant markets, competitiveness was substantially lessened in the presence of the SDP, as compared to the likely state of competition in the absence of this practice. In other words, the Tribunal should have considered whether, without the SDP, the relevant product market would be substantially more competitive. Proper examination of this question might include the following considerations: whether entry or expansion might be substantially faster, more frequent or more significant without the SDP; whether switching between products and suppliers might be substantially more frequent; whether prices might be substantially lower; and whether the quality of products might be substantially greater. In this regard, identification of the occurrence of entry, or reference to evidence of competition subsisting in the presence of the impugned practice, is insufficient. I conclude therefore that the Tribunal erred in law in its analysis, for the purposes of paragraph 79(1)(*c*), as to whether the SDP has had, is having or is likely to have the effect of preventing or lessening competition substantially in the relevant markets.

(B) For the purposes of paragraph 79(1)(*b*), did the Tribunal err in its determination with respect to whether the SDP constitutes an "anti-competitive act"?

[59] The statutory test for an abuse of dominant position set out in section 79 is a conjunctive one: each

analyse ou de ses propres conclusions. Bref, ces sections antérieures de la décision n'étayent guère, si même elles le font tant soit peu, l'argument suivant lequel le Tribunal aurait implicitement pris en considération les facteurs relatifs et comparatifs dont l'alinéa 79(1)*c*) commande l'examen. La lecture attentive de l'exposé des motifs du Tribunal indique au contraire qu'il a effectué l'ensemble de son analyse du point de vue étroit et absolu de la question de savoir si l'entrée et la concurrence se trouvaient empêchées, et non du point de vue plus large, relatif et comparatif, que traduisent l'expression « faire obstacle » et le terme « diminuer ».

4) Conclusion relative à l'alinéa 79(1)*c*)

[58] En résumé, le Tribunal aurait dû orienter son attention vers le point de savoir si, sur chacun des marchés pertinents, la concurrence se trouvait sensiblement diminuée avec le PDS, en comparaison de l'état vraisemblable de la concurrence en l'absence de cette pratique. Autrement dit, le Tribunal aurait dû se demander si, en l'absence du PDS, le marché de produit pertinent aurait été sensiblement plus concurrentiel. L'examen de cette question tel qu'il doit être effectué pourrait comprendre l'analyse des points de savoir : si l'entrée ou le développement de concurrents pourrait se révéler sensiblement plus rapide, plus fréquent ou plus important en l'absence du PDS; si le changement de produits et de fournisseurs pourrait être sensiblement plus fréquent; si les prix pourraient être sensiblement plus bas; et si la qualité des produits pourrait être sensiblement supérieure. À cet égard, il ne suffit pas de constater l'entrée effective de concurrents ou d'invoquer les éléments tendant à prouver que la concurrence subsiste malgré la présence de la pratique attaquée. Je conclus donc que le Tribunal a commis une erreur de droit dans l'analyse qu'il a effectuée afin d'établir si, pour l'application de l'alinéa 79(1)*c*), le PDS a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence sur les marchés pertinents.

B) Pour l'application de l'alinéa 79(1)*b*), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si le PDS constitue un « agissement anti-concurrentiel »?

[59] Le critère que prévoit l'article 79 pour l'établissement d'un abus de position dominante est de

of the three distinct elements must be found if an order is to issue. The Tribunal found that the market control element required under paragraph 79(1)(*a*) was established, and this finding, which is the subject of the cross-appeal, is upheld by this Court in separate reasons. This Court must also determine whether the Tribunal erred in its findings with respect to paragraph 79(1)(*b*).

[60] Paragraph 79(1)(*b*) calls for a determination as to whether the respondent, through the SDP, "ha[s] engaged in or [is] engaging in a practice of anti-competitive acts". The Tribunal had no difficulty recognizing the SDP as a "practice". It wrote, at paragraph 171, that the term entails more than an isolated act but may be one occurrence that is sustained and systemic, or that has had a lasting impact on competition. It explained at paragraph 200 of its reasons that the SDP is structured, organized and applied throughout Canada, albeit with some variations in the multiplier and rebates in the different regions and that the various components of the program add up to a practice. The respondent does not appear to contest this particular finding. The dispute arises with respect to whether the SDP can be characterized as composed of "anti-competitive acts" ( *agissements anti-concurrentiels*).

[61] The Commissioner argued that while the Tribunal stated the correct legal test for anti-competitive acts, which was established in previous Tribunal decisions, this was not the test that it ultimately applied in its analysis of the SDP. The Tribunal erred in law, the Commissioner asserts, by requiring proof of a link between the SDP and a decrease in competition, and by improperly extending the scope of the valid business justification doctrine. As a result, according to the Commissioner, the approach to paragraph 79(1)(*b*) adopted by the Tribunal conflated the discrete statutory tests established by paragraphs 79(1)(*b*) and 79(1)(*c*).

[62] This question is further complicated in the case at bar by the fact that this appeal represents the first time that a court has considered the legal test applicable for

nature conjonctive : chacune des trois conditions distinctes doit être remplie pour qu'une ordonnance puisse être rendue. Le Tribunal a conclu qu'était remplie la condition du contrôle du marché que prévoit l'alinéa 79(1)*a*), et cette conclusion, qui fait l'objet de l'appel incident, est confirmée par notre Cour dans un exposé de motifs distinct. Notre Cour doit aussi établir si le Tribunal a formulé une conclusion erronée pour ce qui concerne l'alinéa 79(1)*b*).

[60] L'alinéa 79(1)*b*) exige qu'il soit répondu à la question de savoir si l'intimée, en appliquant le PDS, « se livre [. . .] ou [s'est] livrée [. . .] à une pratique d'agissements anti-concurrentiels ». Le Tribunal a conclu sans difficulté que le PDS est une « pratique ». Il écrit au paragraphe 171 de l'exposé de ses motifs que, même si ce terme désigne plus qu'un acte isolé, un tel acte peut être considéré comme une pratique s'il est prolongé et systémique ou s'il a des répercussions durables sur la concurrence. Il explique au paragraphe 200 que le PDS est un programme structuré, organisé et appliqué à l'échelle nationale, mis à part quelques différences entre les régions sous le rapport des taux d'abattement et de ristourne, et que ses divers éléments composent effectivement une pratique. L'intimée ne semble pas contester cette conclusion. La contestation a pour objet le point de savoir si le PDS peut être défini comme composé d'« agissements anti-concurrentiels » (*anti-competitive acts*).

[61] La commissaire soutient que, si le Tribunal a formulé correctement le critère juridique applicable aux agissements anti-concurrentiels, qu'il a d'ailleurs établi dans des décisions antérieures, ce n'est pas là le critère qu'il a en fin de compte appliqué dans son analyse du PDS. Le Tribunal a commis une erreur de droit, affirme la commissaire, en exigeant la preuve d'un lien entre le PDS et un recul de la concurrence, et en étendant illégitimement la portée de la doctrine de la justification commerciale valable. Par suite, selon la commissaire, l'approche de l'alinéa 79(1)*b*) adoptée par le Tribunal pèche par la fusion des critères distincts que prévoient les alinéas 79(1)*b*) et 79(1)*c*).

[62] Cette question se trouve encore compliquée dans le présent appel par le fait que c'est la première fois qu'un tribunal judiciaire examine le critère juridique

the purposes of paragraph 79(1)(*b*). The Tribunal has considered, in prior abuse of dominance cases, the legal test and analytic methodology applicable in ascertaining the existence of an "anti-competitive act". The Tribunal's jurisprudence on these questions cannot by itself be determinative in the current case, as its views on questions of law are not binding on this Court. The Tribunal's jurisprudence may however be indicative of what makes sense and what has been working in the past—if, at the same time, it corresponds to the wording of the Act.

(1) The legal test under paragraph 79(1)(*b*)

[63] The Act does not provide an express definition of "anti-competitive act". Section 78 provides a list of 11 anti-competitive acts, expressly "without restricting the generality of the term". These examples are thus illustrative only, and indeed the Tribunal has recognized in its previous decisions that conduct not specifically mentioned in section 78 can constitute an anti-competitive act (*NutraSweet*, at page 34; *Laidlaw*, at pages 331-332; *D & B*, at page 257; *Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) (Comp. Trib.), 1 at page 180 (*Tele-Direct*)). While clearly non-exhaustive, the illustrative list in section 78 provides direction as to the type of conduct that is intended to be captured by paragraph 79(1)(*b*): reasoning by analogy, a non-enumerated anti-competitive act will exhibit the shared essential characteristics of the examples listed in section 78.

[64] In *NutraSweet*, the Tribunal applied this interpretive approach to paragraph 79(1)(*b*), and suggested (at page 34) the following working definition of "anti-competitive act":

A number of the acts [mentioned in section 78] share common features but . . . only one feature is common to all: an anti-competitive act must be performed for a purpose, and evidence of this purpose is a necessary ingredient. The purpose common to all acts, save that found in paragraph 78(*f*), is an intended negative effect on a competitor that is

applicable sous le régime de l'alinéa 79(1)*b*). Le Tribunal de la concurrence a lui-même examiné, dans des affaires antérieures d'abus de position dominante, le critère juridique et la méthode d'analyse à adopter pour établir l'existence d'un « agissement anti-concurrentiel ». Mais la jurisprudence du Tribunal sur ces questions ne peut en soi être considérée comme déterminante dans la présente espèce, puisque ses opinions sur les questions de droit n'ont pas valeur contraignante pour notre Cour. La jurisprudence du Tribunal peut cependant donner une idée des solutions logiques et qui se sont révélées efficaces dans le passé—à condition, toutefois, qu'elles soient conformes au libellé de la Loi.

1) Le critère juridique prévu à l'alinéa 79(1)*b*)

[63] La Loi ne définit pas formellement l'expression « agissement anti-concurrentiel », mais son article 78 énumère 11 exemples d'agissements anti-concurrentiels, dont le caractère simplement indicatif est attesté par l'emploi du terme « notamment ». En fait, le Tribunal a établi dans des décisions antérieures qu'un comportement non visé explicitement à l'article 78 peut néanmoins constituer un agissement anti-concurrentiel : *NutraSweet*, à la page 65; *Laidlaw*, aux pages 87 et 88; *D & B*, à la page 70; et *Canada (Directeur des enquêtes et recherches) c. Télé-Direct (Publications) Inc.*, [1997] D.T.C.C. nº 8 (QL), au paragraphe 545 (*Télé-Direct*). Bien que manifestement exemplative et non exhaustive, la liste de l'article 78 donne une idée du type de comportement auquel le législateur veut voir s'appliquer l'alinéa 79(1)*b*); il reste possible d'établir par analogie qu'un agissement anti-concurrentiel non spécifié présente les caractéristiques essentielles communes aux exemples énumérés à l'article 78.

[64] Dans *NutraSweet*, le Tribunal a appliqué ce mode d'interprétation à l'alinéa 79(1)*b*) et a proposé (à la page 65) la définition opératoire suivante de l'expression « agissement anti-concurrentiel » :

Certains de ces agissements [visés à l'article 78] ont des éléments communs mais [. . .] un seul est commun à tous : l'agissement anti-concurrentiel doit avoir un but particulier dont il est nécessaire de faire la preuve. Le but commun à tous ces agissements, sauf celui de l'alinéa 78*f*), est l'effet négatif intentionnel sur un concurrent et cet effet doit être abusif,

predatory, exclusionary or disciplinary. [Emphasis added.]

[65] I adopt the above definition, which is very close in substance to the core characteristic of the enumerated list of section 78, save at paragraph 78(1)(*f*). This exception was noted by the Tribunal in *NutraSweet*.

[66] Two aspects of this definition should be noted. First, an anti-competitive act is identified by reference to its purpose. Second, the requisite purpose is an intended predatory, exclusionary or disciplinary negative effect on a competitor. I will elaborate on each of these aspects in turn.

[67] First, the meaning of the term purpose deserves some comment. As the Tribunal observed in *Tele-Direct*, at page 180, "'[p]urpose' is used in this context in a broader sense than merely subjective intent on the part of the respondent . . . it might be more apt to speak of the overall character of the act in question" (emphasis added). In order to apply paragraph 79(1)(*b*), the purpose or character of the impugned conduct must therefore be determined. Relevant factors to be considered and weighed to determine this overarching "purpose" include the reasonably foreseeable or expected objective effects of the act (from which intention may be deemed, as I explain further below), any business justification, and any evidence of subjective intent, if available (see *Tele-Direct*, at page 180).

[68] The second aspect describes the type of purpose required in the context of paragraph 79(1)(*b*): to be considered "anti-competitive" under paragraph 79(1)(*b*), an act must have an intended predatory, exclusionary or disciplinary negative effect on a competitor. The paragraph 79(1)(*b*) inquiry is thus focused upon the intended effects of the act on a competitor. As a result, some types of effects on competition in the market might be irrelevant for the purposes of paragraph 79(1)(*b*), if

viser une exclusion ou une mise au pas. [Non souligné dans l'original.]

[65] J'adopte cette définition, qui se révèle très proche en substance de la caractéristique commune fondamentale des exemples énumérés à l'article 78, exception faite de l'alinéa 78(1)*f*). Cette exception est d'ailleurs notée par le Tribunal dans *NutraSweet*.

[66] Deux aspects de cette définition doivent retenir notre attention. Premièrement, l'agissement anti-concurrentiel est défini par rapport à un but (*purpose*). Deuxièmement, le but qu'il faut établir est un effet négatif intentionnel sur un concurrent, qui doit être abusif, ou viser une exclusion ou une mise au pas. Je vais maintenant examiner successivement chacun de ces aspects de manière détaillée.

[67] Premièrement, la signification du terme but (*purpose*) appelle quelques observations. Comme le Tribunal le faisait remarquer au paragraphe 542 de *Télé-Direct* « [l']"objet" [*purpose*] englobe davantage, dans ce contexte, que la simple intention subjective de la défenderesse [. . .] il pourrait être plus approprié de parler de la nature générale des agissements en cause » (non souligné dans l'original). Il faut donc, pour appliquer l'alinéa 79(1)*b*), établir le but, l'objet ou la nature du comportement attaqué. Parmi les facteurs pertinents à examiner et à apprécier pour établir ce « but » ou cet « objet » prépondérant, il faut mentionner les effets objectifs prévus ou raisonnablement prévisibles du comportement en question (effets dont on peut déduire une intention réputée, comme je l'explique plus loin), la justification commerciale s'il y en a une, et tous éléments de preuve dont on dispose tendant à établir l'intention subjective (voir *Télé-Direct*, au paragraphe 543).

[68] Le deuxième aspect de la définition caractérise le but ou l'objet qu'il faut établir sous le régime de l'alinéa 79(1)*b*) : pour être considéré comme « anti-concurrentiel » sous ce régime, l'agissement doit avoir un effet négatif intentionnel sur un concurrent, lequel effet doit être abusif, ou viser une exclusion ou une mise au pas. L'analyse à effectuer dans le cadre de l'alinéa 79(1)*b*) est donc orientée vers les effets intentionnels de l'agissement sur un concurrent (*on a competitor*). Il

these effects do not manifest through a negative effect on a competitor. It is important to recognize that "anti-competitive" therefore has a restricted meaning within the context of paragraph 79(1)(*b*). While, for the Act as a whole, "competition" has many facets as enumerated in section 1.1, for the particular purposes of paragraph 79(1)(*b*), "anti-competitive" refers to an act whose purpose is a negative effect on a competitor.

[69] Adopting this interpretive approach to section 79, it is conceivable that a practice might be found to be composed of anti-competitive acts within the meaning of paragraph 79(1)(*b*), but at the same time, for the purposes of paragraph 79(1)(*c*), be held not to have the effect of preventing or lessening competition substantially in the market in question.

[70] A final comment should be made with respect to the evidence required to establish an anti-competitive purpose within the meaning of paragraph 79(1)(*b*). It is clear from the legislative history of paragraph 79(1)(*b*) that evidence of subjective intent, although certainly probative if available, is not required in order to find that a given act is anti-competitive within the meaning of paragraph 79(1)(*b*). When Bill C-91, which eventually became the *Competition Act*, was first introduced in Parliament in December 1985, the text of paragraph (*b*) of the abuse of dominance provision (then section 51) read as follows:

> **51.** (1) Where, on application by the Commissioner, the Tribunal finds that
>
> . . .
>
> (*b*) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and the object of the practice is to lessen competition, and [Emphasis added.]

Perceived problems with the subjective intent requirement implied by the latter part of the proposed

s'ensuit que certains types d'effets sur la concurrence dans le marché pourraient se révéler dénués de pertinence pour l'application de l'alinéa 79(1)*b*), s'ils ne se traduisent pas par un effet négatif sur un concurrent. Il est important de bien voir que le terme « anti-concurrentiel » revêt par conséquent une signification restreinte dans le contexte de l'alinéa 79(1)*b*). Si, au regard de l'ensemble de la Loi, la « concurrence » présente de multiples aspects comme en témoignent les objets énumérés à son article 1.1, le terme « anti-concurrentiel », pour l'application particulière de l'alinéa 79(1)*b*), qualifie un agissement ayant pour but ou pour objet un effet négatif sur un concurrent (*competitor*).

[69] Suivant cette manière d'interpréter l'article 79, il est concevable qu'une pratique puisse être déclarée composée d'agissements anti-concurrentiels au sens de l'alinéa 79(1)*b*), mais être dite en même temps, pour l'application de l'alinéa 79(1)*c*), ne pas avoir pour effet d'empêcher ou de diminuer sensiblement la concurrence sur le marché en question.

[70] Une dernière remarque s'impose touchant la preuve nécessaire pour établir l'existence d'un but anti-concurrentiel sous le régime de l'alinéa 79(1)*b*). Il ressort à l'évidence de la genèse de l'alinéa 79(1)*b*) que, bien que de tels éléments soient certes probants si l'on en produit, il n'est pas nécessaire de disposer de preuve tendant à établir l'intention subjective pour conclure qu'un comportement donné est un agissement anti-concurrentiel au sens de l'alinéa 79(1)*b*). Au moment de la première présentation du projet de loi C-91, qui allait devenir la *Loi sur la concurrence*, au Parlement en décembre 1985, l'alinéa *b*) de l'article relatif à l'abus de position dominante (alors l'article 51) était libellé comme suit :

> **51.** (1) Lorsque le Tribunal, à la suite d'une demande du directeur, conclut :
>
> [. . .]
>
> *b*) que cette personne ou ces personnes se livrent ou se sont livrées à une pratique d'agissements anti-concurrentiels dont le but est de réduire la concurrence, et [Non souligné dans l'original.]

Les personnes appelées à témoigner devant le Comité législatif sur le projet de loi C-91 ont été nombreuses à

paragraph (*b*) were frequently raised in testimony before the House of Commons Legislative Committee on Bill C-91 (see Canada, House of Commons, *Minutes of the Proceedings and Evidence of the Legislative Committee on Bill C-91*, First session of 33rd Parliament, 1986 at pages 2:8-9, 3:7-9, 3:17, 5:13, 5:15, 5:63-64, 6:9-10; 9:20-21; note also the contrary view expressed at pages 4:55-56, 6:57-58; 7:55-57, 7:60-63 (Minutes of the Committee on Bill C-91)). In response, the reference to "the object of the practice" was deleted in paragraph (*b*), in order to remove any subjective intent requirement from the statutory test for abuse of dominant position (see Minutes of the Committee on Bill C-91, at pages 11:3 and 11:32-33).

[71] On the basis of this legislative history, I would endorse the following comment by the Tribunal in *Laidlaw*, at page 342, with respect to the proper role of evidence concerning subjective intent within paragraph 79(1)(*b*):

> Proof of subjective intention on the part of a respondent is not necessary in order to find that a practice of anti-competitive acts has occurred. Such intention is almost impossible of proof in many cases involving corporate entities unless one stumbles upon what is known as a "smoking gun". (A document which makes it clear that the purpose of the conduct in question was to exclude competitors from the market.) Section 79 of the Act provides for a civil proceeding and civil remedies. In that context corporate actors and individuals are deemed to intend the effects of their actions.

[72] Proof of the intended nature of the negative effect on a competitor can thus be established directly through evidence of subjective intent, or indirectly by reference to the reasonably foreseeable consequences of the acts themselves and the circumstances surrounding their commission, or both.

[73] Even though evidence of subjective intent is neither required nor determinative, intention remains an important ingredient of paragraph 79(1)(*b*). In particular, intention is relevant in the sense that while a

évoquer les problèmes que poserait selon elles la condition de l'intention subjective impliquée par la dernière partie du texte proposé de l'alinéa *b*); voir Canada, Chambre des communes, *Procès-verbaux et témoignages du Comité législatif sur le Projet de loi C-91*, 1re session du 33e Parlement, 1986 (Procès-verbaux du Comité sur le projet de loi C-91), aux pages 2:8-9, 3:7-9, 3:17, 5:13, 5:15, 5:63-64, 6:9-10 et 9:20-21; voir aussi les pages 4:55-56, 6:57-58; 7:55-57, 7:60-63, où l'opinion contraire est exprimée. Par suite, on a rayé de l'alinéa *b*) la mention du « but » de la pratique, afin d'alléger de toute condition d'intention subjective le critère juridique relatif à l'abus de position dominante; voir Procès-verbaux du Comité sur le projet de loi C-91, aux pages 11:3 et 11:32-33.

[71] Me fondant sur cet aspect de la genèse de l'alinéa 79(1)*b*), j'estime devoir souscrire aux observations suivantes formulées par le Tribunal aux pages 111 et 112 de *Laidlaw*, sur le rôle qu'il convient d'attribuer à la preuve relative à l'intention subjective sous le régime de cet alinéa :

> La démonstration de l'intention subjective de la défenderesse ne s'impose pas afin de conclure qu'il y a eu pratique d'agissements anticoncurrentiels. Démontrer qu'il y a eu intention subjective est souvent presque impossible lorsqu'on a affaire à de grandes entreprises, à moins de disposer d'éléments de preuve péremptoires (par exemple, un document qui établit, sans ambiguïté, que le but visé par la pratique en question est d'évincer des concurrents du marché). L'article 79 de la Loi prévoit et des poursuites et des redressements au civil. Dans ce contexte, qu'il s'agisse d'entreprises ou d'individus, ils sont réputés avoir eu l'intention de tirer profit des effets découlant de leurs agissements.

[72] On peut donc faire la preuve de la nature intentionnelle de l'effet négatif sur un concurrent soit directement, au moyen d'éléments établissant l'intention subjective, soit indirectement, en se fondant sur les conséquences raisonnablement prévisibles des agissements eux-mêmes et/ou sur les circonstances de ceux-ci.

[73] Même si la preuve de l'intention subjective n'est ni requise ni déterminante, l'intention reste un élément important de l'alinéa 79(1)*b*). Plus précisément, l'intention est pertinente dans la mesure où, s'il ne peut

respondent cannot disavow responsibility for the reasonably foreseeable consequences of its acts, a respondent might nevertheless be able to establish that such consequences should not, in the context of the paragraph 79(1)(*b*) inquiry, be considered the intended "purpose" or "overall character" of the acts in question. In appropriate circumstances, proof of a valid business justification for the conduct in question can overcome the deemed intention arising from the actual or foreseeable effects of the conduct, by showing that such anti-competitive effects are not in fact the overriding purpose of the conduct in question. In essence, a valid business justification provides an alternative explanation as to why the impugned act was performed. To be relevant in the context of paragraph 79(1)(*b*), a business justification must be a credible efficiency or pro-competitive rationale for the conduct in question, attributable to the respondent, which relates to and counterbalances the anti-competitive effects and/or subjective intent of the acts. The appropriate application of the valid business justification doctrine in the context of paragraph 79(1)(*b*) will be further considered below, in my discussion of the Tribunal's analysis in the case at bar.

(2) The Tribunal's paragraph 79(1)(*b*) decision

[74] In the case at bar, it would appear that the Tribunal correctly articulated the legal test. At paragraph 171 of its reasons, at the outset of its review of the Tribunal's definition of "anti-competitive acts" in its previous cases, the Tribunal stated:

> In order to determine whether acts are anti-competitive, the Tribunal must consider the nature and purpose of the acts in question, as well as the impact they have or may have on the relevant market. (*Nielsen* at 257; *Laidlaw* at 333; *NutraSweet* at 34) In both *Tele-Direct* and *Laidlaw*, the Tribunal assessed the alleged anti-competitive practices by taking into account what effect they had had on competitors. [Emphasis added.]

In the course of quoting a longer passage from *Tele-Direct*, the Tribunal reproduced (at paragraph 178)

se décharger de la responsabilité des conséquences raisonnablement prévisibles de ses actes, le défendeur pourrait néanmoins se révéler capable d'établir que ces conséquences, dans le contexte de l'analyse que commande l'alinéa 79(1)*b*), ne devraient pas être considérées comme le « but », l'« objet » ou la « nature générale » des actes en question. Si le contexte s'y prête, la preuve d'une justification commerciale valable du comportement en cause peut l'emporter sur l'intention réputée découlant des effets réels ou prévisibles de ce comportement, en montrant que ces effets anti-concurrentiels ne constituent pas en fait l'objet prépondérant dudit comportement. Essentiellement, la justification commerciale valable forme une autre explication possible des motifs du comportement attaqué. Pour être pertinente dans le contexte de l'alinéa 79(1)*b*), la justification commerciale doit être une raison fondée sur l'efficience ou proconcurrentielle du comportement en question, raison attribuable au défendeur, qui se rapporte aux effets anti-concurrentiels et/ou à l'intention subjective de ce comportement et leur fait contrepoids. Je reviendrai plus loin sur l'application appropriée de la doctrine de la justification commerciale valable au contexte de l'alinéa 79(1)*b*) lorsque j'examinerai l'analyse effectuée par le Tribunal dans la présente affaire.

2) La décision rendue par le Tribunal sous le régime de l'alinéa 79(1)*b*)

[74] Dans la présente espèce, il semblerait que le Tribunal ait correctement formulé le critère juridique applicable. On peut lire ce qui suit au paragraphe 171 de l'exposé de ses motifs, au début de son examen de la définition que donne sa jurisprudence de l'expression « agissements anti-concurrentiels » :

> Pour établir si des agissements donnés sont anti-concurrentiels, le Tribunal doit prendre en considération la nature et l'objet de ces agissements, ainsi que l'incidence qu'ils ont ou peuvent avoir sur le marché pertinent.(*Nielsen*, à la page 257; *Laidlaw*, à la page 333; et *NutraSweet*, à la page 34.) Dans *Télé-Direct* aussi bien que *Laidlaw*, le Tribunal a évalué les agissements dont on alléguait le caractère anti-concurrentiel en tenant compte de leurs effets sur les concurrents. [Non souligné dans l'original.]

Citant un long passage de *Télé-Direct*, le Tribunal a reproduit (au paragraphe 178) la phrase clé qu'on trouve

the key sentence from *NutraSweet*, at page 34, to the effect that the feature common to anti-competitive acts is that they are all performed for a "purpose", namely "an intended negative effect on a competitor that is predatory, exclusionary or disciplinary". This formulation was also repeated in the concluding section of the Tribunal's decision (at paragraph 284).

[75] However, despite this correct articulation of the test, the Tribunal's analysis of the salient features of the applicable legal test is a cause for concern. At the end of the portion of its paragraph 79(1)(*b*) analysis entitled "The Law", the Tribunal summarized as follows its understanding of key aspects of the legal test (at paragraph 191):

> The Tribunal [in *Tele-Direct*] has stated that there must be a link between the impugned practice and a decrease in competition. Moreover, if a practice does not appear to have an exclusionary effect or cause detriment to the consumer, it cannot be said to be anti-competitive. [Emphasis added.]

[76] This statement is incorrect, in at least two respects.

[77] First, for the purposes of paragraph 79(1)(*b*), a link need not be proven between the impugned practice and a decrease in competition. Quite simply, such a causal link is not part of the legal test for an anti-competitive act. Moreover, an emphasis upon evidence of this type runs the risk of obscuring the correct focus of the paragraph 79(1)(*b*) test. An anti-competitive act is one whose purpose is an intended negative effect on a competitor that is predatory, exclusionary or disciplinary. The focus of analysis is thus on the act itself, to discern its purpose. The questions as to whether a decrease in competition in the market is evident, or whether any such decrease can be causally attributed to the impugned practice, are not directly relevant for this task. Certainly, such findings are not requisite elements of the test for an anti-competitive act.

à la page 65 de *NutraSweet*, comme quoi les agissements anti-concurrentiels ont pour caractéristique commune d'avoir un « but » particulier, à savoir d'entraîner un « effet négatif intentionnel sur un concurrent [. . .] [effet qui] doit être abusif, viser une exclusion ou une mise au pas ». Le Tribunal a aussi répété cette formule dans la conclusion de sa décision (au paragraphe 284).

[75] Cependant, bien que le Tribunal ait ainsi formulé correctement le critère juridique applicable, son analyse des caractères saillants de ce critère pose problème. À la fin de la partie de son analyse de l'application de l'alinéa 79(1)*b*) intitulée « Le droit », soit au paragraphe 191, le Tribunal résume comme suit son interprétation des aspects principaux de ce critère juridique :

> Le Tribunal a déclaré [dans *Télé-Direct*] qu'il doit y avoir un lien entre la pratique attaquée et la diminution de la concurrence. En outre, ne peuvent être considérées comme anti-concurrentielles les pratiques qui ne se révèlent pas avoir d'effet tendant à exclure ou causer de préjudice aux consommateurs. [Non souligné dans l'original.]

[76] Cette proposition est erronée, au moins à deux égards.

[77] Premièrement, pour l'application de l'alinéa 79(1)*b*), il n'est pas nécessaire d'établir un lien entre la pratique attaquée et une diminution de la concurrence. L'établissement d'un tel lien de causalité ne fait tout simplement pas partie du critère juridique applicable aux agissements anti-concurrentiels. En outre, en mettant l'accent sur la nécessité d'une preuve de cette nature, on court le risque de faire dévier ce qui doit rester l'axe du critère de l'alinéa 79(1)*b*). Un agissement anti-concurrentiel est un comportement ayant pour but un effet négatif intentionnel sur un concurrent, effet qui doit être abusif, ou viser une exclusion ou une mise au pas. L'analyse doit donc être axée sur le comportement lui-même, dont il s'agit de discerner le but. Les questions de savoir si l'on peut constater une diminution de la concurrence sur le marché ou si la cause d'une telle diminution peut être attribuée à la pratique attaquée ne sont pas directement pertinentes à l'égard de cette tâche. De telles conclusions ne sont certainement pas des éléments nécessaires du critère de l'existence d'un agissement anti-concurrentiel.

[78] Obviously, if an act is to be found anti-competitive, there must be evidence linking the impugned practice to the requisite intended negative effect on a competitor: the practice must be found to cause or at least contribute to the intended negative effect. Such a negative effect on a competitor must also be found to be the "purpose" of the practice in question, and to this end, all relevant factors must be taken into account and weighed to determine if the requisite purpose is established. One must remember, however, that in the context of paragraph 79(1)(*b*), evidentiary factors are relevant only in so far as they shed light upon the paragraph 79(1)(*b*) statutory test, that is upon the purpose of the act *vis-à-vis* competitors. Evidence concerning other types of effects of the impugned act that are not related to competitors—while perhaps pertinent in respect of the paragraph 79(1)(*c*) assessment of competition—are not directly relevant for paragraph 79(1)(*b*). Similarly, evidence concerning the general competitive state and structure of the relevant market, and whether such features can be causally attributed to the impugned act, are not the direct focus of the paragraph 79(1)(*b*) analysis, and are more properly considered under paragraph 79(1)(*c*). In short, paragraph 79(1)(*b*) simply concerns whether the act displays the requisite intended effect on competitors; it is not directly concerned with the state of competition in the market or the general causes thereof. In directing itself to the contrary, and requiring proof of a causal link between the impugned act and a decrease in competition, the Tribunal erred.

[78] À l'évidence, pour que la pratique attaquée puisse être déclarée anti-concurrentielle, il doit y avoir des éléments de preuve qui en démontrent le lien avec le facteur nécessaire qu'est l'effet négatif intentionnel sur un concurrent : il faut établir que cette pratique cause ledit effet ou, à tout le moins, y contribue. Il faut aussi établir qu'un tel effet négatif sur un concurrent constitue le « but » ou l'« objet » de la pratique en question, et il faut à cette fin prendre en considération et apprécier tous les facteurs pertinents. On doit cependant se garder d'oublier que, dans le contexte de l'alinéa 79(1)*b*), les facteurs de preuve n'ont de pertinence que dans la mesure où ils éclairent l'application du critère juridique de cet alinéa, c'est-à-dire le but de la pratique par rapport aux concurrents. La preuve concernant d'autres sortes d'effets du comportement attaqué qui ne sont pas liés aux concurrents, si elle peut se révéler pertinente à l'égard de l'évaluation du niveau de concurrence sous le régime de l'alinéa 79(1)*c*), n'a pas de pertinence directe relativement à l'alinéa 79(1)*b*). De même, les éléments de preuve concernant la structure et l'état généraux de la concurrence sur le marché pertinent et le point de savoir si la cause de ces caractéristiques peut être attribuée à la pratique attaquée n'intéressent pas directement l'analyse relevant de l'alinéa 79(1)*b*), et doivent plutôt être examinés sous le régime de l'alinéa 79(1)*c*). Bref, l'alinéa 79(1)*b*) pose purement et simplement la question de savoir si le comportement considéré a sur les concurrents l'effet intentionnel de la nature requise; il n'a pas de rapport direct avec l'état de la concurrence sur le marché ou ses causes générales. En orientant son analyse dans le sens contraire et en exigeant la preuve d'un lien de causalité entre la pratique attaquée et une diminution de la concurrence, le Tribunal a commis une erreur.

[79] Second, the Tribunal appears mistakenly to suggest in the above-quoted passage that the impugned practice's effects on the consumer should or could be considered within the paragraph 79(1)(*b*) analysis. However, contrary to what the Tribunal implies in the above quotation, "detriment to the consumer" is not a relevant independent consideration for the purposes of paragraph 79(1)(*b*), as evidence of this type does not relate directly to whether an act has the requisite defining characteristic of an intended negative effect on

[79] Deuxièmement, dans le même passage cité plus haut, le Tribunal paraît se fonder sur l'idée erronée que l'on devrait ou pourrait prendre en considération les effets de la pratique attaquée sur les consommateurs dans le cadre de l'analyse relevant de l'alinéa 79(1)*b*). Or, contrairement à ce que le Tribunal laisse entendre dans ce passage, le « préjudice aux consommateurs » n'est pas un facteur indépendant pertinent à prendre en considération pour l'application de l'alinéa 79(1)*b*), étant donné que les éléments de preuve tendant à établir

a competitor. The effect of an act on consumers may in some circumstances be relevant in assessing the credibility and weight of a proffered business justification, as I explain further below. Otherwise, however, such evidence is largely irrelevant for the purposes of the paragraph 79(1)(*b*) assessment, and is more appropriately considered under paragraph 79(1)(*c*). To the extent that the Tribunal suggests in the above-quoted sentence that "detriment to the consumer" is an independently relevant consideration for the purposes of paragraph 79(1)(*b*), the Tribunal therefore erred.

[80] The Tribunal thus embarked on its paragraph 79(1)(*b*) analysis from an incorrect foundation: it erroneously believed itself obliged to consider factors which are not relevant in the correct legal test. The Supreme Court stated in *Southam*, at paragraph 41 that "[i]f the Tribunal did ignore items of evidence that the law requires it to consider, then the Tribunal erred in law." Logically, this statement can be extended to encompass the situation of the case at bar: if the Tribunal considered items of evidence that the law requires it not to consider, then the Tribunal also erred in law. Moreover, these irrelevant factors may well have played a decisive role in this case: according to the Tribunal's own articulation, evidence of a link between the practice and a decrease in competition was considered to be required for the purposes of paragraph 79(1)(*b*). Thus, to the extent that the Tribunal misdirected itself as to the applicable legal test, and as a consequence considered irrelevant factors in making its paragraph 79(1)(*b*) determination, the Tribunal committed a reversible error of law.

[81] The Tribunal's erroneous interpretation of the paragraph 79(1)(*b*) test played a significant role in its analysis of the SDP. It is clear that in concluding that the

un tel préjudice ne se rapportent pas directement au point de savoir si un comportement donné remplit la condition nécessaire d'avoir un effet négatif intentionnel sur un concurrent. L'effet d'un comportement sur les consommateurs peut dans certains cas se révéler pertinent aux fins d'évaluation de la crédibilité d'une justification commerciale invoquée et de son poids, comme je l'expliquerai plus loin. Autrement, la preuve de cette nature est dans une large mesure dénuée de pertinence aux fins de l'analyse qu'exige l'alinéa 79(1)*b*) et doit plutôt être prise en considération dans le cadre de l'alinéa 79(1)*c*). Dans la mesure où il donne à entendre dans la phrase citée plus haut que le « préjudice aux consommateurs » est un facteur pertinent indépendant à prendre en considération pour l'application de l'alinéa 79(1)*b*), le Tribunal a donc aussi commis une erreur.

[80] Le Tribunal a ainsi entrepris son analyse relative à l'alinéa 79(1)*b*) à partir d'un principe erroné : il s'est cru à tort obligé de prendre en considération des facteurs qui ne sont pas pertinents du point de vue du critère juridique applicable. La Cour suprême fait observer au paragraphe 41 de *Southam*, que « [s]i le Tribunal a effectivement fait abstraction d'éléments de preuves que le droit lui commande de prendre en considération, il a alors commis une erreur de droit ». Logiquement, on peut étendre le sens de cette proposition de manière qu'elle s'applique à la présente espèce : si le Tribunal a pris en considération des éléments de preuve dont le droit lui commande de ne pas tenir compte, il a alors aussi commis une erreur de droit. En outre, il se pourrait bien que ces facteurs non pertinents aient joué un rôle décisif dans l'affaire qui nous occupe; si l'on en croit sa propre formulation, le Tribunal estimait nécessaire, pour l'application de l'alinéa 79(1)*b*), que la preuve fût faite de l'existence d'un lien entre la pratique attaquée et une diminution de la concurrence. Par conséquent, dans la mesure où il s'est mépris sur le critère juridique applicable et a par suite pris en considération des facteurs non pertinents pour rendre sa décision sous le régime de l'alinéa 79(1)*b*), le Tribunal a commis une erreur de droit donnant lieu à révision.

[81] L'interprétation erronée par le Tribunal du critère de l'alinéa 79(1)*b*) a joué un rôle important dans son analyse du PDS. Il est évident que, pour conclure que le

SDP was not anti-competitive, the Tribunal relied heavily upon its mistaken understanding that a demonstrable link must exist between the impugned act and a decrease in competition. Indeed, the Tribunal expressly stated that this factor was "the most striking" basis for its conclusion (at paragraph 261):

> The most striking argument against the alleged anti-competitive effect of the SDP is the fact that it has not prevented entry nor competition in certain regions. The SDP has not prevented an increase in imports, nor has it prevented the emergence, for the first time in thirty years, of a new manufacturer of cast iron DWV products. For a practice to be found anti-competitive, it must have a negative effect on competition. As was stated in *Tele-Direct*, there has to be a link between the practice and its alleged anti-competitive effect. In the instant case, the link has not been established to the Tribunal's satisfaction. The Tribunal recognizes that entry may be difficult, but this appears unrelated to the SDP. Several other factors come into play: Bibby is a known manufacturer that offers a complete line of products; the market is not a growth market, thus limiting investment potential. Yet, it has been possible for competitors to match Bibby's price and offer a reliable supply, to the point of making it an interesting proposition for distributors or contractors to change suppliers. This has occurred, notwithstanding the SDP, as illustrated by new entrants such as Sierra and Vandem, and by new arrangements such as Wolseley's change of suppliers.

[82] As this passage shows, the Tribunal's incorrect assumption that a link to a reduction in competition was required under paragraph 79(1)(*b*) critically influenced its reasoning. Instead of enquiring as to whether the SDP's purpose was an intended negative effect on competitors, the Tribunal asked whether there was evidence of a decrease in competition in the relevant market, in the abstract, and whether the identified competitive problems could be causally attributed to the SDP and hence be considered its "effects". This approach, of focussing on the general state of competition in the market rather than on the purpose of the impugned act, led the Tribunal to adopt an unwarrantedly and incorrectly narrow test for paragraph 79(1)(*b*): essentially, the Tribunal's reasoning would imply that unless an impugned act prevents entry of

PDS n'était pas anti-concurrentiel, le Tribunal s'est fondé dans une large mesure sur sa conception erronée qu'il doit exister un lien démontrable entre le comportement attaqué et une diminution de la concurrence. En fait, le Tribunal écrit en toutes lettres que ce facteur est l'argument « le plus fort » qui a déterminé sa conclusion (au paragraphe 261) :

> L'argument le plus fort avancé contre la thèse de l'effet anticoncurrentiel du PDS est le fait que celui-ci n'a pas empêché l'entrée ni la concurrence dans certaines régions. Le PDS n'a pas empêché la progression des importations, pas plus que l'émergence, pour la première fois en 30 ans, d'un nouveau fabricant de produits d'évacuation et de ventilation en fonte. Pour être déclarée anticoncurrentielle, une pratique doit avoir un effet défavorable sur la concurrence. Comme le Tribunal l'a fait observer dans *Télé-Direct*, il doit y avoir un lien entre la pratique attaquée et l'effet anticoncurrentiel qu'on lui attribue. Dans la présente espèce, un tel lien n'a pas été établi de manière à convaincre le Tribunal. Ce dernier reconnaît que l'entrée sur le marché considéré peut être difficile, mais cette difficulté ne paraît pas liée au PDS. D'autres facteurs jouent ici : Bibby est un fabricant bien connu qui offre une ligne complète; et le marché ne présente pas de perspectives de croissance, ce qui limite les possibilités d'investissement. Pourtant, il s'est révélé possible pour les concurrents de Bibby d'offrir des prix comparables aux siens, à tel point que le changement de fournisseur a pu paraître avantageux à certains distributeurs ou entrepreneurs. C'est ainsi que, malgré le PDS, de nouvelles entreprises telles que Sierra et Vandem ont pris pied sur le marché, et que Wolseley a accordé sa clientèle à un autre fournisseur.

[82] Comme le montre ce passage, l'hypothèse erronée du Tribunal que l'alinéa 79(1)*b*) exigeait la démonstration d'un lien avec une réduction de la concurrence a exercé une influence cruciale sur son raisonnement. Au lieu de se poser la question de savoir si le PDS avait pour but un effet négatif intentionnel sur les concurrents, le Tribunal s'est demandé s'il y avait des éléments de preuve établissant une diminution de la concurrence sur le marché pertinent, dans l'abstrait, et si l'on pouvait attribuer la cause des problèmes de concurrence constatés au PDS et par conséquent les considérer comme les « effets » de ce dernier. Cette approche consistant à orienter l'attention vers l'état général de la concurrence sur le marché plutôt que vers le but de la pratique attaquée a amené le Tribunal à adopter de manière injustifiable et erronée un critère

competitors or otherwise prevents competition, or unless it is the (predominant) cause of the uncompetitive attributes observed in the market, the act cannot be considered anti-competitive. This result is clearly incorrect.

[83] In my view, the Tribunal's error of law with respect to paragraph 79(1)(*b*) is partly attributable to a conflation of the legal test for paragraph 79(1)(*c*) with that applicable for paragraph 79(1)(*b*). As I mentioned above at the outset of my analysis, the multi-element structure of section 79 suggests that upon proper interpretation, each statutory element must give rise to a distinct legal test. To repeat, paragraph 79(1)(*b*) relates to whether the impugned act exhibits the requisite anti-competitive purpose *vis-à-vis* competitors, while paragraph 79(1)(*c*) concerns the broader state of competition, and whether the practice has the effect of substantially lessening competition in the relevant market. A particular indirect evidentiary indicator may serve subtly different—yet importantly distinct—purposes in regard to paragraph 79(1)(*b*) as compared to paragraph 79(1)(*c*). Since paragraph 79(1)(*b*) focuses on whether the impugned act was performed for a particular purpose with respect to competitors, the relevant factors—that is, evidence concerning its foreseeable effects on competitors, business justifications for its adoption, and subjective intent—are to be interpreted in this particular light. By contrast, paragraph 79(1)(*c*) mandates an assessment of the substantiality of the practice's actual or likely effects on competition in the relevant market(s), a task that proceeds from the vantage point of the market as a whole and invites consideration of a wider range of effects of the practice in question. The approach adopted by the Tribunal in this case does not properly recognize or maintain these important conceptual distinctions between the statutory elements of paragraphs 79(1)(*b*) and 79(1)(*c*).

trop étroit pour l'application de l'alinéa 79(1)*b*); essentiellement, le raisonnement du Tribunal impliquerait que, à moins d'empêcher l'entrée de concurrents ou d'empêcher autrement la concurrence, ou à moins de constituer la cause (principale) des caractéristiques anti-concurrentielles observées sur le marché, le comportement attaqué ne peut être considéré comme un agissement anti-concurrentiel. Cette proposition est à l'évidence erronée.

[83] À mon sens, l'erreur de droit du Tribunal touchant l'alinéa 79(1)*b*) est en partie attribuable à une fusion du critère juridique applicable à l'alinéa 79(1)*c*) et de celui qui correspond à l'alinéa 79(1)*b*). Comme je le disais plus haut au début de mon analyse, la pluralité des conditions prévues à l'article 79 donne à penser que, si on l'interprète bien, à chacune de ces conditions doit correspondre un critère juridique distinct. Pour le redire encore une fois, l'alinéa 79(1)*b*) porte sur le point de savoir si la pratique attaquée a bien le but anti-concurrentiel qu'elle doit avoir à l'égard des concurrents, tandis que l'alinéa 79(1)*c*) concerne l'état général de la concurrence et la question de savoir si ladite pratique a pour effet de diminuer sensiblement la concurrence sur le marché pertinent. Un élément donné de preuve indirecte peut remplir des fonctions subtilement différentes—mais dont il est important de voir qu'elles restent bien distinctes— relativement aux alinéas 79(1)*b*) et 79(1)*c*). Comme l'alinéa 79(1)*b*) porte avant tout sur le point de savoir si le comportement attaqué avait un but particulier pour ce qui concerne les concurrents, les facteurs pertinents—c'est-à-dire la preuve concernant ses effets prévisibles sur les concurrents, les justifications commerciales de son adoption et l'intention subjective—doivent être interprétés dans ce cadre déterminé. L'alinéa 79(1)*c*), quant à lui, commande une appréciation du caractère sensible ou non des effets réels ou vraisemblables de ce comportement sur la concurrence dans le ou les marchés pertinents, tâche qu'il faut remplir à partir d'une vue d'ensemble du marché et qui appelle l'examen d'un ensemble plus vaste d'effets du comportement en question. Or, le Tribunal a adopté dans la présente affaire une approche qui ne prend pas en compte ou ne maintient pas comme il faudrait ces importantes distinctions conceptuelles entre les conditions que prévoient respectivement les alinéas 79(1)*b*) et 79(1)*c*).

(3) The valid business justification and paragraph 79(1)(*b*)

[84] The Tribunal's conflation of the legal tests for paragraphs 79(1)(*b*) and 79(1)(*c*) is also apparent in its discussion of the business justification arguments proffered by the respondent. The Tribunal noted two business justifications suggested by the respondent: first, that the SDP's uniform rebate structure encourages competition, by creating a level playing field between small and large distributors; and second, that the SDP makes possible the high-volume sales necessary to enable Bibby to maintain a full line of products.

[85] The Tribunal rejected the first business justification proposed by the respondent, but was persuaded by the second. With respect to the first justification, the Tribunal concluded (at paragrah 209) that although the creation of equitable opportunities for small- and medium-sized enterprises to participate in the Canadian economy is an objective of the Act set out in section 1.1, this is not a relevant consideration for the purposes of section 79:

> While the Tribunal acknowledges this to be an enunciated purpose of the Act, the Tribunal is of the view that this purpose is unrelated to the issue of abuse of dominance. Competition between distributors is not at issue. Rather, the case is about competition between Bibby and other suppliers of cast iron DWV products. The equitable characteristics of the SDP as it relates to distributors have little to do with whether Bibby is exercising its market power in a way that precludes competition between suppliers of the product. In consequence, this argument of business justification must fail.

[86] The Tribunal was persuaded, however, by the second business justification put forward by the respondent. It explained its reasoning as follows (at paragraphs 212 and 259):

> High-volume sales are also important in a business which is volume-driven, as Mr. Leonard, General Manager of Bibby, explained. Bibby argues that it needs the sales to ensure efficiencies and to lower its cost of production; the Commissioner did not challenge this assertion. The rebate

3) La justification commerciale valable et l'alinéa 79(1)*b*)

[84] La fusion opérée par le Tribunal entre les critères juridiques correspondant respectivement aux alinéas 79(1)*b*) et 79(1)*c*) est également manifeste dans son analyse des arguments présentés par l'intimée au titre des justifications commerciales. Le Tribunal note deux justifications commerciales avancées par l'intimée : premièrement, le fait que le système uniforme d'abattements et de ristournes du PDS favoriserait la concurrence en égalisant les chances pour les petits et les grands distributeurs; et deuxièmement, le fait que le PDS rendrait possible les ventes en grandes quantités dont Bibby a besoin pour maintenir une ligne complète de produits.

[85] Le Tribunal rejette la première justification commerciale proposée par l'intimée, mais accueille la seconde. Pour ce qui concerne la première, le Tribunal conclut (au paragraphe 209) que, si l'un des objets explicites de la Loi, énoncés à son article 1.1, est effectivement d'assurer à la petite et à la moyenne entreprise une chance honnête de participer à l'économie canadienne, cet objet n'est pas un facteur pertinent pour l'application de l'article 79 :

> Le Tribunal reconnaît qu'il s'agit là d'un objet explicite de la Loi, mais estime que cet objet n'est pas lié à la question de l'abus de position dominante. La concurrence entre les distributeurs n'est pas ici en question. La présente espèce concerne plutôt la concurrence entre Bibby et les autres fournisseurs de produits d'évacuation et de ventilation en fonte. Le caractère équitable du PDS par rapport aux distributeurs n'a pas grand-chose à voir avec le point de savoir si Bibby exerce sa puissance commerciale d'une manière qui entraverait la concurrence entre fournisseurs des produits susdits. En conséquence, cette justification commerciale n'est pas recevable.

[86] Le Tribunal se laisse cependant convaincre du bien-fondé de la seconde justification commerciale avancée par l'intimée. Il explique son raisonnement comme suit (aux paragraphes 212 et 259) :

> En outre, la vente de volumes considérables s'avère importante dans un secteur où la quantité de la production est un facteur déterminant, ainsi que l'a expliqué M. Leonard, directeur général de Bibby. Celle-ci fait valoir qu'elle a besoin de fortes ventes pour assurer son efficience et pour diminuer

structure provided for in the SDP does encourage distributors to deal with Bibby for all three products if they choose Bibby to supply one of them and in consequence Bibby's sales are increased. As was stated in *Laidlaw*, the self-interest justification is not sufficient. However, in this case, the Tribunal accepts, based on Mr. Leonard's evidence, that high volumes allow Bibby to maintain in inventory smaller, less profitable but nevertheless important products. As a result, items that are used less often remain available in the market. This availability serves the interests of distributors and contractors, whether or not they belong to the SDP, and ultimately benefits the consumer.

. . .

The Respondent's business argument that Bibby needs to sell a certain volume in all three products to be able to maintain full production of all product lines is valid. There are certainly recognizable advantages in having a reliable source able to manufacture and supply a full line of cast iron pipe DWV products for the Canadian market.

[87] This analysis is problematic, as the Tribunal appears to have lost sight of the role of the valid business justification doctrine within paragraph 79(1)(*b*), and instead seems to grant it an independent role. A business justification for an impugned act is properly relevant only in so far as it is pertinent and probative in relation to the determination required by paragraph 79(1)(*b*), namely the determination as to whether the purpose for which the act was performed was a predatory, exclusionary or disciplinary negative effect on a competitor. As I explained above in the discussion of the intentionality aspect of the paragraph 79(1)(*b*) test, a valid business justification can, in appropriate circumstances, overcome the deemed intention arising from the actual or foreseeable negative effects of the conduct on competitors, by demonstrating that such anti-competitive effects are not in fact the overriding purpose of the conduct in question. In this way, a valid business justification essentially provides an alternative explanation as to why the impugned act was performed, which in the right circumstances might be sufficient to counterbalance the evidence of negative

son coût de production, affirmation que la commissaire n'a pas contestée. Or, la structure des abattements et ristournes que prévoit le PDS incite effectivement les distributeurs qui choisissent Bibby comme fournisseur d'un produit donné à acheter l'ensemble des trois à cette même entreprise, de sorte que les ventes de Bibby s'en trouvent augmentées. Comme le Tribunal l'a fait observer dans *Laidlaw*, l'intérêt propre n'est pas une justification commerciale suffisante. Cependant, dans la présente espèce, le Tribunal, se fondant sur le témoignage de M. Leonard, accepte l'argument que la vente de forts volumes permet à Bibby de garder en stock des produits qui se vendent moins et ne sont pas aussi rentables que les autres, mais qui restent néanmoins importants. Par suite, les articles d'usage peu fréquent demeurent disponibles sur le marché. Cette disponibilité sert les intérêts des distributeurs et des entrepreneurs, qu'ils soient ou non inscrits au PDS, et, en dernière analyse, les intérêts des consommateurs.

[. . .]

Le Tribunal estime valable l'argument commercial de la défenderesse selon lequel Bibby doit vendre un volume déterminé de chacun des trois produits pour pouvoir continuer la production intégrale de l'ensemble de ses gammes. On ne peut certainement s'empêcher de reconnaître les avantages que présente l'existence d'une entreprise fiable capable de fabriquer et de fournir une ligne complète de produits d'évacuation et de ventilation en fonte sur le marché canadien.

[87] Cette analyse fait problème, étant donné que le Tribunal paraît y avoir perdu de vue le rôle de la doctrine de la justification commerciale valable dans le cadre de l'alinéa 79(1)*b*), et semble plutôt lui attribuer un rôle indépendant. La justification commerciale d'une pratique attaquée ne peut être prise en considération que dans la mesure où elle est pertinente et probante par rapport à la décision qu'exige l'alinéa 79(1)*b*), soit celle du point de savoir si le comportement attaqué avait pour but un effet négatif sur un concurrent, effet qui doit être abusif, ou viser une exclusion ou une mise au pas. Comme je l'ai expliqué plus haut dans l'analyse de l'aspect relatif à l'intention du critère applicable à l'alinéa 79(1)*b*), une justification commerciale valable peut, si le contexte le permet, l'emporter sur l'intention réputée découlant des effets négatifs, réels ou prévisibles, du comportement attaqué sur les concurrents, en démontrant que ces effets anti-concurrentiels ne sont pas en fait le but prédominant de ce comportement. De cette façon, une justification commerciale valable constitue une autre explication possible des motifs du comportement attaqué, laquelle, si la situation s'y prête,

effects on competitors or subjective intent in this vein.

[88] The valid business justification doctrine is not an absolute defence for paragraph 79(1)(*b*). Rather, a business justification is properly employed to counterbalance or neutralize other evidence of an anti-competitive purpose, prior to making a determination under 79(1)(*b*). As the Tribunal observed in *D & B*, a business justification proffered by a respondent must therefore be "weigh[ed]. . . in light of any anti-competitive effects to establish the overriding purpose" of the impugned act (at page 262, also quoted in *Tele-Direct*, at page 180). In *D & B*, the Tribunal properly emphasized this balancing exercise (at page 265):

> Proof of the existence of a business motive for long-term contracts [the impugned conduct] that was unrelated to an anti-competitive purpose would undoubtedly be relevant to an evaluation of an allegation of anti-competitive acts. The mere proof of *some* legitimate business purpose would be, however, hardly sufficient to support a finding that there is no anti-competitive act. All known factors must be taken into account in assessing the nature and purpose of the acts alleged to be anti-competitive.

[89] In the case at bar, the Commissioner argued that the business justification accepted by the Tribunal is actually a self-interest argument based on selling more product, and therefore cannot qualify as a business justification for the purposes of paragraph 79(1)(*b*). The respondent countered that this was a mischaracterization of the Tribunal's reasons, as in its view the business justification actually accepted by the Tribunal related to the maintenance of a full product line and the consequent benefits for consumers: according to the respondent, "it is crystal clear from the Tribunal's reasons that the Tribunal accepted the SDP's business purpose on the basis of its benefits to customers and end consumers, rather than Canada Pipe" (respondent's memorandum of fact and law, at paragraph 83, emphasis in original).

peut suffire à contrebalancer la preuve des effets négatifs sur les concurrents ou d'une intention subjective orientée dans ce sens.

[88] La doctrine de la justification commerciale valable n'est pas un moyen de défense absolu dans le cadre de l'alinéa 79(1)*b*). Son usage légitime est autre : on doit plutôt se demander, avant de rendre une décision sous le régime de cet alinéa, si la justification commerciale contrebalance ou neutralise les éléments de preuve tendant à établir l'existence d'un but anti-concurrentiel. Comme le Tribunal l'a fait observer à la page 80 de *D & B*, il faut « évaluer [une justification commerciale avancée par un défendeur] en fonction des effets anti-concurrentiels pour établir l'objectif prépondérant » de la pratique attaquée (passage également cité au paragraphe 543 de *Télé-Direct*). Le Tribunal a mis l'accent avec raison sur cette opération d'évaluation comparative aux pages 85 et 86 de *D & B* :

> La preuve de l'existence d'un motif d'ordre commercial justifiant les contrats à long terme [qui constituent le comportement attaqué], à l'exclusion de toute fin anti-concurrentielle, est sans aucun doute pertinente dans le cadre de l'évaluation d'une allégation d'agissements anti-concurrentiels. Toutefois, la seule preuve d'une *quelconque* fin commerciale légitime peut difficilement justifier une conclusion selon laquelle il n'y a pas d'agissements anti-concurrentiels. Tous les facteurs connus doivent être pris en considération pour déterminer la nature et la fin des agissements que l'on prétend être anti-concurrentiels.

[89] Dans la présente espèce, la commissaire soutient que la justification commerciale acceptée par le Tribunal est en fait un argument fondé sur l'intérêt propre, soit l'intérêt qu'il y a à vendre plus de produits, et n'est donc pas recevable pour l'application de l'alinéa 79(1)*b*). L'intimée réplique qu'il s'agit là d'une représentation inexacte des motifs du Tribunal. Selon elle, la justification commerciale que ce dernier a en fait accueillie se rapportait au maintien d'une ligne complète de produits et aux avantages qui s'ensuivent pour les consommateurs; [TRADUCTION] « il ressort à l'évidence de l'exposé de ses motifs [fait valoir l'intimée] que le Tribunal a accepté la justification commerciale du PDS sur le fondement de ses avantages pour les clients et pour les consommateurs finaux, plutôt que pour Tuyauteries Canada » (exposé des faits et du droit de l'intimée, paragraphe 83; souligné dans l'original).

[90] In my view, the respondent's interpretation of the Tribunal's reasons with respect to the second business justification is apt. However, this reasoning, which relies solely upon consumer welfare benefits to establish the business justification, is at the core of the Tribunal's error. Simply stated, improved consumer welfare is on its own insufficient to establish a valid business justification for the purposes of paragraph 79(1)(*b*). A valid business justification must provide a credible efficiency or pro-competitive explanation, unrelated to an anti-competitive purpose, for why the dominant firm engaged in the conduct alleged to be anti-competitive. The business justification must therefore be attributable to the respondent, for it is the latter's allegedly anti-competitive conduct which is sought to be explained.

[91] In the case at bar, the Tribunal's reasons do not establish the requisite efficiency-related link between the SDP and the respondent, and hence do not supply a legitimate explanation for the latter's choice to engage in the impugned conduct, unrelated to an anti-competitive purpose. Without such a link, self-interest remains as the only justification for the SDP which is attributable to the respondent for the purposes of paragraph 79(1)(*b*). The Tribunal thus erred in concluding, on the basis of the reasoning provided in its decision, that the respondent had established a valid business justification for the SDP. While this error may not ultimately have been determinative, in that a valid business justification is at most a factor to be balanced within the paragraph 79(1)(*b*) determination, it may well have played an important supporting role in the Tribunal's decision with respect to paragraph 79(1)(*b*).

(4) Conclusion with respect to paragraph 79(1)(*b*)

[92] In sum, the aspects of the Tribunal's decision discussed above admittedly represent short extracts of a long and complex analysis. However, the identified errors suggest a basic misapprehension and misapplication of the legal test for paragraph 79(1)(*b*),

[90] L'intimée donne là à mon sens une interprétation exacte des motifs du Tribunal pour ce qui concerne la seconde justification commerciale. Or, ce raisonnement, qui se fonde seulement sur l'accroissement du bien-être des consommateurs pour établir la justification commerciale, joue un rôle central dans l'erreur du Tribunal. Pour dire les choses simplement, l'accroissement du bien-être des consommateurs ne suffit pas à lui seul à démontrer le caractère valable d'une justification commerciale pour l'application de l'alinéa 79(1)*b*). Une justification commerciale valable doit être une explication crédible, fondée sur l'efficience ou de nature proconcurrentielle, et sans lien avec un but anti-concurrentiel, des motifs qu'avait l'entreprise dominante de se livrer au comportement attaqué comme étant anti-concurrentiel. La justification commerciale doit donc être attribuable au défendeur, puisque c'est le comportement supposé anti-concurrentiel de ce dernier qu'il s'agit d'expliquer.

[91] Dans la présente espèce, l'exposé des motifs du Tribunal n'établit pas l'existence du lien nécessaire, fondé sur l'efficience, entre le PDS et l'intimée, et ne donne donc pas une explication légitime, non liée à un but anti-concurrentiel, de la décision de l'intimée de se livrer au comportement attaqué. À défaut d'un tel lien, l'intérêt propre reste la seule justification du PDS qui soit attribuable à l'intimée pour l'application de l'alinéa 79(1)*b*). Le Tribunal a donc commis une erreur en concluant, sur le fondement du raisonnement exposé dans sa décision, que l'intimée avait établi une justification commerciale valable du PDS. S'il se peut que cette erreur n'ait pas en fin de compte été déterminante, au sens où une justification commerciale valable n'est tout au plus qu'un facteur parmi d'autres à prendre en compte pour la décision relevant de l'alinéa 79(1)*b*), elle pourrait bien avoir joué un rôle de soutien important dans la décision que le Tribunal a rendue sous le régime de cet alinéa.

4) Conclusion relative à l'alinéa 79(1)*b*)

[92] Somme toute, les aspects de la décision du Tribunal examinés plus haut ne représentent, j'en conviens, que de courts extraits d'une longue et complexe analyse. Cependant, les erreurs constatées témoignent d'une idée fausse et d'une application

and a troubling conflation between paragraphs 79(1)(*b*) and (*c*). Thus, at the very least, the extracts highlighted above render suspect the Tribunal's analysis of the relevant factors in the context of paragraph 79(1)(*b*). I can only conclude that the matter should be returned to the Tribunal for a reconsideration of its paragraph 79(1)(*b*) determination in light of the correct legal test.

impropre du critère juridique relatif à l'alinéa 79(1)*b*), ainsi que d'une fusion gênante des éléments respectifs des alinéas 79(1)*b*) et *c*). Par conséquent, les extraits relevés plus haut font à tout le moins peser un soupçon sur l'analyse proposée par le Tribunal des facteurs pertinents dans le contexte de l'alinéa 79(1)*b*). Force m'est donc de conclure que l'affaire devrait être renvoyée au Tribunal pour qu'il réexamine sa décision relative à l'alinéa 79(1)*b*) en fonction du critère juridique approprié.

(C) For the purposes of subsection 77(2), did the Tribunal err in its determination with respect to whether the SDP has the result that competition is or is likely to be lessened substantially?

C) Pour l'application du paragraphe 77(2), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si la concurrence est ou sera vraisemblablement réduite sensiblement en conséquence du PDS?

[93] As I described above at paragraph 21 of these reasons, there is a parallel structure and logic between the requisite statutory elements for exclusive dealing under subsection 77(2) and abuse of dominant position under subsection 79(1). The parties did not present separate arguments with respect to the substantial lessening of competition element of subsection 77(2), and instead simply referred the Court to their arguments concerning this element in the context of section 79. This same approach was adopted by the Tribunal, which concluded, "[f]or the same reasons. . . as in our analysis under section 79," that the Commissioner had failed to establish that the exclusive dealing practice has lessened competition substantially (paragraph 282).

[93] Comme je le disais plus haut au paragraphe 21, il existe un parallélisme structurel et logique entre, d'une part, les conditions prévues au paragraphe 77(2) concernant l'exclusivité, et, d'autre part, celles prévues au paragraphe 79(1) touchant l'abus de position dominante. Les parties n'ont pas exposé de moyens distincts à propos de la condition de diminution sensible de la concurrence que prévoit l'alinéa 77(2) et se sont plutôt contentées de renvoyer la Cour aux arguments qu'elles avaient avancés relativement à cet élément dans le contexte de l'article 79. Le Tribunal a adopté la même approche et a conclu, « [a]ux mêmes motifs [. . .] que ceux [qu'il avait] formulés dans [son] analyse fondée sur l'article 79 », que la commissaire n'avait pas établi que la pratique d'exclusivité eût diminué sensiblement la concurrence (paragraphe 282).

[94] In *NutraSweet*, the Tribunal observed that "the fundamental test of substantial lessening of competition is the same in both sections of the Act [section 79 and subsection 77(2)]" (page 56). The similarity between this element in section 79 and subsection 77(2) is indeed strong, in that both provisions employ the key concepts of substantial lessening and competition. However, the two provisions also contain some differences in wording. In particular, the scope of section 79 appears to include events of the past, which are not expressly included for the purposes of subsection 77(2): paragraph 79(1)(*c*) encompasses three time frames ("has had, is having or is likely to have"), while subsection 77(2) refers to only two ("is or is likely to").

[94] Dans *NutraSweet*, le Tribunal faisait observer que « le critère fondamental de la diminution sensible de la concurrence est le même dans les deux articles de la Loi [soit l'article 79 et le paragraphe 77(2)] » (page 111). La ressemblance entre cet élément considéré dans le contexte de l'article 79 et cet élément considéré du point de vue du paragraphe 77(2) est effectivement forte, en ce que les deux dispositions mettent en œuvre les concepts clés de diminution sensible et de concurrence. Cependant, il y a aussi certaines différences entre les textes de ces deux dispositions. En particulier, la portée de l'article 79 s'étend aux événements du passé, qui ne sont pas expressément compris dans le champ d'application du paragraphe

77(2); en effet, l'alinéa 79(1)*c*) englobe les trois divisions du temps (« a, a eu ou aura vraisemblablement »), tandis que le paragraphe 77(2) ne s'applique qu'au présent et à l'avenir (« est ou sera vraisemblablement »).

[95] For the purposes of this appeal, I need not consider whether the differences in wording between paragraph 79(1)(*c*) and subsection 77(2) might in particular cases properly yield substantively different results with respect to the substantial lessening of competition element. In the case at bar, it is clear that the Tribunal simply adopted the same legal test and analysis in respect of the substantial lessening of competition element for both section 79 and subsection 77(2). To the extent that the Tribunal erred in law in the context of paragraph 79(1)(*c*) in its interpretation of the test for substantial lessening of competition, the same errors of law apply with respect to subsection 77(2).

[95] Je n'ai pas à me demander, pour les besoins du présent appel, si les différences de libellé de l'alinéa 79(1)*c*) et du paragraphe 77(2) pourraient à bon droit, dans des cas particuliers, donner lieu à des conclusions de fond différentes touchant la condition de diminution sensible de la concurrence. Dans la présente espèce, il apparaît à l'évidence que le Tribunal a tout simplement appliqué le même critère juridique et la même analyse à la condition de diminution sensible de la concurrence considérée dans le cadre de l'article 79 et du paragraphe 77(2). Dans la mesure où le Tribunal a commis des erreurs de droit dans son interprétation du critère de la diminution sensible de la concurrence dans le contexte de l'alinéa 79(1)*c*), il peut être dit avoir commis les mêmes erreurs de droit relativement au paragraphe 77(2).

(D) For the purposes of subsection 77(2), did the Tribunal err in its determination with respect to whether the SDP is likely to impede entry or expansion of a firm or a product in a market or have any other exclusionary effect in a market?

D) Pour l'application du paragraphe 77(2), le Tribunal a-t-il formulé une conclusion erronée touchant le point de savoir si le PDS aura vraisemblablement, sur un marché, soit pour effet de faire obstacle à l'entrée ou au développement d'une firme, ou encore au lancement ou à l'expansion des ventes d'un produit, soit quelque autre effet tendant à exclure?

[96] The parallel structure of subsections 77(2) and 79(1) is also apparent in comparing the second elements required by the two statutory provisions: both provisions call for the identification of a particular type of impugned conduct, namely a practice of exclusive dealing with an exclusionary effect in the case of subsection 77(2), and a practice of anti-competitive acts in the case of paragraph 79(1)(*b*). The parties did not present separate arguments concerning this element of subsection 77(2), but rather appear to have assimilated this element into their arguments concerning section 79.

[96] Le parallélisme de structure entre les paragraphes 77(2) et 79(1) est également manifeste lorsque l'on compare les conditions qu'ils prévoient en second lieu : les deux paragraphes exigent du commissaire l'établissement d'un comportement déterminé, savoir une pratique d'exclusivité à effet tendant à exclure dans le cas du paragraphe 77(2), et une pratique d'agissements anti-concurrentiels dans le cas de l'alinéa 79(1)*b*). Les parties n'ont pas fait valoir de moyens distincts au sujet de cet élément du paragraphe 77(2), mais paraissent plutôt l'avoir incorporé dans leurs argumentations respectives touchant l'article 79.

[97] The Tribunal was satisfied that the SDP was a practice of exclusive dealing according to the statutory definition provided in paragraph 77(1)(*b*) (paragraph

[97] La commissaire a convaincu le Tribunal que le PDS constituait une pratique d'exclusivité selon la définition de l'alinéa 77(1)*b*) (paragraphe 279).

279). However, the Tribunal concluded that an exclusionary effect had not been established, based on its analysis under section 79 (at paragraphs 281 and 282):

> We have concluded under section 79 that the SDP is not an anti-competitive practice because we found insufficient evidence to show that the SDP in itself had an exclusionary effect.
>
> . . .
>
> For the same reasons therefore as in our analysis under section 79, we find that the Commissioner has failed to establish that the exclusive dealing practice impedes or is likely to impede entry of a new competitor or have any exclusionary effect. . .

Cependant, le Tribunal a aussi conclu, sur le fondement de son analyse relative à l'article 79, que la commissaire n'avait pas établi l'existence d'un effet tendant à exclure (aux paragraphes 281 et 282) :

> Nous avons conclu sous le régime de l'article 79 que le PDS n'est pas une pratique anticoncurrentielle, au motif de l'insuffisance des éléments produits pour établir que le PDS aurait en soi un effet tendant à exclure
>
> [. . .]
>
> Aux mêmes motifs, donc, que ceux que nous avons formulés dans notre analyse fondée sur l'article 79, nous concluons que la commissaire n'a pas établi que la pratique d'exclusivité ait, ou doive vraisemblablement avoir, soit pour effet de faire obstacle à l'entrée d'un nouveau concurrent, soit quelque autre effet tendant à exclure [. . .]

[98] For the purposes of this appeal, I need not decide the precise scope or nature of the similarity between the statutory element of subsection 77(2) concerning exclusionary effects, and paragraph 79(1)(*b*). There may well be differences between the two provisions, which could prove pertinent in a future case. However, it is sufficient in the circumstances of this case to note that the exclusionary effects required under subsection 77(2) are clearly of a relative nature, as indicated by use of the word "impede" in paragraphs 77(2)(*a*) and (*b*), rather than a more categorical verb, such as "prevent". I have already considered in detail the Tribunal's treatment of the evidence concerning barriers to entry and the effects of the SDP, and it is unnecessary to repeat this analysis here. My conclusion, stated above at paragraph 58, is equally applicable for the purposes of the Tribunal's determination with respect to the exclusionary effects element of subsection 77(2): the Tribunal's analysis of the evidence concerning barriers to entry and the effects of the SDP was conducted from the narrow perspective of prevention, and not the broader perspective implied by the word "impede". The adoption of this unduly narrow perspective constitutes reversible error.

[98] Je n'ai pas à décider, pour les besoins du présent appel, la portée ou la nature exactes de la similarité entre la condition relative aux effets tendant à exclure que prévoit le paragraphe 77(2) et la condition prévue à l'alinéa 79(1)*b*). Il se pourrait bien qu'il y ait des différences entre ces deux dispositions, et que ces différences se révèlent pertinentes dans une affaire ultérieure. Cependant, il suffit de noter, dans le contexte des faits de la présente espèce, que les effets tendant à exclure dont le paragraphe 77(2) exige l'établissement sont manifestement de nature relative, comme l'indique l'emploi, aux alinéas 77(2)*a*) et *b*), de l'expression « faire obstacle » plutôt que d'un verbe plus catégorique comme « empêcher ». J'ai déjà examiné en détail l'utilisation par le Tribunal des éléments de preuve concernant les obstacles à l'entrée et les effets du PDS, et il est inutile que je répète ici cette analyse. La conclusion que j'ai formulée au paragraphe 58 ci-dessus s'applique également à la conclusion du Tribunal touchant la condition relative aux effets tendant à exclure que prévoit le paragraphe 77(2) : le Tribunal a analysé la preuve concernant les obstacles à l'entrée et les effets du PDS du point de vue étroit qu'exprime le terme « empêcher » et non du point de vue plus large qu'appelle l'expression « faire obstacle ». L'adoption de ce point de vue indûment étroit constitue une erreur susceptible de révision.

[99] Moreover, it should be noted that like subsection 79(1), subsection 77(2) establishes distinct statutory

[99] En outre, il est à noter que, comme le paragraphe 79(1), le paragraphe 77(2) énumère des conditions

elements, each of which must be established before an order prohibiting exclusive dealing can issue. These distinct statutory elements must not be conflated: the existence of the various exclusionary effects described in paragraphs 77(2)(*a*), (*b*) and (*c*) must be considered separately from the question of whether there has been a substantial lessening of competition. Since the Tribunal relied, for the purpose of its subsection 77(2) determination concerning exclusionary effects, upon its erroneous paragraph 79(1)(*b*) reasoning, its conclusion in this regard cannot stand.

## V. CONCLUSION

[100] For the above reasons, I would allow the appeal with costs, I would set aside the Tribunal's decision in this regard, and I would refer the matter back to the Tribunal for a redetermination in accordance with these reasons and on the basis of the evidence currently on record.

LÉTOURNEAU J.A.: I concur.

PELLETIER J.A.: I concur.

distinctes, dont chacune doit être remplie pour que puisse être rendue une ordonnance interdisant de pratiquer l'exclusivité. Ces conditions distinctes que prévoit la Loi ne doivent pas être fusionnées : l'existence des divers effets tendant à exclure que définissent les alinéas 77(2)*a*), *b*) et *c*) doit être examinée séparément de la question de savoir s'il y a eu diminution sensible de la concurrence. Or, comme le Tribunal a fondé la conclusion qu'il a formulée touchant les effets tendant à exclure dans le cadre du paragraphe 77(2) sur son raisonnement erroné à propos de l'alinéa 79(1)*b*), cette conclusion ne peut être maintenue.

## V. CONCLUSION

[100] Pour les motifs exposés ci-dessus, j'accueillerais l'appel avec dépens, j'annulerais la décision du Tribunal à l'égard des questions en litige dans l'appel, et je lui renverrais l'affaire pour qu'il procède à un nouvel examen conformément aux présents motifs et sur le fondement de la preuve actuellement au dossier.

LE JUGE LÉTOURNEAU, J.C.A. : Je souscris aux présents motifs.

LE JUGE PELLETIER, J.C.A. : Je souscris aux présents motifs.

# 6

[2007] 2 F.C.R. 57

A-106-05

2006 FCA 236



**Commissioner of Competition** *(Appellant)*

*v.*

**Canada Pipe Company Ltd./Tuyauteries Canada Ltee** *(Respondent)*

***INDEXED AS: CANADA (COMMISSIONER OF COMPETITION) v. CANADA PIPE CO. (F.C.A.)***

Federal Court of Appeal, Desjardins, Letourneau and Pelletier JJ.A.—Ottawa, February 7, 9 and June 23, 2006.

*Competition — Cross-appeal from Competition Tribunal's dismissal of Commissioner of Competition's application for order under Competition Act, ss. 77, 79 — Tribunal holding respondent dominant in each of relevant markets in Canada for cast iron drain, waste and vent (DWV) products — Cross-appeal concerning Tribunal's assessment of product market definition, market power, both pertaining to finding respondent dominant in relevant markets — Tribunal's conclusion applicable market not including DWV products made from variety of different materials, because cast iron treated as separate market by distributors, not unreasonable — Conclusion respondent had market power in relevant markets also open to Tribunal — Cross-appeal dismissed, Pelletier J.A. dissenting as to issue of market power.*

This was a cross-appeal from a decision of the Competition Tribunal dismissing the Commissioner of Competition's application for an order against the respondent under sections 77 and 79 of the *Competition Act*. The application related to the respondent's Stocking Distributor Program (SDP) for the sale and supply of its cast iron drain, waste and vent (DWV) products. The Tribunal held that the respondent was dominant in each of the relevant markets in Canada for cast iron DWV products, that it was a "major supplier" of cast iron products, and that by marketing its cast iron DWV products using the SDP, the respondent had engaged in a practice of exclusive dealing. At issue in the cross-appeal was the Tribunal's assessment of product market definition and market power (*Competition Act*, paragraph 79(1)(*a*)). The respondent submitted that if the Tribunal had followed the analytical approach it was required by law to adopt, it would have had to define the applicable market to include competing DWV products made from a variety of different materials. The issue of market power would not have arisen in such a properly defined product market as the respondent's market share would not have exceeded approximately 10 %.

*Held* (Pelletier J.A. dissenting), the cross-appeal should be dismissed.

*Per* Desjardins J.A. (Letourneau J.A. concurring): The Tribunal correctly identified the legal principles applicable to the determination of the product market, and adopted an appropriate methodology to apply these principles in the particular case of the respondent. The Tribunal considered "substitutability", that is, whether there exist sufficiently close substitutes to the product at issue, such that the market for that product includes those substitutes. As no direct evidence was presented to the Tribunal on the cross-elasticity of demand, the Tribunal proceeded to consider the indirect evidence by reference to the topics enumerated in the *Enforcement Guidelines on the Abuse of Dominance Provisions*. It concluded that cast iron still played a distinct role in the DWV industry and was treated as a separate market by distributors. Moreover, because of the significant price

variation in cast iron DWV products, from region to region, the Tribunal found there were six geographic markets. Since the Tribunal considered the appropriate elements and arrived at a reasonable conclusion, these findings were immune from judicial intervention.

The Tribunal also correctly identified and articulated the principles applicable to the determination concerning market power, including both the direct and indirect approaches to this issue. It concluded that the evidence established the respondent could and did exercise market power in the relevant markets. Considering the evidence, it was open to the Tribunal to conclude on the direct approach that the respondent was pricing pipe and fittings with “hefty margins”, and that for pipe, fittings and mechanical joint couplings, it had a “significant ability to vary prices across the regions.” This indicated supra-competitive pricing. On the indirect approach, it was open to the Tribunal to conclude that the respondent had market power.

*Per* Pelletier J.A. (dissenting): The Tribunal’s conclusion with respect to market power was unreasonable. Given the Tribunal’s definition of market power as the ability to set prices above competitive levels for a considerable period, it was difficult to see on what basis the Tribunal could conclude that the respondent had market power in four of the six geographic markets identified. The respondent lowered its prices after the emergence of competing suppliers of cast iron products in those markets. The fact of lowering prices to respond to the emergence of new competitors is inconsistent with the definition of marker power.

STATUTES AND REGULATIONS JUDICIALLY CONSIDERED

*Combines Investigation Act,* R.S.C. 1970, c. C-23, s. 51 (as enacted by S.C. 1986, c. 26, s. 47).

*Competition Act,* R.S.C., 1985, c. C-34, ss. 1 (as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 19), 1.1 (as enacted *idem), 77 (as am. idem,* s. 45; S.C. 1999, c. 2, ss. 23, 37(y); c. 31, s. 52 (F); 2002 c. 16, ss. 11.2, 11.3), 79 (as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1990, c. 37, s. 31; 1999, c. 2, s. 37(z); 2002, c. 16, s. 11.4).

CASES JUDICIALLY CONSIDERED

APPLIED:

*Canada (Director of Investigation and Research) v. Southam Inc.* [1997] 1 S.C.R. 748; (1996), 144 D.L.R. (4th) 1; 50 admin. 1.R. (3d) 199; 71 C.P.R. (3d) 417; 209 N.R. 20 (as to standard or review); *Dr. Q v. College of Physicians and Surgeons of British Columbia,* [2003] 1 S.C.R. 226; (2003), 223 D.L.R. (4th) 599; [2003] 5 W.W.R. 1; 11 B.C.L.R. (4th) 1; 48 Amin. L.R. (3d) 1; 179 B.C.A.C. 170; 302 N.R. 34; 2003 SCC 19 (as to standard or review); *Law Society of New Brunswick v. Ryan,* [2003] 1 S.C.R. 247; (2003), 257 N.B.R. (2d) 207; 223 D.L.R. (4th) 577; 48 Admin. L.R. (3d) 33; 31 C.P.C. (5th) 1; 302 N.R. 1; 2003 SCC 20 (as to standard of review); *R. v. Nova Scotia Pharmaceutical Society,* [1992] 2 S.C.R. 606; (1992), 114 N.S.R. (2d) 91; 93 D.L.R. (4th) 36; 313 A.P.R. 91; 74 C.C.C. (3d) 289; 43 C.P.R. (3d) 1; 15 C.R. (4th) 1; 10 C.R.R. (2d) 34; 139 N.R. 241.

CONSIDERED:

*Canada (Commissioner of Competition) v. Canada Pipe Co*., [2007] 1 F.C.R. 3; (2006), 268 D.L.R. (4th) 193; 49 C.P.R. (4th) 241; 350 N.R. 291; 2006 FCA 233; *Canada (Director of Investigation and Research) v. NutraSweet Co*. (1990), 32 C.P.R. (3d) I (Comp. Trib.); *Canada (Director of Investigation and Research) v. Southam Inc*., [1995] 3 F.C. 557(1995), 127 D.L.R. (4th) 263; 21 B.L.R. (2d) 1; 63 C.P.R. (3d) 1; 185 N.R. 321 (C.A.); revd on other grounds [1997] 1 S.C.R. 748; (1996), 144 D.L.R. (4th) 1; 50 Admin. L.R. (2d) 199; 71 C.P.R. (3d) 417; 209 N.R. 20; *Canada (Director of Investigation and Research) v. Southam Inc*., [1997] 1 S.C.R. 748; (1997),

144 D.L.R. (4th) 1; 50 Admin. L.R. (2d) 199; 71 C.P.R. (3d) 417; 209 N.R. 20*; Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc*. (1997), 73 C.P.R. (3d) 1 (Comp. Trib.); *Canada (Director of Investigation and Research) v. Laidlaw Waste Systems Ltd*. (1992), 40 C.P.R. (3d) 289 (Comp. Trib.).

REFERRED TO:

*Canada (Commissioner of Competition) v. Superior Propane Inc. (2000), 7 C.P.R. (4th) 385 (Comp. Trib.); rev'd on other grounds, [2001] 3 F.C. 185(2001), 199 D.L.R. (4th) 130; 11 C.P.R. (4th) 289; 269 N.R. 109; 2001 FCA 204; Canada (Director of Investigation and Research) v. Southam Inc. (1992), 43 C.P.R. (3d) 161 (Comp. Trib.); Canada (Director of Investigation and Research) v. NutraSweet Co. (1990), 32 C.P.R. (3d) 1 (Comp. Trib.); The Queen v. J. W. Mills & Son Ltd et al., [1968] 2 Ex. C.R. 275; (1968), 56 C.P.R. 1; Canada (Director of Investigation and Research) v. Southam Inc., [1997] 1 S.C.R. 748; (1997), 144 D.L.R. (4th) 1; 50 Admin. L.R. (2d) 199; 71 C.P.R. (3d) 417; 209 N.R. 20.*

AUTHORS CITED

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CROSS-APPEAL from a decision of the Competition Tribunal ((2005), 40 C.P.R. (4th) 453 (Comp. Trib.)) which, although dismissing the Commissioner of Competition's application for an order against the respondent under sections 77 and 79 of the *Competition Act*, found that the respondent was dominant in each of the relevant markets. Cross-appeal dismissed, Pelletier J.A. dissenting.

APPEARANCES:

*Randall Holley* and *Leslie J.F. Milton* for appellant.

*Kent E. Thomson, James W. E. Doris* and *Charles E. Tingley* for respondent.

SOLICITORS OF RECORD:

*Johnston & Buchan LLP, Ottawa,* and *Deputy Attorney General of Canada* for appellant.

*Davies Ward Phillips & Vineberg LLP, Toronto,* for respondent.

*The following are the reasons for judgment rendered in English by*

[1] DESJARDINS J.A.: The Competition Tribunal (the Tribunal) dismissed an application by the appellant Commissioner of Competition (the Commissioner) seeking an order against the respondent (Canada Pipe or Bibby, which is a division of the respondent) under sections 77 [as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1999, c. 2, ss. 23, 37(y); c. 31, s. 52(F); 2002, c. 16, ss. 11.2, 11.3] and 79 [as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1998, c. 37, s. 31; 1999, c. 2, s. 37(*z*); 2002, c. 16, s.11.4] of the *Competition Act* [R.S.C., 1985, c. C-34, s. 1 (as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 19)] (reported as (2005), 40 C.P.R. (4th) 453 (Comp. Trib.)).

[2] The application related to the marketing strategy—referred to as the Stocking Distributor Program or SDP—adopted by Canada Pipe for the sale and supply of its cast iron drain, waste and vent (DWV) products. The Tribunal held that Canada Pipe is dominant in each of the relevant markets in Canada for cast iron DWV products, that Canada Pipe is a "major supplier" of cast iron products, and that by marketing its cast iron DWV products using the SDP, Canada Pipe has engaged in a practice of exclusive dealing. The Tribunal further held, however, that the Commissioner had failed to establish that Canada Pipe has engaged in a practice of anti-competitive acts that has, is or is likely to result in a substantial lessening or prevention of competition in the relevant markets, or that Canada Pipe's practice of exclusive dealing is likely to impede entry or expansion of a firm in a market or have any other exclusionary effect in a market such that competition is or is likely to be lessened substantially.

[3] The appeal by the Commissioner is disposed of in separate reasons [[2007] 2 F.C.R. 3 (F.C.A.)].

[4] We are seized of the cross-appeal whereby Canada Pipe claims that the Tribunal erred in its assessment of product market definition and market power.

[5] Canada Pipe's cross-appeal is confined to the Tribunal's treatment of paragraph 79(1)(*a*) of the Act and to its determinations concerning the issues of product market and market power. (In a footnote to its memorandum of fact and law, paragraph 119, Canada Pipe adds, however, that these submissions have equal application to the exclusive dealings provisions of the Act in subsection 77(2). The determination of whether a market participant is a "major supplier" of a product in a market within the meaning of subsection 77(2) also hinges on the issues of market definition and market power.)

[6] The purpose of defining the relevant product market is to identify the possibility for the exercise of market power (*Canada (Commissioner of Competition) v. Superior Propane Inc*. (2000), 7 C.P.R. (4th) 385 (Comp. Trib.), at paragraph 47, revd on other grounds [2001] 3 F.C. 185C.A.)). Market power has been defined as the ability to set prices above competitive levels for a considerable period of time (*Canada (Director of Investigations and Research) v. Southam, Inc*. (1992), 43 C.P.R. (3d) 161 (Comp. Trib.), at page 177; *Canada (Director of Investigation and Research) v. NutraSweet Co*. (1990), 32 C.P.R. (3d) 1 (Comp. Trib.), at page 28).

[7] Canada Pipe submits that if the Tribunal had followed the analytical approach it was required by law to adopt in respect of these issues, it would have had to define the applicable product market to include competing DWV products made from a variety of different materials, including plastic, copper, stainless steel, asbestos cement and cast iron. Canada Pipe's market share in such a properly defined product market would not have exceeded approximately 10% at any relevant point in time. Canada Pipe says this is so regardless of the manner in which the applicable geographic markets are defined and regardless of whether the product market is further subdivided into pipe, fittings and couplings. The issue of market power, says Canada Pipe, simply does not arise in respect of a market participant having a market share in the range of 10%. There has

never been, it says, an abuse of dominance case brought against a market participant having a market share of less than 10% (memorandum of fact and law of the respondent Canada Pipe, paragraph 119).

PRODUCT MARKET—ANALYSIS OF THE LAW AND THE EVIDENCE

[8] Defining the relevant product market is a necessary first step under paragraph 79(1)(*a*) of the Act, as the Tribunal clearly recognized.

[9] Paragraph 79(1)(*a*) provides:

> **79.** (1) Where, on application by the Commissioner, the Tribunal finds that
>
> (*a*) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business, [Emphasis is mine.]

[10] The Tribunal was careful in defining the operative terms of this provision of the Act (paragraphs 65, 66 and 67 of its reasons and order):

> A "class or species of business" has been interpreted by the Tribunal in abuse of dominance cases to mean the relevant product market. The expression "Canada or any area thereof" is to be understood as the geographic market, while "control" has been found to be synonymous with market power *(Canada (Director of Investigation and Research) v. D & B Companies of Canada Ltd.* ((1995), 64 C.P.R. (3d) 216 (hereinafter *Nielsen* decision)); *Canada (Director of Investigation and Research) v. Laidlaw Waste Systems Ltd.* ((1992), 40 C.P.R. (3d) 289, [1992] C.C.T.D. No. 1 (QL) (Comp. Trib.) *(Laidlaw)); Canada (Director of Investigation and Research) v. NutraSweet Co.* ((1990), 32 C.P.R. (3d) 1 (Comp. Trib.) *(NutraSweet)); Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc.* ((1997), 73 C.P.R. (3d) 1 *(Tele-Direct)).* [Emphasis is mine.]

[11] The Tribunal further explained:

> The Act does not specify how the analysis under paragraph 79(1)(*a*) of the Act is to proceed. However, in the above-mentioned cases, the analysis begins with a definition of the product market. This approach is also the one adopted by the Competition Bureau's (the "Bureau") *Enforcement Guidelines on the Abuse of Dominance Provisions* (the "Guidelines"). Although the Guidelines have no binding effect on the Tribunal, they are useful in that they serve to indicate how the Bureau will proceed in an abuse of dominance case. At section 3.2.1 the Guidelines underscore the importance of defining the product market:
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> > This paragraph [79(1)(*a*)] of the Act contains a number of elements that need to be separately clarified: (i) the existence of a class or species of business in Canada or any area thereof; (ii) the meaning of "control"; and (iii) the meaning of "one or more persons."
> >
> > 3.2.1(a) "Class or species ofbusiness"—Product Market Definition
> >
> > A precondition for assessing market power is identifying existing competitors that are likely to constrain the ability of the firm or firms to profitably raise prices or otherwise restrict competition. The 1986 provisions adopted the term "class or species of business" rather than the term "market" in the context of the control element. The

> Bureau approach is to consider defining a "class or species of business" as synonymous with defining a relevant product. The analysis begins by examining the product market(s) within which the alleged abuse of dominance has occurred or is occurring.

The Tribunal restates the same principle in *Tele-Direct,* and adds that the exercise is also necessary for the purposes of section 77:

> A necessary first step in deciding this case is to define the relevant market. This must be done for purposes of section 79 in order to determine if *Tele-Direct,* as alleged by the Director, "substantially or completely control[s] throughout Canada or any area thereof, a class or species of business". The Tribunal decided in *Canada (Director of Investigation and Research) v. D & B Companies of Canada Ltd.* (1995), 64 C.P.R. (3d) 216, [1995] C.C.T.D. No. 20 (QL) (Comp. Trib.), that "class or species of business" means product market and "control" means market power …. [Emphasis is mine.]

[12] The Tribunal then explained (at paragraph 68 of its reasons and order) that in determining the relevant product market, it had to consider "substitutability". This meant whether there exist sufficiently close substitutes to the product at issue, such that the market for that product includes those substitutes.

[13] The Tribunal [at paragraph 68] adopted the definition of "substitutability" which is found in the decision of this Court in *Canada (Director of Investigation and Research) v. Southam Inc.,* [1995] 3 F.C. 557at pages 632 and 633, revd on other grounds [1997] 1 S.C.R. 748.

> In determining the relevant product market one considers substitutability—in other words, whether there exist sufficiently close substitutes to the product at issue, such that the market for that product includes those substitutes. In *Tele-Direct,* the Tribunal cites the market definition set out in *Canada (Director of Investigation and Research) v. Southam Inc.,([1995]* 3 F.C. 557 63 C.P.R. (3D) I (F.C.A.)), where the Federal Court of Appeal defines what is meant by substitutability:
>
> Products can be said to be in the same market if they are close substitutes. In turn, products are close substitutes if buyers are willing to switch from one product to another in response to a relative change in price, i.e. if there is buyer price sensitivity. Direct evidence of substitutability includes both statistical evidence of buyer price sensitivity and anecdotal evidence, such as the testimony of buyers on past or hypothetical responses to price changes. However, since direct evidence may be difficult to obtain, it is also possible to measure substitutability and thereby infer price sensitivity through indirect means. Such indirect evidence focusses on certain practical indicia, such as functional interchangeability and industry views/behaviour, to show that products are close substitutes. *(Ibid,* at paragraph 161). [Emphasis is mine.]

[14] The Tribunal noted, at paragraphs 69 and 71, that no direct evidence was presented to the Tribunal on the cross-elasticity of demand—that is, whether increasing the price of DWV cast iron products would lead to an increased demand for DWV products made of other materials. Therefore, the product market could not be determined directly.

[15] Given the importance of determining whether other products would constrain price increases of cast iron DWV products, the Tribunal proceeded to consider the indirect evidence by reference to the topics enumerated in the *Enforcement Guidelines on the Abuse of Dominance Provisions* (the Guidelines), which include such headings as the views, strategies, behaviour and identity of buyers; trade views, strategies and behaviours; end use, physical and technical characteristics; price relationship and relative price levels; substitutability; and three product markets or one.

[16] The Tribunal thus correctly identified the legal principles applicable to the determination of the product market, and adopted an appropriate methodology to apply these principles in the particular case of Canada Pipe. The Tribunal considered the indirect evidence under each of the topics suggested in the Guidelines. Its conclusions on the basis of this evidence included the following findings.

[17] First, the Tribunal, at paragraph 82 of the reasons and order, under the heading "Trade Views, Strategies and Behaviour", made the finding that "in high-rise buildings, cast iron offers the advantage of meeting all requirements for fire and life safety purposes, and that only non-combustible materials, essentially cast iron, can be used in vertical shafts."

[18] Second, with respect to end use, other advantages of cast iron were noted, namely strength, durability and lower level noise. The Tribunal then indicated (at paragraph 92 of the reasons and order) that although plastic may eventually replace cast iron entirely, "this has vet to happen, and cast iron continues to be in a class of its own" (my emphasis).

[19] Third, the Tribunal noted, at paragraph 97 of the reasons and order, under the heading "Price Relationships and Relative Price Levels", that the evidence showed that Canada Pipe had reacted to the entry of new cast iron suppliers, whether manufacturers (Vandem) or imports (Sierra, New Centurion), by aggressively lowering its prices. In Quebec and the Maritimes, where no such competition exists, prices had increased since 1998.

[20] Fourth, at paragraphs 101 and 102 of the reasons and order, under the heading "Substitutability" with regard to paragraph 102, the Tribunal said the following:

> The competition with plastics appears to have had little effect on the prices of cast iron. Bibby devotes considerable effort to promoting the physical characteristics of cast iron products as compared to plastics, but these efforts do not lead to a reduction in price for cast iron products. From the evidence, it appears that the use of plastics is prevalent and increasing across the country. The prices of cast iron have not been decreasing with the increased use of plastics. Prices of cast iron DWV products have increased in Quebec and the Maritimes. They have decreased where Bibby has met cast iron competition—in Ontario with Vandem, in the West with importers. In other words, even though the Respondent claims that plastic is a competing material, there is no evidence that plastic products have had a constraining effect on prices of cast iron DWV products.
>
> The experts on both sides agreed that there was a lack of data for calculating the elasticity of the demand, such that a direct measure of substitutability was impossible. The

> Tribunal does not have sufficient evidence to show whether consumers (in this case, distributors) would change their behaviour because of a rise in prices. In the present context, such an analysis is impossible, and not only because of a lack of data. The fact is that the choice to buy cast iron over other products is not only a matter of price; as seen earlier in these reasons, other important considerations come into play. From the evidence of Mr. Zorko and others, we find that for certain applications, such as in vertical shafts, non-combustible material remains the only acceptable material, which in practical terms means cast iron. In certain other applications, where considerations of safety and non-combustibility are paramount (based on use, occupancy, and height of building) the use of material other than metal will be constrained. For example, a sprinkler system may be compulsory or fire separation sealants will be required. The Respondent sought to convince the Tribunal that this situation was evolving, and that plastics in particular were offering true competition. On the evidence, the Tribunal is satisfied that for certain applications, cast iron has no economic substitute. [Emphasis is mine.]

[21] On the basis of its review of the indirect evidence, the Tribunal concluded as follows on product market and geographic markets (paragraph 112 of the reasons and order):

> The evidence reflects a market that is changing because of the increasing importance of plastics in the DWV industry. We find the American data presented by Dr. Ware on plastics replacing cast iron of limited assistance in the Canadian context, given the impact of Canadian regulations on the choice of materials and the absence of statistical evidence showing a similar trend in Canada. From the evidence we have heard, however, plastics seem to offer a number of advantages to the construction industry and appear to be increasingly used. Nevertheless, the Tribunal is of the view that cast iron still plays a distinct role in the DWV industry, and it is treated as a separate market by distributors and contractors. More importantly, it is treated differently by Bibby itself, in its marketing and its pricing policies. In consequence, the Tribunal finds that the product market is the cast iron DWV product market, within which three distinct markets can be identified: cast iron pipe and fittings and MJ couplings. Because of the significant price variations in cast iron DWV products from region to region, we find that there are six distinct geographic markets: British Columbia, Alberta, the Prairies, Ontario, Quebec and the Maritimes. [Emphasis is mine.]

[22] The Tribunal was therefore of the view (paragraph 112 of the reasons and order) that cast iron still played a distinct role in the DWV industry and was treated as a separate market by distributors and contractors, and by Canada Pipe itself. It found that the product market was the cast iron DWV product market, within which three distinct markets were identified: cast iron pipe, fittings and MJ couplings. Moreover, because of the significant price variations in cast iron DWV products, from region to region, the Tribunal found there were six distinct geographic markets: British Columbia, Alberta, the Prairies, Ontario, Quebec and the Maritimes.

MARKET POWER—ANALYSIS OF THE LAW AND THE EVIDENCE

[23] The Tribunal then addressed the issue of market power. Its analysis in this regard was divided into two sections, titled “Direct approach” and “Indirect approach”. The Tribunal explained the distinction between the two approaches as follows (at paragraph 122):

> Market power is defined as the ability to set prices above competitive levels for a considerable period. The direct approach involves showing that prices are indeed above the competitive level. In *Tele-Direct,* for example, the Tribunal found that the very large accounting profits were a direct indication of market power. However, as was the case in *Laidlaw, Nielsen* and *NutraSweet,* this approach is not always feasible. If a market is monopolized or not perfectly competitive because of a trade restraint imposed by a major supplier, it may be difficult to determine what would be the relevant competitive benchmark. In such a case, an indirect approach can be taken, which will consider such indicia as market share, barriers to entry and customer countervailing

[24] Later in its decision, the Tribunal explained the principles underpinning the indirect approach (at paragraphs 138 and 139):

> As stated in *Laidlaw* and *Nielsen,* a large market share leads to a *prima facie* conclusion that the firm likely has market power. In order to establish market power, this conclusion must be supported by other findings on issues such as the existence of barriers to entry, the number of other competitors, excess capacity and the state of the market. Where barriers to entry are non-existent, even a very large market share will not support a finding of market power. In the case of cast iron DWV products, it would appear that the following barriers to entry should be considered: sunk costs, cost of entry, incumbent advantage and the Stocking Distributor Program.
>
> The Tribunal must also review evidence of actual entry into the market, which would serve to negate the presence of barriers. Entry, of course, must be both effective and viable to be significant. In addition, the Tribunal must consider customer countervailing power and the state of the market. [Emphasis is mine.]

[25] It is apparent that the Tribunal correctly identified and articulated the principles applicable to the determination concerning market power, including both the direct and indirect approaches to this issue. The above-quoted passages show that the Tribunal properly understood the analytic purpose and role of the different types of direct and indirect evidence adduced with respect to the issue of market power.

[26] The Tribunal summarized the direct and indirect evidence adduced by the Commissioner on the issue of the market power (paragraphs 114 to 117 of the reasons and order) in the following manner:

> The Commissioner's case for market power relies heavily on Dr. Ross's analysis of the direct evidence—i.e. evidence that Bibby has the ability to raise and maintain prices above competitive levels for a significant period of time. Dr. Ross never defines what the competitive price levels would be; rather, he postulates that the direct information on prices and margins leads to the conclusion that Bibby's prices are supra-competitive. More specifically, Dr. Ross relies on three elements of direct evidence to conclude that Bibby has market power in the relevant markets: 1) high profit margins; 2) prices well above the landed prices of imports; and 3) Bibby's capacity to set prices, as shown by the high prices where no competition exists (Quebec and the Maritimes) and its capacity to lower its prices dramatically in the face of competition. (Expert Report of Dr. Ross at paragraph 31.)
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> There are as well, according to Dr. Ross, indirect indicators of Bibby's market power: Bibby's considerable market share and little or no sustained and successful entry for the last several years. His conclusions on this last point are summarized as follows:

> While imports have made inroads periodically, they have been met by aggressive responses from Bibby, and Bibby's market share remains very high. Similarly, Vandem has been trying to establish itself as a largely domestic competitor, but has had considerable difficulty. (Expert Report of Dr. Ross at paragraph 32.)
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> Dr. Ross is of the view that there are several barriers to entry. First, he states that it would be difficult to establish a new foundry, or adapt a current foundry to produce cast iron DWV pipe and fittings. Secondly, since there is excess capacity in the industry, the industry may not be likely to attract new investment. Adapting an existing foundry to produce DWV cast iron products could represent risky sunk costs. Given the fact that Bibby itself holds much of the excess capacity, it could use or threaten to use this capacity to produce large quantities to be sold at low prices. (Expert Report of Dr. Ross at paragraph 68.) In addition, although not a barrier *per se,* both parties agree that the cast iron DWV industry is a mature industry, not one in which one can expect great growth or innovation.
>
> Thirdly, Dr. Ross maintains that imports face barriers of their own. Bibby is a well-established manufacturer, offering complete lines of products. Imported product lines may be less complete, and buyers may be wary of their quality and of the warranties attached. Fourthly, Bibby's vigorous response to entry by imports and by Vandem may have had a chilling effect on potential entrants. Finally, and most importantly, the SDP program is itself a barrier to entry: entrants, whether importers or manufacturers, have difficulty having access to the distributors, already tied into Bibby's loyalty program. [Emphasis is mine.]

[27] The Tribunal then considered the direct and the indirect evidence concerning market power that was adduced before it, as the following summary and extracts demonstrate.

[28] The direct evidence related to Dr. Ross' submission in three main areas: high margins, prices substantially above import prices, and high prices absent competition with the corollary of being able to significantly lower prices where competition occurred.

[29] With regard to high margins, the Tribunal stated (at paragraph 124):

> When studied closely, Dr. Ross's *[sic]* presentation on high margins appears somewhat strained. The margins are based on cost of production (fittings and pipe) and do not include MJ couplings (which Bibby imports). In addition, the analysis is centred on margins, not profits. Dr. Ross cautions that marginal costs do not necessarily give us an exact idea of Bibby's profits, because the costs are extrapolated from Bibby data without complete information on how those costs were established. We have no information on whether the costs include only variable costs, or also fixed costs. (Expert Report of Dr. Ross at paragraph 17 and footnote 6.) However, the Tribunal is prepared to accept Dr. Ross' calculations of production costs and variable costs, from which he derives gross profit margins and contribution margins. (Expert Report of Dr. Ross at Appendix 3, p. 6.) We note that the marginal costs are only based on the cost of production of pipe and fittings; they therefore exclude MJ couplings, which Bibby does not manufacture but imports from a sister company. [Emphasis is mine.]

[30] The Tribunal was apparently very critical of Dr. Ross' analysis, as also shown in paragraphs 127, 131 and 135, but nevertheless noted at paragraph 137 that Canada Pipe had offered no evidence to rebut the Commissioner's assertions of high margins.

[31] Turning to the indirect evidence of market power, the Tribunal first considered Canada Pipe's market share. It stated (at paragraph 140 of the reasons and order):

> The concentration of the market in Bibby's hands, through the various buy-outs, consolidations and marketing arrangements with American sister companies, has given Bibby an overwhelming share of the market. Evidence shows that Bibby controls between 80 and 90% of the market in cast iron DWV products. Market share can be a significant indicator of market power, absent evidence of ease of entry for competitors *(Tele-Direct).* What needs to be considered, therefore, is whether the barriers to entry or other factors preclude other competitors from entering the market. [Emphasis is mine.]

[32] The Tribunal considered under the heading of "Barriers to Entry": sunk costs, cost of entry, incumbent advantage, stock distributor program, and actual entry. Under the heading "Other Factors", it considered countervailing power and the state of the market.

[33] Sunk costs were defined by the Tribunal as costs that cannot be recovered if investment is made to enter the market and that attempt fails. While sunk costs could be a significant barrier to entry, the Tribunal did not find them significant considering the paucity of explanation given by the Commissioner on the question (paragraph 141 of the reasons and order).

[34] The cost of entry, wrote the Tribunal, involved either refitting an existing foundry or buying imported goods. The Tribunal estimated that the viability of the current importers did not seem threatened and imports were steadily on the rise (paragraphs 142 and 143 of the reasons and order).

[35] On the topic of the incumbent advantage, the Tribunal noted that Canada Pipe was a well-known and well-established manufacturer and that a new entrant would probably have difficulty competing with the quality and quantity of products Canada Pipe was able to offer. No other supplier, it said, had a strong national presence (paragraph 144 of the reasons and order).

[36] With regard to the factor of the Stocking Distributor Program, the Tribunal was satisfied that it had an impact in the market. There was, however, no direct evidence that would support the conclusion that it was a barrier to entry (paragraph 149 of the reasons and order).

[37] With respect to the factor of actual entry, the Tribunal came to the conclusion that successful entry was possible—but limited, considering that Canada Pipe maintained a considerable market share (paragraph 156 of the reasons and order).

[38] The Tribunal was of the view that distributors had little countervailing power, considering that Canada Pipe had maintained its SDP since 1998 (paragraph 159 of the reasons and order).

[39] The Tribunal accepted that the market was mature, i.e., it was a market with little real growth potential. This factor could therefore discourage more active entry (paragraph 160 of the reasons and order).

[40] Ultimately, the Tribunal accepted Dr. Ross' analysis that the direct and indirect evidence together established that Canada Pipe could and did exercise market power in the relevant markets (paragraph 161 of the reasons and order). This conclusion of the Tribunal will be considered in more detail further below.

THE STANDARD OF REVIEW AND ITS APPLICATION

[41] I agree with Pelletier J.A. that to be successful on the cross-appeal, Canada Pipe must demonstrate that the Tribunal acted unreasonably, considering that product market and market power raise issues of mixed fact and law. As examined in detail above, the Tribunal articulated the correct legal tests in the course of its determinations concerning product market and *market* power. The Supreme Court's conclusion in *Southam* therefore applies with equal force in this case: "if the Tribunal erred, it was in applying the law to the facts; and that is a matter of mixed law and fact" (paragraph 44).

[42] The nature of the question is an important factor in determining the standard of review according to the pragmatic and functional approach. In general, all else being equal, a question of mixed fact and law attracts the reasonableness standard of review. However, the jurisprudence has recognized the existence of different types of questions of mixed fact and law: as McLachlin C.J. explained in *Dr. Q v. College of Physicians and Surgeons of British Columbia,* [2003] 1 S.C.R. 226, a question of mixed fact and law "will call for more deference if the question is fact-intensive, and less deference if it is law-intensive" (paragraph 34). In *Law Society of New Brunswick v. Ryan,* [2003] 1 S.C.R. 247, the Court applied this analysis, observing that the question of mixed fact and law at issue in that case contained fact-intensive elements which did "not involve easily extracted and discretely framed questions of law" (paragraph 41).

[43] The issues raised in the case at bar contain fact-intensive elements which do not involve easily extracted and discretely framed questions of law.

[44] I agree with Pelletier J.A. that the analysis of the categories or factors referred to in the Guidelines as indirect evidence for the determination of product market (namely the views, strategies, behaviour and identity of buyers; trade views, strategies and behaviours; end use; physical and technical characteristics; and price relationships and relative price levels) is a matter of weighing evidence. It therefore falls within the province of the Tribunal. Consequently, unless the Tribunal's conclusion is unreasonable, it is of no concern to this Court. Substitutability is always a question of degree *(The Queen v. S.J. Mills & Sons Ltd. et al.,* [1968] Ex.C. R. 275, cited with approval in *Canada (Director of Investigation and Reserach) v. Southam Inc.,* [1997] 1 S.C.R. 748). Since the Tribunal considered the appropriate elements and arrived at a reasonable conclusion, its finding on product market is therefore immune from judicial intervention.

[45] I do not share Pelletier J.A.'s view, however, that the Tribunal's findings on market power in four of the six geographic markets, namely British Columbia, Alberta, the Prairies and Ontario, are flawed and warrant the intervention of this Court.

[46] My analysis with respect to the Tribunal's determination on market power is the following.

[47] As stated earlier, the Tribunal was highly critical of Dr. Ross' analysis of the direct evidence of market power, as evidenced in paras 124 to 137 of the reasons and order, and of Canada Pipe's lack of response on the topic (paragraph 137 of the reasons and order).



[48] The Tribunal, with hesitation, I would say, accepted Dr. Ross' calculations of production costs and variable costs from which he derived gross profit margins and contribution margins. However, the Tribunal noted (at paragraph 124 of the reasons and order) that the marginal costs were only based on the cost of production of pipe and fittings: they therefore excluded MJ couplings which Canada Pipe did not manufacture but imported from its sister company. The Tribunal indicated that Dr. Ware, for Canada Pipe, cast some doubt on Dr. Ross' calculations.

[49] The Tribunal concluded, at paragraph 136 and 137 of the reasons and order:

> Notwithstanding the statistical debate between the two experts, the fact remains that prices in the West are significantly lower than prices in the East, and the obvious explanation, confirmed by witnesses appearing before the Tribunal, is the presence of imports. Prices for Bibby products are lower in British Columbia than in Quebec, yet the products are manufactured in Quebec, and the cost of transport has to be added to the cost of production for items sold in British Columbia. The Tribunal is therefore satisfied, from consideration of the price differentials, particularly in British Columbia and Alberta, that imports have had an impact on prices of cast iron DWV products. Similarly, the Tribunal is satisfied that Vandem's entry in Ontario has exerted downward pressure on the prices in that province. No such movement is noted in Quebec and the Maritimes.
>
> It is somewhat puzzling that Bibby offers no evidence to rebut the Commissioner's assertions of high margins. Dr. Ware and counsel for the Respondent certainly have shown the frailties of the Commissioner's position, but the Tribunal notes that no cost calculations are provided in response. It would have been within Bibby's power to present the true profitability of pipe and fittings sales. No such evidence is before us**. We are left with Bibby's hefty margins and its significant ability to vary prices across the regions**. [Emphasis is mine.]

[50] The Tribunal bolstered the conclusions derived from the direct evidence with a careful analysis of the elements contained in the indirect approach, stressing the positive elements and the drawbacks. The Tribunal then concluded (at paragraph 161):

> The Tribunal is of the view that Bibby can and does exercise market control in the three product markets and the six geographic regions. The evidence provided by the direct approach was incomplete, since the high margins dealt only with two of the three products. For those two products, the Tribunal finds that Bibby is pricing above marginal cost. For all three products, Bibby's ability to lower prices indicates supra-competitive pricing. With regards to the indirect approach, the Tribunal finds that on balance the evidence indicates that Bibby has market power. The evidence on barriers to entry is not entirely conclusive. However, Bibby's large market share, its range of products and national presence, the limited penetration of competitors and the fact that this market offers only limited growth potential are sufficient to establish that Bibby does control a substantial part of the cast iron

DWV products market. [Emphasis is mine.]

[51] Considering the evidence, with all its flaws, left uncontradicted by Canada Pipe, it was open to the Tribunal to conclude on the direct approach that Canada Pipe was pricing pipe and fittings with “hefty margins” (paragraph 137 of the reasons and order), and that for pipe, fittings and MJ couplings, Canada Pipe had a “significant ability to vary prices across the regions” (paragraph 137 of the reasons and order). This indicated supra-competitive pricing. On the indirect approach, it was open to the Tribunal, on the balance of the evidence, to conclude that Canada Pipe had market power.

CONCLUSION

[52] The Tribunal correctly interpreted and applied the law with respect to paragraph 79(1)(*a*) throughout in its reasons. Market power is not an easy concept to handle. In *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, at paragraph 101, the Supreme Court of Canada noted that with regard to paragraph 79(1)(*a*) of the Act (formerly section 51 [*Combines Investigation Act*, R.S.C. 1970, c. C-23, s. 51 (as enacted by S.C. 1986, c. 26, s. 47)]), alleged holders of a dominant position must be shown to “substantially or completely control, throughout Canada or any other area thereof, a class or species of business”. Gonthier J. for the Court added “The required degree of market power under s. 51 of the Act comprises ‘control’, and not simply the ability to behave independently of the market.” The Tribunal in the case at bar complied with this analysis.

[53] The factual analysis by the Tribunal is sometimes not as clearly stated and analyzed as one might have wished. This may be explained in part by the variety of factors the Tribunal was called upon to consider. But one cannot ignore, on the point raised by Pelletier J.A., that the Tribunal considered not only the direct evidence of market power, but also extensive indirect evidence. On both approaches, it was satisfied that Canada Pipe exercised market power. I cannot say that the Tribunal acted unreasonably in so concluding: the Tribunal demonstrably “had its reasons for doing so, and those reasons cannot be said to be without foundation or logical coherence” (S.C.C., *Southam*, at paragraph 68).

[54] Considering the standard of review and the intense fact-finding character of these issues, the further intervention of this Court is, in my view, unwarranted.

[55] I would dismiss this cross-appeal with costs.

LETOURNEAU J.A.: I concur.

* * *

*The following are the reasons for judgment rendered in English by*

PELLETIER J.A. (dissenting):

INTRODUCTION

[56] In response to the Commissioner's appeal of the dismissal of her application, Canada Pipe has cross-appealed from the Competition Tribunal's (the Tribunal) finding that it dominated the market for cast iron DWV pipes, joints and fittings. Canada Pipe attacks both aspects of that finding, namely the definition of the product and geographic markets, as well as the finding that it has market power in the relevant markets.

[57] As my colleague Desjardins J.A.'s reasons allowing the Commissioner's appeal make clear, the Tribunal was required to decide a number of discrete questions in disposing of the Commissioner's application for an order against Canada Pipe pursuant to section 79 of the *Competition Act*, R.S.C., 1985, c. C-34 (the Act). The Commissioner's appeal deals with two of those questions, namely whether Canada Pipe's Stocking Distributor Program (SDP) was a practice of anti-competitive acts, and whether the SDP had the effect of substantially preventing or lessening competition in a market. This cross-appeal deals with the issue of whether Canada Pipe occupies a dominant position in that market; in other words, does Canada Pipe "substantially or completely control, throughout Canada or any area thereof, a class or species of business", to use the words of paragraph 79(1)(*a*) of the Act?

[58] That question can be broken down into two other questions: the definition of the product and geographic markets in which Canada Pipe trades, and whether Canada Pipe exercises market power within those markets. The Tribunal decided that there were three product markets, namely the markets for cast iron pipe, cast iron fittings and cast iron joints, and six geographical markets, namely British Columbia, Alberta, the Prairies, Ontario, Quebec and the Maritimes. It also decided that Canada Pipe exercised market power in all those markets and that, as a result, the conditions of paragraph 79(1)(*a*) of the Act were satisfied. It is those conclusions which are in issue in this cross-appeal.

[59] As an aside, the Tribunal decision refers to Canada Pipe as Bibby because the Stocking Distributor Program is operated by its Bibby Ste-Croix division. In these reasons, I will refer to the cross-appellant as Canada Pipe and to the respondent by cross-appeal as the Commissioner.

THE TRIBUNAL DECISION

[60] The first question which the Tribunal had to address was the definition of the product and geographic markets in which Canada Pipe trades. This question is fundamental because any finding of abuse of market dominance must be in relation to those markets.

[61] This Court took up the question of the definition of a product market in *Canada (Director of Investigation and Research) v. Southam Inc*., [1995] 3 F.C. 557 (*Southam*, F.C.A.) where the following appears (at page 632):

> Products can be said to be in the same market if they are close substitutes. In turn, products are close substitutes if buyers are willing to switch from one product to another in response to a relative change in price, i.e. if there is buyer price sensitivity.

Whether products are close substitutes for one another can be proven either directly or indirectly (at paragraph 161):

> Direct evidence of substitutability includes both statistical evidence of buyer sensitivity and anecdotal evidence, such as the testimony of buyers on past or hypothetical responses to price changes. However, since direct evidence may be difficult to obtain, it is also possible to measure substitutability and thereby infer price sensitivity through indirect means. Such indirect evidence focusses on certain practical indicia, such as functional interchangeability and industry views/behaviour, to show that products are close substitutes.

The Tribunal noted that direct evidence of substitutability was not available and went on to examine the indirect evidence. It considered the views, strategies, behaviour and identity of buyers, the trade's views, strategies and behaviour, end use, physical and technical characteristics, price relationships and relative price levels, and substitutability.

[62] Under the heading of views, strategies, behaviour and identity of buyers, the Tribunal noted that while contractors used both plastic and cast iron products, cast iron was the product of choice for certain applications. As for the trade's views and strategies, the Tribunal found that the fact that the National Building Code specifies cast iron for certain applications, notably vertical shafts in highrise buildings, was an important consideration. The industry view appeared to be that there was no substitute for cast iron in that application, notwithstanding the development of non-combustible plastic pipe. The Tribunal's conclusion was that "in high-rise buildings, cast iron offers the advantage of meeting all requirements for fire and life safety purposes, and that only non-combustible materials, essentially cast iron, can be used in vertical shafts" (Tribunal reasons, paragraph 82).

[63] The Tribunal then considered the issue of functional interchangeability under the heading of "End Use". In other words, are plastic DWV (drain, waste and vent) products and cast iron DWV products interchangeable? The Tribunal reviewed the evidence as to the advantages and disadvantages of each material. It noted the growing prevalence of plastic products in Canada, but could draw no conclusion as to the pace of change, in the absence of detailed data for the Canadian marketplace. In the end, the Tribunal concluded that, by reason of its strength, durability, lower noise level as well as non-combustibility, cast iron "continues to be in a class of its own" (Tribunal reasons, paragraph 92).

[64] Under the heading of "Physical and Technical Characteristics", the Tribunal briefly touched upon the same physical properties as in prior parts of its analysis.

[65] The Tribunal then considered the issue of price relationships and relative price levels. It quoted a passage from the *Enforcement Guidelines on the Abuse of Dominance Provisions* (Competition Bureau, 2001) (Enforcement Guidelines) to the effect that the absence of a correlation in price movements between two products over a significant period of time is an indication that the two products are not in the same market, while the presence of such a correlation is an indication that the two products compete in the same market (Tribunal reasons, paragraph 96).

[66] The Tribunal specifically noted the absence of evidence of relative price movement between cast iron DWV products and products made from other materials. However, it also noted that Canada Pipe's prices dropped where it faced competition from other cast iron product suppliers, whereas prices increased in those markets where there was no such competition (Tribunal reasons, paragraph 97). This is not to say that Canada Pipe ignored competition from plastic products; the Tribunal found that it devoted considerable marketing resources to persuading buyers of the advantages of cast iron over plastic. But these efforts did not include price reductions. The Tribunal's key conclusions on this issue are found in the following passage (at paragraph 101):

> The prices of cast iron have not been decreasing with the increased use of plastics. Prices of cast iron DWV products have increased in Quebec and the Maritimes. They have decreased where [Canada Pipe] has met cast iron competition—in Ontario with Vandem, in the West with importers. In other words, even though the Respondent [Canada Pipe] claims that plastic is a competing material, there is no evidence that plastic products have had a constraining effect on prices of cast iron DWV products.

[67] The Tribunal concluded its analysis of the market definition by considering the issue of substitutability. It noted that the question of whether to use cast iron DW V products or plastic DWV products is not simply a question of price. Cast iron is the only material which, in practical terms, meets current National Building Code requirements as to the use of non-combustible materials. On balance, the Tribunal concluded that "for certain applications, cast iron has no economic substitute". (Tribunal reasons, paragraph 102).

[68] Having regard to the fact that "all three products [pipe, fittings and joints] can be bought separately from different suppliers and the pricing trends for each appear independent", [at paragraph 103] the Tribunal decided that there are three relevant product markets, namely cast iron pipe, cast iron fittings and cast iron joints.

[69] On the issue of geographic markets, the Tribunal attributed some importance to the fact that while Canada Pipe has a national presence, its competitors do not. The result is that competition is regionalized so that prices are constrained by competition from cast iron products in Ontario, for example, but they are not so constrained in Quebec and the Maritimes. This led the Tribunal to conclude that there are six geographic markets, defined by the competitive environment, namely British Columbia, Alberta, the Prairies, Ontario, Quebec, and the Maritimes.

[70] The Tribunal then turned to the second step of its inquiry under paragraph 79(1)(*a*) of the Act, the issue of market power. Market power is defined as the ability to raise and maintain prices above competitive levels for a significant period of time: *Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc*. (1997), 73 C.P.R. (3d) 1 (Comp. Trib.), at page 82.

[71] As in the case of close substitutes, market power can be proven directly or indirectly. In this case, the Tribunal considered both the direct and the indirect evidence of market power. It considered high margins, prices substantially above import prices,

high prices absent competition (or lower prices in the presence of competition) as direct evidence of market power.

[72] The Tribunal found that the evidence of high margins was not persuasive. The Commissioner's expert purported to calculate Canada Pipe's profit margins on the basis of partial data supplied by Canada Pipe. However, there was no way of comparing Canada Pipe's margins with those of other vendors. In any event margins varied across geographic regions: consistently high in Quebec and the Maritimes, but dipping into the negative for considerable periods of time in Alberta, the Prairies and British Columbia (Tribunal reasons, paragraph 127).

[73] The Tribunal considered the evidence of the Commissioner's expert Dr. Ross, who attempted to show that Canada Pipe's prices were above competitive levels by comparing them to the price of imported products. The Tribunal discounted this evidence because of an absence of raw data, and an absence of information on the pricing philosophy of offshore producers, who may be selling at artificially low prices to achieve market penetration.

[74] Finally, the Tribunal considered the argument that regional price disparities suggested that prices were above competitive levels in the high price regions. For example, certain Canada Pipe products cost the same in Ontario, where they are produced, and in British Columbia. It is clear that if prices were at competitive levels, the price would be higher in British Columbia given the cost of transporting the product from Ontario to British Columbia.

[75] The Tribunal was persuaded that the price differentials between those regions where Canada Pipe faced competition from cast iron products and those regions where it did not indicated that prices in the latter areas were above competitive levels.

[76] The indirect evidence of market power related to market share, barriers to entry and the state of the market.

[77] Based upon its definition of the product market, the Tribunal concluded that Canada Pipe had an overwhelming share of the market, somewhere between 80% and 90% of the market for cast iron products. However, market share alone does not indicate market power if there are no barriers to entry to that market. The Tribunal noted that there was little evidence of sunk costs as a barrier to entry. In particular, the importation of product does not require a significant physical plant.

[78] The Tribunal considered whether the SDP itself operated as a barrier to entry. The emergence of another cast iron manufacturer, Vandem, suggested that the SDP was not an effective barrier to entry. Entry is one thing, viability is another. The Tribunal did not have evidence before it of Vandem's viability but it did have evidence that it had captured a not insignificant share of the market in a relatively brief period of time. Canada Pipe, however, continued to have by far the largest market share. Importers had also succeeded in establishing themselves in the West. But both Vandem and the importers had achieved only limited market penetration.

[79] A final consideration is the state of the market. The market for cast iron DWV products is a mature market in the sense that there is not likely to be significant growth in the size of the market, which operates to discourage entry since growth potential is limited.

[80] The Tribunal concluded that Canada Pipe "can and does exercise market power in the three product markets and the six geographic regions" (Tribunal reasons, paragraph 161). In particular, the Tribunal found that Canada Pipe's ability to lower prices to meet competition indicated that prices in the areas where there was no competition were supra-competitive. As regards the indirect evidence of market power, the Tribunal found that Canada Pipe's "large market share, its range of products and national presence, the limited penetration of competitors and the fact that this market offers only limited growth potential are sufficient to establish that [Canada Pipe] does control a substantial part of the cast iron DWV products market" (Tribunal reasons, paragraph 161).

[81] In the end result, the Tribunal found that the conditions of paragraph 79(1)(*a*) of the Act were satisfied.

STANDARD OF REVIEW

[82] Given that any challenge to the Tribunal's conclusions must be assessed through the lens of the appropriate standard of review, I propose to deal with that question first.

[83] It was in the course of disposing of a competition law case, *Canada (Director of Investigation and Research) v. Southam Inc*., [1997] 1 S.C.R. 748, (*Southam*, S.C.C.), that the Supreme Court of Canada recognized the possibility of a standard of review other the correct or the patently unreasonable decision, namely the reasonable decision. Given that this appeal raises many of the same questions as were raised in *Southam*, S.C.C., it seems to me that one can usefully refer to that case in undertaking the pragmatic and functional analysis with respect to this appeal.

[84] The Supreme Court noted at paragraphs 30 and 31 of its decision that there is a statutory right of appeal under the Act. In the same way, this case raises no issues of jurisdiction, save for one discreet argument by the Commissioner to the effect that since leave was not obtained to appeal questions of fact, this Court has no jurisdiction to consider an appeal on the question of the definition of the product and geographic markets because those determinations are findings of fact. That argument leads into the second question in the pragmatic and functional analysis, namely the nature of the question before the Court.

[85] In *Southam*, F.C.A., this Court held that the question of the analytical framework to be applied in defining a product market was a question of law, and therefore a matter on which the Court owed no deference to the Tribunal's decision. Before the Supreme Court, the argument turned on whether the Tribunal had in fact properly applied the test for defining the product market. In *Southam*, S.C.C., the Supreme Court held that if the

Tribunal erred, it was in the application of the law to the facts, a question of mixed fact and law. It was therefore entitled some deference on the part of the Court.

[86] The question as to whether Canada Pipe exercised market power is, it seems to me, a question of the same order. There is no particular dispute as to the nature of the factors to be considered; the disagreement is as to whether those factors were properly considered. In the circumstances, I conclude that both questions raised by the cross-appeal are questions of mixed law and fact.

[87] The next issue is the purpose of the statute administered by the Tribunal. The Supreme Court referred to the purpose clause found at section 1.1 [as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 19] of the Act to conclude that the aims of the legislation are more economic than legal. Concepts like “the efficiency and adaptability of the Canadian economy” and the effect of foreign competition on Canadian companies are better understood by businessmen and economists than by judges. This is as true in this case as it was in *Southam*, S.C.C.

[88] This led the Court to consider the expertise of the Tribunal. The Court recognized the Tribunal’s expertise in economics and commerce. The Court’s review of the Tribunal’s expertise in light of the problem which it had before it is particularly apposite to this case [*Southam*, S.C.C., at paragraph 52]:

> The particular dispute in this case concerns the definition of the relevant product market—a matter that falls squarely within the area of the Tribunal’s economic or commercial expertise. Undeniably, the determination of cross-elasticity of demand, which is in theory the truest indicium of the dimensions of a product market, requires some economic or statistical skill. But even an assessment of indirect evidence of substitutability, such as evidence that two kinds of products are functionally interchangeable, needs a variety of discernment that has more to do with business experience than with legal training. Someone with experience in business will be better able to predict likely consumer behaviour than a judge will be. What is more, indirect evidence is useful only as a surrogate for cross-elasticity of demand, so that what is required in the end is an assessment of the economic significance of the evidence; and to this task an economist is almost by definition better suited than is a judge.

The problem before this Court is exactly the same problem as was before the Court in *Southam*, S.C.C. I have little difficulty in coming to the same conclusion as the Supreme Court did on this issue, which is that the Tribunal is better equipped to decide such questions than are the courts.

[89] Having reviewed these factors, the Supreme Court found that they called for a standard less deferential than the patently unreasonable decision but more deferential than correctness. This led it to conclude that the standard of review of a decision of the Competition Tribunal on the issue of market definition was reasonableness. In my view, that conclusion applies equally well to this case in so far as the issue of market definition is concerned. The question of market power raises the same kinds of issues as does the question of market definition and leads to the same conclusion with respect to the standard of review.

[90] I therefore conclude that the standard of review of the Tribunal's decision with respect to the issues raised in this cross-appeal is that of the reasonable decision.

ANALYSIS OF CANADA PIPE'S GROUNDS OF APPEAL

[91] Canada Pipe's position on the issue of product market definition is that the relevant product market includes competing DWV products made from a variety of materials. In support of its position, it refers to a number of discrete arguments which I reproduce below in a summary way:

(a) the Tribunal ignored its own conclusion that there was competition between cast iron products and those made of other materials in all applications except vertical shafts in highrise buildings;

(b) the Tribunal ignored evidence that manufacturers market their products by comparing products made of different materials to each other;

(c) the Tribunal erred in requiring complete overlap in the applications in which competing DWV products can be used;

(d) the Tribunal failed to quantify the extent of the use of cast iron pipe in vertical shafts in highrise buildings in order to determine if it was material to the issue;

(e) the Tribunal failed to consider whether Canada Pipe is able to price discriminate based upon end use in applications for which it has no substitute; and

(f) the Tribunal ignored evidence of price relationships between cast iron and other materials.

[92] As noted earlier, the issue with respect to market definition is whether products are close substitutes for each other. All are agreed that there was no direct evidence on that issue. Consequently, the Tribunal proceeded on the basis of the indirect evidence of close substitutability. In *Southam*, S.C.C., the Court noted that the Tribunal considered the following as *indicia* of close substitutes (at paragraph 16):

> Accordingly, the members determined that recourse should be had to "indirect evidence" of substitutability. Indirect indicia of substitutability include (at p. 179) "the physical characteristics of the products, the uses to which the products are put, and whatever evidence there is about the behaviour of buyers that casts light on their willingness to switch from one product to another in response to changes in relative prices". Also relevant are "[t]he views of industry participants about what products and which firms they regard as actual and prospective competitors".

[93] At page 630 of the Court's reasons in *Southam*, F.C.A., the Competition Bureau's Enforcement Guidelines were quoted at length and were incorporated into the Court's analysis. I do not propose to reproduce them here due to their length but I note that they identify the following as indications that products are close substitutes: Views, strategies, behaviour and identity of buyers; trade views, strategies and behaviour; end

use, physical and technical characteristics. These are the very criteria which the Tribunal applied in this case.

[94] The Enforcement Guidelines are not binding on this Court, but they are an indication of the Competition Bureau's views as to the factors to be considered. Given the Competition Bureau's role in the enforcement of the legislation, the Enforcement Guidelines are an element to be taken into account in the interpretation of the legislative requirements. The ultimate question is always one for the Court, but it may find some assistance in the Competition Bureau's views.

[95] If these are the appropriate factors to take into account in deciding whether products are close substitutes, then the weight to be assigned to those factors is a matter for the Tribunal. The parties, or this Court, might assign them more, or less, weight than did the Tribunal but in the end, it is the Tribunal's assessment which is to prevail. In this case, the Tribunal acknowledged that there was competition between DWV products made from different materials but discounted this apparent competition because it found it had no effect on prices (Tribunal reasons, paragraph 101). It treated the evidence of comparison marketing between products made from different materials in the same way (Tribunal reasons, paragraph 98).

[96] The Tribunal did not misapprehend the evidence when it noted that, for all practical purposes, cast iron is the only product to be used in vertical shafts in highrise buildings. The weight to be assigned to that evidence is a matter for the Tribunal. The fact that there was no quantitative evidence in support of that conclusion does not detract from the Tribunal's ability to take it into account.

[97] The fact that price discrimination by end-use may be evidence of different markets (as set out in paragraphs 148-150 of Canada Pipe's memorandum) does not mean that the opposite is true, namely that the inability to price discriminate according to end use indicates a common market.

[98] It is true that the Tribunal did not consider evidence of price relationships between cast iron and other products; it is not true to say that it ignored such evidence since even Canada Pipe agrees that there was no such evidence before the Tribunal (see Canada Pipe's memorandum of fact and law). The Tribunal cannot ignore what is not before it. The Tribunal did attach considerable significance to the fact that the price of cast iron products dropped in the presence of competition from cast iron products but that it remained high when there were no other cast iron suppliers in a given geographic market.

[99] As Iacobucci J. pointed out in *Southam*, S.C.C., "the weighing of criteria in a balancing test must be largely a matter of discretion. The very purpose of a multi-factored test, such as the one that the Tribunal used to determine the dimensions of the relevant product market, is to permit triers of fact to do justice in diverse particular cases" (paragraph 66). The Tribunal exercised its discretion in the weighing of the various factors which it considered and defined the product market accordingly. Having

regard to the evidence and to its reasons, I cannot say that its conclusion was unreasonable.

[100] The Tribunal's conclusions with respect to market power is another matter.

[101] Section 79 of the Act provides as follows:

> **79.** (1) Where, on application by the Commissioner, the Tribunal finds that
>
> (a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,
>
> (b) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and
>
> (c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
>
> the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

[102] The expression "market power" does not appear in section 79. What does appear is the requirement that a person "substantially or completely control … a class or species of business." The use of market power as a proxy for the element of control is one which has been developed in the jurisprudence, both that of the Tribunal and of this Court.

[103] That position is expressed with admirable concision in the Enforcement Guidelines:

> **3.2.1(d)** "Substantially or completely control"? Market Power.
>
> Once the universe of existing competitors is delineated, it is necessary to assess the extent to which these rivals constrain any market power that the dominant fin-11(s) might otherwise possess. The Bureau considers control to be synonymous with market power, where market power is the ability to profitably set prices above competitive levels for a considerable period of time.

The same idea appears frequently in the Tribunal jurisprudence (*Tele-Direct*, at pages 33-34):

> A necessary first step in deciding this case is to define the relevant market. This must be done for purposes of section 79 in order to determine if Tele-Direct, as alleged by the Director, "substantially or completely control[s] throughout Canada or any area thereof, a class or species of business". The Tribunal decided in *Canada (Director of Investigation and Research) v. D & B Companies of Canada Ltd*. ((1995), 64 C.P.R. (3d) 216, [1995] C.C.T.D. No. 20 (QL) (Comp. Trib.)), that "class or species of business" means product market and "control" means market power. The remaining phrase, "throughout Canada or any area thereof', refers to the geographic market. Therefore, in order for section 79 to apply, the Tribunal must first conclude that Tele-Direct has market power

(*NutraSweet*, at page 28)

> The respondent's view is that "control" is most meaningfully treated as synonymous with "market power". Market power is generally accepted to mean an ability to set prices above competitive levels for a considerable period. While this is a valid conceptual approach, it is not one that can readily be applied; one must ordinarily look to indicators of market power such as market share and entry barriers. The specific factors that need to be considered in evaluating control or market power will vary from case to case.
>
> The tribunal is persuaded that the respondent's position is in keeping with the logic of the section and the Act.

[104] The same theme is found in the Tribunal's decision in *Canada (Director of Investigation and Research) v. Laidlaw Waste Systems Ltd*. (1992), 40 C.P.R. (3d) 289, at page 325:

> In deciding whether a firm has substantial or complete control of a market, one asks whether the firm has market power in the economic sense. Market power in the economic sense is the power to maintain prices above the competitive level without losing so many sales that the higher price is not profitable. It is the ability to earn supra-normal profits by reducing output and charging more than the competitive price for a product. As was said in the NutraSweet decision supra (at p. 28): "Market power is generally accepted to mean an ability to set prices above competitive levels for a considerable period." [Emphasis added.]

This Court has not been previously called upon to consider this question. It has addressed the question of market power, but in the context of the review of a transaction likely to substantially lessen competition. Market power was defined as follows in *Southam*, F.C.A. (at page 608):

> It is universally accepted that a merger must be examined in terms of its likely effect on competition within a relevant market. The central concern is with respect to exercise of market power by a single dominant firm or a group of firms acting collectively. In turn, market power is recognized as the ability to profitably raise prices above competitive levels without losing a significant portion of business to rival firms or firms that may become rivals as a result of the price increase: … [Emphasis added.]

[105] Finally, the Supreme Court of Canada considered the question of market power in *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606, a case involving a prosecution under the *Combines Investigations Act* [R.S.C. 1970, c. C-23] (repealed) the precursor of the Act. Speaking of market power in relation to conspiracies to lessen competition, the Court described market power as the "ability to behave relatively independently of the market" (page 653). However, the Court went on to say that in the case of the abuse of dominance provisions, market power meant control and not simply the ability to behave independently of the market. This simply reflects the language of paragraph 79(1)(*a*) and its precursor, paragraph 32(1)(*c*) of the *Combines Investigation Act*. The Supreme Court's comments simply confirm the Tribunal's position with respect to market power as the test for control.

[106] In this case, the Tribunal defined market power as [at paragraph 122] “the ability to set prices above competitive levels for a considerable period,” a definition that is entirely consistent with the jurisprudence.

[107] While there appears to be broad agreement as to the use of market power as a proxy for control of the market, there is some difference of opinion as to how that factor is to be proved. In the passage cited above from the *NutraSweet* decision, the Tribunal indicates that some regard must be had for market share and barriers to entry. These are regarded as indirect proof of market power. But where direct evidence of market power is available, it should be considered (*Tele-Direct*, at pages 82 and 83):

> …, the Tribunal also recognized that where the available evidence does not allow the definition of market power to be applied directly, it is necessary to look to indicators of market power, such as market share and barriers to entry. (*NutraSweet*, *supra*, footnote 3; *Laidlaw*, *supra*, footnote 24; *D & B*, *supra*.)
>
> The Tribunal has never ruled out the possibility, however, that direct indicators of market power might be available as evidence in an appropriate case. Direct indicators of market power relate to the performance of the firm or firms in question or to their behaviour. The broad question that is posed is whether the observed performance results (e.g., profits) or observed patterns of conduct (e.g., pricing policy) are more likely to be associated with a firm or firms that are competitive or with those that have market power. While there are difficulties in applying direct indicators of market power, if the evidence is available this avenue should not be excluded.

As will be seen, this is a case in which the direct evidence is available and, in my view, determinative.

[108] Canada Pipe’s attack on the Tribunal’s conclusions with respect to market power can be summarized as follows:

I- The Tribunal incorrectly relied upon evidence of high margins.

2- The Tribunal incorrectly relied upon Canada Pipe’s ability to lower prices.

3- The Tribunal erred in finding market power without conclusive evidence of barriers to entry.

[109] It is true that the Tribunal was critical of the evidence of high margins put forward by the Commissioner’s expert, Dr. Ross, as can be seen from the following paragraph in the Tribunal’s reasons (at paragraph 129):

> When looking at the summary of gross profits margins, the numbers seem high, though negative in some cases, as stated above. Dr. Ross himself, in his report, cautions the reader as to the interpretation of these figures. Dr. Ross made his calculations based on limited data provided by [Canada Pipe], but cannot say how those costs were established by [Canada Pipe] nor what they include. Moreover, he adds, even high margins do not necessarily lead to a conclusion of high economic profits, because the extra revenues (beyond marginal costs) might be necessary to cover fixed costs. Further, the Tribunal has no data on [Canada Pipe’s] ratio of fixed costs to variable costs.

It is also true that the Tribunal appears to have given this evidence some credit in that it relies upon it to conclude that in two of the product markets, Canada Pipe is pricing above marginal cost. The two markets in question are the markets for pipe and fittings (Tribunal reasons, paragraph 124).

[110] Looking at the evidence of high margins, I may not have come to the same conclusion as did the Tribunal. But as Iacobucci J. said in *Southam*, S.C.C. (at paragraph 79):

> It is possible that if I were deciding this case *de novo*, I might not dismiss so readily as the Tribunal did what is admittedly weighty evidence of inter-industry competition. In my view, it is very revealing that Southam's own expert, an American newspaper consultant, identified the community newspapers as the source of Southam's difficulties in the Lower Mainland. To find, in the face of such evidence, that the daily newspapers and the community newspapers are not competitors is perhaps unusual. In that sense, the Tribunal's finding is difficult to accept. However, it is not unreasonable. The Tribunal explained that, in its view, Southam was mistaken about who its competitors were; and though I may not consider that reason compelling, I cannot say that it is not a reason for which there is a logical and evidentiary underpinning. More generally, I notice that the Tribunal seems to have been preoccupied with the definition of the relevant market. It is possible that the members may occasionally have lost sight of the ultimate inquiry, which is whether the acquisition of the community newspapers by Southam substantially lessened competition. But again, I cannot say that the Tribunal's approach was unreasonable.

[111] Faulty as the evidence of high margins appears to be, it was for the Tribunal to assess it. The fact that I may have come to a different conclusion does not make its conclusion unreasonable.

[112] The more compelling argument against Canada Pipe's possession of market power in all 18 markets identified by the Tribunal is its reaction to the emergence of competitive suppliers. The Commissioner relied on the evidence of price reductions in response to competition to argue that the ability to reduce prices indicated that they were above competitive levels to begin with. But if prices have become competitive as a result of the emergence of competing suppliers, the significance of non-competitive prices at an earlier point in time is not obvious.

[113] Since market power is defined in terms of price, the best evidence of market power is a supplier's pricing following changes in the market. One would think that a supplier who is able to maintain prices above competitive levels (however defined) would be impervious to the emergence of competing suppliers. How did Canada Pipe react to the emergence of competing suppliers of cast iron DWV products (Tribunal reasons, at paragraph 97)?

> The evidence shows clearly that Bibby [Canada Pipe] has reacted to the entry of new cast iron suppliers, whether manufacturer (Vandem) or imports (Sierra, New Centurion) by aggressively lowering its prices. In Quebec and the Maritimes, where no such competition exists, prices have increased since 1998. Although it is shown that Bibby [Canada Pipe] monitors the prices for plastic DWV products, there is no evidence of the prices of plastic products having a disciplinary effect on the price of the cast iron products.

If Canada Pipe's prices were supra-competitive in the absence of competition, they became competitive when new suppliers of cast iron products emerged. What was the effect of these price reductions (Tribunal reasons, at paragraph 127)?

> The evidence on profit margins in the present case is not as clear as it was in *Tele-Direct*. Whereas in the latter case Tele-Direct was able to consistently pay 40 percent of its revenues to the telephone companies, in this case margins vary from one region to the next. They are consistently high in Quebec and the Maritimes, but dip in other regions, to the point of being negative for considerable periods of time in Alberta, the Prairies and British Columbia.

[114] In my view, this passage documents the Tribunal's acceptance of the fact that in some markets, margins were not high, though they were in others. It also shows that the Tribunal ultimately accepted that Canada Pipe's price reductions, in those regions where they occurred, were the result of competition from new suppliers (Tribunal reasons, at paragraph 136):

> Notwithstanding the statistical debate between the two experts, the fact remains that prices in the West are significantly lower than prices in the East, and the obvious explanation, confirmed by witnesses appearing before the Tribunal, is the presence of imports. Prices for Bibby [Canada Pipe] products are lower in British Columbia than in Quebec, yet the products are manufactured in Quebec, and the cost of transport has to be added to the cost of production for items sold in British Columbia. The Tribunal is therefore satisfied, from consideration of the price differentials, particularly in British Columbia and Alberta, that imports have had an impact on prices of cast iron DWV products. Similarly, the Tribunal is satisfied that Vandem's entry in Ontario has exerted downward pressure on the prices in that province. No such movement is noted in Quebec and the Maritimes.

Given the definition of market power, it is difficult to see on what basis the Tribunal could conclude that Canada Pipe had market power in British Columbia, Alberta, the Prairies and Ontario after the emergence of competing suppliers of cast iron products in those regions. The fact of reducing prices to respond to the emergence of new competitors is inconsistent with "the ability to set prices above competitive levels for a considerable period".

[115] Seen in this light, Canada Pipe is only in a position to exercise market power in Quebec and the Maritimes, where it faces no competition, and where prices have risen, not fallen. In the other four geographic markets, it is constrained by the presence of importers and manufacturers of cast iron products to reduce its prices significantly. Those reductions are inconsistent with possession of market power.

[116] In its concluding paragraph on this issue, the Tribunal summarizes its position on market power, as disclosed by the indirect evidence, as follows (at paragraph 161):

> The evidence on barriers to entry is not entirely conclusive. However, Bibby's [Canada Pipe's] large market share, its range of products and national presence, the limited penetration of competitors and the fact that this market offers only limited growth potential are sufficient to establish that Bibby [Canada Pipe] does control a substantial part of the cast iron DWV products market.

If there is a test of control other than market power, the Tribunal has not articulated it. If the test is market power, then the Tribunal's failure to recognize the significance of the price reductions which followed the emergence of new entrants in the market in Ontario and the western geographic regions is unreasonable.

[117] Canada Pipe also attacks the Tribunal's finding on barriers to entry. The Tribunal found that (at paragraph 152):

> Entry must be shown to be both effective and viable. In this instance, entry by various players, especially in the West and to a lesser extent in Ontario, has certainly had an effect on prices. From Bibby's reaction to these new entrants, it can be said that they are perceived as competitors. Thus entry has been effective where it has occurred. Its viability remains to be determined.

In my view, this passage incorporates two findings of fact which are conclusive against a finding of market power on the part of Canada Pipe. New suppliers did emerge, so that barriers to entry, if present, were not determinative, and the new suppliers had an effect on Canada Pipe's prices, which is inconsistent with the latter exercising market power.

[118] As a result, I find that the Tribunal's conclusion that Canada Pipe had market power in British Columbia, Alberta, the Prairies and Ontario is unreasonable as it is inconsistent with its own definition of market power, the test of whether Canada Pipe had control or substantial control of the 18 markets which the Tribunal defined. As a result, the Tribunal's finding as to market power applies only to the three product markets in two of the six geographic markets which it defined, namely Quebec and the Maritimes.

CONCLUSION

[119] Having regard to the evidence which the Tribunal had before it, as well as the standard of review applicable to these questions, I find that the Tribunal's definition of the product markets do not justify this Court's intervention. However, I am of the view that we must intervene with respect to the question of Canada Pipe's market power in British Columbia, Alberta, the Prairies and Ontario, four of the six geographic markets identified by the Tribunal. The fact that Canada Pipe was required to lower prices in response to competition from other suppliers of cast iron products in those markets is inconsistent with the definition of market power. Consequently, I would return the matter to the Competition Tribunal with a direction for reconsideration on the basis of these reasons.

# 7

Competition Tribunal

Tribunal de la Concurrence

#185(a)

CT - 88 / 4

IN THE MATTER OF an application by the Director of Investigation and Research under section 75 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

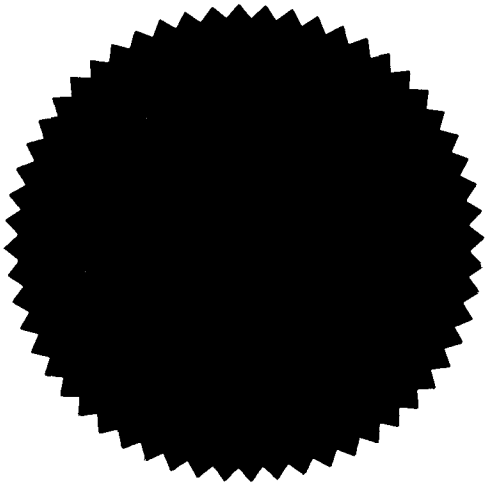
AND IN THE MATTER OF a refusal to supply automotive parts for export by Chrysler Canada Ltd. to Richard Brunet.

B E T W E E N :

The Director of Investigation and Research

Applicant

- and -



Chrysler Canada Ltd.

Respondent

**REASONS AND ORDER**

**Date of Hearing:**

July 4 - 18 and 21, 1989

**Presiding Member:**

The Honourable Mr. Justice Max M. Teitelbaum

**Judicial Member:**

The Honourable Mr. Justice Leonard A. Martin

**Lay Member:**

Dr. Frank Roseman

**Counsel For the Applicant:**

**Director of Investigation and Research**

William J. Miller
John S. Tyhurst
John F. Rook, Q.C.

**Counsel For the Respondent:**

**Chrysler Canada Ltd.**

Thomas A. McDougall, Q.C.
Anne Mactavish

**Amicus Curiae:**

Yves Bériault
Madeleine Renaud

## COMPETITION TRIBUNAL

## REASONS AND ORDER

***The Director of Investigation and Research***

***v.***

***Chrysler Canada Ltd.***

On December 14, 1988, the Director of Investigation and Research ("Director") filed an application with the Competition Tribunal ("Tribunal") pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended ("Act"), requesting the following relief:

> 1. An order against the Respondent Chrysler Canada Ltd. (Chrysler) requiring that it forthwith and thereafter accept Richard Brunet (Brunet) as a customer on trade terms usual and customary to its relationship with Brunet for the supply of Chrysler Parts (as hereafter defined) to Brunet; and
>
> 2. Such other and further orders which in the circumstances may be just, including:
>
>  a) requiring and directing that Chrysler reverse all steps taken to dissuade any person (including Chrysler franchised dealers) in Canada from conducting business with Brunet with respect to Chrysler Parts;

b) restraining Chrysler from combining or arranging with any other person to refuse, suppress, hinder or delay the supply of Chrysler Parts to Brunet; and

c) directing that Chrysler take all such ancillary and necessary steps and actions to restore Brunet to the position he enjoyed before the actions herein complained of.

In 1977 Richard Brunet ("Brunet") opened and began to operate a business in the City of Montreal, Province of Quebec, commonly known as R. Brunet Company ("RBC"). The business was registered as a sole proprietorship.

Brunet's father had operated a similar business in New York City, State of New York, in the United States of America, under the name of G. Brunet Company. This business was involved in the export of automotive parts, including automotive parts of Chrysler Corporation, Ford Corporation and General Motors Corporation. The automotive parts were exported, in the main, to Colombia, Peru and Venezuela. In November 1974, following the death of his father, Brunet took over the operation of his father's business until 1976 when he came to live in Canada.

Brunet, as had his father, exported automotive parts to markets outside of North America, initially to South America, and later to the Middle East, Scandinavia and the United Kingdom.

Although RBC deals with the sale of automotive parts which it purchases from various suppliers, the present application

pertains to the relationship between RBC and Chrysler Canada and the sale by RBC of Chrysler automotive parts in the export market.

Throughout the proceedings, certain terminology relating to the Chrysler parts has been used. The most frequent references are to two groups of Chrysler parts: "A Parts" and "B Parts". On its price lists, Chrysler[1] identifies its parts by a seven-digit number and by one of the above two letters.

B Parts are commonly known as "captive" parts. Mr. Clifford Roy Burnett ("Burnett"), the recently retired Vice-President of Parts and Service and Technical Programs of Chrysler Canada, who since 1974 had the responsibility through various positions for the parts distribution in Canada, testified that some automotive parts that are considered captive parts may in fact be available from a source other than Chrysler. Generally, however, if an owner of a Chrysler motor vehicle must replace a B Part, the part will have to be obtained from Chrysler. Sheet metal parts or interior mouldings were referred to as clear examples of captive parts that could only be supplied by Chrysler.

A Parts are commonly known as "competitive" parts since these parts are available from a variety of automotive parts

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[1] "Chrysler" without a modifier refers to the entire Chrysler organization in North America.

manufacturers for a particular application. An example of a competitive part would be a shock absorber or a fan belt.

Automotive parts can also be divided according to the use to which the part is put. When reference is made to "service" parts, this is taken to mean parts that are used to repair a vehicle, consequent upon an accident or some other malfunction, as opposed to "aftermarket" parts which are replaced as a matter of course during routine maintenance. The breakdown according to application relates to the captive/competitive dichotomy in the following way: service parts may be both captive and competitive; aftermarket parts are competitive more than captive.

Certain brand names specific to the Chrysler organization also appear in the evidence. "Autopar" is a line of Chrysler parts which comprises only competitive parts and which is marketed only by Chrysler Canada. "Mopar" is a line of Chrysler parts which, in Canada, includes mainly captive parts.

Finally, mention should be made of the "Interparts" programs of Chrysler U.S. Interparts programs involve a bulk purchase of some minimum quantity of an automotive part from a special production run of that specific part. These programs include both captive and competitive parts and are only available through Chrysler U.S.

RBC had its first dealings with Chrysler Canada in 1977 and continued to buy from them until the events that led to the present application. Apart from selling Chrysler parts Brunet dealt with two major suppliers in the United States (described as "Other U.S." in Table 1 below). He has also purchased small volumes of auto parts from several suppliers in Canada. His principal supplier in the U.S. until 1983 was Ford Corporation. His relationship with this company ended in 1985. The "Other U.S." since 1985 consists, for practical purposes, of purchases from a single source of supply on behalf of a particular customer. The purchases from Chrysler Canada dealers relate to the present proceedings. Table 1 divides the sales of RBC by the aforementioned sources of supply since 1984.

**TABLE 1**

**R. Brunet Company**

**Gross Sales by Line of Business**

| Year | Chrys. Canada | Chrys. Canada Dealers | Chrys. U.S. | Inter-parts, M.D.* | Other Canada | Other U.S. |
|---|---|---|---|---|---|---|
| 1989# | - | 26,618 | 67,630 | - | 21,706 | - |
| 1988 | - | 119,310 | 52,734 | 156,464 | 23,985 | 376,648 |
| 1987 | 99,154 | 223,495 | 24,126 | 325,872 | 78,280 | 140,890 |
| 1986 | 362,245 | - | 25,180 | 171,551 | 50,920 | 225,207 |
| 1985 | 259,892 | - | 20,442 | 95,235 | 11,984 | 338,824 |
| 1984 | 300,394 | - | 27,813 | 23,631 | 57,373 | 508,370 |

*Notes*:

* M.D. = Master Distributors

\# To May 12, 1989 only. Transactions with customers were placed in supplier categories by Mr. Reinke of Arthur Anderson Co. based on the supplier from whom Brunet made the largest purchases in each transaction. As a result, there are some minor discrepancies between the values in the table for 1989 and the actual sources of supply.

**Total Gross Sales**

| Year | Total |
|---|---|
| 1989# | 115,954 |
| 1988 | 729,141 |
| 1987 | 891,817 |
| 1986 | 835,103 |
| 1985 | 726,377 |
| 1984 | 917,581 |

*Notes*:

# To May 12, 1989 only.

*Sources*:

Exhibit 10: Statement of Roman Boyko, C.A. / Richard Joly, C.A., Coopers and Lybrand, for the Director of Investigation and Research, Schedules A to H; Exhibit 31: R. Brunet Company Sales, Cost of Sales and Gross Margin for the Period from January 1, 1989 to May 12, 1989, prepared by B.J. Reinke, C.A.

It is uncontested that Brunet was encouraged by Chrysler Canada throughout his association with it to expand the sale of Chrysler Canada auto parts in the export market. A number of actions were taken by Chrysler Canada in its treatment of Brunet to allow for the needs of his customers who faced particular problems of exchange controls and import permits with time deadlines. The details of some of the particular services provided by Chrysler Canada will be discussed in connection with the definition of market. Brunet undertook to represent the Autopar line at trade shows in South America with posters supplied by Chrysler Canada. On occasion Chrysler Canada referred potential customers to Brunet.

On August 29, 1986, Brunet received a telephone call from a Mr. P.R. Williams, National Parts and Sales and Marketing Manager for Chrysler Canada, who informed Brunet that all his orders with Chrysler Canada had been placed on hold. By letter dated October 8, 1986, in reply to a letter from Brunet dated October 2, 1986, sent to Burnett and dealing with a matter referred to as "Requirement for Britain",[2] Burnett advised Brunet that there was "no longer any organizational responsibility for handling these orders in Canada". This letter went on to state that all orders currently in the system would be processed according to "normal practice and/or availability of supply":

October 8, 1986

Mr. Richard Brunet
R. Brunet Company
Suite 918
360 St. James Street West
Montreal, Quebec
H2Y 1P5

Dear Richard:

Your letter of October 2, 1986 is received and since there is no longer any organizational responsibility for handling these orders in Canada I have referred your request to Mr. B.J. Lerner in the U.S. Chrysler Export Sales Office who will handle all of your requirements.

All orders currently in the system will be filled and shipped as per our normal practice and/or availability of supply.

Thank you for your inquiry. You will hear from Mr. Lerner's office in the near future.

Yours very truly,

(s) C.R. Burnett[3]

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2 Exhibit 3, Tab 162.

3 Exhibit 3, Tab 164.

The orders currently in the system were filled by Chrysler Canada over the following five to six months. No new orders were accepted by Chrysler Canada after October 8, 1986 causing Brunet to try to find alternative sources of supply. In January 1987, Brunet approached several Montreal-area Chrysler Canada dealers in order to source parts to service his customers. It did not take long for Chrysler Canada to become aware that Brunet was purchasing parts from its dealers. This information was relayed to Chrysler Canada's head office by Chrysler Canada field representatives through its Montreal office. Suspicion was also aroused by a large order placed by a Chrysler Canada dealer through the Chrysler Canada computer system. This order contained an unusually large number of older automotive parts, far in excess of normal domestic demand. A representative of Chrysler Canada (head office) contacted the Sales Manager of the Regional Office in Pointe Claire, Province of Quebec, a Mr. Jacques St. Pierre, and asked St. Pierre to have his district managers instruct their dealers not to sell Chrysler automotive parts for export.

This initiative was followed up by a bulletin to all Chrysler Canada dealers dated May 8, 1987:

Bulletin No. 87-37
May 8, 1987

TO ALL DEALERS AND AUTOPAR DISTRIBUTORS
OF CHRYSLER CANADA LTD.

**EXPORT PARTS SALES**

We have received several inquiries recently from Dealers regarding the sale of Chrysler Parts for **Export Sales** purposes. The requests may have resulted from recent articles in the press that Chrysler would be expanding sales of some North American-built products into foreign markets.

The sales of Mopar and Autopar Parts by Chrysler Canada is strictly to service our Canadian customers, not for export. If you receive an inquiry concerning export sales, please contact your Regional Parts Sales Manager, for referral to our Export Sales Office in Detroit. All Chrysler Canada Export Sales will be handled in this manner.

We would appreciate your co-operation in this matter.

(s) P.R. Williams

P.R. WILLIAMS
National Parts Sales
and Marketing Manager[4]

Bulletin n$^{o}$ 87-37
Le 8 mai 1987

AUX CONCESSIONNAIRES ET DISTRIBUTEURS
AUTOPAR DE CHRYSLER CANADA LTÉE

**VENTE DE PIECES POUR L'EXPORTATION**

Plusieurs concessionnaires nous ont récemment contactés au sujet de la vente de pièces Chrysler **pour l'exportation**. Les demandes sont peut-être reliées à la parution de certains articles dans la presse déclarant que Chrysler étendrait la vente de certains produits de fabrication nord-américaine aux marchés étrangers.

La vente des produits Mopar et Autopar par Chrysler Canada est strictement réservée à nos clients canadiens et non à l'exportation. Pour toute demande concernant la vente pour l'exportation, veuillez communiquer avec votre directeur régional, secteur vente des pièces, qui en référera au bureau des ventes pour l'exportation à Detroit. Toutes les ventes de pièces pour l'exportation de Chrysler Canada seront ainsi traitées.

Votre collaboration dans cette affaire sera grandement appréciée.

Le Directeur national,
vente et commercialisation
des pièces,

(s) P.R. Williams

P.R. Williams[5]

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[4] Exhibit 4, Tab 230 (underlining added).

[5] *Ibid.* (underlining added).

Despite the general language of this bulletin, the Tribunal is satisfied, from the testimony of Burnett, that the bulletin *was aimed at preventing Brunet* from obtaining Chrysler parts to service his customers.

> Q. Now, in the second sentence in that first paragraph, it says:
>
> "The request may have resulted from recent articles in the press that Chrysler would be expanding sales of some North American-built products into foreign markets."
>
> Given your evidence to this point on this bulletin, would you agree with me that the specific impetus for the bulletin was Mr. Brunet and not any articles that may have appeared in the press?
>
> A. That is true, although there were articles in the press about Chrysler entering the European market.
>
> Q. But I put it to you that, in the absence of Mr. Brunet's activities, you would not have sent this memorandum.
>
> A. Probably not, sir.[6]

Notwithstanding the issuance of the bulletin Brunet was still able to purchase, with difficulty, Chrysler parts from Chrysler Canada dealers. On September 27, 1987 a second bulletin was issued by Chrysler Canada.[7] This second bulletin was much the same as the first. It emphasized, as did the first, that parts were not to be sold for export and that all requests for parts for export should be

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6 Cross-examination of Burnett at p. 1534 of the transcript.

7 Exhibit 16.

referred to the dealer's Regional Manager who, in turn, would refer the matter to the office of Export Sales in Detroit.

Some time after the May 1987 bulletin, Chrysler Canada commenced a review of all of its dealer agreements which culminated in the re-signing of all the Chrysler Canada dealers to new dealer agreements. A clause was inserted in order to restrict parts sales to the domestic market in the following terms:

> Whereas the parties hereto have heretofore entered into a Sales and Service Agreement relating to, among other things, a means for the sale, in Canada, of parts and accessories and other products and services manufactured or distributed by CHRYSLER ... .
>
> And to provide parts to the Canadian domestic market to assure service to those vehicles sold in Canada for the full extent of their service requirements.[8]

Although no sanctions or penalties have as yet been applied against any of its dealers by Chrysler Canada for breach of the clause, Burnett is of the view that the new agreement gives Chrysler Canada the power to terminate the franchise of a dealer who sells parts to Brunet. Changes were also made to the computerized ordering system of Chrysler Canada to flag atypical orders involving large volumes or unusual parts.

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[8] *Parts Wholesale Sales Agreement*, Exhibit 6, Tab 338 (underlining added). See also *Parts Merchandising Sales Agreement*, Exhibit 26.

**Section 75 of the *Competition Act***

On the basis of the above facts the Director instituted the proceedings pursuant to section 75 of the Act. Section 75 reads:

> 75. (1) Where, on application by the Director, the Tribunal finds that
>
> (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,
>
> (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,
>
> (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product, and
>
> (d) the product is in ample supply,
>
> the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.
>
> (2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.
>
> (3) For the purposes of this section, the expression "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

In order for the Tribunal to exercise its discretion to make an order pursuant to the section the Director must establish all of the elements contained in each of the paragraphs (1)(a) to (1)(d). Paragraphs (1)(c) and (1)(d) are not in serious dispute. The Tribunal is satisfied that Brunet is willing and able to meet the usual trade terms of Chrysler Canada and that the product is in ample supply. No evidence was led to the contrary. Before turning to the determination of whether the elements of (1)(a) and (1)(b) have been met, it is necessary to establish the meaning of "product" and "market".

*Product*

Is the product in question Chrysler Canada auto parts as submitted by the Director, Chrysler auto parts, or auto parts in general as submitted by the respondent? The definition of market is closely tied to the answer to this question. The Tribunal is satisfied that the relevant product is, for the reasons explained below, Chrysler auto parts.

Products and markets can only be meaningfully defined in a particular context and for a particular purpose. The approach to defining these terms may be entirely different where, as in the case of a merger, the ultimate test is whether the merger will substantially lessen competition and the definition must be consistent with the attempt to determine whether the merger will result in an

increase in prices or in other effects consistent with a lessening of competition. In the case of paragraph 75(1)(a), the ultimate test concerns the effect on the business of the person refused supplies. Where products are purchased for resale, the effect on the business of the person refused supply will depend on the demand of the person's customers and whether substitutes are acceptable to them. Therefore, the starting point for the definition of "product" under section 75 is the buyer's customers.

Although Brunet's business is the export of auto parts, the definition of the product in relation to Brunet's dealings with Chrysler Canada depends on the demand of customers who purchased Chrysler auto parts. The issue is whether they treated Chrysler auto parts as a distinct product or as one for which they would readily accept substitutes. The evidence shows that Brunet responded to direct orders of customers, that customers *specified* that they wanted genuine Chrysler parts, and that they used numerical codes specific to Chrysler's parts system when ordering. There was no question of substituting parts of other suppliers for those of Chrysler. The product in question is thus Chrysler auto parts.

The respondent submits that subsection 75(2) severely constrains the definition of the product as Chrysler auto parts: "the effect of subsection 75(2) with its reference to class of articles is that the Tribunal must define a product by a genus or class or kind

description, unless the product meets the single exception thereto."[9] The applicant takes the position that the subsection "adds little to the analysis. In a buyer-derived demand situation alternative branded goods are of little utility and the particular sought branded goods will always be of importance."[10]

In the view of the Tribunal subsection 75(2) does not enter into the definition of the product as Chrysler auto parts. The product is Chrysler auto parts not "only because it is differentiated from the other articles in its class by a trade mark, proprietary name or the like".[11] It is not only the existence of the trademark that determines the definition but rather the demand of Brunet's customers. Subsection 75(2) forecloses reliance being placed on trademarks (save for the specified exception) to define products in spite of the existence of acceptable substitutes to customers. This factor, the presence or absence of acceptable substitutes to customers, is of paramount importance in arriving at the appropriate definition of the "product" and was the determining factor in the present case.

The evidence is that it is primarily service parts and within that group mainly captive parts that are ordered from Brunet. This is consistent with the designation of other parts as competitive

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9 Respondent's Memorandum of Law at para. 40.

10 Memorandum of Law of the Applicant at para. 35.

11 *Competition Act*, R.S.C. 1985, c. C-34, as am., s. 75(2) (underlining added).

because for these parts there are numerous alternative sources of supply and active price competition. Looking to the fact that sales by Brunet of the Autopar line, which consists only of competitive parts, were very limited, Chrysler Canada would have the Tribunal exclude the Autopar line from the product definition. The Director has stressed, through the evidence of Brunet, that in Brunet's experience competitive parts are ordered in the same way as captive parts (as a seven-digit number) and with the same insistence on genuine Chrysler parts. Virtually nothing turns on the finding of a distinction; no element of the decision depends on whether the product in question is Chrysler auto parts, captive and competitive, or exclusively captive Chrysler auto parts since the volume of competitive parts ordered from Brunet appears to have been minimal. A finding for Chrysler Canada would require that Brunet's sales and gross profits be modified to exclude sales of Autopar. This was not done by the Respondent's accounting expert. Given the foregoing and the fact that from Brunet's perspective (if not that of his customers insofar as they shop for cheaper sources of supply prior to ordering from Brunet) there is no difference between competitive and captive parts, the Tribunal makes no distinction between captive and competitive Chrysler parts.

The economist, Professor Ralph A. Winter, who appeared as an expert witness on behalf of the respondent, submits that the Tribunal should approach the definition of product and market not from the point of view of Brunet as a buyer, but from the viewpoint

of determining whether Chrysler has substantial market power. This, he submits, can only be done by considering what Chrysler sells and with whom it competes. He concludes that the relevant market is synonymous with the worldwide sale of automobiles since the price of auto parts is established in conjunction with the pricing of vehicles. It is Winter's view that Chrysler's pricing of parts is constrained by the effect this can have on the sale of its vehicles and that it faces very stiff competition in the sale of its vehicles. Winter concludes that since Chrysler does not have substantial market power as a seller of vehicles, its decision to discontinue supplying Brunet was motivated by concerns for efficiency and not to increase its market power.

This argument is presented by Winter in relation to the definition of product and market and also in conjunction with the Tribunal's use of its discretion to grant an order in the event that it finds that all of the elements have been satisfied by the applicant. The Tribunal is satisfied that a broad consideration of Chrysler's market power is not required in determining whether the specific elements of section 75 of the Act have been satisfied but may be relevant in the Tribunal's exercise of its discretion.

*Market*

Having defined the product as Chrysler auto parts, the Tribunal must now determine the market in which Brunet buys

Chrysler auto parts. The applicant contends that the relevant market comprises Canada, that Chrysler Canada is the sole supplier and Brunet, in the event, is the sole buyer. The respondent submits that the market consists of both the U.S. and Canada, that Chrysler U.S. is the supplier and exporters of Chrysler auto parts are the buyers. The Tribunal is satisfied that the relevant market is Canada, and that the U.S. and Canada are separate markets. This conclusion is discussed in the following section that deals with the differences between purchases from Chrysler Canada and from Chrysler U.S. in small and large volumes.

*(a) Parts Purchased in Small Volume*

This refers to the number of units of each part and to the fact that the parts are individually packaged. It does not refer to the size of the total order.

The automotive parts purchased from Chrysler Canada or Chrysler U.S. are physically identical. However, Chrysler Canada and Chrysler U.S. each publish separate price lists for these parts. The evidence is that prices in Canada are established with respect to market conditions in Canada. According to the evidence of Burnett, Chrysler Canada used the U.S. price list as a point of departure and made its modifications to price in the light of domestic conditions, subject to meeting the financial tests within Chrysler.

The reason why prices (*denominated in a common currency*) for some parts are cheaper in Canada than in the U.S. was addressed in the evidence of Burnett and, more speculatively, in the evidence of Professors Schwindt and Winter. Burnett states that Canadian prices are primarily cheaper for parts used for older models of cars. He also said that Chrysler Canada tends not to change the prices of inventory until it is necessary to reorder and since the turnover of inventory is much slower in Canada than in the U.S., reordering occurs less frequently and thus price increases lag behind those in the U.S.

Winter hypothesizes that parts prices in Canada fell at the time of the decline in the Canadian dollar as compared to the American dollar in late 1970s. He reasons that Chrysler, in common with other companies, is reluctant to incorporate the effect of exchange rate changes in their prices because this would be too disruptive. Professor Richard Schwindt concludes that prices of vehicles and parts in Canada are more sensitive to import competition than in the U.S. and thus tend to be lower. All the explanations share the common feature that, *whatever the cause, market conditions in the U.S. and Canada are different and the differences are reflected in different parts prices.* The percentage of all Chrysler parts that were priced lower in Canada is not in evidence. The only specific evidence is that it is primarily older parts that are affected.

The evidence generally indicates that customers tended to buy exclusively or primarily from Brunet those parts that were cheaper to source through Chrysler Canada. Parts that were generally less expensive to source in the U.S. were purchased through other suppliers.

In addition to the price differences between Chrysler Canada and Chrysler U.S., there were several other important differences between them as sources of service parts. Chrysler Canada offered Brunet (and thus Brunet's customers) "price protection" against changes in prices between the time of order and delivery. This protection was offered for a period of up to four months, covering two bi-monthly changes in price lists. Only recently, in February 1989, was this protection made available to Brunet by Chrysler U.S.

Furthermore, when an order was sent to Chrysler Canada it responded with an "availability report" which identifies the parts that were immediately available and the length of the delay that would be required in supplying each of the remaining parts.

Brunet also asserts, with some corroboration from correspondence with customers, that Chrysler Canada offered superior service in other ways. Brunet claims that the percentage of orders immediately filled by Chrysler Canada was much higher than was the case with Chrysler U.S. and that the latter tended to fill orders

through a series of relatively small shipments to Brunet's designated port. The result was slower shipment to Brunet's customers and higher costs. Brunet also claims that the accuracy with which orders were filled was higher in Canada than in the U.S. As a result there were fewer customer claims when supply was obtained from Chrysler Canada. The only evidence offered in contradiction is testimony by Burnett to the effect that the "fill rate" on orders received by Chrysler *from dealers* is 95 per cent in the U.S. compared to 96 per cent in Canada. This evidence does not, however, provide any information on Brunet's experience with Chrysler U.S. since Brunet *is not a dealer and does not make typical dealer's orders.*

The Tribunal does not accept Brunet's allegations that it is cheaper to ship to European destinations from a port in Montreal rather than a port in New Jersey. This evidence, given by Brunet, is contradicted by the evidence of a Mr. Jansson, a witness from Sweden who imports Chrysler Canada vehicles and Chrysler parts from Canada.

The importance to Brunet's customers of all of the foregoing differences between sourcing from Chrysler Canada and Chrysler U.S. that are not directly related to differences in the price lists cannot be accurately assessed. To do so would require evidence on whether Brunet's customers chose to source from Chrysler Canada when its prices were *higher* than those set by Chrysler U.S. In the absence of evidence of this kind, or at least evidence of customer

statements that they clearly preferred to source from Chrysler Canada, the Tribunal concludes that these factors *alone* do not create two distinct sources of supply. This conclusion is supported by evidence that Brunet's customers tend to buy parts that are cheaper to source from Chrysler U.S. through other exporters than Brunet. This suggests that whatever problems there might have been in sourcing from Chrysler U.S., they could be overcome by price concessions or other advantages that these other exporters offered Brunet's customers. Insofar as Brunet's customers were concerned, he was a preferred source of supply primarily for parts that are cheaper to source in Canada.

Brunet earned a considerably higher profit margin on parts sourced from Chrysler Canada than on U.S. orders as the Canadian price list necessarily included Canadian federal sales tax and duty on parts imported into Canada. The duty and tax did not apply on parts exported from Canada. The duty and sales tax paid by Chrysler Canada were returned to Brunet and constituted the major part of his profit margin. The higher profitability Brunet earned on parts obtained in Canada put him in a position to offer discounts on the published price lists or to absorb some of the cost of higher prices, as may be the case when he buys from dealers. Thus, customers could be encouraged to purchase Canadian-sourced parts when list prices in the U.S. and Canada were similar. Whether discounts were in fact offered by Brunet is less important than his ability to do so.

Schwindt is of the view that the separate price lists in the two countries and the other differences discussed above create a separate "product bundle" with respect to Chrysler parts sourced in Canada and those sourced in the U.S., even though the parts are physically identical. He concludes that the differences are sufficiently great to create two distinct markets:

> When sourcing his purchases, Brunet considered a number of elements which were important to his purchase decision. These elements include: the physical characteristics of the automotive part; the delivery point; the probability that the order would be filled in a single delivery; the reliability of the supplier in meeting promised delivery dates; the predictability of trade terms; the probability of unauthorized substitutions; the probability of missing, misplaced or damaged goods; the supplier's cancellation policy; and price. Generally the physical characteristics of Chrysler automotive parts supplied by Chrysler Canada Ltd. were identical to those supplied by Chrysler U.S. However, the other elements of the product bundle could differ significantly between these suppliers.[12]

As indicated above, the Tribunal concludes that the critical difference between the two sources of supply is price.

Winter concludes that the physical identity of the parts obtained from the two sources is critical in establishing market boundaries, and since the only difference between the two sources is price (or other claimed advantages that can be translated into a price

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[12] Exhibit 22: Exhibit "A" to the Affidavit of Richard Schwindt, dated June 4, 1989 at p. 7.

difference), parts supplied from Chrysler Canada and from Chrysler U.S. are in the same market:

> Products that are physically identical, and are perfectly substitutable in their end uses are properly regarded as in the same market unless geographical distance and directly related costs preclude their substitutability. Almost all of the items that Professor Schwindt lists, such as higher handling costs of U.S. sourced product, less price protection, less accommodation of timing requests, a stricter cancellation policy, and the unilateral substitution of technically equivalent parts, are equivalent to a higher cost of purchasing from Chrysler U.S., or a higher price paid to Chrysler U.S. The physical products from the two sources were identical; from the buyer's point of view all differences in terms of trade are equivalent to differences in price.[13]

He states that to conclude, as does Schwindt, that Chrysler Canada is in a different market than Chrysler U.S., is to arrive at the odd result that there is one supplier and one customer. He states that the effect of denying Brunet supply from Chrysler Canada is to place Brunet on the same footing as exporters operating from the U.S., whereas before he had the advantage of being able to sell from both price lists and to buy from both sources:

> The prices paid by Brunet to Chrysler U.S. and the trade terms available to Brunet from Chrysler U.S., were the same terms faced by every other distributor of Chrysler parts for export from North America (*supra*, Section II, paragraph 9). If a buyer of a particular article can obtain perfectly substitutable products at a modest or moderate price or cost increase, which price increase puts the buyer on an equal footing with other buyers of the product, then the substitute products should properly be included in the same market definition. The perfect

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[13] Exhibit 29: Report Prepared by Ralph A. Winter, dated June 20, 1989 at para. 9.

> substitutability of the parts from Chrysler U.S. and Chrysler Canada fulfils the essential criterion for inclusion of products in the same market.[14]

Whether Brunet is placed on the same footing as exporters in the U.S. (described by Burnett as the "level playing field") is not relevant to a determination of market definition, but may be relevant in deciding whether the Tribunal should exercise its discretion in issuing an order in the event that the applicant is successful in the present proceedings.

The existence of separate price lists in the U.S. and Canada and the fact that they are intended, according to the evidence of Burnett, to respond to different market conditions in the two countries strongly implies the existence of separate markets. No convincing evidence to the contrary has been presented. The price lists are used by the vast dealer networks in the two countries. It is difficult to believe that anyone would question that dealers in the U.S. and Canada are in separate markets with respect to the purchase of their parts. Yet Winter and the respondent submit that Brunet is in the same market as the numerous U.S.-based exporters with whom he competes for non-North American business. The Tribunal does not accept this conclusion, given that Chrysler Canada and Chrysler U.S. are in separate markets.

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[14] *Ibid.* at para. 10.

In the case of Brunet it is clear that the market niche he occupies is based on the fact that some Chrysler auto parts are cheaper in Canada than in the U.S. The price differences are maintained by Chrysler for its own purposes. Similarly, the apparently anomalous situation where there is a single seller and a single buyer is also a result of Chrysler corporate policy. The decision to allow Brunet to address the non-North American markets from Canada was taken by Chrysler. It would similarly be able, apart from the question of the application of section 75 of the Act, to decide that all non-North American exports will originate in the U.S.

*(b) Interparts - Parts Purchased in Large Volume*

Are parts purchased under the Interparts programs in the United States in the same market as service parts purchased from Chrysler Canada? Although they are physically identical, parts purchased through Interparts and parts from Chrysler Canada are not generally substitutes and hence are not in the same market. This conclusion follows from the features of the Interparts programs: very large minimum purchase requirements; orders must be placed in advance for later manufacture and hence it may take considerable time for an order to be filled; parts are packaged in bulk rather than individually; prices are much lower than for parts ordered in small volumes. The dollar value of minimum purchases was recently raised by a large multiple in conjunction with the creation of Master Distributors of Interparts. The effect of this change is the virtual

elimination of any substitution that may have occurred between sourcing of service parts in Canada and from Interparts.

**The Law**

As previously stated, the present application is made pursuant to section 75 of the Act. In order for the Director to succeed in his present application, he must satisfy the Tribunal of the existence of each element contained in the section.

*(a) Business Substantially Affected*

The establishment of the product and market as being Chrysler auto parts available in Canada allows a consideration of the element found in paragraph 75(1)(a), that is, whether Brunet was "substantially affected" in his "business" by the refusal of Chrysler Canada to supply Brunet with Chrysler auto parts.

The applicant submits that the "business" in issue relates to the "specific line or product within the overall enterprise affected by the refusal", that is, Brunet's business is exporting Chrysler Canada auto parts.[15] The respondent submits that a broader

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[15] Memorandum of Law of the Applicant at para. 42.

interpretation is required in light of the definition of "business" found in subsection 2(1) of the Act which states:

> "business" includes the business of
> (a) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and
> (b) acquiring, supplying and otherwise dealing in services.

The respondent submits that the evidence shows that Brunet's "business" is the "export business" or "conceivably his business of exporting automotive parts".[16]

A majority of the Tribunal agrees with the submission of the respondent that the effect on the entire activity of which the refused supplies are a part should be used. It is clear that a fair analysis of the situation in the present case requires that a broader interpretation is required than the one urged by the applicant. The submission of the applicant, if accepted, would be unnecessarily restrictive since this could preclude a proper understanding of the effects of the refusal to supply.

This does not mean, however, that the effect of the refusal to supply can be established solely by examining the overall sales and profit figures. To understand the effect of the refusal to supply, it is necessary to answer the following:

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16 Respondent's Memorandum of Law at para. 25.

(a) does the product in issue account for a large percentage of the overall business?

(b) is the product easily replaced by other products sold by the business?

(c) does the sale of the product use up capacity that could be devoted to other activities?

(d) is the product used or sold in conjunction with other products and services so that the effect on the overall results of the business may be much greater than indicated by the volume of the product purchased?

Reliance on an examination of the overall business result may be appropriate where it is difficult to do a more disaggregated analysis. This is not necessary in the case of Brunet's business; it is very small, he has few customers and it is possible to inquire meaningfully whether there is a relationship between transactions. Under the circumstances the figures on his overall business provide information for only an initial step in the evaluation. The accountants called as expert witnesses by the parties did not have any particular familiarity with the auto parts export business in

general, or with Brunet's business in particular. They were not, therefore, in a knowledgable position to give evidence on how the refusal of Chrysler Canada to sell to Brunet affected his overall sales and profits. Similarly, Winter, who stated the hypothesis that the capacity formerly used on the sale of Chrysler Canada-sourced parts was redirected to the sale of parts from other sources, was not in a position to confirm the factual validity of this submission.

The figures placed in evidence by the accountants for the two sides were similar and served to confirm that the records maintained by Brunet fairly represented his business transactions. There is agreement that the few discrepancies in their treatments are not of material importance in determining whether Brunet is substantially affected in his business.

The respondent stresses that Brunet had larger sales and profit after Chrysler Canada refused to supply Brunet in 1986 (referred to by the Director as the "cut-off") than in the years preceding it and therefore Brunet was not substantially affected by his inability to obtain supply from Chrysler Canada. As noted earlier, in some cases this type of evidence might be conclusive, but only where it is not possible to analyze how the separate parts of the business are related. The Tribunal is satisfied, through the evidence of Brunet, that the gross sales and profits earned from the sale of other products is totally unrelated, by way of the utilization of

capacity or by way of demand, to the sale of Chrysler parts. The sale of other parts took very little of Brunet's time or that of his assistant and his business could easily have accommodated these additional sales if he had not lost sales of Chrysler parts as a result of his inability to obtain supplies from Chrysler Canada. Similarly, the demand for Chrysler auto parts was independent of the demand for other parts. Accordingly, any changes in the sales of other parts and the gross margins therefrom would have taken place whether or not Brunet's relationship with Chrysler Canada had changed. The same conclusion is applicable with respect to Interparts since service parts and Interparts represent separate markets. There is no reason to believe that Brunet's customers would be influenced to increase their demand for Interparts as a result of Brunet's inability to obtain supply from Chrysler Canada. If the cut-off had any effect on the sale of Interparts it would be a negative one to the extent that Brunet lost customers as a result of Chrysler Canada's refusal to supply auto parts.

Large sales of other auto parts to a single customer in 1987 and in 1988 virtually disappeared during the first four months of 1989. The large sales and resulting gross profits from these transactions were an essential part in the overall sales and gross profit figures that the respondent relies on to state that the cut-off does not have a substantial effect on Brunet's business because overall sales and gross profits did not fall after 1986. The most

recent figures submitted show that overall sales and gross profits are much lower, on an annual basis, than before the cut-off.[17] This illustrates the danger of relying on aggregate data when more specific and relevant information is available. The Tribunal is satisfied that the evidence shows that both the increase in the sales of other auto parts and the subsequent decline are unrelated to the extent to which Chrysler parts are available to Brunet in Canada.

Following the cut-off Brunet was able to obtain parts from Chrysler Canada dealers. Under his arrangement with them he paid them their acquisition cost plus five per cent. It is noteworthy that Canadian-sourced parts were sufficiently more price attractive than those obtainable from Chrysler U.S. that Brunet and his customers preferred to pay the additional five per cent rather than purchase from Chrysler U.S.

A review of the extent to which Brunet was able to replace Chrysler Canada by its dealers must take into account the steps that Chrysler Canada took to discourage its dealers from selling to Brunet. The verbal warnings to particular dealers, the bulletins to all dealers and, finally the re-signing of all dealers to new contracts with a clause that is designed, according to the evidence of Burnett,

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[17] Exhibit 31: R. Brunet Company Sales, Cost of Sales and Gross Margin for the Period from January 1, 1989 to May 12, 1989; Table 1, *supra* at p. 7-8.

to give Chrysler Canada the authority to discontinue supplying a dealer in the event that the dealer sells for export, have progressively changed the conditions under which Brunet can buy from Chrysler Canada dealers. Chrysler Canada has modified its computer software to more readily enable it to detect orders that may be intended for export. As a result of these efforts by Chrysler Canada, Brunet is forced to split his orders and to spread them over some time to attempt to avoid detection. There is evidence that three dealers openly sell to Brunet. The evidence is not clear on whether any of them have wholesale dealer status. If they do not, the prices that they pay for captive parts are more than those which Brunet paid to Chrysler Canada. In addition, it must be assumed that the dealers are earning some profit margin on their sales to Brunet, such as the five per cent referred to previously, thus causing Brunet to pay a substantially higher price for the auto parts than that paid by Brunet to Chrysler Canada.

Table 2 shows Brunet's gross profit and sales resulting from purchases from Chrysler Canada, Chrysler Canada dealers and Chrysler U.S. from 1984 to May 1989.

## TABLE 2

**Gross Sales and Profit*: Parts Sourced from Chrysler Canada, Chrysler Canada Dealers and Chrysler U.S.**

**1984-1989**

| Year | Chrys. Canada | Chrys. Canada Dealers | Gross Profit Chrys. Canada & Dealers | Chrys. U.S. | Gross Profit Chrys. U.S. |
|---|---|---|---|---|---|
| 1984 | 300,394 | | 49,161 | 27,813 | 1,410 |
| 1985 | 259,892 | | 39,407 | 20,442 | 1,019 |
| 1986 | 362,245 | | 47,202 | 25,180 | 1,885 |
| 1987 | 99,154 | 233,495 | 43,554 | 24,126 | 1,555 |
| 1988 | ___ | 119,310 | 14,706 | 52,734 | 4,321 |
| 1989** | ___ | 26,618 | 3,856 | 67,630 | 6,140# |

*Notes:*

* Gross profit (or gross margin or mark-up) is gross sales minus cost of goods sold. The Coopers & Lybrand report prepared on behalf of the applicant uses the terminology "mark-up" rather than "gross margin". There does not in fact appear to be any difference between the two terms except when expressed as a percentage, which involves the use of a different denominator. The principal discrepancy between the gross margins of Arthur Anderson and the mark-up of Coopers & Lybrand is with respect to dealers in 1988. Arthur Anderson arrived at a figure of $18,495, which compares to $14,706 in the table. The figures in all other cases are the same or very close. The Arthur Anderson study provided gross margins for fewer years for the categories shown in the table and thus the decision to use the Coopers and Lybrand information was, so to speak, by default.

** January 1 - May 12.

# Includes purchases from Chrysler U.S. and from Master Distributors of Interparts.

*Sources:*

Exhibit 10: Statement of Roman Boyko, C.A. / Richard Joly, C.A., Coopers and Lybrand for the Director of Investigation and Research, Schedules A to D; Exhibit 31: R. Brunet Company Sales, Cost of Sales and Gross Margin for the Period from January 1, 1989 to May 12, 1989.

The effectiveness of Chrysler Canada's efforts in preventing Brunet from exporting from Canada is shown in the above table. There is a marked decline in sales and profits on purchases of Chrysler auto parts in Canada between 1986 and 1988 and on through somewhat more than the first quarter of 1989. The figures for 1989 are taken as providing only an order of magnitude because the period is relatively short. The 1989 figures are based on an analysis by Mr. Reinke of Arthur Anderson & Co. who appeared as an expert witness on behalf of the respondent. Reinke prepared the figures in response to a request made to him during cross-examination. He examined the ledger cards used by Brunet and included only those transactions for which both a purchase and a sale were recorded. In the view of the Tribunal, this was the only reasonable course. Ledger cards on which only one part of a transaction are recorded cannot be included as part of sales for the period in question. Some transactions started in 1988 are part of the partial 1989 figures and it is to be expected that some transactions started between January 1 and May 12, 1989 will be completed and recorded as such after May 12, 1989. There is no obvious bias imported into the 1989 figures by this factor. The only legitimate concern that the volume of sales is understated relates to the possibility that Brunet failed to make entries on the ledger cards for completed transactions. No evidence of this was presented to the Tribunal.

The respondent points to variations in demand that are unrelated to the cut-off as a possible explanation for any decline in sales and gross margins experienced by Brunet. This is a possibility that must be taken into account. Variation in demand certainly accounted for swings in the sale of other auto parts. In considering this factor the Tribunal notes that neither party attempted to provide a benchmark against which the changes in Brunet's sales of service parts might be measured (such as, for instance, the total exports of Chrysler service parts from North America during the years in question). The Tribunal is not satisfied that the large changes in sales experienced by Brunet were caused by variations in demand that are unrelated to the cut-off.

To evaluate the changes in sales and profits experienced by Brunet, it is necessary to determine the meaning of "substantially affected". The applicant submits that "substantially affected" simply means more than a *de minimis* effect. This conclusion is based on the fact that an earlier draft of the Act required only that the person be "adversely affected" which could mean a negative effect to a small degree.

The respondent submits that "substantially" does not simply mean "some" or "to a degree" but rather "major" or "significant". The respondent takes the position that the ordinary dictionary definition should be used in the absence of strong reasons to the contrary. The Tribunal agrees that "substantial" should be given its

ordinary meaning, which means more than something just beyond *de minimis*. While terms such as "important" are acceptable synonyms, further clarification can only be provided through evaluations of actual situations.

The cut-off resulted in a decline of over $200,000 in sales between 1986 and 1988. 1987 was a year of transition during most of which Brunet was able to obtain parts from Chrysler Canada dealers and Chrysler Canada continued to fill orders received by Brunet before October 1986. The slight rise in 1988 sales of Chrysler U.S.-sourced parts suggests that some substitution may have occurred between Chrysler Canada and Chrysler U.S. sourced parts, perhaps because of the increasing difficulty of obtaining parts in Canada. If such substitution did occur, it was far too limited to alleviate the decline in sales and gross profits from Chrysler auto parts. The decline in profits between 1986 and 1988 from sourcing Chrysler parts in Canada was in excess of $30,000. Losses of the order of magnitude of $200,000 in sales and $30,000 in gross profits constitute a substantial effect for a small business such as Brunet's. The figures for more than a third of 1989 and the fact that Chrysler Canada has put in place contracts that will permit it to discipline dealers who sell for export suggest that even greater losses may be anticipated in the future.

*(b) Inadequate Competition in the Market*

The issue as to whether Brunet is unable to obtain supplies because of inadequate competition in the market turns on whether Chrysler Canada dealers are in the same market as Chrysler Canada as suppliers to Brunet. The Tribunal concludes that the restrictions placed by Chrysler Canada on its dealers clearly make them inferior sources of supply to Brunet and that they therefore do not provide adequate competition to Chrysler Canada.

**Exercise of Discretion**

The Tribunal is satisfied that the Director has proven, through the evidence presented, all of the elements of section 75 of the Act. Once this prerequisite is met, the Tribunal has the discretion to issue an order requiring Chrysler Canada to resume supplying Brunet with Chrysler auto parts within a specified time on usual trade terms.

There are several areas of evidence and argument that bear on the exercise of the Tribunal's discretion. These are: the reasons behind Chrysler Canada's decision to discontinue supplying Brunet; the market position of Chrysler and the changes that it was making in its distribution system; the long association between Brunet and

Chrysler Canada; the unquestioned encouragement that Chrysler Canada provided Brunet; and the manner in which the cut-off was implemented.

*(a) The Decision to Discontinue Supply to Brunet*

The respondent takes the position that the decision to no longer permit Brunet to buy from Chrysler Canada was taken in response to Brunet breaking one of the conditions attached to such supply, that Brunet not sell to franchised dealers outside of North America in competition with Chrysler U.S.

The existence of such a condition is in dispute. Burnett alleges that this condition, along with the condition that Brunet not divert supplies into the North American market, were clearly set out in a verbal arrangement between himself and Brunet. There is no written agreement between Chrysler Canada and Brunet. Brunet denies that it was ever understood that he was not to sell to Chrysler dealers outside of North America. The Tribunal accepts his evidence.

Associated documentary evidence supports Brunet's position. Correspondence between Chrysler Canada and Brunet corroborates that Chrysler Canada was concerned that parts sold to Brunet not be diverted into the domestic market. Procedures were established to ensure that such diversion was prevented. In contrast, there is no

mention in any of the correspondence between Brunet and Chrysler Canada prior to 1986 that the latter was concerned about the possibility that Brunet might be selling to franchised dealers outside of North America. Concern about Brunet competing with Chrysler U.S. is first raised in May 1986 in connection with Brunet's approach to an "Interparts distributor" (rather than a franchised dealer) in Peru:

May 1, 1986

Mr. R. Brunet
R. Brunet Company
Suite 918
360 St. James Street West
Montreal, Quebec
H2Y 1P5

Dear Richard:

This letter will serve to confirm our telephone conversation regarding your letter of March 19, 1986, to Colonial Motors in Peru. Your letter suggests that in some cases, it is more advantageous to purchase parts from yourself than it is to purchase from Chrysler Corporation. Colonial Motors is an authorized Interparts Distributor.

I would like to remind you that when you are representing Chrysler Canada Ltd. in the export market, your objective is to compliment (*sic*) the Corporation's Interparts Division's sales activities, not to compete for their Distributors' business. We would appreciate your co-operation in this matter.

Yours very truly,

CHRYSLER CANADA LTD.

(s) P.R. Williams
National Parts Sales
and Marketing Manager

cc: C.R. Burnett[18]

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[18] Exhibit 3, Tab 134.

The context and the language of the letter create ambiguities. This sole written reference to the claimed Chrysler Canada understanding with Brunet is not persuasive.

Most importantly, sales to a Mr. Karlsson, a franchised dealer in Sweden, took place against a backdrop of a visit by Karlsson to the central Chrysler Canada parts depot. Brunet introduced Karlsson to the manager of the warehouse and sent Burnett a copy of a letter that Brunet sent to the manager following Karlsson's visit. Burnett passed on the letter to Williams, the author of the May 1986 letter referred to above.[19] It is difficult to believe that Brunet would have been so open in presenting and discussing Karlsson if he knew that sales to Karlsson's company would have been in contravention of a condition of purchase from Chrysler Canada. Furthermore, Brunet claims that he was referred to Karlsson by an employee of Chrysler Canada, a Mr. Barton, through a Mr. Hedlund who was acting as Canadian agent for Karlsson. This evidence is not contradicted. It is also undisputed that the same employee, Barton, had referred a Mr. Jansson, a non-franchised dealer in Sweden who had purchased vehicles from Chrysler Canada and needed parts, to Brunet. Burnett states that he did not know that Karlsson was a franchised dealer although Chrysler Canada had access to this information. More critical to the issue is the fact that Burnett never

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19 *Ibid.*

inquired, leaving the impression that whether Brunet was selling to franchised Chrysler dealers outside of North America was of no concern to Chrysler Canada.

*(b) Consolidation of Control of Chrysler Exports*

Although the evidence does not support the respondent's position that Chrysler Canada had an agreement with Brunet with respect to export to Chrysler franchised dealers, this does not mean that Chrysler was not concerned by such exports. It does not require specific evidence to conclude that the Chrysler export arm would find it embarrassing to have to compete with Brunet for the trade of its dealers. But beyond any such potential embarrassment, it is easy to accept that Chrysler would want to consolidate control of exports in one country and not be concerned with pricing differences between Canada and the United States affecting export markets. One does not have to go so far as Winter and conclude that the motive for consolidating exports is strictly to enhance efficiency in order to conclude that the decision is not solely intended to protect a separate price structure in Canada. Although Burnett denies that the Chrysler organization was in disarray in the early 1980s when Chrysler was in financial difficulty, the evidence shows that plants outside North America were sold off and the sale of Chrysler vehicles through (foreign) Chrysler franchised dealers was stopped. The evidence shows that, in recent years, Chrysler vehicles are once again being sold through (foreign) franchised dealers. It is

easy to understand that Chrysler would want to make organizational changes that can better accommodate its changing distribution system.

The respondent has not attempted to provide a cohesive explanation of the Chrysler distribution system. The principal argument put forward is that Brunet was being placed in the same position as U.S.-based exporters who, according to the evidence of Burnett, numbered somewhat more than one hundred and had combined annual sales of $80 million (U.S.). No details were provided regarding who these firms are, who they sell to or their relation with Chrysler U.S.

The Tribunal must consider that the respondent has not presented any evidence that the granting of an order pursuant to section 75 of the Act would disadvantage the respondent. A point that has been raised in connection with the attempt to prevent dealers from selling for export is that exporting some parts that are in short supply (this applies particularly to older vehicles) could deprive domestic consumers. It strikes the Tribunal that this concern could most effectively be dealt with by having Brunet deal directly with Chrysler Canada. To the extent that Brunet is successful in buying from dealers, Chrysler Canada cannot identify the orders from dealers that are destined for export, which was not the case when it was selling directly to Brunet.

*(c) Brunet's Long Association with Chrysler Canada*

It is uncontested that Brunet was encouraged throughout his association with Chrysler Canada. A number of actions were taken by Chrysler Canada to accommodate its treatment of Brunet to allow for the needs arising from dealing with customers who faced problems of exchange controls and import permits with time deadlines. Burnett confirmed that Chrysler Canada had encouraged Brunet in his efforts to expand the sale of Chrysler Canada auto parts. Chrysler Canada on occasion referred potential customers to Brunet. In spite of this long and friendly relationship, no attempt was made by Chrysler Canada to resolve any problems that they perceived in Brunet selling to Karlsson in Sweden or attempting to sell to Colonial Motors, an Interparts dealer in Peru. There was no warning that he might be cut off and there was no face-to-face meeting to discuss the situation. Brunet was shown little consideration apart from Burnett agreeing to fill orders received by him prior to the cut-off date.

**Conclusion**

Section 75 is different than other sections in Part VIII of the Act. The test for whether the elements in the section are satisfied is not the effect on competition or efficiency. These considerations enter, where applicable, in the exercise of discretion.

The Tribunal accepts that Chrysler or Chrysler Canada does not occupy a very strong market position in the automobile industry (even though, as might be expected, it is in a very strong position with respect to the distribution of its products) and that it may have legitimate business interests that it is trying to protect. Weighing against this consideration is the long relationship between Brunet and Chrysler Canada, the manner in which sales to Brunet were terminated, and the fact that the respondent has not made any effort to establish that the granting of an order by the Tribunal would prejudice it in any way. Brunet has been substantially affected by the denial of supplies. He merits relief and it will be provided in the order.

The Tribunal is of the view that a proper balancing of interests in this case might be better accomplished with an order that was limited with respect to time, or perhaps with respect to the category of buyers that would be open to Brunet. Such an order could probably best be achieved through negotiations between the parties.

The Tribunal is satisfied, however, that its authority under section 75 is limited to the issue of an order that requires the respondent to supply Brunet Chrysler parts under the usual trade terms as it had done up to October 1986. Such an order shall issue.

There shall be no order as to costs. The Tribunal is satisfied that it does not have the jurisdiction to order the payment of costs.

FOR THESE REASONS, THE TRIBUNAL ORDERS THAT Chrysler Canada Ltd. accept Richard Brunet as a customer for the supply of Chrysler parts on trade terms usual and customary to its relationship with Brunet as the said terms existed prior to August, 1986.

DATED at Ottawa, this 13th day of October, 1989.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) M.M. Teitelbaum
M.M. Teitelbaum

# 8

Competition Tribunal | Tribunal de la Concurrence

Reference: *CarGurus, Inc v Trader Corporation*, 2016 Comp. Trib. 15
File No.: CT-2016-003
Registry Document No.: 41

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34 as amended;

**AND IN THE MATTER OF** an application by CarGurus, Inc. for an Order pursuant to section 103.1 granting leave to make application under sections 75, 76 and 77 of the *Competition Act*.



BETWEEN:

**CarGurus, Inc.**
(applicant)

and

**Trader Corporation**
(respondent)

Decided on the basis of the written record.
Before Judicial Member: D. Gascon J. (Chairperson)
Date of Reasons for Order and Order: October 14, 2016

**REASONS FOR ORDER AND ORDER DISMISSING AN APPLICATION FOR LEAVE**

## I. OVERVIEW

**[1]** On April 15, 2016, CarGurus, Inc. ("**CarGurus**") applied to the Competition Tribunal, pursuant to section 103.1 of the *Competition Act*, RSC 1985, c C-34 (the "**Act**"), for leave to bring an application under sections 75, 76 and 77 of the Act dealing respectively with refusal to deal, price maintenance and exclusive dealing. If leave is granted, CarGurus seeks an order directing Trader Corporation ("**Trader**") to accept CarGurus as a customer and to supply certain vehicle listings data to it on standard trade terms, and prohibiting Trader from continuing to engage in the practices forming the basis of CarGurus' application.

**[2]** On May 4, 2016, Trader submitted a request by letter for leave to file affidavit evidence as part of its representations in writing in response (the "**Response**") to CarGurus' application for leave. On June 9, 2016, the Tribunal partially granted Trader's request to file certain affidavit evidence as part of its Response. On June 23, 2016, Trader filed its Response and CarGurus subsequently filed its reply (the "**Reply**") on June 30, 2016.

**[3]** In support of its application for leave, CarGurus submitted an affidavit sworn on April 14, 2016 by Ms. Martha Blue, the Senior Vice-President Business Development for CarGurus (the "**Blue Affidavit**"). As an exhibit attached to the Blue Affidavit, CarGurus submitted another affidavit of Ms. Blue sworn on March 3, 2016 (the "**Blue Copyright Affidavit**") which had been filed in the context of an on-going copyright litigation between CarGurus and Trader before the Ontario Superior Court of Justice (the "**Copyright Proceeding**").

**[4]** In its Response, Trader submitted an affidavit sworn on June 23, 2016 by Mr. Roger Dunbar, Vice President of Marketing for Trader (the "**Dunbar Affidavit**"). Trader also relied on several affidavits filed in the Copyright Proceeding, and which were included by CarGurus as attachments to the Blue Affidavit, notably an affidavit of Mr. Dunbar sworn December 22, 2015 (the "**Dunbar Copyright Affidavit**").

**[5]** Pursuant to subsections 103.1(1) and (6) of the Act, the Tribunal has relied on these affidavits and the written representations of the parties in deciding this application for leave.

**[6]** CarGurus claims that it has provided sufficient credible evidence to satisfy the Tribunal that there is a reasonable possibility that its business is directly and substantially affected by Trader's practices, and that such practices could be the subject of an order under either section 75, 76 or 77 of the Act. Trader opposes CarGurus' application for leave and seeks an order denying it, with costs. Trader argues that CarGurus has failed to provide sufficient credible evidence for each of the requirements set out in sections 75, 76 or 77 as well as subsections 103.1(7) and 103.1(7.1) of the Act.

**[7]** For the reasons that follow, I am not satisfied that CarGurus has met its burden under subsection 103.1(7) to apply for relief under the refusal to deal and exclusive dealing provisions

of the Act, nor under subsection 103.1(7.1) with respect to the relief sought under the price maintenance provision.[1]

## II. BACKGROUND

### A. THE PARTIES

#### a. CarGurus

**[8]** CarGurus owns and operates websites that enable potential purchasers of automobiles to research and compare vehicle listings for used and new automobiles within a geographic area, and to contact the sellers of those vehicles. In the context of this application, CarGurus refers to such websites as "**Digital Marketplaces**". CarGurus launched its website in the United States (known as cargurus.com) in 2007 and announced the launch of its Canadian website (i.e., cargurus.ca) on May 26, 2015.

**[9]** CarGurus asserts that it provides its vehicle listings services to dealers for free and operates on a lower-cost subscription model. It generates the leads to dealers and then follows up with those dealers to offer them additional services. CarGurus argues that it is this low-cost offering that has made it a very successful competitor in the United States.

#### b. Trader

**[10]** Trader operates a Digital Marketplace for vehicles in Canada and also offers other related services. Through its websites autotrader.ca and autohebdo.net, Trader advertises an inventory of new and used vehicles for sale in Canada. It sources its inventory of vehicle listings from private sellers and vehicle dealers. It does not buy or sell vehicles, but acts as an intermediary between buyers and sellers.

**[11]** In addition to offering its listing services, Trader also offers "capture services". If a dealer subscribes to Trader's capture service, Trader has one of its employees, or a contractor who has assigned his or her intellectual property rights to Trader, visit the dealership, consult with and gather information from the dealer and take photographs of the vehicles. The Trader representative then organizes this vehicle information and photographs and uploads all this data for display on one or more of Trader's and the dealer's websites (the "**Trader Vehicle Listings**").

**[12]** Trader makes its Trader Vehicle Listings available to other competing Digital Marketplaces through a licensing process known in the industry as a "**Syndication Agreement**".

**[13]** Access to the supply of the Trader Vehicle Listings is the core issue raised by this application for leave filed by CarGurus.

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[1] The Tribunal wishes to indicate that its decision was ready to be released in mid-September but that, further to Directions issued on September 14 and October 4, 2016, it had agreed to temporarily hold off releasing its decision in light of the parties' settlement discussions.

## B. THE RELEVANT FACTS

### a. The Industry

**[14]** CarGurus and Trader both carry on business in the online marketing of automobiles. They compete by offering Digital Marketplaces that allow consumers to search vehicle listings from automobile dealers and private sellers for new and used vehicles for sale. Consumers use the Digital Marketplaces to acquire information about vehicle availability, features and prices in the search and evaluation process leading to the purchase of a vehicle. However, although consumers conduct their search online, the actual purchase of vehicles still typically takes place when consumers visit the physical premises of automobile dealers or the private sellers.

**[15]** The vehicle listing information available on Digital Marketplaces normally includes, for each vehicle, the make, model, year, vehicle information number, mileage, price, photographs and other details. It is uncommon to market a vehicle without a photograph.

**[16]** Online marketing of vehicles involves the downstream market where Digital Marketplaces such as CarGurus and Trader offer their services as well as an upstream market for the supply of vehicle listing data (the "**Vehicle Listings**") used by those Digital Marketplaces to deliver their services. CarGurus describes Digital Marketplaces as a two-sided platform connecting sellers of vehicles and potential buyers of vehicles, where both sides benefit from the increase in the size of the group sitting on the opposite side of the platform.

**[17]** Vehicle Listings are commonly provided by original equipment manufacturers (i.e., the car manufacturers), automobile dealers, private sellers and Digital Marketplaces themselves. Entities known in the industry as feed providers (the "**Feed Providers**") also receive Vehicle Listings from dealers and provide data feeds of such Vehicle Listings to Digital Marketplaces.

**[18]** CarGurus, Trader and the other operators of Digital Marketplaces aggregate Vehicle Listings information from car manufacturers, automobile dealers and private sellers and make it accessible to consumers through search engines on their respective websites.

**[19]** CarGurus estimates that there are approximately 10 businesses in Canada operating Digital Marketplaces, including Trader. CarGurus further claims that Trader is the dominant supplier of Vehicle Listings to Digital Marketplaces. While CarGurus does not include Kijiji as a competitor in Digital Marketplaces, Kijiji represents itself as the largest automotive Digital Marketplace in Canada in its advertising materials.

**[20]** Given that consumers want to have access to comprehensive vehicle information when they are shopping for a vehicle, there is a direct correlation between Vehicle Listings, website traffic, specific inquiries from consumers to dealers about a vehicle (known as "leads" to dealers), and resulting revenues for the Digital Marketplaces. According to CarGurus, the ability to generate leads to dealers is the basis of its revenue model.

### b. Relationship between CarGurus and Trader

**[21]** Trader claims that it owns copyright in the vehicle photographs that are included in its inventory of Vehicle Listings and more specifically in the Trader Vehicle Listings.

**[22]** In May 2015, Trader found that its vehicle photographs contained in the Trader Vehicle Listings appeared on CarGurus' website and advised CarGurus that it held the copyright on these photographs. In July 2015, Trader sent CarGurus a draft Syndication Agreement relating to the potential future supply of the Trader Vehicle Listings to CarGurus. CarGurus did not accept the terms of the Syndication Agreement proposed by Trader, as CarGurus claims that a number of its provisions would have prevented it from effectively competing with Trader in the Canadian marketplace.

**[23]** There were no further communications between the parties between July and December 2015.

**[24]** In December 2015, Trader commenced the Copyright Proceeding seeking declarations that CarGurus had infringed Trader's copyright in relation to some 217,856 photographs added to a website administered by Trader, as well as statutory damages in respect of those infringements.

**[25]** On December 8, 2015, CarGurus removed over 1 million photographs from its website for Vehicle Listings that were not obtained from Feed Providers.

**[26]** The litigation between CarGurus and Trader remains pending and the central issue to be determined in that contested Copyright Proceeding is whether the vehicle photographs contained in the Trader Vehicle Listings do actually enjoy copyright protection.

## C. THE PARTIES' ARGUMENTS

### a. CarGurus

**[27]** In its application for leave, CarGurus argues that Trader is engaged in the following anticompetitive conduct in order to exclude or impede CarGurus' expansion in the downstream market for Digital Marketplaces in Canada (the "**Trader Conduct**"):

- Trader discriminates against CarGurus in respect of the Trader Vehicle Listings that Trader administers by refusing to syndicate those vehicle listings on the usual trade terms made available to other Digital Marketplaces;

- Trader refuses to syndicate to CarGurus Vehicle Listings from dealers who request that Trader does so;

- Trader instructs third parties not to syndicate to CarGurus by threatening to otherwise cut off its syndication to these third parties; and

- Trader improperly asserts copyright and has commenced litigation over thousands of non-copyrightable photographs, in an attempt to litigate CarGurus out of the market for Digital Marketplaces.

**[28]** On this final point, CarGurus adds that, even if Trader's copyright assertions are upheld, Trader's refusal to supply its copyrighted photographs is also violating the Act since such a refusal is more than a mere exercise of copyright because of its cumulative effect on Trader's market power in the provision of Digital Marketplaces.

**[29]** CarGurus contends that as a result of the Trader Conduct, it has been directly and substantially affected in its business through a significant decrease in leads generated for dealers, a reduced conversion rate (i.e., the percentage of visitors to the CarGurus website who contacted at least one dealer about a car for sale) and a drop in detailed views of CarGurus pages leading to a corresponding drop in advertising revenue. CarGurus estimates that the Trader Conduct has reduced CarGurus' revenue by 39% or $75,000 USD to date and that its forgone revenue through the end of 2017 is expected to be $3.7 million USD.

**[30]** CarGurus further argues that the Trader Conduct could be the subject of an order by the Tribunal under each of sections 75, 76 and 77 of the Act.

### i. Section 75

**[31]** CarGurus first asserts that the five elements of section 75 on refusals to deal have been met in the following manner:

- CarGurus is substantially affected in its business and precluded from carrying on business due to its inability to obtain the Trader Vehicle Listings for inclusion on its website on usual trade terms (through a Syndication Agreement);

- CarGurus is unable to obtain adequate supply of Vehicle Listings because the Trader Vehicle Listings are in Trader's sole control and Trader controls at least 42.5% of all Vehicle Listings supplied in Canada;

- CarGurus is willing to meet the usual trade terms of Trader for the syndication of the Trader Vehicle Listings through a commercially reasonable agreement based on Trader's standard trade terms with other Digital Marketplaces;

- Vehicle Listings, and more specifically the Trader Vehicle Listings, are not in limited supply and are regularly supplied by Trader to Digital Marketplaces as a matter of course; and,

- Trader's refusal to deal is having an adverse effect on competition in the downstream market for Digital Marketplaces as Trader Conduct denies the expansion of CarGurus' innovative, consumer-focused website in the market.

### ii. Section 76

**[32]** Turning to section 76 on price maintenance, CarGurus argues that the Trader Conduct could be caught under paragraph 76(3)(a) since Trader is engaged in the business of supplying a "product" (i.e., Vehicle Listings). Additionally, CarGurus pleads that if it is accepted that Trader holds copyright in the photographs appearing in the Trader Vehicle Listings, the Trader Conduct could also be caught under paragraph 76(3)(c) as Trader would have the exclusive rights and privileges conferred by the copyright.

**[33]** CarGurus contends that Trader Conduct breaches subparagraph 76(1)(a)(ii) since Trader has refused to supply the Trader Vehicle Listings to CarGurus in an attempt to keep CarGurus from competing in the downstream market for Digital Marketplaces. CarGurus alleges that Trader is doing so because of CarGurus' low pricing policy for various services, including the "Instant Market Value" produced by CarGurus' mathematical algorithms, and other innovative features.

**[34]** Furthermore, CarGurus argues that the Trader Conduct also falls within subparagraph 76(1)(a)(ii) because it has "otherwise discriminated" against CarGurus by denying it access to the Trader Vehicle Listings and by refusing to deal with it on the standard trade terms granted by Trader to other Digital Marketplaces.

**[35]** CarGurus also alleges that Trader has induced Dealer Dot Com ("**DDC**") and other Feed Providers not to syndicate the Trader Vehicle Listings to CarGurus as a condition of doing business with Trader, thus also contravening subsection 76(8) of the Act.

**[36]** Finally, CarGurus submits that the Trader Conduct has impeded its entry and expansion into the downstream market for Digital Marketplaces in Canada, thereby resulting, or likely to result, in a substantial lessening or prevention of competition.

### iii. Section 77

**[37]** With respect to section 77 on exclusive dealing, CarGurus argues that, as a threshold element, Trader is a "major supplier" of Vehicle Listings in Canada since it is the sole supplier of the Trader Vehicle Listings. It also claims that the exclusivity provisions found in Trader's agreements with dealers and Feed Providers preclude those dealers and other Feed Providers from syndicating their inventory of Vehicle Listings to CarGurus without Trader's consent – which Trader refuses to grant.

**[38]** CarGurus submits that, as a consequence, Trader's exclusive dealing has impeded CarGurus' entry and expansion in the downstream market for Digital Marketplaces in Canada. It claims that this has resulted, and is likely to result, in a substantial lessening of competition in the market.

## b. Trader

**[39]** Trader opposes CarGurus' application for leave. It argues that CarGurus has failed to provide sufficient credible evidence to give rise to a *bona fide* belief that it has been directly and

substantially affected in its business by Trader's actions, or that Trader has engaged in conduct that could be subject to an order under sections 75, 76 or 77 of the Act.

### i. Section 75

**[40]** Regarding refusal to deal, Trader submits that, in evaluating paragraph 75(1)(a), it is proper to query whether the applicant has "other options in terms of supply" and argues that where the applicant has access to an alternative source of supply which the applicant chooses not to pursue, it cannot be said that insufficient competition among suppliers is the "overriding reason" for the refusal. In terms of alternative source of supply, Trader argues that CarGurus can obtain Vehicle Listings from other Feed Providers and/or generate its own content (including photographs). By way of example, it refers to Kijiji as a company that has competed and grown by obtaining Vehicle Listings information from other Feed Providers. It also argues that there is no impediment to CarGurus replicating Trader's capture services.

**[41]** Trader also notes that CarGurus has experienced exponential growth even after Trader asserted its copyright on photographs and launched its Copyright Proceeding.

**[42]** Trader interprets paragraph 75(1)(b) to require that an applicant's inability to "obtain adequate supplies of the product" be causally linked to the "insufficient competition among suppliers of the product in the market". It argues that this provision requires the "insufficient competition among suppliers" be the "overriding reason" why the applicant is unable to obtain adequate supplies of the product. Trader further cites *B-Filer Inc v Bank of Nova Scotia*, 2006 Comp Trib 42 ("***B-Filer***") as stating that "any inference that insufficient competition led to a refusal to deal may be rebutted by evidence that shows an objectively justifiable business reason" that explains the respondent's conduct. In this regard, Trader submits CarGurus' blatant infringement of Trader's copyright is its objectively justifiable business reason.

**[43]** With respect to the criteria under paragraph 75(1)(c), Trader argues that it is customary for Trader and a potential syndication partner to negotiate the terms of their syndication agreement. It emphasized that it is willing to syndicate its copyright content to other competing Digital Marketplaces and does so regularly. It submits that, by choosing copyright infringement over negotiation, CarGurus is not willing to meet Trader's usual and customary trade terms.

**[44]** Trader relies on the Tribunal's decision in *Stargrove Entertainment Inc v Universal Music Publishing Group Canada*, 2015 Comp Trib 26 ("***Stargrove***") in support for its position that relief under paragraph 75(1)(d) is simply not available to CarGurus as the impugned conduct involves the refusal to grant a licence over copyrighted materials.

**[45]** Trader finally argues that CarGurus has failed to provide sufficient credible evidence that the alleged Trader Conduct is likely to have an adverse effect on competition, as required by paragraph 75(1)(e). It submits that the relevant market is (at its narrowest) the downstream market for Digital Marketplaces, which includes numerous websites such as Kijiji, eBay Motors U.S, Edmunds, Canadian Black Book, Cars.com, Wheels.ca, Auto123.com and AutoExpert. It notes that Trader and CarGurus are but two of many competitors in this market.

### ii. Section 76

**[46]** With respect to price maintenance, Trader argues that CarGurus has failed to meet its burden under both subsections 76(1) and 76(8) of the Act.

**[47]** Trader submits that, given the decision in *Commissioner of Competition v Visa Canada Corporation*, 2013 Comp Trib 10 ("***Visa***"), subsection 76(1) requires a "resale" of a product that is "identical or substantially similar" to the product for which price is being allegedly maintained. In this regard, it pleads that CarGurus will oftentimes alter the Trader content before repackaging it and that section 76 does not cover the supply of an "input product".

**[48]** Trader adds that CarGurus has not presented any evidence beyond bald, unsubstantiated allegations that Trader has induced any supplier to refuse supply to CarGurus as required by subsection 76(8).

**[49]** With respect to CarGurus' argument that Trader had "otherwise discriminated" against it, Trader notes that the *Stargrove* decision interpreted that phrase to mean "treating a person differently than another without proper justification". Trader claims that it has not treated CarGurus any differently than any other competitor since it provided CarGurus with their standard form of Syndication Agreement and was anticipating a negotiation. To the extent it has treated CarGurus differently, it is solely because CarGurus had "scraped" Trader's copyrighted content.

**[50]** Trader also contends that CarGurus' application presents no evidence demonstrating that Trader has been motivated by a low pricing policy of CarGurus. Additionally, it denies being motivated by any alleged low pricing policy since it believes that CarGurus' price structure is simply different and not actually "low cost" as compared to Trader's model.

### iii. Section 77

**[51]** With respect to exclusive dealing, Trader argues that CarGurus has failed to provide evidence to support a claim under either paragraph (a) or (b) to the statutory definition of "exclusive dealing" contained in subsection 77(1) of the Act.

**[52]** Trader asserts that it does not have exclusive control over Vehicle Listings and that many of its customers (i.e., automobile dealers) list their vehicles with Trader as well as with other Digital Marketplaces. Trader does not require dealers to deal exclusively or primarily with it. Furthermore, Trader does not preclude CarGurus from developing its own equivalent to Trader's data feed information in partnership with dealers.

**[53]** Trader submits that CarGurus' application contains no evidence, and provides no reasonable inference to suggest, that Trader has induced dealers to meet exclusivity conditions by offering to supply information on more favourable terms or conditions as a result. It argues that there is no evidence that dealers receive a financial benefit in return for dealing exclusively with Trader.

**[54]** Similar to its argument under section 75, Trader also submits that relief under section 77 is simply not available where the alleged exclusivity pertains to a refusal to licence intellectual property.

**[55]** Regarding the issue of the direct and substantial impact on CarGurus' business, Trader submits that CarGurus has not raised more than a mere speculation that its business has been substantially affected and has based its analysis on its own non-certified projections of revenue without providing a basis for those projections and whether they were commercially reasonable. It also claims that the measurements relied on by CarGurus assumes that they would be infringing Trader's copyright as a baseline.

**[56]** Finally, Trader submits that should the Tribunal find that CarGurus has met the leave requirements, the Tribunal should nonetheless decline to exercise its discretion to grant leave. In this regard, it argues that it is not commercially reasonable for CarGurus' infringement of Trader's copyright to be rewarded by an order of the Tribunal that would be tantamount to a compulsory licence.

## III. ANALYSIS

### A. The Leave Test

**[57]** Subsection 103.1(7) of the Act sets out the test for leave on an application under section 75 and 77 of the Act, whereas subsection 103.1(7.1) does the same for section 76 of the Act. They read as follows:

| | |
|---|---|
| **103.1(7)** The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section. | **103.1(7)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles. |
| **103.1(7.1)** The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section. | **103.1(7.1)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu de l'article 76 s'il a des raisons de croire que l'auteur de la demande est directement gêné en raison d'un comportement qui pourrait faire l'objet d'une ordonnance en vertu du même article |

**[58]** Subsection 103.1(7) provides that leave may be granted under sections 75 or 77 if the Tribunal "has reason to believe that an applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section". Subsection 103.1(7.1) is similar but does not include the word "substantially".

**[59]** The approach to the granting of leave for relief under section 75 was recently set out in detail in *Audatex Canada, ULC v CarProof Corporation*, 2015 Comp Trib 28 ("***Audatex***") at paras 42-47. The Tribunal also summarized that approach in *Stargrove* at paras 17-21, in respect of an application relating to sections 75, 76 and 77. I adopt these principles for the purpose of this application for leave.

**[60]** As indicated in those decisions, leave applications under section 103.1 of the Act require the Tribunal to determine whether the application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly (and substantially in the case of sections 75 and 77) affected in its business by the alleged practice, and that the alleged practice could be subject to an order. While the Tribunal's role at the leave stage is to perform a screening function and the evidence is assessed on a standard that is less than the balance of probabilities, the evidence must nonetheless show more than a mere possibility that the business may be directly and substantially affected (*Symbol Technologies Canada ULC v Barcode Systems Inc*, 2004 FCA 339 ("***Barcode FCA***") at para 19).

**[61]** With respect to the first part of the test under subsection 103.1(7) (i.e., being "directly and substantially affected"), it is worth citing the *Audatex* decision at para 45:

> For the "substantial" component, terms such as "important" are acceptable synonyms to considering whether there has been a "substantial" impact, which is ultimately assessed by reviewing the circumstances at issue (*Canada (Director of Investigation and Research) v Chrysler Canada Ltd* (1989), 27 CPR (3d) 1 (Comp. Trib.), aff'd 38 CPR (3d) 25 (FCA) at para 64). In the *Nadeau* decision on the merits, Mr. Justice Blanchard specified that "the Applicant need not demonstrate that it is affected by the refusal to the point of it being unable to carry on its business. Rather, it is required to establish on a balance of probabilities that it is affected in an important or significant way" (*Nadeau Poultry Farm Limited v Groupe Westco Inc et al*, 2009 Comp. Trib. 6 ("*Nadeau Final Order*") at para 131, aff'd 2011 FCA 188).

**[62]** Turning to the second part of the test (whether the conduct "could be the object of an order"), all the elements of the practice must be addressed (*Barcode FCA* at para 19) and the Tribunal must be satisfied that "each of the elements set out in subsection 75(1) could be met when the application is heard on the merits" (*B-Filer Inc v The Bank of Nova Scotia,* 2005 Comp Trib 38 ("***B-Filer Leave***") at para 53). At the leave stage, it is understood that the question of whether the reviewable conduct "could" be subject to an order is being considered in an application which is not supported by a full evidentiary record (*The Used Car Dealers Association of Ontario v Insurance Bureau of Canada,* 2011 Comp Trib 10 ("***Used Car Dealers***") at para 32).

**[63]** Since the current application for leave filed by CarGurus relates not only to section 75 but also to section 76 on price maintenance and section 77 on exclusive dealing, I would simply add that the specific evidence which could be justified under these two other provisions similarly has to focus on the particular elements to be determined by the Tribunal under these restrictive trade practices. The approach under those provisions remains guided by the principles established in *Audatex* and *B-Filer Leave*.



## B. CarGurus' Application under Sections 75 and 77

**[64]** For the reasons that follow, I am not satisfied that CarGurus has met its burden for leave to apply for relief under either section 75 or section 77, as it has not demonstrated that there is reason to believe that it has met the first part of the leave test, namely, that it has been or could be substantially affected in its business by the Trader Conduct. I instead find that CarGurus has failed to submit sufficient, non-speculative and cogent evidence to give me reasonable grounds to believe that the impact of the Trader Conduct on its business could reasonably be considered to constitute a "substantial" effect.

**[65]** It is well-established that the business to be considered on a leave application pursuant to section 75 of the Act is the entire business of the applicant, not simply the product line affected by the refusal to supply (*Sears Canada Inc v Parfums Christian Dior Canada Inc*, 2007 Comp Trib 6 at para 21). The substantiality of the effect must therefore be measured against that whole business. In addition, the case law developed by the Tribunal in applications for leave requires that the effect to be looked at and considered is the impact attributable or linked to those entities whose supply is being refused. Indeed, subsection 103.1(7) refers to the applicant being directly and substantially affected "by the practice".

**[66]** I have assumed, for the purpose of this decision, that CarGurus is "directly" affected in its business by the Trader Conduct.

### a. CarGurus' Evidence on Substantiality

**[67]** CarGurus' argument relating to this first part of the leave test is found at paragraphs 84 to 93 of its Memorandum of Fact and Law and at paragraph 27 of its Reply Memorandum. The evidence in support of that argument is set forth at paragraphs 46 to 54 of the Blue Affidavit and at paragraphs 120 to 124 of the Blue Copyright Affidavit.

**[68]** CarGurus submits that the removal of the Trader photographs and its inability to display the Trader Vehicle Listings has led to less traffic and is generating less leads to dealers, which has negatively affected its revenue realization. It submits that it is substantially affected in the following manner:

- The number of multiple leads CarGurus can generate for dealers has diminished significantly;
- CarGurus has lost 60% of leads for dealers whose Vehicle Listings are related to Trader;
- CarGurus has lost approximately 25% of its overall lead volume;

- CarGurus' conversion rate (i.e., the percentage of visitors to the CarGurus website who contacted at least one dealer about a car for sale) has decreased by 16%; and

- Detailed views of CarGurus' pages have dropped by 31%, leading to a corresponding 31% drop in advertising revenue.

**[69]** CarGurus estimates that, further to those reduced leads, conversion rates and page views, the Trader Conduct has reduced CarGurus' revenues by $75,000 USD or 39% up to the end of March 2016, and that its forgone revenues through the end of 2017 are expected to be $3.7 million USD.

**[70]** It appears that CarGurus assumes a direct (and linear) correlation between the lead volume, number of leads generated by CarGurus' website, the page views and its revenue realization generated through these indicators.

### b. Shortcomings of CarGurus' Evidence

**[71]** There are five major problems with the evidence of substantial effect provided by CarGurus.

**[72]** First, there is no reliable evidence on the proportion of CarGurus' total inventory of Vehicle Listings which is represented by the Trader Vehicle Listings that were deleted from CarGurus' website and that Trader allegedly refuses to supply.

**[73]** The Blue Affidavit (at paragraphs 33, 34, 49 and 56) and the Blue Copyright Affidavit (at paragraphs 67 and 71) refer to Trader as being dominant and having a 42.5 % market share, but there is no clear explanation of how this figure is arrived at and what it actually represents.

**[74]** A review of the record leads the Tribunal to conclude that the 42.5% figure represents Trader's estimated market share in the downstream market where Digital Marketplaces offer their services. It appears that, in its assessment of the substantial effect attributed to the Trader Conduct, CarGurus assumes that this 42.5% market share of Trader in the downstream market can be used as a proxy for Trader's market share in the supply of Vehicle Listings in the upstream market. However, there is no evidence on the overall supply of Vehicle Listings which would allow the Tribunal to verify whether this assumption can be supported, or on the proportion of the overall supply of Vehicle Listings in the online marketing of automobile business that is accounted for by Trader. Nor is there evidence of the proportion of Vehicle Listings supplied to CarGurus that was actually accounted for by Trader and its Trader Vehicle Listings.

**[75]** In other words, the Blue Affidavit does not provide information on the actual supply of Vehicle Listings lost by CarGurus further to Trader's refusal to supply the Trader Vehicle Listings, or on the proportion of CarGurus' total inventory of vehicle listings data represented by Trader. The Blue Affidavit only states that Trader has a dominant 42.5% market share. The Blue Affidavit does not describe the volume of Trader Vehicle Listings that is available or that was supplied by Trader (before CarGurus decided to delete the Trader photographs from its website).

**[76]** I appreciate that there will inevitably be incomplete information on some topics at the application for leave stage (*Used Car Dealers* at para 32). However, sufficient and credible information on the magnitude of the supply of the product at stake and on the proportion represented by the supplier refusing to supply are fundamental and basic elements needed by the Tribunal in order to be able to make a determination on whether the evidence provides the basis for the Tribunal to form a *bona fide* belief of a direct and substantial effect pursuant to subsection 103.1(7) of the Act (*Audatex* at para 68). As indicated in *Audatex*, this type of evidence was typically available to the Tribunal in those cases where it decided to grant an application for leave under section 103.1 of the Act. In *Nadeau Poultry Farm Limited v Groupe Westco Inc et al*, 2008 Comp Trib 7 ("***Nadeau Leave Order***") for example, the evidence of substantial effect was found sufficient by the Tribunal, as the applicant had provided figures showing that the exact supply held by the respondents represented 48% of the overall chicken processing business of Nadeau. This allowed the Tribunal to have a reliable measure of the impact of the intended cut-off in supply, which had not yet occurred in that case.

**[77]** In the current case, the evidence does not clearly indicate to the Tribunal the proportion of the supply represented by Trader in CarGurus' business, or in the upstream market as a whole. As indicated, the principal evidence adduced on this point is with respect to the market share that Trader allegedly represents in the downstream market for Digital Marketplaces where Trader and CarGurus compete.

**[78]** I pause to underline that even the 42.5% market share figure used by CarGurus raises significant concerns, as it appears to be based on a market estimate in which the competitor Kijiji has not been taken into account. Yet, the evidence on the record suggests that Kijiji may be, by far, the largest player in the Digital Marketplaces in Canada. According to CarGurus' own data contained in Exhibit 10 to the Blue Affidavit, Kijiji appears to be the most significant player in the supply of online automotive listings, being 2.5 times as large as Trader in terms of total unique visitors and even much larger if indicators such as total views or total visits are used. Other evidence indicates that Kijiji describes itself as the largest supplier of Vehicle Listings in Canada. Neither the Blue Affidavit nor the Blue Copyright Affidavit provides a satisfactory explanation for excluding that entity from CarGurus' market share estimate. If Kijiji were included in the downstream market for Digital Marketplaces, Trader's estimated market share of 42.5% would drop, by at least half. It remains puzzling to the Tribunal how Kijiji could have been entirely excluded from CarGurus' market share calculations and estimates without a more detailed explanation on its reasons for doing so.

**[79]** The second problem with CarGurus' evidence relates to the actual and expected "reduced revenues" identified by CarGurus, which do not represent an actual drop in existing or anticipated revenues of CarGurus. CarGurus is a new entrant in the Digital Marketplace business in Canada and its evidence on reduced revenues essentially reflects reductions compared to business *projections* it had initially made for its emerging business.

**[80]** The only financial evidence provided by CarGurus is found at Exhibit 11 of the Blue Affidavit. Exhibit 11 does not contain actual profit and loss statements but rather reproduces two different sets of monthly projections of revenues. Exhibit 11 first provides the original "Canada 2015-2017" monthly projections of revenues of CarGurus established in December 2015 and covering the period until December 2017 (the "**Initial Projections**"). It also includes revised

monthly projections made in April 2016, covering the same time period and allegedly reflecting the impact of the refusal to supply of the Trader Vehicle Listings (the "**Revised Projections**"). Finally, Exhibit 11 provides the actual revenues generated by CarGurus' Digital Marketplaces business for a period of six months, up to the month of March 2016.

**[81]** The $75,000 USD reduction in actual revenues as of March 2016 and the estimated anticipated loss of $3.7 million USD up to end of 2017 reflect the difference between actual and projected revenues, or between the two sets of projections made by CarGurus. These are not actual or real reductions in revenues. The reduced revenues claimed by CarGurus to be evidence of "substantial effect" on its business essentially portray projections which are not of the same magnitude as what was initially contemplated and expected.

**[82]** I further note that no support was provided to the Tribunal by CarGurus for these projections of anticipated sales. Indeed, neither Exhibit 11 nor the rest of the Blue Affidavit offer background or explanation on how CarGurus' projections were established, the basis for these projections and how the supply of Vehicle Listings by Trader was factored into these projections.

**[83]** I agree with CarGurus that it is only required to provide "sufficient credible evidence" to satisfy the Tribunal that there is a reasonable possibility that its business may be directly and substantially affected by a refusal to deal. I am also mindful of the fact that CarGurus does not have to wait until harm actually occurs before bringing an application under subsection 103.1 of the Act (*Nadeau Leave Order* at para 25). But sufficient, cogent evidence is needed, even for anticipated harm. Relying on projections to establish a substantial impact on a business under subsection 103.1(7) still requires support in the form of clear and convincing evidence, which CarGurus has not provided. A party relying on projections has the onus to at least provide a basis for those projections.

**[84]** This case is quite different from the situation in *Nadeau Leave Order* where the evidence of substantial effect was found sufficient by the Tribunal. In *Nadeau Leave Order*, supply had not yet ceased, but there was nonetheless sufficient and measurable evidence of the anticipated effects of the refusal. Nadeau had provided figures showing the exact supply held by the respondents, as well as solid financial evidence of the proportion of Nadeau's supply actually represented by the suppliers of chicken who intended to terminate supply. This allowed the Tribunal to find reliable evidence regarding the substantiality of the upcoming refusal on Nadeau's business.

**[85]** This type of evidence has not been offered by CarGurus in this case.

**[86]** In *Mrs. O's Pharmacy v Pfizer Canada Inc*, 2004 Comp Trib 24("***Mrs. O's Pharmacy***"), the Tribunal indicated that simple projections and forecasts are not enough to constitute convincing and credible evidence of substantial effect on an applicant's business. Similarly, CarGurus has not provided hard data on the supply of Vehicle Listings actually accounted for by Trader in the upstream market, nor any hard data on its own lost sales or reduced revenues, save for Exhibit 11 to the Blue Affidavit.

**[87]** It bears underscoring that, at the leave application stage, there must be credible evidence to give the Tribunal a reason to believe that a causal relationship exists between the action of the

supplier and the business consequences for the applicant. When only unsupported projections or forecasts are used, causality becomes speculative as several factors could have an impact on the growth a new business (*Mrs. O's Pharmacy* at para 25). I find that the "projections" evidence adduced by CarGurus only amounts to a mere possibility of substantial effect and is speculative. In a situation like this where the contemplated detrimental effect of the Trader Conduct is through a series of projections for which the assumptions are unknown, I am not satisfied that CarGurus' evidence can be considered as sufficient.

**[88]** The third problem with CarGurus' evidence of substantial effect is that it is alleged to be occurring or to be likely to occur in a context in which CarGurus expects and forecasts its revenues to continuously *increase* until the end of December 2017. As a practical matter, this renders more difficult the Tribunal's assessment of the alleged substantial adverse effects.

**[89]** Whether one looks at the Initial Projections or at the Revised Projections contained in Exhibit 11 to the Blue Affidavit, CarGurus' revenues are projected to increase steadily, every single month, until December 2017. This is true even for the Revised Projections of revenues where the alleged refusal to supply the Trader Vehicle Listings and more generally the Trader Conduct are taken into account. The evidence provided by CarGurus indicates that, under the Initial Projections, monthly revenues were expected to increase from $22,000 in December 2015 to $301,000 in December 2016, and then to $762,000 in December 2017. The Revised Projections represent 50% to 60% of the initial forecast, but CarGurus' revenues are nonetheless projected to increase to $192,000 in December 2016, and to $392,000 in December 2017. Even under those projections which allegedly reflect the impact of the refusal to supply the Trader Vehicle Listings, the revenues generated by CarGurus' Digital Marketplace business are expected to increase every single month throughout the period, though at a slower pace than the initial December 2015 forecast.

**[90]** I appreciate that it is of course more difficult to demonstrate that a refusal to supply or other practice substantially affects a business when the applicant has not been historically supplied by the respondent. But some credible basis for assertions in this regard must nevertheless be provided. I underline that this is not a situation where supported projections of increased revenues did not eventually materialize because of a refusal to supply. CarGurus' case is about revised projections which have not yet been confirmed and have not yet happened.

**[91]** I agree with CarGurus and acknowledge that, in its assessment of the substantial effect, the Tribunal is essentially conducting a "but for" analysis. As the Tribunal recently elaborated in detail in *The Commissioner of Competition v The Toronto Real Estate Board,* 2016 Comp Trib 7 ("***TREB***") at paras 477-483, a "but for" approach involves comparing a situation in the presence of the impugned conduct with a scenario that likely would have prevailed in the absence of such conduct. Therefore, the fact that CarGurus has or would have managed to increase revenues despite the Trader Conduct, or is projecting increasing revenues, does not, in and of itself, act as a bar to CarGurus' case. However, even using a "but for" approach, I am not convinced that there is sufficient credible evidence to conclude that a "substantial effect" exists in this case.

**[92]** The test is not simply whether CarGurus' business would have substantially grown but for the Trader Conduct. The Tribunal must also determine whether the reduced projections attributable to the Trader Conduct are enough to conclude that CarGurus' business could be

negatively affected in an important or significant way. Given the uncertainty about those projections and the lack of support on their basis, and in light of expected increased revenues, I am not persuaded that there is non-speculative evidence supporting such a finding. I am not convinced that CarGurus' evidence showing projections of continuing increasing revenues for a new entrant in the business, despite the refusal to deal or exclusive dealing being complained of, gives rise to a reasonable belief that it is substantially affected in its business.



**[93]** The fourth problem with CarGurus' evidence of substantial effect relates to the actual revenues posted by CarGurus since it entered the Digital Marketplace business in Canada. The limited data provided by CarGurus does not show an adverse effect caused by the Trader Conduct so far.

**[94]** While CarGurus claims in the Blue Affidavit that the 31% drop in detailed page views in December 2015 attributable to the loss of the Trader photographs corresponds to a 31 % decrease in advertising revenues, this is not what the actual revenues reported by CarGurus show. Quite the contrary.

**[95]** There was instead an *increase* in advertising revenues in the months following the termination of the supply of the Trader Vehicle Listings. Exhibit 11 to the Blue Affidavit indicates that CarGurus' monthly revenues coming from the dealer subscription revenues in fact grew from $2,602 in October 2015 to $10,471 in December 2015, and up to $43,895 in March 2016. It is also striking to note that those revenues have increased in each of January, February and March 2016 compared to the previous month, and that they were four times as large in March 2016 as they were in December 2015.

**[96]** In addition to Exhibit 11 to the Blue Affidavit, other evidence provided by CarGurus also suggests that, even after Trader's refusal to supply in December 2015, CarGurus' monthly revenues have continued to increase. The Blue Affidavit reports that CarGurus' monthly advertising revenues have increased from $16,000 in December 2015 to $80,000 in March 2016, despite the Trader Conduct. In the same four-month period, the number of Canadian dealers with advertising packages with CarGurus increased from 39 to 137, and the average amount paid by dealers went from $400/month to $500/month.

**[97]** So, the actual revenues show continuous growth over the first six months of CarGurus's entry in this new line of business.

**[98]** I acknowledge that this evidence is limited to only a few months, but this suggests that other sources of supply of Vehicle Listings have remained and will remain available to CarGurus from Feed Providers and other potential sources. It also illustrates that, even without the Trader Vehicle Listings, CarGurus continued to post growing revenues. This undermines CarGurus' assertion that it has been or is likely to be substantially affected in its business. Furthermore, even the financial projections revised in April 2016 that apparently factor in the Trader Conduct which is the subject of this leave application show continuous growth in sales and revenues, month after month, between now and the end of 2017.

**[99]** It may be that the Revised Projections are not as optimistic as the Initial Projections made prior to December 2015, but such expected growing revenues make it much more difficult for me

to form a *bona fide* belief that CarGurus' business is or may be being substantially affected by the Trader Conduct. As the financial evidence provided by CarGurus shows that actual revenues have been growing month after month since the inception of its business, and have continued to grow since the alleged refusal to deal and exclusive dealing practices are supposed to have affected its business, I am unable to find that the "substantially affected" requirement has been met.

**[100]** Finally, CarGurus claims that the difference between its Revised Projections and the Initial Projections reflects the impact of the Trader Conduct. The problem is that, when the limited evidence on CarGurus' actual revenues is looked at, it shows that the difference between the Initial Projections and the actual revenues posted until the end of March 2016 was of the same magnitude as the difference between the two sets of projections, even before the claimed effect of the Trader Conduct came into play. Looking at the November 2015 data reported by CarGurus (when CarGurus still enjoyed access to the Trader Vehicle Listings), actual revenues represented only 68% of CarGurus' Initial Projections, and that figure was 47% for the December 2015 revenues. It then stood at between 62% and 65% for the first three months of 2016. In other words, the gap between CarGurus' actual revenues and its Initial Projections is in the same range, before and after the Trader Conduct and the refusal to supply the Trader Vehicle Listings.

**[101]** This suggests that the differential (or claimed reduction in revenues) identified by CarGurus may well originate from inaccurate projections of its revenue stream rather than from a decrease attributable to the loss of the Trader Vehicle Listings. This evidence also undermines CarGurus' assertion that the drop in anticipated revenues (and the alleged substantial effect on CarGurus' business) could be attributed to the Trader Conduct. Stated otherwise, the difference between the actual revenues and the forecast appears to be independent from the supply of the Trader Vehicle Listings or absence thereof.

### c. Conclusion regarding Sections 75 and 77

**[102]** In light of the foregoing, I am not persuaded that, when all the evidence adduced by CarGurus is considered, it constitutes sufficient credible evidence to allow the Tribunal to reasonably believe that CarGurus may be directly and substantially affected in its business by the Trader Conduct. It is not sufficient that the evidence shows a mere possibility that the business may be substantially affected. The standard of proof requires the "existence of reasonable grounds for a belief" (*National Capital News Canada v Milliken*, 2002 Comp Trib 41 at paras 9-10). A baldly asserted decrease in the anticipated growth of revenues, compared to an earlier unsupported projection, does not rise to the level of providing the basis for a *bona fide* belief of an actual or likely substantial effect in the assessment of applications for leave under subsection 103.1(7) (*Audatex* at paras 80-84).

**[103]** In addition, on the particular facts of this case, the fact that CarGurus' own projections show a continuous growth in its business notwithstanding its revised figures attributable to the Trader Conduct instead suggests that CarGurus expects to be able to find supplies of Vehicle Listings from sources other than Trader.

**[104]** This finding is fatal to CarGurus' application under both sections 75 and 77 and is dispositive of the leave application with respect to those two provisions of the Act. Since CarGurus has failed to meet the requirement of "directly and substantially affected in the applicant's business", it is not necessary to consider whether CarGurus has adduced sufficient evidence to meet the second part of the test for leave, namely whether each of the elements of subsection 75(1) or section 77 could be met and an order could be issued under the refusal to deal or exclusive dealing provisions.



## C. CarGurus' Application under Section 76

**[105]** Turning to section 76 on price maintenance, subsection 103(7.1) governing applications for leave under that provision only requires that a party has been "directly affected" by the alleged reviewable conduct. For purposes of this application for leave, that requirement is clearly met.

**[106]** I must now turn to the second part of the leave test, which requires that I be satisfied that each of the elements of the price maintenance provision could be met. For the following reasons, I find that CarGurus has not made the case for leave to seek relief under section 76. In brief, I am not persuaded, based on the evidence before me, that all elements set out in section 76 could be met if the application is heard on the merits.

### a. The Section 76 Elements

**[107]** The primary purpose of the price maintenance provisions contained in section 76 of the Act is to allow greater price competition among retailers/dealers by freeing them from pricing restraints which would otherwise be imposed by their suppliers. Section 76 sets out three distinct reviewable trade practices. The first is resale price maintenance (paragraph 76(1)(a)(i)). The second is refusal to supply because of a low pricing policy (paragraph 76(1)(a)(ii)). The third is inducing a supplier to refuse to supply because of a low pricing policy (subsection 76(8)). In all three cases, the conduct can only be subject to an order if it has had, is having or is likely to have, an "adverse effect" on competition in a market.

**[108]** CarGurus' application relates to the second and third trade practices covered by section 76. These each essentially contain five basic requirements. In order to constitute reviewable conduct, there needs to be: 1) a person engaged in the business of producing or supplying a product in Canada (or a person described in paragraphs 76(3)(b) or (c)); 2) a direct or indirect refusal to supply the product, or other discrimination, by such person; 3) a low pricing policy by the person being denied supply; 4) a refusal to supply or other discrimination which is motivated, at least primarily, by such low pricing policy; and 5) and an actual or likely adverse effect on competition in a market. In the case of subsection 76(8), there also needs to be an inducement to another supplier.

**[109]** Under the leave test, CarGurus carries the burden of demonstrating that each of these elements of the price maintenance practice could be met if the application were heard on the merits. The words "could be" connotes a probability, and not only a mere possibility (*Barcode Systems Inc v Symbol Technologies Canada ULC*, 2004 Comp Trib 1 ("***Barcode***") at para 13).

**[110]** I am not satisfied that CarGurus has met the threshold for leave under section 76 of the Act on at least three of the elements of section 76: the requirement that CarGurus has a low pricing policy, the requirement that the refusal to supply the Trader Vehicle Listings is due to CarGurus' low pricing policy, and the actual or likely adverse effect on competition in the downstream market for Digital Marketplaces where CarGurus compete.

### b. The Low Pricing Policy

**[111]** First, I find that there is insufficient credible evidence of CarGurus' alleged low pricing policy and of CarGurus being a low-cost competitor.

**[112]** In order to support an application under section 76(1)(a)(ii) or 76(8), CarGurus must first provide evidence on its own low pricing policy. In this case, the evidence offered in that respect is limited, at best unclear and uncertain, and not convincing. CarGurus simply states in the Blue Affidavit and the Blue Copyright Affidavit that it offers its services either for free or for a lower cost than Trader. Surprisingly, no material evidence has been provided on the actual pricing offered by CarGurus, despite the fact that the existence of a low pricing policy is a key element of its application under section 76.

**[113]** Information regarding CarGurus' pricing is found in paragraphs 27 and 28 of the Blue Affidavit and at paragraphs 55 to 60 of the Blue Copyright Affidavit. At paragraph 27, Ms. Blue indicates that the amount charged by CarGurus varies based on the dealership size, the number the listings and the size of the market. In the following paragraph, Ms. Blue indicates that CarGurus had 39 customers and that their cost per month was "an average of $400".

**[114]** The low pricing policy contemplated by section 76 requires, at the very least, evidence of "low pricing" and of a "policy". Since subparagraph 76(1)(a)(ii) and subsection 76(8) refer to a "policy" rather than a "practice", I accept that an applicant's stated intent with respect to a future course of low pricing conduct may constitute a low pricing policy, even where that person has not yet engaged in the conduct. However, the "low pricing" element must be supported by evidence showing, for example, that an applicant's price is below a supplier's pricing suggestions, that it is less than the price the applicant charges for similar products elsewhere, or that it is lower than the price that other retailers typically charge for similar products. CarGurus has not provided such evidence.

**[115]** The only material evidence of pricing was in fact provided in the Dunbar Affidavit where Mr. Dunbar offered figures indicating that CarGurus' pricing was not lower than many of its competitors in the Digital Marketplaces business.

**[116]** This is a situation quite different from *Used Car Dealers* or *Stargrove* where the evidence provided clearly showed that the applicants in those cases were undoubtedly offering their respective products at a price lower than their competitors ($7 by listing in *Used Car Dealers*, and $5 per CD in the case of *Stargrove*).

**[117]** I am not persuaded that the evidence before me on the alleged low pricing policy of CarGurus constitutes sufficient credible evidence to allow the Tribunal to reasonably believe that CarGurus could meet this element of section 76 and that an order could be issued under that provision. It was CarGurus' burden to provide evidence on this element of section 76, and in fact

CarGurus was best positioned to demonstrate the existence of its own low pricing policy. It has failed to do so.

### c. The Causation Element

**[118]** Second, I do not find that there is sufficient credible evidence that the alleged refusal by Trader to supply the Trader Vehicle Listings is due to or motivated by any low pricing on the part of CarGurus.

**[119]** Paragraph 76(1)(a)(ii) only applies to refusals to supply imposed "because of the low pricing policy" of a person or class of persons. There must therefore be a causal connection between the low pricing policy and the refusal to supply or the discrimination. Historically, in decisions issued under the former criminal price maintenance provision contained in the old section 61 of the Act, Courts have held that the sole and effective reason for the refusal to supply had to be the retailer's low pricing policy (*R v Griffith Saddlery & Leather Ltd.* (1986), 14 CPR (3d) 389 (Ont Prov Ct) at para 24; *R v Andico Manufacturing Ltd* (1983), 4 CPR (3d) 476 (MBQB) at para 47). However, some later decisions moved away from the requirement that the low pricing policy be the only real driving concern. Two decisions involving the real estate industry indeed suggested that the person's low pricing policy could be the main reason behind the refusal to supply or one reason incidental to it, or one of many reasons regardless of priority (*R v 41813 Alberta Ltd* (February 4, 1994), No 9201-13366 (ABQB); *R v Royal LePage Real Estate Services Ltd* (October 28, 1994), No 9201-14125 (ABQB)). In other words, the low pricing policy had to be a proximate cause of the refusal to supply, but other proximate causes could exist. This approach appears to have been retained by the Competition Bureau in its *Price Maintenance Guidelines* issued in 2014 (Canada, Competition Bureau, *Price Maintenance (Section 76 of the Competition Act)* (September 15, 2014) (the "**Guidelines**") at section 3.1.3).

**[120]** This is the first time that the Tribunal has to interpret the terms "because of" the low pricing policy in the context of the new civil price maintenance provision now described at section 76 of the Act. I note that the words "because of" are also used in section 75 on refusal to deal, where relief can be granted if a person is unable to obtain adequate supplies of a product "because of" insufficient competition among suppliers. In the context of section 75, these words have been interpreted by the Tribunal as meaning that insufficient competition needs to be the "overriding reason" for the refusal (*Nadeau Poultry Farm Ltd v Groupe Westco Inc*, 2009 Comp Trib 6, aff'd 2011 FCA 188 ("***Nadeau***") at paras 228-229 and 247; *Canada (Director of Investigation and Research) v Xerox Canada Inc* (1990), 33 CPR (3d) 83 (Comp Trib) at para 83).

**[121]** A similar approach must prevail under section 76. I am therefore of the view that, in order to be successful in an application under paragraph 76(1)(a)(ii) or subsection 76(8), the applicant must demonstrate that the low pricing policy is the overriding reason for the refusal, even though it may not be the only reason. Stated differently, it must be a principal reason for the refusal.

**[122]** In this case, no direct evidence has been provided by CarGurus, such as correspondence from Trader or internal notes reflecting discussions to that effect with Trader, showing that Trader's refusal to supply the Trader Vehicle Listings is motivated or caused in any way by

CarGurus' low pricing policy. I would add that not only has CarGurus failed to provide direct evidence bearing on Trader's motives, but its claim in that respect has been squarely contradicted by Mr. Dunbar in the Dunbar Affidavit, where Mr. Dunbar denied that Trader was motivated in any way by CarGurus' low pricing policy.

**[123]** This, once again, is a situation different from *Stargrove* where the respondents in that application for leave had not produced any evidence in rebuttal and where the Tribunal found that Stargrove had itself provided some circumstantial evidence of motive on the part of the suppliers involved (*Stargrove* at paras 38-39).

**[124]** The Tribunal can of course consider circumstantial evidence when no direct evidence is available (*Used Car Dealers* at paras 44-48). However, such circumstantial evidence must still meet the "requirement that there be sufficient credible evidence to give rise to a *bona fide* belief that the conduct could be subject to an order" (*Used Car Dealers* at para 48). In *Used Cars Dealers*, efforts had been made by the applicant to provide evidence of concerns with the low pricing policy being the driving factor for the termination of the supply. The affidavit submitted in that case referred to circumstantial evidence on price differentials, the actions of a competitor and connections that provided to the applicant reasons to believe that the refusal to supply occurred because of its low pricing policy (*Used Cars Dealers* at paras 46-47). The affidavit submitted tried to provide evidence on the reasons for the refusal to supply and referred notably to the absence of other reasons for terminating supply. The applicant argued that, in the absence of an alternative reason, a reasonable adverse inference could be drawn from such silence and that the low pricing policy could be considered as the driving factor for the refusal.

**[125]** Even though there were some details in the affidavit to support the affiant's belief that the refusal may have been motivated by the low prices of the applicant, the Tribunal was nevertheless not convinced by such circumstantial evidence and could not conclude that there was sufficient credible evidence to show the possibility that the termination was due to a low pricing policy (*Used Cars Dealers* at para 61). The Tribunal thus dismissed the application for leave.

**[126]** In the current case, not only has CarGurus not provided any direct evidence on Trader's motivation but there is no circumstantial evidence on Trader's motives. No efforts or attempts have even been made to refer to circumstantial evidence supporting the proposition that Trader's refusal to supply the Trader Vehicle Listings was due to CarGurus' low pricing policy.

**[127]** It is worth citing the evidence provided by CarGurus in respect of that element of section 76. It is found at paragraphs 40 to 42 of the Blue Affidavit and reads as follows:

> 40. As noted in the First Affidavit at paragraph 110, I believe that Trader views CarGurus as its biggest competitive threat <u>because the CarGurus Website is</u> innovative and CarGurus drives considerable value to dealers and the public, as is proven by CarGurus' U.S. business. CarGurus' IMV ratings range drive consumer traffic and VDP views not only to the CarGurus' Website, but also dealers' websites based on CarGurus' rankings. This provides value to dealers that Trader cannot.

> 41. Moreover, CarGurus offers these services either for free or for a lower cost than Trader offers its own service. For example, CarGurus' basic package, which is offered to dealers free of charge, includes posting dealers' inventory on the CarGurus Website with up to 10 photographs, and allows CarGurus Website users to anonymously email such dealers about their available vehicles for sale.
>
> 42. I believe that Trader's different treatment of CarGurus and its refusal to deal with CarGurus on the usual terms with which it deals with other Digital Marketplaces stems from CarGurus' low pricing policy and from Trader's concern that CarGurus' expansion in the Canadian market would force Trader to compete by providing more innovative products and services and by lowering its prices.
>
> [emphasis added]

**[128]** Similar wording appears at paragraph 99 of CarGurus' Memorandum of Fact and Law and at paragraphs 107 and 108 of its Proposed Notice of Application. I observe that paragraph 110 of the Blue Copyright Affidavit refers to CarGurus' innovative features and how it allows it to expand into the marketplace, but does not contain any reference to CarGurus' low pricing policy.

**[129]** I point out that this is the whole extent of the evidence provided by CarGurus on this causation element of section 76. Indeed, in its Reply Memorandum, when referring to the evidence to support a *bona fide* belief on that issue, CarGurus strictly refers to paragraph 107 of its Memorandum and to paragraphs 41-42 of the Blue Affidavit. No further evidence has been provided to support CarGurus' statements on Trader's motives or on the causal relationship between CarGurus' low pricing policy and Trader's refusal to supply the Trader Vehicle Listings.

**[130]** More specifically, nowhere does the Blue Affidavit refer or allude to efforts or attempts made by CarGurus to obtain evidence of CarGurus' pricing policy being the cause or motivation of the Trader Conduct. Left with such limited evidence and assertions, I can only conclude that there is no credible evidence to support the causation element contained in section 76. True, these are factual issues that would be elaborated and developed in an application on the merits. However, an applicant still needs to provide at least a minimum level of credible evidence on this element of the practice to be granted leave. I am of course mindful that, at the leave stage, and prior to discovery, the means available to CarGurus to find such evidence are more limited. However, it is still a burden that it carries in order to be granted leave. Even at the leave stage, an applicant cannot simply repeat the wording of the Act, provide no evidence in support and expect that such orphaned statements can be sufficient to give the Tribunal the *bona fide* belief it needs to have.

**[131]** The statements contained at paragraphs 40 to 42 of the Blue Affidavit lead me to make two further observations.

**[132]** First, Ms. Blue states at paragraph 42 that she "believe(s)" that the Trader Conduct stems from CarGurus' low pricing policy. The belief of an affiant is not sufficient to establish the level of evidence needed under subsection 103.1(7) or 103.1 (7.1). The applicant has to provide sufficient credible evidence so that the Tribunal has the *bona fide* belief that an order could be made. But the Tribunal's belief cannot simply rely on the applicant's own belief. It has to rely on the applicant's evidence.

**[133]** In *Brandon Gray Internet Services Inc v Canadian Internet Registration Authority*, 2011 Comp Trib 17 ("***Gray***"), the Tribunal indeed stated that a "bald statement of belief" about adverse impact on competition in the market (such as simply stating that the termination of supply will result in reduced competition), without any supporting evidence, was not sufficient, and therefore leave was not granted (*Gray* at para 13).

**[134]** My second observation is this. I find it striking to note that paragraphs 40 to 42 of the Blue Affidavit, and all other references made by CarGurus to the reason for the Trader Conduct and its refusal to supply the Trader Vehicle Listings, never suggest that CarGurus' low pricing policy could be the overriding factor for the Trader Conduct. In fact, the Blue Copyright Affidavit, as the source of the Blue Affidavit, does not even mention CarGurus' low pricing policy. In addition, in every sentence where CarGurus refers to this issue in its evidence, it always alludes to both its low pricing policy and to CarGurus' superior innovative features. There is never a reference made solely to the primary role of CarGurus' low pricing policy. Indeed, paragraphs 40 to 42 of the Blue Affidavit first refer to CarGurus' innovative feature as being the apparent driver of the Trader Conduct and use the word "Moreover" to introduce the concern about the low pricing policy.

**[135]** This is a fundamental deficiency in CarGurus' evidence.

**[136]** Section 76 is the price maintenance provision of the Act. Its purpose is to provide relief in respect of refusals to supply or discriminatory practice motivated by a person's low pricing policy. It aims at reducing the restrictions that a supplier can put on the ability of resellers to compete on price, where those restrictions have, or are likely to have, an adverse impact on competition. The provision cannot be resorted to in order to sanction refusals by a supplier which may be driven by other motives. It may be that a supplier refuses to supply a product based on other behavior which could be found to be anti-competitive. It may be that a supplier would refuse to supply or discriminate against a person because of that person's disrupting innovative marketing practices or products. But this is not what section 76 aims to address. Section 76 applies to refusals or discrimination motivated primarily by the low pricing policy of a person. Had Parliament intended, in section 76, to prohibit refusals to supply primarily motivated by a person's innovative practices, it would have said so. It has not. Section 76 is strictly concerned with a low pricing policy. Other provisions of the Act, such as abuse of dominance, can be invoked to challenge an anti-competitive practice aimed at eliminating or disciplining an innovative new entrant. But that cannot constitute a ground to justify a section 76 application.

**[137]** The low pricing policy must be the overriding or principal cause of the supplier's refusal or discrimination. The Tribunal accepts, as stated by the Competition Bureau in the Guidelines, that a person's low pricing policy need not be the only reason for the refusal or discrimination. However, such low pricing policy has to be the *overriding* or *principal* reason informing and

motivating the supplier's decision. Even if a number of other factors contributing to the refusal are present, there still must be evidence that the low pricing policy plays a material and principal role in the refusal to supply.

**[138]** In this case, I do not find evidence allowing me to reasonably infer that CarGurus' low pricing policy could be the overriding or principal cause of Trader's refusal to supply, as opposed to CarGurus' status as a disruptive innovator. By systematically linking its claimed low pricing policy and its innovative features as the motives allegedly driving the Trader Conduct, CarGurus does not allow me to conclude that the low pricing policy could be the main or principal cause of the Trader Conduct. In fact, CarGurus' own evidence suggests that the overriding reason for the Trader Conduct is CarGurus' innovating features rather than its low pricing policy.

**[139]** This is the wording that CarGurus chose to use in its evidence and in the Blue Affidavit. Considering the evidence submitted, I am therefore not satisfied that CarGurus has met the evidentiary threshold on the causation element of section 76. There is no sufficient credible evidence to give me a *bona fide* belief that CarGurus' low pricing policy, separate and distinct from other competing and innovative features it may have, could be the principal motivation and the overriding factor behind the Trader Conduct and its refusal to supply the Trader Vehicle Listings.

**[140]** I observe in closing that, in addition, there is also ample evidence on the record that the reason driving the Trader Conduct and its refusal to supply the Trader Vehicle Listings is in fact its claim of copyright infringement by CarGurus and the ongoing litigation it commenced against CarGurus in the Copyright Proceeding. It may be that Trader's claim could be denied by the Ontario Superior Court of Justice and that its allegations of copyright infringement relating to the Trader photographs are not upheld by the Court. However, at this stage and in light of the evidence before me in this application for leave, the existence of the Copyright Proceeding provides an objective business reason for the refusal to supply the Trader Vehicle Listings to CarGurus and is yet another factor pointing to an absence of sufficient credible evidence that Trader's refusal to supply is motivated by CarGurus' low pricing policy.

### d. Adverse Effect on Competition

**[141]** Third, I am not convinced that there is sufficient credible evidence to form a *bona fide* belief that the Trader Conduct could have an actual or likely adverse effect on competition in a market.

**[142]** For the purposes of the adverse effect analysis (whether under paragraph 76(1)(b) on price maintenance or paragraph 75(1)(e) on refusal to deal), it is recognized that the relevant market is the market in which the applicant participates, namely the operation of Digital Marketplaces.

**[143]** In *B-Filer*, the Tribunal stated that paragraph 75(1)(e) "requires the assessment of the competitiveness or likely competitiveness of a market with, and without, the refusal to deal" (*B-Filer* at para 200). The Tribunal also considered the concept of "adverse effect on competition" in *Nadeau*. The Tribunal held that, in order to determine whether a refusal to deal would be

likely to have an adverse effect, it was necessary to examine a series of indicators which could vary on a case-by-case basis. In *Nadeau*, these included factors such as market share and market concentration (requiring an assessment of the relevant product and geographic markets), barriers to entry, impact on prices, the effect on rivals' costs, the impact on the quality and variety of the product, possible foreclosure of supply to other processors in the market and the impact of the possible elimination of the applicant from the market.



**[144]** In each of *B-Filer*, *Visa* and *Nadeau*, the Tribunal stated that, in its view, even if the threshold for establishing an "adverse" effect on competition is lower than that for a "substantial" reduction, it still requires evidence that the refusal to deal or price maintenance would have the effect of creating or enhancing a supplier's "market power". For a refusal to deal to have an adverse effect on a market, the Tribunal stated that the "remaining market participants must be placed in a position, as a result of the refusal, of created, enhanced or preserved market power" (*B-Filer* at para 208). In other words, "without market power there can be no adverse effect in a market" (*Nadeau* at para 369; *Visa* at para 350).

**[145]** An assessment of an adverse effect on competition thus requires a consideration of whether the refusal creates, enhances or preserves the market power of the remaining market participants. In *Canada (Director of Investigation and Research) v NutraSweet Co.* (1990), 32 CPR (3d) 1, the Tribunal noted that "[m]arket power is generally accepted to mean an ability to set prices above competitive levels for a considerable period". In that case, the Tribunal recognized that this valid conceptual approach is not one that can be readily applied. It held that the factors that need be considered in evaluating market power will vary from case to case but ordinarily include indicators such as market share and entry barriers (*Nadeau* at para 368). Market power has also been defined in the jurisprudence alternatively in terms of "an ability to set prices above competitive levels and to maintain them at that level for a significant period of time without erosion by new entry or expansion of existing firms," and "the ability to profitably influence price, quality, variety, service, advertising, innovation or other dimensions of competition" (*TREB* at para 165).

**[146]** In this case, there is very limited evidence in the Blue Affidavit on the issue of adverse effect of the Trader Conduct on competition. At paragraph 59 of the Blue Affidavit, Ms. Blue simply states that: "If Trader continues its current practices, the percentage of the market it controls will only increase with time as it enters into exclusive agreements with additional dealers and Feed Providers, shutting CarGurus out of the market." And there are the various references mentioned above relating to the alleged 42.5% market share of Trader. No specific assessment was made by CarGurus on the likely geographic or product market at stake.

**[147]** The Tribunal could conservatively assume that the relevant market in this case is the narrowest market in which CarGurus operates, namely the Canadian Digital Marketplaces. Assuming that is the case, the evidence on the record shows that there are at least 10 businesses or competitors in Canada offering Digital Marketplace services and competing in this downstream "market," including Kijiji and Trader as the two major and leading players. The evidence provided does not allow the Tribunal to clearly measure the size of the downstream market which CarGurus claims will be affected by Trader's refusal to supply, or the market power of participants absent CarGurus' participation. However, looking at Exhibit 10 to the Blue

Affidavit, the evidence indicates that the market for Digital Marketplaces is quite competitive, with two leading competitors (Kijiji and Trader) and a series of smaller ones.

**[148]** From the information on the number and size of competitors in Exhibit 10, it is apparent that CarGurus is a fairly minor competitor for the time being. There is also no evidence of the market share or relative size that CarGurus would likely achieve in the foreseeable future in the absence of the Trader Conduct. This is therefore not a situation where a major competitor would be eliminated by the Trader Conduct. In fact, CarGurus' own projections rather indicate that, even without access to the Trader Vehicle Listings, it will continue to expand and will arguably increase its presence and market share in the business, be it at a slower growth rate.

**[149]** I am therefore not satisfied that CarGurus has provided sufficient credible evidence that the refusal to supply the Trader Vehicle Listings could create, enhance or preserve market power of any entity in the Digital Marketplaces market. It is not a situation similar to *Nadeau* where evidence had been provided that the anticipated refusal to supply would displace a major competitor in the downstream market (Nadeau) and eliminate it as a main competitor of the leading players in the business.

**[150]** As the Tribunal indicated in *Audatex*, the requirement of an actual or likely adverse effect on competition is a key dimension of the private recourses available under sections 75 or 76 of the Act. The Tribunal stated the following at paragraph 50 of that decision:

> While sections 75 and 103.1 provide for a private right of action for refusals to deal, they are part of the Act and must be considered in the context of this legislation and what it aims to protect and accomplish. As Mr. Justice Rothstein said in *Barcode FCA*, "[the] basic purpose of the *Competition Act* as described in subsection 1.1 is 'to maintain and encourage competition in Canada' and the purpose of section 75 is in furtherance of that objective" (*Barcode FCA* at para 14). He elaborated on that point further in his reasons, restating the purpose of the Act to maintain and encourage competition and adding that "[i]t is not to provide a statutory cause of action for the resolution of a dispute between a supplier and a customer that has no bearing on the maintenance or encouragement of competition" (*Barcode FCA* at para 23).

**[151]** The requirement of an adverse effect on competition reflects the fact that the private application provisions of the Act are not there to arbitrate private contractual disputes relating to the supply of a product in circumstances where a refusal to supply does not have a market impact. The adverse competitive effect has to be more than an impact on CarGurus' business, as this is already captured by the requirement that the applicant be substantially affected by the refusal to supply. The evidence has to have a market dimension. As the Tribunal stated in *Nadeau* at para 368, the requirement that the practice is "likely to have" an adverse effect means that there is a requirement to establish the likelihood that an adverse effect is probable and not merely possible.

**[152]** Here, CarGurus is a new entrant. Evidence needed to demonstrate that there could be an adverse effect on competition in these circumstances is arguably more difficult to meet. But it is still the burden of the applicant to bring forward sufficient credible evidence to give the Tribunal

a *bona fide* belief that this requirement of section 76 could be met. In light of the market structure for the operation of Digital Marketplaces in Canada, the presence of two leading competitors and numerous other smaller ones, and the relatively small, but growing, size of CarGurus, I am not satisfied that sufficient credible evidence has been produced by CarGurus to support a *bona fide* belief that holding CarGurus out of the Digital Marketplaces market or limiting its expansion could have an adverse effect on competition in the market.



### e. Conclusion regarding Section 76

**[153]** For all these reasons, I conclude that the Tribunal "could" not make an order under section 76 requiring Trader to supply CarGurus when the application is heard on the merits, as insufficient evidence has been provided on at least three elements set out in the price maintenance provision.

## IV. CONCLUSION

**[154]** For the reasons discussed above, CarGurus' application for leave is not supported by sufficient credible evidence to give rise to a *bona fide* belief that CarGurus may be or is substantially affected in its business by the alleged refusal to supply or exclusive dealing by Trader. Accordingly, CarGurus' application for leave to apply under section 75 and 77 of the Act is denied.

**[155]** Similarly, the Tribunal concludes that it could not make an order under section 76 of the Act as the evidence on at least three elements of the price maintenance provision is insufficient to give rise to a *bona fide* belief that CarGurus could meet them.

**FOR THE ABOVE REASONS, THE TRIBUNAL ORDERS THAT**:

**[156]** The application seeking leave for relief under sections 75, 76 and 77 of the Act is dismissed.

**[157]** The respondent Trader is awarded costs against the applicant CarGurus, at the mid-point of Column III of the table to Tariff B of the *Federal Courts Rules*, SOR/98-106.

DATED at Ottawa, this 14th day of October 2016.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

**COUNSEL:**

For the applicant:

CarGurus, Inc.

Nikiforos Iatrou
Bronwyn Roe

For the respondent:

Trader Corporation

Michael Koch
Peter Ruby
Hannah Arthurs

# 9

Competition Tribunal | Tribunal de la Concurrence

**PUBLIC VERSION**



Reference: *The Commissioner of Competition v. CCS Corporation et al.*, 2012 Comp. Trib. 14
File No.: CT-2011-002
Registry Document No.: 189

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an Order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by CCS Corporation of Complete Environmental Inc.

B E T W E E N:

**The Commissioner of Competition**
(applicant)

and

**CCS Corporation, Complete Environmental Inc., Babkirk Land Services Inc., Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey, and Thomas Craig Wolsey**
(respondents)

Dates of hearing: Nov.16-18, Nov.22-25, Nov.29 - Dec.2, and Dec.13&14, 2011
Before: S. Simpson J. (Chairperson), P. Crampton C.J. and Dr. W. Askanas
Date of reasons and order: May 29, 2012
Reasons and order signed by: S. Simpson J. (Chairperson), P. Crampton C.J. and Dr. W. Askanas
Concurring reasons signed by: P. Crampton C.J.

**REASONS FOR ORDER AND ORDER**

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## A. EXECUTIVE SUMMARY

**[1]** The Tribunal has decided on a balance of probabilities that the Merger is likely to prevent competition substantially in the market for the supply of secure landfill services for solid hazardous waste from oil and gas producers in a geographic market which, at a minimum, is the area identified by CCS' expert, Dr. Kahwaty, as the "Potentially Contestable Area".

**[2]** The Tribunal has concluded that CCS is a monopolist in the geographic market and that it exercises significant market power which is being maintained as a result of the Merger.

**[3]** Although Dr. Baye, the Commissioner's expert, suggested a wide range of likely price decreases in the absence of the Merger, the Tribunal has found that a decrease in average tipping fees of at least 10% was prevented by the Merger.

**[4]** There is significant time and uncertainty associated with entry. The Tribunal has concluded that effective entry would likely take a minimum of 30 months from site selection to the completed construction and operation of a secure landfill in the relevant market.

**[5]** The Tribunal has also decided that, in the absence of the Merger, the Vendors would likely not have sold the Babkirk Facility in the summer of 2010 but would have operated it themselves and would have constructed a new secure landfill with a capacity of 125,000 tonnes by October of 2011. This landfill would likely have operated as a complement to the Vendors' bioremediation business until no later than October 2012.

**[6]** The Tribunal has also concluded that the Vendors' bioremediation business would likely have been unprofitable and that by October 2012, the Vendors would likely have changed their business plan to significantly focus on the secure landfill part of their business or would have sold the Babkirk Facility to a secure landfill operator. In either case, no later than the spring of 2013, the Babkirk Facility would have operated in meaningful competition with CCS' Silverberry secure landfill. It is the prevention of this competition by the Merger which constitutes a likely substantial prevention of competition.

**[7]** The efficiencies claimed by CCS do not meet the requirements of section 96 of the Act.

**[8]** Divestiture is an effective remedy and is the least intrusive option.

**[9]** The application has been allowed. The Tribunal has ordered CCS to divest the shares or assets of BLS.

**[10]** In dealing with the facts of this case, the Tribunal's conclusions were all based on an analysis of whether the events at issue were likely to occur.

## B. INTRODUCTION

**[11]** The Commissioner of Competition (the "Commissioner") has applied for an order under section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act"), dissolving a transaction in which CCS Corporation ("CCS") acquired the shares of Complete Environmental Inc. ("Complete") and ownership of its wholly-owned subsidiary Babkirk Land Services Inc. ("BLS") on January 7, 2011 (the "Merger"). In the alternative, the Commissioner requests a divestiture order requiring CCS to dispose of the shares or assets of BLS in a manner to be directed by the Tribunal.

**[12]** In her application (the "Application"), the Commissioner alleges that the Merger is likely to prevent competition substantially in the market for hazardous waste disposal services in North-Eastern British Columbia ("NEBC") because, at the date of the Merger, Complete was a poised entrant by reason of having obtained the regulatory approvals needed to operate a secure landfill for hazardous solid waste on a site at Mile 115, Alaska Highway, Wonowon, B.C. (the "Babkirk Site").

**[13]** Pending the Tribunal's decision on this application, CCS undertook to maintain all approvals, registrations, consents, licenses, permits, certificates and other authorizations necessary for the operation of a hazardous waste disposal facility (the "Babkirk Facility" or "Babkirk") on the Babkirk Site. Complete's other assets and businesses were not subject to this undertaking.

## C. THE PARTIES

**[14]** The Commissioner is the public official who is responsible for the enforcement of the Act.

**[15]** CCS is a private energy and environmental waste management company. Its customers are mainly oil and gas producers in Western Canada. CCS owns the only two operating secure landfills in NEBC that are permitted to accept solid hazardous waste. One is the Silverberry secure landfill ("Silverberry"). It opened in 2002. It is located approximately 50 km north-west of Fort St. John. The other is called Northern Rockies secure landfill ("Northern Rockies"). It opened in 2009 and is situated about 340 km northwest of Silverberry, about 260 km from the Babkirk Site and approximately 20 km south of Ft. Nelson. CCS also operates a variety of different types of secure landfills in Alberta and Saskatchewan and owns a separate waste management business called Hazco Waste Management ("Hazco"). Schedule "A" hereto is a map showing the locations of the landfills which are relevant to this Application.

**[16]** BLS was founded in 1996 by Murray and Kathy Babkirk (the "Babkirks"). BLS operated a facility which was not a secure landfill. It had a permit for the treatment and short-term storage of hazardous waste on the 150 acre (approx.) Babkirk Site. It is located approximately 81 km or 1 ½ hours by car, northwest of Silverberry. The Babkirks operated their facility for approximately six years under a permit from the British Columbia Ministry of the Environment

("MOE") which was issued in 1998. However, in 2004, they stopped accepting waste. Two years later, the Babkirks retained SNC Lavalin ("SNCL") to prepare the documents BLS needed to apply for permits for the construction of a secure landfill capable of accepting solid, hazardous waste at the Babkirk Site.

**[17]** The individual Respondents are the former shareholders of Complete who sold their shares to CCS in the Merger. Karen and Ron Baker are married and Ken Watson is their son-in-law. Tom Wolsey is Randy Wolsey's father. The former shareholders will be referred collectively as the "Vendors". All the Vendors, except Tom Wolsey, gave evidence in this proceeding.

**[18]** In November of 2006, Randy Wolsey, acting on his own behalf and on behalf of other individual Respondents, negotiated a "handshake agreement" with the Babkirks to purchase the shares of BLS. The deal was conditional on BLS obtaining approval for the secure landfill from the Environmental Assessment Office ("EAO"). In April 2007, the Vendors incorporated Complete (initially called Newco) to be the company that would eventually purchase the shares of BLS. After an extensive process of consultation and review, the EAO issued a certificate (the "EA Certificate") to BLS on December 3, 2008. Four months later, in April 2009, Complete acquired all the outstanding shares of BLS and it became a wholly-owned subsidiary of Complete. Thereafter, on February 26, 2010, BLS received a permit from the MOE authorizing the construction of a secure landfill, with a maximum storage capacity of 750,000 tonnes, and a storage and treatment facility with a maximum capacity of 90,000 tonnes (the "MOE Permit").

**[19]** At the time of the Merger, Complete had other business interests. It operated municipal solid waste landfills for the Peace River Regional District as well as a solid waste transfer station. In addition, it owned a roll-off container rental business (the "Roll-off Bin Business"). Since the Merger, those businesses have been operated by Hazco.

**[20]** CCS, Complete and BLS will be described collectively as the "Corporate Respondents".

## D. THE PARTIES' POSITIONS

### The Commissioner

**[21]** The Commissioner alleges that because CCS owns the only two operational secure landfills for solid hazardous waste in NEBC, it has a monopoly and associated market power which allows it to price discriminate between different customers and set the prices for hazardous waste disposal above a competitive level. These prices are known as "Tipping Fees".

**[22]** The Commissioner alleges that Complete was ready to enter the market for secure landfill services in NEBC and that it was likely that competition between Complete and CCS would have caused a decline in average Tipping Fees in NEBC of at least 10%. Alternatively, the Commissioner alleges that the Vendors would have sold Complete to a purchaser which would have operated a secure landfill in competition with CCS. Finally, the Commissioner maintains that any efficiencies associated with the Merger are likely to be *de minimis*.

### The Respondents

**[23]** The Vendors submit that their sale of Complete was not a Merger under the Act because there was no business in operation at the Babkirk Site. They also deny (i) that Complete was poised to enter the market for the direct disposal of hazardous waste into a secure landfill and (ii) that, in the absence of the Merger, an alternative buyer would have purchased Complete and operated a secure landfill. The Respondents maintain that if the Vendors had not sold Complete to CCS, they would likely have processed hazardous waste at the Babkirk Facility using a treatment technique called bioremediation. This type of treatment would have been complemented by a half cell (125,000 tonnes) of secure landfill. The secure landfill would only have been used to store the small amount of hazardous waste that could not be successfully treated, and would not have been used to engage in meaningful competition with CCS in respect of the supply of secure landfill services.

**[24]** The Corporate Respondents challenge both the Commissioner's interpretation of CCS' pricing behaviour and her prediction of the anti-competitive effects she has alleged would likely result from the Merger. Among other things, they allege that the Commissioner's approach to market definition is fundamentally flawed and that the area in which there is scope for competition between the Babkirk and Silverberry facilities is, at best, limited to the very small "Potentially Contestable Area" identified by CCS' expert, Dr. Kahwaty (the "Contestable Area").

**[25]** The Corporate Respondents also submit that the efficiencies resulting from the Merger are likely to be greater than, and will offset, the effects of any prevention of competition brought about by the Merger. They further argue that the Commissioner failed to meet her burden of quantifying the deadweight loss as part of her case in chief. As a result, they say that the Tribunal should conclude that the Merger is not likely to result in any quantifiable effects.

**[26]** Finally, all the Respondents submit that if there is to be remedy, it should be divestiture, rather than dissolution.

## E. THE EVIDENCE

**[27]** Attached as Schedule "B" is a list of the witnesses who testified for each party and a description of the documentary evidence.

## F. INDUSTRY BACKGROUND

**[28]** The management of solid hazardous waste generated by oil and gas operators is regulated in British Columbia by the *Environmental Management Act*, SBC 2003, c 53 (the "EMA") and regulations. If the waste produced meets the definition of "hazardous waste" found in the *Hazardous Waste Regulation*, (B.C. Reg. 63/88) (the "HW Regulation"), oil and gas operators wishing to dispose of hazardous waste must do so within the confines of the legislative framework. The MOE is responsible for administering the EMA and HW Regulation.

Hereinafter, hazardous waste as defined in the HW Regulation which is solid will be described as "Hazardous Waste".

**[29]** Under the HW Regulation, a person must receive a permit from the MOE to operate a facility called a secure landfill that can accept Hazardous Waste for disposal. A "secure landfill" is defined in the HW Regulation as a disposal facility where Hazardous Waste is placed in or on land that is designed, constructed and operated to prevent any pollution from being caused by the facility outside of the area of the facility ("Secure Landfill").

**Disposal at Secure Landfills**

**[30]** Oil and gas drilling operators (also called waste generators) produce two major types of Hazardous Waste that can be disposed of at a Secure Landfill: contaminated soil and drill cuttings. The contaminants are typically hydrocarbons, salts, and metals.

**[31]** Hydrocarbons are categorized as light-end hydrocarbons and heavy-end hydrocarbons. The evidence shows that Hazardous Waste often includes hydrocarbons of both types.

**[32]** Oil and gas generators can contaminate soil with salt when, among other things, they inadvertently spill produced water or brine. Produced water is water that has been trapped in underground formations and is brought to the surface along with the oil or gas. Metals can be found in Hazardous Waste because they occur naturally or because they have been included in additives used in drilling.

**[33]** The HW Regulation states that a Secure Landfill cannot be used to dispose of liquid hazardous waste.

**[34]** Hazardous Waste from "legacy sites" can also be disposed of at Secure Landfills. Dr. Baye defined legacy waste as "accumulated waste from decades of drilling activity that has been left at the drilling site" ("Legacy Waste").

**[35]** Operators pay third-party trucking companies to transport Hazardous Waste to Secure Landfills. Transportation costs are typically a substantial portion of waste generators' overall costs of disposal. Dr. Baye estimated that a generator would pay $4 to $6 per tonne for every hour spent transporting waste from, and returning to a generator's site.

**[36]** At the hearing, Mr. **[CONFIDENTIAL]** and Mr. **[CONFIDENTIAL]**, indicated that no ongoing liability is shown on their books once Hazardous Waste is sent to Secure Landfills, even though generators could be liable if a Secure Landfill operator goes bankrupt or if the landfill fails and Hazardous Waste leaches out of the facility.

**[37]** The MOE has issued five permits for Secure Landfills. Four of them are in NEBC and are currently valid: Silverberry, Northern Rockies, Babkirk and Peejay.

**[38]** Silverberry has a permitted capacity which allows it to accept 6,000,000 tonnes of waste. At 1.52 tonnes per cubic meter, which is the same figure used to calculate tonnes at Silverberry,

Northern Rockies' permitted capacity is 3,344,000 tonnes. In 2010, **[CONFIDENTIAL]** tonnes of Hazardous Waste was tipped at Silverberry and, in that year, Northern Rockies accepted **[CONFIDENTIAL]** tonnes.

**[39]** Tipping Fees vary depending on the type of waste. According to the evidence given by Dr. Baye, the average Tipping Fee for all substances at Silverberry was **[CONFIDENTIAL]** per tonne in 2010 and the average Tipping Fee for all waste tipped at Northern Rockies in the same year was **[CONFIDENTIAL]** per tonne.

**[40]** Peejay is located in a relatively inaccessible area near the Alberta border. It was developed by a First Nations community to serve nearby drilling operators such as Canadian Natural Resources Limited ("CNRL"). Construction specifications and an operational plan for Peejay were approved by the MOE on March 11, 2009. However, the Secure Landfill has not yet been constructed and there may be financial difficulties at the project.

**[41]** There are presently no Secure Landfills in operation in NEBC which are owned by oil and gas generators.

**Bioremediation - Methodology**

**[42]** Bioremediation is a method of treating soil by using micro-organisms to reduce contamination. The microbes can be naturally occurring or they can be deliberately added to facilitate bioremediation. In NEBC, bioremediation usually takes place on an oil and gas producing site where the waste is generated. Bioremediation can also be undertaken offsite but the evidence indicates that there are no offsite bioremediation facilities currently operating in NEBC.

**[43]** A common bioremediation technique is landfarming. In landfarming, contaminated waste is placed on impermeable liners and is periodically aerated by being turned over or tilled. The landfarming technique the Vendors planned to use involves turning soil to create windrows which are **[CONFIDENTIAL]** triangular-shaped piles of soil **[CONFIDENTIAL]**.

**[44]** The preponderance of the evidence showed that, given sufficient time, light-end hydrocarbons can be successfully bioremediated in NEBC despite the cold if the clay soil is broken up. However, the Tribunal has concluded that soil contaminated with heavy-end hydrocarbons is not amenable to cost effective bioremediation because it is difficult, unpredictable, and very time consuming. Further, waste contaminated with metals and salts cannot be effectively bioremediated with technologies currently approved for use in Canada.

**[45]** Once bioremediation is complete, an operator will normally hire a consultant to determine whether the Hazardous Waste can be certified as "delisted" in accordance with a delisting protocol. If so, there is no further liability associated with that particular waste.

**[46]** Mr. Watson testified that his company, Integrated Resource Technologies Ltd. ("IRTL"), had successfully bioremediated hydrocarbon-contaminated soil throughout the winter in NEBC

and Northern Alberta. Since about 2002, he has been using a specially designed machine from Finland, the "ALLU AS-38H". This machine **[CONFIDENTIAL]** is capable of breaking up heavy clay so that bacteria can enter the windrow and consume the hydrocarbon contaminants.

## G. THE ISSUES

**[47]** The following broad issues are raised in this proceeding:

1. Is CCS' acquisition of Complete a "merger"?
2. What is the product dimension of the relevant market?
3. What is the geographic dimension of the relevant market?
4. Is the Merger Pro-Competitive?
5. What is the analytical framework in a "prevent" case?
6. Is the Merger likely to prevent competition substantially?
7. What is the burden of proof on the Commissioner and on a Respondent when the efficiencies defence is pleaded pursuant to section 96 of the Act?
8. Has CCS successfully established an efficiencies defence?
9. Is the appropriate remedy dissolution or divestiture?

### ISSUE 1 IS CCS' ACQUISITION OF COMPLETE A MERGER?

**[48]** As a threshold matter, the Vendors submit that the Application should be dismissed because, at the date of the Merger, Complete was not a "business" within the meaning of section 91 of the Act, given that it was not actively accepting and treating Hazardous Waste, and was not otherwise operational in relation to the supply of Secure Landfill services. Instead, they maintain that Complete was simply an entity which held the assets of BLS, i.e. permits and property. Accordingly, the Vendors' position is that, because CCS acquired assets which had not yet been deployed, it did not acquire a "business", as contemplated by section 91 of the Act. The Vendors also submit that the other businesses owned by Complete and acquired in the Merger are not relevant for the purposes of this Application because the Commissioner does not allege that they caused or contributed to a substantial prevention of competition.

**[49]** A merger is defined in section 91 as the acquisition of a "business". The section reads as follows:

| | |
|---|---|
| In sections 92 to 100, "merger" means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person. | Pour l'application des articles 92 à 100, « fusionnement » désigne l'acquisition ou l'établissement, par une ou plusieurs personnes, directement ou indirectement, soit par achat ou location d'actions ou d'éléments d'actif, soit par fusion, association d'intérêts ou autrement, du contrôle sur la totalité ou quelque partie d'une entreprise d'un concurrent, d'un fournisseur, d'un client, ou d'une autre personne, ou encore d'un intérêt |

relativement important dans la totalité ou quelque partie d'une telle entreprise.

**[50]** Business is defined as follows in subsection 2(1) of the Act (the "Definition"):

| | |
|---|---|
| "business" includes the business of | « entreprise » Sont comprises parmi les entreprises les entreprises : |
| (*a*) manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and | *a*) de fabrication, de production, de transport, d'acquisition, de fourniture, d'emmagasinage et de tout autre commerce portant sur des articles; |
| (*b*) acquiring, supplying and otherwise dealing in services. | *b*) d'acquisition, de prestation de services et de tout autre commerce portant sur des services. |
| It also includes the raising of funds for charitable or other non-profit purposes. | Est également comprise parmi les entreprises la collecte de fonds à des fins de charité ou à d'autres fins non lucratives. |



**[51]** The Tribunal notes two features of the Definition. First, it uses the word "includes", which means that it is not exhaustive. Second, unlike the definitions of the term "business" found in statutes such as the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), the Definition makes no reference to generating profits or revenues.

**[52]** Turning to the facts, it is the Tribunal's view that, for the reasons described below, Complete was actively engaged in the development of the Babkirk Site as a hazardous waste treatment facility.

**[53]** Before the Merger, Complete had taken the following steps:

- It had purchased the shares of BLS, thereby acquiring the EA Certificate and the Babkirk Site;
- It had continued the application process and had secured the MOE Permit;
- It had held numerous shareholders' meetings to plan how the Babkirk Site would be developed as a bioremediation facility and how that facility would operate in conjunction with other businesses owned by the Vendors;
- Its shareholders had discussed bioremediation with Petro-Canada and had solicited its interest in becoming a customer for both bioremediation and Secure Landfill services;
- It had hired IRTL and had paid it **[CONFIDENTIAL]** to bioremediate the soil in cell #1 at the Babkirk Facility. This work was undertaken because it was a condition precedent to the construction of the half cell of Secure Landfill;
- It was developing an operations plan for the Babkirk Facility.

**[54]** In the Tribunal's view, these activities demonstrate that Complete was engaged in the business of developing the Babkirk Site as a Hazardous Waste treatment service that included a Secure Landfill. Since the Definition is not exhaustive, the Tribunal has concluded that it

encompasses the activities in which Complete and its shareholders had been engaged at the time of its purchase by CCS. Further, the absence of a requirement for revenue in the Definition suggests to the Tribunal that it covers a business in its developmental stage.

**[55]** For all these reasons, the Tribunal has concluded that Complete was a business under section 91 of the Act at the date of the Merger.

**[56]** In view of this conclusion, it is not necessary to decide whether Complete's Roll-off Bin Business or its management of municipal dumps could be businesses for the purposes of section 91 of the Act.

**[57]** However, in the Chairperson's view, a business being acquired in a merger must have some relevance to a Commissioner's application. In other words, it must have the potential to impact competition in the markets at issue. This observation means that, in this case, Complete's Roll-off Bin Business and its management of municipal dumps would not have been caught by the definition in section 91 because they are not involved in any way in the disposal or treatment of Hazardous Waste. In his separate reasons, Crampton C.J. has taken a different position on this point.

## ISSUE 2 WHAT IS THE PRODUCT DIMENSION OF THE RELEVANT MARKET?

### The Analysis

**[58]** In defining relevant markets, the Tribunal generally follows the hypothetical monopolist approach. As noted in *Commissioner of Competition v. Superior Propane*, 2000 Comp. Trib. 15, 7 C.P.R. (4th) 385 (Comp. Trib.) ("*Propane 1*"), at para. 57, the Tribunal embraces the description of that approach set forth at paragraph 4.3 in the Commissioner's Merger Enforcement Guidelines ("MEGs"), which state:

> Conceptually, a relevant market is defined as the smallest group of products, including at least one product of the merging parties, and the smallest geographic area, in which a sole profit-maximizing seller (a "hypothetical monopolist") would impose and sustain a small but significant and non-transitory increase in price ("SSNIP") above levels that would likely exist in the absence of the merger.

**[59]** The price that would likely have existed in the absence of or "but for" the merger in a "prevent case" is the Base Price. The burden is on the Commissioner to demonstrate the "Base Price". In this case, Dr. Baye has predicted a decrease in Tipping Fees in the absence of the Merger of at least 10% and in some of his economic modelling the price decrease is as large as 21%. In *The Commissioner of Competition v. Canadian Waste Services Holdings Inc.*, 2001 Comp. Trib. 3; 11 C.P.R. (4th) 425; aff'd 2003 FCA 131, at para. 92, the Tribunal observed that, when a price change can be predicted with confidence, it is appropriate to delineate markets based on the likely future price even if the future level of that price cannot be predicted precisely.

In such cases, it may be sufficient for the Commissioner to demonstrate a range in which the likely future price would have fallen.

**[60]** However, if a reasonable approximation of the likely future price cannot be demonstrated, it may be difficult for the Tribunal to clearly define the boundaries of the relevant market. In such cases, it will nevertheless be helpful for the Tribunal to be provided with sufficient evidence to demonstrate why substitutes that appear to be acceptable at the prevailing price level would or would not remain acceptable at price levels that would likely exist "but for" the merger or anti-competitive practice in question. In any event, evidence about various practical indicia is typically required to apply the hypothetical monopolist approach. The Tribunal recognizes that, like other approaches to market definition, the hypothetical monopolist approach is susceptible to being somewhat subjective in its practical application, in the absence of some indication of what constitutes a "small but significant and non-transitory increase in price" (SSNIP). For this reason, objective benchmarks such as a five percent price increase lasting one year, can be helpful in circumscribing and focusing the inquiry.

**[61]** In the Application at paragraph 11, the Commissioner alleged that "[t]he anti-competitive effects of the Merger "primarily" affect oil and gas companies disposing of Hazardous Waste produced at oil and gas fields within NEBC." [our emphasis]. However, in his initial report Dr. Baye did not limit the product market to Hazardous Waste produced at oil and gas fields. Nevertheless, during the hearing, Dr. Baye and Dr. Kahwaty essentially agreed that the amount of solid hazardous waste generated by non-oil and gas sources and tipped at Secure Landfills in British Columbia is so small that it does not warrant consideration in these proceedings. Accordingly, in the Tribunal's view, the Commissioner's product market definition is "solid hazardous waste generated by oil and gas producers and tipped into secure landfills in NEBC".

**[62]** However, the Respondents deny that the product market is as narrow as the Commissioner suggests. They say that it also includes bioremediation and the storage or risk management of waste on the sites where the waste was generated. They assert that these options constrain any market power that CCS may have. We will deal with these positions in turn.

**Evidence about the Use of Bioremediation**

**[63]** Bioremediation has been described above and the evidence is clear that it is not an acceptable substitute for generators of Hazardous Waste if soil is contaminated with salts or metals. The Tribunal also accepts that, if heavy-end hydrocarbons are present, bioremediation is not cost effective or successful in a reasonable timeframe.

**[64]** Mr. Andrews gave evidence about the use of bioremediation. He joined the MOE in January 2011. At that time, he was asked to review the E-Licensing Database, which keeps track of the progress made by operators who are bioremediating Hazardous Waste. He found that approximately 50% of the operators who had entries in the Database had reported no annual activity. He said that this indicated that many operators "had stopped actively treating H[azardous] W[aste] at these sites, or at least had stopped reporting any activities to the MOE."

**[65]** He therefore contacted Conoco Philips Canada, Suncor Energy Inc. ("Suncor"), Progress, Devon Canada Corporation ("Devon") and Apache Canada Ltd. ("Apache"). They accounted for 80% of the registered sites with no reported activity. Among other things, he asked these operators to update their operations plans and submit annual reports.

**[66]** According to Mr. Andrews' witness statement, three of the operators reported that they had dealt with the Hazardous Waste they were bioremediating by sending it to a Secure Landfill and he anticipated that the remaining operators would do the same because bioremediation had failed. Mr. Andrews also said that Suncor filed an operations plan for its registered bioremediation sites which stated that, in the future, it would be sending all its Hazardous Waste to a Secure Landfill.

**[67]** Mr. Andrews also described his experience with onsite treatment before he joined the MOE. He stated the following in his witness statement [paragraphs 23-26]:

> I managed the HW at seven sites that CNRL had registered. These sites were allocated north of Fort St John and on existing oil and gas lease sites or on abandoned sites. There were approximately 50,000 tonnes of HW at these sites.
>
> Initially, we tried treating the HW onsite. At each of these sites we put the HW into windrows and used a turner to turn the HW three times per year at each site. Hazco Environmental Services was the contractor that provided the windrow turner. We also added fertilizers and nutrients in the soil to assist in the bioremediation process. The fertilizer is meant to add additional nutrients to aid the bacteria to process the hydrocarbons.
>
> CNRL pursued this treatment process for two years. While CNRL was able to reduce the contaminants in the HW at these sites, it failed to reduce the contaminants enough to "delist" the HW. Delisting HW means reducing the presence of contaminants low enough so that the soil is no longer considered to be HW. CNRL spent significant amounts of money on treatment because the sites required constant monitoring. The sites would get wet and require dewatering out to prevent berm overflow and enable equipment access.
>
> Ultimately, after two years of treatment, it was clear that bioremediation would not work to address the contamination issues. CNRL decided to send the remaining HW to a Secure Landfill, specifically Silverberry, which was the landfill closest to the sites. I was also responsible for this process. It took CNRL approximately 2-3 years and several million dollars to send all the waste to Silverberry.

**[68]** **[CONFIDENTIAL]**, who works as a Contracting and Procurement Analysist for **[CONFIDENTIAL]**, testified that its current operations in NEBC are in two fields called **[CONFIDENTIAL]**. He indicated that **[CONFIDENTIAL]** uses Secure Landfills to dispose of its Hazardous Waste and that it does not bioremediate because of the associated costs, the time necessary to bioremediate, and the manpower required to undertake bioremediation. He stated

that liability has the potential to remain if the Hazardous Waste is not effectively bioremediated and that additional costs might be incurred if the Hazardous Waste, which is not effectively treated, must be tipped into a Secure Landfill. He added that there is ongoing uncertainty about whether bioremediation is effective or not.

**[69]** **[CONFIDENTIAL]**, the Vice-President of Operations at **[CONFIDENTIAL]**, testified that **[CONFIDENTIAL]** uses an oil-based mud system to reduce friction on horizontal wells and that the oil-based mud cuttings are typically tipped into Secure Landfills. He also stated that **[CONFIDENTIAL]** sees disposal at a Secure Landfill as the most economic alternative for dealing with the Hazardous Waste from drilling, as disposal eliminates the increased environmental risk and cost of long term storage and/or site remediation. He explained that "[c]ontainment, transport and disposal of hazardous waste generated from drilling operations is currently the only option used by **[CONFIDENTIAL]** for managing hazardous waste generated from drilling." Accordingly, it is clear that, at its current drilling sites, only Secure Landfills are used for disposal.

**[70]** However, with respect to the Legacy Waste in NEBC on drilling sites which **[CONFIDENTIAL]**, Mr. **[CONFIDENTIAL]** testified that **[CONFIDENTIAL]** will bioremediate some of the waste on these sites. He explained that bioremediation of the Legacy Waste had already been started by **[CONFIDENTIAL]**. He stated that the decision to dispose of Hazardous Waste instead of treating it is taken on a case-by-case basis, and depends on the type and amount of Hazardous Waste present on the legacy site, the likelihood of successful remediation, and the cost of excavation, transport and disposal.

**[71]** During a review of the HW Regulation undertaken by the MOE, the MOE retained Conestoga-Rovers & Associates to conduct a report on Secure Landfill disposal. The report is entitled "Secure Landfill Disposal Policy Review" and dated March 2011. It states:

> Based on equal weighting of cost, cost variability, timeline, and treatment certainty landfilling [Secure Landfill] is the preferred option under all scenarios. Landfarming [bioremediation] can be an appropriate method for treating hydrocarbon contaminated soils given appropriate concentrations and a multi-year timeline.

**[72]** Devin Scheck, the Director of Waste Management and Reclamation at the British Columbia Oil and Gas Commission, testified that many operators still choose to dispose of their contaminated soils in Secure Landfills, even in situations where bioremediation is feasible, because of the associated costs and timeframe. He said the following in his witness statement [paragraphs 25-27]:

> In my experience, a significant number of the sites that Operators seek to remediate are remediated by the Operator disposing of the contaminated soils at a landfill. With sites that are only contaminated with light end hydrocarbons, Operators may seek to bioremediate the soil on site, but heavy end hydrocarbons tend to have a poor response to bioremediation. As well, tight clay (which is prevalent in North Eastern B.C. where the oil and gas activity is most prevalent)

> makes bioremediation difficult, as does the relatively cold weather in the region. The presence of other contaminants, such as salts or metals that exceed CSR standards, prevent bioremediation from being an appropriate option, as salts and metals cannot be bioremediated.
>
> Accordingly, when dealing with anything other than light end hydrocarbons, my experience is that Operators will usually dig up the soil, and dispose of it at a Secure Landfill like Silverberry in B.C. or a closer landfill across the Alberta border, such as the CCS Class II Alberta Landfill at LaGlace.
>
> In my experience, even where bioremediation may be feasible, many Operators will still choose to landfill their contaminated soils. With bioremediation there is much uncertainty about costs, and the timeframe required for treatment is also uncertain. Weather conditions, site access issues, amount/type of treatment, future equipment and labour costs, as well as the costs of ongoing access for treatment and sampling to determine if the soils are remediated contribute to this uncertainty.

**[73]** Mark Polet, an expert environmental biologist with specialized knowledge in environmental assessment, remediation and reclamation, as well as waste facility management development, stated as follows in paragraph 17 of his expert report:

> Once an Operator in NEBC decides to clean up its waste, the two most practical options available are: 1) the disposal of the waste at an appropriate landfill; or 2) the treatment of the waste onsite through a process known as bioremediation. Operators do not have a uniform preference for either option but, in my experience, will choose an option based on cost, risk, efficacy and other reasons such as environmental stewardship.

**[74]** At the hearing, Mr. Polet testified that the costs of bioremediation and secure landfilling can be comparable. He stated:

> Once you define the types [of contaminants], you can decide on the most prudent response. And so, for instance, if I found on a site just the light end hydrocarbons with no other types of contamination mixed with it, I would look at bioremediation as an alternative. If it had salts and metals associated with the contamination, as well, then I would lean very strongly to landfill. If it had heavier end hydrocarbons, I would lean strongly to landfill, as well.
>
> In terms of cost, there -- can be quite comparable in price, but of course bioremediation is very limited in what it can be applied to. And the one thing that we've noticed in working in the field is that when bioremediation is not managed properly, then much material actually lands back up in the landfill, anyway. So it has to be well managed to work properly.

**[75]** There is also evidence about bioremediation in the Statement of Agreed Facts (the "Agreed Facts"). However, at the hearing it became clear that, contrary to the way in which they are presented, some of the facts were not actually agreed. The problematic evidence concerns bioremediation and was gathered in two ways. The evidence in paragraphs 63-67 of the Agreed Facts was given directly to the Commissioner's staff. This evidence will be called "Evidence A".

**[76]** Evidence A has two significant characteristics. The sources are not named and the Agreed Facts state in paragraph 63 that "…the Bureau has not confirmed the truth of the facts communicated to it by the operators…" Evidence A is in the Agreed Facts because CCS insisted that it be included and CCS asks the Tribunal to give it weight and assume it is true.

**[77]** Evidence A reflects that operator "F" bioremediates at least 70% of its waste in BC because it considers bioremediation to be better for the environment. Operators "H" and "J" bioremediate about 50% their waste. These operators appear to be bioremediating on their drilling sites to avoid the transportation charges and Tipping Fees associated with Secure Landfills.

**[78]** Although the Commissioner cannot confirm its truth, the Tribunal is nevertheless prepared to give Evidence A some weight because it can see no reason why industry participants would lie to the Commissioner about their use of onsite bioremediation. However, without knowing the volume of waste produced by "F", "H" and "J", it is impossible to determine whether bioremediation is being undertaken on a significant scale. In any event, it is clear that, even for these waste generators, there is a substantial portion of Hazardous Waste in respect of which bioremediation is not used.

**[79]** The second category of evidence is found in paragraphs 69-74 of the Agreed Facts. It was gathered in July 2011 by representatives of National Economic Research Associates ("NERA"). Dr. Baye works at NERA and it appears that NERA was retained by the Commissioner to interview industry participants. The Commissioner's staff attended these interviews and the six sources are named (**[CONFIDENTIAL]**). No concern is expressed about the reliability of this evidence. This evidence will be called "Evidence B".

**[80]** The Commissioner only called witnesses from **[CONFIDENTIAL]** and **[CONFIDENTIAL]** who, as discussed above, indicated that they do not bioremediate as a matter of policy **[CONFIDENTIAL]**.

**[81]** CCS states the evidence of the other four operators, described in Evidence B, shows that they are active bioremediators and CCS asks the Tribunal to draw an adverse inference from the fact that they were not called by the Commissioner. However, in the Tribunal's view, no such inference should be drawn because the Commissioner had no obligation to adduce the evidence and it was open to CCS to do so.

**[82]** Evidence B shows that **[CONFIDENTIAL]** bioremediates 10-15% of its waste. **[CONFIDENTIAL]** engages in some bioremediation at about 70% of its sites and **[CONFIDENTIAL]** bioremediates about 75% of its treatable material onsite. (It also appears to treat the balance of treatable material offsite but this is not explained. Since there are no offsite

bioremediation facilities in NEBC, the Tribunal has concluded that this statement must refer to offsite treatment elsewhere.) **[CONFIDENTIAL]** bioremediates onsite and sometimes moves waste between its sites for bioremediation. In the last 3-4 years, it has bioremediated 60-70% of its abandoned well waste.

**[83]** It is noteworthy that this evidence gives no volumes for treatable and Legacy Hazardous Waste. In these circumstances, and given that the Respondent did not call witnesses from these four operators or other operators, the Tribunal is not persuaded that bioremediation is being undertaken on a significant scale in NEBC.

**Evidence about Storage and Risk Management**

**[84]** Storage means that Hazardous Waste is left untreated on a drilling site which is still under lease. As long as the MOE does not order a cleanup, this option is available even though drilling has finished, as long as the operator continues to make the lease/tenure payments for the site. Since such payments are low compared to the cost of cleaning up the site, doing nothing may be an attractive option in some cases and the evidence from Trevor Mackay's examination for discovery is that "many" operators have waste stored on their sites. However, Mr. **[CONFIDENTIAL]** testified that **[CONFIDENTIAL]** does not store the Hazardous Waste generated from drilling operations for long periods of time, due to the cost and potential liability issues. He explained that the typical well site storage costs during drilling operations are **[CONFIDENTIAL]** per well.

**[85]** Risk Management is a process undertaken when drilling is finished and an operator wishes to terminate a lease. The operator must restore the site's surface as nearly as possible to the condition it was in before drilling. Once this has been accomplished, a Certificate of Restoration (also referred to as a Certificate of Compliance) is issued and the operator's lease is terminated. However, the operator remains liable for any issues arising from the Hazardous Waste that is left behind and is obliged to comply with conditions such as monitoring even after the certificate is issued.

**[86]** On this topic, Mark Polet said the following in his reply report:

> Based on my experience, Operators use risk management as a last resort if treatment or disposal are not practical. I rarely recommend it because even if approval is obtained, which in my experience is very difficult, the Operator retains liability and there is a recognition that the site may need to be revisited if issues arise.

**[87]** Pete Marshal, an expert in Hazardous Waste management, testified that, although disposal in a Secure Landfill, bioremediation and risk management are each potentially available methods for dealing with Hazardous Waste, he did not know how many operators choose risk management.

**[88]** This evidence leads the Tribunal to conclude that risk management is seldom used and is not considered to be an acceptable substitute for disposing of Hazardous Waste in a Secure Landfill.

**Conclusions about the Product Market**

**[89]** Although some operators with Hazardous Waste which is contaminated with light-end hydrocarbons consider bioremediation to be an acceptable substitute for disposal in a Secure Landfill, there is no evidence about the volumes of waste which are successfully bioremediated. More importantly, there is no evidence that the availability of bioremediation has any constraining impact on Tipping Fees in NEBC. In addition, the Tribunal finds that bioremediation is not considered by at least some waste generators to be an acceptable substitute for disposal in a Secure Landfill, particularly in respect of soil that is contaminated with heavy-end hydro-carbons, salts or metals.



**[90]** With regard to storage and risk management, there was no evidence about the volumes stored in NEBC and no evidence to suggest that the tenure payments or the cost to obtain a certificate of restoration have any impact on Tipping Fees at Silverberry.

**[91]** Because bioremediation is not cost effective and is slow for a substantial volume of contaminated soil in NEBC and because it does not work at all on salts and metals, the Tribunal is satisfied that a substantial number of generators do not consider bioremediation to be a good substitute for the disposal of such Hazardous Waste in a Secure Landfill and would not likely switch to bioremediation in response to a SSNIP. Accordingly, the Tribunal is satisfied that the relevant product is "solid hazardous waste generated by oil and gas producers and tipped into secure landfills in NEBC".

## ISSUE 3 WHAT IS THE GEOGRAPHIC DIMENSION OF THE RELEVANT MARKET?

**[92]** The Tribunal and the courts have traditionally considered it necessary to define a relevant market before proceeding to assess the competitive effects of mergers under the Act. (See, for example, *Director of Investigation and Research v. Hillsdown Holdings (Canada) Ltd.* (1992), 41 C.P.R. (3d) 289, at 297; *Canada (Director of Investigation and Research) v. Southam Inc*, [1997] 1 S.C.R. 748, at para. 79). However, they have cautioned against losing sight of the ultimate inquiry, which is whether the merger being assessed prevents or lessens, or is likely to prevent or lessen, competition substantially. (*Southam*, above; "*Propane 1*", above, at para. 48). With this admonition in mind, it is the Tribunal's view that, in this case, the Tribunal may evaluate the competitive effects of the Merger without precisely defining the relevant geographic market.

**[93]** This conclusion is important because, as will be discussed below, the evidence that has been adduced does not permit the Tribunal to delineate the exact boundaries of the geographic market.

**[94]** The Tribunal agrees with the approach taken in the MEGs. The process begins with a small area around one of the merging parties' locations (in this case, a Secure Landfill site) and then asks whether all rivals operating at locations in that area, if acting as a hypothetical monopolist, would have the ability and incentive to impose a small but significant price increase (typically 5%) and sustain that increase for a non-transitory period of time (typically one year). If the postulated price increase would likely cause purchasers of the relevant product in that area to switch sufficient quantities of their purchases to suppliers located outside that area to render the price increase unprofitable, then the geographic dimension of the relevant market would be progressively expanded until the point at which a seller of the relevant product, if acting as a hypothetical monopolist, would have the ability and incentive to impose a SSNIP.

**[95]** In the case at bar, the evidence dealt with three geographic regions:

I. **The Contestable Area** – this was identified by Dr. Kahwaty on behalf of CCS.
II. **All of NEBC** – the Commissioner, supported by her expert Dr. Baye, submitted this definition of the geographic market.
III. **The Babkirk Polygon** – this area was identified in internal CCS documents dealing with the potential impact of the Babkirk Facility on CCS.

### I. The Contestable Area

**[96]** In broad terms, the Contestable Area identified by Dr. Kahwaty encompasses an hourglass shaped area of 11,000 square kilometres which lies between the Babkirk Site and Silverberry. In his analysis, the road network in this area is such that there are some areas in which both Silverberry and a potential landfill at the Babkirk Site may be viable disposal options for customers with well sites in those areas. Dr. Kahwaty acknowledges that the transportation costs required to reach Silverberry or the Babkirk Site are such that both may be economic alternatives for these customers. In Dr. Kahwaty's view, the geographic scope of the relevant market should be limited to this area.

**[97]** Dr. Kahwaty used Dr. Baye's 10% predicted decline in Tipping Fees as his benchmark for defining the geographic scope of the relevant market. In short, he assessed every well site and calculated whether, if given a 10% reduction off the Tipping Fees paid at Silverberry, the customer would be indifferent as between tipping at Babkirk and Silverberry, having regard for the fact that their total disposal cost (transportation plus Tipping Fee) would be the same for each Secure Landfill. Twelve such customers were identified, accounting for approximately 41,900 tonnes in the Contestable Area. Dr. Kahwaty acknowledged that a larger critical price discount would produce a larger contestable area.

**[98]** The Tribunal is satisfied that a hypothetical monopolist supplying Secure Landfill services to these twelve customers in respect of the Hazardous Waste generated in the Contestable Area would have the ability and incentive to impose and sustain a SSNIP above levels that would likely exist in the absence of the Merger.

**[99]** Indeed, the Tribunal considers that the Contestable Area is likely understated and, in fact, smaller than the minimum area in which a hypothetical monopolist would have the ability and incentive to impose and sustain a SSNIP. The Tribunal has reached this view for several reasons. First, the Tribunal accepts Dr. Baye's position that "Babkirk need not have a location advantage for a customer – and the customer need not switch from Silverberry to Babkirk – for that customer to significantly benefit from the lower Tipping Fees stemming from competition". Second, the evidence suggests that new wells are likely to be drilled in the area between Babkirk and Northern Rockies, and that there is Legacy Waste sitting on abandoned well-sites in that region. Meaningful price and non-price competition between Babkirk and Northern Rockies for at least some of that waste likely would have developed in the absence of the Merger. Third, the geographic extent of the Contestable Area is necessarily limited by Dr. Kahwaty's assumption of a base price that is only 10% below prevailing levels. If that figure is too low Dr. Kahwaty admitted that the geographic market would be larger than the Contestable Area.



**[100]** In addition, the Tribunal notes that the volume of Hazardous Waste generated in the Contestable Area likely is greater than reported by Dr. Kahwaty because he only used data for 2010. Moreover, Dr. Kahwaty excluded CCS' national customers from his analysis and this may also have resulted in an understated geographic market.

**[101]** With respect to the possibility that Secure Landfills in Alberta might be economically accessible for generators of waste in the Contested Area, Dr. Kahwaty stated that "transportation costs are too great for [customers located to the south and east of Silverberry, who currently tip their waste in Alberta] to opt to dispose at a potential landfill at the Babkirk site (even with a significant discount) as compared to disposing at Silverberry at current prices." The Tribunal extrapolates from this and concludes that customers generating Hazardous Waste in the Contestable Area are unlikely to transport their waste to secure landfill sites in Alberta due to the significant transportation costs and potential liability that would be associated with hauling waste over such a long distance.

**[102]** For all these reasons, the Tribunal concludes that the geographic market is at least as large as the Contestable Area. We now turn to whether it could be as large as all of NEBC.

### II. All of NEBC

**[103]** NEBC covers approximately 118,800 square kilometres and is vast in comparison to Dr. Kahwaty's Contestable Area. NEBC and the much smaller Contestable Area are compared on the map attached hereto as Schedule "C", which is taken from Tab 29 of Dr. Kahwaty's report of October 21, 2011.

**[104]** Dr. Baye concludes that the relevant geographic market is NEBC on the basis that this is the region where targeted customers are located, including current customers at both Silverberry and Northern Rockies Secure Landfills.

**[105]** In reaching this conclusion, Dr. Baye relies on an economic theory of market equilibrium which predicts that CCS would have an incentive to compete with an independently operated

Babkirk Facility for customers located outside of Dr. Kahwaty's Contested Area. This theory is based on his understanding that CCS' average 2010 Tipping Fees at Silverberry were approximately **[CONFIDENTIAL]** per tonne and its average landfill costs were approximately **[CONFIDENTIAL]** per tonne, yielding a margin in excess of 60%. Using these figures, Dr. Baye assumes that CCS would be prepared to reduce its Tipping Fees by 25% or greater in some areas to retain business in the face of competition from an independent Babkirk Facility.

**[106]** However, among other problems, Dr. Baye's theory fails to take into account the opportunity cost to CCS that would be associated with substantially reducing its Tipping Fees to sell landfill capacity today, which could be sold in the future at higher Tipping Fees to customers located closer to Silverberry. In the absence of any analysis of how this opportunity cost would factor into CCS' current decision-making process, the Tribunal finds that the economic theory relied on by Dr. Baye is not particularly helpful in defining the geographic scope of the relevant market.

**[107]** In his initial report, Dr. Baye also provides estimates based on econometric regression models which he asserts are consistent with this theory and his definition of the geographic market as extending throughout all of NEBC. The first set of models, found at Exhibits 19 and 20 of Dr. Baye's initial report, test his hypothesis that the distance between a Secure Landfill and its closest competitor is a significant predictor of the average Tipping Fees at that landfill.

**[108]** Exhibit 20 predicts that the opening of an independent landfill at the Babkirk Site will result in a large decline in average Tipping Fees at Northern Rockies, because it would reduce the distance to Northern Rockies' nearest competitor to three hours and 49 minutes. However, this ignores (i) the substantial transportation costs that the vast majority of customers who tip at Northern Rockies would have to incur to transport their waste to Babkirk, (ii) the very small number of well-sites located between those two facilities, and (iii) the apparent absence of any incentive for CCS to alter its Tipping Fees at Northern Rockies in response to entry at Babkirk.

**[109]** The second set of regression models are estimates offered by Dr. Baye which relate to a "natural experiment" involving SES' entry at Willesden Green, Alberta, in December 2008. That facility became the closest competitor to CCS' Rocky Mountain House landfill ("Rocky"), located approximately one hour away. In his analysis of CCS' 2010 transactions data, Dr. Baye discovered that CCS substantially reduced the Tipping Fees it charged to several customers subsequent to the opening of SES' facility at Willesden Green.

**[110]** To address the possibility that these substantial price reductions were purely coincidental, Dr. Baye developed "difference in difference" ("DiD") regression models, reported at Exhibit 26 of his initial report. The DiD approach controls for unobserved events, other than SES' entry at Willesden Green, which might have led to the observed decline in Tipping Fees at Rocky. In short, the DiD models include a "treatment" setting in which the event (in this case, entry) occurred and a "control" setting in which the event did not occur. Dr. Baye took the change in Tipping Fees that occurred in the treatment setting and subtracted any change that occurred in the control setting. He interpreted the difference in the change (or the "difference in difference") as the effect of entry at Willesden Green on Tipping Fees at Rocky.

**[111]** It is significant that, in selecting a control landfill, Dr. Baye considered it important to pick a site that "is unlikely to be affected by the treatment event – in this case entry at Willesden Green." One of the principal criteria that he employed in making that selection was that the control landfill had to be "at least 300 km away" from Willesden Green. The same logic would imply that entry at Babkirk would not likely affect Tipping Fees at Northern Rockies, which is situated 260 km away from the Babkirk Site. A key assumption underlying Dr. Baye's DiD models is therefore inconsistent with his definition of the geographic market as all of NEBC. This, together with the fact that Northern Rockies is almost four times further away from Babkirk than SES' Willesden Green facility is away from CCS' Rocky facility, lead the Tribunal to conclude that Dr. Baye's DiD analysis is not particularly helpful in defining the geographic scope of the relevant market. That said, as discussed in detail below, the transactions data which reveals substantial price reductions by CCS to seven of its customers following SES' entry at Willesden Green is relevant to the Tribunal's assessment of the likely competitive effects of the Merger.



**[112]** Finally, the Tribunal notes that Dr. Baye also points to internal documents of CCS which he says are consistent with his definition of the relevant geographic market. However, those documents simply: (i) make projections of the overall annual operating margin (**[CONFIDENTIAL]**) that CCS stood to lose at Silverberry and Northern Rockies were an independent landfill to open at the Babkirk Site; (ii) predict a pricing war if the Babkirk Facility was operated independently or acquired by a third party; (iii) discuss the likelihood of having to compete through "value propositions"; and (iv) reflect that CCS likely takes into account its customers' transportation costs to the next closest competing landfill in setting its Tipping Fees. While these types of statements assist in assessing whether the Merger is likely to prevent competition substantially, they are not particularly helpful to the Tribunal in defining the geographic scope of the relevant market.

## III. The Babkirk Polygon

**[113]** The Babkirk Polygon is the third area that was discussed at the hearing. That area was identified by a member of CCS' business development team who was asked to project Babkirk's market capture area. The Tribunal has added a rough depiction of that area on Schedule "C" hereto.

**[114]** The Babkirk Polygon was apparently intended to identify the locations of existing Silverberry customers who would be likely to tip at Babkirk rather than at Silverberry, if Babkirk was operated as a Secure Landfill. In other words, the Babkirk Polygon was CCS' representation of the geographic locations of business it risked losing if Babkirk opened as a Secure Landfill. It includes territory north and west of Babkirk and is a larger area than Dr. Kahwaty's Contestable Area.

**[115]** The Tribunal is satisfied that the locational advantage that the Babkirk Facility would enjoy for customers with drilling operations situated to its north and west is such that those customers would not likely tip at Silverberry in the absence of a very substantial reduction in its Tipping Fees. Given the opportunity cost that CCS would incur by offering such a substantial

reduction in its Tipping Fees, and given the absence of any analysis by the Commissioner or Dr. Baye of the impact of that opportunity cost on CCS's decision-making, the Tribunal is not persuaded that CCS would have an incentive to compete for those customers in the absence of the Merger.

**[116]** Likewise, the Tribunal has not been persuaded on a balance of probabilities that such customers who operate to the north and west of the Babkirk Facility would tip at Silverberry, in response to a SSNIP above the maximum average tipping fee level that it believes is likely to exist in the absence of the Merger. For the reasons discussed below, the Tribunal has concluded that such price level will be at least 10% below existing levels. However, transportation costs and the liability associated with transporting Hazardous Waste over the long distance to Silverberry are such that it would require more than a SSNIP to induce waste generators located in those regions to tip their Hazardous Waste at Silverberry.

**[117]** The Tribunal has concluded that the geographic scope of the relevant market is at least as large as the Contestable Area identified by Dr. Kahwaty, and likely falls between the limits of that area and the bounds of the Babkirk Polygon, which includes some of the Contestable Area, but adds significant territory north and west of Babkirk.

**[118]** The Tribunal is satisfied that it would not matter if the geographic scope of the relevant market actually includes additional customer locations in the Babkirk Polygon, beyond the Contestable Area, because CCS would remain the sole supplier of Secure Landfill services to any reasonably defined broader group of customers.

## ISSUE 4 IS THE MERGER PRO-COMPETITIVE?

**[119]** CCS has suggested that the Merger is pro-competitive because it brings to the market a new Secure Landfill at the Babkirk Site. CCS further asserts that the Merger will most quickly transform the Babkirk Site into a Secure Landfill to complement CCS' existing business and serve the growing oil and gas industry in NEBC. CCS says that these facts explain its customers' failure to complain about the Merger.

**[120]** The Tribunal disagrees. In its view, a merger which prevents all actual or likely rivalry in a relevant market cannot be "pro-competitive," even if it expands market demand more quickly than might otherwise be the case. Such a merger might be efficiency-enhancing, as contemplated by the efficiency defence in section 96 of the Act. However, it has adverse consequences for the dynamic process of competition and the benefits that such process typically yields. In the absence of actual rivalry, or a very real and credible threat of future rivalry, meaningful competition does not exist.

## ISSUE 5 WHAT IS THE ANALYTICAL FRAMEWORK IN A "PREVENT CASE?

**[121]** The "prevention" branch of section 92 was raised in three previous Tribunal cases: *Canada (Director of Investigation and Research) v. Southam Inc.* (1992), 43 C.P.R. (3d) 161 (Comp. Trib.), rev'd on other grounds (1995), 63 C.P.R. (3d) 1 (F.C.A.), rev'd, [1997] 1 S.C.R. 748, *Propane 1* and *Canadian Waste Services*. However, since those cases were primarily concerned with allegations involving a substantial lessening of competition, the Tribunal did not address in any detail the analytical framework applicable to the assessment of an alleged substantial prevention of competition.

**[122]** In determining whether competition is likely to be prevented, the Tribunal will assess whether a merger is more likely than not to maintain the ability of the merged entity to exercise greater market power than in the absence of the merger, acting alone or interdependently with one or more rivals. For the purposes of this case, this requires comparing a world in which CCS owns the relevant Secure Landfills in NEBC (i.e. Northern Rockies, Silverberry and Babkirk) with a world in which Babkirk is independently operated as a Secure Landfill.

**[123]** In assessing cases under the "prevent" branch of section 92, the Tribunal focuses on the new entry, or the increased competition from within the relevant market, that the Commissioner alleges was, or would be, prevented by the merger in question. In the case of a proposed merger, the Tribunal assesses whether it is likely that new entry or expansion would be sufficiently timely, and occur on a sufficient scale, to result in: (i) a material reduction of prices, or in a material increase in non-price competition, relative to prevailing price and non-price levels of competition, (ii) in a significant (i.e., non-trivial) part of the relevant market, and (iii) for a period of approximately two years. If so and if the entry or expansion likely would occur within a reasonable period of time, the Tribunal will conclude that the prevention of competition is likely to be substantial.

**[124]** The Tribunal also considers whether other firms would be likely to enter or expand on a scale similar to that which was prevented or forestalled by the merger, and in a similar timeframe. Where the Tribunal finds that such entry or expansion would probably occur, it is unlikely to conclude that the merger is likely to prevent competition substantially.

**[125]** As noted earlier and as recognized by all parties, the price against which the prevailing prices will be compared will be the price that would likely have existed in the absence of the merger. The burden will be on the Commissioner to demonstrate that price level, or the range of prices, that likely would have existed "but for" the merger.

**[126]** In final argument, the Commissioner and CCS suggested that helpful guidance on the approach that should be taken to prevention of competition cases can be provided by the U.S. jurisprudence pertaining to mergers that have been alleged to reduce potential competition. In the Tribunal's view, that jurisprudence is not particularly helpful to merger assessment under the Act, because it was developed in respect of a different statutory test and, for the most part, many years ago. (It appears that the US Supreme Court and the federal appellate courts have not had an opportunity to revisit that jurisprudence since the 1980s. See M. Sean Royall and Adam J. Di

Vincenzo, "Evaluating Mergers between Potential Competitors under the New Horizontal Merger Guidelines", *Antitrust* (Fall 2010) 33, at 35.)

## ISSUE 6 IS THERE A SUBSTANTIAL PREVENTION OF COMPETITION?



### A. The "But For" analysis

*Introduction*

**[127]** In *Commissioner of Competition v. Canada Pipe Company Ltd.*, 2006 FCA 233, the Federal Court of Appeal decided that a "but for" analysis was the appropriate approach to take when considering whether, under paragraph 79(1)(c) of the Act, "…the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially." The specific question to be asked is stated, as follows, at paragraph 38 of the decision "…would the relevant markets – in the past, present or future – be substantially more competitive but for the impugned practice of anti-competitive acts?"

**[128]** Language similar to that found in section 79 appears in section 92 of the Act. Section 92 says that an order may be made where "…the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen competition substantially." For this reason, the parties and the Tribunal have determined that the "but for" approach is also appropriate for use in cases under section 92 of the Act. The parties recognize that the findings will be forward looking in nature and CCS has cautioned the Tribunal against unfounded speculation. With this background, we turn to the "but for" analysis.

**[129]** The discussion below will address the threshold issue of whether effective competition in the supply of Secure Landfill services in the Contestable Area identified by Dr. Kahwaty likely would have materialized in the absence of the Merger. Stated alternatively, would effective competition in the relevant market likely have emerged "but for" the Merger? After addressing this issue, the Tribunal will turn to the section 93 factors that are relevant in this case, as well as the issue of countervailing power.

**[130]** In undertaking the "but for" analysis, the Tribunal will consider the following questions:

(a) If the Merger had not occurred, what new competition, if any, would likely have emerged in the Contestable Area?
(b) If the Merger had not occurred, what would have been the likely scale of that new competition?
(c) If the Merger had not occurred, when would the new competition likely have entered the market?

**[131]** The Commissioner suggested that either June or July, 2010 be used as the timeframe for considering the "but for" world. CCS, on the other hand, was more precise and suggested that the relevant time for this purpose should be the end of July 2010, when CCS and Complete signed

the letter of intent which led to the Merger. Since the parties have essentially agreed, the Tribunal will focus on the end of July.

**[132]** The Tribunal's view is that, as of the end of July 2010, there were only two realistic scenarios for the Babkirk Site absent the Merger. They were:

1. The Vendors would have sold to a waste company called Secure Energy Services Inc. ("SES"), which would have operated a Secure Landfill; or
2. The Vendors would have operated a bioremediation facility together with a half cell of Secure Landfill.

**[133]** Extensive evidence was adduced on these topics. The discussion below summarizes the most important aspects of that evidence.

**Scenario #1 – A sale of Complete to SES**

**[134]** In February of 2007 when the Vendors first met to organize Complete, they decided that their exit strategy would be to sell the company to Newalta Corporation or to CCS. Newalta is a waste company which operates Secure Landfills in Alberta. However, it was always the Vendors' intention to sell only when they could achieve an acceptable return on their investment.

**[135]** In November 2007, Canaccord Capital sent a four-person investment team to Fort St. John to investigate the purchase of a number of the Vendors' companies, including Complete. At that time, the Vendors' intentions about a sale of Complete were recorded in the company's minutes, which, among other things, stated:

> …consensus at Complete's meeting was to carry on the way we are going unless we are presented with a very attractive proposal from outside. We don't want to do all the work for the benefit of others – better to take a longer time, but to have higher rewards for ourselves…

**[136]** Subsequently, a Vision Statement, dated June 22, 2008, was prepared by Karen Baker. That document stated that they wanted to make a "good return on sale of company". The Statement also observed:

> The VISION of Complete Environmental Inc. is to become a diversified, highly efficient, environmental corporation in NEBC generating a high profit margin thus, presenting itself as an attractive acquisition to multiple potential purchasers.

**[137]** After Complete received its MOE Permit on February 26, 2010, Ken Watson's company, IRTL, offered to purchase Complete for **[CONFIDENTIAL]**. Before that offer was made, the Vendors had not been actively considering a sale. However, IRTL's offer spurred them to seriously consider the matter and, before they responded to IRTL's, they authorized Randy Wolsey to contact CCS and SES for expressions of interest.

**[138]** On March 23, 2010, Randy Wolsey spoke to SES but was told that it had no interest in making an offer because it was busy with its initial public share offering. However, SES did indicate a possible future interest and stated that it valued BLS at approximately **[CONFIDENTIAL]** in either mixed cash and shares or **[CONFIDENTIAL]** plus a share offering. In contrast, CCS expressed immediate interest and Dan Wallace of CCS verbally offered **[CONFIDENTIAL]** for BLS.

**[139]** The Vendors eventually decided to sell Complete to IRTL. However, IRTL's offer was withdrawn in early June 2010 after Ken Watson learned that, contrary to his expectations, Canaccord Capital would not finance IRTL's acquisition of Complete. After Cannacord declined, he did not have time to arrange alternative financing.

**[140]** According to Karen Baker, after IRTL's offer was withdrawn, the Vendors decided to try to sell Complete one last time. They concluded that, if they did not receive an interesting offer, they would operate the Babkirk Facility themselves. This would involve moving forward with an operating plan and constructing a half cell of Secure Landfill. To ascertain if a sale was possible, Randy Wolsey was again asked to contact CCS and SES. In addition, he was asked to contact Newalta. He did so, but Newalta did not respond to his email.

**[141]** At about that time, Dan Wallace of CCS apparently heard that IRTL's offer had fallen through and sent Randy Wolsey an email asking if CCS could renew its earlier offer. Mr. Wolsey responded by offering to sell BLS for **[CONFIDENTIAL]**. On June 22, 2010, CCS agreed to purchase the shares of BLS for that amount.

**[142]** Inexplicably, Randy Wolsey did not tell the other Vendors about his deal with CCS. Instead, he arranged a meeting with SES (the "Meeting"). It was held on June 29, 2010 and was attended by Rene Amirault, President and CEO of SES, Dan Steinke, SES' Vice-President of Business Development, and Corey Higham, SES' Business Development Representative (the "SES Group").

**[143]** According to the Vendors, the SES Group spent much of the Meeting giving a presentation to show that SES was an attractive investment. An SES brochure prepared for potential investors was used for this purpose. However, the Vendors were not interested in acquiring shares of SES and they testified that no price for BLS or Complete was ever suggested and no offer was discussed.

**[144]** According to Mr. Amirault, he indicated during the Meeting that an all cash offer could be made. The Vendors denied this. Since this evidence is significant and was not included in Mr. Amirault's witness statement, the Tribunal has concluded an all cash offer was not mentioned and that the Vendors understood that SES would only purchase Complete if it could use its shares to finance part of the purchase price.

**[145]** During the Meeting, the SES Group had questions about how to secure the necessary regulatory approvals to allow SES to expand the permitted capacity of the Babkirk Facility and to upgrade the design of the Secure Landfill cells (the "Questions"). The Vendors could not answer the Questions and Mr. Amirault testified that he asked for and was refused permission to

speak to Del Reinheimer about the Questions. However, some Vendors could not remember anyone from the SES Group asking for permission to speak to Del Reinheimer about the Questions and other Vendors denied that anyone asked for such permission at that time. Mr. Reinheimer was the Section Head, Environmental Management in the Environmental Protection Division of the MOE.

**[146]** Mr. Amirault stated that following the Meeting, SES was actively interested in purchasing Complete and gave the following reasons to explain its failure to make an offer or submit a letter of intent in July 2010:

- The Questions had to be answered before a price could be established.
- There was no particular urgency about making an offer because there were no other buyers. Mr. Amirault testified that the Vendors had indicated at the Meeting that Complete had promised a First Nation that it would not sell to CCS and the SES Group knew that Newalta was not interested.

**[147]** Mr. Amirault acknowledged that the Questions were about process i.e. "how to" go about getting approvals for increased permitted capacity and enhanced cell design. He also stated that he had no doubt that the approvals would be forthcoming. In these circumstances and because, as described below, SES was actively engaged in the development of another Secure Landfill, it is the Tribunal's view that SES would have known what it needed to spend to increase the permitted capacity and upgrade the landfill cells at the Babkirk Site. Accordingly, the Tribunal does not accept Mr. Amirault's evidence that SES could not establish a purchase price without the answers to the Questions.

**[148]** There is a dispute about whether, on July 6, 2010, Corey Higham sent Ron Baker an email setting out the Questions which had been discussed at the Meeting. Mr. Amirault stated in hearsay evidence in his witness statement that Corey Higham had told him that the email had been sent. A photocopy of that alleged email was appended to Mr. Amirault's witness statement. However, after Ron Baker made a witness statement stating that he did not recall having received the email, no reply evidence was filed by Corey Higham to say that it had, in fact, been sent. The email is an important document to the extent that it evidences an ongoing interest by SES in receiving answers to the Questions. However, given that it was not properly adduced, the Tribunal gives it no weight.

**[149]** As mentioned above, Mr. Amirault testified that Ron Baker told the SES Group during the Meeting that he had promised a First Nation that the Vendors would not sell the Babkirk Facility to CCS. This meant that SES understood that the Vendors were not likely to receive a competing offer. However, this apparently significant detail did not appear in Mr. Amirault's witness statement and was not referred to in his examination-in-chief. It was mentioned for the first time in answer to a question posed by the Tribunal. For this reason, this evidence is not accepted as an explanation for SES' failure to show a more active interest in purchasing Complete.

**[150]** Mr. Amirault acknowledged that the window for undertaking construction in 2010 "…was closing, closing fast" and that SES wanted to begin construction at Babkirk at the end of August or by mid-September at the latest. This meant that, if SES had been actively interested in

acquiring Complete, it would have moved quickly to present the Vendors with a letter of intent. Mr. Amirault also testified that, apart from updating its earlier market study of the Babkirk Facility, no further due diligence was required. In addition, he testified that he did not need the approval of his Board of Directors to deliver a letter of intent. In these circumstances, the Tribunal has concluded that SES' failure to follow up more quickly on its meeting with the Vendors and its failure to demonstrate any interest in making an offer at that time are attributable to a lack of active interest in acquiring BLS in July 2010.



**[151]** Ron Baker recalls that he was called by Corey Higham on July 28, 2010. However, Mr. Baker does not remember what Mr. Higham said during that telephone call. Since Corey Higham did not give evidence, the Tribunal considers it fair to assume that he did not make an offer to purchase Complete or propose a letter of intent. Although Mr. Baker does not recall much of his own side of the conversation, he does remember telling Mr. Higham that Complete had just signed a letter of intent with CCS.

**[152]** The Tribunal considers it noteworthy that, since 2007, SES had been developing a new Secure Landfill called Heritage. It was located approximately 153 km south of the Babkirk Site. However, it was not favourably received during public consultations because it was to be located near a populated area and on a site where a landslide had occurred. Corey Higham of SES was told on July 26, 2010 that the EA's review of the Heritage Project had been "suspended" pending further evidence from SES about the suitability of the site. SES eventually abandoned the project in December of 2010.

**[153]** Based on this evidence, the Tribunal has concluded that SES had an ongoing general interest in the Babkirk Facility. It had spoken to Murray Babkirk when he owned BLS and it had indicated possible future interest when Randy Wolsey contacted it in March of 2010. SES also sent its most senior executive to the Meeting in June 2010. However, the Tribunal has also concluded that SES was not actively interested in a purchase in July 2010. It never discussed a potential price, and, although it asked the Questions, the answers were not crucial to setting the price and SES already knew that it would be granted the additional approvals it sought. Finally, although Mr. Amirault testified that there was no due diligence of any consequence to be undertaken, SES did not send a letter of intent and there are no internal SES documents showing that it was preparing to make an offer. The Tribunal has concluded that SES' failure to take a more active interest in purchasing Babkirk is explained by the fact that it was still giving priority to its project at the Heritage site. This is understandable, since it had already invested three years and approximately $1.3 million in developing the project.

**[154]** In all these circumstances, the Tribunal has concluded, on a balance of probabilities, that SES likely would not have made an acceptable offer for Complete by the end of July 2010 or at any time in the summer of 2010 and that the Vendors would have moved forward with their own plans to develop the Babkirk Facility.

**Scenario #2 – The Vendors Operate Babkirk**

**[155]** The Vendors' position is that Complete was created to purchase BLS and to operate a bioremediation facility on the Babkirk Site. They assert that their plan was to accept only

Hazardous Waste contaminated with light-end hydrocarbons which could be treated using bioremediation.

**[156]** However, the Vendors recognized that bioremediation might sometimes fail and that they might be left with clumps of contaminated soil ("Hot Spots") after the surrounding waste had been successfully treated. The Vendors understood that the contaminated soil would have to be placed in a Secure Landfill before the remaining soil could be tested and de-listed as non-hazardous waste.

**[157]** To enable BLS to permanently dispose of the contaminated soil from the Hot Spots and to attract customers to the Babkirk Facility, the Vendors proposed to construct a Secure Landfill on the Babkirk Site, which they described as "incidental" to their treatment operation. This meant that only soil that was not successfully treated using bioremediation would be moved into the Secure Landfill. The Tribunal will give this meaning to the term "Incidental" in the context of the Vendors' Secure Landfill in the balance of this decision.

**[158]** The Commissioner denies that the Vendors' Secure Landfill was only to be used on an Incidental basis. She maintains that the Vendors always intended to accept and directly and permanently dispose of all types of Hazardous Waste in their Secure Landfill. We will refer to this business model as a "Full Service" Secure Landfill. To support her position, the Commissioner relies, in part, on the documents used to obtain the EA Certificate and the MOE Permit. These documents will be described collectively as the Regulatory Approval Documents ("RADs"). As discussed below, the RADs clearly indicate that a Secure Landfill was to be opened on the Babkirk Site. The Commissioner also relies on the Draft Operations Plans (the "Operations Plan") for the Babkirk Site, which show that a Full Service Secure Landfill was planned.

**[159]** Finally, the Commissioner relies on statements in a variety of documents which she asserts reflect that the Vendors intended to compete with CCS. She submits that references in those documents to competing with CCS meant operating the Babkirk Facility as a Full Service Secure Landfill.

**The Vendors' Documents**

**[160]** The Vendors explained that they needed an EA Certificate and an MOE Permit for a Secure Landfill in order to accept Hazardous Waste of any kind for any type of treatment at the Babkirk Facility. However, they also stated that neither document required them to operate on a Full Service basis. In other words, although they were entitled to do so, they were not required to accept all types of Hazardous Waste for direct disposal. Instead, they were free to operate an "Incidental" Secure Landfill.

**[161]** The Vendors ask the Tribunal to focus on the documents which were prepared when Complete was being incorporated and when the MOE Permit was finally granted, as the best evidence of their intention, which they say was to use the Secure Landfill on the Babkirk Site only as Incidental to their bioremediation. The five documents in this category will be described as the "Vendors' Documents". We will deal with them in turn below.

**[162] Minutes of a meeting that Randy Wolsey and Ken Watson attended with Del Reinheimer and other MOE and EAO officials on January 24, 2007.** The minutes state:

> Ken [Watson] discussed the remediation side of the facility's operations, which will continue even after (if) the landfill is constructed. He stated that he has had interest expressed from companies who wish to pursue remediation as well as landfilling. Ken outlined some of the practices and equipment currently used in other operations with which he is involved, and showed some pictures and videos of the equipment (e.g. ALLU AS 38 composting machine) in action.
>
> Ken and Randy stated that their intention would be to have an ALLU AS 38 kept at the facility full-time. They cited that it would be capable of processing up to about 25,000m per day of Peace River region clay.
>
> [our emphasis]



**[163]** In his testimony, Mr. Reinheimer agreed that his understanding was that the Vendors were going to operate a bioremediation facility and that it was an open question whether or not the Secure Landfill, for which application had been made, would ever be built. In the Tribunal's view, this evidence supports the Incidental nature of the Secure Landfill.

**[164] Minutes of a Newco meeting dated in February 2007**. These minutes record the Vendors' vision for their new business, which was to become Complete. The minutes make no mention of a Secure Landfill at the Babkirk Site. They speak only of processing waste. The document also describes CNRL and Petro-Canada as customers for treatment and indicates that Petro-Canada has been interested for years. In context, it is clear that Petro-Canada's interest was in bioremediation. The fact that a Secure Landfill is not mentioned even though the application for its approval was already underway, strongly suggests that it was to play an Incidental role in Complete's business at the Babkirk Site.

**[165]** The minutes read as follows:

> **Newco name** should be "**Environmental Services Co**." not "Waste Management (Facility) Co." **Services** to be offered by Newco were suggested to include drilling for sites in the 115 area, remediation on clients' sites, excavation at client sites, and processing at 115 landfill. We could also coordinate the trucking to haul clients' contaminated dirt that we would excavate at client sites to Mile 115 for processing, although we would not own such trucks.
>
> The **Target Market** would be environmental engineering companies and end-user oil and gas companies such as PetroCanada and CNRL. It would be good if we could get a letter from PetroCan/Matrix regarding the potential amount of work. Our services are needed – PetroCan has been interested for years now. This should be a "Market Pull" rather than "Product Push" situation.

> There would considerable **landfill preparation** at Mile 115 [the Babkirk Site]. Randy suggested Tom would probably like to be involved here with heavy equipment operation. We expect to have the permit by Nov 1/07. It would probably take 1 year for money to come in from sales for the landfill itself since we have to build the cells.
>
> [the emphasis is in the original]

**[166]** The Tribunal has studied the final passage quoted above and has concluded that, although the term "landfill" is used, the topic under discussion was actually bioremediation and the Vendors' plan to sell the successfully treated soil.

**[167] A diagram outlining Newco's operation**. This document shows how Complete's treatment facility on the Babkirk Site would complement other businesses operated by the Vendors. The diagram does not refer to the existence of a Secure Landfill. This omission also suggests that a Secure Landfill was not a significant part of Complete's business or of the Vendors' plan to integrate a number of their businesses.

**[168] Minutes of January 20, 2010**. This document describes a meeting that Ken Watson and Ron Baker attended with Del Reinheimer and other officials from the MOE to discuss the Vendors' plans for the Babkirk Site. By this time, Complete owned Babkirk and had received the EA Certificate. The issuance of the MOE Permit for the Secure Landfill was the next step. The relevant portions of the minutes read as follows:

> Ken [Watson] and Ron [Baker] both stressed that although they would rather not use Babkirk as a Landfill but as a treatment facility, industry demands that Babkirk is Permitted as a Secure Landfill prior to transporting materials to or using Babkirk in any way. The term "Secure" appears to be of utmost importance to all major oil and gas companies.
>
> - Although Del [Reinheimer of the MOE] didn't understand why industry perceives as such, he realized the concern.
> - He stated that even though the Permit may be approved, operation of a Secure Landfill may not begin until the Operating Plan is also approved and the landfill has been constructed.
> - Ken and Ron agreed it is rather the perception of the word "Secure" that is required at this time to entice clients, than the use of an actual operating landfill.
> - Ken suggested that prior to approved Secure Landfill operations, unacceptable material could be sent to CCS (small amount around contamination source) and the remainder could be accepted at Babkirk.
>
> All agreed construction of the landfill is to commence within 2 years of Permit issuance; and that the Landfill Operating Plan must be completed prior to construction but the issuance of the Permit itself is not affected by the existence or not of the Operating Plan.

> Ron [Baker] suggested that the Permit read that the construction phase of the landfill be completed in small segments of a ½ cell over a period of time rather than the construction of a full ½ cell at one time (as suggested by Reg).
>
> [our emphasis]

**[169]** In the Tribunal's view, there are several reasons why this document indicates that the Secure Landfill at the Babkirk Site was to be Incidental. First, Ron Baker was suggesting that even a half cell was not needed and proposed that smaller segments be constructed. This approach makes sense only if the Secure Landfill was to be Incidental. No one intending to compete with CCS' Full Service Secure Landfill at Silverberry would contemplate the construction of a small segment of a half cell.

**[170]** Second, the Incidental nature of the Secure Landfill is disclosed when Ken Watson suggested that, before the Secure Landfill was operational at Babkirk, unacceptable material could be moved to CCS. The interesting point is that the unacceptable material is not material delivered by waste generators for direct disposal into the Secure Landfill at the Babkirk Site. Rather, it is only the "small amount around [the] contamination source" or, in other words, the material around Hot Spots. Once again, this confirms that the Vendors' intention was that their Secure Landfill would only be used on an Incidental basis.

**[171]** **Minutes dated March 20, 2010**. These minutes reflect the Vendors' thinking in response to the offer to purchase that they received from IRTL. The minutes indicate that, at that time, they believed they had the following three options:

1. Operate start first secure cell and bioremediate [inc salt];
2. Bioremediate without cell;
3. Sell ???

The Minutes also stated:

> "Need 12 month season to see how well bioremediation works."

**[172]** The Vendors ask the Tribunal to note that this evidence all predates CCS' purchase of Complete and the Commissioner's interest in the Merger. The Vendors also submit that their evidence at the hearing was consistent with their intention to operate only an Incidental Secure Landfill. Both the proposed manager of the Babkirk Facility (Randy Wolsey) and the man who would be in charge of daily operations (Ken Watson) testified that the only waste they intended to accept at Babkirk was waste which could be bioremediated.

**The RADs**

**[173]** There are numerous RADs, however, those which are particularly relevant are: the "Terms of Reference" dated August 29, 2007; the "Application for an Environmental Assessment Certificate" dated February 11, 2008; the "Babkirk Secure Landfill Project Assessment Report" dated November 12, 2008; and a "BC Information Bulletin" dated December 9, 2008.

**[174]** The first significant RAD is the Terms of Reference for the Babkirk Secure Landfill Project. It was approved by the EAO on August 29, 2007.

**[175]** Section 3.1 reads as follows:

> The Proponent [Murray Babkirk] has experienced a considerable decline in the amount of waste brought to the existing facility for storage and treatment since the approval of the Silverberry Secure Landfill Facility application (north of Fort St. John, B.C.) as understandably, direct disposal forms a more cost effective option for clients than treatment and disposal. The conversion of the existing facility from a purely Short-term Storage and Treatment Facility to a Secure Landfill and Short-term Storage and Treatment Facility will allow fair competition between the Proponent and Silverberry facilities in providing responsible waste management solutions for local industry.
>
> […]
>
> This section will provide:
>
> […]
> □ a list of the materials to be accepted at the Project for disposal;
> □ a general description of the criteria that will be used to determine whether contaminated soil will be disposed of directly into the secure landfill or treated by bioremediation;
> […]
>
> [our emphasis]

**[176]** This document suggests that the proposed facility on the Babkirk Site would accept Hazardous Waste for direct disposal into the Secure Landfill and that the Secure Landfill was being developed so that the Babkirk Site could compete with CCS at Silverberry. This document was first drafted by SNCL on the instructions of Murray Babkirk, who was effectively the proponent, since, with his wife, he owned BLS. However, as discussed below, some of the Vendors later reviewed it and they did not suggest changes to reflect their intention to operate only an Incidental Secure Landfill. Since the further RADs contain similar language, it is not necessary to describe them in detail. The Tribunal is satisfied that they all indicate that there would be a Full Service Secure Landfill on the Babkirk Site.

**[177]** It is clear that some of the Vendors were, in Karen Baker's words, "integrally involved" during the regulatory process leading to the EA Certificate. Some attended and assisted with information sessions, consultation meetings, and presentations to First Nations; some were included in correspondence regarding the EA Certificate; some participated directly in drafting or reviewing some of the RADs; and some assisted the Babkirks with technical matters. The Vendors also advanced funds which the Babkirks were able to use to finance the environmental assessment process and pay the fees charged by SNCL. This financial support totalled

approximately $300,000 and was deducted from the purchase price that Complete eventually paid the Babkirks for the BLS shares. In all these circumstances, the Commissioner submits that the RADs reflect the Vendors' true intentions.

**[178]** However, the Vendors state that while the RADs authorized the construction of a Full Service Secure Landfill, they say nothing about the Vendors' intentions. Mr. Baker explained that, as far as the Vendors were concerned, as long as they had an approval for a Secure Landfill, no one would complain if they chose to operate it on an Incidental basis. He also stated that, if they had asked to amend the Terms of Reference, which is clearly the document on which the later RADs were based, it would have slowed down the approval process for changes that, in the Vendors' opinion, were unnecessary.

**[179]** The Tribunal has concluded that this explanation is reasonable and that it underpins Mr. Baker's response when he was asked why the Vendors didn't correct the Terms of Reference to reflect their intention to operate an Incidental Secure Landfill. He testified:

> […] There was nothing in it that was that onerous to us or important to us to warrant changing.

**[180]** In view of this explanation and in view of the Vendors' Documents which, starting in January 2007, consistently show that their plan was to operate an Incidental Secure Landfill, the Tribunal concludes that, although the RADs accurately described what could be offered at the Babkirk Facility, they did not accurately reflect the Vendors' intentions.

**The Operations Plan**

**[181]** The Vendors never completed an Operations Plan for the Secure Landfill on the Babkirk Site.

**[182]** The first Operations Plan was prepared by SNCL. An early and incomplete draft of that document is dated January 9, 2008. The evidence showed that a revision was prepared in December 2008. The Tribunal is satisfied that both versions provided in several places that the Secure Landfill could be operated on a Full Service basis. For example:

> […] <u>The addition of secure landfill capabilities to this facility would allow for direct disposal</u> in addition to treatment and remediation of contaminated soil. This addition would allow the Babkirk facility to compete with the nearby Silverberry Secure Landfill facilities. The proposed facilities would be contained entirely within the footprint of the former facilities.
>
> [our emphasis]

**[183]** Mr. Baker's evidence was that the Vendors worked directly with SNCL on the Operations Plan and that they had worked "quite a little bit" on revisions to the first draft. However, he testified that when the Vendors reviewed the revised version they were not satisfied and decided to prepare their own plan. He added that writing a new plan would have taken "months" of work.

**[184]** However, other evidence makes it clear that the Vendors did not pursue the idea of rewriting the Operations Plan. Minutes of Complete's meeting, which Ron Baker attended in March 2010, show that the Vendors then thought that it was "mostly in order" and that only a couple of weeks were needed to put it in final form for the MOE. Minutes of a later meeting in May 2010 suggest that the Operations Plan needed "4-5 days work".

**[185]** Mr. Baker acknowledged that he understood the Operations Plan to be saying that waste generators could directly and finally dispose of untreatable Hazardous Waste into the Secure Landfill at the Babkirk Site. In this regard, the transcript of his cross-examination at p. 1212 reads:

> **Mr. Iatrou**: So you would accept waste. Some of it might be highly contaminated, not really treatable. That would stay in [the secure landfill], but the stuff that could be treated would come out of that cell as capacity and the bioremediation cell was freed up?
>
> **Mr. Baker**: That's correct.

**[186]** However, a review of Mr. Baker's entire cross-examination on the Operations Plan reveals, in the Tribunal's view, that when he gave that answer, he was not saying that the Vendors intended to operate a Full Service Secure Landfill. Rather, he was describing what was possible under the plan. This difference becomes clear in the following exchange:

> **Mr. Iatrou**: You would accept the same sort of material that you could take to Silverberry?
>
> **Mr. Baker:** Yes, correct. We could accept it. Our plan was not to accept the type of soil that can only go to Silverberry, if you get my drift here. I suppose I have to explain that slightly.
>
> [our emphasis]

**[187]** Towards the end of his cross-examination, Mr. Baker began to answer questions from the Vendors' perspective. For example, when asked about the section of the Operations Plan that spoke about closing secure cells once they were filled, he stated "This was the concept, that if we ever got around to using the Secure Landfill section of our facility…" [our emphasis].

**[188]** And at the end of his examination, when asked whether or not all three secure cells had to be built at once, Mr. Baker said "No, no, no. This whole idea of graded construction was that we – our intention half of one cell and never have to do anything further. That was our intention. We would store so little of this landfillable material in that portion of a cell that it would last us the lifetime of our interest in this operation." [our emphasis].

**[189]** In the Tribunal's view, it is clear that the Vendors' approach to the Operations Plan was the same as it had been to the RADs. A plan that permitted the direct disposal of Hazardous Waste did not oblige the Vendors to accept it. It is obvious to the Tribunal that, from the early days of Newco in 2007, the Vendors wanted to make the Babkirk Facility as attractive as possible for sale and this meant that it had to be capable of being operated as a Full Service Secure Landfill. However, this does not mean that the Vendors intended to operate the Babkirk Facility in that manner given their long expressed preference for a bioremediation facility with an Incidental Secure Landfill.



**Was Babkirk Going to Compete with CCS?**

**[190]** The Commissioner also relies on what she describes as the Vendors' expressed intention to compete with CCS to support her allegation that Complete was poised to operate a Full Service Secure Landfill at the Babkirk Site. The statements on which she relies are found in the RADs, the Operations Plan and in Complete's minutes.

**[191]** There is no doubt that, in 2006 when the Babkirks approached SNCL to work on documents for the EA Certificate, they intended to operate a Full Service Secure Landfill on the Babkirk Site once the approvals were in place. As noted earlier, the original project description prepared by SNCL makes this clear when it says:

> The Proponent [BLS owned by the Babkirks] has reportedly experienced a considerable decline in his soil storage and treatment business since the approval of the Silverberry Secure Landfill Facility application (north of Fort St. John, BC) as understandably, direct disposal forms a more cost effective option for clients than treatment and disposal. <u>The conversion of the existing facility from a purely Short-term Storage and Treatment Facility to a Secure Landfill and Short-term Storage and Treatment Facility will allow fair competition between the Proponent and Silverberry facilities in providing responsible waste management solutions for local industry.</u>
>
> [our emphasis]

**[192]** This language is repeated in the Terms of Reference and the point is made even more clearly in the application for the EA Certificate. It states that the proposed facility would allow the proponent to provide "market competition for direct disposal of waste soil" and speaks of the Babkirk Facility being in "direct competition" with CCS at Silverberry.

**[193]** The Vendors' Operations Plan also mentions that the Secure Landfill has been added to the Babkirk Site to allow it to compete with Silverberry and, in the Vision Statement she wrote for Newco, which is attached to minutes dated June 22, 2008, Karen Baker stated that the Vendors wanted Complete "…to become the Number One Competitor to the industry leader [CCS/Newalta]".

**[194]** In his cross-examination at the hearing, Randy Wolsey acknowledged an intention to compete with CCS. However, he testified that while landfilling and competing with Silverberry

was “going to happen”, it would be on a “very different scale” because the Vendors were going to supply a “brand new service”.

**[195]** Mr. Baker also acknowledged in his testimony that the Vendors did intend to compete with CCS and others, but not on price. He stated that they were going to compete by offering a service that was different from anything offered by CCS or Newalta.

**[196]** The Tribunal has concluded that Complete intended to “compete” with Silverberry by offering a new bioremediation service, and that its statements about competition were not intended to mean that the Vendors planned to operate a Full Service Secure Landfill on the Babkirk Site.

**Conclusions**

**[197]** If the Merger had not occurred, it is the Tribunal’s view that, at the end of July 2010, in the absence of a letter of intent from SES, the Vendors would have proceeded to develop the Babkirk Facility. This would have involved:

- Completing the Operations Plan;
- Securing the MOE’s approval for the Operations Plan;
- Constructing a half cell of Secure Landfill capacity i.e. 125,000 tonnes; and
- Accepting Hazardous Waste for bioremediation and moving waste that could not be successfully bioremediated into the Incidental Secure Landfill.

**[198]** Although there was evidence to suggest that the Vendors might have decided to start accepting waste for bioremediation without any Secure Landfill capacity, the Tribunal has concluded that the Vendors would likely have built their half cell of Secure Landfill as soon as possible for two reasons. First, the Vendors told Del Reinheimer of the MOE on January 20, 2010 about the importance customers placed on having Secure Landfill capacity available. Indeed, Petro-Canada had refused to deliver waste for bioremediation until the Vendors opened a Secure Landfill. Second, Ken Watson testified that the plan was to store in the Secure Landfill all waste that was awaiting treatment. Presumably, this storage capacity would have been needed as soon as the business started in earnest.

**[199]** The Tribunal has also concluded that it is more likely than not that the Vendors would have had an approved operations plan by the end of October 2010 and that the three months of preparatory work, which Ken Watson testified was needed before the Babkirk Facility could accept waste, would have been substantially completed by the end of October 2010.

**[200]** This means that in the spring of 2011, the Vendors would have been able to accept waste for bioremediation. However, since generators had advised that they would not tip until a Secure Landfill was available, it is unlikely that any meaningful quantity of waste would have been delivered. Construction of the half cell of Incidental Secure Landfill would have begun as soon as the construction season opened in June 2011. Accordingly, given that the evidence showed that the construction would take three or four months, the Tribunal has concluded that the Babkirk Facility would have been fully operational by October 2011.

**[201]** The evidence establishes that the Vendors felt that a twelve month period was needed to see how well bioremediation would work. The Tribunal therefore considers it reasonable to project that the Vendors would have carried on with bioremediation as their principal focus through the fall of 2012. However, the Tribunal has also concluded that, notwithstanding Ken Watson's contacts and his experience with bioremediation, the Vendors' bioremediation business would have been unprofitable for the reasons discussed below.



**[202]** There would have been few if any customers for two reasons. First, while the evidence showed that there is a significant amount of treatable soil on drilling sites in the area around the Babkirk Facility, the bioremediation that presently occurs is done by generators on their own sites. There was no evidence that any companies are paying to transport waste to offsite bioremediation facilities in NEBC. Although Ken Watson testified that he expected that CNRL, Encana, and Bonavista would be interested in disposing of their waste in this fashion and, although Petro-Canada had been interested, the Vendors did not call evidence from any prospective customers to say that they would be prepared to truck their waste to the Babkirk Facility for bioremediation. Further, the Vendors provided the Commissioner with a list of potential customers and **[CONFIDENTIAL]** was first on that list. However, Mr. **[CONFIDENTIAL],** Vice-President, Operations at **[CONFIDENTIAL]**, testified for the Commissioner that **[CONFIDENTIAL]** philosophy is "going to landfill". In other words, his company was not a significant potential customer for the Vendors' bioremediation facility.

**[203]** Second, the Vendors testified that the Tipping Fees they would charge for bioremediation would be significantly higher than Silverberry's Tipping Fees for Secure Landfill services. It is difficult to imagine that generators with waste that could be bioremediated on their own sites would pay large sums to transport their Hazardous Waste to Babkirk and tip there at rates higher than those at Silverberry, given that they could continue to bioremediate on their own sites or tip for less at Silverberry.

**[204]** Further, there was no evidence from any potential purchasers who might have bought treated waste from Complete for use as cover for municipal dumps or as backfill for excavations. It does not appear that any such sales would have been available to generate revenue for Complete.

**[205]** It is not clear how long the Vendors would have been prepared to operate on an unprofitable basis, without beginning to accept more waste at the Secure Landfill part of the Babkirk Facility. In their final written submissions, the Vendors ask the Tribunal to assume that they would have incurred losses for two years before they decided that their venture had failed.

**[206]** However, the Tribunal has concluded that, because there was no evidence that the Vendors have deep pockets or significant borrowing power, it is unreasonable to suppose that they would have been prepared to operate unprofitably beyond the fall of 2012, when they could have generated additional revenues by accepting more waste into the Secure Landfill part of their facility.

**[207]** Accordingly, it is the Tribunal's view that the Vendors would have started to operate a Full Service Secure Landfill at least by the spring of 2013. In other words, they would have

begun to accept significant quantities of Hazardous Waste for direct disposal into Babkirk's Secure Landfill, in competition with CCS. In the alternative, they would have sold Complete or BLS to a purchaser which would have operated a Full Service Secure Landfill. Given that the Vendors had a valuable and scarce asset and given the evidence that demand for Secure Landfill services has, for some time, been projected to increase as new drilling is undertaken in the area north and west of Babkirk, the Tribunal is satisfied that such a sale would have been readily available to the Vendors. Finally, whether Babkirk was operated by the Vendors or a new owner, Babkirk and Silverberry would have become direct and serious competitors by no later than the spring of 2013.

**[208]** We have reached this conclusion notwithstanding CCS' submission that the Vendors' lack of experience and the smaller capacity of the Babkirk Facility would have constrained it from functioning as a serious competitor. In our view, as they had done in the past when they retained IRTL, the Vendors would have hired experts, if needed, to redress their lack of expertise. Moreover, 750,000 tonnes of permitted capacity was sufficient to allow the Vendors or a purchaser to compete effectively with CCS at Silverberry.

**[209]** To summarize, the Tribunal has decided that it is likely that the Vendors would have operated a bioremediation treatment facility with an Incidental Secure Landfill for approximately one year from October 2011 to October 2012 (the "Initial Operating Period"). Thereafter, in the spring of 2013, the Babkirk Facility would have become a Full Service Secure Landfill.

**[210]** Turning to the impact of these developments, it is the Tribunal's view that, as soon as the half cell of the Secure Landfill capacity at the Babkirk Facility was operational in October of 2011, waste generators who tipped at Silverberry would have seen that there was a potential alternative to Silverberry at the Babkirk Facility. The Tribunal cannot predict what would actually have happened. However, we can reasonably expect that, during the Initial Operating Period, some generators of Hazardous Waste would have asked the Vendors to take their waste for direct disposal, if only to use the possibility of disposing at Babkirk as a basis for negotiating lower Tipping Fees at Silverberry. This would have been possible because many oil and gas producers have one year non-exclusive contracts with CCS.

**[211]** As well, given that the Vendors would have needed revenue and given that it might have been convenient for some of their customers, it is reasonable to assume that the Vendors would have accepted at least some Hazardous Waste for direct disposal during the Initial Operating Period, in spite of their evidence that this was not their intention. This possibility was foreseen by Ron Baker when, in his cross-examination, he was asked about the decision matrix in the Operations Plan which reflected that soil which arrived and could not be bioremediated would be landfilled with other soil that could not be bioremediated. He said that, "if we had room", "chances are" such soil would be put in the Secure Landfill.

**[212]** The question is whether this competition afforded by Babkirk in the Initial Operating Period can be considered substantial. In *Director of Investigation and Research v. Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) 1, the Tribunal addressed the question of the potential importance of a small amount of competition, in the course of examining the impact on Yellow

Pages consultants of Tele-Direct's discriminatory anti-competitive practices. In that case, the Tribunal was considering whether there had been a substantial lessening of competition.

**[213]** The Tribunal heard evidence that consultants, who charged fees to place Yellow Pages advertisements, had lost time and money and that their ability to attract new customers had been damaged by Tele-Direct's conduct. The Tribunal also found that, although the consultants only occupied a small segment of the market and had a limited and fragile ability to compete with Tele-Direct, they had had a significant positive influence on the level of service Tele-Direct provided to customers who were purchasing yellow pages advertisements. In this context the Tribunal stated at paragraph 758:

> Where a firm with a high degree of market power [Tele-Direct] is found to have engaged in anti-competitive conduct, smaller impacts on competition resulting from that conduct will meet the test of being "substantial" than where the market situation was less uncompetitive to begin with. In these circumstances, particularly Tele-Direct's overwhelming market power, even a small impact on the volume of consultants' business, of which there is some evidence, by the anti-competitive acts must be considered substantial.

**[214]** In contrast, in this case, the Tribunal has concluded that the competition offered by the Babkirk Facility in the Initial Operating Period would likely have had no material, let alone significant, impact on pricing at Silverberry, because any competition would have been offered on an extremely small scale. In our view, during the Initial Operating Period, Silverberry could have ignored any requests by customers for lower prices because the Babkirk Facility would not have been a viable alternative for the volumes of Hazardous Waste oil and gas producers tipped at Silverberry. This means that the prevention of any competition that would have developed in the Initial Operating Period would not have been "substantial".

**[215]** Turning to the spring of 2013, the competition that would have been offered by Babkirk as a Full Service Secure Landfill would have been direct and substantial and, as discussed below, it is this competition that was substantially prevented by the Merger.

## B. What are the Relevant Assessment Factors?

*Conditions of Entry*

**[216]** The conditions of entry into a relevant market can be a decisive factor in the Tribunal's assessment of whether a merger is likely to prevent or lessen competition substantially. This is because, "[i]n the absence of significant entry barriers it is unlikely that a merged firm, regardless of market share or concentration, could maintain supra-competitive pricing for any length of time"( *Hillsdown*, above, at 324; see also *Propane 1*, above, at para. 127).

**[217]** To be effective, entry must be timely, likely and sufficient to ensure that any prevention of future competition will not be substantial.

**[218]** CCS maintains that the evidence in this case is that the Secure Landfill business is not characterized by significant entry barriers and that the conditions for entry are conducive for potential competitors. In this regard, CCS asserts that (i) the regulatory regime is permissive, as evidenced by the fact that a number of permits to operate a Secure Landfill have been granted in NEBC in recent years, (ii) there is a growing market in the NEBC region for oil and gas drilling and related services, coupled with a growing demand and pressure for socially responsible waste management alternatives, and (iii) the industry practice of engaging in short-term contracts is conducive to entry. CCS further asserts that the Commissioner's reliance on the fact that BLS took nearly four years to obtain its Secure Landfill permit is misplaced, most importantly because BLS did not pursue concurrent permitting. Concurrent permitting allows an applicant to pursue applications for EA Certificates and an MOE Permits (together the "Authorizations") in tandem. CCS also asserts that entry is much less time consuming if a remote area near Babkirk is selected. Thus, attempts to develop secure landfills in populated areas around Dawson Creek should not be accepted as precedents for the timing that entry might involve near Babkirk.



**[219]** Among other things, prior to seeking the Authorizations, a new entrant must spend several months selecting a site from among various potential sites. This involves drilling test holes to determine whether the site's subsurface characteristics are appropriate for Secure Landfilling. If so, a further assessment is undertaken which involves drilling multiple test holes and installing monitoring equipment. There is no evidence about the time needed to complete only a site selection. However, **[CONFIDENTIAL]** spent 15 to 18 months on site selection and the preparation of an application for a potential landfill.

**[220]** Once a potential entrant has completed the site selection described above, it must then obtain the required Authorizations. The evidence is that this process would likely take at least 18-24 months and that a further 3 to 4 months are needed for construction.

**[221]** Notwithstanding the time and money ($1.3 million) it spent during the development process, as described earlier, SES abandoned its plans to open the Heritage landfill and, after spending $885,000.00, CCS abandoned its proposed Sunrise Landfill in NEBC, due to opposition from local residents. These two incidents of site abandonment by knowledgeable industry participants underscore the risk and uncertainty associated with new entry, as well as the "sunk" nature of the entry costs in the event that an entry initiative is unsuccessful.

**[222]** Based on this evidence, the Tribunal has concluded that, even in a remote location and even with concurrent permitting, it would take a new entrant at least 30 months to complete the process of selecting a new site, obtaining the required Authorizations and constructing a new Secure Landfill. That said, the Tribunal notes that there is no evidence of any proposed entry in the Contestable Area.

*Absence of Acceptable Substitutes/Effective Remaining Competition*

**[223]** For the reasons given earlier, the Tribunal is satisfied that, for some product and for some generators, bioremediation does not compete in the same market as the supply of Secure Landfill services and does not exercise any constraining influence on price or non-price competition within the latter market.

**[224]** This conclusion is supported by the fact that CCS' Tipping Fees are significantly higher in areas where it does not face competition from other Secure Landfill operators, than they are in areas where CCS does face such competition. In addition, the "natural experiment" that occurred when SES opened its facility in Willesden Green Alberta, and CCS substantially reduced its Tipping Fees to seven of its significant customers, strongly suggests that CCS' pricing behaviour is primarily determined by reference to the location of competing suppliers of Secure Landfill services, rather than by competition with suppliers of bioremediation services.

**[225]** Dr. Baye provided extensive evidence with respect to CCS' alleged ability to price discriminate in order to show that it had market power. However, given the foregoing and because CCS is a monopolist in the relevant market and is not constrained by any actual or potential competition from within or outside the market, it is clear that CCS has significant market power. This conclusion is further supported by the discussion of countervailing market power immediately below. For this reason, it is not necessary to consider the allegation of price discrimination.

*Countervailing Power*

**[226]** CCS correctly notes that none of its customers have complained about the Merger. CCS encourages the Tribunal to infer from this that the Merger is not likely to prevent competition substantially. However, the Tribunal is not persuaded that this is a reasonable inference.

**[227]** The Tribunal recognizes that CCS' largest customers pay lower Tipping Fees than its smaller customers. However, the Tribunal notes that Dr. Baye's report indicates that even CCS' largest customers are forced to pay higher Tipping Fees in areas where CCS faces no competition than in areas where such competition exists and this evidence was not contested. In 2010, the average Tipping Fees at Silverberry and Northern Rockies were **[CONFIDENTIAL]** and **[CONFIDENTIAL]** respectively. However, Tipping Fees at CCS' South Grande Prairie **[CONFIDENTIAL]** and Rocky **[CONFIDENTIAL]** in Alberta were significantly lower because they both face competition from SES. This no doubt explains why Mr. **[CONFIDENTIAL]**, who testified for the Commissioner, made it clear in his testimony that he would welcome competition for CCS in NEBC.

**[228]** The attenuated or limited nature of any countervailing power that may be in the hands of CCS' largest customers is also reflected in the evidence that written requests by them for price relief were rejected by CCS during the industry downturn in late 2008 and early 2009.

## C. Conclusions

**[229]**

(i) Based on all of the foregoing, the Tribunal has concluded that the Merger is likely to prevent competition substantially. The Merger prevented likely future competition between the Vendors and CCS in the supply of Secure Landfilling services in, at the very least, the Contestable Area. Although the

competition that was prevented in 2012 is not likely to be substantial, the Tribunal is satisfied that by no later than the spring of 2013, either the Vendors or a party that purchased the Babkirk Facility would have operated in direct and serious competition with CCS in the supply of Secure Landfill services in the Contestable Area.

(ii) In estimating the magnitude of the likely adverse price effects of the Merger, the Commissioner relied on expert evidence adduced by Dr. Baye. That evidence included economic theory and regression models. However, for reasons discussed below the Tribunal has not given significant weight to that economic theory or to those regression models in assessing the magnitude of the likely adverse price effects of the Merger. In reaching this decision, the Tribunal took into account the fact that the models do not control for costs, and the fact that, although Dr. Baye acknowledged that his theory of spatial competition should only be used if other data were unavailable, he used his theory even though he had actual CCS data.

(iii) Nevertheless, as discussed below in connection with the "effects" element of section 96, the Tribunal is satisfied that prices likely would have been at least 10% lower in the Contestable Area in the absence of the Merger.

(iv) The Tribunal therefore finds that the Merger is more likely than not to maintain the ability of CCS to exercise materially greater market power than in the absence of the Merger, and that the Merger is likely to prevent competition substantially.



## ISSUE 7 WHEN THE EFFICIENCIES DEFENCE IS PLEADED, WHAT IS THE BURDEN OF PROOF ON THE COMMISSIONER AND ON THE RESPONDENT?

**[230]** CCS has alleged that the Commissioner failed to properly discharge her burden to prove the extent of the quantifiable effects of the Merger. CCS alleges that the Commissioner's failure to prove those effects in her case in chief has precluded CCS from being able to meet its overall burden to prove the elements of the efficiencies defence on a balance of probabilities. CCS asserts that the Commissioner's failure means that the effects should be zero and that the Application should therefore be dismissed.

**[231]** In paragraph 48 of its response to the Commissioner's Application, CCS pleaded the efficiencies defence in the following terms:

> The Acquisition has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention of competition that will result from the Acquisition, and the gains in efficiency will not likely be attained if the requested order or orders are made by the Tribunal.

**[232]** The burdens of proof under section 96 were established and applied over the course of the four decisions in *Propane* (*Propane 1*, at para. 48, rev'd on other grounds 2001 FCA 104, [2001] 3 F.C. 185 ("*Propane 2"*), leave to appeal to SCC refused, 28593 (September 13, 2001),

redetermination, *The Commissioner of Competition v. Superior Propane Inc.*, 2002 Comp. Trib. 16, 18 C.P.R. (4th) 417 ("*Propane 3*"), aff'd 2003 FCA 53, [2003] 3 F.C. 529 ("*Propane 4*")). "The effects of any prevention or lessening of competition" must be demonstrated by the Commissioner on balance of probabilities (*Propane 1*, above, at para. 402; *Propane 2*, above, at para. 177, *Propane 4*, at para. 17). Her burden is to prove (i) the extent of the *anti-competitive* effects in question where they are quantifiable, even if only roughly so (*Propane 4*, at paras. 35-38), and (ii) any non-quantifiable or qualitative *anti-competitive* effects of the merger. It also includes the burden to demonstrate the extent of any *socially adverse* effects that are likely to result from the merger, i.e., the proportion of the otherwise neutral wealth transfer that should be included in the trade-off assessment contemplated by section 96, as well as the weighting that should be given to those effects (*Propane 4*, above, at paras. 35-38, and 61-64). In this case, there being no socially adverse effects, the term "Effects" will be used to described quantifiable and non-quantifiable anti-competitive effects.



**[233]** That said, the respondents bear the burden on the ultimate issue, namely, that the efficiency gains are likely to be greater than, and to offset, the effects of any prevention or lessening of competition likely to result from the merger (*Propane 2*, above, at para. 154).

**[234]** There is no dispute about the fact that, in his expert report in chief, Dr. Baye only calculated that an average price decrease of at least 10% would be prevented by the Merger. This meant that CCS did not have a figure for the Effects and was obliged to serve its expert report on efficiencies with no ability to take a position about whether the number it calculated for its total efficiencies was greater than the Effects. As a result, CCS maintains that, as a matter of substantive and procedural fairness, it was effectively denied a right of response and the ability to properly meet its own burden under section 96. It therefore asserts that the Tribunal should conclude that there are no quantified Effects as a result of the Merger.

**[235]** Dr. Baye did eventually quantify the Effects but not until he wrote his reply report, which was only made available to CCS two weeks before the hearing. By then, the Tribunal's Scheduling Order did not permit CCS to bring a motion or file a further expert report. In addition, the Tribunal accepts that, in practical terms, there was insufficient time before the hearing to permit CCS to move to strike Dr. Baye's report or to seek leave to file a further report in response to the Commissioner's quantification of the Effects.

**[236]** The Commissioner maintains that her substantive burden to quantify the Effects only arises once a respondent advances its affirmative defence by proving efficiencies. She submits that any other result would require her to respond to every bald assertion of efficiencies, regardless of whether a respondent actually relies on efficiencies at the hearing. She asserts in her final written argument that this "would be an incredible waste of resources, and one that is antithetical to the notion of responding to an affirmative defence".

**[237]** In the Tribunal's view, the Commissioner's argument about resources does not justify her failure to meet her burden to prove the Effects as part of her case in chief. Once CCS pleaded section 96, the efficiencies defence became part of the fabric of the case and, if it had not been pursued by CCS, the Commissioner would have been entitled to costs fully compensating her for work done by her experts to calculate the Effects.

**[238]** The Commissioner also defended her approach by stating that, until CCS served Dr. Kahwaty's report on efficiencies ("Efficiencies Report"), it was an open question whether it was going to pursue the efficiencies defence at all. In this regard, she noted that prior to serving that report, CCS advanced no facts or proof of efficiencies, and provided no guidance on the types of efficiencies that Dr. Kahwaty planned to identify and quantify. She also observed that the Tribunal's Revised Scheduling Order, dated August 19, 2011, indicated that CCS might not pursue the efficiencies defence.

**[239]** The revised scheduling order required the "Corporate Respondents to serve expert reports, *if any*, on efficiencies and provide them to the Tribunal" on or before October 7, 2011 (our emphasis). However, since the phrase "if any" was proposed by the Commissioner and not by CCS, the Tribunal does not accept that it suggests that CCS had resiled from its pleading.

**[240]** In addition, the Tribunal can find no basis in the record for concluding that CCS did not intend to mount the efficiencies defence. The Tribunal notes that the Commissioner asked questions about efficiencies during examination for discovery and asked, during a case management teleconference on August 15, 2011, that CCS be ordered to produce documents relevant to the issue. During that teleconference, the Presiding Judicial Member stated that efficiencies were at issue and that, if relevant documents existed, their production was required.

**[241]** Given the pleading of section 96 and these developments, the Tribunal concludes that there was no reason to doubt that CCS would pursue an efficiencies defence.

**[242]** The Commissioner further asserts that the legislation and the case law do not dictate how she must meet her burden to prove the extent of the Effects. She submits that she is not obliged in every case to lead evidence about demand elasticities and provide detailed calculations about the range of likely Effects. This is particularly so in a case such as this in which she asserts that the efficiencies are "plainly so minimal that it was an open question whether [the efficiencies defence would even be pursued]".

**[243]** The Tribunal acknowledges that the legislation and the jurisprudence do not dictate how the Commissioner must meet her burden. However, as noted above, where it is possible to quantify the Effects of a merger, even if only in "rough" terms, the Commissioner has the onus to provide an estimate of such Effects (*Propane 4*, above, at paras. 35 – 38).

**[244]** Indeed, where the necessary data can be obtained, the Commissioner will be expected in future cases to provide estimates of market elasticity and the merged entity's own-price elasticity of demand in her case in chief. These estimates facilitate the calculation of the magnitude of the output reduction and price effects likely to result from the merger. They are also necessary in order to calculate the deadweight loss ("DWL") that will likely result from the output reduction and related price effects. DWL is the loss to the economy as a whole that results from the inefficient allocation of resources which occurs when (i) customers reduce their purchases of a product as its price rises, and shift their purchases to other products that they value less, and (ii) suppliers produce less of the product.

**[245]** Given that there will often be shortcomings in the data used to estimate market elasticities and the merged entity's own-price elasticity of demand, prudence dictates that a range of plausible elasticities should be calculated, to assist the Tribunal to understand the sensitivity of the Commissioner's estimates to changes in those elasticities. The Tribunal will be open to making its assessment of the quantitative extent of the Effects on the basis of persuasively supported "rough estimates" of those Effects, but only if the data required to reliably estimate elasticities cannot reasonably be obtained. Such rough estimates may be derived from evidence with respect to the magnitude of the likely price effects of the merger, including statements or projections made in the internal documents of the respondent or its advisors (including its investment bankers); persuasive estimates by customers, other lay witnesses, or expert witnesses; and persuasive evidence from "natural experiments."

**[246]** Although the Commissioner failed to meet her burden, in the unusual circumstances of this case, CCS was not prejudiced by that failure because, instead of doing the required independent analysis of elasticities, Dr. Baye relied on his assumed price decrease of at least 10% and on certain assumptions used by Dr. Kahwaty in calculating CCS' claimed market expansion efficiencies. In making that calculation, Dr. Kahwaty assumed that the opening of a Secure Landfill at Babkirk would lead waste generators to dispose of approximately **[CONFIDENTIAL]** additional tonnes of Hazardous Waste, as forecast in CCS' internal documents. Further, during the hearing. Dr. Kahwaty was able to effectively attack Dr. Baye's DWL calculations on various grounds, including his failure to base them on conventional calculations of elasticities when he could have obtained the data necessary to perform those calculations. In short, CCS was able to effectively assert the defence and argue that the efficiencies its expert presented were greater than the Effects (i.e. the DLW) calculated by Dr. Baye. For these reasons, the Tribunal declines to dismiss the Application.

**[247]** There is a second reason why CCS' request is being denied. CCS was also required to show that the cognizable efficiencies would be likely to *offset* the Effects. This means that even if the Tribunal had accepted CCS' submission that a zero weighting should be given to the quantifiable Effects, it would not necessarily follow that the Tribunal would find that the *offset* element of section 96 has been established on a balance of probabilities.

**[248]** This is so for two reasons. First, as noted in *Propane 3*, above, at para. 172, "it cannot be concluded that the Tribunal would find that efficiency gains (whether large or small) that marginally exceeded the effects (whether large or small) would necessarily offset those effects." This is because the loss of dynamic competition will always merit some non-trivial qualitative weighting in the trade-off assessment. Indeed, dynamic efficiencies and dynamic Effects can have a major impact on the trade-off assessment. Second, in this case, the Commissioner adduced evidence of *qualitative* Effects in Dr. Baye's expert report in chief. As well, CCS adduced evidence of qualitative efficiencies, such as improved service, reduced risk for customers and the environment, which put in play the issue of whether a substantial prevention of competition likely would adversely impact upon these matters.

**[249]** Accordingly, the Commissioner's failure to meet her burden to quantify the Effects, even in rough terms, at the appropriate time is not a sufficient reason to conclude that CCS is relieved of its obligation to meet its burden to meet the "offset" element in section 96.

## ISSUE 8 HAS CCS SUCCESSFULLY ESTABLISHED AN EFFICIENCIES DEFENCE?

### What are the Claimed Efficiencies?

**[250]** We now turn to summarizing the efficiencies claimed by CCS. In that regard, Dr. Kahwaty testified on behalf of CCS that the Merger would likely result in efficiencies that he grouped into the following five categories.

**[251] Transportation efficiencies**: These were described as being productive efficiencies realized by those customers presently serviced at Silverberry, who have an aggregate of **[CONFIDENTIAL]** locations that are situated closer to the Babkirk Facility than to Silverberry. Once CCS opens the Babkirk as a Secure Landfill, those customers will realize significant transportation cost savings, thereby freeing up resources for other uses. Based on what he described as the "going rate" of approximately **[CONFIDENTIAL]** for trucking services, the number of loads shipped from each of the above-mentioned **[CONFIDENTIAL]** locations in 2010, and the time saved by tipping at Babkirk instead of Silverberry, Dr. Kahwaty estimated the annual aggregate transportation cost savings for the aforementioned customers to be **[CONFIDENTIAL]**. Using a lower trucking rate of **[CONFIDENTIAL]** per hour per load (or $5 per tonne per hour of transport), Dr. Kahwaty provided a second estimate of those annual transportation cost savings, which totaled **[CONFIDENTIAL]**. Dr. Kahwaty also calculated that his two estimates represented approximately **[CONFIDENTIAL]** and **[CONFIDENTIAL]** respectively of CCS' 2010 revenue derived from the **[CONFIDENTIAL]** customer locations in question.

**[252] Market expansion efficiencies**: Dr. Kahwaty stated that, absent the opening of a Secure Landfill at Babkirk, a significant volume of existing Legacy Waste and newly generated Hazardous Waste, within the drawing area of the Babkirk Facility, would not have been transported to Silverberry due to the significant risk, and related financial liability, that would be associated with transporting such waste over the long distance to Silverberry. However, with the opening of a Secure Landfill at the Babkirk Site, CCS estimated that approximately **[CONFIDENTIAL]** tonnes per year of such waste ("Market Expansion Waste") likely would be transported for disposal at Babkirk. Dr. Kahwaty acknowledged that this estimate is "necessarily imprecise," and suggested that the incremental volume of Market Expansion Waste could substantially exceed CCS' estimate of **[CONFIDENTIAL]** tonnes per year. Based on the reported margin for Silverberry in 2009 of **[CONFIDENTIAL]** and a price of **[CONFIDENTIAL]** per tonne, Dr. Kahwaty estimated an increase in producer surplus from this incremental volume of **[CONFIDENTIAL]**. In addition, based on an estimated reduction in disposal costs of **[CONFIDENTIAL]** per tonne, Dr. Kahwaty estimated that customers would gain approximately **[CONFIDENTIAL]** per year in consumer surplus. This is only 50% of the product of multiplying **[CONFIDENTIAL]** by **[CONFIDENTIAL]**, because Dr. Kahwaty felt that customers do not gain the full reduction in the costs of disposal when they are induced to dispose of their waste by virtue of a lower overall cost of disposition. The sum of the estimated **[CONFIDENTIAL]** in producer surplus gains and the estimated **[CONFIDENTIAL]** in consumer gains, was a total of **[CONFIDENTIAL]** of annual market expansion efficiencies.

**[253] Overhead Efficiencies**: Dr. Kahwaty estimated that the Merger would result in annual overhead savings of approximately **[CONFIDENTIAL]**. He stated that these savings likely would be achieved by virtue of the fact that CCS could draw upon its existing administrative staff (e.g., those persons who deal with legal, regulatory, marketing, engineering, financial and health & safety matters) in operating the Babkirk Facility. In the absence of the Merger, he stated that the Vendors likely would have had to incur expenses associated with these functions. In reaching his estimate of **[CONFIDENTIAL]**, Dr. Kahwaty used the cost reductions that CCS has achieved in operating Complete's Roll-off Bin Business as a proxy. In addition, he submitted that some "qualitative" credit should be given to this category of efficiencies, because Complete would otherwise need to expend resources developing administrative systems and to deal with some of the matters identified above.

**[254] Roll-off Bin Business Efficiencies**: Dr. Kahwaty estimated that CCS's Merger of the Roll-off Bin Business has resulted in annual cost savings of approximately **[CONFIDENTIAL]**. These savings were described as having been achieved as a result of (i) the upgrading of its trucks to meet higher safety standards, (ii) investments in business development efforts, and (iii) the absorption of administrative functions, such as billing, into CCS' pre-existing corporate systems.

**[255] Qualitative efficiencies**: Dr. Kahwaty listed the following qualitative efficiencies as being likely to result from the Merger:

a. the landfill services to be offered by CCS at the Babkirk Site will be of higher (and known) quality and involve less risk for customers due to CCS's knowledge and experience in the operation and management of hazardous waste landfills;

b. customers will benefit from being able to purchase bundled packages of services that may include, for example, loading, trucking and tipping services;

c. the landfill services to be offered by CCS at the Babkirk Site will reduce risks for customers due to CCS's substantial financial resources, which provide assurance to customers regarding the long-term management of the Babkirk Facility and the potential continuing liability for wastes disposed in that landfill;

d. CCS will have the capability and resources necessary to expand the Babkirk Facility as necessary and to meet special customer needs (e.g., rapid responses to increased disposal needs);

e. since landfilling is CCS' business and since the Vendors were not planning to operate a Secure Landfill, CCS will promote landfilling services to a greater extent than the Vendors would have done, once the Babkirk Site is operational, making trucking cost efficiencies available to more customers;

f. the provision of Secure Landfill services by CCS at the Babkirk Site will reduce risks for generators, trucking firms, and other road users related to the transportation of Hazardous Waste on roads over long distances;

g. increased competition in the Roll-off Bin Business will benefit roll-off customers and may reduce the extent of any DWL in the roll-off industry, which will increase the total surplus generated in the roll-off marketplace; and

h. increased site remediation from reduced trucking costs will benefit area residents, wildlife, and the overall environment, and will also further the government's policy of expanding contaminated site remediations.

**[256]** Dr. Kahwaty also stated that some or all of the efficiencies identified above would likely be achieved sooner by CCS than by Complete or by any third-party who might acquire the Babkirk Facility pursuant to an order of the Tribunal.

**[257]** In addition, Dr. Kahwaty stated that CCS should be given credit for some of the efficiencies that it has already achieved in respect of the Roll-off Bin Business.

**[258]** Finally, Dr. Kahwaty provided reasoned estimates about the extent to which the above-mentioned trucking and market expansion efficiencies would increase under market growth scenarios of 1%, 2% and 4% compounded annually over the next 10 years. Based on this work, he suggested that these increased efficiencies ought to be considered by the Tribunal.

**[259]** After providing his annual estimates of the quantifiable efficiencies, Dr. Kahwaty calculated the net present value of those efficiencies as of January 1, 2012 using three different discount rates: (i) a risk-free interest rate of 1%, which he described as being the annual yield on one to three year government of Canada marketable bonds over the 10 week period preceding the date of his report (October 7, 2011); (ii) an interest rate of 10%, which he described as being "roughly equivalent to rates prevailing in the oil and gas industry"; and (iii) an intermediate rate of 5.5%.

**[260]** The Tribunal accepts the evidence of Mr. Harrington, the Commissioner's expert, that, in broad terms, the discount rate used in calculating the net present value of efficiencies typically does not matter, so long as the same discount rate is used to calculate the net present value of the Effects. That said, the Tribunal also accepts Mr. Harrington's evidence that, (i) as a general principle, the appropriate discount rate to use in discounting a set of future cash flows is a function of the risk of those cash flows being wrong, (ii) there is some uncertainty associated with the efficiencies identified and estimated by Dr. Kahwaty and CCS, and therefore (iii) the midpoint (5.5%) of the three discount rates identified by Dr. Kahwaty is the most defensible of the three rates to use in calculating efficiencies and Effects in this case.

**The assessment of the claimed efficiencies**

**[261]** In the initial stage of assessing efficiencies claimed under section 96 of the Act, the Tribunal applies five screens to eliminate efficiencies that are not cognizable under that section.

**[262]** The first screen eliminates claims that do not involve a type of productive or dynamic efficiency, or that are not otherwise likely to result in any increase in allocative efficiency. The second screen narrows the claimed efficiencies to those that the Tribunal is satisfied are *likely* to be brought about by the Merger. Efficiencies that cannot be demonstrated to be more likely than not to be attained in the Merger are filtered out at this stage. The third screen filters out claimed efficiency gains that would be brought about by reason only of a redistribution of income between two or more persons, as contemplated by subsection 96(3). These types of gains include savings that result solely from a reduction in output, service, quality or product choice, as well as from increases in bargaining leverage and reductions in taxes. The fourth screen filters out claimed efficiency gains that would be achieved outside Canada and would not flow back to

shareholders in Canada as well as any savings from operations in Canada that would flow through to foreign shareholders.

**[263]** In the case at bar, the application of the first four screens does not result in the elimination of any of the claimed efficiencies.

**[264]** The fifth screen filters out claimed efficiencies that either (a) would likely be attained through alternative means if the Tribunal were to make the order that it determines would be necessary to ensure that the merger in question does not prevent or lessen competition substantially, or (b) would likely be attained through the Merger even if that order were made. This screen has a critical role to play in the case at bar.

**[265]** In this case, the fifth screen eliminates most of the efficiencies claimed by CCS. With three exceptions, being the one year of transportation efficiencies and the one year of market expansion efficiencies discussed at paragraph 269 below, as well as the overhead efficiencies discussed above, virtually all of the efficiencies claimed by CCS would likely be achieved even if the order referred to in the preceding paragraph is made. That order is an order for the divestiture of the shares or assets of BLS (the "Order").

**[266]** Although there is currently some uncertainty regarding the identity of a prospective purchaser, the Tribunal is satisfied that a divestiture will ultimately be made to a purchaser who will operate the Babkirk Facility and attract essentially the same volumes of Hazardous Waste as were assumed by Dr. Kahwaty in arriving at his estimates of transportation and market expansion efficiencies.

**[267]** The Tribunal has decided that, absent exceptional circumstances, it will not be prepared to conclude that the claimed efficiencies that would be realized by any acceptable alternative purchaser should be included in the trade-off assessment, on the basis that it is not possible to identify any particular *likely* purchaser of the shares or assets contemplated by the divestiture order.

Transportation and Market Expansion Efficiencies

**[268]** Based on the reasonable assumption that a purchaser under the Order will emerge and attract, in its first year of operation, the volume of Hazardous Waste that formed the basis for Dr. Kahwaty's estimates of CCS' claimed transportation and market expansion efficiencies, those efficiencies cannot be considered in the section 96 assessment because they are likely to be achieved even if the Order is made.

**[269]** A noteworthy exception to this conclusion concerns the transportation and market expansion efficiencies that CCS claims would be achieved more quickly by CCS than by a purchaser. In this regard, CCS asserted that it would already have been operating at Babkirk but for the Commissioner's intervention and that, in any event, it is likely to be in a position to operate a Secure Landfill at the Babkirk Site by the summer of 2012. In contrast, CCS stated that a purchaser following a divestiture is unlikely to be in a position to operate a Secure Landfill facility at the Babkirk Site before mid-2013, having regard to the time required (i) for the

Tribunal to render a decision in this proceeding, (ii) to effect the actual sale of the shares or assets of BLS (which it estimates to will require "at least six months, or more," inclusive of due diligence), (iii) to modify or prepare an operations plan for the landfill, (iv) for the MOE to approve the operations plan, and (v) for the purchaser to construct the landfill, bearing in mind that construction can only be undertaken between June and September.

**[270]** In the Tribunal's view, claimed efficiencies that would not likely be achieved by a purchaser under the Order, but that would likely be achieved by CCS solely because of the types of delays identified immediately above and associated with the implementation of the Order, are not cognizable efficiencies under section 96. These will be described as "Order Implementation Efficiencies". In the case at bar, CCS and the Vendors completed the Merger after being advised that the Commissioner intended to apply to the Tribunal. To give the Respondents the benefit of Order Implementation Efficiencies in such circumstances, and thereby potentially preclude the Tribunal from issuing the Order in respect of their anticompetitive Merger, would be contrary to the purposes of the Act.

**[271]** In any event, even if CCS were given full credit for the Order Implementation Efficiencies, those efficiencies are only likely to be between **[CONFIDENTIAL]** and **[CONFIDENTIAL]** (which represents one year of transportation cost savings) plus **[CONFIDENTIAL]** (which represents one year of annual market expansion efficiencies). As discussed below in connection with the Tribunal's treatment of the "offset" element of section 96, these efficiencies are not sufficient to change the Tribunal's overall determination with respect to section 96.

The Roll-off Bin Business Efficiencies

**[272]** The divestiture of the shares or assets of BLS will not have any impact on the Roll-off Bin Business efficiencies claimed by CCS. Stated alternatively, those efficiencies will likely be attained even if the Order is made. Accordingly, those efficiencies cannot be considered in the trade off assessment contemplated by section 96.

**[273]** CCS has also submitted that certain productive efficiencies have already been achieved as a result of (i) its upgrading and sale of trucks to meet higher safety standards and to operate more efficiently, and (ii) CCS having absorbed certain administrative functions into its pre-existing corporate functions. However, as Mr. Harrington testified on behalf of the Commissioner, these efficiencies would only be lost if CCS were required to divest the Roll-off Bin Business. Given that the Order does not include the Roll-off Bin Business, those efficiencies will not be affected by the Order as contemplated by subsection 96(1) of the Act. Accordingly, they are not cognizable. In any event, given the value of these efficiencies, which Dr. Kahwaty estimated to be approximately **[CONFIDENTIAL]**, the Tribunal's overall conclusion with respect to section 96, set forth below, would not change even if these efficiencies were given full value in the trade-off assessment.

**[274]** More generally, if certain efficiencies have already been achieved, they cannot be considered to be a potential "cost" of making the order contemplated by section 96. Therefore, they cannot be considered in the assessment under section 96. In other words, it cannot be said

that those efficiencies "would not likely be attained if the order were made," as required by subsection 96(1).

The Overhead Efficiencies

**[275]** As has been noted, Dr. Kahwaty estimated that these efficiencies would likely total approximately **[CONFIDENTIAL]** per year. He arrived at this assessment by, among other things, using as a proxy the cost reductions that CCS has achieved in operating the Roll-off Bin Business. Those cost reductions amounted to approximately 21% of the overhead expenses that previously were incurred by Complete in operating the Roll-off Bin Business. Dr. Kahwaty applied this 21% to the overhead expenses incurred at Silverberry, to reach his estimate of approximately **[CONFIDENTIAL]** in annual overhead savings. Mr. Harrington took issue with this methodology, in part because the Roll-off Bin Business is different from the landfill business. In addition, he opined that if there is a divestiture, some of these savings, which he described as being equivalent to one-half of the annual cost of a full time back-office employee, would likely be achieved by the purchaser. The Tribunal is persuaded by this reasoning and therefore accepts Mr. Harrington's conclusion that the annual overhead efficiencies which are cognizable under section 96 are reasonable but are probably somewhat less than the **[CONFIDENTIAL]** that CCS has claimed.

**[276]** As a practical matter, given the conclusion that the Tribunal has reached with respect to the "offset" element of section 96, discussed below, the fact that a more precise estimate of the cognizable overhead efficiencies is not available does not affect the Tribunal's overall determination with respect to the efficiencies defence in section 96.

The Qualitative Efficiencies

**[277]** As discussed above, Dr. Kahwaty identified eight types of qualitative efficiencies that he claimed would likely result from the Merger. The Tribunal is not persuaded that any of these efficiencies "would not likely be attained if the Order were made," as provided in subsection 96(1). Ultimately, the answer to that question is dependent upon the expertise, financial resources, and reputation of the purchaser under the Order. Given that the purchaser may well have the same expertise, financial resources and reputation as CCS, the Tribunal cannot give significant weight to these claimed efficiencies. Indeed, given that the purchaser will have to be approved by the Commissioner, the Tribunal is of the view that all, or virtually all, of these claimed efficiencies are likely to be achieved by that purchaser.

**[278]** Regardless of the identity of the purchaser, some of the types of qualitative efficiencies identified by Dr. Kahwaty will be achieved, including those related to the Roll-off Bin Business, the reduction of risks related to the transportation of Hazardous Waste over long distances and the increased site remediation that will benefit residents, wildlife, and the overall environment. In fact, to the extent that the Merger is likely to substantially prevent competition, as the Tribunal has found, we conclude that it is entirely appropriate to take into account, in the trade-off assessment, the likelihood that there will be less site clean-up and tipping of Hazardous Waste in

Secure Landfills than otherwise would have occurred if an Order were made. This will be described below when non-quantifiable effects are considered.

**[279]** The Tribunal concludes that the only efficiencies claimed by CCS that are cognizable under section 96 are a maximum of **[CONFIDENTIAL]** in annual overhead efficiencies, having a net present value of approximately **[CONFIDENTIAL]**, using a discount rate of 5.5%.

**[280]** If, contrary to the Tribunal's conclusion, the Order Implementation Efficiencies are also cognizable under section 96, then it would be appropriate to include in the trade-off assessment further amounts of approximately **[CONFIDENTIAL]** to **[CONFIDENTIAL]** (i.e., one year of transportation cost savings) plus **[CONFIDENTIAL]** (i.e., one year of annual market expansion efficiencies).

**What are the Effects for the Purposes of Section 96 of the Act?**

**[281]** As CCS noted in its Final Argument, the total surplus approach remains the starting point in assessing the effects contemplated by section 96. Under that approach, the cognizable quantifiable efficiencies will be balanced against the DWL that is likely to result from a merger. In addition, the Tribunal considers any cognizable dynamic or other non-quantifiable efficiencies and *anti-competitive* Effects. Where there is evidence of important dynamic or other non-quantifiable efficiencies and anti-competitive effects, such evidence may be given substantial weight in the Tribunal's trade-off assessment.

**[282]** After the Tribunal has assessed the evidence with respect to the quantifiable (i.e., DWL) and non-quantifiable *anti-competitive* Effects of the merger, it will assess any evidence that has been tendered with respect to the other effects contemplated by section 96 and the purpose clause in section 1.1 of the Act. It is at this point that the Tribunal's assessment will proceed beyond the total surplus approach. In brief, at this stage of the Tribunal's assessment, it will determine whether there are likely to be any *socially adverse* effects associated with the merger. If so, it will be necessary to determine how to treat the wealth transfer that will be associated with any adverse price effects that are likely to result from the merger. In a merger among sellers of products, that wealth transfer will be from the merging parties' customers to the merged entity. Of course, to the extent that the merging parties' rivals may be likely to follow such price effects, the wealth transfer would need to be calculated across the sales or purchases of such rivals as well.

**[283]** The Tribunal expects that in most cases, it will be readily apparent that the wealth transfer should be treated as neutral in its analysis, because the socio-economic profiles of consumers and the merged entity's shareholders will not be sufficiently different to warrant a conclusion that the wealth transfer is likely to lead to *socially adverse* Effects. For greater certainty, the cognizable social Effects under section 96 do not include broader social effects, such as those related to plant-closings and layoffs (*Propane 1*, at para. 444).

**[284]** In these proceedings, the Commissioner adduced no evidence with respect to *socially adverse* effects. Indeed, in her Final Argument (at para. 208) she conceded that the Merger is not likely to result in any such effects, and that the wealth transfer should be treated as being neutral

in this case. Accordingly, the discussion below will be confined to *anti-competitive* effects. In other words, in making its determination under section 96 in the case at bar, the Tribunal will adopt the total surplus approach.

Quantifiable Effects

**[285]** Quantifiable *anti-competitive* Effects are generally limited to the DWL that is likely to result from a merger.

**[286]** In this case, the DWL is the future loss to the economy as a whole that will likely result from the fact that purchasers of Secure Landfill services in the Contestable Area will purchase less of those services than they would have purchased had the Tipping Fees for such services declined due to the competition that would likely have materialized between CCS and Babkirk operated as a Full Service Secure Landfill.

**[287]** The DWL that is likely to result from a merger is likely to be significantly greater when there is significant pre-existing market power than when the pre-merger situation is highly competitive (*Propane 3*, above, at para. 165). In the case at bar, as in *Propane*, the Commissioner did not adduce specific evidence of pre-existing market power, for example, with respect to the extent to which prevailing Tipping Fees exceed competitive levels. Therefore, the Tribunal is not in a position to quantify the impact that any such pre-existing market power likely would have on the extent of the DWL. Where, as in this case, the pre-existing market situation is characterized by a monopoly and the Tribunal is not provided with sufficient persuasive evidence to enable it to quantify the Effects associated with such market power, it will be open to the Tribunal to give qualitative weight to those Effects. Given the very limited nature of the cognizable efficiencies in this case, it has not been necessary for the Tribunal to attribute such a qualitative weighing to those Effects in making its determination under section 96.

**[288]** As discussed above, CCS submitted that the Tribunal should conclude that there are no quantifiable Effects as a result of the Merger, because the Commissioner did not lead any evidence with respect to such Effects until she served Dr. Baye's reply report, on November 4, 2011. The Tribunal has rejected that position because CCS was not ultimately prejudiced in this regard. The Tribunal will therefore proceed to address the evidence adduced in Dr. Baye's reply report. As will be noted below, the Tribunal is satisfied that CCS would not have met its burden under section 96, even if the quantifiable Effects had been deemed to be zero.

**[289]** At the outset of his reply report, Dr. Baye summarized a number of the conclusions set forth in his initial report, dated September 30, 2011. These included the following:

a. the Merger likely prevents the prices for the disposal of Hazardous Waste generated in NEBC from falling significantly for many customers;
b. the effects of the Merger are unlikely to be uniform across all customers in the relevant market; and
c. the average reduction in the Tipping Fees throughout NEBC is likely to be at least 10%, but the effects are likely to be significantly higher for customers generating Hazardous

Waste in the vicinity near Babkirk and Silverberry and lower for customers located near the southern and northern boundaries of NEBC.

**[290]** The Tribunal is satisfied, on a balance of probabilities, that with the exception of the geographic extent of the Effects, the foregoing conclusions are supported by the weight of the evidence that it has found to be credible and persuasive. As to the geographic region over which the aforementioned Effects are likely to result from the Merger, the Tribunal finds that, at a minimum, such Effects are likely to extend throughout the Contestable Area identified by Dr. Kahwaty. Given the conclusions that the Tribunal has reached regarding the minimal nature of the efficiencies claimed by CCS, it is unnecessary to define the scope of the anti-competitive Effects with greater precision.

**[291]** As Dr. Baye explicitly noted, his conclusions were based on a range of different sources of information and economic analyses, rather than on any specific source of information or economic methodology. Those sources included CCS' internal documents and a "natural experiment." The Tribunal has not placed weight on the economic models that are set forth in Dr. Baye's reports, for example, the tipping fee and DiD regressions presented at exhibits 20 and 26 of his initial Report, which are also briefly discussed in his reply report. In the Tribunal's view, some of the assumptions underlying those models are questionable. The same is true of some of the outcomes of those models, such as the prediction of greater adverse price effects for customers located closer to Northern Rockies than to Babkirk. In the Tribunal's view, those predictions of Dr. Baye's models are counterintuitive and are not supported by the weight of the other evidence adduced in these proceedings.

**[292]** More generally, as noted above, Dr. Baye's models do not account for the opportunity cost that CCS would incur if it were to lower Tipping Fees to the 20 - 25% range necessary to attract business from customers located farthest away from Silverberry and Babkirk, respectively, as discussed at paragraphs six and seven of his reply report. The Tribunal is not persuaded that it would be in CCS' interest to reduce prices to that extent in the near future, and to thereby deplete its finite Secure Landfill capacity at Silverberry, assuming that CCS would likely be able to attract business at higher Tipping Fees further in the future to fill that capacity.

**[293]** Notwithstanding the fact that the Tribunal has found the models at exhibits 20 and 26 to be unreliable, we are satisfied, on a balance of probabilities, that competition from an independently owned and operated Full Service Secure Landfill at the Babkirk Site likely would result in CCS reducing its prices by an average of at least 10% for customers in the geographic market described above. This conclusion is based on evidence from CCS' own internal documents, evidence given by **[CONFIDENTIAL]** of **[CONFIDENTIAL]** and the transactions data pertaining to the "natural experiment" at Willesden Green modelled in Dr. Baye's DiD analysis.

**[294]** The internal CCS documents referenced above include:

a. a slide presentation, dated August 26, 2010, which is attached at Exhibit K to Mr. D. Wallace's witness statement, **[CONFIDENTIAL]**

b. an e-mail, dated July 15, 2010, sent by Trevor Barclay to Ryan Hotston and Lance Kile, **[CONFIDENTIAL]**
c. a document, entitled **[CONFIDENTIAL]**, containing several slides dated "3/9/2009/ **[CONFIDENTIAL]**
d. a financial analysis prepared by Dan Wallace, attached to an e-mail dated March 31, 2010, and at Exhibit C to his witness statement, **[CONFIDENTIAL]**
e. a document dated March 31, 2010, entitled **[CONFIDENTIAL]**, attached at Exhibit D to Dan Wallace's witness statement, **[CONFIDENTIAL]**
f. a document, entitled **[CONFIDENTIAL]**, dated September 15, 2009 and included at Tab 32 of the Parties' Admissions Brief, **[CONFIDENTIAL]**.



**[295]** Turning to evidence from customers, there was, as mentioned earlier, an unusual paucity of such evidence in this case. However, Mr. **[CONFIDENTIAL]**, Vice President, Operations, at **[CONFIDENTIAL]** testified that "competition, in our mind, provides a more competitive playing field in terms of your pricing setup" and that "in Northeast B.C. we currently don't have that same level of competition in this facet of our business."

**[296]** Lastly, the transactions data from the "natural experiment" at Willesden Green, which is found in Dr. Baye's initial report, demonstrates that CCS reduced its prices significantly to seven customers after SES' entry at South Grande Prairie.

**[297]** For all these reasons, we have concluded that, in the absence of the Merger, competition in the provision of Secure Landfill services at Silverberry and the Babkirk Site likely would have resulted in prices being, on average, at least 10% lower in the geographic market described above. This is a sufficient basis for concluding that the Merger likely will prevent competition substantially, particularly given that the Merger preserves a monopolistic market structure, and thereby prevents the emergence of potentially important competition.

**[298]** In his reply report, Dr. Baye opined that even if competition is only likely to be substantially prevented in the Contestable Area identified by Dr. Kahwaty, the welfare loss is likely to be significant. Specifically, Dr. Baye estimated that loss to be approximately **[CONFIDENTIAL]** annually. That estimate was based on an assumed price decrease of 10%, from **[CONFIDENTIAL]** to **[CONFIDENTIAL]** per tonne, and certain assumptions and estimates used by Dr. Kahwaty in calculating the market expansion efficiencies, discussed above. In making that calculation, Dr. Kahwaty assumed that the opening of a Secure Landfill facility at Babkirk would likely lead customers to dispose of approximately **[CONFIDENTIAL]** additional tonnes of Hazardous Waste, as forecast in CCS' internal documents. As discussed earlier in these reasons, that forecast increase in demand concerned Legacy Waste and future waste that would not otherwise be transported to Silverberry, due to (i) the level of the current disposal cost (Tipping Fees plus transportation cost) and (ii) the risk that would be associated with transporting Hazardous Waste to Silverberry. Dr. Kahwaty estimated that the total disposal costs of customers located in the Contestable Area that he identified likely would decline by approximately **[CONFIDENTIAL]** per tonne, due to the closer proximity of the Babkirk Facility, relative to Silverberry.

**[299]** Based on the foregoing numbers used by Dr. Kahwaty to estimate the market expansion efficiencies, and the linear demand that was assumed by Dr. Kahwaty, Dr. Baye estimated that a 10% price reduction (from **[CONFIDENTIAL]** to **[CONFIDENTIAL]**) for customers in the Contestable Area would increase the volume of waste disposed of by those customers from **[CONFIDENTIAL]** tonnes to **[CONFIDENTIAL]** tonnes, annually. He further estimated CCS' unit costs to be approximately **[CONFIDENTIAL]**, based on the average 2010 price at Silverberry of **[CONFIDENTIAL]** across all substances, and the **[CONFIDENTIAL]** landfill margin reported for Silverberry in 2009, which was used by Dr. Kahwaty in estimating the market expansion efficiencies.

**[300]** Given the foregoing estimates, Dr. Baye calculated the area under the demand curve for the Contestable Area to be (i) a rectangle that is approximately **[CONFIDENTIAL]** tonnes multiplied by **[CONFIDENTIAL]**, for a total of **[CONFIDENTIAL]**, plus (ii) a right triangle that is **[CONFIDENTIAL]** high and **[CONFIDENTIAL]** wide, for an area of **[CONFIDENTIAL]**. Summing (i) plus (ii) yielded a figure of **[CONFIDENTIAL]**. From this latter amount, Dr. Baye deducted CCS' unit cost of **[CONFIDENTIAL]** multiplied by **[CONFIDENTIAL]**, to arrive at an estimated welfare loss of **[CONFIDENTIAL]**.

**[301]** The Tribunal is persuaded that, on a balance of probabilities, the approach adopted by Dr. Baye, and the numbers he used in reaching his estimate of the likely DWL, are reasonable for the purposes of the Tribunal's assessment of Effects under section 96 of the Act. In the Tribunal's view, the manner in which Dr. Baye proceeded in this regard is sound, and the inputs that he used are reliable and conservative. The fact that Dr. Baye relied on certain assumptions made by Dr. Kahwaty is not particularly important for the purposes of the Tribunal's assessment under section 96. What is important is that there is reliable evidence before the Tribunal that permitted the DWL to be estimated.

**[302]** The Tribunal acknowledges Dr. Kahwaty's testimony that, to calculate the DWL, it is necessary to know the shape of the demand curve, and that, when prices are likely to differ across customers, it is necessary to have customer-specific elasticity data. However, the Tribunal is persuaded that, in the absence of such information, a reliable "rough" estimate of the likely DWL can be obtained based on information such as that which was used by Dr. Baye in reaching his estimated annual welfare loss of approximately **[CONFIDENTIAL]**.

**[303]** Accordingly, the Tribunal accepts Dr. Baye's estimate of **[CONFIDENTIAL]**, as being the minimum annual DWL.

**[304]** Dr. Baye then speculated that, (i) if the average price decrease in that area was 21 percent, the annual DWL would be approximately **[CONFIDENTIAL]**, (ii) if prices across all Hazardous Waste tipped at Silverberry in 2010 decreased by 10%, the DWL would be approximately **[CONFIDENTIAL]**, and (iii) if prices across all such waste decreased by 21%, the DWL would be approximately **[CONFIDENTIAL]**. However, the Tribunal is not persuaded that these speculations about prices are reasonable.

Non-quantifiable Effects

**[305]** The Tribunal is satisfied that the Merger likely would result in certain important qualitative or other non-quantifiable Effects.

**[306]** In his initial report, Dr. Baye identified at least two important qualitative anti-competitive Effects of the Merger. First, at paragraph 157, he stated that lower Tipping Fees would induce waste generators to more actively clean up legacy sites in NEBC. At paragraph 91 of his report, he described this in terms of lower Tipping Fees inducing waste generators to substitute away from "delay," or bioremediation, towards disposal at a Secure Landfill. As Dr. Kahwaty noted at paragraph 96 of his Efficiencies Report, increased site remediation from lower disposal costs benefits "area residents, wildlife, and the overall environment."



**[307]** Second, at paragraph 137(c) of his initial report, Dr. Baye stated that, to retain its waste volumes in the face of competition from an independently owned and operated Babkirk Facility, CCS "would have had an incentive to compete through 'value propositions' that, among other things, link prices on various services to provide customers with a lower total cost for waste services." Although the services in question were not further discussed by Dr. Baye, they were addressed in "read-in" evidence adduced by the Commissioner and cited by Dr. Baye (at footnote 93 of his initial report). The Tribunal is satisfied, on a balance of probabilities, that competition between CCS and an independently owned and operated Babkirk Facility would have led to important non-price benefits to waste generators in the form of various "value propositions" that include either existing services being provided at lower prices, or new or enhanced services being provided that likely would not otherwise be provided if the Order is not made.

**Are the Cognizable Efficiencies Greater than and do they Offset the Effects?**

**[308]** Section 96 requires the Tribunal to determine whether the cognizable efficiencies "will be greater than, and will offset" the cognizable effects of any prevention or lessening of competition that will result or is likely to result from a merger.

**[309]** The Tribunal considers that the terms "greater than" and "offset" each contemplate both quantifiable and non-quantifiable (i.e., qualitative) efficiencies. In the Tribunal's view, "greater than" connotes that the efficiencies must be of larger magnitude, or more extensive than, the effects referred to in section 96. This contemplates a balancing of commensurables, even if some of the efficiencies being balanced are not capable of accurate or rough quantification. By contrast, the term "offset" is broad enough to connote a balancing of incommensurables (e.g., apples and oranges) that requires the exercise of subjective judgment to determine whether the efficiencies compensate for the likely effects referred to in section 96.

**[310]** In the case at bar, the Tribunal has found that the cognizable, quantifiable, efficiencies likely to result from the Merger will be a maximum of **[CONFIDENTIAL]** annually. Those are the overhead efficiencies estimated by Dr. Kahwaty. In addition, the Tribunal has found that CCS has not demonstrated, on a balance of probabilities, that the qualitative efficiencies it has

claimed are cognizable. In other words, it has not demonstrated that those efficiencies would not likely be attained if the Order were made.

**[311]** On the other hand, the Tribunal has found that the quantifiable Effects are likely to be at least **[CONFIDENTIAL]** annually. That is the value of the minimum DWL associated with the Contestable Area.

**[312]** Based on these findings, it is readily apparent that CCS has not demonstrated that the cognizable, *quantifiable*, efficiencies likely to be brought about by the Merger will likely be "greater than" the *quantifiable* Effects that are likely to result from the Merger. Using a 5.5% discount rate, CCS estimated that the present value of these (overhead) efficiencies to be approximately **[CONFIDENTIAL]**, in comparison with a present value of **[CONFIDENTIAL]** for the aforementioned Effects.

**[313]** Given the Tribunal's conclusion that the Merger would result in a number of important qualitative or other non-quantifiable effects, and that it would not likely bring about significant qualitative, cognizable, efficiencies, it is also readily apparent that the combined quantitative and qualitative efficiencies are not likely to be "greater than" the combined quantitative and qualitative Effects.

**[314]** In addition, the Tribunal is persuaded, on a balance of probabilities, that even if a zero weighting is given to the *quantifiable* Effects, as CCS submitted should be done, CCS has not satisfied the "offset" element of section 96. In short, the Tribunal is satisfied that the very minor *quantitative* efficiencies, (**[CONFIDENTIAL]** annually) that are cognizable, together with any qualitative or other non-quantifiable efficiencies that may be cognizable, would not "offset" the significant qualitative Effects that it has found are likely to result from the Merger.

**[315]** This conclusion would remain the same even if the Tribunal were to accept and give full weight to the Order Implementation Efficiencies, which only amount to a maximum of **[CONFIDENTIAL]** (which represents one year of transportation cost savings) plus **[CONFIDENTIAL]** (which represents one year of annual market expansion efficiencies).

**[316]** This is because, in the Tribunal's view, the qualitative Effects, when taken together merit substantial weight. That weight is greater than the weight attributable to the aggregate of the cognizable quantitative and qualitative efficiencies under any reasonable approach. In brief, those qualitative Effects are (i) reduced site clean-up and the benefits that such remediation would confer upon "area residents, wildlife, and the overall environment"; and, more importantly, (ii) reduced "value propositions" than would likely otherwise emerge in the relevant market, linking prices to various new or enhanced services.

**[317]** Most importantly, in the absence of the Order, the Merger will maintain a monopolistic structure in the relevant market. In other words, the Merger will not only give rise to the qualitative effects summarized immediately above, but it will also preclude benefits of competition that will arise in ways that will defy prediction.

**[318]** In summary, the Tribunal is satisfied that CCS has not met its burden to establish, on a balance of probabilities, the "greater than" or "offset" elements set forth in section 96.

## ISSUE 9 WHAT IS THE APPROPRIATE REMEDY – DISSOLUTION OR DIVESTITURE?

**[319]** An important question under this heading is whether SES is currently a willing purchaser for the Babkirk Site. Surprisingly, when Mr. Amirault of SES testified for the Commissioner, neither her counsel during questioning in chief nor counsel for the Vendors during cross-examination asked Mr. Amirault if SES is still interested in acquiring BLS.

**[320]** The Commissioner's position is that, once she showed that dissolution was an effective and available remedy, the burden of proof shifted to the Vendors to demonstrate that divestiture was an available, effective and less intrusive remedy. The Commissioner maintains that the Vendors were obliged to ask Mr. Amirault if SES is still interested and, because they failed to ask that question and because they failed to lead any evidence about other prospective purchasers, they have no basis to argue that divestiture will be an effective remedy.

**[321]** The Tribunal does not accept the Commissioner's characterization of the onus. In the Tribunal's view, if the Commissioner proposes alternative remedies, as she did in this case, she bears the onus of showing that, although one may be preferable, each is available and effective. Accordingly, the Commissioner's counsel should have asked Mr. Amirault about SES' interest in purchasing the shares of BLS.

**[322]** The Tribunal notes that, in her written final argument, the Commissioner asks the Tribunal not to infer that SES is an interested purchaser. However, in contrast, in final oral argument, counsel for the Commissioner suggested that SES is an interested buyer.

**[323]** The Tribunal accepts the latter submission and has determined, for the following reasons, that SES is likely to make an offer to purchase the Babkirk Facility at some point during the divestiture process under the Order:

- SES has already decided to operate a Secure Landfill in NEBC. It tried unsuccessfully and at considerate expense to secure the Authorizations at its Heritage Site;
- Babkirk already has the necessary Authorizations and SES is confident that its plans to expand the permitted capacity at Babkirk and upgrade the cell design will be approved;
- SES has demonstrated an active and continuing interest in the Babkirk Facility since the Merger. Among other things, this is demonstrated by SES' lawyers' written submissions to the Commissioner and by the participation of its CEO, Mr. Amirault, as a witness in these proceedings.

**[324]** We now turn to the proposed remedies.

**[325]** The Commissioner wants the Babkirk Site operated as a competitive Full Service Secure Landfill and she believes that dissolution will produce this result more quickly than divestiture.

**[326]** Her submission is that, once the Vendors again hold the shares of Complete and have repaid CCS the purchase price, they will be highly motivated to resell Complete or the shares of BLS because this will enable them to recover their funds as soon as possible. However, this submission assumes that the Vendors will immediately be offered a price they are prepared to accept. In the Tribunal's view, there is no basis for this assumption. The evidence is clear that the Vendors have never been willing to be pushed into a quick sale.

**[327]** The Commissioner's submission also assumes that the Vendors will have an incentive to sell quickly because they will be short of funds as a result of having to repay CCS as soon as the shares of Complete are returned to them. This assumption is also questionable, in part because it appears that CCS has indemnified the Vendors against all claims arising from any investigation or actions by the Bureau with respect to the Merger. Given this background, it is possible that CCS may not insist on immediate payment.

**[328]** Even if the Commissioner is correct and the Vendors are cash-strapped and anxious to resell BLS or Complete, the Tribunal still anticipates that they will want an attractive price. It is also important to remember that all five individual Vendors must agree to accept an offer and they will not necessarily be like-minded, in part because some are near retirement and others are in mid-career.

**[329]** The Tribunal notes that two years will have passed since the Babkirk Facility was last for sale. This means that purchasers, other than SES, may show interest, especially given the increasing rate of gas production in the area northwest of Babkirk. Dr. Baye testified that he thought SES, Newalta and Clean Harbours were potential purchasers. As well, it is not unreasonable to think that an oil and gas producer may decide to own and operate a Secure Landfill. The Tribunal heard evidence that **[CONFIDENTIAL]** is considering becoming a part-owner of the Secure Landfill at Peejay. If the Vendors receive multiple offers, protracted negotiations may follow.

**[330]** Finally, if they do not receive an offer they consider attractive, the Vendors are free to change their minds and resurrect their plan to operate a bioremediation facility with an Incidental Secure Landfill. This would not result in the competition the Commissioner seeks because it will only be realized if the Babkirk Facility operates as a Full Service Secure Landfill.

**[331]** There is also the question of whether a purchaser after dissolution will be an effective competitor. In the proposed order for dissolution found at the conclusion of the Commissioner's final argument, she does not seek the right to approve a purchaser and she only asks for notice of a future merger if it is "among the Respondents". In our view, this makes dissolution a less effective remedy.

**[332]** Given all these observations, the Tribunal is concerned that dissolution may not be effective in that it may not lead to a prompt sale and a timely opening of the Babkirk Facility as a Secure Landfill.

**[333]** It is also the case that dissolution is the more intrusive remedy.

**[334]** Three of the Vendors testified about the financial hardship they would face if dissolution were ordered by the Tribunal. Ken Watson's share of the proceeds of the transaction was **[CONFIDENTIAL]**. He testified that if ordered to return the proceeds to CCS, **[CONFIDENTIAL]**, he expects to face significant financial hardship.

**[335]** Randy Wolsey's share of the proceeds was approximately **[CONFIDENTIAL]**. He testified that almost half of the proceeds have been used to develop a property on which he is constructing a new family home. The balance has been invested in the purchase of various investment products. According to Mr. Wolsey, he expects to lose approximately **[CONFIDENTIAL]** if he is forced to make a quick sale on the residential property before the house under construction has been completed.

**[336]** Karen Baker testified that if required to return her share of the proceeds, approximately **[CONFIDENTIAL]**, then her ability to continue to provide financial support to certain small business will be compromised. She also indicated that if the transactions were to be dissolved, she expects that the "work required to reverse the sale and calculate the adjustments required to account for changes in Complete's assets, working capital and lost opportunity costs, as well as the opportunity costs in time away from the other businesses in which [she is] involved, and cost to some of those businesses for replacement personnel to do the work that [she] should be doing, would cause [her] significant stress and emotional hardship."

**[337]** The Commissioner asserts that, in the particular circumstances of this case, hardship is irrelevant, because she warned the Vendors that she would seek dissolution before they sold Complete to CCS. However, in the Tribunal's view it is the right of private parties to disagree with the Commissioner and make their case before the Tribunal. Accordingly, they are not estopped from raising issues of hardship.

**[338]** The Tribunal is also of the view that dissolution is overbroad, since it involves Complete's other businesses and not just BLS.

**[339]** In the spring of 2007, Complete acquired the assets of a municipal waste management business based in Dawson Creek, British Columbia. As noted earlier, those assets included contracts for the management of the Fort St. John and Bessborough municipal landfills and the Dawson Creek Transfer Station, the supply and hauling of roll-off bins, and the provision of rural refuse collections and transfer services. At the time of the Merger, those contracts and related equipment were transferred to CCS. Hazco has been responsible for this business since then.

**[340]** Mr. Garry Smith, the president of Hazco, testified that Hazco has upgraded Complete's trucks and has sold some older equipment which it considered surplus. The two municipal landfill contracts have been extended and are now held directly by Hazco. Complete's employees are now employed by Hazco and there have been personnel changes. At the hearing, Mrs. Baker

testified about the impact of the sale of some of the assets. She stated:

> Now, that equipment was older equipment. It wouldn't have brought big money, but the point is it was sufficient for us to do the work that we wanted it to do. Well, now the oil and gas industry is hot, hot up there. Trying to get equipment back, we certainly wouldn't get that equipment back. Any decent used equipment, I have no idea. The prices would be through the roof. Would we buy new equipment? I don't know. So right now, we don't even have the equipment to go back to work

**[341]** To conclude, the Tribunal has decided that dissolution is intrusive, overbroad and will not necessarily lead to a timely opening of the Babkirk Facility as a Full Service Secure Landfill.

**[342]** Turning to divestiture, the Tribunal finds that it is an available and effective remedy. If reasonable but tight timelines are imposed, it will not matter if, as the Commissioner alleges, SES and CCS are reluctant to negotiate because of their outstanding litigation. In the end, if they cannot agree, a trustee will sell the shares or assets of BLS, either to SES or another purchaser approved by the Commissioner. In other words, divestiture will be effective.

**[343]** A divestiture with tight timelines has other advantages. The Commissioner will have the right to pre-approve the purchaser, the person responsible for effecting the divestiture will ultimately be CCS or a professional trustee, rather than five individuals, the timing will be certain, a sale will ultimately occur and the approved purchaser will compete with Silverberry on a Full Service basis.

**[344]** For all these reasons, the Tribunal will order CCS to divest the shares or assets of BLS.

## H. COSTS

**[345]** The Commissioner chose dissolution as her preferred remedy when she commenced the Application. She made this choice because she believed that at the time of the Merger, the Vendors were about to construct and operate a Full Service Secure Landfill. For this reason she concluded that the most timely way to introduce competition was to return Babkirk to the Vendors.

**[346]** However, for the reasons given above, the Tribunal has concluded that the Vendors did not intend to operate a Full Service Secure Landfill. This means that the Commissioner has failed to prove the premise which caused her to name the individual Vendors as parties to the Application. In essence she failed to prove her case against them and for this reasons she is liable for their costs.

**[347]** However, during the Vendors' motion for summary disposition which was heard two weeks before the hearing, they indicated that, if the motion was successful and they were removed as parties, four of them would nevertheless attend the hearing to give evidence. The Tribunal assumes that, had done so, they would have been represented by one counsel.

Accordingly, the Commissioner is to pay their costs less the legal fees which would have been incurred had they appeared as witnesses.

## I. FOR THESE REASONS THE TRIBUNAL ORDERS THAT:

**[348]** CCS is to divest the shares or assets of BLS on or before December 28, 2012 failing which a trustee is to effect a sale on or before March 31, 2013. If possible, the terms for this process are to be agreed between the Commissioner and CCS and are to be submitted to the Tribunal on or before June 22, 2012. If the agreed terms are accepted by the Tribunal, they will be incorporated in a further order to be called the Divestiture Procedure Order. If the Commissioner and CCS cannot agree to terms, each party is to submit a proposed Divestiture Procedure Order on or before June 29, 2012. If necessary, the Tribunal will hear submissions about each party's proposal in early July and then make the Divestiture Procedure Order.

**[349]** CCS is to pay the Commissioner's costs and, because dissolution was not ordered, the Commissioner is to pay the Vendors' costs less the fees they would have paid for legal representation if they had attended as non-parties to give their evidence. The Commissioner is to prepare a bill of costs to be submitted to CCS and the Vendors are to submit a bill of costs to the Commissioner both on or before August 31, 2012. Both are to be prepared in accordance with Federal Court Tariff B at the mid-point of column 3. If by September 14, 2011 no agreement is reached about lump sums to be paid, the Tribunal will hear submissions and fix the awards of costs.

DATED at Ottawa, this 29th day of May, 2012.

SIGNED on behalf of the Tribunal by the Panel Members.

(s) Sandra J. Simpson J. (Chairperson)

(s) Paul Crampton C.J.

(s) Dr. Wiktor Askanas

## J. THE SCHEDULES

**[350]** The schedules appear on the following pages:

Schedule A: Map Showing Secure Landfills (based on Exhibit 4-A to Dr. Baye's Expert Report)


Source: CCS, SES, and Newalta company websites.

This map may be printed in colour.

# SCHEDULE "B"

## THE EVIDENCE

### Witnesses who gave oral testimony (in alphabetical order)



**For the Commissioner of Competition**

- **Rene Amirault**
  President & CEO of Secure Energy Services Inc.
- **Robert Andrews**
  Section Head- Environmental Management, Government Unit in the British Columbia Ministry of the Environment.
- **Michael Baye**
  Expert Economist - Special Consultant at National Economic Research Associates, Inc. and the Bert Elwert Professor of Business Economics and Public Policy at the Indiana University Kelley School of Business.
- **Chris Hamilton**
  Project Assessment Director at the British Columbia Environmental Assessment Office.
- **Andrew Harrington**
  Expert on Efficiencies - Managing director of the Toronto office of Duff & Phelps.
- **[CONFIDENTIAL]**
  Contracting and Procurement Analyst for the **[CONFIDENTIAL]**.
- **[CONFIDENTIAL]**
  Vice-President, Operations at **[CONFIDENTIAL]**.
- **Mark Polet**
  Associate at Klohn Crippen Berger Ltd. ("KCB"). KCB is a private, specialized engineering and environmental consulting firm with its head office in Vancouver.
- **Del Reinheimer**
  Environmental Management Officer in the Environmental Protection Division at the British Columbia Ministry of the Environment.
- **Devin Scheck**
  Director, Waste Management & Reclamation at the British Columbia Oil and Gas Commission.

**For the Vendors**

- **Karen Baker**
  One of the founding shareholders of Complete Environmental Inc.
- **Ronald Baker**
  One of the founding shareholders of Complete Environmental Inc.
- **Kenneth Watson**
  One of the founding shareholders of Complete Environmental Inc.
- **Randy Wolsey**
  One of the founding shareholders of Complete Environmental Inc.

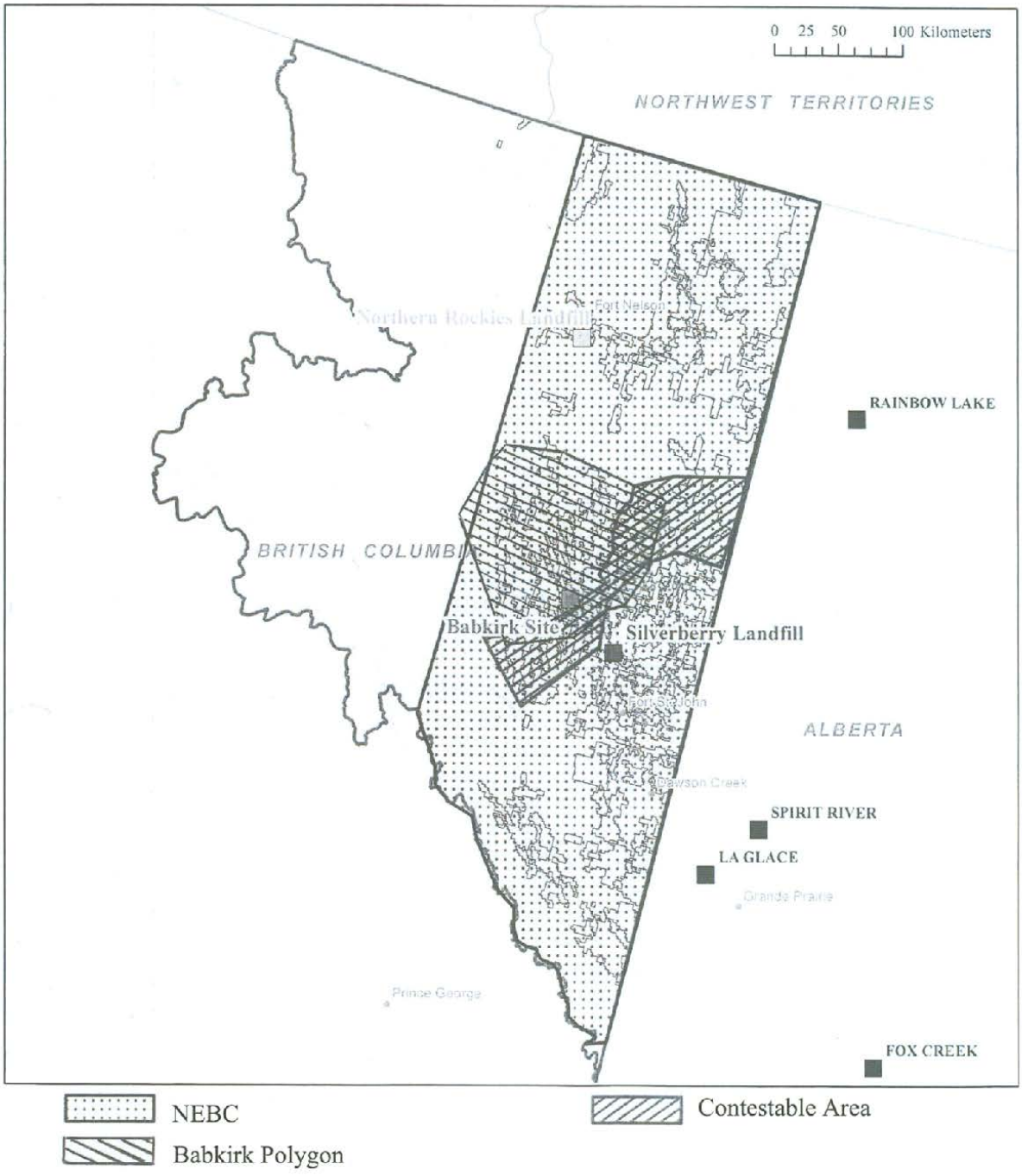
**For the Corporate Respondents**

- **Trevor Barclay**
  Landfill Manager of the Northern Rockies Secure Landfill.
- **James Coughlan**
  Director of Sales and Marketing of CCS Corporation
- **Henry Kahwaty**
  Expert economist - Director with Berkeley Research Group, LLC.
- **Richard Lane**
  Vice-President of CCS Midstream Services, a division of CCS Corporation.
- **Pete Marshall**
  Principal of Adelantar Consulting, an environmental consultancy based in Edmonton, Alberta.
- **Daniel Wallace**
  Manager, Business Development of CCS Corporation's Midstream Services division

**Other Evidence**

- The witness statements from those who testified.
- Read-ins from Examinations for Discovery of Karen Baker and Kenneth Watson for the Vendors, Daniel Wallace for the Corporate Respondents and Trevor MacKay for the Commissioner of Competition
- The statement of agreed facts.
- The witness statements of **Robert Coutts**, President of SkyBase Geomatic Solutions Inc. and **Garry Smith**, President of Hazco Waste Management (owned by CCS). On consent these witnesses were not called to give oral testimony.
- A Joint list of agreed documents.
- The exhibits marked during the hearing.

Schedule C: Map of NEBC, the Contestable Area and the Babkirk Polygon



## K. CONCURRING REASONS BY P. CRAMPTON C.J.

**[351]** Although I participated in the writing of, and signed, the Panel's decision in this case, I would like to comment on certain additional matters.

### A. IS CCS'S ACQUISITION OF COMPLETE A MERGER?

**[352]** At paragraph 56 of the Panel's reasons, it is noted that it was not necessary to decide whether Complete's Roll-off Bin Business or its management of municipal dumps could be a business for the purposes of section 91 of the Act. That said, the conclusion reached by the Chairperson on this point was articulated at paragraph 57. That conclusion was stated as follows:

> "[A] business being acquired in a merger must have some relevance to a Commissioner's application. In other words, it must have the potential to impact competition in the markets at issue. This observation means that, in this case, Complete's Roll-off Bin Business and its management of municipal dumps would not have been caught by the definition in section 91 because they are not involved in any way in the disposal or treatment of Hazardous Waste."

**[353]** I respectfully disagree. In my view, the term "business", as contemplated by section 91 of the Act, is not, as the Vendors maintained, confined to a business that competes with a business of an acquiring party. There is no such limitation in section 91 or in the definition of the term "business" that is set forth in subsection 2(1) of the Act.

**[354]** The Vendors attempted to support their position by noting that section 92 of the Act requires that a "merger" prevent or lessen, or be likely to prevent or lessen, competition substantially. However, it is not necessary for a merger to involve two or more competing businesses to have the potential to prevent or lessen competition substantially. For example, the inclusion of the terms "supplier" and "customer" in section 91 reflects Parliament's implicit recognition that a vertical merger may have such an effect. The words "or other person" in section 91 reflect that Parliament also did not wish to exclude the possibility that other types of non-horizontal mergers may also have such an effect.

**[355]** Considering the foregoing, I am not persuaded that the Vendors' position is assisted by reading the words of section 91 "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at 41; and *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, at para. 33 ("*Mowat*")). In the absence of any apparent ambiguity, one must adopt an interpretation of section 91 "which respects the words chosen by Parliament" (*Mowat*, above). The principle that the Act be given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" also supports the view that section 91 ought not be read in the limited manner suggested by the Vendors (*Interpretation Act*, R.S.C. 1985, c. I-21, s. 12).

**[356]** Indeed, if anything, a reading of section 91 in a manner that is harmonious with the scheme and object of the Act and the intention of Parliament arguably further supports interpreting section 91 in a way that does not require the type of assessment of competitive effects that is contemplated by the interpretation advanced by the Vendors. That is to say, when viewed in the context of the scheme and object of the Act as a whole, it is arguable that section 91 was intended by Parliament to be a gating provision, in respect of which an assessment ordinarily is to be made relatively early on in the evaluation contemplated by sections 92 and 93.



**[357]** For example, all but one of the assessment factors in the non-exhaustive list that is set forth in section 93 refer to the "merger or proposed merger" in respect of which an application under section 92 has been made. In my view, this suggests that the merger or proposed merger in question should be identified before the assessment contemplated by sections 92 and 93 is conducted.

**[358]** If an agreement, arrangement or practice cannot properly be characterized as a merger, it will fall to be investigated under another provision of the Act, such as section 45, section 79, or section 90.1, each of which has a substantive framework which differs in important respects from the framework set forth in section 92. Indeed, in the case of agreements or arrangements that may be investigated under section 45, which is a criminal provision, there are important procedural implications associated with the decision to pursue a matter under that section, versus under section 90.1, 79 or 92. I recognize that there may be cases in which it may be appropriate to assess a matter under section 92 as well as under one or more of the other provisions mentioned immediately above, for a period of time before an election is made under section 98, 45.1, 79(7) or 90.1(10). However, the scheme of the Act and the interests of administrative efficiency arguably support the view that a determination as to whether a matter ought to be investigated as a merger, rather than a type of conduct addressed elsewhere in the Act, ordinarily should be made before the central substantive determinations under the applicable section of the Act are made. Among other things, such substantive determinations often take several months, and sometimes take much longer, to make.

**[359]** In summary, for all of the foregoing reasons, I have concluded that the term "business" in section 91 is sufficiently broad to include any business in respect of which there is an acquisition or establishment of control or a significant interest, as contemplated therein. In the case at bar, this would include Complete's Roll-off Bin Business, which was fully operational at the time of Complete's acquisition by CCS. It would also include Complete's management of municipal dumps.

### B. MARKET DEFINITION

**[360]** Market definition has traditionally been a central part of merger analysis in Canada and abroad for several reasons. These include (i) helping to focus the assessment on products and locations that are close substitutes for the products and locations of the merging parties, (ii) helping to focus the assessment on the central issue of market power, (iii) helping to identify the merging parties' competitors, (iv) helping to understand the basis for existing levels of price and non-price competition, and (v) facilitating the calculation of market shares and concentration levels. In turn, changes in market shares and concentration levels can be very helpful, albeit not

determinative, in understanding the likely competitive effects of mergers and in assisting enforcement agencies to triage cases and to provide guidance to the public.

**[361]** In recent years, developments in antitrust economics have reached the point that the United States Department of Justice and Federal Trade Commission have begun to embrace approaches that "need not rely on market definition" (*Horizontal Merger Guidelines* (August 19, 2010), at § 6.1). Likewise, the MEGs, at paragraph 3.1, have been amended to stipulate that market definition is not necessarily a required step in the Commissioner's assessment of a merger.

**[362]** These developments can be accommodated within the existing framework of the Act and the Tribunal's jurisprudence.

**[363]** In discussing market definition, the Panel noted, at paragraph 92 of its reasons, that the Tribunal has in the past cautioned against losing sight of the ultimate inquiry, which is whether the merger being assessed prevents or lessens, or is likely to prevent or lessen, competition substantially. The Tribunal has also previously noted that the Act does not require that a relevant market be defined in assessing whether competition is likely to be prevented or lessened substantially (*Propane 1*, above, at para. 56). The logical implication is that defining a relevant market is not a necessary step in assessing whether a merger prevents or lessens, or is likely to prevent or lessen, competition substantially. Accordingly, it will be open to the Tribunal, in an appropriate case, to make this assessment without defining a relevant market.

**[364]** That said, at this point in time, it is anticipated that such cases will be exceptional. Indeed, failing to define a relevant market may make it very difficult to calculate, or even to reasonably estimate, the actual or likely DWL associated with a merger, for the purposes of the efficiencies defence in section 96 of the Act.

### C. THE ANALYTICAL FRAMEWORK IN A "PREVENT" CASE

**[365]** At the outset of the Commissioner's final oral argument, her counsel urged the Tribunal to clarify the analytical approach applicable to three areas, namely, (i) the assessment of whether a merger prevents, or is likely to prevent, competition substantially, (ii) the efficiencies defence, and (iii) the circumstances in which the Tribunal will entertain the remedy of dissolution, and what factors will be taken into account in determining the appropriate remedy in any particular case.

**[366]** These topics are all addressed to some extent in the Panel's decision. I would simply like to add some additional comments, particularly with respect to the analytical framework applicable to the Tribunal's assessment of whether a merger prevents, or is likely to prevent, competition substantially.

**[367]** The Tribunal's general focus in assessing cases brought under the "substantial prevention of competition" and "substantial lessening of competition" branches of section 92 is essentially the same. In brief, that focus is upon whether the merged entity is likely to be able to exercise materially greater market power than in the absence of the merger. The same is true with respect to other sections of the Act that contain these words.

**[368]** In determining whether competition is likely to be *lessened*, the more particular focus of the assessment is upon whether the merger is likely to facilitate the exercise of new or increased market power by the merged entity, acting alone or interdependently with one or more rivals. In determining whether competition is likely to be *prevented*, that more particular focus is upon whether the merger is likely to preserve the existing market power of one or both of the merging parties, by preventing the erosion of such market power that otherwise likely would have taken place if the merger did not occur.

**[369]** In making its assessment in the latter context, and with respect to a proposed merger, the Tribunal compares (i) the state of competition that would likely exist if the merger were to proceed, with (ii) the state of competition that would likely exist if the merger did not proceed. Scenario (ii) typically is referred to as the "but for", or "counterfactual", scenario. In the case of a completed merger, that "but for" scenario is the market situation that would have been most likely to emerge had the merger not occurred.

**[370]** When the Tribunal determines that a merger is not likely to enable the merged entity to exercise greater market power than in the absence of the merger, the Tribunal generally will conclude that the merger is not likely to prevent or lessen competition at all, let alone substantially. With respect to allegations that competition is likely to be *lessened*, this conclusion generally will flow from a finding that the merger is not likely to enable the merged entity to *enhance existing, or to create new,* market power. With respect to allegations that competition is likely to be *prevented*, this conclusion generally will flow from a finding that the merger in question is not likely to enable the merged entity to *maintain* greater existing market power than in the absence of the merger. Once again, the foregoing also applies with respect to other sections of the Act that contain the "prevent or lessen competition substantially" test.

**[371]** With respect to sellers, market power is the ability to profitably maintain prices above the competitive level, or to reduce levels of non-price competition (such as service, quality or innovation), for an economically meaningful period of time. With respect to purchasers, market power is the ability to profitably depress prices below the competitive level, or to reduce levels of non-price competition, for such a period of time.

**[372]** In assessing whether market power is likely to be created, enhanced or maintained by a merger or a reviewable trade practice, the Tribunal assesses the intensity of competition, as reflected in its price and non-price dimensions. Competition is a dynamic, *rivalrous process* through which the exercise of market power is prevented or constrained as firms strive, among other things, to develop, produce, distribute, market and ultimately sell their products in rivalry with other firms. That rivalrous process generates the principal source of pressure on firms to innovate new or better products or business methods, and to deliver those products at competitive prices. In turn, those innovations and competitive prices serve to increase aggregate economic welfare in the economy, the economy's international competitiveness and the average standard of living of people in the economy.

**[373]** In assessing the intensity of price competition, the Tribunal focuses upon whether prices are likely to be higher than in the absence of the merger. In assessing the intensity of non-price

competition, the Tribunal focuses upon whether levels of service, quality, innovation, or other important non-price dimensions of competition are likely to be lower than in the absence of the merger. This focus ensures that the assessment of the intensity of price and non-price dimensions of competition is *relative*, rather than *absolute*, in nature (*Canada Pipe*, above, at paras. 36 – 38). In short, the assessment of levels of price and non-price competition is made relative to the levels of price and non-price competition that likely would exist "but for" the merger. The same approach is taken with respect to non-merger matters that require an assessment of whether competition is likely to be prevented or lessened substantially.

**[374]** Competition may be said to be *prevented* when future competition is hindered or impeded from developing. Common examples of such prevention of competition in the merger context include (i) the acquisition of a potential or recent entrant that was likely to expand or to become a meaningful competitor in the relevant market, (ii) an acquisition of an incumbent firm by a potential entrant that otherwise likely would have entered the relevant market *de novo*, and (iii) an acquisition that prevents what otherwise would have been the likely emergence of an important source of competition from an existing or future rival.

**[375]** In determining whether a prevention or lessening of competition is likely to be *substantial*, the Tribunal typically will assess the likely magnitude, scope and duration of any adverse effects on prices or on non-price levels of competition that it may find are likely to result from the creation, enhancement or maintenance of the merged entity's market power. That is to say, the Tribunal assesses the likely degree of such price and non-price effects, the extent of sales within the relevant market in respect of which such effects are likely to be manifested, and the period of time over which such effects are likely to be sustained.

**[376]** With respect to magnitude or degree, the Tribunal has previously defined substantiality in terms of whether customers are "likely to be faced with *significantly* higher prices or *significantly* less choice over a *significant* period of time than they would be likely to experience in the absence of the acquisitions" (*Southam*, above, at 285, emphasis added). However, given that the Tribunal has now embraced the hypothetical monopolist framework and the SSNIP test for market definition, it is necessary to revisit this definition of substantiality. This is because if the degree of market power used to define relevant markets is the same as the degree of market power used to assess competitive effects, a merger would not be found to be likely to prevent or lessen competition substantially unless the degree of new, enhanced or maintained market power of the merged entity is the same degree of market power held by as the hypothetical monopolist that was conceptualized for the purposes of market definition.

**[377]** Accordingly, the degree of market power used in assessing whether competition is likely to be prevented or lessened substantially must be recalibrated downwards. That recalibrated degree of market power is a level of market power required to maintain prices *materially* higher, or to depress one or more forms of non-price competition to a level that is *materially* lower, than they likely would be in the absence of the merger. As a practical matter, in the case at bar, this distinction between "material" and "significant" is of little significance, because the Panel has found that prices are likely to be significantly (i.e., at least 10%) higher than they would likely have been in the absence of the Merger.

**[378]** Turning to the scope dimension of "substantiality", the Tribunal will assess whether the merged entity, acting alone or interdependently with other firms, likely would have the ability to impose the above-mentioned effects in a material part of the relevant market, or in a respect of a material volume of sales.

**[379]** With respect to the duration dimension of "substantiality", the Tribunal typically will assess whether the merged entity, acting alone or interdependently with other firms, likely would have the ability to sustain the above-mentioned effects for approximately two years or more, relative to the "but for" scenario. This explains why the Tribunal typically assesses future entry and the expansion of potential rivals to the merged entity by reference to a benchmark of approximately two years.

**[380]** When, as in this case, the merger has already occurred and the Commissioner alleges that the merger is likely to prevent competition substantially, the Tribunal's assessment of the duration dimension of "substantiality" will focus on two things. First, the Tribunal will assess whether the entry or expansion that was prevented or forestalled by the merger likely would have been sufficiently timely, and on a sufficient scale, to have resulted in a material reduction of prices, or a material increase in one or more non-price dimensions of competition, had the merger not occurred. If so, the Tribunal will assess whether the entry or expansion of third parties likely will achieve this result, notwithstanding the fact that the merger has occurred.

**[381]** Before assessing whether a likely prevention of future competition would be "substantial," the Tribunal also will assess whether that future competition likely would have materialized "but for" the merger in question. In this regard, the Tribunal will assess whether such competition likely would have developed within a reasonable period of time.

**[382]** What constitutes a reasonable period of time will vary from case to case and will depend on the business under consideration. In situations where steps towards entry or expansion were being taken by the firm whose entry or expansion was prevented or forestalled by the merger, a reasonable period of time would be somewhere in the range of time that typically is required to complete the remaining steps to enter or expand on the scale described above. Similarly, in situations where the entry or expansion was simply in the planning stage, a reasonable period of time would be somewhere in the range of time that typically is required to complete the plans in question and then to complete the steps required to enter or expand on the scale described above. In situations where entry on such a scale cannot occur for several years because, for example, a new blockbuster drug is still in clinical trials, a reasonable period of time would be approximately the period of time that it typically would take for such trials to be completed, relevant regulatory approvals obtained, and commercial quantities of the drug produced and sold. In situations where entry on the scale described above cannot occur for several years because of long term contracts between customers and suppliers, a reasonable period of time would be approximately one year after a volume of business that is sufficient to permit entry or expansion on that scale becomes available.

**[383]** In all cases, the Tribunal must be satisfied that the future competition that is alleged to be prevented by the merger likely would have materialized within a reasonable period of time. If so,

the Tribunal will assess whether the prevention of that competition likely would enable the merged entity to exercise materially greater market power than in the absence of the merger, for a period of approximately two years or more, subsequent to that time.

**[384]** Notwithstanding the foregoing, it is important to underscore that the magnitude, scope and duration dimensions of "substantiality" are interrelated. This means that where the merged entity is likely to have the ability to prevent a particularly large price decrease that likely would occur "but for" the merger, the volume of sales in respect of which the price decrease would have had to be experienced before it will be found to be "material" may be less than would otherwise be the case. The same is true with respect to the period of time in respect of which the likely adverse price effects must be experienced – it may be less than the two year period that typically is used. Likewise, where the volume of sales in respect of which a price decrease is likely to occur is particularly large, (i) the degree of price decrease required to meet the "materiality" threshold may be less than would otherwise be the case, and (ii) the period of time required for a prevention of competition to be considered to be "substantial" may be less than two years.

**[385]** In conducting its assessment of whether a merger is likely to prevent competition substantially, the Tribunal also assesses whether other firms likely would enter or expand on a scale similar to that which was prevented or forestalled by the merger, and in a similar timeframe. Where the Tribunal finds that such entry or expansion likely would occur even if the merger proceeds, it is unlikely to conclude that the merger is likely to prevent competition substantially.

**[386]** In summary, to demonstrate that a merger is likely to prevent competition substantially, the Commissioner must establish, on a balance of probabilities, that "but for" the merger, one of the merging parties likely would have entered or expanded within the relevant market within a reasonable period of time, and on a sufficient scale, to effect either a material reduction of prices or a material increase in one or more levels of non-price competition, in a material part of the market, for approximately two years. Alternatively, the Commissioner must establish a similar likely effect on prices or on levels of non-price dimensions of competition as a result of the development of another type of future competition that likely would have occurred "but for" the merger.

### D. WHEN EFFICIENCIES CAN BE CONSIDERED

**[387]** The Tribunal's decision in *Propane 3*, above, has been interpreted as suggesting that cost reductions and other efficiencies can never be considered prior to the triggering of the defence set forth in section 96. This appears to be a misreading of *Propane 3*. The source of this misunderstanding appears to be found in paragraph 137 of that decision. The focus of the discussion in that paragraph was on the differences between the Canadian and American approaches to efficiencies, and, specifically, whether section 96 requires the efficiencies likely to result from a merger to be so great as to ensure that there are no adverse price effects of the merger.

**[388]** There may well be situations in which any cost reductions or other efficiencies likely to be attained through a merger will increase rivalry, and thereby increase competition, in certain ways. These include: (i) by enabling the merged entity to better compete with its rivals, for example, by assisting two smaller rivals to achieve economies of scale or scope enjoyed by one or more larger rivals, (ii) by increasing the merged entity's incentive to expand production and to reduce prices, thereby reducing its incentive to coordinate with other firms in the market post-merger, and (iii) by leading to the introduction of new or better products or processes.



**[389]** There is no "double counting" of such efficiencies when it is determined that the merger in question is likely to prevent or lessen competition substantially and a trade-off assessment is then conducted under section 96. This is because, in that assessment, such efficiencies would only be considered on the "efficiencies" side of the balancing process contemplated by section 96. They would not directly or indirectly be considered on the "effects" side of the balancing process, because they would not be part of any cognizable (i) quantitative effects (e.g., the DWL or any portion of the wealth transfer that may be established to represent socially adverse effects), or (ii) qualitative effects (e.g., a reduction in dynamic competition, service or quality). Moreover, at the section 92 stage of the analysis, they typically would not be found to be a source of any new, increased or maintained market power that must be identified in order to conclude that the merger is likely to prevent or lessen competition substantially.

## E. THE EFFICIENCIES DEFENCE

**[390]** The analytical framework applicable to the assessment of the efficiencies defence has been set forth in significant detail in the Panel's decision. I simply wish to make a few additional observations.

### (i) Conceptual framework

**[391]** In broad terms, section 96 contemplates a balancing of (i) the "cost" to the economy that would be associated with making the order that the Tribunal has determined should otherwise be made under section 92 (the "Section 92 Order"), and (ii) the "cost" to the economy of not making the Section 92 Order. The former cost is the aggregate of the lost efficiencies that otherwise would likely be attained as a result of the merger. The latter cost is the aggregate of the effects of any prevention or lessening of competition likely to result from the merger, if the Section 92 Order is not made.

**[392]** Section 96 achieves this balancing of "costs" by (i) confining efficiencies that are cognizable in the trade-off assessment to those that "would not likely be attained if the [Section 92 Order] were made", as contemplated by subsection 96(1), and (ii) confining the effects that may be considered in the trade-off assessment to "the effects of any prevention or lessening of competition that will result or is likely to result from the merger or proposed merger".

**[393]** In short, the efficiencies that are eliminated by this language in subsection 96(1), which is referred to at paragraph 264 of the Panel's decision as the fifth "screen" established by section 96, are not considered in the trade-off assessment because they would not represent a "cost" to society associated with making the Section 92 Order. That is to say, the efficiencies excluded by

this screen either would likely be achieved through alternative means in any event, or they would be unaffected by the Section 92 Order. This could occur, for example, because they would be attained in one or more markets or parts of the merged entity's operations that would be unaffected by the Section 92 Order. It is in this sense that the assessment contemplated by section 96 is heavily dependent on the nature of the Section 92 Order.

**[394]** That said, to the extent that there are efficiencies in other markets that are so inextricably linked to the cognizable efficiencies in the relevant market(s) that they would not likely be attained if the Section 92 Order were made, they are cognizable under section 96 and will be included in the trade-off assessment.

**[395]** In assessing whether efficiencies are likely to be achieved through alternative means, the Tribunal will assess the realities of the market(s) concerned, and will not exclude efficiencies from its analysis on the basis of speculation that the efficiencies could *possibly* be achieved through such alternative means.

**[396]** It bears emphasizing that, under section 96, the relevant counterfactual is the scenario in which the Section 92 Order is made. This is not necessarily the scenario in which the merger does not occur.

(ii) Socially adverse effects

**[397]** At paragraph 284 of the Panel's decision, it was observed that the Commissioner adduced no evidence with respect to what the Tribunal in the past has characterized as being *socially adverse* effects. The Panel also observed that the Commissioner conceded that the merger is not likely to result in any such effects. Accordingly, the Panel confined its assessment to the *anti-competitive* effects claimed by the Commissioner.

**[398]** However, given that the Commissioner requested, in her final oral submissions, that the Panel clarify the analytical approach applicable to the efficiencies defence, the following observations will be provided with respect to the potential role of socially adverse effects in the trade-off analysis contemplated by section 96, in future cases.

**[399]** At paragraph 205 of its final argument, CCS characterized the approach established by the Federal Court of Appeal in *Propane 2*, above, as being the "balancing weights approach." This is the same terminology that was used by Dr. Baye at footnote 14 of his reply report, where he referred to the approach established in *Propane 3,* above, and *Propane 4*, above. However, as the Tribunal noted in *Propane 3,* at para. 336, balancing weights "is incomplete [as an approach] and useful only as a tool to assist in its broader inquiry" under section 96. With this in mind, the Tribunal characterized that broader inquiry mandated by *Propane 2* in terms of the "socially adverse effects" approach. However, on reflection, the term "weighted surplus" approach would seem to be preferable.

**[400]** As noted at paragraphs 281 – 283 of the Panel's decision, the total surplus approach remains the starting point for assessing the effects contemplated by the efficiencies defence set forth in section 96 of the Act. After the Tribunal has assessed the evidence with respect to the

quantifiable (i.e., the DWL) and non-quantifiable anti-competitive effects of the merger in question, it will assess any evidence that has been tendered with respect to socially adverse effects. In other words, if the Commissioner alleges that the merger is likely to give rise to socially adverse effects, the Tribunal will determine how to treat the wealth transfer that is likely to be associated with any adverse price effects of the merger. The wealth transfer is briefly discussed at paragraph 282 of the Panel's decision.

**[401]** As the Tribunal observed in *Propane 3*, above, at para. 372, "demonstrating significant adverse redistributional effects in merger review will, in most instances, not be an easy task." Among other things, determining how to treat the wealth transfer will require "a value judgment and will depend on the characteristics of [the affected] consumers and shareholders" (*Propane 3*, above, at para. 329). It will "rarely [be] so clear where or how the redistributive effects are experienced" (*Propane 3*, above, at para. 329). In general, the exercise "will involve multiple social decisions" and "[f]airness and equity [will] require complete data on socio-economic profiles on [*sic*] consumers and shareholders of producers to know whether the redistributive effects are socially neutral, positive or adverse" (*Propane 3*, above, at paras. 329 and 333).

**[402]** Where it is determined that the merger likely will result in a socially adverse transfer of wealth from one or more identified lower income group(s) to higher income shareholders of the merged entity, a subjective decision must be made as to how to weigh the relevant part(s) of the wealth transfer. (If the entire wealth transfer will involve a socially adverse transfer, then it would be necessary to decide how to weigh the full transfer.) If the income effect on some purchaser groups would be more severe than on others, different weightings among the groups may be required.

**[403]** It is at this point in the assessment that the balancing weights tool can be of some assistance. As proposed by Professor Peter Townley, one of the Commissioner's experts in *Propane*, above, this tool simply involves determining the weight that would have to be given to the aggregate reduction in consumer surplus (*i.e.*, the sum of the deadweight loss, including any deadweight loss attributable to pre-existing market power, plus the wealth transfer) in order for it to equal the increased producer surplus that would likely result from the merger (*i.e.*, the sum of the efficiency gains and the wealth transfer). (See the Affidavit of Peter G.C. Townley, submitted in *Propane*, above, (available at http://www.ct-tc.gc.ca/CMFiles/CT-1998-002_0115_38LES-1112005-8602.pdf).)

**[404]** For example, in *Propane*, the aggregate reduction in consumer surplus was estimated to be $43.5 million, *i.e.*, the estimated $40.5 million wealth transfer plus the estimated $3 million DWL. By comparison, the aggregate increase in producer surplus was estimated to be $69.7 million, *i.e.*, the sum of the efficiency gains accepted by the Tribunal, namely $29.2 million, plus the wealth transfer of $40.5 million. The balancing weight was therefore represented by *w* in the following formula: $1(69.7) - w\ (\$43.5) = 0$. Solving for *w* yielded a value of 1.6, which was the weight at which the consumer losses and the producer gains just balanced. (See *Propane 3*, above, at paras. 102-104.) Accordingly, for consumer losses to outweigh producer gains, they would have had to be given a weight of greater than 1.6, assuming that producer gains were given a weight of 1.

**[405]** Professor Townley's helpful insight was that members of the Tribunal often would be in a position to subjectively determine, even in the absence of substantial information, whether there was any reasonable basis for believing that a weighting greater than the balancing weight ought to be applied to the socially adverse portion(s) of the wealth transfer. If not, then notwithstanding an insufficiency of the information required to accurately calculate a full set of distributional weights, it could be concluded that the efficiencies likely to result from the merger would outweigh the adverse effects on consumer surplus. Unfortunately, there was not sufficient information adduced in *Propane* to permit the Tribunal to assess whether the estimated balancing weight of 1.6 was reasonable, given the socio-economic differences between and among consumers and shareholders (*Propane 3*, above, at para. 338).

**[406]** Where the balancing weights tool does not facilitate a determination of the weights to be assigned to any identified socially adverse effects, other evidence may be relied upon to assist in this regard. For example, in *Propane 3*, the Tribunal relied upon Statistics Canada's report entitled *Family Expenditure in Canada, 1996*, which suggested that only 4.7% of purchasers of bottled propane were from the lowest-income quintile, while 29.1% were from the highest-income quintile. The Tribunal ultimately determined that the redistributive effects of the merger on customers in the lowest-income quintile would be socially adverse, and included in its trade-off analysis an estimate of $2.6 million to reflect those adverse effects. Although it found that it had no basis upon which to determine whether the DWL should be weighted equally with adverse redistribution effects, the Tribunal ultimately concluded that, even if the $2.6 million in adverse distribution effects were weighted twice as heavily as the $3 million reduction in DWL and a further $3 million to represent the adverse qualitative effects of the merger, the combined adverse impact on consumer surplus would not exceed $11.2 million (*Propane 3*, above, at para. 371). Since that estimate was still far below the recognized efficiency gains of $29.2 million, it concluded that the defence in section 96 had been met. This conclusion was upheld on appeal.

(iii) Non-quantifiable/qualitative effects

**[407]** The Panel's assessment of the non-quantifiable effects that were considered in the section 96 trade-off assessment in this case is set forth at paragraphs 305-307 of its reasons.

**[408]** I simply wish to add that where there is not sufficient evidence to quantify, even roughly, effects that ordinarily would be quantifiable, it will remain open to the Tribunal to accord *qualitative* weight to such effects. For example, in the case at bar, it would have been open to accord qualitative weight to the anti-competitive effects of the Merger expected to occur outside the Contestable Area, given that the evidence established that such effects were likely, but could not be calculated due to shortcomings in the evidence. As it turned out, it was unnecessary for the Panel to give those effects any weighting whatsoever.

**[409]** Similarly, had the Panel not accepted the Commissioner's evidence with respect to the quantitative magnitude of the DWL, such that there was then no evidence on this specific matter, it would have been open to the Panel to accord qualitative weight to the fact that there would have been *some* significant DWL associated with the adverse price effects which it determined were likely to result from the Merger. The same will be true in other cases in which either it is

not possible to reliably quantify the likely DWL, even in rough terms, or the Commissioner fails to adduce reliable evidence regarding the extent of the likely DWL, at the appropriate time.

DATED at Ottawa, this 29th day of May, 2012.

(s) Paul Crampton C.J.

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# 10

Competition Tribunal | Tribunal de la Concurrence

**PUBLIC VERSION**



Reference: *The Commissioner of Competition v The Toronto Real Estate Board*, 2016 Comp. Trib. 7
File No.: CT-2011-003
Registry Document No.: 385

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

B E T W E E N:

**The Commissioner of Competition**
(applicant)

and

**Toronto Real Estate Board**
(respondent)

and

**Canadian Real Estate Association**
(intervenor)

Dates of hearing: 20120910 to 20120914, 20120918 to 20120919, 20120924 to 20120925, 20120927 to 20120928, 20121002 to 20121003, 20121009 to 20121010, and 20121017 to 20121018 (Initial hearing); 20150921 to 20150924, 20151005 to 20151007, and 20151102 (Redetermination hearing)
Before: P. Crampton C.J., D. Gascon (Chairperson) and Dr. W. Askanas
Date of reasons and order: April 27, 2016

**REASONS FOR ORDER AND ORDER**

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## I. Executive summary

[1] The Commissioner of Competition (the **"Commissioner"**) has filed an application pursuant to section 79 of the *Competition Act*, RSC 1985, c C-34, as amended (the **"Act"**), for an order prohibiting the Toronto Real Estate Board (**"TREB"**) from engaging in certain anti-competitive acts in connection with the supply of residential real estate brokerage services in the Greater Toronto Area (**"GTA"**).

[2] In brief, the Commissioner contends that, by restricting access to certain Multiple Listing Service (**"MLS"**) information on the password-protected virtual office websites (**"VOW"**) of its real estate brokers and salesperson members (the **"Members"**), and by restricting the manner in which its Members may display and use that information, TREB's conduct constitutes an abuse of dominant position under section 79. The Commissioner asks the Tribunal to remedy TREB's alleged substantial prevention of competition in two general ways: First, by prohibiting TREB from enforcing its current restrictions on the display and use of MLS data, and second, by requiring TREB to include certain data in an electronic data feed to its Members who use it for display on their password-protected VOWs. TREB responds that it opted to exclude the disputed information from its VOW data feed after careful consideration of privacy and copyright issues, and that its VOW policy does not substantially lessen or prevent competition. Among other things, it maintains that any incremental impact that its VOW policy may have on competition is not substantial.

[3] For the reasons that follow, the Tribunal has decided to partially grant the application brought by the Commissioner. The terms of the Tribunal's order (the **"Order"**) will primarily address certain restrictive aspects of the rules and policy that TREB has adopted with respect to VOWs, which are defined below as the VOW Restrictions. The specific terms of the Order will be determined after the parties have provided written submissions addressing this issue of remedy and have had an opportunity to make oral submissions. A Direction to that effect will be issued by the Tribunal shortly following the issuance of these reasons.

[4] In the course of reaching its decision, the Tribunal determined that the Commissioner has established, on a balance of probabilities, that the three elements of section 79 have been satisfied. The Tribunal first concluded that TREB substantially or completely controls the supply of MLS-based residential real estate brokerage services in the GTA, within the meaning of paragraph 79(1)(*a*) of the Act. The Tribunal then found that TREB has engaged in, and continues to engage in, a practice of anti-competitive acts, as contemplated by paragraph 79(1)(*b*). In essence, that practice is comprised of the enactment and maintenance of the VOW Restrictions. In addition, the Tribunal concluded that the VOW Restrictions have had, are having and are likely to have the effect of preventing competition substantially in a market, as contemplated by paragraph 79(1)(*c*). The Tribunal reached that conclusion after finding, among other things, that the VOW Restrictions have substantially reduced the degree of non-price competition in the supply of MLS-based residential real estate brokerage services in the GTA, relative to the degree that would likely exist in the absence of those restrictions. Most importantly, this includes a considerable adverse impact on innovation, quality and the range of residential real estate

brokerage services that likely would be offered in the GTA, in the absence of the VOW Restrictions.

[5] The Tribunal observes that the Commissioner's application raised particular challenges for several reasons: (i) it involved an assessment of dynamic competition and innovation, (ii) significant developments have occurred in the relevant market since this application was initially filed in May 2011, and (iii) limited quantitative evidence was adduced regarding the impact of changes in certain local markets in the United States and in Nova Scotia, relative to other local markets where similar changes did not occur.

[6] Among other things, the remedy to be imposed on TREB under the Tribunal's Order will remove important restrictions on the ability of innovative, Internet-based brokerages and other competitors in the GTA residential real estate brokerage services market to offer new products and services to consumers, in competition with brokers and agents who rely on more traditional products and services.



## II. Introduction and overview

### A. *Procedural history*

[7] The Tribunal's decision in this proceeding follows a long procedural history going back to May 2011 when the Commissioner first filed a Notice of Application (the **"Initial Application"**) for an order against TREB under the abuse of dominance provisions of the Act.

[8] In the fall of 2012, the Tribunal held an initial hearing over a period of six weeks (the **"Initial Hearing"**). In April 2013, the panel dismissed the Commissioner's application (*The Commissioner of Competition v The Toronto Real Estate Board*, 2013 Comp. Trib. 9 (**"*TREB CT*"**)). However, in February 2014, the Federal Court of Appeal set aside the Tribunal's order dismissing the application and referred the matter back to the Tribunal for a reconsideration on the merits (*Commissioner of Competition v Toronto Real Estate Board*, 2014 FCA 29 ("***TREB FCA***"), leave to appeal to SCC refused, 35799 (24 July 2014)).

[9] The Commissioner's application was reconsidered on the merits by a differently-constituted panel, and a redetermination hearing was held by the Tribunal in the fall of 2015, over a period of eight days (the **"Redetermination Hearing"**).

### B. *The parties' pleadings*

[10] In May 2011, the Commissioner had applied to the Tribunal for an order under subsection 79(1) of the Act, prohibiting TREB from directly or indirectly enacting, interpreting or enforcing certain rules, policies and agreements (the **"MLS Restrictions"**) that allegedly have excluded, prevented or impeded the emergence of innovative business models and service

offerings in respect of the supply of residential real estate brokerage services in the GTA. Those business models and service offerings involve the use of a particular Internet-based data-sharing vehicle known as a VOW to offer new products and services to home buyers and home sellers.

[11] The Commissioner also sought an order under subsection 79(2), directing TREB to take certain actions to overcome the effects of its alleged practice of anti-competitive acts.

[12] The Commissioner's Initial Application focused on MLS Restrictions that exclude or prevent TREB's Members from innovating by using certain information in TREB's MLS system to operate a VOW. However, the relief sought by the Commissioner was cast in language that appeared to extend beyond the MLS Restrictions. In this regard, the statement of relief sought was couched in terms of "any restrictions, including the MLS Restrictions" that have the alleged anti-competitive effects. Other passages of the Initial Application expressed a concern about the impact of such effects on brokers who operate VOWs or other innovative business models, or who offer services similar to VOWs.

[13] That wording remained in the Amended Notice of Application (the **"Application"**) filed by the Commissioner in July 2011. That version of the Application augmented the initial version primarily by addressing the VOW policy proposed by TREB and the provisions that were added to TREB's MLS rules in respect of VOWs (collectively, the **"VOW Policy and Rules"**) and that TREB sent to its Members a few weeks after the Initial Application was filed. The Application was not modified for the Redetermination Hearing.

[14] As it turned out, the Commissioner's focus in this proceeding was primarily on the restrictive aspects of TREB's VOW Policy and Rules and terms included in TREB's VOW Data Feed Agreement (the **"Data Feed Agreement"**) (collectively, the **"VOW Restrictions"**). These restrictions notably exclude certain types of information from the VOW data feed (the **"VOW Data Feed"**) that TREB makes available to its Members. This excluded information concerns data with respect to: sold and "pending sold" homes; withdrawn, expired, suspended or terminated listings (the **"WEST"** listings); and offers of commission to brokers who represent the successful home purchaser, known as "cooperating brokers" (collectively, the **"Disputed Data"**). Two other principal aspects of the VOW Restrictions include prohibitions on (i) the use of the information included in the VOW Data Feed for any purpose other than display on a website, and (ii) the display on a VOW of the information contained in the Disputed Data, which TREB makes available to its Members in other ways.

[15] Nevertheless, at the end of his closing submissions at the Redetermination Hearing, the Commissioner confirmed that the relief being sought extends beyond a request for an order requiring TREB to include the Disputed Data in its VOW Data Feed, and to eliminate the above-mentioned prohibitions. The Commissioner maintained that his overarching objective is to ensure that there is no discrimination between the modes in which information is delivered by TREB to its Members.

[16] Accordingly, in addition to requiring the Disputed Data to be included in the VOW Data Feed, the order being sought by the Commissioner would reflect this general non-discrimination principle, as well as ensuring that the VOW Data Feed includes all MLS information that is available in other ways to TREB's Members, and that there are no restrictions on how VOW operators or other Members may use MLS information on the VOW portions of their websites.

[17] In brief, the Commissioner seeks an order that would, in his view, ensure a level playing field between more traditional "bricks and mortar" brokers and those who wish to provide new products and services based on MLS information in the manner that they think is appropriate, and in particular over the Internet.

[18] The Commissioner also acknowledged in his closing submissions at the Redetermination Hearing that no relief is being sought in this proceeding in respect of TREB's conduct prior to 2011. Accordingly, these reasons will not assess whether any of that conduct constituted a practice of anti-competitive acts that prevented or lessened competition substantially, or was likely to do so.

[19] In the Application, the Commissioner alleges that each of the three elements that must be satisfied under paragraphs 79(1)(*a*), (*b*) and (*c*) of the Act, respectively, before an order may be made by the Tribunal under section 79, are met. More specifically, the Commissioner contends that:

a. TREB substantially or completely controls the supply of residential real estate brokerage services in the GTA;

b. The MLS Restrictions constitute a practice of anti-competitive acts, the purpose and effect of which is to discipline and exclude innovative brokers who would otherwise compete with TREB's Members who use more traditional business methods; and

c. The MLS Restrictions have lessened and prevented, and will continue to lessen and prevent, competition substantially in the market for the supply of residential real estate brokerage services in the GTA. In particular, the Commissioner asserts that by restricting brokers' use of VOWs, the MLS Restrictions discourage entry and expansion by brokers wishing to offer innovative services, with the result that the positions of more traditional brokers are entrenched, their market power is maintained, and innovation is inhibited.

[20] In its Response, TREB asserts, among other things, that the Commissioner has ignored its copyright in the MLS database and that, under subsection 79(5) of the Act, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived from the *Copyright Act*, RSC 1985, c C-42 is not an anti-competitive act for the purposes of section 79.

[21] Moreover, TREB maintains that none of the three elements set forth in subsection 79(1) is met. Specifically, TREB submits that:

a. It does not substantially or completely control the supply of residential real estate brokerage services in the GTA, primarily because it has no market power in that market and has no motivation to exercise any market power, due to the fact that it is not itself a supplier of residential real estate brokerage services;

b. Neither the VOW Policy and Rules nor any of the other conditions that TREB places on its Members' access to and use of the MLS system have the purpose of having a negative effect on a competitor that is predatory, exclusionary or disciplinary. Instead, they have been implemented for a number of legitimate purposes. These include preserving the value of the MLS system for the benefit of its Members, and safeguarding the privacy rights of its Members and their customers by ensuring that its Members are compliant with their respective obligations under privacy legislation and the *Code of Ethics*, O Reg 580/05 (the **"*Code of Ethics*"**) established by the Real Estate Council of Ontario (**"RECO"**), pursuant to the *Real Estate and Business Brokers Act, 2002,* SO 2002, c 30, Sched C (**"*REBBA*"**); and

c. There is no basis for the Commissioner's allegation that, "but for" TREB's impugned conduct, there would likely be greater innovation, enhanced quality of service or increased price competition in the supply of residential real estate brokerage services in the GTA. TREB contends that the VOW Policy and Rules do not create, maintain or enhance market power. Furthermore, in the context of the broader competition that is occurring in the supply of real estate brokerage services to buyers and sellers of homes in the GTA, TREB submits that the incremental negative effect of its VOW Policy and Rules, if any, is not significant.

[22] In the Reply filed in September 2011, after the VOW Policy and Rules were formally adopted by TREB and its Members, the Commissioner rejects TREB's above-mentioned positions.

[23] With respect to TREB's alleged substantial or complete control of the supply of residential real estate brokerage services in the GTA, the Commissioner submits that TREB's position that it does not compete with brokers ignores the reality that TREB enacts and enforces its rules, policies and agreements for the benefit of its Members, most of whom pursue a traditional business model. The Commissioner maintains that the enactment of the VOW Policy and Rules demonstrates TREB's substantial or complete ongoing control of the relevant market, and that brokers cannot realistically compete without access to TREB's MLS system.

[24] With respect to TREB's alleged practice of anti-competitive acts, the Commissioner states that the purpose and effect of TREB's MLS Restrictions is to discipline and exclude innovative brokers who would otherwise compete with TREB's traditional member brokers using their VOWs. The Commissioner adds that by preventing its Members from providing certain MLS data through a VOW, including "highly valuable information" pertaining to the sold prices of homes, TREB discriminates against innovative brokers. This is because TREB imposes

no corresponding restrictions on traditional brokers who provide the very same MLS information to consumers by means other than a VOW. The Commissioner submits that the ultimate effect of the MLS Restrictions is to exclude potential competitors who are not yet in the market as well as those innovative member brokers who are eager to compete using a VOW.

[25] The Commissioner further submits that TREB's business justifications for the MLS Restrictions should be rejected. Regarding privacy, the Commissioner argues that TREB's position is belied by the fact that the information at issue in this proceeding is currently and freely distributed by traditional brokers to consumers on a regular basis by means other than a VOW.

[26] Regarding TREB's copyright, the Commissioner asserts that the exception in subsection 79(5) of the Act does not apply because TREB has not established a copyright in the MLS database (including the Disputed Data) and because, even if it had, the MLS Restrictions go well beyond a mere exercise of any rights that TREB may have under the *Copyright Act*.

[27] Finally, the Commissioner maintains that the MLS Restrictions, and in particular the narrower VOW Restrictions, have lessened and prevented, and will continue to lessen and prevent, competition substantially in the market for the supply of residential real estate brokerage services in the GTA. The Commissioner affirms that this is so because, "but for" those restrictions, consumers would benefit from substantially greater competition in that market. Specifically, the Commissioner states that the MLS Restrictions effectively protect and perpetuate the static traditional brokerage model for the delivery of residential real estate brokerage services. The impugned restrictions on innovative, Internet-based business models such as VOWs thus have negatively affected the range and quality of services being offered over the Internet by brokers to their customers and have denied consumers the benefits of downward pressure on commission rates that would otherwise exist.

[28] Given that the parties' submissions and the evidence filed in this case centered almost entirely on the VOW Restrictions, those specific restrictions are the focus of this decision. However, the Tribunal will remain open to considering the inclusion of terms in its Order that go beyond the VOW Restrictions, after it has reviewed the parties' written submission on remedy and has considered the oral submissions that will be made during the hearing that will be scheduled with respect to the specific issue of the remedy to be imposed in this case.

## C. *Section 79 of the Act*

[29] Pursuant to subsection 79(1) of the Act, the Tribunal may make an order prohibiting all or any of the persons described in paragraph 79(1)(*a*) from engaging in a practice described in paragraph 79(1)(*b*), where it finds, on a balance of probabilities, that the three elements described in that subsection have been met. Those are that:

a. One or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business;

b. That person or those persons have engaged in or are engaging in a practice of anti-competitive acts; and

c. The practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market.



[30] It is important to note that section 79 specifies three distinct elements that must each be determined independently. In *Canada (Commissioner of Competition) v Canada Pipe Co*, 2006 FCA 233 (**"*Canada Pipe FCA*"**), leave to appeal to SCC refused, 31637 (10 May 2005), the Federal Court of Appeal stressed that, in abuse of dominance cases, the Tribunal must avoid "the interpretive danger of impermissible erosion or conflation of the discrete underlying statutory tests" (*Canada Pipe FCA* at para 28). However, the same evidence can be relevant to more than one element (*Canada Pipe FCA* at paras 27-28).

[31] Pursuant to subsection 79(2), if an order is not likely to restore competition, the Tribunal may, in addition to or in lieu of making an order under subsection 79(1), make an order directing any or all of the persons against whom an order is sought to take such actions as are reasonable and necessary to overcome the effects of the practice in a market in which the Tribunal has found the three above-mentioned elements to have been met.

[32] In determining whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, subsection 79(4) further requires the Tribunal to consider whether the practice is a result of superior competitive performance.

[33] An exception to the Tribunal's order-making powers under subsections 79(1) and (2) of the Act is provided by subsection 79(5), which stipulates that for the purposes of section 79, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under certain legislation pertaining to intellectual or industrial property, including the *Copyright Act*, is not an anti-competitive act.

[34] The Commissioner bears the burden of establishing the three elements of subsection 79(1), and the Tribunal must make a positive determination in respect of each of those elements before it may issue an order. The burden of proof with respect to each element is the civil standard, that is, on the balance of probabilities.

[35] The full text of section 79 of the Act, and of section 78, which sets forth a non-exhaustive list of anti-competitive acts, is reproduced in Schedule "A" to this decision.

**D.** ***The Tribunal's initial decision***

[36] In *TREB CT*, the initial panel of the Tribunal dismissed the Commissioner's Application.

[37] In brief, the panel concluded that the Commissioner had not met the requirements of paragraph 79(1)(*b*) for three reasons. First, it relied on its interpretation of *Canada Pipe FCA* at paragraph 68, where the Federal Court of Appeal held that "to be considered 'anti-competitive' under paragraph 79(1)(*b*), an act must have an intended predatory, exclusionary or disciplinary negative effect on a competitor." The panel found that, because TREB does not compete with its Members, the MLS Restrictions could not have the negative effect on a competitor required by *Canada Pipe FCA*, as interpreted by the panel. It found that *Canada Pipe FCA* served as a binding precedent.

[38] Second, the panel found that the Application was inconsistent with the guidelines entitled *The Abuse of Dominance Provisions*, issued in September 2012 by the Commissioner (the **"*Guidelines*"**). The panel noted that while the *Guidelines* state, at section 3.2, that "certain acts not specifically directed at competitors could still be considered to have an anti-competitive purpose," the *Guideline*s do not clearly stipulate that a dominant firm's conduct might fall within the purview of section 79, even though that firm may not compete in the relevant market.

[39] Third, the panel stated that the language of subsection 79(4), which requires the Tribunal to consider whether an impugned practice is a result of superior competitive performance, makes it clear that paragraph 79(1)(*b*) applies only if the dominant firm in question is a competitor.

[40] The panel therefore concluded that the Application did not meet the requirements of paragraph 79(1)(*b*). The panel also observed, with respect to paragraph 79(1)(*a*), that even if it could be established that TREB had market power, the requirements of that paragraph would not be met because that market power would not be exercised by a firm that competes in the relevant market identified by the Commissioner, namely, the supply of residential real estate brokerage services in the GTA. Finally, the panel also observed that the requirements of paragraph 79(1)(*c*) had not been met, as there were no anti-competitive acts under paragraph 79(1)(*b*).

**E.** ***The Federal Court of Appeal's decision***

[41] In February 2014, the Federal Court of Appeal set aside the Tribunal's order dismissing the Commissioner's Application and referred the matter back to the Tribunal for reconsideration (*TREB FCA*).

[42] In reaching its conclusion, the Court acknowledged that, in the passages of *Canada Pipe FCA* relied upon by the Tribunal, the panel interpreted the word "competitor" to mean "competitor of the person who is the target of the Commissioner's application for a subsection 79(1) order." Speaking for the Court, Sharlow JA stated that there was "nothing in the language or context of the *Competition Act* to justify the addition of those qualifying words" (*TREB FCA* at para 17). She added that the addition of those qualifying words also could not be justified by

the facts as found in *Canada Pipe FCA*. With respect to the dispute between the Commissioner and TREB, Sharlow JA stated that she did not accept that the Court intended its decision in *Canada Pipe FCA* to preclude the application of subsection 79(1) to TREB in respect of a rule that it makes binding on its Members (*TREB FCA* at para 18).

[43] In further discussing that conclusion, Sharlow JA referred to paragraph 78(1)(*f*) of the Act. That specific provision describes one type of act that is deemed to be anti-competitive for the purposes of section 79. It appears as part of a non-exhaustive list of other acts contained at subsection 78(1) that are also deemed to be anti-competitive. Paragraph 78(1)(*f*) refers to the "buying up of products to prevent the erosion of existing price levels." Sharlow JA observed that, in *Canada Pipe FCA*, the Court recognized that this paragraph 78(1)(*f*) describes an act that is not necessarily taken by a person against that person's own competitor. She proceeded to note that the Court in that case did not reconcile this with its view that "to be considered 'anti-competitive' under paragraph 79(1)(*b*), an act must have an intended predatory, exclusionary or disciplinary negative effect on a competitor" (*TREB FCA* at paras 15 and 19, referring to *Canada Pipe FCA* at paras 64-68). In expressing disagreement with the interpretation given to *Canada Pipe FCA* by the Tribunal, Sharlow JA stated that "paragraph 78(1)(*f*) is an indication that Parliament did not intend the scope of subsection 79(1) to be limited in such a way that it cannot possibly apply to [TREB] in this case" (*TREB FCA* at para 20). She added that if the Court had intended to adopt the contrary interpretation as a general rule, she "would be compelled to find that aspect of *Canada Pipe* to be manifestly wrong because it is based on flawed reasoning (specifically, the unexplained inconsistency in the reasons)" (*TREB FCA* at para 20).

[44] Sharlow JA then proceeded to briefly address two other points identified by the Tribunal in its reasons for dismissing the Commissioner's Application.

[45] With respect to the *Guidelines*, she simply mentioned that they provide no useful guidance to the Court in interpreting section 79 (*TREB FCA* at para 21). With respect to subsection 79(4), she agreed with the Commissioner that it only applies for the purpose of assessing whether a practice has had, is having or is likely to have the effect of preventing or lessening of competition substantially in a market, as contemplated by paragraph 79(1)(*c*) of the Act. In other words, this provision does not support the view that, "as a matter of law, a subsection 79(1) order cannot be made against [TREB] simply because it does not compete with its members" (*TREB FCA* at para 22).

## III. Parties and intervenors

[46] The Commissioner is the public official appointed by the Governor in Council under section 7 of the Act to be responsible for the enforcement and administration of the Act.

[47] TREB is a not-for-profit corporation that was incorporated in 1920 pursuant to the laws of Ontario. It is Canada's largest real estate board and serves approximately 42,500 Members. Its core purpose is to advance the continuing success of its Members. To that end, it provides a range of services to those Members, including access to and use of the MLS system. TREB's

activities are guided by a 16-member Board of Directors elected by TREB's Members from among their ranks. Additional information regarding TREB's operations will be provided later at various points in these reasons.

[48] The Canadian Real Estate Association (**"CREA"**) and Realtysellers Real Estate Inc. (**"RRE"**) were granted leave to intervene in this proceeding.

[49] Prior to the Initial Hearing, the Tribunal was advised that RRE was no longer represented but was reserving its intervention rights. However, no one appeared for RRE throughout that hearing and no submissions were made on its behalf. Subsequently, the Tribunal issued an order quashing its prior order granting RRE leave to intervene (*The Commissioner of Competition v The Toronto Real Estate Board*, 2014 Comp. Trib. 5). Accordingly, no further references will be made to RRE as an intervenor.

[50] CREA is a not-for-profit trade association that represents over 110,000 real estate brokers and agents working through approximately 90 real estate boards and associations across Canada, including provincial and territorial associations. Among other things, it describes itself as the national voice for the Canadian real estate industry, including on competition law and technological issues. Membership in CREA is open to real estate boards and associations, as well as to their members in good standing, provided that they agree to be bound by, among other things, CREA's Realtor Code, and by various rules, by-laws and policies that it has issued.

## IV. Industry background

### A. *Provincial legislation*

[51] Each province/territory in Canada regulates and licenses the brokers and agents within its jurisdiction. In Ontario, brokers and agents are regulated by the *REBBA*. Among other things, the *REBBA* provides that no one may trade in real estate in Ontario unless they are registered under that legislation.

### B. *The Real Estate Council of Ontario*

[52] RECO is responsible for administering the *REBBA* and the regulations promulgated thereunder, on behalf of the provincial government. One such regulation is RECO's *Code of Ethics*.

### C. *The Ontario Real Estate Association*

[53] According to information on its website, the Ontario Real Estate Association (**"OREA"**) was founded in 1922 to organize real estate activities across the province. It represents approximately 65,000 real estate broker and salesperson members of Ontario's 40 real estate

boards. In addition to serving its members through a wide variety of publications, educational programs and special services, it apparently provides all real estate licensing courses in Ontario.

### D. *Brokers, agents, realtors and salespersons*

[54] Real estate brokerages are businesses that are registered under the *REBBA* to trade in real estate. Brokerages can be independent but are often franchisees, operating one or more offices under the banner of a corporate franchise, such as RE/MAX, Royal LePage, Sutton Group or Century 21.

[55] Brokerage franchisees pay fees to their franchisor in exchange for the use of the latter's corporate brand.

[56] Each brokerage must have a broker of record. Among other things, that individual is responsible for all of the trading activities of a registered brokerage.

[57] The terms "broker" and "salesperson" are defined in the *REBBA* as persons who have the prescribed qualifications to be registered as such under the *REBBA* and who are employed by a brokerage to trade in real estate. A broker is subject to additional requirements under the legislation, typically supervises salespersons and may be the owner of the brokerage.

[58] The term "agent" is not defined by the *REBBA*. However, the Tribunal understands the term to mean a person who is registered as a salesperson and who is employed by a brokerage to trade in real estate.

[59] "REALTOR" is a certification trade-mark that is indirectly jointly owned in Canada by CREA and the National Association of Realtors (**"NAR"**). The NAR is essentially the equivalent of CREA in the United States.

[60] The Tribunal understands that a broker, salesperson or agent becomes a "realtor" in Canada when he or she becomes a member of CREA and agrees to be bound by CREA's Realtor Code, its by-laws, its rules and its policies.

[61] Although the terms "broker", "salesperson", "agent" and "realtor" appear to have been used interchangeably throughout these proceedings, the term "agent" will typically be used in these reasons when referring to individuals who trade in real estate.

### E. *The home purchase and sale process*

[62] Although the involvement of an agent is not required in order for real estate transactions to be completed in Ontario, the majority of buyers and sellers choose to work with agents.

[63] Most agents routinely deal with both categories of clients, and sometimes represent both the seller and the buyer in the same real estate transaction.

[64] A home seller who retains an agent ordinarily will enter into a contractual arrangement known as a "listing agreement" with the agent's brokerage. Among other things, the standard listing agreement prepared by OREA (the "**Listing Agreement**") and recommended by TREB for use by its Members authorizes the brokerage to market and sell the home on behalf of the owner.

[65] Services typically provided by agents to home sellers include: (1) educating the seller about the real estate market; (2) assisting the seller to determine the asking price for his or her home; (3) preparing the listing; (4) marketing the home to potential buyers; (5) representing the seller in negotiations on behalf of the seller; and (6) finalizing the transaction.

[66] As with home sellers, residential buyers will often retain an agent to assist them with the purchase of a house. As noted earlier, the agent representing a buyer is known as a "cooperating broker."

[67] In most circumstances, and at the recommendation of TREB, the agent and buyer will enter into either OREA's standard Buyer Representation Agreement (the **"BRA"**) or OREA's Buyer Customer Service Agreement (the **"BCSA"**). Services typically provided to home buyers by agents include: (1) educating the buyer about the real estate market; (2) assisting the buyer to determine the characteristics and price of the home he or she wishes to purchase; (3) identifying and showing homes which meet the buyer's objectives; (4) assisting the buyer to determine the price to be offered; (5) negotiating a purchase on the buyer's behalf; and (6) finalizing the transaction.

[68] In determining a recommended asking or offer price for a client, an agent usually conducts a comparative market analysis (**"CMA"**). A CMA typically compares a property which is listed or is about to be listed with nearby properties that have recently sold. This assists in determining the market value of the subject property. CMAs vary widely, and can involve a simple or a very detailed analysis.

[69] Agents typically receive compensation in the form of a commission payment calculated as a percentage of the sale price. Generally, home sellers pay a commission to the listing brokerage, which then offers a portion of that commission to the cooperating brokerage. Among other things, this encourages the cooperating broker to show the home.

### F. *The MLS system*

[70] An important service provided by TREB to its Members is access to the MLS system. The MLS system is a cooperative selling system which allows agents to share information and provide maximum exposure of properties listed for sale. The MLS system is not accessible to

members of the general public. TREB's Members access the MLS system by way of a secure log-in intranet website.

[71] CREA owns the Multiple Listing Service trade-mark, the MLS trade-mark and the associated logos, each of which is licensed to TREB and the other real estate boards that are members of CREA.

[72] In addition to providing agents with information about available properties listed for sale and the list prices of homes, the MLS system provides agents with a broad range of other information, including interior and exterior photographs, the time a property has been on the market, and historical and other data regarding the property. OREA's standard forms (including its Listing Agreement, its BRA and its BCSA) are also available on the MLS system.

[73] Not all residential properties that are for sale can be found on a MLS system. For example, information regarding exclusive listings, properties that are "for sale by owner" (**"FSBO"**) and many newly constructed properties such as condominiums is not available to agents through a MLS system.

[74] To obtain and maintain access to the MLS system, TREB Members must execute and agree to be bound by the terms of an Authorized User Agreement (**"AUA"**), as well as TREB's MLS rules and policies (the **"MLS Rules and Policies"**).

[75] Properties listed on the MLS system are included in an extensive database (the **"MLS Database"**) that contains both current active listings and an archive of inactive listings on properties. TREB's MLS Database is a searchable repository of real estate listings that have been provided to the MLS system by its Members throughout the GTA and is accessible over an intranet on a Member-to-Member basis.

[76] Active listings include properties that have not been sold and are still available for sale. Inactive listings include sold listings, "pending sold" listings and WEST listings. Though the term is not always defined consistently, the Tribunal understands that "pending sold" refers to a sold property that has not yet closed and is "firm," in the sense that it does not have or no longer has any conditions to closing. Where there are such conditions to closing, the sale is considered to be a "sold conditional" home as opposed to a "pending sold," and the sale price is then not available in the MLS Database. A sale is conditional when the buyer and seller have executed an agreement of purchase and sale with conditions precedent. WEST listings are listings of homes that did not sell and, as such, there is no sale price associated with these inactive listings in the MLS Database.

[77] Pursuant to the MLS Rules and Policies, Members are obliged to report to TREB the existence of a conditional sale, but not the final selling price, within two business days of the execution of the agreement of purchase and sale. Two days after any stipulated conditions have been satisfied, the sale price must then be provided, along with the potential closing date.

[78] The listing information that is inputted in the MLS Database is collected by way of an "MLS Data Information Form" filled out by the seller and the agent. Certain fields are mandatory, including the address of the property, its list price, the number of rooms, the municipal taxes, the seller's name, information about the interior and exterior of the home, the cooperating brokerage commission, and whether permission has been given to display the address on the Internet. The form also has other fields that are optional, such as the approximate age of the building, estimated square footage information, and open house dates.



## G. *Stratus Data Systems Inc.*

[79] The MLS Database is provided to TREB's Members through a platform operated by Stratus Data Systems Inc. ("**Stratus**"). Members can search for information about both unavailable and available properties on the MLS Database. The Stratus software can also generate a report which can be used to prepare CMAs, provide information to clients regarding listings, conduct market research, etc. The public has no access to the Stratus system. However, Members can arrange to have their clients automatically receive emails about new or changed listings in the neighborhoods in which they have expressed interest and that have been uploaded to the TREB MLS Database. Stratus also has a specific application to permit agents to conduct CMAs for consumers.

## H. *The U.S. antitrust investigation and 2008 settlement*

[80] The Tribunal understands that TREB first began considering adopting a policy on VOWs in approximately 2003, when it obtained a copy of the draft VOW policy that NAR proposed to adopt in the United States at that time (the **"2003 Draft NAR Policy"**).

[81] In 2005, the United States Department of Justice (the **"U.S. DOJ"**) began proceedings against NAR in relation to NAR's then existing VOW policy. That version of NAR's VOW policy permitted individual listing agents in the United States to withhold their listings from display on VOWs, by means of an opt-out right. The U.S. DOJ alleged, among other things, that such an opt-out discriminated against VOWs and was anti-competitive.

[82] In late 2008, the U.S. DOJ and NAR settled their litigation. That settlement was ultimately embodied in a final judgment of the U.S. District Court for the Northern District of Illinois, Eastern Division, to which was appended an amended NAR VOW policy (the **"2008 NAR VOW Policy"**).

[83] The Tribunal understands that, among other things, the 2008 NAR VOW Policy effectively no longer allowed listing agents to opt-out or to otherwise refuse to share their MLS listings with operators of VOWs, or with real estate boards. It also effectively prohibited discrimination against VOWs by imposing requirements on them that were not imposed on agents accessing the MLS system through other means, including with respect to the Disputed Data.

## I. *The Commissioner's investigation*

[84] Following the announcement of the possible settlement between the U.S. DOJ and NAR in mid-2008, the Competition Bureau (the **"Bureau"**) approached TREB about implementing a similar VOW policy based on the principles of non-discrimination.

[85] Among other things, this led CREA to establish a VOW task force (**"CREA's VOW Task Force"**), as TREB believed that the VOW issue had national implications and should therefore be dealt with at a national level.

[86] However, CREA's VOW Task Force stalled after reaching a point of impasse with the Bureau in approximately 2010.

[87] In July 2010, TREB conducted a strategic planning exercise with its newly elected Board of Directors and decided to establish its own VOW task force (**"TREB's VOW Task Force"**). TREB did not actually begin to set up its task force until March of 2011.

[88] In the meantime, in November 2010, the Commissioner sent a voluntary information request to TREB concerning VOWs. That action appears to have spurned TREB to prepare a draft VOW policy, dated May 18, 2011, which tracked to a considerable extent the 2008 NAR VOW Policy. However, TREB eliminated from its draft VOW policy the provisions in the 2008 NAR VOW Policy that prohibited listing agents from discriminating against VOW operators, and added certain other provisions that are the subject of dispute in this proceeding.

[89] For example, whereas the 2008 NAR VOW Policy permitted the restriction on the display of certain information by VOWs *only* if the restriction applied to other delivery mechanisms (such as fax and telephone), TREB's draft VOW policy contained no restriction upon how its Members could communicate the Disputed Data through other delivery mechanisms.

[90] Nine days later, on May 27, 2011, the Commissioner filed the Initial Application with the Tribunal.

[91] In the wake of that action by the Commissioner, TREB made further revisions to its draft VOW policy in June 2011. However, that policy continues to prohibit VOWs from displaying the Disputed Data at all. Indeed, as discussed below, TREB also does not include the Disputed Data in its VOW Data Feed and prohibits the use of any information included in the VOW Data Feed for purposes other than display on a website.

[92] Following a 60-day period during which Members were invited to comment on the draft VOW policy, the VOW Policy and Rules were approved by TREB's Board of Directors in late August 2011. The VOW Data Feed discussed below then went "live" in mid-November 2011.

## J. *TREB's VOW Policy and Rules*

[93] The term "virtual office website" is somewhat incongruous, as it refers neither to a website nor to a virtual office. Rather, the term is used to describe an area of a brokerage's website where MLS information is made available to potential home sellers and buyers in a particular searchable format. In the GTA, that information is received by TREB's Members over the VOW Data Feed. The fact that a VOW Data Feed is received does not reveal anything about the principal nature of an agent's office arrangements. Those arrangements may be based on the traditional "bricks and mortar" business model or they may simply be based on a model where a brokerage's agents log-in from home or other locations.

[94] The Tribunal will use the term VOW simply to describe a password-protected area of a brokerage's website where consumers can access and search a database containing MLS information.

[95] TREB's VOW Policy and Rules govern how Members can operate a VOW in the GTA. For the purposes of this proceeding, the key provisions of the VOW Policy and Rules include the following:

1. A member of the public may only access MLS information on a Member's VOW if: (1) the Member has first established a broker-consumer relationship; (2) the Member obtains the name and a valid email for a consumer; (3) the consumer has agreed to prescribed "terms of use"; and (4) the consumer creates a user name and password for the Member's VOW (Rules 800 and 805);

2. A Member's VOW may provide other features, information, or functions in addition to the display of TREB's MLS information (Rule 803);

3. A Member, whether through their VOW or by any other means, may not make available for search by, or display to, consumers the following MLS data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO rules:

    a. Expired, withdrawn, suspended or terminated listings, and pending solds or leases, including listings where sellers and buyers have entered into an agreement that has not yet closed;

    b. The compensation offered to other Members;

    c. The seller's name and contact information, unless otherwise directed by the seller to do so;

    d. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property; and

e. Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO rules and applicable privacy laws (Rule 823).

## K. *The VOW Data Feed*

[96] TREB Members receive data for their VOWs *via* TREB's VOW Data Feed. The VOW Data Feed is an electronic connection over the Internet between a Member's website and TREB's MLS third party database (the "**Third Party Database**"). The Third Party Database is a copy of TREB's MLS Database that TREB uses to transmit data to third parties pursuant to various agreements. The VOW Data Feed appears to contain all of TREB's MLS active listing data, except for cooperating broker commissions, listings which the seller has elected to withhold from the Internet, information that cannot be distributed by any mechanism of delivery, the seller's name and contact information (unless otherwise directed by the seller), and instructions or remarks intended for cooperating brokers only. For greater certainty, none of the Disputed Data is included in the VOW Data Feed, which is offered to TREB's Members at no charge.

[97] TREB's MLS data is transmitted to the VOW operator in a raw data format, to enable the Member to present the data to a customer in whatever manner the Member chooses, subject to the certain restrictions.

[98] Use of the VOW Data Feed is governed by the VOW Policy and Rules as well as by TREB's VOW Data Feed Agreement.

[99] To have access to TREB's VOW Data Feed, Members (and Affiliated VOW Partners (**"AVPs"**), where applicable) must sign the Data Feed Agreement. An AVP is an entity or person designated by a Member to operate a VOW on behalf of the Member, subject to the Member's supervision, accountability and compliance with the VOW Policy and Rules. For the purposes of this proceeding, an important provision of the Data Feed Agreement is the following:

> **4.1 Services and Licence.** Subject to the terms and conditions of this Agreement and the VOW Policy and Rules, TREB will provide to Member or AVP, if operating Member's VOW(s) on behalf of Member, a VOW Data Feed to Member or AVP, solely and exclusively for the Purpose ("Services"). Subject to the terms and conditions of this Agreement, TREB hereby grants to Member and AVP, if operating Member's VOW on behalf of Member, a non-exclusive, non-transferable, non-sublicensable, revocable limited license to use such Listing Information as may be provided to Member or AVP through the VOW Data Feed solely and exclusively for the Purpose.
>
> (Emphasis added)

[100] The term Purpose is defined as follows in the Data Feed Agreement:

> "Purpose" means to permit a Member to display on the Member's VOW given Listing Information which is transmitted through a VOW Data Feed to the Member for the sole purpose of use by Consumers that have a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through Member's VOW.
>
> (Emphasis added)

[101] The Data Feed Agreement also provides that access to the VOW Data Feed may be suspended or terminated if a Member or AVP breaches the Data Feed Agreement or TREB's MLS Rules and Policies.



## V. Evidence – Overview

### A. *Lay witnesses*

#### (1) For the Commissioner

[102] The Commissioner led evidence from the following lay witnesses:

a. William McMullin: Mr. McMullin is the Chief Executive Officer (**"CEO"**) of ViewPoint Realty Services Inc. (**"ViewPoint"**). ViewPoint is an Internet-based, technology-driven, residential real estate brokerage based in Halifax, Nova Scotia that offers a broad variety of services through its website, www.viewpoint.ca. Those services include tools and features that make extensive MLS information available to potential home sellers and purchasers, as well as analyses of that information.

b. Urmi Desai: Ms. Desai is a co-founder of Realosophy Realty Inc. (**"Realosophy"**), a full-service brokerage in the GTA which provides services through two websites as well as a storefront office in the Leslieville area of Toronto. Ms. Desai is responsible for Realosophy's strategy and marketing.

c. John Pasalis: Mr. Pasalis is a co-founder and broker of record of Realosophy. In addition to working as a broker, he provides analytics and real estate commentary for Realosophy's website and in the public media.

d. Scott Nagel: Mr. Nagel is the CEO of real estate operations for Redfin Corporation (**"Redfin"**). Redfin is an Internet-based real estate brokerage based in the United States that operates in approximately 74 metropolitan areas throughout the United States.

e. Shayan Hamidi: Mr. Hamidi is a co-founder and a former CEO of TheRedPin.com Realty Inc. (**"TheRedPin"**). He left the company in 2014. TheRedPin is an online brokerage based in the GTA that operates through its website www.TheRedPin.com.

f. Tarik Gidamy: Mr. Gidamy is a co-founder and the broker of record of TheRedPin. He has been licensed to practice in real estate in Ontario and has been a Member of TREB since 1997. Since Mr. Hamidi left the company in 2014, Mr. Gidamy has shared the duties of TheRedPin's CEO with two other individuals.

g. Joel Silver: Mr. Silver is the Managing Director of Trilogy Growth, LP (**"Trilogy Growth"**), which strategically invests in early stage, innovative companies. In 2012, Trilogy Growth invested in TheRedPin. Mr. Silver is a member of TheRedPin's Board of Directors and has shared the duties of TheRedPin's CEO with Mr. Gidamy and another individual.

h. Mark Enchin: Mr. Enchin is a Guelph-area real estate agent with a history of developing technology-based tools for use by agents. He is a sales representative with Realty Executives Plus Ltd. **("Realty Executives"**) who has an interest in expanding into the GTA by licensing his VOW, which appears to be still in development, to agents located there. Prior to a development in 2007 that will be discussed later in these reasons, Mr. Enchin developed a VOW that was licensed to approximately 1,000 realtors, including many in the GTA.

i. Sam Prochazka: Mr. Prochazka is the founder and CEO of Sam & Andy Inc. (**"Sam & Andy"**), a real estate software company (also known as an AVP) that built websites for real estate professionals in Western Canada, the United States and the GTA prior to its sale to Ubertor, a Vancouver-based firm, in May 2015.

[103] Messrs. McMullin, Pasalis, Nagel, Gidamy and Prochazka testified at both the Initial Hearing in 2012 and the Redetermination Hearing in 2015, whereas the other witnesses identified above only testified at the Initial Hearing. The Tribunal generally found Messrs. McMullin, Pasalis, Nagel, Gidamy and Prochazka to be credible and forthright. Given that none of the members of the redetermination panel participated in the Initial Hearing, the Tribunal will refrain from making such observations regarding Ms. Desai, Mr. Hamidi, Mr. Silver and Mr. Enchin, who testified only at that hearing.

[104] The Tribunal pauses to note that further to an order issued in April 2014 (*The Commissioner of Competition v The Toronto Real Estate Board*, 2014 Comp. Trib. 4), all witness statements, expert reports, exhibits, transcripts, and opening and closing submissions from the Initial Hearing form part of the record of the Redetermination Hearing. The Tribunal's order further provided that the pleadings of the parties would not be amended and that opening and closing statements could refer to evidence given at both the Initial Hearing and the Redetermination Hearing.

**(2) For TREB**

[105] TREB led evidence from the following lay witnesses:

a. Donald Richardson: Mr. Richardson was TREB's CEO for approximately 14 years prior to his departure from TREB in 2014. He is now partially retired and currently holds the position of consultant for TREB. Before joining TREB as its CEO, he worked for approximately 20 years at OREA in a variety of roles, including CEO for the last six of those years.

b. Tung-Chee Chan: Mr. Chan has been the sole owner and broker of record of Tradeworld Realty Inc. ("**Tradeworld**") since 1985. Tradeworld is a brokerage with four offices in the GTA.

c. Pamela Prescott: Ms. Prescott is the owner and a broker at Century 21 Heritage Group Ltd. (**"Century 21 Heritage"**), an independently-owned brokerage with several offices in the northern part of the GTA and approximately 475 real estate agents. Century 21 Heritage operates under the Century 21 banner. Ms. Prescott served as a Director of TREB for a period of three years in the early 2000s.

d. Evan Sage: Mr. Sage is a Vice President and Sales Representative at Sage Real Estate, which describes itself as "Toronto's most philosophically and technologically advanced boutique brokerage." He was a member of TREB's VOW Task Force.

e. Timoleon (Tim) Syrianos: Mr. Syrianos is the principal owner, President and broker of record of Ultimate Realty Inc. (**"Ultimate Realty"**), a RE/MAX franchisee with two offices in the GTA and approximately 235 salespersons. Mr. Syrianos has been a Director of TREB since July 2012 and was previously a member of its VOW Task Force and of its MLS committee (the **"MLS Committee"**).

[106] Messrs. Richardson, Sage and Syrianos, as well as Ms. Prescott, testified at both the Initial Hearing in 2012 and the Redetermination Hearing in 2015, whereas Mr. Chan only testified at the Initial Hearing. For the reason explained at paragraph 103 above, the Tribunal will refrain from making observations regarding the testimony of Mr. Chan during the Initial Hearing. With respect to the Redetermination Hearing, the Tribunal generally found Messrs. Sage and Syrianos to be credible, forthright, helpful and impartial. The Tribunal found Ms. Prescott to be somewhat less impartial and helpful. The Tribunal also had concerns about the reliability of certain aspects of Mr. Richardson's testimony, which are discussed at paragraphs 355 and 356 below. In addition, the Tribunal found some of his testimony on cross-examination to have been evasive in nature. Where Mr. Richardson's testimony was inconsistent with other evidence, the Tribunal therefore generally found such other evidence to be more reliable.

### (3) For CREA

[107] Mr. Gary Simonsen testified on behalf of CREA. Mr. Simonsen is CREA's CEO. Prior to assuming that position in July 2011, he was CREA's Chief Operating Officer. The Tribunal generally found Mr. Simonsen to be credible and forthright.

## B. *Expert witnesses*

### (1) For the Commissioner

[108] Dr. Greg Vistnes testified on behalf of the Commissioner. Dr. Vistnes is an economist specializing in the fields of industrial organization and the economics of competition. He holds a Ph.D. in economics from Stanford University. He is a Vice President in the Washington, DC office of Charles River Associates. The Tribunal generally found Dr. Vistnes to be credible, forthright and more willing to concede weaknesses/shortcomings in his evidence or in the Commissioner's case, than was the case for Dr. Jeffrey Church, TREB's expert witness. Where his evidence was inconsistent with that provided by Dr. Church or by Dr. Fredrick Flyer (CREA's expert witness), the Tribunal found his evidence to be more persuasive, objective and reliable than that of the latter individuals. However, the Tribunal accepts TREB's position that Dr. Vistnes did not have a good understanding of the legal test for what constitutes a "substantial" prevention or lessening of competition, as contemplated by paragraph 79(1)(*c*) of the Act. For this reason, the Tribunal refrained from accepting Dr. Vistnes' evidence on that particular issue.

### (2) For TREB

[109] Dr. Jeffrey Church testified on behalf of TREB. Dr. Church is a Full Professor in the Department of Economics at the University of Calgary. He holds a Ph.D. in economics from the University of California, Berkeley. The Tribunal found Dr. Church to be less forthright, objective and helpful than Dr. Vistnes or Dr. Flyer. The Tribunal also found Dr. Church to be evasive at several points during his cross-examination and to have made unsupported, speculative assertions at various points in his testimony and in his written expert reports.

### (3) For CREA

[110] Dr. Fredrick Flyer testified on behalf of CREA. Dr. Flyer is an economist holding a Ph.D. in economics from the University of Chicago and an M.S. in labour and industrial relations from the University of Illinois. He is an Executive Vice President at Compass Lexecon. The Tribunal generally found Dr. Flyer to be objective and forthcoming. However, it also found that his testimony often remained general and high-level, and that he did not immerse himself in the details of the Canadian real estate industry and in the specific evidence and matters at issue in this proceeding to the same degree as Dr. Vistnes and Dr. Church.

### C. *Documentary evidence*

[111] Attached at Schedule "B" is a list of the exhibits that were admitted in this proceeding.

## VI. Issues

[112] The following broad issues are raised in this proceeding:

a. What is or are the relevant market(s) for the purposes of this proceeding?;

b. Does TREB substantially or completely control a class or species of business in any area of Canada, as contemplated by paragraph 79(1)(*a*) of the Act?;

c. Were the VOW Restrictions adopted for an exclusionary or disciplinary purpose, as contemplated by paragraph 79(1)(*b*) of the Act, or was their adoption motivated by legitimate business justifications? If so, does that continue to be the case?;

d. Have the VOW Restrictions had the effect of preventing or lessening competition substantially in the relevant market(s), or are they having or likely to have that effect, as contemplated by paragraph 79(1)(*c*) of the Act?;

e. Does TREB have a copyright over the MLS Database and, if it is the case, do the VOW Restrictions constitute the "mere" exercise of TREB's intellectual property rights?; and

f. What is the appropriate remedy, if any?

[113] Each of these issues will be discussed in turn.

## VII. Analysis

### A. *What is or are the relevant market(s) for the purposes of this proceeding?*

[114] The first issue to be determined by the Tribunal is the identification of the relevant market(s) for the purposes of this proceeding. For the reasons detailed below, the Tribunal concludes that the relevant market is the supply of MLS-based residential real estate brokerage services in the GTA.

#### (1) Analytical framework

[115] The ultimate focus of the analysis contemplated by subsection 79(1) of the Act is upon whether a practice of anti-competitive acts by a dominant firm has had, is having or is likely to have the effect of preventing or lessening competition substantially in a *market*. The market in

question is the market in which the practice in question is alleged to have had, to be having, or to be likely to have such an impact.

[116] Where the firm that is the focus of an application under section 79 is alleged to substantially or completely control a different market, it will be necessary to define that *other* market *for the purposes of paragraph 79(1)(a)*. This is further discussed below, in section VII.B.(3) of these reasons, including at paragraphs 203-207.

[117] In defining relevant markets in proceedings brought under section 79 of the Act, the Tribunal has focused upon whether there are close substitutes for the product "at issue" (*Commissioner of Competition v Canada Pipe*, 2005 Comp. Trib. 3 (**"*Canada Pipe CT*"**) at para 68). In the cases that it has considered to date, that product has been the same for the purposes of the Tribunal's analysis of both paragraph 79(1)(*a*) and paragraph 79(1)(*c*).

[118] In turn, "close substitutes" have been defined in terms of whether "buyers are willing to switch from one product to another in response to a relative change in price, i.e., if there is buyer price sensitivity" (*Canada (Commissioner of Competition) v Canada Pipe*, 2006 FCA 236 (**"*Canada Pipe FCA Cross Appeal*"**), leave to appeal to SCC refused, 31637 (10 May 2005) at paras 12-16, and *Canada (Commissioner of Competition) v Tele-Direct Publications Inc* (1997), 73 CPR (3d) 1 (Comp. Trib.) (**"*Tele-Direct*"**) at p. 35, both citing the test adopted by the Federal Court of Appeal in *Canada (Director of Investigation and Research) v Southam Inc*, [1995] 3 FC 557, 63 CPR (3d) 1 (CA) (**"*Southam*"**), rev'd on other grounds [1997] 1 SCR 748, a merger case).

[119] Essentially the same approach has been adopted with respect to assessing whether supply at one geographic location is a close substitute for supply at another location.

[120] However, an objective benchmark for assessing "a relative change in price" or "buyer price sensitivity" was not provided in any of those cases.

[121] More recently, in merger cases, the Tribunal embraced the hypothetical monopolist approach, as defined at paragraph 4.3 of the Bureau's 2011 *Merger Enforcement Guidelines* (the **"*MEGs*"**) (*Commissioner of Competition v CCS Corporation*, 2012 Comp. Trib. 14 (**"*CCS*"**) at para 94). That approach has been defined as follows in the *MEGs*:

> Conceptually, a relevant market is defined as the smallest group of products, including at least one product of the merging parties, and the smallest geographic area, in which a sole profit-maximizing seller (a "hypothetical monopolist") would impose and sustain a small but significant and non-transitory increase in price ("SSNIP") above levels that would likely exist in the absence of the merger.

[122] This is the approach adopted by the Commissioner in this case and in the Bureau's *Guidelines*. It is also essentially the analytical framework adopted by the economic experts who testified on behalf of both the Commissioner and TREB, namely, Dr. Vistnes and Dr. Church, respectively.

[123] In *CCS* at paragraph 94, the Tribunal noted that in applying the "small but significant and non-transitory" components of the hypothetical monopolist approach, the Tribunal will typically use a test of a five percent price increase lasting one year. In other words, if sellers of a product or of a group of close substitute products in a provisionally defined market, acting as a hypothetical monopolist, would not have the ability to profitably impose and sustain a five percent price increase lasting one year, the product bounds of the relevant market will be progressively expanded until the point at which a hypothetical monopolist would have that ability and degree of market power. Essentially the same approach is applied to identify the geographic dimension of relevant markets.

[124] The Tribunal considers that the time has come to recognize that this analytical framework can make a conceptually helpful contribution to market definition in the context of proceedings under section 79 of the Act. This is in no small part because it supplies objective benchmarks (five percent, one year and the "smallest group" principle) that have been missing from the approach adopted in past abuse of dominance cases brought before the Tribunal under section 79. In the absence of such objective benchmarks, the exercise of assessing whether one product is a close substitute for another product can be highly subjective in nature.

[125] However, it must be recognized that the practical challenges associated with applying the hypothetical monopolist framework will often be greater in an abuse of dominance proceeding brought under section 79 than in the merger area. This is because of the difficulty associated with determining the "base price" for the purposes of that framework (**"Base Price"**).

[126] In a proceeding brought under section 79 of the Act, the Base Price is the price that would likely have existed "but for" the alleged practice(s) of anti-competitive acts. It is the Commissioner's burden to demonstrate that price. Determining such a price in a section 79 proceeding will often be more difficult than determining the Base Price in a merger context, i.e., the price that would likely exist in the absence of a merger. This may be so notwithstanding that it is not necessary for the Commissioner to demonstrate the Base Price with precision (*CCS* at para 59).

[127] This is because, if a merger has not yet been completed, the Base Price frequently will simply be the prevailing price, especially if it is being alleged that the merger is likely to *lessen* competition. In addition, direct recent evidence of substitutability, for example in the form of evidence of competitive responses to recent price changes or promotional activities, will often be available.

[128] Even where it is being alleged that the merger is likely to *prevent* competition, there will often be direct evidence, for example in the form of one of the merging parties' business plans, regarding the likely future price in the absence of the merger. Alternatively, there may well be

sufficient direct evidence to demonstrate a range over which the likely future price would have fallen (*CCS* at para 59).

[129] In a proceeding under section 79 of the Act, such direct evidence with respect to the Base Price will often not be available. This is especially so where, as in the present proceeding, the principal allegation is that the impugned conduct is *preventing* competition, or will prevent competition in the future. However, even in a case in which the principal allegation is that the impugned conduct is *lessening* competition, or has already lessened competition, the practical challenges associated with applying the iterative exercise contemplated by the hypothetical monopolist approach may be insurmountable. This is in part because products that may appear to be close substitutes at the prevailing price may not be close substitutes at the Base Price level, i.e., at the price that likely would have prevailed in the absence of the impugned conduct.

[130] Accordingly, it should be recognized that market definition in section 79 proceedings will largely involve assessing indirect evidence of substitutability, including factors such as functional interchangeability in end-use; switching costs; the views, strategies, behaviour and identity of buyers; trade views, strategies and behaviours; physical and technical characteristics; and price relationships and relative price levels (*Canada Pipe FCA Cross Appeal* at paras 15-16; *Tele-Direct* at pp. 36-82). In assessing such indirect evidence, functional interchangeability in end-use is a necessary but not sufficient condition for products to be included in the same relevant market (*Tele-Direct* at p. 38).

[131] In the geographic context, transportation costs and shipment patterns, including across Canada's borders, should also be assessed.

[132] In carrying out such assessments of indirect indicia of substitutability, it should be recognized that it will often neither be possible nor necessary to define the product and geographic dimensions of the relevant market(s) with precision. However, an assessment must ultimately be made (at the paragraph 79(1)(*c*) stage of the analysis) of the extent to which products and supply locations that have not been included in the relevant market provide or would likely provide competition to the products and locations that have been included in the market (*CCS* at paras 59-60 and 92; *Director of Investigation and Research v NutraSweet Co* (1990), 32 CPR (3d) 1 (Comp. Trib.) (***"NutraSweet"***) at p. 20).

### (2) The product dimension

[133] The Commissioner submits that the product dimension of the relevant market is the supply of residential real estate brokerage services that provide MLS accessibility.

[134] In his 2012 written closing submissions, the Commissioner recognized that sellers of homes require different services than purchasers of homes and that therefore, from a demand-side perspective, it might be more appropriate to define distinct relevant markets consisting of each of those distinct categories of purchasers of real estate brokerage services. This was also the position advanced by Dr. Vistnes.

[135] However, given that brokers and agents generally provide both sell-side and demand-side MLS-based services, and given that consumers sometimes retain the same agent or broker to sell their home and then to purchase another home, the Commissioner advanced, and continues to advance, a single relevant market comprised of both sell-side and buy-side residential real estate brokerage services. Dr. Vistnes also sometimes referred to essentially the same single relevant market in his expert reports.

[136] TREB acknowledges that the ultimate focus of the Tribunal's assessment should be upon the supply of residential real estate brokerage services. However, it alternately refers to both the "market" and the "markets" for real estate brokerage services in its written submissions.

[137] In discussing the relevant market, CREA generally used the same "residential real estate brokerage services" language used by the Commissioner. The same is true of Dr. Flyer, who explicitly declined to accept Dr. Vistnes' position that there are separate relevant markets for sell-side and buy-side real estate brokerage services.

[138] For the purposes of this proceeding, it does not appear to matter whether there is a single relevant market for the supply of MLS-based real estate brokerage services, or two separate relevant markets, consisting of the supply of real estate brokerage services to home sellers and home buyers, respectively. In brief, it appears to be common ground between the parties and CREA that competitive conditions in respect of the supply of real estate brokerage services to home buyers and home sellers are highly similar.

[139] Accordingly, for ease of reference, the Tribunal will define a single relevant market for the supply of MLS-based residential real estate brokerage services to home sellers and home buyers, respectively.

[140] The Tribunal is satisfied that this is a relevant market, for the following reasons.

[141] First, the evidence suggests that home buyers and sellers generally enter into contracts for the supply of a bundle of MLS-based residential real estate brokerage services, rather than paying separately for unbundled services. Although there is evidence that some home buyers and sellers may prefer to contract for smaller bundles of such services if offered at a discount, the Tribunal accepts Dr. Vistnes' view that discount and limited-service brokerage services are in the same relevant product market as full-service brokerage services. The Tribunal notes that this view was not contested by TREB or CREA.

[142] Second, home buyers have not switched away from MLS-based services to a significant degree, despite the fact that the average absolute level of money they indirectly pay in commissions to purchase a home in the GTA increased by more than 20% (in nominal and adjusted terms) over the period 2008 to 2011, and has increased even further since that time. This, according to Dr. Vistnes, has occurred as a result of the increase in home prices, and not as a result of an increase in the commission rates.

[143] Dr. Vistnes testified that, between 2007 and October 2014, the percentage of home purchasers who have chosen to use MLS-based residential real estate brokerage services increased from approximately 89.7% to approximately 90.9 % of all home buyers. The Tribunal was not provided with evidence to suggest that home sellers have switched away from MLS-based real estate brokerage services in recent years, at a rate proportionate to the increase in total brokerage commissions paid. Indeed, Dr. Vistnes' uncontradicted testimony was that he is aware of no such evidence.

[144] Third, there is no readily available substitute for the full range of information and services that are provided to home buyers and sellers by suppliers of MLS-based residential real estate brokerage services. Although some of that information is available separately or in much smaller bundles on the Internet or from some of the other sources discussed in the next section below, home purchasers and sellers have not switched away from MLS-based services to those other sources of supply. To the extent that the evidence suggests that home buyers and home sellers may be sourcing information that they value on the Internet, they are doing so *in addition to* procuring MLS-based real estate brokerage services, as confirmed by the figures immediately above. The same is true with respect to the complementary services offered by home appraisers, home inspectors, mortgage specialists and real estate lawyers. In other words, those services are used as *complements*, not substitutes, for the MLS-based real estate brokerage services.

[145] Fourth, the evidence provided in this proceeding by agents and brokers supports the view that their customers require access to a broad range of the information available on TREB's MLS system, and that those customers would not likely seek or be able to readily obtain that information from alternative sources.

[146] Fifth, industry documentation reflects a view that industry participants consider that there is a single and distinct market for MLS-based residential real estate brokerage services.

[147] Finally, TREB did not contest Dr. Vistnes' view, which the Tribunal accepts, that there would likely be significant substitution from agents' services to the services offered by brokers, if the price of agents' services were to rise relative to brokers' services, and *vice versa*.

[148] Dr. Church suggested that a market defined in terms of the supply of MLS-based residential real estate brokerage services may be too narrow. For example, he suggested that "exclusive listings" tend not be listed on the MLS system and that it is now much easier for alternatives to the MLS system, such as FSBO offerings, to meet consumers' demands for the range of services that they desire. He further suggested that Dr. Vistnes' evidence that substitution away from MLS-based brokerage services has not increased while the absolute level of money charged for commissions has increased in recent years, is undermined by his failure to take account of rising income levels during that period. He made a similar critique of Dr. Vistnes' failure to take account of substitution at the margins between rentals and home purchases, and between purchases of existing homes and new homes.

[149] The Tribunal takes Dr. Church's point regarding rising income levels. However, the fact remains that home purchasers appear to have increased their usage of MLS-based residential real estate brokerage services over a period of time when the absolute level of commissions (in dollar terms) rose substantially, including in the years prior to both of the Tribunal's hearings in this proceeding. Moreover, no evidence was tendered by Dr. Church or TREB to suggest that there is a material degree of substitution at the margins between rentals and home purchases, or between purchases of existing homes and new homes. Likewise, no evidence was adduced to suggest that "exclusive listings" account for a significant percentage of overall listings in the GTA. Indeed, Mr. Syrianos suggested the contrary and indicated it was not a very high number of Ultimate Realty's business.

[150] Dr. Church also asserted that, in a proceeding under section 79 of the Act, the relevant markets for establishing dominance and competitive effects must be informed by the nature of the alleged exclusionary practices.

[151] Dr. Church's position with respect to the market contemplated by paragraph 79(1)(*a*) will be discussed in the next section below. The relevant market in which to assess competitive effects is the market referred to in paragraph 79(1)(*c*). The Tribunal is satisfied that an assessment of the alleged exclusionary practices in this case would not alter the conclusions that it has reached with respect to the product dimension of that market. Dr. Church's positions regarding the relevant market are discussed further below in section VII.B.(3) as well as at paragraphs 208-212 of these reasons.

[152] In conclusion, the Tribunal is satisfied, based on the considerations discussed above and the evidence on the record in this proceeding, that the product dimension of the relevant market contemplated by paragraph 79(1)(*c*) should be defined in terms of the supply of MLS-based residential real estate brokerage services.

### (3) The geographic dimension

[153] It is common ground between the parties that the geographic scope of the relevant market for the supply of residential real estate brokerage services is local and likely is no broader than the GTA, which is comprised of the city of Toronto and the regional municipalities of Halton, Peel, York and Durham. This was not disputed by CREA. Indeed, the local nature of the market was acknowledged by its expert, Dr. Flyer. Dr. Church, on behalf of TREB, also agreed with this position.

[154] The local nature of the relevant market is generally supported by the following evidence.

[155] Dr. Vistnes' analysis of MLS data for the period of January 2010 to February 2012 indicates that approximately 76% of sell-side transactions and approximately 69% of buy-side transactions occurred within 10 kilometres of agents' principal bases of operations. At 20 kilometres from those bases, the corresponding figures are approximately 92% and 89%. At 30 kilometres, they increase to approximately 97% and 96%.

[156] The testimony of several agents, including Messrs. Gidamy, Pasalis and Enchin, as well as Ms. Prescott, confirms that agents tend to specialize at the local level, to meet consumer demand for local expertise. This appears to be confirmed by Dr. Vistnes' analysis, which indicates that even where there are differences in commissions between adjacent local areas, the geographic range within which agents conduct their business does not materially increase.

[157] However, Ms. Prescott also stated that since the Initial Hearing, agents are increasingly competing for business across the entire city of Toronto. No evidence was adduced to suggest that home buyers or home sellers in the GTA retain the services of agents whose principal base of operations is located outside the GTA.

[158] Although the foregoing evidence suggests that there may be several local relevant markets within the GTA, nothing in this proceeding turns on whether there is a single relevant geographic market that extends throughout the GTA, or several separate and discrete geographic markets within the GTA.

[159] Given that the focus of this proceeding is upon certain of TREB's practices, and given that TREB's focus and activities extend throughout the GTA, the Tribunal is of the view that it is appropriate to define a single geographic market consisting of the GTA. This will simplify the discussion and analysis below, without adversely impacting upon the interests of either party or CREA.

[160] The Tribunal observes in passing that the Commissioner confirmed in his closing argument at the Redetermination Hearing that he is not seeking relief that goes beyond the GTA, except to the extent that TREB's MLS data can be accessed outside the GTA, including through inter-board agreements that allow agents located outside the GTA to access that data.

#### (4) Conclusion

[161] For all the foregoing reasons, the Tribunal concludes that the relevant market for the purpose of this proceeding is the supply of MLS-based residential real estate brokerage services in the GTA (the **"Relevant Market"**).

### B. *Does TREB substantially or completely control a class or species of business in any area of Canada?*

[162] The Tribunal now turns to the second issue to be determined in this proceeding, namely, whether TREB substantially or completely controls a class or species of business in any area of Canada, as contemplated by paragraph 79(1)(*a*) of the Act. For the reasons set forth below, the Tribunal finds, on the balance of probabilities, that TREB substantially or completely controls the supply of MLS-based residential real estate brokerage services in the GTA.

### (1) Analytical framework

[163] Paragraph 79(1)(*a*) deals with the "dominance" dimension of section 79. It requires the Tribunal to find that one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business.

[164] The Tribunal has consistently interpreted the words "throughout Canada or any area thereof" and "class or species of business" to mean the geographic and product dimensions of the relevant market in which the respondent is alleged to have "substantial or complete control" (*Canada Pipe CT* at paras 65-67). This position was upheld by the Federal Court of Appeal in *Canada Pipe FTA Cross Appeal* at paragraphs 16 and 44.

[165] The Tribunal has also consistently interpreted the words "substantially or completely control" to be synonymous with market power. In turn, it has defined market power using various formulations, in particular "the ability to set prices above competitive levels for a considerable period" (*Canada Pipe CT* at para 122, aff'd *Canada Pipe FCA Cross Appeal* at paras 6 and 23-25; *Canada (Director of Investigation and Research) v D & B Companies of Canada Ltd* (1995), 64 CPR (3d) 216 (Comp. Trib.) (**"*Nielsen*"**) at pp. 232 and 254); "an ability to set prices above competitive levels and to maintain them at that level for a significant period of time without erosion by new entry or expansion of existing firms" (*Tele-Direct* at p. 82); and "the ability to profitably influence price, quality, variety, service, advertising, innovation or other dimensions of competition" (*Commissioner of Competition v Canadian Waste Services Holdings Inc*, 2001 Comp. Trib. 3 at para 7, aff'd 2003 FCA 131, leave to appeal refused [2004] 1 SCR vii). This latter definition was embraced by the Supreme Court of Canada in *Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 (**"*Tervita*"**) at paragraph 44.

#### (a) *The degree of market power required*

[166] The jurisprudence to date leaves unanswered the question of what constitutes a "competitive level" of prices. It also does not appear to recognize that, except in perfectly competitive markets, firms often have *some* market power. Indeed, if paragraph 79(1)(*a*) simply requires a demonstration of some market power, even to a *material* degree, it would arguably be redundant. This is because an ability to exercise materially greater market power than in the absence of the impugned anti-competitive practice must be established to satisfy the requirement in paragraph 79(1)(*c*) that the impugned practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market.

[167] Fortuitously, the Supreme Court of Canada has shed some light upon the issue. Specifically, in *R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 (**"*PANS*"**), the Court contrasted the level of market power required by former paragraph 32(1)(*c*) of the *Combines Investigation Act*, RSC 1970, c C-23 with the level required by what is now paragraph 79(1)(*a*). Paragraph 32(1)(*c*), which subsequently became paragraph 45(1)(*c*) of the Act, before it was repealed, made it an offence to conspire, combine, agree or arrange with another person to prevent or lessen competition unduly.

[168] In defining the degree of market power necessary to trigger the application of that criminal offence, the Supreme Court stated that it was less than what is contemplated by paragraph 79(1)(*a*). The Court held that the degree of market power required to trigger the application of paragraph 32(1)(*c*) was simply "the capacity to behave independently of the market, in a passive way" (*PANS* at p. 654). It characterized this as requiring a moderate degree of market power, and contrasted this with the greater degree of market power required to "influence the market" under paragraph 79(1)(*a*).

[169] Having a degree of market power that is more than "moderate" to trigger the application of paragraph 79(1)(*a*), and that is higher than the degree of increased or maintained market power generally required to demonstrate a substantial prevention or lessening of competition, would therefore appear to be required to give effect to the Supreme Court's observations in *PANS* and to avoid an interpretation of paragraph 79(1)(*a*) that arguably renders that provision redundant.

[170] Such an approach would also be more consistent with the view that subsection 79(1) is intended to apply to firms with dominant positions, as reflected in the jurisprudence (*Canada Pipe FCA* at para 21; *Canada Pipe CT* at para 7) and in the heading above section 78 ("Abuse of Dominant Position") (*Commissioner of Competition v Visa Canada Corporation*, 2013 Comp. Trib. 10 at para 112). The Tribunal observes that similar wording appears in the marginal notes above section 79, although it recognizes that, pursuant to section 14 of the *Interpretation Act*, RSC 1985, c I-21, marginal notes form no part of the enactment and are inserted for convenience of reference only. In brief, given that non-dominant firms often have *some* degree of market power, a firm with a "dominant" position should be considered to be a firm that has more than merely "some" market power, and more than the "material" degree of market power contemplated by paragraph 79(1)(*c*).

[171] Requiring a level of market power that is more than "moderate", and more than what is contemplated by paragraph 79(1)(*c*), would also be broadly consistent with the Tribunal's prior observation that "no *prima facie* finding of dominance would arise" when it is determined that the respondent's share of the relevant market is below 50% (*Canada (Director of Investigation & Research) v Laidlaw Waste Systems Ltd* (1992), 40 CPR (3d) 289 (Comp. Trib.) (**"*Laidlaw*"**) at p. 317).

[172] This approach would also make good sense, because having an intervention threshold under paragraph 79(1)(*a*) for single firm conduct that is higher than the threshold for mergers and agreements among competitors would avoid chilling potentially pro-competitive single firm behaviour.

[173] With all of the foregoing in mind, the Tribunal considers that the degree of market power contemplated by paragraph 79(1)(*a*) is a *substantial* degree of market power. This is greater than the *material* degree of increased or maintained market power (compared to the "but for" world) that is required to demonstrate a substantial lessening of competition under paragraph 79(1)(c) (*Tervita* at paras 50 and 80-81; *CCS* at para 377).

[174] In the Tribunal's view, a *substantial* degree of market power is a degree of market power that confers upon an entity considerable latitude to determine or influence price or non-price dimensions of competition in a market, including the terms upon which it or others carry on business in the market. This roughly approximates the degree of market power that is used to measure whether a firm has a "dominant position" under Article 82 of the *Treaty Establishing the European Community* (2002/C 325/01), namely, an ability to behave to an appreciable extent independently of its competitors (Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertaking (2009/C 45/02) at para 10; Case 27/76 *United Brands Company and United Brands Continental v Commission*, [1978] ECR 207 at para 65; Case 85/76 *Hoffman – La Roche & Co v Commission*, [1979] ECR 461 at para 38; Case COMP/C-3/37.792 *Microsoft* at para 428).



### (b) *Exclusionary behaviour and market power*

[175] The Commissioner and TREB dispute whether market power includes the ability to restrict the output of one's rivals. The Commissioner submits that market power includes the power to engage in exclusionary behaviour such as preventing rivals from introducing products to the market. However, TREB disputes that position, and maintains that the power to exclude is not a cognizable form of market power under the Act. It states that this is so because the power to exclude is not captured by the definition of market power articulated by the Supreme Court in *Tervita* at paragraph 44, namely, "the ability to profitably influence price, quality, variety, service, advertising, innovation or other dimensions of competition."

[176] The Tribunal disagrees with TREB's position. To the extent that the power to exclude comprises an ability to restrict the output of other actual or potential market participants, and thereby to profitably influence price, it falls squarely within the definition of market power articulated in *Tervita*. Indeed, it is often the exercise of the power to exclude that facilitates a dominant firm's ability to profitably influence the dimensions of competition referred to in *Tervita*.

[177] TREB further maintains that it cannot "profitably" influence price because it is a not-for-profit entity that does not participate in the relevant market for MLS-based residential real estate brokerage services. Rather, it is an input supplier to that market, and has no stake in who wins or who loses in that market. Contrasting the situation in which a dominant upstream supplier may exercise market power for the benefit of its downstream affiliated entity, TREB maintains that it has no "horse in the race."

[178] The Tribunal disagrees.

[179] To begin, the Federal Court of Appeal explicitly determined, in setting aside the Tribunal's initial decision in this proceeding, that the words used in paragraph 79(1)(*a*) are sufficiently broad to apply to a firm that does not compete in the market that it allegedly substantially or completely controls. This includes a firm that controls a significant input to

competitors in the market, or that makes rules that effectively control the business conduct of those competitors (*TREB FCA* at para 13).

[180] The Court in that case proceeded to find that subsection 79(1) is sufficiently broad to be applicable to TREB in respect of a rule that it makes binding on its Members (*TREB FCA* at para 18). That is to say, "Parliament did not intend the scope of subsection 79(1) to be limited in such a way that it cannot possibly apply to [TREB] in this case" (*TREB FCA* at para 20). In making those findings, the Court refrained from determining whether TREB in fact substantially or completely controls any market. However, it recognized that the rule at the heart of this case is "a rule prohibiting members from posting historical data on a virtual office website" and that "[t]he effect of that rule is that a member who operates through a virtual office website cannot enable clients to access the historical data online" (*TREB FCA* at para 5). The statement that the Court made at paragraph 18 of *TREB FCA* must be read with that in mind.



[181] It follows from the foregoing statements of the Court that a trade association that does not participate in a market with its members can nevertheless be found to have market power, particularly when it acts on behalf of the majority of its members.

[182] Trade associations can exercise such market power in a broad range of ways, including by establishing or mandating product standards or other rules, by-laws or practices that insulate all or some of its members from one or more sources of actual or potential competition. To the extent that a trade association has such an ability, it has market power. To the extent that its actions can enable or facilitate the ability of its members to maintain higher prices, or to maintain lower levels of service, product quality, variety or advertising levels than would otherwise prevail in the absence of those actions, they meet the definition of market power set forth by the Supreme Court in *Tervita*. The same is true where a trade association has the ability to forestall the entry and expansion of innovative products and services.

[183] In such circumstances, trade associations can be said to have the ability to *profitably* influence price, quality, variety, service, advertising or innovation, within the meaning of *Tervita*, on behalf of some or all of their members. In this context, it is the members whose profits would be increased or maintained by the actions of their trade association.

[184] In the Tribunal's view, the definitions of market power set forth in *Tervita* and the other authorities on the meaning of market power mentioned at paragraph 165 above are sufficiently broad to encompass trade associations that act on behalf of some or all of their members, and in the manner described above. This was clearly the view of the Federal Court of Appeal in *TREB FCA*. Although that decision pre-dated *Tervita*, there is nothing in *Tervita* or any of the other authorities mentioned above to suggest that the definitions of market power that they articulated were intended to preclude their application to trade associations that do not directly participate in the relevant market.

[185] The Tribunal considers that such a result would be perverse, as it would enable competitors to do indirectly what they may be prohibited from doing directly, namely, agreeing or arranging among themselves to take action that prevents or lessens, or is likely to prevent or

lessen, competition in a market. Trade associations often do indeed have "horses in the race," namely, members of the associations whose interests they may be endeavouring to protect from competition.

[186] Such a result would also be inconsistent with the various objectives set forth in the purpose clause of the Act (section 1.1), namely:

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| to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices. | de préserver et de favoriser la concurrence au Canada dans le but de stimuler l'adaptabilité et l'efficience de l'économie canadienne, d'améliorer les chances de participation canadienne aux marchés mondiaux tout en tenant simultanément compte du rôle de la concurrence étrangère au Canada, d'assurer à la petite et à la moyenne entreprise une chance honnête de participer à l'économie canadienne, de même que dans le but d'assurer aux consommateurs des prix compétitifs et un choix dans les produits. |

[187] In the alternative, TREB submits that even if a respondent has market power, it cannot be said to substantially or completely control a market within the meaning of paragraph 79(1)(*a*) if it is a not-for-profit entity with no incentive to exercise market power against its members.

[188] The Tribunal disagrees. To the extent that a respondent trade association has the ability to exercise substantial market power to insulate all or some of its members from competition, and thereby enable them to maintain significantly higher prices, or significantly lower levels of non-price competition, than would otherwise be the case, it can be found to come within the purview of paragraph 79(1)(*a*).

[189] It bears underscoring, as a general proposition, that it is the *ability* to exercise the required degree of market power, not whether in fact a dominant firm finds it to be in its interest to exercise that power from time to time, that is relevant for the purposes of paragraph 79(1)(*a*), and indeed of paragraph 79(1)(*c*).

[190] Of course, where a trade association *actually exercises* substantial market power, this would demonstrate that it has that requisite degree of market power. The same is true of any entity alleged to have substantial market power.

### (2) Measuring market power

[191] Market power can be measured either directly or indirectly. The direct approach focuses upon whether profits are indicative of substantial market power. The indirect approach considers other indicia such as market share, entry barriers or the countervailing power of customers. However, neither approach is easy to apply in practice (*Canada Pipe CT* at para 122; *Canada Pipe FCA Cross Appeal* at para 52).

[192] To date, the Tribunal has only been able to establish market power pursuant to the direct approach on two occasions. The first was in *Tele-Direct* at page 101, where it concluded that evidence of economic rents in the form of consistent payments by the respondent to its parent company of 30% - 40% of its collective revenues provided a direct indication of the respondent's market power. The second was in *Canada Pipe CT* at paragraph 161, where the Tribunal found that the evidence of high margins on certain products and an ability to lower prices selectively indicated supra-competitive pricing.

[193] In the absence of direct evidence of market power, the Tribunal has endeavoured to measure market power indirectly. In so doing, it has invariably assessed market shares and barriers to entry and has sometimes concluded that the respondent substantially or completely controlled a market largely on the basis of those two factors (*NutraSweet* at pp. 28-31; *Tele-Direct* at pp. 85-96; *Nielsen* at pp. 254-255). However, it has also assessed other factors such as the excess capacity of other firms (*Laidlaw* at p. 327), pricing practices and accounting profits (*Laidlaw* at pp. 327-330), the limited penetration of competitors (*Canada Pipe CT* at para 161) and the limited growth potential of the market (*Canada Pipe CT* at para 161).

[194] With respect to market shares, the Tribunal has suggested that a *prima facie* finding of substantial control of a market will be made with a large market share exceeding 50% (*Laidlaw* at pp. 317 and 325; *Nielsen* at pp. 254-255; *Canada Pipe CT* at para 138). Such a presumption would become stronger as the disparity between the market share of the respondent and the market shares of the other firms in the market increases, or if the respondent's share is fairly stable over time. Of course, a high market share of another rival could indicate joint dominance, particularly as the market share of that rival rises above 25%, or if the shares of the top two firms remain stable over time. Relatively stable shares of the top three or four firms could also be an indicator of joint dominance.

[195] With respect to barriers to entry, the Tribunal has noted that, in the absence of barriers to entry, even a very large market share will not support a finding of market power (*Canada Pipe CT* at para 138) and even a single seller cannot exercise market power (*Tele-Direct* at p. 85).

[196] As a practical matter, a finding that the respondent has substantial market power would ordinarily be justified where the evidence demonstrates that prices were, are or likely would be *significantly* higher, or that non-price benefits of competition such as quality, service, variety or innovation were, are or likely would be *significantly* lower, than they would have been or would be in the absence of the impugned practice of anti-competitive acts.

### (3) Class or species of business

#### (a) *Overview*

[197] The Commissioner submits that, for the purposes of paragraph 79(1)(*a*), the "class or species of business" or product market that TREB controls is the relevant market that is the ultimate focus of this proceeding under section 79. That market is the market for MLS-based residential real estate brokerage services.

[198] The Commissioner asserts that TREB controls that relevant market because it controls how its Members compete through its rule-making ability. It controls access to the MLS system; it has the ability to discipline Members who do not follow its rules, including by withdrawing their access to the MLS system; it has imposed such discipline in the past; and it can and does insulate its Members from competition by excluding the innovative products of actual or potential competitors who threaten to disrupt the *status quo*.

[199] The Commissioner maintains that the foregoing enables TREB to dictate who can and cannot compete, and on what terms, and can prevent an entire class of competition from emerging in the relevant market. He adds that TREB is horizontally integrated by virtue of its structure as an association and joint venture between competitors and that TREB's control over the market is reinforced by its vertical and horizontal integration with its Members. He suggests that such integration is a practical reality because TREB is controlled by a Board of Directors, all 16 members of which are licensed and practising realtors, who assume their board duties on a volunteer basis.

[200] For its part, TREB submits that the assessment of market power for the purposes of paragraph 79(1)(*a*) must take into consideration the conduct that is at issue in a particular case. In this case, that would primarily be its withholding of the Disputed Data from its VOW Data Feed, its prohibition of the display of the Disputed Data on a VOW, and its imposition of restrictions on an agent's ability to use the data in its VOW feed for purposes other than mere display to the public.

[201] The Tribunal does not accept the proposition that an assessment of market power at the paragraph 79(1)(*a*) stage of its analysis must always take into consideration the conduct that is at issue in a particular case. As the Federal Court of Appeal has noted, the three elements of subsection 79(1) of the Act are distinct. Although certain evidence may be considered in the assessment of more than one of those elements, the three elements themselves must remain conceptually distinct (*Canada Pipe FCA* at para 28).

[202] The conduct that is at issue in any particular case is the principal focus of the assessment at the second step of the three-step assessment contemplated by subsection 79(1), namely, the assessment of whether the respondent has engaged in or is engaging in a practice of anti-competitive acts, as contemplated by paragraph 79(1)(*b*). The actual or likely effects of such conduct are then the focus of the third stage of the analysis, as contemplated by paragraph

79(1)(*c*), although they may also be relevant at the second stage, as discussed in the next section of these reasons. However, at the first stage of the analysis, the focus is upon the existence of dominance and whether the respondent substantially or completely controls throughout Canada or any area thereof, any class or species of business. At that stage of the analysis, the conduct "at issue" in a proceeding is not necessarily relevant.

[203] In this particular case, TREB submits that there is one or more relevant market(s) for the purposes of the analysis contemplated by paragraph 79(1)(*a*), namely, the market(s) for the supply of the principal components of the Disputed Data. That is to say, TREB submits that, for the purposes of paragraph 79(1)(*a*), there may be distinct relevant markets for the supply of information with respect to solds, "pending solds," WEST listings and the commissions of cooperating brokers. In any event, a separate assessment of the close substitutes for each of those types of information is required.

[204] In the Tribunal's view, it does not particularly matter for the purposes of the assessment contemplated by paragraph 79(1)(*a*) whether TREB controls what it characterizes as an "upstream input" to brokers, or the downstream market for the supply of MLS-based residential real estate brokerage services. If it controls or substantially controls either an upstream market or a downstream market, that is sufficient for the purposes of paragraph 79(1)(*a*).

[205] Nothing turns on this particular issue in this proceeding, as the Tribunal is satisfied, for the reasons explained below, that (i) there are no close substitutes for the supply of any of the principal components of the Disputed Data, (ii) TREB therefore controls the supply of those inputs to agents in the GTA, and, in any event, (iii) TREB controls the market for the supply of MLS-based residential real estate brokerage services.

[206] TREB submits that it would have to be dominant in one or more "upstream markets" for it to be dominant in the downstream market for the provision of residential real estate brokerage services.

[207] The Tribunal disagrees. If it is established that TREB has substantial or complete control of either an upstream market or the downstream market for the supply of MLS-based residential real estate services, that is the end of the matter, for the purposes of the assessment contemplated by paragraph 79(1)(*a*).

[208] Dr. Church proposed the "essential facilities" framework as being conceptually useful to determine the question of whether TREB substantially or completely controls a relevant market. In his view, one of the remedies sought by the Commissioner (i.e., the inclusion of the Disputed Data in TREB's VOW Data Feed) amounts to a mandated access to what the Commissioner must consider is an essential upstream input.

[209] Accordingly, he submitted that the framework advanced by the Bureau in the past with respect to essential facilities should be applied. As a first step in that framework, it must be established that the respondent is dominant in both the upstream and downstream markets

(*Submission by the Commissioner of Competition Before the Canadian Radio-Television and Telecommunications Commission – Telecom Notice of Consultation CRTC 2013-551 – Review of Wholesale Services and Associated Policies*, at footnote 7, available at http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03655.html).

[210] The Tribunal questions whether it is necessary to establish, in an "essential facilities" case, that the respondent is dominant in both an upstream and a downstream market. The Tribunal does not wish to preclude the possibility that a demonstration could be made, in a particular case, that the respondent substantially controls a market for an upstream input, that it has engaged in a practice of anti-competitive acts in respect of that input, and that such practice has had, or is having the effect of preventing or lessening competition in a downstream market. This could include a downstream market in which the respondent is a new entrant or, in any event, a competitor that is not yet able to exercise market power in that market.

[211] It is not necessary to resolve this issue in this proceeding, because the Tribunal agrees with the Commissioner, Dr. Vistnes and Dr. Flyer that this is not an "essential facilities" case.

[212] In brief, this is not a case in which an upstream input supplier is denying customers *access* to an input. TREB's Members already have access to the Disputed Data through TREB's Stratus system. Rather, the withholding of that information from TREB's VOW Data Feed, and the rules that restrict the manner in which TREB's Members can use and display that and other information, are what is at issue in this case. As Dr. Vistnes testified, TREB is simply saying to its Members "who have always had the information, you're not allowed to compete with it in this way" (Transcript, October 5, 2015, at p. 578).

[213] Accordingly, access is not the issue. As CREA recognized in its closing submissions, the issue is how the Disputed Data is made accessible to TREB's Members.

### (b) *The supply of the Disputed Data*

[214] Dr. Church's focus for the purposes of paragraph 79(1)(*a*) was upon the upstream supply of the Disputed Data. He submitted that the Tribunal's focus ought to be on whether there are close substitutes for the Disputed Data. He then proceeded to identify several potential substitutes for the Disputed Data.

[215] For Dr. Church, the analysis of substitution depends upon whether the consumer is in the search phase or the valuation/offer phase of the home selling/buying process.

[216] He suggested that, at the search phase, consumers become informed about the market for homes. Among other things, they assess factors such as the relative characteristics of different communities, the relative values of homes in those communities, the relative values of different home characteristics, and price trends.

[217] By contrast, at the valuation/offer phase, home sellers and purchasers are much more advanced in their thinking and require information to, among other things, set the actual price of their home, or establish the price they are willing to offer for a home.

[218] By the time they reach that more advanced phase of the process of selling or purchasing a home, the vast majority of home sellers and buyers will have retained the services of an agent, who is able to supply them with the Disputed Data, which the agent will have obtained from TREB through the Stratus system. (As discussed at paragraph 364 below, there is persuasive evidence that there is a widespread practice among TREB's Members of providing Disputed Data to consumers in various ways other than through a VOW, such as in person, by fax or by email). Therefore, Dr. Church and TREB maintain that, at the valuation/offer phase, the existing source of the Disputed Data (i.e., TREB's Stratus system) provides a close substitute for potential purchasers and sellers of homes, as they are easily able to obtain that information from their agent.



[219] TREB and Dr. Church therefore submit that making the Disputed Data available over TREB's VOW Data Feed would, at most, only be useful to *potential home sellers and home buyers* at the initial search phase, when they are seeking a general ballpark sense of the value of a home.

[220] At this search phase, Dr. Church maintains that there are many substitutes for the Disputed Data, even though those substitutes do not necessarily provide entirely the same data that would be available through TREB's VOW Data Feed, if the Disputed Data were included in that data feed. These substitutes allegedly include list prices, and information available from Teranet Inc. (**"Teranet"**), the Municipal Property Assessment Corporation (**"MPAC"**), brokers, appraisers and other innovative data-sharing vehicles.

**(i) List prices**

[221] Dr. Church submitted that list prices are very good substitutes for sold and "pending sold" listings because they incorporate market information relevant to the search phase and there is a very stable relationship between list prices and sales prices. Based on an analysis that Dr. Church conducted of GTA area data, he found that list prices maintain a relationship of an average of 95% of sold prices over time. He inferred from this that the distribution of list prices is a good substitute for the distribution of sold prices. Accordingly, he suggested that list price information provides essentially the same information that consumers would extract at the search phase from the Disputed Data if it were available on an agent's VOW. In other words, information regarding the average list prices of homes in particular communities would enable potential purchasers and sellers of homes to obtain a good sense of the relative values of homes in those communities, the relative values of different home characteristics, and price trends.

[222] The Tribunal does not accept that list prices of homes in any particular community are a good substitute for information pertaining to "solds" and "pending solds" in that community. Among other things, while information pertaining to the *average* list prices of homes in the GTA or even in a community within the GTA, having a particular set of characteristics, may enable

potential purchasers and sellers of homes to estimate the *average* selling prices of homes in that area that have those characteristics, such information will not assist buyers and sellers to estimate the value of the specific homes in specific neighbourhoods that they may find to be of potential interest. This is particularly so where the homes that are in their initial set of comparators have materially different characteristics from each other (as can frequently be the case), where communities have different types of homes (e.g., detached/semi-detached, three bedroom/four bedroom, homes near busy streets/quiet streets, etc.) or where sellers deliberately undervalue their home, in an effort to generate a "bidding war."

[223] More importantly, data with respect to average list prices in the GTA or in specific communities therein isn't a good substitute for "solds" or "pending solds" for innovative *agents* who want to be able to better compete with traditional agents, e.g., by preparing innovative forms of analysis or more accurate estimates of home prices than can be obtained by using a statistic such as 95% of the average list prices of homes in the GTA or a particular community.

[224] Similarly, the fact that *consumers* are able obtain information with respect to "solds" and "pending solds" directly from an agent, either in person, by fax or by email at the valuation/offer phase does not assist innovative *agents* who would like to be able to access such information over TREB's VOW Data Feed, and then provide it to their customers through products and services offered over the Internet.

**(ii) Teranet, MPAC, brokers and appraisers**

[225] Dr. Church also suggested that historical and current data with respect to sold prices is available from other sources, such as Teranet; MPAC; large real estate brokerages like Royal LePage, Century 21 and RE/MAX; and firms that provide appraisal services, such as Zoocasa and Centract Settlement Services (now Brookfield RPS).

[226] According to Dr. Church, Teranet is in the business of selling reports and analysis derived from Ontario's Land Registration System. In this regard, he noted that it runs a service called GeoWarehouse, which describes itself as a "web-based, centralized, property information source that provides state-of-the-art mapping and research tools, as well as professional reports." Based on information that it is able to access from the Land Registration System, GeoWarehouse has the potential to offer real estate agents and others access to sold information on particular homes, dating back many years. This includes sold prices of homes that were sold as recently as 60-90 days ago. In his 2012 expert report, Dr. Church hypothesized that there is nothing to suggest that any industry participant cannot contract with Teranet to be able to obtain and use information with respect to the sold prices of homes. He maintained this position at the Redetermination Hearing.

[227] Likewise, Dr. Church noted that MPAC's mandate includes providing property owners and business stakeholders with consistent and accurate property assessments, based on the recent sales prices of comparable properties. In his testimony, he maintained that MPAC is an alternative to MLS information with respect to sold prices. While acknowledging that the "raw

data" may not be the same, he maintained that the content is sufficiently similar to constitute a good substitute for the supply of the Disputed Data from TREB.

[228] Dr. Church added that TREB currently provides its Members with access to Teranet and MPAC information through "portals" that it has specifically purchased for TREB's Members. However, neither Dr. Church nor TREB referred to any evidence which demonstrates that any agents actually source sold information from Teranet or MPAC, particularly as a substitute for MLS information.

[229] Dr. Church also suggested that there is a *potential* for large brokerages and corporate franchisors to self-supply information with respect to sold prices. In his 2012 expert report, he estimated that the top five such brokerages/franchisors collectively accounted for over 70% of the transactions in the GTA in 2011, and he speculated that such entities *could* compile or *might be able to* provide data that is statistically representative of the MLS sold data that is more broadly available through Stratus. To ascertain whether an agent might be able to make reasonable price estimates based only on **[CONFIDENTIAL]** internal data, relative to using the full MLS Database, he estimated two sets of simple hedonic price regressions on data for detached homes that sold between January 2007 and December 2011. He concluded that his analysis implied that **[CONFIDENTIAL]** data are a good substitute to the "full" MLS data, not just for **[CONFIDENTIAL]** own listings, but for all listings in the communities in question.

[230] However, based on the following evidence, which the Tribunal accepts, the Tribunal is satisfied that information available from Teranet/GeoWarehouse, MPAC and large brokerages/franchisors cannot be considered to be a good substitute for MLS sold information that the Commissioner submits should be available over TREB's VOW Data Feed.

[231] After assessing each of the above-mentioned potential substitutes for the Disputed Data, Dr. Vistnes concluded that none of them are good substitutes for the Disputed Data, and that there is no other alternative source for this information.

[232] With respect to Teranet/GeoWarehouse, Dr. Vistnes noted the following:

a. It does not currently allow the data that it makes available to TREB's Members to be "republished" by brokers, whether on their VOWs or otherwise;

b. It has demonstrated an unwillingness to enter into new contracts with brokers that would allow "republication" of that information on brokers' websites. This was corroborated by Mr. Enchin, who referred to his request to obtain square footage information, and stated that Teranet left him with "the clear impression that they were very reluctant to sell [him] this information" (Exhibit A-021, Reply Witness Statement of Mark Enchin dated August 17, 2012, at para 11);

c. It has not made its sold listings available to others in the real estate industry, such as ZooCasa;

d. The fact that Teranet charges TREB **[CONFIDENTIAL]** per year for its Members' access to the very limited scope of data available through its GeoWarehouse product, suggests that brokers might incur substantial costs to gain access to Teranet's sold data. This is further corroborated by the fact that Teranet's representatives apparently told Mr. Enchin that one or two data fields could cost as much as $5 per property, which would work out to approximately $37,500 per month (or $450,000 per year) to display information on 7,500 new sold listings per month;

e. The data available on GeoWarehouse is not as up-to-date as the information available on the MLS system. In addition to the medium time lag of over seven weeks from the time a home is sold to the time the sale agreement closes, it takes an additional 10-14 days before sold data is available to users of GeoWarehouse;

f. Even if Teranet had comprehensive sold data that it was willing to provide at minimal cost, brokers would still face costs associated with integrating that data into their VOWs; and

g. Teranet does not have the same extent of information that appears in the MLS system (e.g., days on the market, original price and price changes).

[233] With respect to MPAC, Dr. Vistnes noted that Dr. Church provided no evidence that MPAC can provide comprehensive information, that it would be willing to provide such data, that it would be willing to do so at a price brokers pay for the same information from the MLS system, or that the data would be timely, reliable and capable of being integrated into brokers' VOWs. He added that because much of MPAC's data appears to be derivative of Teranet's data, many of the same reasons that Teranet/GeoWarehouse would be a poor substitute for the information available from TREB's MLS system, would apply to MPAC.

[234] Dr. Vistnes' evidence with respect to Teranet/GeoWarehouse and MPAC is consistent with the evidence provided by several of the Commissioner's lay witnesses, who also maintained that there are no good substitutes to TREB's MLS system for information regarding sold listings or other Disputed Data, whether from Teranet/GeoWarehouse, MPAC or elsewhere. This includes the following evidence:

a. Mr. Hamidi indicated that Stratus and GeoWarehouse are weak and inflexible technologies that require agents to perform a lot of work in order to make sense of the information. He stated that with a complete data feed from TREB, TheRedPin "could put all of the information from several sources together, seamlessly and in innovative ways for [its] agents and [its] customers and not be limited by the information and pre-packaged format of Stratus and Geowarehouse" (Exhibit A-013, Witness Statement of Shayan Hamidi dated June 22, 2012 (**"2012 Hamidi Statement"**), at para 51);

b. **[CONFIDENTIAL]** Elsewhere, Mr. McMullin stated that there is no comprehensive source of information for residential properties for sale and sold, other than TREB's MLS system. He noted that, among other things, Teranet does not even have information with respect to sold data (except for sold prices, though Mr. McMullin understands that there is a time lag), "pending solds," WEST listings, and other status changes that are vital to

ViewPoint's value proposition. At the Redetermination Hearing, he added that Teranet representatives "were not willing to license the sales data they had or have in their possession" (Transcript, September 22, 2015, at p. 102);

c. In addition to the evidence discussed at paragraphs 232-233 above, Mr. Enchin stated that Teranet and MPAC do not have information with respect to "pending solds" and that their sold information is not as up to date and therefore not as useful to realtors and their customers as data in a real estate board's MLS system; and

d. Mr. Prochazka testified that he attempted to obtain information from Teranet on at least two occasions but never heard back from them.

[235] With respect to the potential for large brokerages and corporate franchisers to "self supply" sold data, Dr. Vistnes once again disagreed with Dr. Church. In this regard, he noted that even the largest franchises and brokerages would have only limited sold listings, i.e., only their own sold listings. By way of example, he estimated that by relying solely on sold information from its own listings, **[CONFIDENTIAL]** would lose access to approximately 70 percent of sold listings in the GTA. Smaller brokerages would have even less coverage of the market. He further observed that this possibility of "self supply" was mere speculation.

[236] Turning to appraisers, Dr. Vistnes noted that they do not collect all of their own information, but instead rely on the same data sources that brokers rely upon, including the MLS system, Teranet and MPAC. Insofar as the MLS system is concerned, it is not realistic to believe that appraisers would be able to obtain the same Disputed Data that TREB is prohibiting its Members from displaying on their VOWs. Likewise, there is no reason to believe that appraisers would be any more successful than brokers/agents have been at obtaining sold information from Teranet/GeoWarehouse and MPAC.

[237] With respect to the possibility that the websites operated by brokers offering FSBO services might be a possible source of supply of sold information to other brokers/agents, Dr. Vistnes appropriately noted that FSBO sales appear to constitute a small share of all sales in the GTA, and thus would be unable to provide much coverage of the market.

[238] In summary, based on the evidence discussed above, the Tribunal accepts Dr. Vistnes' conclusion that Teranet's GeoWarehouse, MPAC, large brokerages and other sources are not good substitutes for the sold information that is available on TREB's MLS system. Moreover, if Teranet's GeoWarehouse or MPAC were acceptable substitutes for the sold information that is available on TREB's MLS system, one would expect to see at least some brokers sourcing sold information from one or both of those sources, instead of sourcing exclusively from the MLS system. TREB provided no evidence that this is occurring or ever has occurred to any meaningful degree in the GTA. The same is true with respect to the potential for brokerages to self-supply, or to share their "sold data" between themselves, and with respect to the proposition that sold information available on the websites of brokerages offering FSBO services are an acceptable substitute for the MLS sold information that is available from TREB.

[239] Dr. Church also observed that innovative agents can obtain information with respect to "solds" the same way that other agents obtain that information. However, the Tribunal accepts the evidence provided by Dr. Vistnes and certain innovative agents, who stated that there are no good substitutes for obtaining the Disputed Data, whether over the Stratus system or otherwise. Specifically:

a. Mr. Pasalis stated that the information that TREB currently makes available to its Members (including over the Stratus system) requires agents to engage in a time consuming and costly manual process of assembling and uploading sold information to their websites. He added that this process is prone to human error, and that this can undermine the reliability of the analysis produced. If sold information were available in TREB's VOW Data Feed, Realosophy "could automate the assembly of the information, reduce [its] costs, eliminate human error, and ensure that the information [its] agents are relying on is as up-do-date as possible" (Exhibit A-120, Second Witness Statement of John Pasalis dated February 2, 2015, at para 11);

b. Mr. McMullin stated that the VOW Data Feed offered by TREB lacks content and that without an ability to access all of the MLS data through an efficient means, ViewPoint has "no realistic basis for competing effectively" in the GTA (Exhibits A-100 and CA-099, Second Witness Statement of William McMullin dated February 5, 2015 (**"2015 McMullin Second Statement"**), at paras 49-50). Mr. McMullin testified that ViewPoint, "to do [its] business, [requires] the data in both real-time through a data feed which use [sic] as [sic] protocol known as RETS, Real Estate Transaction Standard, and also in the bulk format" (Transcript, September 11, 2012, at pp. 246-247); and

c. Dr. Vistnes stated that "since brokers cannot practically turn to other equivalent sources of information regarding the excluded data fields, brokers are effectively prevented from providing that information on their VOWs." He added that "to the extent that substitution is possible, it would be to an inferior, more costly, alternative" (Exhibits A-136 and CA-137, Reply Expert Report of Dr. Greg Vistnes dated August 4, 2015 (**"2015 Vistnes Reply Expert Report"**), at pp. 9 and 13). Elsewhere, he observed that by being unable to offer the Disputed Data over a VOW, "brokers must incur the costs of serving as an information intermediary in which consumers ask for particular information, the broker conducts the necessary search, and then the broker transmits the information via a phone call, email or fax to the consumer" (Exhibits A-138 and CA-135, Expert Report of Dr. Greg Vistnes dated February 6, 2015, at p. 6).

### (iii) Other innovative vehicles

[240] TREB also submitted that it has a demonstrated history of innovation and that VOWs are simply one tool that real estate professionals can use to deliver real estate services over the Internet. CREA makes a similar argument. According to TREB, another effective tool is the centralized Internet Data Exchange (**"IDX"**) program that it launched in January 2010. That program enables brokers who participate in the IDX to advertise each other's listings on their respective websites. This effectively creates a large pool of shared listings. Participation is optional and reciprocal and, according to TREB, over 90% of its Members have subscribed to its IDX program, which is quicker, easier and less expensive to operate than a VOW.

[241] However, the Tribunal understands that IDXs cannot show *any* of the Disputed Data fields.

[242] The same is also true for other Internet-based data-sharing vehicles such as CREA's IDX, realtor.ca (a public website operated by CREA), or CREA's data distribution facility (**"DDF"**). Realtor.ca was developed by CREA and displays for free active listings from across the country. The information found on realtor.ca is a subset of listing content from MLS systems across the country. The website does not display the Disputed Data and does not require registration. Likewise, the Tribunal understands that the information available through DDF does not include the Disputed Data.

[243] Dr. Church further suggested that any attempt by TREB to exercise market power in respect of the Disputed Data might elicit a supply-side response similar to what has occurred in the United States. He noted that there are three suppliers of national assessor and recorder bulk data in that country (CoreLogic, RealtyTrac and Black Knight), as well as several additional regional suppliers, which have commercialized their real estate data, including by licensing data to provide automated valuation models, home price indexes, or to power consumer-facing tools. He suggested that the popularity of valuation tools and information on search portals suggests that MLS-sourced "sold" price information is unlikely to be *uniquely* useful.

[244] In this latter regard, Dr. Church noted that the most visited real-estate websites in the United States are search portals, namely, realtor.com, Zillow and Trulia. He observed that the latter two entities obtain their data on sold prices from non-MLS sources, including public records, and display that data to the public on their websites. He asserted that there is no evidence that any of these websites are perceived by *consumers* to be less valuable or useful than VOW sites using MLS-sourced information such as the Disputed Data.

[245] The Tribunal finds three principal shortcomings with these submissions. The first is that they are speculation. They are simply assertions that are not supported by any evidence that any of these U.S. entities has ever considered expanding into Canada, notwithstanding that TREB has consistently refused to provide the Disputed Data over its VOW Data Feed for several years. The second shortcoming is that Dr. Church did not indicate where those potential entrants would obtain information with respect to the sold prices of homes in the GTA. Finally, Dr. Church's

arguments are focused on consumers, rather than agents, particularly innovative agents who would like to be able to disrupt the market by offering the Disputed Data over a VOW.

[246] Dr. Church further maintains that concrete conclusions regarding the availability of substitutes to MLS information, including the Disputed Data, cannot be based on what can be currently witnessed in the market, because MLS information "may actually be priced at an infra-competitive level, consistent with TREB's non-profit status on non-commercial pricing" (Exhibits R-079 and CR-080, Expert Report of Dr. Jeffrey Church dated July 27, 2012, at para 222). He refers to this as a "reverse cellophane problem." In this regard, he notes that TREB's Members pay an annual membership fee that provides access to many resources and benefits, only one of which is access to the MLS system. According to Mr. Richardson, TREB's brokers and salespersons pay annual membership dues of $611.80, as well as an initiation fee ($4,960 for businesses and $460 for individuals) that, in part, reflects the fact that new Members gain access to the information that has been "built up over years" in TREB's MLS Database (Exhibits R-141 and CR-142, Updated Witness Statement of Donald Richardson (**"2015 Richardson Statement"**), at paras 11-12).

[247] In this context, Dr. Church observes that the marginal access price of the MLS system is zero. He suggests that other potential suppliers of sold information *might* begin to make that information available to agents, if TREB were to increase the price of MLS access beyond a competitive level.

[248] The Tribunal does not consider it necessary or appropriate to speculate upon what might happen if TREB were to exercise a different form of market power (increasing the price of MLS access) than those alleged in this application (i.e., withholding of the Disputed Data over its VOW Data Feed, restrictions on how the data from the VOW Data Feed may be used, and the prohibition of the display of Disputed Data). The question is whether the latter conduct constitutes a practice of anti-competitive acts that has had, is having or is likely to have the effect of preventing or lessening competition substantially in the market for the supply of MLS-based residential real estate brokerage services. For the purposes of answering that question, it is not necessary to engage in the exceptionally difficult exercise that would be required to ascertain what the economically "competitive" price of access to MLS information is or should be.

[249] Dr. Church also speculates that the fact that commercial supply of sold information does not currently exist *could* reflect a lack of *consumer demand* for such data. However, once again, this fails to recognize that the focus of this application is upon whether there is significant *agent demand* for this information, and, if so, whether TREB's withholding of that information from the VOW Data Feed, together with the other VOW Restrictions, meets the requirements of paragraphs 79(1)(*b*) and (*c*) of the Act. Moreover, the evidence in the record suggests that wherever sold information is not arbitrarily restricted from display over the Internet, that information is obtained by brokers and made available to potential home buyers and sellers over the Internet. For example, this is the case in the Halifax Regional Municipality (**"HRM"**) of Nova Scotia, where ViewPoint has availed itself of this opportunity. The same is true in a large number of U.S. states, where Redfin has done the same. Mr. Prochazka's AVP also used the sold data provided by the boards in Edmonton and three jurisdictions in British Columbia before its

access to such information was discontinued around 2008-2010. He testified that he "pressed them for a long time, for over a year, to give [the sold data] back to [them]" (Transcript, September 18, 2012, at p. 933).

[250] In summary, for the reasons discussed above, the Tribunal concludes that there are no acceptable substitutes for the sold information in the MLS system. In addition, neither Dr. Church nor TREB provided any persuasive evidence to demonstrate that there are acceptable substitutes for the other components of the Disputed Data, namely, "pending solds," WEST listings and cooperating broker commissions.

[251] Accordingly, even if, as suggested by Dr. Church, it were necessary to define markets in which the Disputed Data, or the distinct components thereof, is supplied, the Tribunal would conclude there are no acceptable substitutes for the Disputed Data, in aggregate or individually, and that therefore TREB substantially or completely controls one or more markets for the supply of those inputs.

[252] However, it is not necessary to define such markets, because as discussed below, the Tribunal is satisfied that TREB controls the market for the supply of MLS-based residential real estate brokerage services.

### (c) *The supply of MLS-based brokerage services*

[253] As noted at paragraph 198 above, the Commissioner submits that TREB controls the market for the supply of MLS-based residential real estate brokerage services because it controls how its Members compete through its rule-making ability. In brief, the Commissioner contends that TREB controls access to the MLS system; it has the ability to discipline Members who do not follow its rules, including by withdrawing their access to the MLS system; it has imposed such discipline in the past; and it can and does insulate its Members from competition by excluding the innovative products of actual or potential competitors who threaten to disrupt the *status quo*.

[254] The Tribunal agrees for the following reasons:

a. To obtain and maintain access to the MLS system, TREB's By-Laws (the **"By-Laws"**) prescribe that TREB's Members must execute and agree to be bound by TREB's MLS Rules and Policies as well as its AUA (By-Laws at Article 2, s. 3.01(a));

b. In the event that a Member breaches the terms of the AUA and its breach is not cured within two weeks after receipt of a notice from TREB, the latter may terminate the AUA pursuant to s. 12(a) of the AUA;

c. Such action would effectively terminate a Member's access to the MLS system;

d. Members' access to the MLS system, and indeed their membership in TREB, can also be terminated if they breach TREB's MLS Rules and Policies (By-Laws at Article 3, s. 4.02(f));

e. TREB's MLS Rules and Policies establish a detailed code "for the orderly, competitive and efficient operation of TREB's MLS System" (MLS Rules and Policies, Introduction, at p. 1). Among other things, that code establishes rules that: regulate the solicitation of home buyers and sellers who have signed exclusive agreements with another Member; mandate the type of information that must or may be uploaded to the MLS system and when information must be posted to that system; mandate when listings on the MLS system must be available for showings, inspections and registration of offers; regulate and limit certain aspects of property advertising that are not covered by RECO's rules pertaining to advertising; regulate the reporting of transactions; limit when offers of commissions to cooperating agents can be altered; and restrict what information may be displayed on a Member's VOW, as well as the conditions under which a consumer may search for or retrieve any listing information on a Member's VOW;

f. Pursuant to the AUA, TREB's Members agree, among other things, to access and use the MLS Database and other services provided by TREB in accordance with the AUA and only in the manner and for the purpose expressly specified in the AUA;

g. Messrs. Pasalis, McMullin and Enchin testified that access to the MLS system is critical to providing residential real estate brokerage services. This was not disputed by TREB, although it represented that an unspecified number of agents/brokers in the GTA are not Members of TREB, which now has approximately 42,500 Members;

h. TREB has described the MLS system as "one of the most important tools used by virtually every REALTOR" (Exhibit A-004, Document 382, at p.1);

i. Dr. Vistnes noted that a board's MLS system was described on a CREA-sponsored website as "the single most powerful tool for buying and selling a home" (Exhibits A-030 and CA-029, Expert Report of Dr. Greg Vistnes dated June 22, 2012 (**"2012 Vistnes Expert Report"**), at para 148);

j. In 2006, CREA reported that approximately 87% of home buyers and 89% of home sellers in Toronto used the services of a realtor during their last home transaction in 2005 or 2006 (Exhibit A-004, Document 869, at pp. 42 and 50);

k. Dr. Vistnes, whose testimony on this point the Tribunal accepts, stated: "Without access to the MLS the broker effectively cannot compete in the market." Dr. Vistnes added that "because [TREB] controls access to the MLS … it's effectively dictating the rules under which brokers are allowed to compete and not compete. It's dictating whether they can compete and it's dictating the forum in which they can compete" (Transcript, October 5, 2015, at pp. 458-459);

l. Dr. Vistnes also stated: "Consumers expect their broker to have access to the MLS: absent MLS access, buy-side brokers will be unable to show prospective clients the full range of homes available for sale or provide all the information about those homes, and

sell-side brokers will be unable to expose the seller's home to the full range of buyers" (Exhibits A-032 and CA-031, Reply Expert Report of Dr. Greg Vistnes dated August 23, 2012 (**"2012 Vistnes Reply Expert Report"**), at para 23);

m. TREB has demonstrated its willingness to terminate a Member's access to the MLS. For example, in 2007, it terminated the access of Mr. Fraser Beach, who was the broker of record for BNV Real Estate Inc. ("**BNV**"); and when BNV later partnered with RRE, TREB terminated the latter's access. This was not disputed by TREB. More recently, in October 2014 and February 2015, TREB threatened to stop providing MLS access to Members who were violating its VOW Policy and Rules or its AUA; and

n. TREB has effectively prevented some innovative brokers who wish to enter or expand within the market for MLS-based supply of residential real estate brokerage services, based on an innovative VOW-based business model, from doing so.



[255] The Tribunal observes that the Ontario Superior Court of Justice reached a similar conclusion as Dr. Vistnes in 2009 when it noted that it was a "practical reality of the market that a realtor who wishes to trade in resale residential properties in the GTA requires access to the MLS Database to carry on an effective business and, therefore, needs to be a member of TREB" (*Beach v Toronto Real Estate Board*, [2009] OJ No 5227 (**"*TREB OSCJ*"**) at para 10). On appeal, the Ontario Court of Appeal noted that without access to TREB's MLS system, the appellant "was not able to carry on business as a real estate broker" (*Beach v Toronto Real Estate Board*, [2010] OJ No 5541 (**"*TREB OCA*"**) at para 3).

[256] TREB maintains that it does not substantially or completely control the Relevant Market for several reasons. These include a number of legal arguments that were addressed and rejected at paragraphs 175-190 of these reasons.

[257] In addition to those arguments, TREB states that it has no financial or other interest in how competition occurs among its Members. In oral argument, this was put in terms of TREB having no "horse in the race" (Transcript, November 2, 2015, at p. 1270). TREB adds that its governance structure provides a constraint on the exercise of any market power that TREB could have or might otherwise wish to exercise against its Members.

[258] However, TREB's mission is to act for the benefit of its Members. This includes acting in ways that its Board of Directors, all of whom are licensed and practising brokers/agents in the GTA, direct it to act, whether it be to insulate them from new and disruptive forms of competition, or otherwise.

[259] In this context, the Tribunal is satisfied that TREB does indeed have an interest in how competition occurs among its Members, and does indeed have a "horse in the race," namely, the Members whose success TREB pursues as its "core purpose" (2015 Richardson Statement, at para 5). The Tribunal is also satisfied that TREB can and does exercise the substantial market power that it derives from its control over access to the MLS system, as well as under the terms of the By-Laws, the MLS Rules and Policies, and the AUA, for the benefit of its traditional

brokers, who comprise the vast majority of TREB's membership. As noted by Dr. Vistnes, TREB's control of the MLS system "gives TREB the opportunity to dictate who can compete and who cannot compete, and that provides it with significant market power" (Transcript, October 5, 2015, at p. 458).

[260] The Tribunal also agrees with the following observation made by Dr. Vistnes:

> As long as TREB serves as a vehicle through which its members can act to promote their own self-interest, TREB's conduct can be expected to largely mimic those members' collective preferences. Thus, from an economic perspective, it does not matter that TREB uses its market dominance to benefit its members rather than itself (…).
>
> (2012 Vistnes Reply Expert Report, at para 28)

[261] TREB asserts that paragraph 79(1)(*a*) of the Act "is directed at determining whether a firm has substantial or complete control over a market, not whether a firm controls *how competition occurs* in a market" (TREB's 2012 Closing Submissions, at para 199). The Tribunal disagrees. The wording in paragraph 79(1)(*a*) is sufficiently broad to bring within its purview situations where a firm controls *how* competition occurs in a market. There is nothing in that wording, or in the scheme of the Act, to suggest otherwise.

[262] TREB also maintains that it cannot substantially or completely control the Relevant Market because it does not have the ability to set prices above competitive levels therein. However, the Tribunal finds that, through its ability to exclude disruptive innovators, including those who would like to become full-information VOWs, TREB has the ability to indirectly influence important non-price dimensions of competition in the supply of real estate brokerage services.

[263] TREB further suggests that it cannot substantially or completely control the Relevant Market because there are insignificant barriers to entry into the market, as evidenced by the large number of brokers who become Members of TREB each year.

[264] However, this misses the point. The source of TREB's substantial market power is its control over its MLS system and how information on that system can be used. As noted above, TREB's control over that system is reinforced by the By-Laws, by TREB's MLS Rules and Policies, and by the terms of the AUA. In this context, the potential entry that is relevant is the entry of a competing MLS system, not the potential entry of new Members. The Tribunal accepts Dr. Vistnes' evidence that, due to the important network effects associated with TREB's MLS system, the entry of a competing MLS system "is extremely unlikely" (2012 Vistnes Reply Expert Report, at para 23). The Tribunal also accepts that even in a market with a large number of competitors, a dominant firm can engage in conduct that "results in a market that is less competitive than it would have been otherwise" (2015 Vistnes Reply Expert Report, at p. 6).

[265] Finally, TREB submits that its ability to exercise market power is constrained by innovative forces in the Relevant Market. In this regard, TREB notes that its Members "are eager adopters of new technology generally, and of VOWs in particular" (TREB's 2015 Closing Submissions, at para 210). It adds that hundreds of member firms, representing the substantial majority of its salespersons and broker Members, are subscribed to its IDX feed and that over 300 Members have subscribed to its VOW Data Feed.

[266] However, notwithstanding these developments in the market, the Tribunal is satisfied that the evidence demonstrates, on a balance of probabilities, that TREB substantially or completely controls the Relevant Market through its control over its MLS system and how information on that system can be used.



#### (4) Area of Canada

[267] As noted at paragraph 164 above, the Tribunal has consistently interpreted the words "throughout Canada or any area thereof" to mean the geographic dimension of the relevant market in which the respondent is alleged to have "substantial or complete control." For the reasons discussed at paragraphs 153-161 above, the Tribunal considers it appropriate to define the geographic dimension of the market as extending throughout the GTA.

#### (5) Conclusion

[268] For the reasons set forth above, the Tribunal thus concludes that the Commissioner has demonstrated, on a balance of probabilities, that the requirements of paragraph 79(1)(*a*) are met and that TREB substantially or completely controls, throughout Canada or any area thereof, a class or species of business, namely, the market for the supply of MLS-based residential real estate brokerage services in the GTA.

### C. *Has TREB engaged in, or is it engaging in, a practice of anti-competitive acts?*

[269] The Tribunal will therefore turn to the third issue to be determined in this proceeding. This is whether TREB has engaged in, or is engaging in, a practice of anti-competitive acts, as contemplated by subsection 79(1)(*b*) of the Act. For the reasons detailed below, the Tribunal finds, on a balance of probabilities, that TREB has engaged and continues to engage in a practice of anti-competitive acts, namely, the VOW Restrictions. In that regard, the Tribunal concludes that the evidence of TREB's subjective anti-competitive intent and reasonably foreseeable exclusionary effects outweighs the evidence provided in support of its asserted legitimate business justifications.

### (1) Analytical framework

#### (a) *The purpose-focused assessment*

[270] The second element of the Canadian abuse of dominance provision is the "abuse" dimension of the conduct contemplated by section 79. Pursuant to paragraph 79(1)(*b*), this is expressed in terms of whether the person or persons in question have engaged or are engaging in a "practice of anti-competitive acts."

[271] Almost two decades ago, the Tribunal observed that "distinguishing between competition on the merits and anti-competitive conduct … is not an easy task" (*Tele-Direct* at p.179). That remains as true today as it was then. However, an analytical framework has gradually emerged.

[272] The Federal Court of Appeal dealt extensively with this element in *Canada Pipe FCA*. As a result, it is now settled law that the focus of the assessment under paragraph 79(1)(*b*) of the Act is upon the purpose of the impugned practice, and specifically upon whether that practice was or is intended to have a predatory, exclusionary or disciplinary negative effect on a competitor (*Canada Pipe FCA* at paras 67-72 and 77).

[273] The term "practice" in paragraph 79(1)(*b*) is generally understood to contemplate more than an isolated act, but may include an ongoing, sustained and systemic act, or an act that has had a lasting impact on competition (*Canada Pipe FCA* at para 60). In addition, different individual anti-competitive acts taken together may constitute a "practice" (*NutraSweet* at p. 35).

[274] In this context, subjective intent will be probative and informative, if it is available, but it is not required to be demonstrated (*Canada Pipe FCA* at para 70; *Laidlaw* at p. 334). Instead, the Tribunal will assess and weigh all relevant factors, including the "reasonably foreseeable or expected objective effects" of the conduct, in attempting to discern the "overall character" of the conduct (*Canada Pipe FCA* at para 67). In making this assessment, the respondent will be deemed to have intended the effects of its actions (*Canada Pipe FCA* at paras 67-70; *Nielsen* at p. 257).

[275] It bears underscoring that the assessment is focused on determining whether the respondent subjectively or objectively intended a predatory, exclusionary or disciplinary negative effect on a competitor, as opposed to on competition. While adverse effects on competition can be relevant in determining the overall character or objective purpose of an impugned practice, it is not necessary to ascertain an actual negative impact on competition in order to conclude that the practice is anti-competitive, within the meaning contemplated by paragraph 79(1)(*b*). The focus at this stage is upon whether there is the requisite subjective or objective intended negative impact on one or more competitors. An assessment of the actual or likely impact of the impugned practice on competition is reserved for the final stage of the analysis, contemplated by paragraph 79(1)(*c*) (*Canada Pipe FCA* at paras 74-78).

[276] To the extent that past pronouncements of the Tribunal may have suggested that it is *necessary* for an adverse impact on competition be demonstrated before it can be concluded that impugned conduct is anti-competitive within the meaning of paragraph 79(1)(*b*), (e.g., *Canada Pipe CT* at para 171; *Nielsen* at p. 257; *Laidlaw* at p. 333), they should be disregarded. However, to the extent that those cases held that an adverse impact on competition can be relevant to the assessment of the overall character or objective purpose of an impugned practice, they remain good law (*Canada Pipe FCA* at paras 74-79).

[277] Likewise, although past jurisprudence may have suggested that it is necessary to demonstrate the requisite negative impact on a direct competitor of the respondent, it is now clear that this is not the case. The meaning of the word *competitor* in the phrase "predatory, exclusionary or disciplinary negative effect on a *competitor*" means *a person who competes in the relevant market, or who is a potential entrant into that market*. It does not mean *a competitor of the respondent* (*TREB FCA* at paras 17-20).

[278] Accordingly, a trade association may be found to have engaged in a practice of anti-competitive acts if those acts are found to have been intended, subjectively or objectively, to have a predatory, exclusionary or disciplinary negative effect on one or more persons who compete in the relevant market, or who would like to enter that market. The same is true of an entity situated upstream or downstream from the relevant market.

[279] However, before a practice engaged in by a respondent who does not compete in the relevant market can be found to be *anti-competitive*, the Commissioner will be required to satisfy the Tribunal that the respondent has a plausible *competitive interest* in the market.

[280] In the case of a trade association, this may be as straightforward as demonstrating that it has a plausible interest in protecting some or all of its members from new entrants or from smaller disruptive competitors in the market. In such circumstances, the complete or partial exclusion of potential or actual competitors or new products will be assessed in essentially the same way as similar conduct engaged in by a joint venture (see, for example, Herbert Hovenkamp, "Exclusive Joint Ventures and Antitrust Policy," (1995) *Columb Bus L Rev* 1 at pp. 64-66).

[281] In the case of an entity that is upstream or downstream from the relevant market, this may involve demonstrating that the entity has a plausible competitive interest that is different from the typical interest of a supplier in cultivating downstream competition for its goods or services, or the typical interest of a customer in cultivating upstream competition for the supply of the goods or services that it purchases. Among other things, this will ensure that garden-variety refusals to supply or other vertical conduct that has no link to a plausible competitive interest by the respondent in the relevant market will not be mistaken for the type of anti-competitive conduct that is contemplated by paragraph 79(1)(*b*).

[282] For greater certainty, if a respondent, who is a dominant supplier to, or customer of, participants in the relevant market, is found to have no plausible competitive interest in adversely impacting competition in the relevant market, other than as described immediately above, its

practices generally will not be found to fall within the purview of paragraph 79(1)(*b*). This is so regardless of whether that entity's conduct might incidentally adversely impact upon competition. For example, an upstream supplier who discontinues supply to a customer because the customer consistently breaches agreed-upon terms of trade typically would not be found to have engaged in a practice of anti-competitive acts solely because that customer is no longer able to obtain supply (perhaps because of its poor reputation) and is forced to exit the market, or becomes a weakened competitor in the market.



[283] In any event, there must be evidence linking an impugned practice to the requisite subjectively or objectively intended negative effect on a competitor. Where such an effect has already occurred, it must be demonstrated that the practice caused or contributed to those effects (*Canada Pipe FCA* at para 78).

[284] However, the required anti-competitive purpose can also be demonstrated from evidence establishing that there was a subjective intent to engage in predatory behaviour against, to completely or to partially exclude or to discipline one or more competitors; or that one of these types of effects was a reasonably foreseeable consequence of the conduct.

### (b) *Weighing evidence of anti-competitive purpose and legitimate business justifications*

[285] In considering all of the relevant circumstances relating to the purpose of the impugned practice, a critical part of the Tribunal's assessment involves evaluating any legitimate business considerations that may be advanced by the respondent, and then *weighing* them against any predatory, exclusionary or disciplinary negative effects on firms participating in the market that it finds were subjectively intended or reasonably foreseeable (*Canada Pipe FCA* at para 67).

[286] The Tribunal emphasizes the weighing aspect of the assessment to underscore that the demonstration of a legitimate business justification does not necessarily provide an absolute defence to an allegation that an impugned practice is anti-competitive, within the meaning of paragraph 79(1)(*b*). Instead, "a business justification is properly employed to counterbalance or neutralize other evidence of an anti-competitive purpose, prior to making a determination under 79(1)(*b*)" (*Canada Pipe FCA* at para 88).

[287] Where any predatory, exclusionary or disciplinary motivations are found to have played a more important role in the respondent's overall subjective intentions than one or more asserted legitimate business justifications, the overall character of the impugned practice typically will be found to have the anti-competitive purpose contemplated by paragraph 79(1)(*b*). Likewise, where it is determined that any predatory, exclusionary or disciplinary effects that are objectively deemed to have been intended outweigh one or more legitimate business justifications, the impugned practice typically will be found to have an anti-competitive purpose.

[288] As is the case for all components of section 79 of the Act, in conducting this balancing exercise, the Tribunal assesses the evidence on the "balance of probabilities" standard. The Tribunal notes that, in *FH v McDougall*, 2008 SCC 53 (**"*McDougall*"**), the Supreme Court held that there is only one civil standard of proof in Canada, a balance of probabilities. Speaking for a unanimous Court, Mr. Justice Rothstein further stated in his reasons that the only legal rule in all cases is that "evidence must be scrutinized with care by the trial judge" and that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall* at paras 45-46). He concluded by saying that, in all civil cases, "the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred" (*McDougall* at para 49). The Supreme Court reaffirmed this in *Tervita*, at paragraph 66.

[289] Therefore, in assessing the balancing test under paragraph 79(1)(*b*), the Tribunal must determine whether sufficiently clear, convincing and cogent evidence exists to demonstrate that the overriding purpose of the impugned practice was anti-competitive. If it is not satisfied that such evidence has been adduced, the Tribunal will conclude that this element has not been demonstrated by the Commissioner. The Tribunal considers this to be particularly important in section 79 cases, to avoid chilling unilateral conduct that is primarily motivated by legitimate business justifications, but may also be objectively expected to have some adverse impact on competition. That being said, while "sufficiently clear, convincing and cogent" evidence is required to meet the evidentiary burden on this weighing test, it is still the balance of probabilities standard of proof that applies.

[290] It is implicit in the foregoing that the existence of *some* business justification will not shield conduct that was principally motivated by predatory, exclusionary or disciplinary objectives, or that has predatory, exclusionary or disciplinary effects that are deemed to have been intended by the respondent.

[291] The Tribunal further observes that the balancing exercise contemplated above is not the type of quantitative assessment contemplated by the efficiency exception in section 96 of the Act. No similar exception or defense exists in section 79, for good reason: it would be much more difficult, and perhaps even completely intractable, in the section 79 context.

[292] Rather, the weighing exercise under paragraph 79(1)(*b*) involves determining whether there is clear and convincing evidence, quantitative or otherwise, that establishes that the actual or reasonably foreseeable predatory, exclusionary or disciplinary effects and/or subjective intent outweigh the efficiency or pro-competitive rationales of the respondent (*Canada Pipe FCA* at paras 73 and 88). In this exercise, the efficiency or pro-competitive benefits actually obtained or likely to be realized by the respondent can provide helpful and relevant evidence bearing on the respondent's intentions.

[293] In conducting this balancing exercise, the Tribunal will endeavour to ascertain whether, on a balance of probabilities, the actual or reasonably foreseeable anti-competitive effects are disproportionate to the efficiency or pro-competitive rationales identified by the respondent; or whether sufficiently cogent evidence demonstrates that the respondent was motivated more by

subjective anti-competitive intent than by efficiency or pro-competitive considerations. In other words, even where there is some evidence of subjective anti-competitive intent on the part of the respondent, such evidence must convincingly demonstrate that the overriding purpose of the conduct was anti-competitive in nature. If there is evidence of both subjective intent and actual or reasonably foreseeable anti-competitive effects, the test is whether the evidence is sufficiently clear and convincing to demonstrate that such subjective motivations and reasonably foreseeable effects (which are deemed to have been intended), taken together, outweigh any efficiencies or other pro-competitive rationale intended to be achieved by the respondent. In assessing whether this is so, the Tribunal will assess whether the subjective and deemed motivations were more important to the respondent than the desire to achieve efficiencies or to pursue other pro-competition goals.



### (c) *Defining and identifying legitimate business justifications*

[294] To be considered "legitimate" in the context of paragraph 79(1)(*b*), a business justification must involve more than a respondent's self-interest. Rather, it "must be a credible efficiency or pro-competitive rationale for the conduct in question, attributable to the respondent, which relates to and counterbalances the anti-competitive effects and/or subjective intent of the acts" (*Canada Pipe FCA* at paras 73 and 90-91). The business justification must also be independent of the anti-competitive effect of the practice concerned. Of course, there may be legal considerations, such as privacy laws, that legitimately justify an impugned practice, provided that the evidence supports that the impugned conduct was primarily motivated by such considerations.

[295] The Commissioner has interpreted this test for what constitutes a "legitimate business justification" to include cost reductions in production or other aspects of a firm's operations, improvements in technology or production processes that result in innovative new products, and improvements in product quality or service (*Guidelines* at section 3.2). The Tribunal typically would be inclined to consider these types of business justifications to be legitimate. However, all of the circumstances must be considered. For example, the cost reductions that might be contemplated or realized by driving one's rivals from the relevant market would not suffice to shield conduct that was primarily motivated by a predatory, exclusionary or disciplinary purpose.

[296] Insight into the requirement that there be a credible efficiency or pro-competitive rationale that is attributable to the respondent, and that goes beyond the respondent's self-interest, can be provided by considering the two business justifications that were advanced by the respondent in *Canada Pipe CT*. First, the respondent asserted that the uniform rebates that it offered through its impugned stocking distributor program (**"SDP"**) encouraged competition by creating a level playing field between small and large distributors. Second, it claimed that the SDP permitted it to achieve the high volume of sales necessary to enable it to maintain a full line of cast iron drain, waste and vent (**"DWV"**) products. Put differently, the respondent maintained that, to be able to continue to offer distributors a complete line of DWV products, including less frequently sold items, it needed to ensure a high volume of sales on other (higher volume and higher margin) DWV products (*Canada Pipe CT* at paras 208-210).

[297] The Tribunal rejected the first of the respondent's justifications on the basis that competition between distributors in the downstream market was not at issue, and had no bearing on whether the respondent was exercising its market power in a way that precluded competition between suppliers of DWV products (*Canada Pipe CT* at para 209). However, the Tribunal accepted the second business justification, on the basis that maintaining smaller, less profitable, but nevertheless important products in inventory served the interests of distributors, contractors and ultimately consumers (*Canada Pipe CT* at para 212). The Federal Court of Appeal rejected this reasoning, on the ground that "improved consumer welfare is *on its own* insufficient to establish a valid business justification" (*Canada Pipe FCA* at para 90 (emphasis added)). The Court elaborated by stating:

> In the case at bar, the Tribunal's reasons do not establish the requisite efficiency-related link between the SDP and the respondent, and hence do not supply a legitimate explanation for the latter's choice to engage in the impugned conduct, unrelated to an anti-competitive purpose. Without such a link, self-interest remains as the only justification for the SDP which is attributable to the respondent for the purposes of paragraph 79(1)(*b*).
>
> (*Canada Pipe FCA* at para 91)

[298] The Tribunal does not understand the Court, in making the above-quoted statement, to have put into question the conventional view that, absent an anti-competitive purpose, a desire to gain competitive advantage by offering something new and of value to consumers constitutes legitimate competition on the merits. Indeed, the Court appeared to recognize this when it observed that "[t]he effect of an act on consumers may in some circumstances be relevant in assessing the credibility and weight of a proffered business justification" (*Canada Pipe FCA* at para 79). This recognition is also arguably reflected in the Court's observation that a "valid business justification must provide a credible efficiency or pro-competitive explanation, *unrelated to an anti-competitive purpose*, for why the dominant firm engaged in the conduct alleged to be anti-competitive" (*Canada Pipe FCA* at para 90 (emphasis added)).

[299] The very essence of competition involves finding new and innovative ways to make one's products more attractive to one's customers. So long as such practices are unrelated to an anti-competitive purpose, whether subjective or deemed, they are pro-competitive in nature and constitute legitimate competition on the merits. However, where this is not obvious, an explanation needs to be provided as to how an impugned practice assists or is likely to assist the respondent to better compete in the relevant market.

[300] The Federal Court of Appeal appears to have rejected the second business justification asserted by the respondent in *Canada Pipe CT* on the basis that the Tribunal's rationale for accepting that justification did not provide the requisite link between the interests of "distributors and contractors … and ultimately … the consumer" (*Canada Pipe CT* at para 212), on the one hand, and the respondent, on the other hand (*Canada Pipe FCA* at paras 90-91). In reaching that conclusion, the Court did not comment on the fact that, earlier in the same paragraph of the Tribunal's reasons, the Tribunal noted that the respondent had asserted that it needed the

additional sales volume expected to result from the SDP, to ensure efficiencies and to lower its cost of production. The Tribunal also noted that the Commissioner had not challenged that assertion.

[301] It thus appears that the Court interpreted the Tribunal's failure to mention these facts again, in explaining why it accepted the respondent's second business justification, as indicating that its sole rationale for accepting the justification was the fact that the SDP "serves the interests of distributors and contractors … and ultimately benefits the consumer." Without any stated link between this and the respondent, the Court concluded that there was no acceptable, credible, efficiency or pro-competitive rationale for the SDP. In addition, the Court may have concluded, on the particular facts of that case, that the sole rationale identified by the Tribunal could not be said to be "unrelated to an anti-competitive purpose" (*Canada Pipe FCA* at paras 90-91).

[302] It follows from the foregoing that to be acceptable under paragraph 79(1)(*b*), a business justification for an impugned practice must not only provide either a credible efficiency or a credible pro-competitive rationale for the practice, it must also be linked to the respondent (*Canada Pipe FCA* at paras 90-91). This is subject to the important caveat that legal considerations, such as privacy, may provide a legitimate justification for an impugned practice.

[303] For efficiencies to be linked to the respondent, they must have been intended to be attained, at least in part, by the respondent itself. In other words, there must be persuasive evidence that the respondent intended that the impugned practice would likely result in the attainment of efficiencies *by the respondent*. These efficiencies may include cost reductions in production or other aspects of its operations, improvements in technology or production processes that result in innovative new products or product enhancements, or improvements in quality or service.

[304] Likewise, for other types of pro-competitive rationales, the respondent must provide a credible and persuasive explanation of how the impugned practice was intended to enable it to compete on the merits. While it will often be the case that a practice intended to benefit consumers will assist a firm to compete on the merits, that is not necessarily always the case. Indeed, examples of anti-competitive practices that may have benefited consumers, at least in the short-run, can be found in the Tribunal's jurisprudence (e.g., some of the impugned practices in *NutraSweet* at pp. 38-43; and the inducements paid to retailers in *Nielsen* at pp. 263-264 and 266). Accordingly, an explanation should be provided as to how an impugned practice assists, or is likely to assist, the respondent to better compete in the relevant market.

[305] In determining whether a practice was intended to have this result, the Tribunal ordinarily will focus on determining whether the practice was intended to assist the respondent to compete more effectively with its rivals, whether in terms of prices or of non-price competition. To the extent that a practice may eliminate rivalry altogether, it cannot be "pro-competitive" (*CCS* at para 120), unless the practice is a manifestation of superior competitive performance, or what might more aptly be called "decisive" competitive performance.

[306] In determining the overall character of a practice, the Tribunal will also assess the extent to which anti-competitive effects and justifications based on benefits to consumers will be manifested beyond the short-term. This is because practices, such as targeted practices that exclude new competitors, may have ambiguous effects in the short-term, but may be likely to harm consumers and competition in the longer term (*Tele-Direct* at p. 199).

[307] Competing on the merits is one thing. Pre-empting meaningful competition from emerging over a sustained period of time may be quite another thing, particularly where the respondent faces little present competition.

[308] Nevertheless, targeted practices that merely "meet" the competition, as opposed to "beating" it, typically will be considered to constitute "competition on the merits," and be legitimately justified. Likewise, the introduction of a new or better quality product typically will be considered to constitute competition on the merits, even if that initiative can be said to "beat" the competition.

[309] This is not intended to imply that other practices that involve "beating" the competition will necessarily be considered to be anti-competitive, if they have a predatory, exclusionary or disciplinary negative effect on a competitor. It bears underscoring that the Tribunal will assess and weigh all of the relevant factors, including the reasonably foreseeable effects of the conduct, in attempting to discern the overall character of an impugned practice.

[310] In considering arguments based on "competition on the merits," the Tribunal does not apply a safe-harbour for practices which a non-dominant firm would likely have undertaken in similar circumstances. On the contrary, any conduct that is subjectively intended or deemed to have been intended to have a predatory, exclusionary or disciplinary negative effect on a competitor can be found to be anti-competitive within the meaning of section 79, even if the same conduct would be considered to constitute "competition on the merits" if pursued by a non-dominant firm (*Tele-Direct* at pp. 180-181).

[311] In assessing the overall character of a practice that has reasonably foreseeable anti-competitive effects on one or more competitors, the Tribunal may consider whether the practice has involved or would likely involve a sacrifice of short-term profits that would not likely be recouped by the respondent, "but for" such effects. As an alternative, the Tribunal may consider whether the practice would make economic sense, "but for" such anti-competitive effect. The Tribunal is aware that the latter approach has been advocated by the U.S. DOJ in several proceedings under § 2 of the *Sherman Antitrust Act*, 15 USC §§ 1-7 (Gregory J Werden, "Identifying Exclusionary Conduct under Section 2: the 'No Economic Sense' Test" (2006) 2:73 *Antitrust LJ* 413).

[312] In considering whether a practice has involved or would likely involve a sacrifice of short-term profits that would not likely be recouped by the respondent "but for" any reasonably foreseeable anti-competitive effect, the Tribunal will attempt to determine and weigh the avoidable costs incurred in pursuing the practice as well as the cognizable benefits likely to be obtained by the firm as a result of the practice. Cognizable benefits can include any cost savings

or other efficiencies attained or likely to be attained by the firm, as well as revenues from additional units of products sold as a result of the practice, plus increased revenues that may be attributable to quality improvements.

[313] In conducting this latter assessment of cognizable benefits, the hypothetical "but for" world will be the one in which there were no predatory, exclusionary or disciplinary effects on competitors. For greater certainty, if actual or future competition likely would have driven down the price of the relevant product "but for" the impugned practice, the relevant price in the assessment will be that lower future price, rather than the price that prevailed immediately prior to the commencement of that practice.

[314] The alternative approach of assessing whether a practice made economic sense "but for" any actual or reasonably foreseeable anti-competitive effects may be more helpful and straightforward to apply than the profit-sacrifice approach in a range of circumstances. This is in part because the former approach does not require a determination that there has been, or is likely to be, a sacrifice of short-term profits. Instead, the Tribunal would simply assess whether it made economic sense to incur the costs associated with the practice, "but for" the anti-competitive effects in question.

[315] In other words, the Tribunal would attempt to determine whether the respondent likely would be able to recover the costs incurred in pursuing the practice, solely with profits that do not depend on the actual or reasonably foreseeable anti-competitive effects in order to be realized. If those costs are such that it would not have made economic sense for the respondent to have engaged in the practice absent the profits or other benefit obtained by excluding or disciplining one or more established competitors or new entrants, then the Tribunal likely would conclude that the objective purpose of the practice was anti-competitive in nature.

[316] For greater certainty, as with the profit-sacrifice approach, in assessing whether an impugned practice made economic sense, the Tribunal will consider in its assessment profits that do not depend on anti-competitive effects in order to be attained. However, in contrast to the profit-sacrifice approach, no adverse conclusion would be drawn where there may appear to have been a profit sacrifice, if the conduct otherwise made economic sense.

[317] In assessing whether an impugned practice made economic sense, the Tribunal would attempt to determine the reasonably anticipated impact of the challenged conduct at the time it was initiated, rather than focusing upon the actual impact of the conduct. Among other things, this would assist to avoid unwarranted conclusions being drawn in situations where there have been unforeseen, unfavourable developments for the respondent or its rivals in the intervening period. Nevertheless, the Tribunal would also consider the actual impact of the conduct in assessing what the reasonably anticipated impact of the conduct would have been, at the time it was initiated.

[318] Inquiring into whether a practice made economic sense at the time it was initiated is helpful even where the costs associated with pursuing the practice are minor or trivial. Even in such circumstances, this analysis may assist to reveal that it would have made no economic sense

to engage in the practice, "but for" its predatory, exclusionary or disciplinary negative effects on one or more established competitors or new entrants.

**(2) Did TREB have a subjective intention to exclude actual or potential participants in the relevant market(s) by adopting the VOW Restrictions, or were those restrictions motivated by legitimate business justifications?**

[319] The Commissioner submits that TREB had a subjective intention to exclude, through the VOW Restrictions, potential entrants into the relevant market and existing TREB Members who were poised to disrupt the traditional residential brokerage business model that is followed by TREB's other Members in the GTA. The Tribunal agrees.

[320] The Commissioner asserts that the VOW Restrictions comprise at least three acts that individually and collectively constitute a practice. These are:

i. The exclusion of the Disputed Data from TREB's VOW Data Feed;

ii. Provisions in TREB's VOW Policy and Rules that prohibit Members who want to provide services through a VOW from using the information included in the VOW Data Feed for any purpose other than display on a website; and

iii. Prohibiting TREB's Members from displaying certain information, including the Disputed Data, on their VOWs, notwithstanding that, in practice, there is no similar limitation on the Members' ability to share essentially the same information with consumers, when Members access such information through the Stratus system, or otherwise. This prohibition is reinforced by terms in TREB's Data Feed Agreement that limit the use of the MLS data in the VOW Data Feed to a purpose that is narrower than the corresponding provision in the AUA that applies to Members using the Stratus system. Among other things, the Commissioner maintains that those terms severely restrict the ability of VOW operators to use certain MLS data to improve the efficiency of their operations and to provide enhanced services to their customers and clients through their VOWs.

[321] TREB maintains that it ultimately decided to exclude the Disputed Data from its VOW Data Feed *because* of concerns about consumer privacy. It asserts that those concerns were central to the decision-making process that it followed in discussing and implementing its VOW Policy and Rules. However, this is not borne out by the evidence.

[322] The Tribunal finds that each of the above-mentioned acts challenged by the Commissioner is in fact anti-competitive and that, individually and collectively, they constitute a practice. In carefully calibrating the parameters of its VOW Policy and Rules, in deliberately eliminating provisions from the corresponding U.S. VOW policy that served as a "good starting point for the development of a TREB policy," and in ultimately implementing the VOW Restrictions, TREB was motivated primarily by a desire to insulate its Members from disruptive competition.

### (a) *Background and development of the VOW Policy and Rules*

[323] Mr. Richardson states that TREB first became aware of, and began monitoring, the VOW concept as early as 2002. Around that time, TREB sent some of its Members to attend conferences in the United States to stay up to date on developments there. However, TREB appears to have been content to let CREA take the lead with respect to the study of VOWs.



#### (i) The EDU Task Force

[324] Roughly contemporaneously, CREA established its Electronic Data Usage Task Force ("**EDU Task Force**"), which included two Members of TREB, namely, Mr. DiMichele, TREB's then Chief Information Officer (**"CIO"**) (now TREB's CEO) and Mr. Silver, who was president of TREB in 2011-2012. (This is a different Mr. Silver from the Commissioner's lay witness mentioned earlier in these reasons.)

[325] In early 2003, two of the members of the EDU Task Force were deputized to review the 2003 Draft NAR Policy and to make recommendations to the rest of the group. Shortly afterwards, CREA obtained a copy of the 2003 Draft NAR Policy and sent it to the members of the EDU Task Force. Two weeks later, they circulated a revised draft of the policy to the full group. It appears that the one noteworthy change they made to the draft document was to remove the ability of local real estate boards to choose whether to permit VOWs to display sold data.

[326] Specifically, the following language from the 2003 Draft NAR Policy was deleted from the "proposed guidelines" that were circulated to the EDU Task Force:

> An MLS may permit Participants to make "Sold" data available on a VOW for search by Registrants. If "Sold" data is made available, the MLS may establish reasonable limits on the number of listings that Registrants may retrieve or download in response to an inquiry.
>
> (Exhibit CA-003, Document 1124, at p. 5)

[327] Subsequent email exchanges between the members of the EDU Task Force reflected ongoing concerns. For example, one member reported back that he had received "the distinct feeling that clear guidelines [were] wanted by everyone who [had spoken to him] but [had] a feeling from some that [they] should not tolerate any kind of VOW" (Exhibit CA-003, Document 10026, at p. 1). Another member suggested that "[b]rokers must have the choice of opting in or out and full disclosure to the VOW visitor is also very important" (Exhibit CA-003, Document 10026, at p. 1). A third person observed: "I see that NAR is proposing fairly extensive restrictions on VOW's [sic]. We would be advised to do the same" (Exhibit A-004, Document 865, at p. 1). Another person mentioned that "no matter what type of rules we put in for VOW's [sic]- the second they are adopted - many people will try to find a way around the rules. Has the idea of not allowing VOW's [sic] been set aside?" (Exhibit A-004, Document 10033, at p. 1).

[328] Ultimately, revisions were made to the draft guidelines that were prepared by the EDU Task Force which contained two important restrictions. First, VOWs were limited to displaying active listings – the same data available on CREA's website (MLS.ca, which was later renamed realtor.ca). One EDU Task Force member appears to have been referring to this provision when he observed: "Why would anyone use a password and jump through hoops when he can get the same information directly from mls.ca without going through it" (Exhibit CA-003, Document 52, at p.1).

[329] Second, the guidelines permitted any agent to opt out of having its listings displayed on a VOW. As a result, VOWs would not be as useful or attractive as they were in the United States.

[330] The purpose of the guidelines proposed by the EDU Task Force was stated to be as follows:

> This discussion paper is for the purpose of developing guidelines for the effective, efficient and beneficial use of electronic data for Boards, Associations and REALTORS.
>
> There is a legitimate fear on one hand of capitulating to misuse of REALTORS' hard-earned data banks, and on the other hand of being left behind in an electronic revolution moving at the speed of light.
>
> *The objective always is to ensure the REALTOR remains central to the real estate transaction and that efforts to guide the use of MLS® data are to that end.*
>
> (EDU Task Force Report, Exhibits IC-084 and CIC-085, Witness Statement of Gary Simonsen dated August 3, 2012 (**"2012 Simonsen Statement"**), Exhibit 18, at p. 494)
>
> (Emphasis added)

[331] The italicized words in the foregoing statement of purpose essentially reflect a concern about "disintermediation." That concern was reflected later in the report of the EDU Task Force, as follows:

> We have heard dire predictions of disintermediation, which basically implies removal from involvement in the transaction. We have heard wild projections of financial windfalls. These have not come to pass. Nonetheless, the Internet has had a profound effect on us.
>
> The threat of disintermediation has certainly affected other industries. Travel agents and stock brokers have been heaviest hit. Bankers are scrambling to change with the new technologies.

> Others offering homogeneous products have and will continue to be affected as well. The major determination of disintermediation seems to be the type of product and the degree of complication in the transaction. If the consumer can be sure of getting exactly the same thing from various sources, like an airline ticket or even an automobile, the likelihood of using the Internet increases dramatically.
>
> (EDU Task Force Report, 2012 Simonsen Statement, Exhibit 18, at pp. 495-496)

[332] Rather than concerns about privacy, it was this concern about disintermediation and, more broadly, the unknown disruptive impact of being unable to control how the MLS data might be utilized, that appears to have been of principal concern to the EDU Task Force and to other Members of TREB who expressed their views on this matter during that period.

### (ii) Development of TREB's VOW Policy and Rules

[333] In the following years, TREB opted not to make a VOW Data Feed available to its Members. Instead, to display MLS listings on their websites, TREB's Members were required to sign data transfer agreements (**"DTAs"**) with each brokerage whose listings the Member wished to have appear on their website. Mr. Hamidi testified that this proved to be very labour intensive and difficult, and created a practical barrier to making a complete set of listings available on TheRedPin's website.

[334] During that period, Mr. Enchin continued to develop a VOW product that included an appraisal feature that used MLS data sourced from TREB's MLS Database. After he presented his product to Mr. DiMichele, the latter informed him that "politics" likely would prevent him from pursuing his vision for his product. Mr. Enchin was subsequently informed by TREB's then President, Ms. Cynthia Lai, that she doubted she would have time to "put this through with all the other things that were on her mandate to do" (Transcript, September 14, 2012, at p. 758).

[335] In the years following the U.S. DOJ's initiation of proceedings against NAR in 2005 in relation to NAR's then existing VOW policy, TREB monitored that dispute and was reluctant to proceed with its own VOW policy pending its resolution.

[336] One of the contentious issues in the U.S dispute was the provision in NAR's then existing VOW policy that permitted individual agents to opt out or withhold their listings from display on VOWs.

[337] In 2007, while the dispute was ongoing in the United States, TREB disabled a bulk download feature that had previously enabled its Members to download a large volume of listing information in a single transfer from TREB's MLS system. This action was taken after two brokerages allegedly "scraped" TREB's MLS Database to create their own online databases, in violation of the AUA. Among other things, this led to the termination of those brokers' access to

the MLS system. TREB asserts that its position that such scraping violated the AUA was upheld by the Ontario Superior Court in *TREB OSCJ*.

[338] The DOJ and NAR ultimately settled their dispute in November 2008 after NAR agreed to make certain changes to its VOW policy. Those changes included eliminating the requirement for VOW operators to seek the permission of listing brokers to display information on a VOW (Exhibit A-004, Document 233, NAR VOW Policy attached to Final Judgment (**"Proposed Final Judgment"**), at p. 14 of 26). As a practical matter, this effectively precluded agents from opting-out or otherwise refusing to share their MLS listings with VOW operators.

[339] Equally importantly, NAR's amended VOW policy included principles of non-discrimination. In brief, operators of MLS systems could only prohibit VOWs from displaying certain listing information if that prohibition applied equally to non-VOW operators:

1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:

    a. A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:

        i. Expired, withdrawn or pending listings.

        ii. Sold data unless the actual sales price of completed transactions is accessible from public records.

        iii. The compensation offered to other MLS Participants.

        iv. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.

        v. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.

        vi. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

    (Proposed Final Judgment, at pp. 20-21 of 26)

[340] This non-discrimination principle was reinforced in Part IV of the Proposed Final Judgment, which, among other things, prohibited NAR from adopting, maintaining or enforcing any rule, or entering into or enforcing any agreement or practice, that directly or indirectly:

a. Prohibits a Broker from using a VOW or prohibits, restricts, or impedes a Broker who uses a VOW from providing to Customers on its VOW all of the Listing Information that a Broker is permitted to Provide to Customers by hand, mail, facsimile, electronic mail, or any other methods of delivery;

b. Unreasonably disadvantages or unreasonably discriminates against a Broker in the use of a VOW to Provide to Customers all of the Listing Information that a Broker is permitted to Provide to Customers by hand, mail, facsimile, electronic mail, or any other methods of delivery.

(Proposed Final Judgment, at p. 5 of 26)

[341] As discussed further below, notwithstanding that TREB used the 2008 NAR VOW Policy as a "good starting point" for its own policy, it made important modifications to the language above.

[342] In July 2008, following the announcement of the possible settlement between NAR and the U.S. DOJ, the Bureau approached TREB to discuss the adoption of a similar VOW policy. However, TREB believed that this was a national issue that should involve CREA, which then established its own CREA's VOW Task Force. TREB therefore waited to see what would come out of that initiative.

[343] Even before that time, references to VOWs, which had appeared in TREB's 2004 and 2005/2006 Strategic Plans, disappeared from TREB's Strategic Plan, beginning with its 2006/2007 Strategic Plan.

[344] Shortly after being approached by the Bureau in July 2008, CREA's then President, Mr. Calvin Lindberg, described forced data sharing with VOWs as a "line in the sand" and predicted a backlash if brokerages were forced to "open what they have spent years creating to just any REALTOR to frame on their VOW, and not offer them an opt out." Among other things, he observed that:"[This] is not something I could accept in my business and neither could my company agree to change their [sic] business model, and I believe there are numerous companies across the country that have spent hundreds of thousands of dollars creating their very successful niche market" (Exhibit A-004, Document 1148, at p. 1).

[345] Mr. Lindberg's concerns appear to have been shared by at least some of the members of CREA's VOW Task Force. Ultimately, that group's work "stalled after reaching a point of impasse with the Bureau" in approximately 2010, "around the same time that the Commissioner commenced a proceeding against CREA regarding a different matter" (Exhibits R-039 and CR-040, Witness Statement of Donald Richardson dated July 27, 2012 (**"2012 Richardson Statement"**), at para 116; Exhibit IC-177, Updated Witness Statement of Gary Simonsen (**"2015 Simonsen Statement"**), at para 75). The minutes of the third meeting of CREA's VOW Task Force reflect that "opt-outs and sold data" were the most contentious issues (Transcript, October 10, 2012, at p. 2329; Exhibit A-087, Minutes from CREA's VOW Task Force, December 1-2, 2008, at p. 4).

[346] In the meantime, Mr. Hamidi met with Mr. DiMichele of TREB to discuss the website platform that he and his business partners had developed. He was told by Mr. DiMichele that TREB did not have a policy to permit Mr. Hamidi's brokerage to receive MLS data in an electronic data feed, as he had hoped. Instead, he would have to collect signatures "from each and every individual brokerage" to be able to display their listings on his website. After he and his partners tested their platform using a data feed transfer from two brokerages, they realized that "it would take a lot of work trying to get other brokerages to provide [them] with listings in a data feed format." Without "all the resale home listings data in a feed from the TREB MLS," they decided to abandon the home resale business and focus on new condominiums (2012 Hamidi Statement, at paras 18-22).



### (iii) TREB's VOW Task Force

[347] According to Mr. Richardson, TREB revived its own efforts to establish its VOW Task Force in July 2010, during a strategic planning exercise with its newly elected Board of Directors. Names of potential task force members were subsequently submitted to the TREB Board in March 2011 for ratification. Mr. Richardson, who was then TREB's CEO, acted as the staff liaison to the task force, while Mr. DiMichele, its CIO (and now CEO) acted as the group's advisor. The mandate of TREB's VOW Task Force was "to investigate and recommend to the Board of Directors, the feasibility of TREB adopting a VOW Policy" (2012 Richardson Statement, at para 458).

[348] During that period (July 2010 – March 2011), no action was taken by TREB in connection with VOWs.

[349] However, it appears that the impetus for action increased after the Commissioner sent TREB a voluntary information request concerning VOWs, in November 2010.

[350] TREB's VOW Task Force met for the first time on March 31, 2011. The minutes of that meeting reflect that the group's members were supplied with a copy of the 2008 NAR VOW Policy that was appended to NAR's settlement agreement with the U.S. DOJ, and that the members of TREB's VOW Task Force agreed that the NAR Policy "was a good starting point for the development of a TREB policy rather than starting from scratch" (2012 Richardson Statement, Exhibit CC, at p. 495).

[351] According to Mr. Richardson, it was also agreed that "the NAR VOW Policy would need to be modified in light of Canadian laws, including *PIPEDA* [*Personal Information Protection and Electronic Documents Act*, SC 2000, c 5], and RECO's code of ethics" (2012 Richardson Statement, at para 125). However, that is nowhere reflected in the minutes of that meeting.

[352] TREB's VOW Task Force met three more times in 2011, on April 21, May 12 and May 20. The minutes of those meetings reflect that the group agreed upon a need for "Terms of Use for VOW Operators" and for VOW "Visitors." Among other things, it was recommended that website visitors be required to register, validate, agree to terms of use and then enter the VOW area of the website with a time-limited password. The minutes reflect that other issues addressed

included: the nature of information that could be provided to a "consumer" as opposed to a "client;" whether advertisements could be included in a VOW; whether brokers and home sellers could be given the option to "opt-out" of providing information to a VOW operator (this was considered to be "essential" for home sellers); whether CMAs could be provided online, and if so, on what conditions; whether brokerages could have their own policies regarding their agents' use of VOWs; and whether universal participation by all brokers would be required – subject to an opt-out for home sellers.

[353] In the minutes of the May 20 meeting, it was also noted that the VOW "[i]ssue is reminiscent of "white label" ATMs – In the end, they were in [the] best interest of Consumers – VOWs are an "extra" service for Members to offer Consumers" (2012 Richardson Statement, Exhibit GG, at p. 538).

[354] In addition, for what appears to be the first time in the documentation on the record in this proceeding, there was a reference in the minutes of the May 12 meeting to the need to ensure that information with respect to "solds" was treated "in accordance with RECO and PIPEDA requirements" (2012 Richardson Statement, Exhibit EE, at p. 507). In this regard, it was noted that ""pending solds" were not appropriate for VOW display", that there were "consents issues" with regards to "other solds" (2012 Richardson Statement, Exhibit EE, at p. 508) and that "information or systems which did not identify specific properties should be ok" (2012 Richardson Statement, Exhibit EE, at p. 507).

[355] The minutes of the May 20 meeting noted that concerns continued to exist with respect to "solds" and that "clarification under PIPEDA and RECO Rules [was] necessary," and that, while consistency in treatment between "bricks and mortar" and Internet operations was desirable, the Internet "is a little more 'out there' re: Privacy" (2012 Richardson Statement, Exhibit GG, at pp. 537-538). According to Mr. Richardson, privacy law concerns were also raised at the April 21 meeting of TREB's VOW Task Force. However, there is no reference to such discussions in the minutes of that meeting, which address a broad range of other issues. This inconsistency, together with the corresponding inconsistency regarding whether privacy issues were discussed at the initial meeting of TREB's VOW Task Force on March 31, gives the Tribunal significant doubts regarding the reliability of Mr. Richardson's evidence in respect of this issue. Those doubts are reinforced by the fact that Mr. Richardson stated that TREB's VOW Task Force also discussed concerns regarding WEST listings, at its final meeting on May 20. However, while the minutes of that meeting reflect a desire to obtain greater clarification regarding the potential application of the *PIPEDA* and RECO's rules to "solds," they do not mention WEST listings.

[356] The Tribunal's concerns regarding the reliability of Mr. Richardson's evidence in respect of TREB's motives in relation to its VOW Policy and Rules are further reinforced by the fact that he initially strongly denied that TREB's Members were concerned about having to share TREB's MLS information with VOW operators. In cross-examination, he stated that he was "sure" of his position in this regard. However, when confronted with emails addressed to him reflecting such concerns, Mr. Richardson admitted that his memory was not accurate on this point (Transcript, September 27, 2012, at pp. 1683-1685). That said, he maintained that such concerns were not widespread within TREB's membership.

[357] On May 19, 2011, prior to the final meeting of TREB's VOW Task Force, Mr. Richardson circulated a draft of the VOW policy to its Members and to TREB's Board of Directors. That draft was in the form of a blackline against the 2008 NAR VOW Policy, so that readers could readily ascertain the differences between what was being proposed by TREB and NAR's VOW policy. Among other things, that draft removed the language that prohibits NAR's MLS members from discriminating against VOW operators, by refusing to make available information that is provided to brokers in other formats, and by restricting what can be done with certain MLS data. As a result of that change, TREB's Members would not be able to make certain information, including the Disputed Data available for search by, or display to, consumers, and it was made clear that the Disputed Data was "intended exclusively for other Members and their brokers and salespersons" (2012 Richardson Statement, Exhibit FF, at p. 521).



[358] This change from the 2008 NAR VOW Policy is reflected immediately below:

~~1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:~~

~~a.~~ A ~~Participant's~~ Member's VOW may not make available for search by or display to ~~Registrants~~ Consumers the following data intended exclusively for other ~~MLS Participants~~ Members and their ~~affiliated licensees~~ brokers and salespersons:

i. Expired, withdrawn, suspended or ~~pending~~ terminated listings.

ii. Pending solds or sold data unless the method of use of actual sales price of completed transactions is ~~readily publicly accessible. from public records.~~ in compliance with RECO Rules and Privacy Laws.

iii. The compensation offered to other ~~MLS Participants~~ Members.

iv. ~~The type of listing agreement, i.e., exclusive right to sell or exclusive agency.~~

v. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.

vi. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

(2012 Richardson Statement, Exhibit FF, at p. 521)

[359] It is also noteworthy that although the issue of "privacy laws and consents" was mentioned in the May 18, 2011 Task Force Report to TREB's Board of Directors, it was simply noted in that report that this issue was "of particular concern" and that the "Task Force felt some

additional legal research would be appropriate on both the PIPEDA and RECO requirements" (2012 Richardson Statement, Exhibit FF, at p. 512).

[360] There does not appear to be any evidence on the record as to whether that legal research or any legal advice regarding privacy law and the adequacy of the existing consents signed by home sellers and buyers was ever sought and provided, although Ms. Prescott subsequently provided the Tribunal with her interpretation of those consents. Likewise, there is no evidence that the advice of the Privacy Commissioner was ever sought and obtained prior to the finalization of the VOW Policy and Rules. (The Tribunal acknowledges that TREB explained that it was subjected to pressure by the Commissioner to act very quickly during that timeframe).



**(iv) Events surrounding the adoption of the VOW Policy and Rules**

[361] On May 27, 2011, the Commissioner filed the Initial Application seeking relief under section 79.

[362] Three days later, **[CONFIDENTIAL]** a member of TREB's Board of Directors, sent an e-mail to **[CONFIDENTIAL]** colleagues on the Board stating: "This is worse than a knee replacememt [sic] … I say let them start their own VOW.. [sic] let them get their own information and show us how great it is.. [sic] never mind all the privacy issues […] and what type of mess would we all be in if they have their way …" (Exhibit CA-056, **[CONFIDENTIAL]** RE: Competition Bureau and TREB- Notice of Application, at p. 1; Transcript, September 27, 2012, at pp. 1689-1694).

[363] On June 1, 2011, after both TREB's VOW Task Force and TREB's Board of Directors approved a draft of the VOW Policy and Rules, TREB's MLS Committee met to initiate the process necessary to change TREB's MLS Rules and Policies to permit the use of VOWs. The minutes of that meeting reflect that the draft was adopted for recommendation to TREB's Board of Directors, after some apparently minor changes were made. Although those minutes reflect that the proposal would be "sent for legal review and to CREA to ensure that these are in adherence to the Competition Law," they did not refer to privacy issues or to the *PIPEDA*. The same is true of the minutes of the meeting of the MLS Committee that took place on June 13, 2011, as well as the meetings of TREB's Board of Directors, which took place on June 9, 2011 and June 23, 2011, at which the VOW Policy and Rules, as amended, were endorsed once again. The latter minutes reflect that a "legal review and CREA input with respect to competition law" occurred during the in camera portion of that meeting. However, there was no reference in the minutes to privacy issues or to the *PIPEDA*.

[364] Following the June 13, 2011 meeting of the MLS Committee, changes were made to what is now Rule 823 of the VOW Policy and Rules as part of the review with the MLS Committee, and after input was received from legal counsel. Specifically, the opening language of that Rule was changed to include the words "or by any other means," as well as the words "subject to applicable laws, regulations and the RECO rules." While the first of those changes ostensibly addressed the discriminatory nature of the VOW Policy and Rules, the evidence on the record makes it abundantly clear that it is commonplace among TREB's Members to share sold data

with their clients in person, by fax and by email on a fairly widespread basis, and that this practice is at least tolerated by TREB. The Tribunal notes that TREB and CREA have referred to some evidence to the contrary, but it is satisfied that the practice exists (Transcript, September 13, 2012, at pp. 638-641; Transcript, September 25, 2012, at pp. 1452-1455; Transcript, October 6, 2015, at pp. 750-751; Exhibits R-079 and CR-080, Expert Report of Dr. Jeffrey Church dated July 27, 2012 at paras 15, 179 and 263; Exhibits IC-182 and CIC-183, Expert Report of Dr. Fredrick Flyer dated June 2, 2015 at paras 10-11 and 14-17; 2015 Vistnes Reply Expert Report at page 3, footnote 3; Exhibit IC-088, Expert Report of Dr. Fredrick Flyer dated August 13, 2012 at para 25; and 2012 Vistnes Expert Report at paras 268-270).In addition, TREB tools such as *Toronto MLS Contacts & CMA* (Exhibit A-004, Document 1348) and *Appraisal for Superior Sales and Listings* (Exhibit A-004, Document 1345) teach TREB Members how to use sold and other MLS data to create CMAs for actual and potential clients. In their testimony, Messrs. Richardson and Syrianos confirmed that CMAs containing sold information can and are provided by TREB's Members to their clients, provided that the appropriate consent has been obtained. As to the second change, one is left to speculate as to what specifically it was intended to address.



[365] TREB notes that the press release that it issued on June 24, 2011 to launch a 60-day consultation process with its Members stated that its new VOW policy gave "due consideration to TREB's legal responsibility to ensure the protection of consumer data" and that TREB "took great sensitivity and care" in balancing this consideration with its desire to avoid "restricting Members' ability to provide the highest level of service to their customers." However, this does not appear to be borne out by the minutes of the meetings discussed above, or by TREB's prior history with the VOW issue, dating back to 2003. There is also no mention of privacy concerns or *PIPEDA* in the minutes of the meeting of TREB's Board of Directors dated August 25, 2011, following the expiry of the 60-day consultation period with TREB's Members. Those minutes simply reflect that, after legal counsel "entertained [a] round table Q&A regarding TREB's VOW Policy and Rules," TREB's Board of Directors approved the final VOW Policy and Rules and commenced the process of developing the technological infrastructure to implement the VOW Data Feed, which ultimately was launched on November 15, 2011.

[366] Indeed, in a report entitled "MLS Focus Group Report," dated June 27, 2011, which was considered by TREB's MLS Committee at its meeting of September 13, 2011, it was noted that rulings from the Privacy Commissioner and from RECO were still needed in respect of VOWs (Exhibit CA-003, Document 1304, at p. 6). Mr. Richardson confirmed that such a ruling from RECO was never sought or obtained. Mr. Richardson also confirmed that TREB's VOW Task Force did not obtain any additional information about the *PIPEDA* or RECO, even though the minutes of the May 12, 2011 meeting stated that the task force "felt some additional legal research would be appropriate on both PIPEDA and RECO requirements" (Transcript, September 27, 2012, at pp. 1667-1668). There is no evidence on the record to suggest that such a ruling from the Privacy Commissioner was ever sought or obtained. Nevertheless, TREB argued that the decision to exclude the Disputed Data from the VOW Data Feed was "prudent given the requirements of PIPEDA, and in particular given the 2009 decision from the Office of the Privacy Commissioner, which was known to and considered by the Task Force in its deliberations" (TREB's 2015 Closing Submissions, at para 239).

[367] That same MLS Focus Group Report also reflected a concern that data "should be safeguarded and consumers should not be allowed to copy and paste into other sites." This suggests that a "display only" form of the Disputed Data on VOW operators' websites might well have satisfied TREB's Members, and that their concerns related more to *the uses* to which the data might be put, than to privacy.

[368] In fact, when the Tribunal asked Mr. Richardson whether allowing the Disputed Data to be seen on a VOW operator's website in a "read only" manner would be a possible solution to TREB's concerns, he replied that every time a compromise such as that was offered to the Commissioner, it was rejected. He added: "If there is a technological solution to things like CMAs and demonstrating sold information that does not involve data transfer over to another computer, it's worthwhile pursuing" (Transcript, October 6, 2015, at pp. 748-751).

[369] This makes it very apparent to the Tribunal that TREB's real concern, at least as understood by TREB's CEO during the relevant period, was with *losing control* over the Disputed Data, rather than with that data being simply *displayed* to anyone who might visit a VOW operator's website. Stated differently, to the extent that there was any concern about safeguarding the Disputed Data, the evidence indicates that such concern related more to the loss of control over the data, rather than to privacy.

[370] When pressed during the Initial Hearing as to why TREB's Members appeared to be so concerned about the emergence of VOW brokerages in the GTA, Mr. Richardson simply responded that "[s]ome may be a little fearful of new technology" (Transcript, September 27, 2012, at pp. 1741-1742).

[371] On cross-examination, Mr. Sage admitted that some TREB Members were concerned that the "introduction of more and more technology will put pressure on commission rates" (Transcript, September 28, 2012, at pp. 1873-1874). This concern was also reflected in the Concise Statement of Economic Theory that was attached to TREB's Response in this proceeding. At paragraph 24 of that document, it is stated that "[u]nrestrained VOWs may create excessive incentives for price competition among buyers' brokers and divert the focus away from non-price competition," and that "[r]ather than compete over price (by offering a discount) to a buyer already in the market, sellers may prefer instead to provide incentives for finding new buyers by promising a large commission."

### (v) Recent developments

[372] The Tribunal also considers it noteworthy that TREB did not take any action against two large, traditional brokerages that made sold information available on their websites for an extended period of time in 2014/2015. In particular, Bosley Real Estate Ltd. Brokerage (**"Bosley"**) and RE/MAX Hallmark Realty Ltd. Brokerage (**"RE/MAX Hallmark"**) displayed sold information on their respective websites for at least ten months in 2014/2015, in apparent violation of TREB's VOW Policy and Rules.

[373] This was particularly noteworthy because TREB's President, Marc McLean, has a management position with Bosley, and Bosley's President, Mr. Tom Bosley, is a former President and Director of TREB, CREA, RECO and OREA. It was not until Mr. Pasalis complained about this, while defending himself in the face of a threatened suspension of his MLS account for allegedly failing to comply with TREB's VOW Policy and Rules, and then reported this in his 2015 witness statement in this proceeding, that TREB eventually took action. Although there does not appear to be evidence of prior communications between TREB and the two brokerages in question, TREB sent a letter to all of its Members on February 4, 2015 reminding them that the use, distribution, and/or display of sold data in whatever form and on the Internet without all appropriate consents constitutes a violation of their obligations under their AUA with TREB, as well as violation of the *PIPEDA* and RECO's *Code of Ethics*. A short while later, **[CONFIDENTIAL]** sent an email message to **[CONFIDENTIAL]** at TREB, confirming that **[CONFIDENTIAL]** brokerage had pulled the offending sold information and expressing hope that TREB would "take the appropriate action or those of us following the rules will have no choice but to follow [the] lead" of those who were posting such information. There was no reference whatsoever in **[CONFIDENTIAL]** email message to any concerns about privacy, and no mention of TREB's position that such information might violate the *PIPEDA*.

[374] The Tribunal further notes that, according to the testimony of Ms. Prescott, and despite a decision of Century 21 Heritage to stop sending sold price information to the Century 21 website, the practice was still going on in 2015 and that more than 290 properties with sold prices were posted on the website of Century 21 Heritage at some point that year.

### (vi) Alleged privacy concerns

[375] The Tribunal recognizes that TREB implemented privacy policies in 2004 in an effort to ensure that its and its Members' practices conformed with the requirements in the *PIPEDA*, and that TREB has a Chief Privacy Officer who is its designated representative under the *PIPEDA*. TREB also educates and provides resources and support to its Members on issues of privacy through a variety of methods. In addition, the Tribunal acknowledges that TREB sought input from the Office of the Privacy Commissioner (**"OPC"**) in August 2012 in respect of its "Questions and Answers" document, which addresses a variety of privacy-related topics, including the distribution of CMAs, the disclosure of sold prices, and the use of expired listings. However, TREB was informed by the OPC that it did not provide advance rulings regarding the statutes that it enforces, such as the *PIPEDA*, and that it was unable to comment on the accuracy of interpretations of that legislation by external parties.

[376] Those communications with the OPC post-dated the development of TREB's VOW Policy and Rules and, in any event, were not principally concerned with that policy. Moreover, there is no evidence that TREB's privacy policies received much, if any, consideration during the development of TREB's VOW Policy and Rules.

[377] While TREB led evidence from two of the members of its VOW Task Force, Mr. Sage and Mr. Syrianos, neither one was able to shed any light on reasons why important provisions in the 2008 NAR VOW Policy were eliminated from TREB's final VOW Policy and Rules.

[378] TREB similarly did not lead evidence from anyone who was on its Board of Directors during the relevant period, to testify and be cross-examined regarding what occurred at the meetings of the Board at which the VOW Policy and Rules were discussed on May 26, June 9, June 23 and August 25, 2011. (The Tribunal understands that, while he acted as the staff liaison to TREB's VOW Task Force, Mr. Richardson is not a Director of TREB, he did not attend the final hour-long discussion of the Board at which it discussed and voted on the final VOW Policy and Rules, he was not a member of TREB's VOW Task Force, and he did not vote on the issues discussed by the task force.)

[379] TREB also did not put forward Mr. Palmer, its Chief Privacy Officer, or Mr. DiMichele, who was TREB's CIO during the development of its VOW Policy and Rules, and who is now its CEO, to testify on this privacy issue.

[380] In short, TREB had ample opportunity to lead evidence to establish its alleged privacy justification for the VOW Restrictions. However, it failed to do so. Given that it was TREB's burden to establish that justification on a balance of probabilities, it is not necessary for the Tribunal to draw an adverse inference from this failure by TREB to adduce evidence from the persons mentioned in the two immediately preceding paragraphs, as the Commissioner requested.

[381] In any event, for the reasons explained at paragraphs 355-356 above, the Tribunal does not find Mr. Richardson's evidence regarding the intentions of the members of TREB's Board of Directors, its MLS Committee and its VOW Task Force to be persuasive or reliable. The Tribunal also agrees with the Commissioner that Mr. Richardson's testimony regarding such intentions is not particularly probative of such intentions.

[382] TREB also led evidence by Ms. Prescott, who is the owner and a broker at Century 21 Heritage, an independently owned real estate brokerage with offices in Thornhill, Richmond Hill, Newmarket and Bradford in the GTA. In her 2015 witness statement, Ms. Prescott states: "At the time of the initial hearing before the Competition Tribunal, Century 21 Heritage Group sales representatives obtained the consent of clients for th[e] sold information to be posted on the Century 21 website by way of schedule "B" to the agreement of purchase and sale. As I testified at the initial hearing, only about 5-10% of our brokerage's clients were giving consent to post sold price information on the Century 21 website" (Exhibits R-132 and CR-133, Updated Witness Statement of Pamela Prescott, at para 12). She added that since the Initial Hearing, her brokerage made a decision to stop sending sold price information to the Century 21 website and now has a standalone "Permission to Advertise the Sale of the Property" document that her sales representatives ask the parties to a residential real estate transaction to sign. Less than 5% of her brokerage's clients sign that form.

[383] However, there is no evidence that any of Century 21 Heritage's customers ever complained to Ms. Prescott or her colleagues, or otherwise communicated concerns regarding the privacy of their information, prior to when TREB's VOW Policy and Rules were finalized. Ms. Prescott also did not explain what information was and is given to her brokerage's clients at the time they were and are asked to sign the documents referred to immediately above.

[384] TREB mentions that Mr. Gidamy of TheRedPin testified that he didn't think that TREB was concerned about him expanding his share of the market. However, that is simply Mr. Gidamy's impression. It is not direct evidence of TREB's lack of subjective intent to exclude disruptive competitors such as TheRedPin.

[385] The Tribunal also observes that Mr. Richardson testified that TREB typically receives two complaints per year from members of the public throughout the GTA regarding the privacy of the information that they provide to TREB's Members, including sold information that is subsequently shared extensively, as described in paragraphs 395-398 below.

[386] This evidence of an absence of significant consumer concern about privacy issues is supported by Mr. McMullin, who testified in 2012 that there had only been nine occasions when a person had contacted ViewPoint to request that information be removed from the website. Mr. McMullin testified at the Redetermination Hearing that, since June 2012, ViewPoint had received a "couple of dozen a year" privacy complaints (Transcript, September 23, 2015, at p. 171). He explained that "most of the complaints that [ViewPoint gets] are about information that is readily available on many websites." He added that "[i]t just so happens that because ours is really popular we get more complaints" (Transcript, September 23, 2015, at p. 172). Mr. McMullin further explained the few number of complaints relative to the utilization of www.viewpoint.ca by stating that there is a "give-and-take", and that "most consumers […] believe that it's necessary [for ViewPoint to have the information that they provided] there because someday they are going to be on the other side of the trade and that this information is imperative to enable them to make a quality decision" (Transcript, September 22, 2015, at p. 98). He added that there was one complaint made to the OPC by an individual who alleged that ViewPoint had disclosed personal information without consent by publishing the purchase price of the person's home on www.viewpoint.ca for view by registered users. The complaint was resolved during the course of the investigation and ViewPoint was advised that no further action would be taken. ViewPoint did not take any action and was not asked by the OPC to remove any information from the website.

[387] The evidence that few consumers have complained regarding the privacy of the Disputed Data extends to the United States where sold information is widely available. According to Mr. Nagel, Redfin receives only "limited complaints about privacy concerns about information displayed on redfin.com" and those "usually revolve around taking photos of sold homes down from Redfin's website" (Exhibits A-129 and CA-130, Second Witness Statement of Scott Nagel dated February 5, 2015 (**"2015 Nagel Statement"**), at para 32(a)).

[388] Finally, TREB asserts that its decision to exclude the Disputed Data from the VOW Data Feed was prudent given the requirements of the *PIPEDA* and a 2009 decision of the OPC which essentially held that the publication of an advertisement stating that a property had sold for 99.3% of the asking price contravened the *PIPEDA*, because it enabled the public to calculate the sold price. Although the sold price of the home was available on the public property register, the OPC held in that decision that the exception for public information in paragraph 7(3)(h.1) of the *PIPEDA* did not apply because the information in question was obtained pursuant to the

purchase agreement to which the salesperson was privy, and was not actually collected from a publicly available source.

[389] Mr. Richardson testified that this decision influenced the ultimate recommendation by the members of TREB's VOW Task Force regarding sold and "pending sold" information. However, this is not borne out by the minutes of the task force's meetings. More importantly, the evidence as a whole suggests that privacy considerations were not a principal motivating factor behind TREB's VOW Policy and Rules.



[390] In summary, the Tribunal has determined that the evidence on the record in this proceeding demonstrates that TREB's motivations in initially resisting the emergence of VOWs in the GTA, and then in adopting and maintaining a more restrictive and discriminatory policy than what is reflected in the settlement reached between NAR and the U.S. DOJ, were primarily to limit or at least restrict a potentially disruptive form of competition in the GTA, and to retain full control of TREB's MLS data. Among other things, TREB appears to have been concerned that VOWs could lead to increased price and non-price competition, to reducing TREB's and its Members' control over MLS data, and to reducing the role played by TREB's Members in residential real estate transactions. Privacy played a comparatively small role, and only towards the end of TREB's process. Based on the evidence adduced, the Tribunal has concluded that the privacy concerns that have been identified by TREB were an afterthought and continue to be a pretext for TREB's adoption and maintenance of the VOW Restrictions.

[391] To insulate its Members from the full force of the disruptive competition posed by VOW operators, TREB deliberately modified in a number of ways the 2008 NAR VOW Policy that had served as "a good starting point" for its own policy. It did so by modifying that policy to include the VOW Restrictions, which include: (i) excluding the Disputed Data from its VOW Data Feed; (ii) prohibiting its Members from using the information included in the VOW Data Feed for any purpose other than display on a website (Rules 802 and 824), notwithstanding the fact that, in practice, there is no similar *de facto* limitation on its Members' ability to make available or use in other ways the exact same information when it is obtained from TREB in other ways, such as over the Stratus system; and (iii) prohibiting its Members from displaying certain information, (including sold, "pending sold," WEST listings and cooperating broker commissions) on their VOWs (Rule 823), again, notwithstanding that in practice, there is no similar limitation on its Members' ability to share essentially the same information with consumers, when Members access such information through the Stratus system, or otherwise.

[392] The Tribunal is satisfied that these changes from the 2008 NAR VOW Policy were crafted primarily for an exclusionary purpose, and not out of privacy concerns.

### (b) *TREB's approach to the consents used by its Members*

[393] TREB asserts that the consent clauses in the Listing Agreement, the BRA and the BCSA that it recommends be used by its Members, and that the Tribunal understands are typically used by TREB's Members, are not sufficient for the purposes of the *PIPEDA*.

[394] In brief, TREB's position appears to be that, while those consent clauses are sufficient to enable the confidential information of home buyers and home sellers to be disclosed to its Members and to their customers if done in person, by fax or by email, they are not sufficient to permit the wide display of that information on a VOW and over the Internet. In other words, TREB maintains that there is a "practical obscurity" of personal information that exists under TREB's current rules that would be lost with the vast reach of the Internet.



[395] The Tribunal acknowledges that making the Disputed Data available over the Internet through TREB Members' VOWs would result in that information being much more widely distributed than is currently the case. However, the Tribunal finds it difficult to reconcile the privacy concerns that TREB now expresses with the fact that TREB previously appeared to be unconcerned about privacy, as reflected by the fact that it made the Disputed Data available to:

a. Its 42,500 Members over its Stratus system;

b. The members of most other real estate boards in Ontario, through a data sharing program known as CONNECT, which was available to approximately 92% of Ontario realtors in August 2012 and to 98% in June 2015;

c. The clients of its Members and the clients of members of those real estate boards mentioned immediately above (provided such information is disclosed to those clients in person, by fax or by email); and

d. Certain appraisers.

[396] TREB also admitted in 2012 that it was aware of the fact that one of its Members had a practice of providing an email subscription service that sent emails with current MLS sales data, the day following its posting on TREB's MLS system. Moreover, one of TREB's witnesses, Mr. Sage, acknowledged that his brokerage sends monthly reports to its customers by email that include very detailed transaction information, including sold prices, which can be forwarded by their customers to whomever they choose. Although the address of sold homes is now redacted, those addresses are provided upon request to customers, and in any event can often easily be deduced if a customer knows what the list price of a home was or approximately how long it was on the market.

[397] The Tribunal further notes that TREB makes all or part of the Disputed Data available to various third parties, such as CREA (for statistical purposes), Altus Group Limited (for the purposes of preparing a House Price Index), the CD Howe Institute (as part of a research project on the impact of the Toronto Land Transfer Tax), and Interactive Mapping Inc. (for the purpose of its MLS Data Verification System known as ICHECK). However, it appears that the information disclosed to those parties does not wind up being available to the public in a manner that would allow the confidential information of an individual home buyer or seller to be ascertained.

[398] Moreover, TREB's own intranet system enables TREB's Members to forward by email up to 100 sold listings at a time to anyone.

[399] The Tribunal agrees with the Commissioner that if TREB were truly concerned about privacy, it would, at a minimum, have taken steps to ensure that the Disputed Data is not distributed beyond its Members. It has not done so.

[400] TREB asserts it would contravene the *PIPEDA* to create a tie between buying or selling a house on the MLS system, and a mandatory consent to the wide dissemination of sold information over the Internet. However, TREB's past actions with respect to consents reinforce the Tribunal's view that TREB's privacy justification is largely a pretext to attempt to legitimize its practice of anti-competitive acts. For example, in 2004, TREB refused a request by a home seller to remove the seller's MLS Listing Information from TREB's MLS system, on several grounds. For example, TREB maintained that the "retention of the MLS Listing history on the system is important and the retention of 'expireds' is just as important as retaining 'solds,' especially in a quick moving market and the option of 'exclusives' is available to those who do not wish to list on the MLS system." TREB added that, "due to the 'holdover' clause, it is important to keep track of and to retain 'expireds' on the MLS system for legal and other reasons which benefit the consumer." In addition, TREB stated that "the integrity of TREB over the years has been based on its ability to serve the public through a cooperative system and [it] cannot allow encroachment on a good service that has evolved to serve both Realtors and the public well, while respecting PIPEDA requirements" (Exhibit A-004, Document 89, at pp. 1-2).

[401] TREB's existing "Questions and Answers" on privacy issues reflects essentially the same position. The same is true of *Frequently Asked Privacy Questions* and answers that CREA developed for its members, which states: "Both current and historical data is essential to the operation of the MLS® system and by placing your listing on the MLS® system, you are agreeing to allow this ongoing use of listing and sales information" (2012 Simonsen Statement, Exhibit 8, at p. 350). The Tribunal observes that TREB's Policy 102 and Policy 103 add that, apart from inaccurate data: "No other changes will be made in the historical data" (2012 Richardson Statement, Exhibit D, at p. 168).

[402] In addition, when TREB received legal advice that the posting of interior home photos raised privacy issues, TREB's MLS Committee recommended to TREB's Board of Directors that it "**[CONFIDENTIAL]"** (Exhibit CA-003, Document 1192, at p. 2). Subsequent versions of that consent provision contained express language to address the retention and use of interior photos in TREB's MLS system. However, there is no evidence that TREB ever considered taking similar action to address the privacy concerns that it now advances with respect to sold and "pending sold" information.

[403] The Tribunal observes in passing that interior photos and other highly personal information, including virtual tours, are not only available on the websites of TREB's Members, but are also available on popular and frequently visited websites, such as realtor.ca, which not only display such information, but also allow it to be emailed to "a friend."

[404] TREB also appears to have obtained legal advice with respect to its Members' ability to provide CMAs containing sold data to their clients. That advice seems to be reflected in the "Questions and Answers" document that it has prepared for its Members. Among other things, that document states as follows:

> Although it cannot be said with absolute certainty given the lack of precedents or case law on the ultimate interpretation of many aspects of PIPEDA, a strong argument can be made that the words "conduct comparative market analyses" contained in the consent clause of the OREA standard form listing agreement can be interpreted broadly enough to include the essential part of "conducting a CMA", that is, providing that information to a prospective seller or prospective buyer.
>
> (2015 Richardson Statement, at p. 494)



[405] Notwithstanding TREB's lack of certainty regarding the privacy law issues related to the display of the Disputed Data on a VOW, it admitted that no written legal opinion was ever received on this point. (The Tribunal recognizes that TREB's admissions related to the time frame "prior to June 24, 2011.") Moreover, in contrast to the action it took to reinforce the consent language in the Listing Agreement to cover the posting of interior home photos, there is no evidence that such action was ever considered to address the privacy issue that TREB now raises as a justification for the restrictive aspects of its VOW Policy and Rules.

[406] In summary, the approach that TREB has taken with respect to the consents in the standard Listing Agreement that it recommends its Members sign, and in the agreements typically signed by home buyers (namely either the BRA or the BCSA), suggests that TREB has not in the past been concerned about privacy. On the contrary, it has resisted attempts by consumers to have their information removed from the MLS system or even altered, unless such information is inaccurate; it has sought to expand its consents when it has received advice that they might not be sufficiently broad to include highly personal and confidential information such as pictures of the inside of homes; and it interprets its existing consents as being sufficiently broad to enable sold information to be provided to potential customers.

[407] Indeed, Mr. Richardson testified that the existing language in Section 11 of the Listing Agreement likely is sufficiently broad to permit the disclosure of WEST listings, even though there are some concerns or sensitivities from homeowners about such information, and that the existing language in the BRA is also sufficient to permit the disclosure of sold information to a prospective purchaser. Mr. Richardson also acknowledged that other solutions, such as using a separate consent form, are available to permit "pending sold" and sold listings to be included in the VOW Data Feed.

**(c)** ***RECO's advertising policy***

[408] TREB maintains that, as with the *PIPEDA*, RECO's *Code of Ethics* requires informed consent to be obtained by TREB's Members before they advertise the "sold" price of a client's home, or other confidential information. TREB asserts that because one of the central functions of a VOW is to help to generate "leads" for VOW operators, a VOW is by definition an advertising tool. For greater certainty, TREB submits that the fact that a VOW might also be a method of delivering real estate services does not necessarily imply that it is not an advertising vehicle.

[409] At the time of the Initial Hearing, "advertising" was defined in RECO's 2011 Advertising Guidelines (see Exhibit R-083, at p. 450) in the following terms:

> Any notice, announcement or representation directed at the public that is authorized, made by or on behalf of a registrant and that is intended to promote a registrant or the business, services or real estate trades of a registrant in any medium including, but not limited to, print, radio, television, electronic media or publication on the internet (including websites and social media sites). Business cards, letterhead or fax cover sheets that contain promotional statements may be considered as "advertising."
>
> (Emphasis added)

[410] Pursuant to subsection 36(8) of RECO's *Code of Ethics*, a registrant shall not include anything in an advertisement that could reasonably be used to identify specific real estate unless the owner of the real estate has consented in writing. Pursuant to subsection 36(9), a registrant shall not include anything in an advertisement that could reasonably be used to determine any of the contents of an agreement that deals with the conveyance of an interest in real estate, including any provision of the agreement relating to the price, unless the parties to the agreement have consented in writing.

[411] The Commissioner notes that the Ontario Superior Court of Justice decided in 2009 that the publication of MLS listing information on a website did not constitute advertising in contravention of TREB's Rule R-430 or subsections 36(8) or (9) of RECO's *Code of Ethics* (*TREB OSCJ* at paras 109 and 112).

[412] Be that as it may, it is not immediately apparent to the Tribunal how the inclusion of sold information on a VOW would constitute advertising, irrespective of how that sold information is displayed (including in the form of a CMA), when providing that same information in a "conventional" CMA would not constitute advertising. It is also not clear why the provision of sold information would constitute "advertising," when the provision of other MLS information regarding a home would not. The Tribunal observes that the minutes of TREB's VOW Task Force which are discussed at paragraph 352 above drew a distinction between "advertisements" and other information that would be included in a VOW, presumably including raw data.

[413] As discussed at paragraphs 354-355 and 359 above, TREB's VOW Task Force identified the need to ensure that information with respect to "solds" was treated in accordance with RECO's requirements and noted that clarification in that regard should be sought.

[414] However, Mr. Richardson confirmed in cross-examination that no one on TREB's VOW Task Force requested RECO's position on whether posting any of the Disputed Data on a VOW would constitute advertising.

[415] There is no other evidence that TREB's VOW Policy and Rules may have been adapted from the 2008 NAR VOW Policy, or were otherwise crafted, to ensure compliance with RECO's *Code of Ethics*. The Tribunal notes that TREB did not lead evidence from TREB's Director and former President Ms. Cynthia Lai, even though she was a member of RECO's Board of Directors at the time of the Initial Hearing. (The Tribunal also notes that TREB sought to have RECO's CEO, Mr. Wright, attend the Initial Hearing and produce certain decisions made by RECO's disciplinary tribunal as well as certain interpretations that RECO had adopted in respect of the *Code of Ethics*. After Mr. Wright retained counsel to quash the subpoena served by TREB's counsel, the Commissioner and TREB agreed to permit those documents to be introduced without the need for them to be proved by Mr. Wright or another representative of RECO.)

[416] The Tribunal further observes that Bosley disclosed sold prices on its website for approximately one year in 2014/2015, in apparent violation of TREB's VOW Policy and Rules, notwithstanding that its President and co-founder, Mr. Bosley, is a former RECO Chairperson, and notwithstanding that another Bosley broker, Keith Tarswell, is also a former RECO Chairperson and has been a member of its Board of Directors for several years. In fact, as mentioned at paragraph 373 above, when **[CONFIDENTIAL]** agreed to stop posting sold information on its website, **[CONFIDENTIAL]** informed Mr. Richardson that he hoped that TREB would "take the appropriate action or those of us following the rules will have no choice but to follow [the] lead" of those who were posting such information. This suggests that Messrs. Bosley and Tarswell did not think that their brokerage was violating RECO's *Code of Ethics* or its advertising policy.

[417] Moreover, although RECO investigated a number of agents at Sage Real Estate when they sent daily email communications containing sold information for approximately one year to anyone who provided an email address, its investigation was confined to the failure of those agents to include the Sage logo on their website. That investigation did not concern the daily communication of sold information. Likewise, Mr. Enchin stated that although he was contacted by a representative of RECO after a realtor complained that he advertised listings on his VOW without permission, RECO did not pursue any disciplinary action after he explained that his VOW had a registration and password requirement and that he did not advertise MLS listings to the public at large.

[418] TREB maintains that the Tribunal should accord significance to the fact that RECO has since taken action to clarify that VOWs constitute advertising. However, the support that it provides for this assertion is a RECO Publication entitled *For The RECOrd*, which was published in the Winter of 2013, and which simply states that RECO's Advertising Guidelines

apply to all forms of advertising, including electronic media, websites and social media sites. That document proceeds to add that VOW operators have an obligation to ensure that their VOWs are compliant with those guidelines. It is far from clear that RECO has clarified that providing sold information or other Disputed Data over a VOW would constitute advertising, in contravention of its *Code of Ethics*.

[419] In any event, the fact that RECO may have adopted this position in 2013 does not help to persuade the Tribunal that the principal motivation, or even a principal motivation, of TREB at the time that it developed and finalized its VOW Policy and Rules in 2011, including by adapting them from NAR's 2008 VOW Policy, was, or now is, to ensure compliance with RECO's *Code of Ethics*.

[420] The same applies to the fact that TREB took the position in a notice sent to its Members in February 2015 that the use, distribution, and/or display of sold data in whatever form and on the Internet without all appropriate consents is in violation of their obligations under their AUA and in violation of the *PIPEDA* and RECO's *Code of Ethics*. The Tribunal further notes that TREB's own Rules and documentation do not suggest that it considers VOWs to constitute advertising.

### (d) *Other business justifications*

[421] TREB states that, in addition to privacy, there are several other justifications, which it labels "efficiency justifications," for the VOW Restrictions. However, there is no persuasive evidence that any of these other justifications played a principal role in the development and implementation of TREB's VOW Policy and Rules, let alone the VOW Restrictions. Indeed, for some of them, there is no evidence that they played any role whatsoever. Moreover, those alleged justifications appear to relate solely to TREB's restrictions on the display of individual sold and "pending sold" prices.

[422] First, TREB asserts that its VOW Policy and Rules promote the liquidity of the MLS system in three ways: by protecting privacy, by preventing strategic advantage, and by preventing potential interference with contractual relations.

[423] With respect to the protection of privacy, TREB suggests that if the use of its MLS system to sell a property is tied with automatic inclusion of sold information on its VOW Data Feed, consumers may choose to sell their homes through non-MLS channels. However, TREB provided no evidence to suggest that this has occurred to any meaningful degree in Nova Scotia or in areas of the United States where MLS sold information is available on VOWs. Indeed, a recent survey conducted by NAR reflects that the percentage of consumers in the United States who retain the services of a realtor to sell their home has increased from 84% in 2008 to 88% in 2014. This happened notwithstanding the growth of VOWs displaying sold information since the release of the 2008 NAR VOW Policy (Exhibit IC-140, NAR 2014 Profile of Home Buyers and Sellers (**"NAR 2014 Profile"**), at pp. 92-93 and 117). In the absence of any persuasive evidence

to support this justification put forward by TREB, the Tribunal concludes that it is simply a speculative assertion.

[424] Concerning the protection of strategic advantage, TREB states that the disclosure of WEST and "pending sold" listings on a VOW would provide sensitive information to purchasers that could be used to the disadvantage of sellers. For example, if a purchaser knew what price a seller had conditionally accepted, the purchaser would know the seller's "reserve" price and be able to use that to the seller's disadvantage, if the conditional sale fell through. However, the only evidence that this was a concern for TREB at the time it was developing its VOW Policy and Rules is a brief statement contained in the minutes of one of the four meetings of TREB's VOW Task Force during which the VOW Policy and Rules were developed. Specifically, the minutes of the May 12, 2011 meeting state: "It was the consensus of the Task Force that 'pending solds' were not appropriate for VOW display …" The same statement was included in the VOW Task Force's draft report, dated May 18, 2011, to TREB's Board of Directors. Those documents however do not elaborate upon the reasons why TREB's VOW Task Force concluded that "pending sold" listings were not appropriate for display on a VOW. (The Tribunal notes that there is a difference between a conditional sale and a "pending sold," and that the sale price of conditional sales is not available on the MLS system at all. It is only once the conditions have been met that the sale price will be entered into the MLS Database.)

[425] Even if the Tribunal were to give TREB the benefit of the doubt on this point, the Tribunal remains persuaded, considering the totality of the evidence, that TREB's principal motivation for not including any of the Disputed Data in its VOW Data Feed was to prevent potential and existing TREB Members from being able to make sold information and various innovative offerings derived from that information available on their VOWs.

[426] The same is true with respect to TREB's assertion that the VOW Restrictions promote the liquidity of the MLS system by preventing potential interference with contractual relations. However, the Tribunal accepts TREB's claim that the display of "pending sold" information would expose home sellers to being targeted by unsolicited approaches by other service providers, or even unsolicited offers by other purchasers.

[427] In addition, TREB maintained that the VOW Restrictions preserve the incentives of its existing Members to invest in its MLS database, by continuing to contribute listings. It suggested that, if, as the Commissioner appears to contemplate, the inclusion of the Disputed Data in its VOW Data Feed were to have the effect of assisting VOW-based brokers to gain market share at the expense of its traditional Members, large traditional brokerages and franchise groups would have an incentive to leave TREB's MLS system to establish a rival MLS. However, once again, TREB provided no evidence to support the proposition that this was a concern for TREB at the time it developed its VOW Policy and Rules. In addition, there is no evidence that this has occurred in Nova Scotia, where information on "solds" and other components of the Disputed Data has been available for several years. With respect to the United States, Dr. Church acknowledged in cross-examination that there was only one example of real estate agents leaving a MLS system to establish a rival one, and that was in 2004, before NAR's existing VOW policy came into effect. There is no evidence as to why those agents took that action.

[428] Finally, in its Concise Statement of Economic Theory, at paragraph 24, TREB further asserted that its VOW Policy and Rules may be pro-competitive, in part because they reduce the scope for VOW operators to "free ride" on the efforts of full-service brokers "because they do not contribute appropriately to the cost of maintaining the TREB MLS® and because they do not contribute to the number of listings." However, Mr. Richardson confirmed in questioning from the Tribunal during the 2012 hearing that TREB is not suggesting that new Members should not have access to all of the information in TREB's MLS system on the ground that they did not contribute to the MLS system in the past. He also acknowledged that the initiation fee paid by all new Members, including new VOW-based operators, essentially represents a purchase of the equity in the MLS system, or a payment "for the work that has been done [in the past] and the service that has been generated …" (Transcript, September 27, 2012, at pp. 1740-1741).



**(e) *Conclusion***

[429] In summary, it was TREB's burden to establish that there were legitimate business justifications for the restrictive aspects of its VOW Policy and Rules and that those justifications were at least as important as any subjective or deemed anti-competitive intent that it is demonstrated to have had. The Tribunal's review of TREB's subjective motivations alone leads it to conclude that TREB did not meet that burden.

[430] Indeed, the Tribunal concludes, on a balance of probabilities, that TREB's principal motivation in implementing the VOW Restrictions was to insulate its Members from the disruptive competition that innovative, Internet-based brokerages such as ViewPoint wished to bring to the Relevant Market. The Tribunal is satisfied that the business justifications TREB now advances are without persuasive evidentiary support.

[431] The Tribunal's conclusion in this regard is reinforced by its view that, "but for" the exclusionary effects on disruptive competitors that were intended by TREB, the VOW Restrictions did not make economic sense. In this regard, the Tribunal was not provided with any persuasive evidence to demonstrate that, "but for" the anti-competitive effects of the VOW Restrictions on VOW-based rivals or others who might otherwise challenge the traditional approaches to business adopted by the vast majority of TREB's Members, the VOW Restrictions conferred any other benefit on those Members. That is to say, there is no persuasive evidence before the Tribunal that TREB's Members benefitted from the VOW Restrictions, except to the extent that those restrictions insulated them from the new forms of competition.

**(3) Was it reasonably foreseeable that the VOW Restrictions would have an exclusionary effect on one or more competitors?**

[432] TREB submits that it was not reasonably foreseeable that the VOW Policy and Rules would have a predatory, exclusionary or disciplinary negative effect on its Members, or on potential entrants who wished to operate brokerages offering a VOW. On the contrary, it maintains that the reasonably foreseeable consequence of the VOW Policy and Rules was that

brokerages would be able to offer VOWs in the GTA; and that this is exactly what actually happened.

[433] The Commissioner replies that it was reasonably foreseeable that the VOW Restrictions would have an exclusionary effect on VOW-based competitors. The Tribunal agrees.

[434] Notwithstanding that TREB's VOW Task Force was well aware of the 2008 NAR VOW Policy, and indeed considered it to be a "good starting point" for TREB's VOW policy, it intentionally modified important provisions, including with respect to "sold" data, that NAR included in its VOW Policy to reach a settlement with the U.S. DOJ.

[435] TREB's Board of Directors can be presumed to have been well aware of the significance of these modifications when they met to discuss the draft VOW Policy and Rules in June and August 2011, because TREB had been closely monitoring the U.S. dispute and the Commissioner's detailed Initial Application in this proceeding was filed on May 27, 2011.

[436] In any event, as noted at paragraph 328 above, after the EDU Task Force modified the 2003 Draft NAR Policy to limit VOWs to displaying active listings – the same data that is available on realtor.ca –, one EDU Task Force member observed: "Why would anyone use a password and jump through hoops when he can get the same information directly from mls.ca without going through it" (Exhibit CA-003, Document 52, at p.1).

[437] In the Tribunal's view, this statement reflects that the EDU Task Force member who made the statement was well aware that limiting the information available on TREB's VOW Data Feed to largely the same information that was already generally available on the Internet, and imposing limitations on how information displayed on VOWs can be accessed by potential home buyers and sellers, would make it difficult for VOW-based competitors to attract potential home buyers and sellers to their websites.

[438] A key provision of the VOW Policy and Rules is paragraph 24, which is essentially duplicated in Rule 823. The most relevant changes between the final text of that Rule and the corresponding provision in the 2008 NAR VOW Policy were mentioned above and are reproduced below for convenience:

> ~~An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants'use of MLS listing data in providing brokerage services via all other delivery mechanisms:~~
>
> A Member, whether through a Member's VOW or by any other means, may not make available for search by, or display to, Consumers the following MLS® data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules:

a. Expired, withdrawn, suspended or terminated Listings, and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;

b. Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws;

c. The compensation offered to other Members

d. The seller's name and contact information, unless otherwise directed by the seller to do so; and

e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.



[439] These changes that were made to the language in the 2008 NAR VOW Policy effectively removed the principle that local real estate boards could not discriminate against VOW operators by preventing them from displaying or making available for search information described in paragraphs (a), (b) and (c) above, while allowing that same information to be communicated to actual and potential home buyers and sellers by alternative means, including in person, by fax or by email. As discussed at paragraph 364 above, the Tribunal is satisfied that although TREB's VOW Policy and Rules prevent TREB's Members from displaying and making available that information for search on a VOW, TREB does not in fact prevent its Members from communicating such information to actual home buyers in person, by fax or by email. The Tribunal acknowledges that both Rule 823 and Policy 24 prevent TREB's Members from making certain information, including the Disputed Data, available for search by or display to consumers (subject to applicable laws, regulations and RECO's Rules). However, the evidence demonstrates that the practice of the Disputed Data being available to potential home purchasers and sellers remains commonplace in the GTA.

[440] TREB further discriminated, and continues to discriminate, against VOW operators by excluding the Disputed Data from its VOW Data Feed. This appears to be effected pursuant to Policies 15 and 17. Members who wish to provide that information to their actual or potential customers must continue to do so in the traditional manner, namely, in person, by fax or by email. This exclusion, together with the elimination from the VOW Data Feed of information on a home as soon as it becomes a "sold" or a "pending sold," will be discussed in section VII.D of these reasons.

[441] In addition, the VOW Policy and Rules prohibit TREB's Members from using the information included in the VOW Data Feed for any purpose other than display on a website, notwithstanding the fact that, in practice, there is no similar limitation on its Members' ability to make available or use the exact same information when it is obtained from TREB in other ways, such as over the Stratus system. For example, pursuant to Rule 802, TREB's Members are limited to displaying MLS information supplied by TREB, in accordance with the VOW Policy and Rules. The Tribunal understands that this prevents Members from using the information

obtained over the VOW Data Feed to provide statistical analyses or other innovative services that are based on such information.

[442] This restriction is reinforced by section 4.1 of TREB's VOW Data Feed Agreement, which specifies that the VOW Data Feed is provided by TREB to a Member or an AVP that operates a Member's VOW on the Member's behalf, "solely and exclusively for the Purpose." In turn, "Purpose" is defined in terms of "permit[ing] a Member to display on Member's VOW given Listing Information which is transmitted through a VOW Data Feed to Member for the sole purpose of use by Consumers that have a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through Member's VOW."

[443] The Tribunal understands that this language operates to prevent TREB's Members from doing more than simply displaying on their VOWs the MLS information received from TREB over the VOW Data Feed. This was also Mr. Richardson's understanding. In addition, Mr. Pasalis testified that his understanding is that Members cannot use that information to perform statistical analysis and share that analysis online with potential home buyers and sellers. This general restriction is further reinforced by section 6.2(f) of the VOW Data Feed Agreement, which explicitly prohibits TREB's Members from directly or indirectly duplicating, altering, modifying or transferring any information transmitted through a VOW Data Feed. That provision also prohibits TREB's Members from merging such information with other data; and from publishing any Listing Information in any form, or creating any derivative work(s) or adaptations(s) based on such information.

[444] Such restrictions do not apply to Members wishing to use MLS information in these or other ways, so long as the information is used "for the purpose of and directly related to the [Member's] ordinary carrying on if its business" (AUA, section 2). For greater certainty, Members who obtain access to MLS information pursuant to the AUA are simply restricted from using that information "in any manner not directly related to the business of real estate," as defined in the *REBBA* (AUA, section 4(a)). The Tribunal understands that this effectively leaves TREB's Members free to perform and share with potential home sellers and purchasers sophisticated analysis of MLS information obtained over TREB's Stratus system, as Sage Real Estate does.

[445] The Tribunal is satisfied that any person acquainted with the residential real estate brokerage market in the GTA would have been able to foresee the objective impact that the VOW Restrictions, as reinforced by the VOW Data Feed Agreement, would have on VOW operators. That is to say, such persons would have reasonably foreseen that the VOW Restrictions, as reinforced by the VOW Data Feed Agreement, likely would have an exclusionary effect on VOW operators, by severely restricting their ability to differentiate themselves from traditional brokers, and by raising their costs of doing business.

[446] As a direct consequence of the more restrictive nature of the VOW Policy and Rules, as reinforced by the VOW Data Feed Agreement, relative to the 2008 NAR VOW Policy, potential competitors such as ViewPoint have not entered the Relevant Market in the GTA. The evidence demonstrates that TREB was very aware of many of the innovations that ViewPoint had

introduced to the residential real estate brokerage market in the HRM and elsewhere in Nova Scotia, and that TREB recognized the impact that its VOW Restrictions would have on ViewPoint and other VOW-based operators.

[447] The VOW Restrictions are also having a significant adverse impact on Redfin's ongoing assessment of potentially entering the GTA, **[CONFIDENTIAL]**.

[448] In addition, the VOW Restrictions have prevented other competitors, such as the TheRedPin and Realosophy, from expanding by offering new and innovative products and have effectively imposed higher costs of doing business on them.

[449] Moreover, two AVPs, Sam & Andy (which was sold in May 2015) and Mr. Enchin, were not able to offer brokerages the website and VOW products that they would have been able to provide, but for the VOW Restrictions. As a result of those restrictions, Sam & Andy focused its efforts on other markets and ultimately sold its business. However, its co-founder Mr. Prochazka testified that if the Commissioner obtained the relief he is seeking in this proceeding, he would contact people such as Mr. McMullin, with a view to assisting them to offer the products that they have been prevented from offering in the GTA as a result of TREB's VOW Policy and Rules.

[450] Furthermore, the VOW Restrictions have resulted in increasing the costs of doing business for those who are attempting to offer new products and services over their websites. As Mr. Pasalis testified, assembling sold information manually from the MLS system is a time consuming and costly process. It is also prone to human error, which can undermine the reliability of the analysis produced. In addition, Mr. Enchin stated that he was able to show approximately 30% fewer homes, and spend less time responding to client requests, during the period of time, between 2001 and 2007, when he was able to download data from the MLS system in bulk and was able to display sold and "pending sold" listings on his VOW. He added that having to manually enter new TREB listings was too time consuming, costly and inefficient, once the option of downloading MLS data in bulk was no longer available. Mr. Nagel indicated on his part that his VOW-based model saves customers and agents lots of time and effort.

[451] Based on all of the foregoing, the Tribunal is satisfied that the exclusionary impacts of VOW Restrictions were reasonably foreseeable. They can therefore be deemed to have been intended by TREB.

### (4) Does the evidence of subjective anti-competitive intent and reasonably foreseeable exclusionary effects outweigh the evidence of legitimate business justifications?

[452] For the reasons set in sections (2) and (3) immediately above, the Tribunal concludes that the evidence of subjective anti-competitive intent and reasonably foreseeable exclusionary effects outweighs the very limited evidence that was adduced in support of the alleged legitimate business justifications that TREB claims underpinned the development and implementation of the VOW Restrictions.

[453] The Tribunal further concludes that the VOW Restrictions, as reinforced by the VOW Data feed Agreement, constitute ongoing, sustained and systemic acts that individually and collectively amount to a practice of anti-competitive acts, within the meaning of paragraph 79(1)(*b*) of the Act (*Canada Pipe FCA* at para 60).

### (5) Conclusion

[454] Based on the foregoing, the Tribunal concludes that the Commissioner has demonstrated, on a balance of probabilities, that the requirements of paragraph 79(1)(*b*) are met and that TREB has engaged in, and continues to engage in, a practice of anti-competitive acts.

## D. *Have the VOW Restrictions prevented or lessened competition substantially, or are they likely to have that effect?*

[455] The Tribunal will now turn to the fourth issue to be determined in this proceeding. This is whether TREB's VOW Restrictions have prevented or lessened competition, or are preventing or lessening competition, substantially in the Relevant Market, or are likely to have that effect, as contemplated by paragraph 79(1)(*c*) of the Act. For the reasons detailed below, the Tribunal finds, on a balance of probabilities, that they have indeed had such effect and that, in the absence of an order of the Tribunal, they are likely to continue to do so.

### (1) Analytical framework

#### (a) *Overview*

[456] Paragraph 79(1)(*c*) deals with the third component of the abuse of dominance provision, the anti-competitive effect of the impugned conduct.

[457] Paragraph 79(1)(*c*) has two distinct and alternative branches. The first requires the Tribunal to find that an impugned practice has had, is having or is likely to have the effect of *preventing* competition substantially in a market. The second requires the Tribunal to find that

the practice has had, is having or is likely to have the effect of *lessening* competition substantially in a market.

[458] The test in assessing cases brought under each of those two branches is essentially the same. In brief, paragraph 79(1)(*c*) contemplates an approach that emphasizes comparative and relative considerations of past, present and future time frames, as opposed to absolute ones (*Canada Pipe FCA* at para 44).

[459] In conducting this assessment, the Tribunal will assess both the degree of the prevention or lessening of competition as well as its duration (*Tervita* at paras 45 and 78). Where a prevention or lessening of competition does not extend throughout the relevant market, the Tribunal will also assess whether it extends throughout a "material" part of the market (*CCS* at paras 375 and 378).

[460] With respect to the degree, or magnitude, the Tribunal assesses whether the impugned practice has enabled, is enabling or is likely to enable the respondent to exercise *materially* greater market power than in the absence of the practice (*Tervita* at paras 50-51 and 54). In brief, a practice that enables a firm to exercise a materially greater degree of market power than it otherwise have been able to exercise, is a practice that prevents or lessens competition substantially. What constitutes "materially" greater market power will vary from case to case. The Tribunal has not found it useful to apply rigid numerical criteria in conducting this assessment. When the respondent is a trade association, the Tribunal's focus will include whether the impugned practice has enabled the association's members to exercise materially greater market power in the relevant market than in the absence of the practice.

[461] As discussed at paragraph 165 above, market power has been defined in the jurisprudence alternatively in terms of "the ability to set prices above competitive levels for a considerable period," "an ability to set prices above competitive levels and to maintain them at that level for a significant period of time without erosion by new entry or expansion of existing firms," and "the ability to profitably influence price, quality, variety, service, advertising, innovation or other dimensions of competition." In the first two variations of these tests, the term "price" is considered to be shorthand for all of the dimensions of competition mentioned in the third variation.

[462] These price and non-price dimensions of competition are assessed because they are generally reliable proxies for the intensity of rivalry. In the absence of rivalry, competition does not exist and cannot constrain the exercise of market power, unless the threat of potential competition is particularly strong. It is therefore the process of rivalry that ordinarily prevents or constrains the exercise of market power, as firms strive, among other things, to develop, produce, distribute, market and ultimately sell their products in competition with other firms.

[463] In turn, the competitive prices, non-price offerings and innovations that result from that process of rivalry generally serve to increase aggregate economic welfare in an economy, the economy's international competitiveness and the median standard of living of people in the economy. This is particularly true of the innovations that result from the competitive process.

[464] When assessing whether competition with respect to *prices* has been, is or is likely to be prevented or lessened *substantially*, the test applied by the Tribunal is to determine whether prices were, are or likely would be, materially higher than in the absence of the impugned practice. With respect to *non-price* dimensions of competition, such as quality, variety, service, advertising or innovation, the test applied is to determine whether the level of one or more of those dimensions of competition was, is or likely would be materially lower than in the absence of the impugned practice (*Tervita* at para 80; *CCS* at paras 123-125 and 376-377).

[465] With respect to the duration aspect of its assessment, the test applied by the Tribunal is whether this material increase in prices or material reduction in non-price dimensions of competition resulting from an impugned practice has lasted, or is likely to be maintained for, approximately two years (*Tervita* at para 80; *CCS* at para 123).

[466] Where it is alleged that future competition has been, is, or is likely to be prevented by an impugned practice, this period will run from the time when that future competition would have likely materialized, in the absence of the impugned practice. If such future competition cannot be demonstrated to have been, or to be, *likely* to materialize in the absence of the impugned practice, the test contemplated by paragraph 79(1)(*c*) will not be met.

[467] To be *likely* to materialize, the future competition must be demonstrated to be more probable than not to occur in the absence of the impugned practice (*Tervita* at para 66). To meet this test, the Commissioner is required to demonstrate that the future competition, whether in the form of entry by new competitors or expansion by existing competitors (including in the form of the introduction of new product offerings), likely would have materialized within a discernible time frame. This time frame need not be precisely calibrated, but must be based on evidence of when the entry or expansion in question realistically would have occurred, having regard to the typical lead time for new entry or expansion to occur in the relevant market in question. The farther into the future predictions are made, the less reliable and more speculative in nature they will be (*Tervita* at paras 68-74). This demonstration can be made with respect to either identified or unidentified potential or actual competitors, although it may be easier to adduce the requisite evidence with respect to identified potential or actual competitors (*Tervita* at paras 61-63). In any event, it must be demonstrated that the future competition that was, is or is likely to be prevented by the impugned practice would have been sufficiently important to have a substantial impact on competition in the relevant market (*Tervita* at para 78).

[468] In addition to all of the foregoing, in assessing whether the degree or magnitude of a prevention or lessening of competition is sufficient to be considered "substantial," the Tribunal will consider the overall economic impact of an impugned practice in the relevant market. For example, the Tribunal may conclude that a large price increase, or a large reduction in non-price benefits of competition, constitutes a substantial prevention or lessening of competition, even if that anti-competitive effect is likely to last less than two years, relative to the level of price or non-price competition that likely would have prevailed in the absence of the practice.

[469] "Substantiality" can be demonstrated by the Commissioner through quantitative or qualitative evidence. CREA contends that a qualitative assessment of the anti-competitive effects is only appropriate when these effects cannot be quantitatively estimated, and that the Commissioner has the burden to demonstrate that the effects cannot be quantified before turning to qualitative evidence. The Tribunal disagrees. In contrast to merger cases in which the efficiency exception is invoked by the respondent(s), there is no obligation on the Commissioner to quantify the anti-competitive effects of an impugned practice of anti-competitive acts (*Tervita* at para 166). In *Tervita*, the Supreme Court clearly distinguished between the measurement of anti-competitive effects under section 92 and the balancing exercise under section 96 on efficiencies. Quantification is only mandatory for the latter. In the context of a merger, the Court found that the "the statutory scheme does not bar a finding of likely substantial prevention where there has been a failure to quantity deadweight loss" (*Tervita* at para 166). The Tribunal is of the view that such analysis similarly applies to a finding of substantial prevention of competition in the context of an abuse of dominant position.

[470] Therefore, in order to meet the requirements of paragraph 79(1)(*c*), the Commissioner can resort to either quantitative or qualitative evidence, or both. However, the Commissioner must always adduce sufficiently clear and convincing evidence to demonstrate, on a balance of probabilities, that competition is likely to be prevented or lessened substantially (*Tervita* at paras 65 and 76). The Tribunal recognizes that it may be more difficult to meet this burden when the Commissioner relies largely on qualitative evidence, in part because quantitative evidence can be more probative to demonstrate the presence or absence of anti-competitive effects. In any event, the Tribunal will be entitled to draw an adverse inference if evidence that would or could be available has not been adduced.

[471] The Tribunal also recognizes that there may be a greater need for the Commissioner to rely on qualitative evidence in innovation cases like this one. This is because dynamic competition is generally more difficult to measure and to quantify. Indeed, when dealing with innovation, reliable statistical or empirical evidence is sometimes not available and the Commissioner may need to resort to more qualitative tools and instruments to demonstrate the competitive effects of a challenged conduct. Such evidence can take the form of business documents, witness statements and testimonies, industry analyses, etc. As long as such qualitative evidence collectively meets the requirements of the applicable standard of proof of balance of probabilities, it can be sufficient to support an application, even with limited quantitative evidence, or indeed none at all. In other words, no particular type of evidence is necessarily required. However, it bears repeating that the Commissioner ultimately bears the burden of proof and the Tribunal must be convinced on a balance of probabilities (*Canada Pipe FCA* at para 46).

[472] Despite the similarity in the general focus of the Tribunal when considering the two branches of paragraph 79(1)(*c*), there are nevertheless important differences in its assessment of the "lessen" and "prevent" dimensions of competition (*Tervita* at para 55).

[473] Specifically, in assessing whether competition has been or is likely to be *lessened*, the more particular focus of the assessment is upon whether the impugned practice has facilitated, or is likely to facilitate, the exercise of new or increased market power by the respondent. In this assessment, the Tribunal typically will endeavour to determine whether the intensity of rivalry has been, or is likely to be, diminished or reduced, as a result of the impugned practice. Where the Tribunal determines that this is not likely to be the case, it generally will conclude that competition is not likely to be lessened at all, let alone substantially. This is subject to the caveat discussed below regarding a trade association respondent.

[474] By contrast, in assessing whether competition is likely to be *prevented*, the Tribunal's more particular focus is upon whether the impugned practice has preserved, or is likely to preserve, any existing market power enjoyed by the respondent, by preventing or impeding new competition that otherwise likely would have materialized in the absence of the impugned practice. In this assessment, the Tribunal typically will endeavour to determine whether the intensity of rivalry likely would have increased, "but for" the implementation of that practice. Where the Tribunal determines that this is not likely to be the case, it generally will conclude that competition is not likely to be prevented at all, let alone substantially. Once again, this is subject to the caveat regarding a trade association respondent.

[475] Where the respondent is a trade association, the Tribunal will consider whether the impugned practice is likely to facilitate the exercise of new or increased market power by some or all of the members of the association, or to preserve their market power, relative to the situation that would likely have prevailed in the absence of the respondent's impugned practice. Where the Tribunal determines that this is not likely to be the case, it generally will conclude that competition is not likely to be prevented or lessened at all, let alone substantially.

[476] Finally, where a respondent with a high degree of market power is found to have engaged in a practice of anti-competitive acts, smaller impacts on competition resulting from that practice will meet the test of being "substantial" (*Tele-Direct* at p. 247).

### (b) *The "but for" approach*

[477] In comparing the level of competition in the presence of the impugned practice with the level of competition that likely would have prevailed in the absence of the impugned practice, the Tribunal typically asks what likely would have occurred "but for" the impugned practice (*Tervita* at paras 50-51; *Canada Pipe FCA* at paras 44 and 58).

[478] Where the practice has been in place for a significant period of time and its effects have already been fully manifested, the Tribunal will begin its assessment by comparing the state of competition that prevailed before the implementation of the practice, with the state of competition at the time the Tribunal hears the application. The Tribunal may also compare the former state of competition with that which existed at a particular time prior to the hearing of the application, if that is relevant to its consideration of the Commissioner's application and the relief sought. However, where the state of competition was in any event likely to change,

regardless of the implementation of the impugned practice, the Tribunal will compare the state of competition at the time of its hearing with the state of competition that likely would have prevailed "but for" the implementation of the practice.

[479] Similarly, where the effects of the practice on competition have not yet fully manifested themselves, the Tribunal will compare the state of competition that existed prior to the implementation of the practice, with the state of competition that likely will exist once the effects of the practice on competition have been fully manifested (*Canada Pipe FCA* at para 55). Once again, this assessment may be adjusted where the state of competition was in any event likely to change, regardless of the implementation of the impugned practice.

[480] As is apparent from the foregoing, the Tribunal's analysis under paragraph 79(1)(*c*) is *relative* in nature. That is to say, the Tribunal compares, on the one hand, the level of competition that exists, or would likely exist, after the implementation of the impugned practice, and on the other hand, the level of competition that likely would have existed "but for" the impugned practice. As stated in the preceding section of these reasons, the test contemplated by this paragraph is whether the difference between those two levels of competition is, was, or would likely be, *substantial*; and this test is met when the price of the relevant product is likely to be materially higher, or the level of one or more significant dimensions of non-price competition is likely to be materially lower, than in the absence of the impugned practice.

[481] It follows from the foregoing that the *absolute* level of competition in, or entry into, the relevant market, is not the focus of the Tribunal's assessment. Stated differently, the issue is not whether competition continues to be intense, or whether *some* new entry continues to occur. The issue typically is whether competition likely would have *even been more intense*, perhaps as a result of *even more* entry or innovation, "but for" the implementation of the impugned practice (*Canada Pipe FCA* at paras 36-37, 53 and 57-58).

[482] It also follows from the foregoing that the failure of the Commissioner to provide historical data comparing the competitiveness of the relevant market in the past with its competitiveness at the time of the hearing (or other relevant intermediate time), is not necessarily fatal to the Commissioner's application. The Commissioner can also succeed by adducing evidence to establish a substantial difference between the level of actual or likely competition in the relevant market in the presence of the impugned practice and the level of competition that likely would have prevailed in the absence of that practice (*Tervita* at paras 50-51; *Canada Pipe FCA* at paras 55 and 58). However, it bears emphasizing once again that the burden to demonstrate both the substantial nature of the alleged prevention or lessening of competition, and the basic facts of the "but for" scenario that are required to make that demonstration, lies with the Commissioner (*Tervita Corporation v Commissioner of Competition*, 2013 FCA 28 at paras 107-108).

[483] Although the Tribunal ordinarily applies this "but for" approach, it maintains the right to adopt a different approach in appropriate cases (*Canada Pipe FCA* at para 44).

### (2) The alleged anti-competitive effects

#### (a) *Summary and commentary*

[484] In his Concise Statement of Economic Theory, the Commissioner submits that TREB's practice of anti-competitive acts constitutes *a significant barrier to entry and expansion* for brokers who would like to offer brokerage services over the Internet. He asserts that, by limiting the degree to which TREB's Members compete with one another, the positions of TREB's traditional brokers are entrenched and their market power maintained.

[485] More specifically, the Commissioner maintains that the VOW Restrictions *negatively affect the range of brokerage services* being offered to consumers by VOWs and other innovative business models in the Relevant Market.

[486] In addition, he maintains that the VOW Restrictions *reduce the overall level of innovation* in the Relevant Market, including the development of more efficient business models by brokers who would otherwise offer new forms of competition to traditional "bricks and mortar"-based brokerages. Among other things, he asserts that this has prevented innovative brokers from increasing their efficiency and productivity, for example, by reducing their costs, working with more customers at a time and specializing in providing a subset of brokerage services in respect of which they have a comparative advantage.

[487] In his Application, the Commissioner elaborates by stating that TREB's practice of anti-competitive acts prevents agents from providing over the Internet information that otherwise would be labour-intensive to assemble for clients. In the absence of that anti-competitive practice, agents would be freed up from those labour-intensive tasks, and would therefore be able to focus on providing additional value to consumers.

[488] The Commissioner adds that the exclusion of VOWs and other innovative business models *denies consumers the benefits of the downward pressure on commission rates* that would likely otherwise exist. For example, he maintains that, by preventing increases in efficiency and productivity, TREB is preventing VOW-based operators and other innovative brokerages from passing the cost savings that would be realized from such efficiencies on to their customers through reduced commission rates or through increased rebates, as is being done by some VOWs operating in the United States.

[489] Moreover, the Commissioner submits that, in the absence of the VOW Restrictions, *the quality of services* in the Relevant Market would be substantially greater, and consumers would benefit from *substantially greater choice.*

[490] In his 2015 Closing Submissions, the Commissioner added that the adverse impact of those restrictions on non-price competition have *reduced the total output* of residential real estate brokerage services in the GTA, relative to what it would otherwise be "but for" those restrictions.

[491] Finally, the Commissioner's expert, Dr. Vistnes, asserts that TREB's refusal to permit VOW operators to display the Disputed Data on their VOWs helps to *maintain agents' incentives to steer consumers into inefficient matches*, at the expense of the home buyer, the seller or both. Stated differently, he maintains that with the better information that full-information VOWs would provide regarding a home's market value, buyers would be less vulnerable to being encouraged to offer an excessive price, and sellers would be less vulnerable to being encouraged to accept too low a price.

[492] In its Response, TREB begins by stating that it has no market power in the Relevant Market, that the VOW Restrictions do not create, enhance or maintain any market power for TREB and that, in any event, TREB has no motivation to exercise any market power that it may have. For the reasons discussed in section VII.B.(3) of these reasons above, including at paragraphs 256-266, the Tribunal disagrees with these propositions.

[493] In its written and oral submissions, TREB also maintained that its Members do not have market power. Among other things, it asserted that competition in the Relevant Market has only intensified since the Initial Hearing.

[494] With respect to the range of brokerage services being offered in the Relevant Market, TREB states that its policies do not materially reduce the broad array of services that continue to be offered, including new services that continue to be introduced over the Internet and otherwise.

[495] Regarding price competition, TREB maintains that its VOW Policy and Rules do not prescribe the commission structures that must be adopted by its Members, and that in any event, there is clear evidence of price competition among participants in the Relevant Market. In this regard, TREB notes that negotiations can and routinely do occur regarding the level of commissions on both the "sell" and the "buy" side of residential real estate transactions, and that agents often give rebates or other consideration that effectively reduces the level of their commission.

[496] Turning to innovation, TREB maintains that a VOW is only one type of a wide range of innovation initiatives that are ongoing in the Relevant Market, as manifested by a plethora of new service offerings that continue to be introduced by new and existing market participants on an ongoing basis.

[497] Regarding the total output of brokerage services in the Relevant Market, Dr. Church testified, in response to questioning from the Tribunal, that demand for residential real estate brokerage services is inelastic, because it is derived from the demand for buying and selling homes, and that therefore any change in the quality of such services probably has no impact on that demand for buying and selling homes. More generally, TREB objected to the fact that this allegation of the Commissioner was raised too late in the proceeding to permit it (TREB) to fully respond.

[498] Finally, with respect to buyer steering, TREB submits, among other things, that the Commissioner has not demonstrated that this behaviour occurs in the Relevant Market, or that it has harmed competition.

[499] CREA supported many of the positions taken by TREB. It also raised concerns regarding the potential effect of the remedy requested by the Commissioner on its trade-marks (which include the Multiple Listing Service trade-mark, the MLS trade-mark and the associated logos), as well as on the REALTOR trade-mark, REALTORS trade-marks and the associated logos that CREA indirectly co-owns with NAR.

[500] The Tribunal acknowledges that individual real estate brokers and agents in the Relevant Market do not have market power. However, that is not the issue raised by this proceeding. The issue is whether the VOW Restrictions have insulated, are insulating, or are likely to insulate TREB's Members from new forms of rivalry that, in aggregate, would likely substantially increase competition in their absence, as reflected in materially lower prices or in materially greater non-price benefits of competition. When a group of rivals, whether through their trade association or otherwise, insulates itself from increased competition, they are in essence exercising a cognizable form of market power. In brief, to prevent a material increase in quality, variety or innovation, or a material reduction in price, is to prevent a material reduction in one's market power, whether such market power exists at the individual or group level. For the reasons discussed in section VII.D.(3) of these reasons below, the Tribunal is satisfied that TREB has exercised, and continues to exercise, such market power on behalf of its Members who sought to be insulated from innovative forms of competition.

[501] The Tribunal also acknowledges that there is a high degree of competition in the Relevant Market, as reflected in considerable ongoing entry and exit, a significant degree of discounting activity with respect to net commissions, and a significant level of ongoing technological and other innovation, including with respect to quality and variety and through Internet-based data-sharing vehicles.

[502] However, as noted at paragraph 481 above, the absolute level of competition in, or entry into, a relevant market is not the focus of the Tribunal's assessment. Instead, that focus is upon whether competition likely would have been substantially even more intense "but for" the VOW Restrictions. The fact that other aspects of the VOW Policy and Rules might increase competition, for example, by virtue of the fact that they now enable VOWs to operate in the GTA, albeit in a limited way, is irrelevant.

[503] Nevertheless, the Tribunal agrees with TREB and CREA that the appropriate focus of assessment under paragraph 79(1)(*c*) of the Act should be upon the *incremental* effect of the VOW Restrictions on competition. More specifically, the specific focus of this stage of the assessment is upon whether competition would likely be substantially greater in the absence of the VOW Restrictions than it is at the present time, or is likely to be in the future, if they remain unchanged.

[504] For the reasons discussed below, the Tribunal concludes that the incremental adverse effect of the VOW Restrictions on competition has been, is, and is likely to continue to be substantial, relative to the "but for" world in which those restrictions did not exist. These anti-competitive effects take the form of increased barriers to entry, increased costs for VOWs, reduced range and quality of brokerage services, and reduced innovation.



### (b) *Increased barriers to entry and expansion*

[505] In assessing whether competition has been, is or is likely to be substantially prevented or lessened by a practice of anti-competitive acts, one of the factors to consider is whether entry or expansion into the relevant market likely would have been, or likely would be, substantially faster, more frequent or more significant "but for" that practice (*Canada Pipe FCA* at para 58). This factor has played a central role in several cases that the Tribunal has dealt with under section 79 of the Act (*NutraSweet* at pp. 27 and 47-48; *Laidlaw* at pp. 347-348; *Nielsen* at p. 277).

[506] The Commissioner submitted that TREB's MLS Restrictions, including the VOW Restrictions, constitute a significant barrier to entry or expansion for brokers who would like to be able to operate a full-information VOW in the Relevant Market.

[507] TREB acknowledged that an assessment of whether an impugned practice impedes entry or expansion in a market can assist the Tribunal to determine whether market power has been or is likely to be created, enhanced or preserved by an impugned practice. However, it submitted that there are no significant barriers to entry into the Relevant Market, and this is confirmed by the fact that its membership grew from approximately 35,000 to approximately 42,500 in the period between the Initial Hearing and the Redetermination Hearing in this proceeding.

[508] In the absence of evidence that some of TREB's new Members have entered the Relevant Market as full-information VOWs, the fact that TREB's membership continues to grow does not significantly assist the Tribunal to determine whether the VOW Restrictions constitute a significant barrier to entry or expansion for brokers who would like to be able to operate a full-information VOW in the Relevant Market. Moreover, the Tribunal notes that data provided by Dr. Church suggests that approximately 30% of those who register for access to TREB's MLS system cease accessing that system within three years.

[509] TREB further submitted that VOW technology has been popular with "brand name" affiliated brokerages, and can be easily adopted by any TREB Member. In this regard, TREB stated that its VOW Data Feed has been adopted by 322 brokerages, including by several that are affiliated with large franchise-affiliated brokerages.

[510] However, once again, this evidence does not significantly assist the Tribunal to address whether the VOW Restrictions have had, are having or are likely to have an exclusionary effect on brokers who would like to be able to operate a full-information VOW in the GTA. By contrast, several of the Commissioner's witnesses provided credible and persuasive evidence

regarding the exclusionary impact that the VOW Restrictions have had on them. This evidence includes the following.

**(i) ViewPoint**

[511] Mr. McMullin stated in 2012 that ViewPoint would like to expand into the GTA but could not do so in a commercially viable way due to TREB's VOW Restrictions, including the lack of certain content in TREB's VOW Data Feed. Specifically, he stated that ViewPoint requires data about properties that have sold (including recently sold properties) and other Disputed Data that are provided in "real time," in order to compete effectively using its brokerage model. He added that if ViewPoint could access all of the MLS data that is currently available to brokers through non-VOW channels, it would have a basis for competing in the GTA. Without such information, he stated that ViewPoint has no realistic basis for competing effectively in that market. In his updated 2015 witness statement, Mr. McMullin confirmed that the above statement remains true.

[512] Mr. McMullin elaborated on the foregoing as follows:

> In the case of both potential buyers and potential sellers, convenience and transparency are key ingredients in being able to use viewpoint.ca to attract customers. We have to be able to compete for consumers' business with traditional brokerages. Unless we can provide the same MLS information through our website as those traditional brokerages can through conventional means (in person, by phone, email, etc.), then we will rarely succeed to convince a customer to list or buy with ViewPoint. Without a full dataset from the MLS system, we would be unable to compete effectively. With access to the same information and the ability to display it on our website, the consumer can compare and choose between the convenience and transparency of using our website to obtain information about their potential purchase or sale, and the personal relationship of a traditional Realtor to obtain that same information.
>
> (Exhibits A-002 and CA-001, Witness Statement of William McMullin dated June 18, 2012 (**"2012 McMullin Statement"**), at para 78)

[513] Mr. McMullin added that without the ability to provide innovative products and services based on the MLS system and other property-related information over the Internet, it would have required "years of work [to] overcome the advantages of the incumbent traditional brokerages" and to gain the amount of business that ViewPoint has achieved in Nova Scotia (2012 McMullin Statement, at para 28).

[514] ViewPoint's interest in the GTA dates back to December 2010, about a year after it launched its website in Nova Scotia, in January 2010. At that time, Mr. McMullin sent a lengthy email to Mr. DiMichele, who was TREB's CIO, to express his interest in the GTA market. After failing to receive a response to that communication and after several subsequent unsuccessful attempts to meet with Mr. DiMichele, ViewPoint became a Member of TREB in August 2011. Contemporaneously, Mr. McMullin wrote an email to TREB's President at the time, Mr. Richard Silver. Among other things, Mr. McMullin requested a meeting with Mr. Silver. After further unsuccessful attempts to reach Messrs. Silver and DiMichele by email or by telephone, Mr. McMullin went to TREB's offices in November 2011, where he had an unproductive meeting with TREB's Chief Privacy Officer, Mr. Von Palmer.

[515] Shortly after TREB's VOW Data Feed became available in November 2011, ViewPoint executed TREB's Data Feed Agreement. However, in the absence of the Disputed Data, ViewPoint still has not entered the GTA.

[516] In the six years of its existence, ViewPoint has grown to become the largest independent real estate brokerage in Nova Scotia, with 22 agents in the field. (The term "independent" in this sense means that it is not part of one of the large franchise systems, such as RE/MAX or Royal LePage.) Its gross revenues have risen from $**[CONFIDENTIAL]** in 2012 to $**[CONFIDENTIAL]** in 2013, and then to $**[CONFIDENTIAL]** in 2014, including revenues from advertising (which went from $**[CONFIDENTIAL]** to $**[CONFIDENTIAL]** between 2012 and 2014). It continues to register approximately **[CONFIDENTIAL]** new users each day. Over that same period, the number of total page views on www.viewpoint.ca rose from approximately **[CONFIDENTIAL]** million in 2012 to **[CONFIDENTIAL]** million in 2013 and then **[CONFIDENTIAL]** million in 2014. Since the launch of www.viewpoint.ca in January 2010, registered and unregistered visitors have viewed more than **[CONFIDENTIAL]** million pages of property and listing information. The Google Analytics reports attached to the 2015 McMullin Second Statement indicate that, in 2014, there were **[CONFIDENTIAL]** sessions, **[CONFIDENTIAL]** users (Google's estimate of the number of persons who accessed www.viewpoint.ca), and **[CONFIDENTIAL]** page views on www.viewpoint.ca.

[517] According to Mr. McMullin, registered users account for approximately 90% of the traffic on ViewPoint's website. ViewPoint had **[CONFIDENTIAL]** new registered users in 2012; **[CONFIDENTIAL]** in 2013; and **[CONFIDENTIAL]** in 2014. It participated in **[CONFIDENTIAL]** brokered transactions in the HRM in 2012, **[CONFIDENTIAL]** in 2013, and **[CONFIDENTIAL]** in 2014. This represented growth in its share of total brokered transactions in the HRM from **[CONFIDENTIAL]** to **[CONFIDENTIAL]** over that period, notwithstanding overall yearly declines in the total number of brokered transactions in the region of 12.9% in 2013 and a further 3% in 2014. During the Redetermination Hearing, Mr. McMullin estimated that ViewPoint was on track to realize growth of approximately 25-28% in the total number of its brokered transactions (for the whole of Nova Scotia) in 2015.

[518] The foregoing figures were not disputed by TREB or CREA.

[519] Mr. McMullin further testified that if the VOW Restrictions were eliminated, ViewPoint would enter the Relevant Market within three to four months. The Tribunal accepts that this would be a likely result of the elimination of the VOW Restrictions.

**(ii) TheRedPin**

[520] TheRedPin evolved out of an entity known as Realty Teller, which started operations in 2008. In 2009, TREB's refusal to make resale home listings data available in an electronic data feed led Realty Teller to focus its efforts on the new condominium market, by creating an online platform to connect builders and developers with potential buyers. In September 2010, the Realty Teller website was launched publicly.

[521] In June 2011, soon after TREB launched its 60-day consultation process in relation to its VOW Policy and Rules, Mr. Hamidi and his partners decided to move forward with their original Realty Teller vision from 2008, by becoming an official brokerage and a Member of TREB. TheRedPin was launched later that month and was, according to Mr. Hamidi, one of Canada's first online brokerages at that time.

[522] In December 2011, shortly after TREB launched its VOW Data Feed, TheRedPin became the first brokerage to launch a website using TREB's VOW Data Feed.

[523] Since its initial launch, TheRedPin has focused on being a web-based brokerage oriented towards meeting customer desires and needs, all in a single user-friendly website. In particular, TheRedPin endeavours to provide a single online source of information that home buyers and sellers value. In addition to simply displaying that information, TheRedPin seeks to innovate with the MLS data and other information that it is able to obtain.

[524] However, the VOW Restrictions have limited TheRedPin's ability to "get better traction as a brokerage." Among other things, TheRedPin believes that obtaining access to the Disputed Data would enable it to offer better and more services to attract a greater number of people to its brokerage. Mr. Gidamy elaborated as follows:

> Because potential customers already have access to current listing information online on realtor.ca, TheRedPin has to offer potential customers more than just current listings to attract them to TheRedPin.com over realtor.ca, and to convert them into clients of our brokerage. Having sold information in the VOW datafeed and the innovative tools we expect to develop using it, would provide powerful new ways of first attracting and then of converting website visitors into clients. For example, on the listing side, heatmaps and other neighbourhood-specific sold information could help us show home sellers how TheRedPin's technology can help them value and ultimately sell their home.

(Exhibits A-113 and CA-114, Second Witness Statement of Tarik Gidamy dated January 30, 2015 (**"2015 Gidamy Statement"**), at para 21)

[525] Mr. Gidamy also stated that the VOW Data Feed remains critical to his ability to generate traffic on TheRedPin website and use it to generate leads, since "TREB's VOW data feed enables website users to see 100% of current MLS® listings on TheRedPin.com" (2015 Gidamy Statement, at para 7). Mr. Gidamy however admitted that realtor.ca does post or show the current MLS listings from real estate boards across the country.

[526] Mr. Gidamy also stated that, with access to the Disputed Data, and the freedom to use it in innovative ways, TheRedPin would be in a much better position to prepare accurate and in-depth advice and CMAs; and to more generally better distinguish TheRedPin from its competitors by putting MLS data to its best and highest use for home sellers and buyers. By contrast, without that data and freedom, he believes that TheRedPin is at "a serious competitive disadvantage" with other brokerages, which are able to provide the Disputed Data such as sold information to their clients in conventional ways (Exhibit A-015, Witness Statement of Tarik Gidamy dated June 22, 2012, at para 22). He added that if TheRedPin is not able to achieve greater efficiencies such as those that would flow from the innovations described below, and to achieve the increased brand recognition that it believes would be generated by its new products, it will have to scale down its business and operate at a much smaller size to remain in operation. Mr. Silver added that the likely effect of providing brokerages with a data feed containing more key information held closely by the real estate industry would be to allow brokerages to compete more effectively in providing real estate brokerage services.

**(iii) Realosophy**

[527] Mr. Pasalis asserted that the absence of sold, "pending sold," status change and geomapping data in TREB's VOW Data Feed is constraining Realosophy's growth.

[528] Mr. Pasalis explained that Realosophy's business model depends on having access to data, particularly from TREB's MLS system. As a result, its inability to obtain a data feed with sold and "pending sold" data limits Realosophy's ability to provide services to consumers online and to its clients.

[529] Among other things, he asserted that the limitations in TREB's VOW Data Feed are impeding Realosophy's ability to provide more advanced analytics and commentaries online and through the media, and to engage with clients more frequently by providing more updates of information. In addition, Ms. Desai and Mr. Pasalis stated that the registration requirement in the VOW Policy and Rules is having a significant chilling effect on potential clients who are reluctant to register to access the innovative services provided by Realosophy. Although Mr. Pasalis has less objection to requiring potential home buyers and sellers to register on his website to access specific sold and "pending sold" data on an individual listing basis, he believes that there should be no need to register to access aggregated information about sold property prices.

**(iv) Redfin**

[530] According to Mr. Nagel, Redfin is the leading real estate brokerage website in the United States. Between early February 2015, when he signed his second witness statement, and the end of September 2015, when he testified at the Redetermination Hearing, Redfin expanded from 48 metropolitan areas in 24 states to 74 metropolitan areas in 35 states. In addition, it expanded from 1,102 agents to approximately 1,800 agents, and from approximately 1,600 partner agents to over 2,300 partner agents, during that same period. However, it is not clear from the evidentiary record what this growth translates into, in terms of Redfin's share of brokered residential real estate transactions in any given urban market. The Tribunal was left with the sense that Redfin may remain well under 5%. Nevertheless, over the first nine months of 2015, Redfin had approximately 1,045,000 registrations on its website.

[531] In 2012, Mr. Nagel stated that Redfin had been considering expanding into Canada because it has "several metropolitan areas with strong housing markets and a tech-savvy population." In particular, Redfin was considering expanding into Vancouver, Toronto and possibly Calgary (Exhibit A-008, Witness Statement of Scott Nagel dated June 20, 2012, at para 56). However, it had not yet done a detailed analysis in respect of such potential expansion. Mr. Nagel added that the lack of available sold, recently sold and other current information about specific properties would have a significant impact on whether Redfin enters a market.

[532] In his 2015 witness statement, Mr. Nagel stated that **[CONFIDENTIAL]** (2015 Nagel Statement, at paras 26-28).

[533] When pressed by the Tribunal on this issue during his testimony, Mr. Nagel explained that Redfin decided "to take an active look again" at expanding into Toronto after the Commissioner's Application was remitted to the Tribunal. He reiterated that one of the factors that is relevant to Redfin's decision regarding a potential expansion into Toronto is whether it will be able to provide information with respect to "sold" properties, which is required "to provide our full customer experience in Canada." He added that one of the reasons why he was participating in the Tribunal's proceedings "is because [Redfin would] prefer to provide everything, just like [it does] in the vast majority of U.S. jurisdictions" (Transcript, September 24, 2015, at pp. 429-430).

[534] Based on Mr. Nagel's evidence, the Tribunal cannot conclude that the VOW Restrictions have prevented Redfin from expanding into the GTA, or that Redfin *likely would expand* into the GTA "but for" those restrictions. Accordingly, the Tribunal will not consider the adverse effect that the VOW restrictions appear to be having on Redfin's decision in this regard, in determining whether those restrictions have prevented or lessened, or are preventing or lessening competition substantially in the Relevant Market, or are likely to have that effect.

[535] However, the Tribunal observes in passing that those restrictions are having a deterring effect on Redfin, and that if they were eliminated, the potential for Redfin to expand into the GTA would increase.

### (v) Other full-information VOW operators

[536] Two witnesses representing AVPs gave evidence on behalf of the Commissioner, namely, Mr. Prochazka, one of the founders of Sam & Andy, and Mr. Enchin, a sales representative with Realty Executives.

[537] Sam & Andy was an AVP that operated turnkey websites, including with VOWs, for agents in various cities in Canada and the United States, prior to its sale to Ubertor, a Vancouver-based firm, in May 2015.

[538] The VOW product that Mr. Prochazka provided was called Platinum Clicksold. For $45 per month, clients were provided with an unlimited number of active listings, photos per listing and custom domains as well as some additional technical features.

[539] As of February 2015, Sam & Andy had 90 Platinum Clicksold customers in the GTA. However, by the time Sam & Andy was sold to Ubertor in May 2015, this number may have been reduced by approximately half.

[540] Between 2005 and 2011, Sam & Andy contacted TREB up to twice per year to explore obtaining access to its MLS data, so that it could begin offering its services to realtors in the GTA. However, it was not until TREB issued its VOW Policy and Rules, and began to provide a VOW Data Feed, that Sam & Andy was able to obtain access to TREB's MLS data. In Mr. Prochazka's words, it was not until "this case was launched that TREB kind of started to play ball a little bit, give us a little bit of access to VOW and IDX data" (Transcript, September 23, 2015, at p. 306).

[541] However, the information provided in TREB's VOW Data Feed fell short of what Sam & Andy was able to obtain from MLS entities in the United States, which provided historical listing information (including sold data), mapping coordinates, status changes and identification codes in their data feeds.

[542] Moreover, various terms in TREB's VOW Policy and Rules increased Sam & Andy's operating costs and created barriers for agents who wished to purchase its products and services. For example, the VOW Data Feed did not contain fields with listing changes, mapping coordinates or agent identification codes to link agents with their listings agents. In addition, agents who wished to obtain a website with a VOW were required to obtain a signed agreement from their supervising broker. Mr. Prochazka testified that TREB is the only MLS entity with which he has dealt which imposes this requirement. At the time of the Initial Hearing, supervising brokers had refused to permit approximately 20 agents from obtaining a Clicksold website. By the time of the Redetermination Hearing, the requirement that agents obtain a signed agreement from their supervising broker had "arrested [Sam & Andy's] growth in the GTA" (Transcript, September 23, 2015, at p. 307).

[543] After concluding that "there really was no big opportunity for expansion and that [they] had run into too many barriers" in the GTA and other areas of Canada (Transcript, September 23, 2015, at p. 318), the majority shareholders of Sam & Andy sold the firm to Ubertor. As a result of those barriers, the GTA had become Sam & Andy's "worst-performing market" (Transcript, September 23, 2015, at p. 324).

[544] When Mr. Prochazka evaluated the potential to open a web-based brokerage in Edmonton and Calgary, he determined that it was necessary to provide sold data to be able to assist the public to gain insights into the property market, for example, through statistical tools such as price trends and sales velocity. This is because a web-based brokerage must be able to provide something more than what is already available on realtor.ca. He testified that it is "impossible to compete" as a web-based brokerage based on what is currently in TREB's VOW Data Feed (Transcript, September 23, 2015, at p. 311).

[545] Mr. Prochazka testified that if the Commissioner were to obtain what he is seeking in his Application, he would seek an opportunity to invest in, and sit on the board of, a web-based brokerage such as ViewPoint.

[546] Turning to Mr. Enchin, he created his first VOW in 2001, which he licensed to approximately 1,000 other realtors. That VOW was created at a time when TREB permitted its Members and certain others, including Mr. Enchin, to download its MLS listings in bulk. Mr. Enchin's VOW displayed MLS listing data, including sold and pending sold information, until TREB disabled its Members' ability to download TREB's MLS data in large quantities in 2007. He then sold his software and contracts with brokers to another company.

[547] In the summer of 2011, after becoming aware of TREB's VOW Policy and Rules, Mr. Enchin contacted TREB to obtain more details about its VOW policy and data feed. He then began to develop a new VOW and retained the assistance of a third-party, Adpioneers, which specialized in website development. He and his partners committed to a $100,000 contract to complete the initial version of his 2012 VOW. At the time of the Initial Hearing, he had demonstrated his 2012 VOW to five large brokerages in the GTA, who had all committed to adopting it for their approximately 4,000 agents once it became available. Smaller brokerages, representing approximately 1,000 agents, had also expressed interest in or committed to adopting Mr. Enchin's 2012 VOW, once it became available. Mr. Enchin stated that he believed his 2012 VOW would have been more popular with realtors and their clients if he could have offered the appraisal feature, which required sold and "pending sold" data.

[548] Unfortunately for Mr. Enchin, Adpioneers admitted in October 2012, after Mr. Enchin testified at the Initial Hearing, that it lacked the expertise to complete the VOW. Mr. Enchin and Adpioneers then terminated their relationship. After investing additional time and money to develop his VOW with the assistance of another third-party (who was also unable to complete the task), Mr. Enchin paused the development of his VOW for a period of time. In February 2015, he stated that he was working with a new software developer and hoped to have a trial version of his VOW completed by the end of that month.

[549] The Tribunal was not provided with any update regarding Mr. Enchin's efforts to launch his new VOW, as he did not appear at the Redetermination Hearing. As a result, the Tribunal cannot conclude that it is more probable than not that Mr. Enchin will actually launch that VOW and begin making it available. With respect to the VOW Restrictions, the Tribunal cannot conclude that they have had any adverse impact on the development of Mr. Enchin's current VOW or that, "but for" those restrictions Mr. Enchin likely would launch that VOW and begin making it available to agents in the GTA. In other words, any impact that those restrictions may have had on Mr. Enchin's re-entry into the GTA will not be considered by the Tribunal in assessing whether they have prevented or lessened, or are preventing or lessening, competition substantially in the Relevant Market, or are likely to have that effect.



#### (vi) Conclusion

[550] Based on the foregoing, the Tribunal concludes that the VOW Restrictions have had a significant adverse impact on entry into, and expansion within, the Relevant Market by web-based and other brokerages that would like to offer full-information VOWs in the GTA. Stated differently, "but for" those restrictions, such entry and expansion likely would have been faster or more significant (*Canada Pipe FCA* at para 58).

[551] In summary, those restrictions have prevented ViewPoint, a very disruptive and substantial potential competitor, from entering into the Relevant Market; and have prevented two additional disruptive brokerages, TheRedPin and Realosophy, from expanding within that market. Those restrictions also prevented Sam & Andy from expanding within the market, and prevented their brokerage customers from doing the same.

### (c) *Increased costs imposed on VOWs*

[552] The Commissioner also submitted that the VOW Restrictions undermine the ability of full-information VOWs to compete because they have the effect of raising their costs. TREB replied that the evidence does not demonstrate that the VOW Policy and Rules have had, or are likely to have, the effect of raising these costs at all, let alone substantially. The Tribunal disagrees with TREB.

[553] With respect to ViewPoint, TREB noted that Mr. McMullin testified that his agents complete approximately 20 to 22 transactions per year, as compared with what he characterized as being a "provincial average" of 10 to 12 transactions per year per agent. Among other things, Mr. McMullin mentioned that while the traditional brokerage model is based on recruiting agents who will then go out and find customers, his model is based on minimizing, rather than on maximizing, the number of agents, and then using ViewPoint's website to attract prospects who are then connected with its agents. However, TREB and CREA pointed out that Mr. McMullin's calculations were given during the Redetermination Hearing for the first time and were not adequately supported or proven. TREB added that the Tribunal was not provided with any evidence to demonstrate that ViewPoint's agents complete more transactions per year than the average number completed by brokerages operating in the Relevant Market under TREB's existing VOW Policy and Rules. The Tribunal accepts this latter point.

[554] The Tribunal nonetheless also accepts Mr. McMullin's testimony that the costs associated with having to manually upload information with respect to price or other listing status changes would be prohibitive. In addition, the Tribunal accepts his testimony that ViewPoint uses its website www.viewpoint.ca as a lead generating device and that this frees up time for its agents to complete other tasks.

[555] Turning to TheRedPin, TREB and CREA noted that Mr. Gidamy stated that the inclusion of sold information in TREB's VOW Data Feed would enable TheRedPin to develop automated CMA tools that would save its agents time. Mr. Hamidi also testified to the time saving aspect. Nonetheless, TREB and CREA estimated that this time saving would be less than five hours per month per agent. On cross-examination, Dr. Vistnes did not dispute this particular estimate, and he agreed that this specific cost saving was not substantial.

[556] What TREB and CREA omit to mention, though, is that Dr. Vistnes was careful to confine his agreement on this point to this particular example of cost saving that Mr. Gidamy had identified. He did not resile from his broader point that the VOW Restrictions have the effect of raising the operating costs and reducing the productivity of VOW-based competitors in various ways.

[557] Each of TheRedPin's representatives who testified stated that the VOW Restrictions are imposing higher costs on TheRedPin, or are preventing it from reducing its costs. Generally speaking, Messrs. Hamidi, Gidamy and Silver supported the Commissioner's position that empowering the customer to do more assists the brokerage in becoming more efficient, in part because less time is spent generating leads in the time-consuming manner that is adopted by traditional brokerages, thereby freeing agents up to focus on work that adds value to customers. In addition, TheRedPin could provide more automated and other tools to make its agents more efficient and responsive. Mr. Gidamy further noted that such automated tools would not be confined to CMAs.

[558] With respect to Realosophy, TREB observed that Mr. Pasalis testified on cross-examination that the "dashboard" tool recently launched by Realosophy had already enabled Realosophy to achieve considerable time saving for its agents by automating the assembly and display of certain information. However, TREB failed to note that Mr. Pasalis also testified that because that information is manually uploaded, it must be double checked before its agents make any offers on a home, to ensure that important information was not missed. Therefore, Realosophy's agents end up duplicating much of the work that is required to produce the existing dashboard, at least for the particular property that its customer decides to make an offer on.

[559] More broadly, Mr. Pasalis stated that, with access to sold, "pending sold," live update and other information in TREB's VOW Data Feed, Realosophy's agents would need to spend less time merely gathering data for their clients, which would free them up to assist clients to understand the data and reports they are getting, and to better understand the options available to them. In addition, he maintained that much of the preparatory and education work required to prepare CMAs could be automated if sold and "pending sold" data were included in the VOW Data Feed.

[560] In addition to the foregoing, as discussed at paragraph 542 above, Mr. Prochazka stated that certain aspects of TREB's VOW Policy and Rules increased Sam & Andy's operating costs. For example, the absence of agent identification codes in TREB's VOW Data Feed forced Sam & Andy to create a workaround solution that required its clients to manually associate themselves with their listings.

[561] Mr. Enchin also testified that his ability to provide home buyers with access to sold and "pending sold" data through his VOW prior to 2007, when TREB stopped permitting its Members and others such as Mr. Enchin to download its MLS listings data in bulk, contributed to him showing approximately 30% fewer homes to his clients and assisted him to spend less time responding to client requests. During the Initial Hearing, he added that having access to sold information contributed significantly to saving him a significant amount of time when preparing CMAs for his clients.



[562] Based on the foregoing, the Tribunal concludes that the VOW Restrictions have increased the costs of TheRedPin, Realosophy and Sam & Andy to a non-trivial degree in the Relevant Market, and have increased the costs that ViewPoint would have to incur to compete effectively in the GTA. Stated differently, "but for" those restrictions, their costs of doing business likely would have been lower.

[563] The Tribunal also accepts Dr. Vistnes' evidence that the VOW Restrictions discriminate against full-information VOW operators, place those brokerages at a significant competitive disadvantage, reduce their competitive viability and diminish the likelihood that they will succeed in the marketplace.

### (d) *Reduced range of brokerage services*

[564] The Commissioner further submitted that the exclusion of full-information VOWs and other innovative business models has negatively affected the range of brokerage services being offered to consumers. In other words, he maintained that "but for" TREB's MLS Restrictions, including the VOW Restrictions, the range of real estate brokerage services offered in the Relevant Market likely would be substantially greater.

[565] CREA responded that VOWs do not and were never intended to replace brokers. They simply provide a means by which a broker can partially provide over the Internet one of the services a broker normally provides in person to a client, namely, the provision of relevant property information that a client needs or wants. VOWs do not physically show homes, negotiate prices, close a transaction or perform various other important functions that are performed by brokers and their agents, including the refinement of listing and offer prices at the final stages of the listing and offer process. Moreover, a lot of the content available on VOWs is readily available to consumers elsewhere, including on a broad range of websites operated by brokerages and others.

[566] The Tribunal agrees that VOWs do not, and were never intended to, replace brokers. Messrs. McMullin, Silver and Pasalis were very clear on this point, both to the Tribunal and to TREB.

[567] Indeed, the experience in the United States reflects that even as VOWs have become more popular since the 2008 NAR VOW Policy came into force, the percentage of home purchasers who use a real estate agent or broker had increased from 81% to 88% by 2014. The corresponding statistic for those who used the Internet at some point in their search for a home was 92% in 2014 (NAR 2014 Profile, at pp. 45, 53, 58 and 60).

[568] However, the question remains whether the VOW Restrictions are nevertheless materially reducing the range of brokerage services that would likely be offered in the Relevant Market, "but for" those restrictions, such that competition has been or is being prevented substantially, or is likely to be prevented substantially.

[569] TREB and CREA assert that brokerages in the GTA currently offer a broad array of services, including on the Internet. In addition to the services mentioned above and in the discussion on innovation below, they note that Realosophy's website already offers features such as geocoding, school ranking profiles, a "Neighborhood Match" product, public transit information, local business information, demographic information and "walk scores." **[CONFIDENTIAL]** In a similar vein, Sage Real Estate's website features videos and professional photographs, floor plans and 3D tours, and a variety of information about properties, including asking price, neighbourhood information and proximity to shopping and schools.

[570] For the reasons discussed below, the Tribunal has concluded that, notwithstanding the broad array of brokerage services currently offered in the Relevant Market in the GTA, the range of such services available in that market likely would be considerably broader "but for" the VOW Restrictions.

[571] In understanding why this is so, it is important to keep in mind that those restrictions not only prevent TREB's Members from displaying the Disputed Data on a VOW in raw form, but also exclude this data from the VOW Data Feed and prevent them from using any data from the VOW Data Feed to create new features, tools and other services. This is readily apparent from a review of some of the services currently offered in other markets by ViewPoint and that TheRedPin and Realosophy would like to offer, which they are being prevented from offering in the Relevant Market by the VOW Restrictions.

**(i) ViewPoint**

[572] ViewPoint launched its website in January 2010. That website included detailed information on MLS listings across Nova Scotia, although ViewPoint only had agents in the HRM. It currently provides services to three different types of users:

a. *Unregistered users*, who are anonymous visitors who are able to access basic information such as the lot size and assessment value of every property in Nova Scotia, as well as current listing information on those MLS listings which are part of the IDX program;

b. *Registered users*, who are visitors who have created a user account by providing their name and email address and then verifying their email address. In addition to being able to view all of the information that may be seen by unregistered users, they are able to view all active MLS listings, as well as important information that TREB's VOW Restrictions prohibit in the GTA, including sold prices, WEST listings information, other historical information pertaining to sold properties, such as price and other listing status changes, and number of days on the market;

c. *Client Advantage users*, who are able to receive additional information, if they are willing to make a soft commitment to using a ViewPoint agent, and then provide more detailed information regarding their needs (such as when they intend to buy and sell), as well as their contact information. Among other things, these users have access to additional information that cannot currently be made available in the GTA, including:

    i. a professional valuation tool that, among other things, incorporates information pertaining to recent "sold" listings, thereby enabling the client to prepare a more accurate CMA than can be prepared without such information, and to do so *before* they meet with a broker, so that they have a better understanding of the market going into that meeting;

    ii. land registry information; and

    iii. property reports that provide detailed information summarizing real estate and click activity around a subject property.

[573] In addition, ViewPoint also offers a popular "Followed Properties" feature, which allows its registered users to ask to be alerted whenever there are any changes to the status of one or more properties, such as a change in price, a new or updated listing, or a delisting.

[574] Furthermore, for agents, ViewPoint has streamlined the process of booking showings, providing feedback to listing agents after a showing, and settling a transaction on closing. When they receive a showing request, buying agents no longer have to look up information to initiate contact with the listing agent, because ViewPoint's software immediately dispatches that information to the buyer's agent. And following a showing, the buyer's agent can initiate feedback with the click of a mouse, without having to enter any of the contact information for the listing agent. If the client proceeds to purchase the property, the agent simply has to enter the property identifier (or MLS number), and ViewPoint's software will bring up a wealth of information to pre-populate the transaction documentation. Mr. McMullin's sales coordinators have informed him that this latter innovation has led to a dramatic increase in efficiency.

[575] Mr. McMullin stated that in the absence of the VOW Restrictions, the website services that ViewPoint would offer in the GTA would be cutting-edge and would include many of the same features already available on www.viewpoint.ca.

**(ii) TheRedPin**

[576] Messrs. Gidamy, Hamidi and Silver each testified that, "but for" the VOW Restrictions, the TheRedPin would likely offer many new brokerage services on its website.

[577] For example, Mr. Hamidi stated that with access to the Disputed Data, TheRedPin would be able to provide better and more services, including automatic notifications to customers of price reductions in neighbourhoods of interest and information regarding trends in the relationship between sold and list prices, including aggregates to show trends to users in different formats. He added that TheRedPin would also provide more tools for its agents to make them more efficient, more responsive and able to provide better information to the brokerage's clients. Mr. Gidamy added that he expects that having sold information in TREB's VOW Data Feed would enable TheRedPin to develop "powerful new ways of first attracting and then of converting website visitors into clients" (2015 Gidamy Statement, at para 21). This includes by supplementing its existing potential client nurturing programs with various automated tools and other innovations. On the listing side, those tools would include heat maps, graphs, charts and other neighbourhood specific information on sold properties, as well as automated and tailored prospect matches or neighbourhood analyses that could be sent to potential buyers to make them more knowledgeable about neighbourhoods that might be a good fit for them. Mr. Gidamy mentioned creating a tool which would pull out home prices in areas that typically have bidding wars. Some of the above-mentioned tools are already being used by TheRedPin for non-MLS new home and condominium sales. These include heat maps of condominiums, and tools that enable potential investors to ascertain which views would sell better than other views and which floors offer a better return on money. In addition, TheRedPin would like to be able to provide greater transparency regarding commissions, better information regarding whether a pending sale is likely to become a firm sale, and whether there is a pattern or trend of conditions not being fulfilled in a particular neighbourhood.

[578] Although the heat maps and some of the other neighbourhood specific tools and analyses mentioned by Mr. Gidamy may already be offered by Realosophy, as suggested by CREA, the Tribunal accepts, based on the evidence provided, that the VOW Restrictions are preventing TheRedPin from offering the enhanced variations of those innovations that it would like to introduce to the Relevant Market, and from offering them in a more timely manner through a VOW. They are also preventing the greater variety of service offerings that would exist if the VOW Restrictions did not prevent such innovations from being introduced to the Relevant Market.

**(iii) Realosophy**

[579] Mr. Pasalis stated that, with access to more data, including sold and "pending sold" information, Realosophy could provide a more complete and precise picture of the particular

property by aggregating all information in much the same way as it has done with its neighbourhood profiles. It would likely also provide automatic updates of its neighbourhood profiles on a monthly or more frequent basis, automatic updates of changes in particular listings, innovative price trend and comparable home tools, and more accurate price trend analyses. This was confirmed by Ms. Desai, who stated: "[Realosophy] has the business model, technology, and skill set to be able to use additional data such as solds, pending solds, and price changes in a way that allows us to generate more original content to attract and educate consumers" (Exhibit A-007, Witness Statement of Urmi Desai dated June 20, 2012, at para 30).



[580] In addition, Mr. Pasalis noted that with access to that information, Realosophy would be able to determine and better advise customers with respect to price changes in the market, the percentage of homes selling for more than list price, how "hot" a neighbourhood area might be, when the property last sold, what it was listed for that time, how long it sat on the market, how many times it has been listed in the last year, recent comparable sales and how their homes are doing from an investment perspective.

[581] More broadly, he stated that Realosophy would be able to provide more advanced analytics and commentaries online and through the media. Among other things, this would allow customers to educate themselves better about property prices and market trends in neighbourhoods, and would permit Realosophy to engage with its clients more frequently.

**(iv) Sam & Andy**

[582] Mr. Prochazka testified that if historical listing data had been available in TREB's VOW Data Feed prior to Sam & Andy's exit from the market in May 2015, Sam & Andy would have offered its clients more products and services for their websites, including statistical neighbourhood analysis, listing price history and automatic property valuations. In addition, he testified that his firm would have been able to offer performance metrics for agents so that, for example, agents could be alerted if a listing had performance metrics that fell outside of certain parameters. He added that, in the United States, his firm provided trending tools and graphs similar to what ViewPoint provides on its website, and tools based on price history and historical transaction rates.

**(v) Conclusion**

[583] Based on all of the foregoing, the Tribunal concludes that, notwithstanding the broad array of brokerage services currently offered in the Relevant Market in the GTA, the range of such services likely would be considerably broader "but for" the VOW Restrictions.

[584] Although the information contained in the Disputed Data appears to be widely available to home sellers and home buyers from brokers in the Relevant Market today (in person, by fax, by email or by phone), the evidence demonstrates that "but for" the VOW Restrictions, firms such as ViewPoint, Realosophy and TheRedPin likely would have offered by now, and likely would offer in the future, a range of additional innovative and value-added tools, features and other services on a VOW based on that information. As Mr. Gidamy testified: "[It's] not about

the piece of data itself, it's how you display and how you engage and how you create stickiness …" (Transcript, September 23, 2015, at p. 293).

### (e) *Reduced quality of brokerage service offerings*

[585] The Commissioner also submitted that "but for" TREB's MLS Restrictions, including the VOW Restrictions, the quality of various real estate brokerage services that are currently offered in the Relevant Market would be substantially greater.

[586] CREA maintained that there is no evidence before the Tribunal that the quality of services is suffering because of TREB's VOW Restrictions. TREB added that any alleged substantial increase in quality of service would be manifested in more customers hiring a brokerage, which is not borne out by the evidence. This is discussed in section VII.D.(3) below.

[587] TREB further asserted that the majority of the content displayed on a website with a VOW comes from sources other than the VOW Data Feed, and that the "real value of these websites is not the provision of information itself, but rather in the analysis of that information." TREB maintains that "the facilitation of some additional data analysis" by full-information VOWs would not represent a significant increase in quality of service. It states that this is particularly so given that brokerages in the GTA already provide analysis based on sold data, as does TREB through its Market Watch publication. In this regard, TREB referred to Sage Real Estate's Market Report newsletter, which provides statistical trends over the previous month for a variety of neighbourhoods in Toronto, aggregated statistics for the neighbourhood, and some individual transaction-level information about properties that sold in the neighbourhood. Those statistical trends include average sold prices for homes in the neighbourhood, trend lines depicting the relationship between sold prices and list prices, and a chart comparing the average number of days on the market each month over a three-year period. TREB also referred to various analytics provided by Realosophy on its blog, including a comparison of buyers' purchasing power across Toronto neighbourhoods. In addition, TREB noted that its Market Watch publication includes aggregated statistics on transactions processed through TREB's MLS system for the month, as well as a statistical break-down of sold house prices by type and by various regions of the city that appear to approximate large neighbourhoods. That publication also contains year-to-date statistics and year-over-year statistical comparisons.

[588] However, the Tribunal agrees with the Commissioner that the *additional* data analysis which TREB acknowledges would be provided by full-information VOW operators is an important part of what full-information VOWs likely would introduce to the Relevant Market, in the absence of the VOW Restrictions. Another important part of what those VOW operators would introduce would be other innovative service offerings that would be based on manipulation of the Disputed Data and that would be quickly accessible through the VOW. For example, full-information VOW operators would be in a position to provide the type of information that is available in TREB's Market Watch and in Sage Real Estate's Market Report much more quickly than is currently the case. (The Tribunal understands that this is monthly.)

[589] Moreover, the Tribunal disagrees with TREB's position that the additional data analysis that full-information VOWs would likely introduce to the Relevant Market in the absence of the VOW Restrictions would not likely represent a significant increase in quality.

[590] The Tribunal has discussed in section VII.D.(2)(d) above some of the additional innovative services that the Commissioner's witnesses have testified they would likely offer in the absence of the VOW Restrictions. In addition to those new services, those witnesses testified that, in the absence of the VOW Restrictions, they would likely be able to provide better quality versions of existing services, such as better, more accurate and more complete CMAs; more timely and automated notifications of price reductions; and more accurate, timely and complete other information regarding homes with particular characteristics in a specific neighbourhood, or other matters. Such other information includes detailed historical MLS listing information (including with respect to "solds," "pending solds," and WEST listings), dating back many years; statistical analysis tools that, among other things, would assist buyers to determine how long a property might take to sell, or what the sales price-to-listing price ratios are in a particular neighbourhood; and "live" status-change or other information that would enable customers to react quickly to developments in the market. The Tribunal considers the enhancement of CMAs to be particularly significant, as the evidence suggests that it is one of the more valuable sales tools used by agents.

[591] TREB also submitted that if sold data were to become available on its VOW Data Feed, it would be relatively easy for any brokerage in the GTA to display that data on its website. It therefore suggested that in examining the significance of the potential availability of that information to full-information VOWs, the Tribunal should focus on the incremental value that such information would have for full-information VOWs, by virtue of the value added that they would provide to that sold information.

[592] Once again, the Tribunal disagrees. In assessing whether TREB's practice of withholding sold data from its VOW Data Feed and prohibiting the display of sold data on its Members' websites is preventing competition, it is relevant to consider the incremental value that this would have for the Relevant Market as a whole, not just for full-information VOWs. To the extent that other brokerages, in addition to full-information VOWs, can be expected to respond to the enhanced quality offerings of the full-information VOWs, that is a further effect that must be taken into account in the Tribunal's assessment. For example, the Tribunal considers it likely that many other brokerages in the Relevant Market would respond to the more accurate CMAs mentioned above, by offering more accurate CMAs of their own. A failure to do so would make it more difficult for them to effectively compete. In any event, the Tribunal considers it reasonable to infer that many of the 322 brokerages that are already offering VOWs in the GTA likely would respond to the enhanced service quality offerings of ViewPoint, Realosophy and TheRedPin, with improved service offerings of their own. In brief, if the Disputed Data were included in TREB's VOW Data Feed, it is reasonable to expect that at least some of those brokerages would use that information on their VOWs to compete with those who will be using that information.

[593] TREB asserts that a brokerage website with the Disputed Data on its VOW would not provide a significant increase in quality at either the search phase or the valuation/offer phase of the home sale and purchase process, which are discussed at paragraphs 215-220 of these reasons. Although TREB acknowledges that the Disputed Data is valuable to potential home sellers and purchasers during the latter phase, TREB insists that there is no significant incremental value associated with that data being available on a VOW versus other delivery mechanisms, including orally or by hand from an agent, particularly since a consumer must in any event work with an agent in person at that stage. TREB adds that the Disputed Data is much less valuable to consumers during the search phase, because home buyers at that stage are just generally attempting to learn about the home buying market.

[594] TREB's position is contradicted by the testimony of several of the Commissioner's witnesses, whose testimony the Tribunal finds persuasive and credible.

[595] For example, Mr. McMullin testified that registered users on www.viewpoint.ca view the sales history of a property more often than anything else and have confirmed in surveys and verbally that they consider the sales history of a home, including with respect to sold and WEST listings information, to be the information that is most important to them. Among other things, this information enables them to make more informed decisions and to better understand the marketplace before they contact a broker or an agent. As an indication of the level of interest of ViewPoint's registered users in sales history, Mr. McMullin stated that ViewPoint's analysis of user activity on www.viewpoint.ca indicated that about **[CONFIDENTIAL]** of the distinct users who had accessed the website over a 30-day period had reviewed the sales history of at least one sold property; and that this percentage increased to **[CONFIDENTIAL]** over a 90-day period. Similarly, Mr. Nagel stated that the sold listings pages on Redfin's website are one of the most viewed types of pages, ranking only after the main home page, the main map for each metropolitan area and current listings.

[596] In addition, Mr. Gidamy stated that having the Disputed Data available in TREB's Data Feed would significantly improve the accuracy, timeliness and quality of service that TheRedPin provides to its customers. A similar point was made by Ms. Desai.

[597] Mr. Enchin observed that, prior to 2007, when TREB disabled the download function that allowed him to download MLS listings in bulk form from its MLS system, he offered a sophisticated appraisal tool on his VOW that, among other things, used sold and "pending sold" data to predict the actual selling price of homes within $1,000-$2,000. Mr. Enchin testified that this tool assisted home sellers to determine if their homes were listed at the appropriate price. He added that having access to sold information also helps people to determine how long a home might take to sell and to estimate sales to listing ratios. In addition, he stated that this tool was of value in assisting home purchasers to determine the appropriate price to offer for a home.

[598] Based on the foregoing, the Tribunal concludes that, "but for" the VOW Restrictions, the quality of some important service offerings in the market likely would be significantly greater (*Canada Pipe FCA* at para 58).

[599] For example, CMAs likely would be based on more comprehensive information, and therefore would be more helpful and accurate. Mr. Hamidi indicated it would be possible to create a CMA with sold data on homes with indoor swimming pools or certain school, neighbourhood or lifestyle information. Furthermore, interactive maps and other features that may currently exist in the Relevant Market would reflect sold prices and other updates (including with respect to WEST listings, and the fact that a conditional offer has been placed on a home), and would do so in "real time."

[600] In addition to the foregoing, having access over the Internet to the Disputed Data, and to analyses incorporating that information, would provide value to those home sellers and purchasers who prefer to have that information *prior to* meeting with a broker; or who may wish to choose between the convenience and transparency of obtaining that information over a full-information VOW and obtaining it directly from an agent in the traditional manner.



### (f) *Reduced innovation*

[601] The Commissioner submitted that TREB's MLS Restrictions, including its VOW Restrictions, have stifled innovation or shielded its Members from innovative forms of competition, by excluding innovative brokerage models from the Relevant Market and by preventing existing brokerages from offering innovative hybrid or mixed-model services to consumers.

[602] In response, TREB and CREA maintained that there is and will continue to be a high degree of innovation in the Relevant Market, and that the overall extent of innovation in the market has not been materially reduced by the VOW Restrictions. They insisted that this is particularly so with respect to the Internet, which they stated has become and will remain an intensely competitive arena for brokers and agents.

[603] Among other things, TREB noted that its Members use technology for a variety of purposes, including: promoting individual listings through property-specific and general brokerage websites; using social networking in promoting listings; automating real estate transaction paperwork; and providing "live chat" capability with the brokerage over the Internet.

[604] TREB added that not all "innovative brokerages" choose to implement a VOW Data Feed within their brokerage website. For example, Sage Real Estate was recognized in the media as "the most philosophically and technologically advanced brokerage in the city of Toronto" despite not using a VOW Data Feed in its website. Using TREB's IDX feed and CREA's DDF feed, Sage Real Estate is turning its website into a home search portal for buyers not only in Toronto, but across Canada. Likewise, Ultimate Realty has four separate websites and two different mobile apps. Once again, its website that is geared towards residential real estate uses TREB's IDX feed and the DDF feed. (However, the mobile app that is geared towards residential real estate uses TREB's VOW Data Feed.) Between 75 and 125 leads are generated each month through these online tools. CREA noted that a number of other brokerages in the

GTA, including TheRedPin, Realosophy, Zolo and Spring Realty, are using their websites to distinguish themselves from their competitors and as their primary lead generation tool.

[605] More broadly, TREB noted that brokerages covering well over 90% of its membership are subscribed to its IDX feed; and that nationally, 73% of CREA's membership is subscribed to its DDF feed, notwithstanding that provincial regulation limits the participation of realtors in Québec, Manitoba and Saskatchewan. Among other things, the listing information available on the DDF is comparable to that found on realtor.ca, and therefore does not include the information included in the Disputed Data fields.

[606] For its part, CREA noted that its website realtor.ca is highly popular and, among other things, allows consumers to search active listings and obtain detailed information and photos about properties across Canada, without the need to call a broker or to provide their identity through a log-in requirement. In 2014 alone, realtor.ca provided approximately 1 million leads to Canadian realtors. Mr. Simonsen testified in September 2015 that year-to-date data indicated that this number was likely to approximately double in 2015. Moreover, for purchasers planning on making a real estate decision within three months, 60% of the people who responded to a survey on realtor.ca were using the website as their primary source for searching properties, 70% were working with a realtor and 72% planned to do so. Among other things, users of realtor.ca are able to keyword search or search using a map function, view listing information including up to 99 photographs for each listing (with more available by link), take virtual tours, compare properties, review neighbourhood demographic information, get directions to a property, assess the property's "walkability" by its "walk score," email the listing to others and contact an agent. CREA plans to add additional innovations in the near future.

[607] The Tribunal acknowledges that TREB and its Members have developed various Internet-based and other innovations that provide new and valuable offerings to home sellers and buyers. However, the question is not whether there are highly innovative participants in the Relevant Market, a high degree of acceptance of innovative technology, and offerings that are popular with consumers in the existing environment, notwithstanding the VOW Restrictions. The question is whether innovation would likely be, or have been, materially greater in the absence of those restrictions. In other words, notwithstanding that TREB and its Members continue to move along the innovation ladder, would the removal of the VOW Restrictions allow innovative residential real estate brokerages to move further or more quickly up on that ladder? The Tribunal is persuaded that this is likely to be the case.

[608] Several of the innovations that have already been developed by ViewPoint, and that representatives of Realosophy and TheRedPin have stated they would likely launch or would be able to launch in the Relevant Market with a full-information VOW and access to the Disputed Data, have been discussed at various points in these reasons above (see for example paragraphs 572-581 above).

[609] Another innovation that ViewPoint has introduced is the automation of its "trade accounting." According to Mr. McMullin, ViewPoint replaced what he described as the "legacy system" that is provided by a third party, Lone Wolf, and used broadly across the residential real

estate industry. Apparently, that system is not fully integrated with the MLS system. As a result, ViewPoint extended the capabilities of its platform to encompass all of the functionality that Lone Wolf had previously provided. The sales coordinators who are responsible for managing and entering trades have reported that this has resulted in a dramatic increase in efficiency because, for example, to begin the entry of a trade they simply have to enter the property identifier or the MLS number and it will bring up a screen with a wealth of pre-populated information fields that enables them to settle transactions much more efficiently.



[610] More generally, ViewPoint is an innovative company that the Tribunal expects will continue to develop innovative service offerings that likely would be, and likely would have been, made available in the Relevant Market "but for" the VOW Restrictions. The Tribunal bases its view in this regard not only on the impressive array of innovative products that were described in Mr. McMullin's initial witness statement, but also on those additional products that it launched between the time of that statement and the time of his two subsequent 2015 statements, some of which are described in the immediately preceding section above. The Tribunal recognizes that many of those products, some of which are identified in the paragraphs immediately below, would not be adversely affected by the VOW Restrictions *per se*. However, to the extent that those restrictions are preventing ViewPoint's entry into the Relevant Market, they are indirectly preventing ViewPoint from being able to introduce the full range of its existing innovations to the Relevant Market. Those restrictions are also preventing an important innovator from further disrupting the Relevant Market. In this regard, Mr. McMullin's uncontradicted testimony is that ViewPoint "continuously and from the outset until … this day look[s] for ways to use software, the internet and data to streamline and make more efficient the delivery of what we will call brokerage services. That's everything from acquiring customers to handling their inquiries to facilitating trade on the street in terms of showings and then, finally, through to actually accounting for trades that [it] assist[s] buyers and sellers in completing" (Transcript, September 22, 2015, at p. 71). The Tribunal is satisfied that ViewPoint would continue to behave in this manner if it were to enter the Relevant Market.

[611] Apart from some of the innovative offerings that have already been described at various points in these reasons, additional offerings currently available to one or more categories of users on www.viewpoint.ca include:

a. A "property rating" feature, which allows ViewPoint's clients to see comments that other visitors to the home have posted about the property;

b. Photographs of the home taken from a helicopter or a low flying aircraft and from the street, which provide more detail and are often more recent than those typically available, which are taken from a satellite;

c. Historical tax assessment information;

d. Colour coded identifiers on ViewPoint's local maps, that allow registered users to readily identify properties that have sold or are the subject of price changes – all of which are available in "real time," and in some cases depict changes that were made on that day;

e. A standard feature that places registered users on the map at the last place they were before they logged off;

f. A monthly mortgage calculator;

g. Extensive information from the province's land registration system;

h. A side-bar list of recent listings in chronological order, which gets automatically updated in "real time";

i. A feature that enables registered users to constrain the presentation of listings to only those ones that are in the map view, together with an accompanying side-bar of new or changed listings corresponding to that constrained area, which may be expanded or narrowed at the user's discretion;

j. A feature that allows registered users to follow developments with respect to a significant number of properties, including those that are not currently listed for sale; and

k. A "Property Clicks" tool that allows registered users and registered clients to track the number of followers and clicks on a property.

[612] In addition, ViewPoint offers its listing clients information about the number of web-based visitors who have looked at their property, as well as enhanced profile on its website. Its Full Service Listing service provides further features, including providing their properties with four distinct differences from other properties identified on its interactive map and a comprehensive weekly report regarding the website activity on their property.

[613] Another innovative offering currently available from ViewPoint is an optional $1,000 "flat fee" service that it offers to sellers who want to represent themselves and reduce their selling costs. As previously noted, Mr. McMullin stated that in the absence of the VOW Restrictions, the website services offered by ViewPoint would be cutting-edge and would include many of the same features already available on www.viewpoint.ca. The Tribunal acknowledges that some of these features could perhaps be developed or offered through Internet-based data-sharing vehicles other than VOWs. But the Tribunal is satisfied, based on the evidence before it, that without access to the Disputed Data, ViewPoint is not likely to enter the GTA and to offer such other features, whether on a full-information VOW or simply in the non-VOW area of its website.

[614] Turning to TheRedPin, Mr. Hamidi testified that TREB has been preventing him and his partners from innovating using TREB's MLS data for several years. In 2009, TREB's refusal to make resale home listing data available in a feed led them to focus their efforts on new condominiums. Although they subsequently entered the Relevant Market by launching TheRedPin shortly after TREB announced its VOW Policy and Rules in June 2011, he and Mr. Gidamy each stated that, "but for" the VOW Restrictions, TheRedPin would offer additional tools and services for their clients. Mr. Silver conveyed essentially the same view.

[615] In addition, as discussed at paragraphs 576-577 above, Messrs. Gidamy and Hamidi testified that if the VOW Restrictions were eliminated, TheRedPin would develop innovative new tools to assist its agents to be more efficient and serve potential customers.

[616] Based on all of the foregoing, the Tribunal concludes that "but for" the VOW Restrictions, there likely would have been, and likely would be, considerably more innovation in the Relevant Market, including as yet unidentified innovations that would be in addition to those described in these reasons above. Some of that innovation would be in the form of the additional brokerage services and enhance quality described in the two immediately preceding sections above. Additional innovation would be in the form described in this section. However, the Tribunal wishes to emphasize that it has been careful not to "double count" these anti-competitive effects in assessing whether, together, they constitute, or are likely to constitute, a "substantial" prevention of competition.



[617] The Tribunal also accepts Dr. Vistnes' evidence that VOWs represent an important form of dynamic competition, including innovation, that offer the potential to change the manner in which competition among real estate agents and brokers occurs.

[618] The Tribunal embraces the classical definition of dynamic competition offered by Joseph Schumpeter, who defined competition as a dynamic process wherein firms strive to survive under an evolving set of rules that constantly produce winners and losers. Schumpeter added that, in this process, the basic instrument that allows firms to be ahead of their competitors is the introduction of informational asymmetries which result primarily from innovation. A framework for antitrust analysis that favors dynamic competition over static competition "puts less weight on market share and concentration in the assessment of market power and more weight on assessing potential competition and enterprise-level capabilities" (J Gregory Sidack & David J Teece, "Dynamic Competition in Antitrust Law" (2009) 5:4 *J Competition L & Economics* 581 at 581).

[619] The Tribunal is satisfied that, "but for" the VOW Restrictions, full-information VOWs likely would have an important impact on the manner in which such dynamic competition occurs. For this reason, and the reasons provided above in respect of the range and quality of brokerage services, the Tribunal also agrees with Dr. Vistnes that the VOW Restrictions have substantially reduced, and continue to substantially reduce, dynamic competition, including innovation. This will be discussed in section VII.D.(3) below.

#### (g) *Reduced pressure on commission rates*

[620] The Commissioner, supported by Dr. Vistnes, submitted that in the absence of TREB's MLS Restrictions, including the VOW Restrictions, customers in the Relevant Market would be more likely to be offered discounts or rebates on their commissions paid to brokers, as brokers use VOWs to deliver services more efficiently, reduce their costs, and then pass those cost savings along to home sellers and home buyers. The Commissioner maintained that the

aggregate savings to home sellers and buyers in the GTA would likely be very substantial over a period of years.

[621] TREB responded that the Commissioner has not demonstrated that full-information VOWs would likely offer materially lower commissions or increased discounts in the Relevant Market than VOWs currently competing there. The Tribunal agrees with TREB on this point.

[622] TREB notes that TheRedPin and Realosophy already offer discounts/rebates in the GTA with their current VOWs, and that there is no persuasive evidence that they would reduce their net commissions further, if the VOW Restrictions were prohibited by the Tribunal. Indeed, Mr. Gidamy stated that TheRedPin has been moving in the opposite direction, reducing its cash-back rebate from 25% to 15% effective June 1, 2014.

[623] TREB also notes that ViewPoint and some full-information VOWs in the United States have ceased their practice of offering discounts in recent years. With respect to ViewPoint, Mr. McMullin stated that it stopped offering rebates to buyers in recent years after determining that it was detrimental to ViewPoint's ability to attract new agents and that there was not a clear competitive advantage associated with offering such rebates. With respect to sellers, he added that they often fear that lower-priced brokerages do not provide the same level of sales and marketing exposure and that in a buyers' market, they may even wind up not selling their home.

[624] Likewise, the U.S. experience does not reflect that commission rates have decreased with full-information VOWs. ZipRealty stopped offering rebates in the United States after tests and focus-group studies revealed that its rebate program was not the primary driver of its business. A second U.S. full-service VOW that used to offer significant rebates (eRealty Inc.) was purchased by Prudential Financial Inc. which apparently ceased offering such rebates. In addition, Redfin reduced the level of its rebates/discounts in 2007 and then again in 2012. Mr. Nagel testified that he is not aware of whether commissions in the United States have been reduced since the 2008 settlement between the DOJ and NAR.

[625] Based on the foregoing evidence, and in the absence of any persuasive evidence supporting the Commissioner's position, the Tribunal concludes that it has not been demonstrated that the VOW Restrictions have had, or are *likely* to have, the effect of materially impacting in a negative way net commissions in the Relevant Market. Stated differently, the evidence does not establish on a balance of probabilities that, "but for" those restrictions, competition with respect to net real estate commissions likely would be more intense, and reflected in materially lower commissions or larger rebates for home sellers or home purchasers in the Relevant Market. Indeed, this appears to have been recognized by the Commissioner, who acknowledged in his 2015 Closing Submissions that the *focus* of the evidence in the Redetermination Hearing has been on non-price competition, even though he continued to maintain that the evidence of lower brokerage costs "is consistent with the expectation that lower costs will be passed on to home buyers and sellers in the form of lower prices over time" (Commissioner's 2015 Closing Submissions, at paras 168-169). Of course, to the extent that the elimination of the VOW Restrictions would lower the costs of participants in the Relevant Market, one would expect that this should ultimately lead to lower net commissions or lower fees

for accessing services on VOWs. However, that possibility will not be considered by the Tribunal in its assessment of whether the VOW Restrictions meet the test set forth in paragraph 79(1)(*c*) of the Act.

### (h) *Reduced output*

[626] After the Tribunal raised a question at the Redetermination Hearing regarding the impact of TREB's impugned conduct on the output of residential real estate brokerage services, the Commissioner made submissions on this issue in closing argument. In brief, the Commissioner submitted that the VOW Restrictions likely have the effect of materially reducing the level of total output of brokerage services in the Relevant Market, relative to the level of output that likely would exist "but for" those restrictions.

[627] In response to questioning from the Tribunal, Dr. Church stated that he did not agree with that submission. He based his position on his view that the demand for residential real estate brokerage services in the Relevant Market is highly inelastic, because that demand is derived from consumer demand for buying and selling homes, and the latter demand is not likely going to change based on changes in price or non-price competition with respect to brokerage services.

[628] However, the evidence demonstrates that the amount of brokerage services consumed by home purchasers and sellers is not fixed to the number of underlying home purchase and sale transactions. This is corroborated by the evidence indicating that a very high percentage of persons consume brokerage services over the Internet and that a high percentage of such persons nevertheless ultimately retain the services of a different broker to assist them to consummate the purchase or sale of a home. In this latter regard, Mr. McMullin readily acknowledged that many consumers who visit www.viewpoint.ca retain someone other than ViewPoint to be their broker.

[629] Notwithstanding the foregoing, the Tribunal excluded this issue from its consideration of whether competition has been, is, or is likely to be prevented or lessened substantially. This is because this was not part of the Commissioner's Application and TREB did not have an opportunity to respond to the Commissioner's written submissions on this point. In addition, paragraph 16 of the Order issued by the Tribunal on April 23, 2014 expressly stipulated that "[t]he economic theory of the case will not change" for the Redetermination Hearing.

### (i) *Maintenance of incentives to steer buyers away from inefficient transactions*

[630] In his initial report, Dr. Vistnes took the position that TREB's refusal to permit VOW operators to display the Disputed Data on their VOWs helps to maintain agents' incentives to steer consumers into inefficient matches, at the expense of the home buyer, the seller or both. In his view, buyers would be less vulnerable to being encouraged to offer an excessive price, and sellers would be less vulnerable to being encouraged to accept too low a price, if they had access

to the more comprehensive information that TREB's VOW Restrictions are preventing VOW operators from making available on their VOWs.

[631] Dr. Vistnes offered several examples of situations in which agents might have an incentive to steer potential home sellers or buyers into inefficient matches. For instance, he postulated that an agent may care less about a $10,000 difference in the selling price of a home, because this will only change the agent's commission by approximately $250, if the agent was splitting a 5% commission with another broker. As a result, the agent may encourage a seller to accept a lower offer (or to set a lower initial price), even if it might be in the seller's interest to wait for a higher offer to come along. Likewise, an agent might encourage a buyer to offer a higher price in order to close a sale, even if it might have been in the buyer's interest to keep looking.

[632] Another example provided by Dr. Vistnes in his 2012 expert report concerned the incentive for a buyer's agent to steer their client away from homes offering a lower buy-side commission rate, so as to protect their own commission. Using the hypothetical of two $500,000 homes on the market, offering cooperating broker commissions of 2.5% and 2.0%, respectively, he noted that the agent would earn an extra $2,500 by steering their buyer towards the higher commission home. Dr. Vistnes produced analysis which appears to provide some support for his view that this type of behaviour may be occurring in the GTA, because the frequency of different brokerages being used on both the sell-side and the buy-side of a transaction is greater when the buy-side commission exceeds 1% than when it is less than 1%.

[633] A third example provided by Dr. Vistnes concerned dual agency situations where an agent represents both buyers and sellers. Dr. Vistnes postulated that when agents have opportunities to produce dual agency outcomes, they have a strong incentive to do so, regardless of whether that may be in the interest of the buyer or seller. In this regard, Dr. Vistnes prepared a statistical analysis of sales by the five largest corporate brokerages in the GTA, which appears to show that dual-agency outcomes are more common than expected.

[634] While informative, the evidence provided by Dr. Vistnes with respect to steering does not assist the Commissioner to demonstrate that TREB's VOW Restrictions have prevented or lessened, or are likely to prevent or lessen, *competition between brokers* in the Relevant Market.

[635] The Tribunal notes that this theory was not mentioned in the Application, was not addressed to any material degree in the Commissioner's 2015 Closing Submissions, and was not supported by any significant additional evidence. For example, the Commissioner did not adduce evidence to demonstrate that full-information VOWs have ever competed in specific ways to reduce steering, let alone to demonstrate that such efforts have had a material impact on price or non-price dimensions of competition.

[636] As a practical matter, the Tribunal agrees with TREB's position that the scope for agents to act in the ways described by Dr. Vistnes is reduced, relative to what it once may have been, by the availability of substantially more information on the Internet and elsewhere regarding homes that are for sale or have sold in the Relevant Market.

[637] The Tribunal also notes that RECO's *Code of Ethics* appears to address the principal concerns raised by Dr. Vistnes. Specifically, section 19 states:

> If a brokerage has entered into a representation agreement with a buyer, a broker or salesperson who acts on behalf of the buyer pursuant to the agreement shall inform the buyer of properties that meet the buyer's criteria without having any regard to the amount of commission or other remuneration, if any, to which the brokerage might be entitled.

[638] For the foregoing reasons, the Tribunal thus concludes that the Commissioner did not demonstrate that the VOW Restrictions are preventing or lessening competition between brokers by maintaining steering incentives that would be materially diminished in the absence of those restrictions.



#### (j) *Conclusion*

[639] The Tribunal therefore concludes, on a balance of probabilities, that "but for" the VOW Restrictions, there likely would be a considerably broader range of services in the Relevant Market, the quality of some services in the Relevant Market likely would be significantly better, and there likely would be considerably more innovation in the Relevant Market. There would also be reduced barriers to entry and costs. However, the Tribunal is not satisfied that, "but for" the VOW Restrictions, commission rates, output or the incentive to steer buyers away from inefficient transactions would be reduced in the Relevant Market.

### (3) Substantiality of anti-competitive effects

[640] The Tribunal must now determine whether the anti-competitive effects attributable to the VOW Restrictions and identified above raise to the level of "substantiality" required by paragraph 79(1)(*c*) of the Act.

[641] TREB and CREA submitted that the VOW Restrictions do not result in prices that are materially greater, or in levels of non-price competition that are materially lower, than the levels of price and non-price competition that would likely exist "but for" the VOW Restrictions. In taking this position, TREB emphasized that the Tribunal's assessment should be narrowly focused upon the incremental impact of an order requiring the Disputed Data to be made available for search and display on its Members' VOWs.

[642] The Tribunal's focus has indeed been upon the incremental impact of the VOW Restrictions. However, in determining whether the "substantiality" element is met, the Tribunal must assess the aggregate incremental impact of the three aspects of the VOW Restrictions that the Commissioner alleges constitute a practice of anti-competitive acts, namely (i) excluding the Disputed Data from TREB's VOW Data Feed; (ii) prohibiting TREB's Members from using the information included in the VOW Data Feed for any purpose other than display on a website;

and (iii) prohibiting TREB's Members from displaying certain information (including the Disputed Data) on their VOWs.

[643] For the reasons set forth in section VII.D.(2) above, the Tribunal has concluded that, "but for" that practice of anti-competitive acts, there would likely have been, and would likely be in the future:

- more and faster entry and expansion by new and existing competitors than is currently the case;
- lower costs for operating a VOW;
- a considerably broader range of brokerage service offerings;
- an increase in the quality of various product offerings; and
- a considerably greater degree of innovation.

[644] The question that therefore remains is whether, taking all these factors together (and regardless of whether they individually meet the "substantiality" threshold), the aggregate impact of these incremental anti-competitive effects of TREB's VOW Restrictions constitutes, or is likely to constitute, a *substantial* prevention of competition. It bears underscoring that, in addressing this question, the issue is not whether innovative brokers can compete without a VOW that includes the Disputed Data. Rather, the issue is whether the VOW Restrictions have prevented, are preventing, or are likely to prevent competition substantially in the Relevant Market. This "substantiality" is assessed in terms of magnitude and scope.

**(a)** ***Magnitude and degree***

[645] TREB and CREA suggest that the issue of substantiality cannot be answered in the affirmative unless the evidence establishes that full-information VOW-based brokerages would likely be hired by significantly more clients as a real estate brokerage, as a result of being able to display the Disputed Data. TREB adds that it is not relevant for the Tribunal's analysis if a website becomes more popular with "real estate voyeurs" or consumers who are ultimately going to hire another brokerage.

[646] The Tribunal considers that the first of these propositions by TREB and CREA must be recast in terms of whether full-information VOW brokerages likely would be hired by significantly more clients as a real estate brokerage, "but for" the *aggregate impact* of the three components of TREB's practice of anti-competitive acts described at paragraph 642 above.

[647] Moreover, the Tribunal's analysis cannot be confined to the impact of that practice on full-information VOW-*based* brokerages. It is also important and relevant for the Tribunal to consider whether those existing TREB Members who wish to offer full-information VOWs, while also continuing to compete as traditional "bricks and mortar" brokerages would likely be

hired by significantly more clients as a real estate brokerage, as a result of being able to operate as full-information VOWs in addition to their more traditional offerings. (The Tribunal understands that to the extent that many of the 322 Members of TREB who are now offering VOWs continue to also conduct business in the traditional manner, they are not considered to be full-information VOW-*based* brokerages.)

[648] Turning to "real estate voyeurs," TREB submits that to the extent that those consumers proceed from a VOW to use another brokerage to complete their real estate transactions, the fact that they may have visited the VOW before that point in time is without competitive significance under paragraph 79(1)(*c*).

[649] The Tribunal disagrees. To the extent that such other brokerages likely would have to compete to a greater degree to prevent the consumers in question from becoming clients of the full-information VOW brokerages whose websites they have visited, the fact that the latter do not ultimately win the patronage of such clients is not irrelevant to the Tribunal's assessment. Stated differently, as a general principle, innovation is not only relevant to the Tribunal's assessment under paragraph 79(1)(*c*) to the extent that it assists the innovator to win business. It is also relevant to the extent that it prompts rivals in the relevant market to respond with competitive initiatives of their own, in order to retain such business or to win it away from either the innovator or another rival.

[650] A good example of this is the evidence that Bosley and RE/MAX Hallmark displayed sold information on their respective websites for at least ten months in 2014/2015. As discussed in paragraph 373 above, when requested by TREB to cease displaying sold information, Bosley's President, Mr. Tom Bosley, expressed the hope that TREB would "take the appropriate action or those of us following the rules will have no choice but to follow [the] lead" of those other brokerages who were posting such information. Another example, on a much broader scale, is realtor.com's decision to begin posting sold information subsequent to the widespread posting of such information on other websites in the United States (see paragraph 700 below). A third example would be the approximately 322 brokerages that TREB has stated now operate VOWs in the GTA, as a result of the introduction of TREB's VOW Policy and Rules, which were pushed by a smaller number of innovators.

[651] To further buttress its position that the VOW Restrictions have had no material adverse impact on the Relevant Market, TREB noted that TheRedPin and Realosophy have continued to grow their business despite the VOW Restrictions, as confirmed by Messrs. Gidamy and Pasalis, and to expand their respective presence in the media.

[652] However, this is beside the point. What is pertinent for the Tribunal's analysis is the testimony of Messrs. Gidamy, Hamidi and Pasalis and Ms. Desai regarding the significant value of sold information, and how the ability to display and use such information would enable TheRedPin and Realosophy to offer a range of additional new services to their clients and agents. The Tribunal is satisfied that this ability to offer a range of additional new services to their clients and agents would assist TheRedPin and Realosophy to be able to better compete, and therefore to grow, materially more than they have been growing.

### (i) The limited quantitative evidence

[653] TREB and CREA submitted that if full-information VOWs were as much of a disruptive technology as the Commissioner has suggested, the impact of their presence on residential real estate brokerage markets in the United States and in Nova Scotia would be observable. However, TREB and CREA noted that the Commissioner and Dr. Vistnes failed to conduct any empirical analysis of any of those markets, notwithstanding the fact that full-information VOWs have existed in the United States for over seven years and have existed in Nova Scotia for a number of years. TREB and CREA also stated that the Commissioner failed to adduce any quantitative analysis of the relative effectiveness of VOWs with sold data and VOWs without sold data in converting website users to clients. In other words, they asserted that the Commissioner failed to present empirical evidence of the incremental effect of sold and other Disputed Data in increasing a full-information VOW operator's ability to generate clients. TREB requested the Tribunal to draw an adverse inference from the Commissioner's failure to conduct such empirical analysis.

[654] TREB further argued that information comparing Redfin's conversion rates in local markets where it can display sold information on its website, with its rates in local markets where it cannot display that information on its website, was available to Mr. Nagel, yet was not provided. Once again, TREB requested the Tribunal to draw an inference that is unfavourable to the Commissioner, because Mr. Nagel was the Commissioner's witness.

[655] During the Redetermination Hearing, the Tribunal pressed Dr. Vistnes on the Commissioner's failure to conduct an empirical assessment comparing the nature and extent of competition in areas of the United States where sold data is available on VOWs, with the level of competition in areas where sold data is not available on VOWs. Dr. Vistnes explained that he advised the Commissioner against attempting to subpoena MLS information from real estate boards in the United States because, to conduct a legitimate study, it would have been necessary to obtain "a tremendous amount of data from a significant number of MLSes." Based on his experience with the dispute that led to the 2008 settlement between the U.S. DOJ and NAR, this would have required "a huge outlay of effort" that may not "have been particularly reliable or particularly informative," given the difficulty of having to properly control for all of the differences in the local markets in question. He therefore advised the Commissioner that he did not believe that that would be the best way in which to advance the case.

[656] The Tribunal acknowledges that, as a statutory authority, the Commissioner has to be prudent with, and make difficult decisions regarding the allocation of, the limited public funds available for administering and enforcing the Act at any given time. The Tribunal also accepts that Dr. Vistnes' experience with the dispute between the U.S. DOJ and NAR provided a legitimate basis upon which to draw conclusions about the costs and utility of a comparative analysis between local markets where sold information is available and other local markets where it is not available. Therefore, the Tribunal is not prepared to draw an adverse inference from the Commissioner's failure to conduct the empirical assessment in question regarding the U.S. experience. That said, the Tribunal notes that the Commissioner continues to bear the

burden of supporting his Application on the balance of probabilities, which may well be a more challenging task in the absence of quantitative evidence.

[657] However, the Tribunal is prepared to draw some adverse inference from the failure of Messrs. Nagel and McMullin to adduce evidence regarding the experience of Redfin and Viewpoint, respectively, in areas of the United States and Nova Scotia where sold information or the "pending sold" price is and is not permitted to be displayed on its website. That is to say, the Tribunal is prepared to infer that Redfin's and ViewPoint's conversion rates in areas where they are not permitted to display "sold" information or "pending sold" prices on their website are not lower than they are in areas where those entities are permitted to display that information on their websites. However, given that this may well be explainable by the local differences mentioned by Dr. Vistnes, the Tribunal does not accord great significance to this inference. The more significant points, in the Tribunal's view, are that both Mr. Nagel and Mr. McMullin persuasively testified that sold information is critical to potential home sellers and buyers (see discussion at paragraphs 595 and 675 of these reasons), and that being prohibited from providing that information to consumers in various innovative formats is significantly impeding them from distinguishing themselves from their rivals.

[658] That being said, the Tribunal observes that even a limited comparison between one local U.S. market where sold information is available and one local U.S. market where such information is not available may have been at least somewhat helpful. The same is true with respect to Nova Scotia and the HRM, with regards to "pending sold" prices. The Tribunal further notes that in other parts of his testimony, Dr. Vistnes confirmed that the U.S. experience since 2008 could be instructive, so long as the analysis controlled for differences that might exist between the markets being compared. The absence of any such comparison, including a quantitative comparison of markets with and without full-information VOWs, rendered much more difficult the Tribunal's assessment of the "substantiality" element of paragraph 79(1)(*c*), and resulted in this case being much more of a "close call," than it otherwise may have been.

**(ii) Conversion rates**

[659] In addition to the foregoing, both TREB and CREA raised the issue of the low "conversion rates" of full-information VOWs. The Tribunal pauses to note that this term was sometimes used to describe the conversion of website visitors to registered users on a VOW and sometimes used to describe the subsequent conversion of registered users on a VOW to actual clients of the brokerage.

[660] TREB and CREA maintained that the available evidence on "conversion rates" indicates that full-information VOWs have not had a substantial impact on competition in the United States or in Nova Scotia. While full-information VOWs have been successful in attracting a large number of visitors to their respective websites, they have been much less successful in converting those visitors to clients who retain them on actual purchase and sale transactions.

[661] TREB noted that Redfin and ViewPoint have "conversion" rates of only **[CONFIDENTIAL]**, and **[CONFIDENTIAL]** respectively, whereas TheRedPin's conversion

rate is **[CONFIDENTIAL]** even though it does not have a full-information VOW. For Redfin, this figure represents the percentage of unique website visitors who registered on its website over the three-year period 2012-2014. For ViewPoint, it represents the number of transactions that it brokered during the period from January 1, 2015 to September 19, 2015 **[CONFIDENTIAL]** divided by the total number of new registered users during that period **[CONFIDENTIAL]**. However, if one were comparing "apples to apples," ViewPoint's "conversion" rate appears to have been **[CONFIDENTIAL]** in 2014, as there were **[CONFIDENTIAL]** new registrations out of **[CONFIDENTIAL]** users that year (Exhibit CA-103, ViewPoint Realty Business Metrics; 2015 McMullin Second Statement, at p. 28). For TheRedPin, the "conversion rate" represents the "current" percentage of registered users on its VOW who hired TheRedPin on a completed transaction, although the specific period in relation to which this percentage pertains was not provided. TREB observed from these statistics that TheRedPin is approximately **[CONFIDENTIAL]** times as successful in converting clients as Redfin, and over **[CONFIDENTIAL]** times as successful as ViewPoint.



[662] The Tribunal does not accord much significance to the fact that the low conversion rates of firms such as ViewPoint, Redfin and TheRedPin suggest that many consumers are evidently treating the information available on their websites as complements to the information available from the (different) broker they ultimately use to list or purchase their home. The fact remains that the innovative tools, features and other services available on those websites is assisting them to compete, and is forcing traditional brokerages to respond.

[663] TREB invited the Tribunal to conclude from this evidence on conversion rates that there is no causal relationship between having a full-information VOW and being able to convert website users into clients. TREB asked the Tribunal to draw a similar conclusion from the fact that technology-based competitors such as TheRedPin and Realosophy continue to grow, even though they do not have access to a VOW containing the Disputed Data.

[664] The Tribunal is not prepared to reach such conclusions. The Tribunal acknowledges that conversion rates are low and that the quantitative evidence provided by the Commissioner in this proceeding is limited. The Tribunal also recognizes that there is no quantitative evidence comparing markets where VOW operators have access to sold listings or other Disputed Data with markets where they do not. However, the Commissioner's case is focused on dynamic competition and innovation. In such cases, reliable quantitative evidence is often not available or cannot easily be obtained. In the absence of quantitative evidence comparing the performance of Redfin or ViewPoint in markets where, on the one hand, they are able to display and use the Disputed Data to offer services that are based on that information, and on the other hand, they are not able to display and use some or all of the Disputed Data, the Tribunal must make its determination on the basis of the available evidence, in this case primarily qualitative, on the record.

### (iii) Qualitative evidence

[665] The qualitative evidence adduced by the Commissioner demonstrates six important things.

[666] First, as discussed in greater detail below, the Disputed Data is very important, if not critical, in assisting Internet-based brokerages to distinguish themselves from incumbent traditional brokerages. And being able to distinguish themselves from more traditional brokerages is an essential element to allow VOW operators like ViewPoint, TheRedPin or Realosophy to enter the Relevant Market, or to expand within it to the degree that otherwise likely would be the case.

[667] Second, home purchasers and sellers value being able to obtain information with respect to sold prices, the conditional sale status of homes in the market, firm "pending sold" information, WEST listings and cooperating broker commissions *prior to* meeting with their broker/agent, or in any event *prior to* finalizing the listing price of their homes or making an offer on a home.

[668] Third, an inability to display and use the Disputed Data to develop innovative products has been preventing, and is likely to continue to prevent, ViewPoint from entering the Relevant Market. This has also prevented Realosophy and TheRedPin from growing as much as they likely would have grown, and is likely continuing to prevent them from growing as much as they likely would grow, "but for" the VOW Restrictions. Moreover, this also prevented Sam & Andy from expanding within the Relevant Market, and prevented their brokerage customers from doing the same.

[669] Fourth, ViewPoint, Realosophy and TheRedPin are Internet-based innovative brokerages that, in aggregate, likely would have introduced a considerably broader range of brokerage services, increased the quality of some important services (such as CMAs), benefited from lower operating costs and considerably increased the overall level of innovation in the Relevant Market, "but for" the VOW Restrictions. The cumulative impact of these anti-competitive effects resulting from the VOW Restrictions is such that the level of non-price competition would likely be substantially greater in the absence of the impugned practice.

[670] Fifth, the VOW Restrictions have erected barriers to the entry and expansion of innovative brokers in the Relevant Market. ViewPoint's disruptive, innovative approach to its business has assisted it to become the largest independent brokerage in Nova Scotia, and to continue growing even during the downturn in the real estate business that has occurred in 2013 and 2014. Although the Tribunal cannot predict whether ViewPoint likely would achieve a share of the Relevant Market that is similar to what it has achieved in the HRM **[CONFIDENTIAL]**, the Tribunal is satisfied that, in the absence of the VOW Restrictions, ViewPoint likely would enter, grow and become an important competitor in the Relevant Market. To put ViewPoint's **[CONFIDENTIAL]** share into perspective, the Tribunal observes that Dr. Church reported in 2012 that the largest brokerage in the GTA at that time had a market share of approximately 4%. Dr. Vistnes estimated that even a 3% market share would make ViewPoint roughly the sixth or seventh largest firm in the GTA. The Tribunal notes that Mr. McMullin testified in September 2015 that ViewPoint was on track to finish the year with a 25-28% increase in its number of brokered transactions in Nova Scotia. The Tribunal is also satisfied that the VOW Restrictions are preventing TheRedPin and Realosophy from growing and becoming significantly more important competitors in the GTA.

[671] The Tribunal considers that its conclusion regarding the ability of these entities to enter into and expand within the GTA is supported by the experience of Redfin in the United States, which continues to expand and grow. Although its absolute share of the overall residential real estate brokerage business in the United States is small (i.e., well below **[CONFIDENTIAL]**% in the areas where it operates), it was ranked 13 out of the 500 top real estate brokerages in the United States in 2011, based on the number of closed transactions per sales associate. Redfin's continued growth and expansion demonstrates that its business model is successful.

[672] Sixth, the VOW Restrictions have stifled innovation in the supply of Internet-based real estate brokerage services in the GTA.

[673] The Tribunal is satisfied that that the qualitative evidence provided by the Commissioner in respect of the foregoing matters is not speculative and is specific enough to meet, on a balance of probabilities, the substantiality threshold set forth in paragraph 79(1)(*c*).

### (iv) Importance of the Disputed Data

[674] Furthermore, the Tribunal accepts the qualitative evidence of several of the Commissioner's witnesses who testified regarding the importance of information pertaining to the Disputed Data (i.e., sold, "pending sold," WEST listings and cooperative broker commissions), both to them and to home sellers/purchasers.

#### *A. Sold data*

[675] Regarding sold information, Messrs. Nagel, McMullin, Pasalis, Gidamy, Hamidi and Enchin all testified that this information is very important to home sellers and buyers; and that being able to display and use that information on their VOWs would assist them to convert visitors to their VOWs into clients. The Tribunal also accepts Mr. McMullin's testimony that sold prices are "the single most reliable piece of evidence of market activity in the real estate business, because a listing price is nothing more than an advertisement, a solicitation, an aspiration of a seller, whereas a sold price is indicative of market value for a property" (Transcript, September 22, 2015, at p. 91).

[676] The Tribunal concludes that being able to obtain sold information from the VOW Data Feed, and to work with that data as they see fit, would likely enable full-information VOWs, including ViewPoint and those such as TheRedPin who would like to become full-information VOWs, to convert an increasing and significant number of website users into clients.

[677] Parenthetically, an important aspect of "sold" price data is information about the number of days that a sold home was on the market. Although days on the market (**"DOM"**) information is available in TREB's VOW Data Feed for current listings, it is not available for homes that have sold. Given that homes that have not yet sold sometimes spend more DOM on average than homes that have sold, Dr. Vistnes indicated that having access only to DOM information about *current* listings can give consumers a misleading sense of how long a home may spend on the

market. Moreover, not having access to DOM information for "sold" homes can deprive consumers of potentially very valuable information, particularly in a "hot" market.

### *B. Pending sold information and conditional sold status*

[678] With respect to "pending sold" information, TREB noted that it is not available on Redfin's website, and that the Commissioner has not provided evidence to demonstrate that the lack of that information impedes Redfin's ability to compete in the United States at all, let alone substantially. It added that ViewPoint has not been able to display "pending sold" information outside the HRM since 2013, yet no evidence has been adduced that this has impeded ViewPoint's ability to compete outside the HRM in any manner.

[679] However, the Tribunal accepts Mr. McMullin's evidence that the fact that a conditional offer has been accepted on a home, together with "real time" access to the sold price of that home, is information that is "of enormous value" for home buyers and sellers, and therefore for ViewPoint. Among other things, this information gives consumers important information regarding the value of a comparable home at a particular moment in time, which can be extremely valuable in a market that is rising or falling. Mr. Enchin made essentially the same point during his cross-examination, and observed that "pending sold" information is "as important, if not more important, than actual sold data" (Transcript, September 14, 2012, at p. 779).

[680] Dr. Vistnes analyzed TREB's MLS data and determined that the median duration between the "sale date" and the "close date" for sold homes in the GTA from 2007 to 2011 was approximately seven weeks. Therefore, providing home sellers and home buyers with "pending sold" information eliminates an important information lag that would otherwise exist. Timely access to this information can be very important in a rising or declining market. In the GTA, the significance of a seven-week lag can perhaps best be appreciated by considering that, between June 2010 and June 2011, market prices in the GTA increased at an average annual rate of about 10%. Thus, prices in any given two-month period increased approximately 1.5%, on average, across the GTA, with some neighbourhoods experiencing even greater increases. On the price of $500,000 home, this works out to approximately $8,000 per two-month period.

[681] Mr. McMullin added that conditional sold information also permits agents and their clients to avoid spending their time seeing or further considering a property that is the subject of a conditional sale. In addition, knowing the date by which the conditions must be satisfied enables other potential buyers who are still interested in the home to check whether the deal actually went "firm" on that date, and to act accordingly.

[682] The Tribunal also accepts Mr. Gidamy's evidence that a buyer may well continue to be interested in a property that has just changed from an active listing to a conditionally sold listing; and that having information regarding the conditions of a purchase enables TheRedPin to better advise such buyers as to the likelihood of the conditions being met and whether there is a pattern or trend of conditions in a particular neighbourhood or building not being met.

[683] The Tribunal further notes that the NAR 2014 Profile reported that information with respect to "pending sales/contract status" was considered by 69% of those who participated in the study to be "very useful" or "somewhat useful" information to obtain on a website.

### *C. WEST listings*

[684] With respect to WEST listings, TREB reiterated a number of the same arguments that it made with respect to "pending solds." However, once again, the Tribunal accepts Mr. McMullin's evidence that this information is very important to both ViewPoint and its users, and that this has been confirmed through surveys and discussions with its users. This is because it assists potential home sellers and buyers to make a well-informed decision. Stated differently, Mr. McMullin testified that this information assists clients to rationalize the marketplace and to possibly measure the motivations of the seller.

[685] In an attempt to estimate how much information a consumer would fail to see if his or her CMA excluded WEST listings and pending sales, Dr. Vistnes conducted an analysis of all past sales during the six month period preceding March 1, 2012, all WEST listings during that period, and all sales that were pending as of March 1, 2012 that had not yet closed. That analysis, set forth in his 2012 reply report, revealed that, for the top 100 communities in the GTA, consumers would lose information on approximately 46% of listings that they otherwise would be able to consider, "but for" the unavailability of the Disputed Data.

### *D. Cooperating broker commissions*

[686] Turning to cooperating broker commissions, the Commissioner's submissions were largely focused on his buyer steering argument, which the Tribunal has concluded was not demonstrated on a balance of probabilities.

[687] However, the Commissioner also submitted that TREB's prohibition on the display of offers of commissions on a VOW and the exclusion of this information from its VOW Data Feed increases the costs of VOW operators and reduces their ability to distinguish themselves from their competitors. The Tribunal agrees.

[688] With respect to the impact of these restrictions on VOW operators' costs, Messrs. Gidamy and Hamidi testified that TheRedPin would like to use offer of commission data to calculate more tailored rebates. At the present time, TheRedPin advertises rebates based on an assumed 2.5% cooperating commission, because achieving greater precision would require manually entering the offers of commission for every active listing, which would be prohibitively time consuming.

[689] Regarding the ability of VOW operators to distinguish themselves, Messrs. McMullin, Silver, Hamidi and Pasalis each stated that being able to provide this information would enable them to increase transparency in the market. Mr. Silver added that this would improve the customer experience created on TheRedPin's website, while Mr. Pasalis observed that this would

improve consumers' trust and confidence in real estate agents. Mr. Enchin testified that educated customers would find this information to be valuable.

[690] To the extent that increasing transparency is an important aspect of their Internet-based business models, the Tribunal accepts that being able to display this offer of commission would assist full-information VOWs and other Internet-based brokerages to better distinguish themselves from traditional brokerages, who appear to prefer to disclose this information in person (to keep the broker/agent "at the centre of the real estate transaction"), if at all.

### *E. Conclusion*

[691] The Tribunal concludes that information with respect to sold data, "pending sold," the conditional sale status of a home, WEST listings and cooperating broker commissions is very valuable to those Internet-based brokerages who testified in this proceeding and to home purchasers and sellers. The Tribunal accepts the evidence that this information is very important, if not critical, in assisting Internet-based brokerages to distinguish themselves from incumbent traditional brokerages. The Tribunal also finds persuasive the evidence that home purchasers and sellers value being able to obtain this information prior to meeting with their broker/agent, or in any event, prior to finalizing the listing price of their homes or making an offer on a home.

[692] CREA submitted that the Commissioner's witnesses consistently testified that their websites, and not their VOWs, were their principal source of lead generation or means of attracting customers. Upon reviewing the evidence, the Tribunal is satisfied that those witnesses, who are all web-based brokerages, were simply stating that they rely entirely or primarily on their websites to generate leads or attract customers. Those same witnesses made it also very clear that having a full-information VOW is or would be an important tool in assisting them to better compete with other brokerages.

#### (v) Other considerations

[693] In addition to the foregoing, TREB noted that some brokerages in Nova Scotia have stopped using VOWs. TREB appeared to suggest that the Tribunal should infer from this that VOW-based operators are not as competitively significant as the Commissioner has suggested. However, the Tribunal is satisfied, based on the above-mentioned evidence, that the elimination of the VOW Restrictions likely would result in at least some full-information VOWs collectively having a substantial positive impact on the level of non-price competition in the Relevant Market. The fact that some other market participants might try, and then abandon, full-information VOWs does not alter this conclusion.

[694] TREB and CREA further maintained that the display of the Disputed Data does not rank highly among the various types of information that consumers seek. In support of this position, CREA referred to statistics in the NAR 2014 Profile, which reported that detailed information about recently sold properties ranked eighth among website features that home purchasers who responded to NAR's survey found to be "very useful." Those same home purchasers ranked "pending sales/contract status" sixth. The five highest ranked features were photographs, detailed

information about properties for sale, interactive maps, virtual tours and neighbourhood information.

[695] TREB considers its position in this regard to have been corroborated by Mr. Hamidi, who testified that the straight provision of information to consumers (such as on a VOW) is at the lower end of importance, among the various services that consumers typically seek from a realtor. However, as discussed at paragraphs 595-597 and 675-677 above, the foregoing evidence was contradicted by Messrs. McMullin, Enchin, Nagel, Hamidi and Gidamy, as well as by Ms. Desai, all of whom testified that sold information is highly valued by home buyers and sellers.

[696] Moreover, activity data pertaining to visitors to ViewPoint's website indicates that, during the period December 20, 2014 to January 18, 2015 (30 days), approximately **[CONFIDENTIAL]** of the **[CONFIDENTIAL]** distinct users (by account ID) who accessed the site during that period reviewed the sales history of at least one sold property. Over a 90-day period, **[CONFIDENTIAL]** of users clicked on at least one sold property. Likewise, Mr. Nagel testified that Redfin's metrics indicate that pages showing sold listing information are among the most viewed pages on Redfin's website, ranking only behind the homepage, the map view and current listings. In addition, the NAR 2014 Profile reported that 75% of buyers considered detailed sold information to be somewhat or very useful on a website.

[697] In addition, TREB and CREA submitted that the Relevant Market is highly competitive and innovative, as reflected in part by the large number of very popular websites, the large number of active agents and brokers, the substantial number of agents and brokers who enter the GTA every year, and the high degree of technological innovation that is ongoing and widespread in the Relevant Market. The Tribunal does not dispute that the Relevant Market, as it currently exists, displays these various characteristics, to varying degrees.

[698] However, as noted elsewhere in these reasons, the focus of this proceeding is not on the absolute level of competition in the Relevant Market. It is upon whether, "but for" VOW Restrictions, the Relevant Market would likely be, or likely would have been, substantially more competitive. In the course of assessing this issue, the Tribunal has determined that information with respect to sold properties (including the selling price), "pending sold" properties, WEST listings and cooperating broker commissions is important, not only for full-information VOWs, but also for home sellers and purchasers.

[699] The Tribunal notes that wherever the display of sold information on brokers' websites is not prevented by a MLS system, it would appear to be displayed, not just by VOW operators, but by traditional brokers, such as Bosley and RE/MAX Hallmark. Ms. Prescott also testified that sold information is displayed on Century 21's website even if it is contrary to the office policy of her brokerage Century 21 Heritage. No persuasive evidence to the contrary was submitted.

[700] Indeed, in the United States, it would appear that the wide availability of sold information ultimately led realtor.com, which appears to be the official listing website of NAR, to make sold information available on its website. Although CREA took the position that there was insufficient evidence to prove the Commissioner's assertion that this development was caused by

competitive forces, the fact remains that realtor.com commenced displaying sold information after that information was being widely displayed by competitor websites, such as Zillow. The fact of sold information being available on realtor.com was recognized by each of Dr. Vistnes, Dr. Church and Dr. Flyer.

[701] The Tribunal is also satisfied that information with respect to the sold prices of homes, together with derivative analytical and statistical information, is made available by agents and brokers wherever they are not prevented by their local MLS system from doing so, because potential home purchasers value that information. The Tribunal accepts the Commissioner's submission that, if it were otherwise, one would expect that fewer brokers would provide that information on their websites, when free to do so.



#### (vi) Conclusion on magnitude

[702] For the reasons set forth above, the Tribunal concludes that the VOW Restrictions have adversely affected non-price competition in the Relevant Market to a degree that is material. Indeed, the Tribunal concludes that the aggregate adverse impact of the VOW Restrictions on non-price competition has been substantial, having regard to the considerable negative effect on the range of brokerage services, the negative effect on the quality of service offerings, and the considerable adverse impact on innovation in the Relevant Market. In the absence of an order, this substantial adverse impact is likely to continue. The Tribunal has reached this conclusion despite the fact that, the quantitative evidence on commission rates does not indicate that net commissions for real estate brokerage services were, are or likely would be, materially higher than in the absence of the VOW Restrictions.

### (b) *Duration and scope*

[703] Regarding the time dimension of the anti-competitive effects discussed above, the Tribunal concludes that those adverse effects have been manifested since the implementation of TREB's VOW Policy and Rules in the fall of 2011. In brief, they have been manifested for a period longer than the two-year benchmark referred to in *Tervita*. Moreover, those adverse effects are likely to continue to manifest themselves in the absence of an order that appropriately addresses the VOW Restrictions. Stated differently, the Tribunal has concluded that the duration of those adverse effects on non-price competition is substantial.

[704] With respect to the scope of the adverse effects within the Relevant Market, the Tribunal is satisfied that the anti-competitive effects of TREB's VOW Restrictions are impacting, and in the absence of an order will continue to impact, competition throughout the GTA, and therefore are impacting a substantial part of the Relevant Market. Indeed, the fact that the VOW Restrictions extend throughout the GTA was acknowledged by TREB's expert, Dr. Church. In addition to the fact that a VOW is available to anyone throughout the GTA, the evidence indicates that VOWs typically offer information in respect of listings throughout the area covered by the local MLS system, in this case the GTA, and that VOWs target customers throughout that same area. This is consistent with evidence from Ms. Prescott that realtors are increasingly competing for business across the GTA, as opposed to staying put within a

neighbourhood or a part of the city. Further evidence that the VOW Restrictions are impacting a substantial part of the Relevant Market is that, as of May 8, 2015, there were approximately 322 brokerages that had signed up to receive TREB's VOW Data Feed.

### (4) Conclusion

[705] For all the foregoing reasons, the Tribunal concludes, on a balance of probabilities, that the requirements of paragraph 79(1)(*c*) are met and that the VOW Restrictions have prevented, are preventing and, in the absence of an order, are likely to continue to prevent competition substantially in the supply of MLS-based residential real estate brokerage services in the GTA.

[706] In summary, those restrictions have resulted, are resulting and, in the absence of an Order, likely will continue to result, in a material, important and substantial incremental reduction in the degree of several non-price dimensions of competition in the Relevant Market, relative to the level of those dimensions of competition that likely would have prevailed, and that would likely prevail, "but for" the VOW Restrictions. These dimensions of competition include the range of brokerage services, the operating costs of VOWs, the quality of those services and the level of innovation. The qualitative evidence pertaining to the adverse effects of the VOW Restrictions on these dimensions of competition, as well as the barriers to entry and expansion, is sufficient to persuade the Tribunal that those restrictions have prevented, are preventing and, in the absence of an order, are likely to continue to prevent competition substantially in the Relevant Market.

[707] While the Tribunal acknowledges that demonstrating the anti-competitive effects caused by dynamic changes in the market raises more challenges and difficulty (*Canada (Director of Investigation & Research) v Hillsdown Holdings (Canada) Ltd* (1992), 41 CPR (3d) 289 (Comp. Trib.) at pp. 330-331), it is satisfied that, having considered the evidence as a whole, the Commissioner has met his burden under paragraph 79(1)(*c*) in this case.

[708] In addition, those anti-competitive effects have been occurring throughout the Relevant Market for a substantial period of time, namely, since the launch of TREB's VOW Policy and Rules in the fall of 2011. In the absence of an order from the Tribunal, those anti-competitive effects are likely to continue to manifest themselves throughout the GTA.

[709] The Tribunal observes that the scope of data covered by the VOW Restrictions may appear modest at first sight, given that they relate to Disputed Data forming only a small subset of all data available in TREB's MLS Database. However, to the extent that the VOW Restrictions insulate TREB's Members from increased competition from new entrants and from Members who would like to provide additional service offerings through their existing VOWs, or through new VOWs, those restrictions are maintaining what is in essence the collective market power that TREB's Members are able to exercise through their control of TREB and its rule-making functions. This collective market power is manifested in the form of materially less brokerage service offerings, innovation, quality and variety than would exist "but for" the VOW Restrictions.

[710] One of TREB's objections to the Commissioner's theory of market power maintenance is that the *Guidelines* state the following: "[v]igorous price and non-price rivalry among firms is an indicator of competitive markets. If the firms in the allegedly jointly dominant group are, in fact, competing vigorously with one another, they will not be able to jointly exercise market power" (*Guidelines* at p. 9).

[711] The Commissioner's *Guidelines* are not binding upon the Tribunal or the Courts, although they may assist them to determine the appropriate approach to adopt in general or in particular cases (*Canada Pipe CT* at para 66, aff'd, *Canada Pipe FCA Cross Appeal* at para 94; *Tele-Direct* at pp. 36-37). In any event, the Tribunal is satisfied that this statement was not intended to apply to a situation, such as here, where a trade association enacts rules and policies to shield its members from new forms of competition. This is so even if the members continue to compete "vigorously" on terms that they themselves have established through their trade association.

[712] In closing, the Tribunal notes that this case focuses on dynamic competition, including innovation, the most important type of competition. As observed by Dr. Vistnes, VOWs constitute an important new means by which brokers compete and an important way in which competition can provide consumers with better services. By shielding its Members from important forms of that disruptive competition, and thereby depriving consumers of the benefit of those enhanced services, TREB engaged in a discriminatory practice of anti-competitive acts that has prevented, and continues to prevent, competition substantially. In the absence of an Order from the Tribunal, that substantial prevention of competition is likely to continue.

[713] By preventing competition from determining how innovation should be introduced to the supply of residential real estate brokerage services in the GTA, TREB has substantially distorted the competitive market process and prevented innovative brokers such as Viewpoint, TheRedPin and Realosophy from considerably increasing the range of brokerage services, increasing the quality of existing services, and considerably increasing the degree of innovation in the Relevant Market.

[714] Although "organized real estate" recognizes that consumers are demanding "new ways of doing business, more choices, more flexibility, transparency, communication and more information quicker than ever before," and want to have greater control over the process of buying and selling homes, TREB has decided to limit what information can be disclosed by innovative brokerages who threaten the majority of its Members (2012 Vistnes Expert Report, at para 252, quoting "Exploring Possible Futures for Organized Real Estate in Canada: Insights from Cross-Canada Dialogues," CREA, 2011, at pp. 13-14).

[715] Markets are most efficient, and consumers best served, when competing firms are free to decide how to compete and whether to try to better compete by offering a new product or service. In the absence of legitimate regulatory concerns, the market and consumers, rather than competitors or their trade associations, are the best judge of whether new products or services are valued by consumers and whether such products should be offered in the market.

## VIII. TREB's Copyright

[716] The fifth issue to be decided in his proceeding relates to TREB's copyright.

[717] TREB claims that it owns copyright in the TREB MLS Database and therefore holds valid intellectual property rights over the overall arrangement of the information in that database. Relying on subsection 79(5) of the Act, TREB submits that its VOW Policy and Rules are a mere exercise of that copyright, such that this is a complete defence to an application by the Commissioner alleging an abuse of dominance, even if the impugned practice is or is assumed to be exclusionary in effect. In other words, TREB contends that its VOW Restrictions do not constitute a practice of anti-competitive acts under section 79 because those restrictions are merely the exercise of its copyright in its MLS system, as contemplated by subsection 79(5). In any event, TREB maintains that the Tribunal does not have jurisdiction to order TREB to grant a compulsory licence of its intellectual property in this proceeding.

[718] The Tribunal notes that TREB does not claim copyright in respect of the individual components of the MLS Database, including the Disputed Data.

[719] Subsection 79(5) of the Act states:

| | |
|---|---|
| For the purposes of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act, Industrial Design Act, Integrated Circuit Topography Act, Patent Act, Trade-marks Act* or any other Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act. | Pour l'application du présent article, un agissement résultant du seul fait de l'exercice de quelque droit ou de la jouissance de quelque intérêt découlant de la *Loi sur les brevets*, de la *Loi sur les dessins industriels*, de la *Loi sur le droit d'auteur*, de la *Loi sur les marques de commerce*, de la *Loi sur les topographies de circuits intégrés* ou de toute autre loi fédérale relative à la propriété intellectuelle ou industrielle ne constitue pas un agissement anti-concurrentiel. |

[720] The Commissioner responds that TREB's argument must fail for two reasons. First, TREB has not led sufficient evidence to establish copyright in the MLS Database. Second, even if the MLS Database is protected by copyright, TREB's conduct amounts to more than the "mere exercise" of its intellectual property rights under subsection 79(5).

[721] For the reasons detailed below, the Tribunal agrees with the Commissioner. Based on the evidence on the record, the Tribunal is not persuaded, on a balance of probabilities, that TREB has established the existence of copyright in the MLS Database**,** including the Disputed Data. In

any event, even assuming that such copyright exists, two of the three principal VOW Restrictions constitute more than the mere exercise of TREB's intellectual property rights, namely, the prohibitions on (i) the use of the information included in the VOW Data Feed for any purpose other than display on a website, and (ii) the display on a VOW of the information contained in the Disputed Data, which TREB makes available to its Members in other ways.



## A. *The Copyright Act*

[722] Copyright is a creature of statute. In Canada, the rights and remedies in that respect are set forth in the *Copyright Act*, which constitutes a comprehensive regime (*Compo Co v Blue Crest Music Inc*, [1980] 1 SCR 357 at pp. 372-373). "Copyright" refers to the bundle of rights conferred by the *Copyright Act* on the author of a work and owner of the copyright in the work. It provides protection for literary, artistic, dramatic or musical works and other subject-matter including performer's performances, sound recordings and communication signals. The owner of copyright has the sole right to produce or reproduce a work (or a substantial part of it) in any form, and has the sole right to exhibit the work in public (section 3). Furthermore, pursuant to subsection 13(4) of the *Copyright Act*, the owner of copyright has the right to assign or licence the copyrighted work. However, such assignment must be in writing to be valid. If a work is unpublished, copyright includes the right to publish the work or any substantial part of it.

[723] Copyright subsists in all original literary, dramatic, musical and artistic works, including paintings, drawings, maps, photographs, designs, musical compositions, sculptures and plans, provided the conditions set out in the *Copyright Act* have been met, namely: 1) the work must be original, in that it involves some intellectual effort or skill; and 2) the author was at the date of the making of the work a citizen of, or a person ordinarily resident in, Canada or some other countries to which rights under the *Copyright Act* extends.

[724] Under the *Copyright Act*, the term "every original literary, dramatic, musical and artistic work" is defined in section 2 to include "compilations." A compilation is defined in section 2 to mean "(a) a work resulting from the selection or arrangement of literary, dramatic, musical or artistic works or of parts thereof, or (b) a work resulting from the selection or arrangement of data."

## B. *The existence of copyright in the MLS Database*

### (1) TREB's submissions

[725] TREB submits that, as the author of the TREB MLS system, it owns the copyright in the TREB MLS Database. According to TREB, its copyright claim is based on its arrangement of real estate data. TREB further specifies that its copyright claim is in the MLS Database, not the MLS system itself.

[726] In the case of a compilation, the arranger may not have copyright in the individual components, but may have copyright in the overall arrangement of the components, if there is sufficient originality in that arrangement. TREB thus argues that it is this overall arrangement that must be considered, not the individual fragments that make up the compilation (*CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13 (**"*CCH*"**) at para 33; *Tele-Direct (Publications) Inc v American Business Information, Inc*, [1998] 2 FC 22 (CA) (**"*Tele-Direct ABI*"**) at para 5).

[727] For a work to be sufficiently "original" to qualify for copyright protection, the work must have been the subject of at least a minimum degree of skill, judgment and labour in its overall selection or arrangement (*CCH* at para 16; *Tele-Direct ABI* at para 28). According to TREB, this threshold is an "incredibly low bar" to meet in respect of a compilation. In that regard, TREB refers to *ITAL-Press Ltd v Sicoli*, [1999] FCJ No 837 (TD) at para 110, where the Federal Court found that there was copyright in telephone listings in Italian-Canadian phone books, consisting of the names of people who appeared by their names to be of Italian origin. Mr. Justice Gibson found there to be an element of skill and judgment as well as labour, although not of the highest order, in the selection of Canadian residents who can reasonably be thought to be of Italian origin.

[728] TREB also relies on a series of U.S. decisions where courts have held that MLS operators own the copyright in their MLS databases, because the MLS database compilations in question met the test for originality in light of the efforts made by the MLS operator to oversee and control the quality and accuracy of the content of the database (*Metropolitan Regional Information Systems Inc v American Home Realty Network Inc*, 2012 US Dist LEXIS 121352 at pp. 22-23 (of Lexis) (**"*Metropolitan*"**); *Metropolitan Regional Information Systems Inc v American Home Realty Network Inc*, 2012 US Dist LEXIS 162111 at pp. 7-8 (of Lexis); *Metropolitan Regional Information Systems Inc v American Home Realty Network Inc*, 2013 US App LEXIS 14445 at pp. 10-11 (of Lexis); *Montgomery County Association of Realtors Inc v Realty Photo Master Corporation*, 1995 US Dist LEXIS 2111 at p. 7 (of Lexis)). TREB notes in particular that, in view of the *Metropolitan* decision, its MLS database compilation cannot be characterized as the mere entry of data on the computer. In *Metropolitan*, the argument to the effect that the MLS system is on "automatic pilot" was considered and rejected, and the U.S. Court instead found that the overall system, its structure and its rules ought to be considered in deciding the issue of copyright.

[729] TREB further asserts that in *TREB OSCJ* at paragraphs 100-101 and *TREB OCA* at paragraph 21, both the Ontario Superior Court of Justice and the Court of Appeal for Ontario alluded to TREB's copyright in the MLS Database, with the Court of Appeal describing TREB as having a "proprietary ownership interest" in the database.

[730] TREB also submits that the record in this proceeding is replete with evidence as to TREB's skill, judgment, and labour with respect to the MLS Database. TREB refers in particular to the following:

a. The use of TREB's MLS Database is governed by a comprehensive set of rules that are enacted and administered by TREB to ensure the accuracy and quality of the information and the orderly operation of the database, and to cover updating and uploading of data;

b. TREB provides its Members with a "MLS Data Information Form" to be used as part of the data entry process, to ensure that certain characteristics of properties are entered into the database for any listing, including some mandatory fields identified by TREB and which may differ from other MLS systems;

c. TREB ensures the accuracy of the listings in the MLS Database by way of proprietary software and encourages its Members to report any inaccuracies found in the listings;

d. TREB's AUA provides that the MLS Database is proprietary to TREB and that TREB's Members grant TREB a content licence with respect to the listings they upload into the database. Under the AUA, the user agrees to grant TREB a perpetual, worldwide, royalty-free, non-exclusive, sub-licensable and transferable right and license including all related intellectual property rights; and

e. TREB's software licence agreement with Stratus (the owner of the software that runs TREB's MLS Database) (the **"Stratus Licence Agreement"**) provides that TREB owns the intellectual property associated with the data inputted into the MLS system.



### (2) Analysis

[731] The Tribunal is not persuaded that TREB owns copyright in the MLS Database, including the Disputed Data. In brief, the Tribunal has concluded that TREB has not led sufficient evidence to establish the level of skill, judgment and labour required for the MLS Database to benefit from copyright protection.

#### (a) *General principles*

[732] Copyright applies to a database only if the "selection or arrangement of data" is original. For a work (including a compilation of data) to be "original," it needs to be an intellectual creation (*Tele-Direct ABI* at paras 8-18). That is to say, the work must be the result of an exercise of "skill" and "judgment" (*CCH* at para 16). While the Tribunal acknowledges that the threshold is low, that threshold nonetheless does exist (*CCH* at para 16; *Tele-Direct ABI* at para 28). As stated by the Commissioner, in compilation situations, drawing a line between what signifies a minimal degree of skill, judgment and labour and what indicates an absence of creative element is not an easy task (*Édutile Inc v Automobile Protection Assn,* [2004] FC 195, 6 CPR (4th) 211 at para 13). But sufficient evidence must be adduced to convince the Tribunal, on a balance of probabilities, that such a determination can be made. This is especially the case here, since TREB does not benefit from the presumptions found at section 34.1 of the *Copyright Act*, which apply only to civil proceedings in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff to it.

[733] Simply capturing and compiling data supplied by real estate agents into the MLS Database does not suffice to produce a copyrighted work. To attract copyright protection, a work must add some non-trivial intellectual substance to the raw data. The test for originality in Canadian copyright law was extensively reviewed by the Supreme Court of Canada in *CCH*, where the Court found that skill and judgment are essential to a finding of originality (at para 16):

> For a work to be "original" within the meaning of the *Copyright Act*, it must be more than a mere copy of another work. At the same time, it need not be creative, in the sense of being novel or unique. What is required to attract copyright protection in the expression of an idea is an exercise of skill and judgment. By skill, I mean the use of one's knowledge, developed aptitude or practised ability in producing the work. By judgment, I mean the use of one's capacity for discernment or ability to form an opinion or evaluation by comparing different possible options in producing the work. This exercise of skill and judgment will necessarily involve intellectual effort. The exercise of skill and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise.
>
> (Emphasis added)

[734] The assessment of such skill, judgment and labour is highly fact-specific and depends on the evidence provided. But there must be a meaningful degree of intellectual effort by the author in the work that is worthy of protection and reward (*Tele-Direct ABI* at para 29). The use of the word "auteur" in French conveys a sense of inventive labour, "creativity and ingenuity." A particular amount of labour is not in itself a determinative of originality (*Tele-Direct ABI* at para 29).

[735] In *Tele-Direct ABI*, the Federal Court of Appeal upheld the Federal Court's finding that Tele-Direct arranged its information, the vast majority of which was not subject to copyright, according to accepted, commonplace standards of selection in the industry. In doing so, it exercised only a minimal degree of skill, judgment and labour in its overall YellowPages arrangement, which was found to be insufficient to support a claim of originality in the compilation so as to warrant copyright protection (*Tele-Direct (Publications) Inc v American Business Information, Inc*, (1996) 74 CPR (3d) 72 (FC) at paras 52-54). The Court thus rejected Tele-Direct's assertion that the YellowPages directories were protected by copyright.

**(b)** ***The evidence***

[736] The Tribunal agrees with the Commissioner that, like the YellowPages in *Tele-Direct ABI*, TREB's MLS Database is little more than information (the vast majority of which is not subject to copyright) arranged according to accepted, commonplace standards of selection in the real estate industry. Copyright cannot exist in these circumstances, neither in the manner in

which TREB has compiled the MLS Database nor in the manner of presenting or organizing the data on its website or on VOWs. The Tribunal is not persuaded that identifying certain mandatory fields or deciding what confidential information may be displayed on a VOW is sufficient to constitute the required degree of exercise of skill and judgment.

[737] The Tribunal recognizes that TREB takes the real estate listings data provided by its Members and presents the information on its intranet in a prescribed fashion. However, while TREB claims that the MLS Database is a compilation of data resulting from significant labour, as well as skill and judgment, the evidence suggests otherwise. More specifically:

a. None of TREB's witnesses testified about how TREB arranges the factual information that it receives from its Members, the effort that it takes, or the skill or judgment involved in determining what particular arrangement is appropriate;

b. Mr. Richardson simply testified that TREB contracts with a third-party to verify certain mandatory fields for errors. However, making sure that data is correct is not equivalent to exercising skill or judgment in its arrangement;

c. Mr. Richardson also testified on the functionality of TREB's intranet system and explained in his witness statement how to distinguish that system from the MLS Database. However, Mr. Richardson did not demonstrate to the Tribunal how TREB's MLS Database was constructed and works, but he rather discussed the software leased from Stratus and how it permits TREB’s Members to interact with the MLS Database and retrieve information from it;

d. TREB's contracts with third parties refer to its copyright, but that does not amount to proving the degree of skill, judgment or labour needed to show originality and to satisfy the copyright requirements;

e. The fact that third parties have acknowledged TREB's asserted copyright or proprietary work is not sufficient to demonstrate the existence of such copyright. For example, the recognition in the Stratus Licence Agreement that TREB owns the intellectual property associated with the data inputted into the MLS system, or that such information is proprietary, does not establish that the MLS Database is in fact subject to copyright;

f. Mr. Richardson testified that once Members upload information to TREB's MLS system by completing the Data Information Form, the listing appears on TREB's intranet system almost instantaneously. On the particular facts of this case, this suggests that there is little skill, judgment, labour or originality involved in arranging the information in the MLS Database;

g. Real estate boards across Canada operate MLS databases containing factual information on real estate listings. Far from being original, TREB also collects “home facts” in the same way that boards across Canada do, save for the mandatory fields which may vary between MLS systems. There is not sufficient evidence that TREB's MLS Database is original in comparison to those of other boards; and

h. The fact that TREB's MLS Database may be governed by a comprehensive set of rules enacted and administered by TREB to ensure the accuracy and quality of the information and the orderly operation of the database is not sufficient to confer copyright protection on what is subsequently displayed in the database. Ensuring the accuracy of the listings in the MLS Database and encouraging the Members to report any inaccuracies found in the listings does not amount to evidence reflecting the originality of the work.



[738] The process of inputting listings to the MLS system involves the listing broker directly inputting the listing information into the database through a fill-in-the-blank Data Information Form. The broker completes the form in consultation with the seller of the property, if the seller consents to having that property uploaded to TREB's MLS Database. The form has certain fields that are mandatory, such as the street name and number, the list price, and the number of rooms. The form also has other fields that are optional, such as the approximate age of the building, the approximate square footage, and open house dates. In addition, the form has a field for "remarks for brokerages," often containing information that is private or sensitive in nature, such as when the owner will be absent from the property. As stated by Mr. Richardson, the TREB MLS system "is set up to allow the listing broker, or office designate, to directly input the listing information into the database, as opposed to requiring TREB to centrally input all new listings into the database" (2012 Richardson Statement, at para 41).

[739] Merely aligning factual data in such a non-original way is not sufficient to attract copyright protection (*Distrimedic Inc v Dispill Inc*, 2013 FC 1043 at para 323). Further, where the information is arranged according to industry standards, the amount of skill, labour and judgment exercised is minimal and will not meet the originality threshold (*Denturist Group of Ontario v Denturist Assn of Canada*, 2014 FC 989 at para 65). Similarly, when an idea can only be expressed in a limited number of ways, the expression will not be protected (*Red Label Vacations Inc v 411 Travel Buys Ltd*, 2015 FC 18 at para 98). The Supreme Court of Canada has observed that, when determining what embodies the originality of a collective work (that is capable of attracting copyright), it is "whether a substantial part of a protected work has been reproduced, […] not the quantity which was reproduced that matters as much as the quality and nature of what was reproduced" (*Robertson v Thomson Corp*, 2006 SCC 43 at para 38).

### (3) Conclusion

[740] Based on the foregoing, the Tribunal finds that, in essence, TREB's specific compilation of data from real estate listings amounts to a mechanical exercise that does not attract copyright protection. No evidence was adduced to demonstrate that the actual compilation of the database is more than a matter of simply assembling raw facts and routine elements from the listings in a mechanical fashion and posting them to the MLS system, without adding something original or creating elements unique to TREB's MLS system.

[741] Furthermore, the Stratus Licence Agreement suggests that, through that agreement, TREB is not protecting the specific form of selection or arrangement employed on its website, but the MLS data itself.

[742] The Tribunal acknowledges that some U.S. decisions, including *Metropolitan*, have recognized that, in light of the efforts made by the MLS operator in overseeing and controlling the quality and accuracy of the content of the database, MLS operators in the United States have been found to own the copyright in their respective MLS databases. These decisions were based on the evidence presented in these various cases. However, the Tribunal finds that the evidence provided in this proceeding does not allow it to conclude, on a balance of probabilities, that clear, convincing and cogent evidence has been provided to demonstrate the necessary degree of skill, judgment and labour required to support TREB's claim of copyright under Canadian law. In brief, TREB has not demonstrated the degree of intellectual effort required in this regard.

[743] TREB further contends that the Commissioner's submissions on the issue of copyright are completely inconsistent with his submissions on the issue of market power. According to TREB, the Commissioner is saying, on the one hand, that TREB's MLS Rules and Policy are sufficiently robust, comprehensive, and pervasive to grant them control over the market for residential real estate services in the GTA, while on the other hand the Commissioner takes the position that the MLS Database does not demonstrate sufficient skill and judgment to grant TREB copyright protection of that database. The Tribunal considers that these are two distinct issues and does not agree that this reflects an inconsistency or a contradiction.

[744] TREB rightly points out that the primary concerns expressed by the initial panel with the copyright argument revolved around the fact that the licence agreement between TREB and Stratus was not in the evidence at the time. The Tribunal acknowledges that TREB has since filed the most recently amended version of the licence agreement with Stratus. However, this Stratus Licence Agreement does not provide evidence of TREB's skill, judgment, and labour.

[745] Finally, the Tribunal observes that TREB's copyright argument is made in respect to the MLS Database as a whole, whereas TREB's practice of anti-competitive acts relates primarily to the VOW Restrictions, which concern only a small subset of the MLS Database. There is no evidence that the Disputed Data involve any degree of skill, judgment and labour on the part of TREB, and that a copyright claim could be made by TREB on this subset of the MLS Database.

### C. *Mere exercise of intellectual property rights*

[746] TREB also contends that the provisions contained in TREB's VOW Policy and Rules are a mere exercise of its intellectual property rights. Given the Tribunal's conclusion on the absence of copyright, this issue does not need to be addressed. However, for completeness, the it will be briefly discussed below.

[747] Subsection 79(5) of the Act essentially states that the mere exercise of rights derived under the *Copyright Act* is not an anti-competitive act. Relying on the *Tele-Direct* decision of the Tribunal at paragraphs 60-70, TREB submits that something more than the mere exercise of statutory rights, even if such exercise is exclusionary in effect, must be present before there can be a finding of misuse of intellectual property. In *Tele-Direct*, the Tribunal found that inherent in the very nature of the right to license a trade-mark is the right for the owner of the trade-mark to

determine whether or not, and to whom, to grant a licence. Selectivity in licensing is fundamental to the rationale behind protecting trade-marks, and this principle was applied to copyright by the Tribunal in *Director of Investigation and Research v Warner Music Canada Ltd*, [1997] CCTD No 53 (Comp. Trib.) (**"*Warner Music*"**) at paragraph 32.

[748] In *Warner Music*, the Commissioner (then known as the Director) brought an application against Warner Music Canada Ltd. and its affiliates (**"Warner"**) alleging that their refusal to grant copyright licences to BMG Canada to make sound recordings from their master recordings was an impermissible refusal to deal contrary to section 75 of the Act. Warner contracted with artists to make master recordings and had an exclusive copyright over these master recordings in Canada. In that decision, the Tribunal recognized that Parliament grants to copyright holders the right to exclude others from the use of the copyrighted work, and that this aspect is fundamental to copyright. The Tribunal found that it would be inconsistent to hold that Warner was engaging in anti-competitive practices by simply exercising a right that had been specifically granted by Parliament. Moreover, given the exclusive nature of the copyright enjoyed by Warner, it could not be considered a "product" that was in "ample supply," within the meaning of section 75.

[749] Relying on *Warner Music*, TREB further contends that its motivation for the decision to refuse to licence its intellectual property is irrelevant for the application of subsection 79(5). TREB submits that its decision not to licence the Disputed Data as part of the VOW Data Feed is squarely within the reasoning of the Tribunal in *Tele-Direct*.

[750] According to TREB, the licensing process includes choosing the mode of delivery of intellectual property rights, because intellectual property can be licensed to be used in different ways for different purposes. In support of that argument, TREB refers to *Eli Lilly and Co v Apotex Inc*, 2005 FCA 361 (**"*Eli Lilly*"**), where Eli Lilly Canada Inc. (**"Lilly"**) received the assignment of a patent from another company which, in combination with its own related patents, gave Lilly a monopoly in the antibiotic cefaclor. In that case, it was argued that patent assignments could lessen or prevent competition unduly within the meaning of section 45 of the Act, as it then was. The "something more" was found to be the increased power of Lilly in the market for bulk cefaclor, "as a result of [the addition of the assigned patents to] its existing ownership of the patents for the other known, commercially-viable processes for manufacturing the medicine" (*Eli Lilly* at para 18). In the current case, TREB argues that there is no similar "something more," as the conduct at issue here is the mere denial of access to intellectual property through a refusal to licence.

[751] TREB also maintains that the argument that TREB's conduct goes beyond the mere exercise of its intellectual property rights because its conduct creates, enhances, or maintains market power, if accepted, would render meaningless the defence in subsection 79(5) of the Act, because by definition the only conduct covered by subsection 79(1) is conduct that creates, enhances, or maintains market power. For the reasons set forth above, including at paragraphs 500 and 709, the Tribunal is satisfied that, by insulating its Members from important forms of increased non-price competition, TREB's VOW Restrictions have maintained, and are continuing to maintain, a form of market power that TREB and its Members collectively enjoy. Among other things, that market power is manifested in TREB's control of its MLS system and

its power to prevent innovative rivals from entering into, or expanding within, the Relevant Market.

[752] TREB also relies on the Bureau's *Intellectual Property Enforcement Guidelines* (September, 2000) (**"*IPEGs*"**), where the Bureau says at p. 7: "The unilateral exercise of the IP right to exclude does not violate the general provisions of the *Competition Act* no matter to what degree competition is affected. To hold otherwise could effectively nullify IP rights, […] and be inconsistent with the Bureau's underlying view that IP and competition law are generally complementary."

[753] The Commissioner responds that even if the MLS Database or the Disputed Data was protected by copyright, TREB's conduct amounts to more than the "mere exercise" of its intellectual property rights. Subsection 79(5) of the Act does not state that "the exercise of those rights is not an anti-competitive act", nor does it exclude from the definition of anti-competitive act "the lawful exercise of intellectual property rights." The Commissioner maintains that only an act that is the mere exercise of a right, and nothing else, may fall within the statutory exception under subsection 79(5). He claims that TREB's conduct is more than a mere exercise of a copyright. He states that this is particularly so with respect to TREB's prohibitions on (i) the use of the information included in the VOW Data Feed for any purpose other than display on a website, and (ii) the display on a VOW of the information contained in the Disputed Data, which TREB makes available to its Members in other ways.

[754] The Tribunal agrees with the Commissioner. Subsection 79(5) attempts to balance the extraordinary statutory monopoly rights conferred by intellectual property with the public interest in competition. To strike the right balance, the Tribunal and Federal Court of Appeal have interpreted that provision narrowly. In *Tele-Direct* at page 32, the Tribunal distinguished a refusal to licence. However, where a respondent attaches anti-competitive conditions to the use of its intellectual property, subsection 79(5) will not immunize it from scrutiny. In this case, the two prohibitions mentioned at the end of the immediately preceding paragraph above constitute anti-competitive conditions that TREB has attached to the use of intellectual property.

[755] TREB's VOW Restrictions do not simply restrict its Members' access to the Disputed Data. They instead control how TREB's Members display certain information sourced from the MLS Database, and how they use that information to deliver services to their customers. At the same time, TREB effectively permits or condones the dissemination of this information through more traditional means.

[756] Through its VOW Restrictions, TREB has used its control over the MLS Database to shield some of its Members from competition from innovators who would like to enter into, or expand within, the Relevant Market. Just as the respondent in *Eli Lilly* used its statutory rights to increase its market power beyond whatever initial power it may have enjoyed under its original patent rights, TREB is using its control over the MLS Database to insulate from innovative forces those of its Members who prefer to continue doing business in the traditional manner. This goes beyond a "mere exercise" of any intellectual property rights that TREB may have in the MLS Database.

[757] Put differently, the VOW Restrictions confer on TREB and its above-mentioned Members advantages beyond those derived from the *Copyright Act*.

[758] Based on all of the foregoing, the Tribunal concludes that, even if it were to assume that TREB owns a valid copyright on the MLS Database or on the Disputed Data, the VOW Restrictions are more than a mere exercise of its intellectual property rights. This is particularly the case with respect to the prohibitions on (i) the use of the information included in the VOW Data Feed for any purpose other than display on a website, and (ii) the display on a VOW of the information contained in the Disputed Data, which TREB makes available to its Members in other ways.



**D. *Jurisdiction***

[759] Finally, TREB claims that the Tribunal does not have the jurisdiction to order TREB to grant a compulsory licence with respect to its intellectual property. In that respect, TREB distinguishes between sections 32 and 79 of the Act. TREB contends that, in the absence of clear language in section 79, it would be wrong to conclude that the Tribunal has been given the power to order a respondent to grant what are, in effect, compulsory licences, when, pursuant to section 32, the Federal Court can make such an order only after the applicant meets a competition impact test and only after defences based on international treaty rights are considered (*Warner Music* at paras 26-28).

[760] The Tribunal considers that this case does not involve the imposition of a compulsory licence, as conventionally understood. TREB already makes each of the components of the Disputed Data available to its Members in other ways. More importantly, the VOW Restrictions go far beyond a refusal to include the Disputed Data in the VOW Data Feed, and include prohibitions on (i) the use of the information included in the VOW Data Feed for any purpose other than display on a website, and (ii) the display on a VOW of the information contained in the Disputed Data, which TREB makes available to its Members in other ways.

[761] In any event, it is settled law that the Tribunal has the jurisdiction to order the supply of a proprietary product.

[762] In brief, outside the narrow context that was at issue in *Warner Music*, the Tribunal has not hesitated to exercise its jurisdiction to issue an order in respect of intellectual property.

[763] For example, in *NutraSweet*, the Tribunal found a number of the respondent's practices to have been anti-competitive, including trade-mark allowances offered by NutraSweet for displaying its swirl logo, exclusive supply and use clauses, cooperative marketing allowances, meet-or-release clauses and most favoured-nation-clauses. The Tribunal held that the trade-mark allowances and advertising discounts created an "all-or-nothing" choice for customers and were "essentially inducements to exclusivity" (*NutraSweet* at pp. 41-43). It therefore issued a broad remedial order prohibiting NutraSweet from enforcing, or entering into, contractual terms

relating to the exclusivity of supply or use of financial inducements for trade-mark display or other allowances, meet-or-release clauses and most-favoured-nation clauses.

[764] Likewise, in *Nielsen*, the respondent was found to have engaged in anti-competitive practices with respect to its historical scanner data. In the result, it was ordered, among other things, to provide that data to Information Resources Inc. (**"IRI"**) upon request, provided that IRI was willing to pay for 50% of the reasonable, documented expenses associated with gathering that data and 100% of the reasonable cost of making a copy and providing it to IRI (*Nielsen* at p. 282).

[765] Similarly, in *Southam*, a merger case, the remedial order issued by the Tribunal required the divestiture, at Southam's option, of either the North Shore News or the Real Estate Weekly newspapers, including the copyright in the newspapers and the trade-marks associated with those newspaper businesses.

[766] In addition, in *Director of Investigation and Research v Bank of Montreal.* (1996), 68 CPR (3d) 527 (Comp. Trib.) (**"*Bank of Montreal*"**), a consent order was issued under the abuse of dominance provisions of the Act requiring the charter members of an electronic banking network to "provide a commercially reasonable trade mark license without charge upon request to any member participating in the shared services that use the trade marks" (*Bank of Montreal* (Consent Order)).

[767] Finally, in *Director of Investigation and Research v AGT Directory Limited*, [1994] CCTD No 24 (Comp. Trib.), another consent order case under the abuse of dominance provisions, the respondents were prohibited from refusing to license the "Yellow Pages" trade-marks to certain companies for use in the sale of advertising in telephone directories, provided these companies entered into and maintained commercially reasonable standard form trade-mark licensing agreements.

[768] The Tribunal is satisfied that the *expressio unius* principle of statutory interpretation does not preclude it from exercising jurisdiction in respect of intellectual property rights, simply by virtue of the fact that section 32 of the Act sets forth specific provisions with respect to intellectual property. Among other things, this is because the language of section 32 is explicitly confined to the narrow situation of "where *use has been made of the exclusive rights and privileges conferred by*" the types of intellectual property protection mentioned therein (emphasis added). Situations that go beyond the use of the exclusive privileges *conferred by* one or more statutes creating intellectual property fall to be addressed by other provisions of the Act. Those include section 79 of the Act. In brief, where a dominant firm engages in a practice of anti-competitive acts that goes beyond the mere exercise of such rights and privileges, for example by imposing anti-competitive restrictions that materially increase or maintain any market power that would otherwise exist (having regard to intellectual property rights) "but for" those restrictions, the Tribunal has the jurisdiction to issue a remedial order to address that practice. The Tribunal is satisfied that there is nothing in the scheme of the Act to suggest otherwise. Indeed, if this were the case, firms would be free to extend any market power that may be conferred by a statute conferring rights over intellectual property beyond that which is

contemplated by the statute. In the absence of clear language curtailing the Tribunal's broad remedial jurisdiction to address abuses of dominant position, the Tribunal does not accept the suggestion that this is what Parliament intended.

## IX. Remedy

[769] The Commissioner, in his final written submissions of 2015, seeks an Order that would:

a. Prohibit TREB from enforcing certain terms of its VOW Policy and Rules and its VOW Data Feed Agreement, related to the display and use of the MLS data;

b. Require TREB to include, in its VOW Data Feed, all unavailable listings in the MLS Database (including the data fields for sold listings, "pending sold" listings and WEST listings), and the data fields for offers of commission for available (current) listings, all for use by TREB's Members and to provide services over the Internet, including display of such listings on a VOW; and

c. Require TREB to amend certain of its rules and contract terms, to maintain and support its data feed and not to reverse course or exercise its rule-making powers to discriminate against its Members that use the data feed.

[770] At the Redetermination Hearing, counsel for the Commissioner re-emphasized its overarching concern that there should be no discrimination between the modes in which the information is delivered by TREB to its Members, and that what the Commissioner is seeking is a level playing field. He thus clarified that he is seeking the inclusion in the VOW Data Feed of all listing information on a non-discriminatory basis, and not just the Disputed Data. He also confirmed that he is not seeking any relief beyond the GTA. In other words, the Commissioner is not requesting an order against any other real estate board in the country.

[771] TREB asserts that the Tribunal should exercise care in crafting a remedy to ensure that the personal information of individuals is not widely disclosed on the Internet without their informed consent. It seeks the opportunity to make further submissions on the appropriate remedy.

[772] The Tribunal agrees that further submissions on the remedy are necessary in the present circumstances.

[773] As a result, the Tribunal will, shortly following the issuance of these reasons, issue a Direction providing a schedule for the filing of written representations by the parties and a date for a hearing on the remedy to be issued.

[774] That being said, the Tribunal nonetheless makes the following remarks regarding the remedy to be imposed further to its conclusions.

[775] CREA, in accordance with the terms of the Tribunal order granting it leave to intervene in these proceedings, has made submissions on the impact of the Commissioner's proposed remedies on CREA and its members, including its trade-marks (*Commissioner of Competition v Toronto Real Estate Board*, 2011 Comp. Trib. 22 (**"*CREA Intervention Order*"**) at para 40). CREA asserts that it has a significant concern about the negative effect of the remedy sought by the Commissioner on CREA's trade-marks and also asserts that the accessibility of the Disputed Data on a VOW may serve to diminish the credibility of a MLS system in the eyes of the consumer as well as the credibility of realtors. CREA further submits that the Tribunal's remedy should be expressly limited to the GTA.

[776] More specifically, CREA states that consumers are concerned about their property information being disclosed on a public website and adds that realtors who placed such information on the MLS system and who provide services using that system may negatively affect the credibility of CREA's trade-marks. However, as discussed at paragraphs 382-387 of these reasons, the evidence that consumers may be concerned about the display of the Disputed Data on VOWs was very limited and not persuasive. In any event, the Tribunal has not been persuaded that existing consents in the standard Listing Agreement that TREB recommends its Members to execute with their clients do not extend to the display of historical information such as the sold price of their home and WEST listings information, after their homes have been sold.

[777] CREA also submits that the Tribunal should assess both the likely benefits and the likely harm to consumers of the remedy that the Commissioner has requested. The Tribunal agrees with this approach. However, the Tribunal finds that CREA did not identify any significant harm, beyond the privacy-based concerns addressed in these reasons.

[778] The Tribunal further notes that VOWs are simply one part of one type of Internet-based data-sharing vehicles, being broker operated websites. The Tribunal agrees with CREA that any remedy resulting from this proceeding should not have the harmful effect of endorsing one type of innovative tool over another. The remedy to be imposed in this case will therefore not endorse one type of innovative tool over any other. It will simply address the restrictions applicable to VOWs, and participants in the Relevant Market will remain free to compete by offering whatever innovative services they deem appropriate, without any bias in favour or against full-information VOWs.

[779] TREB submits that conditional solds data should not be included in the VOW Data Feed because this would cause prejudice to home sellers who are parties to such "pending sold" transactions, based on the fact that it would disclose their reservation price to potential home purchasers. The Tribunal agrees that this is a very real and legitimate concern and will need to be addressed in calibrating the remedy.

[780] The Tribunal is also mindful of the fact that its orders pursuant to subsections 79(1) and 79(2) must only go as far as it considers necessary in order to restore competition in the relevant markets (*Laidlaw* at p. 351). The Tribunal will therefore look for the least intrusive remedy and determine what will be necessary to restore competition on the basis of the evidence put before it

as to how the Relevant Market operates and the effects the VOW Restrictions have had and are having.

[781] Finally, the Tribunal must also maintain the flexibility to modify the remedies proposed to it in order to achieve an order that it believes will be effective (*Nielsen* at p. 285).

## X. Costs

[782] At the end of the Redetermination Hearing, the Tribunal encouraged the parties to reach an agreement as to the quantum of costs without knowing the outcome of the case. The Tribunal explained that if no agreement could be reached, the parties could make submissions in due course on costs. The Tribunal observes that it is increasingly favouring this approach. This is because asking the parties to agree on the issue of costs *before* they know the outcome is more likely to result in a reasonable and expeditious resolution of the question of costs. The Tribunal further notes that it will typically favor lump sum awards of costs over formal taxation of bills of costs.

[783] By way of letter January 28, 2016, counsel for the Commissioner and for TREB notified the Tribunal that they had reached an agreement with respect to Tariff B legal costs and a partial agreement with respect to disbursements. According to the agreement, if the Tribunal awards costs payable by TREB to the Commissioner, TREB shall pay to the Commissioner $215,000 in respect of Tariff B legal costs, and $113,000 in respect of disbursements other than those relating to expert witnesses. The Commissioner and TREB further agreed to consult with each other, after the release of the Tribunal's final decision, in order to agree upon the quantum payable by one to the other in respect of disbursements for expert witnesses. If no agreement can be reached, either party may seek the Tribunal's assistance or ruling.

[784] The Tribunal will therefore order TREB to pay to the Commissioner $215,000 in respect of Tariff B legal costs, and $113,000 in respect of disbursements other than those relating to expert witnesses. The Tribunal further directs the Commissioner and TREB to consult with each other in order to agree upon the quantum payable by TREB in respect of disbursements for expert witnesses. If no agreement can be reached within two weeks of this decision, the Commissioner and TREB are to file written submissions not exceeding five pages with the Tribunal

[785] The Tribunal understands that the Commissioner and CREA have had no discussions about costs since the Redetermination Hearing ended, and the Commissioner has reserved his position on this issue. The Tribunal, in its decision granting CREA leave to intervene, refused to order that CREA would not be liable for costs, as the Tribunal did not want to "fetter the discretion of the panel" should unforeseen circumstances develop (*CREA Intervention Order* at para 43). The Tribunal therefore directs the Commissioner and CREA to consult with each other in order to agree upon the quantum of costs payable by CREA, if any. If no agreement can be reached within two weeks of this decision, the Commissioner and CREA are to file with the Tribunal written submissions (not exceeding five pages) outlining their respective positions.

## XI. Order

[786] For the reasons given above, the Tribunal partially grants the application brought by the Commissioner. The specific terms of the Tribunal Order will be determined and issued following the Tribunal's review of the parties' written submissions on remedy and the hearing at which they will be provided an opportunity to make verbal submissions on that issue.

[787] These reasons are confidential. In order to enable the Tribunal to issue a public version of this decision, the Tribunal directs the parties to attempt to reach an agreement upon the redactions to be made to these reasons in order to protect confidential evidence and information. The parties are to jointly correspond with the Tribunal by no later than the close of the Registry on Friday, May 13, 2016, setting out their agreement and any areas of disagreement concerning the redaction of the confidential version of the decision. If there is any disagreement, the parties shall separately correspond with the Tribunal setting out their respective submissions with respect to any proposed, but contested, redactions from these confidential reasons. Such submissions are to be served and filed by the close of the Registry on Monday, May 16, 2016.

DATED at Ottawa, this 27th day of April, 2016.

SIGNED on behalf of the Tribunal by the Panel Members.

(s) Paul Crampton C.J.
(s) Denis Gascon J. (Chairperson)
(s) Dr. Wiktor Askanas

Schedules

**Schedule "A" – Relevant provisions of the *Competition Act***

| | |
|---|---|
| 78 (1) For the purposes of section 79, anti-competitive act, without restricting the generality of the term, includes any of the following acts: | 78 (1) Pour l'application de l'article 79, agissement anti-concurrentiel s'entend notamment des agissements suivants : |
| (a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market; | a) la compression, par un fournisseur intégré verticalement, de la marge bénéficiaire accessible à un client non intégré qui est en concurrence avec ce fournisseur, dans les cas où cette compression a pour but d'empêcher l'entrée ou la participation accrue du client dans un marché ou encore de faire obstacle à cette entrée ou à cette participation accrue; |
| (b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market; | b) l'acquisition par un fournisseur d'un client qui serait par ailleurs accessible à un concurrent du fournisseur, ou l'acquisition par un client d'un fournisseur qui serait par ailleurs accessible à un concurrent du client, dans le but d'empêcher ce concurrent d'entrer dans un marché, dans le but de faire obstacle à cette entrée ou encore dans le but de l'éliminer d'un marché; |
| (c) freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market; | c) la péréquation du fret en utilisant comme base l'établissement d'un concurrent dans le but d'empêcher son entrée dans un marché ou d'y faire obstacle ou encore de l'éliminer d'un marché; |

(d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

d) l'utilisation sélective et temporaire de marques de combat destinées à mettre au pas ou à éliminer un concurrent;

(e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

e) la préemption d'installations ou de ressources rares nécessaires à un concurrent pour l'exploitation d'une entreprise, dans le but de retenir ces installations ou ces ressources hors d'un marché;

(f) buying up of products to prevent the erosion of existing price levels;

f) l'achat de produits dans le but d'empêcher l'érosion des structures de prix existantes;

(g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

g) l'adoption, pour des produits, de normes incompatibles avec les produits fabriqués par une autre personne et destinées à empêcher l'entrée de cette dernière dans un marché ou à l'éliminer d'un marché;

(h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market; and

h) le fait d'inciter un fournisseur à ne vendre uniquement ou principalement qu'à certains clients, ou à ne pas vendre à un concurrent ou encore le fait d'exiger l'une ou l'autre de ces attitudes de la part de ce fournisseur, afin d'empêcher l'entrée ou la participation accrue d'un concurrent dans un marché;

(i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor.

i) le fait de vendre des articles à un prix inférieur au coût d'acquisition de ces articles dans le but de discipliner ou d'éliminer un concurrent.

(j) and (k) [Repealed, 2009, c.

j) et k) [Abrogés, 2009, ch. 2,

2, s. 427]

79 (1) Where, on application by the Commissioner, the Tribunal finds that

(a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,

(b) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and

(c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

(2) Where, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take such actions, including the

art. 427]

79 (1) Lorsque, à la suite d'une demande du commissaire, il conclut à l'existence de la situation suivante :

a) une ou plusieurs personnes contrôlent sensiblement ou complètement une catégorie ou espèce d'entreprises à la grandeur du Canada ou d'une de ses régions;

b) cette personne ou ces personnes se livrent ou se sont livrées à une pratique d'agissements anti-concurrentiels;

c) la pratique a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, le Tribunal peut rendre une ordonnance interdisant à ces personnes ou à l'une ou l'autre d'entre elles de se livrer à une telle pratique.

(2) Dans les cas où à la suite de la demande visée au paragraphe (1) il conclut qu'une pratique d'agissements anti-concurrentiels a eu ou a pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché et qu'une ordonnance rendue aux termes du paragraphe (1) n'aura vraisemblablement pas pour effet de rétablir la concurrence dans ce marché, le Tribunal peut, en sus ou au lieu de rendre l'ordonnance prévue au paragraphe (1), rendre une ordonnance enjoignant à l'une

divestiture of assets or shares, as are reasonable and as are necessary to overcome the effects of the practice in that market.

ou l'autre ou à l'ensemble des personnes visées par la demande d'ordonnance de prendre des mesures raisonnables et nécessaires dans le but d'enrayer les effets de la pratique sur le marché en question et, notamment, de se départir d'éléments d'actif ou d'actions.

(3) In making an order under subsection (2), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

(3) Lorsque le Tribunal rend une ordonnance en application du paragraphe (2), il le fait aux conditions qui, à son avis, ne porteront atteinte aux droits de la personne visée par cette ordonnance ou à ceux des autres personnes touchées par cette ordonnance que dans la mesure de ce qui est nécessaire à la réalisation de l'objet de l'ordonnance.

(3.1) If the Tribunal makes an order against a person under subsection (1) or (2), it may also order them to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding $15,000,000.

(3.1) S'il rend une ordonnance en vertu des paragraphes (1) ou (2), le Tribunal peut aussi ordonner à la personne visée de payer, selon les modalités qu'il peut préciser, une sanction administrative pécuniaire maximale de 10 000 000 $ et, pour toute ordonnance subséquente rendue en vertu de l'un de ces paragraphes, de 15 000 000 $.

(3.2) In determining the amount of an administrative monetary penalty, the Tribunal shall take into account any evidence of the following:

(3.2) Pour la détermination du montant de la sanction administrative pécuniaire, il est tenu compte des éléments suivants :

(a) the effect on competition in the relevant market;

a) l'effet sur la concurrence dans le marché pertinent;

(b) the gross revenue from

b) le revenu brut provenant des

sales affected by the practice;

ventes sur lesquelles la pratique a eu une incidence;

(c) any actual or anticipated profits affected by the practice;

c) les bénéfices réels ou prévus sur lesquels la pratique a eu une incidence;

(d) the financial position of the person against whom the order is made;

d) la situation financière de la personne visée par l'ordonnance;

(e) the history of compliance with this Act by the person against whom the order is made; and

e) le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

(f) any other relevant factor.

f) tout autre élément pertinent.

(3.3) The purpose of an order made against a person under subsection (3.1) is to promote practices by that person that are in conformity with the purposes of this section and not to punish that person.

(3.3) La sanction prévue au paragraphe (3.1) vise à encourager la personne visée par l'ordonnance à adopter des pratiques compatibles avec les objectifs du présent article et non pas à la punir.

(4) In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal shall consider whether the practice is a result of superior competitive performance.

(4) Pour l'application du paragraphe (1), lorsque le Tribunal décide de la question de savoir si une pratique a eu, a ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, il doit évaluer si la pratique résulte du rendement concurrentiel supérieur.

(5) For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act, Industrial Design Act, Integrated Circuit Topography Act, Patent Act, Trade-marks Act* or any other

(5) Pour l'application du présent article, un agissement résultant du seul fait de l'exercice de quelque droit ou de la jouissance de quelque intérêt découlant de la *Loi sur les brevets,* de la *Loi sur les dessins industriels,* de la *Loi sur le droit d'auteur,* de la *Loi*

Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act.

*sur les marques de commerce*, de la *Loi sur les topographies de circuits intégrés* ou de toute autre loi fédérale relative à la propriété intellectuelle ou industrielle ne constitue pas un agissement anti-concurrentiel.

(6) No application may be made under this section in respect of a practice of anti-competitive acts more than three years after the practice has ceased.

(6) Une demande ne peut pas être présentée en application du présent article à l'égard d'une pratique d'agissements anti-concurrentiels si la pratique en question a cessé depuis plus de trois ans.

(7) No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

(7) Aucune demande à l'endroit d'une personne ne peut être présentée au titre du présent article si les faits au soutien de la demande sont les mêmes ou essentiellement les mêmes que ceux qui ont été allégués au soutien :

(a) proceedings have been commenced against that person under section 45 or 49; or

a) d'une procédure engagée à l'endroit de cette personne en vertu des articles 45 ou 49;

(b) an order against that person is sought by the Commissioner under section 76, 90.1 or 92.

b) d'une ordonnance demandée par le commissaire à l'endroit de cette personne en vertu des articles 76, 90.1 ou 92.

## Schedule "B" – List of Exhibits

| | |
|---|---|
| CA-001 | Confidential Witness Statement of William McMullin dated June 18, 2012 |
| A-002 | Witness Statement of William McMullin dated June 18, 2012 |
| CA-003 | List of Confidential Documents submitted by the Commissioner on September 10, 2012 |
| A-004 | List of Public Documents Submitted by the Commissioner on September 10, 2012 |
| IC-005 | Nova Scotia visits January - May 2012 |
| A-006 | ViewPoint Demonstration Video |
| A-007 | Witness Statement of Urmi Desai dated June 20, 2012 |
| A-008 | Witness Statement of Scott Nagel dated June 20, 2012 |
| CA-009 | Confidential Letter re Changes to the Vow Datafeed dated September 6, 2012 |
| A-010 | Witness Statement of John Pasalis dated June 20, 2012 |
| R-011 | Email of August 2, 2011, including blog post co-written by Mr. Pasalis, entitled "The end of Realtor.ca?" |
| A-012 | Public version of CA-009 - Letter re Changes to the Vow Datafeed dated September 6, 2012 |
| A-013 | Witness Statement of Shayan Hamidi dated June 20, 2012 |
| R-014 | RedPin News Release |
| A-015 | Witness Statement of Tarik Gidamy dated June 22, 2012 |
| A-016 | Witness Statement of Joel Silver dated June 22, 2012 |
| A-017 | Standard Form Seller Brokerage Agreement (NSAR and AVREB) |
| A-018 | TheRedPin VOW Registration |
| CA-019 | Confidential Witness Statement of Mark Enchin dated June 19, 2012 |
| A-020 | Witness Statement of Mark Enchin dated June 19, 2012 |
| A-021 | Reply Witness Statement of Mark Enchin dated August 17, 2012 |
| A-022 | Witness Statement of Sam Prochazka dated June 22, 2012 |

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|---|---|
| IC-023 | Webpages from website of Paula Amaral |
| IC-024 | REBGV Rules of 10 Cooperation: July 2010 – Complete |
| CA-025 | Commissioner's Confidential Request to Admit |
| A-026 | Commissioner's Request to Admit |
| CA-027 | TREB's Confidential Response to the Commissioner's Request to Admit |
| A-028 | TREB's Response to the Commissioner's Request to Admit |
| CA-029 | Confidential Expert Report of Dr. Greg Vistnes dated June 22, 2012 |
| A-030 | Expert Report of Dr. Greg Vistnes dated June 22, 2012 |
| CA-031 | Confidential Reply Expert Report of Dr. Greg Vistnes dated August 23, 2012 |
| A-032 | Reply Expert Report of Dr. Greg Vistnes dated August 23, 2012 |
| A-033 | Presentation of Dr. Greg Vistnes (PDF) |
| CA-034 | Confidential Percentage Component of Buy-Side Offered Commissions – Summary |
| IC-035 | 2011 Profile of Home Buyers and Sellers 2011 |
| IC-036 | Excerpt from 2012 National Association of REALTORS ® Member Profile |
| A-037 | Public version of CA-038 - Letter from Scott Nagel [RedFin] to Madam Justice Simpson providing responses to questions from the Tribunal of September 12, 2012 |
| CA-038 | Confidential Letter from Scott Nagel [RedFin] to Madam Justice Simpson providing responses to questions from the Tribunal of September 12, 2012 |
| R-039 | Witness Statement of Donald Richardson dated July 27, 2012 |
| CR-040 | Confidential Witness Statement of Donald Richardson dated July 27, 2012 |
| R-041 | STRATUS Screenshots |
| R-042 | Updated List of VOWs and AVPs |
| A-043 | E-Mail from Von Palmer dated September 24, 2012 attaching two chains of emails |
| R-044 | C21 and Zoocasa |

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| R-045 | Public Accessing Solds September 26, 2012 |
| R-046 | MPAC FAQs |
| R-047 | Pricelist Catalogue |
| R-048 | Teranet Services |
| A-049 | Schedule B to Agreement of Purchase |
| A-050 | Various News Articles |
| A-051 | RECO Advertising Guidelines |
| A-052 | MLS Rules and Policies Effective January 1, 2006 |
| A-053 | Sample CMA of TREB'S Residential Freehold Unavailable Sale |
| A-054 | TREB Privacy Q & A for Approval |
| A-055 | Office of the Privacy Commissioner of Canada |
| CA-056 | Lydia RE: Competition Bureau and TREB - Notice of Application |
| CA-057 | Re: Lydia RE: Competition Bureau and TREB - Notice of Application |
| R-058 | Email from Marie-Michele Caux to Will Stewart re Toronto Real Estate Board |
| R-059 | Privacy Compliance Material on www.torontomls.net |
| CR-060 | Tung-Chee Chan Commission Tables |
| R-061 | Witness Statement of Tung-Chee Chan dated July 27, 2012 |
| R-062 | Witness Statement of Pamela Prescott dated July 27, 2012 |
| CR-063 | C21 Heritage Group Actual Commission |
| R-064 | Witness Statement of Evan Sage dated July 27, 2012 |
| CR-065 | Confidential Sage Real Estate Commission Table |
| A-066 | In the listings game, the ground shifts |
| A-067 | Sage Real Estate September Market Report |
| R-068 | Century 21 - Schedule B - SALE 2011 |
| R-069 | Sage – Sched B for sale – Last updated January 2012 |

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| R-070 | Witness Statement of Timoleon Syrianos dated July 27, 2012 |
| CR-071 | Confidential Witness Statement of Timoleon Syrianos dated July 27, 2012 |
| CR-072 | Confidential REMAX Ultimate |
| A-073 | REMAX Consent to Advertise Sold Properties |
| A-074 | Schedule B to the Agreement of Purchase and Sale |
| CA-075 | Confidential REMAX Ultimate Realty - Commission Report (June 1- June 30, 2011) |
| A-076 | RE/MAX Ultimate Realty - Commission Report (June 1- June 30, 2011) |
| CA-077 | Confidential RE/MAX Ultimate Realty - Commission Report (June 1- June 30, 2012) |
| A-078 | RE/MAX Ultimate Realty - Commission Report (June 1- June 30, 2012) |
| R-079 | Expert Report of Dr. Jeffrey Church dated July 27, 2012 |
| CR-080 | Confidential Expert Report of Dr. Jeffrey Church dated July 27, 2012 |
| CR-081 | Confidential corrections to the Expert Report of Dr. Jeffrey Church |
| R-082 | Summary of Expert Report of Dr. Jeffrey Church |
| R-083 | List of RECO documents entered on consent of all parties |
| IC-084 | Witness Statement of Gary Simonsen dated August 3, 2012 |
| CIC-085 | Confidential Witness Statement of Gary Simonsen dated August 3, 2012 |
| IC-086 | Example of Residential Property Search on www.realtor.ca |
| A-087 | Minutes from CREA VOW Task Force |
| IC-088 | Expert Report of Dr. Fredrick Flyer dated August 13, 2012 |
| IC-089 | Powerpoint Presentation for Dr. Fredrick Flyer's Expert Evidence |
| IC-090 | Privacy Workbook |
| IC-091 | TREB Education Workbook - Complying with Privacy |
| A-092 | The Commissioner of Competition Read-ins – Excerpts from the Examination for Discovery of Donald Richardson held March 19, 20, 21 and April 3, 2012 |

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| R-093 | TREB Read-ins |
| R-094 | Self-Regulated Professions - Balancing Competition and Regulation, Competition Bureau 2007 |
| R-095 | TREB's Request to Admit |
| CR-096 | TREB's Confidential Request to Admit |
| R-097 | Corrections to the Expert Report of Dr. Jeffrey Church |
| R-098 | Completed Read-in from the Discovery of Donald Richardson |
| CA-099 | Confidential Second Witness Statement of William McMullin dated February 5, 2015 |
| A-100 | Second Witness Statement of William McMullin dated February 5, 2015 |
| CA-101 | Confidential Third Witness Statement of William McMullin dated July 31, 2015 |
| A-102 | Third Witness Statement of William McMullin dated July 31, 2015 |
| CA-103 | Confidential ViewPoint Realty Business Metrics |
| A-104 | Demo of Viewpoint.ca for unregistered user |
| CA-105 | Confidential Demo of Viewpoint.ca for registered user |
| A-106 | Demo of Viewpoint.ca for registered user |
| IC-107 | Email chain between William McMullin and CREA – May 6, 2014 to June 26, 2014 |
| IC-108 | Email chain between William McMullin and CREA – September 3, 2013 to October 25, 2013 |
| IC-109 | 2014 Consumer Insights Report for Realtors |
| IC-110 | FOR IDENTIFICATION ONLY - Com Score Media Trend Viewpoint.ca |
| IC-111 | FOR IDENTIFICATION ONLY - Com Score Media Key Measures June 2015 Atlantic |
| IC-112 | Sales pending |
| A-113 | Second Witness Statement of Tarik Gidamy dated January 30, 2015 |
| CA-114 | Confidential Second Witness Statement of Tarik Gidamy dated January 30, 2015 |

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| R-115 | Online brokerage RedPin sticks it to traditional real estate |
| R-116 | TheRedPin In The News |
| A-117 | Second Witness Statement of Sam Prochazka dated February 3, 2015 |
| CA-118 | Confidential Second Witness Statement of Sam Prochazka dated February 3, 2015 |
| R-119 | TheRedPin Want to Make Great Service Ubiquitous in The Canadian Housing Market |
| A-120 | Second Witness Statement of John Pasalis dated February 2, 2015 |
| A-121 | 208 Pape Ave - Bosley |
| CA-122 | 155 Gainsborough - Bosley (Confidential) |
| A-123 | 155 Gainsborough - Re/Max Hallmark |
| A-124 | #815 - 255 Richmond St. E. - Bosley |
| A-125 | #815 - 255 Richmond St. E - Re/Max Hallmark |
| A-126 | 35 Woodfield Rd - Bosley |
| A-127 | 35 Woodfield Rd - RE/MAX Hallmark |
| R-128 | The Future of Home Buying |
| A-129 | Second Witness Statement of Scott Nagel dated February 5, 2015 |
| CA-130 | Confidential Second Witness Statement of Scott Nagel dated February 5, 2015 |
| IC-131 | NAR Section 19 Model Rules on Virtual Office Websites with Attachments |
| R-132 | Updated Witness Statement of Pamela Prescott |
| CR-133 | Confidential Updated Witness Statement of Pamela Prescott |
| A-134 | Century 21 Heritage Group Ltd. - Directory Search |
| CA-135 | Confidential Expert Report of Dr. Greg Vistnes dated February 6, 2015 |
| A-136 | Reply Expert Report of Dr. Greg Vistnes dated August 4, 2015 |
| CA-137 | Confidential Reply Expert Report of Dr. Greg Vistnes dated August 4, 2015 |
| A-138 | Expert Report of Dr. Greg Vistnes dated February 6, 2015 |
| IC-139 | NAR 2014 Home Buyer and Seller Generational Trends with Attachments |

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| IC-140 | NAR 2014 Profile of Home Buyers and Sellers with attachments |
| R-141 | Updated Witness Statement of Donald Richardson |
| CR-142 | Confidential Updated Witness Statement of Donald Richardson |
| A-143 | Third Witness Statement of Mark Enchin dated February 2, 2015 |
| A-144 | RECO Board of Directors |
| A-145 | RECO 2013-2014 Annual Report |
| A-146 | For the Record Spring 2014 |
| A-147 | RECO's 2015 Board of Directors |
| A-148 | Bosley site issue - VOW Compliance |
| CA-149 | FW: Homes Sold on Toronto MLS® |
| CA-150 | FW: Solds |
| CA-151 | FW: Toronto Condos Sold |
| R-152 | Updated Witness Statement of Tung-Chee Chan |
| CR-153 | Confidential Updated Witness Statement of Tung-Chee Chan |
| R-154 | Reconnect (Autumn Edition 2013) (RECO Document) |
| R-155 | For the RECOrd (Winter 2013) (RECO Document) |
| R-156 | Reconnect (Spring Edition 2015) (RECO Document) |
| R-157 | Social Media for Real Estate Professionals (RECO Document) |
| R-158 | Advertising Checklist (with attachment) (RECO Document) |
| R-159 | Advertising Sold Properties (with attachment) (RECO Document) |
| A-160 | Working with a Realtor |
| A-161 | Buyer Customer Service Agreement |
| CA-162 | Confidential Stratus Screenshots Sold Search |
| R-163 | Updated Witness Statement of Evan Sage |
| CR-164 | Confidential Updated Witness Statement of Evan Sage |

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| R-165 | The BREL Team Screenshots |
| A-166 | 229 Kenilworth Ave |
| A-167 | The Future of the Real Estate Industry |
| R-168 | Updated Witness Statement of Timoleon Syrianos |
| CR-169 | Confidential Updated Witness Statement of Timoleon Syrianos |
| CR-170 | Confidential RE/MAX Ultimate Realty Inc. All Written Trades - August 01, 2014 to July 31, 2015 |
| R-171 | Expert Report of Dr. Jeffrey Church dated May 15, 2015 |
| CR-172 | Confidential Expert Report of Dr. Jeffrey Church dated May 15, 2015 |
| R-173 | Summary of Second Expert Report of Dr. Jeffrey Church, dated October 6, 2015 |
| A-174 | Realtor.com to display sold listings data in Chicago, Boston, SF |
| A-175 | NAR vote could give broker and agent listing websites a shot in the arm |
| A-176 | Federal Antitrust Policy |
| IC-177 | Updated Witness Statement of Gary Simonsen |
| IC-178 | Important Changes to the Rules for Use of the REALTOR® Certification Mark |
| IC-179 | REALTOR.ca Nova Scotia Web and Mobile Traffic Analysis: 2012, 2013, 2014 |
| IC-180 | CREA internet presentation of Gary Simonsen |
| A-181 | CREA Board of Directors |
| IC-182 | Updated Expert Report of Dr. Fredrick Flyer dated June 2, 2015 |
| CIC-183 | Confidential Updated Expert Report of Dr. Fredrick Flyer dated June 2, 2015 |
| IC-184 | NAR Website Statistics for January - June 2015 with Attachments |
| A-185 | 155 Gainsborough Bosley (Public version of CA-122) |

## Appearances

**For the applicant:**

The Commissioner of Competition

John F. Rook, Q.C.
Emrys Davis
Andrew D. Little
Tara DiBenedetto

**For the respondent:**

Toronto Real Estate Board

Donald S. Affleck, Q.C.
David N.Vaillancourt
Fiona Campbell

**For the intervenor:**

Canadian Real Estate Association

Sandra A. Forbes
Michael Finley
James Dinning

# 11

Competition Tribunal | Tribunal de la Concurrence

Reference: *Construx Engineering Corporation* ***v.*** *General Motors of Canada*, 2005 Comp. Trib. 21
File no.: CT-2005-004
Registry Document no.: 0007a

IN THE MATTER OF the *Competition Act* R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application by Construx Engineering Corporation for an order pursuant to section 103.1 granting leave to make application under sections 75 and *77* of the *Competition Act;*

AND IN THE MATTER OF an application by Construx Engineering Corporation for an interim order pursuant to section 104 of the *Competition Act.*

BETWEEN:

**Construx Engineering Corporation**
(applicant)

And

**General Motors of Canada Ltd**
(respondent)

Decided on the basis of the written record.
Member: Simpson J. (Chairman)
Date of reasons and order: Monday June 13, 2005
Signed by: Simpson J.

**REASONS AND ORDER IN LEAVE APPLICATION UNDER SECTIONS 75 AND 77**

**[I]** This application, pursuant to section 103.1 of the Competition Act, R.S.C. 195, c. C-34, as amended, (the "Act") is for leave to apply to the Competition Tribunal (the "Tribunal") for orders under section 75 of the Act - refusal to deal - and section 77 - market restriction. Construx Engineering Corporation ("Construx") alleges that General Motors of Canada Ltd. ("GM") is refusing to supply it with new GM motor vehicles (the "Vehicles"). Construx also alleges that this practice amounts to market restriction.

**[2]** GM acknowledges that its policy is to prohibit authorized GM dealers in Canada from selling Vehicles to persons or businesses who will resell or export. This policy is clearly stated in the agreements between GM and its authorized dealers. Those agreements also provide for various enforcement mechanisms which are designed to ensure that dealers will respect the prohibition. These include loss of rebates and allowances, loss of warranty coverage for the vehicle sold, etc. GM also acknowledges its policy of prohibiting the import of Vehicles manufactured outside Canada by persons other than its authorized dealers. For ease of reference, these policies will collectively be described as the "Policies".

**[3]** Construx filed its application for leave on April 25, 2005. The Commissioner certified on May 3,2005, pursuant to subsection lO3.l(3), that the matter was not the subject of an inquiry and had not been the subject of an inquiry which was discontinued because of a settlement. On May 5, 2005, the Tribunal issued a notice stating that it could hear the application for leave. GM filed its response on May 20, 2005. Counsel for Construx inquired about the possibility of filing a reply, and was given 7 days to do so. No reply was filed.

## I. BACKGROUND

**[4]** On leave applications, an applicant must provide the Tribunal with sufficient information about its business to allow the Tribunal to grant leave. The affidavit of Construx' president, affirmed on April 1 I, 2005, discloses that:

(i) Construx describes itself as a "wholesale dealer and broker of transportation products, including automobiles". Historically, once Construx purchased atransportation product, it either exported it to a buyer outside Canada or resold it to buyers in Canada. Construx' president states that, to the best of his knowledge, those buyers "generally" exported the product.

(ii) In the course of its business, Construx has purchased Vehicles primarily from authorized GM dealers in Ontario. However, Construx has also acquired Vehicles from other suppliers which had previously purchased them from authorized Ontario GM dealers.

(iii) Construx states that it cannot purchase Vehicles from authorized GM dealers because of GM's Policies which prohibit the export of Vehicles from Canada and the resale of Vehicles in Canada. As well, Construx would like to begin importing Vehicles but this option is also precluded by GM's Policies.

(iv) Construx alleges that the Policies have had a "devastating" effect. Between 1997 and 2003, Construx' Vehicle sales figure was $6.8M, representing 38% of its total sales. Construx says that in 2003, it sold 53 Vehicles, which represented 67% of all its new motor vehicle sales in 2003. However, in 2004, by contrast, Construx was unable to acquire any Vehicles.

(v) Construx states that GM's efforts to prevent the export of Vehicles from Canada has meant that Construx has been unable to fill a number of purchase orders described as orders for 120 sport utility vehicles and other similar vehicles and 200 Chevrolet Avalanche and heavy duty pickup trucks, for a total loss of $490,000.

(vi) Construx also claims that if allowed to do so, authorized GM dealers would place orders with Construx to purchase Vehicles manufactured outside Canada. Since Construx cannot import Vehicles from outside Canada, it says that it is also losing those prospective sales. Also because of the import prohibition, Construx was unable in 2003 to satisfy orders of 15 Chevrolet SSRs for a total loss of $75,000.

**[5]** The Tribunal notes the following serious deficiencies in the evidence presented by Construx:

(i) There is no evidence, except in relation to the Vehicles, concerning either the nature of or the volume of the transportation products Construx sells.

(ii) There is no evidence setting out Construx' annual sales figures for the Vehicles in the period from 1997 to 2003.

(iii) There is no evidence of Construx' total annual sales of transportation products in those years.

(iv) There is no evidence about the geographic market, except that Construx primarily purchased fiom authorized GM dealers in Ontario, and resold mainly for export.

(v) There is no evidence about how many Vehicles sold by Construx remained in Canada and how many were exported.

(vi) There is no evidence about what constitutes the product market. In particular, no attempt is made to show that the Vehicles constitute a separate product.

(vii) Finally, there is no evidence that the Policies have led to a substantial lessening of competition.

## II. DISCUSSION

**[6]** The starting point in the consideration of a leave application is subsection 103.1(7) which states:

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| **103.1**<br>(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section. | **103.1**<br>(7) Le Tribunal peut faire droit a une demande de permission de prhsenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gent dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire I'objet d'une ordonnance en vertu de ces articles. |

**[7]** The threshold in a leave application is low, but there must be some evidence presented that would, if the facts were proven, justify an order requiring supply or prohibiting market restriction *(Symbol Technologies Canada ULC v. Barcode Systems Inc.* 2004 FCA 339). In that case, the Federal Court of Appeal confirmed the test for leave under section 103.1 first enunciated by Madam Justice Dawson in *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41 at paragraph 14:

> Accordingly, on the basis of the plain meaning of the wording used in subsection 103.1(7) of the Act and the jurisprudence referred to above, I conclude that the appropriate standard under subsection 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a ***bona fide*** belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.

**[8]** In the present case, the Tribunal need not consider whether Construx is "directly" affected, because even if it is assumed that it is directly affected by GM's Policies, there is no evidence that it is "substantially" affected. As noted in the list of deficiencies above, Construx' evidence does not provide sufficient information about its business and the impact of the Policies on its business. Construx claims that the sale of Vehicles represented 38% of its total sales from 1997 to 2003, but given the absence of a yearly breakdown, the Tribunal cannot assess the significance of those sales. Construx claims that the sales of Vehicles in 2003 represented 67% of the sales of new motor vehicles, but since the business of Construx is "transportation products" and no total sales figure has been provided, the Tribunal cannot know what this means for the whole enterprise. There is therefore no reasonable basis for the Tribunal to believe that Construx has been substantially affected as required by subsection 103.1(7).

**[9]** The Tribunal therefore concludes that the application for leave is not supported by "sufficient credible evidence" to give it reason to believe that the applicant is substantially affected in its business. That being so, it is not necessary to consider sections 75 and 77 of the Act, nor the submissions made by GM.

## III. ORDER

**[10]** For these Reasons, this application is hereby dismissed without costs.

DATED at Toronto, this 13th da y of June, 2005,

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Sandra J. Simpson

REPRESENTATIVES:

For the applicant:

Construx Engineering Corporation

Donald S. Affleck, Q.C.
Angela Yadav

For the respondent:

General Motors of Canada Ltd.

Peter Franklyn
Mahmud Jamal
Steve Sansom

# 12

Competition Tribunal Tribunal de la Concurrence

**CT - 1991 / 002 – Doc # 72**

IN THE MATTER OF an application by the Director of Investigation and Research under section 79 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

AND IN THE MATTER OF certain practices by Laidlaw Waste Systems Ltd. in the communities of Cowichan Valley Regional District, Nanaimo Regional District and the District of Campbell River, British Columbia.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Laidlaw Waste Systems Ltd.

Respondent

**REASONS FOR ORDER**

**Dates of Hearing:**

October 28 - November 19, and December 16, 1991

**Presiding Member:**

The Honourable Madame Justice Barbara J. Reed

**Lay Members:**

Dr. Frank Roseman
Madame Marie-Hélène Sarrazin

**Counsel for the Applicant:**

**Director of Investigation and Research**

William J. Miller
Josée Touchette

**Counsel for the Respondent:**

**Laidlaw Waste Systems Ltd.**

A. G. Henderson
Kerry D. Sheppard
Patrick Selinger

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**COMPETITION TRIBUNAL**

**REASONS FOR ORDER**

***The Director of Investigation and Research***

***v.***

***Laidlaw Waste Systems Ltd.***

## I. INTRODUCTION

An application is brought by the Director of Investigation and Research ("Director") pursuant to section 79 of the *Competition Act* ("the Act"),[1] for orders prohibiting Laidlaw Waste Systems Ltd. ("Laidlaw") from engaging in certain anti-competitive acts and for orders to redress the anti-competitive situation created by those acts. Subsection 1 of section 79 provides:

> 79. (1) Where, on application by the Director, the Tribunal finds that
>
> *(a)* one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,
> *(b)* that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and
> *(c)* the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
>
> the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

[1] R.S.C., 1985, c. C-34, as amended.

Subsection 2 of section 79 authorizes the Tribunal to make orders to restore competition to the market. This is the second case brought under section 79 since its enactment in 1986. The first was *Director of Investigation and Research v. The NutraSweet Company*. [2]

## II. CLASS OR SPECIES OF BUSINESS - PRODUCT MARKET

There is no dispute in this case as to the relevant product market. It is a specific category of waste collection and disposal service.

Solid waste collection and disposal services can be classified into three categories: the collection and disposal of garbage which has been placed in bags or cans, usually at curbside; the collection and disposal of garbage which has been placed in bins which remain on the customer's premises at all times; the collection and disposal of garbage which has been placed in very large containers which are transported to the dump site to be emptied.

The first type of service is usually required by residences, small apartments and those establishments which generate relatively small quantities of garbage. The vehicles used for this service are often of a rear- or side-load

[2] (1990), 32 C.P.R. (3d) 1 (Competition Trib.).

configuration, usually containing a compactor, into which the bags of garbage are loaded manually.

The third type of service (roll-off or giant-haul service) is required by customers who generate large amounts of waste, some of it non-compactible. These customers are often industrial undertakings such as large factories or construction sites. The large containers (up to forty cubic yards in size) are loaded onto a flat-bed roll-off truck and, as has been noted, taken to the dump site for emptying. The empty container is then returned to the customer's premises unless it has been rented for one occasion only.

It is the second type of service which is the product in issue in this case. While it is sometimes referred to in the evidence as commercial service or front-end service, it is common ground that a more accurate description is lift-on-board service. This service is required by customers who generate a significant quantity of solid waste. These customers are often commercial enterprises such as restaurants, office buildings and campgrounds. The bins may be as small as two cubic yards or as large as twelve cubic yards. The vehicles used for collection are often front-load vehicles which lift the bin over the front of the truck by a hydraulic hoist. The waste material is thus emptied into the vehicle where it is compacted. These trucks while usually of a front-load configuration may also be of either a side-load or rear-load variety.

Lift-on-board customers can be subdivided with respect to their size and method of purchasing. Some, who most likely sign the standard form contracts which are in issue in this case, are small enterprises often requiring no more than one bin for service. Others, who either because of the volume of service they require or because as public entities they are bound by certain purchasing standards, seek service only through a process of public tender. No argument has been made that a distinction should be made for product market definition purposes between these two and the Tribunal does not make any.

## III. LAIDLAW'S CONDUCT

### A. Acquisitions and Related Activity

Laidlaw's conduct which is the subject of this application can be described by reference to a number of geographic areas[3] on the eastern side of Vancouver Island: the Cowichan Valley (Duncan) area; the Nanaimo area; the Courtenay-Comox-Cumberland area; and the Campbell River area.

(1) Cowichan Valley (Duncan) Area

In 1986 there were three lift-on-board disposal service companies in the Cowichan Valley (Duncan) area: C.W. Disposals Ltd. ("C.W."), Fox's Disposal

[3] More fully described *infra* at 46-48.

Service (1977) Ltd. ("Fox"), and PAN Garbage Disposal ("PAN"). C.W. was by far the largest player in the market. It held a municipal contract with the Corporation of the District of North Cowichan. Fox held a five-year contract with the Village of Lake Cowichan which it served together with some outlying areas. PAN was and is a very small family-run business operating to the south of Duncan.

(a) Acquisition of C.W. Disposals Ltd. - Restrictive Covenant

In May 1986, Laidlaw acquired the assets of C.W. The acquisition agreement included a restrictive covenant obligating the shareholders and chief operating officers of the company not to engage directly or indirectly in any waste disposal business, for a period of five years after the acquisition, anywhere within the province of British Columbia. The covenant provides alternatively for non-competition within a 300-mile radius of Duncan and in the further alternatives within a 200-mile radius, a 100-mile radius or a 50-mile radius of Duncan. An internal memorandum, dated May 21, 1986 and prepared by Laidlaw's in-house counsel, indicated that it was a 300-mile radius which had been agreed to despite the fact that the signed contract provides for a covenant extending over the whole province of British Columbia.

(b) Municipal Contract of C.W. Disposals Ltd. - Pre-emption by Laidlaw Waste Systems Ltd.

The acquisition agreement also provided for the assumption by Laidlaw of the contract which C.W. held with the Corporation of the District of North Cowichan. That contract had been signed first in 1975. It had a one-year term which renewed automatically each year in the absence of notice by either party terminating the contract. The municipal council annually approved the prices to be charged to those who used the lift-on-board garbage disposal service. In December 1985 the council approved the rates which were to be charged for 1986.

While initially the municipality had billed the customers for the lift-on-board service, there is some evidence that in early 1986 it was expecting C.W. to take over this administrative task. This does not mean that the municipality was withdrawing from the contract but merely that it expected C.W. to assume certain administrative tasks related thereto. The council accepted Laidlaw as the successor to C.W. under this contract. It was known by June 1986 that the council planned, in the fall, to call for public tenders with respect to the contract. Before this could occur, however, Laidlaw managed to have many of C.W.'s ex-customers sign individual contracts with Laidlaw even though Laidlaw was at the time serving these customers pursuant to its contract with the Corporation. The council had asked Laidlaw to cease the practice but Laidlaw did not comply.

When the tender for the municipal contract was called, Laidlaw suggested to the council that this process was futile since most of the individuals to whom the service was being provided were by this time directly under contract with Laidlaw. The council proceeded with the tendering process. Laidlaw took part in that process. Laidlaw was the high bidder. Fox was the low bidder. Laidlaw then questioned the authority of the council to award the contract since Laidlaw had individual contracts with many of the users of the service. Laidlaw threatened the council with a lawsuit. The council cancelled the tendering process and did not award a contract. The council took this course of action because it did not want the expense and political embarrassment of being involved in a lawsuit with Laidlaw.

(c) Fox's Disposal Service (1977) Ltd. Leaves the Market

In April 1987 the contract which Fox held with the Village of Lake Cowichan came up for retender. The Village decided to provide its own lift-on-board collection and disposal service for its inhabitants. This left only the outlying areas to be covered by the tender. Fox was the low bidder for the lift-on-board service but Laidlaw was the low bidder with respect to the residential portion of the collection service covered by the contract. Fox lost the contract to Laidlaw. Fox was thereafter out of business.

(d) Advance Waste Systems Inc. - A New Entrant

Advance Waste Systems Inc. ("Advance") entered the lift-on-board business in the Cowichan Valley (Duncan) area in April 1987. Advance was financed by Daniel Jack McLeod. He had been operating a roll-off waste disposal service in the Duncan area for many years. The lift-on-board service of Advance was run on a day-to-day basis by Michael Wallace. After commencement of the business, Mr. Wallace was approached on several occasions by a representative of Laidlaw, Dean Woods, seeking to purchase the Advance lift-on-board business. Mr. Wallace was also harassed by Mr. Woods with verbal taunts regarding the future of Advance.

Part of Advance's marketing strategy was to emphasize the fact that it was a local company. In a communication to Laidlaw's customers, Mr. Wallace mistakenly referred to Laidlaw as "of Chicago, Illinois".[4] He had seen Laidlaw referred to in that way in a newspaper article even though he thought Laidlaw originated in Hamilton, Ontario. In fact, Laidlaw Waste Systems Ltd. did go through several metamorphoses and, at one point in the early 1980s, it was listed as Laidlaw Industries Inc. on the NASDAQ Exchange in Chicago. Laidlaw responded to the Advance letter in a wildly overly aggressive manner by launching an action against Advance seeking damages for libel, injurious

[4] Joint Book of Documents, vol. VII, tab F-2 at 9 (Exhibit VII).

falsehood and interference with contractual relations. Mr. Woods again approached Mr. Wallace and sought to buy the Advance lift-on-board business. Mr. Wallace was told that if this business was not sold to Laidlaw, Laidlaw would ensure that Advance was put out of business. Mr. Wallace understood that part of the strategy for doing so involved the pursuit of legal action against Advance for the support of which Laidlaw was willing to spend $100,000.

Eventually, on February 28, 1990, Mr. McLeod sold the Advance lift-on-board business to Laidlaw; it had been suggested to him that Laidlaw might begin operating in the roll-off business in the Duncan area.

(e) Acquisition of Advance Waste Systems Inc. - Restrictive Covenants

The acquisition agreement pursuant to which Laidlaw purchased the Advance lift-on-board assets in February 1990 requires Advance and its principal officers not to engage either directly or indirectly in the lift-on-board business, for a period of five years after the acquisition, within a geographic area commencing 15 miles north of Victoria and ending at the northern city limits of Nanaimo and extending 30 miles westward from the coastline of Vancouver Island between those limits.[5] Laidlaw agreed not to operate any roll-off business within this same

[5] The actual text of the covenant, although different in wording, is not different in substance:

Commencing at Goldstream Provincial Park, then following northward up the coastline of Vancouver Island to Parksville, then inland a distance of thirty miles, then returning down the Island staying a distance thirty miles from the coast until at the same parallel as Goldstream

area for the same period of time. In fact, undoubtedly unknown to Mr. McLeod, Laidlaw was already under a restrictive covenant not to engage in the roll-off business in this area as a result of an agreement signed with Jones Disposal Services Ltd. in May 1986.[6] Under the agreement with Advance, Laidlaw also obtained a right of first refusal to purchase Advance's roll-off business, should it decide to sell.

With the withdrawal of Advance from the lift-on-board business in the Cowichan Valley (Duncan) area, Advance ceased a small amount of business which it had been doing in Nanaimo for ex-customers of another company which had been purchased by Laidlaw, SCS Waste Systems Inc.[7] After the acquisition of Advance the only competitor to Laidlaw in the Cowichan Valley (Duncan) area was and is PAN.

(f) Attempted Acquisition of PAN Garbage Disposal

Laidlaw tried on several occasions to acquire PAN. On one occasion Mr. McLeod was asked by Laidlaw to purchase PAN and turn it over to Laidlaw.

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Provincial Park and then across to the Park. (Joint Book of Documents, vol. II, tab A-5-8 at 93 (Exhibit II)).

[6] *Infra* at 19.

[7] *Infra* at 20-21.

PAN had refused to deal with Laidlaw. Mr. McLeod refused. Mr. McLeod was left with the impression that Laidlaw intended to move into the residential garbage collection business in the area in which PAN operates in order to bring prices down so low that Niko Pfaffe, who together with his wife owns and operates PAN, would be driven out of business. Mr. Pfaffe who has met Laidlaw as a competitor in the residential collection business has also been left with that message.

(2) Nanaimo Area

In 1986 there were three businesses providing lift-on-board service in the Nanaimo area: Nanaimo Disposal Service (1980) Ltd. ("Nanaimo Disposal"); Jones Disposal Services Ltd. ("Jones"); and United Disposal Ltd. ("United"). Laidlaw purchased Nanaimo Disposal in March 1986. It purchased the lift-on-board businesses of Jones and United in May and August respectively of the same year.

(a) Acquisition of Nanaimo Disposal Service (1980) Ltd.
- Restrictive Covenant

The acquisition agreement respecting Nanaimo Disposal contains a non-competition clause whereby the vendors (the company and its two principals) are obligated not to carry on either directly or indirectly any waste disposal business, for a period of five years after the acquisition, within a 300-mile radius of the City

of Nanaimo or within a 300-mile radius of the City of Vancouver. An exception to this restriction allowed one of the principals, Kalvin Fox, to continue to carry on a garbage disposal business in the District of Port Hardy. Port Hardy is 391 kilometres (250 miles) north of the City of Nanaimo.

(b) Acquisition of Jones Disposal Services Ltd. - Restrictive Covenants

The May 1986 acquisition agreement with Jones contained a non-competition clause obligating both the company and Norman Jones not to carry on directly or indirectly any commercial lift-on-board service or any residential side- or rear-load collection and disposal service, for a period of ten years after the acquisition, anywhere within the province of British Columbia. Laidlaw's in-house counsel's reporting letter indicates that a ten-year 300-mile radius had been agreed upon.[8] At the same time, Laidlaw signed a companion agreement not to compete with Jones in the roll-off waste disposal business for ten years within a 50-mile radius of Nanaimo.[9] Laidlaw sold the roll-off equipment it had acquired when it purchased Nanaimo Disposal to Jones and obtained a right of first refusal,

[8] The restrictive covenants are again set out in a step arrangement, both in terms of time and in terms of area (within a 500-mile radius, a 400-mile radius, a 300-mile radius of the City of Nanaimo or anywhere on Vancouver Island; the alternative time periods descend in one year decrements to one year). There is some uncertainty from the materials in evidence as to exactly what covenants were in fact signed. Both executed and unexecuted versions exist and these differ. Also, the executed version does not seem to contain a time dimension but it is clear from the asset purchase agreement (Joint Book of Documents, vol. XIII, tab L-2 at 276 (Exhibit XIII (confidential)) and vol. II, tab A-5-4 at 56 (Exhibit II)) that a covenant for ten years was agreed upon.

[9] This covenant was also of a "step" variety going from a 50-mile radius downward in decrements of ten to a ten-mile radius and in time from ten years to one year.

for a ten-year period, to purchase Jones' roll-off business or assets should that company decide to sell.

(c) Acquisition of United Disposal Ltd. - Restrictive Covenant

The August 1986 acquisition agreement with United obligated that company and its two principals, Peter Kupiak and Ivan Paquette, not to compete either directly or indirectly in the waste disposal business, for a period of five years after the acquisition, within a 300-mile radius of Parksville (Parksville is 36 kilometres northwest of Nanaimo).[10] After that acquisition there were no competitors to Laidlaw in the lift-on-board service in the Nanaimo area.

(d) SCS Waste Systems Inc. - A New Entrant - Acquisition
- Restrictive Covenant

In April 1987, SCS Waste Systems Inc. ("SCS Waste Systems") commenced business in the Nanaimo area. This business was started by Charles Saunders in conjunction with a steel container manufacturing business he operated under the name of SCS Steel Container Systems Inc. ("SCS"). That company manufactured a variety of steel containers used for waste disposal services including the bins used for lift-on-board service. Mr. Saunders

[10] This covenant was also a "step" variety going from a 300-mile radius downward to a 50-mile radius.

approached Laidlaw when he first started his container manufacturing business to see if that company would purchase containers from him. He was told that Laidlaw was not buying anything at the time and in any event it had its own source of supply for containers.

After SCS Waste Systems had been in the business for four months, a Laidlaw representative approached Mr. Saunders and he understood from that meeting that Laidlaw had $265,000 for the purchase of new containers. He understood that Laidlaw would be willing to deal with SCS, but not while SCS Waste Systems was a competitor to Laidlaw.

SCS Waste Systems was sold to Laidlaw in August 1987. The acquisition agreement contains a non-competition clause obligating SCS Waste Systems, SCS and Mr. Saunders not to engage either directly or indirectly in the solid waste collection and disposal business, for a period of five years after the acquisition, within a 400-mile radius of the City of Nanaimo.[11] Since that time Laidlaw has purchased steel containers for its business from SCS. After SCS Waste Systems went out of business, as noted above, some of its customers approached Advance to see if that company would provide lift-on-board collection and disposal services in the Nanaimo area.

[11] This covenant was also of a "step" variety going from a radius of 400 miles downward to a 50-mile radius.

(e) West Coast Waste Systems Inc. - A New Entrant - Invoking a Restrictive Covenant

In April 1989, Peter Kupiak's brother, Jerry Kupiak, started West Coast Waste Systems Inc. ("West Coast"). Jerry Kupiak tendered on a recycling contract with the Regional District of Nanaimo. The details are not important; it is sufficient to note that on a retender, which included both lift-on-board service and the recycling service, West Coast was the low bidder.

It was assumed by the Kupiak brothers that Peter Kupiak could be involved in the business as recycling manager. They were aware of the restrictive covenant which Peter Kupiak had signed with Laidlaw in connection with its acquisition of United but did not believe that the covenant prevented Peter Kupiak's involvement in recycling as opposed to the traditional type of garbage collection in which United had been engaged. Laidlaw commenced an action against both Peter and Jerry Kupiak as well as against West Coast, seeking an interim injunction to prevent any of them from engaging in the waste disposal business.

After obtaining legal advice the Kupiak brothers realized that Peter Kupiak's involvement in recycling was covered by the covenant. A letter, dated October 31, 1989, was written to the Regional District recognizing this obligation and giving a commitment that Peter Kupiak would not be involved in the

business. Jerry Kupiak also signed an affidavit, dated November 29, 1989, in response to Laidlaw's application for an interim injunction, stating that he and his brother now understood the scope of the covenant and that Peter Kupiak would not be involved in the business. Despite this commitment, Laidlaw pursued the action and had a consent judgment issued against Peter Kupiak on February 20, 1990. There is no evidence that Laidlaw communicated with the Kupiak brothers regarding its concerns about the covenant prior to starting its action for an injunction.

A Laidlaw manager also wrote to the Regional District on September 11, 1989:

> I am writing in follow up to the opening of Tender 89-102.
>
> I am quite concerned, as in the past I have seen a similar situation where a low bidder was chosen when there was reason to believe they would be unable to perform.
>
> The situation took place in Delta where Laidlaw had been serving for a number of years. ...
>
> We attempted to explain to the decision makers that it was below cost for the service they were anticipating but they went with the low bid.
>
> Since then, the poor performance and lack of funds has been headline news in that community.
> ...
>
> The Council has had a political problem on its hands and is now contemplating retendering in lieu of the requested increase.

> The stress on the system and inconvenience on the taxpayer has left those involved with a desire to roll back the clock.
>
> Here in Nanaimo there is a chance to avoid the same problem. ...
>
> ...
>
> I would suggest that the Regional District of Nanaimo does not want the problems attendant with an underbid contract that is so significant.[12]

Employees of the Regional District received a subsequent communication from Laidlaw, dated October 31, 1989, suggesting that it would be reasonable if the District decided to retender, particularly given the fact that Peter Kupiak was now not going to be involved in West Coast. The contract was not retendered. West Coast was awarded the contract. West Coast is still in business in the Nanaimo area. The uncertainties created by Laidlaw's legal action against the Kupiak brothers and West Coast, however, delayed the signing of the contract with the Regional District for over a year. The contract was not finally signed until September 24, 1990 and service thereunder was not begun until January 8, 1991.[13]

In addition to West Coast, Browning-Ferris Industries ("B.F.I.") is also presently attempting to establish itself as a competitor in the Nanaimo area. In the spring and summer of 1990 it obtained two tendered contracts: one is a

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[12] Joint Book of Documents, vol. VII, tab F-1 at 150-51 (Exhibit VII).

[13] Transcript at 116-17 (28 October 1991).

Department of National Defence contract and the other a Regional and City School Board contract. There is evidence that these were bid not with the primary objective of making a profit but in order to get a foothold in the market in that area.[14]

(3) Courtenay-Comox-Cumberland Area

(a) Attempted Acquisition of Lacey Garbage Disposal Limited

There are two disposal services in the Courtenay-Comox-Cumberland area: Lacey Garbage Disposal Limited ("Lacey") and Valley Disposal Limited. Lacey is by far the larger company, holding contracts with the City of Courtenay, the Town of Comox and Canadian Forces Base Comox. Laidlaw approached Lacey on several occasions to see if that company was interested in selling. This initiative was temporarily dropped. Lacey was given to understand that its asking price was too high. Laidlaw had learned that in the event of a purchase it was unlikely that the City of Courtenay would assign the Lacey garbage collection contract to Laidlaw. Laidlaw has on subsequent occasions sought to purchase Lacey, often just before one or other of the contracts that Lacey holds came up for retender.

[14] Transcript at 360ff (29 October 1991).

(4) Campbell River Area

(a) Acquisition of Borgfjord Trucking (1986) Ltd. and Campbell River Sanitation Service Ltd. - Restrictive Covenants

In the spring of 1986 there were two competitors in the Campbell River area: Borgfjord Trucking (1986) Ltd. ("Borgfjord") and Campbell River Sanitation Service Ltd. ("Campbell River Sanitation"). Laidlaw purchased Borgfjord and Campbell River Sanitation on the same day, May 1, 1986. The agreement with Borgfjord contained a non-competition clause under which that company and its two principals agreed not to directly or indirectly engage in any solid waste disposal business, for a period of five years after the acquisition, within a 500-mile radius of Campbell River. The agreement with Campbell River Sanitation contained a clause which required the company and its three principals not to carry on directly or indirectly any waste disposal business in competition to Laidlaw, for a period of five years after the acquisition, anywhere within the province of British Columbia. Laidlaw's in-house counsel's reporting letter indicates that only a 300-mile radius had been agreed to in the case of Campbell River Sanitation even though the signed contract provides for the broader term.[15]

(b) B & D Disposal Ltd. - A New Entrant

[15] Both covenants are of a "step" variety descending in 100-mile decrements with a 50-mile radius being the smallest.

In March 1988 a new company commenced offering lift-on-board service in the Campbell River area: B & D Disposal Ltd. ("B & D"). This company was run by Dwight Bakken and Brian Preston. Mr. Bakken was motivated to get into the business by an experience he had had with Laidlaw. He had spoken to a Laidlaw representative to obtain garbage pick-up for his residence. He was asked to pay for service twelve months in advance. He did not consider this request appropriate and was further outraged by remarks which he remembers as indicating that there was no competition to Laidlaw in the market and therefore he had no choice.

(c) Acquisition of B & D Disposal Ltd. - Restrictive Covenant

In any event, Mr. Bakken and Mr. Preston commenced business and the business grew, initially at least. In June 1989, Mr. Bakken was forced to leave the business as a result of personal financial difficulties. Mr. Preston decided he could not carry on alone. His new partner was not as experienced as Mr. Bakken. Mr. Preston had other businesses and could not afford the time and effort to make B & D a viable operation. He attempted to find a purchaser other than Laidlaw and was unable to do so. He sold B & D to Laidlaw on September 1, 1989. The agreement contained a non-competition clause obligating B & D and its two principals (at the time Brian Preston and Kenneth Pople) not to engage either directly or indirectly in the solid waste disposal business, for a period of five

years after the acquisition, within a 100-mile radius of the municipal boundaries of Campbell River.

In May 1990, Bernard Bakken, brother of Dwight Bakken, and his partner Claude Vermette started a lift-on-board disposal business in Campbell River under the name Camvest Disposals ("Camvest"). They are presently trying to establish this business in that area.

## B. Laidlaw's Contracting Practices

### (1) Signing the Contracts

Immediately after acquiring the lift-on-board collection and disposal assets of the above companies, Laidlaw approached the customers of those firms to have them sign service contracts (customer service agreements) with Laidlaw. This was done, when possible, by using the locally known owner/operator of the acquired company.[16] That individual was asked to approach his "ex-customers" to explain that he had sold his business to Laidlaw and that Laidlaw's corporate practice was to obtain a signed container service agreement from its customers. In addition, Laidlaw would at times organize "sales blitzes" and bring in sales personnel from

[16] Transcript at 319-23 (29 October 1991) and at 505-11 (30 October 1991).

outside the local area to assist in signing customers to contracts or to assist in obtaining renewals of existing contracts. Laidlaw would seek the renewal of contracts, at times, long before their expiry date. A disturbingly recurring theme through much of the evidence before the Tribunal was that signatures on many of these contracts had been obtained by representing to the customers that the documents they were being asked to sign were "a mere formality", or because it was "the national corporate practice which Laidlaw followed", or because Laidlaw simply wanted "to up-date its information", or because the acquisition entailed switching information to Laidlaw's computer system and it was necessary "to verify where the various containers were located". The issue in this case does not require a determination as to how many of these contracts were obtained through misrepresentation. The above details are set out merely for the purpose of setting the context within which many signatures were obtained.[17]

(2) Terms of the Contracts

The contracts thus signed were for a three-year term. After three years the contract would automatically renew ("evergreen clause") unless notice had been given by registered mail 60 days before the expiration of the three-year period. There is no provision limiting the number of times the contracts are to roll over in this way. If the customer wished to terminate because he or she was going out of

[17] Transcript at 268-75 (29 October 1991).

business or was relocating to an area in which Laidlaw did not provide lift-on-board service, then the contract could be terminated on 30 days notice.[18] If Laidlaw wished to terminate because a customer refused to accept a proposed price increase, then this could be done by giving the customer 30 days written notice under some contract forms, or ten days written notice in more recent versions. The most recent version has no notice provisions.

Laidlaw's standard form contract changed from time to time and all versions presently exist in the market as a result of the evergreen clause and because, even after the issuance of new contract forms, the older forms were often used until the supply was exhausted.

The contracts used in 1986 contained a clause which obligated the customer, even if the contract had been terminated, to take service from Laidlaw if Laidlaw was willing to meet a competitor's terms and conditions of service (right of first refusal clause):

> If, during the term of this Agreement or of any renewal period (and regardless whether the Customer has given notice of termination under this Agreement) or during a period of 90 days after the termination of this Agreement, the Customer receives a bona fide offer from another supplier for the provision of solid waste disposal services or if the Customer wishes itself to make a bona fide offer to another supplier, then the Customer shall not accept or make such offer unless the Customer first offers to enter into an agreement with the Company [Laidlaw] on the same or

[18] Early versions of the standard form contract do not contain an express provision in this regard.

> equivalent terms and conditions with respect to monthly charges, number and size of bins, frequency of service, date of service, and term (including renewal periods) as are contained or are to be contained in such bona fide offer. The Customer's offer to the Company shall be in writing, delivered by hand or by registered mail, and shall be open for acceptance for 14 days following actual receipt by the Company. If the Company accepts the Customer's offer, the Customer shall execute the Company's then standard Container Service Agreement containing the terms and conditions agreed to.... [19] (underlining added)

This was subsequently changed to a right to compete clause:

> Customer grants the Company the right to compete with any bona fide offer which Customer receives or intends to make during the term of this Agreement or of any renewal period relating to the provision of non-hazardous solid waste disposal services after the termination of this Agreement. Customer shall notify Company forthwith in writing if Customer receives or intends to make any such bona fide offer, disclosing to the Company all of the terms and conditions thereof. Customer shall not accept or make such offer for the period of fourteen (14) days after such notification and, if the Company within fourteen (14) days of such notification submits an offer of its own Customer shall consider the Company's offer, but is not bound to accept it. Nothing stated in this clause shall be interpreted as relieving the Customer of its obligation to comply strictly with the provisions of this Agreement until such time as this Agreement has been terminated in accordance with its terms.[20] (underlining added)

This clause was eventually dropped from Laidlaw's standard form contract in 1991 insofar as the Vancouver Island markets are concerned. Laidlaw took the position before the Tribunal that it did not intend to try to enforce the clauses in existing contracts. However, no notice of this had been given to Laidlaw's

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[19] Joint Book of Documents, vol. V, tab D-1 at 1 (Exhibit V).

[20] *Ibid.* at 3.

customers in the markets under consideration prior to the hearing of this application.

Certainly, there is no disagreement that these clauses are anti-competitive. Requiring a customer to provide information about bids from other companies allowed Laidlaw to know who was competing with it and on what terms before the competitor could succeed in obtaining a single customer from Laidlaw. Laidlaw therefore did not have to respond to competition by lowering prices generally. It could target price reductions only on the customer that a competitor was seeking to acquire, thereby reducing the costs of using predatory or disciplinary pricing to discourage price competition. In addition, these kinds of clauses prevent secret price-cutting which is widely recognized to be an important means of maintaining competitive markets. Since it has been agreed that these clauses will be dropped, they will not be referred to again for the purposes of these reasons except when the remedies which are requested are discussed.

Although the contracts with customers specifically mention the number of bins, the size thereof and the frequency per week with which they were to be emptied, the contracts also purport to bind the customer to employ Laidlaw for *all* its garbage disposal purposes:

> Customer agrees that the Company shall have the sole and exclusive right to pick up and dispose of all

> garbage and other refuse during the currency of this agreement.[21] (underlining added)

Other versions read:

> This agreement shall include collection and disposal of all solid waste generated by Customer excluding radioactive, volatile .... [22](underlining added)

and

> During the term of the Agreement, Customer shall solely and exclusively use Company's Equipment and Service for the collection, removal and disposal of all of its non-hazardous solid waste.[23]

This was used, for example, to prevent one customer (Bayside Inn Resort) from participating in a pilot recycling project with respect to part of its garbage at a time when Laidlaw did not provide such service.[24] It was used to attempt to prevent another customer (Island Hall Beach Resort) from using a competitor to service two bins located close to the hotel kitchen when that customer's contract with Laidlaw, on its face, only referred to service for one bin located close to the Crossroads Pub[25] which was also part of the resort complex.

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[21] *Ibid.* at 1.

[22] *Ibid.* at 2.

[23] *Ibid.* at 3.

[24] Transcript at 434-35 (30 October 1991).

[25] Transcript at 736ff (31 October 1991).

The price to be charged under the contracts can be increased automatically if landfill site dumping fees charged to Laidlaw are increased. Price increases for reasons not covered by the automatic price increase clause can be charged if the customer consents. Customers are assumed to consent unless on receipt of notice they specifically notify Laidlaw that they object to the price rise (a negative option clause). The early contract forms required Laidlaw to give the customer a 30-day notice of a proposed price rise. The 30-day notice requirement was changed in later contract forms to a 15-day notice. On some occasions at least the notice given to customers was nothing more than a statement in the bottom corner of one month's invoice that a price rise was going to be added to the following month's bill. If the customer did nothing to object and the invoice containing the price rise was paid, the customer was deemed under the contract to have agreed to the price rise.

The most recent of the contract forms is structured differently. The automatic price increase clause covers not only increases in landfill site dumping fees but also increases in taxes, duties, levies, fuel costs, certain administrative fees and "other costs of doing business". No notice of proposed increases is required to be given with respect to price rises for other reasons. The forms simply state that price increases which the company proposes and which are agreed to by the customer will be incorporated into the contract. Consent to increases is said to be "evidenced by the action and practices of the parties." If

Laidlaw interprets the customer's paying of a bill to which a price increase has been added as an action implying agreement, then this contract also contains a negative option clause. A negative option clause under this most recent standard form contract will of course be less important because of the increased number of items and their open-ended nature for which automatic cost increases may now be charged.

There is evidence to indicate that Laidlaw used the occasion of landfill dumping fee increases to raise its price to customers in an amount which considerably exceeded a straight flow-through of the increased dumping fees charged to Laidlaw.[26]

If a customer, despite the three-year term, insists that the contract be terminated, some versions of the contract provide for the payment of liquidated damages in an amount six times the customer's average monthly charge.[27] This clause was changed in more recent contracts to provide for an amount equal to 30% of the customer's charge for the month preceding default multiplied by the number of months remaining under the contract.

[26] Based on Mr. Woods' evidence regarding measured weight and the comparison of Laidlaw's additional costs and those required to be paid by the customer.

[27] Again, the early standard form contracts do not contain this provision.

Although the details differ, Laidlaw's contracts contain many elements which are also found in the standard form contracts used by the two other major international garbage collection firms, Browning-Ferris Industries ("B.F.I.") and Waste Management Inc. ("W.M.I."). Indeed, some forms of contracts were adopted by Laidlaw in response to B.F.I.'s contracting practices.

(3) Enforcement of the Contracts

As has been noted, often customers did not know they had signed a contract with Laidlaw. One such form contains almost no indication on its face that it is a contract. There is an indication in very minute printing that general conditions concerning the agreement are found on the reverse side of the paper. It is on this reverse side that one finds the terms of the contract described above. Since customers were not always aware that they had a written contract with Laidlaw, when they were approached by a Laidlaw competitor seeking their business or if disgruntled by Laidlaw's service or price and seeking an alternate supplier, they would purport to cancel what they thought to be their verbal contract with Laidlaw and hire the competitor. It would then be brought to their attention that a written three-year contract existed.

In the meantime it is possible that the competitor had placed a bin on the customer's premises and started to provide service to that customer. Both the

customer and the competitor would then be told by Laidlaw that a contract with Laidlaw existed and the potential competitor would have to remove its bin and cease serving the customer. The chilling effect this had on competition is amply illustrated by the evidence of Peter Kupiak concerning the experience of West Coast,[28] Jack McLeod concerning the experience of Advance,[29] and Brian Preston concerning the experience of B & D.[30] The difficulties encountered as a result of the Laidlaw contracts led them to discontinue actively seeking new customers. Instead they waited to be approached by potential customers.

When a customer attempted to obtain service from another hauler, the customer was likely to receive a letter from Laidlaw as follows:

> We are forwarding a copy of your existing contract to your attention, on the off chance that you were not aware of the service contract.
> We would ask you to review terms and conditions governing the contract which is in force.
>
> We are continuing and will continue to provide service as per our contractual obligation and respectfully request that you, our customer do the same.
>
> ...
>
> Thank you in advance for your continued business.[31]

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[28] Transcript at 121-23, 142-44 (28 October 1991).

[29] Transcript at 611, 620 (30 October 1991).

[30] Transcript at 1220ff (4 November 1991).

[31] Joint Book of Documents, vol. V, tab D-5 at 13 (Exhibit V).

Alternatively or additionally, if the customer persisted, a letter would be sent by Laidlaw's local legal counsel to the customer's lawyer:

> I act for Laidlaw Waste Systems Ltd. and have been provided with a copy of your letter to my client's Nanaimo division, dated November 1, 1988.
>
> ...
>
> It is apparent that your client has contrived an excuse to cancel its Container Service Agreement and that it has done so because of a competitive price quote from Advance Waste Systems Inc. This occasionally happens and has consistently prompted Laidlaw to sue for damages for breach of its Container Service Agreement. I have personally handled several such actions and can tell you that none has been dismissed to date. If Mr. Andrinopolos winds up paying Laidlaw damages for breach of contract, he will inevitably find that the expected short-term price reduction will disappear.
>
> I am writing in the hope that your client can be persuaded to abide by his Container Service Agreement with Laidlaw to the end of its current term on February 16, 1990. The alternative is an action by Laidlaw for damages for breach of contract, in the context of which we do not believe your client's complaints of poor service will stand up to scrutiny.[32] (underlining added)

In fact, Laidlaw's practice in the Vancouver Island markets seems to have been one of not pursuing litigation against customers. No evidence was adduced of any action against a *customer* having been commenced to enforce the contracts. Only the threat of litigation was used.

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[32] *Ibid.* at 16-17.

[33] Transcript at 1477 (6 November 1991).

[33.1] The Tribunal thinks it is important to point out that the counsel who wrote these letters was not in any way connected to or associated with the counsel who appeared for Laidlaw in these proceedings.

In addition to writing to the customer or the customer's lawyer, Laidlaw's local legal counsel[33.1] would also write to the competitor. An example of this type of letter follows:

> I have been asked to bring to your attention two recent incidents of unlawful competition by Advance. First, Advance has initiated service to Katerina's Place at 15 Front Street, in Nanaimo, notwithstanding that the customer has a valid and subsisting Container Service Agreement with Laidlaw. The customer has purported to cancel the Laidlaw Container Service Agreement on the ground of poor service, but this excuse is entirely contrived. ...
>
> I enclose for your reference copies of the two Container Service Agreements in question. You will see that both contracts are for terms of three years and can be cancelled only at the end of a contract period and only by 60 days' prior written notice by registered mail. Both contracts remain in force, and Laidlaw intends to see that they are enforced, if necessary by litigation against both the customers and your client. Laidlaw has pursued many such actions against its customers over the last few years and has not been unsuccessful to date. ...
>
> Unless Advance's containers are removed from these two sites immediately, Laidlaw will have no alternative but to take action against the two customers in question for breach of contract and against Advance for inducing breach of contract. In addition, Laidlaw will seek an injunction against
>
> Advance, if a pattern of unlawful interference becomes apparent.[34] (underlining added)

Another such letter reads as follows:

> Almost all of Laidlaw's customers have entered into written Container Service Agreements, virtually all of which have a minimum term of three years. This is standard in the industry. This means that, any time your client calls on a prospective customer and finds that the customer is at present being serviced by Laidlaw, there is a very high probability that the customer has an existing contract with Laidlaw. It would therefore be unlawful for your client to invite such a customer to enter into a service contract with your client, unless of course the term of your client's contract was not to commence until the expiration of the existing Laidlaw contract. Such unlawful competition has been the subject of litigation between major waste disposal suppliers in the Lower

[34] Joint Book of Documents, vol. IX, tab H-4 at 137-38 (Exhibit IX).

> Mainland, and I am aware of at least two injunctions that have been pronounced to restrain unlawful interference in a competitor's contractual relations.
>
> Laidlaw does not want to have to sue to protect its patronage, but it is certainly prepared to do so. Would you kindly raise this matter with your client and urge your client not to interfere with any of Laidlaw's existing contracts. Your client can safely assume that there is an existing contract in all cases where a Laidlaw container is on site. If either your client or the customer in question is uncertain whether a Laidlaw contract exists, the customer or your client need only contact Mr. Dean Woods at Laidlaw's office in Nanaimo to be provided with an answer.[35] (underlining added)

As has already been noted, in May 1990, Claude Vermette and Bernard Bakken started a lift-on-board service in Campbell River under the name Camvest Disposals. Vermette and Bakken began to solicit customers for this business before its May 3, 1990 opening by placing advertisements in the local newspaper and by calling on potential customers. They received a number of favourable responses and on commencement of their business placed bins on the premises of those individuals who had decided to become their customers. Many of these individuals had contracts with Laidlaw and did not realize it. Camvest began to get letters from Laidlaw with copies of contracts attached and, in general, removed its bin unless the customer indicated otherwise. On May 16, 1990, Camvest received a letter from Laidlaw's local legal counsel indicating that he had been advised by Laidlaw that Camvest was inducing Laidlaw's customers to breach their contracts:

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[35] *Ibid*., tab H-1 at 25.

> We demand that you remove your waste containers from the customers' premises immediately. If the waste containers are not removed immediately, we will seek our client's instructions to bring an injunction application against you. We will seek an Order that you be prevented from placing any of your waste containers on premises where Laidlaw already has waste containers in place. We will also be seeking an Order that the containers already placed on the premises of Laidlaw customers be removed forthwith. Of course, we will also seek damages and costs of the action against you.[36]

On June 7, 1990, Laidlaw commenced an action against Camvest seeking both an interlocutory and a permanent injunction to prevent Camvest from placing containers on premises where a Laidlaw container existed and to require Camvest to remove the bins it had already placed. Damages for inducing breach of contract were also sought. This was supported by an affidavit listing eleven customers who had allegedly been induced to breach their contracts with Laidlaw. Attached were the relevant copies of the Laidlaw contracts. The eleven customers responded by filing affidavits stating that Camvest had not induced any of them to break their contract with Laidlaw. One such affidavit reads, in part, as follows:

> 4. THAT in about March, 1990, I advised Laidlaw Waste Systems Ltd. (hereinafter referred to as "Laidlaw") that I would no longer be requiring their services. I advised Laidlaw that I would be using the services of Camvest Disposals it started *(sic)*.
>
> 5. THAT at the time I cancelled, Laidlaw claimed that I had a contract with them but I do not believe that I had any contract with Laidlaw. If I had one, I was unaware of it.

[36] Joint Book of Documents, vol. X, tab H-7 at 14-15 (Exhibit X).

> 6. THAT approximately one month after I had advised Laidlaw I would not need their services any longer, a representative of Laidlaw attended at our office and had my wife sign a three year contract, a copy of which is marked as Exhibit "P" to the Affidavit of William Alexander Muise. My wife attends the office only about once per week. She was unaware of what she was signing. Laidlaw obtained a contract signed by my wife knowing full well that Greenstone Creek Logging Ltd. was no longer going to be using their services.[37]

Another affidavit reads in part:

> 1. THAT I am the owner/operator of M & H Kitchens.
>
> 2. THAT I deny advising William Alexander Muise that I was under any pressure to enter into a contract with Camvest Disposals.
>
> 3. THAT I terminated my contract with Laidlaw Waste Systems Ltd. (hereinafter referred to as "Laidlaw") after obtaining legal advice by reason of Laidlaw's breach of that contract by raising monthly charges without authorization. A copy of my lawyer's letter dated May 29, 1990 is attached hereto and market Exhibit "A".
>
> 4. THAT neither Camvest Disposals nor any of its agents or representatives in any manner induced, persuaded, encouraged, pressured or suggested that I breach my contract with Laidlaw. There was no interference by Camvest Disposals with any contractual relations between Laidlaw and M & H Kitchens.
>
> 5. THAT I asked Laidlaw to remove their waste container from my premises but Laidlaw has failed or refused to do so. I wish their waste container removed.[38]

Laidlaw's application for an interlocutory injunction was refused but the judge who heard that application indicated that there was a serious issue to be tried with respect to the dispute. This would be dealt with on the hearing of the claim for a permanent injunction and damages. Laidlaw filed an appeal of the decision

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[37] *Ibid.* at 128-29.

[38] *Ibid*. at 138.

refusing an interlocutory injunction. In reporting to Messrs. Vermette and Bakken on these developments, their counsel indicated that he was making an attempt to negotiate a settlement with Laidlaw and to come to "some agreeable manner of doing business". The attempt to reach a negotiated settlement was prompted by the fact that a considerable amount of money had already been spent by Camvest in defending the application for an interlocutory injunction and Camvest could not support extended legal fees. Camvest's costs to that point were in excess of $8,000 and are now in excess of $14,000. Camvest's counsel reported that the response he received to his attempt to obtain a settlement was: "Laidlaw's lawyer feels they have to proceed with the appeal and injunction application". Negotiations for settlement did continue, however, but before either a settlement could be agreed upon or the appeal could be heard, Camvest became aware of the Bureau of Competition Policy's investigation into Laidlaw's activities. Neither the appeal nor the application for a permanent injunction has been pursued.

## IV. AN AREA OF CANADA - GEOGRAPHIC MARKET

Subsection 79(1) of the Act only applies if the respondent "substantially or completely controls" the relevant class or species of business "throughout Canada or any area thereof." In order to determine whether complete or substantial control exists it is necessary to define the market, both its product and geographic dimensions, within which the control is alleged to operate. As has been noted

above, the product market dimensions are not in dispute. The product is the provision of lift-on-board garbage collection and disposal service. There is considerable dispute, however, about the geographic dimensions of the market.

## A. Description of the Area

The geographic area relevant for the purposes of this case is a longitudinal portion of the eastern side of Vancouver Island. It stretches, in general, along Highway No. 1 (north from the City of Victoria to the City of Nanaimo) and Highway No. 19 (from the City of Nanaimo to the District of Campbell River and then to the Village of Sayward). Population is clustered at intervals along the spine created by these highways. The first significant population centre north of Victoria is the City of Duncan (population approximately 4,100). It is 60 kilometres from Victoria. A dump site is located south of Duncan (TRP No. 2).[39] North of Duncan are a number of small communities which fall into the District of North Cowichan (population approximately 20,000) and immediately north of that is the Town of Ladysmith (population approximately 5,000). Ladysmith is 28 kilometres from Duncan. A landfill site exists just south of Ladysmith (TRP No. 3).[40] Directly to the west of Duncan and not on Highway No. 1 is the Village of Lake Cowichan. It is 30 kilometres from Duncan. A dump site is located

[39] Thermal Reduction Plant ("TRP") No. 2, Koksilah Road.

[40] Peerless Road.

approximately a further 20 kilometres northwest of that village (TRP No. 1).[41] The communities of Duncan, the District of North Cowichan, the Village of Lake Cowichan and the Town of Ladysmith are all located in the Cowichan Valley Regional District.

The next significant population centre north of Ladysmith along the longitudinal route defined by Highway No. 1 is the City of Nanaimo (population approximately 56,000). Nanaimo is 23 kilometres northwest of Ladysmith. It is 51 kilometres from Duncan. A dump site is located south of Nanaimo, the Cedar Road landfill site. The City of Parksville (population approximately 6,800) and the Town of Qualicum Beach (population approximately 4,100) are 36 and 47 kilometres, respectively, northwest of Nanaimo along Highway No. 19. Until recently a landfill site existed at Qualicum Beach. It was closed at the beginning of September 1991 and a transfer station was opened just west of Parksville, the Church Road transfer station. Garbage which is collected in the Parksville/Qualicum Beach area is taken to this transfer station and dumped into rail cars. The Nanaimo Regional District then transports this garbage south to the Cedar Road dump outside Nanaimo. The communities of Nanaimo, Parksville and Qualicum Beach are all located in the Nanaimo Regional District.

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[41] Meads Creek.

The next major population cluster along the spine created by Highway No. 19 is formed by the Town of Comox (population approximately 7,800), the City of Courtenay (population approximately 11,000) and the Village of Cumberland (population approximately 2,000). Courtenay is 73 kilometres from Parksville and 108 kilometres from Nanaimo. A landfill site exists south of the Courtenay-Comox-Cumberland area, the Pigeon Lake disposal site. The District of Campbell River (population approximately 20,000) is 45 kilometres northwest of the Courtenay-Comox-Cumberland area along Highway No. 19. Quadra Island is located to the east of Campbell River and is reached by ferry. The Village of Sayward (population approximately 400) is located 79 kilometres northwest of Campbell River. A dump site is located in the vicinity of this community. A dump site exists to the southwest of Campbell River. The communities of Courtenay, Comox, Cumberland, Campbell River, Quadra Island and Sayward are located in the Comox-Strathcona Regional District.

**B. Positions of the Parties**

While the Director has alleged in his application that anti-competitive acts lessened competition substantially in the Cowichan Valley Regional District, the Nanaimo Regional District and the District of Campbell River, the dimensions of the geographic markets are more specifically delineated by his expert as being within a radius of 50 kilometres or less from each of Laidlaw's hubs in the

Cowichan Valley (Duncan) area, the City of Nanaimo and the District of Campbell River.

The respondent argues that the relevant geographic markets are two in number. It is its position that the Cowichan Valley Regional District and the Nanaimo Regional District together form one geographic market and that the eastern portion of the Comox-Strathcona Regional District forms the other. This eastern portion of the Comox-Strathcona Regional District includes not only the District of Campbell River and the Courtenay-Comox-Cumberland area but also the community of Sayward and the whole of Quadra Island. There is no dispute that the geographic markets, however they may be defined, do not include the City of Duncan and the Village of Lake Cowichan. These two communities employ their own crews and trucks to provide lift-on-board garbage collection and disposal service.

**C. Market Definition and Determination**

The general test for determining the geographic dimensions of a market is the same as that used to determine the product dimensions: identification of the universe of effective competition. That is, insofar as the relevant geographic dimensions are concerned, for the purposes of this case one asks what are the boundaries of the geographic area within which competitors must be based if they

are to provide effective competition to Laidlaw. Effective competition means that the competitor provides a significant restraint on Laidlaw's ability to raise prices above the competitive level.

The Director's position is that the determination of the geographic boundaries of the market should be based on a review of how the market in the relevant areas operated in the past as well as on observation of the existing market: the past and present conduct of the customers and providers of lift-on-board service. The respondent's position is that the conceptual test, found in the Director's *Merger Enforcement Guidelines*,[42] should be used: could a provider of the service (as a hypothetical monopolist) impose a significant non-transitory price increase without causing the buyers of the service to purchase the service from suppliers located in other regions. A significant price rise is sometimes considered to be 5%; non-transitoriness is sometimes said to exist if the rise can be sustained for a two-year period.[43]

(1) Essential Issue - Dimensions of Market in which Campbell River is Located

It must first of all be noted that whether the Cowichan Valley (Duncan) area and the Nanaimo area are classified as one market or as two is not of great

[42] Director of Investigation and Research, Information Bulletin No. 5, March 1991 (Supply and Services Canada, 1991).

[43] [U.S.] Justice Department Merger Guidelines 49 Fed.Reg. 26,823 (1984); J. Whalley, "Department of Justice Merger Enforcement" (1988) 57 Antitrust L.J. 109.

import in this case. It was agreed at the opening of the hearing that however that market(s) is(are) defined, Laidlaw's market share is extensive. It is so high under either classification that it will give rise to a *prima facie* conclusion that Laidlaw is dominant in that(those) market(s). The main dispute respecting geographic dimensions is whether the communities of Courtenay-Comox-Cumberland are in the same geographic market as the District of Campbell River. If they are, then Laidlaw's share of that market is probably below 50% and no *prima facie* finding of dominance would arise. If they are not, then Laidlaw's market share is considerably higher.

(2) Hypothetical Monopolist

The expert opinion, filed on behalf of the respondent, that a hypothetical monopolist would be restrained by a competitor based more than 50 kilometres away, relies upon evidence respecting the incremental cost of operating a garbage disposal service at a distance equal to 50 kilometres from the base. This analysis is based on information obtained from Laidlaw as to its cost of providing service into the Cowichan Valley (Duncan) area from Nanaimo, which it does once a week, and the revenue received therefrom. The analysis assumes a route density for the one-day service in the remote region equal to the route density in what might be called the home area.

With respect to the use of Laidlaw cost and revenue information in the Cowichan Valley (Duncan) - Nanaimo areas, if the Director's position is correct and Laidlaw is without effective competition in those areas, then there is no reason to assume that the revenue figures which have been provided are ones which would exist if Laidlaw were constrained by a competitive market ("the cellophane fallacy").[44] Accordingly, an analysis of the incremental costs, which a provider of the service could sustain and still compete effectively in the remote market, based on such figures is not persuasive.

Counsel for Laidlaw argues that the criticism of commentators on the holding in *United States v. E. I. du Pont de Nemours & Co.* (the cellophane case) does not apply because that case was concerned with the product boundaries of a market, not its geographic boundaries. It is noted that different sets of evaluative criteria are used for defining the geographic boundaries and the product boundaries of a market (e.g., transportation costs and shipment patterns are particularly relevant to the former). He also argues that the revenue figures ($20 per pick-up) on which Laidlaw's experts founded their analysis is a competitive price. He maintains that this is so because Laidlaw's competitors did not attempt to compete with Laidlaw on that price.[45]

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[44] *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956); D.F. Turner, "Antitrust Policy and the Cellophane Case" (1956-7) 70 Harv. L.R. 281.

[45] Transcript at 1147-48, 1283 (4 November 1991).

The alleged non-competition on price does not demonstrate that the price is a competitive one. Such behaviour can be explained in two ways: (1) the competitors did not wish to engage in price competition with Laidlaw because they were afraid that Laidlaw's market power would enable it to undercut them selectively with respect to price and thus force them out of the market; (2) they were exhibiting normal pricing behaviour in a concentrated market and sheltering under the price being charged by the dominant firm.

With respect to the arguments concerning the applicability of the "cellophane fallacy", different evaluative criteria may be relevant for determining the product and geographic market dimensions. This does not lead to the conclusion, however, that the logic of the criticism (using prices or revenue as they exist in a non-competitive market as a surrogate for competitive prices) is invalid.

Counsel for Laidlaw argues that it is not open to the Director to argue that the model used by Laidlaw's experts is flawed on the basis of the "cellophane fallacy" when he did not adduce any expert evidence to this effect. The Director's objection to the evidence relates to the weight to be given to it in the absence of evidence by Laidlaw that the cost and revenue information contained therein relates to the competitive level. This criticism can be made without support by expert evidence. It is Laidlaw which is relying on the opinion in question and

therefore Laidlaw has the responsibility of providing the factual basis to support it.

In addition, to analyze the Campbell River market area with respect to Courtenay-Comox-Cumberland, one should be using prices and costs from those areas. And, in any event, it is not at all clear that all relevant costs have been included in the analysis. For example, no allocation is made for the extra costs involved in the initial delivery of the container to the customer and related sales representative or service calls to the extent that these might require physical attendance at the customer's premises. No allocation is made for contingencies such as the breakdown of a truck in the remote area. With respect to the assumption that the route density (for the one-day a week service) in the remote area is the same as in the home area, this does not mirror the initial competitive situation which exists when a new supplier attempts to provide service in the remote market. It assumes that the new supplier has obtained customers in a tight geographic area, comparable to that which exists where the supplier is well established. It is likely that customers would be scattered and far more dispersed for a new competitor than they are for Laidlaw in the Cowichan Valley (Duncan) area. The model, therefore, does not demonstrate that the remote supplier of the service could be an *effective* competitor.

Also missing from the analysis is a consideration of further costs and strategic factors that a Courtenay based firm would have to contend with in trying

to operate in Campbell River. The 5% hypothetical increase is imposed on a volume base derived from the pick-up of 74 bins in a single day. The assumption is that the distant firm is able to attract that volume of business for a *particular* day. The evidence is that customers often have a preference with regard to the day that their bins are picked up. This factor would add to the difficulties facing the Courtenay seller in attracting a sufficient number of customers who were not tied by Laidlaw contracts. Based on the experience of entrants in Campbell River, there is no reason to believe that the Courtenay firm would quickly attract the required volume of business. During the period that fewer than 74 bins were being picked up the firm would be experiencing losses compared to operating in Courtenay. For these losses to be recovered the price differential would have to be more than the 5% difference assumed by the respondent's experts. Additionally, it is clear from the evidence that prices for garbage disposal are not uniform. Selective price-cutting by Laidlaw would be another factor that could confront the would-be entrant.

Indeed, as counsel for the Director argues, it is not obvious that a significant non-transitory price increase test for determining market boundaries is useful in an abuse of dominant position case. In an abuse of dominant position case it is not the *potential* dominant position or the increase in dominance of a firm which is at issue. The respondent firm is alleged already *to have* a dominant

position in the relevant market. The market definition issue relates to an existing situation rather than a prospective one.

The Tribunal wishes to emphasize that the above discussion of the respondent's expert evidence should not be taken as an acceptance that the 5% price rise criterion is necessarily a useful one even in a merger case. While the test of a non-transitory significant price increase may be conceptually useful, what percentage will be significant and what period of time will satisfy the test of non-transitoriness can only be determined by reference to the facts of a particular case.

(3) Regulatory Constraints on Dump Sites

All three regional districts have by-laws or rules which require that only solid waste from certain areas is to be dumped in the various landfill sites. The Cowichan Valley Regional District requires that only waste from that district may be deposited in its dump sites (TRP No. 1, TRP No. 2 and TRP No. 3). In addition, conditions attached to the permits authorizing the operation of the sites require that only refuse collected from its vicinity be deposited in the particular site.

The Nanaimo Regional District requires with one exception that only refuse generated within its boundaries is to be disposed of at its dump sites. That

district prescribes dump site usage by reference to school district boundaries. Refuse collected from residents of School District No. 68 (located in the southern portion of the district) must be disposed of in the Cedar Road landfill site located south of the City of Nanaimo. School district boundaries in British Columbia are not necessarily coincident with regional district boundaries. School District No. 68 takes in part of the northern area of the Cowichan Valley Regional District and thus refuse collected in that area may also be disposed of at the Cedar Road dump. Refuse collected from residents of School District No. 69 (the northern part of the Nanaimo Regional District) was required to be dumped at the Qualicum Beach landfill site until it was closed at the beginning of September 1991. It now may be deposited at either the Church Road transfer station or taken to the Cedar Road site south of Nanaimo.

In the Comox-Strathcona Regional District the use of dump sites is also restricted to residents of the district. With respect to the Pigeon Lake disposal site located in the Courtenay-Comox-Cumberland area, only refuse collected from those municipalities is to be disposed of at that site. Insofar as the Campbell River dump is concerned, the District of Campbell River (By-Law No. 1261) allows only residents of that district and the surrounding electoral areas D, E and F as well as a defined portion of J to dispose of garbage at that dump site. Electoral areas E and F are small areas adjacent to the District of Campbell River. Electoral area D is larger in size but apart from the area close to the District of Campbell

River is sparsely populated; indeed, much is completely uninhabited. The "defined portion of J" refers to a small part of Quadra Island closest to Campbell River. The dump site at Sayward is limited to refuse collected from the vicinity of that village.

While the regulations respecting the use of dump sites are factors which constrain the geographic market, these regulations do not prevent a hauler operating in one area on one day and dumping at the appropriate site, and operating in another area on another day and dumping at the site appropriate to that area. Also, it is clear that arrangements can be made with dump site operators to allow for the dumping of small volumes which have been collected outside their area.[46]

(4) Past and Present Behaviour of Market Participants

The Director relies heavily on evidence respecting the past and present behaviour of the providers of lift-on-board service in the areas in question. He uses that evidence to support a conclusion that the outer boundaries of the geographic market are generally within 50 kilometres or less from a hauler's hub of operation. Such hubs are usually located in close proximity to a substantial population centre and a disposal site.

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[46] Transcript at 366 (29 October 1991).

The evidence discloses, for example, that Fox[47] operated around the Village of Lake Cowichan and sought business no further afield than the District of North Cowichan. Advance[48] operated in the Duncan and North Cowichan area. On the sale of SCS Waste Systems[49] to Laidlaw, Advance attempted to service some customers in the City of Nanaimo but this was found to be uneconomical.[50] The market in that area was more difficult to penetrate because of Laidlaw's contracts than was the case in the Cowichan area.

Nanaimo Disposal[51] operated in the Town of Ladysmith and the City of Nanaimo.[52] (It faced some competition in Ladysmith from C.W. which at the time operated out of Duncan). United[53] and its predecessors, Mid-Island Disposal Co. Ltd. and B & B Garbage Disposal Ltd., operated in the Parksville-Qualicum Beach area (from Nanoose Bay to Qualicum Beach). SCS Waste Systems served customers located in the Ladysmith-Nanaimo area and West Coast similarly limits its scope of operation[54].

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[47] *Supra* at 11, 14.

[48] *Supra* at 14-17.

[49] *Supra* at 20-21.

[50] Transcript at 890, 892 (1 November 1991).

[51] *Supra* at 18.

[52] "We tried to stay within a reasonable amount of travelling time. If you get out too far, it costs you too much to get back to the garbage dump, and time-wise". (Transcript at 316 (29 October 1991)).

[53] *Supra* at 18, 20.

[54] Except for some customers in Chemainus and Crofton who are part of a "package deal". *Supra* at 20-24.

B & D[55] operated in the Campbell River District area,[56] never going south of the Oyster River. The Oyster River crosses Highway No. 19 approximately halfway between Courtenay and Campbell River. Camvest operates within a 15-mile radius of Campbell River. Insofar as the Campbell River area is concerned, it is most significant that Lacey, which operates in the Courtenay-Comox-Cumberland area, does not consider it economical to operate north of the Oyster River. It is significant that Laidlaw does not operate south of it.

Evidence respecting past and present players in the market must of course be considered carefully. The conduct may result from characteristics particular to those players (e.g., a decision to run a family business and remain small) rather than being evidence of the actual geographic scope of possible effective competition. In this case, however, the evidence of the historical and present conduct of what might be called the small collection and disposal participants in the market is buttressed by other evidence.

In a written submission to the Bureau of Competition Policy with respect to another transaction, Laidlaw itself described the geographic markets in the solid waste services industry as being:

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[55] *Supra* at 27-28.

[56] "... we wanted to concentrate as close to the dump as possible." (Transcript at 1152 (4 November 1991)).

> ... generally local in nature essentially defined by political jurisdictions and transportation economics. They tend to cluster around metropolitan areas.[57]

Laidlaw also continued to operate hubs in both Nanaimo and Duncan despite its claim that these two areas fall into one market. Laidlaw's evidence that in the future it might conduct itself differently is not persuasive. Laidlaw does service the Cowichan Valley (Duncan) area once a week with a truck sent from Nanaimo. However, this does not demonstrate that the two areas are one market. The conduct is more properly characterized as cost minimization behaviour by a participant who operates in two adjacent markets and has excess capacity in one of them. The evidence that Laidlaw serves Sayward from Campbell River is unconvincing as evidence that the communities of Courtenay-Comox-Cumberland and Campbell River are in the same geographic market. Sayward is a small (population 400) and remote area. It is considerably farther from Campbell River than is Courtenay-Comox-Cumberland. As far as is known Laidlaw is the closest supplier of garbage disposal services to Sayward. It would be out of the question to station equipment in Sayward; the volumes could not support it. The fact that Laidlaw now apparently finds it profitable to service Sayward provides no information about the economies of Laidlaw competing in Courtenay-Comox-Cumberland or Lacey competing in Campbell River. There is simply insufficient information regarding this new service to allow the Tribunal to give that

[57] Exhibit A-55: Appendix X, Waste Services Industry, at 1.

development much weight. There is no information, for example, concerning the price that is being charged to the residents of Sayward.

It is significant that when the Nanaimo Regional District closed the Qualicum Beach landfill site, the Church Road transfer station was opened. The Regional District did not require haulers in the Parksville-Qualicum Beach area to transport the refuse they collected to the Cedar Road site. The Regional District had received advice that it was uneconomical to expect a hauler to serve customers located more than 30 kilometres from a landfill site.

The Tribunal accepts the proposition that when assessing the boundaries of the geographic market, the place at which the trucks are parked is relevant as a hub. In the case of the small local businesses this is likely to be the place at which the administrative functions are also carried out. In the case of a firm such as Laidlaw the administrative functions (e.g., billing, accounting, etc.) may take place many miles away, in Victoria, Edmonton or Hamilton, but such functions are not relevant to the geographic dimensions of the lift-on-board service market. These dimensions must be assessed by reference to factors relevant to the geographic scope of the market, primarily transportation costs, and not by reference to factors which are independent of such costs.

(5) Conclusion

One does not expect to be able to define the geographic dimensions of a market with precision. The boundaries will necessarily overlap with adjacent markets and be indistinct from those adjacent markets at many points.

The Tribunal's conclusion is that the Courtenay-Comox-Cumberland area is not in the same market as Campbell River. This conclusion is based in part on the evidence respecting the conduct of the past and present market participants in all three areas under consideration: the fact that the providers of lift-on-board service generally did not, and do not, on a regular and on-going basis attempt to provide service to customers located more than 50 kilometres from the base of operation at which their trucks are parked, is a response to the higher cost of operating at further distances. Laidlaw's retention of the two hubs, one in the Cowichan Valley (Duncan) area and the other in the Nanaimo area, is significant, as is the evidence of Lacey. If one found that Laidlaw operated at greater distances in the Cowichan Valley (Duncan) and Nanaimo areas, then one might be prepared to accept the argument that Lacey's view of the boundaries of its market, operating from Royston (between Comox and Cumberland) was based on considerations particular to it and was too limited but that is not the case.

In addition, there is virtually no credible evidence that prices charged in the Campbell River area are or would be disciplined by the prices which pertain in the Courtenay-Comox-Cumberland area or that customers in the Campbell River area look outside that area for providers of the service.

One of the most significant factors in the determination of the geographic boundaries of the market is that the area between Courtenay-Comox-Cumberland and Campbell River is sparsely populated. This creates a significant barrier to effective overlapping competitive areas by firms operating in the two different localities. The geographic boundaries of a market cannot be glibly defined by reference to a certain kilometre or mileage distance. A more careful analysis is required. In this case the extensive, sparsely populated area between the communities of Courtenay-Comox-Cumberland and Campbell River together with the locations of the dump-sites which serve those areas are significant to the conclusion that the two population centres are not in the same geographic market with respect to the provision of the lift-on-board garbage collection and disposal service.

## V. SUBSTANTIAL OR COMPLETE CONTROL

In deciding whether a firm has substantial or complete control of a market, one asks whether the firm has market power in the economic sense. Market power

in the economic sense is the power to maintain prices above the competitive level without losing so many sales that the higher price is not profitable. It is the *ability* to earn supra-normal profits by reducing output and charging more than the competitive price for a product. As was said in the *NutraSweet* decision:

> Market power is generally accepted to mean an ability to set prices above competitive levels for a considerable period.[58] (underlining added).

As was also stated in the *NutraSweet* decision:

> While this [the ability to set prices above the competitive level] is a valid conceptual approach, it is not one that can readily be applied; one must ordinarily look to indicators of market power such as market share and entry barriers. The specific factors that need to be considered in evaluating control or market power will vary from case to case.[59]

A ***prima facie*** determination as to whether a firm is likely to have market power can be made by considering the share of the relevant market held by that firm. If that share is very large the firm will very likely have market power.[60] But other considerations must also be taken into account including: how many competitors there are in the market and their respective market shares; how much

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[58] *Supra*, note 2 at 28.

[59] *Ibid*.

[60] See, for example, H. Hovenkamp, *Economics and Federal Antitrust Law* (St.Paul, Minn.: West, 1985) at 58 for a discussion of this assumption.

excess capacity the firms in the market have; how easily a new firm can establish itself as a competitor.

**A. Market Share**

There is no dispute that the most appropriate method of measuring market share is by comparing the revenues earned by each of the providers of lift-on-board service in the relevant geographic markets. Such information was not available to the expert witnesses of either party when their affidavits of expert evidence were filed.

Two alternative methods of measuring market share were used by the experts: a comparison of the respective weights of refuse dumped at the various dump sites and a physical count of the number of containers of each provider which could be seen within the relevant geographic markets. Both these measures were recognized to be flawed. A customer is charged for lift-on-board service by reference to the size of the bin and the frequency with which it must be emptied. Since the weight of the refuse emptied from one bin may vary considerably from that emptied from another, weight is not necessarily an accurate surrogate for revenue. The weight of the garbage dumped by one hauler vis-à-vis others may not precisely reflect market share. More important, however, is the fact that this kind of data is not available for all dump sites. No weight data is available from

the Campbell River dump site nor from the Lake Cowichan (TRP No. 1) site. Tipping fees are not charged at those locations and weight information was not collected. Also, with respect to the Lake Cowichan dump, Laidlaw's experts did not include in their calculations Laidlaw's estimate of the amount of material dumped by Laidlaw at that site. Information obtained by the experts from the dump site operator indicated that no commercial lift-on-board waste was deposited at that location. The operator of the dump did not realize that Laidlaw was using side-load (or rear-load) vehicles to service the lift-on-board customers in that area.

Insofar as assessing market share by container count is concerned, there is no guarantee that all bins will be located and counted. Some may not be easily visible (i.e., they may be located inside buildings). In addition, the bins were only counted in a sample area and there is no reason to believe that the sample area is truly representative. Another flaw in this technique arises because counting containers does not provide information as to how often they are emptied. Assumptions in this regard must be made.

During the course of the hearing, information concerning the gross revenue of the various suppliers of lift-on-board service was sought. Some of this data may lack precision to the extent that the information given relates to the gross revenue of a hauler's total operation (if that operation includes both lift-on-

board service and residential collection service or other services).[61] Nevertheless, any inaccuracies that might arise from the inclusion of mixed revenues by the smaller firms can only operate to Laidlaw's benefit.

The data collected indicates that in the District of Campbell River area Laidlaw's market share exceeds 87%. The only other provider of lift-on-board service in that area is Camvest, a company, as previously noted, that commenced business on May 3, 1990. There is also a small hauler on Quadra Island but little information about that firm was placed before the Tribunal and its scope of operation is not of great import.

In the combined markets of Cowichan Valley (Duncan) and Nanaimo, Laidlaw's market share, according to the gross revenue figures, also exceeds 87%. Three firms hold the remaining share. PAN, the small family business operating in the Cowichan Valley (Duncan) area has 1.3%. West Coast and B.F.I. operate in the Nanaimo area and hold 6.4% and 4.7% respectively.

**B. Excess Capacity**

Share of sales may overstate a firm's market power when there is excess capacity since other firms are able to increase their market shares by increasing

[61] Exhibit A-57-C: Market Share Calculation by Gross Revenue for Commercial (Lift-on-Board) Solid Waste Collection in Relevant Geographic Markets (confidential); Exhibit A-91-C: Market Share Calculation by Gross Revenue for Commercial (Lift-on-Board) Solid Waste Collection in Relevant Geographic Markets (confidential).

output and sales. With respect to waste removal, capacity is probably best measured in terms of the capacity of trucks. However, capacity cannot be measured simply by counting the number of trucks; age, type of equipment and state of repair have to be taken into account. Bins too must be considered when measuring capacity, but this input does not have the "lumpiness" of trucks (i.e., a truck has to be bought regardless of the number of bins to be serviced) and therefore the operator can avoid expanding the number of bins too far ahead of actual need.

In any event, the evidence is clear that Camvest in the District of Campbell River area, West Coast in the Nanaimo area and B.F.I. in the Cowichan Valley (Duncan) area are servicing far fewer bins than their truck capacity allows. The pressure on them to expand to more fully utilize their truck capacity is not in doubt. Their share of truck capacity is probably greater than their share of current sales and, if they survive, can be taken as an indicator of their future share of sales. However, the importance of excess capacity is tempered by the extent to which customers are bound by long-term contracts and by the apparent unwillingness of Laidlaw's competitors to use price as an inducement to attract customers.

## C. Pricing Practices

Counsel for Laidlaw argues that there is no convincing evidence that Laidlaw is dominant in the markets in question because there is no evidence that it has been charging prices above the competitive level.

Insofar as tendered contracts are concerned, in 1987 Laidlaw held the Campbell River School Board contract. The Board paid $22,440 to Laidlaw under that contract. When B & D entered the market, it bid for this contract. It bid $18,780 for the 1988 year and was awarded the contract. This was a profitable price for B & D. The following year, 1989, B & D tendered the same bid. Laidlaw won the contract with a tender of $14,580. Laidlaw claims that its ability to reduce its price so dramatically was the result of its adoption of a computerized grid routing system. This is not convincing. The computer program would appear to be a fairly standard and simple routing program which replaced what had previously been a manual task. It is not believable that the adoption of this system or the installation of a computer system for Laidlaw's administrative functions generally result in cost savings leading to the price reductions which occurred. Also, there was no lowering of prices generally to all customers in this regard.

In 1987, Laidlaw held the North Cowichan School District contract. When the contract came up for tender in 1987, Advance bid $2,600 per month. It was lower than Laidlaw's bid. When the contract again came up for tender in 1989, Advance lowered its bid to $1,750 per month because it had heard of what had

happened in Campbell River. Laidlaw's tender on the contract was $1,760 per month. Mr. Paquette, who worked for Laidlaw at the time, was told to write up another contract and take it to the individual in charge (the Maintenance Superintendent) to try to resubmit a bid at a lower price: "I was just told to lower the contract rate under the pretence that the original bid was charging them for extra pick-ups which they would normally have got for free"[62]. This initiative was not successful; Advance was retained on the contract.

With regard to pricing pursuant to the standard form contracts, it must first be noted that there was no evidence from Laidlaw as to its pricing policies during most of the years in question. Its representatives and ex-employees could give no guidance as to how prices were set or what costs Laidlaw took into account when deciding how to price its services. More recently (since January 1990 in Nanaimo, January 1991 for Campbell River) price lists have been available but still no analysis of costs has been provided. The price lists contain A, B and C levels of pricing for the use of sales representatives. Laidlaw's representative, Dean Woods, indicated that in general Laidlaw was successful in getting customers to agree to the highest level, the A level.

It is argued that Laidlaw's financial statements demonstrate that Laidlaw was not exercising market power. For the fiscal year ending August 31, 1991, the

[62] Transcript at 528 (30 October 1991).

Campbell River Divisional Income Statement shows a net income of $27,481 as against a total revenue of $1,027,720 (50% of which is for commercial accounts). Net income on that basis is 2.7% of total revenue. The Nanaimo Divisional Income Statement (which includes the Cowichan Valley area) shows a net income of $23,021 on total revenue of $2,889,468 (82% of which is for commercial accounts). The net income shown by these figures then is only 0.8% of total revenue.

There is a general concern that accounting profits or net income is not a reliable indicator of economic profit.[63]In the case of Laidlaw there is a more specific problem. It relates to the numerous acquisitions made by Laidlaw and the amortization of the goodwill as an expense in its statements. Since most of the cost of the acquisitions appears to have been a payment for goodwill rather than for tangible assets, it is reasonable to conclude that the amortizations represent significant amounts. These are not part of the normal cost of waste disposal and including them totally clouds even accounting net income.

Customers gave evidence as to the rises in price which Laidlaw kept imposing pursuant to the terms of the standard form contracts and the negative option price clauses contained therein. Mr. Thomson of Muffy's Muffins Ltd. gave evidence that he tried to terminate his contract with Laidlaw because "we

[63] See F.M. Fisher & J.J. McGowen, "On the Misuse of Accounting Rates of Return to Infer Monopoly Profits" (1983) 73 Am. Econ. Rev. 82.

were getting a little tired of the rates going up constantly".[64] Mr. Thomson sought a quotation from Advance for provision of the same service that he was getting from Laidlaw and discovered that Advance's prices were 20-25% below Laidlaw's.

Mr. Clarke, property manager for School District No. 69 in the Regional District of Nanaimo, also experienced repeated efforts to raise prices. In October 1990 he received a notice that Laidlaw's price was going to rise as a result of a "temporary fuel surcharge". After obtaining legal advice, he wrote back to Laidlaw noting that the contract between them did not provide for an automatic price rise on that basis. Laidlaw responded that a mistake had been made and the price increase was rolled back.[65] Shortly thereafter a notice was received stating that a price rise was to occur as a result of increased landfill site dumping fees being charged to Laidlaw. Mr. Clarke wrote back asking for supporting documentation. At the time, refuse collected from School District No. 69 was deposited at the Qualicum Beach disposal site where no dumping fees were charged. Laidlaw responded saying a mistake had been made and the price increase was rolled back. More recently, Laidlaw has moved to a flat rate[66] format with respect to customer charges in conjunction with increases imposed as a result

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[64] Transcript at 764 (31 October 1991).

[65] Transcript at 807-9 (31 October 1991).

[66] Transcript at 2903 (18 November 1991): a charge based on a customer's lift rate times the number of lifts per year, divided by 12, to which the appropriate portion of the yearly rental for the bin is added to obtain the amount billed monthly.

of the dumping fees now being charged at the Church Road transfer station.[67] Mr. Clarke has not paid the most recent invoices but has asked for a breakdown of the flat rate fees in comparison to the previous method of charging. He notes that there appears to be at minimum a 100% increase as a result of these changes.

Donald Bruce, who was Maintenance Supervisor for Pat Carson Bulldozing, noted that Laidlaw would often "slip ... a price increase through without notifying me ahead of time". He would then phone Laidlaw to get the increase rolled back. He gave evidence:

> If I spent my energy chasing them I could keep it [the price] where I felt it was reasonable. The minute you turned your back and a raise got through, it was too late to fight it. This is what happened in the last, I can't remember the increase, but it was quite a jump ....[68]

Mr. Paquette who worked for Laidlaw between 1986 and 1989 gave evidence that Laidlaw asked its various divisions to aim for a 20-25% profit margin. He noted, however:

> In Parksville we had no competition at all. I believe we hit ... 42 per cent in one month.[69]

While, as counsel for Laidlaw argues, there is no firm evidence that Laidlaw was charging monopoly prices in the markets in question, the anecdotal evidence is more consistent with a firm exercising market power than the reverse.

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[67] Transcript at 812 (31 October 1991).

[68] Transcript at 1060 (1 November 1991).

[69] Transcript at 536 (30 October 1991).

**D. Barriers to Entry**

Market share is only a *prima facie* indication of market power. As has been noted, other considerations must also be taken into account. One of these is barriers to entry: how easily can a firm commence business in the relevant market and establish itself there as a viable competitor? The term "entry" for an economist when used in the phrase "barriers to entry" is a term of art which carries with it the connotation of sustainability. The term "entry" will be used in that sense in these reasons. Related words such as "to enter" or "entrant" are used in their non-technical sense as meaning "to begin" or "to commence".

In general, in this industry barriers to entry are very low.[70] The amount of equipment required is limited: a truck and some containers. The capital to purchase these can easily be obtained: the equipment will itself serve as security for a loan. There is no requirement for extensive technical training or expertise although experience as a mechanic is useful. There are limited administrative and overhead expenses. Many of the providers of the service have operated and still operate out of their homes.[71] The most significant barrier to entry is acquiring a sufficient customer base within a reasonable period of time to allow the business to become profitable.

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[70] See also *infra* at 108-9.

[71] Transcript at 833-34 (31 October 1991), 1186 (4 November 1991), 1369 (5 November 1991).

While barriers to entry in the industry are low, much higher barriers exist in the markets under discussion as a result of the contracting practices of Laidlaw. It is these contracting practices, along with other allegedly anti-competitive acts, which it is argued lead to both Laidlaw's dominant position and a substantial lessening of competition in the markets in question.

## VI. ANTI-COMPETITIVE ACTS RESULTING IN A SUBSTANTIAL LESSENING OF COMPETITION

### A. Anti-Competitive Acts

There is no *general* definition in the Act as to what characterizes an anti-competitive act. Section 78 contains a list of examples of behaviour which are included in that definition.[72] There is no dispute that this list is not exhaustive. The various acts of Laidlaw which are alleged to be anti-competitive, that is, a

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[72] Section 78 reads:

78. For the purposes of section 79, "anti-competitive act", without restricting the generality of the term, includes any of the following acts:
*(a)* squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
*(b)* acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
*(c)* freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
*(d)* use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;
*(e)* pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
*(f)* buying up of products to prevent the erosion of existing price levels;
*(g)* adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;
*(h)* requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market; and
*(i)* selling articles at a price lower than the acquisition cost for the purpose of disciplining or liminating a competitor.

pattern of acquisitions designed to create and maintain a monopoly position together with contracting practices designed to preserve that position, are not among those enumerated in section 78.

The principle underlying section 79 is that the public interest is best served when markets are competitive. The refusal of the common law courts to enforce contracts which contain unreasonable restraints of trade is one manifestation of that principle. Such contracts are deemed to be contrary to public policy. In *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co. Ltd.*, Lord Macnaghten said:

> The true view at the present time I think, is this: The public have an interest in every person's carrying on his trade freely: so has the individual. All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and therefore void. That is the general rule. But there are exceptions: restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is a sufficient justification, and indeed it is the only justification, if the restriction is reasonable -- reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public.[73]

Useful descriptions of the antecedents of competition law can be found in: *Competition Law* by R. Whish;[74] and *Canadian Competition Policy* by B. Dunlop et al.[75] Part of that history includes the Sherman Act[76] in the United States; it was

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[73] [1894] A.C. 535 (H.L.) at 565.

[74] (London: Butterworths, 1985) c. 2.

[75] (Toronto: Canada Law Book Inc., 1987) c. 1-3.

[76] 15 U.S.C. § 1-7.

enacted in 1890. Read literally it condemns every contract in restraint of trade (although subject to statutory and judicially developed exceptions). Another manifestation in more recent times is article 85 of the Treaty of Rome.[77] It prohibits acts:

> which may affect trade between the member states [of the European Economic Community] and which have as their object or effect the prevention, restriction or distortion of competition within the common market ...

A review of the literature indicates that attempting to establish some general criteria as to when an act or practice is anti-competitive and should be restrained, as opposed to when it is a sign of healthy or at least normal commercial competition, is not easy. As has often been said, every contract is a contract in restraint of trade: the commercial freedom of the contracting parties is limited by their obligations to perform the contract. To the extent that any general criteria exist they seem to require an assessment of the nature and purpose of the acts which are alleged to be anti-competitive and the effect that they have or may have on the relevant market. An analysis is required which takes into account the commercial interests of both parties served by the conduct in question and the degree of restraint or distortion of competition which results.

(1) Acquisitions

[77] 298 U.N.T.S. 11 (25 March 1957).

It is agreed, as counsel for Laidlaw argues, that acquisitions by themselves are not anti-competitive acts. That does not mean, however, that they might not be used as such and thereby become so. An acquisition can be a legitimate method of entering a market; it can be a legitimate method of growing in a market. The pattern of acquisitions and attempted acquisitions in this case together with the evidence respecting their surrounding circumstances make it clear that Laidlaw's practice of acquiring firms in the lift-on-board business was for the purpose of initially acquiring a monopolistic position in the markets in question and then eliminating competitors from those markets. This characterization results from a number of factors.

(a) Frequency, Timing and Result of Acquisitions

One important factor is the time frame within which the acquisitions occurred. In the Campbell River area the only two competitors were acquired on the same day. In the Nanaimo area the only three competitors were acquired within five months of each other. Not only were all the existing firms acquired in those two areas, but there was a clear pattern of attempting to acquire any new entrant which appeared on the scene both in those areas and in the Cowichan Valley (Duncan) area. The attempted acquisition of Lacey in the Courtenay-Comox-Cumberland area and of PAN in the Cowichan Valley (Duncan) area also supports the conclusion that the acquisitions and attempted acquisitions were

entered into for the purpose of monopolizing the markets. The effect of the acquisitions was to give Laidlaw at times 100% of the market.

(b) Expressions of Subjective Intent

While subjective intent may not be a required element in order to find that a given practice (series of acts) is of an anti-competitive nature in this case such exists. It can therefore be taken into consideration as part of the relevant evidence. Charles Saunders was encouraged to sell SCS Waste Systems to Laidlaw on the promise that Laidlaw would thereafter purchase bins from him. Michael Wallace was given to understand that if Advance was not sold to Laidlaw, Laidlaw would see it put out of business by causing Advance extensive and expensive litigation costs. PAN, which has not been acquired, was left with the impression that if it refused to sell, Laidlaw would use its market power to ensure that it was put out of the market by way of price competition. Lacey was left with the message that if it would not sell to Laidlaw, Laidlaw had other methods of achieving what it wanted. Laidlaw argues that the activity of some of its employees in these markets, for example, in leaving the above-described messages with SCS Waste Systems, Advance, PAN and Lacey, should not be taken as evidence of intent on Laidlaw's part. It may be that there will be occasions when an employee is off on a "frolic of his own" and his conduct will not be taken as evidence of the intent of his corporate employer but that will rarely be the case and it is not the case here.

Indeed, one acquisition was undertaken at the specific direction of a senior corporate officer after he saw a non-Laidlaw bin in the market when visiting the Nanaimo area.

(c) Laidlaw's Business Purpose Explanation - Not Convincing

It is argued that the acquisitions were not anti-competitive acts but were merely a manifestation of Laidlaw's general corporate policy to enter markets and achieve growth through acquisitions. In support of this position it was stated that the acquisitions in question were subjected to the same *pro forma* financial analysis as other acquisitions and were completed after it was determined that they made good business sense. Yet, the only acquisition for which any analysis was provided was that of B & D on September 1, 1989 and some relating to the possible acquisition of Lacey. No *pro forma* analysis was available with respect to the acquisition of Advance which occurred in February 1990 after the standardized *pro forma* spread sheets were allegedly in use by Laidlaw. The *pro forma* analyses for the acquisitions supposedly determine whether an acceptable rate of return would be garnered from the acquisitions. One assumption which enters into these *pro forma* analyses is that there will be no competition in the market place over the length of the pay-back period.[78] In addition, the length of that period (eight years) is itself an indication of the fact that the acquisitions were

[78] Transcript at 2626-30 (15 November 1991).

proceeding on the assumption that Laidlaw would face no or at least little competition in the future in the markets in question. The fact that so much of the purchase price for these acquisitions is related to goodwill could very well be an indication that a premium might have been paid by Laidlaw for the firm being acquired.

(d) Restrictive Covenants

Finally, the overly restrictive covenants in the acquisition agreements also demonstrate an intent to monopolize the markets. It is trite law that in order to be enforceable restrictive covenants must be reasonable. The leading case on this subject is the *Nordenfelt* decision.[79] Restrictive covenants must be reasonable with reference to both the interests of the parties themselves and the interests of the public. As stated by Blair J.A. in *Tank Lining Corp. v. Dunlop Industrial Ltd.*, *Nordenfelt* essentially established a four stage inquiry:

> Firstly, is the covenant under review in restraint of trade? ... Secondly, is the restraint one which is against public policy and, therefore, void? ... Thirdly, can the restraint be justified as reasonable in the interests of the parties? Fourthly, can it also be justified as reasonable with reference to the interests of the public?[80]

[79] *Supra*, note 73.

[80] (1982), 40 O.R. (2d) 219 (C.A.) at 223.

With respect to the geographic scope of such covenants, reasonable boundaries are usually determined by the location of the customers of the business which is sold[81]. Covenants preventing a vendor from operating within a 300-mile radius with respect to the purchase of a business which operated generally within an area having less than a 30-mile radius, are clearly unreasonable.

Counsel for Laidlaw argues that restrictive covenants are a normal and usual part of acquisition agreements and that it is not unusual to find these drafted in a series of step-type decrements. He argues that the covenants used in these acquisitions were a standard type used by Laidlaw with respect to a variety of acquisitions and that the overbreadth of the covenants was simply an oversight. While some of the covenants, at least, are of a "standard form" format, it is clear that a representative of Laidlaw did address his or her mind to their application in the relevant markets. Reporting letters by Laidlaw's in-house counsel specifically note the scope of the covenants which were agreed to. These, in general, were of a 300-mile radius. It is also significant that when Laidlaw was the party giving covenants these were always very carefully limited in scope.

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[81] M.J. Trebilcock, *The Common Law of Restraint of Trade: A Legal and Economic Analysis* (Toronto: Carswell, 1986) at 240:

> ... the covenantee [the purchaser] must typically show that the business sold previously operated throughout the area subject to restraint, although not necessarily in every community within that area.
>
> ... in cases where the customers of the business sold are concentrated in one part of the geographic area subject to restraint, the courts will commonly strike a covenant down, if it cannot be severed.

The reciprocal agreements with Jones and Advance by which Laidlaw agreed to stay out of the roll-off market in return for the vendor's agreement to stay out of the lift-on-board market are the type of acts (market sharing arrangements) that fall under section 45 of the Act. Whether or not these result in a substantial lessening of competition in the roll-off market for the purposes of section 79 is not clear from the evidence adduced in this case. Whether they results in an "undue lessening" of competitive in the roll-off market for the purposes of section 45 is also not clear. While intuitively one would expect this to be so, given the small size of the markets in question, there is simply insufficient evidence with respect to the roll-off markets for the purposes of section 79 to enable the Tribunal to come to any conclusion in that regard.

Regardless of the conclusion with respect to the effects of any or all of the restrictive covenants they provide some evidence of intent. It is clear from the evidence as a whole that the acquisitions were part of a pattern of anti-competitive acts.

(2) Mergers or Acquisitions and Section 79 - Legal Considerations

With respect to acquisitions one further matter must be addressed: whether they properly can be considered under section 79 at all. In the *NutraSweet* decision the Tribunal refused to classify a voluntary agreement between

competitors as an anti-competitive act. The agreement in question was a worldwide market sharing agreement by The NutraSweet Company with its suppliers. Reference was made in this regard to the fact that a feature of the enumerated acts listed in section 78 (except for that in paragraph (f)) is that the competitor of the dominant firm is a target, not a fellow actor.[82] At the same time, the Tribunal left open the question as to whether or not such horizontal arrangements might be classified as anti-competitive acts. It commented that it was reluctant to conclude that all horizontal arrangements were excluded from sections 78 and 79 and that, in any event, it was sufficient for the purposes of the *NutraSweet* decision to state that the Tribunal had not been provided with adequate justification (insofar as effects in Canada were concerned) to allow the Tribunal to categorize the market sharing agreement as an anti-competitive act.

The Tribunal in this case, insofar as the acquisition agreements are concerned, is dealing with horizontal arrangements between willing competitors. Extensive and detailed evidence and argument has been heard respecting the anti-competitive effects of the conduct in question. It is not seriously in dispute, as the Tribunal noted in the *NutraSweet* decision, that the enumeration in section 78 is not controlling with respect to the scope of section 79. The Tribunal in this case has no difficulty classifying the acquisitions as acts constituting an anti-competitive practice.

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[82] *Supra*, note 2 at 37.

Counsel for Laidlaw argues that acquisitions and mergers do not fall under section 79 at all because they are dealt with elsewhere in the Act. A detailed set of provisions concerning the prevention or dissolution of anti-competitive mergers and acquisitions is found in sections 91 to 107 inclusive. Laidlaw argues that, based on the maxim *expressio unius* (explicit mention of one case involves implicit exclusion of the others), Parliament could not have intended that mergers be dealt with under the abuse of dominance provisions. Laidlaw's argument is based on two sections of the Act: (a) paragraph 78(b) includes as anti-competitive acts the acquisition by a supplier of a customer and the acquisition by a customer of a supplier, but not the acquisition of a competitor; and (b) section 91 defines merger, in part, as "the acquisition ... of control over or significant interest in the whole or a part of a business of a competitor ...". Laidlaw says that because the acquisition of a competitor is explicitly mentioned in section 91 but not in paragraph 78(b) Parliament intended such acquisitions to be dealt with under the merger provisions and not under the abuse of dominance provisions. Had Parliament intended otherwise, Laidlaw contends that it would have listed the acquisition of a competitor as an anti-competitive act under paragraph 78(b).[83]

Laidlaw's *expressio unius* argument is not convincing. Firstly, paragraph 78(b) is explicitly non-exhaustive. The fact that an act is not listed in paragraph 78(b), even if it is listed elsewhere in the statute, is no reason to

[83] Written Argument of the Respondent at 44-45.

conclude that it is excluded as an anti-competitive act. Secondly, while section 91 does state that the acquisition of a competitor is a merger, it does not necessarily follow that such an acquisition *exclusively* falls under the merger provisions.

Moreover, there would not appear to be any other indication in the Act that merger and abuse of dominance are to be mutually exclusive, such that a merger case could never be brought under section 79. Nor would there seem to be anything inconsistent or repugnant in the finding that a merger case could be brought as an abuse of dominance case. As such, the following words of E.A. Driedger, are applicable:

> If the overlapping provisions, whether in the same statute or not, are not in conflict, then the question is whether they both operate with respect to a particular situation or whether only one operates. It would seem that *prima facie* both operate, unless there is something to indicate that the legislature intended one provision to be exhaustive or exclusive ...
>
> Acts should be so construed as to avoid or remove inconsistent overlapping. But there is no principle that they should be construed so as to avoid or remove overlapping not inconsistent.[84] (underlining added)

If there were any doubt at all about this question, subsection 79(7) makes it clear that Parliament contemplated the possibility of mergers being the subject

[84] *Construction of Statutes*, 2d. ed. (Toronto: Butterworths, 1983) at 235-36.

of either a section 92 application or a section 79 application.[85] Subsection 79(7) and companion sections 45.1 and 98 are relevant. Subsection 79(7) provides that where proceedings are commenced under the conspiracy or merger provisions of the Act, no application may be made under the abuse provision based on the same or substantially the same facts.[86] These provisions prohibit concurrent proceedings and require that a choice initially be made between the abuse, merger, and conspiracy provisions. The mere inclusion of these sections clearly contemplates that an application on the same facts could be made under either the merger or the abuse of dominance provisions. Otherwise, there would be no need for these sections at all as merger and abuse of dominance would be mutually exclusive and there would be no possibility of concurrent proceedings.

Counsel for the Director referred to the interpretation of section 79 suggested by Anderson and Khosla:

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[85] Subsection 79(7) reads:

> (7) No application may be made under this section against a person
>
> *(a)* against whom proceedings have been commenced under section 45, or
> *(b)* against whom an order is sought under section 92.
>
> on the basis of the same or substantially the same facts as would be alleged in the proceedings under section 45 or 92, as the case may be.

[86] Sections 45.1 and 98 are similar. Section 45.1 provides that where proceedings are commenced under the merger or abuse of dominance provisions, no application may be made under the conspiracy provision based on the same or substantially the same facts. Section 98 provides that where proceedings are commenced under the conspiracy or abuse of dominance provisions, no application may be made under the merger provision based on the same or substantially the same facts.

> The choice between the merger and abuse of dominance provisions could arise, for example, in situations involving a series of acquisitions in an industry by a dominant firm. In such situations it may be the cumulative effect of such actions (i.e., the practice of anti-competitive acts) rather than any single purchase which lessens competition substantially. In these circumstances, the abuse provisions may be more readily applicable than the merger provision.[87]

This accords with the Tribunal's interpretation of the provisions in question.

(3) Contracting Practices

Professor Noll, in his affidavit of expert evidence,[88] (counsel for Laidlaw chose not to cross-examine him) notes that in most cases long-term, exclusive contracts do not raise significant anti-competitive issues. They can contribute to economic efficiency and thereby benefit consumers. They serve to allocate future business risks; investment decisions, for example, which must be made today can be made with some degree of assurance that they will not be subject to the vagaries of future price increases and other factors. Such timing may be particularly important when a supplier provides a product or service to a customer which is specifically tailored to that customer's needs and which entails a "relation

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[87] R.D. Anderson and S.D. Khosla, "Reflections on McDonald on Abuse of Dominant Position" (1987) 8:3 Can. Comp. Pol. Rec. 51 at 56. See also R.D. Anderson and S.D. Khosla, "Recent Developments in Canadian and U.S. Merger Policy" (1986) 7:3 Can. Comp. Pol. Rec. 46 at 58.

[88] Expert Affidavit of Professor R.G. Noll (Exhibit A-52).

- specific investment", that is, one made solely for the purpose of serving a particular customer.[89]

Roll-over provisions can be beneficial in some circumstances because they can lower transaction costs. Liquidated damages clauses can often avoid litigation costs. Automatic price rise clauses (often called negative option price clauses) can eliminate unnecessary negotiation or litigation and apportion the risk related to future events between the vendor and the purchaser. In a negotiated contract when there is more or less equal bargaining power one can assume that benefits to both sides will arise.

While certain of the contract terms may in many circumstances be entirely unobjectionable, it is necessary to look at the particular combination of clauses in the contracts in question as they relate to the vendor and purchaser of lift-on-board service in the relevant markets and to balance this against the effect the contracts are having on competition in those markets.

(a) Contract Terms - From the Supplier's Point of View

With respect to the long-term nature of the contracts in issue, Professor Noll notes that the relation-specific investments that we would normally expect to

[89] *Ibid.* at 9-10. Professor Noll offers the example of a railway spur built specifically to serve a coal mine. The long-term exclusive contract with liquidated damages clauses protects the parties against future opportunistic behaviour on either side that seeks to take advantage of the lock-in nature of the investments.

find when there is exclusivity, long terms and liquidated damages clauses, do not exist in the lift-on-board service business.[90] He notes that the customer-specific investment made by Laidlaw consists "primarily of the costs of negotiating the agreement". This is borne out by the evidence. The Tribunal notes that this investment will not be independent of the contract terms since the amount that Laidlaw is willing to spend in obtaining a customer's signature to a contract will depend upon how long and profitably the customer is bound by that contract. Professor Noll expresses the opinion that the other terms of the contract[91] (other than exclusivity, long term and liquidated damages) also do not have any identifiable efficiency rationale. The Tribunal agrees with that opinion.

The terms of the Laidlaw contracts are not justified as necessary to protect Laidlaw against any cost exposure on termination by a customer. In the first place, no such cost exposure exists because the costs associated with commencing service to a customer are minimal. Secondly, if such terms were necessary to protect Laidlaw, one would not expect to find that customers who go out of business or move to locations where Laidlaw does not provide service, would be able to terminate on a 30-day notice, while in all other circumstances they are bound for three years. It is also significant that Laidlaw does not offer customers a

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[90] *Ibid.* at 14. While the text of the affidavit refers to the "waste disposal business", it is clear from the context that it is the lift-on-board segment of the industry which is under discussion.

[91] *Supra* at 30ff.

lower price for signing a long-term contract; nor does it refuse to provide service if a customer refuses to sign any contract.

The automatic price increase clause protects Laidlaw from any exposure to increases in dump fees, which are a significant portion of its costs, and, under the most recent standard form contract, against increases in taxes, levies, duties, fuel costs, administrative and other costs of doing business. The negative option price clause in the earlier contract gives Laidlaw the power to adjust prices to monopoly level as long as there are no other suitable competitors in the market. The customer is then locked in by the long-term provisions of the contract so that even if a competitor eventually enters the market there is no opportunity to take advantage of that event and thereby obtain the benefit of a price which is closer to that which pertains in a competitive market.

There is no credible explanation for many of the provisions of these contracts other than to create barriers to entry for would-be competitors by making customer purchase decisions inflexible. The tying of the customers to Laidlaw operates to exclude other competitors from the market.

(b) Contract Terms - From the Purchasers' Point of View

The three-year term, the automatic roll-over provisions, the inability to cancel the contract after 60 days before the end of each three years, the liquidated

damages clauses and the exclusivity provision bind the customer tightly to Laidlaw for a long period of time. These terms prevent a customer from accepting an offer of service from a Laidlaw competitor unless the customer is careful to arrange for such at some time prior to the 60 days before the expiration of the three-year term.

The negative option price clauses can lead to monopoly pricing even when competitors are present in the market[92]. Since lift-on-board service is usually a minor cost item for a business, there is a tendency for those in charge to overlook the increases which are being levied simply because contesting them takes more time than it is worth.[93] If a customer responds negatively to a price increase he or she is immediately faced with having to arrange for alternate service and within a very short period of time: ten days under some contracts.

The fact that the contracts in question are contracts of adhesion is also significant. Laidlaw notes that some terms in some cases were negotiated. This was clearly an infrequent occurrence and does not detract from the characterization of the contracts as contracts of adhesion. The dominant position

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[92] *Supra*, note 88 at 19.

[93] Transcript at 1060 (1 November 1991).

of the respondent is both secured by and reflected in these contracts.[94] The evidence makes it clear that the customer derives virtually no benefit from them.

(c) Intent Required

One last consideration with respect to the contracting practices must be addressed: the nature of the intent which must be proven in order to find that a respondent has engaged in anti-competitive practices. Counsel for Laidlaw argues that it is necessary to find a clear subjective intention. He argues that in this case the contract forms were general forms used by Laidlaw everywhere in the North American market. He argues that they are designed to meet competition from Laidlaw's two main competitors on that broader stage: Browning-Ferris Industries ("B.F.I.") and Waste Management Inc. ("W.M.I.") All three firms operate continent-wide. W.M.I., with gross revenues of approximately $5 billion annually, is six to eight times the size of Laidlaw. B.F.I. is three to four times the

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[94] F. Kessler, "Contracts of Adhesion - Some Thoughts about Freedom of Contract" (1943) 43 Columbia L.R. 629 at 632:

> In so far as the reduction of costs of production and distribution thus achieved is reflected in reduced prices, society as a whole ultimately benefits from the use of standard contracts. And there can be no doubt that this has been the case to a considerable extent. The use of standard contracts has, however, another aspect which has become increasingly important. Standard contracts are typically used by enterprises with strong bargaining power. The weaker party, in need of the goods or services, is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses. His contractual intention is but a subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood only in a vague way, if at all.

size of Laidlaw. In the context of Canadian markets, however, Laidlaw is the largest of the three.

Counsel for Laidlaw argues that the contracts in the North American context are standard in the industry, that they were not designed with the particular markets here in question in mind. Therefore, Laidlaw could have had no specific intention to restrict competition in the Vancouver Island markets.

Proof of subjective intention on the part of a respondent is not necessary in order to find that a practice of anti-competitive acts has occurred. Such intention is almost impossible of proof in many cases involving corporate entities unless one stumbles upon what is known as a "smoking-gun".[95] Section 79 of the Act provides for a civil proceeding and civil remedies. In that context corporate actors and individuals are deemed to intend the effects of their actions.

In addition, the claim that the contracts are designed to compete with B.F.I. and W.M.I. on the national and indeed North American stage seems to be saying no more than "we are doing it because they are doing it." The three firms may be international in size but many markets in which they operate are local. The contracts in question exclude not only the small, local competitors but also

[95] A document which makes it clear that the purpose of the conduct in question was to exclude competitors from the market.

B.F.I. or W.M.I. as the case might be. There is nothing before the Tribunal with respect to how these contracts operate in larger markets. Nevertheless, insofar as the markets in issue are concerned, there is no doubt that they have anti-competitive effects. It is no answer to say that they were designed for a different market and therefore not intended to have anti-competitive effects in the smaller market. As has been noted, actions will be presumed to have been intended to have the effects which actually occur in the absence of convincing evidence to the contrary. The argument that Laidlaw lacked the requisite intention because the contracts were designed to counter B.F.I. and W.M.I. contracting practices is not convincing.

(d) Jurisprudence Considered

In general, the jurisprudence which has been cited to the Tribunal with respect to anti-competitive acts, as it relates to various contracting practices, is not *directly* relevant. It relates to the statute law of other jurisdictions. At the same time, that jurisprudence does provide illustrations as to how the law in those other jurisdictions has developed. This is useful background information for the Tribunal. Of particular interest in this regard were: *Hoffmann-La Roche & Company AG v. Commission of the European Communities*;[96] *International Salt*

[96] [1979] E.C.R. 461.

*Co., Inc. v. U.S.*[97]; Use of Negative Option Plans by Sellers in Commerce;[98] *Washington v. TCI Cablevision*; *Soda Ash-Solvay*;[100] *European Gas*;[101] and "Monopolization and the Definition of "Abuse" of a Dominant Position under Article 86 E.E.C. Treaty" by J.T. Lang.[102]

(4) Aided by Questionable Litigation Practices

No one can read the evidence concerning the use Laidlaw made of litigation and the threat of litigation in this case without a sense of outrage. The respondent used its vastly larger size and economic resources together with the threat of litigation to prevent customers from switching to competitors. It commenced spurious litigation and threatened litigation against its competitors to drive or attempt to drive them out of business by raising their costs of doing business. This is certainly predatory behaviour.

It is useful to quote from R.H. Bork:

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[97] 332 U.S. 392 (1947).

[98] 16 C.F.R. § 425 (1973).

[99] No. 91-2-11299-1 (Wash. Super. Ct. 4 June 1991).

[100] Commission of the European Communities decision 91/299, [1991] 2 CEC 2029.

[101] (1989) 10 E.C.L.R. 299.

[102] (1979) 16 C.M.L. Rev. 345 at 363.

> As a technique for predation, sham litigation is theoretically one of the most promising. Litigation, whether before an agency or a court, can often be framed so that the expenses to each party will be about the same. Indeed, if, as is usual, the party seeking to enter the market bears the burden of going forward with evidence, litigation expenses may be much heavier for him. Expenses in complex business litigation can be enormous, not merely in direct legal fees and costs but in the diversion of executive time and effort and in the disruption of the organization's regular activities. Thus, the firm resisting market entry through sham litigation can impose equal or greater costs upon the entrant and, if it has greater or even equal reserves, may be able to outlast the potential rival. This tactic is likely to find unqualified success only against smaller firms, since the costs of litigation must loom large relative to reserves if the firm is to be driven out. The tactic may be successful against larger firms if the costs are large relative to expected profits in a small market.
>
> The predator need not expect to defeat entry altogether. He may hope only to delay it. Sham litigation then becomes a useful tactic against any size firm, regardless of relative reserves, for it may be worth the price of litigation to purchase a delay of a year or several years in a rival's entry into a lucrative market. In such cases, successful predation does not require that the predator be able to impose larger costs on the victim, that the predator have greater reserves than the victim, or that the predator have better access to capital than the victim. No other technique of predation is able to escape all of these requirements, and that fact indicates both the danger and the probability of predation by misuse of governmental processes.
>
> This mode of predation is particularly insidious because of its relatively low antitrust visibility.[103]

It would be hoped that when courts become aware of this kind of oppressive use of the legal system they would at the very least be prepared to award costs to the defendant on a full indemnity basis.

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[103] R.H. Bork, *The Anti-Trust Paradox* (New York: Basic Books, Inc., 1978) at 347-48.

**B. Substantial Lessening of Competition**

Pursuant to paragraph 79(1)(c) of the Act, the Tribunal must determine if the practice of anti-competitive acts has had, is having or is likely to lessen competition substantially.

(1) Market Concentration

Laidlaw argues that the Director has not demonstrated that there has been any substantial lessening of competition in the relevant markets. It is argued that no analysis has been done of the state of competition in the markets before Laidlaw entered compared to what exists now. While it is true that the Director has provided no statistical information concerning the state of competition in the markets before Laidlaw's entry, it is known that in the Cowichan Valley (Duncan) area there were two businesses that *could* compete in that area: Fox and C.W. Whether PAN should be included as a vigorous competitor is unclear given its size. In the Nanaimo area there were three companies: Nanaimo Disposal, Jones and United. In the Campbell River area there were two: Borgfjord and Campbell River Sanitation. The markets are clearly small and would not likely support more than two competitors in the Cowichan Valley (Duncan) area, two in the Campbell River area and three in the Nanaimo area. This does not mean, however, that there has not been a substantial lessening of competition in those markets.

In addition, it is argued that the Nanaimo-Cowichan market is becoming increasingly competitive. The changing market shares calculated by the Ross-Levelton study[104] are as follows:

| Date | Laidlaw | PAN | B.F.I. | West Coast |
|---|---|---|---|---|
| January 1991 | 90.89% | 3.40% | 5.45% | 0.26% |
| June 1991 | 83.43% | 3.69% | 11.11% | 1.77% |
| October 1991 | 77.96% | 3.97% | 8.72% | 9.36% |

The evidence disclosed that the West Coast percentages for January 1991 and June 1991 were significantly understated. It is likely that the market share for West Coast in the months in question is much larger than indicated. Laidlaw's market share and that of the other market participants would be correspondingly reduced. This means that the evidence of a trend is not very convincing. Indeed, one could not conclude that a trend existed by reference to such a short time frame and particularly when all the data relate to the period after the Director's investigation commenced.

The acquisition practices increased concentration in the market, at times to monopoly levels. Laidlaw bought all the firms in the market so that at times it held a 100% market share. This by itself constitutes at least a *prima facie*

[104] Exhibit A-69: Market Trend Analysis at 2.

lessening of competition which is substantial. The Tribunal does not purport to determine whether those practices alone, in the absence of the Laidlaw contracts, could have resulted in a substantial lessening of competition. It is sufficient to say that the acquisitions form part of the anti-competitive practices in that regard.

(2) Creation of Artificial Barriers to Entry

It is not just the number of competitors and comparative market shares which are relevant in considering whether a substantial lessening of competition has occurred. In this case the linchpin of Laidlaw's maintenance of its dominant position is the standard form contracts of adhesion which it uses to lock in a customer base. In this regard, the substantial lessening which is to be assessed need not necessarily be proved by weighing the competitiveness of the market in the past with its competitiveness at present. Substantial lessening can also be assessed by reference to the competitiveness of the market in the presence of the anti-competitive acts and its likely competitiveness in their absence.

Counsel for Laidlaw argued that the evidence discloses that competitors can still enter the market easily and grow. Reference was made to the fact that SCS Waste Systems placed about 80 containers with customers in a four-month period. Advance acquired about 350 container rentals in a three-year period. West Coast placed 150 containers in the market between its commencement of business

in January 1990 and October 1991. B & D acquired about 180 container placements in a fourteen-month period. Camvest had approximately 135 containers after a seventeen-month period.

In evaluating the number of containers placed by Laidlaw's past and present competitors it is important to bear certain things in mind. To the extent that Laidlaw did not succeed in having all customers sign contracts there was a small pool of customers available to competitors when they entered. It is clear from the evidence that the firms which tried and are trying (since they are not yet viable at their current scales) to establish themselves in the market experienced an initial surge of growth and then ran into the barrier created by Laidlaw's contracts. Extrapolation from the number of containers placed in the early months of operation is therefore not justified. The evidence further discloses that the local firms benefited from the preference of many customers to deal with a local firm. Thus, the firms had an advantage that should have translated into easy success if they were willing, at least, to meet Laidlaw's price. The evidence also discloses that the number of bins placed by Advance and West Coast overstates their success. Messrs. McLeod and Wallace, the owner and manager of Advance, stated that they succeeded in placing many bins with rural customers who otherwise took care of their own garbage disposal. The prices received from these customers were low and the cost of servicing them high. Advance was forced into these arrangements by the need to utilize its trucks and personnel. Similarly,

Mr. Kupiak of West Coast described having to go much farther afield than he would choose to go if he had access to customers closer to his base of operation.

It is argued that without evidence as to how long it normally takes to become established as a viable business in these markets, one cannot conclude that the time horizons have been too long. It is argued that Fox's entry into the Nanaimo market in 1980 was no more rapid than is the case for some of the companies now trying to establish themselves in the relevant markets. It is difficult to put much reliance on Fox's experience of so many years ago as a benchmark for a reasonable period of entry today.

Professor Noll's description, which is fully supported by the evidence, notes that the costs of getting into the business are not great. It requires an investment in a truck, some containers, a minimum commitment in work hours to waste collection employees and a similar commitment in advertising. The most significant factor facing an entrant is to obtain a minimum number of customers to keep the truck and collection workers fully occupied and to cover the other initial commitments necessary for entry. But once a minimum number of customers is obtained, the future scale economies in the provision of lift-on-board service are very small and diminish quite rapidly. (These additional economies arise from being able to design more efficient pick-up routes as more customers are added). The implication is that for a very small company, attaining quickly a

minimum number of customers is very important, but for a large company with several trucks and pick-up routes, scale economies are not important. Delay in achieving the minimum scale necessary to operate means that the new firm must experience higher costs than incumbent firms, and probably losses. Losses experienced during early periods increase the risk and reduce the incentive to enter. In the event that the firm does not succeed, the losses absorbed are not recoverable. But in any event these losses must be taken into account when estimating future profits. Professor Noll notes that, in addition, the contracts enable one geographic area to be monopolized regardless of competitive conditions in an adjacent area: they segment the market so that each can be separately monopolized.

There is no reason to doubt that based solely on the economics of lift-on-board service these should be highly competitive markets. The evidence shows, however, that the effect of the contracts is to make entry sufficiently difficult so that it no longer effectively polices the market. The evidence demonstrates that a new firm can acquire a certain number of customers but that it cannot establish a customer base with sufficient rapidity to make entry attractive. In the markets in question there is no doubt that acquisition practices of Laidlaw buttressed by the creation of artificial barriers to entry through the contracts have resulted in a substantial lessening of competition.

## VII. EVIDENCE CONSIDERATIONS

Counsel for Laidlaw correctly points out that few of the witnesses in this case were truly neutral. Some of the past competitors and customers of Laidlaw certainly do not view Laidlaw in a positive light. The Tribunal has been conscious of that fact when weighing the evidence. It has equally been aware that many of Laidlaw's witnesses are also not disinterested in the outcome of these proceedings.

Part of the evidence of Michael Wallace was heard by the Tribunal subject to its admissibility being determined at a later time. The evidence relates to a conversation which Mr. Wallace taped. The conversation was with Dean Woods, District Manager of Laidlaw, and took place over lunch. The tape was not submitted in evidence. It was used by Mr. Wallace to refresh his memory before giving evidence. A copy of the tape was provided to counsel for Laidlaw sometime before the hearing and the original was made available to him during the hearing. The tape appears to be undecipherable, because of background noise, to everyone except Mr. Wallace.

Counsel for Laidlaw argued that evidence of the luncheon conversation should not be accepted in evidence because it had been taped by Mr. Wallace

without Mr. Woods' consent. This argument was based on the recent decision of the Supreme Court of Canada in *R. v. Duarte*.[105]

While subsection 184(1) of the *Criminal Code*[106] makes it a criminal offence to electronically "intercept" a private conversation, it is not illegal for one of the participants to a conversation to record that conversation without the knowledge of the other participants. The tape recording by Mr. Wallace of a conversation in which he participated is not illegal. In the *Duarte* case, the Supreme Court decided that when this kind of "participant" or "consent" taping is carried out by "an instrumentality of the state" (e.g., a police officer) it amounts to a search or seizure. As such it would be unreasonable unless it had been authorized by judicial warrant. The Court held that it was unacceptable in a free society that agents of the state be free to use the technology of electronic surveillance at their sole discretion. The unauthorized audio-visual recording in issue in the *Duarte* case was therefore said to offend section 8 of the *Canadian Charter of Rights and Freedoms*. At the same time, the Court held that the admission of the evidence, even though it had been obtained without authorization by judicial warrant, would not bring the administration of justice into disrepute. The evidence had been obtained on the understanding of the law as it existed pre-

[105] [1990] 1 S.C.R. 30.

[106] R.S.C., 1985, c. C-46, as amended.

*Duarte* and not through a deliberate or wilful breach of *Charter* rights. The evidence was therefore held to be admissible.

In the present case, it is sufficient to note that Mr. Wallace was not acting as an instrumentality of the state when he recorded his conversation with Mr. Woods. He was acting as a private individual. The *Duarte* decision does not apply. There is no impediment to the admissibility of Mr. Wallace's evidence on the basis of the *Duarte* decision.

Laidlaw also questioned the credibility of the evidence given by Darlene Gunter. Laidlaw suggests that she forged signatures on some container service agreements. Laidlaw has made no attempt to pursue its allegations in this regard through the criminal courts and the handwriting expert called by Laidlaw did not do a blind analysis.[107] The Tribunal does not doubt the credibility of Ms. Gunter's evidence.

## VIII. REMEDIES

The Director seeks the following remedies:

[107] An analysis in which the expert is not aware of the identity and handwriting of the person suspected of writing the documents.

... an Order or Orders prohibiting the Respondent from entering into or continuing to use any agreement for the provision of the Product in the Markets which contain terms:

1.(i) a) creating an automatic renewal thereof;
b) requiring notice of termination beyond one payment period;
c) creating or containing a term of more than one year;
d) creating a right of first refusal on the part of the Respondent for the continuation or acquisition of the business of a customer or potential customer;
e) obliging a customer to reveal competitive bids or information regarding discussions, negotiations or quotes provided to the customer from competitors of the Respondent;
f) requiring the customer, if it requires the Product at multiple locations or in differing quantities, or levels of service to obtain it exclusively from the Respondent;
g) requiring a customer to pay any stipulated sum upon early termination.

(ii) declaring null and void any such provisions in contracts in place in the Markets.

2. [An order] prohibiting the acquisition of any competitor in the Markets for a period of three years from the date of the Order of this Tribunal.

3. An Order prohibiting the Respondent from exiting the Markets for a period of three years from the date of the Order of this Tribunal.

4. An Order prohibiting the Respondent for a period of three years from charging a price for the Product in any of the Markets, for the purpose of meeting or undercutting the price of a competitor in such market unless the price so charged by the Respondent is applied or made available uniformly by it to customers similarly situated.

5. An Order directing that the Respondent may only supply the Product in the Markets, if, by written contract, which contract shall prominently and unambiguously state thereon that the document is a contract for waste disposal for a fixed term; and that all such contracts in place therein at the time that the orders sought herein are granted and entered into thereafter for a period of three years be provided to the Applicant at the Applicant's request;

6. An order declaring any clause in any contract of purchase and sale or appurtenant or ancillary thereto of a competitor or any other provider of the product in the Markets or its business which restricts that vendor or any of its principals or any other

person a party thereto from competing in the Markets or each of them, in any business or activity competitive with that of the Respondent's, null and void until such time that the Respondent demonstrates that it is no longer dominant in the Markets;

7. An order declaring any existing agreements between the Respondent and any other person which allocates customers, fixes territorial limits on the extent of the involvement of the parties in the market for the supply of the Product in the Markets, or which stipulates conditions or prohibitions as to entry into the Markets, are null and void; and prohibiting the Respondent from entering into any such agreement;

8. An order requiring the Respondent to develop a system to determine the cost of service of each of its customers based upon an approved Canadian Institute of Chartered Accountants Generally Accepted Accounting Principles formulation thereof derived from the weight of waste generated by each customer as weighed at the time of pick up;

9. An order requiring the Respondent, for a period of five years from the date of the Order to create and circulate to its customers in the Markets and each of them a price list regarding its scale of charges for the supply of the Product;

10. An order requiring the Respondent to provide timely notice to each of its customers of any change in its standard form of container service agreement and providing therein an explanation of each such change and providing to each of its customers an option to adopt such changes or new form of container service agreement in lieu of its then extant contract;

11. An order directing the Respondent to provide a copy of this Order and a synopsis thereof as approved by the Applicant to each customer as of the date thereof;

12. An order directing the Respondent to similarly provide a copy of such order and a synopsis thereof to each of its managerial employees a statement of its policy of compliance with the Competition Act, an explanation of the said Act, and in particular the implications of ss. 78 and 79 thereof; and

13. Such other and further order as may to this Tribunal appear just.[108]

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[108] Written Argument of the Applicant at 57-60.

The remedies which the Director seeks can be classified as: (a) prohibition of certain acquisition practices in the future and the voiding of restrictive covenants in existing acquisition agreements; (b) prohibition of certain contracting practices in the future and the alteration of existing contracts so that the anti-competitive terms are made inoperative; (c) other substantive orders designed to restore competition; and (d) notice requirements respecting any order which the Tribunal might make.

Subsection 79(1) authorizes the Tribunal to issue orders preventing the future occurrence of anti-competitive acts. In addition, subsection (2) provides:

> 79. (2) Where, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take such actions, including the divestiture of assets or shares, as are reasonable and as are necessary to overcome the effects of the practice in that market.

The Tribunal is aware that its orders pursuant to subsections 79(1) and 79(2) must only go as far as it considers necessary in order to restore competition in the relevant markets. It agrees with counsel for Laidlaw's argument that it is not part of the Tribunal's function to impose penalties or punitive measures. What is necessary to restore competition is a judgment which must be made by reference to the evidence which has been put before the Tribunal as to how the markets in

question operate and have operated and the effects the anti-competitive acts are having thereon. The Tribunal has taken these considerations into account in deciding which of the orders requested by the Director it is prepared to grant.

**A. Acquisitions and Restrictive Covenants**

The Tribunal is willing to grant an order prohibiting Laidlaw from acquiring any competitor in the market for a period of three years from the date of the order (Director's remedy 2). Laidlaw's acquisition practices clearly constituted anti-competitive acts which were a significant element leading to the substantial lessening of competition which occurred in these markets. The acquisition practices have, in some circumstances, made customers reluctant to use the services of a Laidlaw competitor because of a belief, resulting from past experience, that Laidlaw will acquire that new company in the not too far distant future and the customer will be disadvantaged as a result of having left Laidlaw. The Tribunal is therefore of the view that the three-year ban on acquisitions is a necessary aspect of an order designed to restore competition to the markets.

Insofar as declaring the restrictive covenants in the acquisition agreements to be null and void (Director's remedies 6 and 7), counsel for Laidlaw argues that this type of remedy is not within the jurisdiction of the Tribunal because it is a blatant interference with the property rights of the parties to those contracts. It is argued

that the Tribunal is a creature of statute and not a court of inherent jurisdiction and therefore cannot grant the remedy sought.

There is no doubt that the Tribunal is not a court of inherent jurisdiction and is a creature of statute. At the same time, it is clear from the types of remedies which are expressly *included within* the Tribunal's mandate (ordering sales of shares and assets) that the Tribunal was given broad jurisdiction to interfere with property rights not only of the party or parties before it but also of third parties who have contracts with the respondent. This is clear not only from the remedies expressly described but also from the types of activity which the Tribunal is mandated to restrain: pre-emption of scarce resources; buying up products to prevent erosion of existing price levels; adoption of product specifications; requiring or ordering a seller to sell only or primarily to certain customers.

Five of the covenants in question have already expired. Three of the remaining four which relate to lift-on-board service, that given by Jones, that given by B & D, and that given by SCS Waste Systems, are clearly overly broad. The covenants given by Jones and B & D purport to cover areas within a 300-mile radius of Nanaimo and a 100-mile radius of Campbell River respectively. The covenant given by SCS Waste Systems is a step covenant of which the smallest decrement is a 50-mile radius from Nanaimo. This covers large parts of highly populated areas of mainland British Columbia, including at least parts of Vancouver. These

are areas in which SCS Waste Systems never operated. The covenants are clearly wildly overly broad and therefore void.

With respect to the covenant given by Advance concerning lift-on-board service, it is carefully crafted so as to be no broader than 30 miles across following the spine of Highway No. 1 (which also follows the coastline of Vancouver Island). It is difficult to conclude that it is an unreasonable restriction on the basis of the applicable common law principles.

With respect to the two covenants respecting the roll-off business given by Laidlaw (one to Jones and the other to Advance), characterizing those covenants is more difficult. While intuitively one is led to the conclusion that given the size of the markets they must constitute either an undue restriction in the terms of section 45 or lead to a substantial lessening of competition in the terms of section 79, on reviewing the evidence there is simply insufficient information concerning the state of the roll-off market to allow such a conclusion.

Counsel for Laidlaw argues that even if the lift-on-board covenants are overly broad, they do not lead to a substantial lessening of competition because they keep such a small number of potential competitors out of the market. Therefore, it is argued that remedies with respect to them are not within the Tribunal's purview.

While it may be clear that an application of the common law principles respecting restrictive covenants would lead to the conclusion that all of the unexpired covenants would be unenforceable as being overly broad, the Tribunal has not been convinced that declaring the unexpired restrictive covenants void is necessary to restore competition in the markets. There is merit in the argument that their effect on the markets and on competition therein is marginal. At the same time, in some sense, the Tribunal's refusal to issue a declaration in this regard is somewhat irrelevant since the parties to the lift-on-board covenants will by virtue of these reasons have an appreciation of the legal weakness of those covenants.

**B.Contracts**

With respect to future and existing contracts, as has already been noted, Laidlaw has removed the right of first refusal and the right to compete clauses from its standard form contracts. Thus future contracts will not contain those terms. Insofar as existing contracts are concerned, Laidlaw has undertaken not to enforce those clauses and to notify its customers of this position. Similarly, Laidlaw has undertaken to remove the liquidated damages clause from its standard form contracts. Laidlaw is willing to notify its customers that those terms contained in existing contracts will not be enforced (Director's remedies 1(i)(d), (e), (g) and (ii) as it relates to subparagraphs (d), (e), (g) of paragraph (i)).

Laidlaw has revised its contract forms so that there is bold printing on the face which warns the customer that it is a contract for three years which is being signed (part of Director's remedy 5).

Laidlaw has also decided to alter the term of the roll-over renewal period found in the contracts. Under this arrangement the original term of the contract would be for three years but renewals thereafter would be for one year only. The Tribunal does not consider this sufficient to reduce the artificial barriers to entry caused by the contracts. The Tribunal is prepared to grant an order that the contracts, both present and future, shall have no longer initial term than one year. An automatic right of renewal is appropriate but only for a one-year period. At the expiration of the initial one-year term, cancellation of the contract may occur on one-month's notice by either party.[109] It would seem preferable that the existing contracts expire on their anniversary dates within a year of the Tribunal's order rather than all on one day (Director's remedies 1(i)(a), (b), (c) and (ii) as it relates to subparagraphs (a), (b), (c) of paragraph (i)).

[109] Madame Sarrazin is of the view that a more appropriate and perhaps effective method of eliminating the abusive practices would be to simply require that all Laidlaw contracts be terminable on 60 days notice. She notes, first, that there was much evidence that prior to Laidlaw's entry into the markets no formal written contracts were in use and termination of service in general was effected by 30 days notice, that the customer service agreements were not introduced as a result of the customer's preferences and that the competition used them only as a reaction to Laidlaw practices. Professor Noll pointed out that the contracts do not create efficiencies and are the key to maintaining and enforcing market power for Laidlaw. It is further emphasized that in all cases, simple clear cut remedies targeted at the fundamental issues are preferable to more complex and interventionist ones that will have a perpetual life and may not cover adequately all situations present and future. With the evidence before the Tribunal, and in light of the above principle, Madame Sarrazin notes that it would have been reasonable for the Director to have asked for contracts terminable on 60 days notice to overcome the effects of Laidlaw practices in the market. Such remedy would serve the purpose required and would allow the market to restore itself.

The Tribunal is willing to grant an order that the standard form contracts not contain terms requiring a customer to obtain service exclusively from Laidlaw with respect to all its lift-on-board service (Director's remedy 1(i)(f) and (ii) insofar as it relates to subparagraph (f) of paragraph (i)). Laidlaw argued that these exclusivity clauses were included in order to ensure that the customer did not stream recyclable and therefore more profitable waste from the waste stream, which would otherwise have been available to Laidlaw. This is not convincing. In the first place, it is the customer not Laidlaw which does the streaming. In the second place, the reference to recyclable waste only appears in the latest Laidlaw contracts; there is no way that this can be seen as a situation relevant to the earlier contracts. More importantly, however, there is no reason to tie a customer to a location (or quality of service (e.g. recyclable)) for which he or she has not specifically initially contracted. In the context of the present application such clauses abet the anti-competitive reach of the contracts by excluding competitors from these other areas.

In deciding to grant an order relating to the contracts as described above, the Tribunal is aware that only Laidlaw will be bound to conduct itself in this fashion. Other firms in these markets will not be so constrained. No order will exist preventing Browning-Ferris Industries (B.F.I.) from seeking three-year contracts from its customers. This, however, is the consequence of the authority granted to the Tribunal under the Act. Orders can only be made pursuant to section 79

against a dominant firm. While the situation created by such orders would seem to be unbalanced, the Tribunal is aware that if customers are faced with a choice between a three-year lock-in type contract such as that which Laidlaw now uses and a one-year contract from which the anti-competitive clauses have been removed, it seems likely that they would choose the less onerous version.

## C. Other Substantive Remedies

The Tribunal is not willing to grant an order preventing Laidlaw from exiting any of the markets for a period of three years from the date of the order (Director's remedy 3). If the Director can provide a fairly precise definition of what is meant by "exiting", the Tribunal is prepared to include in its order a requirement that Laidlaw give the Director 60 days notice of any such intended action. The Tribunal is also willing to include in its order a provision that an application to amend or alter the existing order could be made in reference to this exit activity if it was deemed desirable to do so, despite the fact that section 106 of the Act provides for application for variation of an order in changed circumstances.

The Tribunal is willing to require that Laidlaw provide the Director with copies of all of its existing and future contracts (second half of Director's remedy 5). It is not prepared to require Laidlaw to provide an opportunity to each existing customer to change its contract to new contract forms whenever such forms are

introduced (Director's remedy 10). The Tribunal notes that the existing contract between any given customer and Laidlaw will be based on a number of interrelated factors including price. The purpose to be served by obligating Laidlaw, merely because it introduces a new form of contract, to offer that contract to all existing contracted customers is not immediately obvious. At the same time, the Tribunal is willing to include in its order a requirement that if and when any new contract form is prepared, it should be accompanied by an explanation describing the differences between it and the contract which the customer had previously signed when submitted to existing customers.

That leaves for consideration what might be called the pricing remedies: (a) prohibition against Laidlaw charging a price in any of the markets for the purpose of undercutting a competitor unless the price so charged is made available uniformly to all its customers (Director's remedy 4); (b) Laidlaw to create and circulate price lists to all its customers for a period of five years (Director's remedy 9); and (c) requires Laidlaw to develop a system to determine a cost of service to each of its customers (Director's remedy 8).

The Tribunal has difficulty accepting that orders of this nature should be issued. The Tribunal's difficulty arises because no argument has been articulated as to why these remedies are sought and what will potentially be achieved through

them. In addition, these remedies, on their face, raise serious questions for the Tribunal.

With respect to the request for an order requiring Laidlaw not to charge a price in any of the markets for the purpose of undercutting a competitor unless it is made available uniformly to all customers (Director's remedy 4), it is difficult to see how customers would benefit from a policy which prevented them from playing off suppliers against each other. Predatory pricing while originally pleaded was not seriously at issue in this case. More importantly, no argument has been made demonstrating that the possible pay-off from such activity would not be greatly reduced, if not eliminated, by the lowering of the barriers to entry which will result from the other remedies.

With respect to the request that Laidlaw be required to circulate price lists to its customers (Director's remedy 9), it has not been demonstrated to the Tribunal that this could serve any useful purpose since it is conceded that any such price list would be a "suggested price" list only. It is understood that any such list would not be binding on Laidlaw and that Laidlaw would be free to negotiate with individual customers. The list, at the same time, could become the focus for implicit pricing agreement by the suppliers in these very concentrated markets.

With respect to the requirement that Laidlaw develop a cost of service for each of its customers (Director's remedy 8), the Tribunal notes that this remedy is conceptually inconsistent with the Director's remedies 4 and 9. The request that the cost of service to each individual customer be determined is inconsistent with the notion underlying remedies 4 and 9 that standardized pricing is possible. If the concern is that Laidlaw may be charging some customers too little compared to average variable cost, the disadvantage would be Laidlaw's as long as the rest of the customer base turned over quickly enough so that it was available to competition from other suppliers.

The Tribunal is willing to reconsider its refusal to include in the order what is referred to as the pricing remedies. It takes this stand because it wishes to ensure that all valid reasons for seeking such remedies have been brought to its attention. Accordingly, the Director, if he so wishes, may file written argument setting out the rationale on which the request for those remedies is based, within ten days of the date of these reasons. This should include, for example, an explanation as to what the remedies are intended to accomplish, why they are justified on the evidence and why they are necessary in the light of the other remedies which the Tribunal has agreed to grant. If the Director chooses to exercise this option the respondent will of course be given a corresponding ten days within which to reply.

**D. Notice Requirements**

Laidlaw does not object to notifying all its customers of any order the Tribunal might make in accordance with a communication drafted by the Director (Director's remedy 11). Laidlaw does object to providing to its managerial employees notice of any order plus a statement that its policy is to comply with the Act (Director's remedy 12). It is argued that this last is a new remedy which did not appear in the notice of application nor in any documentation before counsel's final written argument. Counsel for the Director indicated that if it was necessary he would make a formal motion to amend the notice of application in this regard. Counsel for Laidlaw's argument, that it is not open to the Tribunal to make the order requested, is based on the Tribunal's decision in the *NutraSweet* case:

> In formulating an appropriate order the Tribunal is of the view that it must confine itself essentially to the kind of orders requested by the Director in his original application with such modifications as may fairly be considered to have been in issue in the case. While other possible remedies were discussed during argument, no amendment was sought to the application in this respect. It is a matter of fairness that the respondent not now be faced with a remedy of which it had no formal notice.[110] (underlining added)

If a formal notice to amend the application is required, then it is hereby granted. At the same time, the "additional" remedy being sought is not different in *kind* from that sought under the original application. It is merely an addition to the scope of the notice to be given with respect to any order the Tribunal might make, and a

[110] *Supra*, note 2 at 57-58.

requirement that Laidlaw make an express commitment to abide by the provisions of the Act. The test regarding additions or alternatives to remedies is whether or not the respondent will be prejudiced as a result of not having had earlier notice of the request, of not having had an opportunity to adduce relevant evidence respecting the effects of the remedy or an opportunity to explain why it is inappropriate. The respondent will not be prejudiced in this manner by the expanded notice requirements now being requested and the Tribunal is willing to grant an order which includes such requirements.

**E. Request that Order be Drafted**

The Tribunal asks that counsel for the Director, in consultation with counsel for the respondent, draft an order for issuance by the Tribunal in accordance with these reasons. A draft shall be submitted within ten days of the date of these reasons.

DATED AT Ottawa, this 20th day of January, 1992.

SIGNED ON behalf of the Tribunal by the presiding judicial member.

(s) B. Reed
B. Reed

# 13

Competition Tribunal | Tribunal de la Concurrence

**CT - 1994 / 003 – Doc # 204a**

IN THE MATTER OF an application by
the Director of Investigation and Research
under sections 77 and 79 of the *Competition Act*,
R.S.C. 1985, c. C-34.

B E T W E E N :

The Director of Investigation and Research

Applicant

- and -

Tele-Direct (Publications) Inc.
Tele-Direct (Services) Inc.

Respondents

- and -

Anglo-Canadian Telephone Company
NDAP-TMP Worldwide Ltd. and
Directory Advertising Consultants Limited
Thunder Bay Telephone

Intervenors

**REASONS AND ORDER**

**Dates of Hearing:**

September 5-8, 11-14, 27-29; October 2-3, 5-6, 10-13, 16-20, 23-27; 30; November 2-3, 6-10, 14-17, 20-22, 24, 27-30; December 1, 4, 6-8, 1995; January 22-26; February 12-16, 23, 26-29; March 1, 1996

**Members:**

Rothstein J. (presiding)
Frank Roseman
Christine Lloyd

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**Directory Advertising Consultants Limited**

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John M. Hovland

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**VI. MARKET DEFINITION (cont'd)**

**GUIDE TO ACRONYMS**

| | |
|---|---|
| **ASR** | authorized selling representative |
| **CANYPS** | Canadian Yellow Pages Service |
| **CCS** | cost of customer service |
| **CMR** | Certified Marketing Representative |
| **CPI** | consumer price index |
| **CPM** | cost per thousand |
| **CRTC** | Canadian Radio-television and Telecommunications Commission |
| **DAC** | Directory Advertising Consultants Limited |
| **DSP** | Dial Source Plus, Inc. |
| **GSF** | general sales force |
| **NAM** | national account manager |
| **NAR** | national account representative |
| **NDAP** | NDAP-TMP Worldwide Ltd. |
| **NYPSA** | National Yellow Pages Service Association |
| **RRC** | raising rivals' costs |
| **telco** | telephone company |
| **TPA** | Total Performance Assessment |
| **TYP** | Talking Yellow Pages |
| **VAN** | Value-Added Network |

| | |
|---|---|
| **VIA** | Very Important Advertiser |
| **YPPA** | Yellow Pages Publishers Association |

**COMPETITION TRIBUNAL**

**REASONS AND ORDER**

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***The Director of Investigation and Research***

***v.***

***Tele-Direct (Publications) Inc. et al.***

## I. INTRODUCTION

This application is concerned, broadly speaking, with two aspects of telephone directory or, as it is commonly referred to "Yellow Pages", advertising. The first aspect is the provision of advertising space in a published directory or the publishing business. This aspect of the business encompasses activities such as the compilation, printing and distribution of the directory. The second aspect is the provision of the advertising services required to create a finished advertisement for publication in a directory. The services aspect of the business includes such elements as locating customers, selling advertising space, and providing advice and information to customers on the design, content, creation and placement of directory advertising.

The applicant in this case is the Director of Investigation and Research ("Director"), the public official charged with enforcement of the *Competition Act* ("Act").[1] The Director brings an application against the respondents, Tele-Direct (Publications) Inc. and Tele-Direct (Services) Inc., under sections 77 and 79 of the Act, the provisions dealing with, as they are commonly known, tied selling and abuse of dominant position:

> 77. (1) For the purposes of this section . . .
> "tied selling" means
> (*a*) any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to
> (i) acquire any other product from the supplier or the supplier's nominee, or
> (ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and
> (*b*) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (*a*)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs.
>
> (2) Where, on application by the Director, the Tribunal finds that . . . tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to
> (*a*) impede entry into or expansion of a firm in the market,
> (*b*) impede introduction of a product into or expansion of sales of a product in the market, or
> (*c*) have any other exclusionary effect in the market,
> with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in . . . tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.
>
> 79. (1) Where, on application by the Director, the Tribunal finds that
> (*a*) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,
> (*b*) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and
> (*c*) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
> the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

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[1] R.S.C. 1985, c. C-34.

In relation to section 77, the Director alleges that the respondents have engaged in a practice whereby, as a condition of supplying advertising space in telephone directories, they have required or induced customers seeking advertising space in telephone directories to acquire another product from them, namely telephone directory advertising services. As the respondents are allegedly major suppliers of advertising space, this practice of tied selling has allegedly impeded entry into or expansion of firms in the market because advertising agencies or others would provide the services or would expand to provide increased services, were space and services not tied together by the respondents. The result, it is alleged, is that competition has been, is, or is likely to be lessened substantially.

With respect to the alleged abuse of dominant position, the Director alleges that the respondents substantially or completely control the classes or species of business they engage in, namely the provision of advertising space and the provision of advertising services. The respondents, it is alleged, have engaged in or are engaging in a practice of anti-competitive acts in each of the markets for space and for services. In the advertising space market, the alleged practice focuses on the actions taken by the respondents upon entry by competing publishers of telephone directories into some of their markets. In the services market, the alleged practice includes acts directed by the respondents against alternative or independent suppliers of services. The acts alleged to be anti-competitive in the services market cover a wide gambit, including, among others, refusal to deal directly with certain service suppliers as agents for advertisers, providing space to independent service suppliers on less favourable terms than to the respondents' internal sales staff, "squeezing" the return available to independent service

providers by restricting the availability of commission over time, and refusing to license its Yellow Pages trade-marks to competing service suppliers. These practices allegedly have had, are having, or are likely to have the effect of preventing or lessening competition substantially in the markets for the provision of advertising space in telephone directories and advertising services, respectively.

The respondent Tele-Direct (Publications) Inc. is owned by Bell Canada and BCE Inc. It is comprised of two parts: a "directory" division and an "other business" division. The directory division embraces the directory publishing operations for Bell Canada in its territory, which covers most of Quebec and Ontario. The other business division is made up of various companies partly or wholly owned by BCE Inc., one of which is Tele-Direct (Services) Inc.[2] Tele-Direct (Services) Inc. publishes telephone directories under contract for non-Bell Canada telephone companies ("telcos") with discrete territories within Ontario,[3] for Télébec (owned by BCE Inc.) in parts of Quebec, and for other telcos outside of Ontario and Quebec. Tele-Direct (Services) Inc. also has international operations and includes Tele-Direct (Media) Inc., an accredited advertising agency specializing in Yellow Pages created by Tele-Direct in 1994. There is overlap between Tele-Direct (Services) Inc. and Tele-Direct (Publications) Inc. at the officer level but Tele-Direct (Services) Inc. has its own employees who run its business. In these

[2] Others include the remaining portion of Bell Canada, Télébec, Maritime Tel & Tel, etc.

[3] E.g., the Corporation of the City of Thunder Bay, Amtelecom Inc. (Aylmer, Straffordville and Port Burwell), the Corporation of the Town of Kenora.

reasons, except where the context requires separate identification, the two respondents will be referred to together as "Tele-Direct" or the respondents.

The respondents deny each of the allegations in the Director's application. In particular, regarding the tied selling allegation, the respondents' primary position is that advertising services and advertising space form an inseparable package for reasons of efficiency and revenue growth. In response to the abuse of dominance allegations, the respondents maintain that they do not substantially or completely control, or have market power in, the alleged market as there are many adequate substitutes for telephone directory advertising, namely other local advertising media. With respect to the specific alleged anti-competitive acts, the respondents take the position that the allegations relate to acts directed at three specific groups operating in separate markets: other directory publishers, Tele-Direct's accredited agents and non-accredited service providers. Save for publishers, they assert that they are not in competition with the groups against whom their acts are said to be directed.

Five requests for leave to intervene were received and granted in this proceeding although two of those were later discontinued.

NDAP-TMP Worldwide Ltd. ("NDAP") and Directory Advertising Consultants Limited ("DAC") are accredited Yellow Pages advertising agencies which provide services to clients who wish to advertise in telephone directories, particularly those published by or for the various telcos across Canada. They arrange for the preparation and placement of the advertisements in

these directories on behalf of their clients. They presented final argument on the issues relevant to the role of agencies in the market.

The Anglo-Canadian Telephone Company ("Anglo-Canadian"), through one of its divisions, publishes Yellow Pages directories in British Columbia for BC Tel and in parts of Quebec for Quebec Tel. Anglo-Canadian licenses the Yellow Pages trade-marks from the respondents. Anglo-Canadian presented final argument only on the issues related to the possible compulsory licensing of the Yellow Pages trade-marks requested by the Director as part of the abuse of dominance case.

InfoText Limited ("InfoText"), a subsidiary of Newfoundland Tel, and Thunder Bay Telephone supply subscriber listing information to Tele-Direct for directory publication for subscribers in Newfoundland and Labrador and in the city of Thunder Bay, respectively. InfoText subsequently discontinued its intervention. Both InfoText and Thunder Bay Telephone requested intervenor status only to place their requests for leave to intervene on the record, which the Tribunal allowed.

White Directory of Canada, Inc. ("White") is a non-telco publisher of telephone directories in St. Catharines, Niagara Falls and Fort Erie. White discontinued its intervention prior to the commencement of the hearing.

*Preliminary Comments of the Presiding Judicial Member*

The notice of application in this matter was filed on December 22, 1994. The hearing commenced in September 1995 and ended at the beginning of March 1996. This decision has taken over 11 months to issue. In view of the Tribunal's usual practice of dealing with matters before it more expeditiously, some explanation is warranted.

There is no doubt that this has been the most complex case presented to the Tribunal since its inception. In addition to a strongly contested question of market definition, the case, in reality, consists of five cases, each requiring the Tribunal to address substantial competition issues (tied selling, abuse of dominance in respect of agents, consultants and publishers and trade-marks). Each of the five cases involves a multitude of sub-issues. Many of the Director's numerous specific allegations were multifaceted. To each allegation, the respondents raised a host of defences.

The record in this case provides a telling indication of its complexity. It consists of almost 15,000 pages of transcript taken over 70 days and involving 58 witnesses, including five expert witnesses. There were 36 volumes of documents produced in the joint book of documents alone. A further 156 exhibits not included in the joint book were entered in evidence by the parties. The parties submitted over 600 pages of written argument and oral argument took 11 days.

In many respects, the approach of the Director and respondents to this case does not result in a joining of issues. Counsel for the Director referred to their respective positions as "ships passing in the night". The result is that the Tribunal has often been left to identify and define, as well as resolve, the issues.

Indeed, the appropriate conceptual frameworks for the various issues have been very difficult to determine. The application included novel allegations of anti-competitive acts (for example, "targeting" in respect of publisher entrants) and inter-relationships between issues, such as the alleged anti-competitive acts against agents in the abuse of dominance case and tying, which required considerable deliberation.

Finally, there was the troubling issue of tying. This is the first case in which tying has been raised as a "principal" or substantial allegation.[4] This is a particularly difficult issue when related to services. There has been considerable debate among competition lawyers, economists and jurists about the difficulty of addressing alleged anti-competitive activity without adversely affecting efficiency in the context of tying, and the Tribunal was squarely faced with these issues in this case.

[4] Tying was a minor portion of the case in *Director of Investigation and Research v. The NutraSweet Company* (1990), 32 C.P.R. (3d) 1, [1990] C.C.T.D. No. 17 (QL).

*Summary of Conclusions*

1. Telephone directory advertising is a distinct advertising medium without close substitutes and is therefore the relevant product market. Geographic markets are local, corresponding roughly to the scope of each of Tele-Direct's directories. Tele-Direct has an overwhelming share of the product market in all relevant local markets.

2. Tele-Direct has control or market power since the condition of easy entry required to overcome the presumption of market power arising from Tele-Direct's extremely large market share is not satisfied. Direct indicators of market power, such as the level of profits and methods of pricing, reinforce this conclusion.

3. With respect to the allegation of tied selling, telephone directory space and telephone directory advertising services constitute two products solely for national and regional advertisers and Tele-Direct has tied the supply of advertising space to the acquisition of advertising services for these customers. We have prohibited the practice of tied selling.

4. The allegation that Tele-Direct has engaged in a practice of anti-competitive acts against entrants into telephone directory publishing, particularly in the Sault Ste. Marie and Niagara regions, is rejected.

5. The allegation that Tele-Direct has engaged in a practice of anti-competitive acts directed against agents and resulting in substantial lessening of competition is rejected.

6. The allegation that Tele-Direct has engaged in a practice of discriminatory anti-competitive acts against consultants which have or are likely to result in a substantial lessening of competition is accepted. Tele-Direct is ordered to cease the practice. Other allegations respecting consultants are rejected.

7. The allegation that Tele-Direct's refusal to license its trade-marks to certain competitors is a practice of anti-competitive acts is rejected because the refusal is protected from being an anti-competitive act by subsection 79(5) of the *Competition Act* as a legitimate exercise of its rights under the *Trade-marks Act*.

## II. BACKGROUND FACTS

### A. TELEPHONE DIRECTORY ADVERTISING

A white pages telephone directory is a comprehensive list of all telephone subscribers in a specified area. A listing includes a name, address and telephone number. A classified telephone directory, historically printed on yellow paper (hence "Yellow Pages"),[5] includes all business telephone subscriber listings plus advertising arranged by heading or descriptive category. There are often multiple headings under which a directory user might search in order to find a certain type of business.

[5] The words "Yellow Pages" and "Pages jaunes" are registered trade-marks of the respondents in Canada although they are considered generic or descriptive in the United States. Tele-Direct licenses its trade-marks to other telco directory publishers in Canada but not to non-telco directory publishers.

Tele-Direct's Yellow Pages directories generally cover the same geographic area as the corresponding white pages. Some white pages directories, however, cover a much broader area than the Yellow Pages; in those cases, there would be several different Yellow Pages directories for a single white pages. Tele-Direct also publishes even more narrowly-scoped Yellow Pages directories for individual "neighbourhoods" in Montreal and Toronto.

Telcos are required by the Canadian Radio-television and Telecommunications Commission ("CRTC") to distribute the appropriate up-to-date telephone directory for their district, both white and Yellow Pages, to telephone subscribers at no additional charge. Tele-Direct pays the various telcos for subscriber listing information and the right to publish and distribute the directories to subscribers. It makes its profits from the net advertising revenues. Tele-Direct publishes directories annually.

Every business telephone subscriber is entitled to receive in its Yellow Pages directory one light-type listing free of charge under the heading of its choice. Any features added to a listing, for example, bold type or extra lines, a second heading or another directory must be purchased. Actual advertisements in the Yellow Pages must, of course, also be purchased. For Tele-Direct's purposes, an "advertiser" is a subscriber who has a paid item in either the white pages (an enhanced listing) or Yellow Pages of a directory. Revenues from Yellow Pages advertising is far greater than any "advertising" expenditures in the white pages.[6]

[6] Approximately 10 percent of Tele-Direct (Publications) Inc. 1994 directory revenue came from expenditures in the white pages.

Approximately 50 percent of business subscribers are "advertisers". The remainder are called "non-advertisers" or "non-ads". The percentage of advertisers is smaller in the largest centres such as Montreal and Toronto and larger in smaller centres. Excluding neighbourhood directories and agency clients,[7] average advertising expenditures in 1994 in Tele-Direct (Publications) Inc. directories were approximately $1,700, with advertisers spending that amount or less constituting around 30 percent of revenues but over 80 percent of advertisers. At the other end of the spectrum, the top 30 percent of revenues comes from only about two percent of advertisers, those who spend more than approximately $10,000 annually. A few very large advertisers spending an average of $113,000 provide 6.5 percent of revenues but represent only 0.1 percent of advertisers by number.

A number of different types of advertising can be purchased in a Tele-Direct Yellow Pages directory. Apart from the basic upgrades to its initial free listing (e.g., second heading, bold type), a business may purchase "in-column" or "display" advertising. The pages in Tele-Direct's directories are generally divided into four columns; an "in-column" advertisement fits within the confines of one of the columns with the variation being in the height of the advertisement. In-column advertisements are arranged alphabetically, interspersed among the simple listings.

A variation on the in-column advertisement is the trade item advertisement, including the trade-name, trade-mark and custom trade-mark advertisements (usually referred to together as

[7] The very small and the very large accounts.

"trade-marks" or "trade-mark advertisements"). In order to place this type of advertisement, the listed businesses must have authorization to use the trade-name or mark in their directory advertising. The trade-name or mark acts as the heading for the advertisement, followed by one or more listings of specific businesses.

Display advertisements range in size from a quarter column (1/16 of a page) to a full page. The placement of these advertisements is loosely alphabetical, as space on a page permits. Options like various types of borders, red, other colours, "white knockout" (white background instead of yellow) may be added to both in-column and display advertisements. They also feature a variety of design and layout techniques, print styles and sizes and graphics.

## B. PUBLISHERS

Revenues from the telephone directory business in Canada amount to about $900 million to $1 billion annually. The vast majority of these are generated by the telco-affiliated directories. Apart from the Tele-Direct directories and other directories published by or on behalf of telcos, there are over 250 "independent" directories published in Tele-Direct's territory. These directories are independent in the sense that they have no connection to the provider of telephone service. They come in a wide variety of formats (size, subject, colour of paper) but can, generally, be characterized as two types: "niche" and "broadly-scoped" directories.

Niche directories operate in geographic areas which are substantially smaller than the areas covered by the corresponding telco directories. These directories have a generally smaller, more tightly-scoped distribution area than the telco directory, allowing a local retailer to advertise to a smaller geographic area at a lower cost. Niche directories are often directed at a particular religious, ethnic or demographic group.

Two independent publishers of broadly-scoped directories currently produce directories in parts of Tele-Direct's territory. White, which was for a brief time an intervenor in this proceeding, has published directories in the Niagara region since 1993. Dial Source Plus, Inc. ("DSP") publishes a directory in the Sault Ste. Marie area and has also done so since 1993.

## C. SERVICE SUPPLIERS

Telephone directory advertising services, including the sale of space in Tele-Direct's directories, are provided by three groups: Tele-Direct's internal sales force, advertising agencies and consultants. More detail on each of these groups and their particular method of operation will be provided as appropriate throughout these reasons. For the moment, the following should suffice to introduce the various players.

The internal sales force of Tele-Direct consists largely of unionized sales representatives who are remunerated through a combination of salary, commission and other incentives. Services similar to those provided by Tele-Direct's internal sales force are also offered by outside

advertising agencies. These include general advertising agencies which, if they deal with Yellow Pages at all, usually have a department devoted to that function, advertising agencies specializing in Yellow Pages only and in-house advertising agencies.

Agencies are not remunerated directly by the advertiser but, rather, through a commission paid by the publisher as a percentage of the value of the advertising purchased. While the agency receives commission, the agency's employees earn salary for providing services to the agency's clients. Agencies are restricted in the accounts that they can service as Tele-Direct only pays commission on accounts which meet certain criteria. Tele-Direct's commissionable account definition has undergone a number of changes over the years which will be discussed in further detail later. It is not controversial that fewer accounts meet the current criteria than met prior definitions. The current criteria were adopted in 1993 and are sometimes referred to as the "national" account definition.[8] In order to receive the 25 percent commission payable on these accounts, the agency placing the advertising must be accredited as a Certified Marketing Representative or "CMR" in accordance with the standards set by the Yellow Pages Publishers Association ("YPPA").

Services are also provided by Yellow Pages consultants. Consultants create advertisements for Yellow Pages advertisers and advise them on where and to what extent they should advertise in the Yellow Pages. Typically, consultants obtain cost savings on behalf of

[8] Under this rule, in very general terms, to qualify for commission, an account must involve advertising in at least 20 Yellow Pages directories within Tele-Direct's territory and at least 20 percent of the total value of the advertising must be placed in directories of another publisher outside Tele-Direct's territory.

advertisers by advising the purchase of smaller or less colourful advertisements, more limited geographic placement of advertisements or by redesigning the advertising. They are not recognized by Tele-Direct, which refers to them by the less complimentary term of "cut agents". Consultants do not receive commission. In general, consultants are paid by the advertiser out of the savings in advertising expenditures resulting from the adoption of the consultant's advice.

## III. TIME LIMITATIONS

The respondents argue that the Director is subject to three time constraints which limit the allegations of anti-competitive acts that can be advanced for the purposes of the Director's case under section 79. These arguments are that: the *Competition Act* is not retrospective; the Director's allegations are statute-barred by the *Crown Liability and Proceedings Act*;[9] and subsection 79(6) of the *Competition Act* further limits those allegations. Each argument will be dealt with in turn.

The particular allegations that are challenged relate to Tele-Direct's requirement of "issue billing" (payment from CMRs required at the time of issue of a directory as opposed to monthly payments when advertisers deal with Tele-Direct's general sales force) and its restricting of the commissionability criteria applicable to CMRs. The actual words at paragraph 65 of the application are:

[9] R.S.C. 1985, c. C-50.

> . . . the Applicant says that the Respondents have engaged in the following anti-competitive acts:
>
> . . .
>
> (c) providing advertising space to independent advertising agencies on less favourable terms and conditions than to its own sales staff, including: . . .
>
> (ii) requiring that such independent agencies pay the total amount outstanding for a year's insertion of advertising in a given directory, while customers placing orders through internal sales staff may pay such amount monthly over the course of the year without interest charges; . . .
> (d) squeezing the return available to independent advertising agencies by acts which include:
>
> . . .
>
> (iv) further restricting the availability of commission to such agencies over time.

## A. RETROSPECTIVITY

There is no apparent difference between the parties with respect to the broad legal principles regarding retrospectivity. The general rule is that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the particular statute.[10] Côté, one of the authorities cited by the respondents, states that a retrospective effect occurs when a new statute is applied "in such a way as to prescribe the legal regime of facts entirely accomplished prior to its commencement." He further states that it is *not* retrospective operation when a statute is applied to ongoing facts which began prior to the statute's commencement.[11] The Driedger text, also referred to by the respondents, describes ongoing facts or "continuing facts" as

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[10] *Gustavson Drilling (1964) Limited v. M.N.R.* (1975), [1977] 1 S.C.R. 271 at 279.

[11] P. Côté, *The Interpretation of Legislation in Canada*, 2d ed. (Quebec: Yvon Blais, 1991) at 118, 123.

> . . . one or more facts that endure over a period of time, such as ownership or imprisonment or residency. A continuing fact can be any state of affairs or status or relationship that is capable of persisting over time. . . .[12]

The dispute between the parties is whether the allegations advanced by the Director regarding issue billing and commissionability criteria imply retrospective application of the *Competition Act*.

The respondents submit that since no concept of an "anti-competitive act" existed before 1986, when the *Competition Act* came into force, no act which occurred prior to 1986 can now be characterized as anti-competitive for purposes of section 79. They also argue that section 79 on its terms can *only* be applied to discrete acts or events, of which there must be multiple instances to constitute a "practice".

With respect to commissionability, the respondents argue that the Director is alleging that they "narrowed" the definition by discrete acts which occurred in 1975 and again in 1993. The 1975 "narrowing" cannot be anti-competitive and the 1993 "narrowing" alone is only one act and cannot amount to a "practice". Likewise, they say that the Director has alleged that Tele-Direct's "decision" to require issue billing, another discrete act which took place long before 1986, cannot be an anti-competitive act. The fact that these decisions resulted in allegedly restrictive policies that have been applied continuously ever since, they submit, is irrelevant because there is no "new act" of "requiring issue billing" or of "narrowing" besides 1993.

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[12] *Driedger on the Construction of Statutes*, 3d ed. by R. Sullivan (Toronto: Butterworths, 1994) at 514-15.

The Director argues that the respondents have mischaracterized the pleadings. The Director submits that the current situation, the day-to-day restricted state of the commissionable market and the ongoing requirement of issue billing, are the focus of the allegations of anti-competitive acts, rather than the original decisions to implement these policies. The pre-1986 events, the Director submits, shed light on history, intent and progress. Thus, the Director says there is no question of retrospectivity.

We are of the view that section 79 is not restricted in its application to discrete acts or events as opposed to an ongoing course of conduct or state of affairs. The meaning of "practice" in subsection 79(1) was considered by the Tribunal in the *NutraSweet* case.[13] There, the Tribunal found that a practice may exist where there is more than an "isolated act or acts". It also observed that the examples of anti-competitive acts listed in section 78 could entail both a course of conduct over time as well as discrete acts:

> . . . The anti-competitive acts covered in s. 78 run a wide gamut. Some almost certainly entail a course of conduct over a period of time, such as freight equalization in para. 78(*c*), whereas others consist of discrete acts, such as the setting of product specifications in para. 78(*g*). The interpretation of "practice" must be sufficiently broad so as to allow for a wide variety of anti-competitive acts. Accordingly, the tribunal is of the view that a practice may exist where there is more than an "isolated act or acts". For the same reasons, the tribunal is also of the view that different individual anti-competitive acts taken together may constitute a practice.[14]

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[13] *Supra* note 4.

[14] *Ibid*. at 35.

We are satisfied that the practice contemplated by subsection 79(1) must be more than an isolated act or acts but can include a number of individual anti-competitive acts taken together or a course of anti-competitive conduct over time.

Clearly, the Director's pleadings contemplate the violation of subsection 79(1) of the *Competition Act* by a current practice of anti-competitive acts by the respondents. The fact that the act or acts giving rise to the current practice took place prior to 1986 does not make application of the subsection retrospective. In this case, the Director is not challenging the initial decisions by Tele-Direct to commence issue billing and to restrict commission in 1975 as discrete anti-competitive acts in and of themselves. Requiring payment from CMRs at time of issue of a directory may have been instituted in 1959 but it continued after 1986 and existed when the Director's application was filed. Similarly, the "narrow" commissionability market which commenced with a change in the commissionability rules in 1975 continued after 1986. While it may have been narrowed further in 1993, it is not the discrete act of narrowing that is in issue in this case. Rather, it is the ongoing narrow commissionability rules that existed when the Director's application was filed and that were, in the view of the Director, exacerbated in 1993 with further narrowing, that are the focus of the allegations of anti-competitive conduct. As such, there is no retrospective application of the *Competition Act* in this case.

Nor is it inappropriate in these circumstances to have regard to events occurring prior to 1986 to consider fully the allegations made under section 79. We take guidance from the

approach adopted by the Supreme Court in *Gamble v. R.* Wilson J., speaking for the majority, states:

> . . . Frequently an alleged current violation [of the *Charter*] will have to be placed in the context of its pre-*Charter* history in order to be fully appreciated. . . . Charter standards cannot be applied to events occurring before its proclamation but it would be folly, in my view, to exclude from the Court's consideration crucial pre-*Charter* history.[15]

It is clear from the words of the application, and from the way the case developed before the Tribunal, that the current state of affairs is the focus of the Director's allegations of anti-competitive conduct. The respondents have not argued that the Director's pleadings misled them regarding the case they had to meet and that therefore they have suffered prejudice in preparing or presenting their case. Indeed, such an argument could not be advanced given the detailed and inclusive record regarding not only the current situation in the market but also the historical context.

### B. *CROWN LIABILITY AND PROCEEDINGS ACT*

The respondents' second limitation argument is based on section 32 of the *Crown Liability and Proceedings Act* which reads:

[15] [1988] 2 S.C.R. 595 at 625-26.

> Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of a cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

The respondents argue that the *Crown Liability and Proceedings Act* statutorily bars the Crown (here, the Director) from acting on a cause of action which arose more than six years before the issuing of the application, that is, prior to December 22, 1988. Thus, they argue, all references to changes made in commissionability criteria or any other alleged anti-competitive act after 1986, when sections 78 and 79 were enacted, but prior to December 22, 1988 (six years before the application was filed), are statute-barred.

The respondents did not press this point and it will be dealt with summarily. First, as argued by the Director, the respondents cannot rely on the *Crown Liability and Proceedings Act* as they did not plead it in their response. The law is clear that a limitation period does not terminate a cause of action but provides a defendant with a procedural means of defence which must be pleaded in the defence.[16]

Second, section 32 of the *Crown Liability and Proceedings Act* is simply not applicable to this case. The opening words of section 32 indicate that if there is a specific limitation period in the statute governing the cause of action involved, here the *Competition Act*, that limitation period applies.[17] It is only in the absence of a specific provision that either a provincial limitation

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[16] *Kibale v. Canada* (1990), 123 N.R. 153 (F.C.A.). See also rule 409 of the Federal Court Rules.

[17] *Canada v. Maritime Group (Canada) Inc.*, [1993] 1 F.C. 131 (T.D.)

period or the six-year limitation period in section 32 is considered. Subsection 79(6) of the *Competition Act*, to which the respondents have also made reference, provides a limitation period for proceedings brought under that section.

### C. SUBSECTION 79(6)

Subsection 79(6) of the *Competition Act* states:

> No application may be made under this section in respect of a practice of anti-competitive acts more than three years after the practice has ceased.

Again, the respondents did not plead this limitation period. Further, while they refer to subsection 79(6), the respondents made no effort to argue how it applies in this case. No more need be said.

## IV. IMPACT OF THE CONSENT ORDER

The respondents argue that the Director is estopped from bringing this application before the Tribunal to the extent that it deals with issues adjudicated by the Tribunal in a previous proceeding. On November 18, 1994, the Tribunal issued an order, the terms of which were agreed to by the parties, as a result of an application brought by the Director against the Yellow Pages publishers in Canada.[18] We will refer to that order as the Consent Order. The respondents in the present proceedings were among the respondents named in that order.

[18] *Director of Investigation and Research v. AGT Directory Limited et al*., CT-94/2.

In the application which resulted in the Consent Order, the Director alleged that the respondents in those proceedings had jointly engaged in a practice of anti-competitive acts within the meaning of sections 78 and 79 of the Act. The specific allegations levied against those respondents and found at paragraph 74 of the application were as follows:

> . . . it is the Director's submission that the Respondents engaged in the following anti-competitive acts to impede or prevent a competitor's entry into or eliminating a competitor from a market. The anti-competitive acts of the Respondents constituted a practice of anti-competitive acts by the Respondents which had the effect of substantially preventing or lessening competition in the relevant product market of the Selling of National Advertising into Telephone Directories in Canada. The Respondents:
>
> (i) agreed that only Publishers could Sell National Advertising directly into Telephone Directories;
>
> (ii) appointed each other as their exclusive Selling Companies for the Selling of National Advertising in Telephone Directories in each of their respective territories and therefore did not compete with such exclusive Selling Companies in those territories;
>
> (iii) agreed to a Head Office Rule, thus precluding the National Advertiser from either placing the advertisement directly with all the Respondents which actually published the advertisements or using an entity unrelated to any of the Respondents to place the advertising directly in each Respondent's Telephone Directories.

The Consent Order contains prohibitions designed to prevent the respondents who agreed to it from engaging in certain acts in the selling of national advertising in Yellow Pages telephone directories, including:

> With regard to the sale of national advertising in Yellow Pages telephone directories, each respondent shall be prohibited from:
>
> . . .
>
> (f) agreeing with any other respondent on the criteria for determining which national advertising accounts are commissionable;
>
> (g) agreeing with any other respondent on the rate of commission

> payable, except during a transition period ending June 30, 1995 during which a minimum commission of 25% will be available to selling companies for national advertising which meets the commissionability criteria established by each respondent. . . .[19]

The parties appear to be in agreement with respect to the law of issue estoppel. The doctrine of issue estoppel precludes an action being brought against a party with respect to an issue which was already decided in an earlier proceeding. There are three requirements to be met before issue estoppel applies so as to bar a new proceeding. First, there must have been an earlier proceeding in which there was a determination of the same issue. Second, the determination of the issue in the earlier proceeding must have been a final decision. Finally, the parties to each of the two proceedings must be the same.[20] The doctrine of issue estoppel applies equally to issues decided in consent orders and in contested orders.[21]

The Supreme Court of Canada has held that the decision upon which a party relies for issue estoppel must have dealt directly and necessarily with the issue which is being raised for a second time:

> . . . It will not suffice if the question arose collaterally or incidentally in the earlier proceedings or is one which must be inferred by argument from the judgment. . . . The question out of which the estoppel is said to arise must have been "fundamental to the decision arrived at" in the earlier proceedings.[22] (references omitted)

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[19] *Director of Investigation and Research v. AGT Directory Limited* (18 November 1994), CT-94/2, Consent Order at para. 3, [1994] C.C.T.D. No. 24 (QL).

[20] *Angle v. M.N.R.* (1974), [1975] 2 S.C.R. 248.

[21] G. Spencer Bower & A.K. Turner, *The Doctrine of Res Judicata*, 2d ed. (London: Butterworths, 1969) at 37.

[22] *Supra* note 20 at 255.

Tele-Direct argues that the issues relating to its commissionability criteria alleged by the Director in this case, namely, that its policy of offering commission only on accounts which meet its "national" definition is an anti-competitive act and constitutes tied selling, were dealt with by the Tribunal in the Consent Order. Tele-Direct's position is that the Director is estopped from re-litigating these issues in the present proceeding. According to Tele-Direct, the Director, and the Tribunal by virtue of its issuance of the Consent Order, were satisfied that any substantial lessening of competition in the sales of national advertising would be alleviated by the terms of the order. If the Director seeks to vary the Consent Order, the Director can only do so by following the procedure for rescission and variation of consent orders which is governed by section 106 of the Act; this course was not pursued by the Director.

The respondents further argue that, by implication, the Consent Order authorizes them to set their own commissionability criteria without interference as long as they do not agree on the rate with any other publisher. Accordingly, they say that it is inconsistent for the Director to bring this proceeding, which could result in the Tribunal interfering with Tele-Direct's decisions relating to its commissionability criteria for national advertising.

The Director's position is that the issues raised in the two proceedings are not the same and that, therefore, the doctrine of issue estoppel does not apply. According to the Director, the anti-competitive acts which were the subject of the Consent Order were certain *joint* practices of the Canadian Yellow Pages Service ("CANYPS") members (the telco publishers) regarding the manner in which national advertising could be placed in their directories. It was the agreements

between the respondents to the Consent Order which constituted the anti-competitive acts and resulted in a substantial lessening of competition which were remedied by the order. In the present proceeding, however, it is alleged anti-competitive acts of Tele-Direct itself which are the subject of review. There was no decision in the earlier proceedings regarding how Tele-Direct sets its own commissionability criteria or how it otherwise deals with independent agencies located in its territory.

The requirements for issue estoppel are not met in this case. While the Consent Order was a final decision of the Tribunal, the terms of which are binding on Tele-Direct, the issues which were dealt with in that proceeding are not the same as those in the present case. This is clear from the application and supporting documentation and the Consent Order. It was the substantial lessening of competition resulting from the respondents' joint practice of anti-competitive acts or joint abuse of dominance that the Director sought to remedy by the Consent Order. The instant case deals with entirely separate allegations of anti-competitive acts of Tele-Direct acting alone. The Consent Order prohibits the respondents named in it from agreeing amongst themselves on the rate of commission payable. That order does not address the commissionability criteria which an individual publisher may set. Nothing in the Consent Order limits the jurisdiction of the Tribunal to review the commissionability criteria set by Tele-Direct.

## V. TRADE-MARKS

The Director alleges that the respondents, by "refusing to licence [their] trade-marks, such as the words `Yellow Pages' and `Pages Jaunes' and the walking fingers logo, to competing

suppliers of advertising services", have engaged in a practice of anti-competitive acts contrary to section 79 of the Act. In particular, the Director seeks to prohibit the respondents' alleged practice of "selective licensing" whereby certain competitors are refused licences, allegedly arbitrarily or pursuant to an anti-competitive intent, and others are not. As a remedy, the Director seeks an order "that the respondents licence, at the request of independent advertising agencies, including consultants, and on commercially reasonable terms and conditions, the trade-marks registered for the respondents' own use in relation to telephone directories."

The Director's submissions raise two issues. First, the Tribunal must determine whether the refusal to license a trade-mark to certain persons or groups of persons is an anti-competitive act. Second, if it is an anti-competitive act, the Tribunal must determine whether it has jurisdiction to order the respondents to license their trade-marks. Having carefully considered the evidence and the submissions of counsel, the Tribunal is of the view that the selective refusal to license a trade-mark is not an anti-competitive act. Accordingly, the second question need not be answered.

The facts concerning the respondents' refusal to license their trade-marks are not disputed. The respondents license the use of their trade-marks to CMRs and other telco-affiliated directory publishers; they do not license other advertising agencies or consultants. The respondents aggressively defend their trade-marks against what they perceive to be infringement but they do not pursue every perceived infringement with equal zeal. The evidence is that Tele-

Direct overlooks certain uses of its trade-marks but threatens to, or institutes, legal action against the use of its trade-marks by, for instance, consultants.

Both the *Trade-marks Act*[23] and the *Competition Act* are relevant. The purpose of a trade-mark is to distinguish the wares or services of the owner from those of others.[24] The *Trade-marks Act* provides that the owner of a trade-mark has the exclusive right to its use.[25] Further, the owner of a trade-mark may license another to use that trade-mark, and that use is deemed to have the same effect as use by the owner.[26] Subsection 79(5) of the *Competition Act* provides:

> For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act*, *Industrial Design Act*, *Integrated Circuit Topography Act*, *Patent Act*, *Trade-marks Act* or any other Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act.

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[23] *Trade-marks Act*, R.S.C. 1985, c. T-13.

[24] A "trade-mark" is defined in s. 2 of the *Trade-marks Act* as "a mark that is used by a person for the purpose of distinguishing or so as to distinguish wares or services manufactured, sold, leased, hired or performed by him from those manufactured, sold, leased, hired or performed by others. . . ."

[25] *Trade-marks Act*, s. 19.

[26] S. 50(1) of the *Trade-marks Act*, as am. S.C. 1993, c. 15, s. 69, provides:

> For the purposes of this Act, if an entity is licensed by or with the authority of the owner of the trade-mark to use the trade-mark in a country and the owner has, under the licence, direct or indirect control of the character or quality of the wares or services, then the use, advertisement or display of the trade-mark in that country as or in a trade-mark, trade-name or otherwise by that entity has, and is deemed always to have had, the same effect as such a use, advertisement or display of the trade-mark in that country by the owner.

The Director submits that subsection 79(5) does not preclude a finding that "abuses" of intellectual property rights are anti-competitive acts. It is the Director's position that Tele-Direct's practice of selective licensing is an abuse of Tele-Direct's trade-mark rights. The Director asserts that an owner's "exclusive right to use" its trade-mark is not unlimited. The Director relies upon case law which has defined "use" not to include activities which are for purposes other than distinguishing wares or services of the owner from the wares or services of others.[27] Accordingly, the Director submits that the respondents' position that "any written use of the words `Yellow Pages' would be dealt with" and the fact that the respondents have used their "superior resources" to assert this claim successfully is evidence of the respondents' exclusionary intent in respect of their trade-marks.

Tele-Direct argues that, as owner of the trade-marks, it has the statutory right to decide to whom it will or will not license those trade-marks, including the right to refuse to licence where it is not in its best interest to do so. It argues that there is no evidence that it has adopted a policy of refusing to license trade-marks to competitors for the purposes of restraining competition; rather, it does not make sense for Tele-Direct to license its trade-marks to consultants whose businesses are based on the premise that Tele-Direct "rips-off" its customers.

In support of his position, the Director relies on the decision of the United States District Court in *Car-Freshener Corp. v. Auto-Aid Manufacturing Corp.*, where the Court stated that

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[27] E.g., comparative advertising or use of trade-mark in a merely descriptive sense, for example, does not constitute infringement: see *Clairol International Corp. v. Thomas Supply & Equipment Co.*, [1968] 2 Ex. C.R. 552 at 556; *Syntex Inc. v. Apotex Inc.* (1984), 1 C.P.R. (3d) 145 (F.C.A.).

there was "no doubt that a trade-mark may be utilized in such a manner as to constitute a violation of antitrust laws"[28] and offered several examples: the use of a strong trade-mark to unlawfully tie a weaker product, unlawful price discrimination exercised with respect to a trade-mark, or other illegal anti-competitive practices. The Tribunal is in agreement with the Director that there may be instances where a trade-mark may be misused. However, in the Tribunal's view, something more than the mere exercise of statutory rights, even if exclusionary in effect, must be present before there can be a finding of misuse of a trade-mark. Subsection 79(5) explicitly recognizes this.

The respondents' refusal to license their trade-marks falls squarely within their prerogative. Inherent in the very nature of the right to license a trade-mark is the right for the owner of the trade-mark to determine whether or not, and to whom, to grant a licence; selectivity in licensing is fundamental to the rationale behind protecting trade-marks. The respondents' trade-marks are valuable assets and represent considerable goodwill in the marketplace. The decision to license a trade-mark -- essentially, to share the goodwill vesting in the asset -- is a right which rests entirely with the owner of the mark. The refusal to license a trade-mark is distinguishable from a situation where anti-competitive provisions are attached to a trade-mark licence.

The owner's exclusive jurisdiction over licensing accords with the scheme of the *Trade-marks Act*. There is no statutory means by which a person can petition the Registrar of Trade-

[28] 483 F.Supp. 82 at 86-87 (1977).

marks for a licence to use a trade-mark, implying that the decision to license rests with the owner of the mark. Furthermore, the licensing provisions of the *Trade-marks Act* provide that, in order to constitute a valid licence, the trade-mark owner should have "direct or indirect control of the character or quality of the wares or services" to which the licensee was attaching the mark. Indeed, in *Unitel Communications Inc. v. Bell Canada*,[29] the Court expunged trade-marks owned by Bell Canada, in part because Bell Canada had failed to exercise control over the use of its trade-marks by an independent telco. In the case at bar, the lack of control over the quality of the goods or services is particularly relevant since the Director is suggesting that the respondents' trade-marks should be licensed to consultants with whom the respondents do not share identity of interest.

While the evidence suggests that Tele-Direct is motivated, at least in part, by competition in its decision to refuse to license its trade-marks, the fact is that the *Trade-marks Act* allows trade-mark owners to decide to whom they will license their trade-marks. The respondents' motivation for their decision to refuse to license a competitor becomes irrelevant as the *Trade-marks Act* does not prescribe any limit to the exercise of that right.

The respondents' legitimate desire to protect the value of the goodwill vested in their trade-marks by refusing to license them does not amount to an anti-competitive act. In view of the strength of their trade-marks, the respondents can be expected to be, and are entitled to be, protective of their rights. Indeed, if the respondents did not protect their marks, they would risk

[29] (1995), 61 C.P.R. (3d) 12 (F.C.T.D.).

having them lose their distinctiveness, as in *Unitel*. This is a real concern, given that the Yellow Pages trade-marks are no longer registered in the United States.

While independent advertising agencies and consultants may wish to use the respondents' trade-marks, there is simply no basis for granting an order requiring the respondents to license their trade-marks.[30] Although the respondents may have been zealous in protecting their trade-marks, both in refusing to license and in threatening litigation for infringement, the irrefutable fact is that the respondents have been, through the provisions of the *Trade-marks Act*, accorded the right to refuse to license their trade- marks, even selectively. The exercise of this right is protected from being an anti-competitive act by subsection 79(5) of the Act.

## VI. MARKET DEFINITION

A necessary first step in deciding this case is to define the relevant market. This must be done for purposes of section 79 in order to determine if Tele-Direct, as alleged by the Director, "substantially or completely control[s], throughout Canada or any area thereof, a class or species of business". The Tribunal decided in *Director of Investigation and Research v. D & B Companies of Canada*[31] that "class or species of business" means product market and "control" means market power. The remaining phrase, "throughout Canada or any area thereof", refers to

[30] In fact, neither the Director nor the respondents directed the Tribunal to any cases where a party was ordered to license a trade-mark.

[31] (1995), 64 C.P.R. (3d) 216, [1995] C.C.T.D. No. 20 (QL) (Comp. Trib.).

the geographic market. Therefore, in order for section 79 to apply, the Tribunal must first conclude that Tele-Direct has market power.

A market must also be defined in order to consider the allegation of tying, brought under section 77. Under subsection 77(2), the Tribunal must find that "tied selling, because it is engaged in by a major supplier of a product in a market . . . is likely to" have a number of detrimental effects. If Tele-Direct is found to have market power, it would qualify as a "major supplier".

## A. PRODUCT MARKET

The argument and the evidence presented to us regarding the relevant product market focus on whether there are close substitutes for telephone directory advertising. The Director includes in his relevant market advertising in Tele-Direct's Yellow Pages directories and in telephone directories produced by independent (non-telco affiliated) publishers.

The respondents concede that advertising in independent directories is in the same relevant market as advertising in Yellow Pages directories. Their position is that both independent and Yellow Pages directories form part of a broader product market comprised of all local advertising media. The respondents define "local advertising" in this context as advertising designed to promote business at a particular location. They would include, for example, direct mail, outdoor signage, community newspapers, daily newspapers, catalogues, trade magazines,

flyers, radio, television -- in fact advertising in any medium as long as the advertising is designed to promote a particular location.

It is important to keep in mind that our goal in defining the relevant market in this case is to determine whether other local advertising media provide competitive discipline for Tele-Direct in respect of its Yellow Pages pricing[32] and output decisions. The Director argues that they do not. The respondents argue that they do.

### (1) Substitutability -- The Basic Test

The parties agree that the fundamental test or "touchstone" for determining the boundaries of the relevant product market is substitutability, as the Tribunal has consistently held in previous decisions, including three abuse of dominant position cases.[33] Products must be close substitutes in order to be placed in the same product market. The parties also agree that the appropriate approach to or framework for market definition is set out in the Federal Court of Appeal decision in *Director of Investigation and Research v. Southam Inc.*[34] Both parties quote the same passage from that decision:

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[32] Or surrogates such as service, quality, etc.

[33] *NutraSweet, supra* note 4; *Director of Investigation and Research v. Laidlaw Waste Systems Ltd.* (1992), 40 C.P.R. (3d) 289, [1992] C.C.T.D. No. 1 (QL); *D & B, supra* note .

[34] [1995] 3 F.C. 557 (C.A). An important issue in *Southam* was whether the two Pacific Press dailies and various community newspapers, all owned by Southam, were in the same product market. The Tribunal found that they were not; the Court of Appeal reversed on this point. An appeal to the Supreme Court is pending.

> Products can be said to be in the same market if they are close substitutes. In turn, products are close substitutes if buyers are willing to switch from one product to another in response to a relative change in price, i.e. if there is buyer price sensitivity. Direct evidence of substitutability includes both statistical evidence of buyer price sensitivity and anecdotal evidence, such as the testimony of buyers on past or hypothetical responses to price changes. However, since direct evidence may be difficult to obtain, it is also possible to measure substitutability and thereby infer price sensitivity through indirect means. Such indirect evidence focusses on certain practical *indicia*, such as functional interchangeability and industry views/behaviour, to show that products are close substitutes.[35] (reference omitted)

It is also common ground between the parties that this approach does not represent a radical departure from the approach used by the Tribunal in previous decisions.

### (2) The *Southam* Decision

The *Southam* decision is the first Court of Appeal decision to deal in any depth with market definition under the Act.[36] That the parties differ considerably on how the general approach stated by the Court of Appeal in *Southam* is to be applied to the facts of the case before us is evident from the broad product market proposed by the respondents and the narrow product market proposed by the Director.

#### (a) Direct Evidence of Substitutability

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[35] *Ibid*. at 632-33.

[36] *Southam* was followed in *R. v. Clarke Transport Canada Inc.* (1995), 130 D.L.R. (4th) 500 (Ont. Ct. (Gen. Div.)), (1995) 64 C.P.R. (3d) 289. While the Director referred to that decision, it was not argued in any detail nor, apparently, relied on by either side.

There is no dispute that, first, we must consider any direct evidence of substitutability. In *Southam* the Court of Appeal states:

> To the extent that it is possible to adduce statistical evidence of high demand elasticity, such evidence is virtually conclusive that two products are in the same product market. Evidence of price sensitivity can also come in anecdotal form which is a less conclusive, although still a persuasive factor tending to show that products are close substitutes.[37]

The Director did not adduce any statistical evidence. The respondents mention the two "Elliott" reports, studies conducted for Tele-Direct in early 1993 for purposes other than this proceeding, as "statistical data" on advertisers' reaction to relative price increases.[38] The Elliott reports were general surveys of "customer satisfaction" which did not deal with price sensitivity of advertisers between different media.[39] Even if they had dealt with relative prices of various different media, in our view the Elliott reports would not qualify as the type of direct statistical evidence of demand cross-elasticity that was intended by the Court of Appeal. Such a study would have to be undertaken for the purpose of determining cross-elasticity between the products alleged to be in the market, be conducted in an appropriately rigorous fashion and meet tests of statistical significance. While the Elliott reports do not qualify as statistical evidence of demand cross-elasticity, they will be considered as part of the indirect evidence of substitutability.

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[37] *Supra* note 34 at 633.

[38] Confidential exhibit CJ-14 (blue vol. 5), tab 173; confidential exhibit CJ-19 (blue vol. 10), tab 285 (Newfoundland).

[39] The participants were asked if they would shift their advertising from Tele-Direct to an independent *directory* in response to a 15 percent increase in Tele-Direct's prices.

Although the Director called a number of buyers or advertisers as witnesses in this case, he does not rely on their evidence as "anecdotal evidence" of price sensitivity, from his point of view, low price sensitivity. He refers to their evidence as indirect evidence under various rubrics. The respondents likewise treat the testimony of the advertisers as indirect evidence. We will therefore not address the question of whether that testimony provides any direct evidence of price sensitivity or a lack thereof.

In the absence of direct evidence regarding buyer price sensitivity, we must therefore proceed to examine the available indirect evidence or "practical indicia" to draw inferences about price sensitivity.

(b) Indirect Evidence of Substitutability

The Director has organized the evidence of product market definition using headings similar to those set out in the *Merger Enforcement Guidelines*:[40] end use, physical and technical characteristics, views, strategies, behaviour and identity of buyers, trade views, strategies and behaviour ("inter-industry competition"), price relationships and relative price levels and switching costs. The respondents have also used the same headings to organize their evidence, although in a slightly different order. The *Merger Enforcement Guidelines* are not sacrosanct.

[40] Consumer and Corporate Affairs Canada, Director of Investigation and Research, *Merger Enforcement Guidelines*, Information Bulletin No. 5 (Supply and Services Canada, March 1991).

But, as the parties are agreed that the evidence may be organized according to those guidelines, we accept that this is a practical and useful way in which to proceed.

The parties may use the same organizational structure but they do not agree on the respective roles to be accorded to the various practical indicia. In particular, they take different positions on the way in which the indicia of "functional interchangeability" and "inter-industry competition" should be employed in defining a product market based on the Court of Appeal decision in *Southam*. They also differ, of course, on the nature of the evidence and the conclusions to be drawn therefrom that should be considered under each heading. A detailed review of the evidence and the arguments under each heading will follow. We must first address, however, the arguments regarding the general approach to the practical indicia or indirect evidence of substitutability.

The Director submits that the Court of Appeal in *Southam* found that functional interchangeability is a "vital feature" and a "central part of the framework" of market definition, although it is not a sufficient condition for two products to be in the same market. The Director argues that the Court of Appeal did not state that functional interchangeability and inter-industry competition were the "sole" or "driving" factors in market definition but only found that *ignoring* those factors was an error of law.

The respondents in their written argument agree that the Tribunal must consider the evidence with respect to functional interchangeability and that it is central but alone does not

conclusively demonstrate that two products belong in the same relevant market -- other factors must be considered. They point out that the additional factor that was "very important" to the Court of Appeal in *Southam* was inter-industry competition. During oral argument, counsel took the stricter position that the Court of Appeal held that if functional interchangeability and "broad" inter-industry competition are found, then it is an error not to place the products under consideration in the same market. If the two indicia mentioned are present, the Tribunal *must* infer price sensitivity and therefore a single product market.

The Tribunal must determine whether the Court of Appeal prescribed, as a matter of law, the role and importance of the factors or indicia of "functional interchangeability" and "inter-industry competition". With respect to functional interchangeability as one of the indirect indicia, the Court of Appeal stated that it was "not simply one of many criteria to be considered but a critical part of the framework." It also confirmed that functional interchangeability will generally be regarded as a "necessary but not sufficient condition to be met before products will be placed in the same market." With respect to inter-industry competition, the Court of Appeal found that evidence of "broad" competition, namely that the two types of newspapers were striving to reach many of the same advertisers with significant success by the community newspapers which, in turn, preoccupied Southam and generated responses by it, was sufficient to show competition "in fact".[41]

[41] *Supra* note 34 at 635, 637-38.

A finding that the products alleged to be in the same market serve the same relevant purpose is a necessary first step in the analysis. A finding of functional interchangeability, however, is not alone sufficient to place the products in the same market. As the Court stated:

> . . . There are other factors which may tend to reinforce, or undermine, a finding that two products are functionally interchangeable.[42]

With respect to evidence of "broad" inter-industry competition, we do not understand the Court to be saying that the presence of such evidence, along with evidence of functional interchangeability, will, in every case, dictate that the products in question should be placed in the same product market. If the Court intended to confine the analysis to these two practical indicia and effectively negate consideration of other factors, like, for example, the views, strategies and behaviour of buyers, the Court would have done so explicitly. It did not do so. In *Southam*, the Court confined its conclusions to the matter before it:

> While evidence of substitutability through functional interchangeability and inter-industry competition was adduced, the Tribunal ultimately ignored such evidence. In doing so, the Tribunal adopted an overly narrow approach to substitutability as it dismissed "broad" conceptions of interchangeability and inter-industry competition. In doing so, the Tribunal erred in focusing predominantly on price sensitivity. *In this case, the similarity of use between Pacific Dailies and community newspapers, and the competitiveness which existed between them, is sufficient to place both in the same product market.*[43] (emphasis added)

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[42] *Ibid*. at 637.

[43] *Ibid*. at 640.

We conclude that consideration of functional interchangeability is essential in assessing indirect evidence of whether two or more products are in the same market. But this does not exclude other relevant evidence which may reinforce or undermine what functional interchangeability implies.

In considering the whole of the evidence, the Tribunal will bear in mind the ultimate reason why the market is being defined. In this case, the goal is to determine if the respondents have market power (or are "major suppliers"), that is, if the alleged close substitutes, other local advertising media, provide competitive discipline for Tele-Direct in making price (or quality) and output decisions.

### (3) Functional Interchangeability

The Director submits that two headings from the *Merger Enforcement Guidelines*, "end use" and "physical and technical characteristics", are both related to the question of functional interchangeability. Certain characteristics of directories are, he argues, key factors which dictate the end use of a directory as a directional reference tool and which thus limit the "functional interchangeability" of directory advertising with directional advertising in other media.

The respondents argue that all local advertising has the same end use: to increase business at a particular location. They submit that the characteristics of the various media should not be considered as part of the determination of functional interchangeability.

Regarding functional interchangeability, the Court of Appeal in *Southam* says:

> . . . But the fact that community newspapers are more local in nature does not go to the question of functional interchangeability, but to the behaviour of buyers as to preference for geographical scope. This latter *subjective* factor should not be mingled with the purely *objective* factor of functional interchangeability which focusses on use or purpose.[44] (emphasis added)

The Court imposes the constraint that the views of buyers should not enter when functional interchangeability is being decided because they are "subjective". Only "objective" factors should enter at this point.

Under the criterion "end use", the *Merger Enforcement Guidelines* refer to the extent to which two products are "functionally interchangeable in end use". That is the way in which the term will be used in this decision. Physical and technical characteristics, along with other indicia, serve to determine whether the products found to be functionally interchangeable in end use are close substitutes. Rather than considering physical and technical characteristics as part of the determination of functional interchangeability, as the Director proposes, the Tribunal will treat them separately from functional interchangeability.

The Director and one of his economics expert witnesses, Richard Schwindt,[45] have defined the relevant end use of telephone directory advertising to be use as a "directional" medium. ("Directional" and "directive" were used interchangeably in the material before us.)

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[44] *Ibid*. at 636-37.

[45] Associate Professor of Economics and Business Administration at Simon Fraser University.

Two elements are said to characterize a directional advertising medium: (a) consumers consult the medium when they are at a point in the buying cycle when they are ready to buy, and (b) the medium is used as a reference tool. Directional advertising is distinguished from creative advertising, which is widely acknowledged to be used for creating or stimulating demand. The Director admits that other advertising media besides Yellow Pages might be considered directional but names catalogues, direct mail and classified newspaper advertising as the only candidates.

The respondents and their economics expert witness, Robert Willig,[46] take the view that all "local" advertising[47] has the same end use, to attract customers to a particular establishment. Thus, they argue, advertising in the Yellow Pages and advertising in other local media are functionally interchangeable. In response to the Director's argument, they argue that directionality is not generally regarded as encompassing the element of use as a reference tool. They further argue that the directional/creative dichotomy is not valid. They take the position that there is no such sharp distinction in the advertising done by local advertisers. In their submission, directional means only that the advertising directs consumers to a particular establishment -- which can be done in any medium. Given the respondents' definition of "local" advertising, all advertising by a local advertiser necessarily has a directional component. Similarly, since they are of the view that all local advertising, including advertising in telephone

[46] Professor of Economics and Public Affairs at Princeton University.

[47] As opposed to "national" or "brand awareness" advertising which promotes a product wholly apart from *any* location.

directories, has as its goal the stimulation of demand at a location, all local advertising necessarily has a creative component.

Since the respondents have defined "local" advertising as advertising designed to promote business at a particular location, it follows that the purpose of all local advertising is to attract customers to a business. Such a definition is at a high level of generality. While we recognize that the "end use" indicia acts as a "filter" or a "first stage" in the analysis only, it should still cast some light on the ultimate question to be determined, i.e., whether all "local" media are *close* substitutes providing sufficient competitive discipline among themselves that they should be considered to be part of the same product market in this case. We find the words of Gibson J. in *R. v. J.W. Mills & Sons Ltd*., which the Court of Appeal in *Southam* found "worthy of replication", to be instructive on this point:

> Defining the relevant market in any particular case, therefore, requires a balanced consideration of a number of characteristics or dimensions to meet the analytical needs of the specific matter under consideration.
>
> At one extremity, an ill-defined description of competition is that every service, article, or commodity, which competes for the consumer's dollar is in competition with every other service, article or commodity.
>
> At the other extremity, is the narrower scope definition, which confines the market to services, articles, or commodities which have uniform quality and service.
>
> In analyzing any individual case these extremes should be avoided and instead there should be weighed the various factors that determine the degrees of competition and the dimensions or boundaries of the competitive situation. For this purpose the dimensions or boundaries of a relevant market must be determined having in mind the purpose for what it is intended. For example, two products may be in the same market in one case and not in another.[48]

[48] [1968] 2 Ex. C.R. 275 at 305-306.

The criterion of functional interchangeability in end use should not be treated at such a high level of generality that it precludes objective yet contextual analysis. To say that, for example, automobiles and bicycles are in the same product market because they both provide a means of transportation would make the level of generality so high that no meaningful analysis could be performed as a result of it. Some consideration must be given to context.

To put functional interchangeability in end use in context in this case, it is important to look at the buying cycle and which types of media are generally regarded as directional and thus particularly effective in reaching consumers who are at the end of the buying cycle. These consumers are "ready to buy" but must decide which commercial establishment to patronize. The question is which types of media effectively bring the particular establishment to the consumer's attention in those circumstances.

The respondents referred us to a number of American cases which, they argue, support their broad conception of end use. We do not find these authorities particularly helpful. First, and most importantly, the product market that is arrived at in a particular case is very much dependent on the facts of that case and the context in which the case is brought, that is, the alleged anti-competitive wrong that the plaintiff is seeking to cure. As Gibson J. stated in the passage quoted above, "two products may be in the same market in one case and not in another." Therefore, the mere fact that another court did or did not find that directory advertising was in the same market as other local media is not in itself compelling. Some of the cases cited by the

respondents were not antitrust cases.[49] Others did not deal with directory advertising.[50] In addition, counsel for the Director was able to bring to our attention a number of other American cases in which the courts, either explicitly or implicitly, used Yellow Pages advertising as a relevant market.[51] Further, while the reasoning with respect to market definition in another case might provide us with some insight, one would have to be reasonably certain that the court in question was applying the same conceptual framework or "test" as we have adopted. These considerations all highlight the futility of looking for a simple, neat answer to market definition in the case law.

Based on the evidence, particularly materials created by the respondents themselves outside of the context of this proceeding, which we will review in more detail below, we accept the Director's position that the distinction between creative and directional media is a valid one for determining the end use of Yellow Pages and other local advertising. A fair consideration of the evidence, which will shortly be addressed, supports the position that creative advertising creates awareness of and demand for goods and services at the beginning of the buying cycle and that directional advertising refers to advertising to consumers who are at the end of the buying cycle which "directs" them where to buy a product or service. This effectively limits the number of media that can be considered to be directional.

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[49] Respondents' Book of Authorities, vol. 6, tabs A,B.

[50] Respondents' Book of Authorities, vol. 6, tabs C, D; vol. 3, tab 41.

[51] Respondents' Book of Authorities, vol. 3, tabs 38, 47; Director's Book of Authorities in Reply, tabs 6, 7, 9.

Although the respondents argued that directional advertising simply means advertising (in any media including those traditionally considered creative) that contains a name, address or phone number to "direct" a consumer to particular establishment,[52] this was not Tele-Direct's view outside of this case. In the Multimedia Training Course created by Tele-Direct for its sales representatives, directional advertising is defined as:

> Media used by the advertiser to direct the buyer where to buy or use a product or service. Examples: Yellow Pages, catalogues, direct mail. Directive media complements and supports creative media.[53]

The three examples used suggest that directional media, in fact, have very specific characteristics beyond simply including a name, address or phone number. All are print media and in each case there is no editorial or entertainment content. The consumer has no reason to consult these media other than a reason related to making a purchase, i.e., at the end of the buying cycle.

The course material also discusses and sets out in chart form the role of the various media at the various stages of the buying cycle: awareness, interest, comprehension, trial, purchase and repurchase. The text explains:

> . . . [S]uch traditional advertising media as TV, Radio and Magazines are by their nature designed to generate awareness for products and services. The impact or intrusion qualities of this advertising creates an interest for the products and services and has the ability to demonstrate the benefits to the consumer and is ultimately designed to create a need or desire in the mind of the consumer.

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[52] This is, of course, co-extensive with their definition of local advertising.

[53] Confidential exhibit CJ-16 (blue vol. 7), tab 215 at 118727.

. . .
Although creative advertising is crucial at the awareness, interest and comprehension stage of the buying cycle, it loses impact at the actual purchase stage because of the time or distance between the initial awareness and the purchase.[54]

At the purchase stage, newspaper, direct mail, outdoor, radio and Yellow Pages are all considered to have some strengths. Television and magazines are not. Of those with strength at the purchase stage, only newspapers and direct mail (and Yellow Pages), however, are described as "directive". The strength of outdoor advertising at the purchase stage is as a "reminder message". The strength of radio at that stage is to offer price points and convey a "sense of urgency". Again, this course material supports the view that directionality imports something more than the ability to provide a consumer with a name and address. All of television, newspapers, direct mail, outdoor, radio and Yellow Pages are capable of including this information in advertising, yet Tele-Direct did not consider them all to be directional.

This interpretation is further supported by the letter sent to the Director by Tele-Direct during the course of the Director's investigation into the industry (referred to as the "Bourke letter"). The letter was intended to provide industry background.[55] It states that:

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[54] *Ibid*. at 118801.

[55] At the hearing, counsel for the respondents attempted to convince the Tribunal to attribute less weight to the letter than we otherwise might on the grounds that it was not prepared with the assistance of an economist and that it was produced in a compressed period of time. The letter was written by Tele-Direct's Vice-president of Marketing with the assistance of a number of lawyers from counsel's office. We have no information as to the extent of the economic background of any of those lawyers. It is signed by the President of Tele-Direct. During the discovery process the respondents resisted production of the letter on the grounds that it was protected by settlement negotiation privilege. The Tribunal ruled that the letter did not fall within that privilege and ordered it produced. We have no hesitation, for the purposes for which we refer to the letter, of attributing significant weight to it.

> The Yellow Pages traditionally is viewed as a "directional" or "considered purchase" advertising medium, which provides consumers with information on where they can purchase the goods and services they want. . . . Directional advertising is most attractive to local advertisers, particularly local retailers, who seek to motivate customers to visit their stores or to use their services. *Other directional media include direct marketing, catalogues, trade magazines, and specialty supplements to newspapers or magazines*.[56] (emphasis added)

There is no mention made of outdoor or television and radio as directional media. When Thomas Bourke, Tele-Direct's President, testified at the hearing he confirmed that the basic strength of Yellow Pages was to provide information on where to buy, as stated in the letter. In the list of directional media, he would, however, now include the classified sections of daily and community newspapers and specialty and other classified directories.

The letter continues:

> By contrast, the other major advertising media - outdoor, newspapers, radio, television and magazines - are classified as "creative" advertising media, which create awareness of and demand for products and services. Creative advertising assists advertisers who are either trying to sell a product or service, or promote their name. This service is attractive to major manufacturers or suppliers, who usually do not have a preference as to where the consumer buys its product or services.[57]

Since names, addresses and phone numbers could just as easily be included in advertising in the regular part of a newspaper and a magazine as in a special supplement or classified section, something more is involved in the way that the participants in the industry view directionality. As in the training material, all the examples of directional media are characterized by the absence of general editorial content. The characteristic that specialty supplements and classified sections in newspapers or magazines, other directories, catalogues and direct mail

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[56] Exhibit J-5 (green vol. 3), tab 239 at 86008.

[57] *Ibid*.

share with Yellow Pages is that the advertising in those media will be totally ineffective unless it is consulted by people who are "in the market" -- who are looking to make a purchase. As Mr. Bourke put it when describing how Yellow Pages complete the buying cycle, they must be in a "buying frame of mind". Consumers will not be involuntarily exposed to the advertising by virtue of going to the medium for entertainment or other reasons; they must voluntarily decide to consult the Yellow Pages or a catalogue, read the direct mail or an advertising supplement or classified section. These media are not picked up and browsed through idly in a spare moment.

The respondents argue that all directional advertising, even Yellow Pages advertising, has a "creative" component. Otherwise, they submit, no one would pay for a display advertisement in the Yellow Pages. The free business listing could provide a name, address and phone number. Clearly, there is "creativity" involved in designing an eye-catching Yellow Pages advertisement. This is not the same as creative ("creates" *demand*) as opposed to directional ("directs" consumers who are ready to buy) advertising as those terms are used in the industry, according to the evidence.

Mr. Bourke, echoing Raymond Greimel, Executive Director of YPPA, testified that the new attitude in the industry is that Yellow Pages are *both* directional and creative. He was unable, however, to explain how Yellow Pages advertising "creates awareness of and demand for products and services" in the words of the Bourke letter, as he recognized that people do not consult the Yellow Pages unless they already have a need for some product or service. He could

only say that Yellow Pages advertising "reinforced" or "supported" the advertising in the creative media.

We are not satisfied from the paucity of evidence on the point that directional advertising means that the medium containing the advertising is a "reference tool", as the Director further submits. If this element were proven, virtually all media except directories would be excluded from potentially being part of the relevant product market at this point. We do not consider that the evidence supports narrowing the definition of "directional" in this respect.

Functional interchangeability is simply a preliminary filter to exclude those products which evidently do not have the same end use as Yellow Pages advertising. Nevertheless, certain conclusions can be stated. First, the respondents' position that local advertising in *all* media qualifies as directional is not tenable. In particular, television, radio and outdoor media are clearly not treated as directional in Tele-Direct's own materials. Television is seen as having little relevance to the latter stages in the buying cycle; it is strong in creating awareness and interest at the beginning of the cycle only. While radio and outdoor have a role at the later stages, that role was not to present a directive message but rather to create "urgency" or serve as a "reminder" of other advertising.

This is not to say that these media *cannot* be used for directional advertising in any circumstances. It is a possibility, but in deciding whether various media serve the same end use, one must look to usual uses and not mere possibilities unsupported by the evidence. We are of

the view that both the electronic and outdoor media can be excluded at this point as they are not directional media and thus do not have the same end use as Yellow Pages advertising. Since the electronic and outdoor media have not met this "necessary" condition for inclusion in the relevant product market, we will not deal with them further.

Second, there is some doubt as to whether "regular" advertising (as opposed to special supplements or classifieds) in newspapers and magazines is properly included as directional advertising. Based on the list in the Bourke letter, which was updated by Mr. Bourke in his testimony and is therefore, presumably, as comprehensive as Tele-Direct considers it should be, we could exclude "regular" newspaper and magazine advertising at this point. The Multimedia Training Course, however, does refer to "newspaper" advertising, without further details, as directive. Given the preliminary nature of the criteria of functional interchangeability and in light of the overall model used by the respondents to argue their case, we will not exclude newspapers from further consideration. Magazines will not be dealt with further, as they were largely ignored in the remainder of the evidence and argument of both parties.

**(4) Other Relevant Indicia**

Having determined that some, though not all, local advertising media pass the threshold test of functional interchangeability, we will now consider the evidence and argument on the remaining practical indicia to decide if those media are close substitutes and belong to the same product market as telephone directory advertising.

(a) Physical and Technical Characteristics

Telephone directories are issued annually, are comprehensive both with respect to including all suppliers and being delivered to all telephone subscribers, and they are governed by their own rules with respect to the content of advertising. The Director is of the view that these characteristics set Yellow Pages apart from other media.

The respondents argue that each advertising medium has different "strengths and weaknesses" and can claim to be unique. They submit that a "catalogue" of differences is not alone enough to place two products in separate markets. They state that the relevant question is whether the product is unique in some respect that significantly limits the extent to which *buyers* (here, advertisers) are willing to substitute other products for the product at issue. We agree that to deal with physical and technical characteristics separately from the views and behaviour of buyers is somewhat artificial. It is, however, the way in which the parties have chosen to organize their arguments and the evidence in this case. Therefore, in this portion of the judgment, we will restrict ourselves to the points raised by the parties in their respective arguments under that heading. We recognize that this factor is mainly important in the analysis as providing background for the next section on buyer views and behaviour.

(i) Time Insensitivity/Permanence

Advertisements in the Yellow Pages are finalized several months prior to publication and have to stand for the entire year between directories. This means that Yellow Pages advertising

cannot be used to convey time-sensitive information. As noted by Professor Schwindt, for the Director, this sets Yellow Pages apart from other directional media, such as direct mail or supplements to magazines or newspapers, in which time-sensitive information such as prices tends to be featured. In fact, until recently Tele-Direct regulations prohibited the inclusion of prices in Yellow Page advertisements to avoid potential false advertising claims. This ban has now been lifted. It is doubtful whether, in a fast-changing world, price advertising can ever be an important part of telephone directory advertising while directories are a print medium that changes only every year.[58] The evidence of the advertiser witnesses amply supported the conclusion that Yellow Pages are *not* used for time-sensitive advertising.[59]

The fact that Yellow Pages cannot be used to convey time-sensitive information is characterized by the respondents as a "weakness", the "flip side" of which is "permanence", a "strength". Based on a statement by Professor Willig in his rebuttal affidavit,[60] they conclude that a weakness in Yellow Pages does not suggest that advertisers *would not* substitute other media for Yellow Pages; a weakness probably suggests that they *would* substitute other media.

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[58] Apparently there is some experimentation in some American centres with allowing restaurants to run advertisements that include menus. In a relatively stable economic environment firms in such an industry might be willing to risk committing themselves to prices for as long as a year.

[59] See, e.g., the testimony of Jack Forrester of HOJ Car and Truck Rentals, that he does not use Yellow Pages for specials or promotions: transcript at 5:778 (11 September 1995); the testimony of Jean-Yves Laberge of the Turpin Group of automobile sales and leasing businesses, that he puts prices and specials in his newspaper advertisement but not in the Yellow Pages: transcript at 13:2406-407 (3 October 1995); and the testimony of Steve Kantor of Tiremag Corp., who sells wheels and tires, that he cannot use Yellow Pages to advertise seasonal product offerings or prices: transcript at 17:3288-89 (11 October 1995).

[60] Paragraph 24 of Professor Willig's rebuttal affidavit (exhibit R-181) reads:

> . . . As a matter of economics, it is difficult to see how negative characteristics can contribute to a showing of dominance in a narrow relevant market. Instead, negative characteristics contribute to the willingness of buyers to substitute out of the product at issue, and so their recognition should, if anything, argue for a wider market to be relevant, not a narrower one.

Thus, any identified weaknesses are seen as evidence of Yellow Pages vulnerability and not as evidence that the products against which Yellow Pages is being compared may not be close substitutes.

We do not accept that a "weakness" alone provides evidence of or even suggests substitutability. Substitution is not a one-way process. The conclusion on whether there are close substitutes for the firm's products is not based on asymmetrical substitution. We must certainly consider whether there is ready substitution *from* Yellow Pages *to* other media but we must also be satisfied of the reverse, ready substitution *to* Yellow Pages *from* other media.

For the very reason that telephone directories are not suited to time-sensitive information, they are the one source of directional advertising that advertisers can be virtually certain will be retained for a long period by consumers. Apart from catalogues, which often are valid for periods of up to six months, the information in other vehicles is quickly dated and will be discarded. Catalogues, however, generally provide information on a single seller and do not cover the wide range of goods and services found in the Yellow Pages. The relative permanence of directories supports the Director's position that Yellow Pages are unique among directional media in serving as a continuing reference of all available suppliers.

(ii) Comprehensiveness

It is conceded by the respondents that telephone directories are unique with respect to their comprehensive list of suppliers. They argue, however, that comprehensiveness comes from

the free listings and that the directory would still be comprehensive even if it contained no display advertisements. That is true. The respondents go on to state that an advertiser values comprehensiveness *only* if the advertiser is targeting customers who contact *all* listed suppliers before making a purchase, in which case the advertiser would not need a display advertisement. The latter statement simply does not follow. The advertiser witnesses who appeared before us made it clear that they value the comprehensiveness of the Yellow Pages because that is a feature that leads consumers in general to use the Yellow Pages. (Since we are talking about a directional medium, we are speaking of consumers who are ready to purchase some good or service and are looking for a supplier.) Once a consumer decides to consult the Yellow Pages because of its comprehensiveness, an advertiser finds it profitable to advertise in the Yellow Pages to cause that consumer to choose its establishment as opposed to that of another supplier.

On the distribution side, the respondents do not dispute that there is no other medium that is so comprehensively distributed. All telephone subscribers, the vast majority of the population, receive a telephone directory. The respondents attempt to counter this fact by pointing out that persons who receive the Yellow Pages, and thus are the potential customers of businesses listed or advertising in the Yellow Pages, are also exposed to other media which do not depend on their active involvement, that is, on their deciding to consult the Yellow Pages. This argument, in effect, simply reiterates the respondents' position that all media have the same end use, since it ignores the fact that the voluntary nature of Yellow Pages (consumers must decide to consult the Yellow Pages to be exposed to the advertising) means that it is *not* used for the same purpose as are the creative media (consumers are involuntarily exposed to the advertising by virtue of using

the medium for the entertainment or information value). We have found that Yellow Pages are a directional medium. Exposure to creative media is not relevant as they serve a different purpose.

The respondents also point out that the scope of a particular directory may be too broad for a particular advertiser. That advertiser may wish to reach only a limited geographic area and could do so more cost-effectively with flyers. This will be addressed in the next section when we consider buyer views on whether the unique characteristics of Yellow Pages are significant to them and thus limit their choices among media.

(iii) Other Restrictions

In addition to the restriction on price advertising there are Yellow Pages rules regulating comparative advertising, the use of coupons and the use of superlatives. There is no evidence on the effect of these restrictions. However, their existence does indicate that the publishers of telephone directories were and are willing to create an advertising environment that sets their vehicle apart from others. Clearly Tele-Direct is not concerned that these restrictions make Yellow Pages less attractive such that advertisers would substitute other media.

In summary, all media have strength and weaknesses. Contrary to the respondents' arguments, however, we are of the view that "weaknesses" of the Yellow Pages as a medium do not imply that advertisers will readily switch from it to other media. If pricing information is important to advertisers and they *cannot* use Yellow Pages to convey prices because of restrictive rules or time-insensitivity, then their choice to use newspaper advertising instead

cannot be seen as a *substitution of newspapers for Yellow Pages*. Likewise, if advertisers *cannot* achieve their goal of being in a "reference" medium by advertising in newspapers, then their decision to advertise in the Yellow Pages cannot be seen as a *substitution of Yellow Pages for newspapers*. In other words, strengths and weaknesses in areas important to advertisers are really characteristics that tend *against* substitutability. The existence of significant (to advertisers) differences between Yellow Pages and other media would lead to the inference that other media are not close substitutes to the Yellow Pages.

(b) Views, Strategies, Behaviour and Identity of Buyers

Both sides recognize the importance of the identity, views and behaviour of buyers, in this case, Yellow Pages advertisers. Before turning to the more detailed evidence, we first set out the position of each of the Director and the respondents on the question of substitutability from the perspective of the advertisers.

The Director submits that advertisers do not consider that there are any close substitutes for Yellow Pages advertising. He bases this on the testimony of the advertiser and agency witnesses, who although not a representative sample, gave cogent reasons for their views on substitution despite the diverse businesses involved. He argues that the advertisers cannot easily move their advertising spending from Yellow Pages to other media because of the value that they place on certain unique characteristics of Yellow Pages as a medium. In support of this position,

he also points to evidence that Yellow Pages spending is not even part of the "advertising" budget at large for many Yellow Pages advertisers.

The respondents conceive of all advertisers, including Yellow Pages advertisers, as operating on a fixed advertising budget which is allocated among various media (the "media mix") based on the highest returns that can be obtained from the advertising expenditures. Decisions about media mix are driven by perceptions of relative cost-effectiveness. Therefore, Yellow Pages spending is vulnerable to reduction (by means of smaller size, less colour) or cancellation in favour of expanded spending on other local media which are perceived as more cost-effective. The respondents' position emphasizes the possibility of significant substitution between media "at the margin".

The respondents argue that the evidence supports the following propositions (although they state them in a somewhat different order):

(1) the businesses that advertise in Tele-Direct's directories ("current Tele-Direct customers") also advertise in a variety of other media;

(2) current Tele-Direct customers perceive that other media provide as good or better value than Yellow Pages advertising and may be assigned as high or a higher priority in the advertiser's media mix;

(3) current Tele-Direct customers in the same line of business may each choose a different media mix, including a different emphasis on advertising in the Yellow Pages (bigger or smaller, black and white or colour Yellow Pages advertisement);

(4) many of the businesses that do not advertise in Yellow Pages ("Tele-Direct non-advertisers") advertise elsewhere;

(5) Yellow Pages advertisers who have cancelled their advertising in Yellow Pages ("former Tele-Direct customers") continue to advertise in other media; and

(6) former Tele-Direct customers are unenthusiastic about the value provided by Tele-Direct in relation to other suppliers.

They submit that these propositions support their theory that advertisers readily shift their spending between media and thus Yellow Pages advertising and advertising in all other local media are in the same product market. The respondents also point to some evidence which they say reflects *actual* switching behaviour by Yellow Pages advertisers to other media.

Two preliminary comments are in order. The first relates to the use of a term such as "at the margin" which, in effect, invites the Tribunal to ignore the cellophane fallacy because of its emphasis on current price levels rather than the competitive price.[61] Any firm or group of firms

[61] It is commonplace economics that a firm with market power will set prices where the demand for its product is elastic; that is, at the point where a further increase in price would cause a reduction in revenue. Some of the reduction in revenue may result from consumers switching to other products which are the closest substitutes *at that price*, but which would not be considered by

that have fully exploited their market power might see some substitution if the relative price of their product goes up further. Their inability to raise their prices without buyer switching "at the margin" is, in these circumstances, because they have already exercised their market power *not* because they have *no* market power because of the presence of close substitutes.

Secondly, with regard to the proposition that advertising budgets are fixed, there is some support in the evidence that this is true for large companies. The situation is not so clear for small companies. We recognize, however, that some percentage of Tele-Direct's revenue is likely derived from advertisers who have advertising budgets that include Yellow Pages. Therefore, we will proceed to address the critical question of whether these advertisers and others treat Yellow Pages and other media as close substitutes. It will be convenient, in this instance, to organize our review of the evidence put forward by the parties by focusing in turn on each of the customer groups mentioned in the respondents' propositions. We will look first at the evidence regarding former Tele-Direct customers, then turn to non-advertisers and finally, current Tele-Direct customers.

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these consumers as substitutes if the firm with market power were pricing its product *at a competitive level*. This so-called "cellophane fallacy" (originating from criticism of the decision of the Supreme Court of the United States in *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956)) can result in the mistaken conclusion that a firm does not have market power because of the presence of substitutes when in fact the reverse is true -- the substitution is occurring *because of* the exercise of market power. In principle markets should be defined at competitive prices.

(i) Former Tele-Direct Customers

This group comprises Tele-Direct customers who have *completely* cancelled their Yellow Pages advertising. One would expect, therefore, that these advertisers would provide the most compelling affirmation of the respondents' theory of ready shifts in spending between media.

At the outset, we note, however, that whatever is learned about former Tele-Direct customers cannot be generalized to the population of Yellow Pages advertisers as a whole. From Tele-Direct's 1994 Corporate Post Canvass Analysis Report we know that former Tele-Direct customers are relatively unimportant in terms of total Tele-Direct revenue, and individually they were spending far less than average annual amounts in the Yellow Pages. The 1993 revenue from advertisers who cancelled their Yellow Pages advertising completely in 1994 represented only 1.3 percent of total 1993 revenue for Tele-Direct (Publications) Inc. The average annual expenditure in the Yellow Pages for these advertisers was about $700.[62]

The respondents rely on the information about former customers provided by the January 1993 Elliott report on customer satisfaction.[63] The report indicates that former customers view Tele-Direct's products and services as "poor value" and generally of fair to poor quality, both absolutely and relative to other suppliers.

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[62] Confidential exhibit CJ-28 (black vol. 7), tab 42 at 129284. Customers who disconnected their business telephone service are not included. There was no general price change between 1993 and 1994, although there were a number of incentive plans.

[63] Confidential exhibit CJ-14 (blue vol. 5), tab 173.

Because the former Tele-Direct customers could answer questions about other media suppliers, the results do indicate that *some* Tele-Direct former customers use other media. The study does not reveal what percentage of former customers are, in fact, using other advertising vehicles or which ones they are using. We know from the 1994 Corporate Post Canvass Analysis Report that former advertisers were spending relatively small amounts in the Yellow Pages. This would tend to indicate their options for buying other media on an annual basis with the dollars thus freed up are limited, given the cost of some of the media (particularly newspapers, radio and television) alleged to be close substitutes. The survey also found, not surprisingly, a low level of satisfaction with Tele-Direct among former customers. The study does not provide convincing evidence that a significant portion of former customers transferred advertising spending *from* the Yellow Pages *to* other media or that Yellow Pages is vulnerable to competition from other media as opposed to losing advertisers by virtue of its own failings.

With respect to former Tele-Direct customers the Director refers to two Tele-Direct reports which set out the reasons which customers gave to Tele-Direct sales representatives for cancelling their advertising: the "P.A.R. (Potential Advertiser Retrieval) Summary" report and the "Wipe Out Sampling Summary".[64] One can assume from the fact that the representatives were able to contact the customers that they remained in business and maintained a business listing.

[64] Confidential exhibit CJ-87 (black vol. 14), tab 111 at 134805; confidential exhibit CJ-33 (black vol. 12), tab 85 at 132815.

Tele-Direct uses the P.A.R. form completed by cancelled customers to attempt to understand why advertising was cancelled. One of the choices on the form for reason for cancellation is "trying other media". Professor Willig found it "notable" that Tele-Direct listed "trying other media" as a choice on the P.A.R. form., i.e., that Tele-Direct was alive to the possibility of its advertisers switching to other media. However, the P.A.R. Summary report printed in September 1995 shows that only four out of 203 former customers (two percent) surveyed stated that they cancelled because they were "trying other media". Professor Willig conceded that this low number would have some significance and would suggest a low level of movement between media if the study were meant to be comprehensive.

To counter the low percentage, the respondents argue that the relevant denominator is actually smaller than 203. To the extent that 56 customers were probably going to go out of business, they should be excluded. If we remove these customers, only three percent of the former customers surveyed gave "trying other media" as their reason for cancelling their Yellow Pages advertising.

The respondents would also exclude a further 84 customers who gave a variety of reasons other than "trying other media" for their cancellation (e.g., "financial reasons", "restructuring", "wouldn't discuss", "clients are mostly from referrals") to bring the sample size to 63. They would also include in the numerator, with those advertisers who answered "trying other media", another 47 advertisers who gave various other responses[65] on the argument that these advertisers

[65] "Non-believers", "inadequate response from advertising" and "don't need large recognition".

were probably already using other media and, therefore, would not say they were "trying" other media when they moved their dollars to what they considered a more effective medium. Thus restructured, they argue that the report yields an 81 percent response rate in favour of substitutability between all media.

There is nothing in the report which supports the changes advocated by the respondents. The inclusions and exclusions are based on speculation, at best. Beyond removing the customers who have gone out of business, the report must be taken as it stands. If it is significant, as Professor Willig maintained, that Tele-Direct wanted to know if former customers were "trying other media", and included it as a possible response for former customers to choose, then it is significant whether they did choose that response or not. Any of the customers who answered could have selected "trying other media" if that were indeed their primary motivation for leaving the Yellow Pages.

On the whole the P.A.R. Summary report demonstrates that only a handful of customers may have discontinued Yellow Page advertising in favour of other advertising vehicles. Even for these customers little can be concluded about substitutability. They said they were "trying other media". Without some follow-up as to whether they found other advertising vehicles more effective in boosting their sales, it is not possible to tell if the other media were close substitutes for them. Indeed, some of these customers may have returned to Yellow Pages because they did *not* find the other media adequate for their purposes.

Similarly, the "Wipe Out Sampling Summary" by Tele-Direct shows only two of 87 (about two percent) former customers "trying other methods of advertising". The respondents attempt to re-interpret these results in the same manner as with the P.A.R. Summary report, i.e., by reducing the denominator. Again, there is no support in the document itself for such re-interpretation. This report tends to support the conclusion from the P.A.R. Summary report that very few customers discontinued Yellow Pages advertising in favour of other advertising vehicles.

(ii) Tele-Direct Non-advertisers

Tele-Direct's overall penetration rate is about 50 percent. This means, as the respondents state, that some businesses do not buy any Yellow Pages advertising. It is probably also true that most businesses advertise in some way. What does the evidence reveal, if anything, about this class of Tele-Direct non-advertisers? Is their advertising spending likely to be easily switched from whatever vehicles they are currently using into Yellow Pages (and vice versa)?

Tele-Direct divides non-advertisers into two groups: poor prospects for Yellow Pages advertising (Market 6)[66] and current non-advertisers with some potential (Market 7). Market 6 accounts are not contacted during a sales canvass; about 85 percent of Market 7 accounts are contacted. Both Valerie McIlroy, Tele-Direct's Vice-president of Marketing until July 1994, and David Giddings, a Vice-president of Sales, described the manner in which Tele-Direct contacts these non-advertisers as a "blitz". During a canvass, one or two days at various times are

[66] For example, individuals in professions prohibited from advertising, variety stores, construction sites.

designated as "non-ad blitz days" and the telephone sales representatives focus on calling as many non-advertisers as they can each day, up to 20 to 30 calls. Tele-Direct's success in converting these non-advertisers is at most five percent.

If all media are close substitutes and advertising dollars are as fluid as the respondents argue, then Tele-Direct would seem to have a reasonable prospect of luring customers away from those other media and into the Yellow Pages. Yet, Tele-Direct's success rate with non-advertisers is very low. In addition, the approach taken to non-advertisers, namely telephone sales "blitz" days, provides little indication that Tele-Direct considers these non-advertisers "good" prospects which merit spending a lot of time and money to convert. Former Yellow Pages advertisers who have cancelled would presumably be especially good candidates but Tele-Direct does not appear to direct any special effort even to this group.

One of the studies referred to by the respondents that does include some specific information on non-advertisers is the 1990 study by Impact Research.[67] The study consisted of interviews with 36 business people in Montreal and Toronto, half of whom were Yellow Pages "non-advertisers".[68] There is some indication that the non-advertisers were probably using some other media but there is no data on how many advertisers or which media.

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[67] Confidential exhibit CJ-18 (blue vol. 9), tab 249.

[68] Contrary to Tele-Direct's habitual use of the term, the "non-advertisers" studied may have had a bold listing.

The results of the study do not, in any event, support the respondents' contention about the potential to shift advertising dollars between all local media in search of the most "cost-effective" alternative. Seventeen of the 18 non-advertisers did not advertise in the Yellow Pages "mainly because of the *perceived non-use of the Yellow Pages by their potential customers*." Sixteen of the non-advertisers were not going to advertise in the next Yellow Pages edition because they were convinced it was an "*inappropriate medium* for their advertising needs".[69] Two were undecided.

The views of non-advertisers do not support the contention that there is ready substitution between Yellow Pages and all other local media. If anything, the evidence that is available tends in the opposite direction.

(iii) Current Tele-Direct Customers

The respondents place considerable emphasis on the fact that existing Yellow Pages advertisers use a variety of media and that many believe that other media are as good or a better value than Yellow Pages. Because many firms advertise in a number of different advertising vehicles, the respondents argue, they are thus able to shift advertising dollars among them as the returns on them vary.

[69] *Supra* note at 107661, 107681 (emphasis added). One non-advertiser was just starting up his business and could not make the current edition deadline.

The evidence from the Director's advertiser witnesses, as well as from the Tele-Direct surveys,[70] confirms that Yellow Page advertisers tend not to be solely reliant on this one vehicle. Many advertisers use a variety of media. Even within a heading, some Yellow Pages advertisers have smaller advertisements, advertisements without colour or simply a free listing, thus potentially freeing advertising dollars to spend in other media. However, there is little that we can conclude from this fact alone. As acknowledged by Professor Willig, the use of more than one advertising vehicle tells us nothing about whether the vehicles in question are substitutes, complements,[71] or have no relationship whatsoever. To draw conclusions about substitutability there must be evidence that advertisers do *in fact* shift between the various media in response to competitive moves by those media.

The principal evidentiary source referred to by the respondents respecting current customers is the January 1993 Elliott report. As with cancelled customers, current customers were asked to rate Tele-Direct in terms of, among other items, value for money and overall quality. Many existing customers believe that other media provide as good value or better value and quality than Yellow Pages advertising. Thirty-five percent say that the relative value for the money of Yellow Pages is much or somewhat worse than other suppliers while the relative quality is about the same as other suppliers. Likewise, 38 percent of all customers believe that

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[70] E.g., Elliott reports: confidential exhibit CJ-14 (blue vol. 5), tab 173 (January 1993) and confidential exhibit CJ-19 (blue vol. 10), tab 285 (February 1993 - Newfoundland); V.I.A. survey: confidential exhibit CJ-11 (blue vol. 2), tab 89; Yellow Pages Satisfaction Study (Omnifacts Research): confidential exhibit CJ-15 (blue vol. 6), tab 199.

[71] The term "complement" has been used in this context primarily in its ordinary sense and not in its strict economic sense. No one has asserted that the different advertising vehicles are complements in the sense that a reduction in the price of one vehicle would lead to an increase in the price of the other. Rather the term has been used to indicate that Yellow Pages perform a different function than other vehicles and are thus needed to complete an advertising programme.

Yellow Pages are high or very high priced in relation to other suppliers. In the western region (Ontario), 56 percent of large customers believe that Yellow Pages are high or very high priced while only five percent say that Yellow Pages are very low or low priced. The respondents say this evidence shows that Yellow Pages are vulnerable to advertisers switching to other media.

We are of the view that these results tend to contradict rather than support the respondents' premise that all media are close substitutes. It is difficult to conclude that customers who had good substitutes would choose to continue to purchase a product that they believed was too high priced and of poor value. One would expect that, if all media were close substitutes, the medium perceived as providing better value and price would be purchased in preference to the others. Yet, dissatisfied Tele-Direct customers apparently continue to advertise in the Yellow Pages despite their opinion that other media are as good or better value and lower priced. The Elliott report provides more support for the proposition that Tele-Direct has a comfortable cushion of market power that permits it to keep its customers in spite of the fact that significant numbers of them were not complimentary about its service and pricing than it does for the proposition that Tele-Direct competes with other suppliers providing easily substitutable products.

The respondents also refer to a 1994 study by Omnifacts Research in Newfoundland.[72] Four focus group sessions were conducted with a total of 31 Yellow Pages advertisers, two sessions with new advertisers and two sessions with established customers.[73] In-depth interviews

[72] *Supra* note 70.

[73] *Ibid.* New advertisers were generally very small companies; established customers were larger.

were conducted with 16 customers, 10 of whom had reduced their Yellow Pages spending. Many of the customers also used other media, primarily print, in the form of local trade magazines, flyers and direct mail for new customers and flyers and direct mail for established customers.

There was a general view among the participants that they *had* to advertise in the Yellow Pages. They generally found it difficult to judge the effectiveness of the advertising they did, including Yellow Pages. In particular, they expressed considerable uncertainty about the value of larger size and coloured advertisements in Yellow Pages. Established customers ". . . tend to follow the competition when deciding on placement and size of Yellow Pages advertising. Most are clearly not sure whether the advertising in the Yellow Pages actually works, but the consensus is that they have to be there."[74] Some expressed displeasure at the number of headings since they felt compelled to advertise in several headings if their competitors did.

Particularly significant are the results of the interviews with customers who had reduced their Yellow Pages expenditures. The report states:

> Those companies who reported that their expenditures decreased fall into two main groupings: those who decreased as a cost cutting measure and those who decreased primarily because they do not perceive the Yellow Pages to be effective for reaching their target markets.
>
> Those that decreased their expenditures as a cost cutting measure essentially felt that the current economic conditions were affecting their business revenues. . . .

[74] *Ibid.* at 116796.

> Clients who have decreased their Yellow Pages expenditures because they did not consider the Yellow Pages to be effective, reported that their markets are primarily industrial or business-to-business and given the nature of the products and services that they offer, the Yellow Pages are not therefore consistent with their target markets.[75]

There is no indication in either case that customers reduced their Yellow Pages advertising in order to shift dollars into other media.[76]

Turning to the Director's evidence, the viva voce evidence of advertisers and other market participants who represent advertisers strongly supports the position of the Director that advertisers do not regard Yellow Pages and other media as close substitutes. Although several advertisers were approximately average size in terms of spending on Yellow Pages, most were in the top two or three percent of Tele-Direct customers. That is, average expenditures ranged from about $2,000 annually to well in excess of $100,000. For the most part a large percentage of advertising dollars were spent by these advertisers on other advertising vehicles, although a small number of the advertiser witnesses devoted almost all their advertising to Yellow Pages. Advertisers spending relatively large amounts in the Yellow Pages are, nevertheless, well placed to provide evidence on the opportunities for substituting between Yellow Pages and other advertising vehicles.

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[75] *Ibid.* at 116811-12.

[76] In terms of actual switching behaviour, the respondents referred to evidence of a locksmith who cut his Yellow Pages spending and bought brochures, on the advice of a Yellow Pages consultant, and of a photographer who was visited by a newspaper consultant who designed a smaller Yellow Pages advertisement for him. The implications of the existence and practices of the consultants for substitutability will be dealt with in the next section. Both newspaper and Yellow Pages consultants use a similar methodology, in that they attempt to convince an advertiser that a smaller, less expensive Yellow Pages advertisement will be equally effective *in the Yellow Pages*. The Director also provided numerous examples of "non-switching" where increases or decreases in spending on other media were unrelated to spending on Yellow Pages.

Although the circumstances of advertisers and the language used to describe their advertising strategies varied, none of the advertisers indicated that other media could be substituted for Yellow Pages. What they did say was that they use different media for different purposes. They use Yellow Pages advertising for purposes which take advantage of its unique characteristics. They advertise in the Yellow Pages because it is a reference of all available suppliers which is received and retained by most consumers and is consulted by them. They consider that Yellow Pages is cost-effective in this regard and generates a superior level of customer response.

Some, particularly large-budget, advertisers use other media to "create awareness". The witnesses use media other than Yellow Pages to advertise specials, include prices or to target a specific group or occasion. Steve Kantor of Tiremag Corp., who sells aluminum wheels and tires, uses other vehicles to convey a seasonal message, selling the "sporty" look in spring and "safety" in fall. Likewise, Kenneth Flinn, who operates a taxi and courier business (Lockerby Taxi Inc.) and relies almost exclusively on Yellow Pages, uses radio during the holiday season to convey the message "don't drink and drive". Yellow Pages cannot accommodate this time-sensitive advertising.

On this point, the respondents attempted to demonstrate the vulnerability of Yellow Pages to substitution by a review of advertisements in a number of newspapers from Toronto, Thornhill, London, Ottawa, Niagara, Sault Ste. Marie, St. Catharines and Montreal over a three-week period. The purpose was to show that some advertisers were using both Yellow

Pages and newspapers and that they could substitute one for the other.[77] Professor Willig observes that a "limited number" of advertisers employed "much the same" advertisements in both the newspaper and the Yellow Pages. He puts forward only four examples, of which only two are identical. For the other two, "the newspaper ad includes some of the same information presented in the directory display ad, but . . . the newspaper ad also includes some timely information of the kind that a directory ad could not contain, due to its permanence."[78]

The respondents provided three further examples of advertisements that were similar in both the Yellow Pages and a newspaper.[79] These types of advertisements evidently represent a very small percentage of Yellow Pages advertisements. Equally important is the conclusion that the respondents draw from Professor Willig's survey and the other examples, that the advertisements are only "essentially" the same and that where differences arise, they often stem from the *greater timeliness* of the newspaper. For example, the newspaper advertisement contains a price. They did not, however, provide us with any basis for concluding that prices and other time-sensitive information are trivial or unimportant to advertisers.

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[77] Newspaper advertisements were identified for establishments in the businesses represented by the top five Yellow Pages headings in the region's Tele-Direct directories. Then, those establishments with newspaper advertisements were sought in their local Tele-Direct Yellow Pages directories. Overall, the search found 542 newspaper advertisers in these categories. Of this group, 39% had display advertisements in both the searched newspaper and in the local Tele-Direct Yellow Pages directory, while 61% of the newspaper advertisers had no display advertisement in their local Tele-Direct Yellow Pages directory. (The 61% is comprised of 42% who had no Yellow Pages business phone number, and hence no listing in the Tele-Direct Yellow Pages of any kind. Another 12% did have lightface classified listings in the local Tele-Direct Yellow Pages directory, but no advertisement in that directory of any kind. Yet another 6% had a boldface listing in their local Tele-Direct Yellow Pages directory, but no display advertisement in that directory.)

[78] Expert affidavit of R. Willig (17 August 1995): exhibit R-180 at paras. 20-22, appendix 2B.

[79] Exhibit R-116. One of the three contained pricing information in the newspaper and not in the directory.

Time sensitivity for some advertisers cannot mean that those advertisers are likely to *switch from* Yellow Pages *to* newspapers and vice versa. Instead, they will use newspapers to convey time-sensitive information because that is what newspapers are good at doing. Likewise, they will use Yellow Pages to convey a message that is *not* time-sensitive but that takes advantage of other characteristics of Yellow Pages as a medium.

Agents specialized in selling Yellow Pages, general advertising agents, a witness with a large media buying agency and the former Vice-president of Marketing with Tele-Direct also testified that they did not consider other advertising vehicles a substitute for Yellow Pages and had not observed their customers to have ever done so.

Professor Schwindt's evidence supports the Director's argument that certain types of businesses use or do not use the Yellow Pages because Yellow Pages have particular characteristics that set them apart from other advertising vehicles. His evidence showed that businesses providing emergency services (glass repair, contractors, plumbers), infrequently consumed products (lawyers, moving and storage, exterminators), services used by travellers (automobile rental), products for which the use of the telephone is important (pizza), or any combination of these, tend to rely heavily on the Yellow Pages. Professor Schwindt also points out that there are types of businesses (grocers, department stores and theatres) that are known to advertise very heavily in other vehicles such as newspapers and flyers and spend virtually nothing on Yellow Pages.

On the other hand, Professor Willig, for the respondents, pointed out that whether Tele-Direct has market power, i.e., is vulnerable to ready substitution by advertisers to other media, depends on the combined demand of all advertisers, including those who are not necessarily very reliant on Yellow Pages. While he concedes some advertisers are more reliant than others on Yellow Pages advertising and that this affects the *average* elasticity of demand and the ability of Tele-Direct to exercise market power, he is of the view that the presence of advertisers who are willing to switch serves to discipline Tele-Direct's pricing. He acknowledges, however, that his position is subject to exception if Yellow Pages publishers could be shown to have the ability to price discriminate.

Price discrimination allows a firm with market power to secure higher profits (strictly, price less marginal cost) on sales to some customers than on sales to others. A firm without the ability to price discriminate may be disciplined by the ready ability of at least some of its customers to switch if prices are increased and, when considering a price increase, must weigh what it will lose against what it will gain from that action.

However, where a firm has found a way to price discriminate, no weighing need be considered. The prices for customers who might switch will be left at a level where they will continue to purchase. However, for those customers who are so reliant on the firm that they cannot switch, the firm may extract higher prices and therefore higher profits on sales to them. The ability to price discriminate therefore tends to demonstrate that a firm is not, at least in respect to the customers who are subject to the discrimination, vulnerable to those customers substituting other products for that of the firm.

On our assessment of the evidence, Tele-Direct does engage in price discrimination but not as between headings, i.e., it does not charge plumbers (a business likely to be heavily reliant on Yellow Pages) more for the same advertisement than it does grocery stores (likely to be less reliant). Rather, Tele-Direct price discriminates against those who tend to spend more in Yellow Pages by buying larger advertisements[80] or colour. Those customers are charged much more than can be explained by the additional costs associated with producing and servicing the enhanced advertisement. Thus, larger advertisers (by expenditure) under all headings contribute more to Tele-Direct's profits than smaller advertisers. Professor Willig agreed that if customers who use colour value Yellow Pages more than customers who do not, the pricing of colour is a way to price discriminate between customers who value Yellow Pages more and customers who value it less.

Tele-Direct does not have to target these firms; they in effect identify themselves. Firms that are heavily reliant on Yellow Pages are the ones that will buy a larger and more colourful advertisement in order to attract customers away from their competitors in the same Yellow Pages heading. This is indicated by the large average expenditures per subscriber and per advertiser under headings such as "moving and storage" and five other headings that stand out in the top 25 listed by Professor Schwindt in his report. The fact that there are advertisers under

[80] There is an important difference between Yellow Pages and non-classified advertising in other print media (or electronic media, for that matter) that results from the fact that media with editorial or entertainment content usually prefer to have minimum percentage of such content. The effect is to create an opportunity cost to having larger advertisements, because they absorb some of the available space for other content. This consideration is not present in the case of Yellow Pages and should not affect the pricing of larger advertisements.

other headings who are less reliant on Yellow Pages can have no influence on the ability of Tele-Direct to extract higher returns from advertisers who compete heavily within headings.

Moreover, while headings provide an important first indicator of whether a business is likely to be a heavy advertiser, there may be important differences among advertisers within a heading. One advertiser in a heading may have a larger or more colourful advertisement than the advertising by its competition within that heading. This is illustrated by the evidence of Howard Kitchen of Lansing Buildall, whose firm of lumber supply outlets is a relatively large Yellow Pages advertiser in the Toronto area. When asked about the fact that a large new entrant in lumber supply was not advertising in the Yellow Pages, he pointed out that his firm encouraged telephone inquiries while his competitor did not. The pricing of Yellow Pages, therefore, is able to capture the greater need of particular customers within headings as well as between headings. Thus, Tele-Direct's ability to price discriminate causes us to conclude, at least in respect of those larger advertisers who are most reliant on Yellow Pages advertising and therefore purchase large size advertisements or colour, that there is no ready substitutability between Yellow Pages and other media.

(iv) Conclusion

There is little evidence supporting the respondents' position that all media are substitutes for local advertisers. Specifically, the evidence of switching behaviour between Yellow Pages and other media is extremely weak. There is almost no evidence that advertisers

regard Yellow Pages as serving the same purpose as other media nor that they regard its purpose in the broad manner put forward by the respondents. While there is evidence of changes in advertising expenditures, they are associated with changes in economic conditions or advertising strategy rather than switching between media in response to competitive moves by those media.

While it is true as a matter of arithmetic that when expenditures are shifted within a fixed budget there will be winners and losers among the media, this fact tells us nothing about the willingness of firms to reallocate expenditures within the budget *as a result of competitive moves by advertising vehicles*. Advertisers' goals, situations and advertising needs are subject to change. Specific physical and technical differences among media limit the way that they can be used to accomplish a specific objective, such as the announcement of a sale, the listing of prices or a promotion related to a change in season and raise doubt about the willingness of advertisers to treat advertising dollars as fluid or as easily substitutable between Yellow Pages and other media. The respondents' proposition that both former and current Yellow Pages advertisers use a variety of advertising vehicles is likely correct. It was also proven that relatively large percentages of former and current advertisers do not think very highly of Yellow Pages. This tells us nothing about whether there is a sufficiently large body of Yellow Pages advertisers who are willing to switch their advertising dollars in the event that Yellow Pages were priced above the competitive level. There must be evidence that advertisers reallocate dollars in reaction to competitive moves by different media. It is insufficient just to demonstrate a fixed budget and changes in allocation by advertisers between media. In other words, there must be evidence in

one form or another that advertisers regard other advertising vehicles as close substitutes for Yellow Pages.

The testimony of the advertiser witnesses about why they use Yellow Pages and the importance of Yellow Pages advertising to them is supported by Tele-Direct's own studies of advertisers. Many advertisers believe they *have* to be in Yellow Pages to be in a comprehensive reference tool, particularly if their competition is there. They feel they have no choice. As stated in the Omnifacts study:

> . . . There were numerous comments concerning the fact that the Yellow Pages, like the telco, operates in a monopoly situation where their customers are to some extent captive advertisers, who have really no choice but to place their advertising with Tele-Direct.[81]

If they do not use Yellow Pages it is because it does not suit their purpose, not because they can readily move dollars between Yellow Pages and other media. The views of buyers, therefore, strongly tend to support the view that Yellow Pages and other local media are not close substitutes.

(c) Trade Views, Strategies and Behaviour (Inter-industry Competition)

The Director argues that there is little evidence that Tele-Direct or other market participants consider Yellow Pages to be in competition with other media. Whatever steps Tele-Direct took in relation to other media, he submits, are to be contrasted with its reaction to other

[81] Confidential exhibit CJ-15 (blue vol. 6), tab 199 at 116802.

market participants that it clearly regarded as competition. The other competitors referred to by the Director are consultants, agencies which sell Yellow Pages advertising, and independent publishers of telephone directories.

The respondents argue that Tele-Direct does not compete, for various reasons, with either consultants or agencies in providing *services* to advertisers. They do, however, admit that independent publishers are in the relevant market with Tele-Direct, whether that market includes only directories or all local media. We will, therefore, compare Tele-Direct's reactions to other media to its reactions to independent directory publishers, about which there is no dispute between the parties.

The respondents argue that the evidence reveals "broad competition" or "competition in fact", as referred to by the Court of Appeal in *Southam,* between Tele-Direct and all other local media. They submit that Tele-Direct views other media as competitors and has taken various initiatives to compete with other media. They argue that other media, in turn, view Tele-Direct as a competitor.

The respondents submit that evidence of "broad competition" places all local media in the same product market. The respondents say that differences in the type or intensity of response to different "competitors" should not eliminate some "competitors" from the relevant market. We cannot agree. The type and intensity of the alleged competitive response is an element for consideration in determining if the products argued to be in the same market are close

substitutes. Substitutability, as pointed out in the *J.W. Mills* case quoted above, is always a question of degree. Differences in the intensity of the reaction to players admitted to be competitors by Tele-Direct and those alleged to be competitors by Tele-Direct can help us to determine where to draw the line in this case.

(i) Tele-Direct's Views and Behaviour

General

The evidence is unequivocal that other directory publishers have been referred to as competitors by Tele-Direct and the respondents concede that they are. A number of independent publishers not affiliated with a telco produce directories in Tele-Direct's territory. Over the years, Tele-Direct has collected information on and copies of directories of independent publishers. As of 1994, the information was organized into a "competitive database" as part of the creation of a "Sensitive Market Intelligence System". The sales representatives gather information and the marketing department analyzes information on independent publishers as part of this system. Tele-Direct goes to considerable lengths to track and compile data on the revenues, prices, scoping, circulation and other features of independent directories.[82]

[82] See Competition Database Binder (1994): confidential exhibit CJ-15 (blue vol. 6), tab 205; 1994 Sensitive Market Report: confidential exhibit CJ-29 (black vol. 8), tab 51; Directory Publishers in Tele-Direct Operating Area: confidential exhibit CJ-32 (black vol. 11), tab 77 at 132125-45.

Further, it is not in dispute between the parties that when a broadly-scoped independent directory entered into Tele-Direct's territory in each of the Niagara region and in Sault Ste. Marie, Tele-Direct responded with zero price increases, advertiser incentive programs, promotional campaigns, and improvements to its own directories.[83]

While there are references within Tele-Direct documents to other media as "competitors" and to "competing for the advertising dollar", there was no effort on Tele-Direct's part to track revenues, prices, features or circulation in a comprehensive and detailed a fashion as there was with other directory publishers. When one compares the competition data base and sensitive markets material cited above to the documents put forward by the respondents as showing competition with other media, the difference in intensity is immediately apparent. They refer in their written argument, for example, to two speeches from 1984 and 1985 which refer to "competing with all other types of advertising media" and being in a "constant struggle for the customer's advertising dollar." Considerable emphasis is also placed on a 1993 document entitled "East Office Competition Analysis". The "east office" deals with only a portion of Tele-Direct's territory, namely the Peterborough, Orillia and Barrie areas. The document is a summary of a meeting regarding competition. It lists newspapers, flyers, consultants and television as competitors and canvasses various points of discussion. It does not identify particular competitors, give any detail on revenues likely lost, comparative pricing or features like circulation.

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[83] For further details, see the facts set out in the section entitled "C. Market for Advertising Space - Publishing" in chapter "IX. Abuse of Dominant Position", *infra*.

There was likewise no evidence of a Tele-Direct response to other media competition that bears any resemblance to the focused and intense response to the competing directory publishers. The respondents referred us to other initiatives by Tele-Direct that they submit are of particular significance and we will deal with them in further detail below.

Educational Efforts

Educating employees to deal with the existence of competitors might be some evidence of concern by Tele-Direct about the potential for its advertisers to switch to other media. The evidence regarding Tele-Direct's educational efforts indicates, at best, a weak concern about the necessity to compete with other media. The respondents rely on the Multimedia Training Course as the principal Tele-Direct initiative to compete with other media. The only clear evidence we have, which comes from a written answer by the respondents to a question on discovery, is that the course was given once in 1992 for four days to all sales "employees". The oral evidence on the issue was vague, suggesting that the course was not an initiative that was considered significant by Tele-Direct.[84]

Based on the course having been given once in 1992 to all sales representatives, the investment by Tele-Direct was 1880 (470 x 4) person-days. Based on the average remuneration

[84] Mr. Giddings' testimony on this topic was confusing. He testified at various times that the course, or perhaps one module of it (which a discovery answer indicated had never been used for training purposes), was given to new representatives in about 1990 and that it, or some part of it, had been repeated for unknown numbers in 1993 and 1994. However, he also testified that no new premise sales representatives had been hired since 1992 casting doubt as to how many times and to how many persons the course was given.

of a premise sales representative, the cost to Tele-Direct was *at most* $500,000.[85] This was a one-time cost relating to *all* of Tele-Direct's territory with benefits spread over a number of years. By contrast, in reaction to the entry of DSP in Sault Ste. Marie, in one year (1993) in one relatively small market Tele-Direct spent over $215,000. Evidence of educational efforts does not suggest a great concern on Tele-Direct's part about other media competition.

Sales Aids

The respondents point to a variety of "sales aids" produced by Tele-Direct which contain references to other media. They submit that the specific claims made in the documents with respect to other media in relation to Yellow Pages are unimportant. Rather, they say significance lies in the simple fact that Tele-Direct created material which refers to other media to provide to its sales force. They claim that if Yellow Pages were "unique", there would be no need for this type of promotional material.

We are of the view that in examining the documents prepared for use by Yellow Pages representatives, we should consider whether the content of those documents points to the treatment by Tele-Direct of Yellow Pages as a separate advertising medium (the Director's position) versus whether the content indicates signs of competitive activity with other media (the

[85] The use of the average premise remuneration errs on the side of being too high. The other type of sales representative, a telephone sales representative, earns, on average, only about 60 percent of what a premise representative earns. Also, Mr. Giddings did say at one point that this course was given to *new* representatives, who would likely earn less than average in any case.

respondents' position). The mere existence of sales aids which mention other media in some context cannot be solely determinative of the issue.

Two memoranda dated 1983 and 1985, respectively, deal with direct mail (flyers) as an alternative to Yellow Pages and provide visual aids to salespeople. The first concludes:

> We all know that any form of advertising is beneficial in one way or another but direct mail should never be an alternative to Yellow Pages when considering the circulation, permanence, or economy of the two mediums, and these visuals prove that.[86]

The second states:

> Unbelievable.
>
> When comparing the economy of Yellow Pages with the cost of Direct Mail it is hard to imagine why someone would consider Direct Mail an alternative to Yellow Pages advertising.[87]

Despite the fact that Tele-Direct sales representatives may have had, to some extent, to provide arguments on the superiority of Yellow Pages in relation to flyers and, indeed, any other media, the words used suggest non-, or at least low, substitutability between Yellow Pages and the alternative media. The authors of the memoranda appear to express disbelief and incredulity that anyone would ever consider direct mail as an economical alternative to Yellow Pages advertising.

Tele-Direct's Strategic Business Plan for the time period 1983-88 states:

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[86] Exhibit J-2 (red vol. 2), tab 82 at 8833.

[87] *Ibid*., tab 81 at 8827.

> Part of a large, profitable but slow growth industry, the directory advertising business operates from a privileged position in a captive market.[88]

Tele-Direct has characterized its own market as "captive" in this business plan. We infer that this high level document reflects the perception of Tele-Direct management as to competition from other media. It places in context the aforementioned memoranda.

The respondents also refer to a set of documents that was prepared for the 1992 sales canvass which includes comparisons between the cost of advertising in Yellow Pages and two dailies and three community newspapers in the Toronto area. Other documents give the same type of information for other cities and towns. Another similar package compares the cost of Yellow Pages to two Toronto dailies, and shows what could be purchased with the Yellow Pages dollars in television, radio, flyers, calendars, key chains and ball point pens.

When we examine the content of these documents, we find that, as with the direct mail examples, what is being emphasized is the *lack* of comparability between the cost of Yellow Pages and the other media. With respect to the comparisons with newspaper advertising, one document (from 1992), for example, compares a 1/4 page advertisement for 30 days in the Toronto Yellow Pages (circulation over 1.3 million) at $677 with a 1/4 page single insertion in *The Globe and Mail* (circulation about 325,000) at over $7,000. Mr. Giddings described this type of sales pitch as making a comparison to point out that there is *no* comparison between Yellow Pages and newspapers. Newspapers are simply so much more expensive that there is no

[88] Exhibit J-2 (red vol. 2), tab 116 at 13525.

comparability. Another document has a similar tone; it focuses mainly on newspapers for comparisons but also highlights how *little* can be purchased with the Yellow Pages dollars if transferred to television ("2-60 second spots, non-prime time"), radio ("2-1 minute spots") and flyers, calendars, key chains and ball point pens (15,600 flyers, 709 calendars, 1,213 key chains and 1,365 pens while Yellow Pages circulation is over 900,000).

Tele-Direct, unlike other print media, does not use a "CPM" or cost per thousand measure in promoting its product to advertisers. A CPM is a calculation of the cost of the medium per thousand persons reached, which can be applied to the number of copies sold (assuming one reader per copy sold) or read (if that number is known) of, for example, a magazine or newspaper. The CPM allows comparisons between print media. Tele-Direct researched the possibility of developing a CPM for its directories in the late 1980s. Its survey of general and specialized advertising agencies revealed that the agencies thought such a measure

> . . . entirely unnecessary since we [Tele-Direct] are the only ones in this field and there can be no similar comparison (they absolutely cannot imagine comparing us to the other "media").
>
> . . .
>
> In the event of serious competition, all agree that such a tool would be useful.
>
> However, two of the largest agencies already understand the usefulness and even suggest the development of this type of measure to better acquaint people with the Yellow Pages on a "national" level, and to establish ourselves as the unbeatable leader in the industry.[89]

[89] Confidential exhibit CJ-10 (blue vol. 1), tab 17 at 106527-28.

Although a later study concluded that a CPM measure should be developed for Yellow Pages that would be, to some extent, comparable to other media in order to "contribute to developing a media image for Y.P. directories, and would create a barrier for potential competition", none was developed. Tele-Direct does use a CPM-type formula internally in its pricing to ensure that its directories of similar circulation are priced similarly but CPM is not used as a marketing tool.

Equally relevant to the question of how Tele-Direct views its product in relation to other media is the large volume of Tele-Direct promotional material selling advertisers on the advantages of being dominant *in* a Yellow Pages heading. The virtues of size and colour are extolled in testimonial letters and other promotional material. The "YPROI study", which the respondents argue is a primary tool of their sales force in selling the "value of the medium", starts with a comparison of which media influenced persons who had made a recent purchase,[90] but also includes a page trumpeting the importance of size, colour and "impact" within the Yellow Pages so as to influence the buyer's selection of a firm once he or she consults the Yellow Pages.

The advantage of "standing out" that is being sold to customers is with respect to competitors advertising *in the Yellow Pages*, and not with reference to advertisements in some other medium. As pointed out by one of the Director's economics expert witnesses, Margaret Slade,[91] the amount of advertising a firm does in the Yellow Pages is dependent on how much its

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[90] Radio - 4%, television - 6%, other - 11%, newspapers - 19% and Yellow Pages - 60%: confidential exhibit CJ-18 (blue vol. 9), tab 243 at 107177ff.

[91] Professor of Economics at the University of British Columbia.

competitors do. When a Yellow Pages sales representative convinces a customer to increase its expenditures on Yellow Pages advertising, this creates pressure on its competitors to do likewise (referred to as the "prisoner's dilemma"). This phenomenon came through in the comments received from the established customers participating in the Omnifacts study in Newfoundland, that they tend to follow the competition when deciding on placement and size of their Yellow Pages advertising. The pressure on advertisers to observe and to some extent follow what their competitors are doing in the Yellow Pages indicates that Yellow Pages are a distinct medium, a separate arena within which firms seek to stand out.

The respondents stress that competition for the advertising dollar is not so much a matter of whether firms advertise in the Yellow Pages but of how *much* they advertise, primarily whether they buy coloured advertisements and larger advertisements. The number of headings would be an additional factor determining the expenditures of customers. It is noteworthy that the attempts by Tele-Direct to sell colour and size to its advertisers are based on comparisons with black and white advertisements or smaller advertisements *within* Yellow Pages.[92] Thus, the success or failure of Tele-Direct representatives in capturing more of the advertising dollar depends on the extent to which they can convince customers that they need to upgrade their advertisements *to be more effective vis-à-vis the customers' competitors* in the Yellow Pages. It is difficult to perceive of this as "inter-media" competition.

[92] While it is true that price comparisons with the newspapers are used, including different sizes of newspaper advertisements and advertisements with red, the message is that it is cheaper to use the Yellow Pages regardless of the size or colour of the advertisement.

Pricing -- General Policy

Another relevant area in inter-media views and conduct concerns how, if at all, the prices of other media influence Tele-Direct's pricing. Tele-Direct generally establishes its prices about a year and a half to two years in advance, with prices, for example, for the 1995 directories set in late 1993.

The Pricing Policy documents placed on the record reveal that Tele-Direct considers various inputs in setting prices. For example, in the 1993 Pricing Policy produced in October 1991,[93] these included rate/circulation alignment policy,[94] recent Tele-Direct price-ups (1988-92), the consumer price index ("CPI") (1991-93), the paper and allied industry price index (1990-92), the percentage change year-to-year in the number of directory copies printed by Tele-Direct (1991-93), estimated price-ups in other media for 1992 and Tele-Direct's internal rate of inflation (1991-93). Given the timing, much of the information is estimated. The 1994 Pricing Policy is a two-page document only as all 1994 issues had a zero percent price-up. In the brief text, the following are mentioned: relationship with customers, impact on profitability, prevailing economic factors, cost containment including a recent, more favourable printing contract and the rate of inflation or CPI. In the 1995 Pricing Policy, the only change from the 1993 Pricing Policy is to replace the "paper and allied industry price index" heading

[93] The 1993 prices were revised in February 1992. The respondents rely heavily on this particular exercise; it is reviewed in detail below.

[94] Consistency in cost per thousand of circulation across directories.

with "junked directories".[95] The 1996 Pricing Policy adds two additional items, gross domestic product and personal disposable income and reverts to using an indicator of paper cost increase, as for 1993.

In all cases, the information regarding the forecasted price-ups of other media that is contained in the policies was obtained from general advertising agencies, usually two or three different ones, and is stated as a range. The media included are television, dailies, magazines, outdoor and radio. "Business papers" also appeared in one year and "transit" in one other year.

To obtain insight on how the information with respect to other media entered into pricing decisions, we look to the testimony of Ms. McIlroy, who was intimately involved in the pricing decisions. According to her, the "key drivers" of pricing were, in order of importance: relationship to cost, rate/circulation re-alignment, revenue stream for the sales force and local considerations, both economic and the presence or feared entry of a competitive directory. She stated that there was no direct relationship between the prices of other media and Tele-Direct's pricing. Her view was based on her own experience and a review of all relevant pricing documents on the record, dating from the early 1980s to the 1995 Pricing Policy. Ms. McIlroy did not alter her position regarding the relative unimportance of other media in setting Yellow Pages prices when responding to questions on cross-examination.

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[95] Ms. McIlroy explained that the "junked directories" are those that never enter into circulation. Tele-Direct used the volume of junked directories to forecast how many copies should be printed and to ensure that estimate was realistic. If many of the copies printed end up as junked directories, this over-inflates Tele-Direct's circulation figures.

Douglas Renwicke was the Senior Vice-president to whom Ms. McIlroy reported from 1991-94 and was involved in sales or marketing from 1988. He expressed general agreement with Ms. McIlroy's description of the price setting process. He disagreed over certain details that are not germane to the present discussion. However, more importantly, he also disagreed with Ms. McIlroy concerning the relevancy of other media prices in Tele-Direct price setting.

Mr. Renwicke stated that the three "primary" key drivers for pricing in the 1990s are CPI, other media price-ups and local market knowledge. A group of "secondary" key drivers include growth and circulation, gross domestic product and Tele-Direct's internal rate of inflation (costs). He distinguished price setting in the 1980s when the key drivers were circulation, internal costs and, from 1987 to 1990, circulation alignment.

At least for the 1980s, during which Tele-Direct enjoyed exceptional growth, Mr. Renwicke agrees with Ms. McIlroy that factors such as the internal rate of inflation at Tele-Direct and circulation growth were primary determinants of Tele-Direct's prices. He also recognizes that towards the end of the 1980s discrepancies in rates per thousand in different directories became another important concern that entered at the local market level. The attempt to get prices in line across markets was abandoned for a couple of years following the recession but appears to be re-emerging as an ongoing factor. Considering Ms. McIlroy's and Mr. Renwicke's evidence together, we conclude that other media prices were not a "key driver" during the 1980s.

Mr. Renwicke explicitly distinguishes the 1990s and it is here that he appears to take issue with Ms. McIlroy. We will, therefore, look in more detail at the information available to the officers engaged in price setting in 1991, 1993 and 1994 (for 1993, 1995 and 1996).[96]

The 1993 Pricing Policy document sets out the following predicted increases in various items for 1993:

> Increase in CPI for Ontario: 3.6%
> Increase in CPI for Quebec: 3.7%
>
> Tele-Direct internal rate of inflation: 5%
>
> Increase in cost of printing: 4.7%
>
> Increase in copies to be printed: 2.9%
> (proxy for circulation increase)

The ranges of predicted percentage price-ups for other media set out in the document were obtained by Claude Phaneuf, Manager of Marketing Research, from two general advertising agencies and a media buying firm.[97] Notably, these predicted increases are for *1992 only*:

> Television: 0% - 10%
> Dailies: 3% - 7%
> Business Papers: 5% - 8%
> Magazines: 3% - 7%
> Outdoor: 3% - 5%
> Radio: 4% - 7%

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[96] The 1992 exercise (for 1994) is not included as prices were not increased.

[97] Information on business papers and outdoor came from only one source.

According to Messrs. Phaneuf and Renwicke the predicted price changes for 1992 were considered relevant even though Tele-Direct was considering price changes for 1993 because the canvass of customers for the 1993 directories was done during 1992. However, Mr. Phaneuf could not explain why predicted changes for other factors such as the CPI were obtained for 1993.

Two notes accompany the information on other media price increases. They state: "Demand Driven Market" and "Anybody's Crystal Ball". According to Mr. Phaneuf, the second note is a warning about the discrepancy in the information received from different sources (as indicated by the wide range of predicted price changes, such as for television). Taking the first note at its face value, it means that the prices that would actually prevail in 1992 would depend on the state of demand at that time.

The average Tele-Direct price increase established in October 1991 for 1993 was five percent, with a minimum of 3.5 percent and a maximum of 5.9 percent for specific directories. The average price increase of five percent for 1993 falls within the range of other media price-ups (not difficult since the range is so large) but the same average increase could just as easily have been arrived at without any reference to other media prices. This observation also applies to the pricing documents for 1995 and 1996 that were used in setting prices in 1993 and 1994.

Several other points emerge from a review of the information available to Mr. Renwicke and other officers. Although Mr. Renwicke stated that he would be concerned about the prices of community and daily newspapers, only the price-up of dailies was collected. While the general agencies that provided the information to Mr. Phaneuf were much more likely to be familiar with dailies than with community newspapers, it is instructive that there is no evidence of any effort by Tele-Direct to obtain pricing information about its other alleged competitors, community newspapers.

Further, no information on flyers or direct mail is included. Other Tele-Direct documents group flyers with Yellow Pages as directional media, indicating that prices for flyers would clearly be relevant, and perhaps more relevant than predicted prices for the electronic media, business papers and magazines. We also note that the information provided by Mr. Phaneuf for television does not reveal whether the prices in question relate to local television, network television or both. When questioned about this Mr. Renwicke was not sure but thought that the predicted price changes related to local television.

We conclude that Ms. McIlroy's view that the prices of other media had little or no influence on Tele-Direct's pricing policy in the 1990s is borne out. Mr. Renwicke's use of the term "key driver" when referring to the prices of other media is disingenuous. The documentary evidence does not support this characterization. Nor, in fact, does the remainder of Mr. Renwicke's own testimony. By a "key driver", he apparently meant a very tenuous

relationship between Tele-Direct's price increases and the price increases of other media. He testified that other media prices enter into Tele-Direct's price setting as follows:

> . . . [W]e wouldn't focus this closely on network TV as we would on community or daily newspapers, but we focus on that because we don't want to be way out of line with what newspapers are pricing up at or other comparable media that we feel our advertisers use amongst their choices of how to promote their business.
>
> . . . We feel if the gap was too large and we didn't pay attention to that over time, there could be at least substitution on the margin that could take place.
>
> I think that's a real concern throughout the recession.
>
> . . .
>
> Q. You said you would be concerned if the prices were way out of line. What do you mean by "way out of line"?
>
> A. Frankly, particularly with newspapers, I would consider anything, five percent or greater, to be too much out of line.[98]

A fear of losing *some* advertising dollars to other media if a *relatively large* difference in price *increases* persists over time (and during a recession) confirms only that newspaper or other media pricing provides little or no competitive discipline for Tele-Direct's pricing. Tele-Direct did not ignore the prices of other media; they were a part of the general economic environment. But given the types of media covered and the tentative conclusions that it could derive from the information we cannot conclude that it had the concern of a firm worried about close substitutes.

Pricing -- Revision of 1993 Prices in 1992

The respondents place considerable emphasis on the fact that in February 1992 Tele-Direct, for the first time ever, revised its 1993 prices during the canvass for the 1993 directories

[98] Transcript at 44:9285-86, 9290 (22 November 1995).

as it ran into advertiser resistance due to the difficult economic times. For the remaining directories not yet canvassed the average price increase was reduced from five percent to 3.2 percent.

The respondents point to a brief statement in the minutes of a sales and marketing executive meeting held in February 1992 which they say reflects the reasons why prices were revised:

> The rates that were implemented for 1993 have been revised to lower levels given the reaction of our customers to our 1992 prices, *the pricing of other media* and the expected rate of inflation in Ontario and Quebec.[99] (emphasis added)

They also rely on the revised Standby Statement for 1993 Pricing which was presented at the meeting and apparently accepted by all concerned. The Statement reads:

> Our pricing policy for 1993 issues of Yellow Pages and White Pages directories has been revised downward to take into consideration the economic conditions prevailing in 1992.
>
> This policy reflects the fact that most prices are on a downward trend for 1992. It is also in step with the advertising industry where media rates for 1992 are expected to be in the 3% to 5% range for daily newspapers, magazines and out-of-home (billboards, etc.). Radio and T.V. are expected to be in the 0% to 5% range with peaks of 10% for T.V. due to high demand for last-minute buying.
>
> All media are expected to increase their rates towards the end of 1992 as the economy picks up. Forecasts for 1993 and 1994 are for prices increases of 10% or more. Based on these forecasts, it is evident that Yellow Pages directory advertising will be one of the media with the lowest price-ups during that period.

[99] Confidential exhibit CJ-12 (blue vol. 3), tab 115 at 109881.

> Finally, our pricing structure must also reflect our own internal cost increases which have been kept to a minimum for 1992 thus allowing us to keep price-ups at their very low levels.[100]

Both Mr. Renwicke and Ms. McIlroy attended the meeting at which the prices were revised. Ms. McIlroy attributed no importance to the Standby Statement as a price setting document, regarding it purely as a document prepared for public relations purposes. Nor did Mr. Renwicke mention other media prices when describing the motivation for the revision in 1993 prices. He emphasized general economic conditions:

> In 1991 we clearly did not project the decrease that would take place in CPI or the recession . . . [I]n February '92, we actually re-did prices for '93 for the books we could still catch and I am thinking of the border markets in particular that were being decimated with cross-border shopping, Niagara Falls, Sarnia, Windsor.
>
> We reduced those all by a percentage point. So, we did our best to try and get back down to a point where we were near CPI because our customers were reading in the paper every day that inflation in Toronto was approaching zero and why were our rates up at four per cent, five per cent, six per cent. Partly it was a function of the lag we had in setting those prices initially and not foreseeing the downturn that did take place in the economy.[101]

Taking into account both the documents and the views of two of the officers involved in the exercise, the 1993 price revision does not change our view that other media prices are not "key drivers" in Tele-Direct's pricing.

New Products

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[100] Confidential exhibit CJ-32 (black vol. 11), tab 76 at 132008-9 (public) (with covering memorandum).

[101] Transcript at 44:9283-84 (22 November 1995).

The respondents list four new product initiatives which they say show competition between Tele-Direct and the other media by the fact of their having been tried. These four products were coupons in directories, AdSpot and BrandSell (creative-type directory advertisements), colour and participation in the "Marketing the Medium" program which is designed to prove the value of Yellow Pages.

There was little evidence about the nature and cost of these programs and why they were launched, which media were considered important competitors in triggering them, what success they achieved in terms of revenue gain or loss for Tele-Direct and if they were discontinued and why. Contrary to the respondents' submissions, we cannot accept that the mere existence of these alleged new products is instructive. Their mere existence is not indicative of substitutability between Yellow Pages and any other advertising medium.

(ii) Newspapers

Newspaper Consultants

The respondents rely on the evidence of the activities of newspaper consultants as proof both of Tele-Direct's response to a "competitor" (daily newspapers) and of an initiative by another medium to compete against Yellow Pages. Newspaper consultants attempt to convince Yellow Pages advertisers that they are spending too much on their Yellow Pages advertising. Once the newspaper consultants have succeeded in persuading the advertiser to cut back on

Yellow Pages spending, they then try to convince the advertiser to place some of the dollars "saved" in newspaper advertising.

Newspaper consultants first became active in Canada in 1987, having previously operated in the United States. One method used by the consultants was to hold seminars, sponsored by the newspaper that hired the consultants, to which Yellow Page advertisers were invited. A second method, apparently employed to a greater extent in recent years, is to locate good "prospects" among Yellow Pages advertisers (those with large or coloured Yellow Pages advertisements) and then visit them.

Newspaper consultant activity is not convincing evidence that newspapers and Yellow Pages are close substitutes. If Yellow Pages and newspapers were close substitutes, the newspaper's sales representatives would be fully familiar with Yellow Pages as part of the competitive environment. If the two media were close substitutes it would not be necessary for newspapers to hire outside "consultants" on a one-shot or periodic basis. Further, it would be expected that price discounting by the newspapers would be a more potent weapon than the rather circuitous approach of the use of consultants in regaining or capturing revenue from the Yellow Pages. The success of newspaper consultants depends on finding customers who are unhappy with Tele-Direct. An unmistakable implication is that such customers do not perceive other media as close substitutes for Yellow Pages, otherwise they would already have stopped or reduced their use of Yellow Pages.

Further, a successful newspaper consultant must convince the advertiser that a different, less costly Yellow Pages advertisement or set of advertisements will work *as well* as the existing Yellow Pages advertising. In other words, the question is how much does that advertiser really need to spend to have an effective advertisement *in the Yellow Pages*? This is borne out by the fact that a consultant's methodology involves two distinct steps. First, the Yellow Pages advertiser must be convinced that he or she can reduce Yellow Pages expenditures without prejudicing the results from the Yellow Pages advertising. Then, the newspaper consultant must try and sell the advertiser on spending the dollars saved elsewhere. But, this is clearly a second step. This is recognized even by Tele-Direct in a document referring to newspaper consultants:

> newspaper reps are recommending down-size YP and don't talk about newspapers (probably will go in later to make pitch).[102]

The advertiser, of course, may simply decide to pocket the savings. This process is not indicative of shifting of spending from one competing media to another. The restriction of the context to the Yellow Pages as the first step taken by newspaper consultants is a critical point in defining the relevant market. It indicates that what is occurring is not the allocation of the advertisers' overall advertising budget between newspapers and Yellow Pages but rather focusing on whether money can be saved in Yellow Pages advertising without regard to other media.

On the whole, the presence of newspaper consultants has been sporadic, sometimes in one local market and sometimes in another. In no case have they been continuously active in any

[102] East Office Competition Analysis: confidential exhibit CJ-13 (blue vol. 4), tab 158 at 115094.

local market. With respect to the actual success of the newspaper consultants, Ms. McIlroy testified that "they were never successful in doing any damage really of any kind, at least that we monitored. I never noticed any significant damage."[103] Mr. Giddings also testified that he could not quantify their impact.[104] This is telling evidence regarding Tele-Direct's response to the alleged "competition". The success of newspaper consultants could be easily tracked. They visit advertisers individually and try to convince them to adopt a specific advertising plan. In these cases it is perfectly clear to the Tele-Direct sales representatives why the customer is making changes in his or her program. No data was gathered by Tele-Direct on the impact of newspaper consultants, which would have been expected had Tele-Direct considered the effort worthwhile. It apparently did not.

Community Newspapers

The respondents called one witness who represented community newspapers. Ginette Allard-Villeneuve of Quebecor testified that, in her opinion, community newspapers and Yellow Pages compete for the advertising budget and that the advertisements placed in each are "somewhat interchangeable". Since Ms. Allard-Villeneuve appeared to have very little familiarity with or knowledge about the Yellow Pages, it is evident that she is referring to a very attenuated form of "competition" between the two. The respondents do not, in fact, seem to be claiming anything more than that.

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[103] Transcript at 20:3827 (16 October 1995).

[104] Transcript at 39:8077-78 (15 November 1995).

(iii) Conclusion

The evidence on inter-industry views and conduct indicates that there was some limited competition between Yellow Pages and other media, principally newspapers. When the form of this competition and Tele-Direct's response to it are contrasted with the kind of head-to-head competition that occurred in Sault Ste. Marie and Niagara Falls, where there was entry of competing broadly-scoped telephone directories, there are pronounced differences in the intensity of Tele-Direct response.[105] The same difference in intensity is found in Tele-Direct's failure to track its successes and failures relative to other media and its assiduous efforts to track the sales volumes of independent publishers that it had identified as competitors. Tele-Direct did collect anticipated prices of other media in setting its prices. However, these were broad estimates and the prices for electronic media, for which there is virtually no evidence of direct competition with Yellow Pages, are included. On the other hand, media which are closer (as opposed to "close") substitutes such as community newspapers and flyers are excluded. It is difficult to see the predicted price changes of other media as an important ingredient in Tele-Direct's pricing. In short, the evidence of inter-media competition supports the Director's position that Yellow Pages and other media are not close substitutes.

[105] As already indicated, Tele-Direct responded with zero price increases, advertiser incentive programs, promotional campaigns and improvements to its own directories.

(d) Price Relationships and Relative Price Levels

There is little evidence that can properly be considered under this heading. Telephone directories and other media do not have a common standard of measurement that would allow valid price comparisons. While price comparisons were prepared for the use of Tele-Direct sales representatives, they were designed to show that Yellow Pages advertising was virtually non-comparable to other media (primarily newspapers). In any event, no common standard of measurement was used.

The respondents refer to two documents which purport to track a weighted average of annual price increases of other media and those of Tele-Direct over approximately a decade, along with the overall rate of inflation.[106] There is no rigorous analysis either in the internal documents of Tele-Direct or by the experts that would allow any conclusion to be drawn from these documents alone. Given that there are common economic forces driving prices even in very disparate industries, one would expect to see some correlation in overall price movement. An attenuated correlation in price movement does not indicate close substitutes. Even a high correlation between two sets of prices is only a *necessary* condition for the two products to be considered to be in the same market. But, it is not a *sufficient* condition to prove they are in the same market because other factors than substitutability may be responsible for the correlation.

[106] Pricing Policy - CPI & Media Price Evolution (1984-1994): confidential exhibit CR-158 at 111314; Tele-Direct Price Up vs. Canada Inflation Rate and Other Media: confidential exhibit CJ-29 (black vol. 8), tab 48 at 129708.

(e) Switching Costs

There is no dispute that the costs of switching from one medium to another are relatively low.

**(5) Conclusions Regarding Substitutability**

Each of the indicia points in the same direction. We have little difficulty in concluding that telephone directory advertising is a distinct advertising medium without close substitutes. Directory advertising is a directional medium with a function distinct from that of creative media. Within the group of media considered to be directional, a review of the evidence regarding physical and technical characteristics, advertiser perceptions and behaviour, inter-industry competition and price relationships leads us to conclude that telephone directory advertising is a relevant product market.

## B. GEOGRAPHIC MARKET

There is no dispute between the parties that the geographic market is local in nature, corresponding roughly to the scope of each of Tele-Direct's directories.

## VII. CONTROL: MARKET POWER

The exercise of defining a relevant market is only a step towards answering the critical question of whether Tele-Direct has "control" or market power in that market. As the Tribunal

has said on previous occasions, market power is generally considered to mean an ability to set prices above competitive levels and to maintain them at that level for a significant period of time without erosion by new entry or expansion of existing firms. In those cases, the Tribunal also recognized that where the available evidence does not allow the definition of market power to be applied directly, it is necessary to look to indicators of market power, such as market share and barriers to entry.[107]

The Tribunal has never ruled out the possibility, however, that direct indicators of market power might be available as evidence in an appropriate case. Direct indicators of market power relate to the performance of the firm or firms in question or to their behaviour. The broad question that is posed is whether the observed performance results (e.g., profits) or observed patterns of conduct (e.g., pricing policy) are more likely to be associated with a firm or firms that are competitive or with those that have market power. While there are difficulties in applying direct indicators of market power, if the evidence is available this avenue should not be excluded. In this case, the parties addressed both the indirect or structural approach to market power (market share and barriers to entry) and "other evidence" of market power of a more direct nature. The Tribunal will likewise address both avenues in that order.

[107] *NutraSweet*, *supra* note 4; *Laidlaw*, *supra* note 33; *D & B*, *supra* note 31.

## A. INDIRECT APPROACH: MARKET STRUCTURE

Having determined that telephone directory advertising in local areas constitute relevant markets, it remains to determine Tele-Direct's market share and the conditions of entry into those markets. A large market share can support an initial determination that a firm likely has market power, absent other extenuating circumstances, in general, ease of entry.[108]

We will deal with the question of market power in the supply of telephone directory advertising, which includes both publishing and advertising services. The issues relating to the possible "subdivision" of the market into two (or perhaps more) component parts will be canvassed later in these reasons.

### (1) Market Share

Based on Tele-Direct's November 1995 revenue estimates for independent publishers operating in its markets and the data on the record regarding its own published revenues for Ontario and Quebec for 1994, Tele-Direct (Publications) Inc. has approximately 96 percent share of telephone directory revenues in Ontario and Quebec.[109] It is instructive to note that, in 1992, a

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[108] *Laidlaw*, *ibid.* at 325; *D & B*, *ibid.* at 254-55.

[109] Overview of Other Publishers in Tele-Direct Markets: confidential exhibit CR-170; Tele-Direct (Publications) Inc. - Profitability Study for 1994: confidential exhibit CR-185. Tele-Direct's 1994 published revenues were the most recent available at the time of the hearing. Exhibit CR-170 was put forward by the respondents as their most up-to-date information on independents' revenues and so we will refer to it to the exclusion of the various other numbers and documents brought up during Mr. Renwicke's testimony. Exhibit CR-170 provides two different bottom line totals for number of independent directories and revenue. The difference is accounted for by cessation of publication by one publisher with ten directories and revenues of $1.5 million. The totals that have been used are those that include that publisher and its revenues.

Tele-Direct document estimated the total *potential* sales of independent directories in Ontario and Quebec at $32 million.[110] That would indicate an upper limit on the potential growth of the independents of well under 10 percent of Tele-Direct revenues. The same year, Tele-Direct estimated the *actual* sales of independents at less than one-third of the "potential" amount set out. The November 1995 estimates place the total revenues of the independents at slightly over one-half of what was described as their potential business in 1992. Even in Tele-Direct's worst case scenario regarding growth of independents, it would still be left with a market share of 90 percent.

Although there was no significant disagreement between the parties that the geographic markets are local in nature, largely corresponding to the scope of the relevant Tele-Direct directory, Tele-Direct's information on other publishers was presented for sales throughout the territory of Tele-Direct (Publications) Inc., namely Ontario and Quebec. No local market information was placed on the record except for the revenues of White and DSP in the Niagara and Sault Ste. Marie areas. White publishes a directory in each of Niagara Falls, St. Catharines and Fort Erie, as does Tele-Direct. DSP publishes one directory covering the area bounded by Sault Ste. Marie, Elliot Lake and Wawa in Canada. Tele-Direct publishes three separate directories for that area. On the basis that in each of those two local markets the large independent and Tele-Direct are the only significant players, in the Niagara region based on

[110] Telephone Directory Competition in Ontario/Quebec: confidential exhibit CJ-13 (blue vol. 4), tab 164; testimony of D. Renwicke: transcript at 46:9679-80 (27 November 1995). This figure was calculated based on a research study conducted in the United States which determined that independents overall had 5.9 percent of telco directory revenues. The 1993 Simba/Communications Trends study places independents at under 7 percent of total national revenues: confidential exhibit CJ-14 (blue vol. 5), tab 174.

1994 revenues, Tele-Direct has a market share of about 85 percent, while in the Sault Ste. Marie region its market share is about 80 percent.[111]

Thus, even in the two markets in which Tele-Direct faces the most significant competition, its market share is still over 80 percent. In the absence of further detailed information on local market shares, which apparently even Tele-Direct does not compile, this fact, allied with Tele-Direct's overwhelming share of sales over its territory as a whole, leads us to conclude that Tele-Direct dominates telephone directory advertising in markets in Ontario and Quebec. *Prima facie*, we are of the view that Tele-Direct has market power based on its large share of the relevant market, absent compelling evidence of easy entry into the supply of telephone directory advertising.

### (2) Barriers to Entry

In the absence of barriers to entry, even a single seller cannot exercise market power. Any attempt by the incumbent to price above the competitive level will attract immediate entry by competing sellers. We have concluded that Tele-Direct has a large share of the relevant

[111] According to the respondents' map of other publishers (exhibit R-159), only DSP and Tele-Direct are in Sault Ste. Marie, Elliot Lake and Wawa; only White and Tele-Direct are in St. Catharines and Niagara Falls. There are the Locator and Easy to Read directories in Fort Erie but there is no local revenue information on the record. It cannot be very high based on averages taken from Overview of Other Publishers in Tele-Direct Markets (confidential exhibit CR-170). Niagara calculation: Tele-Direct 1994 published revenues for Niagara Falls, St. Catharines and Fort Erie taken from Tele-Direct's 1994 Corporate Post Canvass Analysis Report (confidential exhibit CJ-28 (black vol. 7), tab 42 at 128980); White's 1994 revenue was stated by Richard Lewis to be 17 percent of Tele-Direct's revenue (transcript at 22:4363-64 (18 October 1995)). Sault Ste. Marie calculation: Tele-Direct 1994 published revenues for the Sault Ste. Marie, Elliot Lake and Wawa taken from Tele-Direct's 1994 Corporate Post Canvass Analysis Report (confidential exhibit CJ-28 (black vol. 7), tab 42 at 128983); DSP 1994 (year 2) revenues taken from DSP - Sault Ste. Marie Directory - Gross Revenue from 1993 to 1995 (confidential exhibit CA-109).

market. Proof of easy entry would overcome the initial determination that Tele-Direct has market power in the supply of telephone directory advertising.

The parties have organized their arguments regarding barriers to entry under three headings, (a) observed entry and exit, (b) sunk costs and (c) incumbent advantages. We will use the same headings.

(a) Observed Entry and Exit

Observed entry into a market can provide some indication of the existence or non-existence and the nature of any barriers to entry. There is no dispute that entry into publishing a "niche" directory appears to be relatively easy. The Director has admitted as much, based on the large number of niche directories and the high level of observed entry and exit.

The Director argues that the smaller directories have captured only a "minuscule" portion of the market and that fact, combined with Tele-Direct's lack of competitive reaction to their presence, confirms that they are of little importance in constraining Tele-Direct's market power. Further, the experience of White and DSP confirms the existence of significant barriers to entry by a broadly-scoped directory.

The respondents submit that entry need not be on a large scale and that many independent publishers have entered on a small scale and then grown slowly, thus avoiding drawing a

response from Tele-Direct. Although not directly stated, the implication is that the publishers that chose this strategy have become a competitive force in the market. They also point to White and DSP as proof that broadly-scoped directories have successfully entered, remain in the market and are even profitable.

(i) Niche/Smaller Directories

Relative ease of entry by niche directories is not particularly relevant to an assessment of Tele-Direct's market power as it is clear from the evidence that the presence of these directories has had and can have little competitive impact on Tele-Direct. There is no evidence of any response by Tele-Direct to the presence or entry of a niche directory. There is certainly no evidence that they currently limit Tele-Direct's pricing or encourage better service by their presence.

With the exception of directories published by White and DSP, virtually all of the independent directories cover smaller geographic areas than the directories produced by Tele-Direct. The Director is correct that these smaller directories account for only a small portion of the overall market (less than three percent by revenue). Further, level of activity of each of the smaller independent directories indicates why individually they are not a serious threat to Tele-Direct. If the directories of DSP and White are excluded, there are 279 other independent directories with estimated average annual sales of just over $51,000 each. Of these, the 30 Locator directories had by far the largest estimated average annual sales, of the order of

$200,000 per directory. Mr. Renwicke thought that the largest Locator directory "could" be close to $1 million in revenue, which would make the remaining directories even smaller on average. The remaining 249 directories had estimated average annual sales of approximately $33,000 each. In contrast, in 1995, the broadly-scoped DSP directory had estimated annual revenues of over $1 million while each of White's three broadly-scoped directories averaged over $500,000 in revenues.

The respondents spent some time with their witness, Mr. Renwicke, reviewing examples of directories of three independent publishers in support of their position that, instead of going "head-to-head" with Tele-Direct, an independent could enter small and gradually expand and still be a competitive force in local markets. The respondents referred specifically to the Easy to Read directory, the Locator directories and the Other Book. There are Easy to Read directories in about a dozen, mainly small, Ontario communities. Locator publishes some 30 directories in various small to medium-sized Ontario towns. The Other Book published ten directories, all in the Ottawa area, but is not published anymore.[112]

The argument focuses on the Easy to Read directory in Stratford, Ontario. It is described in the argument as an "impressive" directory. The fact remains, however, that it is of negligible size. The total revenues of all the Easy to Read directories are not even stated separately on the Overview of Other Publishers in Tele-Direct Markets. Presumably they are included in the group

[112] Overview of Other Publishers in Tele-Direct Markets: confidential exhibit CR-170.

of "Other Publishers in Ontario (geographic)" which have average total annual sales of only about $31,000. Tele-Direct's 1994 revenues in Stratford were over 40 times that amount.[113]

Mr. Renwicke pointed out and made favourable comments about the features of the Locator directory entered in evidence, which included postal codes, audiotext[114] and community pages. He also described the Other Book, which had postal codes, amortization tables and a babysitter's guide as some of its features, as a "good-looking book".

Yet, despite the apparent quality of these directories, some of which contain features not offered by Tele-Direct in its directories, the respondents did not refer us to any evidence of Tele-Direct reacting to their presence in a way that would indicate that they were actually a competitive concern, in the sense of providing some discipline on Tele-Direct's quality and pricing. It is indisputable that Tele-Direct is aware of the presence of these independents and to some extent monitors their progress. That is not, in our view, evidence that these directories are a competitive force in the market. There is no indication on the record before us of any positive reaction of the type that occurred when DSP and White entered. Other than the existence of the competitive database and Mr. Renwicke's opinions, the respondents referred only to a 1993 presentation by Mr. Renwicke to the Tele-Direct board which provided information on independents and named White, DSP and Locator.

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[113] Tele-Direct's 1994 Corporate Post Canvass Analysis Report: confidential exhibit CJ-28 (black vol. 7), tab 42 at 128982.

[114] Phone numbers that people could call to get anything from up-to-date news, weather and sports, to medical information and their daily horoscope.

Moreover, even if there was evidence of some competitive response by Tele-Direct to niche directories this by itself would hardly be sufficient to conclude that Tele-Direct did not have market power given its overwhelming market share. The smaller or niche directories are, by their very nature, limited in scope and influence. Thus, although entry on this scale is easy, up to a point (since each new entrant must find a new "niche" and there is a limited number), entry by smaller directories does not limit Tele-Direct's market power.

(ii) Broadly-Scoped Independent Directories

The conditions of entry by a broadly-scoped independent directory covering an area similar to the corresponding Tele-Direct directory, which will compete head-to-head with Tele-Direct, are highly relevant to the question of market power. Tele-Direct's responses to the entry of broadly-scoped directories in the Niagara and Sault Ste. Marie areas indicate that only such head-to-head competition has the potential to produce the benefits to consumers that one looks to competition for, namely lower prices and better products and services.

Can entry by publishers of broadly-scoped directories be considered sufficiently easy so that Tele-Direct is unable to take advantage of its large market share? Additionally, assuming that entry of a single competing publisher were to occur, would this assure that Tele-Direct would no longer have market power because of either the intensity of competition or easy entry conditions for additional publishers? The respondents urge us to conclude that because White and DSP managed to enter in particular markets and have remained in business, entry barriers are

low enough that Tele-Direct has no market power. We decline to place so much emphasis on two isolated instances of entry in answering these questions. To answer both questions properly, we must review the arguments on entry conditions for broadly-scoped independent directories in some detail.

(b) Sunk Costs

The Director argues that sunk costs are a barrier to entry as they are perceived by potential entrants as unrecoverable if entry is unsuccessful. The respondents submit that, based on the Tribunal's decision in *Southam*, sunk costs alone are not enough. In *Southam*, the Tribunal held that neither sunk costs nor economies of scale were themselves sufficient to create an entry barrier but that together they were.[115] The respondents contend that the other source of a barrier to entry identified by the Director in this case, namely incumbent advantages, is not like economies of scale and does not operate with whatever sunk costs are present to create entry barriers in the sense required by *Southam*.

We agree that *Southam* held that sunk costs or economies of scale individually are not sufficient. That decision, however, should not be taken to mean that the combination of sunk costs and economies of scale is the only way in which sunk costs can form part of a barrier to entry. What is important is whether the market in question is one in which the potential entrant faces the risk that the post-entry conditions will be less favourable than pre-entry conditions

[115] *Director of Investigation and Research v. Southam Inc.* (1992), 43 C.P.R. (3d) 161 at 281-82, [1992] C.C.T.D. No. 7 (QL).

because of the likely response of the incumbent. Thus, in *Southam*, the presence of sunk costs and economies of scale meant that there was a credible threat that the incumbent would maintain output in the face of new entry even if doing so drove prices down towards cost.[116] This acted as a deterrent to entry.

In this case, therefore, it will be necessary to ask, first, whether there are in fact significant sunk costs associated with directory publishing. Then, we must determine whether the nature of the market is such that prospective entrants face a credible threat that the incumbent will respond in a manner that will make entry unprofitable given the existence of the sunk costs.

Sunk costs are defined as the part of the investment required for entry that cannot be recovered in the event that the attempt fails. Assets that are of value only to a specific enterprise are sunk and those that are of value to other firms are not sunk, or only partially sunk. The Director submits that entry into the directory business requires substantial sunk costs: acquiring and compiling subscriber listing information, assembling advertising into the finished directory, canvassing clients to place advertising, publishing the directory (including the cost of enhancements), training the sales force and promoting the directory. The respondents admit that there is no doubt that there are "some" sunk costs associated with publishing a directory for the first time but submit that the Director has overstated the sunk costs. They say the sunk costs are not, in fact, significant. However, the evidence of the witnesses from White and DSP, which was

[116] The same point is made in P.S. Crampton, *Mergers and the Competition Act* (Toronto: Carswell, 1990) at 435-37.

not contradicted, amply supports the premise that the activities listed must be carried out in order to produce a directory and that the costs incurred are substantial.

DSP and White both entered by publishing a "prototype" directory. With a prototype directory, the publisher offers advertising in the directory at no charge. The prototype is distributed to consumers and the publisher then has a history of usage to give it credibility in selling advertising in its next directory. The respondents argue that the sunk costs are substantially increased when an independent publisher chooses to enter by publishing a prototype because there are no advertising revenues to offset the costs. They say that the extent of the sunk costs is within the control of the entrant and a different entry strategy would generate lower sunk costs.

Establishing usage and selling advertising are inextricably linked for a directory publisher. As stated in the 1993 Simba/Communications Trends study, achieving credibility among local advertisers is one of the biggest hurdles that a publisher must overcome.[117] It was precisely in order to overcome the credibility concerns of advertisers that both DSP and White chose initially to publish a prototype directory. Entering with a paid directory does not eliminate the credibility problem and achieving credibility, by whatever means chosen, involves costs. We have no basis on which to conclude, as urged by the respondents, that it would have been less costly overall for White and DSP to enter first with a paid directory.

[117] "Lessons of Yellow Pages Competition": confidential exhibit CJ-14 (blue vol. 5), tab 174 at 115924.

The respondents also submit that if the entrant chose to enter with an initial paid directory, it could avoid the cost of publishing entirely if a sufficient volume of business was not confirmed during the canvass and it then abandoned its plans to enter. While we agree that the only way to avoid the costs of producing a directory is to abandon the project, we do not agree that this is a strategy that could be used with impunity by would-be entrants. The mere possibility that such a strategy could be employed exacerbates the credibility problems facing a would-be entrant, and in the event it were employed, would detrimentally affect any prospects for the same firm or other firms to attempt entry in another market.

Recognizing that there are sunk costs involved in entry into directory publishing, do those sunk costs amount to a significant barrier to entry? We are of the opinion that those sunk costs do create a barrier to entry when a broadly-scoped directory is introduced because the entrant publisher is going "head-to-head" with the telco's directory. In those circumstances, the incumbent will respond and post-entry conditions will be less favourable for a would-be entrant than pre-entry conditions. As the Simba/Communications Trends study noted, under the heading "Disadvantages of Large, Head-to-Head Directories", "[u]tilities are willing to `pull out the big guns' to protect large bread-and-butter markets."[118] It is not disputed that when White and DSP entered into Tele-Direct's markets with broadly-scoped directories, Tele-Direct responded with price freezes, incentive programs, enhancements and promotional campaigns. Thus, the combination of sunk costs and likely response by the incumbent create a significant entry barrier

[118] *Ibid*. at 115982.

and entry would not necessarily occur even though Tele-Direct was pricing above competitive levels.

(c) Incumbent Advantages

(i) Subscriber Listing Information

Would-be entrants into the directory business do not have access to subscriber listing information from the telcos on the same terms as Tele-Direct. Access to subscriber listing information by independent publishers has been the subject of some controversy and has been dealt with on several occasions by the CRTC. In 1992, the CRTC ordered greater access to the subscriber listing information in the hands of Bell Canada. Because of the price of the information, and other conditions imposed on its distribution, this decision did not result in commercially viable access to the information. Both White and DSP witnesses testified that they were forced to wait until the Tele-Direct directory was published and then re-key, verify and update the listings to use in their own directories, a costly and time-consuming process.

In March 1995, the CRTC revisited the matter at the request of White and liberalized the availability of listing information, including reducing the price that could be charged by Bell Canada. There was no indication from the White or DSP witnesses who appeared before us of any problem with the 1995 resolution by the CRTC of the price and availability issues. Richard

Lewis, the Executive Vice-president and Chief Executive Officer of White, stated, in fact, that White was very satisfied with that aspect of the decision.

The CRTC added an important proviso, however, when it ruled that consumers who wanted to opt out of having their listings sold to a "third party" could do so. From the point of view of the independent directory publishers, this caused a problem because the CRTC did not distinguish between types of "third parties". Thus, the independent publishers were grouped in with, for example, telemarketers, to whom many consumers would not want their information to be released. The 1995 decision was stayed pending an appeal to Cabinet which, in late June 1996, overturned that portion of the CRTC ruling.

In light of the Cabinet decision, which was rendered after the close of the hearing in this matter, the Tribunal invited further submissions from the parties regarding the impact of that decision on their respective positions. The respondents submit that the Cabinet decision has removed the only barrier to entry into publishing. The respondents point to Mr. Lewis's statement that after a favourable decision from Cabinet, White will proceed with additional directories in the Toronto/Niagara area. The Director agrees that the Cabinet decision will likely reduce *one of* the barriers to entry into directory publishing but maintains that there are still other, significant barriers into the market. The Director refers to the United States situation where, despite access to subscriber listing information for several years, independents have less than seven percent of total industry revenues.

The only evidence before us is that the issues of importance to the independents, availability, price and opting out, have been dealt with satisfactorily to them. We conclude that, at present, subscriber listing information cannot be considered to be a significant barrier to entry.

(ii) Reputation/Affiliation with Telco

An entrant into directory publishing has the related tasks of convincing users of the value of its directory and of convincing advertisers that it is a worthwhile vehicle in which to advertise. The directory will only be widely used if it has a critical mass of advertising in it. If the directory is not widely used, few businesses will advertise in it and, in the absence of advertising by its competitors in a new directory, there is no pressure on a potential customer to advertise itself in the new directory. This is not a problem that Tele-Direct ever had to face because of its (or Bell Canada's) longstanding presence in the market as the only available directory. In addition, Tele-Direct benefits from its affiliation with a large and established telco which lends a certain authenticity.

To overcome the preference of advertisers for the incumbent directory requires enhanced expenditures on advertising and promotion and lower prices by the entrant. There is numerical evidence on the disadvantage of entrants *vis-à-vis* the incumbent only with respect to lower prices. The Simba/Communications Trends study of the directory industry in the United States revealed that in the top 10 competitive markets, the average telco (utility) rate for a double-half column was 53 percent higher than for independent publishers competing head-to-head in those

markets. The average cost of advertising, per thousand of circulation, for the utility directories was 46 percent higher than for the independents.[119]

Mr. Lewis of White stated that his company usually plans on pricing about 40 percent lower than the telco directory in a market they are considering entering. Gary Campbell, the General Manager of DSP, testified that on average their prices were 30 percent less than those of Tele-Direct. A comparison of published prices between Tele-Direct and the initial White and DSP directories confirms these general statements although price differences vary considerably between types of advertisements.[120]

In both markets, the entrants had invested in introducing new features (enhancements) into their directories that Tele-Direct had not hitherto introduced. For example, White's Niagara region directories included the following features not previously offered by Tele-Direct: free smaller size copy in addition to the regular size directory (a "mini"), audiotext, extensive community pages which provide information of regional or local interest,[121] larger size print, three column format instead of four, postal codes included in the white pages, additional colour

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[119] *Ibid.* at 115984.

[120] White's prices in 1994 were generally about 25 percent less than Tele-Direct's for in-column, about 40 percent less for display and about 55 less for red display: exhibit A-103. White first published in Niagara in 1993 with a prototype directory in which advertisers could advertise free of charge. The 1994 prices are for its first "revenue" directory in which advertisers paid for their advertising. Likewise, in Sault Ste. Marie, the DSP rates reflected substantial discounts off Tele-Direct's, with greater discounts for display and coloured display than for other types of advertisements: YPPA Rates and Data Information for the period 1992-95: exhibit A-111.

[121] For example, area sports team schedules, seating diagrams for theatres and arenas, a listing of local golf courses, highway access information, historical sites, schedule of events, maps, senior citizens' services listings, human services' listings, "kid's pages", bus routes, customs and goods and services tax information.

in the advertisements. DSP also included many of the same enhancements in its directories plus other, unique, features.[122] Thus, any advantage enjoyed by Tele-Direct clearly stemmed from its incumbency and its affiliation with Bell Canada and not from the superiority of its product.

Based on White's experience in the United States, it appears that the rate differential between the independent and the telco does narrow over time but still remains significant. Mr. Lewis testified that in Buffalo, New York, where White has published for 27 years, its prices are still 25 to 33 percent less than those of the telco directory.

As part of the survey resulting in the January 1993 Elliott report, customers of Tele-Direct were asked if they would advertise in a competing directory if it offered 15 percent lower prices. Only 36 percent said that they would advertise in the new directory and a mere eight percent that they would discontinue advertising in Tele-Direct's directory.[123] As indicated by the United States data and the experience of White and DSP, to attract a significant number of advertisers the entrant would likely have to offer discounts closer to 50 percent than to 15 percent.

Based on both the particular experiences of White and DSP in entering Tele-Direct's markets and the more general evidence relating to the United States experience, it is our

[122] For example, it is a "flip" directory with the Canadian cities on one side and the neighbouring American cities on the other. The book also includes a "reverse directory" -- listings by phone number first.

[123] Confidential exhibit CJ-14 (blue vol. 5), tab 73 at 115416-18.

conclusion that an incumbent directory publisher's "reputation" or affiliation with a telco constitutes a significant barrier to entry into publishing a competing broadly-scoped directory. An important part of this barrier is the advantage that the incumbent directory has because it already contains the advertisements of a business's competitors. A new entrant must overcome that fact in seeking to persuade the business to advertise in its new directory. New entrants must offer substantial price discounts, even when they are publishing a product with features not included in the incumbent's directory.

(iii) "Yellow Pages" Trade-mark

The words "Yellow Pages" and "Pages Jaunes" and the "walking fingers" logo are both registered trade-marks of Tele-Direct in Canada. Tele-Direct only licenses those marks to publishers which are affiliated with other telcos. The same words and the logo are in the public domain in the United States.

As attested to by Mr. Lewis, it probably would have been easier for White (and DSP or any other entrant) to explain the nature of the product it was seeking to introduce in the Canadian market if it had been permitted to use the marks, which have a high level of public recognition, as it can and does in the United States. In fact, Mr. Lewis would have paid a "substantial" fee to use the marks in Canada. The trade-mark situation appears to confer some marketing advantage on Tele-Direct and reinforces the other barriers already discussed.

(iv) Strategic Behaviour

Under this heading, the Director first refers to the anti-competitive acts being alleged in a later portion of the argument regarding other publishers. Paragraph 120 states that

> . . . It was Tele-Direct's objective to "make competition expensive" and "raising the bar" to entry and it succeeded.

The only way in which we could determine if the strategic behaviour referred to constitutes an entry barrier would be to assess the effects of that behaviour on the market. The Director did not deal with evidence of effects in relation to the issue of market power. The alleged anti-competitive acts regarding publishers will, of course, be dealt with in due course.

The Director also argues that the alleged anti-competitive acts in respect of services are relevant to entry conditions into publishing. It is submitted that one of Tele-Direct's objectives was to reduce the power of the specialized agencies in order to make it harder for new entrants into publishing to gain market share. If it had been proven that some Tele-Direct policy or initiative against agents did indeed have a deleterious effect on new publishing entrants, this would be relevant to our assessment of entry barriers. We are of the view, however, that the limited evidence provided on this point does not prove that there were such effects.

### (3) Conclusion

We are of the view that even with subscriber listings available to independent publishers on reasonable terms, significant entry barriers in the form of the reputation effects and sunk costs reviewed above will remain. The condition of easy entry required to overcome the presumption of market power arising from Tele-Direct's extremely large market share is not satisfied.

## B. DIRECT APPROACH: OTHER EVIDENCE OF MARKET POWER

As other evidence of market power the Director relies on the high profits earned by Tele-Direct, its lack of responsiveness to customer needs, and an allegation that it has lagged behind other media in supporting agents, in promoting the product and in using technology to process advertisements received from agents. We are of the view that there is insufficient evidence on the record, and that the question was not explored in sufficient depth, for us to draw a conclusion one way or the other regarding the allegation of lagging behind other media. The evidence regarding profitability and customer dissatisfaction, however, is extensive.

### (1) Profits

The respondents acknowledge at paragraph 41 of their response that Tele-Direct earns very large accounting profits. It is also undisputed that Tele-Direct pays 40 percent of its collected revenues directly to Bell Canada and a similar percentage to the other telcos with

which it contracts to publish a directory. This payment is said to be in return for access to subscriber lists and for services. The evidence revealed that the only service provided by the telcos is billing.

Where the respondents and their expert, Professor Willig, differ from the Director is with respect to the significance of Tele-Direct's admitted profitability as an indicator of market power. The respondents' argument first points out the well-known concerns about trying to convert accounting to economic profit. While we recognize the validity of those concerns in general, we do not consider that they apply with much force to the most compelling evidence of profitability, the payment by Tele-Direct to Bell Canada. That payment is a set percentage of collected revenues. It is not an accounting "profit" figure or a "bottom line" amount produced by the application of accounting conventions. Therefore, we are of the view that an examination of the payment to Bell Canada and its possible implications for market power is not clouded by accounting conventions at the outset. The presence of such a payment indicates that Tele-Direct has revenues of at least 40 percent over its recorded costs.

Professor Willig took the position that the profits which allow Tele-Direct to make the payment to Bell Canada reflect a return on intangible capital which is a necessary investment in the creation of the profits. In his rebuttal affidavit he stated:

> 46. . . . It is well known that there are many reasons why accounting measures of profits can deviate both randomly and systematically from being an indicator of the theoretical notion of economic profits. One reason for systematic deviation is of general significance in businesses where intangible assets are important. Here, the value of the intangible assets does not appear on the accounting books. Then, when operating margins are expressed as a percent of

> the book value of assets, the resulting percent is systematically too large, relative to economic meaning, simply because the book's list of assets misses the intangible ones. This effect is likely to be of specially great quantitative significance where trade-marks, brand-names, product or service reputation, proprietary technology, and organizational capital are important to the business.
>
> 47. Of course, service industries typically contain leading instances of businesses where intangible assets are important. For example, the business of any successful magazine is unlikely to rest on significant tangible assets, and instead to depend on intangible assets that include the name and design of the magazine, and perhaps the organizational capital embedded in the editorial and advertising sales teams. The rate of return on tangible assets earned by such a business will turn sensitively on whether the books include ownership of the business office and a fleet of trucks or autos, or whether the business leases such properties. In either event, the assets that really drive the success of the business will not be valued on the books, and so the rate of return on assets will indicate nothing about the economic profitability of the enterprise, and certainly nothing about market power.
>
> 48. It goes without saying that the directory publishing business is a prime example of the effects just discussed. For all the conventional reasons alluded to, the rate of return on assets, or other accounting measures of profits, are not reliable indicators of market power. . . .[124]

In other words, Tele-Direct is only earning the requisite return on its intangible assets to remain in business and not any kind of economic rents. Professor Willig returned in his oral testimony to the example of a magazine and its intangible assets which create a loyal readership. We have some difficulty seeing the same effect at work with a directory which has no editorial content, unlike a magazine. There may be creativity in the way the directory is assembled so it is of maximum utility to consumers but the evidence was that Tele-Direct lagged behind new entrants like White and DSP in this respect.

When asked specifically about the intangible assets or activities of Tele-Direct, Professor Willig responded:

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[124] Expert rebuttal affidavit of R. Willig (30 August 1995): exhibit R-181 at 13, paras. 46-48.

> Evidently . . . there is some value to having, and having had, the "utility" franchise in a given area. If one tries to translate that into what it means today or next year, the operative word really is "reputation", and the reputation is of significance both to advertisers and also to consumers who have to decide whether to pick the book up or not and, if so, which book to pick up. Somehow that reputation attaches to that book because of its heritage, its history, evidently, and also to its identification with the current telco.

. . .

I agree . . . that it is hard to reach out and grab that reputation. But if we think about the character of the directory business . . . the notion that, if you are an advertiser and you are being asked to pay for an ad in advance of the completion of the book and in advance of evidence about what consumers are going to do in terms of using it, then you have to reach, as an advertiser, an expectation, an anticipation of how good the book is going to be.

You have to form an image in your mind before you commit yourself to your advertising expenditure: Is everybody going to use this and will the other advertisers take ads in it? If they don't, then consumers won't use the book and, if consumers don't use the book, then my ad which I am being asked to pay for today won't have its exposure.

The key to the underlying value proposition of the advertiser is the anticipation that 18 months later or 12 months later the book is going to be out and it is going to be a really good book and people are really going to use it.

It is unusual that you can't really tell the value of what it is you are buying until it is done and many months have passed. . . .[125]

There are several difficulties with this hypothesis. First, on a factual level, there is evidence that Tele-Direct's advertisers (except the small group using agencies) do not pay for their advertising 12 to 18 months in advance. Monthly billing commences once the directory is published. Advertisers pay in instalments (interest free) after publication.

Second, Professor Willig emphasized that the key to the value of Tele-Direct's reputation asset was the anticipation that advertisers have that the directory is going to come out and will be a "good" directory that people are actually going to use. Surely all local media, which the respondents postulate are close substitutes for telephone directory advertising, face the same challenge in selling time or space to advertisers. Rather than paying Tele-Direct at a level that

[125] Transcript at 56:11663, 11667-68 (23 January 1996).

allows Tele-Direct to earn a 40 percent premium, would not advertisers simply switch to one of the other alleged close substitutes? Tele-Direct's premium would soon disappear in that scenario.

If, on the other hand, telephone directory advertising is somehow unique because of the close link between a critical mass of advertising in the directory and use of the directory by consumers, then this uniqueness argues against other media being close enough substitutes to provide competitive discipline. Tele-Direct's ability to exploit its association with the telco to earn returns well above its costs would then indicate market power in the market for telephone directory advertising. This latter scenario is more in accordance with the other evidence on the record which reveals that as between the telco directory and other *directory* publishers, the fact of association makes a significant difference. As was already discussed above, one cannot attribute the premium to Tele-Direct having a "superior product" to other telephone directory publishers in terms of the features of the directory. If it had a superior product, Tele-Direct would not concern itself with competing directories, which it does, and the only evidence before us was that the entrants like White and DSP were initially the superior product, until Tele-Direct responded to their enhancements.

Further, Professor Willig's theory of profits as a return on intangible assets cannot co-exist with the respondents' pleading that Tele-Direct's profits go to cross-subsidize Bell Canada's local telephone service as set out in their second amended response:

> 20. . . . What was initially conceived as an essential but costly feature of telephone service has become a lucrative revenue source for the telcos. . . .

> 21. In Ontario, for example, T-D Pubs pays each of the independent telcos with which it contracts 43% of the gross revenue collected from subscribers of the telco who advertise in the telephone directories. In the case of T-D Pubs, this revenue source, as well as the entire net income of T-D Pubs, are included by the CRTC in Bell Canada's revenues to reduce the cost of local service. Each residential telco subscriber in Ontario and Quebec receives a subsidy of over $2 per month as a result of the revenues captured through telephone directory advertising.

Bernard Courtois, Vice-president, Law and Regulatory Matters for Bell Canada, explained:

> . . . So, both the commission revenues from Tele-Direct [the 40 percent] and all the net income of Tele-Direct, that is equivalent to adding $284 million to the revenues of Bell Canada in 1994 for regulatory purposes. Divide that by the number of residential subscribers and it amounts to $3.38 per month on the average residence telephone bill.
>
> I should say that the average residence basic telephone bill in Bell Canada with Touchtone is about $12.75. So, if you didn't have the Tele-Direct activities going on, that bill would have to be more than $16.00. Of course, if Tele-Direct were a completely arm's length company, we would still get some of that commission revenue.
>
> . . .
>
> Q. I think you did point out that in any telco basically they always collect some of this profit through the 40 percent. I mean every telco seems to collect that so they all get subsidized in that way by publishers. Is that what you were saying?
>
> A. That's correct, and I should point out that it's a very large part. I guess the commission revenues might be two-thirds and the net income one-third of that subsidy. . . .[126]

George Anderson, who was previously with NYNEX, described a similar situation in the United States. He testified that the utility directory publisher has to "impute" a substantial portion of its income, over and above the cost for subscriber listing information which has been widely available for some time in that country, back to the telco to help defer the cost of telephone service. In his words:

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[126] Transcript at 32:6559-61 (3 November 1995).

> The [AT & T] consent decrees . . . took an unregulated business, which was Yellow Pages, and at the ninety-ninth hour put it in with the regulated segment of the business to serve as a cash cow, not my words, to serve as a funding business that would help defray, defer, hold down the rate of return and hold down the cost of telephone service.[127]

James Logan, currently President of YPPA and formerly with US West, confirmed this view.

We observe that if all Tele-Direct and other telco directory publishers were earning was a competitive return on all assets, including intangibles, the telcos would not have "profits" available to use for a completely different purpose, namely cross-subsidization of local telephone service. Unless intangibles are to be treated as a *deus ex machina* to explain away high economic profits, they must be identifiable, as must be the activities resulting in their creation. Otherwise, simply asserting "intangibles" would always preclude high profits from demonstrating market power. We cannot accept an approach leading to such a conclusion. Intangibles that can account for *apparent* high economic profit are the result of activities that are extraordinarily successful, such as those creating new products or ways of doing things better than others. In contrast to the example of successful magazines cited by Professor Willig, there is no evidence of this in the case of Tele-Direct or the other Yellow Pages publishers. Moreover, the fact that there is such widespread subsidization of telephone services by Yellow Pages publishers associated with telcos strongly suggests that the source of the subsidies is not any outstanding effort on the part of individual publishers.

[127] Transcript at 41:8556-57 (17 November 1995).

The Director also argues that the fact that new entrants view the market as potentially profitable, even given the large price discounts off Tele-Direct's prices that they must offer and the other expenses they must incur to establish their own credibility or reputation, is an objective measure of Tele-Direct's profitability. We agree that market participants are responding to economic profit rather than to accounting profit.

We conclude, therefore, that the payment to the telcos by Tele-Direct is a form of "economic rent" whose value depends on the surplus that can be earned from publishing a directory associated with a telco. The cost to the telcos of providing the subscriber listings and doing the billing is minimal. The listings are a by-product of supplying telephone service and the billing for advertising is incorporated into the subscriber's monthly telephone bill. While it is true that it would be more costly for Tele-Direct to do the billing itself, it is unlikely that it would cost, at most, more than a few percent of revenue.[128]

In the face of competition from other media the amount that Tele-Direct could afford to pay, and that the telcos could demand, would be considerably less. With sufficient competition the payments to the telcos would disappear entirely. Even if Tele-Direct earns no economic profit on its operations beyond what it pays out to Bell Canada, its price to average cost margin is extraordinarily high. While no benchmark was placed in evidence, merger guidelines, both in the United States and Canada, place products in separate markets if their existence would not

[128] All the work relating to contract verification and dealing with complaints is already done by Tele-Direct. What is performed by Bell Canada are simply the mechanical steps of bill preparation and mailing.

prevent a hypothetical monopolist, post-merger, from increasing prices by five percent. Even allowing as much as two percent for mailing costs, one is left with a margin of 38 percent. We are of the view that the evidence of economic rents provides a direct indication of Tele-Direct's market power.

**(2) Dissatisfied Customers**

The Director submits that the respondents' actions towards the advertisers, their customers, display market power. Reference is made to Tele-Direct's requirement that advertisers give up copyright in their advertisement, its restrictions on group advertising and evidence of low customer satisfaction in general. There is evidence, in the form of studies like the Elliott reports and the presence of consultants, that a significant percentage of Tele-Direct customers are less than happy with the service provided by Tele-Direct. We reviewed the evidence to this effect in the section on Market Definition when dealing with the arguments of the respondents which emphasized the low degree of customer satisfaction. As a direct indicator of market power, however, we are reluctant to rely on customer dissatisfaction because of the practical difficulties in applying such a subjective test.

**(3) Other: Pricing Policies**

In addition to the evidence of profitability advanced by the Director, the Tribunal is of the view that Tele-Direct's approach to setting prices supports the conclusion that Tele-Direct is

behaving more like a firm with a comfortable margin of market power than a firm facing close substitutes. We note Professor Willig's point that evidence of price discrimination, in isolation, would not reliably indicate market power. In combination with the other evidence it is, however, compelling. Two aspects of Tele-Direct's price-setting policy are important: the premiums charged for colour and larger size (price discrimination) and the effort to equalize price per thousand across geographic markets (circulation alignment).

(a) Price Discrimination

As we reviewed in the section on market definition, colour and increased size are more valuable to advertisers who rely more heavily on the Yellow Pages. In broad terms, these are advertisers whose business involves infrequently purchased or emergency services (e.g., plumber, exterminator, mover, auto repairs, lawyer), infrequently purchased, expensive durables where comparison shopping is likely (e.g., cars, major appliances), services used by travellers (e.g., car rental) or which encourage orders by telephone (e.g., pizza, lumber yard with telephone order business). They need to attract attention in the Yellow Pages so that a consumer is drawn to their Yellow Pages advertisement as opposed to the Yellow Pages advertisement of their competitor. In our view, Tele-Direct systematically price discriminates against advertisers who are heavily reliant on the Yellow Pages through its pricing of colour and size and its ability to do so is direct evidence of market power.

Tele-Direct charges a 50 percent premium to add red to an advertisement. This premium is unrelated to costs of production. The representative of one of the independent publishers testified that at a 50 percent premium, a publisher would be realizing a very high profit margin. In other words, the additional printing and production costs are well below the price charged.

Ms. McIlroy explained that the object of Tele-Direct's pricing of colour at a premium is to control its penetration to ensure that it will be sufficiently uncommon so that the coloured advertisements "stand out" on the page. The price is set high enough that everyone will not buy it. In the same vein, Tele-Direct introduced multi-colour in those markets where there was already a lot of red in the directories as an alternative way of allowing advertisers to "stand out". This is not the kind of pricing policy that can be pursued by a firm under competitive pressure because its competitors would simply charge a lower price to take advantage of the profit opportunity and compete away the premium.

Further, the premium for red is largely invariant across local markets. It is difficult to see how there could be such uniform pricing in the face of "competition" from other local media, which would vary from market to market. Tele-Direct's pricing of red can hardly be seen as a response to these prices but is much more consistent with a company concerned only about its own, unique environment.

Based on the evidence before us, there is similar uniformity and lack of relationship to cost in Tele-Direct's pricing of larger advertisements. A comprehensive Tele-Direct rate card was

not placed in evidence. In the 33 local markets included on the excerpt from the YPPA rates that was tendered as an exhibit, the price increases by about 90 percent for each doubling of advertisement size from a quarter column (1/16 page) to a double quarter column (1/8 page) and from a double quarter column to a double half column (1/4 page).[129] As in the case of colour, the evidence revealed that the additional costs of producing larger advertisements do not appear to justify the increase in price. Based on cost, one would expect a discount greater than ten percent for an advertisement twice as large.

The respondents do not dispute that Tele-Direct's premiums for red and for size cannot be explained by additional costs. Counsel conceded in argument that those were the facts but argued that Tele-Direct was engaging in "value pricing". He hypothesized that an advertiser buying a larger advertisement might get ten times the results that would have been obtained with a smaller advertisement and, therefore, paying almost twice as much for the larger advertisement is actually a bargain. The larger advertiser, the argument goes, is getting more value out of the medium. Value pricing is not a phenomenon readily associated with a competitive market, the hallmark of which is pricing which is ultimately cost-driven.[130] Value pricing is more likely to be associated with a regulated monopolist and is more an indication of the presence of market power than of its absence.

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[129] YPPA Rates and Data Information for the period 1992-95: exhibit A-111 at 9.

[130] Leaving aside dynamic, innovation-driven industries, to which telephone directories do not belong.

The ability of Tele-Direct to discriminate against customers who spend *more* on advertising by way of larger or coloured advertisements is of particular importance in assessing whether Tele-Direct lacks market power *because* other local media provide close substitutes for Yellow Pages, as argued by the respondents. Larger Yellow Pages advertisers have greater choice among the allegedly competitive media since, by definition, they have more dollars in Yellow Pages that they can switch to any other media. Smaller advertisers are less likely to be able to afford the full range of other media. While it may be true, as Professor Willig pointed out, that certain vehicles, such as community newspapers or church calendars might be more acceptable to smaller advertisers, there is no denying that, from a budget point of view, larger advertisers have more options. Thus, larger Yellow Pages advertisers should have the more elastic demand if there are, as the respondents argue, close substitutes to Yellow Pages. The fact that Tele-Direct's margin over cost increases with enhanced expenditures on colour and size indicates the opposite. The anomaly of Tele-Direct being able to price discriminate against advertisers who at first blush have the greatest range of options underscores its market power.

The two broadly-scoped independent publishers, White and DSP, also charge some premiums for colour or size, although neither charges a premium as high or as consistent across the board as Tele-Direct's.[131] Certainly, no one has suggested that either White or DSP has market power. Yet, Mr. Campbell provided the same explanation of DSP's pricing of red, for

[131] In Sault Ste. Marie, DSP charges a premium for red ranging from 36 to 50 percent for full page, half page, double half column (1/4 page), double quarter column (1/8 page) and quarter column (1/16 page). For each doubling in size, however, DSP price increases are 56 percent to 76 percent, considerably lower than Tele-Direct's size premium. In Niagara Falls, White charges only between eight and nine percent premium for red, with one exception, a quarter column advertisement, which reflects a 28 percent increase. For each doubling in size, White charges from 74 to 91 percent more.

example, as Ms. McIlroy did -- that it is priced above incremental costs to ensure its scarcity. Does the independents' use of some premiums for colour or size imply that Tele-Direct has no market power? We think not. The presence of two publishers in Sault Ste. Marie and Niagara certainly does not indicate a "competitive" market.

The evidence regarding the independent publishers does not detract from our view that Tele-Direct's ability to price discriminate is evidence of market power. Although the independents can, to a much more limited extent, implement some of the same pricing policies, this is not surprising. Tele-Direct prices in each local market create an "umbrella" beneath which the new entrants can shelter which underlines that Tele-Direct has market power sufficient to create the umbrella.

(b) Circulation Alignment

Since 1987 (or for 1989 prices onwards), Tele-Direct has actively pursued a policy of "circulation alignment" in calculating its annual price increases. The only exception was in 1992 (for 1994 prices) when poor economic conditions resulted in a zero price increase across the board. The objective of this policy was to bring about consistency in cost per thousand or CPM between directories. Some directories had experienced rapid growth in circulation but since they were subject to the same general price increases as other directories which had not grown as much in circulation, their CPM or price relative to circulation was substantially lower. Ms. McIlroy referred to the Mississauga directory as one in which the rates were seen as too low

given the circulation of the directory. A program was therefore instituted to bring the CPMs in all markets into line over a number of years by imposing additional price increases (but not price decreases) in particular local markets.

In applying the alignment policy absolutely no allowance was made, or is made, for differentials in the intensity of competition from other media in each local market. The entire process can be described as a very bureaucratic one and certainly not what one would expect if Tele-Direct was forced to respond to varying degrees of competitive pressure in the numerous (approximately 100) local markets where it operates.

Professor Willig conceded that this "bureaucratic" approach to pricing and apparent indifference to local market conditions was puzzling but theorized that it could result from Tele-Direct's connection to a utility company. Utilities come from a culture of regulation where pricing flexibility is frowned upon. Further, if individual sales people were given latitude to discount to individual customers, the result for a large organization like Tele-Direct would be chaos.

Pricing individually by customer goes well beyond responding to the supposedly competitive media in a local market and thus does not directly address the point. The regulatory "culture" of utilities, is, of course, undeniable. What is more pertinent is how Tele-Direct could maintain such a culture in the form of its approach to pricing in the presence of the alleged close substitutes. If its bureaucratic price-setting led Tele-Direct to set a price too high in a particular

market, surely it would see a dramatic revenue loss to other media and would quickly change its approach. There is no evidence that this has happened.

#### (4) Conclusion

The other direct evidence of market power advanced by the Director along with Tele-Direct's pricing policies affirm our previous conclusion based on the indirect approach that Tele-Direct has market power in telephone directory advertising.

## VIII. TIED SELLING

### A. INTRODUCTION

Tying or "tied selling" is dealt with in section 77 of the *Competition Act*. The relevant parts of section 77 are:

> (1) . . . "tied selling" means
> (*a*) any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to
> (i) acquire any other product from the supplier or the supplier's nominee, or
> (ii) refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and
> (*b*) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (*a*)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs.

> (2) Where, on application by the Director, the Tribunal finds that . . . tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to
> (*a*) impede entry into or expansion of a firm in the market,
> (*b*) impede introduction of a product into or expansion of sales of a product in the market, or
> (*c*) have any other exclusionary effect in the market,
> with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in . . . tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

A tie is the supply of one product *on the condition that* the buyer takes a second product as well *or* on terms that *induce* the buyer to take the second product as well. Such an arrangement may be prohibited by the Tribunal under section 77 if it meets all the other requirements of that section, namely that the tying is a practice engaged in by a major supplier and results in a substantial lessening of competition. The requirement that Tele-Direct must be a major supplier is satisfied by our earlier finding of market power in the telephone directory advertising market. The other requirements of the section are still to be resolved.

The Director alleges that the respondents have engaged in a practice of requiring or inducing customers for advertising space in telephone directories (the tying product) to acquire another product, telephone directory advertising services (the tied product), from the respondents. The Director further alleges that the practice of tied selling has impeded entry into or expansion of firms in the market resulting in a substantial lessening of competition.

The advertising space or publishing business is described at paragraph 9 of the application as including:

> . . . all matters relevant to the provision of advertising space in a directory, including access to a subscriber data base (including information relating to new subscribers) upon which the books are based, compilation, physical creation of hard copy, printing, promotion and distribution.

The advertising services business refers to:

> . . . the provision of services relating to the sale of advertising space in a telephone directory, including establishing new customers, calling on customers, and providing advice, information and other services relating to the design, cost, content, location, creation and placing of the advertisements.

The Director further states that the purchaser of an advertisement in a telephone directory obtains two products related to the two businesses: advertising space and advertising services.

## B. FACTS

Before we proceed further, it is necessary to review some facts relevant to the supply of advertising services to Yellow Pages advertisers.

### (1) Tele-Direct's Internal Sales Force

Tele-Direct sells telephone directory advertising through its internal sales force. This group is sub-divided into those representatives who deal with customers over the telephone ("tel-sell") and those who attend at the customers' places of business ("premise"), together called the general sales force or "GSF". The premise sales representatives travel from place to place during the year to canvass advertisers for a particular area or directory within a confined time frame. In

1994, premise sales accounted for about 60 percent of the revenues generated by Tele-Direct's internal sales force, while tel-sell generated less than 30 percent of revenues.

A further category of sales representatives, sometimes included as part of the GSF and sometimes considered apart from it by Tele-Direct, is that which services so-called "national accounts". These representatives are called national account managers ("NAMs") or national account representatives ("NARs"). This group accounts for the remaining approximately 10 percent of revenues.

There are no hard and fast rules governing which accounts are handled by the NAM/NAR group as opposed to the remainder of the GSF. Some large accounts are serviced by the GSF. The Tele-Direct witnesses indicated that, in general, accounts that require a great deal of servicing, for example, multiple visits over a year, are likely to be assigned to the NAM/NAR unit. Because of the canvass-based sales approach used by the GSF, often the GSF is involved in a canvass in another area and is unavailable to service a particular account repeatedly. The NAMs and NARs are located in certain centres all year long and can service these accounts more easily. A further factor is the account's complexity, including number of headings, the number of markets, and the amount of change required each year. If the account requires a lot of attention to ensure accuracy (for example, that no directories are missed) and perhaps clerical-type support, it will end up in the national group. There was also evidence that accounts which had little future growth potential or which had simply proven to be problem accounts in the past are handled by the NAM/NAR unit.

Tele-Direct (Publications) Inc. is divided into two geographic regions, eastern and western. The eastern region is comprised of the province of Quebec, with parts of Ontario such as Ottawa, Kingston, Sault Ste. Marie and Sudbury. The western region covers the remainder of Ontario. The structure and organization of the company in both regions is broadly similar, although the eastern region is smaller both in terms of revenue serviced and number of sales representatives.

The facts regarding (a) remuneration, (b) evaluation and (c) account assignment and continuity for Tele-Direct's internal sales force are relevant because one of the Director's arguments regarding Tele-Direct's motivation to engage in the alleged tied selling is that its internal sales force can be more effectively motivated to sell more Yellow Pages advertising than agents.

(a) Remuneration

The remuneration of the Tele-Direct representatives is highly dependent on the revenues generated by each individual as they are paid through a combination of salary and commission. Both the tel-sell and premise representatives earn a base salary (which is higher for premise) and in addition are eligible for a number of commissions and incentives.

The amount of commission paid to a sales representative is determined by the nature of the advertising which is sold. If the sales representative manages to generate new business (an

increase over the previous year's advertising expenditure), an annual commission of 13 percent is paid on the total new business. If the advertiser is renewing the advertising which was purchased in the previous year, the sales representative is paid a 2.4 percent commission on the renewal amount. Renewal commission is paid on any portion of an account which is renewed, even if the total amount of advertising purchased is less than the previous year. The renewal commission was first introduced in the early 1980s, prior to which the representatives were paid only salary and new business commission. The final basis upon which a commission is paid to a sales representative reflects rate increases. This applies in a situation where an advertiser renews exactly the same advertising program as it had in the previous year but there has been a rate increase which is applicable to that advertising program. The sales representative receives renewal commission on the amount spent the previous year and rate increase commission on the difference between the two account totals because of the rate increase. The rate increase commission is six percent.

Since 1993, a premise representative also has the potential of earning a yearly bonus in the amount of $2,000. The bonus is based on factors such as the number of complaints made against the representative by advertisers, the representative's score in Tele-Direct's internal evaluation, the number of "lates" (advertising submitted after a directory closing date) and mistakes and the representative's overall work flow. Apart from the bonus, there are a number of other incentives offered to premise sales representatives, for example, awards and trips.

The NAM/NAR group also earn base salary plus commission but with a much larger proportion of their income accounted for by salary. Their new business commission is nine percent, with a renewal commission of 0.5 percent and a rate increase commission of 1.2 percent. They may qualify for a bonus equal to seven percent of their income for maximizing net sales or a bonus of three percent for maximizing retained revenue. An average NAM earns less than an average premise representative.

Sales representatives are supervised by salaried sales managers. Sales managers also qualify for various incentives and bonuses, which may vary in nature from year to year, based on the results of the sales representatives that they supervise.

(b) Evaluation

In the western region Tele-Direct has a formal assessment program for its sales representatives called Total Performance Assessment ("TPA"). Each representative is assessed using the TPA every six months.

The TPA is comprised of three categories: sales results (worth 60 percent), customer satisfaction (worth 20 percent) and job administration (worth 20 percent). The sales results score is largely based on the representative's incremental revenues in relation to other representatives (25 points of 60). Customer satisfaction is broken down into customer disputes and an overall customer survey. Customer disputes refer to the number of times customers of the representative

have called in with a complaint or a concern. The customer survey component is a Gallup survey.[132] The final aspect is job administration which includes work flow (success in meeting benchmark requirements for servicing a certain percentage of revenue during a canvass by a certain date), number of internal queries and lates.

The TPA is not used in the eastern region which has not had a formal evaluation program since 1994 because of union disputes. Currently, sales representatives in the eastern region are evaluated by an internal management review in which their supervisors conduct follow-up interviews with clients. It is Tele-Direct's intention to replace this less formal evaluation process in the future.

(c) Account Assignment and Continuity

Tele-Direct uses a canvass approach to sell advertising. Each directory has a canvass period, the length of which depends on the size of the directory, during which the GSF focuses its attention on selling advertising for the next issue of that directory. The GSF is under time constraints to complete its sales and solicitations prior to the deadline, or the closing date, for the directory. Once one canvass is complete, the GSF moves on to the next one.

[132] Each year 25 customers of each sales representatives are asked questions relating to the quality of the service provided by the representative.

For each canvass, Tele-Direct canvass coordinators assign accounts to the sales representatives to ensure as much as possible that each salesperson ends up with a bundle of accounts which is balanced in revenue and in growth potential. Accounts are assigned based on a complex system of "markets" and "grades". For example, "Market 1" accounts are dealt with by premise representatives while "Market 2" accounts are dealt with by tel-sell. As well as being divided by market, accounts are also graded; the lower the grade assigned to an account the higher the potential that type of business will buy Yellow Pages. Grades are based on the type of business as represented by the heading under which it would appear in the directory.

For each canvass the grades and markets for the accounts are analyzed to determine whether, based on factors like time, the size of the cities or towns included and the number of sales representatives available, the premise representatives will cover all of the grades in Market 1, or whether, perhaps, some of the higher grades in that market should be assigned to tel-sell. For the same reasons, for a given canvass, not all accounts are assigned; those with lower potential or that are inactive may be dropped.

For both the premise and the tel-sell group, account assignment has traditionally been random. With a few minor exceptions, accounts were divided up at the beginning of each canvass with no intention of returning individual accounts to the same representative who serviced them in the previous year. In 1993, a test was conducted in a northern market whereby there was 100 percent continuity of tel-sell accounts. Ms. McIlroy's impression of the results was that they were positive in general; however, we have no information about whether tel-sell

continuity has been adopted more generally. For premise sales, Tele-Direct adopted the Very Important Advertiser ("VIA") program in the late 1980s which provided a form of continuity: advertisers spending a certain amount per month were assigned the same representative every year. By 1992-93, there was a more general continuity policy in place whereby 30 percent of all premise accounts were assigned back to the sales representative for three years if $500 or more was being spent or a pricing incentive was involved. Currently, about 55 percent of the accounts of a typical premise representative (about 85 percent of revenue) are subject to continuity.

**(2) Tele-Direct's Commissionability Rules**

Prior to 1958, a 15 percent commission was available on "national" advertising. The definition of "national" was, however, unclear. In 1958, Bell Canada adopted a new policy, developed in consultation with and endorsed by the Canadian Association of Advertising Agencies. To be commissionable at 15 percent, the advertising had to appear in two or more directories serving two or more "calling areas" with no more than 80 percent of the total advertising in one directory. No particular association membership was required of the agency; if the agency's ability to pay was in doubt, its credit was investigated.

Tele-Direct's definition of a commissionable account underwent a further change effective January 1, 1976. The amended definition of commissionability became known as the "eight-market rule". To qualify as a commissionable account under this rule, the advertiser had to purchase advertising with a minimum value of a trade-mark in eight "markets", as defined by

Tele-Direct. Canada was divided into 19 markets, with six in Quebec and seven in Ontario. The entire United States constituted a single 20th market. If the account qualified and the agency provided completed artwork, Tele-Direct would pay a 15 percent commission on the account. Again, no particular membership in an industry association was required.

The commissionability rule was next changed effective July 1, 1993 to create the so-called "national definition" which is the current rule. Under this rule, to be commissionable an account must advertise, at a minimum, in directories in two provinces. Advertising must be placed in at least 20 directories and in each directory the value of the advertising must be a minimum of a trade-mark. Finally, 20 percent of the total value of the advertising must be placed in directories outside Tele-Direct's territory.

In order to receive 25 percent commission on "national accounts" the agency has to be a CMR and a member of YPPA. In addition, to be eligible for the 25 percent commission, the CMR must transmit its order to Tele-Direct via the Value-Added Network ("VAN") run by the YPPA. This facility provides for electronic transmission of account data and other information to a publisher. In order to access VAN, the CMR must be a member of the YPPA and must acquire the necessary computer hardware and software.

All accounts which met the eight-market rule as of July 1993 have been "grandfathered"; Tele-Direct still pays 15 percent commission on those accounts. Once an account ceases to qualify under the eight-market rule, it cannot be re-qualified. New accounts, those which reached

eight-market status after July 1993, cannot be "grandfathered". Tele-Direct has made no commitment to how long the "grandfathering" of eight-market accounts will remain in place. It could be discontinued at any time.

## C. ALTERNATE THEORIES OF THE CASE

As elaborated in the opening statement, the Director's theory of the case for tying is that the respondents, as a condition of supplying space, have required or induced customers to acquire the tied product, services, from them. We have already reviewed the structure of the market. The respondents offer a commission on accounts meeting their "national" definition and on grandfathered eight-market accounts. They service the remainder of the accounts themselves and do not offer a commission, or price space and services separately, for those "local" accounts, amounting to over 90 percent of Tele-Direct's revenue.

In accordance with his theory, the Director alleges that the respondents by refusing to sell either the space or the services in an unbundled fashion have violated section 77. Counsel for the Director described the Director's case in opening in alternative terms by referring to the respondents' refusal to pay commission except to the limited extent that they now do as a violation of section 77 because commission would be a means of recognizing or effecting an unbundling for the services that non-commissionable customers seek. The Director says that as matters now stand, non-commissionable customers have a choice of either obtaining services from respondents as part of the "package" price that they pay for their advertising or paying

twice for the services -- once as part of the package price charged by the respondents and once directly to the service provider.

The respondents say that the Director's concept of tying is misconceived. They submit that there is no product known as "advertising services" separate from a product known as "advertising space". They focus on the *selling* portion of the services referred to by the Director and argue that the sales advice provided by Tele-Direct's internal sales force forms an inseparable package with the space which Tele-Direct supplies in its directories. Indeed, they emphasize, there is no advertising space without a sale. They argue that how advertisements in their directories are sold is a business decision to be made solely by Tele-Direct and is not justiciable. Tele-Direct determines when it is more appropriate to sell its product through its internal sales force and when it will "employ" and pay a commission to agents to sell its product.

In other words, the respondents argue that they have chosen a "hybrid" system. As their primary sales channel, they maintain an internal sales force. They have also chosen to employ agents to sell to a limited group of large advertisers who have distinct needs. Among the reasons given for primary use of the internal sales force were: efficiency, that the average cost of revenues serviced internally was lower than for revenues serviced by outside agents; revenue growth, that the internal sales force is more effective in growing revenue; and servicing, to ensure attention to small advertisers and non-advertisers that Tele-Direct considers important but external agents might not.

The respondents take the position that the Director's application regarding tied selling is an attack on vertical integration. They characterize Tele-Direct's decision regarding commissionability as a choice in some instances to buy services from agents and in others to make the services in-house. They refer to the words of Posner J. in *Jack Walters & Sons Corp. v. Morton Buildings, Inc.* for guidance:

> The end that Walters [a terminated dealer] alleges is that Morton [the manufacturer] wanted to take over the retail function; in the terminology of industrial organization, it wanted to integrate forward. But vertical integration is not an unlawful or even a suspect category under the antitrust laws: "Firms constantly face `make-or-buy' decisions -- that is, decisions whether to purchase a good or service in the market or to produce it internally -- and ordinarily the decision, whichever way it goes, raises no antitrust question." . . . Vertical integration is a universal feature of economic life and it would be absurd to make it a suspect category under the antitrust laws just because it may hurt suppliers of the service that has been brought within the firm.
>
> A common type of vertical integration is for a manufacturer to take over the distribution of his product. . . .
>
> We just said that vertical integration is not an improper objective. But this puts the matter too tepidly; vertical integration usually is procompetitive. If there are cost savings from bringing into the firm a function formerly performed outside it, the firm will be made a more effective competitor.[133] (references omitted)

The respondents urge us to take from the words of Posner J. that their narrowing of the commissionability criteria is simply taking over the distribution function internally and Tele-Direct's decision about how to run its business, which it does not have to "justify" to anyone.

The Director underlines that he is not opposed to vertical integration in principle. He cautions, however, that if the method chosen for the vertical integration violates a section of the

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[133] 1984-2 Trade Cas. (CCH) ¶ 66,080 at 66,024-25 (7th Cir. 1984).

Act, with particular reference to sections 75, 77 and 79, then it is subject to challenge and the respondents cannot achieve immunity by "waving the flag of vertical integration". We agree that simply affixing the label of "vertical integration" does not conclusively decide anything. It does not preclude the Director from attempting to convince the Tribunal that what is going on in the case before it meets the requirements of a section of the Act. This view is not inconsistent with the *dicta* of Posner J. in the *Jack Walters* case, who indicates that the presence of market power may cast vertical integration in a different light and points out that market power was not present on the facts before him:

> . . . some economists believe that monopolistic firms might integrate vertically in order to deny supplies or outlets to competitors, or to make it more costly for new firms to enter the market (because they would have to enter at more than one level of production or distribution), or to facilitate price fixing with their competitors. But nothing of this kind is suggested here. Walters does allege that Morton has a big name in the prefabricated farm buildings market, but there is no indication that this is a meaningful economic market that might be worth monopolizing, or that Morton's purpose in integrating into retail distribution was to make life harder for *its* competitors. Its object was to make more money by reducing the cost of retail distribution, not by coercing or excluding (or for that matter colluding with) its own competitors, whoever they may be, or discouraging potential competitors. *Indeed Walters' tie-in claim is premised on the ready availability, from other manufacturers, of the building parts that Morton sells in kits from which Morton Buildings are put together. This shows that Morton has no monopoly*.[134] (emphasis added; references omitted)

The recognition that vertical integration is generally pro-competitive on efficiency grounds raises another issue. The Director says there is no provision in section 77 for an efficiency "defence". We agree that there is no such explicit reference to an efficiency defence. However, many forced "package sales" are the product of efficiency and even a supplier with market power may sell items in combination for efficiency reasons.

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[134] *Ibid*. at 66,025.

A fundamental requirement of tying is the existence of two products, the tied product and the tying product. It is implicit in the determination of whether there are one or two products that efficiency considerations must be taken into account. We consider that demand for separate products and efficiency of bundling are the two "flip sides" of the question of separate products. Assuming demand for separate products, if efficiency is proven to be the reason for bundling, there is one product. If not, there are two products. As we will review below, this approach is consistent with the American jurisprudence regarding the test for separate products relied on by the Director.

The Director is of the view that, assuming that the necessary elements of the section have been met -- major supplier, two products, tying, and the exclusion of competitors resulting in a substantial lessening of competition -- it is not necessary for him to provide a plausible explanation of *why* or *how* the firm benefits from the tie. This is a valid position. The Tribunal would not impose such a requirement on the Director. It cannot be denied, however, that there is always more comfort in drawing conclusions the greater the depth of understanding.

In this case, the Director has in fact provided explanations as to why Tele-Direct might be engaged in tied selling. The Director submits that Tele-Direct is leveraging its market power in the sale of space into the market for advertising services through tying. One explanation of this is that Tele-Direct's policy of bundling advertising space and services allows Tele-Direct to exploit better an alleged information asymmetry it enjoys *vis-à-vis* its customers, the advertisers. As with any advertising medium, it is not possible to evaluate effectiveness of Yellow Pages

advertising with any degree of precision. To the extent that data on effectiveness of the medium is available, it is in the control of Tele-Direct not the advertisers. In light of this, the Director argues that Tele-Direct prefers to keep advertising services in-house as much as possible because its representatives can be more effectively motivated to "oversell" than independent service providers. We will deal with this reasoning in due course.

The Director also says that the "usual" assumption of profit maximization used in determining whether a firm stands to gain from a tie does not apply in the instant case and the economic literature on the subject that relies on this assumption to analyze the possible effects of a tie is not a useful source. He says it is futile to seek a "rational" or "profit-maximizing" explanation for Tele-Direct's behaviour since Tele-Direct, because of its unique situation and relationship to Bell Canada, is not subject to the constraints of profit-maximization and its corollary, cost-minimization.

In support of the premise that Tele-Direct is not profit-maximizing, Thomas Wilson,[135] an economist expert witness for the Director, draws on the fact that the profits of Tele-Direct are included for regulatory purposes when decisions are made about Bell Canada's prices. He is of the view that the pressure to minimize costs is reduced and that there may also be systematic distortions such as the use of more capital than an unregulated firm would use in order to boost the capital base of the regulated firm (the "Averch-Johnson effect"). However, this particular

[135] Professor of Economics and Director of the Policy and Economic Analysis Program at the University of Toronto.

hypothesis is not supported by the evidence which, in fact, points in the other direction insofar as Tele-Direct has chosen to subcontract capital intensive operations such as printing.

Professors Wilson and Slade, for the Director, are also of the view that management's decisions with respect to the commissionability of various accounts are motivated by a concern to maximize *sales* rather than to minimize *costs*. Professor Wilson sees the reduced pressure on regulated firms to minimize costs as allowing Tele-Direct's management to pursue personal interests, such as operating a larger enterprise, thereby garnering personal satisfaction and monetary rewards. Professor Slade is of the view that the ownership structure of Tele-Direct, whereby there is no threat of a takeover, contributes to allow management to pursue its hypothesized desire for larger size.

Even though there are several occasions when we have difficulty understanding the decisions of Tele-Direct's management if they really are pursuing cost-minimization, we are far from convinced that Tele-Direct's management is not generally constrained to follow a profit-maximizing course. The fact that Tele-Direct is a wholly-owned subsidiary should be sufficient to ensure that there is adequate ownership control. It is obvious from the evidence of Mr. Courtois, the Bell Canada representative on Tele-Direct's Board of Directors, that Bell does not practice micro-management. The main instrument of control appears to be the requirement that Tele-Direct pay Bell the same percentage of revenues as Tele-Direct is required to pay other telcos when it contracts to perform their directory functions. This requirement was introduced precisely to impose market discipline on Tele-Direct. In addition to the forty percent of revenue

that Tele-Direct remits to Bell, it also makes a substantial contribution to Bell's profits in the form of dividends. The evidence does not support the conclusion that Bell has been cavalier about allowing Tele-Direct's management to pursue other than profit-maximizing goals. Moreover, in recent years Bell's earnings have been well below its regulated allowed rate of return, a situation not conducive to permissiveness. Even when Bell earnings were not below the allowed rate of return, higher profits from Tele-Direct would still benefit Bell between applications for rate increases.

While we do not rule out that Tele-Direct's management may be under less than the usual amount of pressure to perform, we are reluctant to discard the usual working assumption of profit-maximization in the absence of some compelling evidence that is consistent with the assumption that Tele-Direct is pursuing other goals. The only specific evidence cited in support of the premise that Tele-Direct's management pushes revenue growth beyond the point of profit-maximization is the stress that they place on canvassing businesses that do not advertise in the Yellow Pages, the non-advertisers. The success rate from this effort is low and Professor Slade concludes that the fact that the effort is made can be explained by management's greater concern with growth of revenue than with profits. On the whole, however, the evidence on the canvass of non-advertisers is that moderate resources are devoted to this task. We are not convinced that the canvass of non-advertisers is not profit-maximizing.

We note here that there is another possible theory of the case. For reasons of clarity and coherence, however, it is more convenient to deal with it at a much later point in these reasons. We return to it below as an "Addendum" to our conclusion regarding the separate products issue.

We therefore do not accept that we should approach this case with a view to treating Tele-Direct as other than a profit-maximizing firm, albeit a firm with market power. Nor do we accept that efficiency considerations are not relevant to our section 77 analysis. Efficiency and demand, together, form the basis of the consideration of one or two products, to which we now proceed.

## D. SEPARATE PRODUCTS

### (1) Approach to Determining Separate Products or Single Product

The first element of section 77 to be considered is whether advertising space and advertising services are separate products. The Director takes the position that advertising services constitute a distinct product separate from advertising space. The respondents argue that advertising services are in fact an "input" into Yellow Pages advertising, not a separate product.

Merely labelling advertising services and advertising space as either two "products" or as "inputs" into a single product does not assist. As Areeda, Hovenkamp and Elhauge state:

> . . . just about any product could be described as a tie of its components. And just about any two products could be described as mere parts in a more encompassing single product. . . .[136]

There must be some rationale for distinguishing between situations where there are two products involved, and thus at least the possibility of an illegal tie that should be prohibited, and those where there is a single product and no question of tying.

The parties are in agreement that the Canadian jurisprudence does not provide much guidance on the test to be applied. Both parties referred to the 1984 decision of the Supreme Court of the United States in *Jefferson Parish Hospital District No. 2 v. Hyde*[137] for guidance, although they emphasize different portions of the decision.

In *Jefferson Parish* the Court provided its most extensive discussion of the "single product" test. At issue in the case was the validity of an exclusive contract between the hospital and a firm of anaesthesiologists. Any patient who chose to have an operation performed at that hospital was required to use an anaesthesiologist employed by the firm in question (Roux & Associates). The Court had to decide if this constituted an illegal tying arrangement. In making that inquiry, the Court considered two questions, whether the hospital was selling two separate products that might be tied together and, if so, whether the hospital used market power to force its patients to accept the tying arrangement. The majority answered the first question in the affirmative but the second question in the negative (the hospital was found not to have

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[136] P.E. Areeda, H. Hovenkamp & E. Elhauge, *Antitrust Law*, vol. 10 (Boston: Little, Brown, 1996) at 175.

[137] 466 U.S. 2.

market power), so in the result it found no illegal tying arrangement. The minority found only one product and concluded for that reason that there was no illegal tying arrangement.[138]

In discussing the question of separate products, the majority noted that the answer to the question of one or two products turns not on the functional relationship between them but rather on the character of the demand for the two items. The majority then stated:

> . . . Thus, in this case no tying arrangement can exist unless there is a sufficient demand for the purchase of anesthesiological services separate from hospital services to identify a distinct product market in which it is efficient to offer anesthesiological services separately from hospital services.[139] (reference omitted)

We adopt this statement of the majority as the applicable test for separate products. We believe that this test effectively captures both the demand and the efficiency elements necessary for us to distinguish between cases when a tie that is injurious to consumer welfare is possible and those in which the tie, although imposed by a major supplier, is efficient and should not be condemned. Demand is, of course, critical. If there is no demand, it would be pointless to require that the two products be offered separately. Efficiency is also critical as the existence of separate demand should not govern if providing the products separately would result in higher costs that would outweigh the benefits to those who want them separately.

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[138] The majority consisted of Stevens, Brennan, White, Marshall and Blackmun JJ. The minority included O'Connor, Powell, Rehnquist JJ. and Burger C.J.

[139] *Supra* note 137 at 21-22.

Our approach will be to examine first the evidence pertaining to the demand side of the equation, to determine whether the Director has proven buyer, in this case advertiser, interest in acquiring space and service separately. By this we mean an answer to the question: "Is there a significant set of advertisers who actually want the items separated?" If this question is answered in the affirmative, then we will turn to the evidence relating to whether it is efficient to separate the products.

The respondents rely on a portion of the minority judgment in *Jefferson Parish*. The minority wrote:

> . . . there is no sound economic reason for treating surgery and anesthesia as separate services. Patients are interested in purchasing anesthesia only in conjunction with hospital services, so the hospital can acquire no *additional* market power by selling the two services together. . . . In these circumstances, anesthesia and surgical services should probably not be characterized as distinct products for tying purposes.[140]

In conclusion, they reiterated:

> . . . Since anesthesia is a service useful to consumers only when purchased in conjunction with hospital services, the arrangement is not properly characterized as a tie between distinct products. It threatens no additional economic harm to consumers beyond that already made possible by any market power that the hospital may possess. *The fact that anesthesia is used only together with other hospital services is sufficient, standing alone, to insulate from attack the hospital's decision to tie the two types of services.*[141] (emphasis added)

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[140] *Ibid*. at 43.

[141] *Ibid*. at 46.

The respondents did not provide us with any reason to adopt the minority judgment over the majority. In fact, the majority opinion explicitly rejected tests based on functional relationships, including the "useless without" test. In a footnote the majority noted:

> The fact that anesthesiological services are functionally linked to the other services provided by the hospital is not in itself sufficient to remove the Roux contract from the realm of tying arrangements. We have often found arrangements involving functionally linked products at least one of which is useless without the other to be prohibited tying devices. . . .[142]

There are also sound economic reasons to reject such a test. As pointed out in the Areeda text, it may perversely save the most dangerous ties and call for review when there is little likelihood of adverse effects. The authors of that text use the example of a manufacturer with a monopoly over can-closing machinery who requires all purchasers of the machinery to buy cans from it to point out that:

> . . . [s]uch a tie would bring the [manufacturer] a complete monopoly over cans, for presumably no one would buy empty cans without the machinery to close them. Yet the useless-without test would immunize this tying arrangement. Moreover, while short-run profit maximization is *generally* not enhanced when the tied product has no other use, monopoly in the tied market can impair competition severely in the long-run. . . .[143]

**(2) Other Case Law**

The respondents have also advanced a plethora of other American cases with respect to the question of separate products. In general, the respondents rely on these cases to urge us to view the facts before us solely from the supplier's (Tele-Direct's) perspective and to ignore

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[142] *Ibid*. at 19 n. 30.

[143] *Supra* note 136 at 269.

demand considerations. Their fundamental premise appears to be that Tele-Direct's choice to "market" its product in a certain fashion is determinative and negates the possibility of any tying claim. We did not accept the Director's argument that considerations of demand govern; likewise we reject the respondents' argument that a supplier's choice is paramount. Both elements of demand and efficiency will be taken into account, as set out above. In any event, it is clear that the case before us is unique and does not "fit" exactly into any of the precedents cited to us. A more detailed treatment of the case law follows.

(a) Single Product

One tying case was referred to, *Souza v. Estate of Bishop*,[144] a case against a lessor of land in Hawaii based on the refusal of the lessor, like most other landowners in Hawaii, to sell the land. The tying product was argued to be the residences plaintiffs owned on the land while the tied product was the leasehold. The claim was dismissed on a motion for summary judgment, affirmed by the Court of Appeal.

From this decision, the respondents ask us to conclude that if a supplier presents two products as a package or, in other words, if they are being marketed together, that is the end of the matter and the Tribunal must conclude that there is a single product. The Court found that the plaintiffs' argument defied reason because the product being marketed was a house plus leased land and not a house purchasable separately from the land on which it stood. The Court also

[144] 1987-1 Trade Cas. (CCH) ¶ 67,628 (9th Cir. 1987).

found that the plaintiffs presented no evidence that the house and the leased land constituted separate products. We have already set out the test we intend to apply, which takes into account both demand and supply. We do not accept that simply because a producer or a supplier bundles products together that they are, *ipso facto*, one product.

Four cases are relied on by the respondents because they involve the Yellow Pages industry or an analogous industry. The respondents argue that these cases indicate that the United States courts have uniformly rejected any concept of an antitrust violation because of a publisher's refusal to pay commission or its decision to change the accounts on which it will pay commission. Thus, they conclude that the courts "in effect" have treated directory advertising as one product. They make this argument despite the fact that none of these cases was based on a claim of tied selling and therefore the issue of separate products in the sense with which we are dealing here was not before the court. The respondents claim, however, that these cases indicate that there is only one product *because* the tying argument was not raised in any of them.

We do not accept that the absence of a tying claim makes the cases dispositive of the issues before us in a tying case. In general, we do not see how the results in these cases can be directly transferred to the case before us. We will, however, review the decisions in order to see what, if any, assistance we can draw from the findings in resolving the issue of separate products on the facts before us.

In *Selten Agency, Inc. v. Pacific Telephone and Telegraph Co.*,[145] a specialized advertising agency brought an antitrust action involving numerous allegations against a number of telcos and telephone directory publishers that were members of the National Yellow Pages Service Association ("NYPSA") (the predecessor to YPPA). All of the allegations involved joint action by the NYPSA members. The only issue with any possible, although remote, relevance to this case was the claim by the agency that the NYPSA members *agreed* not to pay commissions on local advertising to agencies, constituting an illegal horizontal division of markets.

The Court concluded there was no evidence of an illegal agreement. The evidence was that the NYPSA agreement covered only national advertising; there was no prohibition on commissions for local advertising. Publishers were free to offer commission on local accounts and, the Court notes, some, in fact, did so. The Court also noted that those who did not offer commission on local accounts had their own sales force and therefore did not require the services of advertising agencies. The respondents rely heavily on the next sentence of the judgment, that "[i]t is not a violation of the antitrust laws for a publisher to refuse to buy a service that is not worth buying"[146] to argue that publishers do not have to buy services from agents or, in other words, provide a commission for any accounts they do not want to. As we have already stated, we do not accept that the supplier's choice is the sole governing factor in a tying case. Due consideration must be given to the supply side of the equation but we cannot ignore demand considerations.

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[145] No. CV 77-3450-FW (Dist. Ct. C.D. Cal. 8 June 1981).

[146] *Ibid*. at 17.

In *O'Connor Agency v. General Telephone Co.*,[147] an advertising agency alleged that a Yellow Pages publisher conspired with other publishers to change the definition of local or "B" accounts so that commission would no longer be paid on those accounts. The defendants brought a motion for summary judgment which was granted.

In granting the motion, the Court found an "agreement" to change the criteria based on adherence to the YPPA guidelines. Using a rule of reason approach, the Court then proceeded to consider and weigh both the anti- and pro-competitive effects of the change in the relevant market. The Court found that the plaintiff had provided no admissible evidence that the relevant product market was Yellow Pages and also provided insufficient admissible evidence of actual anti-competitive effect arising from the change. The Court also found that the publisher had a legitimate business reason for adhering to YPPA standards, namely the uncontroverted evidence that the defendant changed the commission criteria to increase its national Yellow Pages advertising which was not performing up to expectation.

The respondents rely on this case for the very broad proposition that "the U.S. jurisprudence directly involving Yellow Pages has rejected any concept of any antitrust violation because of the refusal of a publisher to pay commission to a CMR or as a result of the publisher changing the accounts on which it will pay a CMR" and that "[i]n effect the courts have said there is only one product that we're selling and we can sell it through whatever channel we

[147] No. CV-93-3650 LGB (U.S. Dist. Ct. C.D. Cal. 2 August 1994), appeal pending.

want".[148] The case certainly does not support those broad generalizations. It was a conspiracy case resolved on a motion for summary judgment because of failure to prove either a relevant market or actual anti-competitive effect.

The respondents submit that the case of *Thompson Everett, Inc. v. National Cable Advertising, L.P.*[149] is analogous to the case at bar. In that case an independent cable television advertiser representative brought action against exclusive contracts between the cable company and their spot advertising sales agents on the basis that the "traditional" cable representatives or sales agents were engaged in a concerted effort to exclude the independent from the business. The Court of Appeal affirmed the decision of the lower court to grant summary judgment.

The Court found that the exclusive contracts were not being enforced through an illegal conspiracy. It also found that the independent did not have access to the exclusive contracts because it was not willing to compete with the exclusive agents for them and was simply seeking to substitute its own method of serving the cable company for that selected by the cable company. The Court also found that there was no unlawful monopoly in the cable representative market because cable companies are part of a larger market.

Once again, the respondents rely on this case to argue that the Court endorsed the cable company's choice of using exclusive representatives simply because that was the way the cable

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[148] Transcript at 66:13762-63 (26 February 1996).

[149] 57 F.3d 1317 (4th Cir. 1995).

company chose to do it. We have already indicated that the supplier's choice will not be the only consideration in a tying case. Indeed, the case itself does not go that far.

The most interesting decision referred to by the respondents is *Ad-Vantage Telephone Directory Consultants, Inc. v. GTE Directories Corp.*[150] The case involved a claim by an "authorized selling representative" ("ASR") for the placement of national advertising in telephone directories that the publisher had monopolized or attempted to monopolize the sale of Yellow Pages advertising. Because of problems in collecting payment for advertising placed by the ASR, the publisher started billing the advertisers directly. The ASR claimed that the publisher's direct contact with its customers resulted in a loss of accounts to it and its eventual failure.

The monopolization case failed because the ASR could not define any relevant market in which it and the publisher competed. The ASR had originally based its claim on the national advertising market where the publisher competed for the sale of national advertising as an ASR itself but could not show any market power on the part of the publisher in that market. The claim was then amended to allege that the relevant market was the sale of advertising space in a specific directory, shifting the focus to local advertising. Based on evidence that the ASR had received commission for the placement of advertisements for two local advertisers, apparently by accident, the ASR argued that it competed with the publisher's sales force for local advertising. The argument of the ASR was that the lawful power to publish the exclusive directory for a

[150] 1987-2 Trade Cas. (CCH) ¶ 67,683 (11th Cir. 1987).

specific geographic area did not give the publisher the right to be the exclusive seller of advertising space within that directory as publication and sale were separate activities.

The Court commented that the ASR's market theory had a certain "superficial" appeal based on its similarity to a typical wholesale/retail monopolization case where a vertically integrated manufacturer uses its dominant position at one level of activity (manufacturing) to eliminate competition at another level (retailing). The Court noted that for the ASR's theory to work, the publisher must be viewed as a wholesaler or manufacturer of advertising space and the ASR as a retailer of this space. If not a retailer, the ASR could not be considered a competitor of the publisher at the retail level.

The Court concluded that, to the extent that the sale of Yellow Pages advertising is an activity separable from the publishing of the advertising, the sales made by independent ASRs were in the nature of an agency and not retail sales. Agents, the Court noted, do not compete with those whom they represent. The wholesale/retail analogy failed, in part, because there *could* be no "resale" of Yellow Pages:

> . . . Yellow pages is not a product that is produced and distributed. The blank yellow pages do not exist prior to the sale of an advertisement, somehow awaiting distribution on a resale market. Each advertisement, that is, the space of the ad, is "created" when the advertisement is sold to the advertiser. . . . ASRs do not maintain an inventory of ad space to be sold. An ASR cannot purchase a page in the yellow pages and then distribute it to advertisers as it sees fit.[151]

[151] *Ibid*. at 58,482.

The agency characterization was preferred, in part, because the Court considered the relationship between the publisher and the ASR in the case before it to be analogous to the relationship between an airline and a travel agent:

> . . . The publisher lawfully establishes the price for its advertising and announces it to the public. It determines when it is going to publish directories, and has the ultimate say on how many advertisements it will accept. An advertiser may deal directly with the publisher, or may use an Authorized Sales Representative. However, should it use an ASR, the ASR must submit a request for advertising to the publisher, analogous to a reservation in the forthcoming publication. The ASR does not purchase an inventory of yellow pages space. The service which the advertiser has paid for is performed by the publisher, not the ASR. Further, should the advertisement fail to appear as requested in the appropriate directory, the publisher is under an obligation to refund the advertiser's money. Finally, should a publisher not receive enough advertisements to make a directory profitable, it must still publish the directory; the publisher retains the "risk" that not enough yellow pages advertisements will be "distributed" -- not the ASRs.[152]

The Court found ample evidence in the record that the ASR functioned as an agent, including the NYPSA guidelines which provided that ASRs represented the publisher "when selling National Yellow Pages advertising to national advertisers or their advertising agencies, or when negotiating disputes with such national advertisers or their advertising agencies".[153] The Court noted that there was also evidence that the ASR acted as an agent of the advertiser, including liability to the publisher for payment, but concluded that "[e]ither way, an ASR functions as an agent, not an `independent contractor,' and not, in any case, as a retailer of yellow pages advertising space."[154] Thus, the leveraging argument failed as there was no "second activity" to be monopolized by using the publisher's market power to publish directories as leverage.

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[152] *Ibid*. at 58,483.

[153] *Ibid*.

[154] *Ibid*. at 58,484.

One element of this decision is the Court's insistence that the ASRs had to be considered retailers in order to be in competition with the publisher. A finding that the ASRs were merely agents of the publishers or, perhaps, agents of the customers, in the sense of having no independent existence from either or both of those two entities seems to preclude competition between the ASRs and the publisher. We do not believe, however, that the inapplicability of a strict retail model is conclusive. The Court did mention in passing, for example, independent contractors. The fundamental question is whether the publisher is in competition with the ASR or other person alleged to be excluded by the activity in question, which we agree is a question that should also be addressed in the context of a tying claim.

A second important element of the Court's conclusion concerned the functions performed by ASRs, that were apparently viewed as simple "order takers" insofar as the commission from the publisher was concerned. The Court indicated its assumption that the ASR was paid separately by the advertiser for other services such as layout[155] when it distinguished the case before it from a successful monopolization claim by an advertising agency against a television station. The television station had expanded its in-house advertising agency services by starting to produce commercials (for a fee) as well as selling air time. In *Ad-Vantage*, the Court stated:

[155] Or these might have been provided by the advertiser's "advertising agency" and not the ASR.

> Thus, in *Six Twenty-Nine Productions*, a leveraging argument was possible. The production of [Yellow Pages] advertisements is a related activity separate from the sale of advertising space. Each is a separate source of revenue. In the context of this case, no evidence was presented indicating that ASRs receive no separate compensation from their clients when the ASRs engage in the production -- the lay out -- of the advertisements. In fact, testimony of a former NYPSA official indicated that *most* of the national yellow pages advertising is purchased through ASRs by advertising agencies on behalf of national advertisers, supporting the notion that ad agencies perform a separate function. Thus, the leveraging argument made in *Six Twenty-Nine Productions* is not available here.[156]

What we take from this case is that it is important to examine the actual services performed by the agents for advertisers and the relationship between Tele-Direct and the agents, with a view to determining if they do, in fact, "compete" with Tele-Direct in any relevant sense.

(b) Relationship between Agents, Advertisers and Tele-Direct

The respondents say that, as in the *Ad-Vantage* case, agents in the case before us function as either representatives of Tele-Direct or, on occasion, as agents of the advertisers. In the first case, Tele-Direct does not compete with itself or its own representatives and in the second, it cannot be considered to compete with its customers. Based on the evidence of Charles Mitchell, Tele-Direct's Director of Marketing Sales Support, they submit that, in fact, Tele-Direct has not competed for agency accounts since 1992. The Director argues that, unlike in *Ad-Vantage*, the Canadian CMRs are not agents of Tele-Direct. The Director submits that the evidence supports the proposition that Tele-Direct has consistently considered, and still does consider, the agencies as its competitors.

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[156] *Supra* note 150 at 58,484.

The initial point at issue is the exact contractual relationship between agents and Tele-Direct. In 1988, Tele-Direct required the agencies to sign new contracts with it. Under those contracts, the agent warrants that it is duly authorized to enter into the agreement on behalf of the advertiser. Further, the agency agrees that "it is not acting and does not purport to act as agent for Tele-Direct."[157] This is exemplified by the provisions that the agent agrees to pay for the advertising; to indemnify and hold harmless Tele-Direct from claims by the advertiser; and to warrant on behalf of the advertiser the truth of all assertions in the advertising. Tele-Direct's Corporate Secretary and legal counsel, Patrick Crawford, confirmed that these contracts have not been revoked and that the agencies were not agents for or of Tele-Direct.

The respondents argue that the 1993 YPPA agreements entered into by the agencies in order to be accredited as CMRs supersede the earlier contracts although no steps have been taken to repudiate or amend the earlier contracts. In the application to be accredited as a CMR, the agency agrees to "represent" the publisher in the same terms as quoted in *Ad-Vantage* from the NYPSA guidelines.[158] The YPPA guidelines, however, describe a CMR as a member of YPPA which:

> a. Represents to the users the Publishers' product, services and policies, while representing to the Publishers the customers' needs, desires and concerns.
>
> b. Develops a comprehensive national Yellow Pages advertising program for prospects and/or advertisers.

[157] Confidential exhibit CJ-16 (blue vol. 7), tab 214 (public), art. 10.

[158] Exhibit J-5 (green vol. 3), tab 154 at 32277.

> c. Compiles and provides current information pertaining to all Publishers' practices affecting an advertiser's national Yellow Pages program.
>
> d. Develops market research and cost studies for the advertiser or its agency as a basis for making advertising proposals.
>
> e. Provides Publishers on a timely basis with the authorized list of dealers for solicitation under Advertiser's Trade Item.
>
> f. Pays Publishers' invoices without recourse within the time period set forth in the individual Publishers' credit terms, notwithstanding its own collection status with that advertiser or its agency, unless any individual Publisher provides otherwise.
>
> g. Absorbs all adjustment amounts incurred as a result of its own acts, errors, or omissions which including (*sic*) among other things, failure to notify Publishers of cancellations of orders, unless any individual Publisher provides otherwise.[159]

What comes out of this somewhat contradictory documentation of the relationship is that agents are not agents or representatives of Tele-Direct in any sense that would preclude a finding that the two are in competition. The agents are not so allied with Tele-Direct as a publisher that they have no independent existence. Their relationship has elements of both co-operation and competition.

The agents rely on the Yellow Pages industry, as represented by YPPA, and Tele-Direct specifically, to provide information on the effectiveness of Yellow Pages advertising. They are

[159] Exhibit J-4 (green vol. 2), tab 99 at 28021-22.

accredited based on industry standards. With respect to accreditation and the promotion of the medium, the relationship between Tele-Direct and the agents is undoubtedly cooperative.

However, the thrust of the Tele-Direct internal documentary evidence is that Tele-Direct treated the agents as competitors of its internal sales force. Prior to the 1990s, Tele-Direct sought to protect its client base from the agents by selling advertisers on using its services instead, stressing the advantages that dealing directly with Tele-Direct offered, including monthly billing and later closing dates, as well as considering more positive initiatives like assigning representatives to large accounts for a longer period of time. During the early 1990s, when Mr. Mitchell was head of the national accounts group, Tele-Direct actively competed for agents' clients. Mr. Mitchell testified that as of 1992, the approach changed to one of protecting internal accounts and revenue only but the documentation does not bear this out. Certainly, one of the reasons for the creation of Tele-Direct (Media) Inc. in 1994 was to combat the loss by Tele-Direct of national accounts to CMRs. The only "contradictory" evidence on this point is a somewhat unclear statement by Wayne Fulcher of DAC that prior to the formation of its CMR, Tele-Direct did not "normally" try to take away agency "headquartered" accounts. However, Mr. Fulcher does think that Tele-Direct's CMR is in competition with his agency.

Perhaps the most telling point is that Tele-Direct requires that agencies pay at the time of issue of a directory for advertising placed on behalf of their clients. If agents were only agents of Tele-Direct, they would not be financially responsible for the obligation of third parties -- the advertisers. This is compelling evidence that the agencies do not act as agents of Tele-Direct.

The evidence is that Tele-Direct has always considered agents to be, and has reacted to them, as competitors.

Nor can the agents be considered to have no independent existence apart from the advertisers themselves that they also "represent" in the sense of placing orders for advertising on their behalf. Yellow Pages advertising is not a simple product to buy and advertisers desire assistance in making the purchase. Agents, however, are not *mere* "order placers" for advertisers or other advertising agencies employed by advertisers. The evidence before us, which is reviewed in more detail below, is that agents provide a range of services, including advice, layout, design and administration, for which they do not receive additional compensation beyond the commission paid by Tele-Direct.[160] Further, we have no evidence that much of the agents' business consists of simply placing orders for another advertising agency employed by the customer to do the remaining work involved in producing the advertising. Advertisers want these other services in relation to their Yellow Pages advertising from agents. Thus, for advertisers, agents have a separate existence from Tele-Direct.

The relationship between Tele-Direct and agents is complex. Tele-Direct treats the agents as independent businesses with which they cooperate to advance their own objectives but with which they also compete. While Tele-Direct apparently recognizes that agents can service certain accounts better than its internal sales force, by reason of its creation of a class of commissionable

[160] The evidence is that agents charged separately for artwork when the commission rate was 15 percent but do not do so at the 25 percent commission rate.

accounts, it is also its goal, or at least the goal of certain groups within the corporation such as the national accounts group, to keep as much revenue as possible in-house and reduce its dependence on agencies to the absolute minimum possible. We conclude that the business relationship between Tele-Direct and agents is not inconsistent with Tele-Direct and agents treating each other as competitors.

(c) Additional Economic Benefit

The respondents argue that there is an "exception" to tying recognized in the American jurisprudence where the seller of the alleged tying product does not receive an "additional economic benefit" from the sale of the tied product. They say that Tele-Direct gets no additional economic benefit from the sale of services in this case because there is no "separate charge" for services.

The respondents cite two cases on this point. The first is *Directory Sales Management Corp. v. Ohio Bell*,[161] a decision affirming summary judgment granted against the plaintiff in an antitrust suit by an independent directory publisher against the telco and its directory publisher. The two defendants were wholly-owned subsidiaries of the same parent. One of the allegations was that the defendants tied business telephone service (tying product) to a free Yellow Pages listing (tied product) by refusing to reduce the price of the telephone service if the subscriber chose not to be listed.

[161] 833 F.2d 606 (6th Cir. 1987).

The Court noted that an illegal tying arrangement might exist if the telco in some way charged for the "free" listing indirectly in the bill for telephone service, even though it did not charge for the listing directly. The evidence was that there was no hidden charge for the listing as the telco did not pay the publisher for the expenses incurred in publishing the listing. The Court stated that if the telco did not receive a "financial benefit" from the tied product, there could be no tying arrangement.

The second case is *Beard v. Parkview Hospital.*[162] Dr. Beard, an osteopathic radiologist, was employed by a group of doctors that was the exclusive provider of radiological services to Parkview Hospital. Dr. Beard resigned from the group with the intention of providing radiological services on his own to patients at Parkview Hospital. The hospital did not permit him to do so and Dr. Beard sued, alleging that the exclusive contract for radiological services was an illegal tie of radiological services to other hospital services. Under the terms of the contract between the hospital and the group providing the radiological services, the group billed patients directly for its services and the hospital did not share in the fee. The lower court granted summary judgment for the hospital.

In affirming the dismissal, the appeal court approved the lower court's reliance on the requirement that the seller of the tying product must benefit directly from the sale of the tied product. The Court held that the requirement was also consistent with *Jefferson Parish*, which stated that an illegal tying arrangement is one where a firm with market power attempts to

[162] 1990-2 Trade Cas. (CCH) ¶ 69,154 (6th Cir. 1990).

impose restraints on competition in the market for the tied product, because the seller who "derives no economic benefit from sales of an alleged tied product or service is not attempting to invade the alleged tied product or service market in a manner proscribed by section 1 of the Sherman Act."[163]

Areeda explains the purpose of this rule in American case law and its relationship to tying as a *per se* offence:

> . . . a tie-in, though affecting a substantial volume of commerce in the tied product, is not per se unlawful when it does not foreclose any rival supplier or, perhaps, when any such foreclosure is inherently minor. . . .
>
> One convenient and frequent way to capture the concept of a relevant foreclosure is to ask whether the defendant has a financial interest in the tied product. In most courts, ties do not cross the threshold of potential power or effect when the defendant lacks an economic interest in the tied product, primarily because such a tie does not ordinarily enhance the defendant's power in the tied market or bring about any other consequences of the kind that the per se rule against tying seeks to prevent. "Foreclosure" there may be but not a relevant one.[164] (reference omitted)

Further, using the example of a defendant firm accused of providing its product *A* only to buyers who purchase *B* from a second, separate firm *T*, thus "foreclosing" other suppliers of product *B*, he explains:

> The defendant who gains not a penny, directly or indirectly, from firm *T*'s sales of product *B* is no "competitor" in the market for the tied product *B.* This much is clear, although there are difficulties ahead in deciding what type and magnitude of financial connection with firm *T* makes the defendant a "competitor" of those foreclosed suppliers.[165]

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[163] *Ibid*. at 64,348.

[164] P.E. Areeda, *Antitrust Law*, vol. 9 (Boston: Little, Brown, 1991) at 330-31.

[165] *Ibid*. at 333.

Therefore, where there is no financial interest in sales of the tied product or in the tied market, the alleged tie-in does not cross the threshold for *per se* illegality, although the alleged tie does remain subject to review under the rule of reason.[166]

There are three points to be made regarding this argument of the respondents. First, the test of lack of any financial interest in the tied market or economic benefit from the sale of the tied product, however worded, is closely linked in American law to the *per se* nature of tying, which makes us reluctant to adopt it directly because Canadian law is based on a different standard, that of "substantial lessening of competition".

Second, there is some validity to the Director's argument that the question of economic benefit from the tied product, or of participation by the firm with market power in the tied market, only arises when two separate corporate entities are involved in the supply of the tying and the tied products. That was the case in both decisions cited and is not the case on our facts.

Further, in the *Beard* case it was abundantly clear that the hospital itself, the supplier of the alleged tying product, was not a participant in the radiological services, or tied product, market in any way as it did not receive any part of the fee for those services, which went directly from the patient to the unrelated doctors' group. In *Ohio Bell*, the situation was less clear as the two corporate entities were related but, in any event, the Court was definitive that there was no evidence of a "hidden" or "indirect" charge for the Yellow Pages listing in the telco's bill for

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[166] *Ibid.* at 347.

telephone service. The telco, the firm with market power, was not attempting to, in the words from *Beard*, "invade" the market for the supply of directory listings.

In contrast, on the facts before us, Tele-Direct itself supplies both space and services to all advertisers, both commissionable and non-commissionable. We also have evidence that it considers both consultants (detailed elsewhere) and agencies, the alternate service suppliers, to be its competitors. Since Tele-Direct provides services, it must be compensated for them. As a rational firm it would not provide something for nothing. Therefore, it cannot be concluded that it receives "no additional benefit" from its own sales of the alleged tied product. The precise form of that compensation or "benefit" is not at issue here.[167] Whether Tele-Direct has succeeded in foreclosing any alternate suppliers in the services market is evidently a relevant question but that is not what this argument of the respondents focuses on. This argument is that Tele-Direct gets no additional economic benefit from the provision of services and that, therefore, any exclusionary effects in that market are irrelevant because of the lack of linkage to the firm with market power over the tying product. The facts do not support this hypothesis.

(d) Separate Billing/Separate Payment

The respondents argue that if a producer pays for the "components" of a "product" directly and then sells the "product" complete with "necessary inputs" at a specified price, there

[167] The element of no separate charge, or separate billing, for services, which the respondents appear to allude to as part of this argument, is another issue which is dealt with in the next section.

is no tying. They state that the concept of tying *only* applies where the customer pays *separately* for the alleged tied and tying products. In oral argument, this was expressed as the proposition that it is not a tie to bundle something because as long as there is only one "cost" to the buyer, what is being sold is the supplier's single "product".

A distinction was drawn between the case at bar and the facts in *Jefferson Parish*, in which the respondents submit the items found by the Court to be separate products were not "bundled" but were in "two pieces" because there were two bills. They argue that the patient in *Jefferson Parish* paid for both "parts", presumably hospital services and anaesthesiological services, and that if a buyer pays for two different things on two bills, there cannot be one product. Reference was also made to the case of *Collins v. Associated Pathologists, Ltd.*[168]

Turning to *Jefferson Parish*, the distinction drawn by the respondents between that case and the instant case on the facts relating to billing is not as apparent as argued. In *Jefferson Parish*, the hospital and Roux & Associates had a contract which provided that all anaesthesiological services required by the hospital's patients would be performed by Roux. The hospital agreed with Roux to provide an anaesthesia department, including space, equipment, maintenance and other services, drugs and supplies, and nursing personnel (subject to approval by Roux). The use of the anaesthesia department was restricted to physicians employed by Roux. As the Court said:

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[168] 1988-1 Trade Cas. (CCH) ¶ 67,971 (7th Cir. 1988).

> The hospital has provided its patients with a package that includes the range of facilities and services required for a variety of surgical operations. At East Jefferson Hospital the package includes the services of the anesthesiologist.[169] (reference omitted)

The Court describes the billing arrangement as follows:

> . . . The fees for *anesthesiological services* are billed separately to the patients by the hospital. They cover the hospital's costs *and* the professional services provided by Roux. After a deduction of eight percent to provide a reserve for uncollectible accounts, the fees are divided equally between Roux and the hospital.[170] (emphasis added)

The majority of the Supreme Court did consider the "separate billing" of anesthesiological services" as a factor that entered into its determination of whether there were separate products. Yet, the actual billing arrangement, as described by the Court, looks very much like a combined bill for the tied product (professional anaesthesiological services) and part of the tying product (hospital services), much like Tele-Direct's bills for Yellow Pages advertising. Specifically, the amount billed included both a professional services portion for anaesthesiological services and a hospital-supplied anaesthesia equipment, facilities, support personnel and drugs portion. The fee is simply divided equally between the two, irrespective of the actual extent of professional services required in the particular case. It is not explicit separate billing of professional services.

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[169] *Supra* note 137 at 18.

[170] *Ibid*. at 6 n. 4.

In any event, there is no indication in the Court's decision that the factor of "separate billing" is essential or even critical. The most that can be said is that it is one factor to examine. We agree with the Director that if the entire resolution of the one or two products issue could be determined simply by the pricing or billing arrangements, this would allow suppliers to immunize all activity from tying claims simply by refusing to quote separate prices for items provided as a package.

Further, the Director submits that the mechanism or the route by which the money ends up in the hands of the separate service supplier is not relevant. In the commissionable market, the separate service supplier is paid by commission. A payment by commission may be somewhat more circuitous than, for example, direct billing by the hour by agents for their services (allied with a discounted price for space provided by Tele-Direct to persons who did not use its services) but the end result is the same -- the advertiser pays for the services, the advertiser receives the services of an agent, the agency receives payment for the services provided. Payment to agencies by way of commission was historically, and to a large degree still is, a fact of life in all advertising media.

The significance of the reference to *Collins* in this context escapes us. The Court in that case found that there was no distinct demand for pathology services as a product separate from hospital services. The Court did not refer to billing arrangements at all in making its findings. It based its conclusion solely on the lack of consumer or patient requests for specific pathologists or perception of pathology services as separate from other hospital services.

In summary, none of the cases referred to convinces us that the approach we have adopted to the separate product question is inappropriate. Several were largely irrelevant because they dealt with completely different facts or different, non-tying, antitrust issues. To the extent issues were raised which we considered relevant, particularly in the other Yellow Pages cases, we dealt with them in that context. We will now proceed with the basic approach we outlined at the outset and consider the evidence and arguments relating to demand and efficiency.

**(3) Demand by Advertisers**

Are advertisers that fall in that portion of the market which Tele-Direct currently defines as non-commissionable interested in purchasing the services associated with creating and placing a Yellow Pages advertisement from a source other than Tele-Direct? In other words, does Tele-Direct's practice of bundling space and services for a single price "force" them to buy a product that they would rather not buy from Tele-Direct? Or, do they regard the two components as a package that they would rather not acquire separately in any event?

The Director called 19 advertiser witnesses; the respondents called two. All of the witnesses except the two called by the respondents expressed a desire to obtain the services associated with developing and placing Yellow Pages advertising from someone other than Tele-Direct. Seven of the 19 advertisers called by the Director are current agency clients; [171] the remainder of the advertisers are serviced directly by Tele-Direct representatives. Of those, eight

[171] One advertiser (Turpin Group Inc.) participates in a trade-mark advertisement for General Motors dealers for which General Motors, a national advertiser, uses DAC. Turpin's own advertising is treated as local and it deals with Tele-Direct's internal sales force.

use or have used a consultant. Three would like to use an agent but cannot qualify for commission.

Fourteen witnesses represent multi-outlet (whether franchised, licensed or corporate-owned), multi-directory advertisers. The geographic dispersion of the outlets ranges from a metropolitan area to country-wide. Three are single outlet but multi-directory advertisers because of the wide territory from which they draw business. The remaining four advertisers are single outlet, single directory advertisers. All of the witnesses called are spending above-average amounts in the Yellow Pages. Two were spending close to the average of $1,700 (at about $2,000 annually each); the remainder ranged from $7,000 to $300,000.

The respondents have not attempted to rebut the specific evidence of the advertisers who indicate that they would prefer to obtain advertising services from someone other than Tele-Direct. They called two witnesses to show that some advertisers prefer Tele-Direct's services, although one of those witnesses stated that advertisers should have the choice of dealing with Tele-Direct or using an agent. Counsel admitted in oral argument that in the "top end" of the market, some advertisers find the bundling of services and space by Tele-Direct problematic. He argues, however, that these advertisers constitute a "statistically insubstantial sample" and that there will always be a number of people "who would like to get something for nothing" and "as long as they aren't paying for it".

It is true that the customers called to give evidence constitute a very small proportion of total advertisers. They were not randomly selected and we do not treat them as a statistically significant sample. However, coupled with their anecdotal evidence of why they prefer to use agents is the evidence that in the current commissionable market, which includes grandfathered eight-market accounts, agents enjoy the lion's share of the business. When advertisers have the choice, the vast majority choose an agent, rather than Tele-Direct, for services. There is clearly separate demand beyond what Tele-Direct considers a "national" account (the 1993 definition) with respect to eight-market accounts, currently grandfathered. Moreover, there is no reason to believe that the line drawn by Tele-Direct between commissionable and non-commissionable accounts accurately reflects the boundary of demand; that those accounts that are commissionable prefer to use an alternate service provider while those who are not commissionable do not. Given the strength of demand for agents' services in the current commissionable market, we think it is reasonable to infer that the preference shown by the large majority of commissionable accounts for the use of agents extends down into the current non-commissionable market, at least to some extent. We are satisfied there is sufficient evidence before us to conclude that there is demand for separate advertising services below the existing commissionable market and that the advertisers called by the Director can tell us something about the nature of that demand.

Common amongst the Director's witnesses, whether single or multi-directory advertisers, was a preference for the advice or consultative services provided by an agent or a consultant over those of Tele-Direct. A recurring theme was that the agent or consultant provides an "overall"

picture, reviewing all of the client's Yellow Pages advertising, including white pages listings, which headings were being used and which should be used, all the directories involved, what the client's competitors are doing and the nature of the business's markets. These service providers help plan the Yellow Pages advertising, including recommending headings and, in some cases where the level of expenditure is higher, budgeting. In the case of agents, a representative is assigned to the account for a long period of time and the clients have the perception that the agency "understands" its particular business. That these service providers tend to pay attention to the overall picture is suggested by the testimony of two advertisers, one the client of an agent and one of a consultant, that the agency or the consultant was the one to bring to its attention duplicative advertisements in its Yellow Pages program.

The advertisers using agents also mentioned creative services as one of the elements of the service provided. For the clients of consultants, creative services are at least equally important since by re-designing an advertisement and by substituting other design techniques, like, for example, screening, for the more expensive size and colour, the consultants are able to reduce the cost of advertising.

In the case of both agents and consultants, advertisers generally perceive that these "independent" service providers are more interested in helping them get more out of their Yellow Pages advertising dollar than is the typical Tele-Direct representative. Frequently, according to the advertisers, the Tele-Direct representative does not have time to sit down and consult with the advertiser. The advertiser has to accommodate itself to the schedule of the representative

faced with a full schedule and deadlines in a particular canvass. Another recurring complaint is that the Tele-Direct representative is more interested in selling more colour or a larger size than in arriving at the level and type of advertising that is right for that client; representatives are perceived as quite aggressive and prone to "upsell". Most of the advertisers also recognize that these problems result from the way in which Tele-Direct operates its canvasses and compensates its representatives; their comments were not directed at the representatives as individuals. While the agencies are also paid commission, individual representatives are paid straight salary for servicing the agency's existing client base.[172]

The multi-directory advertisers also prefer the services of third parties because they provide "co-ordination" or "administrative" services. These multi-directory advertisers are primarily the clients of agents rather than consultants.[173] They testified extensively about the advantages of using an agency which will keep track of publication dates for the various directories, control the uniformity of the advertisements, company image and message across directories and, where applicable, organize the contact between head office and franchisees or licensees for approval of advertisements and billing. Promoting a uniform message and image is particularly important to franchisers whose franchisees may be quite independent of head office

[172] The evidence is that the agencies generally keep servicing existing clients and prospecting for new clients separate; adding new clients is usually the primary responsibility of one or more designated persons. Out of the five CMRs that testified, two pay commission for new clients; only one of those offers that incentive to all employees, the other has a vice-president who is responsible for new business.

[173] Only two of the multi-directory (leaving aside the one who is in only two directories) advertisers were clients of consultants and only one of those talked about uniformity of advertisements and co-ordinating dates and deadlines.

and also to those which had enrolled businesses to their network which operate the franchised business as only a part of their overall business.[174]

It might be argued that the administrative services provided by agents are not supplied at all by Tele-Direct.[175] On that reasoning, administrative services would not be a component of the advertising services at issue in the tying case. The argument would be that since Tele-Direct does not supply administrative services, it is not in competition with agents because it is supplying different services and customers who want administrative services are free to purchase them separately.

It appears that, in fact, Tele-Direct has made some effort to provide the administrative services emphasized by the advertiser witnesses who appeared before us (uniformity and co-ordination) through its national accounts group and with its efforts regarding continuity. Further, while it is possible that such administrative services could *conceivably* be purchased separately, there is no reason to believe that it would be efficient to do so. There is no evidence of agents providing these services to advertisers who use Tele-Direct for the remaining services, even

[174] E.g., the "Autopro" line of automobile parts is offered by licensed Autopro mechanics and service stations across the country; the franchisees of Location Pelletier offer short-term vehicle rentals under that banner but usually operate another business as well.

[175] A similar conclusion was reached in the United Kingdom by the Office of Fair Trading ("OFT") in its 1984 report on the Yellow Pages industry: exhibit J-6 (green vol. 4), tab 282. When British Telecom withdrew all commission and internalized services through an exclusive sales contractor, the advertising agencies argued that they were placed at a disadvantage in competing to offer services to advertisers as the advertiser had to pay for the sales contractor's services, included in the rate card price, and then pay again to use the services of an agent. The OFT concluded that the "administration of the account" on the advertiser's behalf, by which they meant the day-to-day running of the account (negotiating claims, authorizations, proof-checking, paying bills) could not be carried out by the sales contractor and would either be done by the advertiser using its own resources or an agent. In respect of those services, therefore, the agencies were not competing with the sales contractor but rather with the advertiser's own resources.

though there is clearly a demand for them. The fact that Tele-Direct provides administrative services in some cases but not in others simply means that Tele-Direct and the agents are not providing precisely the same product. Indeed, one would not expect to find homogeneous packages of services. Otherwise, there would be no reason for customers to choose one service provider over the other. Therefore, we are satisfied that administrative services are a relevant and important aspect of advertiser demand for advertising services.

We now turn to the respondents' argument that advertisers only prefer agents because they are getting something for nothing or they are not paying for the agents. We do not accept this argument. The advertiser is paying for the advertising services whether provided by Tele-Direct or, if the account is commissionable, by an agent. With respect to the use of consultants, advertisers pay to use consultants as Tele-Direct's price remains the same but the consultant charges the advertiser a portion of the amount the advertiser saves by use of the consultant. Those savings would otherwise be for the advertiser to either spend on more Yellow Pages advertising or to pocket.

Even if we were to accept that the cost to advertisers of obtaining services is the same whether they choose Tele-Direct or an agent, we think it is still evidence of separate demand that where advertisers have the choice, the advertisers prefer to use agents. However, the evidence is, as will be explained, that when advertisers use agents, they bear costs additional to what they would have to bear if they placed their advertising through the Tele-Direct representative. Thus, it is apparent that customers prefer agents even if it is more costly to use an agent than to deal

directly with Tele-Direct. This is strong evidence of demand for the services of agents by advertisers when they have the possibility of using them.

One source of higher cost derives from the billing practices of Tele-Direct. When advertising is placed through Tele-Direct's representative, the cost of advertising is divided into twelve equal parts and included in the Bell Canada telephone bill commencing upon issue of the directory. Advertisers who use agents are required to pay for their advertising on an issue basis, that is, to pay the full amount upon issue of the directory. When this occurs the advertisers' additional cost of using an agent is roughly one-half the annual cost of funds or, in other words, one-half of the commercial interest rate.[176] Given interest rates over the past 20 years, this has, depending upon the time, constituted approximately three to six percent of the advertising bill, a cost the advertiser does not pay if it uses Tele-Direct's services. In the words of Mr. Kitchen of Lansing Buildall, these advertisers are "paying a premium in terms of the payment schedule." While it is true that some advertisers that used agencies have arranged for periodic payments, no arrangement disclosed in the evidence is as favourable to them as the Tele-Direct monthly billing practice.

Another cost borne by some advertisers in order to use an agent is the placing of "extra" advertising in directories outside the areas from which the advertiser draws its customers so that

[176] Counsel for the respondents appeared to take the position that advertisers did not incur higher costs of using agents in those cases where the advertisers placed advertisements in a number of directories that were issued throughout the year. Although this argument has a superficial appeal because it appears that advertisers are paying on a periodic basis either way, it is not valid. Advertisers who use an agent must pay in advance for each directory as opposed to over a 12 month period if they use Tele-Direct.

the criteria for the eight-market rule (grandfathered accounts) are met. Five advertiser witnesses buy "extra" advertising. In one case, the cost of the additional advertisements is paid by the agent; in another the agent pays 15 percent of the cost of the additional advertisements. The other advertisers bear the full cost of the "extra" advertising.

How far down does the demand for separate services extend? We have evidence from a number of advertisers, both agency clients and clients of consultants, probably best described as large local or regional advertisers. Despite the amounts they are spending in Yellow Pages, these advertisers would not qualify even under the eight-market rule if they only advertised in the areas where they have locations or from where they draw business.[177] Since there are only seven market areas in Ontario and six in Quebec, that rule requires advertising outside the boundaries of each province.[178]

However, we did not hear from any truly "small" advertisers. Although two of the advertiser witnesses spend about average amounts in the Yellow Pages, they are the outlying examples. Most of the remaining witnesses, even those using consultants, spend at least $10,000

[177] Of the seven agency clients, five, to all appearances, would not meet the eight-market criteria; the sixth apparently does but does not meet the 20-directory requirement for the 1993 rule. The seventh may meet the 1993 definition but as a group advertisement which is problematic for other reasons (see chapter "IX. Abuse of Dominant Position" under "D. Market for Advertising Services", *infra*). The three advertisers who currently use Tele-Direct but would like to use an agent are similar: a franchiser, a large regional advertiser and a company with three offices in two provinces.

[178] Among the agency clients, HOJ Car and Truck Rentals, for example, spends $125,000 annually and has 36 franchises, all located in southwestern Ontario. Location Pelletier spends $120,000 to $160,000 annually but its 60 licensees are all within the province of Quebec. Stephensons' Rent-all Inc., as Mr. Day of Day Advertising Group, Inc. testified, became non-commissionable when the eight-market rule came in and that was when it began to do the "extra" advertising. Stephensons has 38 retail outlets in southern Ontario and spends $140,000 on Yellow Pages advertising. Among the consultant clients, Canac-Marquis Grenier has 10 outlets across Quebec and spends $50,000 on its advertising; Tiremag Corp. spends $20,000 although it has only one outlet.

and most spend considerably more than that. Advertisers spending more than $10,000 annually represent only two percent of Tele-Direct's total advertisers by number and about one-third of its advertising revenues. There are, therefore, a vast number of advertisers representing a significant amount of revenue about which we know little regarding the character of their demand for separate advertising services.

The Director refers us to documentary evidence dating from 1975 when Tele-Direct changed to the eight-market commission rule to show that approximately 20 percent of the pre-1976 agency customers purchased less than $1,000 per year of Yellow Pages advertising. Many purchased as little as $500 worth of advertising annually. We have no reason to doubt the accuracy of these statements. We are reluctant, however, to reach conclusions about "small" advertisers based only on documentary evidence that is some 20 years old.

On the other hand, we have the views of Michael Trebilcock, the respondents' economist expert witness,[179] regarding "smaller" advertisers, which imply that these advertisers do not demand advertising services from a source other than the publisher. Based on the data provided in the report of the Office of Fair Trading,[180] he notes that for smaller advertisers, the cost of providing advertising services overwhelmingly comprises space and selling effort rather than advisory services. The reasoning behind these statements is sound and there has not been any evidence or argument to the contrary. It is certainly plausible that the lowest-cost

[179] Professor of Law and Director of the Law and Economics Programme at the University of Toronto.

[180] *Supra* note 175.

"advertisements", for example a bold listing, do not contain much, if any, creative content. We therefore accept that the general thrust of this argument is valid and that, for "smaller" advertisers, it is highly doubtful that a separate demand for advertising services exists.[181]

The evidence supports the view that there is buyer interest in obtaining advertising services from suppliers other than Tele-Direct over at least part of the spectrum of advertisers. While it is difficult to know where exactly to draw the line, we can conclude at this point that there is no evidence that would satisfy this threshold test of separate demand from "smaller", including new, advertisers. It is apparent that the larger advertisers would have the greater need for the services of agents or consultants based on the complexity of their advertising. Smaller, including new, advertisers whose advertising is relatively more simple likely would not have such need.

However, based on the evidence before us, we are not prepared to draw a firm line below which we could confidently say there is no evidence of buyer demand for services of independent advertising service providers. Therefore, at this point, we only conclude that there is evidence of buyer demand for advertising services for suppliers other than Tele-Direct for "larger" advertisers.

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[181] We note from Tele-Direct's 1994 Corporate Post Canvass Analysis Report that "new" advertisers, those using Yellow Pages for the first time or new businesses, are certainly among the smaller Tele-Direct advertisers. Selling effort is especially important with respect to new advertisers. The average *annual* expenditure by a new advertiser is $839, less than half the average for all advertisers. Less than one-half of one percent of new advertisers spend $1,000 or more *per month* where the corresponding percentage among established advertisers is about 3.5 times greater. Apparently, the typical new Yellow Pages advertiser starts with a small advertisement, in which case it is the value of the medium and the "sales pitch" which are important and not other advertising services.

**(4) Respondents' "Efficiency" Arguments**

Given the evidence of demand for services from suppliers other than Tele-Direct, is there evidence that efficiency considerations would dictate a single product? Based on the historical practices of Tele-Direct, the Director has ample evidence that the products can and were, in fact, sold separately. Pre-1975, a large percentage of advertisers could acquire services from a source other than Tele-Direct. Under the eight-market rule and the 1993 rule, any advertiser that qualifies or can make itself qualify by some extra advertising can acquire services separately from an agent. The respondents have put forward a number of efficiency arguments which, if valid, they say would lead to the conclusion that there is a single product and therefore, no tie. These arguments are largely based on the analysis and evidence of Professor Trebilcock, their expert witness. There were also profitability studies entered in evidence by the respondents and they will be dealt with in the next section.

(a) Impossibility of Leveraging: Fixed Proportions

Professor Trebilcock, for the respondents, is of the view that the Director's theory that Tele-Direct is attempting to leverage its market power (assuming it has market power) over space into the services market by bundling space and services is not valid. He states that such leveraging cannot occur because advertising space and advertising services are complements which are consumed in fixed proportions. There is agreement between the experts on both sides that complementary goods used in fixed proportions imply that the only profit-maximizing

motive to bundle the two products is in order to minimize costs; all opportunities to exploit market power could be accomplished with control over either product. This implies that the bundling is socially efficient and it should be concluded that there is only one product.[182]

Professor Slade, for the Director, argues that space and services are at least partially substitutable. Professor Slade is of the view that:

> . . . it is possible to achieve the same impact by using a large ad or one that is cleverly designed. In addition, astute targeting of the "right" directories can substitute for purchasing space in a larger group of directories. More generally, an agency that provides service can often advise on ways to cut expenditure on space while maintaining the same level of advertising impact. In addition, it might even suggest ways of obtaining a higher impact from lower expenditure by, for example, substituting white knockout for colour.[183]

Because of the failure of the assumption of complementarity, she argues, leveraging is possible. Certainly the possibility of an extension of market power over a substitute, even if only a partial substitute, is one which causes concern and should be examined further.

The evidence supports variable rather than fixed proportions. To the extent that agents tend, compared to Tele-Direct representatives, to be less likely to promote increased expenditures on space, the additional expenditures on advertising services by agency clients (through the purchase of extra advertising, foregoing monthly billing) lead to the substitution of

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[182] We should note here that while the Director refers to space and services, Professor Trebilcock refers to three elements: space, consulting advice (design, graphics, layout, etc.) and selling effort (or pure promotion of the value of the medium). He recognizes that selling effort is clearly variable in relation to space. That is the genesis of the principal-agent problem dealt with later in this section.

[183] Expert rebuttal affidavit of M.E. Slade (28 August 1995): exhibit A-119 at 11.

advertising services for advertising space. Furthermore, once it is recognized that there is an issue of the quality and content of advertising services, as indicated by the evidence of advertisers and their willingness to pay more for agents than it would cost them to use Tele-Direct's representatives, even assuming the same expenditure on space using an agent or Tele-Direct, it is difficult to see how advertising services are being consumed in fixed proportions with advertising space.

The evidence regarding the activities of consultants also suggests that advertising services and advertising space are not used in fixed proportions, and that they are partial substitutes. The purchase of services from a supplier other than Tele-Direct results in reduced expenditures on space. An example provided by a consultant concerned a very large and apparently inappropriate existing advertisement for a taxi company in the Hamilton area. The existing full page advertisement included a large picture of an airplane and reference to airport service. The consultant (Serge Brouillet of Ad-Vice Communications) determined from his marketing needs analysis for the client that he actually did very little airport business. The changes proposed by the consultant were both less costly and appeared to be more effective.

We conclude that advertising space and service are not consumed in fixed proportions and it cannot therefore be assumed, as argued by the respondents, that only efficiency explains why they are bundled by Tele-Direct.

(b) Widespread Industry Reliance on Internal Sales Force

As part of his expert evidence on behalf of the respondents, Professor Trebilcock stated that any theory of the tying allegations in this case must explain four central facts. One of those facts is stated as:

> Almost all yellow pages directory publishers organize their selling functions in a similar way to TD i.e. by heavy reliance on an internal sales force.[184]

It is not in dispute that all North American publishers, whether telco-affiliated or independent, rely heavily on their internal sales force. The Director has, however, brought forward evidence indicating that where the line is drawn between accounts that are open to agency competition because they qualify for commission and those which are exclusive to the internal sales force differs from publisher to publisher. The Director further argues that Tele-Direct's current commissionability rule is one of the strictest in North America.

The respondents submit that Tele-Direct's national account definition simply represents the transposition of the YPPA national account definition (also referred to as the YPPA "A" account definition) into the Canadian context. The YPPA by-laws provide that, as a minimum standard, an advertising program involving two or more publishers, 20 or more directories, and at least three states with 30 percent of the advertising revenue outside the primary state is considered national Yellow Pages advertising. Publisher members must accept advertising

[184] Expert affidavit of M. Trebilcock (18 August 1995): exhibit R-174(b) at para. 27.

meeting those criteria as national. They are not precluded from accepting advertising meeting less stringent criteria as national. Each publisher decides on the level of compensation for advertising it defines as national.

While the *terms* of the YPPA definition are similar to those used by Tele-Direct in its definition, the evidence was that the effect of applying the definition in Canada is very different. Where there are about 6,000 directories in the United States, there are only about 350 in Canada. Tele-Direct is one of only seven or eight publishers in Canada and controls 70 percent of Canadian Yellow Pages publishing revenue. Tele-Direct's definition incorporates a minimum of two provinces instead of three states. Tele-Direct requires 20 percent of the published revenue outside the primary *publisher's territory*; the YPPA definition requires 30 percent of the revenue but outside the primary *state*. Under the YPPA definition, as long as two publishers are involved, there could be minimum revenue in the second publisher's territory. According to the agency witnesses, the 20 percent requirement is especially onerous given that Tele-Direct's territory includes the two most populous provinces. Overall, commission is currently paid on 13 to 14 percent of total directory advertising revenues in the United States as opposed to seven to eight percent of total revenues in Canada.

Although it is true that an account wholly within a large state such as California (with a larger population than all of Canada) might not be commissionable under the "A" account definition, according to the President of the YPPA, most publishers, including telco affiliates (RBOCs) pay commission on regional accounts, called "B" accounts. For example, the evidence

was that Pacific Bell has a commissionable account which could include accounts wholly within the state of California.

In Canada, with one exception, all the telco publishers require advertising to be placed in two publishers' territories to qualify for commission at 25 percent,[185] usually with a minimum of 20 percent of revenues required outside the dominant publisher's territory. Effectively, this generally means that two provinces will also be required.[186] Since the other publishers have much smaller territories than Tele-Direct, their "two publishers" requirement is easier to meet.

Professor Trebilcock places great stress on the fact that independent publishers also rely heavily on an internal sales force because "many of these directories do not remotely possess any market power (however measured) in many of the directory markets in which they operate."[187] Therefore, he concludes

> *The stark and enormously significant implication of this fact is that the decision to vertically integrate advertising selling functions clearly has nothing to do with market power*. It must be explained entirely by the kind of efficiency considerations . . . outlined earlier in this opinion.[188]

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[185] AGT Directory Limited only pays 25 percent on foreign numbers (as do all publishers) but pays 15 percent on *any other* advertising, including local accounts.

[186] Except for Edmonton Tel: advertising in Calgary and Edmonton would qualify under its rule.

[187] *Supra* note 184 at para. 27.

[188] *Ibid*.

Based on the evidence from White and DSP, we know that, in Canada at least, despite the fact that they offer commission on all accounts brought to them by CMRs,[189] the independents rely heavily on their internal sales force. The evidence that we have is that an internal sales force is a *necessity* for their survival rather than a choice based on efficiency considerations. Despite the liberal commission rules, they receive a small proportion of their overall revenues from agents and must rely on their own sales force for the bulk of their revenues.[190] In fact, recruiting an effective sales force is one of the hurdles a new publisher has to overcome.

While we agree that the independent publishers are unlikely to have market power, we are reluctant to conclude solely on the basis of the fact that they rely on an internal sales force that the "bundling" of sales and service by a publisher with market power is competitively benign.[191] We would likely be willing to draw that conclusion if we had evidence that the markets in which independents are operating, particularly in the United States, are competitive. If they were, yet most sales by publishers were on a bundled basis, that would be a very strong indication that efficiency was dictating the bundling and that there was only one product at issue.

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[189] The evidence of Mr. Lewis of White was that White pays commission (in the United States and presumably also in Canada) on any account submitted by a CMR without restriction. The commission rate is 23 percent for established directories and 30 percent for newer directories. Likewise, DSP pays CMRs commission on any account.

[190] E.g., for White: eight percent of revenues in U.S. placed by agents; in Canada, one-half of one percent of revenues placed by agents.

[191] In circumstances where the dominant players are telco publishers and those publishers only pay commission on national and regional accounts, it follows that agents are active mainly in those sectors. They are not set up to service local accounts even if independents pay commission on those. Thus, because the dominant players do not want to use agents for local accounts, independents *cannot*, even if they wanted to, rely solely on agents but must use an internal sales force. Professor Slade is of the view that agents would tend to serve this market over time if the major publishers changed their policies and provided a broader market. Further, as the independent is usually the newcomer into a market dominated by the telco publisher, agents are reluctant to recommend a new directory, even for national and regional accounts where at least some of the major players pay commission, until it has proven itself.

The only evidence we have, however, is that those markets, like Tele-Direct's market, are dominated by the telco publisher. It was pointed out to us by the respondents that most RBOCs' prices are even higher than Tele-Direct's. We also referred in the section dealing with Tele-Direct's market power to testimony that indicates that American telco publishers also have sufficient profits to subsidize local telephone service. We are, therefore, not satisfied that widespread reliance on an internal sales force across publishers, including independents, dictates a single product on efficiency grounds because it may be a function of telco dominance in all markets.

(c) Agents' Views

The implication of finding and prohibiting the tied selling alleged by the Director is that agents would, one way or another, be permitted to offer their services to a wider range of accounts below the level of "national" accounts currently considered by Tele-Direct as commissionable. Professor Trebilcock is of the view that agents are not interested in servicing smaller accounts.

In interviews with agents that the Director's staff undertook in investigations prior to filing the application, the agents stated that they were not interested in the smaller accounts. As reported by Professor Trebilcock, who had access to the summary of the interviews prepared by the Director's counsel, the smallest accounts that any of the agents expressed an interest in ranged from those spending from $10,000 to $50,000 per year on Yellow Pages. A lower limit of

$10,000 excludes almost 98 percent of all customers and approximately 70 percent of total revenue but would represent a substantial increase over the amount of revenue currently commissionable.

When giving evidence the agents took a different position and stated that they would be interested in all customers but would handle the business differently. The only reasonable interpretation is that the early answers reflected the agents views given their current method of operation. Their answers when giving evidence, in contrast, reflected the willingness of businesspeople to consider any reasonable opportunity to turn a profit, including considering the possibilities of paddling into uncharted waters. On the whole, we regard their views during the interviews as the more reliable. Because the agents apparently have little or no interest in servicing smaller accounts, we infer that they regard themselves, at least in their current setup, as at a cost disadvantage *vis-à-vis* Tele-Direct in dealing with these smaller customers.

Therefore, we agree with Professor Trebilcock that agents are not interested in servicing smaller accounts, although neither he in his evidence nor the Tribunal at this stage can be more explicit than having regard to the $10,000 to $50,000 range about what constitutes "smaller" accounts.

(d) Justification for Tele-Direct's Practice of Bundling

Professor Trebilcock attempted the most complete explanation and justification of Tele-Direct's practice of bundling space and services over most advertiser accounts. Initially, he

divides what the Director has alleged to be advertising services into selling effort and consulting advice regarding the advertisement (artwork, placement, etc.). He states that selling effort cannot be priced on its own as customers will not pay for a "sales pitch"; it must be bundled with either space or consulting advice. The overall problem facing Tele-Direct (and other publishers) is to exercise control over those selling its product and to motivate agents or internal staff, as the case may be, to provide an optimal mix of selling effort and consulting advice *from Tele-Direct's viewpoint*. The Tribunal agrees that there is what is known as a "principal/agent" problem at work here. The issue is the nature of the problem and whether Tele-Direct's viewpoint is the only relevant one or should be the operative one.

Professor Trebilcock divides his explanation concerning Tele-Direct's approach to commissionability into three categories: small advertisers, larger local advertisers (which presumably includes regional advertisers) and currently commissionable advertisers (larger national or regional accounts involving multiple publishers). We have accepted that it is likely that small advertisers have no separate demand for advertising services. New advertisers, with few exceptions, coincide with small advertisers. For the sake of completeness we continue with the "efficiency" or cost-side evidence for all advertisers including small advertisers.

Professor Trebilcock's primary explanation of why Tele-Direct prefers to rely on its own resources for servicing small customers is that it is highly likely that it is cheaper for Tele-Direct to service small customers internally. His view is that the most effective method of selling advertising to these customers, probably because of significant economies of scale, appears to

entail "`blanketing' directory territories in concentrated time blocks on a sequential basis" as Tele-Direct currently does. It is, however, not self-evident that this approach results in lower per unit costs than using smaller numbers of representatives who take a longer time to do a canvass. There is simply no evidence.

Another factor cited by Professor Trebilcock that is likely to lead to attenuated efforts by CMRs regarding small advertisers is the possibility that advertisers would engage in opportunistic conduct. The difficulty Professor Trebilcock foresees is that once the successful selling effort has been made, which the customer is unwilling to pay for, the customer is in a position to ask for, and other sellers are in a position to offer, a discount because they need only provide the consulting advice and not the selling effort, for which the first seller will be uncompensated. He believes that this problem is most acute for small advertisers, including first-time buyers. For large advertisers, selling effort constitutes a smaller percentage of overall advertising services. In addition, larger customers might have more difficulty engaging in opportunistic conduct because they are more likely to become known to agents. Tele-Direct can avoid this "free riding" by small advertisers by bundling space and selling effort. This is a version of the free riding argument often made in defence of vertical arrangements such as resale price maintenance which may be valid in some circumstances. There is, however, absolutely no evidence that it applies on the facts in the instant case.

Professor Trebilcock also points to a divergence of interest between Tele-Direct and agents which leads to an incentive compatibility problem should Tele-Direct use agents to

service small advertisers, otherwise referred to as the "completeness externality". This externality, compounded by advertiser opportunism as explained above, is also the principal explanation advanced for why Tele-Direct prefers to provide services internally for "larger local" advertisers. As Professor Trebilcock recognizes, a simple cost difference cannot explain the reluctance of Tele-Direct to offer a commission on these accounts as the agents would not service them, even if commission were offered, if they were at a cost disadvantage to Tele-Direct.

According to Professor Trebilcock, there is a positive correlation between the "completeness" of a directory and the value that users place on it. Advertisers are willing to spend on a directory to the extent that the users find it valuable. But since each individual advertiser benefits only minimally from their own contribution to completeness, they are unwilling to pay for this effect. Tele-Direct, as the publisher, is able to internalize this externality over the longer term (the more "complete" and useful the directory, the more valuable the advertising space and the higher rates it can charge).

While there is no doubt that publishers value "completeness" for the reasons stated, it is largely an undefined term. There is no explanation in Professor Trebilcock's evidence, for example, of why a directory is in any sense more complete when there are paid bold listings rather than unpaid listings in ordinary type. Nor is there any adequate explanation of why users would value more advertisements in colour or larger advertisements unless they provide more information. There were also indications from the evidence that there can be *too much*

advertising from the viewpoint of users. In large centres such as Montreal and Toronto, it has been necessary to split directories because of their size. Thus, while it is indisputable that directories must have sufficient representation by advertisers so that the directory is considered to be a useful reference, it is far from clear that *all* increases in advertising contribute to this objective. This point is critical because if Tele-Direct is encouraging increased selling effort beyond the range where further advertising contributes to completeness in any meaningful positive way, then the ability of Tele-Direct to sell additional advertising through its own sales force cannot be assumed to be socially beneficial in providing users with additional value.

Professor Trebilcock is of the view that the completeness externality leads to two results. First, Tele-Direct has a stronger incentive than CMRs to recruit new accounts; CMRs will focus most of their efforts on attracting existing advertisers from Tele-Direct or other CMRs. Second, while Tele-Direct is interested in retaining customers over the long term in order to enhance completeness, CMRs will be more concerned with immediate returns. Thus, when Tele-Direct recommends the, in Professor Trebilcock's words, "optimal" advertising package, the CMR will have an incentive to convince the advertiser that a less expensive or "sub-optimal" package is equally useful in order to recruit the customer. The risk of dissatisfaction on the part of the customer is increased; the customer may stop using Yellow Pages because of informational imperfections which make it difficult to distinguish between weakness in the medium and bad advice.

Further, Professor Trebilcock is of the view that it would be difficult for Tele-Direct to structure incentives to CMRs to induce them to sell a "socially optimal" quantity and quality of advertising by way of contract because of significant transactions costs. On the other hand, Tele-Direct can and does motivate its internal sales force "to sell and advise clients to purchase optimal packages by offering training, encouragement, screening of advertising sales by managers, internal promotions, awards, a team ethic, etc."[192]

The Tribunal is inclined to agree with Professor Trebilcock that it is probably easier for Tele-Direct to create incentives that motivate its own representatives to sell more than agents. The more important question is whether leaving Tele-Direct the unfettered choice of when to use agents and when to service internally leads to a truly "socially optimal" result. We have already indicated some doubts that the unrestricted pursuit of completeness, while it may be in Tele-Direct's interest, is wholly in the public interest or "socially optimal".

The Director argues that Tele-Direct chooses to retain services in-house because this allows it to motivate its sales force to exploit better the "information asymmetry" it enjoys *vis-à-vis* its customers or, in other words, to "oversell". He submits that Tele-Direct's incentive structure results in its sales representatives convincing advertisers to buy more than they would if they were provided with balanced information or the possibility of obtaining an alternative viewpoint from another service supplier. Witnesses stated that they did not regard the advice from Tele-Direct's representatives as objective. We have acknowledged that, as a general matter,

[192] *Supra* note 184 at para. 22.

the effectiveness of marginal dollars spent on advertising is difficult to determine. This leaves customers somewhat vulnerable to the advice they receive. The incentive structure for Tele-Direct's representatives makes the Director's argument that they are motivated to "oversell" at least plausible. To the extent that the Tele-Direct representatives succeed in selling "too much" advertising to one advertiser, the effect would multiply throughout a heading, since, as the evidence revealed, many firms base their Yellow Pages expenditures on that of their competitors (the "prisoner's dilemma"). We, therefore, cannot accept Professor Trebilcock's critical assumption that the advertising a Tele-Direct representative sells is necessarily socially optimal.

With regard to recruiting new customers, we accept that a publisher would want to ensure that there was a thorough and efficient canvass of potential new customers, in the sense that all were approached and there was no duplication of effort. Since the prospective new Yellow Pages advertisers are easily identifiable from business telephone subscriber information in the hands of the publisher, it makes sense to assign them to specific persons rather than creating a "free for all". This can be done on an individual basis, by territory, or any other method that avoids multiple contact of the same prospect by different persons. The assignment is key; if customers are assigned it makes little difference whether the persons making the contact are employees or outside agents.

Professor Trebilcock also believes that a reason why Tele-Direct does not make larger local customers commissionable is that agents would curry favour with customers by recommending less than the "optimal" amount of advertising (or the amount that a Tele-Direct

representative would recommend), with long-term detrimental effects, because they are primarily interested in immediate returns. While Tele-Direct may worry about the advice being given by agents, it is far from clear that the quality of their advice is a cause for concern with respect to satisfying the needs of consumers. The facts before us do not support Professor Trebilcock's view that agents tend to take a short-term view. When the actual relationships between customers and agents and customers and the internal sales force are considered, it is the former who have the long-term relationship. Until recently most Tele-Direct representatives, *unlike* agents, predominantly had a short-run relationship with customers. Professor Trebilcock also acknowledged that agents might be reluctant to be perceived as pushing current sales because customers might be inclined to switch agents. Tele-Direct's representatives do not have this concern because customers do not have freedom of choice. Much of the representatives' livelihood depends on increased sales to existing customers whereas the employees of the agents are on salary and receive no additional compensation for increased sales to existing clients.[193] Moreover, there is no evidence that agents' clients have tended to cancel advertising for any reason.

In Professor Trebilcock's view, the fact that Tele-Direct chooses to pay commission on multiple publisher accounts is evidence that Tele-Direct is motivated by efficiency considerations with respect to all its decisions regarding commissionability. Otherwise why would Tele-Direct choose to make any part of its sales commissionable? Professor Trebilcock

[193] Based on the evidence of the representatives of CMRs who testified; together those CMRs account for a large portion of commissionable sales.

interprets the fact that Tele-Direct pays commission on national accounts and that the bulk of sales to this segment is made by agents as proof that agents can more efficiently service this segment. While Professor Trebilcock believes that the tendency of agents to undersell and focus on existing advertisers and the possibility of opportunism are still present, the cost advantages of agents compensate for these weaknesses. These sophisticated advertisers are also better able to monitor whether they are being sold the "optimal" amount of advertising and the possibility of losing such a client effectively polices the agent. While the Director accepts that the agents are more efficient in servicing the commissionable segment, he disputes, as noted above, that agents in any circumstances sell "sub-optimal" amounts of advertising as defined by Tele-Direct's perspective. The Director takes issue with the view that Tele-Direct is more efficient in dealing with the rest of its customers. Detailed evidence on relative efficiency was placed before us and is the focus of the next section.

In summary, as indicated in the section on advertiser demand, we have accepted Professor Trebilcock's view that there is no separate demand for advertising services for "small" customers. With respect to those advertisers for which separate demand has been proven, called "larger local" advertisers by Professor Trebilcock, the Tribunal does not accept that either the completeness externality or the possibility of advertiser opportunism is supported on the evidence before us and, therefore, does not dictate that space and services are a single product with respect to those customers. The question of relative efficiency or cost advantages on the part of Tele-Direct with respect to servicing those advertisers will be addressed in detail in the next section.

### (5) Comparative Profitability Studies: Agents/Internal Sales Force

The respondents have introduced evidence bearing on the comparative efficiency of Tele-Direct's representatives and agents to argue that the commissionability rules are, and always have been, efficiency based. The primary evidence is a comparative cost study dated 1995 created for these proceedings and entered through Michel Beauséjour, Tele-Direct's Vice-president of Finance. In addition, there are two other internal contribution-to-profit studies from 1974 and 1985, along with the descriptive evidence of Donald Richmond, Director of Manufacturing and Contract Administration for Tele-Direct, and Jan Rogers, Director of Corporate Methods and Support.

Before turning to a detailed discussion of the evidence it is necessary to consider its import with respect to the respondents' claim that its policies with respect to the payment of commission and the utilization of agents are dictated by efficiency considerations. While the studies referred to are relevant to the respondents' position, there are very important caveats that seriously weaken the conclusions that can be drawn from the evidence. Firstly, in an ordinary "make or buy" decision what is being compared is only the *cost* of producing a particular product in-house or buying it. This basic requirement (of looking only at cost) is violated when a comparison is made between the *contribution to Tele-Direct's profit* by the internal sales force and agents, i.e., revenue considerations enter.

More importantly, the products (i.e., the provision of services to commissionable and non-commissionable accounts) being compared in the Raheja study from 1974 and the 1995 study are very different. In fact, these studies are well described by the comparison of "apples and bananas". It is difficult to see what can be derived from the exercise of comparing the contribution to profit of agents and Tele-Direct's representatives who each deal with an entirely different set of customers. A significant percentage of the non-commissionable accounts are dealt with entirely over the telephone. Where representatives meet with customers, the customers' needs, for the most part, cannot be compared with the large multi-directory customers who rely on agents. What is the point of comparing the contribution to profit of agents, who are acknowledged to be relatively effective in serving complex "national" customers, with the contribution to profit of Tele-Direct's representatives in serving customers, many of whose requirements are relatively simple? While the comparison in 1985 between NAMs/NARs and agents might be considered to be a close, although not an exact comparison, the data are not current and not particularly detailed.

Overall, we have found these profitability studies not to be supportive of the respondents' position. The early studies are out-of-date (and Raheja is of limited relevance because of the difference in products being compared and an error in it), a critical point when considering current efficiency. At numerous points in the 1995 study, the differences in costs can be traced to differences in the characteristics of the customers being served rather than to any possible difference in the relative costs of agents and Tele-Direct's personnel. It also suffers from bias in favour of Tele-Direct because of its time frame and from methodological weaknesses.

For completeness, we will comment on the studies to further explain why, in our opinion, they are not reliable for the purpose advanced by the respondents, that is, to demonstrate that Tele-Direct's internal sales force is more efficient than agents.

(a) Raheja Study (1974) [194]

This study was prepared as part of a review of Tele-Direct's policy towards advertising agencies, including agencies specializing in Yellow Pages, which were a relatively recent phenomenon at the time, with a view to determining a commission payment. The study itself notes that the system of classifying accounts at Tele-Direct made it difficult to calculate profitability of the various components. Nevertheless, Mr. Bourke was of the view that management at the time placed sufficient confidence in the results of the study to make decisions on the basis of it. The study showed that in the "local market", defined as all sales within Tele-Direct's own directories, agency sales were less profitable. Although there is no evidence of the weight that the study played in the decision, in 1976 Tele-Direct sharply restricted the commissionable market by moving to the eight-market rule.

The odd thing about the exercise is that, taken on its own terms, there is an obvious error in the study: the commission to agents is counted both as a reduction from revenue *and* as an expense. When the error is corrected the comparative ratio is somewhat better for the agents than it is for Tele-Direct's own representatives. The respondents take the position that the existence of

[194] Confidential exhibit CJ-32 (black vol. 11), tab 83 at 132667ff.

the error is irrelevant; management acted on the information, proving that Tele-Direct was motivated by efficiency considerations and not by any other motive. While the study may suggest that Tele-Direct was at least *interested* in efficiency at the time, it is peculiar that so simple an error was not easily immediately detected by those supposedly basing decisions on it. In the circumstances, and having regard to the many qualifications in the study, the existence and results of the study are not of assistance.

(b) Profitability Study: National Accounts - Selling (1985) [195]

This study deals with the contribution to profit of national accounts serviced by agencies and NAMs in 1983 and 1984. Agencies included specialized and regular agencies while the NAMs included one Tele-Direct sales representative who dealt with high revenue potential customers and another who dealt with low revenue potential customers.

The study was entered in the record during the cross-examination of Mr. Beauséjour. Although the bottom line contributions to profit were noted, there was no examination of the study with the witness other than to establish that the then prevailing methodology regarding the payment to Bell Canada was employed. Based on the description in the document the only costs that were specifically attributed to the agents and NAMs were agency commissions and so-called sales expenses. The latter included the salaries of sales personnel in the national accounts group

[195] Exhibit J-1 (red vol. 1), tab 61.

but also the personnel who processed orders submitted by agents.[196] All other costs were allocated on the basis of the net revenues generated by each of the two channels.

For the combined eastern and western regions, the contribution to profit as a percentage of total revenues generated for the agents and NAMs in 1983 was 18.7 percent and 17 percent respectively. In 1984 the contribution was 20 percent for both. While there are caveats,[197] the important point that emerges from the study is that Tele-Direct had no reason to believe at that time that it was less costly to rely on its own representatives who dealt with customers with the same or similar characteristics as those served by agents. The respondents did not bring to our attention any further study or any evidence whatsoever of internal consideration of relative efficiency leading up to the 1993 change in the commissionability rules. The only documentation on the record, and the evidence of Mr. Mitchell who was intimately involved in the preparation leading up to the change, focuses on effects on number of accounts and revenues that would be available to agents or the internal sales force under various scenarios.

(c) Profitability Study (1995) [198]

Towards the end of the hearing counsel for the respondents introduced through Mr. Beauséjour a document comparing the relative contribution to profit in 1994 of agents and

[196] Total salaries were allocated to CANYPS, agencies, NAMs and GSF.

[197] To anticipate questions that might arise as a result of the discussion of Tele-Direct's latest contribution to profit study, the same percentage cost of customer service (the payment to Bell Canada) and "melt" is used for both agents and NAMs. There is some tipping of the scales in favour of agents with respect to the cost of customer service since it is applied net of commission in the case of agents. On the other hand, no account is taken of the fact that agents pay up-front and the customers of NAMs pay over a year.

[198] Confidential exhibit CR-185.

the internal sales force, including the national accounts group. The document was admitted over the strenuous objections of counsel for the Director. During discovery, Tele-Direct provided a cost of sales figure for its internal sales force of 12.3 percent of revenue. The basis for that figure was explored through detailed follow-up questions and further explanation. There was no indication from the respondents that a second study was being undertaken by Tele-Direct, and that it contained results that were different from those that had been given on oral discovery and in follow-up answers. On December 4, 1995, counsel for the respondents produced the second study to counsel for the Director.

While we found the timing of the production and, in fact, counsel for the respondents' conduct of this whole matter of the new study to be, to say the least, unfortunate, we admitted the document while allowing the Director further discovery and preparation time. Despite the inappropriate timing, we were of the view that the Tribunal should not forego receiving information that could have an important bearing on the case and which apparently went to the heart of the respondents' position that the bundling of space and services by Tele-Direct was dictated by efficiency considerations.

(i) Unrepresentative Timing of Study

Apart from the general difficulty, already highlighted, of comparisons being made between the servicing of very different types of accounts, there is another serious defect in the recent study. The period for which the study is done almost certainly creates a bias in favour of

the internal sales force *vis-à-vis* the agents because of the state of progress of certain improvements Tele-Direct was making to its process. The study fails to take account of the fact that the application of technology is in a period of transition. While improvements favouring the internal sales force have been put in place, those favouring agents are on the immediate horizon. Despite this, the latter have been ignored in the study.

The system that Tele-Direct was putting in place in 1994 with respect to the publishing process was much more efficient for the internal sales force than the system that it replaced. More specifically, a computer system was introduced that allowed the electronic storage of advertisements, including finished artwork. This means that advertisements that renew without change, about 70 percent of all advertisements, are already in the computer. This is contrasted by Mr. Richmond with the previous system:

> . . . In the old system, when we used an outside supplier [for pre-press functions, e.g., layout, paste-up], if we got an ad from last year, we may or may not have found that artwork because it was kept in a filing cabinet somewhere. It meant that the next year we had to have an artist redraw the artwork to match what was in the book before. This was very inefficient. We had to store logos all over the place so that everybody could get hold of it.[199]

There are also savings when there are changes to the advertisement. Under the new system, minor changes can easily be made on the electronic version of the advertisement.

Although agents submit their advertisements "camera ready" (as "veloxes"), they must be scanned into its system by Tele-Direct. If there is no change in an advertisement from the

[199] Transcript at 34:7026 (7 November 1995).

previous year then it follows that it should be possible to avoid re-scanning the advertisement, as it is already in the system, so some savings should be possible. Mr. Richmond did not know the percentage of agents' advertisements that are repeated without change but he did state that *all* CMR advertisements are scanned, implying they are scanned even if there is no change. It is not clear why Tele-Direct does this.

Thus, until recently and certainly when commission was further restricted in 1993, the costs that Tele-Direct would have experienced for the internal sales force were those that existed prior to the introduction of the new system. Under the old system the fact that agents were submitting complete advertisements meant that the cost comparison in the publishing part of creating a directory was far more favourable to agents than is presently the case. According to Mr. Richmond the cost of implementing the new system is $26 million and the annual savings are of the order of $12 million, which would have made previous publishing costs for internally-generated advertisements almost twice as high as they were in 1994.

Using current data disadvantages the agents with respect to the near future. There would be no need to scan agents' advertisements if the advertisements could be transmitted electronically. Currently, newspapers and magazines have systems in place for this purpose. The Yellow Pages publishers are moving in this direction, according to Mr. Logan, the President of the YPPA. He foresees this capability on the VAN system, the electronic YPPA order system, in two to three years. The pay-off would be a smoother flow with lower costs for publishers and CMRs and a reduction in errors.

The other area within publishing where change can be anticipated is in how Tele-Direct receives orders over the VAN. Currently a clerk in Montreal and one in Toronto take the information off the VAN as hard copy. After the order has been dealt with in this form, it is eventually re-entered into Tele-Direct's system. Ms. Rogers stated that Tele-Direct had hoped to be able to transfer all orders received through VAN directly into the contract data base without re-keying but this did not happen. According to Mr. Logan of the YPPA, "[t]he bigger publishers, both independents and utilities, now are developing and I think probably most of them -- not everybody, most of them -- can take the information directly off the VAN and run it into their systems without re-keying".[200] For some reason Tele-Direct is lagging behind other North American publishers in taking advantage of the VAN, the system for which agents made significant investments and for which, in part, Tele-Direct agreed to raise commission rates from 15 to 25 percent over a two-year period. While there have been reductions in cost in processing agents' orders since the movement to VAN, according to Ms. Rogers these appear to be less related to the VAN than to internal reorganization and, therefore, this confirms that Tele-Direct has not taken full advantage of the VAN.

For all these reasons, we conclude that the study does not recognize the technological transition in publishing Yellow Pages and that failure to do so favours the internal sales force over the agents.

[200] Transcript at 36:7370 (9 November 1995).

(ii) Methodological Weaknesses

There are significant methodological problems with this study. The study is based on a "causal model". Costs were analyzed by Tele-Direct personnel to determine whether particular costs would be experienced in the absence of either agents or the internal sales force. If the answer was in the affirmative those costs were assigned to the group that caused the costs in question. Costs that could not be identified as caused by one or the other channel were treated as common costs and allocated to the two channels on the basis of relative revenue. This overall methodology was submitted to Tele-Direct's auditing firm for confirmation that the approach was sound. All cost assignments and allocations were performed by Tele-Direct personnel and the results were not audited by an outside firm. The testing of the results was done only through discovery and cross-examination during the hearing.

In the final result, the internal sales force's contribution to profit is shown to be approximately 13.5 percentage points higher than that of the agents. If we ignore for the moment the complications created by the difference in types of accounts serviced by each, this result would mean that in order for the agents to be competitive with the internal sales force the commission rate paid to them would have to be nine percent rather than the average of 22.5 percent that in fact is paid to them (22.5 less 13.5).

We turn first to the method used to allocate common costs. It is, in our view, valid to allocate these costs on the basis of revenue where the common costs can be considered to be

related to the level of sales. This is true for an area such as manufacturing the directories, where the costs depend on the volume of advertisements and it may make little difference whether the advertisements are generated by the internal sales force or agents. This approach to allocating common costs is far less justifiable when the costs in question relate to personnel, e.g., the personnel department itself. This is important because sales representatives and all their support personnel are internal to Tele-Direct while the agents and their support personnel are not. In areas like these it would be more appropriate to allocate costs based on the relative proportion of employees identified as devoted to servicing the internal sales force and agents. Mr. Beauséjour admitted that this was an equally valid approach as using relative sales and that either method could have been used.

An analysis of each of the common cost areas to see whether it was more appropriate to use one or the other weighting procedure would have produced a more objective and defensible result. We note that Tele-Direct did depart from its approach to allocating common costs on the basis of revenue in at least one instance, which also happened to work in its favour.[201]

In the study Tele-Direct has violated its own methodology for attributing costs on a causal basis in a way that increases the costs of dealing with agents. As noted earlier, the current system of storing advertisements in a computer is in the process of being introduced. The cost of duplication between the old and new systems which would, on the stated approach, be attributed

[201] Depreciation of the scanner (a common cost since it is caused neither by internal sales force or CMRs) is divided equally between internal sales force and agents based on relative volume of items by number scanned from these sources. Based on the revenue methodology otherwise employed most of the depreciation would be allocated to internal sales force.

to the internal sales force, was treated in the study as a "transition" cost and was subtracted from the total internal costs. Similar costs related to moving to the VAN system were, however, attributed to the agents. To be even-handed, they too should have been considered "transition" costs and subtracted from the agents' costs. Further, it is questionable that the large investment in the new system for dealing with internal orders should simply be ignored, as was done in the study, rather than amortized over several years. The effect of not doing so is also to understate internal costs.

Counsel for the Director questioned the validity of the cost attribution in the study in several areas where a relatively small percentage of costs was taken to be caused by internal sales force even though the internal sales force and its direct support account for 61 percent of total employees. With respect to the costs of the Personnel and Benefits department, Tele-Direct concluded that there would only be a saving of about 16 percent from eliminating the internal sales force and thus only 16 percent of the total cost was attributed to the internal sales force. Similarly, in the Labour Relations department the saving assumed was only 30 percent. In defence of these decisions, Mr. Beauséjour explained that there were certain basic requirements that would have to be maintained to service the remaining personnel even if 61 percent of the personnel were eliminated. In effect, this approach treats the present organizational chart as inviolate. We question whether Tele-Direct would approach such a massive change on an "avoidable cost" basis.

The Director's principal challenge to this study relates to the method of dealing with the "cost of customer service" ("CCS"), the 40 percent of net sales revenue that is paid to Bell Canada. In all past studies of profitability, CCS was treated as a cost. It was also so treated throughout the many months when there were successive drafts and refinements of the 1995 study, almost until the moment that the study was entered in these proceedings. As a result of the penultimate amendment to the figure for CCS, the contribution to profit of the agents changed from being slightly less than the internal sales force to almost five percent *more* than the internal sales force.[202] Subsequent to that, Mr. Beauséjour decided that there was no reason to treat CCS as a cost since Tele-Direct and Bell were part of the same corporate entity and it makes little difference whether Tele-Direct made payments to Bell in the form of CCS or as dividends. Despite the apparently fortuitous timing of this realization, we accept that the point is valid. It is one thing for Bell to insist that CCS be included as a cost in order to impose market discipline on Tele-Direct but it is another matter when a study of the relative costs of using agents and internal staff is being performed. It then makes better sense to treat Bell and Tele-Direct on a consolidated basis. This in itself is not a methodological weakness.

However, the same reasoning means that the Tele-Direct study should have taken into account the benefits accruing to Tele-Direct/Bell from the fact that agents pay up-front for advertisements whereas customers of the internal sales force pay monthly. Mr. Beauséjour recognized this benefit in cross-examination but it does not appear in the study. As discussed

[202] The reason why CCS has such a large impact is that under Tele-Direct's contract with Bell Canada the revenue from agents who are billed by Tele-Direct rather than Bell are not subject to the payment of CCS. Thus the average payment of CCS is much lower in the case of agents than of internal sales force.

earlier, the difference in timing of payment amounts to interest for about half a year, an appreciable difference of three to six percent per year.

(iii) Particular Examples of Problems Arising from the Difference in Products

The respondents advance this study as evidence which they say proves the different, and greater, "interface" costs that they incur when processing orders originating with external agents as compared to the costs of processing orders originating internally. As we indicated at the outset, it is extremely difficult, in conducting a study of this nature, to distinguish the genuine interface costs, costs that arise because Tele-Direct is dealing with agents rather than the internal sales force, from costs that arise from the nature of the advertising, and thus are not clearly related to the channel submitting the order and are not true interface costs. This problem permeates the study and, thus, it cannot prove relative interface costs in its present form as the respondents maintain it can.

That is not to say that we think the problems arising from the difference in the products, unlike the unrepresentative timing and methodological weaknesses already identified, consistently operate in the respondents' favour by lowering internal costs and raising agents' costs. As detailed below, this is sometimes the case; sometimes the reverse is true.

We turn to some examples. One relates to the interpretation and treatment of credits to customers as a result of Tele-Direct's errors. Customers using the internal sales force were reimbursed 1.3 percent of gross revenues as a result of errors made by sales representatives or

during the publishing process. The rate of reimbursement to agents as a result of publishing error was 3.5 percent. This difference in the rate of Tele-Direct's errors is a factor in the overall lower contribution to profit of agents.

In the notes to the study it is stated that the difference is due to the fact that orders from agents are handled by more people, that is, CMR personnel and the national accounts publishing group of Tele-Direct. It is, however, irrelevant how many people in the CMR handle orders because only errors attributable *to Tele-Direct* are reimbursed. One possibility that may explain part of the difference in error rates is the greater knowledge and, perhaps, incentive that agents have to discover and complain about errors compared with the customers of the internal sales force. Mr. Beauséjour admitted this was a possibility. While this explanation would probably not change Tele-Direct's view that the higher reimbursement is a "cost", it would hardly be a reflection of lower efficiency in the use of agents compared to the internal sales force.

On the other hand, Ms. Rogers stated that the higher error rate in processing agents' orders was due to the larger, more complex advertising programmes submitted by agents. This suggests that the error rates are related to the nature of the advertising programmes rather than the channel through which they flow. To the extent that the principal reason for the difference is the difference in the type of accounts serviced by each channel, it cannot be concluded that the difference in error rate is a cost of dealing with agents.

The comparatively large error rate in dealing with agents' advertisements also shows up in other costs attributed to dealing with agents. A Tele-Direct employee checks the advertisements after the directories have been printed, a duplication of effort since the agents also verify their advertisements. In addition, there are the resources expended in error negotiations with the agents.

Apart from the difference in the size of advertising programmes mentioned by Ms. Rogers, we also know about one other respect in which there is a significant difference in the content of advertisements submitted by the internal sales force and agents. Approximately 80 percent of "trade-mark" advertisements are handled by agents. Three Tele-Direct clerks within the department which processes agents' orders are assigned to checking a proposed trade-mark advertisement to ensure it has been authorized by the owner of the trade-mark. This is a cost assigned totally to agents that depends on the nature of the advertisement rather than on the channel dealing with the advertisement.

In a related area, that of bad debts, the study may, in fact, underestimate the comparative cost of dealing with agents as opposed to the internal sales force. Over the years there is a regular, although fluctuating, percentage of unpaid bills to customers serviced internally. Until recently Tele-Direct has not had the same experience with agents. Mr. Beauséjour noted that Tele-Direct is currently owed money by an agent but no figure for non-collection from agents was included in the study. The area of "melt", bad debts along with discontinuance of phone service, which negatively affect the internal sales force contribution to profit, are probably due to

the character of the clients served by the internal sales force rather than having anything to do with who is servicing them. This is consistent with the more "volatile" nature of smaller accounts commented on in internal Tele-Direct documents.

(d) Conclusion

The numerous points on which the various studies are subject to challenge confirm that they cannot be used for the purpose of comparing the relative efficiency of Tele-Direct's internal sales force and agents.

**(6) Conclusion on Separate Products**

The Director has alleged that tying is present over the entire demand spectrum, although counsel for the Director has, in effect, recognized that there may not be tying for "small" customers.[203] According to the respondents, there is no tying for any of their customers. The parties' positions represent the two extremes. The Director would have us order the respondents to offer space and services separately (whether by separate prices or expanded commission) to all their customers. The respondents would have us make no order, thus allowing them to offer the two separately only to those customers that they choose.

[203] By proposing the further alternative remedy of reverting to the pre-1975 commission rule.

We are of the view that neither extreme is supported by the evidence. What we see is that customers or advertisers are not homogeneous in terms of their need for services, or demand, or in terms of the costs involved in servicing them, or efficiency considerations. On the contrary, they are very heterogeneous, ranging from an individual running a small business from home and spending a minimal amount on a simple advertisement in the Yellow Pages to large corporations advertising in a multitude of directories. Our view is that we cannot decide whether there is one product or two products for all these different customers in a blanket fashion. We must engage in an exercise of "line drawing".

We are of the view that the evidence on demand for separately supplied advertising services and the evidence and arguments relating to efficiency of supply indicate that advertising space and advertising services are separate products with respect to "large local" and regional advertisers. They are a single product for "small" advertisers. The difficulty is in knowing how reasonably or workably to distinguish regional and, more problematic "large local", advertisers from "small" advertisers, whether in terms of number of markets (as in the eight-market rule) or dollars spent on Yellow Pages. In approaching this task we have been mindful that the Director bears a burden in this regard of justifying any remedy granted. To the extent that the evidence and argument have left the matter unresolved, it behooves us to be cautious in our conclusions.

We know that in the current commissionable market, including grandfathered accounts, where advertisers have a choice, they overwhelmingly choose agents. We have found that

demand extends well below the 1993 "national" definition and below the eight-market definition of commissionability.

The differences in the constituents of demand between the relatively smaller advertisers that employ the services of a consultant and those of larger, multi-directory advertisers that use agents or would use them if their accounts were commissionable are notable. The needs of the latter are more complex. In addition to advice and creative services, most require help in administration and in assuring uniformity of message. We infer that the intensity of demand, as measured by their willingness to pay, year after year, for these services by way of extra advertising or issue billing, is greater for larger customers that have multi-dimensional needs.

We turn to cost considerations to focus further on the appropriate dividing line. We have concluded that agents' interest, presumably driven by their view of their comparative efficiency *vis-à-vis* Tele-Direct, is primarily in customers with a minimum size ranging from $10,000 to $50,000 in annual expenditures on Yellow Pages advertising. This alone would dictate raising the bar for any unbundling of space and services to a minimum of $10,000.[204]

While the evidence that at least some independent publishers are willing to pay commission on any business brought in by agents could be interpreted to mean that it would be efficient to unbundle across the entire demand spectrum, we are not comfortable going that far. It

[204] We are referring to monetary amounts here because that is the way the evidence came in. Other criteria, such as number of markets, are more informative and other evidence was presented in that form. We attempt to relate the two measures below.

is far from clear that these publishers are guided by the relative efficiency of agents and in-house staff in servicing customers since for the most part their market position requires them to rely heavily on in-house staff despite their liberal commission rules. Their policy on commission could as easily be reflective of their desire to attract additional demand as of the relative efficiency of agents and in-house staff.

The approach of the large American publishers associated with telcos is to bundle space and services for all accounts smaller than those classified as national accounts or, for those who use a "B" account definition, for accounts smaller than regional accounts. We are not satisfied, however, that the publishers in question operate in competitive markets and that their choice of a dividing line is necessarily efficiency driven. As a result, we conclude that while unbundling of national and "B" accounts by them is probably efficiency driven, we cannot say that bundling for the balance of their accounts is motivated by efficiency and is conclusive on the dividing line for one versus two products.

Tele-Direct's studies are not helpful in drawing conclusions with respect to relative efficiencies of agents and Tele-Direct's employees along the demand spectrum. What we do know is that the eight-market rule was created by Tele-Direct primarily to capture more accurately "national" accounts than did the original 1958 definition and, at the time, Tele-Direct apparently considered this rule to be in its interest. Further, it is also clear that Tele-Direct did no studies and had no internal discussion of relative efficiencies when it further restricted commissionability in 1993. In doing so it ignored demand from existing eight-market customers

(including those that were forced to buy unneeded advertising to qualify for eight-market status). Given that agents had served these types of customers over many years, that other publishers have "B" accounts, and that Tele-Direct at no time addressed the comparative efficiency of agents and the internal sales force for these accounts, there is no evidence of any efficiency offset which would lead us to conclude that space and services were not separate products for all the accounts within reach of the eight-market rule.

The eight-market rule was not specifically designed to deal with the needs of regional advertisers. This is obvious from the fact that there are seven markets in Ontario and six in Quebec. By almost any definition an advertiser covering all the markets in a province would be considered "regional" although such an advertiser would not be commissionable under the eight-market rule. Many of them likely managed to bring themselves within the rule with extra advertising. At a minimum, a firm that covers an entire province the size of Quebec or Ontario should qualify without more. We have no reason to doubt that the strong demand for advertising services from agents displayed by currently grandfathered eight-market accounts extends to advertisers that cover six markets, which would mean, for example, the entire province of Quebec. It is difficult to see that the efficiency implications for separately supplied advertising services at the six-market level are significantly different than for eight markets.

There is a rough relationship between the number of markets served and the amounts spent on Yellow Pages advertising. According to Tele-Direct's internal studies, the average amount spent on Yellow Pages advertising among customers served by Tele-Direct

representatives but that were in the commissionable category under the eight-market rule was $54,000.[205] The comparable figures for accounts that would qualify under a seven-market and six-market rule, respectively, are $44,000 and $26,000. While some agents might find six-market accounts below their threshold of interest, the evidence is that they are within the range that some agents are willing to service, perhaps in anticipation of future growth.

We are cognizant that looking only on the demand side a case might be made for unbundling well below the six-market level. The evidence with regard to efficiency, principally the agents' views on accounts that they would like to service, does not support this conclusion. The Director suggests that there is no harm in unbundling across the board -- the market can be allowed to decide. If agents are more efficient, they will end up servicing the accounts. If Tele-Direct's internal sales force is more efficient, especially for smaller accounts, it will end up servicing those accounts. This implies a simple solution to a complex problem. In large measure, Tele-Direct is "the market" since the pricing of advertising services is inevitably its responsibility, whether it chooses to set commission rates for various types of accounts or to charge separately for the services of its internal sales force. Given widespread unbundling, Tele-Direct might well decide to set several different prices (or commission rates) for advertising services depending on the relative costs of servicing various categories of accounts. As the study on relative profitability showed, this would likely be a difficult task. It is not one that should be imposed without some greater certainty that there will be a significant overall benefit from the

[205] While the document is not explicit, the data were gathered in 1993 so we infer these are 1993 figures: confidential exhibit CJ-31 (black vol. 10), tab 69 at 131635.

change. Therefore, we find that space and services constitute two products down to the six-market level and a single product below that level.

*Addendum on Tying*

At the outset of our discussion on tying, we indicated that another theory of the tying case was possible and we address that now. While some of the respondents' arguments and evidence are related, they did not adopt the precise approach which we outline hereunder.

One interpretation of the evidence is that advertising space and services are not demanded nor provided separately even in the existing commissionable market. Rather, larger advertisers either wish to purchase the bundle of space and services from Tele-Direct or from agents, in either case they are purchasing bundled space and services. Tele-Direct insists that the agents it deals with be accredited. The Director acknowledges that the placing of advertising in telephone directories is complex and accepts accreditation of agents by Tele-Direct. Indeed we do not necessarily envision advertisers purchasing space from Tele-Direct and providing their own services (except perhaps in the case of advertisers with accredited in-house advertising departments).

Following from the fact that accreditation means that only accredited services providers (including Tele-Direct's internal sales force) can place orders for space and they do so along with providing other services, it could be concluded that space and services must be bundled to be

sold and that, therefore, they constitute a single product. Another way of viewing the matter would be that advertising space and services could be considered a single finished product on the basis that the real complaint respecting tying is not that advertisers are precluded from purchasing space and services separately, but that Tele-Direct has simply refused to supply unbundled space (i.e., at a discount) to agents which prevents them from selling to advertisers the same bundle of advertising space and services that is sold by Tele-Direct.

The evidence does not support this interpretation for the following reasons. First, we are satisfied that agents are not resellers of Tele-Direct's advertising space such that advertisers are purchasing the space *from agents* along with services. Agents do not carry an inventory of advertising space which they purchase from Tele-Direct for resale to advertisers. They assume no risks with respect to advertising space. Rather, when the agent's customer decides to purchase Yellow Pages advertising, the agent submits an order to Tele-Direct together with all other necessary information and Tele-Direct processes the order. The fact that Tele-Direct contracts with and bills the agents for the space, and treats the agents as the "buyer" in that sense, is not determinative of the relationship between the agent and the advertiser. We think that the fact that the agent does not have an inventory of space for resale is more consistent with the agent acting as an agent for the advertiser for the acquisition of space from Tele-Direct.[206] On this view of the evidence, the purchaser is not purchasing a bundle of space and services from the agent.

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[206] Agents are agents for or "represent" advertisers in the sense that they place advertising on the advertisers' behalf but, as indicated earlier, agents have an independent interest and existence apart from advertisers in other aspects of service provision.

Second, the evidence does not indicate that advertisers wish to purchase advertising space from an agent as opposed to Tele-Direct. We think, all other things being equal, they are probably indifferent. However, there was evidence that they would prefer to pay Tele-Direct for space through monthly billing on their telephone bill rather than purchasing the space through agents on an issue billing basis. It is Tele-Direct that requires the latter arrangement, not the customer who demands it. This is not evidence that advertisers demand Yellow Pages space from agents as part of a service and space bundle. Nor have we been presented with evidence suggesting that efficiency would be adversely affected if Tele-Direct was to contract with and bill advertisers directly for space.

Finally, a purpose of the *Competition Act* is to encourage competition in order to provide consumers with competitive prices and product choice. There is evidence of demand for services from agents as opposed to Tele-Direct and efficiency considerations at the six-market level and above do not preclude facilitating such choice. For these reasons we have rejected this alternative interpretation of the evidence and have accepted that advertising space and advertising services constitute separate products.

## E. TYING CONDITION

Having determined that there are separate products over at least part of the spectrum of Yellow Pages advertisers, we must now determine if those advertisers falling within that range were somehow "forced" to buy the products together rather than from separate sources. Since we

have not found separate products below six markets, any references to the "local" market in this section refer only to that portion of the market from the current "national" definition down to six markets. In that range, where we have found separate products, we must establish that the two products were "tied" together as set out in subsection 77(1).

Paragraph 77(1)(a) provides one definition of tied selling. In essence, it is described as a practice whereby a supplier, as a "condition of" supplying the tying product to a customer, requires that customer to acquire another product from the supplier. Paragraph 77(1)(b) provides an alternative definition, the operative portion of which is that tied selling is a practice whereby a supplier "induces" a customer to meet the condition of acquiring another product from the supplier by offering to supply the tying product on more favourable terms and conditions if the customer agrees to acquire the second product.

The Director pleaded both the "requirement" or "condition" and the "inducement" in the application. The Director submits that, on non-commissionable accounts, the respondents require the customer to acquire their advertising services as a condition of supplying the space at a bundled price "and/or" the respondents induce customers to acquire their services by offering to supply space at no additional cost for the additional value if the customer also acquires their services.

It is undisputed that Tele-Direct does not segregate the charges for space and services in the non-commissionable market segment and that those "local" customers who get their services

elsewhere than from Tele-Direct (for example, by using a consultant) or do not need any or some of the services, do not pay less or get a discount off the total price of their advertising. The Director submits that the effect of this is that "local" customers must buy space and services together from Tele-Direct; it is only economically viable to purchase services separately from an independent provider in the commissionable market. To do so in the non-commissionable market would require the customer to pay twice for services, once to Tele-Direct as part of the bundled price and once to the independent service provider that would actually provide the services. The Director argues that the effect of this is that it is either a "requirement" that both space and services be acquired from Tele-Direct or, perhaps the better fit on the facts, a compelling "inducement" to do so.

The Director points to evidence of the advertisers that recognize that if they use an independent service provider when commission is not available they will, in effect, be paying twice for services and this is why they stay with Tele-Direct despite dissatisfaction with the quality of service. Further, the Director emphasizes that Tele-Direct itself knew the value of this economic inducement and used claims that its services were "free" or included in the cost of the space to convince customers to choose its services.

The respondents advance a number of arguments relevant to the question of whether space and services are indeed tied together on the facts of this case. They argue that there is no "condition" involved because there is no contractual obligation to purchase services from Tele-Direct as local customers are free to acquire services from a CMR; however, Tele-Direct will not

pay a commission on the account. They rely on the case of *Ortho Diagnostic Systems, Inc. v. Abbott Laboratories, Inc.*[207] for the proposition that it is not an antitrust violation to sell components as a package where the same items can be purchased separately but at greater cost. They argue that there are no *more favourable* terms and conditions offered to customers that take Tele-Direct's services over those that do not because there is only one set of terms and conditions in the local market -- the bundle.

We see no reason to conclude that the references in the section to "conditions" or even "terms and conditions" require that these be embodied in an explicit contractual document. As we understand this requirement, it is to determine that customers are effectively forced or coerced to take the two products, which have been determined to be separate products, from the supplier of the tying product rather than acquiring only the tying product from that source and getting the tied product from someone else. This obviously can occur where there is an explicit contractual requirement to that effect. It may, however, also be equally present where there is a discount or other advantage that constitutes an inducement to acquire the two from the same source. The "conditions" or coercion referred to in the section mean more than contractual terms; they may be economic conditions which have the effect of precluding choice of supplier. Whether customers actually do have an effective choice or not is a question of fact to be determined on the evidence before us, not of the legal nature of the purchase arrangement.

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[207] 1993-1 Trade Cas. (CCH) ¶ 70,266 (S.D.N.Y. 1993).

The *Ortho* case is of no assistance to the respondents. The case involved an application for a preliminary injunction by Ortho to prevent the implementation of a contract between the Council of Community Blood Centers and Abbott for a number of blood tests. Ortho alleged both monopoly leveraging and tying based on the theory that Abbott's pricing of various "packages" of blood tests forced any rational buyer to purchase all five tests from Abbott rather than buying one or more tests from competing suppliers like Ortho. The preliminary injunction was denied on the basis that Ortho had shown no irreparable harm.

The passages quoted to us by the respondents were simply the Court's summary of Abbott's arguments and authorities on the monopoly leveraging point.[208] The Court stated that Abbott's arguments gave it "pause" but all that it concluded in the end was that Ortho had shown that there were sufficiently serious questions on the merits to warrant litigation. On the tying claim, the Court, in fact, noted:

> There is some case law to support the position that a tie does not have to be explicit but can instead be inferred from the pricing structure of two products and the market power which the party has. . . .
>
> Absent an explicit condition in the contract, there is a question of fact for the fact-finder regarding the existence of the tie, and we are unable on this state of the record to determine if plaintiff is likely to prevail on the merits of the tying claims. What is evident however is that there are sufficiently serious questions going to the merits of the tying claim to make them a fair ground for litigation.[209]

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[208] *Ibid* at 70,333.

[209] *Ibid*. at 70,334.

Therefore, the relevant question for us is whether, on the facts before us, the customers of Tele-Direct were "forced" to acquire services from it or did they have the option of acquiring space alone from Tele-Direct. We conclude that the evidence of the advertiser witnesses and Tele-Direct's own behaviour amply support the position of the Director that the lack of commission in the "local" market operated as a powerful inducement to acquire both space and services from Tele-Direct.

## F. SUBSTANTIAL LESSENING OF COMPETITION

Has the extent of the exclusion resulting from Tele-Direct's limitation of commission to "national accounts" as defined in the 1993 rule resulted in, or is it likely to result in, a substantial lessening of competition? It is first necessary to establish the relevant comparator that should be employed in evaluating the magnitude of the lessening involved. There is no purpose in comparing the six to eight-market accounts with all other accounts that are currently bundled and that we have decided may remain that way because demand characteristics and likely efficiency comparisons dictate a single product. The most relevant comparator is the size of the existing commissionable market under the 1993 definition because we are considering expanding that market. Eight-market accounts are currently commissionable but this could be discontinued at any moment without an order of the Tribunal so we include eight-market accounts as part of the tied portion of the market to evaluate substantiality. Further, grandfathering currently prevents accounts from "growing into" eight-market status.

In a word, it is clear that six to eight-market accounts constitute an appreciable volume of business that, without the tying practice, would be available for agents to service. The largest constituent is currently grandfathered eight-market accounts. In addition, there are the six and seven-market accounts now serviced exclusively by Tele-Direct. Based on the Tele-Direct documentation prepared in anticipation of the 1993 rule change and the evidence of Mr. Mitchell, both of which are far from being completely clear, we find that a fair approximation of the value of accounts which are now commissionable under the 1993 definition (thus, excluding grandfathered accounts and including "national" accounts serviced both by Tele-Direct and agents) is about $30 million. Our best estimate of the accounts which have been found to be tied, namely six, seven and eight-market accounts, and would be added to the commissionable market is about $19 million. Thus, the combined total of the accounts found to be tied adds up to well in excess of 50 percent of the current commissionable market. Both in relative and absolute dollar terms, the amount of revenue affected by the tie is undoubtedly sufficient to conclude that there is a substantial lessening of competition.

A final issue arises with respect to substantial lessening. The respondents advance in their written argument a "technical" argument based on the use of definite and indefinite articles in subsection 77(2). They submit that the substantial lessening of competition must be assessed in the market for the tying product, here the market for the supply of advertising space: has the tying of space and services impeded entry into or expansion of a firm or had any other exclusionary effect in the space market? This argument was not referred to orally.

While the definite and indefinite articles can be read in different ways, the section should be read in a way that makes sense. Since tying generally, and certainly in this case, involves "leveraging" from the tying product market to the tied product market, it is only sensible to assess the effects of the practice, or the substantial lessening of competition, in the target or tied product market.

## G. REMEDY

Section 77 of the Act provides that upon a finding by the Tribunal of tied selling by the supplier of the tying product (Tele-Direct), the Tribunal may make an order "prohibiting [the supplier] from continuing to engage in . . . tied selling. . . ."

Prohibiting Tele-Direct from continuing to engage in tied selling means that the tying product, advertising space, and the tied product, advertising services for six, seven and eight-market accounts, must be unbundled by Tele-Direct. The "unbundling" may take the form of separate prices: Tele-Direct could quote separate rates for space and services. It may also take the form of an expanded definition of commissionable accounts to allow six, seven and eight-market customers to use the services of an agent, who would earn commission at an appropriate rate.

While we do not rule out the possibility of advertisers acquiring space from Tele-Direct (at the separately quoted space price) and then paying a separate fee for services to Tele-Direct

or to an agent, we think this scenario is unlikely. There are practical implications arising from Tele-Direct's predominance in the publishing market and the accreditation of agents that suggest that the marketplace in an "unbundled" environment after our order will work largely the same as it does today except that the commissionable market will be expanded to cover six, seven and eight-market accounts. Advertisers that wish to utilize Tele-Direct's services would continue to buy space and services from Tele-Direct at one price.

Because of the specialized nature of the Yellow Pages industry, the respondents regard accreditation as important and the Director and his witnesses, for example, Ms. McIlroy and Professor Slade, support it. Thus, Tele-Direct would be justified in requiring that services, including the placement of orders, be provided by accredited service providers only. Unbundling does not require that advertisers be given the opportunity to interface directly with Tele-Direct to place their orders, if they do not wish to utilize Tele-Direct's services. Advertisers would either deal with Tele-Direct for space and services or with an agent for services and, through an agent, with Tele-Direct for space. This contributes to our view that in all likelihood, the structural arrangement that exists today would likely continue, changed only to permit agents to compete with Tele-Direct to provide services to six, seven and eight-market accounts.

The prohibition on tying, however, does not carry with it a requirement that Tele-Direct pay a specified commission to agents. It will be up to Tele-Direct to pay such commission as it chooses. Commission rates could be identical for all accounts or might be variable. However, the prohibition on tying implies that the price charged by Tele-Direct for its space and services

together cannot, in relation to the price at which it offers space to customers using agents (i.e., its price for both space and services together less the commission to the agent) be an inducement to customers' using Tele-Direct's services rather than agents, thus continuing the tie. In other words, the price for space to customers of agents cannot be artificially inflated (or the commission paid to agents artificially reduced) so that space is not realistically available separately. Tele-Direct cannot make it economically non-viable for customers to purchase space from Tele-Direct and use an agent's services because in those circumstances the space effectively costs more than if the customer were to use Tele-Direct's services.

The intervenor agents (and the Director in the alternative) submit that the Tribunal should order Tele-Direct to pay a minimum 15 percent commission to agents. Although this proposition was advanced in the context of the Tribunal finding a tie across the entire market for Yellow Pages advertising in Tele-Direct's directories, in the context of our finding that there is only tying down to the six-market level, the minimum 15 percent commission would apply in respect of six, seven or eight-market customers serviced by agents. We have no difficulty with Tele-Direct voluntarily complying with our order prohibiting tying by paying a minimum 15 percent commission. A 15 percent commission rate has historical precedent and is well accepted in the advertising industry. It appears to be a workable "average" that would be simpler to administer than variable commission rates for each of the six, seven and eight-market accounts, should Tele-Direct choose to use it.

However, the setting of a commission rate by the Tribunal is not, in our opinion, envisioned in the powers given to it under section 77 of the Act regarding tying or in the general jurisdiction given to the Tribunal under section 8 of the *Competition Tribunal Act*.[210] The Tribunal is not a rate-setting body. The implication of rate-setting is an ongoing regulatory oversight which is the antithesis of the objectives of competition policy. To grant this remedy, the Tribunal would be required to hold itself open to revision to the 15 percent rate. We could not saddle Tele-Direct or the agents with a rate cast in stone forever and the alternative of ongoing rate regulation is, in our view, simply not part of the mandate of the Tribunal. It is true that the Tribunal issued the Consent Order providing for a 25 percent commission on national accounts, but that order was for a limited time and was on consent. It provides no justification for a gearing up of a general regulatory process implied by setting a rate for an indefinite period in this contested proceeding.

The Tribunal's order will therefore provide that Tele-Direct is prohibited from tying its advertising services to advertising space for six, seven and eight-market accounts. Should Tele-Direct choose to comply with the order by a commission arrangement with accredited agents at a minimum rate of 15 percent, the Tribunal would find such an arrangement acceptable compliance. Otherwise, Tele-Direct can price space and services separately or implement a commission arrangement for six, seven and eight-market accounts at an appropriate level or levels. The price Tele-Direct charges for its bundle of space and services, if it continues to offer them as a package, in relation to the price that it charges for space separately cannot be such that

[210] R.S.C. 1985 (2d Supp.), c. 19.

it continues to tie space to services by way of an inducement offered to customers that take Tele-Direct's services. The order will specify that the parties may apply to the Tribunal for interpretation of the order or directions if they consider it necessary to ensure compliance.

## IX. ABUSE OF DOMINANT POSITION

### A. INTRODUCTION

For ease of reference, we set out again subsection 79 (1) of the Act, which deals with abuse of dominant position:

> Where, on application by the Director, the Tribunal finds that
> (*a*) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,
> (*b*) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and
> (*c*) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
> the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

Unlike previous abuse of dominance applications that have come before the Tribunal, where only one market was at issue, the Director here is putting forward two abuse of dominance cases, one involving the alleged market for the supply of advertising space and the second, the alleged market for the supply of advertising services.

One case is that the respondents have market power in the market for the supply of telephone directory advertising space, or publishing, and have engaged in a practice of anti-

competitive acts which has resulted in a substantial lessening of competition in that market. This case involves the responses of the respondents to the instances of new entry by competing broadly-scoped publishers in local markets, most significantly the entry of White in the Niagara region and the entry of DSP in Sault Ste. Marie.

The second case is that the respondents have market power in the market for the supply of telephone directory advertising services or, in the alternative, that they are leveraging their market power in the space market into the services market, and have engaged in a practice of anti-competitive acts which have resulted in a substantial lessening of competition in the services market. Among the anti-competitive acts alleged to form a practice affecting this market are both acts directed at agents and acts directed at consultants. For example, one of the alleged anti-competitive acts is the bundling of space and services (restricted commissionability rules for agents) which forms the basis of the tying portion of the Director's application. Another is the alleged refusal by Tele-Direct to deal with consultants.

## B. APPROACH TO SECTION 79 ANALYSIS

In dealing with the particular allegations in this case, the purpose of section 79 must be kept in mind. Neither party disputed that section 79 is not intended to condemn a firm merely for having market power. Instead, it is directed at ensuring that dominant firms compete with other

firms on merit and not through abusing their market power.[211] Such abuse includes, as pointed out by the Director, entrenchment and extension of market power.[212] It would not be in the public interest to prevent or hamper even dominant firms in an effort to compete on the merits. Competition, even "tough" competition, is not to be enjoined by the Tribunal but rather only anti-competitive conduct. Unfortunately, distinguishing between competition on the merits and anti-competitive conduct, as the Tribunal has noted in the past, is not an easy task.[213]

The Tribunal established in *NutraSweet* that the list of anti-competitive acts set out in section 78 is not exhaustive. The Tribunal held that the common feature of the acts included in section 78 is that they are all performed for a "purpose", namely "an intended negative effect on a competitor that is predatory, exclusionary or disciplinary."[214] The Tribunal's approach to assessing whether acts are anti-competitive was set out most recently in *D & B*:

> . . . in evaluating whether allegedly anti-competitive acts fall within section 78, the Tribunal must determine the "nature and purpose of the acts which are alleged to be anti-competitive and the effect that they have or may have on the relevant market". The required analysis will take into account the commercial interests of both parties to the conduct in question and the resulting restriction on competition. The decision in *Laidlaw* makes it clear that, although such proof may be possible in a particular case, it is not necessary for the Director to prove subjective intent to restrict competition in the relevant market on the part of a respondent. The respondent will be deemed to intend the effects of its actions.[215] (references omitted)

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[211] Consumer and Corporate Affairs Canada, *Competition Law Amendments: A Guide* (Supply and Services Canada, December 1985).

[212] *NutraSweet, supra* note 4 at 47.

[213] *Laidlaw, supra* note 33 at 333.

[214] *NutraSweet, supra* note 4 at 34.

[215] *D & B, supra* note 31 at 257.

The Tribunal must determine the "purpose" of the act that is alleged to be anti-competitive. "Purpose" is used in this context in a broader sense than merely subjective intent on the part of the respondent. As counsel for the Director pointed out, it might be more apt to speak of the overall character of the act in question.

What the Tribunal must decide is whether, once all relevant factors have been taken into account and weighed, the act in question is, on balance, "exclusionary, predatory or disciplinary". Relevant factors include evidence of the effects of the act, of any business justification and of subjective intent which, while not necessary, may be informative in assessing the totality of the evidence. A "business justification" must be a "credible efficiency or pro-competitive" business justification for the act in issue.[216] Further, the business justification must be weighed "in light of any anti-competitive effects to establish the overriding purpose"[217] of the challenged act:

> . . . The mere proof of *some* legitimate business purpose would be, however, hardly sufficient to support a finding that there is no anti-competitive act. All known factors must be taken into account in assessing the nature and purpose of the acts alleged to be anti-competitive.[218]

In their argument, the respondents advance several propositions regarding the nature of an anti-competitive act that they submit the Tribunal must determine as a matter of law in this case. One of these propositions is particularly relevant to the case relating to the publishing

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[216] *Ibid.* at 261.

[217] *Ibid.* at 262.

[218] *Ibid.* at 265.

market. They state that certain acts constitute "competition on the merits" and cannot ever be anti-competitive acts. In another formulation, they state that objectively competitive conduct cannot constitute an anti-competitive act. They would define "objectively competitive" conduct as conduct which a non-dominant firm would have undertaken in similar circumstances.[219] Applying this argument to the specific case of the allegations involving the publishing market, the respondents say that the Director cannot allege, for example, that "zero price increases" are an anti-competitive act because competitive firms sometimes use zero price increases or even price decreases to compete.

We do not take issue with the proposition that section 79 is not intended to prevent dominant firms from competing on the merits. We do, however, doubt that it is possible to define, in the abstract, a list of acts that are "objectively competitive" and that could never, therefore, engage section 79. Competition on price is surely one of the hallmarks of a competitive market. Yet even the act of "price cutting" cannot be given absolute immunity from review under section 79 because of the possibility of predation. In our view, a case-by-case, factual analysis will always be necessary to determine if, in the particular circumstances, an act is anti-competitive. All the relevant factors must be weighed in deciding whether a particular act is, in the circumstances, competition on the merits or an anti-competitive act. That question cannot be answered as a matter of law in a vacuum.

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219 They rely mainly on *Clear Communications Ltd. v. Telecom Corp. of New Zealand* (1994), 174 N.R. 266 (P.C.).

## C. MARKET FOR ADVERTISING SPACE - PUBLISHING

### (1) Facts

The independent publishers DSP and White have already been discussed at various places in these reasons, largely in chapter "VII. Control: Market Power". We summarize here and add some further relevant facts.

Since 1993, DSP has produced a white pages and classified directory covering Sault Ste. Marie, Elliot Lake and Wawa in northwestern Ontario. Since January 1994, it has been a division of Southam Inc. but is still operated largely independently from the Southam newspapers in the area in question. Tele-Direct publishes three separate directories for the areas covered by the DSP directory.

The DSP Canadian directory is combined with a corresponding directory for the Sault Ste. Marie, Michigan area. The American portion is published by Noverr Publishing Inc. ("Noverr") which publishes several directories in the state of Michigan.

White publishes competing directories (Niagara Falls, St. Catharines and Fort Erie) to Tele-Direct's in the Niagara region in Canada. White also entered Canada in 1993. White is a wholly-owned subsidiary of the American company White Directory Publishers, Inc. which is a private company controlled by the Lewis family. The American company began operations in

1968 with a classified directory (yellow pages only) in the Buffalo area. A white pages directory was later added and then in the second half of the 1980s and early 1990s additional directories containing both classified and white pages were started in other areas of New York state and Pennsylvania. White's entry into Canada was followed by further expansion in the United States in 1994 and 1995, into Florida and North Carolina.

Both DSP and White first published "prototype" directories in Canada, DSP in January 1993 and White in November and December 1993.[220] DSP published its first revenue directory in November 1993. White began its canvass for its first revenue directory in late 1993 and continued in 1994. Its first revenue directory was published in late 1994.

In order to produce their directories, White and DSP had to generate subscriber listings for their white and yellow pages. As discussed earlier, despite the 1992 ruling of the CRTC, at the time of their entry DSP and White did not have commercially viable direct access to subscriber listings. They had to use the most recent Tele-Direct directories, re-key the data, verify and update each listing.

Included in the directories of White and DSP were features which were not present in the existing directories of Tele-Direct in either region, including audiotext, community pages, larger

[220] Advertising in a prototype directory is provided free to businesses. A prototype serves to lend credibility to a new publisher's claim that it will, in fact, produce a directory and affords the publisher an opportunity to prove to advertisers the value of advertising in its directory.

size print, three-column format, postal codes and additional colour plus a free smaller size copy in addition to the regular size directory (a "mini").[221]

Less detail was provided on the other two competitive markets referred to by the Director. In October 1994, a competing directory was published in Joliette, Quebec by Les Pages Soleil, a joint venture involving the company which publishes the Locator directories in Ontario. Les Pages Soleil also feature enhancements like community pages, postal codes and only three columns per page.

In Newfoundland, a company called Unifone Files Inc. ("Unifone") intended to publish a province-wide directory called "The Big Phone Book", apparently some time in 1993 or 1994. Tele-Direct (Services) Inc. publishes seven directories in Newfoundland for Newfoundland Tel (St. John's, eastern Newfoundland (four), western Newfoundland and central Newfoundland). In addition to its broader scope, the Unifone directory was to feature larger print, community pages and a "mini" directory. As of February 1994, however, Unifone was no longer in existence and it never did publish a directory.

The two entrants for which we had evidence on this point (White and DSP) priced advertising in their directories 30 to 40 percent below Tele-Direct's rates.

[221] DSP also included a "reverse" directory -- listings by phone number first.

Tele-Direct responded to these various entrants using a number of initiatives, including price freezes, advertiser incentive programs, advertising and promotional expenditures, and directory enhancements. Tele-Direct was also involved in litigation or threatened litigation against the entrants in Sault Ste. Marie and Niagara. Further details on these responses follow.

Tele-Direct adopted a zero percent price increase or price freeze in Sault Ste. Marie in 1993. Except for 1994, when there was a general price freeze across all of Tele-Direct's territory, prices were increased annually in the vast majority of Tele-Direct's directories outside of the competitive markets.[222] In 1995, there were zero price increases in Sault Ste. Marie, Joliette and the Niagara region. The information on the record regarding 1996 prices is that all markets were subject to a price increase, including the competitive markets.

Tele-Direct has offered advertiser incentive programs of various kinds throughout its territory at different times. The critical distinction between the programs offered in the competitive markets and those offered in other markets is that in the competitive markets the incentives were available to advertisers who *renewed or increased* their advertising whereas in the other markets only those advertisers who *increased* their level of spending were eligible.

The advertiser incentive program in Sault Ste. Marie was first offered in 1993. While originally intended as a one-year program it was extended to three years, ending in 1995.[223] In

[222] The exceptions for Tele-Direct's directories were the neighbourhood directories and areas subject to rescoping or splitting of directories. At the request of other telcos, like Newfoundland Tel and Northern Tel, prices were also frozen in those directories in 1995.

[223] In the first year (1993), all existing advertisers renewing or purchasing advertising received the next size up or colour, if applicable, at no extra charge. In 1994, all advertisers who participated in the program in 1993 were offered the next size up free,

Niagara, a program similar to the Sault Ste. Marie advertiser incentive program was offered in 1994 and 1995. As of the hearing, no decision had been taken about proceeding to offer the program in Niagara for a third year. In Joliette, a program was offered in 1995 which provided that advertisers renewing or purchasing advertising would receive the next largest size advertisement or colour if applicable. In Newfoundland, the same program was offered in four directories in 1994. Mr. Beauséjour, Tele-Direct's Vice-president of Finance, confirmed that the program was instituted in response to the presence of Unifone.[224]

In each competitive market, Tele-Direct added a number of features to its directories that were introduced first by the entrant. Most of these features tend to be fairly standard in many American markets. For example, the enhancements used by White in its Canadian prototype are almost all standard features for it in its American markets. The features added by Tele-Direct in response are not generally used by it in its directories in other markets.

We have limited information about the Joliette and Newfoundland situations in this respect. Tele-Direct did add a community pages section to its Joliette directory. Mr. Renwicke thought that postal codes had also been added. A memorandum dated October 1993 records a

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free colour or a 15 percent rebate if they renewed or increased their advertising. Those who had not participated in 1993 and new advertisers were given a 15 percent rebate. In the third and final year, the program became even more complex with different choices available to 1994 participants who were renewing depending on which option they had chosen (rebate/free size up or colour) in 1994. Non-advertisers and non-participants were again offered a 15 percent rebate as were 1994 participants who were increasing their advertising.

[224] In 1995, when Unifone was no longer present, advertisers were offered a 15 percent rebate if they increased their advertising but participants in the 1994 program could receive the rebate if they renewed their upsized or colour item.

recommendation by Tele-Direct (Services) Inc. that the Newfoundland directories contain "some enhancements starting with the central Newfoundland 1994 directory."[225]

In Sault Ste. Marie, Tele-Direct added enhancements to its directories similar to those offered by DSP, including four-colour format, postal codes, community pages and its own audiotext system (Talking Yellow Pages or "TYP"). Likewise, in Niagara Tele-Direct reacted to the entrance of White by adding enhancements similar to those of White to the Tele-Direct directories in that area. Tele-Direct did not introduce all of the enhancements included by the entrants. For example, it did not adopt larger type or distribute "mini" directories.

Some further detail is required about the audiotext system or TYP in order to understand the allegations advanced by the Director in this respect. Audiotext is an electronic technology which allows consumers with Touch-Tone phones to obtain access to audio messages which are stored on a computer. The directory publisher provides in its directory codes which can be used by consumers to gain access to the messages on topics of interest to the consumer. The provision of an audiotext service is comprised of both hardware components, the computer and satellite dish, for example, and the information lines which are fed to the satellite dish from a supplier. Depending on the information being offered, the lines are updated at regular intervals during the day, on a daily basis or on a monthly basis.

[225] Confidential exhibit CJ-87 (black vol. 14), tab 104 at 134481.

Tele-Direct introduced its first TYP in Kitchener in 1988 followed by Toronto and Quebec City that same year. Unlike the audiotext involving the provision of general information on various topics to consumers, the Kitchener and Quebec City services involved advertiser-specific information. The code was provided in the advertisement; the interested consumer could call for more detailed information regarding that supplier, for example, prices. These services were later abandoned for lack of advertiser interest; the Toronto service, which is of the general information type, is still offered. Since it first offered TYP, Tele-Direct's supplier of the information lines required has been a company called Perception Electronic Publishing ("Perception").[226] As of November 1993, Perception is owned by Brite Voice Systems.

When it entered the Sault Ste. Marie market with its prototype directory in January 1993, DSP provided an audiotext service. This was the first time such a service was offered in Sault Ste. Marie. The information supplier for DSP was Perception. During the first two months that it was offered, the DSP audiotext service was heavily used.

Tele-Direct introduced its TYP in Sault Ste. Marie in April 1993 in advance of its June 1993 directory, some three months after DSP published its prototype directory, also using Perception for its information feed. Tele-Direct used flyers to distribute the relevant codes to consumers. It was roughly at the same time as the Tele-Direct TYP were introduced that DSP began to experience deterioration in its audiotext service because the information was no longer being updated in a timely manner. DSP was in constant contact with Perception in order to get

[226] Formerly called BDR Audio Network.

the lines updated within an acceptable time frame, but with no success. The quality of DSP information feed from Perception remained poor until November 1993, which was essentially the same time that Perception was acquired by Brite Voice Systems.

Tele-Direct also engaged in large advertising campaigns in Sault Ste. Marie and Niagara. No detailed information was provided in this respect regarding the other two competitive markets. Compared with pre-entry levels virtually all of the advertising and promotional expenditures were new. In Sault Ste. Marie, Tele-Direct spent only about $50,000 on advertising in 1992 as compared to $215,000 in 1993. By 1994, expenditures had dropped back to $22,000. In Niagara, Tele-Direct spent $43,000 in 1992, $71,000 in 1993 and $28,000 in 1994.[227] In 1993, advertising expenditures in Sault Ste. Marie constituted approximately 11 percent of published revenues for that city; in 1993 in the Niagara area, advertising expenses amounted to less than one percent of published revenues.

Another circumstance relevant to the Director's allegations respecting publishers is that Tele-Direct initiated a suit against DSP in May 1993 for infringing the "walking fingers" trade-mark and Tele-Direct's copyright in the advertisements in the Tele-Direct directory with its prototype directory. In the spring of 1995, Tele-Direct notified DSP that it would also be challenging the 1994 and 1995 DSP directories. At the time of the hearing, the lawsuit had reached the stage of discoveries. A representative for Tele-Direct had been discovered and the discovery of the representative for DSP was scheduled for November 1995.

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[227] Exhibit R-152.

Although no suit has been launched in relation to White, Tele-Direct made it abundantly clear to White early in 1993 that it would vigorously defend its trade-marks and its interpretation of its copyright interests arising from the advertisements in the Tele-Direct directories. In particular, Tele-Direct informed White that it could not make use of an advertiser's copy, layout or graphics as they existed in the current Tele-Direct directory in creating the first White directory.

**(2) Control of a Class or Species of Business in Canada**

The Tribunal has already found that the supply of telephone directory advertising constitutes a relevant product market and that the relevant geographic markets are local in nature. We have also found that Tele-Direct possesses market power in those markets. We are satisfied, therefore, that Tele-Direct has market power in the market for the supply of advertising space or the telephone directory publishing market and therefore controls the business in the relevant geographic markets.

**(3) Practice of Anti-competitive Acts**

(a) Allegations - Pleadings

The Director's application, as amended, says at paragraph 65 that the following acts together constitute a practice of anti-competitive acts affecting the market for advertising space, or the publishing market, which leads to a substantial lessening of competition in that market:

> . . .
>
> (g) targeting price reductions and other discounts to those markets in which entry by competing publishers has occurred or is occurring; and
>
> (h) causing, directly or indirectly, advertising agencies to refuse to place advertising in telephone directories published by competing publishers or otherwise discriminating against or causing independent advertising agencies to discriminate against competing publishers; and
> (i) making disparaging statements in regard to new market entrants.

In argument, the Director did not refer to the act set out in (i). Under the heading in the written argument, "Otherwise Discriminating between Publishers", the Director gathers evidence relating to the respondents' policy of not allowing the directories of competing publishers to count towards the 20 directory requirement of Tele-Direct's national account definition. Under the heading in the written argument, "Targeting/Raising Rivals' Costs", the Director refers to various actions by the respondents in response to entry by competing publishers in the local markets of Joliette (Quebec), Newfoundland, Niagara and Sault Ste. Marie which are alleged to constitute anti-competitive acts because of their targeted nature and intent and the degree or intensity of the response. The particular responses listed are zero price increases, incentive programs, advertising and promotional spending, directory enhancements, interfering with the DSP audiotext feed and litigation or threats of litigation.

The respondents say that the allegations involving directory enhancements, promotional spending and litigation or threats of litigation are not encompassed by the pleadings and cannot be relied on by the Director.

It is not in dispute that the evidence and the argument put forward by the Director on this issue must be supported by the pleadings, either by the specific words in the application or by reasonable inference therefrom. It is trite to say that the pleadings are intended to define the issues in dispute between the parties, to give fair notice to each party as to the case that it will have to meet and to assist the decision maker in considering and deciding the allegations that have been made. Where, as here, an argument about the scope of the application is only raised at the stage of final argument, we agree with the Director that regard may be had to interlocutory proceedings, discovery and the conduct of the hearing itself to determine what the *parties* considered were the issues raised by those pleadings. We need not restrict ourselves to the pleadings in a vacuum.

(i) Enhancements

Directory enhancements were not explicitly mentioned in the application. However, in its request for leave to intervene, White specified, in paragraph 9 of the request, those matters in issue which affected it. Item (e) reads:

> offering directory enhancements (community pages, an audio text system and postal codes) targeted to areas where competition or the threat of competition exists. . . .

As stated in the reasons of the Tribunal for granting leave to intervene, the respondents did not oppose the intervention. The respondents only objected to White being given leave to make representations with respect to certain issues which, the respondents argued, were outside

the scope of the Director's application. The respondents submitted that the representations of an intervenor must be relevant to the proceedings and that relevance is defined by the parties' pleadings. The Tribunal agreed. The issues in White's intervention challenged by the respondents as being outside the scope of the application did not include item (e) "enhancements" but rather focused on six other items. The Tribunal accepted that four of the disputed six items were not supported by the application and excluded them from the purview of White's intervention.

If the respondents were genuinely of the view that the question of directory enhancements was outside the scope of the application as defined by the pleadings, then they would have challenged that part of White's intervention request. The question of what was and what was not supported by the pleadings regarding the alleged anti-competitive acts in relation to independent publishers was squarely in issue at the intervention hearing. The clear implication of the respondents' failure to challenge item (e) is that they considered that enhancements were within the pleadings.

Nothing occurred after the intervention hearing that would have led to any other conclusion. The Director requested the production of documents and conducted discovery on the question of enhancements. Eventually the relevant documents were produced, without objection.[228] The Director submits that Tele-Direct has taken this "about face" on the question of enhancements in order to provide an after-the-fact explanation for its belated production of a

[228] For a more complete discussion of this issue, see *infra* in this section on abuse of dominance in publishing under "(b) Alleged Anti-competitive Acts", "(ii) Targeting/Raising Rivals' Costs".

boxful of relevant documents relating to its responses in competitive markets. The Director called evidence at the hearing on enhancements, without objection. The respondents themselves led evidence on the question of enhancements. Tele-Direct cannot now change a position that it took on an interlocutory proceeding and maintained throughout discovery, the hearing and up until the commencement of its final argument. The entire case has been conducted on the basis that directory enhancements are fairly in issue. Enhancements are properly before the Tribunal.

(ii) Advertising and Promotional Expenditures

Unlike directory enhancements, advertising and promotional expenditures were not specifically addressed at White's intervention hearing. If we looked only at the words of the pleadings, it might be arguable whether those words would support the allegation. Again, however, we have a course of conduct that sheds considerable light on whether the parties themselves thought promotional expenditures were at issue as part of the allegation of anti-competitive acts. It is clear that they did. Oral and documentary discovery was conducted by the Director on this issue. Counsel for the Director referred to it in his opening address. The Director called evidence in chief on the issue and the respondents called responding evidence. Advertising and promotional expenditures are properly before the Tribunal.

(iii) Litigation and Threatened Litigation

Counsel for the respondents pointed out that the Director was not seeking any remedy specifically relating to litigation. Counsel for the Director did not address the respondents'

argument that litigation or threatened litigation falls outside the pleadings. In argument on the merits, however, the Director took the position that litigation or threats of litigation contribute to the anti-competitive act of "targeting" or "raising rivals' costs".

The words of the pleadings do not obviously incorporate such a concept. The original application, at paragraph 65(h), contained a specific allegation of an anti-competitive act of "threatening or taking legal action to restrict competing suppliers of advertising space from gaining access to, or from utilizing, subscriber listing information". This allegation was later withdrawn. However, as with promotional expenditures, litigation was dealt with in the evidence and argument. In view of the specific withdrawal by the Director of the reference in the pleadings to litigation or threatened litigation, the respondents' position is somewhat stronger on this point than on the others. But, it is not necessary to decide the issue on procedural grounds. As will become apparent, we are not satisfied on the merits of the argument that litigation or threatened litigation constitute anti-competitive conduct in this case.

(b) Alleged Anti-competitive Acts

(i) Causing Agencies to Refuse to Place Advertising with Independents

The independent publishers' directories do not count towards the 20-directory requirement that forms part of the 1993 definition of a Tele-Direct commissionable account. The Director argues that the effect of the Tele-Direct policy in this regard is that CMRs do not

recommend independent directories to advertisers when they would do so if those directories counted towards qualification as a commissionable account. Thus, it is submitted, this excludes independents from revenues that they would otherwise obtain.

The Director relies on the evidence of Mr. Lewis of White comparing the situation in Canada with respect to advertising placed in his directories by CMRs to that in the United States. In distinction to Tele-Direct's policy, in the United States publishers include the directory of any other YPPA member in determining whether an account qualifies for commission. White is a YPPA member and therefore its directories count towards the minimum directory requirement in the United States. Mr. Lewis testified that in that country eight percent of White's advertising revenues are placed by CMRs while in Canada less than one-half of one percent comes from CMRs.

The respondents respond that this testimony alone does not constitute proof of the requisite exclusionary effect. Because White has been operating in the United States for a lot longer, and is therefore more established than it is in Canada, they question the validity of the comparison being made. Further, they rely on the evidence of Stephanie Crammond of Media Nexus, a specialized Yellow Pages advertising agency, that if she had confidence in the distribution figures cited by the various independents, she would consider them. Likewise, Richard Clark of DAC stated that his position on independent directories was to "wait and see" if they were going to stay around and then base a decision on which directory had greater usage. He did point out that typically the telco directory has the greater usage and, therefore, if a

competing directory is used, generally it is on a secondary basis, with the primary advertising dollars allocated to the telco directory.

On balance, we are not persuaded by the Director's argument. While we recognize that monetary incentives are bound to enter into an agency's recommendation to a client, the Director's argument implies that agencies are entirely driven by earning commission and will compromise the quality of the advice they give by omitting to recommend a good, independent directory merely because it would not help the account qualify for a Tele-Direct commission. The burden of the remainder of the Director's case, as it involves agencies, is that they are, among other things, independent suppliers of advice to advertisers and therefore provide a valuable alternative to Tele-Direct's captive salesforce. For the Director to suggest now that agencies would not provide good advice seems to be somewhat inconsistent with that position. But apart from this, the independents, of course, pay their own commission on advertising placed in their directories.

There are factors at play other than Tele-Direct's criteria in agents' decisions when recommending directories to their clients. As Mr. Clark's testimony indicates, an important reason why independent publishers in Canada may not receive a high volume of business from agencies is that, because Tele-Direct is the established publisher, it is rarely a choice *between* Tele-Direct's directory and the independent directory for a particular area. Rather, the agency will generally recommend the Tele-Direct directory as the primary directory for advertising

because of widespread usage and then, if additional money is available, recommend the independent *also*.

In summary, we do not accept that Tele-Direct's policy regarding the 20-directory requirement discourages agency recommendations of independent directories.

One final observation in this area arises from the respondents' written argument at paragraph 590, that as a matter of law "[i]t cannot be an anti-competitive act for a dominant firm to decline to assist or give aid to a competitor." We agree with the general proposition that a firm is not, and should not be, required to "assist" its competitors. The respondents, however, add an additional element to the proposition when they submit that:

> Each of the anti-competitive acts listed in section 78 require the dominant firm to *actively initiate* some action. . . . None of the listed acts are triggered simply by the dominant firm *not doing something or refusing to assist*. . . . (emphasis added)

While the respondents did not advance this argument in relation to the specific allegation we are dealing with here (or, in fact, in relation to any specific allegation), it certainly seems relevant to the question of whether Tele-Direct should be obliged to recognize advertising in independent directories as counting towards Tele-Direct's commissionability requirement of a minimum of 20 directories. As stated above, as a general proposition, competitors should not be required to assist one another. But, this general proposition may be shown to be inapplicable in a given section 79 case by the Director proving that the "act" of the respondent meets the elements of that section and is an anti-competitive act leading to a substantial lessening of competition.

Then, any order of the Tribunal which may issue is, by definition, not an order to "assist" a competitor but rather, in the case of subsection 79(1), an order to cease and desist from anti-competitive conduct.

It is, therefore, not sufficient, in circumstances such as these, to argue the general proposition. Nothing can be determined by simply labelling the alleged anti-competitive "act" as "doing something" (active) or "not doing something" (passive). The anti-competitive effect of the conduct of the respondents, whether "active" or "passive", must be weighed against any business justification in order to conclude whether there has or has not been a substantial lessening of competition. That can only be done by reference to the evidence. On this point, Tele-Direct only argued the general proposition.

(ii) Targeting/Raising Rivals' Costs

Reaction of Tele-Direct

Before turning to the evidence it is necessary to consider what the Director means when he alleges that "targeting/raising rivals' costs" is an anti-competitive act. There is a growing body of literature dealing with "raising rivals' costs" ("RRC"). The theory was proposed as a similar but more credible route to market power than predatory pricing because it does not depend on short-term price cutting beyond what is profit-maximizing followed by later recoupment. With RRC, it is not necessary to cause the rivals to exit, no "deep pockets" are necessary and the

additional profits are gained immediately.[229] Typically, an RRC strategy involves increasing rivals' costs by raising the price of some scarce input which in turn results in the rival reducing its output.[230] In other words, there is a relatively immediate output reduction in the market concerned. Only two elements of the act alleged by the Director seem to bear any resemblance to this conception of RRC -- the audiotext affair and litigation and threats of litigation. As we shall see, the remaining actions of Tele-Direct relating to pricing, incentives and advertising did not result in output reduction in the markets in question. The considerations involved in RRC can provide little assistance in evaluating the allegations relating to those reactions of Tele-Direct in competitive markets or the "targeting" aspect of this act.

The Director has not attempted to explain what is meant by targeting in any detail, perhaps regarding the term as largely self-explanatory. It is, however, far from being a household word in competition law. While we have no reason to discourage novel approaches to discerning potentially anti-competitive conduct that might fall within section 79, we do see considerable difficulty in applying the targeting concept. It is always difficult to distinguish between anti-competitive practices and normal competition. The conduct in question may be generally benign and it is only in certain contexts that it is anti-competitive. The difficulty is even more pronounced in this case, given the actions on the part of Tele-Direct that the Director would have the Tribunal, if not prohibit completely, certainly restrict.

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[229] T.G. Krattenmaker & S.C. Salop, "Competition and Cooperation in the Market for Exclusionary Rights" (1986) 76:2 Amer. Econ. Rev. 109.

[230] D.T. Scheffman, "The Application of Raising Rivals' Costs Theory to Antitrust" (1992) 37 Antitrust Bulletin 187.

In argument counsel for the Director described the nature of targeting as follows:

> The reason that acts of predation or near-predation can be anti-competitive is because the firm is dominant in a larger market. The danger is that, rather than bringing the public the benefit of competition in a limited area, what is happening is that in the long-term analysis the dominant firm is leveraging its market power from its broadly-dominated market into specific targeted areas where competition enters, with a view to either eliminate that competition entirely or, as in the situation here where the expressed intent fell a bit short of that, to ensure that the competition didn't move into any other markets and to raise their costs so that those companies would know that it was not going to be a profitable enterprise to continue their expansion.
>
> What we are suggesting is that this is really a test of degree, that we have in at least one of the markets evidence which is very close to predation. What we have is such a tightly focused and overwhelming marshalling of the dominant resources of the company to these targeted areas that there is a need for a remedy.
>
> . . .
>
> . . . While one may formulate various tests that would have different requirements in terms of the super-normal targeted response, this is probably the clearest case imaginable in terms of the absolutely overwhelmingly aggressive nature of the response to these targeted markets.[231]

Counsel clarified that "leveraging" in this context means the use of monopoly rents from other markets to subsidize near-predatory behaviour in the markets in question.[232]

One of the ordinary meanings of the word "target" is

> anything that is fired at or made an objective of warlike operations . . . [233]

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[231] Transcript at 64:13167-68, 13170 (16 February 1996).

[232] *Ibid.* at 13169.

[233] *The Concise Oxford Dictionary*, 7th ed. (Oxford: Clarendon Press) at 1094.

In one obvious sense, therefore, "targeting" simply refers to focused or aimed rather than general responses. The facts show that Tele-Direct behaved differently in the competitive markets. If the Director is arguing that the actions of Tele-Direct constitute the anti-competitive act of targeting merely because its actions in markets in which broadly-scoped entry was occurring were different from those in markets where no such entry had occurred, we do not accept the argument. Targeting cannot be distinguished as an anti-competitive act merely by the fact that there is a differentiated response. Targeting, in the sense of a differentiated response to competitors, is a decidedly normal competitive reaction. An incumbent can be expected to behave differently where it faces entry than where it does not. One competes where there is competition. Similarly there may be gradations of reaction depending on the nature of the competitive threats.

The earlier discussion regarding market power established that, whereas the broadly-scoped directories published by entrants in the "targeted" markets were considered by Tele-Direct as competition for its own directories, the same was not true of other publishers who sought market niches defined by geography or other specific characteristics of their intended audience (e.g., ethnic, religious, easy to read directories). Furthermore, both White and DSP introduced features into their directories such as postal codes, information about cultural events, coupons, etc., that provide value to users that could affect whether the Tele-Direct directories would be retained by telephone subscribers in those markets if Tele-Direct did nothing.

If "targeting" does not depend solely on differentiated responses, how is it to be distinguished from competition on the merits? We do not take the Director to be proposing that an incumbent, even one with a dominant market position, is precluded from responding to entry. Entry would obviously be *encouraged* if the incumbent accommodated the entrant. It is, however, doubtful that anyone would suggest that this is a desirable competitive outcome. Anything short of accommodation is likely to make the post-entry prospects of an entrant less attractive than the pre-entry benefits enjoyed by the incumbent. It is, therefore, not enough for us to find that Tele-Direct's responses made entry less attractive.

Indeed, the Director's position seems to be that a firm is free to act to discourage entry but that there is a limit to what it may do. This is reflected in the Director's proposed remedy, which would allow Tele-Direct to use two out of three of price reductions or discounts, enhancements and an advertising campaign in individual markets.[234] Once the incumbent passes this critical threshold, it is submitted that it has moved into the realm of anti-competitive conduct. The reasoning behind this, as we understand it, is that while what has been done in the particular markets may not be particularly harmful, the long-term harm caused by discouraging future entry outweighs any immediate benefit. In other words, the response in the markets where entry occurs is part of an effort to discourage entry into other markets by behaving in a fashion which is nearly, but not necessarily, predatory in the strict sense in which that word is usually used.

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[234] Tele-Direct would be unrestricted in its responses if it implemented those responses throughout its territory.

In support of the position that Tele-Direct's response went beyond what is "normal", the Director relies on its expressions of corporate intent, the number, variety and degree of its responses and the intensity of those responses. As a standard for assessing how far Tele-Direct went the Director submits that we can look to the evidence that its response in Sault Ste. Marie caused Tele-Direct to incur losses, a comparison to the experience of independent entrants in American markets, and the difference between White's and DSP's expectations and their actual results and their future plans.

Counsel for the Director also suggests that Tele-Direct is using its monopoly rents from other markets to cross-subsidize its responses in competitive markets. This possible meaning of targeting would only apply, however, where the dominant firm is incurring losses in the targeted market. However, the Director does not appear to be suggesting that this is a necessary condition for the Tribunal to find that "targeting" is an anti-competitive act in this case.

First, we will examine the question whether what Tele-Direct did in the competitive markets was generally of benefit to consumers (advertisers) in those markets, largely neutral or, in fact, harmful. While Tele-Direct's actions clearly made it more expensive for the entrants than if it had accommodated them, seizing market share from a rival by offering a better product or lower prices is not, in general, exclusionary since consumers in the markets concerned are made better off. The Director has not attempted to argue that Tele-Direct's responses caused harm to advertisers in the particular markets in which entry occurred. The Director did, however, submit

that at least some of Tele-Direct's actions were of negligible or temporary benefit to those advertisers.

With respect to the zero price increases, there is no question that advertisers benefitted from this initiative. The evidence indicates that the advertiser incentive program in competitive markets was carefully designed to absorb customers' directory advertising budgets so that little would be left for the new entrants when they canvassed for paid advertising. Yet, it is difficult to conclude that these programs did not benefit advertisers, particularly when rebates were involved. Making its directories more attractive by adding enhancements and increased advertising by Tele-Direct would both tend to increase usage of telephone directories and, thus, benefit advertisers in those markets. There was evidence that some of the enhancements to Tele-Direct's directories were viewed by the company as temporary expedients. For example, the postal code feature in Niagara was designed to be easily removable.[235] Nevertheless, as no evidence was brought to our attention indicating actual removal of the postal code section, we can only conclude it has been maintained by Tele-Direct. Further, although the Director argued that much of Tele-Direct's advertising was "negative" advertising which only disparaged its competitors, we do not have enough information on the advertising campaign to be in a position to identify which portions were "negative" and if the negative outweighed the positive. Overall, the inescapable conclusion is that Tele-Direct's responses to entry resulted in an improvement for advertisers in the "targeted" markets.

[235] Mr. Bourke wrote to Mr. Renwicke stating that postal codes should be left as a section rather than integrated as part of the listing (as White had done), otherwise "we'll [n]ever get rid of it": confidential exhibit CJ-86 (black vol. 13), tab 101 at 134297.

What, then, about the likelihood of harm in Tele-Direct's territory as a whole because of the effect of these responses on future entry or expansion? There is evidence that Tele-Direct was not solely concerned with "meeting" competition in Sault Ste. Marie and Niagara. Tele-Direct also feared further entry into other areas, particularly from DSP which was associated with Southam and had the advantage of having local connections and organization through the publisher's newspapers. This is clear from the evidence of Ms. McIlroy, who was in a key position as Vice-president of Marketing at that time.

Ms. McIlroy testified that Tele-Direct designed its strategies first around the Sault Ste. Marie situation and then replicated them in Niagara when White appeared. She confirmed that one of her objectives in Sault Ste. Marie, as set out in document recording her notes for a presentation, was to "limit Southam motivation to continue Yellow Pages roll-out in Ontario".[236] She further explained that as a "counter-strategy", if Southam's intention to enter directory publishing was a long-term, well-funded strategy, then her second objective was to "make the cost of carrying on business against [Tele-Direct] market-by-market exceptionally high."[237]

But those were not the sole objectives. Ms. McIlroy also described Tele-Direct's strategy in the following terms:

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[236] Confidential exhibit CJ-33 (black vol. 12), tab 88 at 133221A.

[237] Transcript at 21:4088-89 (17 October 1995).

> . . . the basic premise was to make it expensive for the competitor to compete with us and to focus on doing everything and doing it right in the Sault, putting whatever investments or resources that was necessary to avoid unnecessary market share [loss] and to protect our interest in that market.[238]

Similarly, in a presentation that she made to her fellow officers she set out the following points as constituting Tele-Direct's "challenge":

> • Protect usage and awareness - promotion
>
> • Add value to advertiser - incentive
>
> • Add value to user - product enhancements
> - size and colour
>
> • Sustain leadership profile
>
> • Compete on value vs. cost
>
> • *Make competition an expensive proposition*[239] (emphasis added)

Mr. Renwicke disputed whether the last point was ever accepted as corporate policy, but in matters of dispute between Ms. McIlroy and her fellow officers we accept her evidence. She left Tele-Direct on good terms and she has no discernible reason for colouring her evidence, particularly as she was the officer responsible for preparing tactics that the Director would have us label as anti-competitive.

It is only the reference to making competition "expensive" as part of Tele-Direct's strategy that raises any question of anti-competitive motivation. It is doubtful that Tele-Direct could make competition expensive without negatively affecting its own profitability. According

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[238] Transcript at 20:3918-19 (16 October 1995).

[239] Confidential exhibit CJ-33 (black vol. 12), tab 88 at 133316.

to Ms. McIlroy the participants at the officers' meeting were taken aback at the cost to the company of making it expensive for the competition. They agreed to "spend what it took" with the proviso that the expenditures would be selective and the officers would be kept current on what was transpiring, even as frequently as on a weekly basis. The fact that Ms. McIlroy convinced her fellow officers to adopt a policy of making competition expensive even when doing so would be detrimental to current profits provides some indication that Tele-Direct was trying to influence its competitors' future conduct to some extent.

There is as well another consideration. The documents relating to Tele-Direct's responses in Sault Ste. Marie and Niagara were not provided during documentary discovery within the time frame ordered. They did not make their appearance until after Tele-Direct apparently learned that the Director had contacted Ms. McIlroy and that she would appear as a witness in these proceedings for the Director. Counsel for Tele-Direct attempted to blame the delay in the production of these documents on inadvertence. He said that the relevant box of documents got lost but that no one seemed to know where or why. If the documents were lost, a detailed explanation is in order especially given the controversial issue to which they pertain and that the content of some of the documents is clearly adverse to Tele-Direct's position. A vague explanation carries little weight. The belated production and inadequate explanation cause the Tribunal to make an adverse inference with respect to Tele-Direct's intentions on this issue. Tele-Direct apparently considered that it might have "gone too far" in its responses in those markets. This, along with the statements of corporate policy, provides support for the view that Tele-

Direct intended, in a subjective sense, to convey a warning about future entry as well as protecting its position in the individual markets subject to entry.

Nonetheless, the critical question is whether there is a reasonable likelihood that future entry will be discouraged by Tele-Direct's actions. If so, is that possible negative effect more compelling than the proven benefits in the individual markets from Tele-Direct's improving its product, freezing prices and increasing advertising expenditures, all of which contributed in some measure to increasing usage of telephone directories, which is generally seen as pro-competitive. A reasonable likelihood of significant long-run detriment must exist if these tactics are to be discouraged.

The Director relies to some extent on the evidence given by White and DSP, which will be canvassed below, regarding their intentions about future expansion, which he says shows that future entry and expansion *have been* deterred by Tele-Direct's behaviour. That evidence is, however, a small portion of the evidence put forward by the Director in support of his case. In effect, the Director asks us to *infer* from the "overwhelming intensity" of Tele-Direct's response in the markets where it faced entry that potential entry into other markets *will* be deterred.

Before we proceed to consider the more detailed arguments, we should indicate at the outset that we have serious reservations with respect to the overwhelming intensity approach adopted by the Director. The Director has not advanced any "objective" criteria by which the

Tribunal is to assess whether Tele-Direct's responses in the competitive markets have the overall anti-competitive character or "purpose" required for section 79.

Although the Director is not arguing that Tele-Direct's conduct was predatory, predation is certainly the closest analogy to what is put forward here. The essence of an allegation of predatory pricing is that the firm foregoes short-run revenues by cutting prices, driving out rivals and thus providing itself with the opportunity to recoup more than its short-term losses through higher profits earned in the longer term in the absence of competition. A predatory pricing allegation is difficult because, at least in the short-run, consumers apparently benefit from lower prices. In addition, predation can only succeed if the predator has greater staying power than its rivals and a reasonable prospect of recouping its losses. In order to distinguish competitive pricing action from predation, therefore, the "Areeda-Turner test" for predatory pricing[240] was developed and has been adopted by the courts.

Our difficulty here is that, unlike the predatory pricing case, no "test" or criteria of any kind were even proposed by the Director or his experts. Indeed, we acknowledge that the likelihood of being able to establish objective criteria to distinguish between harmful and beneficial conduct of the type in issue is remote. In effect, because of the absence of any criteria, the Tribunal is being asked by the Director to place itself in the shoes of a potential entrant with a view to assessing the credibility of the alleged "threat" being issued by Tele-Direct by its

[240] In brief, the essence of the test is that a price below reasonably anticipated short-run marginal costs is predatory while a price above short-run marginal costs is not. Because marginal cost data are often unavailable, average variable cost is generally used as a proxy. For a summary of the conclusions of Areeda and Turner on this topic, see *Antitrust Law*, vol. 3 (Toronto: Little, Brown, 1978) at para. 711d.

responses to entry. The Tribunal must determine whether the response in the initial markets in which entry occurred was so "overwhelmingly intense" that an entrant would be intimidated and future entry or expansion deterred.[241] What may seem to be a response of "overwhelming intensity" to one person may not to another. It is inevitably a highly subjective exercise. Decisions by the Tribunal restricting competitive action on the grounds that the action is of overwhelming intensity would send a chilling message about competition that is, in our view, not consistent with the purpose of the Act, as set forth in section 1.1. We are concerned that, in the absence of some objective test, firms can have no idea what constitutes a "competitive" versus an "anti-competitive" response when responses like those used by Tele-Direct in this case are involved (e.g., price freezing or cutting, incentives, product improvements, increased advertising).

While Tele-Direct certainly made very strong responses to entry in Niagara and Sault Ste. Marie, there is no certain way for the Tribunal to judge what magnitude of response Tele-Direct would have employed had it not been concerned, among other things, with discouraging further entry. To say that the response was greater than it otherwise would have been assumes that we can judge how much Tele-Direct would have done had it been acting competitively and that, therefore, we can determine, with reasonable assurance, to what degree the observed responses went beyond that and became anti-competitive. In trying to make this comparison urged upon us by the Director, it must be recognized that Tele-Direct was facing pretty stiff competition from

[241] There would evidently be little point in the incumbent pursuing an aggressive course of responses in every market subject to entry solely to make an impression or deliver a threat since that strategy would have already been defeated. If there was widespread response by the incumbent in all markets in which entry occurred or was threatened, consumers would benefit in the short-term with no discernible long-term negative effects.

the new entrants. The entrants' publications were initially superior with respect to features and they were priced up to 40 percent below Tele-Direct. While Tele-Direct's expenditures on advertising and promotion constituted a sea change from its previous expenditures, DSP spent more over the three years from 1992 to 1994 than Tele-Direct did, including large amounts in the local Southam newspaper.

The Director makes two broad arguments in support of the position that Tele-Direct's actions went beyond "normal" competition and, taken together, constitute anti-competitive acts. The first is that Tele-Direct's "bottom line" results in Sault Ste. Marie in 1993 reveal that Tele-Direct barely broke even in that market when the cost of introducing the improvements to the directory and the advertising and promotional expenditures are taken into account. This conclusion was not disputed by Mr. Beauséjour who agreed that the results shown were "very close to breakeven".

The analysis presented to the witness, however, included the payment to Bell Canada (CCS) as an "expense" deducted from revenue. When Bell and Tele-Direct are treated on an integrated basis, as we earlier found in the tying context to be appropriate when considering Tele-Direct's profitability study, it would be inaccurate to refer to Tele-Direct's results in Sault Ste. Marie as a "marginal profit" or "loss" situation. The pro-rated share of the payment to Bell would have to be added back to the Tele-Direct's results in Sault Ste. Marie. Given that the Bell payment is mostly contribution to profit and it is a substantial amount, this would move the Sault Ste. Marie results well above the breakeven point, even with the extra expenditures on

enhancements and advertising. Indeed, it would appear that the payment to Bell constitutes the largest portion of the "profit" that attracts independent publishers to attempt to enter Tele-Direct's markets and which allows them to contemplate profitably pricing 30 or 40 percent below Tele-Direct. In the Niagara region, Tele-Direct earned a profit in 1993 even when the payment to Bell is treated as an expense.

The Director's second argument is that experience in the industry also demonstrates that Tele-Direct went beyond "normal" competitive responses. This includes the evidence regarding expectations of White and DSP versus their experience and their future intentions as well as evidence about how American telco publishers have responded to entry in their markets.

With respect to the experience of an American telco publisher responding to entry, Mr. Anderson, who was with NYNEX, testified in chief that when NYNEX perceived independent directory publishers as significant competition, it would make its sales force aware of their presence, possibly do more advertising, and consider the scoping of its directories and their features. He also pointed out that it had not been his experience that features would be introduced only in a competitive market. After a trial run, if the feature proved successful, it would be implemented "across the product line." In cross-examination, he admitted that NYNEX had never, at least to his knowledge, offered an incentive program similar to that used by Tele-Direct in its competitive markets in response to entry of a competing publisher. He gave the same response when asked about a specific market where, in response to entry, NYNEX might have frozen prices in specific markets in response to entry for two years, without rescoping. With

respect to the remaining possibilities put to him by counsel for the Director, Mr. Anderson either had no knowledge (e.g., advertising as a separate budget item) or commented on the lack of applicability in the American context (e.g., telco publishers cannot offer audiotext, no trade-mark to protect through legal action). Without any knowledge about the marketplace in which NYNEX operates, we are unable to draw any conclusions about this evidence.

With respect to White, Mr. Lewis stated that his experience in entering markets in the United States had led him to believe that White would have larger sales in Niagara than turned out to be the case. In its first revenue year, White expected to capture between 30 and 40 percent of Tele-Direct's revenue.[242] In fact, White's revenue for its second directory (the first revenue-generating directory), published in 1994, was 17 percent of Tele-Direct's revenue. Revenue for the third directory (the 1995 directory) represented a nine percent increase from the previous year for a total of about 19 percent of Tele-Direct's revenue.

Mr. Lewis stated that his initial plans for expansion beyond the Niagara region in Canada had been put on hold indefinitely due to Tele-Direct's conduct *and* the inability to obtain complete subscriber listing information. At the time of the hearing, this matter of subscriber listings was on appeal to the federal Cabinet. Mr. Lewis also said that upon a favourable Cabinet decision on the privacy issue, he would anticipate starting a number of additional directories in the Toronto and Niagara region. Any conclusion that White was deterred from future expansion

[242] Anticipated sales are expressed as a percentage of estimated revenue of the existing directory. This does not mean that all sales are drawn from the incumbent as the demand for directory advertising is expected to increase when a second publication is introduced.

by Tele-Direct's conduct and that, therefore, that conduct passes an anti-competitive threshold would be difficult in light of this evidence and the subsequent Cabinet decision overruling the CRTC decision that was to the effect that consumers should be able to opt out of having their listing information released to independent publishers.[243]

In formulating its entry strategy, DSP factored into its business plan both the risk of legal action by Tele-Direct and the possibility of a Tele-Direct competitive reaction. DSP, erroneously as it turns out, anticipated little response from Tele-Direct based on that company virtually ignoring the entry of the Locator directories in a large number of communities. As we have discussed, the Locator directories are simply not close substitutes for Tele-Direct's directories. DSP's expectation for its first revenue-generating directory was to capture about 50 percent of Tele-Direct's revenue. In developing this estimate, DSP reviewed the American experience and consulted extensively with its joint venture partner, Noverr. Instead, the directory generated about half of the expected revenue in dollar terms. The revenues for the second revenue-generating directory, published in 1994, were once again considerably lower than expected. It was, however, anticipated that the revenues for the 1995 directory would be higher and marginally profitable.

DSP has also decided not to expand in Ontario even though that was the original plan. While Tele-Direct's conduct was said to have been the reason for that decision, the evidence

[243] For further explanation of this matter, see chapter "VII. Control: Market Power" under "A. Indirect Approach: Market Structure", "(2) Barriers to Entry", "(c) (i) Subscriber Listing Information", *supra*.

suggests that there were other reasons as well. In particular, it would appear that DSP's expectations were quite aggressive for a new business and, to some extent (in relying on the Locator experience), in error. The Director says that the Sault Ste. Marie, Michigan part of the DSP joint directory, which did not experience a response like Tele-Direct's, had been far more successful than its Ontario counterpart. However, that side of the publication also fell well short of what had been anticipated as a "normal" first year revenue, further suggesting that the DSP's expectations may not have been realistic.

We do not have enough evidence to arrive at any conclusion about the effect of Tele-Direct's actions on deterring entry or expansion in the Newfoundland and Joliette situations.

The remedy suggested by the Director changed from the application to final argument. In our view, the remedy, as currently formulated, illustrates the difficulty of dealing with "targeting" as an anti-competitive act. The notice of application, at paragraph 1(b)(xiii), requested that:

> the Respondents be prohibited from targeting price reductions and other discounts for advertising space to those markets in which entry by competing publishers has occurred or is occurring.

In oral argument, counsel for the Director explained that the remedy ultimately being requested by the Director would read as follows:

> that the respondents be prohibited for a period of five years from: (i) targeting a price, a price reduction, or other discount including any advertiser incentive program offering free colour, free size up, or a first time placement discount where there is no annual increase in advertiser spending; *and* (ii) targeting any

> directory enhancement, including audio-text service; *and* (iii) targeting any advertising campaign; to a market where entry by a competing directory publisher has occurred, is occurring, or is reasonably anticipated to occur unless such listed item is offered or applied uniformly and simultaneously by the respondents in the majority of their directory markets.

The "and" between the listed items is critical. The Director proposes that Tele-Direct be permitted to do any *one* or *two* of the three enumerated actions in any market where entry has occurred. However, if all three should be undertaken then they would have to be followed in a majority of Tele-Direct's local markets.

We recognize that the Director is likely attempting, by this compromise remedy, to recognize that Tele-Direct's responses are of benefit to consumers in the market in which they occur. This effectively highlights the difficulty of the "targeting" allegation. First, the number of competitive responses (one or two) that Tele-Direct is allowed is completely arbitrary. The Director has not provided the Tribunal with any rationale as to why one or two (but not three) responses would not be anti-competitive. Further, there is no suggestion that the Tribunal should limit the extent to which Tele-Direct could invoke the competitive responses to which it would be entitled. Yet, the Director alleges that Tele-Direct's responses in the competitive markets were anti-competitive in part *because of* their intensity and ferocity.

Considering the difficulty in circumscribing "targeting" so that it does not result in discouraging desirable competitive activity, we do not find that Tele-Direct's conduct with regard to pricing, promotion and changes to its directories in the competitive markets, in particular in the Sault Ste. Marie and Niagara areas, is anti-competitive.

Litigation or Threatened Litigation

Finally, we turn to the Director's argument that litigation or threatened litigation by Tele-Direct, when taken together with the other actions of Tele-Direct, contribute to targeting/raising rivals' costs.

The Director argues that Tele-Direct's use of litigation or threatened litigation "goes into the mix" to show intent and the excessive degree of the overall response to entry in the competitive markets. The Director does not rely on the nature of the litigation on its own. The Director does not argue, for instance, that the litigation was a "sham". "Sham" litigation, or litigation which the plaintiff knows is without foundation but uses to stifle or impair competition, can be a technique of predation.[244] In the words of Robert Bork: "As a technique for predation, sham litigation is theoretically one of the most promising."[245]

Since no argument is being made that the litigation started by Tele-Direct against DSP was "without foundation",[246] we need some other means to determine whether the litigation in question crossed the line to anti-competitive conduct. We do not consider that it is sufficient to look at the litigation only in combination with the other responses. There must be some evidence

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[244] Sham litigation could include a claim with no reasonable cause of action which might be struck out at an early stage of proceedings or a claim based on facts that were untrue or otherwise not supportive of the claim, in which case, the litigation could be extensive.

[245] R.H. Bork, *The Antitrust Paradox* (New York: Basic Books, 1978) at 347.

[246] Some mention was made that the copyright claim might be a "broad" interpretation of the existing American law but that is hardly definitive.

specific to the bringing or the conduct of the litigation itself that would lead us to conclude that the purpose was to contribute to the impairment of competition over the protection of property rights.

The Director points out that while Mr. Crawford, Tele-Direct's Corporate Secretary and legal counsel, originally testified that Tele-Direct defended any unauthorized use of its trade-marks and copyrights, it became apparent on cross-examination that this was not true. Tele-Direct overlooked unauthorized use on a number of occasions. Perhaps the difficulty with this witness's credibility on this issue and the fact that litigation seems only to be taken against specific competitors do lead to the view that Tele-Direct focused on those competitors. However, that alone is not enough if the litigation is not a sham.

On the facts of this case, we cannot conclude that Tele-Direct brought, conducted or gave warnings regarding otherwise apparently valid litigation in such a manner that its purpose was clearly to contribute to the impairment of competition in those markets where entry occurred rather than the protection of its intellectual property rights. There is no evidence, for instance, of undue delay. As of the date of the hearing, DSP had not yet been discovered but a major factor in this delay was the illness of Mr. McCarthy, the intended representative for DSP. Discovery of DSP was, however, scheduled for November 1995 with Mr. Campbell for DSP. Discoveries of Tele-Direct had been completed by the date of the hearing. There is no evidence that the litigation is following any other than the "normal" course. Unlike the *Laidlaw* case, there is no evidence of responding to an apparently minor matter in a "wildly overly aggressive manner"

with multiple claims or of pointed threats to put a competitor "out of business" using, in part, the pursuit of legal action for which, as the Laidlaw representative informed the competitor, a large sum of money had been reserved.[247] While Tele-Direct did not proceed against White after its warning regarding possible litigation, it is certainly plausible that it did not do so because of the similarity of the issues to the DSP case. That litigation would seem likely to settle at least the copyright question once and for all, by establishing a precedent for Tele-Direct's dealings with other publishers.

The Tribunal, therefore, cannot accept the Director's submission that litigation or threatened litigation in this case can contribute to a finding of anti-competitive acts by Tele-Direct.

Audiotext in Sault Ste. Marie

The Director alleges that Tele-Direct used its power as a major buyer to influence the supplier of audiotext information in Sault Ste. Marie, Perception, resulting in a degradation of the feed to DSP. The respondents acknowledge in their written argument that the allegation could be an anti-competitive act, if proven, but dispute that it is supported by the evidence. The critical questions are whether Tele-Direct was merely asserting its contractual rights and what responsibility, if any, can be assigned to Tele-Direct for the quality of service delivered by Perception to DSP.

[247] *Laidlaw*, *supra* note 33 at 298.

*Did Tele-Direct have a contractual right to exclusivity?*

The respondents state in their written argument, at paragraph 930, that "Perception recognized that Tele-Direct was entitled to the exclusive right to its only feed . . . ." This statement is not supported by the evidence. Up until January 1994, the only contract between Tele-Direct and Perception was for the Toronto area and it provided Tele-Direct with exclusive access to Perception's feed in the Toronto local calling area only. Perception had in fact refused to grant Tele-Direct exclusivity for other areas because of the limitation on its ability to market its service.

In the fall of 1992, when Tele-Direct became aware of the proposed entry into Sault Ste. Marie by DSP, including offering audiotext, Tele-Direct entered into negotiations with Perception to supply its TYP in that market. One of Tele-Direct's concerns was that the feed in Sault Ste. Marie be exclusive to it, that DSP not have access to the same feed. The evidence reveals that the parties did not, in fact, come to an agreement on exclusivity until much later. While exclusivity is mentioned in a letter in March 1993,[248] the draft contract sent by Perception to Tele-Direct in May 1993 is instructive. The letter enclosing the contract states that with "all the excitement of getting `the Soo' up and talking" Perception had neglected to send Tele-Direct the contract for Sault Ste. Marie. The contract clearly states that it is a "non-exclusive" licence to receive and store information.[249]

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[248] Confidential exhibit CJ-86 (black vol. 13), tab 96 at 134118.

[249] Draft contract and covering letter: confidential exhibit CJ-87 (black vol. 14), tab 114 at 134825-27.

The contract was never signed by Tele-Direct but nonetheless provides proof that Perception, at least, did not consider at that time that Tele-Direct had exclusive rights to its feed. They were certainly not *ad idem* in that respect. The final contract covering Sault Ste. Marie, which does provide for exclusivity, was not signed until January 1994.[250] A letter in September 1993 provides that upon acceptance of a new agreement by Tele-Direct, the "BDR Audio Network will be made available to only directory publishers in Canada and exclusively to Tele-Direct within Ontario and Quebec."[251] Peter Dolan, Director of Sales at Tele-Direct (Services) Inc., admitted, however, that Tele-Direct had to go "back and forth" with Perception a couple of times in order to get the wording regarding exclusivity re-inserted into the final contract. Tele-Direct does not appear to have had, until November 1993 at the earliest, a right to exclusivity with Perception and, therefore, had no right to insist or attempt to insist on exclusive service from Perception prior to that date.

*Did Tele-Direct influence the delivery of service by Perception to DSP?*

Upon becoming aware in late 1992 that Perception was supplying an information feed to DSP and that it had the same content as Tele-Direct's feed, Tele-Direct, through Mr. Dolan, expressed its displeasure to Perception. Perception agreed to remedy the situation prior to publication of the DSP directory. Mr. Dolan said that he thought Perception would acquire an

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[250] Confidential exhibit CJ-31 (black vol. 10), tab 68 at 131548-54.

[251] *Ibid.* at 131555.

alternate feed for DSP as a remedy. At the same time, Tele-Direct was pushing for exclusivity with Perception.

Tele-Direct's TYP were launched in mid-February 1993. Tele-Direct was not satisfied with Perception's response to its complaint regarding the feed to DSP, including an effort in early February whereby Perception started sending slightly re-arranged or reworded content to DSP. In cross-examination, Mr. Dolan indicated that Tele-Direct wanted a "superior feed" to that provided to DSP.[252]

A meeting was scheduled for February 23, 1993 with Perception. The agenda, which was provided to Perception, states that what Perception was doing with respect to the DSP feed was "not satisfactory" to Tele-Direct. Mr. Dolan explained that Perception was simply re-voicing the network and again stated that Tele-Direct was not satisfied because it wanted a "superior" feed. This concern was communicated to Perception at the meeting.

In re-examination, taking Mr. Dolan to clause 8 of the January 1994 contract with Perception which uses the word "superior", counsel for the respondents elicited a response that "superior" meant "of high quality" and that was the way in which Mr. Dolan had used the word in his cross-examination. Clause 8 of the contract reads:

[252] Transcript at 42:8856 (20 November 1995).

> . . . Brite does commit that the BDR Audio Network will continue to be of the same exceptional quality as the affiliate has enjoyed. BDR will continue to be of superior quality and utilize its own personnel for the creation and dissemination of information.[253]

Clause 11.6, which was later brought to the witness's attention, is instructive:

> . . . Brite will continue to supply the superior level of programming that the Affiliate has come to expect. Other audio networks offered by Brite Voice Systems or any Brite subsidiary or related company, will not exceed the BDR Audio Network in measurable deliverables including, but not limited to, frequency of reports, quantity of content, program choice and diversity as well as voice quality. Brite will make every effort to avoid American colloquialism. . . .[254]

Even in the contract, therefore, it is apparent that the word "superior" is used in a comparative, rather than an absolute, sense.[255] When questioned by the panel about clause 11.6 of the contract, Mr. Dolan agreed that what the clause was meant to ensure was that nobody had anything *better* than Tele-Direct. We conclude, therefore, that, despite the later attempt at qualification, Mr. Dolan was using the word "superior" in its comparative sense throughout his testimony. Tele-Direct was pressing Perception for a better feed than Perception was giving DSP.

Of most significance, on January 25, 1993, Tele-Direct held out what can only be regarded as a major "carrot" to Perception. Mr. Dolan, on behalf of Tele-Direct, wrote asking Perception for its "advice and recommendations" on the most efficient way to provide a TYP

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[253] Confidential exhibit CJ-31 (black vol. 10), tab 68 at 131550.

[254] *Ibid.* at 131551.

[255] The September 1993 letter also uses the word "superior" and essentially the same language about "measurable deliverables" (confidential exhibit CJ-31 (black vol. 10), tab 68 at 131555) as later appeared in the January 1994 contract.

service throughout Tele-Direct's territory.[256] There is evidence that by March of 1993, consequent upon a February 25, 1993 officers' meeting, these plans were scaled down dramatically. TYP installation was to begin only in markets currently or potentially threatened by a competitor, some ten markets. TYP were treated as a strategic tool against competition rather than a widespread innovation. In fact, after Sault Ste. Marie TYP were introduced only in Niagara Falls, in response to White, and in Windsor, where Tele-Direct was concerned both about potential entry by White and the fact that the Windsor Star is owned by Southam. It is difficult to escape the conclusion that Tele-Direct was using the promise of the roll-out of TYP service throughout its territory in order to gain the cooperation of Perception when it introduced its TYP service in Sault Ste. Marie in February 1993.

That the promised roll-out of the TYP service was a factor in the relationship between Tele-Direct and Perception is clear from the letter Perception wrote Tele-Direct on March 1, 1993, following the February meeting. In it Perception informed Tele-Direct that an "alternative audio source" for DSP would be provided by March 29, 1993. The letter concludes ". . . you are a very important client to us and we want to work with you as you roll out audiotex *(sic)* throughout your territory."[257]

The deterioration to DSP feed was coincident with its first revenue canvass in the spring and summer of 1993. (Its first revenue directory was published in November 1993.) Because of

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[256] Confidential exhibit CJ-86 (black vol. 13), tab 95 at 134080.

[257] *Ibid.* at 134107.

the poor quality of the feed, the audiotext lines were not used to nearly the same extent as in the first two months of operation. Because of the reduced volume, DSP could not use the record of the number of calls to its audiotext service as evidence of widespread use of its directory by consumers. As a result, the audiotext service was not as positive a factor as it might have been in selling its directory to advertisers.

Mr. Campbell said that it would have been virtually impossible for DSP to change its information supplier when it experienced problems. Despite what Mr. Dolan said, there was little reason for Tele-Direct to think that Perception was able, even if willing, to produce an alternative high quality feed for DSP. As matters turned out, the feed to DSP only became acceptable again once the merger of Perception and Brite resulted in another source of feed becoming available in about November 1993.

We are of the view that Tele-Direct used its bargaining power, stemming from its dominant position in the market for the supply of telephone directory advertising, to pressure Perception to, in effect, withhold supply from DSP for the purpose of frustrating or, at least, negatively impacting, the DSP attempt at entry in Sault Ste. Marie.[258] Unlike the other responses used by Tele-Direct in the competitive markets, the only perceptible effect on consumers and advertisers was a negative one. It would appear to us that the kind of conduct engaged in by

[258] Entry meaning the attempt by DSP to establish itself in the Sault Ste Marie market on an economic basis with a revenue directory; that is, not the publication of a prototype directory alone.

Tele-Direct regarding audiotext in Sault Ste. Marie unequivocally falls within the class of anti-competitive acts against which sections 79 is meant to guard.

Did Tele-Direct engage in a practice of anti-competitive acts in relation to audiotext in Sault Ste. Marie? Based on the standard set out in *Nutrasweet*,[259] an "isolated act" does not constitute a practice. In the instant case the deterioration in the audiotext feed to DSP resulted from intensive and repeated efforts on the part of Tele-Direct that hardly qualify as an "isolated act". Nor do we find that the reasonably anticipated duration and seriousness of the consequences of the efforts by Tele-Direct suggest that they should be treated as "isolated" and thus outside the reach of section 79. We therefore consider that Tele-Direct's actions regarding the DSP feed for its audiotext service in Sault Ste. Marie constitute a practice of anti-competitive acts.

Further, we find no difficulty in concluding that the effects of the deterioration in the quality of the audiotext feed resulted in a substantial lessening of competition in the Sault Ste Marie market. In conducting its first revenue canvass, DSP was denied the anticipated marketing advantage of using its audiotext call volumes to prove usage of its directory to potential advertisers because the feed deteriorated just as the canvass started. Achieving credibility with advertisers is one of the biggest hurdles that an entrant publisher must overcome.[260] The audiotext problem was a serious setback for DSP in its initial effort to attract paid advertising. However, as the Director has not requested a remedy specific to the audiotext problem or, more

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[259] *Supra* note 4 at 34-35.

[260] See further discussion, *supra* at 123.

generally, governing Tele-Direct's relationship with the suppliers, no remedy follows from this finding.

## D. MARKET FOR ADVERTISING SERVICES

### 1) Class or Species of Business in Canada (Relevant Market): Agents

The Director alleges a number of anti-competitive acts which form a practice resulting in a substantial prevention or lessening of competition in the market for the supply of advertising services. These alleged anti-competitive acts affect agents and consultants or, in some cases, one or the other. The Director takes the position that when determining whether there is a substantial prevention or lessening of competition the effects of all of the listed acts found to be anti-competitive should be combined because they all affect the advertising services market. Further, one of the alleged anti-competitive acts is the tying of the provision of advertising services to advertising space, the same allegation we have already dealt with in the tying portion of this decision. Another alleged anti-competitive act which bears a striking resemblance to an allegation of tying is also included under the heading "Squeezing", namely, "further restricting the availability of commission [to other service providers] over time".

The respondents submit that, to the extent a separate "services" market exists, consultants and agents are in different services markets and acts affecting more than one market cannot be combined to form a practice and, thus, to determine whether there has been a substantial

prevention or lessening of competition. A prevention or lessening of competition must take place *in a market* in the words of section 79. They also argue that Tele-Direct does not have market power in either services market.

As we have found that there is an anti-competitive tie covering only part of the alleged advertising services market, we cannot agree with the Director that there is one advertising services market in which both agents and consultants operate that encompasses *all* of Tele-Direct's customers. Customers meeting the 1993 commissionability rule are evidently included in the services market. The customer segment that we have determined is anti-competitively tied under section 77 -- namely regional customers -- is also included. (We will return below to the question of whether the tying practice should also form part of the section 79 case.) Agents are operating in this services market. And, Tele-Direct competes with the agents in providing services to those customers. Consultants do not.

It is difficult to see how acts taking place in different markets could be logically combined to determine if competition is substantially lessened or prevented in a particular market. Thus, only the acts affecting agents can be combined for the purpose of determining whether there has been a substantial lessening of competition in the services market.

Correspondingly, only acts affecting consultants can be combined to determine whether there has been a substantial lessening of competition in the relevant market in which they

operate. It is a separate section 79 case. The details of the allegations against consultants will be dealt with below under the heading "Consultants".

Further, not all the alleged practices of anti-competitive acts respecting agents are of a sufficiently similar character so that they can be combined when assessing whether there has been a substantial prevention or lessening of competition in the services market. In particular, tying (and its restatement "restricting commission over time") differs significantly from the other alleged anti-competitive acts. The Director has brought the allegation of tying under both sections 77 and 79. The analysis and result are the same under both sections. Having found that tying results in a substantial lessening of competition by impeding entry of or expansion of agents into or excluding them from the part of the demand spectrum between six and eight markets, should this substantial lessening of competition be combined with the effects resulting from any other practice of anti-competitive acts that the Director succeeds in proving? If so, all anti-competitive acts so found would automatically lead to a finding of substantial prevention or lessening of competition by reason of our finding respecting tying.

In our view, it is not appropriate to combine the effects of tying with the effects of the practice of other anti-competitive acts. The other alleged anti-competitive acts (save for group advertising) relate to a specific historical market, the commissionable market including the eight-market grandfathered accounts. It is possible to evaluate the effects of the alleged anti-competitive acts in this well-defined context. The issue is whether there has been a substantial

lessening of competition where agents have historically been competing. In the case of tying, the allegation is that the extent of the market itself has been limited.

In this case, there is a distinct difference between the nature and effect of tying and the other alleged anti-competitive acts, save for group advertising which we return to below. We note that this might not be true in other cases where there might be some interaction or a less distinct dividing line between the section 77 and section 79 claims. A finding that the respondents have engaged in tying does not act as a spring-board for a finding of substantial lessening in the market segment where the agents have been competing. Prohibiting tying should permit the agents to compete in the enlarged market as they have in the historically commissionable market. A finding of substantial lessening of competition in the historically commissionable market should therefore be based on a practice of acts with respect to that market.

Therefore, we need not deal with tying further under section 79. We will now turn to the allegations relating to the commissionable market and then the allegation regarding the prohibition on group advertising which is distinct.

### (2) Control of the Existing Commissionable Market

It is evident that, despite the Director's submission to this effect, Tele-Direct does not have *direct* control or market power in the currently commissionable advertising services market.

It has a modest market share of approximately 25 percent in that market.[261] The Director also advances an alternative position that is not based on direct control by Tele-Direct but rather on the hypothesis that it is leveraging its control in the publishing market into the services market. We have found that Tele-Direct has control in the telephone directory advertising market which gives it market power in the publishing of advertising space. The Director argues that Tele-Direct is using this market power as a lever to obtain market power in advertising services through its alleged anti-competitive acts. We agree that this is an arguable theory that could, if proven, fall within the parameters of section 79. Whether Tele-Direct has, in fact, leveraged its existing market power must now be determined.

### (3) Analysis Respecting the Existing Commissionable Market

The alleged anti-competitive acts are set out in full at paragraph 65 of the application. We paraphrase them here (not necessarily in the order set out in paragraph 65) as they relate to agents and alleged abuse of dominance only:

(1) "squeezing" the return available to agents by transferring functions to, withholding services from and making terms of supply to agents more onerous;

(2) discriminating against agents by providing space to them on less favourable terms than available to Tele-Direct's internal sales force, including:

[261] See further discussion of market share below under "Analysis Respecting the Existing Commissionable Market".

- *group advertising* - prohibiting advertisements containing the name of more than one local advertiser, e.g., franchisees;

- *issue billing* - requiring agents to pay for advertising on behalf of their clients at the time of issue as opposed to payment on a monthly basis which is the payment method employed when sales of advertising are made through Tele-Direct's own sales personnel;

- *closing dates* - requiring that agents submit advertising for publication earlier than the date applicable to Tele-Direct's sales personnel;

- *tear sheets, etc.* - refusing or delaying to provide tear sheets and other information and material to agents; and

- *promotional programs* - delaying to inform agents of or refusing to make certain promotional programs available to agents' clients, including:

    - a program whereby an advertiser using Tele-Direct's sales personnel could obtain a subsidy towards the cost of Yellow Pages advertising if Yellow Pages are mentioned in advertising in other media;

    - cooperative advertising programmes whereby a supplier contributes to the cost of advertising of its customer or distributor;

    - keyed advertising in which a new advertisement with a new telephone number is placed in the Yellow Pages and the calls to that number are monitored to assess the effectiveness of the advertisement; and

    - other trial and test programs.

The Director submits that these acts have had adverse effects on agents and that there is no business justification that would exempt the acts from being found to be anti-competitive. The Tribunal would observe that some of these acts appear to have created some difficulty for agents and, in some cases, there does not seem to be an acceptable business justification. However, it is not necessary to embark upon a detailed act-by-act analysis to weigh their effects on agents

against their business justification because of our conclusion that the Director has not demonstrated that the acts have or are likely to prevent or lessen competition substantially in the relevant advertising services market.

Both parties referred us to the statement set out in the Tribunal's decision in *NutraSweet* that:

> [i]n essence, the question to be decided is whether the anti-competitive acts engaged in ... preserve or add to ... market power.[262]

The Director's operative theory is that Tele-Direct is extending its market power from the space market to the services market through the alleged practice of anti-competitive acts. This means that the Director must demonstrate that Tele-Direct has or is establishing, or is likely to achieve, market power in the services market.

In order to assess whether Tele-Direct now controls the services market, we first look to market shares in the currently commissionable market. There is disagreement between the Director and Tele-Direct on the respective market shares of Tele-Direct and the agents. The parties rely on a variety of data that most supports their positions. Market share estimates range from 65 to 87 percent for agents and from 13 to 35 percent for Tele-Direct. We reject the extreme numbers put forward by the Director and Tele-Direct as not supportable on the evidence and, indeed, they were not seriously advanced by either side. While there are weaknesses in the

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[262] *Supra* note 4 at 47.

data, we are satisfied that a market share of about 75 percent for agents and 25 percent for Tele-Direct is reasonably accurate.[263]

A high market share for agents and a correspondingly low market share for Tele-Direct would suggest that, even if Tele-Direct has engaged in anti-competitive acts, it has not been successful in obtaining market power in the advertising services market. Indeed, the fact that Tele-Direct's market share is as high as it is may well be attributable to factors unique to Tele-Direct but which are not anti-competitive, such as the desire of some advertisers to deal directly with the publisher. From the available data, it is apparent that, even on an individual basis, Tele-Direct does not have as high a market share as DAC/NDAP, which has about a 40 percent share. Based on all these considerations, we are satisfied that Tele-Direct's 25 percent share falls well short of a level that might be considered to indicate market power.

We must also consider whether there is any evidence of a trend towards a material increase in Tele-Direct's market share, which might indicate that it is in the process or is likely in the future to acquire market power as a result of the acts which the Director alleges to be anti-competitive. Certainly, there is anecdotal evidence of individual advertisers switching from an agent to Tele-Direct for some of the reasons which constitute acts which the Director submits are anti-competitive, for example, issue billing. We have no evidence, however, of any declining trend in market share for agents or increasing trend in market share for Tele-Direct over any

[263] Both sides agreed that the agents' market share in 1993 was about 80 percent: confidential exhibit CJ-31 (black vol. 10), tab 69 at 131680. Adjusting to exclude sales into Tele-Direct's directories by agents based outside of Tele-Direct's territory, we arrive at approximately 75 percent for agents and 25 percent for Tele-Direct.

period of time. Further, it would not seem that the agency business is unattractive or that agents are in any way systematically going out of business. On the contrary, we have had evidence of additional agents being accredited in recent years and others who are still seeking accreditation.

Is there any reason to believe that in the future the alleged anti-competitive acts will have any *greater* deleterious effect on the agents than they may have had in the past? We recognize that a new element has been added to the interactions in the marketplace by the relatively recent creation of Tele-Direct's CMR. Could it be that, in combination with Tele-Direct (Media) Inc. which provides an additional vehicle for Tele-Direct to use practices like the alleged anti-competitive acts, the alleged anti-competitive acts will likely cause competition to be prevented or lessened substantially in the future?

We are unable to arrive at such a conclusion. We have no evidence of the competitive impact of the advent of Tele-Direct's CMR into the market. It has been competing since 1994 but we were provided with no evidence whatsoever from which to infer that the combination of its presence and Tele-Direct's alleged anti-competitive acts have resulted or will result in a materially lower market share to agents and a correspondingly higher share for Tele-Direct. One would have expected that if this was an important factor, we would have seen some significant movement of accounts from the independent agents to Tele-Direct's CMR. There was no such evidence. It is true that Tele-Direct's CMR is in its early years and it may not be as effective now as it will be later. To be valid, however, inferences about the future must be based on evidence.

Given the record before us, any conclusion about the future effect of Tele-Direct's CMR in combination with the alleged anti-competitive acts would be speculative.

The Director has the burden of proving a substantial lessening of competition. We conclude that while some of the disadvantages which form part of the Director's abuse of dominance case and were imposed on agents by Tele-Direct may have had some adverse effect on them, that effect could not have been and is not likely to be substantial or the agents would not hold 75 percent of the market or there would be evidence of a decline over time in the share held by agents.

### (4) Group Advertising

Group advertising is display advertising consisting of the individual business names of a number of franchisees or distributors under a common logo or trade-mark.[264] This type of advertisement is now prohibited by Tele-Direct and to all intents and purposes is not sold by agents or Tele-Direct.[265] The revenues that might potentially be converted into group advertising are currently non-commissionable and are serviced by the internal sales force as local or individual business accounts.

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[264] The difficulty here is that some franchisees or licensees carry on a number of businesses besides the licensed or franchised one and they do not operate their business under a "corporate" name. They wish to be listed in the advertisement under their own name, which often has high recognition value in their community, while still participating in the group advertising to promote the licence or franchise. An example is the Autopro dealers: the licensed Autopro garages or service stations do not carry the "Autopro" name. Tele-Direct does not permit them to be listed under their individual names.

[265] There was evidence of an occasional advertisement that appears to be a group advertisement or something resembling a group advertisement but we are satisfied that it is Tele-Direct's policy not to permit group advertising.

The effect of the alleged practice of anti-competitive acts regarding group advertising is to prevent competition by limiting the size of the commissionable market available to agents, rather than limiting their ability to compete for existing commissionable accounts. Because of the difference in the nature of the allegations, whether there is a likely substantial prevention of competition as a result of Tele-Direct's practice regarding group advertising must be evaluated separately from the alleged practices of anti-competitive acts respecting the existing commissionable market.

We believe that Tele-Direct's policy on group advertising is dictated by its concern with a net revenue loss should advertisers abandon or reduce individual advertising in favour of group advertising. The incidental effect is to deny a type of advertising that would primarily be of interest to larger advertisers, for example, franchisers, some of whose accounts are likely targets for agencies. Although we heard anecdotal evidence of how certain advertisers would prefer to participate in group advertising, we were not presented with evidence as to the magnitude of the effect of this restriction. In the circumstances relating to agents we are of the opinion that such information should have been provided. Without such evidence, we cannot conclude that the prohibition against group advertising constitutes a substantial prevention of competition.

**(5) Conclusion**

We are unable to conclude that the evidence demonstrates that the acts alleged to be anti-competitive in the existing commissionable market and in respect of group advertising have had,

are having or are likely to have the effect of preventing or lessening competition substantially. As a result, the Tribunal is without jurisdiction to grant a remedy under section 79 of the Act. It is, therefore, not necessary to consider in detail whether the individual acts complained of are anti-competitive and whether separately or in combination they amount to a practice.

We are not unmindful that some of Tele-Direct's actions in respect of agents seemed wilful and senseless. However, the Competition Tribunal does not exist to regulate industry practices generally. Rather, it has jurisdiction only to remedy the substantial prevention or lessening of competition and where this has not been proved, no remedy can be ordered.

## E. CONSULTANTS

### (1) Introduction

At paragraph 65(b) of the application, the Director alleges that Tele-Direct engaged in anti-competitive acts by refusing to deal directly with consultants as agents for advertisers purchasing space from Tele-Direct. The paragraph continues:

> The Respondents have issued guidelines to their advertising space sales staff which provide that the customer must deal with the Respondent's salespersons and no consultant can deal with the salespersons as a customer's agent.

The following, more specific, aspects of refusing to deal directly with consultants were provided in the written argument at paragraph 297:

**[I.]**
(a) written instructions: refusal to act upon written instructions received from consultants on behalf of advertisers;

(b) oral instructions: refusal to act upon oral instructions received from consultants on behalf of advertisers or meet consultants or the advertiser in the presence of consultants to receive same;

(c) follow-up: refusal to deal with consultants on subsequent errors or problems.

In paragraph 65(c)(v) of the application, the Director alleges that Tele-Direct also engaged in anti-competitive acts by providing advertising space to consultants on less favourable terms than to its own sales staff, including rejecting or delaying orders based on alleged errors or other problems which would not result in delay or rejection of orders from Tele-Direct's own sales representatives. As set out in paragraph 296 of the written argument, the specific aspects of these acts are:

**[II.]**
(a) delivery and processing problems: refusal to acknowledge or accept delivery of orders involving consultants or denial of delivery resulting in the delay or rejection of same, refusal to process such orders or the return of such orders to the advertiser or consultant;

(b) alleged errors: the identification of errors or problems in such orders which would not result in the delay or rejection of orders handled by the Respondents' own sales staff;

(c) oral instructions: refusal to meet with the advertiser to take instructions originating in advice from consultants;

(d) consequential acts: rejecting or delaying the processing of consultant orders, permitting or facilitating the following consequential actions:

(i) informing advertisers that their orders may or may not be processed if prepared by consultants or that consultants are "scam artists", have committed errors or similar threats or derogatory comments;

(ii) inducing breach of the contract between advertisers and consultants.

The final alleged anti-competitive acts of relevance to consultants are found at paragraph 65(e) of the application. The Director maintains that Tele-Direct is engaging in anti-competitive acts by refusing to supply specifications to consultants for the placing of advertisements in its directories.

We will deal with the alleged anti-competitive acts under the headings (a) refusal to deal directly with consultants, (b) discriminatory acts and (c) specifications, starting in "(5) Anti-competitive Acts", below.

### (2) Allegations - Pleadings

The respondents argue that the "consequential acts" listed under II. (d) above do not fall within paragraph 65(c)(v) of the application and should not, therefore, be considered by the Tribunal. They also submit that one of the remedies requested by the Director, pertaining to copyright in advertisements, was not pleaded. The Director conceded that the case for including the remedy is not strong and we will not deal with it further.

On the question of the construction of the pleadings and what may be considered as fairly within them, once we have reached the stage of final argument we have indicated that what is determinative is what the parties considered to be in issue, looking at the proceeding as a whole. We will use the same general approach to the arguments here.

Counsel for the respondents admitted that aspects II.(a) and II.(b) were clearly in the application and II.(c) might be reasonably inferred from the application but II.(d) was outside the pleadings. The elements of (d) which were emphasized in oral argument by the respondents regarding their objection related to the question of inducing breach of contract and what was termed the "bad mouthing" claim or the making of disparaging remarks about consultants. In reply, counsel for the Director stated that the Director was not seeking a remedy with respect to the consequential acts and that there was little point in addressing whether they were part of the case. We have some difficulty with this position. The Director is clearly seeking a remedy for the alleged anti-competitive acts of providing advertising space to consultants on less favourable terms than to its own sales staff, including rejecting or delaying orders based on alleged errors or other problems, of which II.(d)(i), at least, is a subset. The Director also accepted, however, and we agree that any issue of counselling breach of contract is a matter for the civil courts so we will not deal with it further. The remaining acts listed in II.(d) were addressed by *both* parties through evidence and argument. Based on their conduct of the proceedings, the respondents were aware that these acts were in issue and there is, therefore, no prejudice to them by the Tribunal dealing with them on the merits.

### (3) Competition Between Consultants and Tele-Direct

For the Director to succeed in any of the allegations, it must first be shown that Tele-Direct and the consultants are competitors. The respondents submit that consultants do not "sell" anything; they merely "unsell". They describe consultants as being in the business of providing

independent (or non-partisan) advice to disgruntled, local Yellow Pages advertisers. They say that Tele-Direct does not operate in this market since advertisers recognize that Tele-Direct's advice is partisan and not independent.

The Tribunal accepts that while the relationship between Tele-Direct and the consultants is not that seen in the more usual competitive context, they are nonetheless competitors. It is true that consultants exist by downselling, while it is highly unlikely that Tele-Direct representatives would offer the same type of advice. It is also true that consultants' advice is independent while Tele-Direct representatives are, by definition, partisan. Further, consultants normally do not have an ongoing relationship with an advertiser and their remuneration arrangement takes a different form than that for Tele-Direct. There may be other differences of detail.

At bottom, however, both consultants and Tele-Direct representatives provide services which a customer can use to achieve the final result of an advertisement in the Yellow Pages. As we have seen from the evidence put forward in this case, a customer may choose to use either a consultant or the Tele-Direct representative to obtain these services. In this sense, they are substitutes for one another and compete to serve the advertising customers. There was substantial evidence put before us that Tele-Direct, in fact, views consultants as significant competitors, monitors their progress and takes action to attempt to limit their inroads on its revenues.

This is not to say that consultants (and Tele-Direct) operate in the "separate" services market, an argument which we have already rejected. Both consultants and Tele-Direct are

participants in the broad telephone directory advertising market. Tele-Direct controls that market, as set out in the chapter entitled "VII. Control: Market Power", above.

**(4) Facts**

(a) Consultants and their Method of Operation

Three directory advertising consultants testified before the Tribunal. Jim Harrison of Tel-Ad Advisors Ltd. ("Tel-Ad") has serviced the Ontario market from an office in the Toronto area since June 1984. Prior to that time, Mr. Harrison was an employee of Dominion Directory. Serge Brouillet, previously in sales and also training and promotion with Tele-Direct, started Ad-Vice Communications ("Ad-Vice") in mid-1989 in Sudbury to service northern Ontario. In the fall of 1990, he sold the northern Ontario operation to Charles Blais to be run as Ad-Vice North and moved into the Toronto market. Mr. Blais also appeared as a witness. Mr. Blais operated the Ad-Vice franchise in Sudbury from November 1990 to December 1992 when he sold it back to Mr. Brouillet who ran it in 1993.

A summary of the *modus operandi* of consultants in general will provide context for the relations between consultants and Tele-Direct and for the Director's allegations. Consultants operate on the basis that many Yellow Pages advertisers can reduce their Yellow Pages spending without reducing the effectiveness of the advertising. In other words, they target customers who are dissatisfied with the amount that they are spending with Tele-Direct and are willing to pay a

fee to lower it. Consultants recruit customers by going through the Yellow Pages and identifying likely candidates for their services, those for whom they can save money. Two of the major factors are the size of the advertisement and the use of colour; number of headings and number of directories are also reviewed.

After contacting the client by telephone to determine interest, the consultant or an employee of the consultant meets with the client and makes a presentation showing the client various options for changing the advertising. The potential for conflict with Tele-Direct and its commissioned sales representatives is obvious from the outset. The consultants' income depends on reducing customers' expenditures on Yellow Pages. Thus, they attempt to convince the customer that the extra amount spent for options like larger size and colour is not worth paying. To do this, they might bring to the attention of the customer how much more those options cost and question their effectiveness for the customer. Tele-Direct's representatives, of course, emphasize the value and effectiveness of colour, size and the like by drawing on arguments and evidence put together by Tele-Direct to show that they are worth the cost.

With respect to submitting customers' orders to Tele-Direct for processing, when it first commenced operations Tel-Ad sent orders to Tele-Direct on behalf of customers. These were rejected by Tele-Direct. Then Tel-Ad sent in the orders on a generic order form with no identifiers; these were also rejected and returned either to Tel-Ad or the customer. Attempts to submit orders with a letter of power of attorney from the customer also failed. Eventually, Tel-Ad simply left the orders with the customers to be submitted to Tele-Direct. In July 1984, Tel-Ad

started legal action against Tele-Direct for refusing to accept advertising orders directly from Tel-Ad. Tel-Ad also sought an interlocutory injunction requiring Tele-Direct to accept orders submitted by Tel-Ad on behalf of advertisers. The injunction application was denied on the basis of no irreparable harm and the action was later abandoned. Tel-Ad's activities led to the first version of Tele-Direct's guidelines for dealing with consultants, drafted in 1986. Tele-Direct's guidelines are reviewed in some detail below.

(b) Tele-Direct Reaction - General

The existence and activity of consultants strike at the trustworthiness of advice provided by Tele-Direct's sales representatives and place highly profitable revenues in jeopardy. Tele-Direct does all within its power to eliminate any possibility of consultants gaining the ear of its customers. It has taken out advertisements warning customers to beware of consultants. The same message is conveyed by the representatives and by letters to customers telling them to call Tele-Direct if contacted by consultants.

According to the 1986 Tele-Direct guidelines for dealing with consultants, the "official" line on consultants to be conveyed by representatives is that their objective is to reduce Yellow Pages advertising which will reduce the effectiveness of the advertising and likely adversely affect the customer's business, based on studies conducted by Tele-Direct. Emphasis is placed on the fact that consultants are only paid if the customer reduces Yellow Pages spending, implying that consultants are likely to give biased advice, and that Tele-Direct will perform the "same"

service as the consultant (advice and artwork) and "not charge a fee".[266] Tele-Direct also encouraged its representatives to point out to the customer that while Tele-Direct was concerned with the long-term, consultants do not have a continuing relationship with the customer and therefore have no incentive to take into account the possible negative repercussions on the customer's business if their advice is followed.

There is evidence that at least some sales representatives went considerably further in their efforts to discredit consultants, calling them "scam" artists and other epithets, saying they were unfamiliar with Tele-Direct's specifications and showing poor photocopies of artwork done by consultants to customers in an attempt to cast doubt on the ethics and professionalism of the consultants.

Tele-Direct has also taken other, positive steps to combat consultants by improving elements of its service to its customers. For example, Tele-Direct has attempted to create a better working relationship with customers through "consultative" selling and by assigning representatives to customers for up to three years rather than changing each year. While the changes made by Tele-Direct were not in response to consultants alone, they were rooted in customer dissatisfaction with Tele-Direct's service.

[266] These assertions ignore the fact that Tele-Direct representatives would rarely, if ever, give advice on how to reduce spending.

(c) Tele-Direct's Consultant Guidelines

The guidelines set out Tele-Direct's procedures and directives to its sales force for dealing with orders for advertising originating with consultants and for handling customer contact once involvement of a consultant has been detected or suspected. This stage of the relationship between consultants, customers and Tele-Direct forms the focus of the Director's allegations of anti-competitive conduct. While the application of the various guidelines has been somewhat erratic and interpretation of their terms varied, it is clear that Tele-Direct has at no time dealt directly with a consultant acting *on behalf of* or in a representative capacity for an advertiser. Tele-Direct has always insisted on visiting a customer suspected of using a consultant even after an order was received from the customer and obtaining the customer's signature on its own documents. The package provided by Mr. Brouillet of Ad-Vice to his clients, following futile attempts on his part to avert the visit of the Tele-Direct representative by providing Tele-Direct's contract or a similar document to his clients himself,[267] advises the client that the Tele-Direct representative will be in contact to transfer the advertising program onto the Tele-Direct forms.

(i) 1986 Guidelines and Their Application

As general rules, the 1986 guidelines provided that:

[267] Tele-Direct threatened him with legal action, apparently for breach of copyright in its contractual terms and conditions.

> (c) Tele-Direct will not accept insertion orders directly from directory consultants who have not been granted accredited agency status by Tele-Direct.
>
> (d) Tele-Direct sales representatives should continue to contact their customers directly and request that the customers actually sign the Tele-Direct contracts and layout sheets so as to ensure the accuracy of the Yellow Pages advertising proposal prepared by a directory consultant.[268]

While the Tele-Direct policy of refusing to accept orders directly from consultants may have been followed in Tele-Direct's western region, it was not followed in the eastern region, in particular in Montreal, Sudbury and Ottawa. Letters sent in 1989 by Tele-Direct to Consultant en publicité annuaire et communication (CEPAC 2000) Inc. (" CEPAC 2000 ") in Montreal and Ad-Vice in Sudbury and in 1990 to Steven White of Tel-Ad in Ottawa[269] outlined for the consultants in question the procedure to follow in submitting orders to Tele-Direct.[270] The orders had to be delivered to named Tele-Direct managers in the relevant offices, accompanied by proper authorization by the advertiser on the advertiser's company letterhead.

Paul de Sève, Tele-Direct's Vice-president of Sales for the eastern region, confirmed that, although Tele-Direct's policy was not to deal directly with the consultant on the advertiser's behalf, in the eastern region at least, it was accepting orders from consultants. Orders were not automatically rejected and returned to the consultant even though Tele-Direct was aware of consultant involvement. The orders were taken as an indication that the customer wanted to

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[268] Confidential exhibit CJ-10 (blue vol. 1), tab 5 (public).

[269] Not affiliated with Mr. Harrison.

[270] Initially, Tele-Direct refused to accept orders from Mr. Brouillet, until he obtained a copy of the letter sent to CEPAC 2000.

change its advertising and a Tele-Direct representative would visit the advertiser and deal with him or her directly. In Tele-Direct's own words,

> . . . Regardless of whether the "cut agent" or the customer was directing insertion/change/cancellation of Yellow Pages advertising through letter or order form, we would accept this information as notification that the customer wished to renegotiate his Yellow Pages advertising. The Tele-Direct representative would deal directly with our customer, using our forms and contracts in the setting up of Yellow Pages advertising.[271]

(ii) 1990 Policy and Application

Tele-Direct implemented new consultant guidelines in December 1990. The opening words of the revised guidelines state that:

> We changed our operating procedures on dealing with "cut agents" effective December, 1990, to further strengthen and reinforce our direct servicing philosophy with our customers.
>
> These changes were made to ensure that we did not act on "cut agent" instructions, for the insertion/change/cancellation of our customers' Yellow Pages advertising. Furthermore, these changes were intended to leave no doubt in the minds of our customers that we do not do business with "cut agents".[272]

The "general procedures" established by these guidelines were as follows:

> • we will always accept letters/packages sent or given to us by customers and act in accordance with their wishes.

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[271] Operating procedures prior to December 1990: confidential exhibit CJ-11 (blue vol. 2), tab 58 at 107788 (public).

[272] Operating procedures, December 1990: *ibid.* at 107792 (public).

> • to the best of our knowledge, we will not accept, nor act upon, information sent or given to us by "cut agents" on behalf of our customers, nor accept or act upon information sent or given to us by customers containing directives from "cut agents."
>
> Instead, our procedure will be to not accept packages from "cut agents" or from customers for "cut agents" and in the event that a package is accepted in error, its contents will be returned to the "cut agent" with a covering letter designed for this purpose.[273]

The guidelines then provide more detail on the procedure to be followed in particular situations. The gist is that if, upon external examination of a letter or package, it became apparent that it was from a consultant or from a customer working with a consultant, the letter or package would be returned to the consultant. If the letter or package was apparently from a customer, with no external indication of consultant involvement, the letter or package would be opened but if further examination of the contents revealed the involvement of or a directive from a consultant, the letter or package would be returned to the consultant. Even when the letter or package appeared to come from or was, in fact, dropped off by the customer, if it was rejected because of consultant involvement, the customer would not be informed that the order had been returned to the consultant.

Mr. de Sève admitted that the procedures set out above represented a dramatic change from the 1986 guidelines, at least with respect to how the Montreal, Sudbury and Ottawa offices had been operating.[274] It is also clear from his testimony that the principal reason for the change was that Tele-Direct was having second thoughts about having "legitimized" the consultants to

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[273] *Ibid.*

[274] There is some question as to whether the consultants affected were notified specifically of the change in policy or of the exact terms of the new policy. Messrs. Brouillet and Blais said that they were not.

the extent they had by writing the letters referred to above in 1989 and 1990. The 1990 strike by Tele-Direct's sales representatives meant that the consultants were particularly active in the fall of that year.

The 1990 guidelines were adhered to strictly in one respect. At no time did Tele-Direct accept orders that were not submitted on the customer's letterhead. Other aspects of the guidelines appear to have been unevenly applied. Despite the statement that Tele-Direct would *always* accept orders from its customers and "act in accordance with their wishes", there was evidently considerable uncertainty within Tele-Direct as to how the guidelines were to be applied with respect to rejecting customers' orders for consultant involvement. Some orders containing indications of consultant involvement or where a consultant was known to be involved were accepted without incident or accepted after an initial rejection. Yet, Mr. de Sève's evidence, which as Vice-president of Sales for the eastern region we take to be an "official" application of the guidelines, was that where there was doubt, it was *assumed* that the documents came from a consultant and they were returned to the consultant without advising the customer.

This is what happened in the summer of 1991 in the case of a package containing 23 orders under customers' signatures which were, in fact, prepared by Ad-Vice North (Mr. Blais). An internal Tele-Direct document dealing with how it should respond to a complaint by Mr. Blais about this incident indicates that packages were being returned to Ad-Vice North by the Sudbury office *even though* Ad-Vice North was not mentioned in any of the correspondence and *regardless of* the fact that the letter of direction was from the customer because the

employees recognized the Ad-Vice "format". Mr. de Sève stated that consultant involvement was probably assumed because of the number of orders in one envelope.

Mr. de Sève also confirmed that in 1991 Tele-Direct adopted a further policy of not processing orders received at the closing date according to the customer's instructions if they originated with a consultant even though it would do so for orders coming from its own sales force. Tele-Direct would instead rely on its last year's contract with the customer or the latest contract signed by the customer.

(iii) 1992 Policy and Application

The difficulties with and the inconsistency in application of the 1990 guidelines led to the most recent Tele-Direct guidelines for dealing with consultants, dated February 1992. These guidelines are currently in force. The operating procedures in those guidelines state that they are designed to "formalize our existing policy of dealing directly with customers." Two important aspects of that policy are:

> . . . Tele-Direct will not accept a customer's appointment of a consultant to act on his/her behalf in dealings with Tele-Direct; and, Tele-Direct will not knowingly take instructions from a consultant acting on behalf of a customer.[275]

The detailed procedures provide that when correspondence is received from a consultant, whether by mail, courier, delivery, etc., it is opened and the contents examined to determine what action (from a list of A to D) should be taken. According to the procedures, any correspondence

[275] Confidential exhibit CJ-12 (blue vol. 3), tab 105 at 109796 (public).

from a customer appointing a consultant to act on his/her behalf is to be returned to the customer with a form letter indicating that Tele-Direct will only deal with its customers directly (B). Any "directive" from a consultant is to be returned to the consultant with a form letter which simply states that the material was received "in error" (C). A second form letter is to be sent to the customer explaining that the material has been returned to the consultant without being processed and stating Tele-Direct's policy of only dealing with the customer directly. The guidelines also state that any correspondence from a consultant regarding problems with or errors in published advertising are to be ignored altogether and the matter resolved directly with the customer (D).

Most importantly, if the correspondence contains instructions from a customer regarding his/her advertising, the procedures provide that the instructions should be accepted and handled "in the normal fashion, i.e., deal directly with the customer" (A). The evidence of Messrs. Renwicke and de Sève regarding when correspondence will be considered by Tele-Direct to contain instructions "from a customer" and will be accepted and handled in the "normal fashion" reveals that the guidelines are still open to interpretation. Mr. de Sève testified that even if the instructions are from the customer, on the customer's letterhead, if they include any reference to consultant involvement, the order will not be accepted. He was of the view that such a case fell within B or C set out above. Mr. Renwicke, on the other hand, first stated that such an order would be accepted. He then qualified this by saying that it depended on the "tonal quality" of the letter and of any references to a consultant. According to him, the defining criteria is

whether it was perceived that the consultant "is going to be seen to or is actually playing a leadership role for that account".[276]

Assuming that the order is accepted, the guidelines also set out a "protocol" for customer contact by sales representatives when dealing "directly" with customers which reveals that little weight is given to the order already received from the customer. The representatives are to conduct themselves throughout in a "business-like and professional manner" but are expected to "only provide Yellow Pages selling services *directly to a customer*." While Tele-Direct's representatives are permitted (but not required) to meet with a customer when a consultant is present, they must decline to take *any* instructions from a consultant even if the customer insists. The protocol provides that all instructions must come directly from the customer. If the customer refuses to deal with the Tele-Direct representative directly, the representative is to review with the customer the customer's legal obligations under the existing Tele-Direct contract, i.e., that the previous year's advertising will simply be renewed. If this approach fails, the sales representatives are advised to try again later to re-convene the meeting but if the customer still refuses to deal directly, then advise the customer that the contract will remain in force in accordance with its terms.

Mr. de Sève admitted that under this protocol, where a customer handed the Tele-Direct representative a package containing instructions prepared by a consultant and asked the

[276] Testimony of P. de Sève: transcript at 44:9123-27 (22 November 1995); testimony of D. Renwicke: transcript at 46:9630-34 (27 November 1995).

representative to follow them, that would lead to a termination of the interview and the instructions would not be followed. He also admitted that, in fact, Tele-Direct representatives would refuse to meet with the customer in the presence of the consultant because they would not be able to discuss with the client "one-on-one" the merits of the change in the advertising program.

(d) Specific Incidents

The Director relies on numerous specific incidents involving consultants and their customers as evidence in support of his allegations. The respondents dispute that some of those occurrences took place or if they took place, took place as related by the Director's witnesses.

We accept that there were times when Tele-Direct went beyond simply rejecting or returning orders from customers where consultant involvement was suspected and treated these in an extremely cavalier fashion. On one occasion in 1989, a package of customer orders prepared by Mr. Brouillet, including one from Ad-Vice's law firm, was left with a secretary who threw it out of the Tele-Direct office and into the hallway. The lawyer was able to confirm after a number of phone calls that his order had been retrieved and was processed. He inquired about the remaining orders but Tele-Direct refused to inform him of the fate of the other orders in the package.

On another occasion in 1990, when the manager designated to receive orders from Ad-Vice in Sudbury was not in the office, the process server left the package on the counter and the receptionist threw it in the garbage. Apparently the order was not processed in accordance with those instructions, according to the respondents, because the advice was delivered late. The only evidence brought to our attention on this point was a recently written note by the Tele-Direct representative that stated "delivered past deadline - did not use their material".[277] The affidavit of service sworn contemporaneously, however, indicates that the package was delivered on August 16, 1990. Mr. de Sève's evidence was that the closing date for Sudbury was in November. We therefore do not accept that the package was delivered late.

We accept the evidence of incidents in which orders from customers who had used a consultant were subject to "errors" in processing by Tele-Direct. In three cases Tele-Direct acknowledged to the customers that errors had been made and provided a credit. These included Todd Optical Ltd. (mistake in telephone number and location), Adler Moving Systems (advertisement in the Elliot Lake directory omitted), Forest Products and Builders (advertisement did not appear), all customers of Mr. Brouillet. The owner of Todd Optical Ltd. had written a letter of support for Ad-Vice. We note that these errors all had potentially serious adverse consequences for the businesses involved.

Another customer of Ad-Vice, Lockerby Taxi Inc., whose owner appeared as a witness, experienced an odd error when an unpaid "filler" advertisement was published featuring

[277] Confidential exhibit CJ-27 (black vol. 6), tab 33 at 128522.

Lockerby's name with the query "Sales Down?" in the background. Mr. Flinn was never provided an explanation or apology for the error. His attempt to obtain compensation was denied by Tele-Direct because he could not prove damage to his business.

The Director also called evidence that Tele-Direct informed customers that advertising prepared by a consultant did not comply with its specifications on the slimmest of pretexts.[278] Several of the examples related to clients of Mr. Brouillet, who testified that to his knowledge the advertisements were in accordance with existing specifications. The respondents called no evidence that the advertising did not meet specifications. In one case, the respondents admitted that the advertisement prepared by CEPAC 2000 did, in fact, comply with specifications.[279] We conclude that Tele-Direct would not have objected to these advertisements had it not been for the involvement of a consultant in each case.

As noted above, Tele-Direct's admitted practice is not to act on a customer's order, where a consultant is believed to be involved, until the customer has been visited by a Tele-Direct representative. Instead, Tele-Direct treats the order from the customer merely as an "indication" that the customer wants to change his or her advertising. Thus, in every case of suspected consultant involvement, the customer will be visited by a Tele-Direct representative. At the point of a meeting between the Tele-Direct representative and the customer, usually the customer

[278] E.g., Postime Distributors (wrong paper, wrong size), Paul's Quality Woodcraft (non-compliance with specifications in general), M & L Service (wrong paper) and Canac-Marquis Grenier (borderless advertisement not allowed).

[279] The advertisement was for Canac-Marquis Grenier.

would have already signed a contract with the consultant approving the changes recommended by the consultant and agreeing to pay the consultant's fee. The respondents deny that there was any tendency within Tele-Direct to delay visiting a customer who was known or suspected to have used a consultant until the last minute and to use the visit as the occasion to make disparaging remarks implying that the customer had been "taken advantage of" by the consultant or to use other tactics to pressure the customer into changing his or her mind about the program recommended by the consultant.

We accept that these types of tactics were fairly widely used by Tele-Direct's representatives. Last minute contact resulting in pressure on the customer and some confusion as to what the customer had to do to ensure the advertising would run as originally ordered occurred in several examples put before us. Mr. Harrison recounted the example of Mr. Kantor of Tiremag Corp. Mr. Kantor's order was delivered by registered mail to Tele-Direct in April 1993. Mr. Kantor was contacted by the Tele-Direct representative six months later, close to the closing date for the Brampton directory, and informed that no order for that directory had been received and that unless something was done, his advertising for the previous year would have to be used. Mr. Kantor insisted that he had already given them his instructions but Tele-Direct never located the package. The previous year's advertisement was run, then Tele-Direct located the package and admitted it had made a mistake. Similar problems occurred for Pat's Party Rentals, a client of

Mr. Brouillet.[280] Other examples are the Britannia Restaurant & Banquet Hall, again a client of Mr. Brouillet, and the Muskoka Riverside Inn, a client of Mr. Blais.[281]

Eric Beesley of Georgetown Quik-Lube Ltd., who appeared in person, testified that, having submitted his order much earlier, he was contacted by the Tele-Direct representative the day before the closing date to attempt to persuade him to stay with his existing program. Then on the final day, he was called again and advised that he had to attend at the Tele-Direct office in person to make the changes. Mr. Beesley, however, was aware of the contractual clause allowing him to make changes in writing by a certain date, pointed out that he had complied with it and the advertising was processed as he had ordered.

There is only one documented case in the evidence in which a Tele-Direct representative counselled a customer *outright* not to honour a contract with a consultant.[282] Tele-Direct's guidelines explicitly warn Tele-Direct representatives not to provide advice with respect to customers' legal obligations. There is, however, abundant evidence of instances where customers

[280] The order was sent in under her signature on July 15, 1991. On September 30, 1991, the client received a form letter from Tele-Direct stating that the material had been returned to the consultant without processing. (As of that date, Ad-Vice had not received anything back.) The customer panicked, thinking her advertising would not appear. Mr. Brouillet was unable to obtain confirmation that the advertising would appear as ordered. The client ended up dealing directly with Tele-Direct and Mr. Brouillet had to sue to recover his fee.

[281] The Britannia Restaurant & Banquet Hall order was sent in on August 2, 1991. On September 25, 1991, shortly before the closing date, Tele-Direct faxed the client its contract documents, which described the previous year's program. The client simply signed the documents, thinking they represented the new order. The old program appeared, the client protested, Tele-Direct insisted on full payment, the client refused to pay and was eventually barred from placing further advertising in Tele-Direct's directories. A Tele-Direct notation on a document relating to this customer indicates some concern even on its part about what transpired. The Muskoka Riverside Inn submitted its order prior to the deadline for making changes. The order was returned to the consultant and the client notified he had to send the order himself. The client missed the deadline for changing artwork and Tele-Direct ran the old advertising.

[282] L.J. Sunshine Hardwood Flooring. Ad-Vice has sued the customer for breach of contract. In his defence, the customer claims that the Tele-Direct representative advised him that he had been "misrepresented" and should stop payment on his cheque.

refused to pay consultants following a meeting with the Tele-Direct representative. If the customer refuses to pay, the consultant is obliged to take legal action to recover the fees owed.[283] In general, where the consultants have gone to court, they have been successful in having the contract honoured. While it might be argued that the persistent refusals to pay by customers indicates dissatisfaction with the consultants' services rather than reflecting any tactics employed by Tele-Direct's representatives, on the evidence we accept that there is a link between the visit by the representative and the instances of refusal to pay the consultants' fees.

The issue in many of these incidents is whether Tele-Direct made innocent errors, or whether the climate in Tele-Direct towards consultants resulted in what was, in effect, sabotage of the consultants and their customers. An important reason for concluding that there was more than innocent errors at work is the evidence that Tele-Direct was willing to sacrifice the interests of customers by putting them in the middle of Tele-Direct's struggle against consultants. There is more than a hint of malevolence in the formal and explicit decision in the 1990 guidelines not to inform customers when orders submitted on their behalf were being refused (although this was changed in the 1992 guidelines).

**(5) Anti-competitive Acts**

The Director alleges a number of anti-competitive acts by Tele-Direct involving consultants relating to Tele-Direct's refusal to deal directly with consultants on behalf of advertisers, its discriminatory treatment of customers and customers' orders originating with

[283] Or, evidently, write off the account or accept a reduced fee in settlement, as Mr. Blais did on one occasion.

consultants and its refusal to supply specifications to consultants. None are specifically listed in section 78 of the Act. As the list is not exhaustive, there is no reason not to assess the actions characterized by the Director as anti-competitive acts by Tele-Direct to see if they have the requisite exclusionary, predatory or disciplinary purpose.

The respondents argue that the challenged conduct cannot be anti-competitive because it was generally in accordance with the Tele-Direct guidelines for dealing with consultants, which they say were not intended to and do not prevent the consultants from doing business but rather render Tele-Direct's dealings with consultants "fair and consistent". They further submit that they have valid business reasons for their policy. These "business justifications" will be dealt with in detail for each alleged anti-competitive act.

In a related argument, the respondents submit that, to the extent that the Director is able to prove that Tele-Direct engaged in any of the alleged acts, those acts ceased in 1992 with the implementation of the most recent guidelines for dealing with consultants which have been consistently applied, unlike prior versions. They submit that any practice cannot be caught by section 79 as more than three years have elapsed since it ceased. We do not see validity in the argument. The 1992 guidelines are obviously still in force. The Director has not alleged that it is only the failure to follow the guidelines that is anti-competitive but that certain actions of Tele-Direct, which may not be contrary to the guidelines (refusal to deal directly with consultants on behalf of advertisers) or are simply not dealt with in the guidelines (some discriminatory acts, refusal to supply specifications), are anti-competitive. To the extent that the guidelines sanction

conduct that the Director is alleging is anti-competitive, then the Director is, in effect, challenging the guidelines and their application also. The guidelines certainly do not prohibit (and may actually encourage) the particular conduct by Tele-Direct that is the subject of the allegations.

(a) Refusal to Deal Directly with Consultants

The respondents here repeat the argument that we dealt with earlier under the section concerning the abuse of dominant position with respect to publishers and the 20-directory requirement. They argue that a refusal *cannot* be an anti-competitive act and that they are not required to assist their "detractors" by dealing with consultants as that would be akin to placing a positive duty to act on the respondents. As we stated in that section, semantic arguments about whether the act in question is active or passive do little to advance the real issues in dispute. We will therefore proceed to analyze the more substantive arguments without further comment.

The evidence is clear that Tele-Direct has engaged, since the advent of Mr. Harrison and Tel-Ad in 1984, in the specific aspects of refusing to deal directly with consultants on behalf of customers set out under I. in the introduction above. Tele-Direct has refused to act on written instructions received from consultants on behalf of advertisers; refused to act upon oral instructions received from consultants on behalf of advertisers or meet consultants or the advertiser in the presence of consultants to receive same; and refused to deal with consultants on subsequent errors or problems.

In the eastern region between 1986 and 1990, Tele-Direct acted in contravention of its own 1986 guidelines by *accepting* orders from, at least, CEPAC 2000, Ad-Vice and Tel-Ad, as evidenced by the letters. Even those letters, however, make it clear that the order must be accompanied by a letter *from the customer on the customer's letterhead*.

There is also evidence that Tele-Direct refuses to accept oral instructions from consultants. The 1992 guidelines are clear that the Tele-Direct representative must not accept instructions, even indirectly, from anyone other than the customer. While the current guidelines allow the representative to meet with the customer with the consultant present, the representative is not required to do so. The evidence was that most of the time the representative refuses to meet with the customer with the consultant present. Likewise, Tele-Direct would not deal with consultants on follow-up matters on behalf of customers.

We must weigh the anti-competitive effects of the acts against the business justifications put forward by the respondents. There is no doubt that Tele-Direct was trying to make life difficult for the consultants by refusing to deal with them directly on behalf of advertisers. Tele-Direct did not want the consultants to have any legitimacy in their dealings with its customers. The 1990 guidelines were brought in to eliminate the slight leniency that had developed under the 1986 guidelines, which had placed letters from Tele-Direct in the hands of various eastern region consultants confirming that orders coming from them would be accepted and processed by Tele-Direct.

There are two possible types of adverse effects that might arise from Tele-Direct's refusal to deal with consultants acting on behalf of customers. The first is the possible increase in costs to the consultants that would result from having to do business in a somewhat roundabout way, rather than submitting orders directly. The second, and more important, effect is the effect on the consultants' credibility with customers when they have to explain to customers that they are not permitted by Tele-Direct to submit orders directly on their behalf but must use an indirect procedure. This might put the consultants in a negative light in the eyes of the customer, particularly if the customer is already generally aware of the background of acrimonious relations between Tele-Direct and consultants. Against that backdrop, the indirect procedure that the consultants must use for submitting orders to Tele-Direct might appear as a form of subterfuge.

The evidence does not indicate that cost increases to consultants from Tele-Direct's refusal have been a real issue. The consultants' businesses have experienced ups and downs. While Mr. Harrison was unable to grow his business between 1986 and 1992, servicing an average of 60 new accounts a year, in the last few years he has expanded and is now handling 200 to 250 new accounts a year. Mr. Brouillet testified that Ad-Vice revenues from Yellow Pages consulting were at a high between 1992 and 1994 but dropped roughly to 50 percent of that amount in the last two years. He has also diversified into other businesses in recent years. Mr. Blais eventually gave up and left the business.

Although all three of the mentioned consultants testified at the hearing, none of them expressly linked whatever difficulties that they might have experienced to an *increase in costs*.

Even Mr. Blais did not do so. Undoubtedly, the consultants would like to have the advantage of being able to deal directly with Tele-Direct on behalf of advertisers. We find it instructive that Mr. Harrison has been operating since the mid-1980's, and still operates, in spite of Tele-Direct's refusal to deal directly with him in a representative capacity. Evidently, he, and other consultants no doubt, have managed to find an alternative to direct submission of orders that does not impose significant increased costs, or any increased costs at all, on their businesses. We cannot, therefore, identify any adverse cost effects on consultants resulting from Tele-Direct's refusal to deal with them acting on behalf of advertisers.

The question of possible negative reputational effects or damage to consultants' credibility arising from Tele-Direct's refusal to deal with them acting for customers is complex. To the extent that consultants lose reputation or credibility, customers will be less likely to demand their services. We do have evidence from the consultants that they have suffered negative reputational effects. For example, Mr. Brouillet testified that he could not keep sales help because of the negative environment; sales personnel felt they were regarded by advertisers as not legitimate, as "scam" or "con" artists.

Unfortunately, it is difficult to determine whether these effects result from the refusal by Tele-Direct to deal directly or from other actions of Tele-Direct that are not alleged to be anti-competitive. The Director has not challenged as anti-competitive Tele-Direct's general hostility towards consultants, as manifested by the placing of advertising warning customers about consultants, writing letters to customers and sending out its representatives to their premises with

messages to the same effect. In our view, the negative reputational effects on consultants are due largely to the general environment created by Tele-Direct rather than the specific refusal to deal directly with consultants acting for advertisers. Any connection between the negative reputational effect or loss of credibility on the part of consultants and the refusal to deal directly is very weak.

We turn to Tele-Direct's business justifications for its consultant guidelines and, thus, for its refusal to accept written or oral instructions from consultants or deal with them on follow-up matters. The respondents' general position is that their refusal to deal with consultants "is clearly an efficient response to the damaging effect of the consultants on their business". They point out that the objective of the consultants is to decrease directory advertising which is exactly the opposite of the respondents' objective, which is, in their words, to sell directory advertising "in order to increase the usage of their directories and produce a more complete directory." Because the consultants generally serve customers on a one-time basis, the respondents take the position that consultants have a "perverse" incentive to "undersell", which detracts from the completeness of the directories.

We have already dealt with the "completeness" argument as part of the analysis of tied selling. As we concluded there, it is far from clear that all increases in advertising (especially size and colour which are targeted by consultants for reduction) contribute to completeness. Therefore, the "upselling" of size and colour by Tele-Direct representatives cannot be assumed to be socially beneficial, nor can the "downselling" of those attributes by consultants be assumed to

be socially detrimental. The optimal situation is one in which both points of view are freely available to advertisers so that the advertisers themselves can make the choice.

At paragraph 840 of their written argument, the respondents have also provided the following more detailed justifications for issuing and following their consultant guidelines:

> (i) the consultants do not accept responsibility for payment for the advertising;
>
> (ii) to ensure that the customer is fully informed with respect to the advertising they are purchasing and their available options;
>
> (iii) to ensure customers understand with whom they are dealing;
>
> (iv) to prevent the conflicts that may occur if the Respondents' sales representatives were to take instructions directly from the consultants;
>
> (v) to ensure that advertisers are aware of new programs and initiatives.

We need only deal with the first point. The Director has in effect admitted the validity of the respondents' first business justification, that consultants do not accept financial responsibility for the advertising, by the remedies he seeks. At paragraph 69(b)(iii) of the application, the proposed remedy was:

> . . . that the Respondents accept orders for advertising space on behalf of any party that can satisfy the Respondents' reasonable requirements of evidence of authority to act on behalf of an advertiser and *capacity to pay for the space requested*. (emphasis added)

At paragraph 391 of the written argument, the following further remedy was added:

> . . . that the Respondents be prohibited from requiring that customers who choose to utilize the services of a third party to place advertising be required to enter into a contract directly with the Respondents where the third party who has satisfied the Respondents' reasonable requirements of evidence of authority to

> act on behalf of the advertiser and *where the third party has guaranteed payment on behalf of the principal.* (emphasis added)

These proposed remedies imply that in the Director's view it is reasonable for Tele-Direct to insist on financial guarantees if Tele-Direct is to deal with consultants as representatives of the customer. The consultants do not currently accept any financial responsibility. What the Director has done is to suggest an alternative method of operations for Tele-Direct in its dealings with consultants. He is proposing, in effect, that Tele-Direct begin to deal directly with consultants acting for advertisers by creating a new third sales channel (in addition to the internal sales force and agents).

There is evidence that dealing directly with the consultants would require Tele-Direct to set up an additional interface to deal with them. As described by Mr. Logan of the YPPA, this was the experience of US West, which set up a group of specially trained employees to deal with consultants to avoid problems with its sales force when it dealt directly with consultants. Such direct dealing, therefore, would obviously entail an additional cost to Tele-Direct. Further, Tele-Direct does not currently deal with guarantees in the sense proposed by the Director. Agents, of course, simply pay up front. A system would have to be set up to accommodate this new procedure.

In the circumstances, we think that the additional costs that Tele-Direct would incur if it were forced to deal with consultants directly on behalf of advertisers is a valid justification for

not doing so, given that no adverse cost effects on agents were proven and that any negative reputational effects that are attributable to the refusal to deal directly are, at best, weak. We conclude, therefore, that, overall, Tele-Direct is not engaging in anti-competitive acts by refusing to deal directly with consultants on behalf of advertisers and, in particular, by refusing to accept written or oral instructions from, or engage in follow-up communication with consultants acting on behalf of advertisers.

(b) Discriminatory Acts

The discriminatory acts involve Tele-Direct's actions after the customer has submitted an order based on a consultant's advice and the effects that flow therefrom. Notwithstanding Tele-Direct's stated policy, orders submitted by a customer are sometimes returned because Tele-Direct believes a consultant was involved in the preparation of the order. There is no justification for Tele-Direct precluding an advertiser from seeking the advice of a consultant if the advertiser so chooses. Indeed, that is what one part of Tele-Direct's written guidelines states. Yet, the guidelines, even the 1992 guidelines, also mandate the return of certain customer orders. The fact that Mr. De Sève, a senior executive of Tele-Direct, is aware, and apparently condones, the return of customer orders for suspicion of consultant involvement proves that these were not merely isolated instances or errors.

Further, the history of the 1990 guidelines underlines the fact that Tele-Direct was fully aware of and, in fact, sanctioned the foreseen negative consequences of those guidelines for its

advertisers. The advertisers' interests were sacrificed in order to hamper the consultants. The effect of the 1990 guidelines, as Tele-Direct itself recognized when they were first drafted, was to place the advertiser in the middle of the battle between Tele-Direct and the consultants, to the detriment of the advertiser.

A document attached to the guidelines identifies "perceived weaknesses" in the guidelines which were to be reviewed with the legal advisors. The first related to the fact that Tele-Direct would be rejecting any package delivered by a consultant or bearing any external indication of consultant involvement even if delivered by the customer or also bearing customer information on its face. Packages would therefore be rejected even though they might contain instructions from the customer on the customer's letterhead. A second concern was whether it was a reasonable business approach not to notify customers that the letter/package delivered to Tele-Direct had been rejected and returned to the consultant. In spite of these misgivings, the new policy was put in place.

The internal document dealing with the incident where 23 orders prepared by Mr. Blais were rejected even though they were under customers' signatures states that legal counsel, in fact, recommended against the procedure in the guidelines which permitted this type of rejection. Counsel, as reported in the letter, was of the view that the customers had the right to deal with whomever they wished in designing their advertising and further had the right to send Tele-Direct their instructions on their letterhead and expect that they would be acted on as coming

from them, provided that Tele-Direct was not required to deal directly with the consultant and the correspondence did not carry any consultant identification.

The respondents did not attempt to provide a business justification for rejecting or returning customer orders where there was no evidence of non-compliance with specifications or of late delivery. In the circumstances, we find that the rejection, return, denial of receipt or refusal to process customer orders involving consultants constitute anti-competitive acts.

As noted earlier, the Director is not of the view that Tele-Direct's insistence on visiting a customer after the customer has signed a contract with a consultant and submitted an order to Tele-Direct is by itself an anti-competitive act. He says that the issue relates to what the representative tells the customer and how the order received from the customer is treated. We agree that this is the crux of the difficulty. The anti-competitive acts are those that lead the customers to believe that they will be disadvantaged or that actually harm them because they have used a consultant. These include suspicious errors, last minute contact resulting in confusion for the advertiser about what must be done to have the new advertising run or resulting in missed deadlines, identifying errors or problems in the advertising that would not otherwise be a problem and informing customers that their orders might not be processed. We accept that such incidents occurred and that there is no assurance that they will not be repeated whenever consultants are seen as a threat.

The respondents argue that they were trying in all cases to ensure that their business operated efficiently by requiring consultants to meet deadlines and specifications. We have found that non-compliance with specifications and deadlines were largely pretexts for an attempt to pressure customers into changing their minds about a consultant's recommendations. Most of the incidents in evidence are more accurately characterized as highly disruptive because of the negative impact on customers rather than ensuring the smooth operation of Tele-Direct's business as argued. We have no hesitation in finding that statements or actions by Tele-Direct to discourage advertisers from dealing with consultants by expressly or implicitly indicating that advertisers will thereby be disadvantaged by Tele-Direct constitute anti-competitive acts.

The Director alleges that the respondents discriminate against consultants by refusing to meet with customers to take instructions originating in advice from consultants. On its face this looks very much like the allegation listed in I.(b) and forming part of the refusal by Tele-Direct to deal directly with consultants on behalf of advertisers. Presumably, the discriminatory act being alleged here is a refusal to accept oral instructions from customers using consultants while oral orders from customers not using consultants are accepted and acted on. As has already been noted, Tele-Direct requires that customers using consultants sign Tele-Direct's documents. In and of itself, this is not an anti-competitive act. It might, however, be a discriminatory act if customers not using consultants are not required to sign a contract in like circumstances.

However, the evidence of Mr. Giddings is that, by and large, all of Tele-Direct's customers sign its documents. In fact, Mr. Giddings testified that the only contracts which do not

require signing are those contracts renewing advertising worth less than $100. Further, Mr. Giddings indicated that for those contracts which are not signed, if there is a conflict between the customer and the representative as to what advertising was actually ordered, which results in a "write-off", the representative is financially responsible for the write-off. This policy does not seem unreasonable on an operational basis. With respect to orders which Tele-Direct will accept orally from customers dealing with its representatives (that is, those under $100), there is no evidence that consultants deal with or are interested in obtaining clients whose orders are so small. We do not find this allegation to constitute an anti-competitive act.

There is no doubt that those discriminatory acts of Tele-Direct which we have found to be anti-competitive constitute a practice. They are not "isolated acts".

(c) Specifications

The Director submits that Tele-Direct's refusal to supply specifications to consultants is an anti-competitive act. He argues that consultants cannot adequately advise the customers who choose to use their services without up-to-date access to basic technical information. The Director points to evidence of Tele-Direct using alleged non-compliance with specifications to delay orders or discredit consultants in customers' eyes.

(i) Majority View (Rothstein J. and C. Lloyd)

The majority of the Tribunal are unable to agree with the Director for the following reasons. We see the refusal by Tele-Direct to provide specifications to consultants as another manifestation of Tele-Direct's general aversion to having any relationship with consultants. Looking at the experience of consultants and Tele-Direct's refusal to supply specifications to them, the evidence is that this has not adversely affected their ability to compete. Consultants have been in business since 1984 and we have heard of no difficulty experienced by them because Tele-Direct refused to provide them with specifications.[284] In one way or another, they were aware of what Tele-Direct's specifications required.

As to whether Tele-Direct not providing specifications to consultants would cause a problem in the future, Mr. Brouillet stated:

> . . . If there were changes in their specifications and we were not informed about it, then obviously, there would be a problem. If there was really a problem, the client only had to call us within 24 hours, we could fix what was wrong and forward that to Tele-Direct.[285]

There is no evidence before us that suggests that Tele-Direct's specifications change frequently. If anything we are left with the contrary impression from the absence of evidence from consultants that frequent changes were a problem. Mr. Brouillet stated that once a problem is pointed out it can be quickly fixed. On the basis of this evidence, we are satisfied that any

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[284] This is not to say that Tele-Direct did not reject some orders based on non-compliance with specifications. This may have been the fault of the consultant not to conform to the specifications of which he was aware or because Tele-Direct, without justification, wished to create difficulty for a consultant. But Tele-Direct's rejection of orders was not attributable to consultants not being aware of what Tele-Direct's specifications required.

[285] Transcript at 15:2762 (6 October 1995).

changes to specifications will become known by consultants quickly. We, therefore, have no basis upon which to infer that refusal to provide specifications to consultants will, in any material way, adversely affect their ability to compete in the future.

The respondents did not argue the business justification "that customers understand with whom they are dealing" to justify the refusal to supply specifications to consultants, although this was raised as a justification for other acts. However, we are of the view, based on the evidence, that this business justification is applicable here. There is evidence before us of a number of instances in which there was confusion on the part of advertisers as to the exact relationship of a consultant with Tele-Direct.[286]

We infer from the way in which some consultants operate that this confusion could be exacerbated if a consultant, on visiting a proposed customer, is armed with up-to-date specifications obtained from Tele-Direct. There are indications in the evidence that in their initial contact with advertisers, consultants do not go out of their way to distinguish themselves from Tele-Direct. In some cases, the evidence is that the customer remains confused as to the exact relationship between the consultant and Tele-Direct.[287] In other cases, it is apparent that while an advertiser may initially be confused, the fact that the consultant does not represent Tele-Direct

[286] Evidence of Mr. Lee of M & L Service, Mr. and Mrs. Jovandin of L.J. Sunshine Hardwood Flooring, Mr. Fox of Fox & Partners Limited, Mr. Harmic of Dominion Springs Corporation, Mr. McMaster of H.R. Home Renovations. Of course, the consultants blamed Tele-Direct for the confusion and Tele-Direct blamed the consultants. We cannot say for certain how the confusion about the relationship between Tele-Direct and consultants arose in each case but it does appear there was confusion in the minds of some customers.

[287] E.g., Mr. Lee of M & L Service.

eventually becomes apparent. It may become apparent in conversation between the advertiser and consultant or when the advertiser is requested to pay the consultant separate from Tele-Direct. In the case of Ad-Vice, a follow-up letter makes this clear.[288]

However, in our view, it is the initial confusion that creates the difficulty. We do not think consultants should be "getting their foot in the door" of advertisers because of such initial confusion. Being provided with specifications by Tele-Direct could be used by them as a form of "calling card" signifying a relationship with Tele-Direct that does not really exist. Notwithstanding that in many cases the confusion is eventually cleared up, we do think customers are best served when they know from the outset precisely with whom they are dealing and in this case, the relationship or lack of relationship between Tele-Direct and a consultant. We therefore think that Tele-Direct is justified in refusing to provide specifications to consultants and conclude that such refusal is not an anti-competitive act.

While we are not satisfied that the Director has made a case that the refusal to provide specifications to consultants is an anti-competitive act, we are not unmindful that ultimately it is the advertisers that might encounter difficulty if they retain the services of consultants who use incorrect specifications. It is for this reason that we have, in providing for a remedy for discriminatory acts against advertisers, required Tele-Direct, at its option, to take positive steps to revise a customer's order that is not submitted in compliance with its specifications so that the

[288] The package provided by Mr. Brouillet to his clients advises the client that the Tele-Direct representative will be in contact to transfer the advertising program to the Tele-Direct forms.

order complies or advise the customer what is wrong and how the customer may revise the order in accordance with its specifications.

(ii) Minority View (F. Roseman)

In my view, the refusal to supply specifications is an anti-competitive act. While differing from the majority in their conclusion, I accept that there is little evidence of past harm to consultants from the refusal. Nevertheless, consultants may suffer adverse effects in the future should Tele-Direct change its specifications. The consultants will eventually learn of the changes through trial and error but this leaves a considerable degree of uncertainty during an indeterminate transitional period. Therefore, there is the likelihood that the consultants will be significantly hampered so that the refusal to supply specifications should be considered an anti-competitive act given the complete absence of any sound business justification for the refusal.

The respondents have not advanced any valid business justification. They argue that the refusal is justified by the uniqueness and complexity of Tele-Direct's business and its desire to maintain the value and quality of its product. It is difficult to see how avoidable errors in orders prepared by consultants (and submitted by customers) contribute to quality.

I do not accept the majority's view that the evidence supports the conclusion that the availability of specifications to consultants would result in increased confusion on the part of customers as to the consultants' identity and purpose. I agree with the majority that it is

impossible to identify the source of the confusion that apparently arose for some customers.[289] However, it is noteworthy that none of the incidents of confusion referred to by the majority was linked to Mr. Harrison[290] but only to Mr. Brouillet. Yet, it is Mr. Harrison who has been able to obtain ongoing access to Tele-Direct's specifications from YPPA through an affiliate in the United States. Because I am of the view that refusal to supply specifications will likely significantly hamper the consultants' ability to compete and that there is no valid business justification for the refusal, I conclude that the refusal constitutes an anti-competitive act.

### (6) Substantial Lessening of Competition

The competitive effectiveness of consultants has been reduced as a result of Tele-Direct's practice of discriminatory acts. Consultants incur higher costs as a result of being forced to defend themselves before customers and by having to seek the aid of the courts in enforcing their contracts. These activities require time and expense that could otherwise be spent in attracting and serving customers.

In addition, the consultants' ability to attract new business is negatively affected when their customers are inconvenienced or harmed by Tele-Direct's discriminatory acts. Customers so

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[289] *Supra* note 287.

[290] *Ibid.* All of the incidents cited related to clients of Ad-Vice except for Mr. Fox of Fox & Partners Limited, who was not linked to a specific consultant.

affected are unlikely to be repeat customers or to recommend the services of consultants to other Yellow Pages advertisers.

Although consultants currently service a small portion of the total telephone directory advertising revenue, they are competitively significant. Tele-Direct was forced to respond positively to the presence of consultants by improving its servicing of its customers. Thus, consultants have had and can continue to have a significant positive influence on Tele-Direct's level of service to its customers as Tele-Direct legitimately strives to offset the inroads that consultants make into its sale of Yellow Pages advertising.

It is difficult to arrive at a numerical determination of the effect on consultants of the practice of discriminatory acts we have found to be anti-competitive because the acts are intermingled with other forces that hamper consultants. What we know, however, is that the consultants' ability to compete is limited and fragile as compared to Tele-Direct's virtual monopoly through its control of publishing. Consultants, by the nature of their services, have little ongoing business and must convince advertisers to pay for their services when these advertisers could place advertising in directories without incurring such expense, i.e., the market for their services is necessarily a "thin" one.

Where a firm with a high degree of market power is found to have engaged in anti-competitive conduct, smaller impacts on competition resulting from that conduct will meet the test of being "substantial" than where the market situation was less uncompetitive to begin

with.[291] In these circumstances, particularly Tele-Direct's overwhelming market power, even a small impact on the volume of consultants' business, of which there is some evidence, by the anti-competitive acts must be considered substantial. Of course, in the future, in the absence of any order by the Tribunal, there would be no constraint on Tele-Direct intensifying discriminatory acts against consultants and exacerbating an already substantial effect on them. We have no difficulty concluding that Tele-Direct's proven practice of anti-competitive acts has had, is having or is likely to have the effect of lessening competition substantially in the market.

### (7) Remedies

The Tribunal recognizes that consultants' interests are antithetical to Tele-Direct's and that Tele-Direct should not be forced to assist consultants. However, consultants must be able to compete with Tele-Direct to provide services to advertisers. Tele-Direct cannot use its market power to impede consultants' activities and to disadvantage customers who wish to retain the services of consultants. On the other hand, Tele-Direct must not be restrained from competing fairly with consultants.

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[291] The approach we adopt is implicit in *Director of Investigation and Research v. Imperial Oil Ltd.* (26 January 1990), CT8903/390, Reasons and Decision at 16, [1990] C.C.T.D. No. 1 (QL) (Comp. Trib.) and in U.S. Dept. of Justice/Federal Trade Comm'n, *Horizontal Merger Guidelines*, (2 April 1992) at 1.51. Although dealing with a consent order, *Imperial* in effect addresses the issue of what constitutes a substantial lessening of competition when there are varying initial degrees of market power by evaluating what is required to cure the alleged substantial lessening of competition. Similarly, the Guidelines view any numerical increase in concentration more severely the higher the initial market share of the acquiring firm.

We have concluded that Tele-Direct's refusal to deal with the consultants directly on behalf of advertisers is not an anti-competitive act. No remedy is provided in this respect. Nor is any remedy provided for Tele-Direct's refusal to provide specifications to consultants.

We have found that Tele-Direct engaged in a practice of discriminatory acts against consultants and customers who use consultants resulting in a substantial lessening of competition. While many of the acts in evidence occurred more than three years before the filing of the Director's application, the practice continues. The practice of these acts is prohibited. Customers using consultants must be treated by Tele-Direct no differently than customers who do not use consultants.

For greater certainty, we elaborate on this remedy. Where a customer uses a consultant and the customer submits an order for advertising in the Yellow Pages, Tele-Direct is prohibited from rejecting the order. Tele-Direct may accept the customer's order without revisiting or contacting the customer to attempt to change the customer's mind. It will be open to Tele-Direct to act on the documents submitted by the customer or, if it considers it necessary, require the customer to sign a Tele-Direct document. If Tele-Direct decides to accept the order as it is, Tele-Direct is prohibited from not processing it or unduly delaying its processing and from refusing to confirm to the customer that the order will be processed as submitted. If the order is accepted and it turns out there is non-compliance with Tele-Direct's specifications, then the order must be processed in accordance with a revision made by Tele-Direct that complies with the

specifications or the customer must be advised promptly that the order does not comply with specifications and informed of the exact problem and how to rectify it.

Alternatively, Tele-Direct has the option of providing further advice to the customer to try to convince the customer to change the order submitted. It may do so, including visiting the customer, but it is prohibited from employing the techniques that we have condemned as anti-competitive when doing so. For example, Tele-Direct may not delay until close to the closing date for submitting orders for a directory to contact the customer about alleged problems in the order. Tele-Direct may not advise the customer who used a consultant that the order does not conform to Tele-Direct's specifications or is otherwise unacceptable unless there is a material problem, in which case, Tele-Direct must provide the necessary information so the customer can cure the problem. Tele-Direct cannot use problems with the order in such a way as to leave the customer only with the option of reverting to the prior year's advertisement or having no advertisement appear. Nor may Tele-Direct delay until close to the closing date so that if the Tele-Direct's representative is able to convince the customer to change the order from that recommended by the consultant, that the customer does not have the opportunity of contacting the consultant if the customer wishes further advice from that source.

Subsequent efforts by Tele-Direct to resell the advertisers should be restricted to the merits of the advertising recommended by the consultant. Tele-Direct is prohibited from having its representatives discuss the role of or advisability of using a consultant at this time. We recognize that it may be difficult to distinguish between legitimate "puffing" of Tele-Direct's

service and disparaging comments or inferences about the consultant's service. In view of the instances of disparaging comments by Tele-Direct that have occurred, we caution Tele-Direct to ensure that its instructions to its representatives are clear that in their follow-up meetings they are not to disparage consultants. What would be of concern would be evidence of systematic continuous representations that are untrue or that disparage consultants in these follow-up meetings.

For example, it is simply untrue that customers would receive the same advice from Tele-Direct for no cost as from a consultant who charges a fee because Tele-Direct representatives will rarely if ever recommend a reduction in advertising, which is the essence of the consultants' advice. The fact that consultants have a short-term relationship with a customer may be true but comments to this effect are disparaging if made with a view to causing a customer to lose confidence in a consultant's advice, not based on the merits of that advice. Tele-Direct should ensure that in these meetings its representatives restrict their selling effort to the merits of the advertising.

*Observation by C. Lloyd and F. Roseman*

We would have preferred to see a prohibition on attempted reselling by Tele-Direct's representative after an order was received from a customer. In our view, Tele-Direct has ample opportunity to establish a situation of trust and confidence between its customers and its representatives. If it fails to use its opportunities and customers choose to take the advice of a

consultant because they perceive that they have not received quality service from Tele-Direct, then, ideally, that would be the end of the matter for that directory year. We have chosen, however, not to dispute the Director's concession that Tele-Direct should not be precluded from visiting advertisers after they have submitted an order.

## X. ORDER

FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:

**Definitions**

1. In this order,

(a) "market" shall mean a market as defined by Tele-Direct for purposes of its commissionability rules prior to the filing of the application in this matter, and, for greater certainty, there shall in future be no fewer than six markets in Quebec and seven markets in Ontario;

(b) "consultants" shall mean firms which advise telephone directory advertisers on how to increase the effectiveness of and reduce expenditures on telephone directory advertising, primarily in the Yellow Pages, and which assist advertisers in the placement of orders for telephone directory advertising, but does not include firms which are accredited advertising agencies.

**Tied Selling**

2. The respondents are prohibited from continuing to engage in tied selling, namely tying the supply of advertising space by them to the acquisition of advertising services from them, for customers advertising in six, seven and eight markets.

**Abuse of Dominant Position**

3. The respondents are prohibited from engaging in the practice of discriminatory acts relating to consultants and customers of consultants.

**Remaining Allegations**

4. The remainder of the application of the Director is dismissed.

**Interpretation**

5. The Director or the respondents may apply to the Tribunal for directions or an order interpreting any of the provisions of this order.

**Confidentiality**

6. As required by paragraph 11(1) of the Confidentiality (Protective) Order issued by the Tribunal on March 30, 1995, the panel determines that a "reasonable period" for the retention, in a secure and organized manner, by the respondents of those protected documents returned to them by the Director upon completion or final disposition of this proceeding and any appeals relating thereto, shall be five years.

DATED at Ottawa, this 26th day of February, 1997.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Marshall Rothstein
Marshall Rothstein

# 14

Competition Tribunal Tribunal de la Concurrence

**CT-1989-002 – Doc # 176a**

IN THE MATIER OF an application by the Director of Investigation and Research under sections 79 and 77 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

AND IN THE MATIER OF The NutraSweet Company

BETWEEN:

The Director of Investigation and Research
Applicant

and

The NutraSweet Company
Respondent

and

Tosoh Canada Ltd.
Intervenor

**REASONS AND ORDER**

**Dates of Hearing:**

January 9-11, January 22-26, January 30-February 16, February 20, 21, and 23, April 26, and July 10, 1990

**Presiding Member:**

The Honourable Mr. Justice Barry L. Strayer

**Judicial Member:**

The Honourable Mr. Justice Max M. Teitelbaum

**Lay Member:**

Dr. Frank Roseman

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Alan Pratt

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**COMPETITION TRIBUNAL**

**REASONS AND ORDER**

***The Director of Investigation and Research***

***v.***

***The NutraSweet Company***

## I. INTRODUCTION

On June 1, 1989 the Director of Investigation and Research ("Director") filed a notice of application under sections 79 (abuse of dominant position) and 77 (exclusive dealing and tied selling) of the *Competition Act.*[1] The Director asks the Tribunal to prohibit certain business practices of The NutraSweet Company ("NSC"), the respondent, which are alleged to be contrary to those sections, as well as to make such orders as may be necessary to overcome any adverse effects of those practices in the market.

NSC is a major producer of the sweetener aspartame which it markets under the brand name NutraSweet. Aspartame is primarily used in diet soft drinks, chewing gum, low calorie formulations of various foods (e.g. yogurt), and as a table-top sweetener.

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[1] R.S.C. 1985, c. C-34, as amended.

One intervenor, Tosoh Canada Ltd. ("Tosoh"), a rival producer of aspartame, applied for and was granted leave to intervene in these proceedings. The two major buyers of aspartame in Canada, Coca-Cola Ltd. ("Coke") and Pepsi-Cola Canada Ltd. ("Pepsi") also applied for leave to intervene but later withdrew their applications, agreeing instead to an arrangement whereby their respective witnesses would have counsel present to safeguard company interests during any examination.

NSC Canada is a branch of NSC, a United States corporation that is a wholly-owned subsidiary of Monsanto Co., another U.S. corporation. NSC had earlier been a division of G.D. Searle & Co. ("Searle") which was acquired in 1985 by Monsanto Co.

Aspartame is a high-intensity sweetener that was discovered in 1966 by Searle researchers. Searle obtained use patents (now exploited by NSC) on the product in a large number of countries, but due to delays in obtaining approvals for its use from regulatory health authorities aspartame did not come on the market until late in the lives of these patents. Approval for use in Canada was first granted in 1981 and the Canadian use patent expired in July 1987. In the United States health approval was effectively also first obtained in 1981, but this was for very limited use and aspartame was only permitted in soft drinks (by far aspartame's largest source of sales)

in 1983. The life of the use patent was extended in a number of countries: from 1983 to 1987 in the United Kingdom, and until December 1992 in the United States and Australia.

Worldwide sales of aspartame in 1989 were approximately 7500 metric tonnes, consisting of somewhat over 75 percent sold in the United States, 5 percent in Canada, and 15 percent in Europe. Of the remaining roughly 5 percent, an appreciable percentage was sold in Australia. Canada and Europe are the principal regions where a use patent does not apply. Sales in Europe have grown rapidly, first surpassing those in Canada in 1987 and attaining a level of growth such that the increase in sales between 1988 and 1989 exceeded the total of Canadian sales in 1989.

NSC of course accounts for all sales in the United States and Australia (where the use patents are still in effect) and over 95 percent and 80 percent, respectively, of Canadian and European sales.[2] The Canadian (and worldwide) customers of NSC are primarily food and beverage manufacturers who use aspartame as a sweetening ingredient in their "sugar- free" or "diet" products. In 1989, NSC sold aspartame for use in Canada to about 65 customers for a total volume of 359 tonnes. Five soft drink franchisers figured among the top eight Canadian purchasers of aspartame (by volume and

[2] Exhibits R-19, D-38 and X-16 (confidential).

excluding Searle, the parent company) and accounted for over 300 tonnes. Those five were A & W, Cadbury Schweppes, Crush, Coke and Pepsi. The other three major Canadian buyers were Kraft General Foods, Wrigley and Adams Brands (the last two are chewing gum manufacturers). Coke and Pepsi are obviously by far the largest individual purchasers in this group.

NSC operates two plants in the United States with a combined capacity of 5400 tonnes per annum and it obtains supplies from Ajinomoto, a Japanese company with a high degree of expertise in the manufacture of aspartame. Until the mid-1980s, NSC also obtained supplies from other manufacturers before its own facilities could provide sufficient output. It has recently entered into similar arrangements with two manufacturers for supplies to bridge the period until planned expanded plant capacity is on stream in 1992. (Sales in a given year may exceed plant capacity due to the drawdown of inventories).

The relationship with Ajinomoto dates back to at least the early 1970s. NSC first obtained approval for the sale of aspartame from the United States Food and Drug Administration ("FDA") in 1974. For reasons that are not germane to the present proceedings, this approval was not implemented. An arrangement for supplies had been entered into with Ajinomoto in anticipation

of FDA approval. Ajinomoto holds a large patent portfolio relating to the production of aspartame. It licenses both patents and know-how to NSC in some areas of manufacturing. Ajinomoto and NSC are joint owners in NutraSweet AG which markets aspartame under the NutraSweet trademark in Europe. The product for NutraSweet AG sales is supplied by Ajinomoto. It uses the great majority of its remaining output to supply NSC under long-term contract and a large percentage of Canadian supplies is derived from this source. According to the available evidence the terms of the contract with Ajinomoto restrict it from marketing directly in North America until 1996. Ajinomoto's manufacturing capacity is approximately 1500 tonnes per annum. Less than ten percent of this capacity is used to satisfy demand in Japan where per capita sales of aspartame are very low. Ajinomoto, like NSC, is proceeding with plant expansion.

There is only one producer of aspartame who is currently selling m competition with NSC in Europe and Canada. Holland Sweetener Company ("HSC") is a joint venture between Naamloze Vennootschap DSM and Tosoh Corporation of Japan. It operates a 500-tonnes per annum plant in Holland. Marketing in Europe is conducted by HSC and in Canada by Tosoh, a wholly-owned subsidiary of Tosoh Corporation. Tosoh started marketing efforts in Canada as soon as the Canadian use patent expired in the summer of 1987. HSC started production in mid-1988, several months behind schedule, and it

has only recently been able to approach full capacity output. Sales have, to date, lagged behind output.

Several other firms have produced aspartame from time to time m small pilot plants or in general purpose fine chemical facilities. According to the available evidence none are currently producing. There is evidence, however, that at least some of them were left with inventories after they stopped producing. For example, Pierrel, a firm that had supplied NSC for a time and stopped producing in the mid-1980s, was left with inventory that a distributor was trying to sell in Canada in 1987 and 1988. While customers are not receptive to buying from a supply source that they cannot rely on, there is a strong incentive for firms holding inventories to dispose of them and it is likely that they are being sold and form part of worldwide supplies.

The Director's investigation was initiated by a complaint made by Tosoh.

In our view, the Director's principal allegations fall under two broad heads. Under the first head are contract terms that, it is alleged, create an exclusive supply relationship between NSC and its customers and thus restrict the entry or expansion of would-be or existing competitors. This type of allegation

is advanced by the Director under two sections: under section 77, which specifically addresses exclusive dealing and tied selling; and under section 79, which addresses "anti-competitive acts". The Director contends that these exclusive supply devices fall within the general criteria for anti-competitive acts in section 78, even though not specifically mentioned in the non-exhaustive list of such acts in that section. Under the second broad head is the allegation that NSC has been selling below its "acquisition cost", one of the anti-competitive acts specifically set out in section 78. This virtually constitutes a separate case with regard to the elements that must be satisfied.

Before addressing the specific allegations certain background Issues are discussed below under the headings of "Product Market", "Geographic Market" and "Aspartame Production: Potential Entrants and Entry Conditions into Manufacturing". This background is required not only for an understanding of market context, but also in directly addressing a number of elements in sections 77 and 79.

## II. THE PRODUCT MARKET

The need to identify a relevant product arises in both subsection 77(1) and paragraph 79(1)(a), which refer, respectively, to a supplier of a

"product" and substantial or complete control of "a class or species of business". Paragraph 79(1)(c), which refers to substantial lessening of competition in a "market", also requires identification of a relevant product. It is not useful at this time to address the submissions regarding specific interpretations. Whichever interpretation is adopted for specific paragraphs, both sides accept that, at one point or another, it is necessary to consider the degree to which aspartame is sufficiently distinct from other sweeteners in order to decide whether it should be treated as a separate product or as part of a broader class of sweeteners.

The question is whether, and in what ways, other sweeteners are good substitutes for aspartame. In any given competition law case, a wide range of factors may be relevant in considering product substitutability. Factors which have proved pertinent in the instant case include taste, caloric content, other physical characteristics, safety concerns, price differences, and users' responses to price changes.

The respondent has submitted that it may not always be useful to define the product market exactly, that decisions can more reasonably be arrived at without taking this step since the factors to be considered in defining the market may be ones that are required in considering other critical questions such as market power. As the Tribunal understands the respondent’s submission, it is

that a narrow definition of the product market could lead to the conclusion that NSC has market power, whereas this conclusion might not follow if all competitive pressures (including those arising from sweeteners considered not to be sufficiently close substitutes to be included in the delineated product market) are taken into account when considering the market power question. It is the Tribunal's view that it is necessary that the overall purpose of a section be kept in mind when dealing with the elements which the legislative scheme requires to be specifically addressed. In approaching the discussion of product market, the Tribunal has kept in mind the implications that its conclusions would have for its consideration of market power.

## 1. Sweeteners

Caloric sweeteners and high-intensity sweeteners form two broad classes. Sugar and high-fructose corn syrup are the two most important caloric sweeteners.

High-intensity sweeteners have a perceived sweetness that is, by weight, many times that of sugar. On a rough average (since there is some variation by use), aspartame, cyclamates and saccharin are 180, 30 and 300 times sweeter than sugar, respectively.

There are, however, dimensions (or characteristics) other than sweetness that determine the demand for the various sweeteners. An obvious difference between high-intensity and caloric sweeteners is that the former have comparatively very little bulk. Thus, in uses where sugar provides an important part of the bulk, such as in chocolate bars, bulking agents must be added to the product if a high-intensity sweetener is to be used. The price comparisons among sweeteners contained in the evidence during the proceedings did not include the cost of bulking agents. Comparison between sweetener prices is usually done on a sweetness equivalency basis. The only product in which there is widespread use of high-intensity sweeteners and bulking agents is chewing gum. The bulking agents used in chewing gum provide roughly the same calories as sugar; however, neither the bulking agents nor the high-intensity sweeteners contribute to cavities.

## 2. Categories of Demand for Sweeteners

Sweetener consumption is conveniently divided in the first instance between table-top and industrial use. Table-top use refers to purchases of sweeteners by households and restaurants for direct consumption by individuals. Industrial demand derives from the inclusion of sweeteners as an ingredient in the entire gamut of food and beverages sold to households and institutions. In the table below covering Canada, the United States and the European Economic

Community ("EEC"), table-top sales are seen to be only three or four percent of total sales in Canada and the United States. Industrial sales of aspartame are overwhelmingly driven by demand from the soft drink industry in each of the three geographic areas. Approximately 85 percent of industrial sales are made to this one industry. Coke and Pepsi have a similar order of importance to the soft drink industry as that industry has relative to the overall industrial demand for aspartame.

Aspartame's large percentage of sales to the soft drink industry contrasts with limited sales for other large scale industrial sweetener uses. There are technical problems in using aspartame in baked goods, and confectionery generally consists in large part by volume of sugar so that the use of a high-intensity sweetener (without a bulking agent) would cause much of the product to disappear. There are outstanding petitions to health authorities in Canada and in the United States for approval of the use of aspartame in encapsulated form in baked products. The Canadian petition was filed in September 1988. In spite of this petition and one filed in May of the same year, requesting approval of aspartame for use in such products as fruit spreads and salad dressings, there is nothing in the past history of the demand for aspartame or in the demand projections of NSC that suggest that the pivotal role played by the soft drink industry is likely to change in the foreseeable future.

| | Table-Top Use as a Percentage of Total Sales in 1988 | Carbonated Soft Drinks as a Percentage of Industrial Use in 1988 |
|---|---|---|
| | **All Sweeteners** | |
| Canada | 29 | 35 |
| United States | 21 | 40 |
| European Economic Community | 36 | 30 |
| | **Aspartame** | |
| Canada | 3 | 85 |
| United States | 4 | 84 |
| European Economic Community | 27 | 87 |

Source: Confidential schedules to the expert affidavit of J. Fry for NSC, Schedule 6 (Exhibit R-13-C).

### 3. High-Intensity Sweeteners

High-intensity sweeteners are subjected to a lengthy, rigorous approval process in developed countries. The concerns that arose over the safety of cyclamates and saccharin were apparently responsible for what was described by Mr. Smith of the Health Protection Branch ("HPB") of the Government of Canada as a "new era in the kinds of testing" required by governments for approval of new artificial sweeteners.[3] It required five years

[3] Transcript at 198 (10 January 1990).

from the date of the petition for approval to be granted to the last high-intensity sweetener admitted in the United States. Petitions to HPB are not made public so it is not officially known if, or when, a petition for this same product, acesulfame-k, was filed in Canada. According to Ms. Mathews, formerly Manager of Regulatory Affairs with NSC, the manufacturer of acesulfame-k has publicly stated that a Canadian petition was filed. In any event, acesulfame-k has not been approved for use in Canada, two years after it was granted the approvals sought in the United States.

All the studies designed to show that a new food additive is safe, in the quantities that it would be consumed in the uses requested in a petition, must be completed prior to the filing of a formal petition. Thus most of the effort, and a good part of the time, required to obtain approval for a new product has already been invested by the time a formal petition is filed. There are two new sweeteners, alitame and sucralose, for which petitions were filed in the United States in 1987 and, as might be expected, were likely filed at approximately the same time in Canada. Any other new high-intensity sweeteners on which work is being done are, based on the absence of evidence of imminent filings, so far from being marketed that they can safely be ignored.

There are currently four high-intensity sweeteners that have approval in either Canada, the United States or the EEC. These are aspartame, acesulfame-k, cyclamates and saccharin. In Canada and the United States, only aspartame is approved for a variety of "wet" and "dry" uses; that is, both in applications that do and do not require the high-intensity sweetener to be dissolved when it reaches the consumer. Cyclamates are approved for table-top use in Canada but are banned in the United States. Saccharin can be sold for table-top use in Canada solely in drug stores. In the United States, it is formally banned by the FDA but it has received a number of important congressional exemptions, including most importantly for use in carbonated soft drinks. In the United States the use of acesulfame-k in a number of dry uses was permitted in 1988.

Aspartame is considered to be closest to sugar from a taste point of view. However, it suffers from a number of technical deficiencies that tend to limit its use or make it vulnerable to competition from other sweeteners. Aspartame is not heat stable (i.e. it loses its sweetness when heated) and this has prevented its use as a sweetener in baked foods. This deficiency has been remedied technically by encapsulating the aspartame and petitions for use of this product in baking are pending in Canada and in the United States. Aspartame's less-than-perfect stability also manifests itself when it is used as a sweetener in carbonated soft drinks.It loses its sweetness if the product is stored

for lengthy periods. As a result, diet fountain drinks in the United States tend to contain a blend of aspartame and saccharin, since saccharin is much more stable. Aspartame is exclusively used by Coke and Pepsi (and possibly by all brands) in their diet packaged products in Canada and the United States.

Saccharin is very inexpensive on a sweetness equivalency basis, the least expensive sweetener by far. It suffers, however, from an unpleasant (bitter) aftertaste and is considered to pose some potential health risks. The problem with saccharin's aftertaste can be resolved by blending saccharin with sweeteners such as aspartame or cyclamates.

Acesulfame-k is described as similar to saccharin. It is however, much more expensive. Its primary advantage over saccharin is that it apparently does not raise health concerns. Only limited capacity to produce acesulfame-k is in place, approximately 100 metric tonnes which is less than two percent of the capacity dedicated to the production of aspartame. Acesulfame-k is being marketed in the United States primarily as a table-top sweetener and approval for wet use has not been sought. Although there is no evidence of the wholesale prices of finished products, or of the ingredient cost of acesulfame-k, there is evidence of a pronounced increase in NSC's expenditures on promotion in response to the introduction of acesulfame-k in table-top use in the United

States. Based on this evidence, it is reasonable to conclude that acesulfame-k is an important substitute product in table-top use in the United States and elsewhere where it has approval.

Acesulfame-k is used in a blend in Diet Coke in France, but there is no evidence that it has been adopted in diet formulations in other countries. Unfortunately the evidence does not allow a conclusion on whether this limited penetration of acesulfame-k in diet soft drinks is of broader competitive significance or whether it reflects a peculiarity of the French market or regulatory regime. Based on the considerable delay in obtaining regulatory approvals, acesulfame-k is unlikely to be a factor in the United States or Canadian soft drink industry for some time.

According to several witnesses, there is speculation that the United States' ban on cyclamates will shortly be lifted. As noted earlier, cyclamates application in Canada is limited to table-top use. In the EEC cyclamates are approved for soft drinks use only in West Germany. Clearly, little or no weight can be given to the potential competition from cyclamates in major uses in Canada or in the United States. Apart from the unknowns regarding regulatory approvals (if, when and for what applications), it is highly doubtful that industrial users would move quickly to incorporate an ingredient about which there has been recent health concerns.

Two new high-intensity sweeteners could affect the competitive position of aspartame. The most serious competitive threat appears to be sucralose which, like aspartame, is considered to be similar to sugar in taste but is more stable than aspartame. A number of wet and dry applications are being sought for this product in petitions filed in mid-1987 with the FDA in the United States. The second product, alitame, appears to be considered less of a potential competitive threat. Petitions for various wet and dry applications were filed with the FDA in early 1987. To date, no country has granted approval to either ingredient for any application.

Blending of more than one high-intensity sweetener provides users with the opportunity to reduce their costs by adjusting the mix of sweeteners according to the prices and characteristics of the sweeteners. Blending also provides a synergistic increase in perceived sweetness beyond the level that would be anticipated from the perceived sweetness of each of the sweeteners if separately used. This means that although none of the presently approved high-intensity sweeteners is considered by itself to be an acceptable substitute for aspartame, such sweeteners, if blended, could provide price competition by affecting the proportion of aspartame used in the blends. Whether sweeteners are used individually or in blends, the evidence shows that taste is a major concern of most industrial users of sweeteners. Possible blends offering an acceptable taste profile in soft drinks, mentioned in evidence, are aspartame

with saccharin (or acesulfame-k) and aspartame with cyclamates and saccharin. Professor Wilson, who appeared on behalf of the Director, is of the opinion that because of the possibility of blending, the relevant "product" is intense sweeteners.

## 4. Price Competition Between Sweeteners

Competition between sweeteners can be direct, in the sense that one sweetener is selected over another for a particular use, or the competition can be indirect in that there is competition among the products containing the sweeteners.

It is noteworthy that although aspartame prices fell below EEC sugar prices in 1986 and stood at 42 percent of sugar prices by 1989, aspartame has not been introduced into non-diet soft drinks as a sweetener in the EEC. An hypothesis held out by Dr. Fry, an expert witness for the respondent, is that at prices where aspartame is cheaper than caloric sweeteners it will replace them, with the result that the demand for aspartame becomes very sensitive to price changes. An implication of this result would be that producers of aspartame would be very reluctant to raise prices because to do so would entail a large loss in sales. There is no evidence of direct competition between aspartame and caloric sweeteners, although there is evidence that saccharin (or possibly

acesulfame-k) is used in non-diet or regular carbonated soft drinks in the United Kingdom. There is clearly a cost incentive to use saccharin instead of other sweeteners, including sugar. Yet since 1982, when the use of saccharin peaked, the amount of saccharin (or acesulfame-k) used in regular carbonated soft drinks has steadily fallen; by 1989 it was down by 43 percent from its 1982 peak. There is no cost justification for this change since saccharin prices were 3.9 percent of sugar prices in the EEC on a sweetness equivalent basis in 1982 and 3.8 percent in 1989.[4]

Dr. Fry drew on the growing market share of diet soft drinks as evidence of indirect competition between aspartame and caloric sweeteners. Using the change in the ratio of aspartame to sugar price between 1984 and 1988 in Canada and the change in the percentage share which diet drink sales form of total carbonated soft drink sales, he measured the average "cross-elasticity" between sugar and aspartame to be equal to .14. That is, he concluded that a one percent decline in the price of aspartame, keeping the price of sugar constant, resulted in a .14 percent increase in the diet drinks' share.[5] The

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[4] Confidential schedules to the expert affidavit of J. Fry, Schedules 14 and 11 (Exhibit R-13-C). There is wide geographical variation in sugar prices because of the varying extent to which countries or trade groupings like the EEC protect their sugar producers. Although prices of aspartame in Canada and the EEC have been fairly close, the Canadian price did not fall below the landed price of sugar until 1989.

[5] Expert affidavit of J. Fry at B-34 to B-37 (Exhibit R-13-E); Schedules to the expert affidavit of J. Fry, Schedule 12 (Exhibit R-13-F)

prices of diet and regular soft drinks have been kept equal by producers. Therefore, the mechanism by which the increase in market share is claimed to have been achieved is via increased advertising or other marketing effort in respect of diet soft drinks by the suppliers as the profit margin on the diet drinks became more favorable with declining aspartame prices. There is no evidence whatever that this hypothesized increase in marketing expenditures actually occurred. The only available evidence on advertising is for the United States. There the opposite occurred: less money both absolutely and relative to regular soft drinks was spent on diet drinks as the price of aspartame fell.[6] Furthermore, the logic of Dr. Fry's hypothesis is not clear since throughout the period in question in his study the ingredient price of aspartame was above that of sugar. Thus, even though the price of aspartame was falling and its cost disadvantage was decreasing, it is difficult to see why soft drink suppliers would find it in their interest to increase promotion of a lower profit product. Even on the basis of Dr. Fry's hypothesis it is unclear what the measured "cross-elasticity" represents since the claimed effect of the price change is so indirect.

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[6] Supplementary expert affidavit of J. Fry, Schedule 23, Table 1 (Exhibit R-13-G).

Measuring cross-elasticity is a difficult thing to do because of the problems of isolating the effect of price changes from other factors affecting sale. It is perfectly clear that the demand for diet products is greatly affected by life-style. No attempt was made to allow for this factor, nor could it have been, given the limited number of available observations. The growth in sales of diet drinks has been much faster than that for regular drinks over a long period predating the introduction of aspartame (as shown by the data filed for the United States between 1972 and 1988):[7] the growth rate in the diet segment was well over two and one-half times that for regular drinks between 1972 and 1982, before aspartame was a factor, and in spite of perceived health problems with the ingredient then used in diet drinks. The fact that there was continued growth after aspartame was introduced and its price was falling does not in any way support a finding that the growth in the diet segment can be attributed to the fall in the price of aspartame. While it is possible that aspartame could indirectly compete with caloric sweeteners in Canada and the EEC now that aspartame's price is lower on a sweetness equivalency basis, the evidence regarding this possibility and how it might affect the pricing of aspartame can only unfold in the future.

The question of indirect competition between aspartame and caloric sweeteners was also addressed through evidence on "cannibalization",

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[7] *Ibid.*

which in the present context refers to sales of low-caloric or diet formulations of a product at the expense of the regular or full-caloric formulations. The import of this evidence on whether the price of aspartame is constrained by prices of caloric sweeteners is unclear. As stated by Professor Wilson, the fact that some consumers always or occasionally prefer a low-caloric formulation tells us absolutely nothing about the indirect price competition between aspartame and caloric sweeteners.[8] Dr. Fry gave evidence regarding cannibalization of regular soft drinks by diet versions in the United States. This evidence is in the form of a regression equation in which the consumption of soft drinks (diet, or diet plus regular) is "explained" by gross national product.[9] Apart from whether this evidence is relevant to the issue of substitutability, the Tribunal finds it unconvincing on its own terms given the failure of Dr. Fry to take into account the false statistical signals and misleading impressions of causality created by underlying trends in the economy that are common in this type of analysis.

Examples of advertising by associations of sugar producers in Australia and other countries, highlighting the "naturalness" of sugar compared to aspartame, were introduced by the respondent as further evidence of competition between

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[8] Transcript at 1161-62 (8 February 1990).

[9] Supplementary expert affidavit of J. Fry at 2-3 and Schedule 23, Tables 2, 3 (Exhibit R-13-G).

sugar and aspartame. While these advertisements indicate that the sugar associations believe that they can affect the demand for sugar (and aspartame) by discrediting the origin of aspartame, they do not affect the conclusion that substitution between diet and regular products is primarily life-style rather than price related.

Dr. Fry also submitted measures of the "cross-elasticity" between aspartame and cyclamates using the sales of table-top brands containing cyclamates and aspartame.[10] The figure obtained is approximately .35 which indicates a greater degree of indirect price competition than in the case of aspartame and caloric sweeteners used in soft drinks. There is no more reason to believe that the figures used by Dr. Fry measure the "cross- elasticity" between aspartame and cyclamates in table-top use than that similar figures measured the degree of indirect competition between aspartame and caloric sweeteners in soft drinks. The pattern captured by the numbers is a steady decline in the price of aspartame relative to that of cyclamates at the same time that sales of table-top sweeteners containing aspartame rose while those containing cyclamates were falling. It is noteworthy, however, that although the price of aspartame fell, it was at all times much more expensive than cyclamates -- approximately nine times in 1984 and slightly less than four times in 1988.[11] While the ingredient

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[10] Schedules to the expert affidavit of J. Fry, Schedule 12 (Exhibit R-13-F).

[11] Confidential schedules to the expert affidavit of J. Fry, Schedule 11 ( Exhibit R-13-C).

cost of aspartame and cyclamates are in evidence, the prices charged for these table- top sweeteners are not. Figures in evidence on advertising expenditures of the principal table-top brand containing aspartame do not provide any coherent pattern.[12] The evidence does not support a conclusion that the changes in the relative shares of brands containing aspartame and cyclamates were due solely or primarily to what was happening to the prices of those ingredients. For example, consumers' perceptions of the safety of the two ingredients will obviously influence their relative sales.

This is not to say that it is unlikely that there is competition, broadly conceived, between aspartame and cyclamates. The critical question for present purposes is the extent to which this broad competition limits the ability of aspartame producers to raise prices. The information on which the measurement of cross-elasticity is based is simply too inadequate for the measurement to be useful in this regard. Finally, the fact that sales of aspartame for table-top use represent a very small percentage of total sales of aspartame means that the extent to which aspartame is in direct or indirect competition in this area has a correspondingly small effect on changes in profitability resulting from price changes.

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[12] Supplementary expert affidavit of J. Fry, Schedule 24, Table 2 (Exhibit R-13-G).

The most potent source of competition for aspartame is likely to be from new high-intensity sweeteners. It is, however, difficult to weigh the potential competitive impact of a product that has not yet been approved for any use in any jurisdiction and will undoubtedly take a number of years to be brought into full-scale production after it is approved. The same comment applies to the possible legalization of cyclamates in the United States. While cyclamates are regarded as a good blended sweetener for soft drinks, whether they will be allowed for this purpose and will be an ingredient that beverage producers choose to use is unknown.

The best way of judging the extent to which the price of aspartame is constrained by sweeteners currently on the market, and those that are anticipated to be introduced, is to compare the price of aspartame in jurisdictions where the only competition comes from these other sweeteners to the price in jurisdictions where there is at least the possibility of competing aspartame suppliers. The former is the case in the United States where the use patent has been extended; the latter is the case in Canada. The average price of aspartame in the United States is more than 50 percent higher than it is in Canada. Alternative sweeteners do not provide sufficient competition to limit the market power of NSC in the United States.

In considering the competitive impact of alternative sweeteners it is also relevant to consider the decision of NSC to double, approximately, its production capacity. This decision has been taken in order to safeguard its market share once its United States use patent expires at the end of 1992. In weighing the risks posed by other sweeteners the decision was clearly taken to confront potential competition from other producers of aspartame by developing a highly efficient production capacity capable of meeting much of the future demand.

**Conclusion as to the Product Market**

To sum up, there is no evidence of direct competition between aspartame and caloric sweeteners and very weak evidence of indirect competition between diet and full-caloric products. There is, in comparison, some direct competition from other currently approved high-intensity sweeteners serving the diet market. None by itself, however, is a good substitute in large market segments, and there is also little indication that there is a serious threat from blends. We therefore would define the product market as being aspartame. It really matters little, however, whether the relevant product is defined as "aspartame" or "high-intensity sweeteners" so long as the limited extent to which other high-intensity sweeteners constrain aspartame prices is kept in mind. In Canada, aspartame is the only high-intensity sweetener allowed as a food additive.

Any competition in the table- top segment is likely to have very limited effect on overall prices. Therefore, the effect in Canada of competition from other high-intensity sweeteners must be indirect, flowing from foreign to Canadian aspartame prices. The critical question is the extent to which the Canadian market is insulated from the effects of competition, if any, elsewhere. The answer to this question lies in the definition of the geographic market.

## III. THE GEOGRAPHIC MARKET

Given that there is no production of aspartame in Canada, from the point of view of source of manufacturers' supply Canada is necessarily part of a geographic market that extends beyond its borders. Since Canadian buyers are dependent on manufacturers in other countries, the further question arises as to whether Canada is a separate geographic market at the level of distribution.

The Director takes the position that the relevant geographic market for assessing the impact of the respondent's practices on competition in the sale of aspartame is Canada. He submits that this is supported by: price relationships in different geographic areas (in particular, as between Canada and the EEC); the separate treatment of Canada with respect to volume and price in multi-

country contracts between NSC and Coke and Pepsi; and Canada's own regulatory scheme for admitting intense sweeteners as food additives, a scheme that leads to results different from those found in countries within the EEC. In the view of the Tribunal, the latter consideration is not very helpful in the delineation of geographic markets. It is true that more restrictive regulations regarding other high-intensity sweeteners are likely to increase the demand for aspartame and allow for higher prices. However, this consideration does not address the critical question required to be answered in defining geographic markets, namely, whether an area is sufficiently insulated from price pressures emanating from other areas so that its unique characteristics can result in its prices differing significantly for any period of time from those in other areas.

The respondent's position is that the geographic market is worldwide (save for those countries where NSC still holds a use patent, presumably). It is based on the considerations that transportation costs are low, that there are no Canadian tariff or non-tariff barriers[13] and that, according to Professor Mathewson, an expert witness for the respondent, the minimal required infrastructure for distribution makes entry easy. Professor Mathewson

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[13] The nominal tariff rates for aspartame are as follows: Most-Favoured-Nation Tariff, 12.5%; General Preferential Tariff, 8%; United States Tariff (as of 1 January 1990), 7.5%. See *Customs Tariff*, R.S.C. 1985, c. C-54, item 2924-29.00.10. Under the *Chemicals and Plastics Duties Reduction or Removal Order, 1988,* SOR/88-74, as am. SOR/88-340, SOR/89-327, SOR/90-383, aspartame comes into Canada free of duty until30 June 1991. On that date the exemption will likely be renewed for another year; an extension is apparently a routine matter.

concludes that as long as there are existing suppliers outside Canada they would quickly enter, directly or through others, should NSC attempt to raise Canadian prices.

Geographic market definition represents an attempt to determine the extent of the territory where there is competition and in which prices for a product tend toward uniformity. In most industries, the absence of governmental trade barriers and low transportation costs is enough to ensure that national boundaries do not create separate markets, particularly where there is easy entry into distribution. Under these circumstances one is usually justified in assuming that sellers (or even buyers) will move product from lower-priced areas to higher-priced areas so that attempts to charge higher prices in any region will be frustrated. This cannot, however, be taken for granted.

Any tendency towards equalization of aspartame prices 1s unlikely to result from arbitrage in a narrow sense, i.e. the physical movement of goods from lower-priced to higher-priced areas, since supply contracts for aspartame are country or region specific. To the extent equalization occurs, it is more likely to come from the negotiating position of multinationals who account for a large fraction of purchases. Even in companies that do not negotiate

centrally, personnel in the different regions know the prices paid elsewhere.

On the supply side, HSC has an incentive to push its selling efforts in the region that offers the higher returns, thus tending to create downward pressure in the region with higher prices. Potential new entrants into distribution would have the same incentive. Professor Mathewson's conclusion on the ease of entry into distribution should be qualified by noting that the mere existence of the NutraSweet logo, its history and its use on the packaging of most of the major aspartame buyers is one of the conditions of entry faced by new distributors. Whether and to what extent the logo constitutes a barrier to entry need not be discussed here. The most important test of the operation of this and other factors in segregating the Canadian market from the rest of the world where there is competition (i.e. except for patent protected areas) is in the prices actually paid. The most complete price information in evidence is for Canada and Europe, particularly the EEC, and, in fact, these are the only two significant areas of aspartame consumption outside of the patent areas, the United States and Australia.

**Conclusion as to the Geographic Market**

The bottom line price of NSC, or the "net/net price" to use the term employed by NSC, is arrived at by applying a series of discounts that may be region or customer specific. NSC's average net/net prices in Europe were 10 percent higher than Canadian prices in 1987, the year that the use patents expired in Canada and in the United Kingdom (which had the largest sales of aspartame in Europe), 6 percent higher in 1988, and 13 percent lower in 1989.[14] Country-specific clauses in multi-country contracts along with these average price differences indicate that market conditions in Canada, which include the marketing practices of NSC, can and have produced prices that differ significantly from those in other regions of competition. In other words, it is reasonable to treat Canada as a separate geographic market for the purposes of evaluating the effects of NSC's marketing practices.

## IV. ASPARTAME PRODUCTION: POTENTIAL ENTRANTS AND ENTRY CONDITIONS INTO MANUFACTURING

Aspartame is produced by combining (or "coupling") aspartic acid and phenylalanine. The former is available from a number of sources because it has uses other than in the production of aspartame. Phenylalanine,

[14] Exhibit D-3 (confidential).

on the other hand, is almost exclusively used as an input in aspartame and aspartame producers must integrate in one way or another into its production.

NSC has two plants for the production of aspartame, one in University Park, Illinois and the other in Augusta, Georgia. The former was opened in 1982 and employs a less capital intensive, but overall apparently more costly coupling technology, the "Z" process. The Augusta plant, started up in 1985, uses the "F" process that is based on technology developed by NSC's parent, Monsanto Company.[15] HSC uses the "Z" process, but it employs an enzymatic rather than a chemical process. Although having expertise in both processes, Ajinomoto apparently employs a third chemical process.

There are a number of steps in aspartame production. Each or several combined, depending on the technology, is the subject of patents held by different firms. Apart from NSC (through its licensing agreements with Ajinomoto) and Ajinomoto, no single firm holds patents covering all steps. Ajinomoto is the sole firm with patents covering crystallization, which comes near the end of the production process. Ajinomoto has, according to the evidence of HSC, launched suits in England and Holland against HSC

[15] The cost estimates provided by NutraSweet did not include a cost for the use of capital apart from depreciation. Allowing for the cost of capital would have a greater effect on the more capital intensive "F" process and tend to eliminate or reverse the cost difference that is estimated to exist without this cost component.

claiming patent infringement. A number of firms are known to hold patents covering one or more steps. Apart from the current large scale producers (NSC, Ajinomoto and HSC), only Mitsui Toatsu of Japan is known to hold a relatively full patent portfolio. It covers all production steps save for crystallization.

The Director takes the position that existing patent portfolios create a significant barrier to would-be entrants. He is also of the view that this barrier is reinforced by the economies of scale and sunk costs of aspartame production. The respondent's position with regard to patent portfolios is that it is in the interest of those holding unutilized technology to license their patents and the fact that individual firms do not have patents covering all processes does not create a barrier. The Tribunal accepts that it is not necessary to hold patents in order to produce aspartame; it is only necessary to have access to technology that does not violate patents held by others. Further, the fact that a patent is held does not indicate that the technology covered by the patent is low cost. The Tribunal is of the view that technology and proprietary technology protected by trade secrecy is an impediment to entry, but the available evidence is not sufficiently detailed to go beyond this mild conclusion. Potential entrants probably face a trade-off between investing in low cost technology and using available higher cost techniques. Firms contemplating large-scale entry through dedicated plants would almost certainly have to make investments in

technology to assure that they could achieve competitive costs.

Dr. Fry and Professor Mathewson take the position that there are numerous potential entrants, represented by general fine chemical firms or former aspartame producers, who can easily enter or re-enter the industry. Professor Mathewson summarizes Dr. Fry's evidence and its implications:

> James Fry lists the current producers of aspartame in the world, including their production capacities, as well as potential new producers of aspartame. Further, he details the costs and time lags for converting fine chemical plants to the production of aspartame or reconverting former aspartame facilities to produce aspartame again. In general, any conversion costs are low and the time lags are short....
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> [Given low transportation costs and ease of entry into distribution in Canada], the competitive pressures of potential suppliers under these circumstances would seem to be substantial. The ease of entry into the production and distribution of aspartame implies that NSC must act competitively to survive.[16]

Dr. Fry and Professor Mathewson stress the length of time it would take a fine chemical producer to convert to aspartame production. Their analysis does not take account of the fact that fine chemical producers must have a source of phenylalanine and this requires investment in the production of this input directly or through a contractual commitment. Mr. Minarich, Vice-President of Operations and Technology for NSC, stated that it should be

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[16] Expert affidavit of F. Mathewson at paras 31-32 (Exhibit R-20-C) [footnotes omitted].

possible to purchase phenylalanine. The price range he suggested is well above NSC's cost of producing this ingredient. The evidence of Dr. Fry and of Professor Mathewson also avoids the key question regarding relative costs of producing aspartame in dedicated and general purpose plants. The uncontested evidence of Mr. Vermijs, General Manager of HSC, is that it is considerably more expensive to produce in general purpose plants which would presumably be the type used by fine chemical firms to commence aspartame production.

A tolling agreement between NSC and Hexcel, a fine chemical producer, does not support the view that such producers can easily enter the industry. Under this agreement Hexcel is to manufacture aspartame for NSC. The apparently more costly "Z" coupling technology is to be employed, presumably because it requires equipment that the toll producer, for the most part, has on hand. The price to be paid to Hexcel may not reflect its production costs since NSC will be supplying the know-how, essential raw materials and some equipment. Furthermore, the other alternatives open to Hexcel are not known. The returns that it could earn from producing other fine chemicals would determine what it would demand from NSC. A restrictive covenant in the contract prevents Hexcel from producing aspartame for a five-year period following the termination of its supply agreement with NSC.

Dr. Fry cited a number of firms that have produced aspartame at one time, are currently producing it, or have expressed an interest in producing it. The latter evidence is too inconclusive with respect to potential competition to be meaningful (or useful). The information regarding former or current producers is summarized below. The scale of the plants is based on the evidence of Dr. Fry[17] but the evidence of other witnesses has been taken into account in establishing their status where his evidence was not definite or was contradicted. The first six firms are European, the two following Japanese, and the last two Korean.

| FIRMS | SCALE (tonnes/yr) | STATUS |
|---|---|---|
| Laboratoires Bottu | 50 | Produced in mid-1980s |
| Isochem | 70 | Not producing |
| Farmitalia (currently Antibioticus) | 1000 | Will produce under contract |
| Farchemia | 100 | Not producing |
| Pierrel | 630 | Last produced m 1985 or 1986 |
| Orgamol | 25 | Produced in mid-1986 |

[17] Expert affidavit of J. Fry at 1-1 to 1-7 (Exhibit R-13-E).

| | | |
|---|---|---|
| Mitsui Toatsu | 15 | Laboratory or pilot plant[18] |
| Tosoh | 25 | Pilot plant |
| Cheil Sugar | 25 | Not producing |
| Green Cross | 125 | Recently stopped producing[19] |

Although a number of firms have produced aspartame, very little is known about the cost at which they could do so if they chose to re- enter into production. The European firms discontinued production in the mid-1980s when the price of aspartame was two to three times higher than its current price outside the United States. In almost all cases such production occurred (or is occurring) in pilot or general purpose plants.

The opportunity cost, and thus the willingness to begin producing aspartame, of existing fine chemical producers obviously depends on the returns that they can earn by producing other fine chemicals. Even though it is appreciably more expensive to produce in a general purpose fine chemical plant than one dedicated to the production of aspartame (and phenylalanine) when the cost comparison is made for plants constructed *de novo,* fine chemical producers might nevertheless have costs more comparable to dedicated producers when

[18] Dr. Fry cites Mitsui Toatsu as having a pilot plant but according to the evidence of Mr. Vermijs it is not clear whether this company is at the laboratory or pilot plant stage.

[19] Dr. Fry does not state whether Green Cross is currently producing. The evidence of Mr. Kuipers, Marketing Manager of HSC, is that it is not.

there are anticipated depressed conditions in the fine chemical industry.

Pierrel, Farmitalia and Green Cross appear to have been the most serious entrants. Pierrel produced out of a general purpose facility. It supplied NSC for a time when NSC had inadequate capacity to satisfy demand. Pierrel also tried to sell on its own account. It reportedly discontinued production with large, unsold inventories. Pierrel, like the other firms that left the industry, faced formidable difficulties because the volume of sales possible outside of the areas covered by NSC's use patent was very small.

Farmitalia supplied NSC during the period 1982-85. It will be supplying NSC under a tolling agreement during part of 1990-91. It has equipment for all of the production steps and will be employing its own technology. NSC will be supplying the two basic raw materials. The high price to be received by Farmitalia under the agreement does not support the view that its potential entry would provide a constraint on the pricing of existing producers. In any event, Farmitalia is excluded, as is Hexcel, from producing aspartame for five years following the expiration of its supply agreement.

Little is in evidence regarding Green Cross other than that it recently discontinued production and that it was not considered to be a useful toll producer by NSC.

Based on its patent portfolio, Mitsui Toatsu appears to be a potential entrant. Dr. Fry states that it has a pilot plant but according to Mr. Vermijs it may not yet be at that stage. In any event, it takes about two years to construct a full-scale aspartame plant and then several months to overcome production problems. Since there is no evidence that Mitsui Toatsu has embarked on construction it is at least that far away from entry. If it does not have a pilot plant its entry would be delayed by a further two years or so, based on the experience of HSC.

Access to technology is a necessary first step for entry. However, even a firm with comparable technology to that used by existing firms may find entry conditions difficult, particularly prior to the expiration of the United States use patent at the end of 1992. According to the evidence of Mr. Minarich, there are economies of scale for a plant with a capacity of up to more than one-third of current world output. This is consistent with the evidence submitted by Mr. Vermijs that a decline in capital equipment requirements per unit as scale increases is a common feature in the chemical industry; that is, the cost of vessels and pipes increases less quickly than their capacity. The new 2100-tonne plant

that is being constructed in Augusta falls short of Mr. Minarich's estimate of minimum efficient scale, but it nevertheless represents more than a quarter of world output and more than the total sales outside the United States. Thus, a firm that hopes to achieve cost parity with NSC must achieve a large market share. Such large scale entry entails significant risks since, according to the evidence of Mr. Vermijs, much of the investment in a dedicated aspartame plant is sunk: its value is much less in alternative uses. Another difficulty for would-be entrants is the existence of a marked learning curve in phenylalanine and aspartame production. Even a large, fully utilized plant may not provide costs comparable to those of NSC's present costs until the entrant has accumulated production experience.

**Conclusion as to Entry Barriers**

The Tribunal is satisfied that there are very serious barriers to the entry of new manufacturers of aspartame other than NSC. Entry is difficult because would-be entrants who hope to attain production costs comparable to those of NSC face barriers in the form of the patent portfolios of existing producers, significant economies of scale relative to existing world demand for aspartame and sunk costs that increase the risks of entry. Moreover, even for firms that have the necessary technology in place and the experience of pilot plant production

behind them, there is a minimum two year lag before they can begin large-scale production.

## V. SECTION 79

The Director alleges that NSC is engaging (and has been engaging since the expiry of its Canadian use patent) in the practice of a number of anti-competitive acts resulting in the likely substantial lessening of competition. The elements that must be met under section 79, quoted below, are found in paragraphs (a), (b) and (c) of subsection (1).

> 79. (1) Where, on application by the Director, the Tribunal finds that
>
> (a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,
> (b) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and
> (c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
>
> the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

### 1. "Control"

Paragraph (l)(a) requires that:

> one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business.

This first element raises a question regarding the meaning to be attributed to "control" in "substantially or completely control".

The Director submits that the ordinary dictionary definition of "control" should be applied:

> To exercise restraint or direction upon the free action of; to dominate, command.[20]

In the view of the Director, "control" is control over supply, which can be evaluated by looking to NSC's share of worldwide capacity and share of Canadian sales, or alternatively to the fact that it holds exclusive contracts covering over 90 percent of Canadian sales.

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[20] Written argument of the Director at 17.

The respondent's view is that "control" is most meaningfully treated as synonymous with "market power". Market power is generally accepted to mean an ability to set prices above competitive levels for a considerable period. While this is a valid conceptual approach, it is not one that can readily be applied; one must ordinarily look to indicators of market power such as market share and entry barriers. The specific factors that need to be considered in evaluating control or market power will vary from case to case.

The Tribunal is persuaded that the respondent's position is in keeping with the logic of the section and the Act. This finding is of little practical import because, ultimately, all relevant indicators of market power must be considered in determining whether there is likely to be a prevention or lessening of competition substantially. Furthermore, it is difficult to see how any definition of control, including the dictionary definition, could exclude a consideration of conditions of entry. The structure of the section does, however, raise a question regarding how far it is necessary to go into the evidence on control since it may include an examination of the alleged anti-competitive acts and their effects. If all of the evidence is taken up here then the three principal elements in paragraphs (a), (b) and (c) of subsection 79(1) may become melded in the evaluation of the first element. This is pervasive in competition law because the relevant factors in the different statutory elements are rarely distinct and

it is impossible not to draw on common factors whenever required.

In the alternative argument of the Director, if control is defined to mean "market power" or "monopoly power", the evidence supports the conclusion that NSC has control by reason of its very large share of sales and capacity and the existence of barriers to entry into the intense sweetener market. The latter are set out as:

> (a) process patent barriers associated with producing aspartame; (b) significant sunk costs required to produce aspartame efficiently; (c) the Respondent's contractual practices, which preclude marginal entry and therefore increase the scale of and the costs associated with initial entry; (d) marketing practices of the Respondent which require competitors to engage in similar, expensive marketing in order to compete; and (e) delays associated with regulatory approval and subsequent consumer acceptance of any new intense sweetener. In addition, the most logical potential entrant into the market, Ajinomoto, has been expressly precluded by contract with the Respondent from entering the market.[21]

Earlier discussions of entry conditions into manufacturing and the product market cover the Director's points (a), (b) and (e), while (c) and (d) relate to allegations regarding NSC's conduct. Certain terms of NSC's contract with Ajinomoto are also considered by the Director to constitute an anti-competitive act on the part of NSC. For immediate purposes, the relevance of Ajinomoto's

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[21] Confidential written argument of the Director at 21.

relationship with NSC is that virtually their total combined capacity is under the control of NSC.

The respondent's first submission regarding control is that declining prices and increased output since 1987 are evidence that NSC does not have market power. It is difficult to draw this conclusion from the evidence, particularly when it is considered along with the allegation that NSC is engaging in the anti-competitive act of pricing below its cost. What the evidence does show, and this is quite obvious in any event, is that what, if any, market power NSC currently possesses is much less than it held prior to the expiration of its Canadian use patent.

The respondent's key submission concerns the ability of Coke and Pepsi, as very large buyers, to protect their interests and to counteract any power NSC might have. Their strong bargaining power is stated to reside in the fact that they control sufficient volume to be able, if need be, to set up a rival producer to satisfy their demand. Their position is further strengthened, it is submitted, by the existence of NSC's sunk costs that make it highly vulnerable to such a threatened course of action. The respondent's submission is incomplete because it fails to consider that significant sunk costs, particularly when accompanied by extensive economies of scale, also affect the position of Coke and Pepsi as would-be entrants. As a result of this omission the respondent has greatly

exaggerated the ability of Coke or Pepsi to enter the industry. Above all, this argument ignores the negative consequences that such entry could have on the relative position of the entrant vis-a-vis its major rival and other producers of diet carbonated beverages. Assuming that either firm could find a producer capable of producing at an acceptable cost level, the effect of sufficiently large scale entry to meet the needs of either Coke or Pepsi would be the creation of significant excess capacity. This would tend to place downward pressure on aspartame prices, and this would redound to the benefit of the firm that did not integrate backwards without cost to it. Meanwhile the soft drink firm that did enter, through long-term contract or ownership, would be locked into a situation that could very well result in higher input costs than those faced by its competitors.

There is no doubt that Coke and Pepsi are extremely important customers to NSC and that it must carefully weigh their likely response to any course it adopts. It is clear that the reverse is also true. Coke and Pepsi will still be critically dependent on NSC even after the United States use patent expires, since they will still have to rely on NSC for significant volumes of a highly important ingredient. They must each also consider how the other will react. For example, the risk to them in terms of lost sales if both remove the NutraSweet

logo from their containers[22] is lower than if one of them does so alone, as would be the case if either of them did decide to enter the aspartame business. The history of the adoption of the NutraSweet logo by Coke is instructive in this regard. When aspartame was approved for use in carbonated soft drinks in the United States in 1983, Coke initially chose to use a mixture of aspartame and saccharin and Pepsi opted to use aspartame alone and to display the NutraSweet logo on its containers. Within months Coke had followed.

While Coke and Pepsi have considerable resources to protect their interests, the Tribunal is not persuaded that this consideration eliminates NSC's market power. This is particularly so while the United States use patent is in force and contractual negotiations regarding Canada are affected by it. Whatever conclusions may be reached regarding the nature and the effect of the allegedly anti-competitive contractual terms,[23] it cannot be concluded that NSC lacked market power while these were being negotiated.

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[22] Under their contracts with NSC, both Coke and Pepsi have agreed to display the NutraSweet brand name and "swirl" logo on their diet product packages in return for a significant price discount on the aspartame they buy.

[23] Exclusivity and the related contract terms are discussed *infra* at 64ff.

The respondent also submits that NSC does not have market power because of the existence of other competitors and potential competitors. With respect to smaller competitors, the respondent submits that at the price Mr. Minarich stated that phenylalanine could be purchased (on two or three months notice), these firms might be able to achieve cost levels below the current prices in Canada. Although the evidence does not permit a conclusion regarding exact cost levels of general purpose fine chemical producers, it could possibly support the respondent's conclusion. As noted in the discussion of entry conditions, much depends on the returns that could be earned if the facilities were used to produce other products. In any event, it cannot be concluded that a comparison of production costs and prices alone means that NSC does not possess market power because of potential entry; there are other costs associated with distributing the product about which there is no evidence apart from the costs of NSC, which occupies a unique market position.

The evidence that NSC possesses appreciable market power given its market share (over 95 percent of sales in Canada), entry conditions and the constraints operating on its largest customers is sufficiently compelling so that the boundaries of substantial need not be explored. Its "control" is clearly substantial. Nor is it necessary to consider here the effect of the alleged anti-

competitive acts on entry into distribution and indirectly into manufacturing.

## 2. "Class or Species of Business"

In the Director's view, the "class or species of business" referred to in paragraph 79(1)(a) should be interpreted in a "commercial" sense rather than in the economic sense of a product market, and when a commercial interpretation is applied the class or species of business is the manufacture and supply of aspartame. The Tribunal concurs with the opposing view of the respondent that "class or species of business" is synonymous with the relevant product market. This interpretation is consistent with the Tribunal's view that the meaning of "control" is market power since this concept can only meaningfully be related to a product market. Nothing hangs on the distinction in the instant case since the Tribunal considers the relevant product in Canada to be aspartame.

The Director cites *Eddy Match Co. v. R.*[24] in support of his point of view. This case was brought under the *Combines Investigation Act*,[25] a predecessor to the *Competition Act*. Section 32 provided that anyone who was a party to or

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[24] (1953), 109 C.C.C. 1 (Que. Q.B., AS.).

[25] R.S.C. 1927, c. 26, s. 32, 2.

knowingly assisted in the formation or operation of a combine was guilty of a criminal offence. "Combine" was defined in subsection 2(1) to include:

> a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, ....

Paragraph 2(4)(b) further specified that "merger, trust or monopoly" could mean:

> one or more persons ... who either substantially or completely control, throughout any particular area or district in Canada or throughout Canada the class or species of business in which he is or they are engaged, .... (emphasis added)

The underlined phrase contains the same wording as paragraph 79(1)(a).

Eddy Match Co. ("Eddy") was charged with operating a combine, namely a merger, trust or monopoly, which controlled the business of manufacturing and distributing wooden matches. Eddy and related companies had pursued an aggressive course of conduct towards and subsequent acquisition of, any new entrants into wooden match production. In identifying wooden matches as the relevant "class or species of business" the court did not consider it necessary to take into account other means of producing a

flame as possible substitutes. The court recognized that "lighting devices" was a general class which could contain many types of business but held that "class or species of business" meant wooden matches since that was the only business of Eddy and the matches were distinct from the other lighting devices.

Based on the facts in *Eddy Match Co.* and the different legislative schemes of the *Combines Investigation Act* and the *Competition Act*, the Tribunal does not believe that this case provides a sound basis for identifying "class or species of business" without referring to possible substitutes. The court in that case was seized with charges under a criminal statute, a case in which the accused had engaged in highly aggressive conduct towards other producers of wooden matches; Eddy certainly acted as though wooden matches were sufficiently distinct so that it was worthwhile for it to concentrate its efforts on that industry. In the present statute, however, section 79 provides other remedies and the deciding body is a specialized tribunal. It would run contrary to the spirit of this legislation for the Tribunal to eschew other relevant factors (i.e. possible substitutes) on some presumed technical ground.

Furthermore, the Director recognizes that the product market must be considered at some point in subsection 79(1). In his view, the appropriate

place to do so IS m paragraph 79(1)(c) m reference to the substantial lessening of competition m "a market", which requires the identification of both the product and geographic dimensions. In the view of the Tribunal, the logic of the section is better followed if the product market is precisely identified in connection with the question of "control" rather than being partially dealt with under paragraph 79(1)(a) and then revisited m paragraph 79(1)(c).

## 3. Practice of Anti-Competitive Acts

There are two elements that must be determined in paragraph 79(1)(b), namely whether there is a "practice" and whether there are "anti-competitive acts". Nine anti-competitive acts are set out in section 78:

> 78. For the purposes of section 79, "anti-competitive act", without restricting the generality of the term, includes any of the following acts:
>
> (a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
> (b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
> (c) freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

> (d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor; (e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
> (f) buying up of products to prevent the erosion of existing price levels;
> (g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;
> (h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market; and
> (i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor.

This list of anti-competitive acts is clearly not meant to be exhaustive and the respondent admits that other conduct not specifically mentioned in section 78 can constitute an anti-competitive act. A number of the acts share common features but, as recognized by the Director and the respondent, only one feature is common to all: an anti-competitive act must be performed for a purpose, and evidence of this purpose is a necessary ingredient. The purpose common to all acts, save that found in paragraph 78(f), is an intended negative effect on a competitor that is predatory, exclusionary or disciplinary.

The term "practice" is mentioned at a number of points in the Act, but it is undefined. This question was addressed by the Director but not by the respondent. The Director submits that the interpretation of "practice" adopted

in an Ontario decision on resale price maintenance is an appropriate one. The trial judge found, and was affirmed by the Court of Appeal in *R. v. William E. Coutts* Co., [26] that conduct with respect to the sale of greeting cards over a week constituted a "practice". The trial judge stated: "I believe the word is used in the section in the sense that it denotes a distinction from an isolated act or acts.[27] The Director also submits that different anti-competitive acts may be considered together, as well as repeated instances of one act, to determine whether there is a "practice".

In considering the meaning of "practice" the Tribunal is mindful of an important difference between resale price maintenance and conduct covered under section 79. The former is a criminal offence (with limited defences) whereas section 79 provides a civil remedy with a number of interrelated elements that must be satisfied before the remedy can be granted. If there is a good reason to avoid a limiting interpretation of "practice" under criminal law, it is all the more important to do so under section 79. The anti-competitive acts covered in section 78 run a wide gamut. Some almost certainly entail a course of conduct over a period of time, such as freight equalization in paragraph 78(c), whereas others consist of discrete acts, such as the setting of product specifications in paragraph 78(g). The interpretation of "practice" must

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[26] [1968] 1 O.R. 549.

[27] *Ibid.* at 555.

be sufficiently broad so as to allow for a wide variety of anti-competitive acts. Accordingly, the Tribunal is of the view that a practice may exist where there is more than an "isolated act or acts." For the same reasons, the Tribunal is also of the view that different individual anti-competitive acts taken together may constitute a practice. It is important to stress, however, that this does not in any way relieve the Director of the burden of establishing an anti-competitive purpose for each of the acts.

The Director identifies eight anti-competitive acts allegedly practiced by the respondent. With the exception of "anti-competitive pricing", none of them is specifically related to the anti-competitive acts set out in section 78. Four of the alleged anti-competitive acts relate to the terms of NSC's supply contracts and are part of a supposed attempt by NSC to induce the majority of Canadian aspartame buyers to deal exclusively in its product. These are best treated together. (A conclusion as to whether they constitute separate acts or are terms of contracts with a common theme is reserved until later.) Before discussing this area, the allegations of "abuse of governmental reporting" and "contractual exclusion of potential competitors" are taken up. "Anti-competitive pricing" and "use of U.S. patent to foreclose competition" are considered last.

The determination of an anti-competitive act, and particularly its purpose component, is a difficult task. The Director submits that evidence of subjective intent (through verbal or written statements of personnel of the respondent) or a consideration of the act itself (the premise that a corporation can be taken to intend the necessary and foreseeable consequences of its acts) can be used to establish purpose. The Tribunal finds nothing objectionable in these submissions. In most situations, of course, the purpose of a particular act will have to be inferred from the circumstances surrounding it.

(a) Abuse of Governmental Reporting Requirements

The Director submits that the fact that NSC showed a loss in its Canadian income tax returns for 1986-88 constitutes an anti-competitive act given its strong market position and the reasonable expectation that it should have been profitable. The Director's reasoning is that since NSC does not pay Canadian taxes on its Canadian operations, and will not have to do so for the foreseeable future because of its accumulated losses, it is provided with a competitive advantage vis-a-vis existing and potential competition. The respondent denies that NSC is avoiding taxes overall; if it is saving taxes in Canada, it is paying additional taxes in the United States as a result.

The Director also alleges that since there is no clear explanation for NSC's method of fixing the value of imported aspartame as shown on customs declaration forms, this too constitutes an anti-competitive act. He argues that NSC is avoiding the costs (admittedly very small) of accurately filling out the required forms. There is no duty or other monies payable by NSC associated with the import of aspartame and thus there is no financial implication associated with the accuracy of the returns.

In the v1ew of the Tribunal, this allegation fails since the Director does not even attempt to demonstrate an anti-competitive purpose associated with these alleged abuses of governmental reporting requirements.[28]

(b) Contractual Exclusion of Potential Competitors

The Director alleges that the exclusion of Ajinomoto from Canada as an independent supplier of aspartame pursuant to an agreement

[28] Teitelbaum J. makes this further observation: With regard to the reporting by NSC of a financial loss in its Canadian operation on its Government of Canada corporate income tax returns for the 1986-1988 taxation years, information which NSC solemnly declared to be the truth, and although the Director has been unable to demonstrate an anti-competitive purpose to this reporting, I would comment that senior executive representatives of NSC, including its President, testified under oath that NSC made a profit from its Canadian operations. It thus becomes obvious that by "creative accounting" NSC is able to avoid paying to the Government of Canada income taxes on the profits made by NSC in Canada. It is no excuse to state, as a representative of NSC did, that NSC would pay income taxes on its Canadian profits to the Government of the United States and would thus not avoid paying income tax on these profits.

between Ajinomoto and NSC constitutes an anti-competitive act. The written agreement has not been filed in evidence, but there is testimony from NSC witnesses that Ajinomoto has agreed not to sell in Canada (and the United States) through 1995. The respondent submits that the decision of Ajinomoto not to sell in Canada is not an anti-competitive act but part of an overall agreement that is efficiency enhancing. However, this submission is unsupported by any references to technical or economic complementarities arising from the Ajinomoto/NSC relationship.

Ajinomoto was selected as a supplier by NSC in the early 1970s (if not before) due to its expertise in areas allied to aspartame production. Until recently, Ajinomoto could not function as an independent supplier since NSC's use patents covered most of the world. The evidence shows that NSC relies on Ajinomoto for a small part of its own supply, all of the supply for the joint venture with Ajinomoto in Europe (NutraSweet AG), and for patented and proprietary technology for which it pays a royalty. Ajinomoto is free to sell in Japan for its own account.

Company documents[29] contain information indicating that NSC made large investments in the Ajinomoto plant in the early 1980s. According to the oral

[29] Exhibit VIII-29 (confidential): NSC 1989 Long Range Plan, table entitled "Capital Expenditure Trends".

evidence, the price paid by NSC to Ajinomoto for aspartame in the early and mid-1980s was set at a level designed to allow Ajinomoto rapidly to recover its capital. In later years the price had to cover primarily variable costs. A similar approach is to be used for output from a planned expansion of Ajinomoto facilities. Whether NSC will be providing capital as well for this additional capacity is not in evidence.

On its face, what is known about the arrangement suggests that NSC has ensured that it will not have to confront Ajinomoto as a competitor in the near future. Apart from the licensing of Ajinomoto technology, which is highly likely to be desirable from an efficiency standpoint, it is difficult to perceive any efficiency enhancing or pro-competitive elements in the relationship. Rather, the contrary appears to be true: the two leading producers, each with formidable, if somewhat different, strengths have in effect agreed not to compete.

The critical question is whether the agreement is an anti-competitive act under section 78. In the Director's view, the fact that NSC, given its market position, has an arrangement with Ajinomoto that excludes Ajinomoto from selling in Canada qualifies the arrangement as such. In the Tribunal's view, this by itself is not sufficient. A consistent pattern in the anti-competitive acts cited in section 78 (save for that in paragraph (f)) is that the competitor of the

dominant firm is a target not a fellow actor. While the Tribunal is reluctant to conclude that all horizontal arrangements are excluded from sections 78 and 79, we do not believe that we have been provided with adequate justification for including the NSC/Ajinomoto arrangement (insofar as it affects Canada) as an anti-competitive act under section 78.

(c) Contract Terms Associated with Exclusivity

The Director alleges that the respondent's use of the contractual terms described below constitutes a practice of anti-competitive acts.

(i) Exclusive supply clauses require that the customer purchase all of its aspartame requirements from NSC. Exclusive use clauses require that the customer use aspartame produced by the respondent as the sole or primary sweetener in some or all of the customer's products. A common formulation of these clauses is:

> X agrees to use NutraSweet brand aspartame as the sole (or primary) intense sweetening ingredient in its [list of products by name] [diet and sugar-free products] produced in Canada during the duration of this agreement and further agrees to purchase all of its requirements of NutraSweet brand aspartame from NSC.

A reference herein simply to "exclusivity" includes both types of clause. The two are slightly repetitive since NutraSweet brand aspartame cannot normally be purchased from anyone other than NSC. The result of such clauses is that the customer agrees to purchase only NutraSweet brand aspartame for all of its non-caloric sweetener requirements or for all of those requirements for a particular product line.

(ii) The trademark display allowance or logo display allowance provides a substantial discount from the gross price of the aspartame to the customer. In return, the customer must display the NutraSweet name and logo on its packaging and in print and television advertising featuring the product containing NutraSweet brand aspartame. The allowance is fixed at $X/lb calculated on the total number of pounds of aspartame the customer buys, not on the number of uses made of the trade mark. NSC dictates what has to appear on the packaging (the "NutraSweet/NutraSuc" brand name and the swirl logo) and in what colours and sizes.

Cooperative marketing allowances provide a further discount to the customer in the form of a per pound payment by NSC for support of marketing programs promoting customer products containing only NutraSweet brand aspartame. The payment is calculated on the basis of the total amount of aspartame purchased and must be applied towards NSC-approved advertising

ventures. The approval process is apparently relatively informal, consisting of mutual ongoing discussions or endorsement after the fact. One witness for a customer said that making sure the NutraSweet name and logo were in the advertisement was all that was necessary. This is in fact also dictated by the terms of the standard trademark display allowance.

(iii) In some contracts, a meet-or-release clause gives NSC the option to meet a lower price offered to its customer or to release the customer to purchase from the other supplier; and a most-favoured-nation clause ensures that the price to a particular customer is the lowest price paid by any customer for an equivalent volume of aspartame. Payment from NSC under a most-favoured-nation clause is made by cheque to the particular customer at year-end, without any further explanation.

The first two items, (i) and (ii), clearly constitute a practice since they appear in virtually every one of the respondent's supply contracts. Since the Coke and Pepsi contracts contain the two clauses in (iii) and they cover a large volume of sales over several years, the Director submits that the inclusion of these clauses constitutes a practice. This viewpoint is not disputed by the respondent and the Tribunal agrees with the Director on this point.

Exclusivity as such is not mentioned among the anti-competitive acts m section 78, but in this case it is wholly consistent with them. Exclusivity and the contract terms related to it stem from NSC's "branded ingredient strategy". The idea of identifying and promoting an ingredient such as aspartame is apparently unique to NSC. Buyers of ingredients to be used in their products tend to be highly informed; they are generally interested in the properties of the ingredient they buy and not in its image. Normally the ultimate consumers are only marginally aware, if at all, of particular ingredients in the product they consume. The NSC branded ingredient strategy was implemented soon after the FDA gave approval for the use of aspartame in carbonated soft drinks in the United States. There is no evidence that NSC ever made the use of the NutraSweet name and logo a condition of supply; rather NSC made the use of the name and logo attractive to customers through the offer of discounts for its display and for joint advertising. However, as long as NSC was, through its patent monopoly, the sole supplier of aspartame, the distinction between inducing the use of the name and logo through price reductions and requiring it as a condition of supply was largely a semantic one since NSC could arrange its prices so that customers had little effective choice. The branded ingredient strategy becomes a matter of exclusivity wherever the use patent expires and customers have at least the legal opportunity of buying from other suppliers.

As stressed in the evidence of Professor Mathewson, there is widespread exclusivity in the economy and there are numerous examples where exclusivity in distribution is required to bring forth the necessary effort for the efficient distribution of the product or service. Exclusivity can clearly be the outcome of competitive markets.

According to internal documents, NSC believes that the branded ingredient strategy is necessary to prevent price from falling to the level of marginal costs of production, which tends to occur with other chemicals that are sold as commodities. The internal documents also stress what is referred to as a "sole supplier strategy", that NSC should endeavour to capture and to keep as much of the market as possible for NutraSweet brand aspartame.[30] On the basis of this evidence and the fact that the strategy was introduced when the use patent was in force and customers did not have a choice of suppliers and marketing approaches, the Tribunal is persuaded that the strategy has been and is pursued for the purpose of excluding future or existing competition and not because it is

[30] Section 69 of the *Competition Act* provides that company documents stand as *prima facie* proof that the respondent had knowledge of their contents and that they were created with its authority. The Tribunal's conclusions on the purpose of the branded ingredient strategy are drawn from the Strategic Plan 1984-88 of the NutraSweet Group (developed in 1983 for Searle management) and NSC's Long Range Plans (1986 and 1989), prepared by Mr. Shapiro, President, for presentation to the Executive Management Committee of Monsanto Co. (Exhibits V-20, VIII-29, VIII-31)(confidential). It is not disputed that these documents accurately reflect NSC corporate policy; it is only disputed that the implications of such a policy are anti- competitive.

required for efficient distribution or use of the product.

NSC witnesses stated that the purpose of promoting NutraSweet brand aspartame was to dispel consumers' concerns regarding the safety of aspartame -- concerns that were to be expected given the adverse publicity associated with high-intensity sweeteners such as cyclamates and saccharin. In fact, NSC does not promote aspartame, but rather its own name and mark. According to surveys conducted on behalf of NSC, at least some consumers believe that the presence of NutraSweet brand aspartame in products is a positive thing. However, the fact that consumers react positively to the NutraSweet brand is an outcome for which any company engaging in extensive promotion of its product hopes and does not affect the Tribunal's conclusions regarding NSC's purpose in pursuing exclusivity.

The logo display and cooperative marketing allowances create a strong inducement for the logo's use. Any customer who wants to buy from NSC is virtually compelled to use the logo on any packaging containing NutraSweet aspartame, given that the price inducement is of the order of 40 percent when both logo display and promotion allowances are considered, with the discount for logo display comprising by far the major part. The amount of the logo display allowance is not, as far as anything in evidence shows, in any way

related to the value to NSC of the exposure obtained when its logo is displayed on one customer's packaging as compared to another's. A recent increase in the amount of this allowance was explained by Mr. Rosa, Group Vice-President and General Manager of the Sweetener Group of NSC, as being NSC's preferred form of price reduction.

The logo and advertising discounts create an "all-or-nothing" choice for customers. In the event that customers decide that they would prefer not to use the logo for a particular product line or not to commit themselves to use it on all of that line, they are forced to purchase all their supply from another supplier because it is too expensive to buy from NSC without the logo and advertising discounts. This means that new suppliers must become sufficiently established so that potential customers are willing to entrust all of their needs for a product line to the new supplier.

Although NSC is obviously interested in promoting its name and mark, exclusivity in its own right, rather than exposure of its product name, is clearly at play in the contracts with Coke and Pepsi. They receive logo display allowances for their diet drinks sold in large returnable bottles that do not bear NutraSweet brand identifiers; the trademark is represented only in tiny lettering on the bottle cap. The allowance is also paid for their diet fountain products which do not carry the logo at all.

Therefore, it is clear that the logo display and promotion allowances are essentially inducements to exclusivity.

The Director objects to the meet-or-release clause, as does Tosoh, on the grounds that it gives NSC an advantage over its competitors. When invoked by a customer, the clause provides NSC with information on competitors' offers. To retain the customer's business (or the part on which the customer received a competing bid), NSC need only match the offer. According to Tosoh, competitors are discouraged from making offers if they know that such offers will only be used as a bargaining chip with NSC. According to Professor Thompson, appearing for the Director, meet-or- release clauses are sometimes regarded by economists as an information exchange device among competing firms. In the instant case, it is his view that the clauses serve as entry-deterring devices that reinforce the anti-competitive effects of exclusivity.

In the view of the Tribunal the meet-or-release clause is there at the behest of the largest customers, Coke and Pepsi, who had entered into long-term exclusive contracts. The clause was seen as a way of mitigating the effects of being locked in by an exclusive contract. If exclusive supply is objectionable in the instant case, so is a meet-or-release clause: by making exclusivity more acceptable to customers it serves as an inducement for customers to enter into

exclusive arrangements. There is also no reason to conclude that the clause mitigates the entry-barring effects created by exclusivity. Competitors are discouraged from submitting bids since they know that NSC will be given the opportunity of meeting any price that they submit. In the event that competing bids are submitted, NSC is in a position to ensure that it keeps the business.

The Director's submission regarding the most-favoured-nation clause is that it is an inducement to exclusive dealing because it assures customers that they will not be treated worse than their competitors. The Director submits, correctly in the Tribunal's view, that only a firm with a very large market share can be expected by its customers to provide a most- favoured-nation clause because only it will almost certainly be selling to the customers' competitors. The Tribunal would observe that to the extent that large buyers can exert pressure on their suppliers and thus enhance competition, they are more likely to do so if (unlike the present case) they are assured that they alone will benefit from the pressure they exert and that competitors will not similarly benefit from their efforts. Thus, like the meet- or-release clause, the most-favoured-nation clause does not mitigate the objectionability of exclusive supply.

The Director submits that each of these contract terms associated with exclusive supply should be considered a separate anti-competitive act. In support, he cites case law from the United States relating to exclusive dealing, and case law from the European Commission concerned with "fidelity rebates" similar to the logo display and cooperative marketing allowances, and decisions from the same body relating to meet-or-release clauses. The Tribunal sees little purpose in the context of the present case in determining whether each clause constitutes an anti-competitive act. It is doubtful whether the meet-or-release and most-favoured-nation clauses would exist in the absence of an explicit or implicit exclusive supply agreement. In the Tribunal's view, the issue is whether the agreements requiring exclusive supply, and all the contract terms related to it, have an exclusionary purpose. The Tribunal is persuaded that this is the case.

(d) Selling Below Cost: Relevant Cost Standard

The Director alleges that NSC is engaging m the anti-competitive act described in paragraph 78(i) of "selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor." The Director submits alternative interpretations or sources of cost information for "acquisition cost" in the instant case. The respondent submits, correctly in the Tribunal's view, that acquisition cost does not easily lend itself to manufacturing

situations. In fact, the language of the paragraph suggests that Parliament intended this paragraph to be applied to distribution, i.e. to situations where articles are purchased for resale. Since NSC buys product from Ajinomoto, there is a purchase and resale by NSC. The respondent's submission with respect to these purchases, that acquisition cost is restricted to the cost of the articles and not to the cost of distributing them, is consistent with the language of the paragraph; that is, only the price paid to Ajinomoto, and not the marketing and distribution costs of the Canadian operations, conforms to acquisition cost. Under this interpretation, NSC's prices exceeded its acquisition costs by a comfortable margin.

The respondent also submits that if paragraph 78(i) is to be applied to the aspartame manufactured by it then only the cost of manufacturing the product conforms to the meaning of acquisition cost, and other costs, such as marketing and distribution, are excluded. There is no reason, however, for applying paragraph 78(i) to manufacturing situations where there is not a purchase and resale of articles. Therefore, paragraph 78(i) does not apply with respect to NSC's manufacturing and other costs and the Director's allegation that NSC has been selling below acquisition cost fails.

Some considerable time was spent before the Tribunal in argument as to whether, apart from the allegation of selling below acquisition costs, NSC is guilty of an anti-competitive act through some other form of predatory pricing not specified in section 78. The Tribunal is satisfied that the term "anti-competitive act" in section 78 is broad enough to cover other predatory pricing. We will not deal with this question extensively, however.

First, in spite of an exhaustive review of the evidence we find it less than compelling as to whether there has been pricing below cost by NSC. The Director did not present a consistent or coherent case as to the proper measurement of cost for this purpose. While the correct definition of "cost" here is highly debatable, we accept for present purposes the view of Areeda and Turner[31] that marginal cost (that is, the added cost of producing an additional unit) ("MC") is an appropriate standard. We also agree with them that, because MC is so difficult to determine, a proxy for it is normally average variable cost ("AVC"), that is the average cost per unit of all production taking into account only the cost components that vary with output. It flows from this, however, that AVC is only a valid proxy for MC when a firm is producing below capacity. Areeda and Turner, following common usage by economists, define "capacity" with reference to the output level that corresponds to the point where the average

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[31] P. Areeda & D.F. Turner, "Predatory Pricing and Related Practices under Section 2 of the Sherman Act" (1975) 88 Harv. L. Rev. 697, reprinted in (1980) 10 J. Reprints for Antitrust L. & Econ. 1.

total cost per unit of production ("ATC") is a minimum.[32] MC is equal to ATC at this point and therefore ATC rather than AVC is obviously the better proxy for MC for a firm producing at capacity. Capacity in this sense need not correspond to any notion of a physical limit to output since firms can often increase output by more intensively utilizing existing facilities. Doing this will cause MC to rise above ATC.

In the instant case NSC operates its plants 24 hours per day, seven days per week, with an annual shutdown of several weeks for maintenance. In the absence of further information we have adopted "capacity" to be equal to this physical limit, which also probably closely approximates the low point of ATC. Thus when at capacity, NSC can increase output only by investing in additional plant and equipment rather than by utilizing existing facilities more intensively.

It is not clear whether the plants are operated so intensively for technical reasons or because it is (and was) cheaper to do so taking into account existing and anticipated increases in sales. Given that the plants apparently have been operated at their physical limits for some time, a judgment as to whether NSC has been operating at capacity, in the sense of straining to satisfy its

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[32] *Ibid.* at 710.

level of sales, requires an examination of output and sales or inventory levels. This evidence, along with NSC's investment and purchasing decisions, leaves no doubt that NSC has been and will be fully utilizing its existing capacity to meet its sales. Under these circumstances MC is most closely approximated by ATC, that is all costs including the costs of capital. Identifying a precise date when capacity was reached is not possible, but according to the evidence of Mr. Balbirer, Vice-President of Finance and Planning for NSC, the supply situation of NSC became "very tight" towards the end of 1988. It appears to us that prior to this period, NSC was operating at less than capacity so that the appropriate test of cost would have been AVC. It also appears that during that period its prices were above AVC.

Even if NSC was pricing below cost after 1988, it is highly unlikely that NSC would be able to recoup from Canadian consumers the foregone profits resulting from below-cost pricing. There is, however, evidence that NSC would have a strong commercial motive to sell below cost, outside the United States, having regard to its desire to discourage entry into international markets now so as to preserve its own giant American market when the patent expires there in 1992. However, from the evidence available we can draw only tentative conclusions as to the relationship between prices and ATC, the relevant cost standard for a firm at capacity, after 1988.

Finally, even if we reached a conclusion against NSC in this respect, the Director in his pleadings did not ask for any remedy concerning prices other than that they be forbidden to fall below "acquisition cost", a concept we have found to be irrelevant to this case. Therefore a specific finding on selling below cost is not required in respect of any potential remedy.

(e) Use of United States Patent to Foreclose Competition

The final anti-competitive act alleged by the Director is that NSC has used its United States use patent in three different ways to gain a competitive advantage in Canada.

First, the existence of the patent is stated to have been instrumental in causing Coke and Pepsi to agree to exclusive supply contracts outside of the United States. This matter has already been considered in other contexts and in the view of the Tribunal the evidence does not support a finding that it constitutes or is part of a separate anti-competitive act.

The second way that the patent is stated to have been used anti-competitively is as an instrument for financing below-cost pricing in Canada. The argument that the patent provided NSC with a "deep pocket" is part of

the allegation that NSC was and is pricing below cost in Canada, but in the view of the Tribunal this argument does not advance the allegation.

The third way that the patent was allegedly used involved U.F.L. Foods Inc. ("UFL"). UFL is a Canadian co-packer for Nutri/System; it supplies various low calorie dishes or formulations that are marketed by Nutri/System. UFL had had a supply agreement with Tosoh for the purchase of aspartame used in these products. NSC approached Nutri/System and succeeded in obtaining its cooperation by offering it a number of incentives if it would require its co-packer, UFL, to purchase its aspartame from NSC. One of the benefits consisted of a rebate on all products containing NSC aspartame imported by Nutri/System from co-packers in the United States, equal to the difference between the NSC's United States and Canadian prices times the amount of aspartame contained in the imports.

There are several aspects to this rebate which lead to the conclusion that the United States patent is being used to exclude competition, and in a most heavy-handed fashion. It is virtually impossible for HSC or any other competitor to meet NSC's offer, short of providing customers with a blank cheque. Competitors cannot know how much the rebates on a customer's United States imports will amount to. The large difference between the price in the United States and Canada and the effect that rebating this amount has on the net/net

price is evidence that NSC is willing to price without regard to its cost in order to prevent the expansion of HSC. NSC would not have any way of knowing how costly its offer might be.

This is a form of dumping in that NSC can in effect export its product at a price below that charged in the United States, without any risk to its domestic price which is protected by its exclusive patent rights.

The Tribunal accepts the Director's submission that the use of a monopoly position (created by the United States patent) to obtain a competitive advantage for a dominant firm in another market is an anti-competitive act.

**4. Preventing or Lessening Competition Substantially in a Market**

The final element that must be satisfied for an order to issue is that the practice of anti-competitive acts has or is likely to have "the effect of preventing or lessening competition substantially in a market." For reasons that have been previously addressed, the market in question is the sale and purchase of aspartame in Canada.

The factors to be considered in deciding whether competition has been or is likely to be substantially lessened are similar to those that were discussed in concluding that NSC has market power. In essence, the question to be decided is whether the anti-competitive acts engaged in by NSC preserve or add to NSC's market power.

The issue with respect to the contract terms associated with exclusivity and the use of the United States patent as leverage in competing for Canadian customers is the degree to which these anti-competitive acts add to the entry barriers into the Canadian market and, additionally therefore, into the industry.

The arguments of the Director and the respondent can be summed up as follows. The Director submits that the NSC supply contracts and their terms tie up a very large percentage of the market and prevent small scale or "toe-hold entry" and that the proof lies in the very limited inroads into NSC's market share by HSC and would-be entrants. The respondent submits that: the supply terms are not particularly restrictive; HSC's failure to make more rapid progress is due to growing pains which are now being overcome; NSC's large market share is due to superior economic performance; and, finally, the presence of large buyers who are able to create supply options for themselves is a

guarantee that they will not accept supply contracts that injure their (and their consumers') interests.

The HSC plant was originally scheduled for completion in November 1987, but it did not get into production until mid-1988, and it did not achieve its rated capacity until the end of 1989. Prior to output being available from its plants, HSC relied on the limited output from the Tosoh pilot plant and the accumulated inventories from that operation. As a result of having to rely on output from the pilot plant, Tosoh ran into some difficulties in providing consistent samples for product testing and this delayed the acceptance of its product by some buyers. There were, however, no difficulties with acceptance by most prospective customers and, in particular, there were none with those in the carbonated soft drink industry which accounts for 84 percent of aspartame purchases. But the delay in getting the plant into full production could have caused a more general credibility problem that contributed to HSC's difficulty in attracting customers. The importance of this consideration is greatly diluted by the fact that, as its Canadian patent expired, NSC entered into exclusive contracts running, for the most part, to the end of 1988. Even upon expiry of those contracts, the customer/supplier relationship entrenched by the contract terms (discussed further below) dictated that a new supplier would have to be able to meet all of a customer's requirements, or at least those for a product line;

the customers did not have the option of placing small orders with suppliers as a way of trying them and contributing to their survival. Thus, to the extent that HSC may have had a credibility problem at the end of 1988, it cannot be separated from the effect of NSC's practices.

Success or failure for an entrant into aspartame sales hinges on its ability to obtain business from Coke or Pepsi. Both companies had entered into worldwide exclusive contracts in 1986. There was a possible opening for an entrant due to the meet-or-release clauses in those contracts.

In response to overtures from HSC/Tosoh both Coke and Pepsi asked for bids for all of their 1989 requirements. HSC/Tosoh refused on the stated ground that it did not have sufficient free capacity to meet all the needs of both companies and it wanted to deal with both in the same way. It submitted a bid covering a substantial volume but much less than that requested. The respondent submits that in so doing HSC/Tosoh was the author of its lack of success in obtaining any volume from Coke or Pepsi. We agree with Tosoh's view that it was being used by Coke and Pepsi to obtain a better price from NSC and that there was little chance that either of them was seriously considering giving all of its Canadian business to Tosoh. The fact that neither Coke nor Pepsi had conducted consumer surveys to determine the effect of removing the NutraSweet name and logo from its packages (upon changing

aspartame supplier) is very strong evidence of this. It is highly unlikely that either would take such an important step without testing likely consumer reaction. This conclusion is strongly supported by the impression left by the witnesses representing the two companies in the proceedings. As potential markets for which HSC can compete, these two companies are more restricted in their decisions on sourcing aspartame than a smaller buyer that can easily have its total requirements met by HSC. Their strategic position is also much affected by their rivalry.

The Tribunal is convinced that the exclusivity in NSC's contracts, which includes both the clauses reflecting agreement to deal only or primarily in NutraSweet brand aspartame and the financial inducements to do so, impedes "toehold entry" into the market and inhibits the expansion of other firms in the market. Since exclusive use and supply clauses appear in virtually all of NSC's 1989 contracts, and thus cover over 90 percent of the Canadian market for aspartame, it is clear that during the currency of those contracts there is little room for entry by a new supplier.

It is true that these contracts are generally only one year in duration. Theoretically, therefore, the bulk of the market is only tied up for a year at the most and then a new supplier would have the same chance as NSC of bidding for and winning the supply contracts that have expired.

There are, however, significant differences m such circumstances m the position of a new supplier and that of NSC.

There is the question of the logo unit that appears on the packaging of those customers using NutraSweet brand aspartame who also receive the logo display allowance (in 1989, all of them). If a customer switched suppliers or sourced with two suppliers, the logo unit would have to be removed from its packaging. (The practicality of sourcing from different suppliers by product or product line and thus leaving the NutraSweet logo unit on some packages and not others will be dealt with below.) If changes to advertising are involved and must be put in on short notice, then there are additional costs. There was no evidence that any customer considered the costs of removing the logo to be prohibitive to a change in aspartame supplier, although it would certainly be a factor in the decision. In the cases of Cadbury-Schweppes and Stafford Foods, who did switch to Tosoh aspartame and thus removed the logo from some or all of their packaging, Tosoh contributed to the costs of changing over.

More important than the physical or advertising costs of removing the logo is the uncertainty expressed by customers, particularly the soft drink franchisers, as to the effect of the removal, both on consumers and on their position relative to their competitors. Although Cadbury-Schweppes has removed the logo from certain canned diet products sold in Ontario and

Quebec, namely Schweppes Diet Ginger Ale and Diet Tonic Water, and buys its aspartame for those products from Tosoh, Mr. Matthews, Managing Director at Cadbury Beverages Canada Ltd., indicated that before his company would give more business to Tosoh, entailing the removal of the logo unit from other products, it would want to see one of the major cola brands (i.e. Coke or Pepsi) stop using the swirl. Cadbury-Schweppes has no concrete information that the logo is significant to consumers and is not aware of any direct negative effects resulting from the limited removal already undertaken. There is, however, obviously considerable uncertainty as to whether the logo *might* have some value and, as Mr. Matthews put it, Cadbury-Schweppes is not willing to risk putting itself at a competitive disadvantage vis-a-vis the major cola companies by taking it off all packaging.

Even Coke and Pepsi themselves expressed similar reluctance to take a chance in removing the logo. Neither has conducted market research into how their consumers feel about the logo although both Mr. Eames, President of Coca-Cola Ltd. (the Canadian subsidiary), and Ms. Price, Manager of Package Marketing for Pepsi-Cola Co., believed that there was some NSC-conducted research that appeared to indicate that diet consumers may feel that the logo indicates a safer product. Mr. Eames stated that the issue of having the logo or not is "pretty tough now it has been on for several years".[33]

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[33] Confidential transcript at 622 (25 January 1990).

Before recommending that his company take the logo off its products, Mr. Eames would want to be very comfortable that there would be no negative impact from a consumer perspective. He said that putting the logo on is "primarily a function of price; taking it off would be more than that ... ".[34] Coke does in fact sell its products without the logo in certain EEC countries. Pepsi also has some products in the EEC which do not carry the logo but Ms. Price admitted that Pepsi had been concerned that NSC and Coke would take a strong marketing position in support of a Coke brand containing NutraSweet brand aspartame and against the Pepsi products without it and that Pepsi management thoroughly canvassed this issue before the decision was taken to launch those products. The major cola companies may be ambivalent about the consumer reaction to the logo; they are certainly very apprehensive about taking a chance on removing it that a rival has not taken.

The cost of removing the logo and customers' concerns about a possible negative impact on sales from removal would be present even if all NSC contract clauses relating to exclusivity were removed. Nevertheless, the effect of the logo on entry conditions is relevant in evaluating whether exclusivity and the inducements thereto have the effect of substantially lessening competition.

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[34] *Ibid.* at 626.

Past exclusivity has contributed to the present importance of the logo. More importantly, the starting position as well as the change in market power resulting from a practice need to be considered in evaluating its effects.

Furthermore, the attitude of customers to sourcing from two different aspartame suppliers, thus allowing a smaller supplier to enter the market and gain a track record, is significant. Most of the buyers have an internal policy of using two suppliers for key ingredients, if possible. With respect to aspartame the only practical way to source from two suppliers, given the NSC pricing structure, seems to be to split sources by product line or (for soft drink makers) by package type (e.g. fountain drinks or returnable bottles). In this manner, the logo can be retained on the packaging for products containing NutraSweet brand aspartame and the logo display and cooperative allowances will still apply to that line of product or packaging. If these rebates are not available because all of the aspartame is mixed together, then the higher price on the NSC-sourced component makes the overall price too high. Sourcing from two suppliers means maintaining two inventories and keeping all the aspartame totally separate. In addition, it is not practical for all customers to split off product lines in this manner. Crush, for example, promoted all of its products jointly since none of them generated enough sales on its own to justify independent promotion and thus could not advertise separately those lines

containing NSC aspartame. Wrigley's has only one sugar-free brand of chewing gum ("Extra") as does Adams Brands ("Trident").

The Director further submits that the failure of two particular Canadian distributors of food additives and other ingredients to make any headway in attracting aspartame customers is due to the exclusionary tactics of NSC. In one case the distributor represented Lark and Pierrel (Italy) and in the other Mitsui Toatsu (Japan). The evidence of aspartame buyers is that they were not interested in purchasing from distributors who did not represent manufacturers with ongoing production. This evidence illustrates that in the presence of NSC's branded ingredient strategy, it is difficult to see any potential for "hit and run" entry of fine chemical producers into aspartame production. It is also true that NSC's price was falling rapidly. This was not mentioned as a consideration by buyers, but it obviously affected the potential profitability of the distributors.

The respondent, through its expert witness Professor Mathewson, submits that exclusivity is necessary for NSC to make the investments to meet customers' needs. A similar submission is that overall inventory costs are lower under exclusivity than they would be if each customer had to look after its own needs, as per-unit inventory costs are less when inventories are centrally

managed (by NSC) . This line of reasoning, it should be noted, is not an "efficiency defence". It leads, rather, to the conclusion that customers are, on balance, better off as a result of exclusivity and that they pass these cost savings on to consumers. Under exclusivity customers are able to negotiate a band of minimum and maximum purchases. Without it, the customers would presumably have to commit to a specific volume and would have to hold inventories to satisfy higher-than-anticipated demand, or would have to make higher-than-required purchases in the event that requirements were less than anticipated. An executive of a major customer stated that the broad band negotiated by the customer in its exclusive contract does not mean that this is an important consideration; the customer is, in any event, quite capable of accurately forecasting demand for its product. Whatever the customer's abilities, the Tribunal does not see much merit in the respondent's line of reasoning. It can always be claimed that the risk and cost of holding plant and inventory are reduced if there is a single supplier rather than several. Unless it can be shown that an industry has special characteristics that make this claimed source of cost savings important, there is no reason to give it any weight.

The respondent also submits that exclusivity is necessary to protect NSC against "free riding". NSC bore all the costs of obtaining regulatory approvals and developing markets for aspartame and now other suppliers could reap the

benefit of those investments. The Tribunal does not accept that NSC is entitled to any more protection against competition than it was able to obtain through patent grants that provided it with a considerable head start on potential competitors.

**Conclusion on Section 79**

The Tribunal therefore concludes that NSC substantially controls through its market power a class or species of business, namely the sale of aspartame in Canada.

Further, we conclude that NSC has engaged, and is engaging, in a practice of anti-competitive acts. There are several such acts, and they have been frequently repeated. They include the use in its supply contracts of exclusive supply and use clauses, logo display allowances, cooperative marketing allowances, meet-or-release clauses, and most-favoured-nation clauses. They also include the use of its United States patent to foreclose competition by a system of rebates on exports from the United States to induce Canadian importers to have only NSC aspartame used in products purchased by them in Canada.

We also conclude that these practices have had and are having the effect of preventing or lessening competition substantially.

## VI. SECTION 77

### 1. Exclusive Dealing

Section 77(1) defines "exclusive dealing" as:

> (a) any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to
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> (i) deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or
> (ii) refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and
>
> (b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs; ....

The Director submits that it can be proven that, as a condition of supplying aspartame to its Canadian customers, NSC required the customers to enter into exclusive contracts or, alternatively, that the various "fidelity rebates" (logo display allowance and cooperative marketing funds) in the contracts constitute inducements for a customer to deal exclusively in NutraSweet

brand aspartame. These arguments are put forward to meet the requirements of paragraphs (a) and (b), respectively, of subsection 77(1).

In support of his first submission, the Director argues that the presence of an exclusivity clause in the supply contracts constitutes exclusive dealing since failure by a customer to comply with the exclusivity requirement would entitle NSC to suspend its performance under the contract, namely the supply of aspartame. This follows either because of a specific rescission clause in the contract or because the exclusivity clauses are essential to the contract. The Director also argues that a "condition" of supply is simply a term or provision of the supply contract and that, therefore, the mere inclusion of an exclusivity clause in a supply contract constitutes exclusive dealing.

The Director may be correct in his submission that the exclusivity clauses constitute a "condition" of the contract once the contract is entered into, in the sense that under contract law they must be complied with or certain results will flow, including the right to repudiate. But we are of the view that in considering an allegation of exclusive dealing it is the circumstances in which the particular terms of supply were agreed upon that are critical. The ordinary meaning of the words used in paragraph 77(1)(a) is that the supplier must have refused to supply the product unless the buyer agrees to the terms described

in subparagraph 77(1)(a)(i) or (ii). The respondent submits that the evidence does not show any refusal to supply aspartame or threats of such refusal unless customers agreed to purchase exclusively from NSC. The Tribunal agrees that there is no evidence on the record that customers were refused or threatened with a refusal of aspartame supply if they did not enter into exclusive contracts with NSC. Several customers explicitly denied any coercion and admitted that the request for exclusivity originated with them. The Tribunal therefore accepts that there is no exclusive dealing in this case in the sense set out in paragraph 77(1)(a).

The Director then argues that the fidelity rebates constitute clear financial inducements to the customer both to deal only in the respondent's brand of aspartame and to refrain from using another producer's aspartame. The provision of rebates in the form of the logo display allowance and the cooperative marketing funds encourages customers to use only NutraSweet brand aspartame. In order to qualify for those discounts the logo must appear on the customer's packaging and in its television and print advertising.

Obviously, if the logo appears on the package or in the advertising, it follows that only NutraSweet brand aspartame may be used in the particular product or product line to which the packaging and the advertising belong. A customer would have to pay NSC substantially more for aspartame if he did not qualify himself for these rebates. In its written argument, the respondent concedes

that the set of circumstances surrounding these customer contracts

> probably does amount to an "inducement" of exclusivity by NutraSweet within the meaning of Section 77(1)(b), simply because a real benefit passes from NutraSweet to the customer in return for the commitment in the form of lower price or other better value.[35]

Therefore we conclude that the financial incentives and the exclusivity clause amount to exclusive dealing within the meaning of paragraph 77(1)(b): the customers clearly agreed to deal only or primarily in the products of NSC and in return received various rebates whose existence depends on exclusive use of NutraSweet brand aspartame. There are, however, other requirements to be met before an order can be made.

(a) "Practice"

The Director submits that the same definition of "practice" as holds for sections 78 and 79 should apply here (something other than an isolated act). The Tribunal accepts that this is an appropriate approach. The respondent does not dispute that a practice of exclusive dealing exists on these particular

[35] Written argument of NSC at 156.

facts in view of the number of contracts containing exclusive use and supply clauses.

(b) Other Requirements for Order

Once the existence of a practice of exclusive dealing is established, subsection 77(2) sets out the requirements for a Tribunal order to issue:

> 77. (2) Where, on application by the Director, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to
>
> (a) impede entry into or expansion of a firm in the market,
> (b) impede introduction of a product into or expansion of sales of a product in the market, or
> (c) have any other exclusionary effect in the market,
>
> with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

In considering whether NSC is a "major supplier" of a "product" m a "market", the Tribunal adopts the definition of a "major supplier" established by the Restrictive Trade Practices Commission ("RTPC") in *Director of Investigation and Research v. Bombardier Ltd.:*

> A major or important supplier is one whose actions are taken to have an appreciable or significant impact on the markets where it sells.[36]

In that case, which dealt with exclusive dealing in the snowmobile industry, the RTPC went on to state that a firm's market share is a good indicator of its importance, along with characteristics such as its financial strength and record as an innovator, and possibly other factors depending on the industry.

The relevant product and geographic market having been previously defined, it is not necessary to look beyond the respondent's extremely large market share and share of production capacity in order to conclude that NSC is a major supplier in the Canadian aspartame market. The respondent admits that if "major" denotes nothing more than quantitative sales share, then NSC is a major supplier. The respondent does not advance any other factors that might be taken into account that would affect this conclusion, and does not dispute, in any event, that the practice of exclusive dealing is widespread in Canada since virtually all customers buy pursuant to requirements contracts from either NSC or Tosoh.

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[36] (1980), 53 C.P.R. (2d) 47 at 55.

There remains the further question of whether there has been a "substantial lessening of competition". Paragraphs (a), (b) and (c) of subsection 77(2) are most conveniently, and logically, considered as part of the overall question of whether the exclusive dealing results in a substantial lessening of competition in the market. These paragraphs provide clarification of *how* such an effect on competition would be achieved. This was the approach adopted in *Bombardier:*

> Whether exclusive dealing by a supplier impedes expansion or entry of competitors in the market is most easily and meaningfully considered as part of the determination of whether there is or is likely to be a substantial lessening of competition as a result of the practice.[37]

The effect on competition of exclusivity and the related contractual terms, specifically the logo display allowance and cooperative marketing funds, have been discussed thoroughly in the context of section 79. Since the fundamental test of substantial lessening of competition is the same in both sections of the Act, the same conclusions apply.[38]

The Director also argues that the exclusive dealing practices of the NSC will have an adverse effect on the introduction of a new intense sweetener.

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[37] *Ibid.* at 56.

[38] See *supra* at 80ff.

Not only will regulatory approval have to be obtained, he submits, but a new producer will have to await the expiry of the contracts of the major users of intense sweeteners. We are not convinced that the effects on the introduction of new sweeteners would be significant and, in the light of our other conclusions it is not necessary to consider this further.

## 2. Tied Selling

Subsection 77(1) also defines tied selling. For the purposes of the section, "tied selling" means:

> (a) any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to
> (i) acquire any other product from the supplier or the supplier's nominee, or
> (ii) refrain from using or distributing in conjunction with the tying product another product that is not of a brand or manufacture designated by the supplier or the nominee, and
> (b) any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms if the customer agrees to meet the condition set out in either of those subparagraphs.

The Director submits that the respondent's trademark constitutes a tying product. He argues that, as a condition of supplying the trademark (the NutraSweet brand name and logo) to a customer, the respondent requires that the customer purchase another of its products, namely aspartame, and refrain from

using the aspartame of any other producer in conjunction with the trademark. He further argues that the respondent also offers to supply the trademark on more favourable terms, through the logo display allowance, if the customer purchases aspartame from NSC and does not use any other aspartame with the trademark.

The Tribunal recognizes that, in appropriate circumstances, a trademark might be the subject of a tying arrangement. It is not, however, convinced by the Director's argument that such is the case on the facts before it. In fact, the Director's argument on this point has not been consistent. As pointed out by the respondent, in his notice of application the Director alleged that the tying product was NutraSweet brand aspartame; in his written argument the trademark itself is alleged to be the tying product. Further, it is not clear that the Director seeks any additional remedy in this respect beyond those designed to deal more generally with exclusivity practices. In fact, the Director recognised that the respondent's proprietary rights in its trademark should not be interfered with. Therefore we are making no finding with respect to tied selling.

**Conclusion on Section 77**

The Tribunal therefore concludes that NSC has induced exclusive dealing with its aspartame customers through its financial incentives or fidelity rebates, and its exclusivity clauses. These inducements amount to a practice. NSC is a major supplier and this exclusive dealing has lessened, and is likely to lessen, competition substantially.

## VII. REMEDIES

Having reached the above conclusions as to the applicability of sections 79 and 77 to this situation, the Tribunal is authorised by subsections 79(1) and 77(2) to make orders prohibiting the respondent from engaging in the practices complained of and found to have been committed. It is also authorised by subsections 79(2) and 77(2) to make orders to overcome the effect of such practices as may have already occurred.

In formulating an appropriate order the Tribunal is of the view that it must confine itself essentially to the kind of orders requested by the Director in his original application with such modifications as may fairly be considered to have been in issue in the case. While other possible remedies were discussed during argument, no amendment was sought to the application in this respect.

It is a matter of fairness that the respondent not now be faced with a remedy of which it had no formal notice. Further, although Tosoh suggested various other remedies, it is not a party and cannot define the issues including that of the remedies being sought.

This means that the Tribunal must confine itself to the consideration of the remedies applied for by the Director whose particulars are set out at pages 28 to 31 of his Notice of application, filed on June 1, 1989.

As already noted, this means that we cannot make any order as to selling below cost, as those particulars only request a prohibition against sale below acquisition cost, a concept we have found to be irrelevant. It also means that we cannot make an order specifically addressed to the kind of rebates that NSC offered to UFL to compensate it for the difference between the United States and Canadian prices, even though we found this to be an anti-competitive act.

We have been asked in effect to declare various contracts, some of them not even made in Canada, to be invalid in whole or in part. Some questions have been raised in the pleadings as to our jurisdiction to make such declarations. Without addressing that issue, we find it preferable to confine

ourselves to certain directions to the respondent both with respect to enforcing certain terms of existing contracts or entering into such terms in the future.

Apart from these considerations we will also confine our order to terms which we believe will be relatively certain and enforceable.

We will therefore issue an order prohibiting NSC from enforcing, or entering into, certain terms of contracts for the supply of aspartame to Canadian customers: terms which require the purchaser to purchase or use only NSC aspartame; terms which provide financial inducements to purchase NSC aspartame through trademark display, advertising, or similar allowances; meet-or-release terms; and most-favoured- nation clauses, unless such clauses are also inserted in supply contracts between the respondent and any competitor of that Canadian customer.

## VIII. CONSTITUTIONAL VALIDITY OF THE TRIBUNAL

### 1. The Issues

After the Tribunal had heard all the evidence in the present case, but before final argument had been presented, Philippon J. of the Superior Court of

Quebec rendered a decision in the case of *Alex Couture Inc.* c. *P*.G. *Canada.* [39] In that decision he concluded that major sections of the *Competition Act* are constitutionally invalid and he also found the Competition Tribunal to be invalidly constituted. His reasons may perhaps be adequately summarized in the following paragraph from his decision:

> A notre avis, le Parlement n'a pas la compétence d'accorder les pouvoirs que la Loi accorde au Tribunal de la concurrence, l'assimilant à une cour supérieure d'archives avec taus les pouvoirs d'une véritable cour, sans accorder à ce tribunal les attributs essentiels d'indépendance.[40]

An unofficial translation has rendered this paragraph as follows:

> In our opinion, Parliament does not have jurisdiction to grant the powers which the Act confers on the Competition Tribunal, treating it like a superior court of record with all the powers of a true court, without giving the Tribunal the characteristics essential to independence.

As a result of this decision, counsel for the respondent, NSC, m the present case requested and obtained, on April 26, 1990, leave to amend its response in order to challenge the constitutionality of the Tribunal. As a result the following paragraph was added to its response:

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[39] (6 April 1990), Quebec 200-05-001361-877. This decision has been appealed to the Quebec Court of Appeal.

[40] *Ibid.* at 86.

> 25a. The Respondent says that the Competition Tribunal is constituted pursuant to the *Competition Tribunal Act* in a manner contrary to the *Constitution Act, 1982*, and the *Canadian Bill of Rights*, and is therefore without jurisdiction to adjudicate in this matter in that, although it is required to act judicially:
>
> (a) the legislative provisions providing for the appointment and removal of members of the Competition Tribunal other than Federal Court judges, pursuant to which appointments have purportedly been made, do not safeguard the independence and impartiality of the Tribunal; and
>
> (b) F. Roseman, a full-time, non-judicial member of the Tribunal, continues as a member of the Restrictive Trade Practices Commission under the Combines Investigation Act with statutory responsibilities that are inconsistent with constitutional requirements of neutrality, impartiality and independence that are necessary for the Competition Tribunal to act judicially.[41]

Consequently, an additional date was set aside in July 1990 for argument of the constitutional issue.

For convenience we will first set out the legislative provisions which give rise to this challenge. Subsections 5(2) and (3) of the *Competition Tribunal Act*[42] provide as follows:

> (2) Each lay member shall be appointed for a term not exceeding seven years and holds office during good behavior but may be removed by the Governor in Council for cause.

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[41] Amended response of NSC.

[42] R.S.C. 1985 (2d Supp.), c. 19.

> (3) A member of the Tribunal, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term.

When the *Competition Act* was extensively amended and the Competition Tribunal was established, it was provided in the amending legislation as follows:

> 60(1) Notwithstanding any other provision of this Act, the members of the Restrictive Trade Practices Commission appointed under the *Combines Investigation Act* (in this section referred to as the "members" and the "Commission"), while this subsection is in force, continue in office as such and may exercise such of the powers and perform such of the duties and functions as were, before the coming into force of this Act, vested in them as such for the purpose only of completing any inquiry or other matter or proceeding commenced under the *Combines Investigation Act* or any other Act of Parliament before the coming into force of this section.
>
> (2) For the purposes of any inquiry or other matter or proceeding referred to in subsection (1), the *Combines Investigation Act* and any other Act of Parliament amended by this Act shall be read as if this Act has not come into force.
>
> (3) While the members continue in office in accordance with this section, they may, if so appointed, hold office as members of the Competition Tribunal, but any person who, pursuant to this subsection, holds more than one office is entitled to be remunerated only in respect of one of those offices.
>
> (4) The Governor in Council may, by proclamation, repeal subsection (1) when he is satisfied that the Commission no longer has any inquiry or other matter or proceeding referred to in subsection (1) before it and that the Commission has reported to the Minister of Consumer and Corporate Affairs in respect of all inquiries before it.[43]

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[43] *An Act to establish the Competition Tribunal and to amend the Combines Investigation Act and the Bank Act and other Acts in consequence thereof,* R.S.C. 1985 (2d Supp.), c. 19.

The panel of the Tribunal hearing the present case is composed of two judicial members who are judges of the Federal Court- Trial Division, and one "lay member". The two judicial members, Strayer and Teitelbaum JJ., were appointed members of the Tribunal for a period of seven years effective June 30, 1986. The "lay member" is Dr. Frank Roseman who is presently serving under an appointment by the Governor in Council for a term of seven years commencing May 12, 1987.

The challenge to the validity of the Tribunal here is based on the presence of Dr. Roseman on the panel. The contention is that, as a matter of law, the Tribunal panel cannot be validly constituted because: (1) Dr. Roseman does not enjoy sufficient independence because he is appointed for a limited term of seven years but is eligible, under subsection 5(3) of the *Competition Tribunal Act,* for re-appointment should the Governor in Council so choose, and because he may be removed, according to subsection 5(2) of that Act, by the Governor in Council "for cause"; (2) Dr. Roseman is still a member of the Restrictive Trade Practices Commission ("RTPC") in accordance with the provisions of section 60 of the amending Act as quoted above and in that role has executive functions which are "institutionally inconsistent with a duty to act judicially".[44]

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[44] Memorandum of constitutional argument of NSC at para. 43.

It must be emphasized at the outset that the respondent is not disputing the personal integrity, independence and impartiality of Dr. Roseman in fact. In its factum it states the following:

> The Respondent has complete confidence in the actual personal sense of independence, impartiality and neutrality of Dr. Roseman, just as it does with respect to the other members of the Tribunal. However, it is respectfully submitted, that is not the issue.[45]

It should also be noted that when the respondent first raised this issue before the Tribunal, Dr. Roseman stated for the record that he had had absolutely nothing to do with the work of the RTPC since becoming a member of the Tribunal. He offered to provide an affidavit to this effect but none was requested.

No issue has been raised as to the independence of the judicial members of the Tribunal. They have full independence as judges of the Federal Court. They are appointed for limited terms of up to seven years as members of the Tribunal. This involves only a portion of their time since work at the Tribunal is conducted in place of some Federal Court work and carries no additional remuneration. There is no provision for the removal of judicial members of the

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[45] *Ibid.*

Tribunal before their terms as judicial members are completed, provided they continue as judges of the Federal Court.

The Tribunal accepts that it must deal with the constitutional issue to the extent that it is relevant to the hearing of this particular case by this particular panel. We are not in a position such as that of a judge of the Quebec Superior Court in the *Alex Couture Inc.* case to issue declarations as to the general validity or invalidity of legislation, but we must, in determining the law applicable to the case before us, have regard to all of the law including the law of the constitution. The determination of these questions of law must, in accordance with paragraph 12(1)(a) of the *Competition Tribunal Act*, be made by the two judicial members of the panel.

It is not suggested that the composition of the present panel in any way conflicts with legislation duly enacted by Parliament: indeed, it is clearly in accordance with the provisions of the *Competition Tribunal Act* and subsection 60(3) of the amending Act quoted above. Therefore the whole issue is a constitutional one. It involves a question of whether our constitution requires Parliament to provide some prescribed standard of independence for members of a tribunal such as this, such independence to involve some minimum security of tenure and a separation from the exercise of non-judicial functions.

To underline further the nature of the issues involved here, it must be emphasized that the legislation under attack is federal legislation dealing with a federal appointment to a federal tribunal. This has no direct relationship to the creation of provincial tribunals and the constraints which section 96 of the *Constitution Act, 1867*[46] has been held to impose on provincial legislation.

While a variety of alleged constitutional constraints on Parliament were suggested in argument, we believe they may be most conveniently grouped in two categories: implied constraints, and specific constraints arising out of the judicature provisions of the *Constitution Act, 1867* (sections 96-101).

## 2. Implied Constitutional Constraints

The essential argument made here is that the Competition Tribunal performs judicial functions and therefore the constitution implicitly requires that all members of the Tribunal must enjoy some degree of independence akin to that enjoyed by the traditional senior courts.

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[46] (U.K.), 30 & 31 Viet., c. 3.

It is admitted that there is no express constitutional requirement precisely to this effect. While some reference was made to section 7 and paragraph 11(d) of the *Canadian Charter of Rights and Freedoms,*[41] counsel for the respondent conceded that these provisions do not apply to the situation. Section 7 in guaranteeing the right to "life, liberty and security of the person" and the right not to be deprived thereof "except in accordance with the principles of fundamental justice" does not apply: there is no life, liberty or security interest involved in these proceedings which relate to alleged anti-competitive practices by the respondent in the marketing of aspartame. Further, it is clear that as a corporation the respondent cannot invoke section 7.[48]

Paragraph 11(d) of the Charter, guaranteeing the right to a hearing by an "independent and impartial tribunal", only guarantees that right to a "person charged with an offence". The respondent is not charged with an offence in these proceedings.

The respondent has also made reference to paragraph 2(e) of the *Canadian Bill of Rights*[49] which requires that:

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[47] Part I of the *Constitution Act, 1982,* being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

[48] *A.G. Quebec v. Irwin Toy Ltd.,* [1989] **1** S.C.R. 927 at 1003, 1004, 1009.

[49] S.C. 1960, c. 44.

> no law of Canada shall be construed or applied so as to
>
> …
>
> (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations; ....

While this is not a constitutional requirement it does require us to interpret the *Competition Tribunal Act* so as not to deny the respondent a "fair hearing in accordance with the principles of fundamental justice". But unless that paragraph must be read to have abolished *per se* a multitude of federal tribunals exercising judicial and quasi-judicial power whose members are not given an independence akin to that of judges, which we do not accept, then it must be understood to permit an examination of the circumstances in each case as to whether fairness or natural justice is being denied. We will come back to this question later.

It was argued that even if the above provisions do not create a specific requirement binding on Parliament in this specific situation, they are but examples of a broader principle which is implicit in the constitution. This principle is also said to be, impliedly, part of the constitution of Canada because of the words of the preamble of the *Constitution Act, 1867,* which stated that Canada was to have "a constitution similar in principle to that of the United Kingdom." It is said that the independence of the judiciary is part of the constitution of the United Kingdom and therefore the Canadian constitution

also requires that anyone who exercises judicial functions must enjoy the kind of independence accorded to judges of senior courts.

It might first be noted that this line of argument proceeds on an idealized view of separation of powers in the United Kingdom. The phrase "separation of powers" should, in relation to the United Kingdom constitution, be understood as descriptive rather than prescriptive. Even as a description it must be seen as a generalisation to which there are many exceptions. While it would not be productive to explore this question in detail, it might be observed, for example, that if Canada fully adopted the model of the constitution of the United Kingdom, the Chief Justice of Canada would, like the Lord Chancellor, be a member of the federal Cabinet and would preside in the Senate. Also, at the time of Confederation, when we inherited the principles of the United Kingdom constitution, the Master of the Rolls (the Chief Justice of the Court of Appeal) was still entitled to sit as a member of the House of Commons.[50]

Further, the United Kingdom constitution does not appear to require that judicial functions be confined to legally trained full-time judges with security of tenure. There are, for example, some 25,000 active justices of the peace in

[50] S. Shetreet, *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary* (Amsterdam: North-Holland, 1976) at 15.

England and Wales who try criminal cases and who can impose sentences of up to six months. They are mostly lay people who have no security of tenure and who serve part time.[51] Lay juries have long been a feature of both British and Canadian law. All that is required of these lay adjudicators is that they not be biased in the particular case before them. They are not constitutionally disqualified from performing judicial functions. It is also instructive to note that the constitution of the United Kingdom seemingly accommodates the existence of a tribunal similar in many respects to this Tribunal. The Restrictive Practices Court, which deals with issues of the nature before the Tribunal in this case, is composed of five superior court judges and up to ten lay members. The lay members serve for limited terms as fixed by Her Majesty on the recommendation of the Lord Chancellor and may be removed by the Lord Chancellor (himself a member of the government in power) "for inability or misbehaviour" or for conflict of interest. They are also eligible for re-appointment. Unlike this Tribunal, the Restrictive Practices Court is expressly made a "superior court of record".[52]

It must always be remembered that when the *Constitution Act, 1867* gave Canada a constitution "similar in principle to that of the United Kingdom" it

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[51] S.A. de Smith, *Constitutional and Administrative Law,* 5th ed. by H. Street & R. Brazier (Harmondsworth, Eng.: Penguin, 1985) at 369-70, 389.

[52] *Restrictive Practices Court Act 1976* (U.K.), 1976, c. 33, s. 1,3. *Restrictive Trade Practices Act 1976* (U.K.), 1976, c. 34.

also included the principle of parliamentary sovereignty which was to be subject only to such limitations as were imposed by other provisions of the constitution. Therefore any implied guarantees of separation of powers or independence of those exercising a judicial function must be weighed against the implied powers of Parliament to provide what it regards as the most effective means for adjudicating difficult economic and social issues.

The respondent instead argues that Parliament is precluded by the constitution from conferring any judicial functions on any person or body who or which does not enjoy the kind of individual and institutional independence typical of conventional courts. The terms of this alleged constitutional imperative, however, are drawn by counsel from cases involving the judges of conventional courts and involving other constitutional provisions.[53] They are of little help in defining the constitutional requirements of independence, if such there be, in relation to specialized tribunals such as the Competition Tribunal.

The Tribunal recognizes that most of its functions are of a judicial nature. In substance we determine facts on the basis of evidence and we apply pre-existing law to those facts to render binding decisions. Procedurally it is clear that we must respect the rules of natural justice and fairness in the

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[53] *Valente v. R.,* [1985] 2 S.C.R. 673; *R. v. Beauregard,* [1986] 2 S.C.R. 56.

conduct of our hearings. But we are, as the Federal Court of Appeal has recently pointed out, "an inferior Court".[54] We do not have the implied powers of a superior court and we are subject to the supervision of a superior court.[55]

If there is any implied constitutional requirement, which we doubt, for Parliament to legislate certain safeguards of independence for such a tribunal, that implied requirement would surely be consonant with the common law requirements traditionally recognized in England and in Canada. These are probably well expressed in paragraph 2(e) of the *Canadian Bill of Rights*, also relied on by the respondent, which obliges us to interpret an Act of Parliament such as the *Competition Tribunal Act* as not depriving a person of the right "to a fair hearing in accordance with the principles of fundamental justice". Insofar as those principles of fundamental justice would require independence, they have probably been best summed up by de Grandpre J. in *The Committee for Justice and Liberty v. The National Energy Board:*

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[54] *Chrysler Canada Ltd. v. Competition Tribunal*, (10 July 1990), A-135-90 at 4. This was the position taken by both counsel which the Court accepted.

[55] There is a right of appeal under section 13 of the *Competition Tribunal Act* from the Tribunal to the Federal Court of Appeal on any question of law and with leave on any question of fact; the Superior Court of Quebec has taken the position, apparently, that the Tribunal is also subject to the review powers of the superior courts of the provinces: see *Alex Couture Inc. c. P.G. Canada* (6 August 1987), Quebec 200-05-001361-877 (S.C.), granting a stay against the Tribunal, confirmed by the Court of Appeal in *P.G. Canada c. Alex Couture Inc.*, [1987] R.J.Q. 1971.

> The proper test to be applied in a matter of this type was correctly expressed by the Court of Appeal. As already seen by the quotation above, the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically -- and having thought the matter through-- conclude. Would he think that is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly."[56]

This test has subsequently been applied by the Federal Court of Appeal in at least two cases involving allegations of bias.[57] It will be noted that all of these decisions specifically involved the standard applicable to federal tribunals other than ordinary courts.

Using this test, we do not accept that because of the tenure and re-appointment provisions of the *Competition Tribunal Act* and the fact that Dr. Roseman is still a member of the RTPC, the presence of Dr. Roseman would create in a reasonable, informed person an apprehension of bias. This imaginary reasonable, informed person would take into account factors such as the following: that each member of the Tribunal, including lay members, must

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[56] [1978] 1 S.C.R. 369 at 394. This test has been approved as a constitutional requirement in certain contexts; in *Valente v. R, supra* note 53 at 689, in respect of the requirement of an "independent and impartial tribunal" under paragraph 11(d) of the *Charter;* and by Mahoney J. in *Canadian Imperial Bank of Commerce v. Rifou,* [1986] 3 F.C. 486 at 493 (CA.), as a suggested implied constitutional requirement on Parliament in respect of the exercise of its authority to create courts under section 101 of the *Constitution Act, 1867.*

[57] *Sethi v. Minister of Employment and Immigration* (1988), 87 N.R. 389 at 393, 31 Admin L.R. 123 at 129-30 (F.CA.), leave to appeal denied (1988), 36 Admin L.R. xln (S.C.C.); *Mohammad v. Minister of Employment and Immigration* (1988), 91 N.R. 121 at 132 (F.CA.), leave to appeal denied (1989), 101 N.R. 157 (S.C.C.).

before commencing his duties take an oath that he will "duly and faithfully, and to the best of his skill and knowledge, execute the powers and trusts reposed in him as a member of the Tribunal";[58] that no member can take part in any matter before the Tribunal in which he has a direct or indirect financial interest;[59] that a lay member must be assigned to a particular case by the Chairman who is a judge of the Federal Court and who will, presumably, take into account any valid reason including that of possible bias for not assigning a particular lay member to a particular case; that every panel hearing a case is presided over by a judge of the Federal Court who will also, presumably, be conscious of any apparent bias in a lay member and halt proceedings where he feels such bias to exist;[60] that lay members do not participate in the decision of any question of pure law;[61] and that there is an appeal from the Tribunal to the Federal Court of Appeal as of right on any question of law or mixed law and fact, and with leave on any question of fact alone.[62] Surely a reasonable, informed person would see in these arrangements adequate protection against bias on the part of a given lay member.

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[58] *Competition Tribunal Act*, s. 7(1).

[59] *Ibid.*, s. 10(3).

[60] *Ibid.*, s. 10(2).

[61] *Ibid.*, s. 12(1)(a).

[62] *Ibid.*, s. 13.

It is argued by the respondent, of course, that the conditions of tenure of lay members such as Dr. Roseman, given that they are appointed for a term not exceeding seven years and hold office "during good behavior but may be removed by the Governor in Council for cause", combined with the possibility of re-appointment, would make it appear to the reasonable observer that such members would decide for the Director of Investigation and Research and against a respondent in order to avoid dismissal or to create favour in hope of re-appointment. We do not accept that the right of dismissal "for cause" gives the Governor in Council the right to dismiss a member simply because he has decided a case or cases against the Director. In our view, the word "cause" must be interpreted as confined to a reason for removal involving the conduct of the member in relation to his ability to perform his duties properly, and the test of proper performance of his duties cannot depend on whether he decides in favour of the Director rather than a respondent. Instead it must depend on whether he performs his duties "duly and faithfully, and to the best of his skill and knowledge" as he has taken an oath to do.

If there is any ambiguity in the words "for cause" then we must interpret them in a way which is consistent with paragraph 2(e) of the *Canadian Bill of Rights*, as we are obliged to do by that section, and we should interpret them consistently with the alleged requirement of the constitution that such members

be independent.[63] Further we respectfully concur with the view of the Federal Court of Appeal in the *Sethi* case[64] to the effect that the reasonable, informed observer should not be taken to assume that the government will favour a member of a tribunal who deals unfairly with a party before that tribunal. While it is true that a government officer, the Director of Investigation and Research, is typically a party before the Competition Tribunal, the Minister of Consumer and Corporate Affairs who nominates lay members of the Tribunal has a broader responsibility to ensure that the *Competition Tribunal Act* and the *Competition Act* are administered in accordance with the law, and the law requires a fair hearing for parties before the Tribunal including a lack of bias on the part of members of the Tribunal.

It is also in effect argued by the respondent that a reasonable, informed person would conclude that by the mere fact of his membership in the RTPC, Dr. Roseman cannot be seen to be an unbiased member of the Competition Tribunal. But this informed observer would also note that by the very words of section 60 of the amending Act, quoted above, which continued Dr. Roseman as a member of the Commission and enabled him to sit on the Tribunal at the same time, it would be impossible for a matter which had been commenced

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[63] See *e.g. Slaight Communications Inc. v. Davidson,* [1989] **1** S.C.R. 1038 at 1078.

[64] *Supra,* note 57 at 394.

before the Commission, in respect of which it is argued Dr. Roseman might have had some administrative involvement by his membership in the Commission, to come before the Tribunal. Therefore, he could not reasonably be seen to have an institutional bias in respect to any matter coming before the Competition Tribunal. If there were, as counsel hypothesized, a case before the Tribunal closely related to matters which had previously been before the Commission it would be time enough for Dr. Roseman to disqualify himself from that particular case or for the Chairman to refrain from assigning him to it. There is no suggestion that any such circumstance exists in respect of the present case with which we are dealing.

The other aspect of the argument that Dr. Roseman's membership in the RTPC constitutionally disqualifies him as a member of this Tribunal is really based on some imagined constitutional imperatives. That is, it is contended that if a person may be called upon in another role to exercise executive functions, he cannot legally exercise any judicial functions. We see no support in the law for such a rigid separation of powers, assuming there is no reasonable apprehension of bias in respect of a given case.

We therefore conclude that, even if the legislative provisions authorizing the membership of Dr. Roseman in the Tribunal must be tested against some constitutional standard appropriate for such tribunals, the relevant legislation meets that standard for the purposes of this case. It may well be that longer terms of appointment and clear safeguards as to security of tenure would, in the interest of good public administration, be desirable but we are not persuaded that there is an implied constitutional imperative which prevents Dr. Roseman from sitting on this panel in this case.

## 3. Express Judicature Provisions of the *Constitution Act, 1867*

This aspect of the respondent's argument is to the effect that the Tribunal has been given "superior court functions" and that sections 96 to 100 of the *Constitution Act, 1867* preclude not only provincial legislatures but also the Parliament of Canada from conferring such functions on any body other than a superior court. In support of this argument the respondent relies essentially on jurisprudence concerning the constitutional limitations on provincial legislatures in respect of the creation of provincially-appointed bodies with powers analogous to those of superior, district and county courts. There are several reasons why this jurisprudence is of little help in determining the power of Parliament in respect of the creation of courts and tribunals.

It must first be observed that the limitation on provincial legislative powers in this respect has usually been tied to the provision in section 96 of the *Constitution Act, 1867* that the judges of superior, district and county courts are to be appointed by the Governor in Council. Impugned provincial legislation has, of course, provided for appointment by provincial authorities. In the present case, however, there is no such issue as the members of the Competition Tribunal are appointed by the Governor in Council and for that reason such appointments do not *per se* conflict with section 96.

The significance of section 96 has usually been seen in its keystone role in the distribution of powers -- both executive and legislative -- in respect of the constitution, maintenance, and staffing of the provincial courts. It was an essential part of the Confederation "deal", a compromise whereby provincial courts would administer all provincial laws and most federal laws. For this reason each level of government would have a role in the operation of those courts: the province through its legislative role under section 92, head 14 of the *Constitution Act, 1867*, Parliament through its role in assigning jurisdiction to such courts and in providing for the salaries of their judges, and the Governor in Council through his power of appointment of judges. It is this rationale which is referred to in *McEvoy v. A.G. New Brunswick*,[65] a case heavily relied upon by

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[65] [1983] 1 S.C.R. 704.

the respondent. In a unanimous judgment, the Court stated:

> The traditional independence of English Superior Court judges has been raised to the level of a fundamental principle of our federal system by the *Constitution Act, 1867* and cannot have less importance and force in the administration of criminal law than in the case of civil matters. Under the Canadian constitution the Superior Courts are independent of both levels of government. The provinces constitute, maintain and organize the Superior Courts; the federal authority appoints the judges. The judicature sections of the *Constitution Act, 1867* guarantee the independence of the Superior Courts; they apply to Parliament as well as to the Provincial Legislatures.[66]

From the context it is obvious that this refers only to provincial superior courts, and that the "independence" being referred to is the lack of complete dependence on one level of government or the other which these courts enjoy.

It was also part of the Confederation "deal", however, that Parliament would retain the authority under section 101 of the *Constitution Act, 1867* to create other courts for the administration of federal law. That section provides:

> 101. The Parliament of Canada may, *notwithstanding anything in this Act,* from Time to Time provide for the

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[66] *Ibid.* at 720.

> Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada. (emphasis added)

It is fundamental to note that Parliament is given power to establish "additional courts for the better administration of the laws of Canada" and that this authority is conferred *"notwithstanding anything in this Act"*. Of these words, Duff C.J. once said:

> Whatever is granted by the words of the section, read and applied as *prima facie* intended to endow Parliament with power to effect high political objects concerning the self-government of the Dominion ... in the matter of judicature, is to be held and exercised as a plenary power in that behalf with all ancillary powers necessary to enable Parliament to attain its objects fully and completely.[67]

These words were quoted with approval in the judgment of the Judicial Committee of the Privy Council on appea1.[68]

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[67] *Reference Re Abolition of Appeals to the Privy Council*, [1940] S.C.R. 49 at 63-64, affd *(sub nom. A.G. Ontario v. A.G. Canada)* [1947] A.C. 127 (P.C.).

[68] *A.G. Ontario v. A.G. Canada, ibid.* at 152.

With all due respect to those of a different view[69] section 101 does not read "notwithstanding *some things* in this Act". Thus, whatever limitations flow from sections 96 to 100 of the *Constitution Act, 1867* with respect to the nature of tribunals which provincial legislatures can create, those limitations cannot apply to Parliament in the exercise of its overriding authority under section 101. Cases such as *McEvoy* are not relevant because there what was in issue was the hypothetical exercise of Parliament's criminal law jurisdiction under section 91, head 27 of the *Constitution Act, 1867*. It was held that the exercise of that authority could not override the distribution of legislative and executive powers pertaining to provincial courts as specified in sections 96 to 100. *McEvoy* did not involve the exercise of Parliament's authority under section 101.

In fact the respondent's case rests, not on distribution of powers arguments which might be relevant if a provincial tribunal were involved, but on some kind of separation of powers which, it contends, applies to federal organs of government. In effect, it is arguing that Parliament cannot exercise its power to create courts under section 101 in a way which confers certain kinds of

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[69] See *e.g.* W.R. Lederman, "The Independence of the Judiciary" (1956) 34 Can. Bar Rev. 769, 1139 at 1175-76. It is accepted by the Tribunal, of course, that Parliament could not, for example, use its power under section 101to preclude any judicial review on constitutional issues. That flows, however, not from other provisions of the *Constitution Act, 1867*, but from the power of judicial review that is implicit in a constitution which limits the powers of governments. Stone, J. in *Canadian Imperial Bank of Commerce v. Rifou, supra*, note 56 at 510-15 also held that Parliament's power under section 101 was not limited as to the nature of the "courts" it could create.

judicial functions on bodies other than traditional courts. In support of this proposition the respondent has referred to the statements by two judges of the Federal Court of Appeal in *Canadian Imperial Bank of Commerce v. Rifou*[70]. One of the issues involved in that case was whether an adjudicator under the Canada Labour Code had been validly given 'judicial powers" by Parliament. The three members of the panel hearing the case agreed that the particular powers in question had been validly conferred. However, two members of the panel, Urie and Mahoney JJ., did not accept that Parliament's powers in this respect were completely unfettered. It appears that these comments were *obiter dicta,* and it was therefore unnecessary for those learned judges to define the source or scope of such a limitation on Parliament's powers. The point upon which they agreed in this respect was that as long as Parliament did not preclude judicial review of the decision of such an adjudicator it would not offend the constitutional limitation. This conclusion supports the validity of the Competition Tribunal as there is not only judicial review of it provided, but full powers of appeal from its decisions.

If however we should be wrong in the conclusion that Parliament is not constrained in the exercise of its powers under section 101 in the matter of courts or tribunals which it can create, we will outline briefly why we believe

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[70] *Supra,* note 56.

the traditional limitations imposed on provincial legislatures, if applicable to the establishment of federal tribunals, would not invalidate the inclusion of lay members such as Dr. Roseman in the Competition Tribunal.

It should first be underlined that the Tribunal is not a "superior court". This has been recently confirmed by the Federal Court of Appeal in *Chrysler Canada Ltd. v. Competition Tribunal*[71] with the result that this "inferior tribunal" does not have the implied powers of a superior court. It was held in that case that the Competition Tribunal, unlike a superior court, has no power to punish for a contempt committed *ex facie* of the Tribunal as no such power was specifically conferred on it.

It is true, of course, that the Tribunal does exercise essentially judicial functions. But that fact by itself does not invalidate the creation of a tribunal other than a superior, district or county court. It is a long recognized principle of administrative law that inferior tribunals can exercise judicial functions: indeed, until recently the supervising writs of prohibition and *certiorari* were available only in respect of tribunals exercising judicial and quasi-judicial functions. The criteria now accepted for determining whether a provincial court or tribunal is in reality a superior, district or country court and therefore invalidly constituted

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[71] *Supra,* note 54.

if not staffed with section 96 judges, are those set out by the Supreme Court of Canada in the *Reference Re The Residential Tenancies Act, 1979.*[72] Three criteria were identified there, and unless a tribunal comes within all three it does not violate the requirements of sections 96 to 100 of the *Constitution Act, 1867*. We will refer to the first test only which is:

> ... whether the power or jurisdiction conforms to the power or jurisdiction exercised by superior, district or county courts at the time of Confederation. [73]

We are satisfied that the kind of jurisdiction exercised by the Competition Tribunal in the present case was not exercised by a superior, district or county court at the time of Confederation. In general terms, what we are called upon to decide in this case is whether the respondent has been practising "exclusive dealing", "tied selling", or "anti-competitive acts" in its sale of aspartame in Canada. If we find that the respondent has committed any or all of these acts we must still be satisfied that the result of such acts is that competition is or is likely to be lessened substantially. There was no comparable law at the time of Confederation or for many years thereafter, and provincial, county and district courts at the time of Confederation had no comparable

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[72] [1981] 1 S.C.R. 714 at 734-36.

[73] *Ibid.* at 734.

power or jurisdiction to intervene in the market-place as the Tribunal is called upon to do. The issues involved are in many respects essentially economic and require the input of specialized knowledge in a manner unknown to pre-Confederation courts.[74]

Further, the contest is, in effect, between an officer of the state and the respondent, the proceedings, though civil in nature, being brought to protect the public interest and not simply to advance the personal interests of the initiating party. In this respect they fall between the civil and criminal law proceedings which were typical of the jurisdiction of pre-Confederation courts. Therefore the Tribunal fails to come within the first criterion of the *Residential Tenancies Act* case and it is unnecessary to consider the other criteria of that case.

In a sense, the respondent's contention that Parliament can only confer such judicial functions on section 96 courts, or possibly on federal superior courts, fails because it proves too much. It is implicit in such an argument that a "superior court" created by Parliament under section 101 has also to meet any relevant requirements in sections 96-100. The result would be that any federal tribunal to which such judicial functions are assigned could consist

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[74] For a history of the development of competition legislation see the reasons of Dickson J. in *A.G. Canada v. Canadian National Transportation, Ltd.*, [1983] 2 S.C.R. 206 at 250-54.

only of lawyers, members of the Bars of the respective provinces as prescribed in sections 97 and 98. Further, if they exercise any "superior court functions" they would have to have security of tenure to age 75 in accordance with section 99 and presumably they would have to devote themselves full time to the tribunal. This would not only invalidate a host of existing federal tribunals but would also preclude for the future the inclusion in such tribunals of persons with specialized knowledge (other than that of law) or persons who wish to continue on a part-time basis the careers from which they derive the economic, business, or other special knowledge which they are expected to bring to that tribunal. We find it difficult to believe that the constitution of Canada compels such a result.

**Conclusion on Constitutional Issues**

We therefore conclude that the Tribunal panel hearing this case has been validly constituted.

## IX. ORDER

FOR THESE REASONS, THE TRIBUNAL HEREBY ORDERS THAT:

1. In this order "Canadian customer" includes any person or corporation entering into agreements whether inside or outside of Canada for the purchase of aspartame, in respect of any aspartame to be delivered in Canada for use as a food ingredient.

2. The respondent, The NutraSweet Company, shall not enter into, or enforce, any term of an agreement for the supply of aspartame which:

(a) requires a Canadian customer

(i) to buy all of its aspartame requirements from the respondent; or

(ii) to use the respondent's aspartame exclusively or primarily as the sweetener in some or all of the customer's products;

(b) entitles a Canadian customer to receive

(i) a discount or allowance in return for the use of the respondent's trademark or logo on the customer's products or in its advertising; or

(ii) any similar discount or allowance whose purpose is to induce such customer to buy aspartame exclusively from the respondent as an ingredient for any or all of that customer's products;

(c) entitles a Canadian customer

(i) to require the respondent either to meet any price at which aspartame is offered to the Canadian customer by a competitor of the respondent or to allow that customer to be relieved from his contractual obligations to the respondent; or

(ii) to require the respondent to supply aspartame to the Canadian customer on terms as favourable as those on which the respondent supplies aspartame to any of the customer's competitors, unless such requirements is also included in the respondent's contracts for the supply of aspartame to any of that customer's competitors.

DATED at Ottawa, this 4th day of October, 1990.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) B.L. Strayer
B.L. Strayer

# 15

Federal Court Cour fédérale

**Date: 20230717**

**Docket: T-2627-22**

**Citation: 2023 FC 870**



**Ottawa, Ontario, July 17, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**JANSSEN INC.**

**Applicant**

**and**

**THE MINISTER OF HEALTH AND THE ATTORNEY GENERAL OF CANADA**

**Respondents**

**PUBLIC JUDGMENT AND REASONS**
**(Confidential version issued on June 21, 2023)**

[1] The Applicant, Janssen Inc [Janssen], seeks judicial review of a decision of the Office of Submissions and Intellectual Property [OSIP] on behalf of the Minister of Health dated November 15, 2022. OSIP determined that Canadian Patent No. 3,113,837 [837 Patent] was not eligible to be added to the Patent Register against STELARA® with respect to two supplementary new drug submissions.

[2] While Janssen has raised a number of issues on this application, of central importance are the following two issues: (i) whether OSIP's decision that a supplemental new drug submission approved for additional safety data that could provide a clinician more confidence in prescribing a drug long-term is not a "change in use of the medicinal ingredient" as prescribed by subsection 4(3) of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 [*PMNOC Regulations*] if the approved indication never included a temporal restriction on its use was reasonable; and (ii) whether the Canadian patent filing date requirement in subsection 4(6) of the *PMNOC Regulations* is *ultra vires* the *Patent Act*.

[3] For the reasons that follow, I am not satisfied that Janssen has demonstrated that there is any basis for the Court's intervention. Accordingly, the application for judicial review shall be dismissed in its entirety, with costs.

## I. Background

### A. *Drug Approval under the Food and Drug Regulations*

[4] Drug manufacturers who wish to advertise or sell a new drug in Canada must first obtain a Notice of Compliance [NOC] pursuant to the *Food and Drug Regulations*, CRC, c 870, by filing a drug submission with the Minister.

[5] The *Food and Drug Regulations* refer to several types of drug submissions, including a new drug submission [NDS] and a supplemental new drug submission [SNDS]. An NDS is

typically filed by the innovator drug manufacturer in order to obtain an NOC. An NDS contains a variety of clinical, non-clinical, chemistry and manufacturing data relating to the safety, efficacy and quality of the drug. The Minister evaluates this information to determine whether the drug meets the regulatory requirements in order to initially approve the drug for sale on the Canadian market. After an NOC for an NDS is issued, a manufacturer will typically continue to file information about the drug. Significant changes made to the information or material contained in the NDS are made by filing an SNDS. An NOC is also issued by the Minister for each approved SNDS.



**B.** ***Product Monographs***

[6] As part of the drug review process for an NDS or SNDS, Health Canada reviews a Product Monograph which is a factual, scientific document that describes a drug product's properties, claims, indications, contra-indications, conditions, dosage, administration and any other relevant information that may be required for the optimal, safe and effective use of the drug. The "Indications and Clinical Use" section of a Product Monograph, among other things, lists the uses for which the drug has been approved through the issuance of an NOC.

**C.** ***The PMNOC Regulations***

[7] The *PMNOC Regulations*, which were enacted in 1993 and have subsequently been amended on a number of occasions, were promulgated pursuant to the authority granted to the Governor in Council by subsection 55.2(4) the *Patent Act*, RSC 1985, c P-4, which provides:

The Governor in Council may make regulations respecting the infringement of any patent that, directly or indirectly, could result or results from the making, construction, use or sale of a patented invention in accordance with subsection (1), including regulations

**(a)** respecting the conditions that must be fulfilled before a document — including a notice, certificate or permit — concerning any product to which a patent may relate may be issued to any person under any Act of Parliament that regulates the manufacture, construction, use or sale of that product, in addition to any conditions provided for by or under that Act;

**(b)** respecting the earliest day on which such a document may be issued to a person and the earliest day on which it may take effect, and respecting the manner in which each day is to be determined;

**(c)** respecting the issuance, suspension or revocation of such a document in circumstances where, directly or indirectly, the document's issuance could result or results in the infringement of a patent;

**(d)** respecting the prevention and resolution of disputes with respect to the day on which such a document may be issued or take effect;

**(e)** respecting the prevention and resolution of disputes with respect to the infringement of a patent that could result directly or indirectly from the manufacture, construction, use or sale of a product referred to in paragraph (a);

Le gouverneur en conseil peut, par règlement, régir la contrefaçon de tout brevet qui résulte ou pourrait résulter, de façon directe ou autrement, de la fabrication, de la construction, de l'utilisation ou de la vente, au titre du paragraphe (1), d'une invention brevetée, et notamment :

**a)** régir les conditions complémentaires nécessaires à la délivrance à quiconque, relativement à un produit auquel peut se rapporter un brevet, de tout titre — avis, certificat, permis ou autre — en vertu de lois fédérales régissant la fabrication, la construction, l'utilisation ou la vente d'un tel produit;

**b)** régir la première date à laquelle un tel titre peut être délivré et celle à laquelle il peut prendre effet, ainsi que la manière de fixer chacune de ces dates;

**c)** régir la délivrance, la suspension ou la révocation d'un tel titre lorsque la délivrance de celui-ci entraîne ou pourrait entraîner, de façon directe ou autrement, la contrefaçon d'un brevet;

**d)** régir la prévention et le règlement de différends portant sur la date à laquelle un tel titre peut être délivré ou prendre effet;

**e)** régir la prévention et le règlement de différends portant sur la contrefaçon d'un brevet qui pourrait résulter, de façon directe ou autrement, de la fabrication, de la construction, de l'utilisation ou de la vente d'un produit visé à l'alinéa a);

**f)** régir le règlement de différends portant sur la contrefaçon d'un brevet qui résulte, de façon directe ou autrement, de la fabrication, de la

**(f)** respecting the resolution of disputes with respect to the infringement of a patent that results directly or indirectly from the manufacture, construction, use or sale of such a product;

**(g)** conferring rights of action with respect to disputes referred to in any of paragraphs (d) to (f);

**(h)** restricting or excluding the application of other rights of action under this Act or another Act of Parliament to disputes referred to in any of paragraphs (d) to (f);

**(i)** designating the court of competent jurisdiction in which a proceeding with respect to rights of action referred to in paragraph (g) is to be heard;

**(j)** respecting such proceedings, including the procedure of the court in the matter, the defences that may be pleaded, the remedies that may be sought, the joinder of parties and of rights of action and the consolidation of other proceedings, the decisions and orders the court may make and any appeals from those decisions and orders; and

**(k)** specifying who may be an interested person for the purposes of subsection 60(1) with respect to disputes referred to in paragraph (e).

construction, de l'utilisation ou de la vente d'un tel produit;

**g)** conférer des droits d'action concernant les différends visés à l'un ou l'autre des alinéas d) à f);

**h)** limiter ou interdire le recours à d'autres droits d'action prévus par toute loi fédérale concernant les différends visés à l'un ou l'autre des alinéas d) à f);

**i)** désigner le tribunal compétent à l'égard des procédures résultant de l'exercice des droits d'action visés à l'alinéa g);

**j)** régir ces procédures, notamment la procédure devant ce tribunal, les moyens de défense qui peuvent être invoqués, les conclusions qui peuvent être recherchées, la jonction de parties, la réunion de droits d'action ou d'autres procédures, les décisions et ordonnances qui peuvent être rendues ainsi que les appels de ces décisions et ordonnances;

**k)** préciser qui peut être un intéressé pour l'application du paragraphe 60(1) dans le cadre des différends visés à l'alinéa e).



[8] As confirmed by the Supreme Court of Canada in *AstraZeneca Canada Inc v Canada (Minister of Health)*, 2006 SCC 49 at paragraph 12, the *PMNOC Regulations* lie at the intersection of two regulatory systems with sometimes conflicting objectives – (i) the law governing the approval of new drugs (*Food and Drug Act*) with the objective of encouraging the bringing of safe

and effective medicines to market to advance the nation's health; and (ii) patent protection provided to innovators under the *Patent Act*.

[9] The Regulatory Impact Analysis Statement [RIAS] related to the 2006 amendments to the *PMNOC Regulations* describes the balancing function as follows:

> The Government's pharmaceutical patent policy seeks to balance effective patent enforcement over new and innovative drugs with the timely market entry of their lower priced generic competitors. The current manner in which that balance is realized was established in 1993, with the enactment of Bill C-91, the *Patent Act Amendment Act*, 1992, S.C. 1993, c. 2.
>
> On the one end of the balance lies subsection 55.2(1) of the *Patent Act*, better known as the "early-working" exception. In the pharmaceutical industry, early-working allows second and subsequent entry drug manufacturers (typically generic drug companies) to use a patented innovative drug for the purpose of seeking approval to market a competing version of that drug. Normally, conduct of this kind would constitute patent infringement but an exception has been made so that generic drug companies can complete Health Canada's regulatory approval process while the equivalent innovative drug is still under patent, in order to be in a position to enter the market as soon as possible after patent expiry. The generic pharmaceutical industry estimates that early-working can accelerate the market entry of its products in Canada by some three to five years.
>
> The PM(NOC) Regulations represent the other half of the balance. As explained in the original Regulatory Impact Analysis Statement (RIAS) which accompanied their passage in 1993, in creating the early-working exception, Bill C-91 removed an exclusive right otherwise available to patentees and the PM(NOC) Regulations are therefore required "…to ensure that this new exception to patent infringement is not abused by generic drug applicants seeking to sell their products during the term of the competitor's patent…" The PM(NOC) Regulations do this by linking Health Canada's ability to approve a generic drug to the patent status of the equivalent innovative product the generic seeks to copy. Under the current scheme, a generic drug company which compares its product directly or indirectly with a patented, innovative drug in order to

> establish the former's safety and efficacy and secure marketing approval from Health Canada (which comes in the form of a "notice of compliance" or 'NOC") must make one of two choices. It can either agree to await patent expiry before obtaining its NOC or make an allegation justifying immediate market entry that is either accepted by the innovator or upheld by the court.
>
> Thus, while early-working is intended to promote the timely market entry of generic drugs by allowing them to undergo the regulatory approval process in advance of patent expiry, the PM(NOC) Regulations are intended to provide effective patent enforcement by ensuring the former does not result in the actual issuance of a generic NOC until patent expiry or such earlier time as the court or innovator considers justified having regard to the generic company's allegations. Despite their seemingly competing policy objectives, it is important that neither instrument be considered in isolation as the intended policy can only be achieved when the two operate in a balanced fashion.



**D.** ***The Patent Register***

[10] The Minister maintains a Patent Register, which is a list of patents and certifications of supplementary protection associated with each approved drug. Pursuant to subsections 3(2) to 3(8) of the *PMNOC Regulations*, the Minister has the discretion to maintain the Patent Register, including the ability to add or delete patents in various prescribed circumstances.

[11] A "first person" who files an NDS or SNDS may, pursuant to subsection 4(1) of the *PMNOC Regulations*, submit to the Minister a patent for listing on the Patent Register in respect of the drug for which approval is sought. A patent will only be added to the Patent Register if the Minister is satisfied that the relevant regulatory criteria are met.

[12] In the case of an SNDS, paragraph 4(3)(c) sets out the product specificity requirements that must be met for a patent to be listed on the Patent Register:

| | |
|---|---|
| (3) A patent on a patent list in relation to a supplement to a new drug submission is eligible to be added to the register if the supplement is for a change in formulation, a change in dosage form or a change in use of the medicinal ingredient, and<br><br>[…]<br><br>(c) in the case of a change in use of the medicinal ingredient, the patent contains a claim for the changed use of the medicinal ingredient that has been approved through the issuance of a notice of compliance in respect of the supplement. | (3) Est admissible à l'adjonction au registre tout brevet, inscrit sur une liste de brevets, qui se rattache au supplément à une présentation de drogue nouvelle visant une modification de la formulation, une modification de la forme posologique ou une modification de l'utilisation de l'ingrédient médicinal, s'il contient, selon le cas :<br><br>c) dans le cas d'une modification d'utilisation de l'ingrédient médicinal, une revendication de l'utilisation modifiée de l'ingrédient médicinal, l'utilisation ayant été approuvée par la délivrance d'un avis de conformité à l'égard du supplément. |

[13] Subsection 4(4) of the *PMNOC Regulations* prescribe what must be included in a patent list:

| | |
|---|---|
| A patent list shall contain the following:<br><br>(a) an identification of the new drug submission or the supplement to a new drug submission to which the list relates;<br><br>(b) the medicinal ingredient, brand name, dosage form, strength, route of administration and use set out in the new drug submission or the | La liste de brevets comprend :<br><br>a) l'identification de la présentation de drogue nouvelle ou du supplément à la présentation de drogue nouvelle qui s'y rattachent;<br><br>b) l'ingrédient médicinal, la marque nominative, la forme posologique, la concentration, la voie d'administration et l'utilisation prévus à la |

supplement to a new drug submission to which the list relates;

(c) for each patent on the list, the patent number, the filing date of the patent application in Canada, the date of grant of the patent and the date on which the term limited for the duration of the patent will expire under section 44 or 45 of the Patent Act;(d) for each patent on the list, a statement that the first person who filed the new drug submission or the supplement to a new drug submission to which the list relates

is the owner of the patent,

has an exclusive licence to the patent or to a certificate of supplementary protection in which that patent is set out, or

(iii) has obtained the consent of the owner of the patent to its inclusion on the list;

(e) the address in Canada for service, on the first person, of a notice of allegation referred to in paragraph 5(3)(a) or the name and address in Canada of another person on whom service may be made with the same effect as if service were made on the first person; and

(f) a certification by the first person that the information submitted under this subsection is accurate and that each patent on the list meets the eligibility requirements of subsection (2) or (3).

présentation ou au supplément qui s'y rattachent;

c) à l'égard de chaque brevet qui y est inscrit, le numéro de brevet, la date de dépôt de la demande de brevet au Canada, la date de délivrance de celui-ci et la date d'expiration du brevet aux termes des articles 44 ou 45 de la *Loi sur les brevets*;

d) à l'égard de chaque brevet qui y est inscrit, une déclaration portant que la première personne qui a déposé la présentation de drogue nouvelle ou le supplément à une présentation de drogue nouvelle qui s'y rattache :

(i) soit en est le propriétaire,

(ii) soit en détient la licence exclusive ou détient une telle licence à l'égard d'un certificat de protection supplémentaire qui mentionne ce brevet,

(iii) soit a obtenu le consentement du propriétaire pour l'inscrire sur la liste;

e) l'adresse au Canada de la première personne aux fins de signification de l'avis d'allégation visé à l'alinéa 5(3)a) ou les nom et adresse au Canada d'une autre personne qui peut en recevoir signification comme s'il s'agissait de la première personne elle-même;

f) une attestation de la première personne portant que les renseignements fournis aux termes du présent paragraphe

sont exacts et que chaque brevet qui y est inscrit est conforme aux conditions d'admissibilité prévues aux paragraphes (2) ou (3).



[14] The *PMNOC Regulations* also prescribe timing requirements related to patent listing, which depend on when the patent is issued. Specifically, subsections 4(5) and (6) provide:

(5) Subject to subsection (6), a first person who submits a patent list must do so at the time the person files the new drug submission or the supplement to a new drug submission to which the patent list relates.

(6) A first person may, after the date of filing of a new drug submission or a supplement to a new drug submission, and within 30 days after the issuance of a patent that was issued on the basis of an application that has a filing date in Canada that precedes the date of filing of the submission or supplement, submit a patent list, including the information referred to in subsection (4), in relation to the submission or supplement.

(5) Sous réserve du paragraphe (6), la première personne qui présente une liste de brevets doit le faire au moment du dépôt de la présentation de drogue nouvelle ou du supplément à une présentation de drogue nouvelle qui s'y rattachent.

(6) La première personne peut, après la date de dépôt de la présentation de drogue nouvelle ou du supplément à une présentation de drogue nouvelle et dans les trente jours suivant la délivrance d'un brevet faite au titre d'une demande de brevet dont la date de dépôt au Canada est antérieure à celle de la présentation ou du supplément, présenter une liste de brevets, à l'égard de cette présentation ou de ce supplément, qui contient les renseignements visés au paragraphe (4).

[15] As such, only patents that have a filing date in Canada before the filing date of an SNDS are eligible to be added to the Patent Register.

[16] For the purpose of the administration of the patent list, the Minister utilizes a form entitled "Form IV" that the Minister requires be completed by each first person. Form IV states in its header in bold to "COMPLETE ONE FORM PER PATENT PER SUBMISSION".



[17] Having a patent listed on the Patent Register in relation to a particular drug affords significant protections to an innovator. If a second person files a drug submission that directly or indirectly compares their drug with, or makes reference to, a first person's drug that is marketed in Canada under an NOC and which has one or more patents listed on the Patent Register, the second person must, pursuant to subsection 5(1) and (2.1) of the *PMNOC Regulations*, address each listed patent. One manner of addressing a listed patent is to serve on the first person a notice of allegation [NOA], pursuant to subsection 5(2.1)(c), alleging that the listed patent is invalid or would not be infringed by the second person making, constructing, using or selling their drug product. The first person then has the right, within 45 days of being served with a NOA, to bring an action against the second person pursuant to subsection 6(1) seeking a declaration that making, constructing, using or selling of the second person's drug product in accordance with the second person's drug submission would infringe the listed patent(s) addressed in the NOA. When such an action is brought, the Minister is prohibited from issuing a NOC to the second person for 24 months from the date of commencement of the action or such other periods of time prescribed by subsection 7(1) of the *PMNOC Regulations*.

[18] However, not all patents will receive the aforementioned protection afforded by the regulatory regime simply by relating to a drug for which an NOC has been issued. Only those

patents that meet the product specificity and timing requirements of the *PMNOC Regulations* will benefit from the regime's protections.

## E. STELARA®

[19] STELARA® is a Schedule D biologic drug containing the medicinal ingredient ustekinumab [STELARA]. First approved in Canada in December of 2008 for the treatment of psoriasis, STELARA has since gained approvals for several other indications including its use to treat plaque psoriasis, active psoriatic arthritis and moderately to severely active Crohn's disease.

[20] There are currently no patents listed on the Patent Register in respect of STELARA. Canadian Patent No. 2,418,961 was previously listed on November 17, 2009, but expired on August 9, 2021.

[21] Health Canada's "Submissions Under Review" page shows at least one company has filed a submission for approval of a biosimilar of STELARA in January of 2023.

### (1) SNDS 244739

[22] On February 15, 2019, the Applicant filed SNDS 224739 [SNDS 739] seeking approval for a new use of STELARA for the treatment of adult patients with moderately to severely active ulcerative colitis and updates to the Product Monograph. Supporting studies were submitted, including approximately one year of data (44 weeks) from a UNIFI-M maintenance study.

[23] On January 23, 2020, the Minister approved the use of STELARA for the treatment of ulcerative colitis, issuing an NOC for SNDS 739. The NOC stated, under the heading "Reasons for Supplement":

> New indication: The treatment of adult patients with moderately to severely active ulcerative colitis who have had an inadequate response with, lost response to, or were intolerant to either conventional therapy or a biologic or have medical contraindications to such therapies.



[24] The "Dosage and Administration" section of the approved Product Monograph included a recommended induction treatment regimen for ulcerative colitis, as well as a recommended maintenance dose regimen. No temporal limitation on the duration of treatment was included in the Product Monograph. Put differently, the NOC for SNDS 739 did not approve the use of STELARA to treat ulcerative colitis for a limited period of time.

**(2) SNDS 244670**

[25] On October 1, 2020, Janssen filed SNDS 244670 [SNDS 670] seeking to update the Product Monograph of STELARA with updated two-year safety and efficacy data (96 weeks) from the same on-going UNIFI-M study on its use for ulcerative colitis (which use had been previously approved with SNDS 739).

[26] The Clinical Evaluation Executive Summary notes, under the heading "Subject", that SNDS 670 is to "update the product monograph to include results from the long-term extensions

of two Phase 3 studies for the treatment of adult patients with moderately to severely active Crohn's disease or ulcerative colitis".

[27] Both the General Note to Reviewer and Regulatory Executive Summary notes the purpose of the submission was to provide data on safety and efficacy of STELARA through five years of treatment in subjects with Crohn's disease and two years of treatment in subjects with ulcerative colitis, including relevant data in regard to a post-marketing adverse drug reaction for hypersensitivity vasculitis.



[28] Janssen indicated in the Product Information Regulatory Process Form for SNDS 670 that "there [were] no changes to the indication/Use/Dosage (including the maximum daily dose)".

[29] On September 9, 2021, Health Canada issued an NOC for SNDS 670. Under the heading "Reason for Supplement", the NOC states "Updates to the Product Monograph". The approval resulted in two changes to the Product Monograph, as shown in bold and underlined below:

| **Product Monograph (SNDS 739)** | **Product Monograph (SNDS 670)** |
|---|---|
| (1) In the "Clinical Trial Adverse Drug Reactions" section addressing adverse drug reactions reported in studies related to ulcerative colitis, on page 12: | |
| The safety of STELARA®/STELARA® I.V. was evaluated in two randomized, double-blind, placebo-controlled studies (UNIFI-I and UNIFI-M) in 960 adult patients with moderately to severely active ulcerative colitis. The overall safety profile was similar for patients | The safety of STELARA®/STELARA® I.V. was evaluated in two randomized, double-blind, placebo-controlled studies (UNIFI-I and UNIFI-M) in 960 adult patients with moderately to severely active ulcerative colitis. The overall safety profile was similar for patients with psoriasis, psoriatic |

| | |
|---|---|
| with psoriasis, psoriatic arthritis, Crohn's disease and ulcerative colitis. | arthritis, Crohn's disease and ulcerative colitis.<br><br>**The safety profile remaining generally consistent throughout the Week 96 safety analysis.** |
| (2) In the "Study and Demographics and Trial Design" section on page 58: | |
| The maintenance study (UNIFI-M), evaluated 523 patients who achieved clinical response at Week 8 following the administration of STELARA® I.V. in UNIFI-I. These patients were randomized to receive a subcutaneous maintenance regimen of either 90 mg of STELARA® every 8 weeks, 90 mg STELARA® every 12 weeks or placebo for 44 weeks. Randomization was stratified by clinical remission status at maintenance baseline (yes/no), oral corticosteroid use at maintenance baseline (yes/no), and induction treatment.<br><br>The primary endpoint was the proportion of patients in clinical remission at Week 44. Secondary endpoints included the proportion of patients maintaining clinical response through Week 44, the proportion of patients with improvement of endoscopic appearance of the mucosa at Week 44, the proportion of patients with corticosteroid-free clinical remission at Week 44, and the proportion of patients maintaining clinical remission through Week 44 in patients who achieved clinical remission 8 weeks after induction. | The maintenance study (UNIFI-M), evaluated 523 patients who achieved clinical response at Week 8 following the administration of STELARA® I.V. in UNIFI-I. These patients were randomized to receive a subcutaneous maintenance regimen of either 90 mg of STELARA® every 8 weeks, 90 mg STELARA® every 12 weeks or placebo for 44 weeks. Randomization was stratified by clinical remission status at maintenance baseline (yes/no), oral corticosteroid use at maintenance baseline (yes/no), and induction treatment.<br><br>The primary endpoint was the proportion of patients in clinical remission at Week 44. Secondary endpoints included the proportion of patients maintaining clinical response through Week 44, the proportion of patients with improvement of endoscopic appearance of the mucosa at Week 44, the proportion of patients with corticosteroid-free clinical remission at Week 44, and the proportion of patients maintaining clinical remission through Week 44 in patients who achieved clinical remission 8 weeks after induction. **Patients who completed the maintenance study through Week 44 were eligible to continue treatment through Week 96.** |

| | |
|---|---|

**(3) The 837 Patent**

[30] On September 24, 2019, Janssen filed in Canada a patent application for the 837 Patent. The 837 Patent, entitled "Safe and effective method of treating ulcerative colitis with anti-IL 12/IL23 antibody", claims priority from three U.S. provisional patents applications, the earliest one having been filed on September 24, 2018.

[31] The 837 Patent contains 68 claims generally directed toward the use of an anti-IL-12/IL-23p40 antibody (including ustekinumab) for the treatment of moderately to severely active ulcerative colitis, where the subject failed to respond to or was intolerant of at least one enumerated therapy or the subject demonstrated corticosteroid dependence and compositions for use in such treatment.

[32] The claims of the 837 Patent are directed to the treatment of ulcerative colitis, including numerous claims where the clinical response of the subject "continues at least 44 weeks after week 0".

[33] The 837 Patent was issued on July 12, 2022.

[34] On July 25, 2022, Janssen sought to list the 837 Patent in relation to SNDS 670 by submitting three Form IVs for the 837 Patent (one for each DIN).

[35] No Form IV was ever submitted for the 837 Patent in relation to SNDS 739. The deadline by which Janssen could have submitted a patent list for SNDS 739 (as prescribed by subsection 4(6) of the *PMNOC Regulations*) was August 11, 2022. There is no evidence in the record as to why this was not done.



## F. OSIP's Preliminary Decision

[36] By letter dated July 29, 2022, OSIP acknowledged receipt of Janssen's patent lists for the 837 Patent in relation to SNDS 670. OSIP advised Janssen, in detail, of the basis for its preliminary view that SNDS 670 was not approved for a change in use of the medicinal ingredient and as such, SNDS 670 did not provide a basis to list the 837 Patent. Even if SNDS was considered to be approved for a change in use of a medicinal ingredient, OSIP advised that its preliminary view was that the 837 Patent did not contain a claim to the very change sought for approval in the submission.

[37] OSIP also noted the existence of SNDS 739 and that had a patent list been submitted in respect of the 837 Patent and SNDS 739, it would not meet the timing requirements of subsection 4(6), as the filing date for SNDS 739 was February 15, 2019 and the date of filing in Canada of the 837 Patent was subsequent to that date.

[38] OSIP requested that Janssen provide representations as to the eligibility of the 837 Patent for listing on the patent register in respect of SNDS 670.

## G. Janssen's Response to the Preliminary Decision

[39] By letter dated September 14, 2022, Janssen provided detailed submissions in response to OSIP's request. With respect to SNDS 670, Janssen asserted that the 837 Patent claims [redacted] are a new method of use approved through SNDS 670, which is the submission against which Janssen originally sought listing on July 19, 2022. Janssen asserted that it was of the view that the 837 Patent is also listable as against SNDS 739 and that there are in fact no timing issues under subsection 4(6) as the only rational date to be used is the claim date and not the Canadian filing date. Janssen asserted that the use of the Canadian filing date in the *PMNOC Regulations* was illogical, arbitrary and *ultra vires* the scheme of the *Patent Act* and of the *PMNOC Regulations* themselves. Janssen asserted that OSIP ought to apply the intent of the *PMNOC Regulations* with respect to the timing of the patent and the submission under subsection 4(6) and when the claim date is properly applied, the 837 Patent is listable.

[40] In relation to Janssen's request that the 837 Patent also be listed in relation to SNDS 739, Janssen stated at footnote 2 of its submission:

> As a patent list was already submitted with respect to the '837 Patent within the requisite 30 days of its issuance we trust that the OPML will not consider this request to be out of time under subsection 4(6) of the *Regulations*. Further, we understand that the OPML has already considered the listing of the '837 Patent against SNDS 224739, as reflected in the Letter. If the OPML rejects this request, then we respectfully request that the OPML advise us of the reason and allow us an opportunity to respond.

[41] For reasons unknown to the Court, Janssen did not include a Form IV with its submission in relation to SNDS 739 and the 837 Patent.

[42] In support of its assertion that the 837 Patent claims [redacted] are a new method of use approved through SNDS 670, Janssen asserted that a clinician reviewing the new Product Monograph approved with SNDS 670 would change their prescribing practices, especially a clinician who may have been otherwise hesitant to prescribe STELARA beyond 44 weeks. Janssen supported this assertion regarding a clinician's understanding of the new additions to the Product Monograph with an expert statement from Dr. Brian Feagan and two publications.

[43] With respect to the publications, Janssen made the following submissions:

> A clinician's understanding of the additions to the Product Monograph is also reflected in publications reporting on the data collected for the treatment of patients with ustekinumab up to Week 96, including Panaccione R, et al. Ustekinumab is effective and safe for ulcerative colitis through 2 years of maintenance therapy. *Aliment Pharmacol Ther*. 2020; **52**: 1658-1675 ("Pannaccione (2020)"; enclosed). Panaccione (2020) concluded that the "efficacy of ustekinumab in patients with [ulcerative colitis] was sustained through 92 weeks" (abstract), that "[r]ates of symptomatic remission were maintained from Week 44 through Week 92" (page 1671), and that "[t]he results reported here in patients with moderately-to-severely active [ulcerative colitis], together with both clinical trial and registry data confirm the positive long-term efficacy and safety profile of ustekinumab-treated patients" (page 1672). With respect to safety, Panaccione (2020) concluded that "[n]o new safety signals were observed" (abstract) and that "[t]he safety profile observed for ustekinumab in the second year of maintenance treatment was consistent with that reported through the first year during the maintenance study and with the established ustekinumab safety profile" (page 1672). […]
>
> The importance of safety data for ustekinumab beyond one year was also stated in an integrated safety study, Sandborn WJ, et al. Safety

> of Ustekinumab in Inflammatory Bowel Disease: Pooled Safety Analysis Results from Phase 2/3 Studies. *Inflamm Bowel Dis*. 2021; **27(7)**: 994-1007 ("Sandborn (2021)", enclosed). Sandborn (2021) pooled data from six studies, including the UNIFI study for ulcerative colitis, through one year. The authors concluded (pages 1006-7):
>
> > Though these and previously reported findings are reassuring, longer-term longitudinal data and larger (eg, real-world observational) studies are ongoing to confirm current findings of no increased malignancy risk with IL-12/23 inhibition.
> >
> > …
> >
> > There are several limitations to this study. In a lifetime disease, 1 year of treatment is relatively short; longer-term data will be needed to further support these findings. This may limit comparisons, especially for long latency events like malignancies or certain infections. Although the data contained in this article are only from clinical trials, limitations on interpretation may differ from outcomes observed in real-world.
>
> The information added to the Stelara Product Monograph via SNDS 24470 thus provided clinicians with support of the safety findings made one year after that Sandborn (2021) indicated was required.
>
> [Emphasis in original.]

[44] With respect to the expert statement of Dr. Feagan, Dr. Feagan is a gastroenterologist at London Health Sciences Centre and a Professor of Medicine at the Schulich School of Medicine and Dentistry at Western University, with a research focus on the design, conduct and execution of large-scale randomized controlled trials in Crohn's disease and ulcerative colitis. Dr. Feagan's mandate was to: (i) provide brief background information on ulcerative colitis and its treatment options (including STELARA); and (ii) to advise how, if at all, a clinician's prescribing practices would be influenced by the additions to the STELARA Product Monograph arising from the NOC

for SNDS 670. Dr. Feagan provided no evidence in relation to the aforementioned publications relied upon by Janssen.

[45] While Janssen did not make specific submissions related to Dr. Feagan's evidence (other than as detailed in paragraph 42 above), Dr. Feagan opined that community gastroenterologists (who are gastroenterologists not located in a teaching or research hospital) would "take comfort" in the additional information (as it would "alleviate fears relating to potential side effects") and would be more willing to prescribe or be more comfortable prescribing STELARA based on the additional information contained in the Product Monograph.



## II. The Decision under Review

[46] On November 15, 2022, OSIP provided Janssen with its final decision. OSIP found that SNDS 670 was not approved for a change in formulation, change in dosage form or change in use of the medicinal ingredient and did not present an opportunity to list a patent on the Patent Register in accordance with subsection 4(3) of the *PMNOC Regulations*. OSIP noted that SNDS 670 amended STELARA's Product Monograph to include updated safety and efficacy data generated through an on-going study, which was the very same on-going study that had been previously included in the Product Monograph for SNDS 739. OSIP considered the text, context and purpose of subsection 4(3) of the *PMNOC Regulations*, the relevant jurisprudence and the submissions of Janssen, before concluding that updating the safety information in the product monograph did not result in a change in use in SNDS 670.

[47] OSIP went on to examine whether the 837 Patent would have been eligible for listing if one were to assume that SNDS 670 was in fact for a change in use. However, OSIP found that the 837 Patent did not contain a claim to the very change that Janssen alleged was approved by the NOC for SNDS 670 as required by subsection 4(3).

[48] In relation to SNDS 739, OSIP determined that Janssen had not filed a patent list to add the 837 Patent to the Patent Register against SNDS 739. The OSIP went on to find that, even if Janssen had submitted a patent list to add the 837 Patent against SNDS 739, Janssen would not have met the timing requirements in subsection 4(6) of the *PMNOC Regulations,* as the 837 Patent application was filed in Canada after the filing date of SNDS 739. OSIP held that to consider the claim date/priority date (as opposed to the Canadian filing date) as the appropriate date when assessing the application of subsection 4(6) as urged by Janssen would be to ignore the clear words of the *PMNOC Regulations*, circumvent the strict timing requirements and undo the balance struck by the *PMNOC Regulations* and subsection 55.2(1) of the *Patent Act*.

## III. Issue and Standard of Review

[49] This application raises the following issues:

A. Whether OSIP's decision not to add the 837 Patent to the Patent Register in relation to SNDS 670 and SNDS 739 was unreasonable and in particular:

i. Whether OSIP's determination that SNDS 670 was not approved for a change in use of the medicinal ingredient was unreasonable;

ii. Whether OSIP's determination that the 837 Patent was not eligible to be added to the Patent Register as it did not meet the product specificity requirements of paragraph 4(3)(c) was unreasonable; and

iii. Whether OSIP's determination that Janssen failed to provide a patent list in relation to SNDS 739 was unreasonable.

B. Whether the Canadian filing date requirement in subsection 4(6) of the *PMNOC Regulations* is *ultra vires* the *Patent Act*.

[50] The parties agree and I concur that the first issue is reviewable on a standard of reasonableness. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court must be able to trace the decision maker's reasoning without encountering any fatal flaws in the overarching logic and the Court must be satisfied that there is a line of analysis within the given reasons that could reasonably lead the decision maker from the evidence before it to the conclusion at which it arrived [see *Vavilov, supra* at para 102].

[51] A number of elements will generally be relevant in evaluating whether a given decision is reasonable, including the governing statutory scheme, other relevant statutory or common law, the principles of statutory interpretation, the evidence before the decision maker and facts of which the decision maker may take notice, the submissions of the parties, the past practices and decisions of the decision maker and the potential impact of the decision on the individual to whom it applies [see *Vavilov, supra* at para 106].



[52] Where a decision involves a matter of statutory interpretation, the Court does not undertake a *de novo* analysis of the question. Rather, the Court still undertakes a reasonableness review, examining the administrative decision as a whole, including the reasons provided and the outcome reached. An administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. The modern principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where the meaning of a statutory provision is disputed in administrative proceedings, the decision maker must demonstrate in its reasons that it was alive to these essential elements [see *Vavilov, supra* at para 115-116, 120, 121].

[53] The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[54] With respect to the second issue, both parties agree that the issue of whether the Canadian filing date requirement in subsection 4(6) of the *PMNOC Regulations* is *ultra vires* the *Patent Act* is reviewable on a reasonableness standard. However, they disagree as to whether, as the Respondent asserts, the pre-*Vavilov* case law (and in particular, *Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64) remains instructive and applicable to *vires* challenges to regulations.



[55] Prior to *Vavilov*, the Supreme Court of Canada outlined the method to determine if regulations were *ultra vires* in *Katz*, *supra* at paragraphs 24 to 28. The *Katz* approach requires the party challenging the *vires* of the regulations to show that the regulations (which benefit from a presumption of validity) are inconsistent with the purposes and objectives of the enabling statute or the scope of the statutory mandate when read as a whole. The three parts to the *Katz* rule are: (1) the challenging party bears the burden of proof; (2) the Court is directed to take a broad and purposive approach to interpreting the challenged regulation and the enabling statute, consistent with general guidance on statutory interpretation; and (3) the challenging party must overcome the presumption that the regulations are valid, which can only be done by establishing that the regulations are irrelevant, extraneous or completely unrelated to objectives of the governing statute. In particular, the Supreme Court directs that a *vires* challenge does not involve assessing the policy merits of the regulations as the motives or other considerations (political, economic, social or partisan) are irrelevant.

[56] After *Vavilov* established a general framework for review of administrative decisions, this prompted a debate regarding the extent to which the principles established in *Katz* were affected

by *Vavilov.* Some decisions of this Court continued to be guided by the *Katz* approach, mindful of this debate [see *Innovative Medicines Canada v Canada (Attorney General)*, 2020 FC 725 at paras 66-72; *Bertrand v Acho Dene Koe First Nation*, 2021 FC 287 at paras 73-76].



[57] The Federal Court of Appeal weighed into this debate in *Portnov v Canada (Attorney General)*, 2021 FCA 171. Justice Stratas, writing for the Court, explained how the approach outlined in *Katz* had been overtaken by *Vavilov* and thus, the Federal Court of Appeal did not follow the guidance of *Katz* but applied reasonableness review as per *Vavilov* [see *Portnov, supra* at paras 18-28].

[58] The Federal Court of Appeal weighed in again in *International Air Transport Association v Canadian Transportation Agency*, 2022 FCA 211, also considering the jurisprudence on whether courts reviewing the validity of regulations should apply a *Vavilov* standard of review analysis or the *ultra vires* doctrine from *Katz*. In *International Air Transport Association*, the appellant challenged numerous provisions of new regulations (in particular, challenging the Minister's Direction requiring the Agency to make regulations in respect of tarmac delays of three hours or less) on the basis that they exceeded the Agency's authority under the *Canada Transportation Act*. The Federal Court of Appeal discussed the analytical framework in the *Dunsmuir* era, wherein the reviewing court interpreted the statutory grant of authority to determine whether it fell within or outside its ambit. Justice de Montigny, writing for the Court, goes on to discuss the judicial review framework that was later applied in cases such as *Katz*, concluding that *Vavilov* did not bring clarity to the confusion around what framework to apply in the context of delegated legislation. Further, the *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, wherein the

Supreme Court reviewed the validity of regulations at issue, made no mention of the *ultra vires* doctrine or *Vavilov* and reasonableness review. The Federal Court of Appeal noted that the issue is far from settled:

> [188] Unfortunately, *Vavilov* did not bring much clarity to that confusion. Because the Supreme Court purported to adopt the reasonableness standard as the default standard of review to all administrative actions, most intermediate appeal courts adopted the view that delegated legislation would henceforth be reviewed against that standard: see, for example, *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at paras. 48-59; *Portnov v. Canada (Attorney General)*, 2021 FCA 171; *Canadian Association of Refugee Lawyers v. Canada (Citizenship and Immigration)*, 2020 FCA 196 [2021] 1 F.C.R. 271; Paul Daly, "Regulations and Reasonableness Review" (January 29, 2021), online (blog): *Administrative Law Matters* <https://www.administrativelawmatters.com/blog/2021/01/29/regulations-and-reasonableness-review/and the cases cited therein>.
>
> [189] This approach, however, has not been followed unanimously: see, for example, *Hudson's Bay Company ULC v. Ontario (Attorney General)*, 2020 ONSC 8046, 154 O.R. (3d) 103; *Friends of Simcoe Forest Inc. v. Minister of Municipal Affairs and Housing*, 2021 ONSC 3813 at para. 25. Indeed, the reasonableness standard review is fraught with difficulties, not the least of which is that it assumes the body or person that has been granted the power to adopt delegated legislation has also been vested with the power to decide questions of law and to determine the proper interpretation of the habilitating statute; yet, this is obviously not always the case: see John M. Evans, "Reviewing Delegated Legislation After *Vavilov*: *Vires* or Reasonableness?" (2021) 34:1 Can. J. Admin. L.& P. 1.
>
> [190] More recently, the Supreme Court has brought grist to the mill of those who support the view that the *Vavilov* judicial review framework does not apply to delegated legislation. In *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, 455 D.L.R. (4th) 1 [*Ref re Greenhouse Gas*], the Court reviewed the validity of the regulations at issue on the basis of its own interpretation of the enabling statute, without expressing any deference to Cabinet on the interpretative issue. It is true that the majority (in contrast to the dissenting opinion of Rowe J.) made no mention of the *ultra*

> *vires* doctrine, but neither did it refer to *Vavilov* nor to reasonableness review. On the contrary, the majority took it upon itself to interpret the scope of the regulation-making powers found in the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12. While this is clearly not the last word on the subject, it signals at the very least that the issue is far from settled.
>
> [191] That being said, and whether we assess the validity of the Direction and of section 8 of the Regulations through the lens of the reasonableness standard of review or through the more exacting prism of the ultra vires doctrine, the result would be the same. For the appellants to succeed with their argument that subsection 86.11(2) of the CTA does not encompass the power to issue the *Direction* (and section 8 of the Regulations) because it relates to matters covered at paragraph 86.11(1)(f), they would have to show either that the Direction: 1) is irrelevant, extraneous or completely unrelated to the statutory purpose (*Katz* at para. 28; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, 1994 CanLII 115 (SCC) at p. 280), or 2) rests on an unreasonable interpretation of subsection 86.11(2). If the *Direction* (and section 8 of the CTA) satisfies the more exacting *ultra vires* framework, it will obviously meet the less stringent reasonableness standard of review analysis.

[59] However, in its most recent decision in *Innovative Medicines Canada v Canada (Attorney General)*, 2022 FCA 210, Justice Stratas, writing on behalf of the Court, held that *Portnov*, a unanimous and binding decision of this Court, binds future panels of the Federal Court of Appeal (and thus this Court), such that the methodology to be used to assess a regulation is that set out in *Vavilov*, not *Katz* [see *Innovative Medicines, supra,* at paras 26-27].

[60] The Federal Court of Appeal offers specific guidance in *Innovative Medicines, supra,* to the review of regulations enacted by the Governor in Council:

> [39] …Under *Vavilov*, the broader the regulation-making power in a statute, particularly in matters of policy that are quintessentially the preserve of the executive, the less constrained the regulation-

> maker will be in enacting the regulation: *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2021] 1 F.C.R. 374 at para. 28 (applying *Vavilov* and earlier cases consistent with it), aff'd 2022 SCC 30.
>
> [40] This is especially so for the Governor in Council. The Governor in Council is "at the apex of the executive", serves as "the grand co-ordinating body for the divergent provincial, sectional, religious, racial and other interests throughout the nation", and represents "different geographic, linguistic, religious, and ethnic groups": *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 72, 458 D.L.R. (4th) 125 at paras. 36-38. Thus, subject to limiting statutory language passed by our elected representatives, the Governor in Council's regulation-making power is often relatively unconstrained. The key is the limiting statutory language. *Vavilov* goes straight to that key, focusing on what meanings the language of the regulation-making power can reasonably bear. *Katz* doesn't. […]



[61] In conducting a reasonableness review, the Court is to assess the constraints on the administrative decision-maker (the primary constraint being the empowering legislation) and whether the decision maker has remained within them. The Court is entitled to look at the reasons offered by the decision maker, associated documents that shed light on the reasoning process, any submissions made to the decision maker and the record before the decision maker. In the case of decisions of the Governor in Council, reasoned explanations can often be found in the text of the legal instrument it is issuing, prior legal instruments related to it and any associated RIAS. Express explanations can be quite brief, yet still "pass muster" [see *Portnov*, *supra* at paras 33-34; *Innovative Medicines, supra* at para 44].

[62] I am satisfied that in this case, as no exception set out in *Vavilov* to reasonableness review applies, the standard of review is reasonableness and that the Court is to be guided by *Vavilov* (not

*Katz*) and the cases of the Federal Court of Appeal that apply *Vavilov* in conducting its reasonableness review.



## IV. Analysis

### A. OSIP's decision not to add the 837 Patent to the Patent Register for SNDS 670 and SNDS 739 was reasonable

[63] Paragraph 4(3)(c) of the *PMNOC Regulations* sets out the relevant product specificity requirement that must be met for a patent to be listed on the Patent Register in relation to an SNDS. A patent is eligible to be added to the Patent Register if: (i) the SNDS is for a "change in use of the medicinal ingredient"; and (ii) the patent contains a claim for the changed use of the medicinal ingredient that has been approved through the issuance of an NOC in respect of the SNDS.

[64] In relation to SNDS 670, Janssen takes issue with OSIP's determination that: (a) SNDS 670 was not for a change of use of a medicinal ingredient; and (b) that the 837 Patent does not contain a claim for the alleged changed use of the medicinal ingredient. I will address those issues in turn.

[65] In relation to SNDS 739, Janssen takes issue with OSIP's determination that no patent list to add the 837 Patent was filed by Janssen in relation to SNDS 739. The *vires* of the filing date requirement in subsection 4(6) of the *PMNOC Regulations* and its impact on Janssen's ability to add the 837 Patent to the Patent Register in relation to SNDS 739 is addressed separately below.

**(1) OSIP's determination that SNDS 670 was not approved for a change in use of the medicinal ingredient was reasonable**

[66] Before turning to Janssen's submissions and a consideration of the decision under review, I want to begin by looking at any prior consideration (judicial or otherwise) of the phrase "a change in use of the medicinal ingredient".

[67] The phrase "change in the use of a medicinal ingredient" is not defined in the *Patent Act* or the *PMNOC Regulations*.

[68] One can have reference to subsection 2(1) of the *PMNOC Regulations* which defines a "claim for the use of the medicinal ingredient". Subsection 4(1) permits a first person to submit a patent list in relation to an NDS and paragraph 4(2)(d) provides that a patent on a patent list in relation to an NDS is eligible to be added to the register if the patent contains a "claim for the use of the medicinal ingredient" and the use has been approved through the issuance of an NOC in respect of the NDS. While the focus of paragraph 4(2)(d) is on whether the patent contains a claim for the changed use of a medicinal ingredient, it is focused on the "use of the medicinal ingredient" that is later sought to be "changed" in paragraph 4(3)(c). A "claim for the use of the medicinal ingredient" is defined in subsection 2(1) to mean "a claim for the use of the medicinal ingredient for the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms".

[69] In *Abbott Laboratories Ltd v Canada (Attorney General)*, 2008 FCA 244, one of the issues before the Court was whether the patent at issue contained a claim for the very change in use that was approved by the issuance of an NOC with respect to an SNDS. In that case, it was not disputed that a new indication for a drug (to treat NSAID ulcers) constituted a change in use in the medicinal ingredient.

[70] In *Solvay Pharma Inc v Canada (Attorney General)*, 2009 FC 102, this Court dismissed an application for judicial review of a decision of the Minister refusing to add Solvay's patent to the Patent Register pursuant to paragraph 4(3)(c). The Minister had refused to add the patent as the SNDS against which listing was sought did not approve a change in use of the medicinal ingredient. The drug in question, AndroGel, had initially been approved on the basis of safety and efficacy information from a clinical trial following patients to whom the drug was administered for six months. Solvay filed an SNDS to provide additional safety and efficacy information following the extension of that clinical trial to 42 months, including making associated updates to the Product Monograph. An NOC issued in connection with the SNDS and indicated that the reason for the SNDS was to "Update PM with long term extension study results".

[71] Solvay asserted that the SNDS approved a change in use of the medicinal ingredient "as the safe and effective duration of use is extended and important changes to the implied use of the product, as authorized to be described in the Product Monograph, are clearly the essential subject of the SNDS". The Minister rejected this argument and also found that the patent did not contain a claim for the changed use introduced in the Product Monograph by way of the SNDS. Specifically, the Minister held that the patent did not contain "a claim for the changed use of the

medicinal ingredient, for the long term use and relative safety of AndroGel". Rather, the Minister held that the uses of AndroGel are the same uses that were previously approved by an earlier SNDS.



[72] The Court found that the evidence supported the Minister's conclusion that Solvay did not meet either requirement for the listing of its patent on the Patent Register. With respect to the first requirement – that the SNDS represent a change in use of the medicinal ingredient – the Court held:

> [79] The evidence in the record satisfies me that the SNDS, filed on March 11, 2005, did not represent a change in use of the medicinal ingredient of AndroGel testosterone in the form of topical gel. The jurisprudence supports the proposition that "change in use" as that term is used in subsection 4(3) of the NOC Regulations is measured by the approved use in AndroGel's product monograph, as approved by Health Canada, which is described in the Indications and Clinical Use section of that document. AndroGel is indicated for hormone replacement therapy in men suffering from conditions associated with a testosterone deficiency. No change of indication and use was made to Solvay's AndroGel product monograph as a result of the 2006 NOC.

[73] In discussing the amendments to the *PMNOC Regulations* in 2006, the 2006 RIAS also provides some insight into the intended meaning of the phrase "a change in use of the medicinal ingredient", where it states:

> The amendments to section 4 also formally confirm the right to list new patents on the basis of SNDS filings and introduce listing requirements governing that right. Under these requirements, a patent which had been applied for prior to the filing of an SNDS may be submitted in relation to that SNDS provided the purpose of the latter is to obtain approval for a change in use of the medicinal

> ingredient (i.e. a new method of use or new indication), a change in formulation or a change in dosage form and the patent contains a claim to the formulation, dosage form or use so changed…
>
> [Emphasis added.]



**(a)** ***Janssen's submissions***

[74] Janssen asserts that OSIP's determination that SNDS 670 was not approved for a change in use is an improper fettering of OSIP's decision making power and is unreasonable. If a clinician's change in treatment duration or in prescribing practices would be changed by an SNDS, Janssen asserts that this should be sufficient to establish a change in use.

[75] Janssen asserts that OSIP's decision was unreasonable in light of the evidence before them – namely, the expert statement of Dr. Feagan and the two studies. In relation to Dr. Feagen, Janssen asserts that his evidence clearly demonstrated that the additional safety data would change prescribing practices of a community gastroenterologist. In the absence of any competing evidence procured by OSIP, Janssen asserts that there is no reasonable basis upon which OSIP could conclude that the approved health and safety data regarding the 96-week treatment and safety profile of STELARA in SNDS 670 is not a change in use.

[76] Janssen also points to the Sandborn and Panaccione studies, in which Janssen asserts the authors commented on the need for longer-term data to confirm findings of no increased malignancy risk with IL-12/23 inhibition. Janssen asserts that SNDS 670 provided that longer-term safety data that the authors called for and that Dr. Feagan stated would bring comfort or

confidence to Canadian clinicians to prescribe STELARA beyond 44 weeks. While OSIP held that a clinician who was "up to date" on ulcerative colitis research could have referred to either of the two studies before the approval of SNDS 670 to obtain information and "comfort" regarding prescribing STELARA for a longer period of time, Janssen says that this is irrelevant and does not change the fact that the addition of safety data to the approved Product Monograph is a change in use. Moreover, Janssen asserts that OSIP's finding is unsupported by any expert evidence and importantly, would not apply to clinicians who are not up to date on ulcerative colitis research, which is the sector of clinicians that Dr. Feagan was opining about. Janssen notes that there is no requirement in paragraph 4(3)(c) that all physicians change their prescribing practices, rather simply that there be a change in use and that Janssen has demonstrated such a change.



[77] Janssen further asserts that OSIP unreasonably applied *Solvay* to conclude that the addition of safety data can never be a change in use, whereas there is no express exclusion of safety data from the possible changes in use that can be covered by paragraph 4(3)(c) of the *PMNOC Regulations*. At the hearing, Janssen argued that OSIP was "blinded" by the *Solvay* decision and it tainted the entirety of OSIP's assessment of the meaning of "change in use".

[78] Moreover, Janssen asserts that the *Solvay* decision was guided by the evidentiary record before OSIP and in this case, the evidentiary record is distinguishable. Specifically:

A. In *Solvay*, there was no evidence before the Minister to support the conclusion that the SNDS contained a change in use, whereas in this case, the Minister had the evidence of Dr. Feagan and the two studies.

B. In *Solvay*, the Office of Patent Submissions and Liaison had sought the opinion of Health Canada experts, who concluded that there was no change in use, whereas in this case, the Minister did not adduce any of its own expert evidence or contradict Janssen's expert evidence.

C. In *Solvay*, the Court held that the patent claims contain no limitation on the duration of use and that the patent did not address the issue of the duration of testosterone therapy, whereas in this case, the nexus to the patent is present as the 837 Patent [redacted]

[79] Janssen asserts that OSIP failed to take into consideration these distinctions and that each of the aforementioned points of distinction alone undermines OSIP's "strong reliance" on *Solvay* and establish that OSIP's decision was based on a misapprehension of the law and evidence, thus rendering it unreasonable.

[80] Janssen further asserts that OSIP's interpretation of the product specificity requirement of a "change in use of the medicinal ingredient" is inconsistent with the context, language and purpose of the *Patent Act* and the *PMNOC Regulations*. Janssen asserts that the Governor in Council enacted paragraph 4(3)(c) with the broad terminology of change in use and the 2006 RIAS confirms an intention that a change in use was broad enough to include a new indication and a new method of use. Janssen asserts that the RIAS supports an understanding that change in use is not

to be restricted to changes to particular sections of the Product Monograph and that a change in use includes changes in the duration of treatment.

[81] Janssen asserts that the *PMNOC Regulations* must be read in line with the purpose of the *Patent Act* and should be considered in light of the societal imperative of encouraging new and better medical therapies and the difficulties associated with protecting pharmaceutical patent rights by way of conventional infringement litigation. Janssen asserts that the *PMNOC Regulations* are intended to protect that which the innovator has invested time and money to test and have approved for sale (or put different, to protect the patentee's contribution to the public through skill and ingenuity). The clinical trial data in SNDS 670 is the result of time and money invested by Janssen to obtain safety data for STELARA in patients with moderately or severely active ulcerative colitis, the exact type of substantive change intended to be protected by the *PMNOC Regulations*. By adopting an unduly restrictive meaning to change in use, Janssen asserts that it is being improperly denied the full benefit of the patent protection it should be provided as part of the balance of the early working exception. Such an unduly restrictive meaning also, according to Janssen, reduces incentives to research the safety and efficacy of existing medicinal ingredients because it stands in the way of listing patents tied to such research.

[82] Moreover, Janssen notes that the product specificity requirements were intended to prevent the listing of patents in respect of SNDSs for purely administrative changes (such as changes of manufacturer) and asserts that SNDS 670 is not akin to an administrative change.

**(b)** ***Consideration of Janssen's submissions***

[83] In interpreting a "change in use of the medicinal ingredient", the 2006 RIAS provides guidance that a change in use can be a new indication or a new method of use, but cannot be an administrative change (such as a change in drug or company name). There is no dispute that SNDS 670 was not for a new indication, as the treatment of ulcerative colitis was added to the Product Monograph by SNDS 739.

[84] The question then becomes whether, on the record before OSIP and considering the text, context and purpose of section 4(3)(c) of the *PMNOC Regulations*, the guidance provided by the RIAS, this Court's decision in *Solvay* and Janssen's submissions, OSIP reasonably determined that SNDS 670 was not approved for a change in use.

[85] In reaching their decision, OSIP considered the following evidence that was before them:

A. The existing Product Monograph as approved in relation to SNDS 739 approved STELARA to be used to treat adult patients with moderately to severely active ulcerative colitis who have had an inadequate response with, lost response to, or were intolerant to either conventional therapy or a biologic or have medical contraindications to such therapies. That approved use did not include a limitation on the duration of time STELARA could be used to treat ulcerative colitis (notwithstanding that the clinical trial data was limited to 44 weeks). Moreover, SNDS 670 did not seek to add a limitation on the duration of time STELARA could be used to treat ulcerative colitis.

B. The relevant NOC stated that SNDS 670 was approved for updates to the Product Monograph.

C. SNDS 670 did not result in any changes to the "Indications and Clinical Use" section of the product monograph, but rather only added safety and efficacy date to the "Clinical Trial Adverse Drug Reaction" and "Study Demographics and Trial Design" sections of the Product Monograph.

D. Dr. Feagan's evidence was that community gastroenterologists would "take comfort" in the additional information and would be more willing to prescribe or be more comfortable prescribing STELARA based on the additional information contained in the Product Monograph. However, he did not state that community gastroenterologists (or any other gastroenterologists) would not have prescribed STELARA for longer than 44 weeks based on the prior Product Monograph.

E. In Janssen's Product Information Regulatory Enrollment Process form, Janssen wrote (as opposed to checking a box) in relation to SNDS 670 that "there are no changes to the indication/Use/Dosage (including the maximum daily dose)".

[86] OSIP properly considered the aforementioned evidence, the text, context and purpose of the *PMNOC Regulations* (which I will address more fully below), considered the guidance provided in the 2006 RIAS, considered this Court's decision in *Solvay* (which I will also address in more detail below) and considered the submissions of Janssen before concluding as follows:

The OSIP recognizes that a change to the method of use of a medicinal ingredient can be reflected in sections of the product monograph other than the "Indications and Clinical Use" section. For example, the "Contraindications", "Warning and Precautions", and "Dosage and Administration" sections. However, the OSIP disagrees with Janssen's characterization that SNDS 244670 was approved for such a change. Rather, as detailed above, the OSIP is of the view that SNDS 244670 was approved for updates to the product monograph to include results from the long-term extensions of two Phase 3 studies for the treatment of adult patients with moderately to severely active Crohn's disease or ulcerative colitis.

Following the approval of SNDS 224739, STELARA (I.V.) could be used in the treatment of ulcerative colitis for an indefinite period of time. Both Janssen and Dr. Feagan submit that a clinician would change their prescribing practices upon reading the two sentences added to the STELARA (I.V.) product monograph following the approval of SNDS 244670. It is the position of Janssen and Dr. Feagan that the clinician practice would have changed given their increased comfort in prescribing STELARA (I.V.) beyond 44 weeks. However a clinician's reluctance to prescribe a drug is not a limitation on the approved use of that drug.

Clinicians were not prevented from prescribing the drug for the long-term use in treating ulcerative colitis. Dr. Feagan states at paragraph 21 that a community gastroenterologist may not be up to date on ulcerative colitis research and would have concerns about the potential for issues to arise after one year's administration of STELARA (I.V.). Therefore, a clinician who was up to date on ulcerative colitis could have referred to either of the two studies enclosed in Janssen's representations before the approval of SNDS 244670 and could have obtained the comfort needed to change their prescribing practices in accordance with the use for which SNDS 224739 was approved. In any event, a submission approved for additional data that could provide a clinician more confidence in prescribing a drug long-term is not sufficient for the submission to be considered as having been approved for a change in use of the drug if the indication never included a temporal restriction on its use.

Implicit in Janssen's position is the idea that the use of STELARA (I.V.) was limited by the period of time during which ustekinumab was administered to patients in the clinical trials underlying the approval of SNDS 224739. Janssen had made this position explicit on page 7 of its representations, where it states that the use set out in SNDS 224739 is for the treatment of ulcerative colitis "for up to 44 weeks". The OSIP disagrees with Janssen's position that the

> length of time for which STELARA (I.V.) could be used was limited. No such limitation was provided in the STELARA (I.V.) product monograph. As STELARA (I.V.) was approved for the use in treating ulcerative colitis for an indefinite period of time, the inclusion of updates to the product monograph to include results from the long-term extension of two Phase 3 studies could not have changed the approved use of STELARA (I.V.), irrespective of any additional confidence the information may provide clinicians.
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> As noted above, the Federal Court considered substantially similar facts in *Solvay* and held that the inclusion of safety and efficacy information into the product monograph following an extension of a clinical trial did not constitute a change to the use of the medicinal ingredient as required by paragraph 4(3)(c) of the *PM(NOC) Regulations*. Similarly, the inclusion of updates to the STELARA (I.V.) product monograph to include results from the long-term extensions of two Phase 3 studies does not meet the requirements of paragraph 4(3)(c) of the *PM(NOC) Regulations*.
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> [Emphasis added.]

[87] I find that OSIP's decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain OSIP. I see nothing unreasonable about OSIP's focus, in its interpretation and application of paragraph 4(3)(c), on the actual approved use of STELARA (i.e. the use as approved by the Minister) and not the prescribing practices of clinicians, as that which is being "changed" in subsection 4(3) is the use as previously approved by the Minister.

[88] I will now turn to address the specific arguments raised by Janssen.

[89] Turning first to the evidence of Dr. Feagan, OSIP clearly considered Dr. Feagan's evidence and did not dispute his statements regarding the influence that the additional safety and efficacy data would have on certain gastroenterologists. However, OSIP's decision turned on their

determination that STELARA was approved for use to treat ulcerative colitis with no temporal limitation on its use and that a clinician's reluctance to prescribe a drug is not a limitation on the approved use of that drug. Similarly, OSIP considered the two studies and regardless of whether a clinician may or may not have read the studies, OSIP found that a submission approved for additional data that could provide a clinician more confidence in prescribing a drug long-term is not sufficient for the submission to be considered as having been approved for a change in use of the drug if the indication never included a temporal restriction on its use. I see no error on OSIP's part in reaching these conclusions.



[90] With respect to *Solvay*, I reject Janssen's characterization of OSIP's treatment of the decision. On a fair reading, OSIP's reasons do not state that the addition of safety data can never be a change in use. Rather, OSIP considered this Court's decision in *Solvay*, outlined the facts of that case and summarized the Court's findings. OSIP noted the factual similarities between this case and *Solvay* and noted that its finding was supported by the Court's reasoning in *Solvay*.

[91] Janssen's suggestion that OSIP was "blinded" by *Solvay* and that *Solvay* tainted the entirety of OSIP's decision is baseless. OSIP is obligated to follow applicable precedents originating from this Court [see *Bank of Montreal v Li*, 2020 FCA 22 at para 37] and given the factual similarities between the two cases, it was reasonable for OSIP to rely on *Solvay* as an influential precedent. Moreover, a fair reading of OSIP's 23-page decision reveals that OSIP considered all relevant factors in interpreting and applying paragraph 4(3)(c), not just *Solvay*.

[92] While Janssen has attempted to distinguish *Solvay* and faults OSIP for failing to take into account the factual differences between the two cases, I would note that Janssen did not raise *Solvay* with OSIP or put any of its purported distinguishing facts to OSIP to suggest that OSIP should not follow *Solvay*. In any event, I am not satisfied that the factual differences identified by Janssen render OSIP's reliance on *Solvay* unreasonable. OSIP did not state that the two cases were identical, but rather that they were similar and the presence or absence of expert evidence did not play a central role in OSIP's determination that there had not been a change in use in either case. As for Janssen's third argument, that argument relates to the next issue and thus I will address it there.

[93] Moreover, while Janssen made much of the fact that Dr. Feagan's evidence was uncontradicted and that OSIP had failed to secure its own expert evidence on the issue of change of use, this ignores the fact that the burden rested on Janssen to demonstrate that it meets the product specificity requirements of the *PMNOC Regulations*. OSIP was under no obligation to produce an expert statement in response to Dr. Feagan or that otherwise addressed the issue of change in issue. As noted by the Respondent, the only obligation on OSIP was to make a reasonable and procedurally fair determination of the issues before them and in doing so, OSIP was entitled to rely on OSIP's own expertise.

[94] I also reject Janssen's submissions that OSIP's interpretation of the product specificity requirement is inconsistent with the context, language and purpose of the *Patent Act* and *PMNOC Regulations*. I begin by noting that there is no express inconsistency between OSIP's interpretation

of subsection 4(3) and the *Patent Act*. Rather, what Janssen asserts is that there is a "conceptual" inconsistency between the two.

[95] It must be recalled that OSIP agreed with Janssen's interpretation of subsection 4(3) in part, expressly acknowledging that a change in use of a medicinal ingredient includes a change to the method of use (as recognized in the 2006 RIAS) and that a change to the method of use can be reflected in sections of the Product Monograph other than the "Indications and Clinical Use" section. Where OSIP and Janssen part ways is on the question of whether a change in use of the medicinal ingredient in subsection 4(3) includes the "change" asserted by Janssen.

[96] It is clear from a review of OSIP's reasons that OSIP was very much alive to the dispute between OSIP and Janssen as to the interpretation of subsection 4(3). In considering the reasonableness of OSIP's interpretation of subsection 4(3), the Court is guided by the following commentary of the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Mason*, 2021 FCA 156:

> [16] *Hillier* begins by reminding reviewing courts of three basic things they should appreciate when conducting reasonableness review. First, in many cases, administrators may have a range of interpretations of legislation open to them based on the text, context and purpose of the legislation. Second, in particular cases, administrators may have a better appreciation of that range than courts because of their specialization and expertise. And, third, the legislation--the law on the books that reviewing courts must follow--gives administrators the responsibility to interpret the legislation, not reviewing courts.
>
> [17] For these reasons, *Hillier* tells reviewing courts to conduct themselves in a way that gives administrators the space the legislator intends them to have, yet still hold them accountable. Reviewing courts can do this by conducting a preliminary analysis of the text,

context and purpose of the legislation just to understand the lay of the land before they examine the administrators' reasons. But the lay of the land is as far as they should go. They should not make any definitive judgments and conclusions themselves. That would take them down the road of creating their own yardstick and measuring the administrator's interpretation to make sure it fits.

[18] Instead, *Hillier* recommends (at para. 16) that a reviewing court should "focus on the administrator's interpretation, noting what the administrator invokes in support of it and what the parties raise for or against it", trying to understand where the administrator was coming from and why it ruled the way it did: *Hillier* at paragraph 16.

[19] Under this approach, the reviewing court does not act in an "external" way, i.e., "arrive at a definitive conclusion about the best way to read the statutory provision under review before considering how the [administrator's] interpretation matched up with [the] preferred reading". Rather, as Professor Daly has observed, the reviewing court acts in an "internal" way, i.e., "a relatively cursory examination of the provision at issue, with a view to analyzing the robustness of the [administrator's] interpretation". See Paul Daly, "Waiting for Godot: Canadian Administrative Law in 2019" (online: https://canlii.ca/t/t23p at 11).

[20] By necessary implication, *Vavilov* supports the *Hillier* approach. *Vavilov* warns us that even though reviewing courts are accustomed in other contexts to interpret legislative provisions themselves, when conducting reasonableness review of administrative interpretations they should avoid that. Reviewing courts must not "ask how they themselves would have resolved [the] issue", "undertake a *de novo* analysis", "ask itself what the correct decision would have been" or "[decide] the issue themselves": *Vavilov,* at paragraphs 75, 83 and 116. In other words, reviewing courts must not "make [their] own yardstick and then use that yardstick to measure what the administrator did": *Vavilov,* at paragraph 83, citing *Delios,* at paragraph 28. Instead, reviewing courts must exercise "judicial restraint" and respect "the distinct role of administrative decision makers": *Vavilov,* at paragraph 75. They are to do this by examining the administrator's reasons with "respectful attention" and by "seeking to understand the reasoning process": *Vavilov,* at paragraph 84.

[97] Determining the meaning of “change in use of the medicinal ingredient” very much falls within OSIP’s area of expertise. In arriving at their interpretation of that phrase, OSIP considered the plain wording of subsection 4(3) and related provisions of the *PMNOC Regulations* and the intent of the 2006 amendments to subsection 4(3) as reflected in the 2006 RIAS (as cited above) and as acknowledged by the Court of Appeal in *GD Searle & Co v Canada (Health)*, 2009 FCA 35. I see nothing unreasonable with that approach and OSIP’s reasons allow the Court to understand how the text, context and purpose of the *PMNOC Regulations* factored into its reasoning process in arriving at its interpretation of subsection 4(3).



[98] There is no dispute between the parties as to the purpose of the *Patent Act* and the protections that it affords to innovators. However, I reject Janssen’s assertion that OSIP’s interpretation improperly denies Janssen the full benefit of the patent protection it should be provided as part of the balance of the early working exception. As stated above, the *PMNOC Regulations* seek to balance the patent rights associated with innovative drugs against the timely market entry of lower-priced competitor drugs [see *Fresenius Kabi Canada Ltd* v *Canada (Health)*, 2020 FC 1013]. In striking that balance, the product specificity requirements reflected in section 4 inherently acknowledge that not every patent is eligible for listing on the Patent Register, notwithstanding the time and money invested by the innovator. As noted by this Court in *Solvay*, supra at paragraph 69:

> …Under the heading Patent Listing Requirements, the RIAS states, at page 1511, that the NOC Regulations "are intended to operate as a very potent patent enforcement mechanism", citing the 24-month automatic stay when an innovator launches a prohibition application, adding that "it is this very potency which calls for moderation in the application" with the result that "[o]nly those

> patents which meet the current timing, subject matter and relevance requirements set out in section 4 of the regulations are entitled to be added to ... register and to the concurrent protection of the 24-month stay."
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> [Emphasis added.]



[99] It must also be recalled that Janssen is not without the protections of the *Patent Act* under OSIP's interpretation, retaining the right to bring a patent infringement action outside of the PMNOC regime.

[100] Subsection 4(3) limits the subset of patents eligible for listing and I am not satisfied that Janssen has demonstrated how OSIP's interpretation unreasonably denies Janssen the patent protection intended by the balance struck by the *PMNOC Regulations*.

[101] Having determined that OSIP's decision that SNDS 670 did not meet the first product specificity requirement of paragraph 4(3)(c) was reasonable, Janssen's application in relation to the listing of the 837 patent in relation to SNDS 670 cannot succeed. While I need not do so, I will nonetheless go on to consider whether OSIP's determination in relation to the second product specificity requirement was reasonable.

### (2) OSIP's determination that the 837 Patent was not eligible to be added to the Patent Register as it did not meet the product specificity requirements of paragraph 4(3)(c) was reasonable

[102] In considering whether the patent sought to be listed in relation to a particular SNDS meets the product specificity requirement of paragraph 4(3)(c) of the *PMNOC Regulations*, OSIP was

required to apply what is known as the *Abbott* test, as originally set out by Justice Hughes in *Abbott Laboratories Limited v Canada (Attorney General)*, 2008 FC 700 and later affirmed in *Canada (Attorney General) v Abbott Laboratories Limited*, 2008 FCA 354 and applied by the Federal Court of Appeal in a number of other cases, such as *Searle*, *supra*, *Purdue Pharma v Canada (Attorney General)*, 2011 FCA 132, *Gilead Sciences Canada Inc v Canada (Health)*, 2012 FCA 254 and *Eli Lilly Canada Inc v Canada (Attorney General)*, 2015 FCA 166.



[103] Pursuant to the *Abbott* test, OSIP was required to consider the following three questions: (i) what does the 837 Patent claim? (ii) what is the change approved by SNDS 670? and (iii) does the 837 Patent claim the very change approved in SNDS 670?

[104] The current version of the *PMNOC Regulations* makes product specificity between the patent claims and the NOC for the approved drug a key requirement for a patent to be considered eligible for listing on the patent register [see *Gilead*, *supra* at para 33]. Under the prior version of the *PMNOC Regulations*, if the patent claims were shown merely to be "relevant to" the approved drug, the submitted patents were generally accepted for listing. The wording of the current *PMNOC Regulations*, as well as their object and purpose, suggest that the product specificity requirement sets a high threshold of consistency between the patent claims and the NOC [see *Gilead*, *supra* at para 40].

[105] In *Canada* (*Attorney General*) *v Abbott Laboratories Limited*, 2008 FCA 244, leave to appeal refused, [2008] SCCA No 408, [2008] 3 SCR v (*Abbott Prevacid*) [*Abbott 244*], Justice Pelletier commented on the level of specificity required under paragraph 4(3)(*c*). The debate there

concerned the eligibility for listing of a patent in relation to an NOC issued pursuant to an SNDS approving a new use. The Federal Court concluded that the patent was eligible for listing because the patent could be construed as including the new approved use notwithstanding that it was not explicitly claimed in the patent. The Federal Court of Appeal disagreed, stating at paragraphs 47 and 49:

> It stands to reason that if a patent must contain a claim for the changed use identified in Abbott's SNDS, that patent cannot simply claim the use which formed the basis of the original submission. Such a patent does not specifically claim the changed use, even though the changed use may come within the claims of the patent. In other words, the Regulations envisage as a condition of listing a patent in respect of a change in the use of a medicinal ingredient that the patent specifically claims the changed use as opposed to non-specific claims which are wide enough to include the changed use.
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> […]
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> I conclude that paragraph 4(3)(*c*) of the Regulations requires, as a condition of listing a patent on the Patent Register, that the patent must specifically claim the very change in use which was approved by the issuance of a Notice of Compliance with respect to an SNDS.
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> [Emphasis added.]

[106] Before turning to Janssen's submission on this application, I note that before OSIP, Janssen asserted:

> Further and contrary to the clear wording of the *Regulations*, which simply requires "a claim for the changed use … that has been approved", in its Letter, the OPML instead identified what it framed as the very change approved in SNDS 244670 and asked whether the '837 Patent claims the "very change" approved in SNDS 244670. In doing so, the OPML's approach was too narrow and required a nexus between the change approved in SNDS 244670 and

> the ‘837 Patent that is more stringent than what is in fact required by the *Regulations*.

[107] Janssen’s aforementioned description of the product specificity requirement for the 837 Patent as prescribed by subsection 4(3) is reflective of the approach prior to the 2006 amendments to the *PMNOC Regulations* and inconsistent with the clear enunciation of the applicable test as affirmed repeatedly by the Federal Court of Appeal.



[108] Before this Court, Janssen persists with this position in part, refusing in its written submissions to agree with OSIP’s interpretation of subsection 4(3) and its application of the *Abbott* test, yet taking no issue with the application of the *Abbott* test at the hearing. There is no merit to any suggestion that OSIP has misconstrued the applicable legal test and I find that OSIP properly formulated and applied the *Abbott* test by requiring that the 837 Patent claim the “very change in use” approved for SNDS 670.

[109] Without agreeing with OSIP’s interpretation of the requirements of subsection 4(3), Janssen asserts that OSIP’s decision is unreasonable as the 837 Patent meets the “very change in use” standard, as the 837 Patent contains claims covering the [redacted].

[110] [redacted] do not take issue with OSIP’s determination in relation to step one of the *Abbott* test and [redacted], in simple terms, the 837 Patent claims the use of the antibody to treat ulcerative colitis for at least 44 weeks after week zero or for 44 weeks and after.

[111] For step two of the *Abbott* test, one would have to presume that the change in use is as proposed by Janssen (albeit rejected by OSIP) – namely, the addition of longer term safety data up to 96 weeks that changes prescribing practise so as to prescribe STELARA beyond 44 weeks.



[112] It is at step three of the *Abbott* test that the parties' positions regarding the reasonableness of OSIP's determination greatly diverge. I will begin with OSIP's reasons for decision on step three, which provide as follows:

> The '837 Patent does not contain a claim to the very change for which SNDS 244670 was approved. In particular, the '837 patent does not contain a claim directed toward the use of ustekinumab for the treatment of moderately to severely active ulcerative colitis wherein ustekinumab is administered for 96 weeks as maintenance therapy.
>
> As explained above and as set out by the Federal Court of Appeal in *Abbott FCA* and *Searle FCA*, in order to meet the requirements of paragraph 4(3)(c) of the *PM(NOC) Regulations*, the patent must contain a claim to the very changed use. While the '837 patent contains claims directed towards the use of ustekinumab for the treatment of moderately to severely active ulcerative colitis, the duration of time within which the use of ustekinumab is claimed as a maintenance therapy is not limited to 96 weeks. The OSIP is of the view that reference at page 52 of the '837 patent description that the anti-IL-12/IL-23p40 antibody, which may be ustekinumab, could be administered for a total of two years does not restrict the duration of time within which the anti-IL-12/IL-23p40 antibody could be used in any of the 837 patent claims.

[113] Janssen asserts that OSIP unreasonably imposed a standard of "exact matching" between claim language. Janssen asserts that it was sufficient that the claims of the 837 Patent include [redacted]

[114] Janssen asserts that OSIP placed unreasonable reliance on *Abbott 244*, which Janssen asserts is distinguishable from this case. Janssen asserts that in *Abbott 244*, the issue was whether a patent with claims to the treatment of ulcers generally claimed the very change in an SNDS approved for a new use of a drug to treat ulcers caused by non-steroidal anti-inflammatory drugs. In that case, the Court held that the patent did not specifically claim the changed use even though the changed use may come within the claims of the patent. By contrast, Janssen asserts that at least some of the 837 Patent's claims provide the required specificity [redacted]

[115] Janssen further asserts that *Solvay* is distinguishable, as none of the claims of the patent at issue contained a claim directed to the duration of treatment. By contrast, Janssen asserts that the 837 Patent has "claims that include [redacted]

[116] Janssen urged the Court to find that the circumstances in *Eli Lilly Canada Inc v Canada (Attorney General)*, 2015 FCA 166, were more akin to those in this case and that OSIP should have followed *Eli Lilly* rather than *Abbott 244* (despite Janssen not raising either authority with OSIP). In *Eli Lilly*, one of the issues before the Federal Court of Appeal was whether this Court had erred in determining whether the formulation claimed in the relevant patent was the formulation found in the appellant's drug submission for Trifexis. Janssen asserts that *Eli Lilly* is instructive as the Federal Court of Appeal held that a claim to a broader class of compound includes a specific compound in that class.

[117] I am not satisfied that Janssen has established that OSIP's determination regarding step three of the *Abbott* test is unreasonable. Rather, what Janssen urges the Court to do is to reassess the issue and come to a different result, which is not the role of the Court on an application for judicial review.



[118] I find that there was nothing unreasonable in OSIP's reliance on *Abbott 244*, which was a paragraph 4(3)(c) case. While Janssen urges the Court to find that *Eli Lilly* has somehow "overtaken" *Abbott 244*, I am not satisfied that that is the case. *Eli Lilly* was a change in formulation case, not a change in use case and on that basis alone, I find that it is distinguishable. More specifically, I agree with the Respondent that in *Eli Lilly*, at the first step of the *Abbott* test, the Federal Court of Appeal found that the general class of compounds that the patent claimed actually included the very specific formulation that was approved in the NDS. The Federal Court of Appeal found that in such circumstances, this Court was unreasonable in requiring identical wording at step three of the *Abbott* test. The circumstances in this case are distinct.

[119] As confirmed in *Abbott 244*, the *PMNOC Regulations* require that a patent specifically claim the change in use, as opposed to broader claims that are wide enough to subsume the specific change in use. With that principle in mind, I see nothing unreasonable in OSIP's determination that a patent having broad "temporal features" (as described by Janssen) for the use of ustekinumab for an indefinite period of time (for 44 weeks or more) is not the very change in use approved in relation to SNDS 670 (even on Janssen's interpretation thereof) which specifically included safety data to only 96 weeks.

[120] With respect to *Solvay*, I note that OSIP did not refer to *Solvay* in its reasons for decision on this issue.

[121] Accordingly, even if Janssen had established that OSIP's decision in relation to a "change in use of the medicinal ingredient" was unreasonable, Janssen's application in relation to the listing of the 837 patent in relation to SNDS 670 could not succeed on this ground either.



### (3) OSIP's determination that Janssen failed to provide a patent list in relation to SNDS 739 was reasonable

[122] Janssen asserts that OSIP's determination that Janssen failed to file a patent list for the 837 Patent in relation to SNDS 739 was unreasonable as a patent list was filed for the 837 Patent within 30 days of the issuance of the 837 Patent and Janssen sought, by way of its September 14, 2022 submission, to add SNDS 739 to an already submitted patent list, given that it had been raised by OSIP in its preliminary decision letter. Janssen asserts that subsection 4(7) of the *PMNOC Regulations* obligates a first person to keep their patent list up to date, so the Minister clearly contemplated amendments to a patent list.

[123] Moreover, Janssen asserts that the *PMNOC Regulations* do not contain a requirement to add to a patent list by using Form IV, but rather only that a first person must provide all of the information set out in subsection 4(4). Janssen submits that its September 14, 2022 submission provided all of the necessary information prescribed by subsection 4(4). As such, to refuse to add the 837 Patent to the Patent Register on the basis that Janssen did not provide the same information

by way of a Form IV would be an unreasonably harsh result and an extreme example of "form over substance".

[124] Turning to OSIP's reasons for decision, OSIP held:

> The *PM(NOC) Regulations* do not permit a patent list to be submitted in relation to multiple submissions. As noted above, subsection 4(1) of the *PM(NOC) Regulations* allows a first person to seek to add a patent to the Patent Register by submitting a patent list to the Minister. The content of a patent list is prescribed by subsection 4(4). Notably, paragraph 4(4)(a) of the *PM(NOC) Regulations* requires that the patent list identify the submissions to which the patent list relates. The patent list submitted in accordance with 4(6) provides a section dedicated for this purpose and allows the first person to identify the submission in relation to which it submits the patent list.
>
> The patent lists submitted by Janssen seeking to add the '837 patent to the Patent Register identified SNDS 244670. Janssen did not seek to add the '837 patent to the Patent Register against SNDS 224739. Janssen's suggestion that the submission in relation to which a patent list was filed can shift after its receipt would ignore the operation of paragraph 4(4)(a) of the *PM(NOC) Regulations*. The statements made on page 7 of Janssen's representations purporting to change the submission in relation to which its patent lists were submitted are not akin to filing a patent list in accordance with subsection 4(1). As such, the OSIP is of the view that no patent list was filed in relation to SNDS 224739 and that Janssen has not met the requirements to seek to add the '837 patent against SNDS 224739.
>
> In addition, the OSIP disagrees with Janssen's view that the '837 patent was considered for addition to the Patent Register against SNDS 224739 in its preliminary decision letter dated July 29, 2022. Rather, the OSIP is of the view that the use for which SNDS 224739 was approved was included in its preliminary decision letter to contextualize the change for which SNDS 244670 was approved.

[125] I see nothing unreasonable in OSIP's analysis and determination of this issue. OSIP properly considered the requirements of subsection 4(4) of the *PMNOC Regulations*, noting that the regulations prescribe one SNDS per patent list (as also set out in Form IV) and to permit Janssen to add a second SNDS to a pre-existing patent list would run afoul of the express mandatory language of paragraph 4(4)(a), which limits a patent list to one SNDS.

[126] Moreover, I find nothing unreasonable in OSIP's determination that Janssen's attempt to change/amend the SNDS in relation to which its patent lists for the 837 Patent were submitted was not akin to filing a patent list. Janssen was well aware of the requirement to file one patent list per SNDS, given that it had already filed multiple Form IVs in relation to STELARA and given the language of paragraph 4(4)(a). Why Janssen did not file a patent list for SNDS 739 in relation to the 837 Patent is unknown, but Janssen is bound by the consequences of that decision.

[127] While not expressly addressed by OSIP, I would note that, even if I were inclined to find that Janssen's September 14, 2022 submission could constitute a patent list for the 837 Patent, Janssen's September 14, 2022 submission did not, in fact, contain all of the information required by subsection 4(4) of the *PMNOC Regulations*. For example, the submission does not set out the Canadian patent filing date, the patent issue date, the patent expiry date or the address for service of the first person of a NOA. While that information might otherwise be available to OSIP in other documents, there is no obligation on the part of OSIP to search for missing information. Rather, the obligation rested on Janssen to clearly identify all of the information required by subsection 4(4) in its "patent list" [see *Hoffmann-La Roche Ltd v Canada (Health)*, 2005 FC 1415 at para 21].

[128] As acknowledged by Janssen in its written submissions, the Minister has the discretion to determine the manner in which a patent list is to be submitted and the Minister has done so by requiring the use of Form IV. Form IV requires that, in completing the form, a first person provide all of the mandatory information required by subsection 4(4) of the *PMNOC Regulations*. Janssen has pointed to nothing that is unreasonable about the Minister's adoption of Form IV or the Minister's requirement that it be completed by first persons. Rather, Janssen appears to be inviting the Court to find that it was open to the Minister to accept a deviation to the Minister's practices, but without pointing to any error made by the Minister or any lack of coherent and rational chain of analysis in the Minister's determination.

[129] Janssen further asserts that in footnote 2 of its September 14, 2022 submission, Janssen requested that if OSIP rejected their request to add SNDS 739 to the patent list for the 837 Patent, that Janssen be advised of the reason and given an opportunity to respond. Janssen asserts that their procedural fairness rights were breached as OSIP never gave them a chance to address the issue. I reject this assertion. I am not satisfied that OSIP was under any duty to alert Janssen as to its views on Janssen's failure to file a Form IV patent list for SNDS 739 and to provide Janssen an opportunity to make further submissions on the issue. The burden rested on Janssen to take the appropriate steps to submit a patent list for the 837 Patent in relation to each of its SNDSs within the time limits prescribed by the *PMNOC Regulations* and in any event, by September 14, 2022, the deadline for submission of a patent list for the 837 Patent for SNDS 739 had already passed.

[130] In its reply oral submissions, Janssen asserted that it also relied on section 32 of the *Interpretation Act*, RSC 1985, c I-21, which provides that "where a form is prescribed, deviations

from that form, not affecting the substance or calculated to mislead, do not invalidate the form used" and identified two decisions of the Federal Court addressing section 32. This argument, and the related statute and case law, were not raised by Janssen in its memorandum of fact and law filed in this proceeding (nor were they raised in Janssen's submissions before OSIP) and did not arise from something unexpectedly raised by the Respondent in their oral submissions. In the circumstances, it is not open to Janssen to raise the argument now and most certainly inappropriate to attempt to raise it only in reply. Accordingly, I will not consider this portion of Janssen's submission, as to do so would be unfair to the Respondent.



[131] For the reasons stated above, I am not satisfied that Janssen has demonstrated that OSIP's determination that Janssen did not file a patent list for the 837 Patent for SNDS 739 was unreasonable. While I appreciate that Janssen views the impact of OSIP's determination of this issue as unreasonably harsh, the *PMNOC Regulations* contain numerous mandatory requirements (such as the 30 day requirement in subsection 4(6)) that result in harsh consequences when not met. This is a function of the nature of the regulatory regime [see *Fournier Pharma Inc v Canada (Attorney General)*, [1999] 1 FC 327; *Immunex Corporation v Canada (Health)*, 2008 FC 1409; *Merck Canada Inc v Canada (Minister of Health)*, 2021 FC 345].

[132] My finding on this issue is sufficient to dispose of Janssen's application for judicial review in relation to OSIP's refusal to list the 837 Patent in relation to SNDS 739. Notwithstanding, I will nonetheless go on to consider whether the Canadian filing date requirement in subsection 4(6) of the *PMNOC Regulations* is *ultra vires* the *Patent Act*.

## B. The Canadian Filing Date Requirement in Subsection 4(6) of the *PMNOC Regulations* is *intra vires* the *Patent Act*

[133] Notwithstanding OSIP's determination that no patent list had been filed for the 837 Patent in relation to SNDS 739, OSIP went on to consider whether the 837 Patent could have been listed against SNDS 739 if such a patent list had been provided. OSIP determined that Janssen would not have met the timing requirement in subsection 4(6) as the 837 Patent was filed in Canada after SNDS 739 was filed. OSIP further determined that the consideration of the claim date or priority date of the 837 Patent when assessing the application of subsection 4(6) would be to ignore the clear wording of the *PMNOC Regulations* (which states "filing date in Canada"), circumvent the strict timing requirements and undo the balance struck by the *PMNOC Regulations* and subsection 55.2(1) of the *Act*.

[134] Janssen does not take issue with OSIP's interpretation of subsection 4(6) and acknowledges that the filing date requirement in subsection 4(6) refers to the date that the patent application was filed in Canada, rather than the claim date or priority date. Rather, Janssen asserted before OSIP and now before this Court that the filing date requirement in subsection 4(6) is *ultra vires*.

[135] In the alternative, Janssen asserts that the Canadian filing date is an illogical, irrational and/or arbitrary date to employ in subsection 4(6). However, Janssen did not, in its written submissions and at the hearing, develop these arguments and as such, I will not consider them separately. Rather, I will consider the arguments as they were advanced by Janssen.

[136] In conducting a reasonableness review of this issue, the Court is to determine the constraints on the Governor in Council and whether the Governor in Council remained within them, with the focus on any reasons given by the Governor in Council.



[137] In this case, the parties agree that the primary constraint on the Governor in Council is subsection 55.2(4) of the *Patent Act* (as set out above), which contains the Governor in Council's regulation making authority. Section 55.2(4) of the *Patent Act* provides for a broad grant of authority for the making of such regulations as the Governor in Council "considers necessary for preventing the infringement of a patent" by any person who makes use of the early working exception. The specific authority outlined in paragraphs (a) to (e) is said not to limit the generality of the initial grant. Rather, the only limitation lies in the limited purpose for which regulations may be made – the prevention of infringement by those who use the patented invention for the early working exception [see *Apotex Inc v Merck & Co Inc*, 2009 FCA 187 at para 40]. As such, in enacting the *PMNOC Regulations*, the Governor in Council had to interpret the scope of its regulation making power and enact a regulation (subsection 4(6)) that, in its reasonable view, was within that power [see *Innovative Medicines*, *supra* at para 44].

[138] In considering Janssen's submissions, I note that Janssen does not assert that including a reference to a filing date of the patent in subsection 4(6), in and of itself, exceeds the Governor in Council's regulation making authority. In that regard, I note that Janssen originally sought to quash the entirety of subsection 4(6) but, at the hearing, substantially modified the relief sought and now only seeks the quashing of the words "that has a filing date in Canada". This is an important point, as Janssen concedes that the Governor in Council has the authority to enact a regulation that

includes a filing date requirement. This is not necessarily surprising given this Court's determination in *Fournier*, *supra* at para 20, that the Governor in Council's authority and discretion in subsection 55.2(4) are sufficiently broad to embrace the enactment of subsections 4(3) and 4(4) of the *PMNOC Regulations*, which impose time limits on the registration of patent lists.



[139] On Janssen's wording, section 4(6) would read as follows:

> A first person may, after the date of filing of a new drug submission or a supplement to a new drug submission, and within 30 days after the issuance of a patent that was issued on the basis of an application that precedes the date of filing of the submission or supplement, submit a patent list, including the information referred to in subsection (4), in relation to the submission or supplement.

[140] Janssen's argument therefore boils down to an assertion that the specific choice of the Canadian filing date over the claim date or priority date is *ultra vires*. In that regard, Janssen asserts that the Canadian filing date requirement does not conform with the purpose of the *Patent Act* and the *PMNOC Regulations*.

[141] Turning to the purpose of the *Patent Act*, Justice Manson described its purpose as follows in *Innovative Medicines*:

> [76] The policy rationale underlying the *Patent Act* is the patent bargain, or *quid pro quo*. The patent bargain encourages innovation by offering an inventor exclusive rights in a new and useful invention for a limited period in exchange for disclosure of the invention so that society can benefit from this knowledge (*Teva Canada Ltd v Pfizer Canada Inc*, 2012 SCC 60, [2012] 3 S.C.R.

> 625, at paragraph 32). Two central objectives of the *Patent Act* as a whole are to "advance research and development and to encourage broader economic activity" (*Free World Trust v Électro Santé Inc*, 2000 SCC 66, [2000] 2 S.C.R. 104 at paragraph 42; *Harvard College v Canada (Commissioner of Patents)*, 2002 SCC 76, [2002] 4 S.C.R. 45 (Harvard College) at paragraph 185).
>
> [77] As acknowledged by both the applicants and the respondent, patent monopoly rights are not unlimited, and Parliament has at times balanced promotion of ingenuity against other considerations (*Harvard College*, above, at paragraph 185)…



[142] The purpose of the *PMNOC Regulations*, as noted previously, is to balance effective patent enforcement over new and innovative drugs with the timely market entry of their lower priced generic competitors.

[143] Only limited information is known about the rationale for the Governor in Council's choice to use the Canadian patent filing date. The 2006 RIAS indicates that the Government was aware that "an increasing number of court decisions interpreting the PM(NOC) Regulations have given rise to the need to clarify the patent listing requirements" and that these decisions addressed issues of timing and relevance.

[144] Among those decisions was Justice Blanchard's decision in *Pfizer Canada Inc v Canada (Attorney General) (TD)*, 2002 FCT 706, in which the Court was considering an earlier version of subsection 4(4) of the *PMNOC Regulations* which provided:

> A first person may, after the filing of a submission for a notice of compliance and within 30 days after the issuance of a patent that was issued on the basis of an application that has a filing date that precedes the date of filing of the submission, submit a patent list, or

> an amendment to an existing patent list, that includes information referred to in subsection (2).

[145] The issue before the Court was whether the "filing date" in subsection 4(4) should be interpreted to be the priority filing date (in that case, the date of filing in the United States) or the Canadian filing date. The Minister had determined that "filing date" meant the Canadian filing date. The Applicants advanced a number of arguments in support of their assertion that "filing date" meant the priority filing date, including that the Minister's interpretation would place patentees who file their patent applications first in a country other than Canada at a disadvantage compared to patentees who choose to file first in Canada and results in a loss of rights during the priority period. In rejecting the Applicant's submissions, Justice Blanchard stated:

> [50] At the risk of stating the obvious, the *Patent Act* is Canadian legislation and provides for the grant of a patent to an inventor, "if an application for the patent in Canada is filed" (see subsection 27(1) [as am. *idem*, s. 31] of the *Patent Act*). Moreover, the *Patent Act* specifically defines "filing date" to be the Canadian filing date. In my view, any reference to "filing date" in the Act, or in the Regulations thereunder, must be read with regard to this definition. Such an interpretation is consistent with other provisions of the *Patent Act* and the Regulations which, for the most part, explicitly set out, in the context of the specific section, when "filing date" is meant as a date other than the Canadian filing date.

[146] Given the *Pfizer* decision, the Government was accordingly well aware of the issue raised by stakeholders as to the use of the Canadian filing date and the consequences thereof and engaged in consultations with stakeholders prior to the enactment of the current version of subsection 4(6) during which submissions could be made by stakeholders on this issue. The Governor in Council ultimately decided, in enacting subsection 4(6), to expressly include the Canadian filing date.

[147] With respect to subsection 4(6), the only commentary thereon in the 2006 RIAS provides as follows:

> By stipulating that the application filing date of the patent precede the date of the corresponding drug submission, the timing requirement promotes a temporal connection between the invention sought to be protected and the product sought to be approved. This ensures that patents for inventions discovered after the existence of a product do not pre-empt generic competition on that product.



[148] No express rationale is given in the 2006 RIAS as to why the Canadian filing date was specifically chosen. In its reasons for decision, OSIP notes that the Governor in Council chose for subsection 4(6) to refer to the first date of a patent term, as opposed to a date relevant to considerations of novelty, inventiveness or prior use and that this was a deliberate choice.

[149] Janssen asserts that the choice of the Canadian filing date is inconsistent with the aforementioned purpose of the timing requirement (namely, to prevent patents for inventions discovered after the existence of a product from pre-empting generic competition on that product), as the date of the invention's discovery is actually the claim date and not the Canadian filing date. Janssen stresses that the claim date (which is defined in sections 2 and 28.1 of the *Patent Act*) is the relevant date in several sections of the *Patent Act*, including those directed at novelty, inventiveness and the prior use defence, which are concepts at the core of an invention, and demonstrate that within the overall scheme of the *Patent Act*, the invention sought to be protected is linked to the claim date.

[150] Further, Janssen asserts that the selection of the Canadian filing date fails to advance effective enforcement of patents that would be infringed by the use of the early-working exception, such that there is no rational connection between the early-working exception and the requirement that a Canadian patent application be filed before a drug submission to be listed.



[151] I am not convinced by Janssen's submissions. While the 2006 RIAS expresses a rationale for subsection 4(6), the expressed rationale is in regard to why the filing of the patent application must occur before the submission of the SNDS. It was about the sequencing of the patent application and the SNDS, not about the rationale for picking the Canadian filing date over the claim date.

[152] The Governor in Council was well aware that since 1998, the Minister has "sought to apply the amendments on timing and relevance in order to place reasonable limits on the ability of innovator drug companies to list new patents on the basis of SNDS filings" [see 2006 RIAS] and that:

> It is recognized that there may be instances where a patent which does not qualify for the protection of the PM(NOC) Regulations is ultimately infringed by the fact of generic market entry. However, the Government's view is that where the patent fails to meet the listing requirements described above, policy considerations tip the balance in favour of immediate approval of the generic drug, and the matter is better left to the alternative judicial recourse of an infringement action. It follows that the continued viability of the regime greatly depends upon the fair and proper application of these listing requirements.
>
> [Emphasis added.]

[153] The Governor in Council made a choice that struck a particular balance between the PMNOC regime's competing objectives. The enactment of subsection 4(6) was within the Governor in Council's regulation making authority. As recognized by the Federal Court of Appeal in *Innovative Medicines*, having acted within the limits of the statutory language, the Governor in Council's regulation-making power is relatively unconstrained and it certainly falls within Governor in Council's purview to make policy-based choices such as this when deciding the balance to be struck. Could the Governor in Council have chosen to use the claim date in subsection 4(6)? Certainly. But the balance chosen by the date selected need not be perfect and it is not the role of the Court on this application to consider whether a different balance (as urged by Janssen) could have or ought to have been struck [see *Sanofi-Aventis Canada Inc v Teva Canada Limited*, 2012 FC 551 at para 24]. The burden rested on Janssen to demonstrate that the inclusion of the Canadian filing date was not in pursuance of and connected with the prevention of patent infringement and I am not satisfied that they have done so. Rather, I am satisfied that requiring that a patent meet certain timing requirements based on its Canadian filing date, which ensures timely market entry of subsequent generic drugs, is reasonably in keeping with the balance of the competing policy interests at issue.

[154] In some circumstances, the operation of the regulatory regime may benefit a subsequent entry drug manufacturer and in others, the innovator, depending on when the innovator choses to file their patent application in Canada. However, I am not satisfied that this renders subsection 4(6) *ultra vires* or otherwise arbitrary, illogical or irrational. I agree with the Respondent that, in Janssen's view, the language chosen by the Governor in Council must be the most beneficial to innovators in order to be rationally connected to the purpose of the *Patent Act* and the *PMNOC*

*Regulations.* But such an approach ignores the balancing of interests that must be undertaken. Moreover, it also ignores that innovators (whose patents benefit from a priority application) who chose to file their Canadian patent after their SNDS retain their right to bring patent infringement actions under the *Patent Act* regime and are not deprived of the benefit of their priority date in such actions.



[155] Janssen bears the burden of demonstrating that the Governor in Council's inclusion of the Canadian filing date in subsection 4(6) was unreasonable. For the reasons stated above, I am not satisfied that they have done so.

## V. Conclusion

[156] Having found that Janssen has failed to demonstrate that any aspect of OSIP's decision is unreasonable and that the Canadian filing date requirement in subsection 4(6) of the *PMNOC Regulations* is *ultra vires*, illogical, irrational or arbitrary, the application for judicial review shall be dismissed.

## VI. Costs

[157] At the hearing of the application, the parties advised that they agreed that the successful party should be awarded their costs fixed in the amount of $7,500.00. As the Respondents were

successful on the application, they shall be awarded their costs in accordance with the parties' agreement.

**JUDGMENT in T-2627-22**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. The Applicant shall pay to the Respondents their costs of this application fixed in the amount of $7,500.00, inclusive of disbursements and taxes.

"Mandy Aylen"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | T-2627-22 |
| **STYLE OF CAUSE:** | JANSSEN INC. v THE MINISTER OF HEALTH AND THE ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MAY 25, 2023 |
| **JUDGMENT AND REASONS:** | AYLEN J. |
| **DATED:** | JULY 17, 2023 |



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| | |
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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENTS |

# 16

Federal Court of Appeal | Cour d'appel fédérale

**Date: 20231121**

**Docket: A-192-23**

**Citation: 2023 FCA 229**



**CORAM:** **WEBB J.A.**
**LASKIN J.A.**
**LOCKE J.A.**

**BETWEEN:**

**JANSSEN INC.**

**Appellant**

**and**

**THE MINISTER OF HEALTH and ATTORNEY GENERAL OF CANADA**

**Respondents**

Heard at Ottawa, Ontario, on November 21, 2023.
Judgment delivered from the Bench at Ottawa, Ontario, on November 21, 2023.

REASONS FOR JUDGMENT OF THE COURT BY: LOCKE J.A.

Federal Court of Appeal | Cour d'appel fédérale

**Date: 20231121**

**Docket: A-192-23**

**Citation: 2023 FCA 229**



**CORAM:** **WEBB J.A.**
**LASKIN J.A.**
**LOCKE J.A.**

**BETWEEN:**

**JANSSEN INC.**

**Appellant**

**and**

**THE MINISTER OF HEALTH and ATTORNEY GENERAL OF CANADA**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**
**(Delivered from the Bench at Ottawa, Ontario, on November 21, 2023).**

**LOCKE J.A.**

[1] Janssen Inc. (Janssen) obtained notices of compliance in respect of supplemental new drug submissions (SNDSs) numbered 224739 and 244670 on January 23, 2020 and September 9, 2021, respectively. Canadian Patent No. 3,113,837 (the 837 Patent) issued on July 12, 2022, and on July 25, 2022, Janssen submitted a patent list (pursuant to the *Patented Medicines (Notice of Compliance) Regulations*, S.O.R./93-133 (the *Regulations*)) in respect of SNDS 244670

identifying the 837 Patent. SNDS 224739 was not mentioned in this July 25, 2022 submission. It was only on September 14, 2022 that Janssen sought to include SNDS 224739 in the patent list.

[2] Health Canada's Office of Submissions and Intellectual Property (OSIP), on behalf of the Minister of Health, refused to accept the patent list in respect of SNDS 224739 citing several reasons. Janssen sought judicial review of OSIP's decision before the Federal Court, but this was dismissed (2023 FC 870, *per* Justice Mandy Aylen). For the purposes of the present appeal, it is sufficient to address only one of the reasons cited by OSIP: that the patent list submitted on July 25, 2022 did not relate to SNDS 224739, and the submission on September 14, 2022 that did mention SNDS 224739 was outside the 30-day period from the date of issuance of the 837 Patent, as contemplated in subsection 4(6) of the *Regulations*. Because of our conclusion on this issue, it is not necessary to address other questions raised in this appeal, such as (i) whether the September 14, 2022 submission satisfied the other requirements for a patent list, and (ii) whether part of subsection 4(6) of the *Regulations* (unrelated to the 30-day period referred to above) is *ultra vires*.

[3] The parties agree on the standard of review, and we concur. As discussed in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45, the question for this Court to decide is whether the Federal Court identified the appropriate standard of review and applied it correctly. We are to step into the shoes of the Federal Court and focus on OSIP's decision. The parties also agree, as do we, that the Federal Court identified the appropriate standard of review: reasonableness. The issue therefore is whether the Federal Court correctly applied the reasonableness standard of review.

[4] In respect of the one issue that we must address in this appeal, OSIP noted that subsection 4(4) of the *Regulations* enumerates requirements for a patent list, including paragraph 4(4)(a) concerning identification of the SNDS (or new drug submission) to which the list relates. OSIP noted correctly that the patent list submitted on July 25, 2022 did not identify SNDS 224739, and hence this requirement was not met. OSIP rejected Janssen's arguments that (i) the later September 14, 2022 submission could change the nature of the July 25, 2022 patent list, and (ii) OSIP's preliminary response to the July 25, 2022 patent list acknowledged that it also concerned SNDS 224739. OSIP also noted that the 30-day deadline contemplated in subsection 4(6) of the *Regulations* expired on August 11, 2022. Therefore, the September 14, 2022 submission was too late, even assuming (contrary to OSIP's view) that it met the requirements for a patent list.

[5] We are not convinced that there was anything unreasonable in OSIP's analysis in this regard. We also do not agree with Janssen's argument that subsection 4(7) of the *Regulations* should be read to permit it to update the patent list by adding reference to an additional SNDS. Subsection 4(7) provides that a first person "must keep the information on the list up to date"; this subsection does not permit adding a patent to the list. We see nothing in the patent list in this case that would have engaged this provision. The information on the patent list was up to date. Janssen cannot, under the guide of keeping the information on the patent list up to date, add a different SNDS to an existing patent list.

[6] It follows from the foregoing that we find no reviewable error in the Federal Court's conclusion that OSIP's refusal to add the patent list against SNDS 224739 was reasonable.

[7] We will dismiss this appeal with costs.

"George R. Locke"
J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | A-192-23 |
| **STYLE OF CAUSE:** | JANSSEN INC. v. THE MINISTER OF HEALTH and ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | NOVEMBER 21, 2023 |
| **REASONS FOR JUDGMENT OF THE COURT BY:** | WEBB J.A.<br>LASKIN J.A.<br>LOCKE J.A. |
| **DELIVERED FROM THE BENCH BY:** | LOCKE J.A. |

**APPEARANCES:**

| | |
|---|---|
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| Elizabeth Koudys<br>James Schneider<br>Leah Bowes | FOR THE RESPONDENTS<br>THE MINISTER OF HEALTH<br>and ATTORNEY GENERAL OF CANADA |

**SOLICITORS OF RECORD:**

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# 17

Competition Tribunal | Tribunal de la Concurrence

Reference: *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.*, 2008 Comp. Trib. 7
File No.: CT-2008-003
Registry Document No.: 0029

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Order pursuant to section 103.1 granting leave to make an Application under section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited for an Interim Order pursuant to section 104 of the *Competition Act*.

B E T W E E N:

**Nadeau Ferme Avicole Limitée/**
**Nadeau Poultry Farm Limited**
(applicant)

and

**Groupe Westco Inc. and Groupe Dynaco, Coopérative Agroalimentaire, and Volailles Acadia S.E.C. and Volailles Acadia Inc./**
**Acadia Poultry Inc.**
(respondents)

Decided on the basis of the written record.
Presiding Judicial Member: Blanchard J.
Date of Reasons and Order: May 12, 2008
Reasons and Order signed by: Justice Edmond P. Blanchard

**REASONS FOR ORDER AND ORDER GRANTING AN APPLICATION FOR LEAVE UNDER SECTION 103.1 OF THE COMPETITION ACT**

## I. INTRODUCTION

**[1]** Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited (the Applicant) applies to the Competition Tribunal (the Tribunal), pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended (the Act), for leave to bring an application under section 75 of the Act. If leave is granted it further seeks orders under subsection 75(1) and section 104 of the Act directing the Respondents to continue to deal with the Applicant and to supply it with live chickens on the usual trade terms, in the volumes previously supplied.

**[2]** Pursuant to subsections 103.1(1) and (6) of the Act, the Tribunal has relied on the affidavit of Anthony Tavares, Chief Executive Officer of Maple Lodge (the Tavares Affidvit), and the written representations of the parties, including the Applicant's reply, in deciding this application for leave.

## II. THE PARTIES

**[3]** The Applicant is a corporation incorporated under the laws of the Province of New Brunswick and is a wholly-owned subsidiary of Maple Lodge Holding Corporation (Maple Lodge), which is one of the largest processors of chicken in Canada. Maple Lodge employs about 2,300 people and operates two processing facilities in Canada; one in Norval, Ontario and one in St-François de Madawaska, New Brunswick (the St-François Plant). The St-François Plant processes chickens for the Quebec and Maritime markets and is operated by the Applicant.

**[4]** The Respondent, Groupe Westco Inc. (Westco) is a corporation incorporated under the laws of the Province of New Brunswick. Westco is highly integrated in the chicken industry. It owns or controls hatching egg production quota, farms, chicken production quota and chicken production farms. Its chicken production facilities are located in New Brunswick and elsewhere. A brochure published by Westco (Exhibit B to the Tavares Affidavit) indicates that it currently has, besides its chicken production facilities, hatcheries and transportation facilities. The brochure also refers to "Volailles Acadia" as a "coentreprise" that was acquired in 2006. The brochure states that Westco has 51% of New Brunswick's chicken production, and "Volailles Acadia" has 17%, for a total of 68%. The Applicant states that Westco supplies close to 33% of its live chickens.

**[5]** The Respondent, Groupe Dynaco, Coopérative Agroalimentaire (Dynaco), is a cooperative registered in the Province of Quebec. Dynaco has interests in certain chicken production facilities in the Province of New Brunswick. Dynaco is highly integrated in a number of industries, including the chicken industry. The Applicant says that Dynaco supplies 4.6% of its live chickens. It offers a wide range of products and services to meet the needs of agricultural producers and consumers. In Westco's submissions it is conceded that it owns one of Dynaco's 734 shares.

**[6]** The Respondent, Volailles Acadia S.E.C., created under the laws of the Province of Quebec, is registered as an extra-provincial limited partnership in the Province of New Brunswick, and the Respondent, Volailles Acadia Inc./Acadia Poultry Inc., incorporated under the laws of Canada, is registered as an extra-provincial corporation in the Province of New

Brunswick (collectively Acadia). Acadia also supplies the Applicant with live chickens. The Applicant alleges that Acadia is jointly owned by Westco and Dynaco. In Westco's submissions it is conceded that it has a 25% interest in Volailles Acadia S.E.C.

## III. THE RELEVANT FACTS

**[7]** The production of chicken for the Canadian market is managed under a national supply management system that operates through co-ordinated federal-provincial regulatory schemes. Essentially the Chicken Farmers of Canada (CFC), an agency established under the *Farm Products Agencies Act*, R.S.C. 1985, c. F-4, among other things, establishes chicken production quotas federally and distributes quota to each member province. In New Brunswick, the Chicken Farmers of New Brunswick (CFNB), a provincial commodity board established by regulation under the New Brunswick *Natural Products Act*, S.N.B. 1999, c. N-1.2, regulates the intra-provincial production and marketing of chicken in New Brunswick. The quotas allotted to New Brunswick by the CFC are, in turn, allotted to the various producers in New Brunswick by the CFNB.

**[8]** The supply management system applies only to impose live chicken production quotas on producers. There is nothing to require a producer to direct its live chicken supply to any particular processor within or outside New Brunswick. Nor does there appear to be any express restriction on producers becoming involved in chicken processing.

**[9]** Historically, the Applicant has obtained 100% of its live chickens from New Brunswick producers, of which almost 75% has come from quota now owned by the Respondents. At the time of this application, live chickens were also being supplied to the Applicant from Nova Scotia and Prince Edward Island. A number of chicken producers in New Brunswick have consolidated their quotas into three main producer groups, namely the Respondents, which together produce almost 75% of New Brunswick's live chickens. The undisputed evidence is that while the quotas remain in the names of the original producers, the ownership or control of the production has been transferred to the Respondents. At the time of this application the Respondents are supplying about 48% of the Applicant's chickens.

**[10]** Olymel, a Quebec based processor and the Applicant's primary competitor in Quebec and the Eastern provinces, in consort with Westco wanted to buy the St-François Plant. On August 19, 2007, Olymel and Westco, (the Consortium) informed the Applicant that if it was not prepared to sell at a price acceptable to the Consortium, then all of the chicken produced by Westco and Dynaco would temporarily be diverted to Olymel's processing facility in Quebec while the Consortium built its own plant in New Brunswick. Westco had let it be known that it had always been its intention to integrate processing into its business plan.

**[11]** Negotiations for the purchase of the St-François Plant between the Applicant and the Consortium failed. As a result, on January 21, 2008, Westco notified the Applicant that it would cease supplying live chickens to the Applicant effective July 20, 2008, by reason of its decision to have its live chickens processed at the Consortium's new New Brunswick plant.

**[12]** On January 24, 2008, Dynaco advised the Applicant that it would also cease to supply the Applicant with live chickens because the Applicant had sullied its name by referring to Dynaco in correspondence with the New Brunswick Minister of Agriculture. On February 6, 2008, notwithstanding an apology by the Applicant for the mistaken reference to Dynaco in the letter to the Minister, Dynaco confirmed that its supply to the Applicant would terminate in the middle of September, 2008.

**[13]** By letter dated February 28, 2008, Acadia gave formal notice that it would cease supplying live chickens to the Applicant, effective September 15, 2008.

**[14]** The Applicant contends that the refusal to deal by the Respondents collectively will reduce by 75% the supply of live chickens from New Brunswick to the Applicant. This translates, on average, to approximately 48% of the 565,800 chickens (i.e. 271,350) processed weekly at the plant. The Applicant's evidence is that it requires a guarantee of 350,000 live chickens per week to stay viable and that the absolute minimum supply required to simply "get by" is 300,000 live chickens per week.

**[15]** The Applicant's evidence is that losing Westco's 186,230 chickens alone would cause revenue loss of over $830,000 per week, and loss of profit of more than $139,000 per week. Because of the high level of fixed costs at the St-François Plant, loss of the Westco chickens alone would reduce profits by about 50% on an annual basis.

**[16]** The Applicant contends that if the Respondents cut off the Applicant's supply, the St-Francois Plant will only be able to run at 40% of capacity. Processing would be reduced to just over ¾ of one shift and a majority of the 340 jobs would be lost immediately. According to the Applicant, the viability of the whole plant would be severely compromised.

**[17]** The Applicant argues that the refusal of each of Westco, Dynaco and Acadia, separately, would substantially affect its business. Together, they might destroy the business completely.

## IV. ANALYSIS

**[18]** Subsection 103.1(7) of the Act sets out the test for leave on an application under section 75 of the Act. It reads:

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|---|---|
| **103.1**(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section. | **103.1**(7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles. |

**[19]** The test to be followed on an application for leave was first applied by Madam Justice Dawson in *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41, par. 14. The test as articulated by Madam Justice Dawson was subsequently adopted by the Federal Court of Appeal in *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, [2004] FCA 339. Pursuant to this test, the Tribunal must determine whether the leave application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice and that the practice in question could be subject to an order.

**[20]** In considering a leave application, all the elements of the reviewable trade practice of refusal to deal set out in subsection 75 (1) of the Act must be addressed. See *Barcode,* above, at paragraph 18.

**[21]** Subsection 75(1) of the Act provides as follows:

| | |
|---|---|
| **75**.(1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that | **75**.(1) Lorsque, à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, le Tribunal conclut : |
| (*a*) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms, | *a*) qu'une personne est sensiblement gênée dans son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer un produit de façon suffisante, où que ce soit sur un marché, aux conditions de commerce normales; |
| (*b*) the person referred to in paragraph (*a*) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market, | *b*) que la personne mentionnée à l'alinéa *a*) est incapable de se procurer le produit de façon suffisante en raison de l'insuffisance de la concurrence entre les fournisseurs de ce produit sur ce marché; |
| (*c*) the person referred to in paragraph (*a*) is willing and able to meet the usual trade terms of the supplier or suppliers of the product, | *c*) que la personne mentionnée à l'alinéa *a*) accepte et est en mesure de respecter les conditions de commerce normales imposées par le ou les fournisseurs de ce produit; |
| (*d*) the product is in ample supply, and | *d*) que le produit est disponible en quantité amplement suffisante; |
| (*e*) the refusal to deal is having or is likely to have an adverse effect on competition in a market, | *e*) que le refus de vendre a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché, |
| the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the | le Tribunal peut ordonner qu'un ou plusieurs fournisseurs de ce produit sur le marché en question acceptent cette personne comme client dans un délai déterminé aux conditions de commerce normales à moins que, au cours de ce |

person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

délai, dans le cas d'un article, les droits de douane qui lui sont applicables ne soient supprimés, réduits ou remis de façon à mettre cette personne sur un pied d'égalité avec d'autres personnes qui sont capables de se procurer l'article en quantité suffisante au Canada.

**[22]** I will now turn to the first part of the test: whether the evidence before the Tribunal is sufficient to satisfy it that there is reason to believe that the Applicant is directly and substantially affected in its business by a practice referred to in section 75.

**[23]** The Applicant's affiant attests that the St-François Plant is the Applicant's only business and that the Respondents' refusals will have a substantial and direct impact on that business. The evidence indicates that the Respondents' refusals will collectively lead to a loss of approximately 48% of its current supply of live chickens reducing the Applicant's operations to approximately 40% of capacity. While the Respondents Dynaco and Acadia submit that their respective refusals cannot substantially affect the Applicant's business because of their small numbers, I am satisfied that there is evidence of ties between the Respondents which leads me to consider, for the purpose of this leave application, the collective impact of refusals by all Respondents.

**[24]** The Tribunal has not accepted the Respondents' submissions that the business to be examined is that of Maple Lodge. Rather, when considering an application for leave under section 103.1 of the Act, the Tribunal must examine the "applicant's business". The Applicant is not Maple Lodge.

**[25]** The uncontested evidence before the Tribunal indicates that the Respondents will cut off supply shortly. In my view, one should not have to wait until harm actually occurs before bringing an application under subsection 103.1(1) of the Act (see also *Robinson Motorcycle Limited v. Fred Deely Imports Ltd.*, 2005 Comp. Trib. 52, where leave was granted before supply was scheduled to cease).

**[26]** I am therefore satisfied that the Tribunal has reason to believe that the Applicant is directly and substantially affected in its business by the Respondents' refusals.

**[27]** I will now turn to the second part of the test, the factors in subsection 75(1) of the Act.

**[28]** As I explained above, the Applicant's affiant attests that the Respondents' refusals will have a substantial and direct impact on the Applicant's business. The parties appear to agree at this stage that the "product" at issue for the purposes of paragraph 75(1)*(a)* is live chickens.

**[29]** The Respondents contend in their written submissions that the Applicant adduced no evidence to establish the geographic market or show what efforts were made by the Applicant to secure alternate supplies.

**[30]** However, the Applicant's affiant attests that "Nadeau cannot obtain replacement supplies of live chicken from within or outside New Brunswick …" and that "Because the supply

management system creates monopoly production rights for producers and all production is already allocated to other processing plants, Nadeau would be unable to replace the lost volumes from other sources."

**[31]** Given the uncontested evidence that all the Respondents are about to cut off supply to the Applicant, I am satisfied that the Tribunal could conclude that the Applicant's business is substantially affected due to its inability to obtain adequate supplies of live chickens.

**[32]** With respect to paragraph 75(1)(*b*) of the Act, the evidence shows that 74.18% of the chicken quota in New Brunswick is in the hands of the three Respondents. The production of chicken for the Canadian market is managed under a national supply management system. However, that system leaves producers free to sell to the processors of their choice at negotiated prices above a regulated minimum. It is noteworthy that Westco concedes in its submissions that there is "vigorous" competition in the production of live chickens.

**[33]** In these circumstances and considering the fact that 75% of the New Brunswick supply is controlled by the Respondents, the Tribunal could conclude that the Applicant is unable to obtain adequate supplies of live chickens because of insufficient competition among suppliers.

**[34]** With respect to paragraph 75(1)(*c*), the Respondents do not appear to challenge the evidence that the Applicant is willing and able to meet the Respondents' usual trade terms. In any event, I am satisfied that the Tribunal could conclude that the Applicant is willing and able to meet the usual trade terms of the suppliers.

**[35]** Paragraph 75(1)(*d*) requires that the product be in ample supply. The evidence indicates that the Respondents' ability to supply the Applicant has never been a problem. The Supreme Court of Canada has recognized that "[t]he quota system is an attempt to maintain an equilibrium between supply and demand and attenuate the inherent instability of the markets" (see *Fédération des producteurs de volailles du Québec v. Pelland*, [2005] 1 S.C.R. 292, 2005 SCC 20, at par. 38). I am satisfied in the circumstances that the Tribunal could conclude that live chickens are in "ample supply".

**[36]** The market at issue for the purposes of paragraph 75(1)(*e*) is the market in which the Applicant participates, involving the sale of processed chickens. The Applicant's affiant attests that the refusals could lead to the closure of the Applicant's processing plant, thereby eliminating a major competitor in the market place. He explains that the closure of the St-François Plant "…would result in a significant reduction of competition in the chicken market in Quebec and the Maritime provinces." In the circumstances, I am satisfied that the Tribunal could conclude that the refusals are likely to have an adverse effect on competition in a market.

**[37]** For these reasons, I conclude that the Tribunal "could" make an order requiring the Respondents to supply the Applicant.

**[38]** The Tribunal has therefore reason to believe that the Applicant is directly and substantially affected in the Applicant's business by a practice referred to in section 75 that could be subject to an order under that section. Accordingly, leave is granted.

**FOR THESE REASONS THE TRIBUNAL ORDERS THAT:**

**[39]** The Application for leave to apply under section 75 of the Act is granted.

DATED at Ottawa, this 12th day of May 2008.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Edmond P. Blanchard

**COUNSEL:**

For the applicant

Nadeau Ferme Avicole Limitée/Nadeau Poultry Farm Limited

Leah Price
Andrea McCrae

For the respondents

Groupe Westco Inc.

Denis Gascon
Geoffrey Conrad
Éric C. Lefebvre

Groupe Dynaco, Coopérative Agroalimentaire

Paul Routhier
Paul Michaud
Louis Masson

Volailles Acadia S.E.C. and Volailles Acadia Inc./Acadia Poultry Inc.

Pierre Beaudoin
Valérie Belle-Isle

# 18

Reference: *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41
File no.: CT2002005
Registry document no.: 0004



IN THE MATTER OF an application by Mr. Robert Gilles Gauthier, carrying on business as The National Capital News Canada, pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, for leave to make an application under section 75 of the Act.

B E T W E E N :

**The National Capital News Canada**
(applicant)

and

**The Honourable Peter Milliken, M.P.**
(respondent)

Decided on the basis of the written record.
Member: Dawson J. (presiding)
Date of reasons and order: 20021213
Reasons and order signed by: Dawson J.

**REASONS AND ORDER REGARDING APPLICATION FOR LEAVE TO MAKE AN APPLICATION UNDER SECTION 75 OF THE *COMPETITION ACT***

## I. INTRODUCTION

**[1]** This is the first application to the Competition Tribunal ("Tribunal") brought by a party other than the Commissioner of Competition ("Commissioner"). Pursuant to recent amendments to the *Competition Act*, R.S.C. 1985, c. C-34, ("Act") an application by a party other than the Commissioner can only be commenced if leave is granted by a judicial member of the Tribunal.

## II. RELEVANT FACTS

**[2]** Mr. Robert Gilles Gauthier ("applicant") filed, pursuant to subsection 103.1(1) of the Act, an application for leave ("leave application") to make an application under section 75 of the Act ("application") against the Honourable Peter Milliken. Mr. Milliken is named in his capacity as Speaker of the House of Commons ("Speaker"). Sections 75 and 103.1 of the Act are attached to these reasons as Schedule A.

**[3]** In substance, Mr. Gauthier, as proprietor of The National Capital News Canada ("National Capital News"), seeks an order under section 75 of the Act requiring that he and his associates and employees be provided with access to the Parliamentary Press Gallery, without becoming a member of Canadian Parliamentary Press Gallery Inc., and without " . . . being required to meet unfair or arbitrarily restrictive conditions of any other person, group or government official."

**[4]** Contained within the leave application is a statement of grounds and material facts on which the applicant relies. The applicant also filed an affidavit sworn by him in support of the leave application. The applicant asserts that he has been substantially affected in his business, and is significantly precluded from carrying on business, due to his alleged inability to obtain full access to substantial supplies of information and to essential services (including listing on the Press Gallery journalist list) that are provided to his competitors by the Speaker. The Speaker is said to control such access on behalf of the Parliament of Canada. The affidavit describes the history of the National Capital News and its business environment, its alleged need to gain access to sources of information related to the Parliament and Government of Canada and the difficulties encountered over the years to obtain access. Exhibits attached to the affidavit consist of: (1) a copy of a March 25, 1994, letter from Mr. Brian A. Crane, Q.C., counsel for the Speaker of the House of Commons at the time; (2) a letter dated November 10, 1989, from Mr. Marcel R. Pelletier, Q.C., the House of Commons Law Clerk and Parliamentary Counsel, confirming that there has been no legislation ceding a certain power to the Parliamentary Press Gallery; (3) an order of the Ontario Court (General Division) dated January 8, 1996, prohibiting Mr. Gauthier from coming onto the premises of the Canadian Parliamentary Press Gallery; and (4) a letter dated October 16, 1995, from M.G. Cloutier, the Sergeant-at-Arms, House of Commons, confirming there is no restriction on Mr. Gauthier's access to the buildings on Parliament Hill on the same basis as other visitors, with the exception of access to the Press Gallery premises.

**[5]** The affidavit does not describe in any detail the facilities and services provided to the media by the Speaker, the physical location of the Parliamentary Press Gallery, or the location at which other services are provided.

**[6]** The Speaker did not file any material in reply to the leave application. While a respondent to a leave application is not required to make any response, the Tribunal would generally be assisted by relevant material and submissions filed by a respondent in opposition to a leave application.

## III. THE TEST FOR THE GRANTING OF LEAVE UNDER SECTION 103.1 OF THE ACT

**[7]** The test for the granting of leave is contained in subsection 103.1(7) of the Act. It provides as follows:

> The Tribunal may grant leave to make an application under section 75 or 77 if it has *reason to believe* that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section. (emphasis added)

**[8]** In order to exercise its discretion to grant leave, the Tribunal must therefore be satisfied that it has reason to believe that: (1) the applicant is directly and substantially affected in the applicant's business by any practice referred to in section 75 or 77 of the Act; and (2) the alleged practice could be subject to an order under that section.

## IV. THE REQUIREMENT OF "REASON TO BELIEVE"

**[9]** While the phrase "reason to believe" is new to the Act, it has been judicially considered in other contexts. In *Regina* v. *Rollins*, 80 C.C.C. (3d) 385, the British Columbia Supreme Court considered the phrase as it was contained in section 756 of the *Criminal Code*, R.S.C. 1985, c. 27 (1st Supp), which generally allowed a justice to place an offender in custody for observation where there was *reason to believe that evidence might be obtained* as a result of the observation that would be relevant to dangerous offender proceedings. The Court concluded that the expression "reason to believe" requires *reasonable grounds* for the "reason to believe". McKinnon J. wrote, at page 395, that:

> I accept that s. 756 *requires reasonable grounds for the "reason to believe."* That is a precondition to the belief and in most cases will come from the medical opinion but might come from other sources as well; however, in any event, there nevertheless exists the requirement that the court's opinion must be supported by the evidence of at least one medical practitioner. There are, therefore, criteria which offer controlled direction in the exercise of the court's discretion and an ability to obtain a "settled meaning" in relation to the wording or test enunciated in s. 756 which can be used in each application.
>
> I find that s. 756 is a broad test that is not unduly vague and which does set forth an "intelligible" standard, albeit not a difficult one to meet. (emphasis added)

**[10]** I accept that the requirement that the Tribunal has "reason to believe" does not require that it be satisfied that an applicant be directly and substantially affected, but rather that there are

reasonable grounds to believe the applicant's allegations that he has been so affected.

**[11]** As to the nature of the evidence required to establish reasonable grounds upon which to believe that an applicant has been directly and substantially affected, the Federal Court has considered the standard of proof required to show the existence of reasonable grounds for a belief.

**[12]** In *Canada (Attorney General)* v. *Jolly*, [1975] F.C. 216 (C.A.), the Federal Court of Appeal was asked to determine whether there were "reasonable grounds for believing" that an organization, with whom the respondent was associated, was a subversive organization. The Court concluded that, even after *prima facie* evidence had been adduced by the respondent denying the fact, it was only necessary for the Minister to show the existence of reasonable grounds for believing the fact. It was unnecessary for the Minister to go further and establish the subversive character of the organization. The Court stated at paragraph 18:

> . . . But where the fact to be ascertained on the evidence is whether there are reasonable grounds for such a belief, rather than the existence of the fact itself, it seems to me that to require proof of the fact itself and proceed to determine whether it has been established is to demand the proof of a different fact from that required to be ascertained. *It seems to me that the use by the statute of the expression "reasonable grounds for believing" implies that the fact itself need not be established and that evidence which falls short of proving the subversive character of the organization will be sufficient if it is enough to show reasonable grounds for believing* that the organization is one that advocates subversion by force, etc. In a close case the failure to observe this distinction and to resolve the precise question dictated by the statutory wording can account for a difference in the result of an inquiry or an appeal. (emphasis added)

**[13]** Subsequently, in *Chiau* v. *Canada (Minister of Citizenship and Immigration)* (C.A.), [2001] 2 F.C. 297, the Federal Court of Appeal, when asked to determine the proper interpretation of the term "reasonable grounds" in the context of paragraph 19(1)(c.2) of the *Immigration Act of Canada*, R.S.C. 1985, c. I-2, stated at paragraph 60:

> As for whether there were "reasonable grounds" for the officer's belief, I agree with the Trial Judge's definition of "reasonable grounds" . . . as a standard of proof that, while falling short of a balance of probabilities, nonetheless connotes "*a bona fide belief in a serious possibility based on credible evidence*." See Attorney General of Canada v. Jolly, [1975] F.C. 216 (C.A.). (emphasis added)

Leave to appeal to the Supreme Court of Canada was denied (see [2001] S.C.C.A. No. 71).

**[14]** Accordingly, on the basis of the plain meaning of the wording used in subsection 103.1(7) of the Act and the jurisprudence referred to above, I conclude that the appropriate standard under subsection 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in

question could be subject to an order.

## V. APPLICATION OF THE TEST TO THIS LEAVE APPLICATION

**[15]** I turn now to whether the evidence before the Tribunal is sufficient to satisfy it that there is reason to believe that:

> (1) the applicant is directly and substantially affected in his business by a practice referred to in section 75 of the Act; and
> (2) the alleged practice could be subject to an order under section 75 of the Act.

**[16]** It is the second element of the test which I consider to be dispositive of the leave application. I conclude that, for the following reasons, the applicant has failed to establish that the alleged reviewable practice could be subject to an order under section 75 of the Act.

**[17]** The order sought by the applicant against the Speaker is an order that:

> . . . pursuant to Section 75(1), (2) and (3) of the *Competition Act*, Restrictive Trade Practices, Refusal to Deal . . . full access to the Press Gallery facilities and services, including mailbox, listing and other benefits, be provided immediately to the applicant and his employees and associates without further delay . . . (application, paragraph 10)

**[18]** In the statement of grounds and material facts the applicant alleges that access to the services which he seeks is controlled by the Speaker, " . . . who controls such access on behalf of the Parliament of Canada." (application, paragraph 3) The evidence adduced by the applicant in his affidavit as it touches on this point is as follows:

> 6. I have invested 20 years of my life and more than my own financial resources into this business and have been seriously impeded by the Speaker of the House of Commons who finances and controls the facilities and services provided for the media by the House of Commons.
>
> . . .
>
> 17. The House of Commons provides substantial facilities and services made available to members of the media and which allow journalists and their employers to earn their living and realize serious commercial rewards.
>
> . . .
>
> 36. The facilities and services provided by the House of Commons fall under the direct control of the Speaker of the House of Commons who has the sole authority to determine who may have access to the Press Gallery facilities and services.
>
> . . .

38. The power to regulate the admission of strangers to the precincts of Parliament, including the Press Gallery, resides with Parliament alone and has customarily been exercised by the Speaker. (Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 16th ed. London: Butterworths, 1976.)

39. There has been no delegation of that power by either Parliament itself nor the Speaker of the House of Commons to the privately-owned Canadian Parliamentary Press Gallery Corporation, as confirmed by the House of Commons Law Clerk and Parliamentary Counsel, in his letter 10 November 1989 to the applicant's Legal Counsel at that time, **being Exhibit "B" to this my affidavit.**

40. The applicant alleges that the Speaker is the sole person in control of the media facilities and services and therefore to the resultant commercial benefits derived by journalists and publishers who have access.

41. The Speaker has the duty to administer these publicly-funded facilities and services in a fair manner pursuant to the provisions of the *Competition Act.*



**[19]** The applicant is, I believe, correct that it is the Speaker who alone has the power to control access to any part of the House, including the Press Gallery. What is significant, however, is that the Speaker does so through constitutional powers and parliamentary privilege.

**[20]** The origin and nature of parliamentary privilege was reviewed by the Supreme Court of Canada in *New Brunswick Broadcasting Co.* v. *Nova Scotia (Speaker of the House of Assembly)* [1993] 1 S.C.R. 319. There, Justice McLachlin, as she then was, writing for the majority noted that Canadian legislative bodies possess those historically recognized inherent constitutional powers which are necessary to their proper functioning. Writing with respect to the historical tradition of parliamentary privilege, Justice McLachlin stated at pages 378 to 379:

> . . . It has long been accepted that in order to perform their functions, legislative bodies require certain privileges relating to the conduct of their business. It has also long been accepted that these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch.
>
> The Parliamentary privilege of the British Parliament at Westminster sprang originally from the authority of Parliament as a court. Over the centuries, Parliament won for itself the right to control its own affairs, independent of the Crown and of the courts. The courts could determine whether a parliamentary privilege existed, but once they determined that it did, the courts had no power to regulate the exercise of that power. One of those privileges, held absolutely and deemed to be constitutional, was the power to exclude strangers from the proceedings of the House.

**[21]** Justice McLachlin went on to confirm that Canadian legislative bodies properly claim as inherent privileges those rights which are necessary to their capacity to function as legislative bodies (page 381), and, added at page 383, that:

> *. . . If a matter falls within this necessary sphere of matters without which the dignity and efficiency of the House cannot be upheld, courts will not inquire into questions concerning such privilege. All such questions will instead fall to the exclusive jurisdiction of the legislative body.* (emphasis added)

**[22]** As to the scope of that exclusive jurisdiction, at page 384 Justice McLachlin wrote:

> *. . . The parameters of this jurisdiction are set by what is necessary to the legislative body's capacity to function.* So defined, *the principle of necessity will encompass not only certain claimed privileges, but also the power to determine, adjudicate upon and apply those privileges.* Were the courts to examine the content of particular exercises of valid privilege, and hold some of these exercises invalid, they would trump the exclusive jurisdiction of the legislative body, after having admitted that the privilege in issue falls within the exclusive jurisdiction of the legislative body. *The only area for court review is at the initial jurisdictional level: is the privilege claimed one of those privileges necessary to the capacity of the legislature to function?* A particular exercise of a necessary privilege cannot then be reviewed, unless the deference and the conclusion reached at the initial stage be rendered nugatory. (emphasis added)

**[23]** One of the specific privileges discussed by Justice McLachlin was the parliamentary privilege to eject strangers from the House and its precincts. She observed that this ancient privilege was now reposed in the Speaker "who alone has the power, whenever he or she sees fit, to order the withdrawal of strangers from any part of the House" (page 386). This privilege is necessary because the legislative chamber is at the core of the system of representative government (page 387).

**[24]** J.P. Joseph Maingot, Q.C., in *Parliamentary Privilege in Canada*, 2nd Ed. (Montreal: McGill-Queen's University Press, 1997) enumerates the rights, privileges and powers of the Senate and House of Commons in Chapter 11. One such privilege is the right to regulate internal affairs free from interference. This is said to include the right to administer internal affairs both within its precincts and beyond the debating chamber.

**[25]** No evidence or information was provided to suggest that any of the facilities or services that the applicant seeks fall outside the scope of Parliamentary privilege. The applicant asserts that the facilities and services which he seeks are provided by the House of Commons, and are financed and controlled by the Speaker who exercises Parliament's power to regulate the admission of strangers to its precincts.

**[26]** Applying the principles articulated in *New Brunswick Broadcasting*, cited above, to the evidentiary record before me, I am satisfied that the Speaker's alleged refusal to grant to the applicant full access to the Parliamentary Press Gallery facilities and services is an exercise of the parliamentary privilege to control access to the House and its precincts and to regulate the internal affairs of the House. Such privilege also encompass the power to adjudicate and apply those privileges.

**[27]** A similar conclusion was reached by the Ontario Court (General Division) in *Gauthier* v. *Canada (Speaker of the House of Commons),* (1994), 25 C.R.R. (2d) 286 where Madam Justice Bell found that the Court did not have jurisdiction to review the Speaker's decision to deny the plaintiff access to the precincts of Parliament.

**[28]** Just as a court may not examine a particular exercise of these privileges, I conclude that the Tribunal is without jurisdiction to embark upon such examination. The Tribunal is, pursuant to section 9 of the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), a court of record and principles of Parliamentary privilege are as important and applicable to it as they are to other courts. Therefore the practice complained of could not be the subject of any order of the Tribunal under section 75 of the Act.



**[29]** It follows that the Tribunal does not have, and can not have, any basis upon which to believe that the practice complained of by the applicant could be subject to an order. This requirement of subsection 103.1(7) of the Act is not met and therefore the application for leave must fail. In view of this conclusion it is unnecessary to consider whether the applicant adduced sufficient evidence to meet the first element of the test for leave.

FOR THESE REASONS THE TRIBUNAL ORDERS THAT:

**[30]** The leave application is denied.

DATED at Ottawa, this 13th day of December, 2002.

SIGNED on behalf of the Tribunal by the judicial member.

(s) Eleanor R. Dawson

**[31]** Schedule A: Legislative References to sections 75 and 103.1 of the Act.

**75.** (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

(*a*) a person is *substantially affected in his business* or is precluded from carrying on business due to his *inability to obtain adequate supplies of a product* anywhere *in a market* on *usual trade terms*,

(*b*) the person referred to in paragraph (*a*) is unable to obtain adequate supplies of the product because of *insufficient competition among suppliers* of the product in the market,

(*c*) the person referred to in paragraph (*a*) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,
(*d*) the product is in ample supply, and
(*e*) the refusal to deal is having or is likely to have *an adverse effect on competition in a market*,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada. (emphasis added)

(2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.

(3) For the purposes of this section, the expression "trade terms" means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

(4) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

**103.1** (1) Any person may apply to the Tribunal for leave to make an application under section 75 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under section 75 or 77.

(2) The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75 or 77 is sought.

(3) The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

(*a*) is the subject of an inquiry by the Commissioner; or
(*b*) was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75 or 77 is sought.

(4) The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(*a*) or (*b*) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75 or 77.

(5) The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

(6) A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2).

(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 75 or 77 must be made. The application must be made no more than one year after the practice that is the subject of the application has ceased.

(9) The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

(10) The Commissioner may not make an application for an order under section 75, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7), if the person granted leave has already applied to the Tribunal under section 75 or 77.

(11) In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

(12) If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.

REPRESENTATIVE

For the applicant:

Robert Gilles Gauthier, carrying on business as the National Capital News Canada

Robert Gilles Gauthier

For the respondent:

The Honourable Peter Milliken, M.P.

not represented

# 19

Competition Tribunal | Tribunal de la Concurrence

Reference: *Paradise Pharmacy Inc. and Rymal Pharmacy Inc. v. Novartis Pharmaceuticals Canada Inc.*, 2004 Comp. Trib. 21
File No.: CT-2004-004
Registry Document No.: 0008

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF an application by Paradise Pharmacy Inc. and Rymal Pharmacy Inc. (Paradise et al.) for an order pursuant to section 103.1 of the *Competition Act*, granting leave to bring an application under section 75 of the Act;

BETWEEN:

**Paradise Pharmacy Inc. and Rymal Pharmacy Inc.**
(applicants)

And

**Novartis Pharmaceuticals Canada Inc.**
(respondent)

Decided on the basis of the written record.
Presiding Member: Blais J.
Date of Reasons for Order and Order: September 20, 2004

**REASONS FOR ORDER AND ORDER**

**APPLICATION**

**[1]** The applicants are Paradise Pharmacy Inc. and Rymal Pharmacy Inc. (Paradise et al.), corporations incorporated under the laws of the Province of Ontario carrying on business in Hamilton, Ontario. Both pharmacies are owned and operated by Shirley Silberg, a licensed pharmacist.

**[2]** The respondent is Novartis Pharmaceuticals Canada Inc./Novartis Pharma Canada Inc. (Novartis), corporations incorporated under the laws of Canada. Novartis carries on business as a pharmaceutical manufacturer across Canada, including Ontario.

**[3]** Paradise et al. operate retail pharmacies in Hamilton since 1996, for Paradise, and 1997, for Rymal. The applicants offer the products and services associated with a neighbourhood pharmacy - health and beauty aides, cosmetics and prescription and over the counter medicines.

**[4]** There is significant competition among retail pharmacies in the area adjacent to Paradise et al. Both pharmacies have at least one large drugstore operation - Shoppers Drug Mart, Pharma Plus, Wal-Mart - within one mile of their location. Pharmacies depend on manufacturers to supply pharmaceutical products. In some cases, generic products are available. In other patent-protected cases, the drug manufacturer (including its authorized distributors) is the sole source of supply.

**[5]** Paradise et al. have been selling Novartis products since they began operating. Drugs produced by Novartis represent for each pharmacy approximately 7 per cent of their total annual pharmaceutical drug sales. Novartis manufactures a variety of prescription drugs for various ailments, including diabetes (Actos), high blood pressure (Diovan, Lotensin), breast cancer prevention (Femara) and psychiatric disorders (Zyprexa).

**[6]** Paradise et al.'s two distributors have advised them that Novartis has directed the distributors not to supply the pharmacies with any Novartis product. This refusal to deal has led to very serious disruptions, in loss of sales and loss of customer base. Paradise et al. submit that if customers need to fill multiple prescriptions and one of the products is unavailable, customers will simply change pharmacies to enable them to fill all their prescriptions in one same location. Paradise et al. allege that Novartis is seriously threatening their financial viability.

**[7]** Novartis occupies a dominant position in the marketplace with respect to its patented pharmaceutical products. Its products are widely available in the Hamilton area, including from Paradise et al.'s large competitors.

**RESPONDENT'S POSITION**

**[8]** Novartis Pharmaceuticals Canada Inc./Novartis Pharma Canada Inc. (respondent) opposes the application on two grounds: the business of the applicants is not directly and substantially affected, and the test to be applied in considering an application under section 103.1 of the *Competition Act*, R.S.C. *1985, c.* C-34, (the "Act") includes a review of section 75.

Direct and substantial impact:

**[9]** Nine of the eleven products listed by the applicants as being Novartis products actually are, while two (Actos and Zyprexa) are manufactured and sold by Eli Lilly, a pharmaceutical competitor of the respondent. According to IMS, the total sales for the nine products to the applicants for 2003 was approximately $3149.

**[10]** The respondent argues that the applicants are not substantially affected, given the way the Competition Tribunal (the "Tribunal") has construed this term in past decisions.

**[11]** The respondent has reason to believe the applicants have been involved in internet export sales of pharmaceutical products, contrary to the directions that the respondent has given to its independent distributors, in conformity with its Terms and Conditions of Sale.

Test for leave under section 103.1:

**[12]** The respondent argues that there are two separate conditions which must be satisfied for leave to be granted under section 103.1 : the business of the applicant must be directly and substantially affected by the practice of the respondent, and the practice could be subject to an order under section 75.

**[13]** The respondent submits that for a refusal to deal to be subject to a section 75 order, all five conditions specified at section 75 must be met. Yet the Tribunal has been provided with no evidence as to the inability of the applicants to obtain adequate supplies (75(l)(a)) when complying with usual trade terms, nor have the applicants shown that there is any adverse effect on competition (75(l)(e)). In the latter case, in fact, the applicants indicate that competition thrives in the areas surrounding both pharmacies. The respondent therefore contends that the Tribunal has no reason to believe that the respondent's practice could be subject to an order under section 75, since its conditions are not met.

**ANALYSIS**

**[14]** Section 103.1 of the Act is a new section which has been the basis of five decisions so far, which can be briefly summarized as follows:

**[15]** In *National Capital News Canada* v. *Milliken*, 2002 Comp. Trib. 41, Justice Dawson found that the refusal to grant the applicant full access to the Parliamentary Press Gallery was entirely within the privilege of Parliament, as vested in the Speaker, and thus could not be subject to an order under section 75 since the Tribunal did not have the jurisdiction, any more than the courts, to examine that particular exercise of the privilege. For this reason, the requirement of subsection l03.l(7) was not met.

**[16]** *In Barcode Systems Inc.* ***v.*** *Symbol Technologies Canada ULC,* 2004 Comp. Trib. 1, Justice Lemieux granted leave to Barcode, having found sufficient credible evidence to give the Tribunal reason to believe that the applicant may have been directly and substantially affected.

There was evidence that on petition of the Royal Bank of Canada, an interim Receiver had been appointed for all property, assets and undertakings of Barcode. Barcode also asserted in its materials that it had laid off half of its employees.

**[17]** In *Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Ltd.*, 2004 Comp. Trib. 4 (Justice Lemieux), the applicant Allan Morgan and Sons Ltd. filed an application under section 103.1 for leave to make an application under section 75, alleging that the respondent La-Z-Boy Canada Ltd., by terminating its right to act as representative of the respondent, had directly and substantially affected its business.

**[18]** The applicant presented various tables to show sales by category, gross profits and estimates of profit loss due to the respondent's restrictions which occurred before the contract was terminated. Based on these figures, Justice Lemieux found that there was sufficient credible evidence to satisfy himself that the applicant "may have been directly and substantially affected by the actions of La-Z-Boy." He then added: "Morgan's Furniture, at the leave stage, is not required to meet any higher standard of proof threshold."

**[19]** Madam Justice Simpson has recently rendered two decisions on section 103.1 applications, *Robinson Motorcycle Limited. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 13 and Quinlan 's of Huntsville Inc. v. Fred Deeley Imports Ltd., 2004 Comp. Trib. 15. In both cases, leave was granted. Justice Simpson indicated that leave requirements set in subsection 103.1(7) of the Act had been met; she then added that under section 75, an order could issue, because for each condition the Tribunal could conclude that the condition was satisfied.

**[20]** In this case, I believe the applicants have failed to meet the test of "directly and substantially affected in the applicant's business." It is therefore not necessary to consider whether an order could be issued under section 75. The applicants must show sufficient credible evidence of a direct and substantial effect. In Barcode, for example, the company was in receivership and fifty per cent of the employees had been laid off. In *La-Z-Boy*, the applicant had figures showing a 46 per cent decrease in its sales. There was thus a credible basis as to substantial effect.

**[21]** The Tribunal has never defined specifically what was to be considered "substantial"; however, it stated as follows in Canada (Director of Investigation and Research) v. Chrysler Canada Ltd. (1989), 27 C.P.R. (3d) 1:

> The Tribunal agrees that "substantial" should be given its ordinary meaning, which means more than something just beyond de minimis. While terms such as "important" are acceptable synonyms, further clarification can only be provided through evaluations of actual situations.
>
> The cut-off resulted in a decline of over $200,000 in sales between 1986 and 1988. 1987 was a year of transition during most of which Brunet was able to obtain parts from Chrysler Canada dealers and Chrysler Canada continued to fill orders received by Brunet before October, 1986. The slight rise in 1988 sales of Chrysler US-sourced parts suggests that some substitution may have occurred between Chrysler Canada and Chrysler US. sourced parts, perhaps because of the increasing difficulty of obtaining parts in Canada. If such substitution did occur, it was far too limited to alleviate the decline in sales and gross profits from Chrysler auto parts. The decline in profits between 1986 and 1988 from sourcing Chrysler parts in Canada

> was in excess of $30,000. Losses of the order of magnitude of $200,000 in sales and $30,000 in gross profits constitute a substantial effect for a small business such as Brunet's.

**[22]** In its application, the applicants submit that the action of the respondent will have consequences for the business beyond the loss of sales of the respondent's products. Customers will go elsewhere if they cannot fill their prescription, or part of their prescription, at the applicants' pharmacies.

**[23]** No figures are provided to show exactly what has occurred in terms of the impact of the decision of the respondent on the applicants' businesses. Subsection 103.1(7) states that the Tribunal may grant leave if it has reason to believe that the applicant is directly and substantially affected. In other words, the evidence must be direct, not speculative. Since no figures are given, it is difficult for the Tribunal to form a *bona fide* belief that the financial viability of the business is threatened.

**[24]** From the materials submitted, it appears the applicants fear that loss of business will occur. There are no explanations given as to how loss is calculated, no basis nor reference point to show the effect of the loss of the respondent's product. In my view, evidence is insufficient to grant leave.

**THEREFORE THE TRIBUNAL ORDERS THAT:**

**[25]** Leave to make an application under subsection 75 is dismissed.

DATED at Ottawa, this 20th day of September, 2004.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Pierre Blais

REPRESENTATIVES

For the applicants:

Paradise Pharmacy Inc. et al.

Mark Adilman
D.H. Jack

For the respondents:

Novartis Pharmaceuticals Canada Inc.

A. Neil Campbell
Karen S. Kuzumowich

# 20

**Pioneer Corporation,**
**Pioneer North America, Inc.,**
**Pioneer Electronics (USA) Inc.,**
**Pioneer High Fidelity Taiwan Co., Ltd.**
**and Pioneer Electronics of Canada Inc.**
*Appellants*

*v.*

**Neil Godfrey** *Respondent*

- and -

**Toshiba Corporation, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba of Canada Ltd., Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., Samsung Electronics America, Inc., Koninklijke Philips Electronics N.V., Lite-On IT Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Philips Electronics Ltd., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., BENQ Corporation, BENQ America Corporation and BENQ Canada Corp.** *Appellants*

*v.*

**Neil Godfrey** *Respondent*

and

**Option consommateurs,**
**Consumers Council of Canada,**
**Canadian Chamber of Commerce and**
**Consumers' Association of Canada**
*Interveners*

**Indexed as: Pioneer Corp. *v.* Godfrey**
**2019 SCC 42**

**Pioneer Corporation,**
**Pioneer North America, Inc.,**
**Pioneer Electronics (USA) Inc.,**
**Pioneer High Fidelity Taiwan Co., Ltd.**
**et Pioneer Électronique du Canada, inc.**
*Appelantes*

*c.*

**Neil Godfrey** *Intimé*

- et -

**Toshiba Corporation, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba du Canada Limitée, Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc., Samsung Electronics America, Inc., Koninklijke Philips Electronics N.V., Lite-On IT Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Philips Electronics Ltd., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., BENQ Corporation, BENQ America Corporation et BENQ Canada Corp.** *Appelantes*

*c.*

**Neil Godfrey** *Intimé*

et

**Option consommateurs,**
**Consumers Council of Canada,**
**Chambre de commerce du Canada et**
**Association des consommateurs du Canada**
*Intervenants*

**Répertorié : Pioneer Corp. *c.* Godfrey**
**2019 CSC 42**

File Nos.: 37809, 37810.

2018: December 11; 2019: September 20.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Civil procedure — Class actions — Certification — Plaintiff alleging that defendants conspired to fix prices of optical disc drives and related products — Plaintiff's action certified as class proceeding — Class membership including direct purchasers, indirect purchasers and umbrella purchasers — Whether umbrella purchasers have cause of action under Competition Act — Whether Competition Act bars plaintiff from bringing common law or equitable claims — Whether plaintiff's proposed questions relating to loss suffered by class members meet standard for certification as common issues — Competition Act, R.S.C. 1985, c. C-34, s. 36(1) — Class Proceedings Act, R.S.B.C. 1996, c. 50, s. 4(1).*

*Limitation of actions — Competition Act setting out limitation period of two years from day on which conduct was engaged in — Action brought against some defendants more than two years after alleged conduct occurred — Whether action against those defendants barred by statutory limitation period — Whether discoverability rule or doctrine of fraudulent concealment applies to extend statutory limitation period — Competition Act, R.S.C. 1985, c. C-34, s. 36(4).*

The proposed representative plaintiff applied for certification of a class proceeding under the British Columbia *Class Proceedings Act*. The plaintiff alleges that the defendants, who manufacture Optical Disc Drives ("ODDs") and ODD products, conspired to fix prices of ODDs and ODD products between 2004 and 2010 ("class period"). He advances various causes of action based on that alleged conduct. They include a cause of action under s. 36(1)(a) of the *Competition Act*, which allows for the recovery of damages or loss that resulted from conduct contrary to Part VI of the *Competition Act*, as well as common law and equitable claims. The plaintiff seeks to bring the proposed class proceeding on behalf of all British Columbia residents who purchased an ODD or an ODD product during

N[os] du greffe : 37809, 37810.

2018 : 11 décembre; 2019 : 20 septembre.

Présents : Le juge en chef Wagner et les juges Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe et Martin.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

*Procédure civile — Recours collectifs — Autorisation — Allégation du demandeur que les défenderesses ont comploté pour fixer les prix de lecteurs de disques optiques et de produits connexes — Action du demandeur autorisée en tant que recours collectif — Groupe composé d'acheteurs directs, d'acheteurs indirects et d'acheteurs sous parapluie — Les acheteurs sous parapluie ont-ils une cause d'action au titre de la Loi sur la concurrence? — La Loi sur la concurrence empêche-t-elle le demandeur d'intenter des recours de common law ou d'equity? — Les questions proposées par le demandeur qui ont trait à la perte subie par les membres du groupe satisfont-elles à la norme d'autorisation de questions en tant que questions communes? — Loi sur la concurrence, L.R.C. 1985, c. C-34, art. 36(1) — Class Proceedings Act, R.S.B.C. 1996, c. 50, art. 4(1).*

*Prescription — Loi sur la concurrence établissant un délai de prescription de deux ans à compter de la date du comportement en question — Action intentée contre certaines défenderesses plus de deux ans après le comportement reproché — Le délai de prescription prévu par la loi fait-il obstacle à l'action intentée contre ces défenderesses? — La règle de la possibilité de découvrir ou la doctrine de la dissimulation frauduleuse s'applique-t-elle de manière à prolonger le délai de prescription établi par la loi? — Loi sur la concurrence, L.R.C. 1985, c. C-34, art. 36(4).*

Le représentant proposé des demandeurs a demandé l'autorisation d'un recours collectif en vertu de la *Class Proceedings Act* de la Colombie-Britannique. Le demandeur allègue que les défenderesses, qui fabriquent des lecteurs de disques optiques (« LDO ») et des produits munis de LDO, ont comploté pour fixer les prix des LDO et des produits munis de LDO entre 2004 et 2010 (« période visée par le recours collectif »). Il avance diverses causes d'action fondées sur ce comportement reproché, notamment une cause d'action au titre de l'al. 36(1)a) de la *Loi sur la concurrence*, qui permet l'indemnisation d'une perte ou des dommages qui découlent d'un comportement allant à l'encontre de la partie VI de cette loi, ainsi que l'exercice de recours de common law et d'equity. Le

the class period. The proposed class consists of direct purchasers, indirect purchasers, and umbrella purchasers, that is, purchasers whose ODD or ODD product was manufactured and supplied by a non-defendant. Although the action against most of the defendants was filed within two years of the end of the class period, the action against a subset of the defendants ("Pioneer defendants") was filed more than two years after the end of the class period.

The certification judge certified the action as a class proceeding, subject to certain exceptions and conditions. He was not satisfied that it was plain and obvious that the action against the Pioneer defendants was barred by the two-year limitation period set out in s. 36(4) of the *Competition Act*. He also held that the umbrella purchasers had a cause of action against the defendants under s. 36(1)(a) of the *Competition Act*, that a breach of the *Competition Act* could represent the unlawfulness element of the various causes of action advanced by the plaintiff, thereby affirming the availability of those common law and equitable actions, and that the plaintiff's proposed questions in relation to loss suffered by the class were certifiable as common questions. The Court of Appeal dismissed the appeals brought by the defendants.

*Held* (Côté J. dissenting in part): The appeals should be dismissed.

*Per* Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Brown, Rowe and Martin JJ.: It is not plain and obvious that the plaintiff's claim against the Pioneer defendants will fail on the basis that it was commenced after the two-year limitation period in s. 36(4)(a)(i) of the *Competition Act* because the discoverability rule applies to extend the limitation period. As for the inclusion of umbrella purchasers, the pleadings against all the defendants disclose a cause of action for them under s. 36(1)(a) of the *Competition Act*, thereby satisfying the conditions under s. 4(1)(a) of the *Class Proceedings Act* for certification. Also, as s. 36(1) of the *Competition Act* does not bar common law or equitable claims, it is not plain and obvious that the plaintiff's other claims cannot succeed. Furthermore, the certification judge identified the correct standard to certify commonality of loss as a common issue

demandeur cherche à intenter le recours collectif projeté au nom de tous les résidents de la Colombie-Britannique qui ont acheté un LDO ou un produit muni de LDO durant la période visée par le recours collectif. Le groupe projeté est composé des acheteurs directs, des acheteurs indirects et des acheteurs sous parapluie, c'est-à-dire les acheteurs dont les LDO ou produits munis de LDO ont été fabriqués et fournis par une personne qui n'est pas une défenderesse. Bien que l'action contre la plupart des défenderesses ait été déposée moins de deux ans après la fin de la période visée par le recours collectif, l'action contre un sous-groupe des défenderesses (« défenderesses Pioneer ») a été déposée plus de deux ans après la fin de cette période.

Le juge saisi de la demande d'autorisation a autorisé l'action comme recours collectif, sous réserve de certaines exceptions et conditions. Il n'était pas convaincu que l'action intentée contre les défenderesses Pioneer était évidemment et manifestement prescrite en raison de l'écoulement du délai de prescription de deux ans prévu au par. 36(4) de la *Loi sur la concurrence*. Il a également conclu que les acheteurs sous parapluie avaient une cause d'action fondée sur l'al. 36(1)a) de la *Loi sur la concurrence* contre les défenderesses, qu'une infraction à la *Loi sur la concurrence* pouvait constituer l'élément d'illégalité des diverses causes d'action avancées par le demandeur, confirmant ainsi qu'il est possible de se prévaloir de ces recours de common law et d'equity, et que les questions proposées par le demandeur relativement à la perte subie par le groupe pouvaient être autorisées en tant que questions communes. La Cour d'appel a rejeté les appels formés par les défenderesses.

*Arrêt* (la juge Côté est dissidente en partie) : Les pourvois sont rejetés.

*Le* juge en chef Wagner et les juges Abella, Moldaver, Karakatsanis, Gascon, Brown, Rowe et Martin : Il n'est pas évident et manifeste que la demande du demandeur contre les défenderesses Pioneer doit être rejetée au motif qu'elle a été introduite après le délai de prescription de deux ans prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence* parce que la règle de la possibilité de découvrir s'applique de façon à prolonger le délai de prescription. Quant à l'inclusion des acheteurs sous parapluie, les actes de procédure contre toutes les défenderesses révèlent une cause d'action dont ils sont les titulaires en vertu de l'al. 36(1)a) de la *Loi sur la concurrence*, répondant ainsi aux conditions d'autorisation prévues à l'al. 4(1)a) de la *Class Proceedings Act*. En outre, puisque le par. 36(1) de la *Loi sur la concurrence* ne fait pas obstacle aux recours de common law ou d'equity, il n'est pas évident et

and there is no basis to interfere with his certification of these loss-related questions.

Where a limitation period is subject to the rule of discoverability, a cause of action will not accrue for the purposes of the running of the limitation period until the material facts on which the cause of action is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence. The discoverability rule is not a universally applicable rule of limitations, but a rule of construction to aid in the interpretation of statutory limitation periods. It can therefore be displaced by clear legislative language. In determining whether discoverability applies, substance, not form, is to prevail: even where the statute does not explicitly state that the limitation period runs from "the accrual of the cause of action", discoverability applies if it is evident that the operation of a limitation period is conditioned upon accrual of a cause of action or knowledge of an injury. Discoverability will apply where the event triggering the limitation period is an element of the cause of action because, in such cases, the legislature has shown its intention that the limitation period be linked to the cause of action's accrual.

The discoverability rule applies to extend the two-year limitation period in s. 36(4)(a)(i) of the *Competition Act*, such that it begins to run only when the material facts on which the cause of action granted by s. 36(1)(a) of the *Competition Act* is based are discovered or ought to have been discovered by the exercise of reasonable diligence. The event triggering this particular limitation period is the occurrence of an element of the underlying cause of action — specifically, conduct contrary to Part VI of the *Competition Act*. Consideration of the rationales for limitation periods affirms the application of the discoverability rule to this provision.

Furthermore, it is not plain and obvious that the doctrine of fraudulent concealment could not delay the running of the limitation period. Fraudulent concealment is a form of equitable fraud that arises so as to delay the running of a limitation period when it would be, for any

manifeste que les autres recours exercés par le demandeur ne peuvent être accueillis. Qui plus est, le juge saisi de la demande d'autorisation a arrêté la norme applicable à l'autorisation, en tant que question commune, de la question de la communauté de la perte et il n'y a aucune raison de modifier sa décision d'autoriser ces questions relatives à la perte.

Quand un délai de prescription est assujetti à la règle de la possibilité de découvrir, une cause d'action ne prendra naissance, pour les besoins de l'écoulement du délai de prescription, qu'au moment où les faits importants sur lesquels repose cette cause d'action ont été découverts par le demandeur ou auraient dû l'être s'il avait fait preuve de diligence raisonnable. La règle de la possibilité de découvrir n'est pas une règle de prescription d'application universelle; c'est plutôt une règle d'interprétation visant à faciliter l'interprétation des délais de prescription fixés par la loi. Elle peut donc être écartée par un texte législatif clair. Pour décider si la règle de la possibilité de découvrir s'applique, le fond, non la forme, doit prévaloir : même si la loi ne précise pas que le délai de prescription commence à courir à compter de « la naissance de la cause d'action », la règle de la possibilité de découvrir s'applique s'il est évident que le point de départ du délai de prescription dépend de la naissance de la cause d'action ou de la connaissance d'un préjudice. La règle de la possibilité de découvrir s'applique lorsque l'événement marquant le point de départ du délai de prescription est un élément de la cause d'action car, en pareil cas, la législature a manifesté son intention que le délai de prescription soit lié à la naissance de la cause d'action.

La règle de la possibilité de découvrir s'applique de façon à prolonger le délai de prescription de deux ans établi au sous-al. 36(4)a)(i) de la *Loi sur la concurrence* de sorte que ce délai ne commence à courir qu'au moment où les faits importants sur lesquels repose la cause d'action reconnue par l'al. 36(1)a) de la *Loi sur la concurrence* sont découverts ou auraient dû l'être par diligence raisonnable. Le fait déclencheur de ce délai de prescription est la survenance d'un élément de la cause d'action sous-jacente — plus précisément, le comportement qui va à l'encontre de la partie VI de la *Loi sur la concurrence*. L'examen des justifications qui sous-tendent les délais de prescription confirme que la règle de la possibilité de découvrir s'applique à cette disposition.

De plus, il n'est pas évident et manifeste que la doctrine de la dissimulation frauduleuse ne pouvait retarder le point de départ du délai de prescription. La dissimulation frauduleuse est une forme de fraude d'equity dont la présence permet de retarder le point de départ d'un délai

reason, unconscionable for the defendant to rely on the advantage gained by having concealed the existence of a cause of action. The inquiry is not into the relationship within which the conduct occurred, but into the unconscionability of the conduct itself. Its application is therefore not conditioned upon a special relationship between the parties.

Umbrella purchasers have a cause of action under s. 36(1)(a) of the *Competition Act*. Under the theory of umbrella pricing, the entire market for the subject product is affected because anti-competitive cartel activity causes non-cartel manufacturers to also raise their prices. The text of s. 36(1)(a), which provides a cause of action to "[a]ny person who has suffered loss or damage as a result of" conduct contrary to s. 45 of the *Competition Act*, supports the view that umbrella purchasers have a cause of action thereunder. Parliament's use of the words "[a]ny person" empowers any claimant who can demonstrate that loss or damage was incurred as a result of a defendant's conduct to bring a claim. Also, interpreting s. 36(1)(a) so as to permit umbrella purchaser actions furthers the purpose of the *Competition Act* set out in s. 1.1, which is to "maintain and encourage competition in Canada" with a view to providing consumers with "competitive prices and product choices". This interpretation also furthers two other objectives of the *Competition Act*: it furthers the objective of deterrence because it increases the potential liability falling upon those who engage in anti-competitive behaviour, and it furthers the objective of compensation because it affords umbrella purchasers recourse to recover from loss arising from what is assumed to have been anti-competitive conduct. Moreover, departmental and parliamentary statements fortify the view that Parliament intended that the cause of action in s. 36(1)(a) be broadly available to anyone who suffers a loss from anti-competitive behaviour.

Recognizing that umbrella purchasers have a cause of action under s. 36(1)(a) does not risk exposing defendants to indeterminate liability. Firstly, liability of defendants is limited by the class period, and by the specific products whose prices are alleged to have been fixed. Also, in order for cartel members to profit from a conspiracy, the entire market price has to increase — the umbrella effect is therefore an intended consequence of the anti-competitive behaviour. Intended results are not indeterminate, but rather

de prescription lorsqu'il serait abusif pour le défendeur de profiter de l'avantage obtenu en dissimulant l'existence d'une cause d'action. L'examen ne porte pas sur la relation dans le cadre de laquelle le comportement a eu lieu, mais sur le caractère abusif du comportement lui-même. Son application ne tient donc pas à l'existence d'une relation spéciale entre les parties.

Les acheteurs sous parapluie ont une cause d'action fondée sur l'al. 36(1)a) de la *Loi sur la concurrence*. Selon la théorie de l'effet parapluie sur les prix, c'est l'ensemble du marché du produit en cause qui est touché parce que les activités anticoncurrentielles du cartel provoquent également une hausse des prix chez les fabricants ne faisant pas partie du cartel. Le texte de l'al. 36(1)a), qui accorde un droit d'action à « [t]oute personne qui a subi une perte ou des dommages par suite » d'un comportement allant à l'encontre de l'art. 45 de la *Loi sur la concurrence*, étaye le point de vue selon lequel, sous son régime, les acheteurs sous parapluie ont une cause d'action. L'emploi, par le législateur, de l'expression « [t]oute personne » habilite à intenter un recours tout demandeur capable de démontrer que la perte ou les dommages ont été subis par suite du comportement d'une défenderesse. De plus, interpréter l'al. 36(1)a) de façon à autoriser les actions des acheteurs sous parapluie favorise l'atteinte de l'objet de la *Loi sur la concurrence* décrit à l'art. 1.1, qui est de « préserver et de favoriser la concurrence au Canada » dans le but d'assurer aux consommateurs « des prix compétitifs et un choix dans les produits ». Cette interprétation favorise également l'atteinte de deux autres objectifs de la *Loi sur la concurrence* : elle favorise l'atteinte de l'objectif de dissuasion, en ce que le risque de responsabilité auquel s'exposent ceux qui se livrent à des comportements anticoncurrentiels augmente et elle favorise l'atteinte de l'objectif d'indemnisation, parce que les acheteurs sous parapluie ont ainsi la possibilité de recouvrer les pertes découlant de ce qui est présumé être un comportement anticoncurrentiel. Qui plus est, certaines déclarations ministérielles et parlementaires renforcent l'opinion que le législateur entendait que la cause d'action prévue à l'al. 36(1)a) soit largement accessible pour quiconque subit une perte par suite d'un comportement anticoncurrentiel.

La reconnaissance d'une cause d'action fondée sur l'al. 36(1)a) aux acheteurs sous parapluie ne risque pas d'exposer les défenderesses à une responsabilité indéterminée. Premièrement, la responsabilité des défenderesses est limitée par la période visée par le recours collectif et par les produits dont les prix auraient été fixés. De plus, pour que les membres du cartel puissent tirer profit du complot, les prix du marché global doivent augmenter. L'effet parapluie est ainsi une conséquence voulue du

pre-determined. Secondly, as s. 36(1)(a) limits recovery to only those purchasers who can show that they suffered a loss or damage "as a result of" a defendant's conspiratorial conduct, recovery is limited to claimants with a loss that is not too remote from the conduct and umbrella purchasers will have to demonstrate that they suffered such loss or damage. Thirdly, the elements of the wrongful conduct outlined in the text of s. 45(1) in force at the relevant time limit the reach of liability to those who, at a minimum, specifically intend to agree upon anti-competitive conduct.

Section 36(1) of the *Competition Act* does not bar common law or equitable claims, such as claims in civil conspiracy. Prior to the enactment of the cause of action contained in what is now s. 36(1) of the *Competition Act*, a breach of s. 45(1) of the *Competition Act* was, as it still is, able to satisfy the "unlawful means" element of the tort of civil conspiracy. The enactment of the statutory cause of action in s. 36(1) of the *Competition Act* did not oust common law and equitable actions by its express terms or by necessary implication. Section 36(1) is not duplicative of the tort of civil conspiracy, it does not provide a new and superior remedy, nor does it represent a comprehensive and exclusive code regarding claims for anti-competitive conspiratorial conduct. In addition, s. 62 of the *Competition Act* contemplates the subsistence of common law and equitable rights of action. It is therefore not plain and obvious that the plaintiff is precluded from bringing common law and equitable causes of action alongside his s. 36(1)(a) claim.

In order for loss-related questions to be certified as common issues, a plaintiff's expert's methodology need only be sufficiently credible or plausible to establish that loss reached the requisite purchaser level. It is not necessary that it establish that each and every class member suffered a loss nor must it be able to identify those class members who suffered no loss so as to distinguish them from those who did. In *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, [2013] 3 S.C.R. 477, the Court directed that, for a court to certify loss-related questions as common issues in a price-fixing class proceeding, it must be satisfied that the plaintiff has shown a plausible methodology to establish that loss reached one or more claimants at the purchaser level. For indirect purchasers, this would involve demonstrating that the direct purchasers

comportement anticoncurrentiel. Des résultats voulus ne sont pas indéterminés, mais bien déterminés à l'avance. Deuxièmement, comme l'al. 36(1)a) limite le recours en indemnisation aux seuls acheteurs qui peuvent démontrer qu'ils ont subi une perte ou des dommages « par suite » du complot d'une défenderesse, seuls les demandeurs ayant subi une perte qui n'est pas trop éloignée du comportement peuvent donc être indemnisés et les acheteurs sous parapluie devront démontrer qu'ils ont subi une telle perte ou de tels dommages. Troisièmement, les éléments du comportement répréhensible décrits dans le libellé du par. 45(1) qui était en vigueur durant la période en question limitent l'étendue de la responsabilité à ceux qui, au minimum, ont eu l'intention expresse de convenir d'un comportement anticoncurrentiel.

Le paragraphe 36(1) de la *Loi sur la concurrence* ne fait pas obstacle aux recours de common law ou d'equity, tels qu'une action pour complot civil. Avant l'adoption de la disposition conférant une cause d'action qui se trouve dans ce qui est devenu le par. 36(1) de la *Loi sur la concurrence*, une infraction au par. 45(1) de cette loi pouvait, et peut encore, satisfaire à l'élément « moyens illégaux » du délit de complot civil. L'adoption de la disposition du par. 36(1) de la *Loi sur la concurrence* conférant une cause d'action n'a pas écarté les recours de common law et d'equity de façon expresse ou par déduction nécessaire. Le paragraphe 36(1) ne fait pas double emploi avec le délit de complot civil, il ne prévoit pas de nouvelle façon supérieure de remédier à un manquement et il n'est pas non plus un code complet et exclusif régissant les actions pour comportement ou complot anticoncurrentiel. De plus, l'art. 62 de la *Loi sur la concurrence* prévoit le maintien des droits d'action en common law et en equity. Il n'est donc pas évident et manifeste que le demandeur ne peut exercer des recours de common law et d'equity en même temps qu'une action fondée sur l'al. 36(1)a).

Pour que les questions relatives à la perte soient autorisées en tant que questions communes, la méthode de l'expert du demandeur n'a qu'à être suffisamment fiable ou acceptable pour établir que l'acheteur du niveau requis a subi une perte. Il n'est pas nécessaire que cette méthode établisse que chaque membre du groupe a subi une perte. Il n'est pas non plus nécessaire qu'elle permette d'identifier les membres du groupe qui n'ont subi aucune perte de manière à les distinguer de ceux qui en ont subi une. Dans *Pro-Sys Consultants Ltd. c. Microsoft Corporation*, 2013 CSC 57, [2013] 3 R.C.S. 477, la Cour a prescrit que, pour autoriser les questions liées à la perte en tant que questions communes dans un recours collectif pour fixation du prix, le tribunal doit être convaincu que le demandeur a présenté une méthode valable pour établir que

passed on the overcharge. Additionally, showing that loss reached the indirect purchaser level satisfies the criteria for certifying a common issue, since it will significantly advance the litigation, is a prerequisite to imposing liability upon the defendants and will result in common success. Showing loss reached the requisite purchaser level will advance the claims of all the purchasers at that level, because a common issues trial will either determine liability or terminate the litigation, with either scenario advancing the litigation toward resolution.

Aggregate damages under s. 29(1)(b) of the *Class Proceedings Act* are purely remedial, and available only after all other common issues have been determined, including liability. Irrespective, then, of whether aggregate damages are certified as a common issue, it is for the trial judge to determine, following the common issues trial, whether the statutory criteria are met such that the aggregate damages provisions can be applied to award damages. Aggregate damages provisions cannot be used to establish liability. In order for individual class members to participate in the award of damages, the trial judge must be satisfied that each has actually suffered a loss where proof of loss is essential to a finding of liability (as it is for liability under s. 36 of the *Competition Act*). Whether a plaintiff's expert's methodology is sufficient for the purposes of establishing a defendant's liability to all class members will depend on the findings of the trial judge.

*Per* Côté J. (dissenting in part): Both appeals should be allowed in part. The Pioneer defendants have not demonstrated that the plaintiff's claim for recovery under s. 36(1) of the *Competition Act* is time-barred by the limitation period in s. 36(4)(a)(i). While the discoverability rule does not apply to toll the limitation period, it is not plain and obvious that the fraudulent concealment doctrine has no application in this case. There is agreement with the majority, though for different reasons, that the existence of the statutory cause of action in s. 36(1) of the *Competition Act* does not preclude the plaintiff from advancing claims at common law or in equity based on the same conduct prohibited by Part VI. However, there is disagreement that the umbrella purchasers have a claim against the

la perte a été transférée à un ou à plusieurs demandeurs du niveau de l'acheteur. Dans le cas des acheteurs indirects, cela implique de démontrer que les acheteurs directs ont refilé la majoration. Qui plus est, démontrer que la perte a été transférée aux acheteurs indirects satisfait au critère d'autorisation d'une question commune, puisqu'une telle démonstration permettra de faire progresser substantiellement l'instance, qu'elle est essentielle pour imposer une responsabilité aux défenderesses et qu'elle débouche sur un succès commun. Démontrer que la perte a été transférée aux acheteurs du niveau requis fera progresser les réclamations de tous les acheteurs de ce niveau, car l'audition des questions communes déterminera la responsabilité ou mettra fin au litige; les deux scénarios contribuent au règlement du litige.

Les dommages-intérêts globaux au sens de l'al. 29(1)b) de la *Class Proceedings Act* ont un objectif purement réparateur et ne peuvent être octroyés qu'après le règlement de toutes les autres questions communes, y compris la responsabilité. Peu importe, donc, si les dommages-intérêts globaux sont autorisés en tant que question commune, il revient au juge du procès de décider, au terme de l'audition des questions communes, si les critères établis par la loi sont respectés de sorte que les dispositions sur les dommages-intérêts globaux peuvent s'appliquer pour octroyer ceux-ci. Les dispositions sur les dommages-intérêts globaux ne peuvent servir à établir la responsabilité. Pour que les membres du groupe participent à l'octroi des dommages-intérêts, le juge du procès doit être convaincu que chacun d'eux a réellement subi une perte lorsque la preuve de la perte est essentielle à une conclusion de responsabilité (comme c'est le cas de la responsabilité fondée sur l'art. 36 de la *Loi sur la concurrence*). La réponse à la question de savoir si la méthode de l'expert du demandeur suffit pour établir la responsabilité d'un défendeur envers tous les membres du groupe dépend des conclusions du juge du procès.

*La* juge Côté (dissidente en partie) : Il y a lieu d'accueillir les deux pourvois en partie. Les défenderesses Pioneer n'ont pas démontré que le recours en indemnisation intenté par le demandeur au titre du par. 36(1) de la *Loi sur la concurrence* est prescrit en raison du délai de prescription prévu au sous-al. 36(4)a)(i). Bien que la règle de la possibilité de découvrir ne s'applique pas de manière à repousser le point de départ du délai de prescription, il n'est pas évident et manifeste que la doctrine de la dissimulation frauduleuse ne trouve pas application en l'espèce. Il est convenu avec les juges majoritaires — bien que pour des motifs différents — que l'existence de la cause d'action prévue au par. 36(1) de la *Loi sur la concurrence* n'empêche pas le demandeur d'intenter des recours en

defendants under s. 36(1) of the *Competition Act*. There is also disagreement that the certification judge identified the correct standard for certifying loss as a common issue pursuant to s. 4(1)(c) of the *Class Proceedings Act* and therefore that the plaintiff's methodology met the correct standard in the present case.

The discoverability rule does not apply to toll the limitation period in s. 36(4)(a)(i) of the *Competition Act* that is applicable to the plaintiff's claim for recovery under s. 36(1) of that statute. Discoverability is a judge-made rule of statutory interpretation that assists in determining whether the event triggering the commencement of a limitation period depends upon the state of the plaintiff's knowledge. This rule applies only where a legislature provides that the limitation period runs from the accrual of the cause of action (or wording to that effect) or from the occurrence of some event that is related to the state of the plaintiff's knowledge. Conversely, where a legislature provides that a limitation period is triggered by an event that occurs without regard to the plaintiff's state of mind, courts cannot apply the discoverability rule to postpone the commencement of the limitation period until such time as the plaintiff discovered that the event had taken place.

Statutory language referring to the occurrence of an element of the cause of action cannot be equated with language referring to the accrual or arising of the cause of action in its entirety such that the discoverability rule automatically applies in the former case. This would expand the scope of the discoverability rule in a manner that is neither consistent with precedent nor justifiable in principle and would create an arbitrary distinction between triggering events that are related to the cause of action and those that are not, even though both may occur independently of the plaintiff's state of mind. A preferable approach is instead one that considers each statutory limitation clause on its own terms, recognizing that a triggering event that relates to a cause of action can, but need not, be dependent on the plaintiff's state of mind.

The limitation period in s. 36(4)(a)(i) commences on the day on which the conduct contrary to Part VI of the

common law ou en equity qui visent le même comportement interdit par la partie VI. Toutefois, il y a désaccord pour dire que les acheteurs sous parapluie ont un recours contre les défenderesses en vertu du par. 36(1) de la *Loi sur la concurrence*. Il y a également désaccord sur le fait que le juge saisi de la demande d'autorisation a appliqué la bonne norme pour autoriser la question de la perte en tant que question commune en vertu de l'al. 4(1)(c) de la *Class Proceedings Act* et, donc, que la méthode du demandeur a satisfait à la bonne norme en l'espèce.

La règle de la possibilité de découvrir ne s'applique pas de façon à repousser le point de départ du délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence* qui s'applique au recours en indemnisation intenté par le demandeur au titre du par. 36(1) de cette loi. La règle de la possibilité de découvrir est une règle prétorienne d'interprétation statutaire qui aide à déterminer si l'événement qui marque le point de départ du délai de prescription dépend de la connaissance qu'en avait le demandeur. Cette règle s'applique uniquement dans les affaires où le législateur précise que le délai de prescription commence à courir au moment où la cause d'action prend naissance (ou toute autre formulation allant dans le même sens) ou au moment où survient un événement qui a un rapport avec la connaissance du demandeur. À l'inverse, lorsqu'une législature prévoit que le point de départ d'un délai de prescription est marqué par un événement qui survient indépendamment de l'état d'esprit du demandeur, les tribunaux ne peuvent appliquer la règle de la possibilité de découvrir pour reporter le point de départ du délai de prescription jusqu'à ce que le demandeur découvre la survenance de l'événement.

Les mots d'une disposition législative qui font mention de la survenance d'un élément de la cause d'action ne sauraient être assimilés à des mots qui désignent la naissance de la cause d'action dans son ensemble de telle sorte que la règle de la possibilité de découvrir s'applique automatiquement dans le premier cas. Cela étendrait la portée de la règle de la possibilité de découvrir d'une manière qui n'est ni conforme à la jurisprudence ni justifiable en principe et créerait une distinction arbitraire entre les faits déclencheurs ayant un rapport avec la cause d'action et ceux qui n'en ont pas, même si les deux peuvent se produire indépendamment de l'état d'esprit du demandeur. Il vaut mieux plutôt examiner chaque disposition statutaire de prescription selon ses propres termes, en tenant compte qu'un fait déclencheur ayant un rapport avec une cause d'action peut, mais ne doit pas nécessairement, dépendre de la connaissance du demandeur.

Le délai de prescription prévu au sous-al. 36(4)a)(i) commence à courir à la date à laquelle le comportement allant

*Competition Act* actually takes place and not the day on which a potential claimant discovers that it took place. There is simply no link between the triggering event and the plaintiff's state of mind. The provision does not contain wording to the same effect as accrual of the s. 36 cause of action. Applying discoverability would make the limitation period chosen by Parliament virtually meaningless and create uncertainty around the likelihood and timing of significant litigation.

A special relationship between the parties — one that is based on trust and confidence — is not always a prerequisite or a necessary element for the operation of the doctrine of fraudulent concealment. This doctrine operates to prevent a limitation clause from being used as an instrument of injustice in circumstances where a defendant conceals the facts giving rise to a potential cause of action from a plaintiff. In such circumstances, equity suspends the running of the limitation clock until the injured party can reasonably discover the cause of action. Fraud in equity is broader than it is at common law and what constitutes unconscionable conduct will vary from case to case and depend in part on the connection between the parties. Based on this understanding of the fraudulent concealment doctrine, it is not plain and obvious that equity can intervene to toll the applicable limitation period only in cases where there exists a special relationship; it may be that it can also intervene in cases — at least in the commercial context, as here — where the plaintiff can demonstrate something commensurate with or tantamount to a special relationship. However, simply establishing the existence of the conspiracy will not suffice for the fraudulent concealment doctrine to toll the applicable limitation period.

It is plain and obvious that the claims by umbrella purchasers — those class members who purchased from a non-defendant a product that was not manufactured or supplied by a defendant — under s. 36(1)(a) of the *Competition Act* cannot succeed. While on its face, s. 36(1) appears to be worded broadly enough to capture umbrella purchaser claims, so long as they can prove that they suffered loss or damage as a result of the conduct specified in para. (a) or (b) of subs. (1), this statutory provision must be interpreted in a manner that is consistent with the principles of indeterminacy and remoteness that limit the extent of liability at common law. Indeterminacy is a policy consideration that negates the imposition of a duty of care in negligence where it would expose the defendant to liability in an indeterminate amount for an indeterminate

à l'encontre de la partie VI de la *Loi sur la concurrence* se produit, et non à la date où le demandeur éventuel découvre que le comportement en question s'est produit. Il n'existe tout simplement aucun lien entre ce fait déclencheur et l'état d'esprit du demandeur. La disposition en cause ne contient pas des mots dans le sens de naissance de la cause d'action fondée sur l'art. 36. Si la règle de la possibilité de découvrir s'appliquait, le délai de prescription choisi par le Parlement perdrait pratiquement tout son sens et laisserait planer l'incertitude quant à la probabilité d'engager de nombreuses poursuites et au moment de les engager.

L'existence d'une relation spéciale — fondée sur la confiance — entre les parties ne constitue pas toujours une condition préalable ou un élément nécessaire à l'application de la doctrine de la dissimulation frauduleuse. Cette doctrine vise à empêcher que le délai de prescription serve à créer une injustice, lorsque le défendeur cache au demandeur les faits à l'origine d'une cause d'action potentielle. En pareille situation, l'equity permet de suspendre l'écoulement du délai de prescription jusqu'à ce que la partie lésée puisse raisonnablement découvrir l'existence de la cause d'action. Le terme « fraude » comporte un sens plus large en equity qu'en common law et ce en quoi consiste une conduite abusive varie d'une affaire à l'autre et dépend en partie du lien qui unit les parties. Vu cette conception de la dissimulation frauduleuse, il n'est pas évident et manifeste que l'equity peut intervenir pour repousser le point de départ du délai de prescription uniquement dans les cas où il existe une relation spéciale; il se peut qu'elle puisse aussi intervenir dans les cas — du moins en matière commerciale, comme dans le cas présent — où le demandeur peut démontrer quelque chose correspondant ou d'équivalent à une relation spéciale. Cependant, le simple fait d'établir l'existence du complot ne suffit pas pour que la doctrine de la dissimulation frauduleuse repousse le point de départ du délai de prescription applicable.

Il est évident et manifeste que les acheteurs sous parapluie — les membres du groupe qui ont acheté, d'une personne qui n'est pas une défenderesse, un produit qui n'a pas été fabriqué ou fourni par une défenderesse — ne peuvent avoir gain de cause contre les défenderesses dans leur recours fondé sur l'al. 36(1)a) de la *Loi sur la concurrence*. Bien qu'à première vue, le libellé du par. 36(1) semble suffisamment général pour englober les réclamations des acheteurs sous parapluie, pourvu qu'ils puissent établir qu'ils ont subi une perte ou des dommages par suite des comportements énumérés aux al. a) et b) du par. (1), il faut interpréter cette disposition conformément aux principes de l'indétermination et du caractère éloigné qui limitent l'étendue de la responsabilité en common law. L'indétermination correspond à une considération

time to an indeterminate class and remoteness limits the scope of liability in negligence where the harm is too unrelated to the wrongful conduct to hold the defendant fairly liable. Although these principles relate primarily to liability in negligence, they can inform the analysis of claims under s. 36 for pure economic loss. Section 36(1) should not be interpreted in a manner that would permit claimants to recover from defendants for any losses that in some way flowed from the alleged price-fixing conspiracy as it would expose defendants to liability that is potentially limitless in scope for loss and damage that are too remote from any price-fixing that occurred. Consistent with the principles underlying indeterminacy and remoteness, the cause of action in s. 36(1) should be read as limiting the scope of liability of defendants to loss and damage flowing from their own pricing decisions, not those of third parties. Any overcharges the umbrella purchasers may have incurred in the present case were the direct result of pricing decisions made by non-defendant manufacturers and suppliers of ODDs, regardless of whether those choices were influenced by broader market trends. The defendants have control over their own business decisions but not over those of third parties. For this reason, it would be unfair to hold the defendants liable to the umbrella purchasers where they had no control over such liability.

It is not plain and obvious that s. 36(1) bars a plaintiff from alleging common law and equitable causes of action in respect of conduct that breaches the prohibitions in Part VI of the *Competition Act*. The coexistence of statutory and common law or equitable claims arising from conduct contrary to Part VI of the *Competition Act* is contemplated by s. 62 of that statute. The inclusion of s. 62 in the statutory framework suggests that Parliament did not intend the provisions of the *Competition Act* to intrude upon the provinces' jurisdiction over civil rights and liberties. That s. 62 applies only to Part VI of the *Competition Act* is not consequential as the cause of action created by s. 36(1)(a) is expressly tied to conduct that would constitute an offence under that part. When the words of s. 62 are read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object

de politique générale qui vient écarter l'imposition d'une obligation de diligence en droit de la négligence lorsque le défendeur serait exposé à une responsabilité pour un montant indéterminé, pour un temps indéterminé et envers une catégorie indéterminée, et le caractère éloigné a pour effet de limiter l'étendue de la responsabilité pour négligence si le préjudice a trop peu de lien avec l'acte fautif pour que le défendeur puisse raisonnablement être tenu responsable. Bien que ces principes se rapportent principalement à la responsabilité pour négligence, ils peuvent guider l'analyse des réclamations fondées sur l'art. 36 pour des pertes purement économiques. Le paragraphe 36(1) ne devrait pas être interprété d'une manière qui permettrait aux demandeurs de se faire indemniser par les défenderesses pour toute perte découlant d'une façon ou d'une autre du complot allégué de fixation des prix parce que cela aurait pour effet d'exposer les défenderesses à une responsabilité potentiellement illimitée, ainsi qu'à une responsabilité à l'égard de pertes et de dommages qui sont trop éloignés de toute fixation des prix. Conformément aux principes sous-tendant l'indétermination et le caractère éloigné, il y a lieu de considérer que la cause d'action prévue au par. 36(1) limite l'étendue de la responsabilité des défendeurs aux pertes et aux dommages découlant de leurs propres décisions, et non de celles prises par des tiers. Toute majoration que les acheteurs sous parapluie auraient pu absorber en l'espèce était en fin de compte la conséquence directe des choix en matière de prix effectués par ces fabricants et fournisseurs de LDO autres que les défenderesses, que ces choix aient ou non été influencés par des tendances générales du marché. Les défenderesses exercent un contrôle sur leur propres décisions d'affaires, mais non sur celles des autres fabricants et fournisseurs. Pour ce motif, il serait injuste de tenir les défenderesses responsables envers les acheteurs sous parapluie alors qu'elles n'avaient aucun contrôle sur cette responsabilité.

Il n'est pas évident et manifeste que le par. 36(1) empêche le demandeur d'exercer des recours de common law et d'equity à l'égard d'un comportement qui enfreint les prohibitions prévues à la partie VI de la *Loi sur la concurrence*. La coexistence des recours fondés sur la loi et des recours fondés sur la common law ou l'equity qui découlent d'un comportement allant à l'encontre de la partie VI de la *Loi sur la concurrence* est prévue à l'art. 62 de cette loi. L'inclusion de l'art. 62 dans le cadre législatif donne à penser que le Parlement ne voulait pas que les dispositions de la *Loi sur la concurrence* portent atteinte à la compétence des provinces sur les droits et libertés civils. Le fait que l'art. 62 s'applique seulement à la partie VI de la *Loi sur la concurrence* est sans conséquence parce que la cause d'action créée par l'al. 36(1)a) est expressément liée au comportement qui constituerait

of the act and the intention of Parliament, this provision has the effect of preserving all civil rights of action that a claimant may have in respect of anti-competitive conduct contemplated under Part VI of that Act. Section 62 would be meaningless if s. 36(1) were interpreted as exhaustive in respect of civil claims for such conduct.

For questions to be certified as common issues under s. 4(1)(c) of the *Class Proceedings Act*, the representative plaintiff must show there is some basis in fact for the commonality requirement — that is, that the questions be capable of resolution on a class-wide basis. What the "some basis in fact" standard requires in any given case depends on what it is that the proposed questions ask; different questions will impose different requirements. In class actions where loss is an essential element of liability, loss-related questions can be certified as common issues only if the representative plaintiff's expert methodology will be able to actually identify which class members suffered a loss at trial.

In the present case, in order for loss-related questions to be certified as common issues among indirect purchasers pursuant to s. 4(1)(c) of the *Class Proceedings Act*, the representative plaintiff's proposed methodology must be capable of establishing at trial that at least some identifiable indirect purchasers actually suffered a loss. The plaintiff has not met the required standard in the present case because his methodology is only capable of establishing at trial that loss was occasioned somewhere at the indirect purchaser level of the distribution chain. Such a methodology will not enable the common issues trial judge to determine which class members actually suffered a loss — an essential element of the causes of action pleaded, and necessary for the purpose of making determinations as to liability. The proposed loss-related questions will therefore not be capable of resolution on a class-wide or common basis. What is required of the plaintiff in this case is a methodology capable of answering the loss-related questions on an individualized basis, either by showing that all of the indirect purchasers suffered a loss or at least by identifying those who did and separating them from those who did not.

une infraction sous le régime de cette partie. Lorsqu'on lit les termes de l'art. 62 dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'économie de la loi, l'objet de la loi et l'intention du Parlement, cette disposition a pour effet de préserver tous les droits d'action au civil que peut exercer le demandeur relativement à un comportement anticoncurrentiel envisagé à la partie VI de cette loi. L'article 62 serait vide de sens si le par. 36(1) était interprété comme une disposition exhaustive en ce qui concerne les recours civils relatifs à ce type de comportement.

Pour qu'une question soit autorisée en tant que question commune conformément à l'al. 4(1)(c) de la *Class Proceedings Act*, le représentant des demandeurs doit établir l'existence d'un certain fondement factuel pour respecter l'exigence de la question commune, c'est-à-dire que la question doit pouvoir faire l'objet d'une résolution à l'échelle du groupe. Dans un cas donné, la norme fondée sur l'existence d'« un certain fondement factuel » dépend de la teneur des questions proposées; des exigences différentes seront imposées selon les questions soulevées. Dans des recours collectifs où la perte constitue un élément essentiel pour établir la responsabilité, les questions de perte ne peuvent être autorisées en tant que questions communes que si la méthode de l'expert du représentant des demandeurs permet d'identifier au procès les membres du groupe qui ont subi une perte.

En l'espèce, pour que les questions liées à la perte soient autorisées en tant que questions communes aux acheteurs indirects en application de l'al. 4(1)(c) de la *Class Proceedings Act*, la méthode que propose le représentant des demandeurs doit permettre d'établir au procès qu'au moins un certain nombre d'acheteurs indirects identifiables ont effectivement subi une perte. Le demandeur n'a pas satisfait à la norme applicable en l'espèce parce que sa méthode permet seulement d'établir au procès qu'une perte a été subie quelque part au niveau de l'acheteur indirect dans la chaîne de distribution. Cette méthode ne permettra pas au juge appelé à statuer sur les questions communes de déterminer quels membres du groupe ont réellement subi une perte — un élément essentiel des causes d'action plaidées et nécessaires à la prise de décisions sur la responsabilité. Les questions de perte proposées par le demandeur ne pourront donc pas être résolues à l'échelle du groupe ou en commun. Il incombe au demandeur en l'espèce de proposer une méthode permettant de répondre aux questions liées à la perte de façon individuelle : en démontrant que tous les acheteurs indirects ont subi une perte ou, à tout le moins, en identifiant ceux qui ont subi une perte et en les distinguant de ceux qui n'en ont pas subi.

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*W. Michael G. Osborne*, *Brigeeta Richdale* and *Jessica Lewis*, for the appellants Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. and Pioneer Electronics of Canada Inc.

*Laura F. Cooper* and *Vera Toppings*, for the appellants Toshiba Corporation, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba of Canada Ltd. and Toshiba America Information Systems, Inc.

*Robert E. Kwinter* and *Evangelia (Litsa) Kriaris*, for the appellants Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc. and Samsung Electronics America, Inc.

*Neil Campbell*, *Joan Young* and *Samantha Gordon*, for the appellants Koninklijke Philips Electronics

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*W. Michael G. Osborne*, *Brigeeta Richdale* et *Jessica Lewis*, pour les appelantes Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. et Pioneer Électronique du Canada, inc.

*Laura F. Cooper* et *Vera Toppings*, pour les appelantes Toshiba Corporation, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Toshiba du Canada Limitée et Toshiba America Information Systems, Inc.

*Robert E. Kwinter* et *Evangelia (Litsa) Kriaris*, pour les appelantes Samsung Electronics Co., Ltd., Samsung Electronics Canada Inc. et Samsung Electronics America, Inc.

*Neil Campbell*, *Joan Young* et *Samantha Gordon*, pour les appelantes Koninklijke Philips Electronics

N.V., Lite-On IT Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc. and Philips Electronics Ltd.

*John F. Rook*, *Q.C.*, *Christiaan A. Jordaan* and *Emrys Davis*, for the appellants Panasonic Corporation, Panasonic Corporation of North America and Panasonic Canada Inc.

*Stephen Fitterman*, for the appellants BENQ Corporation, BENQ America Corporation and BENQ Canada Corp.

*Reidar M. Mogerman*, *Linda J. Visser*, *David G. A. Jones*, *Charles M. Wright*, *Katie I. Duke* and *Bridget M. R. Moran*, for the respondent.

*Maxime Nasr* and *Violette Leblanc*, for the intervener Option consommateurs.

*Jonathan J. Foreman* and *Jean-Marc Metrailler*, for the intervener the Consumers Council of Canada.

*Sandra A. Forbes* and *Adam Fanaki*, for the intervener the Canadian Chamber of Commerce.

*Jean-Marc Leclerc* and *Mohsen Seddigh*, for the intervener the Consumers' Association of Canada.

The judgment of Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Brown, Rowe and Martin JJ. was delivered by

BROWN J. —

I. Introduction

[1] The proposed representative plaintiff, Neil Godfrey, applied for certification of a class proceeding under the British Columbia *Class Proceedings Act*, R.S.B.C. 1996, c. 50. The defendants manufacture Optical Disc Drives ("ODDs" — a memory storage device that uses laser light or electromagnetic waves near the light spectrum to read and/or record data on optical discs), and ODD products (products that contain ODDs). Godfrey alleges that

N.V., Lite-On IT Corporation of Taiwan, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc. et Philips Electronics Ltd.

*John F. Rook*, *c.r.*, *Christiaan A. Jordaan* et *Emrys Davis*, pour les appelantes Panasonic Corporation, Panasonic Corporation of North America et Panasonic Canada Inc.

*Stephen Fitterman*, pour les appelantes BENQ Corporation, BENQ America Corporation et BENQ Canada Corp.

*Reidar M. Mogerman*, *Linda J. Visser*, *David G. A. Jones*, *Charles M. Wright*, *Katie I. Duke* et *Bridget M. R. Moran*, pour l'intimé.

*Maxime Nasr* et *Violette Leblanc*, pour l'intervenante Option consommateurs.

*Jonathan J. Foreman* et *Jean-Marc Metrailler*, pour l'intervenant Consumers Council of Canada.

*Sandra A. Forbes* et *Adam Fanaki*, pour l'intervenante la Chambre de commerce du Canada.

*Jean-Marc Leclerc* et *Mohsen Seddigh*, pour l'intervenante l'Association des consommateurs du Canada.

Version française du jugement du juge en chef Wagner et des juges Abella, Moldaver, Karakatsanis, Gascon, Brown, Rowe et Martin rendu par

LE JUGE BROWN —

I. Introduction

[1] Le représentant proposé des demandeurs, Neil Godfrey, a demandé l'autorisation d'un recours collectif en vertu de la *Class Proceedings Act*, R.S.B.C. 1996, c. 50, de la Colombie-Britannique. Les défenderesses fabriquent des lecteurs de disques optiques (« LDO » — un dispositif de stockage de la mémoire qui utilise la lumière laser ou les ondes électromagnétiques près du spectre optique pour lire ou enregistrer des données sur un disque optique), et des

the defendants conspired to fix prices of ODDs and ODD products.

[2] The certification judge granted Godfrey's application. Two sets of defendants — one led by Pioneer Corporation, and the other by Toshiba Corporation — each appealed from that decision, unsuccessfully, to the British Columbia Court of Appeal. At stake in these appeals is, principally, whether it is plain and obvious that the claim under s. 36(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34, of so-called "umbrella purchasers" who bought ODDs or ODD products manufactured and supplied by someone *other than* the defendants, but who allege that the defendants' price-fixing conduct raised the market price of the product, cannot succeed. This depends on whether these umbrella purchasers have a cause of action under s. 36(1)(a). For the reasons that follow, I agree with the courts below that they do, and it therefore follows that it is not plain and obvious that their claim cannot succeed.

[3] These appeals also present an occasion to clarify the operation of the statutory limitation period for claims under s. 36(1)(a) of the *Competition Act*, to affirm the availability of common law and equitable actions in respect of claims also brought under s. 36(1)(a) of the *Competition Act*, and to reiterate the standard required to certify loss-related questions as common issues in class proceedings.

[4] As I will explain below, my disposition of all these matters would lead me to dismiss the appeals.

## II. Background

[5] Godfrey applied for certification of a class proceeding against 42 defendants (collectively, "Toshiba"),

produits munis de LDO (produits qui contiennent des LDO). M. Godfrey allègue que les défenderesses ont comploté pour fixer les prix des LDO et des produits munis de LDO.

[2] Le juge saisi de la demande d'autorisation de M. Godfrey a accueilli celle-ci. Deux groupes de défendeurs — l'un dirigé par Pioneer Corporation, et l'autre par Toshiba Corporation — ont tous deux fait appel sans succès de cette décision à la Cour d'appel de la Colombie-Britannique. Les présents pourvois soulèvent principalement la question de savoir s'il est évident et manifeste que la demande fondée sur l'al. 36(1)a) de la *Loi sur la concurrence*, L.R.C. 1985, c. C-34, de ceux qu'on appelle les « acheteurs sous parapluie », qui ont acheté des LDO ou des produits munis de LDO fabriqués et fournis par quelqu'un d'*autre que* les défenderesses, mais qui allèguent que la fixation des prix par les défenderesses s'est traduite par une hausse du prix du produit sur le marché, ne peut être accueillie. La réponse à cette question dépend de la question de savoir si les acheteurs sous parapluie ont une cause d'action fondée sur l'al. 36(1)a). Pour les motifs qui suivent, je suis d'avis, à l'instar des tribunaux d'instance inférieure, qu'ils en ont une, si bien qu'il n'est pas évident et manifeste que leur demande ne peut être accueillie.

[3] En outre, les présents pourvois donnent à la Cour l'occasion d'apporter des précisions sur les délais de prescription applicables aux actions fondées sur l'al. 36(1)a) de la *Loi sur la concurrence*, de confirmer qu'il est possible de se prévaloir des recours de common law et d'equity alors qu'une demande a également été introduite sous le régime de l'al. 36(1)a) de la *Loi sur la concurrence*, et de rappeler la norme applicable à l'autorisation des questions liées à la perte en tant que questions communes à trancher dans un recours collectif.

[4] Comme je l'expliquerai plus loin, les conclusions auxquelles j'arrive sur ces questions m'amènent à rejeter les pourvois.

## II. Contexte

[5] M. Godfrey a demandé l'autorisation d'un recours collectif visant 42 défenderesses (collectivement,

alleging a conspiracy to raise, maintain, fix and/or stabilize the price of ODDs between January 1, 2004 and January 1, 2010 ("class period"). He deposed that he purchased ODD products during the class period, and that he seeks to bring the proposed class proceeding on behalf of all British Columbia residents who purchased an ODD or an ODD product during the class period. The proposed class consists of:

(a) ***direct purchasers***, whose ODD or ODD product was manufactured or supplied *by a defendant* and purchased *from that defendant*,

(b) ***indirect purchasers***, whose ODD or ODD product was manufactured or supplied *by a defendant* and purchased *from a non-defendant*; and

(c) ***umbrella purchasers***, whose ODD or ODD product was manufactured *and* supplied *by a non-defendant*.

III. Judicial History

A. *British Columbia Supreme Court, 2016 BCSC 844 — Masuhara J.*

[6] The certification judge certified the action as a class proceeding, subject to certain exceptions and conditions (para. 221 (CanLII)). One condition was that the class definition be amended so as to satisfy s. 4(1)(b) of the *Class Proceedings Act*. The certification judge held that the class definition ("[a]ll persons resident in British Columbia who purchased [ODDs and ODD products] in [the class period]") was insufficiently precise, as it was unclear which products were included (paras. 128-31).

[7] In his reasons, the certification judge resolved a number of matters, only two of which are relevant to these appeals: whether the pleadings disclose a cause

« Toshiba »), alléguant que celles-ci avaient comploté pour augmenter, maintenir, fixer ou stabiliser le prix des LDO entre le 1er janvier 2004 et le 1er janvier 2010 (« période visée par le recours collectif »). Il a déclaré avoir acheté des produits munis de LDO au cours de la période visée par le recours collectif, et qu'il cherche à intenter le recours collectif projeté au nom de tous les résidents de la Colombie-Britannique qui ont acheté un LDO ou un produit muni de LDO durant la période visée. Le groupe projeté est composé des acheteurs suivants :

a) ***acheteurs directs*** dont les LDO ou les produits munis de LDO ont été fabriqués ou fournis *par une défenderesse* et achetés *de cette défenderesse*,

b) ***acheteurs indirects*** dont les LDO ou les produits munis de LDO ont été fabriqués ou fournis *par une défenderesse* et achetés *d'une personne qui n'est pas une défenderesse*;

c) ***acheteurs sous parapluie*** dont les LDO ou les produits munis de LDO ont été fabriqués *et* fournis *par une personne qui n'est pas une défenderesse*.

III. Historique judiciaire

A. *Cour suprême de la Colombie-Britannique, 2016 BCSC 844 — le juge Masuhara*

[6] Le juge saisi de la demande d'autorisation a autorisé l'action comme recours collectif, sous réserve de certaines exceptions et conditions (par. 221 (CanLII)). Par exemple, il fallait modifier la définition du groupe pour qu'elle respecte l'al. 4(1)(b) de la *Class Proceedings Act*. Le juge saisi de la demande d'autorisation a conclu que la définition du groupe [TRADUCTION] (« [t]outes les personnes résidant en Colombie-Britannique qui ont acheté [des LDO et des produits munis de LDO] durant [la période visée par le recours collectif] ») n'était pas suffisamment précise, en ce qu'elle ne permettait pas de savoir quels produits étaient visés (par. 128-131).

[7] Dans ses motifs, le juge saisi de la demande d'autorisation a tranché plusieurs questions, dont seulement deux sont pertinentes pour les présents pourvois :

of action, and whether Godfrey's proposed questions relating to loss suffered by the class are certifiable as common questions.

(1) Do the Pleadings Disclose a Cause of Action?

[8] The certification judge first considered whether Godfrey's pleadings satisfy s. 4(1)(a) of the *Class Proceedings Act*, which conditions certification upon the pleadings disclosing a cause of action.

(a) *The Pioneer Claim*

[9] A subset of the named defendants ("Pioneer") opposed Godfrey's certification application, arguing that the action was bound to fail because it was barred by the two-year limitation period in s. 36(4) of the *Competition Act* (although the action against the other defendants was filed on September 27, 2010, the action against Pioneer was not filed until August 16, 2013). The certification judge held, however, that this argument could not be considered at the certification stage (para. 46). Further, it was not plain and obvious in any event that the limitation period could *not* be extended in this case by applying principles of discoverability or fraudulent concealment.

(b) *Umbrella Purchasers*

[10] Toshiba argued that the umbrella purchasers had no cause of action under s. 36(1)(a) of the *Competition Act*, because their inclusion would expose it to indeterminate liability. For four reasons, however, the certification judge held that the umbrella purchasers had a cause of action:

1. While "allowing umbrella claims is inconsistent with restitutionary law", restitutionary law does not determine the scope of the *Competition Act* claims, since s. 36 exists to

les actes de procédure révèlent-ils une cause d'action et les questions proposées par M. Godfrey relativement à la perte subie par le groupe peuvent-elles être autorisées en tant que questions communes?

(1) Les actes de procédure révèlent-ils une cause d'action?

[8] Le juge saisi de la demande d'autorisation s'est d'abord demandé si les actes de procédure produits par M. Godfrey respectaient l'al. 4(1)(a) de la *Class Proceedings Act*, qui impose comme condition à l'autorisation que les actes de procédures révèlent une cause d'action.

a) *L'action contre Pioneer*

[9] Un sous-groupe faisant partie des défenderesses désignées (« Pioneer ») s'est opposé à la demande d'autorisation de M. Godfrey, soutenant que l'action était vouée à l'échec parce qu'elle était prescrite en raison de l'écoulement du délai de prescription de deux ans prévu au par. 36(4) de la *Loi sur la concurrence* (bien que l'action contre les autres défenderesses ait été déposée le 27 septembre 2010, l'action contre Pioneer a seulement été déposée le 16 août 2013). Le juge saisi de la demande d'autorisation a conclu, cependant, qu'il ne pouvait pas tenir compte de cet argument à l'étape de l'autorisation (par. 46). Il a ajouté que, de toute façon, il n'était pas évident et manifeste que, dans la présente affaire, le délai de prescription *ne* pouvait *pas* être prorogé par application des principes de la possibilité de découvrir ou de la dissimulation frauduleuse.

b) *Acheteurs sous parapluie*

[10] Toshiba a fait valoir que les acheteurs sous parapluie n'avaient pas de cause d'action suivant l'al. 36(1)a) de la *Loi sur la concurrence*, car leur participation au recours collectif exposerait Toshiba à une responsabilité indéterminée. Le juge saisi de la demande d'autorisation a toutefois conclu, pour quatre motifs, que les acheteurs sous parapluie avaient une cause d'action :

1. S'il est vrai [TRADUCTION] « qu'autoriser l'instruction des demandes présentées par les acheteurs sous parapluie est incompatible avec le droit de la restitution », il reste que le droit de la

compensate for losses, not to restore wrongful gains (para. 73).

2. The possibility of indeterminate liability does not militate against affording umbrella purchasers a cause of action, since the defendants' liability exposure, while significant, would not be indeterminate (paras. 75-76).

3. While umbrella claims expose the defendants to liability for the pricing decisions of non-defendants, the pricing decisions of non-defendants, under the theory of umbrella effects, are not truly "independent" (para. 77).

4. The umbrella purchaser claims would further the goals of the *Competition Act*, including compensation and deterrence (para. 78).

(c) *"Unlawfulness" Element*

[11] The certification judge then considered Toshiba's argument that a breach of the *Competition Act* could not constitute the "unlawful" element of civil causes of action, such as the tort of unlawful means conspiracy (para. 83). He held that he was bound by *Watson v. Bank of America Corp.*, 2015 BCCA 362, 79 B.C.L.R. (5th) 1, such that it could. While, for other reasons, the pleadings did not disclose a cause of action for the unlawful means tort, Godfrey was permitted to amend his pleadings (paras. 109-10). And, while finding that Godfrey's pleadings *did* disclose a cause of action in civil conspiracy (both predominant purpose conspiracy and unlawful means conspiracy), unjust enrichment and waiver of tort (paras. 100, 102, 115 and 119), the certification judge also found that the umbrella purchasers' claims in unjust enrichment and waiver of tort were bound to fail (paras. 116 and 120).

restitution ne définit pas la portée des demandes fondées sur la *Loi sur la concurrence*, puisque l'art. 36 vise l'indemnisation des pertes, non la restitution des gains illicites (par. 73).

2. L'éventualité d'une responsabilité indéterminée n'empêche pas de reconnaître une cause d'action aux acheteurs sous parapluie, étant donné que la responsabilité à laquelle s'exposent les défenderesses, quoiqu'importante, ne serait pas indéterminée (par. 75-76).

3. Bien que les demandes présentées par les acheteurs sous parapluie puissent exposer les défenderesses à une responsabilité quant à des décisions d'établissement des prix prises par des tiers, il reste que, selon la théorie de l'effet parapluie, ces décisions ne sont pas véritablement « indépendantes » (par. 77).

4. Les réclamations des acheteurs sous parapluie favoriseraient l'atteinte des objectifs de la *Loi sur la concurrence*, notamment l'indemnisation et la dissuasion (par. 78).

c) *Élément d'« illégalité »*

[11] Le juge saisi de la demande d'autorisation a ensuite examiné l'argument de Toshiba suivant lequel une infraction à la *Loi sur la concurrence* ne pouvait constituer l'élément [TRADUCTION] « illégal » d'une cause d'action civile, telle que le complot qui prévoit le recours à des moyens illégaux (par. 83). Il a conclu qu'il était lié par l'arrêt *Watson c. Bank of America Corp.*, 2015 BCCA 362, 79 B.C.L.R. (5th) 1, et que cela se pouvait donc. Bien que, pour d'autres raisons, les actes de procédure n'aient pas révélé de cause d'action pour délit d'atteinte par un moyen illégal, M. Godfrey a été autorisé à les modifier (par. 109-110). Et bien qu'il ait conclu que les actes de procédure de M. Godfrey *révélaient* une cause d'action pour complot civil, à la fois pour complot visant principalement à causer un préjudice et complot d'atteinte par un moyen illégal, enrichissement sans cause et renonciation au recours délictuel (par. 100, 102, 115 et 119), le juge saisi de la demande d'autorisation a également conclu que les actions pour enrichissement sans cause et renonciation au recours délictuel intentées par les acheteurs sous parapluie étaient vouées à l'échec (par. 116 et 120).

(2) Do the Claims Raise Common Issues?

[12] Godfrey sought to have 25 questions certified as common questions under s. 4(1)(c) of the *Class Proceedings Act* (several of which related to loss alleged to have been suffered by the proposed class (para. 143)). Godfrey's expert, Dr. Keith Reutter, opined that (1) all the proposed class members would have been impacted by Toshiba's alleged conspiracy, and (2) there are methods available to estimate any overcharge that resulted from the alleged conspiracy, as well as aggregate damages (paras. 151-52). Some of the defendants, however, retained their own expert, Dr. James Levinsohn, who opined that it would not be possible to determine the fact of injury for the proposed class members using common evidence and analysis (para. 153).

[13] After examining Dr. Reutter's opinion in detail, the certification judge concluded that his was a plausible methodology which satisfied the standard set in *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, [2013] 3 S.C.R. 477, for evidence to support certifying loss as a common issue. Specifically, it could establish that overcharges were passed on to the indirect purchaser level (paras. 167 and 179).

[14] The certification judge therefore certified all of the common issues with respect to the direct purchasers and indirect purchasers, except those relating to the unlawful means tort (para. 199). With respect to the umbrella purchasers, he certified all of the common issues except those relating to the unlawful means tort, unjust enrichment, waiver of tort (para. 200) and aggregate damages (para. 188).

B. *British Columbia Court of Appeal, 2017 BCCA 302, 1 B.C.L.R. (6th) 319 — per Savage J.A.*

[15] Pioneer appealed, arguing the certification judge erred in holding: (1) that the limitation period

(2) Les demandes soulèvent-elles des questions communes?

[12] M. Godfrey a demandé que 25 questions soient autorisées en tant que questions communes au titre de l'al. 4(1)(c) de la *Class Proceedings Act* (plusieurs de ces questions portent sur la perte que le groupe projeté aurait subie (par. 143)). L'expert de M. Godfrey, M. Keith Reutter, s'est dit d'avis que (1) tous les membres du groupe projeté ont été touchés par le complot auquel aurait participé Toshiba, et que (2) des méthodes permettent d'estimer la valeur de toute majoration ayant découlé du complot et le montant des dommages-intérêts globaux (par. 151-152). Certaines défenderesses ont cependant fait appel à leur propre expert, M. James Levinsohn, selon qui il ne serait pas possible d'établir le préjudice subi par les membres du groupe proposé au moyen d'une preuve et d'analyses communes (par. 153).

[13] Après avoir examiné en détail l'opinion de M. Reutter, le juge saisi de la demande d'autorisation a conclu que la méthode qu'il proposait était une méthode acceptable qui respectait la norme établie dans l'arrêt *Pro-Sys Consultants Ltd. c. Microsoft Corporation*, 2013 CSC 57, [2013] 3 R.C.S. 477, et qui justifiait l'autorisation de la question liée à la perte en tant que question commune. Plus particulièrement, cette méthode permettait d'établir que la majoration a été refilée aux acheteurs indirects (par. 167 et 179).

[14] Le juge saisi de la demande d'autorisation a donc autorisé toutes les questions communes concernant les acheteurs directs et les acheteurs indirects, à l'exception de celles portant sur le délit d'atteinte par un moyen illégal (par. 199). Quant aux acheteurs sous parapluie, il a autorisé toutes les questions communes à l'exception de celles portant sur le délit d'atteinte par un moyen illégal, l'enrichissement sans cause, la renonciation au recours délictuel (par. 200) et les dommages-intérêts globaux (par. 188).

B. *Cour d'appel de la Colombie-Britannique, 2017 BCCA 302, 1 B.C.L.R. (6th) 319 — le juge Savage*

[15] Pioneer s'est pourvue en appel, soutenant que le juge saisi de la demande d'autorisation avait

defence cannot be considered at the certification stage; (2) that it is not plain and obvious that the discoverability rule never applies to the limitation period in s. 36(4)(a)(i) of the *Competition Act*; and (3) that it is not plain and obvious that the doctrine of fraudulent concealment cannot toll the limitation period in this case (para. 45).

[16] Toshiba also appealed, arguing the certification judge erred by: (1) recasting the standard for certifying loss as a common issue; (2) holding that a breach of s. 45 of the *Competition Act* can furnish the "unlawfulness" element for common law actions; and (3) allowing the umbrella purchasers' causes of action to proceed (para. 44).

[17] The Court of Appeal dismissed both sets of appeals.

(1) Pioneer's Appeal

[18] Agreeing with the certification judge, the Court of Appeal held that limitations arguments should, generally, not be considered at the certification stage. Further, and that aside, the limitations issue in this case was "intimately connected with the facts of the alleged conspiracy" and should be reserved for trial (paras. 67-68). Alternatively, were discoverability properly considered at the certification stage, it would not be plain and obvious that discoverability does not apply to delay the running of the limitation period in s. 36(4)(a)(i) of the *Competition Act*. While recognizing that some courts have declined to apply discoverability to s. 36(4)(a)(i) (para. 72), the Court of Appeal read this Court's decision in *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53, as directing that discoverability applies where the limitation period is explicitly linked to the injured party's knowledge or the basis of the cause of action (para. 89).

commis une erreur en concluant : (1) que la défense de prescription ne peut pas être prise en compte à l'étape de l'autorisation; (2) qu'il n'est pas évident et manifeste que la règle de la possibilité de découvrir ne s'applique jamais au délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*; et (3) qu'il n'est pas évident et manifeste que la doctrine de la dissimulation frauduleuse ne permet pas de repousser le point de départ du délai de prescription en l'espèce (par. 45).

[16] Toshiba s'est également pourvue en appel, soutenant que le juge saisi de la demande d'autorisation s'était trompé : (1) en reformulant le critère d'autorisation de la question liée à la perte à titre de question commune; (2) en concluant qu'une infraction à l'art. 45 de la *Loi sur la concurrence* peut offrir l'élément d'« illégalité » requis pour les actions en common law; et (3) en laissant les causes d'action des acheteurs sous parapluie suivre leur cours (par. 44).

[17] La Cour d'appel a rejeté les deux appels.

(1) Appel de Pioneer

[18] Souscrivant à l'opinion du juge saisi de la demande d'autorisation, la Cour d'appel a conclu que, de façon générale, il ne convenait pas de tenir compte des arguments sur la prescription à l'étape de l'autorisation. Qui plus est, la question de la prescription en l'espèce était [TRADUCTION] « étroitement liée aux faits sous-tendant l'allégation de complot » et elle devait être tranchée au procès (par. 67-68). Subsidiairement, même si l'on tenait compte du principe de la possibilité de découvrir de manière adéquate au stade de l'autorisation, il ne serait pas évident et manifeste que ce principe ne permet pas de reporter le point de départ du délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*. Tout en reconnaissant que certains tribunaux ont refusé d'appliquer ce principe au sous-al. 36(4)a)(i) (par. 72), la Cour d'appel a jugé qu'il se dégage de l'arrêt *Ryan c. Moore*, 2005 CSC 38, [2005] 2 R.C.S. 53, que la règle de la possibilité de découvrir s'applique lorsque le délai de prescription est expressément lié à la connaissance de la partie lésée ou au fondement de la cause d'action (par. 89).

[19] Further, the certification judge was correct, said the Court of Appeal, to conclude that it is not plain and obvious that the doctrine of fraudulent concealment could not apply (para. 110). Equitable fraud was sufficient to invoke the doctrine, and a purely commercial relationship could support the requirement for a "special relationship" (paras. 102-3) between the parties so as to toll the applicable limitation period. Accordingly, Godfrey's failure to plead a "special relationship" would not preclude the doctrine's application here (para. 104).

[19] En outre, aux dires de la Cour d'appel, le juge saisi de la demande d'autorisation a eu raison de conclure qu'il n'était pas évident et manifeste que la doctrine de la dissimulation frauduleuse ne pouvait s'appliquer (par. 110). L'existence d'une fraude en equity suffit pour invoquer la doctrine, et l'existence d'un lien purement commercial permet de satisfaire à l'exigence d'une [TRADUCTION] « relation spéciale » (par. 102-103) entre les parties de manière à repousser le point de départ du délai de prescription applicable. Ainsi, l'omission de M. Godfrey de faire état d'une « relation spéciale » n'empêcherait pas l'application de la doctrine en l'espèce (par. 104).

(2) Certifying Loss as a Common Issue

(2) Autorisation de la question de la perte en tant que question commune

[20] Toshiba argued that, since Dr. Reutter's proposed methodology could neither demonstrate that loss was suffered by each class member nor identify the class members who did not suffer harm, the certification judge erred in certifying questions relating to harm as common questions (para. 113). It also saw error in the certification judge's reference (at para. 169) to the *Class Proceedings Act*'s aggregate damages provisions as supporting the possibility of liability, even where some class members have not demonstrated actual loss.

[20] Toshiba a fait valoir que, puisque la méthode proposée par M. Reutter ne permettait pas de démontrer que la perte a été subie par chacun des membres du groupe, ni d'identifier ceux du groupe qui n'ont pas subi de préjudice, le juge saisi de la demande d'autorisation avait commis une erreur en autorisant les questions liées au préjudice en tant que questions communes (par. 113). Elle considère également que le juge a commis une erreur en mentionnant (par. 169) que les dispositions de la *Class Proceedings Act* portant sur l'octroi de dommages-intérêts globaux peuvent étayer une déclaration de responsabilité, même si certains membres du groupe n'ont pas démontré qu'ils avaient réellement subi une perte.

[21] The Court of Appeal rejected these arguments, noting that *Microsoft* allows loss to be certified as a common issue if "the methodology [is] able to establish that the overcharges have been passed on to the indirect-purchaser level in the distribution chain" (para. 149, citing *Microsoft*, at para. 115). Certifying an issue as common does not create an ultimate right to recovery; it is merely a procedural step that does not change the substantive rights of the parties (para. 158). And, while the aggregate damages provisions in the *Class Proceedings Act* are applicable only once liability is established, they do indeed demonstrate that the statute contemplates recovery where certain class

[21] La Cour d'appel a rejeté ces arguments, soulignant que selon l'arrêt *Microsoft*, les questions liées à la perte peuvent être autorisées en tant que questions communes si « la méthode [permet d']établir que la majoration a été transférée à l'acheteur indirect situé en aval dans la chaîne de distribution » (par. 149, citant *Microsoft*, par. 115). Autoriser une question en tant que question commune ne crée aucun droit ultime d'indemnisation; il s'agit simplement d'une étape procédurale qui ne change rien aux droits substantiels des parties (par. 158). Et, bien que les dispositions relatives aux dommages-intérêts globaux contenues dans la *Class Proceedings Act* ne s'appliquent qu'une fois la responsabilité établie,

members have not proven that they suffered loss (paras. 160-61).

(3) Unlawfulness Element

[22] The Court of Appeal agreed with the certification judge that a breach of s. 45 of the *Competition Act* could represent the unlawfulness element of the various causes of action advanced by Godfrey (para. 186).

(4) The Umbrella Purchasers

[23] Here, too, the Court of Appeal found no error in the certification judge's reasons. Umbrella purchasers have a cause of action under s. 36(1)(a) of the *Competition Act* based on a breach of s. 45(1) (paras. 247-48). Toshiba's arguments that the certification judge did not expressly consider whether the umbrella purchasers have claims at common law, and that the certification judge erred in his interpretation of s. 36, were rejected (paras. 188-89).

[24] Finally, the Court of Appeal agreed with the certification judge that Toshiba's concerns about indeterminate liability did not support denying certification of the umbrella purchasers' claims. An action under s. 36(1)(a) based on a breach of s. 45(1) is subject to internal limitations within ss. 36(1) and 45(1) which address indeterminacy such that it does not arise as a concern in this case (paras. 230-31). Further, Toshiba's additional potential liability to the umbrella purchasers would be significantly less, relative to its potential liability to non-umbrella purchasers (para. 236).

IV. Issues on Appeal

[25] Pioneer's appeal raises the issue of whether it is plain and obvious that the claim against it will not

elles démontrent que la loi envisage la possibilité d'indemnisation si certains membres du groupe n'ont pas démontré qu'ils avaient subi une perte (par. 160-161).

(3) Élément d'illégalité

[22] La Cour d'appel a convenu avec le juge saisi de la demande d'autorisation qu'une infraction à l'art. 45 de la *Loi sur la concurrence* pouvait constituer l'élément d'illégalité des diverses causes d'action avancées par M. Godfrey (par. 186).

(4) Les acheteurs sous parapluie

[23] Là encore, la Cour d'appel n'a relevé aucune erreur dans les motifs du juge saisi de la demande d'autorisation. Les acheteurs sous parapluie ont une cause d'action suivant l'al. 36(1)a) de la *Loi sur la concurrence*, laquelle est fondée sur une infraction au par. 45(1) (par. 247-248). Les arguments de Toshiba, selon lesquels le juge saisi de la demande d'autorisation n'aurait pas expressément examiné si les acheteurs sous parapluie disposaient de recours en common law et le juge aurait commis une erreur dans son interprétation de l'art. 36, ont été rejetés (par. 188-189).

[24] Enfin, la Cour d'appel a partagé l'avis du juge saisi de la demande d'autorisation selon lequel la crainte d'une responsabilité indéterminée manifestée par Toshiba ne justifiait pas le refus d'autoriser les demandes des acheteurs sous parapluie. Toute action fondée sur l'al. 36(1)a) au titre d'un manquement au par. 45(1) est assujettie aux restrictions inhérentes aux par. 36(1) et 45(1), qui circonscrivent la responsabilité de sorte qu'une telle crainte ne se pose pas en l'espèce (par. 230-231). Qui plus est, la responsabilité supplémentaire à laquelle Toshiba pourrait être tenue à l'égard des acheteurs sous parapluie serait substantiellement moindre comparativement à sa responsabilité éventuelle à l'égard des autres acheteurs (par. 236).

IV. Questions en litige

[25] Le pourvoi de Pioneer soulève la question de savoir s'il est évident et manifeste que la demande

succeed because it is statute-barred by s. 36(4)(a)(i) of the *Competition Act*. In answering this question, we must decide:

1. whether the principle of discoverability applies to the limitation period in s. 36(4)(a)(i) of the *Competition Act*; and

2. whether, for fraudulent concealment to toll the limitation period in s. 36(4)(a)(i) of the *Competition Act*, a special relationship between the parties must be established.

[26] The appeals, taken together, raise three common issues:

1. whether it is plain and obvious that the umbrella purchasers' claim under s. 36(1)(a) of the *Competition Act* cannot succeed;

2. whether it is plain and obvious that s. 36(1) of the *Competition Act* bars a plaintiff from bringing concurrent common law and equitable claims; and

3. the required standard to certify loss as a common issue, and whether Dr. Reutter's evidence satisfies that standard.

V. Analysis

[27] Section 4(1) of the *Class Proceedings Act* contains the requirements for certification of a class proceeding in British Columbia. At issue is whether Godfrey has satisfied s. 4(1)(a), which requires that the pleadings disclose a cause of action, and s. 4(1)(c), which requires that the claims of the class members raise common issues. The former requirement is satisfied unless, assuming all the facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261, at para. 20; *Hollick v. Toronto (City)*, 2001 SCC 68, [2001] 3 S.C.R. 158, at para. 25; *Microsoft*, at para. 63). The latter is satisfied where

contre elle ne sera pas accueillie parce qu'elle est prescrite par le sous-al. 36(4)a)(i) de la *Loi sur la concurrence*. Pour répondre à cette question, nous devons trancher les questions suivantes :

1. Le principe de la possibilité de découvrir s'applique-t-il au délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*?

2. Pour que la dissimulation frauduleuse repousse le point de départ du délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*, faut-il établir une relation spéciale entre les parties?

[26] Pris ensemble, les pourvois soulèvent trois questions communes :

1. Est-il évident et manifeste que la demande des acheteurs sous parapluie fondée sur l'al. 36(1)a) de la *Loi sur la concurrence* ne peut être accueillie?

2. Est-il évident et manifeste que le par. 36(1) de la *Loi sur la concurrence* empêche le demandeur d'exercer concurremment des recours de common law ou d'equity?

3. Quelle est la norme requise pour autoriser la question de la perte en tant que question commune et le témoignage de M. Reutter satisfait-il à cette norme?

V. Analyse

[27] Le paragraphe 4(1) de la *Class Proceedings Act* énonce les conditions d'autorisation d'un recours collectif en Colombie-Britannique. Il s'agit de savoir si M. Godfrey a respecté l'al. 4(1)a), qui exige que les actes de procédure révèlent une cause d'action, et l'al. 4(1)c), qui exige que les réclamations des membres du groupe soulèvent des questions communes. La première condition est respectée à moins que, en tenant tous les faits allégués pour avérés, il soit évident et manifeste que la réclamation du demandeur au fond est insoutenable (*Alberta c. Elder Advocates of Alberta Society*, 2011 CSC 24, [2011] 2 R.C.S. 261, par. 20; *Hollick c. Toronto (Ville)*, 2001 CSC 68, [2001] 3 R.C.S. 158, par. 25; *Microsoft*,

there is "some basis in fact" to support a common issue (*Hollick*, at para. 25; *Microsoft*, at paras. 99-100).

[28] Although at certification the plaintiff must satisfy s. 4(1)'s requirements that I have just described, the standard of review on appeal for each particular question depends on the nature of the question, and will be identified in turn.

A. *Pioneer's Appeal*

[29] Noting that the alleged conspiracy is said to have ended on January 1, 2010, and that the action against Pioneer was not commenced until August 16, 2013, Pioneer argues that Godfrey's claim is statute-barred, as it was commenced after the two-year limitation period in s. 36(4)(a)(i) of the *Competition Act* expired. As I will explain, I agree that the discoverability rule applies to extend the limitation period in s. 36(4)(a)(i). It is not plain and obvious that Godfrey's claim against Pioneer will fail on this basis. Although it is therefore unnecessary to opine on whether the doctrine of fraudulent concealment would apply, I take this opportunity to briefly discuss why its application is not conditioned upon a special relationship between the parties.

[30] Determining whether discoverability applies to the limitation period in s. 36(4)(a)(i) is a question of law subject to a standard of correctness, as is the question of whether fraudulent concealment requires a special relationship to be established between the parties. The applicability of either doctrine is, however (and as noted by the Court of Appeal), "bound up in the facts" and must be left to the trial judge to decide (C.A. reasons, at para. 68).

par. 63). La dernière condition est respectée lorsqu'il existe un « certain fondement factuel » pouvant étayer une question commune (*Hollick*, par. 25; *Microsoft*, par. 99-100).

[28] Au stade de l'autorisation, le demandeur doit satisfaire aux exigences du par. 4(1) que je viens de décrire; toutefois, la norme de contrôle en appel applicable à chaque question en particulier dépend de la nature de la question et je préciserai quelle norme s'applique dans chaque cas.

A. *Appel formé par Pioneer*

[29] Soulignant que le complot allégué aurait pris fin le 1er janvier 2010 et que l'action intentée contre elle n'a été introduite que le 16 août 2013, Pioneer soutient que la demande de M. Godfrey est prescrite parce qu'elle a été introduite après l'expiration du délai de prescription de deux ans prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*. Comme je vais l'expliquer, je reconnais que la règle de la possibilité de découvrir s'applique de façon à prolonger le délai de prescription établi au sous-al. 36(4)a)(i). Il n'est pas évident et manifeste que la demande de M. Godfrey contre Pioneer doit être rejetée pour ce motif. Bien qu'il ne soit donc pas nécessaire que je me prononce sur la question de savoir si la doctrine de la dissimulation frauduleuse s'applique, je saisis l'occasion d'examiner brièvement les raisons pour lesquelles son application ne tient pas à l'existence d'une relation spéciale entre les parties.

[30] La question de savoir si la possibilité de découvrir s'applique au délai de prescription prévu au sous-al. 36(4)a)(i) est une question de droit contrôlée suivant la norme de la décision correcte, tout comme la question de savoir si la dissimulation frauduleuse oblige à établir l'existence d'une relation spéciale entre les parties. Toutefois, comme l'a souligné la Cour d'appel, l'applicabilité de ces deux doctrines est [TRADUCTION] « intimement liée aux faits » et il appartient au juge du procès de trancher cette question (motifs de la C.A., par. 68).

(1) Discoverability

(a) *Limitation Periods Run From the Accrual or Knowledge of the Cause of Action*

[31] This Court has recognized that limitation periods may be subject to a rule of discoverability, such that a cause of action will not accrue for the purposes of the running of a limitation period until "the material facts on which [the cause of action] is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence" (*Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, at p. 224; *Ryan*, at paras. 2 and 22).

[32] This discoverability rule does not apply automatically to every limitation period. While a "rule", it is not a universally applicable rule of *limitations*, but a rule of *construction* to aid in the interpretation of statutory limitation periods (*Peixeiro v. Haberman*, [1997] 3 S.C.R. 549, at para. 37). It can therefore be displaced by clear legislative language (*Ermineskin Indian Band and Nation v. Canada*, 2006 FCA 415, [2007] 3 F.C.R. 245, at para. 333, aff'd 2009 SCC 9, [2009] 1 S.C.R. 222). In this regard, many provincial legislatures have chosen to enact statutory limitation periods that codify, limit or oust entirely discoverability's application, particularly in connection with ultimate limitation periods (see, e.g., *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, ss. 4, 5 and 15; *Limitations Act*, R.S.A. 2000, c. L-12, s. 3(1); *Limitation Act*, S.B.C. 2012, c. 13, ss. 6 to 8 and 21; *The Limitations Act*, S.S. 2004, c. L-16.1, ss. 5 to 7; *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5, s. 5; *Limitation of Actions Act*, S.N.S. 2014, c. 35, s. 8; see also *Bowes v. Edmonton (City)*, 2007 ABCA 347, 425 A.R. 123, at paras. 146-58).

[33] Further, absent legislative intervention, the discoverability rule applies only where the limitation period in question runs from the accrual of the cause of action, or from some other event that

(1) Possibilité de découvrir

a) *Le délai de prescription commence à courir à compter de la naissance ou de la connaissance de la cause d'action*

[31] Notre Cour a reconnu que les délais de prescription peuvent être assujettis à la règle de la possibilité de découvrir, de sorte que la cause d'action prendra naissance, pour les besoins de l'écoulement du délai de prescription, « lorsque les faits importants sur lesquels repose cette cause d'action ont été découverts par le demandeur ou auraient dû l'être s'il avait fait preuve de diligence raisonnable » (*Central Trust Co. c. Rafuse*, [1986] 2 R.C.S. 147, p. 224; *Ryan*, par. 2 et 22).

[32] La règle de la possibilité de découvrir ne s'applique pas automatiquement à chaque délai de prescription. C'est une « règle », certes, mais ce n'est pas une règle de *prescription* d'application universelle; c'est plutôt une règle d'*interprétation* visant à faciliter l'interprétation des délais de prescription fixés par la loi (*Peixeiro c. Haberman*, [1997] 3 R.C.S. 549, par. 37). Elle peut donc être écartée par un texte législatif clair (*Bande et nation indienne d'Ermineskin c. Canada*, 2006 CAF 415, [2007] 3 R.C.F. 245, par. 333, conf. par 2009 CSC 9, [2009] 1 R.C.S. 222). À cet égard, plusieurs législatures provinciales ont choisi d'établir au moyen de lois des délais de prescription qui codifient, limitent ou écartent complètement l'application de la règle de la possibilité de découvrir, notamment en ce qui concerne les délais de prescription maximum (voir, p. ex., la *Loi de 2002 sur la prescription des actions*, L.O. 2002, c. 24, ann. B, art. 4, 5 et 15; *Limitations Act*, R.S.A. 2000, c. L-12, par. 3(1); *Limitation Act*, S.B.C. 2012, c. 13, art. 6 à 8 et 21; *The Limitations Act*, S.S. 2004, c. L-16.1, art. 5 à 7; *Loi sur la prescription*, L.N.-B. 2009, c. L-8.5, art. 5; *Limitation of Actions Act*, S.N.S. 2014, c. 35, art. 8; voir aussi *Bowes c. Edmonton (City)*, 2007 ABCA 347, 425 A.R. 123, par. 146-158).

[33] De plus, en l'absence d'intervention de la législature, la règle de la possibilité de découvrir ne s'applique que si le délai de prescription en cause commence à courir à compter de la naissance de la

occurs when the plaintiff has knowledge of the injury sustained:

> In my opinion, the judge-made discoverability rule is nothing more than a rule of construction. Whenever a statute requires an action to be commenced within a specified time from the happening of a specific event, the statutory language must be construed. When time runs from "the accrual of the cause of action" or from some other event which can be construed as occurring only when the injured party has knowledge of the injury sustained, the judge-made discoverability rule applies. But, when time runs from an event which clearly occurs without regard to the injured party's knowledge, the judge-made discoverability rule may not extend the period the legislature has prescribed. [Emphasis added.]

(*Fehr v. Jacob* (1993), 14 C.C.L.T. (2d) 200 (Man. C.A.), at para. 22, cited in *Peixeiro*, at para. 37.)

[34] Two points flow from this statement. First, where the running of a limitation period is contingent upon the accrual of a cause of action or some other event that can occur only when the plaintiff has knowledge of his or her injury, the discoverability principle applies in order to ensure that the plaintiff had knowledge of the existence of his or her legal rights before such rights expire (*Peixeiro*, at para. 39).

[35] Secondly (and conversely), where a statutory limitation period runs from an event unrelated to the accrual of the cause of action or which does not require the plaintiff's knowledge of his or her injury, the rule of discoverability will not apply. In *Ryan*, for example, this Court held that discoverability did not apply to s. 5 of the *Survival of Actions Act*, R.S.N.L. 1990, c. S-32, which stated that an action against a deceased could not be brought after one year from the date of death. As the Court explained (para. 24):

> The law does not permit resort to the judge-made discoverability rule when the limitation period is explicitly linked by the governing legislation to a fixed event unrelated to

cause d'action ou de tout autre événement survenant au moment où le demandeur prend connaissance du préjudice subi :

> [TRADUCTION] À mon avis, la règle prétorienne de la possibilité de découvrir le dommage n'est rien de plus qu'une règle d'interprétation. Dans tous les cas où une loi indique que l'action en justice doit être intentée dans un certain délai après un événement donné, il faut interpréter les termes de cette loi. Lorsque ce délai court à partir du « moment où naît la cause d'action » ou de tout autre événement qui peut être interprété comme ne survenant qu'au moment où la [partie lésée] prend connaissance du dommage, c'est la règle prétorienne de la possibilité de découvrir le dommage qui s'applique. Toutefois, si le délai court à compter de la date d'un événement qui survient clairement, et sans égard à la connaissance qu'en a la [partie lésée], cette règle ne peut prolonger le délai fixé par le législateur. [Je souligne.]

(*Fehr c. Jacob* (1993), 14 C.C.L.T. (2d) 200 (C.A. Man.), par. 22, cité dans *Peixeiro*, par. 37.)

[34] Deux points se dégagent de cet énoncé. Premièrement, lorsque le point de départ du délai de prescription dépend de la naissance de la cause d'action ou de quelque autre événement ne pouvant survenir qu'au moment où le demandeur prend connaissance de son préjudice, le principe de la possibilité de découvrir s'applique de manière à garantir que le demandeur avait connaissance des droits que la loi lui confère avant qu'ils expirent (*Peixeiro*, par. 39).

[35] Deuxièmement (et inversement), lorsqu'un délai de prescription légal commence à courir à compter d'un événement qui n'a rien à voir avec la naissance de la cause d'action ou qui n'exige pas que le demandeur ait connaissance du préjudice qu'il a subi, la règle de la possibilité de découvrir ne s'appliquera pas. Dans l'arrêt *Ryan*, par exemple, la Cour a conclu que la règle ne s'appliquait pas à l'art. 5 de la *Survival of Actions Act*, R.S.N.L. 1990, c. S-32, qui dispose qu'aucune action ne peut être intentée contre une personne décédée après un an suivant la date de son décès. Comme la Cour l'a expliqué (par. 24) :

> Il n'est pas permis, en droit, de recourir à la règle prétorienne de la possibilité de découvrir le dommage dans les cas où la loi applicable lie expressément le délai de

the injured party's knowledge or the basis of the cause of action. [Emphasis added; citation omitted.]

By tying, then, the limitation period to an event unrelated to the cause of action, and which did not necessitate the plaintiff's knowledge of an injury, the legislature had clearly displaced the discoverability rule (*Ryan*, at para. 27).

[36] In determining whether a limitation period runs from the accrual of a cause of action or knowledge of the injury, such that discoverability applies, substance, not form, is to prevail: even where the statute does not explicitly state that the limitation period runs from "the accrual of the cause of action", discoverability will apply if it is evident that the operation of a limitation period is, in substance, conditioned upon accrual of a cause of action or knowledge of an injury. Indeed, clear statutory text is necessary to oust its application. In *Peixeiro*, for example, this Court applied the discoverability rule to s. 206(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, which stated that an action must be commenced within two years of the time when "damages were sustained" (para. 2). The use of the phrase "damages were sustained" rather than "when the cause of action arose" was a "distinction without a difference", as it was unlikely that the legislature intended that the limitation period should run without the plaintiff's knowledge (para. 38).

[37] It is therefore clear that the "the judge-made discoverability rule will apply when the requisite limitation statute indicates that time starts to run from when the cause of action arose (or other wording to that effect)" (G. Mew, D. Rolph and D. Zacks, *The Law of Limitations* (3rd ed. 2016), at p. 103 (emphasis added)). And, while my colleague Côté J. claims to disagree with my analysis, I am fortified by the endorsement in her reasons of this formulation of discoverability (paras. 140 and 149).

prescription à un événement déterminé qui n'a rien à voir avec le moment où la partie lésée en prend connaissance ou avec le fondement de la cause d'action. [Je souligne; référence omise.]

En rattachant, alors, le délai de prescription à un événement qui n'a aucun rapport avec la cause d'action et qui n'exige pas que le demandeur ait connaissance d'un préjudice, la législature a clairement écarté la règle de la possibilité de découvrir (*Ryan*, par. 27).

[36] Pour décider si un délai de prescription commence à courir à la date de la naissance de la cause d'action ou lorsque le demandeur a connaissance du préjudice qu'il a subi, de sorte que la règle de la possibilité de découvrir s'applique, le fond, non la forme, doit prévaloir : même si la loi ne précise pas que le délai de prescription commence à courir à compter de « la naissance de la cause d'action », le principe de la possibilité de découvrir s'applique s'il est évident que le point de départ du délai de prescription dépend, en substance, de la naissance de la cause d'action ou de la connaissance d'un préjudice. En fait, pour écarter l'application du principe, il faut un texte législatif clair. Dans l'arrêt *Peixeiro*, par exemple, notre Cour a appliqué la règle de la possibilité de découvrir au par. 206(1) du *Code de la route*, L.R.O. 1990, c. H.8, selon lequel l'action devait être intentée dans les deux ans de la date à laquelle les « dommages ont été subis » (par. 2). L'utilisation des mots « où les dommages ont été subis » plutôt que « date où la cause d'action a pris naissance » est une « distinction sans importance », puisqu'il est peu probable que la législature ait voulu que le délai de prescription commence à courir à l'insu du demandeur (par. 38).

[37] Il est donc clair que [TRADUCTION] « la règle prétorienne de la possibilité de découvrir s'applique quand la loi de prescription voulue indique que le délai commence à courir à la date de la naissance de la cause d'action (ou qu'il utilise d'autres mots en ce sens) » (G. Mew, D. Rolph et D. Zacks, *The Law of Limitations* (3e éd. 2016), p. 103 (je souligne)). Et, bien que ma collègue prétende être en désaccord avec mon analyse, elle me conforte dans mon opinion en cautionnant cette formulation de la règle de la possibilité de découvrir (par. 140 et 149).

[38] The issue raised by this appeal is what constitutes sufficiently clear legislative expression in this regard, such that discoverability will apply. In my view, where the event triggering the limitation period is an element of the cause of action, the legislature has shown its intention that the limitation period be linked to the cause of action's accrual, such that discoverability will apply. As this Court stated in *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, the accrual of a cause of action is a "gradatio[n]" (p. 34). Where all the elements of a cause of action occur simultaneously, the cause of action accrues contemporaneously with the occurrence of each element (*M. (K.)*, at p. 34). Where, however, the occurrence of each element is separated in time, the accrual of the cause of action is a continuing (but not continual) process. That is, the cause of action will continue to accrue as each element of the cause of action occurs.

[38] Il s'agit en l'espèce de savoir ce qui constitue une expression suffisamment claire de la législature en ce sens pour que la règle de la possibilité de découvrir s'applique. À mon avis, lorsque l'événement marquant le point de départ du délai de prescription est un élément de la cause d'action, la législature a manifesté son intention que le délai de prescription soit lié à la naissance de la cause d'action, déclenchant du même coup l'application de la règle de la possibilité de découvrir. Comme l'a affirmé notre Cour dans *M. (K.) c. M. (H.)*, [1992] 3 R.C.S. 6, la cause d'action « peut prendre naissance [à différents moments] » (p. 34). Si tous les éléments d'une cause d'action apparaissent simultanément, la cause d'action prend naissance au moment où survient chaque élément (*M. (K.)*, p. 34). En revanche, si les éléments ne surviennent pas tous en même temps, la naissance de la cause d'action est un processus en cours (mais non continu). En d'autres termes, la cause d'action continue de prendre naissance à mesure que survient chacun de ses éléments.

[39] This was what the Court in *Ryan* was referring to when it said that discoverability does not apply where the limitation period "is explicitly linked by the governing legislation to a fixed event unrelated to the injured party's knowledge or the basis of the cause of action" (para. 24 (emphasis added)). In *Ryan*, discoverability did not apply because the action was "complete in all its elements" before the operation of the event triggering the limitation period (para. 18). The limitation period was not dependent upon the accrual of the cause of action and thus the limitation period would begin to run independent of the accrual of the cause of action (see *Ryan*, at paras. 16, 18, 20, 29 and 32). Citing the trial judge with approval, the Court added this:

[39] C'est ce dont parlait la Cour dans *Ryan* quand elle a dit que la règle de la possibilité de découvrir ne s'applique pas lorsque « la loi applicable lie expressément le délai de prescription à un événement déterminé qui n'a rien à voir avec le moment où la partie lésée en prend connaissance ou avec le fondement de la cause d'action » (par. 24 (je souligne)). Dans *Ryan*, cette règle ne s'appliquait pas car « tous les éléments » de l'action « [étaient] présents » avant que ne survienne le fait qui marque le point de départ du délai de prescription (par. 18). Le délai de prescription ne dépendait pas de la naissance de la cause d'action et il commencerait donc à courir indépendamment de la naissance de la cause d'action (voir *Ryan*, par. 16, 18, 20, 29 et 32). Citant le juge de première instance avec approbation, la Cour a ajouté ceci :

> The fact of death is of no relevance to the cause of action in question. It is not an element of the cause of action and is not required to complete the cause of action. Whatever the nature of the cause of action, it is existing and complete before the *Survival of Actions Act* operates, in the case of a death, to maintain it and provide a limited time window within which it must be pursued. The fact of the death is irrelevant to the cause of action and serves

> [TRADUCTION] Le décès en tant que tel n'a aucune pertinence en ce qui concerne la cause d'action en question. Il ne constitue pas un élément de la cause d'action et n'est pas nécessaire pour compléter la cause d'action. Quelle que soit la nature de la cause d'action, elle existe et est complète avant que la *Survival of Actions Act* s'applique, en cas de décès, pour la maintenir et fixer un délai limité dans lequel l'action devra être intentée. Le décès

only to provide a time from which the time within which to bring the action is to be calculated. [Emphasis added; para. 32.]

[40] Had, however, the event triggering the limitation period been an *element* of the cause of action, or had it been required to occur before the cause of action could accrue, discoverability *could* apply (*Ryan*, at paras. 29-30, citing *Burt v. LeLacheur*, 2000 NSCA 90, 189 D.L.R. (4th) 193). I do not see my colleague Côté J. as disagreeing on this point: she is quite right when she says that "the words 'basis of the cause of action' in para. 24 of *Ryan* should be understood as essentially synonymous with the 'arising or accrual of the cause of action'" (para. 148). As this Court held in *Peixeiro*, where the limitation period is based on an event that can be construed as synonymous with the accrual of the cause of action, discoverability will apply (para. 38).

[41] From all this, it is evident that discoverability continues to apply where the legislature has shown its intent that a limitation period shall run from "when the cause of action arose (or other wording to that effect)" or where the event triggering the limitation period requires the plaintiff's knowledge of his or her injury (Mew et al., at p. 103). Conversely, discoverability does not apply where that triggering event does not depend on the plaintiff's knowledge or is independent of the accrual of the cause of action. This is not, as my colleague suggests, a modified test for discoverability (reasons of Côté J., at para. 154), but rather is the product of this Court's application of *Fehr* in *Peixeiro* (regarding when discoverability *does* apply) and *Ryan* (regarding when discoverability *does not* apply).

en tant que tel n'est pas pertinent en ce qui concerne la cause d'action et sert seulement de point de départ pour calculer le délai dans lequel l'action devra être intentée. [Je souligne; par. 32.]

[40] Si en revanche le fait déclencheur du délai de prescription constituait un *élément* de la cause of action, ou s'il devait se produire avant que la cause d'action puisse prendre naissance, la règle de la possibilité de découvrir *pourrait* s'appliquer (*Ryan*, par. 29-30, citant *Burt c. LeLacheur*, 2000 NSCA 90, 189 D.L.R. (4th) 193). Je ne pense pas que ma collègue la juge Côté est en désaccord sur ce point : elle a parfaitement raison de dire que « l'expression "fondement de la cause d'action" figurant au par. 24 de l'arrêt *Ryan* devrait être considérée comme étant essentiellement synonyme de l'expression "naissance de la cause d'action" » (par. 148). Comme l'a conclu la Cour dans *Pexeiro*, lorsque le délai de prescription découle d'un fait susceptible d'être jugé synonyme de la naissance de la cause d'action, la règle de la possibilité de découvrir s'applique (par. 38).

[41] Il ressort clairement de tout ce qui précède que la règle de la possibilité de découvrir continue de s'appliquer lorsque la législature a manifesté son intention que le délai de prescription commence à courir [TRADUCTION] « à la naissance de la cause d'action (ou utilisé d'autres mots en ce sens) », ou encore lorsque le fait déclencheur du délai de prescription exige du demandeur qu'il ait connaissance du préjudice qu'il a subi (Mew et autres, p. 103). En revanche, la règle de la possibilité de découvrir ne s'applique pas lorsque le fait déclencheur ne dépend pas de la connaissance du demandeur ou est indépendant de la naissance de la cause d'action. Il ne s'agit pas là, contrairement à ce que laisse entendre ma collègue, d'un critère modifié relatif à la possibilité de découvrir (motifs de la juge Côté, par. 154). Il s'agit plutôt de la conséquence de l'application par notre Cour de l'arrêt *Fehr* dans *Peixeiro* (à propos des circonstances où la règle de la possibilité de découvrir *s'applique*) et dans *Ryan* (au sujet des circonstances où la règle de la possibilité de découvrir *ne* s'applique *pas*).

(b) The Statutory Scheme, and the Objects of Statutory Limitation Periods

[42] Bearing in mind that, as I have explained, the discoverability rule is a rule of *construction*, its application depends on an examination of the pertinent statutory text to assess what triggers the running of the limitation period in question, supplemented by consideration of the statutory scheme within which it operates, and of the legislature's purpose in enacting limitation periods (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21).

[43] Turning first to the statutory text, the relevant provisions of s. 36 of the *Competition Act* state:

**36 (1)** Any person who has suffered loss or damage as a result of

**(a)** conduct that is contrary to any provision of Part VI, . . .

. . .

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

. . .

**(4)** No action may be brought under subsection (1),

**(a)** in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

**(i)** a day on which the conduct was engaged in, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; . . .

. . .

b) Le régime législatif et les objectifs des délais de prescription légaux

[42] Compte tenu du fait que, comme je l'ai expliqué, la règle de la possibilité de découvrir est une règle d'*interprétation*, son application dépend d'un examen du texte législatif pertinent visant à déterminer ce qui marque le point de départ du délai de prescription en question, complété par un examen du régime législatif dans lequel ladite disposition s'inscrit et de l'intention qu'avait la législature quand elle a fixé ce délai de prescription (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 R.C.S. 27, par. 21).

[43] Passons d'abord au texte législatif. Les dispositions pertinentes de l'art. 36 de la *Loi sur la concurrence* prévoient :

**36 (1)** Toute personne qui a subi une perte ou des dommages par suite :

**a)** . . . d'un comportement allant à l'encontre d'une disposition de la partie VI;

. . .

peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

. . .

**(4)** Les actions visées au paragraphe (1) se prescrivent :

**a)** dans le cas de celles qui sont fondées sur un comportement qui va à l'encontre d'une disposition de la partie VI, dans les deux ans qui suivent la dernière des dates suivantes :

**(i)** soit la date du comportement en question,

**(ii)** soit la date où il est statué de façon définitive sur la poursuite;

. . .

[44] The text of s. 36(4)(a)(i) provides that no action may be brought under s. 36(1)(a) after two years from a day *on which conduct contrary to Part VI* occurred. From this, it is clear that the event triggering this particular limitation period is an element of the underlying cause of action. That is, the limitation period in s. 36(4)(a)(i) is triggered by the occurrence of an element of the underlying cause of action — specifically, conduct contrary to Part VI of the *Competition Act*. Therefore, it is subject to discoverability (*Fanshawe College of Applied Arts and Technology v. AU Optronics Corp.*, 2016 ONCA 621, 132 O.R. (3d) 81, at para. 18).

[45] The scheme of s. 36(4) also supports the view that discoverability was intended to apply to the limitation period in s. 36(4)(a)(i). Section 36(4)(a) sets out two limitation periods — s. 36(4)(a)(i), which runs from the day on which the conduct occurred and s. 36(4)(a)(ii), which runs from the day on which criminal proceedings are disposed of. The applicable limitation period is whichever event occurs later. Pioneer argues that Parliament enacted s. 36(4)(a)(ii) to revive a cause of action where the limitation period has expired under s. 36(4)(a)(i), which revival would mitigate any unfairness created by the operation of the limitation period in s. 36(4)(a)(i) (A.F. (Pioneer), at para. 92). I do not view s. 36(4)(a)(ii)'s operation in this way. It is simply an example of a limitation period to which discoverability does not apply because, as the Court of Appeal for Ontario said in *Fanshawe*, the event triggering the limitation period under s. 36(4)(a)(ii) — the disposition of criminal proceedings — is "not connected to a plaintiff's cause of action or knowledge" (para. 47). When s. 36(4)(a)(i) is contrasted with s. 36(4)(a)(ii), it is likely that Parliament intended that discoverability apply to the former limitation period and not the latter. Further, where criminal proceedings are *not* brought against a wrongdoer, the putative mitigating effect of s. 36(4)(a)(ii) would be of no assistance to plaintiffs whose right of action has expired by operation of s. 36(4)(a)(i).

[44] Le texte du sous-al. 36(4)a)(i) prévoit que les actions visées à l'al. 36(1)a) se prescrivent dans les deux ans qui suivent la date du *comportement qui va à l'encontre de la partie VI*. Partant, il est évident que le fait déclencheur de ce délai de prescription est un élément de la cause d'action sous-jacente. En d'autres termes, le délai de prescription prévu au sous-al. 36(4)a)(i) court à compter de la survenance d'un élément de la cause d'action sous-jacente — plus précisément, le comportement qui va à l'encontre de la partie VI de la *Loi sur la concurrence*. Par conséquent, il est assujetti à la règle de la possibilité de découvrir (*Fanshawe College of Applied Arts and Technology c. AU Optronics Corp.*, 2016 ONCA 621, 132 O.R. (3d) 81, par. 18).

[45] Le régime établi par le par. 36(4) appuie également la thèse selon laquelle la règle de la possibilité de découvrir est censée s'appliquer au délai de prescription du sous-al. 36(4)a)(i). L'alinéa 36(4)a) prévoit deux délais de prescription : celui du sous-al. 36(4)a)(i), qui commence à courir à la date du comportement en question, et celui du sous-al. 36(4)a)(ii), qui commence à courir à la date où il est statué sur la poursuite. Le délai de prescription applicable est celui qui commence à courir à la dernière de ces dates. Pioneer soutient que le Parlement a adopté le sous-al. 36(4)a)(ii) en vue de faire renaître une cause d'action qui est prescrite suivant le sous-al. 36(4)a)(i), et que cette renaissance atténuerait toute iniquité créée par l'application du délai de prescription du sous-al. 36(4)a)(i) (m.a. (Pioneer), par. 92). Selon moi, ce n'est pas ainsi que fonctionne le sous-al. 36(4)a)(ii). Cette disposition n'est qu'un exemple de délai de prescription auquel la règle de la possibilité de découvrir ne s'applique pas parce que, comme l'a dit la Cour d'appel de l'Ontario dans l'arrêt *Fanshawe*, le fait déclencheur du délai de prescription prévu au sous-al. 36(4)a)(ii) — la date à laquelle il est statué sur la poursuite — n'est [TRADUCTION] « pas lié à la cause d'action ou à la connaissance du demandeur » (par. 47). Si l'on compare le sous-al. 36(4)a)(i) au sous-al. 36(4)a)(ii), le législateur voulait probablement que la règle de la possibilité de découvrir s'applique au premier délai de prescription, mais non au deuxième. Qui plus est, lorsqu'*aucune* poursuite *n'*est intentée contre le contrevenant, le soi-disant effet d'atténuation attribué au sous-al. 36(4)a)(ii) ne serait d'aucun secours au demandeur dont le droit d'action a expiré par application du sous-al. 36(4)a)(i).

[46] So much for the statutory text and scheme. I turn, then, to consider this limitation period's relation to the overall object of the *Competition Act*, which is to "maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy . . . and . . . provide consumers with competitive prices and product choices" (*Competition Act*, s. 1.1). Anti-competitive agreements — which represent "conduct that is contrary to . . . Part VI" (s. 36(1)(a)) — are invariably conducted through secrecy and deception (*Fanshawe*, at para. 46; C.A. reasons, at para. 93), meaning that they are, by their very nature, *unknown* to s. 36(1)(a) claimants. Parliament would have known this when enacting the limitation provision contained in s. 36(4)(a)(i). It would therefore be absurd, and would render the cause of action granted by s. 36(1)(a) almost meaningless, to state that Parliament did not intend for discoverability to apply, such that the plaintiff's right of action would expire prior to his or her acquiring knowledge of the anti-competitive behaviour. I agree with the Court of Appeal that "it cannot be said that Parliament intended to accord such little weight to the interests of injured plaintiffs in the context of alleged conspiracies so as to exclude the availability of the discoverability rule in s. 36(4)" (C.A. reasons, at para. 93).

[47] The application of discoverability to the limitation period in s. 36(4)(a)(i) is also supported by the object of statutory limitation periods. This Court has recognized that three rationales underlie limitation periods (*M. (K.)*, at pp. 29-31), which courts must consider in deciding whether the discoverability rule applies to a particular limitation period. The first is that limitation periods foster *certainty*, in that "[t]here comes a time . . . when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations"(*M. (K.)*, at p. 29). This concern must be balanced against the unfairness of allowing a wrongdoer to escape liability while the victim of injury continues to suffer the consequences (*M. (K.)*,

[46] Voilà pour le texte législatif et le régime qu'il établit. Je passe maintenant à l'examen du lien qui unit le délai de prescription à l'objet général de la *Loi sur la concurrence*, qui est de « préserver et de favoriser la concurrence au Canada dans le but de stimuler l'adaptabilité et l'efficience de l'économie canadienne [. . .] de même que [. . .] d'assurer aux consommateurs des prix compétitifs et un choix dans les produits » (*Loi sur la concurrence*, art. 1.1). Les ententes anticoncurrentielles — qui participent des « comportement[s] allant à l'encontre [. . .] de la partie VI » (al. 36(1)a)) — font invariablement appel au secret et à la tromperie (*Fanshawe*, par. 46; motifs de la C.A., par. 93), ce qui veut dire qu'elles sont, de par leur nature même, *inconnues* des demandeurs visés par l'al. 36(1)a). Le législateur devait le savoir lorsqu'il a établi le délai de prescription du sous-al. 36(4)a)(i). Il serait non seulement absurde d'affirmer qu'il n'était pas dans l'intention du législateur que la règle de la possibilité de découvrir s'applique, de sorte que le droit d'action du demandeur expirerait avant qu'il prenne connaissance du comportement anticoncurrentiel, mais affirmer cela reviendrait à dénuer pratiquement de son sens la cause d'action reconnue par l'al. 36(1)a). Je conviens avec la Cour d'appel [TRADUCTION] « [qu']il est impossible de dire que le législateur a voulu accorder si peu d'importance aux intérêts des demandeurs lésés, dans les cas d'allégation de complot, qu'il a écarté le recours à la règle de la possibilité de découvrir au par. 36(4) » (motifs de la C.A., par. 93).

[47] L'application de la règle de la possibilité de découvrir au délai de prescription prévu au sous-al. 36(4)a)(i) est également étayée par l'objet sous-tendant les délais de prescription légaux. Notre Cour a reconnu que les délais de prescription reposent sur trois justifications (*M. (K.)*, p. 29-31), dont les tribunaux doivent tenir compte pour décider si la règle de la possibilité de découvrir s'applique à un délai de prescription donné. La première est que les délais de prescription favorisent la *certitude*, en ce qu'« [i]l arrive un moment [. . .] où un éventuel défendeur devrait être raisonnablement certain qu'il ne sera plus redevable de ses anciennes obligations » (*M. (K.)*, p. 29). Ce souci de certitude doit être soupesé en regard de l'iniquité qui consiste à permettre à

at p. 29). The second rationale is *evidentiary*: limitation periods are intended to help prevent evidence from going stale, to the detriment of the plaintiff or the defendant (*M. (K.)*, at p. 30). Finally, limitation periods serve to encourage *diligence* on the part of plaintiffs in pursuing their claims (*M. (K.)*, at p. 30).

[48] Consideration of these rationales for limitation periods affirms discoverability's application here. Even recognizing that shorter limitation periods indicate that Parliament put a premium on the certainty that comes with a limitation statute's function of repose (*Peixeiro*, at para. 34), balancing all of the competing interests underlying s. 36(4)(a)(i) weighs in favour of applying discoverability. The ability of plaintiffs to advance claims for loss arising from conduct contrary to Part VI of the *Competition Act* outweighs defendants' interests in barring them, especially where such conduct is, as I have already noted, concealed from plaintiffs (*Fanshawe*, at para. 46) (such that the evidentiary rationale — that is, the concern about evidence going "stale" — has no place in the analysis). To hold otherwise would create perverse incentives, encouraging continued concealment of anti-competitive behaviour until the two-year limitation period has elapsed. It would therefore not only bar plaintiffs from pursuing their claims, but reward concealment that has been "particularly effective" (*Fanshawe*, at para. 49).

[49] In contrast, applying discoverability to s. 36(4)(a)(i) would not unduly affect the defendant's interests, as discoverability does not excuse the plaintiff from moving matters along, such that the rationale of encouraging diligence is still served (*Peixeiro*, at para. 39). Where plaintiffs sleep on their rights or otherwise do not diligently pursue their

un contrevenant d'échapper à sa responsabilité alors que la victime du préjudice continue à en subir les conséquences (*M. (K.)*, p. 29). La deuxième justification se rattache à la *preuve* : les délais de prescription visent à empêcher que des éléments de preuve deviennent périmés, au détriment du demandeur ou du défendeur (*M. (K.)*, p. 30). Enfin, les délais de prescription servent à encourager les demandeurs à faire preuve de *diligence* dans la poursuite de leurs actions (*M. (K.)*, p. 30).

[48] L'examen des justifications qui sous-tendent les délais de prescription confirme que le principe de la possibilité de découvrir s'applique en l'espèce. Même si je reconnais que la brièveté d'un délai de prescription tend à indiquer que le législateur attache une grande importance à la certitude qui découle de toute loi visant à assurer la tranquillité d'esprit (*Peixeiro*, par. 34), j'estime que la mise en balance de l'ensemble des intérêts divergents sur lesquels repose le sous-al. 36(4)a)(i) milite en faveur de l'application de la règle de la possibilité de découvrir. La capacité des demandeurs de poursuivre en justice pour les pertes découlant d'un comportement allant à l'encontre de la partie VI de la *Loi sur la concurrence* l'emporte sur l'intérêt des défendeurs à les en empêcher, surtout lorsqu'un tel comportement a lieu, comme je l'ai déjà mentionné, à l'insu des demandeurs (*Fanshawe*, par. 46) (de sorte que la justification rattachée à la preuve — la crainte que la preuve devienne « périmée » — n'a pas sa place dans l'analyse). Conclure autrement aurait pour effet indésirable d'inciter l'auteur du comportement anticoncurrentiel à continuer de garder le secret jusqu'à l'expiration du délai de prescription de deux ans. Non seulement les demandeurs ne pourraient pas intenter leurs recours, mais l'on se trouverait à récompenser l'auteur d'une tromperie qui a été [TRADUCTION] « particulièrement efficace » (*Fanshawe*, par. 49).

[49] Par contraste, l'application de la règle de la possibilité de découvrir au sous-al. 36(4)a)(i) ne nuirait pas indûment aux intérêts des défendeurs, car la règle de la possibilité de découvrir ne dispense pas le demandeur de faire avancer sa cause, de sorte que l'objectif d'encourager la diligence demeure atteint (*Peixeiro*, par. 39). Le demandeur qui tarde

claims, discoverability will not operate to extend the limitation period (Mew et al., at p. 83).

[50] For all of these reasons, I find that the discoverability rule applies to the limitation period in s. 36(4)(a)(i), such that it begins to run only when the material facts on which Godfrey's claim is based were discovered by him or ought to have been discovered by him by the exercise of reasonable diligence.

(2) Fraudulent Concealment

[51] In light of my finding that discoverability applies to s. 36(4)(a)(i), it is, strictly speaking, unnecessary to consider the doctrine of fraudulent concealment. Given, however, the submissions and attention given to this issue at the courts below, I will comment briefly here on whether fraudulent concealment requires establishing a special relationship between the parties.

[52] Fraudulent concealment is an equitable doctrine that prevents limitation periods from being used "as an instrument of injustice" (*M. (K.)*, at pp. 58-59). Where the defendant fraudulently conceals the existence of a cause of action, the limitation period is suspended until the plaintiff discovers the fraud or ought reasonably to have discovered the fraud (*Guerin v. The Queen*, [1984] 2 S.C.R. 335, at p. 390). It is a form of "equitable fraud" (*Guerin*, at p. 390; *M. (K.)*, at pp. 56-57), which is not confined to the parameters of the common law action for fraud (*M. (K.)*, at p. 57). As Lord Evershed, M.R. explained in *Kitchen v. Royal Air Forces Association*, [1958] 2 All E.R. 241 (C.A.), at p. 249, cited in *M. (K.)*, at pp. 56-57:

It is now clear . . . that the word "fraud" in s. 26(b) of the Limitation Act, 1939, is by no means limited to common law fraud or deceit. Equally, it is clear, having regard to

à exercer ses droits ou qui n'agit pas avec diligence dans la poursuite de son action ne pourra bénéficier de l'application de la règle de la possibilité de découvrir pour faire prolonger le délai de prescription (Mew et autres, p. 83).

[50] Pour toutes ces raisons, j'estime que la règle de la possibilité de découvrir s'applique au délai de prescription du sous-al. 36(4)a)(i), de sorte que ce délai n'a commencé à courir qu'à la date à laquelle M. Godfrey a découvert les faits importants sur lesquels repose sa demande ou encore à la date à laquelle il les aurait découverts s'il avait fait preuve de diligence raisonnable.

(2) Dissimulation frauduleuse

[51] Étant donné ma conclusion que la règle de la possibilité de découvrir s'applique au sous-al. 36(4)a)(i), il est pour ainsi dire inutile d'examiner la doctrine de la dissimulation frauduleuse. Toutefois, compte tenu de l'attention accordée à cette question devant les juridictions inférieures, ainsi que des observations qui ont été présentées à ce sujet, je me prononcerai brièvement sur la question de savoir si la dissimulation frauduleuse exige la preuve d'une relation spéciale entre les parties.

[52] La doctrine de la dissimulation frauduleuse est une doctrine d'equity qui vise à empêcher que les délais de prescription servent « à créer une injustice » (*M. (K.)*, p. 58-59). Si le défendeur a dissimulé frauduleusement l'existence d'une cause d'action, le délai de prescription est suspendu jusqu'au moment où le demandeur découvre, ou aurait raisonnablement dû découvrir, la fraude (*Guerin c. La Reine*, [1984] 2 R.C.S. 335, p. 390). Il s'agit d'une forme de « fraude d'*equity* » (*Guerin*, p. 390; *M. (K.)*, p. 56-57), qui n'est pas limitée par les paramètres de l'action pour fraude de la common law (*M. (K.)*, p. 57). Comme l'a expliqué le maître des rôles lord Evershed dans l'arrêt *Kitchen c. Royal Air Forces Association*, [1958] 2 All E.R. 241 (C.A.), p. 249, cité dans l'arrêt *M. (K.)*, p. 56-57 :

[TRADUCTION] Il est maintenant évident [. . .] que le terme « fraude » employé à l'al. 26b) de la Limitation Act, 1939, n'est aucunement limité à une tromperie ou à une fraude de

the decision in *Beaman v. A.R.T.S., Ltd.*, [1949] 1 All E.R. 465, that no degree of moral turpitude is necessary to establish fraud within the section. What is covered by equitable fraud is a matter which LORD HARDWICKE did not attempt to define two hundred years ago, and I certainly shall not attempt to do so now, but it is, I think, clear that the phrase covers conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other. [Emphasis added in *M. (K.)*.]

[53] While it is therefore clear that equitable fraud *can* be established in cases where a special relationship subsists between the parties, Lord Evershed, M.R. did not limit its establishment to such circumstances, nor did he purport to define exhaustively the circumstances in which it would or would not apply (see *T.P. v. A.P.*, 1988 ABCA 352, 92 A.R. 122, at para. 10). Indeed, he expressly refused to do so: "What is covered by equitable fraud is a matter which LORD HARDWICKE did not attempt to define two hundred years ago, and I certainly shall not attempt to do so now" (*Kitchen*, at p. 249 (emphasis added)).

[54] When, then, does fraudulent concealment arise so as to delay the running of a limitation period? Recalling that it is a form of *equitable* fraud, it becomes readily apparent that what matters is *not* whether there is a *special relationship* between the parties, but whether it would be, for *any* reason, *unconscionable* for the defendant to rely on the advantage gained by having concealed the existence of a cause of action. This was the Court's point in *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678, at para. 39:

[Equitable fraud] ". . . refers to transactions falling short of deceit but where the Court is of the opinion that it is unconscientious for a person to avail himself of the advantage obtained" (p. 37). Fraud in the "wider sense" of a ground for equitable relief "is so infinite in its varieties that the Courts have not attempted to define it", but "all kinds of unfair dealing and unconscionable conduct in matters of contract come within its ken" . . . . [Emphasis added.]

common law. Il est également clair, compte tenu de l'arrêt *Beaman c. A.R.T.S., Ltd.*, [1949] 1 All E.R. 465, qu'aucun degré de turpitude morale n'est nécessaire pour prouver qu'il y a fraude au sens de l'article. Ce que vise la fraude d'equity est une chose que LORD HARDWICKE n'a pas tenté de définir il y a deux cents ans et que je ne tenterai certainement pas de définir maintenant; toutefois, j'estime qu'il est clair que cette expression vise une conduite qui, compte tenu de la relation spéciale qui existe entre les parties concernées, est une iniquité de la part de l'une envers l'autre. [Souligné dans *M. (K.)*.]

[53] S'il est donc évident que la fraude d'equity *peut* être établie dans les cas où il existe une relation spéciale entre les parties, le maître des rôles lord Evershed ne l'a pas limitée à ces cas, non plus qu'il n'a tenté de définir de façon exhaustive les cas où elle pourrait, ou non, s'appliquer (voir *T.P. c. A.P.*, 1988 ABCA 352, 92 A.R. 122, par. 10). Il a d'ailleurs refusé expressément de le faire : [TRADUCTION] « Ce que vise la fraude d'equity est une chose que LORD HARDWICKE n'a pas tenté de définir il y a deux cents ans et que je ne tenterai certainement pas de définir maintenant » (*Kitchen*, p. 249 (je souligne)).

[54] Mais alors quand la présence d'une dissimulation frauduleuse permet-elle de retarder le point de départ d'un délai de prescription? Rappelons qu'il s'agit d'une forme de fraude d'equity. Partant, il devient évident que ce qui importe, ce *n'*est *pas* de savoir s'il existe une *relation spéciale* entre les parties, mais si, *pour quelque* raison *que ce soit*, il serait *abusif* pour le défendeur de profiter de l'avantage obtenu en dissimulant l'existence d'une cause d'action. C'est ce qu'a expliqué la Cour dans *Performance Industries Ltd. c. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 CSC 19, [2002] 1 R.C.S. 678, par. 39 :

[La fraude d'equity] « . . . s'entend également d'opérations qui ne sont pas dolosives, mais à l'égard desquelles le tribunal estime qu'il serait abusif de laisser une personne profiter de l'avantage obtenu » (p. 37). Au « sens plus large » de fraude donnant ouverture à une réparation en equity, la fraude se présente sous [TRADUCTION] « un nombre tellement infini de formes que les tribunaux n'ont pas tenté de la définir », mais « elle vise toutes sortes de manœuvres déloyales et de conduites abusives en matière contractuelle » . . . [Je souligne.]

It follows that the concern which drives the application of the doctrine of equitable fraud is not limited to the unconscionability of taking advantage of a special relationship with the plaintiff. Nor is the doctrine's application limited, as my colleague suggests, to cases where there is something "tantamount to or commensurate with" a special relationship between the plaintiff and the defendant (paras. 171 and 173-74). While a special relationship is *a* means by which a defendant might conceal the existence of a cause of action, equitable fraud may also be established by pointing to other forms of unconscionable behaviour, such as (for example) "some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts" (*M. (K.)*, at p. 57, citing *Halsbury's Laws of England* (4th ed. 1979), vol. 28, at para. 919). In short, the inquiry is not into the *relationship* within which the conduct occurred, but into the *unconscionability* of the conduct itself.

Il s'ensuit que ce n'est pas seulement l'iniquité qui découle du fait de laisser une personne profiter de l'avantage d'une relation spéciale avec le demandeur qui justifie l'application de la doctrine de la fraude d'equity. L'application de la doctrine n'est pas non plus restreinte, comme le suggère ma collègue, aux cas où il y a quelque chose d'« équivalen[t] ou correspondant à » une relation spéciale entre le demandeur et le défendeur (par. 171 et 173-174). Bien qu'une relation spéciale soit pour le défendeur *un* moyen de dissimuler l'existence d'une cause d'action, la fraude d'equity peut aussi être établie en invoquant d'autres formes de conduite abusive, par exemple [TRADUCTION] « que l'on [a] abusé d'une situation de confiance, que l'on [a] délibérément abusé de la bonté de quelqu'un ou délibérément caché des faits » (*M. (K.)*, p. 57, citant *Halsbury's Laws of England* (4e éd. 1979), vol. 28, par. 919). Bref, l'examen ne porte pas sur la *relation* dans le cadre de laquelle le comportement a eu lieu, mais sur le *caractère abusif* du comportement lui-même.

[55] The question of whether Pioneer's alleged conduct amounts to fraudulent concealment will, of course, fall to be decided by a trial judge. Nevertheless, I agree with the Court of Appeal and the certification judge that it is not "plain and obvious" that fraudulent concealment could not delay the running of the limitation period in this case (C.A. reasons, at para. 110).

[55] La question de savoir si le comportement reproché à Pioneer constitue de la dissimulation frauduleuse devra, bien sûr, être tranchée par le juge de première instance. Néanmoins, je conviens avec la Cour d'appel et le juge saisi de la demande d'autorisation qu'il n'est pas « évident et manifeste » que la doctrine de la dissimulation frauduleuse ne pouvait retarder le point de départ du délai de prescription en l'espèce (motifs de la C.A., par. 110).

### B. *Umbrella Purchasers' Cause of Action Under Section 36(1) of the Competition Act*

### B. *La cause d'action que reconnaît le par. 36(1) de la Loi sur la concurrence aux acheteurs sous parapluie*

[56] Toshiba argues that the certification judge erred by certifying the umbrella purchasers' claims brought under s. 36(1)(a) of the *Competition Act*. For the following reasons, I disagree.

[56] Toshiba soutient que le juge saisi de la demande d'autorisation a commis une erreur en autorisant les réclamations présentées par les acheteurs sous parapluie sur le fondement de l'al. 36(1)a) de la *Loi sur la concurrence*. Pour les motifs qui suivent, je ne suis pas d'accord avec elle.

[57] Whether umbrella purchasers have a cause of action under s. 36(1)(a) of the *Competition Act* is a question of law, reviewable on a standard of correctness. Since, as I explain below, I have concluded that umbrella purchasers *do* have a cause of action

[57] La question de savoir si les acheteurs sous parapluie ont une cause d'action fondée sur l'al. 36(1)a) de la *Loi sur la concurrence* est une question de droit susceptible de contrôle selon la norme de la décision correcte. Puisque, comme je l'explique plus loin, j'ai

under s. 36(1)(a), it is *not* plain and obvious that their claim cannot succeed. Godfrey's pleadings disclose a cause of action for umbrella purchasers, thereby satisfying the conditions under s. 4(1)(a) of the *Class Proceedings Act* for certification.

[58] The theory behind holding price-fixers liable to umbrella purchasers — who, it will be recalled are in this case persons who purchased ODDs or ODD products neither manufactured nor supplied by the defendants — is that the defendants' anti-competitive cartel activity creates an "umbrella" of supra-competitive prices, causing non-cartel manufacturers to raise their prices (*Shah v. LG Chem, Ltd.*, 2015 ONSC 6148, 390 D.L.R. (4th) 87 ("*Shah (Ont. S.C.J.)*"), at para. 159). Additionally, the European Court of Justice in *Kone AG and Others v. ÖBB-Infrastruktur AG*, [2014] EUECJ C-557/12, explained umbrella pricing as:

> Where a cartel manages to maintain artificially high prices for particular goods and certain conditions are met, relating, in particular, to the nature of the goods or the size of the market covered by that cartel, it cannot be ruled out that a competing undertaking, outside the cartel in question, might choose to set the price of its offer at an amount higher than it would have chosen under normal conditions of competition, that is, in the absence of that cartel. In such a situation, even if the determination of an offer price is regarded as a purely autonomous decision, taken by the undertaking not party to a cartel, it must none the less be stated that such a decision has been able to be taken by reference to a market price distorted by that cartel and, as a result, contrary to the competition rules. [Emphasis added; para. 29.]

[59] In short, a rising tide lifts all boats; under the theory of umbrella pricing, the entire market for the subject product is affected:

> Umbrella effects typically arise when price increases lead to a diversion of demand to substitute products.

conclu que les acheteurs sous parapluie *ont effectivement* une cause d'action fondée sur l'al. 36(1)a), il *n'*est *pas* manifeste et évident que leur demande ne peut être accueillie. Les actes de procédure de M. Godfrey révèlent une cause d'action dont sont titulaires les acheteurs sous parapluie, répondant ainsi aux conditions d'autorisation prévues à l'al. 4(1)a) de la *Class Proceedings Act*.

[58] La logique qui sous-tend la recherche de la responsabilité des participants à un accord de fixation des prix envers les acheteurs sous parapluie — qui, rappelons-le, sont en l'espèce les personnes qui ont acheté des LDO ou des produits munis de LDO qui n'ont été ni fabriqués, ni fournis par les défenderesses — est que les activités anticoncurrentielles des défenderesses créent un « parapluie » ou une « ombrelle » de prix supraconcurrentiels qui provoque une hausse des prix chez les fabricants ne faisant pas partie du cartel (*Shah c. LG Chem, Ltd.*, 2015 ONSC 6148, 390 D.L.R. (4th) 87 (« *Shah (C.S.J. Ont.)* »), par. 159). En outre, la Cour de justice de l'Union européenne a expliqué en ces termes dans *Kone AG et autres c. ÖBB-Infrastruktur AG*, [2014] EUECJ C-557/12, l'effet d'ombrelle (ou effet parapluie) sur les prix :

> Lorsqu'une entente parvient à maintenir un prix artificiellement élevé pour certains produits et que certaines conditions du marché sont réunies, tenant, notamment, à la nature du produit ou à la taille du marché couvert par cette entente, il ne peut être exclu que l'entreprise concurrente, extérieure à celle-ci, choisisse de fixer le prix de son offre à un montant supérieur à celui qu'elle aurait choisi dans des conditions normales de concurrence, c'est-à-dire en l'absence de ladite entente. Dans un tel contexte, même si la détermination d'un prix d'offre est considérée comme une décision purement autonome, adoptée par l'entreprise ne participant pas à une entente, il y a lieu cependant de constater que cette décision a pu être prise par référence à un prix du marché faussé par cette entente et, par conséquent, contraire aux règles de concurrence. [Je souligne; par. 29.]

[59] Bref, la marée monte également pour tous les bateaux; selon la théorie de l'effet parapluie sur les prix, c'est l'ensemble du marché du produit en cause qui est touché :

> [TRADUCTION] L'effet parapluie se produit habituellement lorsqu'une augmentation des prix donne lieu à

Because successful cartels typically reduce quantities and increase prices, this diversion leads to a substitution away from the cartels' products toward substitute products produced by cartel outsiders. . . . [T]he increased demand for substitutes typically leads to higher prices for the substitute products. Such price increases are called umbrella effects and may arise either in the same relevant market . . . or in neighboring markets.

(R. Inderst, F. Maier-Rigaud and U. Schwalbe, "Umbrella Effects" (2014), 10 *J. Competition L. & Econ.* 739, at p. 740)

[60] Several decisions of lower courts have certified umbrella purchaser actions brought under s. 36(1)(a) without expressly considering whether such purchasers had a cause of action (see: *Fairhurst v. Anglo American PLC*, 2014 BCSC 2270; *Pro-Sys Consultants Ltd v. Infineon Technologies AG*, 2009 BCCA 503, 98 B.C.L.R. (4th) 272; *Irving Paper Ltd. v. Atofina Chemicals Inc*. (2009), 99 O.R. (3d) 358 (S.C.J.); *Crosslink Technology Inc. v. BASF Canada*, 2014 ONSC 1682, 54 C.P.C. (7th) 111). Appellate decisions in British Columbia and Ontario have, however, expressly considered the issue and concluded that they *do* (see: C.A. reasons, at para. 247; *Shah v. LG Chem, Ltd.*, 2018 ONCA 819, 142 O.R. (3d) 721 ("*Shah (ONCA)*"), at para. 52).

[61] Whether umbrella purchasers have a cause of action under s. 36(1)(a) of the *Competition Act* is a question of statutory interpretation. The text of s. 36(1)(a) must therefore be read in its entire context and in its grammatical and ordinary sense, harmoniously with the scheme and objects of the *Competition Act*.

(1) Text of Section 36(1)

[62] As already noted, s. 36(1)(a) of the *Competition Act* creates a statutory cause of action which allows for the recovery of damages or loss that resulted from

un détournement de la demande vers des produits de substitution. Comme les participants à un cartel prospère s'entendent en général pour réduire les quantités et augmenter les prix, ce détournement se traduit par un abandon des produits du cartel au profit des produits fabriqués par des non participants au cartel. [. . . ] [L]a demande accrue pour les produits de substitution entraîne habituellement une hausse des prix de ces produits. Cette hausse est appelée l'« effet parapluie » et cet effet peut se produire sur le même marché pertinent [. . .] ou sur des marchés voisins.

(R. Inderst, F. Maier-Rigaud et U. Schwalbe, « Umbrella Effects » (2014), 10 *J. Competition L. & Econ.* 739, p. 740)

[60] Dans plusieurs décisions, les juridictions inférieures ont autorisé des actions intentées par des acheteurs sous parapluie en vertu de l'al. 36(1)a) sans se demander explicitement si ces acheteurs avaient une cause d'action (voir : *Fairhurst c. Anglo American PLC*, 2014 BCSC 2270; *Pro-Sys Consultants Ltd c. Infineon Technologies AG*, 2009 BCCA 503, 98 B.C.L.R. (4th) 272; *Irving Paper Ltd. c. Atofina Chemicals Inc*. (2009), 99 O.R. (3d) 358 (C.S.J.); *Crosslink Technology Inc. c. BASF Canada*, 2014 ONSC 1682, 54 C.P.C. (7th) 111). Des tribunaux d'appel de la Colombie-Britannique et de l'Ontario ont toutefois expressément abordé la question et conclu qu'ils en *avaient* une (voir : motifs de la C.A., par. 247; *Shah c. LG Chem, Ltd.*, 2018 ONCA 819, 142 O.R. (3d) 721 (« *Shah (ONCA)* »), par. 52).

[61] La question de savoir si les acheteurs sous parapluie ont une cause d'action fondée sur l'al. 36(1)a) de la *Loi sur la concurrence* est une question d'interprétation législative. Le texte de l'al. 36(1)a) doit donc être lu dans son contexte global et en suivant le sens ordinaire et grammatical qui s'harmonise avec l'économie et les objets de la *Loi sur la concurrence*.

(1) Texte du par. 36(1)

[62] Comme je l'ai déjà expliqué, l'al. 36(1)a) de la *Loi sur la concurrence* crée une cause d'action qui permet l'indemnisation d'une perte ou des dommages

conduct contrary to Part VI. The relevant portion states:

**Recovery of damages**

**36 (1)** Any person who has suffered loss or damage as a result of

**(a)** conduct that is contrary to any provision of Part VI . . .

. . .

may . . . sue for and recover from the person who engaged in the conduct . . . an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

[63] Godfrey relies on "conduct that is contrary to . . . Part VI" ("Offences in Relation to Competition"), since he alleges that Toshiba acted contrary to s. 45(1)(b), (c), and (d) of the *Competition Act*. During the class period,[1] s. 45(1) stated:

**Conspiracy**

**45.** (1) Every one who conspires, combines, agrees or arranges with another person

. . .

(*b*) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(*c*) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

qui découlent d'un comportement allant à l'encontre de la partie VI. Voici les passages pertinents :

**Recouvrement de dommages-intérêts**

**36 (1)** Toute personne qui a subi une perte ou des dommages par suite :

**a)** . . . d'un comportement allant à l'encontre d'une disposition de la partie VI;

. . .

peut [. . .] réclamer et recouvrer de la personne qui a eu un tel comportement [. . .] une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

[63] M. Godfrey se fonde sur les termes « comportement allant à l'encontre [. . .] de la partie VI » (« Infractions relatives à la concurrence »), puisqu'il allègue que Toshiba a agi en contravention des al. 45(1)b), c), et d) de la *Loi sur la concurrence*. Durant la période visée par le recours collectif[1], le par. 45(1) était rédigé comme suit :

**Complot**

**45.** (1) Commet un acte criminel et encourt un emprisonnement maximal de cinq ans et une amende maximale d'un million de dollars, ou l'une de ces peines, quiconque complote, se coalise ou conclut un accord ou arrangement avec une autre personne :

. . .

*b*) soit pour empêcher, limiter ou réduire, indûment, la fabrication ou production d'un produit ou pour en élever déraisonnablement le prix;

*c*) soit pour empêcher ou réduire, indûment, la concurrence dans la production, la fabrication, l'achat, le troc, la vente, l'entreposage, la location, le transport ou la fourniture d'un produit, dans le prix d'assurances sur les personnes ou les biens;

[1] Section 45(1) was amended by the *Budget Implementation Act, 2009*, S.C. 2009, c. 2, s. 410. The amendments are not material to these reasons for judgment.

[1] Le paragraphe 45(1) a été modifié par la *Loi d'exécution du budget de 2009*, L.C. 2009, c. 2, art. 410. Les modifications ne sont pas importantes pour les présents motifs.

(*d*) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding one million dollars or to both.

[64] The text of s. 36(1)(a) supports the view that umbrella purchasers have a cause of action thereunder for conduct contrary to s. 45(1) of the *Competition Act*. Section 36(1)(a) provides a cause of action to *any person* who has *suffered loss or damage* as a result of conduct contrary to s. 45. Significantly, Parliament's use of "any person" does not narrow the realm of possible claimants. Rather, it empowers *any* claimant who can demonstrate that loss or damage was incurred as a result of the defendant's conduct to bring a claim. On this point, the following paragraph from the Court of Appeal for Ontario's decision in *Shah (ONCA)* (at para. 34) is apposite, and I adopt it as mine:

On a plain reading, if the umbrella purchasers can prove loss resulting from a proven conspiracy under s. 45, s. 36(1) grants those purchasers a statutory means by which to recover those losses. Taking the language at face value, the umbrella purchasers' right of recovery is limited only by their ability to demonstrate two things: (1) that the respondents conspired within the meaning of s. 45; and (2) that the losses or damages suffered by the appellants resulted from that conspiracy.

(2) Purpose of the *Competition Act*

[65] As I have already recounted, the purpose of the *Competition Act* is to "maintain and encourage competition in Canada" with a view to providing consumers with "competitive prices and product choices" (s. 1.1). A conspiracy to price-fix is the "very antithesis of the *Competition Act*'s objective" (*Shah (ONCA)*, at para. 38). Monetary sanctions for such anti-competitive conduct therefore further the *Competition Act*'s purpose. This Court has also recognized two other objectives of the *Competition*

*d*) soit, de toute autre façon, pour restreindre, indûment, la concurrence ou lui causer un préjudice indu.

[64] Le texte de l'al. 36(1)a) étaye le point de vue selon lequel, sous son régime, les acheteurs sous parapluie ont une cause d'action pour tout comportement allant à l'encontre du par. 45(1) de la *Loi sur la concurrence*. L'alinéa 36(1)a) accorde un droit d'action à *toute personne* qui a *subi une perte ou des dommages* par suite d'un comportement allant à l'encontre de l'art. 45. Fait important, l'emploi, par le législateur, de l'expression « toute personne » n'a pas pour effet de restreindre les catégories de demandeurs éventuels. Cette expression a plutôt pour effet d'habiliter à intenter un recours *tout* demandeur capable de démontrer que la perte ou le dommage a été subi en raison du comportement du défendeur. Sur ce point, le paragraphe suivant tiré de l'arrêt *Shah (ONCA)* de la Cour d'appel de l'Ontario (par. 34) est pertinent et je le fais mien :

[TRADUCTION] Suivant le sens ordinaire des mots utilisés, si les acheteurs sous parapluie peuvent démontrer qu'ils ont subi une perte par suite d'un complot établi sur le fondement de l'art. 45, le par. 36(1) leur accorde un moyen de recouvrer cette perte. Interprété au pied de la lettre, le par. 36(1) confère aux acheteurs sous parapluie un droit de recouvrement qui n'est limité que par leur capacité à démontrer deux choses : (1) que les intimés ont comploté au sens de l'art. 45; et (2) que la perte ou les dommages subis par les appelants découlent de ce complot.

(2) Objet de la *Loi sur la concurrence*

[65] Comme je l'ai déjà mentionné, l'objet de la *Loi sur la concurrence* est de « préserver et de favoriser la concurrence au Canada » dans le but d'assurer aux consommateurs « des prix compétitifs et un choix dans les produits » (art. 1.1). Comploter en vue de fixer les prix va [TRADUCTION] « totalement à l'encontre de l'objet de la *Loi sur la concurrence* » (*Shah (ONCA)*, par. 38). Les sanctions pécuniaires imposées dans de tels cas de conduite anticoncurrentielle favorisent ainsi l'atteinte de la fin visée par la *Loi sur*

*Act* of particular relevance here, being deterrence of anti-competitive behaviour, and compensation for the victims of such behaviour (*Infineon Technologies AG v. Option Consommateurs*, 2013 SCC 59, [2013] 3 S.C.R. 600 ("*Infineon*"), at para. 111; *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58, [2013] 3 S.C.R. 545 ("*Sun-Rype*"), at paras. 24-27; *Microsoft*, at paras. 46-49). Interpreting s. 36(1)(a) so as to permit umbrella purchaser actions furthers both of these objectives.

[66] Allowing umbrella purchaser actions furthers deterrence because it increases the potential liability falling upon those who engage in anti-competitive behaviour (*Shah (ONCA)*, at para. 38). Here, Godfrey alleges that four of the named defendants controlled 94 percent of the global ODD market (A.R., vol. II, at para. 70). While this means that Toshiba's potential liability to the umbrella purchasers would only marginally increase its existing liability to non-umbrella purchasers, I accept that any increase in potential liability will likely carry a correspondingly deterrent effect.

[67] The objective of compensation is also furthered by allowing umbrella purchaser actions, because doing so affords umbrella purchasers recourse to recover from loss arising from what, for the purposes of these appeals, is assumed to have been anti-competitive conduct. Barring a class of purchasers who were, on the theory pleaded, intended by the defendants to pay higher prices as a result of their price-fixing is inconsistent with the compensatory goal of the *Competition Act*.

[68] Relatedly, and while far from determinative, departmental and parliamentary statements fortify my view that Parliament intended that the cause of action in s. 36(1)(a) be broadly available, such that anyone who suffers a loss from anti-competitive behaviour could bring a private action. The briefing document accompanying the first stage of the

*la concurrence*. Notre Cour a reconnu deux autres objectifs de la *Loi sur la concurrence* qui revêtent en l'espèce une importance particulière : la dissuasion des comportements anticoncurrentiels et l'indemnisation des victimes de ces comportements (*Infineon Technologies AG c. Option consommateurs*, 2013 CSC 59, [2013] 3 R.C.S. 600 (« *Infineon* »), par. 111; *Sun-Rype Products Ltd. c. Archer Daniels Midland Company*, 2013 CSC 58, [2013] 3 R.C.S. 545 (« *Sun-Rype* »), par. 24-27; *Microsoft*, par. 46-49). Interpréter l'al. 36(1)a) de façon à autoriser les actions des acheteurs sous parapluie favorise l'atteinte de ces deux objectifs.

[66] Autoriser les actions des acheteurs sous parapluie favorise la dissuasion, en ce que le risque de responsabilité auquel s'exposent ceux qui se livrent à des comportements anticoncurrentiels augmente (*Shah (ONCA)*, par. 38). En l'espèce, M. Godfrey allègue que quatre des défenderesses désignées contrôlaient 94 p. 100 du marché global des LDO (d.a., vol. II, par. 70). Bien que cela signifie que la responsabilité potentielle à laquelle s'expose Toshiba à l'égard des acheteurs sous parapluie ne ferait qu'augmenter légèrement la responsabilité qu'elle a envers les autres acheteurs que ceux sous parapluie, je reconnais que toute augmentation de sa responsabilité éventuelle aura probablement un effet dissuasif correspondant.

[67] Autoriser les actions des acheteurs sous parapluie favorise également l'atteinte de l'objectif d'indemnisation, parce que ces acheteurs auraient ainsi la possibilité de recouvrer les pertes découlant de ce qui, pour les besoins des présents pourvois, est présumé être un comportement anticoncurrentiel. Exclure une catégorie d'acheteurs qui, selon la thèse avancée, devaient payer des prix plus élevés par suite du stratagème de fixation des prix établi par les défenderesses est incompatible avec l'objectif d'indemnisation de la *Loi sur la concurrence*.

[68] Dans le même ordre d'idées, bien que ce soit loin d'être concluant, certaines déclarations ministérielles et parlementaires me confortent dans mon opinion que le législateur entendait que la cause d'action prévue à l'al. 36(1)a) soit largement accessible, de sorte que quiconque subit une perte par suite d'un comportement anticoncurrentiel peut intenter

modernization amendments (which introduced the original civil remedies provision) stated:

> Under the existing law there is no civil recourse under the Act for persons injured by reason of the fact that others have participated in violation of the Combines Investigation Act. The provision dealing with civil damages, although it is expected to be of particular value to small businessmen who have been hurt by conduct contrary to the Act, will be equally available to consumers and to any other members of the public who have been so damaged.
>
> The amendment provides that anyone who has suffered loss or damage because of such a violation . . . may . . . sue for and be awarded damages equal to the actual loss incurred . . . . [Emphasis added.]

(Consumer and Corporate Affairs Canada, *Proposals for a New Competition Policy for Canada* (1973), at pp. 48-49)

This is further supported by parliamentary committee discussions on the introduction of a private cause of action. In committee, the responsible minister explicitly stated that there was no reason to limit consumers' recourse under the private cause of action to direct loss or damage (House of Commons, Standing Committee on Finance, Trade and Economic Affairs, *Minutes of Proceedings and Evidence*, Issue No. 45, 1st Sess., 30th Parl., May 8 1975, at p. 45:18).

(3) Indeterminate Liability

[69] Toshiba argues that recognizing the umbrella purchasers as having a cause of action would expose Toshiba to a "potentially limitless scope of liability" (A.F. (Toshiba), at para. 97). This raises the question, first of all, of whether indeterminate liability is relevant *at all* to deciding the scope of possible s. 36(1)(a) claimants for conduct contrary to s. 45(1) of the *Competition Act*. On this point, the Court of Appeal considered that it might be relevant

une action privée. On peut lire ce qui suit dans le document d'information préparé à l'occasion de la première étape des modifications visant à moderniser la Loi (qui ont mené à l'adoption de la première disposition relative aux recours civils) :

> En vertu de la loi actuelle, il n'existe pas de recours possible en dommages-intérêts pour les personnes lésées du fait que d'autres ont participé à des infractions à la Loi relative aux enquêtes sur les coalitions. La disposition visant les dommages-intérêts sera d'une valeur particulière pour les petites entreprises lésées par des actions contraire (*sic*) à la Loi mais ladite disposition pourra également être invoquée par les consommateurs et par toutes personnes ayant été ainsi lésées.
>
> La modification stipule que toute personne qui a subi des pertes ou un préjudice à cause d'une telle infraction [. . .] peut intenter des poursuites et recevoir des dommages-intérêts équivalents à la perte réelle subie . . . [Je souligne.]

(Consommation et Corporations Canada, *Propositions pour une nouvelle politique de concurrence pour le Canada* (1973), p. 45)

Cette opinion est de plus étayée par les délibérations du comité parlementaire sur la création d'une cause d'action en droit privé. En comité, le ministre responsable a expressément déclaré qu'il n'y avait aucune raison de limiter le recours par les consommateurs à la cause d'action en droit privé pour recouvrer la perte ou les dommages directement subis (Chambre des communes, Comité permanent des finances, du commerce et des questions économiques, *Procès-verbaux et témoignages*, fasc. n° 45, 1re sess., 30e lég., 8 mai 1975, p. 45:18).

(3) Responsabilité indéterminée

[69] Toshiba soutient que la reconnaissance d'une cause d'action aux acheteurs sous parapluie aurait pour effet de l'exposer à une [TRADUCTION] « responsabilité potentiellement illimitée » (m.a. (Toshiba), par. 97). Ce qui nous amène, premièrement, à la question de savoir si la responsabilité indéterminée est un facteur d'une *quelconque* pertinence pour décider qui sont les demandeurs susceptibles de se prévaloir de l'al. 36(1)a) par suite d'un comportement allant à

(on the express assumption that concerns about indeterminate liability might properly be considered outside the context of a negligence action) (C.A. reasons, at para. 227). I note, parenthetically, that whether that assumption is valid — that is, whether indeterminate liability might properly be considered *at all* in the context of a claim under s. 36(1)(a) of the *Competition Act* — I am content to leave for another day since, for the reasons that follow, I am of the view that indeterminate liability would not arise in this case in any event.

[70] Toshiba argues that indeterminate liability is a relevant consideration here because the umbrella purchasers seek to recover for pure economic loss. Toshiba relies upon this Court's statement in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, that "[t]he risk of indeterminate liability is enhanced by the fact that the claims are for pure economic loss" (para. 100). In *Imperial Tobacco*, a class proceeding was brought against Imperial Tobacco by persons who purchased "light" or "mild" cigarettes. Imperial Tobacco issued third-party notices to the Government of Canada, alleging it was liable to tobacco companies for, *inter alia*, negligent misrepresentation. This Court held that "the prospect of indeterminate liability is fatal to the tobacco companies' claims of negligent misrepresentation", since "Canada had no control over the number of people who smoked light cigarettes" (para. 99). Similarly, Toshiba argues that it had no control over the quantity of ODDs sold to the umbrella purchasers by non-defendant manufacturers or the number of purchasers to whom it may be liable, such that the extent of its liability is indeterminate (A.F. (Toshiba), at para. 102).

[71] Several features of this case, however, lead me to the view that recognizing the umbrella purchasers'

l'encontre du par. 45(1) de la *Loi sur la concurrence*. Sur ce point, la Cour d'appel a jugé (en supposant expressément que les préoccupations au sujet de la responsabilité indéterminée pourraient valablement être examinées dans un contexte autre que celui d'une action pour négligence) qu'il pourrait s'agir d'un facteur pertinent (motifs de la C.A., par. 227). Je signale incidemment qu'il vaut mieux reporter à une autre occasion l'analyse de la question de savoir si cette hypothèse est valide — c'est-à-dire si la responsabilité indéterminée est *susceptible* d'être valablement examinée dans le contexte d'une demande fondée sur l'al. 36(1)a) de la *Loi sur la concurrence* — puisque, pour les motifs qui suivent, j'estime que la question de la responsabilité indéterminée ne se poserait pas en l'espèce de toute façon.

[70] Toshiba soutient que la responsabilité illimitée est une considération pertinente en l'espèce, parce que les acheteurs sous parapluie cherchent à être indemnisés d'une perte purement économique. Toshiba se fonde à cet égard sur une affirmation de notre Cour dans l'arrêt *R. c. Imperial Tobacco Canada Ltd.*, 2011 CSC 42, [2011] 3 R.C.S. 45 : « Le risque de responsabilité indéterminée est aggravé par le caractère purement financier de la perte alléguée » (par. 100). Dans *Imperial Tobacco*, un recours collectif avait été intenté contre Imperial Tobacco par des consommateurs de cigarettes « légères » ou « douces ». Imperial Tobacco avait mis en cause le gouvernement du Canada, alléguant qu'il était responsable envers les compagnies de tabac, entre autres, pour avoir fait des déclarations inexactes par négligence. La Cour a conclu que « la possibilité d'une responsabilité indéterminée porte un coup fatal aux allégations des compagnies de tabac relatives aux déclarations inexactes faites par négligence », puisque le « Canada n'exerçait aucun contrôle sur le nombre de fumeurs de cigarettes légères » (par. 99). De même, toujours selon Toshiba, elle n'exerçait aucun contrôle sur le nombre de LDO vendus aux acheteurs sous parapluie par des fabricants autres que les défenderesses ou sur le nombre d'acheteurs envers qui elle risque d'être tenue responsable, de sorte que l'étendue de sa responsabilité est indéterminée (m.a. (Toshiba), par. 102).

[71] Toutefois, plusieurs éléments de la présente affaire m'amènent à conclure que la reconnaissance

cause of action under s. 36(1)(a) does not risk exposing Toshiba to indeterminate liability.

[72] First, Toshiba's liability is limited by the class period, and by the specific products whose prices are alleged to have been fixed. Whereas in *Imperial Tobacco*, Canada had no control over who smoked light cigarettes (para. 99), the theory of umbrella effects links the pricing decisions of the non-defendant manufacturers to Toshiba's anti-competitive behaviour (C.A. reasons, at para. 239). I have already noted that Godfrey's pleadings allege that, during the class period, four of the named defendants collectively controlled 94 percent of the global ODD market. Godfrey also alleges that Toshiba intended to raise prices across that market (A.R., vol. II, at pp. 21-22). This allegation is rooted in the theory that, in order for Toshiba to profit from the conspiracy, the entire market price for ODDs had to increase. Otherwise, Toshiba would have lost market share to non-defendant manufacturers (transcript, at pp. 56-57, A.R., vol. III, at p. 166).

[73] This supports the submission made before us by Godfrey's counsel that umbrella effects are "not just a known and foreseeable consequence of what the defendants are doing, it's an intended consequence" (transcript, at p. 61). The point is that the results of Toshiba's alleged anti-competitive behaviour are not indeterminate. Intended results are *not indeterminate*, but *pre-determined*. I therefore agree with the Court of Appeal that there is "no reason why defendants who intend to inflict damage on umbrella purchasers should be exonerated from liability on the basis that they exercised no control over their liability" (C.A. reasons, at para. 241).

[74] Secondly, and as I have already recounted, s. 36(1)(a) limits recovery to only those purchasers who can show that they suffered a loss or damage "as a result of" the defendants' conspiratorial conduct. In

de la cause d'action des acheteurs sous parapluie fondée sur l'al. 36(1)a) ne risque pas d'exposer Toshiba à une responsabilité indéterminée.

[72] Premièrement, la responsabilité de Toshiba est limitée par la période visée par le recours collectif et par les produits dont les prix auraient été fixés. Alors que dans l'affaire *Imperial Tobacco*, le Canada n'exerçait aucun contrôle sur le nombre de fumeurs de cigarettes légères (par. 99), la théorie de l'effet parapluie établit un lien entre les décisions prises par les fabricants autres que les défenderesses quant à l'établissement des prix et le comportement anticoncurrentiel de Toshiba (motifs de la C.A., par. 239). J'ai déjà mentionné que M. Godfrey allègue dans ses actes de procédure que, durant la période visée par le recours collectif, quatre des défenderesses désignées contrôlaient à elles seules 94 p. 100 du marché global des LDO. M. Godfrey a aussi allégué que Toshiba entendait augmenter les prix dans l'ensemble de ce marché (d.a., vol. II, p. 21-22). Cette allégation tire son origine de la thèse voulant que, pour que Toshiba puisse tirer profit du complot, les prix du marché global des LDO devaient augmenter. Sinon, Toshiba aurait perdu une part de marché en faveur des fabricants autres que les défenderesses (transcription, p. 56-57, d.a., vol. III, p. 166).

[73] Cela étaye l'observation faite devant nous par l'avocat de M. Godfrey selon qui l'effet parapluie n'est [TRADUCTION] « pas juste une conséquence connue et prévisible des agissements des défenderesses, c'est une conséquence voulue » (transcription, p. 61). Le fait est que les résultats du comportement anticoncurrentiel de Toshiba ne sont pas indéterminés. Des résultats voulus *ne* sont *pas indéterminés*, mais *déterminés à l'avance*. Je suis donc d'accord avec la Cour d'appel pour dire qu'il n'existe [TRADUCTION] « aucune raison pour que les défenderesses, dont l'intention était de causer un préjudice aux acheteurs sous parapluie, soient dégagées de toute responsabilité parce qu'elles n'exerçaient aucun contrôle sur leur responsabilité » (motifs de la C.A., par. 241).

[74] Deuxièmement, comme je l'ai déjà mentionné, l'al. 36(1)a) limite le recours en indemnisation aux seuls acheteurs qui peuvent démontrer qu'ils ont subi une perte ou des dommages « par suite » du complot

order to recover under s. 36(1)(a), then, the umbrella purchasers will have to demonstrate that Toshiba engaged in anti-competitive behaviour, that the umbrella purchasers suffered "loss or damage", and that such loss or damage was "as a result of" such behaviour. The statutory text "as a result of" imports both factual and legal causation into s. 36(1). Recovery under s. 36(1) is therefore limited to claimants with a loss that is not too remote from the conduct.

[75] Thirdly, the text of s. 45(1) in force during the class period is instructive. The elements of the wrongful conduct outlined therein were described by the British Columbia Court of Appeal in *Watson* (at paras. 73-74):

> [T]he *actus reus* elements of former s. 45 are:
>
> i) the defendant conspired, combined, agreed, or arranged with another person; and
>
> ii) the agreement was to enhance unreasonably the price of a product, to lessen unduly the supply of a product, or to otherwise restrain or injure competition unduly.
>
> The *mens rea* element of former s. 45 as defined in [*R.*] *v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606 (S.C.C.) at 659-660, (1992), 93 D.L.R. (4th) 36 (S.C.C.), requires:
>
> i) the defendant had a subjective intention to agree and was aware of the agreement's terms; and
>
> ii) the defendant had the required objective intention, that is, a reasonable business person would or should be aware that the likely effect of the agreement would be to lessen competition unduly.

(See also: *Shah (ONCA)*, at para. 50; *R. c. Proulx*, 2016 QCCA 1425, at para. 20 (CanLII).)

While the subjective *mens rea* does not require that the defendants' conduct be directed specifically towards the claimant, s. 45(1) "limits the reach of

des défenderesses. Pour être indemnisés en vertu de l'al. 36(1)a), les acheteurs sous parapluie devront démontrer que Toshiba a eu un comportement anticoncurrentiel, qu'ils ont subi une « perte ou des dommages » et que cette perte ou ces dommages ont été subis « par suite » du comportement en question. L'expression « par suite » intègre tant la causalité factuelle que la causalité juridique au par. 36(1). Seuls les demandeurs ayant subi une perte qui n'est pas trop éloignée du comportement peuvent donc être indemnisés en vertu du par. 36(1).

[75] Troisièmement, le libellé du par. 45(1) qui était en vigueur durant la période visée par le recours collectif est instructif. Les éléments constitutifs du comportement répréhensible sont décrits par la Cour d'appel de la Colombie-Britannique dans l'arrêt *Watson* (par. 73-74) :

> [TRADUCTION] [L]es éléments constitutifs de l'*actus reus* requis par l'ancien art. 45 sont :
>
> i) le défendeur a comploté, s'est coalisé ou a conclu un accord ou un arrangement avec une autre personne;
>
> ii) l'accord visait à élever déraisonnablement le prix d'un produit, ou à réduire indûment la fourniture d'un produit ou, de toute autre façon, à restreindre indûment la concurrence ou à lui nuire indûment.
>
> La *mens rea* de l'infraction prévue à l'ancien art. 45, telle que définie dans l'arrêt [*R.*] *c. Nova Scotia Pharmaceutical Society*, [1992] 2 R.C.S. 606 (C.S.C.), p. 659-660, (1992), 93 D.L.R. (4th) 36 (C.S.C.), exige ce qui suit :
>
> i) le défendeur avait une intention subjective de conclure un accord et il était au courant des modalités de l'accord;
>
> ii) le défendeur avait l'intention objective requise, c'est-à-dire qu'un homme ou une femme d'affaires raisonnable saurait ou devrait savoir que l'accord aura vraisemblablement pour effet de restreindre indûment la concurrence.

(Voir aussi : *Shah (ONCA)*, par. 50; *R. c. Proulx*, 2016 QCCA 1425, par. 20 (CanLII).)

Bien que la *mens rea* subjective n'exige pas que le comportement des défendeurs soit dirigé directement contre le demandeur, le par. 45(1) [TRADUCTION] « limite

liability to those who, at a minimum, specifically intend to agree upon anti-competitive conduct" (*Shah (ONCA)*, at para. 51).

[76] Taken together, these features of ss. 36(1)(a) and 45(1) of the *Competition Act* limit the availability of this cause of action to those claimants who can demonstrate: (1) a causal link between the loss suffered and the conspiratorial conduct; and (2) that the defendants' conduct satisfies the *actus reus* and *mens rea* elements of s. 45(1) of the *Competition Act*.

[77] This is not to say that umbrella purchasers' actions will not be complex or otherwise difficult to pursue. Marshalling and presenting evidence to satisfy the conditions placed by Parliament on recovery under ss. 36(1)(a) and 45(1) — showing a causal link between loss and conspiratorial conduct, and proving the *actus reus* and *mens rea* of s. 45(1) — represents a significant burden. That said, this Court's statement in *Microsoft* (at paras. 44-45) regarding indirect purchaser claims is, in my view, equally applicable to claims brought by umbrella purchasers:

> Indirect purchaser actions, especially in the antitrust context, will often involve large amounts of evidence, complex economic theories and multiple parties in a chain of distribution, making the tracing of the overcharges to their ultimate end an unenviable task. However, . . . these same concerns can be raised in most antitrust cases, and should not stand in the way of allowing indirect purchasers an opportunity to make their case . . . .
>
> In bringing their action, the indirect purchasers willingly assume the burden of establishing that they have suffered loss. This task may well require expert testimony and complex economic evidence. Whether these tools will be sufficient to meet the burden of proof, in my view, is a factual question to be decided on a case-by-case basis. Indirect purchaser actions should not be barred altogether solely because of the likely complexity associated with proof of damages.

And, of course, in this case it will be for the trial judge to determine whether the umbrella purchaser

l'étendue de la responsabilité à ceux qui, au minimum, ont eu l'intention expresse de convenir d'un comportement anticoncurrentiel » (*Shah (ONCA)*, par. 51).

[76] Considérés ensemble, ces éléments de l'al. 36(1)a) et du par. 45(1) de la *Loi sur la concurrence* ont pour effet de limiter cette cause d'action aux demandeurs qui peuvent démontrer : (1) un lien de causalité entre la perte subie et le complot; et (2) que le comportement des défendeurs satisfait à l'*actus reus* et à la *mens rea* requis par le par. 45(1) de la *Loi sur la concurrence*.

[77] Cela ne veut pas dire qu'il ne sera pas compliqué ou autrement difficile pour les acheteurs sous parapluie de poursuivre leurs actions. Rassembler et présenter suffisamment d'éléments de preuve pour satisfaire aux conditions d'indemnisation imposées par le législateur à l'al. 36(1)a) et au par. 45(1) — établir un lien de causalité entre la perte et le complot, ainsi que l'*actus reus* et la *mens rea* de l'infraction prévue au par. 45(1) — représente un lourd fardeau. Cela dit, la déclaration de notre Cour dans l'arrêt *Microsoft* (par. 44-45) au sujet des recours des acheteurs indirects s'applique, à mon avis, tout autant aux actions intentées par les acheteurs sous parapluie :

> L'action intentée par un acheteur indirect, surtout sur le fondement des dispositions antitrust, comporte souvent une preuve volumineuse, la formulation de théories économiques complexes et l'existence de nombreuses parties le long de la chaîne de distribution, de sorte qu'il est d'autant plus ardu de retracer le parcours de la majoration d'un maillon à l'autre jusqu'à son aboutissement final. Toutefois, [. . .] il s'agit de caractéristiques communes à la plupart des affaires antitrust et elles ne devraient donc pas empêcher l'acheteur indirect de prouver ses allégations . . .
>
> L'acheteur indirect qui intente une action contracte volontairement l'obligation d'établir qu'il a subi une perte, ce qui peut fort bien nécessiter le témoignage d'experts et une preuve complexe de nature économique. À mon avis, la question de savoir si ces éléments lui permettront de s'acquitter de cette obligation tient aux faits de l'espèce. Il n'y a pas lieu de faire totalement obstacle à l'action de l'acheteur indirect pour la seule raison qu'il sera ardu d'établir le préjudice subi.

Bien entendu, il appartiendra au juge de première instance de décider en l'espèce si les acheteurs sous

claimants have presented sufficient evidence to establish that, in the circumstances of the case and in the relevant market, Toshiba caused umbrella pricing.

[78] In view of the foregoing, it is not plain and obvious that the umbrella purchasers' cause of action under s. 36(1)(a) of the *Competition Act* cannot succeed, and I would reject this ground of appeal.

C. *Section 36(1) of the Competition Act Does Not Bar Common Law or Equitable Claims*

[79] In addition to his statutory claims under the *Competition Act*, Godfrey advances claims in, *inter alia*, civil conspiracy.

[80] Toshiba argues that the courts below erred in two respects concerning the relationship between a statutory claim under the *Competition Act* and the tort of civil conspiracy. First, it says that the tort of civil conspiracy based on a breach of the predecessor statute to the *Competition Act* (the *Combines Investigation Act*, R.S.C. 1970, c. C-23) was never available to plaintiffs prior to the enactment in 1975 of the private right of action. Secondly, and in any event, the courts below failed to recognize that, by legislating ss. 36(1) and 45(1) of the *Competition Act*, Parliament intended to oust the common law tort of civil conspiracy (A.F. (Toshiba), at para. 119).

[81] These arguments raise questions of law, and are therefore reviewed on a standard of correctness. For the reasons below, I reject both arguments, and it is therefore not plain and obvious that Godfrey's common law and equitable claims cannot succeed, except as was otherwise held by the certification judge.[2]

[2] As recounted at para. 11, the certification judge held that the pleadings did not disclose a cause of action for unlawful means tort, or (in respect of the umbrella purchasers) for unjust enrichment and waiver of tort.

parapluie ont présenté suffisamment d'éléments de preuve pour établir que, dans les circonstances, Toshiba a entraîné un effet d'ombrelle sur les prix.

[78] Compte tenu de ce qui précède, il n'est pas évident et manifeste que la cause d'action des acheteurs sous parapluie fondée sur l'al. 36(1)a) de la *Loi sur la concurrence* ne peut être accueillie et je rejetterais ce moyen d'appel.

C. *Le paragraphe 36(1) de la Loi sur la concurrence ne fait pas obstacle aux recours de common law ou d'equity*

[79] Outre le recours qu'il a intenté sous le régime de la *Loi sur la concurrence,* M. Godfrey a intenté, entre autres, une action pour complot civil.

[80] Toshiba soutient que les tribunaux d'instance inférieure ont commis deux erreurs en ce qui concerne le lien entre une action intentée sous le régime de la *Loi sur la concurrence* et le délit de complot civil. Premièrement, elle fait valoir qu'un demandeur, avant l'adoption, en 1975, du droit d'action privé, ne pouvait jamais avoir recours au délit de complot civil fondé sur une violation de la loi qu'a remplacée la *Loi sur la concurrence* (la *Loi relative aux enquêtes sur les coalitions*, S.R.C. 1970, c. C-23). Deuxièmement, en tout état de cause, les tribunaux d'instance inférieure ont eu tort de ne pas reconnaître que, par l'adoption des par. 36(1) et 45(1) de la *Loi sur la concurrence*, le législateur entendait écarter le délit de common law qu'est le complot civil (m.a. (Toshiba), par. 119).

[81] Ces arguments soulèvent des questions de droit, et ils sont donc contrôlés suivant la norme de la décision correcte. Pour les motifs qui suivent, je rejette les deux arguments, si bien qu'il n'est pas évident et manifeste que les recours de common law ou d'equity exercés par M. Godfrey ne peuvent être accueillis, sauf indication contraire dans les conclusions du juge saisi de la demande d'autorisation[2].

[2] Comme je l'ai mentionné au par. 11, le juge saisi de la demande d'autorisation a statué que les actes de procédure n'avaient pas révélé une cause d'action pour délit d'atteinte par un moyen illégal ou (à l'égard des acheteurs sous parapluie) pour enrichissement sans cause et renonciation au recours délictuel.

(1) The Tort of Civil Conspiracy Based on the Breach of a Statute Existed Prior to the Enactment of the Statutory Cause of Action

[82] To be clear, I do not dispute Toshiba's submission that the 1975 amendments were significant. The predecessor to the *Competition Act* (the *Combines Investigation Act*) was exclusively penal — indeed, its constitutionality as an exercise of Parliament's legislative authority over the criminal law was upheld in *Proprietary Articles Trade Association v. Attorney General for Canada*, [1931] A.C. 310 (P.C.). In 1975, Parliament supplemented this penal function with regulatory and civil enforcement provisions, including a civil remedy provision (now s. 36(1)) (*Watson*, at para. 36).

[83] All this said, our law had recognized the tort of civil conspiracy based on the breach of a statute long before Parliament legislated a civil right of action in 1975. In *International Brotherhood of Teamsters v. Therien*, [1960] S.C.R. 265, and *Gagnon v. Foundation Maritime Ltd.*, [1961] S.C.R. 435, this Court imposed liability on trade unions for unlawful means conspiracy for conduct prohibited by statute (*Therien*, at p. 280; *Gagnon*, at p. 446). And, in *Cement LaFarge v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452, which was decided on the basis of the *Combines Investigation Act*, this Court affirmed not only the existence of the tort of civil conspiracy, but also that a breach of the *Combines Investigation Act* could satisfy the "unlawful" element of unlawful means conspiracy (pp. 471-72). Any question on this point was settled when *LaFarge* was cited in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, [2014] 1 S.C.R. 177, at para. 64, for the same proposition — that a breach of statute could satisfy the "unlawful means" component of the tort of unlawful means conspiracy.

[84] The law admits of no ambiguity on this point. Prior to the enactment of the cause of action contained in what is now s. 36(1) of the *Competition Act*,

(1) Le délit de complot civil fondé sur la violation d'une loi existait avant l'adoption de la disposition conférant une cause d'action

[82] Pour être clair, je ne conteste pas l'argument de Toshiba selon lequel les modifications de 1975 étaient importantes. La loi ayant précédé la *Loi sur la concurrence* (la *Loi relative aux enquêtes sur les coalitions*) était de nature exclusivement pénale — en effet, comme elle résultait de l'exercice du pouvoir législatif fédéral en matière de droit criminel, sa constitutionnalité a été confirmée dans l'arrêt *Proprietary Articles Trade Association c. Attorney General for Canada*, [1931] A.C. 310 (C.P.). En 1975, le législateur a suppléé à la fonction pénale de cette loi en adoptant des dispositions d'exécution de nature réglementaire et civile, dont une disposition prévoyant un recours civil (l'actuel par. 36(1)) (*Watson*, par. 36).

[83] Tout cela étant dit, notre droit avait reconnu le délit de complot civil fondé sur la violation d'une loi bien avant que le législateur ait adopté une disposition créant un droit d'action au civil en 1975. Dans les arrêts *International Brotherhood of Teamsters c. Therien*, [1960] R.C.S. 265, et *Gagnon c. Foundation Maritime Ltd.*, [1961] R.C.S. 435, notre Cour a tenu les syndicats responsables de complot exécuté par des moyens illégaux car ils avaient agi en contravention de la loi (*Therien*, p. 280; *Gagnon*, p. 446). Et dans l'arrêt *Cement LaFarge c. B.C. Lightweight Aggregate*, [1983] 1 R.C.S. 452, qui repose sur la *Loi relative aux enquêtes sur les coalitions*, notre Cour a non seulement confirmé l'existence du délit de complot civil, mais elle a aussi reconnu qu'une violation de cette loi pouvait constituer l'élément d'« illégalité » du délit de complot exécuté par des moyens illégaux (p. 471-472). S'il subsistait le moindre doute sur ce point, il a été écarté lorsque, dans l'arrêt *A.I. Enterprises Ltd. c. Bram Enterprises Ltd.*, 2014 CSC 12, [2014] 1 R.C.S. 177, par. 64, la Cour a cité l'arrêt *LaFarge* à l'appui de la même proposition — qu'une violation de la loi pouvait satisfaire à l'élément « moyens illégaux » du délit de complot exécuté par des moyens illégaux.

[84] Le droit ne laisse place à aucune ambiguïté sur ce point. Avant l'adoption de la disposition conférant une cause d'action qui se trouve dans ce qui est

a breach of s. 45(1) of the *Competition Act* was, as it still is, able to satisfy the "unlawful means" element of the tort of civil conspiracy.

(2) The Enactment of the Statutory Cause of Action Did Not Oust Common Law and Equitable Actions

[85] Turning to Toshiba's other argument, the starting point in deciding whether a common law right of action has been legislatively ousted is the presumption that Parliament does not intend to abrogate common law rights (R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at p. 538). While s. 36(1) does not by its express terms oust common law causes of action, legislation may rebut this presumption by ousting the common law either expressly *or by necessary implication* (*Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298, at pp. 1315-16).

[86] In *Gendron*, this Court held, for three reasons, that the *Canada Labour Code*, R.S.C. 1970, c. L-1 (as amended by S.C. 1972, c. 18; S.C. 1977-78, c. 27) ousted the common law duty of fair representation by necessary implication. First, the content of the duty in the *Canada Labour Code* was co-extensive with the common law duty such that "[t]he common law duty is . . . not in any sense additive; it is merely duplicative" (p. 1316). Secondly, in enacting the *Canada Labour Code*, Parliament enacted a comprehensive and exclusive code, which indicated an intention for the *Canada Labour Code* to "occupy the whole field in terms of a determination of whether or not a union has acted fairly" (p. 1317). Finally, the *Canada Labour Code* provided a "new and superior method of remedying a breach" of the duty of fair representation (p. 1319).

[87] None of these considerations apply to s. 36(1) of the *Competition Act*, relative to the common law tort of civil conspiracy. Section 36(1) is neither duplicative of the tort of civil conspiracy nor does it provide a "new and superior" remedy. Claims under

devenu le par. 36(1) de la *Loi sur la concurrence*, une infraction au par. 45(1) de la *Loi sur la concurrence* pouvait, et peut encore, satisfaire à l'élément « moyens illégaux » du délit de complot civil.

(2) L'adoption de la disposition conférant une cause d'action n'a pas écarté les recours de common law

[85] En ce qui concerne l'autre argument de Toshiba, le point de départ pour déterminer si un recours de common law a été écarté par une loi est la présomption que le législateur n'a pas l'intention d'abroger des droits reconnus par la common law (R. Sullivan, *Sullivan on the Construction of Statutes* (6e éd. 2014), p. 538). Si le par. 36(1) n'exclut pas expressément les causes d'action fondées sur la common law, il reste qu'une loi peut réfuter cette présomption en écartant la common law de façon expresse *ou par déduction nécessaire* (*Gendron c. Syndicat des approvisionnements et services de l'Alliance de la Fonction publique du Canada, section locale 50057*, [1990] 1 R.C.S. 1298, p. 1315-1316).

[86] Dans l'arrêt *Gendron*, notre Cour a conclu, pour trois motifs, que le *Code canadien du travail*, S.R.C. 1970, c. L-1 (modifié par S.C. 1972, c. 18; S.C. 1977-78, c. 27) avait écarté, par déduction nécessaire, le devoir de juste représentation reconnu par la common law. Premièrement, le contenu du devoir imposé par le *Code canadien du travail* correspond à celui de common law, de sorte que « ce devoir n'ajoute rien; il fait simplement double emploi » (p. 1316). Deuxièmement, en adoptant le *Code canadien du travail,* le législateur a adopté un code complet et exclusif, ce qui témoignait de son intention que le *Code canadien du travail* « occupe tout le champ lorsqu'il s'agit de déterminer si un syndicat a agi de façon juste » (p. 1317). Enfin, le *Code canadien du travail* prévoit « une nouvelle façon, [. . .] supérieure [au devoir de common law], de remédier à un manquement » au devoir de juste représentation (p. 1319).

[87] Aucune de ces considérations ne s'applique au par. 36(1) de la *Loi sur la concurrence* relativement au délit de complot civil en common law. Le paragraphe 36(1) ne fait pas double emploi avec le délit de complot civil et il ne prévoit pas non plus de

s. 36(1) are subject to the limitation period stated in s. 36(4), whereas the tort of civil conspiracy is subject to provincial limitations statutes. Additionally, the tort of civil conspiracy allows for a broader range of remedies than is available under s. 36(1), such as punitive damages (*Watson*, at para. 57).

[88] Nor does s. 36(1) represent a comprehensive and exclusive code regarding claims for anti-competitive conspiratorial conduct. That this is so is made plain by s. 62 of the *Competition Act* ("Civil rights not affected") which contemplates the subsistence of common law and equitable rights of action by providing that "nothing in this Part [which includes s. 45(1), in respect of which s. 36(1) creates a statutory right of action] shall be construed as depriving any person of any civil right of action". This is also consistent with this Court's conclusion in *Infineon* (at para. 95) that it was open for a plaintiff to proceed with its claim under art. 1457 of the *Civil Code of Québec* ("*C.C.Q.*") for the alleged violation of s. 45(1) of the *Competition Act*. Were s. 36(1) a complete and exclusive code, no such claim under the *C.C.Q.* would have been possible.

[89] I therefore would reject this ground of appeal. The courts below correctly decided that it is not plain and obvious that Godfrey is precluded from bringing common law and equitable causes of action alongside his s. 36(1)(a) claim. Additionally, a breach of s. 45(1) of the *Competition Act* can supply the "unlawful" element of the tort of civil conspiracy. I see nothing in my colleague's reasons (at paras. 193-203) that deviates in any respect from my own on this point.

D. *Certifying Loss as a Common Issue*

[90] Toshiba's final ground of appeal relates to the requirement in s. 4(1)(c) of the *Class Proceedings Act* that class members' claims raise common issues.

« nouvelle façon [. . .] supérieure » de remédier à un manquement. Les actions fondées sur le par. 36(1) sont visées par le délai de prescription du par. 36(4), alors que le délit de complot civil est assujetti aux lois provinciales en matière de prescription. De plus, le délit de complot civil offre un éventail plus large de réparations que le par. 36(1), telles que les dommages-intérêts punitifs (*Watson*, par. 57).

[88] Le paragraphe 36(1) n'est pas non plus un code complet et exclusif régissant les actions pour comportement ou complot anticoncurrentiel. C'est ce qui ressort clairement de l'art. 62 de la *Loi sur la concurrence* (« Droits civils non atteints »), qui prévoit le maintien des droits d'action en common law et en equity : « . . . la présente partie [dont le par. 45(1), à l'égard duquel le par. 36(1) crée un droit d'action] n'a pas pour effet de priver une personne d'un droit d'action au civil ». Cela s'accorde également avec la conclusion de notre Cour dans l'arrêt *Infineon* (par. 95) qu'un demandeur pouvait choisir de se fonder sur l'art. 1457 du *Code civil du Québec* (« *C.c.Q.* ») pour faire valoir ses droits par suite d'une violation du par. 45(1) de la *Loi sur la concurrence*. Si le par. 36(1) avait constitué un code complet et exclusif, aucun recours n'aurait été possible sous le régime du *C.c.Q.*

[89] Je rejetterais donc ce moyen d'appel. Les tribunaux d'instance inférieure ont à juste titre décidé qu'il n'est pas évident et manifeste que M. Godfrey ne peut exercer des recours de common law et d'equity en même temps qu'une action fondée sur l'al. 36(1)a). J'ajouterai qu'une violation du par. 45(1) de la *Loi sur la concurrence* peut fournir l'élément d'« illégalité » du délit de complot civil. Je ne vois rien dans les motifs de ma collègue (par. 193-203) qui s'écarte d'une façon ou d'une autre de mon opinion sur ce point.

D. *Autorisation de la question de la perte en tant que question commune*

[90] Le dernier moyen d'appel avancé par Toshiba se rapporte à l'exigence imposée par l'al. 4(1)c) de la *Class Proceedings Act* que les demandes des membres du groupe soulèvent des questions communes.

[91] Godfrey sought to certify several loss-related questions as common issues, principally whether the class members suffered economic loss (Sup. Ct. reasons, at para. 143). These questions were stated broadly enough that they could be taken as asking whether *all* class members suffered economic loss or whether *any* class members suffered economic loss. And, because they could be taken in two different ways they might, following the common issues trial, be answered in different ways.

[92] The certification judge certified the common issues relating to loss on the basis that the standard outlined in *Microsoft* requires that a plaintiff's expert methodology need only establish loss at the indirect-purchaser level (Sup. Ct. reasons, at paras. 167 and 179). The questions, therefore, of whether *any* class members suffered loss and of whether *all* class members suffered loss, fulfill the requirements of a common question. Toshiba says that he erred, and argues that *Microsoft* requires, for loss to be certified as a common issue, that a plaintiff's expert's methodology be capable either of showing loss to *each and every class member*, or of distinguishing between those class members who suffered loss from those who did not (A.F. (Toshiba), at para. 63). Dr. Reutter's methodology, Toshiba says, does not meet this standard (A.F. (Toshiba), at para. 76).

[93] Godfrey responds that the courts below correctly held that *Microsoft* requires, as a condition of certifying loss as a common issue, only a methodology capable of establishing that overcharges were passed on to the indirect-purchaser level (R.F. (Toshiba Appeal), at para. 93). This standard is consistent with the principles underlying the commonality requirement, since a single answer to whether loss reached the indirect-purchaser level significantly advances the litigation. Dr. Reutter's methodology meets this standard (R.F. (Toshiba Appeal), at para. 94).

[91] M. Godfrey a demandé qu'un certain nombre de questions relatives à la perte soient autorisées en tant que questions communes, principalement celle de savoir si les membres du groupe avaient subi une perte économique (motifs de la C.S., par. 143). Ces questions sont formulées de façon suffisamment large pour qu'elles puissent être interprétées comme demandant si *tous* les membres du groupe ont subi une perte économique ou si *l'un* d'entre eux a subi une perte économique. Parce que ces questions peuvent être interprétées de deux façons différentes, elles pourraient donc, à la suite de l'audition des questions communes, appeler des réponses différentes.

[92] Le juge saisi de la demande d'autorisation a autorisé les questions communes liées à la perte au motif que, selon le critère établi dans l'arrêt *Microsoft*, la méthode proposée par l'expert d'un demandeur doit seulement permettre d'établir la perte subie par l'acheteur indirect (motifs de la C.S., par. 167 et 179). Les questions de savoir si *un* des membres du groupe a subi une perte et si *tous* les membres du groupe en ont subi une remplissent les conditions d'une question commune. Toshiba affirme qu'il s'agit là d'une erreur et que selon l'arrêt *Microsoft*, pour que la question de la perte puisse être autorisée en tant que question commune, la méthode proposée par l'expert d'un demandeur doit permettre soit d'établir la perte subie par *chacun des membres du groupe*, soit de faire la distinction entre les membres du groupe qui ont subi une perte et ceux qui n'en ont pas subi (m.a. (Toshiba), par. 63). La méthode proposée par M. Reutter, affirme Toshiba, ne respecte pas ce critère (m.a. (Toshiba), par. 76).

[93] M. Godfrey répond que les juridictions inférieures ont conclu à bon droit que l'arrêt *Microsoft* assujettit l'autorisation d'une question de perte en tant que question commune à la condition que la méthode proposée permette d'établir que la majoration a été refilée à l'acheteur indirect (m.i. (pourvoi de Toshiba), par. 93). Ce critère respecte les principes qui sous-tendent l'exigence du caractère commun, puisque la moindre réponse à la question de savoir si la perte a été refilée à l'acheteur indirect fait avancer substantiellement l'instance. La méthode proposée par M. Reutter satisfait à ce critère (m.i. (pourvoi de Toshiba), par. 94).

[94] The appropriate standard for certifying loss as a common issue at the certification stage is a question of law, to be reviewed on appeal for correctness. If I conclude that the certification judge identified the correct standard, then the certification judge's decision to certify the issues as common may not be disturbed absent a palpable and overriding error.

(1) Dr. Reutter's Methodology

[95] Application of the *Microsoft* standard here requires some review of Dr. Reutter's report. In that report, he drew two conclusions:

(1) . . . all members of the proposed Class would have been impacted by the actions of defendants as alleged in the *Amended Notice of Civil Claim*, and

(2) . . . there are accepted methods available to estimate any overcharge and aggregate damages that resulted from the alleged wrongdoing using evidence common to the proposed Class.

(A.R., vol. III, at p. 119)

[96] These conclusions were based on the presence of four economic factors during the period of the alleged conspiracy that suggest that the ODD industry was vulnerable to collusive conduct (A.R., vol. III, at pp. 122-23 and 136). These factors are:

(1) [ODDs] are commodity-like and manufactured to conform to industry standards,

(2) during the proposed Class period [the] defendants accounted for a majority of all [ODDs] manufactured worldwide,

(3) there are no economic substitutes for [ODDs], and;

(4) the manufacture of [ODDs] exhibits barriers to entry.

(A.R., vol. III, at pp. 119-20)

[94] La norme qu'il convient d'appliquer pour autoriser la question de la perte en tant que question commune au stade de l'autorisation est une question de droit qui doit être contrôlée en appel suivant la norme de la décision correcte. Si je conclus que le juge saisi de la demande d'autorisation a identifié la bonne norme, la décision du juge saisi de la demande d'autorisation ne peut être modifiée en l'absence d'une erreur manifeste et dominante.

(1) Méthode proposée par M. Reutter

[95] L'application du critère de l'arrêt *Microsoft* à la présente affaire nous impose d'examiner le rapport de M. Reutter. Dans ce rapport, M. Reutter tire deux conclusions :

[TRADUCTION]

(1) . . . tous les membres du groupe projeté auraient été touchés par les actes des défenderesses, ainsi qu'il est allégué dans l'*Avis de poursuite civile modifié*.

(2) . . . des méthodes acceptables permettent d'estimer la valeur de toute majoration et de tout préjudice global qui ont découlé des actes fautifs reprochés, et ce, au moyen de la preuve commune du groupe projeté.

(d.a., vol. III, p. 119)

[96] Ces conclusions reposaient sur la présence, durant la période du complot allégué, de quatre facteurs économiques tendant à indiquer que l'industrie des LDO était vulnérable aux comportements collusoires (d.a., vol. III, p. 122-123 et 136). Voici ces facteurs :

[TRADUCTION]

(1) Les [LDO] s'apparentent à des produits de base et sont fabriqués selon les normes de l'industrie,

(2) durant la période visée par le recours collectif projeté, les défenderesses fabriquaient la majorité des [LDO] à l'échelle mondiale,

(3) il n'existe aucun substitut économique aux LDO, et

(4) la fabrication de LDO se heurte à des barrières à l'entrée.

(d.a., vol. III, p. 119-120)

Because of the presence of these four factors, and the laws of supply and demand, Dr. Reutter concluded that "any conspiratorial overcharge would have been absorbed in part and passed-through in part at each level of the distribution chain, thus impacting all members of the proposed Class" (A.R., vol. III, at pp. 120 and 148).

[97] In order to estimate overcharges and aggregate damages arising from the alleged price-fixing, Dr. Reutter developed a methodology to estimate the "but-for" price of the products subject to the anticompetitive conduct (A.R., vol. III, at p. 150). This involves use of mainstream and accepted economic methodologies based on multiple regression (Sup. Ct. reasons, at para. 158). In particular, it entails three steps:

> First, for the matter at hand, an economic model describing the interaction of the supply of and demand for [ODDs] must be developed. Second, based on the economic model, data will need to be collected from various sources, including defendants (when available), as well as public and third party vendors. Third, standard statistical and econometric techniques are used to determine the extent to which the alleged conspiracy resulted in supra-competitive prices for [ODDs].
>
> (A.R., vol. III, at p. 150)

[98] In order to quantify the aggregate damages suffered by the proposed class, Dr. Reutter proposes to quantify the damages suffered by direct and indirect purchasers in the proposed class, which quantification can occur on a class-wide basis, using accepted economic and statistical methods (Sup. Ct. reasons, at para. 159). Overcharge, once estimated, can then be allocated among the class members (A.R., vol. III, at p. 167). Both aggregate damages and overcharge can be estimated using defendant transaction data, supplemented with data collected from public and private sources (A.R., vol. III, at p. 120).

À cause de la présence de ces quatre facteurs, ainsi que des lois de l'offre et de la demande, M. Reutter a conclu que [TRADUCTION] « toute majoration découlant d'une collusion aurait été absorbée en partie et refilée en partie à chacun des niveaux de la chaîne de distribution, de sorte que tous les membres du groupe projeté ont été touchés » (d.a., vol. III, p. 120 et 148).

[97] Afin d'estimer la valeur de la majoration et du préjudice global ayant découlé de la fixation des prix alléguée, M. Reutter a conçu une méthode permettant d'évaluer le prix des produits en cause en l'absence de tout comportement anticoncurrentiel (d.a., vol. III, p. 150). Il faut pour cela recourir aux méthodes économiques courantes et reconnues fondées sur la régression multiple (motifs de la C.S., par. 158). La méthode comporte, plus précisément, trois étapes :

> [TRADUCTION] Premièrement, s'agissant de l'affaire qui nous occupe, il faut élaborer un modèle économique qui décrit l'interaction entre l'offre et la demande de [LDO]. Deuxièmement, à partir de ce modèle économique, des données devront être recueillies auprès de diverses sources, notamment des défenderesses (si de telles données sont disponibles), ainsi que du public et des vendeurs autres que les défenderesses. Troisièmement, grâce à des techniques normalisées d'analyse statistique et économétrique, il faudra déterminer la mesure dans laquelle le complot allégué a mené à des prix supraconcurrentiels pour les [LDO].
>
> (d.a., vol. III, p. 150)

[98] Afin de quantifier le préjudice global subi par le groupe proposé, M. Reutter propose de quantifier les dommages subis par les acheteurs directs et les acheteurs indirects du groupe proposé, ce qui peut se faire à l'échelle du groupe au moyen de méthodes reconnues d'analyse économique et statistique (motifs de la C.S., par. 159). Une fois estimée, la majoration peut être répartie entre les membres du groupe (d.a., vol. III, p. 167). Le préjudice global et la majoration peuvent être estimés à l'aide des données relatives aux opérations commerciales des défenderesses, ainsi que de renseignements recueillis auprès du public et de sources privées (d.a., vol. III, p. 120).

[99] The question of whether a plaintiff's methodology must show loss at the indirect purchaser level or loss to each and every class member appears to be moot, since Dr. Reutter opines that all class members were impacted by Toshiba's anti-competitive behaviour; his methodology therefore satisfies either standard. Toshiba, however, points to its cross-examination of Dr. Reutter at the certification hearing as obtaining the concession that his methodology cannot demonstrate that all class members suffered a loss (A.F. (Toshiba), at paras. 86-87). At the hearing before this Court, counsel for Godfrey argued that Toshiba's counsel mischaracterized what emerged from that cross-examination (transcript, at p. 59). Because of this dispute, it is important to examine what actually occurred.

[100] After confirming that Dr. Reutter would use an average selling price across the ODD market to estimate overcharge, the following exchange took place:

399 Q. And implicit in the average is the fact that some class members may not have suffered any loss, but they would be compensated by the amount of the average overcharge in relation to the purchase that they made?

A. It's an empirical question and I don't want to sound flippant, but it depends. There may be some -- there may be some small subset or subset, I don't want to put an adjective in front of it. There may be some subset that were not impacted. I don't, from an economic standpoint, understand how that would be if there was, in fact, a conspiracy that fixed the price at the upstream and then that was, in fact, passed through.

. . .

403 Q. . . . But if you conclude that some members were not impacted once you do the analysis, then they would be compensated even though they suffered no loss?

[99] La question de savoir si la méthode proposée par un demandeur doit démontrer que l'acheteur indirect a subi une perte ou bien que chaque membre du groupe a subi une perte semble être devenue théorique, puisque M. Reutter s'est également dit d'avis que tous les membres du groupe ont été touchés par le comportement anticoncurrentiel de Toshiba; la méthode qu'il propose satisfait donc aux deux critères. Toshiba signale toutefois que, lorsqu'elle a contre-interrogé M. Reutter lors de l'audition de la requête en autorisation, celui-ci aurait admis que sa méthode ne permet pas d'établir que tous les membres du groupe ont subi une perte (m.a. (Toshiba), par. 86-87). Devant nous, l'avocat de M. Godfrey a fait valoir que l'avocat de Toshiba s'était mépris sur ce qui s'est dégagé de ce contre-interrogatoire (transcription, p. 59). Vu ce différend, il importe d'examiner ce qui s'est vraiment produit.

[100] Après que M. Reutter eut confirmé qu'il utiliserait le prix de vente moyen des LDO dans l'ensemble du marché afin d'estimer la valeur de la majoration, l'échange suivant a eu lieu :

[TRADUCTION]

399 Q. Et il ressort implicitement de la moyenne que certains membres du groupe pourraient n'avoir subi aucune perte, mais qu'ils seraient indemnisés du montant de la majoration moyenne par rapport à l'achat qu'ils ont fait?

R. C'est là une question empirique et, sans vouloir paraître facétieux, je dirais que ça dépend. Il se pourrait que -- il se pourrait que quelques petits sous-groupes ou des sous-groupes, je ne veux pas les qualifier. Il se pourrait que certains sous-groupes n'aient pas été touchés. D'un point de vue économique, je ne comprends pas comment cela pourrait arriver si, dans les faits, il y a eu complot pour fixer le prix en amont et puis si ce prix a été transféré en aval.

. . .

403 Q. . . . Mais si, après analyse, vous concluez que certains membres n'ont pas été touchés, ils seraient alors indemnisés même s'ils n'ont subi aucune perte?

A. Again, it depends on how finely or where we want to draw the line of what we're analyzing or what we're measuring.

. . .

A. Someone could -- the average is an average and if you want to throw a zero in there, as Dr. Levinsohn does, and say that there could be zero damages, I can't deny that, you know, if you average zero with some other numbers you get something other than zero by the definition of mathematics.

. . .

407 Q. . . . Does the methodology which produces an average, is that average overcharge then applied to all class members irrespective of whether the average reflects the overage that they, in fact, incurred?

A. Yes.

408 Q. All right. And is there anything in the methodology that you are proposing that allows one to determine who those people are that suffered more or less? They're simply compensated on average?

. . .

410 . . .

A. In identifying him, no. [Emphasis added.]

(A.R., vol. V, at pp. 216-19)

Dr. Reutter went on to explain that his methodology is capable of creating subgroups within the class. For example, if the evidence after discovery suggests that Toshiba stopped price-fixing for a few months and then resumed again, the class members who purchased ODDs during that time would be excluded from the model (A.R., vol. V, at pp. 220-21).

[101] It is not at all apparent that this exchange shows Dr. Reutter resiling from his opinion that *all*

R. Encore là, ça dépend du soin avec lequel nous voulons tracer la ligne ou encore de l'endroit où nous voulons la tracer pour ce qui est de ce que nous analysons ou de ce que nous mesurons.

. . .

R. Quelqu'un pourrait -- la moyenne est une moyenne et si vous voulez y mettre un zéro, comme le fait M. Levinsohn, et dire qu'il se pourrait qu'il n'y ait aucun préjudice, je ne peux pas nier que, vous savez, si vous faites la moyenne entre zéro et certains autres chiffres, vous obtenez autre chose que zéro, c'est ce que sont les mathématiques.

. . .

407 Q. . . . Selon la méthode utilisée pour faire une moyenne, est-ce que la majoration moyenne s'applique à tous les membres du groupe peu importe si cette moyenne reflète l'excédent qu'on leur a, en fait, refilé?

R. Oui.

408 Q. Très bien. Et y a-t-il quelque chose dans la méthode que vous proposez qui permet de savoir qui sont ceux pour qui le préjudice est plus grand ou moins grand? Ils sont simplement indemnisés selon la moyenne?

. . .

410 . . .

R. De les identifier, non. [Je souligne.]

(d.a., vol. V, p. 216-219)

M. Reutter a ensuite expliqué que sa méthode permettait de créer des sous-groupes au sein du groupe. Par exemple, si après l'interrogatoire, la preuve démontre que Toshiba a cessé de fixer les prix pour ensuite recommencer à le faire quelques mois plus tard, les membres du groupe qui auraient acheté un LDO au cours de cette période seraient exclus du modèle (d.a., vol. V, p. 220-221).

[101] Il n'est absolument pas évident que cet échange démontre que M. Reutter est revenu sur

class members would be impacted. On the contrary, he stated that he did not understand, from an economic standpoint, how it would be possible for some members of the class *not* to have suffered a loss if there was a conspiracy and the fixed price was passed through. Dr. Reutter's methodology therefore satisfies both the standards argued for by Toshiba and Godfrey.

[102] In any event, even were Dr. Reutter's methodology incapable of showing loss to every class member, as I explain below, it is not necessary, in order to support certifying loss as a common question, that a plaintiff's expert's methodology establish that each and every class member suffered a loss. Nor is it necessary that Dr. Reutter's methodology be able to identify those class members who suffered no loss so as to distinguish them from those who did. Rather, in order for loss-related questions to be certified as common issues, a plaintiff's expert's methodology need only be sufficiently credible or plausible to establish loss reached the requisite purchaser level. This leaves the only question being whether the courts below were correct in finding that Dr. Reutter's proposed methodology satisfies that required standard of commonality (C.A. reasons, at paras. 125 and 149). I see no reason to interfere with the certification judge's determination that Dr. Reutter's methodology satisfies this standard.

### (2) What Is the Standard Required to Certify Loss as a Common Issue?

[103] The *Class Proceedings Act* provides that in order for an issue to be common, the issue need not "predominate over issues affecting only individual members" (s. 4(1)(c)). Section 1 of the *Class Proceedings Act* defines "common issues" as meaning:

(a) common but not necessarily identical issues of fact, or

son opinion que *tous* les membres du groupe avaient été touchés. Au contraire, il a dit qu'il ne comprenait pas, d'un point de vue économique, comment il serait possible que certains membres du groupe n'aient subi *aucune* perte alors qu'il y avait eu complot et que le prix établi leur avait été transféré. La méthode de M. Reutter satisfait donc aux normes proposées par Toshiba et par M. Godfrey.

[102] Quoi qu'il en soit, même si la méthode de M. Reutter ne permettait de démontrer que chaque membre du groupe a subi une perte, comme je l'expliquerai plus loin, il n'est pas nécessaire, pour justifier l'autorisation de la question de la perte en tant que question commune, que la méthode proposée par un expert du demandeur établisse que chaque membre du groupe a subi une perte. Il n'est pas non plus nécessaire que la méthode de M. Reutter permette d'identifier les membres du groupe qui n'ont subi aucune perte de manière à les distinguer de ceux qui en ont subi une. Pour que les questions relatives à la perte soient autorisées en tant que questions communes, la méthode de l'expert du demandeur n'a qu'à être suffisamment fiable ou acceptable pour établir que l'acheteur du niveau requis a subi une perte. Il reste seulement à déterminer si les juridictions inférieures ont eu raison de conclure que la méthode proposée par M. Reutter satisfait à la norme de communauté requise (motifs de la C.A., par. 125 et 149). Je ne vois aucune raison de modifier la décision du juge saisi de la demande d'autorisation portant que la méthode de M. Reutter satisfait à cette norme.

### (2) Quelle est la norme applicable à l'autorisation d'une question liée à la perte en tant que question commune?

[103] La *Class Proceedings Act* dispose que, pour qu'une question soit commune, elle n'a pas à [TRADUCTION] « l'emporter sur les questions qui touchent uniquement les membres individuels » (al. 4(1)(c)). Selon l'art. 1 de la *Class Proceedings Act*, « question commune » (« *common issues* ») s'entend, selon le cas :

[TRADUCTION]

(a) d'une question de fait commune, mais pas nécessairement identique;

(b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts

[104] In *Microsoft*, at para. 108, this Court reaffirmed the principles of "common issues" for the purpose of certification, as they were explained in *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, [2001] 2 S.C.R. 534:

In [*Dutton*] this Court addressed the commonality question, stating that "[t]he underlying question is whether allowing the suit to proceed as a [class proceeding] will avoid duplication of fact-finding or legal analysis" (para. 39). I list the balance of McLachlin C.J.'s instructions, found at paras. 39-40 of that decision:

(1) The commonality question should be approached purposively.

(2) An issue will be "common" only where its resolution is necessary to the resolution of each class member's claim.

(3) It is not essential that the class members be identically situated *vis-à-vis* the opposing party.

(4) It [is] not necessary that common issues predominate over non-common issues. However, the class members' claims must share a substantial common ingredient to justify a class [proceeding]. The court will examine the significance of the common issues in relation to individual issues.

(5) Success for one class member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent.

[105] In *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, [2014] 1 S.C.R. 3, this Court clarified that the "common success" requirement in *Dutton* should be applied flexibly. "Common success" denotes not that success for one class member must mean success for all, but rather that success for one class member must not mean *failure* for another (para. 45). A question is

(b) d'une question de droit commune, mais pas nécessairement identique, qui découle de faits qui sont communs, mais pas nécessairement identiques;

[104] Au paragraphe 108 de l'arrêt *Microsoft*, la Cour a rappelé les principes relatifs à la « question commune » aux fins d'autorisation qu'elle avait expliqués dans *Western Canadian Shopping Centres Inc. c. Dutton*, 2001 CSC 46, [2001] 2 R.C.S. 534 :

Dans l'arrêt [*Dutton*] notre Cour aborde la notion de communauté et conclut que « [l]a question sous-jacente est de savoir si le fait d'autoriser le recours collectif permettra d'éviter la répétition dans l'appréciation des faits ou l'analyse juridique » (par. 39). J'énumère les autres paramètres établis par la juge en chef McLachlin et qui figurent aux par. 39-40 de l'arrêt :

(1) Il faut aborder le sujet de la communauté en fonction de l'objet.

(2) Une question n'est « commune » que lorsque son règlement est nécessaire au règlement des demandes de chacun des membres du groupe.

(3) Il n'est pas essentiel que les membres du groupe soient tous dans la même situation par rapport à la partie adverse.

(4) Il n'est pas nécessaire que les questions communes l'emportent sur les questions non communes. Les demandes des membres du groupe doivent toutefois partager un élément commun important afin de justifier le recours collectif. Le tribunal évalue l'importance des questions communes par rapport aux questions individuelles.

(5) Le succès d'un membre du groupe emporte nécessairement celui de tous. Tous les membres du groupe doivent profiter du dénouement favorable de l'action, mais pas nécessairement dans la même proportion.

[105] Dans l'arrêt *Vivendi Canada Inc. c. Dell'Aniello*, 2014 CSC 1, [2014] 1 R.C.S. 3, la Cour a précisé que le critère du « succès commun » dégagé dans *Dutton* devait être appliqué avec flexibilité. Le « succès commun » suppose non pas que le succès d'un membre du groupe entraîne celui de tous les membres du groupe, mais plutôt que le succès d'un membre du groupe

considered "common", then, "if it can serve to advance the resolution of every class member's claim", even if the answer to the question, while positive, will vary among those members (para. 46).

[106] In *Microsoft*, the representative plaintiff sought to certify a class proceeding wherein the proposed class members consisted of the end consumers of products whose prices were allegedly fixed ("indirect purchasers"). After concluding that indirect purchasers have a cause of action for price-fixing, the Court considered the standard of expert methodology required to certify loss-related questions as common issues for indirect purchaser class proceedings. The key passage from the Court's reasons states:

> One area in which difficulty is encountered in indirect purchaser actions is in assessing the commonality of the harm or loss-related issues. In order to determine if the loss-related issues meet the "some basis in fact" standard, some assurance is required that the questions are capable of resolution on a common basis. In indirect purchaser actions, plaintiffs generally seek to satisfy this requirement through the use of expert evidence in the form of economic models and methodologies.
>
> The role of the expert methodology is to establish that the overcharge was passed on to the indirect purchasers, making the issue common to the class as a whole (see *Chadha* [*v. Bayer Inc.* (2003), 63 O.R. (3d) 22], at para. 31). The requirement at the certification stage is not that the methodology quantify the damages in question; rather, the critical element that the methodology must establish is the ability to prove "common impact", as described in the U.S. antitrust case of *In Re: Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002). That is, plaintiffs must demonstrate that "sufficient proof [is] available, for use at trial, to prove antitrust impact common to all the members of the class" (*ibid.*, at p. 155). It is not necessary at the certification stage that the methodology establish the actual loss to the class, as long as the plaintiff has demonstrated that there is a methodology capable of doing so. In indirect purchaser actions, this means that the methodology must be able to establish that the overcharges

ne doit pas provoquer l'*échec* d'un autre membre (par. 45). Une question sera considérée comme « commune », donc, « si elle permet de faire progresser le règlement de la réclamation de chacun des membres du groupe », même si la réponse qu'on lui donne, bien que favorable, peut différer d'un membre à l'autre du groupe (par. 46).

[106] Dans l'arrêt *Microsoft*, le représentant des demandeurs a demandé l'autorisation d'un recours collectif pour lequel le groupe proposé était composé des consommateurs finaux des produits dont le prix aurait été fixé (« acheteurs indirects »). Après avoir conclu que les acheteurs indirects avaient une cause d'action en raison de la fixation des prix, la Cour s'est penchée sur la norme applicable pour déterminer si la méthode d'expert permet d'autoriser les questions liées à la perte en tant que questions communes aux acheteurs indirects d'un recours collectif. Voici le passage clé des motifs de la Cour :

> L'une des difficultés que pose le recours d'acheteurs indirects a trait à l'appréciation du caractère commun des questions liées au préjudice ou à la perte. Pour que ces questions puissent satisfaire à la norme d'« un certain fondement factuel », il doit être assez certain qu'elles peuvent faire l'objet d'un règlement commun. Dans le cadre d'actions intentées par des acheteurs indirects, les demandeurs tentent généralement de satisfaire à cette exigence en offrant une preuve d'expert qui revêt la forme de modèles et de méthodes économiques.
>
> La méthode proposée par l'expert vise à établir que la majoration a été transférée aux acheteurs indirects, ce qui rend la question commune au groupe dans son ensemble (voir *Chadha* [*c. Bayer Inc.* (2003), 63 O.R. (3d) 22], par. 31). À l'étape de [l'autorisation], la méthode n'a pas à déterminer le montant des dommages-intérêts, mais doit plutôt — et c'est là l'élément crucial — être susceptible de prouver « les conséquences communes », comme le conclut un tribunal américain dans une affaire antitrust, *In Re : Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002). Les demandeurs doivent démontrer qu'une [TRADUCTION] « preuve permettra d'établir, lors du procès, les conséquences antitrust qui sont communes à tous les membres du groupe » (*ibid.*, p. 155). À l'étape de [l'autorisation], point n'est besoin que la méthode établisse la perte réellement subie par le groupe dans la mesure où le demandeur démontre qu'une méthode permet de le faire. Dans le cadre d'actions d'acheteurs indirects,

have been passed on to the indirect-purchaser level in the distribution chain.

The most contentious question involving the use of expert evidence is how strong the evidence must be at the certification stage to satisfy the court that there is a method by which impact can be proved on a class-wide basis. The B.C.C.A. in *Infineon* [*Technologies AG v. Option Consommateurs*, 2013 SCC 29, [2013] 3 S.C.R. 600] called for the plaintiff to show "only a credible or plausible methodology" and held that "[i]t was common ground that statistical regression analysis is in theory capable of providing reasonable estimates of gain or aggregate harm and the extent of pass-through in price-fixing cases" (para. 68). . . .

. . .

In my view, the expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement. This means that the methodology must offer a realistic prospect of establishing loss on a class-wide basis so that, if the overcharge is eventually established at the trial of the common issues, there is a means by which to demonstrate that it is common to the class (i.e. that passing on has occurred). The methodology cannot be purely theoretical or hypothetical, but must be grounded in the facts of the particular case in question. There must be some evidence of the availability of the data to which the methodology is to be applied. [Emphasis added; paras. 114-18.]

[107] While there may be some room for debate arising from the references to "class-wide basis" in the above passages, in my view, the Court was employing the term "class-wide basis" synonymously with "indirect-purchaser level". *Microsoft*, therefore, directs that, for a court to certify loss-related questions as common issues in a price-fixing class proceeding, it must be satisfied that the plaintiff has shown a plausible methodology to establish that loss reached one or more purchasers — that is, claimants at the "purchaser *level*". For indirect purchasers, this would involve demonstrating that the direct purchasers passed on the overcharge.

la méthode doit donc pouvoir établir que la majoration a été transférée à l'acheteur indirect situé en aval dans la chaîne de distribution.

La question la plus vivement débattue au chapitre de l'utilisation de la preuve d'expert est celle de savoir à quel point la preuve doit être concluante à l'étape de [l'autorisation] pour convaincre le tribunal qu'une méthode permet d'établir les conséquences communes à l'échelle du groupe. Dans l'affaire *Infineon* [*Technologies AG c. Option Consommateurs*, 2013 CSC 29, [2013] 3 R.C.S. 600], la C.A.C.-B. a invité la demanderesse à ne présenter [TRADUCTION] « qu'une méthode valable ou acceptable » pour ensuite conclure qu'« [i]l est bien établi que l'analyse de régression statistique offre en principe une estimation raisonnable du bénéfice ou du préjudice global et de l'étendue du transfert de la perte lorsqu'il y a eu fixation des prix » (par. 68). . .

. . .

À mon avis, la méthode d'expert doit être suffisamment valable ou acceptable pour établir un certain fondement factuel aux fins du respect de l'exigence d'une question commune. Elle doit donc offrir une possibilité réaliste d'établir la perte à l'échelle du groupe, de sorte que, si la majoration est établie à l'issue de l'examen des questions communes au procès, un moyen permette de démontrer qu'elle est commune aux membres du groupe (c.-à-d. que le transfert a eu lieu). Or, il ne peut s'agir d'une méthode purement théorique ou hypothétique; elle doit reposer sur les faits de l'affaire. L'existence des données auxquelles la méthode est censée s'appliquer doit être étayée par quelque preuve. [Je souligne; par. 114-118.]

[107] Bien que la mention de la « perte à l'échelle du groupe » dans les passages précités puisse prêter à controverse, j'estime que la Cour a utilisé cette expression dans le même sens que « [niveau des] acheteurs indirects ». En conséquence, l'arrêt *Microsoft* prescrit que, pour autoriser les questions liées à la perte en tant que questions communes dans un recours collectif pour fixation du prix, le tribunal doit être convaincu que le demandeur a présenté une méthode valable pour établir que la perte a été transférée à un ou à plusieurs acheteurs, c'est-à-dire des demandeurs du « [*niveau* de] l'acheteur ». Dans le cas des acheteurs indirects, cela implique de démontrer que les acheteurs directs ont refilé la majoration.

[108] Additionally, showing that loss reached the indirect purchaser level satisfies the criteria for certifying a common issue, since it will significantly advance the litigation, is a prerequisite to imposing liability upon Toshiba and will result in "common success" as explained in *Vivendi*, given that success for one class member will not result in failure for another. Showing loss reached the requisite purchaser level will advance the claims of all the purchasers at that level.

[109] When thinking about whether a proposed common question would "advance *the litigation*", it is the perspective of *the litigation*, not the plaintiff, that matters. A common issues trial has the potential to *either* determine liability *or* terminate the litigation (W. K. Winkler et al., *The Law of Class Actions in Canada* (2014), at p. 108). Either scenario "advances" *the litigation* toward resolution. Here, if it cannot be shown that loss was suffered by *any* purchasers at the indirect purchaser level, then *none* of the indirect purchasers have a cause of action and the action with respect to *all* the indirect purchasers would fail. I endorse, in this regard, this statement of the Ontario Superior Court in *Shah (Ont. S.C.J.)* (at para. 69):

> Thus, for the purposes of certification, the methodology about the existence of loss need only be shown to be a plausible one that the passing-on reached the indirect purchaser level of the distribution channel and that there might be individual issues about whether any particular class member experienced illegal price-fixing. If the plaintiff's expert's methodology failed in proof at trial, then the class members' claim would fail across the indirect class members' class because each and every one of them would have failed to prove a constituent element of their cause of action; i.e., that the price-fixing penetrated their place or "level" of the distribution channel, and the Defendants would secure a discharge of liability against all the class members. Conversely, if the methodology proved sound to show that overcharges reached the indirect purchaser place in the distribution channel, then there might have to be individual issues trials to determine each class member's entitlement.

[108] Qui plus est, démontrer que la perte a été transférée aux acheteurs indirects satisfait au critère d'autorisation d'une question commune, puisqu'une telle démonstration permettra de faire progresser substantiellement l'instance, qu'elle est essentielle pour imposer une responsabilité à Toshiba et qu'elle débouche sur un « succès commun » tel que l'explique l'arrêt *Vivendi*, car le succès d'un membre du groupe ne se traduira pas par l'échec d'un autre membre. Démontrer que la perte a été transférée aux acheteurs du niveau requis fera progresser les réclamations de tous les acheteurs de ce niveau.

[109] Lorsqu'on pense à la question de savoir si une question commune proposée ferait « avancer *l'instance* », c'est le point de vue de *l'instance* et non celui du demandeur qui compte. L'audition des questions communes peut *soit* déterminer la responsabilité *soit* mettre fin au litige (W. K. Winkler et autres, *The Law of Class Actions in Canada* (2014), p. 108). Les deux scénarios « contribuent » au règlement *du litige*. En l'espèce, si l'on ne peut démontrer que la perte a été subie par *quelque acheteur indirect que ce soit*, *aucun* acheteur indirect n'a une cause d'action et l'action à l'égard de *tous* les acheteurs indirects échouerait. Je souscris à cet égard à l'affirmation qui suit de la Cour supérieure de l'Ontario dans *Shah (C.S.J. Ont.)* (par. 69) :

> [TRADUCTION] Ainsi, aux fins d'autorisation, il faut seulement démontrer que la méthode permettant d'établir l'existence d'une perte est une méthode acceptable, que la perte a été transférée à l'acheteur indirect situé en aval dans la chaîne de distribution et que des questions individuelles quant à savoir si certains membres ont été touchés par la fixation illégale des prix peuvent être soulevées. Si la méthode d'expert du demandeur ne permet pas d'en faire la preuve au procès, alors la demande du groupe sera rejetée à l'égard de la catégorie des membres indirects parce que chacun d'eux aura échoué à prouver un élément constitutif de sa cause d'action; c.-à-d. que la fixation des prix s'est rendue à eux ou à leur « niveau » dans la chaîne de distribution, et les défenderesses seront déchargées de toute responsabilité à l'égard de l'ensemble des membres du groupe. À l'inverse, si la méthode se révèle valable pour démontrer que la majoration a été transférée à l'acheteur indirect situé en aval de la chaîne de distribution, il pourrait alors être nécessaire de tenir des audiences individuelles pour statuer sur le droit de chaque membre de faire partie du groupe.

(3) Does Dr. Reutter's Methodology Meet the Standard?

[110] The certification judge identified the correct standard to certify commonality of loss as a common issue. As Toshiba acknowledges, the issue of whether the certification judge erred in applying that standard to Dr. Reutter's evidence is "subject to . . . deference from an appellate court" (A.F. (Toshiba), at para. 42). The certification judge's analysis of Dr. Reutter's methodology as supporting certification should not be overturned absent a palpable and overriding error.

[111] I agree with the Court of Appeal that the reasoning of the certification judge reveals no basis for interfering with his common issues determination (C.A. reasons, at para. 163). There is no palpable and overriding error in the certification judge's conclusion that Godfrey showed some basis in fact for finding the loss issues to be common (Sup. Ct. reasons, at para. 180). I would therefore reject this ground of appeal.

(4) Availability of Aggregate Damages

[112] I turn, finally, to Toshiba's final argument, which goes to the availability of the aggregate damages provisions found in Division 2 of the *Class Proceedings Act*, s. 29(1)(b), which states:

**Aggregate awards of monetary relief**

**29** (1) The court may make an order for an aggregate monetary award in respect of all or any part of a defendant's liability to class members and may give judgment accordingly if

. . .

(3) La méthode proposée par M. Reutter satisfait-elle à la norme?

[110] Le juge saisi de la demande d'autorisation a arrêté la norme applicable à l'autorisation, en tant que question commune, de la question de la communauté de la perte. Toshiba le reconnaît : la question de savoir si le juge saisi de la demande d'autorisation s'est trompé en appliquant cette norme au témoignage de M. Reutter [TRADUCTION] « oblige la cour d'appel à faire preuve de déférence » (m.a. (Toshiba), par. 42). L'analyse de la méthode proposée par M. Reutter sur laquelle repose la décision du juge saisi de la demande d'autorisation ne devrait pas être annulée en l'absence d'erreur manifeste et déterminante.

[111] Je conviens avec la Cour d'appel que le raisonnement du juge saisi de la demande d'autorisation ne révèle aucune raison de modifier la décision qu'il a rendue au sujet des questions communes (motifs de la C.A., par. 163). Il n'y a aucune erreur manifeste et déterminante dans sa conclusion que M. Godfrey a établi un certain fondement factuel permettant de qualifier de communes les questions liées à la perte (motifs de la C.S., par. 180). Je rejetterais donc ce moyen d'appel.

(4) Possibilité d'obtenir des dommages-intérêts globaux

[112] Je passe finalement au dernier argument de Toshiba, qui intéresse la possibilité d'invoquer les dispositions sur les dommages-intérêts globaux qui figurent à l'al. 29(1)(b) de la *Class Proceedings Act*, lequel prévoit :

[TRADUCTION]

**Octroi global d'une réparation pécuniaire**

**29** (1) Le tribunal peut accorder une réparation pécuniaire pour tout ou partie de la responsabilité du défendeur à l'endroit des membres du groupe et rendre jugement en conséquence si

. . .

(b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability . . .

[113] Because all other issues of fact and law must be decided before the aggregate damages provisions could apply, it is plain that aggregate damages under s. 29(1)(b) are purely remedial, available only after all other common issues have been determined, including liability (see *Microsoft*, at para. 134). Irrespective, then, of whether aggregate damages are certified as a common issue, it is for the trial judge to determine, following the common issues trial, whether the statutory criteria are met such that the aggregate damages provisions can be applied to award damages (*Microsoft*, at para. 134; Winkler et al., at p. 121).

[114] Here, the certification judge certified the following common issues related to aggregate damages for the non-umbrella purchasers (para. 143):

(k) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

. . .

(w) Can the amount of restitution be determined on an aggregate basis and if so, in what amount?

As I will explain below, I would not disturb the certification judge's decision to certify these issues as common issues. Again, it is important to remember that the certification of these issues in relation to the non-umbrella purchasers and the lack of certification in relation to the umbrella purchasers neither mandates nor forecloses the possibility of the trial judge awarding aggregate damages following the common issues trial. As this Court said in *Microsoft*

(b) il ne reste à trancher que des questions de fait ou de droit touchant à la détermination de la réparation pécuniaire afin de quantifier la responsabilité pécuniaire du défendeur . . .

[113] Comme il faut trancher toutes les questions de fait et questions de droit avant que les dispositions sur les dommages-intérêts globaux puissent s'appliquer, il est clair que les dommages-intérêts globaux au sens de l'al. 29(1)(b) ont un objectif purement réparateur et ne peuvent être octroyés qu'après le règlement de toutes les autres questions communes, y compris la responsabilité (voir *Microsoft*, par. 134). Peu importe, donc, si les dommages-intérêts globaux sont autorisés en tant que question commune, il revient au juge du procès de décider, au terme de l'audition des questions communes, si les critères établis par la loi sont respectés de sorte que les dispositions sur les dommages-intérêts globaux peuvent s'appliquer pour octroyer ceux-ci (*Microsoft*, par. 134; Winkler et autres, p. 121).

[114] En l'espèce, le juge saisi de la demande d'autorisation a autorisé les questions communes suivantes liées à l'octroi de dommages-intérêt globaux aux acheteurs qui ne sont pas sous parapluie (par. 143) :

[TRADUCTION]

(k) Le montant des dommages-intérêts peut-il être arrêté globalement et, dans l'affirmative, quel est ce montant?

. . .

(w) Le montant de la restitution peut-il être arrêté globalement et, dans l'affirmative, quel est ce montant?

Comme je vais l'expliquer plus loin, je ne suis pas d'avis de modifier la décision du juge saisi de la demande d'autorisation d'autoriser ces questions en tant que questions communes. Là encore, il importe de se rappeler que l'autorisation de ces questions à l'égard des acheteurs qui ne sont pas sous parapluie et l'absence d'autorisation à l'endroit des acheteurs sous parapluie ne commande ni n'exclut la possibilité que le juge du procès accorde des dommages-intérêts

(para. 134): ". . . the failure to propose or certify aggregate damages, or another remedy, as a common issue does not preclude a trial judge from invoking the provisions if considered appropriate once liability is found".

[115] Toshiba has not appealed the certification of these issues as common issues. Rather, it takes issue with the certification judge's statement when discussing certification of the loss-related common issues that "the aggregate damage provisions [. . .] allow for an aggregate award even where some class members have suffered no financial loss" (Sup. Ct. reasons, at para. 169). Toshiba argues that this statement contradicts this Court's direction in *Microsoft* regarding the purely procedural quality of rights conferred by the *Class Proceedings Act* (A.F. (Toshiba), at para. 54). More particularly, Toshiba says that, by not confining its liability to class members who are able to show actual loss, the certification judge used the *Class Proceedings Act* to confer substantive (and not merely procedural) rights so as to grant a remedy to persons who cannot prove a loss. In this way, Toshiba argues that the certification judge treated the indirect and umbrella purchasers as "juridical entities" and eliminated the distinction between proof of harm and aggregate damages (A.F. (Toshiba), at para. 7).

[116] On this point, I agree with Toshiba that the certification judge's statement that the aggregate damages provisions allow for an award of damages for class members that suffered no loss is inconsistent with this Court's jurisprudence. This Court has repeatedly affirmed that the advantages conferred by class proceeding legislation are purely procedural, and that they do not confer substantive rights (see: *Hollick*, at para. 14; *Bisaillon v. Concordia University*, 2006 SCC 19, [2006] 1 S.C.R. 666, at para. 17; *Microsoft*, at para. 131-32; *Sun-Rype*, at

globaux au terme de l'audition des questions communes. Comme l'a mentionné notre Cour au par. 134 de l'arrêt *Microsoft* : « . . . l'omission de proposer ou d'autoriser à titre de question commune l'opportunité d'accorder des dommages-intérêts globaux ou une autre réparation n'empêche pas le juge de se fonder sur les dispositions s'il l'estime indiqué ».

[115] Toshiba n'a pas porté en appel l'autorisation des questions précitées en tant que questions communes. Elle s'inscrit plutôt en faux contre ce que le juge saisi de la demande d'autorisation a dit au moment d'analyser l'autorisation des questions communes liées à la perte : [TRADUCTION] « . . . les dispositions relatives aux dommages-intérêts globaux [. . .] permettent d'adjuger ceux-ci même si certains membres du groupe n'ont subi aucune perte financière » (motifs de la C.S., par. 169). Selon Toshiba, cette affirmation contredit l'orientation qu'a donnée notre Cour dans l'arrêt *Microsoft* au sujet du caractère purement procédural des droits conférés par la *Class Proceedings Act* (m.a. (Toshiba), par. 54). Plus particulièrement, Toshiba affirme que, en ne restreignant pas la responsabilité aux membres du groupe capables d'établir qu'ils ont subi une véritable perte, le juge saisi de la demande d'autorisation a utilisé la *Class Proceedings Act* pour conférer des droits substantifs (et pas simplement procéduraux) de manière à accorder réparation aux personnes qui ne sont pas en mesure de prouver qu'elles ont subi une perte. Toshiba plaide ainsi que le juge saisi de la demande d'autorisation a traité les acheteurs indirects et sous parapluie comme des [TRADUCTION] « entités juridiques » et a éliminé la distinction entre la preuve du préjudice et les dommages-intérêts globaux (m.a. (Toshiba), par. 7).

[116] Sur ce point, je partage l'avis de Toshiba que l'affirmation du juge saisi de la demande d'autorisation — selon laquelle les dispositions sur les dommages-intérêts globaux permettent d'en adjuger aux membres du groupe qui n'ont subi aucune perte — est incompatible avec la jurisprudence de notre Cour. Cette dernière a maintes fois répété que les avantages offerts par les lois en matière de recours collectifs sont purement procédurales et ne confèrent pas de droit substantiels (voir : *Hollick*, par. 14; *Bisaillon c. Université Concordia*, 2006 CSC

para. 75). In *Microsoft*, this Court could not have been clearer that the aggregate damages provisions cannot be used to establish liability:

> With respect, I do not agree with this reasoning. The aggregate damages provisions of the *CPA* relate to remedy and are procedural. They cannot be used to establish liability (*2038724 Ontario Ltd. v. Quizno's Canada Restaurant Corp.*, 2010 ONCA 466, 100 O.R. (3d) 721, at para. 55). The language of s. 29(1)(b) specifies that no question of fact or law, other than the assessment of damages, should remain to be determined in order for an aggregate monetary award to be made. As I read it, this means that an antecedent finding of liability is required before resorting to the aggregate damages provision of the *CPA*. This includes, where required by the cause of action such as in a claim under s. 36 of the *Competition Act*, a finding of proof of loss. I do not see how a statutory provision designed to award damages on an aggregate basis can be said to be used to establish any aspect of liability.

> I agree with Feldman J.A.'s holding in *Chadha* that aggregate damages provisions are "applicable only once liability has been established, and provid[e] a method to assess the quantum of damages on a global basis, but not the fact of damage" (para. 49). I also agree with Masuhara J. of the B.C.S.C. in *Infineon* that "liability requires that a pass-through reached the Class Members", and that "[t]hat question requires an answer before the aggregation provisions, which are only a tool to assist in the distribution of damages, can be invoked" (2008 BCSC 575 (CanLII), at para. 176). Furthermore, I agree with the Ontario Court of Appeal in *Quizno's*, that "[t]he majority clearly recognized that s. 24 [of the Ontario *Class Proceedings Act, 1992*, S.O. 1992, c. 6] is procedural and cannot be used in proving liability" (para. 55). [Emphasis added; paras. 131-32.]

[117] The foregoing signifies that, where (as here) loss is an element of the cause of action, using the aggregate damages provisions to distribute damages to class members who did not suffer a loss would be

19, [2006] 1 R.C.S. 666, par. 17; *Microsoft*, par. 131-132; *Sun-Rype*, par. 75). Dans l'arrêt *Microsoft*, notre Cour n'aurait pas pu dire plus clairement que les dispositions sur les dommages-intérêts globaux ne peuvent servir à établir la responsabilité :

> Soit dit en tout respect, je n'adhère pas à ce raisonnement. Les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux ont trait à la réparation, sont de nature procédurale et ne peuvent permettre d'établir la responsabilité (*2038724 Ontario Ltd. c. Quizno's Canada Restaurant Corp.*, 2010 ONCA 466, 100 O.R. (3d) 721, par. 55). Le libellé de l'al. 29(1)(b) veut qu'il ne reste à trancher que des questions de fait ou de droit touchant à la détermination de la réparation pécuniaire pour qu'une réparation pécuniaire globale puisse être accordée. À mon sens, il faut une conclusion préalable de responsabilité avant d'appliquer les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux, ce qui comprend, lorsque l'exige une cause d'action comme celles prévues à l'art. 36 de la *Loi sur la concurrence*, une conclusion sur la preuve de la perte. Je ne vois pas comment une disposition visant à accorder des dommages-intérêts de manière globale pourrait être le fondement d'une conclusion sur quelque volet de la responsabilité.

> Je souscris à la conclusion de la juge Feldman dans *Chadha*, à savoir que les dispositions sur l'octroi de dommages-intérêts globaux [TRADUCTION] « s'appliquent seulement une fois la responsabilité établie et offrent une méthode d'évaluation globale des dommages-intérêts, mais ne permettent pas d'établir le préjudice » (par. 49). Je conviens également avec le juge Masuhara de la Cour suprême de la Colombie-Britannique qu'[TRADUCTION] « établir la responsabilité exige de prouver que le transfert de la perte a atteint les membres du groupe. Il faut statuer sur ce point avant d'appliquer les dispositions sur l'évaluation globale des dommages-intérêts, lesquelles n'offrent qu'un moyen d'attribuer l'indemnité » (voir *Infineon*, 2008 BCSC 575 (CanLII), par. 176). Aussi, je partage l'avis de la Cour d'appel de l'Ontario dans *Quizno's* selon lequel [TRADUCTION] « [l]es juges majoritaires reconnaissent clairement que l'art. 24 [de la *Loi de 1992 sur les recours collectifs* de l'Ontario, L.O. 1992, ch. 6] est de nature procédurale et ne peut servir d'assise à l'établissement de la responsabilité » (par. 55). [Je souligne; par. 131-132.]

[117] Les passages précités signifient que lorsque la perte est un élément de la cause d'action (comme c'est le cas en l'espèce), le fait de recourir aux dispositions sur les dommages-intérêts globaux pour

inconsistent with the purely procedural quality of the advantages conferred by the *Class Proceedings Act*. It follows that the reliance by the courts below (Sup. Ct. reasons, at para. 169; C.A. reasons, at para. 161) on s. 31(1)(a)(i) of the *Class Proceedings Act* (which provides that the court may order an aggregate damages award where it would be impractical or inefficient to identify the class members entitled to share in the award) as indicating that the plaintiff need not establish loss to each and every class member was, in my respectful view, mistaken. Section 31(1)(a)(i) is applicable only once liability has been established; otherwise, it would effectively confer substantive rights.

[118] To be clear, I agree that the *Class Proceedings Act* permits individual members of the class to obtain a remedy where it may be difficult to demonstrate *the extent* of individual loss. What the jurisprudence of this Court maintains, however, is that, in order for individual class members to participate in the award of damages, the trial judge must be satisfied that each has *actually suffered* a loss where proof of loss is essential to a finding of liability (as it is for liability under s. 36 of the *Competition Act*). Therefore, ultimately, to use the aggregate damages provisions, the trial judge must be satisfied, following the common issues trial, either that *all* class members suffered loss, or that he or she can distinguish those who have not suffered loss from those who have.

[119] At this stage, it therefore remains possible that issues will arise, once it is determined that loss reached the indirect purchaser level, that affect individual class members' claims (*Microsoft*, at para. 140). In other words, while it was sufficient *for the purposes of certifying loss as a common issue* for Dr. Reutter's methodology to show merely that loss reached the indirect purchaser level, whether this methodology is sufficient *for the purposes of establishing* Toshiba's liability to *all* class members will depend on the findings of

accorder ceux-ci aux membres du groupe qui n'ont subi aucune perte serait incompatible avec le caractère purement procédural des avantages conférés par la *Class Proceedings Act*. Soit dit en tout respect, il s'ensuit que les juridictions inférieures (motifs de la C.S., par. 169; motifs de la C.A., par. 161) ont eu tort de s'appuyer sur le sous-al. 31(1)(a)(i) de la *Class Proceedings Act* (lequel prévoit que le tribunal peut ordonner l'octroi de dommages-intérêts globaux lorsqu'il serait irréaliste ou inefficace d'identifier les membres du groupe qui ont droit à une part du montant global des dommages-intérêts adjugés) pour conclure que le demandeur n'a pas à établir que chacun des membres du groupe a subi une perte. Le sous-al. 31(1)(a)(i) ne s'applique qu'une fois la responsabilité établie; autrement, il se trouverait à conférer des droits substantiels.

[118] Pour dissiper toute équivoque, je conviens que la *Class Proceedings Act* permet aux membres du groupe d'obtenir une réparation dans les cas où il peut être difficile d'établir *l'ampleur* de la perte individuelle. Toutefois, il ressort de la jurisprudence de la Cour que, pour que les membres du groupe participent à l'octroi des dommages-intérêts, le juge du procès doit être convaincu que chacun d'eux a *réellement subi* une perte lorsque la preuve de la perte est essentielle à une conclusion de responsabilité (comme c'est le cas de la responsabilité fondée sur l'art. 36 de la *Loi sur la concurrence*). Par conséquent, au bout du compte, pour se prévaloir des dispositions relatives aux dommages-intérêts globaux, le juge du procès doit être convaincu, à l'issue de l'audition des questions communes, que *tous* les membres du groupe ont subi une perte, ou qu'il peut distinguer ceux qui n'ont pas subi de perte de ceux qui en ont subi une.

[119] À ce stade, il se peut donc toujours que des questions touchant les demandes de membres du groupe se posent, une fois qu'il est établi que la perte a été refilée à l'acheteur indirect (*Microsoft*, par. 140). Autrement dit, bien qu'il ait été suffisant, *aux fins de l'autorisation de la perte en tant que question commune*, que la méthode de M. Reutter établisse simplement que la perte a été refilée aux acheteurs indirects, la réponse à la question de savoir si cette méthode suffit *pour établir* la responsabilité

the trial judge. In this case, Godfrey intends to use Dr. Reutter's methodology to prove that all class members suffered loss. It follows from the foregoing that, if he is successful in doing so, the same methodology can be used to establish both that Toshiba is liable to all class members and that aggregate damages are available to be awarded.

[120] It should be borne in mind that the trial judge, following the common issues trial, might reach any one of numerous possible conclusions on the question of whether the class members suffered loss. For example, the trial judge might accept Dr. Reutter's evidence that *all* class members suffered a loss, in which case it would be open to the trial judge to use the aggregate damages provisions to award damages to all class members. Alternatively, the trial judge might conclude that *no* purchasers suffered a loss — for example, if the trial judge does not accept that Dr. Reutter's methodology demonstrates that loss reached the direct and indirect purchaser levels. Were that the case, the action would fail. Or, it might be that the trial judge finds that an *identifiable subset* of class members did not suffer a loss, in which case the trial judge could exclude those members from participating in the award of damages, and then use the aggregate damages provision in respect of the remaining class members' claims. Finally, the trial judge could accept Toshiba's argument that some class members suffered a loss and some did not, but that it is impossible to determine on the expert's methodology which class members suffered a loss. In such a case, individual issues trials would be required to determine the purchasers to whom Toshiba is liable and who are therefore entitled to share in the award of damages. At the certification stage, no comment can or should be made about the potential conclusions that the trial judge may reach. I outline these possibilities and the availability of aggregate damages merely to provide guidance.

de Toshiba envers *tous* les membres du groupe dépend des conclusions du juge du procès. En l'espèce, M. Godfrey compte employer la méthode de M. Reutter pour prouver que tous les membres du groupe ont subi une perte. Il s'ensuit de ce qui précède que, s'il parvient à faire cette démonstration, on peut employer la même méthode pour établir à la fois que Toshiba est responsable envers tous les membres du groupe et qu'il est possible d'accorder des dommages-intérêts globaux.

[120] Il convient de garder à l'esprit qu'après l'audition des questions communes, le juge du procès peut tirer l'une ou l'autre de nombreuses conclusions sur la question de savoir si les membres du groupe ont subi une perte. Par exemple, le juge du procès pourrait retenir le témoignage de M. Reutter selon lequel *tous* les membres du groupe ont subi une perte, auquel cas il serait loisible au juge du procès de recourir aux dispositions sur les dommages-intérêts globaux pour adjuger les dommages-intérêts à tous les membres du groupe. Le juge du procès pourrait aussi conclure qu'*aucun* acheteur n'a subi de perte — par exemple, s'il n'accepte pas que la méthode de M. Reutter démontre que la perte a été transférée aux acheteurs directs et indirects. Dans un tel cas, l'action échouerait. Peut-être encore que le juge du procès conclura qu'une *sous-catégorie identifiable* de membres du groupe n'a pas subi de perte, auquel cas il exclura ces membres de l'octroi des dommages-intérêts et recourra ensuite à la disposition sur l'octroi de dommages-intérêts globaux à l'égard des demandes de membres restants du groupe. Enfin, le juge du procès pourrait retenir l'argument de Toshiba selon lequel certains membres du groupe ont subi une perte tandis que d'autres n'en ont pas subie, mais conclure qu'il est impossible d'établir avec la méthode de l'expert quels membres du groupe ont subi une perte. Dans un tel cas, des procès portant sur des questions individuelles seraient nécessaires pour identifier les acheteurs envers qui Toshiba est responsable et qui ont donc le droit de prendre part à l'octroi des dommages-intérêts. Au stade de l'autorisation, il n'est pas possible ou indiqué de se prononcer sur les conclusions éventuelles du juge du procès. Je signale ces possibilités et l'ouverture à des dommages-intérêts globaux uniquement en vue de fournir des directives.

[121] But again, to be clear — neither the range of possible findings of the trial judge following the common issues trial, nor the unavailability of aggregate damages for class members that suffered no loss, is relevant to the decision to certify aggregate damages as a common issue. As was the case in *Microsoft*, "[t]he aggregate damages questions [the certification judge] certified relate solely to whether damages can be determined on an aggregate basis and if so in what amount" (para. 135). The certification judge's decision to certify the questions related to aggregate damages for the non-umbrella purchasers should therefore not be disturbed.

VI. Conclusion

[122] I would dismiss the appeals.

[123] Section 37(1) of the *Class Proceedings Act* provides that "neither the [British Columbia] Supreme Court nor the Court of Appeal may award costs to any party to an application for certification". The parties appear to take this as precluding this Court from awarding costs at those courts, and seek only their costs at this Court. I would therefore award Godfrey costs in this Court only.

The following are the reasons delivered by

[124] CÔTÉ J. (dissenting in part) — These appeals raise a fundamental question: are courts at a stage where the balance struck by Parliament in Canada's competition law should be upset by applying new principles of liability for price-fixing cases, resulting in near-automatic certification of class actions? In doing so, are courts going a bridge too far?

I. Overview

[125] These appeals concern the certification of a proposed class action brought in British Columbia by

[121] Mais là encore, soyons clairs : ni l'éventail des conclusions que pourra tirer le juge du procès à l'issue de l'audition des questions communes, ni la possibilité d'accorder des dommages-intérêts globaux aux membres du groupe qui n'ont subi aucune perte, ne sont pertinents pour la décision d'autoriser les dommages-intérêts globaux en tant que question commune. Tout comme dans *Microsoft*, « [l]es questions [liées aux dommages-intérêts globaux que le juge saisi de la demande d'autorisation] certifie consistent seulement à savoir si le montant des dommages-intérêts peut être arrêté globalement et, dans l'affirmative, quel est ce montant » (par. 135). Il ne convient donc pas de modifier la décision du juge saisi de la demande d'autorisation d'autoriser les questions concernant l'octroi de dommages-intérêts globaux aux acheteurs qui ne sont pas sous parapluie.

VI. Conclusion

[122] Je rejetterais les pourvois.

[123] Le paragraphe 37(1) de la *Class Proceedings Act* dispose que [TRADUCTION] « ni la Cour suprême [de la Colombie-Britannique] ni la Cour d'appel ne peuvent accorder des dépens à une partie à une demande d'autorisation ». Les parties semblent en avoir conclu que notre Cour ne peut octroyer des dépens devant ces cours et elles n'ont sollicité que leurs dépens devant notre Cour. J'accorderais donc à M. Godfrey ses dépens devant notre Cour seulement.

Version française des motifs rendus par

[124] LA JUGE CÔTÉ (dissidente en partie) — Les présents pourvois soulèvent une question fondamentale : le moment est-il venu pour les tribunaux de rompre l'équilibre établi par le législateur dans les lois canadiennes sur la concurrence en appliquant de nouveaux principes de responsabilité dans des affaires de fixation des prix, de sorte que les recours collectifs seraient presque automatiquement autorisés? Ce faisant, les tribunaux iraient-ils trop loin?

I. Aperçu

[125] Les présents pourvois concernent l'autorisation d'un recours collectif projeté intenté en

representative plaintiff Neil Godfrey (the "Plaintiff", respondent in these appeals) against a number of defendants (the "Defendants", appellants in these appeals) that manufacture or supply devices known as optical disc drives ("ODDs"). The Plaintiff alleges that the Defendants conspired to fix the prices of ODDs between January 1, 2004 and January 1, 2010 (the "Class Period"). He relies on five causes of action against the Defendants: a contravention of s. 45 of the *Competition Act*, R.S.C. 1985, c. C-34 (which is actionable pursuant to s. 36(1) of that statute), the tort of unlawful means conspiracy, the tort of predominant purpose conspiracy, unjust enrichment, and waiver of tort.

[126] The proposed class is essentially comprised of three groups. Direct purchasers are the class members who purchased an ODD or an ODD product manufactured or supplied by a Defendant *from that Defendant*. Indirect purchasers are the class members who purchased an ODD or an ODD product manufactured or supplied by a Defendant *from a non-Defendant*. Neil Godfrey is one of those indirect purchasers. Finally, class members who purchased from a non-Defendant an ODD or an ODD product *that was not manufactured or supplied by a Defendant* are known as "Umbrella Purchasers". The Plaintiff alleges that all of the class members in these three groups have claims against the Defendants in respect of the alleged price-fixing conspiracy.

[127] The Plaintiff's action against most of the Defendants was commenced on September 27, 2010. He brought a separate action against certain additional Defendants — Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. and Pioneer Electronics of Canada Inc. (the "Pioneer Defendants") — on August 16, 2013, roughly three and a half years following the end of the Class Period.

Colombie-Britannique par le représentant des demandeurs, Neil Godfrey (le « demandeur », l'intimé dans les présents pourvois), contre plusieurs défenderesses (les « défenderesses », les appelantes dans les présents pourvois) qui fabriquent ou fournissent des dispositifs appelés lecteurs de disques optiques (« LDO »). Le demandeur allègue que les défenderesses ont comploté dans le but de fixer les prix des LDO entre le 1er janvier 2004 et le 1er janvier 2010 (la « période visée par le recours collectif »). Il s'appuie sur cinq causes d'action contre les défenderesses : contravention à l'art. 45 de la *Loi sur la concurrence*, L.R.C. 1985, c. C-34 (qui ouvre droit à une action fondée sur le par. 36(1) de cette même loi), délit civil de complot exercé par des moyens illégaux, délit civil de complot visant principalement à causer un préjudice, enrichissement sans cause et renonciation au recours délictuel.

[126] Le groupe projeté est constitué essentiellement de trois catégories d'acheteurs. Les acheteurs directs sont les membres du groupe qui ont acheté un LDO ou un produit muni de LDO fabriqué ou fourni par une défenderesse *de cette défenderesse*. Les acheteurs indirects sont les membres du groupe qui ont acheté un LDO ou un produit muni de LDO fabriqué ou fourni par une défenderesse *d'une personne qui n'est pas une défenderesse*. Neil Godfrey est l'un de ces acheteurs indirects. Enfin, les membres du groupe qui ont acheté, d'une personne qui n'est pas une défenderesse, un LDO ou un produit muni de LDO *qui n'a pas été fabriqué ou fourni par une défenderesse* sont appelés les « acheteurs sous parapluie ». Le demandeur allègue que tous les membres du groupe faisant partie de ces catégories disposent de recours contre les défenderesses relativement au complot allégué de fixation des prix.

[127] Le recours du demandeur contre la plupart des défenderesses a été intenté le 27 septembre 2010. Le 16 août 2013, soit environ trois ans et demi après la fin de la période visée par le recours collectif, le demandeur a intenté une action distincte contre certaines autres défenderesses : Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., Pioneer High Fidelity Taiwan Co., Ltd. et Pioneer Électronique du Canada, Inc. (appelées collectivement les « défenderesses Pioneer »).

[128] At the certification stage, Masuhara J. (the "Certification Judge") consolidated the two actions and conditionally certified them as class proceedings, in accordance with the criteria set out in s. 4(1) of British Columbia's *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (2016 BCSC 844). The Defendants' appeals to the British Columbia Court of Appeal were unanimously dismissed (2017 BCCA 302, 1 B.C.L.R. (6th) 319).

[129] The Defendants that challenge the Court of Appeal's order before this Court in file no. 37810 (the "Toshiba Appeal") contend that both the Certification Judge and the Court of Appeal erred in three respects: (a) by permitting the Umbrella Purchasers to claim under the statutory cause of action in s. 36(1) of the *Competition Act*; (b) by allowing common law and equitable relief based on a breach of the anti-competitive prohibitions in Part VI of the *Competition Act*; and (c) by finding that loss-related issues were common among the indirect purchasers based on the expert methodology proposed by the Plaintiff.

[130] The appeal brought by the Pioneer Defendants in file no. 37809 (the "Pioneer Appeal") raises those same issues, as well as two unique issues pertaining to the treatment of the limitation defence by the courts below. The Pioneer Defendants argue that the Certification Judge erred in holding that the action against them can proceed — notwithstanding that it was commenced more than two years following the end of the Class Period — based on the application of the discoverability rule and the doctrine of fraudulent concealment. In this Court, the Pioneer Defendants submit (a) that the discoverability rule does not apply to postpone the commencement of the limitation period in s. 36(4)(a)(i) of the *Competition Act*, and (b) that the doctrine of fraudulent concealment cannot toll that limitation period unless the Plaintiff can establish that he and the other class members stand in a "special relationship" with the Pioneer Defendants. It follows, in their submission, that the Plaintiff's pleadings do not disclose a cause of action against them in

[128] À l'étape de l'autorisation, le juge Masuhara (le « juge saisi de la demande d'autorisation ») a réuni les deux actions et les a conditionnellement autorisées à titre de recours collectif conformément aux critères énoncés au par. 4(1) de la *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (2016 BCSC 844). Les pourvois interjetés par les défenderesses devant la Cour d'appel de la Colombie-Britannique ont été rejetés à l'unanimité (2017 BCCA 302, 1 B.C.L.R. (6th) 319).

[129] Les défenderesses qui contestent l'ordonnance de la Cour d'appel devant notre Cour dans le dossier nº 37810 (le « pourvoi de Toshiba ») soutiennent que le juge saisi de la demande d'autorisation et la Cour d'appel ont commis trois erreurs : a) en autorisant les acheteurs sous parapluie à se prévaloir de la cause d'action prévue au par. 36(1) de la *Loi sur la concurrence*, b) en autorisant les recours de common law et d'equity fondés sur une violation des prohibitions de comportement anticoncurrentiel prévues à la partie VI de la *Loi sur la concurrence*, et c) en concluant, d'après la méthode proposée par l'expert du demandeur, que les questions liées à la perte étaient communes aux acheteurs indirects.

[130] Le pourvoi interjeté par les défenderesses Pioneer dans le dossier nº 37809 (le « pourvoi de Pioneer ») soulève les mêmes questions, de même que deux questions uniques liées au traitement par les tribunaux d'instance inférieure de leur défense fondée sur la prescription. Les défenderesses Pioneer soutiennent que le juge saisi de la demande d'autorisation a commis une erreur en concluant que l'action intentée contre elles pouvait procéder — malgré le fait qu'elle avait été intentée plus de deux ans après la fin de la période visée par le recours collectif — compte tenu de l'application de la règle de la possibilité de découvrir et de la doctrine de la dissimulation frauduleuse. Devant notre Cour, les défenderesses Pioneer font valoir : a) que la règle de la possibilité de découvrir ne s'applique pas de façon à retarder le début du délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*, et b) que la doctrine de la dissimulation frauduleuse ne permet pas de repousser le point de départ du délai de prescription à moins que le demandeur puisse

accordance with s. 4(1)(a) of the *Class Proceedings Act*.

[131] I would allow both appeals in part. With respect to the limitations issues raised in the Pioneer Appeal, my view is that the discoverability rule does not apply to the limitation period in s. 36(4)(a)(i) because the event that triggers the commencement of the limitation period occurs without regard to the state of a plaintiff's knowledge. As for the doctrine of fraudulent concealment, my view is that it is not plain and obvious that it will toll the operation of the limitation period in this case only if the Plaintiff is capable of demonstrating a special relationship existed. It may be that something tantamount to or commensurate with the existence of a special relationship would be sufficient to toll the limitation period. However, simply establishing the existence of the conspiracy will not suffice.

[132] With respect to the issues raised in the Toshiba Appeal, which are common to both appeals, I agree with my colleague Brown J. — although for different reasons — that the *Competition Act* does not prevent a plaintiff from advancing a claim at common law or in equity together with, or instead of, a claim pursuant to the statutory cause of action in s. 36(1) in respect of the same anti-competitive prohibitions. I disagree with my colleague on the other two issues raised in that appeal, however. In my view, the Umbrella Purchasers cannot succeed in their claims against the Defendants under s. 36(1) of the *Competition Act*. Likewise, I cannot accept that a methodology capable of proving only that loss reached the indirect purchaser level in the distribution chain (and incapable of establishing loss in any individualized manner) is sufficient for the purpose of certifying the loss-related questions proposed by the Plaintiff as "common issues", pursuant to s. 4(1)(c) of the *Class Proceedings Act*.

établir que lui et les autres membres du groupe entretiennent une « relation spéciale » avec les défenderesses Pioneer. Par conséquent, selon elles, les actes de procédure du demandeur ne révèlent aucune cause d'action contre elles en conformité avec l'al. 4(1)(a) de la *Class Proceedings Act*.

[131] Je suis d'avis d'accueillir les deux pourvois en partie. En ce qui concerne les questions relatives aux délais de prescription soulevées dans le pourvoi de Pioneer, j'estime que la règle de la possibilité de découvrir ne s'applique pas au délai de prescription prévu au sous-al. 36(4)a)(i), puisque l'événement qui marque le point de départ du délai de prescription se produit peu importe si un demandeur a connaissance du préjudice. En ce qui a trait à la dissimulation frauduleuse, il ne me semble pas évident et manifeste que cette doctrine repoussera le point de départ du délai de prescription en l'espèce seulement si le demandeur arrive à démontrer qu'il existait une relation spéciale. Il se peut que quelque chose d'équivalent ou correspondant à une relation spéciale suffise à reporter le point de départ du délai de prescription. Cependant, le simple fait d'établir l'existence du complot ne suffira pas.

[132] Pour ce qui est des questions soulevées dans le pourvoi de Toshiba, lesquelles sont communes aux deux pourvois, je conviens avec mon collègue le juge Brown — quoique pour des motifs différents — que la *Loi sur la concurrence* n'empêche pas le demandeur d'intenter un recours en common law ou en equity en même temps, ou au lieu, d'un recours fondé sur la cause d'action prévue au par. 36(1) à l'égard des mêmes pratiques anticoncurrentielles. Toutefois, je ne souscris pas à l'opinion de mon collègue quant aux deux autres questions soulevées dans ce pourvoi. À mon sens, les acheteurs sous parapluie ne peuvent avoir gain de cause contre les défenderesses dans leurs réclamations fondées sur le par. 36(1) de la *Loi sur la concurrence*. De même, je ne puis accepter qu'une méthode permettant uniquement de prouver que la perte a atteint le niveau des acheteurs indirects dans la chaîne de distribution (et qui ne permet pas d'établir la perte de manière individuelle) suffit à l'autorisation des questions liées à la perte proposées par le demandeur en tant que « questions communes » au titre de l'al. 4(1)(c) de la *Class Proceedings Act*.

II. The Pioneer Appeal

[133] The two unique issues raised in the Pioneer Appeal are as follows:

(a) Does the discoverability rule apply to the limitation period established by s. 36(4)(a)(i) of the *Competition Act*?

(b) Must there be a special relationship between the parties to an action in order for the doctrine of fraudulent concealment to toll the limitation period?

[134] The statutory cause of action under s. 36(1)(a) of the *Competition Act*, which allows a claimant to recover for loss or damage resulting from conduct contrary to any provision of Part VI of that Act, is subject to the limitation period established by s. 36(4). These two provisions read as follows:

**36 (1)** Any person who has suffered loss or damage as a result of

**(a)** conduct that is contrary to any provision of Part VI, or

**(b)** the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

. . .

**(4)** No action may be brought under subsection (1),

**(a)** in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

**(i)** a day on which the conduct was engaged in, or

II. Le pourvoi de Pioneer

[133] Les deux questions uniques soulevées dans le pourvoi de Pioneer sont les suivantes :

a) La règle de la possibilité de découvrir s'applique-t-elle au délai de prescription établi au sous-al. 36(4)a)(i) de la *Loi sur la concurrence*?

b) Pour que la doctrine de la dissimulation frauduleuse repousse le point de départ du délai de prescription, doit-il y avoir une relation spéciale entre les parties à une action?

[134] La cause d'action prévue à l'al. 36(1)a) de la *Loi sur la concurrence*, qui permet à une personne ayant subi une perte ou des dommages par suite d'un comportement allant à l'encontre d'une disposition de la partie VI de cette loi de se faire indemniser, est assujettie au délai de prescription établi au par. 36(4). Ces deux dispositions sont ainsi libellées :

**36 (1)** Toute personne qui a subi une perte ou des dommages par suite :

**a)** soit d'un comportement allant à l'encontre d'une disposition de la partie VI;

**b)** soit du défaut d'une personne d'obtempérer à une ordonnance rendue par le Tribunal ou un autre tribunal en vertu de la présente loi,

peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

. . .

**(4)** Les actions visées au paragraphe (1) se prescrivent :

**a)** dans le cas de celles qui sont fondées sur un comportement qui va à l'encontre d'une disposition de la partie VI, dans les deux ans qui suivent la dernière des dates suivantes :

**(i)** soit la date du comportement en question,

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later . . .

. . .

[135] The Plaintiff's action against the Pioneer Defendants, which is based in part on s. 36(1) of the *Competition Act*, was commenced on August 16, 2013 — more than two years following the end of the Class Period, which is the period during which the alleged price-fixing conspiracy took place. The Pioneer Defendants take the position that the Plaintiff's claim for recovery under s. 36(1) of the *Competition Act* is time-barred by the limitation period in s. 36(4)(a)(i). The Plaintiff, for his part, says that both the discoverability rule and the doctrine of fraudulent concealment apply to toll that limitation period. If either applies, then the limitation clock will have begun ticking on the date that he discovered, or ought to have discovered, the existence of the alleged conspiracy.

[136] In order to succeed, therefore, the Pioneer Defendants must persuade this Court that *neither* the discoverability rule *nor* the doctrine of fraudulent concealment has any application in this case.

A. *Does the Discoverability Rule Apply to the Limitation Period Contained in the Statutory Cause of Action in Section 36 of the Competition Act?*

[137] On this first limitations issue raised in the Pioneer Appeal, my colleague takes the view that the discoverability rule postpones the commencement of the limitation period in s. 36(4)(a)(i) until the time at which the potential claimant discovers, or is reasonably capable of discovering, the existence of the impugned conduct that forms the basis of a claim under s. 36(1). I respectfully disagree, for the reasons that follow.

**(ii)** soit la date où il est statué de façon définitive sur la poursuite;

. . .

[135] Fondée en partie sur le par. 36(1) de la *Loi sur la concurrence*, l'action du demandeur contre les défenderesses Pioneer a été intentée le 16 août 2013, plus de deux ans après la fin de la période visée par le recours collectif, soit la période durant laquelle le complot allégué de fixation des prix a eu lieu. Les défenderesses Pioneer sont d'avis que le recours en indemnisation intenté par le demandeur au titre du par. 36(1) de la *Loi sur la concurrence* est prescrit en raison du délai de prescription prévu au sous-al. 36(4)a)(i). Le demandeur, quant à lui, affirme que tant la règle de la possibilité de découvrir que la doctrine de la dissimulation frauduleuse s'appliquent de manière à repousser le point de départ de ce délai de prescription. Si l'une ou l'autre s'applique, alors le délai de prescription aura commencé à courir à la date à laquelle le demandeur a découvert, ou aurait dû découvrir, l'existence du complot allégué.

[136] Donc, pour obtenir gain de cause, les défenderesses Pioneer doivent convaincre notre Cour que *ni* la règle de la possibilité de découvrir *ni* la doctrine de la dissimulation frauduleuse ne s'appliquent en l'espèce.

A. *La règle de la possibilité de découvrir s'applique-t-elle au délai de prescription applicable à la cause d'action prévue à l'art. 36 de la Loi sur la concurrence?*

[137] En ce qui concerne la première question relative aux délais de prescription soulevée dans le pourvoi de Pioneer, mon collègue se dit d'avis que la règle de la possibilité de découvrir reporte le début du délai de prescription prévu au sous-al. 36(4)a)(i) jusqu'au moment où le demandeur éventuel découvre, ou est raisonnablement capable de découvrir, l'existence du comportement reproché qui constitue le fondement de l'action intentée au titre du par. 36(1). Avec égards, je ne partage pas cet avis pour les motifs qui suivent.

(1) The Discoverability Rule

[138] Limitation clauses are statutory provisions that place temporal limits on a claimant's ability to institute legal proceedings. The expiry of a limitation period has the effect of "extinguish[ing] a party's legal remedies and also, in some cases, a party's legal rights" (G. Mew, D. Rolph and D. Zacks, *The Law of Limitations* (3rd ed. 2016) ("Mew et al."), at p. 3). As this Court explained in *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6, statutory limitation clauses reflect the balance struck by the legislature between three distinct policy rationales: granting repose to defendants, avoiding evidentiary issues relating to the passage of time, and encouraging diligence on the part of plaintiffs.

[139] As statutory provisions, limitation clauses give rise to a number of interpretative issues. One important issue is the point at which the limitation period begins running — and in particular, whether the legislature intended that it commence only when the plaintiff has knowledge that the event which sets the clock ticking (sometimes referred to as the "triggering event") has in fact occurred. This is key, because a determination of when a limitation period expires depends on both its duration and its commencement (Mew et al., at pp. 69-70).

[140] Discoverability is a judge-made rule of statutory interpretation that assists in determining whether the event triggering the commencement of a limitation period depends upon the state of the plaintiff's knowledge. In *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147, this Court recognized a "general rule that a cause of action arises for the purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence" (p. 224). What this means is that a limitation period that commences upon "the accrual of the [plaintiff's] cause of action", or wording to that effect, will begin running only when the plaintiff discovers, or is reasonably capable of discovering,

(1) La règle de la possibilité de découvrir

[138] Les dispositions de prescription sont des dispositions statutaires qui visent à fixer des limites temporelles à la faculté du demandeur de se pourvoir devant les tribunaux. L'expiration d'un délai de prescription a pour effet [TRADUCTION] « d'éteindre les recours en justice d'une partie et, dans certains cas, d'éteindre ses droits » (G. Mew, D. Rolph et D. Zacks, *The Law of Limitations* (3e éd. 2016) (« Mew et autres »), p. 3). Comme l'a expliqué la Cour dans *M. (K.) c. M. (H.)*, [1992] 3 R.C.S. 6, les dispositions législatives en matière de prescription reflètent l'équilibre établi par le législateur entre trois justifications d'ordre public distinctes : procurer la tranquillité d'esprit aux défendeurs, éviter les problèmes de preuve liés à l'écoulement du temps, et encourager les demandeurs à être diligents.

[139] À titre de dispositions statutaires, les dispositions de prescription soulèvent plusieurs questions d'interprétation. Une question importante concerne le moment où le délai de prescription commence à courir; plus particulièrement, il s'agit de savoir si le législateur voulait que le délai commence à courir uniquement au moment où le demandeur sait que l'événement qui marque le point de départ du délai (parfois appelé le « fait déclencheur ») s'est effectivement produit. Il est crucial de répondre à cette question puisque, pour déterminer quand un délai de prescription expire, il faut d'abord établir sa durée et la date de son début (Mew et autres, p. 69-70).

[140] La règle de la possibilité de découvrir est une règle prétorienne d'interprétation statutaire qui aide à déterminer si l'événement qui marque le point de départ du délai de prescription dépend de la connaissance qu'en avait le demandeur. Dans *Central Trust Co. c. Rafuse*, [1986] 2 R.C.S. 147, la Cour a reconnu une « règle générale selon laquelle une cause d'action prend naissance, aux fins de la prescription, lorsque les faits importants sur lesquels repose cette cause d'action ont été découverts par le demandeur ou auraient dû l'être s'il avait fait preuve de diligence raisonnable » (p. 224). Cette règle signifie qu'un délai de prescription qui commence quand [TRADUCTION] « la cause d'action [du demandeur] prend naissance », ou toute autre formulation allant dans le même sens,

the facts giving rise to the cause of action (Mew et al., at p. 69). That is the point at which that plaintiff's ability to sue the defendant crystalizes.

[141] This Court expanded upon the principles applicable to the discoverability rule in *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549. In that case, Major J. clarified that discoverability is not a general rule that applies *despite* the wording of a legislative enactment, but rather an "interpretive tool for the construing of limitations statutes which ought to be considered each time a limitations provision is in issue" (para. 37). In so doing, he endorsed the approach to this rule that had been taken by the Manitoba Court of Appeal in *Fehr v. Jacob* (1993), 14 C.C.L.T. (2d) 200:

> In my opinion, the judge-made discoverability rule is nothing more than a rule of construction. Whenever a statute requires an action to be commenced within a specified time from the happening of a specific event, the statutory language must be construed. When time runs from "the accrual of the cause of action" or from some other event which can be construed as occurring only when the injured party has knowledge of the injury sustained, the judge-made discoverability rule applies. But, when time runs from an event which clearly occurs without regard to the injured party's knowledge, the judge-made discoverability rule may not extend the period the legislature has prescribed. [para. 22]

[142] The limitation period in *Peixeiro* ran for two years from the time when "damages were sustained" by the plaintiff (para. 2). Applying the test in *Fehr*, Major J. found it "unlikely that by using the words 'damages were sustained', the legislature intended that the determination of the starting point of the limitation period should take place without regard to the injured party's knowledge" (para. 38). In his view, "[t]he use of the phrase 'damages were sustained' rather than 'cause of action arose' . . . is a distinction without a difference" (*ibid.*). He therefore concluded

ne commencera à courir qu'à partir du moment où le demandeur découvre, ou peut raisonnablement découvrir, les faits à l'origine de la cause d'action (Mew et autres, p. 69). Il s'agit du moment où la capacité du demandeur d'intenter une action contre le défendeur se concrétise.

[141] La Cour a expliqué plus en détail les principes applicables à la règle de la possibilité de découvrir dans *Peixeiro c. Haberman*, [1997] 3 R.C.S. 549. Dans cet arrêt, le juge Major a précisé que la règle de la possibilité de découvrir ne constitue pas une règle générale qui s'applique *malgré* le libellé d'un texte de loi, mais constitue plutôt un « outil qui sert à interpréter les textes de loi établissant des délais de prescription et qui doit être pris en considération chaque fois qu'une telle disposition est en litige » (par. 37). Ce faisant, il a souscrit à la conception de cette règle qui avait été adoptée par la Cour d'appel du Manitoba dans l'arrêt *Fehr c. Jacob* (1993), 14 C.C.L.T. (2d) 200 :

> [TRADUCTION] À mon avis, la règle prétorienne de la possibilité de découvrir le dommage n'est rien de plus qu'une règle d'interprétation. Dans tous les cas où une loi indique que l'action en justice doit être intentée dans un délai précis après un événement donné, il faut interpréter les termes de cette loi. Lorsque le délai court à partir du « moment où naît la cause d'action » ou de tout autre événement qui peut être interprété comme ne survenant qu'au moment où la [partie lésée] prend connaissance du dommage, c'est la règle prétorienne de la possibilité de découvrir le préjudice qui s'applique. Toutefois, si le délai court à compter de la date d'un événement qui survient clairement, et sans égard à la connaissance qu'en a la [partie lésée], cette règle ne peut prolonger le délai fixé par le législateur. [par. 22]

[142] Dans l'arrêt *Peixeiro*, le délai de prescription a couru durant deux ans à compter de la date où les « dommages ont été subis » par le demandeur (par. 2). Après avoir appliqué le critère établi dans l'arrêt *Fehr*, le juge Major a conclu qu'il était « peu probable qu'en utilisant les mots "où les dommages ont été subis" le législateur entendait que l'on détermine le point de départ du délai de prescription sans égard au moment où la personne blessée prend connaissance du préjudice » (par. 38). À son avis, « [l]'utilisation des mots "date où les dommages ont

that the discoverability rule applied to the limitation period at issue in that case.

[143] A different conclusion was reached by this Court on the facts in *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53. That dispute turned, in part, on the interpretation of a limitation period that "prohibits an action brought six months after letters of probate or administration of the estate of the deceased have been granted, and after the expiration of one year from the date of death" (para. 18, referring to s. 5 of the *Survival of Actions Act*, R.S.N.L. 1990, c. S-32). Bastarache J., writing for a unanimous Court, once again affirmed the test set out in *Fehr* and reiterated that discoverability is not a general rule but rather an "interpretative tool for construing limitation statutes" (para. 23). Applying the *Fehr* test to the limitation provision at issue in that case, Bastarache J. concluded as follows:

> Pursuant to the *Survival of Actions Act*, the limitation period is triggered by the death of the defendant or the granting by a court of the letters of administration or probate. The section is clear and explicit: time begins to run from one of these two specific events. The Act does not establish a relationship between these events and the injured party's knowledge. I agree with the appellants that knowledge is not a factor: the death or granting of the letters occurs regardless of the state of mind of the plaintiff. We face here a situation in respect of which, as recognized by this Court in *Peixeiro*, the judge-made discoverability rule does not apply to extend the period the legislature has prescribed. Thus, I agree with the Court of Appeal that by using a specific event as the starting point of the "limitation clock", the legislature was displacing the discoverability rule in all the situations to which the *Survival of Actions Act* applies. [Emphasis added; para. 27.]

[144] The Plaintiff in the instant case agrees that *Fehr* sets out the test for whether a limitation period

été subis" au lieu des mots "date où la cause d'action a pris naissance" [. . .] est une distinction sans importance » (*ibid.*). Il a donc conclu que la règle de la possibilité de découvrir s'appliquait au délai de prescription en cause dans cette affaire.

[143] Notre Cour a tiré une conclusion différente au vu des faits dans l'arrêt *Ryan c. Moore*, 2005 CSC 38, [2005] 2 R.C.S. 53. Le litige portait en partie sur l'interprétation d'un délai de prescription selon lequel « aucune action ne peut être intentée après les six mois qui suivent la délivrance de lettres d'homologation ou d'administration de la succession de la personne décédée et après l'expiration d'un délai d'un an suivant la date du décès » (par. 18, renvoyant à l'art. 5 de la *Survival of Actions Act*, R.S.N.L. 1990, c. S-32). S'exprimant au nom d'une Cour unanime, le juge Bastarache a de nouveau confirmé le critère établi dans l'arrêt *Fehr* et a réaffirmé que la règle de la possibilité de découvrir n'est pas une règle générale, mais plutôt un « outil d'interprétation des lois qui établissent des délais de prescription » (par. 23). Après avoir appliqué le critère établi dans l'arrêt *Fehr* au délai de prescription en cause dans cette affaire, le juge Bastarache a conclu ce qui suit :

> Aux termes de la *Survival of Actions Act*, le délai de prescription court à compter du décès du défendeur ou de la délivrance, par un tribunal, de lettres d'administration ou d'homologation. L'article est clair et explicite : le délai commence à courir au moment où survient l'un de ces deux faits particuliers. La Loi n'établit aucun lien entre ces faits et le moment où la partie lésée en prend connaissance. Je conviens avec les appelants que la connaissance n'est pas un facteur à considérer : le décès ou la délivrance des lettres survient indépendamment de l'état d'esprit du demandeur. En l'espèce, nous nous trouvons devant une situation où, comme notre Cour l'a reconnu dans l'arrêt *Peixeiro*, la règle prétorienne de la possibilité de découvrir le dommage ne s'applique pas pour prolonger le délai fixé par le législateur. Je suis donc d'accord avec la Cour d'appel pour dire qu'en désignant un fait particulier comme élément déclencheur du « compte à rebours de la prescription », le législateur se trouvait à écarter la règle de la possibilité de découvrir le dommage dans tous les cas où la *Survival of Actions Act* s'applique. [Je souligne; par. 27.]

[144] Le demandeur en l'espèce convient que l'arrêt *Fehr* établit le critère à appliquer pour décider si

is subject to the discoverability rule (R.F. (Pioneer Appeal), at para. 29), and my colleague affirms this approach at paras. 31-35 of his reasons. However, he goes on to opine that "where the event triggering the limitation period is an element of the cause of action, the legislature has shown its intention that the limitation period be linked to the cause of action's accrual, such that discoverability will apply" (Brown J.'s reasons, at para. 38 (emphasis added)). In other words, he equates language referring to the *accrual* or *arising* of the cause of action in its entirety with language referring to the *occurrence of an element* of the cause of action; in his view, both evidence a legislative intent that the discoverability rule apply.

[145] Although this approach accords with the view expressed by the British Columbia Court of Appeal in this case (paras. 89-90), as well as by the Ontario Court of Appeal in *Fanshawe College of Applied Arts and Technology v. AU Optronics Corp.*, 2016 ONCA 621, 132 O.R. (3d) 81, at paras. 40, 43 and 45, my respectful view is that it expands the scope of the discoverability rule in a manner that is neither consistent with precedent nor justifiable in principle.

[146] First, the suggestion that discoverability applies in all cases where the triggering event is "the occurrence of an element of the underlying cause of action" (Brown J.'s reasons, at para. 44) broadens the test set out by the Manitoba Court of Appeal in *Fehr* — a test which my colleague purports to endorse at paras. 33-35 of his reasons. In that case, Twaddle J.A. was very clear in explaining that the discoverability rule applies "[w]hen time runs from 'the accrual of the cause of action' or from some other event which can be construed as occurring only when the injured party has knowledge of the injury sustained" (para. 22). Only these two situations were identified; there was no indication whatsoever that the discoverability rule ought to apply *automatically* in circumstances where the triggering event is merely the occurrence of a component element of the cause of action (and not the accrual of the cause of action in its entirety).

un délai de prescription est assujetti à la règle de la possibilité de découvrir (m.i. (pourvoi de Pioneer), par. 29), et mon collègue confirme cette approche aux par. 31-35 de ses motifs. Il ajoute cependant que « lorsque l'événement marquant le point de départ du délai de prescription est un élément de la cause d'action, la législature a manifesté son intention que le délai de prescription soit lié à la naissance de la cause d'action, déclenchant du même coup l'application de la règle de la possibilité de découvrir » (motifs du juge Brown, par. 38 (je souligne)). Autrement dit, il assimile les mots désignant la *naissance* de la cause d'action dans son ensemble à ceux qui désignent la *survenance d'un élément* de la cause d'action; selon lui, les deux témoignent de l'intention du législateur que la règle de la possibilité de découvrir s'applique.

[145] Bien que cette approche concorde avec l'avis exprimé par la Cour d'appel de la Colombie-Britannique en l'espèce (par. 89-90), ainsi qu'avec celui de la Cour d'appel de l'Ontario dans l'arrêt *Fanshawe College of Applied Arts and Technology c. AU Optronics Corp.*, 2016 ONCA 621, 132 O.R. (3d) 81, par. 40, 43 et 45, à mon humble avis, cette approche étend la portée de la règle de la possibilité de découvrir d'une manière qui n'est ni conforme à la jurisprudence ni justifiable en principe.

[146] D'abord, l'idée selon laquelle la règle de la possibilité de découvrir s'applique dans tous les cas où le fait déclencheur est « la survenance d'un élément de la cause d'action » (motifs du juge Brown, par. 44) étend la portée du critère établi par la Cour d'appel du Manitoba dans l'arrêt *Fehr* — un critère auquel mon collègue semble souscrire aux par. 33-35 de ses motifs. Dans cette affaire, le juge Twaddle a expliqué très clairement que la règle de la possibilité de découvrir s'applique [TRADUCTION] « [l]orsque le délai court à partir du "moment où naît la cause d'action" ou de tout autre événement qui peut être interprété comme ne survenant qu'au moment où la partie lésée prend connaissance du préjudice qu'elle a subi » (par. 22). Seules ces deux situations ont été mentionnées; rien n'indiquait que la règle de la possibilité de découvrir doit s'appliquer *automatiquement* dans les cas où le fait déclencheur n'est que la survenance d'un élément de la cause d'action (et non la naissance de la cause d'action dans son ensemble).

[147] Not only did this Court endorse *Fehr* in both *Peixeiro* and *Ryan*, but both appeals were resolved on a fairly straightforward application of this approach to discoverability. In *Peixeiro*, this Court reasoned that the limitation period — which commenced when "damages were sustained" — fell within the first category outlined in *Fehr* (to which the discoverability rule applies), given that this triggering event did *not* occur without regard to the plaintiff's knowledge. Likewise, *Ryan* was decided on the basis that the events triggering the commencement of the limitation period at issue — the death of the defendant or the granting of letters of administration or probate — occurred regardless of the plaintiff's state of mind and therefore fell within the second category in *Fehr*, to which the discoverability rule has no application (para. 27). Put simply, neither case was resolved by determining whether the triggering event was "related to", "linked to the basis of" or "an element of" the plaintiff's cause of action.

[147] Non seulement notre Cour a souscrit à l'arrêt *Fehr* dans *Peixeiro* et *Ryan*, mais les deux pourvois ont été tranchés en appliquant, de façon relativement simple, la règle de la possibilité de découvrir. Dans l'arrêt *Peixeiro*, la Cour a jugé que le délai de prescription — qui avait commencé à courir au moment où les « dommages ont été subis » — appartenait à la première catégorie énoncée dans l'arrêt *Fehr* (à laquelle s'applique la règle de la possibilité de découvrir), puisque ce fait déclencheur *n'était pas* survenu indépendamment de la connaissance qu'en avait le demandeur. De même, dans l'arrêt *Ryan*, le pourvoi a été tranché à partir du principe que les événements qui ont marqué le point de départ du délai de prescription en question — soit le décès du défendeur ou la délivrance de lettres d'homologation ou d'administration — étaient survenus indépendamment de l'état d'esprit du demandeur et appartenaient donc à la deuxième catégorie énoncée dans l'arrêt *Fehr*, à laquelle la règle de la possibilité de découvrir ne s'applique pas (par. 27). Autrement dit, aucun des deux pourvois n'a été tranché en décidant si le fait déclencheur avait « un rapport avec » la cause d'action du demandeur, était « lié au fondement » de cette cause d'action ou « en constitu[ait] un élément ».

[148] It is true that this Court in *Ryan* stated that the discoverability rule does not apply where the limitation period "is explicitly linked by the governing legislation to a fixed event unrelated to the injured party's knowledge or the basis of the cause of action" (para. 24 (emphasis added)). The Court of Appeal in the present case characterized this as an "unequivocal statement . . . that the rule can apply where the limitation period is linked to 'the basis of the cause of action'" (para. 89). With respect, the Court of Appeal's narrow focus on this specific statement ignores the broader context in which it was made. In the immediately preceding paragraph in *Ryan* (i.e. para. 23), Bastarache J. reaffirmed — and reproduced in full — the approach to discoverability set out in *Fehr*, and the statement in question appears to be nothing more than a paraphrased summary of this well-accepted approach. Moreover, in the same paragraph (i.e. para. 24), Bastarache J. explained that the discoverability rule *does* apply where the commencement of the limitation period is "related by the legislation to the arising or accrual of the cause

[148] Il est vrai que dans l'arrêt *Ryan*, notre Cour a déclaré que la règle de la possibilité de découvrir ne s'applique pas dans les cas où « la loi applicable lie expressément le délai de prescription à un événement déterminé qui n'a rien à voir avec le moment où la partie lésée en prend connaissance ou avec le fondement de la cause d'action » (par. 24 (je souligne)). En l'espèce, la Cour d'appel a estimé que ces propos équivalaient à une [TRADUCTION] « déclaration sans équivoque [. . .] que la règle peut s'appliquer lorsqu'un délai de prescription est lié au "fondement de la cause d'action" » (par. 89). Avec égards, par son interprétation étroite de cette phrase précise, la Cour d'appel ne tient pas compte du contexte plus large dans lequel elle a été formulée. Au paragraphe précédent dans l'arrêt *Ryan* (soit le par. 23), le juge Bastarache a réitéré — et reproduit en entier — la conception de la règle de la possibilité de découvrir établie dans l'arrêt *Fehr*, et l'énoncé en question semble n'être rien de plus qu'un résumé paraphrasé de cette approche bien acceptée. En outre, dans le même paragraphe (soit le par. 24), le juge Bastarache

of action". From my reading of *Ryan*, I see no intent on the part of this Court to broaden the traditional approach to discoverability, and for this reason, my view is that the words "basis of the cause of action" in para. 24 of *Ryan* should be understood as essentially synonymous with the "arising or accrual of the cause of action".

[149] In any event, principle also commands that the discoverability rule apply *only* where the limitation period runs from the "accrual of the cause of action" (or wording to that effect) or from the occurrence of some event that is related to the state of the plaintiff's knowledge. This is because discoverability is nothing more than a tool of statutory interpretation. Where a legislature provides that a limitation period is triggered by an event whose occurrence depends on the plaintiff's knowledge, courts give effect to this legislative direction by calculating the running of the limitation period from the point at which the plaintiff acquired or was capable of acquiring such knowledge. Conversely, where the legislature provides that a limitation period is triggered by an event that occurs without regard to the plaintiff's state of mind, the courts do not — and indeed, cannot — apply the discoverability rule to postpone the commencement of the limitation period until such time as the plaintiff discovered, or ought to have discovered, that the event had taken place. Courts are bound to interpret and apply statutory law; they cannot rewrite it (*Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48, [2018] 3 S.C.R. 189, at paras. 54-55 and 58).

[150] Limitation periods that begin running upon the accrual of the plaintiff's cause of action evidently fall within the first category outlined in the preceding paragraph. Mew et al. note that a cause

a expliqué que la règle de la possibilité de découvrir *s'applique* lorsque « la loi lie le point de départ du délai de prescription à la naissance de la cause d'action ». À la lecture de l'arrêt *Ryan*, je ne puis discerner, de la part de la Cour, une quelconque intention d'étendre la conception traditionnelle de la règle de la possibilité de découvrir et, pour cette raison, je suis d'avis que l'expression « fondement de la cause d'action » figurant au par. 24 de l'arrêt *Ryan* devrait être considérée comme étant essentiellement synonyme de l'expression « naissance de la cause d'action ».

[149] Quoi qu'il en soit, le principe commande également que la règle de la possibilité de découvrir s'applique *uniquement* dans les affaires où le délai de prescription commence à courir au moment où « la cause d'action prend naissance » (ou toute autre formulation allant dans le même sens) ou au moment où survient un événement qui a un rapport avec la connaissance du demandeur. Il en est ainsi parce que la règle de la possibilité de découvrir n'est rien d'autre qu'un outil d'interprétation statutaire. Lorsque le législateur précise que le point de départ d'un délai de prescription est marqué par un événement dont la survenance dépend de la connaissance qu'en a le demandeur, les tribunaux donnent effet à cette intention législative en calculant la durée du délai de prescription à partir du moment où le demandeur a pris connaissance, ou pouvait prendre connaissance, de l'événement. À l'inverse, lorsque le législateur prévoit que le point de départ d'un délai de prescription est marqué par un événement qui survient indépendamment de l'état d'esprit du demandeur, les tribunaux n'appliquent pas — et, en fait, ne peuvent appliquer — la règle de la possibilité de découvrir pour reporter le point de départ du délai de prescription jusqu'à ce que le demandeur découvre, ou aurait dû découvrir, la survenance de l'événement. Les tribunaux sont tenus d'interpréter et d'appliquer la loi; ils ne peuvent pas la réécrire (*Renvoi relatif à la réglementation pancanadienne des valeurs mobilières*, 2018 CSC 48, [2018] 3 R.C.S. 189, par. 54-55 et 58).

[150] Les délais de prescription qui commencent à courir lorsque prend naissance la cause d'action du demandeur appartiennent évidemment à la première catégorie énoncée au paragraphe précédent. Selon

of action arises only "when all of the elements of a wrong existed, such that an action could be brought" (p. 69), and conversely, that "no cause of action can be said to have accrued unless there is a plaintiff available who is capable of commencing an action and a defendant in existence who is capable of being sued" (p. 70 (footnotes omitted)). Because a cause of action cannot accrue before the plaintiff discovers that they have the right to commence proceedings against the defendant, a legislature which provides for a limitation period that begins running at that point in time necessarily intends the discoverability rule to apply. This explains the reasoning behind the "general rule" set out by this Court in *Central Trust* (see para. 140 above) and affirmed in *M. (K.)*. It is essential to recognize that the limitation period in each case was triggered by the accrual or arising of the plaintiff's cause of action.

Mew et autres, une cause d'action prend naissance uniquement [TRADUCTION] « lorsque sont survenus tous les éléments constitutifs d'une faute, de sorte qu'une action pourrait être intentée » (p. 69) et, inversement, « aucune cause d'action n'est réputée avoir pris naissance à moins qu'il existe un demandeur disponible et capable d'intenter une action et un défendeur qui puisse être poursuivi » (p. 70 (notes en bas de page omises)). Puisque la cause d'action d'un demandeur ne peut prendre naissance tant que celui-ci n'a pas découvert qu'il est en droit d'intenter une action contre le défendeur, le législateur qui prévoit qu'un délai de prescription commence à courir à ce moment précis entend nécessairement que la règle de la possibilité de découvrir s'applique. Cela explique le raisonnement qui sous-tend la « règle générale » établie par la Cour dans l'arrêt *Central Trust* (voir le par. 140 précité) et confirmée dans *M. (K.)*. Il est essentiel de reconnaître que la naissance de la cause d'action du demandeur a marqué le point du délai de prescription dans tous les cas.

[151] Conversely, "the occurrence of an element of the underlying cause of action" (Brown J.'s reasons, at para. 44) will not always fit within either category outlined above at para. 149. It may be that the occurrence of such an event does in fact depend on the state of the plaintiff's knowledge, but unlike the accrual of a cause of action, this does not invariably follow as a matter of logical necessity. In *Peixeiro*, for example, this Court held that the point at which damages are sustained — a constituent element of (among other things) the tort of negligence — depends on when the plaintiff actually has knowledge of his or her injury. Knowledge will not form part of every element of the cause of action in negligence, however. A breach of a standard of care, for example, may occur years or even decades before the plaintiff first learns about it. Although such a breach is a prerequisite to a successful claim in negligence, it is also something that takes place without any regard to the plaintiff's state of mind.

[151] Par contre, « la survenance d'un élément de la cause d'action » (motifs du juge Brown, par. 44) ne cadrera pas toujours avec l'une ou l'autre des catégories énoncées ci-dessus au par. 149. Il se peut que la survenance d'un tel élément dépende de la connaissance du demandeur, mais contrairement à la naissance de la cause d'action, cela ne constituera pas invariablement une nécessité logique. Dans l'arrêt *Peixeiro*, par exemple, la Cour a déclaré que le moment où les dommages sont subis — un élément constitutif du délit de négligence (entre autres) — dépend du moment où le demandeur a connaissance de son préjudice. Toutefois, la connaissance ne fera pas partie intégrante de chaque élément de la cause d'action dans un cas de négligence. Un manquement à la norme de diligence, par exemple, peut avoir eu lieu des années, voire des décennies, avant que le demandeur n'en ait pris connaissance. Bien que ce manquement constitue une condition préalable à remplir pour qu'une action pour négligence soit accueillie, il s'agit également d'un événement qui survient indépendamment de l'état d'esprit du demandeur.

[152] It is for this reason that I disagree in principle with the proposition that the discoverability rule must

[152] C'est pour cette raison que je suis en désaccord, en principe, avec la proposition selon laquelle

*always* apply where the triggering event "is related to", "is linked to the basis of" or "constitutes an element of" the plaintiff's cause of action. My position is instead consistent with that stated by Marshall J.A. of the Newfoundland Court of Appeal in *Snow v. Kashyap* (1995), 125 Nfld. & P.E.I.R. 182:

Where the limitation period is set by the terms of the statute to run from the time when an action arises or accrues, as in *Kamloops* [*v. Nielsen*, [1984] 2 S.C.R. 2,] and *Central Trust*, there is room to imply that the legislation does not intend the period to commence until the injured party has, or ought to have, an awareness of the claim's existence. The criteria under such legislation provisions, therefore, imports a mental element. However, when the limitation statute explicitly ties the prescription period to a specific occurrence, such as the termination of professional services, knowledge of the claimant cannot be construed as a factor. In such instances it is the happening of the factual event which is explicitly relevant and any interpretation implying the period to be related to the claimant's consciousness of the circumstances is precluded. No scope exists to imply the discoverability rule into the legislative intent. [Emphasis added; para. 38.]

[153] With this in mind, I am respectfully of the view that my colleague's approach is undermined by the well-settled principle that the discoverability rule is fundamentally a rule of statutory interpretation. The fact that a limitation period begins running upon the *occurrence of an element* (and not upon the *accrual* or *arising*) of the plaintiff's cause of action is not, on its own, indicative of any legislative intent regarding the applicability of the discoverability rule. As I have already indicated, my colleague's conclusion is the same as the one reached by the Court of Appeal in this case and by the Ontario Court of Appeal in *Fanshawe*: in such circumstances, according to him, discoverability applies automatically. This, however, creates an arbitrary distinction between triggering events that are related to the cause of action and those that are not, despite the fact that both may occur independently of the plaintiff's state of mind. How can it fairly be said that the legislature

la règle de la possibilité de découvrir doit *toujours* s'appliquer lorsque le fait déclencheur « a un rapport avec », « est lié au fondement de » ou « constitue un élément de » la cause d'action du demandeur. Ma position concorde plutôt avec celle exprimée par le juge Marshall, de la Cour d'appel de Terre-Neuve, dans l'arrêt *Snow c. Kashyap* (1995), 125 Nfld. & P.E.I.R. 182 :

[TRADUCTION] Lorsque le libellé de la loi prévoit que le délai de prescription doit commencer à courir au moment où la cause d'action prend naissance, comme dans les arrêts *Kamloops* [*(Ville de) c. Nielsen*, [1984] 2 R.C.S. 2,] et *Central Trust*, il y a lieu de présumer que le législateur ne souhaitait pas que le délai de prescription ne commence à courir qu'une fois que la partie lésée a découvert, ou aurait dû découvrir, l'existence de la faute. Par conséquent, le critère prévu par ces dispositions législatives suppose un élément mental. Cependant, lorsque la loi en matière de prescription lie expressément le délai de prescription à un événement précis, comme la résiliation de services professionnels, la connaissance du demandeur ne peut être considérée comme un facteur. Dans de tels cas, c'est la survenance de l'événement qui importe expressément, et toute interprétation donnant à penser que le délai de prescription est lié à la connaissance qu'a le demandeur des circonstances est exclue. La règle de la possibilité de découvrir le dommage ne doit en aucun cas être interprétée comme une intention du législateur. [Je souligne; par. 38.]

[153] Compte tenu de ce qui précède, je suis respectueusement d'avis que l'approche de mon collègue est sapée par le principe bien établi selon lequel la règle de la possibilité de découvrir constitue fondamentalement une règle d'interprétation statutaire. Le fait qu'un délai de prescription commence à courir au moment où *survient un élément* de la cause d'action du demandeur (et non au moment où celle-ci *prend naissance*) n'indique pas, à lui seul, que le législateur avait une quelconque intention quant à l'applicabilité de la règle de la possibilité de découvrir. Comme je l'ai déjà mentionné, la conclusion de mon collègue est la même que celle tirée par la Cour d'appel en l'espèce, et la même que celle tirée par la Cour d'appel de l'Ontario dans l'arrêt *Fanshawe* : en pareilles circonstances, selon lui, la règle de la possibilité de découvrir s'applique automatiquement. Cela crée toutefois une distinction arbitraire entre les faits déclencheurs ayant un rapport avec la cause

*intended* the discoverability rule to apply to one and not the other? Although knowledge is necessary for a cause of action to fully accrue to the plaintiff, it does not follow that an element of the cause of action also occurs only when the plaintiff has knowledge thereof.

[154] A preferable approach is instead one that considers each statutory limitation clause on its own terms, recognizing that a triggering event that relates to a cause of action can, *but need not*, be dependent upon the plaintiff's state of mind. This approach is faithful to this Court's jurisprudence, and respectful of the notion of discoverability as an interpretative tool and not a general rule that allows clear statutory wording to be disregarded. For my part, I would reaffirm the approach laid out in *Fehr* without any modification.

(2) Application of the Discoverability Rule to the Limitation Period in Section 36(4)(a)(i)

[155] Given the foregoing, it is no surprise that I disagree with my colleague that the discoverability rule applies to the limitation period in s. 36(4)(a)(i) of the *Competition Act* on the basis that "the event triggering this particular limitation period is an element of the underlying cause of action" (Brown J.'s reasons, at para. 44). Rather, the conclusion that results from applying the law as I explained it in the preceding section is that this limitation period commences on the day on which the conduct contrary to Part VI actually takes place, and not the day on which a potential claimant discovers, or is reasonably capable of discovering, that it took place.

[156] Section 36 of the *Competition Act* was "carefully constructed" to create a limited cause of action in respect of serious criminal offences under Part VI

d'action et ceux qui n'en ont pas, même si les deux peuvent se produire indépendamment de l'état d'esprit du demandeur. Comment peut-on dire en toute équité que la législature *souhaitait* que la règle de la possibilité de découvrir s'applique à l'un et non à l'autre? Bien que la connaissance soit nécessaire pour qu'une cause d'action soit pleinement dévolue au demandeur, il ne s'ensuit pas qu'un élément de la cause d'action survient uniquement lorsque le demandeur en a connaissance.

[154] Il vaut mieux plutôt examiner chaque disposition statutaire de prescription selon ses propres termes, en tenant compte du fait qu'un fait déclencheur ayant un rapport avec une cause d'action peut, *mais ne doit pas nécessairement*, dépendre de la connaissance du demandeur. Cette approche est fidèle à la jurisprudence de la Cour et respecte l'idée selon laquelle la règle de la possibilité de découvrir constitue un outil d'interprétation et non une règle générale qui permet de passer outre au texte clair de la loi. Pour ma part, je suis d'avis de réitérer l'approche adoptée dans l'arrêt *Fehr* sans aucune modification.

(2) Application de la règle de la possibilité de découvrir au délai de prescription prévu au sous-al. 36(4)a)(i)

[155] Compte tenu de ce qui précède, il n'est guère étonnant que je sois en désaccord avec mon collègue que la règle de la possibilité de découvrir s'applique au délai de prescription prévu au sous-al. 36(4)a)(i) de la *Loi sur la concurrence* au motif que « le fait déclencheur de ce délai de prescription est un élément de la cause d'action sous-jacente » (motifs du juge Brown, par. 44). En fait, comme je l'ai expliqué dans la section précédente, l'application du droit mène à la conclusion que le délai de prescription commence à courir à la date à laquelle le comportement allant à l'encontre de la partie VI se produit, et non à la date où le demandeur éventuel découvre ou est raisonnablement capable de découvrir que le comportement en question s'est produit.

[156] L'article 36 de la *Loi sur la concurrence* a été « soigneusement défini », de manière à créer une cause d'action limitée à l'égard de certaines

of the *Competition Act* (*General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641, at p. 689). For example, Parliament limited recovery to an amount "equal to the loss or damage proved to have been suffered" by the plaintiff as a result of the prohibited conduct, thereby foreclosing the availability of other types of damages, such as aggravated or punitive damages. Section 36(2) provides plaintiffs with a shortcut to proving conspiracy where the defendant was convicted of the underlying offence. And of significance for our purposes is the fact that this cause of action is circumscribed by a complex twofold limitation period at s. 36(4) that reflects the balance struck by Parliament among the certainty, evidentiary and diligence rationales that underlie this area of the law.

[157] The wording of the limitation period set out in s. 36(4)(a)(i) provides ample support for the proposition that the two-year period commences independently of when the plaintiff first learns of the wrongdoing. Rather than having the limitation period commence upon the accrual of the cause of action (as was the case in *Central Trust* and *M. (K.)*), Parliament decided that it would instead commence on "a day on which the conduct was engaged in" — which, contrary to the position taken by my colleague, is *not* "wording to [the same] effect" as "accrual of the cause of action" (paras. 37 and 41). There is simply no link between this triggering event and the plaintiff's state of mind; it is, in short, an "event which clearly occurs without regard to the injured party's knowledge". The Certification Judge's reading of this provision led him to the same conclusion (para. 54 (CanLII)). It was the existence of conflicting jurisprudence on this point that caused him "not [to be] satisfied that it is plain and obvious that the discoverability principle can never apply to the limitation period in s. 36(4)" (para. 58).

[158] I acknowledge that the "discoverability rule has been applied by this Court even to statutes of

infractions criminelles graves visées par la partie VI de la *Loi sur la concurrence* (*General Motors of Canada Ltd. c. City National Leasing*, [1989] 1 R.C.S. 641, p. 689). Par exemple, le Parlement a restreint le recouvrement des dommages-intérêts à une somme « égale au montant de la perte ou des dommages [que le demandeur est reconnu] avoir subis » par suite du comportement reproché, écartant ainsi la possibilité d'obtenir d'autres types de dommages-intérêts, comme des dommages-intérêts majorés ou punitifs. Le paragraphe 36(2) prévoit un raccourci qui permet au demandeur de prouver l'existence d'un complot lorsque le défendeur est déclaré coupable de l'infraction sous-jacente. Je tiens également à souligner que la présente cause d'action est circonscrite par un délai de prescription complexe à deux volets au par. 36(4) qui illustre l'équilibre établi par le Parlement entre les justifications propres à ce domaine de droit, soit la certitude, la preuve et la diligence.

[157] Le libellé du sous-al. 36(4)a)(i) justifie amplement d'affirmer que le délai de prescription de deux ans commence à courir sans égard au moment où le demandeur apprend l'existence de l'acte fautif. Au lieu de prévoir que le délai de prescription commence à courir à la date où la cause d'action prend naissance (comme dans les affaires *Central Trust* et *M. (K.)*), le Parlement a décidé qu'il commençait plutôt à courir à la « date du comportement en question » — ce qui, contrairement à la position de mon collègue, *ne* sont *pas* des « mots [utilisés dans le] sens » de « naissance de la cause d'action » (par. 37 et 41). Il n'existe tout simplement aucun lien entre ce fait déclencheur et l'état d'esprit du demandeur. Il s'agit, en bref, d'un « événement qui survient clairement, et sans égard à la connaissance qu'en a la [partie lésée] ». L'interprétation que le juge saisi de la demande d'autorisation donne à cette disposition l'a amené à tirer la même conclusion (par. 54 (CanLII)). La jurisprudence contradictoire sur ce point a fait en sorte que le juge [TRADUCTION] « n'était pas convaincu qu'il est évident et manifeste que le principe de la possibilité de découvrir ne peut jamais s'appliquer au délai de prescription prévu au par. 36(4) » (par. 58).

[158] Je conviens que la « règle de la possibilité de découvrir le dommage a été appliquée par la Cour

limitation in which plain construction of the language used would appear to exclude the operation of the rule" (*Peixeiro*, at para. 38). However, a consideration of the context surrounding s. 36(4)(a)(i) lends further support to the conclusion that the discoverability rule does not apply.

[159] First, the cause of action in s. 36(1)(a) is based on two essential elements: (i) the defendant engaging in conduct contrary to any provision of Part VI, and (ii) the plaintiff suffering loss or damage as a result of such conduct. It is only upon the occurrence of both events that the plaintiff can commence proceedings on the basis of this statutory cause of action. Cognizant of this, and of the fact that conspiracies of this nature take place in secret, Parliament decided that the limitation period would not begin when the plaintiff actually sustained loss or damage, but rather when the defendant engaged in the prohibited conduct. It is important to keep in mind that the point at which the conduct is engaged in necessarily precedes the point at which a claimant will suffer loss or damage as a result of such conduct. I would also note that the offence under s. 45 is complete as soon as an unlawful agreement is made, meaning that the "conduct" is "engaged in" even if the agreement is not actually implemented or prices do not actually increase. It follows as a direct consequence of this legislative choice that the limitation period can in fact expire before the plaintiff is in a position to commence proceedings under s. 36(1)(a).

[160] Second, s. 36(4)(a)(ii) provides a mechanism for the plaintiff to advance a claim that may be barred by s. 36(4)(a)(i): even if two years have expired from the day on which the prohibited conduct was engaged in, the limitation period will restart on the day on which criminal proceedings relating to the impugned conduct are finally disposed of. While s. 36(4)(a)(ii) applies only where the alleged conduct contrary to Part VI is the subject of criminal prosecution, it nevertheless provides an indication that Parliament was aware of the strictness of

même à l'égard de textes de loi établissant des délais de prescription dont le libellé, interprété littéralement, semblait exclure l'application de la règle » (*Peixeiro*, par. 38). Toutefois, l'examen du contexte entourant le sous-al. 36(4)a)(i) étaye davantage la conclusion que cette règle ne s'applique pas.

[159] Premièrement, la cause d'action prévue à l'al. 36(1)a) est fondée sur deux éléments essentiels : (i) le défendeur dont le comportement va à l'encontre d'une disposition de la partie VI, et (ii) le demandeur qui subit une perte ou des dommages par suite d'un tel comportement. Ce n'est que lorsque ces deux événements se produisent que le demandeur peut engager des poursuites sur le fondement de cette cause d'action prévue par la loi. Ainsi, et compte tenu de la nature secrète des complots de ce genre, le Parlement a décidé que le délai de prescription ne commencerait pas à courir à la date à laquelle le demandeur subit réellement une perte ou des dommages, mais plutôt à la date à laquelle le défendeur adopte le comportement reproché. Il est important de se rappeler que le moment où se produit le comportement en question précède forcément le moment où le demandeur subit une perte ou des dommages par suite d'un tel comportement. Je tiens également à faire remarquer que l'infraction prévue à l'art. 45 est commise dès la conclusion de l'accord illégal, ce qui signifie que le « comportement » a eu lieu même si l'accord n'est pas mis en œuvre ou il n'y a pas véritablement de majoration des prix. Le choix du législateur entraîne comme conséquence directe la possibilité que le délai de prescription expire avant que le demandeur soit en mesure d'intenter une action sur le fondement de l'al. 36(1)a).

[160] Deuxièmement, le sous-al. 36(4)a)(ii) prévoit un mécanisme permettant au demandeur d'intenter une action prescrite par le sous-al. 36(4)a)(i) : même s'il s'est écoulé deux ans depuis la date où le comportement prohibé a eu lieu, le délai de prescription recommence à courir à la date où il est statué de façon définitive sur la poursuite criminelle visant le comportement reproché. Bien que le sous-al. 36(4)a)(ii) s'applique seulement dans les cas où le comportement reproché contraire à la partie VI fait l'objet d'une poursuite criminelle, ce sous-alinéa révèle

s. 36(4)(a)(i) and chose to enact this provision as the *only* means of relieving against it.

[161] Third, and unlike claims subject to the general limitation period in British Columbia's *Limitation Act*, S.B.C. 2012, c. 13, s. 21, Parliament has not subjected claims under s. 36(1)(a) to any ultimate limitation period. Interpreting s. 36(4)(a)(i) as commencing only when the underlying conduct becomes discoverable will therefore have the effect of leaving defendants at risk of lawsuit indefinitely. As Paul-Erik Veel helpfully observes, the result would be that "[c]ompanies could face claims decades later, well after the employees involved in the alleged conspiracy may have left and documents lost, without any ability to defend themselves" (*Waiting forever for the axe to drop? Discoverability and the limitation period for Competition Act claims, Lenczner Slaght*, August 12, 2016 (online)). This runs contrary to the certainty and evidentiary rationales that underlie the law of limitations.

[162] Fourth, the two-year limitation period was enacted by Parliament at a time when limitation periods were comparatively much longer. For example, the provincial limitations statutes that were in force at the time in Ontario and British Columbia set out a general limitation period of six years (*The Limitations Act*, R.S.O. 1970, c. 246, s. 45(1); *Statute of Limitations*, R.S.B.C. 1960, c. 370, s. 3). The relatively short limitation period at issue here, which commences even before the cause of action fully crystalizes, provides a further indication of the premium that Parliament placed on granting repose to defendants and encouraging diligence by potential plaintiffs.

[163] The statutory provision at issue here is therefore akin to s. 138.14 of Ontario's *Securities Act*, R.S.O. 1990, c. S.5, which this Court recently

néanmoins que le Parlement était conscient de la rigueur du sous-al. 36(4)a)(i) et a choisi de l'édicter parce qu'il s'agissait du *seul* moyen d'établir une exception à la règle.

[161] Troisièmement, contrairement aux demandes assujetties au délai de prescription général prévu par la *Limitation Act*, S.B.C. 2012, c. 13, art. 21, de la Colombie-Britannique, le Parlement n'a aucunement assorti le recours fondé sur l'al. 36(1)a) d'un délai de prescription ultime. Si l'on tient pour acquis que le délai prévu au sous-al. 36(4)a)(i) ne commence à courir que lorsque le comportement visé peut être découvert, il va sans dire que les défendeurs risquent de se faire poursuivre indéfiniment. Comme Paul-Erik Veel le fait observer à juste titre, il s'ensuivrait que [TRADUCTION] « [l]es entreprises risqueraient de se faire poursuivre des décennies plus tard, longtemps après que les employés ayant participé au complot allégué aient quitté leur poste et que les documents aient été égarés, et sans que les employés ne puissent se défendre » (*Waiting forever for the axe to drop? Discoverability and the limitation period for Competition Act claims*, *Lenczner Slaght*, 12 août 2016 (en ligne)). Cela va à l'encontre des justifications en matière de certitude et de preuve qui constituent le fondement du droit en matière de prescription.

[162] Quatrièmement, le Parlement a fixé le délai de prescription à deux ans à une époque où les délais étaient comparativement beaucoup plus longs. Par exemple, les lois provinciales sur la prescription en vigueur à l'époque en Ontario et en Colombie-Britannique prévoyaient un délai de prescription général de six ans (*The Limitations Act*, R.S.O. 1970, c. 246, par. 45(1); *Statute of Limitations*, R.S.B.C. 1960, c. 370, art. 3). Le délai relativement court en cause dans la présente affaire, qui commence à courir avant même que la cause d'action ne prenne entièrement forme, révèle là encore la grande importance que le Parlement a attachée aux objectifs d'assurer la tranquillité d'esprit des défendeurs et d'encourager les demandeurs potentiels à faire preuve de diligence.

[163] La disposition statutaire en cause dans l'affaire qui nous occupe s'apparente donc à l'art. 138.14 de la *Loi sur les valeurs mobilières*, L.R.O. 1990,

considered in *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60, [2015] 3 S.C.R. 801; because there is no suspension mechanism built into that statutory limitation clause, "the limitation period begins to run regardless of knowledge on the plaintiff's part, be it on when a document containing a misrepresentation is released, when an oral statement containing a misrepresentation is made, or when there is a failure to make timely disclosure" (para. 79). Under both provisions, the limitation period is triggered by an event that is unrelated to the state of the plaintiff's knowledge. This is consistent with a number of judicial decisions that considered this issue as it pertains to s. 36 of the *Competition Act* (see: *CCS Corp. v. Secure Energy Services Inc.*, 2014 ABCA 96, 575 A.R. 1, at para. 4; *Laboratoires Servier v. Apotex Inc.*, 2008 FC 825, 67 C.P.R. (4th) 241, at para. 488; *Garford Pty Ltd. v. Dywidag Systems International, Canada, Ltd.*, 2010 FC 996, 88 C.P.R. (4th) 7, at paras. 28-33; *Eli Lilly and Co. v. Apotex Inc.*, 2009 FC 991, 80 C.P.R. (4th) 1, at para. 729; *Fairview Donut Inc. v. The TDL Group Corp.*, 2012 ONSC 1252, at paras. 643-46 (CanLII)).

[164] On a different note, I am not persuaded that a short limitation period, to which the discoverability rule does not apply, will defeat the purpose for which Parliament enacted s. 36 and the rest of the *Competition Act*. Civil liability under s. 36 is not the exclusive means by which persons are held to account for anti-competitive conduct: the statute also provides for a variety of penal and administrative consequences for activities that reduce competition in the marketplace. Moreover, as I will explain later in these reasons, alleged wrongdoers may also be liable at common law or in equity for conduct that constitutes an offence under Part VI. A short limitation period for the cause of action under s. 36(1) therefore does not defeat Parliament's objective of "maintain[ing] and encourag[ing] competition in Canada . . . in order to provide consumers with competitive prices and product choices" (*Competition Act*, s. 1.1).

c. S.5, de l'Ontario, sur lequel s'est penché récemment notre Cour dans *Banque Canadienne Impériale de Commerce c. Green*, 2015 CSC 60, [2015] 3 R.C.S. 801. Faute de mécanisme interne de suspension prévu par la loi, « le délai de prescription commenc[e] à courir sans égard à la connaissance du demandeur, que ce soit lors de la publication d'un document contenant une déclaration inexacte de faits, lors d'une déclaration orale contenant une déclaration inexacte de faits, ou en cas de défaut de divulgation en temps utile » (par. 79). Selon les deux dispositions, le point de départ du délai de prescription est déclenché par un événement étranger à la connaissance du demandeur. Ce principe est conforme à plusieurs décisions judiciaires portant sur cette question, qui concerne l'art. 36 de la *Loi sur la concurrence* (voir : *CCS Corp. c. Secure Energy Services Inc.*, 2014 ABCA 96, 575 A.R. 1, par. 4; *Laboratoires Servier c. Apotex Inc.*, 2008 CF 825, 67 C.P.R. (4th) 241, par. 488; *Garford Pty Ltd. c. Dywidag Systems International, Canada, Ltd.*, 2010 CF 996, 88 C.P.R. (4th) 7, par. 28-33; *Eli Lilly and Co. c. Apotex inc.*, 2009 CF 991, 80 C.P.R. (4th) 1, par. 729; *Fairview Donut Inc. c. The TDL Group Corp.*, 2012 ONSC 1252, par. 643-646 (CanLII)).

[164] Dans un autre ordre d'idée, je ne suis pas convaincue qu'un court délai de prescription, auquel la règle de la possibilité de découvrir ne s'applique pas, viendra contrecarrer l'objectif que visait le Parlement par l'adoption de l'art. 36 et du reste de la *Loi sur la concurrence*. La responsabilité civile prévue à l'art. 36 n'est pas le seul moyen de tenir une personne responsable d'un comportement anticoncurrentiel : la loi prévoit également un éventail de conséquences pénales et administratives pour des activités qui diminuent la concurrence sur le marché. En outre, comme je l'expliquerai plus loin, l'auteur allégué d'une faute risque d'être tenu responsable en common law ou en equity d'un comportement qui constitue une infraction visée à la partie VI. Par conséquent, le court délai de prescription applicable à la cause d'action prévue au par. 36(1) ne vient pas contrecarrer l'objectif du Parlement de « préserver et de favoriser la concurrence au Canada [. . .] dans le but d'assurer aux consommateurs des prix compétitifs et un choix dans les produits » (*Loi sur la concurrence*, art. 1.1).

[165] As a result, I disagree with my colleague that the limitation period in s. 36(4)(a)(i) begins to run on the date that the conduct contrary to Part VI is either discovered or discoverable by the plaintiff. Properly interpreted, the triggering event in this statutory provision "clearly occurs without regard to the injured party's knowledge", and the provision does not contain "wording to [the same] effect" as "accrual" of the s. 36 cause of action. A proper application of the *Fehr* test therefore leads to the conclusion that the discoverability rule does not apply. Applying discoverability would make the limitation period chosen by Parliament virtually meaningless and create uncertainty around the likelihood and timing of significant litigation.

[165] Par conséquent, je suis en désaccord avec la conclusion de mon collègue selon laquelle le délai de prescription établi au sous-al. 36(4)a)(i) commence à courir à la date à laquelle le demandeur a découvert ou aurait pu découvrir le comportement allant à l'encontre de la partie VI. Si l'on interprète cette disposition correctement, le fait déclencheur dont il est question « survient clairement, et sans égard à la connaissance qu'en a la [partie lésée] » et la disposition en cause ne contient pas des « mots [dans le] sens » de « naissance » de la cause d'action fondée sur l'art. 36. L'application correcte du critère de l'arrêt *Fehr* mène à la conclusion que la règle de la possibilité de découvrir ne s'applique pas. Si cette règle s'appliquait, le délai de prescription choisi par le Parlement perdrait pratiquement tout son sens et laisserait planer l'incertitude quant à la probabilité d'engager de nombreuses poursuites et au moment de les engager.

B. *Must There Be a Special Relationship Between the Parties to an Action in Order for the Doctrine of Fraudulent Concealment to Toll the Limitation Period?*

B. *Pour que la doctrine de la dissimulation frauduleuse reporte le point de départ du délai de prescription, doit-il y avoir une relation spéciale entre les parties à une action?*

[166] The fraudulent concealment doctrine is a doctrine that operates to prevent a limitation clause from being used as an instrument of injustice in circumstances where a defendant conceals the facts giving rise to a potential cause of action from a plaintiff. Because it would be unconscionable for that defendant to then rely on the limitation clause as a defence to the claim, equity "suspend[s] the running of the limitation clock until such time as the injured party can reasonably discover the cause of action" (*Giroux Estate v. Trillium Health Centre* (2005), 74 O.R. (3d) 341 (C.A.), at para. 28). The Canadian approach to this doctrine has its origin in the England and Wales Court of Appeal's decision in *Kitchen v. Royal Air Forces Association*, [1958] 2 All E.R. 241 (C.A.), in which Lord Evershed, M.R., wrote as follows:

[166] La doctrine de la dissimulation frauduleuse vise à empêcher que le délai de prescription serve à créer une injustice lorsque le défendeur cache au demandeur les faits à l'origine d'une cause d'action potentielle. Puisqu'il serait abusif pour le défendeur d'invoquer la prescription comme défense, l'equity [TRADUCTION] « permet de suspendre l'écoulement du délai de prescription jusqu'à ce que la partie lésée puisse raisonnablement découvrir l'existence de la cause d'action » (*Giroux Estate c. Trillium Health Centre* (2005), 74 O.R. (3d) 341 (C.A.), par. 28). La conception canadienne de cette doctrine tire son origine de la décision de la Cour d'appel d'Angleterre et du Pays de Galles, *Kitchen c. Royal Air Forces Association*, [1958] 2 All E.R. 241 (C.A.), où le maître des rôles lord Evershed s'est exprimé ainsi :

It is now clear . . . that the word "fraud" in s. 26(b) of the Limitation Act, 1939, is by no means limited to common law fraud or deceit. Equally, it is clear . . . that no degree of moral turpitude is necessary to establish fraud within the section. What is covered by equitable fraud is a matter which LORD HARDWICKE did not attempt to define two hundred years ago, and I certainly shall not attempt to

[TRADUCTION] Il est maintenant clair [. . .] que le mot « fraude » employé à l'al. 26b) de la Limitation Act, 1939, ne désigne pas uniquement une tromperie ou une fraude en common law. Il est également clair [. . .] qu'aucun degré de turpitude morale n'est nécessaire pour prouver qu'il y a fraude au sens de la disposition. Ce que vise la fraude en equity est une chose que le LORD HARDWICKE

do so now, but it is, I think, clear that the phrase covers conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other. [Emphasis added; p. 249.]

[167] The Pioneer Defendants, relying on *Kitchen* and the jurisprudence that followed, argue that the existence of a "special relationship" between the plaintiff and the defendant is a necessary precondition to the application of the doctrine of fraudulent concealment. Because such a relationship was not pleaded by the Plaintiff, they say that this doctrine cannot operate to toll the limitation period and that the claim against them must fail accordingly.

[168] I would note that this Court has only ever considered the operation of fraudulent concealment in the context of a special relationship between the plaintiff and the defendant. This Court applied that doctrine in *Guerin v. The Queen*, [1984] 2 S.C.R. 335, after Dickson J. (as he then was) found that the conduct of the Indian Affairs Branch of the federal government was "unconscionable, having regard to the fiduciary relationship between the Branch and the [Musqueam Indian] Band" (p. 390). Likewise, this Court recognized the existence of a special relationship between a parent and a child in *M. (K.)*, a case concerning incest. There, La Forest J. explained that such cases necessarily involve "a grievous abuse of a position of confidence", since "incest is really a double wrong — the act of incest itself is followed by an abuse of the child's innocence to prevent recognition or revelation of the abuse" (p. 58). Canadian courts have also found special relationships to exist between lawyers and clients, physicians and patients, employers and terminated employees, and trustees and beneficiaries (Mew et al., at p. 234).

[169] That said, I am not prepared to go so far as to say that a special relationship — which I understand to be one that is based on trust and confidence — is

n'a pas tenté de définir il y a deux cents ans et que je ne tenterai certainement pas de définir maintenant; toutefois, il m'apparaît clair que cette expression vise une conduite qui, compte tenu de l'existence d'une relation spéciale entre les parties concernées, est un abus de la part de l'une envers l'autre. [Je souligne; p. 249.]

[167] S'appuyant sur l'arrêt *Kitchen* et la jurisprudence subséquente, les défenderesses Pioneer font valoir que l'existence d'une « relation spéciale » entre le demandeur et le défendeur est une condition préalable nécessaire à l'application de la doctrine de la dissimulation frauduleuse. Vu que le demandeur en l'espèce n'a pas allégué l'existence d'une telle relation, elles affirment que cette doctrine ne permet pas de repousser le point de départ du délai de prescription et que la demande déposées contre elles est donc vouée à l'échec.

[168] Je ferais observer que notre Cour n'a toujours examiné l'application de la dissimulation frauduleuse que dans le contexte d'une relation spéciale entre le demandeur et le défendeur. Notre Cour a appliqué cette doctrine dans *Guerin c. La Reine*, [1984] 2 R.C.S. 335, à la suite de la conclusion du juge Dickson (plus tard juge en chef) qui qualifiait la conduite de la direction des Affaires indiennes du gouvernement fédéral, de « peu scrupuleuse, compte tenu du rapport fiduciaire qui exist[ait] entre la Direction et la bande [indienne Musqueam] » (p. 390). De même, notre Cour a reconnu l'existence d'une relation spéciale entre un parent et son enfant dans *M. (K.)*, une affaire d'inceste. Le juge La Forest y a expliqué que, forcément, dans de tels cas, « on abuse gravement d'une situation de confiance », puisque « l'inceste est réellement un double méfait — l'acte d'inceste est lui-même suivi d'un abus de l'innocence de l'enfant visant à l'empêcher de se rendre compte de l'agression ou d'en révéler l'existence » (p. 58). Les tribunaux canadiens ont également conclu à l'existence d'une relation spéciale entre les avocats et leurs clients, les médecins et leurs patients, les employeurs et les employés congédiés, ainsi que les fiduciaires et les bénéficiaires de la fiducie (Mew et autres, p. 234).

[169] Cela dit, je ne suis pas disposée à aller jusqu'à affirmer que l'existence d'une relation spéciale — fondée, selon moi, sur la confiance — constitue toujours

always a prerequisite or a necessary element for the operation of the fraudulent concealment doctrine. In *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] 1 S.C.R. 678, Binnie J. explained that fraud in equity is broader than it is at common law, as it captures "transactions falling short of deceit but where the Court is of the opinion that it is unconscientious for a person to avail himself of the advantage obtained" (para. 39 (emphasis added), citing *First City Capital Ltd. v. B.C. Building Corp.* (1989), 43 B.L.R. 29 (B.C.S.C.), at p. 37). He further noted that this ground for equitable relief "is so infinite in its varieties that the Courts have not attempted to define it", adding that "all kinds of unfair dealing and unconscionable conduct in matters of contract come within its ken" (*ibid.* (emphasis added), citing *McMaster University v. Wilchar Construction Ltd.* (1971), 22 D.L.R. (3d) 9 (Ont. H.C.), at p. 19). What constitutes "unconscionable conduct" for the purposes of the doctrine of equitable fraud will vary from case to case and will depend in part on the connection between the parties. This is helpfully explained by Ian Spry in his leading textbook, *The Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages* (9th ed. 2014):

> Fraud in this sense includes, not only fraud in the sense of active dishonesty that gave rise to an action of deceit at law, but also the taking of active steps with the intention of concealing the existence of the material cause of action. The better view is that it includes also, in cases where the defendant is under a special duty to the plaintiff, a failure to disclose the events which have taken place and which give rise to the cause of action in question. So it was said by Lord Evershed that in this context fraud includes "conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other". [p. 440]

[170] In effect, in the commercial context, limiting the application of the fraudulent concealment doctrine to only those situations where there is a special relationship between the parties presupposes that, in that context, there can be no injustice resulting

une condition préalable ou un élément nécessaire à l'application de la doctrine de la dissimulation frauduleuse. Dans *Performance Industries Ltd. c. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 CSC 19, [2002] 1 R.C.S. 678, le juge Binnie a expliqué que le terme « fraude » comporte un sens plus large en equity qu'en common law, car il s'entend également [TRADUCTION] « d'opérations qui ne sont pas dolosives, mais à l'égard desquelles le tribunal estime qu'il serait abusif de laisser une personne profiter de l'avantage obtenu » (par. 39 (je souligne), citant *First City Capital Ltd. c. B.C. Building Corp.* (1989), 43 B.L.R. 29 (C.S. C.-B.), p. 37). Le juge Binnie a également fait remarquer que la fraude donnant ouverture à une réparation en equity se présente sous « un nombre tellement infini de formes que les tribunaux n'ont pas tenté de la définir », et ajouté [TRADUCTION] « [qu']elle vise toutes sortes de manœuvres déloyales et de conduites abusives en matière contractuelle » (*ibid.* (je souligne), citant *McMaster University c. Wilchar Construction Ltd.* (1971), 22 D.L.R. (3d) 9 (H.C. Ont.), p. 19). Déterminer en quoi consiste « une conduite abusive » pour l'application de la doctrine de la fraude en equity varie d'une affaire à l'autre et dépend en partie du lien qui unit les parties. C'est ce qu'explique de manière utile Ian Spry dans son ouvrage qui fait autorité, *The Principles of Equitable Remedies : Specific Performance, Injunctions, Rectification and Equitable Damages* (9e éd. 2014) :

> [TRADUCTION] Dans ce sens, la fraude ne s'entend pas uniquement d'une activité malhonnête qui ouvre droit à une action pour dol, mais aussi de la prise de mesures concrètes dans le but de dissimuler l'existence de la cause d'action réelle. De fait, la fraude s'entend également, dans les cas où le défendeur assume un devoir particulier envers le demandeur, du défaut de révéler les faits qui se sont produits et qui donnent naissance à la cause d'action en question. Comme l'expliquait lord Evershed, dans ce contexte, le mot « fraude » vise « une conduite qui, compte tenu de la relation spéciale qui existe entre les parties concernées, est un abus de la part de l'une envers l'autre ». [p. 440]

[170] En fait, dans le contexte commercial, appliquer la doctrine de la dissimulation frauduleuse uniquement dans les cas où il existe une relation spéciale entre les parties suppose que, dans ce contexte, il ne peut y avoir d'injustice découlant de l'application

from the application of a limitation period *unless* a special relationship exists. Put differently, insofar as there may be situations in which the fraudulent concealment doctrine would rectify an injustice caused to a plaintiff by the application of a limitation period, *even though there exists no special relationship* between the parties, then limiting the doctrine by requiring such a relationship could be seen as contradicting the very spirit of a doctrine that aims to protect against unconscionable conduct.

[171] Based on this understanding of fraudulent concealment, my view is that it is not plain and obvious that equity can intervene to toll the applicable limitation period only in cases where there exists a special relationship; it may be that it can also intervene in cases — at least in the commercial context, as here — where the plaintiff can demonstrate something commensurate with or tantamount to a special relationship.

[172] To be sure, the mere allegation of a price-fixing agreement among defendants is not sufficient *on its own* for the fraudulent concealment doctrine to toll the applicable limitation period. If it were, the limitation period for which Parliament specifically provided in s. 36(4) of the *Competition Act* would be meaningless in these circumstances, given the fact that price-fixing agreements are, in practice, carried out in secret.

[173] In the case at hand, the Plaintiff did not plead that there was a special relationship between the class members and the Pioneer Defendants. However, as I explained above, it is not plain and obvious that this is fatal to the Plaintiff's fraudulent concealment claim, since a special relationship may not be a necessary precondition to the application of the fraudulent concealment doctrine. While the mere allegation of a price-fixing agreement among the Pioneer Defendants is not sufficient *on its own* for this doctrine to toll the applicable limitation period, in the commercial context, a showing of fraud in equity tantamount to or commensurate with the existence of a special relationship could be enough.

d'un délai de prescription *sauf* en présence d'une relation spéciale. Autrement dit, dans la mesure où il peut exister une situation dans laquelle cette doctrine corrigerait une injustice que fait subir à un demandeur l'application d'un délai de prescription, *malgré l'absence de relation spéciale* entre les parties, l'on pourrait considérer que restreindre l'application de la doctrine en exigeant la présence d'une telle relation contredit l'esprit même d'une doctrine qui vise à prévenir les comportements abusifs.

[171] Vu cette conception de la dissimulation frauduleuse, il ne me semble pas évident et manifeste que l'equity peut intervenir pour repousser le point de départ du délai de prescription uniquement dans les cas où il existe une relation spéciale; il se peut qu'elle puisse aussi intervenir dans les cas — du moins en matière commerciale, comme dans le cas présent — où le demandeur peut démontrer quelque chose correspondant ou d'équivalent à une relation spéciale.

[172] À n'en pas douter, la simple allégation que des défendeurs se sont entendus pour fixer les prix ne suffit pas *en soi* pour que la doctrine de la dissimulation frauduleuse repousse le point de départ du délai de prescription applicable. Si cette allégation était suffisante, le délai de prescription que le Parlement a expressément prévu au par. 36(4) de la *Loi sur la concurrence* serait dénué de sens dans les circonstances, vu que les ententes de fixation des prix sont, en pratique, mises en œuvre en secret.

[173] En l'espèce, le demandeur n'a pas invoqué l'existence d'une relation spéciale entre les membres du groupe et les défenderesses Pioneer. Toutefois, comme je l'ai expliqué précédemment, il n'est pas évident et manifeste que cette omission porte un coup fatal à l'allégation de dissimulation frauduleuse faite par le demandeur, car une relation spéciale ne saurait être une condition préalable à l'application de la doctrine de la dissimulation frauduleuse. Bien que la simple allégation qu'un accord de fixation des prix a été conclu entre les défenderesses Pioneer ne suffise pas, *à elle seule*, pour que cette doctrine repousse le point de départ du délai de prescription applicable, dans un contexte commercial, la démonstration qu'il y a eu fraude au sens de l'equity équivalente ou correspondant à l'existence d'une relation spéciale pourrait suffire.

[174] The Plaintiff pleaded that the Pioneer Defendants "took active steps to, and did, conceal the unlawful conspiracy from their customers" (R.F. (Pioneer Appeal, at para. 11)). Given that we are at the certification stage, I am prepared to conclude that it is not "plain and obvious" that the fraudulent concealment doctrine has no application in this case. Whether or not the Plaintiff will be successful in relying on this doctrine to toll the applicable limitation period in these circumstances, however, will depend on what he can prove at trial — that is, whether he can establish a special relationship, or maybe something tantamount to or commensurate with one could suffice.

[175] On the basis of the foregoing, while the discoverability rule does not apply to toll the limitation period, it may be that the fraudulent concealment doctrine does, and, accordingly, I would dismiss the Pioneer Appeal regarding that question. However, there remain three more issues, common to all Defendants, and because the Pioneer Defendants have adopted the submissions of the Toshiba Appeal with regards to these common issues, I will consider them together in the subsequent section. For the aforementioned reasons and for the reasons that follow, I would allow the Pioneer Appeal in part.

III. The Toshiba Appeal

[176] The issues in the Toshiba Appeal, which are common to both appeals, are threefold:

(a) Is it plain and obvious that the Umbrella Purchasers' claims under s. 36(1)(a) of the *Competition Act* cannot succeed?

(b) Is it plain and obvious that s. 36(1) bars a plaintiff from alleging common law and equitable causes of action in respect of conduct that breaches the prohibitions in Part VI of the *Competition Act*?

[174] Le demandeur a fait valoir que les défenderesses Pioneer [TRADUCTION] « ont pris des mesures concrètes pour dissimuler, et ont effectivement dissimulé, le complot illégal à leurs clients » (m.i. (pourvoi de Pioneer), par. 11). Comme l'affaire se trouve à l'étape de l'autorisation, je suis disposée à conclure qu'il n'est pas « évident et manifeste » que la doctrine de la dissimulation frauduleuse ne trouve pas application en l'espèce. Toutefois, le point de savoir si le demandeur réussira à faire reporter le point de départ du délai de prescription applicable dans ces circonstances dépendra de ce qu'il peut prouver au procès; autrement dit, sera-t-il en mesure d'établir une relation spéciale, ou peut-être que quelque chose d'équivalent ou de correspondant à cette relation suffira.

[175] Compte tenu de ce qui précède, même si la règle de la possibilité de découvrir ne s'applique pas de manière à reporter le point de départ du délai de prescription, il se peut que la doctrine de la dissimulation frauduleuse s'applique et, par conséquent, je suis d'avis de rejeter le pourvoi de Pioneer quant à cette question. Il reste cependant à trancher trois autres questions, communes à toutes les défenderesses, et, comme les défenderesses Pioneer ont fait leurs les arguments du pourvoi de Toshiba sur ces questions communes, je les examinerai ensemble dans la prochaine section. Pour les motifs qui précèdent et ceux qui suivent, j'accueillerais le pourvoi de Pioneer en partie.

III. Le pourvoi de Toshiba

[176] Le pourvoi de Toshiba soulève trois questions communes aux deux pourvois :

a) Est-il évident et manifeste que les réclamations présentées par les acheteurs sous parapluie sur le fondement de l'al. 36(1)a) de la *Loi sur la concurrence* ne peuvent être accueillies?

b) Est-il évident et manifeste que le par. 36(1) de la *Loi sur la concurrence* empêche le demandeur d'exercer des recours de common law et d'equity à l'égard d'un comportement qui enfreint les prohibitions prévues à la partie VI de la *Loi sur la concurrence*?

(c) What standard must a representative plaintiff meet in order to have loss-related questions certified as "common issues" among indirect purchasers, and has the Plaintiff met this standard in the present case?

[177] I write separately because my views diverge from those of my colleague on all three of these issues. I will address each in turn.

A. *Is it Plain and Obvious That the Umbrella Purchasers' Claims Under Section 36(1) of the Competition Act Cannot Succeed?*

[178] The first issue in the Toshiba Appeal is whether the Certification Judge erred in holding that the Umbrella Purchasers can advance claims under s. 36(1) of the *Competition Act* against the Defendants. The Defendants submit that the Certification Judge did so err, and that upholding his conclusion on this point will have the effect of opening up "a potentially limitless scope of liability that could not have been contemplated by Parliament and is contrary to the scheme of the *Competition Act*" (A.F. (Toshiba Appeal), at para. 97).

[179] I agree with my colleague that resolving this issue requires an exercise in statutory interpretation, under which the words of the *Competition Act* are to "be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, citing E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87). However, we must not lose sight of the fact that our contextual approach to statutory interpretation also draws on the relevant legal principles and norms (see *R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 43; *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, at para. 48).

c) Quelle est la norme à laquelle doit satisfaire le représentant des demandeurs pour que les questions liées à la perte soient autorisées en tant que « questions communes » aux acheteurs indirects? Le demandeur satisfait-il à cette norme en l'espèce?

[177] Je rédige ces motifs distincts parce que mon opinion et celle de mon collègue divergent sur toutes ces trois questions. Je les examinerai à tour de rôle.

A. *Est-il évident et manifeste que les réclamations présentées par les acheteurs sous parapluie sur le fondement du par. 36(1) de la Loi sur la concurrence ne peuvent être accueillies?*

[178] La première question soulevée dans le pourvoi de Toshiba est de savoir si le juge saisi de la demande d'autorisation a commis une erreur en concluant que les acheteurs sous parapluie peuvent poursuivre les défenderesses en justice sur le fondement du par. 36(1) de la *Loi sur la concurrence*. Les défenderesses font valoir que le juge a commis une telle erreur et que la confirmation de sa conclusion sur ce point aura pour effet d'établir une [TRADUCTION] « responsabilité potentiellement illimitée qui ne saurait figurer parmi les objectifs du Parlement et qui va à l'encontre du régime établi par la *Loi sur la concurrence* » (m.a. (pourvoi de Toshiba), par. 97).

[179] À l'instar de mon collègue, j'estime que pour trancher cette question, il faut se livrer à un exercice d'interprétation statutaire consistant à lire les termes de la *Loi sur la concurrence* [TRADUCTION] « dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'[économie] de la loi, l'objet de la loi et l'intention du législateur » (*Bell ExpressVu Limited Partnership c. Rex*, 2002 CSC 42, [2002] 2 R.C.S. 559, par. 26, citant E. Driedger, *Construction of Statutes* (2e éd. 1983), p. 87). Cependant, nous ne devons pas perdre de vue le fait que notre méthode contextuelle d'interprétation des lois s'appuie également sur les normes et principes juridiques pertinents (voir *R. c. Alex*, 2017 CSC 37, [2017] 1 R.C.S. 967, par. 31; *McLean c. Colombie-Britannique (Securities Commission)*, 2013 CSC 67, [2013] 3 R.C.S. 895, par. 43; *ATCO Gas and Pipelines Ltd. c. Alberta (Energy & Utilities Board)*, 2006 CSC 4, [2006] 1 R.C.S. 140, par. 48).

[180] On its face, s. 36(1) appears to be worded broadly enough to capture claims by umbrella purchasers, so long as they can prove that they "suffered loss or damage as a result of" the conduct specified in para. (a) or (b). According to the Defendants, however, this statutory provision must be interpreted in a manner that is consistent with the principles that limit the extent of liability at common law (A.F. (Toshiba Appeal), at paras. 97-99). They point specifically to two legal principles that are relevant for the purposes of liability to umbrella purchasers: indeterminacy and remoteness. At its core, therefore, the issue under this heading raises the question of whether those principles can inform our interpretation of s. 36(1) of the *Competition Act* — and in particular, the extent of a defendant's liability thereunder in the context of a price-fixing claim brought by persons whose ODD or ODD product was manufactured or supplied by a non-Defendant.

[181] *Indeterminacy* is a policy consideration that negates the imposition of a duty of care in negligence where it would expose the defendant to "liability in an indeterminate amount for an indeterminate time to an indeterminate class" (*Ultramares Corp. v. Touche*, 174 N.E. 441 (N.Y.C.A. 1931), at p. 444, per Cardozo C.J.). This concern arises where finding a duty of care between a plaintiff and a defendant would open the floodgates, resulting in "massive, uncontrolled liability" (A. M. Linden et al., *Canadian Tort Law* (11th ed. 2018), at p. 278). *Remoteness* is a related principle that limits the scope of liability in negligence where "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 12, citing A. M. Linden and B. Feldthusen, *Canadian Tort Law* (8th ed. 2006), at p. 360). According to the authors of the 11th edition of that text:

> The losses or injuries incurred by plaintiffs must not be "too remote" a consequence of the defendants' negligent

[180] À première vue, le libellé du par. 36(1) semble suffisamment général pour englober les réclamations des acheteurs sous parapluie, pourvu qu'ils puissent établir qu'ils ont « subi une perte ou des dommages par suite » des comportements énumérés aux al. a) et b). Les défenderesses affirment cependant qu'il faut interpréter cette disposition conformément aux principes qui limitent l'étendue de la responsabilité en common law (m.a. (pourvoi de Toshiba), par. 97-99). Elles invoquent précisément deux principes de droit pertinents pour la responsabilité envers les acheteurs sous parapluie : l'indétermination et le caractère éloigné. Essentiellement, la question à trancher sous cette rubrique consiste donc à savoir si ces principes peuvent guider notre interprétation du par. 36(1) de la *Loi sur la concurrence* — en particulier l'étendue de la responsabilité des défenderesses dans le contexte d'une action pour fixation des prix intentée par des acheteurs de LDO et de produits munis de LDO fabriqués ou fournis par une personne qui n'est pas une défenderesse.

[181] L'*indétermination* correspond à une considération de politique générale qui vient écarter l'imposition d'une obligation de diligence en droit de la négligence lorsque le défendeur serait exposé à [TRADUCTION] « une responsabilité pour un montant indéterminé, pour un temps indéterminé et envers une catégorie indéterminée » (*Ultramares Corp. c. Touche*, 174 N.E. 441 (C.A. N.Y. 1931), p. 444, le juge en chef Cardozo). Ce risque existe dans le cas où la reconnaissance d'une obligation de diligence entre le demandeur et le défendeur favoriserait la multiplication des actions en justice et entraînerait une [TRADUCTION] « responsabilité massive, échappant à tout contrôle » (A. M. Linden et autres, *Canadian Tort Law* (11e éd. 2018), p. 278). Le *caractère éloigné* est un principe connexe qui a pour effet de limiter l'étendue de la responsabilité pour négligence si [TRADUCTION] « le préjudice a trop peu de lien avec l'acte fautif pour que le défendeur puisse raisonnablement être tenu responsable » (*Mustapha c. Culligan du Canada Ltée*, 2008 CSC 27, [2008] 2 R.C.S. 114, par. 12, citant A. M. Linden et B. Feldthusen, *Canadian Tort Law* (8e éd. 2006), p. 360). Selon les auteurs de la 11e édition de cet ouvrage :

> [TRADUCTION] Les pertes ou les préjudices que subissent les demandeurs ne doivent pas constituer une conséquence

act, in order for compensation to ensue. In other words, to use the older language, negligent defendants who owe a general duty of care are not liable unless their conduct is the "proximate cause" of the plaintiff's losses. Causation alone is not enough; it must be demonstrated that the conduct was the *proximate* cause of the damage. This issue is better described as the scope or extent of liability issue. [Emphasis in original; p. 307.]

[182] Although both indeterminacy and remoteness relate primarily to liability in negligence, I agree with the Defendants that the same underlying concerns can inform our analysis of the issue at hand, which involves claims under s. 36 of the *Competition Act* for pure economic losses. In *Taylor v. 1103919 Alberta Ltd.*, 2015 ABCA 201, 602 A.R. 105, at para. 50, for example, the Alberta Court of Appeal discerned "no principled reason why [the principle of remoteness] ought not to apply" to the statutory cause of action in Alberta's *Land Titles Act*, R.S.A. 2000, c. L-4. In *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, [2013] 3 S.C.R. 477, Rothstein J. considered the principle of remoteness, among other legal norms, in his analysis of whether indirect purchasers have a cause of action under s. 36 of the *Competition Act* (paras. 42-45).

[183] Similarly, in *Associated General Contractors v. Carpenters*, 459 U.S. 519 (1983), the United States Supreme Court held that common law principles — including foreseeability and proximate cause, directness of injury, certainty of damages and privity of contract — can operate to limit the scope of a defendant's liability under the statutory cause of action for anti-competitive conduct in § 4 of the *Clayton Act*, 15 U.S.C. § 15.[3] In that case, the

[3] That provision read as follows: "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

« trop éloignée » de la négligence des défendeurs pour qu'il puisse y avoir indemnisation. Autrement dit, pour reprendre l'ancien libellé, les défendeurs négligents qui ont une obligation générale de diligence n'engagent leur responsabilité que si leur conduite est la « cause immédiate » des pertes subies par les demandeurs. La causalité à elle seule ne suffit pas; il faut établir que la conduite était la cause *immédiate* du préjudice. Cette question concerne davantage l'étendue ou la portée de la responsabilité. [En italique dans l'original; p. 307.]

[182] Bien que l'indétermination et le caractère éloigné se rapportent principalement à la responsabilité pour négligence, je suis d'accord avec les défenderesses pour dire que les mêmes préoccupations sous-jacentes peuvent guider notre analyse de la question à trancher, qui concerne les réclamations fondées sur l'art. 36 de la *Loi sur la concurrence* pour des pertes purement économiques. Dans l'arrêt *Taylor c. 1103919 Alberta Ltd.*, 2015 ABCA 201, 602 A.R. 105, par. 50, par exemple, la Cour d'appel de l'Alberta n'a relevé [TRADUCTION] « aucune raison logique de ne pas appliquer [le principe du caractère éloigné] » à la cause d'action prévue par la *Land Titles Act*, R.S.A. 2000, c. L-4, de l'Alberta. Dans *Pro-Sys Consultants Ltd. c. Microsoft Corporation*, 2013 CSC 57, [2013] 3 R.C.S. 477, le juge Rothstein a examiné le principe du caractère éloigné, parmi d'autres normes juridiques, dans son analyse de la question de savoir si l'acheteur indirect avait une cause d'action au titre de l'art. 36 de la *Loi sur la concurrence* (par. 42-45).

[183] De même, dans *Associated General Contractors c. Carpenters*, 459 U.S. 519 (1983), la Cour suprême des États-Unis a statué que les principes de common law — dont la prévisibilité et la cause immédiate du préjudice, son caractère direct, la certitude du dommage et le lien contractuel — peuvent avoir pour effet de limiter l'étendue de la responsabilité du défendeur au regard du droit d'action prévu à l'art. 4 de la *Clayton Act*, 15 U.S.C. § 15[3] pour

[3] Cette disposition était ainsi rédigée : [TRADUCTION] « Toute personne qui a subi un préjudice dans ses activités commerciales ou relativement à ses biens par suite d'un comportement allant à l'encontre des lois antitrust peut engager des poursuites devant tout tribunal de district des États-Unis dans le district où le défendeur réside, se trouve ou dispose d'un mandataire, sans égard au montant en litige, et elle peut recouvrer le triple des dommages subis, ainsi que les dépens relatifs à l'instance, y compris les honoraires d'avocats raisonnables. »

majority held that a plaintiff could not recover under that provision for harm allegedly suffered by reason of the defendants' coercion of third parties. Although Stevens J. recognized that "[a] literal reading of the statute is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation" (p. 529), he nevertheless held that

> the question whether the [plaintiff] may recover for the injury it allegedly suffered by reason of the defendants' coercion against certain third parties cannot be answered simply by reference to the broad language of [the applicable statutory provision]. Instead . . . the question requires us to evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them. [p. 535]

[184] The issue in the instant case turns on whether the Defendants can be held liable for loss or damage of an economic nature suffered by the Umbrella Purchasers, a group of claimants who bought from non-Defendants ODDs that were manufactured or supplied by non-Defendants. Can the Umbrella Purchasers recover as against the Defendants — companies with which they have no commercial relationship whatsoever? In my view, the answer is no. Any overcharges that those claimants may have incurred were ultimately the direct result of pricing choices *made by those non-Defendant manufacturers and suppliers*, regardless of whether or not those choices were influenced by broader trends in the market. In short, the Defendants have control over their own business decisions, but not over those of non-Defendant manufacturers and suppliers. For this reason, and bearing in mind the principles underlying indeterminacy and remoteness, I am of the view that it would be unfair to hold the Defendants liable to the Umbrella Purchasers where they had no control over such liability. Indeed, interpreting s. 36(1) in the manner suggested by the Plaintiff might well expose the Defendants to unbounded liability — capable of encompassing not only the losses of those Umbrella Purchasers themselves, but also the losses of "[a]nyone who

comportement anticoncurrentiel. Dans cette affaire, les juges majoritaires ont conclu que le demandeur ne pouvait obtenir réparation en vertu de cette disposition pour un préjudice qu'il aurait subi par suite de la coercition exercée par le défendeur à l'endroit de tiers. Bien que le juge Stevens ait reconnu [TRADUCTION] « [qu'une] interprétation littérale de la loi est suffisamment large pour englober tout préjudice attribuable directement ou indirectement aux conséquences d'une violation des lois antitrust » (p. 529), il a néanmoins conclu ce qui suit :

> [TRADUCTION] . . . pour trancher la question de savoir si le [demandeur] peut obtenir réparation pour le préjudice qu'il aurait subi par suite de la coercition exercée par les défendeurs à l'endroit de certains tiers, il ne suffit pas de faire uniquement mention du libellé général [de la disposition statutaire applicable]. En fait, [. . .] nous sommes appelés à évaluer le préjudice subi par le demandeur, la faute reprochée aux défendeurs, ainsi que la relation entre eux. [p. 535]

[184] La question en litige dans le cas présent consiste à savoir si les défenderesses peuvent être tenues responsables de la perte ou des dommages de nature économique subis par les acheteurs sous parapluie, un groupe de demandeurs qui ont acheté d'autres personnes que les défenderesses des LDO fabriqués ou fournis par des personnes qui ne sont pas les défenderesses. Ces acheteurs peuvent-ils se faire indemniser par les défenderesses — des entreprises avec lesquelles les acheteurs sous parapluie n'ont aucune relation commerciale? À mon avis, il faut répondre à cette question par la négative. Toute majoration que ces demandeurs auraient pu absorber était en fin de compte la conséquence directe des choix en matière de prix *effectués par ces fabricants et fournisseurs autres que les défenderesses*, que ces choix aient ou non été influencés par des tendances générales du marché. Bref, les défenderesses exercent un contrôle sur leur propres décisions d'affaires, mais non sur celles des autres fabricants et fournisseurs. Pour ce motif, et gardant à l'esprit les principes qui sous-tendent l'indétermination et le caractère éloigné, je suis d'avis qu'il serait injuste de tenir les défenderesses responsables envers les acheteurs sous parapluie alors qu'elles n'avaient aucun contrôle sur cette responsabilité. En effet, interpréter

was affected by the economic ripples downstream of umbrella purchasers" (A.F. (Toshiba Appeal), at para. 105). In my opinion, this provision must be construed in a manner that prevents such a cascade of liability.

[185] This is consistent with the views expressed by Perell J. of the Ontario Superior Court of Justice in *Shah v. LG Chem, Ltd.*, 2015 ONSC 6148, 390 D.L.R. (4th) 87, and by a unanimous Divisional Court in *Shah v. LG Chem, Ltd.*, 2017 ONSC 2586, 413 D.L.R. (4th) 546. *Shah* involved the certification of a price-fixing class action brought by direct, indirect and umbrella purchasers of lithium ion batteries ("LIBs") manufactured by various defendants. On the question of whether the umbrella purchasers in that case could succeed in their claim under s. 36(1) of the *Competition Act*, Perell J. held as follows:

> . . . the Umbrella Purchasers' claim would impose indeterminate liability on the Defendants and the claim would be unfair because the law, generally speaking, does not impose liability on one person for the conduct of others, and in the instance of the Umbrella Purchasers, the Plaintiffs seek to make the Defendants liable for the advertent, inadvertent, voluntary or involuntary conduct of the non-Defendants in taking advantage of the price-fixing. [para. 175]

The Divisional Court unanimously upheld Perell J.'s conclusion on this point. As Nordheimer J. (as he then was) explained:

> What is alleged here is that the non-defendant [LIB] manufacturers took advantage of the higher market prices being set by the [defendants] through their conspiracy, to similarly increase the prices of their LIBs or LIB products. Assuming that that occurred, the [defendants] had no

le par. 36(1) de la manière suggérée par le demandeur pourrait fort bien exposer les défenderesses à une responsabilité illimitée — susceptible de viser non seulement les pertes subies par les acheteurs sous parapluie, mais aussi les pertes de [TRADUCTION] « [t]oute personne qui a subi les conséquences de nature économique en aval des acheteurs sous parapluie » (m.a. (pourvoi de Toshiba), par. 105). À mon sens, il y a lieu d'interpréter cette disposition de manière à prévenir une telle responsabilité en cascade.

[185] Cette conclusion cadre avec le point de vue exprimé par le juge Perell, de la Cour supérieure de justice de l'Ontario, dans *Shah c. LG Chem, Ltd.*, 2015 ONSC 6148, 390 D.L.R. (4th) 87, et par la Cour divisionnaire à l'unanimité dans *Shah c. LG Chem, Ltd.*, 2017 ONSC 2586, 413 D.L.R. (4th) 546. Cette affaire concernait l'autorisation d'un recours collectif en matière de fixation des prix, intenté par les acheteurs directs, indirects et sous parapluie de piles au lithium-ion (« Pli ») fabriquées par diverses défenderesses. S'agissant de la question de savoir si les acheteurs sous parapluie pouvaient obtenir gain de cause dans leur recours fondé sur le par. 36(1) de la *Loi sur la concurrence*, le juge Perell a conclu ce qui suit :

> [TRADUCTION] . . . le recours des acheteurs sous parapluie imposerait aux défenderesses une responsabilité indéterminée et entraînerait une iniquité, car, de manière générale, le droit ne tient pas une personne responsable de la conduite d'autrui. Dans le cas des acheteurs sous parapluie, les demandeurs cherchent à tenir les défenderesses responsables de la conduite adoptée délibérément ou non en tirant un avantage volontairement ou non, par des personnes qui ne sont pas les défenderesses, car elles ont tiré parti de la fixation des prix. [par. 175]

La Cour divisionnaire a confirmé à l'unanimité la conclusion du juge Perell sur ce point. Comme l'expliquait le juge Nordheimer (maintenant juge à la Cour d'appel de l'Ontario) :

> [TRADUCTION] Il est allégué en l'espèce que les fabricants de [Pli] autres que les défenderesses ont tiré avantage de la hausse des prix sur le marché fixés par les [défenderesses] à la suite du complot qu'elles ont formé pour faire ainsi augmenter le prix de leurs Pli et de leurs produits munis

control over the actions of the non-defendant manufacturers. First and foremost, they had no control over whether the non-defendant manufacturers chose to match prices. Second, they had no control over the volume of LIBs or LIB products, that the non-defendant manufacturers chose to produce and sell. [para. 34]

[186] Both Perell J. and Nordheimer J. analogized the issue of liability to umbrella purchasers in *Shah* to the issue of indeterminacy that had arisen in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45. In that case, a number of tobacco companies were facing lawsuits relating to the sale of "light" or "mild" cigarettes. Those companies, in turn, brought third-party claims against the Government of Canada, alleging that if they were found liable to the plaintiffs, they would be entitled to compensation from Canada for (among other things) negligent misrepresentation. The argument was that Canada had negligently misrepresented the health attributes of low-tar cigarettes to consumers and to those tobacco companies. Canada countered that allowing the tobacco companies' claims in negligent misrepresentation "would result in indeterminate liability", as "Canada had no control over the number of cigarettes being sold" (para. 97). This Court accepted Canada's argument; McLachlin C.J., writing for a unanimous Court, explained as follows:

I agree with Canada that the prospect of indeterminate liability is fatal to the tobacco companies' claims of negligent misrepresentation. Insofar as the claims are based on representations to consumers, Canada had no control over the number of people who smoked light cigarettes. . . .

The risk of indeterminate liability is enhanced by the fact that the claims are for pure economic loss. In *Design Services Ltd. v. Canada*, 2008 SCC 22, [2008] 1 S.C.R. 737, the Court, *per* Rothstein J., held that "in cases of

de Pli. Si l'on tient cela pour avéré, les [défenderesses] n'exerçaient aucun contrôle sur les actes des autres fabricants. D'abord et avant tout, les défenderesses n'avaient aucun contrôle sur le choix des autres fabricants de fixer des prix identiques. Ensuite, les défenderesses n'avaient aucun contrôle sur la quantité de Pli et de produits munis de Pli que les autres fabricants avaient choisi de fabriquer et de vendre. [par. 34]

[186] Les juges Perell et Nordheimer ont fait une analogie entre la question de la responsabilité envers les acheteurs sous parapluie soulevée dans l'arrêt *Shah* et la question de l'indétermination soulevée dans l'arrêt *R. c. Imperial Tobacco Canada Ltée*, 2011 CSC 42, [2011] 3 R.C.S. 45. Dans cette affaire, des compagnies de tabac ont fait l'objet de poursuites pour avoir vendu des cigarettes « légères » ou « douces ». À leur tour, ces compagnies ont mis en cause le gouvernement du Canada, alléguant que, si elles étaient tenues responsables envers les demandeurs, elles auraient le droit d'être indemnisées par le Canada, entre autres, pour déclarations inexactes faites par négligence. Elles ont fait valoir que le Canada avait fait preuve de négligence en déclarant faussement aux fumeurs et aux compagnies de tabac que la cigarette à teneur réduite en goudron serait moins nocive pour la santé. Le Canada s'est opposé à cet argument en soutenant que, si l'on acceptait les allégations des compagnies de tabac en matière de déclaration inexacte faite par négligence, « cela entraînerait une responsabilité indéterminée de sa part » puisque « le nombre de cigarettes vendues était indépendant de sa volonté » (par. 97). Notre Cour a accepté l'argument du Canada, et la juge en chef McLachlin, rédigeant les motifs unanimes, a expliqué ce qui suit :

Je suis d'accord avec le Canada pour dire que la possibilité d'une responsabilité indéterminée porte un coup fatal aux allégations des compagnies de tabac relatives aux déclarations inexactes faites par négligence. Dans la mesure où les allégations reposent sur des déclarations faites aux consommateurs, le Canada n'exerçait aucun contrôle sur le nombre de fumeurs de cigarettes légères. . .

Le risque de responsabilité indéterminée est aggravé par le caractère purement financier de la perte alléguée. Dans *Design Services Ltd. c. Canada*, 2008 CSC 22, [2008] 1 R.C.S. 737, sous la plume du juge Rothstein, la Cour a

pure economic loss, to paraphrase Cardozo C.J., care must be taken to find that a duty is recognized only in cases where the class of plaintiffs, the time and the amounts are determinate" (para. 62). If Canada owed a duty of care to consumers of light cigarettes, the potential class of plaintiffs and the amount of liability would be indeterminate. [Emphasis added; paras. 99-100.]

[187] Although that case concerned indeterminacy in relation to the imposition of a duty of care in negligence, I agree with Nordheimer J. that "the fundamental principle is the same" (para. 32): s. 36(1) should not be interpreted in a manner that makes the Defendants liable to an indeterminate class of people for losses of an indeterminate nature that occurred as a result of business decisions over which they had no control. This accords with the approach taken by the United States Supreme Court in respect of a similar statutory cause of action for anti-competitive conduct: "An antitrust violation may be expected to cause ripples of harm to flow through the Nation's economy; but 'despite the broad wording of § 4 [of the *Clayton Act*] there is a point beyond which the wrongdoer should not be held liable'" (*Associated General Contractors*, at pp. 534-35, citing *Blue Shield of Virginia v. McCready*, 457 U.S. 465 (1982), at pp. 476-77, citing *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), at p. 760, per Brennan J. dissenting). In my view, a preferable reading of the statutory cause of action in s. 36(1) of the *Competition Act* is one that, consistent with the principles underlying indeterminacy and remoteness which operate at common law, limits the potential scope of liability faced by defendants of price-fixing claims to losses flowing from their own pricing decisions, not those of third parties. This promotes the value of certainty so that commercial enterprises "have some appreciation of what risk is to be borne by whom" (*Canadian National Railway Co. v. Norsk Pacific Steamship Co.*, [1992] 1 S.C.R. 1021, at p. 1139).

[188] The Ontario Divisional Court's decision in *Shah* was subsequently overturned by the Court of

mentionné que « dans les cas de perte purement financière, il faut, pour paraphraser le juge en chef Cardozo, prendre soin de ne reconnaître une obligation que dans la mesure où l'on peut déterminer la catégorie des demandeurs, la période et les montants en cause » (par. 62). Si le Canada avait une obligation de diligence envers les fumeurs de cigarettes légères, le nombre potentiel de demandeurs et l'ampleur de la responsabilité seraient indéterminés. [Je souligne; par. 99-100.]

[187] Même si cet arrêt concernait l'indétermination en lien avec l'imposition d'une obligation de diligence en négligence, je suis d'accord avec le juge Nordheimer pour dire que [TRADUCTION] « le principe fondamental est le même » (par. 32) : le par. 36(1) ne devrait pas être interprété de manière à ce que les défenderesses soient tenues responsables envers une catégorie indéterminée de personnes pour des pertes de nature indéterminée découlant de décisions d'affaires qui étaient indépendantes de leur volonté. Cette approche concorde avec celle adoptée par la Cour suprême des États-Unis à propos d'une cause d'action similaire conférée par la loi pour comportement anticoncurrentiel : [TRADUCTION] « On peut s'attendre à ce qu'une violation des lois antitrust ait des répercussions en chaîne sur l'économie de la nation; toutefois, "en dépit du libellé général de l'art. 4 [de la *Clayton Act*], le contrevenant ne peut être tenu responsable au-delà d'un certain point" » (*Associated General Contractors*, p. 534-535, citant *Blue Shield of Virginia c. McCready*, 457 U.S. 465 (1982), p. 476-477, citant *Illinois Brick Co. c. Illinois*, 431 U.S. 720 (1977), p. 760, le juge Brennan, dissident). À mon avis, il est préférable d'interpréter la cause d'action prévue au par. 36(1) de la *Loi sur la concurrence* conformément aux principes sous-tendant l'indétermination et le caractère éloigné qui s'appliquent en common law, de manière à limiter l'étendue de la responsabilité des défendeurs dans des recours en matière de fixation des prix aux pertes découlant de leurs propres décisions, et non de celles prises par des tiers. Cette interprétation promeut la notion de certitude, de sorte que les entreprises commerciales ont « une idée du risque qui doit être assumé et par qui » (*Cie des chemins de fer nationaux du Canada c. Norsk Pacific Streamship Co.*, [1992] 1 R.C.S. 1021, p. 1139).

[188] La décision *Shah* de la Cour divisionnaire de l'Ontario a été infirmée subséquemment par la Cour

Appeal, for reasons substantially similar to those set out by my colleague (*Shah v. LG Chem, Ltd.*, 2018 ONCA 819, 142 O.R. (3d) 721). The unanimous panel in that case took the position that "normative concerns about indeterminate liability" in negligence do not apply in the context of the statutory claim under ss. 36 and 45 of the *Competition Act*, since those concerns "have already been taken care of by Parliament" (para. 47). Like my colleague, the panel stated that, first, the scope of s. 36(1) limits recovery to persons who can prove that they suffered loss or damage "as a result of" the alleged conspiratorial conduct and that, second, the subjective *mens rea* in s. 45 "limits the reach of liability to those who, at a minimum, specifically intend to agree upon anti-competitive conduct" (*ibid.*, at para. 51, cited in Brown J.'s reasons, at para. 75).

[189] In my respectful view, neither of those considerations actually protects against the risk of limitless liability that would flow from recognizing the availability of umbrella purchaser claims under s. 36(1). On the first point, the fact that the text of this provision reads as permitting recovery for any person capable of proving that their loss was sustained "as a result of" an alleged price-fixing conspiracy does not end the interpretative exercise. As I explained above, the dispute here concerns whether those words should be taken as allowing recovery for any and all losses that can conceivably be linked to the alleged wrongdoing, or whether relevant legal norms and principles can assist in construing the provision so as to circumscribe what might otherwise be potentially indeterminate liability. And on the second point, while I accept that the *mens rea* in s. 45 limits liability to defendants who intend to agree upon anti-competitive conduct, this still tells us nothing about the scope of their liability under s. 36(1) — in other words, it tells us *who* is liable but not for *what* they are actually liable.

d'appel, pour des motifs en substance semblables à ceux exposés par mon collègue (*Shah c. LG Chem, Ltd.*, 2018 ONCA 819, 142 O.R. (3d) 721). Dans cet arrêt, la formation unanime était d'avis que les [TRADUCTION] « préoccupations normatives quant à la responsabilité indéterminée » dans les causes de négligence ne s'appliquent pas dans le contexte des actions fondées sur les art. 36 et 45 de la *Loi sur la concurrence*, car « le législateur a déjà répondu à ces préoccupations » (par. 47). À l'instar de mon collègue, la formation unanime a affirmé, d'une part, que la portée du par. 36(1) limite l'indemnisation aux personnes qui peuvent démontrer avoir subi une perte ou des dommages « par suite » du complot allégué et, d'autre part, que la *mens rea* subjective requise à l'art. 45 [TRADUCTION] « limite l'étendue de la responsabilité à ceux qui, au minimum, ont eu l'intention expresse de convenir d'un comportement anticoncurrentiel » (*ibid.*, par. 51, cité dans les motifs du juge Brown, par. 75).

[189] Avec égards, aucune de ces considérations ne protège réellement les fabricants contre le risque de responsabilité illimitée qui découlerait du fait de reconnaître que les acheteurs sous parapluie peuvent déposer des réclamations sur le fondement du par. 36(1). En ce qui concerne le premier point, le fait que le libellé de cette disposition soit interprété comme permettant à toute personne pouvant démontrer qu'elle a subi une perte « par suite » du complot allégué de fixation des prix d'être indemnisée ne met pas fin à l'exercice d'interprétation. Comme je l'ai déjà expliqué, le litige en l'espèce porte sur la question de savoir s'il faut interpréter cette disposition comme autorisant l'indemnisation pour toute perte qui peut vraisemblablement être associée aux fautes reprochées ou si les normes et principes juridiques applicables peuvent aider à interpréter cette disposition de manière à circonscrire ce qui pourrait autrement être une responsabilité indéterminée. En ce qui concerne le deuxième point, bien que j'admette que la *mens rea* prévue à l'art. 45 limite la responsabilité aux défendeurs qui ont l'intention de s'entendre sur un comportement anticoncurrentiel, ceci ne nous apprend rien à propos de l'étendue de leur responsabilité prévue au par. 36(1). Autrement dit, il indique *qui* doit être tenu responsable, mais pas de *quoi* ces défendeurs sont réellement responsables.

[190] Before concluding, I will add one final thought. Permitting umbrella purchaser claims under s. 36(1) opens up the possibility of recovery for overcharges that result from "conscious parallelism" — a phenomenon which occurs when parties not involved in a price-fixing conspiracy deliberately *choose* to adjust their prices in order to match those of their competitors, in the absence of any actual collusion between them. As recently observed by the Quebec Court of Appeal in *R. v. Proulx*, 2016 QCCA 1425, at para. 32 (CanLII), "[a]dopting a comparable or identical pricing policy without an agreement — which by definition requires a meeting of minds — does not fall within the scope of s. 45 of the *Competition Act*".[4] An interpretation of s. 36(1) that allows umbrella purchaser claims for these kinds of independent pricing decisions would effectively grant a right to recover (a) in circumstances where those decisions — to which the umbrella purchasers' alleged overcharges are directly attributable — are neither criminally prohibited nor actionable in and of themselves, and (b) from parties who neither made nor benefitted from those decisions.

[191] All of this leads me to conclude that s. 36(1) of the *Competition Act* should not be interpreted in a manner that would permit claimants to recover from defendants for *any* losses that in some way flowed from the alleged conspiracy. Doing so would have the undesirable effect of exposing defendants to liability that is potentially limitless in scope for loss and damage that are too remote from any price-fixing that occurred. I do not think that this could have been

[190] Avant de conclure, j'ajouterai une dernière réflexion. Laisser libre cours aux réclamations fondées sur le par. 36(1) des acheteurs sous parapluie ouvre la possibilité d'un recouvrement des hausses de prix découlant d'un « parallélisme conscient » — un phénomène qui se produit lorsque les parties ne participant pas à un complot de fixation des prix *choisissent* délibérément d'ajuster leurs prix à ceux de leurs concurrents, sans qu'on puisse parler de collusion. Comme l'a récemment fait remarquer la Cour d'appel du Québec dans l'arrêt *R. c. Proulx*, 2016 QCCA 1425, par. 32 (CanLII), « [l]'adoption d'une politique de prix comparables ou identiques, sans l'existence d'une entente qui par définition nécessite l'accord de deux volontés, ne tombe donc pas sous le coup de l'article 45 de la *Loi sur la concurrence* »[4]. Interpréter le par. 36(1) de façon à permettre aux acheteurs sous parapluie d'intenter une action pour ce type de décision indépendante quant à l'établissement des prix conférerait un droit de recouvrement a) dans les cas où ces décisions — auxquelles la majoration alléguée qui aurait été refilée à ces acheteurs est directement attribuable — ne sont ni interdites par le droit criminel ni susceptibles de poursuites en soi, et b) auprès de parties qui n'ont pas pris ces décisions et n'en ont pas tiré profit.

[191] Tout cela m'amène à conclure que le par. 36(1) de la *Loi sur la concurrence* ne devrait pas recevoir une interprétation qui permettrait aux demandeurs de se faire indemniser par des défendeurs pour *toute* perte découlant d'une façon ou d'une autre du complot allégué. Cela aurait pour effet indésirable d'exposer des défendeurs à une responsabilité potentiellement illimitée, ainsi qu'à une responsabilité à l'égard de pertes et de dommages qui sont trop éloignés de toute

[4] In its *Competitor Collaboration Guidelines* (December 2009), the Competition Bureau of Canada explains that it

> does not consider that the mere act of independently adopting a common course of conduct with awareness of the likely response of competitors or in response to the conduct of competitors, commonly referred to as "conscious parallelism", is sufficient to establish an agreement for the purpose of subsection 45(1). However, parallel conduct coupled with facilitating practices, such as sharing competitively sensitive information or activities that assist competitors in monitoring one another's prices, may be sufficient to prove that an agreement was concluded between the parties. [p. 7]

[4] Dans ses *Lignes directrices sur la collaboration entre concurrents* (décembre 2009), le Bureau de la concurrence du Canada explique qu'il

> ne considère pas que le simple fait d'adopter indépendamment un comportement commun en connaissant la réaction probable des concurrents ou en réponse au comportement des concurrents, qu'on appelle communément « parallélisme conscient », suffit à établir qu'il y a eu entente au sens du paragraphe 45(1). Cependant, lorsqu'il est combiné à des pratiques facilitantes comme la mise en commun de renseignements délicats sur le plan de la concurrence ou des activités qui aident les concurrents à surveiller réciproquement leurs prix, le comportement parallèle peut suffire à prouver qu'une entente a été conclue entre les parties. [p. 7]

Parliament's intention when it enacted this statutory right of action.

[192] In light of the principles to which I have referred above, my view is that the line should be drawn at loss and damage that flowed from the pricing decisions of the Defendants themselves (that is, the loss claimed by the direct and indirect purchasers), and not those that are attributable to third parties who did not participate in — but who nevertheless would have benefitted from — the alleged price-fixing conspiracy. Because the Umbrella Purchasers' losses are indeed attributable to the pricing decisions of non-Defendant ODD manufacturers and suppliers, I find it plain and obvious that their claims in this action under s. 36(1) of the *Competition Act* cannot succeed.

B. *Is It Plain and Obvious That Section 36(1) Bars a Plaintiff From Alleging Common Law and Equitable Causes of Action in Respect of Conduct That Breaches the Prohibitions in Part VI of the Competition Act?*

[193] The second issue raised in the Toshiba Appeal turns on whether the cause of action in s. 36(1) of the *Competition Act* is the exclusive civil remedy for conduct that breaches the criminal offence provisions in Part VI of that statute. The Defendants argue that it is, and that allowing claims in respect of such conduct under common law and equitable causes of action undermines the principle of parliamentary sovereignty. The Plaintiff, by contrast, says that Parliament did not intend to preclude private law remedies for such conduct when it enacted s. 36(1) of the *Competition Act*.

[194] At its core, the issue under this heading is whether a claimant can rely on the common law and equity *as a supplement* to the right of action under s. 36(1) of the *Competition Act* — or put differently, whether a claimant can advance a common law or

fixation des prix. Je ne crois pas que cela ait pu être l'intention du Parlement lorsqu'il a édicté la disposition de la Loi qui confère ce droit d'action.

[192] Compte tenu des principes susmentionnés, je suis d'avis qu'une ligne de démarcation doit être tracée entre les pertes et dommages qui découlent des décisions des défenderesses elles-mêmes quant à la fixation des prix (c'est-à-dire les pertes déplorées par les acheteurs directs et indirects) et les pertes et dommages qui sont attribuables aux tiers qui n'ont pas participé au complot allégué de fixation des prix, mais qui en auraient néanmoins bénéficié. Comme les pertes des acheteurs sous parapluie sont attribuables aux décisions relatives à la fixation des prix prises par des fabricants et fournisseurs de LDO autres que les défenderesses, je suis d'avis qu'il est évident et manifeste que leurs réclamations fondées en l'espèce sur le par. 36(1) de la *Loi sur la concurrence* ne peuvent être accueillies.

B. *Est-il évident et manifeste que le par. 36(1) empêche le demandeur d'exercer des recours de common law et d'equity à l'égard d'un comportement qui enfreint les prohibitions prévues à la partie VI de la Loi sur la concurrence?*

[193] La deuxième question soulevée dans le pourvoi de Toshiba consiste à savoir si la cause d'action fondée sur le par. 36(1) de la *Loi sur la concurrence* est le seul recours civil possible contre un comportement allant à l'encontre des dispositions de la partie VI de cette loi relativement aux infractions criminelles. Les défenderesses répondent par l'affirmative et soutiennent qu'autoriser les réclamations liées à un tel comportement sur le fondement de la common law et de l'equity mine le principe de la souveraineté parlementaire. Le demandeur soutient plutôt que le Parlement n'avait pas l'intention d'écarter la possibilité d'exercer des recours en droit privé à l'encontre d'un tel comportement lorsqu'il a édicté le par. 36(1) de la *Loi sur la concurrence*.

[194] La question à trancher sous cette rubrique consiste essentiellement à savoir si un demandeur peut se prévaloir de la common law et de l'equity *en sus* du droit d'action reconnu par le par. 36(1) de la *Loi sur la concurrence*. Autrement dit, il s'agit de

equitable cause of action instead of, or together with, the statutory cause of action in respect of the same allegation of anti-competitive conduct.

[195] In her leading textbook, *Sullivan on the Construction of Statutes* (6th ed. 2014), Professor Ruth Sullivan explains that "[t]he issue of supplementation arises when there is overlap between legislation and the common law such that both may apply to a particular set of facts and also when legislation is incomplete in that it says nothing of, or does not fully address, a matter relating to the subject of the legislation" (p. 549). On this point, she adds the following:

> When the issue of supplementing legislation arises, the focus may be on the application of common law rules, entitlement to common law remedies or access to common law courts. Although rules, remedies and jurisdiction raise distinct concerns, in each case the fundamental question is the same: is it permissible in the circumstances to supplement the legislation by resorting to the common law? If there is a conflict, the answer is clearly no. In the absence of conflict, the answer to the question depends first of all on legislative intent, which is discovered using the usual methods of interpretation. However, the courts pay particular attention to whether the legislation in question constitutes a complete or exhaustive code. The adequacy of the legislation and the continuing usefulness of the common law rule, remedy or jurisdiction are important considerations. [Emphasis added; p. 549.]

[196] As with the Umbrella Purchasers issue, resolving this issue requires an exercise in statutory interpretation: it must be determined, based on a proper reading of the *Competition Act*, whether Parliament intended s. 36(1) to provide the exclusive civil remedy for persons claiming to have suffered loss or damage as a result of conduct contrary to Part VI.

[197] Like my colleague, I begin my analysis with the presumption against interpreting legislation in a

déterminer si un demandeur peut invoquer une cause d'action fondée sur la common law ou l'equity au lieu d'une cause d'action prévue par la loi, ou les deux, à l'égard d'une même allégation de comportement anticoncurrentiel.

[195] Dans son ouvrage de premier plan intitulé *Sullivan on the Construction of Statutes* (6e éd. 2014), la professeure Ruth Sullivan explique que [TRADUCTION] « [l]a question de la complémentarité se pose lorsqu'il existe un chevauchement tel entre la loi et la common law que les deux peuvent s'appliquer à un ensemble de faits donné et également lorsque la loi est incomplète parce qu'elle ne fait aucune mention, ou ne traite pas entièrement, d'une question relative à l'objet du texte législatif » (p. 549). À cet égard, la professeure Sullivan ajoute ce qui suit :

> [TRADUCTION] Lorsque la question de la complémentarité de la loi se pose, l'accent peut être mis sur l'application des règles de common law, sur le droit aux recours de common law ou sur l'accès aux tribunaux de common law. Bien que les règles, les recours et la compétence soulèvent des préoccupations distinctes, dans chaque cas, la question fondamentale est la même : est-il permis dans les circonstances de compléter la loi en ayant recours à la common law? S'il y a conflit, la réponse est manifestement non. En l'absence de conflit, la réponse à cette question dépend d'abord de l'intention du législateur, que l'on discerne par les méthodes habituelles d'interprétation. Toutefois, les tribunaux accordent une attention particulière à la question de savoir si la loi en question constitue un code complet ou exhaustif. Le caractère suffisant de la loi et l'utilité continue de la règle, du recours ou de la compétence de common law sont des considérations importantes. [Je souligne; p. 549.]

[196] Tout comme pour la question des acheteurs sous parapluie, un exercice d'interprétation législative s'impose pour trancher la question en cause : il faut déterminer, suivant une juste interprétation de la *Loi sur la concurrence*, si le Parlement voulait que le par. 36(1) réserve exclusivement le recours civil possible aux personnes qui prétendent avoir subi une perte ou un préjudice par suite d'un comportement allant à l'encontre de la partie VI.

[197] À l'instar de mon collègue, je me pencherai d'abord sur la présomption selon laquelle il ne faut

manner that would interfere with common law rights. According to Professor Sullivan, such a presumption allows "the courts to insist on precise and explicit direction from the legislature before accepting any change", so as to shield the law "from inadvertent legislative encroachment" (p. 539). Such an intention can be found either in the express wording of the statute or by necessary implication (*Gendron v. Supply and Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298, at pp. 1315-16).

[198] I agree with my colleague that the *Competition Act* does not expressly preclude claimants from supplementing the right of action in s. 36(1) with claims based on causes of action at common law or in equity. However, I am not convinced that the reasoning in *Gendron* applies to the case at hand; while that case dealt with a statutory provision that *codified* a common law right, s. 36 of the *Competition Act* is distinguishable in that it *created* a new right that did not exist before. Instead, I would resolve this issue simply on the basis that the coexistence of statutory and common law or equitable claims arising from conduct contrary to Part VI of the *Competition Act* is in fact contemplated by s. 62 of that statute, which reads as follows:

**62** Except as otherwise provided in [Part VI], nothing in [Part VI] shall be construed as depriving any person of any civil right of action.

[199] In my view, this provision evinces a legislative intention that the provisions of Part VI (which is titled "Offences in Relation to Competition") not abrogate any right of action a claimant has — which might include a right of action founded on the tort of unlawful means conspiracy or in unjust enrichment — that is predicated upon a breach of the offence provisions of the *Competition Act*. As the Manitoba Court of Appeal recognized in *Westfair Foods Ltd. v. Lippens Inc.* (1989), 64 D.L.R. (4th) 335, the inclusion of this provision in the statutory framework suggests

pas interpréter une loi d'une manière qui porte atteinte aux droits reconnus par la common law. Selon la professeure Sullivan, une telle présomption permet aux [TRADUCTION] « tribunaux de mettre l'accent sur des directives précises et explicites formulées par le législateur avant d'accepter tout changement » afin d'éviter tout « empiétement législatif involontaire » sur la loi (p. 539). Pareille intention peut être dégagée du libellé explicite de la loi ou par inférence nécessaire (*Gendron c. Syndicat des approvisionnements et services de l'Alliance de la Fonction publique du Canada, section locale 50057*, [1990] 1 R.C.S. 1298, p. 1315-1316).

[198] Je suis d'accord avec mon collègue pour dire que la *Loi sur la concurrence* n'empêche pas expressément les demandeurs de présenter, en sus du droit d'action prévu au par. 36(1), des réclamations fondées sur des causes d'action reconnues en common law ou en equity. Je ne suis toutefois pas convaincue de l'applicabilité en l'espèce du raisonnement adopté dans *Gendron*; si cette affaire portait sur une disposition statutaire qui *codifiait* un droit issu de la common law, on peut distinguer l'art. 36 de la *Loi sur la concurrence* en ce qu'il a *créé* un nouveau droit qui n'existait pas auparavant. Je suis plutôt d'avis de régler cette question en affirmant simplement que la coexistence des recours fondés sur la loi et des recours fondés sur la common law ou l'equity découlant d'un comportement allant à l'encontre de la partie VI de la *Loi sur la concurrence* est en fait prévue à l'art. 62 de la Loi, qui est ainsi rédigé :

**62** Sauf disposition contraire de la [partie VI], celle-ci n'a pas pour effet de priver une personne d'un droit d'action au civil.

[199] À mon avis, cette disposition illustre une intention du législateur de prévoir que les dispositions de la partie VI (intitulée « Infractions relatives à la concurrence ») n'abrogent pas les droits d'action dont jouit un demandeur — y compris les droits fondés sur le délit de complot exercé par des moyens illégaux ou sur l'enrichissement sans cause — qui reposent sur une violation des dispositions de la *Loi sur la concurrence* en matière d'infractions. Comme l'a reconnu la Cour d'appel du Manitoba dans l'arrêt *Westfair Foods Ltd. c. Lippens Inc.* (1989), 64 D.L.R. (4th) 335,

that Parliament did not intend the provisions of the *Competition Act* to intrude upon the provinces' jurisdiction over civil rights and liberties.

[200] The fact that s. 62 applies only to Part VI of the *Competition Act* — and therefore is not *directly* applicable to s. 36(1), which is instead located in Part IV — is not, in my view, consequential. The cause of action created by s. 36(1)(a) is expressly tied to conduct that would constitute an offence under Part VI of the statute. This Court recognized in *General Motors*, at p. 673, that the purpose of this remedial provision is to "help enforce the substantive aspects of the Act", such as the prohibitions against anti-competitive conduct.

[201] It is also essential to note that s. 62 uses the phrase "any civil right of action", which suggests that Parliament contemplated the preservation of the various civil rights of action that may exist in respect of conduct prohibited under Part VI, beyond the one provided for in s. 36(1). Indeed, the former provision would be redundant and pointless if it merely affirmed what the latter already states: that perpetrators of conduct prohibited by Part VI are subject *both* to criminal prosecution *and* to civil proceedings under s. 36(1)(a). This is especially the case given that s. 36(2) and s. 36(4)(a)(ii) indicate that statutory claims can be brought against defendants even after any criminal proceedings against them were finally disposed of.

[202] Therefore, when I read the words of s. 62 "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament" (Driedger, at p. 87; *Bell ExpressVu*, at para. 26), I am led to the conclusion that this provision has the effect of preserving all civil rights of action that a claimant may have — over and above the right of action available under s. 36(1) of the *Competition Act* — in respect of anti-competitive conduct that would constitute an offence under Part VI of that Act. Indeed, s. 62 would be meaningless if s. 36(1)

l'inclusion de cette disposition dans le cadre législatif donne à penser que le Parlement ne voulait pas que les dispositions de la *Loi sur la concurrence* portent atteinte à la compétence des provinces sur les droits et libertés civils.

[200] Le fait que l'art. 62 s'applique seulement à la partie VI de la *Loi sur la concurrence* — et qu'il ne s'applique donc pas *directement* au par. 36(1), qui se trouve plutôt à la partie IV — me paraît sans conséquence. La cause d'action créée par l'al. 36(1)a) est expressément liée au comportement qui constituerait une infraction sous le régime de la partie VI de la Loi. Dans l'arrêt *General Motors*, p. 673, notre Cour a reconnu que l'objet de cette disposition réparatrice est de « faciliter l'exécution des aspects fondamentaux de la Loi », comme les prohibitions visant le comportement anticoncurrentiel.

[201] Il est également essentiel de souligner que l'art. 62 contient l'expression « un droit d'action au civil », ce qui donne à penser que le Parlement a envisagé de préserver les différents droits d'action au civil qui peuvent être exercés par suite d'un comportement interdit par la partie VI en plus de celui prévu au par. 36(1). En effet, l'art. 62 serait redondant et inutile s'il confirmait simplement ce que dit déjà le par. 36(1), à savoir que les auteurs d'un comportement prohibé par la partie VI peuvent faire l'objet *à la fois* de poursuites criminelles *et* de poursuites civiles en vertu de l'al. 36(1)a). Cela est d'autant plus vrai puisque le par. 36(2) et le sous-al. 36(4)a)(ii) prévoient qu'une action peut être intentée contre un défendeur même après qu'il eut été statué de façon définitive sur la poursuite au criminel.

[202] Par conséquent, lorsque je lis les termes de l'art. 62 [TRADUCTION] « dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'[économie] de la loi, l'objet de la loi et l'intention du [Parlement] » (Driedger, p. 87; *Bell ExpressVu*, par. 26), j'en arrive à la conclusion que cette disposition a pour effet de préserver tous les droits d'action au civil que peut exercer le demandeur — en sus du droit d'action prévu au par. 36(1) de la *Loi sur la concurrence* — relativement à un comportement anticoncurrentiel qui constituerait une infraction sous le régime de la partie VI de cette loi.

were to be interpreted as exhaustive in respect of civil claims for such conduct.

[203] On the basis of this reasoning, I agree with the result reached by my colleague: the courts below did not err in permitting the Plaintiff to advance the pleaded common law and equitable causes of action together with the statutory cause of action under s. 36(1) in this case.

C. *What Standard Must a Representative Plaintiff Meet in Order to Have Loss-Related Questions Certified as "Common Issues" Among Indirect Purchasers, and Has the Plaintiff Met This Standard in the Present Case?*

[204] The final issue on appeal relates to the requirement of common issues in s. 4(1)(c) of the *Class Proceedings Act*. What is it that the Plaintiff must be capable of establishing at the certification stage in order to provide the necessary assurance that his loss-related questions are capable of resolution on a common basis, and does his proposed methodology for establishing loss satisfy this requirement?

(1) Background

[205] The existence of common issues among the individual class members lies at the very heart of a class proceeding. The procedural ability to aggregate these issues and to consider them at once, and for all class members, during a common issues trial is what alleviates the need for each class member to seek redress via separate actions (M. A. Eizenga et al., *Class Actions Law and Practice* (2nd ed. (loose-leaf)), at p. 3-101). The authors of *The Law of Class Actions in Canada* explain the importance of commonality in the following terms:

The presence of significant common issues provides the access to justice and judicial economies that ultimately

En effet, l'art. 62 serait vide de sens si le par. 36(1) était interprété comme une disposition exhaustive en ce qui concerne les recours civils relatifs à ce type de comportement.

[203] Sur le fondement de ce raisonnement, je souscris au résultat auquel arrive mon collègue : les tribunaux d'instance inférieure n'ont pas commis d'erreur en permettant au demandeur de faire valoir les causes d'action en common law et en equity ainsi que la cause d'action fondée sur le par. 36(1) en l'espèce.

C. *Quelle est la norme à laquelle doit satisfaire le représentant des demandeurs pour que les questions liées à la perte soient autorisées comme des « questions communes » aux acheteurs indirects? Le demandeur satisfait-il à cette norme en l'espèce?*

[204] La dernière question à trancher dans le pourvoi concerne l'exigence des questions communes énoncée à l'al. 4(1)(c) de la *Class Proceedings Act*. À l'étape de l'autorisation, que doit être en mesure d'établir le demandeur pour convaincre le tribunal que ses questions liées à la perte peuvent être résolues sur une base commune, et est-ce que la méthode qu'il propose pour prouver la perte respecte cette exigence?

(1) Contexte

[205] L'existence de questions communes aux membres individuels du groupe est au cœur même d'un recours collectif. La capacité, sur le plan procédural, de regrouper ces questions communes et de les étudier une seule fois, et ce pour l'ensemble des membres du groupe, lors de l'audition des questions communes élimine la nécessité que chacun des membres du groupe demande réparation en intentant des actions distinctes (M. A. Eizenga et autres, *Class Actions Law and Practice* (2e éd. (feuilles mobiles)), p. 3-101). Les auteurs de *The Law of Class Actions in Canada* expliquent l'importance de la notion de caractère commun en ces termes :

[TRADUCTION] L'existence de questions communes importantes favorise l'accès à la justice et l'économie des

justify certifying a class proceeding. Common issues are what actually unite and define the class. The mere fact that a group of people suffers a wrong does not justify certifying a class proceeding unless there are common issues to be decided for the defendant and the members of the group.

(W. K. Winkler et al. (2014), at p. 107)

For this reason, the determination of what constitute the common issues in any proposed class action is a key aspect of a certification motion.

[206] In his Proposed Litigation Plan, the Plaintiff submitted a number of questions for resolution on a common basis at trial (A.R., vol. II, at pp. 125-27), including questions that essentially relate to whether the class members suffered a loss in connection with the alleged price-fixing conspiracy.

[207] In order to satisfy the Certification Judge that these loss-related questions were capable of resolution on a common basis, the Plaintiff adduced evidence from an expert economist named Dr. Keith Reutter. In his expert report, Dr. Reutter took the position that "all members of the proposed Class would have been impacted" by the alleged price-fixing conspiracy and that "there are accepted methods available to estimate any overcharge and aggregate damages that resulted from the alleged wrongdoing using evidence common to the proposed Class" (A.R., vol. III, at p. 119). His methods would involve constructing an economic model to estimate the "but-for" price of the ODDs, that is, their price if the alleged anti-competitive conduct had not occurred (Certification Judge's reasons, at para. 156), and would include "econometric methods based on multiple regression to determine the overcharge and pass-through rates" (*ibid.*, at para. 158).

[208] The suggestion that Dr. Reutter's methodology could establish that all class members would have been impacted by the alleged price-fixing conspiracy was called into question during his cross-examination,

ressources judiciaires, ce qui, au bout du compte, justifie l'autorisation d'un recours collectif. En fait, les questions communes unifient et définissent le groupe. Le simple fait qu'un groupe de personnes subisse un tort ne justifie pas l'autorisation d'un recours collectif, à moins qu'il faille se prononcer sur des questions communes au défendeur et aux membres du groupe.

(W. K. Winkler et autres (2014), p. 107)

Pour ce motif, dans le contexte d'une requête en autorisation d'un recours collectif projeté, il est essentiel d'identifier les questions communes.

[206] Dans le plan de déroulement de l'instance qu'il a proposé, le demandeur a énoncé plusieurs questions qui peuvent faire l'objet d'une résolution commune (d.a., vol. II, p. 125-127). Certaines de ces questions visaient essentiellement à savoir si les membres du groupe ont subi une perte liée au complot allégué de fixation des prix.

[207] Dans le but de convaincre le juge saisi de la demande d'autorisation que ces questions liées à la perte pouvaient faire l'objet d'une résolution commune, le demandeur a produit le rapport d'un économiste expert, M. Keith Reutter. Dans son rapport d'expert, M. Reutter soutient que [TRADUCTION] « tous les membres du groupe projeté auraient été touchés » par le complot allégué de fixation des prix et que « certaines méthodes permettraient d'estimer la valeur de toute hausse et de tout préjudice global ayant découlé des actes fautifs reprochés au moyen de la preuve commune au groupe projeté » (d.a., vol. III, p. 119). Ses méthodes supposeraient l'élaboration d'un modèle économique servant à évaluer le prix hypothétique des LDO s'il n'y avait pas eu comportement anticoncurrentiel (motifs du juge saisi de la demande d'autorisation, par. 156), de même que l'utilisation de [TRADUCTION] « méthodes économétriques fondées sur la régression multiple pour calculer la majoration et le montant de la perte transférée » (*ibid.*, par. 158).

[208] Toutefois, la suggestion selon laquelle la méthode de M. Reutter permettrait de prouver que tous les membres du groupe ont été touchés par le complot allégué de fixation des prix a été mise en question

however (see A.R., vol. V, at pp. 210-25). The Defendants therefore resisted certification of the loss-related questions, arguing that the Plaintiff's methodology could not address the issue of loss *on a class-wide basis* because it would not make it possible to answer the Plaintiff's proposed questions at trial in respect of every class member — either by establishing that all of them were overcharged for their ODDs, or by identifying those who were, and distinguishing them from those who were not. In the Defendants' submission, unless it could be determined at the common issues trial that a loss had actually been incurred by at least some specific indirect purchasers, then those loss-related questions could not be decided on a common basis at trial and should therefore not be certified as common issues.

[209] For his part, the Plaintiff argued that, from a factual standpoint, his expert's methodology would be capable of establishing that all class members (including the indirect purchasers) had suffered a loss. As an alternative legal argument, he submitted that he was not required to demonstrate to the Certification Judge that, using his expert's methodology, he would be able to prove at trial that all class members were harmed or to distinguish those who were from those who were not in an individualized fashion (R.F. (Toshiba Appeal), at para. 96). Instead, his position was that it would be sufficient, at the certification stage, if the methodology were simply capable of proving that loss had reached the indirect purchaser *level* in the distribution chain — that is, that some overcharges were passed on to some indirect purchasers, without having to identify which ones.

[210] What is key, for the purposes of the commonality issue, is the difference between demonstrating that loss reached the indirect purchaser *level* — that is, that some overcharges were passed on to some *unidentified* indirect purchasers — and proving that loss reached *all* or *an identified group* of indirect purchasers.

pendant son contre-interrogatoire (d.a., vol. V, p. 210-225). Les défenderesses se sont donc opposées à l'autorisation des questions liées à la perte. Elles ont fait valoir que la méthode du demandeur ne pouvait aborder la question de la perte subie à l'*échelle du groupe*, car elle ne permettra pas de répondre aux questions proposées par le demandeur au procès à l'égard de chacun des membres du groupe — que ce soit en prouvant que tous les membres du groupe ont payé un prix trop élevé pour leurs LDO ou en identifiant les membres qui ont payé un prix trop élevé et en les distinguant de ceux qui ont payé un juste prix. Selon les arguments des défenderesses, à moins qu'il ne soit déterminé lors de l'audition des questions communes qu'une perte a effectivement été subie par au moins quelques acheteurs indirects précis, ces questions liées à la perte ne peuvent être tranchées sur une base commune au procès et ne devraient donc pas être autorisées en tant que questions communes.

[209] Pour sa part, le demandeur a fait valoir que, du point de vue factuel, la méthode proposée par son expert permettrait de prouver que tous les membres du groupe (y compris les acheteurs indirects) ont subi une perte. À titre d'argument juridique subsidiaire, il a affirmé qu'il n'était pas tenu de démontrer au juge saisi de la demande d'autorisation que la méthode proposée par son expert lui permettrait de prouver au procès que tous les membres du groupe ont subi un préjudice ou d'établir de manière individuelle une distinction entre ceux qui ont subi un préjudice et ceux qui n'en ont pas subi (m.i. (pourvoi de Toshiba), par. 96). Le demandeur était plutôt d'avis qu'il lui suffirait de démontrer, à l'étape de l'autorisation, que sa méthode permet d'établir que la perte a atteint le *niveau* de l'acheteur indirect situé en aval dans la chaîne de distribution. Autrement dit, il lui suffirait d'établir qu'une certaine majoration atteint certains acheteurs indirects, sans avoir à les identifier individuellement.

[210] En ce qui concerne la question du caractère commun, l'élément clé est la différence entre la démonstration que la perte a atteint le *niveau* de l'acheteur indirect — c'est-à-dire qu'une certaine majoration a atteint quelques acheteurs indirects *non identifiés* — et la preuve que la perte a atteint *la totalité* des acheteurs indirects ou *un groupe précis* d'acheteurs indirects.

[211] My colleague seems to accept that there is some basis in fact for finding that Dr. Reutter's methodology will have a reasonable prospect of establishing, at the common issues trial, that all of the indirect purchasers suffered a loss. In his view, however, nothing turns on this given his conclusion as to the law:

> . . . it is not necessary, in order to support certifying loss as a common question, that a plaintiff's expert's methodology establish that each and every class member suffered a loss. Nor is it necessary that Dr. Reutter's methodology be able to identify those class members who suffered no loss so as to distinguish them from those who did. Rather, in order for loss-related questions to be certified as common issues, a plaintiff's expert's methodology need only be sufficiently credible or plausible to establish loss reached the requisite purchaser level. [Emphasis added; para. 102.]

[212] For the purposes of my analysis, I am prepared to accept that there is some basis in fact on which the Certification Judge could have found that the proposed methodology would be capable of proving at trial that loss had reached the indirect purchaser level. My disagreement with my colleague lies elsewhere. In my view, a methodology that is incapable of establishing at trial that at least some *identifiable* indirect purchasers actually suffered a loss, but that can instead show only that loss occurred somewhere at the indirect purchaser *level* in the distribution chain, does not allow any of the loss-related questions proposed by the Plaintiff in this case to be answered on a "common" or "class-wide" basis.

(2) Analysis

[213] In *Microsoft*, this Court affirmed that, in order to have a question certified as a common issue, the representative plaintiff must show that there is some basis in fact for the commonality requirement in s. 4(1)(c) of the *Class Proceedings Act* — that is, that the question be capable of resolution *on a class-wide basis* (see paras. 99-114). What the "some basis in fact" standard requires in any given case depends on what it is that the proposed question asks;

[211] Mon collègue semble accepter qu'il existe un certain fondement factuel pour conclure que la méthode de M. Reutter permettra raisonnablement d'établir, lors de l'audition des questions communes, que tous les acheteurs indirects ont subi une perte. Il estime cependant que cela n'est pas pertinent compte tenu de sa conclusion à l'égard du droit :

> . . . il n'est pas nécessaire, pour justifier l'autorisation de la question de la perte en tant que question commune, que la méthode proposée par un expert du demandeur établisse que chaque membre du groupe a subi une perte. Il n'est pas non plus nécessaire que la méthode de M. Reutter permette d'identifier les membres du groupe qui n'ont subi aucune perte de manière à les distinguer de ceux qui en ont subi une. Pour que les questions relatives à la perte soient certifiées en tant que questions communes, la méthode de l'expert du demandeur n'a qu'à être suffisamment valable ou acceptable pour établir que l'acheteur du niveau requis a subi une perte. [Je souligne; par. 102.]

[212] Aux fins de mon analyse, je suis disposée à accepter qu'il existe un certain fondement factuel permettant au juge saisi de la demande d'autorisation de conclure que la méthode proposée permettrait d'établir au procès que la perte a atteint le niveau des acheteurs indirects. Mon désaccord avec mon collègue porte sur un autre point. À mon sens, une méthode qui ne permet pas d'établir au procès qu'au moins un certain nombre d'acheteurs indirects *identifiables* ont effectivement subi une perte et qui permet seulement de démontrer que la perte a atteint le *niveau* de l'acheteur indirect situé en aval dans la chaîne de distribution ne peut être utilisée pour résoudre l'une ou l'autre des questions relatives à la perte proposées par le demandeur en l'espèce de façon commune ou à l'échelle du groupe.

(2) Analyse

[213] Dans l'arrêt *Microsoft*, notre Cour a affirmé que pour qu'une question soit autorisée en tant que question commune, le représentant des demandeurs doit établir l'existence d'un certain fondement factuel pour respecter l'exigence de la question commune énoncée à l'al. 4(1)(c) de la *Class Proceedings Act*, c'est-à-dire que la question doit pouvoir faire l'objet d'une résolution *à l'échelle du groupe* (voir par. 99-114). Dans un cas donné, la norme fondée

different questions will impose different requirements upon the representative plaintiff.

[214] In the case at hand, the loss-related questions proposed by the Plaintiff include the following: What damages, if any, are payable to the Class Members pursuant to s. 36 of the *Competition Act*? Did the Class Members suffer economic loss? Have the Class Members suffered a corresponding deprivation in the amount of the overcharges on the sale of ODDs?

[215] The term "Class Member" or "Class Members" is defined in the Plaintiff's Proposed Litigation Plan as "one or more members of the proposed class", which is comprised of:

All persons resident in British Columbia who, during the period commencing at least as early as January 1, 2004 and continuing through January 1, 2010 (the "Class Period"), purchased optical disc drives ("ODD") or products that contained ODD. [A.R., vol. II, at p. 114]

[216] The broad definition of the term "Class Members", and the use of that term in stating the proposed loss-related questions, reflects the possibility that the Plaintiff might not be able to prove at trial that *everyone* who purchased an ODD or an ODD product actually suffered a loss in connection with the alleged price-fixing conspiracy. Rather, the evidence might be such that loss is provable only in respect of *some* class members. My colleague says that these questions are stated in such a way that they "could be taken as asking whether *all* class members suffered economic loss or whether *any* class members suffered economic loss", and adds that "because they could be taken in two different ways they might, following the common issues trial, be answered in different ways" (para. 91 (emphasis in original)).

[217] Regardless of how flexible these questions might be, however, they cannot be answered on a "class-wide" or "common" basis at trial if the

sur l'existence d'« un certain fondement factuel » dépend de la teneur de la question proposée; des exigences différentes seront imposées au représentant des demandeurs selon les questions soulevées.

[214] En l'espèce, les questions liées à la perte proposées par le demandeur sont notamment les suivantes : Quel est le montant des dommages-intérêts, s'il en est, payables aux membres du groupe conformément à l'art. 36 de la *Loi sur la concurrence*? Les membres du groupe ont-ils subi une perte financière? Les membres du groupe se sont-ils appauvris d'un montant égal à celui de la majoration du prix de vente des LDO?

[215] Les termes [TRADUCTION] « membre du groupe » et « membres du groupe » sont définis dans le plan de déroulement de l'instance proposé par le demandeur comme « un ou plusieurs membres du groupe projeté », qui est composé de :

[TRADUCTION] Tous les résidents de la Colombie-Britannique qui, pendant la période allant au moins du 1er janvier 2004 au 1er janvier 2010 (la « période visée par le recours collectif ») ont acheté des lecteurs de disques optiques (« LDO ») ou des produits munis de LDO. [d.a., vol. II, p. 114]

[216] La définition large du terme « membres du groupe », et l'utilisation de ce terme pour formuler les questions proposées liées à la perte, démontrent la possibilité que le demandeur ne soit pas en mesure de prouver au procès que *toutes* les personnes ayant acheté un LDO ou un produit muni d'un LDO ont effectivement subi une perte à cause du complot allégué de fixation des prix. En fait, la preuve pourrait être telle que seule la perte qu'auraient subie *certains* membres du groupe est susceptible d'être prouvée. Mon collègue affirme que ces questions sont formulées de manière à ce qu'elles « puissent être interprétées comme demandant si *tous* les membres du groupe ont subi une perte économique ou si *l'un* d'entre eux a subi une perte économique » et il ajoute que, « [p]arce que ces questions peuvent recevoir deux interprétations différentes, elles pourraient donc, à la suite de l'audition des questions communes, appeler des réponses différentes » (par. 91 (en italique dans l'original)).

[217] Aussi souples ces questions soient-elles, cependant, elles ne peuvent faire l'objet d'une résolution commune ou d'une résolution à l'échelle du

Plaintiff's methodology is incapable of establishing loss in any identifiable manner. This is because mere proof that some loss reached the indirect purchaser level in the distribution chain does not dispose of any element of liability for any indirect purchaser, nor does it otherwise advance the litigation in any meaningful way.

(a) *Proof at trial that loss reached the indirect purchaser level, without anything more, does not dispose of any element of liability for any indirect purchaser*

[218] As my colleague seems to implicitly acknowledge in his reasons, proof that loss reached the indirect purchaser *level* is insufficient for any finding of liability to be made at the common issues trial. This is because loss or deprivation suffered by the claimant is an essential element of the causes of action under s. 36 of the *Competition Act*, under the common law tort of civil conspiracy, and in unjust enrichment. This is key: the Defendants can be held liable under these causes of action only to those class members who (among other things) are found to have suffered a loss in connection with the price fixing.[5] For this reason, the common issues trial judge cannot impose any liability on the Defendants if the Plaintiff cannot show which class members actually suffered a loss. Individual trials will then be necessary (see Brown J.'s reasons, at para. 120; C.A. reasons, at para. 158; *Shah* (Ont. S.C.J.), at para. 69). Indeed, the Plaintiff acknowledges as much in his Proposed Litigation Plan, when he states the following:

The common issues trial will determine the existence and scope of the alleged conspiracy. The common issues trial

groupe au procès si la méthode du demandeur ne permet pas d'établir la perte d'une manière identifiable. Il en est ainsi parce que la simple preuve qu'une partie de la perte a atteint le niveau de l'acheteur indirect situé en aval dans la chaîne de distribution ne permet pas de démontrer l'existence d'une responsabilité quelconque envers les acheteurs indirects ou de faire progresser l'instance d'une manière utile.

a) *La simple démonstration au procès que la perte a atteint le niveau de l'acheteur indirect ne prouve pas l'existence d'une responsabilité quelconque envers les acheteurs indirects*

[218] Comme semble le reconnaître implicitement mon collègue dans ses motifs, la preuve que la perte a atteint le *niveau* d'acheteurs indirects est insuffisante pour tirer une conclusion de responsabilité lors de l'audition des questions communes. Cela tient au fait que la perte ou l'appauvrissement subi par le demandeur est un élément essentiel des causes d'actions fondées sur l'art. 36 de la *Loi sur la concurrence*, fondées sur le délit de complot civil reconnu en common law et en matière d'enrichissement sans cause. Ceci est un élément clé : les défenderesses peuvent être tenues responsables relativement à ces causes d'action seulement envers les membres du groupe à l'égard desquels (notamment) il est conclu qu'ils ont subi une perte liée à la fixation des prix[5]. Pour cette raison, le juge saisi des questions communes ne peut imputer une quelconque responsabilité aux défenderesses si le demandeur n'est pas en mesure d'identifier les membres du groupe qui ont effectivement subi une perte. Des procès individuels seraient donc nécessaires (voir les motifs du juge Brown, par. 120; motifs de la C.A., par. 158; *Shah* (C.S.J. Ont.), par. 69). En effet, le demandeur le reconnaît dans son plan de déroulement de l'instance proposé, où il affirme ce qui suit :

[TRADUCTION] L'audition des questions communes permettra de déterminer l'existence et l'ampleur du complot

[5] The degree of "connection" varies among the different causes of action. For example, the cause of action under s. 36 of the *Competition Act* is for loss or damage that has occurred "as a result of" anti-competitive conduct. Recovery in unjust enrichment is available to a claimant who suffered a deprivation that "corresponds" to the defendant's enrichment in circumstances where there is no juristic reason for either the enrichment or the deprivation.

[5] Le degré d'un « lien » varie parmi les différentes causes d'action. Par exemple, la cause d'action fondée sur l'art. 36 de la *Loi sur la concurrence* concerne la perte ou les dommages subis « par suite » d'un comportement anticoncurrentiel. Un demandeur ayant subi un appauvrissement qui « correspond » à l'enrichissement du défendeur peut demander un recouvrement pour enrichissement sans cause lorsqu'aucun motif juridique ne justifie l'enrichissement ou l'appauvrissement.

may also determine on a class-wide basis whether Class Members were injured, leading to a finding of liability and a determination of aggregate damages. If the common issues trial does not determine injury on a class-wide basis, liability and damages will be determined on an individual basis in a manageable process. [Emphasis added; A.R., vol. II, at p. 118.]

[219] This, of course, makes sense when we consider the fact that a class action is essentially an aggregation of individual actions that share common issues of fact and law (*Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, [2001] 2 S.C.R. 534, at para. 27). In *Bou Malhab v. Diffusion Métromédia CMR Inc.*, 2011 SCC 9, [2011] 1 S.C.R. 214, this Court reiterated that the class proceeding is merely a procedural vehicle which "cannot be used to make up for the absence of one of the constituent elements of the cause of action", adding that such a proceeding "can succeed only if each claim it covers, taken individually, could serve as a basis for court proceedings" (para. 52 (emphasis added)). By way of illustration, a claimant in an individual trial would not be entitled to a remedy under s. 36(1) of the *Competition Act* merely upon establishing that loss had reached some unidentified persons at his or her level in the distribution chain; that claimant would likewise have no such entitlement in a class proceeding (see *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58, [2013] 3 S.C.R. 545, at para. 75).

[220] Moreover, and again as my colleague's reasons make clear, the aggregate damages provisions of the *Class Proceedings Act* (ss. 29 to 34) cannot be of any assistance to the Plaintiff in establishing liability to all of the class members in a case like this, where proof of loss is a constituent element of the cause(s) of action. As Rothstein J. explained in *Microsoft*:

The aggregate damages provisions of the *CPA* relate to remedy and are procedural. They cannot be used to establish liability (*2038724 Ontario Ltd. v. Quizno's Canada*

allégué. Elle permettra également de déterminer à l'échelle du groupe si les membres du groupe ont subi un préjudice, ce qui mènera à une conclusion de responsabilité et à la fixation des dommages-intérêts globaux. Si l'audition des questions communes ne permet pas de déterminer qu'un préjudice a été subi à l'échelle du groupe, la responsabilité et les dommages-intérêts seront établis individuellement au moyen d'un processus fonctionnel. [Je souligne; d.a., vol. II, p. 118.]

[219] Bien sûr, cela est logique lorsque nous tenons compte du fait qu'un recours collectif est essentiellement un regroupement d'actions individuelles qui partagent des questions communes de fait et de droit (*Western Canadian Shopping Centres Inc. c. Dutton*, 2001 CSC 46, [2001] 2 R.C.S. 534, par. 27). Dans l'arrêt *Bou Malhab c. Diffusion Métromédia CMR inc.*, 2011 CSC 9, [2011] 1 R.C.S. 214, notre Cour a réaffirmé que le recours collectif ne constitue qu'un mécanisme procédural dont « on ne peut s'autoriser [. . .] pour suppléer à l'absence d'un des éléments constitutifs du droit d'action », ajoutant qu'une telle procédure « ne pourra réussir que si chacune des réclamations prises individuellement justifiait le recours aux tribunaux » (par. 52 (je souligne)). À titre d'exemple, le demandeur qui intente une action à titre individuel n'aurait pas droit à une réparation au titre du par. 36(1) de la *Loi sur la concurrence* simplement en établissant qu'une perte a été subie par des personnes non identifiées situées à son niveau de la chaîne de distribution; ce demandeur n'aurait pas non plus droit à une telle réparation dans un recours collectif (voir *Sun-Rype Products Ltd. c. Archer Daniels Midland Company*, 2013 CSC 58, [2013] 3 R.C.S. 545, par. 75).

[220] De plus, et comme mon collègue l'indique clairement dans ses motifs, les dispositions de la *Class Proceedings Act* relatives aux dommages-intérêts globaux (art. 29 à 34) ne peuvent être d'aucune utilité au demandeur pour établir la responsabilité envers tous les membres du groupe dans une affaire comme celle qui nous occupe, où la preuve de la perte est un élément constitutif de la ou des causes d'action. Comme l'a expliqué le juge Rothstein dans *Microsoft* :

Les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux ont trait à la réparation, sont de nature procédurale et ne peuvent permettre d'établir la responsabilité

*Restaurant Corp.*, 2010 ONCA 466, 100 O.R. (3d) 721, at para. 55). The language of s. 29(1)(b) specifies that no question of fact or law, other than the assessment of damages, should remain to be determined in order for an aggregate monetary award to be made. As I read it, this means that an antecedent finding of liability is required before resorting to the aggregate damages provision of the *CPA*. This includes, where required by the cause of action such as in a claim under s. 36 of the *Competition Act*, a finding of proof of loss. I do not see how a statutory provision designed to award damages on an aggregate basis can be said to be used to establish any aspect of liability. [Emphasis added; para. 131.]

(*2038724 Ontario Ltd. c. Quizno's Canada Restaurant Corp.*, 2010 ONCA 466, 100 O.R. (3d) 721, par. 55). Le libellé de l'al. 29(1)(b) veut qu'il ne reste à trancher que des questions de fait ou de droit touchant à la détermination de la réparation pécuniaire pour qu'une réparation pécuniaire globale puisse être accordée. À mon sens, il faut une conclusion préalable de responsabilité avant d'appliquer les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux, ce qui comprend, lorsque l'exige une cause d'action comme celles prévues à l'art. 36 de la *Loi sur la concurrence*, une conclusion sur la preuve de la perte. Je ne vois pas comment une disposition visant à accorder des dommages-intérêts de manière globale pourrait être le fondement d'une conclusion sur quelque volet de la responsabilité. [Je souligne; par. 131.]

[221] The aggregate damages provisions of the *Class Proceedings Act* therefore cannot be interpreted and applied in such a way as to give a remedy to class members who could not obtain a remedy in an individual trial due to their inability to show that they suffered a loss in connection with the alleged conspiracy. It is important not to conflate the assessment of aggregate damages with the rationale for awarding them.

[221] Les dispositions de la *Class Proceedings Act* relatives aux dommages-intérêts globaux ne peuvent donc être interprétées et appliquées de manière à accorder une réparation aux membres du groupe qui ne pouvaient en obtenir une dans un procès individuel en raison de leur incapacité à démontrer qu'ils ont subi une perte par suite du complot allégué. Il est important de ne pas confondre l'évaluation des dommages-intérêts globaux avec la justification de leur octroi.

[222] What all of this means is that a determination at a common issues trial of whether loss reached the indirect purchaser *level* in the distribution chain is of no assistance in resolving the question of whether the Defendants are actually liable to any or all of the indirect purchasers under the causes of action listed above. From the Plaintiff's perspective, the best case scenario is that there is a need for individual trials on the question of which indirect purchasers actually suffered a loss. His worst case scenario is that it cannot be proved that any indirect purchasers suffered a loss at all, which would terminate the litigation altogether as it pertains to those class members. Contrary to what the Certification Judge stated in his reasons (at para. 168), establishing at trial that "the defendants took part in a conspiracy, that they sometimes or always overcharged direct purchasers, and that at least some direct purchasers passed on these overcharges" to the indirect purchasers will *not* be "sufficient to establish the fact of the defendants' liability". It follows, therefore, that the Certification Judge did not identify the correct

[222] Compte tenu de tout ce qui précède, lors de l'audition des questions communes, déterminer si la perte a atteint le *niveau* d'acheteurs indirects situés en aval dans la chaîne de distribution ne permet pas d'établir si les défenderesses sont responsables envers l'ensemble ou une partie des acheteurs indirects relativement aux causes d'action énumérées ci-dessus. Du point de vue du demandeur, dans le meilleur des cas, il faudrait tenir des procès individuels afin de déterminer qui, parmi les acheteurs indirects, a réellement subi une perte. Le pire des cas serait de ne pas pouvoir démontrer que l'un ou l'autre des acheteurs indirects a subi une perte, ce qui mettrait carrément fin au litige visant ces membres du groupe. Contrairement à ce qu'a indiqué le juge saisi de la demande d'autorisation dans ses motifs (par. 168), démontrer au procès que [TRADUCTION] « les défenderesses ont participé à un complot, qu'elles ont parfois ou toujours imposé une majoration aux acheteurs directs et qu'au moins certains de ces acheteurs directs ont refilé ces majorations » aux acheteurs indirects « [*ne*] suffira [*pas*] à établir la responsabilité des défenderesses ». Par

standard for certifying loss as a common issue (see Brown J.'s reasons, at para. 110).

(b) *Proof at trial that loss reached the indirect purchaser level, without anything more, does not allow for any loss-related determination that would advance the litigation in a manner that satisfies the commonality requirement*

[223] My colleague states that the loss-related questions proposed by the Plaintiff in this case satisfy the commonality requirement in s. 4(1)(c) of the *Class Proceedings Act*, based on a methodology that is capable of proving that overcharges were passed on somewhere at the indirect purchaser level, *even though* such a methodology cannot allow any finding of liability to be made at trial (see paras. 109 and 120). Similarly, the Plaintiff takes the position that a "single analysis of whether there was an overcharge and whether that overcharge was passed on to the indirect purchaser level would significantly advance the claim for all class members by avoiding repetition of the collection and analysis of large quantities of economic data" (R.F. (Toshiba Appeal), at para. 106).

[224] In light of the legal principles set out by my colleague at paras. 103-5 of his reasons, however, I cannot agree. To begin with, the fact that losses might have occurred somewhere at the indirect purchaser level in the distribution chain does not assist us in determining which specific indirect purchasers suffered losses in order to identify the class members to whom the Defendants might be liable. If the common issues trial judge finds that overcharges were passed on to at least one unidentifiable indirect purchaser, there would still be a need for individual trials; therefore, duplication of fact-finding would not be eliminated (*Dutton*, at para. 39). And if such individual trials are indeed required, then proof that loss occurred somewhere at the indirect purchaser level is not truly "necessary to the resolution of each class member's claim", is not a "substantial common ingredient" of their causes of action, and cannot in fact result in

conséquent, le juge saisi de la demande d'autorisation n'a pas appliqué la bonne norme pour autoriser la question de la perte en tant que question commune (voir les motifs du juge Brown, par. 110).

b) *La simple démonstration au procès que la perte a atteint le niveau de l'acheteur indirect ne permet pas de rendre une décision sur la perte qui ferait progresser l'instance d'une manière qui respecte l'exigence d'une question commune*

[223] Mon collègue affirme que les questions de perte proposées par le demandeur en l'espèce répondent à l'exigence d'une question commune prévue à l'al. 4(1)(c) de la *Class Proceedings Act*, sur le fondement d'une méthode qui permet de prouver qu'une majoration a été refilée au niveau de l'acheteur indirect, *même si* cette méthode ne permet pas de tirer une conclusion de responsabilité au procès (voir par. 109 et 120). De même, le demandeur soutient que [TRADUCTION] « une seule analyse visant à déterminer s'il y a eu majoration et si celle-ci est passée au niveau de l'acheteur indirect ferait considérablement progresser la demande pour tous les membres du groupe, car elle aurait pour effet d'éviter de répéter la collecte et l'analyse de grandes quantités de données économiques » (m.i. (pourvoi de Toshiba), par. 106).

[224] Compte tenu des principes de droit énoncés par mon collègue aux par. 103-105 de ses motifs, cependant, je ne puis être d'accord. Premièrement, le fait que des acheteurs indirects situés en aval dans la chaîne de distribution pourraient avoir subi une perte ne nous aide pas à déterminer précisément de quels acheteurs indirects il s'agit, d'une manière qui nous permettrait d'identifier les membres du groupe envers lesquels les défenderesses pourraient être responsables. Si le juge appelé à statuer sur les questions communes conclut qu'une majoration a atteint le niveau d'au moins un acheteur indirect non identifiable, il serait tout de même nécessaire de tenir des procès individuels; la répétition de l'appréciation des faits ne serait donc pas éliminée (*Dutton*, par. 39). Et si de tels procès individuels sont vraiment nécessaires, la preuve qu'une perte a été subie quelque part au niveau des acheteurs indirects n'est

"success" for any of those indirect purchasers (*ibid.*, at paras. 39-40 (emphasis added)).

[225] My colleague nevertheless opines that the requisite commonality derives from the fact that failure to show that loss was suffered by *any* indirect purchasers would mean that *none* of them could succeed against the Defendants (para. 108). With respect, however, the function of the common issues trial is not to screen out unmeritorious claims; it is to allow issues of fact and law that are common among many claimants to be determined *at once*, so as to avoid the need for individual determinations for each and every class member. Furthermore, it is unclear why any representative plaintiff would seek the certification of a question that can meaningfully "advance the litigation" only if it results in failure for all indirect purchasers (see Brown J.'s reasons, at para. 109). In any event, I agree that "it would be a gross waste of private and public resources to litigate if the only prospective 'benefit' was to show that there was no point bringing the case in the first place" (K. Wright, T. Shikaze and E. Snow, "On the 'Level' After *Godfrey*: Proving Liability in Canadian Price Fixing Class Actions" (2017), 12 *C.A.D.Q.* 13, at p. 18).[6]

[226] All of this leads me to the conclusion that proof that loss reached the indirect purchaser *level* in the distribution chain would not, without more, allow the common issues trial judge to make any loss-related determinations on a class-wide basis so as to permit the proposed questions to be certified as common issues for trial.

[6] One of the authors of this article served as counsel for certain defendants in this litigation (although not before this Court) and in *Shah*.

pas réellement « nécessaire pour la résolution des demandes de chaque membre du groupe », n'est pas un « élément commun important » de leurs causes d'action et ne peut en fait entraîner le « succès » d'aucun de ces acheteurs indirects (*ibid.*, par. 39-40 (je souligne)).

[225] Mon collègue estime néanmoins que l'exigence d'une question commune découle du fait que si l'on ne peut démontrer que la perte a été subie par *quelque* acheteur indirect *que ce soit*, *aucun* d'entre eux ne peut obtenir gain de cause contre les défenderesses (par. 108). Avec égards, cependant, l'audition des questions communes n'a pas pour fonction d'écarter les demandes non fondées; elle sert plutôt à permettre de trancher *simultanément* des questions de fait et de droit qui sont communes à un grand nombre de demandeurs, de manière à éviter de devoir juger individuellement de ces questions pour chacun des membres du groupe. Qui plus est, on ne sait pas avec certitude pourquoi le représentant des demandeurs solliciterait l'autorisation d'une question qui peut uniquement « faire avancer l'instance » de façon utile si elle entraîne un échec pour tous les acheteurs indirects (voir les motifs du juge Brown, par. 109). Quoi qu'il en soit, je conviens que [TRADUCTION] « ce serait un énorme gaspillage de ressources privées et publiques d'intenter une poursuite si le seul "avantage" éventuel était de démontrer que, dès le départ, il n'y avait pas lieu de porter l'affaire devant les tribunaux » (K. Wright, T. Shikaze et E. Snow, « On the "Level" After *Godfrey* : Proving Liability in Canadian Price Fixing Class Actions » (2017), 12 *C.A.D.Q.* 13, p. 18)[6].

[226] Tout ce qui précède m'amène à conclure que la preuve selon laquelle la perte a atteint le *niveau* de l'acheteur indirect situé en aval dans la chaîne de distribution, à elle seule, ne permettrait pas au juge appelé à statuer sur les questions communes de tirer une conclusion sur la perte à l'échelle du groupe, de manière à permettre l'autorisation des questions proposées en tant que questions communes pour audition.

[6] L'un des auteurs de cet article était l'avocat de certaines défenderesses en l'espèce (mais non devant notre Cour) et dans *Shah*.

(c) *Microsoft does not indicate that loss-related questions are certifiable in indirect purchaser class actions so long as the representative plaintiff has a plausible methodology for proving solely that some overcharges were passed on to the indirect purchaser level*

[227] Like the courts below, my colleague relies on this Court's decision in *Microsoft* to support his conclusion that loss-related questions in indirect purchaser class actions are certifiable even if the representative plaintiff's methodology can show only that loss reached the indirect purchaser *level* (but cannot establish loss on any individualized basis). Because that case raised a number of issues that are similar to those in the case at hand, it is worth analyzing it in some depth.

[228] As in this case, the class action in *Microsoft* was based on an allegation of price manipulation by the defendants, Microsoft Corporation and Microsoft Canada Co./Microsoft Canada CIE (collectively, "Microsoft"). The representative plaintiffs — Pro-Sys Consultants Ltd. and Neil Godfrey (collectively, "Pro-Sys") — specifically alleged, on behalf of all class members, that Microsoft had engaged in unlawful conduct by overcharging for its operating systems. The class was made up of indirect purchasers who had acquired Microsoft products from resellers that had themselves purchased the products from Microsoft or another reseller higher up in the distribution chain. Pro-Sys pleaded causes of action under the common law torts of intentional interference with economic interests and conspiracy, sought damages pursuant to ss. 36, 45 and 52 of the *Competition Act*, and claimed in unjust enrichment and waiver of tort.

[229] Although the loss-related questions in that case are very similar to those proposed in the case at hand, they explicitly asked whether losses or overcharges had been passed on to *all* of the indirect

c) *Microsoft n'indique pas que les questions de perte peuvent être autorisées dans des recours collectifs formés par des acheteurs indirects dès que le représentant des demandeurs emploie une méthode acceptable pour prouver uniquement qu'une majoration a atteint le niveau de l'acheteur indirect*

[227] À l'instar des tribunaux d'instance inférieure, mon collègue se fonde sur l'arrêt *Microsoft* de notre Cour à l'appui de sa conclusion que les questions de perte dans des recours collectifs formés par des acheteurs indirects peuvent être autorisées même si la méthode proposée par le représentant des demandeurs permet seulement de démontrer que la perte a été refilée à l'acheteur indirect (sans prouver la perte de façon individuelle). Comme cette affaire a soulevé plusieurs questions semblables à celles en l'espèce, elle vaut la peine d'être examinée en profondeur.

[228] Comme dans le cas présent, le recours collectif dans *Microsoft* reposait sur une allégation de manipulation des prix de la part des défenderesses, Microsoft Corporation et Microsoft Canada Co./Microsoft Canada CIE (appelées collectivement « Microsoft »). Les représentants des demandeurs, Pro-Sys Consultants Ltd. et Neil Godfrey (appelées collectivement « Pro-Sys »), avaient précisément allégué, au nom de tous les membres du groupe, que Microsoft avait agi illégalement en majorant le prix de ses systèmes d'exploitation. Le groupe était composé d'acheteurs indirects qui avaient acheté des produits de Microsoft de revendeurs qui les avaient eux-mêmes achetés de Microsoft ou d'autres revendeurs situés en amont dans la chaîne de distribution. Pro-Sys invoquait des causes d'action pour délits d'atteinte intentionnelle aux intérêts financiers et de complot reconnus en common law, sollicitait des dommages-intérêts sur le fondement des art. 36, 45 et 52 de la *Loi sur la concurrence* et demandait restitution pour enrichissement sans cause et renonciation au recours délictuel.

[229] Bien que les questions de perte dans cette affaire ressemblaient beaucoup à celles proposées en l'espèce, elles visaient expressément à savoir si la perte ou la majoration avait été transférée à *tous*

purchaser class members.[7] Among the issues at the certification stage was "whether Pro-Sys' proposed methodology will be able to show the initial overcharges and the pass-through to the proposed class members" (*Pro-Sys v. Microsoft*, 2010 BCSC 285 ("*Microsoft* (BCSC)"), at para. 8 (CanLII) (emphasis added)).

[230] Rothstein J., writing for a unanimous Court, clarified that the onus on the representative plaintiff at the certification stage is to establish that there is some basis in fact for the commonality requirement. In the context of loss-related questions, he observed that this requires the proposed methodology to "offer a realistic prospect of establishing loss on a class-wide basis" (para. 118 (emphasis added)). Importantly, Rothstein J. also expanded on how commonality can be established in indirect purchaser class actions where expert evidence is adduced to show that the issue of loss is resolvable on a class-wide basis:

> The role of the expert methodology is to establish that the overcharge was passed on to the indirect purchasers, making the issue common to the class as a whole (see *Chadha*, at para. 31). The requirement at the certification stage is not that the methodology quantify the damages in question; rather, the critical element that the methodology must establish is the ability to prove "common impact", as described in the U.S. antitrust case of *In Re: Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002). That is, plaintiffs must demonstrate that "sufficient proof [is] available, for use at trial, to prove antitrust impact common

[7] The loss-related questions proposed by Pro-Sys included the following: Are the Class Members entitled to losses or damages pursuant to s. 36 of the *Competition Act*, and, if so, in what amount? Did the Class Members suffer economic loss? Did the Class Members suffer economic loss as a result of the Defendants' interference? Have the Class Members suffered a corresponding deprivation in the amount of the Overcharge? (See *Microsoft*, Appendix.) The term "Class Members" was defined in Pro-Sys's proposed litigation plan to mean "all persons resident in British Columbia who, on or after January 1, 1994, indirectly acquired a license for Microsoft Operating Systems and/or Microsoft Applications Software for their own use, and not for purposes of further selling or leasing" (Pro-Sys A.R., vol. III, at p. 196 (emphasis added)).

les acheteurs indirects du groupe[7]. Au nombre des questions soulevées à l'étape de l'autorisation, il y avait celle de savoir [TRADUCTION] « si la méthode proposée par Pro-Sys permettra d'établir la majoration initiale ainsi que son transfert aux membres du groupe projeté » (*Pro-Sys c. Microsoft*, 2010 BCSC 285 (« *Microsoft* (BCSC) »), par. 8 (CanLII) (je souligne)).

[230] Rédigeant l'arrêt unanime de la Cour, le juge Rothstein a précisé qu'à l'étape de l'autorisation, il incombe au représentant des demandeurs d'établir un certain fondement factuel aux fins du respect de l'exigence d'une question commune. Dans le cas des questions de perte, il a fait remarquer que la méthode proposée doit « offrir une possibilité réaliste d'établir la perte à l'échelle du groupe » (par. 118 (je souligne)). Fait important, le juge Rothstein a également donné des précisions sur la manière dont le caractère commun de la perte peut être établi dans le cadre de recours collectifs formés par des acheteurs indirects où une preuve d'expert est présentée pour démontrer que la question de la perte peut être résolue à l'échelle du groupe :

> La méthode proposée par l'expert vise à établir que la majoration a été transférée aux acheteurs indirects, ce qui rend la question commune au groupe dans son ensemble (voir *Chadha*, par. 31). À l'étape de la certification, la méthode n'a pas à déterminer le montant des dommages-intérêts, mais doit plutôt — et c'est là l'élément crucial — être susceptible de prouver « les conséquences communes », comme le conclut un tribunal américain dans une affaire antitrust, *In Re : Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002). Les demandeurs doivent démontrer qu'une [TRADUCTION] « preuve

[7] Les questions de perte proposées par Pro-Sys étaient notamment les suivantes : Les membres du groupe ont-ils droit, suivant l'art. 36 de la *Loi sur la concurrence*, au recouvrement des pertes ou des dommages subis et, dans l'affirmative, à raison de quel montant? Les membres du groupe ont-ils subi une perte financière? Les membres du groupe ont-ils subi une perte financière par suite de cette atteinte? Les membres du groupe se sont-ils appauvris d'un montant égal à celui de la majoration? (Voir *Microsoft*, annexe.) Selon le plan de déroulement de l'instance proposé par Pro-Sys, le terme « membres du groupe » signifie [TRADUCTION] « toutes les personnes résidant en Colombie-Britannique qui, depuis le 1er janvier 1994, ont acquis indirectement une licence pour un système d'exploitation ou un logiciel d'application de Microsoft à leur usage personnel, et non aux fins de revente ou de location » (d.a. Pro-Sys, vol. III, p. 196 (je souligne)).

to all the members of the class" (*ibid.*, at p. 155). It is not necessary at the certification stage that the methodology establish the actual loss to the class, as long as the plaintiff has demonstrated that there is a methodology capable of doing so. In indirect purchaser actions, this means that the methodology must be able to establish that the overcharges have been passed on to the indirect-purchaser level in the distribution chain. [Emphasis added; para. 115.]

[231] In the case at hand, the courts below interpreted this passage as meaning that loss-related questions will always be certifiable as common issues in the context of indirect purchaser class actions so long as the representative plaintiff's methodology is capable of showing loss at the indirect purchaser level of the distribution chain. Respectfully, this reading of *Microsoft* — which focuses almost exclusively on the final sentence in the above-reproduced passage — is not consistent with the reasons as a whole, when read alongside those of the motion judge in that case.

[232] For our purposes, it is significant that the loss-related questions in *Microsoft* concerned whether *all* of the indirect purchasers had suffered a loss. Rothstein J. agreed that the class members' claims raised common issues because the resolution of those issues "would appear to advance the claims of the entire class and to answer them commonly will avoid duplication in legal and factual analysis" (para. 111). He also declined to interfere with the motion judge's finding that Pro-Sys "has a credible or plausible methodology to show that all class members were harmed by Microsoft's alleged illegal activities" (*Microsoft* (BCSC), at para. 122 (emphasis in original); see also *Microsoft*, at para. 126). This led Rothstein J. to conclude as follows:

Unlike *Hollick*, here the loss-related issues can be said to be common because there is an expert methodology that has been found to have a realistic prospect of establishing

permettra d'établir, lors du procès, les conséquences antitrust qui sont communes à tous les membres du groupe » (*ibid.*, p. 155). À l'étape de la certification, point n'est besoin que la méthode établisse la perte réellement subie par le groupe dans la mesure où le demandeur démontre qu'une méthode permet de le faire. Dans le cadre d'actions d'acheteurs indirects, la méthode doit donc pouvoir établir que la majoration a été transférée à l'acheteur indirect situé en aval dans la chaîne de distribution. [Je souligne; par. 115.]

[231] Dans le cas présent, les tribunaux d'instance inférieure ont interprété cet extrait comme signifiant que les questions de perte pourront toujours être autorisées en tant que questions communes dans le contexte de recours collectifs formés par des acheteurs indirects dans la mesure où la méthode proposée par le représentant des demandeurs permet de démontrer que la perte a atteint le niveau de l'acheteur indirect situé en aval dans la chaîne de distribution. Avec égards, cette interprétation de *Microsoft* — axée presque exclusivement sur la dernière phrase de l'extrait reproduit ci-dessus — ne cadre pas avec les motifs dans leur ensemble, lorsqu'ils sont lus conjointement avec ceux du juge saisi de la requête dans cette affaire.

[232] Pour les besoins du présent dossier, il est révélateur que les questions de perte dans *Microsoft* visaient à établir si *tous* les acheteurs indirects avaient subi une perte. Le juge Rothstein a convenu que les réclamations des membres du groupe soulevaient des questions communes, car la résolution de ces questions « permettrait de faire progresser l'examen des allégations du groupe dans son ensemble et d'éviter la répétition dans l'analyse du droit et des faits » (par. 111). Il a également refusé de modifier la conclusion du juge saisi de la requête selon laquelle Pro-Sys [TRADUCTION] « [a] adopt[é] une méthode valable ou acceptable pour démontrer que tous les membres du groupe ont été lésés par les activités illégales reprochées à Microsoft » (*Microsoft* (BCSC), par. 122 (souligné dans l'original); voir également *Microsoft*, par. 126). Le juge Rothstein a donc conclu ce qui suit :

Contrairement à l'affaire *Hollick*, on peut dire en l'espèce que la perte constitue une question commune car il a été déterminé qu'une méthode proposée par un expert

loss on a class-wide basis. If the common issues were to be resolved, they would be determinative of Microsoft's liability and of whether passing on of the overcharge to the indirect purchasers has occurred. Because such determinations will be essential in order for the class members to recover, it can be said, in this case, that a resolution of the common issues would significantly advance the action. While it is possible that individual issues may arise at the trial of the common issues, it is implicit in the reasons of [the motion judge] that, at the certification stage, he found the common issues to predominate over issues affecting only individual class members. [Emphasis added; para. 140.]

[233] A careful reading of *Microsoft* therefore makes it clear that Pro-Sys's loss-related questions were found to be resolvable on a "class-wide" basis because there was a credible and plausible methodology capable of answering them in respect of *all of the class members* at the common issues trial. Rothstein J. most likely referred to a methodology that is "able to establish that the overcharges have been passed on to the indirect purchaser level in the distribution chain" (para. 115) because of the motion judge's observation that, in order to succeed, Pro-Sys "must show that the alleged increased charges to the direct customers were not absorbed by any subsequent level in the distribution channel" before reaching the indirect purchasers who formed part of the class (*Microsoft* (BCSC), at para. 6). Indeed, Rothstein J. went so far as to say that "[t]he role of the expert methodology is to establish that the overcharge was passed on to the indirect purchasers, making the issue common to the class as a whole", and that what the plaintiff "must demonstrate [is] that 'sufficient proof [is] available, for use at trial, to prove antitrust impact common to all the members of the class' ([*In Re: Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002)], at p. 155)" (para. 115 (emphasis added)).

[234] *Microsoft* is therefore a case in which the representative plaintiffs obtained the certification of questions asking whether *all* indirect purchasers had suffered a loss, by providing the motion judge with

permettrait assez certainement d'établir la perte à l'échelle du groupe. Le règlement des questions communes devrait permettre de statuer sur la responsabilité de Microsoft et sur le transfert de la majoration aux acheteurs indirects. Puisqu'il est essentiel de statuer sur ces points afin que les membres du groupe puissent recouvrer le montant de la perte, on peut soutenir en l'espèce que le règlement des questions communes fera progresser substantiellement l'instance. Bien qu'il soit possible que des questions individuelles soient soulevées à l'audition des questions communes, le juge Myers indique implicitement dans ses motifs que, à l'étape de la certification, les questions communes l'emportent sur les questions qui ne touchent que des membres individuels. [Je souligne; par. 140.]

[233] Il ressort donc d'une lecture attentive de l'arrêt *Microsoft* que notre Cour a conclu que les questions de perte soulevées par Pro-Sys pouvaient être réglées à « l'échelle du groupe », car il existait une méthode valable et acceptable permettant d'y répondre pour *tous les membres du groupe* lors de l'audition des questions communes. La mention, dans les motifs du juge Rothstein, d'une méthode pouvant « établir que la majoration a été transférée à l'acheteur indirect situé en aval dans la chaîne de distribution » (par. 115) reprend fort probablement la remarque du juge saisi de la requête selon laquelle, pour avoir gain de cause, Pro-Sys [TRADUCTION] « doit démontrer que la majoration alléguée transférée aux clients directs n'a pas été absorbée par un niveau subséquent de la chaîne de distribution » avant d'être refilée aux acheteurs indirects qui faisaient partie du groupe (*Microsoft* (BCSC), par. 6). En effet, le juge Rothstein est allé jusqu'à dire que « [l]a méthode proposée par l'expert vise à établir que la majoration a été transférée aux acheteurs indirects, ce qui rend la question commune au groupe dans son ensemble », et que le demandeur « [doit] démontrer qu'une [TRADUCTION] "preuve permettra d'établir, lors du procès, les conséquences antitrust qui sont communes à tous les membres du groupe" ([*In Re : Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002)], p. 155) » (par. 115 (je souligne)).

[234] Ainsi, *Microsoft* est une affaire où les représentants des demandeurs ont obtenu l'autorisation de questions visant à déterminer si *tous* les acheteurs indirects ont subi une perte, en fournissant au juge

some basis in fact on which to find that the representative plaintiffs would be capable of proving at trial that they all had. Because the methodology made it possible for the common issues trial judge to resolve a necessary component of everyone's claim at once, without the need for individual trials, the commonality requirement was clearly met. As I have explained, however, *Microsoft* does not support the proposition that loss-related questions concerning indirect purchasers are certifiable, as a matter of course, so long as the plaintiff's methodology can show that some loss reached their level in the distribution chain. My colleague provides no reason for reading *Microsoft* in any other way (see Brown J.'s reasons, at para. 107).

saisi de la requête un certain fondement factuel sur lequel s'appuyer pour conclure que les représentants des demandeurs seraient en mesure de prouver au procès qu'ils avaient tous subi une perte. Comme la méthode a permis au juge appelé à statuer sur les questions communes de régler en même temps un élément nécessaire des demandes de tous, sans la tenue de procès individuels, l'exigence d'une question commune a manifestement été respectée. Cependant, comme je l'ai expliqué, *Microsoft* ne permet pas d'affirmer que les questions de perte subie par les acheteurs indirects peuvent être automatiquement autorisées, dès que la méthode proposée par le demandeur permet de démontrer qu'une perte a été refilée à leur niveau dans la chaîne de distribution. Mon collègue n'indique pas pourquoi il y a lieu d'interpréter autrement cet arrêt (voir les motifs du juge Brown, par. 107).

### (3) Conclusion on the Commonality Issue

[235] The legal dispute between the parties turns on whether loss-related questions that pertain to indirect purchasers in a price-fixing class action can be certified as common issues *even if* the representative plaintiff's methodology is capable only of establishing at trial that loss was occasioned somewhere at the indirect purchaser level of the distribution chain. I would respectfully answer this question in the negative. If the methodology is such that the common issues trial judge will be unable to make any findings as to which class members actually suffered a loss (for the purpose of making determinations as to liability), then those loss-related questions proposed by the plaintiff will not be capable of resolution on a "class-wide" or "common" basis. Indeed, this Court explained in *Sun-Rype* that "where the proposed certified causes of action require proof of loss as a component of proving liability, the certification judge must be satisfied that there is some basis in fact that at least two persons can prove they incurred a loss" (para. 76 (emphasis added)). No two persons can prove that *they* are the ones who incurred a loss if a representative plaintiff's methodology can demonstrate only that loss reached some unidentified persons at their level in the distribution chain; by itself, such a methodology does not establish an

### (3) Conclusion sur la question du caractère commun

[235] Le litige juridique opposant les parties porte sur la question de savoir si les questions de perte visant les acheteurs indirects dans un recours collectif en matière de fixation des prix peuvent être autorisées en tant que questions communes *même si* la méthode proposée par le représentant des demandeurs permet seulement d'établir au procès qu'une perte a été subie quelque part au niveau de l'acheteur indirect dans la chaîne de distribution. Avec égards, je réponds à cette question par la négative. Si la méthode proposée est telle que le juge appelé à statuer sur les questions communes sera incapable de tirer des conclusions quant à l'identité des membres du groupe ayant réellement subi une perte (afin de trancher la question de la responsabilité), ces questions de perte proposées par le demandeur ne pourront donc pas être résolues « à l'échelle du groupe » ou en « commun ». En effet, dans *Sun-Rype*, notre Cour a expliqué que « dans les cas où les causes d'action proposées assujettissent la preuve de la responsabilité notamment à celle de la perte, le juge saisi de la demande d'autorisation doit être convaincu qu'il existe un certain fondement factuel pour dire qu'au moins deux personnes sont en mesure de démontrer avoir essuyé une perte » (par. 76 (je souligne)). Deux personnes ne peuvent prouver qu'*elles* sont celles qui

essential element of liability for anyone. The need for individual trials in those circumstances is indicative of the absence of commonality.

[236] That being said, what is required of the Plaintiff in this case is a methodology capable of answering the loss-related questions on an individualized basis, either by showing that all of the indirect purchasers suffered a loss or at least by identifying those who did and separating them from those who did not or those about whom we cannot be sure (and for whom individual hearings will therefore be necessary). In light of "Dr. Reutter's admissions on cross-examination that there may be some subset of class members who were not impacted, and that it would not be possible, using his methodology, to determine which class members were actually harmed" (C.A. reasons, at para. 125), the loss-related questions should not have been certified as common issues under s. 4(1)(c) of the *Class Proceedings Act*.

IV. Conclusion

[237] Regarding the limitations issues raised in the Pioneer Appeal, I respectfully disagree that the discoverability rule has any application to s. 36(4)(a)(i). As for the doctrine of fraudulent concealment, the Plaintiff did not plead that there is any special relationship between the Pioneer Defendants and the class members, but did plead that the Pioneer Defendants took active steps to conceal the existence of the alleged conspiracy. While these pleadings are sufficient for the purposes of s. 4(1)(a) of the *Class Proceedings Act*, whether any such steps are sufficient to trigger the operation of this equitable doctrine will depend on what the Plaintiff actually proves at trial. As I explained earlier, what is necessary in the commercial context, such as here, could be the demonstration of the existence of *either* a

ont subi une perte si une méthode du représentant des demandeurs permet seulement de démontrer qu'une perte a été transférée à des personnes non identifiées situées à leur niveau dans la chaîne de distribution; à elle seule, cette méthode ne permet pas d'établir un élément essentiel de la responsabilité pour qui que ce soit. La nécessité de tenir des procès individuels dans ces circonstances témoigne de l'absence de caractère commun.

[236] Cela dit, il incombe au demandeur en l'espèce de proposer une méthode permettant de répondre aux questions liées à la perte de façon individuelle : en démontrant que tous les acheteurs indirects ont subi une perte ou, à tout le moins, en identifiant ceux qui ont subi une perte et en les distinguant de ceux qui n'en ont pas subi, ou de ceux à l'égard de qui il est impossible d'affirmer avec certitude qu'ils en ont subi une (et pour qui il sera donc nécessaire de tenir des audiences individuelles). À la lumière des [TRADUCTION] « admissions faites par M. Reutter en contre-interrogatoire voulant qu'il existe peut-être un certain sous-groupe au sein du groupe qui n'a pas été touché et qu'il soit impossible, à l'aide de sa méthode, d'identifier les membres du groupe qui ont réellement été lésés » (motifs de la C.A., par. 125), ces questions de perte n'auraient pas dû être autorisées en tant que questions communes en application de l'al. 4(1)(c) de la *Class Proceedings Act*.

IV. Conclusion

[237] En ce qui a trait aux questions de prescription soulevées dans le pourvoi de Pioneer, avec égards, je ne suis pas d'accord que la règle de la possibilité de découvrir s'applique au sous-al. 36(4)a)(i). Pour ce qui est de la doctrine de la dissimulation frauduleuse, le demandeur n'a pas invoqué l'existence d'une relation spéciale entre les défenderesses Pioneer et les membres du groupe, mais il a plaidé que ces défenderesses ont pris des mesures concrètes pour dissimuler l'existence du complot allégué. Bien que ces arguments soient suffisants pour l'application de l'al. 4(1)(a) de la *Class Proceedings Act*, la question de savoir si de telles mesures suffisent à déclencher l'application de cette doctrine d'equity dépendra de ce que le demandeur réussira à prouver au procès. Comme je l'ai déjà expliqué, ce qu'il faut peut-être

special relationship, *or* something tantamount to or commensurate with one.

[238] Regarding the issues in the Toshiba Appeal, which are common to both appeals, I agree with my colleague — though for different reasons — that the existence of the statutory cause of action in s. 36(1) of the *Competition Act* does not preclude claimants from also advancing claims at common law or in equity based on the same conduct prohibited by Part VI. However, I part ways with my colleague in two important respects. First, I do not agree that the Umbrella Purchasers have a claim against the Defendants under s. 36(1) of the *Competition Act*. Second, I cannot accept that the questions proposed by the Plaintiff that pertain to the commonality of loss among indirect purchasers can be certified where his proposed methodology will be capable of showing nothing more than the fact that some overcharges reached the indirect purchaser level of the distribution chain. In class actions where loss is an essential element of liability (as here), my view is that loss-related questions can be certified as common issues only if the representative plaintiff will be able to actually identify which class members suffered a loss at trial — either by proving that they all did or by distinguishing those who did from those who did not. Because Dr. Reutter admitted on cross-examination that his methodology would be incapable of allowing the Plaintiff to make such an identification at trial, it follows that the loss-related questions proposed by the Plaintiff in this case should not have been certified.

[239] I would therefore allow the appeals in part.

*Appeals dismissed with costs,* CÔTÉ J. *dissenting in part.*

*Solicitors for the appellants Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics*

accomplir en matière commerciale, comme en l'espèce, c'est de démontrer l'existence d'une relation spéciale *ou* de quelque chose d'équivalent ou de correspondant à une telle relation.

[238] En ce qui concerne les questions soulevées dans le pourvoi Toshiba qui sont communes aux deux pourvois, je conviens avec mon collègue — bien que pour des motifs différents — que l'existence de la cause d'action prévue au par. 36(1) de la *Loi sur la concurrence* n'empêche pas les demandeurs d'intenter des recours en common law ou en equity qui visent le même comportement interdit par la partie VI. Cependant, je ne suis pas d'accord avec mon collègue sur deux aspects importants. Premièrement, je ne suis pas d'avis que les acheteurs sous parapluie ont un recours contre les défenderesses en vertu du par. 36(1) de la *Loi sur la concurrence*. Deuxièmement, je ne saurais accepter que les questions proposées par le demandeur quant au caractère commun de la perte entre les acheteurs indirects peuvent être autorisées si la méthode qu'il propose permettra seulement de démontrer qu'une majoration a atteint le niveau des acheteurs indirects de la chaîne de distribution. Dans des recours collectifs où la perte constitue un élément essentiel pour établir la responsabilité (comme en l'espèce), je suis d'avis que les questions de perte ne peuvent être autorisées en tant que questions communes que si le représentant des demandeurs est capable d'identifier les membres du groupe qui ont subi une perte — soit en prouvant qu'ils ont tous subi une perte ou en distinguant ceux qui ont subi une perte de ceux qui n'en ont pas subi. Comme M. Reutter a admis en contre-interrogatoire que sa méthode ne permettrait pas au demandeur de procéder à une telle identification au procès, il s'ensuit que les questions de perte proposées par le demandeur en l'espèce n'auraient pas dû être autorisées.

[239] Je suis donc d'avis d'accueillir les pourvois en partie.

*Pourvois rejetés avec dépens, la juge* CÔTÉ *est dissidente en partie.*

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*Solicitors for the appellants BENQ Corporation, BENQ America Corporation and BENQ Canada Corp.: Shapray Cramer Fitterman Lamer, Vancouver.*

*Solicitors for the respondent: Camp Fiorante Matthews Mogerman, Vancouver; Siskinds, London.*

*Solicitors for the intervener Option consommateurs: Belleau Lapointe, Montréal.*

*Solicitors for the intervener the Consumers Council of Canada: Harrison Pensa, London.*

*Solicitors for the intervener the Canadian Chamber of Commerce: Davies Ward Phillips & Vineberg, Toronto.*

*Solicitors for the intervener the Consumers' Association of Canada: Sotos, Toronto.*

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*Procureurs de l'intervenant Consumers Council of Canada : Harrison Pensa, London.*

*Procureurs de l'intervenante la Chambre de commerce du Canada : Davies Ward Phillips & Vineberg, Toronto.*

*Procureurs de l'intervenante l'Association des consommateurs du Canada : Sotos, Toronto.*

# 21

**Pro-Sys Consultants Ltd. and Neil Godfrey** *Appellants*

*v.*

**Microsoft Corporation and Microsoft Canada Co./Microsoft Canada CIE** *Respondents*

and

**Attorney General of Canada** *Intervener*

**Indexed as: Pro-Sys Consultants Ltd. *v.* Microsoft Corporation**

**2013 SCC 57**

File No.: 34282.

2012: October 17; 2013: October 31.

Present: McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

*Civil procedure — Class actions — Certification — Indirect purchasers — Plaintiffs suing defendants for unlawful conduct in overcharging for its PC operating systems and PC applications software — Plaintiffs seeking certification of action as class proceeding under provincial class action legislation — Whether indirect purchaser actions are available as a matter of law in Canada — Whether certification requirements are met — Class Proceedings Act, R.S.B.C. 1996, c. 50, s. 4(1).*

P brought a class action against M, alleging that beginning in 1988, M engaged in unlawful conduct by overcharging for its Intel-compatible PC operating systems and Intel-compatible PC applications software. P sought certification of the action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 ("*CPA*"). The proposed class is made up of ultimate consumers, known as "indirect purchasers", who acquired M's products from re-sellers.

**Pro-Sys Consultants Ltd. et Neil Godfrey** *Appelants*

*c.*

**Microsoft Corporation et Microsoft Canada Co./Microsoft Canada CIE** *Intimées*

et

**Procureur général du Canada** *Intervenant*

**Répertorié : Pro-Sys Consultants Ltd. *c.* Microsoft Corporation**

**2013 CSC 57**

N° du greffe : 34282.

2012 : 17 octobre; 2013 : 31 octobre.

Présents : La juge en chef McLachlin et les juges LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis et Wagner.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

*Procédure civile — Recours collectifs — Certification — Acheteurs indirects — Action intentée contre les défenderesses au motif qu'elles auraient agi illégalement en majorant le prix de leurs systèmes d'exploitation et de leurs logiciels d'application pour ordinateur personnel — Demande de certification d'une action à titre de recours collectif en application des dispositions provinciales sur les recours collectifs — L'acheteur indirect dispose-t-il d'un recours en droit canadien? — Respect des conditions de certification — Class Proceedings Act, R.S.B.C. 1996, ch. 50, art. 4(1).*

P a intenté contre M un recours collectif dans lequel elle allègue que, à compter de 1988, M a agi illégalement en majorant le prix de ses systèmes d'exploitation et de ses logiciels d'application pour ordinateur personnel compatibles avec le processeur Intel. P a demandé la certification de son action à titre de recours collectif en application de la *Class Proceedings Act*, R.S.B.C. 1996, ch. 50 (« *CPA* »). Le groupe proposé se compose des consommateurs finaux, appelés « acheteurs indirects », qui ont acheté des produits de M à des revendeurs.

The British Columbia Supreme Court found that the certification requirements set out in s. 4(1) of the *CPA* were met and certified the action. The majority of the Court of Appeal allowed M's appeal, set aside the certification order and dismissed the action, determining that indirect purchaser actions were not available as a matter of law in Canada and therefore that the class members had no cause of action under s. 4(1)(a) of the *CPA*.

*Held*: The appeal should be allowed.

Indirect purchasers have a cause of action against the party who has effectuated the overcharge at the top of the distribution chain that has allegedly injured the indirect purchasers as a result of the overcharge being "passed on" to them through the chain of distribution. The argument that indirect purchasers should have no cause of action because passing on has been rejected as a defence in Canada should fail.

The passing-on defence, which was typically advanced by an overcharger at the top of a distribution chain, was invoked under the proposition that if the direct purchaser who sustained the original overcharge then passed that overcharge on to its own customers, the gain conferred on the overcharger was not at the expense of the direct purchaser because the direct purchaser suffered no loss. As such, the fact that the overcharge was "passed on" was argued to be a defence to actions brought by the direct purchaser against the party responsible for the overcharge. This defence has been rejected by this Court in *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3, and that rejection is not limited to the context of the imposition of *ultra vires* taxes; the passing-on defence is rejected throughout the whole of restitutionary law.

However, the rejection of the passing-on defence does not lead to a corresponding rejection of the offensive use of passing on. Therefore, indirect purchasers should not be foreclosed from claiming losses passed on to them. The risk of double or multiple recovery where actions by direct and indirect purchasers are pending at the same time or where parallel suits are pending in other jurisdictions can be managed by the court. Furthermore, indirect purchaser actions should not be barred altogether solely because of the likely complexity associated with proof of damages. In bringing their action, the indirect purchasers willingly assume the burden of establishing that they have suffered loss, and whether they have met their burden of

La Cour suprême de la Colombie-Britannique a conclu que les conditions de certification prévues au par. 4(1) de la *CPA* étaient réunies et elle a certifié l'action. Les juges majoritaires de la Cour d'appel ont accueilli l'appel de M, annulé l'ordonnance de certification et rejeté l'action après avoir statué que l'acheteur indirect n'a pas de recours en droit canadien et que les membres du groupe n'avaient donc pas de cause d'action comme l'exige l'al. 4(1)(a) de la *CPA*.

*Arrêt* : Le pourvoi est accueilli.

L'acheteur indirect a une cause d'action contre l'auteur de la majoration qui se situe au sommet de la chaîne de distribution et qui l'aurait indirectement lésé du fait que la majoration lui a été « transférée » en aval dans la chaîne de distribution. On ne peut retenir l'argument selon lequel l'acheteur indirect ne doit se voir reconnaître aucune cause d'action en raison du rejet du transfert de la perte comme moyen de défense au Canada.

Le moyen de défense fondé sur le transfert de la perte, généralement invoqué par l'auteur de la majoration situé au sommet de la chaîne de distribution, voulait que si l'acheteur direct absorbait la majoration puis la transférait à ses propres clients, l'auteur de la majoration ne réalisait pas le bénéfice au détriment de l'acheteur direct, celui-ci ne subissant aucune perte. Ce « transfert » de la majoration était donc invoqué en défense à l'action intentée par l'acheteur direct contre l'auteur de la majoration. La Cour a rejeté ce moyen de défense dans *Kingstreet Investments Ltd. c. Nouveau-Brunswick (Finances)*, 2007 CSC 1, [2007] 1 R.C.S. 3, et ce rejet ne vaut pas que pour l'imposition d'une taxe *ultra vires*; le moyen de défense fondé sur le transfert de la perte est toujours exclu aux fins du droit de la restitution.

Cependant, le rejet du transfert de la perte comme moyen de défense n'entraîne pas son exclusion comme cause d'action. En conséquence, l'acheteur indirect ne doit pas se voir empêcher de recouvrer le montant de la perte qui lui a été transférée. Le tribunal peut gérer le risque de recouvrement double ou multiple lorsque l'action de l'acheteur direct et celle de l'acheteur indirect sont en instance simultanément ou lorsque des poursuites sont intentées parallèlement dans d'autres ressorts. Par ailleurs, il n'y a pas lieu de faire totalement obstacle à l'action de l'acheteur indirect pour la seule raison qu'il sera ardu d'établir le préjudice subi. L'acheteur indirect qui intente une action contracte volontairement l'obligation d'établir qu'il a subi une perte, et la question

proof is a factual question to be decided on a case-by-case basis. In addition, allowing the offensive use of passing on will not frustrate the deterrence objectives of Canadian competition laws. Indirect purchaser actions may, in some circumstances, be the only means by which overcharges are claimed and deterrence is promoted. Finally, allowing indirect purchaser actions is consistent with the remediation objective of restitution law because it allows for compensating the parties who have actually suffered the harm rather than reserving these actions for direct purchasers who may have in fact passed on the overcharge.

The first requirement for certification at s. 4(1) of the *CPA* requires that the pleadings disclose a cause of action. A plaintiff satisfies this requirement unless, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed. In the case at bar, the pleadings disclose causes of action that should not be struck out at this stage of the proceedings.

First, it cannot be said that the pleadings do not disclose a cause of action under s. 36 of the *Competition Act*. The contention that the s. 36 cause of action is not properly pleaded because it was not included in the statement of claim and that any attempt to add it now would be barred by the two-year limitation period contained in s. 36(4) of the Act is purely technical and should be rejected. The argument that the Competition Tribunal should have jurisdiction over the enforcement of the competition law should also be rejected, since s. 36 expressly confers jurisdiction on the court to entertain the claims of any person who suffered loss by virtue of a breach of Part VI of the Act.

Next, it is not plain and obvious that the claim in tort for predominant purpose conspiracy cannot succeed. The contention that the tort of predominant purpose conspiracy is not made out because the statement of claim fails to identify one true predominant purpose and instead lists overlapping purposes should fail at this stage of the proceedings. Similarly, the argument that the predominant purpose conspiracy claim should be struck as it applies to an alleged conspiracy between a parent corporation and its subsidiaries should fail because it is not plain and obvious that the law considers parent and wholly-owned subsidiary corporations to always act in combination.

Similarly, at this point, it is not plain and obvious that there is no cause of action in tort for unlawful means conspiracy or intentional interference with economic

de savoir s'il s'est acquitté ou non de son fardeau de preuve tient aux faits de l'espèce. En outre, permettre d'alléguer en demande le transfert de la perte ne nuira pas aux objectifs de dissuasion des dispositions canadiennes sur la concurrence. Dans certaines circonstances, l'action de l'acheteur indirect peut offrir le seul moyen de recouvrer la majoration et d'assurer la dissuasion. Enfin, permettre à l'acheteur indirect d'intenter une action en justice s'accorde avec l'objectif de réparation du droit de la restitution, car la personne qui a effectivement subi un préjudice, et non seulement l'acheteur direct qui a pu en fait transférer la majoration, peut ainsi être indemnisée.

La première condition de certification prévue au par. 4(1) de la *CPA* veut que les actes de procédure révèlent une cause d'action. Le demandeur ne satisfait pas à la condition lorsque, à supposer que les faits invoqués soient vrais, la demande ne pourrait manifestement pas être accueillie. En l'espèce, les actes de procédure révèlent des causes d'action qu'on ne saurait radier à ce stade de l'instance.

Premièrement, on ne peut affirmer que les actes de procédure ne révèlent pas une cause d'action fondée sur l'art. 36 de la *Loi sur la concurrence*. La prétention que la cause d'action fondée sur l'art. 36 est irrégulièrement plaidée parce qu'elle ne figure pas dans la déclaration et que le délai de prescription de deux ans imparti au par. 36(4) de la Loi fait obstacle à l'ajout de cette cause d'action est purement technique et doit être rejetée. Celle voulant que c'est au Tribunal de la concurrence qu'il appartient de faire respecter le droit de la concurrence doit également être rejetée puisque l'art. 36 confère expressément compétence à une cour de justice pour statuer sur toute réclamation d'une personne à qui une violation de la partie VI a infligé une perte.

Ensuite, on ne saurait dire qu'il ne peut manifestement pas être fait droit à l'allégation relative au délit civil de complot visant principalement à causer un préjudice. La thèse voulant que l'allégation ne soit pas étayée parce que la déclaration ne révèle pas un véritable objet principal, mais en énumère en fait plusieurs qui se chevauchent, doit être rejetée à ce stade de l'instance. Il convient également de rejeter la demande de radiation de l'allégation de complot entre une société mère et une filiale visant principalement à causer un préjudice car il n'est pas manifeste que, sur le plan juridique, une société mère et une filiale à 100 p. 100 agissent toujours de concert.

Aussi, l'inexistence d'une cause d'action en responsabilité délictuelle pour complot en vue de recourir à des moyens illégaux ou pour atteinte intentionnelle

interests. These alleged causes of action must be dealt with summarily as the proper approach to the unlawful means requirement common to both torts is presently under reserve in this Court in *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, 2012 NBCA 33, 387 N.B.R. (2d) 215, leave to appeal granted, [2012] 3 S.C.R. v. Depending on the decision of this Court in *Bram*, it will be open to M to raise the matter at trial should it consider it advisable to do so.

With respect to the restitutionary claim in unjust enrichment, it is not plain and obvious that it cannot succeed. With respect to the argument that any enrichment received by M came from the direct purchasers and not from the class members, and that this lack of a direct connection between it and the class members forecloses the claim of unjust enrichment, it is not plain and obvious that a claim in unjust enrichment will be made out only where the relationship between the plaintiff and the defendant is direct. The question of whether the contracts between M and the direct purchasers and the contracts between the direct purchasers and the indirect purchasers, which could constitute a juristic reason for the enrichment, are illegal and void should not be resolved at this stage of the proceedings and must be left to the trial judge.

The pleadings based on constructive trust must be struck. In order to find that a constructive trust is made out, the plaintiff must be able to point to a link or causal connection between his or her contribution and the acquisition of specific property. In the present case, there is no referential property. P makes a purely monetary claim. As the claim neither explains why a monetary award is inappropriate or insufficient nor shows a link to specific property, the claim does not satisfy the conditions necessary to ground a constructive trust. On the pleadings, it is plain and obvious that this claim cannot succeed.

Finally, it is not plain and obvious that a cause of action in waiver of tort would not succeed. There is contradictory law as to the question of whether the underlying tort needs to be established in order to sustain an action in waiver of tort. This appeal is not the proper place to resolve the details of the law of waiver of tort, nor the particular circumstances in which it can be pleaded.

aux intérêts financiers n'est pas manifeste à ce stade. Ces causes d'action alléguées doivent être examinées sommairement car, dans le dossier *Bram Enterprises Ltd. c. A.I. Enterprises Ltd.*, 2012 NBCA 33, 387 R.N.-B. (2e) 215, autorisation d'appel accordée, [2012] 3 R.C.S. v., actuellement en délibéré, notre Cour ne s'est pas encore prononcée sur l'approche qui s'impose à l'égard de l'exigence, commune aux deux délits civils, du recours à des moyens illégaux. Selon l'issue du pourvoi dans *Bram*, M pourra demander à la juridiction de première instance de statuer sur ce point si elle le juge opportun.

S'agissant de la demande de restitution fondée sur l'enrichissement sans cause, il n'est pas manifeste qu'il ne peut y être fait droit. En ce qui concerne la thèse voulant que l'enrichissement de M provienne des acheteurs directs, et non des membres du groupe, et que son absence de lien direct avec ces derniers scelle le sort de l'allégation d'enrichissement sans cause, il n'est pas manifeste que l'enrichissement sans cause ne sera établi que si le lien entre la demanderesse et la défenderesse est direct. Il n'y a pas lieu, à ce stade de l'instance, de statuer sur la question de savoir si les contrats entre M et les acheteurs directs et entre les acheteurs directs et les acheteurs indirects, lesquels pourraient constituer la cause juridique de l'enrichissement, sont illégaux et nuls; il appartient au juge du procès de le faire.

Les allégations relatives à l'existence d'une fiducie par interprétation doivent être radiées. Pour faire la preuve d'une fiducie par interprétation, le demandeur doit pouvoir établir un lien ou un rapport de causalité entre sa contribution et l'acquisition d'un bien. Nul bien n'est en cause en l'espèce. P réclame seulement une réparation pécuniaire. Étant donné qu'elle n'indique pas en quoi une réparation pécuniaire serait inappropriée ou insuffisante, et qu'elle n'établit pas de lien avec un bien en particulier, l'allégation ne satisfait pas aux conditions d'imposition d'une fiducie par interprétation. Au vu des actes de procédure, il est manifeste qu'on ne saurait faire droit à cette allégation.

Enfin, il n'est pas manifeste que le demandeur qui fonde son action sur la renonciation au recours délictuel sera débouté. Le droit est contradictoire quant à savoir si le délit civil sous-jacent doit être prouvé ou non pour les besoins d'une action fondée sur la renonciation au recours délictuel. Il ne convient pas de statuer plus avant, dans le cadre du pourvoi, sur le droit applicable en matière de renonciation au recours délictuel, ni sur le contexte particulier dans lequel on peut invoquer celle-ci.

The starting point in determining the standard of proof to be applied to the remaining certification requirements is the standard articulated in this Court's decision in *Hollick v. Toronto (City)*, 2001 SCC 68, [2001] 3 S.C.R. 158: the class representative must show some basis in fact for each of the certification requirements set out in the provincial class action legislation, other than the requirement that the pleadings disclose a cause of action. The certification stage is not meant to be a test of the merits of the action, rather, this stage is concerned with form and with whether the action can properly proceed as a class action. The standard of proof asks not whether there is some basis in fact for the claim itself, but rather whether there is some basis in fact which establishes each of the individual certification requirements. Although evidence has a role to play in the certification process, the standard of proof does not require evidence on a balance of probabilities. The certification stage does not involve an assessment of the merits of the claim and is not intended to be a pronouncement on the viability or strength of the action, rather, it focuses on the form of the action in order to determine whether the action can appropriately go forward as a class proceeding. Each case must be decided on its own facts. There must be sufficient facts to satisfy the applications judge that the conditions for certification have been met to a degree that should allow the matter to proceed on a class basis without foundering at the merits stage by reason of the requirements not having been met.

In the case at bar, the applications judge's finding that the claims raised common issues is entitled to deference. In order to establish commonality, evidence that the acts alleged actually occurred is not required, rather, the factual evidence required at this stage goes only to establishing whether these questions are common to all the class members. With respect to the common issues that ask whether loss to the class members can be established on a class-wide basis, they require the use of expert evidence in order for commonality to be established. The expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement — it must offer a realistic prospect of establishing loss on a class-wide basis so that, if the overcharge is eventually established at the trial of the common issues, there is a means by which to demonstrate that it is common to the class. The methodology cannot be purely theoretical or hypothetical, but must be grounded in the facts of the particular case in question, and there must be some evidence of the availability of the data to which the methodology

Le point de départ pour déterminer la norme de preuve applicable aux autres conditions de certification réside dans l'arrêt *Hollick c. Toronto (Ville)*, 2001 CSC 68, [2001] 3 R.C.S. 158 : le représentant du groupe doit établir un certain fondement factuel pour chacune des conditions que prévoient les dispositions provinciales sur les recours collectifs, sauf celle voulant que les actes de procédure révèlent une cause d'action. L'examen au fond est écarté à l'étape de la certification, laquelle intéresse plutôt la forme et le caractère approprié de la poursuite par voie de recours collectif. Suivant la norme de preuve applicable, la question n'est pas celle de savoir si la demande a un certain fondement factuel, mais bien si un certain fondement factuel établit chacune des conditions de certification. Bien que la preuve importe aux fins de la certification, la norme de preuve n'exige pas une preuve selon la prépondérance des probabilités. La procédure de certification ne comporte pas d'examen au fond de la demande et elle ne vise pas à déterminer le bien-fondé des allégations; elle intéresse plutôt la forme que revêt l'action pour déterminer s'il convient de procéder par recours collectif. L'issue d'une affaire dépend des faits qui lui sont propres. Suffisamment de faits doivent permettre de convaincre le tribunal que les conditions de certification sont réunies de telle sorte que l'instance puisse suivre son cours sous forme de recours collectif sans s'écrouler à l'étape de l'examen au fond à cause du non-respect des conditions applicables.

En l'espèce, la conclusion du juge selon laquelle les demandes soulèvent des questions communes commande la déférence. Établir la communauté des questions n'exige pas la preuve que les actes allégués ont effectivement eu lieu; à ce stade, il faut plutôt établir que les questions soulevées sont communes à tous les membres du groupe. Démontrer le caractère commun des questions — la perte subie par les membres peut-elle être circonscrite à l'échelle du groupe? — commande le recours à une preuve d'expert. La méthode d'expert doit être suffisamment valable ou acceptable pour établir un certain fondement factuel aux fins du respect de l'exigence d'une question commune; elle doit offrir une possibilité réaliste d'établir la perte à l'échelle du groupe, de sorte que, si la majoration est établie à l'issue de l'examen des questions communes au procès, un moyen permette de démontrer qu'elle est commune aux membres du groupe. Il ne peut s'agir d'une méthode purement théorique ou hypothétique; elle doit reposer sur les faits de l'affaire, et l'existence des données auxquelles la méthode est censée s'appliquer

is to be applied. Resolving conflicts between the experts is an issue for the trial judge and not one that should be engaged in at certification.

The applications judge's decision to certify as common issues whether damages can be determined on an aggregate basis and if so, in what amount, should not be disturbed. The question of whether damages assessed in the aggregate are an appropriate remedy can be certified as a common issue. However, this common issue should only be determined at the common issues trial after a finding of liability has been made. The ultimate decision as to whether the aggregate damages provisions of the *CPA* should be available is one that should be left to the common issues trial judge. The failure to propose or certify aggregate damages, or another remedy, as a common issue does not preclude a trial judge from invoking the provisions if considered appropriate.

The applications judge's finding that the class action is the preferable procedure should not be interfered with. In the present case, there are common issues related to the existence of the causes of action and there are also common issues related to loss to the class members. The loss-related issues can be said to be common because there is an expert methodology that has been found to have a realistic prospect of establishing loss on a class-wide basis. If the common issues were to be resolved, they would be determinative of M's liability and of whether passing on of the overcharge to the indirect purchasers has occurred. Because such determinations will be essential in order for the class members to recover in this case, a resolution of the common issues would significantly advance the action.

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doit être étayée par quelque preuve. Trancher entre des preuves d'expert contradictoires relève du juge du procès et ne doit pas intervenir à l'étape de la certification.

La décision de certifier à titre de questions communes l'opportunité d'établir les dommages-intérêts de manière globale et, dans l'affirmative, la détermination du montant de ces dommages-intérêts, ne doit pas être réformée. La question de savoir si l'octroi de dommages-intérêts globaux constitue une réparation appropriée peut être certifiée comme question commune. Cependant, cette question commune ne sera tranchée qu'au procès, une fois la responsabilité établie. La décision relative à l'applicabilité des dispositions de la *CPA* sur les dommages-intérêts globaux doit appartenir en fin de compte au juge du procès appelé à statuer sur les questions communes. L'omission de proposer ou de certifier à titre de question commune l'opportunité d'accorder des dommages-intérêts globaux ou une autre réparation n'empêche pas le juge du procès de se fonder sur les dispositions s'il l'estime indiqué.

La conclusion du juge saisi des demandes selon laquelle le recours collectif constitue la meilleure procédure ne doit pas être modifiée. Dans la présente affaire, non seulement l'existence de causes d'action, mais aussi la perte subie par les membres du groupe, constituent des questions communes. On peut dire que la perte constitue une question commune car il a été déterminé qu'une méthode proposée par un expert permettrait assez certainement d'établir la perte à l'échelle du groupe. Le règlement des questions communes devrait permettre de statuer sur la responsabilité de M et sur le transfert de la majoration aux acheteurs indirects. Puisqu'il est essentiel de statuer sur ces points afin que les membres du groupe puissent recouvrer le montant de la perte, le règlement des questions communes ferait progresser substantiellement l'instance.

**Jurisprudence**

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*J. J. Camp*, *Q.C.*, *Reidar Mogerman*, *Melina Buckley* and *Michael Sobkin*, for the appellants.

*Neil Finkelstein*, *James Sullivan*, *Catherine Beagan Flood* and *Brandon Kain*, for the respondents.

*John S. Tyhurst*, for the intervener.

The judgment of the Court was delivered by

ROTHSTEIN J. —

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*J. J. Camp*, *c.r.*, *Reidar Mogerman*, *Melina Buckley* et *Michael Sobkin*, pour les appelants.

*Neil Finkelstein*, *James Sullivan*, *Catherine Beagan Flood* et *Brandon Kain*, pour les intimées.

*John S. Tyhurst*, pour l'intervenant.

Version française du jugement de la Cour rendu par

LE JUGE ROTHSTEIN —

**TABLE DES MATIÈRES**

## I. Introduction

[1] It is no simple task to assess liability and apportion damages in situations where the wrongdoer and the harmed parties are separated by a long and complex chain of distribution, involving many parties, purchasers, resellers and intermediaries. Such is the problem presented by indirect purchaser actions in which downstream individual purchasers seek recovery for alleged unlawful overcharges that were passed on to them through the successive links in the chain.

[2] The complexities inherent in indirect purchaser actions are magnified when such actions are brought as a class proceeding. When that happens, the courts are required to grapple with not only the difficulties associated with indirect purchaser actions, but are also then asked to decide whether the requirements for certification of a class action are met. These are the questions the Court is faced with in this appeal.

## II. Background

[3] The representative plaintiffs in this action, Pro-Sys Consultants Ltd. and Neil Godfrey (collectively "Pro-Sys"), brought a class action against Microsoft Corporation and Microsoft Canada Co./Microsoft Canada CIE (collectively "Microsoft") alleging that beginning in 1988, Microsoft engaged in unlawful conduct by overcharging for its Intel-compatible PC operating systems and Intel-compatible PC applications software. Pro-Sys claims that as a direct consequence of Microsoft's unlawful conduct, it and all the class members paid and continue to pay higher prices for Microsoft operating systems and applications software than they would have paid absent the unlawful conduct.



## I. Introduction

[1] Ce n'est pas tâche facile que de statuer sur la responsabilité et de répartir les dommages-intérêts lorsque le fautif et les parties lésées se trouvent aux extrémités d'une chaîne de distribution longue et complexe constituée de nombreuses personnes, qu'il s'agisse d'acheteurs, de revendeurs ou d'intermédiaires. Là réside la difficulté que présente l'action intentée par l'acheteur indirect, lequel se situe en aval dans la chaîne de distribution, en vue de recouvrer la majoration illégale qui lui aurait été transférée d'un maillon à l'autre de la chaîne.

[2] La complexité de l'action de l'acheteur indirect s'accentue lorsqu'il y a regroupement au sein d'un recours collectif. Les tribunaux doivent alors non seulement se colleter avec les problèmes liés à une telle action, mais aussi déterminer si les conditions de certification d'un recours collectif sont réunies. Telles sont les questions sur lesquelles la Cour doit se prononcer dans le présent pourvoi.

## II. Contexte

[3] Les demandeurs constitués représentants en l'espèce, Pro-Sys Consultants Ltd. et Neil Godfrey (collectivement, « Pro-Sys »), ont intenté un recours collectif contre Microsoft Corporation et Microsoft Canada Co./Microsoft Canada CIE (collectivement, « Microsoft »). Ils allèguent qu'à compter de 1988, Microsoft a agi illégalement en majorant le prix de ses systèmes d'exploitation et de ses logiciels d'application pour ordinateur personnel compatibles avec le processeur Intel. Selon Pro-Sys, le comportement illégal de Microsoft a eu pour conséquence directe que tous les membres du groupe et elle ont payé et paient toujours, pour les systèmes d'exploitation et les logiciels d'application de Microsoft, un prix supérieur à celui qu'ils auraient payé n'eût été ce comportement.

[4] Pro-Sys sought certification of the action as a class proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 ("*CPA*").

[5] The proposed class is made up of ultimate consumers who acquired Microsoft products from re-sellers, re-sellers who themselves purchased the products either directly from Microsoft or from other re-sellers higher up the chain of distribution. These consumers are known as the "indirect purchasers". The proposed class was defined in the statement of claim as

> all persons resident in British Columbia who, on or after January 1, 1994, indirectly acquired a license for Microsoft Operating Systems and/or Microsoft Applications Software for their own use, and not for purposes of further selling or leasing.

(2010 BCSC 285 (CanLII), at para. 16)

III. The Proceedings Below

A. *Certification Proceedings in the British Columbia Supreme Court*

[6] Pro-Sys filed its original statement of claim in the British Columbia Supreme Court ("B.C.S.C.") in December 2004. Thereafter numerous amendments to the Statement of Claim were made with the approval of Tysoe J., ultimately resulting in the Third Further Amended Statement of Claim. A Fourth Further Amended Statement of Claim has not officially been filed.

[7] In 2006, Microsoft sought an order striking out the claim altogether and an order dismissing the action. In the alternative, it sought to strike out only portions of the claim. The parties agreed that the outcome of the application to strike would be determinative of the certification requirement under s. 4(1)(a) of the *CPA* that the pleadings disclose a cause of action.

[8] Tysoe J. found causes of action under s. 36 of the *Competition Act*, R.S.C. 1985, c. C-34, in tort

[4] Pro-Sys a demandé la certification de l'action à titre de recours collectif en application de la *Class Proceedings Act*, R.S.B.C. 1996, ch. 50 (« *CPA* »).

[5] Le groupe proposé se compose des consommateurs finaux qui ont acheté des produits Microsoft à des revendeurs qui les avaient eux-mêmes achetés soit directement à Microsoft, soit à d'autres revendeurs situés en amont dans la chaîne de distribution. On les qualifie d'« acheteurs indirects ». Le groupe proposé est défini comme suit dans la déclaration :

> [TRADUCTION] . . . toutes les personnes résidant en Colombie-Britannique qui, depuis le 1er janvier 1994, ont acquis indirectement une licence pour un système d'exploitation ou un logiciel d'application de Microsoft à leur usage personnel, et non aux fins de revente ou de location.

(2010 BCSC 285 (CanLII), par. 16)

III. Décisions des tribunaux inférieurs

A. *Procédure de certification devant la Cour suprême de la Colombie-Britannique*

[6] Pro-Sys a déposé sa déclaration initiale à la Cour suprême de la Colombie-Britannique (« C.S.C.-B. ») en décembre 2004. Puis, avec l'approbation du juge Tysoe, elle y a apporté de nombreuses modifications pour arriver finalement à la troisième déclaration modifiée. Une quatrième déclaration modifiée n'a pas été officiellement déposée au dossier.

[7] En 2006, Microsoft a demandé la radiation de la demande et le rejet de l'action. À titre subsidiaire, elle a demandé la radiation de certaines parties seulement de la demande. Les parties conviennent que le sort réservé à la demande de radiation sera déterminant sur le respect de la condition de certification, prévue à l'al. 4(1)(a) de la *CPA*, voulant que les actes de procédure révèlent une cause d'action.

[8] Le juge Tysoe conclut, pour les besoins de l'art. 36 de la *Loi sur la concurrence*, L.R.C. 1985,

for conspiracy and intentional interference with economic interests and in restitution for waiver of tort (2006 BCSC 1047, 57 B.C.L.R. (4th) 323). He ordered that the portions of the pleadings dealing with unjust enrichment and constructive trust should be struck out as they were not sufficient to support such claims, unless they were amended by Pro-Sys. Upon further motion to amend the claims (2006 BCSC 1738, 59 B.C.L.R. (4th) 111), Tysoe J. allowed amendments to support the claims of unjust enrichment and constructive trust.

ch. C-34, à l'existence de causes d'action en responsabilité délictuelle pour complot et atteinte intentionnelle aux intérêts financiers, et en restitution pour renonciation au recours délictuel (2006 BCSC 1047, 57 B.C.L.R. (4th) 323). Il ordonne que les éléments des actes de procédure qui concernent l'enrichissement sans cause et la fiducie par interprétation soient radiés au motif que, dans leur libellé actuel et sauf modification par Pro-Sys, ils n'appuient pas les allégations. Sur demande de modification des actes de procédure, le juge Tysoe autorise ensuite leur modification (2006 BCSC 1738, 59 B.C.L.R. (4th) 111) afin qu'ils appuient les allégations d'un enrichissement sans cause et d'une fiducie par interprétation.



[9] Following his rulings on the applications to strike and to amend, Tysoe J. was appointed to the British Columbia Court of Appeal ("B.C.C.A."), and Myers J. assumed management of the case. Myers J. assessed the remaining certification requirements set out in s. 4(1) of the *CPA*, namely (i) whether there was an identifiable class (s. 4(1)(b)); (ii) whether the claims of the class members raised common issues (s. 4(1)(c)); (iii) whether the class action was the preferable procedure (s. 4(1)(d)); and (iv) whether Pro-Sys and Neil Godfrey could adequately represent the class (s. 4(1)(e)). Myers J. certified the action, finding that all four of the remaining requirements for certification were met (2010 BCSC 285 (CanLII)). The common issues certified by Myers J. are listed in the appendix to these reasons.

[9] Après avoir statué sur les demandes de radiation et de modification, le juge Tysoe a été nommé à la Cour d'appel de la Colombie-Britannique (« C.A.C.-B. »), et le juge Myers s'est vu confier la gestion de l'instance. Le juge Myers a examiné les autres conditions de certification prévues au par. 4(1) de la *CPA*, à savoir (i) l'existence d'un groupe identifiable de personnes (al. 4(1)(b)), (ii) le fait que les demandes des membres du groupe soulèvent une question commune (al. 4(1)(c)), (iii) le fait que le recours collectif constitue la meilleure procédure pour régler la question (al. 4(1)(d)) et (iv) l'aptitude de Pro-Sys et de Neil Godfrey à bien représenter le groupe (al. 4(1)(e)). Il a certifié le recours et conclu que ces quatre autres conditions étaient réunies (2010 BCSC 285 (CanLII)). Les questions communes certifiées par le juge Myers sont énumérées en annexe.

B. *Appeal of the Certification to the British Columbia Court of Appeal, 2011 BCCA 186, 304 B.C.A.C. 90*

B. *Appel de la certification devant la Cour d'appel de la Colombie-Britannique, 2011 BCCA 186, 304 B.C.A.C. 90*

[10] Microsoft appealed from the decisions of Tysoe and Myers JJ. The majority of the B.C.C.A., *per* Lowry J.A. (Frankel J.A. concurring), allowed the appeal, set aside the certification order and dismissed the action, finding it plain and obvious that the class members had no cause of action under s. 4(1)(a) of the *CPA*. The majority reached this conclusion after determining that indirect purchaser actions were not available as a matter of law

[10] Microsoft a porté en appel les décisions des juges Tysoe et Myers. Les juges majoritaires de la Cour d'appel, par la voix du juge Lowry (avec l'accord du juge Frankel), accueillent l'appel, annulent l'ordonnance de certification et rejettent l'action au motif qu'il est manifeste que les membres du groupe n'ont pas de cause d'action comme l'exige l'al. 4(1)(a) de la *CPA*. Ils arrivent à cette conclusion après avoir établi qu'un acheteur indirect

in Canada. As such, it did not consider the other certification requirements.

[11] Donald J.A., dissenting, would have dismissed the appeal and certified the action, finding indirect purchaser actions to be permitted in Canada, and finding sufficient grounds for the action.

[12] In the B.C.C.A., the present case was heard together with another case dealing with substantially similar issues (*Sun-Rype Products Ltd. v. Archer Daniels Midland Co.*, 2011 BCCA 187, 305 B.C.A.C. 55). Counsel for the plaintiffs was the same in both appeals and the appeals were heard by the same panel of judges. As in the present appeal, in *Sun-Rype*, the issue of whether indirect purchaser actions are available in Canada was determinative. In reasons released simultaneously with the reasons in this appeal, the majority of the B.C.C.A. disposed of *Sun-Rype* in the same manner, decertifying and dismissing the indirect purchasers' class action on the basis that indirect purchaser actions were not available under Canadian law. Donald J.A. dissented, finding, as in this appeal, that indirect purchaser actions were permitted.

[13] Leave to appeal was granted in both cases by this Court. They were heard with another indirect purchaser class action originating in Quebec, *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, [2013] 3 S.C.R. 600, which this Court has addressed in separate reasons, *per* LeBel and Wagner JJ. Reasons in *Sun-Rype* can be found at 2013 SCC 58, [2013] 3 S.C.R. 545.

IV. Analysis

[14] The issues are addressed in the following order:

(1) Did the majority of the B.C.C.A. err in finding that indirect purchaser actions were not available as a matter of law in Canada?

ne peut légalement intenter une action au Canada. Ils n'examinent donc pas les autres conditions de certification.

[11] Dissident, le juge Donald aurait rejeté l'appel et certifié l'action car, selon lui, l'acheteur indirect peut poursuivre au Canada et l'action est suffisamment étayée.

[12] La Cour d'appel a entendu l'appel de pair avec un autre dont l'objet est assez semblable, soit *Sun-Rype Products Ltd. c. Archer Daniels Midland Co.*, 2011 BCCA 187, 305 B.C.A.C. 55. Les demandeurs étaient représentés par les mêmes avocats, et les deux appels ont été entendus par la même formation de juges. Dans *Sun-Rype*, comme en l'espèce, la question déterminante était celle de savoir si, au Canada, un acheteur indirect peut intenter un recours. Dans des motifs rendus en même temps que dans la présente affaire, les juges majoritaires de la Cour d'appel réservent le même sort à l'appel, annulent la certification et rejettent le recours collectif des acheteurs indirects au motif que le droit canadien n'autorise pas le recours de l'acheteur indirect. Dissident, le juge Donald conclut que l'acheteur indirect possède un recours.

[13] L'autorisation de pourvoi devant notre Cour a été accordée dans les deux affaires. Il y a eu audition commune des deux appels, ainsi que d'*Infineon Technologies AG c. Option consommateurs*, 2013 CSC 59, [2013] 3 R.C.S. 600, une autre affaire de recours collectif intenté au Québec par des acheteurs indirects dans laquelle les juges LeBel et Wagner se prononcent dans des motifs distincts. Les motifs de l'arrêt *Sun-Rype* sont publiés sous la référence 2013 CSC 58, [2013] 3 R.C.S. 545.

IV. Analyse

[14] La Cour examine les questions en litige dans l'ordre suivant :

(1) Les juges majoritaires de la Cour d'appel de la Colombie-Britannique ont-ils tort de conclure qu'un acheteur indirect ne peut légalement intenter une action au Canada?

(2) Were the findings of Tysoe J. as to the requirement that the pleadings disclose a cause of action under s. 4(1)(a) of the *CPA* correct?

(3) Were the findings of Myers J. as to the balance of the certification requirements under s. 4(1) of the *CPA* correct?

A. *Indirect Purchaser Actions (the "Passing-On" Issue)*

[15] In this appeal, the parties have introduced numerous issues. The one occupying the largest portion of the factums and the oral argument was the question of whether indirect purchasers have the right to bring an action to recover losses that were passed on to them. Some sources have treated this issue as one of standing. I think it more appropriate to treat it as a threshold issue to be determined before moving into the specific causes of action alleged in the certification application.

[16] As I have described above, indirect purchasers are consumers who have not purchased a product directly from the alleged overcharger, but who have purchased it either from one of the overcharger's direct purchasers, or from some other intermediary in the chain of distribution. The issue is whether indirect purchasers have a cause of action against the party who has effectuated the overcharge at the top of the distribution chain that has allegedly injured them indirectly as the result of the overcharge being "passed on" down the chain to them.

[17] Microsoft argues that indirect purchasers should have no such cause of action. Its submits that permitting indirect purchasers to bring an action against the alleged overcharger to recover loss that has been "passed on" would be inconsistent with this Court's jurisprudence, which it says rejected passing on as a defence. Microsoft says that the rejection of the "passing-on" *defence* necessarily entails a rejection of the *offensive* use of passing on by indirect purchasers to recover overcharges that were passed on to them. I begin with a description

(2) Le juge Tysoe a-t-il raison de conclure que les actes de procédure révèlent une cause d'action comme l'exige l'al. 4(1)(a) de la *CPA*?

(3) La conclusion du juge Myers sur les autres conditions de certification prévues au par. 4(1) de la *CPA* est-elle fondée?

A. *Action de l'acheteur indirect (la question du « transfert de la perte »)*

[15] Les parties au pourvoi soulèvent de nombreuses questions, dont celle qui revient le plus souvent dans les mémoires et les plaidoiries, à savoir si l'acheteur indirect peut intenter une action pour recouvrer la perte qui lui a été transférée. D'aucuns estiment qu'il s'agit de savoir s'il a ou non qualité pour agir. Je pense qu'il convient davantage d'y voir une question préliminaire à trancher avant l'examen des causes d'action précises alléguées dans la demande de certification du recours collectif.

[16] Comme je l'indique précédemment, l'acheteur indirect est un consommateur qui n'a pas acheté le produit directement à l'auteur de la majoration, mais à un acheteur direct ou à un autre intermédiaire dans la chaîne de distribution. Dès lors, a-t-il une cause d'action contre l'auteur de la majoration qui se situe au sommet de la chaîne de distribution et qui l'aurait indirectement lésé du fait que la majoration lui a été « transférée » à l'autre extrémité de la chaîne de distribution?

[17] Microsoft fait valoir que l'acheteur indirect ne doit pas se voir reconnaître une telle cause d'action, car selon elle, l'autoriser à ester contre l'auteur allégué de la majoration pour recouvrer la perte qui lui a été « transférée » est incompatible avec la jurisprudence de notre Cour, qui écarte le moyen de défense fondé sur pareil transfert. Microsoft affirme que le rejet du transfert de la perte comme *moyen de défense* implique nécessairement son exclusion comme cause d'action aux fins de recouvrer la perte qui découle d'une

of the passing-on defence and then deal with its impact on indirect purchaser actions.

(1) Rejection of Passing On as a Defence

[18] The passing-on defence was typically advanced by an overcharger at the top of a distribution chain. It was invoked under the proposition that if the direct purchaser who sustained the original overcharge then passed that overcharge on to its own customers, the gain conferred on the overcharger was not at the expense of the direct purchaser because the direct purchaser suffered no loss. As such, the fact that the overcharge was "passed on" was argued to be a defence to actions brought by the direct purchaser against the party responsible for the overcharge.

[19] The passing-on defence has been rejected in both Canadian and U.S. jurisprudence. It was first addressed by the Supreme Court of the United States in 1968 in *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). In that case, Hanover sued United for damages under U.S. antitrust laws because United would only lease, not sell, its shoe machinery, which Hanover claimed resulted in an overcharge to it. United argued that Hanover had passed on the overcharge to its own customers and had therefore suffered no harm. The U.S. Supreme Court (*per* White J., Stewart J. dissenting) rejected the passing-on defence to overcharging. It cited difficulties in ascertaining the nature and extent of the passing on of the overcharge as the reason for rejecting the defence:

Even if it could be shown that the buyer raised his price in response to, and in the amount of, the overcharge and that his margin of profit and total sales had not thereafter declined, there would remain the nearly insuperable difficulty of demonstrating that the particular plaintiff could not or would not have raised his prices absent the overcharge or maintained the higher price

majoration refilée à l'acheteur indirect. Je ferai d'abord état du moyen de défense fondé sur le transfert de la perte, puis j'examinerai son incidence sur l'action de l'acheteur indirect.

(1) Rejet du transfert de la perte comme moyen de défense

[18] Le transfert de la perte a généralement été invoqué en défense par l'auteur de la majoration situé au sommet de la chaîne de distribution. L'argument voulait que si l'acheteur direct absorbait la majoration puis la transférait à ses propres clients, l'auteur de la majoration ne réalisait pas le bénéfice au détriment de l'acheteur direct, car celui-ci ne subissait aucune perte. Ce « transfert » de la majoration était donc invoqué en défense à l'action intentée par l'acheteur direct contre l'auteur de la majoration.

[19] Les tribunaux tant canadiens qu'américains ont rejeté le moyen de défense fondé sur le transfert de la perte. La question a d'abord été examinée en 1968 par la Cour suprême des États-Unis dans *Hanover Shoe, Inc. c. United Shoe Machinery Corp.*, 392 U.S. 481 (1968). Dans cette affaire, Hanover avait poursuivi United en dommages-intérêts sous le régime des dispositions américaines antitrust au motif que cette dernière offrait seulement la location, et non la vente, de ses équipements de fabrication de chaussures, ce qui coûtait plus cher. United avait fait valoir que Hanover avait transféré le surcoût à ses propres clients et n'avait donc pas subi de préjudice. La Cour suprême des États-Unis (le juge White, sous réserve de la dissidence du juge Stewart) a rejeté le moyen de défense fondé sur le transfert de la perte. Elle a invoqué la difficulté de déterminer la nature et la portée du transfert du surcoût :

[TRADUCTION] Même si l'on pouvait montrer que l'acheteur a augmenté son prix à cause du surcoût, et en proportion du surcoût, et que sa marge bénéficiaire et son chiffre de ventes total n'ont pas baissé après cela, il resterait une difficulté quasi insurmontable, c'est-à-dire de démontrer que, n'eût été le surcoût, le demandeur en cause n'aurait pas pu augmenter

had the overcharge been discontinued. Since establishing the applicability of the passing-on defense would require a convincing showing of each of these virtually unascertainable figures, the task would normally prove insurmountable. [p. 493]

[20] The court added that to leave the only actionable causes in the hands of the indirect purchasers who "have only a tiny stake in a lawsuit and little interest in attempting a class action", would mean that "those who violate the antitrust laws by price fixing or monopolizing would retain the fruits of their illegality" (*Hanover Shoe*, at p. 494). The court thus rejected the passing-on defence. Since *Hanover Shoe*, defendants who effectuate illegal overcharges have been precluded from employing the passing-on defence as a means of absolving themselves of liability to their direct purchasers.

[21] The passing-on defence was rejected in Canada in *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3, in the context of a claim for the recovery of taxes paid pursuant to *ultra vires* legislation. The dispute in that case arose out of a claim for the recovery of *ultra vires* user charges on liquor levied by the province of New Brunswick against Kingstreet Investments, whose business, among other things, involved the operation of night clubs. Bastarache J., writing for a unanimous Court, held that a public authority who had illegally overcharged a taxpayer could not reduce its liability for the overcharge simply by establishing that some or all of the overcharge was passed on to the taxpayer's customers.

[22] Bastarache J. found the passing-on defence to be inconsistent with the basic premise of restitution law. Basic restitutionary principles "provide for restoration of 'what has been taken or received from the plaintiff without justification' . . . . Restitution law is not concerned by the possibility of the plaintiff obtaining a windfall precisely because it is not founded on the concept of compensation for

ou n'aurait pas augmenté ses prix, ou qu'il n'aurait pas pu maintenir le prix plus élevé si le surcoût n'avait pas été imposé. Comme la preuve de l'applicabilité du moyen de défense fondé sur le transfert de la perte exigerait une démonstration convaincante à l'égard de chacune de ces données pratiquement impossible à établir, la tâche se révélerait normalement insurmontable. [p. 493]

[20] La cour ajoute que reconnaître une cause d'action au seul acheteur indirect, qui [TRADUCTION] « n'a qu'un intérêt minime dans la poursuite judiciaire et que peu d'intérêt à intenter un recours collectif » revient à permettre à « celui qui enfreint les dispositions antitrust interdisant la fixation des prix ou la monopolisation de conserver le fruit de ses actes illégaux » (*Hanover Shoe*, p. 494). Elle rejette donc le moyen de défense fondé sur le transfert de la perte. Depuis *Hanover Shoe*, le défendeur qui impose un surcoût illégal ou effectue une majoration illégale ne peut invoquer le transfert de la perte en défense pour échapper à sa responsabilité envers son acheteur direct.

[21] Au Canada, le moyen de défense fondé sur le transfert de la perte a été rejeté dans *Kingstreet Investments Ltd. c. Nouveau-Brunswick (Finances)*, 2007 CSC 1, [2007] 1 R.C.S. 3, une affaire de recouvrement de taxes payées en application de dispositions *ultra vires*. Le litige découlait d'une action intentée par Kingstreet Investments, qui exploitait entre autres des boîtes de nuit, pour recouvrer le montant de redevances d'exploitation perçues illégalement par la province du Nouveau-Brunswick sur les boissons alcooliques. Au nom des juges unanimes de la Cour, le juge Bastarache conclut que l'autorité publique qui perçoit illégalement une taxe ne peut limiter sa responsabilité à cet égard en établissant simplement que le contribuable a refilé la taxe à ses clients en totalité ou en partie.

[22] Le juge Bastarache estime que ce moyen de défense est incompatible avec le fondement premier du droit de la restitution. Les principes fondamentaux applicables en la matière « pourvoient à la restitution au demandeur de [TRADUCTION] « "ce qui lui a été pris ou a été reçu de lui sans justification" [. . .] La possibilité que le demandeur obtienne un profit fortuit n'a pas d'importance du

loss" (*Kingstreet*, at para. 47, quoting *Commissioner of State Revenue (Victoria) v. Royal Insurance Australia Ltd.* (1994), 182 C.L.R. 51 (H.C.A.), at p. 71). Accordingly, "[a]s between the taxpayer and the Crown, the question of whether the taxpayer has been able to recoup its loss from some other source is simply irrelevant" (*Kingstreet*, at para. 45, quoting P. D. Maddaugh and J. D. McCamus, *The Law of Restitution* (loose-leaf 2005), at p. 11-45).

[23] Bastarache J. also found the passing-on defence to be "economically misconceived" (*Kingstreet*, at para. 48). By this he accepted that the task of determining the ultimate location of the harm of the overcharge is "exceedingly difficult and constitutes an inappropriate basis for denying relief" (para. 44). Echoing the misgivings expressed in *Hanover Shoe*, he cited the inherent difficulty in accounting for the effects of market elasticities on the prices charged by direct purchasers as the basis for this conclusion. He found these complexities made it impossible to tell what part, if any, of the overcharge was actually passed on (*Kingstreet*, at para. 48).

[24] Pro-Sys says that *Kingstreet* stands only for the rejection of the defence in the context of *ultra vires* taxes. In my view, however, there are three reasons that lead to the conclusion that Bastarache J.'s rejection of the passing-on defence in *Kingstreet* was not limited to that context.

[25] First, this Court's jurisprudence supports the broader rejection of the passing-on defence. In *British Columbia v. Canadian Forest Products Ltd.*, 2004 SCC 38, [2004] 2 S.C.R. 74 ("*Canfor*"), the Crown claimed "diminution of the value of the timber" that it sold, following a forest fire caused largely by Canfor. Though the Court ultimately held in that case that the Crown had not in fact suffered loss because it was able to recover its damages through the regulatory scheme it had

point de vue du droit de la restitution, précisément parce que celui-ci ne repose pas sur le concept de l'indemnisation d'une perte » (*Kingstreet*, par. 47, citant *Commissioner of State Revenue (Victoria) c. Royal Insurance Australia Ltd.* (1994), 182 C.L.R. 51 (H.C.A.), p. 71). Par conséquent, « [d]u point de vue des rapports entre le contribuable et l'État, la question de savoir si le contribuable a été en mesure de récupérer sa perte auprès d'une autre source n'est tout simplement pas pertinente » (*Kingstreet*, par. 45, citant P. D. Maddaugh et J. D. McCamus, *The Law of Restitution* (feuilles mobiles 2005), p. 11-45).

[23] Le juge Bastarache conclut en outre que le moyen de défense fondé sur le transfert de la perte n'est pas « judicieux sur le plan économique » (*Kingstreet*, par. 48). Il admet ainsi que déterminer l'identité de celui à qui incombe en dernier ressort la charge de la taxe « s'avère extrêmement difficile, et il ne convient pas de refuser une réparation en se basant sur ce motif » (par. 44). Revenant sur les réserves exprimées dans *Hanover Shoe*, il évoque à l'appui de sa conclusion la difficulté de déterminer les effets que l'élasticité du marché aura sur les prix demandés par les acheteurs directs. Il conclut qu'en raison de cette difficulté, il est impossible de dire quelle partie de la perte, s'il en est, a été effectivement transférée (*Kingstreet*, par. 48).

[24] Selon Pro-Sys, l'arrêt *Kingstreet* ne milite en faveur du rejet du moyen de défense que dans le contexte du prélèvement d'une taxe *ultra vires*. J'estime toutefois qu'il y a lieu trois raisons de conclure que le juge Bastarache n'écarte pas le transfert de la perte comme moyen de défense que dans ce seul cas.

[25] Premièrement, la jurisprudence de notre Cour appuie le rejet général du moyen de défense fondé sur le transfert de la perte. Dans *Colombie-Britannique c. Canadian Forest Products Ltd.*, 2004 CSC 38, [2004] 2 R.C.S. 74 (« *Canfor* »), la Couronne invoquait la « diminution de la valeur du bois » qu'elle avait vendu par suite d'un incendie de forêt imputable en grande partie à Canfor. Même si, en fin de compte, la Cour conclut que la Couronne n'a pas subi de préjudice puisqu'elle a pu

instituted, Binnie J. stated (albeit in *obiter*) that "[i]t is not generally open to a wrongdoer to dispute the existence of a loss on the basis it has been 'passed on' by the plaintiff" because this would burden courts with "the endlessness and futility of the effort to follow every transaction to its ultimate result" (para. 111, quoting *Southern Pacific Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531 (1918), at p. 534). Likewise, in the same decision LeBel J., dissenting, though not on this point, said that "the passing-on defence, on the facts of this case and generally, must not be allowed to take hold in Canadian jurisprudence" (para. 197). To allow otherwise, LeBel J. indicated, would force a difficult burden of proof on the plaintiff to demonstrate not only that it had suffered a loss, but that it did not engage in any other transactions that would have offset the loss (para. 203).

[26] In *Kingstreet*, Bastarache J. endorsed the reasons for rejecting the passing-on defence advanced by LeBel J. in the tort law context in *Canfor*, saying such rejection was of equal if not greater consequence in restitution law (para. 49).

[27] Second, in *Kingstreet*, Bastarache J. found that the rejection of the passing-on defence was consistent with basic restitutionary law principles. Specifically, the rejection of the defence accords with the principle against unjust enrichment or *nullus commodum capere potest de injuria sua propria* (barring wrongdoers from benefiting from their unlawful actions). Preventing defendants from invoking passing on as a defence helps to ensure that wrongdoers are not permitted to retain their ill-gotten gains simply because it would be difficult to ascertain the precise extent of the harm. Likewise, it is important as a matter of restitutionary law to ensure that wrongdoers who overcharge their purchasers do not operate with impunity, on the grounds that complexities in tracing the overcharge through the chain of distribution will serve to shield them from liability.

recouvrer ses pertes grâce au régime réglementaire applicable, le juge Binnie fait remarquer (de manière incidente) qu'« [i]l n'est généralement pas loisible à l'auteur d'une faute de contester l'existence d'une perte au motif qu'elle a été "transférée" par le demandeur », car pareille prétention obligerait le tribunal à entreprendre « la tâche interminable et futile de suivre chaque opération jusqu'à son aboutissement ultime » (par. 111, citant *Southern Pacific Co. c. Darnell-Taenzer Lumber Co.*, 245 U.S. 531 (1918), p. 534). De même, le juge LeBel, dissident, mais non sur ce point, opine qu'« au regard des faits de l'espèce et en général, il ne faut pas laisser ce moyen de défense s'enraciner dans la jurisprudence canadienne » (par. 197). Selon lui, admettre ce moyen de défense obligerait le demandeur à prouver non seulement qu'il a subi une perte, mais aussi qu'il n'a pas réalisé d'autres opérations commerciales qui l'ont indemnisé de la perte, ce qui serait ardu (par. 203).

[26] Dans *Kingstreet*, le juge Bastarache souscrit aux motifs pour lesquels, dans *Canfor*, le juge LeBel rejette le moyen de défense fondé sur le transfert de la perte en droit de la responsabilité délictuelle et opine que ce rejet vaut tout autant, sinon plus, en droit de la restitution (par. 49).

[27] Deuxièmement, dans *Kingstreet*, le juge Bastarache conclut qu'écarter le moyen de défense fondé sur le transfert de la perte est compatible avec les principes fondamentaux du droit de la restitution. Plus précisément, c'est observer la règle qui interdit l'enrichissement sans cause ou la maxime *nullus commodum capere potest de injuria sua propria* (selon laquelle le fautif ne saurait tirer avantage de son acte illégal). Empêcher le défendeur d'invoquer le transfert de la perte en défense contribue à faire en sorte que le fautif ne puisse conserver le gain mal acquis seulement parce qu'il est difficile de circonscrire le préjudice avec précision. De même, en matière de restitution, il importe de s'assurer que le fautif qui majore le prix exigé de l'acheteur ne le fasse pas impunément parce que la difficulté de retracer le parcours de la majoration d'un maillon à l'autre de la chaîne de distribution ne permet pas d'établir sa responsabilité.

[28] Finally, there is support in the academic commentary for the broader rejection of the passing-on defence. Maddaugh and McCamus have stated that *Kingstreet* was an "authoritative and apparently comprehensive rejection" of the passing-on defence in Canada, and that "[i]n reaching this conclusion, the Supreme Court reflected a broad international consensus with respect to the unsuitability of this defence" ((loose-leaf 2013), at p. 11-46).

[29] For these reasons, I conclude that the rejection of the passing-on defence in *Kingstreet* is not limited to the context of the imposition of *ultra vires* taxes. There is no principled reason to reject the defence in one context but not another; the passing-on defence is rejected throughout the whole of restitutionary law.

(2) Significance of the Passing-On Defence in This Appeal

[30] As described above, the offensive use of passing on would provide the basis for indirect purchaser actions. Microsoft argues that this Court's rejection of the passing-on defence carries, as a necessary corollary, a corresponding rejection of the offensive use of passing on. The rationale is that the rejection should apply equally so that if overchargers are not permitted to rely on passing on in their own defence, indirect purchasers should also not be able to invoke passed on overcharges as a basis for their cause of action.

[31] Microsoft relies on the 1977 decision of the U.S. Supreme Court in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). Illinois Brick manufactured concrete block and sold it to masonry contractors who in turn provided their services to general contractors. The general contractors incorporated the concrete block into buildings and sold the buildings to customers such as the State of Illinois. The State was therefore an indirect purchaser of the products of Illinois Brick (p. 726). The State alleged that Illinois Brick had engaged in a conspiracy to fix the prices of concrete block, contrary to U.S. antitrust legislation,

[28] Enfin, l'exclusion générale du moyen de défense fondé sur le transfert de la perte trouve appui chez les auteurs de doctrine. Ainsi, selon Maddaugh et McCamus, l'arrêt *Kingstreet* constitue une [TRADUCTION] « exclusion globale à la fois péremptoire et manifeste » du moyen de défense fondé sur le transfert de la perte au Canada; « [p]our tirer cette conclusion, la Cour adhère au large consensus international sur l'inapplicabilité de ce moyen de défense » ((feuilles mobiles 2013), p. 11-46).

[29] C'est pourquoi je conclus que le rejet de ce moyen de défense dans *Kingstreet* ne vaut pas que pour l'imposition d'une taxe *ultra vires*. Nul motif rationnel ne permet d'écarter le moyen de défense dans un contexte, mais pas dans un autre; il est toujours exclu aux fins du droit de la restitution.

(2) Importance en l'espèce du moyen de défense fondé sur le transfert de la perte

[30] Comme je l'indique précédemment, le transfert de la perte comme cause d'action fonderait le recours de l'acheteur indirect. Pour Microsoft, le rejet par notre Cour du transfert de la perte comme moyen de défense a nécessairement pour corollaire son rejet comme cause d'action. Or, si l'auteur de la majoration ne peut invoquer le transfert de la perte en défense, l'acheteur indirect ne devrait pas non plus pouvoir l'invoquer en demande.

[31] Microsoft cite l'arrêt *Illinois Brick Co. c. Illinois*, 431 U.S. 720 (1977), rendu par la Cour suprême des États-Unis en 1977. Illinois Brick fabriquait des blocs de béton qu'elle vendait à des entrepreneurs en maçonnerie qui, à leur tour, fournissaient leurs services à des entrepreneurs généraux. Ces derniers utilisaient les blocs de béton pour construire des bâtiments qu'ils vendaient notamment à l'État de l'Illinois, lequel était donc un acheteur indirect des produits d'Illinois Brick (p. 726). À titre d'acheteur indirect, l'État a poursuivi Illinois Brick pour participation à un complot visant à fixer le prix des blocs de béton,

and brought an indirect purchaser action against the company (p. 727).

[32] The U.S. Supreme Court found against the State of Illinois. It held that since, according to *Hanover Shoe*, passing on may not be used defensively, it should not be available to indirect purchasers to use offensively by bringing an action alleging that an overcharge was passed down to them. The court explained that "whatever rule [was] to be adopted regarding pass-on in antitrust damages actions, it must apply equally to plaintiffs and defendants" (*Illinois Brick*, at p. 728).

[33] Microsoft argues that, just as the prohibition on the offensive use of passing on in *Illinois Brick* was considered a necessary corollary to the rejection of the passing-on defence in *Hanover Shoe*, the same result should flow in Canada from the rejection of the passing-on defence in *Kingstreet*. The passing-on issue was not raised before either of the applications judges because those decisions were released prior to *Kingstreet*. However, the majority of the B.C.C.A. accepted this argument in dismissing the Pro-Sys claim.

(3) Analysis of the "Necessary Corollary" Argument

[34] As I will explain, despite the rejection of the passing-on defence, the arguments advanced by Microsoft as to why there should be a corresponding rejection of the offensive use of passing on are not persuasive. Symmetry for its own sake without adequate justification cannot support the "necessary corollary" argument. In my view, the arguments advanced by Microsoft do not provide such justification.

(a) *Double or Multiple Recovery*

[35] Microsoft submits that the offensive use of passing on through indirect purchaser actions leaves it exposed to liability from all purchasers in the chain of distribution. It says that its inability to

contrairement aux dispositions américaines antitrust (p. 727).

[32] La Cour suprême des États-Unis l'a débouté. À son avis, puisque le transfert de la perte ne pouvait être invoqué en défense suivant l'arrêt *Hanover Shoe*, l'acheteur indirect ne pouvait non plus ester en alléguant que la majoration de prix lui avait été transférée. Selon la cour, [TRADUCTION] « quelle que soit la règle applicable au transfert de la perte pour les besoins d'une action antitrust en dommages-intérêts, elle doit s'appliquer tant au demandeur qu'au défendeur » (*Illinois Brick*, p. 728).

[33] Selon Microsoft, étant donné que, dans *Illinois Brick*, l'impossibilité d'invoquer en demande le transfert de la perte est considérée comme le corollaire nécessaire du rejet, dans *Hanover Shoe*, du transfert de la perte comme moyen de défense, le rejet du moyen de défense fondé sur le transfert de la perte dans *Kingstreet* doit emporter la même exclusion en demande au Canada. Les juges de première instance en l'espèce ayant été saisis des demandes avant l'arrêt *Kingstreet*, la question du transfert de la perte n'a pas été soulevée devant eux. Toutefois, les juges majoritaires de la C.A.C.-B. font droit à la prétention et rejettent l'action de Pro-Sys.

(3) L'argument du « corollaire nécessaire »

[34] Comme je l'explique plus loin, malgré le rejet du transfert de la perte comme moyen de défense, les arguments invoqués par Microsoft pour justifier également son exclusion comme cause d'action ne sont pas convaincants. À défaut d'une justification suffisante, la symétrie ne peut étayer à elle seule la thèse du « corollaire nécessaire ». À mon avis, la thèse avancée par Microsoft n'offre pas une telle justification.

a) *Recouvrement double ou multiple*

[35] Microsoft soutient que l'allégation en demande du transfert de la perte par un acheteur indirect lui fait courir le risque d'être tenue responsable vis-à-vis de tous les acquéreurs dans

employ the passing-on defence means that direct purchasers would be able to seek recovery for the entire amount of the overcharge. If, at the same time, indirect purchasers bring actions, this would result in both direct and indirect purchasers seeking recovery of the same amount. Microsoft argues that this potential for double or even multiple recovery should be a sufficient reason to reject the offensive use of passing on.

[36] In *Illinois Brick*, the U.S. Supreme Court considered multiple recovery to be a "serious risk" and said that it was "unwilling to 'open the door to duplicative recoveries'" (pp. 730-31, *per* White J.):

> A one-sided application of *Hanover Shoe* substantially increases the possibility of inconsistent adjudications — and therefore of unwarranted multiple liability for the defendant — by presuming that one plaintiff (the direct purchaser) is entitled to full recovery while preventing the defendant from using that presumption against the other plaintiff . . . . [Emphasis deleted; p. 730.]

[37] This concern cannot be lightly dismissed. However, in my view, there are countervailing arguments to be considered. Practically, the risk of duplicate or multiple recoveries can be managed by the courts. Brennan J., dissenting in *Illinois Brick*, indicated that the risk of overlapping recovery exists only where additional suits are filed after an award for damages has been made or where actions by direct and indirect purchasers are pending at the same time. In both cases, he said, the risk is remote (pp. 762-64).

[38] In the first situation, Brennan J. stated that the complex and protracted nature of antitrust actions, coupled with the short four-year statute of limitations, "make it impractical for potential plaintiffs to sit on their rights until after entry of judgment in the earlier suit" (*Illinois Brick*, at p. 764). With respect to actions under the *Competition Act*, the same reasoning would apply in Canada where our competition actions are similarly complex and where legislation restricts individual

la chaîne de distribution. Elle ajoute que l'impossibilité d'invoquer en défense le transfert de la perte permettra à l'acheteur direct d'obtenir le recouvrement intégral de la somme payée en trop. Si l'acheteur indirect intente lui aussi une action, tant l'acheteur direct que l'acheteur indirect pourront tenter de recouvrer la même somme. Microsoft fait valoir que ce risque de recouvrement double, voire multiple, justifie que l'on exclut l'allégation en demande du transfert de la perte.

[36] Dans *Illinois Brick*, la Cour suprême des États-Unis estime que le recouvrement multiple constitue un [TRADUCTION] « risque sérieux » et elle se dit « non disposée à y donner ouverture » (p. 730-731, le juge White) :

> [TRADUCTION] L'application asymétrique de l'arrêt *Hanover Shoe* augmente considérablement le risque de décisions contradictoires et, par conséquent, de responsabilité multiple imputée sans fondement au défendeur en ce qu'elle présume qu'un des demandeurs (l'acheteur direct) a droit au recouvrement intégral et qu'elle refuse au défendeur le droit d'invoquer cette présomption contre l'autre demandeur . . . [Italiques omis; p. 730.]

[37] On ne saurait écarter cette préoccupation à la légère, mais j'estime que des arguments à l'effet contraire doivent être considérés. Dans les faits, les tribunaux peuvent gérer le risque de recouvrement double ou multiple. Dans *Illinois Brick*, le juge Brennan, dissident, indique que ce risque n'existe que lorsque d'autres poursuites sont intentées après l'indemnisation ou que les actions d'acheteurs directs et indirects sont simultanément en instance. Selon lui, le risque demeure faible dans les deux cas (p. 762-764).

[38] Dans le premier cas, le juge Brennan affirme que la complexité et la durée des poursuites antitrust, auxquelles s'ajoute le court délai de prescription de quatre ans, [TRADUCTION] « peuvent empêcher les demandeurs éventuels d'attendre le prononcé d'un premier jugement pour faire valoir leurs droits » (*Illinois Brick*, p. 764). Le même raisonnement vaut au Canada pour les actions intentées sous le régime de la *Loi sur la concurrence*, qui sont tout aussi complexes et

recovery for damages for violations to just two years (see *Competition Act*, at s. 36(4)(*a*)).

[39] As for the risk of double recovery where actions by direct and indirect purchasers are pending at the same time, it will be open to the defendant to bring evidence of this risk before the trial judge and ask the trial judge to modify any award of damages accordingly. In *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, in discussing the risk of a plaintiff seeking double recovery under separate legal provisions, Dickson J. (as he then was), writing for the majority, held that

> [t]he courts are well able to prevent double recovery in the theoretical and unlikely event of plaintiffs trying to obtain relief under both sets of provisions. . . . [T]he Court at the final stage of finding and quantifying liability could prevent double recovery if in fact compensation and an accounting had already been made by a defendant. No court would permit double recovery. [p. 191]

If the defendant is able to satisfy the judge that the risk is beyond the court's control, the judge retains the discretion to deny the claim.

[40] Likewise, if the defendant presents evidence of parallel suits pending in other jurisdictions that would have the potential to result in multiple recovery, the judge may deny the claim or modify the damage award in accordance with an award sought or granted in the other jurisdiction in order to prevent overlapping recovery.

[41] In view of these practical tools at the courts' disposal, I would agree with Donald J.A. of the B.C.C.A., dissenting in *Sun-Rype*, that "the double recovery rule should not in the abstract bar a claim in real life cases where double recovery can be avoided" (para. 30). At this stage of the proceeding, Microsoft has not produced evidence

auxquelles s'applique un délai de prescription de seulement deux ans lorsqu'une personne réclame une somme égale au montant des dommages qu'elle a subis (voir la *Loi sur la concurrence*, al. 36(4)*a*)).

[39] Dans le second cas — le risque de double indemnisation lorsque l'action de l'acheteur direct et celle de l'acheteur indirect sont en instance simultanément —, le défendeur peut présenter une preuve de ce risque au juge du procès et lui demander de modifier en conséquence tout octroi de dommages-intérêts. Dans *Multiple Access Ltd. c. McCutcheon*, [1982] 2 R.C.S. 161, au nom des juges majoritaires, le juge Dickson (plus tard Juge en chef) dit ce qui suit lorsqu'il se penche sur le risque que le demandeur invoque des régimes législatifs distincts pour être indemnisé deux fois :

> Les cours sont à même d'empêcher le double recouvrement dans le cas théorique et peu probable où des demandeurs cherchent à se faire indemniser en vertu des deux ensembles de dispositions. [. . .] [À] l'étape finale dans laquelle elle conclut à la responsabilité et en fixe le montant, la cour peut empêcher le double recouvrement si, en fait, un défendeur a déjà versé une indemnité et produit une reddition de compte. Aucune cour ne permettra le double recouvrement. [p. 191]

Si le défendeur est en mesure de le convaincre que le risque ne peut être géré par le tribunal, le juge conserve le pouvoir discrétionnaire de rejeter la demande.

[40] De même, si le défendeur établit que des poursuites sont intentées parallèlement dans d'autres ressorts et qu'elles peuvent entraîner une indemnisation supplémentaire, le juge peut rejeter la demande ou modifier l'octroi de dommages-intérêts en fonction des réparations sollicitées ou accordées dans les autres ressorts afin d'empêcher le cumul des indemnités.

[41] Au vu de ces mécanismes dont disposent les tribunaux, je conviens avec le juge Donald, de la C.A.C.-B., dissident dans *Sun-Rype*, que [TRADUCTION] « la règle théorique selon laquelle il ne peut y avoir double recouvrement ne devrait pas s'appliquer pour faire obstacle à une action dans une affaire réelle où il est possible d'empêcher

to demonstrate that the courts in B.C. could not preclude double or multiple recovery. I would thus not reject indirect purchaser actions because of the risk of multiple recovery.

(b) *Remoteness and Complexity*

[42] Microsoft's second argument is that the remoteness of the overcharge and the complexities associated with tracing the loss constitute "'serious' and 'inherent' difficulties of proof associated with pass-on" (R.F., at para. 20). These difficulties are said to give rise to confusion and uncertainty and place a burden on the institutional capacities of the courts tasked with following each overcharge to its ultimate result.

[43] Microsoft relies on the reasoning of the Ontario Court of Appeal in *Chadha v. Bayer Inc.* (2003), 63 O.R. (3d) 22. In *Chadha*, that court denied certification of an indirect purchaser action citing "the many problems of proof facing the appellants . . . , including the number of parties in the chain of distribution and the 'multitude of variables' which would affect the end-purchase price" (para. 45 (adopting the findings of the Divisional Court)). Microsoft argues that if any part of the overcharge was absorbed by any party in the chain, "the chain would be broken" and the extent of the overcharge would become increasingly difficult to trace (R.F., at para. 22, quoting *Chadha*, at para. 45). The reasons on this point in *Illinois Brick*, on which Microsoft relies heavily, point out that there are significant "uncertainties and difficulties in analyzing price and output decisions 'in the real economic world rather than an economist's hypothetical model'" (pp. 731-32). The court lamented the "costs to the judicial system and the efficient enforcement of the antitrust laws of attempting to reconstruct those decisions in the courtroom" (p. 732).

le double recouvrement » (par. 30). À ce stade de l'instance, Microsoft n'a produit aucun élément de preuve selon lequel les tribunaux de la Colombie-Britannique ne peuvent empêcher le recouvrement double ou multiple. Je suis donc d'avis de ne pas écarter l'action de l'acheteur indirect en raison du risque de recouvrement multiple.

b) *Caractère indirect et complexité*

[42] Microsoft soutient deuxièmement que le caractère indirect de la majoration et la difficulté d'établir la perte subie constituent [TRADUCTION] « des obstacles "importants" et "fondamentaux" à la preuve du transfert de la perte » (m.i., par. 20). Ces obstacles seraient sources de confusion et d'incertitude et grèveraient les capacités institutionnelles des tribunaux appelés à retracer le parcours de chacune des majorations jusqu'à son aboutissement final.

[43] Microsoft invoque le raisonnement de la Cour d'appel de l'Ontario dans *Chadha c. Bayer Inc.* (2003), 63 O.R. (3d) 22, où cette dernière refuse de certifier l'action d'un acheteur indirect en raison [TRADUCTION] « des nombreux problèmes de preuve qui attendent les appelants [. . .], y compris le nombre des maillons de la chaîne de distribution et la "multitude de variables" qui jouent dans la détermination du prix d'achat final » (par. 45 (adhérant aux conclusions de la Cour divisionnaire)). Selon Microsoft, si quelque partie de la majoration était absorbée par l'un de ses maillons, [TRADUCTION] « la chaîne serait rompue » et il serait d'autant plus ardu de retracer le parcours de la majoration d'un maillon à l'autre (m.i., par. 22, citant *Chadha*, par. 45). Il appert des motifs formulés sur ce point dans *Illinois Brick*, et sur lesquels Microsoft insiste beaucoup, que [TRADUCTION] « l'analyse des décisions en matière de prix et de production comporte une grande part d'incertitude et de difficulté lorsqu'elle intervient "dans le monde économique réel plutôt que dans le cadre d'un modèle économique fictif" » (p. 731-732). Le tribunal déplore « les coûts supportés par le système judiciaire et les mécanismes d'application des dispositions antitrust lorsqu'il s'agit de reconstituer ces décisions en salle d'audience » (p. 732).

[44] Indirect purchaser actions, especially in the antitrust context, will often involve large amounts of evidence, complex economic theories and multiple parties in a chain of distribution, making the tracing of the overcharges to their ultimate end an unenviable task. However, Brennan J., dissenting in *Illinois Brick*, observed that these same concerns can be raised in most antitrust cases, and should not stand in the way of allowing indirect purchasers an opportunity to make their case:

> Admittedly, there will be many cases in which the plaintiff will be unable to prove that the overcharge was passed on. In others, the portion of the overcharge passed on may be only approximately determinable. But again, this problem hardly distinguishes this case from other antitrust cases. Reasoned estimation is required in all antitrust cases, but "while the damages [in such cases] may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate." . . . Lack of precision in apportioning damages between direct and indirect purchasers is thus plainly not a convincing reason for denying indirect purchasers an opportunity to prove their injuries and damages. [Text in brackets in original; pp. 759-60.]

[45] In bringing their action, the indirect purchasers willingly assume the burden of establishing that they have suffered loss. This task may well require expert testimony and complex economic evidence. Whether these tools will be sufficient to meet the burden of proof, in my view, is a factual question to be decided on a case-by-case basis. Indirect purchaser actions should not be barred altogether solely because of the likely complexity associated with proof of damages.

(c) *Deterrence*

[46] A third argument, which was not raised by Microsoft, but which was discussed in *Illinois Brick* and is particularly relevant to competition actions, is that allowing the offensive use of passing

[44] L'action intentée par un acheteur indirect, surtout sur le fondement des dispositions antitrust, comporte souvent une preuve volumineuse, la formulation de théories économiques complexes et l'existence de nombreuses parties le long de la chaîne de distribution, de sorte qu'il est d'autant plus ardu de retracer le parcours de la majoration d'un maillon à l'autre jusqu'à son aboutissement final. Toutefois, selon le juge Brennan, dissident dans *Illinois Brick*, il s'agit de caractéristiques communes à la plupart des affaires antitrust et elles ne devraient donc pas empêcher l'acheteur indirect de prouver ses allégations :

> [TRADUCTION] Certes, dans bien des cas, le demandeur ne sera pas en mesure de prouver le transfert de la majoration. Dans d'autres, la partie transférée ne pourra être déterminée qu'approximativement. Mais là encore, ce problème distingue à peine l'espèce d'une autre affaire antitrust. Dans ce domaine, toute instance exige une estimation raisonnée, mais « bien que les dommages [dans les affaires de cette nature] ne puissent être déterminés au moyen de simples spéculations ou conjectures, il suffira d'inférer de manière juste et raisonnable l'étendue des dommages, même si le résultat ne sera qu'approximatif. » [. . .] L'imprécision de la répartition des dommages-intérêts entre l'acheteur direct et l'acheteur indirect n'est donc pas une considération suffisante pour priver l'acheteur indirect de la possibilité d'établir le préjudice subi. [Texte entre crochets dans l'original; p. 759-760.]

[45] L'acheteur indirect qui intente une action contracte volontairement l'obligation d'établir qu'il a subi une perte, ce qui peut fort bien nécessiter le témoignage d'experts et une preuve complexe de nature économique. À mon avis, la question de savoir si ces éléments lui permettront de s'acquitter de cette obligation tient aux faits de l'espèce. Il n'y a pas lieu de faire totalement obstacle à l'action de l'acheteur indirect pour la seule raison qu'il sera ardu d'établir le préjudice subi.

c) *Effet dissuasif*

[46] Selon un troisième argument que ne soulève pas Microsoft, mais qui est examiné dans *Illinois Brick* et qui vaut particulièrement dans le cas d'actes anticoncurrentiels, permettre d'invoquer

on frustrates the enforcement of competition laws, thus reducing deterrence. While enforcement of competition laws is generally a question for the government, private individuals are engaged in the enforcement by way of s. 36 which gives them a right of recovery for breaches of Part VI of the *Competition Act*.

[47] The majority in *Illinois Brick* understood *Hanover Shoe* to stand for the proposition that "antitrust laws will be more effectively enforced by concentrating the full recovery for the overcharge in the direct purchasers rather than by allowing every plaintiff potentially affected by the overcharge to sue only for the amount it could show was absorbed by it" (p. 735). The majority in *Illinois Brick* agreed, finding that direct purchasers would be in the best position to bring an action because the "massive evidence and complicated theories" that are characteristic of indirect purchaser actions impose an unacceptable burden on those plaintiffs, making success of such actions unlikely and thereby defeating the deterrence objectives of antitrust laws (p. 741).

[48] In my opinion, allowing the offensive use of passing on should not frustrate the deterrence objectives of Canadian competition laws. I agree with Brennan J., dissenting in *Illinois Brick*, that the offensive use of passing on, unlike the passing-on defence, creates little danger that the overcharger will escape liability and frustrate deterrence objectives but, "[r]ather, the same policies of insuring the continued effectiveness of the [antitrust] action and preventing wrongdoers from retaining the spoils of their misdeeds favor allowing indirect purchasers to prove that overcharges were passed on to them" (p. 753). The rationale for rejecting the passing-on defence because it frustrates enforcement is not a reason for denying an action to those who have a valid claim against the overcharger.

en demande le transfert de la perte ferait obstacle à l'application des dispositions sur la concurrence et nuirait ainsi à la dissuasion. Bien que cette application incombe généralement à l'État, une personne privée peut, suivant l'art. 36, faire respecter la loi et demander le recouvrement d'une somme par suite de la violation de la partie VI de la *Loi sur la concurrence*.

[47] Dans *Illinois Brick*, les juges majoritaires concluent de l'arrêt *Hanover Shoe* que [TRADUCTION] « les lois antitrust seront mieux appliquées si on assure le recouvrement intégral de la majoration par l'acheteur direct au lieu de permettre à chacune des personnes touchées par la majoration de recouvrer uniquement la partie qu'elle peut prouver avoir absorbée » (p. 735). Ils partagent ce point de vue et estiment que l'acheteur direct est le mieux placé pour ester en justice, car [TRADUCTION] « la preuve volumineuse et les théories compliquées » associées à l'instance engagée impose un trop lourd fardeau à l'acheteur indirect, de sorte qu'il est peu probable qu'il ait gain de cause, ce qui va à l'encontre des fins dissuasives des dispositions antitrust (p. 741).

[48] À mon avis, permettre d'alléguer en demande le transfert de la perte ne devrait pas nuire aux objectifs de dissuasion des dispositions canadiennes sur la concurrence. Je conviens avec le juge Brennan, dissident dans *Illinois Brick*, que contrairement au fait d'invoquer le transfert de la perte en défense, le fait d'alléguer le transfert de la perte en demande risque peu de faire en sorte que l'auteur de la majoration échappe à sa responsabilité et que la dissuasion soit compromise; [TRADUCTION] « [l]es mêmes principes qui consistent à assurer l'efficacité constante de l'action [antitrust] et à empêcher le fautif de conserver le gain mal acquis militent plutôt en faveur de la possibilité que l'acheteur indirect prouve que la majoration lui a été refilée » (p. 753). L'exclusion du transfert de la perte comme moyen de défense, afin de ne pas nuire à l'application de la loi, ne justifie pas de refuser son allégation en demande dans une action par ailleurs bien-fondée intentée contre l'auteur de la majoration.

[49] Further, despite evidence advanced by the respondents in the *Sun-Rype* appeal that direct purchasers are often the parties most likely to take action against the overchargers, there may be some situations where direct purchasers will have been overcharged but will be reticent to bring an action against the offending party for fear of jeopardizing a valuable business relationship. In this case, it is alleged that Microsoft's direct purchasers are parties to the overcharging arrangements and would themselves not be likely plaintiffs. Indirect purchaser actions may, in such circumstances, be the only means by which overcharges are claimed and deterrence is promoted. The rejection of indirect purchaser actions in such cases would increase the possibility that the overcharge would remain in the hands of the wrongdoer. For these reasons, I would be of the view that an absolute bar on indirect purchaser actions, thus leaving any potential action exclusively to direct purchasers, would not necessarily result in more effective deterrence than exclusively direct purchaser actions.

(d) *Restitutionary Principles*

[50] Restitution law is remedial in nature and is concerned with the recovery of gains from wrongdoing (see Maddaugh and McCamus (2013), at pp. 3-1 to 3-3). In my view, allowing indirect purchaser actions is consistent with the remediation objective of restitution law because it allows for compensating the parties who have actually suffered the harm rather than merely reserving these actions for direct purchasers who may have in fact passed on the overcharge.

(e) *Departure From the Rule in Illinois Brick in the United States*

[51] Although *Illinois Brick* remains the law at the federal level, it has been made inapplicable at the state level in many states through so-called "repealer statutes" or by judicial decisions. In 2007, the Antitrust Modernization Commission issued a report to Congress indicating that "more than thirty-five states permit indirect, as well as direct, purchasers to sue for damages under state law" (*Antitrust Modernization Commission: Report and*

[49] En outre, malgré la preuve des intimées dans *Sun-Rype* voulant que l'acheteur direct soit souvent le plus susceptible de poursuivre l'auteur de la majoration, il peut arriver qu'un acheteur direct hésite à intenter une action contre le fautif par crainte de mettre en péril de bonnes relations d'affaires. On soutient en l'espèce que les acheteurs directs sont parties aux arrangements de majoration de Microsoft, de sorte qu'il est peu probable qu'ils intentent quelque recours. Dans ces circonstances, les actions d'acheteurs indirects peuvent offrir le seul moyen de recouvrer la majoration et d'assurer la dissuasion. Exclure ces actions en pareil cas augmenterait le risque que la majoration demeure entre les mains du fautif. Pour ces motifs, je suis d'avis qu'écarter tout recours de l'acheteur indirect de sorte que seul l'acheteur direct puisse se pourvoir en justice n'accroîtrait pas nécessairement l'effet dissuasif.

d) *Principes de la restitution*

[50] De nature réparatrice, le droit de la restitution a pour objet le recouvrement du gain mal acquis (voir Maddaugh et McCamus (2013), p. 3-1 à 3-3). J'estime que permettre à l'acheteur indirect d'intenter une action en justice s'accorde avec l'objectif de réparation du droit de la restitution, car la personne qui a effectivement subi un préjudice, et non seulement l'acheteur direct qui a pu en fait transférer la majoration, peut ainsi être indemnisée.

e) *Dérogation à la règle établie aux États-Unis dans l'arrêt Illinois Brick*

[51] Bien que l'arrêt *Illinois Brick* établisse toujours le droit applicable au palier fédéral, de nombreux États l'ont écarté par voie législative ou judiciaire. En 2007, la commission de modernisation des lois antitrust a déposé au Congrès un rapport selon lequel [TRADUCTION] « plus de trente-cinq États permettaient à l'acheteur indirect, comme à l'acheteur direct, d'intenter une action en dommages-intérêts en application de la

*Recommendations* (2007) (online), at p. 269). It recommended to Congress that the rule in *Illinois Brick* be statutorily repealed at the federal level (p. 270). The validity of the "repealer statutes" came before the U.S. Supreme Court in *California v. ARC America Corp.*, 490 U.S. 93 (1989). That court held that *Illinois Brick* did not preempt the enactment of state antitrust laws, even if they had the effect of repealing the rule in *Illinois Brick*. These developments cast doubt on the "necessary corollary" approach in *Illinois Brick*.

loi de l'État » (*Antitrust Modernization Commission : Report and Recommendations* (2007) (en ligne), p. 269). Elle recommandait l'« abrogation » de la règle issue de l'arrêt *Illinois Brick* par une loi fédérale (p. 270). Dans *California c. ARC America Corp.*, 490 U.S. 93 (1989), la Cour suprême des États-Unis a été appelée à se prononcer sur la validité des « lois abrogatoires ». Elle a conclu que l'arrêt *Illinois Brick* ne faisait pas obstacle à l'adoption de dispositions antitrust par un État, même si ces dispositions avaient pour effet d'écarter la règle issue de cet arrêt. Voilà des éléments qui sont de nature à remettre en cause la thèse du « corollaire nécessaire » retenue dans *Illinois Brick*.

(f) *Doctrinal Commentary*

[52] Doctrinal discussions of indirect purchaser actions are still shaped by the initial exchange that occurred directly following the release of *Illinois Brick*. Shortly after the judgment was issued, American scholars William M. Landes and Richard A. Posner (now a judge of the U.S. Court of Appeals for the Seventh Circuit) published an article defending the rule barring indirect purchaser actions (see "Should Indirect Purchasers Have Standing To Sue Under the Antitrust Laws? An Economic Analysis of the Rule of *Illinois Brick*" (1979), 46 *U. Chi. L. Rev.* 602, at pp. 634-35). They argued that reserving the right to bring an action against overchargers to the direct purchasers alone would best promote the antitrust laws. They wrote that allowing indirect purchasers to bring actions would have little to no effect on the objectives of compensation and deterrence because direct purchasers would be more likely to discover the overcharges in the first place and would be more likely to have the information and resources required to bring a successful antitrust action. They called the direct purchaser a more "efficient enforcer" of antitrust laws, and opined that with indirect purchasers, apportionment of the damages is so costly that it becomes a disincentive to sue and that sharing the right to sue among multiple parties has the effect of making the claims small and of weakening the deterrence effect (pp. 608-9). As to compensation, they argued that even if indirect

f) *Doctrine*

[52] Les débats des auteurs sur le recours de l'acheteur indirect demeurent axés sur les échanges qui ont tout juste suivi la publication de l'arrêt *Illinois Brick*. Peu après celle-ci, les Américains William M. Landes et Richard A. Posner (maintenant juge de la Cour d'appel des États-Unis pour le septième circuit) ont défendu dans un article la règle qui refusait le droit d'action à l'acheteur indirect (voir « Should Indirect Purchasers Have Standing To Sue Under the Antitrust Laws? An Economic Analysis of the Rule of *Illinois Brick* » (1979), 46 *U. Chi. L. Rev.* 602, p. 634-635). Selon eux, réserver à l'acheteur direct le droit d'intenter une action contre l'auteur de la majoration était l'option la plus susceptible de promouvoir les dispositions antitrust. Ils ajoutent que permettre à l'acheteur indirect d'intenter une action n'aura pas d'effet ou en aura peu sur la réalisation des objectifs d'indemnisation et de dissuasion, car l'acheteur direct sera plus susceptible de constater la majoration et, ensuite, de disposer des données et des ressources nécessaires pour avoir gain de cause dans une action antitrust. Ils voient dans l'acheteur direct un « agent efficace d'application » des dispositions antitrust et font valoir que permettre à l'acheteur indirect de se pourvoir en justice rendra la répartition des dommages-intérêts si coûteuse que les intéressés hésiteront à poursuivre et que le partage du droit d'action entre de multiples parties réduira l'importance des

purchasers had no independent right of action, they were nonetheless compensated by the ability of direct purchasers to bring an action because the benefit accruing to the direct purchaser as a result of an anticipated successful antitrust action against the overcharger would be reflected in the prices charged by the direct purchasers to the indirect purchasers (p. 605).

[53] Shortly after the publication of Landes and Posner's article, two other antitrust authorities, Robert G. Harris and Lawrence A. Sullivan, expressed an opposing viewpoint (see "Passing On the Monopoly Overcharge: A Comprehensive Policy Analysis" (1979), 128 *U. Pa. L. Rev.* 269, at pp. 351-52). Harris and Sullivan argued that direct purchasers would be reluctant to disrupt valued supplier relationships and would thus be more likely to pass on the overcharge to their own customers. They would not therefore serve as efficient enforcers of the antitrust laws and, rather, it would be more suitable to vest standing in the indirect purchasers in order to best achieve deterrence.

[54] Landes and Posner published a direct response to Harris and Sullivan the next year (see "The Economics of Passing On: A Reply to Harris and Sullivan" (1980), 128 *U. Pa. L. Rev.* 1274). In response to Harris and Sullivan's argument that direct purchasers would be reticent to sue so as not to compromise valuable commercial relationships, they stated that "any forbearance by the direct purchaser to sue will be compensated. The supplier must pay something to bind the direct purchaser to him and this payment is, functionally, a form of antitrust damages" (p. 1278). In other words, the direct purchaser is receiving a financial inducement to be a part of the conspiracy and this benefit could be passed along to the indirect purchasers.

[55] In the years since the exchange between Landes and Posner and Harris and Sullivan, the literature has reflected an ongoing debate on the issue of indirect purchaser actions and specifically the rule in *Illinois Brick*. A survey of the literature

demandes et affaiblira l'effet dissuasif (p. 608-609). Quant à l'indemnisation, ils soutiennent que, même s'il n'a pas de droit d'action indépendant, l'acheteur indirect sera néanmoins « indemnisé » grâce à la faculté de l'acheteur direct d'intenter une action, car ce dernier répercutera sur le prix demandé à l'acheteur indirect les retombées éventuelles d'une action antitrust contre l'auteur de la majoration (p. 605).

[53] Peu après la publication de l'article de Landes et Posner, deux autres spécialistes du droit antitrust, Robert G. Harris et Lawrence A. Sullivan, ont exprimé l'opinion contraire (voir « Passing On the Monopoly Overcharge : A Comprehensive Policy Analysis » (1979), 128 *U. Pa. L. Rev.* 269, p. 351-352). Selon Harris et Sullivan, l'acheteur direct hésitera à compromettre ses bonnes relations avec son fournisseur et sera donc plus enclin à refiler la note à ses clients à lui. Il ne serait donc pas un « agent efficace d'application » des dispositions antitrust; pour les besoins de l'effet dissuasif, mieux vaudrait reconnaître la qualité pour agir à l'acheteur indirect.

[54] L'année suivante, Landes et Posner répliquaient directement à la thèse de Harris et Sullivan (voir « The Economics of Passing On : A Reply to Harris and Sullivan » (1980), 128 *U. Pa. L. Rev.* 1274). En réponse à la thèse de leurs détracteurs, à savoir qu'un acheteur direct hésitera à intenter une action en justice afin de ne pas compromettre de bonnes relations commerciales, ils affirment que [TRADUCTION] « l'omission de l'acheteur direct d'intenter une action en justice sera récompensée. Le fournisseur doit verser quelque chose pour s'attacher l'acheteur direct et il s'agit en quelque sorte d'une indemnisation antitrust » (p. 1278). En d'autres termes, l'acheteur direct obtient pour sa participation au complot une gratification financière qui peut être transmise à l'acheteur indirect.

[55] Depuis ce débat entre Landes et Posner, d'une part, et Harris et Sullivan, d'autre part, la question du droit d'action de l'acheteur indirect et, en particulier, la règle issue de l'arrêt *Illinois Brick*, continuent d'alimenter la discussion. Plus

reveals that most recently, however, there is a significant body of academic authority in favour of repealing the decision in *Illinois Brick* in order to best serve the objectives of the antitrust laws.

[56] Some authors, including Gregory J. Werden and Marius Schwartz, joined Harris and Sullivan in their critique of Landes and Posner, stating specifically that the notion that indirect purchasers would see any of the benefits accruing to a direct purchaser as the result of an anticipated recovery was "quite implausible" ("*Illinois Brick* and the Deterrence of Antitrust Violations — An Economic Analysis" (1984), 35 *Hastings L.J.* 629, at p. 638-39).

[57] The theory that direct purchasers may be unwilling to sue for fear of disrupting an important supplier relationship has also found favour among academics (see e.g. K. J. O'Connor, "Is the *Illinois Brick* Wall Crumbling?" (2001), 15:3 *Antitrust* 34, at p. 38 (noting that indirect purchasers are perhaps more likely to sue than are direct purchasers because they do not risk severing a "direct business relationship with the alleged violator"); A. Thimmesch, "Beyond Treble Damages: *Hanover Shoe* and Direct Purchaser Suits After *Comes v. Microsoft Corp.*" (2005), 90 *Iowa L. Rev.* 1649, at p. 1668 and fn. 127 (stating that in many situations the direct purchaser is in fact dependent upon the supplier and as such would be reticent to sue)). As recently as 2012, the same opinion has been expressed: "This is especially true if direct purchasers are able to pass on any overcharges that result from antitrust violations to consumers. . . . [T]he Supreme Court [of the United States]'s all-or-nothing 'Indirect Purchaser Rule' sweeps too broadly" (J. M. Glover, "The Structural Role of Private Enforcement Mechanisms in Public Law" (2012), 53 *Wm. & Mary L. Rev.* 1137, at p. 1187).

[58] As to the objective of compensation, several authors have commented that the rule in *Illinois Brick* in fact runs contrary to the goal of compensation, with one author calling it "[t]he

récemment, de nombreux auteurs ont cependant préconisé la neutralisation de l'arrêt afin de favoriser la réalisation des objectifs des dispositions antitrust.

[56] Certains, dont Gregory J. Werden et Marius Schwartz, se sont joints à Harris et Sullivan pour critiquer Landes et Posner. Ils qualifient d'[TRADUCTION] « assez invraisemblable » l'idée que l'acheteur indirect puisse bénéficier des retombées pour l'acheteur direct d'un recouvrement anticipé (« *Illinois Brick* and the Deterrence of Antitrust Violations — An Economic Analysis » (1984), 35 *Hastings L.J.* 629, p. 638-639).

[57] La thèse voulant qu'un acheteur direct hésite à poursuivre un fournisseur important par crainte de mettre en péril ses rapports avec lui a aussi ses tenants parmi les auteurs de doctrine (voir p. ex. K. J. O'Connor, « Is the *Illinois Brick* Wall Crumbling? » (2001), 15:3 *Antitrust* 34, p. 38 (selon lequel l'acheteur indirect est peut-être plus susceptible d'intenter une poursuite que l'acheteur direct parce qu'il ne risque pas la rupture de ses [TRADUCTION] « liens d'affaires directs avec le présumé contrevenant »); A. Thimmesch, « Beyond Treble Damages : *Hanover Shoe* and Direct Purchaser Suits After *Comes v. Microsoft Corp.* » (2005), 90 *Iowa L. Rev.* 1649, p. 1668 et note en bas de page 127 (selon lequel, dans bien des cas, l'acheteur direct est en situation de dépendance vis-à-vis du fournisseur et hésitera donc à le poursuivre)). Tout récemment, en 2012, on a avancé la même idée : [TRADUCTION] « Cela est particulièrement vrai lorsque l'acheteur direct peut transférer au consommateur toute somme payée en trop par suite d'une entorse à la concurrence. [. . .] [L]a règle par laquelle la Cour suprême [des États-Unis] refuse catégoriquement à "l'acheteur indirect le droit de poursuivre l'auteur" de la majoration a une portée excessive » (J. M. Glover, « The Structural Role of Private Enforcement Mechanisms in Public Law » (2012), 53 *Wm. & Mary L. Rev.* 1137, p. 1187).

[58] En ce qui concerne l'objectif d'indemnisation, plusieurs auteurs font observer que la règle issue de l'arrêt *Illinois Brick* va en fait à l'encontre de sa réalisation; l'un d'eux dit de cette décision

most far-reaching deviation from the compensatory rationale" (C. C. Van Cott, "Standing at the Fringe: Antitrust Damages and the Fringe Producer" (1983), 35 *Stan. L. Rev.* 763, at p. 775). Likewise, Andrew I. Gavil, an antitrust scholar, has stated that "providing compensation to all victims of unlawful conduct for the harms inflicted by the wrongdoer is a secondary but also essential goal of a comprehensive remedial system, one that *Illinois Brick* disserves in many common circumstances" ("Thinking Outside the *Illinois Brick* Box: A Proposal for Reform" (2009), 76 *Antitrust L.J.* 167, at p. 170).

[59] As can be seen from this overview, despite initial support from well-reputed antitrust scholars, it cannot be said that the rule in *Illinois Brick* still finds favour in the academic literature.

(4) Conclusion on the Offensive Use of Passing On

[60] Although the passing-on *defence* is unavailable as a matter of restitution law, it does not follow that indirect purchasers should be foreclosed from claiming losses passed on to them. In summary:

(1) The risks of multiple recovery and the concerns of complexity and remoteness are insufficient bases for precluding indirect purchasers from bringing actions against the defendants responsible for overcharges that may have been passed on to them.

(2) The deterrence function of the competition law in Canada is not likely to be impaired by indirect purchaser actions.

(3) While the passing-on defence is contrary to basic restitutionary principles, those same principles are promoted by allowing passing on to be used offensively.

qu'elle est celle qui [TRADUCTION] « s'écarte le plus de l'objectif d'indemnisation » (C. C. Van Cott, « Standing at the Fringe : Antitrust Damages and the Fringe Producer » (1983), 35 *Stan. L. Rev.* 763, p. 775). Dans le même ordre d'idées, selon Andrew I. Gavil, spécialiste en matière antitrust, [TRADUCTION] « indemniser toutes les victimes du comportement illégal pour les préjudices causés par le contrevenant constitue un objectif secondaire, mais aussi essentiel, d'un régime de réparation complet, un objectif que l'arrêt *Illinois Brick* méconnaît dans bien des situations courantes » (« Thinking Outside the *Illinois Brick* Box : A Proposal for Reform » (2009), 76 *Antitrust L.J.* 167, p. 170).

[59] Comme il appert de cet aperçu, malgré son appui initial par des auteurs de renom du domaine antitrust, la règle dégagée dans l'arrêt *Illinois Brick* ne remporte plus la faveur des juristes versés en la matière.

(4) Conclusion sur l'allégation en demande du transfert de la perte

[60] Malgré l'impossibilité d'invoquer le transfert de la perte en défense à une action en restitution, l'acheteur indirect ne doit pas pour autant se voir empêcher de recouvrer la perte qui lui a été transférée. En bref, voici les éléments à retenir :

(1) Le risque de recouvrement multiple et les obstacles liés à la complexité de la preuve et au caractère indirect de la majoration ne constituent pas des considérations suffisantes pour priver l'acheteur indirect d'un recours contre l'auteur de la majoration dont le montant lui aurait été transféré.

(2) Le recours de l'acheteur indirect ne portera vraisemblablement pas atteinte à l'effet dissuasif que sont censées avoir les dispositions canadiennes sur la concurrence.

(3) Même si invoquer le transfert de la perte en défense à une action va à l'encontre des principes fondamentaux de la restitution, permettre son allégation en demande est dans le droit fil de ces mêmes principes.

(4) Although the rule in *Illinois Brick* remains good law at the federal level in the United States, its subsequent repeal at the state level in many jurisdictions and the report to Congress recommending its reversal demonstrate that its rationale is under question.

(5) Despite some initial support, the recent doctrinal commentary favours overturning the rule in *Illinois Brick*.

For these reasons, I would not agree with Microsoft's argument that this Court's rejection of the passing-on defence in previous cases and affirmed here precludes indirect purchaser actions.

B. *Certification of the Class Action*

[61] Having answered the threshold question and determined that indirect purchasers may use passing on offensively to bring an action, I turn to the question of whether the present action should be certified as a class action. Because the majority of the B.C.C.A. disposed of the appeal based on its finding that indirect purchaser actions were not available in Canada, it did not consider the certification requirements dealt with by Tysoe J. (causes of action under s. 4(1)(a) of the *CPA*) and Myers J. (balance of the certification requirements under s. 4(1)(b) to (e) of the *CPA*). It therefore remains for this Court to review the certification analysis carried out by the two applications judges. Microsoft contests their findings as to only three of the certification requirements: (1) whether the pleadings disclose a cause of action; (2) whether the claims raise common issues; and (3) whether a class action is the preferable procedure.

(1) The Requirements for Certification Under the British Columbia *Class Proceedings Act*

[62] Section 4(1) of the *CPA* provides:

**4** (1) The court must certify a proceeding as a class proceeding on an application under section 2

(4) Bien que, aux États-Unis, la règle issue de l'arrêt *Illinois Brick* demeure valable au palier fédéral, son « abrogation » dans de nombreux États et le rapport recommandant au Congrès de l'infirmer remettent en question sa raison d'être.

(5) Malgré un certain appui initial, la doctrine récente penche en faveur de la suppression de la règle.

Pour ces motifs, je ne conviens pas avec Microsoft que le rejet par notre Cour dans des affaires antérieures et en l'espèce du moyen de défense fondé sur le transfert de la perte fait obstacle au recours de l'acheteur indirect.

B. *Certification du recours collectif*

[61] Après avoir tranché la question préliminaire et conclu que l'acheteur indirect peut invoquer le transfert de la perte en demande, j'examine maintenant s'il y a lieu ou non de certifier l'action intentée en l'espèce à titre de recours collectif. Étant donné que les juges majoritaires de la C.A.C.-B. statuent que l'acheteur indirect ne peut pas légalement intenter d'action au Canada, ils ne se penchent pas sur les conditions de certification examinées par le juge Tysoe (cause d'action exigée à l'al. 4(1)(a) de la *CPA*) et par le juge Myers (les autres conditions prévues aux al. 4(1)(b) à (e) de la *CPA*). Il nous faut donc contrôler l'analyse des deux juges saisis des demandes en ce qui concerne la certification. Microsoft ne conteste leurs conclusions qu'à l'égard de trois des conditions : (1) les actes de procédure révèlent une cause d'action, (2) les demandes soulèvent une question commune et (3) le recours collectif constitue la meilleure procédure pour régler cette question.

(1) Les conditions de certification selon la *Class Proceedings Act* de la Colombie-Britannique

[62] Le paragraphe 4(1) de la *CPA* dispose :

[TRADUCTION]

**4** (1) Le tribunal saisi d'une demande visée à l'article 2 ou 3 certifie une instance à titre de recours

or 3 if all of the following requirements are met:

(a) the pleadings disclose a cause of action;

(b) there is an identifiable class of 2 or more persons;

(c) the claims of the class members raise common issues, whether or not those common issues predominate over issues affecting only individual members;

(d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;

(e) there is a representative plaintiff who

(i) would fairly and adequately represent the interests of the class,

(ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and

(iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

(2) Do the Pleadings Disclose a Cause of Action?

[63] The first certification requirement requires that the pleadings disclose a cause of action. In *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261 ("*Alberta Elders*"), this Court explained that this requirement is assessed on the same standard of proof that applies to a motion to dismiss, as set out in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. That is, a plaintiff satisfies this requirement unless, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Alberta Elders*, at para. 20; *Hollick v. Toronto (City)*, 2001 SCC 68, [2001] 3 S.C.R. 158, at para. 25).

[64] Pro-Sys has alleged causes of action (1) under s. 36 of the *Competition Act*, (2) in tort

collectif lorsque les conditions suivantes sont réunies :

(a) les actes de procédure révèlent une cause d'action;

(b) il existe un groupe identifiable de deux personnes ou plus;

(c) les demandes des membres du groupe soulèvent une question commune, que celle-ci l'emporte ou non sur les questions qui touchent uniquement les membres individuels;

(d) le recours collectif serait la meilleure procédure pour régler la question commune de manière juste et efficace;

(e) un demandeur-représentant :

(i) défendrait de manière juste et appropriée les intérêts du groupe,

(ii) a présenté, pour le recours collectif, un plan qui établit une méthode praticable de faire progresser l'instance au nom du groupe et d'aviser les membres du groupe de l'existence du recours collectif,

(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les questions communes.

(2) Les actes de procédure révèlent-ils une cause d'action?

[63] La première condition de certification veut que les actes de procédure révèlent une cause d'action. Dans *Alberta c. Elder Advocates of Alberta Society*, 2011 CSC 24, [2011] 2 R.C.S. 261 (« *Alberta Elders* »), notre Cour explique que le respect de cette condition est apprécié au regard de la norme de preuve applicable à la requête en radiation selon l'arrêt *Hunt c. Carey Canada Inc.*, [1990] 2 R.C.S. 959, p. 980. Le demandeur ne satisfait donc pas à la condition lorsque, à supposer que les faits invoqués soient vrais, la demande ne pourrait manifestement pas être accueillie (*Alberta Elders*, par. 20; *Hollick c. Toronto (Ville)*, 2001 CSC 68, [2001] 3 R.C.S. 158, par. 25).

[64] Pro-Sys prétend avoir des causes d'action (1) suivant l'art. 36 de la *Loi sur la concurrence*,

for conspiracy and intentional interference with economic interests, and (3) in restitution for unjust enrichment, constructive trust and waiver of tort. For the reasons that follow, I would agree with Tysoe J. that the pleadings disclose causes of action that should not be struck out at this stage of the proceedings.

(a) *Section 36 of the Competition Act*

[65] Under s. 36 of the *Competition Act*, any person who has suffered loss or damage as a result of conduct engaged in by any person contrary to Part VI of the Act may sue for and recover that loss or damage. Section 36 provides:

> **36.** (1) Any person who has suffered loss or damage as a result of
>
> (*a*) conduct that is contrary to any provision of Part VI . . .
>
> . . .
>
> may in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

[66] Part VI of the *Competition Act* is entitled "Offences in Relation to Competition". The Part VI offences alleged in this appeal are (1) conspiracy, contrary to s. 45(1), and (2) false or misleading representations, contrary to s. 52(1). At the time of the hearing before Tysoe J., those provisions read as follows:

> **45.** (1) [Conspiracy] Every one who conspires, combines, agrees or arranges with another person

(2) en responsabilité délictuelle pour complot et atteinte intentionnelle aux intérêts financiers et (3) en restitution pour enrichissement sans cause, existence d'une fiducie par interprétation et renonciation au recours délictuel. Pour les motifs qui suivent, je conviens avec le juge Tysoe que les actes de procédure révèlent des causes d'action qu'on ne saurait radier à ce stade de l'instance.

a) *Article 36 de la Loi sur la concurrence*

[65] Selon l'art. 36 de la *Loi sur la concurrence*, toute personne qui a subi une perte ou des dommages par suite d'un comportement contraire à la partie VI de la Loi peut réclamer et recouvrer une somme égale au montant de la perte ou des dommages subis. Voici le libellé de l'art. 36 :

> **36.** (1) Toute personne qui a subi une perte ou des dommages par suite :
>
> *a*) . . . d'un comportement allant à l'encontre d'une disposition de la partie VI;
>
> . . .
>
> peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

[66] La partie VI de la *Loi sur la concurrence* est intitulée « Infractions relatives à la concurrence ». Les infractions qu'elle crée et dont la perpétration est alléguée en l'espèce sont (1) le complot, au par. 45(1), et (2) les indications fausses ou trompeuses, au par. 52(1). Voici quel était le libellé de ces dispositions lors de l'audience présidée par le juge Tysoe :

> **45.** (1) [Complot] Commet un acte criminel et encourt un emprisonnement maximal de cinq ans et une amende maximale de dix millions de dollars, ou l'une de ces peines, quiconque complote, se coalise ou conclut un accord ou arrangement avec une autre personne :

(*a*) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

(*b*) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

(*c*) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

(*d*) to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

*a*) soit pour limiter, indûment, les facilités de transport, de production, de fabrication, de fourniture, d'emmagasinage ou de négoce d'un produit quelconque;

*b*) soit pour empêcher, limiter ou réduire, indûment, la fabrication ou production d'un produit ou pour en élever déraisonnablement le prix;

*c*) soit pour empêcher ou réduire, indûment, la concurrence dans la production, la fabrication, l'achat, le troc, la vente, l'entreposage, la location, le transport ou la fourniture du produit, ou dans le prix d'assurances sur les personnes ou les biens;

*d*) soit, de toute autre façon, pour restreindre, indûment, la concurrence ou lui causer un préjudice indu.

**52.** (1) [False or misleading representations] No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

**52.** (1) [Indications fausses ou trompeuses] Nul ne peut, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques, donner au public, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses sur un point important.

[67] The bulk of Microsoft's objections to the cause of action under s. 36 of the *Competition Act* are tied to the theory that offensive passing on is not permitted. In view of my earlier finding that indirect purchaser actions are permitted, those arguments are no longer of consequence in this appeal.

[67] Microsoft conteste l'existence d'une cause d'action fondée sur l'art. 36 de la *Loi sur la concurrence* et fait essentiellement valoir que le transfert de la perte ne peut être allégué en demande. Vu ma conclusion que l'acheteur indirect peut ester en justice, cette prétention n'importe plus aux fins du pourvoi.

[68] However, Microsoft also argues that the s. 36 cause of action is not properly pleaded before this Court because it was not included in Pro-Sys's statement of claim. It argues that any attempt to add it now would be barred by the two-year limitation period contained in s. 36(4) of the Act. However, Donald J.A., dissenting in the B.C.C.A., found Microsoft's contention to be a purely technical objection, and not one that would form a basis to dismiss the claim. I would agree. The Third Further Amended Statement of Claim alleges that the unlawful conduct was continuing, a fact that must be accepted as being true for the purposes of this appeal. As a result, it cannot be said that the action was not filed in a timely manner.

[68] Toutefois, Microsoft soutient par ailleurs que la cause d'action fondée sur l'art. 36 est irrégulièrement plaidée devant notre Cour car elle ne figure pas dans la déclaration de Pro-Sys. Selon elle, le délai de prescription de deux ans imparti au par. 36(4) de la Loi fait obstacle à l'ajout de cette cause d'action. Or, le juge Donald de la C.A.C.-B., dissident, conclut qu'il s'agit d'une prétention d'ordre purement technique et qu'elle ne permet pas de rejeter la demande. Je suis d'accord. Selon la troisième déclaration modifiée, le comportement illégal se poursuivait, ce qui doit être tenu pour avéré aux fins du pourvoi. On ne saurait donc dire que l'action n'a pas été déposée dans le délai prescrit.

[69] Moreover, the Third Further Amended Statement of Claim states specifically that "[t]he plaintiffs plead and rely upon . . . . Part VI of the *Competition Act*" (para. 109, A.R., vol. II, at p. 48) and seeks damages accordingly. Although the Third Further Amended Statement of Claim does not expressly refer to s. 36, recovery for breaches under Part VI of the *Competition Act* may only be sought by private individuals through a claim under s. 36. I agree with Donald J.A. that "the parties put their minds to s. 36 at the certification hearing and so no surprise or prejudice can be complained of" (B.C.C.A., at para. 59). For these reasons, I would not accede to Microsoft's argument that the claim should be barred by the limitation provision of the *Competition Act*.

[69] Par ailleurs, selon le libellé même de la troisième déclaration modifiée, [TRADUCTION] « [l]es demandeurs invoquent [. . .] la partie VI de la *Loi sur la concurrence* » (par. 109, d.a., vol. II, p. 48) et réclament des dommages-intérêts en conséquence. Bien que le document ne renvoie pas expressément à l'art. 36, le recouvrement pour violation de la partie VI de la *Loi sur la concurrence* ne peut être demandé par une personne privée que sur le fondement de cette disposition. Je conviens avec le juge Donald que [TRADUCTION] « les parties ont considéré l'art. 36 lors de l'audition de la demande de certification, de sorte que nulle allégation de surprise ou de préjudice ne saurait être retenue » (C.A.C.-B., par. 59). C'est pourquoi je ne fais pas droit à la prétention de Microsoft selon laquelle le délai de prescription imparti par la *Loi sur la concurrence* fait obstacle à la demande.

[70] Microsoft made other brief arguments objecting to the cause of action under s. 36. Before Tysoe J., it argued that the Competition Tribunal should have jurisdiction over the enforcement of the competition law. I agree that a number of provisions of the *Competition Act* assign jurisdiction to the Competition Tribunal rather than the courts. However, that is not the case with s. 36, which expressly provides that any person who suffered loss by virtue of a breach of Part VI of the Act may seek to recover that loss. The section expressly confers jurisdiction on the court to entertain such claims.

[70] Microsoft invoque d'autres motifs succincts à l'encontre de la reconnaissance d'une cause d'action fondée sur l'art. 36. Devant le juge Tysoe, elle a fait valoir qu'il devait incomber au Tribunal de la concurrence de faire respecter le droit de la concurrence. Je conviens que certaines dispositions de la *Loi sur la concurrence* confèrent compétence au Tribunal de la concurrence plutôt qu'à une cour de justice. Or, ce n'est pas le cas de l'art. 36, qui prévoit expressément que toute personne à qui une violation de la partie VI inflige une perte peut se pourvoir en recouvrement devant une cour de justice.

[71] For all these reasons, it is not plain and obvious that a claim under s. 36 of the *Competition Act* would be unsuccessful. For the purposes of s. 4(1)(a) of the *CPA*, it cannot be said that the pleadings do not disclose a cause of action under s. 36 of the *Competition Act*.

[71] Pour tous ces motifs, il n'est pas manifeste qu'une demande fondée sur l'art. 36 de la *Loi sur la concurrence* ne serait pas accueillie. Pour l'application de l'al. 4(1)(a) de la *CPA*, on ne saurait affirmer que les actes de procédure ne révèlent pas une cause d'action fondée sur l'art. 36 de la *Loi sur la concurrence*.

(b) *Tort*

b) *Responsabilité délictuelle*

[72] Pro-Sys alleges that Microsoft combined with various parties to commit the economic torts of conspiracy (both predominant purpose conspiracy and unlawful means conspiracy) and unlawful interference with economic interests. A

[72] Pro-Sys soutient que Microsoft s'est associée à diverses personnes pour commettre les délits civils financiers que sont le complot (tant celui qui vise principalement à causer un préjudice que celui qui prévoit l'emploi de moyens illégaux) et l'atteinte

conspiracy arises when two or more parties agree "to do an unlawful act, or to do a lawful act by unlawful means" (*Mulcahy v. The Queen* (1868), L.R. 3 H.L. 306, at p. 317). Despite the fact that the tort of conspiracy traces its origins "to the Middle Ages, [it] is not now a well-settled tort in terms of its current utility or the scope of the remedy it affords" (*Golden Capital Securities Ltd. v. Holmes*, 2004 BCCA 565, 205 B.C.A.C. 54, at para. 42).

[73] Nonetheless, in Canada, two types of actionable conspiracy remain available under tort law: predominant purpose conspiracy and unlawful means conspiracy. I first address the arguments related to predominant purpose conspiracy. I then turn to unlawful means conspiracy and unlawful interference with economic interests and deal with them together, as the arguments against these causes of action relate to the "unlawful means" requirement common to both torts.

(i) Predominant Purpose Conspiracy

[74] Predominant purpose conspiracy is made out where the predominant purpose of the defendant's conduct is to cause injury to the plaintiff using either lawful or unlawful means, and the plaintiff does in fact suffer loss caused by the defendant's conduct. Where lawful means are used, if their object is to injure the plaintiff, the lawful acts become unlawful (*Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452, at pp. 471-72).

[75] It is worth noting that in *Cement LaFarge*, Estey J. wrote that predominant purpose conspiracy is a "commercial anachronism" and that the approach to this tort should be to restrict its application:

> The tort of conspiracy to injure, even without the extension to include a conspiracy to perform unlawful

illégale aux intérêts financiers. Il y a complot lorsqu'au moins deux personnes conviennent [TRADUCTION] « d'accomplir un acte illégal ou un acte légal par des moyens illégaux » (*Mulcahy c. The Queen* (1868), L.R. 3 H.L. 306, p. 317). Même si l'existence du délit civil de complot remonte [TRADUCTION] « au Moyen Âge, [il] ne s'agit pas aujourd'hui d'un délit civil bien établi quant à son utilité actuelle ou à la portée de la réparation qu'il permet » (*Golden Capital Securities Ltd. c. Holmes*, 2004 BCCA 565, 205 B.C.A.C. 54, par. 42).

[73] Il demeure que, au Canada, deux types de complot donnent ouverture à une action en droit de la responsabilité délictuelle : celui qui vise principalement à causer un préjudice et celui qui prévoit l'emploi de moyens illégaux. J'examine d'abord la thèse avancée relativement au complot qui vise principalement à causer un préjudice. Je me penche ensuite sur le complot qui prévoit le recours à des moyens illégaux et sur l'atteinte illégale aux intérêts financiers, que j'examine de pair puisque les motifs de contestation de ces causes d'action touchent à l'exigence, commune aux deux délits civils, du recours à des « moyens illégaux ».

(i) Complot visant principalement à causer un préjudice

[74] L'existence du complot visant principalement à causer un préjudice est établie lorsque le comportement du défendeur vise principalement à causer un préjudice au demandeur par des moyens légaux ou illégaux, et que le demandeur subit effectivement un préjudice à cause de ce comportement. Lorsque des moyens légaux sont employés à la même fin, les actes deviennent illégaux (*Ciments Canada LaFarge Ltée c. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 R.C.S. 452, p. 471-472).

[75] Mentionnons que, dans *Ciments LaFarge*, le juge Estey opine que le complot visant principalement à causer un préjudice constitue un « anachronisme commercial » et qu'il y aurait lieu d'en limiter l'application :

> Le délit civil de complot en vue de nuire, même s'il n'est pas étendu de manière à comprendre un complot

acts where there is a constructive intent to injure, has been the target of much criticism throughout the common law world. It is indeed a commercial anachronism as so aptly illustrated by Lord Diplock in *Lonrho*, *supra*, at pp. 188-89. In fact, the action may have lost much of its usefulness in our commercial world, and survives in our law as an anomaly. Whether that be so or not, it is now too late in the day to uproot the tort of conspiracy to injure from the common law. No doubt the reaction of the courts in the future will be to restrict its application for the very reasons that some now advocate its demise. [p. 473]

en vue d'accomplir des actes illégaux lorsqu'il y a une intention implicite de causer un préjudice, a été la cible de nombreuses critiques partout dans le monde de la *common law*. Comme l'indique si bien lord Diplock dans l'arrêt *Lonrho*, précité, aux pp. 188 et 189, il s'agit réellement d'un anachronisme commercial. En fait, il est possible que dans le contexte commercial actuel cette action ait perdu en grande partie son utilité et qu'elle survive comme une anomalie dans notre droit. Quoi qu'il en soit, il est maintenant trop tard pour déraciner de la *common law* le délit civil de complot en vue de nuire. Sans aucun doute, les cours tenteront dans l'avenir, pour les mêmes motifs que certains invoquent actuellement à l'appui de sa suppression, de limiter l'application de ce délit civil. [p. 473]

Notwithstanding these observations, whether predominant purpose conspiracy should be restricted so as not to apply to the facts of this case is not a matter that should be determined on an application to strike pleadings.

Néanmoins, la question de savoir si ce délit civil devrait voir sa portée limitée de sorte que les faits de la présente espèce n'y soient pas assimilés ne doit pas être tranchée dans le cadre d'une demande de radiation.

[76] At para. 91 of its Third Further Amended Statement of Claim, in a section discussing both predominant purpose and unlawful means conspiracy, Pro-Sys states that "[t]he defendants were motivated to conspire" and then lists the defendants' three "predominant purposes and predominant concerns": (1) to harm the plaintiffs by requiring them to purchase Microsoft products rather than competitors' products; (2) to harm the plaintiffs by requiring them to pay artificially high prices; and (3) to unlawfully increase their profits (A.R., vol. II, at p. 43).

[76] Au paragraphe 91 de sa troisième déclaration modifiée, sous une rubrique portant à la fois sur le complot qui vise principalement à causer un préjudice et celui qui prévoit l'emploi de moyens illégaux, Pro-Sys affirme que [TRADUCTION] « [l]es défenderesses entendaient comploter », puis elle énumère les trois « objectifs principaux » de celles-ci : (1) causer un préjudice aux demandeurs en exigeant qu'ils achètent les produits de Microsoft plutôt que ceux de concurrents, (2) causer un préjudice aux demandeurs en exigeant d'eux un prix majoré de façon artificielle et (3) accroître illégalement leurs profits (d.a., vol. II, p. 43).

[77] Microsoft argues that the tort of predominant purpose conspiracy is not made out because Pro-Sys's statement of claim fails to identify one true predominant purpose and instead lists several "overlapping purpose[s]" (R.F., at para. 93). Microsoft submits that by pleading that it was "motivated solely by economic considerations" (para. 94), Pro-Sys in effect concedes that the predominant purpose of Microsoft's alleged conduct could not have been to cause injury to the plaintiff as required under the law.

[77] Microsoft soutient que le délit civil de complot visant principalement à causer un préjudice n'est pas étayé, car la déclaration de Pro-Sys ne révèle pas un véritable objet principal, mais en énumère plutôt [TRADUCTION] « plusieurs qui se chevauchent » (m.i., par. 93). À son avis, lorsque Pro-Sys allègue que Microsoft était « motivée uniquement par des considérations d'ordre financier » (par. 94), elle admet en fait que l'objet principal du comportement reproché ne pouvait être de lui causer un préjudice comme l'exige la loi.

[78] There is disagreement between the parties as to what the pleadings mean. Microsoft says

[78] Il y a désaccord entre les parties sur la portée des allégations de Pro-Sys. Microsoft affirme

that Pro-Sys failed to identify injury to the plaintiffs as the one true predominant purpose. Pro-Sys argues that its pleadings state that Microsoft acted with the predominant purpose of injuring the class members which resulted in, among other things, increased profits. While the pleadings could have been drafted with a more precise focus, I would hesitate on a pleadings application to rule definitively that the predominant purpose conspiracy pleading is so flawed that no cause of action is disclosed. At this stage, I cannot rule out Pro-Sys's explanation that Microsoft's primary intent was to injure the plaintiffs and that unlawfully increasing its profits was a result of that intention. For this reason, I cannot say it is plain and obvious that Pro-Sys's claim in predominant purpose conspiracy cannot succeed.

[79] Microsoft also argues that this claim should be struck to the extent it applies as between corporate affiliates because "[p]arent and wholly-owned subsidiary corporations always act in combination" (R.F., at para. 95). Pro-Sys says that "[t]his is not true as a matter of law" (appellants' response factum, at para. 55). Both parties cite, among other cases, para. 19 of *Smith v. National Money Mart Co*. (2006), 80 O.R. (3d) 81 (C.A.), leave to appeal refused, [2006] 1 S.C.R. xii, which says that "there can be a conspiracy between a parent and a subsidiary corporation". In my view, this statement appears to leave open a cause of action in predominant purpose conspiracy even when the conspiracy is between affiliated corporations. Again, it would not be appropriate on a pleadings application to make a definitive ruling on this issue. In the circumstances, I cannot say it is plain and obvious that the predominant purpose conspiracy claim as it applies to an alleged conspiracy between a parent corporation and its subsidiaries should be struck at this phase of the proceedings.

qu'elles n'établissent pas que le véritable objet principal du complot était de causer un préjudice aux demandeurs. Pro-Sys fait valoir que, suivant ses allégations, les actes de Microsoft visaient principalement à causer un préjudice aux membres du groupe et qu'ils ont notamment eu pour effet d'accroître ses profits. Même si les actes de procédure auraient pu être rédigés de manière plus précise et directe, j'hésite à statuer définitivement, sur demande de radiation, que l'allégation d'un complot visant principalement à causer un préjudice est si lacunaire qu'aucune cause d'action n'est révélée. Pour l'heure, je ne peux écarter l'explication de Pro-Sys selon laquelle l'intention première de Microsoft était de causer un préjudice aux demandeurs et l'accroissement illégal de ses profits a résulté de cette intention. C'est pourquoi je ne saurais dire qu'il ne peut manifestement pas être fait droit à l'allégation de Pro-Sys selon laquelle il y a eu complot visant principalement à causer un préjudice.

[79] Microsoft ajoute que l'allégation doit être radiée dans la mesure où elle vise des sociétés liées, car [TRADUCTION] « [s]ociétés mères et filiales à 100 p. 100 agissent toujours de concert » (m.i., par. 95). Pro-Sys rétorque que [TRADUCTION] « [l]a prétention est infondée en droit » (mémoire en réponse des appelants, par. 55). Les deux invoquent entre autres le par. 19 de l'arrêt *Smith c. National Money Mart Co.* (2006), 80 O.R. (3d) 81 (C.A.), autorisation d'appel refusée, [2006] 1 R.C.S. xii, où la Cour d'appel dit [TRADUCTION] « qu'il peut y avoir complot entre une société mère et une filiale ». À mon sens, cet énoncé paraît permettre que le complot visant principalement à causer un préjudice puisse constituer une cause d'action même lorsque le complot serait le fait de sociétés liées. Là encore, il ne convient pas de statuer définitivement sur ce point au stade de la demande de radiation. Dans les circonstances, je ne peux conclure que l'allégation de complot entre une société mère et sa filiale visant principalement à causer un préjudice doit manifestement être radiée à ce stade de l'instance.

(ii) Unlawful Means Conspiracy and Intentional Interference With Economic Interests

[80] The second type of conspiracy, called "unlawful means conspiracy", requires no predominant purpose but requires that the unlawful conduct in question be directed toward the plaintiff, that the defendant should know that injury to the plaintiff is likely to result, and that the injury to the plaintiff does in fact occur (*Cement LaFarge*, at pp. 471-72).

[81] The tort of intentional interference with economic interests aims to provide a remedy to victims of intentional commercial wrongdoing (*Correia v. Canac Kitchens*, 2008 ONCA 506, 91 O.R. (3d) 353, at para. 98; *OBG Ltd. v. Allan*, [2007] UKHL 21, [2008] 1 A.C. 1). The three essential elements of this tort are (1) the defendant intended to injure the plaintiff's economic interests; (2) the interference was by illegal or unlawful means; and (3) the plaintiff suffered economic loss or harm as a result (see P. H. Osborne, *The Law of Torts* (4th ed. 2011), at p. 336).

[82] Microsoft argues that the claims for unlawful means conspiracy and intentional interference with economic interests should be struck because their common element requiring the use of "unlawful means" cannot be established.

[83] These alleged causes of action must be dealt with summarily as the proper approach to the unlawful means requirement common to both torts is presently under reserve in this Court in *Bram Enterprises Ltd. v. A.I. Enterprises Ltd.*, 2012 NBCA 33, 387 N.B.R. (2d) 215, leave to appeal granted, [2012] 3 S.C.R. v. Suffice it to say that at this point it is not plain and obvious that there is no cause of action in unlawful means conspiracy or in intentional interference with economic interests. I would therefore not strike these claims. Depending on the decision of this Court in *Bram*, it will

(ii) Complot prévoyant le recours à des moyens illégaux et atteinte intentionnelle aux intérêts financiers

[80] Pour le deuxième type de complot — celui « qui prévoit le recours à des moyens illégaux » —, point n'est besoin d'objet principal; il faut seulement que le comportement illégal soit dirigé contre le demandeur, que le défendeur doive savoir que le demandeur en subira vraisemblablement un préjudice et que le demandeur subisse effectivement un préjudice (*Ciments LaFarge*, p. 471-472).

[81] La raison d'être du délit civil d'atteinte intentionnelle aux intérêts financiers est l'indemnisation des victimes de pratiques commerciales délibérément préjudiciables (*Correia c. Canac Kitchens*, 2008 ONCA 506, 91 O.R. (3d) 353, par. 98; *OBG Ltd. c. Allan*, [2007] UKHL 21, [2008] 1 A.C. 1). Les trois éléments essentiels de ce délit civil sont (1) l'intention du défendeur de porter atteinte aux intérêts financiers du demandeur, (2) le recours à des moyens illégaux et (3) le préjudice consécutif subi par le demandeur (voir P. H. Osborne, *The Law of Torts* (4e éd. 2011), p. 336).

[82] Microsoft fait valoir que les allégations de complot prévoyant le recours à des moyens illégaux et d'atteinte intentionnelle aux intérêts financiers doivent être radiées vu l'impossibilité d'établir l'élément qui leur est commun, soit le recours à des « moyens illégaux ».

[83] Ces causes d'action alléguées doivent être examinées sommairement car, dans le dossier *Bram Enterprises Ltd. c. A.I. Enterprises Ltd.*, 2012 NBCA 33, 387 R.N.-B. (2e) 215, autorisation d'appel accordée, [2012] 3 R.C.S. v, actuellement en délibéré, notre Cour ne s'est pas encore prononcée sur l'approche qui s'impose à l'égard de cet élément commun aux deux délits civils. Il suffit de constater que, pour l'heure, l'inexistence d'une cause d'action fondée sur le complot prévoyant le recours à des moyens illégaux ou sur l'atteinte intentionnelle aux intérêts financiers n'est pas

be open to Microsoft to raise the matter in the B.C.S.C. should it consider it advisable to do so.

(c) *Restitution*

[84] Pro-Sys makes restitutionary claims alleging causes of action in unjust enrichment, constructive trust and waiver of tort.

(i) Unjust Enrichment

[85] The well-known elements required to establish an unjust enrichment are (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason (such as a contract) for the enrichment (see *Alberta Elders*, at para. 82; *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 30; *Rathwell v. Rathwell*, [1978] 2 S.C.R. 436, at p. 455; *Pettkus v. Becker*, [1980] 2 S.C.R. 834). Pro-Sys says that Microsoft was unjustly enriched by the overcharge to its direct purchasers that was passed through the chain of distribution to the class members.

[86] Microsoft argues that any enrichment it received came from the direct purchasers, and not from the class members, and that this lack of a direct connection between it and the class members forecloses the claim of unjust enrichment. Additionally, it says that the contracts between Microsoft and the direct purchasers and the contracts between the direct purchasers and the indirect purchasers (the existence of which are undisputed) constitute a juristic reason for the enrichment.

[87] In support of its first argument, Microsoft cites *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762. In *Peel*, McLachlin J. (as she then was) held, at p. 797, that "[t]he cases in which claims for unjust enrichment have been made out generally deal with benefits conferred

manifeste. Je suis donc d'avis de ne pas radier les allégations. Selon l'issue du pourvoi dans *Bram*, Microsoft pourra demander à la Cour suprême de la Colombie-Britannique de statuer sur ce point si elle le juge opportun.

c) *Restitution*

[84] Pro-Sys demande restitution sur le fondement de l'enrichissement sans cause, de la fiducie par interprétation et de la renonciation au recours délictuel.

(i) Enrichissement sans cause

[85] Les éléments qui doivent être réunis pour qu'il y ait enrichissement sans cause sont bien connus : (1) l'enrichissement du défendeur, (2) l'appauvrissement corrélatif du demandeur et (3) l'absence d'une cause juridique de cet enrichissement (p. ex., un contrat) (voir *Alberta Elders*, par. 82; *Garland c. Consumers' Gas Co.*, 2004 CSC 25, [2004] 1 R.C.S. 629, par. 30; *Rathwell c. Rathwell*, [1978] 2 R.C.S. 436, p. 455; *Pettkus c. Becker*, [1980] 2 R.C.S. 834). Selon Pro-Sys, Microsoft s'est injustement enrichie par la majoration du prix exigé de ses acheteurs directs, lesquels ont transféré cette majoration aux membres du groupe situés en aval dans la chaîne de distribution.

[86] Microsoft prétend que l'enrichissement, s'il en est, provient des acheteurs directs, et non des membres du groupe, et que son absence de lien direct avec ces derniers scelle le sort de l'allégation d'enrichissement sans cause. Elle ajoute que les contrats qu'elle a conclus avec les acheteurs directs et ceux intervenus entre les acheteurs directs et les acheteurs indirects (dont l'existence n'est pas contestée) constituent la cause juridique de l'enrichissement.

[87] À l'appui de sa première prétention, Microsoft invoque l'arrêt *Peel (Municipalité régionale) c. Canada*, [1992] 3 R.C.S. 762, où la juge McLachlin (maintenant Juge en chef) conclut à la p. 797 que « [l]es affaires dans lesquelles l'enrichissement sans cause a été établi concernent

directly and specifically on the defendant". A claim in unjust enrichment must be based on "more than an incidental blow-by. A secondary collateral benefit will not suffice. To permit recovery for incidental collateral benefits would be to admit of the possibility that a plaintiff could recover twice — once from the person who is the immediate beneficiary of the payment or benefit . . . , and again from the person who reaped an incidental benefit" (*Peel*, at p. 797). The words of *Peel* themselves would appear to foreclose the possibility of an indirect relationship between plaintiff and defendant. However, this does not resolve the issue. First, it is not apparent that the benefit to Microsoft is an "incidental blow-by" or "collateral benefit". Second, Pro-Sys relies on *Alberta Elders*, which it says stands for the proposition that an unjust enrichment may be possible where the benefit was indirect and was passed on by a third party. At this stage, I cannot conclude that it is plain and obvious that a claim in unjust enrichment will be made out only where the relationship between the plaintiff and the defendant is direct.

généralement des avantages conférés directement et expressément au défendeur ». Pour fonder l'allégation d'enrichissement sans cause, l'avantage conféré ne doit pas revêtir qu'un « caractère purement incident. Un avantage secondaire et accessoire ne suffit pas. En effet, permettre qu'il y ait recouvrement à l'égard d'avantages accessoires et incidents reviendrait à admettre la possibilité d'un double recouvrement par le demandeur — d'abord, de la personne qui bénéficie immédiatement du paiement ou de l'avantage [. . .] et ensuite, de la personne qui en a tiré un avantage incident » (*Peel*, p. 797). Les mots employés dans cet arrêt paraissent écarter en eux-mêmes la possibilité d'un lien indirect entre le demandeur et le défendeur, mais la question n'est pas résolue pour autant. Premièrement, il n'est pas évident que l'avantage obtenu par Microsoft revêt un caractère « purement incident » ou qu'il est « accessoire ». Deuxièmement, Pro-Sys invoque l'arrêt *Alberta Elders*, selon lequel il peut y avoir enrichissement sans cause lorsque l'avantage conféré est indirect et qu'il a été transféré par un tiers. À ce stade, je ne peux conclure qu'il est manifeste que l'enrichissement sans cause ne sera établi que si le lien entre le demandeur et le défendeur est direct.

[88] With regard to Microsoft's juristic reason justification, Pro-Sys pleads that these contracts are "illegal and void" because they constitute a restraint of trade at common law, they violate U.S. antitrust law, they are prohibited by Microsoft's own corporate policies and they violate Part VI of the *Competition Act*. It submits that the contracts cannot therefore constitute a juristic reason for the enrichment. The question of whether the contracts are illegal and void should not be resolved at this stage of the proceedings. These are questions that must be left to the trial judge.

[88] En ce qui concerne la prétendue cause juridique de l'enrichissement de Microsoft, Pro-Sys fait valoir que les contrats en cause sont [TRADUCTION] « illégaux et nuls » en ce qu'ils portent atteinte à la liberté du commerce en common law, ils enfreignent les dispositions américaines antitrust, ils vont à l'encontre des politiques d'entreprise de Microsoft et ils contreviennent à la partie VI de la *Loi sur la concurrence*. Elle soutient qu'il ne s'agit donc pas d'une cause juridique de l'enrichissement. Il n'y a pas lieu, à ce stade de l'instance, de statuer sur la légalité et la validité des contrats. Il appartiendra au juge du procès de le faire.

[89] I am thus unable to find that it is plain and obvious that the claim in unjust enrichment cannot succeed.

[89] Je ne saurais donc conclure qu'il ne peut manifestement pas être fait droit à l'allégation d'enrichissement sans cause.

(ii) Constructive Trust

(ii) Fiducie par interprétation

[90] As a remedy for the alleged unjust enrichment, Pro-Sys submits that an amount equal to the

[90] Pro-Sys soutient qu'en guise de réparation de l'enrichissement sans cause allégué, Microsoft

overcharge from the sales of Microsoft operating systems and Microsoft applications software in British Columbia should be held by Microsoft in trust for the class members. In other words, Pro-Sys is asking that Microsoft be constituted a constructive trustee in favour of Pro-Sys.

[91] *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, is the relevant controlling authority on constructive trusts. In *Kerr*, Justice Cromwell explains that in order to find that a constructive trust is made out, the plaintiff must be able to point to a link or causal connection between his or her contribution and the acquisition of specific property:

> . . . the constructive trust is a broad and flexible equitable tool used to determine beneficial entitlement to property (*Pettkus*, at pp. 843-44 and 847-48). Where the plaintiff can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour (*Pettkus*, at pp. 852-53; *Sorochan*, at p. 50). [para. 50]

[92] In the present case, there is no referential property; Pro-Sys makes a purely monetary claim. Constructive trusts are designed to "determine beneficial entitlement to property" when "a monetary award is inappropriate or insufficient" (*Kerr*, at para. 50). As Pro-Sys's claim neither explains why a monetary award is inappropriate or insufficient nor shows a link to specific property, the claim does not satisfy the conditions necessary to ground a constructive trust. On the pleadings, it is plain and obvious that Pro-Sys's claim that an amount equal to the overcharge from the sale of Microsoft operating systems and Microsoft applications software in British Columbia should be held by Microsoft in trust for the class members cannot succeed. The pleadings based on constructive trust must be struck.

devrait détenir en fiducie pour le compte des membres du groupe une somme égale au montant de la majoration du prix de ses systèmes d'exploitation et de ses logiciels d'application vendus en Colombie-Britannique. En d'autres termes, elle demande que Microsoft soit constituée fiduciaire par interprétation à son bénéfice.

[91] L'arrêt *Kerr c. Baranow*, 2011 CSC 10, [2011] 1 R.C.S. 269, est décisif en matière de fiducies par interprétation. Le juge Cromwell y explique que pour faire la preuve d'une fiducie par interprétation, le demandeur doit pouvoir établir un lien ou un rapport de causalité entre sa contribution et l'acquisition du bien en cause :

> . . . la fiducie [par interprétation] est un outil général, souple et juste qui permet de déterminer le droit de propriété véritable (*Pettkus*, p. 843-844 et 847-848). Si le demandeur peut établir un lien ou un rapport de causalité entre ses contributions et l'acquisition, la conservation, l'entretien ou l'amélioration du bien en cause, une part proportionnelle à l'enrichissement sans cause peut faire l'objet d'une fiducie [par interprétation] en sa faveur (*Pettkus*, p. 852-853; *Sorochan*, p. 50). [par. 50]

[92] Nul bien n'est en cause en l'espèce; Pro-Sys réclame seulement une réparation pécuniaire. La fiducie par interprétation sert à « déterminer le droit de propriété véritable » lorsqu'« une réparation pécuniaire est inappropriée ou insuffisante » (*Kerr*, par. 50). Étant donné que Pro-Sys n'indique pas en quoi une réparation pécuniaire serait inappropriée ou insuffisante, et qu'elle n'établit pas de lien avec un bien en particulier, l'allégation ne satisfait pas aux conditions d'imposition d'une fiducie par interprétation. Au vu des actes de procédure, il est manifeste qu'on ne saurait faire droit à l'allégation de Pro-Sys selon laquelle Microsoft devrait conserver en fiducie pour le compte des membres du groupe une somme égale au montant de la majoration du prix de ses systèmes d'exploitation et de ses logiciels d'application vendus en Colombie-Britannique. Les éléments des actes de procédure qui concernent l'existence d'une fiducie par interprétation doivent être radiés.

(iii) Waiver of Tort

[93] As an alternative to the causes of action in tort, Pro-Sys waives the tort and seeks to recover the unjust enrichment accruing to Microsoft. Waiver of tort occurs when the plaintiff gives up the right to sue in tort and elects instead to base its claim in restitution, "thereby seeking to recoup the benefits that the defendant has derived from the tortious conduct" (Maddaugh and McCamus (2013), at p. 24-1). Causes of action in tort and restitution are not mutually exclusive, but rather provide alternative remedies that may be pursued concurrently (*United Australia, Ltd. v. Barclays Bank, Ltd.*, [1941] A.C. 1 (H.L.), at p. 18). Waiver of tort is based on the theory that "in certain situations, where a tort has been committed, it may be to the plaintiff's advantage to seek recovery of an unjust enrichment accruing to the defendant rather than normal tort damages" (Maddaugh and McCamus, at pp. 24-1 and 24-2). An action in waiver of tort is considered by some to offer the plaintiff an advantage in that it may relieve them of the need to prove loss in tort, or in fact at all (Maddaugh and McCamus, at p. 24-4).

[94] Microsoft advances two arguments as to why this claim should be struck. First, it states that Pro-Sys has pleaded waiver of tort as a remedy and not a cause of action, and therefore proof of loss is an essential element. Second, if indeed waiver of tort is pleaded as a cause of action, the underlying tort must therefore be established, including the element of loss. In my view, neither argument provides a sufficient basis upon which to find that a claim in waiver of tort would plainly and obviously be unsuccessful.

[95] In *Serhan (Trustee of) v. Johnson & Johnson* (2006), 85 O.R. (3d) 665 (S.C.J. (Div. Ct.)), Epstein J. (as she then was) performed an extensive review

(iii) Renonciation au recours délictuel

[93] Subsidiairement à une cause d'action en responsabilité délictuelle, Pro-Sys invoque la renonciation au recours délictuel et demande à recouvrer une somme égale à l'enrichissement sans cause obtenu par Microsoft. Il y a renonciation au recours délictuel lorsque le demandeur renonce à son droit d'intenter une action en responsabilité délictuelle et choisit plutôt de se pourvoir en restitution et [TRADUCTION] « de recouvrer ainsi le bénéfice que le défendeur a tiré de la conduite délictueuse » (Maddaugh et McCamus (2013), p. 24-1). Les causes d'action en responsabilité délictuelle et en restitution ne s'excluent pas mutuellement, mais offrent plutôt des mesures de réparation qui peuvent être réclamées simultanément (*United Australia, Ltd. c. Barclays Bank, Ltd.*, [1941] A.C. 1 (H.L.), p. 18). La renonciation au recours délictuel a pour prémisse que, [TRADUCTION] « dans certains cas de délit civil, le demandeur peut avoir avantage à recouvrer l'enrichissement sans cause obtenu par le défendeur plutôt qu'à obtenir des dommages-intérêts dans le cadre d'une action en responsabilité délictuelle » (Maddaugh et McCamus, p. 24-1 et 24-2). D'aucuns considèrent que l'action fondée sur la renonciation au recours délictuel confère un avantage au demandeur en ce qu'elle peut le dispenser de prouver la perte au regard des règles de la responsabilité délictuelle ou même de quelque manière (Maddaugh et McCamus, p. 24-4).

[94] Microsoft fait valoir deux motifs de radier cette allégation. Premièrement, Pro-Sys invoque la renonciation au recours délictuel dans une optique de réparation, et non à titre de cause d'action, de sorte que la preuve de la perte est essentielle. Deuxièmement, si la renonciation au recours délictuel est effectivement invoquée comme cause d'action, il faut donc établir le délit civil sous-jacent, y compris la perte. À mon avis, aucun des deux motifs avancés ne permet de conclure que la demande fondée sur la renonciation au recours délictuel ne peut manifestement pas être accueillie.

[95] Dans *Serhan (Trustee of) c. Johnson & Johnson* (2006), 85 O.R. (3d) 665 (C.S.J. (C. div.)), la juge Epstein (maintenant juge de la Cour d'appel

of the doctrine of waiver of tort. Her analysis found numerous authorities accepting the viability of waiver of tort as its own cause of action intended to disgorge a defendant's unjust enrichment gained through wrongdoing, as opposed to merely a remedy for unjust enrichment. These authorities differed, however, as to the question of whether the underlying tort needed to be established in order to sustain the action in waiver of tort.

[96] The U.S. and U.K. jurisprudence as well as the academic texts on the subject have largely rejected the requirement that the underlying tort must be established in order for a claim in waiver of tort to succeed (see *Serhan*, at paras. 51-68, citing Maddaugh and McCamus (2005), at p. 24-20; J. Beatson, *The Use and Abuse of Unjust Enrichment: Essays on the Law of Restitution* (1991); D. Friedmann, "Restitution for Wrongs: The Basis of Liability", in W. R. Cornish, et al., eds., *Restitution: Past, Present and Future: Essays in Honour of Gareth Jones* (1998), 133; *National Trust Co. v. Gleason*, 77 N.Y. 400 (1879); *Federal Sugar Refining Co. v. United States Sugar Equalization Board, Inc.*, 268 F. 575 (S.D.N.Y. 1920); *Mahesan v. Malaysia Government Officers' Co-operative Housing Society Ltd.*, [1979] A.C. 374 (P.C.); *Universe Tankships Inc. of Monrovia v. International Transport Workers Federation*, [1983] A.C. 366 (H.L.)). Another line of cases would find a cause of action in waiver of tort to be unavailable unless it can be established that the defendant has committed the underlying tort giving rise to the cause of action (see *United Australia*, at p. 18; *Zidaric v. Toshiba of Canada Ltd.* (2000), 5 C.C.L.T. (3d) 61 (Ont. S.C.J.), at para. 14; *Reid v. Ford Motor Co.*, 2006 BCSC 712 (CanLII)). At least one of these cases (*Reid*) suggests that a reluctance to eliminate the requirement of proving loss as an element of the cause of action is part of the reason for requiring the establishment of the underlying tort (para. 17).

de l'Ontario) examine minutieusement la notion de renonciation au recours délictuel. Elle constate que de nombreux auteurs reconnaissent sa validité comme cause d'action pour la restitution par le défendeur de l'enrichissement sans cause obtenu par des moyens répréhensibles, et non seulement pour la réparation de cet enrichissement sans cause. Ces auteurs diffèrent cependant d'avis quant à savoir si le délit civil sous-jacent doit être prouvé ou non pour les besoins de l'action fondée sur la renonciation au recours délictuel.

[96] Les tribunaux américains et britanniques, ainsi que les auteurs de doctrine en la matière, écartent pour la plupart l'obligation du demandeur d'établir le délit civil sous-jacent pour qu'il puisse avoir gain de cause sur le fondement de la renonciation au recours délictuel (voir *Serhan*, par. 51-68, citant Maddaugh et McCamus (2005), p. 24-20; J. Beatson, *The Use and Abuse of Unjust Enrichment : Essays on the Law of Restitution* (1991); D. Friedmann, « Restitution for Wrongs : The Basis of Liability », dans W. R. Cornish et autres, dir., *Restitution : Past, Present and Future : Essays in Honour of Gareth Jones* (1998), 133; *National Trust Co. c. Gleason*, 77 N.Y. 400 (1879); *Federal Sugar Refining Co. c. United States Sugar Equalization Board, Inc.*, 268 F. 575 (S.D.N.Y. 1920); *Mahesan c. Malaysia Government Officers' Co-operative Housing Society Ltd.*, [1979] A.C. 374 (P.C.); *Universe Tankships Inc. of Monrovia c. International Transport Workers Federation*, [1983] A.C. 366 (H.L.)). Selon un autre courant jurisprudentiel, il ne peut y avoir de cause d'action fondée sur la renonciation au recours délictuel que s'il est établi que le défendeur a commis le délit civil y donnant ouverture (voir *United Australia*, p. 18; *Zidaric c. Toshiba of Canada Ltd.* (2000), 5 C.C.L.T. (3d) 61 (C.S.J. Ont.), par. 14; *Reid c. Ford Motor Co.*, 2006 BCSC 712 (CanLII)). Dans au moins une de ces affaires (*Reid*), le tribunal laisse entendre que la réticence à écarter l'obligation de prouver la perte comme élément de la cause d'action explique en partie qu'il faille prouver le délit civil sous-jacent (par. 17).

[97] Epstein J. ultimately concluded that, given this contradictory law, "[c]learly, it cannot be said that an action based on waiver of tort is sure to fail" and that the questions "about the consequences of identifying waiver of tort as an independent cause of action in circumstances such as exist here, involv[e] matters of policy that should not be determined at the pleadings stage" (*Serhan*, at para. 68). I agree. In my view, this appeal is not the proper place to resolve the details of the law of waiver of tort, nor the particular circumstances in which it can be pleaded. I cannot say that it is plain and obvious that a cause of action in waiver of tort would not succeed.

[97] La juge Epstein conclut au final que, vu l'état contradictoire du droit, [TRADUCTION] « [o]n ne saurait affirmer, de toute évidence, que le demandeur qui fonde son action sur la renonciation au recours délictuel sera assurément débouté »; elle ajoute que le débat « sur les conséquences de la reconnaissance de la renonciation au recours délictuel comme cause d'action indépendante dans des circonstances comme celles de l'espèce fait intervenir des principes sur lesquels il ne convient pas de prononcer à l'étape de l'examen des allégations » (*Serhan*, par. 68). Je suis d'accord. À mon avis, il ne convient pas de statuer plus avant, dans le cadre du pourvoi, sur le droit applicable en matière de renonciation au recours délictuel, ni sur le contexte particulier dans lequel on peut invoquer celle-ci. Je ne peux affirmer que le demandeur qui fonde son action sur la renonciation au recours délictuel sera manifestement débouté.

(3) The Remaining Certification Requirements

(3) Les autres conditions présidant à la certification

[98] The causes of action under s. 36 of the *Competition Act*, in tort and in restitution (except for constructive trust) have met the first certification requirement that the pleadings disclose a cause of action. I now turn to Microsoft's argument that the claims should nevertheless be rejected because they do not meet two of the remaining certification requirements: that the claims of the class members raise common issues and that a class action is the preferable procedure in this case.

[98] Les causes d'action que confère l'art. 36 de la *Loi sur la concurrence*, en responsabilité délictuelle et en restitution (sauf sur le fondement de la fiducie par interprétation) remplissent la première condition de certification voulant que les actes de procédure révèlent une cause d'action. Je me penche maintenant sur la prétention de Microsoft selon laquelle les demandes des membres du groupe doivent néanmoins être rejetées parce qu'elles ne satisfont pas à deux des autres conditions, à savoir qu'une question commune soit soulevée et que le recours collectif constitue la meilleure procédure pour régler cette question.

(a) *Standard of Proof*

a) *Norme de preuve*

[99] The starting point in determining the standard of proof to be applied to the remaining certification requirements is the standard articulated in this Court's seminal decision in *Hollick*. In that case, McLachlin C.J. succinctly set out the standard: ". . . the class representative must show some basis in fact for each of the certification requirements set out in . . . the Act, other than the requirement that the pleadings disclose a

[99] Le point de départ pour déterminer la norme de preuve applicable aux autres conditions de certification réside dans l'arrêt de principe *Hollick* où la juge en chef McLachlin énonce succinctement cette norme : « . . . le représentant du groupe doit établir un certain fondement factuel pour chacune des conditions énumérées [dans] la Loi, autre que l'exigence que les actes de procédure révèlent une cause d'action » (par. 25 (je souligne)). La Juge

cause of action" (para. 25 (emphasis added)). She noted, however, that "the certification stage is decidedly not meant to be a test of the merits of the action" (para. 16). Rather, this stage is concerned with form and with whether the action can properly proceed as a class action (see *Hollick*, at para. 16; *Pro-Sys Consultants Ltd. v. Infineon Technologies AG*, 2009 BCCA 503, 98 B.C.L.R. (4th) 272 ("*Infineon*"), at para. 65; *Cloud v. Canada (Attorney General)* (2004), 73 O.R. (3d) 401 (C.A.), at para. 50).

[100] The *Hollick* standard of proof asks not whether there is some basis in fact for the claim itself, but rather whether there is some basis in fact which establishes each of the individual certification requirements. McLachlin C.J. did, however, note in *Hollick* that evidence has a role to play in the certification process. She observed that "the *Report of the Attorney General's Advisory Committee on Class Action Reform* clearly contemplates that the class representative will have to establish an evidentiary basis for certification" (para. 25).

[101] Microsoft, while accepting the "some basis in fact" standard, argues that "in order for the Plaintiffs to meet the standard of proof, the evidence must establish that the proposed class action raises common issues and is the preferable procedure *on a balance of probabilities*" (R.F., at para. 41 (emphasis in original)). Microsoft relies on the academic writings of Justice Cullity of the Ontario Superior Court of Justice. Cullity J. expressed the view that "[t]o the extent that some basis in fact reflects a concern that certification motions are procedural and should not be concerned with the merits of the claims asserted, there seems no justification for applying the lesser standard to essential preconditions for certification that will not be within the jurisdiction of the court at trial" ("Certification in Class Proceedings — The Curious Requirement of 'Some Basis in Fact'" (2011), 51 *Can. Bus. L.J.* 407, at p. 422). In other words, Cullity J. suggests that because certification requirements are procedural, they will not be revisited at a trial of the common issues. As such, there is no reason to assess them on a

en chef signale que « [l]a Loi écarte carrément un examen au fond à l'étape de la certification » (par. 16). Cette étape intéresse plutôt la forme et le caractère approprié de la poursuite par voie de recours collectif (voir *Hollick*, par. 16; *Pro-Sys Consultants Ltd. c. Infineon Technologies AG*, 2009 BCCA 503, 98 B.C.L.R. (4th) 272 (« *Infineon* »), par. 65; *Cloud c. Canada (Attorney General)* (2004), 73 O.R. (3d) 401 (C.A.), par. 50).

[100] Suivant la norme de preuve issue de l'arrêt *Hollick*, la question n'est pas celle de savoir si la demande a un certain fondement factuel, mais plutôt si un certain fondement factuel établit chacune des conditions de certification. La juge en chef McLachlin signale cependant que la preuve importe aux fins de la certification. Elle fait remarquer que « le rapport [. . .] du comité consultatif du procureur général [sur la réforme du recours collectif] envisageait manifestement que le représentant du groupe serait tenu d'étayer sa demande de certification » (par. 25).

[101] Bien qu'elle souscrive à la norme fondée sur l'existence d'« un certain fondement factuel », Microsoft fait valoir que [TRADUCTION] « pour respecter la norme de preuve, les demandeurs doivent établir *selon la prépondérance des probabilités* que le recours collectif proposé soulève une question commune et qu'il constitue la meilleure procédure pour régler cette question » (m.i., par. 41 (en italique dans l'original)). Elle invoque à l'appui les propos du juge Cullity, de la Cour supérieure de justice de l'Ontario, selon lesquels, [TRADUCTION] « [d]ans la mesure où l'exigence d'un certain fondement factuel est liée au fait que la demande de certification revêt un caractère procédural et que son examen ne doit pas porter sur le fond des allégations, rien ne paraît justifier l'application d'une norme moins stricte aux conditions essentielles qui président à la certification et qui échapperont à la compétence du tribunal lors du procès » (« Certification in Class Proceedings — The Curious Requirement of "Some Basis in Fact" » (2011), 51 *Rev. can. dr. comm.* 407, p. 422). En d'autres termes, le juge Cullity indique qu'en

standard lower than the traditional civil standard of "balance of probabilities". Microsoft further submits that this Court should endorse the American approach of making factual determinations at the certification stage on a preponderance of the evidence and should require certification judges to weigh the evidence so as to resolve all factual or legal disputes at certification, even if those disputes overlap with the merits (see R.F., at para. 42, citing *In re: Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305 (3rd Cir. 2008), at p. 307, and R.F., at para. 43).

[102] I cannot agree with Microsoft's submissions on this issue. Had McLachlin C.J. intended that the standard of proof to meet the certification requirements was a "balance of probabilities", that is what she would have stated. There is nothing obscure here. The *Hollick* standard has never been judicially interpreted to require evidence on a balance of probabilities. Further, Microsoft's reliance on U.S. law is novel and departs from the *Hollick* standard. The "some basis in fact" standard does not require that the court resolve conflicting facts and evidence at the certification stage. Rather, it reflects the fact that at the certification stage "the court is ill-equipped to resolve conflicts in the evidence or to engage in the finely calibrated assessments of evidentiary weight" (*Cloud*, at para. 50; *Irving Paper Ltd. v. Atofina Chemicals Inc.* (2009), 99 O.R. (3d) 358 (S.C.J.), at para. 119, citing *Hague v. Liberty Mutual Insurance Co.* (2004), 13 C.P.C. (6th) 1 (Ont. S.C.J.)). The certification stage does not involve an assessment of the merits of the claim and is not intended to be a pronouncement on the viability or strength of the action; "rather, it focuses on the form of the action in order to determine whether the action can appropriately go forward as a class proceeding" (*Infineon*, at para. 65).

raison de leur nature procédurale, les conditions de certification ne feront pas l'objet d'un nouvel examen lors du procès. Il n'y a donc aucune raison de statuer sur le respect de ces conditions selon une norme moins stricte que celle de la « prépondérance des probabilités » généralement appliquée en matière civile. Microsoft ajoute que notre Cour devrait, à l'instar des tribunaux américains, tirer des conclusions de fait à l'étape de la certification selon la prépondérance de la preuve et exiger du juge saisi de la demande de certification qu'il évalue la preuve de façon à régler les différends d'ordre factuel ou juridique à cette étape, même lorsque ces différends touchent le fond du litige (voir m.i., par. 42, citant *In re : Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305 (3rd Cir. 2008), p. 307, et m.i., par. 43).

[102] Je ne saurais souscrire aux observations de Microsoft sur ce point. Si la juge en chef McLachlin avait voulu que le respect des conditions de certification soit assujetti à la norme de la « prépondérance des probabilités », elle l'aurait précisé. Or, la règle établie est claire. Les tribunaux n'ont jamais considéré que l'arrêt *Hollick* exigeait une preuve selon la prépondérance des probabilités. En outre, en s'appuyant sur le droit américain, Microsoft adopte une approche nouvelle et rompt avec la norme de l'arrêt *Hollick*. La norme fondée sur l'existence d'« un certain fondement factuel » n'exige pas que le tribunal se prononce sur les éléments de fait et les éléments de preuve contradictoires à l'étape de la certification. Elle tient plutôt compte du fait que, à cette étape, [TRADUCTION] « le tribunal n'est pas en mesure de statuer sur les éléments contradictoires de la preuve non plus que de déterminer sa valeur probante à l'issue d'une analyse nuancée » (*Cloud*, par. 50; *Irving Paper Ltd. c. Atofina Chemicals Inc.* (2009), 99 O.R. (3d) 358 (C.S.J.), par. 119, citant *Hague c. Liberty Mutual Insurance Co.* (2004), 13 C.P.C. (6th) 1 (C.S.J. Ont.)). La procédure de certification ne comporte pas d'examen au fond de la demande et elle ne vise pas à déterminer le bien-fondé des allégations; [TRADUCTION] « elle intéresse plutôt la forme que revêt l'action pour déterminer s'il convient de procéder par recours collectif » (*Infineon*, par. 65).

[103] Nevertheless, it has been well over a decade since *Hollick* was decided, and it is worth reaffirming the importance of certification as a meaningful screening device. The standard for assessing evidence at certification does not give rise to "a determination of the merits of the proceeding" (*CPA*, s. 5(7)); nor does it involve such a superficial level of analysis into the sufficiency of the evidence that it would amount to nothing more than symbolic scrutiny.

[104] In any event, in my respectful opinion, there is limited utility in attempting to define "some basis in fact" in the abstract. Each case must be decided on its own facts. There must be sufficient facts to satisfy the applications judge that the conditions for certification have been met to a degree that should allow the matter to proceed on a class basis without foundering at the merits stage by reason of the requirements of s. 4(1) of the *CPA* not having been met.

[105] Finally, I would note that Canadian courts have resisted the U.S. approach of engaging in a robust analysis of the merits at the certification stage. Consequently, the outcome of a certification application will not be predictive of the success of the action at the trial of the common issues. I think it important to emphasize that the Canadian approach at the certification stage does not allow for an extensive assessment of the complexities and challenges that a plaintiff may face in establishing its case at trial. After an action has been certified, additional information may come to light calling into question whether the requirements of s. 4(1) continue to be met. It is for this reason that enshrined in the *CPA* is the power of the court to decertify the action if at any time it is found that the conditions for certification are no longer met (s. 10(1)).

(b) *Do the Claims of the Class Members Raise Common Issues?*

[106] The commonality requirement has been described as "[t]he central notion of a class proceeding" (M. A. Eizenga et al., *Class Actions Law*

[103] De toute manière, plus d'une décennie s'est écoulée depuis *Hollick* et il convient de confirmer l'importance que revêt la procédure de certification comme mécanisme de filtrage efficace. La norme de preuve appliquée au stade de la certification n'emporte pas de [TRADUCTION] « conclusion sur le bien-fondé de l'instance » (*CPA*, par. 5(7)); elle ne donne pas lieu non plus à un examen du caractère suffisant de la preuve qui soit superficiel au point d'être strictement symbolique.

[104] Quoi qu'il en soit, j'estime en toute déférence qu'il serait peu utile de tenter de définir « un certain fondement factuel » dans l'abstrait. L'issue d'une affaire dépend des faits qui lui sont propres. Suffisamment de faits doivent permettre de convaincre le juge saisi des demandes que les conditions de certification sont réunies de telle sorte que l'instance puisse suivre son cours sous forme de recours collectif sans s'écrouler à l'étape de l'examen au fond à cause du non-respect des conditions prévues au par. 4(1) de la *CPA*.

[105] Enfin, je fais observer que les tribunaux canadiens ont refusé d'adopter l'approche américaine et de se livrer à une analyse rigoureuse sur le fond à l'étape de la certification. En conséquence, la certification du recours collectif ne garantit aucunement que les demandeurs auront gain de cause lors de l'examen des questions communes au procès. J'estime qu'il importe de souligner que l'approche canadienne à l'étape de la certification ne permet pas d'apprécier toutes les difficultés et tous les défis que le demandeur devra surmonter pour prouver ses allégations au procès. Une fois le recours certifié, de nouvelles données peuvent apparaître et remettre en question le respect des conditions du par. 4(1). C'est la raison pour laquelle la *CPA* consacre le pouvoir du tribunal de révoquer la certification du recours collectif à tout moment où il est établi que les conditions de certification ne sont plus réunies (par. 10(1)).

b) *Les demandes des membres du groupe soulèvent-elles des questions communes?*

[106] L'exigence d'une question commune a été qualifiée de [TRADUCTION] « [f]ondamentale au recours collectif » (M. A. Eizenga et autres, *Class*

*and Practice* (loose-leaf), at p. 3-34.6). It is based on the notion that "individuals who have litigation concerns 'in common' ought to be able to resolve those common concerns in one central proceeding rather than through an inefficient multitude of repetitive proceedings" (*ibid.*).

[107] Section 4(1)(c) of the *CPA* states that the court must certify an action as a class proceeding if, among other requirements, "the claims of the class members raise common issues, whether or not those common issues predominate over issues affecting only individual members". Section 1 of the *CPA* defines "common issues" as "(a) common but not necessarily identical issues of fact, or (b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts".

[108] In *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, [2001] 2 S.C.R. 534, this Court addressed the commonality question, stating that "[t]he underlying question is whether allowing the suit to proceed as a [class action] will avoid duplication of fact-finding or legal analysis" (para. 39). I list the balance of McLachlin C.J.'s instructions, found at paras. 39-40 of that decision:

(1) The commonality question should be approached purposively.

(2) An issue will be "common" only where its resolution is necessary to the resolution of each class member's claim.

(3) It is not essential that the class members be identically situated *vis-à-vis* the opposing party.

(4) It not necessary that common issues predominate over non-common issues. However, the class members' claims must share a substantial common ingredient to justify

*Actions Law and Practice* (feuilles mobiles), p. 3-34.6). Elle repose sur l'idée que « les personnes qui soulèvent une question de droit "commune" doivent pouvoir obtenir le règlement de cette question commune dans le cadre d'une seule instance plutôt que d'instances multiples et répétitives confinant à l'inefficacité » (*ibid.*).

[107] L'alinéa 4(1)(c) de la *CPA* dispose que le tribunal certifie qu'il s'agit d'un recours collectif lorsque, notamment, [TRADUCTION] « les demandes des membres du groupe soulèvent une question commune, que celle-ci l'emporte ou non sur les questions qui touchent uniquement les membres individuels ». Selon l'article 1 de la *CPA*, « question commune » s'entend, selon le cas, « (a) d'une question de fait commune, mais pas nécessairement identique ou (b) d'une question de droit commune, mais pas nécessairement identique, qui découle de faits qui sont communs, mais pas nécessairement identiques ».

[108] Dans l'arrêt *Western Canadian Shopping Centres Inc. c. Dutton*, 2001 CSC 46, [2001] 2 R.C.S. 534, notre Cour aborde la notion de communauté et conclut que « [l]a question sous-jacente est de savoir si le fait d'autoriser le recours collectif permettra d'éviter la répétition dans l'appréciation des faits ou l'analyse juridique » (par. 39). J'énumère les autres paramètres établis par la juge en chef McLachlin et qui figurent aux par. 39-40 de l'arrêt :

(1) Il faut aborder le sujet de la communauté en fonction de l'objet.

(2) Une question n'est « commune » que lorsque son règlement est nécessaire au règlement des demandes de chacun des membres du groupe.

(3) Il n'est pas essentiel que les membres du groupe soient tous dans la même situation par rapport à la partie adverse.

(4) Il n'est pas nécessaire que les questions communes l'emportent sur les questions non communes. Les demandes des membres du groupe doivent toutefois partager

a class action. The court will examine the significance of the common issues in relation to individual issues.

(5) Success for one class member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent.

[109] Microsoft argues that the differences among the proposed class members are too great to satisfy the common issues requirement. It argues that the plaintiffs allege they were injured by multiple separate instances of wrongdoing, that these acts occurred over a period of 24 years and had to do with 19 different products, and that various co-conspirators and countless licences are implicated. Microsoft also argues that the fact that the overcharge has been passed on to the class members through the chain of distribution makes it unfeasible to prove loss to each of the class members for the purposes of establishing common issues.

[110] The multitude of variables involved in indirect purchaser actions may well present a significant challenge at the merits stage. However, there would appear to be a number of common issues that are identifiable. In order to establish commonality, evidence that the acts alleged actually occurred is not required. Rather, the factual evidence required at this stage goes only to establishing whether these questions are common to all the class members.

[111] Myers J. concluded that the claims raised common issues. I agree that their resolution is indeed necessary to the resolution of the claims of each class member. Their resolution would appear to advance the claims of the entire class and to answer them commonly will avoid duplication in legal and factual analysis. Those findings are entitled to deference from an appellate court.

un élément commun important afin de justifier le recours collectif. Le tribunal évalue l'importance des questions communes par rapport aux questions individuelles.

(5) Le succès d'un membre du groupe emporte nécessairement celui de tous. Tous les membres du groupe doivent profiter du dénouement favorable de l'action, mais pas nécessairement dans la même proportion.

[109] Microsoft fait valoir que les différences entre les membres du groupe proposé sont trop importantes et ne permettent pas de satisfaire à l'exigence d'une question commune. Selon elle, les demandeurs allèguent avoir subi un préjudice à l'occasion de comportements fautifs distincts, que ces actes ont eu lieu sur une période de 24 ans, qu'ils ont visé 19 produits différents, que diverses personnes ont pris part au complot et que d'innombrables licences sont en cause. Elle ajoute que le transfert de la majoration aux membres du groupe en aval dans la chaîne de distribution rend impossible la preuve de la perte de chacun des membres du groupe aux fins d'établir l'existence d'une question commune.

[110] La multitude de variables que font intervenir les actions d'acheteurs indirects pourrait fort bien présenter un défi de taille à l'étape de l'examen au fond. Toutefois, plusieurs questions communes paraissent discernables. Établir la communauté des questions n'exige pas la preuve que les actes allégués ont effectivement eu lieu. À ce stade, il faut plutôt établir que les questions soulevées sont communes à tous les membres du groupe.

[111] Le juge Myers conclut que les demandes soulèvent des questions communes. Je conviens que leur règlement est en effet nécessaire à celui de la réclamation de chacun des membres du groupe. Il permettrait de faire progresser l'examen des allégations du groupe dans son ensemble et d'éviter la répétition dans l'analyse du droit et des faits. Une cour d'appel doit faire preuve de déférence à l'égard de ces conclusions.

[112] The differences cited by Microsoft are, in my view, insufficient to defeat a finding of commonality. *Dutton* confirms that even a significant level of difference among the class members does not preclude a finding of commonality. In any event, as McLachlin C.J. stated, "[i]f material differences emerge, the court can deal with them when the time comes" (*Dutton*, at para. 54).

[113] In addition to the common issues relating to scope and existence of the causes of action pleaded, the remaining common issues certified by Myers J. relate to the alleged loss suffered by the class members and as to whether damages can be calculated on an aggregate basis. The loss-related common issues, that is to say the proposed common issues that ask whether loss to the class members can be established on a class-wide basis, require the use of expert evidence in order for commonality to be established. The standard upon which that evidence should be assessed is contested and I turn to it first below. A question was also raised regarding whether the aggregate damages provision can be used to establish liability. I also address this below.

(i) Expert Evidence in Indirect Purchaser Class Actions

[114] One area in which difficulty is encountered in indirect purchaser actions is in assessing the commonality of the harm or loss-related issues. In order to determine if the loss-related issues meet the "some basis in fact" standard, some assurance is required that the questions are capable of resolution on a common basis. In indirect purchaser actions, plaintiffs generally seek to satisfy this requirement through the use of expert evidence in the form of economic models and methodologies.

[115] The role of the expert methodology is to establish that the overcharge was passed on to the indirect purchasers, making the issue common to the class as a whole (see *Chadha*, at para. 31).

[112] À mon sens, les différences invoquées par Microsoft ne permettent pas d'écarter la conclusion qu'il y a questions communes. L'arrêt *Dutton* confirme que même des différences assez importantes entre les membres du groupe n'empêchent pas de conclure à l'existence de questions communes. En tout état de cause, comme le fait remarquer la juge en chef McLachlin, « [s]i des différences importantes surviennent, le tribunal réglera la question le moment venu » (*Dutton*, par. 54).

[113] Outre celles liées à l'existence et à la portée des causes d'action invoquées, les autres questions communes certifiées par le juge Myers portent sur la perte qu'auraient subie les membres du groupe et sur la possibilité d'établir les dommages-intérêts de manière globale. Démontrer le caractère commun des questions liées à la perte — la perte subie par les membres peut-elle être circonscrite à l'échelle du groupe? — commande le recours à une preuve d'expert. La norme de preuve applicable à cette preuve est contestée, et je l'examine ci-après. On soulève par ailleurs la question de savoir si les dispositions sur l'octroi de dommages-intérêts globaux peuvent servir à fonder la responsabilité. J'examine ce point ensuite.

(i) Preuve d'expert dans le cadre d'actions d'acheteurs indirects

[114] L'une des difficultés que pose le recours d'acheteurs indirects a trait à l'appréciation du caractère commun des questions liées au préjudice ou à la perte. Pour que ces questions puissent satisfaire à la norme d'« un certain fondement factuel », il doit être assez certain qu'elles peuvent faire l'objet d'un règlement commun. Dans le cadre d'actions intentées par des acheteurs indirects, les demandeurs tentent généralement de satisfaire à cette exigence en offrant une preuve d'expert qui revêt la forme de modèles et de méthodes économiques.

[115] La méthode proposée par l'expert vise à établir que la majoration a été transférée aux acheteurs indirects, ce qui rend la question commune au groupe dans son ensemble (voir *Chadha*,

The requirement at the certification stage is not that the methodology quantify the damages in question; rather, the critical element that the methodology must establish is the ability to prove "common impact", as described in the U.S. antitrust case of *In Re: Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002). That is, plaintiffs must demonstrate that "sufficient proof [is] available, for use at trial, to prove antitrust impact common to all the members of the class" (*ibid.*, at p. 155). It is not necessary at the certification stage that the methodology establish the actual loss to the class, as long as the plaintiff has demonstrated that there is a methodology capable of doing so. In indirect purchaser actions, this means that the methodology must be able to establish that the overcharges have been passed on to the indirect-purchaser level in the distribution chain.

[116] The most contentious question involving the use of expert evidence is how strong the evidence must be at the certification stage to satisfy the court that there is a method by which impact can be proved on a class-wide basis. The B.C.C.A. in *Infineon* called for the plaintiff to show "only a credible or plausible methodology" and held that "[i]t was common ground that statistical regression analysis is in theory capable of providing reasonable estimates of gain or aggregate harm and the extent of pass-through in price-fixing cases" (para. 68). This was the standard adopted by Myers J. in the present case. Under this standard, he found the plaintiffs' methodologies to be adequate to satisfy the commonality requirement.

[117] Microsoft submits that the "credible or plausible methodology" standard adopted by Myers J. was too permissive and allowed for a claim to be founded on insufficient evidence. It argues that under s. 5(4) of the *CPA*, the parties are required to file affidavits containing all material facts upon which they intend to rely, and as such Myers J. was under an obligation to weigh

par. 31). À l'étape de la certification, la méthode n'a pas à déterminer le montant des dommages-intérêts, mais doit plutôt — et c'est là l'élément crucial — être susceptible de prouver « les conséquences communes », comme le conclut un tribunal américain dans une affaire antitrust, *In Re : Linerboard Antitrust Litigation*, 305 F.3d 145 (3rd Cir. 2002). Les demandeurs doivent démontrer qu'une [TRADUCTION] « preuve permettra d'établir, lors du procès, les conséquences antitrust qui sont communes à tous les membres du groupe » (*ibid.*, p. 155). À l'étape de la certification, point n'est besoin que la méthode établisse la perte réellement subie par le groupe dans la mesure où le demandeur démontre qu'une méthode permet de le faire. Dans le cadre d'actions d'acheteurs indirects, la méthode doit donc pouvoir établir que la majoration a été transférée à l'acheteur indirect situé en aval dans la chaîne de distribution.

[116] La question la plus vivement débattue au chapitre de l'utilisation de la preuve d'expert est celle de savoir à quel point la preuve doit être concluante à l'étape de la certification pour convaincre le tribunal qu'une méthode permet d'établir les conséquences communes à l'échelle du groupe. Dans l'affaire *Infineon*, la C.A.C.-B. a invité la demanderesse à ne présenter [TRADUCTION] « qu'une méthode valable ou acceptable » pour ensuite conclure qu'« [i]l est bien établi que l'analyse de régression statistique offre en principe une estimation raisonnable du bénéfice ou du préjudice global et de l'étendue du transfert de la perte lorsqu'il y a eu fixation des prix » (par. 68). C'est le critère appliqué par le juge Myers en l'espèce, de sorte qu'il conclut que les méthodes employées par les parties demanderesses permettaient de satisfaire à l'exigence d'une question commune.

[117] Microsoft soutient que le critère de la « méthode valable ou acceptable » adopté par le juge Myers est trop laxiste et ouvre la voie à des demandes étayées par une preuve insuffisante. Elle fait valoir que le par. 5(4) de la *CPA* oblige les parties à déposer des affidavits qui énoncent tous les faits importants qu'elles entendent invoquer et que le juge Myers avait donc l'obligation de mettre

the evidence of both parties where a conflict arises. Microsoft alleges that despite this requirement, Myers J. failed to weigh Pro-Sys's expert evidence against Microsoft's expert evidence, merely concluding that Pro-Sys's expert evidence was "not implausible" and that assessing competing evidence was "not something that can and should be done in a certification application" (R.F., at para. 43, citing reasons of Myers J., at para. 144). Microsoft argues that this approach was in error and is inconsistent with the standard required at certification. Once again relying on U.S. case law, Microsoft urges this Court to weigh conflicting expert testimony at certification and to perform this review in a "robust" and "rigorous" manner (R.F., at paras. 45-48, citing *Hydrogen Peroxide*, at p. 323, and *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541 (2011), at p. 2551).

[118] In my view, the expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement. This means that the methodology must offer a realistic prospect of establishing loss on a class-wide basis so that, if the overcharge is eventually established at the trial of the common issues, there is a means by which to demonstrate that it is common to the class (i.e. that passing on has occurred). The methodology cannot be purely theoretical or hypothetical, but must be grounded in the facts of the particular case in question. There must be some evidence of the availability of the data to which the methodology is to be applied.

[119] To hold the methodology to the robust or rigorous standard suggested by Microsoft, for instance to require the plaintiff to demonstrate actual harm, would be inappropriate at the certification stage. In Canada, unlike the U.S., precertification discovery does not occur as a matter of right. Although document production may be ordered at the discretion of the applications judge, Microsoft objected and Myers J. acceded to Microsoft's position and refused to order it in this case (2007 BCSC 1663, 76 B.C.L.R. (4th) 171). Microsoft can hardly argue for rigorous and robust

en balance les éléments de preuve des deux parties en cas de conflit. Elle allègue que, au mépris de cette exigence, le juge Myers ne soupèse pas la preuve d'expert de Pro-Sys au regard de la sienne, mais conclut simplement que la preuve d'expert de Pro-Sys n'est [TRADUCTION] « pas inacceptable » et que l'appréciation des éléments de preuve contradictoires « ne peut et ne doit pas intervenir à l'étape de la certification » (m.i., par. 43, citant le par. 144 des motifs du juge Myers). Or, selon Microsoft, cette approche est erronée et incompatible avec la norme applicable à cette étape. Invoquant encore une fois la jurisprudence américaine, elle exhorte notre Cour à apprécier les témoignages d'expert contradictoires à l'étape de la certification, et ce, de manière [TRADUCTION] « stricte » et « rigoureuse » (m.i., par. 45-48, citant *Hydrogen Peroxide*, p. 323, et *Wal-Mart Stores, Inc. c. Dukes*, 131 S.Ct. 2541 (2011), p. 2551).

[118] À mon avis, la méthode d'expert doit être suffisamment valable ou acceptable pour établir un certain fondement factuel aux fins du respect de l'exigence d'une question commune. Elle doit donc offrir une possibilité réaliste d'établir la perte à l'échelle du groupe, de sorte que, si la majoration est établie à l'issue de l'examen des questions communes au procès, un moyen permette de démontrer qu'elle est commune aux membres du groupe (c.-à-d. que le transfert a eu lieu). Or, il ne peut s'agir d'une méthode purement théorique ou hypothétique; elle doit reposer sur les faits de l'affaire. L'existence des données auxquelles la méthode est censée s'appliquer doit être étayée par quelque preuve.

[119] Il ne convient pas, à l'étape de la certification, de soumettre la méthode à la norme stricte ou rigoureuse que préconise Microsoft, notamment d'exiger du demandeur qu'il prouve le préjudice effectivement subi. Au Canada, contrairement à ce qui a cours aux États-Unis, il n'y a pas d'emblée un droit à la communication de documents avant la certification. Même si le juge saisi des demandes a le pouvoir discrétionnaire de l'ordonner, Microsoft s'y est opposée et le juge Myers a refusé de l'ordonner en l'espèce (2007 BCSC 1663, 76 B.C.L.R. (4th) 171). Microsoft peut difficilement plaider en

scrutiny when it objected to pre-certification discovery and was successful before the applications judge.

[120] Here, the Pro-Sys expert evidence consists of methodologies proposed by two economists, Professor James Brander and Dr. Janet Netz. Professor Brander's affidavit identified him as the Asia-Pacific Professor of International Business in the Sauder School of Business at the University of British Columbia and senior consultant in the Delta Economics Group. Dr. Netz's affidavit described her as an economist, a founding partner of ApplEcon LLC, an economics consulting firm based in Ann Arbor, Michigan, a tenured Associate Professor of Economics at Purdue University and a Visiting Associate Professor at the University of Michigan. Dr. Netz acted as expert witness in several similar cases brought against Microsoft in the United States. Dr. Netz's testimony drew heavily from the evidence she had prepared in her role as expert in those U.S. cases.

[121] It is Dr. Netz's evidence that the same methodology that applied in the U.S. would apply equally to the case at bar. She testified that the methodologies can demonstrate the initial overcharges by Microsoft to its direct purchasers as well as the pass-through to the indirect purchasers. Dr. Netz outlines three alternative methods by which harm and damages can be calculated. The first two methods, called the "rate of return method" and the "profit margin method", identify the overcharge at the first level of the distribution chain — that is, the overcharge in the sales made directly by Microsoft to its own customers. The first two models do not on their own establish that the overcharge was passed on but are intended to prove the total amount received by Microsoft as a result of the overcharge. The third methodology, the "price premium method", begins the analysis at the other end of the distribution chain, at the ultimate-purchaser level.

faveur d'un examen strict ou rigoureux, alors qu'elle s'est opposée à la communication de documents avant la certification et que le juge saisi des demandes a retenu son opposition.

[120] En l'espèce, la preuve d'expert de Pro-Sys est constituée de méthodes proposées par deux économistes, les professeurs James Brander et Janet Netz. Dans son affidavit, le professeur Brander déclare enseigner le commerce international pour la zone Asie-Pacifique à la Sauder School of Business de l'Université de la Colombie-Britannique et exercer la fonction de conseiller principal au sein du Delta Economics Group. Selon son affidavit, la professeure Netz est économiste et associée fondatrice d'ApplEcon LLC, un cabinet de services-conseils en économie établi à Ann Arbor, au Michigan, professeure agrégée permanente d'économie à l'Université Purdue, ainsi que professeure agrégée invitée à l'Université du Michigan. Elle a été témoin expert dans plusieurs instances semblables engagées contre Microsoft aux États-Unis. Son témoignage s'appuie en grande partie sur les éléments de preuve qu'elle a présentés à titre d'experte dans ces instances.

[121] La professeure Netz estime que les méthodes employées aux États-Unis peuvent également l'être en l'espèce. Selon elle, ces méthodes permettent d'établir la majoration que Microsoft a imposée initialement à ses acheteurs directs, ainsi que son transfert aux acheteurs indirects. Elle fait état de trois méthodes pour évaluer le préjudice subi et établir le montant des dommages-intérêts. Les deux premières méthodes, à savoir celle fondée sur le taux de rentabilité (« *rate of return method* ») et celle fondée sur la marge bénéficiaire (« *profit margin method* »), permettent de déterminer la majoration intervenue au sommet de la chaîne de distribution — soit la majoration directe par Microsoft lors de la vente à ses propres clients. Ces méthodes ne permettent pas à elles seules d'établir le transfert de la majoration, mais elles visent à déterminer la somme totale touchée par Microsoft par suite de la majoration. En ce qui concerne la troisième méthode, celle fondée sur l'augmentation du prix (« *price premium method* »), l'analyse commence à l'autre extrémité de la chaîne de distribution, là où se situe le consommateur final.

[122] Dr. Netz describes the price premium method as follows:

> Under this method, one calculates the *retail* price premium that Microsoft products have relative to competing products for the products at issue and for a set of benchmark products where there have not been allegations of anticompetitive conduct. The overcharge equals the percentage decrease in the *retail* price of the products at issue such that Microsoft would still realize the same *retail* price premium as it does on the benchmark products (i.e., products in markets not affected by Microsoft's unlawful conduct). [Emphasis in original; 2010 BCSC 285, at para. 26.]

[123] Once the retail price overcharge is calculated, the total class member expenditure on the products should then be multiplied by the overcharge percentage in order to arrive at the quantum of damages.

[124] Dr. Netz testified that regression analysis could be employed to ascertain the extent of passing on in order to establish loss at the indirect-purchaser level. Relying on the successful application of the methods in the U.S., Dr. Netz testified that "[t]here is no theoretical reason, in my opinion, why the methods described above cannot be applied to the sales of Microsoft software in Canada" (Netz affidavit, at para. 49 (A.R., vol. II, at p. 177)). Implicit in this evidence is that the data necessary to apply the methodologies in Canada is available.

[125] Myers J. dealt with Microsoft's criticisms of Dr. Netz's testimony at paras. 131-64 of his reasons. Microsoft's criticisms pertained to her alleged failure to take Canadian context into account, the lack of an evidentiary basis for her findings, alleged flaws in the benchmark products she selected, and a lack of workability in her proposed methodology. Myers J. found that despite these criticisms, Dr. Netz had demonstrated a plausible methodology for proving class-wide loss. He therefore did not proceed to address Professor Brander's proposed methods (para. 164).

[122] La professeure Netz décrit comme suit la méthode fondée sur l'augmentation du prix :

> [TRADUCTION] Cette méthode sert à calculer l'augmentation du prix au *détail* des produits de Microsoft par rapport à ceux de concurrents pour les produits en cause et pour un ensemble de produits de référence lorsqu'il n'y a pas eu d'allégations de comportement anticoncurrentiel. La majoration correspond au pourcentage de diminution du prix au *détail* des produits en question qui permettrait à Microsoft de toucher la même augmentation du prix au *détail* que pour les produits de référence (à savoir des produits offerts sur des marchés non touchés par le comportement illégal de Microsoft). [En italique dans l'original; 2010 BCSC 285, par. 26.]

[123] Une fois déterminée la majoration du prix au détail, on établit le montant des dommages-intérêts en multipliant par le pourcentage de majoration le total des dépenses faites par les membres du groupe pour les produits en question.

[124] Selon la professeure Netz, l'analyse de régression peut servir à déterminer l'étendue du transfert afin d'établir la perte subie par l'acheteur indirect. Faisant fond sur l'application concluante de ces méthodes aux États-Unis, elle précise que, [TRADUCTION] « [s]ur le plan théorique, rien ne s'oppose à ce que les méthodes s'appliquent à la vente des logiciels de Microsoft au Canada » (affidavit de la professeure Netz, par. 49 (d.a., vol. II, p. 177)). Il appert implicitement de son témoignage que les données nécessaires à l'application des méthodes existent au Canada.

[125] Aux paragraphes 131-164 de ses motifs, le juge Myers se penche sur les critiques formulées par Microsoft à l'égard du témoignage de la professeure Netz. Microsoft reproche au témoin de ne pas tenir compte du contexte canadien, de n'offrir aucune preuve à l'appui de ses conclusions, de ne pas bien choisir les produits de référence et de proposer des méthodes inapplicables. Le juge Myers conclut que la professeure Netz fait néanmoins état d'une méthode acceptable pour établir la perte infligée à l'échelle du groupe. Il n'examine donc pas les méthodes proposées par le professeur Brander (par. 164).

[126] It is indeed possible that at trial the expert evidence presented by Microsoft will prove to be stronger and more credible than the evidence of Dr. Netz and Professor Brander. However, resolving conflicts between the experts is an issue for the trial judge and not one that should be engaged in at certification (see *Infineon*, at para. 68; *Irving*, at para. 143). The trial judge will have the benefit of a full record upon which to assess the appropriateness of any damages award that may be made pursuant to the proposed methodology. For the purposes of certification and having regard to the deference due the applications judge on this issue, I would not interfere with the findings of Myers J. as to the commonality of the loss-related issues.

(ii) Aggregate Assessment of Damages

[127] The issue raised here is whether the question of aggregate assessment of damages is properly certified as a common issue. The aggregate damages provisions in the *CPA* provide for the quantification of the monetary award on a class-wide basis. Sections 29(1) and 29(2) of the *CPA* are relevant:

**29** (1) The court may make an order for an aggregate monetary award in respect of all or any part of a defendant's liability to class members and may give judgment accordingly if

(a) monetary relief is claimed on behalf of some or all class members,

(b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability, and

(c) the aggregate or a part of the defendant's liability to some or all class members can

[126] Il se peut effectivement que, au procès, le témoignage d'expert présenté par Microsoft se révèle plus convaincant et plus digne de foi que ceux de la professeure Netz et du professeur Brander. Or, trancher entre des preuves d'expert contradictoires relève du juge du procès et ne doit pas intervenir à l'étape de la certification (voir *Infineon*, par. 68; *Irving*, par. 143). Le juge du procès disposera d'un dossier complet qui lui permettra de se prononcer sur le caractère approprié de tout octroi de dommages-intérêts fondé sur la méthode proposée. Aux fins de la certification, et compte tenu de la déférence à laquelle a droit le juge saisi des demandes sur ce point, je suis d'avis de ne pas modifier les conclusions du juge Myers sur le caractère commun des questions touchant à la perte subie.

(ii) Détermination globale du montant des dommages-intérêts

[127] La question qui se pose en l'espèce est celle de savoir s'il y a lieu de certifier comme questions communes celles se rapportant à l'opportunité de dommages-intérêts globaux. Les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux prévoient l'établissement de la réparation pécuniaire à l'échelle du groupe. Voici le libellé des par. 29(1) et (2) de la *CPA* :

[TRADUCTION]

**29** (1) Le tribunal peut fixer par ordonnance le montant global des dommages-intérêts quant à la totalité ou à une partie de la responsabilité pécuniaire d'un défendeur envers les membres du groupe, et rendre jugement en conséquence, si :

(a) une réparation pécuniaire est demandée au nom de tous les membres du groupe ou de certains d'entre eux;

(b) il ne reste à trancher que des questions de fait ou de droit touchant à la détermination de la réparation pécuniaire afin de fixer le montant de la responsabilité pécuniaire du défendeur;

(c) la totalité ou une partie de la responsabilité du défendeur envers tous les membres du

reasonably be determined without proof by individual class members.

(2) Before making an order under subsection (1), the court must provide the defendant with an opportunity to make submissions to the court in respect of any matter touching on the proposed order including, without limitation,

(a) submissions that contest the merits or amount of an award under that subsection, and

(b) submissions that individual proof of monetary relief is required due to the individual nature of the relief.

[128] In this case, the common issues that were certified are whether damages can be determined on an aggregate basis and if so, in what amount. For the reasons below, I would not disturb the applications judge's decision to certify these common issues. However, while the aggregate damages common issues certified by Myers J. deal only with the assessment of damages and not proof of loss, there is some confusion in his reasons about whether the aggregate damages provisions of the *CPA* may be relied on to establish proof of loss where proof of loss is an essential element of proving liability. That question has been resolved differently by various courts in Ontario and British Columbia, where the aggregate damages provisions are sufficiently similar to allow comparison.

[129] In this case, Myers J. concluded that the aggregate damages provisions can be used to establish what I interpret to be the proof of loss element of proving liability. He stated that "the aggregate damages section of the *Class Proceedings Act* allow the harm to be shown in the aggregate to the class as a whole" (para. 126), and also that "the Court of Appeal must be taken to have accepted that for certification of the damage claims, a method of showing harm to all class members need not be demonstrated and, further, that the

groupe ou certains d'entre eux peut raisonnablement être établie sans que des membres n'aient à en faire la preuve individuellement.

(2) Avant de rendre l'ordonnance visée au paragraphe (1), le tribunal permet au défendeur de présenter des observations sur toute question qui touche l'ordonnance proposée, y compris sur ce qui suit :

(a) le bien-fondé de l'ordonnance rendue en application de ce paragraphe ou le montant des dommages-intérêts qui y sont accordés;

(b) la nécessité d'une preuve individuelle du droit à la réparation pécuniaire étant donné la nature individuelle de celle-ci.

[128] Dans la présente affaire, les questions communes qui ont été certifiées sont les suivantes : peut-on établir les dommages-intérêts de manière globale et, dans l'affirmative, à combien se montent-ils? Pour les motifs qui suivent, la décision du juge saisi des demandes de certifier ces questions ne doit pas être réformée. Toutefois, même si les questions que certifie le juge Myers relativement aux dommages-intérêts globaux n'ont trait qu'à la détermination de leur montant, et non à la preuve de la perte, ses motifs créent une certaine incertitude quant à savoir si les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux peuvent être invoquées pour prouver la perte lorsque la preuve de celle-ci est un élément essentiel de l'établissement de la responsabilité. Cette question a été tranchée différemment par les tribunaux de l'Ontario et de la Colombie-Britannique, deux provinces dont les dispositions pertinentes s'apparentent suffisamment entre elles pour qu'on puisse les comparer.

[129] Dans la présente affaire, le juge Myers conclut que ces dispositions peuvent être invoquées pour établir ce qui me paraît être la preuve de la perte qui permet d'établir la responsabilité. Il dit que [TRADUCTION] « les dispositions de la *Class Proceedings Act* sur l'octroi de dommages-intérêts globaux permettent de prouver le préjudice infligé globalement au groupe en entier » (par. 126) et aussi qu'« il faut considérer que, pour la Cour d'appel, la certification d'une demande d'indemnisation n'exige pas la démonstration qu'une méthode

aggregate damages sections can be used to establish liability" (B.C.S.C., at para. 125).

[130] In finding that the aggregate damages provisions of the *CPA* can be used to establish proof of loss to the class as a whole, Myers J. followed a line of jurisprudence of the British Columbia Court of Appeal. This reasoning appears in *Infineon*:

> In *Knight*, this Court affirmed the certification of an aggregate monetary award under the *CPA* as a common issue in a claim for disgorgement of the benefits of the defendants' wrongful conduct without an antecedent liability finding — rather, the aggregate assessment would establish concurrently both that the defendant benefited from its wrongful conduct and the extent of the benefit. [para. 39]

(See also *Steele v. Toyota Canada Inc.*, 2011 BCCA 98, 329 D.L.R. (4th) 389, at paras. 50-52.)

[131] With respect, I do not agree with this reasoning. The aggregate damages provisions of the *CPA* relate to remedy and are procedural. They cannot be used to establish liability (*2038724 Ontario Ltd. v. Quizno's Canada Restaurant Corp.*, 2010 ONCA 466, 100 O.R. (3d) 721, at para. 55). The language of s. 29(1)(b) specifies that no question of fact or law, other than the assessment of damages, should remain to be determined in order for an aggregate monetary award to be made. As I read it, this means that an antecedent finding of liability is required before resorting to the aggregate damages provision of the *CPA*. This includes, where required by the cause of action such as in a claim under s. 36 of the *Competition Act*, a finding of proof of loss. I do not see how a statutory provision designed to award damages on an aggregate basis can be said to be used to establish any aspect of liability.

permet d'établir le préjudice infligé à tous les membres du groupe et, en outre, les dispositions sur l'octroi de dommages-intérêts globaux peuvent être invoquées pour établir la responsabilité » (C.S.C.-B., par. 125).

[130] Pour arriver à la conclusion que les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux peuvent être invoquées pour prouver la perte infligée au groupe dans son ensemble, le juge Myers s'appuie sur la jurisprudence de la Cour d'appel de la Colombie-Britannique. Son raisonnement figure dans *Infineon* :

> [TRADUCTION] Dans *Knight*, la Cour confirme la certification de la réparation pécuniaire globale fondée sur la *CPA* comme question commune dans une instance en restitution des profits tirés du comportement fautif sans détermination préalable de la responsabilité du défendeur — en fait, l'évaluation globale établirait à la fois le fait que le défendeur a tiré profit de son comportement fautif et l'étendue de ce profit. [par. 39]

(Voir également *Steele c. Toyota Canada Inc.*, 2011 BCCA 98, 329 D.L.R. (4th) 389, par. 50-52.)

[131] Soit dit en tout respect, je n'adhère pas à ce raisonnement. Les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux ont trait à la réparation, sont de nature procédurale et ne peuvent permettre d'établir la responsabilité (*2038724 Ontario Ltd. c. Quizno's Canada Restaurant Corp.*, 2010 ONCA 466, 100 O.R. (3d) 721, par. 55). Le libellé de l'al. 29(1)(b*)* veut qu'il ne reste à trancher que des questions de fait ou de droit touchant à la détermination de la réparation pécuniaire pour qu'une réparation pécuniaire globale puisse être accordée. À mon sens, il faut une conclusion préalable de responsabilité avant d'appliquer les dispositions de la *CPA* sur l'octroi de dommages-intérêts globaux, ce qui comprend, lorsque l'exige une cause d'action comme celles prévues à l'art. 36 de la *Loi sur la concurrence*, une conclusion sur la preuve de la perte. Je ne vois pas comment une disposition visant à accorder des dommages-intérêts de manière globale pourrait être le fondement d'une conclusion sur quelque volet de la responsabilité.

[132] I agree with Feldman J.A.'s holding in *Chadha* that aggregate damages provisions are "applicable only once liability has been established, and provid[e] a method to assess the quantum of damages on a global basis, but not the fact of damage" (para. 49). I also agree with Masuhara J. of the B.C.S.C. in *Infineon* that "liability requires that a pass-through reached the Class Members", and that "[t]hat question requires an answer before the aggregation provisions, which are only a tool to assist in the distribution of damages, can be invoked" (2008 BCSC 575 (CanLII), at para. 176). Furthermore, I agree with the Ontario Court of Appeal in *Quizno's*, that "[t]he majority clearly recognized that s. 24 [of the Ontario *Class Proceedings Act, 1992*, S.O. 1992, c. 6] is procedural and cannot be used in proving liability" (para. 55).

[132] Je souscris à la conclusion de la juge Feldman dans *Chadha*, à savoir que les dispositions sur l'octroi de dommages-intérêts globaux [TRADUCTION] « s'appliquent seulement une fois la responsabilité établie et offrent une méthode d'évaluation globale des dommages-intérêts, mais ne permettent pas d'établir le préjudice » (par. 49). Je conviens également avec le juge Masuhara de la Cour suprême de la Colombie-Britannique qu'[TRADUCTION] « établir la responsabilité exige de prouver que le transfert de la perte a atteint les membres du groupe. Il faut statuer sur ce point avant d'appliquer les dispositions sur l'évaluation globale des dommages-intérêts, lesquelles n'offrent qu'un moyen d'attribuer l'indemnité » (voir *Infineon*, 2008 BCSC 575 (CanLII), par. 176). Aussi, je partage l'avis de la Cour d'appel de l'Ontario dans *Quizno's* selon lequel [TRADUCTION] « [l]es juges majoritaires reconnaissent clairement que l'art. 24 [de la *Loi de 1992 sur les recours collectifs* de l'Ontario, L.O. 1992, ch. 6] est de nature procédurale et ne peut servir d'assise à l'établissement de la responsabilité » (par. 55).

[133] This reasoning reflects the intention of the Attorney General of British Columbia. When he introduced the *CPA* in the British Columbia legislature, he stated that the goal of the legislation was to allow individuals who have similar claims to come together and pursue those individual claims collectively: "In simple terms, all we are doing here is finding a way to enable the access that individuals have to the court to be an access that individuals combining together can have to the court" (Hon. c. Gabelmann, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 20, No. 20, 4th Sess., 35th Parl., June 6, 1995, p. 15078). The *CPA* was not intended to allow a group to prove a claim that no individual could. Rather, an important objective of the *CPA* is to allow individuals who have provable individual claims to band together to make it more feasible to pursue their claims.

[133] Ce raisonnement traduit l'intention du procureur général de la Colombie-Britannique. Lorsque ce dernier a présenté la *CPA* à l'Assemblée législative de la province, il a précisé que la loi visait à permettre aux personnes ayant des réclamations apparentées de réunir leurs demandes individuelles et de poursuivre collectivement : [TRADUCTION] « En somme, le but est seulement de trouver un moyen de reconnaître aussi à un regroupement de personnes le droit d'ester en justice que l'on reconnaît à une personne individuelle » (l'hon. C. Gabelmann, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 20, nº 20, 4e sess., 35e lég., 6 juin 1995, p. 15078). La *CPA* ne visait pas à permettre à un groupe de personnes de prouver ce que nulle personne individuelle ne pouvait prouver. L'un de ses principaux objectifs était plutôt de faire en sorte que les personnes qui ont des réclamations individuelles prouvables puissent se regrouper et voir ainsi leurs démarches judiciaires facilitées.

[134] The question of whether damages assessed in the aggregate are an appropriate remedy can be certified as a common issue. However, this common issue is only determined at the common issues

[134] La question de savoir si l'octroi de dommages-intérêts globaux constitue une réparation appropriée peut être certifiée comme question commune. Cependant, cette question commune ne

trial after a finding of liability has been made. The ultimate decision as to whether the aggregate damages provisions of the *CPA* should be available is one that should be left to the common issues trial judge. Further, the failure to propose or certify aggregate damages, or another remedy, as a common issue does not preclude a trial judge from invoking the provisions if considered appropriate once liability is found.

[135] However, as stated above, the determination that the aggregate damages provisions cannot be used to establish proof of loss does not affect Myers J.'s decision to certify aggregate damages as a common issue. Despite his erroneous finding that aggregate damages provisions may be invoked to establish liability, he stated that invoking these provisions for that purpose was not necessary in this case (see paras. 119-20 and 127). The aggregate damages questions he certified relate solely to whether damages can be determined on an aggregate basis and if so in what amount. Having not actually relied on the proposition that aggregate damages provisions can be used to determine liability, Myers J.'s decision to certify questions related to aggregate damages should not be disturbed.

(c) *Is a Class Action the Preferable Procedure?*

[136] The provision of the *CPA* relevant to the preferable procedure requirement is s. 4(2). It reads:

> (2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues, the court must consider all relevant matters including the following:
>
> (a) whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members;

sera tranchée qu'au procès, une fois la responsabilité établie. La décision relative à l'applicabilité des dispositions de la *CPA* sur les dommages-intérêts globaux doit appartenir en fin de compte au juge du procès appelé à statuer sur les questions communes. En outre, l'omission de proposer ou de certifier à titre de question commune l'opportunité d'accorder des dommages-intérêts globaux ou une autre réparation n'empêche pas le juge de se fonder sur les dispositions s'il l'estime indiqué.

[135] Toutefois, rappelons que même si les dispositions sur les dommages-intérêts globaux ne sauraient servir à prouver la perte, la décision du juge Myers de certifier que leur application soulève une question commune demeure valable. Même s'il conclut à tort qu'elles peuvent être invoquées pour établir la responsabilité, il ajoute que point n'est besoin de les invoquer en l'espèce (voir par. 119-120 et 127). Les questions qui s'y rapportent et qu'il certifie consistent seulement à savoir si le montant des dommages-intérêts peut être arrêté globalement et, dans l'affirmative, quel est ce montant. Puisque le juge Myers ne s'appuie pas véritablement sur sa conclusion que les dispositions peuvent être invoquées pour prouver la responsabilité, sa décision de certifier des questions communes touchant à l'octroi de dommages-intérêts globaux n'a pas à être modifiée.

c) *Le recours collectif constitue-t-il la meilleure procédure pour régler les questions communes?*

[136] Le paragraphe 4(2) de la *CPA* prévoit que le recours collectif doit constituer la meilleure procédure pour régler une question commune :

[TRADUCTION]

> (2) Pour déterminer si le recours collectif serait la meilleure procédure pour régler la question commune de manière juste et efficace, le tribunal tient compte des facteurs applicables et se demande notamment ce qui suit :
>
> (a) la question de fait ou de droit qui est commune aux membres du groupe l'emporte-t-elle sur celle qui touche uniquement les membres individuels;

(b) whether a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;

(c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;

(d) whether other means of resolving the claims are less practical or less efficient;

(e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

[137] In *Hollick*, this Court said that preferability must be examined in reference to the three principal aims of the class action regime: ". . . judicial economy, access to justice, and behaviour modification" (para. 27).

[138] Microsoft argues that the lack of commonality between the class members and the abundance of individual issues signifies that a class proceeding will not be a "fair, efficient and manageable method of advancing the claim" as required by *Hollick* (R.F., at para. 84, citing *Hollick*, at para. 28). It argues that the access to justice function of class actions will not be served by certifying the action because it will inevitably break down into numerous individual trials, subjecting the class members to delays. It also argues that the tendency of indirect purchaser action to result in *cy-près* awards — made where it would be impractical to distribute the award to the individual plaintiffs — further frustrates the access to justice aim. As to the objective of behaviour modification, Microsoft contends that it is more properly a concern for the Competition Commissioner and that the procedures that can be initiated by that body are the preferable forum in which to deal with the wrongs alleged in this case.

(b) un nombre important de membres du groupe ont-ils véritablement intérêt à poursuivre des instances séparées;

(c) le recours collectif comprend-il des demandes qui ont été ou qui font l'objet d'autres instances;

(d) les autres modes de règlement sont-ils moins pratiques ou efficaces;

(e) la gestion du recours collectif crée-t-elle de plus grandes difficultés que l'adoption d'un autre moyen?

[137] Dans l'arrêt *Hollick*, notre Cour confirme que le fait de constituer ou non la meilleure procédure pour régler les questions communes est fonction des trois principaux avantages du recours collectif : « . . . l'économie des ressources judiciaires, l'accès à la justice et la modification des comportements » (par. 27).

[138] Selon Microsoft, l'absence de caractéristiques communes aux membres du groupe et le grand nombre de questions individuelles font que le recours collectif n'est pas un moyen [TRADUCTION] « juste, efficace et pratique de faire progresser l'instance » comme l'exige l'arrêt *Hollick* (m.i., par. 84, citant *Hollick*, par. 28). Elle ajoute que la certification de l'action ne saurait remplir la fonction du recours collectif qui consiste à faciliter l'accès à la justice, car l'action se fragmenterait inévitablement en de nombreux procès individuels, ce qui causerait des retards au détriment des membres du groupe. Microsoft soutient en outre que les actions d'acheteurs indirects donnent généralement lieu à des versements selon le principe de l'aussi-près (en anglais, « *cy près doctrine* ») — lorsqu'il est irréaliste de distribuer la somme accordée aux demandeurs individuels —, ce qui n'est pas non plus de nature à favoriser l'accès à la justice. En ce qui concerne l'objectif de modifier les comportements, Microsoft soutient qu'il relève plutôt du commissaire de la concurrence et que les instances susceptibles d'être engagées par cet organisme offrent le meilleur moyen de statuer sur les actes fautifs allégués en l'espèce.

[139] I am unable to accept these arguments. In *Hollick*, McLachlin C.J. was of the view that the plaintiff had not satisfied the certification requirements on the grounds that a class proceeding was not the preferable procedure. In that case, she found that the question of whether or not the defendant had unlawfully emitted methane gas and other pollutants was common to all class members. However, as to whether loss could be established on a class-wide basis, she found too many differences among the class members to consider loss a common issue. In other words, while she found that there was a common issue related to the existence of the cause of action, she did not consider the loss-related issues to be common to all the class members. She dismissed the class action on the basis that "[o]nce the common issue is seen in the context of the entire claim, it becomes difficult to say that the resolution of the common issue will significantly advance the action" (para. 32).

[140] In the present case, there are common issues related to the existence of the causes of action, but there are also common issues related to loss to the class members. Unlike *Hollick*, here the loss-related issues can be said to be common because there is an expert methodology that has been found to have a realistic prospect of establishing loss on a class-wide basis. If the common issues were to be resolved, they would be determinative of Microsoft's liability and of whether passing on of the overcharge to the indirect purchasers has occurred. Because such determinations will be essential in order for the class members to recover, it can be said, in this case, that a resolution of the common issues would significantly advance the action. While it is possible that individual issues may arise at the trial of the common issues, it is implicit in the reasons of Myers J. that, at the certification stage, he found the common issues to predominate over issues affecting only individual class members. I would agree. In the circumstances, I would not interfere with his finding that the class action is the preferable procedure.

[139] Je ne puis faire droit à ces prétentions. Dans *Hollick*, la juge en chef McLachlin estime que le demandeur ne satisfait pas aux conditions de certification en ce que le recours collectif ne constitue pas la meilleure procédure. Selon elle, la question de savoir si la défenderesse a émis illégalement du méthane et d'autres polluants est commune à tous les membres du groupe. Sur la question de savoir si la perte peut être établie à l'échelle du groupe, elle conclut cependant que, en raison de différences trop nombreuses entre les membres du groupe, il n'y a pas lieu de voir dans la perte une question commune. En d'autres termes, bien qu'elle conclue que l'existence d'une cause d'action soulève une question commune, la Juge en chef estime que les questions liées à la perte ne sont pas communes à tous les membres du groupe. Elle refuse de certifier le recours collectif au motif que, « [u]ne fois la question commune considérée dans le contexte global de la demande, il devient difficile d'affirmer que le règlement de la question commune fera progresser substantiellement l'instance » (par. 32).

[140] Dans la présente affaire, non seulement l'existence de causes d'action, mais aussi la perte subie par les membres du groupe, constituent des questions communes. Contrairement à l'affaire *Hollick*, on peut dire en l'espèce que la perte constitue une question commune car il a été déterminé qu'une méthode proposée par un expert permettrait assez certainement d'établir la perte à l'échelle du groupe. Le règlement des questions communes devrait permettre de statuer sur la responsabilité de Microsoft et sur le transfert de la majoration aux acheteurs indirects. Puisqu'il est essentiel de statuer sur ces points afin que les membres du groupe puissent recouvrer le montant de la perte, on peut soutenir en l'espèce que le règlement des questions communes fera progresser substantiellement l'instance. Bien qu'il soit possible que des questions individuelles soient soulevées à l'audition des questions communes, le juge Myers indique implicitement dans ses motifs que, à l'étape de la certification, les questions communes l'emportent sur les questions qui ne touchent que des membres individuels. Je suis d'accord. Dans les circonstances, je suis d'avis de ne pas modifier sa conclusion portant que le recours collectif constituerait la meilleure procédure pour régler les questions communes.

[141] It is also premature to assume that the award in this case will result in *cy-près* distribution or that the objective of access to justice will be frustrated on this account. Further, while under the *Competition Act* the Competition Commissioner is the primary organ responsible for deterrence and behaviour modification, the Competition Bureau in this case has said that it will not be pursuing any action against Microsoft. Accordingly, if the class action does not proceed, the objectives of deterrence and behaviour modification will not be addressed at all. On this issue, the class action is not only the preferable procedure but the only procedure available to serve these objectives.

(4) Conclusion on the Certification of the Action

[142] I would restore the orders of the applications judges allowing for certification of this action as a class proceeding with the exception that the pleadings based on constructive trust be struck.

V. Conclusion

[143] For the above reasons, I would allow the appeal with costs throughout.

Appendix: Common Issues Certified by Myers J.

Breach of *Competition Act*, R.S.C. 1985, c. C-34

(a) Did the Defendants, or either of them, engage in conduct which is contrary to s. 45 and or s. 52 of the *Competition Act*?

(b) Are the Class Members entitled to losses or damages pursuant to section 36 of the *Competition Act*, and, if so, in what amount?

[141] De plus, il est trop tôt pour présumer que la réparation accordée en l'espèce donnera lieu à des versements selon le principe de l'aussi-près ou que, le cas échéant, l'objectif de favoriser l'accès à la justice sera compromis. En outre, bien que, sous le régime de la *Loi sur la concurrence*, la dissuasion et la modification des comportements relèvent en premier lieu du commissaire de la concurrence, le Bureau de la concurrence a indiqué qu'il ne poursuivrait pas Microsoft dans le présent dossier. Par conséquent, si le recours collectif n'est par certifié, les objectifs de dissuasion et de modification des comportements ne feront l'objet d'aucune mesure. Non seulement le recours collectif constitue la meilleure procédure pour atteindre ces objectifs, mais il est le seul.

(4) Conclusion sur la certification du recours collectif

[142] Je suis d'avis de rétablir les ordonnances des juges saisis des demandes qui font droit à la demande de certification de l'action à titre de recours collectif, sous réserve de la radiation des allégations fondées sur la fiducie par interprétation.

V. Conclusion

[143] Pour les motifs qui précèdent, je suis d'avis d'accueillir le pourvoi avec dépens devant tous les cours.

Annexe : Questions communes certifiées par le juge Myers

[TRADUCTION]

Violation de la *Loi sur la concurrence*, L.R.C. 1985, ch. C-34

a) Les défenderesses ou l'une d'elles se sont-elles livrées à un comportement allant à l'encontre des art. 45 ou 52 de la *Loi sur la concurrence*?

b) Les membres du groupe ont-ils droit, suivant l'art. 36 de la *Loi sur la concurrence*, au recouvrement des pertes ou des dommages subis et, dans l'affirmative, à raison de quel montant?

(c) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

Conspiracy

(d) Did the Defendants, or either [of] them, conspire to harm the Class Members?

(e) Did the Defendants, or either of them, act in furtherance of the conspiracy?

(f) Was the predominant purpose of the conspiracy to harm the Class Members?

(g) Did the conspiracy involve unlawful acts?

(h) Did the Defendants, or either of them, know that the conspiracy would likely cause injury to the Class Members?

(i) Did the Class Members suffer economic loss?

(j) What damages, if any, are payable by the Defendants, or either of them, to the Class Members?

(k) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

Tortious Interference with Economic Interests

(l) Did the Defendants, or either of them, intend to injure the Class Members?

(m) Did the Defendants, or either of them, interfere with the economic interests of the Class Members by unlawful or illegal means?

(n) Did the Class Members suffer economic loss as a result of the Defendants' interference?

(o) What damages, if any, are payable by the Defendants, or either of them, to the Class Members?

(p) Can the amount of damages be determined on an aggregate basis and if so, in what amount?

Unjust Enrichment, Waiver of Tort and Constructive Trust

(q) Have the Defendants, or either of them, been unjustly enriched by the receipt of an Overcharge? "Overcharge" means the difference

c) Le montant des dommages-intérêts peut-il être établi de manière globale et, dans l'affirmative, quel est-il?

Complot

d) Les défenderesses ou l'une d'elles ont-elles participé à un complot visant à causer un préjudice aux membres du groupe?

e) Les défenderesses ou l'une d'elles ont-elles agi en vue de la réalisation du complot?

f) Le complot visait-il principalement à causer un préjudice aux membres du groupe?

g) Les auteurs du complot ont-ils eu recours à des actes illégaux?

h) Les défenderesses ou l'une d'elles savaient-elles que le complot causerait vraisemblablement un préjudice aux membres du groupe?

i) Les membres du groupe ont-ils subi une perte financière?

j) Quel est le montant des dommages-intérêts, s'il en est, payables par les défenderesses ou l'une d'elles aux membres du groupe?

k) Le montant des dommages-intérêts peut-il être établi globalement et, dans l'affirmative, quel est-il?

Atteinte délictuelle aux intérêts financiers

l) Les défenderesses ou l'une d'elles ont-elles eu l'intention de nuire aux membres du groupe?

m) Les défenderesses ou l'une d'elles ont-elles porté atteinte aux intérêts financiers des membres du groupe par des moyens illégaux?

n) Les membres du groupe ont-ils subi une perte financière par suite de cette atteinte?

o) Quel est le montant des dommages-intérêts, s'il en est, payables par les défenderesses ou l'une d'elles aux membres du groupe?

p) Le montant des dommages-intérêts peut-il être établi globalement et, dans l'affirmative, quel est-il?

Enrichissement sans cause, renonciation au recours délictuel et fiducie par interprétation

q) Les défenderesses ou l'une d'elles se sont-elles enrichies sans cause par suite d'une majoration? « Majoration » s'entend de la différence entre

between the prices the Defendants actually charged for Microsoft Operating Systems and Microsoft Applications Software in the PC market in Canada and the prices that the Defendants would have been able to charge in the absence of their wrongdoing.

(r) Have the Class Members suffered a corresponding deprivation in the amount of the Overcharge?

(s) Is there a juridical reason why the Defendants, or either of them, should be entitled to retain the Overcharge?

(t) What restitution, if any, is payable by the Defendants, or either of them, to the Class Members based on unjust enrichment?

(u) Should the Defendants, or either of them, be constituted as constructive trustees in favour of the Class Members for the Overcharge?

(v) What is the quantum of the Overcharge, if any, that the Defendants, or either of them, hold in trust for the Class Members?

(w) What restitution, if any, is payable by the Defendants to the Class Members based on the doctrine of waiver of tort?

(x) Are the Defendants, or either of them, liable to account to the Class Members for the wrongful profits, if any, that they obtained on the sale of Microsoft Operating Systems or Microsoft Applications Software to the Class Members based on the doctrine of waiver of tort?

(y) Can the amount of restitution be determined on an aggregate basis and if so, in what amount?

Punitive Damages

(z) Are the Defendants, or either of them, liable to pay punitive or exemplary damages having regard to the nature of their conduct and if so, in what amount and to whom?

Interest

(aa) What is the liability, if any, of the Defendants, or either of them, for court order interest?

les prix que les défenderesses ont effectivement exigés pour les systèmes d'exploitation et les logiciels d'application Microsoft sur le marché canadien des ordinateurs personnels et les prix qu'elles auraient pu exiger n'eût été leur comportement fautif.

r) Les membres du groupe se sont-ils appauvris d'un montant égal à celui de la majoration?

s) Une cause juridique justifie-t-elle les défenderesses ou l'une d'elles de conserver le fruit de la majoration?

t) Quelle somme les défenderesses ou l'une d'elles doivent-elles restituer aux membres du groupe, le cas échéant, sur le fondement de l'enrichissement sans cause?

u) Les défenderesses ou l'une d'elles doivent-elles être constituées fiduciaires par interprétation au bénéfice des membres du groupe quant au montant de la majoration?

v) À combien se monte la majoration, s'il en est, que les défenderesses ou l'une d'elles détiennent en fiducie pour les membres du groupe?

w) Quelle somme, s'il en est, les défenderesses doivent-elles restituer aux membres du groupe sur le fondement de la renonciation au recours délictuel?

x) Les défenderesses ou l'une d'elles sont-elles tenues de comptabiliser à l'intention des membres du groupe les profits illégitimes réalisés, le cas échéant, lorsqu'elles leur ont vendu des systèmes d'exploitation et des logiciels d'application Microsoft, sur le fondement de la renonciation au recours délictuel?

y) Le montant de la restitution peut-il être établi globalement et, dans l'affirmative, quel est-il?

Dommages-intérêts punitifs

z) Les défenderesses ou l'une d'elles sont-elles tenues de verser des dommages-intérêts punitifs ou exemplaires eu égard à la nature de leur comportement et, dans l'affirmative, quel est ce montant et qui sont les bénéficiaires?

Intérêt

aa) Quelle obligation, s'il en est, les défenderesses ou l'une d'elles ont-elles de verser l'intérêt dont le paiement est ordonné par la cour?

Distribution of Damages and/or Trust Funds

(bb) What is the appropriate distribution of damages and/or trust funds and interest to the Class Members and who should pay for the cost of that distribution? [A.R., vol. I, at pp. 167-69]

*Appeal allowed with costs throughout.*

*Solicitors for the appellants: Camp Fiorante Matthews Mogerman, Vancouver; Michael Sobkin, Ottawa.*

*Solicitors for the respondents: McCarthy Tétrault, Toronto; Blake, Cassels & Graydon, Vancouver and Toronto.*

*Solicitor for the intervener: Attorney General of Canada, Ottawa.*

Distribution des dommages-intérêts ou des fonds détenus en fiducie

bb) Quel est le bon mode de distribution aux membres du groupe des dommages-intérêts ou des fonds détenus en fiducie et de l'intérêt, et qui doit assumer le coût de cette distribution? [d.a., vol. I, p. 167-169]

*Pourvoi accueilli avec dépens devant toutes les cours.*

*Procureurs des appelants : Camp Fiorante Matthews Mogerman, Vancouver; Michael Sobkin, Ottawa.*

*Procureurs des intimées : McCarthy Tétrault, Toronto; Blake, Cassels & Graydon, Vancouver et Toronto.*

*Procureur de l'intervenant : Procureur général du Canada, Ottawa.*

# 22

**Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez and Lindy Wagner on their own behalf and on behalf of the other former employees of Rizzo & Rizzo Shoes Limited** *Appellants*

*v.*

**Zittrer, Siblin & Associates, Inc., Trustees in Bankruptcy of the Estate of Rizzo & Rizzo Shoes Limited** *Respondent*

and

**The Ministry of Labour for the Province of Ontario, Employment Standards Branch** *Party*

**INDEXED AS: RIZZO & RIZZO SHOES LTD. (RE)**

File No.: 24711.

1997: October 16; 1998: January 22.

Present: Gonthier, Cory, McLachlin, Iacobucci and Major JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Employment law — Bankruptcy — Termination pay and severance available when employment terminated by the employer — Whether bankruptcy can be said to be termination by the employer — Employment Standards Act, R.S.O. 1980, c. 137, ss. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, S.O. 1981, c. 22, s. 2(3) — Bankruptcy Act, R.S.C., 1985, c. B-3, s. 121(1) — Interpretation Act, R.S.O. 1990, c. I.11, ss. 10, 17.*

A bankrupt firm's employees lost their jobs when a receiving order was made with respect to the firm's property. All wages, salaries, commissions and vacation pay were paid to the date of the receiving order. The province's Ministry of Labour audited the firm's records to determine if any outstanding termination or severance pay was owing to former employees under the *Employment Standards Act* ("*ESA*") and delivered a proof of claim to the Trustee. The Trustee disallowed the claims on the ground that the bankruptcy of an employer does not constitute dismissal from employment and accordingly creates no entitlement to sever-

**Philippe Adrien, Emilia Berardi, Paul Creador, Lorenzo Abel Vasquez et Lindy Wagner en leur propre nom et en celui des autres anciens employés de Rizzo & Rizzo Shoes Limited** *Appelants*

*c.*

**Zittrer, Siblin & Associates, Inc., syndic de faillite de Rizzo & Rizzo Shoes Limited** *Intimée*

et

**Le ministère du Travail de la province d'Ontario, Direction des normes d'emploi** *Partie*

**RÉPERTORIÉ: RIZZO & RIZZO SHOES LTD. (RE)**

Nº du greffe: 24711.

1997: 16 octobre; 1998: 22 janvier.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci et Major.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

*Employeur et employé — Faillite — Indemnités de licenciement et de cessation d'emploi payables en cas de licenciement par l'employeur — Faillite peut-elle être assimilée au licenciement par l'employeur? — Loi sur les normes d'emploi, L.R.O. 1980, ch. 137, art. 7(5), 40(1), (7), 40a — Employment Standards Amendment Act, 1981, L.O. 1981, ch. 22, art. 2(3) — Loi sur la faillite, L.R.C. (1985), ch. B-3, art. 121(1) — Loi d'interprétation, L.R.O. 1990, ch. I.11, art. 10, 17.*

Les employés d'une entreprise en faillite ont perdu leur emploi lorsqu'une ordonnance de séquestre a été rendue à l'égard des biens de l'entreprise. Tous les salaires, les traitements, toutes les commissions et les paies de vacances ont été versés jusqu'à la date de l'ordonnance de séquestre. Le ministère du Travail de la province a vérifié les dossiers de l'entreprise pour déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi* (la «*LNE*») et il a remis une preuve de réclamation au syndic. Ce dernier a rejeté les réclamations pour le

ance, termination or vacation pay under the *ESA*. The Ministry successfully appealed to the Ontario Court (General Division) but the Ontario Court of Appeal overturned that court's ruling and restored the Trustee's decision. The Ministry sought leave to appeal from the Court of Appeal judgment but discontinued its application. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested and were granted an order granting them leave to appeal. At issue here is whether the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*.

*Held*: The appeal should be allowed.

At the heart of this conflict is an issue of statutory interpretation. Although the plain language of ss. 40 and 40*a* of the *ESA* suggests that termination pay and severance pay are payable only when the employer terminates the employment, statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Moreover, s. 10 of Ontario's *Interpretation Act* provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

The objects of the *ESA* and of the termination and severance pay provisions themselves are broadly premised upon the need to protect employees. Finding ss. 40 and 40*a* to be inapplicable in bankruptcy situations is incompatible with both the object of the *ESA* and the termination and severance pay provisions. The legislature does not intend to produce absurd consequences and such a consequence would result if employees dismissed before the bankruptcy were to be entitled to these benefits while those dismissed after a bankruptcy would not be so entitled. A distinction would be made between employees merely on the basis of the timing of their dismissal and such a result would arbi-

motif que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*. En appel, le ministère a eu gain de cause devant la Cour de l'Ontario (Division générale) mais la Cour d'appel de l'Ontario a infirmé ce jugement et a rétabli la décision du syndic. Le ministère a demandé l'autorisation d'interjeter appel de l'arrêt de la Cour d'appel mais il s'est désisté. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé et obtenu l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. En l'espèce, il s'agit de savoir si la cessation d'emploi résultant de la faillite de l'employeur donne naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*.

*Arrêt*: Le pourvoi est accueilli.

Une question d'interprétation législative est au centre du présent litige. Bien que le libellé clair des art. 40 et 40*a* de la *LNE* donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé, l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. Il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur. Au surplus, l'art. 10 de la *Loi d'interprétation* ontarienne dispose que les lois «sont réputées apporter une solution de droit» et qu'elles doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

L'objet de la *LNE* et des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. Conclure que les art. 40 et 40*a* sont inapplicables en cas de faillite est incompatible tant avec l'objet de la *LNE* qu'avec les dispositions relatives aux indemnités de licenciement et de cessation d'emploi. Le législateur ne peut avoir voulu des conséquences absurdes mais c'est le résultat auquel on arriverait si les employés congédiés avant la faillite avaient droit à ces avantages mais pas les employés congédiés après la faillite. Une distinction serait établie entre les employés sur la seule base de la date de leur

trarily deprive some of a means to cope with economic dislocation.

The use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise. Section 2(3) of the *Employment Standards Amendment Act, 1981* exempted from severance pay obligations employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent. Section 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. If this were not the case, no readily apparent purpose would be served by this transitional provision. Further, since the *ESA* is benefits-conferring legislation, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant.

When the express words of ss. 40 and 40*a* are examined in their entire context, the words "terminated by an employer" must be interpreted to include termination resulting from the bankruptcy of the employer. The impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Termination as a result of an employer's bankruptcy therefore does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *Bankruptcy Act* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. It was not necessary to address the applicability of s. 7(5) of the *ESA*.

**Cases Cited**

**Distinguished:** *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343; **referred to:** *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213;

congédiement et un tel résultat les priverait arbitrairement de certains des moyens dont ils disposent pour faire face à un bouleversement économique.

Le recours à l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié. En vertu du par. 2(3) de l'*Employment Standards Amendment Act, 1981*, étaient exemptés de l'obligation de verser des indemnités de cessation d'emploi, les employeurs qui avaient fait faillite et avaient perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale. Le paragraphe 2(3) implique nécessairement que les employeurs en faillite sont assujettis à l'obligation de verser une indemnité de cessation d'emploi. Si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin. En outre, comme la *LNE* est une loi conférant des avantages, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur.

Lorsque les mots exprès employés aux art. 40 et 40*a* sont examinés dans leur contexte global, les termes «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui sont licenciés pour quelque autre raison serait arbitraire et inéquitable. Une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. La cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. Il était inutile d'examiner la question de l'applicabilité du par. 7(5) de la *LNE*.

**Jurisprudence**

**Distinction d'avec les arrêts:** *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725; *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1; *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343; **arrêts mentionnés:** *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86; *R. c. Hydro-Québec*,

*Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103; *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701; *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546; *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1; *R. v. Vasil*, [1981] 1 S.C.R. 469; *Paul v. The Queen*, [1982] 1 S.C.R. 621; *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513; *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25; *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025.

**Statutes and Regulations Cited**

*Bankruptcy Act*, R.S.C., 1985, c. B-3 [now the *Bankruptcy and Insolvency Act*], s. 121(1).
*Employment Standards Act*, R.S.O. 1970, c. 147, s. 13(2).
*Employment Standards Act*, R.S.O. 1980, c. 137, ss. 7(5) [rep. & sub. 1986, c. 51, s. 2], 40(1) [rep. & sub. 1987, c. 30, s. 4(1)], (7), 40*a*(1) [rep. & sub. *ibid*., s. 5(1)].
*Employment Standards Act, 1974*, S.O. 1974, c. 112, s. 40(7).
*Employment Standards Amendment Act, 1981*, S.O. 1981, c. 22, s. 2.
*Interpretation Act*, R.S.O. 1980, c. 219 [now R.S.O. 1990, c. I.11], ss. 10, 17.
*Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1, ss. 74(1), 75(1).

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[1997] 1 R.C.S. 213; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411; *Verdun c. Banque Toronto-Dominion*, [1996] 3 R.C.S. 550; *Friesen c. Canada*, [1995] 3 R.C.S. 103; *Machtinger c. HOJ Industries Ltd.*, [1992] 1 R.C.S. 986; *Wallace c. United Grain Growers Ltd.*, [1997] 3 R.C.S. 701; *R. c. TNT Canada Inc.* (1996), 27 O.R. (3d) 546; *Re Telegram Publishing Co. c. Zwelling* (1972), 1 L.A.C. (2d) 1; *R. c. Vasil*, [1981] 1 R.C.S. 469; *Paul c. La Reine*, [1982] 1 R.C.S. 621; *R. c. Morgentaler*, [1993] 3 R.C.S. 463; *Abrahams c. Procureur général du Canada*, [1983] 1 R.C.S. 2; *Hills c. Canada (Procureur général)*, [1988] 1 R.C.S. 513; *British Columbia (Director of Employment Standards) c. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25; *R. c. Z. (D.A.)*, [1992] 2 R.C.S. 1025.

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*Employment Standards Act*, R.S.O. 1970, ch. 147, art. 13(2).
*Employment Standards Act, 1974*, S.O. 1974, ch. 112, art. 40(7).
*Employment Standards Amendment Act, 1981*, L.O. 1981, ch. 22, art. 2.
*Loi d'interprétation*, L.R.O. 1980, ch. 219 [maintenant L.R.O. 1990, ch. I-11], art. 10, 17.
*Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1, art. 74(1), 75(1).
*Loi sur la faillite*, L.R.C. (1985), ch. B-3 [maintenant la *Loi sur la faillite et l'insolvabilité*], art. 121(1).
*Loi sur les normes d'emploi*, L.R.O. 1980, ch. 137, art. 7(5) [abr. & rempl. 1986, ch. 51, art. 2], 40(1) [abr. & rempl. 1987, ch. 30, art. 4(1)], (7), 40*a*(1) [abr. & rempl. *ibid*., art. 5(1)].

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APPEAL from a judgment of the Ontario Court of Appeal (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. No. 586 (QL), reversing a judgment of the Ontario Court (General Division) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, ruling that the Ministry of Labour could prove claims on behalf of employees of the bankrupt. Appeal allowed.

*Steven M. Barrett* and *Kathleen Martin*, for the appellants.

*Raymond M. Slattery*, for the respondent.

*David Vickers*, for the Ministry of Labour for the Province of Ontario, Employment Standards Branch.

The judgment of the Court was delivered by

IACOBUCCI J. — This is an appeal by the former employees of a now bankrupt employer from an order disallowing their claims for termination pay (including vacation pay thereon) and severance pay. The case turns on an issue of statutory interpretation. Specifically, the appeal decides whether, under the relevant legislation in effect at the time of the bankruptcy, employees are entitled to claim termination and severance payments where their employment has been terminated by reason of their employer's bankruptcy.

1. Facts

Prior to its bankruptcy, Rizzo & Rizzo Shoes Limited ("Rizzo") owned and operated a chain of retail shoe stores across Canada. Approximately 65 percent of those stores were located in Ontario. On April 13, 1989, a petition in bankruptcy was filed against the chain. The following day, a receiving

Sullivan, Ruth. *Statutory Interpretation*. Concord, Ont.: Irwin Law, 1997.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1995), 22 O.R. (3d) 385, 80 O.A.C. 201, 30 C.B.R. (3d) 1, 9 C.C.E.L. (2d) 264, 95 C.L.L.C. ¶210-020, [1995] O.J. nº 586 (QL), qui a infirmé un jugement de la Cour de l'Ontario (Division générale) (1991), 6 O.R. (3d) 441, 11 C.B.R. (3d) 246, 92 C.L.L.C. ¶14,013, statuant que le ministère du Travail pouvait prouver des réclamations au nom des employés de l'entreprise en faillite. Pourvoi accueilli.

*Steven M. Barrett* et *Kathleen Martin*, pour les appelants.

*Raymond M. Slattery*, pour l'intimée.

*David Vickers*, pour le ministère du Travail de la province d'Ontario, Direction des normes d'emploi.

Version française du jugement de la Cour rendu par

LE JUGE IACOBUCCI — Il s'agit d'un pourvoi interjeté par les anciens employés d'un employeur maintenant en faillite contre une ordonnance qui a rejeté les réclamations qu'ils ont présentées en vue d'obtenir une indemnité de licenciement (y compris la paie de vacances) et une indemnité de cessation d'emploi. Le litige porte sur une question d'interprétation législative. Tout particulièrement, le pourvoi tranche la question de savoir si, en vertu des dispositions législatives pertinentes en vigueur à l'époque de la faillite, les employés ont le droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi lorsque la cessation d'emploi résulte de la faillite de leur employeur. 1

1. Les faits

Avant sa faillite, la société Rizzo & Rizzo Shoes Limited («Rizzo») possédait et exploitait au Canada une chaîne de magasins de vente au détail de chaussures. Environ 65 pour 100 de ces magasins étaient situés en Ontario. Le 13 avril 1989, une pétition en faillite a été présentée contre la 2

order was made on consent in respect of Rizzo's property. Upon the making of that order, the employment of Rizzo's employees came to an end.

chaîne de magasins. Le lendemain, une ordonnance de séquestre a été rendue sur consentement à l'égard des biens de Rizzo. Au prononcé de l'ordonnance, les employés de Rizzo ont perdu leur emploi.

3 Pursuant to the receiving order, the respondent, Zittrer, Siblin & Associates, Inc. (the "Trustee") was appointed as trustee in bankruptcy of Rizzo's estate. The Bank of Nova Scotia privately appointed Peat Marwick Limited ("PML") as receiver and manager. By the end of July 1989, PML had liquidated Rizzo's property and assets and closed the stores. PML paid all wages, salaries, commissions and vacation pay that had been earned by Rizzo's employees up to the date on which the receiving order was made.

Conformément à l'ordonnance de séquestre, l'intimée, Zittrer, Siblin & Associates, Inc. (le «syndic») a été nommée syndic de faillite de l'actif de Rizzo. La Banque de Nouvelle-Écosse a nommé Peat Marwick Limitée («PML») comme administrateur séquestre. Dès la fin de juillet 1989, PML avait liquidé les biens de Rizzo et fermé les magasins. PML a versé tous les salaires, les traitements, toutes les commissions et les paies de vacances qui avaient été gagnés par les employés de Rizzo jusqu'à la date à laquelle l'ordonnance de séquestre a été rendue.

4 In November 1989, the Ministry of Labour for the Province of Ontario, Employment Standards Branch (the "Ministry") audited Rizzo's records to determine if there was any outstanding termination or severance pay owing to former employees under the *Employment Standards Act*, R.S.O. 1980, c. 137, as amended (the "*ESA*"). On August 23, 1990, the Ministry delivered a proof of claim to the respondent Trustee on behalf of the former employees of Rizzo for termination pay and vacation pay thereon in the amount of approximately $2.6 million and for severance pay totalling $14,215. The Trustee disallowed the claims, issuing a Notice of Disallowance on January 28, 1991. For the purposes of this appeal, the relevant ground for disallowing the claim was the Trustee's opinion that the bankruptcy of an employer does not constitute a dismissal from employment and thus, no entitlement to severance, termination or vacation pay is created under the *ESA*.

En novembre 1989, le ministère du Travail de la province d'Ontario, Direction des normes d'emploi (le «ministère») a vérifié les dossiers de Rizzo afin de déterminer si des indemnités de licenciement ou de cessation d'emploi devaient encore être versées aux anciens employés en application de la *Loi sur les normes d'emploi*, L.R.O. 1980, ch. 137 et ses modifications (la «*LNE*»). Le 23 août 1990, au nom des anciens employés de Rizzo, le ministère a remis au syndic intimé une preuve de réclamation pour des indemnités de licenciement et des paies de vacances (environ 2,6 millions de dollars) et pour des indemnités de cessation d'emploi (14 215 $). Le syndic a rejeté les réclamations et a donné avis du rejet le 28 janvier 1991. Aux fins du présent pourvoi, les réclamations ont été rejetées parce que le syndic était d'avis que la faillite d'un employeur ne constituant pas un congédiement, aucun droit à une indemnité de cessation d'emploi, à une indemnité de licenciement ni à une paie de vacances ne prenait naissance sous le régime de la *LNE*.

5 The Ministry appealed the Trustee's decision to the Ontario Court (General Division) which reversed the Trustee's disallowance and allowed the claims as unsecured claims provable in bankruptcy. On appeal, the Ontario Court of Appeal overturned the trial court's ruling and restored the decision of the Trustee. The Ministry sought leave

Le ministère a interjeté appel de la décision du syndic devant la Cour de l'Ontario (Division générale) laquelle a infirmé la décision du syndic et a admis les réclamations en tant que réclamations non garanties prouvables en matière de faillite. En appel, la Cour d'appel de l'Ontario a cassé le jugement de la cour de première instance et rétabli la

to appeal from the Court of Appeal judgment, but discontinued its application on August 30, 1993. Following the discontinuance of the appeal, the Trustee paid a dividend to Rizzo's creditors, thereby leaving significantly less funds in the estate. Subsequently, the appellants, five former employees of Rizzo, moved to set aside the discontinuance, add themselves as parties to the proceedings, and requested an order granting them leave to appeal. This Court's order granting those applications was issued on December 5, 1996.

2. Relevant Statutory Provisions

The relevant versions of the *Bankruptcy Act* (now the *Bankruptcy and Insolvency Act*) and the *Employment Standards Act* for the purposes of this appeal are R.S.C., 1985, c. B-3 (the "*BA*"), and R.S.O. 1980, c. 137, as amended to April 14, 1989 (the "*ESA*") respectively.

*Employment Standards Act*, R.S.O. 1980, c. 137, as amended:

**7.** —

(5) Every contract of employment shall be deemed to include the following provision:

> All severance pay and termination pay become payable and shall be paid by the employer to the employee in two weekly instalments beginning with the first full week following termination of employment and shall be allocated to such weeks accordingly. This provision does not apply to severance pay if the employee has elected to maintain a right of recall as provided in subsection 40a (7) of the *Employment Standards Act.*

**40.** — (1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employee gives,

(a) one weeks notice in writing to the employee if his or her period of employment is less than one year;

(b) two weeks notice in writing to the employee if his or her period of employment is one year or more but less than three years;

décision du syndic. Le ministère a demandé l'autorisation d'en appeler de l'arrêt de la Cour d'appel, mais il s'est désisté le 30 août 1993. Après l'abandon de l'appel, le syndic a versé un dividende aux créanciers de Rizzo, réduisant de façon considérable l'actif. Par la suite, les appelants, cinq anciens employés de Rizzo, ont demandé l'annulation du désistement, l'obtention de la qualité de parties à l'instance et une ordonnance leur accordant l'autorisation d'interjeter appel. L'ordonnance de notre Cour faisant droit à ces demandes a été rendue le 5 décembre 1996.

2. Les dispositions législatives pertinentes

Aux fins du présent pourvoi, les versions pertinentes de la *Loi sur la faillite* (maintenant la *Loi sur la faillite et l'insolvabilité*) et de la *Loi sur les normes d'emploi* sont respectivement les suivantes: L.R.C. (1985), ch. B-3 (la *«LF»*) et L.R.O. 1980, ch. 137 et ses modifications au 14 avril 1989 (la *«LNE»*). 6

*Loi sur les normes d'emploi*, L.R.O. 1980, ch. 137 et ses modifications:

**7** . . .

(5) Tout contrat de travail est réputé comprendre la disposition suivante:

> L'indemnité de cessation d'emploi et l'indemnité de licenciement deviennent exigibles et sont payées par l'employeur à l'employé en deux versements hebdomadaires à compter de la première semaine complète suivant la cessation d'emploi, et sont réparties sur ces semaines en conséquence. La présente disposition ne s'applique pas à l'indemnité de cessation d'emploi si l'employé a choisi de maintenir son droit d'être rappelé, comme le prévoit le paragraphe 40a (7) de la *Loi sur les normes d'emploi.*

**40** (1) Aucun employeur ne doit licencier un employé qui travaille pour lui depuis trois mois ou plus à moins de lui donner:

a) un préavis écrit d'une semaine si sa période d'emploi est inférieure à un an;

b) un préavis écrit de deux semaines si sa période d'emploi est d'un an ou plus mais de moins de trois ans;

(c) three weeks notice in writing to the employee if his or her period of employment is three years or more but less than four years;

(d) four weeks notice in writing to the employee if his or her period of employment is four years or more but less than five years;

(e) five weeks notice in writing to the employee if his or her period of employment is five years or more but less than six years;

(f) six weeks notice in writing to the employee if his or her period of employment is six years or more but less than seven years;

(g) seven weeks notice in writing to the employee if his or her period of employment is seven years or more but less than eight years;

(h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more,

and such notice has expired.

. . .

(7) Where the employment of an employee is terminated contrary to this section,

(a) the employer shall pay termination pay in an amount equal to the wages that the employee would have been entitled to receive at his regular rate for a regular non-overtime work week for the period of notice prescribed by subsection (1) or (2), and any wages to which he is entitled;

. . .

**40***a* . . .

(1a) Where**,**

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or

(b) one or more employees have their employment terminated by an employer with a payroll of $2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

c) un préavis écrit de trois semaines si sa période d'emploi est de trois ans ou plus mais de moins de quatre ans;

d) un préavis écrit de quatre semaines si sa période d'emploi est de quatre ans ou plus mais de moins de cinq ans;

e) un préavis écrit de cinq semaines si sa période d'emploi est de cinq ans ou plus mais de moins de six ans;

f) un préavis écrit de six semaines si sa période d'emploi est de six ans ou plus mais de moins de sept ans;

g) un préavis écrit de sept semaines si sa période d'emploi est de sept ans ou plus mais de moins de huit ans;

h) un préavis écrit de huit semaines si sa période d'emploi est de huit ans ou plus,

et avant le terme de la période de ce préavis.

. . .

(7) Si un employé est licencié contrairement au présent article:

a) l'employeur lui verse une indemnité de licenciement égale au salaire que l'employé aurait eu le droit de recevoir à son taux normal pour une semaine normale de travail sans heures supplémentaires pendant la période de préavis fixée par le paragraphe (1) ou (2), de même que tout salaire auquel il a droit;

. . .

**40***a* . . .

[TRADUCTION] (1a) L'employeur verse une indemnité de cessation d'emploi à chaque employé licencié qui a travaillé pour lui pendant cinq ans ou plus si, selon le cas:

a) l'employeur licencie cinquante employés ou plus au cours d'une période de six mois ou moins et que les licenciements résultent de l'interruption permanente de l'ensemble ou d'une partie des activités de l'employeur à un établissement;

b) l'employeur dont la masse salariale est de 2,5 millions de dollars ou plus licencie un ou plusieurs employés.

*Employment Standards Amendment Act, 1981*, S.O. 1981, c. 22

**2.** — (1) Part XII of the said Act is amended by adding thereto the following section:

. . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

*Bankruptcy Act*, R.S.C., 1985, c. B-3

**121.** (1) All debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy shall be deemed to be claims provable in proceedings under this Act.

*Interpretation Act*, R.S.O. 1990, c. I.11

**10.** Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

. . .

**17.** The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law.

3. Judicial History

A. *Ontario Court (General Division)* (1991), 6 O.R. (3d) 441

*Employment Standards Amendment Act, 1981*, L.O. 1981, ch. 22

[TRADUCTION]

**2.** (1) La partie XII de la loi est modifiée par adjonction de l'article suivant:

. . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

*Loi sur la faillite*, L.R.C. (1985), ch. B-3

**121.** (1) Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujetti à la date de la faillite, ou auxquels il peut devenir assujetti avant sa libération, en raison d'une obligation contractée antérieurement à la date de la faillite, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi.

*Loi d'interprétation*, L.R.O. 1990, ch. I.11

**10** Les lois sont réputées apporter une solution de droit, qu'elles aient pour objet immédiat d'ordonner l'accomplissement d'un acte que la Législature estime être dans l'intérêt public ou d'empêcher ou de punir l'accomplissement d'un acte qui lui paraît contraire à l'intérêt public. Elles doivent par conséquent s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables.

. . .

**17** L'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit.

3. L'historique judiciaire

A. *La Cour de l'Ontario (Division générale)* (1991), 6 O.R. (3d) 441

7 Having disposed of several issues which do not arise on this appeal, Farley J. turned to the question of whether termination pay and severance pay are provable claims under the *BA*. Relying on *U.F.C.W., Loc. 617P v. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (Ont. S.C. in Bankruptcy), he found that it is clear that claims for termination and severance pay are provable in bankruptcy where the statutory obligation to provide such payments arose prior to the bankruptcy. Accordingly, he reasoned that the essential matter to be resolved in the case at bar was whether bankruptcy acted as a termination of employment thereby triggering the termination and severance pay provisions of the *ESA* such that liability for such payments would arise on bankruptcy as well.

Après avoir tranché plusieurs points non soulevés dans le présent pourvoi, le juge Farley est passé à la question de savoir si l'indemnité de licenciement et l'indemnité de cessation d'emploi sont des réclamations prouvables en application de la *LF*. S'appuyant sur la décision *U.F.C.W., Loc. 617P c. Royal Dressed Meats Inc. (Trustee of)* (1989), 76 C.B.R. (N.S.) 86 (C.S. Ont. en matière de faillite), il a conclu que manifestement, l'indemnité de licenciement et l'indemnité de cessation d'emploi sont prouvables en matière de faillite lorsque l'obligation légale d'effectuer ces versements a pris naissance avant la faillite. Par conséquent, il a estimé que le point essentiel à résoudre en l'espèce était de savoir si la faillite était assimilable au licenciement et entraînait l'application des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* de manière que l'obligation de verser ces indemnités prenne naissance également au moment de la faillite.

8 In addressing this question, Farley J. began by noting that the object and intent of the *ESA* is to provide minimum employment standards and to benefit and protect the interests of employees. Thus, he concluded that the *ESA* is remedial legislation and as such it should be interpreted in a fair, large and liberal manner to ensure that its object is attained according to its true meaning, spirit and intent.

Le juge Farley a abordé cette question en faisant remarquer que l'objet et l'intention de la *LNE* étaient d'établir des normes minimales d'emploi et de favoriser et protéger les intérêts des employés. Il a donc conclu que la *LNE* visait à apporter une solution de droit et devait dès lors être interprétée de manière équitable et large afin de garantir la réalisation de son objet selon ses sens, intention et esprit véritables.

9 Farley J. then held that denying employees in this case the right to claim termination and severance pay would lead to the arbitrary and unfair result that an employee whose employment is terminated just prior to a bankruptcy would be entitled to termination and severance pay, whereas one whose employment is terminated by the bankruptcy itself would not have that right. This result, he stated, would defeat the intended working of the *ESA*.

Le juge Farley a ensuite décidé que priver les employés en l'espèce du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi aurait pour conséquence injuste et arbitraire que l'employé licencié juste avant la faillite aurait droit à une indemnité de licenciement et à une indemnité de cessation d'emploi, alors que celui qui a perdu son emploi en raison de la faillite elle-même n'y aurait pas droit. Ce résultat, a-t-il dit, irait à l'encontre du but visé par la loi.

10 Farley J. saw no reason why the claims of the employees in the present case would not generally be contemplated as wages or other claims under the *BA*. He emphasized that the former employees in the case at bar had not alleged that termination pay and severance pay should receive a priority in

Le juge Farley ne voyait pas pourquoi les réclamations des employés en l'espèce ne seraient pas généralement considérées comme des réclamations concernant les salaires ou comme d'autres réclamations présentées en application de la *LF*. Il a souligné que les anciens employés en l'espèce

the distribution of the estate, but merely that they are provable (unsecured and unpreferred) claims in a bankruptcy. For this reason, he found it inappropriate to make reference to authorities whose focus was the interpretation of priority provisions in the *BA*.

n'avaient pas soutenu que les indemnités de licenciement et de cessation d'emploi devaient être prioritaires dans la distribution de l'actif, mais tout simplement qu'elles étaient des réclamations prouvables en matière de faillite (non garanties et non privilégiées). Pour ce motif, il a conclu qu'il ne convenait pas d'invoquer la jurisprudence et la doctrine portant sur l'interprétation des dispositions relatives à la priorité de la *LF*.

Even if bankruptcy does not terminate the employment relationship so as to trigger the *ESA* termination and severance pay provisions, Farley J. was of the view that the employees in the instant case would nevertheless be entitled to such payments as these were liabilities incurred prior to the date of the bankruptcy by virtue of s. 7(5) of the *ESA*. He found that s. 7(5) deems every employment contract to include a provision to provide termination and severance pay following the termination of employment and concluded that a contingent obligation is thereby created for a bankrupt employer to make such payments from the outset of the relationship, long before the bankruptcy.

11 Même si la faillite ne met pas fin à la relation entre l'employeur et l'employé de façon à faire jouer les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNF*, le juge Farley était d'avis que les employés en l'espèce avaient néanmoins droit à ces indemnités, car il s'agissait d'engagements contractés avant la date de la faillite conformément au par. 7(5) de la *LNE*. Il a conclu d'une part qu'aux termes du par. 7(5), tout contrat de travail est réputé comprendre une disposition prévoyant le versement d'une indemnité de licenciement et d'une indemnité de cessation d'emploi au moment de la cessation d'emploi et d'autre part que l'employeur en faillite est assujetti à l'obligation conditionnelle de verser ces indemnités depuis le début de la relation entre l'employeur et l'employé, soit bien avant la faillite.

Farley J. also considered s. 2(3) of the *Employment Standards Amendment Act, 1981*, S.O. 1981, c. 22 (the "*ESAA*"), which is a transitional provision that exempted certain bankrupt employers from the newly introduced severance pay obligations until the amendments received royal assent. He was of the view that this provision would not have been necessary if the obligations of employers upon termination of employment had not been intended to apply to bankrupt employers under the *ESA*. Farley J. concluded that the claim by Rizzo's former employees for termination pay and severance pay could be provided as unsecured and unpreferred debts in a bankruptcy. Accordingly, he allowed the appeal from the decision of the Trustee.

12 Le juge Farley a également examiné le par. 2(3) de l'*Employment Standards Amendment Act, 1981*, L.O. 1981, ch. 22 («l'*ESAA*»), qui est une disposition transitoire exemptant certains employeurs en faillite des nouvelles obligations relatives au paiement de l'indemnité de cessation d'emploi jusqu'à ce que les modifications aient reçu la sanction royale. Il était d'avis que cette disposition n'aurait pas été nécessaire si le législateur n'avait pas voulu que les obligations auxquelles sont tenus les employeurs au moment d'un licenciement s'appliquent aux employeurs en faillite en vertu de la *LNE*. Le juge Farley a conclu que la réclamation présentée par les anciens employés de Rizzo en vue d'obtenir des indemnités de licenciement et de cessation d'emploi pouvait être traitée comme une créance non garantie et non privilégiée dans une faillite. Par conséquent, il a accueilli l'appel formé contre la décision du syndic.

B. *Ontario Court of Appeal* (1995), 22 O.R. (3d) 385

13 Austin J.A., writing for a unanimous court, began his analysis of the principal issue in this appeal by focussing upon the language of the termination pay and severance pay provisions of the *ESA*. He noted, at p. 390, that the termination pay provisions use phrases such as "[n]o employer shall terminate the employment of an employee" (s. 40(1)), "the notice required by an employer to terminate the employment" (s. 40(2)), and "[a]n employer who has terminated or who proposes to terminate the employment of employees" (s. 40(5)). Turning to severance pay, he quoted s. 40*a*(1)(*a*) (at p. 391) which includes the phrase "employees have their employment terminated by an employer". Austin J.A. concluded that this language limits the obligation to provide termination and severance pay to situations in which the employer terminates the employment. The operation of the *ESA*, he stated, is not triggered by the termination of employment resulting from an act of law such as bankruptcy.

14 In support of his conclusion, Austin J.A. reviewed the leading cases in this area of law. He cited *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (S.C. in bankruptcy), wherein Houlden J. (as he then was) concluded that the *ESA* termination pay provisions were not designed to apply to a bankrupt employer. He also relied upon *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (Ont. S.C. in bankruptcy), for the proposition that the bankruptcy of a company at the instance of a creditor does not constitute dismissal. He concluded as follows at p. 395:

The plain language of ss. 40 and 40*a* does not give rise to any liability to pay termination or severance pay except where the employment is terminated by the employer. In our case, the employment was terminated, not by the employer, but by the making of a receiving order against Rizzo on April 14, 1989, following a peti-

B. *La Cour d'appel de l'Ontario* (1995), 22 O.R. (3d) 385

Au nom d'une cour unanime, le juge Austin a commencé son analyse de la question principale du présent pourvoi en s'arrêtant sur le libellé des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE*. Il a noté, à la p. 390, que les dispositions relatives à l'indemnité de licenciement utilisent des expressions comme «[a]ucun employeur ne doit licencier un employé» (par. 40(1)), «le préavis qu'un employeur donne pour licencier» (par. 40(2)) et les «employés qu'un employeur a licenciés ou se propose de licencier» (par. 40(5)). Passant à l'indemnité de cessation d'emploi, il a cité l'al. 40*a*(1)*a*), à la p. 391, lequel contient l'expression «l'employeur licencie cinquante employés». Le juge Austin a conclu que ce libellé limite l'obligation d'accorder une indemnité de licenciement et une indemnité de cessation d'emploi aux cas où l'employeur licencie des employés. Selon lui, la cessation d'emploi résultant de l'effet de la loi, notamment de la faillite, n'entraîne pas l'application de la *LNE*.

À l'appui de sa conclusion, le juge Austin a examiné les arrêts de principe dans ce domaine du droit. Il a cité *Re Malone Lynch Securities Ltd.*, [1972] 3 O.R. 725 (C.S. en matière de faillite), dans lequel le juge Houlden (maintenant juge de la Cour d'appel) a statué que les dispositions relatives à l'indemnité de licenciement de la *LNE* n'étaient pas conçues pour s'appliquer à l'employeur en faillite. Il a également invoqué *Re Kemp Products Ltd.* (1978), 27 C.B.R. (N.S.) 1 (C.S. Ont. en matière de faillite), à l'appui de la proposition selon laquelle la faillite d'une compagnie à la demande d'un créancier ne constitue pas un congédiement. Il a conclu ainsi, à la p. 395:

[TRADUCTION] Le libellé clair des art. 40 et 40*a* ne crée une obligation de verser une indemnité de licenciement ou une indemnité de cessation d'emploi que si l'employeur licencie l'employé. En l'espèce, la cessation d'emploi n'est pas le fait de l'employeur, elle résulte d'une ordonnance de séquestre rendue à l'encontre de Rizzo le 14 avril 1989, à la suite d'une pétition présentée par l'un de ses créanciers. Le droit à une indemnité

tion by one of its creditors. No entitlement to either termination or severance pay ever arose.

Regarding s. 7(5) of the *ESA*, Austin J.A. rejected the trial judge's interpretation and found that the section does not create a liability. Rather, in his opinion, it merely states when a liability otherwise created is to be paid and therefore it was not considered relevant to the issue before the court. Similarly, Austin J.A. did not accept the lower court's view of s. 2(3), the transitional provision in the *ESAA*. He found that that section had no effect upon the intention of the Legislature as evidenced by the terminology used in ss. 40 and 40*a*.

Austin J.A. concluded that, because the employment of Rizzo's former employees was terminated by the order of bankruptcy and not by the act of the employer, no liability arose with respect to termination, severance or vacation pay. The order of the trial judge was set aside and the Trustee's disallowance of the claims was restored.

4. Issues

This appeal raises one issue: does the termination of employment caused by the bankruptcy of an employer give rise to a claim provable in bankruptcy for termination pay and severance pay in accordance with the provisions of the *ESA*?

5. Analysis

The statutory obligation upon employers to provide both termination pay and severance pay is governed by ss. 40 and 40*a* of the *ESA*, respectively. The Court of Appeal noted that the plain language of those provisions suggests that termination pay and severance pay are payable only when the employer terminates the employment. For example, the opening words of s. 40(1) are: "No employer shall terminate the employment of an employee. . . ." Similarly, s. 40*a*(1a) begins with

de licenciement ou à une indemnité de cessation d'emploi n'a jamais pris naissance.

15 En ce qui concerne le par. 7(5) de la *LNE*, le juge Austin a rejeté l'interprétation du juge de première instance et a estimé que cette disposition ne créait pas d'engagement. Selon lui, elle ne faisait que préciser quand l'engagement contracté par ailleurs devait être acquitté et ne se rapportait donc pas à la question dont la cour était saisie. Le juge Austin n'a pas accepté non plus l'opinion exprimée par le tribunal inférieur au sujet du par. 2(3), la disposition transitoire de l'*ESAA*. Il a jugé que cette disposition n'avait aucun effet quant à l'intention du législateur, comme l'attestait la terminologie employée aux art. 40 et 40*a*.

16 Le juge Austin a conclu que, comme la cessation d'emploi subie par les anciens employés de Rizzo résultait d'une ordonnance de faillite et n'était pas le fait de l'employeur, il n'existait aucun engagement en ce qui concerne l'indemnité de licenciement, l'indemnité de cessation d'emploi ni la paie de vacances. L'ordonnance du juge de première instance a été annulée et la décision du syndic de rejeter les réclamations a été rétablie.

4. Les questions en litige

17 Le présent pourvoi soulève une question: la cessation d'emploi résultant de la faillite de l'employeur donne-t-elle naissance à une réclamation prouvable en matière de faillite en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi conformément aux dispositions de la *LNE*?

5. Analyse

18 L'obligation légale faite aux employeurs de verser une indemnité de licenciement ainsi qu'une indemnité de cessation d'emploi est régie respectivement par les art. 40 et 40*a* de la *LNE*. La Cour d'appel a fait observer que le libellé clair de ces dispositions donne à penser que les indemnités de licenciement et de cessation d'emploi doivent être versées seulement lorsque l'employeur licencie l'employé. Par exemple, le par. 40(1) commence par les mots suivants: «Aucun employeur ne doit

the words, "Where . . . fifty or more employees have their employment terminated by an employer. . . ." Therefore, the question on which this appeal turns is whether, when bankruptcy occurs, the employment can be said to be terminated "by an employer".

19 The Court of Appeal answered this question in the negative, holding that, where an employer is petitioned into bankruptcy by a creditor, the employment of its employees is not terminated "by an employer", but rather by operation of law. Thus, the Court of Appeal reasoned that, in the circumstances of the present case, the *ESA* termination pay and severance pay provisions were not applicable and no obligations arose. In answer, the appellants submit that the phrase "terminated by an employer" is best interpreted as reflecting a distinction between involuntary and voluntary termination of employment. It is their position that this language was intended to relieve employers of their obligation to pay termination and severance pay when employees leave their jobs voluntarily. However, the appellants maintain that where an employee's employment is involuntarily terminated by reason of their employer's bankruptcy, this constitutes termination "by an employer" for the purpose of triggering entitlement to termination and severance pay under the *ESA*.

20 At the heart of this conflict is an issue of statutory interpretation. Consistent with the findings of the Court of Appeal, the plain meaning of the words of the provisions here in question appears to restrict the obligation to pay termination and severance pay to those employers who have actively terminated the employment of their employees. At first blush, bankruptcy does not fit comfortably into this interpretation. However, with respect, I believe this analysis is incomplete.

21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legisla-*

licencier un employé . . .» Le paragraphe 40*a*(1a) contient également les mots: «si [. . .] l'employeur licencie cinquante employés ou plus . . .» Par conséquent, la question dans le présent pourvoi est de savoir si l'on peut dire que l'employeur qui fait faillite a licencié ses employés.

La Cour d'appel a répondu à cette question par la négative, statuant que, lorsqu'un créancier présente une pétition en faillite contre un employeur, les employés ne sont pas licenciés par l'employeur mais par l'effet de la loi. La Cour d'appel a donc estimé que, dans les circonstances de l'espèce, les dispositions relatives aux indemnités de licenciement et de cessation d'emploi de la *LNE* n'étaient pas applicables et qu'aucune obligation n'avait pris naissance. Les appelants répliquent que les mots «l'employeur licencie» doivent être interprétés comme établissant une distinction entre la cessation d'emploi volontaire et la cessation d'emploi forcée. Ils soutiennent que ce libellé visait à dégager l'employeur de son obligation de verser des indemnités de licenciement et de cessation d'emploi lorsque l'employé quittait son emploi volontairement. Cependant, les appelants prétendent que la cessation d'emploi forcée résultant de la faillite de l'employeur est assimilable au licenciement effectué par l'employeur pour l'exercice du droit à une indemnité de licenciement et à une indemnité de cessation d'emploi prévu par la *LNE*.

Une question d'interprétation législative est au centre du présent litige. Selon les conclusions de la Cour d'appel, le sens ordinaire des mots utilisés dans les dispositions en cause paraît limiter l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi aux employeurs qui ont effectivement licencié leurs employés. À première vue, la faillite ne semble pas cadrer très bien avec cette interprétation. Toutefois, en toute déférence, je crois que cette analyse est incomplète.

Bien que l'interprétation législative ait fait couler beaucoup d'encre (voir par ex. Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3e éd. 1994) (ci-après «*Construction of Statutes*»); Pierre-André Côté, *Interprétation des lois* (2e éd.

*tion in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.

1990)), Elmer Driedger dans son ouvrage intitulé *Construction of Statutes* (2e éd. 1983) résume le mieux la méthode que je privilégie. Il reconnaît que l'interprétation législative ne peut pas être fondée sur le seul libellé du texte de loi. À la p. 87, il dit:

> [TRADUCTION] Aujourd'hui il n'y a qu'un seul principe ou solution: il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur.

Parmi les arrêts récents qui ont cité le passage ci-dessus en l'approuvant, mentionnons: *R. c. Hydro-Québec*, [1997] 1 R.C.S. 213; *Banque Royale du Canada c. Sparrow Electric Corp.*, [1997] 1 R.C.S. 411; *Verdun c. Banque Toronto-Dominion*, [1996] 3 R.C.S. 550; *Friesen c. Canada*, [1995] 3 R.C.S. 103.

I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

22 Je m'appuie également sur l'art. 10 de la *Loi d'interprétation*, L.R.O. 1980, ch. 219, qui prévoit que les lois «sont réputées apporter une solution de droit» et doivent «s'interpréter de la manière la plus équitable et la plus large qui soit pour garantir la réalisation de leur objet selon leurs sens, intention et esprit véritables».

Although the Court of Appeal looked to the plain meaning of the specific provisions in question in the present case, with respect, I believe that the court did not pay sufficient attention to the scheme of the *ESA*, its object or the intention of the legislature; nor was the context of the words in issue appropriately recognized. I now turn to a discussion of these issues.

23 Bien que la Cour d'appel ait examiné le sens ordinaire des dispositions en question dans le présent pourvoi, en toute déférence, je crois que la cour n'a pas accordé suffisamment d'attention à l'économie de la *LNE*, à son objet ni à l'intention du législateur; le contexte des mots en cause n'a pas non plus été pris en compte adéquatement. Je passe maintenant à l'analyse de ces questions.

In *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at p. 1002, the majority of this Court recognized the importance that our society accords to employment and the fundamental role that it has assumed in the life of the individual. The manner in which employment can be terminated was said to be equally important (see also *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701). It was in this context that the majority in *Machtinger* described, at p. 1003, the object of the *ESA* as being the protection of "... the interests of employees by requiring employers to comply with

24 Dans l'arrêt *Machtinger c. HOJ Industries Ltd.*, [1992] 1 R.C.S. 986, à la p. 1002, notre Cour, à la majorité, a reconnu l'importance que notre société accorde à l'emploi et le rôle fondamental qu'il joue dans la vie de chaque individu. La manière de mettre fin à un emploi a été considérée comme étant tout aussi importante (voir également *Wallace c. United Grain Growers Ltd.*, [1997] 3 R.C.S. 701). C'est dans ce contexte que les juges majoritaires dans l'arrêt *Machtinger* ont défini, à la p. 1003, l'objet de la *LNE* comme étant la protection «. . . [d]es intérêts des employés en exigeant que

certain minimum standards, including minimum periods of notice of termination". Accordingly, the majority concluded, at p. 1003, that, ". . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not".

25 The objects of the termination and severance pay provisions themselves are also broadly premised upon the need to protect employees. Section 40 of the *ESA* requires employers to give their employees reasonable notice of termination based upon length of service. One of the primary purposes of this notice period is to provide employees with an opportunity to take preparatory measures and seek alternative employment. It follows that s. 40(7)(a), which provides for termination pay in lieu of notice when an employer has failed to give the required statutory notice, is intended to "cushion" employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment. (Innis Christie, Geoffrey England and Brent Cotter, *Employment Law in Canada* (2nd ed. 1993), at pp. 572-81.)

26 Similarly, s. 40*a*, which provides for severance pay, acts to compensate long-serving employees for their years of service and investment in the employer's business and for the special losses they suffer when their employment terminates. In *R. v. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, Robins J.A. quoted with approval at pp. 556-57 from the words of D. D. Carter in the course of an employment standards determination in *Re Telegram Publishing Co. v. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), at p. 19, wherein he described the role of severance pay as follows:

Severance pay recognizes that an employee does make an investment in his employer's business — the extent of this investment being directly related to the length of

les employeurs respectent certaines normes minimales, notamment en ce qui concerne les périodes minimales de préavis de licenciement». Par conséquent, les juges majoritaires ont conclu, à la p. 1003, qu'«. . . une interprétation de la Loi qui encouragerait les employeurs à se conformer aux exigences minimales de celle-ci et qui ferait ainsi bénéficier de sa protection le plus grand nombre d'employés possible est à préférer à une interprétation qui n'a pas un tel effet».

L'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes repose de manière générale sur la nécessité de protéger les employés. L'article 40 de la *LNE* oblige les employeurs à donner à leurs employés un préavis de licenciement raisonnable en fonction des années de service. L'une des fins principales de ce préavis est de donner aux employés la possibilité de se préparer en cherchant un autre emploi. Il s'ensuit que l'al. 40(7)a), qui prévoit une indemnité de licenciement tenant lieu de préavis lorsqu'un employeur n'a pas donné le préavis requis par la loi, vise à protéger les employés des effets néfastes du bouleversement économique que l'absence d'une possibilité de chercher un autre emploi peut entraîner. (Innis Christie, Geoffrey England et Brent Cotter, *Employment Law in Canada* (2e éd. 1993), aux pp. 572 à 581.)

De même, l'art. 40*a*, qui prévoit l'indemnité de cessation d'emploi, vient indemniser les employés ayant beaucoup d'années de service pour ces années investies dans l'entreprise de l'employeur et pour les pertes spéciales qu'ils subissent lorsqu'ils sont licenciés. Dans l'arrêt *R. c. TNT Canada Inc.* (1996), 27 O.R. (3d) 546, le juge Robins a cité en les approuvant, aux pp. 556 et 557, les propos tenus par D. D. Carter dans le cadre d'une décision rendue en matière de normes d'emploi dans *Re Telegram Publishing Co. c. Zwelling* (1972), 1 L.A.C. (2d) 1 (Ont.), à la p. 19, où il a décrit ainsi le rôle de l'indemnité de cessation d'emploi:

[TRADUCTION] L'indemnité de cessation d'emploi reconnaît qu'un employé fait un investissement dans l'entreprise de son employeur — l'importance de cet investis-

the employee's service. This investment is the seniority that the employee builds up during his years of service. . . . Upon termination of the employment relationship, this investment of years of service is lost, and the employee must start to rebuild seniority at another place of work. The severance pay, based on length of service, is some compensation for this loss of investment.

sement étant liée directement à la durée du service de l'employé. Cet investissement est l'ancienneté que l'employé acquiert durant ses années de service [. . .] À la fin de la relation entre l'employeur et l'employé, cet investissement est perdu et l'employé doit recommencer à acquérir de l'ancienneté dans un autre lieu de travail. L'indemnité de cessation d'emploi, fondée sur les années de service, compense en quelque sorte cet investissement perdu.

In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40*a* of the *ESA* are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

27

À mon avis, les conséquences ou effets qui résultent de l'interprétation que la Cour d'appel a donnée des art. 40 et 40*a* de la *LNE* ne sont compatibles ni avec l'objet de la Loi ni avec l'objet des dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi elles-mêmes. Selon un principe bien établi en matière d'interprétation législative, le législateur ne peut avoir voulu des conséquences absurdes. D'après Côté, *op. cit.*, on qualifiera d'absurde une interprétation qui mène à des conséquences ridicules ou futiles, si elle est extrêmement déraisonnable ou inéquitable, si elle est illogique ou incohérente, ou si elle est incompatible avec d'autres dispositions ou avec l'objet du texte législatif (aux pp. 430 à 432). Sullivan partage cet avis en faisant remarquer qu'on peut qualifier d'absurdes les interprétations qui vont à l'encontre de la fin d'une loi ou en rendent un aspect inutile ou futile (Sullivan, *Construction of Statutes*, *op. cit.*, à la p. 88).

The trial judge properly noted that, if the *ESA* termination and severance pay provisions do not apply in circumstances of bankruptcy, those employees "fortunate" enough to have been dismissed the day before a bankruptcy would be entitled to such payments, but those terminated on the day the bankruptcy becomes final would not be so entitled. In my view, the absurdity of this consequence is particularly evident in a unionized workplace where seniority is a factor in determining the order of lay-off. The more senior the employee, the larger the investment he or she has made in the employer and the greater the entitlement to termination and severance pay. However, it is the more senior personnel who are likely to be employed up

28

Le juge de première instance a noté à juste titre que, si les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la *LNE* ne s'appliquent pas en cas de faillite, les employés qui auraient eu la «chance» d'être congédiés la veille de la faillite auraient droit à ces indemnités, alors que ceux qui perdraient leur emploi le jour où la faillite devient définitive n'y auraient pas droit. À mon avis, l'absurdité de cette conséquence est particulièrement évidente dans les milieux syndiqués où les mises à pied se font selon l'ancienneté. Plus un employé a de l'ancienneté, plus il a investi dans l'entreprise de l'employeur et plus son droit à une indemnité de licenciement et à une indemnité de cessation d'emploi est fondé. Pourtant, c'est le personnel ayant le plus d'ancienneté qui risque de travailler

until the time of the bankruptcy and who would thereby lose their entitlements to these payments.

29 If the Court of Appeal's interpretation of the termination and severance pay provisions is correct, it would be acceptable to distinguish between employees merely on the basis of the timing of their dismissal. It seems to me that such a result would arbitrarily deprive some employees of a means to cope with the economic dislocation caused by unemployment. In this way the protections of the *ESA* would be limited rather than extended, thereby defeating the intended working of the legislation. In my opinion, this is an unreasonable result.

30 In addition to the termination and severance pay provisions, both the appellants and the respondent relied upon various other sections of the *ESA* to advance their arguments regarding the intention of the legislature. In my view, although the majority of these sections offer little interpretive assistance, one transitional provision is particularly instructive. In 1981, s. 2(1) of the *ESAA* introduced s. 40*a*, the severance pay provision, to the *ESA*. Section 2(2) deemed that provision to come into force on January 1, 1981. Section 2(3), the transitional provision in question provided as follows:

**2.** . . .

(3) Section 40*a* of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

31 The Court of Appeal found that it was neither necessary nor appropriate to determine the intention of the legislature in enacting this provisional

jusqu'au moment de la faillite et de perdre ainsi le droit d'obtenir ces indemnités.

Si l'interprétation que la Cour d'appel a donnée des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi est correcte, il serait acceptable d'établir une distinction entre les employés en se fondant simplement sur la date de leur congédiement. Il me semble qu'un tel résultat priverait arbitrairement certains employés d'un moyen de faire face au bouleversement économique causé par le chômage. De cette façon, les protections de la *LNE* seraient limitées plutôt que d'être étendues, ce qui irait à l'encontre de l'objectif que voulait atteindre le législateur. À mon avis, c'est un résultat déraisonnable.

En plus des dispositions relatives à l'indemnité de licenciement et de l'indemnité de cessation d'emploi, tant les appelants que l'intimée ont invoqué divers autres articles de la *LNE* pour appuyer les arguments avancés au sujet de l'intention du législateur. Selon moi, bien que la plupart de ces dispositions ne soient d'aucune utilité en ce qui concerne l'interprétation, il est une disposition transitoire particulièrement révélatrice. En 1981, le par. 2(1) de l'*ESAA* a introduit l'art. 40*a*, la disposition relative à l'indemnité de cessation d'emploi. En application du par. 2(2), cette disposition entrait en vigueur le 1er janvier 1981. Le paragraphe 2(3), la disposition transitoire en question, était ainsi conçue:

[TRADUCTION]

**2.** . . .

(3) L'article 40*a* de la loi ne s'applique pas à l'employeur qui a fait faillite ou est devenu insolvable au sens de la *Loi sur la faillite* (Canada) et dont les biens ont été distribués à ses créanciers ou à l'employeur dont la proposition au sens de la *Loi sur la faillite* (Canada) a été acceptée par ses créanciers pendant la période qui commence le 1er janvier 1981 et se termine le jour précédant immédiatement celui où la présente loi a reçu la sanction royale inclusivement.

La Cour d'appel a conclu qu'il n'était ni nécessaire ni approprié de déterminer l'intention qu'avait le législateur en adoptant ce paragraphe

subsection. Nevertheless, the court took the position that the intention of the legislature as evidenced by the introductory words of ss. 40 and 40*a* was clear, namely, that termination by reason of a bankruptcy will not trigger the severance and termination pay obligations of the *ESA*. The court held that this intention remained unchanged by the introduction of the transitional provision. With respect, I do not agree with either of these findings. Firstly, in my opinion, the use of legislative history as a tool for determining the intention of the legislature is an entirely appropriate exercise and one which has often been employed by this Court (see, e.g., *R. v. Vasil*, [1981] 1 S.C.R. 469, at p. 487; *Paul v. The Queen*, [1982] 1 S.C.R. 621, at pp. 635, 653 and 660). Secondly, I believe that the transitional provision indicates that the Legislature intended that termination and severance pay obligations should arise upon an employers' bankruptcy.

provisoire. Néanmoins, la cour a estimé que l'intention du législateur, telle qu'elle ressort des premiers mots des art. 40 et 40*a*, était claire, à savoir que la cessation d'emploi résultant de la faillite ne fera pas naître l'obligation de verser l'indemnité de cessation d'emploi et l'indemnité de licenciement qui est prévue par la *LNE*. La cour a jugé que cette intention restait inchangée à la suite de l'adoption de la disposition transitoire. Je ne puis souscrire ni à l'une ni à l'autre de ces conclusions. En premier lieu, à mon avis, l'examen de l'historique législatif pour déterminer l'intention du législateur est tout à fait approprié et notre Cour y a eu souvent recours (voir, par ex., *R. c. Vasil*, [1981] 1 R.C.S. 469, à la p. 487; *Paul c. La Reine*, [1982] 1 R.C.S. 621, aux pp. 635, 653 et 660). En second lieu, je crois que la disposition transitoire indique que le législateur voulait que l'obligation de verser une indemnité de licenciement et une indemnité de cessation d'emploi prenne naissance lorsque l'employeur fait faillite.

In my view, by extending an exemption to employers who became bankrupt and lost control of their assets between the coming into force of the amendment and its receipt of royal assent, s. 2(3) necessarily implies that the severance pay obligation does in fact extend to bankrupt employers. It seems to me that, if this were not the case, no readily apparent purpose would be served by this transitional provision.

32 À mon avis, en raison de l'exemption accordée au par. 2(3) aux employeurs qui ont fait faillite et ont perdu la maîtrise de leurs biens entre le moment où les modifications sont entrées en vigueur et celui où elles ont reçu la sanction royale, il faut nécessairement que les employeurs faisant faillite soient de fait assujettis à l'obligation de verser une indemnité de cessation d'emploi. Selon moi, si tel n'était pas le cas, cette disposition transitoire semblerait ne poursuivre aucune fin.

I find support for my conclusion in the decision of Saunders J. in *Royal Dressed Meats Inc.*, *supra*. Having reviewed s. 2(3) of the *ESAA*, he commented as follows (at p. 89):

33 Je m'appuie sur la décision rendue par le juge Saunders dans l'affaire *Royal Dressed Meats Inc.*, précitée. Après avoir examiné le par. 2(3) de l'*ESAA*, il fait l'observation suivante (à la p. 89):

> . . . any doubt about the intention of the Ontario Legislature has been put to rest, in my opinion, by the transitional provision which introduced severance payments into the E.S.A. . . . it seems to me an inescapable inference that the legislature intended liability for severance payments to arise on a bankruptcy. That intention would, in my opinion, extend to termination payments which are similar in character.

> [TRADUCTION] . . . tout doute au sujet de l'intention du législateur ontarien est dissipé, à mon avis, par la disposition transitoire qui introduit les indemnités de cessation d'emploi dans la L.N.E. [. . .] Il me semble qu'il faut conclure que le législateur voulait que l'obligation de verser des indemnités de cessation d'emploi prenne naissance au moment de la faillite. Selon moi, cette intention s'étend aux indemnités de licenciement qui sont de nature analogue.

This interpretation is also consistent with statements made by the Minister of Labour at the time

34 Cette interprétation est également compatible avec les déclarations faites par le ministre du

he introduced the 1981 amendments to the *ESA*. With regard to the new severance pay provision he stated:

> The circumstances surrounding a closure will govern the applicability of the severance pay legislation in some defined situations. For example, a bankrupt or insolvent firm will still be required to pay severance pay to employees to the extent that assets are available to satisfy their claims.
>
> . . .
>
> . . . the proposed severance pay measures will, as I indicated earlier, be retroactive to January 1 of this year. That retroactive provision, however, will not apply in those cases of bankruptcy and insolvency where the assets have already been distributed or where an agreement on a proposal to creditors has already been reached.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 4, 1981, at pp. 1236-37.)

Moreover, in the legislative debates regarding the proposed amendments the Minister stated:

> For purposes of retroactivity, severance pay will not apply to bankruptcies under the Bankruptcy Act where assets have been distributed. However, once this act receives royal assent, employees in bankruptcy closures will be covered by the severance pay provisions.

(*Legislature of Ontario Debates*, 1st sess., 32nd Parl., June 16, 1981, at p. 1699.)

35 Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, Sopinka J. stated:

> . . . until recently the courts have balked at admitting evidence of legislative debates and speeches. . . . The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legisla-

Travail au moment de l'introduction des modifications apportées à la *LNE* en 1981. Au sujet de la nouvelle disposition relative à l'indemnité de cessation d'emploi, il a dit ce qui suit:

> [TRADUCTION] Les circonstances entourant une fermeture régissent l'applicabilité de la législation en matière d'indemnité de cessation d'emploi dans certains cas précis. Par exemple, une société insolvable ou en faillite sera encore tenue de verser l'indemnité de cessation d'emploi aux employés dans la mesure où il y a des biens pour acquitter leurs réclamations.
>
> . . .
>
> . . . les mesures proposées en matière d'indemnité de cessation d'emploi seront, comme je l'ai mentionné précédemment, rétroactives au 1er janvier de cette année. Cette disposition rétroactive, toutefois, ne s'appliquera pas en matière de faillite et d'insolvabilité dans les cas où les biens ont déjà été distribués ou lorsqu'une entente est déjà intervenue au sujet de la proposition des créanciers.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 4 juin 1981, aux pp. 1236 et 1237.)

De plus, au cours des débats parlementaires sur les modifications proposées, le ministre a déclaré:

> [TRADUCTION] En ce qui a trait à la rétroactivité, l'indemnité de cessation d'emploi ne s'appliquera pas aux faillites régies par la Loi sur la faillite lorsque les biens ont été distribués. Cependant, lorsque la présente loi aura reçu la sanction royale, les employés visés par des fermetures entraînées par des faillites seront visés par les dispositions relatives à l'indemnité de cessation d'emploi.

(*Legislature of Ontario Debates*, 1re sess., 32e Lég., 16 juin 1981, à la p. 1699.)

Malgré les nombreuses lacunes de la preuve des débats parlementaires, notre Cour a reconnu qu'elle peut jouer un rôle limité en matière d'interprétation législative. S'exprimant au nom de la Cour dans l'arrêt *R. c. Morgentaler*, [1993] 3 R.C.S. 463, à la p. 484, le juge Sopinka a dit:

> . . . jusqu'à récemment, les tribunaux ont hésité à admettre la preuve des débats et des discours devant le corps législatif. [. . .] La principale critique dont a été l'objet ce type de preuve a été qu'elle ne saurait représenter «l'intention» de la législature, personne morale, mais

tive history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation.

c'est aussi vrai pour d'autres formes de contexte d'adoption d'une loi. À la condition que le tribunal n'oublie pas que la fiabilité et le poids des débats parlementaires sont limités, il devrait les admettre comme étant pertinents quant au contexte et quant à l'objet du texte législatif.

Finally, with regard to the scheme of the legislation, since the *ESA* is a mechanism for providing minimum benefits and standards to protect the interests of employees, it can be characterized as benefits-conferring legislation. As such, according to several decisions of this Court, it ought to be interpreted in a broad and generous manner. Any doubt arising from difficulties of language should be resolved in favour of the claimant (see, e.g., *Abrahams v. Attorney General of Canada*, [1983] 1 S.C.R. 2, at p. 10; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513, at p. 537). It seems to me that, by limiting its analysis to the plain meaning of ss. 40 and 40*a* of the *ESA*, the Court of Appeal adopted an overly restrictive approach that is inconsistent with the scheme of the Act.

36 Enfin, en ce qui concerne l'économie de la loi, puisque la *LNE* constitue un mécanisme prévoyant des normes et des avantages minimaux pour protéger les intérêts des employés, on peut la qualifier de loi conférant des avantages. À ce titre, conformément à plusieurs arrêts de notre Cour, elle doit être interprétée de façon libérale et généreuse. Tout doute découlant de l'ambiguïté des textes doit se résoudre en faveur du demandeur (voir, par ex., *Abrahams c. Procureur général du Canada*, [1983] 1 R.C.S. 2, à la p. 10; *Hills c. Canada (Procureur général)*, [1988] 1 R.C.S. 513, à la p. 537). Il me semble que, en limitant cette analyse au sens ordinaire des art. 40 et 40*a* de la *LNE*, la Cour d'appel a adopté une méthode trop restrictive qui n'est pas compatible avec l'économie de la Loi.

The Court of Appeal's reasons relied heavily upon the decision in *Malone Lynch*, *supra*. In *Malone Lynch*, Houlden J. held that s. 13, the group termination provision of the former *ESA*, R.S.O. 1970, c. 147, and the predecessor to s. 40 at issue in the present case, was not applicable where termination resulted from the bankruptcy of the employer. Section 13(2) of the *ESA* then in force provided that, if an employer wishes to terminate the employment of 50 or more employees, the employer must give notice of termination for the period prescribed in the regulations, "and until the expiry of such notice the terminations shall not take effect". Houlden J. reasoned that termination of employment through bankruptcy could not trigger the termination payment provision, as employees in this situation had not received the written notice required by the statute, and therefore could not be said to have been terminated in accordance with the Act.

37 La Cour d'appel s'est fortement appuyée sur la décision rendue dans *Malone Lynch*, précité. Dans cette affaire, le juge Houlden a conclu que l'art. 13, la disposition relative aux mesures de licenciement collectif de l'ancienne *ESA*, R.S.O. 1970, ch. 147, qui a été remplacée par l'art. 40 en cause dans le présent pourvoi, n'était pas applicable lorsque la cessation d'emploi résultait de la faillite de l'employeur. Le paragraphe 13(2) de l'*ESA* alors en vigueur prévoyait que, si un employeur voulait licencier 50 employés ou plus, il devait donner un préavis de licenciement dont la durée était prévue par règlement [TRADUCTION] «et les licenciements ne prenaient effet qu'à l'expiration de ce délai». Le juge Houlden a conclu que la cessation d'emploi résultant de la faillite ne pouvait entraîner l'application de la disposition relative à l'indemnité de licenciement car les employés placés dans cette situation n'avaient pas reçu le préavis écrit requis par la loi et ne pouvaient donc pas être considérés comme ayant été licenciés conformément à la Loi.

Two years after *Malone Lynch* was decided, the 1970 *ESA* termination pay provisions were

38 Deux ans après que la décision *Malone Lynch* eut été prononcée, les dispositions relatives à l'in-

amended by *The Employment Standards Act, 1974*, S.O. 1974, c. 112. As amended, s. 40(7) of the 1974 *ESA* eliminated the requirement that notice be given before termination can take effect. This provision makes it clear that termination pay is owing where an employer fails to give notice of termination and that employment terminates irrespective of whether or not proper notice has been given. Therefore, in my opinion it is clear that the *Malone Lynch* decision turned on statutory provisions which are materially different from those applicable in the instant case. It seems to me that Houlden J.'s holding goes no further than to say that the provisions of the 1970 *ESA* have no application to a bankrupt employer. For this reason, I do not accept the *Malone Lynch* decision as persuasive authority for the Court of Appeal's findings. I note that the courts in *Royal Dressed Meats*, *supra*, and *British Columbia (Director of Employment Standards) v. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (B.C.S.C.), declined to rely upon *Malone Lynch* based upon similar reasoning.

demnité de licenciement de l'*ESA* de 1970 ont été modifiées par *The Employment Standards Act, 1974*, S.O. 1974, ch. 112. Dans la version modifiée du par. 40(7) de l'*ESA* de 1974, il n'était plus nécessaire qu'un préavis soit donné avant que le licenciement puisse produire ses effets. Cette disposition vient préciser que l'indemnité de licenciement doit être versée lorsqu'un employeur omet de donner un préavis de licenciement et qu'il y a cessation d'emploi, indépendamment du fait qu'un préavis régulier ait été donné ou non. Il ne fait aucun doute selon moi que la décision *Malone Lynch* portait sur des dispositions législatives très différentes de celles qui sont applicables en l'espèce. Il me semble que la décision du juge Houlden a une portée limitée, soit que les dispositions de l'*ESA* de 1970 ne s'appliquent pas à un employeur en faillite. Pour cette raison, je ne reconnais à la décision *Malone Lynch* aucune valeur persuasive qui puisse étayer les conclusions de la Cour d'appel. Je souligne que les tribunaux dans *Royal Dressed Meats*, précité, et *British Columbia (Director of Employment Standards) c. Eland Distributors Ltd. (Trustee of)* (1996), 40 C.B.R. (3d) 25 (C.S.C.-B.), ont refusé de se fonder sur *Malone Lynch* en invoquant des raisons similaires.

39 The Court of Appeal also relied upon *Re Kemp Products Ltd.*, *supra*, for the proposition that although the employment relationship will terminate upon an employer's bankruptcy, this does not constitute a "dismissal". I note that this case did not arise under the provisions of the *ESA*. Rather, it turned on the interpretation of the term "dismissal" in what the complainant alleged to be an employment contract. As such, I do not accept it as authoritative jurisprudence in the circumstances of this case. For the reasons discussed above, I also disagree with the Court of Appeal's reliance on *Mills-Hughes v. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), which cited the decision in *Malone Lynch*, *supra*, with approval.

La Cour d'appel a également invoqué *Re Kemp Products Ltd.*, précité, à l'appui de la proposition selon laquelle, bien que la relation entre l'employeur et l'employé se termine à la faillite de l'employeur, cela ne constitue pas un «congédiement». Je note que ce litige n'est pas fondé sur les dispositions de la *LNE*. Il portait plutôt sur l'interprétation du terme «congédiement» dans le cadre de ce que le plaignant alléguait être un contrat de travail. J'estime donc que cette décision ne fait pas autorité dans les circonstances de l'espèce. Pour les raisons exposées ci-dessus, je ne puis accepter non plus que la Cour d'appel se fonde sur l'arrêt *Mills-Hughes c. Raynor* (1988), 63 O.R. (2d) 343 (C.A.), qui citait la décision *Malone Lynch*, précitée, et l'approuvait.

40 As I see the matter, when the express words of ss. 40 and 40*a* of the *ESA* are examined in their entire context, there is ample support for the con-

Selon moi, l'examen des termes exprès des art. 40 et 40*a* de la *LNE*, replacés dans leur contexte global, permet largement de conclure que les

clusion that the words "terminated by the employer" must be interpreted to include termination resulting from the bankruptcy of the employer. Using the broad and generous approach to interpretation appropriate for benefits-conferring legislation, I believe that these words can reasonably bear that construction (see *R. v. Z. (D.A.)*, [1992] 2 S.C.R. 1025). I also note that the intention of the Legislature as evidenced in s. 2(3) of the *ESAA*, clearly favours this interpretation. Further, in my opinion, to deny employees the right to claim *ESA* termination and severance pay where their termination has resulted from their employer's bankruptcy, would be inconsistent with the purpose of the termination and severance pay provisions and would undermine the object of the *ESA*, namely, to protect the interests of as many employees as possible.

mots «l'employeur licencie» doivent être interprétés de manière à inclure la cessation d'emploi résultant de la faillite de l'employeur. Adoptant l'interprétation libérale et généreuse qui convient aux lois conférant des avantages, j'estime que ces mots peuvent raisonnablement recevoir cette interprétation (voir *R. c. Z. (D.A.)*, [1992] 2 R.C.S. 1025). Je note également que l'intention du législateur, qui ressort du par. 2(3) de l'*ESAA*, favorise clairement cette interprétation. Au surplus, à mon avis, priver des employés du droit de réclamer une indemnité de licenciement et une indemnité de cessation d'emploi en application de la *LNE* lorsque la cessation d'emploi résulte de la faillite de leur employeur serait aller à l'encontre des fins visées par les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi et minerait l'objet de la *LNE*, à savoir protéger les intérêts du plus grand nombre d'employés possible.

In my view, the impetus behind the termination of employment has no bearing upon the ability of the dismissed employee to cope with the sudden economic dislocation caused by unemployment. As all dismissed employees are equally in need of the protections provided by the *ESA*, any distinction between employees whose termination resulted from the bankruptcy of their employer and those who have been terminated for some other reason would be arbitrary and inequitable. Further, I believe that such an interpretation would defeat the true meaning, intent and spirit of the *ESA*. Therefore, I conclude that termination as a result of an employer's bankruptcy does give rise to an unsecured claim provable in bankruptcy pursuant to s. 121 of the *BA* for termination and severance pay in accordance with ss. 40 and 40*a* of the *ESA*. Because of this conclusion, I do not find it necessary to address the alternative finding of the trial judge as to the applicability of s. 7(5) of the *ESA*.

41 À mon avis, les raisons qui motivent la cessation d'emploi n'ont aucun rapport avec la capacité de l'employé congédié de faire face au bouleversement économique soudain causé par le chômage. Comme tous les employés congédiés ont également besoin des protections prévues par la *LNE*, toute distinction établie entre les employés qui perdent leur emploi en raison de la faillite de leur employeur et ceux qui ont été licenciés pour quelque autre raison serait arbitraire et inéquitable. De plus, je pense qu'une telle interprétation irait à l'encontre des sens, intention et esprit véritables de la *LNE*. Je conclus donc que la cessation d'emploi résultant de la faillite de l'employeur donne effectivement naissance à une réclamation non garantie prouvable en matière de faillite au sens de l'art. 121 de la *LF* en vue d'obtenir une indemnité de licenciement et une indemnité de cessation d'emploi en conformité avec les art. 40 et 40*a* de la *LNE*. En raison de cette conclusion, j'estime inutile d'examiner l'autre conclusion tirée par le juge de première instance quant à l'applicabilité du par. 7(5) de la *LNE*.

I note that subsequent to the Rizzo bankruptcy, the termination and severance pay provisions of the *ESA* underwent another amendment. Sections

42 Je fais remarquer qu'après la faillite de Rizzo, les dispositions relatives à l'indemnité de licenciement et à l'indemnité de cessation d'emploi de la

74(1) and 75(1) of the *Labour Relations and Employment Statute Law Amendment Act, 1995*, S.O. 1995, c. 1, amend those provisions so that they now expressly provide that where employment is terminated by operation of law as a result of the bankruptcy of the employer, the employer will be deemed to have terminated the employment. However, s. 17 of the *Interpretation Act* directs that, "[t]he repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law". As a result, I note that the subsequent change in the legislation has played no role in determining the present appeal.

*LNE* ont été modifiées à nouveau. Les paragraphes 74(1) et 75(1) de la *Loi de 1995 modifiant des lois en ce qui concerne les relations de travail et l'emploi*, L.O. 1995, ch. 1, ont apporté des modifications à ces dispositions qui prévoient maintenant expressément que, lorsque la cessation d'emploi résulte de l'effet de la loi à la suite de la faillite de l'employeur, ce dernier est réputé avoir licencié ses employés. Cependant, comme l'art. 17 de la *Loi d'interprétation* dispose que «[l]'abrogation ou la modification d'une loi n'est pas réputée constituer ou impliquer une déclaration portant sur l'état antérieur du droit», je précise que la modification apportée subséquemment à la loi n'a eu aucune incidence sur la solution apportée au présent pourvoi.

## 6. Disposition and Costs

43 I would allow the appeal and set aside paragraph 1 of the order of the Court of Appeal. In lieu thereof, I would substitute an order declaring that Rizzo's former employees are entitled to make claims for termination pay (including vacation pay due thereon) and severance pay as unsecured creditors. As to costs, the Ministry of Labour led no evidence regarding what effort it made in notifying or securing the consent of the Rizzo employees before it discontinued its application for leave to appeal to this Court on their behalf. In light of these circumstances, I would order that the costs in this Court be paid to the appellant by the Ministry on a party-and-party basis. I would not disturb the orders of the courts below with respect to costs.

*Appeal allowed with costs.*

*Solicitors for the appellants: Sack, Goldblatt, Mitchell, Toronto.*

*Solicitors for the respondent: Minden, Gross, Grafstein & Greenstein, Toronto.*

*Solicitor for the Ministry of Labour for the Province of Ontario, Employment Standards Branch: The Attorney General for Ontario, Toronto.*

## 6. Dispositif et dépens

Je suis d'avis d'accueillir le pourvoi et d'annuler le premier paragraphe de l'ordonnance de la Cour d'appel. Je suis d'avis d'y substituer une ordonnance déclarant que les anciens employés de Rizzo ont le droit de présenter des demandes d'indemnité de licenciement (y compris la paie de vacances due) et d'indemnité de cessation d'emploi en tant que créanciers ordinaires. Quant aux dépens, le ministère du Travail n'ayant produit aucun élément de preuve concernant les efforts qu'il a faits pour informer les employés de Rizzo ou obtenir leur consentement avant de se désister de sa demande d'autorisation de pourvoi auprès de notre Cour en leur nom, je suis d'avis d'ordonner que les dépens devant notre Cour soient payés aux appelants par le ministère sur la base des frais entre parties. Je suis d'avis de ne pas modifier les ordonnances des juridictions inférieures à l'égard des dépens.

*Pourvoi accueilli avec dépens.*

*Procureurs des appelants: Sack, Goldblatt, Mitchell, Toronto.*

*Procureurs de l'intimée: Minden, Gross, Grafstein & Greenstein, Toronto.*

*Procureur du ministère du Travail de la province d'Ontario, Direction des normes d'emploi: Le procureur général de l'Ontario, Toronto.*

# 23

**PUBLIC VERSION**



Reference: *Sears Canada Inc. v. Parfums Christian Dior Canada Inc. and Parfums Givenchy Canada Ltd.*, 2007 Comp. Trib. 6
File No.: CT-2007-001
Registry Document No.: 0030

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an application under section 103.1 of the *Competition Act* by Sears Canada Inc. for leave to make an application under section 75 of the *Competition Act*

B E T W E E N :

**Sears Canada Inc.**
(applicant)

and

**Parfums Christian Dior Canada Inc. and**
**Parfums Givenchy Canada Ltd.**
(respondents)

Date of hearing: 20070314
Presiding Judicial Member: Simpson J. (Chair)
Date of Reasons and Order: March 23, 2007
Reasons and Order signed by: Madam Justice S. Simpson

**REASONS FOR ORDER AND ORDER DISMISSING AN APPLICATION FOR LEAVE UNDER SECTION 103.1 OF THE ACT**

## INTRODUCTION

**[1]** Sears Canada Inc. has applied under subsection 103.1(7) of the *Competition Act*, R.S.C. 1985, c. C-34 (the Act) for leave to commence an application for a supply order based on the Respondents' refusal to supply the Prestige Fragrances and Cosmetics described in paragraph 5 below.



## THE PARTIES

**[2]** Sears Canada Inc. (Sears) is incorporated pursuant to the laws of Canada and is a multi-channel, multi-product retailer with a network that includes 196 company-owned stores, 178 dealer stores, more than 1850 catalogue merchandise pick-up locations and internet shopping.

**[3]** Parfums Christian Dior Canada Inc. (Dior) is a Quebec corporation and Parfums Givenchy Canada Ltd. (Givenchy) is incorporated pursuant to the laws of Ontario. Both Dior and Givenchy are wholly-owned subsidiaries of LVMH Louis Vuitton Möet Hennessy.

## THE EVIDENCE

**[4]** Sears' evidence is provided in an affidavit sworn by Carol Wheatley on February 22, 2007 (the Wheatley Affidavit). She describes her present position and experience as follows:

> I am the General Merchandise Manager, Cosmetics and Accessories, of the Applicant, Sears Canada Inc. ("Sears"). I have held this position since August 1, 2004. In my position, I am responsible for developing and managing Sears' Cosmetics and Accessories categories. Prior to this, I held the position of Shop Co-ordinator, Cosmetics at Sears from June 1999 to August 2004. Prior to this, I was a Buyer, Fragrances, at T. Eaton & Co. Ltd. from May 1998 to June 1999, and for the thirteen years prior to that, I held various positions at Quadrant Cosmetics, Sanofi Beaute / Parfums Stern, and Germaine Monteil / Revlon, all of which are cosmetics manufacturers or distributors.

## THE SUPPLY

**[5]** For at least fourteen years, Dior has supplied Sears with Dior fragrances, make-up and skin care products (collectively the Dior Products). They are currently sold in 104 of Sears' 196 company-owed department stores. In the same period, Givenchy supplied Sears with Givenchy fragrances (the Givenchy Products) which are sold in 121 of Sears' 196 company stores.

**[6]** The Dior and Givenchy Products are included in an industry product category known as Prestige Fragrances and Cosmetics. Counsel for Sears indicated that Dior make-up and skin care products are one of the fifteen to twenty brands of Prestige Cosmetics sold in Sears stores. He derived this information from an analysis of the exhibits to the Wheatley Affidavit.

**[7]** The sale of the Dior and Givenchy Products generates revenues for Sears of approximately sixteen million dollars per annum. Sears' annual revenue from the sale of all its products exceeds six billion dollars.

**THE REFUSAL TO SUPPLY**

**[8]** In December 2006, Givenchy advised Sears that it could not supply the Givenchy Products because of "shipping" issues. Then on January 18, 2007, both Dior and Givenchy indicated that they would no longer be doing business with Sears. In a letter of January 24, 2007, counsel for the Respondents terminated the supply of the Dior and Givenchy Products to Sears effective March 24, 2007. However, by agreement during this proceeding, that date was extended to May 4, 2007.

**[9]** Sears speculates that the refusal to supply was prompted by the discounts it offered in December 2006 on all cosmetics products. The Dior and Givenchy Products were included.

**FACTS NOT IN DISPUTE**

**[10]** Revenues from the sale of the Dior and Givenchy Products represent an insignificant percentage **[CONFIDENTIAL]** % of Sears' overall sales and a modest percentage **[CONFIDENTIAL]** % of Sears total cosmetics business. The Dior and Givenchy Products with sales of $ **[CONFIDENTIAL]** and $ **[CONFIDENTIAL]** in 2006 ranked **[CONFIDENTIAL]** and **[CONFIDENTIAL]** respectively among cosmetic lines sold in Sears stores. The five top selling cosmetic lines had sales of **[CONFIDENTIAL]** in 2006.

**[11]** Sears has been losing market share to The Bay in Prestige Fragrances and Cosmetics over the past three years.

**[12]** In addition to Sears, London Drugs has also been refused supply of the Dior and Givenchy Products. This means that only The Bay, Holt Renfrew and Shoppers Drug Mart will continue to distribute the Dior and Givenchy Products in Canada. The status of Jean Coutu as a distributor is uncertain but it is probable that it has also been refused supply.

**[13]** The Dior and Givenchy Products have not traditionally competed on the basis of price with other brands of Prestige Fragrances and Cosmetics.

**THE ISSUES**

**[14]** The following are the issues:

1. What is Sears' business for the purpose of this application?
2. Is there reason to believe that Sears is directly and substantially affected in its business?
3. Is there reason to believe that an order could be made under subsection 75(1) of the Act?

**Issue 1 – Sears' Business**

**[15]** The relevant language in subsection 103.1(7) and paragraph 75(1)(*a*) and subsection 75(2) of the Act is highlighted below:

| | |
|---|---|
| **103.1** (1) Any person may apply to the Tribunal for leave to make an application under section 75 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under section 75 or 77. | **103.1** (1) Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 75 ou 77. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde. |
| … | … |
| (7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section. | (7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles. |
| **75.** (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that<br>(*a*) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms, | **75.** (1) Lorsque, à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, le Tribunal conclut :<br>*a*) qu'une personne est sensiblement gênée dans son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer un produit de façon suffisante, où que ce soit sur un marché, aux conditions de commerce normales; |
| **…** | **…** |
| **75.** (2) For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.<br>[my emphasis] | **75.** (2) Pour l'application du présent article, n'est pas un produit distinct sur un marché donné l'article qui se distingue des autres articles de sa catégorie en raison uniquement de sa marque de commerce, de son nom de propriétaire ou d'une semblable particularité à moins que la position de cet article sur ce marché ne soit à ce point dominante qu'elle nuise sensiblement à la faculté d'une personne à exploiter une entreprise se rapportant à cette catégorie d'articles si elle n'a pas accès à l'article en question.<br>[je souligne] |

***The cases***

**[16]** Sears says that this application for leave is significant because it raises for the first time the question of how the Tribunal will approach the issue of a substantial effect on a multi-product business when the refused items impact only one sector or segment of the overall business. However, this issue is not new. It has already been considered in five cases: Chrysler, three Pharmacy cases and Construx Engineering.

**[17]** In *Director of Investigation & Research v. Chrysler Canada Ltd.*, 27 C.P.R. (3d) 1, aff'd 38 C.P.R. (3d) 25 (F.C.A.), the Director of Investigation and Research applied for an order under section 75 of the Act. The Tribunal was required to consider the language of paragraph 75(1)(*a*) of the Act and determine whether Mr. Brunet had been substantially affected in his business by Chrysler's (the Respondent's) refusal to supply Chrysler auto parts. The Director argued that the business at issue was the sale of Chrysler auto parts. Chrysler said that Mr. Brunet's overall auto parts export business was the business at issue and not just the segment involving Chrysler parts and that this broader interpretation was mandated by the definition of "business" in subsection 2(1) of the Act.

**[18]** The Tribunal found that Chrysler's refusal to supply had caused losses of approximately $200,000 in sales and $30,000 in gross profits and that those losses were substantial for Mr. Brunet's small business. The Tribunal concluded as follows "A majority of the Tribunal agrees with the submission of the respondent that the effect on the entire activity of which the refused supplies are a part should be used." The Tribunal then said that the question of whether the refused product accounted for a large percentage of the overall business was the first issue to be addressed. The Tribunal concluded that Mr. Brunet's overall business had been substantially affected by Chrysler's refusal to supply its auto parts.

**[19]** The three Pharmacy cases are *1177057 Ontario Inc. (c.o.b. as Broadview Pharmacy) v. Wyeth Canada Inc.*, 2004 Comp. Trib. 22, *Paradise Pharmacy Inc. v. Novartis Pharmaceuticals Canada Inc.*, 2004 Comp. Trib. 21 and *Broadview Pharmacy v. Pfizer Canada Inc.*, 2004 Comp. Trib. 23. These cases involved applications for leave under subsection 103.1(7) of the Act. In each case, the Tribunal considered whether the withdrawal of certain brands of prescription drugs had had a direct and substantial effect on the applicants' businesses. In each case, the pharmacy sold products other than prescription drugs and, in each case, Blais J. considered the loss of the prescription drug sales in the context of the pharmacy's overall business.

**[20]** Finally, in *Construx Engineering Corporation v. General Motors of Canada*, 2005 Comp. Trib. 21, the applicant for leave was a wholesale dealer and broker of transportation products including automobiles. GM had refused supply. The only evidence before the Tribunal was that in 2003, the sale of GM vehicles represented 67% of Construx' sales of new motor vehicles. Leave under subsection 103.1(7) of the Act was refused because there was no evidence to show the impact of GM's refusal to supply cars on the whole enterprise.

**[21]** Based on this review, I have concluded that the Tribunal has consistently taken the position that a substantial effect on a business is measured in the context of the entire business.

***The parties' submissions***

**[22]** Sears' written representations do not include a description of Sears' business for the purpose of this application for leave. However, in his oral submissions, counsel for Sears said that, for the purpose of this application, Sears' business is the sale of the Dior and Givenchy Products.

**[23]** The Respondents say that Sears' business is the operation of department stores.

**[24]** The Wheatley Affidavit provides the evidence which was referred to in support of Sears' position. Carol Wheatley says that:

- Consumers of Prestige Fragrances and Cosmetics are intensely brand loyal and, if their preferred product is not available at Sears, they will seek it elsewhere.
- The Dior and Givenchy Products are unique and are "not" or "often not" interchangeable with other brands of Prestige Fragrances and Cosmetics.
- The Dior and Givenchy Products are the subject of heavy investment in research and development which results in innovative and unique products.
- Dior Givenchy Products are advertised as status symbols in association with their brand names.
- Along with other brands of Prestige Fragrances and Cosmetics, the Dior and Givenchy Products are distributed on a selective basis.
- The Dior and Givenchy Products compete with other brands of Prestige Fragrances and Cosmetics on the basis of service and advertising with celebrity endorsements rather than on price.

**[25]** In my view, this evidence is not helpful. It might be apt if used to argue that the Dior and Givenchy Products are "products" as that term is used in paragraph 75(1)(*a*) of the Act but it does not assist in reaching a conclusion about the breadth of Sears' business for the purpose of subsection 103.1(7) of the Act.

***The Language of the Act***

**[26]** As shown in paragraph 15 above, subsection 75(2) of the Act refers to a person carrying on business in a class of articles. It is therefore my view that, if Parliament had intended the substantial effect in subsection 103.1(7) and paragraph 75(1)(*a*) of the Act to be on a business in a class of articles such as the Dior and Givenchy Products, it would have said so.

***Conclusion - Issue 1***

**[27]** In my view, both the Tribunal's earlier decisions and the plain language used in the subsection lead to the conclusion that Sears' entire business as a department store retailer is the business under consideration for the purposes of subsection 103.1(7) of the Act.

**Issue 2 – Substantial Effect**

**[28]** Sears suggested that the French version of paragraph 75(1)(*a*) which uses the phrase "sensiblement gênée dans son entreprise" indicates that a substantial effect need not be a very significant or important effect.

**[29]** In this regard, Sears relied on a Larousse French English Dictionary at page 834 to show that "sensiblement" means "appreciably", "noticeably" and "markedly" (*Grand Dictionnaire Larousse Chambers, Anglais-Français Français-Anglais*, s.v. "sensiblement"). Further, it noted that according to Collins Robert French-English Dictionary at page 328, "gêner" as a verb means to "bother", "disturb" or "be in the way" (*Collins Robert French-English English French Dictionary*, 2nd ed., s.v. "gêner").

**[30]** It is a principle of statutory interpretation that bilingual legislation may be construed by determining the meaning shared by the two versions of the provision. The Harrap French-English Dictionary defines "sensiblement" as "appreciable; perceptible; obviously; to a considerable extent" and the word is defined in Le Petit Robert as "d'une manière appreciable" (see *Grand Harrap Dictionnaire français-anglais et anglais-français*, s.v. "sensiblement" and *Le Petit Robert*, s.v. "sensiblement").

**[31]** In my view, there is nothing in the French language version of paragraph 75(1)(*a*) that detracts from the notion that substantial in the English carries meanings such as important and significant. This is the meaning shared by the two versions and is the one which has already been confirmed by this Tribunal in *Chrysler* where it said that "important" was an acceptable synonym for substantial.

**[32]** Sears says that the substantial effect on its business is the combined impact of the following:

(i) $16,000,000 in lost sales
(ii) Loss of cross-segment sales
(iii) A negative impact on Sears' ability to negotiate with and attract other brands of Prestige Fragrances and Cosmetics
(iv) A negative impact on Sears' ability to compete with The Bay
(v) A negative impact on Sears' marketing strategy and reputation in the marketplace

I will deal with each in turn.

***(i) Lost Sales***

**[33]** As described above, the Dior and Givenchy Products generate revenues of $16 million. However, some of the lost sales will be recouped when customers switch to other brands of Prestige Fragrances and Cosmetics at Sears, so the $16 million figure is slightly high. The Wheatley Affidavit acknowledges this in paragraph 61(a) which says:

> First, Sears will lose a significant portion of the $16 million in annual sales revenue from these products, because only a fraction of the customers will select an alternate brand. The remaining sales revenue will simply be lost as customers look for that product elsewhere.

In my view, whether the figure is $16 million or something less, it is insignificant when considered in the context of Sears' $6 billion overall business.

***(ii) Cross-Segment Sales***

**[34]** Sears says that the Dior and Givenchy Products generate $14 million in sales of other products at Sears. However, this figure is difficult to assess because it is not clear what portion of the sales were made to customers who were motivated to go to Sears to purchase a Dior or Givenchy Product and then purchased something else. Sales of that kind would be relevant as the Wheatley Affidavit acknowledges. However, sales to customers who went to Sears for other products and happened to purchase a Dior or Givenchy Product would not count as relevant cross-segment sales. Since the value of such sales is not in the evidence, the cross-segment sales figure of $14 million must be discounted by an unknown amount. Whatever that amount may be it will not, even when combined with lost sales, be substantial in the context of Sears' entire business.

***(iii) Dealings with other Brands***

**[35]** Sears says that it will suffer harm because the bargaining position and negotiating power of other brands of Prestige Fragrances and Cosmetics will be improved if Sears no longer carries the Dior and Givenchy Products. The Wheatley Affidavit states this as a fact but in my view it is mere speculation because there is no discussion that shows that it is based on the deponent's experience or on comments made by personnel who work for other brands. For this reason, I have given this assertion of alleged harm little weight.

***(iv) Competition with The Bay***

**[36]** The Wheatley Affidavit shows that Sears has lost market share in Prestige Fragrances and Cosmetics in the last three years. It decreased from 26.3% in 2004 to 23.5% in 2005 and to 23.0% in 2006. The concern is that the loss of the Dior and Givenchy Products will contribute to a continuation of the trend. As the loyal Dior and Givenchy customers are lost, Sears says they will be lost principally to The Bay and, while there is no evidence quantifying this effect, I accept Sears' submission.

***(v) Sears Marketing***

**[37]** Sears treats Prestige Fragrances and Cosmetics and Accessories as one of six destination categories in its department stores. The Wheatley Affidavit indicates that Sears must have the Dior and Givenchy Products to convey the message to the market that this destination is credible. Sears says that its reputation and market image will suffer if it does not carry a full range of Prestige Fragrances and Cosmetics. I accept that this could be true to some degree.

**[38]** Sears also uses Dior as the "central magnet" in its Toronto Eaton Centre and Vancouver Pacific Centre flagship stores. The evidence shows that Dior's display is one of the first things customers see when they use one of the ground floor entrances to the stores. As well, in the Calgary store and Rideau Centre store in Ottawa, Dior has branded displays in key locations. Sears estimates that it will cost $600,000 to remove and replace the Dior displays. However, the Respondents have said in paragraph 11 of their written representations that they are willing to cover reasonable costs associated with the removal or renovation of any related displays or shelving units.

***Conclusion – Issue 2***

**[39]** I have concluded that, when taken together, these submissions show that Sears will be directly affected by the Respondents' refusal to supply the Dior and Givenchy Products, but that the effect on Sears' department store business will not be substantial.

**[40]** Accordingly, applying the test for leave approved by the Federal Court of Appeal in *Symbol Technologies ULC v. Barcode Systems Inc.*, [2004] F.C.A. 339 at paragraph 16, I am not satisfied that Sears has provided sufficient credible evidence to give rise to a *bona fide* belief that it may have been directly and substantially affected in its business by the Respondents' refusal to supply the Dior and Givenchy Products.

**Issue 3 – A section 75 order**

**[41]** In view of the previous conclusion, it is not necessary to consider whether the Tribunal could make an order under paragraphs 75(1)(*a*-*e*) of the Act.

**FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:**

**[42]** The application for leave is hereby dismissed with costs.

DATED at Ottawa, this 23th day of March, 2007

SIGNED on behalf of the Tribunal by the Chairperson of the Tribunal.

(s) Sandra J. Simpson

APPEARANCES:

For the applicant:

Sears Canada Inc.:

John F. Rook, Q.C.
Derek J. Bell
Linda Visser

For the respondents:

Parfums Christian Dior Canada Inc.
Parfums Givenchy Canada Ltd.

James Orr
Jennifer Cantwell

# 24

A-39-04
2004 FCA 339

**Symbol Technologies Canada ULC** (*Appellant*) (*Respondent*)

*v.*

**Barcode Systems Inc.** (*Respondent*) (*Applicant*)

***INDEXED AS: SYMBOL TECHNOLOGIES CANADA ULC v. BARCODE SYSTEMS INC. (F.C.A.)***

Federal Court of Appeal, Richard C.J., Létourneau and Rothstein JJ.A.—Winnipeg, September 28; Ottawa, October 7, 2004.

*Competition — Appeal from Competition Tribunal decision granting respondent leave to make Competition Act, s. 75 application for order requiring appellant to accept respondent as customer against appellant — Appellant, Canadian subsidiary of bar code equipment manufacturer, sells, distributes products in Canada — Respondent taking over distribution in Western Canada in about 1994 — Since 2003, appellant refusing to deal with respondent — Respondent bringing leave application pursuant to Act, s. 103.1(1), alleging appellant engaged in restrictive trade practice of "refusal to deal" within meaning of Act, s. 75 — Tribunal granting leave under Act, s. 103.1(7) — Appellant arguing Tribunal erred in granting leave because not taking into account all elements of refusal to deal set out in Act, s. 75(1) — As question of law not engaging particular expertise of Tribunal, correctness appropriate standard of review — Test for granting leave in s. 103.1(7) application set out in National Capital News Canada v. Canada (Speaker of the House of Commons) applied: whether sufficient credible evidence of what is alleged to give rise to bona fide belief by Tribunal that applicant directly, substantially affected in its business by reviewable restrictive trade practice that could be subject of Tribunal order under Act, s. 75 or 77 — That threshold for obtaining leave lower than balance of probabilities — All elements of reviewable practice of refusal to deal, set out in Act, s. 75(1), need to be addressed by Tribunal on leave application in order for it to reach conclusion as to whether practice alleged could be subject to order — Court resolving matter without remitting it to Tribunal — Evidence that respondent substantially affected in its business — Real controversy whether evidence refusal to deal likely to have adverse effect on competition in market (Act, s. 75(1)(e)) — Leave application not appropriate occasion to interpret Act, s. 75(1)(e) for first time — Benefit of any doubt working in favour of granting leave — Sufficient*

A-39-04
2004 CAF 339

**Symbol Technologies Canada ULC** (*appelante*) (*défenderesse*)

*c.*

**Barcode Systems Inc.** (*intimée*) (*demanderesse*)

***RÉPERTORIÉ: SYMBOL TECHNOLOGIES CANADA ULC c. BARCODE SYSTEMS INC. (C.A.F.)***

Cour d'appel fédérale, juge en chef Richard, juges Létourneau et Rothstein, J.C.A.—Winnipeg, 28 septembre; Ottawa, 7 octobre 2004.

*Concurrence — Appel d'une décision du Tribunal de la concurrence accordant à l'intimée la permission de présenter contre l'appelante une demande fondée sur l'art. 75 de la Loi sur la concurrence en vue d'obtenir une ordonnance enjoignant à celle-ci de l'accepter comme cliente — L'appelante, filiale canadienne d'un fabricant de lecteurs de codes à barres, vend et distribue des produits au Canada — Vers 1994, l'intimée a pris en charge la distribution dans l'Ouest canadien — Depuis 2003, l'appelante refuse de traiter avec l'intimée — L'intimée a présenté une demande de permission en vertu de l'art. 103.1(1) de la Loi, alléguant que l'appelante se livrait à une pratique restrictive du commerce, à savoir le refus de vendre au sens de l'art. 75 de la Loi — Le Tribunal a accordé la permission en vertu de l'art. 103.1(7) de la Loi — L'appelante soutient que le Tribunal a commis une erreur en accordant la permission parce qu'il n'a pas pris en considération tous les éléments du refus de vendre énoncés à l'art. 75(1) de la Loi — Comme les questions de droit ne font appel à aucune expertise particulière du Tribunal, la norme applicable est celle de la décision correcte — Le critère applicable pour faire droit à la demande de permission en vertu de l'art. 103.1(7), énoncé dans la décision National Capital News Canada c. Canada (Président de la Chambre des communes), s'appliquait: il faut se demander s'il existe suffisamment d'éléments de preuve crédibles établissant le bien-fondé des allégations pour que le Tribunal puisse croire de bonne foi que le demandeur a été directement et sensiblement gêné dans son entreprise à cause d'une pratique restrictive susceptible d'examen et que cette pratique pourrait faire l'objet d'une ordonnance du Tribunal en vertu des art. 75 ou 77 — Cette charge qui incombe à l'auteur de la demande de permission est moins lourde que celle imposée par la norme de la prépondérance de la preuve — Tous les éléments de la pratique susceptible d'examen que constitue le refus de vendre, énoncés à l'art. 75(1), doivent être considérés*

*evidence constituting reasonable grounds for believing refusal to deal could be subject to order under Act — Appeal dismissed.*

This was an appeal from a decision of the Competition Tribunal granting leave to the respondent to make an application against the appellant. The appellant is the Canadian subsidiary of Symbol Technologies Inc. (Symbol US), the largest single manufacturer of bar code equipment in the world. The appellant sells and distributes Symbol US products in Canada. In or about 1994, the respondent took over the appellant's distribution in Western Canada. Since May 1, 2003, the appellant refused to deal with the respondent. The respondent's application for leave to apply for an order under *Competition Act* subsection 75(1) requiring Symbol to accept Barcode as a customer before the Tribunal (brought pursuant to subsection 103.1(1) of the Act) alleged that Symbol was engaging in the reviewable restrictive trade practice of "refusal to deal" within the meaning of section 75 of the Act. Leave was granted and the present appeal ensued. The appellant argued that the Tribunal member who granted leave erred in law by refusing to take into account all of the elements of the reviewable practice of refusal to deal set out in subsection 75(1) and that the decision to grant leave should be quashed.

*Held*, the appeal should be dismissed.

Subsection 103.1(7) of the Act provides that to grant leave, the Tribunal must have reason to believe that the applicant is directly and substantially affected in its business by a reviewable restrictive trade practice that could be the subject of a Tribunal order under section 75 or 77 of the Act. The decision to grant leave is a discretionary one. However, the question at issue here whether the Tribunal is required to consider all the elements of the restrictive trade practice of refusal to deal was one of law. This question of statutory interpretation does not engage any particular expertise of the Tribunal. Thus, the standard of review was correctness.

*par le Tribunal qui se penche sur une demande de permission pour que celui-ci puisse se prononcer sur la question de savoir si la pratique alléguée pourrait faire l'objet d'une ordonnance — La Cour a tranché l'affaire sans la renvoyer au Tribunal — Preuve a été faite que l'intimée est sensiblement gênée dans son entreprise — Le point véritablement controversé est de savoir s'il y a preuve que le refus de vendre aura vraisemblablement pour effet de nuire à la concurrence dans un marché (art. 75(1)e) de la Loi) — La demande de permission n'est pas l'occasion appropriée pour interpréter l'art. 75(1)e) de la Loi pour la première fois — Le bénéfice du doute devrait jouer en faveur de l'octroi de la permission — La preuve est suffisante pour fonder des motifs raisonnables de croire que le refus de vendre pourrait faire l'objet d'une ordonnance en vertu de la Loi — Appel rejeté.*

Il s'agissait de l'appel d'une décision du Tribunal de la concurrence accordant à l'intimée la permission de présenter une demande à l'encontre de l'appelante. L'appelante est la filiale canadienne de Symbol Technologies Inc. (Symbol US), le principal fabricant de lecteurs de codes à barres au monde. L'appelante vend et distribue les produits Symbol US au Canada. Vers 1994, l'intimée a pris en charge le service de distribution de l'appelante dans l'Ouest canadien. Depuis le 1er mai 2003, l'appelante a refusé de traiter avec l'intimée. Dans sa demande présentée au Tribunal (en vertu du paragraphe 103.1(1) de la *Loi sur la concurrence*) en vue d'obtenir la permission de demander que soit prononcée, en vertu du paragraphe 75(1) de la Loi, une ordonnance enjoignant à Symbol de l'accepter comme cliente, l'intimée a allégué que Symbol se livrait à une pratique restrictive du commerce susceptible d'examen, à savoir le refus de vendre au sens de l'article 75 de la Loi. La permission a été accordée et le présent appel a été interjeté. L'appelante a soutenu que le membre du Tribunal qui a fait droit à la demande de permission a commis une erreur de droit en refusant de tenir compte de tous les éléments de la pratique susceptible d'examen que constitue le refus de vendre, énoncés au paragraphe 75(1) de la Loi, et que la décision d'accorder l'autorisation devrait être annulée.

*Arrêt*: l'appel doit être rejeté.

Le paragraphe 103.1(7) de la Loi prévoit que pour faire droit à la demande, le Tribunal doit avoir des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise par une pratique restrictive du commerce susceptible d'examen et pouvant faire l'objet d'une ordonnance en vertu des articles 75 ou 77 de la Loi. La décision de faire droit ou non à la demande de permission est discrétionnaire. Toutefois, la question en litige en l'espèce, qui consistait à savoir si, dans l'exercice de son pouvoir discrétionnaire, le Tribunal devait considérer tous les éléments de la pratique commerciale restrictive que constitue le refus de vendre, énoncés au paragraphe 75(1), en était une de droit.

The test for granting leave in an application under subsection 103.1(7) found in *National Capital News Canada v. Canada (Speaker of the House of Commons)* was adopted. The application must be supported by sufficient credible evidence to give rise to a *bona fide* belief by the Tribunal that the applicant may have been directly and substantially affected in its business by a reviewable practice, and that the practice in question could be subject to an order. This threshold is lower than proof on a balance of probabilities. That said, the elements of the reviewable trade practice of refusal to deal set out in subsection 75(1) must all be shown and addressed by the Tribunal before it may make an order, not only the merits of the application, but also on an application for leave under subsection 103.1(7). As long as each element is considered, even summarily, the Tribunal's decision to grant or refuse leave will be treated with deference.

Use of essentially the same words in subsection 103.1(7) and paragraph 75(1)(*a*) "that the applicant is directly and substantially affected in the applicants' business", while there are no such similar words in paragraphs 75(1)(*b*) to (*e*) in subsection 103.1(7), does not imply that the statutory elements in paragraphs 75(1)(*b*) to (*e*) need not be considered on a leave application. To determine the leave application, the Tribunal must consider whether the practice that is alleged could be subject to an order under subsection 75(1); and it cannot reach such a conclusion without considering all the elements of refusal to deal set out in that subsection. Also, the purpose of the Act is to maintain and encourage competition in Canada, and so at the leave stage, there must be some evidence by the applicant and some consideration by the Tribunal of the effect of the refusal to deal on competition in a market (paragraph 75(1)(*e*) of Act).

It was deemed appropriate for the Court to resolve the matter instead of remitting the matter to the Tribunal for redetermination as leave applications were intended to be dealt with summarily. There was evidence that the respondent was substantially affected in its business due to its inability to obtain the appellant's products. The only real controversy was whether there was evidence that the appellant's refusal to deal was likely to have an adverse effect on competition in a

Cette question d'interprétation législative ne fait appel à aucune expertise particulière du Tribunal. La norme applicable était donc celle de la décision correcte.

Le critère applicable pour faire droit à la demande de permission en vertu du paragraphe 103.1(7), énoncé dans la décision *National Capital News Canada c. Canada (Président de la Chambre des communes)*, a été adopté. La demande doit être appuyée par des éléments de preuve crédibles suffisants pour que le Tribunal puisse croire de bonne foi que le demandeur a pu être directement et sensiblement gêné dans son entreprise à cause d'une pratique susceptible d'examen et que cette pratique pourrait faire l'objet d'une ordonnance. Cette norme de preuve est moins élevée que la norme de la prépondérance de la preuve. Cela dit, les éléments de la pratique commerciale susceptible d'examen que constitue le refus de vendre, énoncés au paragraphe 75(1), doivent tous être prouvés et considérés par le Tribunal pour que celui-ci puisse rendre une ordonnance et ce, non seulement lorsqu'il examine l'affaire au fond, mais aussi lorsqu'il se penche sur une demande de permission selon le paragraphe 103.1(7). Pourvu que chaque élément soit pris en considération, même brièvement, la décision du Tribunal de faire droit ou non à la demande de permission sera traitée avec déférence.

Le fait que les termes employés au paragraphe 103.1(7), à savoir «que l'auteur de la demande est directement et sensiblement gêné dans son entreprise», soient essentiellement les mêmes que ceux utilisés à l'alinéa 75(1)*a*), alors que ce paragraphe ne comporte pas de termes similaires à ceux employés aux alinéas 75(1)*b*) à *e*), ne signifie pas que les éléments énoncés aux alinéas 75(1)*b*) à *e*) n'ont pas à être considérés au stade de la demande de permission. Pour se prononcer sur la demande de permission, le Tribunal doit se demander si la pratique alléguée pourrait faire l'objet d'une ordonnance en vertu du paragraphe 75(1); et il ne peut tirer pareille conclusion sans considérer tous les éléments du refus de vendre, énoncés à ce même paragraphe. De plus, comme l'objet fondamental de la Loi est de préserver et de favoriser la concurrence au Canada, l'auteur de la demande doit, au stade de la demande de permission, fournir certains éléments de preuve concernant l'effet du refus de vendre sur la concurrence dans un marché (alinéa 75(1)*e*) de la Loi), et le Tribunal doit prendre ces éléments en considération.

On a jugé qu'il était approprié pour la Cour de trancher l'affaire plutôt que de la renvoyer au Tribunal pour qu'il rende une nouvelle décision puisque les demandes de permission sont censées revêtir un caractère sommaire. Preuve a été faite que l'intimée a été sensiblement gênée dans son entreprise en raison de son incapacité à obtenir les produits de l'appelante. Le seul point véritablement controversé était de savoir s'il y avait preuve que le refus de vendre de l'appelante aurait

market. The relevant provision, paragraph 75(1)(*e*), has not been interpreted by the Tribunal or this Court, and a leave application was not considered the appropriate occasion to do so. Therefore, if there were facts in the respondent's affidavit that might meet the requirements of paragraph 75(1)(*e*), the benefit of any doubt was to work in favour of granting leave. Here, there was sufficient evidence to constitute reasonable grounds to believe that the appellant's alleged refusal to deal could be the subject of an order under subsection 75(1): the respondent had somewhat of a presence in the Western Canadian market, and its difficult financial situation could be likely to impede its ability to be an effective competitor in that market.

vraisemblablement pour effet de nuire à la concurrence dans un marché. La disposition pertinente, l'alinéa 75(1)*e*), n'a jamais été interprétée par le Tribunal ou par la Cour, et une demande de permission n'était pas l'occasion appropriée pour le faire. Conséquemment, s'il y avait des faits énoncés dans la déclaration sous serment de l'intimée qui pouvaient satisfaire aux exigences de l'alinéa 75(1)*e*), le bénéfice du doute devait jouer en sa faveur. En l'espèce, la preuve était suffisante pour fonder des motifs raisonnables de croire que le refus de vendre allégué de l'appelante pourrait faire l'objet d'une ordonnance en vertu du paragraphe 75(1): l'intimée avait une certaine présence dans le marché de l'Ouest canadien, et sa situation financière difficile pouvait vraisemblablement gêner sa capacité à se positionner comme un concurrent dynamique dans ce marché.

STATUTES AND REGULATIONS JUDICIALLY CONSIDERED

*Competition Act*, R.S.C., 1985, c. C-34, ss. 1 (as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 19), 1.1 (as enacted *idem*), 75 (as am. *idem*, s. 45; 2002, c. 16, s. 11.1), 77 (as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1999, c. 2, s. 23; 2002, c. 16, ss. 11.2, 11.3), 103.1 (as enacted *idem*, s. 12).
*Competition Tribunal Act*, R.S.C., 1985 (2nd Supp.), c. 19, s. 13(1) (as am. by S.C. 2002, c. 8, s. 130), (2).

LOIS ET RÈGLEMENTS CITÉS

*Loi sur la concurrence*, L.R.C. (1985), ch. C-34, art. 1 (mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 19), 1.1 (édicté, *idem*), 75 (mod., *idem*, art. 45; 2002, ch. 16, art. 11.1), 77 (mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 45; L.C. 1999, ch. 2, art. 23; ch. 31, art. 52; 2002, ch. 16, art. 11.2, 11.3), 103.1 (édicté, *idem*, art. 12).
*Loi sur le Tribunal de la concurrence*, L.R.C. (1985) (2e suppl.), ch. 19, art. 13(1) (mod. par L.C. 2002, ch. 8, art. 130), (2).

CASES JUDICIALLY CONSIDERED

APPLIED:

*National Capital News Canada v. Canada (Speaker of the House of Commons)* (2002), 23 C.P.R. (4th) 77 (Comp. Trib.).

REFERRED TO:

*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; (2002), 208 D.L.R. (4th) 1; 37 Admin. L.R. (3d) 152; 90 C.R.R. (2d) 1; 18 Imm. L.R. (3d) 1; 281 N.R. 1.

JURISPRUDENCE CITÉE

DÉCISION APPLIQUÉE:

*National Capital News Canada c. Canada (Président de la Chambre des communes)* (2002), 23 C.P.R. (4th) 77 (Trib. conc.).

DÉCISION EXAMINÉE:

*Suresh c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2002] 1 R.C.S. 3; (2002), 208 D.L.R. (4th) 1; 37 Admin. L.R. (3d) 152; 90 C.R.R. (2d) 1; 18 Imm. L.R. (3d) 1; 281 N.R. 1.

APPEAL from a decision of the Competition Tribunal ([2004] C.C.T.D. No. 1 (Comp. Trib.) (QL)) granting leave to the respondent to make an application against the appellant. Appeal dismissed.

APPEL d'une décision du Tribunal de la concurrence ([2004] D.T.C.C. nº 1 (Trib. conc.) (QL)) accordant à l'intimée la permission de présenter une demande à l'encontre de l'appelante. Appel rejeté.

APPEARANCES:

*Steven E. Field* and *David G. Hill* for appellant (respondent).
*Lindy J. R. Choy* for respondent (applicant).

ONT COMPARU:

*Steven E. Field* et *David G. Hill* pour l'appelante (défenderesse).
*Lindy J. R. Choy* pour l'intimée (demanderesse).

SOLICITORS OF RECORD:

*Hill Abra Dewar*, Winnipeg, for appellant (respondent).
*Thompson Dorfman Sweatman LLP*, Winnipeg, for respondent (applicant).

*The following are the reasons for judgment rendered in English by*

ROTHSTEIN J.A.:

INTRODUCTION

[1] This is an appeal by Symbol Technologies Canada ULC (Symbol) from a decision of the Competition Tribunal [*Barcode Systems Inc. v. Symbol Technologies Canada ULC*, [2004] C.C.T.D. No. 1 (QL)] under subsection 103.1(7) [as enacted by S.C. 2002, c. 16, s. 12] of the *Competition Act*, R.S.C., 1985, c. C-34 [s. 1 (as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 19)] granting leave to the respondent Barcode Systems Inc. (Barcode) to make an application to the Tribunal against Symbol. In its leave application to the Tribunal, Barcode alleged that Symbol was engaging in the reviewable restrictive trade practice of "refusal to deal" within the meaning of section 75 [as am. *idem*, c. 19, s. 45; S.C. 2002, c. 16, s. 11.1] of the Act.

[2] Barcode's application before the Tribunal is for an order under subsection 75(1) of the *Competition Act* requiring Symbol to accept Barcode as a customer.

[3] In this appeal, Symbol says that the Tribunal member who granted leave erred in law by refusing to take into account statutory requirements and that the decision to grant leave should be quashed by this Court.

FACTS

[4] The facts are taken from the affidavit of David Sokolow, the President of Barcode. There has been no cross-examination on that affidavit. Symbol is the

AVOCATS INSCRITS AU DOSSIER:

*Hill Abra Dewar*, Winnipeg, pour l'appelante (défenderesse).
*Thompson Dorfman Sweatman LLP*, Winnipeg, pour l'intimée (demanderesse).

*Ce qui suit est la version française des motifs du jugement rendus par*

LE JUGE ROTHSTEIN, J.C.A.:

INTRODUCTION

[1] Symbol Technologies Canada ULC (Symbol) interjette appel d'une décision du Tribunal de la concurrence [*Barcode Systems Inc. c. Symbol Technologies Canada ULC*, [2004] D.T.C.C. nº 1 (QL)] accordant à l'intimée Barcode Systems Inc. (Barcode), suivant le paragraphe 103.1(7) [édicté par L.C. 2002, ch. 16, art. 12] de la *Loi sur la concurrence*, L.R.C. (1985), ch. C-34 [art. 1 (mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 19)], la permission de présenter une demande au Tribunal à l'encontre de Symbol. Dans sa demande de permission, Barcode a allégué que Symbol se livrait à une pratique restrictive du commerce susceptible d'examen, à savoir le refus de vendre au sens de l'article 75 [mod. *idem*, ch. 19, art. 45; L.C. 2002, ch. 16, art. 11.1] de la Loi.

[2] Dans sa demande présentée au Tribunal, Barcode demandait que soit prononcée, en vertu du paragraphe 75(1) de la *Loi sur la concurrence*, une ordonnance enjoignant à Symbol de l'accepter comme cliente.

[3] Dans le présent appel, Symbol déclare que le membre du Tribunal qui a fait droit à la demande de permission a commis une erreur de droit en refusant de tenir compte des exigences de la loi, et que la décision d'accorder l'autorisation devrait être annulée par la Cour.

FAITS

[4] Les faits sont tirés de l'affidavit de David Sokolow, président de Barcode. Il n'y a pas eu de contre-interrogatoire relativement à cet affidavit. Symbol est la

Canadian subsidiary of Symbol Technologies Inc. (Symbol US). Symbol US is the largest single manufacturer of bar code equipment in the world. Symbol sells and distributes Symbol US products in Canada. In or about 1994, Barcode took over Symbol's distribution in Western Canada.

[5] In or about January 2003, Symbol informed Barcode that it could no longer buy parts for Symbol products. In April 2003, Symbol informed Barcode that it would not accept purchase orders from Barcode. Barcode says that since May 1, 2003, Symbol has refused to deal with Barcode.

## RELEVANT STATUTORY PROVISIONS

[6] Until 2002, only the Commissioner of Competition could bring an application before the Competition Tribunal in respect of reviewable restrictive trade practices described in Part VIII of the *Competition Act*, e.g. refusal to deal (section 75) and tied selling (section 77 [as am. by R.S.C., 1985 (2nd Supp.), c. 19, s. 45; S.C. 1999, c. 2, s. 23; 2002, c. 16, ss. 11.2, 11.3]). By amendments to the *Competition Act*, S.C. 2002, c. 16, ss. 11.1 to 11.3, private applicants were given the opportunity to bring applications to the Tribunal, subject to the Tribunal granting them leave to do so. Subsection 103.1(1) [as enacted *idem*, s. 12] of the *Competition Act* provides:

**103.1** (1) Any person may apply to the Tribunal for leave to make an application under section 75 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under section 75 or 77.

[7] The considerations the Tribunal is to take into account in determining a leave application are set out in subsection 103.1(7). To grant leave, the Tribunal must have reason to believe that the applicant is directly and substantially affected in its business by a reviewable restrictive trade practice that could be the subject of a Tribunal order under section 75 or 77 of the *Competition Act*. Subsection 103.1(7) provides:

**103.1** . . . .

filiale canadienne de Symbol Technologies Inc. (Symbol US). Symbol US est le principal fabricant de lecteurs de codes à barres au monde. Symbol vend et distribue les produits Symbol US au Canada. Vers 1994, Barcode a pris en charge le service de distribution de Symbol dans l'Ouest canadien.

[5] Vers janvier 2003, Symbol a informé Barcode qu'elle ne pourrait plus acheter les pièces destinées aux produits Symbol. En avril 2003, Symbol a informé Barcode qu'elle n'accepterait pas ses bons de commande. Barcode affirme que depuis le 1er mai 2003, Symbol a refusé de traiter avec elle.

## DISPOSITIONS LÉGISLATIVES PERTINENTES

[6] Jusqu'en 2002, seul le Commissaire de la concurrence pouvait présenter une demande au Tribunal en ce qui concerne les pratiques restrictives du commerce susceptibles d'examen, définies à la Partie VIII de la *Loi sur la concurrence*, tels le refus de vendre (article 75) et les ventes liées (article 77 [mod. par L.R.C. (1985) (2e suppl.), ch. 19, art. 45; L.C. 1999, ch. 2, art. 23; ch. 31, art. 52; 2002 , ch. 16, art. 11.2, 11.3]). À la suite de modifications à la *Loi sur la concurrence*, L.C. 2002, ch. 16, art. 11.1 à 11.3, les particuliers se sont vus accorder la possibilité de présenter des demandes au Tribunal à condition d'en obtenir la permission. Le paragraphe 103.1(1) [édicté, *idem*, art. 12] de la *Loi sur la concurrence* dispose:

**103.1** (1) Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 75 ou 77. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde.

[7] Le paragraphe 103.1(7) énonce les éléments que le Tribunal doit prendre en considération pour se prononcer sur une demande de permission. Pour faire droit à la demande, le Tribunal doit avoir des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise par une pratique restrictive du commerce susceptible d'examen et pouvant faire l'objet d'une ordonnance en vertu des articles 75 ou 77 de la *Loi sur la concurrence*. Le paragraphe 103.1(7) prévoit:

**103.1** [. . .]

(7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

[8] The reviewable restrictive trade practice relied on by Barcode is refusal to deal. Subsection 75(1) provides:

**75.** (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

(*a*) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

(*b*) the person referred to in paragraph (*a*) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

(*c*) the person referred to in paragraph (*a*) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

(*d*) the product is in ample supply, and

(*e*) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

THE ALLEGED ERROR OF LAW

[9] Symbol submits that the Competition Tribunal member who granted leave refused to take account of all the elements of the reviewable practice of refusal to deal set out in subsection 75(1) and therefore erred in law by

(7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles.

[8] La pratique commerciale restrictive d'examen sur laquelle se fonde Barcode est le refus de vendre. Le paragraphe 75(1) est ainsi rédigé:

**75.** (1) Lorsque, à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, le Tribunal conclut:

*a*) qu'une personne est sensiblement gênée dans son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer un produit de façon suffisante, où que ce soit sur un marché, aux conditions de commerce normales;

*b*) que la personne mentionnée à l'alinéa *a*) est incapable de se procurer le produit de façon suffisante en raison de l'insuffisance de la concurrence entre les fournisseurs de ce produit sur ce marché;

*c*) que la personne mentionnée à l'alinéa *a*) accepte et est en mesure de respecter les conditions de commerce normales imposées par le ou les fournisseurs de ce produit;

*d*) que le produit est disponible en quantité amplement suffisante;

*e*) que le refus de vendre a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché,

le Tribunal peut ordonner qu'un ou plusieurs fournisseurs de ce produit sur le marché en question acceptent cette personne comme client dans un délai déterminé aux conditions de commerce normales à moins que, au cours de ce délai, dans le cas d'un article, les droits de douane qui lui sont applicables ne soient supprimés, réduits ou remis de façon à mettre cette personne sur un pied d'égalité avec d'autres personnes qui sont capables de se procurer l'article en quantité suffisante au Canada.

L'ERREUR DE DROIT ALLÉGUÉE

[9] Symbol soutient que le membre du Tribunal qui a fait droit à la demande a refusé de prendre en considération tous les éléments du refus de vendre susceptible d'examen, énoncés au paragraphe 75(1), et

not taking account of statutory requirements. Symbol's main argument is that the member refused to consider whether Symbol's alleged refusal to deal was likely to have an adverse effect on competition in a market as required by paragraph 75(1)(*e*).

[10] Indeed, in his reasons, the member specifically finds that on an application for leave, the Tribunal is not to have regard to whether the refusal to deal is likely to have an adverse effect on competition in a market. At paragraphs 8 and 10, the member states:

> What the Tribunal must have reason to believe is that Barcode is directly and substantially affected in its business by Symbol's refusal to sell. The Tribunal is not required to have reason to believe that Symbol's refusal to deal has or is likely to have an adverse effect on competition in a market at this stage.
>
> . . .
>
> As I read the Act, adverse effect on competition in a market is a necessary element to the Tribunal finding a breach of section 75 and a necessary condition in order that the Tribunal make a remedial order under that section. It is not, however, part of the test for the Tribunal's granting leave or not.

STANDARD OF REVIEW

[11] Subsection 13(1) [as am. by S.C. 2002, c. 8, s. 130] of the *Competition Tribunal Act*, R.S.C., 1985, (2nd Supp.), c. 19, provides for a statutory right of appeal to the Federal Court of Appeal from any decision or order whether final, interlocutory or interim of the Competition Tribunal as if it were a judgment of the Federal Court. The unrestricted right of appeal (except in the case of appeals on questions of fact under subsection 13(2)) is an indication of a correctness standard of review.

[12] Whether to grant leave under subsection 103.1(7) is a discretionary decision of the Tribunal. However, the

qu'il a donc commis une erreur de droit en ne tenant pas compte des exigences de la loi. Symbol soutient essentiellement que le membre a refusé de considérer la question de savoir si le refus de vendre reproché à Symbol aurait vraisemblablement pour effet de nuire à la concurrence dans un marché, comme l'exige l'alinéa 75(1)*e*).

[10] De fait, dans ses motifs, le membre conclut précisément que, saisi d'une demande de permission, le Tribunal n'a pas à considérer la question de savoir si le refus de vendre aura vraisemblablement pour effet de nuire à la concurrence dans un marché. Aux paragraphes 8 et 10, le membre affirme:

> Le Tribunal doit avoir des raisons de croire que Barcode est directement et sensiblement gênée dans son entreprise par le refus de vendre de Symbol. À ce stade, il n'est pas nécessaire que le Tribunal ait des raisons de croire que ce refus a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché.
>
> [. . .]
>
> Selon mon interprétation de la Loi, il doit y avoir atteinte à la concurrence dans un marché pour que le Tribunal conclue à l'existence d'une contravention à l'article 75 et prononce l'ordonnance corrective prévue par cette disposition. Cette atteinte, toutefois n'est pas une exigence du critère appliqué par le Tribunal pour déterminer s'il accordera ou non une permission.

NORME DE CONTRÔLE

[11] Le paragraphe 13(1) [mod. par L.C. 2002, ch. 8, art. 130] de la *Loi sur le Tribunal de la concurrence*, L.R.C. (1985) (2e suppl.), ch. 19, prévoit que les décisions ou ordonnances du Tribunal, que celles-ci soient définitives, interlocutoires ou provisoires, sont susceptibles d'appel devant la Cour d'appel fédérale tout comme s'il s'agissait de jugements de la Cour fédérale. Le droit d'appel absolu (sauf en cas d'appels sur des questions de fait suivant le paragraphe 13(2)) est une indication que la norme de contrôle applicable est celle de la décision correcte.

[12] La décision de faire droit ou non à la demande de permission en vertu du paragraphe 103.1(7) relève du

question at issue here is whether, in exercising its discretion, the Tribunal is required to consider all the elements of the restrictive trade practice of refusal to deal set out in subsection 75(1). That is a question of law, a straight question of statutory interpretation. It is the task of the Court to determine whether the Tribunal has exercised its discretionary power within the constraints imposed by Parliament. See *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, at paragraph 38.

[13] This question of statutory interpretation does not engage any particular expertise of the Tribunal. Economic and commercial considerations are not part of the analysis of whether, on a leave application, all the elements listed in subsection 75(1) must be considered. That expertise is not engaged on the question of statutory interpretation at issue here therefore points to the correctness standard.

[14] The basic purpose of the *Competition Act* as described in section 1.1 [as enacted by R.S.C., 1985 (2nd Supp.), c. 19, s. 19] is "to maintain and encourage competition in Canada" and the purpose of section 75 is in furtherance of that objective. When economic and commercial considerations are being considered, deference may be called for. But these considerations are not at issue in the present appeal.

[15] Weighing these pragmatic and functional considerations, I conclude that the standard of review in this appeal is correctness.

ANALYSIS

The legal test in an application under subsection 103.1(7)

[16] In *National Capital News Canada v. Canada (Speaker of the House of Commons)* (2002), 23 C.P.R. (4th) 77 (Comp. Trib.), Dawson J., in her capacity as a member of the Competition Tribunal, reviewed the test

pouvoir discrétionnaire du Tribunal. Toutefois, la question en litige en l'espèce est de savoir si, dans l'exercice de son pouvoir discrétionnaire, le Tribunal doit considérer tous les éléments de la pratique commerciale restrictive que constitue le refus de vendre, énoncés au paragraphe 75(1). Il s'agit là d'une question de droit, d'une question classique d'interprétation législative. Il appartient à la Cour de décider si le Tribunal a exercé son pouvoir discrétionnaire à l'intérieur des limites imposées par le législateur. Voir *Suresh c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2002] 1 R.C.S. 3, au paragraphe 38.

[13] Cette question d'interprétation législative ne fait appel à aucune expertise particulière du Tribunal. Les considérations économiques et commerciales ne font pas partie de l'analyse quant à savoir si, s'agissant d'une demande de permission, tous les éléments énumérés au paragraphe 75(1) doivent être examinés. Qu'il ne soit pas nécessaire de faire appel à une expertise pour résoudre la question d'interprétation législative en litige en l'espèce indique que la norme applicable est celle de la décision correcte.

[14] L'objet fondamental de la *Loi sur la concurrence*, tel qu'il est défini à l'article 1.1 [édicté par L.R.C. (1985) (2e suppl.), ch. 19, art. 19], est «de préserver et de favoriser la concurrence au Canada», et l'objet de l'article 75 confirme cette intention. Lorsque des considérations économiques et commerciales entrent en jeu, la déférence peut être de mise. Mais tel n'est pas le cas en l'espèce.

[15] Après avoir soupesé ces considérations pragmatiques et fonctionnelles, je conclus que la norme de contrôle applicable au présent appel est celle de la décision correcte.

ANALYSE

Le critère juridique applicable à une demande suivant le paragraphe 103.1(7)

[16] Dans la décision *National Capital News Canada c. Canada (Président de la Chambre des communes)* (2002), 23 C.P.R. (4th) 77 (Trib. conc.), la juge Dawson, à titre de membre du Tribunal de la concurrence, a

for the granting of leave under subsection 103.1(7). After citing authorities on the term "reasonable grounds to believe" she stated at paragraph 14 of her reasons:

> Accordingly on the basis of the plain meaning of the wording used in s. 103.1(7) of the Act and the jurisprudence referred to above, I conclude that the appropriate standard under s. 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.

I agree with Dawson J. and adopt her analysis and conclusion as to the test for granting leave under subsection 103.1(7).

[17] The threshold for an applicant obtaining leave is not a difficult one to meet. It need only provide sufficient credible evidence of what is alleged to give rise to a *bona fide* belief by the Tribunal. This is a lower standard of proof than proof on a balance of probabilities which will be the standard applicable to the decision on the merits.

[18] However, it is important not to conflate the low standard of proof on a leave application with what evidence must be before the Tribunal and what the Tribunal must consider on that application. For purposes of obtaining an order under subsection 75(1), a refusal to deal is not simply the refusal by a supplier to sell a product to a willing customer. The elements of the reviewable trade practice of refusal to deal that must be shown before the Tribunal may make an order are those set out in subsection 75(1). These elements are conjunctive and must all be addressed by the Tribunal, not only when it considers the merits of the application, but also on an application for leave under subsection 103.1(7). That is because, unless the Tribunal considers all the elements of the practice set out in subsection 75(1) on the leave application, it could not conclude, as required by paragraph 103.1(7), that there was reason to believe that an alleged practice could be subject to an

examiné le critère applicable à l'octroi d'une demande de permission en application du paragraphe 103.1(7). Après avoir cité des précédents portant sur l'interprétation de l'expression «motifs raisonnables de croire», elle a déclaré au paragraphe 14 de ses motifs:

> Par conséquent, me fondant sur le sens ordinaire des termes utilisés au paragraphe 103.1(7) de la Loi et sur la jurisprudence à laquelle je me suis reportée, je conclus que la norme appropriée en vertu du paragraphe 103.1(7) consiste à se demander si la demande de permission est appuyée par des éléments de preuve crédibles suffisants pour qu'on puisse croire de bonne foi que le demandeur a pu être directement et sensiblement gêné dans son entreprise à cause d'une pratique susceptible d'examen et que cette pratique pourrait faire l'objet d'une ordonnance.

Je suis du même avis que la juge Dawson, et j'endosse son analyse et sa conclusion quant au critère applicable pour faire droit à la demande de permission en vertu du paragraphe 103.1(7).

[17] La charge qui incombe à l'auteur de la demande de permission n'est pas très lourde. Il n'a qu'à fournir une preuve crédible suffisante de ce qui est allégué pour faire naître une croyance légitime dans l'esprit du Tribunal. Il s'agit là d'une norme de preuve moins élevée que la norme de la prépondérance de la preuve, laquelle s'appliquera à la décision sur le fond.

[18] Toutefois, il est important de ne pas confondre la norme de preuve peu élevée applicable à la demande de permission avec le type de preuve devant être présenté au Tribunal et considéré par lui pour trancher cette demande. Pour obtenir une ordonnance suivant le paragraphe 75(1), le refus de vendre n'est pas simplement le refus d'un fournisseur de vendre un produit à un client intéressé. Les éléments de la pratique commerciale susceptible d'examen que constitue le refus de vendre, éléments devant être prouvés pour que le Tribunal puisse rendre une ordonnance, sont ceux qui sont énoncés au paragraphe 75(1). Ces éléments se combinent et doivent tous être considérés par le Tribunal et ce, non seulement lorsqu'il examine l'affaire au fond, mais aussi lorsqu'il se penche sur une demande de permission selon le paragraphe 103.1(7). Cela s'explique du fait que, s'il ne considérait pas tous les éléments de la pratique énoncés au paragraphe 75(1) pour trancher la

order under subsection 75(1).

[19] The Tribunal may address each element summarily in keeping with the expeditious nature of the leave proceeding under section 103.1. As long as it is apparent that each element is considered, the Tribunal's discretionary decision to grant or refuse leave will be treated with deference by this Court. But the Tribunal's discretion to grant leave is not unfettered. The Tribunal must consider all the elements in subsection 75(1).

[20] The words of subsection 103.1(1) support this interpretation of the requirements of subsection 103.1(7). Subsection 103.1(1) requires that the application for leave be accompanied by an affidavit setting out the facts in support of the application under subsection 75(1). That affidavit must therefore contain the facts relevant to the elements of the reviewable trade practice of refusal to deal set out in subsection 75(1). It is that affidavit which the Tribunal will consider in determining a leave application under subsection 103.1(7). While the standard of proof on the leave application is lower than when the case is considered on its merits, nonetheless, the same considerations are relevant to both and must be taken into account at both stages.

[21] The respondent says that the words in subsection 103.1(7) "that the applicant is directly and substantially affected in the applicants' business" are essentially the words in paragraph 75(1)(*a*) and because there are no words similar to those in paragraphs 75(1)(*b*) to (*e*) in subsection 103.1(7), Parliament did not intend that each element in paragraphs 75(1)(*b*) to (*e*) need be taken into account on a leave application.

[22] I do not think that is correct. Because subsection 103.1(1) says that "any person may apply", it is

demande de permission, le Tribunal ne pourrait conclure, comme le prescrit le paragraphe 103.1(7), qu'il existait des motifs de croire qu'une pratique alléguée pourrait faire l'objet d'une ordonnance en vertu du paragraphe 75(1).

[19] Le Tribunal peut examiner chaque élément brièvement pour respecter la nature expéditive de la procédure de permission prévue à l'article 103.1. Pourvu que chaque élément paraisse être pris en considération, la décision discrétionnaire du Tribunal de faire droit ou non à la demande de permission sera traitée avec déférence par la Cour. Mais le pouvoir discrétionnaire du Tribunal n'est pas absolu. Il doit prendre en considération tous les éléments énoncés au paragraphe 75(1).

[20] Les termes utilisés au paragraphe 103.1(1) confortent cette interprétation des conditions prescrites au paragraphe 103.1(7). Le paragraphe 103.1(1) exige que la demande de permission soit accompagnée d'une déclaration sous serment faisant état des faits. Cette déclaration sous serment doit donc contenir les faits pertinents par rapport aux éléments de la pratique commerciale susceptible d'examen que constitue le refus de vendre, énoncés au paragraphe 75(1). C'est cette déclaration qu'examinera le Tribunal pour trancher une demande de permission en vertu du paragraphe 103.1(7). Bien que la norme de preuve soit moins élevée au stade de la demande de permission qu'à celui de l'examen au fond, il demeure que les mêmes considérations sont pertinentes et doivent être examinées aux deux stades.

[21] L'intimée affirme que les termes employés au paragraphe 103.1(7), à savoir «que l'auteur de la demande est directement et sensiblement gêné dans son entreprise», sont essentiellement les mêmes que ceux utilisés à l'alinéa 75(1)*a*), alors que ce paragraphe ne comporte pas de termes similaires à ceux employés aux alinéas 75(1)*b*) à *e*). Il s'ensuit, dit-il, que le législateur n'entendait pas obliger le Tribunal à prendre en considération chaque élément des alinéas 75(1)*b*) à *e*) au stade de la demande de permission.

[22] Je ne crois pas que cette affirmation soit juste. Étant donné que le paragraphe 103.1(1) dit que «[t]oute

theoretically possible for someone other than a person substantially and directly affected to bring a private application. However, Parliament clearly intended to limit private applications to persons who themselves are directly and substantially affected in their businesses by the alleged reviewable practice. I think that is the reason for the use of words in subsection 103.1(7) that are substantially similar to those in paragraph 75(1)(*a*). However, the use of these words does not imply that the statutory elements in paragraphs 75(1)(*b*) to (*e*) need not be considered on a leave application. That is because, on a leave application, the Tribunal must consider whether the practice that is alleged could be subject to an order under subsection 75(1); and it cannot reach that conclusion without considering all the elements of refusal to deal set out in that subsection.

[23] Counsel for Symbol argued that on a purposive interpretation, it should be clear that on a leave application, the Tribunal must have regard to all the statutory elements in subsection 75(1). I agree. The purpose of the *Competition Act* is to maintain and encourage competition in Canada. It is not to provide a statutory cause of action for the resolution of a dispute between a supplier and a customer that has no bearing on the maintenance or encouragement of competition. That is the obvious reason for paragraph 75(1)(*e*). The threshold at the leave stage is low, but there must be some evidence by the applicant and some consideration by the Tribunal of the effect of the refusal to deal on competition in a market.

Application of the test for leave to the facts

[24] Having determined the correct legal test on an application seeking leave to apply for an order under subsection 75(1), the question is whether this matter should be remitted to the Tribunal for redetermination or whether this Court should dispose of it. Barcode has pointed out that a leave application is intended to be a summary screening process. There is no right of cross-examination on the affidavit filed in support of the application for leave, there is no provision for the respondent to file affidavit evidence and the time limits

personne peut demander», il est théoriquement possible pour quelqu'un d'autre qu'une personne directement et sensiblement gêné de présenter une demande au Tribunal. Cependant, le législateur voulait clairement limiter les demandes des particuliers aux personnes qui sont elles-mêmes directement et sensiblement gênées dans leur entreprise par la pratique alléguée. Je crois que cela explique pourquoi les mots employés au paragraphe 103.1(7) sont substantiellement les mêmes que ceux choisis par le législateur à l'alinéa 75(1)*a*). Toutefois, l'emploi de ces termes ne signifie pas que les éléments énoncés aux alinéas 75(1)*b*) à *e*) n'ont pas à être considérés au stade de la demande de permission, parce qu'à ce stade, le Tribunal doit se demander si la pratique alléguée pourrait faire l'objet d'une ordonnance en vertu du paragraphe 75(1); et il ne peut tirer pareille conclusion sans considérer tous les éléments du refus de vendre, énoncés à ce même paragraphe.

[23] L'avocat de Symbol a fait valoir que, selon une interprétation téléologique, il devrait être clair que pour trancher une demande de permission, le Tribunal doit considérer tous les éléments prévus au paragraphe 75(1). J'endosse ce point de vue. L'objet de la *Loi sur la concurrence* est de préserver et de favoriser la concurrence au Canada, et non d'offrir un recours pour régler un différend entre un fournisseur et un client qui n'a aucune incidence sur la préservation ou l'encouragement de la concurrence. C'est là l'objet manifeste de l'alinéa 75(1)*e*). La charge à ce stade est légère, mais l'auteur de la demande doit fournir certains éléments de preuve concernant l'effet du refus de vendre sur la concurrence dans un marché, et le Tribunal doit prendre ces éléments en considération.

Application du critère aux faits de l'espèce

[24] Ayant établi le critère juridique approprié à une demande de permission de présenter une demande d'ordonnance en vertu du paragraphe 75(1), il reste à se demander si cette affaire devrait être renvoyée au Tribunal pour qu'il rende une nouvelle décision, ou si la Cour devrait trancher elle-même le litige. Barcode fait valoir que la demande de permission se veut un processus sommaire d'examen préalable. Il n'y a pas de droit au contre-interrogatoire sur la déclaration déposée au soutien de la demande, aucune disposition ne permet

in section 103.1 are short, consistent with leave applications being dealt with summarily. For these reasons, I think the appropriate course of action in this case would be for this Court to resolve the matter without further delay.

[25] Is there credible evidence to support a finding that there are reasonable grounds to believe that Symbol's refusal to supply Barcode could be subject to an order under subsection 75(1)? There is evidence that Barcode is substantially affected in its business due to its inability to obtain Symbol's products. Barcode's evidence is that it cannot obtain these products either directly from Symbol or from other Symbol distributors. Barcode says it is willing and able to meet Symbol's usual trade terms and that Symbol's products are in ample supply.

[26] The only real controversy is whether there is evidence that Symbol's refusal to deal is likely to have an adverse effect on competition in a market.

[27] On this point, paragraph 75(1)(*e*) has not been interpreted by the Tribunal or this Court and a leave application is not the appropriate occasion to do so. Therefore, if there are any facts in its affidavit that might meet the requirements of paragraph 75(1)(*e*), the benefit of any doubt should work in favour of granting leave in order not to finally preclude Barcode from its day before the Tribunal.

[28] The evidence of Barcode is that in or about 1994, it took over Symbol's distribution in Western Canada and that by 2002 its annual revenues were in excess of $20 million. Symbol US is the largest single manufacturer of bar code equipment in the world. Barcode's evidence is that if Symbol continues to refuse to supply, Barcode will be forced into receivership, and indeed, the Tribunal member found that on December 19, 2003, Barcode was petitioned into receivership.

[29] From Barcode's evidence, I think it may be inferred, for leave to apply purposes, that there are

à l'intimée de produire une preuve par affidavit et les délais prévus à l'article 103.1 sont courts, toutes choses qui tendent à confirmer le caractère sommaire de cette procédure. Pour ces motifs, j'estime qu'il conviendrait en l'espèce que la Cour tranche l'affaire sans délai.

[25] Y a-t-il une preuve crédible pour étayer la conclusion voulant qu'il y ait des motifs raisonnables de croire que le refus de Symbol d'approvisionner Barcode pourrait faire l'objet d'une ordonnance en vertu du paragraphe 75(1)? Preuve a été faite que Barcode est sensiblement gênée dans son entreprise en raison de son incapacité à obtenir les produits de Symbol. La preuve de Barcode veut qu'elle ne puisse obtenir ces produits directement de Symbol ou par l'intermédiaire d'un de ses distributeurs. Barcode affirme vouloir se conformer aux conditions commerciales habituelles de Symbol et être en mesure de le faire, et dit que les produits de Symbol sont en quantité amplement suffisante.

[26] Le seul point véritablement controversé est de savoir s'il y a preuve que le refus de vendre de Symbol aura vraisemblablement pour effet de nuire à la concurrence dans un marché.

[27] L'alinéa 75(1)*e*) n'a jamais été interprété sur ce point par le Tribunal ou par la Cour, et une demande de permission n'est pas l'occasion appropriée pour le faire. Conséquemment, s'il y a des faits énoncés dans la déclaration sous serment de Barcode qui pourraient satisfaire aux exigences de l'alinéa 75(1)*e*), le bénéfice du doute devrait jouer en sa faveur afin de ne pas lui interdire définitivement l'accès au Tribunal.

[28] La preuve de Barcode veut que, vers 1994, elle se soit chargée de la distribution de Symbol dans l'Ouest canadien, et qu'en 2002 ses profits dépassaient 20 millions de dollars. Symbol US est le plus grand fabricant au monde de lecteurs de codes à barres. Si Symbol continue à refuser de l'approvisionner, Barcode se verra acculée à la faillite, et, de fait, le membre du Tribunal a constaté que, le 19 décembre 2003, Barcode a été mise sous séquestre.

[29] En me fondant sur la preuve soumise par Barcode, je crois que l'on peut inférer, aux fins de la

reasonable grounds to believe that Barcode had somewhat of a presence in the Western Canadian market for the supply and servicing of Symbol's products. Its difficult financial situation reflected by its receivership could be likely to impede its ability to be an effective competitor in that market, thereby having an adverse effect on competition in that market. The evidence may not be strong but I think it is sufficient to constitute reasonable grounds to believe that Symbol's alleged refusal to deal could be the subject of an order under subsection 75(1).

CONCLUSION

[30] For these reasons I would dismiss the appeal with costs.

RICHARD C.J.: I agree.

LÉTOURNEAU J.A.: I agree.

permission de présenter une demande, qu'il existe des motifs raisonnables de croire que Barcode avait une certaine présence dans le marché de l'Ouest canadien pour fournir et réparer les produits Symbol. Sa situation financière difficile, dont témoigne sa mise sous séquestre, pourrait vraisemblablement gêner sa capacité à se positionner comme un concurrent dynamique dans ce marché, ayant ainsi pour effet de nuire à la concurrence dans ce marché. La preuve n'est peut-être pas très forte, mais j'estime qu'elle est suffisante pour fonder des motifs raisonnables de croire que le refus de vendre allégué de Symbol pourrait faire l'objet d'une ordonnance en vertu du paragraphe 75(1).

CONCLUSION

[30] Pour ces motifs, je rejetterais l'appel avec dépens.

LE JUGE EN CHEF RICHARD: Je souscris aux présents motifs.

LE JUGE LÉTOURNEAU, J.C.A.: Je souscris aux présents motifs.

# 25

Competition Tribunal Tribunal de la Concurrence



Reference: *The Used Car Dealers Association of Ontario v. Insurance Bureau of Canada*, 2011 Comp. Trib. 10
File No.: CT-2011-06
Registry Document No.: 29

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by the Used Car Dealers Association of Ontario for an Order pursuant to section 103.1 granting leave to make application under sections 75 and 76 of the *Competition Act*.

B E T W E E N:

**Used Car Dealers Association of Ontario**
(applicant)

and

**Insurance Bureau of Canada**
(respondent)

Decided on the basis of the written record
Before Judicial Member: Simpson J. (Chairperson)
Date of Reasons and Order: September 9, 2011
Reasons and Order signed by: Madam Justice Sandra J. Simpson

**REASONS FOR ORDER AND ORDER GRANTING THE APPLICANT LEAVE TO FILE AN APPLICATION PURSUANT TO SECTION 75 OF THE COMPETITION ACT**

## THE APPLICATION

**[1]** The Used Car Dealers Association of Ontario (the "UCDA") seeks leave from the Competition Tribunal (the "Tribunal") to commence an application pursuant to section 75 and subparagraph 76(1)(a)(ii) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act"). The proposed application names the Insurance Bureau of Canada as the respondent.

## THE DECISION

**[2]** For the following reasons leave has been granted to commence an application under section 75 of the Act. However, leave to proceed under section 76 has been denied.

## THE APPLICANT

**[3]** The UCDA was founded in 1984. It is a not-for-profit trade association which represents more than 4500 motor vehicle dealers in Ontario. The UCDA provides a variety of services to its members including one called Auto Check™ ("Auto Check"). It provides dealers who are selling used cars with information about the accident history of the vehicles they intend to sell. Using a vehicle's VIN number, a dealer who is a member of the UCDA pays a fee of $7.00 (before taxes) to conduct an Auto Check vehicle accident history search.

**[4]** The UCDA's evidence for this application is found in an affidavit sworn by Robert G. Beattie on June 29, 2011 (the "Beattie Affidavit"). Mr. Beattie is the UCDA's Executive Director.

## THE RESPONDENT AND ITS DATABASES

**[5]** The Insurance Bureau of Canada (the "IBC") is a national not-for-profit industry association which represents home, vehicle and business insurers. The IBC is, according to the UCDA, the only source of integrated industry wide data collected from all insurers who sell auto insurance as well as from independent adjusters and investigators. The data are located on a database which IBC describes as its Web Claims Search Application. However, that database does not include information about the dollar value of claims made when vehicles are in accidents. Those values are found in information provided to IBC by its members and collected in a second IBC database called the Automotive Statistical Plan ("ASP Database").

## THE BACKGROUND

**[6]** In 1998, the UCDA became an Associate Member of the IBC primarily to gain access to the information in IBC's Web Claims Search Application. That information is a critical input into UCDA's Auto Check business.

## OTHER PROVIDERS OF VEHICLE ACCIDENT SEARCHES

**[7]** 3823202 Canada Inc., carrying on business as CarProof ("CarProof"), began to provide vehicle accident searches in 2005. It is now the market leader and its searches cost $34.95 (Cdn) before taxes.

**[8]** In 2008, CARFAX, Inc. ("Carfax"), an American based provider of vehicle accident histories, began to sell them in Ontario. It charges $34.99 (U.S.) before taxes.

**[9]** Both CarProof and Carfax purchase IBC's data for their accident history searches and, according to the Beattie Affidavit, they are both able to provide the dollar value of claims as part of their search results.

**[10]** The relationship between Auto Check and CarProof has, from the UCDA's perspective, been troubled. The UCDA took CarProof to court to prevent it from misrepresenting the services offered by Auto Check. In the end, a settlement achieved Auto Check's objective. CarProof has also twice (in 2009 & 2010) tried to persuade the UCDA to enter into a partnership in which the Auto Check service would be terminated and CarProof would supply vehicle accident histories to UCDA's members. The UCDA refused to entertain these proposals because it believes that its members place a high value on their ability to purchase inexpensive vehicle accident histories through Auto Check.

## REGULATORY CHANGES

**[11]** On January 1, 2010, changes to the regulations under the Ontario *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B, required motor vehicle dealers to disclose to potential purchasers whether a used vehicle had ever suffered damage which cost more than $3000.00 to repair.

**[12]** To assist its members to meet this new obligation, the UCDA decided to try to obtain additional information from IBC about the dollar value of insurance claims. IBC has that information on its ASP Database. The Beattie Affidavit describes the UCDA's early efforts to secure this information in paragraphs 21 and 25-28:

> In early June 2009, in anticipation of these [Regulatory] changes, Robert Pierce, the UCDA's Director of Member Services, contacted Marti Pehar, Manager, Business Partnerships, of IBC by telephone and requested that IBC expand the scope of the information it provided to Auto Check™ to include dollar value claims information.
>
> I understand from Mr. Pierce that he met with Ms. Pehar on June 16, 2009 to discuss Auto Check™'s request for dollar value claims information. Although UCDA had indicated its willingness to compensate IBC for the provision of this additional information, on June 24, 2009, Ms. Pehar informed Mr. Pierce that IBC

had refused UCDA's request. I understand and believe that at that time IBC provided, and presently continues to provide, similar information directly or indirectly to CarProof.

On May 17, 2010 Warren Barnard, UCDA's Legal Services Director, and I met with Ralph Palumbo, IBC Vice-President - Ontario, and Randall Bundus, IBC Vice-President -Operations and General Counsel, and renewed Auto Check™'s request for dollar value claims information. Mr. Palumbo stated that he did not see any reason why IBC would not provide this information to UCDA. Mr. Bundus indicated that IBC would need to obtain authorization from its member insurers in order to provide the ASP information to UCDA.

The requirement to obtain insurer consents in respect of dollar claims data came as a surprise to UCDA because this has never been an issue with the Web Claims Search application. Nevertheless, on May 20, 2010, I wrote to Mr. Palumbo and formally requested that IBC seek the requisite authorization from its member insurers to provide the ASP dollar value claims information to Auto Check™.

In a letter dated May 26, 2010, Mr. Bundus wrote to me to state that IBC would not seek the authorization UCDA had requested to supply dollar claims data from its insurer members. Instead, Mr. Bundus indicated that UCDA should contact each insurer member of IBC in order to obtain individual consents for provision of dollar claims information.

[The emphasis is mine]

**THE TERMINATION OF THE UCDA'S ACCESS TO IBC's WEB CLAIMS SEARCH APPLICATION**

**[13]** The Beattie Affidavit deals with this subject and the UDCA's ongoing efforts to secure consents in paragraphs 28-37. There he says:

[In a letter dated May 26, 2010] …, without any prior warning, Mr. Bundus informed me that IBC was terminating UCDA's Associate Membership, thereby ending the 12-year relationship between the parties and Auto Check™'s ability to continue to obtain the claims data from the Web Claims Search application.

On June 2, 2010, my colleague Warren Barnard wrote to Mr. Bundus expressing the UCDA's shock over the unexplained and unforeseen termination of its Associate Membership, and requesting that the IBC reconsider its decision. In the alternative, Mr. Barnard requested an extension of the termination notice period to six months (i.e., to November 26,2010) in order to (i) allow the UCDA a reasonable opportunity to contact the individual insurers whose authorization would be required for UCDA to obtain ASP information from IBC, and (ii) continue using the Web Claims Search application.

In the absence of a reply to Mr. Barnard's letter, on June 9, 2010, McMillan LLP, external counsel to UCDA, wrote to Mr. Bundus expressing UCDA's concerns that IBC's conduct raised issues under the *Competition Act* and reiterating UCDA's request that IBC reconsider the termination of UCDA's membership and its ability to source vehicle claims data (or, alternatively, extend the notice period to six months).

On June 23, 2010, McMillan LLP again wrote to Mr. Bundus, requesting that IBC grant the six-month extension and, in the meantime, provide UCDA with further particulars as to the form and content of the insurer authorizations required by IBC in order to supply the ASP information to Auto Check™. Mr. Bundus replied on June 28, 2010 providing information about the form of authorization required, but refusing to reconsider IBC's termination of UCDA's membership and provision of the Web Claims Search application, or UCDA's request for an extension of the notice period.

After further discussions and emails, IBC reinstated UCDA's Associate Membership and ability to use the Web Claims Search application until November 26, 2010. UCDA also began a process of contacting numerous insurers to obtain consent for IBC to provide ASP information to UCDA, something that has never been required to use the Web Claims Search application.

Between July 2010 and May 2011, UCDA obtained consents from insurers in respect of ASP information, and was also dealing with IBC on a range of contractual, technical and logistical issues related to ASP information. UCDA's Associate Membership has continued on a month to month basis as did its ability to use the Web Claims Search application.

On April 18, 2011, UCDA signed a Service Provider Agreement with IBC for the provision of ASP information from consenting insurers. UCDA was then in a position to seek consent from three insurers who had apparently withdrawn their earlier consents. However, UCDA was not made aware until May 30, in an email from James Fordham, Director of Customer Service at IBC, to Neil Elgar, UCDA's Manager of Administrative Services, that several other insurers had withdrawn their consents in the period from January to March, 2011. Mr. Fordham did not explain how the withdrawals occurred or why UCDA was not informed about them many months earlier when the withdrawals took place.

On June 7, 2011, Mr. Fordham informed Mr. Elgar by email that IBC would be terminating use of the Web Claims Search application. IBC gave notice that termination would take place on June 10, 2011, although after subsequent correspondence between Messrs. Elgar and Fordham, the date was extended to June 17, 2011. Mr. Fordham did not give a reason for the termination or for the briefness of the notice period.

> On June 9, 2011, Mr. Barnard communicated with Mr. Bundus and requested continuing provision of the Web Claims Search application, for which insurer consents had never been required, while UCDA pursued consents from insurers for supply of the ASP information. On June 16, 2011, McMillan LLP reiterated Mr. Barnard's request in voicemail and email messages to Mr. Bundus.
>
> On June 16, 2011, UCDA advised its members that the Auto Check™ searches would be suspended effective June 17, 2011 until further notice due to the inability to obtain supply of sufficient data to provide vehicle accident history searches. On June 17, 2011 at 5:00 pm IBC terminated supply of the Web Claims Search application to UCDA.
>
> [The emphasis is mine]



**THE EFFECT OF THE TERMINATION**

**[14]** The termination on June 17, 2011 (the "Termination") ended a 13 year arrangement which had cost the UCDA $65,000.00 in annual dues plus $16,000.00 which the UCDA provided to IBC in June of 2007 to help finance upgrades to IBC's database. As well, in 2010, IBC added a fee for the information supplied to the UCDA from the Web Claims Search Application. The UCDA has always paid IBC as required.

**[15]** The Termination also caused the UCDA to suspend its Auto Check business.

**THE FUTURE OF AUTO CHECK**

**[16]** The UCDA takes the position that its Auto Check service would again be viable if it had the data from the Web Claims Search Application. In other words, although it would have been helpful, the UCDA's members do not need the dollar value claims information from the ASP Database because, according to the Beattie Affidavit, approximately 2/3 of the searches show that vehicles have not been in accidents. Further, where accidents have occurred, the UCDA's member dealers are free to exercise judgment about whether the damage would have cost below or above $3000.00 to repair. In other words, dealers don't usually need the dollar value of the claims. However, the Beattie Affidavit concedes that, in the small number of situations in which a precise dollar value is needed, dealers can purchase the more costly searches from CarProof or Carfax which include the dollar amounts.

**PART I – SECTION 75 – REFUSAL TO SUPPLY**

**[17]** Subsection 103.1(7) sets out the test for granting leave under section 75 of the Act. It reads:

| | |
|---|---|
| 103.1 (7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the | 103.1 (7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s'il a des raisons de croire que l'auteur de la |

applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles.



**[18]** The law is clear that there must be sufficient credible evidence to give rise to a *bona fide* belief (i) that an applicant is directly and substantially affected by the refusal to supply and (ii) that an order could be made under subsection 75(1)(a-e) of the Act (*Symbol Technologies Canada ULC v. Barcode Systems Inc.*, 2004 FCA 339, at paragraph 16, and *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41, at paragraphs 14-15).

**THE PRODUCT**

**[19]** The UCDA says that the product is IBC's Web Claims Search Application and notes that it has the following distinguishing features:

- The data are available to the UCDA without the need to secure consents from the parties who provide the data.
- It includes integrated industry wide claims data.
- It is offered through IBC's web portal.
- It does not include information about the dollar value of claims.

**[20]** The UCDA says that the Web Claims Search Application is the product that has been refused, and that, for the reasons described above in paragraph 16, it is a viable product which meets the needs of the UCDA's members in almost all situations.

**[21]** The IBC takes a different view and says that the product at issue is the right to access IBC's Web Claims Search Application and that the product is therefore properly characterized as a license. IBC says that, because the Tribunal held in *Canada (Director of Investigation and Research) v. Warner Music Canada Ltd.*, 78 C.P.R. (3d) 321, that licenses are not products for the purpose of section 75 of the Act, an order could not be made.

**[22]** However, I have not been persuaded by this submission. There is no evidence to suggest that IBC ever characterized its arrangements with the UCDA as a license. The evidence is that access to the Web Claims Search Application data was incidental to the UCDA's Associate Membership in IBC.

**[23]** In the alternative, IBC submits that the proper product market is "vehicle insurance claims data" and that data of that kind is available in both IBC's Web Claims Search Application and in its ASP Database.

**[24]** Evidence about the contents and attributes of the ASP Database is sparse but it does appear that the UCDA could use the ASP data to operate Auto Check if it were available. In this regard, the Beattie Affidavit says at paragraph 40:

> The Web Claims Search application will remain critical to the Auto Check™ business unless and until UCDA is able to obtain consents from individual insurers to access sufficient ASP information to offer a viable vehicle accident history search service.

**[25]** As noted above, the Beattie Affidavit shows that the UCDA initially approached IBC asking only for the dollar values of claims on the ASP Database and IBC refused. However, UCDA's request appears to have changed over time into one for access to all the ASP data. This change may have been motivated by IBC's first decision to terminate UCDA's access to the Web Claims Search Application in May 2010. In any event, IBC subsequently agreed to give the UDCA access to the ASP Database but said that consents were required from the insurance companies whose data are found therein (the "Consent(s)"). IBC initially offered to secure the Consents from its members.

**[26]** However, IBC changed its mind and, instead of providing the Consents itself, required the UCDA to approach each insurance company for its Consent. The UCDA undertook this exercise and, over a period of almost one year, from July 2010 to May 2011 it secured many Consents. On April 18, 2011, the UCDA signed a Service Provider Agreement with IBC for the provision of ASP information from consenting insurers. When the agreement was signed, the UCDA knew that three insurers who had consented had withdrawn their earlier Consents. However, it was not until the end of May 2011 that IBC told the UCDA that several other Consents had also been withdrawn earlier in the year. No reasons were provided. Without those Consents, the UCDA does not have access to sufficient ASP data to make the ASP Database a viable alternative for the data on IBC's Web Claims Search Application.

**[27]** Given these facts, I find that the Tribunal could conclude that the fact that access to the ASP Database requires Consents, which are not readily available, means that it is not in the same product market as the Web Claims Search Application data for which no Consents are required.

**[28]** For this reason, I have decided that the Tribunal could conclude that the vehicle insurance claims data from IBC's Web Claims Search Application is the product at issue in this application.

**[29]** IBC also says that, even if the data on the Web Claims Search Application is the product, leave should be denied because the UCDA fails to consistently describe the product it says is at issue. IBC notes that the data the UCDA received before the Termination is variously described as:

- Web Search claims data.
- Vehicle Insurance claims data
- Supply from the IBC Web Claims Search Application
- Vehicle Insurance Claims data

**[30]** In my view, there is no lack of clarity. In spite of the various descriptions provided, it is clear that the UCDA is speaking of the data it has received since 1998 using IBC's Web Claims Search Application.

**DIRECTLY AND SUBSTANTIALLY AFFECTED – SUBSECTION 103.1(7)**

**[31]** The Beattie Affidavit shows that Auto Check's business accounted for more than 50% of the UCDA's net income in the year ended December 31, 2010. As well, Mr. Beattie says that Auto Check is a service which the UCDA's members consider to be "critical" and that it has been suspended as a consequence of the Termination. In my view, this evidence is sufficient to show that, as a result of the Termination, the UCDA is directly and substantially affected in its business. While it may be useful to consider earnings over time as the Tribunal suggested in *Nadeau Poultry Farm Ltd v. Groupe Westco Inc.*, 2009 Comp. Trib. 6, aff'd 2011 FCA 188, I do not accept IBC's submission that such data is required. Further, it is noteworthy that subsection 103.1(7) reads in the present tense and that the UCDA has provided current information.

**THE MEANING OF "COULD"**

**[32]** I now turn to the question of whether an order could be made under section 75 and I think it useful at this juncture to reflect on the meaning of the word "could". The context is important. The question of whether an order "could" be made is being considered in an application for leave which is not supported by a full evidentiary record. Parliament decreed that an applicant would file an affidavit and a respondent would file representations. This means that there will inevitably be incomplete information on some topics. As well, the process is to be expeditious and the burden of proof is lower than the ordinary civil burden which is "a balance of probabilities".

**[33]** In my view, the lower threshold means that the question is whether an order is "possible" and "could" is used in that sense.

**[34]** In deciding whether an order is possible the Tribunal must assess whether there is sufficient credible evidence to give rise to a *bona fide* belief that an order is possible. However, given the context described above, it is not reasonable to conclude that hard and fast evidence is required on every point. In my view, reasonable inferences may be drawn where the supporting grounds are given and circumstantial evidence may be considered.

**THE UCDA'S INABILITY TO OBTAIN ADEQUATE SUPPLIES OF A PRODUCT ANYWHERE IN A MARKET ON USUAL TRADE TERMS 75(1)(a)**

**[35]** The UCDA says that IBC is the only supplier of integrated insurance claims data. IBC disputes this saying that the UCDA could acquire the information it needs for its Auto Check business from CarProof and Carfax. However, in my view, the Tribunal could not conclude that the phrase "anywhere in a market" is intended to require the UCDA to purchase the data it needs from Auto Check's competitors.

**[36]** IBC also says that the UCDA has failed to define the geographic market. However, since the UCDA's members are in Ontario and, since the used vehicle accident histories are sought for

their use, it is reasonable to conclude Ontario is the geographic market and that an order could therefore be made.

**[37]** Finally, with respect to usual trade terms, the evidence shows that the UCDA is willing to continue to pay IBC and since the Web Claims Search Application data is only available from IBC, this aspect of the test is met and an order could be made.



**INSUFFICIENT COMPETITION AMONG SUPPLIERS – 75(1)(b)**

**[38]** In my view, because IBC is the sole supplier, the Tribunal could conclude that the UCDA's inability to secure the data on IBC's Web Claims Search Application is due to insufficient competition.

**THE PERSON REFERRED TO IN PARAGRAPH (A) IS WILLING AND ABLE TO MEET THE USUAL TRADE TERMS OF THE SUPPLIER OR SUPPLIERS OF THE PRODUCT – 75(1)(c)**

**[39]** There is no question that the UCDA is prepared to continue to pay for the Web Claims Search Application data. In these circumstances, I find that the Tribunal could conclude that this test has been met.

**THE PRODUCT IS IN AMPLE SUPPLY – 75(1)(d)**

**[40]** The Beattie Affidavit shows that IBC was able to reinstate the UCDA's associate membership and its access to the Web Claims Search Application after the initial termination of the UCDA's membership on May 26, 2010. Thereafter, it continued supplying the data on a month to month basis until the Termination. Based on this evidence, the Tribunal could conclude that the product is in ample supply.

**THE REFUSAL TO DEAL IS HAVING OR IS LIKE TO HAVE AN ADVERSE EFFECT ON COMPETITION IN A MARKET – 75(1)(e)**

**[41]** In my view, the Tribunal could find that IBC's refusal to supply the Web Claims Search Application has caused Auto Check's exit from the market. Since Auto Check was the low cost provider of accident claims searches to approximately 4500 used car dealers and, since it is reasonable to conclude that these dealers will now be forced to purchase more expensive searches from CarProof or Carfax, the Tribunal could find that the test is met.

**PART II – PRICE MAINTENANCE – 76(1)(a)(ii)**

**[42]** The test for leave to bring applications under section 76 of the Act is found in subsection 103.1(7.1). It says that the Tribunal must have reason to believe that an applicant is directly affected by any conduct that could be the subject of an order.

**[43]** For the reasons given in paragraph 31 above, I have concluded that the UCDA is directly affected by the closure of its Auto Check business.

**[44]** The more difficult question is whether I can conclude that an order "could" be made under subparagraph 76(1)(a)(ii) in the absence of any direct evidence in the Beattie Affidavit showing that IBC's refusal to supply its Web Claims Search Application data to the UCDA is a result of Auto Check's low pricing. The only evidence before the Tribunal is circumstantial.

**[45]** Some of the circumstantial evidence described below relates to the actions and affiliations of two companies called CGI Group Inc. ("CGI") and i2iQ Inc. ("i2iQ")

**[46]** In its submissions the UCDA says at paragraph 25:

> UCDA is unable to establish definitively, without discovery pursuant to the Tribunal's rules, whether IBC's refusal to supply occurred because of concerns about Auto Check™'s low pricing policy. However, there is significant circumstantial evidence related to the large difference between Auto Check™ and CarProof prices, the actions of CarProof, connections between CarProof and i2iQ and communications between i2iQ and IBC, that provides reason to believe that IBC's refusal to supply occurred because of Auto Check™'s low pricing policy.

**[47]** Further in its reply submissions the UCDA said at paragraph 39:

> In this situation, the circumstantial evidence that IBC was acting to benefit CGI, with whom it has a preferred business relationship, and which in turn has a close business relationship with i2iQ and CarProof, is the only evidence on the record related to the reasons for IBC's refusal to supply. It is noteworthy that, as Mr. Beattie indicated in his affidavit, IBC did not provide reasons when it terminated supply to UCDA, and again in its Representations IBC has remained silent about any other reasons for the termination. UCDA submits that in such a situation an adverse inference should be drawn from IBC's silence and/or the "sufficient credible evidence" test should be applied in a manner which allows potentially viable claims to proceed and be tested on the merits rather than be frustrated by the Applicant's inability to access relevant evidence in the possession of the Respondent during the leave stage.

**[48]** While I accept that circumstantial evidence and reasonable inferences may be relied on, the question is whether the circumstantial evidence in this case meets the requirement that there be sufficient credible evidence to give rise to a *bona fide* belief that the conduct could be subject to an order.

**[49]** The UCDA relies on four pieces of circumstantial evidence to show that the Termination was because of UCDA's $7.00 price contrasted with CarProof's price of $34.95. I will deal with each in turn.

**(i) The Price Difference**

**[50]** The evidence shows that CarProof has twice approached the UCDA with a view to acquiring its dealers as its customers. These approaches failed because the UCDA believes that

its members prefer Auto Check's low priced searches. Accordingly, CarProof's searches will only be attractive to the UCDA's members if Auto Check's low cost searches are no longer available.

**[51]** The evidence, which is said to suggest that the Termination was due to Auto Check's low price, is as follows:

- CarProof doesn't deal directly with IBC to obtain its ASP data. It deals through an intermediate company. Mr. Beattie speculates that that company is either i2iQ or CGI or perhaps both. CGI is contractually linked to IBC because CGI operates the ASP Database for IBC and provides other data services to IBC members. One service is called Auto Plus and it provides information to assist insurers when making decisions about coverages and premiums. Another service is Enhanced Auto Plus. It includes vehicle claim histories from CarProof.
- I2iQ's website also offers CarProof's vehicle claim history searches and says that i2iQ has a partnership or strategic alliances with CarProof and with a division of CGI called CGI Insurance Information Services. However, there is no evidence about whether i2iQ has a contractual relationship with IBC.

**[52]** If CGI is the intermediary between CarProof and IBC, the Tribunal is asked to speculate that, because CGI provides important data services to IBC, IBC will be inclined to do a favour for CGI by helping its customer, CarProof. This would be accomplished by refusing to supply data to its low cost competitor Auto Check.

**[53]** Regarding i2iQ, the evidence shows (i) that i2iQ's CEO is able to say to IBC that UCDA's dealers could purchase data from CarProof, (ii) that i2iQ and IBC were in prompt telephone contact about the UCDA's request for dollar claims information and (iii) that i2iQ has a partnership or strategic alliance with a division of CGI. This information suggests to me that i2iQ has a degree of control over CarProof and that i2iQ has a close relationship with IBC and may be the intermediary selling IBC's data to CarProof. If those facts were true, I must infer that IBC would be inclined to do a favour for i2iQ by, in turn, helping its customer CarProof. Again, this would involve refusing to supply the Web Claims Application Search data to Auto Check.

**(ii) CarProof's Actions**

**[54]** These are described in the following paragraphs taken from paragraphs 13-15 of the Beattie Affidavit:

> CarProof has grown substantially and is the market leader in the supply of vehicle accident history searches in Ontario. In 2004, CarProof began distributing false and misleading promotional materials to motor vehicle dealers in Canada, which misrepresented the nature and scope of UCDA's lien search and other services. Following written warnings from UCDA's legal counsel, CarProof abandoned this negative campaign. It again began distributing false and misleading promotional material in 2007 in connection with UCDA's services including its Auto Check™ service. I believe that this may have been motivated in whole or in

> part by UCDA's position as the low-price supplier in the market. UCDA's efforts to resolve the situation out of court were unsuccessful, leading it to commence litigation against CarProof. That litigation was ultimately settled in 2009, with CarProof and UCDA issuing a joint statement in which CarProof acknowledged that UCDA provides accident claim information through its Auto Check™ service and undertook not to make misleading statements in the future.
>
> In early 2009, representatives of CarProof approached UCDA and proposed that UCDA partner with CarProof to provide CarProof vehicle accident histories to UCDA members rather than doing so directly through the Auto Check™ business. Such a proposal, if adopted, would have meant the end of the Auto Check™ business. Bearing in mind CarProof's aggressive business tactics and the significantly higher prices at which it provides vehicle accident history searches, UCDA concluded that a relationship with CarProof was not in the best interests of its members and declined the CarProof proposal.
>
> In early 2010, representatives of CarProof again approached UCDA and requested that UCDA partner with CarProof to provide CarProof vehicle accident histories to UCDA members, rather than doing so directly through the Auto Check™ business. UCDA's views on such a relationship had not changed, and we again rejected CarProof's overtures.

**[55]** In sum, the evidence indicates that CarProof appears to have misrepresented Auto Check's business and has suggested closing it down. However, these efforts have failed because of Auto Check's low price.

**(iii) Connections Between CarProof and i2iQ**

**[56]** This topic is dealt with above in paragraphs 51 and 53.

**(iv) Communications Between i2iQ and IBC**

**[57]** In June 2009, the UCDA contacted Ms. Pehar of IBC to ask for access to the dollar value claims information in the ASP Database. Shortly thereafter, the CEO of i2iQ spoke to Ms. Pehar and advised her that UCDA could purchase CarProof vehicle history reports and confirmed that he could be contacted if the UCDA wanted to pursue the idea. In the alternative, he suggested that the UCDA could speak directly to CarProof.

**[58]** The Beattie Affidavit speculates that IBC must have told i2iQ or CarProof of UCDA's request and that the only reason IBC, CarProof and i2iQ were in contact, after the UCDA asked for access to the dollar value claims information, was because they were concerned that, with this information, Auto Check would be a more effective low cost competitor.

**CONCLUSIONS**

**[59]** Against this background, it is clear that IBC has a close direct relationship with CGI (through its provision of services and maintenance of the ASP Database) and with i2iQ (it spoke to it about the UCDA's request for dollar value claims data). It is also clear that CGI and i2iQ have close ties to CarProof. Its searches are provided to IBC's members through CGI, and i2iQ appears to have some control over CarProof's operations and sells its searches through its website.

**[60]** Finally, it is reasonable to conclude based on its past conduct, that CarProof would like to see Auto Check's low cost business closed so that the UCDA's dealers could become potential customers for CarProof's searches.

**[61]** However, while I can conclude that it is possible that the Termination occurred as a result of IBC's wish to support CarProof's business objectives as a favour to either CGI or i2iQ, I cannot conclude that there is sufficient credible evidence to show the possibility that the Termination by IBC was due to Auto Check's low pricing policy. In these circumstances, an order could not be made.

**ORDER**

**[62]** The UCDA is hereby granted leave, pursuant to subsection 103.1(7) of the Act, to commence an application under section 75 of the Act. However, leave to apply under section 76 of the Act is denied.

**[63]** The UCDA is to have its costs fixed as a lump sum amount payable forthwith based on Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106. The UCDA is to prepare a bill of costs for review by IBC and, if an amount cannot be agreed, the Registry may be contacted and I will fix the amount once a procedure has been agreed.

**DIRECTION**

**[64]** The parties are to consult to see if they can agree about whether an interim supply order can be made and, if so, on what terms. Failing agreement, the Registry may be contacted to discuss arrangements for the hearing of the UCDA's application for interim relief.

DATED at Ottawa, this 9th day of September, 2011

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

**COUNSEL:**

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# COMPETITION LAW OF CANADA

General Editors:

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# COMPETITION LAW OF CANADA



**RELEASE 25 • 2013**

## HIGHLIGHTS

Juris Publishing is pleased to present Release 25, 2013 of **COMPETITION LAW OF CANADA.** This release features significant revisions and updates to Chapter 8 on *Conspiracy and Related Provisions* and includes new legislation and guidelines to the appendices on the CD-ROM.

The following sections of Chapter 8 have been updated and revised:

- Overview of Section 45 and Related Provisions of the Competition Act
- Legislative History of Section 45
- Elements of the Section 45 Offence
- The Concept of "Competitor"
- The "Agreement" Requirement in the Section 45 Offence
- The *Mens Rea* Requirements of Section 45
- The Defense and Exceptions in Section 45
- Section 90.1
- Bid Rigging
- Foreign-Directed Conspiracies
- Specialization Agreements
- Agreements relating to Professional Sport
- Agreements between Federal Financial Institutions

Thus, the Tribunal left open the possibility that an industry norm of the vertical integration could be indicative of a larger product market or otherwise reflect circumstances in which a refusal to deal would not be subjected to an order under Section 75.

*[iv]—The Geographic Market.* Having defined the relevant product in the *Chrysler* case as Chrysler auto parts, the Tribunal then indicated that its task was to "determine the market in which [the complainant] buys Chrysler auto parts."[35] Thus, while the "product" was assessed with regard to the demands of the complainant's customers, the Tribunal assessed the geographic market with regard to the relationship between the supplier and the complainant.

The Tribunal determined in *Chrysler* that the appropriate geographic market was Canada rather than North America, as contended by Chrysler Canada. In reaching this conclusion, the Tribunal focused on the different market conditions in the United States and Canada and, in particular, the different prices charged by Chrysler for auto parts in the two countries. Although the Tribunal did not outline a general analytical framework for reaching its conclusion on the relevant geographic market in the same manner that it did with respect to its determination of the relevant "product," it did indicate that "[t]he existence of separate [Chrysler] price lists in the U.S. and Canada and the fact they are intended, according to the evidence of [Chrysler], to respond to different market conditions in the two countries strongly implies the existence of separate markets."[36] The Tribunal later added that "the critical difference between the two sources of supply is price."[37]

Chrysler Canada and Chrysler U.S. parts were physically identical; however; prices sometimes varied for a number of reasons, including slower turnover of inventory in Canada and fluctuations in exchange rates. The complainant's customers could and did buy Chrysler parts from Chrysler U.S. through other exporters when they were cheaper.

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[35] Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., n. 6, *supra*, at 12.

[36] *Id.* at 16.

[37] *Id.* at 15.

The Tribunal noted that "customers tended to buy exclusively or primarily from [the complainant] those parts that were cheaper to source through Chrysler Canada."[38]

In concluding that Canada and the United States were separate markets, the Tribunal also noted the fact that Chrysler Canada offered "price protection" against changes in price between the time of ordering and delivery, which was not available from Chrysler U.S. until February 1989, and Chrysler Canada provided "availability reports" identifying which parts were immediately available and the time within which other parts could be supplied. The complainant also claimed that Chrysler Canada provided better service by filling a higher percentage of orders immediately with complete and more accurate shipments than Chrysler U.S. However, the Tribunal commented that "whatever problems there might have been in sourcing from Chrysler U.S., they could be overcome by price concessions or other advantages that ... other exporters offered [the complainant's] customers. Insofar as [the complainant's] customers were concerned, he was a preferred source of supply primarily for parts that are cheaper to source in Canada."[39]

The geographic market in the *Xerox* case was not in issue. The Tribunal noted that "it was tacitly assumed to be Canada."[40]

Subsequent cases before the Tribunal have determined that the Tribunal will follow the same approach for the geographic market definition as it does for other sections of the Act.[41] The *Merger Enforcement Guidelines* state that a relevant geographic market consists of all supply points that are regarded as close substitutes by buyers.[42]

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[38] *Id.* at 13.

[39] *Id.* at 14–15.

[40] Director of Investigation and Research v. Xerox Canada Inc., n. 6, *supra*, at 103.

[41] *See Robinson Motorcycle Limited v. Fred Deeley Imports Ltd.*, 2005 Comp. Trib. 52 at para. 8, where the Tribunal states: "... a geographic market [could be found] on the basis that sales are linked to a need for convenient service."

[42] Canada, Competition Bureau, *Merger Enforcement Guidelines* (Ottawa: Industry Canada, 2004), section 3.19.

Although some commentators have suggested that it is not clear whether the geographic market can be larger than Canada in a Section 75 analysis,[43] the Tribunal in *Chrysler* appears to have been willing to find a North American market if the competitive factors had suggested that was appropriate. The Director has also indicated a willingness to consider the impact of foreign suppliers in the context of a Section 75 investigation.[44]

**[c]—"Business."** The Tribunal may make an order under Section 75 only if the complainant carries on a "business" and is substantially affected in, or is precluded from carrying on, that business. Subsection 2(1) of the Act defines a "business" to include "manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles," as well as "acquiring, supplying and otherwise dealing in services."

In *Chrysler*, a majority of the Tribunal adopted the general proposition "that the effect on the entire activity of which the refused supplies are a part should be used" for the purposes of Paragraph 75(1)(a).[45] In that case, the Tribunal accepted Chrysler Canada's submission that the business of the complainant should be viewed as "exporting automotive parts" and rejected the suggestion of the Director that the relevant business of the complainant was limited to "exporting Chrysler Canada auto parts." The Tribunal found the Director's definition unnecessarily restrictive because it "could preclude a proper understanding of the effects of the refusal to supply."[46] This decision, however, still appeared to leave open the possibility of the Tribunal treating different operating divisions within a single corporate entity as separate businesses for the purposes of Section 75.

The Tribunal in the *Xerox* case found that the complainant's business had three "overlapping aspects," namely, the purchase and

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[43] Roberts, n. 2, *supra*, at 209.

[44] *Annual Report of the Director of Investigation and Research for the Year Ended March 31, 1991* (Minister of Supply and Services, 1991) at 12–13.

[45] Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., n. 6, *supra*, at 18.

[46] *Id.*

sale, refurbishing and servicing of photocopiers. As the Tribunal further held that "all three aspects of the business require access to Xerox copier parts for the business to survive,"[47] it was unnecessary for the Tribunal to decide whether each of the three activities constituted a separate business for the purposes of Paragraph 75(1)(a) of the Act.

**[d]—"Substantially Affected"**

Paragraph 75(1)(a) requires that the person refused supply be "substantially affected" in his business or "precluded from carrying on business" as a result of his inability to obtain adequate supplies.

Having adopted a broad definition of "business," the Tribunal in the *Chrysler* case went on to say that the effect of the refusal to supply will not necessarily be established by examining only the overall sales and profit figures of the entire business of the person being refused supply.[48] Rather, the Tribunal indicated[49] that to assess the effect of a refusal to supply, it is necessary to answer the following questions:

(1) Does the product in issue account for a large percentage of the complainant's overall business?

(2) Is the product easily replaced by other products sold by the business?

(3) Does the sale of the product use up capacity that could be devoted to other activities?

(4) Is the product used or sold in conjunction with other products and services so that the effect on the overall results of the business may be much greater than indicated by the volume of the product purchased?

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[47] Director of Investigation and Research v. Xerox Canada Inc., n. 6, *supra*, at 102.

[48] The Tribunal did note that such evidence may be relevant to certain cases, saying "in some cases this type of evidence might be conclusive, but only where it is not possible to analyze how the separate parts of the business are related" (Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., *supra*, n. 6, at 19).

[49] *Id.* at 18.

# 27

# PRIVATE PARTY ACCESS TO THE COMPETITION TRIBUNAL: A CRITICAL EVALUATION OF THE SECTION 103.1 EXPERIEMENT

PAUL ERIK VEEL[†]



*The author examines private access to the Competition Tribunal under section 103.1 of the Competition Act. After considering the proceedings of private parties that have taken place before the Tribunal, he analyzes the requirements that must be met in order to have access and the remedies available. Assessing these from a policy perspective, the author suggests two revisions to the Competition Act: lowering the standing requirement for individuals from having their businesses be "directly and substantially" affected to merely having their businesses be "directly and materially" affected, and expanding section 103.1 to include the possibility of bringing applications for reviewable practices falling under section 79.*

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## INTRODUCTION 1486

In contrast with the experience of many other jurisdictions, including the United States,[1] the enforcement of competition laws in Canada has historically been undertaken by governmental bodies. Prior to 1976, individuals in Canada had no standing before courts to enforce competition laws or to seek damages for breaches of competition laws. Legislative amendments introduced in 1976—and continued in section 36 of the current *Competition Act*—provided individuals with the right to sue for damages for losses caused by certain types of anti-competitive conduct, the most important of these being conspiracies.[2] Section 36 has seen significant use, especially since the introduction of class action legislation, and class actions dealing with anti-competitive conspiracies are now increasingly being litigated in Canadian courts.[3] However, the enforcement of many important provisions of the *Competition Act*, including the provisions outlined in Part VII prohibiting restrictive trade practices, remained exclusively in the hands of Competition Bureau.



Following a flurry of debate over allowing private enforcement,[4] this situation changed in 2002 with the passage of amendments to the *Competition Act*, which gave private parties the ability to access the Competition Tribunal to challenge certain restrictive trade practices

1 B.A. Facey & D.H. Assaf, *Competition and Antitrust Law: Canada and the United States*, 3rd ed. (Markham, Ont.: LexisNexis Canada Inc., 2006) at 489-90 [Facey & Assaf].

2 *Competition Act*, R.S.C., 1985, c. C-34, s. 36 [*Competition Act*]. Legislative amendments in 1976 provided individuals with the right under what is now section 36 of the *Competition Act* to recover damages for losses suffered in certain cases, but private actions under this section were limited by both a) the limitations on the type of offences for which parties could recover damages and b) the inability of parties to seek injunctive relief to prevent the wrong from occurring. See; also Michael Trebilcock, Ralph Winter, Paul Collins & Edward Iacobucci, *The Law and Economics of Canadian Competition Policy* (Toronto: University of Toronto Press, 2003) at 765-75 [Trebilcock *et al*.].

3 The legal and policy considerations relating to competition class actions in Canada have been explored elsewhere at length. See, e.g., Vol. 3, No. 1, of The Canadian Class Action Review, which was devoted exclusively to issues surrounding competition class actions.

4 See, *inter alia*, N. Finkelstein & J. Quinn, "Reevaluating the Role of Private Enforcement and Private Party Access to the Competition Tribunal" (Paper presented at the University of Toronto Faculty of Law, 8 December 1995) [unpublished]; Trebilcock & Roach, *infra* note 7; Roach & Trebilcock Article, *infra* note 60; Rowley & Campbell, *infra* note 8.

in limited circumstances.[5] While these changes represented in some ways a substantial break with the traditional model of competition law enforcement in Canada, little academic attention has been paid to them since their introduction.[6] This article will seek to fill this gap by discussing two interrelated issues which have remained largely unaddressed. First, this article will provide a comprehensive overview of the legal framework for private party access. Second, this article will critically assess that legal framework by exploring *why* private party access is permitted under the *Competition Act* and whether the current framework optimally furthers the policy objectives of allowing private party access.



It is important to note that this article does not purport to provide a comprehensive theoretical analysis of the private enforcement of competition laws; nor does it attempt to provide an international comparative study of the framework governing private enforcement of competition laws; nor does it analyze in detail the substantive provisions in the *Competition Act* that are now enforceable by private litigants. While these are worthwhile research programs, these issues have already been examined elsewhere.[7] This paper will not avoid these topics entirely, but it will only engage with them to the extent necessary to effectively analyze the current provisions. Instead, this paper focuses directly on the Canadian provisions governing private access in order to highlight the current state of the law and assess whether the law actually furthers the policy goals of the *Competition Act*.

This paper will proceed as follows: Part I provides a brief overview of the private proceedings which have taken place before the Tribunal; Part II

5 *An Act to Amend the Competition Act*, S.C. 2002, c. 16.

6 A cursory overview of the provision and some of the cases is available in John Callaghan, Ian MacDonald & Blair McKechnie, "What about the flood of litigation?", online: (2005) Gowlings Lafleur Henderson LLP <http://www.gowlings.com/resources/PDFs/What%20about%20the%20flood%20of%20litigation.pdf>.

7 See Kent Roach & Michael Trebilcock, "Private Party Access to the Competition Tribunal" (Hull, Que.: 7 May 1996) [Trebilcock & Roach]; R. Jack Roberts, "International Comparative Analysis of Private Rights of Access (A Study Commissioned by Industry Canada; Competition Bureau)", online: (1999) <http://strategis.ic.gc.ca/SSI/ct/roberts-e.pdf>; see also Trebilcock *et al*., *supra* note 2 at Chapters 6, 7, 8 and 12.

examines the law of private party access to the Competition Tribunal, both outlining the thresholds that parties must meet in order to obtain access and examining the remedies available to parties; Part III proceeds to assess whether the current legal framework of private party access is effective from a policy standpoint, and it argues that certain changes to the *Competition Act* would better serve the underlying policy goals of private party access; and Part IV serves as a brief conclusion.



## I. A BRIEF OVERVIEW OF PRIVATE PROCEEDINGS BEFORE THE COMPETITION TRIBUNAL

Prior to the amendments which enabled private parties to access the Tribunal, some commentators argued that allowing private access would have disastrous consequences. Rowley and Campbell predicted, *inter alia*, that procedural safeguards would not prevent the flood of unmeritorious litigation and that the high costs relating to private actions would have an overall negative effect on the Canadian economy.[8] Six years after the introduction of private party access, one can conclude that their predictions were incorrect. Between the coming into force of these provisions in 2002 and December 2008, the Tribunal has considered nineteen applications for leave to make an application under sections 75 or 77.[9] Of these nineteen applications, thirteen were dismissed and six were allowed. Of the six which were allowed, only one application has ultimately been adjudicated on its merits, where it failed, and a full hearing on one other is currently pending. Of the four which were allowed but never heard on their merits, settlements were achieved between the parties in two of

8 J. William Rowley & Neil Campbell, "Private Litigation Over Reviewable Practices: A Cost-Benefit Analysis" in *Should Reviewable Practices be Turned into Competition Torts?* (A Report prepared for the Competition Policy Group, October 2001) 21 at 117-166 [Rowley & Campbell].

9 Another application was filed in 2007 by London Drugs, but it was withdrawn before the Tribunal considered it; see Competition Tribunal, online: (2007) <http://www.ct-tc.gc.ca/CMFiles/CT-2007-002_0029_53PVI-582007-1463.pdf>.

the cases, one application was withdrawn, and in one leave was not granted under section 106.[10]

These figures, if taken alone, suggest mixed results from the Canadian experiment with private access. The anticipated flood of frivolous claims has not materialized, and with the possible exception of the two cases in which settlements were reached, private applications have not generally been successful, with the majority (68%) failing at the initial stage of seeking leave to bring an application.[11] This lack of success by private applicants at the initial stage could indicate either that the claims were genuinely unmeritorious or that the rules governing private access prevented genuinely meritorious claims from being heard. The following sections address precisely this question by outlining and critically assessing the law of private access.



## II. THE LAW OF PRIVATE ACCESS TO THE COMPETITION TRIBUNAL

This Part explores the statutory provisions and case law surrounding private access to the Competition Tribunal. It begins with an extended examination of the conditions which an applicant must satisfy in order to be granted leave. It then briefly examines the remedies available to applicants.

10 *Competition Act*, *supra* note 2, s. 106.

11 Of course, there may be other measures of success than simply success by private applicants at the Tribunal. The increased possibility of a company being subject to an application under section 103(1) may have resulted in increased deterrence of reviewable practices which thus could not be the subject of any application, though this obviously cannot be properly assessed.

## A. Obtaining Leave to Make an Application 1490

The starting point of an analysis of private access is its governing provisions. The foundational provision governing access to the Competition Tribunal is section 103.1(1), which, at the time of writing states:

> (1) Any person may apply to the Tribunal for leave to make an application under section 75 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under section 75 or 77.[12]

There are three important aspects of this provision. First, there is no automatic right of access to the Tribunal; rather, a person must apply for leave. The conditions for obtaining leave are discussed in greater detail immediately below. Second, under the language of section 103.1 as it has stood from its introduction in 2002, an application can only be made under section 75 (refusal to deal) or 77 (exclusive dealing, tied selling, and market restriction), though amendments to the *Competition Act* included in Bill C-10 at the time of writing would allow applications to be made under an amended section 76 (price maintenance).[13] Third, the application is undertaken primarily on the basis of affidavit evidence. The application is to be judged summarily, primarily on the basis of affidavit evidence from both parties and without an oral hearing.[14]



12 *Competition Act*, *supra* note 2, s. 103.1(1). Bill C-10, the 2009 budget implementation bill, substantially amends the *Competition Act*. For the purposes of this paper, the most important modification is the amendment of section 103.1 of the Act to include an amended section 76 along with sections 75 and 77 as the provisions under which a person may seek leave to make an application. The amended section 76 introduces price maintenance as a reviewable practice. This change, coupled with the repeal of section 61 of the *Competition Act*, converts price maintenance from a criminal offence to a civil reviewable practice. Bill C-10, *An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures*, 2nd Sess., 40th Parl., 2009 [Bill C-10].

13 Bill C-10, *ibid*.

14 *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, 2004 FCA 339, [2004] F.C.J. No. 1657 at para. 24 [*Barcode (FCA)*]. Section 103.1(6) permits the party served by an application to respond to the application with written representations. The applicant may also be allowed to file a reply to the respondent's response. See *Nadeau Poultry Farm Limited v. Groupe Westco Inc. et al.,* 2008 Comp. Trib. 6.

Various subsections govern the requirements for obtaining leave. Section 103.1(4) prohibits the Tribunal from considering an application for leave where the matter with respect to which leave is sought is the subject of an inquiry by the Commissioner, was the subject of an inquiry by the Commissioner which was discontinued because of a settlement, or has already been brought before the Tribunal by the Commissioner.[15] Section 103.1(8) specifies that leave cannot be obtained where the matter which is the subject of the application ceased more than one year prior.[16]



Beyond the above requirements, the general provision governing the granting of leave is section 103.1(7), which states:

> The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.[17]

In the subsequent jurisprudence, the Tribunal has parsed this provision into two distinct elements: "(1) the applicant is directly and substantially affected in the applicant's business by any practice referred to in section 75

15 *Competition Act*, *supra* note 2, s. 103.1(3), (4). In order to enable the Tribunal to more easily decide this question, section 103.1(3) requires the Commissioner to certify within 48 hours of receiving a copy of the application for leave whether or not the matter which forms the subject of the application fits either of these conditions. *Ibid.* at s. 103.1(3).

16 *Ibid*., s. 103.1(8).

17 *Ibid.*, s. 103.1(7). Under Bill C-10, the standard that would be applicable for granting leave for applications under section 76 of the *Competition Act* is not the standard outlined in section 103.1(7). Rather, Bill C-10 introduces a new section, section 103.1(7.1), which creates a modified standard which is solely applicable to granting leave for applications under section 76. This provision reads as follows: "The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section." Bill C-10, *supra* note 12, s. 431(4). While similar in many ways to the standard in the current section 103.1(7), the standard in the proposed section 103.1(7.1) differs in two respects. First, it removes any reference to an applicant's business, thereby broadening the class of persons who can bring applications. Second, it only requires that an individual be "directly affected" rather than "directly and substantially affected," as is the requirement in section 103.1(7).

or 77 of the Act; and (2) the alleged practice could be subject to an order under that section".[18] The following sections thus first examine the content of these two requirements, before moving on to the required standard of proof.

### 1. "Directly and substantially affected" – The Standing Requirement

The first of the two requirements which the applicant must fulfill is to demonstrate that "the applicant is directly and substantially affected in the applicant's business by any practice referred to in section 75 or 77 of the Act."[19] This requirement has been exceptionally important in applications under section 103.1. Indeed, in the vast majority of decisions where leave was refused, the reason for refusal was that the applicant did not demonstrate that his business was "directly and substantially affected." It is also important to note that this requirement is effectively a test for standing. In order to be able to bring an application, an individual's business must be directly and substantially affected by the impugned conduct; this implies that neither unaffected businesses nor consumers have standing to bring an application under section 103.1(7).[20] Indeed, this interpretation of the purpose of this provision has been confirmed by the Federal Court of Appeal.[21]



18 *National Capital News Canada v. Milliken,* 2002 Comp. Trib. 41, at para. 8. [*National Capital News*].

19 *Ibid*.

20 The rigidity of this requirement is demonstrated by the Competition Tribunal's decision in *Canadian Standard Travel Agency Registry v. International Air Transport Association*, 2008 Comp. Trib. 14, in which it held that a trade association representing a large number of allegedly affected businesses did not having standing to bring an application, as the applicant itself was not affected. From a comparative perspective, the class of parties who can obtain standing in Canada under section 103 of the *Competition Act* is significantly more limited than the class of litigants in the United States that have antitrust standing under American antitrust statutes. For useful discussions of some of the contours of antitrust standing in the United States, see *Associated General Contractors of California, Inc. v. California State Council of Carpenters et al.*, 459 U.S. 519 (1983); *Novell, Inc. v. Microsoft Corp.*, 505 F.3d 302 (4th Cir. 2007).

21 *Barcode (FCA)*, *supra* note 14 at para. 22.

In terms of the substance of what this provision requires, there has thus far not been any judicial consideration of the requirement that the business be "directly" affected. While the Tribunal has not yet had any reason to address this directness requirement, this language likely has the effect of denying standing to a downstream business whose business suffered from the anti-competitive practices taken against an upstream supplier. Thus, if a retailer's business is negatively impacted by a producer's decision to refuse to deal with a wholesaler who had been supplying that retailer, the directness requirement likely limits standing to the directly affected wholesaler rather than the indirectly affected retailer.[22]



In contrast to the lack of judicial interpretation of the directness requirement, the question of when a business has been "substantially affected" has been explored at length by the Competition Tribunal. The threshold for what has been considered "substantial" by the Tribunal has been quite high. Noting the similarity in wording between section 75(1)(a) and section 103.1(7), the Tribunal has effectively taken "substantial" to mean the same thing in the context of section 103.1(7) as it does in section 75(1)(a).[23] Under section 75(1)(a), "substantially affected" has been interpreted to require an examination of whether the business as a whole has been substantially affected rather than simply examining whether a particular product or product line of that business has been affected,[24] and this interpretation has been adopted into the meaning of substantial in section 103.1(7). Thus, in *Broadview Pharmacy v. Wyeth Canada Inc.*, the Tribunal did not find a direct and substantial effect because the product which was the subject of the application only constituted 5% of the applicant's sales of pharmaceuticals.[25] Similarly, in *Construx Engineering Corporation v. General Motors of Canada*, evidence that a line of vehicles which was the subject of an alleged refusal to deal constituted 67% of the applicant's sales of new motor vehicles was not considered to be sufficient

22 This limitation is thus likely analogous to the limitation on recovery by indirect purchasers in American conspiracy class actions. For the classic case on this point, see *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

23 *Competition Act*, *supra* note 2, ss. 75, 103.1.

24 *Chrysler Canada Ltd. v. Canada (Competition Tribunal)* (1989), 1989 Carswell Nat 720, 27 C.P.R. (3d) 1, [1989] C.C.T.D. No.49, at 29-31.

25 2004 Comp. Trib. 22. [*Broadview*].

evidence of a company's business being substantially affected, where there was no indication what percentage of the company's total sales this represented.[26] Even more striking in this regard is the Tribunal's decision in *Sears Canada Inc. v. Parfums Christian Dior Canada Inc. and Parfums Givenchy Canada Ltd*, where a loss of $16 million was not considered a substantial impact to Sears because "it [was] insignificant in the context of Sears' $6 billion business overall".[27]



By contrast, cases where the Tribunal has found evidence of a substantial impact have been those where the business of the applicant has been virtually ruined by the impugned conduct. In *B-Filer Inc. v. The Bank of Nova Scotia*, the Tribunal found that the loss of 50% of the applicant's revenue constituted a substantial impact.[28] In *Robinson Motorcycle Limited. v. Fred Deeley Imports Ltd.*, an applicant's business was substantially affected because it relied exclusively on the products which the respondent refused to supply.[29] In *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, the alleged refusal to deal forced the company into receivership and caused it to lay off half of its workforce.[30] Thus, although there are not enough cases to make a definitive statement, it seems that the threshold of what constitutes a substantial impact is a high one.

### 2. "That could be the subject of an order" – Establishing the Elements of the Practice

The second requirement for being granted leave to make an application is that "the alleged practice could be subject to an order under that section." The initial interpretation of this section was muddled. In the first application under section 103.1, the applicant sought an order to compel the Speaker of Parliament to give him access to the parliamentary press gallery, alleging that the Speaker's failure to do so constituted

26 2005 Comp. Trib. 21 [*Construx*].
27 2007 Comp. Trib. 6, at para. 33 [*Sears*].
28 2005 Comp. Trib. 38 [*B-Filer (2005)*].
29 2005 Comp. Trib, 52, at para. 8 [*Robinson*].
30 2004 Comp. Trib. 1, para. 16-17 [*Barcode (CT)*].

a refusal to deal. The Tribunal disposed of this matter by concluding that parliamentary privilege gave the Speaker of the House the right to refuse access to Parliament to individuals and that the Tribunal had no jurisdiction to consider this privilege; the Tribunal did not discuss what, if anything, an applicant was required to demonstrate under this part of the provision.[31] In *Barcode (CT)*, the second application to the Tribunal under section 103.1, the Tribunal removed this evidentiary burden altogether. The Tribunal ruled that in order to be granted leave to make an application to the Tribunal, applicants only had to demonstrate that their business was directly and substantially affected; in this case, the applicant did not have to provide any evidence of all of the statutory elements of the impugned practice.[32]



On appeal to the Federal Court of Appeal, the Competition Tribunal's conclusion on this point was reversed. The Court of Appeal concluded that in an application for leave, "there must be some evidence by the applicant and some consideration by the Tribunal" of all elements of the reviewable practice which is the subject of the application for leave.[33] This has remained the appropriate standard which has been applied by the Tribunal since *Barcode (FCA)*.

To summarize, the current interpretation of section 103.1(7) requires that in order to be granted leave to make an application, applicants must adduce evidence of two things. First, they must establish that their business was directly and substantially affected by the conduct of the respondent. Second, applicants must give some evidence that the respondent's practice met all the statutory elements of reviewable practice with respect to which they are seeking leave.

31 *National Capital News*, *supra* note 18.
32 *Barcode (CT)*, *supra* note 30 at para. 8.
33 *Barcode (FCA)*, *supra* note 14.

### 3. "Reason to believe" – The Evidentiary Threshold



Having examined the elements which an applicant must demonstrate in an application for leave, it is also necessary to consider the question of the extent to which parties must demonstrate those elements.[34] Section 103.1(7) does not require that a claim be established on the balance of probabilities, but rather specifies that the Tribunal must have "reason to believe" that the elements could be made out.[35] The exact content of this standard has fluctuated somewhat. The initial test employed by the Tribunal in *National Capital News* was that the application would have to be "supported by sufficient credible evidence to give rise to a *bona fide* belief" that the elements of section 103.1(7) could be made out.[36] In *Barcode (CT)*, the Tribunal held that this standard amounted to "less than a balance of probabilities" but more than a "mere possibility".[37] Some decisions have been decided simply on whether the Tribunal "could conclude" that the elements were made out,[38] a standard which necessarily seems to conflict with the fact that a mere possibility is not sufficient. Thankfully, most of the case law has applied the initial test formulated in *National Capital News*.



While the test to be employed has been fairly constant throughout the case law, the application of that test in determining what constitutes "sufficient evidence" has varied. In some cases, a relatively low requirement has been implemented, with the Tribunal accepting affidavit evidence and limited financial statements as sufficient credible evidence that the applicant's business would be directly and substantially harmed.[39] By contrast, where

34 Obviously, the burden of proof must be lower than a balance of probabilities, since such a high standard would negate many of the benefits of an initial application stage. Moreover, it would be unreasonable to require a demonstration of the elements on an overly onerous standard simply on the presentation of affidavit evidence.

35 *Competition Act*, *supra* note 2, s. 103.1(7).

36 *National Capital News*, *supra* note 18 at para. 14; approved of by the Federal Court of Appeal in *Barcode*, see *Barcode (FCA)*, *supra* note 14 at para. 19; applied in *B-Filer (2005)*, *supra* note 28 at para. 52.

37 *Barcode (CT)*, *supra* note 30 at paras. 12-13.

38 *Robinson*, *supra* note 29; *Quinlan's of Huntsville Inc. v. Fred Deeley Imports Ltd.*, 2004 Comp. Trib. 15 [*Quinlan*].

39 *Allan Morgan and Sons Ltd. v. La-2-Boy Canada Ltd.*, 2004 Comp. Trib. 4 [*Allan Morgan*]. Note, however, that precise data is not required for every element. In *Barcode*, the

no financial statements were given, the Tribunal has refused leave, stating that it would not rely on mere speculation;[40] similarly, where financial information was provided in an affidavit but the basis or manner of calculation of that information has not been provided, leave has been refused.[41] While these decisions seem reasonable, the more difficult ones to understand are those where some financial evidence has been adduced in support of the applicant's contention, but the Tribunal has rejected the evidence as being insufficient, as occurred in *Construx*.[42] These cases provide only minimal indication in terms of what the courts will accept as sufficient evidence, and the practical meaning of the test in *National Capital News* is somewhat ambiguous. All that can be said is that while the courts will certainly require some concrete evidence in support of the application, the amount of evidence which is required to constitute "sufficient credible evidence" is unclear.



One final evidentiary point which is worth noting is the impact of section 103.1(11). This section specifies that "in considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it".[43] While this provision has not been judicially considered, its inclusion in the statute is nonetheless important. If the Tribunal were allowed to draw inferences from the fact that the Competition Commissioner had not taken action, a significant additional hurdle would be placed in front of any potential applicants. Especially insofar as one of the policy aims of section 103.1 is to allow private parties to bring valid claims when the Bureau is for some reason unwilling or unable to do so—an idea which is discussed further below—the absence of an explicit provision such as section 103.1(11) might have the effect of completely

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Federal Court of Appeal inferred that there could be a substantial lessening of competition based on certain facts of the case rather than being provided any evidence directly thereof. See *Barcode (FCA)*, *supra* note 14.

40 *Paradise Pharmacy Inc. and Rymal Pharmacy Inc. v. Novartis Pharmaceuticals Canada Inc.,* 2004 Comp. Trib. 21, at para. 23 [*Paradise*]. See also *Annable v. Capital Sports and Entertainment Inc.* 2008 Comp. Trib. 5 [*Annable*].

41 *Sono Pro Inc. v. Sonotechnique P.J.L. Inc.,* 2007 Comp. Trib. 18.

42 *Construx*, *supra* note 26.

43 *Competition Act*, *supra* note 2, s. 103.1(11).

undercutting the policy aims of section 103.1(1). **1498**

### B. Remedies

The remedy available to parties who successfully bring an application under sections 75 or 77 is injunctive relief that prohibits the impugned practice.[44] In addition to final injunctive relief, interlocutory relief is also available.[45] Section 104(1) authorizes the Tribunal to grant interlocutory relief "having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief."[46] The Tribunal has indicated that the governing test for interlocutory relief under section 104(1) is that found in *RJR-MacDonald Inc. v. Canada (Attorney General)*.[47] Under this test, the applicant must establish:

1) that there is a serious issue to be tried;[48]

2) that not granting relief will cause irreparable harm to the applicant; and,

3) that the balance of convenience favours the grant of the injunction.[49]



44 *Ibid*., ss. 75, 77.

45 Interim relief orders may be available even before leave to bring an application has been granted. See *Canadian Standard Travel Agency Registry v. International Air Transport Association*, 2008 Comp. Trib. 12.

46 *Competition Act*, *supra* note 2, s. 104.

47 [1994] 1 S.C.R. 311 [*RJR-MacDonald*]; see *B-Filer Inc. v. The Bank of Nova Scotia*, 2005 Comp. Trib. 52 [*B-Filer (Interim Relief Order)*]; and *Quinlan*'s *of Huntsville Inc. v. Fred Deeley Imports Ltd.,* 2004 Comp. Trib. 28 [*Quinlan (Interim Relief Order*)].

48 Interestingly, in *Quinlan (Interim Relief Order)*, *ibid*., the Tribunal rejected the suggestion that because the injunction sought was a mandatory interlocutory injunction, the standard should be the higher "strong prima facie case" standard. This is in tension with other mandatory interlocutory injunction cases which have employed a higher standard, though not necessarily the "strong prima facie case" standard. For example, see *Dempster v. Mutual Life of Canada*, [2000] I.L.R. I-3748, [1999] O.J. No. 3595 and the cases discussed therein; see also *Parker v. Canadian Tire Corp.*, [1998] O.J. No. 1720.

49 *RJR-MacDonald*, *supra* note 47.

Although there have been few decisions which have considered interlocutory relief under section 104(1), the few decided cases thus far suggest that such injunctions will often be readily obtainable. The first factor above will most likely be met if the applicant obtains leave under section 103.1(7). With respect to the second requirement, the Tribunal in *Quinlan (Interim Relief Order)* held that there was no duty on the part of the applicant to mitigate by making alternative business arrangements and that the loss of sales and goodwill could constitute irreparable harm.[50] Finally, the Tribunal suggested that in a section 75 case, if the products are in ample supply—evidence of which is itself a requirement for obtaining leave—then the balance of convenience will favour the granting of an injunction.[51] Thus, this suggests that interlocutory relief will often be easily available once the applicant has been granted leave.



In contrast to the United States, a successful applicant cannot recover any damages. Section 103.1 has no provision for the awarding of damages; nor do sections 75 or 77. Moreover, section 77(3.1) explicitly states that there may be no award of damages under section 77 to an individual bringing an application under section 103.1.[52] While it is surprising that no analogous provision was inserted into section 75, this does not suggest that damages would be available under section 75 in an application under section 103.1, since injunctive relief is the only remedy contemplated in section 75.

50 *Quinlan (Interim Relief Order)*, *supra* note 47. Interestingly, in *B-Filer (Interim Relief Order)*, where interlocutory relief was refused, one of the reasons that no irreparable harm was found by the court was that B-Filer had made alternative business arrangements; see *B-Filer (Interim Relief Order)*, *supra* note 47. Thus, it seems that there is no duty to mitigate, but if the party does mitigate, it will be denied interlocutory relief. This could potentially create a perverse incentive against mitigation.

51 *Quinlan (Interim Relief Order)*, *Ibid.*

52 *Competition Act*, *supra* note 2 at s. 77.

## III. THE POLICY AIMS OF PRIVATE ACCESS TO THE COMPETITION TRIBUNAL

Having outlined the law on private access as it currently stands, this section considers whether the law advances the policy aims of the *Competition Act*. To this end, this Part first considers what the policy goals are of allowing private party access to the Tribunal. It is important to clearly define these policy goals prior to evaluating the effectiveness or appropriateness of these particular provisions, because it is the realization of the underlying purposes which is the standard by which the current provisions must be measured. This Part then examines to what extent these goals are adequately reflected in the current legal framework by critically examining a) the criteria for being granted leave to bring an application, b) the remedies available to private litigants, and c) the substantive scope of private party access.



In order to elucidate the rationale underlying private party access, it is first necessary to remember the oft-stated maxim that the purpose of competition law is to protect competition, not competitors. Indeed, from an economic perspective, the harm of anti-competitive conduct is not that it harms competitors. Rather, the harm of anti-competitive conduct is the dead-weight social loss that occurs when markets are not operating efficiently.[53] Though for broader reasons rather than the more narrow welfare justifications provided by economic theory, the purpose of the *Competition Act* likewise seems to be the protection of competition. The purpose clause in section 1.1 begins by stating that "the purpose of the Act is to maintain and encourage competition in Canada," and it then proceeds to list a number of reasons why competition is protected.[54] While there are a number of goals fostered through the protection of competition—and there have been significant debates over how to balance those often-

53 Trebilcock *et al.*, *supra* note 2 at 40. For an economic analysis of the harms of monopolistic situations, see Chapter 1 of Jean Tirole, *The Theory of Industrial Organization* (MIT Press, 1988).
54 *Competition Act*, *supra* note 2, s. 1.

competing goals[55]—the overarching objective is to protect competition itself rather than competitors.[56] This is further confirmed by the fact that the majority of the most important substantive provisions of the *Competition Act* only proscribe conduct which harms competitors when that conduct also has an anti-competitive effect, and not when it simply has a harmful effect on a competitor.[57]

This conception of the purpose of competition law has particularly important implications for the private enforcement of competition law. As Rothstein JA wrote in *Barcode (FCA)* with respect to private party access:

> the purpose of the *Competition Act* is to maintain and encourage competition in Canada. It is not to provide a statutory cause of action for the resolution of a dispute between a supplier and a customer that has no bearing on the maintenance or encouragement of competition.[58]



Thus, private party access is not justified on the basis that it can be used by parties to rectify private wrongs, but on the basis that it is instrumentally effective insofar as it serves the socially desirable end of promoting competition.[59]

The theoretical strengths and weaknesses of permitting private enforcement of law in favour of public ends are well-examined by

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55 For the debate over how these goals are balanced, see *Canada (Commissioner of Competition) v. Superior Propane Inc.*, 2000 Comp. Trib. 15, 7 C.P.R. (4th) 385 at para. 404-413; *Canada (Commissioner of Competition) v. Superior Propane Inc.*, 2001 FCA 104, 199 D.L.R. (4th) 130, 269 N.R. 109, [2001] 3 F.C. 185, 2001 CarswellNat 2092, 3 F.C. 185, 11 C.P.R. (4th) 289.

56 For an introductory discussion relating to the historical debate over the purpose of competition law in Canada, see James Musgrove, "Introduction and Overview: The Purpose of Canadian Competition Law" in James Musgrove, ed., *Fundamentals of Canadian Competition Law* (Toronto: Thomson Carswell, 2007) 1.

57 See, *inter alia*, *Competition Act*, *supra* note 2, ss. 45, 75, 77, 79, 92.

58 *Barcode (FCA)*, *supra* note 14 at para. 23.

59 Indeed, Tribunal decisions support this justification. In the cost order resulting from the litigation in *Robinson v. Deeley* cost order, para.31, the Tribunal wrote that "[p]rivate Competition Act litigation is an important enforcement procedure of the Act." See *Robinson Motorcycle Limited v. Fred Deeley Imports Ltd.,* 2005 Comp. Trib. 40.

Trebilcock and Roach and bear reviewing here. On the one hand, there are significant benefits which can flow from allowing private parties to enforce public laws: private enforcement can supplement public enforcement with additional resources, which is particularly important if the public enforcer has limited resources; private enforcers may be in a better position to detect breaches of the law; and private enforcement is an efficient means of holding public enforcers accountable for their decisions not to take action.[60] These considerations certainly apply in the competition context, as the Bureau is resource-constrained and the cost of litigating complex competition cases can be high.[61] Private party access to the Tribunal can thus play an important role in relieving the Competition Bureau of some of its responsibilities, rectifying any perceived under-enforcement, and ensuring effective competition. However, as Trebilcock and Roach note, there are also harms which can result from private enforcement of the law: private enforcement can result in over-deterrence; private enforcers can engage in strategic enforcement or bring frivolous claims;[62] and private enforcement can undermine a coherent plan of public enforcement.[63] Put broadly, this implies that while private enforcers may play a useful role in achieving a public end, because their incentives structure differs from that of a public enforcer, allowing private enforcement of the law may also result in certain societal harms. This suggests that private enforcement should be allowed, but the rules which govern that private enforcement should be structured in such a way as to attempt to bring private incentives



60 Kent Roach & Michael Trebilcock, "Private Enforcement of Competition Laws" (1996) 34 Osgoode Hall L.J. 461 [Roach & Trebilcock Article] at 488; see also the "Interim Report on the *Competition Act*" (Report of the Standing Committee on Industry, June 2000) at Chapter Six, online: (2000) <http://cmte.parl.gc.ca/Content/HOC/committee/362/indu/reports/rp1031742/indu01/13-ch6-e.html>,

61 "Study of the Historical Cost of Proceedings Before the Competition Tribunal", Report Prepared for the Competition Bureau, online: (1999) <http://strategis.ic.gc.ca/pics/ct/wiserep-e.pdf> [Cost Study].

62 Indeed, the potential for frivolous litigation is quite substantial. One study reported that between 1992 and 2000, only 1% of reviewable complaints were found by the Bureau to be meritorious of action on their part, suggesting that there may be a large pool of unsatisfied complainants. See Rowley & Campbell, *supra* note 8 at 56.

63 Roach & Trebilcock Article, *supra* note 60 at 488-89; this final concern is less of an issue in Canadian competition law since the Commissioner has a right under section 103.2 to intervene in a private application.

in line with public aims, i.e., encouraging parties to bring meritorious litigation and dissuading parties from bringing frivolous or strategic litigation.

It is important to note that this conception of private party access is one in which private party access is instrumentally effective as a mechanism for fostering competition. Contrary to what Trebilcock and Roach suggest,[64] allowing this type of private party access to the Tribunal should not be—and has not been, as evidenced by Rothstein JA's comment cited above—justified on grounds of corrective justice. Corrective justice would require the vindication of an applicant's rights where they have been infringed or violated.[65] However, as noted above, the general conception of competition law is that it protects competition rather than competitors; a corrective-justice framework of private access would necessarily imply that a primary goal is protecting competitors. Moreover, it seems difficult to argue that any type of private right belonging to competitors is explicitly protected by competition law. This is because the *Competition Act* only prohibits actions when they have an anti-competitive effect and not simply when a business is harmed. For example, a refusal to deal which ruins a business only runs afoul of section 75 if it has an "adverse effect" on competition.[66] However, whether there has been an adverse effect on competition or not, the business itself has been affected in the exact same manner by the refusal to deal. If corrective justice was a legitimate rationale, the law would protect the business whether or not the practice caused an adverse effect on competition, while the law in fact only prohibits the practice if it results in reduced competition. Thus, although certain types of private actions not considered here, such as those permitting recovery by consumers under section 36, might be justified in part by theories of corrective justice, it is important to bear in mind that the private party access to the Tribunal considered by this article is justified by the social benefit such access brings in terms of protecting competition. With this

64 Roach & Trebilcock Article, *Ibid.* at 488.
65 For a general overview of corrective justice, see E.J. Weinrib, *The Idea of Private Law* (Cambridge, Mass.: Harvard University Press, 1995).
66 *Competition Act*, *supra* note 2, s. 75.

in mind, the following sections examine the extent to which the current framework of private party access appropriately structures the incentives of private parties to bring them in line with the public goal of fostering competition.

### A. Obtaining Leave to Make an Application



As discussed above, section 103.1(7) requires an applicant seeking leave to establish 1) that his business is directly and substantially affected by the practice, and 2) that the alleged practice could be subject to an order under sections 75 or 77. While much of the current mechanism for bringing an application is appropriate from a policy standpoint, the policy considerations discussed above would justify a different standard for the first requirement, i.e., the standing test.

Both a) the requirement to seek leave to make an application, and b) the requirement to give some evidence in support of each statutory element of a reviewable practice are reasonable from a policy standpoint. There are a number of reasons for this. First, an initial application stage provides an opportunity for frivolous or vexatious claims to be dismissed without exposing the respondent to long and costly litigation.[67] Second, it provides an opportunity for novel legal claims to be tested at lower cost to the applicants, thereby actually increasing the possibility of a genuinely meritorious, though novel, claim being brought. Third, by providing a low-cost forum for the adjudication of novel claims, the jurisprudence on the legal meaning of certain statutory provisions can be expanded relatively easily. Indeed, the applications brought under section 103.1 have provided at least some additional definition to certain provisions.[68] This clarity is

67 This goal has been successfully accomplished by the current provisions. While the merits of many of the cases are debatable, at the very least it seems clear that the applicant in *National Capital News* would have failed in an application under section 75. See *National Capital News*, *supra* note 18. A seemingly frivolous claim was also dismissed in *Annable*, *supra* note 40

68 At the very least, the applications under section 103.1(1) have helped define some of the outer contours of the requirements of section 75. Perhaps the best example of this is that

especially important in Canadian competition law, where few cases have been litigated and the contours of many statutory provisions are unclear.

By contrast, the current test for standing—which requires that the applicant's business be directly and substantially affected—is overly onerous. On the one hand, it does make sense to have some type of standing requirement. It is desirable that the applicant actually has some genuine interest in the outcome of the application in order to ensure that the applicant has an incentive to properly litigate what could be, if the application for leave is allowed, a long and costly process. On the other hand, there should not be an overly arduous threshold for standing which arbitrarily bars genuinely interested applicants who have a sufficient incentive to properly litigate a claim.[69]

The particularly problematic aspect of this requirement from a policy perspective is the notion that what is "substantial" is to be assessed in the context of the entire business. There are two problems with this. First, as noted above, in terms of the rationale for having a standing requirement in order simply to give standing to applicants who will take proper steps to effectively litigate the application, there seems to be no justification for denying standing to applicants whose companies have only had one product line of their business impacted; this is particularly the case if the degree to which the firm has been affected is still relatively substantial in absolute terms, even if it is not substantial in proportion to the total size of the business.

Second, and more importantly, it should be remembered that the purpose of competition law is to protect competition rather than competitors. From the perspective of protecting competition, the assessment for impact should be with respect to the product in question rather than the firm. To give a concrete example, whether Givenchy refuses to supply its perfumes



the meaning of "substantially affected" in section 75(1)(a) has been given some additional precision by certain decisions, e.g., *Broadview*, *supra* note 25; *Paradise*, *supra* note 40.

69 Perhaps the most obvious example of this is in *Sears*, *supra* note 27. Given that they stood to lose about $16 million, it seems surprising to suggest that they did not have a sufficient interest to bring an application.

to Sears or to a small retailer which exclusively sells Givenchy perfume, the anti-competitive effect is equivalent, as the competition in the sale of Givenchy's perfume has been reduced.[70] If the purpose of competition law is to protect competition rather than competitors, then it seems arbitrary that the small retailer should be given standing but Sears should not.[71] The focus should be on the anti-competitive effects on the particular product market rather than on the producer or retailer of that product.

Given the policy considerations listed above, it seems that a better requirement for standing would be a provision that requires that the business be "directly and materially" affected rather than "directly and substantially" affected.[72] The former term would still ensure that the applicant has a sufficient interest to effectively litigate the action, but it



70 While a discussion of the anti-competitive effects of vertical restraints are outside the scope of this paper, for an overview of the economics of vertical restraints, see Doris Hildebrand, *Economic Analyses of Vertical Agreements – A Self-Assessment* (The Hague: Kluwer Law International, 2005) at 11-23 [Hildebrand].

71 On a related point, this also suggests that the tribunal looking to section 75.(1)(a) in order to inform the meaning of "substantial" in section 103.1(7) may have been somewhat misguided. In the context of section 75(1)(a), the requirement of the business being "substantially affected" was a substantive statutory element of the reviewable practice, since, as Trebilcock *et al.* write, the history of this provision was that it was, atypically in the *Competition Act*, one that was—but no longer following the introduction of section 75(1)(e) in 2002—concerned with the protection of downstream businesses rather than protecting competition per se. See Trebilcock *et al.*, *supra* note 2 at 420-21. By contrast, "substantially affected" in section 103.1(7) is not a substantive element of the reviewable practice but rather a provision which limits standing. Thus, the purpose of the term is different in the two sections, and the Tribunal should have considered this when interpreting "substantially affected" in the statutory context of section 103.1(7).

72 This point may appear somewhat academic, since applicants under section 75 would still have to establish that they were substantially affected under the second element of the section 103.1(7) test. However, an overly onerous standing requirement should not restrict the availability of standing to bring a section 77 application. Moreover, the second argument above also speaks to a modification of the meaning of "substantial" in section 75(1)(a), so there may be reasons to change the wording in both sections. Note also that "materially" is the term favoured by Roach and Trebilcock, though they too would not have included the directness requirement. See Roach & Trebilcock Article, *supra* note 60. By contrast, the standing requirement which would be introduced by Bill C-10 for private applications challenging price maintenance is, as noted above in footnote , that a person be "directly affected." The absence of the requirement that the person be "substantially" affected suggests an even lower threshold for standing than the "directly and materially" standard suggested here.

would not preclude a large firm from bringing an application merely because the effect on its business was relatively small. While this might seem to expand the number of successful applications—especially given the number of applicants that failed to clear the hurdle of being substantially affected—it should be remembered that applicants would still have to establish the elements of underlying reviewable practice including some type of harm to competition.[73] Many of the frivolous applicants which were dismissed by the Tribunal for want of a substantial effect on the applicant's business would still likely be dismissed for lack of an adverse effect on competition. The only difference is that meritorious applicants that could show an adverse effect on competition would not be prevented from accessing the Tribunal merely because their businesses were not completely annihilated.



### B. Remedies

As examined above, while the current statutory framework allows parties to seek both interlocutory and permanent injunctive relief, it does not allow parties to recover damages. This section will consider whether there are policy arguments for allowing private parties to recover damages, as some have argued.[74] It will conclude that although there may be some benefits in terms of deterrence from allowing parties to recover damages, there are stronger arguments to limit parties' available remedies to injunctive relief.

There are two potential ways in which allowing successful applicants to recover damages could structure private incentives in line with the socially desirable outcome. First, the potential for recovery of damages gives the aggrieved applicant a greater incentive to bring an application before the Tribunal. Second, the prospect of having to pay damages deters a potential offender from engaging in the anti-competitive conduct in the first place.[75]

73 *Competition Act*, *supra* note 2, s. 103.1.

74 For example, see Trebilcock *et al.*, *supra* note 2 at 82-89, 91.

75 Both these points are noted in a 2002 House of Commons Committee report on

Although both of these arguments seem plausible, they are much weaker upon closer inspection.

With respect to the first mechanism, it should first be noted that it is not immediately clear that an award of damages is actually necessary in order to provide parties with a sufficient incentive to bring applications. Between the introduction of section 103.1 in 2002 and December 2008, 17 applications were brought by private parties under section 103.1 alleging reviewable practices under section 75. By contrast, since the introduction of the *Competition Act* in 1986, only five applications have been brought by the Bureau to the Tribunal under section 75. There has thus been a significant increase in the number of applications. Second, while the availability of damages awards might increase the number of meritorious applications, it might also increase the incidence of those that are frivolous or merely strategic. Furthermore, the potential for large damage awards might deter sufficiently risk-averse corporations from defending frivolous claims and instead compel them to settle. This could put excessive power in the hands of unscrupulous applicants. Third, even if in some cases the unavailability of damages provided no incentive for a party to bring an application under section 103.1, they could still either make a complaint to the Bureau about the practice in question or apply to the Commissioner to begin an inquiry under section 9.[76] The fact that private parties do not necessarily have sufficient incentives to challenge every reviewable practice does not mean that the private party mechanism is ineffective. Rather, it merely highlights the fact that the Bureau and the existence of a private right of access are not alternatives, but are instead complementary, with the Bureau having a role in bringing certain applications which private parties do not have sufficient incentives to bring.



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competition law, which argued in favour of the availability of damages for successful private litigants. Standing Committee on Industry, Science and Technology, "A Plan to Modernize Canada's Competition Regime" (April 2002) at 46-48 [Committee Report]. For theory and evidence on the deterrent effect of damages for violation of antitrust laws, see Michael Block, Frederick Nold & Joseph Gregory Sidak, "The Deterrent Effect of Antitrust Enforcement" (1981) 89 J. Pol.'l Econ□□'y.□ 429.

76 *Competition Act*, *supra* note 2, s. 9. For a discussion of some of the Commissioner's duties under section 9, see *Charette v. Canada (Commissioner of Competition)*, 2003 FCA 426, 2003] F.C.J. No. 1697.

With respect to the second mechanism discussed above, although awarding damages to successful applicants would likely deter corporations from undertaking reviewable practices, there are two additional considerations which speak against permitting damage awards. First, there is always the possibility of over-deterrence. From a practical standpoint, it is exceptionally difficult to set awards in such a way as to provide the optimal level of deterrence.[77] Moreover, the reviewable practices which can form the basis of an application under section 103.1 can in many circumstances have benign or pro-competitive effects. The possibility of high damage awards might thus deter corporations from engaging in such conduct even when it is not anti-competitive.[78] Second, the possibility of significant cost awards being granted to successful parties may already provide sufficient deterrence against the most egregious practices. In *B-Filer Inc. et al. v. The Bank of Nova Scotia*, the only application under section 103.1 which was litigated to conclusion, the Tribunal awarded costs to the respondent of almost $900,000.[79] Because of the complexity of competition litigation, the potential for large cost awards being made against the losing party is high. Thus, at least some measure of anti-competitive conduct may already be deterred without the need for significant damage awards.



These observations provide preliminary support for the conclusion that damages should not be available to successful litigants in private actions under section 103.1. However, this paper should not be taken to endorse the proposition that damages should not be awarded. The desirability of damage awards is, using the framework developed above, a question of striking the optimal balance between the benefit of deterring anti-competitive conduct and the harm of frivolous or strategic litigation. While the discussion above suggests that, at the moment, the appropriate balance is already being achieved without the availability of damage awards, a comprehensive assessment of this issue requires significant empirical

77 For a discussion of various theories of optimal deterrence and the difficulties in assessing that optimal level, see William Breit & Kenneth G. Elzinga, "Private Antitrust Enforcement: The New Learning" (1985) 28 J.L. & Econ. 405 at 407-413.

78 For a discussion of some of the benign or even efficiency-enhancing effects of reviewable practices, see Hildebrand, *supra* note 70 at 16-18; see also Trebilcock *et al.*, *supra* note 2 at 424, 468-73.

79 *B-Filer Inc. et al. v. The Bank of Nova Scotia*, 2007 Comp. Trib. 29.

work that is beyond the scope of this paper. It is sufficient for this moment to remark that damage awards should not be made available without the existence of evidence which contradicts the observations and arguments developed above, and any move to introduce damage awards should thus be based on a demonstrable rather than a hypothesized need to deter anti-competitive conduct.

As a final point on this issue, in accordance with the framework developed above, this paper now notes one argument that should *not* be taken to support the availability of damages for successful litigants. In addition to the instrumental deterrence-based rationales examined above, some have argued in favour of the availability of damages in such actions on somewhat correctivist grounds, suggesting that parties have a right to be compensated for harms suffered as a result of another's anti-competitive conduct.[80] However, for the reasons examined above, this justification has and ought to have limited application in the context of section 103.1, as the purpose of this provision and the *Competition Act* generally relates to the protection of competitive markets as an objective in and of itself, rather than the protection or provision of any non-instrumental right to individual competitors. Thus, any justification for awarding damages in actions under section 103.1 should be based on instrumental considerations rather than on the notion that competitors possess any inherent right not to be harmed by anti-competitive conduct that section 103.1 allows them to vindicate.



### C. The Substantive Scope of Private Access

The final issue which this paper addresses is whether it is appropriate to expand the scope of private access to the Tribunal to allow private parties to bring applications under sections other than sections 75 or 77, or, if Bill

80 For example, in "A Plan to Modernize Canada's Competition Regime," the Standing Committee on Industry, Science and Technology noted that "[t]he right to sue for damages is a fundamental right accorded to plaintiffs in civil proceedings throughout the world. It is an injustice that applicants in Tribunal proceedings should be denied the same fundamental right as any other litigant to claim restitution for the losses they have sustained as a result of another person's anticompetitive conduct." Committee Report, *supra* note 75 at 47.

C-10 becomes law, under an amended section 76. In questioning what applications private parties should be permitted to bring, the fundamental policy issue remains the same as above; the potential for more effective enforcement of competition laws must be balanced against the potential harm of strategic or frivolous litigation. Based on these considerations, this paper argues that there is a strong case for allowing private parties to bring applications under section 79.[81]



Section 79, which prohibits abuse of a party's dominant position in the market, is a broad provision which can capture a wide cross-section of anti-competitive acts.[82] Section 79(1) states that:

> (1) Where, on application by the Commissioner, the Tribunal finds that
>
> (a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,
>
> (b) that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and
>
> (c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,
>
> the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.[83]

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81 This proposal is by no means unprecedented. A 2002 House of Commons committee report recommended expanding the private right of access to include actions under section 79 of the *Competition Act*. Committee Report, *supra* note 75 at 50. In its response to this proposal, the government indicated that it preferred to wait until the effect of private party access under section 75 and section 77 could be assessed before making a decision as to whether to expand it to section 79. See Government Response to the Report of the House of Commons Standing Committee on Industry, Science and Technology "*A Plan to Modernize Canada's Competition Regime*" (October 2002) at 9.

82 For an overview of the law relating to abuse of dominance, see Trebilcock *et al*., *supra* note 2 at Chapter 8.

83 *Competition Act*, *supra* note 2, s. 79.

The breadth of this provision stems from the scope of the term "anti-competitive act," which is defined in section 78(1) by reference to a non-exhaustive list of eleven examples of anti-competitive acts, and which was held in *Canada (Director of Investigation and Research) v. Nutrasweet Co.* to include any acts with an anti-competitive purpose.[84]

It seems likely that private applications under section 79 would provide more effective enforcement of the *Competition Act*. As with all reviewable practices, the private applicants may have better information about the impugned practice than would the Bureau, as well as a greater incentive to bring the application. Given the breadth of section 79, the fact that only nine applications have been brought under its aegis by the Bureau since 1986 suggests that the Bureau may be overly conservative in enforcing the provision.[85] Indeed, the high success rate of the Bureau in section 79 applications suggests that they will only bring an application under section 79 if they are very likely to be successful.[86] This suggests that there may be a role for private parties to play in enforcing the provision in borderline cases. Moreover, if private applicants were to appropriate some of the Bureau's role in enforcing section 79, this would provide the Bureau with more resources to devote to effectively enforcing those areas of competition law where private enforcement would be especially problematic, such as in the merger review process. Finally, given the breadth of the statutory provision and the scant judicial consideration it has received, there may be significant benefits from increased litigation which can adequately define the contours of these provisions.

By contrast, there are not significant concerns over the potential for a flood of strategic or frivolous litigation if private applications can be brought



84 *Ibid.*, s. 78; *Canada (Director of Investigation and Research) v. Nutrasweet Co.* (1990), 32 C.P.R. (3d) 1 (Comp. Trib) [*Nutrasweet*].

85 Mark Katz, "Abuse of Dominance" in James Musgrove, ed., *Fundamentals of Canadian Competition Law* (Toronto: Thomson Carswell, 2007) 147 at 149.

86 The high cost of abuse of dominance applications may explain the limited number of applications brought by the Bureau. One study estimated the costs to the Bureau of investigating and prosecuting *NutraSweet* at $1,449,195 and *Tele-Direct* at $2,726,888; see Cost Study, *supra* note 61 at 19. *Nutrasweet*, *supra* note 84; *Canada (Director of Investigation and Research) v. Tele-Direct (Publications) Inc.* (1997), 73 C.P.R. (3d) 1 (Comp. Trib.).

under section 79. There are two reasons for this. First, the statutory terms of section 79 provide an internal check on the number of potentially meritorious suits which the Tribunal could allow. Section 79(1)(a) limits the provision to situations where "one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business." The Tribunal has stated that there will not be a *prima facie* finding of dominance if the respondent's market share is lower than 50%.[87] This means that the class of businesses to which section 79 could potentially apply is much smaller than that to which sections 75 or 77 could apply. Moreover, the Federal Court of Appeal recently held that section 79(1)(b) requires some aspect of an anti-competitive intent, though subjective intent need not be demonstrated.[88] Furthermore, the court held that "proof of a valid business justification for the conduct in question can overcome the deemed intention arising from the actual or foreseeable effects of the conduct, by showing that such anti-competitive effects are not in fact the overriding purpose of the conduct in question".[89] This can provide respondents with a strong defence to an action under section 79. Finally, unlike section 75(1)(e) which only requires an "adverse effect on competition", section 79(1)(c) requires the prevention or substantial lessening of the competition.[90] Thus, this overview of the statutory requirements of section 79(1) suggests that the difficulties in establishing that a violation of section 79 occurred may significantly dissuade private litigants from bringing unmeritorious claims.



Second, the incentive to bring frivolous litigation is further dampened by the high costs that losing applicants may have to bear. This effect may be especially pronounced in abuse of dominance cases, where the factual and legal issues can be more complex and the costs of litigating even higher than in other types of competition actions.[91] Thus, the difficulties

87 *Canada (Director of Investigation & Research) v. Laidlaw Waste Systems Ltd.*, [1992] C.C.T.D. No. 1, 40 C.P.R. (3d) 289, at para. 68.
88 *Canada (Commissioner of Competition) v. Canada Pipe Co.*, 2006 FCA 233, 49 C.P.R. (4th) 241, 268 D.L.R. (4th) 193, 350 N.R. 291, [2007] 2 F.C.R. 3.
89 *Ibid.*, at para. 73.
90 *Competition Act*, *supra* note 2, ss. 75, 79.
91 See Cost Study, *supra* note 61 at 19.

in establishing an offence, combined with the possibility of a high adverse cost order, will likely provide a deterrent to the bringing of frivolous or strategic actions under section 79.

## IV. CONCLUSION



This paper has explored and critically assessed the current framework of private access to the Competition Tribunal. First, it has provided a systematic overview of some of the provisions governing private party access to the Tribunal. This discussion suggests that while the case law on private party access is slowly starting to flesh out the content of section 103.1, there remain some ambiguities, particularly with respect to what constitutes "sufficient credible evidence" to justify granting leave. Applicants should have an understanding of exactly what is required of them at the initial stage of seeking leave, and clarity from the Tribunal on this point would be a welcome development.

Second, this paper has evaluated these provisions from a policy perspective in order to determine whether the current regime is an optimal one in furthering the goals and purposes of competition law in Canada. This was based on a consideration of the degree to which the current framework of private party access appropriately structures the incentives of private parties to align them with the public goal of fostering competition by providing incentives to bring meritorious litigation while still deterring frivolous or strategic litigation. Based on this analysis, two modest revisions to the *Competition Act* were proposed: lowering the standing requirement for individuals from having their businesses be "directly and substantially" affected to merely having their businesses be "directly and materially" affected; and expanding section 103.1 to include the possibility of bringing applications for reviewable practices falling under section 79.

While there are legitimate concerns that the expansion of a private right of access to the Tribunal could result in an explosion of costly competition litigation, the above analysis suggests that these concerns are limited with respect to the changes proposed. While both the lowering of the standing requirement and the expansion of private access to section 79 would increase the amount of litigation, frivolous and strategic litigation would still be a) dismissed at the Tribunal stage, thereby minimizing social costs, and b) deterred by the power of the Tribunal to award costs to the successful party. Thus, the proposed revisions represent incremental changes which would not open the floodgates to unmeritorious litigation, but which would rationalize the structure of private party access to align it with the underlying policies of permitting that access.

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# Litigating Competition Law in Canada

Second Edition

Editor
Nikiforos Iatrou

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under section 75, 77 or 79 if it "has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section."[22]

There is somewhat different wording *vis-à-vis* an application for leave to commence an application pursuant to section 76. There, the Act states that the Tribunal may grant leave "if it has reason to believe that the applicant is directly affected by any conduct referred to in [section 76] that could be subject to an order under that section".[23] Thus, an applicant for leave under section 75, 77 or 79 has the extra burden (when compared with section 76) to satisfy the Tribunal that it has been "substantially" affected by the conduct it is complaining about. Otherwise, the Tribunal has formulated the applicable test in an identical fashion:

> ... whether the leave application is supported by sufficient credible evidence to give rise to a *bona fide* belief that the applicant may have been directly [and substantially] affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.[24]

### [2] Sufficient Credible Evidence

#### [a] Entire Business

The substantial effect on business that must be shown refers to the "entire business" of the applicant, and not to just one particular segment or line of the applicant's overall business. This requirement was dispositive of a number of applications for leave by pharmacies, which sought leave to commence applications against pharmaceutical suppliers who had refused to deal with them. While the lost sales may have constituted a large portion of the pharmacies' pharmaceutical sales business, they did not (or there was no evidence that they did) represent a substantial portion of the pharmacies' overall sales.[25] It is not just a narrow product line that is the Tribunal's focus in assessing leave — it is the entirety of the business.

This was made clear in an application brought by Sears Canada Inc. against

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[22] *Competition Act*, R.S.C. 1985, c. C-34, s. 103.1(7).

[23] *Competition Act*, R.S.C. 1985, c. C-34, s. 103.1(7.1).

[24] *National Capital News Canada v. Canada (Speaker, House of Commons)*, [2002] C.C.T.D. No. 38, 2002 Comp. Trib. 41 at para. 14 (Comp. Trib.), affd [2004] F.C.J. No. 83, 2004 FCA 27, 29 C.P.R. (4th) 421 (F.C.A.); *Symbol Technologies Canada ULC v. Barcode Systems Inc.*, [2004] F.C.J. No. 1657, 2004 FCA 339, 34 C.P.R. (4th) 481 (F.C.A.); *Safa Enterprises Inc. v. Imperial Tobacco Co.*, [2013] C.C.T.D. No. 19, 2013 Comp. Trib. 19 at paras. 12-15 (Comp. Trib.).

[25] *1177057 Ontario Inc. (c.o.b. Broadview Pharmacy) v. Wyeth Canada Inc.*, [2004] C.C.T.D. No. 24, 2004 Comp. Trib. 22 (Comp. Trib.); *Broadview Pharmacy v. Pfizer Canada Inc.*, [2004] C.C.T.D. No. 23, 2004 Comp. Trib. 23 (Comp. Trib.); *Mrs. O's Pharmacy Inc. v. Pfizer Canada Inc.*, [2004] C.C.T.D. No. 21, 2004 Comp. Trib. 24 (Comp. Trib.); *Paradise Pharmacy Inc. v. Novartis Pharmaceuticals Canada Inc.*, [2004] C.C.T.D. No. 22, 2004 Comp. Trib. 21 (Comp. Trib.).

Christian Dior in response to Christian Dior's decision to terminate its supply agreement with Sears.[26] Sales of Christian Dior products constituted $14 million in revenue for Sears — not an insubstantial amount — but the entirety of Sears' business generated $6 billion in revenue. The lost sales from Christian Dior were small, on a relative basis, and therefore the lost revenue could not constitute a "substantial" effect on Sears.

The result can appear harsh. A consequence of this definition of "substantial" effect may be that large, multi-line companies, such as department stores, could never avail themselves of section 103.1 because the loss of the supply of any one product would never rise to the level of "substantial" to its bottom line. One can question the wisdom of this approach. Perhaps, in keeping with the low burden on the applicant at the leave stage, the Tribunal should broaden its definition of a "substantial effect". For example, the loss of the supply of one product may have qualitative effects on a business, such as having a negative effect on the business's reputation or prestige. A product may generate additional, add-on sales. The profit margin for a particular product may mean its importance is understated by only looking at gross sales numbers.

It must be remembered, however, that the Tribunal can only analyze the evidence that is put before it. If applicants are not making creative arguments, backed by data, with respect to the "substantial" effect on their business, then the Tribunal is prevented from doing the same. For example, the Tribunal, in a line of leave decisions in applications brought by pharmacies, was willing to consider an argument that the loss of a particular line of pharmaceuticals could have cascading effects if customers stopped doing business at the pharmacy altogether in favour of a pharmacy that could fill all of their prescriptions. However, the applicants could not substantiate their fears with any data-based evidence, and thus these arguments were not successful.[27]

### [b] Effect of Multiple Proposed Defendants

One potential way to avoid the effects of the broad definition of the applicant's business is to include a number of respondents in the application, putting into issue their cumulative or collective impact on the applicant. Thus, while a department store may never be substantially impacted by just one product, if it can raise concerns about a number of products and manufacturers together, it may be possible to demonstrate a substantial effect.

This situation arose in *Nadeau Poultry Farm Ltd. v. Groupe Westco Inc.*,[28] where a

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[26] *Sears Canada Inc. v. Parfums Christian Dior Canada Inc.*, [2007] C.C.T.D. No. 3, 2007 Comp. Trib. 6 (Comp. Trib.).

[27] For example, see *Mrs. O's Pharmacy Inc. v. Pfizer Canada Inc.*, [2004] C.C.T.D. No. 21, 2004 Comp. Trib. 24 at para. 24 (Comp. Trib.).

[28] *Nadeau Poultry Farm Ltd. v. Groupe Westco Inc.*, [2008] C.C.T.D. No. 7, 2008 Comp. Trib. 7 (Comp. Trib.).

chicken processor sought leave to bring an application against a number of respondent chicken producers. The Tribunal considered the collective effect of the respondents' refusal to deal with the applicant. The circumstances of that case were somewhat unique, though, as there was evidence of ties between the various respondents, which allowed the Tribunal to consider them collectively.[29]

A similar issue could have arisen in *Stargrove Entertainment Inc. v. Universal Music Publishing Group Canada*,[30] a case where the applicant alleged that the respondents, which included both large music labels and smaller ones, were improperly refusing to grant the applicant licenses to reproduce music that was to be sold via low-price CDs, in an effort to maintain high prices for the respondents' own products. The Tribunal was ultimately not convinced that Stargrove's evidence established a "substantial effect", but did not explicitly consider whether that effect had to be separated out to look at the effect caused by each individual respondent (rather, it appears as though the Tribunal was prepared to consider the effect of all of the respondents, collectively).[31] However, in *Stargrove* there was evidence adduced that the respondents may have acted together in concert to shut out the applicant, and had the Tribunal turned its mind to the issue, this may have been enough to justify treating the respondents collectively.[32] As is discussed below, the Tribunal did grant leave to Stargrove to pursue all of the respondents under section 76 of the Act.

### [3] Standard of Proof

The standard of proof applicable on an application for leave is lower than when the application is considered on its merits, and is lower than the ordinary civil burden of balance of probabilities.[33]

However, despite this professed low bar, the Tribunal has required rigorous evidence from an applicant, and has not accepted bald statements as persuasive enough to meet an applicant's evidentiary burden. Where an applicant states that its sales have dropped, or have failed to meet expectations, the Tribunal has demanded backup sales figures and data to support these statements.[34]

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[29] *Nadeau Poultry Farm Ltd. v. Groupe Westco Inc.*, [2008] C.C.T.D. No. 7, 2008 Comp. Trib. 7 at para. 23 (Comp. Trib.).

[30] *Stargrove Entertainment Inc. v. Universal Music Publishing Group Canada*, [2015] C.C.T.D. No. 26, 2015 Comp. Trib. 26 (Comp. Trib.).

[31] *Stargrove Entertainment Inc. v. Universal Music Publishing Group Canada*, [2015] C.C.T.D. No. 26, 2015 Comp. Trib. 26 at paras. 27-28 (Comp. Trib.).

[32] *Stargrove Entertainment Inc. v. Universal Music Publishing Group Canada*, [2015] C.C.T.D. No. 26, 2015 Comp. Trib. 26 at para. 43 (Comp. Trib.).

[33] *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, [2004] F.C.J. No. 1657 at para. 17, 2004 FCA 339, [2005] 2 F.C.R. 254 (F.C.A.).

[34] See *CarGurus, Inc. v. Trader Corp.*, [2016] C.C.T.D. No. 15, 2016 Comp. Trib. 15 at paras. 79-87 (Comp. Trib.), affd [2017] F.C.J. No. 842, 2017 FCA 181 (F.C.A.).

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NOTE

# Antitrust and Authorized Generics: A New Predation Analysis

Natalie Peelish*

**Abstract.** Much attention in the antitrust world has been focused on efforts by brand drug manufacturers to delay or deter generic entry into the pharmaceutical markets following these brand drugs' loss of patent exclusivity. Scholars have recounted and criticized recent exclusionary techniques by brand drug manufacturers, including pay-for-delay (or reverse-payment settlement) agreements, noncash pay-for-delay agreements, and product hopping. These efforts, while successful in stymieing generic entry into the prescription drug market, have largely been struck down by courts as anticompetitive in a series of recent decisions. In light of these decisions, a key, but underanalyzed, concern now is that in order to keep generics out of the market, or at least delay their entry, brand manufacturers will turn to a new tactic: predatory pricing using authorized generics. While some scholarly attention was paid to authorized generics in the early 2000s, almost none has been given since the Supreme Court held unlawful brand drug manufacturers' other main exclusionary tactics, despite the fact that the time is now ripe for the launch of authorized generics. Given that courts have already permitted a brand manufacturer's launch of an authorized generic during a first-filer generic's exclusivity period, brand manufacturers could deter generic entry by launching an authorized generic upon the start of the first filer's exclusivity period but pricing the authorized generic below the generic's costs, thereby preventing the generic from recouping its substantial entry costs. Eventually, if generics see a pattern of brands launching authorized generics during the first filer's period of exclusivity, generics may be deterred from entering the market at all before patent expiration, thereby depriving consumers of price competition in the pharmaceutical market, resulting in higher drug prices overall.

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The problem, however, is that if brand manufacturers are in fact pricing their authorized generics below the generic manufacturers' costs in order to deter generic entry, it is unduly difficult to hold the brand manufacturers accountable under the Supreme Court's current predatory pricing doctrine. Its test, as enunciated in *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, only imposes liability if a predator prices below some measure of its own costs and if there is a reasonable probability that the predator will recoup its initial investment in low prices. This Note provides a new analysis that better accounts for the unique regulatory structure and patent protection of the prescription drug market. It argues that a test based on limit pricing, or pricing below the entrant's costs, would more effectively address this exclusionary conduct that harms consumers.

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**Introduction**

Brand drug prices continue to rise at high rates and to increasingly high levels. In 2018, prices for 267 commonly used brand-name drugs rose by 5.8%—over twice the rate of inflation.[1] While the rate at which prices increased over the past several years peaked at a whopping 15.9% in 2014,[2] the still-lofty rate of rising drug prices means that Americans will pay more for their healthcare—through their own insurance plans or ultimately, as government spending on healthcare increases, through higher taxes.[3] Examples of exorbitantly priced brand-name prescription drugs have dominated headlines recently—Humira, an immunosuppressant, costs $3,000 per month,[4] while Zytiga, which treats prostate cancer, costs $10,000 per month.[5] Even common drugs such as insulin can now cost over $300 for a single vial (triple what the price was in 2002).[6]

Patients lose when drug prices are high, especially as "cost-containment strategies" by insurance companies have shifted a greater share of prescription drug costs to patients themselves.[7] In a recent poll, 29% of adults reported that cost prevented them from taking their medicine as prescribed at some point in the past year, and 8% reported that their condition worsened because of this.[8]

The main reason that prescription drugs cost so much is that "branded products [are] protected by market exclusivity provisions granted by the U.S. Patent and Trademark Office and the Food and Drug Administration (FDA)."[9] While generic manufacturers have come under criticism as well for price

1. AARP Pub. Policy Inst., Brand Name Drug Prices Increase More Than Twice as Fast as Inflation in 2018, at 1 (2019), https://perma.cc/NLG5-D5SK. The AARP report notes that 2018 had the "*slowest* average annual price increase for widely used brand name prescription drugs since at least 2006." *Id.* (emphasis added). But, as the report makes clear, "in the absence of meaningful legislative change," it is "difficult to determine whether the trend will continue." *See id.*

2. *Id.* at 2.

3. *Id.* at 1.

4. Siena Ruggeri, *Exorbitant Drug Pricing: A Moral Issue*, NETWORK LOBBY FOR CATH. SOC. JUST. (Mar. 5, 2019), https://perma.cc/E8AH-RYEE.

5. Ezekiel J. Emanuel, *Big Pharma's Go-To Defense of Soaring Drug Prices Doesn't Add Up*, ATLANTIC (Mar. 23, 2019), https://perma.cc/F7KF-VA3D.

6. *See* Audrey Farley, Perspective, *Drug Prices Are Killing Diabetics. "Walmart Insulin" Isn't the Solution.*, WASH. POST (Feb. 19, 2019, 3:00 AM PST), https://perma.cc/A3T5-ANGF.

7. Aaron S. Kesselheim et al., *The High Cost of Prescription Drugs in the United States: Origins and Prospects for Reform*, 316 JAMA 858, 864 (2016).

8. Ashley Kirzinger et al., *KFF Health Tracking Poll—February 2019: Prescription Drugs*, KFF: POLLING (Mar. 1, 2019), https://perma.cc/WB4R-JVC3.

9. *See* Kesselheim et al., *supra* note 7, at 860.

spikes in certain generic drugs,[10] generics are nonetheless critical to providing a low-cost drug option for consumers. Yet efforts by brand drug manufacturers to delay or deter generic entry can have a severely negative impact on consumer welfare in the form of higher drug prices.[11]

Competition between brand and generic drugs in the pharmaceutical industry has long been a topic of discussion for antitrust commentators. The unique nature of the regulatory environment and the patent protection afforded to most brand drug manufacturers makes the pharmaceutical market ripe for antitrust concerns. And indeed, antitrust violations have materialized across the industry as brand drug manufacturers seek to maintain their market exclusivity by delaying or deterring generic entry even after their patents have expired or have been invalidated.[12]

Recently, brand manufacturers have engaged in a more insidious form of exclusionary conduct: launching authorized, or branded, generics to compete with potential generic entrants. There is nothing inherently problematic under the antitrust laws with a brand drug manufacturer launching another product line—after all, antitrust laws *encourage* competition to lower prices for consumers, and an authorized generic may be just another competitor.[13] An antitrust problem, however, begins to emerge when authorized generics are launched as a means to deter generics from entering the market before patent expiration. If authorized generics are priced in such a way as to effectively deter generics, this may be a form of predation meant to exclude generics from the market in order to maintain the brand manufacturer's patent-induced monopoly. This monopolistic conduct harms consumers because it eliminates generic competitors with lower-priced drug options from the market, leaving consumers with a supracompetitively priced brand drug and an authorized generic that may be only temporarily available at a low price. And harm to consumer welfare is the exact problem the antitrust laws are meant to remedy.

10. *See, e.g.*, Stephen Barlas, *Generic Prices Take Flight: The FDA Is Struggling to Ground Them*, 39 PHARMACY & THERAPEUTICS 833, 843-45 (2014).

11. *See* FTC, AUTHORIZED GENERIC DRUGS: SHORT-TERM EFFECTS AND LONG-TERM IMPACT 4 (2011), https://perma.cc/4A4M-6NZP (considering whether and by how much authorized generics may "delay generic entry, diminish generic competition, and reduce consumer benefits from lower-priced generic products"); *see also* Letter from Rep. Henry A. Waxman to Deborah Majoras, Chairman, FTC (Sept. 13, 2005), *reprinted in* FTC, *supra*, at B-2 ("If the rise in authorized generics causes generic drug manufacturers to stop challenging patents for certain products, generic competition will be significantly delayed, and consumers, businesses, and governments will unnecessarily pay monopoly drug prices for much longer periods.").

12. *See, e.g.*, New York *ex rel.* Schneiderman v. Actavis PLC, 787 F.3d 638, 649 (2d Cir. 2015) (discussing findings that the manufacturer of prescription drug Namenda appeared to have engaged in anticompetitive conduct, thereby violating the antitrust laws, in order "to impede generic competition and to avoid the patent cliff").

13. *See infra* Part II.D.

As other efforts by brand drug manufacturers to maintain their patent-protected monopolies over drug markets have faced increasing scrutiny by the courts,[14] brand drug manufacturers may now rely more heavily on launching authorized generics in an effort to thwart generic entry and extend the length of their patent and market exclusivity, making this tactic a pressing problem for the antitrust laws.

This Note argues that current antitrust doctrine is ill equipped to account for such practices and advocates for a new predation test using limit pricing, rather than below-cost pricing, as a mechanism for determining whether the launch of an authorized generic during a generic's exclusivity period is anticompetitive.

Part I provides an overview of the various competitors in the pharmaceutical market and the federal regulatory framework that governs the market, particularly the Hatch-Waxman Act. Part II describes competition within the Hatch-Waxman regulatory framework. Part III explains how the launch of authorized generics may be a form of price predation if certain conditions are met, but argues that the Supreme Court's current predatory pricing doctrine is ill equipped to impose liability on this type of exclusionary action. Finally, Part IV puts forth a theory of limit pricing and argues that a limit-pricing test is better suited than the Court's current below-cost test to account for predation by authorized generics.

## I. Regulation and Competition in the Pharmaceutical Market

This Part introduces the main cast of characters competing in the pharmaceutical market and the unique regulatory framework in which they act.

### A. Primary Actors

As a preliminary matter, significant competition in the pharmaceutical market occurs between brand drugs and generic drugs.[15] Brand drugs are those which are protected by patents. These patents enable brand manufacturers to

14. *See* FTC v. Actavis, Inc., 570 U.S. 136, 141, 158 (2013) (holding that pay-for-delay agreements may constitute antitrust violations); *In re* Loestrin 24 Fe Antitrust Litig., 814 F.3d 538, 549 (1st Cir. 2016) (holding that noncash pay-for-delay agreements are governed by *Actavis*); King Drug Co. of Florence v. Smithkline Beecham Corp., 791 F.3d 388, 394 (3d Cir. 2015) (same); *see also Schneiderman*, 787 F.3d at 654 (holding that product hopping, a practice whereby brand drug manufacturers reformulate their drugs and thereby extend patent exclusivity in order to delay generic entry, violates the Sherman Act).

15. *See* Richard G. Frank & Raymond S. Hartman, *The Nature of Pharmaceutical Competition: Implications for Antitrust Analysis*, 22 INT'L J. ECON. BUS. 301, 304 (2015).

exclude other competitors during the patent term, thereby allowing them to maintain a legal monopoly over the market for the patent-protected drug.[16] A generic drug is one "created to be the same as an already marketed brand-name drug in dosage form, safety, strength, route of administration, quality, performance characteristics, and intended use."[17] Generics may differ in their inactive ingredients, colors, or flavors, since trademark laws prohibit generic drugs from looking identical to brand drugs.[18] The advantage of generic drugs is that they are priced much lower than brand drugs because, at least under the current legal framework, the generic manufacturers need not conduct the same costly clinical trials on generic drugs or spend "huge sums [on] advertising, marketing, and lobbying."[19] Authorized generics add another element to this competitive framework, discussed further in Part II below.

The nature of this competition between the brands and generics in the pharmaceutical market is due in large part to this market's unique regulatory structure, which determines which drugs may enter, when they may enter, and how long they may stay.

### B. The Federal Food, Drug, and Cosmetic Act

The Federal Food, Drug, and Cosmetic Act (FDCA)[20] governs the manufacturing and marketing of all pharmaceuticals in the United States. The FDCA requires that any pharmaceutical company wishing to market a *new* drug first submit a New Drug Application (NDA).[21] The application must set forth "full reports of investigations" showing whether the drug is safe and

16. *See* Allan N. Littman, *Monopoly, Competition and Other Factors in Determining Patent Infringement Damages*, 38 IDEA 1, 6 (1997) (noting that "patents are legal monopolies the value of which depends on the marketplace" (capitalization altered)).

17. *Generic Drugs: Questions & Answers*, U.S. FOOD & DRUG ADMIN., https://perma.cc/4PJL-FUSM (last updated June 1, 2018).

18. Melissa Stoppler, *Generic Drugs, Are They as Good as Brand Names?*, MEDICINENET, https://perma.cc/2SV6-RHU7 (archived Jan. 16, 2020). While brand drugs and generic drugs are, in the vast majority of cases, interchangeable products (and the FDA treats them as such, *see Generic Drug Facts*, U.S. FOOD & DRUG ADMIN., https://perma.cc/XMN2-8Z5N (last updated June 1, 2018)), the minor differences between brands and generics may affect certain people such that they cannot substitute the products, *see, e.g.*, Beth Levine, *The Truth About Generic vs. Brand-Name Medications*, HUFFPOST (Feb. 22, 2015, 9:11 AM ET), https://perma.cc/JPV4-5PLS. For the purposes of this Note's analysis, however, I treat the drugs as equivalent and perfectly substitutable as that is nearly always the case.

19. ASS'N FOR ACCESSIBLE MEDS., GENERIC DRUG ACCESS & SAVINGS IN THE U.S. 24 (2017), https://perma.cc/4C3Q-X3NX.

20. 21 U.S.C. §§ 301-399i (2018).

21. *Id.* § 355(a).

effective and "a full list of the articles used as components of such drug."[22] The FDA must approve the NDA before the new drug may be marketed.[23]

Even before the FDCA underwent significant changes in 1984,[24] the FDA permitted the marketing of generic copies without requiring generic manufacturers to submit an NDA, at least for drugs whose brand-name equivalents were approved and had been in use "to a material extent or for a material time."[25] In a 1970 rulemaking, the FDA established the Abbreviated New Drug Application (ANDA) for generic manufacturers wishing to enter the market,[26] whereby the generic manufacturers needed only to confirm that the generic drug had the same therapeutic effect and active ingredient as the brand drug.[27]

However, there were still significant limitations on the ability of generic manufacturers to take advantage of the abbreviated approval process. Critically, "the FDA's initial ANDA process applied only to generic forms of drugs approved by the FDA prior to 1962."[28] For any drug approved after 1962, the FDA kept confidential the reports attached to the brand drug's NDA.[29] Section 301(j) of the original FDCA "prohibited the public disclosure or use of any method or process obtained by FDA . . . where such information was entitled to protection as a trade secret."[30] This prevented generic manufacturers from leveraging the brand manufacturer's existing information and research in order to bring a drug to market without having to incur the same, often highly expensive, start-up costs. As a result, before the Hatch-Waxman Act amended the FDCA, generics did not have a large presence in the pharmaceutical market.[31]

### C. The Hatch-Waxman Act

While the FDCA has been amended several times, the most influential changes came in 1984. Concerned about rising drug prices, Congress enacted

22. *Id.* § 355(b).

23. *Id.* § 355(a).

24. *See infra* Part I.C (describing the 1984 Hatch-Waxman Act's amendments to the FDCA).

25. *See* Ellen J. Flannery & Peter Barton Hutt, *Balancing Competition and Patent Protection in the Drug Industry: The Drug Price Competition and Patent Term Restoration Act of 1984*, 40 FOOD DRUG COSM. L.J. 269, 272 (1985).

26. *See* 21 C.F.R. §§ 314.92-.99 (2019); *see also* Approval of Certain New-Drug Applications and Supplements, 35 Fed. Reg. 6574, 6574-75 (Apr. 24, 1970).

27. Flannery & Hutt, *supra* note 25, at 274.

28. *See* Elizabeth Stotland Weiswasser & Scott D. Danzis, *The Hatch-Waxman Act: History, Structure, and Legacy*, 71 ANTITRUST L.J. 585, 587, 589 (2003).

29. *Id.* at 589-90.

30. Flannery & Hutt, *supra* note 25, at 272.

31. Weiswasser & Danzis, *supra* note 28, at 590.

the Drug Price Competition and Patent Term Restoration Act of 1984,[32] otherwise known as the Hatch-Waxman Act, which governs the approval of brand and generic drugs today. The Act emerged as a balance between the competing interests of making lower-cost generic drugs more available while still incentivizing brand manufacturers to innovate and to develop new drugs. In so doing, the Act enables brand manufacturers to "enforce and protect their patent rights prior to generic entry," while also facilitating generic entry by "substantially relaxing the testing requirements imposed on generic manufacturers" and allowing them to take advantage of the safety and effectiveness data already submitted by the brand manufacturers as part of their NDAs.[33] The Act made several key changes to the FDCA in order to effectuate these goals.

First, the Hatch-Waxman Act adopted "bioequivalence" as the new standard for approval of a generic ANDA. For a generic to be bioequivalent, it must use the same active ingredient; be absorbed by the body at approximately the same rate and to the same extent; and contain the same conditions of use, route of administration, dosage form, strength, and labeling as the brand drug.[34] If the generic manufacturer can prove as much, the Act allows it to use the safety and efficacy studies already submitted by the brand drug manufacturer as part of its original NDA[35]—avoiding the costly submission of replicated scientific studies and data and better facilitating entry of generics into the pharmaceutical market.

Second, the Act created an "experimental use exception" that "insulates ANDA-related clinical research from patent-infringement liability."[36] This exception enables generic drug manufacturers to begin bioequivalence testing before the expiration of the patent on the relevant brand drug.[37]

Third, the Act incentivizes generic manufacturers to enter the market by granting the first ANDA filer a 180-day exclusivity period, during which only that generic and the brand drug can be marketed.[38] This 180-day exclusivity period is immensely profitable for the first-filer generic because it effectively

32. Pub L. No. 98-417, 98 Stat. 1585 (codified as amended in scattered sections of the U.S. Code) (enacting the Hatch-Waxman Act in its original form); *see also* Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, §§ 1101-1104, 117 Stat. 2066, 2448-61 (codified as amended at 21 U.S.C. §§ 355(j), 355a; and 35 U.S.C. § 271(e) (2018)) (amending the Hatch-Waxman provisions).

33. Weiswasser & Danzis, *supra* note 28, at 590.

34. 21 U.S.C. § 355(j)(2)(A), 355(j)(8)(B).

35. *See id.* § 355(j)(2)(A)(iv), (vi).

36. Thomas Chen, Note, *Authorized Generics: A Prescription for Hatch-Waxman Reform*, 93 VA. L. REV. 459, 464 (2007).

37. *Id.*; *see also* 35 U.S.C. § 271(e)(1).

38. 21 U.S.C. § 355(j)(5)(B)(iv)(I), (II)(aa)-(bb).

grants a temporary monopoly over the generic market, a prospect that induces generics to enter the market to reap a higher profit.[39]

At the same time, the Act protects the brand manufacturers by restoring part of the patent term that elapses while the brand manufacturer awaits FDA approval of its NDA. The extension period is capped at five years, for a total effective patent term of no more than fourteen years.[40] The purpose of the patent term restoration is to enable brand manufacturers to recoup the costs expended during the lengthy NDA approval process while also compensating the brand manufacturers for the generic drug industry's use of the proprietary reports and studies that they generate as part of their NDA applications.[41]

Additionally, the Act created a new mechanism for the resolution of patent disputes. The Act requires the generic manufacturer to certify that it has met one of the following criteria with respect to each patent listed in the Orange Book[42]:

- *Paragraph I*: "[P]atent information has not been filed" by the brand manufacturer.[43]
- *Paragraph II*: The patent has expired.[44]
- *Paragraph III*: The generic manufacturer indicates "the date on which the patent will expire."[45]
- *Paragraph IV*: The "patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the [ANDA] is submitted."[46]

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39. *See, e.g.*, FTC, *supra* note 11, at i ("During that period, because of the absence of competition, both the generic drug price and the first-filer's revenues are significantly higher than they would be when there are additional generic competitors. Congress created this exclusivity as an incentive for generic companies to enter as soon as possible by challenging invalid patents or patents that are not infringed.").

40. *See* 35 U.S.C. § 156(a)(4), (c), (g).

41. *See* JOHN R. THOMAS, CONG. RESEARCH SERV., R44643, THE HATCH-WAXMAN ACT: A PRIMER 5 (2016), https://perma.cc/CYT2-YLN9 ("[O]bservers have frequently noted that [the Act] presents a fundamental trade-off: In exchange for permitting manufacturers of generic drugs to gain FDA marketing approval by relying on safety and efficacy data from the brand-name firm's NDA, the brand-name firms receive a period of regulatory exclusivity and patent term extension.").

42. The "Orange Book," or the *Approved Drug Products with Therapeutic Equivalence Evaluations*, is the compilation of all approved pharmaceuticals and associated patent information. *Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book)*, U.S. FOOD & DRUG ADMIN., https://perma.cc/S2N5-4HL8 (last updated Oct. 18, 2019).

43. 21 U.S.C. § 355(j)(2)(A)(vii).

44. *Id.*

45. *Id.*

46. *Id.*

If an applicant makes a certification under Paragraph I or II, so long as the other regulatory requirements are met, "approval may be made effective immediately."[47] An ANDA bearing a certification under Paragraph III, however, may not be approved "until the [brand] drug's listed patent expires."[48]

If an ANDA makes a Paragraph IV certification attesting to noninfringement or patent invalidity on the part of the brand drug, the generic manufacturer must notify the brand manufacturer that holds the patents at issue.[49] The brand manufacturer may then file a patent infringement suit within forty-five days of receiving the required notice from the generic manufacturer that submitted the Paragraph IV ANDA; this filing triggers an automatic thirty-month stay on FDA approval of the ANDA unless a court decision that the patent is invalid or not infringed is made earlier.[50] Then, so long as the generic has not been held to infringe the brand drug's patent, the FDA allows the generic drug to be marketed and must grant the first filer of the ANDA the 180-day exclusivity period.[51]

Along with the Hatch-Waxman Act, states have further facilitated generic accessibility through substitution laws and regulations.[52] These substitution rules often provide, with certain exceptions, that a pharmacist may fill a prescription by substituting a generic drug in for a brand drug if a generic drug is available.[53] "Currently, all States have some form of generic substitution law."[54]

The Hatch-Waxman Act has significantly increased "both the speed and success of generic entry."[55] According to an FTC report, "[i]n 2009, 74 percent of all U.S. prescriptions . . . were filled by generics, up from 43 percent in 1996

47. *Id.* § 355(j)(5)(B)(i).

48. THOMAS, *supra* note 41, at 7; *see also* 21 U.S.C. § 355(j)(5)(B)(ii).

49. *Id.* § 355(j)(2)(B).

50. *Id.* § 355(j)(5)(B)(iii).

51. *Id.* § 355(j)(5)(B)(iii)-(iv).

52. For example, California authorizes a pharmacist to substitute a generic for a brand drug (or biological product) if certain conditions are met, such as the generic having the same active ingredients and dosage and the prescriber not having indicated that substitution is not permissible. *See* CAL. BUS. & PROF. CODE §§ 4073, 4073.5(a) (West 2019). Georgia similarly authorizes a pharmacist to substitute a "pharmaceutically equivalent" generic drug or "an interchangeable biological product" for "the express purpose of making available to the consumer the lowest retail priced" equivalent drug or interchangeable biological product in stock. GA. CODE ANN. § 26-4-81 (2019).

53. *See* Richard Cauchi, *State Laws and Legislation Related to Biologic Medications and Substitution of Biosimilars*, NAT'L CONF. ST. LEGISLATURES (May 3, 2019), https://perma.cc/Z7C4-3PQ9.

54. PLIVA, Inc. v. Mensing, 564 U.S. 604, 628 (2011) (Sotomayor, J., dissenting).

55. Saami Zain, *Sword or Shield? An Overview and Competitive Analysis of the Marketing of "Authorized Generics,"* 62 FOOD & DRUG L.J. 739, 742 (2007).

and only 19 percent in 1984."[56] As of 2016, "[g]enerics account for 89% of prescriptions dispensed" in the United States, but "only 26% of total drug costs."[57] The Generic Pharmaceutical Association credits much of the success of generic marketing efforts to the 180-day exclusivity period promised by the Act, stating that "[t]he vast majority of potential profits for a generic drug manufacturer materialize during the 180-day exclusivity period."[58] This exclusivity period is so important to generic drug manufacturers because once the exclusivity period expires and other generics may enter the market, the resulting price competition will "drive[] prices to the competitive level," which can be "as little as 20% of the pre-generic-entry prices," thus "making immediate entry by multiple firms unpromising" for the profit-seeking generic.[59]

### D. Authorized Generics and Hatch-Waxman

While not explicitly addressed by the Hatch-Waxman Act, authorized generics have come to play a major role in the pharmaceutical market by taking advantage of the regulatory framework established by the Act. Authorized generics are "pharmaceutical products that are approved as brand-name drugs but marketed as generic drugs."[60] Authorized generics may be launched by the brand drug manufacturer itself (or an authorized third-party distributor) via the brand drug's NDA, rather than by a separate manufacturer via an ANDA.[61]

Authorized generics first achieved popularity and profitability in the early 2000s as a result of greater generic adoption by pharmacists in general,[62] but they have continued to grow in prominence more recently.[63] The price of an authorized generic is usually lower than that of the corresponding brand-name drug, making it competitive with other generics on the market.[64] The FTC

56. FTC, *supra* note 11, at 3.

57. ASS'N FOR ACCESSIBLE MEDS., *supra* note 19, at 16.

58. FTC, *supra* note 11, at 4 (alteration in original) (quoting Generic Pharm. Ass'n, Comment Letter on Authorized Generic Drug Study: FTC Project No. P062105, at 2 (2006), https://perma.cc/CV8M-58FX).

59. *See* Herbert Hovenkamp, *Antitrust and the Patent System: A Reexamination*, 76 OHIO ST. L.J. 467, 491 (2015).

60. FTC, *supra* note 11, at i.

61. *See* JOHN R. THOMAS, CONG. RESEARCH SERV., RL33605, AUTHORIZED GENERIC PHARMACEUTICALS: EFFECTS ON INNOVATION 6 (2013), https://perma.cc/PT2V-9C6Z.

62. *See id.*

63. *See* Carol Forster, *The Value of Authorized Generics*, U.S. NEWS & WORLD REP. (May 19, 2016, 6:00 AM), https://perma.cc/9XND-KYUQ ("[A]uthorized generics have steadily increased in popularity. By 2014, more than one-third of brand drugs had a matching authorized generic.").

64. *See* THOMAS, *supra* note 61, at 1.

found that authorized generics were present in 61% of first-filer exclusivity periods from 2003 to 2008.[65] And this percentage likely would have been higher but for agreements between brand manufacturers and generic manufacturers not to launch an authorized generic during the first-filer generic's exclusivity period in exchange for delayed first-filer entry.[66]

Because the FDA maintains that a brand manufacturer need not file an ANDA or an NDA in order to market its drug as an authorized generic,[67] it is relatively easy for brand manufacturers to launch authorized generics since they do not have to pay any of the startup costs associated with a new drug such as clinical trials and regulatory reports.[68] And because the Hatch-Waxman Act's 180-day exclusivity period does not cover drugs that do not require *some* form of application, authorized generics may enter the market during the first filer's exclusivity period.[69]

Courts have agreed with the FDA. In *Teva Pharmaceutical Industries Ltd. v. Crawford*, the D.C. Circuit held that the Hatch-Waxman Act "clearly does not prohibit" authorized generics from being sold during the 180-day exclusivity period.[70] Further, in *Mylan Pharmaceuticals, Inc. v. U.S. FDA*, the Fourth Circuit held that the Hatch-Waxman Act did not prohibit a brand drug manufacturer from marketing an authorized generic through a third-party manufacturer during the first-filer generic's exclusivity period.[71] As a result, brand drug manufacturers have continued to launch authorized generics at the beginning of or during the first-filer exclusivity period.

65. FTC, *supra* note 11, at 26. The prevalence of authorized generics during exclusivity periods may suggest that, in some cases, brand manufacturers found it profitable to launch authorized generics in order to compete with generics even without using them as a means of predation, but rather to preserve some of their market share that would have otherwise been lost to generic manufacturers. What this 61% does not capture, however, is how frequently the authorized generics were in fact used as a form of predation to deter generic entry. *See infra* Part IV.C.

66. *See* FTC, *supra* note 11, at 26-27.

67. *See* THOMAS, *supra* note 61, at 10-11.

68. *See generally* Thomas J. Moore et al., *Estimated Costs of Pivotal Trials for Novel Therapeutic Agents Approved by the US Food and Drug Administration, 2015-2016*, 178 JAMA INTERNAL MED. 1451, 1454 (2018) (finding that the median cost of clinical trials for new drugs from 2015 to 2016 was $19 million).

69. FTC, *supra* note 11, at 4; THOMAS, *supra* note 61, at 10-11.

70. 410 F.3d 51, 55 (D.C. Cir. 2005).

71. *See* 454 F.3d 270, 276 (4th Cir. 2006).

## II. Competition Within the Hatch-Waxman Act's Regulatory Framework

This Part describes how the Hatch-Waxman Act both impedes and facilitates competition among these various actors in the pharmaceutical market, as well as the potential antitrust concerns posed by authorized generics.

### A. Price Competition

The Hatch-Waxman Act, insofar as the competition regarding the generic first filer's exclusivity period is concerned, created three distinct periods of competition within the pharmaceutical market: pre-exclusivity, exclusivity, and post-exclusivity. In the pre-exclusivity period—during the patent term and before first-filer generic entry—a brand manufacturer can price its brand drug at whatever price the market will sustain because patent protection grants the brand drug a legal monopoly.[72] And this monopoly period can last for years: "[T]he median length of [post-patent-approval] market exclusivity is 12.5 years for widely used drugs . . . and 14.5 years for highly innovative, first-in-class drugs . . . ."[73]

Any competing brand drugs have different molecules as their active ingredients and compete primarily on quality and clinical profile rather than on price. For example, Bystolic is a brand drug that treats hypertension with the patented nebivolol molecule as its active ingredient,[74] meaning that during the patent term, no other drug can compete directly by producing a drug with the nebivolol molecule as its active ingredient. However, there are numerous other drugs, with *different* molecules as their active ingredients, that also treat hypertension.[75] Bystolic may have tried to market itself as a better or more appropriate hypertension drug than others in order to acquire customers. But, for those patients who needed or wanted Bystolic in particular, its manufacturer had a monopoly over the market for the nebivolol molecule, forcing consumers to buy brand-name Bystolic and pay whatever monopoly price Bystolic's seller charged. Thus, in practice, "competition between 2 or more

72. Indeed, this market exclusivity is the "most important factor that allows brand manufacturers to set high drug prices for brand-name drugs." Kesselheim et al., *supra* note 7, at 861.

73. *Id.*

74. *See* Allergan, Inc., *Drug Label Information: Bystolic—Nebivolol Hydrochloride Tablet*, DAILYMED (updated Jan. 9, 2019), https://perma.cc/X39Q-XG9V.

75. *See* Jim Morelli, *High Blood Pressure (Hypertension) Medications*, RXLIST, https://perma.cc/6CDZ-3W8V (archived Jan. 17, 2020) (describing various categories of hypertension drugs with different active ingredients).

brand-name manufacturers selling drugs in the same class does not usually result in substantial price reductions."[76]

The end of patent protection and the entry of the first-filer generic drug transforms the market from a legal monopoly to a duopoly of sorts during the exclusivity period. The brand manufacturer still has a legal monopoly over its precise formulation of the drug, but the first-filer generic manufacturer can produce a product with the same active ingredient; absorbed by the body at the same rate and to the same extent; and with the same conditions of use, route of administration, dosage form, strength, and labeling.[77] Importantly, the first filer is afforded a legal monopoly over the generic market during the 180-day exclusivity period. And because the first filer has a monopoly over the generic version of the drug, the FTC found that, in the absence of authorized generic competition, the generic drug is priced, on average, at 86% of the brand price before generic entry.[78] Thus, consumers may choose between the high-priced brand drug and the modestly lower-priced generic drug.

The exclusivity period granted to the first filer is a critical incentive for the generic manufacturer to challenge the brand drug manufacturer's patents through a Paragraph IV certification because it enables the generic manufacturer to recoup its expenses, including research and development and litigation. This recoupment occurs through the generic's higher price (compared to its eventual post-exclusivity price) *and* the greater market share promised by exclusivity.

After the first-filer generic's exclusivity period ends and other generics enter the market, competition increases. There is typically a significant decrease in generic drug prices, with the added competition "driving prices down to as little as 20% of pre-generic-entry prices."[79] As a result, the brand drug loses on average 90% of its market share within the first year of generic entry.[80] This drop in prices is great for consumer welfare—according to one study, savings attributable to generic competition totaled $253 billion in 2016 alone.[81] Scott Hemphill and Mark Lemley illustrate the dramatic fall in drug prices after the entry of multiple generics with the case of simvastatin, a drug

76. Kesselheim et al., *supra* note 7, at 861.

77. *See supra* text accompanying note 34.

78. FTC, *supra* note 11, at ii-iii. With authorized generic competition, the first-filer generic drug is priced on average at 82% of the brand drug's pre-generic-entry price. *Id.*

79. Hovenkamp, *supra* note 59, at 491; *see also* Zain, *supra* note 55, at 754 ("[S]tudies using different data sets have found that the average price of generics decrease[s] as more generics enter a market.").

80. FTC, PAY-FOR-DELAY: HOW DRUG COMPANY PAY-OFFS COST CONSUMERS BILLIONS 8 (2010), https://perma.cc/UCH6-7ZWK.

81. ASS'N FOR ACCESSIBLE MEDS., *supra* note 19, at 39.

treating high cholesterol sold in brand form as Zocor.[82] In that case, around six months after the first generic entered the market, the brand drug sold for around $150 for a one-month supply while the generic sold for as low as $7 for the same quantity.[83] However, "after the first few entrants, the marginal effect of each new entrant on generic prices and shares tends to be negligible"; specifically, the generic price stops significantly decreasing after four or five entrants.[84]

As the price of the generic drug declines, the price of the brand drug either increases or stays the same because of the brand manufacturer's ability to price discriminate—that is, to target those customers for whom the demand for the precise brand formulation is inelastic and charge them a higher cost. But because of the rapid loss in market share, the brand drug is unable to profit to the same extent it did before generic entry.

### B. Brand Manufacturers' Response to Generic Competition

Because generic entry can eviscerate a brand manufacturer's market share—sometimes capturing "as much as 80-90 percent [of drug sales] in a matter of weeks"—the vigorous price competition resulting from the increased entry of generics has negatively affected the profits of brand manufacturers.[85] As a result, brand manufacturers have engaged in various efforts—the subject of much discussion and controversy among regulators and academics alike—to protect their profits.[86]

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82. *See* C. Scott Hemphill & Mark A. Lemley, *Earning Exclusivity: Generic Drug Incentives and the Hatch-Waxman Act*, 77 ANTITRUST L.J. 947, 952 (2011).

83. *Id.*

84. Ernst R. Berndt et al., *Authorized Generic Drugs, Price Competition, and Consumers' Welfare*, 26 HEALTH AFF. 790, 792 (2007); *see also id.* at 795 ("Any changes in the long-run number of generics are unlikely to affect generic price and share for the many drugs with more than four or five generic entrants . . . .").

85. *See* Zain, *supra* note 55, at 739; *see also* Frank & Hartman, *supra* note 15, at 304 ("Rapid market penetration by generic drugs leads to substantial loss of market share by the branded manufacturer and a dramatic decrease in generic and market prices.").

86. *See, e.g.*, FTC, *supra* note 80, at 1-2 ("Brand-name pharmaceutical companies can delay generic competition that lowers prices by agreeing to pay a generic competitor to hold its competing product off the market for a certain period of time."); Frank & Hartman, *supra* note 15, at 309 ("The recent and continued trend toward greater generic price discounts and increased generic penetration rates has had a fundamental impact upon the pricing strategies of innovator drug manufacturers."); Kesselheim et al., *supra* note 7, at 861 ("For pharmaceutical manufacturers, 'product life-cycle management' involves preventing generic competition and maintaining high prices by extending a drug's market exclusivity.").

A popular practice in recent years has been "pay-for-delay" agreements.[87] Pay-for-delay, or reverse-payment settlement, agreements occur when a brand manufacturer agrees to pay a potential generic entrant challenging its patents to stay out of the market for a specified period of time, often a duration shorter than the patent term but longer than the generic manufacturer would have waited if it had prevailed in litigation.[88] These agreements occur within the context of the Hatch-Waxman framework: A generic manufacturer submits an ANDA with a Paragraph IV certification, attesting that its generic product does not infringe any of the brand manufacturer's patents or that the patents are invalid. The brand manufacturer then challenges the generic manufacturer's declaration and files a patent infringement suit against the generic manufacturer, triggering the thirty-month stay. "Given the costs and potential uncertainty of patent litigation," the parties often settle their litigation by allowing the generic to enter at some point before patent expiration but later than when the generic would have entered had it prevailed in the patent litigation.[89] These agreements are also called reverse-payment settlement agreements because the patent *holder* is paying the patent *infringer* to stay out of the market, so the payment is "moving in the opposite direction than what would be ordinarily expected in patent litigation."[90] And these payments do not just affect the first-filer generic: Because of the Hatch-Waxman framework, "[b]y paying the generic to delay entering the market, the brand can prevent entry by not only that generic, but also all other generics" since no other generic may challenge the patent after the first filer.[91] These agreements raise antitrust concerns because they enable brand manufacturers to maintain monopoly power over the market for their drug for longer than they ordinarily would if a generic filed a Paragraph IV certification. The FTC has estimated that these settlements cost consumers, taxpayers, and insurance companies approximately $3.5 billion per year.[92]

87. *See "Pay-for-Delay" Settlements: Antitrust Violation or Proper Exercise of Pharmaceutical Patent Rights?*, A.B.A. (Jan. 31, 2011), https://perma.cc/8S5U-EYKY ("In recent years, there has been a surge of agreements between pharmaceutical patent holders and generic drug manufacturers in which the market entry of competing generic drugs is delayed by agreement, effectively extending the patent holder's market exclusivity and profit."); *see also* Herbert Hovenkamp, *Sensible Antitrust Rules for Pharmaceutical Competition*, 39 U.S.F. L. REV. 11, 24 (2004) ("Exit or non-entry payment cases are a novelty in antitrust. They became popular after the Hatch-Waxman Act took effect because of the unique effect that the statute has had on generic entry.").

88. *See* FTC, *supra* note 80, at 1-3.

89. *Id.* at 3.

90. *See* Gregory H. Jones et al., *Strategies That Delay or Prevent the Timely Availability of Affordable Generic Drugs in the United States*, 127 BLOOD 1398, 1398-99 (2016).

91. *See* Michael A. Carrier, *Payment After* Actavis, 100 IOWA L. REV. 7, 15 (2014).

92. *See* FTC, *supra* note 80, at 8.

In *FTC v. Actavis, Inc.*, the Supreme Court held that such pay-for-delay settlements "can sometimes violate the antitrust laws" because they have the "'potential for genuine adverse effects on competition.'"[93] The Court was concerned that, as opposed to a typical settlement, the "payment may . . . provide strong evidence that the patentee seeks to induce the generic challenger to abandon its claim with a share of its monopoly profits that would otherwise be lost in the competitive market."[94] The Court thus held that these agreements are subject to the rule of reason analysis to determine if they violate section 1 of the Sherman Act.[95]

While the *Actavis* decision clearly subjected pay-for-delay agreements in the form of cash settlements to heightened scrutiny, its effect on noncash exclusionary payments was less clear.[96] As a result, instead of paying generic manufacturers to stay out of the market, brand manufacturers have continued to engage in a variety of exclusionary practices, such as paying generic manufacturers "for IP licenses, for supplying raw materials or finished products, and for helping to promote products."[97] Additionally, brand manufacturers have begun to include no-authorized-generic provisions in these settlement agreements, whereby the brand promises to refrain from launching an authorized generic, forgoing significant profits during the first-filer generic's exclusivity period, in exchange for delayed generic entry.[98] Some courts of appeals have held these noncash pay-for-delay agreements to be subject to antitrust scrutiny under the *Actavis* decision,[99] but not all courts have weighed in on the issue.

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93. 570 U.S. 136, 141, 153 (2013) (quoting FTC v. Ind. Fed'n of Dentists, 476 U.S. 447, 460 (1986)). The decision also held that pay-for-delay agreements must be subjected to the rule of reason analysis, rather than making them per se unlawful. *See id.* at 159. In the rule of reason analysis, the anticompetitive effects of an agreement are weighed against its procompetitive justifications to determine if the agreement is an unreasonable restraint of trade. *See* 1 WILLIAM C. HOLMES, INTELLECTUAL PROPERTY AND ANTITRUST LAW § 5:7 (West 2019).

94. *Actavis*, 570 U.S. at 154.

95. *Id.* at 141, 158-60. Section 1 of the Sherman Act governs horizontal agreements between competitors and prohibits "[e]very contract, combination . . . [,] or conspiracy, in restraint of trade." *See* 15 U.S.C. § 1 (2018).

96. *See* Carrier, *supra* note 91, at 34-35 (comparing cash and noncash pay-for-delay settlements).

97. *See* Michael A. Carrier, *Eight Reasons Why "No-Authorized-Generic" Promises Constitute Payment*, 67 RUTGERS U. L. REV. 697, 700 (2015).

98. *See id.* at 701.

99. *See In re* Loestrin 24 Fe Antitrust Litig., 814 F.3d 538, 549, 552 (1st Cir. 2016) (holding that noncash reverse payments fall within the scope of *Actavis*); King Drug Co. of Florence v. Smithkline Beecham Corp., 791 F.3d 388, 394 (3d Cir. 2015) (holding that a "no-[authorized-generic] agreement falls under *Actavis*'s rule because it may represent an unusual, unexplained reverse transfer of considerable value from the patentee to the

*footnote continued on next page*

The FTC has made combating these agreements "one of [its] top priorities."[100] The reason for such ardent enforcement against pay-for-delay agreements is that they have deleterious effects on consumer welfare, which antitrust laws are designed to prevent.[101] For example, one study analyzing twenty pay-for-delay settlements involving monetary payment found that these settlements represented a $12 billion transfer of wealth from consumers to producers after only one year of delay.[102]

Given that courts and antitrust enforcers have imposed increased scrutiny on both cash and noncash pay-for-delay agreements, there is reason to believe that brand manufacturers will instead turn to authorized generics in order to protect their profits from generic competition, especially as no-authorized-generic provisions have become common terms in noncash pay-for-delay agreements. And, in fact, there was a spike in authorized generic launches in 2014, the year after *Actavis* was decided.[103] While the number of explicit no-authorized-generic provisions in settlement agreements seems to have decreased in recent years, brand manufacturers have continued to include, in their patent settlements, agreements regarding authorized generics that may have the same effect as explicit no-authorized-generic provisions.[104] For example, in the FTC's most recent report on drug-patent settlement agreements, the FTC noted that the "most common form of possible compensation" in final settlements without explicit compensation is a promise by the brand manufacturer to refrain from using a third party to distribute an authorized generic, which "could have the same effect as an explicit no-[authorized-generic] commitment."[105] Additionally, the FTC remarked that "[a]nother

alleged infringer and may therefore give rise to the inference that it is a payment to eliminate the risk of competition").

100. *See* Prepared Statement of Markus H. Meier, Acting Dir., Bureau of Competition, FTC, to the House of Representatives Comm. on the Judiciary, Subcomm. on Regulatory Reform, Commercial & Antitrust Law 1, 14 (July 27, 2017), https://perma.cc/33FH-XERB.

101. *See id.* at 14.

102. C. Scott Hemphill, *An Aggregate Approach to Antitrust: Using New Data and Rulemaking to Preserve Drug Competition*, 109 COLUM. L. REV. 629, 650 (2009).

103. According to the FDA's list of authorized generic launches, there were only 80 launches in 2013, but 156 launches in 2014. *See* FDA, FDA Listing of Authorized Generics as of December 19, 2019 (2019), https://perma.cc/C4P8-V3HQ. This is consistent with the argument that brand manufacturers have begun to rely upon authorized generics as a substitute anticompetitive strategy. It is important to note that, at least for some of these launches, exogenous factors (such as date of patent expiration) could also have affected the timing of the launch. *See infra* note 253.

104. *See* FTC, Agreements Filed with the Federal Trade Commission Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003: Overview of Agreements Filed in FY 2016, at 1-2, 4 tbl. (2019), https://perma.cc/FK5R-6Z4D.

105. *Id.* at 1-2.

common form of possible compensation" is a "declining royalty structure, in which the generic's obligation to pay royalties is reduced or eliminated if the brand launches an authorized generic product."[106] This type of agreement, too, may "achieve the same effect as an explicit no-[authorized-generic] commitment."[107]

### C. The Effects of Authorized Generics

When a brand manufacturer launches an authorized generic at the beginning of the first-filer generic's exclusivity period, price competition begins much sooner. After the launch, the first-filer generic no longer reaps the benefits of a high drug price during exclusivity, but must now compete with an authorized generic on price in order to acquire customers, thereby driving down the price.[108] On average, the presence of an authorized generic decreases the generic price by 7% to 14%.[109] Additionally, the presence of an authorized generic reduces revenues to the first-filer generic by as much as 40% to 52% during the exclusivity period, and by 53% to 62% during the thirty months following exclusivity.[110] This represents a significant decrease in profits for the first-filer generic. Importantly, FTC economists found that the presence of an additional competitor lowers generic drug prices by a greater *incremental* amount during the exclusivity period than outside of it, meaning that authorized generics have an outsized effect on the price of the first-filer generic.[111]

A key element in assessing the effects of authorized generics on competition is the interaction between market size—defined as the total revenues generated by a drug—and competition. The literature demonstrates that because market size is a key determinant of the number of entrants, the level of competition varies depending on the size of the drug market. FTC economists studied a large sample of drugs, including those with and without exclusivity periods, and found that drugs in the highest deciles of sales—large drug markets—"clearly face more competitors than lower sales decile drugs."[112] Another study found that there were, on average, 5.8 generic manufacturers present in large markets (outside of the exclusivity period), compared to only 2.7 in smaller

106. *Id.* at 2.

107. *Id.*

108. *See* Berndt et al., *supra* note 84, at 792.

109. FTC, *supra* note 11, at ii.

110. *Id.* at iii.

111. Luke M. Olson & Brett W. Wendling, *The Effect of Generic Drug Competition on Generic Drug Prices During the Hatch-Waxman 180-Day Exclusivity Period* 29 (FTC, Working Paper No. 317, 2013), https://perma.cc/Q29K-5CC9.

112. *Id.* at 16.

markets.[113] The study further found that "the incumbent in smaller drug markets lowers price in response to an increase in potential competition, and this price reduction is an effective entry deterrent."[114] This makes sense because as the number of entrants increases over time, the average price of a drug declines;[115] thus, the sales from a drug must be large enough to make entry profitable even when there are additional competitors driving down the unit price.

This trend holds true for Paragraph IV challenges to brand drugs, which, again, are the method of market entry for generic drugs before patent expiration. Paragraph IV challenges were found to "involve a disproportionate number of the highest revenue brand drugs."[116] For example, the top 40% of drugs by revenue with Paragraph IV decisions had annual retail sales "greater than the average cost of brand drug development up to the point [of] FDA marketing approval"—around $970.83 million (in 2007 dollars).[117] In contrast, there were far fewer Paragraph IV challenges for smaller drug markets. For example, one study found that, based on a ranking of drugs in terms of retail sales, only 19.4% of Paragraph IV decisions concerned drugs that were ranked greater than 200th in terms of revenues.[118] By contrast, 33.9% were ranked in the top twenty-five drugs by revenue.[119] Thus, more generics are incentivized to enter drug markets with larger sales than those with relatively smaller sales lest the smaller markets become unprofitable—not only because the price would be driven down, but also because there would be a larger number of players with which to split sales. Insofar as authorized generics are concerned, studies "indicate that the marketing of an authorized generic prior to patent expiration will likely only have a direct impact on drug prices in smaller

113. *See* Steven Tenn & Brett W. Wendling, *Entry Threats and Pricing in the Generic Drug Industry*, 96 REV. ECON. & STAT. 214, 216 (2014).

114. *Id.* at 227.

115. *See* Ernst R. Berndt & Murray L. Aitken, *Brand Loyalty, Generic Entry and Price Competition in Pharmaceuticals in the Quarter Century After the 1984 Waxman-Hatch Legislation*, 18 INT'L J. ECON. BUS. 177, 186 & fig.3 (2011). One study found that drug prices decline to approximately 55% of the brand price when only two generics are present, 33% with five generics, and 13% with fifteen generics. *See* Kesselheim et al., *supra* note 7, at 861.

116. Laura E. Panattoni, *The Effect of Paragraph IV Decisions and Generic Entry Before Patent Expiration on Brand Pharmaceutical Firms*, 30 J. HEALTH ECON. 126, 127, 144 (2011) (constructing a novel dataset of seventy-two Paragraph IV decisions and finding that such decisions "included a non-trivial portion of all brand drugs that face generic entry, a disproportionate number of high revenue drugs, and cases where the period of exclusivity at issue was a large portion of the average length of patent protection").

117. *Id.* at 127.

118. *Id.* at 138.

119. *Id.*

markets; whereas in larger markets it may (at most) only delay entry."[120] In larger markets, the revenues are such that the market can sustain a greater number of competitors without meaningful impact on price. But in smaller markets, where competitors are vying for a share of a smaller revenue pool, "studies seem to indicate that an authorized generic would result in higher prices, and possibly the elimination of all entry."[121]

### D. Potential Antitrust Concerns with Authorized Generics

Given that authorized generics can enter the market during the first-filer generic's exclusivity period, they have been the subject of controversy among scholars and drug manufacturers alike. Generic drug manufacturers argue that the introduction of authorized generics during the exclusivity period is anticompetitive because it undermines generic drug manufacturers' incentives under the Hatch-Waxman Act to enter the market before patent expiration.[122] This is because, they argue, the higher exclusivity pricing is needed to recoup the costs of the Paragraph IV challenge and ensuing patent litigation.[123] The costs of a Paragraph IV challenge include research and development in formulating the generic version of the drug as well as the litigation expenses of defending against the likely patent infringement suit initiated by the brand drug manufacturer.[124] Though there is a wide range of cost estimates for a Paragraph IV challenge, in 2011, the FTC found that the mean cost of a challenge was $5 million.[125]

Moreover, generic manufacturers rely on this exclusivity period to make "60% to 80% of their potential profit."[126] If they cannot hope to recoup their costs, so the argument goes, generics will not enter the market during the patent term, thereby depriving consumers of a lower-priced drug option.[127] At the same time, it can also be argued that there are significant procompetitive benefits of authorized generics launched during the exclusivity period, namely

120. Zain, *supra* note 55, at 756.

121. *Id.* at 756-57.

122. *See* FTC, *supra* note 11, at ii.

123. *See id.*

124. *See* Hemphill & Lemley, *supra* note 82, at 951-52.

125. *See* FTC, *supra* note 11, at 111. Litigation has been found to increase the cost of a Paragraph IV challenge to at least $10 million. Hemphill & Lemley, *supra* note 82, at 952.

126. Carrier, *supra* note 97, at 710 (quoting Daniel F. Coughlin & Rochelle A. Dede, *Hatch-Waxman Game-Playing from a Generic Manufacturer Perspective: From Ticlid® to Pravachol®, Apotex Has Difficulty Telling Who's on First*, 25 BIOTECHNOLOGY L. REP. 525, 525-26 (2006)); *see also id.* (indicating that generic pharmaceuticals make the "vast majority of potential profits" during the exclusivity period (quoting FTC v. Actavis, Inc., 570 U.S. 136, 144 (2013))).

127. *See* FTC, *supra* note 11, at 4.

that they create competition among generics sooner, thereby driving down the price of generic drugs for consumers during the exclusivity period by as much as 14%.[128]

Nothing would stop a brand manufacturer from lowering the price of its own brand drug to compete with the generics.[129] But the concern unique to authorized generics is that a brand manufacturer can leverage its patent-induced monopoly over a brand drug to deter generic competitors by introducing a nominally differentiated product, in the form of an authorized generic, into the market for generic drugs. The authorized generic can then avail itself of state generic substitution laws, giving it an advantage in competing with the generics that the brand drug lacks. Moreover, brand drug manufacturers launch authorized generics only when facing the threat of generic competition, lest they cannibalize their own market, indicating that this is an anticompetitive tactic aimed at deterring or delaying generic competition.

These concerns accompanying the launch of an authorized generic sit at the intersection of antitrust and intellectual property (IP) law. On the one hand, the purpose of antitrust law is to increase consumer welfare by facilitating robust competition that results in lower prices, better products, and a healthy supply chain. On the other hand, IP law permits and encourages the exclusion of competitors in order to protect and promote innovation. The strategic use of IP to create a less competitive environment does not itself violate the antitrust laws, but antitrust concerns *are* implicated in the IP context when "one firm possesses [IP-based] market power and uses it in exclusionary ways."[130] More specifically, "the lawful holder of IP giving substantial power in a market might exploit that IP in a manner that expands or protects the power by injuring competitors in a manner not efficiency justified."[131] This would amount to a manipulation of the IP laws that violates the antitrust laws.

## III. Authorized Generics as Price Predation

Brand manufacturers that leverage their IP rights in an exclusionary manner have already faced antitrust liability for certain exclusionary tactics—namely, cash and noncash pay-for-delay agreements.[132] This Note focuses on

128. *See id.* at 33.

129. Unless, of course, the price of the brand drug was so low as to constitute predatory pricing, but this would be an irrational strategy for the brand. And there appears to be no evidence that brand manufacturers are lowering the prices of their *branded* drugs at all, let alone to predatory levels.

130. *See* LAWRENCE A. SULLIVAN ET AL., THE LAW OF ANTITRUST: AN INTEGRATED HANDBOOK § 12.6 (3d ed. 2016).

131. *Id.* § 12.8.

132. *See supra* Part II.B.

another theory of antitrust liability for authorized generics: price predation. Specifically, brand manufacturers should face antitrust liability if they launch an authorized generic during the first filer's exclusivity period, price it at a predatory level, and thus deter generic manufacturers from entering during the patent term—thereby enabling the brand manufacturers to maintain (unjustifiably) their monopoly for a longer period of time. Liability for this price predation will be more likely to attach in smaller markets in which the profits to be made by a drug are sufficiently low so as to deter entry by generics when an authorized generic is present and priced below the first filer's costs.

Delaying or deterring generic entry harms consumer welfare by lengthening the time during which consumers can buy only the higher-priced drug option. Targeting behavior that is harmful to consumer welfare is the very purpose of the antitrust laws. The problem, however, is that the Court's current predatory pricing doctrine is insufficient to hold liable predatory actors with monopoly power in certain markets that lack fluid entry and exit. The remaining Parts of this Note will discuss the theory of predation, the current predation doctrine as espoused by the Supreme Court in *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*,[133] and how a limit-pricing test would provide a better alternative to the *Brooke Group* analysis for penalizing anticompetitive behavior, especially in the unique regulatory environment in which authorized generics exist.

### A. The Theory of Predatory Pricing

Broadly speaking, predatory pricing "occurs when a firm with market power [sets] prices below a competitive level for the purpose of, or with the effect of, deterring or eliminating price competition from current or future rivals."[134] It has been described as a "tactic used by highly capitalized firms to bankrupt rivals and destroy competition."[135] The basic theory of predatory pricing is that it is a two-step process whereby a firm strategizes to earn monopoly profits.[136] First, a firm sacrifices short-term profits by engaging in "abnormally low pric[ing] in order to drive rivals from the market," as the rival cannot match such low prices.[137] But "[t]hese low prices do not reflect competition on the merits," as "they will only be available temporarily."[138]

133. 509 U.S. 209 (1993).

134. SULLIVAN ET AL., *supra* note 130, § 4.1.

135. Lina M. Khan, Note, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710, 722 (2017).

136. *See* Aaron S. Edlin, Essay, *Stopping Above-Cost Predatory Pricing*, 111 YALE L.J. 941, 952 (2002).

137. *See id.*

138. *Id.*

Then, once its rivals have been driven out, the predatory firm will raise its prices to a supracompetitive level in order to recoup its investment in charging the initial abnormally low prices and eventually earn an outsized profit.[139] For predatory pricing to be rational, the recoupment gains must be greater than the losses from the initial, predatorily low pricing.[140] Importantly, an incumbent may derive more benefits from a predatory pricing strategy than merely defeating the direct competitor at issue: For example, the predatory regime may send a warning signal to other potential entrants of what they will face upon entry.[141] In this sense, the "predatory behavior can deter future competition *before* it occurs."[142]

The basic theory of predation using authorized generics is as follows. The brand drug manufacturer, *BM*, has a patent on drug *B*. During the term of the patent, or at least until a generic manufacturer enters, *BM* can charge a supracompetitive monopoly price because the patent prevents any rivals from entering the market until an ANDA has been filed and approved. The first-filer generic manufacturer, *GM*, submits an ANDA to enter the market with a generic drug, *G*, that is bioequivalent to *B*, and makes a Paragraph IV certification attesting either that its drug would not infringe *BM*'s patent or that the patent is invalid. As a result, *BM* commences patent litigation against *GM*, triggering the thirty-month stay. Let us assume that the parties do not settle and the thirty-month stay ends without a court decision either way. The FDA then approves the entry of the generic drug into the market, and *GM* enjoys the 180-day exclusivity period promised by the Hatch-Waxman Act as an incentive for being the first to file and challenge *BM*'s patents.[143] This 180-day exclusivity period enables *GM* to recoup the costs of the Paragraph IV challenge to *B* because *G* has no other generic competitors, meaning that *GM* can charge a price high enough to make a profit but still lower than the price of *B*, thereby drawing customers away from *BM*.

Now assume that *BM* introduces an authorized generic, *AG*, into the market at the beginning of *G*'s exclusivity period. If *AG* is priced lower than *G*, then *GM* will be forced to lower its prices in order to compete with *AG*. If *AG* is priced below *G*'s marginal costs such that *GM* is unable to recover its costs of entry and production, then *GM* will be unable to sustain this low price and will be forced to operate at a loss—especially once the exclusivity period ends and

139. *See id.*

140. *See* PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION ¶ 723a (CCH 2019).

141. *See id.* ¶ 726d5.

142. *Id.*

143. *See supra* Part I.C.

other generics enter the market, driving down the price even further. *GM* will eventually be forced to raise its price, exit the market completely, or both.

But the real problem here is not driving *GM* out of this particular market; rather, it is the deterrence of future Paragraph IV challenges and resultant generic entry. Assuming brand drug manufacturers engage in a pattern of launching authorized generics, which many have already been shown to do,[144] they will gain a reputation for being predatory, and generic manufacturers as a whole will be deterred ex ante from challenging the brand drug's patents given concerns over inability to recoup their initial investment.[145] This will enable a brand drug manufacturer to charge a monopoly price throughout the entire term of the patent as generic manufacturers would be unable to recoup the costs of patent litigation via the exclusivity period. This deterrence of generic entrants is the crux of the problem.

On its face, this conduct poses anticompetitive concerns: A monopolist brand manufacturer takes advantage of a regulatory framework in order to exclude rivals—the very rivals that the regulations were meant to protect. Because "the anticipation of an authorized generic entrant reduces the expected profitability during the exclusivity period," patent challenges by prospective generic manufacturers may thereby be deterred.[146] Yet "[i]f some of those forgone challenges had been successful, then independent generic entry might be delayed in the absence of the challenge, harming consumers."[147]

The problem, as the following Subpart will explain, is that the current legal framework for predatory pricing is insufficient to penalize brand drug manufacturers that launch authorized generics in order to deter generic entry before patent expiration.

### B. The Current Framework: The *Brooke Group* Test

Antitrust law has been concerned with predatory pricing ever since the Supreme Court's decision to break up Standard Oil in 1911.[148] Predatory pricing implicates section 2 of the Sherman Act, which prohibits monopolization and attempted monopolization when a firm "has deliberately followed a course

144. "[B]eginning in 2003 there was a substantial increase in the number of [authorized generic] launches for drugs that were subject to a Paragraph IV certification, and by 2007-2008 most [authorized generics] were versions of drugs for which there had been a Paragraph IV certification." FTC, *supra* note 11, at 31.

145. *See id.* at 38 ("[I]n the long-run, the expectation of an [authorized generic] may deter ANDA-generic firms from challenging questionable patents using a Paragraph IV certification.").

146. Berndt et al., *supra* note 84, at 792.

147. *Id.*

148. *See* Standard Oil Co. of N.J. v. United States, 221 U.S. 1, 42-43 (1911).

of market conduct through which it has obtained or maintained power to control price or exclude competition."[149] Here, predatory pricing enables a firm to do both by utilizing its incumbency and cost advantages to squeeze out rivals by pricing at abnormally low levels. Predatory pricing may also implicate the Robinson-Patman Act, which "condemns certain forms of price discrimination," such as when a firm cross-subsidizes its predatory pricing in one market by its actions in another market.[150]

The challenge for courts in predatory pricing cases has been to distinguish between low prices that are part of meritorious competition and low prices that are not. In a series of harsh decisions for would-be predators, such as *Utah Pie Co. v. Continental Baking Co.*,[151] the Supreme Court's early antitrust case law "reinforced the illegitimacy of predatory pricing."[152] But the Court, influenced by Robert Bork and the Chicago School, subsequently changed course and formulated a new test for predatory pricing in *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*,[153] premised on the notion not only that competitors would be reluctant to attempt a predatory pricing regime but also that they would rarely be successful in doing so.[154]

The central claim in *Brooke Group* was made by generic cigarette manufacturer Liggett, which alleged that its competitor Brown & Williamson, which had previously only operated in the brand-name cigarette market, "cut prices on generic cigarettes below cost and offered discriminatory volume rebates to wholesalers to force Liggett to raise its own generic cigarette prices and introduce oligopoly pricing" into the generic cigarette market.[155] When Brown & Williamson entered the generic market, it undercut Liggett's generic prices for wholesale distribution, which instigated a "price war" in the form of rebates between the two manufacturers, during which Brown & Williamson

149. *See* SULLIVAN ET AL., *supra* note 130, § 3.1(a); *see also* United States v. Grinnell Corp., 384 U.S. 563, 570-71 (1966). *See generally* 15 U.S.C. §§ 1-7 (2018).

150. *See* Christopher R. Leslie, *Predatory Pricing and Recoupment*, 113 COLUM. L. REV. 1695, 1698 (2013); *see also* 15 U.S.C. § 13(a) ("It shall be unlawful for any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition . . . .").

151. 386 U.S. 685, 703 (1967).

152. *See* Khan, *supra* note 135, at 725.

153. *See* 509 U.S. 209, 222-24 (1993).

154. *See* Khan, *supra* note 135, at 726, 729-30 ("[T]he Court adopted the Chicago School's narrow conception of what constitutes this harm (higher prices) and how this harm comes about—namely, through the alleged predator raising prices on the previously discounted good.").

155. *See Brooke Grp.*, 509 U.S. at 212.

"maintained a real advantage over Liggett's prices."[156] After the price war, Brown & Williamson was selling its generic cigarettes "at a loss."[157]

Liggett thus "alleged that Brown & Williamson's volume rebates to wholesalers amounted to price discrimination that had a reasonable possibility of injuring competition," because they were "integral to a scheme of predatory pricing."[158] To effectuate this scheme, Liggett argued, "Brown & Williamson reduced its net prices for generic cigarettes below average variable costs" with the "inten[t] to pressure [Liggett] to raise its list prices on generic cigarettes, so that the percentage price difference between generic and branded cigarettes would narrow."[159] According to Liggett, it would have been impossible to further "reduce its wholesale rebates without losing substantial market share to Brown & Williamson," so it was forced to raise its retail prices.[160] This "resulting reduction in the list price gap" would thus "restrain the growth of the [generic] segment and preserve Brown & Williamson's supracompetitive profits on its *branded* cigarettes."[161] Thus, the crux of Liggett's claim was that Brown & Williamson would be able to recoup its losses on the generic cigarettes by raising prices on its branded cigarettes.

In analyzing Liggett's claims, the Court made clear that under either the Robinson-Patman Act or section 2 of the Sherman Act, a successful predatory price claim must allege that "[a] business rival has priced its products in an unfair manner with an object to eliminate or retard competition and thereby gain and exercise control over prices in the relevant market."[162] Specifically, the Court required a plaintiff prove two key elements.

First, a plaintiff must demonstrate that the predator reduced its prices to a level "*below* an appropriate measure of its [own] costs."[163] The Court rejected arguments that an antitrust claim could rest on prices being above cost but "below general market levels or the costs of a firm's competitors," reasoning that "the exclusionary effect of prices above a relevant measure of cost either reflects the lower cost structure of the alleged predator, and so represents competition on the merits, or is beyond the practical ability of a judicial tribunal to control without courting intolerable risks of chilling legitimate price cutting."[164]

156. *See id.* at 215-16.

157. *Id.* at 216.

158. *Id.* at 216-17.

159. *Id.* at 217.

160. *Id.*

161. *Id.* (emphasis added).

162. *Id.* at 222.

163. *Id.* (emphasis added).

164. *See id.* at 223.

Second, a plaintiff must demonstrate that the competitor had "a reasonable prospect," for claims brought under the Robinson-Patman Act, or a "dangerous probability," for claims brought under section 2 of the Sherman Act, "of recouping its investment in below-cost prices."[165] For the Court, "[r]ecoupment is the ultimate object of an unlawful predatory pricing scheme; it is the means by which a predator profits from predation" because "[w]ithout it, predatory pricing produces lower aggregate prices in the market, and consumer welfare is enhanced."[166] Thus, "unsuccessful predation is in general a boon to consumers."[167] The Court emphasized the fact that "below-cost pricing may impose painful losses on its target is of no moment to the antitrust laws if competition is not injured: It is axiomatic that the antitrust laws were passed for 'the protection of *competition*, not *competitors*.'"[168] To that end, the plaintiff must show that ultimately "there is a likelihood that the predatory scheme alleged would cause a rise in prices above a competitive level that would be sufficient to compensate for the amounts expended on the predation, including the time value of the money invested in it."[169] In essence, the predator must be able to "obtain enough market power to set higher than competitive prices, and then must sustain those prices long enough to earn in excess profits what they earlier gave up in below-cost prices."[170]

Recognizing that it would be difficult for plaintiffs to meet this test, the Court explained that its rationale for imposing such rigid obstacles to liability for predation was its concern for false positives, which could chill legitimately competitive price cuts that would benefit consumers.[171]

Applying its newly formulated test to the facts at hand, the Court found that Liggett failed to meet the second requirement for showing predatory pricing. While the Court found that Brown & Williamson's prices on its generic cigarettes were indeed below its costs, it held that Liggett had failed to satisfy the recoupment prong.[172] Specifically, Liggett was unable to show that

165. *Id.* at 224.

166. *Id.*

167. *Id.*

168. *Id.* (quoting Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962)).

169. *Id.* at 225; *see also* C. Scott Hemphill & Philip J. Weiser, *Beyond* Brooke Group*: Bringing Reality to the Law of Predatory Pricing*, 127 YALE L.J. 2048, 2052 (2018) ("As the Court saw it, a price cut—at least as long as the price remains above cost—is unambiguously desirable because it increases output, thereby raising total and consumer welfare.").

170. *Brooke Grp.*, 509 U.S. at 225-26 (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 590-91 (1986)).

171. *See id.* at 226-27 ("It would be ironic indeed if the standards for predatory pricing liability were so low that antitrust suits themselves became a tool for keeping prices high.").

172. *See id.* at 231.

"Brown & Williamson had a reasonable prospect of recovering its losses from below-cost pricing through slowing the growth of generics."[173] It is important to note that much of this analysis turned on facts particular to this case—specifically that the key means of recoupment would be through oligopolistic, supracompetitive price coordination among rival branded cigarette firms, which the Court reasoned Brown & Williamson would be unlikely to achieve and sustain.[174]

The *Brooke Group* test reflects the Court's narrow view of predatory pricing whereby liability attaches only if a predatory firm prices below some measure of its own costs with a reasonable probability that any losses it incurs will be recouped—this is referred to as a "negative-profit" standard.[175] The result of this narrower view is that far fewer predatory pricing claims are brought,[176] and almost none have been successful,[177] demonstrating how difficult such claims are for plaintiffs to prove—despite the antitrust concerns posed by such pricing.[178]

The Court's test in *Brooke Group* has been the subject of heavy criticism and may ultimately be more harmful to consumers than a stricter test that penalizes more predatory conduct but eliminates temporary, predatorily low prices for consumers.[179] Much of the criticism has focused on the below-cost pricing prong of the *Brooke Group* test. Many worry that this requirement will "ignore strategies that are legitimately anticompetitive but that can be accomplished at fully profitable prices," meaning that predators who can avoid pricing below their own costs while still driving out competition will escape liability.[180] This is particularly worrisome because in "cases of monopolization

173. *Id.*

174. *See id.* at 227-28; *see also* Hemphill & Weiser, *supra* note 169, at 2050 ("The Court's unusually detailed review of particular case facts in *Brooke Group* provides a further reason to confine *Brooke Group*'s dicta that predation is implausible.").

175. *See* Steven C. Salop, *Exclusionary Conduct, Effect on Consumers, and the Flawed Profit-Sacrifice Standard*, 73 ANTITRUST L.J. 311, 326 (2006). The Court failed to define which measure of costs should be used (and the correct cost measure remains disputed), but many lower courts and commentators use average variable costs. *See, e.g.*, SULLIVAN ET AL., *supra* note 130, §§ 4.3(a), 4.4; Phillip Areeda & Donald F. Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 HARV. L. REV. 697, 704 (1975).

176. *See* Hemphill & Weiser, *supra* note 169, at 2049 ("Over the past twenty-five years, antitrust claims alleging a predatory price cut have fallen into disuse.").

177. *See id.* at 2062 & n.65 (noting that as of November 2017, "no predatory pricing case . . . has been litigated to a final judgment for plaintiffs").

178. *See, e.g.*, Kenneth L. Glazer, *Predatory Pricing and Beyond: Life After* Brooke Group, 62 ANTITRUST L.J. 605, 606 (1994) ("[P]redatory pricing will be virtually a dead letter in federal antitrust cases.").

179. *See, e.g.*, Hemphill & Weiser, *supra* note 169, at 2053.

180. *See* AREEDA & HOVENKAMP, *supra* note 140, ¶ 736a.

or attempted monopolization, such 'above-cost predation' may be more plausible and prevalent than below-cost predation,"[181] yet would not face liability under *Brooke Group*. The Court's reluctance to penalize predatory price cuts that still remain above a predator's costs reflects its fear of false positives.[182] But this reluctance leads to false negatives—failing to penalize true exclusionary conduct—that have a detrimental effect on consumer welfare. Quite problematically, "the long-run welfare costs of exclusion from predatory price cutting could be much greater than the short-run benefits of lower prices."[183]

Moreover, the Court in *Brooke Group* seemed to think that even if a predator were to price below its costs, recoupment of those costs would be unlikely to occur. Yet scholars have levied criticism against the recoupment prong as well. Christopher Leslie argues that as a fundamental matter, successful recoupment is unnecessary for predation to harm consumer welfare. He argues that this is because it is the predatorily low pricing that comes in the first phase of a predatory pricing strategy, not the recoupment that comes later, that actually drives out rivals, leaving a monopoly for the predator in the second phase.[184]

Others have criticized the recoupment prong for failing to take into account explicitly the reputational benefits that often accompany predation, arguing that "[m]easuring recoupment solely by reference to [a single] product ignores any benefits that result because the defendant's reputation for predatory responses carries to all . . . of its products."[185] Specifically, the predator's reputation for aggressive pricing may deter or drive out rivals in other markets in which it competes, even without the predator actually having to engage in the low-cost pricing. Many courts and scholars, however, have interpreted the recoupment prong to include recoupment in other markets by reputational effects.[186] Relatedly, many criticize the *Brooke Group* test for also failing to

181. Edlin, *supra* note 136, at 942.

182. Hemphill & Weiser, *supra* note 169, at 2052 ("The Court's approach accepts some false negatives—anticompetitive above-cost price cuts—in order to avoid the chilling effect of false positives.").

183. Hemphill & Weiser, *supra* note 169, at 2053. Another criticism of the Court's greater concern about false positives over false negatives targets its assumption that false negatives are rare. *See id.* (observing that the Court offered "this famous dictum . . . without adequate empirical support").

184. *See* Leslie, *supra* note 150, at 1741-42 ("The sad irony of the repeated judicial misapplication of the recoupment requirement in the predatory pricing cases is the fact that this element is unnecessary and inappropriate. Whether a monopolist recoups the money it has spent to acquire monopoly power does not determine whether its anticompetitive conduct has harmed consumer welfare.").

185. AREEDA & HOVENKAMP, *supra* note 140, ¶ 727g.

186. *See, e.g.*, Hemphill & Weiser, *supra* note 169, at 2050 ("[A] plaintiff is free, even under *Brooke Group*, to show that the defendant successfully recouped by acquiring a

*footnote continued on next page*

account for explicitly the deterrence effect of aggressive price cuts on potential new entrants against which the cuts were not directed.[187] This failure, in turn, incentivizes predatory behavior because the predator, if successful in excluding one rival, will more likely be successful in excluding other rivals without even having to engage in the predatory scheme again.

Despite these criticisms, the *Brooke Group* test has persisted. Yet it is particularly inappropriate for scrutinizing conduct in markets in which there is an incumbent monopolist who can employ predatory above-cost pricing and entry barriers, making recoupment all the more likely. The airline industry has been cited as one such market.[188] The predatory use of authorized generics in the pharmaceutical market is another example that underscores fundamental flaws of the *Brooke Group* test that allow certain predators to escape liability while damaging consumer welfare in the long-term. The remainder of this Note will use the example of authorized generics to highlight the problems with the *Brooke Group* test and demonstrate how using a limit-pricing test would better capture the antitrust concerns posed by authorized generics. Given the recent epidemic of rising drug prices, it is critical that predation analysis effectively penalize conduct that directly harms consumers.

### C. Authorized Generics as a Price-Predation Strategy

In an effort to maintain monopolistic power, some brand drug manufacturers use authorized generics as a form of price predation in order to deter other generics from entering the market before patent expiration. The problem with authorized generics is that, "in the long-run, the expectation of an [authorized generic] may deter ANDA-generic firms from challenging questionable patents using a Paragraph IV certification."[189] As one treatise put it, "[a]rguably, the development of authorized generics is intended by pharmaceutical patent owners as a form of predation, making patent challenges by generics uneconomic by squeezing out the profits associated with a successful patent challenge."[190] And some documents by brand manufacturers

reputation for predation in other markets."); Leslie, *supra* note 150, at 1720-21 (noting that "[c]ourts apparently do not appreciate the prospect of recoupment in another market" but "recoupment can happen in markets for complements, substitutes, and replacement goods").

187. *See, e.g.*, Hemphill & Weiser, *supra* note 169, at 2053.

188. *See* Edlin, *supra* note 136, at 980-87.

189. FTC, *supra* note 11, at 38.

190. HERBERT HOVENKAMP ET AL., IP AND ANTITRUST: AN ANALYSIS OF ANTITRUST PRINCIPLES APPLIED TO INTELLECTUAL PROPERTY LAW § 16.02[A] (CCH 2019); *see also* FTC, *supra* note 11, at 57-59 (noting that an "ANDA-generic product usually takes a larger share of the market when it does not face an [authorized generic] competitor,"
*footnote continued on next page*

themselves reflect such an intention. One internal document by a brand drug manufacturer cited in an FTC report states that "[f]inancially speaking," launching an authorized generic is "not a particularly attractive proposition," but "strategically we may want to send a message" that the brand manufacturer "will launch authorized generics" and thus "hopefully reduce future [generic] competition for subsequent . . . products coming off patent."[191]

In the unique regulatory framework set up by the Hatch-Waxman Act, as opposed to in markets closer to perfect competition, predatory pricing may be far more successful because of the barriers to entry and the patent protection afforded to brand drug manufacturers.[192]

First, the first-filer generic will be forced to bear significant costs resulting from the Paragraph IV challenge but without the benefit of charging a higher price during the exclusivity period.[193] These costs are far greater than those of a generic wishing to enter *after* patent exclusivity because they include not only the research and development costs to create the generic version of the brand drug but also the litigation expenses involved in defending against the likely patent infringement suit initiated by the brand manufacturer that triggers the thirty-month stay.[194] Thus, the first filer requires the opportunity to recoup its expenses in the form of higher drug profits, which are most easily obtained during the 180-day exclusivity period.

Second, it is very inexpensive for a brand manufacturer to launch an authorized generic. The brand manufacturer need only incur the minimal marginal costs of manufacturing additional units of a drug for which it has already built and scaled the production mechanism. This enables the brand manufacturer to cheaply produce a new drug and then price it at a low rate without having to incur a profit sacrifice.

Again, the FTC found that the presence of an authorized generic during the exclusivity period "reduces the first-filer generic's revenues by 40 to 52 percent."[195] As a result, the generic manufacturer may be forced to exit the market because it cannot compete with the low prices of the authorized generic. And, seeing this predatory conduct by the brand manufacturer, other

but "introducing an [authorized generic] has a large and negative effect on ANDA revenues").

191. FTC, *supra* note 11, at 71-72 (third alteration in original) (quoting an internal company document).

192. *Cf.* Janusz A. Ordover & Robert D. Willig, *An Economic Definition of Predation: Pricing and Product Innovation*, 91 YALE L.J. 8, 13 (1981) ("In markets in which structural factors permit successful predation, a firm may rationally attempt to induce the exit of a rival in order to gain additional monopoly profits.").

193. *See supra* notes 122-26 and accompanying text.

194. *See supra* text accompanying notes 49-51.

195. FTC, *supra* note 11, at iii.

generic manufacturers would be deterred from entering the market altogether during the patent term because the threat of an authorized generic would make their entry unprofitable.[196] Thus, brand drug manufacturers would be able to avoid Paragraph IV challenges to their patents and the resultant exclusivity period, enabling them to charge monopoly prices for much longer, giving them a windfall and harming consumers. That is the very type of conduct the Hatch-Waxman Act meant to eliminate by making it *easier*, not harder, for generics to enter the market so that consumers could pay lower prices for drugs.

Importantly, this conduct would most likely occur in smaller drug markets and would likely be unsuccessful if attempted in larger markets given the economics of these respective markets: "Studies indicate that the marketing of an authorized generic prior to patent expiration will likely only have a direct impact on drug prices in smaller markets; whereas in larger markets, it may (at most) only delay entry."[197] This suggests that for larger markets, "to the extent that [an] authorized generic deters or delays entry, it will be insufficient to permit a branded drug company to increase generic prices" in the long run.[198] This is because larger markets are profitable enough to sustain a number of competitors. In larger markets, the benefits in the form of broad sales past the exclusivity period would outweigh the first-filer generic's costs of litigation and of being forced to price-match the authorized generic during exclusivity. In smaller markets, however, sales would not be large enough for the first-filer generic to recoup the cost of being forced to compete with the authorized generic during exclusivity, thereby deterring entry.[199] Moreover, there are often multiple first-filer generics in certain large markets precisely because there are greater profits to be reaped. Thus, if generics in these markets are not deterred from filing an ANDA and Paragraph IV certification—even knowing that they may have to split the exclusivity period with another first-filer generic—an authorized generic would be unlikely to deter their entry, in contrast to smaller markets where the authorized generic would have a greater effect.[200]

196. *See supra* notes 144-47 and accompanying text.

197. Zain, *supra* note 55, at 756.

198. *Id.*

199. *See* FTC, *supra* note 11, at 117-18, 118 fig.6-6 (modeling the decision whether a generic files a Paragraph IV challenge in a smaller drug market and showing that generic manufacturers are more likely to break even in larger markets).

200. *See* David Reiffen & Michael R. Ward, *"Branded Generics" as a Strategy to Limit Cannibalization of Pharmaceutical Markets*, 28 MANAGERIAL & DECISION ECON. 251, 263 (2007) ("[O]ur estimates suggest that the price changes resulting from branded generic entry are largest in relatively small markets.").

Empirical data are consistent with this hypothesis. In 2011, the FTC issued a report on the short-term and long-term effects of authorized generics.[201] In so doing, it analyzed information from "more than 100 brand-name and generic manufacturers [along] with price and sales data acquired from commercial sources and information gleaned from FDA databases to assess [authorized generics'] competitive effects."[202] The report found that any "disincentive effects" stemming from the introduction of an authorized generic during the exclusivity period "would likely be experienced in small markets or in situations where the generic had little chance of winning the patent suit anyway."[203] Specifically, the report found that the generic manufacturer's lost revenue when facing an authorized generic would be "most likely to affect decisions to challenge patents on products with small sales."[204] For example, the FTC, using its break-even analysis with higher estimates of generic manufacturers' entry costs, found that the presence of an authorized generic in the market for drugs with sales below $27.3 million was likely to deter a Paragraph IV challenge, and that using lower cost estimates, an authorized generic would have the same effect in a market below $15 million.[205] Another study analyzing drug pricing and entry data found that "[i]t is likely that entry deterrence is more costly in large markets due to their greater profitability. Consequently, an entry-deterring pricing strategy may not be profit maximizing in these markets."[206] But this same study found that "the

201. In 2009, the FTC issued an interim report that "focused on the short-term effects of [authorized generics] during the 180-day exclusivity period." FTC, *supra* note 11, at ii. The 2011 final report "refine[d]" the FTC's short-term analysis and "expand[ed] the analysis to consider long-term effects." *Id.*

202. *Id.*

203. *Id.* at iii. The FTC report demonstrates that "[i]f a challenger anticipates a 50 percent chance of success, an expectation of [authorized generic] competition could tilt the balance against bringing a patent challenge in markets with brand sales between $12 million and $27 million, a range that accounts for 13 percent of drugs." *Id.*

204. *Id.* The FTC also noted that brand manufacturers would be less likely to launch authorized generics in small markets anyway. *See id.* However, such an assumption may not hold true if the brand manufacturers recognize that engaging in a successful predation strategy can deter entry across other product lines by gaining a predatory reputation. Further, at the time the report was authored, brand manufacturers were frequently engaged in other methods to delay generic entry, including making settlements with generic manufacturers whereby they agreed not to launch an authorized generic in exchange for the generic manufacturer delaying its entry into the market. *See supra* notes 87-92 and accompanying text. As a result, brand manufacturers may not have been as focused on launching authorized generics in all drug markets.

205. FTC, *supra* note 11, at 115.

206. Tenn & Wendling, *supra* note 113, at 221. This study also found that

> [f]or small drug markets, where it is easier to deter entry due to lower expected profits, we find that price falls in response to an increase in competition. Few manufacturers enter these

*footnote continued on next page*

incumbent in smaller drug markets lowers price in response to an increase in potential competition, and this price reduction is an effective entry deterrent."[207] Thus, it would seem that authorized generics launched in smaller drug markets could effectively deter generic entry.

### D. The Failure of Current Predation Doctrine

The problem, however, is that under the current predatory pricing doctrine, it would be very difficult for plaintiffs to challenge the launch and aggressively low pricing of authorized generics because they would likely not meet the below-cost prong of *Brooke Group*,[208] allowing brand drug manufacturers to charge supracompetitive prices unscathed.

It would be nearly impossible for the authorized generics to meet this requirement because "the economics of patents rarely lend themselves to pricing that is truly below marginal cost."[209] Rather, a brand manufacturer would take advantage of the structural barriers to entry imposed by the patent and the regulatory regime, and price the authorized generic below some measure of the *true* generic's costs, instead of the authorized generic's costs, so that it could still maximize profits in the short term while simultaneously driving out a rival in the long term. It makes little to no economic sense for a patent holder to price below its *own* (lower) costs since it gains no incremental competitive benefit from doing so and is thus cutting into its own profits, when it could achieve the same effect by merely pricing below the generic

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markets following expiration of the Hatch-Waxman exclusivity period, indicating this price reduction is an effective deterrent. In contrast, in larger drug markets where entry deterrence is less likely to be successful, the incumbent maintains a high price until forced to respond to actual competition.

*Id.* at 214.

207. *Id.* at 227; *see also* Reiffen & Ward, *supra* note 200, at 263 (finding that branded generic entry is most influential in small drug markets).

208. *See* HOVENKAMP ET AL., *supra* note 190, § 16.02[A] ("[A] pure predatory pricing claim may be even harder to prove in the authorized generic context. Even where a predatory pricing claim involves patented goods rather than licenses themselves, the economics of patents rarely lend themselves to pricing that is truly below marginal cost."); *see also* Edlin, *supra* note 136, at 955 ("[I]n a market where a monopoly has cost or other advantages over entrants, the *Brooke Group* rule could lead to adverse welfare consequences. At worst, it could allow a monopoly to charge high prices perpetually, never facing an entrant."); Bryan A. Liang, *The Anticompetitive Nature of Brand-Name Firm Introduction of Generics Before Patent Expiration*, 41 ANTITRUST BULL. 599, 619 (1996) (finding that, "in the [authorized] generics case, in a monopoly market maximum profit is gained at monopoly prices; rational firms will only price below this level . . . in expectation of future returns as a result of a reduction of future competition," where the monopoly price is above the monopolist's cost).

209. HOVENKAMP ET AL., *supra* note 190, § 16.02[A].

manufacturer's costs. As a result, plaintiffs would virtually never be able to meet the pricing-below-cost prong of the test.

As for the second prong of the test, monopolist brand manufacturers would have a far easier time recouping their investment than did the oligopolistic competitors in *Brooke Group*.[210] To play this out more clearly, the major concern with authorized generics is that the predatory pricing in one market would be cross-subsidized by supracompetitive prices charged in another market in which generics were deterred from entering because of the predatory reputation gained by the launch of authorized generics in the first market by a brand that has multiple differentiated drug products.[211] For example, if *B* successfully launched an authorized generic in market $M_1$ and priced it below cost such that the first-filer generic suffered a great loss, and *B* thereby gained a predatory reputation, then *B*'s reputation for predatory pricing would have an *in terrorem* effect on competitors contemplating entering market $M_2$, in which *B* also had a brand drug. Thus, *B* would recoup its costs from market $M_1$ by charging supracompetitive prices in market $M_2$.[212] Given that the major pharmaceutical companies simultaneously have products in a large number of markets, it is entirely conceivable, even likely, that they would gain such predatory reputations.

The particular regulatory structure of the pharmaceutical industry lends itself more easily than the oligopolistic situation in *Brooke Group* to recoupment success for two reasons. First, because a brand drug is patent protected, the patent serves as a barrier to entry, meaning that any other drug manufacturer, generic or otherwise, wishing to enter the market must engage in patent litigation to do so. Litigation has a high cost (often raising the price of Paragraph IV certification to at least $10 million[213]) that generic manufacturers would be unwilling to bear unless they could recoup it through the exclusivity period, which the presence of the authorized generic would prevent. Thus, generic entry would be delayed until after the patent term expires, since generic manufacturers would be deterred from attempting to invalidate the

210. Insofar as the recoupment prong of the *Brooke Group* test is read to include recoupment in other markets via reputational effects, the use of authorized generics satisfies this prong. If a court (arguably erroneously) read the prong to exclude such reputational benefits, then I would advocate for a modification to the test that accounts for the reputational benefits of predation.

211. *Cf.* AREEDA & HOVENKAMP, *supra* note 140, ¶ 723c ("[W]e presume that losses incurred through predation could be regained in at least some markets with high barriers to entry."). And again, pharmaceutical markets have high barriers to entry. *See supra* note 192 and accompanying text.

212. In this sense, the situation somewhat parallels that in *Brooke Group*, where Brown & Williamson would have recouped its costs from predatory pricing in the market for generic cigarettes by charging a higher price in the market for brand cigarettes.

213. Hemphill & Lemley, *supra* note 82, at 952.

patent via a Paragraph IV certification, giving the brand manufacturer ample time to recoup its initial investment. This stands in stark contrast to *Brooke Group*, in which the Court assumed that entry by other competitors would be easy once the predator raised its prices because the oligopoly pricing in that case was difficult to police.[214] It is important to note that "[p]rofitable recoupment does not require that all entry be deterred indefinitely, it requires entry only sufficiently [deterred] to make the predation investment profitable."[215] Thus, even though other generics may enter after the patent has expired, once they can avoid the costs associated with making a Paragraph IV certification, the fact that entry will be deterred in the interim would, in most cases, be enough to facilitate successful recoupment.

Second, once the generic manufacturers are disincentivized from entering the market before the patent term's expiration, brand drug manufacturers that still launch an authorized generic can benefit from a "first-mover advantage."[216] This advantage enables them to keep customers even after other generics enter the market once the patent has expired.[217] Authorized generics can "target[] the irrational brand loyalties of patients and physicians" who may be reluctant to use an *unauthorized* generic, but who would feel comfortable using a generic launched by the brand manufacturer, believing it to be the same product as the actual brand drug.[218] In so doing, authorized generics can "lock in consumers and thereby create substantial switching costs that deter later entrants."[219] These switching costs "can deter subsequent entry by forcing later entrants to invest extra resources to attract customers away from the first-mover firm."[220]

Third, any other drug manufacturer wishing to enter the market with a substitute drug (that is, a drug with a different active ingredient) would be unable to take advantage of the Hatch-Waxman framework and would instead have to file an NDA, which is a lengthy and expensive process.[221] This means that, in many cases, the patent holder would maintain a monopoly while the

214. *See* Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 238-40 (1993).

215. AREEDA & HOVENKAMP, *supra* note 140, ¶ 729a.

216. *See* Chen, *supra* note 36, at 480.

217. *See id.*

218. *See id.*

219. *Id.*

220. *Id.*; *accord* Robert E. Hall, *Potential Competition, Limit Pricing, and Price Elevation from Exclusionary Conduct, in* 1 ISSUES IN COMPETITION LAW AND POLICY 433, 437 (ABA Section of Antitrust Law ed., 2008) ("Getting as many users as possible to adopt a product means that the rival entering in the future has to persuade people to incur switching costs as well as pay the price of the new product.").

221. *See supra* Part I.B.

potential rival attempted to enter the market. Either way, the ability of authorized generics to deter generic entry into the market would enable the brand to maintain supracompetitive prices in order to recoup its initial investment in lowering the price of the authorized generic.

Additionally, the Court's concern in *Brooke Group* regarding the recoupment prong was that it would be difficult to implement and sustain supracompetitive pricing because that would require coordination among multiple actors.[222] Here, however, recoupment would be more easily obtained because only a single actor—the brand manufacturer—would be imposing the supracompetitive pricing, thereby eliminating the coordination problems at issue in *Brooke Group*.[223]

Thus, we are left with a situation in which a challenge to predatory pricing would most likely fail the *Brooke Group* test because the brand manufacturers are not engaging in below-cost pricing, even though their pricing is still entry deterrent, and even though the recoupment prong is easily proven. This, in turn, incentivizes brand drug manufacturers to pursue predatory pricing strategies more aggressively. After all, "[w]hat might maximize consumer welfare in the short run does not necessarily do so in the long run."[224] To limit losses to consumer welfare from authorized generics' predatory pricing schemes, we need a different line of attack.

## IV. Limit Pricing: A Better Measure of Predation for Authorized Generics

Some scholars have argued that the *Brooke Group* test's requirements for a predatory pricing claim of below-cost pricing and reasonable probability of recoupment "may be sufficient to make out a predatory pricing case, but they should not be necessary."[225] This means that there are other ways in which firms can engage in predatory pricing that ultimately harms consumer welfare. But, as demonstrated above, authorized generics will likely fail the below-cost element of the *Brooke Group* test given the patent context and regulatory framework of the pharmaceutical industry. Nonetheless, this framework enables the brand drug manufacturer to achieve the same goal (ensuring supracompetitive pricing by driving out rivals) without pricing

222. *See* Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 227-28 (1993).

223. *See* Hemphill & Weiser, *supra* note 169, at 2065 ("One source of flexibility arises where a monopoly, rather than oligopoly, is concerned. If recoupment is undertaken by a monopoly protected by high barriers to entry, we are far from the oligopoly considered in *Brooke Group*.").

224. AREEDA & HOVENKAMP, *supra* note 140, ¶ 723d2.

225. Edlin, *supra* note 136, at 943; *see also supra* Part III.B.

below its *own* costs. Rather, a brand manufacturer need only employ limit pricing, or pricing below the cost necessary for a *generic* manufacturer to recoup its initial investment in the Paragraph IV certification and the resulting patent litigation. Thus, one solution to policing the predatory launch of authorized generics is through a limit-pricing test that penalizes authorized generics when they are priced below the first-filer generic's entry costs.

### A. Theory

Limit pricing describes the setting of a price "at a level just below that which a prospective entrant to the market would need to charge in order to sustain a successful entry."[226] Limit pricing occurs when an incumbent firm prices "below the short-run profit-maximizing price but above the competitive level" in order to deter or prevent would-be entrants.[227] The limit price is "intended by the monopolist to impair the opportunities of rivals, and, if successful, it does prevent competition from arising."[228] While a monopolist without the fear of entrants can charge whatever price will maximize its immediate profit, monopolists facing potential entry threats are constrained in how they may price if they want to maintain at least some of their monopoly profits. For example, say a brand manufacturer's profit-maximizing price for an authorized generic is $10 per unit, but this is high enough that it would encourage entry by other generics. If the brand manufacturer's costs for producing the drug were only $7 per unit, but the generic entrant's costs were $9 per unit, then the brand manufacturer could price the authorized generic at $8 in order to deter generic entry and sustain its monopoly because the generic manufacturer, if it matches the $8 price, would not be able to make a profit since its higher costs exceed the price charged.[229] So long as the long-term profits from pricing at the lower price exceed those from pricing at the higher price, even while a brand manufacturer accepts an entrant and the resulting market share dilution, the brand manufacturer would rationally choose the lower price.[230]

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226. Leslie, *supra* note 150, at 1716 (quoting Phototron Corp. v. Eastman Kodak Co., 842 F.2d 95, 101 (5th Cir. 1988)).

227. *Glossary of Statistical Terms: Limit Pricing*, OECD, https://perma.cc/D3QC-J8CL (last updated Mar. 16, 2002).

228. AREEDA & HOVENKAMP, *supra* note 140, ¶ 736b1(A).

229. *Cf. id.* (providing a numerical example of how, while the limit price is the long-term profit-maximizing price, it is below the short-term profit-maximizing price).

230. *See* Hall, *supra* note 220, at 441 ("[T]he present value calculated from the incumbent's profits from a limit-pricing strategy applied over the remainder of the product life should exceed the present value of the incumbent's revenue from the duopoly. If not, limit pricing is not profitable and would not have been undertaken.").

The pharmaceutical market is an ideal market for brand manufacturers to engage in limit pricing because "the classical limit-pricing strategy is directed at potential entrants whose costs are higher than those of the incumbent,"[231] making limit pricing a better test of predation. Limit pricing would trigger liability when a brand drug manufacturer prices its authorized generic below a reasonable measure of the generic manufacturer's costs to enter the market,[232] which would include the fixed costs of Paragraph IV certification, resultant patent litigation, and manufacturing. Using limit pricing, rather than below-cost pricing, as a measure of predation would more effectively penalize the type of conduct we want to deter as harmful to consumers, while still serving as an effective screen for those cases in which low costs truly represent competition on the merits. That is because predators who employ limit pricing would *raise* their prices once entry had been deterred, making the price cuts only temporary. Additionally, limit pricing offers courts a practicable and objective way to distinguish between legitimate and illegitimate pricing strategies by comparing the price charged per unit to the fixed costs of entry plus the marginal cost of each additional unit sold. Of course, expert economic analysis would be needed, as it is in nearly all antitrust cases, in order to determine the limit price and the brand manufacturer's likelihood of recoupment in other markets. However, once that information was provided to the courts, they would have an objective metric of judging when an incumbent brand manufacturer was pricing below the generic manufacturer's costs in a real attempt to deter generic entry in its other markets.[233]

There are several ways in which a monopolist can leverage its dominant position to introduce limit pricing to deter potential rivals.[234] Incumbent

231. *See* AREEDA & HOVENKAMP, *supra* note 140, ¶ 736b1(A).

232. I do not propose a specific measure of the generic manufacturer's costs in this Note, but whatever measure is used must include the fixed costs necessary for market entry.

233. Aaron Edlin, in a similar attempt to revise the *Brooke Group* test in order to better penalize above-cost predatory pricing, offers a "'dynamic' standard for adjudicating predation" cases. Edlin, *supra* note 136, at 945. Specifically, Edlin argues:

> In markets where an incumbent monopoly enjoys significant advantages over potential entrants, but another firm enters and provides buyers with a substantial discount, the monopoly should be prevented from responding with substantial price cuts or significant product enhancements until the entrant has had a reasonable time to recover its entry costs and become viable, or until the entrant's share grows enough so that the monopoly loses its dominance.

*Id.* While this approach certainly has merit and would curb above-cost predatory pricing in the pharmaceutical market, it is much better suited for a legislative solution, *see infra* Part IV.C, given that it does far more than merely tweak the measure of cost used in *Brooke Group*, and instead advocates for an entirely new paradigm under which to evaluate predatory pricing.

234. As part of Edlin's proposal for a new category of predation, whereby "[m]onopolization under Sherman Act section 2 [would] include[] price reductions or quality improvements by an incumbent monopoly in response to a substantial entry before the entrant has

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monopolists that have a "significant cost or noncost advantage over entrants"[235] can utilize these advantages to deter competitors from entering the market. Importantly, and distinct from predatory pricing as contemplated in the classic case such as *Brooke Group*, predation in this model does not require the predator to give up all of its monopoly profits in the short-term. Because "the predator's cost is below the entrant's at the margin, [if] the goods are homogeneous" and "competition is over prices" rather than quality, then "the incumbent's short-run [profit-]maximizing response" is to deter competitors from entering the market altogether.[236]

For the limit-pricing theory to hold, then, it must be the case that the monopolist incumbent has cost or noncost advantages over the rival such that it can price below the rival's costs but above its own. Incumbent monopolists typically have several cost advantages. First, the monopolist has the sunk cost of its initial expenditure that has already been recovered from the sales of the monopoly-priced product and that, unlike the potential entrant, it need not incur again.[237] If barriers to entry are high, then the one-time costs of entry matter even more because, while the monopolist was able to recoup its investment in entry by charging monopoly profits when it had the market to itself (before the entry of the first-filer generic), any potential entrants will necessarily lack the possibility of recoupment through supracompetitive pricing as they will still face the incumbent brand (and likely its authorized generic) as competitors. Second, the monopolist will frequently have lower variable costs than the entrant.[238] This will continue to be the case so long as the marginal costs of the monopolist do not increase significantly, which would threaten to destroy any of its cost advantages.[239]

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had a reasonable time to recover its entry costs and become viable," he discusses at length how monopolists can use the inherent advantages in their dominant position to drive out competitors. *See* Edlin, *supra* note 136, at 966-70.

235. *Id.* at 944.

236. *See id.* at 958.

237. *Id.* at 959; *see also* Ordover & Willig, *supra* note 192, at 11-12 ("These [entry] hurdles exist whenever the prospective entrant is cost-disadvantaged relative to the incumbent solely because the incumbent is already functioning as a going concern, and the entrant has not yet committed the requisite resources. In general, entry hurdles arise when investments are not fully reversible. The need to incur the irreversible portion of the investment, and thereby to put that amount at risk, confronts the prospective entrant with a cost disadvantage relative to the incumbent whose resources are already committed. Thus, an incumbent may have an incentive to induce the exit of an entrant, who would then face an entry hurdle afresh." (footnotes omitted)).

238. Edlin, *supra* note 136, at 959.

239. *Id.*

Additionally, there are several noncost advantages an incumbent monopolist may have over the potential entrant, such as brand loyalty and network effects.[240] The upshot of this is that "incumbents with cost advantages may find predation rational and even short-run maximizing, even in a full information setting."[241]

Another key factor that makes this scenario different from that in *Brooke Group* is that once a monopolist has gained a reputation for predatory pricing, potential rivals will be deterred ex ante from entering the market because the incumbent monopolist is signaling to the potential entrant that entry would be futile.[242] At that point, an incumbent monopolist may not need to engage in limit pricing at all, since these rivals will be deterred from entering the market altogether, knowing that the monopolist may at any point again engage in such limit pricing to deter entry.

### B. Application

The patent and regulatory framework of the pharmaceutical market puts the brand manufacturer, as the incumbent monopolist, in an excellent position to launch authorized generics using a strategy of limit pricing to deter potential generic rivals ex ante.

As described above, at least two factors must be present for limit pricing to be a successful predation strategy: (1) an incumbent monopolist and (2) cost or noncost advantages of the monopolist over the potential entrants.

First, brand drug manufacturers are incumbent monopolists by virtue of their patents, which give them a legal monopoly over a particular drug market until the patent expires or a first-filer generic launches a successful Paragraph IV challenge triggering the exclusivity period.

Second, brand manufacturers have significant cost advantages over potential generic entrants. The brand manufacturer has already expended the sunk cost of obtaining the patent and conducting the clinical trials and research necessary for NDA approval by the FDA. Thus, the marginal cost of creating and marketing an authorized generic is substantially lower for the brand manufacturer because it need only increase the quantity of its current output. Because authorized generics can take advantage of state generic substitution laws,[243] the brand manufacturers need not invest in marketing

240. *Id.*

241. *Id.* at 958.

242. *See* Hemphill & Weiser, *supra* note 169, at 2067; *see also* Greg LeBlanc, *Signalling Strength: Limit Pricing and Predatory Pricing*, 23 RAND J. ECON. 493, 494 (1992) (noting that this ex ante deterrence stands in contrast to the predatory pricing model in which a firm, perceiving a low risk of entry by competitors, will wait until a rival enters the market before engaging in the predatory price-cutting).

243. *See supra* notes 52-54 and accompanying text.

and product placement as they would for a brand drug. Here, the brand manufacturer has greater financial staying power because it already has one successful product—the brand drug—on the market that will continue to attract a customer base. While the generic manufacturers need not incur the same initial costs of conducting research and clinical trials (after all, avoiding these costs is the entire point of the ANDA), they must still invest in the research and testing necessary to prove bioequivalence, along with the infrastructure and supplies necessary to create and scale a new drug product.

Additionally, there are significant barriers to entry for first-filer generics that do not exist for the brand drug because the litigation costs associated with a first filer's Paragraph IV certification erect a significant entry hurdle for the first-filer generic.[244] What is more, while the first-filer generic cannot sell its product during the thirty-month stay triggered by the patent litigation, the brand manufacturer will continue reaping a profit.

The brand drug manufacturer also possesses significant noncost advantages over the potential generic entrants. These noncost advantages include brand loyalty, mistrust of generic drugs by consumers, and in certain instances high switching costs, whereby once a consumer begins taking a brand drug, it is difficult to incentivize that same consumer to switch to the generic version of the drug.[245] Additionally, studies "suggest that to the extent that a generic market has first mover advantages, an authorized generic would be particularly well positioned to obtain those advantages."[246]

With these requisite factors met, exploring two hypothetical scenarios demonstrates when a brand manufacturer would face liability under a limit-pricing test for launching an authorized generic and when it would not.

In the unlawful scenario, assume that brand manufacturer *BM* is a major pharmaceutical company with numerous patent-protected drugs spread across various markets. *BM* is facing generic competition in the market for its brand drug $B_1$—a first-filer generic has already made a Paragraph IV certification and is about to enjoy its exclusivity period. *BM* launches an authorized generic, $AG_1$, for $B_1$ at the start of the first filer's exclusivity period and prices it below the first filer's costs. The first filer is unable to recoup its entry and other costs given the steep price competition with $AG_1$ and suffers significant losses.

244. *See supra* note 123 and accompanying text.

245. *See generally* Kathleen Iacocca et al., *Why Brand Drugs Priced Higher Than Generic Equivalents*, 9 INT'L J. PHARMACEUTICAL & HEALTHCARE MARKETING 3, 16-17 (2015) (finding that brand loyalty, personal preferences, and price insensitivity lead brand manufacturers to maintain the high price of their drugs even after generics have entered the market).

246. Zain, *supra* note 55, at 757. *But see* FTC, *supra* note 11, at 12 (noting that "many brand-name companies . . . contract with ANDA-generic companies to market their [authorized generics]").

Seeing this behavior in the market for $B_1$, another generic manufacturer wishing to challenge the patents for *BM*'s $B_2$, a smaller market, changes course and decides to wait until the patent for $B_2$ expires, knowing that it would not be able to recoup the entry costs of a Paragraph IV certification if *BM* were to launch an authorized generic in the market for $B_2$. Because *BM*, a monopolist brand manufacturer, launched an authorized generic priced below its competitor's costs and deterred generic entry in $B_2$, *BM*'s launch of $AG_1$ would satisfy the limit-pricing test. Assuming *BM* recouped its investment in launching $AG_1$ by the deterrence in the market for $B_2$, this conduct would also satisfy the recoupment prong, and thus *BM* should be liable under section 2 of the Sherman Act for predatory pricing.[247]

Now, assume the same facts except that *BM*'s other drugs were all in large markets in which a generic's entry costs constituted only a small portion of its total profits. Even seeing the launch of $AG_1$, the authorized generic in the market for $B_1$, generic manufacturers are not deterred from filing Paragraph IV certifications in the *other* drug markets because they know that even if *BM* launches an authorized generic priced below their costs in these markets, the resultant profit they would make even after exclusivity would still be enough to recoup their investment. Thus, because there is no entry deterrence, this would fail the predation test, and *BM* would not be held liable under the antitrust laws.

### C. Potential Limitations

While a limit-pricing theory of liability would lend itself more readily to penalizing predatory pricing via authorized generics, such liability would be premised on brand manufacturers actually engaging in this strategy. In 2011, the FTC analyzed short-term and long-term competitive effects of authorized generics and concluded that, while authorized generics reduced the first-filer generic's revenues during the exclusivity period, the presence of an authorized generic during this period "has not affected the generic's incentives in a way that has measurably reduced the number of patent challenges by generic firms."[248] But the FTC clarified that "[a]ny disincentive effects would likely be experienced in small markets or in situations where the generic had little chance of winning the patent suit anyway."[249]

The FTC's analysis, however, is not fatal to a limit-pricing theory of liability for several reasons. First, the FTC failed to analyze whether the authorized generics were being priced *below* the first filer's entry costs. If not,

247. *See* 15 U.S.C. § 2 (2018).

248. FTC, *supra* note 11, at iii.

249. *Id.*

then the fact that the generic manufacturers were not deterred from entering the market makes sense because they would still presumably be generating enough revenue, even though forced to split these revenues with an authorized generic, to recoup their investment. And if the brand manufacturers began to engage in a limit-pricing strategy and generics were deterred, then liability under this theory would attach.

Second, the FTC report considered data only from 2001 to 2008.[250] During this time period, which was before the *Actavis* decision scrutinizing pay-for-delay agreements, drug manufacturers were busy entering into these pay-for-delay agreements to deter generic entry, including ones in which brand manufacturers promised not to launch an authorized generic in exchange for later generic entry. These agreements were brand manufacturers' dominant exclusionary strategies before *Actavis*, indicating that they were likely less concerned with engaging in predatory efforts with regard to authorized generics. In this same report, the FTC found that from 2003 to 2008, authorized generics were present in 61% of first-filer exclusivity periods, and indicated that this percentage might have been higher but for agreements between brand and generic manufacturers not to launch an authorized generic in exchange for delayed generic entry.[251]

An analysis of the launches of authorized generics from an official FDA database demonstrates that there were 156 authorized generics launched in 2014 alone, one year *after* the *Actavis* decision came out—up from only 82 launched in 2012, and 80 launched in 2013.[252] While not conclusive, this analysis indicates that brand manufacturers may have been switching tactics upon learning that their main strategy of delaying generic entry was subject to increased scrutiny.[253]

Now that cash—and, in several circuits, noncash—pay-for-delay agreements are subject to increased scrutiny by the courts, there is reason to believe that brand manufacturers will engage in other exclusionary strategies, including predatory pricing via authorized generics.[254] And if so, a limit-pricing theory should be utilized to determine price predation claims.

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250. *Id.* at 7.

251. *Id.* at 6, 32.

252. *See* FDA, *supra* note 103.

253. Other exogenous factors, such as patent expiration, may also have contributed to the uptick in launches of authorized generics in 2014. *See, e.g.*, *Big Pharma's Patent Cliff: Tallying Up the Fallout from Patent Expirations*, BLOOMBERG (Nov. 14, 2013, 8:27 PM PST), https://perma.cc/JH6L-HQQ5; Dan Carroll, *The Biggest Victims of the Patent Cliff in 2014*, MOTLEY FOOL (Dec. 15, 2013, 2:28 PM), https://perma.cc/ZH68-LCS2.

254. For example, a 2015 survey by Cutting Edge Information, a research firm, found that 42% of brand-name drug companies "have used [authorized generics] as a competitive tactic." Doug Bartholomew, *In Defense of the Anti-Generic: Authorized Generics Are the Controversial Hero of Post-Patent Profitability*, PHARMA MANUFACTURING (May 4, 2017),

*footnote continued on next page*

Beyond the question whether brand manufacturers are engaging in limit pricing in practice, there are several theoretical considerations raised by a limit-pricing theory of predation.

One argument that critics of a new theory of predation may make is that pricing below a generic manufacturer's costs is nothing more than competition on the merits via robust competition on pricing. However, *United States v. Grinnell Corp.*—the seminal case defining the test for monopolization—defines a monopoly that violates section 2 of the Sherman Act as "willful acquisition or maintenance of . . . [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident."[255] And brand manufacturers are not launching authorized generics *sua sponte* to provide a low-cost option for consumers; rather, they are launching authorized generics *in response* to generic entry. The FTC found that the launch of authorized generics "simultaneously with or shortly after ANDA-generic entry" is consistent with "strategies based on retaining revenues and with strategies premised on deterring patent challenges."[256] Moreover, we must take these actions in the context of the other exclusionary strategies aimed at driving out generic manufacturers in which brand manufacturers have recently engaged, such as cost and noncost pay-for-delay agreements and product hopping. And when considered in that light, it seems much clearer that launching authorized generics is a tactic to drive out rivals rather than to engage in robust price competition. After all, "a firm that preserves its monopoly by charging low prices only when its rivals make the mistake of entering the market, and only until they exit, denies consumers the benefits from competition on the merits,"[257] and the firm should be held liable for that conduct.[258]

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https://perma.cc/Y83X-7W5W; *see also* Silvia Appelt, *Authorized Generic Entry Prior to Patent Expiry: Reassessing Incentives for Independent Generic Entry*, 97 REV. ECON. & STAT. 654, 659 (2015) ("Industry experts assert that generic firms must expect authorized generic entry in large drug markets in particular.").

255. United States v. Grinnell Corp., 384 U.S. 563, 570-71 (1966).

256. FTC, *supra* note 11, at 72. Moreover, the FTC analyzed documents from brand drug manufacturers and found that the brand manufacturers clearly understood that the launch of authorized generics during the 180-day exclusivity period could "reduce the revenues of generic rivals and could deter future generic entry." *Id.* at iv. While this Note does not advocate for adding an "intent" prong to the predatory pricing test, this analysis demonstrates that the brand manufacturers were in fact engaging in strategic conduct.

257. Edlin, *supra* note 136, at 966.

258. Additionally, under a limit-pricing theory, the brand manufacturer is still pricing below its short-term profit-maximizing price, meaning that it is leaving money on the table. Such a strategy is rational (and we assume firms are rational actors) only if there is a reasonable probability that the firm will recoup this lost profit in some other way. And here, that way is by deterring generics from entering before the end of exclusivity in the brand manufacturer's *other* drug markets, enabling the brand to continue charging monopoly prices, and making a monopoly profit, for longer in those markets.

Relatedly, an incumbent monopolist may try to justify its actions by making a "meeting competition" defense.[259] However, meeting the price of the competitor may still be anticompetitive if its effect is to drive rivals out of the market or deter their entry in the long term, thereby harming consumers when the predator raises the price.[260] This could occur, for example, if more consumers stay with the authorized generic because of switching costs, or if the generic manufacturer is unable to sustain charging such a low price because it is losing part of the market to the monopolist so its output is lower. In this case, "the ability to match prices may be the source of the anticompetitive problem."[261]

Finally, some may argue that a legislative solution prohibiting authorized generic entry during the exclusivity period would be better tailored to solve this anticompetitive problem than a judicial test created by courts. While that may be true, until it happens, courts have a duty under the Sherman Act to police anticompetitive conduct as it occurs and thus should modify their predation analysis to capture the anticompetitive concerns posed by authorized generics. After all, "[a]ntitrust analysis must sensitively recognize and reflect the distinctive economic and legal setting of the regulated industry to which it applies."[262] And the pharmaceutical market is no different.

## Conclusion

There is good reason for courts to be skeptical of price predation claims since they are often very difficult to evaluate successfully. But *Brooke Group*'s concern for false positives has the perverse effect of insulating certain predatory pricing schemes that do not meet its specific criteria but that nonetheless harm consumer welfare in the long term. Specifically, *Brooke Group* shields monopolists in markets with cost advantages and high barriers to entry

259. Often used as an express defense against unlawful price discrimination under the Robinson-Patman Act, *see generally* Note, *Meeting Competition Under the Robinson-Patman Act*, 90 HARV. L. REV. 1476 (1977), the meeting competition defense provides that it is not unlawful for a seller to lower its price "in good faith to meet an equally low price of a competitor," 15 U.S.C. § 13(b) (2018). The seller has the burden of proof to "demonstrate that a 'reasonable and prudent' person would have believed that the granting of the lower price to the allegedly favored customer or customers 'would in fact meet the equally low price of a competitor,' and that he acted in 'good faith' on this belief." WILLIAM C. HOLMES & MELISSA H. MANGIARACINA, ANTITRUST LAW HANDBOOK: 2018-2019 EDITION § 4:4, at 658-59 (2018) (quoting Falls City Indus., Inc. v. Vanco Beverage, Inc., 460 U.S. 428, 438, 451 (1983)).

260. *See* Edlin, *supra* note 136, at 971-72.

261. *Id.* at 972.

262. Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 411-12 (2004) (quoting Town of Concord v. Bos. Edison Co., 915 F.2d 17, 22 (1st Cir. 1990)) (refusing, based on antitrust principles, to create a new exception for the telecommunications industry to the rule that businesses have "no duty to aid competitors").

from liability if they decide to price their products below their rivals' costs in order to deter entry. This Note argues that in these situations, a new test for predatory pricing—limit pricing—is better suited to penalize this very conduct that is detrimental to consumer welfare.

The pharmaceutical market exemplifies these concerns about predatory pricing under the current test, as brand manufacturers can launch authorized generics in order to deter generic entry. While these brands would escape liability under the *Brooke Group* test because they would rarely price the authorized generics below some measure of their own costs, a limit-pricing test would hold brands accountable when they price their authorized generics below a generic entrant's costs in order to deter generic entry.

If courts continue to analyze predation solely under the *Brooke Group* test, drug manufacturers will be free to charge high prices without the constraint of competition, which will have obvious detrimental effects on consumer welfare.[263] "[I]t makes little sense for the law to focus exclusively on the failures of incumbents to short-run-maximize, or, indeed, on extreme failures that involve losing money and pricing below appropriate measures of cost, as required by *Brooke Group*."[264] Moreover, "a rule that favors granting a powerful firm maximum pricing freedom, such as would be the probable result under the below-cost and recoupment-screening tests in *Brooke Group*, may bring a few short-term welfare benefits that are more than offset by welfare losses from long-term higher prices."[265] In the specific context of the pharmaceutical market, when brand manufacturers engage in tactics that successfully deter generic competition, consumers lack "the opportunity to choose the generic alternative until the (potentially invalid or not-infringed) patent of the brand had expired,"[266] which could take years. When these tactics come within the purview of the antitrust laws, courts should analyze them in a way that better maximizes consumer welfare.[267]

Brand drug manufacturers that engage in exclusionary tactics designed to delay and deter generic entry violate the spirit of both antitrust law, which protects consumer welfare, and intellectual property law, which protects only valid innovation for a specified period of time. While more empirical research is needed to determine the extent of this problem as it currently stands, this Note lays out the theoretical foundation for how best to penalize this exclusionary conduct.

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263. *See* Edlin, *supra* note 136, at 955.

264. *Id.* at 958-59.

265. SULLIVAN ET AL., *supra* note 130, at 158 (footnote omitted).

266. FTC, *supra* note 11, at 38.

267. *See* Kesselheim et al., *supra* note 7, at 864-65 (summarizing alternatives).

# 30

First Session, Forty-fourth Parliament,
70-71 Elizabeth II, 2021-2022

# STATUTES OF CANADA 2022

## CHAPTER 10

An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures

**ASSENTED TO**

JUNE 23, 2022

BILL C-19

Première session, quarante-quatrième législature,
70-71 Elizabeth II, 2021-2022

# LOIS DU CANADA (2022)

## CHAPITRE 10

Loi portant exécution de certaines dispositions du budget déposé au Parlement le 7 avril 2022 et mettant en œuvre d'autres mesures

**SANCTIONNÉE**

LE 23 JUIN 2022

PROJET DE LOI C-19

## RECOMMENDATION

Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures*".

## SUMMARY

Part 1 implements certain income tax measures by

**(a)** providing a Labour Mobility Deduction for the temporary relocation of tradespeople to a work location;

**(b)** allowing for the immediate expensing of eligible property by certain Canadian businesses;

**(c)** allowing the Children's Special Allowance to be paid in respect of a child who is maintained by an Indigenous governing body and providing consistent tax treatment of kinship care providers and foster parents receiving financial assistance from an Indigenous governing body and those receiving such assistance from a provincial government;

**(d)** doubling the allowable qualifying expense limit under the Home Accessibility Tax Credit;

**(e)** expanding the criteria for the mental functions impairment eligibility as well as the life-sustaining therapy category eligibility for the Disability Tax Credit;

**(f)** providing clarity in respect of the determination of the one-time additional payment under the GST/HST tax credit for the period 2019-2020;

**(g)** changing the delivery of Climate Action Incentive payments from a refundable credit claimed annually to a credit that is paid quarterly;

**(h)** temporarily extending the period for incurring eligible expenses and other deadlines under film or video production tax credits;

**(i)** providing a tax incentive for specified zero-emission technology manufacturing activities;

**(j)** providing the Canada Revenue Agency (CRA) the discretion to accept late applications for the Canada Emergency Wage Subsidy, the Canada Emergency Rent Subsidy and the Canada Recovery Hiring Program;

**(k)** including postdoctoral fellowship income in the definition of "earned income" for RRSP purposes;

**(l)** enabling registered charities to enter into charitable partnerships with organizations other than qualified donees under certain conditions;

## RECOMMANDATION

Son Excellence la gouverneure générale recommande à la Chambre des communes l'affectation de deniers publics dans les circonstances, de la manière et aux fins prévues dans une mesure intitulée « *Loi portant exécution de certaines dispositions du budget déposé au Parlement le 7 avril 2022 et mettant en œuvre d'autres mesures* ».

## SOMMAIRE

La partie 1 met en œuvre certaines mesures relatives à l'impôt sur le revenu afin de :

**a)** accorder une Déduction pour la mobilité de la main-d'œuvre pour la réinstallation temporaire de gens de métier à un lieu de travail;

**b)** permettre la passation en charges immédiate de biens admissibles par certaines entreprises canadiennes;

**c)** permettre le paiement de l'Allocation spéciale pour enfants relativement à un enfant dont un corps dirigeant autochtone a la charge et assurer un traitement uniforme entre les prestataires de soins des programmes de parenté et les familles d'accueil qui reçoivent de l'aide financière d'un corps dirigeant autochtone et ceux qui reçoivent cette assistance d'un gouvernement provincial;

**d)** multiplier par deux la limite de dépenses admissibles permise en vertu du Crédit d'impôt pour l'accessibilité domiciliaire;

**e)** élargir les critères d'admissibilité par rapport à la déficience des fonctions mentales ainsi qu'à la catégorie des règles relatives aux soins thérapeutiques essentiels du Crédit d'impôt pour personnes handicapées;

**f)** clarifier l'application de la détermination du versement unique supplémentaire du crédit d'impôt pour la TPS/TVH pour la période 2019-2020;

**g)** modifier les modalités de paiement de l'Incitatif à agir pour le climat d'un crédit d'impôt remboursable à chaque année à un crédit versé tous les trois mois;

**h)** accorder une période supplémentaire pour engager des dépenses admissibles et prolonger certaines dates d'échéance relatives aux crédits d'impôt pour production cinématographique ou magnétoscopique;

**i)** accorder un incitatif fiscal pour certaines activités déterminées de fabrication de technologies à zéro émission;

**j)** permettre à l'Agence du revenu du Canada (ARC) d'accepter les demandes tardives de Subvention salariale d'urgence du Canada, de Subvention d'urgence pour le loyer du Canada et du Programme d'embauche pour la relance économique du Canada sur une base discrétionnaire;

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**(m)** allowing automatic and immediate revocation of the registration of an organization as a charity where that organization is listed as a terrorist entity under the *Criminal Code*;

**(n)** enabling the CRA to use taxpayer information to assist in the collection of Canada Emergency Business Account loans; and

**(o)** expanding capital cost allowance deductions to include new clean energy equipment.

It also makes related and consequential amendments to the *Excise Tax Act*, the *Children's Special Allowances Act*, the *Excise Act, 2001*, the *Income Tax Regulations* and the *Children's Special Allowance Regulations*.

Part 2 implements certain Goods and Services Tax/Harmonized Sales Tax (GST/HST) measures by

**(a)** ensuring that all assignment sales in respect of newly constructed or substantially renovated residential housing are taxable supplies for GST/HST purposes; and

**(b)** extending eligibility for the expanded hospital rebate to health care services supplied by charities or non-profit organizations with the active involvement of, or on the recommendation of, either a physician or a nurse practitioner, irrespective of their geographic location.

Part 3 amends the *Excise Act, 2001*, the *Excise Act* and other related texts in order to implement three measures.

Division 1 of Part 3 implements a new federal excise duty framework for vaping products by, among other things,

**(a)** requiring that manufacturers of vaping products obtain a vaping licence from the CRA;

**(b)** requiring that all vaping products that are removed from the premises of a vaping licensee to be entered into the Canadian market for retail sale be affixed with an excise stamp;

**(c)** imposing excise duties on vaping products to be paid by vaping product licensees;

**(d)** providing for administration and enforcement rules related to the excise duty framework on vaping products;

**(e)** providing the Governor in Council with authority to provide for an additional excise duty in respect of provinces and territories that enter into a coordinated vaping product taxation agreement with Canada; and

**(f)** making related amendments to other legislative texts, including to allow for a coordinated federal/provincial-territorial vaping product taxation system and to ensure that the excise duty framework applies properly to imported vaping products.

**k)** inclure le revenu d'une bourse de perfectionnement postdoctoral à la définition de "revenu gagné" pour les fins d'un RÉER;

**l)** permettre aux organismes de bienfaisance enregistrés de conclure sous certaines conditions des partenariats pour des fins charitables avec des organismes qui ne sont pas des donataires reconnus;

**m)** permettre la révocation automatique et immédiate de l'enregistrement d'un organisme de bienfaisance dans les situations où cet organisme est une entité terroriste énumérée sur la liste prévue par le *Code criminel*;

**n)** permettre à l'ARC d'utiliser des renseignements confidentiels de contribuables afin d'aider au recouvrement de prêts sous le Compte d'urgence pour les entreprises canadiennes;

**o)** élargir la déduction pour l'allocation du coût en capital pour y inclure le nouveau matériel de production d'énergie propre.

Elle apporte également des modifications connexes et corrélatives à la *Loi sur la taxe d'accise*, la *Loi sur les allocations spéciales pour enfants*, la *Loi de 2001 sur l'accise*, au *Règlement de l'impôt sur le revenu* et au *Règlement sur les allocations spéciales pour enfants*.

La partie 2 met en œuvre certaines mesures relatives à la taxe sur les produits et services/taxe de vente harmonisée (TPS/TVH) afin de :

**a)** s'assurer que toutes cessions de contrats de vente relatives aux habitations résidentielles nouvellement construites ou ayant fait l'objet de rénovations majeures soient des fournitures taxables aux fins de la TPS/TVH;

**b)** assouplir les règles d'admissibilité pour le remboursement élargi pour les hôpitaux afin d'inclure les services de soins de santé fournis par un organisme de bienfaisance ou un organisme à but non lucratif avec la participation active, ou sur la recommandation, d'un médecin ou d'une infirmière praticienne ou d'un infirmier praticien, peu importe leur emplacement géographique.

La partie 3 modifie la *Loi de 2001 sur l'accise*, la *Loi sur l'accise* et des textes connexes afin de mettre en œuvre trois mesures.

La section 1 de la partie 3 met en œuvre un nouveau cadre fédéral de droits d'accise pour les produits de vapotage pour, notamment :

**a)** obliger les fabricants de produits de vapotage à obtenir une licence de produits de vapotage auprès de l'ARC;

**b)** exiger qu'un timbre d'accise soit apposé sur tous les produits de vapotage qui sont sortis des locaux d'un titulaire de licence de produits de vapotage pour entrer dans le marché canadien pour la vente au détail;

**c)** imposer, sur les produits de vapotage, des droits d'accise qui seront à payer par les titulaires de licence de produits de vapotage;

**d)** prévoir des règles d'administration et d'exécution liées au cadre de droit d'accise sur les produits de vapotage;

**e)** conférer au gouverneur en conseil le pouvoir de mettre en place un droit d'accise additionnel relativement aux provinces et aux territoires qui concluent un accord de coordination de la taxation des produits de vapotage avec le Canada;

**f)** apporter des modifications connexes à d'autres textes, y compris pour permettre un régime fiscal sur les produits de vapotage coordonné entre le gouvernement fédéral et les gouvernements provinciaux et territoriaux et pour s'assurer que le cadre du droit d'accise s'applique de façon appropriée aux produits de vapotage importés.

Division 2 of Part 3 amends the excise duty exemption under the *Excise Act, 2001* for wine produced in Canada and composed wholly of agricultural or plant product grown in Canada.

Division 3 of Part 3 amends the *Excise Act* to eliminate excise duty for beer containing no more than 0.5% alcohol by volume.

Part 4 enacts the *Select Luxury Items Tax Act*. That Act creates a new taxation regime for domestic sales, and importations into Canada, of certain new motor vehicles and aircraft priced over $100,000 and certain new boats priced over $250,000. It provides that the tax applies if the total price or value of the subject select luxury item at the time of sale or importation exceeds the relevant price threshold. It provides that the tax is to be calculated at the lesser of 10% of the total price of the item and 20% of the total price of the item that exceeds the relevant price threshold. To promote compliance with the new taxation regime, that Act includes modern elements of administration and enforcement aligned with those found in other taxation statutes. Finally, this Part also makes related and consequential amendments to other texts to ensure proper implementation of the new tax and to ensure a cohesive and efficient administration by the CRA.

Division 1 of Part 5 retroactively renders a provision of the contract that is set out in the schedule to *An Act respecting the Canadian Pacific Railway*, chapter 1 of the Statutes of Canada, 1881, to be of no force or effect. It retroactively extinguishes any obligations and liabilities of Her Majesty in right of Canada and any rights and privileges of the Canadian Pacific Railway Company arising out of or acquired under that provision.

Division 2 of Part 5 amends the *Nisga'a Final Agreement Act* to give force of law to the entire Nisga'a Nation Taxation Agreement during the period that that Taxation Agreement is, by its terms, in force.

Division 3 of Part 5 repeals the *Safe Drinking Water for First Nations Act*.

It also amends the *Income Tax Act* to exempt from taxation under that Act any income earned by the Safe Drinking Water Trust in accordance with the Settlement Agreement entered into on September 15, 2021 relating to long-term drinking water quality for impacted First Nations.

Division 4 of Part 5 authorizes payments to be made out of the Consolidated Revenue Fund for the purpose of addressing transit shortfalls and needs and improving housing supply and affordability.

Division 5 of Part 5 amends the *Canada Deposit Insurance Corporation Act* by adding the President and Chief Executive Officer of the Canada Deposit Insurance Corporation and one other member to that Corporation's Board of Directors.

Division 6 of Part 5 amends the *Federal-Provincial Fiscal Arrangements Act* to authorize additional payments to the provinces and territories.

Division 7 of Part 5 amends the *Borrowing Authority Act* to, among other things, count previously excluded borrowings made in the spring of 2021 in the calculation of the maximum amount that may be borrowed. It also amends the *Financial Administration Act* to change certain reporting requirements in relation to amounts borrowed under orders made under paragraph 46.1(c) of that Act.

La section 2 de la partie 3 modifie l'exonération des droits d'accise en vertu de la *Loi de 2001 sur l'accise* sur le vin qui est produit au Canada et composé entièrement de produits agricoles ou végétaux cultivés au Canada.

La section 3 de la partie 3 modifie la *Loi sur l'accise* afin d'éliminer les droits d'accise sur la bière ne contenant pas plus de 0,5 % d'alcool par volume.

La partie 4 édicte la *Loi sur la taxe sur certains biens de luxe*. Cette loi instaure un nouveau régime fiscal pour les ventes au Canada et les importations au Canada de certains véhicules automobiles et aéronefs neufs dont le prix dépasse 100 000 $ et certaines embarcations neuves dont le prix dépasse 250 000 $. Cette loi prévoit que la taxe sur les biens de luxe s'applique lorsque le prix total ou la valeur de l'article en cause au moment de la vente ou de l'importation dépasse le seuil de prix pertinent. Elle calcule la taxe de luxe selon le moins élevé des deux montants suivants : 10 % du prix total de l'article en cause et 20 % du prix total de l'article en cause qui dépasse le seuil de prix pertinent. Pour favoriser la conformité au nouveau régime fiscal, cette loi comporte des éléments modernes d'application et d'exécution qui se trouvent également dans d'autres lois fiscales. Enfin, cette partie apporte des modifications corrélatives et connexes à d'autres textes afin d'assurer la mise en œuvre adéquate de la nouvelle taxe et afin de permettre à l'ARC de les appliquer de façon cohérente et efficace.

La section 1 de la partie 5 rend inopérante, rétroactivement, une disposition du contrat figurant à l'annexe de l'*Acte concernant le chemin de fer Canadien du Pacifique*, chapitre 1 des Statuts du Canada (1881). Elle éteint, rétroactivement, toutes les obligations et responsabilités de Sa Majesté du chef du Canada ainsi que tous les droits et privilèges conférés à la Compagnie de chemin de fer Canadien Pacifique qui découlent de cette disposition.

La section 2 de la partie 5 modifie la *Loi sur l'Accord définitif nisga'a* afin de donner force de loi à tout l'accord nisga'a sur la fiscalité, et ce pour la durée stipulée par celui-ci.

La section 3 de la partie 5 abroge la *Loi sur la salubrité de l'eau potable des Premières Nations*.

De plus, elle modifie la *Loi de l'impôt sur le revenu* pour exonérer de l'impôt prévu par cette loi tout revenu gagné par la Fiducie pour de l'eau potable salubre, conformément à l'entente de règlement conclue le 15 septembre 2021 concernant la qualité à long terme de l'eau potable des premières nations touchées.

La section 4 de la partie 5 autorise des paiements sur le Trésor pour faire face aux déficits et besoins en matière de transport en commun et améliorer l'offre de logements et l'accès à des logements abordables.

La section 5 de la partie 5 modifie la *Loi sur la Société d'assurance-dépôts du Canada* afin d'ajouter le président et premier dirigeant de la Société d'assurance-dépôts du Canada ainsi qu'un autre administrateur à la composition du conseil d'administration de cette Société.

La section 6 de la partie 5 modifie la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* afin d'autoriser des versements supplémentaires aux provinces et territoires.

La section 7 de la partie 5 modifie la *Loi autorisant certains emprunts* pour, entre autres, inclure dans le calcul du montant maximum de certains emprunts des emprunts qui en étaient auparavant exclus et qui ont été contractés pendant le printemps 2021. Elle modifie également la *Loi sur la gestion des finances publiques* afin de modifier certaines exigences en matière de reddition de compte relativement à des sommes empruntées au titre d'un décret pris en vertu de l'alinéa 46.1c) de cette loi.

Division 8 of Part 5 amends the *Pension Benefits Standards Act, 1985* to, among other things, permit the establishment of a solvency reserve account in the pension fund of certain defined benefit plans and require the establishment of governance policies for all pension plans.

Division 9 of Part 5 amends the *Special Import Measures Act* to, among other things,

**(a)** provide that assessments of injury are to take into account impacts on workers;

**(b)** require the Canadian International Trade Tribunal to make inquiries with respect to massive importations when it is acting under section 42 of that Act;

**(c)** require that Tribunal to initiate expiry reviews of certain orders and findings;

**(d)** modify the deadline for notifying the government of the country of export of properly documented complaints;

**(e)** modify the criteria for imposing duties in cases of massive importations;

**(f)** modify the criteria for initiating anti-circumvention investigations; and

**(g)** remove the requirement that, in order to find circumvention, the principal cause of the change in a pattern of trade must be the imposition of anti-dumping or countervailing duties.

It also amends the *Canadian International Trade Tribunal Act* to provide that trade unions may, with the support of domestic producers, file global safeguard complaints.

Division 10 of Part 5 amends the *Trust and Loan Companies Act* and the *Insurance Companies Act* to, among other things, modernize corporate governance communications of financial institutions.

Division 11 of Part 5 amends the *Insurance Companies Act* to permit property and casualty companies and marine companies to not include the value of certain debt obligations when calculating their borrowing limit.

Division 12 of Part 5 enacts the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*. The Act prohibits the purchase of residential property in Canada by non-Canadians unless they are exempted by the Act or its regulations or the purchase is made in certain circumstances specified in the regulations.

Division 13 of Part 5 amends the *Parliament of Canada Act* and makes consequential and related amendments to other Acts to, among other things,

**(a)** change the additional annual allowances that are paid to senators who occupy certain positions so that the government's representatives and the Opposition in the Senate are eligible for the allowances for five positions each and the three other recognized parties or parliamentary groups in the Senate with the greatest number of members are eligible for the allowances for four positions each;

**(b)** provide that the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the Leader or Facilitator of every other recognized party or parliamentary group in the Senate are to be consulted on the appointment of certain officers and agents of Parliament; and

**(c)** provide that the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of

La section 8 de la partie 5 modifie la *Loi de 1985 sur les normes de prestation de pension* afin, notamment, de prévoir l'institution d'un compte de réserve de solvabilité du fonds de pension de certains régimes à prestations déterminées et d'exiger l'établissement de politiques sur la gouvernance pour tous les régimes de pension.

La section 9 de la partie 5 modifie la *Loi sur les mesures spéciales d'importation* afin, notamment :

**a)** de prévoir que l'évaluation du dommage tienne compte de l'incidence sur les travailleurs;

**b)** d'exiger du Tribunal canadien du commerce extérieur qu'il enquête sur les importations massives lorsqu'il agit au titre de l'article 42 de cette loi;

**c)** d'exiger de ce tribunal qu'il procède à un réexamen relatif à l'expiration de certaines ordonnances ou conclusions;

**d)** de modifier le délai à l'intérieur duquel le gouvernement du pays d'exportation est avisé de l'existence d'un dossier complet;

**e)** de modifier les critères permettant l'imposition de droits lors d'une importation massive;

**f)** de modifier les critères permettant d'ouvrir des enquêtes sur le contournement;

**g)** de retirer l'exigence selon laquelle la principale cause du changement à la configuration des échanges doit être l'imposition de droits antidumping ou compensateurs.

Elle modifie également la *Loi sur le Tribunal canadien du commerce extérieur* afin de permettre aux syndicats de déposer, avec l'appui des producteurs nationaux, des plaintes relatives aux mesures de sauvegarde globales.

La section 10 de la partie 5 modifie la *Loi sur les sociétés de fiducie et de prêt* et la *Loi sur les sociétés d'assurances* afin, notamment de moderniser les communications relatives à la gouvernance des institutions financières.

La section 11 de la partie 5 modifie la *Loi sur les sociétés d'assurances* afin de permettre aux sociétés d'assurances multirisques et aux sociétés d'assurance maritime de ne pas inclure la valeur de certains titres de créance dans le calcul de leur limite d'emprunt.

La section 12 de la partie 5 édicte la *Loi sur l'interdiction d'achat d'immeubles résidentiels par des non-Canadiens*. La loi interdit l'achat d'immeubles résidentiels au Canada par des non-Canadiens, à moins qu'ils ne soient exemptés par la loi ou ses règlements ou que l'achat soit effectué dans certaines situations précisées dans les règlements.

La section 13 de la partie 5 modifie la *Loi sur le Parlement du Canada* et apporte des modifications corrélative et connexes à d'autres lois afin, notamment :

**a)** de modifier les indemnités annuelles supplémentaires que reçoivent les sénateurs occupant certains postes de sorte qu'elles soient versées à l'égard de cinq postes occupés par les représentants du gouvernement au Sénat et de cinq postes occupés par l'opposition et, s'agissant des trois autres partis ou groupes parlementaires reconnus au Sénat qui comptent le plus grand nombre de sénateurs, à l'égard de quatre postes chacun;

**b)** de prévoir l'obligation de consulter le leader ou représentant du gouvernement au Sénat, le leader de l'opposition au Sénat et le leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat au sujet des nominations de certains hauts fonctionnaires et agents du Parlement;

the Opposition in the Senate and the Leader or Facilitator of every other recognized party or parliamentary group in the Senate may change the membership of the Standing Senate Committee on Internal Economy, Budgets and Administration.

Division 14 of Part 5 amends the *Financial Administration Act* in order to, among other things, allow the Treasury Board to provide certain services to certain entities.

Division 15 of Part 5 amends the *Competition Act* to enhance the Commissioner of Competition's investigative powers, criminalize wage fixing and related agreements, increase maximum fines and administrative monetary penalties, clarify that incomplete price disclosure is a false or misleading representation, expand the definition of anti-competitive conduct, allow private access to the Competition Tribunal to remedy an abuse of dominance and improve the effectiveness of the merger notification requirements and other provisions.

Division 16 of Part 5 amends the *Copyright Act* to extend certain terms of copyright protection, including the general term, from 50 to 70 years after the life of the author and, in doing so, implements one of Canada's obligations under the Canada–United States–Mexico Agreement.

Division 17 of Part 5 amends the *College of Patent Agents and Trademark Agents Act* to, among other things,

**(a)** ensure that the College has sufficient independence and flexibility to exercise its corporate functions;

**(b)** provide statutory immunity to certain persons involved in the regulatory activities of the College; and

**(c)** grant powers to the Registrar and Investigations Committee that will allow for improved efficiency in the complaints and discipline process.

Division 18 of Part 5 enacts the *Civil Lunar Gateway Agreement Implementation Act* to implement Canada's obligations under the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway. It provides for powers to protect confidential information provided under the Memorandum. It also makes related amendments to the *Criminal Code* to extend its application to activities related to the Lunar Gateway and to the *Government Employees Compensation Act* to address the cross-waiver of liability set out in the Memorandum.

Division 19 of Part 5 amends the *Corrections and Conditional Release Act* to restrict the use of detention in dry cells to cases where the institutional head has reasonable grounds to believe that an inmate has ingested contraband or that contraband is being carried in the inmate's rectum.

Division 20 of Part 5 amends the *Customs Act* in order to authorize its administration and enforcement by electronic means and to provide that the importer of record of goods is jointly and severally, or solidarily, liable to pay duties on the goods under section 17 of that Act with the importer or person authorized to account for the goods, as the case may be, and the owner of the goods.

**c)** d'autoriser le leader ou représentant du gouvernement au Sénat, le leader de l'opposition au Sénat et le leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat à apporter des changements à la composition du Comité sénatorial permanent de la régie interne, des budgets et de l'administration.

La section 14 de la partie 5 modifie la *Loi sur la gestion des finances publiques* afin notamment de permettre au Conseil du Trésor de fournir certains services à certaines entités.

La section 15 de la partie 5 modifie la *Loi sur la concurrence* afin de renforcer les pouvoirs d'enquête du commissaire de la concurrence, d'ériger en infraction criminelle la fixation des salaires et les accords connexes, d'augmenter les amendes maximales et les sanctions administratives pécuniaires, de préciser que la divulgation incomplète des prix est une indication fausse ou trompeuse, d'élargir la définition d'agissement anti-concurrentiel, de permettre l'accès privé au Tribunal de la concurrence pour remédier à un abus de position dominante et d'améliorer l'efficacité des exigences en matière de transactions devant faire l'objet d'un préavis et d'autres dispositions.

La section 16 de la partie 5 modifie la *Loi sur le droit d'auteur* afin de prolonger la durée du droit d'auteur qui s'applique dans certains cas, notamment celle qui s'applique de manière générale, de la cinquantième à la soixante-dixième année suivant le décès de l'auteur et, ce faisant, met en œuvre une des obligations du Canada prévues par l'Accord Canada–États-Unis–Mexique.

La section 17 de la partie 5 modifie la *Loi sur le Collège des agents de brevets et des agents de marques de commerce* afin, notamment :

**a)** de faire en sorte que le Collège jouisse de l'indépendance et de la flexibilité nécessaires pour exercer ses fonctions corporatives;

**b)** d'accorder l'immunité par voie législative à certaines personnes impliquées dans les activités réglementaires du Collège;

**c)** de conférer au registraire et au comité d'enquête des pouvoirs qui permettront d'améliorer l'efficacité du processus de plaintes et de discipline.

La section 18 de la partie 5 édicte la *Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway* afin de mettre en œuvre les obligations du Canada découlant du Mémorandum d'accord entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique concernant la coopération relative à la station lunaire civile Gateway. Elle prévoit des pouvoirs permettant la protection des renseignements confidentiels communiqués aux termes du mémorandum. Elle apporte aussi des modifications connexes au *Code criminel* afin d'étendre la portée de son application aux activités relatives à la station lunaire Gateway et des modifications connexes à la *Loi sur l'indemnisation des agents de l'État* pour tenir compte de la renonciation mutuelle aux recours énoncée dans le mémorandum.

La section 19 de la partie 5 modifie la *Loi sur le système correctionnel et la mise en liberté sous condition* pour restreindre la détention en cellule nue aux cas où le directeur du pénitencier est convaincu qu'il existe des motifs raisonnables de croire qu'un détenu a dissimulé un objet interdit dans son rectum ou qu'il l'a ingéré.

La section 20 de la partie 5 modifie la *Loi sur les douanes* pour autoriser l'exécution et le contrôle d'application de cette loi par voie électronique et prévoir que l'importateur officiel de marchandises soit solidaire du paiement des droits, au même titre que l'importateur ou la personne autorisée à faire une déclaration en détail ou provisoire de marchandises, selon le cas, et le

Division 21 of Part 5 amends the *Criminal Code* to create an offence of wilfully promoting antisemitism by condoning, denying or downplaying the Holocaust through statements communicated other than in private conversation.

Division 22 of Part 5 amends the *Judges Act*, the *Federal Courts Act*, the *Tax Court of Canada Act* and certain other acts to, among other things,

**(a)** implement the Government of Canada's response to the report of the sixth Judicial Compensation and Benefits Commission regarding salaries and benefits and to create the office of supernumerary prothonotary of the Federal Court;

**(b)** increase the number of judges for certain superior courts and include the new offices of Associate Chief Justice of the Court of Queen's Bench of New Brunswick and Associate Chief Justice of the Court of Queen's Bench for Saskatchewan;

**(c)** create the offices of prothonotary and supernumerary prothonotary of the Tax Court of Canada; and

**(d)** replace the term "prothonotary" with "associate judge".

Division 23 of Part 5 amends the *Immigration and Refugee Protection Act* to, among other things,

**(a)** authorize the Minister of Citizenship and Immigration to give instructions establishing categories of foreign nationals for the purposes of determining to whom an invitation to make an application for permanent residence is to be issued, as well as instructions setting out the economic goal that that Minister seeks to support in establishing the category;

**(b)** prevent an officer from issuing a visa or other document to a foreign national invited in respect of an established category if the foreign national is not in fact eligible to be a member of that category;

**(c)** require that the annual report to Parliament on the operation of that Act include a description of any instructions that establish a category of foreign nationals, the economic goal sought to be supported in establishing the category and the number of foreign nationals invited to make an application for permanent residence in respect of the category; and

**(d)** authorize that Minister to give instructions respecting the class of permanent residents in respect of which a foreign national must apply after being issued an invitation, if the foreign national is eligible to be a member of more than one class.

Division 24 of Part 5 amends the *Old Age Security Act* to correct a cross-reference in that Act to the *Budget Implementation Act, 2021, No. 1*.

Division 25 of Part 5

**(a)** amends the *Canada Emergency Response Benefit Act* to set out the consequences that apply in respect of a worker who received, for a four-week period, an income support payment and who received, for any week during the four-week period, any benefit, allowance or money referred to in subparagraph 6(1)(b)(ii) or (iii) of that Act;

**(b)** amends the *Canada Emergency Student Benefit Act* to set out the consequences that apply in respect of a student who received, for a four-week period, a Canada emergency student benefit and who received, for any week during the

La section 21 de la partie 5 modifie le *Code criminel* afin de créer l'infraction de fomenter volontairement l'antisémitisme en cautionnant, en niant ou en minimisant l'Holocauste, par la communication de déclarations autrement que dans une conversation privée.

La section 22 de la partie 5 modifie la *Loi sur les juges*, la *Loi sur les Cours fédérales*, la *Loi sur la Cour canadienne de l'impôt* et certaines autres loi afin notamment :

**a)** de mettre en œuvre la réponse du gouvernement du Canada au rapport de la sixième Commission d'examen de la rémunération des juges concernant les salaires et les avantages sociaux et de créer le poste de protonotaire surnuméraire de la Cour fédérale;

**b)** d'augmenter le nombre de juges pour certaines cours supérieures et d'inclure les nouveaux postes de juge en chef adjoint de la Cour du Banc de la Reine du Nouveau-Brunswick et de juge en chef adjoint de la Cour du Banc de la Reine de la Saskatchewan;

**c)** de créer les postes de protonotaire et de protonotaire surnuméraire de la Cour canadienne de l'impôt;

**d)** de remplacer le terme « protonotaire » par celui de « juge adjoint ».

La section 23 de la partie 5 modifie la *Loi sur l'immigration et la protection des réfugiés* pour, notamment :

**a)** autoriser le ministre de la Citoyenneté et de l'Immigration à donner des instructions établissant des ensembles d'étrangers dans le but de déterminer les étrangers qui peuvent recevoir une invitation à présenter une demande de résidence permanente ainsi que les objectifs économiques dont le ministre cherche, en établissant les ensembles, à favoriser l'atteinte;

**b)** interdire aux agents de délivrer un visa ou autre document à un étranger à qui une invitation à présenter une demande a été formulée relativement à un ensemble établi s'il ne pouvait pas en fait être membre de l'ensemble en question;

**c)** exiger que le rapport annuel au Parlement sur l'application de cette loi contienne une description des instructions établissant des ensembles d'étrangers, des objectifs économiques dont le ministre cherche, en établissant les ensembles, à favoriser l'atteinte et du nombre d'étrangers qui ont été invités à présenter une demande de résidence permanente sur la base du fait qu'ils pouvaient être membres d'un ensemble établi;

**d)** autoriser le ministre à donner des instructions sur la catégorie de résidents permanents à l'égard de laquelle un étranger qui peut être invité à présenter une demande doit le faire, s'il peut être membre de plus d'une catégorie.

La section 24 de la partie 5 modifie la *Loi sur la sécurité de la vieillesse* afin d'y corriger un renvoi à la *Loi nº 1 d'exécution du budget de 2021*.

La section 25 de la partie 5, à la fois :

**a)** modifie la *Loi sur la prestation canadienne d'urgence* afin de prévoir les conséquences qui s'appliquent à l'égard d'un travailleur ayant reçu une allocation de soutien du revenu pour toute période de quatre semaines et une prestation, allocation ou autre somme visée aux sous-alinéas 6(1)b)(ii) ou (iii) de cette loi pour toute semaine comprise dans cette période;

**b)** modifie la *Loi sur la prestation canadienne d'urgence pour étudiants* afin de prévoir les conséquences qui s'appliquent à l'égard d'un étudiant ayant reçu une prestation canadienne

four-week period, any benefit, allowance or money referred to in subparagraph 6(1)(b)(ii) or (iii) of that Act; and

**(c)** amends the *Employment Insurance Act* to set out the consequences that apply in respect of a claimant who received, for any week, an employment insurance emergency response benefit and who received, for that week, any payment or benefit referred to in paragraph 153.9(2)(c) or (d) of that Act.

Division 26 of Part 5 amends the *Employment Insurance Act* to, among other things,

**(a)** replace employment benefits and support measures set out in Part II of that Act with employment support measures that are intended to help insured participants and other workers — including workers in groups underrepresented in the labour market — to obtain and keep employment; and

**(b)** allow the Canada Employment Insurance Commission to enter into agreements to provide for the payment of contributions to organizations for the costs of measures that they implement and that are consistent with the purpose and guidelines set out in Part II of that Act.

It also makes a consequential amendment to the *Income Tax Act*.

Division 27 of Part 5 amends the *Employment Insurance Act* to specify the maximum number of weeks for which benefits may be paid in a benefit period to certain seasonal workers and to extend, until October 28, 2023, the increase in the maximum number of weeks for which those benefits may be paid. It also amends the *Budget Implementation Act, 2021, No. 1* to add a transitional measure in relation to amendments to the *Employment Insurance Regulations* that are found in that Act.

Division 28 of Part 5 amends the *Canada Pension Plan* to make corrections respecting

**(a)** the calculation of the minimum qualifying period and the contributory period for the purposes of the post-retirement disability benefit;

**(b)** the determination of values for contributors who have periods excluded from their contributory periods by reason of disability; and

**(c)** the attribution of amounts for contributors who have periods excluded from their contributory periods because they were family allowance recipients.

Division 29 of Part 5 amends *An Act to amend the Criminal Code and the Canada Labour Code* to, among other things,

**(a)** shorten the period before which an employee begins to earn one day of medical leave of absence with pay per month;

**(b)** standardize the conditions related to the requirement to provide a medical certificate following a medical leave of absence, regardless of whether the leave is paid or unpaid;

**(c)** authorize the Governor in Council to make regulations in certain circumstances, including to modify certain provisions respecting medical leave of absence with pay;

**(d)** ensure that, for the purposes of medical leave of absence, an employee who changes employers due to the lease or transfer of a work, undertaking or business or due to a contract being awarded through a retendering process is deemed to be continuously employed with one employer; and

d'urgence pour étudiants pour toute période de quatre semaines et une prestation, allocation ou autre somme visée aux sous-alinéas 6(1)b)(ii) ou (iii) de cette loi pour toute semaine comprise dans cette période;

**c)** modifie la *Loi sur l'assurance-emploi* afin de prévoir les conséquences qui s'appliquent à l'égard d'un prestataire ayant reçu la prestation d'assurance-emploi d'urgence et l'allocation ou la prestation visée aux alinéas 153.9(2)c) ou d) de cette loi pour toute semaine.

La section 26 de la partie 5 modifie la *Loi sur l'assurance-emploi* afin, notamment :

**a)** de remplacer les prestations d'emploi et les mesures de soutien prévues par la partie II de cette loi par des mesures de soutien à l'emploi qui visent à aider les participants et autres travailleurs — notamment les membres des groupes sous-représentés sur le marché du travail — à obtenir ou à conserver un emploi;

**b)** de permettre à la Commission de l'assurance-emploi du Canada de conclure des accords prévoyant le versement à des organismes de contributions relatives aux frais liés à des mesures qui sont mises en œuvre par ces derniers et qui correspondent à l'objet et aux lignes directrices prévues par la partie II de cette loi.

Elle apporte également une modification corrélative à la *Loi de l'impôt sur le revenu*.

La section 27 de la partie 5 modifie la *Loi sur l'assurance-emploi* afin de préciser le nombre maximal de semaines pour lesquelles des prestations peuvent être versées à certains travailleurs saisonniers au cours d'une période de prestations et de prolonger, jusqu'au 28 octobre 2023, l'augmentation du nombre maximal de semaines pour lesquelles ces prestations peuvent être versées. Elle modifie également la *Loi nº 1 d'exécution du budget de 2021* pour ajouter une mesure transitoire relative aux modifications du *Règlement sur l'assurance-emploi* incluses dans cette loi.

La section 28 de la partie 5 modifie le *Régime de pensions du Canada* pour apporter des corrections concernant :

**a)** le calcul de la période minimale d'admissibilité et de la période cotisable qui s'appliquent à la prestation d'invalidité après-retraite;

**b)** la détermination de valeurs à l'égard du cotisant pour les périodes exclues de sa période cotisable en raison d'une invalidité;

**c)** l'attribution de sommes au cotisant pour les périodes exclues de sa période cotisable parce qu'il était bénéficiaire d'allocations familiales.

La section 29 de la partie 5 modifie la *Loi modifiant le Code criminel et le Code canadien du travail* afin, notamment :

**a)** de réduire pour l'employé le délai préalable à l'acquisition d'un jour de congé payé pour raisons médicales par mois;

**b)** d'uniformiser les conditions relatives à l'exigence de présentation d'un certificat médical à la suite d'un congé pour raisons médicales, que le congé soit payé ou non;

**c)** de conférer au gouverneur en conseil le pouvoir de prendre des règlements dans certaines circonstances, notamment pour adapter certaines dispositions concernant le congé payé pour raisons médicales;

**d)** de prévoir qu'aux fins du congé pour raisons médicales, l'employé dont l'employeur change à la suite de la location ou du transfert d'une installation, d'un ouvrage ou d'une entreprise ou à la suite d'un appel d'offres menant à l'octroi d'un contrat est réputé avoir travaillé sans interruption pour un seul employeur;

**(e)** provide that the provisions relating to medical leave of absence come into force no later than December 1, 2022.

Division 30 of Part 5 amends the *Canada Business Corporations Act* to, among other things,

**(a)** require certain corporations to send to the Director appointed under that Act information on individuals with significant control on an annual basis or when a change occurs;

**(b)** allow that Director to provide all or part of that information to an investigative body, the Financial Transactions and Reports Analysis Centre of Canada or any prescribed entity; and

**(c)** clarify that, for the purposes of subsection 21.1(7) of that Act, it is the securities of a corporation, not the corporation itself, that are listed and posted for trading on a designated stock exchange.

Division 31 of Part 5 amends the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to, among other things,

**(a)** create regimes allowing for the forfeiture of property that has been seized or restrained under those Acts;

**(b)** specify that the proceeds resulting from the disposition of those properties are to be used for certain purposes; and

**(c)** allow for the sharing of information between certain persons in certain circumstances.

It also makes amendments to the *Seized Property Management Act* in relation to those forfeiture of property regimes.

**e)** de prévoir que les dispositions portant sur le congé pour raisons médicales entrent en vigueur au plus tard le 1er décembre 2022.

La section 30 de la partie 5 modifie la *Loi canadienne sur les sociétés par actions* afin, notamment :

**a)** d'obliger certaines sociétés à remettre au directeur nommé en vertu de cette loi les renseignements à l'égard des particuliers ayant un contrôle important de celles-ci, et ce annuellement ou à la suite d'un changement;

**b)** de permettre au directeur de fournir tout ou partie de ces renseignements à certains organismes d'enquête, au Centre d'analyse des opérations et déclarations financières du Canada ou à une entité réglementaire;

**c)** de préciser que, pour l'application du paragraphe 21.1(7) de cette loi, ce sont des valeurs mobilières de la société qui sont cotées et négociables à une bourse de valeurs désignée, et non la société elle-même qui est inscrite comme bourse de valeurs désignée.

La section 31 de la partie 5 modifie la *Loi sur les mesures économiques spéciales* et la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)* pour, notamment :

**a)** créer des régimes permettant la confiscation de biens saisis ou bloqués aux termes de ces lois;

**b)** préciser que le produit de la disposition de ces biens doit être utilisé à certaines fins;

**c)** permettre la communication de renseignements entre certaines personnes dans certaines circonstances.

Elle modifie aussi la *Loi sur l'administration des biens saisis* relativement à ces régimes de confiscation de biens.

## TABLE OF PROVISIONS

**An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures**



## TABLE ANALYTIQUE

**Loi portant exécution de certaines dispositions du budget déposé au Parlement le 7 avril 2022 et mettant en œuvre d'autres mesures**

# An Act to implement the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway and to make related amendments to other Acts

# Loi portant sur la mise en œuvre du Mémorandum d'accord entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique sur la coopération relative à la station lunaire civile Gateway et apportant des modifications connexes à d'autres lois

70-71 ELIZABETH II

CHAPTER 10

An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures

[*Assented to 23rd June, 2022*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

# Short Title

**Short title**

**1** This Act may be cited as the *Budget Implementation Act, 2022, No. 1*.

**PART 1**

# Amendments to the Income Tax Act and Other Legislation

R.S., c. 1 (5th Supp.)

## Income Tax Act

**2 (1) Subsection 8(1) of the *Income Tax Act* is amended by striking out "and" at the end of paragraph (r), by adding "and" at the end of paragraph (s) and by adding the following after paragraph (s):**

**Labour mobility deduction**

**(t)** if the taxpayer is an eligible tradesperson for the year, an amount equal to the lesser of

**(i)** $4,000, and

**(ii)** the total of all amounts each of which is a temporary relocation deduction of the taxpayer for the year in respect of an eligible temporary relocation of the taxpayer.

70-71 ELIZABETH II

CHAPITRE 10

Loi portant exécution de certaines dispositions du budget déposé au Parlement le 7 avril 2022 et mettant en œuvre d'autres mesures

[*Sanctionnée le 23 juin 2022*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

# Titre abrégé

**Titre abrégé**

**1** *Loi nº 1 d'exécution du budget de 2022*.

**PARTIE 1**

# Modification de la Loi de l'impôt sur le revenu et de textes connexes

L.R., ch. 1 (5e suppl.)

## Loi de l'impôt sur le revenu

**2 (1) Le paragraphe 8(1) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après l'alinéa s), de ce qui suit :**

**Déduction pour mobilité de la main-d'œuvre**

**t)** si le contribuable est une personne de métier admissible pour l'année, une somme égale à la moins élevée des sommes suivantes :

**(i)** 4 000 $,

**(ii)** le total des sommes représentant chacune une déduction pour réinstallation temporaire du

**(2) Section 8 of the Act is amended by adding the following after subsection (13):**

**Labour mobility deduction — interpretation**

**(14)** For the purposes of this subsection and paragraph (1)(t),

**(a)** a taxpayer is an eligible tradesperson for a taxation year if, in the taxation year, the taxpayer has income from employment as a tradesperson or apprentice and performs their duties of employment in construction activities described in subsection 238(1) of the *Income Tax Regulations*;

**(b)** a temporary work location of a taxpayer is a location in Canada

**(i)** at which the taxpayer performs their duties of employment under a temporary employment contract, and

**(ii)** that is not situated in the locality where the taxpayer is ordinarily employed or carrying on business;

**(c)** an eligible temporary relocation of a taxpayer is a temporary relocation that meets the following conditions:

**(i)** the relocation is undertaken by the taxpayer to enable the taxpayer to perform their duties of employment as an eligible tradesperson at one or more temporary work locations of the taxpayer within the same locality,

**(ii)** prior to the relocation, the taxpayer ordinarily resided at a residence in Canada (in this subsection referred to as the "ordinary residence"),

**(iii)** the taxpayer was required by their duties of employment referred to in subparagraph (i) to be away from the ordinary residence for a period of not less than 36 hours,

**(iv)** during the temporary relocation, the taxpayer temporarily resided at one or more lodgings in Canada (in this subsection referred to as the "temporary lodging"), and

**(v)** the distance between the ordinary residence and each temporary work location of the taxpayer referred to in subparagraph (i) is not less than 150 kilometres greater than the distance between each temporary lodging referred in subparagraph (iv) contribuable pour l'année relativement à une réinstallation temporaire admissible du contribuable.

**(2) L'article 8 de la même loi est modifié par adjonction, après le paragraphe (13), de ce qui suit :**

**Déduction pour mobilité de la main-d'œuvre**

**(14)** Les règles ci-après s'appliquent dans le cadre du présent paragraphe et de l'alinéa (1)t) :

**a)** un contribuable est une personne de métier admissible pour une année d'imposition si, au cours de l'année, le contribuable gagne un revenu tiré d'un emploi en tant que personne de métier ou apprenti pour l'accomplissement des fonctions dans les activités de construction visées au paragraphe 238(1) du *Règlement de l'impôt sur le revenu*;

**b)** un lieu de travail temporaire d'un contribuable s'entend d'un endroit au Canada :

**(i)** où le contribuable accomplit les fonctions de son emploi en vertu d'un contrat de travail temporaire,

**(ii)** qui n'est pas situé dans la localité où le contribuable est habituellement employé ou exploite une entreprise;

**c)** une réinstallation temporaire admissible d'un contribuable est une réinstallation temporaire qui remplit les conditions suivantes :

**(i)** la réinstallation à un ou plusieurs lieux de travail temporaires du contribuable dans la même localité est entreprise par celui-ci afin de lui permettre d'accomplir ses fonctions d'un emploi en tant que personne de métier admissible,

**(ii)** avant la réinstallation, il habitait ordinairement dans une résidence au Canada (appelée « résidence habituelle » au présent paragraphe),

**(iii)** les fonctions de son emploi visées au sous-alinéa (i) l'ont obligé à s'absenter de sa résidence habituelle pendant une période d'au moins 36 heures,

**(iv)** au cours de la période de réinstallation temporaire, il a habité temporairement à un ou plusieurs logements au Canada (appelés « logement temporaire » au présent paragraphe),

**(v)** la distance entre la résidence habituelle et chaque lieu de travail temporaire du contribuable visé au sous-alinéa (i) est supérieure d'au moins 150 kilomètres à la distance entre chaque logement temporaire visé au sous-alinéa (iv) et chaque lieu de

and each temporary work location of the taxpayer referred to in subparagraph (i);

**(d)** subject to paragraph (e), an eligible temporary relocation expense of a taxpayer for a taxation year is a reasonable expense incurred by the taxpayer during the taxation year, the previous taxation year or prior to February 1 of the following taxation year, in respect of

**(i)** transportation for one round trip per eligible temporary relocation by the taxpayer between the ordinary residence and the temporary lodging,

**(ii)** meals consumed by the taxpayer during the round trip described in subparagraph (i), and

**(iii)** the taxpayer's temporary lodging if, throughout the period of the taxpayer's temporary relocation,

**(A)** the taxpayer maintains their ordinary residence as their principal place of residence, and

**(B)** the ordinary residence remains available for the taxpayer's occupancy and is not rented to any other person;

**(e)** an eligible temporary relocation expense described in paragraph (d) does not include an expense incurred by the taxpayer to the extent that

**(i)** the expense is deducted (other than under paragraph (1)(t)) in computing the taxpayer's income for any taxation year,

**(ii)** the expense was deductible under paragraph (1)(t) by the taxpayer for the immediately preceding taxation year, or

**(iii)** the taxpayer is entitled to receive a reimbursement, allowance or any other form of assistance (other than an amount that is included in computing the income for any taxation year of the taxpayer and that is not deductible in computing the income of the taxpayer) in respect of the expense; and

**(f)** a taxpayer's temporary relocation deduction for a taxation year in respect of an eligible temporary relocation of the taxpayer is the lesser of

**(i)** the total eligible temporary relocation expenses of the taxpayer for the taxation year incurred in respect of the eligible temporary relocation, and

**(ii)** half of the taxpayer's total income for the taxation year from employment as an eligible

travail temporaire du contribuable visé au sous-alinéa (i);

**d)** sous réserve de l'alinéa e), les frais de réinstallation temporaire admissibles d'un contribuable pour une année d'imposition constituent des dépenses raisonnables engagées par le contribuable au cours de l'année d'imposition, de l'année d'imposition antérieure ou avant le 1er février de l'année d'imposition suivante, pour :

**(i)** le transport du contribuable pour un aller-retour par réinstallation temporaire admissible entre la résidence habituelle et le logement temporaire,

**(ii)** les repas consommés par le contribuable pendant l'aller-retour visé au sous-alinéa (i),

**(iii)** le logement temporaire du contribuable si, tout au long de sa période de réinstallation temporaire, à la fois :

**(A)** le contribuable maintient sa résidence habituelle comme lieu principal de résidence,

**(B)** la résidence habituelle demeure à la disposition du contribuable et n'est pas louée à une autre personne;

**e)** les frais de réinstallation temporaire admissibles visés à l'alinéa d) ne comprennent pas une dépense engagée par le contribuable dans la mesure où, selon le cas :

**(i)** les frais sont déduits (sauf ceux visés à l'alinéa (1)t)) dans le calcul du revenu du contribuable pour une année d'imposition,

**(ii)** les frais étaient déductibles en application de l'alinéa (1)t) par le contribuable pour l'année d'imposition précédente,

**(iii)** le contribuable a le droit de recevoir un remboursement, une allocation ou toute autre forme d'aide (sauf une somme qui est incluse dans le calcul de son revenu pour une année d'imposition et qui n'est pas déductible dans le calcul de son revenu) au titre des frais;

**f)** la déduction pour réinstallation temporaire d'un contribuable pour une année d'imposition relativement à une réinstallation temporaire admissible du contribuable est la moins élevée des sommes suivantes :

**(i)** le total des frais de réinstallation temporaire admissibles du contribuable pour l'année

tradesperson at all temporary work locations referred to in subparagraph (c)(i) in respect of the eligible temporary relocation (computed without reference to this section).

**(3) Subsections (1) and (2) apply to the 2022 and subsequent taxation years.**

**3 (1) Subsection 13(2) of the Act is replaced by the following:**

**Recapture — Class 10.1 Passenger Vehicle**

**(2)** Notwithstanding subsection 13(1), where an excess amount is determined under that subsection at the end of a taxation year in respect of a passenger vehicle having a cost to a taxpayer in excess of $20,000 or such other amount as may be prescribed, unless it was, at any time, *designated immediate expensing property* as defined in subsection 1104(3.1) of the *Income Tax Regulations*, that excess amount shall not be included in computing the taxpayer's income for the year but shall be deemed, for the purposes of B in the definition *undepreciated capital cost* in subsection 13(21), to be an amount included in the taxpayer's income for the year by reason of this section.

**(2) The portion of paragraph 13(7)(i) of the Act before subparagraph (ii) is replaced by the following:**

**(i)** if the cost to a taxpayer of a *zero-emission passenger vehicle* exceeds the prescribed amount in subsection 7307(1.1) of the *Income Tax Regulations*, or if the cost of a passenger vehicle that was, at any time, *designated immediate expensing property* as defined in subsection 1104(3.1) of the *Income Tax Regulations* exceeds the prescribed amount in subsection 7307(1) of the *Income Tax Regulations*,

**(i)** the capital cost to the taxpayer of the vehicle is deemed to be equal to the prescribed amount under subsection 7307(1) or (1.1), as the case may be, and

**(3) Subsections (1) and (2) are deemed to have come into force for taxation years ending on or after April 19, 2021.**

d'imposition engagés relativement à la réinstallation temporaire admissible,

**(ii)** la moitié du revenu total du contribuable pour l'année provenant de son emploi à titre de personne de métier admissible à tous les lieux de travail temporaires visés au sous-alinéa c)(i) relativement à la réinstallation temporaire admissible (calculé compte non tenu du présent article).

**(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition 2022 et suivantes.**

**3 (1) Le paragraphe 13(2) de la même loi est remplacé par ce qui suit :**

**Récupération — Voitures de tourisme appartenant à la catégorie 10.1**

**(2)** Malgré le paragraphe 13(1), l'excédent — calculé à la fin d'une année d'imposition en application de ce paragraphe — qui concerne une voiture de tourisme dont le coût pour un contribuable dépasse 20 000 $ ou tout autre montant qui peut être fixé par règlement, sauf si elle était, à un moment donné, un *bien relatif à la passation en charges immédiate désigné* au sens du paragraphe 1104(3.1) du *Règlement de l'impôt sur le revenu*, cet excédent n'est pas inclus dans le calcul du revenu du contribuable pour l'année. Il est toutefois réputé, pour l'application de l'élément B de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21), y être inclus par application du présent article.

**(2) Le passage de l'alinéa 13(7)i) de la même loi précédant le sous-alinéa (ii) est remplacé par ce qui suit :**

**i)** si le coût d'une *voiture de tourisme zéro émission* pour un contribuable est supérieur au montant fixé au paragraphe 7307(1.1) du *Règlement de l'impôt sur le revenu* ou si le coût, pour un contribuable, d'une voiture de tourisme qui était, à un moment donné, un *bien relatif à la passation en charges immédiate désigné* au sens du paragraphe 1104(3.1) du même règlement est supérieur au montant fixé au paragraphe 7307(1) de ce règlement,

**(i)** le coût en capital de la voiture pour le contribuable est réputé être égal au montant fixé en application des paragraphes 7307(1) ou (1.1), selon le cas,

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur pour les années d'imposition se terminant au plus tôt le 19 avril 2021.**

**4 (1) The portion of paragraph 81(1)(h) before subparagraph (i) of the Act is replaced by the following:**

**Social assistance**

**(h)** where the taxpayer is an individual (other than a trust), a social assistance payment (other than a prescribed payment) ordinarily made on the basis of a means, needs or income test under a program provided for by an Act of Parliament, a law of a province or a law of an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*), to the extent that it is received directly or indirectly by the taxpayer for the benefit of another individual (other than the taxpayer's spouse or common-law partner or a person who is related to the taxpayer or to the taxpayer's spouse or common-law partner), if

**(2) The portion of paragraph 81(1)(h.1) before subparagraph (i) of the Act is replaced by the following:**

**Social assistance for informal care programs**

**(h.1)** if the taxpayer is an individual (other than a trust), a social assistance payment ordinarily made on the basis of a means, needs or income test provided for under a program of the Government of Canada, the government of a province or of an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*), to the extent that it is received directly or indirectly by the taxpayer for the benefit of a particular individual, if

**(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.**

**5 (1) Paragraph (a) of the description of B in subsection 118.041(3) of the Act is replaced by the following:**

**(a)** $20,000, and

**(2) Paragraphs 118.041(5)(a) and (b) of the Act are replaced by the following:**

**(a)** a maximum of $20,000 of qualifying expenditures for a taxation year in respect of a qualifying individual can be claimed under subsection (3) by the qualifying individual and all eligible individuals in respect of the qualifying individual;

**(b)** if there is more than one qualifying individual in respect of an eligible dwelling, a maximum of $20,000 of qualifying expenditures for a taxation year in respect of the eligible dwelling can be claimed under

**4 (1) Le passage de l'alinéa 81(1)h) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**Assistance sociale**

**h)** la prestation d'assistance sociale, sauf une prestation visée par règlement, qui est habituellement payée à un particulier, à l'exclusion d'une fiducie, dans le cadre d'un programme prévu par une loi fédérale, provinciale ou d'un *corps dirigeant autochtone*, au sens de l'article 2 de la *Loi sur les allocations spéciales pour enfants*, après examen des ressources, de besoins et du revenu — dans la mesure où il la reçoit, directement ou indirectement, au profit d'un autre particulier, à l'exception de son époux ou conjoint de fait ou d'une personne qui lui est liée ou qui est liée à son époux ou conjoint de fait — si, à la fois :

**(2) Le passage de l'alinéa 81(1)h.1) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**Assistance sociale pour programmes de soins informels**

**h.1)** si le contribuable est un particulier (sauf une fiducie), une prestation d'assistance sociale versée habituellement après examen des ressources, des besoins et du revenu en vertu d'un programme fédéral, provincial ou d'un *corps dirigeant autochtone*, au sens de l'article 2 de la *Loi sur les allocations spéciales pour enfants* dans la mesure où elle est reçue directement ou indirectement par le contribuable au profit d'un particulier donné, si les conditions ci-après sont réunies :

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2020.**

**5 (1) L'alinéa a) de l'élément B de la formule figurant au paragraphe 118.041(3) de la même loi est remplacé par ce qui suit :**

**a)** 20 000 $,

**(2) Les alinéas 118.041(5)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** un maximum de 20 000 $ en dépenses admissibles pour une année d'imposition relativement à un particulier déterminé peut être demandé en application du paragraphe (3) par le particulier déterminé et tous les particuliers admissibles relativement au particulier déterminé;

**b)** s'il existe plus d'un particulier déterminé relativement au même logement admissible, un maximum de 20 000 $ en dépenses admissibles pour une année

subsection (3) by the qualifying individuals and all eligible individuals in respect of the qualifying individuals; and

**(3) Subsections (1) and (2) apply to the 2022 and subsequent taxation years.**

**6 (1) Subparagraph 118.3(1)(a.1)(ii) of the Act is replaced by the following:**

**(ii)** is required to be administered at least two times each week for a total duration averaging not less than 14 hours a week, and

**(2) The portion of subsection 118.3(1.1) of the Act before paragraph (a) is replaced by the following:**

**Time spent on therapy**

**(1.1)** For the purpose of paragraph 118.3(1)(a.1), in determining whether therapy is required to be administered at least two times each week for a total duration averaging not less than an average of 14 hours a week, the time spent on administering therapy

**(3) Paragraphs 118.3(1.1)(b) to (d) of the Act are replaced by the following:**

**(b)** in the case of therapy that requires

**(i)** a regular dosage of medication that is required to be adjusted on a daily basis, includes time spent on activities that are directly related to the determination of the dosage of the medication, and

**(ii)** the daily consumption of a medical food or medical formula to limit intake of a particular compound to levels required for the proper development or functioning of the body, includes the time spent on activities that are directly related to the determination of the amount of the compound that can be safely consumed;

**(c)** in the case of

**(i)** a child who is unable to perform the activities related to the administration of the therapy as a result of the child's age, includes the time spent by another person to perform or supervise those activities for the child, and

**(ii)** an individual who is unable to perform the activities related to the administration of the therapy because of the effects of an impairment or impairments in physical or mental functions, includes the

d'imposition relativement au logement admissible peut être demandé en application du paragraphe (3) par les particuliers déterminés et tous les particuliers admissibles relativement aux particuliers déterminés;

**(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition 2022 et suivantes.**

**6 (1) Le sous-alinéa 118.3(1)a.1)(ii) de la même loi est remplacé par ce qui suit :**

**(ii)** doivent être administrés au moins deux fois par semaine pendant une durée totale moyenne d'au moins 14 heures par semaine,

**(2) Le passage du paragraphe 118.3(1.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Temps consacré aux soins thérapeutiques**

**(1.1)** Pour l'application de l'alinéa 118.3(1)a.1), lorsqu'il s'agit d'établir si des soins thérapeutiques sont donnés au moins deux fois par semaine pendant une durée totale moyenne d'au moins 14 heures par semaine, le temps consacré à donner les soins est calculé selon les critères suivants :

**(3) Les alinéas 118.3(1.1)b) à d) de la même loi sont remplacés par ce qui suit :**

**b)** s'il s'agit de soins :

**(i)** dans le cadre desquels il est nécessaire de déterminer un dosage régulier de médicaments qui doit être ajusté quotidiennement, est compté le temps consacré aux activités entourant directement la détermination de ce dosage,

**(ii)** qui exigent la consommation quotidienne d'une formule médicale ou d'un aliment médical afin de limiter l'apport d'un composé particulier aux niveaux nécessaires au bon développement ou fonctionnement du corps, est compté le temps consacré aux activités qui sont directement liées au calcul de la quantité de composés qui peut être consommée sans danger;

**c)** dans le cas :

**(i)** d'un enfant qui n'est pas en mesure d'accomplir les activités liées aux soins en raison de son âge, est compté le temps que consacre une autre personne à accomplir ou à superviser ces activités pour l'enfant,

**(ii)** d'une personne qui n'est pas en mesure d'accomplir les activités liées aux soins en raison des

time required to be spent by another person to assist the individual in performing those activities; and

**(d)** does not include time spent on

**(i)** activities (other than activities described in paragraph (b)) related to dietary or exercise restrictions or regimes,

**(ii)** travel time,

**(iii)** medical appointments (other than medical appointments to receive therapy or to determine the daily dosage of medication, medical food or medical formula),

**(iv)** shopping for medication, or

**(v)** recuperation after therapy (other than medically required recuperation).

effets d'une déficience ou des déficiences des fonctions physiques ou mentales, est compté le temps que doit consacrer une autre personne à aider la personne à accomplir ces activités;

**d)** n'est pas compté le temps consacré aux activités suivantes :

**(i)** les activités (sauf celles visées à l'alinéa b)) liées au respect d'un régime ou de restrictions alimentaires ou d'un programme d'exercices,

**(ii)** les déplacements,

**(iii)** les rendez-vous médicaux (sauf les rendez-vous médicaux pour recevoir des soins thérapeutiques ou pour calculer le dosage quotidien de médicaments, d'une formule médicale ou d'un aliment médical),

**(iv)** l'achat de médicaments,

**(v)** la récupération après les soins (sauf la récupération nécessaire du point de vue médical).

**(3.1) Section 118.3 of the Act is amended by adding the following after subsection (1.1):**

**(3.1) L'article 118.3 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :**

**Deeming**

**(1.2)** Despite subsection (1.1), an individual who is diagnosed with type 1 diabetes mellitus is deemed to require therapy to be administered at least two times each week for a total duration averaging not less than 14 hours a week.

**Présomption**

**(1.2)** Malgré le paragraphe (1.1), le particulier atteint de diabète sucré de type 1 est réputé devoir se faire administrer des soins thérapeutiques au moins deux fois par semaine pendant une durée totale moyenne d'au moins 14 heures par semaine.

**(4) Subsections (1) to (3.1) apply to the 2021 and subsequent taxation years in respect of certificates described in paragraph 118.3(1)(a.2) or (a.3) of the *Income Tax Act* that are filed with the Minister of National Revenue after this Act receives royal assent.**

**(4) Les paragraphes (1) à (3.1) s'appliquent aux années d'imposition 2021 et suivantes relativement aux certificats visés aux alinéas 118.3(1)a.2) ou a.3) de la *Loi de l'impôt sur le revenu* qui sont présentés au ministre du Revenu national après la sanction royale de la présente loi.**

**7 (1) Subparagraphs 118.4(1)(c.1)(i) to (iii) of the Act are replaced by the following:**

**7 (1) Les sous-alinéas 118.4(1)c.1)(i) à (iii) de la même loi sont remplacés par ce qui suit :**

**(i)** attention,

**(ii)** concentration,

**(iii)** memory,

**(iv)** judgement,

**(v)** perception of reality,

**(vi)** problem solving,

**(i)** l'attention,

**(ii)** la concentration,

**(iii)** la mémoire,

**(iv)** le jugement,

**(v)** la perception de la réalité,

**(vi)** la résolution de problèmes,

**(vii)** goal setting,

**(viii)** regulation of behaviour and emotions,

**(ix)** verbal and non-verbal comprehension, and

**(x)** adaptive functioning;

**(2) Subsection (1) applies to the 2021 and subsequent taxation years in respect of certificates described in paragraph 118.3(1)(a.2) or (a.3) of the *Income Tax Act* that are filed with the Minister of National Revenue after this Act receives royal assent.**

**8 (1) Subsection 122.5(3.001) of the Act is replaced by the following:**

**COVID-19 — additional deemed payment**

**(3.001)** An eligible individual in relation to a month specified for a taxation year who files a return of income for the taxation year is deemed to have paid during the specified month on account of their tax payable under this Part for the taxation year an amount determined by the formula

**A – B – C**

where

**A** is the total of

**(a)** $580,

**(b)** $580 for the qualified relation, if any, of the individual in relation to the specified month,

**(c)** if the individual has no qualified relation in relation to the specified month and is entitled to deduct an amount for the taxation year under subsection 118(1) because of paragraph (b) of the description of B in that subsection in respect of a qualified dependant of the individual in relation to the specified month, $580,

**(d)** $306 times the number of qualified dependants of the individual in relation to the specified month, other than a qualified dependant in respect of whom an amount is included under paragraph (c) in computing the total for the specified month,

**(e)** if the individual has no qualified relation and has one or more qualified dependants, in relation to the specified month, $306, and

**(f)** if the individual has no qualified relation and no qualified dependant, in relation to the specified month, the lesser of $306 and 2% of the amount, if any, by which the individual's income for the taxation year exceeds $9,412;

**(vii)** l'atteinte d'objectifs,

**(viii)** le contrôle du comportement et des émotions,

**(ix)** la compréhension verbale et non verbale,

**(x)** l'apprentissage fonctionnel à l'indépendance;

**(2) Le paragraphe (1) s'applique aux années d'imposition 2021 et suivantes relativement aux certificats visés aux alinéas 118.3(1)a.2) ou a.3) de la *Loi de l'impôt sur le revenu* qui sont présentés au ministre du Revenu national après la sanction royale de la présente loi.**

**8 (1) Le paragraphe 122.5(3.001) de la même loi est remplacé par ce qui suit :**

**COVID-19 — montant additionnel réputé versé**

**(3.001)** Le particulier admissible par rapport à un mois déterminé d'une année d'imposition qui produit une déclaration de revenu pour l'année est réputé avoir payé au cours de ce mois, au titre de son impôt payable en vertu de la présente partie pour l'année, le montant obtenu par la formule suivante :

**A – B – C**

où :

**A** représente la somme des montants suivants :

**a)** 580 $,

**b)** 580 $ pour son proche admissible par rapport à ce mois,

**c)** 580 $, s'il n'a pas de proche admissible par rapport à ce mois, mais peut déduire un montant pour l'année en application du paragraphe 118(1), par l'effet de l'alinéa 118(1)b), pour une de ses personnes à charge admissibles par rapport à ce mois,

**d)** le produit de la multiplication de 306 $ par le nombre de ses personnes à charge admissibles par rapport à ce mois, à l'exclusion d'une telle personne pour laquelle un montant est inclus par application de l'alinéa c) dans le calcul du total pour le mois déterminé,

**e)** si, par rapport à ce mois, il n'a pas de proche admissible, mais a une ou plusieurs personnes à charge admissibles, 306 $,

**f)** si, par rapport à ce mois, il n'a ni proche admissible ni personne à charge admissible, 306 $ ou, s'il est moins élevé, le montant représentant 2 % de l'excédent éventuel de son revenu pour l'année sur 9 412 $;

**B** is 5% of the amount, if any, by which the individual's adjusted income for the taxation year in relation to the specified month exceeds $37,789; and

**C** is the total amount that the eligible individual is deemed to have paid under subsection (3) on account of their tax payable for the specified months of July 2019, October 2019, January 2020 and April 2020.

**(2) Subsection (1) is deemed to have come into effect on March 25, 2020.**

**9 (1) Paragraph (i) of the definition *eligible individual* in section 122.6 of the Act is replaced by the following:**

**(i)** an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada, the government of a province or an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*) for the benefit of the other individual; (*particulier admissible*)

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**10 (1) Subsection 122.7(1.2) of the Act is replaced by the following:**

**Receipt of social assistance**

**(1.2)** For the purposes of applying the definitions *eligible dependant* and *eligible individual* in subsection (1) for a taxation year, an individual shall not fail to qualify as a parent (within the meaning assigned by section 252) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada, the government of a province or an *Indigenous governing body* (as defined in section 2 of the *Children's Special Allowances Act*) for the benefit of the other individual, unless the amount is a special allowance under the *Children's Special Allowances Act* in respect of the other individual in the taxation year.

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**11 (1) The definitions *eligible individual*, *qualified dependant* and *qualified relation* in subsection 122.8(1) of the Act are replaced by the following:**

**B** 5 % de l'excédent éventuel de son revenu rajusté pour l'année par rapport à ce mois sur 37 789 $;

**C** le montant total que la personne admissible est réputée avoir payé en vertu du paragraphe (3), au titre de son impôt payable pour les mois déterminés de juillet 2019, d'octobre 2019, de janvier 2020 et d'avril 2020.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 25 mars 2020.**

**9 (1) L'alinéa i) de la définition de *particulier admissible*, à l'article 122.6 de la même loi, est remplacé par ce qui suit :**

**i)** un particulier demeure le père ou la mère (au sens de l'article 252) d'un autre particulier même si une prestation d'assistance sociale est versée dans le cadre d'un programme fédéral, provincial ou d'un *corps dirigeant autochtone*, au sens de l'article 2 de la *Loi sur les allocations spéciales pour enfants* au profit de l'autre particulier. (*eligible individual*)

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**10 (1) Le paragraphe 122.7(1.2) de la même loi est remplacé par ce qui suit :**

**Réception de prestations d'assistance sociale**

**(1.2)** Pour l'application des définitions de *personne à charge admissible* et *particulier admissible* au paragraphe (1) pour une année d'imposition, un particulier demeure le père ou la mère (au sens de l'article 252) d'un autre particulier même si une prestation d'assistance sociale est versée dans le cadre d'un programme fédéral, provincial ou d'un *corps dirigeant autochtone*, au sens de l'article 2 de la *Loi sur les allocations spéciales pour enfants* au profit de l'autre particulier, sauf s'il s'agit d'une allocation spéciale en vertu de la *Loi sur les allocations spéciales pour enfants* relativement à l'autre particulier au cours de l'année d'imposition.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**11 (1) Les définitions de *particulier admissible*, *personne à charge admissible* et *proche admissible*, au paragraphe 122.8(1) de la même loi, sont respectivement remplacées par ce qui suit :**

***eligible individual***, in relation to a month specified for a taxation year, means an individual (other than a trust) who

**(a)** has, before the specified month, attained the age of 19 years; or

**(b)** was, at any time before the specified month,

**(i)** a parent who resided with their child, or

**(ii)** married or in a common-law partnership. (*particulier admissible*)

***qualified dependant***, of an individual in relation to a month specified for a taxation year, means a person who at the beginning of the specified month

**(a)** is the individual's child or is dependent for support on the individual or on the individual's cohabiting spouse or common-law partner;

**(b)** resides with the individual;

**(c)** is under the age of 19 years;

**(d)** is not an eligible individual in relation to the specified month; and

**(e)** is not a qualified relation of any individual in relation to the specified month. (*personne à charge admissible*)

***qualified relation***, of an individual in relation to a month specified for a taxation year, means the person, if any, who, at the beginning of the specified month, is the individual's cohabiting spouse or common-law partner. (*proche admissible*)

***particulier admissible*** Par rapport à un mois déterminé d'une année d'imposition, particulier, à l'exception d'une fiducie, qui, selon le cas :

**a)** avait atteint l'âge de 19 ans avant le mois déterminé;

**b)** à un moment antérieur à ce mois :

**(i)** résidait avec un enfant dont il est le père ou la mère,

**(ii)** était marié ou vivait en union de fait. *(eligible individual)*

***personne à charge admissible*** Est une personne à charge admissible d'un particulier par rapport à un mois déterminé d'une année d'imposition, la personne qui, au début du mois déterminé, répond aux conditions suivantes :

**a)** elle est l'enfant du particulier ou est à sa charge ou à la charge de l'époux ou conjoint de fait visé du particulier;

**b)** elle vit avec le particulier;

**c)** elle est âgée de moins de 19 ans;

**d)** elle n'est pas un particulier admissible par rapport au mois déterminé;

**e)** elle n'est pas le proche admissible d'un particulier par rapport au mois déterminé. *(qualified dependant)*

***proche admissible*** Est un proche admissible d'un particulier par rapport à un mois déterminé d'une année d'imposition la personne qui, au début du mois déterminé, est l'époux ou conjoint de fait visé du particulier*. (qualified relation)*

**(2) Subsection 122.8(2) of the Act is replaced by the following:**

**Persons not eligible or qualified**

**(2)** Despite subsection (1), a person is not an eligible individual, is not a qualified relation and is not a qualified dependant, in relation to a month specified for a taxation year, if the person

**(a)** died before the specified month;

**(b)** is confined to a prison or similar institution for a period of at least 90 days that includes the first day of the specified month;

**(2) Le paragraphe 122.8(2) de la même loi est remplacé par ce qui suit :**

**Personnes non admissibles**

**(2)** Malgré le paragraphe (1), n'est ni un particulier admissible, ni un proche admissible, ni une personne à charge admissible, par rapport au mois déterminé d'une année d'imposition, la personne qui, selon le cas :

**a)** est décédée avant ce mois;

**b)** est détenue dans une prison ou dans un établissement semblable pendant une période d'au moins 90 jours qui comprend le premier jour de ce mois;

**(c)** is at the beginning of the specified month a non-resident person, other than a non-resident person who

**(i)** is at that time the cohabiting spouse or common-law partner of a person who is deemed under subsection 250(1) to be resident in Canada throughout the taxation year that includes the first day of the specified month, and

**(ii)** was resident in Canada at any time before the specified month;

**(d)** is at the beginning of the specified month a person described in paragraph 149(1)(a) or (b); or

**(e)** is a person in respect of whom a special allowance under the *Children's Special Allowances Act* is payable for the specified month.

**(3) Subsections 122.8(4) to (8) of the Act are replaced by the following:**

**Deemed payment on account of tax**

**(4)** An eligible individual in relation to a month specified for a taxation year who files a return of income for the taxation year is deemed to have paid, during the specified month, on account of their tax payable under this Part for the taxation year, an amount equal to the amount, if any, determined by the formula

**(A + B + C × D) × E**

where

**A** is the amount specified by the Minister of Finance for an eligible individual in relation to the specified month for the province (in this subsection and subsection (6) referred to as the "relevant province") in which the eligible individual resides at the beginning of the specified month;

**B** is

**(a)** the amount specified by the Minister of Finance for a qualified relation in relation to the specified month for the relevant province, if

**(i)** the eligible individual has a qualified relation at the beginning of the specified month, or

**(ii)** subparagraph (i) does not apply and the eligible individual has a qualified dependant at the beginning of the specified month, and

**(b)** in any other case, nil;

**C** is the amount specified by the Minister of Finance for a qualified dependant in relation to the specified month for the relevant province;

**c)** est une personne non-résidente au début de ce mois, à l'exception d'une personne non-résidente qui, à la fois :

**(i)** est, à ce moment, l'époux ou le conjoint de fait visé d'une personne qui est réputée, par le paragraphe 250(1), résider au Canada tout au long de l'année d'imposition qui comprend le premier jour de ce mois,

**(ii)** a résidé au Canada à un moment antérieur à ce mois;

**d)** est, au début de ce mois, une personne visée aux alinéas 149(1)a) ou b);

**e)** est quelqu'un pour qui une allocation spéciale prévue par la *Loi sur les allocations spéciales pour enfants* est payable pour ce mois.

**(3) Les paragraphes (4) à (8) de l'article 122.8 de la même loi sont remplacés par ce qui suit :**

**Montant réputé versé au titre de l'impôt**

**(4)** Le particulier admissible par rapport à un mois déterminé d'une année d'imposition qui produit une déclaration de revenu pour l'année est réputé avoir payé, au cours de ce mois, au titre de son impôt payable en vertu de la présente partie pour l'année, une somme égale à la somme obtenue par la formule suivante :

**(A + B + C × D) × E**

où :

**A** représente le montant fixé par le ministre des Finances à l'égard d'un particulier admissible par rapport au mois déterminé relativement à la province (appelée « province visée » au présent paragraphe et au paragraphe (6)) où réside le particulier admissible au début de ce mois;

**B** :

**a)** le montant fixé par le ministre des Finances à l'égard d'un proche admissible par rapport au mois déterminé relativement à la province visée, si :

**(i)** le particulier admissible a un proche admissible au début de ce mois,

**(ii)** le sous-alinéa (i) ne s'applique pas et le particulier admissible a une personne à charge admissible au début de ce mois,

**b)** dans les autres cas, zéro;

**C** le montant fixé par le ministre des Finances à l'égard d'une personne à charge admissible par rapport au mois déterminé relativement à la province visée;

**D** is the number of qualified dependants of the eligible individual at the beginning of the specified month, other than a qualified dependant in respect of whom an amount is included because of subparagraph (a)(ii) of the description of B in relation to the specified month; and

**E** is

**(a)** 1.1, if there is a census metropolitan area, as determined in the last census published by Statistics Canada before the taxation year, in the relevant province and the individual does not reside in a census metropolitan area at the beginning of the specified month, and

**(b)** 1, in any other case.

**D** le nombre de personnes à charge admissibles du particulier admissible au début du mois déterminé, sauf une personne à charge admissible à l'égard de laquelle un montant est inclus par l'effet du sous-alinéa a)(ii) de l'élément B par rapport à ce mois;

**E** :

**a)** si la province visée compte une région métropolitaine de recensement, selon le dernier recensement publié par Statistique Canada avant l'année d'imposition, et que le particulier ne réside pas dans une telle région au début du mois déterminé, 1,1,

**b)** sinon, 1.

**Shared-custody parent**

**(4.1)** Despite subsection (4), if an *eligible individual* is a *shared-custody parent* (as defined in section 122.6, but the definition *qualified dependent* in that section having the meaning assigned by subsection (1)) in respect of one or more qualified dependants at the beginning of a month, the amount deemed by subsection (4) to have been paid during a specified month is equal to the amount determined by the formula

**0.5(A + B)**

where

**A** is the amount determined under subsection (4), calculated without reference to this subsection; and

**B** is the amount determined under subsection (4), calculated without reference to this subsection and subparagraph (b)(ii) of the definition *eligible individual* in section 122.6.

**Parent ayant la garde partagée**

**(4.1)** Malgré le paragraphe (4), si un *particulier admissible* est un *parent ayant la garde partagée* (au sens de l'article 122.6, la définition de *personne à charge admissible* à cet article étant toutefois entendue au sens du paragraphe (1)) à l'égard d'une ou de plusieurs personnes à charge admissibles au début d'un mois, la somme qui est réputée, en vertu du paragraphe (4), avoir été payée au cours d'un mois déterminé correspond à la somme obtenue par la formule suivante :

**0,5(A + B)**

où :

**A** représente la somme obtenue par la formule figurant au paragraphe (4), compte non tenu du présent paragraphe,

**B** la somme obtenue par la formule figurant au paragraphe (4), compte non tenu du présent paragraphe ni du sous-alinéa b)(ii) de la définition de *particulier admissible* à l'article 122.6.

**Months specified**

**(4.2)** For the purposes of this section, the months specified for a taxation year are April, July and October of the immediately following taxation year and January of the second immediately following taxation year.

**Mois déterminés**

**(4.2)** Pour l'application du présent article, les mois déterminés d'une année d'imposition sont avril, juillet et octobre de l'année d'imposition suivante et janvier de la deuxième année d'imposition suivante.

**Authority to specify amounts**

**(5)** The Minister of Finance may specify amounts for a province in relation to a month specified for a taxation year for the purposes of this section. If the Minister of Finance does not specify a particular amount that is relevant for the purposes of this section, that particular amount is deemed to be nil for the purpose of applying this section.

**Montants fixés par le ministre**

**(5)** Le ministre des Finances peut fixer des montants relativement à une province par rapport à un mois déterminé d'une année d'imposition pour l'application du présent article. S'il ne fixe pas un montant particulier se rapportant à l'application du présent article, ce montant est réputé être zéro pour l'application du présent article.

**Deemed rebate in respect of fuel charges**

**(6)** The amount deemed by this section to have been paid during a specified month on account of tax payable for a taxation year is deemed to have been paid during the specified month as a rebate in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act* in respect of the relevant province.

**Only one eligible individual**

**(7)** If an individual is a qualified relation of another individual in relation to a month specified for a taxation year and both those individuals would be, but for this subsection, eligible individuals in relation to the specified month, only the individual that the Minister designates is the eligible individual in relation to the specified month.

**Exception — qualified dependant**

**(8)** If a person would, if this Act were read without reference to this subsection, be the qualified dependant of two or more individuals, in relation to a month specified for a taxation year,

**(a)** the person is deemed to be a qualified dependant, in relation to that month, of the one of those individuals on whom those individuals agree;

**(b)** in the absence of an agreement referred to in paragraph (a), the person is deemed to be, in relation to that month, a qualified dependant of the individuals, if any, who are, at the beginning of that month, *eligible individuals* (as defined in section 122.6, but the definition *qualified dependant* in that section having the meaning assigned by subsection (1)) in respect of that person; and

**(c)** in any other case, the person is deemed to be, in relation to that month, a qualified dependant only of the individual that the Minister designates.

**Notification to Minister**

**(8.1)** An individual shall notify the Minister of the occurrence of any of the following events before the end of the month following the month in which the event occurs:

**(a)** the individual ceases to be an eligible individual;

**(b)** a person becomes or ceases to be the individual's qualified relation; and

**(c)** a person ceases to be a qualified dependant of the individual, otherwise than because of attaining the age of 19 years.

**Présomption de remboursement — redevances sur les combustibles**

**(6)** Le montant qui est réputé, par le présent article, avoir été payé au cours d'un mois déterminé au titre de l'impôt payable pour une année d'imposition est réputé être un remboursement effectué au cours de ce mois relativement aux redevances prélevées en vertu de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* à l'égard de la province visée.

**Un seul particulier admissible**

**(7)** Dans le cas où un particulier est le proche admissible d'un autre particulier par rapport à un mois déterminé d'une année d'imposition et où les deux particuliers seraient, en l'absence du présent paragraphe, des particuliers admissibles relativement à ce mois, seul le particulier désigné par le ministre est le particulier admissible relativement à ce mois.

**Personne à charge admissible d'un seul particulier**

**(8)** La personne qui, en l'absence du présent paragraphe, serait la personne à charge admissible de plusieurs particuliers par rapport à un mois déterminé d'une année d'imposition est réputée être la personne à charge admissible par rapport au mois déterminé :

**a)** soit de celui parmi ces particuliers sur lequel ceux-ci se sont mis d'accord;

**b)** soit, en l'absence d'accord, des particuliers qui, au début de ce mois, sont des *particuliers admissibles* (au sens de l'article 122.6, la définition de *personne à charge admissible* à cet article étant toutefois entendue au sens du paragraphe (1)) à son égard;

**c)** soit, dans les autres cas, de nul autre que le particulier désigné par le ministre.

**Avis au ministre**

**(8.1)** Un particulier est tenu d'aviser le ministre des événements ci-après avant la fin du mois suivant celui où l'événement se produit :

**a)** le particulier cesse d'être un particulier admissible;

**b)** une personne devient le proche admissible du particulier ou cesse de l'être;

**c)** une personne cesse d'être une personne à charge admissible du particulier pour une autre raison que celle d'avoir atteint l'âge de 19 ans.

**(4) Subsections (1) to (3) apply to payments made after June 2022 in respect of the 2021 and subsequent taxation years.**

**12 (1) The Act is amended by adding the following after section 125.1:**

**Definitions**

**125.2 (1)** The following definitions apply in this section.

***adjusted business income***, of a corporation for a taxation year, has the same meaning as in Part LII of the *Income Tax Regulations*. (*revenu rajusté tiré d'une entreprise*)

***cost of capital***, of a corporation for a taxation year, has the same meaning as in Part LII of the *Income Tax Regulations*. (*coût en capital*)

***cost of labour***, of a corporation for a taxation year, has the same meaning as in Part LII of the *Income Tax Regulations*. (*coût en main-d'œuvre*)

***zero-emission technology manufacturing profits***, of a corporation for a taxation year, means the amount determined by the formula

**A × B × C**

where

**A** is the corporation's adjusted business income for the taxation year;

**B** is the fraction determined by the formula

**D ÷ E**

where

**D** is the total of the corporation's ZETM cost of capital and ZETM cost of labour for the taxation year, and

**E** is the total of the corporation's cost of capital and cost of labour for the taxation year; and

**C** is

**(a)** if the fraction determined for B is at least 0.9, the fraction determined by the formula

**F ÷ G**

where

**F** is the amount determined for E, and

**G** is the amount determined for D; and

**(b)** 1, in any other case. (*bénéfices de fabrication de technologies à zéro émission*)

**(4) Les paragraphes (1) à (3) s'appliquent aux paiements effectués après juin 2022 pour les années d'imposition 2021 et suivantes.**

**12 (1) La même loi est modifiée par adjonction, après l'article 125.1, de ce qui suit :**

**Définitions**

**125.2 (1)** Les définitions qui suivent s'appliquent au présent article.

***bénéfices de fabrication de technologies à zéro émission*** En ce qui concerne une société pour une année d'imposition, la somme correspondant à la somme obtenue par la formule suivante :

**A × B × C**

où :

**A** représente le revenu rajusté tiré d'une entreprise de la société pour l'année d'imposition;

**B** la fraction obtenue par la formule suivante :

**D ÷ E**

où :

**D** représente le total du coût en capital de FTZE et du coût en main-d'œuvre de FTZE de la société pour l'année d'imposition,

**E** le total du coût en capital et du coût en main-d'œuvre de la société pour l'année d'imposition;

**C** :

**a)** si l'élément B correspond à au moins 0,9, la fraction obtenue par la formule suivante :

**F ÷ G**

où :

**F** représente le montant déterminé pour l'élément E,

**G** le montant déterminé pour l'élément D;

**b)** 1, dans les autres cas. (*zero-emission technology manufacturing profits*)

***coût en capital*** En ce qui concerne une société pour une année d'imposition, s'entend au sens de la partie LII du *Règlement de l'impôt sur le revenu*. (*cost of capital*)

***coût en capital de FTZE*** En ce qui concerne une société pour une année d'imposition, s'entend au sens de la partie LII du *Règlement de l'impôt sur le revenu*. (*ZETM cost of capital*)

***coût en main-d'œuvre*** En ce qui concerne une société pour une année d'imposition, s'entend au sens de la

***ZETM cost of capital***, of a corporation for a taxation year, has the same meaning as in Part LII of the *Income Tax Regulations*. (*coût en capital de FTZE*)

***ZETM cost of labour***, of a corporation for a taxation year, has the same meaning as in Part LII of the *Income Tax Regulations*. (*coût en main-d'œuvre de FTZE*)

**Zero-emission technology manufacturing**

**(2)** There may be deducted from the tax otherwise payable under this Part by a corporation for a taxation year the amount determined by the formula

**(A × B) + (C × D)**

where

**A** is

**(a)** 0.075, if the taxation year begins after 2021 and before 2029,

**(b)** 0.05625, if the taxation year begins after 2028 and before 2030,

**(c)** 0.0375, if the taxation year begins after 2029 and before 2031,

**(d)** 0.01875, if the taxation year begins after 2030 and before 2032, and

**(e)** nil, in any other case;

**B** is the least of

**(a)** the corporation's zero-emission technology manufacturing profits for the taxation year,

**(b)** the amount of the corporation's adjusted business income for the taxation year (determined without reference to section 5203 of the *Income Tax Regulations*) less

**(i)** if the corporation was a Canadian-controlled private corporation throughout the taxation year, the least of the amounts, if any, determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the taxation year, and

**(ii)** in any other case, nil, and

**(c)** the amount, if any, by which the corporation's taxable income for the taxation year exceeds the total of

**(i)** if the corporation was a Canadian-controlled private corporation throughout the taxation year, the least of the amounts, if any,

partie LII du *Règlement de l'impôt sur le revenu*. (*cost of labour*)

***coût en main-d'œuvre de FTZE*** En ce qui concerne une société pour une année d'imposition, s'entend au sens de la partie LII du *Règlement de l'impôt sur le revenu*. (*ZETM cost of labour*)

***revenu rajusté tiré d'une entreprise*** En ce qui concerne une société pour une année d'imposition, s'entend au sens de la partie LII du *Règlement de l'impôt sur le revenu*. (*adjusted business income*)

**Fabrication de technologies à zéro émission**

**(2)** Il peut être déduit de l'impôt payable par ailleurs d'une société pour une année d'imposition en vertu de la présente partie la somme obtenue par la formule suivante :

**(A × B) + (C × D)**

où :

**A** représente :

**a)** 0,075, si l'année d'imposition commence après 2021 et avant 2029,

**b)** 0,05625, si l'année d'imposition commence après 2028 et avant 2030,

**c)** 0,0375, si l'année d'imposition commence après 2029 et avant 2031,

**d)** 0,01875, si l'année d'imposition commence après 2030 et avant 2032,

**e)** zéro, dans les autres cas;

**B** le moins élevé des montants suivants :

**a)** les bénéfices de fabrication de technologies à zéro émission réalisés par la société pour l'année d'imposition,

**b)** le montant du revenu rajusté tiré d'une entreprise pour l'année d'imposition (déterminé compte non tenu de l'article 5203 du *Règlement de l'impôt sur le revenu*) moins, selon le cas :

**(i)** si la société est tout au long de l'année une société privée sous contrôle canadien, le moins élevé des montants déterminés aux alinéas 125(1)a) à c) relativement à la société pour l'année d'imposition,

**(ii)** dans les autres cas, zéro,

**c)** l'excédent éventuel du revenu imposable de la société pour l'année d'imposition sur le total des sommes suivantes :

**(i)** si la société est tout au long de l'année une société privée sous contrôle canadien, le moins

determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the taxation year,

**(ii)** the corporation's *aggregate investment income* (as defined in subsection 129(4)) for the taxation year, and

**(iii)** the amount determined by multiplying the total of the amounts deducted under subsection 126(2) from its tax for the taxation year otherwise payable under this Part, by the relevant factor for the taxation year;

**C** is

**(a)** 0.045, if the taxation year begins after 2021 and before 2029,

**(b)** 0.03375, if the taxation year begins after 2028 and before 2030,

**(c)** 0.0225, if the taxation year begins after 2029 and before 2031,

**(d)** 0.01125, if the taxation year begins after 2030 and before 2032, and

**(e)** nil, in any other case; and

**D** is

**(a)** if the corporation was a Canadian-controlled private corporation throughout the taxation year, the lesser of

**(i)** the least of the amounts, if any, determined under paragraphs 125(1)(a) to (c) in respect of the corporation for the taxation year, and

**(ii)** the amount determined by the formula

**E – F**

where

**E** is the corporation's zero-emission technology manufacturing profits for the taxation year, and

**F** is the amount determined for B, and

**(b)** nil, in any other case.

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**13 Section 125.4 of the Act is amended by adding the following after subsection (1):**

**COVID-19 — production commencement time**

**(1.1)** The reference to "two years" in subparagraph (b)(iii) of the definition *production commencement*

élevé des montants déterminés aux alinéas 125(1)a) à c) en ce qui concerne la société pour l'année d'imposition,

**(ii)** le *revenu de placement total* (au sens du paragraphe 129(4)) de la société pour l'année d'imposition,

**(iii)** le produit de la multiplication du total des sommes déduites en application du paragraphe 126(2) de son impôt payable par ailleurs pour l'année d'imposition en vertu de la présente partie, par le facteur de référence pour l'année d'imposition;

**C** :

**a)** 0,045, si l'année d'imposition commence après 2021 et avant 2029,

**b)** 0,03375, si l'année d'imposition commence après 2028 et avant 2030,

**c)** 0,0225, si l'année d'imposition commence après 2029 et avant 2031,

**d)** 0,01125, si l'année d'imposition commence après 2030 et avant 2032,

**e)** zéro, dans les autres cas;

**D** :

**a)** si la société est tout au long de l'année une société privée sous contrôle canadien, le moins élevé des montants suivants :

**(i)** le moins élevé des montants déterminés aux alinéas 125(1)a) à c) relativement à la société pour l'année d'imposition,

**(ii)** la somme obtenue par la formule suivante :

**E – F**

où :

**E** représente les bénéfices de fabrication de technologies à zéro émission réalisés par la société pour l'année d'imposition,

**F** le montant déterminé à l'élément B;

**b)** zéro, dans les autres cas.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**13 L'article 125.4 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**COVID-19 — début de la production**

**(1.1)** La mention de « deux ans » au sous-alinéa b)(iii) de la définition de *début de la production* au

*time* in subsection (1) is to be read as a reference to "three years" in respect of film or video productions for which the labour expenditure of the corporation in respect of the production for the taxation year ending in 2020 or 2021 was greater than nil.

**14 (1) Section 125.7 of the Act is amended by adding the following after subsection (15):**

**Extension of time by Minister**

**(16)** For the purposes of determining whether an eligible entity is a qualifying entity, a qualifying recovery entity or a qualifying renter, the Minister may, at any time, extend the time for filing an application under this section.

**(2) Subsection (1) is deemed to have come into force on April 11, 2020.**

**15 (1) The definition *earned income* in subsection 146(1) of the Act is amended by adding the following after paragraph (b):**

**(b.01)** an amount included under paragraph 56(1)(n) in computing the taxpayer's income for a period in the year throughout which the taxpayer was resident in Canada in connection with a program that consists primarily of research and does not lead to a diploma from a college or a collège d'enseignement général et professionnel, or a bachelor, masters, doctoral or equivalent degree,

**(2) Subject to subsection (3), subsection (1) applies in respect of income received in the 2021 and subsequent taxation years.**

**(3) Before 2026, the taxpayer may file an election with the Minister of National Revenue to include income that is described in paragraph (b.01) of the definition *earned income* in subsection 146(1) of the Act, and received by the taxpayer after 2010 and before 2021, for the purposes of computing the taxpayer's *RRSP deduction limit* (as defined in that subsection) on or after the date the election is filed.**

**16 (1) The definition *charitable purposes* in subsection 149.1(1) of the Act is replaced by the following:**

***charitable purposes*** includes making qualifying disbursements; (*fins de bienfaisance*)

paragraphe (1) vaut mention de « trois ans » relativement aux productions cinématographiques ou magnétoscopiques pour lesquelles la dépense de main-d'œuvre de la société relativement à la production pour les années d'imposition se terminant en 2020 ou 2021 était supérieure à zéro.

**14 (1) L'article 125.7 de la même loi est modifié par adjonction, après le paragraphe (15), de ce qui suit :**

**Prorogation du délai par le ministre**

**(16)** Afin de déterminer si une entité déterminée est une entité admissible, une entité de relance admissible ou un locataire admissible, le ministre peut, à tout moment, proroger le délai pour faire une demande en vertu du présent article.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 11 avril 2020.**

**15 (1) La définition de *revenu gagné*, au paragraphe 146(1) de la même loi, est modifiée par adjonction, après l'alinéa b), de ce qui suit :**

**b.01)** soit un montant inclus en application de l'alinéa 56(1)n) dans le calcul de son revenu pour une période de l'année tout au long de laquelle il a résidé au Canada relativement à un programme qui consiste principalement à faire de la recherche et qui ne mène pas à un diplôme décerné par un collège ou un collège d'enseignement général et professionnel ou à un baccalauréat, une maîtrise, un doctorat ou à un grade équivalent;

**(2) Sous réserve du paragraphe (3), le paragraphe (1) s'applique relativement au revenu reçu au cours des années d'imposition 2021 et suivantes.**

**(3) Avant 2026, le contribuable peut faire un choix dans un document présenté au ministre du Revenu national d'inclure le revenu visé à l'alinéa b.01) de la définition de *revenu gagné* au paragraphe 146(1) de la même loi, et que le contribuable a reçu après 2010 et avant 2021, pour le calcul du *maximum déductible aux titres des REER*, au sens de ce paragraphe, à partir de la date où le choix est présenté.**

**16 (1) La définition de *fins de bienfaisance*, au paragraphe 149.1(1) de la même loi, est remplacée par ce qui suit :**

***fins de bienfaisance*** Comprend des versements admissibles. (*charitable purposes*)

**(2) Paragraph (a.1) of the definition *charitable organization* in subsection 149.1(1) of the Act is replaced by the following:**

**(a.1)** all the resources of which are devoted to charitable activities carried on by the organization itself or to making qualifying disbursements,

**(3) Subsection 149.1(1) of the Act is amended by adding the following in alphabetical order:**

***grantee organization*** includes a person, club, society, association or organization or prescribed entity, but does not include a qualified donee; (*organisation donataire*)

***qualifying disbursement*** means a disbursement by a charity, by way of a gift or by otherwise making resources available,

**(a)** subject to subsection (6.001), to a qualified donee, or

**(b)** to a grantee organization, if

**(i)** the disbursement is in furtherance of a charitable purpose (determined without reference to the definition *charitable purposes* in this subsection) of the charity,

**(ii)** the charity ensures that the disbursement is exclusively applied to charitable activities in furtherance of a charitable purpose of the charity, and

**(iii)** the charity maintains documentation sufficient to demonstrate

**(A)** the purpose for which the disbursement is made, and

**(B)** that the disbursement is exclusively applied by the grantee organization to charitable activities in furtherance of a charitable purpose of the charity; (*versement admissible*)

**(4) Paragraphs 149.1(2)(b) and (c) of the Act are replaced by the following:**

**(b)** fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it that are qualifying disbursements, amounts the total of which is at least equal to the organization's disbursement quota for that year; or

**(2) L'alinéa a.1) de la définition de *œuvre de bienfaisance*, au paragraphe 149.1(1) de la même loi, est remplacé par ce qui suit :**

**a.1)** dont la totalité des ressources est consacrée à des activités de bienfaisance qu'elle mène elle-même ou à des versements admissibles;

**(3) Le paragraphe 149.1(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***organisation donataire*** Comprend une personne, un club, un cercle, une association, une organisation ou une entité visée par règlement à l'exclusion d'un donataire reconnu. (*grantee organization*)

***versement admissible*** S'entend d'un versement par un organisme de bienfaisance, sous forme de dons ou par la mise à disposition de ressources :

**a)** sous réserve du paragraphe (6.001), à un donataire reconnu;

**b)** à une organisation donataire si, à la fois :

**(i)** le versement est effectué en vue de la réalisation de fins de bienfaisance (déterminées compte non tenu de la définition de *fins de bienfaisance* au présent paragraphe) de l'organisme de bienfaisance,

**(ii)** l'organisme de bienfaisance veille à ce que le versement s'applique exclusivement à des activités de bienfaisance en vue de la réalisation de fins de bienfaisance de celui-ci,

**(iii)** l'organisme de bienfaisance tient des documents qui permettent de montrer :

**(A)** d'une part, le but du versement effectué,

**(B)** d'autre part, le fait que l'organisation donataire applique exclusivement le versement à des activités de bienfaisance en vue de la réalisation de fins de bienfaisance de l'organisme. (*qualifying disbursement*)

**(4) Les alinéas 149.1(2)b) et c) de la même loi sont remplacés par ce qui suit :**

**b)** soit ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène elle-même ou par des dons sous forme de versements admissibles, des sommes dont le total est au moins égal à son contingent des versements pour l'année;

**(c)** makes a disbursement, other than

**(i)** a disbursement made in the course of charitable activities carried on by it, or

**(ii)** a qualifying disbursement.

**(5) Paragraphs 149.1(3)(b) and (b.1) of the Act are replaced by the following:**

**(b)** fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it that are qualifying disbursements, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

**(b.1)** makes a disbursement, other than

**(i)** a disbursement made in the course of charitable activities carried on by it, or

**(ii)** a qualifying disbursement;

**(6) Paragraphs 149.1(4)(b) and (b.1) of the Act are replaced by the following:**

**(b)** fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it that are qualifying disbursements, amounts the total of which is at least equal to the foundation's disbursement quota for that year;

**(b.1)** makes a disbursement, other than

**(i)** a disbursement made in the course of charitable activities carried on by it, or

**(ii)** a qualifying disbursement;

**(7) Paragraph 149.1(4.1)(d) of the Act is replaced by the following:**

**(d)** of a registered charity, if it has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year, in addition to its disbursement quota for each of those taxation years, an amount that is less than the fair market value of the property, on charitable activities carried on by it or by way of gifts that are qualified disbursements to qualified donees or grantee organizations, with which it deals at arm's length;

**c)** soit fait un versement, sauf s'il s'agit :

**(i)** d'un versement fait dans le cadre de ses activités de bienfaisance,

**(ii)** d'un versement admissible.

**(5) Les alinéas 149.1(3)b) et b.1) de la même loi sont remplacés par ce qui suit :**

**b)** ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène elle-même ou par des dons sous forme de versements admissibles, des sommes dont le total est au moins égal à son contingent des versements pour cette année;

**b.1)** fait un versement, sauf s'il s'agit :

**(i)** d'un versement fait dans le cadre de ses activités de bienfaisance,

**(ii)** d'un versement admissible.

**(6) Les alinéas 149.1(4)b) et b.1) de la même loi sont remplacés par ce qui suit :**

**b)** ne dépense pas au cours d'une année d'imposition, pour les activités de bienfaisance qu'elle mène elle-même ou par des dons sous forme de versements admissibles, des sommes dont le total est au moins égal à son contingent des versements pour cette année;

**b.1)** fait un versement, sauf s'il s'agit :

**(i)** d'un versement fait dans le cadre de ses activités de bienfaisance,

**(ii)** d'un versement admissible.

**(7) L'alinéa 149.1(4.1)d) de la même loi est remplacé par ce qui suit :**

**d)** de tout organisme de bienfaisance enregistré qui a reçu au cours d'une année d'imposition un don de biens, sauf un don déterminé, d'un autre organisme de bienfaisance enregistré avec lequel il a un lien de dépendance et qui a dépensé avant la fin de l'année d'imposition subséquente — en plus d'une somme égale à son contingent des versements pour chacune de ces années — une somme inférieure à la juste valeur marchande des biens pour des activités de bienfaisance qu'il mène ou de dons sous forme de versements admissibles à des donataires reconnus ou à des organisations donataires, avec lesquels il n'a aucun lien de dépendance;

**(8) Subsection 149.1(6) of the Act is replaced by the following:**

**Devotion of resources — charitable activity**

**(6)** A charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that it uses those resources in carrying on a related business.

**Qualifying disbursement limit — charitable organizations**

**(6.001)** In any taxation year, disbursements of income of a charitable organization by way of gifts to a qualified donee (other than disbursements of income to a registered charity that the Minister has designated in writing as a charity associated with the charitable organization) in excess of 50% of the charitable organization's income for that year are not qualifying disbursements.

**(9) Subsection 149.1(10) of the Act is repealed.**

**(10) Subsections 149.1(20) and (21) of the Act are replaced by the following:**

**Rule regarding disbursement excess**

**(20)** Where a registered charity has expended a disbursement excess for a taxation year, the charity may, for the purpose of determining whether it complies with the requirements of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, for the immediately preceding taxation year of the charity and five or less of its immediately subsequent taxation years, include in the computation of the amounts expended on charitable activities carried on by it and by way of gifts made by it that are qualifying disbursements, such portion of that disbursement excess as was not so included under this subsection for any preceding taxation year.

**Definition of *disbursement excess***

**(21)** For the purpose of subsection (20), ***disbursement excess***, for a taxation year of a charity, means the amount, if any, by which the total of amounts expended in the year by the charity on charitable activities carried on by it and by way of gifts made by it that are qualifying disbursements exceeds its disbursement quota for the year.

**17 (1) Paragraph 152(1.2)(d) of the Act is replaced by the following:**

**(8) Le paragraphe 149.1(6) de la même loi est remplacé par ce qui suit :**

**Affectation des ressources — activité de bienfaisance**

**(6)** Une œuvre de bienfaisance est considérée comme consacrant ses ressources à des activités de bienfaisance qu'elle mène elle-même dans la mesure où elle utilise ces ressources pour exercer une activité commerciale complémentaire.

**Plafond de versement admissible — organisme de bienfaisance**

**(6.001)** Les versements de revenu d'une œuvre de bienfaisance sous forme de dons à un donataire reconnu au cours d'une année d'imposition (à l'exception des versements de revenu à un organisme de bienfaisance enregistré que le ministre a désigné par écrit comme étant un organisme de bienfaisance associé à l'œuvre de bienfaisance) supérieurs à 50 % du revenu de l'œuvre de bienfaisance pour l'année ne sont pas des versements admissibles.

**(9) Le paragraphe 149.1(10) de la même loi est abrogé.**

**(10) Les paragraphes 149.1(20) et (21) de la même loi sont remplacés par ce qui suit :**

**Dépenses excédentaires**

**(20)** L'organisme de bienfaisance enregistré qui a fait des dépenses excédentaires pour une année d'imposition peut, pour déterminer s'il se conforme aux alinéas (2)b), (3)b) ou (4)b) pour son année d'imposition précédente et pour au plus ses cinq années d'imposition ultérieures, inclure dans le calcul des montants affectés, soit aux activités de bienfaisance qu'il mène, soit aux dons sous forme de versements admissibles, la partie de ces dépenses excédentaires qui n'a pas été incluse au titre du présent paragraphe pour une année d'imposition antérieure.

**Définition de *dépenses excédentaires***

**(21)** Pour l'application du paragraphe (20), les ***dépenses excédentaires*** d'un organisme de bienfaisance pour une année d'imposition correspondent à l'excédent éventuel du total des sommes qu'il a dépensées au cours de l'année pour ses activités de bienfaisance ou en faisant des dons sous forme de versements admissibles, sur son contingent des versements pour l'année.

**17 (1) L'alinéa 152(1.2)d) de la même loi est remplacé par ce qui suit :**

**(d)** if the Minister determines the amount deemed by subsection 122.5(3), (3.001) or 122.8(4) to have been paid by an individual for a taxation year to be nil, subsection (2) does not apply to the determination unless the individual requests a notice of determination from the Minister.

**(2) Subsection (1) applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.**

**18 (1) Paragraph 160.1(1)(b) of the Act is replaced by the following:**

**(b)** the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess (other than any portion thereof that can reasonably be considered to arise as a consequence of the operation of section 122.5, 122.61 or 122.8) from the day it became payable to the date of payment.

**(2) Section 160.1 of the Act is amended by adding the following after subsection (1.1):**

**Liability for refund — Climate Action Incentive**

**(1.2)** If a person is a qualified relation of an individual (within the meaning assigned by subsection 122.8(1)), in relation to one or more months specified for a taxation year, the person and the individual are jointly and severally, or solidarily, liable to pay the lesser of

**(a)** any excess described in subsection (1) that was refunded in respect of the taxation year to, or applied to a liability of, the individual as a consequence of the operation of section 122.8; and

**(b)** the total of the amounts deemed by subsection 122.8(4) to have been paid by the individual during those specified months.

**(3) Subsection 160.1(2) of the Act is replaced by the following:**

**Liability under other provisions**

**(2)** Subsections (1.1) and (1.2) do not limit a person's liability under any other provision of this Act.

**(4) Subsection 160.1(3) of the Act is replaced by the following:**

**d)** si le ministre établit que le montant qui est réputé, en vertu des paragraphes 122.5(3) ou (3.001) ou 122.8(4), avoir été payé par un particulier pour une année d'imposition est nul, le paragraphe (2) ne s'applique pas à la décision, à moins que le particulier ne demande un avis de décision au ministre.

**(2) Le paragraphe (1) s'applique aux paiements effectués après juin 2022 relativement aux années d'imposition 2021 et suivantes.**

**18 (1) L'alinéa 160.1(1)b) de la même loi est remplacé par ce qui suit :**

**b)** le contribuable doit payer au receveur général des intérêts sur l'excédent, sauf toute partie de l'excédent qu'il est raisonnable de considérer comme découlant de l'application des articles 122.5, 122.61 ou 122.8, calculés au taux prescrit, pour la période allant du jour où cet excédent est devenu payable jusqu'à la date du paiement.

**(2) L'article 160.1 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :**

**Responsabilité en cas de remboursement — incitatif à agir pour le climat**

**(1.2)** Le particulier et la personne qui est son proche admissible (au sens du paragraphe 122.8(1)), par rapport à un ou plusieurs mois déterminés d'une année d'imposition sont débiteurs solidaires du moins élevé des montants suivants :

**a)** l'excédent visé au paragraphe (1) qui a été remboursé au particulier pour l'année, ou imputé sur un autre montant dont il est redevable, par application de l'article 122.8;

**b)** le total des montants réputés, par le paragraphe 122.8(4), avoir été payés par le particulier au cours des mois en question.

**(3) Le paragraphe 160.1(2) de la même loi est remplacé par ce qui suit :**

**Responsabilité**

**(2)** Les paragraphes (1.1) et (1.2) ne limitent en rien la responsabilité de quiconque découlant d'une autre disposition de la présente loi.

**(4) Le paragraphe 160.1(3) de la même loi est remplacé par ce qui suit :**

**Assessment**

**(3)** The Minister may at any time assess a taxpayer in respect of any amount payable by the taxpayer because of any of subsections (1) to (1.2) or for which the taxpayer is liable because of subsection (2.1) or (2.2), and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section, as though it were made under section 152 in respect of taxes payable under this Part, except that no interest is payable on an amount assessed in respect of an excess referred to in subsection (1) that can reasonably be considered to arise as a consequence of the operation of section 122.5, 122.61 or 122.8.

**(5) Subsections (1) to (4) apply to payments made after June 2022 in respect of the 2021 and subsequent taxation years.**

**19 (1) Paragraph 163(2)(c.4) of the Act is replaced by the following:**

**(c.4)** the amount, if any, by which

**(i)** the total of all amounts each of which is an amount that would be deemed by section 122.8 to be paid by that person during a month specified for the year or, where that person is the *qualified relation* of an individual in relation to that specified month (within the meaning assigned by subsection 122.8(1)), by that individual, if that total were calculated by reference to the information provided in the person's *return of income* (within the meaning assigned by subsection 122.8(1)) for the year

exceeds

**(ii)** the total of all amounts each of which is an amount that is deemed by section 122.8 to be paid by that person or by an individual of whom the person is the *qualified relation* in relation to a month specified for the year (within the meaning assigned by subsection 122.8(1)),

**(2) Subsection (1) applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.**

**20 (1) Section 164 of the Act is amended by adding the following after subsection (2.2):**

**Cotisation**

**(3)** Le ministre peut, à tout moment, établir à l'égard d'un contribuable une cotisation pour toute somme que celui-ci doit payer en application des paragraphes (1) à (1.2) ou dont il est débiteur par l'effet des paragraphes (2.1) ou (2.2). Les dispositions de la présente section, notamment celles portant sur les intérêts à payer, s'appliquent, avec les adaptations nécessaires, aux cotisations établies en vertu du présent article comme si elles étaient établies en vertu de l'article 152 relativement aux impôts à payer en vertu de la présente partie. Toutefois, aucun intérêt n'est à payer sur une cotisation établie à l'égard de l'excédent visé au paragraphe (1) s'il est raisonnable de considérer qu'il découle de l'application des articles 122.5, 122.61 ou 122.8.

**(5) Les paragraphes (1) à (4) s'appliquent aux paiements effectués après juin 2022 relativement aux années d'imposition 2021 et suivantes.**

**19 (1) L'alinéa 163(2)c.4) de la même loi est remplacé par ce qui suit :**

**c.4)** l'excédent du total visé au sous-alinéa (i) sur le total visé au sous-alinéa (ii) :

**(i)** le total des sommes représentant chacune une somme qui serait réputée, en vertu de l'article 122.8, être payée par cette personne au cours d'un mois déterminé pour l'année ou, si cette personne est le *proche admissible* (au sens du paragraphe 122.8(1)) d'un particulier par rapport à ce mois, par ce particulier, si ce total était calculé d'après les renseignements fournis dans la *déclaration de revenu* (au sens du paragraphe 122.8(1)) de la personne pour l'année,

**(ii)** le total des sommes représentant chacune une somme qui serait réputée, en vertu de l'article 122.8, être payée par cette personne ou par un particulier dont la personne est le *proche admissible* (au sens du paragraphe 122.8(1)) par rapport à un mois déterminé de l'année;

**(2) Le paragraphe (1) s'applique aux paiements effectués après juin 2022 relativement aux années d'imposition 2021 et suivantes.**

**20 (1) L'article 164 de la même loi est modifié par adjonction, après le paragraphe (2.2), de ce qui suit :**

**Application respecting refunds — Climate Action Incentive**

**(2.21)** Where an amount deemed under section 122.8 to be paid by an individual during a month specified for a taxation year is applied under subsection (2) to a liability of the individual and the individual's return of income for the year is filed on or before the individual's balance-due day for the year, the amount is deemed to have been so applied on the day on which the amount would have been refunded if the individual were not liable to make a payment to Her Majesty in right of Canada.

**(2) The portion of subsection 164(3) of the Act before paragraph (a) is replaced by the following:**

**Interest on refunds and repayments**

**(3)** If, under this section, an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5, 122.61, 122.8 or 125.7) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of the days referred to in the following paragraphs and that ends on the day on which the amount is refunded, repaid or applied:

**(3) Subsections (1) and (2) apply to payments made after June 2022 in respect of the 2021 and subsequent taxation years.**

**21 Paragraph 168(1)(f) of the Act is replaced by the following:**

**(f)** in the case of a registered charity, registered Canadian amateur athletic association or registered journalism organization, accepts a gift the granting of which was expressly or implicitly conditional on the charity, association or organization making a gift to another person, club, society, association or organization other than a qualified donee.

**22 (1) Subsection 188(1.2) of the Act is replaced by the following:**

**Winding-up period**

**(1.2)** In this Part, the winding-up period of a charity is the period

**(a)** that begins immediately after the earliest of the days on which

**Imputation d'un remboursement — incitatif à agir pour le climat**

**(2.21)** Le montant qui est réputé, par l'article 122.8, être payé par un particulier au cours d'un mois déterminé pour une année d'imposition et qui est imputé, en application du paragraphe (2), sur un autre montant dont le particulier est redevable est réputé avoir été ainsi imputé le jour où il aurait été remboursé si le particulier n'avait pas été redevable d'un montant à Sa Majesté du chef du Canada, à condition que la déclaration de revenu du particulier pour l'année soit produite au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année.

**(2) Le passage du paragraphe 164(3) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Intérêts sur les sommes remboursées**

**(3)** Si, en vertu du présent article, une somme à l'égard d'une année d'imposition est remboursée à un contribuable ou imputée sur tout autre montant dont il est redevable, à l'exception de tout ou partie de la somme qu'il est raisonnable de considérer comme découlant de l'application des articles 122.5, 122.61, 122.8 ou 125.7, le ministre paie au contribuable les intérêts afférents à cette somme au taux prescrit ou les impute sur cet autre montant, pour la période commençant au dernier en date des jours visés aux alinéas ci-après et se terminant le jour où la somme est remboursée ou imputée :

**(3) Les paragraphes (1) et (2) s'appliquent aux paiements effectués après juin 2022 relativement aux années d'imposition 2021 et suivantes.**

**21 L'alinéa 168(1)f) de la même loi est remplacé par ce qui suit :**

**f)** dans le cas d'un organisme de bienfaisance enregistré, d'une association canadienne enregistrée de sport amateur ou d'une organisation journalistique enregistrée, accepte un don fait explicitement ou implicitement à la condition que l'organisme, l'association ou l'organisation fasse un don à une autre personne, à un autre club, à un cercle, à une autre association ou à une autre organisation, à l'exception d'un donataire reconnu.

**22 (1) Le paragraphe 188(1.2) de la même loi est remplacé par ce qui suit :**

**Période de liquidation**

**(1.2)** Pour l'application de la présente partie, la période de liquidation d'un organisme de bienfaisance correspond à la période qui :

**(i)** the Minister issues a notice of intention to revoke the registration of the charity under any of subsections 149.1(2) to (4.1) and 168(1),

**(ii)** the charity becomes a listed terrorist entity, and

**(iii)** it is determined, under subsection 7(1) of the *Charities Registration (Security Information) Act*, that a certificate served in respect of the charity under subsection 5(1) of that Act is reasonable on the basis of information and evidence available, and

**(b)** that ends on the day that is the latest of

**(i)** the day, if any, on which the charity files a return under subsection 189(6.1) for the taxation year deemed by subsection (1) to have ended, but not later than the day on which the charity is required to file that return,

**(ii)** the day on which the Minister last issues a notice of assessment of tax payable under subsection (1.1) for that taxation year by the charity, and

**(iii)** if the charity has filed a notice of objection or appeal in respect of that assessment, the day on which the Minister may take a collection action under section 225.1 in respect of that tax payable.

**a)** d'une part, commence le lendemain du premier jour en date où :

**(i)** le ministre délivre un avis d'intention de révoquer l'enregistrement de l'organisme enregistré en vertu de l'un des paragraphes 149.1(2) à (4.1) et 168(1),

**(ii)** l'organisme devient une entité terroriste inscrite,

**(iii)** un certificat signifié à l'égard de l'organisme en vertu du paragraphe 5(1) de la *Loi sur l'enregistrement des organismes de bienfaisance (renseignements de sécurité)* est jugé raisonnable au titre du paragraphe 7(1) de cette loi, compte tenu des renseignements et des autres éléments de preuve disponibles;

**b)** d'autre part, se termine au dernier en date des jours suivants :

**(i)** le jour où l'organisme produit une déclaration de revenu en vertu du paragraphe 189(6.1) pour l'année d'imposition qui est réputée, par le paragraphe (1), avoir pris fin, mais au plus tard le jour où l'organisme est tenu de produire cette déclaration,

**(ii)** le jour où le ministre délivre le dernier avis de cotisation concernant l'impôt payable par l'organisme pour l'année en vertu du paragraphe (1.1),

**(iii)** si l'organisme a produit un avis d'opposition ou d'appel relativement à cette cotisation, le jour où le ministre peut prendre une mesure de recouvrement en vertu de l'article 225.1 relativement à cet impôt payable.

**(2) Subsection (1) is deemed to have come into force on June 29, 2021.**

**(2) Le paragraphe (1) est réputé être entré en vigueur le 29 juin 2021.**

**23 (1) Paragraph 188.1(5)(c) of the Act is replaced by the following:**

**(c)** a qualifying disbursement.

**23 (1) L'alinéa 188.1(5)c) de la même loi est remplacé par ce qui suit :**

**c)** en un versement admissible.

**(2) Subsection 188.1(12) of the Act is replaced by the following:**

**(2) Le paragraphe 188.1(12) de la même loi est remplacé par ce qui suit :**

**Gifts not at arm's length**

**(12)** If a registered charity has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length and it has expended, before the end of the next taxation year — in addition to its disbursement quota for each of those taxation years — an amount that is

**Don à un organisme avec lien de dépendance**

**(12)** L'organisme de bienfaisance enregistré qui a reçu au cours d'une année d'imposition un don de biens (sauf un don déterminé) d'un autre organisme de bienfaisance enregistré avec lequel il a un lien de dépendance et qui a dépensé avant la fin de l'année d'imposition subséquente — en plus d'une somme égale à son contingent des

less than the fair market value of the property on charitable activities carried on by it or by way of gifts made by it that are qualifying disbursements to qualified donees or grantee organizations, with which it deals at arm's length, the registered charity is liable to a penalty under this Act for that subsequent taxation year equal to 110% of the difference between the fair market value of the property and the additional amount expended.

**24 Paragraph 241(4)(d) of the Act is amended by striking out "or" at the end of subparagraph (xvii), by adding "or" at the end of subparagraph (xviii) and by adding the following after subparagraph (xviii):**

**(xix)** to an official of the Canada Revenue Agency solely for the purpose of the collection of amounts owing to Her Majesty in right of Canada under the Canada Emergency Business Account program established by Export Development Canada in accordance with an authorization made under subsection 23(1) of the *Export Development Act*;

versements pour chacune de ces années — une somme inférieure à la juste valeur marchande des biens pour des activités de bienfaisance qu'il mène ou de dons sous forme de versements admissibles à des donataires reconnus ou à des organisations donataires, avec lesquels il n'a aucun lien de dépendance, est passible, sous le régime de la présente loi pour l'année subséquente, d'une pénalité égale à 110 % de la différence entre la juste valeur marchande des biens et la somme additionnelle dépensée.

**24 L'alinéa 241(4)d) de la même loi est modifié par adjonction, après le sous-alinéa (xviii), de ce qui suit :**

**(xix)** à un fonctionnaire de l'Agence du revenu du Canada, mais uniquement en vue de la perception d'une somme due à Sa Majesté du chef du Canada au titre du programme Compte d'urgence pour les entreprises canadiennes établi par Exportation et développement Canada aux termes d'une autorisation accordée au titre du paragraphe 23(1) de la *Loi sur le développement des exportations*;

R.S., c. E-15

## Excise Tax Act

**25 Paragraph 295(5)(d) of the *Excise Tax Act* is amended by striking out "or" at the end of subparagraph (viii), by adding "or" at the end of subparagraph (ix) and by adding the following after subparagraph (ix):**

**(x)** to an official of the Canada Revenue Agency solely for the purpose of the collection of amounts owing to Her Majesty in right of Canada under the Canada Emergency Business Account program established by Export Development Canada in accordance with an authorization made under subsection 23(1) of the *Export Development Act*;

L.R., ch. E-15

## Loi sur la taxe d'accise

**25 L'alinéa 295(5)d) de la *Loi sur la taxe d'accise* est modifié par adjonction, après le sous-alinéa (ix), de ce qui suit :**

**(x)** à un fonctionnaire de l'Agence du revenu du Canada, mais uniquement en vue de la perception d'une somme due à Sa Majesté du chef du Canada au titre du programme Compte d'urgence pour les entreprises canadiennes établi par Exportation et développement Canada aux termes d'une autorisation accordée au titre du paragraphe 23(1) de la *Loi sur le développement des exportations*;

1992, c. 48, Sch.

## Children's Special Allowances Act

**26 (1) Section 2 of the *Children's Special Allowances Act* is amended by adding the following in alphabetical order:**

***Indigenous governing body*** means an *Indigenous governing body* (as defined in section 1 of *An Act respecting First Nations, Inuit and Métis children, youth and families*) that

1992, ch. 48, ann.

## Loi sur les allocations spéciales pour enfants

**26 (1) L'article 2 de la *Loi sur les allocations spéciales pour enfants* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***corps dirigeant autochtone*** S'entend d'un *corps dirigeant autochtone* (au sens de l'article 1 de la *Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*) qui, selon le cas :

**(a)** has given notice under subsection 20(1) of that Act;

**(b)** has requested a coordination agreement under subsection 20(2) of that Act; or

**(c)** meets prescribed conditions. (*corps dirigeant autochtone*)

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**27 (1) Paragraphs 3(1)(a) and (b) of the Act are replaced by the following:**

**(a)** resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal and is maintained by

**(i)** a department or agency of the government of Canada or a province, or

**(ii)** an agency appointed by a province, including an authority established under the laws of a province, or by an agency appointed by such an authority, for the purpose of administering any law of the province for the protection and care of children;

**(b)** is maintained by an institution licensed or otherwise authorized under the law of the province to have the custody or care of children; or

**(c)** resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under the laws of an Indigenous governing body and is maintained by

**(i)** the Indigenous governing body,

**(ii)** a department or agency of the Indigenous governing body, or

**(iii)** an agency appointed by the Indigenous governing body, including an authority established under the laws of the Indigenous governing body, or by an agency appointed by such an authority, for the purpose of administering any law of the Indigenous governing body for the protection and care of children.

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**a)** a donné un avis en vertu du paragraphe 20(1) de cette loi;

**b)** a demandé un accord de coordination en vertu du paragraphe 20(2) de cette loi;

**c)** remplit les conditions réglementaires. (*Indigenous governing body*)

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**27 (1) Le paragraphe 3(1) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**c)** qui, résidant pendant un mois donné dans un établissement spécialisé, dans un foyer de placement familial, chez des parents nourriciers ou chez un tuteur ou toute autre personne physique exerçant des fonctions similaires, nommé en vertu des lois d'un corps dirigeant autochtone, est à la charge :

**(i)** soit d'un tel corps dirigeant,

**(ii)** soit d'un ministère ou d'un organisme d'un tel corps dirigeant,

**(iii)** soit d'un organisme chargé par un tel corps dirigeant — y compris une régie constituée en vertu des lois de ce corps dirigeant — d'appliquer sa législation visant la protection et le soin des enfants (ou d'un organisme, y compris un office, chargé par une telle régie d'appliquer cette législation).

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**28 (1) Paragraph 4(1)(a) of the Act is replaced by the following:**

**(a)** an application therefor has been made in the prescribed manner by the department, agency, institution or Indigenous governing body referred to in subsection 3(1) that maintains the child; and

**(2) Subsection 4(3) of the Act is replaced by the following:**

**No allowance payable**

**(3)** No special allowance is payable for the month in which the child in respect of whom the special allowance is payable commences to be maintained by a department, agency, institution or Indigenous governing body, and no special allowance is payable in respect of a child for the month in which the child is born or commences to reside in Canada.

**(3) Paragraph 4(4)(a) of the Act is replaced by the following:**

**(a)** ceases to be maintained by the department, agency, institution or Indigenous governing body;

**(4) Subsections (1) to (3) are deemed to have come into force on January 1, 2020.**

**29 (1) Sections 5 and 6 of the Act are replaced by the following:**

**Recipient of special allowance**

**5** Where payment of a special allowance is approved in respect of a child, the special allowance shall, in such manner and at such times as are determined by the Minister, be paid to the department, agency, institution or Indigenous governing body referred to in subsection 3(1) that maintains the child or, in the prescribed circumstances, to a foster parent.

**Report**

**6** Where a special allowance ceases to be payable in respect of a child for a reason referred to in paragraph 4(4)(a), (b) or (c), the chief executive officer of the department, agency, institution or Indigenous governing body that made the application under paragraph 4(1)(a) in respect of the child shall, as soon as possible after the special allowance ceases to be payable in respect of the child, notify the Minister in the prescribed form and manner.

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**28 (1) L'alinéa 4(1)a) de la même loi est remplacé par ce qui suit :**

**a)** le ministère, l'organisme, l'établissement ou le corps dirigeant autochtone visé au paragraphe 3(1) qui a la charge de l'enfant a présenté la demande réglementaire prévue à cet effet;

**(2) Le paragraphe 4(3) de la même loi est remplacé par ce qui suit :**

**Réserve**

**(3)** L'allocation spéciale n'est versée ni pour le mois au cours duquel l'enfant commence à être à la charge du ministère, de l'organisme, de l'établissement ou du corps dirigeant autochtone, selon le cas, ni pour celui au cours duquel il naît ou commence à résider au Canada.

**(3) L'alinéa 4(4)a) de la même loi est remplacé par ce qui suit :**

**a)** cesse d'être à la charge du ministère, de l'organisme, de l'établissement ou du corps dirigeant autochtone;

**(4) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 1er janvier 2020.**

**29 (1) Les articles 5 et 6 de la même loi sont remplacés par ce qui suit :**

**Nature de l'allocataire**

**5** L'allocation spéciale est versée, selon les modalités et aux intervalles fixés par le ministre, au ministère, à l'organisme, à l'établissement ou au corps dirigeant autochtone visé au paragraphe 3(1) qui a la charge de l'enfant y ouvrant droit ou, dans les circonstances déterminées par règlement, au parent nourricier.

**Obligation de l'allocataire**

**6** Lorsque l'allocation spéciale cesse d'être due pour l'un des motifs prévus aux alinéas 4(4)a) à c), le premier dirigeant du ministère, de l'organisme, de l'établissement ou du corps dirigeant autochtone qui avait la charge de l'enfant en avise dès que possible le ministre selon les modalités réglementaires.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**30 (1) Subsections 9(1) and (2) of the English version of the Act are replaced by the following:**

**Return of special allowance**

**9 (1)** Any person, department, agency, institution or Indigenous governing body that has received or obtained by cheque or otherwise payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, shall, as soon as possible, return the cheque or the amount of the payment, or the excess amount, as the case may be.

**Recovery of amount of payment**

**(2)** Where a person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, constitutes a debt due to Her Majesty.

**(2) Subsection 9(3) of the Act is replaced by the following:**

**Deduction from subsequent special allowance**

**(3)** Where any person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, may be deducted and retained in such manner as is prescribed out of any special allowance to which the person, department, agency, institution or Indigenous governing body is or subsequently becomes entitled under this Act.

**(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.**

**31 (1) Section 11 of the Act is replaced by the following:**

**Agreements for exchange of information**

**11** The Minister may enter into an agreement with the government of any province, or an Indigenous governing

**30 (1) Les paragraphes 9(1) et (2) de la version anglaise de la même loi sont remplacés par ce qui suit :**

**Return of special allowance**

**9 (1)** Any person, department, agency, institution or Indigenous governing body that has received or obtained by cheque or otherwise payment of a special allowance under this Act to which the person, department, agency, institution or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, shall, as soon as possible, return the cheque or the amount of the payment, or the excess amount, as the case may be.

**Recovery of amount of payment**

**(2)** Where a person, department, agency, institution or Indigenous governing body has received or obtained payment of a special allowance under this Act to which the person, department, agency, institution, or Indigenous governing body is not entitled, or payment in excess of the amount to which the person, department, agency, institution or Indigenous governing body is entitled, the amount of the special allowance or the amount of the excess, as the case may be, constitutes a debt due to Her Majesty.

**(2) Le paragraphe 9(3) de la même loi est remplacé par ce qui suit :**

**Recouvrement par déduction**

**(3)** Les montants versés indûment ou en excédent à un ministère, un organisme, un établissement ou un corps dirigeant autochtone peuvent, selon les modalités réglementaires, être déduits des allocations spéciales qui leur sont ultérieurement dues.

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2020.**

**31 (1) L'article 11 de la même loi est remplacé par ce qui suit :**

**Accords d'échange de renseignements**

**11** Le ministre peut conclure un accord avec le gouvernement d'une province ou d'un corps dirigeant

body, for the purpose of obtaining information in connection with the administration or enforcement of this Act or the regulations and of furnishing to that government, or Indigenous governing body, under prescribed conditions, any information obtained by or on behalf of the Minister in the course of the administration or enforcement of this Act or the regulations, if the Minister is satisfied that the information to be furnished to that government, or Indigenous governing body, under the agreement is to be used for the purpose of the administration of a social program, income assistance program or health insurance program in the province or of the Indigenous governing body.

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**32 (1) Paragraph 13(a) of the English version of the Act is replaced by the following:**

**(a)** providing for the suspension of payment of a special allowance during any investigation respecting the eligibility of a department, agency, institution or Indigenous governing body to receive the special allowance and specifying the circumstances in which payment of a special allowance, the payment of which has been suspended, may be resumed;

**(2) Paragraph 13(c) of the Act is replaced by the following:**

**(c)** specifying for the purposes of this Act the circumstances in which a child shall be considered to be maintained by a department, agency, institution or Indigenous governing body; and

**(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2020.**

2002, c. 22

## Excise Act, 2001

**33 Paragraph 211(6)(e) of the *Excise Act, 2001* is amended by striking out "or" at the end of subparagraph (ix), by adding "or" at the end of subparagraph (x) and by adding the following after subparagraph (x):**

**(xi)** to an official of the Agency solely for the purpose of the collection of amounts owing to Her Majesty in right of Canada under the Canada Emergency Business Account program established by Export Development Canada in accordance with an authorization made under subsection 23(1) of the *Export Development Act*;

autochtone en vue de recueillir des renseignements liés à l'application ou à l'exécution de la présente loi ou de ses règlements et de fournir à celui-ci, aux conditions réglementaires, des renseignements recueillis par lui ou pour son compte dans le cadre de l'application ou de l'exécution de la présente loi ou de ses règlements s'il est convaincu que ces renseignements seront utilisés pour l'application des programmes sociaux, de sécurité du revenu ou d'assurance-santé de la province ou du corps dirigeant autochtone.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**32 (1) L'alinéa 13a) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(a)** providing for the suspension of payment of a special allowance during any investigation respecting the eligibility of a department, agency, institution or Indigenous governing body to receive the special allowance and specifying the circumstances in which payment of a special allowance, the payment of which has been suspended, may be resumed;

**(2) L'alinéa 13c) de la même loi est remplacé par ce qui suit :**

**c)** spécifier les cas où, dans le cadre de la présente loi, un enfant doit être considéré comme étant à la charge d'un ministère, d'un organisme, d'un établissement ou d'un corps dirigeant autochtone;

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2020.**

2002, ch. 22

## Loi de 2001 sur l'accise

**33 L'alinéa 211(6)e) de la *Loi de 2001 sur l'accise* est modifié par adjonction, après le sous-alinéa (x), de ce qui suit :**

**(xi)** à un fonctionnaire de l'Agence, mais uniquement en vue de la perception d'une somme due à Sa Majesté du chef du Canada au titre du programme Compte d'urgence pour les entreprises canadiennes établi par Exportation et développement Canada aux termes d'une autorisation accordée au titre du paragraphe 23(1) de la *Loi sur le développement des exportations*;

C.R.C., c. 945

# Income Tax Regulations

**34 (1) Section 1100 of the *Income Tax Regulations* is amended by adding the following before subsection (1):**

**Immediate expensing**

**(0.1)** For the purposes of paragraph 20(1)(a) of the Act, a deduction is allowed in computing an eligible person or partnership's income for each taxation year equal to the lesser of

**(a)** the eligible person or partnership's immediate expensing limit for the taxation year,

**(b)** the undepreciated capital cost to the eligible person or partnership as of the end of the taxation year (before making any deduction under this Part for the taxation year) of property that is designated immediate expensing property for the taxation year, and

**(c)** if the eligible person or partnership is not a Canadian-controlled private corporation, the amount of income, if any, earned from the source of income that is a business or property (computed without regard to paragraph 20(1)(a) of the Act) in which the relevant designated immediate expensing property is used for the eligible person or partnership's taxation year.

**Undepreciated capital cost — immediate expensing**

**(0.2)** Before computing any other deduction permitted under this Part and Schedules II to VI, the amount of any deduction made under subsection (0.1) by an eligible person or partnership in respect of a designated immediate expensing property of a prescribed class shall be deducted from the undepreciated capital cost of the particular class to which the property belongs.

**Expenditures excluded from paragraph (0.1)(b)**

**(0.3)** For the purposes of paragraph (0.1)(b), in respect of property of a class in Schedule II that is immediate expensing property of an eligible person or partnership solely because of subparagraph (c)(i) of the definition *immediate expensing property* in subsection 1104(3.1), amounts incurred by any person or partnership in respect of the property are not to be included in

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# Règlement de l'impôt sur le revenu

**34 (1) L'article 1100 du *Règlement de l'impôt sur le revenu* est modifié par adjonction, avant le paragraphe (1), de ce qui suit :**

**Passation en charges immédiate**

**(0.1)** Pour l'application de l'alinéa 20(1)a) de la Loi, une personne ou société de personnes admissible peut déduire dans le calcul de son revenu pour chaque année d'imposition un montant correspondant au moins élevé des montants suivants :

**a)** le plafond de passation en charges immédiate de la personne ou société de personnes admissible pour l'année d'imposition;

**b)** la fraction non amortie du coût en capital, pour la personne ou société de personnes admissible à la fin de l'année d'imposition (avant toute déduction en vertu de la présente partie pour l'année d'imposition) des biens qui sont des biens relatifs à la passation en charges immédiate désignés pour l'année d'imposition;

**c)** si la personne ou société de personnes admissible n'est pas une société privée sous contrôle canadien, le montant du revenu éventuel (calculé compte non tenu de l'alinéa 20(1)a) de la Loi) provenant de la source de revenus qui est une entreprise ou des biens dans laquelle les biens relatifs à la passation en charges immédiate désignés pertinents sont utilisés pour l'année d'imposition de la personne ou société de personnes admissible.

**Fraction non amortie du coût en capital — passation en charges immédiate**

**(0.2)** Avant le calcul de toute autre déduction permise en vertu de la présente partie et des annexes II à VI, tout montant qu'une personne ou société de personnes admissible a déduit en application du paragraphe (0.1) relativement à un bien relatif à la passation en charges immédiate désigné d'une catégorie prescrite est déduit de la fraction non amortie du coût en capital de la catégorie donnée à laquelle le bien appartient.

**Dépenses exclues de l'alinéa (0.1)b)**

**(0.3)** Pour l'application de l'alinéa (0.1)b), quant à un bien d'une catégorie de l'annexe II qui n'est un bien relatif à la passation en charges immédiate d'une personne ou société de personnes admissible que par l'effet du sous-alinéa c)(i) de la définition de *bien relatif à la passation en charges immédiate* au paragraphe 1104(3.1), les montants engagés par une personne ou une société de

determining the undepreciated capital cost to the eligible person or partnership as of the end of the taxation year (before making any deduction under this Part for the taxation year) of property that is designated immediate expensing property for the taxation year if the amounts are incurred before April 19, 2021 (if the eligible person or partnership is a Canadian-controlled private corporation) or before 2022 (if the eligible person or partnership is an individual or Canadian partnership), unless

**(a)** the property was acquired by an eligible person or partnership from another person or partnership (referred to in this paragraph as the "transferee" and the "transferor", respectively)

**(i)** if the transferee is a Canadian-controlled private corporation, after April 18, 2021, or

**(ii)** if the transferee is an individual or a Canadian partnership, after December 31, 2021;

**(b)** the transferee was either

**(i)** the eligible person or partnership, or

**(ii)** a person or partnership that does not deal at arm's length with the eligible person or partnership; and

**(c)** the transferor

**(i)** dealt at arm's length with the transferee, and

**(ii)** held the property as inventory.

personnes relativement au bien ne doivent pas être inclus dans le calcul de la fraction non amortie du coût en capital, pour la personne ou société de personnes admissible, à la fin de l'année d'imposition (avant toute déduction en vertu de la présente partie pour l'année d'imposition) des biens qui sont des biens relatifs à la passation en charges immédiate désignés pour l'année d'imposition si les montants sont engagés avant le 19 avril 2021 (si la personne ou société de personnes admissible est une société privée sous contrôle canadien) ou avant 2022 (si la personne ou société de personnes admissible est un particulier ou une société de personnes canadienne), sauf si, à la fois :

**a)** une personne ou société de personnes admissible acquiert le bien d'une autre personne ou société de personnes (appelées au présent alinéa respectivement « cessionnaire » et « cédant ») :

**(i)** si le cessionnaire est une société privée sous contrôle canadien, après le 18 avril 2021,

**(ii)** si le cessionnaire est un particulier ou une société de personnes canadienne, après le 31 décembre 2021;

**b)** le cessionnaire était :

**(i)** soit la personne ou la société de personnes admissible,

**(ii)** soit une personne ou société de personnes qui a un lien de dépendance avec la personne ou la société de personnes admissible;

**c)** le cédant, à la fois :

**(i)** n'avait pas de lien de dépendance avec le cessionnaire,

**(ii)** détenait le bien à titre de bien à porter à l'inventaire.

**(2) The portion of subsection 1100(1.1) of the Regulations before paragraph (a) is replaced by the following:**

**(1.1)** Despite subsections (0.1), (1) and (3), the amount deductible by a taxpayer for a taxation year in respect of a property that is a specified leasing property at the end of the year is the lesser of

**(2) Le passage du paragraphe 1100(1.1) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(1.1)** Malgré les paragraphes (0.1), (1) et (3), le montant déductible par un contribuable pour une année d'imposition relativement à un bien qui est un bien de location déterminé à la fin de l'année correspond au moins élevé des montants suivants :

**(3) Subsection 1100(1.12) of the Regulations is replaced by the following:**

**(3) Le paragraphe 1100(1.12) du même règlement est remplacé par ce qui suit :**

**(1.12)** Despite subsections (0.1), (1) and (1.1), where, in a taxation year, a taxpayer has acquired a property that was not used by the taxpayer for any purpose in that year and the first use of the property by the taxpayer is a lease of the property in respect of which subsection (1.1) applies, the amount allowed to the taxpayer under subsections (0.1) and (1) in respect of the property for the year shall be deemed to be nil.

**(4) The portion of subsection 1100(11) of the Regulations before paragraph (a) is replaced by the following:**

**(11)** Despite subsections (0.1) and (1), in no case shall the aggregate of deductions, each of which is a deduction in respect of property of a prescribed class owned by a taxpayer that includes rental property owned by him, otherwise allowed to the taxpayer by virtue of subsection (0.1) or (1) in computing his income for a taxation year, exceed the amount, if any, by which

**(5) The portion of subsection 1100(15) of the Regulations before paragraph (a) is replaced by the following:**

**(15)** Despite subsections (0.1) and (1), in no case shall the aggregate of deductions, each of which is a deduction in respect of property of a prescribed class that is leasing property owned by a taxpayer, otherwise allowed to the taxpayer under subsection (0.1) or (1) in computing his income for a taxation year, exceed the amount, if any, by which

**(6) The portion of subsection 1100(20.1) of the Regulations before paragraph (a) is replaced by the following:**

**(20.1)** The total of all amounts each of which is a deduction in respect of computer tax shelter property allowed to the taxpayer under subsection (0.1) or (1) in computing a taxpayer's income for a taxation year shall not exceed the amount, if any, by which

**(7) Subsection 1100(21.1) of the Regulations is replaced by the following:**

**(21.1)** Despite subsections (0.1) and (1), where a taxpayer has acquired property described in paragraph (s) of Class 10 in Schedule II, or in paragraph (m) of Class 12 of Schedule II, the deduction in respect of the property otherwise allowed to the taxpayer under subsection (0.1) or (1) in computing the taxpayer's income for a taxation year shall not exceed the amount that it would be if the capital cost to the taxpayer of the property were reduced by the portion of any debt obligation of the taxpayer

**(1.12)** Malgré les paragraphes (0.1), (1) et (1.1), lorsqu'au cours d'une année d'imposition le contribuable a acquis un bien qu'il n'a utilisé à aucune fin pendant cette année et que le premier usage qu'il fait du bien est d'en faire l'objet d'un bail visé par le paragraphe (1.1) le montant déductible pour l'année par le contribuable en application des paragraphes (0.1) et (1) relativement au bien est réputé nul.

**(4) Le passage du paragraphe 1100(11) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(11)** Malgré les paragraphes (0.1) et (1), en aucun cas le total des déductions, dont chacune est une déduction à l'égard de biens d'une catégorie prescrite possédés par un contribuable, qui comprend les biens locatifs possédés par lui, que le contribuable peut déduire par ailleurs en vertu des paragraphes (0.1) ou (1) en calculant son revenu pour une année d'imposition, ne doit excéder la fraction, si fraction il y a :

**(5) Le passage du paragraphe 1100(15) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(15)** Malgré les paragraphes (0.1) et (1), le total des déductions qu'un contribuable peut faire en vertu de ces paragraphes dans le calcul de son revenu pour une année d'imposition, à l'égard de biens d'une catégorie prescrite qui sont des biens donnés en location à bail qui lui appartiennent, ne peut dépasser la fraction éventuelle :

**(6) Le passage du paragraphe 1100(20.1) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(20.1)** Le total des sommes qu'un contribuable peut déduire en application des paragraphes (0.1) ou (1) dans le calcul de son revenu pour une année d'imposition au titre de produits informatiques déterminés ne peut dépasser l'excédent de la somme visée à l'alinéa a) sur celle visée à l'alinéa b) :

**(7) Le paragraphe 1100(21.1) du même règlement est remplacé par ce qui suit :**

**(21.1)** Malgré les paragraphes (0.1) et (1), lorsqu'un contribuable acquiert un bien visé à l'alinéa s) de la catégorie 10 de l'annexe II ou à l'alinéa m) de la catégorie 12 de cette annexe, la déduction qui lui est accordée par ailleurs au titre de ce bien en vertu des paragraphes (0.1) ou (1) dans le calcul de son revenu pour une année d'imposition ne peut dépasser ce qu'elle serait si le coût en capital du bien pour lui était réduit de la partie d'un titre de créance lui appartenant, impayé à la fin de l'année, qui

outstanding at the end of the year that is convertible into an interest or, for civil law, a right in the property or an interest in the taxpayer.

**(8) The portion of subsection 1100(24) of the Regulations before paragraph (a) is replaced by the following:**

**(24)** Despite subsections (0.1) and (1), in no case shall the total of deductions, each of which is a deduction in respect of property of Class 34, 43.1, 43.2, 47 or 48 in Schedule II that is specified energy property owned by a taxpayer, otherwise allowed to the taxpayer under subsection (0.1) or (1) in computing the taxpayer's income for a taxation year, exceed the amount, if any, by which

**(9) Subsections (1) to (8) are deemed to have come into force on April 19, 2021.**

**35 (1) Subsection 1102(20.1) of the Regulations is replaced by the following:**

**(20.1)** For the purposes of subsections 1100(0.3) and (2.02) and 1104(3.1) and (4), a particular person or partnership and another person or partnership shall be considered not to be dealing at arm's length with each other in respect of the acquisition or ownership of a property if, in the absence of this subsection, they would be considered to be dealing at arm's length with each other and it may reasonably be considered that the principal purpose of any transaction or event, or a series of transactions or events, is to cause

**(a)** the property to qualify as accelerated investment incentive property or immediate expensing property; or

**(b)** the particular person or partnership and the other person or partnership to satisfy the condition in subclause 1100(2.02)(a)(i)(C)(I) or subparagraph 1100(0.3)(c)(i).

**(2) Subsection (1) is deemed to have come into force on April 19, 2021.**

**36 (1) Section 1104 of the Regulations is amended by adding the following after subsection (3):**

**Definitions**

**(3.1)** The following definitions apply in this Part and Schedules II to VI.

est convertible en un intérêt ou, pour l'application du droit civil, un droit sur le bien ou une participation dans le contribuable.

**(8) Le passage du paragraphe 1100(24) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(24)** Malgré les paragraphes (0.1) et (1), le total des déductions — représentant chacune une déduction pour des biens compris dans les catégories 34, 43.1, 43.2, 47 ou 48 de l'annexe II qui constituent des biens énergétiques déterminés appartenant à un contribuable — autrement accordées au contribuable en application des paragraphes (0.1) ou (1) dans le calcul de son revenu pour une année d'imposition ne peut dépasser l'excédent éventuel du total visé à l'alinéa a) sur le total visé à l'alinéa b) :

**(9) Les paragraphes (1) à (8) sont réputés être entrés en vigueur le 19 avril 2021.**

**35 (1) Le paragraphe 1102(20.1) du même règlement est remplacé par ce qui suit :**

**(20.1)** Pour l'application des paragraphes 1100(0.3) et (2.02) et 1104(3.1) et (4), sont réputées avoir un lien de dépendance à l'égard de l'acquisition ou de la détention d'un bien une personne ou société de personnes donnée et une autre personne ou société de personnes si, en l'absence du présent paragraphe, elles seraient considérées ne pas avoir de lien de dépendance entre elles et il est raisonnable de croire que le principal objet d'une opération ou d'un événement ou d'une série d'opérations ou d'événements est de faire en sorte :

**a)** soit que ces biens soient admissibles à titre de biens relatifs à l'incitatif à l'investissement accéléré ou de biens relatifs à la passation en charges immédiate;

**b)** soit que la personne ou société de personnes donnée et l'autre personne ou société de personnes remplissent la condition énoncée à la subdivision 1100(2.02)a)(i)(C)(I) ou au sous-alinéa 1100(0.3)c)(i).

**(2) Le paragraphe (1) est réputé être entré en vigueur le 19 avril 2021.**

**36 (1) L'article 1104 du même règlement est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Définitions**

**(3.1)** Les définitions qui suivent s'appliquent à la présente partie et aux annexes II à VI.

***bien relatif à la passation en charges immédiate*** S'entend, pour une année d'imposition, d'un bien d'une

***designated immediate expensing property*** for a taxation year, means property of an eligible person or partnership that

**(a)** is immediate expensing property of the eligible person or partnership;

**(b)** became available for use by the eligible person or partnership in the taxation year; and

**(c)** is designated as designated immediate expensing property in prescribed form filed by the eligible person or partnership with the Minister for the taxation year

**(i)** if the eligible person or partnership is a partnership, on or before the day that is 12 months after the day on which any member of the partnership is required to file an information return under section 229 for the fiscal period to which the designation relates, and

**(ii)** in any other case, on or before the day that is 12 months after the eligible person or partnership's filing-due date for the taxation year to which the designation relates. (*bien relatif à la passation en charges immédiate désigné*)

***eligible person or partnership*** for a taxation year, means

**(a)** a corporation that was a Canadian-controlled private corporation throughout the year;

**(b)** an individual (other than a trust) who was resident in Canada throughout the year; or

**(c)** a Canadian partnership all of the members of which were, throughout the period, persons described in paragraph (a) or (b). (*personne ou société de personnes admissible*)

***immediate expensing property*** for a taxation year, means property of a prescribed class (other than property included in any of Classes 1 to 6, 14.1, 17, 47, 49 and 51 in Schedule II) of an eligible person or partnership that

**(a)** is acquired by the eligible person or partnership

**(i)** if the eligible person or partnership is a Canadian-controlled private corporation, after April 18, 2021, or

**(ii)** if the eligible person or partnership is an individual or a Canadian partnership, after December 31, 2021;

**(b)** becomes available for use

catégorie prescrite (sauf les biens compris dans les catégories 1 à 6, 14.1, 17, 47, 49 et 51 de l'annexe II) d'une personne ou société de personnes admissible qui, à la fois :

**a)** est acquis par la personne ou société de personnes admissible :

**(i)** si la personne ou société de personnes admissible est une société privée sous contrôle canadien, après le 18 avril 2021,

**(ii)** si la personne ou société de personnes admissible est un particulier ou une société de personnes canadienne, après le 31 décembre 2021;

**b)** devient prêt à être mis en service :

**(i)** si la personne ou société de personnes admissible est un particulier ou une société de personnes canadienne dont tous les associés sont des particuliers tout au long de l'année, avant 2025,

**(ii)** dans les autres cas, avant 2024;

**c)** remplit l'une des conditions suivantes :

**(i)** le bien, à la fois :

**(A)** n'a pas été utilisé à quelque fin que ce soit avant son acquisition par la personne ou société de personnes admissible,

**(B)** n'est pas un bien relativement auquel un montant a été déduit en application de l'alinéa 20(1)a) ou du paragraphe 20(16) de la Loi par toute personne ou société de personnes pour une année d'imposition se terminant avant le moment de son acquisition par la personne ou société de personnes admissible,

**(ii)** le bien :

**(A)** n'a pas été acquis dans des circonstances où :

**(I)** un montant est réputé avoir été admis en déduction ou déduit en vertu de l'alinéa 20(1)a) de la Loi au titre du bien dans le calcul du revenu de la personne ou société de personnes admissible pour des années d'imposition antérieures,

**(II)** la fraction non amortie du coût en capital d'un bien amortissable de la personne ou société de personnes admissible d'une catégorie prescrite a été réduite d'un montant déterminé en fonction de l'excédent du coût en capital

**(i)** if the eligible person or partnership is an individual or a Canadian partnership all the members of which are individuals throughout the taxation year, before 2025, and

**(ii)** in any other case, before 2024; and

**(c)** meets either of the following conditions:

**(i)** the property

**(A)** has not been used for any purpose before it was acquired by the eligible person or partnership, and

**(B)** is not a property in respect of which an amount has been deducted under paragraph 20(1)(a) or subsection 20(16) of the Act by any person or partnership for a taxation year ending before the time the property was acquired by the eligible person or partnership, or

**(ii)** the property was not

**(A)** acquired in circumstances where

**(I)** the eligible person or partnership was deemed to have been allowed or deducted an amount under paragraph 20(1)(a) of the Act in respect of the property in computing income for previous taxation years, or

**(II)** the undepreciated capital cost of depreciable property of a prescribed class of the eligible person or partnership was reduced by an amount determined by reference to the amount by which the capital cost of the property to the eligible person or partnership exceeds its cost amount, or

**(B)** previously owned or acquired by the eligible person or partnership or by a person or partnership with which the eligible person or partnership did not deal at arm's length at any time when the property was owned or acquired by the person or partnership. (*bien relatif à la passation en charges immédiate*)

***taxpayer*** unless the context otherwise requires, includes an eligible person or partnership. (*contribuable*)

du bien pour la personne ou société de personnes admissible sur son coût indiqué,

**(B)** antérieurement, n'a pas été la propriété de la personne ou société de personnes admissible ou d'une personne ou société de personnes avec laquelle elle avait un lien de dépendance à tout moment où la personne ou la société de personnes était propriétaire du bien ou en a fait l'acquisition, ou n'a pas été acquis par elle ou par une telle personne ou société de personnes. (*immediate expensing property*)

***bien relatif à la passation en charges immédiate désigné*** Bien d'une personne ou société de personnes admissible pour une année d'imposition qui remplit les conditions suivantes :

**a)** il est un bien relatif à la passation en charges immédiate de la personne ou société de personnes admissible;

**b)** il est devenu prêt à être mis en service par la personne ou société de personnes admissible au cours de l'année d'imposition;

**c)** il est désigné auprès du ministre comme bien relatif à la passation en charges immédiate désigné, selon le formulaire prescrit, par la personne ou société de personnes admissible pour l'année d'imposition :

**(i)** si la personne ou société de personnes admissible est une société de personnes, au plus tard douze mois après la date où un associé de la société de personnes est tenu, en application de l'article 229, de produire une déclaration de renseignements pour l'exercice auquel la désignation se rapporte,

**(ii)** dans les autres cas, au plus tard douze mois après la date d'échéance de production de la personne ou société de personnes admissible pour l'année d'imposition à laquelle la désignation se rapporte. (*designated immediate expensing property*)

***contribuable*** Comprend, sauf indication contraire du contexte, une personne ou société de personnes admissible. (*taxpayer*)

***personne ou société de personnes admissible*** S'entend pour une année d'imposition :

**a)** d'une société qui était une société privée sous contrôle canadien tout au long de l'année;

**b)** d'un particulier, à l'exception d'une fiducie, qui a résidé au Canada tout au long de l'année;

**c)** d'une société de personnes canadienne dont l'ensemble des associés étaient, tout au long de la période, des personnes visées aux alinéas a) ou b). (*eligible person or partnership*)

**Immediate expensing limit**

**(3.2)** For the purposes of this Part and Schedules II to VI, an eligible person or partnership's immediate expensing limit for a taxation year is $1,500,000 unless the eligible person or partnership is associated (within the meaning of section 256 of the Act, as modified by subsection (3.6)) in the taxation year with one or more other eligible persons or partnerships, in which case, except as otherwise provided in this section, its immediate expensing limit is nil.

**Plafond de passation en charges immédiate**

**(3.2)** Pour l'application de la présente partie et des annexes II à VI, le plafond de passation en charges immédiate d'une personne ou société de personnes admissible pour une année d'imposition est de 1 500 000 $, sauf si la personne ou société de personnes admissible est associée (au sens de l'article 256 de la Loi, telle que modifiée par le paragraphe (3.6)), pendant l'année, à une ou plusieurs autres personnes ou sociétés de personnes admissibles, auquel cas son plafond de passation en charges immédiate est nul, sauf disposition contraire du présent article.

**Associated eligible persons or partnerships**

**(3.3)** Despite subsection (3.2), if all the eligible persons or partnerships that are associated with each other (within the meaning of section 256 of the Act, as modified by subsection (3.6)) in a taxation year file with the Minister in prescribed form an agreement that assigns for the purpose of this Part and Schedules II to VI a percentage to one or more of them for the year, the immediate expensing limit for the year of each of the eligible persons or partnerships is

**(a)** if the total of the percentages assigned in the agreement does not exceed 100%, $1,500,000 multiplied by the percentage assigned to that eligible person or partnership in the agreement; and

**(b)** in any other case, nil.

**Personnes ou sociétés de personnes admissibles associées**

**(3.3)** Malgré le paragraphe (3.2), si toutes les personnes ou sociétés de personnes admissibles qui sont associées les unes aux autres (au sens de l'article 256 de la Loi, telle que modifiée par le paragraphe (3.6)), pendant une année d'imposition présentent au ministre, selon le formulaire prescrit, une convention par laquelle est attribué, pour l'application de la présente partie et des annexes II à VI, un pourcentage à une ou plusieurs d'entre elles pour l'année, le plafond de passation en charges immédiate, pour l'année, de chacune des personnes ou sociétés de personnes admissibles correspond à ce qui suit :

**a)** si le total des pourcentages attribués selon la convention n'excède pas 100 %, le produit de 1 500 000 $ par le pourcentage attribué à la personne ou société de personnes admissible selon la convention;

**b)** dans les autres cas, zéro.

**Failure to file agreement**

**(3.4)** If any of the eligible persons or partnerships that are associated with each other (within the meaning of section 256 of the Act, as modified by subsection (3.6)) in a taxation year has failed to file with the Minister an agreement described in subsection (3.3) within 30 days after notice in writing by the Minister has been forwarded to any of them that such an agreement is required for the purpose of any assessment of tax under Part I of the Act, the Minister shall, for the purpose of this Part and Schedules II to VI, allocate an amount to one or more of them for the taxation year.

**Défaut de présenter la convention**

**(3.4)** Si une ou plusieurs personnes ou sociétés de personnes admissibles qui sont associées les unes aux autres (au sens de l'article 256 de la Loi, telle que modifiée par le paragraphe (3.6)) pendant une année d'imposition ne présentent pas au ministre une convention visée au paragraphe (3.3) dans les trente jours suivant l'envoi par le ministre, à une ou plusieurs d'entre elles, d'un avis portant qu'une telle convention est requise pour l'établissement d'une cotisation en vertu de la partie I de la Loi, le ministre attribue, pour l'application de la présente partie et des annexes II à VI, un montant à une ou plusieurs d'entre elles pour l'année.

**Special rules for immediate expensing limit**

**(3.5)** Despite subsections (3.2) to (3.4),

**(a)** where an eligible person or partnership (in this paragraph referred to as the "first person") has more than one taxation year ending in the same calendar year and it is associated (within the meaning of section 256 of the Act, as modified by subsection (3.6)) in two or more of those taxation years with another eligible person or partnership (in this paragraph referred to as the "other person") that has a taxation year ending in that calendar year, the immediate expensing limit of the first person for each taxation year ending in the calendar year in which it is associated (within the meaning of section 256 of the Act, as modified by subsection (3.6)) with the other person that ends after the first such taxation year ending in that calendar year is, subject to the application of paragraph (b), an amount equal to the lesser of

**(i)** its immediate expensing limit determined under subsection (3.3) or (3.4) for the first such taxation year ending in the calendar year, and

**(ii)** its immediate expensing limit determined under subsection (3.3) or (3.4) for the particular taxation year ending in the calendar year; and

**(b)** where an eligible person or partnership has a taxation year that is less than 51 weeks, its immediate expensing limit for the year is that proportion of its immediate expensing limit for the year determined without reference to this paragraph that the number of days in the year is of 365.

**Détermination du plafond de passation en charges immédiate dans certains cas**

**(3.5)** Malgré les paragraphes (3.2) à (3.4) :

**a)** lorsqu'une personne ou société de personnes admissible (appelée « première personne » au présent alinéa) a plus d'une année d'imposition se terminant au cours de la même année civile et qu'elle est associée (au sens de l'article 256 de la Loi, telle que modifiée par le paragraphe (3.6)) au cours d'au moins deux de ces années avec une autre personne ou société de personnes admissible (appelée « autre personne » au présent alinéa) qui a une année d'imposition se terminant au cours de cette année civile, le plafond de passation en charges immédiate de la première personne pour chaque année d'imposition donnée se terminant au cours de l'année civile où elle est associée (au sens de l'article 256 de la Loi, telle que modifiée par le paragraphe (3.6)) avec l'autre personne et après la première année d'imposition se terminant au cours de cette année civile correspond, sous réserve de l'alinéa b), au moins élevé des montants suivants :

**(i)** son plafond de passation en charges immédiate pour la première année d'imposition se terminant au cours de l'année civile, déterminé selon les paragraphes (3.3) ou (3.4),

**(ii)** son plafond de passation en charges immédiate pour l'année d'imposition donnée se terminant au cours de l'année civile, déterminé selon les paragraphes (3.3) ou (3.4);

**b)** lorsqu'une personne ou société de personnes admissible a une année d'imposition d'une durée inférieure à 51 semaines, son plafond de passation en charges immédiate pour l'année est la fraction de son plafond de passation en charges immédiate pour l'année, déterminé compte non tenu du présent alinéa, représentée par le rapport qui existe entre le nombre de jours de l'année d'imposition et 365.

**Associated - interpretation**

**(3.6)** For the purposes of this Part and Schedules II to VI, in determining whether an eligible person or partnership is associated (within the meaning of section 256 of the Act, as modified by this subsection) with another eligible person or partnership in a taxation year

**(a)** if the eligible person or partnership is a partnership,

**(i)** the partnership is deemed to be a corporation (in this subsection referred to as a "deemed corporation") for the year,

**Associé — interprétation**

**(3.6)** Pour l'application de la présente partie et des annexes II à VI, afin de déterminer si une personne ou société de personnes admissible est associée (au sens de l'article 256 de la Loi, telle que modifiée par le présent paragraphe) avec une autre personne ou société de personnes admissible au cours d'une année d'imposition, les règles suivantes s'appliquent :

**a)** si la personne ou société de personnes admissible est une société de personnes :

**(ii)** the deemed corporation is deemed to have a capital stock of a single class of shares, with a total of 100 issued and outstanding shares,

**(iii)** each member (in this subsection referred to as a "deemed shareholder") of the deemed corporation is deemed to be a shareholder of the deemed corporation,

**(iv)** each deemed shareholder of the deemed corporation is deemed to hold a number of shares in the capital stock of the deemed corporation determined by the formula

**A × 100**

where

**A** is equal to

**(A)** the deemed shareholder's specified proportion for the last fiscal period of the deemed corporation, or

**(B)** if the deemed shareholder does not have a specified proportion described in clause (A), the proportion that the fair market value of the deemed shareholder's interest in the deemed corporation at that time is of the fair market value of all interests in the deemed corporation at that time, and

**(v)** the deemed corporation's fiscal period is deemed to be its taxation year; and

**(b)** if the eligible person or partnership is an individual (other than a trust) who carries on a business or has acquired immediate expensing property

**(i)** the individual, in respect of that business or property, is deemed to be a corporation that is controlled by the individual, and

**(ii)** the corporation's taxation year is deemed to be the same as the individual's taxation year.

**(2) Subsection (1) is deemed to have come into force on April 19, 2021.**

**(i)** la société de personnes est réputée être une société (appelée « société réputée » au présent paragraphe) pour l'année,

**(ii)** la société réputée est réputée avoir un capital-actions constitué d'une seule catégorie d'actions, avec un total de 100 actions émises et en circulation,

**(iii)** chaque associé (appelé « actionnaire réputé » au présent paragraphe) de la société réputée est réputé être un actionnaire de la société réputée,

**(iv)** chaque actionnaire réputé de la société réputée est réputé détenir un nombre d'actions du capital-actions de la société réputée qui correspond au résultat de la formule suivante :

**A × 100**

où :

**A** représente :

**(A)** la proportion déterminée de l'actionnaire réputé pour le dernier exercice de la société réputée,

**(B)** si l'actionnaire réputé n'a pas de proportion déterminée visée à la division (A), la proportion que représente le rapport entre la somme visée à la subdivision (I) et celle visée à la subdivision (II) :

**(I)** la juste valeur marchande de la participation de l'actionnaire réputé dans la société réputée à ce moment,

**(II)** la juste valeur marchande de l'ensemble des participations dans la société réputée à ce moment;

**(v)** l'exercice de la société réputée est réputé être son année d'imposition;

**b)** si la personne ou société de personnes admissible est un particulier (à l'exception d'une fiducie) qui exploite une entreprise ou qui a acquis un bien relatif à la passation en charges immédiate :

**(i)** le particulier, relativement à cette entreprise ou ces biens, est réputé être une société contrôlée par le particulier,

**(ii)** l'année d'imposition de la société est réputée être la même que celle du particulier.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 19 avril 2021.**

**37 (1) The definitions *biogas* and *producer gas* in subsection 1104(13) of the Regulations are replaced by the following:**

***biogas*** means the gas produced by the anaerobic digestion of specified waste material. (*biogaz*)

***producer gas*** means

**(a)** in respect of a property of a taxpayer that becomes available for use by the taxpayer before 2025, fuel the composition of which, excluding its water content, is all or substantially all non-condensable gases that is generated primarily from eligible waste fuel or specified waste material using a thermo-chemical conversion process and that is not generated from any feedstock other than eligible waste fuel, specified waste material or fossil fuel; and

**(b)** in respect of a property of a taxpayer that becomes available for use by the taxpayer after 2024, fuel

**(i)** the composition of which, excluding its water content, is all or substantially all non-condensable gases,

**(ii)** that is generated using a thermo-chemical conversion process,

**(iii)** that is generated from feedstock of which no more than 25% is fossil fuel when measured in terms of energy content (expressed as a higher heating value of the feedstock), and

**(iv)** that is not generated from any feedstock other than eligible waste fuel, specified waste material or fossil fuel. (*gaz de gazéification*)

**37 (1) Les définitions de *biogaz* et *gaz de gazéification*, au paragraphe 1104(13) du même règlement, sont respectivement remplacées par ce qui suit :**

***biogaz*** Le gaz produit par la digestion anaérobie de déchets déterminés. (*biogas*)

***gaz de gazéification***

**a)** Relativement à un bien d'un contribuable qui devient prêt à être mis en service par le contribuable avant 2025, combustible dont la composition, à l'exclusion de sa teneur en eau, consiste en totalité ou en presque totalité en gaz non condensables, qui est produit à partir principalement de combustibles résiduaires admissibles ou de déchets déterminés au moyen d'un procédé de conversion thermochimique et qui n'est produit à partir d'aucune matière première, sauf un combustible résiduaire admissible, des déchets déterminés ou un combustible fossile;

**b)** relativement à un bien d'un contribuable qui devient prêt à être mis en service par le contribuable après 2024, combustible qui remplit les conditions suivantes :

**(i)** sa composition, à l'exclusion de sa teneur en eau, consiste en totalité ou en presque totalité en gaz non condensables,

**(ii)** il est produit au moyen d'un procédé de conversion thermochimique,

**(iii)** il est produit à partir d'une matière première dont au plus 25 % sont des combustibles fossiles lorsqu'elle est mesurée en termes de contenu énergétique (exprimée en fonction de son pouvoir calorifique supérieur),

**(iv)** il n'est produit à partir d'aucune matière première, sauf un combustible résiduaire admissible, des déchets déterminés ou un combustible fossile. (*producer gas*)

**(2) The definitions *plant residue* and *separated organics* in subsection 1104(13) of the Regulations are replaced by the following:**

***plant residue*** means residue of plants (not including wood waste and waste that no longer has the chemical properties of the plants of which it is a residue) that would otherwise be waste material. (*résidus végétaux*)

***separated organics*** means organic waste (other than waste that is considered to be toxic or hazardous waste under any law of Canada or a province) that could be

**(2) Les définitions de *matières organiques séparées* et *résidus végétaux*, au paragraphe 1104(13) du même règlement, sont respectivement remplacées par ce qui suit :**

***matières organiques séparées*** Déchets organiques (sauf les déchets qui sont considérés comme toxiques ou dangereux aux termes des lois fédérales ou provinciales) qui seraient acceptés à une installation admissible de gestion des déchets ou à un site d'enfouissement admissible. (*separated organics*)

disposed of in an eligible waste management facility or eligible landfill site. (*matières organiques séparées*)

***résidus végétaux*** Résidus de végétaux, à l'exception des déchets de bois et des déchets qui n'ont plus les propriétés chimiques des végétaux dont ils sont les résidus, qui seraient par ailleurs des déchets. (*plant residue*)

**(3) Subsection 1104(13) of the Regulations is amended by adding the following in alphabetical order:**

***gaseous biofuel*** means a fuel produced all or substantially all from specified waste material that is a gas at a temperature of 15.6°C (60°F) and a pressure of 101 kPa (14.7 psia). (*biocarburants gazeux*)

***liquid biofuel*** means a fuel produced all or substantially all from specified waste material or carbon dioxide that is a liquid at a temperature of 15.6°C (60°F) and a pressure of 101 kPa (14.7 psia). (*biocarburants liquides*)

***solid biofuel*** means a fuel produced all or substantially all from specified waste material that is a solid at a temperature of 15.6°C (60°F) and a pressure of 101 kPa (14.7 psia) (other than charcoal that is used for cooking or fuels with fossil fuel-derived ignition accelerants) and that has undergone

**(a)** a thermo-chemical conversion process to increase its carbon fraction and densification; or

**(b)** densification into pellets or briquettes. (*biocarburants solides*)

***specified waste material*** means wood waste, plant residue, municipal waste, sludge from an eligible sewage treatment facility, spent pulping liquor, food and animal waste, manure, pulp and paper by-product and separated organics. (*déchets déterminés*)

**(3) Le paragraphe 1104(13) du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***biocarburants gazeux*** Combustible produit en totalité, ou presque, à partir de déchets déterminés qui est un gaz à une température de 15,6 °C (60 °F) et à une pression de 101 kPa (14,7 psi). (*gaseous biofuel*)

***biocarburants liquides*** Combustible produit en totalité, ou presque, à partir de déchets déterminés ou du dioxyde de carbone qui est un liquide à une température de 15,6 °C (60 °F) et à une pression de 101 kPa (14,7 psi). (*liquid biofuel*)

***biocarburants solides*** Combustible produit en totalité, ou presque, à partir de déchets déterminés qui est solide à une température de 15,6 °C (60° F) et à une pression de 101 kPa (14,7 psi) (sauf le charbon qui est utilisé pour la cuisson ou les combustibles avec accélérateurs d'allumage dérivés de combustibles fossiles) et qui, soit :

**a)** a subi un procédé de conversion thermochimique pour augmenter sa fraction de carbone et sa densification;

**b)** a subi une densification en granules ou briquettes. (*solid biofuel*)

***déchets déterminés*** Déchets de bois, résidus végétaux, déchets municipaux, boues provenant d'une installation de traitement des eaux usées admissible, liqueurs résiduaires, déchets alimentaires et animaux, fumier, sous-produits de pâtes et papier et matières organiques séparées. (*specified waste material*)

**(4) Subsection (1) applies in respect of property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.**

**(4) Le paragraphe (1) s'applique relativement aux biens acquis après le 18 avril 2021 qui n'ont pas été utilisés ou acquis pour être utilisés avant le 19 avril 2021.**

**(5) Subsections (2) and (3) are deemed to have come into force on April 19, 2021.**

**(5) Les paragraphes (2) et (3) sont réputés être entrés en vigueur le 19 avril 2021.**

**38 (1) Clause 1104(17)(a)(ii)(A) of the Regulations is replaced by the following:**

**(A)** any of subparagraphs (d)(vii) to (ix), (xi), (xiii), (xiv), (xvi), (xvii) and (xix) to (xxii) of Class 43.1, or

**38 (1) La division 1104(17)a)(ii)(A) du même règlement est remplacée par ce qui suit :**

**(A)** soit à l'un des sous-alinéas d)(vii) à (ix), (xi), (xiii), (xiv), (xvi), (xvii) et (xix) à (xxii) de la catégorie 43.1,

**(2) Subsection (1) applies to property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.**

**39 Section 1106 of the Regulations is amended by adding the following after subsection (1):**

## COVID-19 — Application for a Certificate of Completion

**(1.1)** In respect of applications filed with the Minister of Canadian Heritage in respect of film or video productions for which the labour expenditure of the corporation in respect of the production for the taxation years ending in 2020 or 2021 was greater than nil, the definition *application for a certificate of completion* in subsection (1) is to be read as follows:

***application for a certificate of completion***, in respect of a film or video production, means an application by a prescribed taxable Canadian corporation in respect of the production, filed with the Minister of Canadian Heritage before the day (in this Division referred to as "the production's application deadline") that is the later of

**(a)** the day that is 24 months after the end of the corporation's taxation year in which the production's principal photography began,

**(b)** the day that is 18 months after the day referred to in paragraph (a), if the corporation has filed, with the Canada Revenue Agency, and provided to the Minister of Canadian Heritage a copy of, a waiver described in subparagraph 152(4)(a)(ii) of the Act, within the normal reassessment period for the corporation in respect of the first and second taxation years ending after the production's principal photography began, or

**(c)** the day that is 12 months after the day referred to in paragraph (b), if the corporation has filed, with the Canada Revenue Agency, and provided to the Minister of Canadian Heritage a copy of, a waiver described in subparagraph 152(4)(a)(ii) of the Act, within the normal reassessment period for the corporation in respect of the first, second and third taxation years ending after the production's principal photography began. (*demande de certificat d'achèvement*)

**(2) Le paragraphe (1) s'applique aux biens acquis après le 18 avril 2021 et qui n'ont pas été utilisés ou acquis pour être utilisés avant le 19 avril 2021.**

**39 L'article 1106 du même règlement est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

## COVID-19 — Demande de certificat d'achèvement

**(1.1)** En ce qui concerne les demandes présentées au ministre du Patrimoine canadien relatives aux productions cinématographiques ou magnétoscopiques pour lesquelles la dépense de main-d'œuvre de la société relativement à la production pour les années d'imposition se terminant en 2020 ou 2021 était supérieure à zéro, la définition de *demande de certificat d'achèvement* au paragraphe (1) est réputée avoir le libellé suivant :

***demande de certificat d'achèvement*** Demande relative à une production cinématographique ou magnétoscopique qu'une société canadienne imposable visée présente au ministre du Patrimoine canadien avant le jour (appelé « date limite de demande relative à la production » à la présente section) qui correspond au dernier en date des jours suivants :

**a)** le jour qui suit de 24 mois la fin de l'année d'imposition de la société au cours de laquelle ont débuté les principaux travaux de prise de vue relatifs à la production;

**b)** le jour qui suit de 18 mois le jour visé à l'alinéa a), si la société a présenté à l'Agence du revenu du Canada la renonciation visée au sous-alinéa 152(4)a)(ii) de la Loi — et en a fourni une copie au ministre du Patrimoine canadien — au cours de la période normale de nouvelle cotisation qui lui est applicable pour les première et deuxième années d'imposition se terminant après le début des principaux travaux de prise de vue relatifs à la production;

**c)** le jour qui suit de 12 mois le jour visé à l'alinéa b), si la société a présenté à l'Agence du revenu du Canada la renonciation visée au sous-alinéa 152(4)a)(ii) de la Loi — et en a fourni une copie au ministre du Patrimoine canadien — au cours de la période normale de nouvelle cotisation qui lui est applicable pour les première, deuxième et troisième années d'imposition se terminant après le début des principaux travaux de prise de vue relatifs à la production. (*application for a certificate of completion*)

## COVID-19 — Excluded Production

**(1.2)** The reference to "2-year period" in subparagraph (a)(iv) of the definition *excluded production* in subsection (1) is to be read as a reference to "three-year period" in respect of film or video productions for which the labour expenditure of the corporation in respect of the production for the taxation years ending in 2020 or 2021 was greater than nil.

**40 The Regulations are amended by adding the following after section 3702:**

## Information Returns

**3703** For the purpose of subsection 149.1(14) of the Act, the following is prescribed information for the public information return of a charity in a taxation year:

**(a)** in respect of each grantee organization that received total qualifying disbursements from the charity in excess of $5,000 in the taxation year, the name of the grantee organization;

**(b)** the purpose of each qualifying disbursement made to a grantee organization referred to in paragraph (a) in the taxation year; and

**(c)** the total amount disbursed by the charity to each grantee organization referred to in paragraph (a) in the taxation year.

**41 (1) Section 5202 of the Regulations is amended by adding the following in alphabetical order:**

***qualified zero-emission technology manufacturing activities*** means

**(a)** qualified activities that are

**(i)** performed in connection with the manufacturing or processing of

**(A)** solar energy conversion equipment, including solar thermal collectors, photovoltaic solar arrays and custom supporting structures or frames, but excluding passive solar heating equipment,

## COVID-19 — Production exclue

**(1.2)** La mention de « période de deux ans » au sous-alinéa a)(iv) de la définition de *production exclue* au paragraphe (1) vaut mention de « période de trois ans » relativement aux productions cinématographiques ou magnétoscopiques pour lesquelles la dépense de main-d'œuvre de la société relativement à la production pour les années d'imposition se terminant en 2020 ou 2021 était supérieure à zéro.

**40 Le même règlement est modifié par adjonction, après l'article 3702, de ce qui suit :**

## Déclarations de renseignements

**3703** Pour l'application du paragraphe 149.1(14) de la Loi, les renseignements ci-après sont des renseignements prescrits concernant la déclaration publique de renseignements d'un organisme de bienfaisance pour une année d'imposition :

**a)** à l'égard de chaque organisation donataire qui a reçu un total de versements admissibles d'un organisme de bienfaisance supérieur à 5 000 $ au cours de l'année d'imposition, le nom de l'organisation donataire;

**b)** l'objet de chaque versement admissible fait à une organisation donataire visée à l'alinéa a) pendant l'année d'imposition;

**c)** le montant total versé par l'organisme de bienfaisance à chaque organisation donataire visée à l'alinéa a) pendant l'année d'imposition.

**41 (1) L'article 5202 du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***activités admissibles de fabrication de technologies à zéro émission*** S'entend :

**a)** des activités admissibles qui, à la fois :

**(i)** qui sont exercées dans le cadre de la fabrication ou de la transformation :

**(A)** de matériel de conversion en énergie solaire, y compris les capteurs d'énergie solaire, les batteries solaires photovoltaïques, les structures ou cadres de support sur mesure, à l'exclusion du matériel de chauffage solaire passif,

**(B)** wind energy conversion equipment, including wind turbine towers, nacelles and rotor blades,

**(C)** water energy conversion equipment, including hydroelectric, water current, tidal and wave energy conversion equipment,

**(D)** geothermal energy equipment,

**(E)** equipment for a ground source heat pump system,

**(F)** electrical energy storage equipment used for storage of renewable energy or for providing grid-scale storage or other ancillary services, including battery, compressed air and flywheel storage systems,

**(G)** equipment used to charge, or to dispense hydrogen to, property included in clause (J),

**(H)** equipment used for the production of hydrogen by electrolysis of water,

**(I)** equipment that is a component of property included in clauses (A) to (H), if such equipment is purpose-built or designed exclusively to form an integral part of that property,

**(J)** property that

**(I)** would be a *zero-emission vehicle* (as defined in subsection 248(1) of the Act if that definition were read without reference to its paragraphs (b) and (c)), or

**(II)** is described in subparagraph (a)(i) of Class 56 of Schedule II, and

**(K)** integral components of the powertrain of property included in clause (J), including batteries or fuel cells, and

**(ii)** not the manufacturing or processing of general purpose components or equipment which components or equipment are suitable for integration into property other than property described in subparagraph (i);

**(b)** qualified activities that are performed in connection with production in Canada of

**(i)** hydrogen by electrolysis of water,

**(ii)** *gaseous biofuel* (as defined in subsection 1104(13)),

**(B)** de matériel de conversion de l'énergie éolienne, y compris les tours à éoliennes, les nacelles et les pales de rotor,

**(C)** de matériel de conversion de l'énergie hydraulique, y compris le matériel hydroélectrique, de courant d'eau, de marée et des vagues,

**(D)** de matériel d'énergie géothermique,

**(E)** de matériel pour un système de pompe géothermique,

**(F)** de matériel de stockage de l'énergie électrique utilisé pour le stockage de l'énergie renouvelable ou pour la fourniture de systèmes de stockage à l'échelle du réseau ou d'autres services auxiliaires, y compris les systèmes de stockage par batterie, par l'air comprimé et par volants d'inertie,

**(G)** de matériel servant à la recharge des biens visés à la division (J), ou à la dispense d'hydrogène à ceux-ci,

**(H)** de matériel utilisé pour la production d'hydrogène par électrolyse de l'eau,

**(I)** de matériel constituant un composant de biens visés aux divisions (A) à (H), si celui-ci est conçu à une fin particulière ou exclusivement pour faire partie intégrante de ce bien,

**(J)** de biens qui :

**(I)** soit, seraient des *véhicules zéro émission* (au sens du paragraphe 248(1) de la Loi, compte non tenu des alinéas b) et c) de cette définition),

**(II)** soit, sont visés au sous-alinéa a)(i) de la catégorie 56 de l'annexe II,

**(K)** de composants essentiels du groupe motopropulseur de biens visés à la division (J), y compris les batteries ou les piles à combustible,

**(ii)** qui ne sont pas la fabrication ou le traitement de composantes ou de matériel de nature générale dont les composants ou le matériel sont adaptés pour l'intégration aux biens, sauf ceux visés au sous-alinéa (i);

**b)** des activités admissibles qui sont exercées dans le cadre de la production au Canada, selon le cas :

**(i)** d'hydrogène par électrolyse de l'eau,

**(iii)** *liquid biofuel* (as defined in subsection 1104(13)), and

**(iv)** *solid biofuel* (as defined in subsection 1104(13)); and

**(c)** the conversion of a vehicle, performed in Canada, into a property described in clause (a)(i)(J); (*activités admissibles de fabrication de technologies à zéro émission*)

***ZETM cost of capital***, of a corporation for a taxation year, means the portion of the cost of capital of the corporation for the year that reflects the extent to which each property included in the calculation of the cost of capital was used directly in qualified zero-emission technology manufacturing activities of the corporation during the year; (*coût en capital de FTZE*)

***ZETM cost of labour***, of a corporation for a taxation year, means the portion of the cost of labour of the corporation for that year that reflects the extent to which

**(a)** the salaries and wages included in the calculation of the cost of labour were paid or payable to persons for the portion of their time that they were directly engaged in qualified zero-emission technology manufacturing activities of the corporation during the year, and

**(b)** the other amounts included in the calculation of the cost of labour were paid or payable to persons for the performance of functions that would be directly related to qualified zero-emission technology manufacturing activities of the corporation during the year if those persons were employees of the corporation; (*coût en main-d'œuvre de FTZE*)

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**42 (1) The portion of section 5204 of the Regulations before the definition *cost of capital* is replaced by the following:**

**5204** If a corporation is a member of a partnership at any time in a taxation year of the corporation, the following definitions apply:

**(2) Section 5204 of the Regulations is amended by adding the following in alphabetical order:**

**(ii)** de *biocarburants gazeux* (au sens paragraphe 1104(13)),

**(iii)** de *biocarburants liquides* (au sens paragraphe 1104(13)),

**(iv)** de *biocarburants solides* (au sens du paragraphe 1104(13));

**c)** de la conversion d'un véhicule, effectuée au Canada, en un bien visé à la division a)(i)(J); (*qualified zero-emission technology manufacturing activities*)

***coût en capital de FTZE*** S'entend du coût en capital d'une société pour une année d'imposition correspondant à la mesure dans laquelle chaque bien inclus dans le calcul du coût en capital a été utilisé directement dans des activités admissibles de fabrication de technologies à zéro émission de la société pendant l'année; (*ZETM cost of capital*)

***coût en main-d'œuvre de FTZE*** S'entend du coût en main-d'œuvre d'une société pour une année d'imposition correspondant à la mesure dans laquelle :

**a)** d'une part, les salaires et traitements inclus dans le calcul du coût en main-d'œuvre ont été payés ou étaient payables à des personnes pour le temps où elles se livraient directement à des activités admissibles de fabrication de technologies à zéro émission de la société pendant l'année;

**b)** d'autre part, les autres montants inclus dans le calcul du coût en main-d'œuvre ont été payés ou étaient payables à des personnes pour l'exécution de fonctions qui seraient directement reliées aux activités admissibles de fabrication de technologies à zéro émission de la société pendant l'année si ces personnes étaient des employés de la société; (*ZETM cost of labour*)

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**42 (1) Le passage de l'article 5204 du même règlement précédant la définition de *coût brut* est remplacé par ce qui suit :**

**5204** Lorsqu'une société fait partie d'une société de personnes à un moment quelconque d'une année d'imposition de la société, les définitions suivantes s'appliquent :

**(2) L'article 5204 du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***ZETM cost of capital***, of the corporation for the year, means the portion of the cost of capital of the corporation for that year that reflects the extent to which each property included in the calculation of the cost of capital was used directly in qualified zero-emission technology manufacturing activities

**(a)** of the corporation during the year, or

**(b)** of the partnership during its fiscal period coinciding with or ending in the year, as the case may be; (*coût en capital de FTZE*)

***ZETM cost of labour***, of the corporation for the year, means the portion of the cost of labour of the corporation for that year that reflects the extent to which

**(a)** the salaries and wages included in the calculation of the cost of labour were paid or payable to persons for the portion of their time that they were directly engaged in qualified zero-emission technology manufacturing activities

**(i)** of the corporation during the year, or

**(ii)** of the partnership during its fiscal period coinciding with or ending in the year, and

**(b)** the other amounts included in the calculation of the cost of labour were paid or payable to persons for the performance of functions that would be directly related to qualified zero-emission technology manufacturing activities of the corporation during the year, or of the partnership during its fiscal period coinciding with or ending in the year, if those persons were employees of the corporation or the partnership, as the case may be; (*coût en main-d'œuvre de FTZE*)

***coût en capital de FTZE*** S'entend du coût en capital de la société pour l'année qui correspond à la mesure dans laquelle chaque bien inclus dans le calcul du coût en capital est utilisé directement dans des activités admissibles de fabrication de technologies à zéro émission, selon le cas :

**a)** de la société pendant l'année,

**b)** de la société de personnes pendant son exercice coïncidant avec l'année ou se terminant au cours de celle-ci; (*ZETM cost of capital*)

***coût en main-d'œuvre de FTZE*** S'entend du coût en main-d'œuvre de la société pour l'année qui correspond à la mesure dans laquelle :

**a)** les salaires et traitements inclus dans le calcul du coût en main-d'œuvre ont été payés ou étaient payables à des personnes pour le temps où elles se livraient directement à des activités admissibles de fabrication de technologies à zéro émission, selon le cas :

**(i)** de la société pendant l'année,

**(ii)** de la société de personnes pendant son exercice coïncidant avec l'année ou se terminant au cours de celle-ci,

**b)** les autres sommes incluses dans le calcul du coût en main-d'œuvre ont été payées ou étaient payables à des personnes pour l'exécution de fonctions qui seraient directement reliées aux activités admissibles de fabrication de technologies à zéro émission de la société pendant l'année, ou de la société de personnes pendant son exercice coïncidant avec l'année ou se terminant au cours de celle-ci, si ces personnes étaient des employés de la société ou de la société de personnes; (*ZETM cost of labour*)

**(3) Subsections (1) and (2) are deemed to have come into force on January 1, 2022.**

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2022.**

**43 Section 9300 of the Regulations is amended by adding the following after subsection (1):**

**43 L'article 9300 du même règlement est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**(1.1)** The references to "24 months" in paragraphs 9300(1)(a) and (b) are to be read as references to "36 months" in respect of film or video productions for which the Canadian labour expenditure of the corporation in respect of the production for the taxation years ending in 2020 or 2021 was greater than nil.

**(1.1)** Les mentions de « 24 mois » aux alinéas 9300(1)a) et b) valent mention de « 36 mois » relativement aux productions cinématographiques ou magnétoscopiques pour lesquelles la dépense de main-d'œuvre au Canada de la société relativement à la production pour les années d'imposition se terminant en 2020 ou 2021 était supérieure à zéro.

**44 (1) Subparagraphs (c)(i) and (ii) of Class 43.1 in Schedule II to the Regulations are replaced by the following:**

**(i)** part of a system that

**(A)** is used by the taxpayer, or by a lessee of the taxpayer, to generate electrical energy, or both electrical and heat energy, using only fuel that is eligible waste fuel, fossil fuel, producer gas, spent pulping liquor or any combination of those fuels,

**(B)** if the system is rated to generate more than three megawatts of electrical energy, meets the following condition on an annual basis:

$$A \geq (2 \times B + C)/(D + E/3412)$$

where

**A** is 11,000 BTU per kilowatt-hour,

**B** is the energy content of fossil fuel other than solution gas (expressed as the higher heating value of the fuel) consumed by the system in BTU,

**C** is the energy content of the eligible waste fuel, producer gas and spent pulping liquor (expressed as the higher heating value of the fuel) consumed by the system in BTU,

**D** is the gross electrical energy produced by the system in kilowatt-hours, and

**E** is the net useful energy in the form of heat exported from the system to a thermal host in BTU, and

**(C)** uses fuel of which no more than 25% of the energy content (expressed as the higher heating value of the fuel) is from fossil fuel, as determined on an annual basis, or

**44 (1) Les sous-alinéas c)(i) et (ii) de la catégorie 43.1 de l'annexe II du même règlement sont remplacés par ce qui suit :**

**(i)** font partie d'un système qui, à la fois :

**(A)** est utilisé par le contribuable, ou par son preneur, pour produire de l'énergie électrique, ou de l'énergie électrique et de l'énergie thermique, uniquement au moyen d'un combustible résiduaire admissible, d'un combustible fossile, d'un gaz de gazéification ou d'une liqueur résiduaire, ou au moyen d'une combinaison de plusieurs de ces combustibles,

**(B)** si le système à une capacité de production de plus de trois mégawatts d'énergie électrique, il remplit la condition suivante sur une base annuelle :

$$A \geq (2 \times B + C)/(D + E/3412)$$

où :

**A** représente 11 000 BTU par kilowattheure,

**B** le contenu énergétique du combustible fossile autre que du gaz dissous (exprimé en fonction de son pouvoir calorifique supérieur) consommé par le système, exprimé en BTU,

**C** le contenu énergétique du combustible résiduaire admissible, du gaz de gazéification et de la liqueur résiduaire (exprimé en fonction de leur pouvoir calorifique supérieur) consommé par le système, exprimé en BTU,

**D** l'énergie électrique brute produite par le système, exprimée en kilowattheures,

**E** l'énergie utile nette sous forme de chaleur exportée du système à un système thermique hôte, exprimée en BTU,

**(C)** utilise un combustible dont au plus 25 % du contenu énergétique (exprimé en fonction de son pouvoir calorifique supérieur) provient de combustibles fossiles, établi sur une base annuelle,

**(2) Clause (d)(i)(B) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(B)** it is not a building, part of a building (other than a solar collector that is not a window and that is integrated into a building), energy equipment that backs up equipment described in subclause (A)(I) or (II) nor equipment that distributes heated or cooled air or water in a building,

**(3) Subparagraph (d)(iv) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(iv)** heat recovery equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of conserving energy, reducing the requirement to acquire energy or extracting heat for sale, by extracting for reuse thermal waste that is generated directly in an industrial process (other than an industrial process that generates or processes electrical energy), including such equipment that consists of heat exchange equipment, compressors used to upgrade low pressure steam, vapour or gas, waste heat boilers and other ancillary equipment such as control panels, fans, instruments or pumps, but not including property that is employed in reusing the recovered heat (such as property that is part of the internal heating or cooling system of a building or electrical generating equipment) or is a building,

**(4) Subparagraph (d)(vii) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(vii)** equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy or heat energy, or both electrical and heat energy, solely from geothermal energy, including such equipment that consists of piping (including above or below ground piping and the cost of completing a well (including the wellhead and production string), or trenching, for the purpose of installing that piping), pumps, heat exchangers, steam separators, electrical generating equipment and ancillary equipment used to collect the geothermal heat, but not including buildings, distribution equipment, equipment described in subclause (i)(A)(II), property otherwise included in

**(2) La division d)(i)(B) de la catégorie 43.1 de l'annexe II du même règlement est remplacée par ce qui suit :**

**(B)** ils ne sont ni des bâtiments, ni des parties de bâtiment (exception faite de capteurs solaires qui ne sont pas des fenêtres et sont intégrés à un bâtiment), ni du matériel énergétique qui sert en cas de panne ou d'entretien du matériel visé aux subdivisions (A)(I) ou (II), ni du matériel de distribution d'air ou d'eau chauffé ou refroidi dans un bâtiment,

**(3) Le sous-alinéa d)(iv) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(iv)** du matériel de récupération de la chaleur que le contribuable ou son preneur utilise principalement pour économiser de l'énergie, pour réduire les besoins d'acquérir de l'énergie ou pour extraire de la chaleur en vue de la vendre, par l'extraction, en vue de leur réutilisation, de déchets thermiques provenant directement d'un procédé industriel (sauf celui qui produit ou transforme de l'énergie électrique), y compris le matériel de ce type qui consiste en matériel d'échange thermique, en compresseurs servant à hausser la pression de la vapeur ou du gaz basse pression, en chaudières de récupération des chaleurs perdues et en matériel auxiliaire comme les panneaux de commande, les ventilateurs, les instruments ou les pompes, mais à l'exclusion des biens qui servent à réutiliser la chaleur récupérée (comme les biens qui font partie d'un système interne de chauffage ou de refroidissement d'un bâtiment ou le matériel générateur d'électricité) et des bâtiments,

**(4) Le sous-alinéa d)(vii) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(vii)** du matériel que le contribuable, ou son preneur, utilise principalement pour produire de l'énergie électrique ou de l'énergie thermique, ou les deux, uniquement à partir d'énergie géothermique, y compris le matériel de ce type qui consiste en tuyauterie (qui comprend la tuyauterie hors-sol ou souterraine et le coût d'achèvement d'un puits — y compris la tête du puits et la colonne de production —, ou de creusement d'une tranchée, en vue de l'installation de cette tuyauterie), en pompes, en échangeurs thermiques, en séparateurs de vapeur, en matériel générateur d'électricité et en matériel auxiliaire servant à recueillir la chaleur géothermique, mais à l'exclusion des bâtiments, du

Class 10 and property that would be included in Class 17 if that Class were read without reference to its paragraph (a.1),

**(5) Subparagraph (d)(ix) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(ix)** equipment that

**(A)** is used by the taxpayer, or by a lessee of the taxpayer, for the sole purpose of generating heat energy, not using any fuel other than eligible waste fuel, fossil fuel, producer gas or a combination of those fuels,

**(B)** uses fuel of which no more than 25% of the energy content (expressed as the higher heating value of the fuel) is from fossil fuel, as determined on an annual basis,

**(C)** may include

**(I)** fuel handling equipment used to upgrade the combustible portion of the fuel,

**(II)** control, feedwater and condensate systems, and

**(III)** other ancillary equipment, and

**(D)** does not include

**(I)** equipment used for the purpose of producing heat energy to operate electrical generating equipment,

**(II)** buildings or other structures,

**(III)** heat rejection equipment (such as condensers and cooling water systems),

**(IV)** fuel storage facilities,

**(V)** other fuel handling equipment, and

**(VI)** property otherwise included in Class 10 or 17,

matériel de distribution, du matériel visé à la subdivision (i)(A)(II), des biens compris par ailleurs dans la catégorie 10 et des biens qui seraient inclus dans la catégorie 17 en l'absence de son alinéa a.1),

**(5) Le sous-alinéa d)(ix) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(ix)** du matériel :

**(A)** que le contribuable, ou son preneur, utilise dans le seul but de produire de l'énergie thermique, et qui utilise seulement un combustible résiduaire admissible, un combustible fossile, un gaz de gazéification ou une combinaison de ces combustibles,

**(B)** qui utilise un combustible dont au plus 25 % du contenu énergétique (exprimé en fonction de son pouvoir calorifique supérieur) provient de combustibles fossiles, établi sur une base annuelle,

**(C)** incluant :

**(I)** le matériel de manutention du combustible qui sert à valoriser la part combustible du combustible,

**(II)** les systèmes de commande, d'eau d'alimentation et de condensat,

**(III)** le matériel auxiliaire,

**(D)** à l'exclusion :

**(I)** du matériel qui sert à produire de l'énergie thermique pour faire fonctionner du matériel générateur d'électricité,

**(II)** des bâtiments et autres constructions,

**(III)** du matériel de rejet de la chaleur (comme les condensateurs et les systèmes d'eau de refroidissement),

**(IV)** des installations d'entreposage du combustible,

**(V)** de tout autre matériel de manutention du combustible,

**(VI)** des biens compris par ailleurs dans les catégories 10 ou 17,

**(6) Subparagraphs (d)(xi) and (xii) of Class 43.1 in Schedule II to the Regulations are replaced by the following:**

**(xi)** equipment all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to produce liquid biofuel, including storage, materials handling and ash-handling equipment and equipment used to remove non-combustibles and contaminants from the fuels produced, but not including

**(A)** equipment used to produce spent pulping liquor,

**(B)** equipment used for the collection or transportation of specified waste material or carbon dioxide,

**(C)** equipment used for the transmission or distribution of liquid biofuel,

**(D)** property that would otherwise be included in Class 17,

**(E)** automotive vehicles, and

**(F)** buildings or other structures,

**(xii)** fixed location fuel cell equipment used by the taxpayer, or by a lessee of the taxpayer, that uses hydrogen generated only from ancillary electrolysis equipment (or, if the fuel cell is reversible, the fuel cell itself) using electricity all or substantially all of which is generated by using kinetic energy of flowing water or wave or tidal energy or by geothermal, photovoltaic, wind energy conversion, or hydroelectric equipment, of the taxpayer or the lessee, and equipment ancillary to the fuel cell equipment other than buildings or other structures, transmission equipment, distribution equipment, auxiliary electrical generating equipment and property otherwise included in Class 10 or 17,

**(6) Les sous-alinéas d)(xi) et (xii) de la catégorie 43.1 de l'annexe II du même règlement sont remplacés par ce qui suit :**

**(xi)** du matériel dont la totalité, ou presque, de l'utilisation par le contribuable, ou par son preneur, est destinée à produire du biocarburant liquide, y compris l'équipement de stockage, le matériel de manutention, le matériel de manutention des cendres et le matériel servant à éliminer les produits non combustibles et les contaminants provenant de combustibles produits, à l'exclusion :

**(A)** du matériel utilisé pour produire de la liqueur résiduaire,

**(B)** du matériel servant à la collecte ou au transport de déchets déterminés ou de dioxyde de carbone,

**(C)** du matériel servant à la transmission ou à la distribution de biocarburants liquides,

**(D)** des biens qui seraient compris par ailleurs dans la catégorie 17,

**(E)** des véhicules automobiles,

**(F)** des bâtiments ou autres structures,

**(xii)** des piles à combustible stationnaires utilisées par le contribuable ou par son preneur, utilisant de l'hydrogène produit uniquement par du matériel auxiliaire d'électrolyse (ou, s'il s'agit d'une pile à combustible réversible, par la pile proprement dite) qui utilise de l'électricité produite en totalité ou en presque totalité par l'énergie cinétique de l'eau en mouvement, l'énergie des vagues ou l'énergie marémotrice, ou par du matériel géothermique, photovoltaïque ou hydro-électrique, ou du matériel de conversion de l'énergie cinétique du vent, du contribuable ou de son preneur, ainsi que du matériel auxiliaire de pile à combustible, à l'exclusion des bâtiments et autres constructions, du matériel de transmission, du matériel de distribution, du matériel auxiliaire générateur d'électricité et des biens compris par ailleurs dans les catégories 10 ou 17,

**(7) Subparagraph (d)(xiv) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(xiv)** property that is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electricity using kinetic energy of flowing water or wave or tidal energy, including support

**(7) Le sous-alinéa d)(xiv) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(xiv)** des biens qui sont utilisés par le contribuable, ou par son preneur, principalement pour produire de l'électricité à partir de l'énergie cinétique de l'eau en mouvement, de l'énergie des vagues ou de

structures, control and conditioning equipment, submerged cables and transmission equipment, but not including buildings, distribution equipment, auxiliary electricity generating equipment, property otherwise included in Class 10 and property that would be included in Class 17 if that class were read without reference to its subparagraph (a.1)(i),

**(8) Subparagraph (d)(xvi) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(xvi)** equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating producer gas (other than producer gas that is to be converted into liquid fuels or chemicals), including related piping (including fans and compressors), air separation equipment, storage equipment, equipment used for drying or shredding feedstock, ash-handling equipment, equipment used to upgrade the producer gas into biomethane and equipment used to remove non-combustibles and contaminants from the producer gas, but not including, buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), equipment used to convert producer gas into liquid fuels or chemicals, and property otherwise included in Class 10 or 17,

**(9) Subparagraph (d)(xvi) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(xvi)** equipment that

**(A)** is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating producer gas (other than producer gas that is to be converted into liquid fuels or chemicals),

**(B)** uses feedstock of which no more than 25% of the energy content (expressed as the higher heating value of the feedstock) is from fossil fuel, as determined on an annual basis,

**(C)** may include

**(I)** related piping (including fans and compressors),

**(II)** air separation equipment,

l'énergie marémotrice, y compris les supports, le matériel de commande et de conditionnement, les câbles sous-marins et le matériel de transmission, mais à l'exclusion des bâtiments, du matériel de distribution, du matériel auxiliaire de production d'électricité, des biens inclus par ailleurs dans la catégorie 10 et des biens qui seraient compris dans la catégorie 17 s'il n'était pas tenu compte de son sous-alinéa a.1)(i),

**(8) Le sous-alinéa d)(xvi) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(xvi)** du matériel que le contribuable, ou son preneur, utilise principalement pour produire du gaz de gazéification (sauf celui qui est converti en carburants liquides ou en produits chimiques), y compris les canalisations connexes (incluant les ventilateurs et les compresseurs), le matériel de séparation d'air, le matériel de stockage, le matériel servant à sécher ou à broyer la matière première, le matériel de manutention des cendres, le matériel servant à valoriser le gaz de gazéification en biométhane ainsi que le matériel servant à éliminer les produits non combustibles et les contaminants du gaz de gazéification, mais à l'exclusion des bâtiments ou d'autres constructions, du matériel de rejet de la chaleur (comme les condensateurs et les systèmes d'eau de refroidissement), et du matériel servant à convertir le gaz de gazéification en carburants liquides ou produits chimiques et des biens compris par ailleurs dans les catégories 10 ou 17,

**(9) Le sous-alinéa d)(xvi) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(xvi)** du matériel :

**(A)** que le contribuable, ou son preneur, utilise principalement pour produire du gaz de gazéification (sauf celui qui est converti en carburants liquides ou en produits chimiques),

**(B)** qui utilise une matière première dont au plus 25 % du contenu énergétique (exprimé en fonction de son pouvoir calorifique supérieur) provient de combustibles fossiles, établi sur une base annuelle,

**(C)** incluant :

**(I)** les canalisations connexes (incluant les ventilateurs et les compresseurs),

**(II)** le matériel de séparation d'air,

**(III)** storage equipment,

**(IV)** equipment used for drying or shredding feedstock,

**(V)** ash-handling equipment,

**(VI)** equipment used to upgrade the producer gas into biomethane, and

**(VII)** equipment used to remove non-combustibles and contaminants from the producer gas, and

**(D)** does not include

**(I)** buildings or other structures,

**(II)** heat rejection equipment (such as condensers and cooling water systems),

**(III)** equipment used to convert producer gas into liquid fuels or chemicals, and

**(IV)** property otherwise included in Class 10 or 17,

**(10) Paragraph (d) of Class 43.1 in Schedule II to the Regulations is amended by striking out "or" at the end of subparagraph (xvii) and by adding the following after subparagraph (xviii):**

**(xix)** a pumped hydroelectric energy storage installation all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to store electrical energy including reversing turbines, transmission equipment, dams, reservoirs and related structures, and that meets the condition in either subclause (d)(xviii)(B)(I) or (II) in this Class, but not including

**(A)** property used solely for backup electrical energy, and

**(B)** buildings,

**(xx)** equipment all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to produce solid biofuel, including storage, materials handling and ash-handling equipment, but not including

**(A)** equipment used to make wood chips, hog fuel or black liquor,

**(III)** le matériel de stockage,

**(IV)** le matériel servant à sécher ou à broyer la matière première,

**(V)** le matériel de manutention des cendres,

**(VI)** le matériel servant à valoriser le gaz de gazéification en biométhane,

**(VII)** le matériel servant à éliminer les produits non combustibles et les contaminants du gaz de gazéification,

**(D)** à l'exclusion :

**(I)** des bâtiments ou d'autres constructions,

**(II)** du matériel de rejet de la chaleur (comme les condensateurs et les systèmes d'eau de refroidissement),

**(III)** du matériel servant à convertir le gaz de gazéification en carburants liquides ou produits chimiques,

**(IV)** des biens compris par ailleurs dans les catégories 10 ou 17,

**(10) L'alinéa d) de la catégorie 43.1 de l'annexe II du même règlement est modifié par adjonction, après le sous-alinéa (xviii), de ce qui suit :**

**(xix)** une installation d'accumulation d'énergie hydroélectrique par pompage dont la totalité, ou presque, de l'utilisation par le contribuable, ou par son preneur, est destinée au stockage d'énergie électrique, y compris les turbines réversibles, l'équipement de transmission, les barrages, les réservoirs et les structures connexes, et qui remplit les conditions énoncées aux subdivisions d)(xviii)(B)(I) ou (II) dans la présente catégorie, à l'exclusion :

**(A)** des biens servant exclusivement de source d'énergie électrique d'appoint,

**(B)** des bâtiments,

**(xx)** de l'équipement dont la totalité, ou presque, de son utilisation par le contribuable, ou par son preneur, est destinée à produire du biocarburant solide, y compris le matériel de stockage, le matériel de manutention, le matériel de manutention des cendres, à l'exclusion :

**(B)** property that would otherwise be included in Class 17,

**(C)** automotive vehicles, and

**(D)** buildings and other structures,

**(xxi)** equipment used by the taxpayer, or by a lessee of the taxpayer, to dispense hydrogen for use in automotive equipment powered by hydrogen, including vaporization, compression, cooling and storage equipment, but not including

**(A)** equipment used for the production or transmission of hydrogen,

**(B)** equipment used for the transmission or distribution of electricity,

**(C)** automotive vehicles,

**(D)** auxiliary electrical generating equipment, and

**(E)** buildings and other structures, or

**(xxii)** equipment all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to produce hydrogen through electrolysis of water, including electrolysers, rectifiers and other ancillary electrical equipment, water treatment and conditioning equipment and equipment used for hydrogen compression and storage, but not including

**(A)** equipment used for the transmission or distribution of hydrogen,

**(B)** equipment used for the transmission or distribution of electricity,

**(C)** automotive vehicles,

**(D)** auxiliary electrical generating equipment, and

**(E)** buildings and other structures, and

**(11) Subsections (1), (5) and (9) apply in respect of property of a taxpayer that becomes available for use by the taxpayer after 2024.**

**(A)** du matériel qui sert à fabriquer des copeaux de bois, des combustibles de déchets de bois ou de la liqueur noire,

**(B)** des biens qui seraient compris par ailleurs dans la catégorie 17,

**(C)** des véhicules automobiles,

**(D)** des bâtiments ou d'autres structures,

**(xxi)** de l'équipement que le contribuable, ou son preneur, utilise pour distribuer l'hydrogène en vue d'être utilisé dans le matériel automobile, y compris l'équipement de vaporisation, de compression, de stockage et de refroidissement, à l'exclusion :

**(A)** du matériel utilisé pour la production ou la transmission d'hydrogène,

**(B)** du matériel utilisé pour la transmission ou la distribution d'électricité,

**(C)** des véhicules automobiles,

**(D)** du matériel auxiliaire générateur d'électricité,

**(E)** des bâtiments ou d'autres structures,

**(xxii)** de l'équipement dont la totalité, ou presque, de son utilisation par le contribuable, ou par son preneur, est destinée à produire de l'hydrogène par électrolyse de l'eau, y compris les électrolyseurs, les redresseurs et d'autres appareils électriques auxiliaires, l'équipement de traitement et de conditionnement de l'eau, et les équipements utilisés pour la compression et le stockage de l'hydrogène, à l'exclusion :

**(A)** du matériel utilisé pour la transmission ou la distribution d'hydrogène,

**(B)** du matériel utilisé pour la transmission ou la distribution d'électricité,

**(C)** des véhicules automobiles,

**(D)** du matériel auxiliaire générateur d'électricité,

**(E)** des bâtiments ou d'autres structures,

**(11) Les paragraphes (1), (5) et (9) s'appliquent relativement au bien d'un contribuable qui devient prêt à être mis en service par le contribuable après 2024.**

**(12) Subsections (2) to (4), (6) to (8) and (10) apply to property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.**

**45 (1) Paragraph (a) of Class 43.2 in Schedule II to the Regulations is replaced by the following:**

**(a)** otherwise than because of paragraph (d) of that Class; or

**(2) Subparagraph (b)(i) of Class 43.2 in Schedule II to the Regulations is repealed.**

**(3) Subsections (1) and (2) apply in respect of property of a taxpayer that becomes available for use by the taxpayer after 2024.**

**(12) Les paragraphes (2) à (4), (6) à (8) et (10) s'appliquent aux biens acquis après le 18 avril 2021 qui n'ont pas été utilisés ou acquis pour être utilisés avant le 19 avril 2021.**

**45 (1) L'alinéa a) de la catégorie 43.2 de l'annexe II du même règlement est remplacé par ce qui suit :**

**a)** autrement que par l'effet de l'alinéa d) de cette catégorie;

**(2) Le sous-alinéa b)(i) de la catégorie 43.2 de l'annexe II du même règlement est abrogé.**

**(3) Les paragraphes (1) et (2) s'appliquent relativement au bien d'un contribuable qui devient prêt à être mis en service par le contribuable après 2024.**

SOR/93-12

## Children's Special Allowance Regulations

**46 (1) The definition *applicant* in section 2 of the *Children's Special Allowance Regulations* is replaced by the following:**

***applicant*** means a department, agency, institution or Indigenous governing body referred to in subsection 3(1) of the Act; (*demandeur*)

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**47 (1) The portion of section 7 of the Regulations before paragraph (a) is replaced by the following:**

**7** The information referred to in section 11 of the Act may be furnished to the government of a province or to an Indigenous governing body, under the terms of an agreement between the Minister and that government or Indigenous governing body, for the purpose of the administration of a social, income assistance or health insurance program of that province or Indigenous governing body that is specified in the agreement, on condition that

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

**48 (1) Paragraphs 9(a) and (b) of the Regulations are replaced by the following:**

DORS/93-12

## Règlement sur les allocations spéciales pour enfants

**46 (1) La définition de *demandeur*, à l'article 2 du *Règlement sur les allocations spéciales pour enfants*, est remplacée par ce qui suit :**

***demandeur*** Ministère, organisme, établissement ou corps dirigeant autochtone visé au paragraphe 3(1) de la Loi. (*applicant*)

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**47 (1) Le passage de l'article 7 du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**7** Les renseignements visés à l'article 11 de la Loi peuvent être fournis au gouvernement d'une province ou à un corps dirigeant autochtone, aux termes d'un accord conclu entre ce gouvernement ou ce corps dirigeant autochtone et le ministre, pour l'application d'un programme social, de sécurité du revenu ou d'assurance-santé de la province ou du corps dirigeant autochtone qui est spécifié dans cet accord, si les conditions suivantes sont respectées :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

**48 (1) Les alinéas 9a) et b) du même règlement sont remplacés par ce qui suit :**

**(a)** the applicant, at the end of the month, provides for the child's care, maintenance, education, training and advancement to a greater extent than any other department, agency, institution, Indigenous governing body or any person; or

**(b)** the applicant is an entity referred to in any of paragraphs 3(1)(a) to (c) of the Act that has applied in respect of a child who

**(i)** was formerly in the care of foster parents or was formerly maintained by an entity referred to in any of paragraphs 3(1)(a) to (c) of the Act, and

**(ii)** has been placed in the permanent or temporary custody of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal, or under the laws of an Indigenous governing body, who has received financial assistance from the applicant for the month in respect of the child's maintenance.

**(2) Subsection (1) is deemed to have come into force on January 1, 2020.**

## Coordinating Amendments

### Bill C-222

**49 If Bill C-222, introduced in the 1st session of the 44th Parliament and entitled *An Act to amend the Income Tax Act (travel expenses deduction for tradespersons)*, receives royal assent before or on the same day as this Act receives royal assent, then, on the day this Act receives royal assent, that Act is deemed never to have come into force and is repealed.**

### Bill C-241

**50 If Bill C-241, introduced in the 1st session of the 44th Parliament and entitled *An Act to amend the Income Tax Act (deduction of travel expenses for tradespersons)*, receives royal assent before or on the same day as this Act receives royal assent, then, on the day this Act receives royal assent, that Act is deemed never to have come into force and is repealed.**

### Bill S-216

**51 If Bill S-216, introduced in the 1st session of the 44th Parliament and entitled *An Act to amend the Income Tax Act (use of resources of a registered charity)*, receives royal assent before or on**

**a)** soit le demandeur est à la fin de ce mois celui qui assure le soin, la subsistance, l'éducation, la formation et le perfectionnement de l'enfant dans une plus large mesure que tout autre ministère, organisme, établissement, corps dirigeant autochtone ou toute personne;

**b)** soit le demandeur est l'une des entités mentionnées à l'un des alinéas 3(1)a) à c) de la Loi et la demande vise un enfant qui, à la fois :

**(i)** avait été confié aux soins de parents nourriciers ou placé à la charge de toute entité mentionnée à l'un des alinéas 3(1)a) à c) de la Loi,

**(ii)** a été confié pour ce mois à la garde — permanente ou temporaire — d'un tuteur nommé au titre d'un décret, d'une ordonnance ou d'un jugement d'un tribunal compétent, d'une loi d'un corps dirigeant autochtone ou de toute autre personne physique ainsi nommée exerçant des fonctions similaires à son égard, qui a reçu du demandeur une assistance financière pour assurer pendant le mois la subsistance de l'enfant.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2020.**

## Dispositions de coordination

### Projet de loi C-222

**49 En cas de sanction du projet de loi C-222, déposé au cours de la 1re session de la 44e législature et intitulé *Loi modifiant la Loi de l'impôt sur le revenu (déduction des frais de déplacement pour les gens de métier)*, si la date de sanction est antérieure ou concomitante à celle de la présente loi, cette autre loi est réputée ne pas être entrée en vigueur et est abrogée.**

### Projet de loi C-241

**50 En cas de sanction du projet de loi C-241, déposé au cours de la 1re session de la 44e législature et intitulé *Loi modifiant la Loi de l'impôt sur le revenu (déduction des frais de déplacement pour les gens de métier)*, si la date de sanction est antérieure ou concomitante à celle de la présente loi, cette autre loi est réputée ne pas être entrée en vigueur et est abrogée.**

### Projet de loi S-216

**51 En cas de sanction du projet de loi S-216, déposé au cours de la 1re session de la 44e législature et intitulé *Loi modifiant la Loi de l'impôt sur le revenu (utilisation des ressources d'un***

**the same day as this Act receives royal assent, then, on the day this Act receives royal assent, that Act is deemed never to come into force and is repealed.**

## PART 2

R.S., c. E-15

# Amendments to the Excise Tax Act (GST/HST Measures)

**52 (1) The *Excise Tax Act* is amended by adding the following after section 192:**

### New housing — assignment of agreement

**192.1** If a taxable supply by way of sale of a *single unit residential complex* (as defined in subsection 254(1)) or of a residential condominium unit is made in Canada under an agreement of purchase and sale (in this section referred to as the "purchase agreement") entered into with a builder of the single unit residential complex or of the residential condominium unit and if another supply by way of assignment of the purchase agreement is made by a person (other than the builder) under another agreement, then the following rules apply for the purposes of this Part:

**(a)** the other supply is deemed to be a taxable supply, by way of sale, of real property that is an interest in the single unit residential complex or residential condominium unit; and

**(b)** the consideration for the other supply is deemed to be equal to the amount determined by the formula

**A – B**

where

**A** is the consideration for the other supply as otherwise determined for the purposes of this Part, and

**B** is

**(i)** if the other agreement indicates in writing that a part of the consideration for the other supply is attributable to the reimbursement of a deposit paid under the purchase agreement, the part of the consideration for the other supply, as otherwise determined for the purposes of this Part, that is solely attributable to the reimbursement of the deposit paid under the purchase agreement, and

**(ii)** in any other case, zero.

## PARTIE 2

L.R., ch. E-15

# Modification de la Loi sur la taxe d'accise (mesures relatives à la TPS/TVH)

**52 (1) La *Loi sur la taxe d'accise* est modifiée par adjonction, après l'article 192, de ce qui suit :**

### Habitations neuves — cession du contrat

**192.1** Lorsque la fourniture taxable d'un *immeuble d'habitation à logement unique* (au sens du paragraphe 254(1)) ou d'un logement en copropriété est effectuée par vente au Canada aux termes d'un contrat de vente conclu avec le constructeur de l'immeuble ou du logement et qu'une autre fourniture est effectuée, en vertu d'un autre contrat, par cession du contrat de vente par une personne autre que ce constructeur, les règles ci-après s'appliquent pour l'application de la présente partie :

**a)** l'autre fourniture est réputée être une fourniture taxable, par vente, d'un immeuble qui est un droit sur l'immeuble d'habitation à logement unique ou le logement en copropriété;

**b)** la contrepartie de l'autre fourniture est réputée égale au montant obtenu par la formule suivante :

**A – B**

où :

**A** représente la contrepartie de l'autre fourniture, déterminée par ailleurs pour l'application de la présente partie,

**B** selon le cas :

**(i)** si l'autre contrat indique par écrit qu'une partie de la contrepartie de l'autre fourniture est attribuable au remboursement d'un dépôt versé en vertu du contrat de vente, la partie de la contrepartie de l'autre fourniture, déterminée par ailleurs pour l'application de la présente partie, qui est attribuable uniquement à ce remboursement,

**(ii)** sinon, zéro.

**(2) Subsection (1) applies in respect of any supply by way of assignment of an agreement of purchase and sale if the supply is made after May 6, 2022.**

**53 (1) Clause (a)(ii)(C) of the definition *facility supply* in subsection 259(1) of the Act is replaced by the following:**

**(C)** a nurse practitioner acting in the course of the practise of a nurse practitioner, or

**(2) Clause (a)(iii)(B) of the definition *facility supply* in subsection 259(1) of the Act is replaced by the following:**

**(B)** a physician or nurse practitioner be at, or be on-call to attend at, the public hospital or qualifying facility at all times when the individual is at the public hospital or qualifying facility,

**(3) Subparagraph (a)(ii) of the definition *home medical supply* in subsection 259(1) of the Act is replaced by the following:**

**(ii)** after a physician acting in the course of the practise of medicine, a nurse practitioner acting in the course of the practise of a nurse practitioner or a prescribed person acting in prescribed circumstances has identified or confirmed that it is appropriate for the process to take place at the individual's place of residence or lodging (other than a public hospital or a qualifying facility),

**(4) Paragraph (b) of the definition *home medical supply* in subsection 259(1) of the Act is replaced by the following:**

**(b)** in respect of which the property is made available, or the service is rendered, to the individual at the individual's place of residence or lodging (other than a public hospital or a qualifying facility), on the authorization of a person who is responsible for coordinating the process and under circumstances in which it is reasonable to expect that the person will carry out that responsibility in consultation with, or with ongoing reference to instructions for the process given by, a physician acting in the course of the practise of medicine, a nurse practitioner acting in the course of

**(2) Le paragraphe (1) s'applique relativement aux fournitures par cession d'un contrat de vente effectuées après le 6 mai 2022.**

**53 (1) La division a)(ii)(C) de la définition de *fourniture en établissement*, au paragraphe 259(1) de la même loi, est remplacée par ce qui suit :**

**(C)** un infirmier praticien ou une infirmière praticienne agissant dans l'exercice de la profession d'infirmier praticien ou d'infirmière praticienne,

**(2) La division a)(iii)(B) de la définition de *fourniture en établissement*, au paragraphe 259(1) de la même loi, est remplacée par ce qui suit :**

**(B)** qu'un médecin ou un infirmier praticien ou une infirmière praticienne soit présent, ou de garde, à l'hôpital public ou à l'établissement admissible pendant toute la durée du séjour du particulier,

**(3) Le sous-alinéa a)(ii) de la définition de *fourniture de biens ou services médicaux à domicile*, au paragraphe 259(1) de la même loi, est remplacé par ce qui suit :**

**(ii)** après qu'un médecin agissant dans l'exercice de la médecine, qu'un infirmier praticien ou une infirmière praticienne agissant dans l'exercice de la profession d'infirmier praticien ou d'infirmière praticienne ou qu'une personne visée par règlement agissant dans les circonstances visées par règlement, a établi ou confirmé qu'il y a lieu que le processus soit accompli au lieu de résidence ou d'hébergement (sauf un hôpital public ou un établissement admissible) du particulier;

**(4) L'alinéa b) de la définition de *fourniture de biens ou services médicaux à domicile*, au paragraphe 259(1) de la même loi, est remplacé par ce qui suit :**

**b)** les biens sont mis à la disposition du particulier, ou les services lui sont rendus, à son lieu de résidence ou d'hébergement (sauf un hôpital public ou un établissement admissible), avec l'autorisation de la personne qui est chargée de coordonner le processus et dans des circonstances où il est raisonnable de s'attendre à ce que cette personne s'acquitte de sa charge soit en consultation avec un médecin agissant dans l'exercice de la médecine ou avec une personne qui est un infirmier praticien ou une infirmière praticienne agissant dans l'exercice de la profession d'infirmier praticien ou d'infirmière praticienne ou une personne visée par

the practise of a nurse practitioner or a prescribed person acting in prescribed circumstances,

**(5) Subsections (1) to (4) apply for the purposes of determining a rebate of a person under section 259 of the Act for claim periods ending after April 7, 2022, except that, in determining a rebate of a person for the claim period that includes April 7, 2022, the rebate is to be determined as if those subsections did not apply in respect of**

**(a) an amount of tax that became payable by the person on or before April 7, 2022;**

**(b) an amount that is deemed to have been paid or collected by the person on or before April 7, 2022; and**

**(c) an amount that is required to be added in determining the person's net tax**

**(i) as a result of a branch or division of the person becoming a small supplier division on or before April 7, 2022, or**

**(ii) as a result of the person ceasing to be a registrant on or before April 7, 2022.**

règlement agissant dans les circonstances visées par règlement, soit en suivant de façon continue les instructions concernant le processus données par un tel médecin ou une telle personne;

**(5) Les paragraphes (1) à (4) s'appliquent au calcul du montant remboursable à une personne en vertu de l'article 259 de la même loi pour les périodes de demande se terminant après le 7 avril 2022. Toutefois, en ce qui concerne le calcul du montant remboursable à une personne pour la période de demande qui inclut le 7 avril 2022, le montant du remboursement doit être calculé comme si ces paragraphes ne s'appliquaient pas à :**

**a) tout montant de taxe devenu payable par la personne au plus tard le 7 avril 2022;**

**b) tout montant réputé avoir été payé ou perçu par la personne au plus tard le 7 avril 2022;**

**c) tout montant à ajouter dans le calcul de la taxe nette de la personne du fait, selon le cas :**

**(i) qu'une de ses succursales ou divisions est devenue une division de petit fournisseur au plus tard le 7 avril 2022,**

**(ii) qu'elle a cessé d'être un inscrit au plus tard le 7 avril 2022.**

## PART 3

# Amendments to the Excise Act, 2001, the Excise Act and Other Related Texts

## DIVISION 1

## Excise Act, 2001 and Other Related Texts (Vaping Products)

2002, c. 22

### Excise Act, 2001

**54 (1) The definitions *container*, *excise stamp* and *manufacture* in section 2 of the *Excise Act, 2001* are replaced by the following:**

## PARTIE 3

# Modification de la Loi de 2001 sur l'accise, de la Loi sur l'accise et de textes connexes

## SECTION 1

## Loi de 2001 sur l'accise et textes connexes (produits de vapotage)

2002, ch. 22

### Loi de 2001 sur l'accise

**54 (1) Les définitions de *contenant*, *fabrication* et *timbre d'accise*, à l'article 2 de la *Loi de 2001 sur l'accise*, sont respectivement remplacées par ce qui suit :**

***container***, in respect of a tobacco product, a cannabis product or a vaping product, means a wrapper, package, carton, box, crate, bottle, vial or other container that contains the tobacco product, cannabis product or vaping product. (*contenant*)

***excise stamp*** means a tobacco excise stamp, a cannabis excise stamp or a vaping excise stamp. (*timbre d'accise*)

***manufacture*** includes

**(a)** in respect of a tobacco product, any step in the preparation or working up of raw leaf tobacco into the tobacco product, including packing, stemming, reconstituting, converting or packaging the raw leaf tobacco or tobacco product; and

**(b)** in respect of a vaping product, any step in the production of the vaping product, including inserting a vaping substance into a vaping device or packaging the vaping product. (*fabrication*)

***contenant*** En ce qui concerne un produit du tabac, un produit du cannabis ou un produit de vapotage, enveloppe, paquet, cartouche, boîte, caisse, bouteille, ampoule ou autre contenant le renfermant. La présente définition ne s'applique pas aux articles 258 et 260. (*container*)

***fabrication*** Comprend :

**a)** toute étape de la préparation ou de la façon du tabac en feuilles pour en faire un produit du tabac, notamment l'empaquetage, l'écôtage, la reconstitution, la transformation et l'emballage du tabac en feuilles ou du produit du tabac;

**b)** toute étape de la production d'un produit de vapotage, notamment insérer une substance de vapotage dans un dispositif de vapotage et l'emballage du produit de vapotage. (*manufacture*)

***timbre d'accise*** Timbre d'accise de tabac, timbre d'accise de cannabis ou timbre d'accise de vapotage. (*excise stamp*)

**(2) Paragraph (a) of the definition *packaged* in section 2 of the Act is replaced by the following:**

**(a)** in respect of raw leaf tobacco, a tobacco product, a cannabis product or a vaping product, packaged in a prescribed package; or

**(2) L'alinéa a) de la définition de *emballé*, à l'article 2 de la même loi, est remplacé par ce qui suit :**

**a)** Se dit du tabac en feuilles, des produits du tabac, des produits du cannabis ou des produits de vapotage qui sont présentés dans un emballage réglementaire;

**(3) The definition *stamped* in section 2 of the Act is amended by striking out "and" at the end of paragraph (a), by adding "and" at the end of paragraph (b) and by adding the following after paragraph (b):**

**(c)** in respect of a vaping product, that a vaping excise stamp, and all prescribed information in a prescribed format in respect of the vaping product, are stamped, impressed, printed or marked on, indented into or affixed to the vaping product or its container in the prescribed manner to indicate that duty has been paid on the vaping product. (*estampillé*)

**(3) La définition de *estampillé*, à l'article 2 de la même loi, est modifiée par adjonction, après l'alinéa b), de ce qui suit :**

**c)** se dit d'un produit de vapotage, ou de son contenant, sur lequel un timbre d'accise de vapotage ainsi que les mentions prévues par règlement et de présentation réglementaire relativement au produit de vapotage sont apposés, empreints, imprimés, marqués ou poinçonnés selon les modalités réglementaires pour indiquer que les droits afférents ont été acquittés. (*stamped*)

**(4) Paragraph (b) of the definition *take for use* in section 2 of the Act is replaced by the following:**

**(b)** in respect of a cannabis product or a vaping product, to consume, analyze or destroy the cannabis product or vaping product. (*utilisation pour soi*)

**(4) L'alinéa b) de la définition de *utilisation pour soi*, à l'article 2 de la même loi, est remplacé par ce qui suit :**

**b)** en ce qui concerne un produit du cannabis ou un produit de vapotage, le fait de le consommer, de l'analyser ou de le détruire. (*take for use*)

**(5) Section 2 of the Act is amended by adding the following in alphabetical order:**

***additional vaping duty*** means a duty imposed under section 158.58. (*droit additionnel sur le vapotage*)

***immediate container***, in respect of a vaping substance, means the container that is in direct contact with the vaping substance. It does not include a vaping device. (*contenant immédiat*)

***specified vaping province*** means a prescribed province. (*province déterminée de vapotage*)

***vaping device*** means property (other than prescribed property) that is

**(a)** a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;

**(b)** a vaping pod or another part that may be used with a device referred to in paragraph (a); or

**(c)** a prescribed property. (*dispositif de vapotage*)

***vaping duty*** means a duty imposed under section 158.57. (*droit sur le vapotage*)

***vaping excise stamp*** means a stamp that is issued by the Minister under subsection 158.36(1) and that has not been cancelled under section 158.4. (*timbre d'accise de vapotage*)

***vaping product*** means

**(a)** a vaping substance that is not contained within a vaping device; or

**(b)** a vaping device that contains a vaping substance.

It does not include a cannabis product or a tobacco product. (*produit de vapotage*)

***vaping product drug*** means a vaping product (other than a prescribed vaping product) that is

**(a)** a drug that has been assigned a drug identification number under the *Food and Drug Regulations*; or

**(b)** a prescribed vaping product. (*drogue de produit de vapotage*)

***vaping product licensee*** means a person that holds a vaping product licence issued under section 14. (*titulaire de licence de produits de vapotage*)

**(5) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***contenant immédiat*** S'entend, relativement à une substance de vapotage, du contenant qui est en contact direct avec la substance de vapotage. La présente définition exclut un dispositif de vapotage. (*immediate container*)

***dispositif de vapotage*** Bien, sauf un bien visé par règlement, qui est :

**a)** un dispositif qui produit des émissions sous forme d'aérosol et qui est destiné à être porté à la bouche en vue de l'inhalation de l'aérosol;

**b)** une capsule de vapotage ou une autre pièce pouvant être utilisée avec un dispositif visé à l'alinéa a);

**c)** un bien visé par règlement. (*vaping device*)

***drogue de produit de vapotage*** Un produit de vapotage, sauf un produit de vapotage visé par règlement, qui est :

**a)** une drogue à laquelle une identification numérique a été attribuée en application du *Règlement sur les aliments et drogues*;

**b)** un produit de vapotage visé par règlement. (*vaping product drug*)

***droit additionnel sur le vapotage*** Droit imposé en vertu de l'article 158.58. (*additional vaping duty*)

***droit sur le vapotage*** Droit imposé en vertu de l'article 158.57. (*vaping duty*)

***mention obligatoire pour vapotage*** Mention réglementaire que doit porter, en application de la présente loi, un contenant de produits de vapotage qui n'ont pas à être estampillés en vertu de la présente loi. (*vaping product marking*)

***produit de vapotage***

**a)** Une substance de vapotage qui n'est pas contenue dans un dispositif de vapotage;

**b)** un dispositif de vapotage qui contient une substance de vapotage.

La présente définition exclut un produit du cannabis et un produit du tabac. (*vaping product*)

***province déterminée de vapotage*** Province visée par règlement. (*specified vaping province*)

***vaping product marking*** means prescribed information that is required under this Act to be printed on, or affixed to, a container of vaping products that are not required under this Act to be stamped. (*mention obligatoire pour vapotage*)

***vaping substance*** means

**(a)** a substance or mixture of substances, whether or not it contains nicotine, that is produced to be used, or sold for use, with a vaping device to produce emissions in the form of an aerosol; or

**(b)** a prescribed substance, material or thing.

It does not include a prescribed substance, material or thing. (*substance de vapotage*)

***substance de vapotage*** S'entend :

**a)** de la substance ou du mélange de substances — contenant ou non de la nicotine — destiné à être utilisé avec un dispositif de vapotage pour produire des émissions sous forme d'aérosol;

**b)** d'une matière ou chose visée par règlement.

La présente définition exclut une matière ou chose visée par règlement. (*vaping substance*)

***timbre d'accise de vapotage*** Timbre émis par le ministre en vertu du paragraphe 158.36(1) qui n'a pas été annulé en vertu de l'article 158.4. (*vaping excise stamp*)

***titulaire de licence de produits de vapotage*** Titulaire de la licence de produits de vapotage délivrée en vertu de l'article 14. (*vaping product licensee*)

**55 (1) Subsection 5(1) of the Act is replaced by the following:**

**Constructive possession**

**5 (1)** For the purposes of section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37, subsections 158.38(1) and 158.44(1) and (2), sections 230 and 231 and subsection 238.1(1), if one of two or more persons, with the knowledge and consent of the rest of them, has anything in the person's possession, it is deemed to be in the custody and possession of each and all of them.

**(2) The portion of subsection 5(2) of the Act before paragraph (a) is replaced by the following:**

**Definition of *possession***

**(2)** In this section and in section 25.2, subsections 25.3(1), 30(1), 32(1) and 32.1(1), section 61, subsections 70(1) and 88(1), section 158.04, subsections 158.05(1) and 158.11(1) and (2), section 158.37 and subsections 158.38(1), 158.44(1) and (2) and 238.1(1), ***possession*** means not only having in one's own personal possession but also knowingly

**55 (1) Le paragraphe 5(1) de la même loi est remplacé par ce qui suit :**

**Possession réputée**

**5 (1)** Pour l'application de l'article 25.2, des paragraphes 25.3(1), 30(1), 32(1) et 32.1(1), de l'article 61, des paragraphes 70(1) et 88(1), de l'article 158.04, des paragraphes 158.05(1) et 158.11(1) et (2), de l'article 158.37, des paragraphes 158.38(1) et 158.44(1) et (2), des articles 230 et 231 et du paragraphe 238.1(1), la chose qu'une personne a en sa possession au su et avec le consentement d'autres personnes est réputée être sous la garde et en la possession de toutes ces personnes et de chacune d'elles.

**(2) Le passage du paragraphe 5(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Définition de *possession***

**(2)** Au présent article, à l'article 25.2, aux paragraphes 25.3(1), 30(1), 32(1) et 32.1(1), à l'article 61, aux paragraphes 70(1) et 88(1), à l'article 158.04, aux paragraphes 158.05(1), 158.11(1) et (2), à l'article 158.37 et aux paragraphes 158.38 (1) et 158.44(1) et (2) et 238.1(1), ***possession*** s'entend du fait pour une personne d'avoir une chose en sa possession personnelle ainsi que du fait, pour elle :

**56 Subsection 14(1) of the Act is amended by striking out "or" at the end of paragraph (d), by adding "or" at the end of paragraph (e) and by adding the following after paragraph (e):**

**(f)** a vaping product licence, authorizing the person to manufacture vaping products.

**56 Le paragraphe 14(1) de la même loi est modifié par adjonction, après l'alinéa e), de ce qui suit :**

**f)** une licence de produits de vapotage, autorisant son titulaire à fabriquer des produits de vapotage.

**57 Subsection 19(1) of the Act is replaced by the following:**

**Issuance of licence**

**19 (1)** Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person that is not a retailer of alcohol authorizing the person to possess in their excise warehouse manufactured tobacco, cigars or vaping products that are not stamped or non-duty-paid packaged alcohol.

**58 Paragraph 23(3)(b) of the Act is replaced by the following:**

**(b)** shall, in the case of a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence, require security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations; and

**59 The Act is amended by adding the following after section 158.34:**

**PART 4.2**

# Vaping Products

## Manufacturing and Stamping

**Manufacturing without licence prohibited**

**158.35 (1)** No person shall, other than in accordance with a vaping product licence issued to the person, manufacture vaping products.

**Deemed manufacturer**

**(2)** A person that, whether for consideration or otherwise, provides or offers to provide in their place of business equipment for use in that place by another person in the manufacturing of a vaping product is deemed to be manufacturing the vaping product and the other person is deemed not to be manufacturing the vaping product.

**Exception — manufacture for personal use**

**(3)** An individual who is not a vaping product licensee may manufacture vaping products for their personal use.

**Exception — regulations**

**(4)** Subsection (1) does not apply in respect of a prescribed person that manufactures prescribed vaping

**57 Le paragraphe 19(1) de la même loi est remplacé par ce qui suit :**

**Agrément**

**19 (1)** Sous réserve des règlements, le ministre peut délivrer, sur demande, l'agrément d'exploitant d'entrepôt d'accise à la personne qui n'est pas un vendeur au détail d'alcool l'autorisant à posséder dans son entrepôt d'accise des cigares, des produits de vapotage ou du tabac fabriqué non estampillés ou de l'alcool emballé non acquitté.

**58 L'alinéa 23(3)b) de la même loi est remplacé par ce qui suit :**

**b)** exige, dans le cas d'une licence de spiritueux, d'une licence de tabac, d'une licence de cannabis ou d'une licence de produits de vapotage, que soit fournie sous une forme qu'il juge acceptable une caution d'une somme déterminée conformément aux règlements;

**59 La même loi est modifiée par adjonction, après l'article 158.34, de ce qui suit :**

**PARTIE 4.2**

# Produits de vapotage

## Production et estampillage des produits de vapotage

**Interdiction — production**

**158.35 (1)** Il est interdit, sauf en conformité avec une licence de produits de vapotage, de produire des produits de vapotage.

**Présomption — producteur**

**(2)** La personne qui, en échange d'une contrepartie ou autrement, fournit ou offre de fournir à son lieu d'affaires du matériel qu'une autre personne peut utiliser dans ce lieu pour produire un produit de vapotage est réputée produire le produit de vapotage, et l'autre personne est réputée ne pas le produire.

**Exception — fabrication à des fins personnelles**

**(3)** Il est permis au particulier non titulaire de licence de produits de vapotage de fabriquer des produits de vapotage destinés à son usage personnel.

**Exception — règlement**

**(4)** Le paragraphe (1) ne s'applique pas relativement à la production de produits de vapotage visés par règlement

products in prescribed circumstances or for a prescribed purpose.

**Issuance of vaping excise stamps**

**158.36 (1)** On application in the prescribed form and manner, the Minister may issue, to a vaping product licensee or to a prescribed person that is importing vaping products, stamps the purpose of which is to indicate that vaping duty and, if applicable, additional vaping duty have been paid on a vaping product.

**Quantity of vaping excise stamps**

**(2)** The Minister may limit the quantity of vaping excise stamps that may be issued to a person under subsection (1).

**Security**

**(3)** No person shall be issued a vaping excise stamp unless the person has provided security in a form satisfactory to the Minister and in an amount determined in accordance with the regulations.

**Supply of vaping excise stamps**

**(4)** The Minister may authorize a producer of vaping excise stamps to supply, on the direction of the Minister, vaping excise stamps to a person to which those stamps are issued under subsection (1).

**Design and construction**

**(5)** The design and construction of vaping excise stamps shall be subject to the approval of the Minister.

**Counterfeit vaping excise stamps**

**158.37** No person shall produce, possess, sell or otherwise supply, or offer to supply, without lawful justification or excuse the proof of which lies on the person, anything that is intended to resemble or pass for a vaping excise stamp.

**Unlawful possession of vaping excise stamps**

**158.38 (1)** No person shall possess a vaping excise stamp that has not been affixed to the container of a vaping product in the manner prescribed for the purposes of the definition *stamped* in section 2 to indicate that duty has been paid on the vaping product.

**Exceptions — possession**

**(2)** Subsection (1) does not apply to the possession of a vaping excise stamp by

**(a)** the person that lawfully produced the vaping excise stamp;

par une personne visée par règlement dans des circonstances ou à des fins prévues par règlement.

**Émission de timbres d'accise de vapotage**

**158.36 (1)** Sur demande présentée en la forme et selon les modalités qu'il autorise, le ministre peut émettre, aux titulaires de licence de produits de vapotage et aux personnes visées par règlement qui importent des produits de vapotage, des timbres servant à indiquer que le droit sur le vapotage et, s'il y a lieu, le droit additionnel sur le vapotage ont été acquittés sur un produit de vapotage.

**Nombre de timbres d'accise de vapotage**

**(2)** Le ministre peut limiter la quantité de timbres d'accise de vapotage qui peuvent être émis à une personne en vertu du paragraphe (1).

**Caution**

**(3)** Il n'est émis de timbre d'accise de vapotage qu'aux personnes ayant fourni, sous une forme que le ministre juge acceptable, une caution d'un montant déterminé conformément aux règlements.

**Fourniture de timbres d'accise de vapotage**

**(4)** Le ministre peut autoriser un producteur de timbres d'accise de vapotage à fournir, sur son ordre, des timbres d'accise de vapotage à toute personne à qui ces timbres sont émis en application du paragraphe (1).

**Conception et fabrication**

**(5)** La conception et la fabrication des timbres d'accise de vapotage sont sujettes à l'approbation du ministre.

**Contrefaçon**

**158.37** Nul ne peut, sans justification ou excuse légitime dont la preuve lui incombe, produire, posséder, vendre ou autrement fournir, ou offrir de fournir, une chose qui est destinée à ressembler à un timbre d'accise de vapotage ou à passer pour un tel timbre.

**Possession illégale de timbres d'accise de vapotage**

**158.38 (1)** Nul ne peut avoir en sa possession un timbre d'accise de vapotage qui n'a pas été apposé sur un produit de vapotage emballé selon les modalités réglementaires visées à la définition de *estampillé* à l'article 2 pour indiquer que les droits afférents ont été acquittés.

**Exceptions — possession**

**(2)** Le paragraphe (1) ne s'applique pas dans le cas où le timbre d'accise de vapotage est en la possession des personnes suivantes :

**a)** la personne qui a légalement produit le timbre;

**(b)** the person to which the vaping excise stamp is issued;

**(c)** a sufferance warehouse licensee that possesses the vaping excise stamp in their sufferance warehouse on behalf of the person described under paragraph (b); or

**(d)** a prescribed person.

**Unlawful supply of vaping excise stamps**

**158.39** No person shall dispose of, sell or otherwise supply, or offer to supply, a vaping excise stamp otherwise than in accordance with this Act.

**Cancellation of vaping excise stamps**

**158.4** The Minister may

**(a)** cancel a vaping excise stamp that has been issued; and

**(b)** direct that it be returned or destroyed in a manner specified by the Minister.

**Unlawful packaging or stamping**

**158.41** No person shall package or stamp a vaping product unless

**(a)** the person is a vaping product licensee;

**(b)** the person is the importer or owner of the vaping product and the vaping product has been placed in a sufferance warehouse for the purpose of being stamped; or

**(c)** the person is a prescribed person.

**Unlawful removal**

**158.42 (1)** Except as permitted under section 158.52 or if prescribed circumstances exist, no person shall remove a vaping product from the premises of a vaping product licensee unless it is packaged and

**(a)** if the vaping product is intended for the duty-paid market,

**(i)** it is stamped to indicate that vaping duty has been paid, and

**(ii)** if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid; or

**(b)** if the vaping product is not intended for the duty-paid market, all vaping product markings that are

**b)** la personne à qui le timbre a été émis;

**c)** l'exploitant agréé d'entrepôt d'attente qui possède le timbre dans son entrepôt d'attente pour le compte de la personne mentionnée à l'alinéa b);

**d)** toute personne visée par règlement.

**Fourniture illégale de timbres d'accise de vapotage**

**158.39** Il est interdit de vendre ou de fournir autrement, ou d'offrir de fournir un timbre d'accise de vapotage, ou d'en disposer, autrement que conformément à la présente loi.

**Annulation des timbres d'accise de vapotage**

**158.4** Le ministre peut :

**a)** d'une part, annuler un timbre d'accise de vapotage après son émission;

**b)** d'autre part, ordonner qu'il soit retourné ou détruit selon ses instructions.

**Emballage ou estampillage illégal**

**158.41** Il est interdit d'emballer ou d'estampiller un produit de vapotage sans être :

**a)** un titulaire de licence de produits de vapotage;

**b)** un importateur ou un propriétaire du produit de vapotage, dans le cas où celui-ci a été déposé dans un entrepôt d'attente en vue d'être estampillé;

**c)** une personne visée par règlement.

**Sortie illégale**

**158.42 (1)** Sauf exception prévue à l'article 158.52 ou si les circonstances prévues par règlement s'avèrent, il est interdit de sortir un produit de vapotage des locaux d'un titulaire de licence de vapotage à moins qu'il ne soit emballé et :

**a)** si le produit est destiné au marché des marchandises acquittées :

**(i)** qu'il ne soit estampillé pour indiquer que le droit sur le vapotage a été acquitté,

**(ii)** si un droit additionnel sur le vapotage relativement à une province déterminée de vapotage est imposé sur le produit de vapotage, qu'il ne soit estampillé pour indiquer que ce droit a été acquitté;

required under this Act to be printed on, or affixed to, its container are so printed or affixed.

**Exceptions**

**(2)** Subsection (1) does not apply to a vaping product licensee that removes from their premises a vaping product if it is

**(a)** being removed for

**(i)** delivery to another vaping product licensee,

**(ii)** export, or

**(iii)** delivery to a person for analysis or destruction in accordance with subparagraph 158.66(a)(iv); or

**(b)** a vaping product drug.

**Removal by Minister**

**(3)** Subsection (1) does not apply to the removal of a vaping product for analysis or destruction by the Minister.

**Prohibition — vaping products for sale**

**158.43** No person shall purchase or receive for sale a vaping product

**(a)** from a manufacturer that the person knows, or ought to know, is not a vaping product licensee;

**(b)** that is required under this Act to be packaged and stamped unless it is packaged and stamped in accordance with this Act; or

**(c)** that the person knows, or ought to know, is fraudulently stamped.

**Unlawful possession or sale of vaping products**

**158.44 (1)** Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product unless

**(a)** it is packaged; and

**(b)** it is stamped to indicate that vaping duty has been paid.

**b)** sinon, qu'il ne porte les mentions obligatoires pour vapotage qui doivent être imprimées ou apposées sur son contenant conformément à la présente loi.

**Exceptions**

**(2)** Le paragraphe (1) ne s'applique pas au titulaire de licence de produits de vapotage qui sort des produits de vapotage de ses locaux :

**a)** s'il sort les produits de vapotage :

**(i)** pour livraison à un autre titulaire de licence de produits de vapotage,

**(ii)** pour exportation,

**(iii)** pour livraison à une personne en vue de l'analyse ou de la destruction conformément au sous-alinéa 158.66a)(iv);

**b)** qui sont des drogues de produit de vapotage.

**Sortie par le ministre**

**(3)** Le paragraphe (1) ne s'applique pas à la sortie d'un produit de vapotage en vue de l'analyse ou de la destruction par le ministre.

**Interdiction — produits de vapotage pour vente**

**158.43** Il est interdit à une personne d'acheter ou de recevoir, pour le vendre :

**a)** un produit de vapotage d'un producteur dont elle sait ou devrait savoir qu'il n'est pas un titulaire de licence de produits de vapotage;

**b)** un produit de vapotage qui, en contravention de la présente loi, n'est ni emballé ni estampillé;

**c)** un produit de vapotage dont elle sait ou devrait savoir qu'il est estampillé frauduleusement.

**Interdiction de possession ou vente de produits de vapotage**

**158.44 (1)** Sauf si les circonstances prévues par règlement s'avèrent, il est interdit à quiconque, sauf à un titulaire de licence de produits de vapotage, de vendre, d'offrir en vente, d'acheter ou d'avoir en sa possession un produit de vapotage, ou d'en disposer, à moins que les conditions suivantes ne soient réunies :

**a)** le produit est emballé;

**b)** le produit est estampillé pour indiquer que le droit sur le vapotage a été acquitté.

**Unlawful possession or sale — specified vaping province**

**(2)** Except if prescribed circumstances exist, no person, other than a vaping product licensee, shall dispose of, sell, offer for sale, purchase or have in their possession a vaping product in a specified vaping province unless it is stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

**Province déterminée de vapotage**

**(2)** Sauf si les circonstances prévues par règlement s'avèrent, il est interdit à quiconque, sauf à un titulaire d'une licence de produits de vapotage, de vendre, d'offrir en vente, d'acheter ou d'avoir en sa possession dans une province déterminée de vapotage un produit de vapotage, ou d'en disposer, à moins que le produit ne soit estampillé pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

**Exception — possession of vaping products**

**(3)** Subsections (1) and (2) do not apply to the possession of vaping products

**(a)** in the case of imported vaping products,

**(i)** by an excise warehouse licensee in their excise warehouse,

**(ii)** by a sufferance warehouse licensee in their sufferance warehouse, or

**(iii)** by a customs bonded warehouse licensee in their customs bonded warehouse;

**(b)** by a prescribed person that is transporting the vaping products under prescribed circumstances and conditions;

**(c)** by a person that possesses the vaping products for analysis or destruction in accordance with subparagraph 158.66(a)(iv);

**(d)** by an accredited representative for their personal or official use;

**(e)** by an individual who has imported the vaping products for their personal use in quantities not in excess of prescribed limits;

**(f)** by an individual who has manufactured the vaping products in accordance with subsection 158.35(3); or

**(g)** if the vaping products are vaping product drugs.

**Exception — possession de produits de vapotage**

**(3)** Les paragraphes (1) et (2) ne s'appliquent pas à la possession de produits de vapotage :

**a)** dans le cas de produits de vapotage importés :

**(i)** par un exploitant agréé d'entrepôt d'accise dans son entrepôt,

**(ii)** par un exploitant agréé d'entrepôt d'attente dans son entrepôt,

**(iii)** par un exploitant agréé d'entrepôt de stockage dans son entrepôt;

**b)** par une personne visée par règlement qui les transporte dans les circonstances et selon les modalités prévues par règlement;

**c)** par une personne qui est en possession des produits de vapotage aux fins d'analyse ou de destruction conformément au sous-alinéa 158.66a)(iv);

**d)** par un représentant accrédité pour son usage personnel ou officiel;

**e)** par un particulier qui les a importés pour son usage personnel, en quantités ne dépassant pas les limites fixées par règlement;

**f)** par un particulier qui les a fabriqués conformément au paragraphe 158.35(3);

**g)** qui sont des drogues de produit de vapotage.

**Exception — sale or offer for sale**

**(4)** Subsections (1) and (2) do not apply to the disposal, sale, offering for sale or purchase of a vaping product if

**(a)** the vaping product is an imported vaping product, an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product for export and the vaping product is exported by the licensee in accordance with this Act;

**Exception — disposition, vente, etc.**

**(4)** Les paragraphes (1) et (2) ne s'appliquent pas à la disposition, à la vente, à l'offre en vente ou à l'achat d'un produit de vapotage dans les circonstances suivantes :

**a)** le produit de vapotage est un produit de vapotage importé, un exploitant agréé d'entrepôt d'accise ou un exploitant agréé d'entrepôt de stockage vend ou offre

**(b)** the vaping product is an imported vaping product and an excise warehouse licensee or a customs bonded warehouse licensee sells or offers to sell the vaping product to an accredited representative for their personal or official use; or

**(c)** the vaping product is a vaping product drug.

**b)** le produit de vapotage est un produit de vapotage importé et un exploitant agréé d'entrepôt d'accise ou un exploitant agréé d'entrepôt de stockage vend ou offre en vente le produit de vapotage à un représentant accrédité pour son usage personnel ou officiel;

**c)** le produit de vapotage est une drogue de produit de vapotage.

### Sale or distribution by licensee

**158.45 (1)** Except if prescribed circumstances exist, no vaping product licensee shall distribute a vaping product or sell or offer for sale a vaping product to a person unless

**(a)** it is packaged;

**(b)** it is stamped to indicate that vaping duty has been paid; and

**(c)** if additional vaping duty in respect of a specified vaping province is imposed on the vaping product, it is stamped to indicate that the additional vaping duty has been paid.

### Vente ou distribution par un titulaire de licence

**158.45 (1)** Sauf si les circonstances prévues par règlement s'avèrent, il est interdit au titulaire de licence de produits de vapotage de distribuer, de vendre ou d'offrir en vente à une personne un produit de vapotage :

**a)** qui n'est pas emballé;

**b)** qui n'est pas estampillé de manière à indiquer que le droit sur le vapotage a été acquitté;

**c)** qui, si un droit additionnel sur le vapotage relativement à une province déterminée de vapotage est imposé sur le produit de vapotage, n'est pas estampillé de manière à indiquer que ce droit a été acquitté.

### Exceptions

**(2)** Subsection (1) does not apply to the distribution, sale or offering for sale of a vaping product by a vaping product licensee

**(a)** if the distribution, sale or offering for sale is to

**(i)** another vaping product licensee, or

**(ii)** an accredited representative for their personal or official use;

**(b)** if the vaping product is exported by the vaping product licensee in accordance with this Act; or

**(c)** if the vaping product is a vaping product drug.

### Exceptions

**(2)** Le paragraphe (1) ne s'applique pas à la distribution, à la vente ou à l'offre en vente d'un produit de vapotage par un titulaire de licence de produits de vapotage :

**a)** si la distribution, la vente ou l'offre en vente est à :

**(i)** un titulaire de licence de produits de vapotage,

**(ii)** un représentant accrédité pour son usage personnel ou officiel;

**b)** si le produit de vapotage est exporté par le titulaire de licence de produits de vapotage conformément à la présente loi;

**c)** si le produit de vapotage est une drogue de produit de vapotage.

### Packaging and stamping of vaping products

**158.46** A vaping product licensee that manufactures a vaping product shall not enter the vaping product into the duty-paid market unless

**(a)** the vaping product has been packaged by the licensee;

### Emballage et estampillage des produits de vapotage

**158.46** Le titulaire de licence de produits de vapotage qui produit un produit de vapotage ne peut le mettre sur le marché des marchandises acquittées que si les conditions suivantes sont réunies :

**a)** il a emballé le produit de vapotage;

**(b)** the package has printed on it prescribed information;

**(c)** the vaping product is stamped at the time of packaging to indicate that vaping duty has been paid; and

**(d)** if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped at the time of packaging to indicate that additional vaping duty in respect of the specified vaping province has been paid.

**b)** les mentions prévues par règlement ont été imprimées sur l'emballage;

**c)** le produit de vapotage est estampillé au moment de l'emballage pour indiquer que le droit sur le vapotage a été acquitté;

**d)** si le produit de vapotage est destiné au marché des marchandises acquittées d'une province déterminée de vapotage, le produit de vapotage est estampillé au moment de l'emballage pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

### Packaging and stamping of imported vaping products

**158.47 (1)** Except if prescribed circumstances exist, if a vaping product is imported, it must, before it is released under the *Customs Act* for entry into the duty-paid market,

**(a)** be packaged in a package that has printed on it prescribed information;

**(b)** be stamped to indicate that vaping duty has been paid; and

**(c)** if the vaping product is to be entered in the duty-paid market of a specified vaping province, be stamped to indicate that additional vaping duty in respect of the specified vaping province has been paid.

### Emballage et estampillage — importations

**158.47 (1)** Sauf si les circonstances prévues par règlement s'avèrent, les produits de vapotage qui sont importés doivent, préalablement à leur dédouanement effectué en vertu de la *Loi sur les douanes* en vue de leur entrée dans le marché des marchandises acquittées :

**a)** être présentés dans un emballage portant les mentions prévues par règlement;

**b)** être estampillés pour indiquer que le droit sur le vapotage a été acquitté;

**c)** si les produits de vapotage sont destinés au marché des marchandises acquittées d'une province déterminée de vapotage, être estampillés pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

### Exceptions for certain importations

**(2)** Subsection (1) does not apply to a vaping product

**(a)** that is imported by a vaping product licensee for further manufacturing by the licensee;

**(b)** that a vaping product licensee is authorized to import under subsection 158.53(2); or

**(c)** that is imported by an individual for their personal use in quantities not in excess of prescribed limits.

### Exceptions

**(2)** Le paragraphe (1) ne s'applique pas à ce qui suit :

**a)** les produits de vapotage qui sont importés par un titulaire de licence de produits de vapotage pour une étape ultérieure de fabrication par lui;

**b)** les produits de vapotage qu'un titulaire de licence de produits de vapotage est autorisé à importer en vertu du paragraphe 158.53(2);

**c)** les produits de vapotage qui sont importés par un particulier pour son usage personnel, en quantités ne dépassant pas les limites fixées par règlement.

### Notice — absence of stamping

**158.48 (1)** The absence on a vaping product of stamping that indicates that vaping duty has been paid is notice to all persons that vaping duty has not been paid on the vaping product.

### Avis — absence d'estampille

**158.48 (1)** L'absence d'estampille sur un produit de vapotage indiquant que le droit sur le vapotage a été acquitté constitue un avis que ce droit n'a pas été acquitté relativement à ce produit.

**Notice — specified vaping province**

**(2)** The absence on a vaping product of stamping that indicates that additional vaping duty in respect of a specified vaping province has been paid is notice to all persons that additional vaping duty in respect of the specified vaping province has not been paid on the vaping product.

**Unstamped products to be warehoused**

**158.49** If vaping products manufactured in Canada are not stamped by a vaping product licensee, the vaping product licensee must immediately enter the vaping products into the licensee's excise warehouse.

**Vaping product markings — warehousing**

**158.5 (1)** Subject to subsection (4), no person shall enter into an excise warehouse a container of vaping products unless the container has printed on it, or affixed to it, vaping product markings and other prescribed information.

**Vaping product markings — imports**

**(2)** Subject to subsections (3) and (4), no person shall deliver a container of imported vaping products that does not have printed on it, or affixed to it, vaping product markings and other prescribed information to

**(a)** an accredited representative; or

**(b)** a customs bonded warehouse.

**Delivery of imported stamped vaping products**

**(3)** A container of imported vaping products that were manufactured outside Canada and are stamped may be delivered to a customs bonded warehouse.

**Exception in prescribed circumstances**

**(4)** A container of vaping products does not require vaping product markings to be printed on it, or affixed to it, if prescribed circumstances exist.

**Non-compliant imports**

**158.51 (1)** If an imported vaping product intended for the duty-paid market is not stamped to indicate that vaping duty has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

**Non-compliant imports — specified vaping province**

**(2)** If an imported vaping product intended for the duty-paid market of a specified vaping province is not stamped

**Avis — province déterminée de vapotage**

**(2)** L'absence d'estampille sur un produit de vapotage indiquant que le droit additionnel sur le vapotage a été acquitté relativement à une province déterminée de vapotage constitue un avis que ce droit n'a pas été acquitté relativement à ce produit.

**Entreposage de produits non estampillés**

**158.49** Le titulaire de licence de produits de vapotage qui n'estampille pas des produits de vapotage fabriqués au Canada doit aussitôt les déposer dans son entrepôt d'accise.

**Mentions obligatoires — produits entreposés**

**158.5 (1)** Sous réserve du paragraphe (4), les contenants de produits de vapotage ne peuvent être déposés dans un entrepôt d'accise que si les mentions obligatoires pour vapotage et autres mentions prévues par règlement y ont été imprimées ou apposées.

**Mentions obligatoires — produits importés**

**(2)** Sous réserve des paragraphes (3) et (4), il est interdit à quiconque de livrer des contenants de produits de vapotage importés qui ne portent pas les mentions obligatoires pour vapotage et autres mentions prévues par règlement :

**a)** à un représentant accrédité;

**b)** à un entrepôt de stockage.

**Livraison de produits de vapotage importés estampillés**

**(3)** Les contenants de produits de vapotage importés qui ont été fabriqués à l'étranger et qui sont estampillés peuvent être livrés à un entrepôt de stockage.

**Exception — circonstances visées par règlement**

**(4)** Les mentions obligatoires pour vapotage n'ont pas à être imprimées ou apposées sur les contenants de produits de vapotage si les circonstances prévues par règlement s'avèrent.

**Absence d'estampille ou de mention**

**158.51 (1)** Un produit de vapotage importé destiné au marché des marchandises acquittées qui n'est pas estampillé pour indiquer que le droit sur le vapotage a été acquitté au moment où il est déclaré conformément à la *Loi sur les douanes* est entreposé dans un entrepôt d'attente en vue d'être ainsi estampillé.

**Province déterminée de vapotage**

**(2)** Un produit de vapotage importé destiné au marché des marchandises acquittées d'une province déterminée

to indicate that additional vaping duty in respect of the province has been paid when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being so stamped.

de vapotage qui n'est pas estampillé pour indiquer que le droit additionnel sur le vapotage relativement à la province a été acquitté au moment où il est déclaré conformément à la *Loi sur les douanes* est entreposé dans un entrepôt d'attente en vue d'être ainsi estampillé.

**Exception**

**(3)** Subsections (1) and (2) do not apply in prescribed circumstances.

**Exception**

**(3)** Les paragraphes (1) et (2) ne s'appliquent pas dans les circonstances visées par règlement.

**Vaping products — waste removal**

**158.52 (1)** No person shall remove a vaping product that is waste from the premises of a vaping product licensee other than the licensee or a person authorized by the Minister.

**Sortie de déchets de produits de vapotage**

**158.52 (1)** Nul n'est autorisé à sortir des déchets de produits de vapotage des locaux d'un titulaire de licence de produits de vapotage, à l'exception de ce titulaire ou d'une personne autorisée par le ministre.

**Removal requirements**

**(2)** If a vaping product that is waste is removed from the premises of a vaping product licensee, it shall be dealt with in the manner authorized by the Minister.

**Modalités de sortie**

**(2)** Lorsque des déchets de produits de vapotage sont sortis des locaux d'un titulaire de licence de produits de vapotage, celui-ci s'en occupe de la manière autorisée par le ministre.

**Re-working or destruction of vaping products**

**158.53 (1)** A vaping product licensee may re-work or destroy a vaping product in the manner authorized by the Minister.

**Produit de vapotage façonné de nouveau ou détruit**

**158.53 (1)** Le titulaire de licence de produits de vapotage peut façonner de nouveau ou détruire, de la manière autorisée par le ministre, tout produit de vapotage.

**Importation for re-working or destruction**

**(2)** The Minister may authorize a vaping product licensee to import vaping products manufactured in Canada by the licensee for re-working or destruction by the licensee in accordance with subsection (1).

**Importation pour nouvelle façon ou destruction**

**(2)** Le ministre peut autoriser le titulaire de licence de produits de vapotage à importer, pour nouvelle façon ou destruction par ce dernier conformément au paragraphe (1), des produits de vapotage qu'il a fabriqués au Canada.

## Responsibility for Vaping Products

## Responsabilité en matière de produits de vapotage

**Responsibility — vaping products manufactured in Canada**

**158.54 (1)** Subject to section 158.55, a person is responsible for a vaping product manufactured in Canada at any time if

**(a)** the person is

**(i)** the vaping product licensee that owns the vaping product at that time, or

**(ii)** if the vaping product is not owned at that time by a vaping product licensee, the vaping product licensee that last owned it; or

**(b)** the person is a prescribed person.

**Responsabilité — produit fabriqué au Canada**

**158.54 (1)** Sous réserve de l'article 158.55, une personne est responsable d'un produit de vapotage fabriqué au Canada à un moment donné dans les cas suivants :

**a)** la personne est :

**(i)** le titulaire de licence de produits de vapotage qui est propriétaire du produit de vapotage à ce moment,

**(ii)** si le produit de vapotage n'appartient pas à un titulaire de licence de produits de vapotage à ce moment, le titulaire de licence produits de vapotage qui en a été le dernier propriétaire;

**Responsibility — imported vaping products**

**(2)** Subject to sections 158.55 and 158.56, a person is responsible for an imported vaping product at any time if the person

**(a)** imported the vaping product; or

**(b)** is a prescribed person.

**Person not responsible**

**158.55** A person that is responsible for a vaping product ceases to be responsible for it if

**(a)** it is packaged and stamped and the duty on it is paid;

**(b)** it is consumed or used in the manufacturing of a vaping product that is

**(i)** a vaping product drug, or

**(ii)** a prescribed vaping product;

**(c)** it is taken for use and the duty on it is paid;

**(d)** it is taken for use in accordance with any of subparagraphs 158.66(a)(i) to (iv);

**(e)** it is exported;

**(f)** it is delivered to an accredited representative for their personal or official use;

**(g)** it is lost in prescribed circumstances and the person fulfils any prescribed conditions; or

**(h)** prescribed circumstances exist.

**Imports for personal use**

**158.56** An individual that imports vaping products for their personal use in quantities not in excess of prescribed limits is not responsible for those vaping products.

**b)** la personne est visée par règlement.

**Responsabilité — produit de vapotage importé**

**(2)** Sous réserve des articles 158.55 et 158.56, une personne est responsable à un moment donné d'un produit de vapotage importé si la personne :

**a)** a importé le produit de vapotage;

**b)** est une personne visée par règlement.

**Fin de la responsabilité**

**158.55** La personne qui est responsable d'un produit de vapotage cesse d'en être responsable dans les cas suivants :

**a)** il est emballé et estampillé et les droits afférents sont acquittés;

**b)** il est consommé ou utilisé dans la production d'un produit de vapotage qui est :

**(i)** une drogue de produit de vapotage,

**(ii)** un produit de vapotage visé par règlement;

**c)** il est utilisé pour soi et les droits afférents sont acquittés;

**d)** il est utilisé pour soi conformément à l'un des sous-alinéas 158.66a)(i) à (iv);

**e)** il est exporté;

**f)** il est livré à un représentant accrédité pour son usage personnel ou officiel;

**g)** il est perdu dans les circonstances prévues par règlement, et la personne remplit toute condition prévue par règlement;

**h)** les circonstances prévues par règlement s'avèrent.

**Importation pour usage personnel**

**158.56** Un particulier qui importe pour son usage personnel des produits de vapotage, en quantités ne dépassant pas les limites fixées par règlement, n'est pas responsable de ces produits de vapotage.

# Imposition and Payment of Duty on Vaping Products

### Imposition

**158.57** Duty is imposed on vaping products manufactured in Canada or imported in the amount determined under Schedule 8 and is payable

**(a)** in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

**(b)** in the case of imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

### Imposition — additional vaping duty

**158.58** In addition to the duty imposed under section 158.57, a duty in respect of a specified vaping province is imposed on vaping products manufactured in Canada, or imported, in prescribed circumstances in the amount determined in a prescribed manner and is payable

**(a)** in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are packaged; and

**(b)** in the case of imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

### Application of *Customs Act*

**158.59** The duties imposed under sections 158.57 and 158.58 on imported vaping products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*, and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

### Duty on vaping products taken for use

**158.6 (1)** If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, the following rules apply:

# Imposition et acquittement des droits sur les produits de vapotage

### Imposition

**158.57** Un droit sur les produits de vapotage fabriqués au Canada ou importés est imposé aux taux prévus à l'annexe 8 et est exigible :

**a)** dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a fabriqués et au moment de leur emballage;

**b)** dans le cas de produits de vapotage importés, de l'importateur, du propriétaire ou d'une autre personne qui est tenue, aux termes de la *Loi sur les douanes*, de payer les droits perçus en vertu de l'article 20 du *Tarif des douanes* ou qui serait tenue de payer ces droits sur les produits de vapotage s'ils y étaient assujettis.

### Imposition — droit additionnel sur le vapotage

**158.58** En plus du droit imposé en vertu de l'article 158.57, un droit relativement à une province déterminée de vapotage est imposé, dans les circonstances prévues par règlement, sur les produits de vapotage fabriqués au Canada ou importés au montant établi selon les modalités réglementaires et est exigible :

**a)** dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a fabriqués et au moment de leur emballage;

**b)** dans le cas de produits de vapotage importés, de l'importateur, du propriétaire ou d'une autre personne qui est tenue, aux termes de la *Loi sur les douanes*, de payer les droits perçus en vertu de l'article 20 du *Tarif des douanes* ou qui serait tenue de payer ces droits sur les produits de vapotage s'ils y étaient assujettis.

### Application de la *Loi sur les douanes*

**158.59** Les droits imposés en vertu des articles 158.57 et 158.58 sur les produits de vapotage importés sont payés et perçus aux termes de la *Loi sur les douanes*. Des intérêts et pénalités sont imposés, calculés, payés et perçus aux termes de cette loi comme si les droits étaient des droits perçus en vertu de l'article 20 du *Tarif des douanes*. À ces fins, la *Loi sur les douanes* s'applique avec les adaptations nécessaires.

### Droit sur produits de vapotage utilisés pour soi

**158.6 (1)** Si une personne donnée est responsable de produits de vapotage à un moment donné où ces produits de vapotage sont utilisés pour soi, les règles suivantes s'appliquent :

**(a)** if the vaping products are packaged, they are relieved of the duty imposed under section 158.57; and

**(b)** duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

**Specified vaping province — taken for use**

**(2)** If a particular person is responsible for vaping products at a particular time when the vaping products are taken for use, a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. That duty is in addition to the duty imposed under subsection (1).

**Duty payable**

**(3)** The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

**Duty on unaccounted vaping products**

**158.61 (1)** If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), the following rules apply:

**(a)** if the vaping products are packaged, they are relieved of the duty imposed under section 158.57; and

**(b)** duty is imposed on the vaping products in the amount determined in respect of the vaping products under Schedule 8.

**Specified vaping province — unaccounted vaping products**

**(2)** If a particular person that is responsible at a particular time for vaping products cannot account for the vaping products as being, at the particular time, in the possession of a vaping product licensee or in the possession of another person in accordance with subsection 158.44(3), a duty in respect of a specified vaping province is imposed on the vaping products in prescribed circumstances in the amount determined in prescribed manner. That duty is in addition to the duty imposed under subsection (1).

**a)** si les produits de vapotage sont emballés, ils sont exonérés du droit imposé en vertu de l'article 158.57;

**b)** un droit est imposé sur les produits de vapotage au montant déterminé selon l'annexe 8 relativement à ces produits.

**Province déterminée de vapotage — utilisation pour soi**

**(2)** Si une personne donnée est responsable de produits de vapotage à un moment donné où ces produits de vapotage sont utilisés pour soi, un droit relativement à une province déterminée de vapotage est imposé, dans les circonstances prévues par règlement, sur les produits de vapotage au montant établi selon les modalités réglementaires. Ce droit s'ajoute au droit imposé en vertu du paragraphe (1).

**Droit exigible**

**(3)** Le droit imposé en vertu d'un des paragraphes (1) et (2) est exigible au moment donné visé à ce paragraphe de la personne donnée visée à ce paragraphe.

**Droit sur les produits de vapotage égarés**

**158.61 (1)** Si une personne donnée qui est responsable de produits de vapotage à un moment donné ne peut rendre compte de ces produits comme étant, au moment donné, en la possession d'un titulaire de licence de produits de vapotage, ou en la possession d'une autre personne conformément au paragraphe 158.44(3), les règles suivantes s'appliquent :

**a)** si les produits de vapotage sont emballés, ils sont exonérés du droit imposé en vertu de l'article 158.57;

**b)** un droit est imposé sur les produits de vapotage au montant déterminé selon l'annexe 8 relativement à ces produits.

**Province déterminée de vapotage**

**(2)** Si une personne donnée qui est responsable de produits de vapotage à un moment donné ne peut rendre compte de ces produits de vapotage comme étant, au moment donné, en la possession d'un titulaire de licence de produits de vapotage, ou en la possession d'une autre personne conformément au paragraphe 158.44(3), un droit relativement à une province déterminée de vapotage est imposé, dans les circonstances prévues par règlement, sur ces produits de vapotage au montant établi selon les modalités réglementaires. Ce droit s'ajoute au droit imposé en vertu du paragraphe (1).

**Duty payable**

**(3)** The duty imposed under subsection (1) or (2) is payable at the particular time, and by the particular person, referred to in that subsection.

**Exception**

**(4)** Subsection (1) does not apply in circumstances in which the particular person referred to in that subsection is convicted of an offence under section 218.2.

**Duty relieved — unstamped vaping products**

**158.62 (1)** The duties imposed under sections 158.57 and 158.58 are relieved on a vaping product that is not stamped.

**Vaping products imported for personal use**

**(2)** Subsection (1) does not apply to the importation of vaping products by an individual for their personal use to the extent that the quantity of the products imported exceeds the quantity permitted under Chapter 98 of the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to be imported without the payment of *duties*, as defined in Note 4 to that Chapter.

**Duty relieved — importation by an individual**

**158.63 (1)** The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured in Canada and are stamped.

**Duty relieved — reimportation**

**(2)** The duties imposed under sections 158.57 and 158.58 are relieved on vaping products imported by an individual for their personal use if they were manufactured outside Canada, were previously imported into Canada and are stamped.

**Duty relieved — importation for destruction**

**158.64** The duties imposed under paragraphs 158.57(b) and 158.58(b) are relieved on a stamped vaping product that was manufactured in Canada by a vaping product licensee and that is imported for re-working or destruction in accordance with section 158.53.

**Duty relieved — prescribed circumstances**

**158.65** The duties imposed under section 158.57 or 158.58 are relieved on a vaping product in prescribed circumstances.

**Droit exigible**

**(3)** Le droit imposé en vertu d'un des paragraphes (1) et (2) est exigible au moment donné visé à ce paragraphe de la personne donnée visée à ce paragraphe.

**Exception**

**(4)** Le paragraphe (1) ne s'applique pas dans les circonstances où la personne donnée visée à ce paragraphe est déclarée coupable de l'infraction visée à l'article 218.2.

**Exonération — produits de vapotage**

**158.62 (1)** Sont exonérés des droits imposés en vertu des articles 158.57 et 158.58 les produits de vapotage qui ne sont pas estampillés.

**Produits de vapotage importés pour usage personnel**

**(2)** Le paragraphe (1) ne s'applique pas aux produits de vapotage qu'un particulier importe pour son usage personnel dans la mesure où la quantité de produits importés dépasse celle qu'il lui est permis d'importer en franchise de droits aux termes du chapitre 98 de la liste des dispositions tarifaires de l'annexe du *Tarif des douanes*. Au présent paragraphe, ***droits*** s'entend au sens de la note 4 de ce chapitre.

**Exonération — importation par un particulier**

**158.63 (1)** Les produits de vapotage importés par un particulier pour son usage personnel sont exonérés des droits imposés en vertu des articles 158.57 et 158.58 s'ils ont été fabriqués au Canada et sont estampillés.

**Exonération — réimportation par un particulier**

**(2)** Les produits de vapotage importés par un particulier pour son usage personnel sont exonérés des droits imposés en vertu des articles 158.57 et 158.58 s'ils ont été fabriqués à l'étranger, ont déjà été importés au Canada et sont estampillés.

**Exonération — importation pour destruction**

**158.64** Les produits de vapotage estampillés qui ont été fabriqués au Canada par un titulaire de licence de produits de vapotage et qui sont importés par celui-ci pour nouvelle façon ou destruction conformément à l'article 158.53 sont exonérés des droits imposés en vertu des alinéas 158.57b) et 158.58b).

**Exonération — circonstances prévues par règlement**

**158.65** Les produits de vapotage sont exonérés des droits imposés en vertu des articles 158.57 et 158.58 dans les circonstances prévues par règlement.

**Duty not payable**

**158.66** Duty is not payable on a vaping product

**(a)** that is

**(i)** taken for analysis, or destroyed, by the Minister,

**(ii)** taken for analysis by a vaping product licensee in a manner approved by the Minister,

**(iii)** destroyed by a vaping product licensee in a manner approved by the Minister,

**(iv)** delivered by a vaping product licensee to another person for analysis or destruction by that person in a manner approved by the Minister,

**(v)** a vaping product drug, or

**(vi)** a prescribed vaping product; or

**(b)** in prescribed circumstances.

**Exonération**

**158.66** Les droits ne sont pas exigibles sur un produit de vapotage dans les cas suivants :

**a)** le produit de vapotage est :

**(i)** utilisé à des fins d'analyse, ou détruit, par le ministre,

**(ii)** utilisé à des fins d'analyse par un titulaire de licence de produits de vapotage de la manière approuvée par le ministre,

**(iii)** détruit par un titulaire de licence de produits de vapotage de la manière approuvée par le ministre,

**(iv)** livré par un titulaire de licence de produits de vapotage à une autre personne à des fins d'analyse ou de destruction par celle-ci de la manière approuvée par le ministre,

**(v)** une drogue de produit de vapotage,

**(vi)** un produit de vapotage visé par règlement;

**b)** les circonstances prévues par règlement s'avèrent.

## Excise Warehouses

**Restriction — entering vaping products**

**158.67** No person shall enter into an excise warehouse

**(a)** a vaping product that is stamped; or

**(b)** any other vaping product except in accordance with this Act.

**Prohibition on removal**

**158.68 (1)** Except if prescribed circumstances exist, no person shall remove from an excise warehouse vaping products manufactured in Canada.

**Removal of Canadian manufactured vaping products**

**(2)** Subject to the regulations, a vaping product manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured it only if it is

**(a)** for export by the licensee in accordance with this Act; or

**(b)** for delivery to an accredited representative for their official or personal use.

## Entrepôts d'accise

**Restriction — dépôt dans un entrepôt**

**158.67** Il est interdit de déposer dans un entrepôt d'accise :

**a)** un produit de vapotage qui est estampillé;

**b)** tout autre produit de vapotage, sauf en conformité avec la présente loi.

**Sortie d'entrepôt de produits fabriqués au Canada**

**158.68 (1)** Sauf si les circonstances prévues par règlement s'avèrent, il est interdit de sortir d'un entrepôt d'accise des produits de vapotage fabriqués au Canada.

**Exception — produit de vapotage canadien**

**(2)** Sous réserve des règlements, un produit de vapotage fabriqué au Canada ne peut être sorti de l'entrepôt d'accise du titulaire de licence de produits de vapotage qui l'a fabriqué que s'il est destiné, selon le cas :

**a)** à être exporté par le titulaire de licence conformément à la présente loi;

**b)** à être livré à un représentant accrédité, pour son usage personnel ou officiel.

**Removal from warehouse for re-working or destruction**

**(3)** Subject to the regulations, vaping products manufactured in Canada may be removed from the excise warehouse of the vaping product licensee that manufactured them if they are removed for re-working or destruction by the licensee in accordance with section 158.53.

**Removal of imported vaping products**

**158.69 (1)** Except if prescribed circumstances exist, no person shall remove imported vaping products from an excise warehouse.

**Exception**

**(2)** Subject to the regulations, imported vaping products may be removed from an excise warehouse

**(a)** for delivery to another excise warehouse;

**(b)** for delivery to an accredited representative for their official or personal use; or

**(c)** for export by the excise warehouse licensee in accordance with this Act.

**60 (1) The portion of subsection 159(1) of the Act before paragraph (a) is replaced by the following:**

**Determination of fiscal months**

**159 (1)** The fiscal months of a person other than a cannabis licensee or a vaping product licensee shall be determined in accordance with the following rules:

**(2) Subsection 159(1.01) of the Act is replaced by the following:**

**Fiscal months — cannabis or vaping product licensee**

**(1.01)** For the purposes of this Act, the fiscal months of a cannabis licensee or a vaping product licensee are calendar months.

**61 Section 180 of the Act is replaced by the following:**

**No refund — exportation**

**180** Subject to this Act, the duty paid on any tobacco product, cannabis product, vaping product or alcohol entered into the duty-paid market shall not be refunded on the exportation of the tobacco product, cannabis product, vaping product or alcohol.

**Sortie d'entrepôt pour nouvelle façon ou destruction**

**(3)** Sous réserve des règlements, un produit de vapotage fabriqué au Canada peut être sorti de l'entrepôt d'accise du titulaire de licence de produits de vapotage qui l'a fabriqué en vue d'être façonné de nouveau ou détruit par lui conformément à l'article 158.53.

**Sortie de produits de vapotage importés**

**158.69 (1)** Sauf si les circonstances prévues par règlement s'avèrent, il est interdit de sortir d'un entrepôt d'accise des produits de vapotage importés.

**Exceptions**

**(2)** Sous réserve des règlements, des produits de vapotage importés peuvent être sortis d'un entrepôt d'accise aux fins suivantes :

**a)** leur livraison à un autre entrepôt d'accise;

**b)** leur livraison à un représentant accrédité pour son usage personnel ou officiel;

**c)** leur exportation par l'exploitant agréé d'entrepôt d'accise conformément à la présente loi.

**60 (1) Le passage du paragraphe 159(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Mois d'exercice**

**159 (1)** Les mois d'exercice d'une personne, sauf un titulaire de licence de cannabis ou un titulaire de licence de produits de vapotage, sont déterminés selon les règles suivantes :

**(2) Le paragraphe 159(1.01) de la même loi est remplacé par ce qui suit :**

**Mois d'exercice — titulaire de licence de produits de cannabis ou vapotage**

**(1.01)** Pour l'application de la présente loi, le mois d'exercice d'un titulaire de licence de cannabis ou d'un titulaire d'une licence de produits de vapotage correspond au mois civil.

**61 L'article 180 de la même loi est remplacé par ce qui suit :**

**Exportation — droit non remboursé**

**180** Sous réserve des autres dispositions de la présente loi, les droits payés sur les produits du tabac, les produits du cannabis, les produits de vapotage et l'alcool entrés dans le marché des marchandises acquittées ne sont pas remboursés à l'exportation des produits du tabac, des

**62 The Act is amended by adding the following after section 187.1:**

**Refund of duty — destroyed vaping product**

**187.2** The Minister may refund to a vaping product licensee the duty paid on a vaping product that is re-worked or destroyed by the licensee in accordance with section 158.53 if the licensee applies for the refund within two years after the vaping product is re-worked or destroyed.

**63 (1) Paragraph 206(1)(d) of the Act is replaced by the following:**

**(d)** every person that transports a tobacco product, cannabis product or vaping product that is not stamped or non-duty-paid packaged alcohol.

**(2) Section 206 of the Act is amended by adding the following after subsection (2.01):**

**Keeping records — vaping product licensee**

**(2.02)** Every vaping product licensee shall keep records that will enable the determination of the amount of vaping product manufactured, received, used, packaged, re-worked, sold or disposed of by the licensee.

**64 (1) The portion of section 214 of the Act before paragraph (a) is replaced by the following:**

**Unlawful production, sale, etc.**

**214** Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1 and 158.37 to 158.39 is guilty of an offence and liable

**(2) The portion of section 214 of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:**

**Unlawful production, sale, etc.**

**214** Every person that contravenes any of sections 25, 25.2 to 25.4, 27 and 29, subsection 32.1(1) and sections 60, 62, 158.02, 158.04 to 158.06, 158.08, 158.1, 158.35, 158.37 to 158.39, 158.41 and 158.43 is guilty of an offence and liable

produits du cannabis, des produits de vapotage ou de l'alcool.

**62 La même loi est modifiée par adjonction, après l'article 187.1, de ce qui suit :**

**Remboursement du droit — produit de vapotage détruit**

**187.2** Le ministre peut rembourser à un titulaire de licence de produits de vapotage le droit payé sur un produit de vapotage qui est façonné de nouveau ou détruit par le titulaire conformément à l'article 158.53 si celui-ci en fait la demande dans les deux ans suivant la nouvelle façon ou la destruction du produit.

**63 (1) L'alinéa 206(1)d) de la même loi est remplacé par ce qui suit :**

**d)** les personnes qui transportent des produits du tabac, des produits du cannabis ou des produits de vapotage non estampillés ou de l'alcool emballé non acquitté.

**(2) L'article 206 de la même loi est modifié par adjonction, après le paragraphe (2.01), de ce qui suit :**

**Registres — titulaire de licence de produits de vapotage**

**(2.02)** Tout titulaire de licence de produits de vapotage doit tenir des registres permettant d'établir la quantité de produits de vapotage qu'il produit, reçoit, utilise, emballe, façonne de nouveau ou vend, ou dont il dispose.

**64 (1) Le passage de l'article 214 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Production, vente, etc., illégales**

**214** Quiconque contrevient à l'un des articles 25, 25.2 à 25.4, 27 et 29, au paragraphe 32.1(1) ou à l'un des articles 60, 62, 158.02, 158.04 à 158.06, 158.08, 158.1 et 158.37 à 158.39 commet une infraction passible, sur déclaration de culpabilité :

**(2) Le passage de l'article 214 de la même loi précédant l'alinéa a), édicté par le paragraphe (1), est remplacé par ce qui suit :**

**Production, vente, etc., illégales**

**214** Quiconque contrevient à l'un des articles 25, 25.2 à 25.4, 27 et 29, au paragraphe 32.1(1) ou à l'un des articles 60, 62, 158.02, 158.04 à 158.06, 158.08, 158.1, 158.35, 158.37 à 158.39 et 158.43 commet une infraction passible, sur déclaration de culpabilité :

**65 The Act is amended by adding the following after section 218.1:**

**65 La même loi est modifiée par adjonction, après l'article 218.1, de ce qui suit :**

### Punishment — sections 158.44 and 158.45

**218.2 (1)** Every person that contravenes section 158.44 or 158.45 is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3) or to imprisonment for a term of not more than five years, or to both; or

**(b)** on summary conviction, to a fine of not less than the amount determined under subsection (2) and not more than the lesser of $500,000 and the amount determined under subsection (3) or to imprisonment for a term of not more than 18 months, or to both.

### Peine — articles 158.44 et 158.45

**218.2 (1)** Quiconque contrevient aux articles 158.44 ou 158.45 commet une infraction passible, sur déclaration de culpabilité :

**a)** par mise en accusation, d'une amende au moins égale à la somme déterminée selon le paragraphe (2), sans dépasser la somme déterminée selon le paragraphe (3), et d'un emprisonnement maximal de cinq ans, ou de l'une de ces peines;

**b)** par procédure sommaire, d'une amende au moins égale à la somme déterminée selon le paragraphe (2), sans dépasser 500 000 $ ou, si elle est moins élevée, la somme déterminée selon le paragraphe (3), et d'un emprisonnement maximal de dix-huit mois, ou de l'une de ces peines.

### Minimum amount

**(2)** The amount determined under this subsection for an offence under subsection (1) is the greater of

**(a)** the amount determined by the formula

**(A + B) × 200%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the offence relates, using the rates of duty applicable at the time the offence was committed, and

**B** is

**(i)** if the offence occurred in a specified vaping province, the amount determined for A, and

**(ii)** in any other case, 0, and

**(b)** $1,000 in the case of an indictable offence and $500 in the case of an offence punishable on summary conviction.

### Amende minimale

**(2)** La somme déterminée selon le présent paragraphe pour l'infraction visée au paragraphe (1) correspond au plus élevé des montants suivants :

**a)** la somme obtenue par la formule suivante :

**(A + B) × 200 %**

où :

**A** représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage auxquels l'infraction se rapporte, d'après les taux applicables au moment où l'infraction a été commise;

**B** :

**(i)** si l'infraction est commise dans une province déterminée de vapotage, la valeur de l'élément A,

**(ii)** sinon, zéro;

**b)** 1 000 $, s'il s'agit d'un acte criminel, et 500 $, s'il s'agit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

### Maximum amount

**(3)** The amount determined under this subsection for an offence under subsection (1) is the greater of

**(a)** the amount determined by the formula

**(A + B) × 300%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the offence

### Amende maximale

**(3)** La somme déterminée selon le présent paragraphe pour l'infraction visée au paragraphe (1) correspond au plus élevé des montants suivants :

**a)** la somme obtenue par la formule suivante :

**(A + B) × 300 %**

où :

relates, using the rates of duty applicable at the time the offence was committed, and

**B** is

**(i)** if the offence occurred in a specified vaping province, the amount determined for A, and

**(ii)** in any other case, 0, and

**(b)** $2,000 in the case of an indictable offence and $1,000 in the case of an offence punishable on summary conviction.

**66 Paragraph 230(1)(a) of the Act is replaced by the following:**

**(a)** the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1), 218.2(1) or 231(1); or

**67 Paragraph 231(1)(a) of the Act is replaced by the following:**

**(a)** the commission of an offence under section 214 or subsection 216(1), 218(1), 218.1(1) or 218.2(1); or

**68 Subsection 232(1) of the Act is replaced by the following:**

**Part XII.2 of *Criminal Code* applicable**

**232 (1)** Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under section 214, subsection 216(1), 218(1), 218.1(1) or 218.2(1) or section 230 or 231.

**69 The Act is amended by adding the following after section 233.1:**

**Contravention of section 158.46 or 158.49**

**233.2** Every vaping product licensee that contravenes section 158.46 or 158.49 is liable to a penalty equal to the amount determined by the formula

**(A + B) × 200%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

**B** is

**A** représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage auxquels l'infraction se rapporte, d'après les taux applicables au moment où l'infraction a été commise;

**B** :

**(i)** si l'infraction est commise dans une province déterminée de vapotage, la valeur de l'élément A,

**(ii)** sinon, zéro;

**b)** 2 000 $, s'il s'agit d'un acte criminel, et 1 000 $, s'il s'agit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

**66 L'alinéa 230(1)a) de la même loi est remplacé par ce qui suit :**

**a)** soit de la perpétration d'une infraction prévue à l'article 214 ou aux paragraphes 216(1), 218(1), 218.1(1), 218.2(1) ou 231(1);

**67 L'alinéa 231(1)a) de la même loi est remplacé par ce qui suit :**

**a)** soit de la perpétration d'une infraction prévue à l'article 214 ou aux paragraphes 216(1), 218(1), 218.1(1) ou 218.2(1);

**68 Le paragraphe 232(1) de la même loi est remplacé par ce qui suit :**

**Application de la partie XII.2 du *Code criminel***

**232 (1)** Les articles 462.3 et 462.32 à 462.5 du *Code criminel* s'appliquent, avec les adaptations nécessaires, aux procédures engagées à l'égard des infractions prévues à l'article 214, aux paragraphes 216(1), 218(1), 218.1(1) et 218.2(1) et aux articles 230 et 231.

**69 La même loi est modifiée par adjonction, après l'article 233.1, de ce qui suit :**

**Contravention — articles 158.46 ou 158.49**

**233.2** Le titulaire de licence de produits de vapotage qui contrevient aux articles 158.46 ou 158.49 est passible d'une pénalité égale à la somme obtenue par la formule suivante :

**(A + B) × 200 %**

où :

**A** représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage auxquels la contravention se rapporte, d'après les taux applicables au moment où la contravention a été commise;

**(a)** if the contravention occurred in a specified vaping province, the amount determined for A, and

**(b)** in any other case, 0.

**70 (1) Subsection 234(1) of the Act is replaced by the following:**

**Contravention of certain sections**

**234 (1)** Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5 or 158.67 is liable to a penalty of not more than $25,000.

**(2) Subsection 234(1) of the Act, as enacted by subsection (1), is replaced by the following:**

**Contravention of certain sections**

**234 (1)** Every person that contravenes section 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5, 158.52 or 158.67 is liable to a penalty of not more than $25,000.

**(3) Section 234 of the Act is amended by adding the following after subsection (3):**

**Failure to comply**

**(4)** Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b) is liable to a penalty of not more than $25,000.

**(4) Subsection 234(4) of the Act, as enacted by subsection (3), is replaced by the following:**

**Failure to comply**

**(4)** Every person that fails to return or destroy stamps as directed by the Minister under paragraph 158.4(b), or that fails to re-work or destroy a vaping product in the manner authorized by the Minister under section 158.53, is liable to a penalty of not more than $25,000.

**71 The Act is amended by adding the following after section 234.1:**

**Contravention — sections 158.35 and 158.43 to 158.45**

**234.2** Every person that contravenes section 158.35, that receives for sale vaping products in contravention of section 158.43 or that sells or offers to sell vaping products in contravention of section 158.44 or 158.45 is liable to a penalty equal to the amount determined by the formula

**(A + B) × 200%**

where

**B** :

**a)** si la contravention a lieu dans une province déterminée de vapotage, la valeur de l'élément A,

**b)** sinon, zéro.

**70 (1) Le paragraphe 234(1) de la même loi est remplacé par ce qui suit :**

**Contravention à certains articles**

**234 (1)** Quiconque contrevient aux articles 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5 ou 158.67 est passible d'une pénalité maximale de 25 000 $.

**(2) Le paragraphe 234(1) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**Contravention à certains articles**

**234 (1)** Quiconque contrevient aux articles 38, 40, 49, 61, 62.1, 99, 149, 151, 158.15, 158.5, 158.52 ou 158.67 est passible d'une pénalité maximale de 25 000 $.

**(3) L'article 234 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Défaut de se conformer**

**(4)** Quiconque omet de retourner ou de détruire des timbres selon les instructions du ministre visées à l'alinéa 158.4b) est passible d'une pénalité maximale de 25 000 $.

**(4) Le paragraphe 234(4) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :**

**Défaut de se conformer**

**(4)** Quiconque omet de retourner ou de détruire des timbres selon les instructions du ministre visées à l'alinéa 158.4b), ou omet de façonner de nouveau ou de détruire un produit de vapotage de la manière autorisée par le ministre en vertu de l'article 158.53, est passible d'une pénalité maximale de 25 000 $.

**71 La même loi est modifiée par adjonction, après l'article 234.1, de ce qui suit :**

**Contravention — articles 158.35 et 158.43 à 158.45**

**234.2** Quiconque contrevient à l'article 158.35, reçoit des produits de vapotage pour les vendre en contravention de l'article 158.43 ou vend ou offre en vente des produits de vapotage en contravention des articles 158.44 ou 158.45 est passible d'une pénalité égale à la somme obtenue par la formule suivante :

**(A + B) × 200 %**

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

**B** is

**(a)** if the contravention occurred in a specified vaping province, the amount determined for A, and

**(b)** in any other case, 0.

**A** représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage auxquels la contravention se rapporte, d'après les taux applicables au moment où la contravention a été commise;

**B** :

**a)** si la contravention a lieu dans une province déterminée de vapotage, la valeur de l'élément A,

**b)** sinon, zéro.

**72 Subsection 237(6) of the Act is replaced by the following:**

**72 Le paragraphe 237(6) de la même loi est remplacé par ce qui suit :**

**Diversion of unstamped vaping products**

**(5.1)** Every vaping product licensee is liable to a penalty in respect of a vaping product manufactured in Canada that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.68(2) if the product is not delivered or exported, as the case may be, for that purpose.

**Réaffectation de produits de vapotage non estampillés**

**(5.1)** Le titulaire de licence de produits de vapotage est passible d'une pénalité sur un produit de vapotage fabriqué au Canada qui est sorti de son entrepôt d'accise à une fin visée au paragraphe 158.68(2), mais qui n'est pas livré ou exporté, selon le cas, à cette fin.

**Diversion of imported vaping products**

**(5.2)** Every excise warehouse licensee is liable to a penalty in respect of an imported vaping product that is removed from the excise warehouse of the licensee for a purpose described in subsection 158.69(2) if the product is not delivered or exported, as the case may be, for that purpose.

**Réaffectation de produits de vapotage importés**

**(5.2)** L'exploitant agréé d'entrepôt d'accise est passible d'une pénalité sur un produit de vapotage importé qui est sorti de son entrepôt d'accise à une fin visée au paragraphe 158.69(2), mais qui n'est pas livré ou exporté, selon le cas, à cette fin.

**Amount of penalty for diversion of vaping products**

**(5.3)** The amount of a penalty for each vaping product that is removed from an excise warehouse for a purpose referred to in subsection (5.1) or (5.2) and that is not delivered or exported, as the case may be, for that purpose is equal to the amount determined by the formula

**(A + B) × 200%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is removed from the excise warehouse; and

**B** is

**(a)** if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is removed from the excise warehouse, the amount determined for A, and

**(b)** in any other case, 0.

**Montant de la pénalité — Réaffectation de produits de vapotage**

**(5.3)** Le montant de la pénalité pour chaque produit de vapotage qui est sorti d'un entrepôt d'accise à une fin visée aux paragraphes (5.1) ou (5.2) mais qui n'est pas livré ou exporté, selon le cas, à cette fin est égal à la somme obtenue par la formule suivante :

**(A + B) × 200 %**

où :

**A** représente la somme déterminée selon l'annexe 8 relativement au produit de vapotage, d'après les taux applicables au moment où le produit de vapotage est sorti de son entrepôt d'accise;

**B** :

**a)** si au moins une province est visée par règlement pour l'application de la définition de *province déterminée de vapotage* à l'article 2 au moment où le produit de vapotage est sorti de l'entrepôt d'accise, la valeur de l'élément A,

**b)** sinon, zéro.

**Exception**

**(6)** A licensee that would otherwise be liable to a penalty under this section is not liable if the licensee proves to the satisfaction of the Minister that the alcohol, tobacco product or vaping product that was removed from their excise warehouse or special excise warehouse was returned to that warehouse.

**73 The Act is amended by adding the following after section 238:**

**Penalty in respect of unaccounted vaping products**

**238.01 (1)** Every excise warehouse licensee is liable to a penalty in respect of a vaping product entered into their excise warehouse if the licensee cannot account for the vaping product

**(a)** as being in the warehouse;

**(b)** as having been removed from the warehouse in accordance with this Act; or

**(c)** as having been destroyed by fire while kept in the warehouse.

**Amount of penalty**

**(2)** The amount of a penalty for each vaping product that cannot be accounted for is equal to the amount determined by the formula

**(A + B) × 200%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the vaping product is entered into the excise warehouse; and

**B** is

**(a)** if at least one province is prescribed for the purposes of the definition *specified vaping province* in section 2 at the time the vaping product is entered into the excise warehouse, the amount determined for A, and

**(b)** in any other case, 0.

**74 (1) Paragraph 238.1(1)(a) of the Act is replaced by the following:**

**(a)** the person can demonstrate that the stamps were affixed to tobacco products, cannabis products, vaping products or their containers in the manner prescribed for the purposes of the definition *stamped* in section 2 and that duty, other than special duty, has been paid on the tobacco products, cannabis products or vaping products; or

**Exception**

**(6)** Le titulaire de licence ou d'agrément qui serait par ailleurs passible d'une pénalité prévue au présent article ne l'est pas s'il établit à la satisfaction du ministre que, après avoir été sorti de son entrepôt d'accise ou de son entrepôt d'accise spécial, l'alcool, le produit du tabac ou le produit de vapotage y a été retourné.

**73 La même loi est modifiée par adjonction, après l'article 238, de ce qui suit :**

**Pénalité pour produit de vapotage égaré**

**238.01 (1)** L'exploitant agréé d'entrepôt d'accise est passible d'une pénalité sur un produit de vapotage déposé dans son entrepôt s'il ne peut rendre compte du produit :

**a)** comme se trouvant dans l'entrepôt;

**b)** comme ayant été sorti de l'entrepôt conformément à la présente loi;

**c)** comme ayant été détruit par le feu pendant qu'il se trouvait dans l'entrepôt.

**Montant de la pénalité**

**(2)** Le montant de la pénalité pour chaque produit de vapotage dont il ne peut être rendu compte est égal à la somme obtenue par la formule suivante :

**(A + B) × 200 %**

où :

**A** représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage, d'après les taux applicables au moment où le produit de vapotage est déposé dans l'entrepôt d'accise;

**B** :

**a)** si au moins une province est visée par règlement pour l'application de la définition de *province déterminée de vapotage* à l'article 2 au moment où le produit de vapotage est déposé dans l'entrepôt d'accise, la valeur de l'élément A,

**b)** sinon, zéro.

**74 (1) L'alinéa 238.1(1)a) de la même loi est remplacé par ce qui suit :**

**a)** elle peut démontrer que les timbres ont été apposés sur des produits du tabac, sur des produits du cannabis, sur des produits de vapotage ou sur leur contenant selon les modalités réglementaires visées à la définition de *estampillé* à l'article 2 et que les droits afférents autres que le droit spécial ont été acquittés;

**(2) Subsection 238.1(2) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):**

**(c)** in the case of a vaping excise stamp

**(i)** if the stamp is in respect of a specified vaping province, $10.00, and

**(ii)** in any other case, $5.00.

**75 The portion of section 239 of the Act before paragraph (a) is replaced by the following:**

**Other diversions**

**239** Unless section 237 applies, every person is liable to a penalty equal to 200% of the duty that was imposed on packaged alcohol, a tobacco product, a cannabis product or a vaping product if

**76 Section 264 of the Act is replaced by the following:**

**Certain things not to be returned**

**264** Despite any other provision of this Act, any alcohol, specially denatured alcohol, restricted formulation, raw leaf tobacco, excise stamp, tobacco product, cannabis product or vaping product that is seized under section 260 must not be returned to the person from whom it was seized or any other person unless it was seized in error.

**77 Subsection 266(2) of the Act is amended by striking out "and" at the end of paragraph (d), by adding "and" at the end of paragraph (e) and by adding the following after paragraph (e):**

**(f)** a seized vaping product only to a vaping product licensee.

**78 (1) Paragraph 304(1)(c.1) of the Act is replaced by the following:**

**(c.1)** respecting the types of security that are acceptable for the purposes of subsection 158.03(3) or 158.36(3), and the manner by which the amount of the security is to be determined;

**(2) Paragraph 304(1)(f) of the Act is replaced by the following:**

**(f)** respecting the information to be provided on tobacco products, packaged alcohol, cannabis products and vaping products and on containers of tobacco

**(2) Le paragraphe 238.1(2) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**c)** en ce qui concerne le timbre d'accise de vapotage :

**(i)** dix dollars si le timbre vise une province déterminée de vapotage,

**(ii)** sinon, cinq dollars.

**75 Le passage de l'article 239 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Autres réaffectations**

**239** Sauf en cas d'application de l'article 237, une personne est passible d'une pénalité égale au montant représentant 200 % des droits imposés sur de l'alcool emballé, un produit du tabac, un produit du cannabis ou un produit de vapotage si les conditions suivantes sont réunies :

**76 L'article 264 de la même loi est remplacé par ce qui suit :**

**Pas de restitution**

**264** Malgré les autres dispositions de la présente loi, l'alcool, l'alcool spécialement dénaturé, la préparation assujettie à des restrictions, le tabac en feuilles, les timbres d'accise, les produits du tabac, les produits du cannabis et les produits de vapotage qui sont saisis en vertu de l'article 260 ne sont restitués au saisi ou à une autre personne que s'ils ont été saisis par erreur.

**77 Le paragraphe 266(2) de la même loi est modifié par adjonction, après l'alinéa e), de ce qui suit :**

**f)** des produits de vapotage saisis, mais seulement à un titulaire de licence de produits de vapotage.

**78 (1) L'alinéa 304(1)c.1) de la même loi est remplacé par ce qui suit :**

**c.1)** prévoir les types de cautions qui sont acceptables pour l'application des paragraphes 158.03(3) ou 158.36(3) ainsi que le mode de calcul des cautions;

**(2) L'alinéa 304(1)f) de la même loi est remplacé par ce qui suit :**

**f)** préciser les renseignements à indiquer sur les produits du tabac, l'alcool emballé, les produits du cannabis et les produits de vapotage et sur leurs contenants;

products, packaged alcohol, cannabis products and vaping products;

**(3) Paragraph 304(1)(i) of the Act is replaced by the following:**

**(i)** respecting the entry and removal of tobacco products, alcohol or vaping products from an excise warehouse or a special excise warehouse;

**(4) Paragraph 304(1)(n) of the Act is replaced by the following:**

**(n)** respecting the sale under section 266 of alcohol, tobacco products, raw leaf tobacco, specially denatured alcohol, restricted formulations, cannabis products or vaping products seized under section 260;

**79 The Act is amended by adding the following after section 304.2:**

**Definition of *coordinated vaping duty system***

**304.3 (1)** In this section, ***coordinated vaping duty system*** means the system providing for the payment, collection and remittance of duty imposed under any of section 158.58 and subsections 158.6(2) and 158.61(2) and any provisions relating to duty imposed under those provisions or to refunds in respect of any such duty.

**Coordinated vaping duty system regulations — transition**

**(2)** The Governor in Council may make regulations, in relation to the joining of a province to the coordinated vaping duty system,

**(a)** prescribing transitional measures, including

**(i)** a tax on the inventory of vaping products held by a vaping product licensee or any other person, and

**(ii)** a duty or tax on vaping products that are delivered prior to the province joining that system; and

**(b)** generally to effect the implementation of that system in relation to the province.

**Coordinated vaping duty system regulations — rate variation**

**(3)** The Governor in Council may make regulations

**(3) L'alinéa 304(1)i) de la même loi est remplacé par ce qui suit :**

**i)** régir le dépôt de produits du tabac, d'alcool et de produits de vapotage dans un entrepôt d'accise ou un entrepôt d'accise spécial et leur sortie d'un tel entrepôt;

**(4) L'alinéa 304(1)n) de la même loi est remplacé par ce qui suit :**

**n)** régir la vente, en vertu de l'article 266, d'alcool, de produits du tabac, de tabac en feuilles, d'alcool spécialement dénaturé, de préparations assujetties à des restrictions, de produits du cannabis ou de produits de vapotage saisis en vertu de l'article 260;

**79 La même loi est modifiée par adjonction, après l'article 304.2, de ce qui suit :**

**Définition de *régime coordonné des droits sur le vapotage***

**304.3 (1)** Au présent article, ***régime coordonné des droits sur le vapotage*** s'entend du régime qui prévoit le paiement, la perception et le versement des droits imposés en vertu de l'article 158.58, des paragraphes 158.6(2) ou 158.61(2) ou des dispositions concernant ces droits ou les remboursements relativement à ces droits.

**Règlement — transition**

**(2)** En ce qui concerne le passage d'une province au régime coordonné des droits sur le vapotage, le gouverneur en conseil peut, par règlement :

**a)** prévoir des mesures transitoires, y compris :

**(i)** une taxe sur les stocks de produits de vapotage détenus par un titulaire de licence de produits de vapotage ou toute autre personne,

**(ii)** un droit ou une taxe sur les produits de vapotage livrés avant que la province ne passe à ce régime;

**b)** prendre toute mesure en vue de la transition à ce régime, et de sa mise en œuvre, à l'égard de la province.

**Règlement — variation de taux**

**(3)** Le gouverneur en conseil peut, par règlement :

**(a)** prescribing rules in respect of whether, how and when a change in the rate of duty for a specified vaping province applies (in this section any such change in the rate of duty is referred to as a "rate variation"), including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is imposed or payable and when duty is required to be reported and accounted for;

**(b)** if a manner of determining an amount of duty is to be prescribed in relation to the coordinated vaping duty system,

**(i)** specifying the circumstances or conditions under which a change in the manner applies, and

**(ii)** prescribing transitional measures in respect of a change in the manner, including

**(A)** a tax on the inventory of vaping products held by a vaping product licensee or any other person, and

**(B)** a duty or tax on vaping products that are delivered prior to the change; and

**(c)** prescribing amounts and rates to be used to determine any refund that relates to, or is affected by, the coordinated vaping duty system, excluding amounts that would otherwise be included in determining any such refund, and specifying circumstances under which any such refund shall not be paid or made.

**a)** établir des règles prévoyant le moment à partir duquel s'opère un changement de taux des droits applicables à une province déterminée de vapotage (un tel changement de taux étant appelé au présent article « variation de taux »), ainsi que les modalités d'application d'un tel changement, y compris des règles selon lesquelles l'état d'une chose est réputé, dans des circonstances déterminées et à des fins déterminées, être différent de ce qu'il serait par ailleurs, notamment le moment où les droits sont imposés ou exigibles, et le moment où les droits doivent être déclarés et où il faut en rendre compte;

**b)** si une manière de déterminer un montant de droit doit être établie selon les modalités réglementaires relativement au régime coordonné des droits sur le vapotage :

**(i)** préciser les circonstances et les conditions selon lesquelles un changement à la manière s'applique,

**(ii)** prévoir des mesures transitoires relativement à un changement à la manière, y compris :

**(A)** une taxe sur les stocks de produits de vapotage détenus par un titulaire de licence de produits de vapotage ou toute autre personne,

**(B)** un droit ou une taxe sur les produits de vapotage livrés avant le changement;

**c)** prévoir les montants et les taux devant entrer dans le calcul du montant de tout remboursement relatif au régime coordonné des droits sur le vapotage ou sur lequel celui-ci a une incidence, exclure les montants qui entreraient par ailleurs dans le calcul d'un tel remboursement et préciser les circonstances dans lesquelles un tel remboursement n'est pas versé ou effectué.

### Coordinated vaping duty system regulations — general

**(4)** For the purpose of facilitating the implementation, application, administration and enforcement of the coordinated vaping duty system or a rate variation or the joining of a province to the coordinated vaping duty system, the Governor in Council may make regulations

**(a)** prescribing rules in respect of whether, how and when that system applies and rules in respect of other aspects relating to the application of that system in relation to a specified vaping province, including rules deeming, in specified circumstances and for specified purposes, the status of anything to be different than what it would otherwise be, including when duty is

### Règlement — général

**(4)** Afin de faciliter la mise en œuvre, l'application, l'administration et l'exécution du régime coordonné des droits sur le vapotage ou une variation de taux, ou le passage d'une province à ce régime, le gouverneur en conseil peut, par règlement :

**a)** établir des règles prévoyant le moment à partir duquel ce régime s'applique, ainsi que ses modalités d'application, et des règles liées à d'autres aspects concernant l'application de ce régime relativement à une province déterminée de vapotage, y compris des règles selon lesquelles l'état d'une chose est réputé, dans des circonstances déterminées et à des fins déterminées, être différent de ce qu'il serait par ailleurs,

imposed or payable and when duty is required to be reported and accounted for;

**(b)** prescribing rules related to the movement of vaping products between provinces, including a duty, tax or refund in respect of such movement;

**(c)** providing for refunds relating to the application of that system in relation to a specified vaping province;

**(d)** adapting any provision of this Act or of the regulations made under this Act to the coordinated vaping duty system or modifying any provision of this Act or those regulations to adapt it to the coordinated vaping duty system;

**(e)** defining, for the purposes of this Act or the regulations made under this Act, or any provision of this Act or those regulations, in its application to the coordinated vaping duty system, words or expressions used in this Act or those regulations including words or expressions defined in a provision of this Act or those regulations;

**(f)** providing that a provision of this Act or of the regulations made under this Act, or a part of such a provision, does not apply to the coordinated vaping duty system;

**(g)** prescribing compliance measures, including penalties and anti-avoidance rules; and

**(h)** generally in respect of the application of that system in relation to a province.

notamment le moment où les droits sont imposés ou exigibles, et le moment où les droits doivent être déclarés et où il faut en rendre compte;

**b)** établir des règles relatives au mouvement de produits de vapotage entre les provinces, notamment une taxe, un droit ou un remboursement lié à ce mouvement;

**c)** prévoir des remboursements concernant l'application de ce régime relativement à une province déterminée de vapotage;

**d)** adapter toute disposition de la présente loi ou de règlements pris en application de la présente loi au régime coordonné des droits sur le vapotage ou la modifier en vue de l'adapter à ce régime;

**e)** définir, pour l'application de la présente loi ou des règlements pris en application de la présente loi, ou d'une de leurs dispositions, en son état applicable au nouveau régime coordonné des droits sur le vapotage, des mots ou expressions utilisés dans la présente loi ou ces règlements, y compris ceux définis dans une de leurs dispositions;

**f)** exclure une des dispositions de la présente loi ou des règlements pris en application de la présente loi, ou une partie d'une telle disposition, de l'application du régime coordonné des droits sur le vapotage;

**g)** établir des mesures d'observation, notamment des pénalités et des règles anti-évitement;

**h)** prendre toute autre mesure en vue de l'application de ce régime relativement à une province.

**Conflict**

**(5)** If a regulation made under this Act in respect of the coordinated vaping duty system states that it applies despite any provision of this Act, in the event of a conflict between the regulation and this Act, the regulation prevails to the extent of the conflict.

**Primauté**

**(5)** S'il est précisé, dans un règlement pris sous le régime de la présente loi relativement au régime coordonné des droits sur le vapotage, que ses dispositions s'appliquent malgré les dispositions de la présente loi, les dispositions du règlement l'emportent sur les dispositions incompatibles de la présente loi.

**80 The Act is amended by adding, after Schedule 7, the Schedule 8 set out in Schedule 1 to this Act.**

**80 La même loi est modifiée par adjonction, après l'annexe 7, de l'annexe 8 figurant à l'annexe 1 de la présente loi.**

# Related Amendments

R.S., c. C-46

## Criminal Code

**81 (1) Subparagraph (g)(i) of the definition *offence* in section 183 of the *Criminal Code* is replaced by the following:**

**(i)** section 214 (unlawful production, sale, etc., of tobacco, alcohol, cannabis or vaping products),

**(2) Paragraph (g) of the definition *offence* in section 183 of the Act is amended by adding the following after subparagraph (iii.1):**

**(iii.2)** section 218.2 (unlawful possession, sale, etc., of unstamped vaping products),

R.S., c. E-15

## Excise Tax Act

**82 The definition *excisable goods* in subsection 123(1) of the *Excise Tax Act* is replaced by the following:**

***excisable goods*** means beer or malt liquor (within the meaning assigned by section 4 of the *Excise Act*) and spirits, wine, tobacco products, cannabis products and vaping products (within the meaning assigned by section 2 of the *Excise Act, 2001*); (*produit soumis à l'accise*)

R.S., c. F-8; 1995, c. 17, s. 45(1)

## Federal-Provincial Fiscal Arrangements Act

**83 Subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act* is amended by adding the following in alphabetical order:**

***coordinated vaping product taxation agreement*** means an agreement or arrangement entered into by the Minister on behalf of the Government of Canada under Part III.3, including any amendments or variations to the agreement or arrangement made in accordance with that Part; (*accord de coordination de la taxation des produits de vapotage*)

**84 The Act is amended by adding the following after section 8.82:**

# Modifications connexes

L.R., ch. C-46

## Code criminel

**81 (1) Le sous-alinéa g)(i) de la définition de *infraction*, à l'article 183 du *Code criminel*, est remplacé par ce qui suit :**

**(i)** l'article 214 (production, vente, etc., illégales de tabac, d'alcool, de cannabis ou de produits de vapotage),

**(2) L'alinéa g) de la définition de *infraction*, à l'article 183 de la même loi, est modifié par adjonction, après le sous-alinéa (iii.1), de ce qui suit :**

**(iii.2)** l'article 218.2 (possession, vente, etc., illégales de produits de vapotage non estampillés),

L.R., ch. E-15

## Loi sur la taxe d'accise

**82 La définition de *produit soumis à l'accise*, au paragraphe 123(1) de la *Loi sur la taxe d'accise*, est remplacée par ce qui suit :**

***produit soumis à l'accise*** La bière et la liqueur de malt, au sens de l'article 4 de la *Loi sur l'accise*, ainsi que les spiritueux, le vin, les produits du tabac, les produits du cannabis et les produits de vapotage, au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*excisable goods*)

L.R., ch. F-8; 1995, ch. 17, par. 45(1)

## Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces

**83 Le paragraphe 2(1) de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***accord de coordination de la taxation des produits de vapotage*** Accord ou arrangement conclu par le ministre pour le compte du gouvernement du Canada en vertu de la partie III.3, y compris les modifications à l'accord ou à l'arrangement effectuées en vertu de cette partie. (*coordinated vaping product taxation agreement*)

**84 La même loi est modifiée par adjonction, après l'article 8.82, de ce qui suit :**

**PART III.3**

# Coordinated Vaping Product Taxation Agreements

### Coordinated Vaping Product Taxation Agreement

**8.9 (1)** The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement or arrangement with the government of a province respecting the taxation of vaping products and, without restricting the generality of the foregoing, respecting

**(a)** the collection, administration and enforcement of taxes on vaping products in respect of the province under a single Act of Parliament;

**(b)** the provision to the Government of Canada by the government of the province, or to the government of the province by the Government of Canada, of

**(i)** information acquired in the administration and enforcement of Acts imposing taxes on vaping products and Acts providing for rebates, refunds or reimbursements of taxes on vaping products, paid or payable, or of amounts paid or payable as or on account of the taxation of vaping products, and

**(ii)** other information related to the regulation of vaping and the distribution of vaping products relevant to the system of taxation of vaping products under a single Act of Parliament;

**(c)** the accounting for taxes collected in accordance with the agreement;

**(d)** the implementation of and transition to the system of taxation of vaping products contemplated under the agreement;

**(e)** payments, and the eligibility for payments, by the Government of Canada to the government of the province in respect of the revenues from the system of taxation contemplated under the agreement and to which the province is entitled under the agreement, the time when such payments will be made, and the remittance by the government of the province to the Government of Canada of any overpayments by the Government of Canada or the right of the Government of Canada to set off any overpayments against other amounts payable by the Government of Canada to the government of the province, whether under the

**PARTIE III.3**

# Accords de coordination de la taxation des produits de vapotage

### Accord de coordination de la taxation des produits de vapotage

**8.9 (1)** Avec l'approbation du gouverneur en conseil, le ministre peut conclure, avec le gouvernement d'une province et pour le compte du gouvernement du Canada, un accord ou un arrangement en matière de taxation des produits de vapotage et, notamment, un accord ou un arrangement qui portent sur les points suivants :

**a)** la perception et l'application des taxes sur les produits de vapotage à l'égard de la province en application d'une seule loi fédérale;

**b)** la communication au gouvernement du Canada par le gouvernement provincial, ou inversement, de ce qui suit :

**(i)** les renseignements obtenus lors de l'application et de l'exécution de lois imposant des taxes sur les produits de vapotage et de lois prévoyant le remboursement ou la remise des taxes sur les produits de vapotage payées ou payables, ou des montants payés ou payables au titre des taxes sur les produits de vapotage,

**(ii)** d'autres renseignements liés à la réglementation et à la distribution des produits de vapotage pertinents pour le régime de taxation des produits de vapotage en application d'une seule loi fédérale;

**c)** la façon de rendre compte des taxes perçues en conformité avec l'accord;

**d)** la mise en œuvre du régime de taxation des produits de vapotage prévue par l'accord et le passage à ce régime;

**e)** les versements effectués par le gouvernement du Canada au gouvernement provincial — et auxquels la province a droit aux termes de l'accord — relativement aux recettes provenant du régime de taxation prévu par l'accord, les conditions d'admissibilité à ces versements, le calendrier de paiement et le versement par le gouvernement provincial au gouvernement du Canada des paiements en trop effectués par ce dernier ou le droit du gouvernement du Canada d'appliquer ces paiements en trop en réduction d'autres montants à payer au gouvernement provincial, que ce soit aux

agreement or any other agreement or arrangement or any Act of Parliament;

**(f)** the payment by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, of the taxes on vaping products payable under the system of taxation of vaping products contemplated under the agreement and the accounting for the taxes on vaping products so paid;

**(g)** the compliance by the Government of Canada and its agents and subservient bodies, and by the government of the province and its agents and subservient bodies, with the Act of Parliament under which the system of taxation of vaping products is administered and regulations made under that Act; and

**(h)** other matters that relate to, and that are considered advisable for the purposes of implementing or administering, the system of taxation of vaping products contemplated under the agreement.

termes de l'accord, de tout autre accord ou arrangement ou d'une loi fédérale;

**f)** le paiement par le gouvernement du Canada et ses mandataires et entités subalternes, ainsi que par le gouvernement provincial et ses mandataires et entités subalternes, des taxes sur les produits de vapotage payables dans le cadre du régime de taxation des produits de vapotage visé par l'accord et la façon de rendre compte des taxes ainsi payées;

**g)** l'observation par le gouvernement du Canada et ses mandataires et entités subalternes, ainsi que par le gouvernement provincial et ses mandataires et entités subalternes, de la loi fédérale en vertu de laquelle le régime de taxation des produits de vapotage est appliqué et de ses règlements d'application;

**h)** d'autres questions concernant le régime de taxation des produits de vapotage visé par l'accord et dont l'inclusion est indiquée aux fins de mise en œuvre ou d'application de ce régime.

#### Amending agreements

**(2)** The Minister, with the approval of the Governor in Council, may on behalf of the Government of Canada enter into an agreement with the government of a province amending or varying an agreement or arrangement with the province entered into under subsection (1) or this subsection.

#### Accords modificatifs

**(2)** Avec l'approbation du gouverneur en conseil, le ministre peut conclure, avec le gouvernement d'une province et pour le compte du gouvernement du Canada, un accord modifiant un accord ou un arrangement conclu avec la province aux termes du paragraphe (1) ou du présent paragraphe.

#### Payments

**8.91** If there is a coordinated vaping product taxation agreement with the government of a province, the appropriate minister may pay to the province out of amounts received in a fiscal year under the Act of Parliament referred to in paragraph 8.9(1)(a)

**(a)** amounts determined in accordance with the agreement as provided, and at such times as are specified, in the agreement; and

**(b)** subject to the regulations, advances in respect of the amounts referred to in paragraph (a).

#### Versements

**8.91** Si un accord de coordination de la taxation des produits de vapotage a été conclu avec le gouvernement d'une province, le ministre compétent peut verser à la province, sur les sommes reçues au cours d'un exercice sous la loi fédérale visée à l'alinéa 8.9(1)a) :

**a)** des montants déterminés en conformité avec l'accord et prévus par celui-ci, selon le calendrier prévu par l'accord;

**b)** sous réserve des dispositions réglementaires, des avances sur les montants visés à l'alinéa a).

#### Statutory authority to make payments

**8.92** Despite any other Act, the payments paid under a coordinated vaping product taxation agreement under the authority of section 8.91 may be made without any other or further appropriation or authority.

#### Autorisation d'effectuer des versements

**8.92** Malgré toute autre loi, les versements effectués aux termes d'un accord de coordination de la taxation des produits de vapotage sous le régime de l'article 8.91 peuvent être effectués sans autre affectation de crédits ou autorisation.

**85 (1) Paragraph 40(b) of the Act is replaced by the following:**

**85 (1) L'alinéa 40b) de la même loi est remplacé par ce qui suit :**

**(b)** respecting the calculation and payment to a province of advances on account of any amount that may become payable to the province under this Act, an administration agreement, a reciprocal taxation agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement and the adjustment, by way of reduction or set off, of other payments to the province because of those advances;

**(2) Paragraph 40(d) of the Act is replaced by the following:**

**(d)** prescribing the time and manner of making any payment under this Act, an administration agreement, a sales tax harmonization agreement, a coordinated cannabis taxation agreement or a coordinated vaping product taxation agreement;

**b)** concernant le calcul et le versement, à une province, d'avances sur tout montant qui peut devenir payable à la province en application de la présente loi, d'un accord d'application, d'un accord de réciprocité fiscale, d'un accord d'harmonisation de la taxe de vente, d'un accord de coordination de la taxation du cannabis ou d'un accord de coordination de la taxation des produits de vapotage et le rajustement, par réduction ou compensation, d'autres paiements à la province par suite de ces avances;

**(2) L'alinéa 40d) de la même loi est remplacé par ce qui suit :**

**d)** prescrivant à quel moment et de quelle manière sera fait tout paiement prévu par la présente loi, un accord d'application, un accord d'harmonisation de la taxe de vente, un accord de coordination de la taxation du cannabis ou un accord de coordination de la taxation des produits de vapotage;

R.S., c. 1 (2nd Supp.)

## Customs Act

**86 Subsection 2(1) of the *Customs Act* is amended by adding the following in alphabetical order:**

***immediate container*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

***vaping device*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

***vaping product licensee*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*titulaire de licence de produits de vapotage*)

***vaping substance*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

**87 Subsection 97.25(3) of the Act is amended by adding the following after paragraph (c):**

**(c.1)** if the good is a vaping product, to a vaping product licensee;

**88 Subsection 109.2(2) of the Act is replaced by the following:**

L.R., ch. 1 (2e suppl.)

## Loi sur les douanes

**86 Le paragraphe 2(1) de la *Loi sur les douanes* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***contenant immédiat*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*immediate container*)

***dispositif de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping device*)

***produit de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping product*)

***substance de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping substance*)

***titulaire de licence de produits de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping product licensee*)

**87 Le paragraphe 97.25(3) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**c.1)** s'il s'agit d'un produit de vapotage, à un titulaire de licence de produits de vapotage;

**88 L'alinéa 109.2(2)a) de la même loi est remplacé par ce qui suit :**

**Contravention relating to tobacco, cannabis and vaping products and to designated goods**

**(2)** Every person that

**(a)** removes tobacco products, cannabis products, vaping products or designated goods or causes tobacco products, cannabis products, vaping products or designated goods to be removed from a customs office, sufferance warehouse, bonded warehouse or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or

**(b)** sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts,

is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products, cannabis products, vaping products or designated goods released in like condition at the rates of duties applicable to like tobacco products, cannabis products, vaping products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct.

**a)** soit enlève ou fait enlever, contrairement à la présente loi, au *Tarif des douanes* ou à leurs règlements d'application, des produits du tabac, des produits du cannabis, des produits de vapotage ou des marchandises désignées d'un bureau de douane, d'un entrepôt d'attente, d'un entrepôt de stockage ou d'une boutique hors taxes;

**89 Subsection 117(2) of the Act is replaced by the following:**

**No return of certain goods**

**(2)** Despite subsection (1), if spirits, wine, specially denatured alcohol, restricted formulations, cannabis, raw leaf tobacco, excise stamps, tobacco products or vaping products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.

**89 Le paragraphe 117(2) de la même loi est remplacé par ce qui suit :**

**Pas de restitution**

**(2)** Malgré le paragraphe (1), les spiritueux, le vin, l'alcool spécialement dénaturé, les préparations assujetties à des restrictions, le cannabis, le tabac en feuilles, les timbres d'accise, les produits du tabac et les produits de vapotage qui sont saisis en vertu de la présente loi ne sont restitués au saisi ou à une autre personne que s'ils ont été saisis par erreur.

**90 Subsection 119.1(1.1) of the Act is amended by striking out "and" at the end of paragraph (c) and by adding the following after that paragraph:**

**(c.1)** a vaping product may only be to a vaping product licensee; and

**90 Le paragraphe 119.1(1.1) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**c.1)** produits de vapotage : titulaires de licence de produits de vapotage;

**91 The portion of subsection 142(1) of the Act before paragraph (a) is replaced by the following:**

**Disposal of things abandoned or forfeit**

**142 (1)** Unless the thing is spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, an excise stamp, a tobacco product or a vaping product, anything that has been abandoned to Her Majesty in right of Canada under this Act and anything the forfeiture of which is final under this Act shall

**91 Le passage du paragraphe 142(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Destination des objets abandonnés ou confisqués**

**142 (1)** Sauf s'il s'agit de spiritueux, d'alcool spécialement dénaturé, de préparations assujetties à des restrictions, de vin, de tabac en feuilles, de timbres d'accise, de produits du tabac ou de produits de vapotage, il est disposé des objets qui, en vertu de la présente loi, sont

**92 (1) Subsection 142.1(1) of the Act is replaced by the following:**

**Dealing with abandoned or forfeited alcohol, etc.**

**142.1 (1)** If spirits, specially denatured alcohol, a restricted formulation, wine, raw leaf tobacco, a tobacco product or a vaping product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it.

**(2) Subsection 142.1(2) of the Act is amended by striking out "and" at the end of paragraph (c) and by adding the following after that paragraph:**

**(c.1)** a vaping product may only be to a vaping product licensee; and

**93 Paragraph 164(1)(h.2) of the Act is replaced by the following:**

**(h.2)** respecting the sale of alcohol, a tobacco product, raw leaf tobacco, specially denatured alcohol, a restricted formulation or a vaping product detained, seized, abandoned or forfeited under this Act;

1997, c. 36

## Customs Tariff

**94 Paragraph 83(a) of the *Customs Tariff* is replaced by the following:**

**(a)** in the case of goods that would have been classified under tariff item No. 9804.10.00 or 9804.20.00, the value for duty of the goods shall be reduced by an amount equal to that maximum specified value and, in the case of alcoholic beverages, vaping products and tobacco, the quantity of those goods shall, for the purposes of assessing duties other than a duty under section 54 of the *Excise Act, 2001*, be reduced by the quantity of alcoholic beverages, vaping products and tobacco and up to the maximum quantities specified in tariff item No. 9804.10.00 or 9804.20.00, as the case may be;

**95 Subsection 89(2) of the Act is replaced by the following:**

**Exception**

**(2)** Relief of the duties or taxes levied or imposed under sections 21.1 to 21.3, the *Excise Act, 2001* or the *Excise*

**92 (1) Le paragraphe 142.1(1) de la même loi est remplacé par ce qui suit :**

**Alcool abandonné ou confisqué**

**142.1 (1)** Le ministre peut vendre ou détruire les spiritueux, l'alcool spécialement dénaturé, les préparations assujetties à des restrictions, le vin, le tabac en feuilles, les produits du tabac ou les produits de vapotage qui, en vertu de la présente loi, ont été abandonnés ou confisqués à titre définitif, ou autrement en disposer.

**(2) Le paragraphe 142.1(2) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**c.1)** produits de vapotage : titulaires de licence de produits de vapotage;

**93 L'alinéa 164(1)h.2) de la même loi est remplacé par ce qui suit :**

**h.2)** prévoir la vente d'alcool, de produits du tabac, de tabac en feuilles, d'alcool spécialement dénaturé, de préparations assujetties à des restrictions retenus ou de produits de vapotage, saisis, abandonnés ou confisqués en vertu de la présente loi;

1997, ch. 36

## Tarif des douanes

**94 L'alinéa 83a) du *Tarif des douanes* est remplacé par ce qui suit :**

**a)** dans le cas de marchandises qui auraient été classées dans les nos tarifaires 9804.10.00 ou 9804.20.00, leur valeur en douane est réduite du montant de cette valeur maximale spécifiée et, dans le cas de boissons alcooliques, de produits de vapotage et de tabac, la quantité de ces marchandises est, pour l'application des droits, sauf ceux prévus à l'article 54 de la *Loi de 2001 sur l'accise*, réduite de la quantité de boissons alcooliques, de produits de vapotage et de tabac jusqu'à la quantité maximale spécifiée dans l'un ou l'autre de ces numéros tarifaires, selon le cas;

**95 Le paragraphe 89(2) de la même loi est remplacé par ce qui suit :**

**Exception**

**(2)** L'exonération ne s'applique pas dans le cas de droits ou taxes perçus ou imposés, en application des articles 21.1 à 21.3, de la *Loi de 2001 sur l'accise* ou de la *Loi sur*

*Tax Act* may not be granted under subsection (1) on tobacco products, vaping products or designated goods.

**96 Subsection 113(2) of the Act is replaced by the following:**

**No refund**

**(2)** No refund or drawback of the duties imposed on tobacco products or vaping products under the *Excise Act, 2001* shall be granted under subsection (1), except if a refund of the whole or the portion of the duties is required to be granted under Division 3.

**97 (1) The Description of Goods of tariff item No. 9804.10.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with "For the purpose of this tariff item," and ending with "of manufactured tobacco." with a reference to "For the purpose of this tariff item, goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers."**

**(2) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9804.20.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:**

**(a)** goods may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if included in the baggage accompanying the person at the time of return to Canada; and

**(b)** if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) acquired abroad are not included in the baggage accompanying the person, they may be classified under this tariff item if they are reported by the person at time of return to Canada.

*la taxe d'accise*, sur les produits du tabac, les produits de vapotage et les marchandises désignées.

**96 Le paragraphe 113(2) de la même loi est remplacé par ce qui suit :**

**Aucun remboursement**

**(2)** Il n'est accordé aucun remboursement ou drawback des droits imposés sur les produits du tabac ou les produits de vapotage en vertu de la *Loi de 2001 sur l'accise*, sauf si le remboursement d'une fraction ou de la totalité des droits est prévu par la section 3.

**97 (1) La Dénomination des marchandises du nº tarifaire 9804.10.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage commençant par « Aux fins du présent numéro tarifaire, » et se terminant par « de tabac fabriqué. » par le passage « Aux fins du présent numéro tarifaire, les marchandises peuvent comprendre du vin n'excédant pas 1,5 litre ou des boissons alcooliques n'excédant pas 1,14 litre, une quantité de tabac n'excédant pas cinquante cigares, deux cents cigarettes, deux cents bâtonnets de tabac et deux cents grammes de tabac fabriqué et des produits de vapotage n'excédant pas 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats. »**

**(2) Les alinéas a) et b) de la Dénomination des marchandises du nº tarifaire 9804.20.00 de la liste des dispositions tarifaires de l'annexe de la même loi sont remplacés par ce qui suit :**

**a)** les marchandises peuvent comprendre du vin n'excédant pas 1,5 litre ou des boissons alcooliques n'excédant pas 1,14 litre, une quantité de tabac n'excédant pas cinquante cigares, deux cents cigarettes, deux cents bâtonnets de tabac et deux cents grammes de tabac fabriqué et des produits de vapotage n'excédant pas 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats, s'ils sont contenus dans les bagages accompagnant la personne lors de son retour au Canada; et

**b)** lorsque les marchandises (sauf les boissons alcooliques, les cigares, les cigarettes, les bâtonnets de tabac, le tabac fabriqué et les produits de vapotage) acquises à l'étranger ne sont pas contenues dans les

**(3) The Description of Goods of tariff item No. 9804.30.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with "For the purpose of this tariff item," and ending with "or manufactured tobacco." with a reference to "For the purpose of this tariff item, goods shall not include those which could otherwise be imported into Canada free of duties, nor alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products."**

**(4) The Description of Goods of tariff item No. 9804.40.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with "For the purpose of this tariff item," and ending with "or manufactured tobacco." with a reference to "For the purpose of this tariff item, goods shall not include alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco or vaping products."**

**(5) Paragraphs (a) and (b) of the Description of Goods of tariff item No. 9805.00.00 in the List of Tariff Provisions set out in the schedule to the Act are replaced by the following:**

**(a)** the provisions shall apply to either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers, if they are included in the baggage accompanying the importer, and no relief from payment of duties is being claimed in respect of alcoholic beverages, tobacco or vaping products under another item in this Chapter at the time of importation;

**(b)** if goods (other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products) are not accompanying the person returning from abroad, they may be classified under this item when imported at a later time if they are reported by the person at the time of return to Canada; and

**(3) La Dénomination des marchandises du nº tarifaire 9804.30.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage commençant par « Aux fins du présent numéro tarifaire, » et se terminant par « ou le tabac fabriqué. » par le passage « Aux fins du présent numéro tarifaire, les marchandises n'incluent pas celles qui pourraient autrement être importées au Canada en franchise de droits, ni les boissons alcooliques, les cigares, les cigarettes, les bâtonnets de tabac, le tabac fabriqué ou les produits de vapotage. »**

**(4) La Dénomination des marchandises du nº tarifaire 9804.40.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage commençant par « Aux fins du présent numéro tarifaire, » et se terminant par « ou le tabac fabriqué. » par le passage « Aux fins du présent numéro tarifaire, les marchandises n'incluent pas les boissons alcooliques, les cigares, les cigarettes, les bâtonnets de tabac, le tabac fabriqué ou les produits de vapotage. »**

**(5) Les alinéas a) et b) de la Dénomination des marchandises du nº tarifaire 9805.00.00 de la liste des dispositions tarifaires de l'annexe de la même loi sont remplacés par ce qui suit :**

**a)** les dispositions s'appliquent au vin dont la quantité n'excède pas 1,5 ou aux boissons alcooliques dont la quantité n'excède pas 1,14 litre, au tabac dont la quantité n'excède pas cinquante cigares, deux cents cigarettes, deux cents bâtonnets de tabac et deux cents grammes de tabac fabriqué et des produits de vapotage n'excédant pas 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats, lorsqu'ils sont contenus dans les bagages accompagnant l'importateur et qu'aucune exonération de droits n'est demandée à l'égard de boissons alcooliques ou de produits du tabac en vertu d'un autre numéro tarifaire du présent Chapitre au moment de l'importation;

**b)** les marchandises (sauf les boissons alcooliques, les cigares, les cigarettes, les bâtonnets de tabac, le tabac fabriqué et les produits de vapotage) qui n'accompagnent pas la personne revenant de l'étranger et sont

importées à une date ultérieure peuvent être classées dans le présent numéro tarifaire si elles ont été déclarées par la personne au moment de son retour au Canada; et

**(6) The Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by striking out "and" at the end of subparagraph (a)(i), by adding "and" at the end of subparagraph (a)(ii), and by adding the following after subparagraph (a)(ii):**

**(iii)** vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers;

**(6) La Dénomination des marchandises du nº tarifaire 9807.00.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par adjonction, après le sous-alinéa a)(ii), de ce qui suit :**

**(iii)** des produits de vapotage n'excédant pas 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats;

**(7) Paragraph (c) of the Description of Goods of tariff item No. 9807.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "(other than alcoholic beverages, cigars, cigarettes, tobacco sticks and manufactured tobacco)" with a reference to "(other than alcoholic beverages, cigars, cigarettes, tobacco sticks, manufactured tobacco and vaping products)".**

**(7) L'alinéa c) de la Dénomination des marchandises du nº tarifaire 9807.00.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage « (sauf les boissons alcooliques, les cigares, les cigarettes, les bâtonnets de tabac et le tabac fabriqué) » par le passage « (sauf les boissons alcooliques, les cigares, les cigarettes, les bâtonnets de tabac, le tabac fabriqué et les produits de vapotage) ».**

**(8) The Description of Goods of tariff item No. 9816.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "and not being advertising matter, tobacco or alcoholic beverages," with a reference to "and not being advertising matter, tobacco, alcoholic beverages or vaping products,".**

**(8) La Dénomination des marchandises du nº tarifaire 9816.00.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage « et n'étant pas des objets de réclame, du tabac, ni des boissons alcooliques » par le passage « et n'étant pas des objets de réclame, du tabac, des boissons alcooliques, ni des produits de vapotage ».**

**(9) The Description of Goods of heading No. 98.25 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "alcoholic beverages; tobacco; tobacco products;" with a reference to "alcoholic beverages; tobacco; tobacco products; vaping products;".**

**(9) La Dénomination des marchandises de la position nº 98.25 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage « les boissons alcooliques; le tabac; les produits du tabac; » par le passage « les boissons alcooliques; le tabac; les produits du tabac; les produits de vapotage; ».**

**(10) The Description of Goods of heading No. 98.26 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "alcoholic beverages; tobacco; tobacco products;" with a reference to "alcoholic beverages; tobacco; tobacco products; vaping products;".**

**(10) La Dénomination des marchandises de la position nº 98.26 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage « les boissons alcooliques; le tabac; les produits du tabac; » par le passage « les boissons alcooliques; le tabac; les produits du tabac; les produits de vapotage; ».**

**(11) The Description of Goods of tariff item No. 9827.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference beginning with "Goods, which may include" and ending with "of manufactured tobacco," with a reference to "Goods, which may include either wine not exceeding 1.5 litres or any alcoholic beverages not exceeding 1.14 litres, tobacco products not exceeding fifty cigars, two hundred cigarettes, two hundred tobacco sticks and two hundred grams of manufactured tobacco, and vaping products not exceeding 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers,".**

**(12) The Description of Goods of tariff item No. 9906.00.00 in the List of Tariff Provisions set out in the schedule to the Act is amended by replacing the reference to "other than alcoholic beverages and tobacco products," with a reference to "other than alcoholic beverages, tobacco products and vaping products,".**

**(11) La Dénomination des marchandises du nº tarifaire 9827.00.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage commençant par « Marchandises, pouvant comprendre » et se terminant par « de tabac fabriqué, » par le passage « Marchandises, pouvant comprendre du vin n'excédant pas 1,5 litre ou des boissons alcooliques n'excédant pas 1,14 litre, une quantité de tabac n'excédant pas cinquante cigares, deux cents cigarettes, deux cents bâtonnets de tabac et deux cents grammes de tabac fabriqué et des produits de vapotage n'excédant pas 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats, ».**

**(12) La Dénomination des marchandises du nº tarifaire 9906.00.00 de la liste des dispositions tarifaires de l'annexe de la même loi est modifiée par remplacement du passage « à l'exclusion des boissons alcooliques et des produits de tabac, » par le passage « à l'exclusion des boissons alcooliques, des produits de tabac et des produits de vapotage, ».**

SOR/81-701

## Tariff Item No. 9805.00.00 Exemption Order

**98 Section 3 of the *Tariff Item No. 9805.00.00 Exemption Order* is amended by adding the following after paragraph (b):**

**(b.1)** vaping products owned by and in the possession of the importer;

DORS/81-701

## Décret d'exemption du numéro tarifaire 9805.00.00

**98 L'article 3 du *Décret d'exemption du numéro tarifaire 9805.00.00* est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**b.1)** les produits de vapotage;

SI/85-181

## Postal Imports Remission Order

**99 (1) Paragraph (a) of the definition *goods* in section 2 of the *Postal Imports Remission Order* is replaced by the following:**

**(a)** alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

**(2) Section 2 of the Order is amended by adding the following in alphabetical order:**

TR/85-181

## Décret de remise visant les importations par la poste

**99 (1) L'alinéa a) de la définition de *marchandises*, à l'article 2 du *Décret de remise visant les importations par la poste*, est remplacé par ce qui suit :**

**a)** les boissons alcoolisées, les produits du cannabis, les produits de vapotage, les cigares, les cigarettes et le tabac fabriqué;

**(2) L'article 2 du même décret est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

***produit de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping product*)

SI/85-182; SI/92-128, s. 2(F)

## Courier Imports Remission Order

**100 (1) Paragraph (a) of the definition *goods* in section 2 of the *Courier Imports Remission Order* is replaced by the following:**

**(a)** alcoholic beverages, cannabis products, vaping products, cigars, cigarettes and manufactured tobacco;

**(2) Section 2 of the Order is amended by adding the following in alphabetical order:**

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*. (*produit de vapotage*)

TR/85-182; TR/92-128, art. 2(F)

## Décret de remise visant les importations par messager

**100 (1) L'alinéa a) de la définition de *marchandises*, à l'article 2 du *Décret de remise visant les importations par messager*, est remplacé par ce qui suit :**

**a)** les boissons alcoolisées, les produits du cannabis, les produits de vapotage, les cigares, les cigarettes et le tabac fabriqué;

**(2) L'article 2 du même décret est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***produit de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping product*)

SOR/86-1065

## Customs Sufferance Warehouses Regulations

**101 Subsection 15(4) of the *Customs Sufferance Warehouses Regulations* is replaced by the following:**

**(4)** For the purposes of subsection 39.1(1) of the Act, firearms, prohibited ammunition, prohibited devices, prohibited or restricted weapons, tobacco products and vaping products are goods of a prescribed class that are forfeit if they are not removed from a sufferance warehouse within 14 days after the day on which they were reported under section 12 of the Act.

**102 Paragraph 17(a) of the Regulations is replaced by the following:**

**(a)** stamping the goods, if the goods consist of

**(i)** imported raw leaf tobacco or imported tobacco products that are placed in the sufferance warehouse in accordance with section 39 of the *Excise Act, 2001*, or

**(ii)** imported vaping products that are placed in the sufferance warehouse in accordance with section 158.51 of the *Excise Act, 2001*;

DORS/86-1065

## Règlement sur les entrepôts d'attente des douanes

**101 Le paragraphe 15(4) du *Règlement sur les entrepôts d'attente des douanes* est remplacé par ce qui suit :**

**(4)** Pour l'application du paragraphe 39.1(1) de la Loi, les armes à feu, armes prohibées ou à autorisation restreinte, dispositifs prohibés, munitions prohibées, produits du tabac et produits de vapotage constituent une catégorie réglementaire de marchandises qui sont confisquées si elles ne sont pas enlevées d'un entrepôt d'attente à l'expiration du délai de quatorze jours suivant la date de leur déclaration aux termes de l'article 12 de la Loi.

**102 L'alinéa 17a) du même règlement est remplacé par ce qui suit :**

**a)** l'estampillage des marchandises, s'il s'agit de :

**(i)** produits du tabac importés ou de tabac en feuilles importé qui sont entreposés dans un entrepôt d'attente conformément à l'article 39 de la *Loi de 2001 sur l'accise*,

**(ii)** produits de vapotage importés qui sont entreposés dans un entrepôt d'attente conformément à l'article 158.51 de *Loi de 2001 sur l'accise*;

SOR/87-720

## Non-residents' Temporary Importation of Baggage and Conveyances Regulations

**103 Section 2 of the *Non-residents' Temporary Importation of Baggage and Conveyances Regulations* is amended by adding the following in alphabetical order:**

***immediate container*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*contenant immédiat*)

***vaping device*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*dispositif de vapotage*)

***vaping substance*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*substance de vapotage*)

**104 Subsection 4(1) of the Regulations is amended by striking out "or" at the end of paragraph (b) and by adding the following after that paragraph:**

**(b.1)** 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than twelve vaping devices and immediate containers; or

DORS/87-720

## Règlement sur l'importation temporaire de bagages et de moyens de transport par un non-résident

**103 L'article 2 du *Règlement sur l'importation temporaire de bagages et de moyens de transport par un non-résident* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***contenant immédiat*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*immediate container*)

***dispositif de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping device*)

***substance de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping substance*)

**104 Le paragraphe 4(1) du même règlement est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**b.1)** un maximum de 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats;

SOR/90-225

## Tariff Item No. 9807.00.00 Exemption Order

**105 Paragraph 2(b) of the *Tariff Item No. 9807.00.00 Exemption Order* is replaced by the following:**

**(b)** tobacco products and vaping products;

DORS/90-225

## Décret d'exemption des exigences énoncées au numéro tarifaire 9807.00.00

**105 L'alinéa 2b) du *Décret d'exemption des exigences énoncées au numéro tarifaire 9807.00.00* est remplacé par ce qui suit :**

**b)** les produits du tabac et les produits de vapotage;

SOR/96-46

## Customs Bonded Warehouses Regulations

**106 Section 2 of the *Customs Bonded Warehouses Regulations* is amended by adding the following in alphabetical order:**

***vaping product*** has the same meaning as in section 2 of the *Excise Act, 2001*; (*produit de vapotage*)

DORS/96-46

## Règlement sur les entrepôts de stockage des douanes

**106 L'article 2 du *Règlement sur les entrepôts de stockage des douanes* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***produit de vapotage*** S'entend au sens de l'article 2 de la *Loi de 2001 sur l'accise*. (*vaping product*)

**107 Section 14 of the Regulations is amended by striking out "and" at the end of paragraph (e), by adding "and" at the end of paragraph (f) and by adding the following after paragraph (f):**

**(g)** vaping products that are not stamped.

**108 The Regulations are amended by adding the following after section 16:**

**16.1** No licensee shall receive into or remove from a bonded warehouse imported vaping products unless they are to be removed from the warehouse for sale to a foreign diplomat in Canada or export from Canada.

**109 Section 18 of the Regulations is replaced by the following:**

**18** For the purposes of subsections 37(2) and 39.1(2) of the *Customs Act*, tobacco products, packaged spirits and vaping products are a prescribed class of goods and are forfeit if they have not been removed from the bonded warehouse within five years of the day on which the goods are described in the form prescribed under subsection 19(2) of that Act.

SOR/2003-115

## Regulations Respecting Excise Licences and Registrations

**110 Subparagraph 2(2)(b)(i) of the *Regulations Respecting Excise Licences and Registrations* is replaced by the following:**

**(i)** failed to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products or vaping products or any regulations made under it, or

**111 Section 4 of the Regulations is replaced by the following:**

**4** A licence is valid for the period specified in the licence, which period shall not exceed

**(a)** in the case of a vaping product licence, three years; and

**(b)** in any other case, two years.

**112 (1) The portion of subsection 5(1) of the Regulations before paragraph (a) is replaced by the following:**

**107 L'article 14 du même règlement est modifié par adjonction, après l'alinéa f), de ce qui suit :**

**g)** les produits de vapotage non estampillés.

**108 Le même règlement est modifié par adjonction, après l'article 16, de ce qui suit :**

**16.1** Il est interdit à l'exploitant d'un entrepôt de stockage d'y recevoir ou d'en enlever des produits de vapotage importés, sauf s'ils sont destinés à être enlevés de l'entrepôt pour être vendus à un diplomate étranger en poste au Canada ou exportés.

**109 L'article 18 du même règlement est remplacé par ce qui suit :**

**18** Pour l'application des paragraphes 37(2) et 39.1(2) de la *Loi sur les douanes*, les produits du tabac, les spiritueux emballés et les produits de vapotage constituent des catégories de marchandises qui sont confisquées si elles restent dans l'entrepôt de stockage plus de cinq ans après qu'elles ont été mentionnées sur un formulaire réglementaire aux termes du paragraphe 19(2) de cette loi.

DORS/2003-115

## Règlement sur les licences, agréments et autorisations d'accise

**110 Le sous-alinéa 2(2)b)(i) du *Règlement sur les licences, agréments et autorisations d'accise* est remplacé par ce qui suit :**

**(i)** il n'a pas omis de se conformer à toute loi fédérale, autre que la Loi, ou provinciale — ou à leurs règlements — portant sur la taxation ou la réglementation de l'alcool, des produits du tabac ou des produits de vapotage,

**111 L'article 4 du même règlement est remplacé par ce qui suit :**

**4** La licence ou l'agrément est valide pour la période qui y est précisée, laquelle ne peut excéder :

**a)** dans le cas d'une licence de produits de vapotage, trois ans;

**b)** dans les autres cas, deux ans.

**112 (1) Le passage du paragraphe 5(1) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**5 (1)** For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence is an amount of not less than $5,000 and

**(2) Paragraph 5(1)(b) of the Regulations is replaced by the following:**

**(b)** in the case of a tobacco licence, a cannabis licence or a vaping product licence, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence.

**113 Paragraph 12(1)(e) of the Regulations is replaced by the following:**

**(e)** fails to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of or controls on alcohol, tobacco products or vaping products, or any regulations made under it; or

SOR/2003-203; 2018, c. 12, s. 106

## Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped

**114 The title of the *Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped* is replaced by the following:**

Regulations Respecting the Possession of Tobacco, Cannabis or Vaping Products That Are Not Stamped

**115 The Regulations are amended by adding the following after section 1.3:**

**1.4** For the purposes of paragraph 158.44(3)(b) of the *Excise Act, 2001*, a person may possess a vaping product that is not stamped if

**(a)** the person is authorized by an officer under section 19 of the *Customs Act* to transport vaping products that have been reported under section 12 of that Act and is acting in accordance with that authorization; or

**(b)** the person has in their possession documentation that provides evidence that the person is transporting the vaping product on behalf of

**(i)** a vaping product licensee,

**5 (1)** Pour l'application de l'alinéa 23(3)b) de la Loi, la caution que le demandeur d'une licence de spiritueux, d'une licence de tabac, d'une licence de cannabis ou d'une licence de produits de vapotage fournit doit être d'une somme suffisante — d'au moins 5 000 $ — pour :

**(2) L'alinéa 5(1)b) du même règlement est remplacé par ce qui suit :**

**b)** dans le cas d'une licence de tabac, d'une licence de cannabis ou d'une licence de produits de vapotage, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, des droits visés à l'alinéa 160b) de la Loi.

**113 L'alinéa 12(1)e) du même règlement est remplacé par ce qui suit :**

**e)** il omet de se conformer à toute loi fédérale, autre que la Loi, ou provinciale — ou à leurs règlements — portant sur la taxation ou la réglementation de l'alcool, des produits du tabac ou des produits de vapotage;

DORS/2003-203; 2018, ch. 12, art. 106

## Règlement sur la possession de produits du tabac ou de produits du cannabis non estampillés

**114 Le titre du *Règlement sur la possession de produits du tabac ou de produits du cannabis non estampillés* est remplacé par ce qui suit :**

Règlement sur la possession de produits du tabac, du cannabis ou de vapotage non estampillés

**115 Le même règlement est modifié par adjonction, après l'article 1.3, de ce qui suit :**

**1.4** Sont visées pour l'application de l'alinéa 158.44(3)b) de la *Loi de 2001 sur l'accise* les personnes suivantes :

**a)** celle qui est autorisée par un agent en vertu de l'article 19 de la *Loi sur les douanes* à transporter des produits de vapotage — déclarés conformément à l'article 12 de cette loi — et qui agit en conformité avec l'autorisation;

**b)** celle qui a en sa possession un document attestant qu'elle transporte les produits de vapotage pour le compte de l'une des personnes suivantes :

**(i)** un titulaire de licence de produits de vapotage,

**(ii)** an excise warehouse licensee, or

**(iii)** an accredited representative.

SOR/2003-288; 2018, c. 12, s. 108

## Stamping and Marking of Tobacco and Cannabis Products Regulations

**116 The title of the *Stamping and Marking of Tobacco and Cannabis Products Regulations* is replaced by the following:**

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

**117 Paragraph 2(c) of the Regulations is replaced by the following:**

**(c)** a cannabis product or a vaping product is packaged in a prescribed package when it is packaged in the smallest package — including any outer wrapper, package, box or other container — in which it is sold to the consumer.

**118 (1) Subsection 4(1) of the Regulations is replaced by the following:**

**4 (1)** For the purposes of subsections 25.1(1) and 158.36(1) of the Act, a prescribed person is a person that satisfies the requirements set out in paragraphs 2(2)(a) to (e) of the *Regulations Respecting Excise Licences and Registrations*.

**(2) Section 4 of the Regulations is amended by adding the following after subsection (3):**

**(4)** For the purposes of paragraph 158.38(2)(d) of the Act, the following persons are prescribed:

**(a)** a person that transports a vaping excise stamp on behalf of a person described in paragraph 158.38(2)(a) or (b) of the Act; and

**(b)** a person that has in their possession vaping excise stamps only for the purpose of applying adhesive to the stamps on behalf of the vaping product licensee to which the stamps are issued.

**119 The Regulations are amended by adding the following after section 4:**

**4.01 (1)** If the Minister holds, at any time in a calendar month, security that a person has provided under subsection 158.36(3) of the Act and if the person is not a vaping product licensee throughout the calendar month, the

**(ii)** un exploitant agréé d'entrepôt d'accise,

**(iii)** un représentant accrédité.

DORS/2003-288; 2018, ch. 12, art. 108

## Règlement sur l'estampillage et le marquage des produits du tabac et des produits du cannabis

**116 Le titre du *Règlement sur l'estampillage et le marquage des produits du tabac et des produits du cannabis* est remplacé par ce qui suit :**

Règlement sur l'estampillage et le marquage des produits du tabac, du cannabis et de vapotage

**117 L'alinéa 2c) du même règlement est remplacé par ce qui suit :**

**c)** dans le cas d'un produit du cannabis ou d'un produit de vapotage, le plus petit emballage dans lequel il est normalement offert en vente au public, y compris l'enveloppe extérieure, l'emballage, la boîte ou autre contenant, dans lequel il est vendu au consommateur.

**118 (1) Le paragraphe 4(1) du même règlement est remplacé par ce qui suit :**

**4 (1)** Pour l'application des paragraphes 25.1(1) et 158.36(1) de la Loi, une personne visée par règlement est une personne qui répond aux exigences énoncées aux alinéas 2(2)a) à e) du *Règlement sur les licences, agréments et autorisations d'accise*.

**(2) L'article 4 du même règlement est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**(4)** Pour l'application de l'alinéa 158.38(2)d) de la Loi, est une personne visée par règlement :

**a)** la personne qui transporte un timbre d'accise de vapotage pour le compte d'une personne mentionnée aux alinéas 158.38(2)a) ou b) de la Loi;

**b)** la personne qui a en sa possession des timbres d'accise de vapotage dans le seul but d'y appliquer un adhésif pour le compte du titulaire de licence de produits de vapotage à qui les timbres ont été émis.

**119 Le même règlement est modifié par adjonction, après l'article 4, de ce qui suit :**

**4.01 (1)** Si le ministre détient, à un moment d'un mois civil, une caution qui a été fournie par une personne en application du paragraphe 158.36(3) de la Loi et si la personne n'est pas un titulaire de licence de produits de

person must file with the Minister an information return for the calendar month in respect of the possession and use of any vaping excise stamps issued to the person.

**(2)** The information return of a person for a particular calendar month must

**(a)** be made in prescribed form containing prescribed information; and

**(b)** be filed in prescribed manner on or before the last day of the first calendar month following the particular calendar month.

**120 The Regulations are amended by adding the following after section 4.1:**

**4.11 (1)** Subject to subsections (2) to (4), the amount of security for the purpose of subsection 158.36(3) of the Act is the greater of

**(a)** $1.00 multiplied by the number of vaping excise stamps that either are in the applicant's possession at the time of application or are to be issued in respect of the application, and

**(b)** $5,000.

**(2)** Subject to subsections (3) and (4), if the amount determined under paragraph (1)(a) is greater than $5 million, the amount of security for the purpose of subsection 158.36(3) of the Act is $5 million.

**(3)** If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is equal to or greater than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is nil.

**(4)** If a person has provided security under paragraph 23(3)(b) of the Act in an amount that is less than the amount of security determined in accordance with subsections (1) and (2), the amount of security for the purpose of subsection 158.36(3) of the Act is the difference between the amount of security determined in accordance with subsections (1) and (2) and the amount of security provided by the person under paragraph 23(3)(b) of the Act.

**121 The portion of section 4.2 of the Regulations before paragraph (a) is replaced by the following:**

vapotage tout au long du mois civil, la personne doit présenter au ministre une déclaration de renseignements pour le mois civil relativement à la détention et à l'utilisation de tout timbre d'accise de vapotage qui a été émis à la personne.

**(2)** La déclaration de renseignements pour un mois civil donné doit :

**a)** être faite en la forme et contenir les renseignements déterminés par le ministre;

**b)** être présentée au ministre selon les modalités qu'il détermine au plus tard le dernier jour du mois civil qui suit le mois civil donné.

**120 Le même règlement est modifié par adjonction, après l'article 4.1, de ce qui suit :**

**4.11 (1)** Sous réserve des paragraphes (2) à (4), le montant de la caution pour l'application du paragraphe 158.36(3) de la Loi correspond au plus élevé des montants suivants :

**a)** 1,00 $ multiplié par le nombre de timbres d'accise de vapotage qui sont soit détenus par le demandeur au moment de la demande ou soit à être émis relativement à la demande;

**b)** 5 000 $.

**(2)** Sous réserve des paragraphes (3) et (4), lorsque le montant visé à l'alinéa (1)a) est de plus de cinq millions de dollars, le montant de la caution, pour l'application du paragraphe 158.36(3) de la Loi s'établit à cinq millions de dollars.

**(3)** Lorsqu'une personne a fourni une caution aux termes de l'alinéa 23(3)b) de la Loi dont le montant est égal ou supérieur au montant de la caution déterminé en vertu des paragraphes (1) et (2), le montant de la caution à verser en application du paragraphe 158.36(3) de la Loi est nul.

**(4)** Lorsqu'une personne a fourni une caution aux termes de l'alinéa 23(3)b) de la Loi dont le montant est inférieur au montant de la caution déterminé en vertu des paragraphes (1) et (2), le montant de la caution, pour l'application du paragraphe 158.36(3) de la Loi, correspond à la différence entre le montant de la caution déterminé en vertu des paragraphes (1) et (2) et le montant de la caution fourni par la personne aux termes de l'alinéa 23(3)b) de la Loi.

**121 Le passage de l'article 4.2 du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**4.2** For the purposes of the definition *stamped* in section 2 of the Act and subsections 25.3(1), 158.05(1) and 158.38(1) of the Act, the prescribed manner of affixing an excise stamp to a package is by affixing the stamp

**4.2** Pour l'application de la définition de *estampillé* à l'article 2 de la Loi et des paragraphes 25.3(1), 158.05(1) et 158.38(1) de la Loi, est apposé selon les modalités réglementaires le timbre d'accise qui est apposé :

**122 The Regulations are amended by adding the following after section 5:**

**122 Le même règlement est modifié par adjonction, après l'article 5, de ce qui suit :**

**5.1 (1)** For the purposes of paragraphs 158.44(3)(e) and 158.47(2)(c) and section 158.56 of the Act, the prescribed limit is five units of vaping products.

**(2)** For the purposes of subsection (1), a unit of vaping products consists of 120 millilitres of vaping substance in liquid form, or 120 grams of vaping substance in solid form, within any combination of not more than 12 vaping devices and immediate containers.

**5.1 (1)** Pour l'application des alinéas 158.44(3)e) et 158.47(2)c) et de l'article 158.56 de la Loi, la limite est fixée à cinq unités de produits de vapotage.

**(2)** Pour l'application du paragraphe (1), constitue une unité d'un produit de vapotage une quantité de 120 millilitres de substance de vapotage sous forme liquide, ou 120 grammes de substance de vapotage sous forme solide, se trouvant dans toute combinaison d'au plus douze dispositifs de vapotage et contenants immédiats.

**123 The heading after section 7 of the Regulations is replaced by the following:**

**123 L'intertitre suivant l'article 7 du même règlement est remplacé par ce qui suit :**

## Vaping Product Marking

## Mention obligatoire pour vapotage

**8 (1)** For the purposes of subsection 158.5(1) of the Act, the required vaping product markings are

**(a)** for containers of vaping products manufactured in Canada, the marking set out in Schedule 7; and

**(b)** for containers of vaping products manufactured outside Canada, the marking set out in Schedule 8.

**8 (1)** Pour l'application du paragraphe 158.5(1) de la Loi, les mentions obligatoires pour vapotage sont les suivantes :

**a)** celle figurant à l'annexe 7, pour les produits de vapotage fabriqués au Canada;

**b)** celle figurant à l'annexe 8, pour les produits de vapotage fabriqués à l'extérieur du Canada.

**(2)** The vaping product markings must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in the appropriate Schedule.

**(2)** Les mentions obligatoires pour vapotage sont imprimées ou apposées, bien en vue, sur le contenant, selon les spécifications prévues à l'annexe applicable.

**9 (1)** For the purposes of subsection 158.5(2) of the Act, the required vaping product marking is the marking set out in Schedule 8.

**9 (1)** Pour l'application du paragraphe 158.5(2) de la Loi, les mentions obligatoires pour vapotage sont celles figurant à l'annexe 8.

**(2)** The vaping product marking must be printed on or affixed to the container in a conspicuous manner and in accordance with the specifications set out in Schedule 8.

**(2)** Les mentions obligatoires pour vapotage sont imprimées ou apposées, bien en vue, sur le contenant, selon les spécifications prévues à l'annexe 8.

**124 Schedule 7 to the Regulations is amended by replacing the reference after the heading "SCHEDULE 7" with the following:**

**124 Le renvoi qui suit le titre « ANNEXE 7 », à l'annexe 7 du même règlement, est remplacé par ce qui suit :**

(Sections 6 and 8)

(articles 6 et 8)

**125 The heading of Schedule 7 to the Regulations is replaced by the following:**

# Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured in Canada

**126 Schedule 8 to the Regulations is amended by replacing the reference after the heading "SCHEDULE 8" with the following:**

(Sections 6 to 9)

**127 The heading of Schedule 8 to the Regulations is replaced by the following:**

# Marking for Containers of Manufactured Tobacco, Cigars and Vaping Products Manufactured Outside Canada, Containers of Cigars Manufactured in Canada and Intended for Delivery to a Duty Free Shop or as Ships' Stores and Containers of Imported Manufactured Tobacco and Cigars Referred to in Subsection 38(2) of the Act

## Application

**128 (1) Sections 158.35, 158.51 to 158.53, 158.68 and 158.69 of the *Excise Act, 2001*, as enacted by section 59, subsection 64(2), sections 65 to 69, subsections 70(2) and (4), sections 71, 72 and 75, subsection 81(2) and sections 82, 87 to 105, 115 and 122 come into force on October 1, 2022.**

**(2) Sections 158.41, 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 59, apply in respect of vaping products manufactured in Canada that are packaged on or after October 1, 2022 and to vaping products that are imported into Canada or *released* (as defined in subsection**

**125 Le titre de l'annexe 7 du même règlement est remplacé par ce qui suit :**

# Mention obligatoire pour les contenants de tabac fabriqués, de cigares fabriqués et de produits de vapotage au Canada

**126 Le renvoi qui suit le titre « ANNEXE 8 », à l'annexe 8 du même règlement, est remplacé par ce qui suit :**

(articles 6 à 9)

**127 Le titre de l'annexe 8 du même règlement est remplacé par ce qui suit :**

# Mention obligatoire pour les contenants de tabac fabriqué, de cigares et de produits de vapotage fabriqués à l'extérieur du Canada, les contenants de cigares fabriqués au Canada destinés à être livrés à une boutique hors taxes ou à titre de provisions de bord et les contenants de tabac fabriqué et de cigares importés visés au paragraphe 38(2) de la loi

## Application

**128 (1) Les articles 158.35, 158.51 à 158.53, 158.68 et 158.69 de la *Loi de 2001 sur l'accise*, édictés par l'article 59, le paragraphe 64(2), les articles 65 à 69, les paragraphes 70(2) et (4), les articles 71, 72 et 75, le paragraphe 81(2) et les articles 82, 87 à 105, 115 et 122 entrent en vigueur le 1er octobre 2022.**

**(2) Les articles 158.41, 158.57 et 158.58 de la *Loi de 2001 sur l'accise*, édictés par l'article 59, s'appliquent relativement aux produits de vapotage fabriqués au Canada qui sont emballés le 1er octobre 2022 ou par la suite et aux produits de**

**2(1) of the *Customs Act*) on or after that day. Those sections of the *Excise Act, 2001* also apply in respect of**

**(a) vaping products manufactured in Canada that are packaged before October 1, 2022 if the vaping products are stamped after the day on which this Act receives royal assent; and**

**(b) vaping products that are imported into Canada or *released* (as defined in subsection 2(1) of the *Customs Act*) after the day on which this Act receives royal assent but before October 1, 2022 if the vaping products are stamped when they are reported under the *Customs Act*.**

**(3) Sections 158.42 to 158.47 and 158.49, subsection 158.5(2), sections 158.54 to 158.56, 158.6 and 158.61 of the *Excise Act, 2001*, as enacted by section 59, subsection 63(1) and sections 107 to 109 come into force on October 1, 2022. However, those provisions of the *Excise Act, 2001*, subsection 63(1) and sections 107 to 109 do not apply before 2023 in respect of**

**(a) vaping products manufactured in Canada that are packaged before October 1, 2022 and that are not stamped; and**

**(b) vaping products that are imported into Canada or *released* (as defined in subsection 2(1) of the *Customs Act*) before October 1, 2022 and that are not stamped.**

**(4) In applying sections 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by section 59, in respect of vaping products manufactured in Canada that are packaged before October 1, 2022, paragraph (a) of each of those sections 158.57 and 158.58 is to be read as follows:**

**(a)** in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the later of the beginning of October 1, 2022 and the time they are stamped; and

**vapotage qui sont importés au Canada ou *dédouanés* (au sens du paragraphe 2(1) de la *Loi sur les douanes*) le 1er octobre 2022 ou par la suite. Ces articles de la *Loi de 2001 sur l'accise* s'appliquent également relativement aux :**

**a) produits de vapotage fabriqués au Canada qui sont emballés avant le 1er octobre 2022 s'ils sont estampillés après le jour de la sanction de la présente loi;**

**b) produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après le jour de la sanction de la présente loi, mais avant le 1er octobre 2022, s'ils sont estampillés lorsqu'ils sont déclarés en application de la *Loi sur les douanes*.**

**(3) Les articles 158.42 à 158.47 et 158.49, le paragraphe 158.5(2), les articles 158.54 à 158.56, 158.6 et 158.61 de la *Loi de 2001 sur l'accise*, édictés par l'article 59, le paragraphe 63(1) et les articles 107 à 109 entrent en vigueur le 1er octobre 2022. Toutefois, ces dispositions de la *Loi de 2001 sur l'accise* et le paragraphe 63(1) et les articles 107 à 109 ne s'appliquent pas avant 2023 relativement aux :**

**a) produits de vapotage fabriqués au Canada qui sont emballés avant le 1er octobre 2022 et qui ne sont pas estampillés;**

**b) produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, avant le 1er octobre 2022 et qui ne sont pas estampillés.**

**(4) Pour l'application des articles 158.57 et 158.58 de la *Loi de 2001 sur l'accise*, édictés par l'article 59, relativement aux produits de vapotage fabriqués au Canada qui sont emballés avant le 1er octobre 2022, l'alinéa a) de chacun de ces articles 158.57 et 158.58 est réputé avoir le libellé suivant :**

**a)** dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a fabriqués et au dernier en date du moment qui est au début du 1er octobre 2022 et du moment où ils sont estampillés;

## DIVISION 2

2002, c. 22

# Excise Act, 2001 (Wine)

**129 (1) Section 87 of the *Excise Act, 2001* is amended by adding "and" at the end of paragraph (a) and by repealing paragraph (a.1).**

**(2) Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022.**

**130 (1) Paragraph 88(2)(i) of the Act is replaced by the following:**

**(i)** that is wine referred to in paragraph 135(2)(b) may be possessed by any person; and

**(2) Subsection (1) comes into force, or is deemed to have come into force, on June 30, 2022, but does not apply to wine packaged before that day.**

**131 (1) Subsection 134(3) of the Act is replaced by the following:**

**Exception**

**(3)** Subsection (1) does not apply to wine

**(a)** that is produced by an individual for their personal use and that is consumed in the course of that use; or

**(b)** that is produced in Canada from honey or apples and composed wholly of agricultural or plant product grown in Canada.

**(2) Subsection (1) applies after June 29, 2022.**

**132 (1) Paragraph 135(2)(a) of the Act is replaced by the following:**

**(a)** produced in Canada from honey or apples and composed wholly of agricultural or plant product grown in Canada;

**(2) Subsection (1) applies to wine packaged on or after June 30, 2022.**

## SECTION 2

2002, ch. 22

# Loi de 2001 sur l'accise (vin)

**129 (1) L'alinéa 87a.1) de la *Loi de 2001 sur l'accise* est abrogé.**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 30 juin 2022.**

**130 (1) L'alinéa 88(2)i) de la même loi est remplacé par ce qui suit :**

**i)** si l'alcool consiste en vin visé à l'alinéa 135(2)b), toute personne;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 30 juin 2022. Toutefois, ce paragraphe ne s'applique pas au vin emballé avant cette date.**

**131 (1) Le paragraphe 134(3) de la même loi est remplacé par ce qui suit :**

**Exception**

**(3)** Le paragraphe (1) ne s'applique pas :

**a)** au vin qu'un particulier produit pour son usage personnel et qui est consommé à cette fin;

**b)** au vin qui est produit au Canada à partir de miel ou de pommes et qui est composé entièrement de produits agricoles ou végétaux cultivés au Canada.

**(2) Le paragraphe (1) s'applique à compter du 30 juin 2022.**

**132 (1) L'alinéa 135(2)a) de la même loi est remplacé par ce qui suit :**

**a)** au vin qui est produit au Canada à partir de miel ou de pommes et qui est composé entièrement de produits agricoles ou végétaux cultivés au Canada;

**(2) Le paragraphe (1) s'applique au vin emballé après le 29 juin 2022.**

**DIVISION 3**

R.S., c. E-12

# Excise Act (Beer)

**133 (1) The portion of the definition *beer* or *malt liquor* in section 4 of the *Excise Act* before paragraph (a) is replaced by the following:**

***beer*** or ***malt liquor*** means any product (other than *wine*, as defined in section 2 of the *Excise Act, 2001*) containing more than 0.5% absolute ethyl alcohol by volume that is

**(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2022.**

**134 (1) Subsection 170.1(3) of the Act is replaced by the following:**

**Exclusion of exports**

**(3)** In subsection (1), the reference to "first 75,000 hectolitres of beer and malt liquor brewed in Canada" does not include beer or malt liquor that is exported or deemed to be exported under section 173.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on July 1, 2022.**

**PART 4**

# Select Luxury Items Tax Act

## Enactment of Act

**Enactment**

**135 (1) The *Select Luxury Items Tax Act*, whose text is as follows and whose schedule is set out in Schedule 2 to this Act, is enacted:**

An Act respecting the taxation of select luxury items

## Short Title

**Short title**

**1** This Act may be cited as the *Select Luxury Items Tax Act*.

**SECTION 3**

L.R., ch. E-12

# Loi sur l'accise (bière)

**133 (1) Le passage de la définition de *bière* ou *liqueur de malt* précédant l'alinéa a), à l'article 4 de la *Loi sur l'accise*, est remplacé par ce qui suit :**

***bière*** ou ***liqueur de malt*** Tout produit (à l'exclusion du *vin*, au sens de l'article 2 de la *Loi de 2001 sur l'accise*) contenant plus de 0,5 % d'alcool éthylique absolu par volume qui :

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er juillet 2022.**

**134 (1) Le paragraphe 170.1(3) de la même loi est remplacé par ce qui suit :**

**Exclusion — exportations**

**(3)** Sont exclues des 75 000 premiers hectolitres de bière et de liqueur de malt brassés au Canada dont il est question au paragraphe (1) la bière ou la liqueur de malt qui est exportée, ou réputée être exportée, selon l'article 173.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er juillet 2022.**

**PARTIE 4**

# Loi sur la taxe sur certains biens de luxe

## Édiction de la loi

**Édiction**

**135 (1) Est édictée la *Loi sur la taxe sur certains biens de luxe*, dont le texte suit et dont l'annexe figure à l'annexe 2 de la présente loi :**

Loi visant la taxation de certains biens de luxe

## Titre abrégé

**Titre abrégé**

**1** *Loi sur la taxe sur certains biens de luxe*.

## PART 1

# Select Luxury Items Tax

## DIVISION 1

## Interpretation and Application

### SUBDIVISION A

### Interpretation

#### Definitions

**2 (1)** The following definitions apply in this Act.

***assessment*** means an assessment under this Act and includes a reassessment. (*cotisation*)

***bank*** means a *bank* as defined in section 2 of the *Bank Act* or an *authorized foreign bank*, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act. (*banque*)

***calendar quarter*** means a period of three months beginning on the first day of January, April, July or October. (*trimestre civil*)

***Commissioner*** means, except in sections 80 and 81 and subsections 153(1) to (8) and (19), the Commissioner of Revenue appointed under section 25 of the *Canada Revenue Agency Act*. (*commissaire*)

***common-law partner*** of an individual at a particular time means a person who is the common-law partner of the individual at the particular time for the purposes of the *Income Tax Act*. (*conjoint de fait*)

***confirmed delivery service*** means certified or registered mail or any other service that provides a record that a notice or document has been sent or delivered. (*service de messagerie*)

***consideration*** includes any amount that is payable by operation of law. (*contrepartie*)

***credit union*** has the same meaning as in subsection 137(6) of the *Income Tax Act*. (*caisse de crédit*)

***export*** means export from Canada. (*exportation*)

***government entity*** means

## PARTIE 1

# Taxe sur certains biens de luxe

## SECTION 1

## Définitions, interprétation et application

### SOUS-SECTION A

### Définitions et interprétation

#### Définitions

**2 (1)** Les définitions qui suivent s'appliquent à la présente loi.

***aéronef assujetti*** S'entend d'un aéronef qui est :

**a)** un *avion*, *planeur* ou *hélicoptère*, au sens du paragraphe 101.01(1) du *Règlement de l'aviation canadien*, dont la date de fabrication est postérieure à 2018 si l'aéronef, selon le cas :

**(i)** est muni uniquement d'un ou de plusieurs sièges destinés au pilote et ne peut avoir aucune autre configuration des sièges,

**(ii)** est muni uniquement d'un ou de plusieurs sièges destinés au pilote, ou n'est muni d'aucun siège, et ne peut avoir une configuration des sièges, sauf les sièges destinés au pilote, de 40 places ou plus,

**(iii)** est muni d'un ou de plusieurs sièges destinés au pilote et d'un ou de plusieurs sièges passagers et a une configuration des sièges, sauf les sièges destinés au pilote, de 39 places ou moins;

**b)** un aéronef visé par règlement.

La présente définition exclut :

**c)** un aéronef qui est conçu et équipé pour les activités militaires;

**d)** un aéronef qui est équipé exclusivement pour le transport de marchandises;

**e)** un aéronef qui, à la fois :

**(i)** est immatriculé avant septembre 2022 auprès d'un gouvernement autrement qu'à une fin qui est

**(a)** a department or agency of the government of Canada or of a province;

**(b)** a municipality;

**(c)** an *aboriginal government* as defined in subsection 2(1) of the *Federal-Provincial Fiscal Arrangements Act*;

**(d)** a corporation all of the shares (except directors' qualifying shares) of the capital stock of which are owned by one or more persons each of which is

**(i)** Her Majesty in right of Canada or a province,

**(ii)** a municipality, or

**(iii)** a corporation described in this paragraph; or

**(e)** a board or commission, established by Her Majesty in right of Canada or a province, that performs an administrative or regulatory function of government, or by a municipality, that performs an administrative or regulatory function of a municipality. (*entité gouvernementale*)

***guest*** of a particular person on a subject item means an individual that uses or enjoys the subject item and that

**(a)** does not deal at arm's length with the particular person;

**(b)** is an employee of the particular person or of a person that does not deal at arm's length with the particular person; or

**(c)** uses or enjoys the subject item, at the invitation of the particular person or a person referred to in paragraph (a) or (b), for no consideration or for nominal consideration. (*invité*)

***identification number*** of a subject item means an identification number that is satisfactory to the Minister and is unique to the subject item. (*numéro d'identification*)

***import*** means import into Canada. (*importation*)

***Indigenous governing body*** has the same meaning as in section 2 of the *Department of Indigenous Services Act*. (*corps dirigeant autochtone*)

***judge***, in respect of any matter, means a judge of a superior court having jurisdiction in the province in which the matter arises or a judge of the Federal Court. (*juge*)

***military authority*** means the Canadian Forces, within the meaning of section 14 of the *National Defence Act*, accessoire à sa fabrication, à sa mise en vente ou à son transport,

**(ii)** est un aéronef à l'égard duquel l'un de ses utilisateurs a la possession avant septembre 2022;

**f)** un véhicule assujetti;

**g)** un aéronef visé par règlement. (*subject aircraft*)

***autorité militaire*** S'entend des Forces canadiennes, au sens de l'article 14 de la *Loi sur la défense nationale*, du ministère de la Défense nationale ou d'une *force étrangère présente au Canada*, au sens de l'article 2 de la *Loi sur les forces étrangères présentes au Canada*. (*military authority*)

***banque*** *Banque*, au sens de l'article 2 de la *Loi sur les banques*, ou une *banque étrangère autorisée*, au sens de cet article, qui ne fait pas l'objet des restrictions et exigences visées au paragraphe 524(2) de cette loi. (*bank*)

***bien assujetti*** Aéronef assujetti, navire assujetti ou véhicule assujetti. (*subject item*)

***caisse de crédit*** S'entend au sens du paragraphe 137(6) de la *Loi de l'impôt sur le revenu*. (*credit union*)

***commissaire*** Sauf aux articles 80 et 81 et aux paragraphes 153(1) à (8) et (19), s'entend du commissaire du revenu, nommé en vertu de l'article 25 de la *Loi sur l'Agence du revenu du Canada*. (*Commissioner*)

***conjoint de fait*** Quant à un particulier à un moment donné, le particulier qui est le conjoint de fait du particulier à ce moment pour l'application de la *Loi de l'impôt sur le revenu*. (*common-law partner*)

***contrepartie*** Est assimilé à une contrepartie tout montant qui est payable par effet de la loi. (*consideration*)

***corps dirigeant autochtone*** S'entend au sens de l'article 2 de la *Loi sur le ministère des Services aux Autochtones*. (*Indigenous governing body*)

***corps policier***

**a)** La Gendarmerie royale du Canada, la Police provinciale de l'Ontario, la Sûreté du Québec, la Garde côtière canadienne ou un corps de police municipal ou régional créé sous le régime d'une loi provinciale;

**b)** une entité gouvernementale qui est responsable de la préservation et du maintien de la paix publique;

**c)** une personne visée par règlement. (*police authority*)

the Department of National Defence or a *visiting force*, as defined in section 2 of the *Visiting Forces Act*. (*autorité militaire*)

***Minister*** means the Minister of National Revenue. (*ministre*)

***municipality*** means

**(a)** an incorporated city, town, village, metropolitan authority, township, district, county or rural municipality or other incorporated municipal body however designated; or

**(b)** any other local authority that the Minister may determine to be a municipality for the purposes of this Act. (*municipalité*)

***officer*** means, except in sections 75, 127 and 149,

**(a)** a person who is appointed or employed in the administration or enforcement of this Act; and

**(b)** with respect to imported goods that have not been released under the *Customs Act*, an *officer* as defined in subsection 2(1) of that Act. (*préposé*)

***passenger seat*** means a seat on an aircraft other than a pilot seat. (*siège passager*)

***person*** means an individual, a partnership, a corporation, the estate or succession of a deceased individual, a trust, a joint venture, a government or a body that is a society, a union, a club, an association, a commission or another organization of any kind. (*personne*)

***personal representative***, of a deceased individual or the estate or succession of a deceased individual, means the executor of the individual's will, the liquidator of the individual's succession, the administrator of the estate or any person that is responsible under the appropriate law for the proper collection, administration, disposition and distribution of the assets of the estate or succession. (*représentant personnel*)

***pilot seat*** includes a flight engineer seat or a flight deck observer seat. (*siège destiné au pilote*)

***police authority*** means

**(a)** the Royal Canadian Mounted Police, the Ontario Provincial Police, the Sûreté du Québec, the Canadian Coast Guard or a municipal or regional police force established in accordance with provincial legislation;

**(b)** a government entity that is responsible for the preservation and maintenance of the public peace; or

***cotisation*** Cotisation ou nouvelle cotisation établie en vertu de la présente loi. (*assessment*)

***entité gouvernementale***

**a)** Ministère ou agence du gouvernement du Canada ou d'une province;

**b)** municipalité;

**c)** *gouvernement autochtone* au sens du paragraphe 2(1) de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*;

**d)** personne morale dont l'ensemble des actions du capital-actions, à l'exception des actions conférant l'admissibilité aux postes d'administrateurs, appartiennent à une ou plusieurs des personnes suivantes :

**(i)** Sa Majesté du chef du Canada ou d'une province,

**(ii)** une municipalité,

**(iii)** une personne morale visée au présent alinéa;

**e)** conseil ou commission, établi par Sa Majesté du chef du Canada ou d'une province ou par une municipalité, qui exerce une fonction gouvernementale ou municipale, selon le cas, d'ordre administratif ou réglementaire. (*government entity*)

***exportation*** Ce qui est exporté du Canada. (*export*)

***importation*** Ce qui est importé au Canada. (*import*)

***invité*** S'agissant d'un invité d'une personne donnée à bord d'un bien assujetti, le particulier qui utilise le bien assujetti ou qui en jouit et qui :

**a)** soit a un lien de dépendance avec la personne donnée;

**b)** soit est le salarié de la personne donnée ou le salarié d'une personne qui a un lien de dépendance avec la personne donnée;

**c)** soit utilise le bien assujetti ou en jouit, sur l'invitation de la personne donnée ou d'une personne visée aux alinéas a) ou b), sans contrepartie ou pour une contrepartie symbolique. (*guest*)

***juge*** Juge d'une cour supérieure de la province où l'affaire prend naissance ou juge de la Cour fédérale. (*judge*)

***ministre*** Le ministre du Revenu national. (*Minister*)

**(c)** a prescribed person. (*corps policier*)

***prescribed*** means

**(a)** in the case of a form or the manner of filing a form, authorized by the Minister;

**(b)** in the case of the information to be given on or with a form, specified by the Minister; and

**(c)** in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation. (*Version anglaise seulement*)

***qualifying aircraft user*** means a person (other than a prescribed person) that is

**(a)** Her Majesty in right of Canada or a province;

**(b)** a person that is an agent of Her Majesty in right of Canada or a province;

**(c)** a municipality;

**(d)** an Indigenous governing body;

**(e)** a police authority;

**(f)** a government entity that has as its primary responsibility the conduct of emergency medical response activities or emergency fire response activities;

**(g)** a government entity that has as its primary responsibility the operation, management and maintenance of a hospital;

**(h)** a person that has as its primary responsibility the operation, management and maintenance of a *listed airport*, as defined in section 2 of the *Air Travellers Security Charge Act*;

**(i)** NAV CANADA, a corporation incorporated on May 26, 1995 under Part II of the *Canada Corporations Act*; or

**(j)** a prescribed person. (*utilisateur admissible d'aéronef*)

***record*** means any material on which representations, in any form, of information or concepts are recorded or marked and that is capable of being read or understood by a person, a computer system or other device. (*registre*)

***registered vendor***, in respect of a type of subject item, means a person that is registered under Division 5 as a

***municipalité***

**a)** Administration métropolitaine, ville, village, canton, district, comté ou municipalité rurale constitués en personne morale ou autre organisme municipal ainsi constitué quelle qu'en soit la désignation;

**b)** toute autre administration locale à laquelle le ministre confère le statut de municipalité pour l'application de la présente loi. (*municipality*)

***navire*** Navire, bateau ou embarcation conçu ou utilisable — exclusivement ou non — pour la navigation sur l'eau, au-dessous ou légèrement au-dessus de celle-ci, indépendamment de son mode de propulsion ou de l'absence de propulsion. (*vessel*)

***navire assujetti***

**a)** Navire qui, à la fois :

**(i)** est conçu ou aménagé pour les activités de loisir, récréatives ou sportives,

**(ii)** a une date de fabrication qui est postérieure à 2018;

**b)** navire visé par règlement.

La présente définition exclut :

**c)** une *maison flottante*, au sens du paragraphe 123(1) de la *Loi sur la taxe d'accise*;

**d)** un navire conçu et équipé exclusivement pour :

**(i)** la capture, la récolte ou le transport commercial du poisson ou d'autres ressources marines vivantes,

**(ii)** le transport de passagers ou de véhicules selon un horaire régulier entre deux ou plusieurs points;

**e)** un navire disposant de couchettes pour plus de 100 particuliers qui ne sont pas des membres d'équipage;

**f)** un navire qui est, à la fois :

**(i)** immatriculé avant septembre 2022 auprès d'un gouvernement autrement qu'à une fin accessoire à sa fabrication, à sa mise en vente ou à son transport,

**(ii)** un navire à l'égard duquel l'un de ses utilisateurs a la possession avant septembre 2022;

**g)** un véhicule assujetti ou un aéronef assujetti;

**h)** un navire visé par règlement. (*subject vessel*)

vendor in respect of that type of subject item. (*vendeur inscrit*)

***select subject vessel*** means

**(a)** a subject vessel (other than a prescribed subject vessel) that is equipped with a bed, bunk, berth or similar sleeping amenity; or

**(b)** a prescribed subject vessel. (*navire assujetti désigné*)

***subject aircraft*** means an aircraft that is

**(a)** an *aeroplane*, *glider* or *helicopter*, as those terms are defined in subsection 101.01(1) of the *Canadian Aviation Regulations*, that has a date of manufacture after 2018 if the aircraft

**(i)** is equipped only with one or more pilot seats and cannot have any other seating configuration,

**(ii)** is equipped only with one or more pilot seats, or is not equipped with any seats, and cannot have a seating configuration, excluding pilot seats, of 40 or greater, or

**(iii)** is equipped with one or more pilot seats and one or more passenger seats and has a seating configuration, excluding pilot seats, of 39 or fewer, or

**(b)** a prescribed aircraft,

but does not include

**(c)** an aircraft that is designed and equipped for military activities,

**(d)** an aircraft that is equipped for the carriage of goods only,

**(e)** an aircraft

**(i)** that is registered with a government before September 2022 otherwise than solely for a purpose incidental to its manufacture, offering for sale or transportation, and

**(ii)** in respect of which a user of the aircraft has possession before September 2022,

**(f)** a subject vehicle, or

**(g)** a prescribed aircraft. (*aéronef assujetti*)

***subject item*** means a subject aircraft, a subject vehicle or a subject vessel. (*bien assujetti*)

***navire assujetti désigné***

**a)** Navire assujetti (autre qu'un navire assujetti visé par règlement) qui est muni d'un lit, d'une couchette, d'un poste à quai ou d'équipement de couchage semblable;

**b)** navire assujetti visé par règlement. (*select subject vessel*)

***numéro d'identification*** Quant à un bien assujetti, un numéro d'identification que le ministre estime acceptable et qui est propre au bien assujetti. (*identification number*)

***personne*** Particulier, société de personnes, personne morale, succession, fiducie, coentreprise ou gouvernement, ainsi qu'un organisme qui est un syndicat, un club, une association, une commission ou autre organisation; ces notions sont visées dans des formulations générales, impersonnelles ou comportant des pronoms ou adjectifs indéfinis. (*person*)

***préposé***

**a)** Personne nommée ou employée relativement à l'application ou à l'exécution de la présente loi;

**b)** s'agissant de marchandises importées qui n'ont pas été dédouanées en application de la *Loi sur les douanes*, un *agent* au sens du paragraphe 2(1) de cette loi. (*officer*)

***registre*** Tout support sur lequel des représentations d'information ou de notions sont enregistrées ou inscrites et qui peut être lu ou compris par une personne ou par un système informatique ou un autre dispositif. (*record*)

***représentant personnel*** Quant à une personne décédée ou à sa succession, le liquidateur de succession, l'exécuteur testamentaire, l'administrateur de la succession ou toute personne chargée, selon la législation applicable, de la perception, de l'administration, de l'aliénation et de la répartition de l'actif successoral. (*personal representative*)

***service de messagerie*** Service de livraison de courrier certifié ou recommandé ou tout autre service qui tient un registre de l'envoi ou de la livraison d'un avis ou d'un document. (*confirmed delivery service*)

***siège destiné au pilote*** Comprend un siège de mécanicien navigant ou d'observateur au poste de pilotage. (*pilot seat*)

***subject vehicle*** means

**(a)** a motor vehicle that

**(i)** is designed or adapted primarily to carry individuals on highways and streets,

**(ii)** has a seating capacity of not more than 10 individuals,

**(iii)** has a *gross vehicle weight rating*, as that term is defined in subsection 2(1) of the *Motor Vehicle Safety Regulations*, that is less than or equal to 3,856 kg,

**(iv)** has a date of manufacture after 2018, and

**(v)** is designed to travel with four or more wheels in contact with the ground, or

**(b)** a prescribed motor vehicle,

but does not include

**(c)** an ambulance,

**(d)** a hearse,

**(e)** a motor vehicle that is clearly marked for policing activities,

**(f)** a motor vehicle that is clearly marked and equipped for emergency medical response activities or emergency fire response activities,

**(g)** a recreational vehicle that is designed or adapted to provide temporary residential accommodations, and is equipped with at least four of the following elements:

**(i)** cooking facilities,

**(ii)** a refrigerator or ice box,

**(iii)** a self-contained toilet,

**(iv)** a heating or air-conditioning system that can function independently of the vehicle engine,

**(v)** a potable water supply system that includes a faucet and sink, and

**(vi)** a 110-V to 125-V electric power supply, or a liquefied petroleum gas supply, that can function independently of the vehicle engine,

**(h)** a motor vehicle

***siège passager*** Siège à bord d'un aéronef autre qu'un siège destiné au pilote. (*passenger seat*)

***taxe*** Sauf au paragraphe 13(1), aux articles 15 et 16, au sous-alinéa 18(2)a)(iv) et à l'alinéa 42(1)b), taxe payable en application de la présente loi. (*tax*)

***trimestre civil*** S'entend d'une période de trois mois débutant le premier jour de janvier, avril, juillet ou octobre. (*calendar quarter*)

***utilisateur admissible d'aéronef*** S'entend d'une personne (sauf une personne visée par règlement) qui est :

**a)** Sa Majesté du chef du Canada ou d'une province;

**b)** une personne qui est un mandataire de Sa Majesté du chef du Canada ou d'une province;

**c)** une municipalité;

**d)** un corps dirigeant autochtone;

**e)** un corps policier;

**f)** une entité gouvernementale dont la responsabilité principale est l'exécution d'activités de secours médical d'urgence ou d'intervention d'urgence en cas d'incendie;

**g)** une entité gouvernementale dont la responsabilité principale est l'exploitation, la gestion et l'entretien d'un hôpital;

**h)** une personne dont la responsabilité principale est l'exploitation, la gestion et l'entretien d'un *aéroport désigné*, au sens de l'article 2 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*;

**i)** la société NAV CANADA, constituée sous le régime de la partie II de la *Loi sur les corporations canadiennes* le 26 mai 1995;

**j)** une personne visée par règlement. (*qualifying aircraft user*)

***véhicule assujetti***

**a)** Véhicule à moteur qui, à la fois :

**(i)** est principalement conçu ou aménagé pour transporter des particuliers sur les routes et dans les rues,

**(ii)** compte au maximum dix places assises,

**(i)** that is registered before September 2022 with a government, and

**(ii)** in respect of which possession was transferred to a user of the motor vehicle before September 2022, or

**(i)** a prescribed motor vehicle. (*véhicule assujetti*)

***subject vessel*** means

**(a)** a vessel that

**(i)** is designed or adapted for leisure, recreation or sport activities, and

**(ii)** has a date of manufacture after 2018, or

**(b)** a prescribed vessel,

but does not include

**(c)** a *floating home*, as defined in subsection 123(1) of the *Excise Tax Act*,

**(d)** a vessel that is designed and equipped solely for

**(i)** commercially catching, harvesting or transporting fish or other living marine resources, or

**(ii)** ferrying passengers or vehicles on a fixed schedule between two or more points,

**(e)** a vessel that has sleeping facilities for more than 100 individuals who are not crew members,

**(f)** a vessel

**(i)** that is registered with a government before September 2022, otherwise than solely for a purpose incidental to its manufacture, offering for sale or transportation, and

**(ii)** in respect of which a user of the vessel has possession before September 2022,

**(g)** a subject vehicle or a subject aircraft, or

**(h)** a prescribed vessel. (*navire assujetti*)

***tax*** means, except in subsection 13(1), sections 15 and 16, subparagraph 18(2)(a)(iv) and paragraph 42(1)(b), tax payable under this Act. (*taxe*)

***vessel*** means a boat, ship or craft that is designed, or is capable of being used, solely or partly for navigation in, on, through or immediately above water, without regard to the method or lack of propulsion. (*navire*)

**(iii)** a un *poids nominal brut du véhicule*, au sens du paragraphe 2(1) du *Règlement sur la sécurité des véhicules automobiles*, qui est égal ou inférieur à 3 856 kg,

**(iv)** a une date de fabrication qui est postérieure à 2018,

**(v)** est conçu pour rouler sur au moins quatre roues en contact avec le sol;

**b)** véhicule à moteur visé par règlement.

La présente définition exclut :

**c)** une ambulance;

**d)** un corbillard;

**e)** un véhicule à moteur clairement identifié pour les activités policières;

**f)** un véhicule à moteur clairement identifié et équipé pour les activités de secours médical d'urgence ou d'intervention d'urgence en cas d'incendie;

**g)** un véhicule récréatif conçu ou aménagé pour servir de local d'habitation temporaire et qui est muni d'au moins quatre des éléments suivants :

**(i)** une installation qui permet de faire la cuisine,

**(ii)** un réfrigérateur ou un compartiment à glace,

**(iii)** une toilette autonome,

**(iv)** un système de chauffage ou de climatisation qui peut fonctionner indépendamment du moteur du véhicule,

**(v)** un système d'approvisionnement en eau potable qui comprend un robinet et un évier,

**(vi)** un système d'alimentation électrique de 110 V à 125 V, ou un circuit d'alimentation en gaz de pétrole liquéfié, qui peut fonctionner indépendamment du moteur du véhicule;

**h)** un véhicule à moteur qui, à la fois :

**(i)** est immatriculé avant septembre 2022 auprès d'un gouvernement,

**(ii)** est un véhicule à moteur à l'égard duquel la possession a été transférée à un utilisateur du véhicule à moteur avant septembre 2022;

**i)** un véhicule à moteur visé par règlement. (*subject vehicle*)

***vendeur inscrit*** Relativement à un type de bien assujetti, la personne qui est inscrite en application de la section 5 à titre de vendeur relativement à ce type de bien assujetti. (*registered vendor*)

**Definition of *Canada***

**(2)** In or in respect of Subdivision B of Division 2, ***Canada*** has the same meaning as in the *Customs Act*.

**Définition de *Canada***

**(2)** Pour l'application de la sous-section B de la section 2, ***Canada*** s'entend au sens de la *Loi sur les douanes*.

**Meaning of administration or enforcement of this Act**

**3** For greater certainty, a reference in this Act to the administration or enforcement of this Act includes the collection of any amount payable under this Act.

**Sens de « application ou exécution de la présente loi »**

**3** Il est entendu que, dans la présente loi, la mention « application ou exécution de la présente loi » s'entend en outre du recouvrement d'une somme payable en application de la présente loi.

**Person resident in Canada**

**4** For the purposes of Division 2 of Part 2 and paragraph 21(6)(e), a person is deemed to be resident in Canada at any time

**(a)** in the case of a corporation, if the corporation is incorporated or continued in Canada and not continued elsewhere;

**(b)** in the case of a partnership, a joint venture, an unincorporated society, a club, an association or an organization, or a branch thereof, if the member or participant, or a majority of the members or participants, having management and control thereof is or are resident in Canada at that time;

**(c)** in the case of a labour union, if the labour union is carrying on activities as such in Canada and has a local union or branch in Canada at that time; and

**(d)** in the case of an individual, if the individual is deemed under any of paragraphs 250(1)(b) to (f) of the *Income Tax Act* to be resident in Canada at that time.

**Personne résidant au Canada**

**4** Pour l'application de la section 2 de la partie 2 et de l'alinéa 21(6)e), sont réputés résider au Canada à un moment donné :

**a)** la personne morale constituée ou prorogée exclusivement au Canada;

**b)** la société de personnes, la coentreprise, le club, l'association ou l'organisation non dotée de la personnalité morale, ou une succursale de ceux-ci, dont le membre ou le participant, ou la majorité des membres ou participants, la contrôlant ou la gérant réside au Canada à ce moment;

**c)** le syndicat ouvrier qui exerce au Canada des activités à ce titre et y a une unité ou section locale à ce moment;

**d)** le particulier qui est réputé, en vertu de l'un des alinéas 250(1)b) à f) de la *Loi de l'impôt sur le revenu*, résider au Canada à ce moment.

**Arm's length**

**5 (1)** For the purposes of this Act

**(a)** related persons are deemed not to deal with each other at arm's length;

**(b)** associated persons are deemed not to deal with each other at arm's length; and

**(c)** it is a question of fact whether persons not related to, or not associated with, each other are, at any particular time, dealing with each other at arm's length.

**Lien de dépendance**

**5 (1)** Pour l'application de la présente loi :

**a)** des personnes liées sont réputées avoir entre elles un lien de dépendance;

**b)** des personnes associées sont réputées avoir entre elles un lien de dépendance;

**c)** la question de savoir si des personnes non liées entre elles ou non associées les unes aux autres

**Related persons**

**(2)** For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsections 251(2) to (6) of the *Income Tax Act*, except that

**(a)** a reference in those subsections to "corporation" is to be read as a reference to "corporation or partnership"; and

**(b)** a reference in those subsections to "shares of the capital stock of a corporation" or "shareholders" is, in respect of a partnership, to be read as a reference to "rights in a partnership" or "partners", respectively.

**Related persons — partnership**

**(3)** For the purposes of this Act, a member of a partnership is deemed to be related to the partnership.

**Associated persons**

**(4)** A particular corporation is associated with another corporation for the purposes of this Act if, by reason of subsections 256(1) to (6) of the *Income Tax Act*, the particular corporation is associated with the other corporation for the purposes of that Act.

**Corporations controlled by same person or group**

**(5)** A person other than a corporation is associated with a particular corporation for the purposes of this Act if the particular corporation is controlled by the person or by a group of persons of which the person is a member and each of whom is associated with each of the others.

**Partnership or trust**

**(6)** For the purposes of this Act, a person is associated with

**(a)** a partnership if the total of the shares of the profits of the partnership to which the person and all other persons who are associated with the person are entitled is more than half of the total profits of the partnership, or would be more than half of the total profits of the partnership if it had profits; and

**(b)** a trust if the total of the values of the interests in the trust of the person and all other persons who are associated with the person is more than half of the total value of all interests in the trust.

n'avaient aucun lien de dépendance à un moment donné est une question de fait.

**Personnes liées**

**(2)** Pour l'application de la présente loi, des personnes sont liées si elles sont des personnes liées au sens des paragraphes 251(2) à (6) de la *Loi de l'impôt sur le revenu*. Toutefois :

**a)** la mention « société » à ces paragraphes vaut mention de « société ou société de personnes »;

**b)** les mentions « actions du capital-actions d'une société » ou « actionnaires » relativement à une société de personnes valent respectivement mention de « droits dans une société de personnes » ou « associés ».

**Personnes liées — société de personnes**

**(3)** Pour l'application de la présente loi, l'associé d'une société de personnes est réputé être lié à celle-ci.

**Personnes morales associées**

**(4)** Les paragraphes 256(1) à (6) de la *Loi de l'impôt sur le revenu* s'appliquent afin de déterminer si des personnes morales sont associées pour l'application de la présente loi.

**Personne associée à une personne morale**

**(5)** Une personne autre qu'une personne morale est associée à une personne morale pour l'application de la présente loi si elle la contrôle, seule ou avec un groupe de personnes associées les unes aux autres dont elle est membre.

**Société de personnes ou fiducie**

**(6)** Pour l'application de la présente loi, une personne est associée :

**a)** à une société de personnes si le total des parts sur les bénéfices de celle-ci auxquelles la personne et les personnes qui lui sont associées ont droit représente plus de la moitié des bénéfices totaux de la société ou le représenterait si celle-ci avait des bénéfices;

**b)** à une fiducie si la valeur globale des participations dans celle-ci qui appartiennent à la personne et aux personnes qui lui sont associées représente plus de la moitié de la valeur globale de l'ensemble des participations dans la fiducie.

**Association with third person**

**(7)** For the purposes of this Act, a person is associated with another person if each of them is associated with the same third person.

**Personne associée à un tiers**

**(7)** Pour l'application de la présente loi, des personnes sont associées si chacune d'elles est associée à un tiers.

**Associated persons — partnership**

**(8)** For the purposes of this Act, a member of a partnership is deemed to be associated with the partnership.

**Personnes associées — société de personnes**

**(8)** Pour l'application de la présente loi, l'associé d'une société de personnes est réputé être associé à celle-ci.

**Negative amounts**

**6** Except as specifically otherwise provided, if an amount or a number is required under this Act to be determined or calculated by or in accordance with an algebraic formula and the amount or number when so determined or calculated would, in the absence of this section, be a negative amount or number, it is deemed to be zero.

**Résultats négatifs**

**6** Sauf disposition contraire, tout montant ou nombre dont la présente loi prévoit le calcul selon une formule algébrique et qui, une fois calculé, est négatif est considéré comme égal à zéro.

**Sale — subject item**

**7 (1)** For the purposes of this Act, a vendor sells a subject item to a purchaser if

**(a)** the vendor transfers ownership of the subject item to the purchaser by way of sale under an agreement; and

**(b)** the subject item is delivered or made available in Canada in relation to the agreement.

**Vente — bien assujetti**

**7 (1)** Pour l'application de la présente loi, un vendeur vend un bien assujetti à un acheteur si, à la fois :

**a)** le vendeur transfère par vente la propriété du bien assujetti à l'acheteur aux termes d'une convention;

**b)** le bien assujetti est livré au Canada, ou y est mis à la disposition d'une personne, en lien avec la convention.

**Partial ownership**

**(2)** For the purposes of this Act, a particular person transfers ownership of a subject item to another person even if, at the time ownership is transferred to the other person, the particular person retains partial ownership or transfers partial ownership to any third person.

**Propriété partielle**

**(2)** Pour l'application de la présente loi, une personne donnée transfère la propriété d'un bien assujetti à une autre personne même si, au moment du transfert de la propriété à l'autre personne, la personne donnée conserve la propriété partielle ou ne transfère que la propriété partielle à un tiers.

**Security interest — not a sale**

**(3)** For the purposes of this Act and despite subsection (1), if, under an agreement entered into in respect of a debt or obligation, a person transfers a subject item or an interest in a subject item for the purpose of securing payment of the debt or performance of the obligation, the transfer is deemed not to be a sale of the subject item and the transferee is deemed not to be an owner of the subject item only because of the transfer, and if, on payment of the debt or performance of the obligation or the forgiveness of the debt or obligation, the subject item or interest is retransferred, the retransfer of the subject item or interest is deemed not to be a sale of a subject item.

**Titre de garantie — non-vente**

**(3)** Pour l'application de la présente loi et malgré le paragraphe (1), le transfert d'un bien assujetti, ou d'un droit y afférent, aux termes d'une convention concernant une dette ou une obligation et visant à garantir le paiement de la dette ou l'exécution de l'obligation est réputé ne pas constituer la vente du bien assujetti et le cessionnaire est réputé ne pas être un propriétaire du bien assujetti en raison seulement de ce transfert. De plus, le retour du bien assujetti ou du droit y afférent, une fois la dette payée ou remise ou l'obligation exécutée ou remise, est réputé ne pas constituer la vente du bien assujetti.

**When sale completed**

**(4)** Subject to subsection (5), for the purposes of this Act, the sale of a subject item to a purchaser is completed at the earlier of

**Achèvement de la vente**

**(4)** Sous réserve du paragraphe (5), pour l'application de la présente loi, la vente d'un bien assujetti à un acheteur est achevée au premier en date :

**(a)** the time at which possession of the subject item is transferred to the purchaser or to another person, and

**(b)** the time at which ownership of the subject item is transferred to the purchaser.

**When sale completed — regulations**

**(5)** For the purposes of this Act, if prescribed conditions are met in respect of the sale of a subject item to a purchaser, the sale is completed at the prescribed time.

**Deemed sale**

**(6)** For the purposes of this Act, except if prescribed circumstances exist, if ownership of a subject item is transferred in any manner otherwise than by way of sale from a particular person to another person and if the subject item is delivered or made available in Canada, the following rules apply:

**(a)** the particular person is deemed to sell the subject item to the other person;

**(b)** the particular person is deemed to be the vendor in respect of the sale and the other person is deemed to be the purchaser in respect of the sale;

**(c)** the sale is deemed to be completed at the earlier of the time at which the possession of the subject item is transferred and the time at which ownership of the subject item is transferred; and

**(d)** the value of the consideration paid for the sale of the subject item is deemed to be equal to the total of

**(i)** the retail value of the subject item at the time at which the sale is completed as determined under paragraph (c), and

**(ii)** a prescribed amount.

**Improvement to subject item**

**8 (1)** Subject to subsection (2), for the purposes of this Act, an improvement in respect of a subject item is the provision of property or a service in any manner, including by way of sale, transfer, barter, exchange, licence, rental, lease, gift or disposition, that is a provision of

**(a)** tangible personal property that is installed in or on, or is affixed to, the subject item;

**(b)** a service that modifies the subject item and is physically performed in respect of the subject item; or

**(c)** a prescribed property or service.

**a)** du moment du transfert de la possession du bien assujetti à l'acheteur ou à une autre personne;

**b)** du moment du transfert de la propriété du bien assujetti à l'acheteur.

**Achèvement de la vente — règlement**

**(5)** Pour l'application de la présente loi, si les conditions prévues par règlement sont remplies relativement à la vente d'un bien assujetti à un acheteur, la vente est achevée au moment prévu par règlement.

**Présomption de vente**

**(6)** Pour l'application de la présente loi, sauf si les circonstances prévues par règlement s'avèrent, si la propriété du bien assujetti est transférée d'une personne donnée à une autre personne autrement que par vente et si le bien assujetti est livré au Canada, ou y est mis à la disposition d'une personne, les règles suivantes s'appliquent :

**a)** la personne donnée est réputée vendre le bien assujetti à l'autre personne;

**b)** la personne donnée est réputée être le vendeur relativement à la vente et l'autre personne est réputée être l'acheteur relativement à la vente;

**c)** la vente est réputée être achevée au premier en date du moment où la possession du bien assujetti est transférée et du moment du transfert de la propriété du bien assujetti;

**d)** la valeur de la contrepartie payée pour la vente du bien assujetti est réputée être égale au total des montants suivants :

**(i)** la valeur au détail du bien assujetti au moment où la vente est achevée, déterminée selon l'alinéa c),

**(ii)** un montant visé par règlement.

**Amélioration à un bien assujetti**

**8 (1)** Sous réserve du paragraphe (2), pour l'application de la présente loi, une amélioration relativement à un bien assujetti est la fourniture d'un bien ou d'un service de toute manière, y compris par vente, transfert, troc, échange, louage, licence, donation ou aliénation, qui est :

**a)** la fourniture d'un bien meuble corporel qui est installé ou fixé sur le bien assujetti;

**b)** la fourniture d'un service qui modifie le bien assujetti et qui est exécuté physiquement relativement au bien assujetti;

**Excluded improvements**

**(2)** For the purposes of this Act, the provision of property or a service is deemed not to be an improvement in respect of a subject item if it is

**(a)** the provision of a repair, cleaning or maintenance service in respect of the subject item;

**(b)** the provision of tangible personal property to replace other tangible personal property that is a part of the subject item and that is damaged, defective or non-functioning;

**(c)** in the case of a subject vehicle,

**(i)** the provision of tangible personal property that is, or a service that is in respect of,

**(A)** a child safety seating system or a child safety restraint system, or

**(B)** a trailer or camper, or

**(ii)** the provision of tangible personal property or a service that specially equips or adapts the subject vehicle

**(A)** for its use by or in transporting an individual using a wheelchair, or

**(B)** with an auxiliary driving control to facilitate the operation of the vehicle by an individual with a disability; or

**(d)** the provision of a prescribed property or service.

**When improvement completed**

**(3)** Subject to subsection (4), for the purposes of this Act, an improvement in respect of a subject item is completed at

**(a)** if the improvement is the provision of tangible personal property that is installed in or on, or is affixed to, the subject item, the time at which the installation of the tangible personal property is physically completed; and

**c)** la fourniture d'un bien ou d'un service visé par règlement.

**Amélioration exclue**

**(2)** Pour l'application de la présente loi, la fourniture d'un bien ou d'un service est réputée ne pas être une amélioration relativement à un bien assujetti si, selon le cas :

**a)** il s'agit de la fourniture d'un service de réparation, de nettoyage ou d'entretien relativement au bien assujetti;

**b)** il s'agit de la fourniture d'un bien meuble corporel en remplacement d'un autre bien meuble corporel qui fait partie du bien assujetti et qui est endommagé, défectueux ou non fonctionnel;

**c)** dans le cas où le bien assujetti est un véhicule assujetti :

**(i)** soit il s'agit de la fourniture d'un bien meuble corporel qui est, ou d'un service relatif à, selon le cas :

**(A)** un système de siège de sécurité pour enfants ou un dispositif de retenue de sécurité pour enfants,

**(B)** une remorque ou une caravane,

**(ii)** soit il s'agit de la fourniture d'un bien meuble corporel ou d'un service qui équipe ou adapte le véhicule de façon spéciale, selon le cas :

**(A)** en vue de son utilisation par des personnes en fauteuil roulant,

**(B)** avec un appareil de conduite auxiliaire servant à faciliter sa conduite par les personnes handicapées;

**d)** il s'agit de la fourniture d'un bien ou d'un service visé par règlement.

**Amélioration achevée**

**(3)** Sous réserve du paragraphe (4), pour l'application de la présente loi, une amélioration relativement à un bien assujetti est achevée :

**a)** si l'amélioration vise la livraison de biens meubles corporels qui sont installés sur le bien assujetti ou y sont fixés, au moment où l'installation du bien meuble corporel est physiquement achevée;

**(b)** if the improvement is the provision of a service that is physically performed in respect of the subject item, the time at which the performance of the service is physically completed.

**When improvement completed — regulations**

**(4)** For the purposes of this Act, if prescribed conditions are met in respect of an improvement in respect of a subject item, the improvement is completed at the prescribed time.

**Price threshold**

**9** For the purposes of this Act, the price threshold in respect of a subject item is

**(a)** in the case of a subject vehicle, $100,000;

**(b)** in the case of a subject aircraft, $100,000; and

**(c)** in the case of a subject vessel, $250,000.

**Definition of *business***

**10 (1)** For the purposes of this section, a ***business*** includes a profession, calling, trade, manufacture or undertaking of any kind whatever and any activity engaged in on a regular or continuous basis that involves the provision of property by way of lease, licence or similar arrangement, but does not include an office or employment.

**Where flights originate and terminate**

**(2)** For the purposes of this section, a flight of a subject aircraft originates at the location of the *take-off*, as that term is defined in subsection 101.01(1) of the *Canadian Aviation Regulations*, of the subject aircraft and terminates at the location of the *landing*, as that term is defined in that subsection, of the subject aircraft.

**Qualifying flight**

**(3)** For the purposes of this section, except if prescribed circumstances exist, a subject aircraft is used for a flight that is a qualifying flight if

**(a)** the purpose of the flight is to provide

**(i)** a *scheduled service*, as defined in subsection 3(1) of the *Transportation Information Regulations*,

**(ii)** an air ambulance service,

**(iii)** an aerial fire fighting service,

**(iv)** an aerial forest fire management service,

**b)** si l'amélioration vise la prestation de services qui sont effectués physiquement relativement au bien assujetti, au moment où l'exécution du service est physiquement achevée.

**Amélioration achevée — règlement**

**(4)** Pour l'application de la présente loi, si des conditions prévues par règlement sont remplies relativement à une amélioration, l'amélioration est achevée au moment visé par règlement.

**Seuil de prix**

**9** Pour l'application de la présente loi, le seuil de prix relatif à un bien assujetti est :

**a)** s'agissant d'un véhicule assujetti, 100 000 $;

**b)** s'agissant d'un aéronef assujetti, 100 000 $;

**c)** s'agissant d'un navire assujetti, 250 000 $.

**Définition de *entreprise***

**10 (1)** Pour l'application du présent article, sont compris parmi les ***entreprises*** les commerces, les industries, les professions et toutes affaires quelconques, ainsi que les activités exercées de façon régulière ou continue qui comportent la fourniture de biens par bail, licence ou accord semblable. En sont exclus les charges et les emplois.

**Endroit où un vol commence et se termine**

**(2)** Pour l'application du présent article, le vol d'un aéronef assujetti commence à l'endroit de son *décollage*, au sens du paragraphe 101.01(1) du *Règlement de l'aviation canadien*, et se termine à l'endroit de son *atterrissage*, au sens de ce paragraphe.

**Vol admissible**

**(3)** Pour l'application du présent article, sauf si les circonstances prévues par règlement s'avèrent, un aéronef assujetti est utilisé pour un vol qui est un vol admissible si, selon le cas :

**a)** l'objet du vol est de fournir, selon le cas :

**(i)** un *service régulier*, au sens du paragraphe 3(1) du *Règlement sur les renseignements relatifs au transport*,

**(ii)** un service d'ambulance aérienne,

**(iii)** un service aérien de lutte contre les incendies,

**(v)** an aerial search and rescue operation,

**(vi)** an aerial transportation service for the retrieval and transportation of organs for human transplant,

**(vii)** an aerial weather altering service,

**(viii)** an aerial survey service,

**(ix)** an aerial construction service,

**(x)** an aerial spraying or spreading service,

**(xi)** an air flight training service, or

**(xii)** for the carriage of goods only;

**(b)** it is the case that

**(i)** all or substantially all of the passenger seats on the flight are offered for sale on a seat-by-seat basis to the general public, and

**(ii)** all or substantially all of the passengers on the flight are individuals that deal at arm's length with

**(A)** the person that operates the subject aircraft for the flight,

**(B)** each person that is an owner of the subject aircraft, and

**(C)** in cases where one or more of those passenger seats are offered for sale by a person other than a person referred to in clause (A) or (B), that other person;

**(c)** the flight originates or terminates in a remote community listed in the schedule;

**(d)** the flight is conducted in the course of a business of an owner of the subject aircraft (other than a business without a reasonable expectation of profit) and otherwise than for the leisure, recreation, sport or other enjoyment of

**(i)** an owner of the subject aircraft,

**(ii)** a guest of an owner of the subject aircraft on the subject aircraft, or

**(iii)** another person that has the right to use the subject aircraft under a lease, licence or similar arrangement or a guest of the other person on the subject aircraft; or

**(e)** prescribed circumstances exist.

**(iv)** un service aérien de contrôle des incendies de forêt,

**(v)** une opération aérienne, ou un service aérien, de recherche et de sauvetage,

**(vi)** un service de transport aérien pour le prélèvement et le transport d'organes humains destinés à être greffés sur des humains,

**(vii)** un service aérien de modification des conditions météorologiques,

**(viii)** un service aérien de levé topographique,

**(ix)** un service aérien de travaux publics ou de construction,

**(x)** un service aérien d'épandage,

**(xi)** un service aérien de formation en vol,

**(xii)** le transport de marchandises seulement;

**b)** il s'avère que, à la fois :

**(i)** la totalité ou la presque totalité des sièges passagers sur le vol sont offerts individuellement pour la vente au grand public,

**(ii)** la totalité ou la presque totalité des passagers sur le vol sont des particuliers qui n'ont aucun lien de dépendance avec les personnes suivantes :

**(A)** la personne qui opère l'aéronef assujetti pour le vol,

**(B)** toute personne qui est un propriétaire de l'aéronef assujetti,

**(C)** dans le cas où l'un ou plusieurs de ces sièges passagers sont offerts pour vente par une personne autre qu'une personne visée aux divisions (A) ou (B), cette autre personne;

**c)** le vol commence ou se termine à un endroit qui est situé dans une collectivité éloignée figurant à l'annexe;

**d)** le vol est effectué dans le cadre d'une entreprise d'un propriétaire de l'aéronef assujetti, sauf une entreprise qui est exploitée sans attente raisonnable de profit, et autrement que pour des activités de loisir, récréatives ou sportives, ou pour toute autre utilisation personnelle, de l'une des personnes suivantes :

**(i)** un propriétaire de l'aéronef assujetti,

**(ii)** un invité d'un propriétaire de l'aéronef assujetti à bord de l'aéronef assujetti,

**(iii)** une autre personne qui a le droit d'utiliser l'aéronef assujetti aux termes d'un bail, d'une licence ou d'un accord semblable ou d'un invité de cette autre personne à bord de l'aéronef assujetti;

**e)** les circonstances prévues par règlement s'avèrent.

**Qualifying subject aircraft**

**(4)** For the purposes of this Act, except in prescribed circumstances, a subject aircraft is a qualifying subject aircraft of a person at a particular time that is on a particular day if the person is an owner of the subject aircraft at the particular time and the amount determined by the following formula is greater than or equal to 0.9:

**(A + B + C) / (D + E + F)**

where

**A** is

**(a)** if the particular time is the time at which the person acquires ownership of the subject aircraft, zero, and

**(b)** in any other case, the total of all amounts, each of which is a duration of time that the subject aircraft was used for a flight that was a qualifying flight and that originated or terminated at a location in Canada during the period that ends on the particular day and begins on the later of

**(i)** the day on which the person became an owner of the subject aircraft, and

**(ii)** the day that is one year before the particular day;

**B** is the total of all amounts, each of which is a duration of time for which it can reasonably be expected that the subject aircraft will be used for a flight

**(a)** that is a qualifying flight,

**(b)** that originates or terminates at a location in Canada during the period that begins on the day after the particular day and that ends on the day that is one year after the particular day, and

**(c)** throughout which the person is an owner of the subject aircraft;

**C** is a prescribed amount;

**D** is

**(a)** if the particular time is the time at which the person acquires ownership of the subject aircraft, zero, and

**Aéronef assujetti admissible**

**(4)** Pour l'application de la présente loi, sauf si les circonstances prévues par règlement s'avèrent, un aéronef assujetti est un aéronef assujetti admissible d'une personne à un moment donné qui est au cours d'un jour donné si la personne est un propriétaire de l'aéronef assujetti au moment donné et si le montant obtenu par la formule suivante est égal ou supérieur à 0,9 :

**(A + B + C) / (D + E + F)**

où :

**A** représente :

**a)** si le moment donné est le moment de l'acquisition de la propriété de l'aéronef assujetti par la personne, zéro,

**b)** dans les autres cas, le temps total durant lequel l'aéronef assujetti a été utilisé pour des vols qui étaient des vols admissibles et qui commençaient ou se terminaient à un endroit au Canada durant la période qui se termine le jour donné et qui commence au dernier en date des jours suivants :

**(i)** le jour où la personne est devenue un propriétaire de l'aéronef assujetti,

**(ii)** le jour qui précède d'un an le jour donné;

**B** le temps total durant lequel il est raisonnable de s'attendre à ce que l'aéronef assujetti soit utilisé pour des vols qui, à la fois :

**a)** sont des vols admissibles,

**b)** commencent ou se terminent à un endroit au Canada durant la période qui commence le jour qui suit le jour donné et qui se termine le jour qui suit d'un an le jour donné,

**c)** tout au long desquels la personne est un propriétaire de l'aéronef assujetti;

**C** la durée de temps visée par règlement;

**D** :

**a)** si le moment donné est le moment de l'acquisition de la propriété de l'aéronef assujetti par la personne, zéro,

**(b)** in any other case, the total of all amounts, each of which is a duration of time that the subject aircraft was used for a flight that originated or terminated at a location in Canada during the period that ends on the particular day and begins on the later of

**(i)** the day on which the person acquired ownership of the subject aircraft, and

**(ii)** the day that is one year before the particular day;

**E** is the total of all amounts, each of which is a duration of time for which it can reasonably be expected that the subject aircraft will be used for a flight

**(a)** that originates or terminates at a location in Canada during the period that begins on the day after the particular day and that ends on the day that is one year after the particular day, and

**(b)** throughout which the person is an owner of the subject aircraft; and

**F** is a prescribed amount.

**b)** dans les autres cas, le temps total durant lequel l'aéronef assujetti a été utilisé pour des vols qui commençaient ou se terminaient à un endroit au Canada durant la période qui se termine le jour donné et qui commence au dernier en date des jours suivants :

**(i)** le jour où la personne a acquis la propriété de l'aéronef assujetti,

**(ii)** le jour qui précède d'un an le jour donné;

**E** le temps total durant lequel il est raisonnable de s'attendre à ce que l'aéronef assujetti soit utilisé pour des vols qui, à la fois :

**a)** commencent ou se terminent à un endroit au Canada durant la période qui commence le jour qui suit le jour donné et qui se termine le jour qui suit d'un an le jour donné,

**b)** tout au long desquels la personne est un propriétaire de l'aéronef assujetti;

**F** la durée de temps visée par règlement.

**Qualifying subject aircraft — regulations**

**(5)** For the purposes of this Act, a subject aircraft is a qualifying subject aircraft of a person at any time if prescribed conditions are met.

**Aéronef assujetti admissible — règlement**

**(5)** Pour l'application de la présente loi, un aéronef assujetti est un aéronef assujetti admissible d'une personne à un moment donné si les conditions prévues par règlement sont remplies.

**Where vessel journeys originate and terminate**

**11 (1)** For the purposes of this section, a journey by a subject vessel originates at the location at which any of the following activities occur and terminates at the location where the subject vessel is next stopped and at which any of the following activities occur:

**(a)** individuals embark on or disembark from the subject vessel;

**(b)** goods are loaded onto or removed from the subject vessel; and

**(c)** the subject vessel is stopped to allow for its servicing or refuelling or for emergency or safety purposes.

**Commencement et fin — trajet d'un navire**

**11 (1)** Pour l'application du présent article, le trajet d'un navire assujetti commence à l'endroit où au moins une des activités ci-après se produit et se termine au prochain endroit où s'arrête le navire et où au moins une des activités suivantes se produit :

**a)** l'embarquement ou le désembarquement de particuliers du navire assujetti;

**b)** le chargement ou le déchargement de marchandises du navire assujetti;

**c)** le navire assujetti s'arrête pour permettre son entretien ou son ravitaillement ou à des fins d'urgence ou de sécurité.

**Use in Canada — vessel**

**(2)** For the purposes of this section, if a journey by a subject vessel originates or terminates at a location in Canada, the subject vessel is deemed to be used in Canada for the duration of the entire journey.

**Utilisation au Canada — navire**

**(2)** Pour l'application du présent article, si un navire assujetti est utilisé dans le cadre d'un trajet qui commence ou se termine à un endroit au Canada, le navire assujetti est réputé être utilisé au Canada pendant la durée du trajet.

**Qualifying activities — vessel**

**(3)** For the purposes of this section, except in prescribed circumstances, a subject vessel (other than a select subject vessel) is used in Canada in the course of a qualifying activity at any time if

**(a)** the subject vessel is used in Canada at that time otherwise than for the leisure, recreation, sport or other enjoyment of

**(i)** an owner of the subject vessel,

**(ii)** a guest of an owner of the subject vessel on the subject vessel, or

**(iii)** another person that has the right to use the subject vessel under a lease, licence or similar arrangement or a guest of the other person on the subject vessel; or

**(b)** prescribed circumstances exist.

**Activités admissibles — navire**

**(3)** Pour l'application du présent article, sauf dans les circonstances prévues par règlement, un navire assujetti (sauf un navire assujetti désigné) est utilisé au Canada dans le cadre d'une activité admissible à un moment si, selon le cas :

**a)** le navire assujetti est utilisé au Canada à ce moment autrement que pour des activités de loisir, récréatives ou sportives, ou pour toute autre utilisation personnelle, de l'une des personnes suivantes :

**(i)** un propriétaire du navire assujetti,

**(ii)** un invité d'un propriétaire du navire assujetti à bord du navire assujetti,

**(iii)** une autre personne qui a le droit d'utiliser le navire assujetti aux termes d'un bail, d'une licence ou d'un accord semblable ou un invité de cette autre personne à bord du navire assujetti;

**b)** les circonstances prévues par règlement s'avèrent.

**Qualifying subject vessel**

**(4)** For the purposes of this Act, except in prescribed circumstances, a subject vessel (other than a select subject vessel) is a qualifying subject vessel of a person at a particular time that is on a particular day if the person is an owner of the subject vessel at the particular time and the amount determined by the following formula is greater than or equal to 0.9:

**(A + B + C) / (D + E + F)**

where

**A** is

**(a)** if the particular time is the time at which the person acquires ownership of the subject vessel, zero, and

**(b)** in any other case, the total of all amounts, each of which is a duration of time that the subject vessel was used in Canada in the course of a qualifying activity during the period that ends on the particular day and begins on the later of

**(i)** the day on which the person acquired ownership of the subject vessel, and

**(ii)** the day that is one year before the particular day;

**B** is the total of all amounts, each of which is a duration of time for which it can reasonably be expected that the subject vessel will be used in Canada in the course of a qualifying activity during the period that

**Navire assujetti admissible**

**(4)** Pour l'application de la présente loi, sauf si les circonstances prévues par règlement s'avèrent, un navire assujetti, sauf un navire assujetti désigné, est un navire assujetti admissible d'une personne à un moment donné qui est au cours d'un jour donné si la personne est un propriétaire du navire assujetti au moment donné et si le montant obtenu par la formule suivante est égal ou supérieur à 0,9 :

**(A + B + C) / (D + E + F)**

où :

**A** représente :

**a)** si le moment donné est le moment de l'acquisition de la propriété du navire assujetti par la personne, zéro,

**b)** dans les autres cas, le temps total durant lequel le navire assujetti a été utilisé au Canada au cours d'activités admissibles durant la période qui se termine le jour donné et qui commence au dernier en date des jours suivants :

**(i)** le jour où la personne a acquis la propriété du navire assujetti,

**(ii)** le jour qui précède d'un an le jour donné;

**B** le temps total durant lequel il est raisonnable de s'attendre à ce que le navire assujetti soit utilisé au Canada dans le cadre d'activités admissibles durant la période qui commence le lendemain du jour donné et qui se termine :

begins on the day after the particular day and that ends on

**(a)** if it can reasonably be expected that the person will transfer ownership of the subject vessel before the day that is one year after the particular day, the day on which it can reasonably be expected that the person will transfer ownership of the subject vessel, and

**(b)** in any other case, the day that is one year after the particular day;

**C** is a prescribed amount;

**D** is

**(a)** if the particular time is the time at which the person acquires ownership of the subject vessel, zero, and

**(b)** in any other case, the total of all amounts, each of which is a duration of time that the subject vessel was used in Canada during the period that ends on the particular day and begins on the later of

**(i)** the day on which the person acquired ownership of the subject vessel, and

**(ii)** the day that is one year before the particular day;

**E** is the total of all amounts, each of which is a duration of time for which it can reasonably be expected that the subject vessel will be used in Canada during the period that begins on the day after the particular day and that ends on

**(a)** if it can reasonably be expected that the person will transfer ownership of the subject vessel before the day that is one year after the particular day, the day on which it can reasonably be expected that the person will transfer ownership of the subject vessel to another person, and

**(b)** in any other case, the day that is one year after the particular day; and

**F** is a prescribed amount.

**a)** dans le cas où il est raisonnable de s'attendre à ce que la personne transfère la propriété du navire assujetti avant le jour qui suit d'un an le jour donné, le jour auquel il est raisonnable de s'attendre à ce que la personne transfère la propriété du navire assujetti,

**b)** dans les autres cas, le jour qui suit d'un an le jour donné;

**C** la durée de temps visée par règlement;

**D** :

**a)** si le moment donné est le moment de l'acquisition de la propriété du navire assujetti par la personne, zéro,

**b)** dans les autres cas, le temps total durant lequel le navire assujetti a été utilisé au Canada durant la période qui se termine le jour donné et qui commence au dernier en date des jours suivants :

**(i)** le jour où la personne a acquis la propriété du navire assujetti,

**(ii)** le jour qui précède d'un an le jour donné;

**E** le temps total durant lequel il est raisonnable de s'attendre à ce que le navire assujetti soit utilisé au Canada durant la période qui commence le lendemain du jour donné et qui se termine :

**a)** dans le cas où il est raisonnable de s'attendre à ce que la personne transfère la propriété du navire assujetti avant le jour qui suit d'un an le jour donné, le jour auquel il est raisonnable de s'attendre à ce que la personne transfère la propriété du navire assujetti à une autre personne,

**b)** dans les autres cas, le jour qui suit d'un an le jour donné;

**F** la durée de temps visée par règlement.

#### Qualifying subject vessel — regulations

**(5)** For the purposes of this Act, a subject vessel is a qualifying subject vessel of a person at any time if prescribed conditions are met.

#### Navire assujetti admissible — règlement

**(5)** Pour l'application de la présente loi, un navire assujetti est un navire assujetti admissible d'une personne à un moment donné si les conditions prévues par règlement sont remplies.

#### Registration of vehicle

**12 (1)** For the purposes of this Act, a subject vehicle is registered with a government if it is registered with, or licensed by, that government for the purposes of

#### Immatriculation de véhicules

**12 (1)** Pour l'application de la présente loi, un véhicule assujetti est immatriculé auprès d'un gouvernement s'il est immatriculé ou enregistré auprès de ce gouvernement, ou si un permis ou une autorisation semblable à

permitting that subject vehicle to travel on public roads within the jurisdiction of that government.

**Registration of aircraft**

**(2)** For the purposes of this Act, a subject aircraft is registered with a government if it is registered with, or licensed by, that government for the purposes of permitting that subject aircraft to fly within the jurisdiction of that government.

**Registration of vessel**

**(3)** For the purposes of this Act, a subject vessel is registered with a government if it is registered with, or licensed by, that government for the purposes of permitting that subject vessel to navigate within the jurisdiction of that government.

son égard a été obtenu de ce gouvernement, afin de permettre à ce véhicule assujetti de circuler sur les voies publiques à l'intérieur du territoire de ce gouvernement.

**Immatriculation d'aéronefs**

**(2)** Pour l'application de la présente loi, un aéronef assujetti est immatriculé auprès d'un gouvernement s'il est immatriculé ou enregistré auprès de ce gouvernement, ou si un permis ou une autorisation semblable à son égard a été obtenu de ce gouvernement, afin de permettre à cet aéronef assujetti de voler à l'intérieur du territoire de ce gouvernement.

**Immatriculation de navires**

**(3)** Pour l'application de la présente loi, un navire assujetti est immatriculé auprès d'un gouvernement s'il est immatriculé ou enregistré auprès de ce gouvernement, ou si un permis ou une autorisation semblable à son égard a été obtenu de ce gouvernement, afin de permettre à ce navire assujetti de naviguer à l'intérieur du territoire de ce gouvernement.

## SUBDIVISION B

## Consideration and Retail Value

**Definitions**

**13 (1)** The following definitions apply in this Subdivision.

***money*** includes any currency, cheque, promissory note, letter of credit, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and other similar instrument, whether Canadian or foreign, but does not include currency the fair market value of which exceeds its stated value as legal tender in the country of issuance or currency that is supplied or held for its numismatic value. (*argent*)

***provincial levy*** means

**(a)** a tax, duty or fee imposed under an Act of the legislature of a province in respect of the supply, consumption or use of property or a service, other than

**(i)** a tax, duty or fee that is included in the *Taxes, Duties and Fees (GST/HST) Regulations* or that would be so included if paragraph 3(b) of those Regulations were read without reference to subparagraph (iv) of that paragraph, or

**(ii)** a prescribed tax, duty, fee or amount; or

**(b)** a prescribed tax, duty or fee. (*prélèvement provincial*)

## SOUS-SECTION B

## Contrepartie et valeur au détail

**Définitions**

**13 (1)** Les définitions qui suivent s'appliquent à la présente sous-section.

***argent*** Y sont assimilés la monnaie, les chèques, les billets à ordre, les lettres de crédit, les traites, les chèques de voyage, les lettres de change, les bons de poste, les mandats-poste, les versements postaux et tout autre effet, canadien ou étranger, de même nature. La présente définition exclut la monnaie dont la juste valeur marchande dépasse la valeur nominale dans le pays d'origine et celle fournie ou détenue pour sa valeur numismatique. (*money*)

***fourniture*** Fourniture d'un bien ou d'un service, notamment par vente, transfert, troc, échéance, louage, licence, donation ou aliénation. (*supply*)

***prélèvement provincial*** S'entend :

**a)** des frais, droits ou taxes imposés en application d'une loi provinciale relativement à la fourniture, à la consommation ou à l'utilisation d'un bien ou d'un service, sauf :

**(i)** les frais, droits ou taxes qui sont inclus au *Règlement sur les frais, droits et taxes (TPS/TVH)* ou qui seraient ainsi inclus si l'alinéa 3b) de ce

***supply*** means a provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition. (*fourniture*)

**When supply is made**

**(2)** For the purposes of this Subdivision, a supply is made at the time at which

**(a)** if the supply is a sale of a subject item, the sale is completed;

**(b)** if the supply is an improvement in respect of a subject item, the improvement is completed;

**(c)** if the supply is made in connection with a sale of a subject item and is not an improvement in respect of the subject item, the sale is completed;

**(d)** if the supply is made in connection with an improvement in respect of a subject item and is not an improvement in respect of the subject item, the improvement is completed; and

**(e)** in any other case, the supply is made for the purposes of Part IX of the *Excise Tax Act*.

**When supply is made — regulations**

**(3)** Despite subsection (2), for the purposes of this Subdivision, if prescribed conditions are met in respect of a supply, the supply is made at the prescribed time.

**Value of consideration**

**14 (1)** Subject to this Subdivision, for the purposes of this Act, the value of the consideration, or any part of the consideration, for a supply is deemed to be equal to

**(a)** if the consideration or that part is expressed in money, the amount of the money; and

**(b)** in any other case, the fair market value of the consideration or that part at the time at which the supply was made.

**Combined consideration**

**(2)** Subject to subsections (3) and (4), for the purposes of this Act, if

règlement s'appliquait compte non tenu du sous-alinéa (iv) de cet alinéa,

**(ii)** les frais, droits ou taxes ou montant visés par règlement;

**b)** des frais, droits ou taxes visés par règlement. (*provincial levy*)

**Fourniture**

**(2)** Pour l'application de la présente sous-section, une fourniture est effectuée au moment auquel :

**a)** si la fourniture est une vente d'un bien assujetti, la vente est achevée;

**b)** si la fourniture est une amélioration relativement à un bien assujetti, l'amélioration est achevée;

**c)** si la fourniture est effectuée en rapport avec la vente du bien assujetti et n'est pas une amélioration relativement au bien assujetti, la vente est achevée;

**d)** si la fourniture est effectuée en rapport avec une amélioration relativement à un bien assujetti et n'est pas une amélioration relativement au bien assujetti, l'amélioration est achevée;

**e)** dans les autres cas, la fourniture est effectuée pour l'application de la partie IX de la *Loi sur la taxe d'accise*.

**Fourniture — règlement**

**(3)** Malgré le paragraphe (2), pour l'application de la présente sous-section, si les conditions visées par règlement sont remplies relativement à une fourniture, celle-ci est effectuée au moment visé par règlement.

**Valeur de la contrepartie**

**14 (1)** Sous réserve de la présente sous-section, pour l'application de la présente loi, la valeur de tout ou partie de la contrepartie d'une fourniture est réputée correspondre :

**a)** dans le cas où la contrepartie est sous forme d'un montant d'argent, à ce montant d'argent;

**b)** dans les autres cas, à la juste valeur marchande de la contrepartie au moment de la fourniture.

**Contrepartie combinée**

**(2)** Pour l'application de la présente loi et sous réserve des paragraphes (3) et (4), dans le cas où une contrepartie est payée pour une fourniture, où une autre contrepartie est payée pour une ou plusieurs autres fournitures

**(a)** consideration is paid for a supply and other consideration is paid for one or more other supplies or matters, and

**(b)** the consideration for one of the supplies or matters exceeds the consideration that would be reasonable if the other supply were not made or the other matter were not provided,

the consideration for each of the supplies and matters is deemed to be that part of the total of all amounts, each of which is consideration for one of those supplies or matters, that may reasonably be attributed to each of those supplies and matters.

ou choses et où la contrepartie d'une des fournitures ou choses dépasse celle qui serait raisonnable si l'autre fourniture n'était pas effectuée, ou l'autre chose livrée, la contrepartie pour chacune des fournitures et choses est réputée égale à la fraction du total des montants dont chacun représente la contrepartie d'une de ces fournitures ou choses qu'il est raisonnable d'imputer à chacune de ces fournitures et choses.

**Consideration for sale includes fees**

**(3)** For the purposes of this Act, if consideration is paid for the sale of a subject item and other consideration is paid for one or more other supplies or matters (other than an improvement in respect of the subject item) and the other consideration represents a fee or other similar charge in respect of the subject item or the sale, the following rules apply:

**(a)** the other supplies and matters are deemed to form part of the sale; and

**(b)** the other consideration is to be included in the consideration for the sale.

**Inclusion dans la contrepartie pour une vente**

**(3)** Pour l'application de la présente loi, dans le cas où une contrepartie est payée pour la vente d'un bien assujetti, où une autre contrepartie est payée pour une ou plusieurs autres fournitures ou choses (sauf une amélioration relativement au bien assujetti) et où l'autre contrepartie représente des frais relativement au bien assujetti ou à la vente, les règles suivantes s'appliquent :

**a)** les autres fournitures et choses sont réputées faire partie de la vente;

**b)** l'autre contrepartie doit être incluse dans la contrepartie pour la vente.

**Consideration for improvement includes fees**

**(4)** For the purposes of this Act, if consideration is paid for an improvement in respect of a subject item and other consideration is paid for one or more other supplies or matters (other than a sale of the subject item) and the other consideration represents a fee or other similar charge in respect of the improvement, the following rules apply:

**(a)** the other supplies and matters are deemed to form part of the improvement; and

**(b)** the other consideration is to be included in the consideration for the improvement.

**Inclusion dans la contrepartie pour les améliorations**

**(4)** Pour l'application de la présente loi, dans le cas où une contrepartie est payée pour une amélioration relativement à un bien assujetti, où une autre contrepartie est payée pour une ou plusieurs autres fournitures ou choses (sauf une vente du bien assujetti) et où l'autre contrepartie représente des frais relativement à l'amélioration, les règles suivantes s'appliquent :

**a)** les autres fournitures et choses sont réputées faire partie de l'amélioration;

**b)** l'autre contrepartie doit être incluse dans la contrepartie pour l'amélioration.

**Incidental supplies**

**(5)** For the purposes of this Act, if a particular property or service is supplied together with any other property or service for a single consideration and if it may reasonably be regarded that the provision of the other property or service is incidental to the provision of the particular property or service, the other property or service is deemed to form part of the particular property or service so supplied.

**Fournitures accessoires**

**(5)** Pour l'application de la présente loi, le bien ou le service dont la fourniture peut raisonnablement être considérée comme étant accessoire à la fourniture d'un autre bien ou service est réputé faire partie de cet autre bien ou service s'il a été fourni pour une contrepartie unique.

**Non-arm's length supplies**

**(6)** For the purposes of this Act, if a supply of property or a service is made between persons not dealing with each other at arm's length for consideration less than the fair market value of the property or service at the time at which the supply is made, the consideration paid for the supply is deemed to be equal to the fair market value of the property or service at that time.

**Nominal consideration**

**(7)** For the purposes of this Act, if a supply of property or a service is made for no consideration or nominal consideration, the consideration paid for the supply is deemed to be equal to the fair market value of the property or service at the time at which the supply is made.

**Improvement by way of lease, etc.**

**(8)** For the purposes of this Act, if an improvement in respect of a subject item is provided by way of lease, licence or similar arrangement and the improvement is the provision of tangible personal property, the consideration paid for the improvement is deemed to be equal to the fair market value of the improvement at the time at which the improvement is completed.

**Value in Canadian currency**

**(9)** For the purposes of this Act, if the consideration for a supply is expressed in a foreign currency, the value of the consideration is to be computed on the basis of the value of that foreign currency in Canadian currency on the day that the supply is made, or on such other day as is acceptable to the Minister.

**Levies included in consideration**

**15** For the purposes of this Act, the consideration for a supply of property or a service includes

**(a)** any tax, duty or fee imposed under an Act of Parliament that is payable or collectible in respect of the supply, production or importation of the property or service, other than tax under this Act or Part IX of the *Excise Tax Act* that is payable in respect of the property or service;

**(b)** any provincial levy that is payable or collectible in respect of the supply or production of the property or service; and

**(c)** any other amount that is collectible in respect of the supply or production of the property or service under an Act of the legislature of a province and that is equal to, or is collectible on account of or in lieu of, a provincial levy.

**Fourniture — lien de dépendance**

**(6)** Pour l'application de la présente loi, si la fourniture d'un bien ou d'un service est effectuée entre personnes ayant entre elles un lien de dépendance pour une contrepartie inférieure à la juste valeur marchande du bien ou du service au moment où la fourniture est effectuée, la contrepartie payée pour la fourniture est réputée être égale à la juste valeur marchande du bien ou du service à ce moment.

**Contrepartie symbolique**

**(7)** Pour l'application de la présente loi, si la fourniture d'un bien ou d'un service est effectuée sans contrepartie ou pour une contrepartie symbolique, la contrepartie pour la fourniture est réputée être égale à la juste valeur marchande du bien ou du service au moment où la fourniture est effectuée.

**Améliorations par bail, etc.**

**(8)** Pour l'application de la présente loi, si une amélioration relativement à un bien assujetti est fournie par bail, licence ou accord semblable et si l'amélioration constitue la fourniture d'un bien meuble corporel, la contrepartie payée pour l'amélioration est réputée être égale à la juste valeur marchande de l'amélioration au moment où celle-ci est achevée.

**Valeur étrangère**

**(9)** Pour l'application de la présente loi, la valeur de la contrepartie d'une fourniture exprimée en devise étrangère doit être calculée en fonction de la valeur de cette devise en monnaie canadienne le jour où la fourniture est effectuée ou tout autre jour que le ministre estime acceptable.

**Composition de la contrepartie**

**15** Pour l'application de la présente loi, les éléments suivants sont compris dans la contrepartie d'une fourniture d'un bien ou d'un service :

**a)** les frais, droits ou taxes imposés en application d'une loi fédérale, sauf la taxe imposée en vertu de la présente loi ou de la partie IX de la *Loi sur la taxe d'accise*, qui sont payables ou percevables relativement à la fourniture ou relativement à la production ou à l'importation du bien ou du service;

**b)** les prélèvements provinciaux qui sont payables ou percevables relativement à la fourniture ou à la production du bien ou du service;

**c)** tout autre montant percevable relativement à la fourniture ou à la production du bien ou du service en application d'une loi provinciale et qui est égal à un

prélèvement provincial ou qui est percevable à son titre.

#### Retail value of subject item

**16** For the purposes of this Act, the retail value of a subject item at any time is the amount determined by the formula

**A + B + C + D**

where

**A** is the fair market value of the subject item at that time;

**B** is the total of all amounts, each of which is a fee or charge in respect of the transportation or freight of the subject item but only to the extent that the amount is not included in the determination of A;

**C** is the total of all amounts, each of which is an amount described in any of the following paragraphs but only to the extent that each amount is not included in the determination of A:

**(a)** a tax, duty or fee imposed under an Act of Parliament that is payable or collectible in respect of a supply of the subject item or in respect of the production or importation of the subject item, other than tax under this Act or Part IX of the *Excise Tax Act* that is payable in respect of the subject item,

**(b)** a provincial levy that is payable or collectible in respect of a supply of the subject item or in respect of the production of the subject item, and

**(c)** another amount that is collectible in respect of a supply of the subject item or in respect of the production of the subject item under an Act of the legislature of a province and that is equal to, or is collectible on account of or in lieu of, a provincial levy; and

**D** is a prescribed amount.

#### Valeur au détail d'un bien assujetti

**16** Pour l'application de la présente loi, la valeur au détail d'un bien assujetti à un moment donné est le montant obtenu par la formule suivante :

**A + B + C + D**

où :

**A** représente la juste valeur marchande du bien assujetti au moment donné;

**B** le total des montants dont chacun représente un frais relativement au transport du bien assujetti, mais seulement dans la mesure où le montant n'est pas inclus dans le calcul de la valeur de l'élément A;

**C** le total des montants dont chacun représente un montant visé à l'un des paragraphes ci-après, mais seulement dans la mesure où le montant n'est pas inclus dans le calcul de la valeur de l'élément A :

**a)** des frais, droits ou taxes imposés en application d'une loi fédérale, sauf la taxe imposée en vertu de la présente loi ou de la partie IX de la *Loi sur la taxe d'accise*, qui sont payables ou percevables relativement à une fourniture du bien assujetti ou relativement à la production ou à l'importation du bien assujetti,

**b)** un prélèvement provincial qui est payable ou percevable relativement à une fourniture du bien assujetti ou à la production du bien assujetti,

**c)** un autre montant qui est percevable relativement à une fourniture du bien assujetti ou à la production du bien assujetti en application d'une loi provinciale qui est égal à un prélèvement provincial ou qui est percevable à son titre;

**D** un montant visé par règlement.

### SUBDIVISION C

## Her Majesty

#### Her Majesty

**17** This Act is binding on Her Majesty in right of Canada or a province.

### SOUS-SECTION C

## Sa Majesté

#### Sa Majesté

**17** La présente loi lie Sa Majesté du chef du Canada ou d'une province.

## DIVISION 2

# Application of Tax

### SUBDIVISION A

## Tax on Sale

#### Tax — sale of subject item

**18 (1)** Subject to this Act, if a vendor sells a subject item to a purchaser and the taxable amount of the subject item exceeds the price threshold in respect of the subject item, tax in respect of the subject item is payable to Her Majesty in right of Canada in the amount determined under section 34.

#### Liability for tax — vendor or purchaser

**(2)** The tax under subsection (1) in respect of a subject item sold by a vendor to a purchaser is payable by

**(a)** the purchaser, in the case where the vendor is

**(i)** Her Majesty in right of Canada or a province,

**(ii)** an agent of Her Majesty in right of Canada or a province,

**(iii)** an Indigenous governing body,

**(iv)** a person entitled to tax relief privileges under the *Foreign Missions and International Organizations Act* for the tax payable under subsection 165(1) of the *Excise Tax Act* in respect of the sale, or

**(v)** a prescribed person; and

**(b)** the vendor, in any other case.

#### When tax payable

**(3)** The tax under subsection (1) becomes payable at the time at which the sale is completed.

#### Taxable amount

**(4)** Subject to subsections (5) to (7), the taxable amount of a subject item sold by a vendor to a purchaser is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B + C**

## SECTION 2

# Assujettissement

### SOUS-SECTION A

## Taxe sur la vente

#### Taxe — vente d'un bien assujetti

**18 (1)** Sous réserve de la présente loi, lorsqu'un vendeur vend un bien assujetti à un acheteur et que le montant taxable du bien assujetti excède le seuil de prix relatif au bien assujetti, une taxe relative au bien assujetti, d'un montant déterminé en vertu de l'article 34, est payable à Sa Majesté du chef du Canada.

#### Taxe payable — vendeur ou acheteur

**(2)** La taxe prévue au paragraphe (1) relative à un bien assujetti vendu par un vendeur à un acheteur est payable par :

**a)** l'acheteur, dans le cas où le vendeur est, selon le cas :

**(i)** Sa Majesté du chef du Canada ou d'une province,

**(ii)** un mandataire de Sa Majesté du chef du Canada ou d'une province,

**(iii)** un corps dirigeant autochtone,

**(iv)** une personne ayant droit à des privilèges d'exonération fiscale en application de la *Loi sur les missions étrangères et les organisations internationales* à l'égard de la taxe payable en vertu du paragraphe 165(1) de la *Loi sur la taxe d'accise* relativement à la vente,

**(v)** une personne visée par règlement;

**b)** le vendeur, dans les autres cas.

#### Taxe payable

**(3)** La taxe prévue au paragraphe (1) devient payable au moment où la vente est achevée.

#### Montant taxable

**(4)** Sous réserve des paragraphes (5) à (7), le montant taxable d'un bien assujetti vendu par un vendeur à un acheteur correspond, pour l'application du présent article et afin de déterminer en vertu l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

where

**A** is the value of the consideration for the sale of the subject item;

**B** is the total of all amounts, each of which is the value of the consideration for an improvement in respect of the subject item that is provided by the vendor, or a person that does not deal at arm's length with the vendor, in connection with the sale of the subject item, but only to the extent that the amount is not included in the determination of A; and

**C** is a prescribed amount.

**A + B + C**

où :

**A** représente la valeur de la contrepartie pour la vente du bien assujetti;

**B** le total des montants dont chacun représente la valeur de la contrepartie pour une amélioration relativement au bien assujetti qui est fournie par le vendeur, ou par une personne ayant un lien de dépendance avec celui-ci, en rapport à la vente du bien assujetti, mais seulement dans la mesure où le montant n'est pas inclus dans le calcul de la valeur de l'élément A;

**C** un montant visé par règlement.

### Taxable amount — lease by non-arm's length purchaser

**(5)** Subject to subsection (7), if a vendor sells a subject item to a purchaser that does not deal at arm's length with the vendor, if the purchaser and another person enter into a lease, licence or similar arrangement (in this subsection referred to as the "lease agreement") that provides the other person with the right to use the subject item for a period of at least six months and if the lease agreement is entered into in connection with the sale, the taxable amount of the subject item is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

**A** is the greatest of

**(a)** the value of the consideration for the sale,

**(b)** the retail value of the subject item at the time at which the other person first has the right to use the subject item under the lease agreement, and

**(c)** the retail value of the subject item at the time at which possession of the subject item is transferred to the other person under the lease agreement; and

**B** is a prescribed amount.

### Montant taxable — location par acheteur ayant un lien de dépendance

**(5)** Sous réserve du paragraphe (7), si un vendeur vend un bien assujetti à un acheteur avec lequel il a un lien de dépendance, si l'acheteur et une autre personne concluent un bail, une licence ou un accord semblable (appelés « convention de bail » au présent paragraphe) qui confère à l'autre personne le droit d'utiliser le bien assujetti pendant une période d'au moins six mois et si la convention de bail est conclue en rapport avec la vente, le montant taxable du bien assujetti correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la plus élevée des valeurs suivantes :

**a)** la valeur de la contrepartie pour la vente,

**b)** la valeur au détail du bien assujetti au moment où l'autre personne a pour la première fois le droit d'utiliser le bien assujetti aux termes de la convention de bail,

**c)** la valeur au détail du bien assujetti au moment où la possession de ce dernier est transférée à l'autre personne en vertu de la convention de bail;

**B** un montant visé par règlement.

### Taxable amount — lease to vendor by purchaser

**(6)** Subject to subsection (7), if a vendor sells a subject item to a purchaser, if the purchaser and the vendor enter into a lease, licence or similar arrangement (in this subsection referred to as the "lease agreement") that provides the vendor with the right to use the subject item for a period of at least six months and if the lease agreement is entered into in connection with the sale, the taxable amount of the subject item is, for the purposes of this section and for the purposes of determining under

### Montant taxable — bail au vendeur par l'acheteur

**(6)** Sous réserve du paragraphe (7), si un vendeur vend un bien assujetti à un acheteur, si l'acheteur et le vendeur concluent un accord qui est un bail, une licence ou un accord semblable qui confère au vendeur le droit d'utiliser le bien assujetti pendant une période d'au moins six mois et si l'accord est conclu en rapport avec la vente, le montant taxable du bien assujetti correspond, pour l'application du présent article et afin de déterminer en vertu de

section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

**A** is the greater of

**(a)** the value of the consideration for the sale, and

**(b)** the retail value of the subject item at the time at which the vendor first has the right to use the subject item under the lease agreement; and

**B** is a prescribed amount.

**Taxable amount — regulations**

**(7)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject item in prescribed circumstances is to be determined in prescribed manner.

**Tax not payable — registered vendor of vehicles**

**19 (1)** The tax under section 18 in respect of a subject vehicle sold by a vendor to a purchaser is not payable if an exemption certificate applies in respect of the sale of the subject vehicle in accordance with section 36 and if the vendor is a registered vendor in respect of subject vehicles or a prescribed person.

**Tax not payable — previously registered vehicle**

**(2)** The tax under section 18 in respect of a subject vehicle sold by a vendor to a purchaser is not payable if the subject vehicle has been registered with the Government of Canada or a province except if

**(a)** the subject vehicle was registered only because of the sale and has never otherwise been registered with the Government of Canada or a province; or

**(b)** the vendor

**(i)** is Her Majesty in right of Canada or a province, an agent of Her Majesty in right of Canada or a province or an Indigenous governing body,

**(ii)** imported the subject vehicle, and

**(iii)** did not pay tax under section 20 in respect of the importation of the subject vehicle.

l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la plus élevée des valeurs suivantes :

**a)** la valeur de la contrepartie pour la vente,

**b)** la valeur au détail du bien assujetti au moment où le vendeur a le droit d'utiliser le bien assujetti pour la première fois en vertu de l'accord;

**B** un montant visé par règlement.

**Montant taxable — règlement**

**(7)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

**Exception — vendeur inscrit de véhicules**

**19 (1)** La taxe prévue à l'article 18 relative à un véhicule assujetti vendu par un vendeur à un acheteur n'est pas payable si un certificat d'exemption s'applique relativement à la vente du véhicule assujetti conformément à l'article 36 et si le vendeur est un vendeur inscrit relativement aux véhicules assujettis ou une personne visée par règlement.

**Exception — véhicule immatriculé auparavant**

**(2)** La taxe prévue à l'article 18 relative à un véhicule assujetti vendu par un vendeur à un acheteur n'est pas payable si le véhicule assujetti a été immatriculé auprès du gouvernement du Canada ou d'une province, sauf si, selon le cas :

**a)** le véhicule assujetti n'a été immatriculé qu'en raison de la vente et n'a jamais été autrement immatriculé auprès du gouvernement du Canada ou d'une province;

**b)** le vendeur, à la fois :

**(i)** est Sa Majesté du chef du Canada ou d'une province, un mandataire de Sa Majesté du chef du Canada ou d'une province ou un corps dirigeant autochtone,

**(ii)** a importé le véhicule assujetti,

**(iii)** n'a pas payé la taxe prévue à l'article 20 relative à l'importation du véhicule assujetti.

**Tax not payable — certain vehicles**

**(3)** The tax under section 18 in respect of a subject vehicle sold by a vendor to a purchaser is not payable if

**(a)** the subject vehicle is equipped for policing activities and

**(i)** the purchaser is a police authority or a military authority, or

**(ii)** it is the case that

**(A)** the purchaser and a police authority or military authority enter into an agreement that is a lease, licence or similar arrangement,

**(B)** the agreement is entered into at or before the time at which the sale is completed,

**(C)** the police authority or military authority has the right to use the subject vehicle for a period of at least six months under the agreement,

**(D)** the purchaser transfers possession of the subject vehicle to the police authority or military authority under the agreement, and

**(E)** the purchaser provides to the vendor, and the vendor retains, evidence satisfactory to the Minister that the conditions in clauses (A) to (D) are met in respect of the subject vehicle; or

**(b)** the subject vehicle is equipped for military activities and

**(i)** the purchaser is a military authority, or

**(ii)** it is the case that

**(A)** the purchaser and a military authority enter into an agreement that is a lease, licence or similar arrangement,

**(B)** the agreement is entered into at or before the time at which the sale is completed,

**(C)** the military authority has the right to use the subject vehicle for a period of at least six months under the agreement,

**(D)** the purchaser transfers possession of the subject vehicle to the military authority under the agreement, and

**(E)** the purchaser provides to the vendor, and the vendor retains, evidence satisfactory to the

**Exception — certains véhicules**

**(3)** La taxe prévue à l'article 18 relative à un véhicule assujetti vendu par un vendeur à un acheteur n'est pas payable si, selon le cas :

**a)** le véhicule assujetti est équipé pour des activités policières et, selon le cas :

**(i)** l'acheteur est un corps policier ou une autorité militaire,

**(ii)** les conditions suivantes sont réunies :

**(A)** l'acheteur et un corps policier ou une autorité militaire concluent un accord qui est un bail, une licence ou un accord semblable,

**(B)** l'accord est conclu au plus tard au moment de l'achèvement de la vente,

**(C)** le corps policier ou l'autorité militaire a le droit d'utiliser le véhicule assujetti pendant une période d'au moins six mois aux termes de l'accord,

**(D)** l'acheteur transfère la possession du véhicule assujetti au corps policier ou à l'autorité militaire aux termes de l'accord,

**(E)** l'acheteur fournit au vendeur, et celui-ci conserve, des preuves que le ministre estime acceptables, établissant que les conditions énoncées aux divisions (A) à (D) sont remplies relativement au véhicule assujetti;

**b)** le véhicule assujetti est équipé pour des activités militaires et, selon le cas :

**(i)** l'acheteur est une autorité militaire,

**(ii)** les conditions suivantes sont réunies :

**(A)** l'acheteur et une autorité militaire concluent un accord qui est un bail, une licence ou un accord semblable,

**(B)** l'accord est conclu au plus tard au moment de l'achèvement de la vente,

**(C)** l'autorité militaire a le droit d'utiliser le véhicule assujetti pendant une période d'au moins six mois aux termes de l'accord,

**(D)** l'acheteur transfère la possession du véhicule assujetti à l'autorité militaire aux termes de l'accord,

Minister that the conditions in clauses (A) to (D) are met in respect of the subject vehicle.

**(E)** l'acheteur fournit au vendeur, et celui-ci conserve, des preuves que le ministre estime acceptables, établissant que les conditions énoncées aux divisions (A) à (D) sont remplies relativement au véhicule assujetti.

#### Exemption certificate for aircraft or vessel

**(4)** The tax under section 18 in respect of a subject aircraft or subject vessel sold by a vendor to a purchaser is not payable if an exemption certificate applies in respect of the sale in accordance with section 36.

#### Certificat d'exemption pour un aéronef ou navire

**(4)** La taxe prévue à l'article 18 relative à un aéronef assujetti ou à un navire assujetti vendu par un vendeur à un acheteur n'est pas payable si un certificat d'exemption s'applique relativement à la vente conformément à l'article 36.

#### Tax certificate for aircraft or vessel

**(5)** The tax under section 18 in respect of a subject aircraft or subject vessel sold by a vendor to a purchaser is not payable if a tax certificate in respect of the subject aircraft or subject vessel is in effect in accordance with section 37 at the time at which the sale is completed.

#### Certificat fiscal relatif à un aéronef ou navire

**(5)** La taxe prévue à l'article 18 relative à un aéronef assujetti ou à un navire assujetti vendu par un vendeur à un acheteur n'est pas payable si un certificat fiscal relatif à l'aéronef assujetti ou au navire assujetti est en vigueur conformément à l'article 37 au moment auquel la vente est achevée.

### SUBDIVISION B

## Tax on Importation

### SOUS-SECTION B

## Taxe à l'importation

#### Tax — importation into Canada

**20 (1)** Subject to this Act, a person that is liable under the *Customs Act* to pay duty on an imported subject item, or that would be so liable if the subject item were subject to duty, must pay to Her Majesty in right of Canada tax in respect of the subject item in the amount determined under section 34 if the taxable amount of the subject item exceeds the price threshold in respect of the subject item.

#### Taxe — importation au Canada

**20 (1)** Sous réserve de la présente loi, une personne qui est redevable de droits imposés, en vertu de la *Loi sur les douanes*, sur un bien assujetti importé, ou qui serait ainsi redevable si le bien assujetti était frappé de droits, est tenue de payer à Sa Majesté du chef du Canada une taxe relativement au bien assujetti d'un montant déterminé en vertu de l'article 34 si le montant taxable du bien assujetti excède le seuil de prix relatif au bien assujetti.

#### Taxable amount

**(2)** Subject to subsection (3), the taxable amount of a subject item that is imported is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B + C**

where

**A** is the value of the subject item, as it would be determined under the *Customs Act* for the purposes of calculating duties imposed on the subject item at a percentage rate, whether the subject item is in fact subject to duty;

**B** is the amount of all duties and taxes, if any, payable on the subject item under the *Customs Tariff*, the *Excise Tax Act* (other than Part IX of that Act), the

#### Montant taxable

**(2)** Sous réserve du paragraphe (3), le montant taxable d'un bien assujetti qui est importé correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B + C**

où :

**A** représente la valeur du bien assujetti, déterminée aux termes de la *Loi sur les douanes* aux fins de calcul des droits imposés sur le bien assujetti selon un certain pourcentage, que le bien assujetti soit ou non frappé de droits;

**B** le total des droits et taxes payables sur le bien assujetti aux termes de la *Loi sur la taxe d'accise* (sauf la partie IX de cette Loi), de la *Loi sur les mesures*

*Special Import Measures Act* or any other law relating to customs; and

**C** is a prescribed amount.

**Taxable amount — regulations**

**(3)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject item in prescribed circumstances is to be determined in prescribed manner.

**Application of *Customs Act***

**(4)** Subject to this Act, tax under this section in respect of a subject item is to be paid and collected under the *Customs Act*, and interest and penalties are to be imposed, calculated, paid and collected under that Act, as if the tax were a customs duty levied on the subject item under the *Customs Tariff* and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require.

**Tax not payable — registered vendor**

**21 (1)** The tax under section 20 in respect of a subject item that is imported is not payable if the subject item is imported by a registered vendor in respect of that type of subject item.

**Tax not payable — previously registered vehicles**

**(2)** The tax under section 20 in respect of a subject vehicle that is imported is not payable if the subject vehicle has been registered with the Government of Canada or a province before the importation unless

**(a)** the registration was done in connection with the importation; and

**(b)** the subject vehicle has never otherwise been registered with the Government of Canada or a province.

**Tax not payable — certain vehicles**

**(3)** The tax under section 20 in respect of a subject vehicle that is imported is not payable if

**(a)** the subject vehicle is equipped for policing activities and imported by a police authority or a military authority; or

**(b)** the subject vehicle is equipped for military activities and imported by a military authority.

*spéciales d'importation*, du *Tarif des douanes* ou de tout autre texte législatif concernant les douanes;

**C** un montant visé par règlement.

**Montant taxable — règlement**

**(3)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

**Application de la *Loi sur les douanes***

**(4)** Sous réserve de la présente loi, la taxe prévue au présent article relative à un bien assujetti est payée et perçue aux termes de la *Loi sur les douanes* et des intérêts et pénalités sont imposés, calculés, payés et perçus aux termes de cette loi, comme si la taxe était un droit de douane imposé sur le bien assujetti en vertu du *Tarif des douanes*. À ces fins et sous réserve de la présente loi, la *Loi sur les douanes* s'applique avec les adaptations nécessaires.

**Exception — vendeur inscrit**

**21 (1)** La taxe prévue à l'article 20 relative à un bien assujetti qui est importé n'est pas payable si le bien assujetti est importé par un vendeur inscrit relativement à ce type de bien assujetti.

**Exception — véhicules immatriculés auparavant**

**(2)** La taxe prévue à l'article 20 relative à un véhicule assujetti qui est importé n'est pas payable si celui-ci a été immatriculé auprès du gouvernement du Canada ou d'une province avant l'importation, à moins que, à la fois :

**a)** l'immatriculation n'ait été accomplie en rapport avec l'importation;

**b)** le véhicule assujetti n'ait jamais été autrement immatriculé auprès du gouvernement du Canada ou d'une province.

**Exception — certains véhicules**

**(3)** La taxe prévue à l'article 20 relative à un véhicule assujetti qui est importé n'est pas payable si, selon le cas :

**a)** le véhicule assujetti est équipé pour des activités policières et est importé par un corps policier ou une autorité militaire;

**b)** le véhicule assujetti est équipé pour des activités militaires et est importé par une autorité militaire.

**Tax not payable — tax certificate**

**(4)** The tax under section 20 in respect of a subject aircraft or subject vessel is not payable if a tax certificate in respect of the subject aircraft or subject vessel is in effect in accordance with section 37 at the time at which the tax would become payable in the absence of this subsection.

**Tax not payable — special import certificate**

**(5)** The tax under section 20 in respect of a subject aircraft or subject vessel (other than a select subject vessel) that is imported is not payable if, at the time at which the tax would become payable in the absence of this subsection, a special import certificate in respect of the importation is in effect in accordance with section 38.

**Tax not payable — special cases**

**(6)** The tax under section 20 in respect of a subject item that is imported is not payable if

**(a)** the subject item is classified under heading No. 98.01 or tariff item No. 9802.00.00 or 9803.00.00 of the schedule to the *Customs Tariff*, to the extent that the subject item is not subject to duty under that Act;

**(b)** the subject item is imported for the sole purpose of maintenance, overhaul or repair of the subject item in Canada and

**(i)** neither title to, nor beneficial use of, the subject item is intended to pass, or passes, to a person in Canada while the subject item is in Canada, and

**(ii)** the subject item is exported as soon after the maintenance, overhaul or repair is completed as is reasonable having regard to the circumstances surrounding the importation and, where applicable, to the normal business practice of the importer;

**(c)** it is the case that

**(i)** the subject item is a foreign-based conveyance,

**(ii)** the importation of the subject item was non-taxable by reason of the reference to heading No. 98.01 of the schedule to the *Customs Tariff* in paragraph (a) but the subject item is diverted solely for maintenance, overhaul or repair in Canada,

**(iii)** neither title to, nor beneficial use of, the subject item is intended to pass, or passes, to a person in Canada while the subject item is in Canada, and

**(iv)** the subject item is exported as soon after the maintenance, overhaul or repair is completed as is

**Exception — certificat fiscal**

**(4)** La taxe prévue à l'article 20 relative à un aéronef assujetti ou à un navire assujetti n'est pas payable si un certificat fiscal relatif à l'aéronef assujetti ou au navire assujetti est en vigueur conformément à l'article 37 au moment auquel elle deviendrait payable en l'absence du présent paragraphe.

**Exception — certificat d'importation spécial**

**(5)** La taxe prévue à l'article 20 relative à un aéronef assujetti ou à un navire assujetti (sauf un navire assujetti désigné) qui est importé n'est pas payable si, au moment auquel elle deviendrait payable en l'absence du présent paragraphe, un certificat d'importation spécial relativement à l'importation est en vigueur conformément à l'article 38.

**Exception**

**(6)** La taxe prévue à l'article 20 relative à un bien assujetti qui est importé n'est pas payable si, selon le cas :

**a)** le bien assujetti est classé sous la position 98.01 ou sous les nos tarifaires 9802.00.00 ou 9803.00.00 de l'annexe du *Tarif des douanes* et il n'est pas soumis à des droits aux termes de cette loi;

**b)** le bien assujetti est importé dans l'unique but d'être entretenu, remis en état ou réparé au Canada et les conditions suivantes sont réunies :

**(i)** ni la propriété ni l'usage effectif du bien assujetti n'est destiné à être transmis ni n'est transmis à une personne au Canada pendant qu'il s'y trouve,

**(ii)** le bien assujetti est exporté dans un délai raisonnable une fois l'entretien, la remise en état ou la réparation achevé, compte tenu des circonstances entourant l'importation et, le cas échéant, des pratiques commerciales normales de l'importateur;

**c)** il s'avère, à la fois :

**(i)** que le bien assujetti est un moyen de transport étranger dont le point d'attache est à l'étranger,

**(ii)** que le bien assujetti, non-taxable en raison du renvoi, apparaissant à l'alinéa a), à la position 98.01 de l'annexe du *Tarif des douanes*, est réaffecté pour entretien, remise en état ou réparation au Canada,

**(iii)** que ni la propriété ni l'usage effectif du bien assujetti n'est destiné à être transmis ni n'est transmis à une personne au Canada pendant qu'il s'y trouve,

reasonable having regard to the circumstances surrounding the importation and, where applicable, to the normal business practice of the importer;

**(d)** the subject item is a subject vessel imported in circumstances where customs duties have been removed under subsection 7(1) of the *Vessel Duties Reduction or Removal Regulations*;

**(e)** the subject item is a subject vehicle that is imported temporarily by an individual resident in Canada and

**(i)** the subject item was last provided in the course of a vehicle rental business to the individual by way of lease, licence or similar arrangement under which continuous possession or use of the subject item is provided for a period of less than 180 days,

**(ii)** immediately before the importation, the individual was outside Canada for an uninterrupted period of at least 48 hours, and

**(iii)** the subject item is exported within 30 days after the importation; or

**(f)** the subject item would be classified under tariff item No. 9802.00.00 of the schedule to the *Customs Tariff* to the extent that the subject item would not be subject to duty under that Act if the definition *conveyance* in section 2 of the *Temporary Importation of Conveyances by Residents of Canada Regulations* were read as follows:

***conveyance*** means any vehicle, aircraft, water-borne craft or other contrivance that is used to move persons or goods;

**(iv)** que le bien assujetti est exporté dans un délai raisonnable une fois l'entretien, la remise en état ou la réparation achevé, compte tenu des circonstances entourant l'importation et, le cas échéant, des pratiques commerciales normales de l'importateur;

**d)** le bien assujetti est un navire assujetti importé dans des circonstances où les droits de douane ont été supprimés en application du paragraphe 7(1) du *Règlement sur la diminution ou la suppression des droits de douane sur les navires*;

**e)** le bien assujetti est un véhicule assujetti qui est importé temporairement par un particulier résidant au Canada et, à la fois :

**(i)** le bien assujetti a été fourni au particulier la dernière fois, dans le cadre d'une entreprise de location de véhicules, au moyen d'un bail, d'une licence ou d'un accord semblable aux termes duquel ou de laquelle la possession ou l'utilisation continue du bien assujetti est transférée pendant une période de moins de cent quatre-vingts jours,

**(ii)** immédiatement avant l'importation, le particulier était à l'étranger pendant une période ininterrompue d'au moins quarante-huit heures,

**(iii)** le bien assujetti est exporté dans un délai de trente jours après l'importation;

**f)** le bien assujetti serait classé sous le nº tarifaire 9802.00.00 de l'annexe du *Tarif des douanes* et il ne serait pas soumis à des droits aux termes de cette loi si la définition de *moyen de transport* à l'article 2 du *Règlement sur l'importation temporaire de moyens de transport par des résidents du Canada* était remplacée par ce qui suit :

***moyen de transport*** désigne tout véhicule, aéronef, bâtiment flottant ou autre moyen de locomotion utilisé pour le transport de personnes ou de marchandises;

**Definition of *determination of the tax status***

**22 (1)** In this section, ***determination of the tax status*** of a subject item means a determination, re-determination or further re-determination that tax under this Subdivision is, or is not, payable in respect of the subject item.

**Application of *Customs Act* — determination**

**(2)** Subject to subsections (4) to (6), the *Customs Act* (other than subsections 67(2) and (3) and sections 68 and 70) and the regulations made under that Act apply, with any modifications that the circumstances require, to the

**Définition de *classement***

**22 (1)** Au présent article, ***classement*** s'entend du classement tarifaire d'un bien assujetti, de la révision de ce classement ou du réexamen de cette révision, effectuée en vue d'établir si la taxe prévue à la présente sous-section est payable ou non relativement au bien assujetti.

**Application de la *Loi sur les douanes* — classement**

**(2)** Sous réserve des paragraphes (4) à (6), la *Loi sur les douanes* (sauf les paragraphes 67(2) et (3) et les articles 68 et 70) et ses règlements d'application s'appliquent, avec les adaptations nécessaires, au classement d'un bien

determination of the tax status of a subject item for the purposes of this Subdivision as if it were the determination, re-determination or further re-determination, as the case requires, of the tariff classification of the subject item.

**Application of *Customs Act* — appraisal**

**(3)** The *Customs Act* and the regulations made under that Act apply, with any modifications that the circumstances require, to the appraisal, re-appraisal or further re-appraisal of the value of a subject item for the purposes of this Subdivision as if it were the appraisal, re-appraisal or further re-appraisal, as the case requires, of the value for duty of the subject item.

**Appeals of determination of tax status**

**(4)** In applying the *Customs Act* to a determination of the tax status of a subject item, the references in that Act to the "Canadian International Trade Tribunal" are to be read as references to the "Tax Court of Canada".

**Application — this Act and *Tax Court of Canada Act***

**(5)** The provisions of this Act and of the *Tax Court of Canada Act* that apply to an appeal taken under section 100 apply, with any modifications that the circumstances require, to an appeal taken under subsection 67(1) of the *Customs Act* from a decision of the President of the Canada Border Services Agency made under section 60 or 61 of the *Customs Act* in a determination of the tax status of a subject item as if the decision of the President were a confirmation of an assessment or a reassessment made by the Minister under subsection 97(8) or (9) as a consequence of a notice of objection filed under subsection 97(1) by the person to which the President is required to give notice under section 60 or 61 of the *Customs Act*, as the case may be, of the decision.

**Rebate — appraisal or re-appraisal**

**(6)** If, because of an appraisal, a re-appraisal or a further re-appraisal of the value of a subject item or a determination of the tax status of a subject item, it is determined that the amount that was paid as tax under this Subdivision in respect of the subject item exceeds the amount of tax that is required under this Subdivision to be paid in respect of the subject item and a refund of the excess would be given under paragraph 59(3)(b) or 65(1)(b) of the *Customs Act* if the tax under this Subdivision in respect of the subject item were a customs duty in respect of the subject item levied under the *Customs Tariff*, a rebate of the excess is to be paid, subject to section 46, to the person that paid the excess, and the provisions of the

assujetti pour l'application de la présente sous-section comme s'il s'agissait du classement tarifaire du bien assujetti ou de la révision ou du réexamen de ce classement.

**Application de la *Loi sur les douanes* — appréciation**

**(3)** La *Loi sur les douanes* et ses règlements d'application s'appliquent, avec les adaptations nécessaires, à l'appréciation de la valeur d'un bien assujetti pour l'application de la présente sous-section, à la révision de cette appréciation ou au réexamen de cette révision, comme s'il s'agissait de l'appréciation de la valeur en douane du bien assujetti, de la révision de cette appréciation ou du réexamen de cette révision, selon le cas.

**Appels concernant le classement**

**(4)** Pour l'application de la *Loi sur les douanes* au classement d'un bien assujetti, les mentions « Tribunal canadien du commerce extérieur » dans cette loi valent mention de « Cour canadienne de l'impôt ».

**Application — présente loi et *Loi sur la Cour canadienne de l'impôt***

**(5)** Les dispositions de la présente loi et de la *Loi sur la Cour canadienne de l'impôt* concernant les appels interjetés en vertu de l'article 100 s'appliquent, avec les adaptations nécessaires, aux appels interjetés en vertu du paragraphe 67(1) de la *Loi sur les douanes* d'une décision du président de l'Agence des services frontaliers du Canada rendue conformément aux articles 60 ou 61 de la *Loi sur les douanes* quant au classement d'un bien assujetti, comme si cette décision était la confirmation d'une cotisation ou d'une nouvelle cotisation établie par le ministre en application des paragraphes 97(8) ou (9) par suite d'un avis d'opposition présenté aux termes du paragraphe 97(1) par la personne que le président est tenu d'aviser de la décision selon les articles 60 ou 61 de la *Loi sur les douanes*.

**Remboursements**

**(6)** Si, par suite de l'appréciation de la valeur d'un bien assujetti, de la révision de cette appréciation, du réexamen de cette révision ou du classement du bien assujetti, il est établi que le montant payé relativement au bien assujetti au titre de la taxe prévue à la présente sous-section excède la taxe à payer relativement au bien assujetti aux termes de la présente sous-section et que cet excédent serait remboursé en application des alinéas 59(3)b) ou 65(1)b) de la *Loi sur les douanes* si la taxe prévue à la présente sous-section constituait des droits de douane imposés relativement au bien assujetti en application du *Tarif des douanes*, l'excédent est remboursé à la personne qui l'a payé, sous réserve de l'article 46. Dès

*Customs Act* that relate to the payment of such refunds and interest on such refunds apply, with any modifications that the circumstances require, as if the rebate of the excess were a refund of duty.

#### Application of section 69 of *Customs Act*

**(7)** Subject to section 46, section 69 of the *Customs Act* applies, with any modifications that the circumstances require, if an appeal in respect of the value of a subject item or a determination of the tax status of a subject item is taken for the purpose of determining whether tax under this Subdivision in respect of the subject item is payable or of determining the amount of such tax.

### SUBDIVISION C

## Tax in Other Circumstances

#### Tax — registration of registered vendor's vehicle

**23 (1)** Subject to this Act, if a registered vendor in respect of subject vehicles is an owner of a subject vehicle at a particular time, if the subject vehicle is registered at the particular time with the Government of Canada or a province, if the subject vehicle has never otherwise been registered with the Government of Canada or a province and if the taxable amount of the subject vehicle exceeds the price threshold in respect of the subject vehicle, the registered vendor must pay to Her Majesty in right of Canada tax in respect of the subject vehicle in the amount determined under section 34.

#### When tax payable

**(2)** The tax under subsection (1) becomes payable at the particular time referred to in that subsection.

#### Tax not payable

**(3)** The tax under subsection (1) in respect of a registration of a subject vehicle owned by a registered vendor is not payable if the registration of the subject vehicle is done only because

**(a)** the subject vehicle is sold by the registered vendor to a purchaser; or

**(b)** the right to use the subject vehicle is provided by the registered vendor to a person under a lease, licence or similar arrangement.

#### Taxable amount

**(4)** Subject to subsection (5), the taxable amount of a subject vehicle that is owned by a registered vendor is,

lors, les dispositions de la *Loi sur les douanes* qui portent sur le versement du montant remboursé et des intérêts afférents s'appliquent, avec les adaptations nécessaires, comme si le remboursement de l'excédent de taxe était un remboursement de droits.

#### Application de l'article 69 de la *Loi sur les douanes*

**(7)** Sous réserve de l'article 46, l'article 69 de la *Loi sur les douanes* s'applique, avec les adaptations nécessaires, dans le cas où un appel concernant la valeur d'un bien assujetti ou son classement est interjeté en vue de déterminer si la taxe prévue à la présente sous-section est payable relativement au bien assujetti et de déterminer le montant de cette taxe.

### SOUS-SECTION C

## Taxe dans d'autres circonstances

#### Taxe — immatriculation d'un véhicule d'un vendeur inscrit

**23 (1)** Sous réserve de la présente loi, si un vendeur inscrit relativement aux véhicules assujettis est un propriétaire d'un véhicule assujetti à un moment donné, si le véhicule assujetti est immatriculé au moment donné auprès du gouvernement du Canada ou d'une province et n'a jamais été autrement immatriculé auprès du gouvernement du Canada ou d'une province et si le montant taxable du véhicule assujetti excède le seuil de prix relatif au véhicule assujetti, le vendeur inscrit est tenu de payer à Sa Majesté du chef du Canada une taxe relative au véhicule assujetti d'un montant déterminé en vertu de l'article 34.

#### Taxe payable

**(2)** La taxe prévue au paragraphe (1) devient payable au moment donné visé à ce paragraphe.

#### Exception

**(3)** La taxe prévue au paragraphe (1) relative à l'immatriculation d'un véhicule assujetti dont un vendeur inscrit est propriétaire n'est pas payable si cette immatriculation est accomplie uniquement qu'en raison, selon le cas :

**a)** de la vente du véhicule assujetti par le vendeur inscrit à un acheteur;

**b)** de l'octroi par le vendeur inscrit du droit d'utiliser le véhicule assujetti à une personne aux termes d'un bail, d'une licence ou d'un accord semblable.

#### Montant taxable

**(4)** Sous réserve du paragraphe (5), le montant taxable d'un véhicule assujetti dont un vendeur inscrit est

for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

**A** is the greater of

**(a)** the retail value of the subject vehicle at the time at which the subject vehicle is registered with the Government of Canada or a province, and

**(b)** the retail value of the subject vehicle at the time at which the registered vendor first uses the subject vehicle; and

**B** is a prescribed amount.

**Taxable amount — regulations**

**(5)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject vehicle in prescribed circumstances is to be determined in prescribed manner.

**Tax — lease of subject vehicle**

**24 (1)** Subject to this Act, if a registered vendor in respect of subject vehicles is an owner of a subject vehicle, if the registered vendor provides the right to use the subject vehicle to another person under a lease, licence or similar arrangement, if the subject vehicle has not previously been registered with the Government of Canada or a province otherwise than in connection with the lease, licence or similar arrangement and if the taxable amount of the subject vehicle exceeds the price threshold in respect of the subject vehicle, the registered vendor must pay to Her Majesty in right of Canada tax in respect of the subject vehicle in the amount determined under section 34.

**When tax payable**

**(2)** The tax under subsection (1) becomes payable at the time at which the other person first has the right to use the subject item under the lease, licence or similar arrangement.

**Tax not payable**

**(3)** The tax under subsection (1) in respect of a subject vehicle that is owned by a registered vendor and in respect of which the right to use the subject item is provided to another person under a lease, licence or similar arrangement is not payable if

propriétaire correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la plus élevée des valeurs suivantes :

**a)** la valeur au détail du véhicule assujetti au moment de son enregistrement ou immatriculation auprès du gouvernement du Canada ou d'une province,

**b)** la valeur au détail du véhicule assujetti au moment de son utilisation pour la première fois par le vendeur inscrit;

**B** un montant visé par règlement.

**Montant taxable — règlement**

**(5)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un véhicule assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

**Taxe — location d'un véhicule assujetti**

**24 (1)** Sous réserve de la présente loi, si un vendeur inscrit relativement aux véhicules assujettis est un propriétaire d'un véhicule assujetti et en octroie le droit d'utilisation à une autre personne aux termes d'un bail, d'une licence ou d'un accord semblable, si le véhicule assujetti n'a pas auparavant été immatriculé auprès du gouvernement du Canada ou d'une province autrement qu'en rapport avec le bail, la licence ou l'accord semblable et si le montant taxable du véhicule assujetti excède le seuil de prix relatif au véhicule assujetti, le vendeur inscrit est tenu de payer à Sa Majesté du chef du Canada une taxe relative au véhicule assujetti d'un montant déterminé en vertu de l'article 34.

**Taxe payable**

**(2)** La taxe prévue au paragraphe (1) devient payable au moment où l'autre personne a pour la première fois le droit d'utiliser le bien assujetti aux termes du bail, de la licence ou de l'accord semblable.

**Exception**

**(3)** La taxe prévue au paragraphe (1) relative à un véhicule assujetti dont un vendeur inscrit est propriétaire et relativement auquel le droit d'utilisation est octroyé à une autre personne aux termes d'un bail, d'une licence ou d'un accord semblable n'est pas payable si, selon le cas :

**(a)** the subject vehicle is equipped for policing activities and

**(i)** the other person is a police authority or military authority,

**(ii)** the other person has the right to use the subject item for a period of at least six months under the lease, licence or similar arrangement,

**(iii)** the registered vendor transfers possession of the subject vehicle to the other person under the lease, licence or similar arrangement, and

**(iv)** the registered vendor retains evidence satisfactory to the Minister that the conditions in subparagraphs (i) to (iii) are met in respect of the subject item; or

**(b)** the subject vehicle is equipped for military activities and

**(i)** the other person is a military authority,

**(ii)** the other person has the right to use the subject item for a period of at least six months under the lease, licence or similar arrangement,

**(iii)** the registered vendor transfers possession of the subject vehicle to the other person under the lease, licence or similar arrangement, and

**(iv)** the registered vendor retains evidence satisfactory to the Minister that the conditions in subparagraphs (i) to (iii) are met in respect of the subject item.

**a)** le véhicule assujetti est équipé pour des activités policières et, à la fois :

**(i)** l'autre personne est un corps policier ou une autorité militaire,

**(ii)** l'autre personne a le droit d'utiliser le bien assujetti pendant une période d'au moins six mois aux termes du bail, de la licence ou de l'accord semblable,

**(iii)** le vendeur inscrit transfère la possession du véhicule assujetti à l'autre personne aux termes du bail, de la licence ou de l'accord semblable,

**(iv)** le vendeur inscrit conserve des preuves, que le ministre estime acceptables, que les conditions énoncées aux sous-alinéas (i) à (iii) sont remplies relativement au bien assujetti;

**b)** le véhicule assujetti est équipé pour des activités militaires et, à la fois :

**(i)** l'autre personne est une autorité militaire,

**(ii)** l'autre personne a le droit d'utiliser le bien assujetti pendant une période d'au moins six mois aux termes du bail, de la licence ou de l'accord semblable,

**(iii)** le vendeur inscrit transfère la possession du véhicule assujetti à l'autre personne aux termes du bail, de la licence ou de l'accord semblable,

**(iv)** le vendeur inscrit conserve des preuves, que le ministre estime acceptables, que les conditions énoncées aux sous-alinéas (i) à (iii) sont remplies relativement au bien assujetti.

**Taxable amount**

**(4)** Subject to subsection (5), the taxable amount of a subject vehicle that is owned by a registered vendor and in respect of which the right to use the subject item is provided to another person under a lease, licence or similar arrangement is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

**A** is the greater of

**(a)** the retail value of the subject vehicle at the time at which possession of the subject vehicle is first transferred to the other person under the lease, licence or similar arrangement, and

**Montant taxable**

**(4)** Sous réserve du paragraphe (5), le montant taxable d'un véhicule assujetti dont un vendeur inscrit est propriétaire et relativement auquel le droit d'utilisation est octroyé à une autre personne aux termes d'un bail, d'une licence ou d'un accord semblable correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la plus élevée des valeurs suivantes :

**a)** la valeur au détail du véhicule assujetti au moment du transfert de sa possession pour la première fois à l'autre personne aux termes du bail, de la licence ou de l'accord semblable,

**(b)** the retail value of the subject vehicle at the time at which the other person first has the right to use the subject vehicle under the lease, license or similar arrangement; and

**B** is a prescribed amount.

**b)** la valeur au détail du véhicule assujetti au moment où l'autre personne a pour la première fois le droit de l'utiliser aux termes du bail, de la licence ou de l'accord semblable;

**B** un montant visé par règlement.

**Taxable amount — regulations**

**(5)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject item in prescribed circumstances is to be determined in prescribed manner.

**Montant taxable — règlement**

**(5)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

**Tax — lease of aircraft or vessel**

**25 (1)** Subject to this Act, if a particular person is an owner of a subject item that is a subject aircraft or subject vessel, if the particular person provides the right to use the subject item to another person under a lease, licence or similar arrangement and if the taxable amount of the subject item exceeds the price threshold in respect of the subject item, the particular person must pay to Her Majesty in right of Canada tax in respect of the subject item in the amount determined under section 34.

**Taxe — bail d'un aéronef ou d'un navire**

**25 (1)** Sous réserve de la présente loi, si une personne donnée est un propriétaire d'un bien assujetti qui est un aéronef assujetti ou un navire assujetti, si elle octroie le droit d'utiliser le bien assujetti à une autre personne aux termes d'un bail, d'une licence ou d'un accord semblable et si le montant taxable du bien assujetti excède le seuil de prix relatif au bien assujetti, la personne donnée est tenue de payer à Sa Majesté du chef du Canada une taxe relative au bien assujetti d'un montant déterminé en vertu de l'article 34.

**When tax payable**

**(2)** The tax under subsection (1) becomes payable at the time at which the other person first has the right to use the subject item under the lease, licence or similar arrangement.

**Taxe payable**

**(2)** La taxe prévue au paragraphe (1) devient payable au moment où l'autre personne a pour la première fois le droit d'utiliser le bien assujetti aux termes du bail, de la licence ou de l'accord semblable.

**Tax not payable**

**(3)** The tax under subsection (1) in respect of a subject item that is owned by a particular person and in respect of which the right to use the subject item is provided to another person under a lease, licence or similar arrangement is not payable if, at the time at which the other person first has the right to use the subject item under a lease, licence or similar arrangement

**(a)** in the case of a subject vessel (other than a select subject vessel), the subject item is a qualifying subject vessel of the particular person;

**(b)** in the case of a subject aircraft,

**(i)** the subject item is a qualifying subject aircraft of the particular person,

**(ii)** each person that is an owner of the subject item is a qualifying aircraft user, or

**(iii)** the other person is a qualifying aircraft user; or

**Exception**

**(3)** La taxe prévue au paragraphe (1) relative à un bien assujetti dont une personne donnée est un propriétaire et relativement auquel le droit d'utilisation est octroyé à une autre personne aux termes d'un bail, d'une licence ou d'un accord semblable n'est pas payable si, au moment où l'autre personne a le droit d'utiliser le bien assujetti pour la première fois aux termes d'un bail, d'une licence ou d'un accord semblable, selon le cas :

**a)** dans le cas d'un navire assujetti (autre qu'un navire assujetti désigné), il est un navire assujetti admissible de la personne donnée;

**b)** dans le cas d'un aéronef assujetti :

**(i)** soit il est un aéronef assujetti admissible de la personne donnée,

**(ii)** soit chaque personne qui est un propriétaire de l'aéronef assujetti est un utilisateur admissible d'aéronef,

**(c)** a tax certificate in respect of the subject item is in effect in accordance with section 37.

**Taxable amount**

**(4)** Subject to subsection (5), the taxable amount of a subject item that is owned by a particular person and in respect of which the right to use the subject item is provided to another person under a lease, licence or similar arrangement is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

**A** is the greater of

**(a)** the retail value of the subject item at the time at which possession of the subject item is first transferred to the other person under the lease, licence or similar arrangement, and

**(b)** the retail value of the subject item at the time at which the other person first has the right to use the subject item under the lease, license or similar arrangement; and

**B** is a prescribed amount.

**Taxable amount — regulations**

**(5)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject item in prescribed circumstances is to be determined in prescribed manner.

**Tax — use of aircraft or vessel**

**26 (1)** Subject to this Act, if a person is an owner at a particular time of a subject item that is a subject aircraft or subject vessel, if the subject item is used in Canada at the particular time and if the taxable amount of the subject item exceeds the price threshold in respect of the subject item, the person must pay to Her Majesty in right of Canada tax in respect of the subject item in the amount determined under section 34.

**When tax payable**

**(2)** The tax under subsection (1) becomes payable at the particular time referred to in that subsection.

**(iii)** soit l'autre personne est un utilisateur admissible d'aéronef;

**c)** un certificat fiscal relatif au bien assujetti est en vigueur conformément à l'article 37.

**Montant taxable**

**(4)** Sous réserve du paragraphe (5), le montant taxable d'un bien assujetti dont une personne donnée est un propriétaire et relativement auquel le droit d'utilisation est octroyé à une autre personne aux termes d'un bail, d'une licence ou d'un accord semblable correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la plus élevée des valeurs suivantes :

**a)** la valeur au détail du bien assujetti au moment du transfert de sa possession pour la première fois à l'autre personne aux termes du bail, de la licence ou de l'accord semblable,

**b)** la valeur au détail du bien assujetti au moment où l'autre personne a pour la première fois le droit d'utiliser le bien assujetti aux termes du bail, de la licence ou de l'accord semblable;

**B** un montant visé par règlement.

**Montant taxable — règlement**

**(5)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

**Taxe — utilisation d'un aéronef ou d'un navire**

**26 (1)** Sous réserve de la présente loi, si une personne est un propriétaire à un moment donné d'un bien assujetti qui est un aéronef assujetti ou un navire assujetti, si le bien assujetti est utilisé au Canada au moment donné et si le montant taxable du bien assujetti excède le seuil de prix relatif au bien assujetti, la personne est tenue de payer à Sa Majesté du chef du Canada une taxe relative au bien assujetti d'un montant déterminé en vertu de l'article 34.

**Taxe payable**

**(2)** La taxe prévue au paragraphe (1) devient payable au moment donné visé à ce paragraphe.

**Tax not payable**

**(3)** The tax under subsection (1) in respect of a subject item that is used in Canada by a person at a particular time is not payable if

**(a)** in the case of a subject vessel (other than a select subject vessel), the subject item is a qualifying subject vessel of the person at the particular time;

**(b)** the person is a registered vendor in respect of that type of subject item and the use of the subject item by the person is reasonably necessary or incidental to the manufacture, offering for sale or transportation of the subject item;

**(c)** in the case of a subject aircraft, at the particular time

**(i)** the subject item is a qualifying subject aircraft, or

**(ii)** each person that is an owner of the subject aircraft is a qualifying aircraft user;

**(d)** a tax certificate in respect of the subject item is in effect at the particular time in accordance with section 37;

**(e)** the person imported the subject item before the particular time and tax under section 20 in respect of the importation was not payable by the person because of the application of subsection 21(6); or

**(f)** tax in respect of the subject item became payable under section 27 or 28 by the person at or before the particular time.

**Taxable amount**

**(4)** Subject to subsection (5), the taxable amount of a subject item that is used in Canada at a particular time is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

**A** is the retail value of the subject item at the particular time; and

**B** is a prescribed amount.

**Taxable amount — regulations**

**(5)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a

**Exception**

**(3)** La taxe prévue au paragraphe (1) relative à un bien assujetti qui est utilisé au Canada par une personne à un moment donné n'est pas payable si, selon le cas :

**a)** dans le cas d'un navire assujetti (autre qu'un navire assujetti désigné), il est un navire assujetti admissible de la personne au moment donné;

**b)** la personne est un vendeur inscrit relativement à ce type de bien assujetti et l'utilisation du bien assujetti par la personne est raisonnablement nécessaire ou accessoire à sa fabrication, à sa mise en vente ou à son transport;

**c)** dans le cas d'un aéronef assujetti, au moment donné :

**(i)** soit il est un aéronef assujetti admissible de la personne,

**(ii)** soit chaque personne qui est un propriétaire de l'aéronef assujetti est un utilisateur admissible d'aéronef;

**d)** un certificat fiscal relatif au bien assujetti est en vigueur au moment donné conformément à l'article 37;

**e)** la personne a importé le bien assujetti avant le moment donné et n'était pas tenue de payer la taxe prévue à l'article 20 relativement à l'importation en raison de l'application du paragraphe 21(6);

**f)** la taxe relative au bien assujetti est devenue payable en application des articles 27 ou 28 par la personne au plus tard au moment donné.

**Montant taxable**

**(4)** Sous réserve du paragraphe (5), le montant taxable d'un bien assujetti qui est utilisé au Canada à un moment donné correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de la taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la valeur au détail du bien assujetti au moment donné;

**B** un montant visé par règlement.

**Montant taxable — règlement**

**(5)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien

subject item in prescribed circumstances is to be determined in prescribed manner.

### Tax — ceasing to be registered vendor

**27 (1)** Subject to this Act, if a person ceases to be a registered vendor in respect of a type of subject item at a particular time, if the person is an owner of a subject item of that type at the particular time and if the taxable amount of the subject item exceeds the price threshold in respect of the subject item, the person must pay to Her Majesty in right of Canada tax in respect of the subject item in the amount determined under section 34.

### When tax payable

**(2)** The tax under subsection (1) becomes payable at the particular time referred to in that subsection.

### Tax not payable

**(3)** The tax under subsection (1) in respect of a subject item that is owned by a person at the particular time at which the person ceases to be a registered vendor in respect of that type of subject item is not payable if

**(a)** in the case of a subject vehicle, the subject item was registered with the Government of Canada or a province before the particular time;

**(b)** in the case of a subject aircraft,

**(i)** if the person is the only owner of the subject aircraft, the person is a qualifying aircraft user at the particular time, and

**(ii)** in any other case, each person that is an owner of the subject aircraft is a qualifying aircraft user at the particular time;

**(c)** in the case of a subject aircraft or subject vessel (other than a select subject vessel), the subject item is a qualifying subject aircraft or qualifying subject vessel of the person at the particular time; or

**(d)** in the case of a subject aircraft or subject vessel, a tax certificate in respect of the subject item is in effect at the particular time in accordance with section 37.

### Taxable amount

**(4)** Subject to subsection (5), the taxable amount of a subject item owned by a person is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

### Taxe — cesser d'être un vendeur inscrit

**27 (1)** Sous réserve de la présente loi, si une personne cesse d'être un vendeur inscrit relativement à un type de bien assujetti à un moment donné, si la personne est un propriétaire d'un bien assujetti de ce type au moment donné et si le montant taxable du bien assujetti excède le seuil de prix relatif au bien assujetti, la personne est tenue de payer à Sa Majesté du chef du Canada une taxe relative au bien assujetti d'un montant déterminé en vertu de l'article 34.

### Taxe payable

**(2)** La taxe prévue au paragraphe (1) devient payable au moment donné visé à ce paragraphe.

### Exception

**(3)** La taxe prévue au paragraphe (1) relative à un bien assujetti dont une personne est un propriétaire au moment donné où la personne cesse d'être un vendeur inscrit relativement à ce type de bien assujetti n'est pas payable si, selon le cas :

**a)** dans le cas d'un véhicule assujetti, le bien assujetti était immatriculé auprès du gouvernement du Canada ou d'une province avant le moment donné;

**b)** dans le cas d'un aéronef assujetti :

**(i)** si la personne est le seul propriétaire de l'aéronef assujetti, la personne est un utilisateur admissible d'aéronef au moment donné,

**(ii)** dans les autres cas, chaque personne qui est un propriétaire de l'aéronef assujetti est un utilisateur admissible d'aéronef au moment donné;

**c)** dans le cas d'un aéronef assujetti ou d'un navire assujetti (sauf un navire assujetti désigné), le bien assujetti est un aéronef assujetti admissible ou un navire assujetti admissible de la personne au moment donné;

**d)** dans le cas d'un aéronef assujetti ou d'un navire assujetti, un certificat fiscal relatif au bien assujetti est en vigueur au moment donné conformément à l'article 37.

### Montant taxable

**(4)** Sous réserve du paragraphe (5), le montant taxable d'un bien assujetti dont une personne est un propriétaire correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe

**A + B**

where

**A** is the retail value of the subject item at the time at which the person ceases to be a registered vendor in respect of that type of subject item; and

**B** is a prescribed amount.

**Taxable amount — regulations**

**(5)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject item in prescribed circumstances is to be determined in prescribed manner.

**Tax — ceasing to be qualifying aircraft user**

**28 (1)** Subject to this Act, if a person ceases to be a qualifying aircraft user at a particular time, if the person is an owner of a subject aircraft at the particular time and if the taxable amount of the subject aircraft exceeds the price threshold in respect of the subject aircraft, the person must pay to Her Majesty in right of Canada tax in respect of the subject aircraft in the amount determined under section 34.

**When tax payable**

**(2)** The tax under subsection (1) becomes payable at the particular time referred to in that subsection.

**Tax not payable**

**(3)** The tax under subsection (1) in respect of a subject aircraft that is owned by a person at the particular time at which the person ceases to be a qualifying aircraft user is not payable if

**(a)** the subject aircraft is a qualifying subject aircraft of the person at the particular time; or

**(b)** a tax certificate in respect of the subject aircraft is in effect at the particular time in accordance with section 37.

**Taxable amount**

**(4)** Subject to subsection (5), the taxable amount of a subject aircraft owned by a person is, for the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the amount determined by the formula

**A + B**

where

payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

où :

**A** représente la valeur au détail du bien assujetti au moment où la personne cesse d'être un vendeur inscrit relativement à ce type de bien assujetti;

**B** un montant visé par règlement.

**Montant taxable — règlement**

**(5)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

**Taxe — cesser d'être un utilisateur admissible d'aéronef**

**28 (1)** Sous réserve de la présente loi, si une personne cesse d'être un utilisateur admissible d'aéronef à un moment donné, si la personne est un propriétaire d'un aéronef assujetti à ce moment et si le montant taxable de l'aéronef assujetti excède le seuil de prix relatif à l'aéronef assujetti, la personne est tenue de payer à Sa Majesté du chef du Canada une taxe relative à l'aéronef assujetti du montant déterminé en vertu de l'article 34.

**Taxe payable**

**(2)** La taxe prévue au paragraphe (1) devient payable au moment donné visé à ce paragraphe.

**Exception**

**(3)** La taxe prévue au paragraphe (1) relative à un aéronef assujetti dont une personne est un propriétaire au moment donné où celle-ci cesse d'être un utilisateur admissible d'aéronef n'est pas payable si, selon le cas :

**a)** l'aéronef assujetti est un aéronef assujetti admissible de la personne au moment donné;

**b)** un certificat fiscal relatif à l'aéronef assujetti est en vigueur au moment donné conformément à l'article 37.

**Montant taxable**

**(4)** Sous réserve du paragraphe (5), le montant taxable d'un aéronef assujetti dont une personne est un propriétaire correspond, pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, au montant obtenu par la formule suivante :

**A + B**

**A** is the retail value of the subject aircraft at the time at which the person ceases to be a qualifying aircraft user; and

**B** is a prescribed amount.

**Taxable amount — regulations**

**(5)** For the purposes of this section and for the purposes of determining under section 34 the amount of tax payable under this section, the taxable amount of a subject item in prescribed circumstances is to be determined in prescribed manner.

## SUBDIVISION D

## Tax on Improvements

**Rules — improvement after sale**

**29 (1)** Subject to section 31, for the purposes of this section and for the purposes of determining under section 35 the amount of tax payable under this section, if a vendor sells a subject item to a particular purchaser, the following rules apply:

**(a)** the improvement period in respect of the subject item is the period that begins on the day that an agreement for the sale is entered into and ends on

**(i)** if the subject item is subsequently sold to a person that deals at arm's length with the particular purchaser and if the sale to the person is completed on a particular day that is before the day that is one year after the day on which the sale to the particular purchaser is completed, the particular day, and

**(ii)** in any other case, the day that is one year after the day on which the sale to the particular purchaser is completed;

**(b)** the unimproved taxable amount of the subject item is equal to the taxable amount of the subject item as determined under section 18 in respect of the sale to the particular purchaser; and

**(c)** the net improvement amount of the subject item is equal to the total of all amounts, each of which is the value of the consideration for an improvement in respect of the subject item that is completed at any time during the improvement period in respect of the subject item but only to the extent that the value of the consideration is not included in the determination of the unimproved taxable amount of the subject item.

où :

**A** représente la valeur au détail de l'aéronef assujetti au moment où la personne cesse d'être un utilisateur admissible d'aéronef;

**B** un montant visé par règlement.

**Montant taxable — règlement**

**(5)** Pour l'application du présent article et afin de déterminer en vertu de l'article 34 le montant de taxe payable en vertu du présent article, le montant taxable d'un bien assujetti dans les circonstances prévues par règlement est déterminé selon les modalités réglementaires.

## SOUS-SECTION D

## Taxe sur les améliorations

**Règles — amélioration après la vente**

**29 (1)** Sous réserve de l'article 31, pour l'application du présent article et afin de déterminer en vertu de l'article 35 le montant de taxe payable en vertu du présent article, si un vendeur vend un bien assujetti à un acheteur donné, les règles suivantes s'appliquent :

**a)** la période d'amélioration relativement au bien assujetti est la période qui commence le jour où une convention de vente est conclue et prend fin, selon le cas :

**(i)** si le bien assujetti est ultérieurement vendu à une personne qui n'a pas de lien de dépendance avec l'acheteur donné et si la vente à la personne est achevée un jour donné qui précède le jour qui suit d'un an la date à laquelle la vente à l'acheteur donné est achevée, le jour donné,

**(ii)** dans les autres cas, le jour qui suit d'un an la date à laquelle la vente à l'acheteur donné est achevée;

**b)** le montant taxable non amélioré du bien assujetti est égal au montant taxable du bien assujetti, tel que déterminé en vertu de l'article 18 relativement à la vente à l'acheteur donné;

**c)** le montant net pour l'amélioration du bien assujetti est égal au total des montants dont chacun représente la valeur de la contrepartie pour une amélioration relativement au bien assujetti qui est achevée à un moment donné durant la période d'amélioration relative au bien assujetti, mais seulement dans la mesure où la valeur de la contrepartie n'est pas incluse dans la détermination du montant taxable non amélioré du bien assujetti.

**Tax — improvement after sale**

**(2)** Subject to this Act, a person must pay to Her Majesty in right of Canada tax in respect of a subject item in the amount determined under section 35 if

**(a)** a vendor sells the subject item to the person and tax in respect of the subject item becomes payable under section 18; and

**(b)** the net improvement amount of the subject item is greater than or equal to $5,000.

**When tax payable**

**(3)** The tax under subsection (2) in respect of a subject item becomes payable at the beginning of the day following the day on which the improvement period in respect of the subject item ends.

**Rules — improvement in other circumstances**

**30 (1)** Subject to section 31, for the purposes of this section and for the purposes of determining under section 35 the amount of tax payable under this section, if tax in respect of a subject item becomes payable by a person on a particular day under any of sections 20 and 23 to 28, the following rules apply:

**(a)** the improvement period in respect of the subject item is the period that begins on the particular day and ends on

**(i)** if the subject item is subsequently sold to another person that deals at arm's length with the person and the sale is completed before the day that is one year after the particular day, the day on which the sale is completed, and

**(ii)** in any other case, the day that is one year after the particular day;

**(b)** the unimproved taxable amount of the subject item is equal to the taxable amount of the subject item as determined under whichever of those sections is applicable; and

**(c)** the net improvement amount of the subject item is equal to the total of all amounts, each of which is the value of the consideration for an improvement in respect of the subject item that is completed at any time during the improvement period in respect of the subject item but only to the extent that the value of the consideration is not included in the determination of the unimproved taxable amount of the subject item.

**Taxe — amélioration après vente**

**(2)** Sous réserve de la présente loi, une personne est tenue de payer à Sa Majesté du chef du Canada une taxe relativement à un bien assujetti d'un montant déterminé en vertu de l'article 35 si, à la fois :

**a)** un vendeur vend le bien assujetti à la personne et la taxe relative au bien assujetti devient payable en vertu de l'article 18;

**b)** le montant net pour l'amélioration du bien assujetti est égal ou supérieur à 5 000 $.

**Taxe payable**

**(3)** La taxe prévue au paragraphe (2) relative à un bien assujetti devient payable au début du jour qui est le lendemain du jour où la période d'amélioration relative au bien assujetti se termine.

**Règles — amélioration dans d'autres circonstances**

**30 (1)** Sous réserve de l'article 31, pour l'application du présent article et afin de déterminer en vertu de l'article 35 le montant de taxe payable en vertu du présent article, si la taxe relativement à un bien assujetti devient payable par une personne un jour donné en vertu de l'un des articles 20 et 23 à 28, les règles suivantes s'appliquent :

**a)** la période d'amélioration relative au bien assujetti est la période qui commence le jour donné et qui se termine :

**(i)** si le bien assujetti est vendu ultérieurement à une autre personne qui n'a pas de lien de dépendance avec la personne et si la vente est achevée avant le jour qui suit d'un an le jour donné, la date à laquelle la vente est achevée,

**(ii)** dans les autres cas, le jour qui suit d'un an le jour donné;

**b)** le montant taxable non amélioré du bien assujetti est égal au montant taxable du bien assujetti tel que déterminé en vertu de celui de ces derniers articles qui s'applique;

**c)** le montant net pour l'amélioration du bien assujetti est égal au total des montants dont chacun représente la valeur de la contrepartie pour une amélioration relativement au bien assujetti qui est achevée à un moment donné durant la période d'amélioration relative au bien assujetti, mais seulement dans la mesure où la valeur de la contrepartie n'est pas incluse dans la détermination du montant taxable non amélioré du bien assujetti.

**Tax — improvement in other circumstances**

**(2)** Subject to this Act, a person must pay to Her Majesty in right of Canada tax in respect of a subject item in the amount determined under section 35 if

**(a)** tax in respect of the subject item becomes payable on a particular day by the person under any of sections 20 and 23 to 28; and

**(b)** the net improvement amount of the subject item is greater than or equal to $5,000.

**When tax payable**

**(3)** The tax under subsection (2) in respect of a subject item becomes payable at the beginning of the day following the day on which the improvement period in respect of the subject item ends.

**Improvement period — regulations**

**31 (1)** For the purposes of this Subdivision, if prescribed circumstances exist, the improvement period in respect of a subject item is a prescribed period.

**Unimproved taxable amount — regulations**

**(2)** For the purposes of this Subdivision and for the purposes of determining under section 35 the amount of tax payable under this Subdivision in respect of a subject item, if prescribed circumstances exist, the unimproved taxable amount of the subject item is to be determined in prescribed manner.

**Net improvement amount — regulations**

**(3)** For the purposes of this Subdivision and for the purposes of determining under section 35 the amount of tax payable under this Subdivision in respect of a subject item, if prescribed circumstances exist, the net improvement amount of the subject item is to be determined in prescribed manner.

**Non-arm's length — joint and several, or solidary, liability**

**32** If tax in respect of a subject item is payable by a particular person under section 29 or 30 and if ownership of the subject item is transferred at any time during the improvement period in respect of the subject item to another person that is not dealing at arm's length with the particular person, the other person is jointly and severally, or solidarily, liable with the particular person for the payment of the tax.

**Taxe — amélioration dans d'autres circonstances**

**(2)** Sous réserve de la présente loi, une personne est tenue de payer à Sa Majesté du chef du Canada une taxe relativement à un bien assujetti d'un montant déterminé selon l'article 35 si, à la fois :

**a)** la taxe relativement au bien assujetti est devenue payable un jour donné par la personne en vertu de l'un des articles 20 et 23 à 28;

**b)** le montant net pour l'amélioration du bien assujetti est égal ou supérieur à 5 000 $.

**Taxe payable**

**(3)** La taxe prévue au paragraphe (2) devient payable au début du jour qui est le lendemain du jour où la période d'évaluation relative au bien assujetti se termine.

**Période d'amélioration — règlement**

**31 (1)** Pour l'application de la présente sous-section, si des circonstances prévues par règlement s'avèrent, la période d'amélioration relativement à un bien assujetti est une période visée par règlement.

**Montant taxable non amélioré — règlement**

**(2)** Pour l'application de la présente sous-section et afin de déterminer en vertu de l'article 35 le montant de taxe payable en vertu de la présente sous-section relativement à un bien assujetti, si des circonstances prévues par règlement s'avèrent, le montant taxable non amélioré du bien assujetti est déterminé selon les modalités réglementaires.

**Montant net pour l'amélioration — règlement**

**(3)** Pour l'application de la présente sous-section et afin de déterminer en vertu de l'article 35 le montant de taxe payable en vertu de la présente sous-section relativement à un bien assujetti, si les circonstances prévues par règlement s'avèrent, le montant net pour l'amélioration du bien assujetti est déterminé selon les modalités réglementaires.

**Lien de dépendance — responsabilité solidaire**

**32** Si la taxe relative à un bien assujetti est payable par une personne donnée en vertu des articles 29 ou 30 et si la propriété du bien assujetti est transférée à un moment donné au cours de la période d'amélioration relativement au bien assujetti à une autre personne qui a un lien de dépendance avec la personne donnée, l'autre personne est solidairement tenue avec la personne donnée au paiement de la taxe.

## SUBDIVISION E

## General Rules

### Tax not payable — regulations

**33** Tax under this Act in respect of a subject item is not payable if prescribed circumstances exist.

### Amount of tax — general

**34** The amount of tax payable under this Division (other than Subdivision D) in respect of a subject item is equal to the lesser of

**(a)** the amount determined by the formula

**A × B**

where

**A** is the taxable amount of the subject item, and

**B** is 10%, and

**(b)** the amount determined by the formula

**(C – D) × E**

where

**C** is the taxable amount of the subject item,

**D** is the price threshold in respect of the subject item, and

**E** is 20%.

### Amount of tax — improvement

**35** The amount of tax payable under Subdivision D in respect of a subject item is equal to the amount determined by the formula

**(A – B) + C**

where

**A** is the amount that would be the amount of tax payable in respect of the subject item if that amount of tax were determined under section 34 and the taxable amount of the subject item were equal to the total of the unimproved taxable amount of the subject item and the net improvement amount of the subject item;

**B** is the amount that would be the amount of tax payable in respect of the subject item if that amount of tax were determined under section 34 and the taxable amount of the subject item were equal to the unimproved taxable amount of the subject item; and

**C** is a prescribed amount.

## SOUS-SECTION E

## Règles générales

### Exception — règlement

**33** La taxe prévue à la présente loi relativement à un bien assujetti n'est pas payable si les circonstances prévues par règlement s'avèrent.

### Montant de taxe — généralités

**34** Le montant de taxe payable en vertu de la présente section (sauf la sous-section D) relativement à un bien assujetti est égal au moindre des montants suivants :

**a)** le montant obtenu par la formule suivante :

**A × B**

où :

**A** représente le montant taxable du bien assujetti,

**B** 10 %;

**b)** le montant obtenu par la formule suivante :

**(C – D) × E**

où :

**C** représente le montant taxable du bien assujetti,

**D** le seuil de prix relatif au bien assujetti,

**E** 20 %.

### Montant de la taxe — améliorations

**35** Le montant de taxe payable en vertu de la sous-section D relativement à un bien assujetti est égal au montant obtenu par la formule suivante :

**(A – B) + C**

où :

**A** représente le montant qui serait le montant de taxe payable relativement au bien assujetti si ce montant de taxe était calculé en vertu de l'article 34 et si le montant taxable du bien assujetti était égal au total du montant taxable non amélioré du bien assujetti et du montant net pour l'amélioration du bien assujetti;

**B** le montant qui serait le montant de taxe payable relativement au bien assujetti si ce montant de taxe était déterminé en vertu de l'article 34 et si le montant taxable du bien assujetti était égal au montant taxable non amélioré du bien assujetti;

**C** un montant visé par règlement.

## DIVISION 3

# Certificates

### Exemption certificate

**36 (1)** For the purposes of this Act, an exemption certificate applies in respect of the sale of a subject item by a vendor to a purchaser only if

**(a)** the certificate is made in prescribed form containing prescribed information;

**(b)** the certificate includes

**(i)** the identification number of the subject item,

**(ii)** one of the following declarations by the purchaser:

**(A)** a declaration that the purchaser is a registered vendor in respect of that type of subject item at the time at which the sale is completed,

**(B)** in the case of a subject aircraft, a declaration that the purchaser is a qualifying aircraft user at the time at which the sale is completed,

**(C)** in the case of a subject aircraft, a declaration that the subject item is, at the time at which ownership of the subject item is transferred to the purchaser, a qualifying subject aircraft of the purchaser, or

**(D)** in the case of a subject vessel (other than a select subject vessel), a declaration that the subject item is, at the time at which ownership of the subject item is transferred to the purchaser, a qualifying subject vessel of the purchaser,

**(iii)** if the certificate includes the declaration in clause (ii)(A), the registration number assigned to the purchaser under subsection 51(2), and

**(iv)** an acknowledgement by the purchaser that the purchaser is assuming liability to pay any amount of tax in respect of the subject item that is or may become payable by the purchaser under this Act;

**(c)** the purchaser provides, in a manner satisfactory to the Minister, the certificate in respect of the sale to the vendor; and

**(d)** the vendor retains the certificate.

## SECTION 3

# Certificats

### Certificat d'exemption

**36 (1)** Pour l'application de la présente loi, un certificat d'exemption ne s'applique relativement à la vente d'un bien assujetti par un vendeur à un acheteur que si, à la fois :

**a)** le certificat est établi en la forme et contient les renseignements déterminés par le ministre;

**b)** le certificat comprend, à la fois :

**(i)** le numéro d'identification du bien assujetti,

**(ii)** l'une des déclarations suivantes de l'acheteur :

**(A)** une déclaration que l'acheteur est un vendeur inscrit relativement à ce type de bien assujetti au moment où la vente est achevée,

**(B)** dans le cas d'un aéronef assujetti, une déclaration que l'acheteur est un utilisateur admissible d'aéronef au moment où la vente est achevée,

**(C)** dans le cas d'un aéronef assujetti, une déclaration qu'il est, au moment où la propriété de celui-ci est transférée à l'acheteur, un aéronef assujetti admissible de l'acheteur,

**(D)** dans le cas d'un navire assujetti (sauf un navire assujetti désigné), une déclaration qu'il est, au moment où la propriété de celui-ci est transférée à l'acheteur, un navire assujetti admissible de l'acheteur,

**(iii)** si le certificat comprend la déclaration visée à la division (ii)(A), le numéro d'inscription attribué à l'acheteur en application du paragraphe 51(2),

**(iv)** une reconnaissance par l'acheteur que celui-ci assume l'obligation de payer tout montant de taxe relative au bien assujetti qui est ou peut devenir payable par celui-ci en vertu de la présente loi;

**c)** l'acheteur présente, d'une manière que le ministre estime acceptable, le certificat relatif à la vente au vendeur;

**d)** le vendeur conserve le certificat.

**Exemption certificate — multiple purchasers**

**(2)** For the purposes of this Act, if a subject item is sold by a vendor to more than one purchaser, an exemption certificate applies in respect of the sale of the subject item only if

**(a)** in the absence of this subsection, an exemption certificate would apply in respect of each purchaser in accordance with subsection (1); and

**(b)** the declaration that is made by each purchaser under subparagraph (1)(b)(ii) is made under the same clause of that subparagraph.

**Exemption certificate — regulations**

**(3)** Despite subsections (1) and (2), for the purposes of this Act, if prescribed circumstances exist, an exemption certificate applies in respect of a sale of a subject item.

**Tax certificate**

**37 (1)** A person must send to the Minister an application for a tax certificate in respect of a subject item that is a subject aircraft or subject vessel if

**(a)** tax in respect of the subject item became payable by the person on a particular day;

**(b)** it is the case that

**(i)** if the tax became payable under section 20, the tax was paid in accordance with that section, and

**(ii)** in any other case, the person has filed with the Minister the return for the reporting period that includes the particular day and the person has taken into account the tax in determining the net tax for that reporting period;

**(c)** in the case where a rebate is or was available in respect of the subject item under Division 4, the amount of the rebate is less than the amount of the tax; and

**(d)** prescribed conditions, if any, are met.

**Content of application**

**(2)** An application under subsection (1) in respect of a subject item must

**(a)** include the identification number of the subject item;

**Certificat d'exemption — acheteurs multiples**

**(2)** Pour l'application de la présente loi, si un bien assujetti est vendu par un vendeur à plus d'un acheteur, un certificat d'exemption ne s'applique relativement à la vente que si les conditions suivantes sont remplies :

**a)** en l'absence du présent paragraphe, un certificat d'exemption s'appliquerait relativement à chaque acheteur en conformité avec le paragraphe (1);

**b)** la déclaration qui est faite par chacun des acheteurs en application du sous-alinéa (1)b)(ii) est faite en vertu de la même division de ce sous-alinéa.

**Certificat d'exemption — règlement**

**(3)** Malgré les paragraphes (1) et (2), pour l'application de la présente loi, si des circonstances prévues par règlement s'avèrent, un certificat d'exemption s'applique relativement à une vente d'un bien assujetti.

**Certificat fiscal**

**37 (1)** Une personne doit envoyer au ministre une demande pour un certificat fiscal relativement à un bien assujetti qui est un aéronef assujetti ou un navire assujetti si, à la fois :

**a)** la taxe relative au bien assujetti est devenue payable par la personne un jour donné;

**b)** la taxe :

**(i)** dans le cas où la taxe est devenue payable en application de l'article 20, a été payée en conformité avec cet article,

**(ii)** dans les autres cas, a été prise en compte dans le calcul de la taxe nette pour la période de déclaration de la personne qui comprend le jour donné et la déclaration pour cette période de déclaration a été présentée au ministre;

**c)** dans le cas où un remboursement est, ou a été, disponible relativement au bien assujetti en application de la section 4, le montant du remboursement est inférieur au montant de la taxe;

**d)** les conditions prévues par règlement, le cas échéant, sont remplies.

**Contenu de la demande**

**(2)** Une demande visée au paragraphe (1) relativement à un bien assujetti doit :

**a)** inclure le numéro d'identification du bien assujetti;

**(b)** specify the date on which the tax in respect of the subject item became payable;

**(c)** include evidence satisfactory to the Minister that the conditions described in subparagraph (1)(b)(i) or (ii), as the case may be, are met; and

**(d)** be made in prescribed form containing prescribed information.

**b)** préciser la date à laquelle la taxe relative au bien assujetti est devenue payable;

**c)** inclure une preuve, que le ministre estime acceptable, que les conditions visées aux sous-alinéas (1)b)(i) ou (ii), selon le cas, sont satisfaites;

**d)** être établie en la forme et contenir les renseignements déterminés par le ministre.

**Timing of application**

**(3)** An application under subsection (1) in respect of a subject item must be filed with the Minister in prescribed manner on or before

**(a)** the particular day that is one year after the day on which the tax in respect of the subject item became payable; or

**(b)** any day after the particular day that the Minister may allow.

**Délai**

**(3)** Une demande visée au paragraphe (1) relativement à un bien assujetti doit être présentée au ministre, selon les modalités qu'il détermine, au plus tard :

**a)** le jour donné qui suit d'un an le jour où la taxe relative au bien assujetti est devenue payable;

**b)** toute date postérieure fixée par le ministre.

**Issuance of tax certificate**

**(4)** Upon receipt of an application under subsection (1) in respect of a subject item, the Minister must consider, with all due dispatch, the application and, if the Minister is satisfied that the conditions described in that subsection are met in respect of the subject item, issue a tax certificate in respect of the subject item specifying

**(a)** the identification number of the subject item;

**(b)** the date on which the tax certificate came into effect; and

**(c)** any other information that is prescribed by regulation.

**Délivrance du certificat fiscal**

**(4)** Sur réception d'une demande visée au paragraphe (1) relativement à un bien assujetti, le ministre examine, avec diligence, la demande et, s'il est convaincu que les conditions visées à ce paragraphe sont remplies relativement au bien assujetti, délivre un certificat fiscal relatif au bien assujetti précisant, à la fois :

**a)** le numéro d'identification du bien assujetti;

**b)** la date d'entrée en vigueur du certificat;

**c)** tout autre renseignement prévu par règlement.

**Tax certificate — in effect**

**(5)** For the purposes of this Act, a tax certificate in respect of a subject item that is issued under subsection (4) is deemed to be in effect beginning immediately after the time at which the tax in respect of the subject item became payable.

**Certificat fiscal — en vigueur**

**(5)** Pour l'application de la présente loi, un certificat fiscal relatif à un bien assujetti qui est délivré en application du paragraphe (4) est réputé être en vigueur à partir du moment qui suit immédiatement le moment auquel la taxe relative au bien assujetti est devenue payable.

**Existing certificate**

**(6)** The Minister must not issue a tax certificate in respect of a subject item if another tax certificate has previously been issued in respect of the subject item under subsection (4) and the other tax certificate has not been revoked under subsection (10).

**Certificat existant**

**(6)** Le ministre ne délivre pas un certificat fiscal relativement à un bien assujetti si un autre certificat fiscal a été délivré auparavant relativement au bien assujetti en application du paragraphe (4) et si l'autre certificat fiscal n'a pas été révoqué en vertu du paragraphe (10).

**Statement to applicant**

**(7)** After considering an application under subsection (1) in respect of a subject item, the Minister must send, or

**Déclaration au demandeur**

**(7)** Après examen d'une demande visée au paragraphe (1) relativement à un bien assujetti, le ministre envoie, ou

make available in electronic format, to the applicant a statement specifying whether or not a tax certificate was issued under subsection (4) in respect of the subject item and

**(a)** if a tax certificate in respect of the subject item was issued because of the application, the Minister must send, or make available in electronic format, to the applicant with the statement a copy of, or the information included on, the tax certificate; or

**(b)** if the Minister does not issue a tax certificate because there exists a previously issued tax certificate in respect of the subject item that has not been revoked under subsection (10), the Minister must send, or make available in electronic format, to the applicant with the statement a copy of, or the information included on, the previously issued tax certificate.

**Request by third party**

**(8)** On request made by a person to the Minister in prescribed manner, the Minister must send, or make available in electronic format, to the person

**(a)** a statement specifying

**(i)** whether a tax certificate in respect of a subject item has been issued under subsection (4), and

**(ii)** if a tax certificate in respect of the subject item has been issued under subsection (4), whether a notice of revocation in respect of the tax certificate has been issued under subsection (10);

**(b)** if a tax certificate in respect of the subject item has been issued under subsection (4), a copy of, or the information included on, the tax certificate; and

**(c)** if a notice of revocation in respect of a tax certificate in respect of the subject item has been issued under subsection (10), a copy of, or the information included on, the notice of revocation.

**Notification of change**

**(9)** If a tax certificate in respect of a subject item was issued under subsection (4), if the tax certificate has not been revoked under subsection (10) and if the person that applied for the tax certificate under subsection (1) becomes aware at any time that the conditions described

rend disponible en format électronique, au demandeur un énoncé précisant si, oui ou non, un certificat fiscal a été délivré en application du paragraphe (4) relativement au bien assujetti et, selon le cas :

**a)** si un certificat fiscal relatif au bien assujetti a été délivré en raison de la demande, le ministre envoie, ou rend disponible en format électronique, au demandeur en accompagnement de l'énoncé une copie du certificat fiscal ou les renseignements inclus dans le certificat fiscal;

**b)** si le ministre ne délivre pas un certificat fiscal en raison de l'existence d'un certificat fiscal délivré auparavant relativement au bien assujetti qui n'a pas été révoqué en application du paragraphe (10), le ministre envoie, ou rend disponible en format électronique, au demandeur en accompagnement de l'énoncé une copie du certificat fiscal délivré auparavant ou les renseignements inclus dans le certificat fiscal délivré auparavant.

**Demande par un tiers**

**(8)** Sur demande d'une personne faite en la forme et contenant les renseignements déterminés par le ministre, le ministre envoie, ou rend disponible en format électronique, à la personne :

**a)** une déclaration :

**(i)** précisant si, oui ou non, un certificat fiscal relativement au bien assujetti a été délivré en application du paragraphe (4),

**(ii)** si un certificat fiscal relatif au bien assujetti a été délivré en application du paragraphe (4), précisant si, oui ou non, un avis de révocation relativement au certificat fiscal a été délivré en application du paragraphe (10);

**b)** si un certificat fiscal relatif au bien assujetti a été délivré en application du paragraphe (4), une copie du certificat fiscal ou les renseignements inclus dans le certificat fiscal;

**c)** si un avis de révocation relatif à un certificat fiscal relatif au bien assujetti a été délivré en application du paragraphe (10), une copie de l'avis de révocation ou les renseignements inclus dans l'avis de révocation.

**Avis de changement**

**(9)** Si un certificat fiscal relatif à un bien assujetti a été délivré en application du paragraphe (4), si le certificat fiscal n'a pas été révoqué en vertu du paragraphe (10) et si la personne qui en a fait la demande en application du paragraphe (1) constate à un moment donné que les

in subsection (1) are not met in respect of the subject item, the person must without delay provide notice in writing to the Minister that the conditions in subsection (1) are not met.

**Revocation**

**(10)** If a tax certificate has been issued in respect of a subject item under subsection (4) and the tax certificate has not already been revoked under this subsection and the Minister becomes aware that the conditions described in subsection (1) are not met in respect of the subject item, the Minister must with all due dispatch

**(a)** revoke the tax certificate; and

**(b)** issue a notice of revocation in respect of the tax certificate specifying

**(i)** the identification number of the subject item,

**(ii)** the effective date of the revocation, and

**(iii)** any information that is prescribed by regulation.

**Revocation — timing**

**(11)** For the purposes of this Act, a tax certificate issued under subsection (4) that has been revoked under subsection (10) is deemed never to have been in effect on any day on or after the effective day specified in the notice of revocation.

**Application for special import certificate**

**38 (1)** A person that intends to import a subject item that is a subject aircraft or subject vessel (other than a select subject vessel) may apply to the Minister for a special import certificate in respect of the importation of the subject item if

**(a)** at the time at which the subject item is accounted for in accordance with section 32 of the *Customs Act*, the person is an owner of the subject item and

**(i)** the subject item is a qualifying subject aircraft or qualifying subject vessel of the person, or

**(ii)** in the case of a subject aircraft, the subject item is accounted for in accordance with section 32 of the *Customs Act* solely by the person and

**(A)** if the person is the only owner of the subject aircraft, the person is a qualifying aircraft user, and

conditions prévues au paragraphe (1) ne sont pas remplies relativement au bien assujetti, cette personne doit, sans délai, aviser le ministre par écrit que les conditions prévues au paragraphe (1) ne sont pas remplies.

**Révocation**

**(10)** Si un certificat fiscal relatif à un bien assujetti a été délivré en application du paragraphe (4) et si le certificat fiscal n'a pas déjà été révoqué en application du présent paragraphe et si le ministre constate que les conditions prévues au paragraphe (1) ne sont pas remplies relativement au bien assujetti, le ministre, avec diligence :

**a)** révoque le certificat fiscal;

**b)** délivre un avis de révocation relatif au certificat fiscal précisant :

**(i)** le numéro d'identification du bien assujetti,

**(ii)** la date d'entrée en vigueur de la révocation,

**(iii)** tout autre renseignement prévu par règlement.

**Révocation — moment**

**(11)** Pour l'application de la présente loi, un certificat fiscal qui a été délivré en application du paragraphe (4) et qui a été révoqué par le ministre en application du paragraphe (10) est réputé ne pas être en vigueur à compter de la date précisée dans l'avis de révocation.

**Demande de certificat d'importation spécial**

**38 (1)** Une personne qui a l'intention d'importer un bien assujetti qui est un aéronef assujetti ou un navire assujetti (sauf un navire assujetti désigné) peut demander au ministre un certificat d'importation spécial relatif au bien assujetti si, selon le cas :

**a)** au moment où celui-ci fait l'objet d'une déclaration en conformité avec l'article 32 de la *Loi sur les douanes*, la personne est un propriétaire du bien assujetti et, selon le cas :

**(i)** le bien assujetti est un aéronef assujetti admissible ou un navire assujetti admissible de la personne,

**(ii)** dans le cas d'un aéronef assujetti, le bien assujetti fait l'objet de cette déclaration seulement par la personne et, selon le cas :

**(A)** si la personne est le seul propriétaire de l'aéronef assujetti, la personne est un utilisateur admissible d'aéronef,

**(B)** in any other case, each person that is an owner of the subject aircraft is a qualifying aircraft user; or

**(b)** prescribed conditions are met.

**Content of application**

**(2)** An application made by a person in respect of a subject item under subsection (1) must

**(a)** include a declaration by the person specifying which of the conditions described in paragraph (1)(a) or (b) are met in respect of the subject item;

**(b)** include the identification number of the subject item;

**(c)** include the person's name;

**(d)** be made in prescribed form containing prescribed information; and

**(e)** be filed with the Minister in prescribed manner.

**Issuance of special import certificate**

**(3)** Upon receipt of an application made by a person in respect of a subject item under subsection (1), the Minister must, with all due dispatch, consider the application and, if the Minister is satisfied that the conditions in respect of the subject item described in that subsection are met, issue and send to the person a special import certificate in respect of the importation of the subject item by the person specifying

**(a)** the name of the person;

**(b)** the identification number of the subject item;

**(c)** the date on which the special import certificate is issued; and

**(d)** any other information that is prescribed by regulation.

**Special import certificate — in effect**

**(4)** For the purposes of this Act, a special import certificate that is issued under subsection (3) in respect of the importation of a subject item is deemed to be in effect beginning on the day on which the special import certificate is issued.

**Notice of non-issuance**

**(5)** If, after considering an application made by a person in respect of a subject item under subsection (1), the Minister does not issue to the person a special import

**(B)** dans les autres cas, chaque personne qui est un propriétaire de l'aéronef assujetti est un utilisateur admissible d'aéronef;

**b)** les conditions prévues par règlement sont remplies.

**Contenu de la demande**

**(2)** Une demande faite par une personne en vertu du paragraphe (1) relativement à un bien assujetti doit :

**a)** contenir une déclaration par la personne précisant lesquelles des conditions visées aux alinéas (1)a) ou b) sont remplies relativement au bien assujetti;

**b)** comprendre le numéro d'identification du bien assujetti;

**c)** comprendre le nom de la personne;

**d)** être établie en la forme et contenir les renseignements déterminés par le ministre;

**e)** être présentée au ministre selon les modalités qu'il détermine.

**Délivrance d'un certificat d'importation spécial**

**(3)** Sur réception d'une demande faite par une personne en vertu du paragraphe (1) relativement à un bien assujetti, le ministre, avec diligence, examine la demande et, s'il est convaincu que les conditions relatives au bien assujetti énoncées à ce paragraphe sont remplies, délivre et envoie à la personne un certificat d'importation spécial relatif à l'importation du bien assujetti précisant les renseignements suivants :

**a)** le nom de la personne;

**b)** le numéro d'identification du bien assujetti;

**c)** la date de délivrance du certificat d'importation spécial;

**d)** tout autre renseignement prévu par règlement.

**Certificat d'importation spécial — en vigueur**

**(4)** Pour l'application de la présente loi, un certificat d'importation spécial qui est délivré en application du paragraphe (3) relativement à l'importation d'un bien assujetti est réputé être en vigueur à partir du jour de sa délivrance.

**Avis de non-délivrance**

**(5)** Si, après avoir examiné une demande d'une personne faite en vertu du paragraphe (1) relativement à un bien assujetti, le ministre ne délivre pas à la personne un

certificate in respect of the importation of the subject item by the person, the Minister must send a notice to the person specifying that a special import certificate was not issued.

**Notification of change**

**(6)** If a special import certificate in respect of the importation of a subject item was issued to a person under subsection (3), if the special import certificate has not been revoked under subsection (7) and if the person becomes aware that the conditions described in subsection (1) are not met in respect of the subject item, the person must without delay provide notice in writing to the Minister that the conditions in subsection (1) are not met.

**Revocation**

**(7)** If a special import certificate in respect of the importation of a subject item was issued to a person under subsection (3), if the special import certificate has not already been revoked under this subsection and if the Minister becomes aware that the conditions described in subsection (1) are not met in respect of the subject item, the Minister must with all due dispatch

**(a)** revoke the special import certificate; and

**(b)** issue, and send to the person, a notice of revocation in respect of the special import certificate specifying

**(i)** the identification number of the subject item,

**(ii)** the effective date of the revocation, and

**(iii)** any information that is prescribed by regulation.

**Revocation — in effect**

**(8)** For the purposes of this Act, a special import certificate issued under subsection (3) that has been revoked under subsection (7) is deemed to cease to have effect on the effective day specified in the notice of revocation.

certificat d'importation spécial relatif à l'importation du bien assujetti par la personne, le ministre envoie un avis à la personne précisant qu'un certificat d'importation spécial n'a pas été délivré.

**Avis de changement**

**(6)** Si un certificat d'importation spécial relatif à l'importation d'un bien assujetti a été délivré à une personne en application du paragraphe (3), si le certificat d'importation spécial n'a pas été révoqué en application du paragraphe (7) et si la personne constate que les conditions prévues au paragraphe (1) ne sont pas remplies relativement au bien assujetti, la personne doit, sans délai, aviser le ministre par écrit que les conditions prévues au paragraphe (1) ne sont pas remplies.

**Révocation**

**(7)** Si un certificat d'importation spécial relatif à l'importation d'un bien assujetti a été délivré à une personne en application du paragraphe (3), si le certificat d'importation spécial n'a pas déjà été révoqué en application du présent paragraphe et si le ministre constate que les conditions prévues au paragraphe (1) ne sont pas remplies relativement au bien assujetti, le ministre, avec diligence :

**a)** révoque le certificat d'importation spécial;

**b)** délivre, et envoie à la personne, un avis de révocation relatif au certificat d'importation spécial précisant :

**(i)** le numéro d'identification du bien assujetti,

**(ii)** la date d'entrée en vigueur de la révocation,

**(iii)** tout autre renseignement prévu par règlement.

**Révocation — en vigueur**

**(8)** Pour l'application de la présente loi, un certificat d'importation spécial qui a été délivré en application du paragraphe (3) et qui a été révoqué en application du paragraphe (7) est réputé ne pas être en vigueur à compter de la date précisée dans l'avis de révocation.

## DIVISION 4

# Rebates

### SUBDIVISION A

## Rebates to Net Tax

#### Rebate to net tax — export

**39 (1)** If the sale of a subject item to a purchaser by a vendor is completed at a particular time and the purchaser exports the subject item at a later time, the Minister must pay to the vendor a rebate in respect of the reporting period of the vendor that includes the later time if

**(a)** the following conditions are met:

**(i)** the vendor is a registered vendor in respect of that type of subject item at the particular time,

**(ii)** the purchaser is not, at any time during the period beginning at the particular time and ending at the later time, a registered vendor in respect of that type of subject item,

**(iii)** tax under section 18 in respect of the sale of the subject item becomes payable by the vendor at the particular time and the tax is taken into account in the determination of the net tax for the reporting period of the vendor that includes the particular time,

**(iv)** the subject item is not used in Canada at any time before the later time except to the extent reasonably necessary or incidental to its manufacture, offering for sale, transportation or exportation,

**(v)** the subject item is not registered with the Government of Canada or a province before the later time except if the registration is done solely for a purpose incidental to its manufacture, offering for sale, transportation or exportation,

**(vi)** the purchaser exports the subject item as soon after the sale is completed as is reasonable having regard to the circumstances surrounding the exportation, the sale and, if applicable, the normal business practice of the purchaser and vendor, and

**(vii)** the purchaser provides to the vendor, and the vendor retains, evidence satisfactory to the Minister of the exportation of the subject item by the purchaser; or

## SECTION 4

# Remboursements

### SOUS-SECTION A

## Remboursements relatifs à la taxe nette

#### Remboursement relatif à la taxe nette — exportation

**39 (1)** Si la vente d'un bien assujetti à un acheteur par un vendeur est achevée à un moment donné et si l'acheteur exporte le bien assujetti à un moment ultérieur, le ministre paie au vendeur un remboursement relativement à sa période de déclaration qui comprend le moment ultérieur si, selon le cas :

**a)** les conditions suivantes sont remplies :

**(i)** le vendeur est un vendeur inscrit relativement à ce type de bien assujetti au moment donné,

**(ii)** l'acheteur n'est pas, à un moment quelconque durant la période qui commence au moment donné et qui se termine au moment ultérieur, un vendeur inscrit relativement à ce type de bien assujetti,

**(iii)** la taxe prévue à l'article 18 relative à la vente du bien assujetti devient payable par le vendeur au moment donné et elle est prise en compte dans le calcul de la taxe nette pour la période de déclaration du vendeur qui comprend le moment donné,

**(iv)** le bien assujetti n'est utilisé au Canada à aucun moment avant le moment ultérieur, sauf dans la mesure qu'il est raisonnable de considérer comme nécessaire ou accessoire à sa fabrication, à sa mise en vente, à son transport ou à son exportation,

**(v)** le bien assujetti n'est pas immatriculé auprès du gouvernement du Canada ou d'une province avant le moment ultérieur, sauf si le bien assujetti n'a été immatriculé qu'à une fin accessoire à sa fabrication, à sa mise en vente, à son transport ou à son exportation,

**(vi)** l'acheteur exporte le bien assujetti dans un délai raisonnable après que la vente est achevée, compte tenu des circonstances entourant l'exportation, la vente et, le cas échéant, des pratiques commerciales courantes de l'acheteur et du vendeur,

**(vii)** l'acheteur fournit au vendeur, et ce dernier conserve, des preuves que le ministre estime

**(b)** prescribed conditions are met.

acceptables de l'exportation du bien assujetti par l'acheteur;

**b)** les conditions prévues par règlement sont remplies.

**Amount of rebate**

**(2)** The amount of a rebate under subsection (1) in respect of a sale of a subject item is equal to the amount of the tax in respect of the sale referred to in subparagraph (1)(a)(iii).

**Montant du remboursement**

**(2)** Le montant d'un remboursement prévu au paragraphe (1) relativement à la vente d'un bien assujetti est égal au montant de taxe relative à la vente visé au sous-alinéa (1)a)(iii).

**Rebate to net tax — regulations**

**40** The Minister must pay a rebate in respect of a subject item to a prescribed person in the amount determined in prescribed manner if prescribed circumstances exist.

**Remboursements relatifs à la taxe nette — règlement**

**40** Le ministre paie un remboursement relativement à un bien assujetti à une personne visée par règlement d'un montant déterminé selon les modalités réglementaires si les circonstances prévues par règlement s'avèrent.

**Application for rebate to net tax**

**41** Despite any other provision of this Act, a rebate under this Subdivision in respect of a particular reporting period of a person is not to be paid unless an application for the rebate

**(a)** is made in prescribed form containing prescribed information; and

**(b)** is filed with the Minister in prescribed manner

**(i)** on or before the day on or before which the return under section 55 is required to be filed for the last reporting period of the person that ends within two years after the end of the particular reporting period, and

**(ii)** with the return in respect of the reporting period in which the amount of the rebate is taken into account in determining the net tax for the reporting period.

**Demande de remboursement relatif à la taxe nette**

**41** Malgré toute autre disposition de la présente loi, le montant d'un remboursement en application de la présente sous-section relativement à une période de déclaration donnée d'une personne n'est payé que si une demande de remboursement, à la fois :

**a)** est faite en la forme et contient les renseignements que le ministre détermine;

**b)** est présentée au ministre selon les modalités qu'il détermine, à la fois :

**(i)** au plus tard à la date limite où la personne doit produire la déclaration prévue à l'article 55 pour sa dernière période de déclaration se terminant dans les deux ans suivant la fin de la période de déclaration donnée,

**(ii)** avec la déclaration relative à la période de déclaration pour laquelle le montant du remboursement est pris en compte pour déterminer la taxe nette pour la période de déclaration.

## SUBDIVISION B

## Other Rebates

**Rebate — foreign representative**

**42 (1)** The Minister must pay to a person a rebate in respect of a sale of a subject item from a vendor to the person if

**(a)** tax under section 18 is payable by the vendor in respect of the sale of the subject item and the tax is taken into account in the determination of the net tax for

## SOUS-SECTION B

## Autres remboursements

**Remboursement — représentant étranger**

**42 (1)** Le ministre paie à une personne un remboursement relativement à une vente d'un bien assujetti par un vendeur à la personne si, à la fois :

**a)** la taxe prévue à l'article 18 est payable par le vendeur relativement à la vente du bien assujetti et la taxe est prise en compte dans le calcul de la taxe nette pour

the reporting period of the vendor that includes the time at which the sale is completed; and

**(b)** the person is entitled to tax relief privileges under the *Foreign Missions and International Organizations Act* for the tax payable under subsection 165(1) of the *Excise Tax Act* in respect of the sale.

**Amount of rebate**

**(2)** The amount of a rebate payable under subsection (1) in respect of a sale of a subject item is equal to the amount of the tax in respect of the sale referred to in paragraph (1)(a).

**Application for rebate**

**(3)** Despite any other provision of this Act, a rebate under this section is not to be paid unless an application for the rebate is

**(a)** made in prescribed form containing prescribed information; and

**(b)** filed with the Minister in prescribed manner within two years after the day on which the sale is completed.

**Rebate — payment in error**

**43 (1)** The Minister must pay a rebate to a person if the person paid an amount in excess of the amount that was payable by the person under this Act whether the amount was paid by mistake or otherwise.

**Amount of rebate**

**(2)** The amount of a rebate payable under subsection (1) by the Minister is the amount of the excess referred to in that subsection.

**Restriction on rebate**

**(3)** A rebate under this section in respect of an amount is not to be paid to a person to the extent that

**(a)** the amount was taken into account as an amount required to be paid by the person in respect of a reporting period of the person and the Minister has assessed the person for that period under section 92; or

**(b)** the amount was an amount assessed under section 92.

la période de déclaration du vendeur qui comprend le moment où la vente est achevée;

**b)** la personne a droit à des privilèges d'exonération fiscale en application de la *Loi sur les missions étrangères et les organisations internationales* à l'égard de la taxe payable en vertu du paragraphe 165(1) de la *Loi sur la taxe d'accise* relativement à la vente.

**Remboursement**

**(2)** Le montant d'un remboursement prévu au paragraphe (1) relativement à la vente d'un bien assujetti est égal au montant de taxe relative à la vente visé à l'alinéa (1)a).

**Demande de remboursement**

**(3)** Malgré toute autre disposition de la présente loi, un remboursement prévu au présent article n'est payé que si une demande de remboursement, à la fois :

**a)** est faite en la forme et contient les renseignements déterminés par le ministre;

**b)** est présentée au ministre, dans les deux ans après le jour où la vente est achevée, selon les modalités qu'il détermine.

**Remboursement d'une somme payée par erreur**

**43 (1)** Le ministre paie un remboursement à une personne si la personne a payé un montant qui excède celui qu'elle était tenue de payer en application de la présente loi, que ce montant ait été payé par erreur ou autrement.

**Remboursement**

**(2)** Le remboursement à payer par le ministre correspond à l'excédent mentionné au paragraphe (1).

**Restriction**

**(3)** Aucun remboursement en vertu du présent article relativement à un montant n'est payé à une personne dans la mesure où, selon le cas :

**a)** le montant a été pris en compte à titre de montant que la personne était tenue de payer relativement à une période de déclaration de la personne et le ministre a établi une cotisation à l'égard de la personne pour cette période en vertu de l'article 92;

**b)** le montant représentait un montant visé par une cotisation établie en vertu de l'article 92.

**Application for rebate**

**(4)** Despite any other provision of this Act, a rebate under this section is not to be paid unless an application for the rebate is

**(a)** made in prescribed form containing prescribed information; and

**(b)** filed with the Minister in prescribed manner within two years after the earlier of the day that the amount was taken into account in determining the net tax for a reporting period of the person and the day that the amount was paid to the Receiver General.

**One application per quarter**

**(5)** Not more than one application for a rebate under this section may be made by a person in a calendar quarter.

**Rebate — regulations**

**44** The Minister must pay a rebate in respect of a subject item to a prescribed person in the amount determined in prescribed manner if prescribed circumstances exist.

**Restriction on rebate**

**45** A rebate under this Subdivision is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* have been filed with the Minister.

**SUBDIVISION C**

## General Rules for Rebates

**Restriction on rebate**

**46** A rebate of an amount is not to be paid to a person under this Division

**(a)** to the extent that it can reasonably be regarded that the person has obtained or is entitled to obtain a rebate, refund or remission of the amount under any other Division of this Act or under any other Act of Parliament; or

**Demande de remboursement**

**(4)** Malgré les autres dispositions de la présente loi, un remboursement en application du présent article n'est payé que si une demande de remboursement, à la fois :

**a)** est faite en la forme et contient les renseignements que le ministre détermine;

**b)** est présentée au ministre, selon les modalités qu'il détermine, dans les deux ans suivant le premier en date du jour où le montant a été pris en compte dans le calcul de la taxe nette pour une période de déclaration de la personne et du jour où le montant a été payé au receveur général.

**Une demande par trimestre**

**(5)** Une personne ne peut présenter plus d'une demande de remboursement par trimestre civil en vertu du présent article.

**Remboursement — règlement**

**44** Le ministre paie un remboursement relativement à un bien assujetti à une personne visée par règlement d'un montant déterminé selon les modalités réglementaires si les circonstances prévues par règlement s'avèrent.

**Restriction — remboursements**

**45** Le montant d'un remboursement visé à la présente sous-section n'est payé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne doit produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ont été présentées au ministre.

**SOUS-SECTION C**

## Règles générales pour les remboursements

**Restriction — remboursements de la présente section**

**46** Le montant d'un remboursement n'est pas payé à une personne en application de la présente section, selon le cas :

**a)** dans la mesure où il est raisonnable de considérer que la personne a obtenu, ou a le droit d'obtenir, un remboursement ou une remise du montant en application d'une autre section de la présente loi ou d'une autre loi fédérale;

**(b)** if prescribed circumstances exist.

**b)** si les circonstances prévues par règlement s'avèrent.

### Single application

**47** Only one application may be made under this Division for a rebate with respect to any matter.

### Demande unique

**47** L'objet d'un remboursement ne peut être visé par plus d'une demande présentée en application de la présente section.

### Restriction — bankruptcy

**48** If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate or succession of a bankrupt, a rebate under this Division that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required to be filed in respect of the bankrupt under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* in respect of periods ending before the appointment have been filed and all amounts required under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* to be paid by the bankrupt in respect of those periods have been paid.

### Restriction — faillite

**48** En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif ou de la succession d'un failli, un remboursement prévu par la présente section auquel le failli avait droit avant la nomination n'est payé après la nomination que si toutes les déclarations à produire relativement au failli en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien* et de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* relativement aux périodes qui ont pris fin avant la nomination ont été produites et que si les montants à payer par le failli en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* relativement à ces périodes ont été payés.

### Statutory recovery rights

**49** Except as specifically provided under this Act, the *Financial Administration Act* or the *Customs Act*, no person has a right to recover any money paid to Her Majesty in right of Canada as or on account of, or that has been taken into account by Her Majesty in right of Canada as, an amount payable under this Act.

### Droits de recouvrement créés par une loi

**49** Il est interdit de recouvrer de l'argent qui a été payé à Sa Majesté du chef du Canada au titre d'un montant payable en application de la présente loi ou qu'elle a pris en compte à ce titre, à moins qu'il ne soit expressément permis de le faire en application de la présente loi, de la *Loi sur la gestion des finances publiques* ou de la *Loi sur les douanes*.

## DIVISION 5

## Registration, Reporting Periods, Returns and Requirement to Pay

## SECTION 5

## Inscriptions, périodes de déclaration, déclarations et paiements

### Qualifying sale

**50 (1)** For the purposes of this section, a person makes a qualifying sale of a subject item if

**(a)** the person sells the subject item to a purchaser;

**(b)** the subject item

### Vente admissible

**50 (1)** Pour l'application du présent article, une personne effectue la vente admissible d'un bien assujetti si, à la fois :

**a)** la personne vend le bien assujetti à un acheteur;

**b)** le bien assujetti, selon le cas :

**(i)** in the case of a subject vehicle, has never been registered with the Government of Canada or a province other than a registration that is done only because of the sale, and

**(ii)** in the case of a subject aircraft or subject vessel, has never been registered with the Government of Canada other than a registration that is done solely for a purpose incidental to its manufacture, offering for sale or transportation; and

**(c)** the price threshold in respect of the subject item is less than the greatest of

**(i)** the consideration for the sale,

**(ii)** the retail value of the subject item at the particular time at which the sale is completed, and

**(iii)** if the subject item has a manufacturer's suggested retail price, the amount that would be the retail value of the subject item at the particular time if the fair market value of the subject item at the particular time were equal to the manufacturer's suggested retail price of the subject item.

**Qualifying importation**

**(2)** For the purposes of this section, a person makes a qualifying importation of a subject item if

**(a)** the person imports the subject item;

**(b)** the subject item

**(i)** in the case of a subject vehicle, has never been registered with the Government of Canada or a province other than a registration that is done only because of the importation, and

**(ii)** in the case of a subject aircraft or subject vessel, has never been registered with the Government of Canada other than a registration that is done solely for a purpose incidental to its manufacture, offering for sale or transportation; and

**(c)** the price threshold in respect of the subject item is exceeded by the greatest of

**(i)** the taxable amount of the subject item determined under section 20 in respect of the importation,

**(ii)** the retail value of the subject item at the particular time at which the subject item is accounted for in accordance with section 32 of the *Customs Act* in respect of the importation, and

**(i)** dans le cas d'un véhicule assujetti, n'a jamais été immatriculé auprès du gouvernement du Canada ou d'une province sauf une immatriculation qui est accomplie uniquement en raison de la vente,

**(ii)** dans le cas d'un aéronef assujetti ou d'un navire assujetti, n'a jamais été immatriculé auprès du gouvernement du Canada sauf une immatriculation qui est accomplie uniquement à une fin qui est accessoire à sa fabrication, à sa mise en vente ou à son transport;

**c)** le seuil de prix relatif au bien assujetti est inférieur au plus élevé des montants suivants :

**(i)** la contrepartie de la vente,

**(ii)** la valeur au détail du bien assujetti au moment donné où la vente est achevée,

**(iii)** si le bien assujetti a un prix de vente au détail suggéré par le fabricant, le montant qui serait la valeur au détail du bien assujetti au moment donné si la juste valeur marchande du bien assujetti au moment donné était égale au prix de vente au détail suggéré par le fabricant pour le bien assujetti.

**Importation admissible**

**(2)** Pour l'application du présent article, une personne effectue une importation admissible d'un bien assujetti si, à la fois :

**a)** la personne importe le bien assujetti;

**b)** le bien assujetti, selon le cas :

**(i)** dans le cas d'un véhicule assujetti, n'a jamais été immatriculé auprès du gouvernement du Canada ou d'une province sauf une immatriculation qui est accomplie uniquement en raison de son importation,

**(ii)** dans le cas d'un aéronef assujetti ou d'un navire assujetti, n'a jamais été immatriculé auprès du gouvernement du Canada sauf une immatriculation qui est accomplie uniquement à une fin qui est accessoire à sa fabrication, à sa mise en vente ou à son transport;

**c)** le seuil de prix relatif au bien assujetti est inférieur au plus élevé des montants suivants :

**(i)** le montant taxable du bien assujetti déterminé selon l'article 20 relativement à l'importation,

**(ii)** la valeur au détail du bien assujetti au moment donné où celui-ci a fait l'objet d'une déclaration

**(iii)** if the subject item has a manufacturer's suggested retail price, the amount that would be the retail value of the subject item at the particular time if the fair market value of the subject item at the particular time were equal to the manufacturer's suggested retail price of the subject item.

**Registration required**

**(3)** For the purposes of this Act, a person is required to be registered as a vendor in respect of a type of subject item if the person

**(a)** makes a qualifying sale, or a qualifying importation, of a subject item of that type in the course of a business of offering for sale in Canada subject items of that type that

**(i)** in the case of subject vehicles, have never been registered with the Government of Canada or a province, and

**(ii)** in the case of subject aircraft and subject vessels, have never been registered with the Government of Canada other than registrations that are done solely for a purpose incidental to the manufacture, offering for sale or transportation of the subject items; or

**(b)** is a prescribed person.

**Timing of application**

**(4)** A person that is required under subsection (3) to be registered as a vendor in respect of a type of subject item must apply to the Minister for registration on or before the earlier of

**(a)** the day on which the first qualifying sale of a subject item of that type made by the person is completed,

**(b)** the day on which, for the first qualifying importation of a subject item of that type made by the person, the subject item is accounted for in accordance with section 32 of the *Customs Act*, or

**(c)** if prescribed conditions are met, the prescribed day.

**Registration permitted**

**(5)** For the purposes of this Act, a person that is not required under this section to be registered as a vendor in respect of a type of subject item may apply to the

conformément à l'article 32 de la *Loi sur les douanes* relativement à l'importation,

**(iii)** si le bien assujetti a un prix de vente au détail suggéré par le fabricant, le montant qui serait la valeur au détail du bien assujetti au moment donné si la juste valeur marchande du bien assujetti au moment donné était égale au prix de vente au détail suggéré par le fabricant pour le bien assujetti.

**Inscription obligatoire**

**(3)** Pour l'application de la présente loi, une personne est tenue d'être inscrite à titre de vendeur relativement à un type de bien assujetti si elle, selon le cas :

**a)** effectue une vente admissible, ou une importation admissible, d'un bien assujetti de ce type dans le cadre d'une entreprise de mise en vente au Canada de biens assujettis de ce type qui, selon le cas :

**(i)** dans le cas de véhicules assujettis, n'ont jamais été immatriculés auprès du gouvernement du Canada ou d'une province,

**(ii)** dans le cas d'aéronefs assujettis ou de navires assujettis, n'ont jamais été immatriculés auprès du gouvernement du Canada sauf des immatriculations qui sont accomplies uniquement à une fin qui est accessoire à la fabrication, à la mise en vente ou au transport des biens assujettis;

**b)** est une personne visée par règlement.

**Délai**

**(4)** La personne qui, en application du paragraphe (3), est tenue de s'inscrire à titre de vendeur relativement à un type de bien assujetti doit présenter une demande d'inscription au ministre au plus tard le premier en date des jours suivants :

**a)** le jour où la première vente admissible d'un bien assujetti de ce type par la personne est achevée;

**b)** le jour où, pour la première importation admissible d'un bien assujetti de ce type effectuée par la personne, le bien assujetti a fait l'objet d'une déclaration conformément à l'article 32 de la *Loi sur les douanes*;

**c)** si des conditions prévues par règlement sont remplies, le jour prévu par règlement.

**Inscription au choix**

**(5)** Pour l'application de la présente loi, une personne qui n'est pas tenue, en application du présent article, de s'inscrire à titre de vendeur relativement à un type de bien assujetti peut présenter une demande d'inscription

Minister to be registered as a vendor in respect of that type of subject item if the person is a prescribed person.

au ministre à ce titre si la personne est une personne visée par règlement.

**Registration not required**

**(6)** Despite subsection (3), a person is not required to be registered as a vendor in respect of a type of subject item for the purposes of this Act if the person is a prescribed person.

**Inscription non obligatoire**

**(6)** Malgré le paragraphe (3), une personne n'est pas tenue d'être inscrite à titre de vendeur relativement à un type de bien assujetti pour l'application de la présente loi si la personne est une personne visée par règlement.

**Application for registration**

**51 (1)** An application for registration under this Division is to be made in prescribed form containing prescribed information and is to be filed with the Minister in prescribed manner.

**Demande d'inscription**

**51 (1)** Une demande d'inscription en vertu de la présente section doit être faite en la forme et contenir les renseignements déterminés par le ministre et être présentée à celui-ci selon les modalités qu'il détermine.

**Notification of registration**

**(2)** If a person that meets the requirements for registration under this Division applies for registration, the Minister may register the person and, upon doing so, the Minister must assign a registration number to the person for the purposes of this Act and notify the person of the registration number and of the effective date of the registration.

**Avis d'inscription**

**(2)** Le ministre peut inscrire toute personne qui remplit les conditions pour s'inscrire en vertu de la présente section et qui lui présente une demande d'inscription. Dès lors, le ministre lui attribue un numéro d'inscription pour l'application de la présente loi et l'avise de ce numéro ainsi que de la date de prise d'effet de l'inscription.

**Notice of intent — failure to apply**

**(3)** If the Minister has reason to believe that a person is not registered as a vendor in respect of a type of subject item for the purposes of this Act, is required to be so registered under this Division and has failed to apply for registration under this Division as and when required, the Minister may send a notice in writing (in this section referred to as a "notice of intent") to the person that the Minister proposes to so register the person under subsection (5).

**Avis d'intention — défaut de présenter une demande**

**(3)** Si le ministre a des raisons de croire qu'une personne n'est pas inscrite à titre de vendeur relativement à un type de bien assujetti aux termes de la présente loi, qu'elle est tenue de l'être en vertu de la présente section et qu'elle n'a pas présenté une demande en ce sens aux termes de la présente section selon les modalités et dans les délais prévus, le ministre peut lui envoyer par écrit un avis (appelé « avis d'intention » au présent article) selon lequel il propose de l'inscrire aux termes du paragraphe (5).

**Representations to Minister**

**(4)** Upon receipt of a notice of intent, a person must apply for the registration under this Division proposed in the notice or establish to the satisfaction of the Minister that the person is not required to be so registered.

**Démarches auprès du ministre**

**(4)** Sur réception d'un avis d'intention, la personne doit présenter, aux termes de la présente section, une demande pour l'inscription qui est proposée dans l'avis d'intention ou convaincre le ministre qu'elle n'est pas tenue d'être ainsi inscrite.

**Registration by Minister**

**(5)** If, after 60 days after the particular day on which a notice of intent was sent by the Minister to a person, the person has not applied under this Division for the registration in respect of a type of subject item proposed in the notice and the Minister is not satisfied that the person is not required to be so registered, the Minister may register the person as a vendor in respect of that type of subject item under this Division and, upon doing so, must assign a registration number to the person for the

**Inscription par le ministre**

**(5)** Si, au terme de la période de soixante jours suivant l'envoi par le ministre de l'avis d'intention à la personne, celle-ci n'a pas présenté de demande, aux termes de la présente section, pour l'inscription relativement à un type de bien assujetti qui est proposée dans l'avis d'intention et que le ministre n'est pas convaincu qu'elle n'est pas tenue d'être ainsi inscrite, le ministre peut inscrire la personne à titre de vendeur relativement à ce type de bien assujetti aux termes de la présente section. Le cas échéant, le ministre lui attribue un numéro d'inscription

purposes of this Act and notify the person of the registration number and of the effective date of the registration.

et l'avise de ce numéro et de la date de prise d'effet de l'inscription.

**Cancellation of registration**

**52 (1)** The Minister may, after giving a person that is registered under this Division reasonable written notice, cancel a registration of the person as a vendor in respect of a type of subject item under this Division if the Minister is satisfied that the registration is not required for the purposes of this Act.

**Annulation de l'inscription**

**52 (1)** Après préavis écrit suffisant donné à une personne inscrite en application de la présente section, le ministre peut annuler une inscription de cette personne à titre de vendeur inscrit relativement à un type de bien assujetti aux termes de la présente section s'il est convaincu qu'elle n'est pas nécessaire pour l'application de la présente loi.

**Request for cancellation**

**(2)** If a person files with the Minister in prescribed manner a request, in prescribed form containing prescribed information, to have a registration of the person as a vendor in respect of a type of subject item cancelled, the Minister must cancel the registration of the person if the Minister is satisfied that the registration is not required for the purposes of this Act.

**Demande d'annulation**

**(2)** Si une personne présente au ministre, selon les modalités, en la forme et contenant les renseignements que le ministre détermine, une demande d'annulation d'une inscription de la personne à titre de vendeur relativement à un type de bien assujetti, le ministre annule cette inscription s'il est convaincu que celle-ci n'est pas nécessaire pour l'application de la présente loi.

**Cancellation in prescribed circumstances**

**(3)** The Minister must cancel a registration of a person as a vendor in respect of a type of subject item under this Division in prescribed circumstances.

**Annulation — circonstances prévues par règlement**

**(3)** Le ministre annule une inscription d'une personne à titre de vendeur relativement à un type de bien assujetti en application de la présente section dans les circonstances prévues par règlement.

**Notice of cancellation**

**(4)** If the Minister cancels a registration of a person under this Division, the Minister must notify the person of the cancellation and the effective date of the cancellation.

**Avis d'annulation**

**(4)** Si le ministre annule une inscription d'une personne en application de la présente section, il avise la personne de l'annulation et de la date de prise d'effet de l'annulation.

**Security — registration**

**53 (1)** For the purposes of this Act, the Minister may require a person that applies to be registered, or that is required to be registered, under this Division to give and maintain security, in an amount determined by the Minister and subject to any terms and conditions that the Minister may specify, for the payment of any amount that is or may become payable by the person under this Act.

**Garantie — inscription**

**53 (1)** Pour l'application de la présente loi, le ministre peut exiger d'une personne qui demande à être inscrite en application de la présente section, ou qui est tenue de l'être, qu'elle donne et maintienne une garantie, d'un montant déterminé par le ministre et sous réserve des modalités qu'il peut préciser, pour le paiement d'un montant qui est ou peut devenir payable par la personne en application de la présente loi.

**Security — importation**

**(2)** For the purposes of this Act, the Minister may require a person referred to in subsection 20(1) to give and maintain security, in an amount determined by the Minister and subject to any terms and conditions that the Minister may specify, for the payment of any amount that is or may become payable by the person under this Act, if the provisions of the *Customs Act*, the *Customs Tariff* or any other laws relating to customs under which security may be required do not apply to the payment of that amount.

**Garantie — importation**

**(2)** Pour l'application de la présente loi, le ministre peut exiger que la personne visée au paragraphe 20(1) donne et maintienne une garantie — soumise aux modalités établies par le ministre et d'un montant déterminé par lui — pour le paiement d'un montant qui est payable par elle en application de la présente loi, ou peut le devenir. Le présent article ne s'applique pas lorsque les dispositions de la *Loi sur les douanes*, du *Tarif des douanes* ou d'autres lois douanières en vertu desquelles une garantie peut être exigée s'appliquent au paiement de ce montant.

**Failure to comply**

**(3)** If, at any time, a person referred to in subsection (1) or (2) fails to give or maintain security in an amount satisfactory to the Minister, the Minister may retain as security, out of any amount that may be or may become payable to the person under this Act, the *Excise Tax Act*, the *Excise Act, 2001* or Part 1 of the *Greenhouse Gas Pollution Pricing Act*, an amount not exceeding the amount determined by the formula

**A – B**

where

**A** is the amount of security that would, at that time, be satisfactory to the Minister if it were given by the person in accordance with subsection (1) or (2), as the case may be; and

**B** is the amount of security, if any, given and maintained by the person in accordance with subsection (1) or (2), as the case may be.

**Amount deemed paid**

**(4)** The amount retained under subsection (3) is deemed to have been paid, at the time referred to in that subsection, by the Minister to the person, and to have been given, immediately after that time, by the person as security in accordance with subsection (1) or (2), as the case may be.

**Reporting periods**

**54 (1)** For the purposes of this Act, a reporting period of a person is

**(a)** before 2023, the period that begins on September 1, 2022 and ends on December 31, 2022; and

**(b)** after 2022

**(i)** unless subparagraph (ii) applies, a calendar quarter, or

**(ii)** if prescribed conditions are met, a prescribed period.

**Reporting period — registration or cancellation**

**(2)** Despite subsection (1), if at a particular time the Minister registers a person, or cancels a registration of a person, under this Division

**(a)** the particular reporting period of the person that includes the particular time ends on the day that includes the particular time; and

**Défaut de se conformer**

**(3)** Si, à un moment donné, la personne mentionnée aux paragraphes (1) ou (2) omet de donner ou de maintenir une garantie d'un montant que le ministre estime acceptable, le ministre peut retenir comme garantie, sur un montant qui peut être ou peut devenir payable à la personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de 2001 sur l'accise* ou de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, un montant ne dépassant pas le montant obtenu par la formule suivante :

**A – B**

où :

**A** représente le montant de garantie qui, au moment donné, serait acceptable pour le ministre si la personne le lui donnait en conformité avec les paragraphes (1) ou (2), selon le cas;

**B** le montant de garantie donné et maintenu par la personne en conformité avec les paragraphes (1) ou (2), selon le cas.

**Montant réputé payé**

**(4)** Le ministre est réputé avoir payé à la personne, au moment mentionné au paragraphe (3), le montant retenu en vertu de ce paragraphe et la personne est réputée l'avoir donné à titre de garantie en conformité avec les paragraphes (1) ou (2), selon le cas, immédiatement après ce moment.

**Périodes de déclaration**

**54 (1)** Pour l'application de la présente loi, la période de déclaration d'une personne correspond à ce qui suit :

**a)** avant 2023, la période qui commence le 1er septembre 2022 et qui se termine le 31 décembre 2022;

**b)** après 2022 :

**(i)** sauf si le sous-alinéa (ii) s'applique, un trimestre civil,

**(ii)** si les conditions prévues par règlement sont remplies, une période prévue par règlement.

**Période de déclaration — inscription ou annulation**

**(2)** Malgré le paragraphe (1), si, à un moment donné, le ministre inscrit une personne ou annule son inscription en application de la présente section, les règles suivantes s'appliquent :

**a)** la période de déclaration donnée de la personne qui comprend le moment donné prend fin à la date qui inclut le moment donné;

**(b)** a reporting period of the person begins on the day after the day that includes the particular time and ends on the day that is the last day of the calendar quarter that includes the particular time.

**b)** une période de déclaration de la personne commence le lendemain de la date qui inclut le moment donné et prend fin le dernier jour du trimestre civil qui inclut le moment donné.

**Filing of return**

**55 (1)** Every person that is registered or required to be registered under this Division must file a return with the Minister for each reporting period of the person. The return is to be filed on or before the last day of the first month after the end of the reporting period.

**Production obligatoire**

**55 (1)** Chaque personne qui est inscrite en application de la présente section, ou qui est tenue de l'être, doit présenter une déclaration au ministre pour chacune de ses périodes de déclaration. La déclaration doit être produite au plus tard le dernier jour du premier mois qui suit la période de déclaration.

**Filing of return — non-registered persons**

**(2)** Every person that is not registered and not required to be registered under this Division must file a return with the Minister for each reporting period of the person in which tax (other than tax under section 20) becomes payable by the person. The return is to be filed on or before the last day of the first month after the end of the reporting period.

**Production obligatoire — personnes non inscrites**

**(2)** Chaque personne qui n'est ni inscrite ni tenue de l'être en vertu de la présente section doit présenter une déclaration au ministre pour chacune de ses périodes de déclaration où une taxe (sauf celle visée à l'article 20) devient payable par elle. La déclaration doit être présentée au plus tard le dernier jour du premier mois qui suit la période de déclaration.

**Filing of return — regulations**

**(3)** Despite subsections (1) and (2), if prescribed circumstances exist, a return for a reporting period that is a prescribed reporting period is to be filed with the Minister in accordance with prescribed rules.

**Déclaration — règlement**

**(3)** Malgré les paragraphes (1) et (2), si les circonstances prévues par règlement s'avèrent, la déclaration pour une période de déclaration prévue par règlement doit être produite auprès du ministre en conformité avec les règles fixées par règlement.

**Filing not required — regulations**

**(4)** Despite subsections (1) and (2), if prescribed circumstances exist, a return for a reporting period that is a prescribed reporting period is not required to be filed.

**Production non obligatoire — règlement**

**(4)** Malgré les paragraphes (1) et (2), si les circonstances prévues par règlement s'avèrent, une déclaration pour une période de déclaration qui est une période de déclaration prévue par règlement n'a pas à être produite.

**Form and content**

**56** Every return that is required to be filed under section 55 is to be made in prescribed form containing prescribed information and is to be filed in prescribed manner.

**Format et contenu**

**56** Chaque déclaration à produire en vertu de l'article 55 doit être faite en la forme et contenir les renseignements déterminés par le ministre et lui être présentée selon les modalités qu'il détermine.

**Net tax — obligation**

**57 (1)** Every person that is required to file a return under section 55 must, in the return, determine the net tax for the reporting period of the person for which the return is required to be filed.

**Taxe nette — obligation**

**57 (1)** Chaque personne qui est tenue de présenter une déclaration en vertu de l'article 55 doit, dans la déclaration, calculer la taxe nette pour la période visée par la déclaration.

**Determination of net tax**

**(2)** Subject to this Act, the net tax for a particular reporting period of a person is, for the purposes of this Act, the positive or negative amount determined by the formula

**(A – B) + C**

where

**Calcul de la taxe nette**

**(2)** Sous réserve de la présente loi, la taxe nette pour une période de déclaration donnée d'une personne correspond, pour l'application de la présente loi, au montant, positif ou négatif, obtenu par la formule suivante :

**(A – B) + C**

**A** is the total of all amounts, each of which is an amount of tax (other than tax under section 20) that becomes payable by the person in the particular reporting period;

**B** is the total of all amounts, each of which is an amount of a rebate under Subdivision A of Division 4 payable by the Minister in respect of a reporting period and that is claimed by the person in the return under section 55 for the particular reporting period; and

**C** is a prescribed amount.

**Requirement to pay**

**(3)** If the net tax for a reporting period of a person is a positive amount, the person must pay that amount to the Receiver General on or before the day on or before which the return for the reporting period is required to be filed.

**Rebate of net tax**

**(4)** If the net tax for a reporting period of a person is a negative amount, the person may claim in the return for the reporting period the amount of that net tax as a rebate for the reporting period payable to the person by the Minister. The Minister must pay the rebate to the person with all due dispatch after the return is filed.

**Restriction — rebate of net tax**

**(5)** The Minister is not required to pay a rebate under subsection (4) to a person unless the Minister is satisfied that all information, that is contact information or that is information relating to the identification and business activities of the person, to be given by the person on any application for registration made by the person under this Division has been provided and is accurate.

**Restriction — rebate of net tax**

**(6)** A rebate under subsection (4) is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* have been filed with the Minister.

où :

**A** représente le total des montants dont chacun représente un montant de taxe (sauf celle prévue à l'article 20) qui devient payable par la personne au cours de la période de déclaration donnée;

**B** le total des montants dont chacun représente un montant de remboursement prévu à la sous-section A de la section 4 payable par le ministre à la personne relativement à une période de déclaration et qui est demandé par la personne dans sa déclaration en vertu de l'article 55 pour la période de déclaration donnée;

**C** un montant visé par règlement.

**Obligation de payer**

**(3)** Si la taxe nette pour une période de déclaration est un montant positif, la personne doit payer ce montant au receveur général au plus tard à la date limite à laquelle la déclaration pour cette période de déclaration doit être produite.

**Remboursement de la taxe nette**

**(4)** Si la taxe nette pour une période de déclaration est un montant négatif, la personne peut, dans sa déclaration produite pour cette période de déclaration, demander au ministre de lui payer ce montant à titre de remboursement pour la période de déclaration. Le ministre paie avec diligence le remboursement après la production de la déclaration.

**Restriction — remboursement de la taxe nette**

**(5)** Le ministre n'est pas tenu de payer, en vertu du paragraphe (4), un remboursement à une personne à moins qu'il ne soit convaincu que tous les renseignements — coordonnées et renseignements concernant l'identification et les activités d'entreprise de la personne — que la personne devait indiquer dans toute demande d'inscription présentée par la personne en vertu de la présente section ont été fournis et sont exacts.

**Restriction — remboursement de la taxe nette**

**(6)** Un remboursement prévu au paragraphe (4) n'est payé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien,* de la *Loi de 2001 sur l'accise* et de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ont été produites au ministre.

**Interest on rebate of net tax**

**(7)** If a rebate for a reporting period of a person is paid to the person under subsection (4), interest at the specified rate is to be paid to the person on the rebate for the period that begins on the day that is 30 days after the later of the day the return in which the rebate is claimed is filed with the Minister and the day following the last day of the reporting period and that ends on the day the rebate is paid.

**Overpayment of rebate or interest**

**58** If an amount is paid to, or applied to a liability of, a person as a rebate, or as interest, under this Act and the person is not entitled to the rebate or interest, as the case may be, or the amount paid or applied exceeds the rebate or interest, as the case may be, to which the person is entitled, the person must pay to the Receiver General an amount equal to the rebate, interest or excess, as the case may be, on the day the rebate, interest or excess, as the case may be, is paid to, or applied to a liability of, the person.

**Information return**

**59 (1)** A person (other than a prescribed person) must file with the Minister an information return for a reporting period of the person if

**(a)** the person is required under section 55 to file a return for the reporting period;

**(b)** the person sells a subject item to a purchaser, the sale is completed during the reporting period, the taxable amount of the subject item determined under section 18 in respect of the sale exceeds the price threshold in respect of the subject item and

**(i)** an exemption certificate applies in respect of the sale in accordance with section 36,

**(ii)** tax under section 18 in respect of the sale of the subject item is payable by the purchaser, or

**(iii)** tax under section 18 is not payable by the person because of the application of subsection 19(3);

**(c)** the person imports a subject item, the subject item is accounted for in accordance with section 32 of the *Customs Act* at any time during the reporting period, the taxable amount of the subject item determined under section 20 in respect of the importation exceeds the price threshold in respect of the subject item and tax is not payable by the person under section 20 because of the application of subsection 21(3); or

**(d)** prescribed circumstances exist.

**Intérêts imputés au remboursement de la taxe nette**

**(7)** Si un remboursement pour une période de déclaration d'une personne lui est payé en vertu du paragraphe (4), des intérêts, calculés sur ce remboursement, doivent lui être payés au taux d'intérêt déterminé pour la période commençant le trentième jour suivant la dernière en date de la date à laquelle la déclaration contenant la demande de remboursement est présentée au ministre et de la date qui suit le dernier jour de la période de déclaration et se terminant à la date du paiement du remboursement.

**Remboursement ou intérêts payés en trop**

**58** Si un montant est payé à une personne, ou déduit d'un montant dont elle est redevable, au titre d'un remboursement ou d'intérêts prévus par la présente loi auquel la personne n'a pas droit ou qui excède le montant auquel elle a droit, la personne est tenue de payer au receveur général un montant égal au montant remboursé, aux intérêts ou à l'excédent le jour du paiement ou de la déduction.

**Déclaration de renseignements**

**59 (1)** Une personne (sauf une personne visée par règlement) est tenue de présenter au ministre une déclaration de renseignements pour une période de déclaration de la personne lorsque l'une des conditions ci-après s'avère :

**a)** la personne est tenue de présenter une déclaration en vertu de l'article 55 pour la période de déclaration;

**b)** la personne vend un bien assujetti à un acheteur, la vente est achevée durant la période de déclaration, le montant taxable du bien assujetti déterminé en application de l'article 18 relativement à la vente excède le seuil de prix relatif au bien assujetti et :

**(i)** soit un certificat d'exemption s'applique relativement à la vente conformément à l'article 36,

**(ii)** soit la taxe prévue à l'article 18 relative à la vente du bien assujetti est payable par l'acheteur,

**(iii)** soit la personne n'est pas tenue de payer la taxe prévue à l'article 18 en raison de l'application du paragraphe 19(3);

**c)** la personne importe un bien assujetti, celui-ci fait l'objet d'une déclaration en conformité avec l'article 32 de la *Loi sur les douanes* à un moment donné au cours de la période de déclaration, le montant taxable du bien assujetti déterminé en vertu de l'article 20 relativement à l'importation excède le seuil de prix relatif au bien assujetti et la personne n'est pas tenue de

payer la taxe en vertu de l'article 20 en raison de l'application du paragraphe 21(3);

**d)** les circonstances prévues par règlement s'avèrent.

**Information return — form and content**

**(2)** An information return in respect of a reporting period of a person that is required to be filed under this section must

**(a)** be made in prescribed form containing prescribed information;

**(b)** be filed with the Minister in prescribed manner on or before the last day of the first month after the end of the reporting period of the person;

**(c)** specify the identification number of each subject item that is sold by the person and in respect of which the following conditions are met:

**(i)** the sale of the subject item is completed during the reporting period,

**(ii)** the taxable amount of the subject item determined under section 18 in respect of the sale exceeds the price threshold in respect of the subject item, and

**(iii)** it is the case that

**(A)** an exemption certificate applies in respect of the sale in accordance with section 36,

**(B)** tax under section 18 in respect of the sale of the subject item is payable by the purchaser, or

**(C)** tax under section 18 is not payable by the person because of the application of subsection 19(3); and

**(d)** specify the identification number of each subject item that is imported by the person and in respect of which the following conditions are met:

**(i)** the subject item is accounted for in accordance with section 32 of the *Customs Act* at any time during the reporting period,

**(ii)** the taxable amount of the subject item determined under section 20 in respect of the importation exceeds the price threshold in respect of the subject item, and

**(iii)** tax is not payable by the person under section 20 because of the application of subsection 21(3).

**Déclaration de renseignements — forme et contenu**

**(2)** La déclaration de renseignements relativement à une période de déclaration d'une personne qui doit être présentée en vertu du présent article doit satisfaire aux conditions suivantes :

**a)** elle doit être faite en la forme et contenir les renseignements déterminés par le ministre;

**b)** elle doit être présentée au ministre selon les modalités qu'il détermine au plus tard le dernier jour du premier mois suivant la période de déclaration de la personne;

**c)** elle doit préciser le numéro d'identification de chaque bien assujetti qui est vendu par la personne et relativement auquel les conditions suivantes sont remplies :

**(i)** la vente du bien assujetti est achevée durant la période de déclaration,

**(ii)** le montant taxable du bien assujetti déterminé en application de l'article 18 relativement à la vente excède le seuil de prix relatif au bien assujetti,

**(iii)** il s'avère, selon le cas :

**(A)** qu'un certificat d'exemption s'applique relativement à la vente conformément à l'article 36,

**(B)** que la taxe prévue à l'article 18 relative à la vente du bien assujetti est payable par l'acheteur,

**(C)** que la personne n'est pas tenue de payer la taxe prévue à l'article 18 en raison de l'application du paragraphe 19(3);

**d)** elle doit préciser le numéro d'identification de chaque bien assujetti qui est importé par la personne et relativement auquel les conditions suivantes sont remplies :

**(i)** le bien assujetti fait l'objet d'une déclaration en conformité avec l'article 32 de la *Loi sur les douanes* à un moment donné au cours de la période de déclaration,

**(ii)** le montant taxable du bien assujetti déterminé en vertu de l'article 20 relativement à l'importation excède le seuil de prix relatif au bien assujetti,

**(iii)** la personne n'est pas tenue de payer la taxe prévue à l'article 20 en raison de l'application du paragraphe 21(3).

**Information return — regulations**

**(3)** If prescribed circumstances exist, an information return for a reporting period must be filed in accordance with prescribed rules.

**Déclaration de renseignements — règlement**

**(3)** Si les circonstances prévues par règlement s'avèrent, une déclaration de renseignements pour une période de déclaration doit être produite en conformité avec les règles fixées par règlement.

## PART 2

# Administration

## PARTIE 2

# Application

### DIVISION 1

## Miscellaneous

### SECTION 1

## Divers

#### SUBDIVISION A

### Trustees, Receivers and Personal Representatives

#### SOUS-SECTION A

### Syndics, séquestres et représentants personnels

**Definitions**

**60 (1)** The following definitions apply in this section.

***bankrupt*** has the same meaning as in section 2 of the *Bankruptcy and Insolvency Act*. (*failli*)

***business*** includes a part of a business. (*entreprise*)

***receiver*** means a person that

**(a)** under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;

**(b)** is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;

**(c)** is appointed by a *bank* or an *authorized foreign bank*, as those terms are defined in section 2 of the *Bank Act*, to act as an agent or mandatary of the bank in the exercise of the authority of the bank under subsection 426(3) of that Act in respect of property of another person;

**Définitions**

**60 (1)** Les définitions qui suivent s'appliquent au présent article.

***actif pertinent***

**a)** Si le pouvoir d'un séquestre porte sur l'ensemble des biens, des entreprises, des affaires et des éléments d'actif d'une personne, cet ensemble;

**b)** si ce pouvoir ne porte que sur une partie des biens, des entreprises, des affaires et des éléments d'actif d'une personne, cette partie. (*relevant assets*)

***entreprise*** Est assimilée à une entreprise toute partie de celle-ci. (*business*)

***failli*** S'entend au sens de l'article 2 de la *Loi sur la faillite et l'insolvabilité*. (*bankrupt*)

***représentant*** Personne, autre qu'un syndic de faillite ou un séquestre, qui gère, liquide ou contrôle les biens, les affaires ou la succession d'une autre personne, ou s'en occupe de toute autre façon. (*representative*)

***séquestre*** Personne qui, selon le cas :

**a)** par application d'une obligation ou autre titre de créance, de l'ordonnance d'un tribunal ou d'une loi fédérale ou provinciale, a le pouvoir de gérer ou

**(d)** is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation; or

**(e)** is appointed as a committee, guardian, curator, tutor or mandatary in case of incapacity with the authority to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets.

It includes a person that is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, but, if a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, it does not include that creditor. (*séquestre*)

***relevant assets*** of a receiver means

**(a)** if the receiver's authority relates to all the properties, businesses, affairs and assets of a person, all those properties, businesses, affairs and assets; and

**(b)** if the receiver's authority relates to only part of the properties, businesses, affairs or assets of a person, that part of the properties, businesses, affairs or assets. (*actif pertinent*)

***representative*** means a person, other than a trustee in bankruptcy or a receiver, that is administering, winding up, controlling or otherwise dealing with any property, business, estate or succession of another person. (*représentant*)

**Trustee in bankruptcy — obligations**

**(2)** For the purposes of this Act, if on a particular day a person becomes a bankrupt,

**(a)** the trustee in bankruptcy, and not the person, is liable for the payment of any amount (other than an amount that relates solely to activities in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate) that is required to be paid by the person under this Act, during the period beginning on the day immediately after the day on which the trustee became the trustee in bankruptcy of the person and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*, except that

**(i)** the trustee is liable for the payment of any amount that is required to be paid by the person under this Act after the particular day in respect of reporting periods that ended on or before the

d'exploiter les entreprises ou les biens d'une autre personne;

**b)** est nommée par un fiduciaire aux termes d'un acte de fiducie relativement à un titre de créance, pour exercer le pouvoir du fiduciaire de gérer ou d'exploiter les entreprises ou les biens du débiteur du titre;

**c)** est nommée par une *banque* ou par une *banque étrangère autorisée*, au sens de l'article 2 de la *Loi sur les banques*, à titre de mandataire de la banque lors de l'exercice du pouvoir de celle-ci visé au paragraphe 426(3) de cette loi relativement aux biens d'une autre personne;

**d)** est nommée à titre de liquidateur pour liquider les biens ou les affaires d'une personne morale;

**e)** est nommée à titre de mandataire en cas d'inaptitude, de curateur ou de tuteur ayant le pouvoir de gérer les affaires et les biens d'un particulier qui est dans l'impossibilité de les gérer.

Est assimilée au séquestre la personne nommée pour exercer le pouvoir d'un créancier, aux termes d'une obligation ou d'un autre titre de créance, de gérer ou d'exploiter les entreprises ou les biens d'une autre personne, à l'exclusion du créancier. (*receiver*)

**Obligations du syndic**

**(2)** Les règles ci-après s'appliquent dans le cadre de la présente loi en cas de faillite d'une personne :

**a)** le syndic de faillite, et non le failli, est tenu au paiement des sommes, sauf celles qui se rapportent uniquement à des activités non visées par la faillite que le failli commence à exercer le jour de la faillite ou postérieurement, que doit payer le failli en application de la présente loi pendant la période commençant le lendemain du jour où le syndic est devenu le syndic du failli et se terminant le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité*; toutefois :

**(i)** la responsabilité du syndic à l'égard du paiement des sommes que le failli doit payer en application de la présente loi après le jour de la faillite relativement à des périodes de déclaration ayant pris fin ce jour-là ou antérieurement se limite aux biens du

particular day but only to the extent of the property of the person in possession of the trustee available to satisfy the liability,

**(ii)** the trustee is not liable for the payment of any amount for which a receiver is liable under subsection (3), and

**(iii)** the payment by the person of an amount in respect of the liability discharges the liability of the trustee to the extent of that amount;

**(b)** if, on the particular day, the person is registered under Division 5 of Part 1, the registration continues in relation to the activities of the person to which the bankruptcy relates as though the trustee in bankruptcy were registered under that Division in the same capacity as the person in respect of those activities and ceases to apply to the activities of the person in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate;

**(c)** the reporting periods of the person begin and end on the day on which they would have begun and ended if the bankruptcy had not occurred, except that

**(i)** the reporting period of the person during which the person becomes a bankrupt ends on the particular day and a new reporting period of the person in relation to the activities of the person to which the bankruptcy relates begins on the day immediately after the particular day, and

**(ii)** the reporting period of the person, in relation to the activities of the person to which the bankruptcy relates, during which the trustee in bankruptcy is discharged under the *Bankruptcy and Insolvency Act* ends on the day on which the discharge is granted;

**(d)** subject to paragraph (f), the trustee in bankruptcy must file with the Minister in the prescribed form and manner all returns in respect of the activities of the person to which the bankruptcy relates for the reporting periods of the person ending in the period beginning on the day immediately after the particular day and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and that are required under this Act to be filed by the person, as if those activities were the only activities of the person;

**(e)** subject to paragraph (f), if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a reporting period of the person ending on or before the particular day, the trustee in bankruptcy must, unless the Minister

failli en la possession du syndic et disponibles pour éteindre l'obligation,

**(ii)** le syndic n'est pas responsable du paiement des sommes pour lesquelles un séquestre est responsable en vertu du paragraphe (3),

**(iii)** le paiement d'une somme par le failli au titre de l'obligation éteint d'autant l'obligation du syndic;

**b)** si le failli est inscrit en application de la section 5 de la partie 1 le jour de la faillite, l'inscription continue d'être valable pour ses activités visées par la faillite comme si le syndic était inscrit en application de cette section en la même qualité que le failli relativement à ces activités, mais cesse de l'être pour ce qui est des activités non visées par la faillite que le failli commence à exercer ce jour-là ou postérieurement;

**c)** la faillite n'a aucune incidence sur le début et la fin des périodes de déclaration du failli; toutefois :

**(i)** la période de déclaration qui comprend le jour de la faillite prend fin ce jour-là et une nouvelle période de déclaration concernant les activités visées par la faillite commence le lendemain,

**(ii)** la période de déclaration, concernant les activités visées par la faillite, qui comprend le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité* prend fin ce jour-là;

**d)** sous réserve de l'alinéa f), le syndic est tenu de présenter au ministre, en la forme et selon les modalités déterminées par celui-ci, les déclarations — que le failli est tenu de produire en application de la présente loi — concernant les activités du failli visées par la faillite, exercées au cours des périodes de déclaration du failli qui ont pris fin pendant la période commençant le lendemain du jour de la faillite et se terminant le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité*, comme si ces activités étaient les seules que le failli exerçait;

**e)** sous réserve de l'alinéa f), si le failli ne produit pas, au plus tard le jour de la faillite, la déclaration qu'il est tenu de produire en application de la présente loi pour une période de déclaration se terminant ce jour-là ou antérieurement, le syndic est tenu de présenter au ministre, en la forme et selon les modalités déterminées par celui-ci, une déclaration pour cette période, sauf si le ministre renonce par écrit à exiger cette déclaration du syndic;

**f)** lorsqu'un séquestre est investi de pouvoirs relativement à une entreprise, à un bien, aux affaires ou à des

waives in writing the requirement for the trustee to file the return, file with the Minister in the prescribed form and manner a return for that reporting period of the person; and

**(f)** if there is a receiver with authority in respect of any business, property, affairs or assets of the person, the trustee in bankruptcy is not required to include in any return any information that the receiver is required under subsection (3) to include in a return.

éléments d'actif du failli, le syndic n'est pas tenu d'inclure dans une déclaration les renseignements que le séquestre est tenu d'y inclure en vertu du paragraphe (3).

**Receiver's obligations**

**(3)** For the purposes of this Act, if on a particular day a receiver is vested with authority to manage, operate, liquidate or wind up any business or property, or to manage and care for the affairs and assets, of a person,

**(a)** if the relevant assets of the receiver are a part and not all of the person's businesses, properties, affairs or assets, the relevant assets of the receiver are deemed to be, throughout the period during which the receiver is acting as receiver of the person, separate from the remainder of the businesses, properties, affairs or assets of the person as though the relevant assets were businesses, properties, affairs or assets, as the case may be, of a separate person;

**(b)** the person and the receiver are jointly and severally, or solidarily, liable for the payment of any amount that is required to be paid by the person under this Act before or during the period during which the receiver is acting as receiver of the person to the extent that the amount can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person at the time the amount became payable except that

**(i)** the receiver is liable for the payment of any amount that is required to be paid by the person under this Act before that period only to the extent of the property of the person in possession or under the control and management of the receiver after

**(A)** satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the amount, and

**(B)** paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person,

**(ii)** the person is not liable for the payment of any amount payable by the receiver, and

**Obligations du séquestre**

**(3)** Dans le cas où un séquestre est investi, à une date donnée, du pouvoir de gérer, d'exploiter ou de liquider l'entreprise ou les biens d'une personne, ou de gérer ses affaires et ses éléments d'actif, les règles suivantes s'appliquent dans le cadre de la présente loi :

**a)** s'il ne représente qu'une partie des entreprises, des biens, des affaires ou des éléments d'actif de la personne, l'actif pertinent est réputé être distinct du reste des entreprises, des biens, des affaires ou des éléments d'actif de la personne, pendant la période où le séquestre agit à ce titre pour la personne, comme si l'actif pertinent représentait les entreprises, les biens, les affaires et les éléments d'actif d'une autre personne;

**b)** la personne et le séquestre sont solidairement tenus au paiement des sommes que doit payer la personne en application de la présente loi avant ou pendant la période où le séquestre agit à ce titre pour la personne, dans la mesure où il est raisonnable de considérer que les sommes se rapportent à l'actif pertinent du séquestre ou aux entreprises, aux biens, aux affaires ou aux éléments d'actif de la personne qui auraient constitué l'actif pertinent du séquestre si le séquestre avait agi à ce titre pour la personne au moment où les sommes sont devenues payables; toutefois :

**(i)** le séquestre n'est tenu de payer les sommes que doit payer la personne en application de la présente loi avant cette période que jusqu'à concurrence des biens de la personne qui sont en sa possession ou qu'il contrôle et gère après avoir, à la fois :

**(A)** réglé les réclamations de créanciers qui, à la date donnée, peuvent être réglées par priorité sur les réclamations de Sa Majesté du chef du Canada relativement aux sommes,

**(B)** versé les sommes qu'il est tenu de payer au syndic de faillite de la personne,

**(ii)** la personne n'est pas tenue de payer les sommes payables par le séquestre,

**(iii)** the payment by the person or the receiver of an amount in respect of the liability discharges the joint and several, or solidary, liability to the extent of that amount;

**(c)** the reporting periods of the person begin and end on the day on which they would have begun and ended if the vesting had not occurred, except that

**(i)** the reporting period of the person, in relation to the relevant assets of the receiver, during which the receiver begins to act as receiver of the person, ends on the particular day and a new reporting period of the person in relation to the relevant assets begins on the day immediately after the particular day, and

**(ii)** the reporting period of the person, in relation to the relevant assets, during which the receiver ceases to act as receiver of the person, ends on the day on which the receiver ceases to act as receiver of the person;

**(d)** the receiver must file with the Minister in the prescribed form and manner all returns in respect of the relevant assets of the receiver for reporting periods ending in the period during which the receiver is acting as receiver and that are required under this Act to be made by the person, as if the relevant assets were the only businesses, properties, affairs and assets of the person; and

**(e)** if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a reporting period of the person ending on or before the particular day, the receiver must, unless the Minister waives in writing the requirement for the receiver to file the return, file with the Minister in the prescribed form and manner a return for that reporting period that relates to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that reporting period.

**Certificates for receivers and representatives**

**(4)** Every receiver and representative that controls property of another person that is required to pay any amount under this Act must, before distributing the property to any person, obtain a certificate from the Minister certifying that the following amounts have been paid or that security for the payment of them has, in accordance with this Act, been accepted by the Minister:

**(a)** all amounts that are payable by the other person under this Act in respect of the reporting period

**(iii)** le paiement d'une somme par le séquestre ou la personne au titre de l'obligation éteint d'autant l'obligation;

**c)** le fait que le séquestre soit investi du pouvoir relativement à la personne n'a aucune incidence sur le début ou la fin des périodes de déclaration de la personne; toutefois :

**(i)** la période de déclaration de la personne, en ce qui concerne l'actif pertinent, au cours de laquelle le séquestre commence à agir à ce titre pour la personne prend fin à la date donnée, et une nouvelle période de déclaration, en ce qui concerne l'actif pertinent, commence le lendemain,

**(ii)** la période de déclaration de la personne, en ce qui concerne l'actif pertinent, au cours de laquelle le séquestre cesse d'agir à ce titre pour la personne prend fin le jour où le séquestre cesse d'agir ainsi;

**d)** le séquestre est tenu de présenter au ministre, en la forme et selon les modalités déterminées par celui-ci, les déclarations — que la personne est tenue de produire en application de la présente loi — concernant l'actif pertinent pour les périodes de déclaration de la personne se terminant au cours de la période où le séquestre agit à ce titre, comme si l'actif pertinent représentait les seuls biens, entreprises, affaires ou éléments d'actif de la personne;

**e)** si la personne ne produit pas, au plus tard à la date donnée, toute déclaration qu'elle est tenue de produire en application de la présente loi pour une période de déclaration se terminant à cette date ou antérieurement, le séquestre est tenu de présenter au ministre, en la forme et selon les modalités déterminées par celui-ci, une déclaration pour cette période concernant les entreprises, les biens, les affaires ou les éléments d'actif de la personne qui auraient constitué l'actif pertinent si le séquestre avait agi à ce titre au cours de cette période, sauf si le ministre renonce par écrit à exiger cette déclaration du séquestre.

**Obligation d'obtenir un certificat**

**(4)** Le séquestre ou le représentant qui contrôle les biens d'une personne tenue de payer des sommes en application de la présente loi est tenu d'obtenir du ministre, avant de distribuer les biens à quiconque, un certificat confirmant que les sommes ci-après ont été payées ou qu'une garantie pour leur paiement a été acceptée par le ministre conformément à la présente loi :

**a)** les sommes qui sont payables par la personne en application de la présente loi pour la période de

during which the distribution is made, or any previous reporting period; and

**(b)** all amounts that are, or can reasonably be expected to become, payable under this Act by the representative or receiver in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period.

**Liability for failure to obtain certificate**

**(5)** Any receiver or representative that distributes property without obtaining a certificate in respect of the amounts referred to in subsection (4) is personally liable for the payment of those amounts to the extent of the value of the property so distributed.

**Estate or succession of deceased individual**

**61 (1)** Subject to subsections 60(4) and (5) and sections 62 and 63, if an individual dies, this Act (other than section 75) applies as though the estate or succession of the individual were the individual and the individual had not died, except that

**(a)** the reporting period of the individual during which the individual died ends on the day the individual died; and

**(b)** a reporting period of the estate or succession begins on the day after the individual died and ends on the day the reporting period of the individual would have ended if the individual had not died.

**Extension**

**(2)** Despite any other provision of this Act, if the return for the reporting period referred to in paragraph (1)(a) would, in the absence of this subsection, have been required to be filed earlier than the particular day that is the last day of the third month after the month in which the individual died, that return is required to be filed not later than the particular day and any amount payable under this Act in respect of that reporting period is payable to the Receiver General on the particular day.

**Definitions**

**62 (1)** The following definitions apply in this section and in section 63.

***trust*** includes the estate or succession of a deceased individual. (*fiducie*)

***trustee*** includes the personal representative of a deceased individual, but does not include a *receiver* as defined in subsection 60(1). (*fiduciaire*)

déclaration qui comprend le moment de la distribution ou pour une période de déclaration antérieure;

**b)** les sommes qui sont payables par le séquestre ou par le représentant à ce titre en application de la présente loi, ou dont il est raisonnable de s'attendre à ce qu'elles le deviennent, pour la période de déclaration qui comprend le moment de la distribution ou pour une période de déclaration antérieure.

**Responsabilité**

**(5)** Le séquestre ou le représentant qui distribue des biens sans obtenir le certificat visé au paragraphe (4) est personnellement tenu au paiement des sommes en cause, jusqu'à concurrence de la valeur des biens ainsi distribués.

**Succession**

**61 (1)** Sous réserve des paragraphes 60(4) et (5) et des articles 62 et 63, en cas de décès d'une personne, les dispositions de la présente loi, sauf l'article 75, s'appliquent comme si la succession de la personne était la personne et comme si celle-ci n'était pas décédée. Toutefois :

**a)** la période de déclaration de la personne pendant laquelle elle est décédée se termine le jour de son décès;

**b)** la période de déclaration de la succession commence le lendemain du décès et se termine le jour où la période de déclaration de la personne aurait pris fin si elle n'était pas décédée.

**Prorogation des délais de production**

**(2)** Malgré les autres dispositions de la présente loi, la déclaration pour la période de déclaration mentionnée à l'alinéa (1)a) qui, en l'absence du présent paragraphe, serait à produire avant le jour donné qui est le dernier jour du mois qui suit de trois mois le mois du décès de la personne doit être produite au plus tard le jour donné et toute somme payable relativement à cette période doit être versée au receveur général ce jour-là.

**Définitions**

**62 (1)** Les définitions qui suivent s'appliquent au présent article et à l'article 63.

***fiduciaire*** Est assimilé à un fiduciaire le représentant personnel d'une personne décédée. N'est pas un fiduciaire le *séquestre* au sens du paragraphe 60(1). (*trustee*)

***fiducie*** Sont comprises parmi les fiducies les successions. (*trust*)

**Trustee's liability**

**(2)** Subject to subsection (3), each trustee of a trust is liable to satisfy every obligation imposed on the trust under this Act, whether the obligation was imposed during or before the period during which the trustee acts as trustee of the trust, but the satisfaction of an obligation of a trust by one of the trustees of the trust discharges the liability of all other trustees of the trust to satisfy that obligation.

**Joint and several or solidary liability**

**(3)** A trustee of a trust is jointly and severally, or solidarily, liable with the trust and each of the other trustees, if any, for the payment of all amounts that are required to be paid by the trust under this Act before or during the period during which the trustee acts as trustee of the trust except that

**(a)** the trustee is liable for the payment of amounts that are required to be paid by the trust under this Act before the period only to the extent of the property of the trust under the control of the trustee; and

**(b)** the payment by the trust or the trustee of an amount in respect of the liability discharges their liability to the extent of that amount.

**Waiver**

**(4)** The Minister may, in writing, waive the requirement for the personal representative of a deceased individual to file a return for a reporting period of the individual ending on or before the day the individual died.

**Activities of trustee**

**(5)** For the purposes of this Act, if a person acts as trustee of a trust, anything done by the person in the person's capacity as trustee of the trust is deemed to have been done by the trust and not by the person.

**Distribution by trust**

**63** For the purposes of this Act, if a trustee of a trust distributes, at a particular time, property of the trust to one or more persons, the distribution of the property is deemed to be a transfer of ownership of the property by the trust to the persons at the particular time and the property is deemed to be delivered to the persons the location at which the property is located at the particular time.

**Responsabilité du fiduciaire**

**(2)** Sous réserve du paragraphe (3), le fiduciaire d'une fiducie est tenu d'exécuter les obligations imposées à la fiducie en application de la présente loi, indépendamment du fait qu'elles aient été imposées pendant la période au cours de laquelle il agit à titre de fiduciaire de la fiducie ou antérieurement. L'exécution d'une obligation de la fiducie par l'un de ses fiduciaires libère les autres fiduciaires de cette obligation.

**Responsabilité solidaire**

**(3)** Le fiduciaire d'une fiducie est solidairement tenu avec la fiducie et, le cas échéant, avec chacun des autres fiduciaires au paiement des sommes que doit payer la fiducie en application de la présente loi pendant la période au cours de laquelle il agit à ce titre ou avant cette période. Toutefois :

**a)** d'une part, le fiduciaire n'est tenu au paiement de sommes que doit payer la fiducie en vertu de la présente loi avant la période que jusqu'à concurrence des biens de la fiducie qu'il contrôle;

**b)** d'autre part, le paiement par la fiducie ou le fiduciaire d'une somme au titre de l'obligation éteint d'autant leur obligation.

**Dispense**

**(4)** Le ministre peut, par écrit, dispenser le représentant personnel d'une personne décédée de la production d'une déclaration pour une période de déclaration de la personne qui se termine au plus tard le jour de son décès.

**Activités du fiduciaire**

**(5)** Pour l'application de la présente loi, tout acte accompli par une personne qui agit à titre de fiduciaire d'une fiducie est réputé accompli par la fiducie et non par elle.

**Distribution par une fiducie**

**63** Pour l'application de la présente loi, la distribution à un moment donné d'un bien d'une fiducie par le fiduciaire à une ou plusieurs personnes est réputée être un transfert de la propriété du bien par la fiducie aux personnes au moment donné et le bien est réputé être livré aux personnes là où se trouve le bien au moment donné.

## SUBDIVISION B

## Amalgamation and Winding-up

### Amalgamations

**64 (1)** If two or more corporations (each of which is referred to in this section as a "predecessor") are merged or amalgamated to form one corporation (in this section referred to as the "new corporation"), otherwise than as the result of the acquisition of property of one corporation by another corporation pursuant to the purchase of the property by the other corporation or as the result of the distribution of the property to the other corporation on the winding-up of the corporation, except for prescribed purposes, the new corporation is, for the purposes of this Act, deemed to be the same corporation as, and a continuation of, each predecessor.

### Reporting period

**(2)** If subsection (1) applies in respect of predecessors that are merged or amalgamated at a particular time

**(a)** the reporting period of each predecessor that includes the particular time ends on the day that includes the particular time; and

**(b)** a reporting period of the new corporation begins on the day following the day that includes the particular time and ends on the last day of the reporting period of the new corporation, if that reporting period were determined in the absence of this subsection, that includes the particular time.

### Winding-up

**65 (1)** If at a particular time a particular corporation is wound up and not less than 90% of the issued shares of each class of the capital stock of the particular corporation were, immediately before the particular time, owned by another corporation, except for prescribed purposes, the other corporation is, for the purposes of this Act, deemed to be the same corporation as, and a continuation of, the particular corporation.

### Reporting period

**(2)** If the other corporation referred to in subsection (1) is deemed to be the same corporation as, and a continuation of, the particular corporation referred to in that subsection

**(a)** the reporting period of the particular corporation that includes the particular time referred to in that subsection ends on the day that includes the particular time; and

## SOUS-SECTION B

## Fusion et liquidation

### Fusions

**64 (1)** Si des personnes morales fusionnent pour former une personne morale autrement que par suite soit de l'acquisition des biens d'une personne morale par une autre après achat de ces biens par cette dernière, soit de la distribution des biens à l'autre personne morale à la liquidation de la première, sauf à des fins prévues par règlement, la personne morale issue de la fusion est réputée, pour l'application de la présente loi, être la même personne que chaque personne morale fusionnante et en être la continuation.

### Période de déclaration

**(2)** Si le paragraphe (1) s'applique relativement à deux personnes morales ou plus qui fusionnent à un moment donné :

**a)** la période de déclaration de chaque personne morale fusionnante qui comprend le moment donné se termine le jour qui comprend le moment donné;

**b)** une période de déclaration de la personne morale issue de la fusion commence le lendemain du jour qui comprend le moment donné et se termine le dernier jour de la période de déclaration de cette personne morale, si cette période de déclaration était déterminée en l'absence du présent paragraphe, qui comprend le moment donné.

### Liquidation

**65 (1)** Lorsqu'est liquidée, à un moment donné, une personne morale donnée dont au moins 90 % des actions émises de chaque catégorie du capital-actions étaient la propriété d'une autre personne morale immédiatement avant le moment donné, sauf à des fins prévues par règlement, l'autre personne morale est, pour l'application de la présente loi, réputée être la même personne que la personne morale donnée et en être la continuation.

### Période de déclaration

**(2)** Si l'autre personne morale mentionnée au paragraphe (1) est réputée être la même que la personne morale donnée mentionnée à ce paragraphe et en être la continuation :

**a)** la période de déclaration de la personne morale donnée qui comprend le moment donné mentionné à ce paragraphe se termine le jour qui comprend ce moment donné;

**(b)** a reporting period of the other corporation begins on the day following the day that includes the particular time and ends on the last day of the reporting period of the other corporation, if that reporting period were determined in the absence of this subsection, that includes the particular time.

**b)** une période de déclaration de l'autre personne morale commence le lendemain du jour qui comprend le moment donné et se termine le dernier jour de la période de déclaration de cette autre personne morale, si cette période de déclaration était déterminée en l'absence du présent paragraphe, qui comprend ce moment donné.

## SUBDIVISION C

## Partnerships and Joint Ventures

### Partnerships

**66 (1)** For the purposes of this Act, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

### Joint and several or solidary liability

**(2)** A partnership and each member or former member (each of which is referred to in this subsection as the "member") of the partnership (other than a member that is a limited partner and is not a general partner) are jointly and severally, or solidarily, liable for

**(a)** the payment of all amounts that are required to be paid by the partnership under this Act before or during the period during which the member is a member of the partnership or, if the member was a member of the partnership at the time the partnership was dissolved, after the dissolution of the partnership, except that

**(i)** the member is liable for the payment of amounts that become payable before the period only to the extent of the property that is regarded as property of the partnership under the relevant laws of general application in force in a province relating to partnerships, and

**(ii)** the payment by the partnership or by any member of the partnership of an amount in respect of the liability discharges their liability to the extent of that amount; and

**(b)** all other obligations under this Act that arose before or during that period for which the partnership is liable or, if the member was a member of the partnership at the time the partnership was dissolved, the obligations that arose upon or as a consequence of the dissolution.

## SOUS-SECTION C

## Sociétés de personnes et coentreprises

### Sociétés de personnes

**66 (1)** Pour l'application de la présente loi, tout acte accompli par une personne à titre d'associé d'une société de personnes est réputé avoir été accompli par celle-ci dans le cadre de ses activités et non par la personne.

### Responsabilité solidaire

**(2)** Une société de personnes et chacun de ses associés ou anciens associés (chacun étant appelé « associé » au présent paragraphe), à l'exception d'un associé qui en est un commanditaire et non un commandité, sont solidairement responsables de ce qui suit :

**a)** le paiement des montants que doit payer la société de personnes en application de la présente loi avant ou pendant la période au cours de laquelle l'associé en est un associé ou, si l'associé était un associé de la société au moment de la dissolution de celle-ci, après cette dissolution; toutefois :

**(i)** l'associé n'est tenu au paiement des montants devenus à payer avant la période que jusqu'à concurrence des biens qui sont considérés comme étant ceux de la société selon les lois pertinentes d'application générale concernant les sociétés de personnes qui sont en vigueur dans une province,

**(ii)** le paiement par la société ou par un de ses associés d'un montant au titre de l'obligation réduit d'autant leur obligation;

**b)** les autres obligations de la société en application de la présente loi survenues avant ou pendant la période visée à l'alinéa a) ou, si l'associé est un associé de la société au moment de la dissolution de celle-ci, les obligations qui découlent de cette dissolution.

#### Joint ventures

**67 (1)** For the purposes of this Act, anything done by a participant in a joint venture, or by an operator of the joint venture, in the course of the activities for which the joint venture agreement was entered into are deemed to have been done by the joint venture in the course of the joint venture's activities and not to have been done by the participant or operator.

#### Joint and several or solidary liability

**(2)** A joint venture and each participant in, or operator of, the joint venture (each of which is referred to in this subsection as the "member") are jointly and severally, or solidarily, liable for

**(a)** the payment of all amounts that become payable by the joint venture under this Act before or during the period during which the member is a participant in, or operator of, the joint venture, except that the payment by the joint venture or by any member of an amount in respect of the liability discharges their liability to the extent of that amount; and

**(b)** all other obligations under this Act that arose before or during that period for which the joint venture is liable.

### SUBDIVISION D

## Anti-avoidance

#### Definitions

**68 (1)** The following definitions apply in this section.

***tax benefit*** means a reduction, an avoidance or a deferral of an amount of tax or other amount payable by a person under this Act or an increase in a rebate or other amount payable to a person under this Act. (*avantage fiscal*)

***tax-related consequences*** to a person means the amount of tax, net tax, rebate or other amount payable by, or payable to, the person under this Act, or any other amount that is relevant for the purposes of computing that amount. (*attribut fiscal*)

***transaction*** includes an arrangement or event. (*opération*)

#### Coentreprises

**67 (1)** Pour l'application de la présente loi, tout acte accompli par un participant à une coentreprise, ou par un entrepreneur de la coentreprise, dans le cadre des activités pour lesquelles la convention de coentreprise a été conclue est réputé avoir été accompli par la coentreprise dans le cadre de ses activités et non par le participant ou l'entrepreneur.

#### Responsabilité solidaire

**(2)** La coentreprise, le participant à la coentreprise ou un entrepreneur de celle-ci (chacun étant appelé « associé » au présent paragraphe) sont solidairement responsables de ce qui suit :

**a)** le paiement des montants que doit payer la coentreprise en application de la présente loi avant ou pendant la période au cours de laquelle l'associé en est un participant ou un entrepreneur; toutefois, le paiement par la coentreprise ou l'un de ses associés d'un montant au titre de l'obligation réduit d'autant leur obligation;

**b)** les autres obligations en application de la présente loi survenues avant ou pendant la période visée à l'alinéa a).

### SOUS-SECTION D

## Évitement

#### Définitions

**68 (1)** Les définitions qui suivent s'appliquent au présent article.

***attribut fiscal*** S'agissant des attributs fiscaux d'une personne, taxe, taxe nette, remboursement ou autre montant payable par, ou payable à, cette personne en application de la présente loi, ainsi que tout autre montant à prendre en compte dans le calcul de la taxe, de la taxe nette, du remboursement ou de l'autre montant payable par cette personne ou du montant qui lui est remboursable. (*tax-related consequences*)

***avantage fiscal*** Réduction, évitement ou report de taxe ou d'un autre montant payable par une personne en application de la présente loi ou augmentation d'un remboursement ou d'un autre montant payable à une personne en application de la présente loi. (*tax benefit*)

***opération*** Y sont assimilés les conventions, les mécanismes et les événements. (*transaction*)

**General anti-avoidance provision**

**(2)** If a transaction is an avoidance transaction, the tax-related consequences to a person must be determined as is reasonable in the circumstances in order to deny a tax benefit that, in the absence of this section, would result directly or indirectly from that transaction or from a series of transactions that includes that transaction.

**Avoidance transaction**

**(3)** An avoidance transaction means any transaction

**(a)** that, in the absence of this section, would result directly or indirectly in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

**(b)** that is part of a series of transactions, which series, in the absence of this section, would result directly or indirectly in a benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

**Provision not applicable**

**(4)** For greater certainty, subsection (2) does not apply in respect of a transaction if it may reasonably be considered that the transaction would not result directly or indirectly in a misuse of the provisions of this Act or in an abuse having regard to the provisions of this Act (other than this section) read as a whole.

**Determination of tax-related consequences**

**(5)** Without restricting the generality of subsection (2), in determining the tax-related consequences to a person, as is reasonable in the circumstances, in order to deny a tax benefit that would, in the absence of this section, result directly or indirectly from an avoidance transaction

**(a)** any rebate or any deduction in net tax may be allowed or disallowed, in whole or in part;

**(b)** any rebate or deduction referred to in paragraph (a) may, in whole or in part, be allocated to any person;

**(c)** the nature of any payment or other amount may be recharacterized; and

**(d)** the effects that would otherwise result from the application of other provisions of this Act may be ignored.

**Disposition générale anti-évitement**

**(2)** En cas d'opération d'évitement, les attributs fiscaux d'une personne doivent être déterminés de façon raisonnable dans les circonstances de sorte à supprimer un avantage fiscal qui, en l'absence du présent article, découlerait, directement ou indirectement, de cette opération ou d'une série d'opérations dont celle-ci fait partie.

**Opération d'évitement**

**(3)** L'opération d'évitement s'entend :

**a)** soit de l'opération dont, en l'absence du présent article, découlerait directement ou indirectement un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables — l'obtention d'un avantage fiscal n'étant pas considérée comme un objet véritable;

**b)** soit de l'opération qui fait partie d'une série d'opérations dont, en l'absence du présent article, découlerait directement ou indirectement un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables — l'obtention d'un avantage fiscal n'étant pas considérée comme un objet véritable.

**Champ d'application précisé**

**(4)** Il est entendu que l'opération dont il est raisonnable de considérer qu'elle n'entraîne pas directement ou indirectement d'abus dans l'application des dispositions de la présente loi lue dans son ensemble — abstraction faite du présent article — n'est pas visée par le paragraphe (2).

**Attributs fiscaux**

**(5)** Sans préjudice de la portée générale du paragraphe (2), en vue de déterminer les attributs fiscaux d'une personne de façon raisonnable dans les circonstances de sorte à supprimer l'avantage fiscal qui, en l'absence du présent article, découlerait directement ou indirectement d'une opération d'évitement :

**a)** tout remboursement et toute déduction dans le calcul de la taxe nette payable peut être en totalité ou en partie admis ou refusé;

**b)** tout ou partie du remboursement ou de la déduction visés à l'alinéa a) peut être attribué à une personne;

**c)** la nature d'un paiement ou d'un autre montant peut être qualifiée autrement;

**Exception**

**(6)** Despite any other provision of this Act, the tax-related consequences to any person following the application of this section must only be determined through an assessment, reassessment or additional assessment involving the application of this section.

**Definitions**

**69 (1)** The following definitions apply in this section.

***parameter change*** means a change in any of the following:

**(a)** a formula, or an element of a formula, in a provision of this Act;

**(b)** a price threshold in respect of a subject item;

**(c)** a manner for determining the taxable amount of a subject item or the amount of tax payable in respect of a subject item;

**(d)** an activity described in subsection 11(3) or (4); or

**(e)** words or expressions defined in a provision of this Act. (*modification de paramètre*)

***tax benefit*** has the meaning assigned by subsection 68(1). (*avantage fiscal*)

***transaction*** has the meaning assigned by subsection 68(1). (*opération*)

**Parameter change — transactions**

**(2)** If

**(a)** a transaction, or a series of transactions, involving property is made between two or more persons, all of whom are not dealing with each other at arm's length at the time any of those transactions are made,

**(b)** the transaction, any of the transactions in the series of transactions or the series of transactions would in the absence of this section result directly or indirectly in a tax benefit to one or more of the persons involved in the transaction or series of transactions, and

**(c)** it may not reasonably be considered that the transaction, or the series of transactions, has been undertaken or arranged primarily for *bona fide* purposes

**d)** les effets qui découleraient par ailleurs de l'application des autres dispositions de la présente loi peuvent ne pas être pris en compte.

**Exception**

**(6)** Malgré les autres dispositions de la présente loi, les attributs fiscaux d'une personne, par suite de l'application du présent article, ne peuvent être déterminés qu'au moyen de l'établissement d'une cotisation, d'une nouvelle cotisation ou d'une cotisation supplémentaire, en tenant compte du présent article.

**Définitions**

**69 (1)** Les définitions qui suivent s'appliquent au présent article.

***avantage fiscal*** S'entend au sens du paragraphe 68(1). (*tax benefit*)

***modification de paramètre*** S'entend d'un changement de l'un des éléments suivants :

**a)** une formule, ou un élément d'une formule, dans une disposition de la présente loi;

**b)** un seuil de prix relatif à un bien assujetti;

**c)** une façon de déterminer le montant taxable d'un bien assujetti ou le montant de taxe payable relativement à un bien assujetti;

**d)** une activité visée aux paragraphes 11(3) ou (4);

**e)** des mots ou expressions définis dans une disposition de la présente loi. (*parameter change*)

***opération*** S'entend au sens du paragraphe 68(1). (*transaction*)

**Modification de paramètre — opérations**

**(2)** Dans le cas où les conditions suivantes sont réunies :

**a)** une opération, ou une série d'opérations, portant sur un bien est effectuée entre plusieurs personnes ayant entre elles un lien de dépendance au moment où l'une ou plusieurs de ces opérations sont effectuées,

**b)** en l'absence du présent article, l'opération, l'une des opérations de la série ou la série proprement dite se traduirait, directement ou indirectement, par un avantage fiscal pour une ou plusieurs des personnes en cause,

**c)** il n'est pas raisonnable de considérer que l'opération ou la série d'opérations a été effectuée principalement pour des objets véritables — le fait pour une ou

other than to obtain a tax benefit, arising from a parameter change, for one or more of the persons involved in the transaction or series of transactions,

the amount of tax, net tax, rebate or other amount payable by, or payable to, any of those persons under this Act, or any other amount that is relevant for the purposes of computing that amount must be determined as is reasonable in the circumstances in order to deny the tax benefit to any of those persons.

**Denying tax benefit on transactions**

**(3)** Despite any other provision of this Act, a tax benefit must only be denied under subsection (2) through an assessment, reassessment or additional assessment.

plusieurs des personnes en cause d'obtenir un avantage fiscal par suite d'une modification de paramètre n'étant pas considéré comme un objet véritable,

tout montant de taxe, de taxe nette, de remboursement ou tout autre montant qui est payable par l'une ou plusieurs des personnes en cause, ou qui leur est payable, en application de la présente loi, ou tout autre montant qui entre dans le calcul d'un tel montant, est déterminé de façon raisonnable dans les circonstances de sorte à supprimer l'avantage fiscal en cause.

**Suppression de l'avantage fiscal**

**(3)** Malgré les autres dispositions de la présente loi, un avantage fiscal ne peut être supprimé en vertu du paragraphe (2) qu'au moyen de l'établissement d'une cotisation, d'une nouvelle cotisation ou d'une cotisation supplémentaire.

## DIVISION 2

# Administration and Enforcement

### SUBDIVISION A

## Payments

**Set-off of rebate**

**70** If, at any time, a person files a particular return under section 55 in which the person reports an amount that is required to be paid by the person under this Act and the person claims a rebate under Subdivision B of Division 4 of Part 1 or subsection 57(4) payable to the person under this Act at that time, in the particular return or in another return, or in a separate application filed under this Act with the particular return, the person is deemed to have paid at that time, and the Minister is deemed to have rebated at that time, an amount equal to the lesser of the amount required to be paid and the amount of the rebate.

**Definition of *electronic payment***

**71 (1)** In this section, ***electronic payment*** means any payment to the Receiver General that is made through electronic services offered by a person described in any of paragraphs (2)(a) to (d) or by any electronic means specified by the Minister.

**Electronic payment**

**(2)** Every person that is required under this Act to pay an amount to the Receiver General must, if the amount is $10,000 or more, make the payment by way of electronic payment, unless the person cannot reasonably pay the

## SECTION 2

# Application et exécution

### SOUS-SECTION A

## Paiements

**Compensation de remboursement**

**70** La personne qui, à un moment donné, produit en vertu de l'article 55 une déclaration dans laquelle elle indique une somme qu'elle est tenue de payer en application de la présente loi et qui demande dans cette déclaration, ou dans une autre déclaration ou une demande distincte produite conformément à la présente loi avec cette déclaration, le paiement d'un remboursement qui lui est payable au moment donné en vertu de la sous-section B de la section 4 de la partie 1 ou du paragraphe 57(4), est réputée avoir payé, et le ministre avoir remboursé, au moment donné la somme en question ou, s'il est inférieur, le montant du remboursement.

**Définition de *paiement électronique***

**71 (1)** Au présent article, ***paiement électronique*** s'entend d'un paiement au receveur général qui est effectué par l'entremise des services électroniques offerts par une personne visée à l'un des alinéas (2)a) à d) ou sous une forme électronique de la manière que le ministre précise.

**Paiement électronique**

**(2)** Quiconque est tenu par la présente loi de payer un montant au receveur général doit, dans le cas où le montant est de 10 000 $ ou plus, le payer par voie de paiement électronique, sauf si la personne qui effectue le paiement

amount in that manner, to the account of the Receiver General at or through

**(a)** a bank;

**(b)** a credit union;

**(c)** a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or

**(d)** a corporation that is authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or hypothecs on immovables.

ne peut raisonnablement l'effectuer de cette manière, au compte du receveur général à ou par l'entremise de l'une des personnes suivantes :

**a)** une banque;

**b)** une caisse de crédit;

**c)** une personne morale qui est autorisée par la législation fédérale ou provinciale à exploiter une entreprise d'offre au public de services de fiduciaire;

**d)** une personne morale qui est autorisée par la législation fédérale ou provinciale à accepter du public des dépôts et qui exploite une entreprise soit de prêts d'argent garantis sur des biens immeubles ou réels, soit de placements dans des dettes garanties par des hypothèques relatives à des biens immeubles ou réels.

#### Small amounts owing

**72 (1)** If, at any time, the total of all unpaid amounts owing by a person to the Receiver General under this Act does not exceed $2.00, the amount owing by the person is deemed to be nil.

#### Sommes minimes

**72 (1)** La somme dont une personne est redevable au receveur général en application de la présente loi est réputée nulle si le total des sommes dont elle est ainsi redevable est égal ou inférieur à 2 $.

#### Small amounts payable

**(2)** If, at any time, the total of all amounts payable by the Minister to a person under this Act does not exceed $2.00, the Minister may apply those amounts against any amount owing, at that time, by the person to Her Majesty in right of Canada. However, if the person, at that time, does not owe any amount to Her Majesty in right of Canada, those amounts payable are deemed to be nil.

#### Sommes minimes

**(2)** Si, à un moment donné, le total des sommes à payer par le ministre à une personne en application de la présente loi est égal ou inférieur à 2 $, le ministre peut les déduire de toute somme dont la personne est alors redevable à Sa Majesté du chef du Canada. Toutefois, si la personne n'est alors redevable d'aucune somme à Sa Majesté du chef du Canada, les sommes à payer par le ministre sont réputées nulles.

#### Authority for separate returns

**73 (1)** A person that engages in one or more activities in separate branches or divisions may file an application, in the prescribed form and manner, with the Minister for the authority to file separate returns and applications for rebates under this Act in respect of a branch or division specified in the application.

#### Déclarations distinctes

**73 (1)** La personne qui exerce une activité dans des succursales ou divisions distinctes peut demander au ministre, en la forme et selon les modalités déterminées par celui-ci, l'autorisation de produire des déclarations et demandes de remboursement distinctes en application de la présente loi pour chaque succursale ou division précisée dans la demande.

#### Authorization by Minister

**(2)** On receipt of the application, the Minister may, in writing, authorize the person to file separate returns and applications for rebates in relation to the specified branch or division, subject to any conditions that the Minister may at any time impose, if the Minister is satisfied that

**(a)** the branch or division can be separately identified by reference to its location or the nature of the activities engaged in by it; and

#### Autorisation

**(2)** Sur réception de la demande, le ministre peut, par écrit, autoriser la personne à produire des déclarations et demandes de remboursement distinctes pour chaque succursale ou division précisée, sous réserve de conditions qu'il peut imposer en tout temps, s'il est convaincu de ce qui suit :

**a)** la succursale ou la division peut être reconnue distinctement par son emplacement ou la nature des activités qui y sont exercées;

**(b)** separate records, books of account and accounting systems are maintained in respect of the branch or division.

**b)** des registres, livres de compte et systèmes comptables sont tenus séparément pour la succursale ou la division.

**Revocation of authorization**

**(3)** The Minister may revoke an authorization if

**(a)** the person, in writing, requests the Minister to revoke the authorization;

**(b)** the person fails to comply with any condition imposed in respect of the authorization or any provision of this Act;

**(c)** the Minister is no longer satisfied that the requirements of subsection (2) in respect of the person are met; or

**(d)** the Minister considers that the authorization is no longer required.

**Retrait d'autorisation**

**(3)** Le ministre peut retirer l'autorisation dans les cas suivants :

**a)** la personne lui en fait la demande par écrit;

**b)** la personne ne se conforme pas à une condition de l'autorisation ou à une disposition de la présente loi;

**c)** le ministre n'est plus convaincu que les exigences du paragraphe (2) relativement à la personne sont remplies;

**d)** le ministre est d'avis que l'autorisation n'est plus nécessaire.

**Notice of revocation**

**(4)** If the Minister revokes an authorization, the Minister must send a notice in writing of the revocation to the person and must specify in the notice the effective date of the revocation.

**Avis de retrait**

**(4)** Le ministre informe la personne du retrait de l'autorisation dans un avis écrit précisant la date d'entrée en vigueur du retrait.

**Definition of *electronic filing***

**74 (1)** For the purposes of this section, ***electronic filing*** means using electronic media in a manner specified in writing by the Minister.

**Transmission électronique**

**74 (1)** Pour l'application du présent article, la transmission de documents par voie électronique se fait selon les modalités que le ministre précise par écrit.

**Electronic filing**

**(2)** A person that is required to file with the Minister a return under this Act or an application under Division 3 or 4 of Part 1, and that meets the criteria specified in writing by the Minister for the purposes of this section, may file it by way of electronic filing.

**Production par voie électronique**

**(2)** La personne qui est tenue de présenter au ministre une déclaration en vertu de la présente loi ou une demande en vertu des sections 3 ou 4 de la partie 1 et qui satisfait aux critères que le ministre précise par écrit pour l'application du présent article peut la présenter au ministre par voie électronique.

**Mandatory electronic filing**

**(3)** The Minister may require that a return under this Act or an application under Division 3 or 4 of Part 1 be filed by way of electronic filing.

**Transmission électronique obligatoire**

**(3)** Le ministre peut exiger qu'une déclaration en vertu de la présente loi ou une demande en vertu des sections 3 ou 4 de la partie 1 lui soit présentée par voie électronique.

**Deemed filing**

**(4)** For the purposes of this Act, if a person files a return under this Act or an application under Division 3 or 4 of Part 1, by way of electronic filing, the return or application, as the case may be, is deemed to be a return or an application made in the prescribed form filed with the Minister on the day on which the Minister acknowledges acceptance of it.

**Présentation réputée**

**(4)** Pour l'application de la présente loi, la déclaration en vertu de la présente loi ou la demande en vertu des sections 3 ou 4 de la partie 1 qu'une personne présente au ministre par voie électronique est réputée présentée au ministre, en la forme qu'il détermine, le jour où il en accuse réception.

**Execution of returns, etc.**

**75** A return (other than a return filed by way of electronic filing under section 74), certificate or other document made under this Act (other than an exemption certificate referred to in section 36) by a person that is not an individual must be signed on behalf of the person by an individual duly authorized to do so by the person or the governing body of the person and the following people are deemed to be so duly authorized:

**(a)** if the person is a corporation or an association or organization that has duly elected or appointed officers, the president, vice-president, secretary and treasurer, or other equivalent officers, of the person; and

**(b)** if the person is the estate or succession of a deceased individual, the personal representative of the estate or succession.

**Extension of time**

**76 (1)** The Minister may at any time extend, in writing, the time for filing a return or providing information under this Act.

**Effect of extension**

**(2)** If the Minister extends the time within which a person must file a return or provide information under subsection (1), the following rules apply:

**(a)** the return must be filed, or the information must be provided, within the time so extended;

**(b)** any amount payable that the person is required to report in the return must be paid within the time so extended;

**(c)** any interest payable under section 82 on the amount referred to in paragraph (b) must be calculated as though the amount were required to be paid on the day on which the extended time expires; and

**(d)** any penalty payable under section 107 in respect of the return must be calculated as though the return were required to be filed on the day on which the extended time expires.

**Demand for return**

**77** The Minister may, on demand sent by the Minister, require a person to file, within any reasonable time stipulated in the demand, a return under this Act for any period designated in the demand.

**Validation des documents**

**75** La déclaration, sauf celle transmise selon l'article 74, le certificat ou tout autre document fait en application de la présente loi, sauf le certificat d'exemption visé à l'article 36, par une personne autre qu'un particulier doit être signé en son nom par un particulier qui y est dûment autorisé par la personne ou son organe directeur. Les personnes suivantes sont réputées être ainsi autorisées :

**a)** le président, le vice-président, le secrétaire et le trésorier, ou un autre cadre occupant un poste similaire, d'une personne morale, ou d'une association ou d'un organisme dont les cadres sont dûment élus ou nommés;

**b)** le représentant personnel de la succession d'un particulier décédé.

**Prorogation**

**76 (1)** Le ministre peut, en tout temps, par écrit, proroger le délai imparti pour produire une déclaration ou communiquer des renseignements en application de la présente loi.

**Effet de la prorogation**

**(2)** Les règles ci-après s'appliquent en cas de prorogation du délai par le ministre :

**a)** la déclaration doit être produite, ou les renseignements communiqués, dans le délai prorogé;

**b)** les sommes payables à indiquer dans la déclaration doivent être payées dans le délai prorogé;

**c)** les intérêts payables en vertu de l'article 82 sur les sommes visées à l'alinéa b) sont calculés comme si ces sommes devaient être payées au plus tard à l'expiration du délai prorogé;

**d)** les pénalités payables en vertu de l'article 107 au titre de la déclaration sont calculées comme si la déclaration devait être produite au plus tard à l'expiration du délai prorogé.

**Mise en demeure de produire une déclaration**

**77** Toute personne doit, sur mise en demeure du ministre, produire, dans le délai raisonnable fixé par la mise en demeure, une déclaration en application de la présente loi visant la période précisée dans la mise en demeure.

## SUBDIVISION B

## Administration and Officers

### Minister's duty

**78** The Minister must administer and enforce this Act and the Commissioner may exercise the powers and perform the duties of the Minister under this Act.

### Staff

**79 (1)** The persons that are necessary to administer and enforce this Act are to be appointed, employed or engaged in the manner authorized by law.

### Delegation of powers

**(2)** The Minister may authorize any person employed or engaged by the Canada Revenue Agency or who occupies a position of responsibility in the Canada Revenue Agency to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial power or duty of the Minister, under this Act.

### Administration of oaths

**80** Any person, if designated by the Minister for the purpose, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act, and every person so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

### Inquiry

**81 (1)** The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an officer of the Canada Revenue Agency, to make any inquiry that the Minister may deem necessary with reference to anything relating to the administration or enforcement of this Act.

### Appointment of hearing officer

**(2)** If the Minister, under subsection (1), authorizes a person to make an inquiry, the Minister must forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

### Powers of hearing officer

**(3)** For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation to the inquiry has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.

## SOUS-SECTION B

## Personnel assurant l'exécution

### Fonctions du ministre

**78** Le ministre assure l'application et l'exécution de la présente loi et le commissaire peut exercer les pouvoirs et les fonctions conférés au ministre par la présente loi.

### Personnel

**79 (1)** Sont nommées, employées ou engagées de la manière autorisée par la loi les personnes nécessaires à l'application et à l'exécution de la présente loi.

### Fonctionnaire désigné

**(2)** Le ministre peut autoriser toute personne employée ou engagée par l'Agence du revenu du Canada ou occupant une fonction de responsabilité au sein de celle-ci à exercer les attributions que lui confère la présente loi, notamment en matière judiciaire ou quasi judiciaire.

### Déclaration sous serment

**80** Toute personne peut, si le ministre l'a désignée à cette fin, faire prêter les serments et recevoir les déclarations sous serment, solennelles ou autres, exigés pour l'application ou l'exécution de la présente loi, ou qui y sont accessoires. À cet effet, la personne ainsi désignée dispose des pouvoirs d'un commissaire aux serments.

### Enquête

**81 (1)** Le ministre peut, pour l'application et l'exécution de la présente loi, autoriser une personne, qu'il s'agisse ou non d'un fonctionnaire de l'Agence du revenu du Canada, à faire toute enquête que celui-ci estime nécessaire sur quoi que ce soit qui se rapporte à l'application et à l'exécution de la présente loi.

### Nomination d'un président d'enquête

**(2)** Le ministre qui autorise une personne à faire une enquête doit, sans délai, demander à la Cour canadienne de l'impôt une ordonnance nommant le président d'enquête.

### Pouvoirs du président d'enquête

**(3)** Aux fins de l'enquête, le président d'enquête a tous les pouvoirs conférés à un commissaire par les articles 4 et 5 de la *Loi sur les enquêtes* et ceux qui sont susceptibles de l'être par l'article 11 de cette loi.

**When powers to be exercised**

**(4)** A hearing officer appointed under subsection (2) in relation to an inquiry must exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to any persons that the person authorized to make the inquiry considers appropriate for the conduct of the inquiry, but the hearing officer is not to exercise the power to punish any person unless, on application by the hearing officer, a judge, including a judge of a county court, certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the power is proposed to be exercised 24 hours notice of the hearing of the application, or any shorter notice that the judge considers reasonable.

**Exercice des pouvoirs du président d'enquête**

**(4)** Le président d'enquête exerce les pouvoirs conférés à un commissaire par l'article 4 de la *Loi sur les enquêtes* à l'égard des personnes que la personne autorisée à faire enquête considère comme appropriées pour la conduite de celle-ci. Toutefois, le président d'enquête ne peut exercer le pouvoir de punir une personne que si, à la requête de celui-ci, un juge atteste que ce pouvoir peut être exercé dans l'affaire exposée dans la requête et que si le requérant donne à la personne à l'égard de laquelle il est proposé d'exercer ce pouvoir avis de l'audition de la requête vingt-quatre heures avant ou dans le délai plus court que le juge estime raisonnable.

**Rights of witnesses**

**(5)** Any person who gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence.

**Droits des témoins**

**(5)** Le témoin à l'enquête a le droit d'être représenté par avocat et, sur demande faite au ministre par le témoin, de recevoir transcription de sa déposition.

**Rights of person investigated**

**(6)** Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2), on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry, on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

**Droits des personnes visées par une enquête**

**(6)** Toute personne dont les affaires donnent lieu à l'enquête a le droit d'être présente et d'être représentée par avocat tout au long de l'enquête. Sur demande du ministre ou d'un témoin, le président d'enquête peut en décider autrement pour tout ou partie de l'enquête, pour le motif que la présence de cette personne ou de son avocat nuirait à la bonne conduite de l'enquête.

## SUBDIVISION C

## Interest

**Specified rate of interest**

**82 (1)** For the purposes of every provision of this Act that requires interest to be computed at a specified rate

**(a)** if the interest is to be paid or applied on an amount payable by the Minister to a person, the specified rate in effect during a calendar quarter is

**(i)** the prescribed rate, or

**(ii)** if no rate is prescribed under subparagraph (i), the interest rate determined for the calendar quarter under subsection 2(2) of the *Interest Rates (Excise Act, 2001) Regulations*; and

## SOUS-SECTION C

## Intérêts

**Taux d'intérêt déterminé**

**82 (1)** Pour l'application des dispositions de la présente loi selon lesquelles des intérêts doivent être calculés à un taux déterminé :

**a)** si les intérêts sont à payer ou à imputer sur un montant que le ministre verse à une personne, le taux d'intérêt déterminé en vigueur au cours d'un trimestre civil correspond :

**(i)** au taux réglementaire,

**(ii)** en l'absence d'un taux réglementaire pour l'application du sous-alinéa (i), au taux d'intérêt déterminé pour le trimestre selon le paragraphe 2(2) du

**(b)** in any other case, the specified rate in effect during a calendar quarter is

**(i)** the prescribed rate, or

**(ii)** if no rate is prescribed under subparagraph (i), the interest rate determined for the calendar quarter under subsection 2(1) of the *Interest Rates (Excise Act, 2001) Regulations*.

*Règlement sur les taux d'intérêt (Loi de 2001 sur l'accise)*;

**b)** dans les autres cas, le taux d'intérêt déterminé en vigueur au cours d'un trimestre civil correspond :

**(i)** au taux réglementaire,

**(ii)** en l'absence d'un taux réglementaire pour l'application du sous-alinéa (i), au taux d'intérêt déterminé pour le trimestre selon le paragraphe 2(1) du *Règlement sur les taux d'intérêt (Loi de 2001 sur l'accise)*.

**Compound interest**

**(2)** If a person fails to pay an amount to the Receiver General as and when required under this Act, the person must pay to the Receiver General interest on the amount. The interest must be compounded daily at the specified rate and computed for the period that begins on the first day after the day on or before which the amount was required to be paid and that ends on the day the amount is paid.

**Intérêts composés**

**(2)** La personne qui ne verse pas une somme au receveur général dans le délai et selon les modalités prévus par la présente loi est tenue de payer des intérêts, au taux déterminé, calculés et composés quotidiennement sur cette somme pour la période commençant le lendemain de l'expiration du délai de versement et se terminant le jour du versement.

**Payment of interest that is compounded**

**(3)** For the purposes of subsection (2), interest that is compounded on a particular day on an unpaid amount of a person is deemed to be required to be paid by the person to the Receiver General at the end of the particular day, and, if the person has not paid the interest so computed by the end of the day after the particular day, the interest must be added to the unpaid amount at the end of the particular day.

**Paiement des intérêts composés**

**(3)** Pour l'application du paragraphe (2), les intérêts qui sont composés un jour donné sur la somme impayée d'une personne sont réputés être à verser par elle au receveur général à la fin du jour donné. Si la personne ne paie pas ces intérêts au plus tard à la fin du jour suivant, ils sont ajoutés à la somme impayée à la fin du jour donné.

**Payment before specified date**

**(4)** If the Minister has served a demand that a person pay on or before a specified date all amounts payable by the person under this Act on the date of the demand, and the person pays the amount demanded on or before the specified date, the Minister must waive any interest that would otherwise apply in respect of the amount demanded for the period beginning on the first day following the date of the demand and ending on the day of payment.

**Renonciation**

**(4)** Si le ministre met une personne en demeure de verser dans un délai précis la totalité des sommes dont elle est redevable en application de la présente loi à la date de la mise en demeure, et que la personne s'exécute, il doit renoncer aux intérêts qui s'appliqueraient par ailleurs au montant visé par la mise en demeure pour la période commençant le lendemain de la date de la mise en demeure et se terminant le jour du versement.

**Compound interest on amounts owed by Her Majesty**

**83** Interest must be compounded daily at the specified rate on amounts owed under this Act by Her Majesty in right of Canada to a person and computed for the period beginning on the first day after the day on which the amount is required to be paid by Her Majesty in right of Canada and ending on the day on which the amount is paid or is applied against an amount owed by the person to Her Majesty in right of Canada.

**Intérêts composés sur les dettes de Sa Majesté**

**83** Des intérêts, au taux déterminé, sont calculés et composés quotidiennement sur les sommes dont Sa Majesté du chef du Canada est débitrice en application de la présente loi envers une personne, pour la période commençant le lendemain du jour où elles devaient être payées et se terminant le jour où elles sont payées ou déduites d'une somme dont la personne est redevable à Sa Majesté du chef du Canada.

**Interest if Act amended**

**84** For greater certainty, if a provision of an Act amends this Act and provides that the amendment comes into force on, or applies as of, a particular day that is before the day on which the provision is assented to, the provisions of this Act that relate to the calculation and payment of interest apply in respect of the amendment as though the provision had been assented to on the particular day.

**Intérêts — modification de la présente loi**

**84** Il est entendu que, si la présente loi fait l'objet d'une modification qui entre en vigueur un jour antérieur à la date de sanction du texte modificatif, ou s'applique à compter de ce jour, les dispositions de la présente loi qui portent sur le calcul et le paiement d'intérêts s'appliquent à la modification comme si elle avait été sanctionnée ce jour-là.

**Waiving or reducing interest**

**85 (1)** The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive, cancel or reduce any interest payable by the person under this Act on an amount that is required to be paid by the person under this Act in respect of the reporting period.

**Renonciation ou réduction — intérêts**

**85 (1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler ou réduire les intérêts à payer par la personne en application de la présente loi sur toute somme dont elle est redevable en application de la présente loi pour la période, ou y renoncer.

**Interest where amounts waived or reduced**

**(2)** If a person has paid an amount of interest and the Minister has waived or reduced under subsection (1) any portion of the amount, the Minister must pay interest at the specified rate on an amount equal to the portion of the amount that was waived or reduced beginning on the day that is 30 days after the day on which the Minister received a request in a manner satisfactory to the Minister to apply that subsection and ending on the day on which the portion is rebated to the person.

**Intérêts sur somme réduite ou à laquelle il est renoncé**

**(2)** Si une personne a payé un montant d'intérêts que le ministre a réduit en tout ou en partie, ou auquel il a renoncé en tout ou en partie, en vertu du paragraphe (1), le ministre paie, sur la partie du montant qui a fait l'objet de la réduction ou de la renonciation, des intérêts calculés au taux réglementaire pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de ce paragraphe et se terminant le jour où la partie du montant est remboursée à la personne.

**Cancellation of penalties and interest**

**86** If at any time a person pays all tax and amounts under section 58 payable by the person under this Act for a reporting period of the person and, immediately before that time, the total, for the reporting period, of all interest payable by the person under section 82 and penalties payable under section 107 is not more than $25, the Minister may cancel the total of the penalties and interest.

**Annulation des intérêts et pénalités**

**86** Si, à un moment donné, une personne paie la totalité des taxes et des montants visés à l'article 58 dont elle est redevable en application de la présente loi pour sa période de déclaration et que, immédiatement avant ce moment, le total, pour cette période, des intérêts à payer par la personne en vertu de l'article 82 et des pénalités à payer en vertu de l'article 107 n'excède pas 25 $, le ministre peut annuler le total des intérêts et des pénalités.

**Dishonoured instruments**

**87** For the purposes of this Act and section 155.1 of the *Financial Administration Act*, any charge that is payable at any time by a person under the *Financial Administration Act* in respect of an instrument tendered in payment or settlement of an amount that is payable under this Act is deemed to be an amount that is payable by the person at that time under this Act. In addition, Part II of the *Interest and Administrative Charges Regulations* does not apply to the charge and any debt under subsection 155.1(3) of the *Financial Administration Act* in respect of the charge is deemed to be extinguished at the time the

**Effets refusés**

**87** Pour l'application de la présente loi et de l'article 155.1 de la *Loi sur la gestion des finances publiques*, les frais qui deviennent payables par une personne à un moment donné en application de la *Loi sur la gestion des finances publiques* relativement à un effet offert en paiement ou en règlement d'une somme à payer en application de la présente loi sont réputés être une somme qui devient payable par la personne à ce moment en application de la présente loi. En outre, la partie II du *Règlement sur les intérêts et les frais administratifs* ne s'applique pas aux frais, et toute créance relative à ces frais,

total of the amount and any applicable interest under this Act is paid.

visée au paragraphe 155.1(3) de la *Loi sur la gestion des finances publiques*, est réputée avoir été éteinte au moment où le total de la somme et des intérêts applicables en application de la présente loi est versé.

## SUBDIVISION D

## Records and Information

### Keeping records

**88 (1)** Every person that pays or is required to pay an amount of tax, every person that is required under this Act to file a return and every person that makes an application for a rebate must keep all records that are necessary to enable the determination of the person's liabilities and obligations under this Act or the amount of any rebate to which the person is entitled under this Act and whether the person has complied with this Act.

### Minister may specify information

**(2)** The Minister may specify the form a record is to take and any information that the record must contain.

### Language and location of record

**(3)** Unless otherwise authorized by the Minister, a record must be kept in Canada in English or in French.

### Electronic records

**(4)** Every person required under this Act to keep a record that does so electronically must ensure that all equipment and software necessary to make the record intelligible are available during the retention period required for the record.

### Exemptions

**(5)** The Minister may, on any terms and conditions that are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection (4).

### Inadequate records

**(6)** If a person fails to keep adequate records for the purposes of this Act, the Minister may, in writing, require the person to keep any records that the Minister may specify, and the person must keep the records specified by the Minister.

### General period for retention

**(7)** Every person that is required to keep records must retain them until the expiry of six years after the end of the year to which they relate or for any other period that may be prescribed.

## SOUS-SECTION D

## Registres et renseignements

### Obligation de tenir des registres

**88 (1)** La personne qui paie ou est tenue de payer un montant de taxe, la personne qui est tenue, en application de la présente loi, de produire une déclaration ainsi que la personne qui présente une demande de remboursement doit tenir les registres permettant d'établir ses obligations et responsabilités aux termes de la présente loi ou de déterminer le remboursement auquel elle a droit et de déterminer si elle s'est conformée à la présente loi.

### Forme et contenu

**(2)** Le ministre peut préciser la forme d'un registre ainsi que les renseignements qu'il doit contenir.

### Langue et lieu de conservation

**(3)** Sauf autorisation contraire du ministre, les registres sont tenus au Canada, en français ou en anglais.

### Registres électroniques

**(4)** Quiconque tient des registres, comme l'y oblige la présente loi, par voie électronique doit s'assurer que le matériel et les logiciels nécessaires à leur intelligibilité soient accessibles pendant la durée de conservation.

### Dispense

**(5)** Le ministre peut, selon des modalités qu'il estime acceptables, dispenser une personne ou une catégorie de personnes de l'exigence visée au paragraphe (4).

### Registres insuffisants

**(6)** Le ministre peut exiger par écrit que la personne qui ne tient pas les registres nécessaires à l'application de la présente loi tienne ceux qu'il précise. Dès lors, la personne est tenue d'obtempérer.

### Durée de conservation

**(7)** La personne obligée de tenir des registres doit les conserver pendant la période de six ans suivant la fin de l'année qu'ils visent ou pendant toute autre période fixée par règlement.

**Objection or appeal**

**(8)** If a person that is required under this Act to keep records serves a notice of objection or is a party to an appeal or reference under this Act, the person must retain every record that pertains to the subject-matter of the objection, appeal or reference until the objection, appeal or reference is finally disposed of.

**Demand by Minister**

**(9)** If the Minister is of the opinion that it is necessary for the administration or enforcement of this Act, the Minister may, by a demand served personally or sent by confirmed delivery service, require any person required under this Act to keep records to retain those records for any period that is specified in the demand, and the person must comply with the demand.

**Permission for earlier disposal**

**(10)** A person that is required under this Act to keep records may dispose of them before the expiry of the period during which they are required to be kept if written permission for their disposal is given by the Minister.

**Electronic funds transfer**

**89** For greater certainty, information obtained by the Minister under Part XV.1 of the *Income Tax Act* may be used for the purposes of this Act.

**Requirement to provide information or record**

**90 (1)** Despite any other provision of this Act, the Minister may, subject to subsection (3), for any purpose related to the administration or enforcement of this Act, by a notice served or sent in accordance with subsection (2), require a person resident in Canada or a person that is not resident in Canada but that is engaged in activities in Canada to provide any information or record.

**Notice**

**(2)** A notice referred to in subsection (1) may be

**(a)** served personally;

**(b)** sent by confirmed delivery service; or

**(c)** sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (1) electronically.

**Unnamed persons**

**(3)** The Minister must not impose on any person (in this section referred to as a "third party") a requirement to

**Opposition ou appel**

**(8)** La personne obligée de tenir des registres qui signifie un avis d'opposition ou est partie à un appel ou à un renvoi en application de la présente loi doit conserver les registres concernant l'objet de ceux-ci jusqu'à ce qu'il en soit décidé de façon définitive.

**Mise en demeure**

**(9)** Le ministre peut exiger, par mise en demeure signifiée à personne ou envoyée par service de messagerie, que la personne obligée de tenir des registres en application de la présente loi conserve ceux-ci pour la période précisée dans la mise en demeure, s'il est d'avis que cela est nécessaire pour l'application ou l'exécution de la présente loi. Dès lors, la personne est tenue d'obtempérer.

**Autorisation de se départir des registres**

**(10)** Le ministre peut autoriser par écrit une personne à se départir des registres qu'elle doit conserver avant la fin de la période déterminée pour leur conservation.

**Télévirement**

**89** Il est entendu que les renseignements obtenus par le ministre en application de la partie XV.1 de la *Loi de l'impôt sur le revenu* peuvent être utilisés pour l'application de la présente loi.

**Obligation de produire des renseignements ou registres**

**90 (1)** Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (3) et pour l'application ou l'exécution de la présente loi, par avis signifié ou envoyé conformément au paragraphe (2), mettre en demeure une personne résidant au Canada ou une personne n'y résidant pas mais y exploitant une entreprise de produire des renseignements ou des registres.

**Avis**

**(2)** L'avis visé au paragraphe (1) peut être :

**a)** soit signifié à personne;

**b)** soit envoyé par service de messagerie;

**c)** soit envoyé par voie électronique à une banque ou une caisse de crédit qui a consenti par écrit à recevoir les avis prévus au paragraphe (1) par voie électronique.

**Personnes non désignées nommément**

**(3)** Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la production de

provide information or any record relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (4).

**Judicial authorization**

**(4)** A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this subsection referred to as the "group") if the judge is satisfied by information on oath that

**(a)** the person or group is ascertainable; and

**(b)** the requirement is made to verify compliance by the person or persons in the group with any obligation under this Act.

**Definitions**

**91 (1)** The following definitions apply in this section.

***authorized person*** means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty in right of Canada to assist in carrying out the provisions of this Act. (*personne autorisée*)

***business number*** means the number (other than a Social Insurance Number) used by the Minister to identify a person registered for the purposes of this Act. (*numéro d'entreprise*)

***confidential information*** means information of any kind and in any form that relates to one or more persons and that is

**(a)** obtained by or on behalf of the Minister for the purposes of this Act, or

**(b)** prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates and, for the purposes of applying subsections (3), (13) and (15) to a representative of a government entity that is not an official, includes only the information described in subsection (6). (*renseignement confidentiel*)

***court of appeal*** has the same meaning as in section 2 of the *Criminal Code*. (*cour d'appel*)

renseignements ou de registres concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (4).

**Autorisation judiciaire**

**(4)** Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la production de renseignements ou de registres prévue au paragraphe (1) concernant une personne non désignée nommément ou plus d'une personne non désignée nommément — appelée « groupe » au présent paragraphe —, s'il est convaincu, sur dénonciation sous serment, de ce qui suit :

**a)** cette personne ou ce groupe est identifiable;

**b)** la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque obligation prévue par la présente loi.

**Définitions**

**91 (1)** Les définitions qui suivent s'appliquent au présent article.

***cour d'appel*** S'entend au sens de l'article 2 du *Code criminel*. (*court of appeal*)

***entité gouvernementale*** N'est pas visée l'administration locale à laquelle le ministre confère le statut de municipalité aux termes de l'alinéa b) de la définition de *municipalité* au paragraphe 2(1). (*government entity*)

***fonctionnaire*** Personne qui est ou a été employée par Sa Majesté du chef du Canada ou d'une province, qui occupe ou a occupé une fonction de responsabilité à son service ou qui est ou a été engagée par elle ou en son nom. (*official*)

***numéro d'entreprise*** Le numéro, sauf le numéro d'assurance sociale, utilisé par le ministre pour identifier un inscrit pour l'application de la présente loi. (*business number*)

***personne autorisée*** Personne engagée ou employée, ou précédemment engagée ou employée, par Sa Majesté du chef du Canada, ou en son nom, pour aider à l'application des dispositions de la présente loi. (*authorized person*)

***renseignement confidentiel*** Renseignement de toute nature et sous toute forme concernant une ou plusieurs personnes et qui, selon le cas :

**a)** est obtenu par le ministre ou en son nom pour l'application de la présente loi;

***government entity*** does not include a local authority determined by the Minister to be a municipality under paragraph (b) of the definition *municipality* in subsection 2(1). (*entité gouvernementale*)

***official*** means a person that is employed in the service of, that occupies a position of responsibility in the service of, or that is engaged by or on behalf of Her Majesty in right of Canada or a province, or a person that was formerly so employed, that formerly occupied such a position or that formerly was so engaged. (*fonctionnaire*)

***representative*** of a government entity means a person that is employed in the service of, that occupies a position of responsibility in the service of, or that is engaged by or on behalf of, a government entity, and includes, for the purposes of subsections (2), (3), (13) and (15), a person that was formerly so employed, that formerly occupied such a position or that formerly was so engaged. (*représentant*)

**Provision of confidential information**

**(2)** Except as authorized under this section, an official or other representative of a government entity must not knowingly

**(a)** provide, or allow to be provided, to any person any confidential information;

**(b)** allow any person to have access to any confidential information; or

**(c)** use any confidential information other than in the course of the administration or enforcement of this Act.

**Confidential information evidence not compellable**

**(3)** Despite any other Act of Parliament or other law, no official or other representative of a government entity is required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

**Communications — proceedings have been commenced**

**(4)** Subsections (2) and (3) do not apply in respect of

**(a)** criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or

**b)** est tiré d'un renseignement visé à l'alinéa a).

N'est pas un renseignement confidentiel le renseignement qui ne révèle pas, même indirectement, l'identité de la personne en cause. Par ailleurs, pour l'application des paragraphes (3), (13) et (15) au représentant d'une entité gouvernementale qui n'est pas un fonctionnaire, le terme ne vise que les renseignements mentionnés au paragraphe (6). (*confidential information*)

***représentant*** Est représentant d'une entité gouvernementale toute personne qui est employée par l'entité, qui occupe une fonction de responsabilité à son service ou qui est engagée par elle ou en son nom, y compris, pour l'application des paragraphes (2), (3), (13) et (15), toute personne qui a déjà été ainsi employée, a déjà occupé une telle fonction ou a déjà été ainsi engagée. (*representative*)

**Communication de renseignements**

**(2)** Sauf autorisation prévue au présent article, il est interdit à un fonctionnaire ou autre représentant d'une entité gouvernementale :

**a)** de fournir sciemment à quiconque un renseignement confidentiel ou d'en permettre sciemment la fourniture;

**b)** de permettre sciemment à quiconque d'avoir accès à un renseignement confidentiel;

**c)** d'utiliser sciemment un renseignement confidentiel en dehors du cadre de l'application ou de l'exécution de la présente loi.

**Communication de renseignements dans le cadre d'une procédure judiciaire**

**(3)** Malgré toute autre loi fédérale et toute règle de droit, nul fonctionnaire ou autre représentant d'une entité gouvernementale ne peut être requis, dans le cadre d'une procédure judiciaire, de témoigner, ou de produire quoi que ce soit, relativement à un renseignement confidentiel.

**Communication de renseignements en cours de procédures**

**(4)** Les paragraphes (2) et (3) ne s'appliquent :

**a)** ni aux poursuites criminelles, sur déclaration de culpabilité par procédure sommaire ou sur acte d'accusation, engagées par le dépôt d'une dénonciation ou d'un acte d'accusation, en vertu d'une loi fédérale;

**(b)** any legal proceedings relating to the administration or enforcement of this Act, any other Act of Parliament or law of a province that provides for the imposition of a duty or tax, the *Canada Pension Plan*, the *Employment Insurance Act* or Part 1 of the *Greenhouse Gas Pollution Pricing Act*.

**b)** ni aux procédures judiciaires ayant trait à l'application ou à l'exécution de la présente loi, du *Régime de pensions du Canada*, de la *Loi sur l'assurance-emploi* ou de toute autre loi fédérale ou provinciale qui prévoit le paiement d'un droit ou d'une taxe.

**Authorized provision of confidential information**

**(5)** The Minister may provide appropriate persons with any confidential information that may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual or to the environment in Canada or any other country.

**Fourniture autorisée d'un renseignement confidentiel**

**(5)** Le ministre peut fournir aux personnes compétentes tout renseignement confidentiel qui peut raisonnablement être considéré comme nécessaire uniquement à une fin reliée à la vie, à la santé ou à la sécurité d'une personne physique ou à l'environnement au Canada ou dans tout autre pays.

**Disclosure of confidential information**

**(6)** An official may provide any confidential information to a person identified in subsection 211(6) of the *Excise Act, 2001*, but only to the extent that the information is described in that subsection and solely for the applicable purposes identified in that subsection with any modifications that the circumstances require, including reading references to the *Excise Act, 2001* as references to this Act.

**Divulgation d'un renseignement confidentiel**

**(6)** Un fonctionnaire peut fournir un renseignement confidentiel à une personne visée au paragraphe 211(6) de la *Loi de 2001 sur l'accise*, mais uniquement dans la mesure où le renseignement est visé à ce paragraphe et uniquement pour les fins applicables indiquées à ce paragraphe compte tenu des modifications nécessaires, dont notamment le fait que toute mention de la *Loi de 2001 sur l'accise* vaut mention de la présente loi.

**Restrictions on information sharing**

**(7)** No information may be provided to a representative of a government entity under subsection (6) in connection with a program, activity or service provided or undertaken by the government entity unless the government entity uses the business number as an identifier in connection with the program, activity or service.

**Restriction — partage des renseignements**

**(7)** Un renseignement ne peut être fourni au représentant d'une entité gouvernementale en conformité avec le paragraphe (6) relativement à un programme, à une activité ou à un service offert ou entrepris par l'entité que si celle-ci utilise le numéro d'entreprise comme identificateur du programme, de l'activité ou du service.

**Public disclosure**

**(8)** The Minister may, in connection with a program, activity or service provided or undertaken by the Minister, make available to the public

**(a)** the business number of, and the name of (including any trade name or other name used by), the holder of a business number; and

**(b)** a copy of, or information contained on, a tax certificate issued under section 37 or a notice of revocation in respect of such a certificate.

**Communication au public**

**(8)** Le ministre peut mettre à la disposition du public, relativement à un programme, à une activité ou à un service qu'il offre ou entreprend :

**a)** le numéro d'entreprise et le nom d'un détenteur de numéro d'entreprise (y compris tout nom commercial ou autre nom qu'il utilise);

**b)** une copie d'un certificat fiscal délivré en application de l'article 37 ou d'un avis de révocation relatif à un tel certificat ou les renseignements inclus dans un tel certificat ou avis.

**Public disclosure by representative of government entity**

**(9)** A representative of a government entity may, in connection with a program, activity or service provided or undertaken by the government entity, make available to the public the business number of, and the name of

**Communication au public par le représentant d'une entité gouvernementale**

**(9)** Le représentant d'une entité gouvernementale peut mettre à la disposition du public, relativement à un programme, à une activité ou à un service offert ou entrepris par l'entité, le numéro d'entreprise et le nom d'un

(including any trade name or other name used by), the holder of a business number, if

**(a)** a representative of the government entity was provided with that information in accordance with subsection (6); and

**(b)** the government entity uses the business number as an identifier in connection with the program, activity or service.

détenteur de numéro d'entreprise (y compris tout nom commercial ou autre nom qu'il utilise) si, à la fois :

**a)** ces renseignements ont été fournis à un représentant de l'entité en conformité avec le paragraphe (6);

**b)** l'entité utilise le numéro d'entreprise comme identificateur du programme, de l'activité ou du service.

**Serious offences**

**(10)** An official may provide information to a law enforcement officer of an appropriate police organization in the circumstances described in subsection 211(6.4) of the *Excise Act, 2001*.

**Infractions graves**

**(10)** Un fonctionnaire peut fournir des renseignements à un agent d'exécution de la loi d'une organisation de police compétente dans les circonstances prévues au paragraphe 211(6.4) de la *Loi de 2001 sur l'accise*.

**Threats to security**

**(11)** An official may provide information to the head, or their delegate, of a recipient Government of Canada institution listed in Schedule 3 to the *Security of Canada Information Sharing Act* in the circumstances described in subsection 211(6.5) of the *Excise Act, 2001*.

**Menaces à la sécurité**

**(11)** Un fonctionnaire peut fournir des renseignements au responsable d'une institution fédérale destinataire figurant à l'annexe 3 de la *Loi sur la communication d'information ayant trait à la sécurité du Canada*, ou à son délégué, dans les circonstances prévues au paragraphe 211(6.5) de la *Loi de 2001 sur l'accise*.

**Measures to prevent unauthorized use or disclosure**

**(12)** The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order any measures that are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including

**(a)** holding a hearing *in camera*;

**(b)** banning the publication of the information;

**(c)** concealing the identity of the person to whom the information relates; and

**(d)** sealing the records of the proceeding.

**Prévention de l'utilisation ou la divulgation non autorisée d'un renseignement**

**(12)** La personne qui préside une procédure judiciaire concernant la surveillance ou l'évaluation d'une personne autorisée ou des mesures disciplinaires prises à son endroit peut ordonner la mise en œuvre des mesures nécessaires pour éviter qu'un renseignement confidentiel soit utilisé ou fourni à une fin étrangère à la procédure, y compris :

**a)** la tenue d'une audience à huis clos;

**b)** la non-publication du renseignement;

**c)** la non-divulgation de l'identité de la personne en cause;

**d)** la mise sous scellés du procès-verbal des délibérations.

**Disclosure to person or on consent**

**(13)** An official or other representative of a government entity may provide confidential information relating to a person

**(a)** to that person; and

**(b)** with the consent of that person, to any other person.

**Divulgation d'un renseignement confidentiel**

**(13)** Un fonctionnaire ou autre représentant d'une entité gouvernementale peut fournir un renseignement confidentiel :

**a)** à la personne en cause;

**b)** à toute autre personne, avec le consentement de la personne en cause.

**Confirmation of registration and business number**

**(14)** On being provided by any person with information specified by the Minister sufficient to identify a single person and a number, an official may confirm or deny that the following statements are both true:

**(a)** the identified person is registered under Division 5 of Part 1; and

**(b)** the number is the business number of the identified person.

**Appeal from order or direction**

**(15)** An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official or other representative of a government entity to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

**(a)** the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

**(b)** the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

**Disposition of appeal**

**(16)** The court to which an appeal is taken under subsection (15) may allow the appeal and quash the order or direction appealed from or may dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts must apply, with any modifications that the circumstances require, in respect of an appeal instituted under subsection (15).

**Stay**

**(17)** An appeal instituted under subsection (15) must stay the operation of the order or direction appealed from until judgment is pronounced.

**Confirmation de l'inscription et du numéro d'entreprise**

**(14)** Le fonctionnaire à qui sont fournis à la fois des renseignements précisés par le ministre qui permettent d'identifier une personne en particulier et un numéro peut confirmer ou nier que les énoncés ci-après sont tous les deux exacts :

**a)** la personne est inscrite en application de la section 5 de la partie 1;

**b)** le numéro en question est le numéro d'entreprise de la personne.

**Appel d'une ordonnance ou d'une directive**

**(15)** Le ministre ou la personne contre laquelle une ordonnance est rendue, ou à l'égard de laquelle une directive est donnée, dans le cadre ou à l'occasion d'une procédure judiciaire enjoignant à un fonctionnaire ou autre représentant d'une entité gouvernementale de témoigner, ou de produire quoi que ce soit, relativement à un renseignement confidentiel peut sans délai, par avis signifié aux parties intéressées, interjeter appel de l'ordonnance ou de la directive devant :

**a)** la cour d'appel de la province dans laquelle l'ordonnance est rendue ou la directive donnée, s'il s'agit d'une ordonnance ou d'une directive émanant d'un tribunal établi en application des lois de la province, que ce tribunal exerce ou non une compétence conférée par les lois fédérales;

**b)** la Cour d'appel fédérale, s'il s'agit d'une ordonnance ou d'une directive émanant d'une cour ou d'un autre tribunal établi en application des lois fédérales.

**Décision d'appel**

**(16)** La cour saisie d'un appel peut accueillir l'appel et annuler l'ordonnance ou la directive en cause ou rejeter l'appel. Les règles de pratique et de procédure régissant les appels à la cour s'appliquent, compte tenu des modifications nécessaires, aux appels interjetés en vertu du paragraphe (15).

**Sursis**

**(17)** L'application de l'ordonnance ou de la directive objet d'un appel interjeté en vertu du paragraphe (15) est différée jusqu'au prononcé du jugement.

## SUBDIVISION E

## Assessments

### Assessment

**92 (1)** The Minister may assess a person for any amount of tax or other amount payable by the person under this Act and may, despite any previous assessment covering, in whole or in part, the same matter, vary the assessment, reassess the person or make any additional assessments that the circumstances require.

### Liability not affected

**(2)** The liability of a person to pay an amount under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

### Minister not bound

**(3)** The Minister is not bound by any return, application or information provided by or on behalf of any person and may make an assessment despite any return, application or information provided or not provided.

### Assessment valid and binding

**(4)** An assessment, subject to being vacated on an objection or appeal under this Act and subject to a reassessment, is deemed to be valid and binding.

### Assessment deemed valid

**(5)** Subject to being reassessed or vacated as a result of an objection or appeal under this Act, an assessment is deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding under this Act relating to it.

### Rebate on reassessment

**(6)** If a person has paid an amount assessed under this section and the amount paid exceeds the amount determined on reassessment to have been payable by the person, the Minister must pay a rebate to the person equal to the excess and, for the purpose of section 83, the rebate is deemed to have been required to be paid on the day on which the amount was paid to the Minister together with interest on the excess at the specified rate for the period beginning on the day the amount was paid by the person and ending on the day the rebate is paid.

## SOUS-SECTION E

## Cotisations

### Cotisation

**92 (1)** Le ministre peut établir une cotisation pour déterminer la taxe ou les autres sommes payables par une personne en application de la présente loi et peut, malgré toute cotisation antérieure portant, en tout ou en partie, sur la même question, modifier la cotisation, en établir une nouvelle ou établir des cotisations supplémentaires, selon les circonstances.

### Obligation inchangée

**(2)** L'inexactitude, l'insuffisance ou l'absence d'une cotisation ne change rien aux sommes dont une personne est redevable en application de la présente loi.

### Ministre non lié

**(3)** Le ministre n'est pas lié par quelque déclaration, demande ou renseignement produit par une personne ou en son nom; il peut établir une cotisation indépendamment du fait que quelque déclaration, demande ou renseignement ait été produit.

### Cotisation valide et exécutoire

**(4)** Sous réserve d'une nouvelle cotisation et d'une annulation prononcée par suite d'une opposition ou d'un appel fait selon la présente loi, une cotisation est réputée valide et exécutoire.

### Présomption de validité

**(5)** Sous réserve d'une nouvelle cotisation et d'une annulation prononcée lors d'une opposition ou d'un appel fait selon la présente loi, une cotisation est réputée valide et exécutoire malgré les erreurs, vices de forme ou omissions dans la cotisation ou dans une procédure y afférente mise en œuvre en vertu de la présente loi.

### Remboursement sur nouvelle cotisation

**(6)** Si une personne a payé un montant déterminé en vertu du présent article et que ce montant excède celui qu'elle a à payer par suite de l'établissement d'une nouvelle cotisation, le ministre lui rembourse l'excédent. Pour l'application de l'article 83, le remboursement est réputé avoir été à payer le jour où le montant a été payé au ministre, accompagné des intérêts sur la différence au taux réglementaire pour la période qui commence ce jour-là et se termine le jour où le remboursement est payé.

**Determination of rebates**

**(7)** In making an assessment, the Minister may take into account any rebate payable to the person being assessed under this Act. If the Minister does so, the person is deemed to have applied for the rebate under this Act on the day the notice of assessment is sent.

**Interest on cancelled amounts**

**(8)** Despite subsection (6), if a person has paid an amount of interest or penalty and the Minister waives or cancels that amount under section 85 or 120, the Minister must rebate the amount to the person, together with interest on the amount at the specified rate for the period beginning on the day that is 30 days after the day on which the Minister received a request in a manner satisfactory to the Minister to apply that section and ending on the day on which the rebate is paid.

**Assessment of rebate**

**93 (1)** On receipt of an application made by a person for a rebate under this Act, the Minister must, without delay, consider the application and assess the amount of the rebate, if any, payable to the person.

**Reassessment**

**(2)** The Minister may reassess or make an additional assessment of the amount of a rebate despite any previous assessment of the amount of the rebate.

**Assessment of overpayment of rebate**

**(3)** The Minister may assess, reassess or make an additional assessment of an amount payable by a person under section 58 despite any previous assessment of the amount.

**Payment**

**(4)** If, on assessment under this section, the Minister determines that a rebate is payable to a person, the Minister must pay the rebate to the person.

**Interest**

**(5)** If a rebate under this section is paid to a person, the Minister must pay interest at the specified rate to the person on the rebate for the period beginning on the day that is 30 days after the day on which the application for the rebate is filed with the Minister and ending on the day on which the rebate is paid.

**Détermination des remboursements**

**(7)** Lorsqu'il établit une cotisation, le ministre peut tenir compte de tout remboursement à payer à la personne visée par la cotisation. Le cas échéant, la personne est réputée avoir demandé le remboursement en application de la présente loi à la date d'envoi de l'avis de cotisation.

**Intérêts sur montants annulés**

**(8)** Malgré le paragraphe (6), si une personne a payé un montant — intérêts ou pénalité — que le ministre a annulé, ou auquel le ministre a renoncé, en vertu des articles 85 ou 120, le ministre rembourse le montant à la personne, ainsi que les intérêts afférents calculés au taux réglementaire pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de cet article et se terminant le jour où le remboursement est payé.

**Détermination du remboursement**

**93 (1)** Sur réception de la demande d'une personne visant un remboursement prévu par la présente loi, le ministre doit, sans délai, l'examiner et établir une cotisation visant le montant du remboursement.

**Nouvelle cotisation**

**(2)** Le ministre peut établir une nouvelle cotisation ou une cotisation supplémentaire au titre d'un remboursement même si une cotisation a déjà été établie à ce titre.

**Détermination d'un montant remboursé en trop**

**(3)** Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire pour déterminer un montant payable par une personne en vertu de l'article 58 même si une cotisation a déjà été établie à l'égard du montant.

**Paiement**

**(4)** Le ministre paie le montant du remboursement à une personne s'il détermine, lors de l'établissement d'une cotisation en application du présent article, que le montant est à payer à cette personne.

**Intérêts**

**(5)** Le ministre paie à la personne à qui un montant est remboursé en vertu du présent article des intérêts au taux déterminé calculés sur le montant pour la période commençant le trentième jour suivant la production de la demande de remboursement et se terminant le jour où le remboursement est payé.

**Restriction on payment by Minister**

**94** An amount under section 92 or 93 is not to be paid to a person by the Minister at any time, unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and Part 1 of the *Greenhouse Gas Pollution Pricing Act* have been filed with the Minister.

**Restriction visant les paiements par le ministre**

**94** Un montant en application de l'article 92 ou 93 n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ont été présentées au ministre.

**Notice of assessment**

**95 (1)** After making an assessment under this Act, the Minister must send to the person assessed a notice of the assessment.

**Avis de cotisation**

**95 (1)** Une fois une cotisation établie à l'égard d'une personne en application de la présente loi, le ministre lui envoie un avis de cotisation.

**Payment of remainder**

**(2)** If the Minister has assessed a person for an amount, any portion of that amount then remaining unpaid is payable to the Receiver General as of the date of the notice of assessment.

**Paiement du solde**

**(2)** Si le ministre a établi une cotisation à l'égard d'une personne, la partie impayée de la cotisation doit être payée au receveur général à la date de l'avis de cotisation.

**Limitation period for assessments**

**96 (1)** Subject to subsections (3) to (7) and (10), no assessment in respect of an amount of tax or other amount payable by a person under this Act must be made more than four years after it became payable by the person under this Act.

**Prescription des cotisations**

**96 (1)** Sous réserve des paragraphes (3) à (7) et (10), l'établissement d'une cotisation à l'égard de la taxe ou de toute autre somme payable par une personne en application de la présente loi se prescrit par quatre ans à compter de la date à laquelle elles sont devenues ainsi payables.

**Period for assessment of rebate**

**(2)** Subject to subsections (3) to (7) and (10), an assessment under subsection 93(1) of the amount of a rebate may be made at any time, but a reassessment or additional assessment under section 93 or an assessment under subsection 93(3) in respect of an amount paid or applied as a rebate or of an amount paid or applied as interest in respect of an amount paid or applied as a rebate is not to be made more than four years after the day the application for the rebate was filed in accordance with this Act.

**Période de cotisation — demande de remboursement**

**(2)** Sous réserve des paragraphes (3) à (7) et (10), une cotisation concernant le montant d'un remboursement peut être établie en vertu du paragraphe 93(1) à tout moment; cependant, une nouvelle cotisation ou une cotisation supplémentaire établie en vertu de l'article 93 ou une cotisation établie en vertu du paragraphe 93(3) concernant un montant payé ou déduit au titre d'un remboursement ou un montant payé ou déduit au titre des intérêts applicables à un montant payé ou déduit à titre d'un remboursement ne peut être établie après l'expiration d'un délai de quatre ans suivant la production de la demande de remboursement conformément à la présente loi.

**Exception — objection or appeal**

**(3)** A variation of an assessment, or a reassessment, in respect of an amount of tax or other amount payable under this Act by a person may be made at any time if the variation or reassessment is made

**(a)** to give effect to a decision on an objection or appeal;

**Exception — opposition ou appel**

**(3)** Une cotisation concernant la taxe ou toute autre somme payable par une personne en application de la présente loi peut être modifiée, ou une nouvelle cotisation concernant une telle taxe ou somme peut être établie, à un moment donné :

**a)** en vue d'exécuter la décision rendue par suite d'une opposition ou d'un appel;

**(b)** with the written consent of an appellant to dispose of an appeal; or

**(c)** to give effect to an alternative basis or argument advanced by the Minister under subsection (7).

**b)** avec le consentement écrit de la personne visée, en vue de régler un appel;

**c)** pour tenir compte d'un nouveau fondement ou d'un nouvel argument avancé par le ministre en vertu du paragraphe (7).

**Exception — neglect or fraud**

**(4)** An assessment in respect of any matter may be made at any time if the person to be assessed has, in respect of that matter,

**(a)** made a misrepresentation that is attributable to their neglect, carelessness or wilful default; or

**(b)** committed fraud with respect to a return or an application for a rebate filed under this Act.

**Exception — négligence ou fraude**

**(4)** Une cotisation peut être établie à tout moment si la personne devant faire l'objet de la cotisation, a relativement à l'objet de la cotisation :

**a)** fait une fausse déclaration attribuable à sa négligence, son inattention ou son omission volontaire;

**b)** commis une fraude relativement à une déclaration ou à une demande de remboursement produite en application de la présente loi.

**Exception — other period**

**(5)** If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount as or on account of tax, or net tax, payable for a particular reporting period of the person that was in fact payable for another reporting period of the person, the Minister may at any time make an assessment for that other period in respect of that matter.

**Exception — erreur sur la période de déclaration**

**(5)** Si le ministre constate, lors de l'établissement d'une cotisation, qu'une personne a payé, au titre de la taxe à payer ou de la taxe nette à payer pour une période de déclaration, un montant qui était à payer pour une autre période de déclaration, il peut établir une cotisation pour l'autre période.

**Exception — adjustment to rebate**

**(6)** If the result of a reassessment on an objection to, or a decision on an appeal from, an assessment is to reduce the amount of tax, or net tax, payable by a person and, by reason of the reduction, any rebate claimed by the person for a reporting period, or in an application for a rebate, should be reduced, the Minister may at any time assess or reassess that reporting period or that application for rebate, as the case may be, only for the purpose of taking the reduction of tax into account in respect of the rebate.

**Exception — ajustement à un remboursement**

**(6)** Dans le cas où une nouvelle cotisation établie par suite d'une opposition à une cotisation ou d'une décision d'appel concernant une cotisation réduit la taxe ou la taxe nette payable par une personne et, de façon incidente, réduit un remboursement demandé par la personne pour une période de déclaration ou dans une demande de remboursement, le ministre peut, en tout temps, établir une cotisation ou une nouvelle cotisation pour cette période ou cette demande, mais seulement pour tenir compte de l'incidence de la réduction de la taxe sur le remboursement.

**Alternative basis or argument**

**(7)** The Minister may advance an alternative basis or argument in support of an assessment of a person, or in support of all or any portion of the total amount determined on assessment to be payable by a person under this Act, at any time after the period otherwise limited by subsection (1) or (2) for making the assessment unless, on an appeal under this Act,

**(a)** there is relevant evidence that the person is no longer able to adduce without leave of the court; and

**(b)** it is not appropriate in the circumstances for the court to order that the evidence be adduced.

**Nouveau fondement ou nouvel argument**

**(7)** Le ministre peut avancer un nouveau fondement ou un nouvel argument à l'appui d'une cotisation établie à l'égard d'une personne, ou à l'appui de tout ou partie du montant total déterminé lors de l'établissement d'une cotisation comme étant payable par une personne en application de la présente loi, après l'expiration des délais prévus aux paragraphes (1) ou (2) pour l'établissement de la cotisation, sauf si, sur appel interjeté en application de la présente loi :

**a)** d'une part, il existe des éléments de preuve que la personne n'est plus en mesure de produire sans l'autorisation du tribunal;

**Limitation**

**(8)** If a reassessment of a person is made that gives effect to an alternative basis or argument advanced by the Minister under subsection (7) in support of a particular assessment of the person, the Minister is not to reassess for an amount that is greater than the total amount of the particular assessment.

**Exception**

**(9)** Subsection (8) does not apply to any portion of an amount determined on reassessment that the Minister would be entitled to reassess under this Act at any time after the period otherwise limited by subsection (1) or (2) for making the reassessment if this Act were read without reference to subsection (7).

**Exception — waiver**

**(10)** An assessment in respect of any matter specified in a waiver filed under subsection (11) may be made at any time within the period specified in the waiver unless the waiver has been revoked under subsection (12), in which case an assessment may be made at any time during the 180 days that the waiver remains in effect.

**Filing of waiver**

**(11)** Any person may, within the time otherwise limited by subsection (1) or (2) for an assessment, waive the application of subsection (1) or (2) by filing with the Minister a waiver in the prescribed form specifying the period for which, and the matter in respect of which, the person waives the application of that subsection.

**Revocation of waiver**

**(12)** Any person that has filed a waiver may revoke it by filing with the Minister a notice of revocation of the waiver in the prescribed form and manner. The waiver remains in effect for 180 days after the day on which the notice is filed.

**b)** d'autre part, il ne convient pas que le tribunal ordonne la production des éléments de preuve dans les circonstances.

**Restriction**

**(8)** Si une nouvelle cotisation est établie à l'égard d'une personne pour tenir compte d'un nouveau fondement ou d'un nouvel argument avancé par le ministre en vertu du paragraphe (7) à l'appui d'une cotisation donnée établie à l'égard de la personne, le ministre ne peut établir la nouvelle cotisation pour un montant supérieur au montant total de la cotisation donnée.

**Exception**

**(9)** Le paragraphe (8) ne s'applique à aucune partie d'un montant déterminé lors de l'établissement d'une nouvelle cotisation à l'égard duquel le ministre pourrait établir une nouvelle cotisation en application de la présente loi après l'expiration des délais prévus aux paragraphes (1) ou (2) pour l'établissement de la nouvelle cotisation s'il n'était pas tenu compte du paragraphe (7).

**Exception — renonciation**

**(10)** Une cotisation portant sur une question précisée dans une renonciation présentée en vertu du paragraphe (11) peut être établie dans le délai indiqué dans la renonciation ou, en cas de révocation de la renonciation en vertu du paragraphe (12), dans les cent-quatre-vingts jours pendant lesquels la renonciation demeure en vigueur.

**Présentation de la renonciation**

**(11)** Toute personne peut, dans le délai prévu par ailleurs aux paragraphes (1) ou (2) pour l'établissement d'une cotisation à son égard, renoncer à l'application de ces paragraphes en présentant au ministre une renonciation en la forme déterminée par celui-ci qui précise l'objet de la renonciation ainsi que sa période d'application.

**Révocation de la renonciation**

**(12)** La renonciation est révocable à cent-quatre-vingts jours de la date d'avis au ministre en la forme et selon les modalités qu'il détermine.

## SUBDIVISION F

## Objections to Assessment

**Objection to assessment**

**97 (1)** Any person that has been assessed and that objects to the assessment may, within 90 days after the date of the notice of the assessment, file with the Minister a

## SOUS-SECTION F

## Opposition aux cotisations

**Opposition à la cotisation**

**97 (1)** La personne qui fait opposition à la cotisation établie à son égard peut, dans les quatre-vingt-dix jours suivant la date de l'avis de cotisation, présenter au

notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

**Issue to be decided**

**(2)** A notice of objection must

**(a)** reasonably describe each issue to be decided;

**(b)** specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

**(c)** provide the facts and reasons relied on by the person in respect of each issue.

**Late compliance**

**(3)** Despite subsection (2), if a notice of objection does not include the information required under paragraph (2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may, in writing, request the person to provide the information, and that paragraph is deemed to be complied with in respect of the issue if, within 60 days after the day on which the request is made, the person submits the information in writing to the Minister.

**Limitation on objections**

**(4)** Despite subsection (1), if a person has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) as a result of the notice of objection, unless the earlier assessment was made in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment, the person may object to the particular assessment in respect of an issue

**(a)** only if the person complied with subsection (2) in the notice with respect to that issue; and

**(b)** only with respect to the relief sought in respect of that issue as specified by the person in the notice.

**Application — subsection (4)**

**(5)** Subsection (4) does not limit the right of the person to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

ministre un avis d'opposition, en la forme et selon les modalités qu'il détermine, exposant les motifs de son opposition et tous les faits pertinents.

**Question à trancher**

**(2)** L'avis d'opposition que produit une personne doit contenir les éléments suivants pour chaque question à trancher :

**a)** une description suffisante;

**b)** le redressement demandé, sous la forme de la somme qui représente le changement apporté à une somme à prendre en compte aux fins de cotisation;

**c)** les motifs et les faits sur lesquels se fonde la personne.

**Observation tardive**

**(3)** Malgré le paragraphe (2), dans le cas où un avis d'opposition produit par une personne ne contient pas les renseignements prévus aux alinéas (2)b) ou c) relativement à une question à trancher qui est décrite dans l'avis, le ministre peut demander par écrit à la personne de fournir ces renseignements. La personne est réputée s'être conformée à l'alinéa applicable relativement à la question à trancher si, dans les soixante jours suivant la date de la demande par le ministre, elle communique au ministre par écrit les renseignements requis.

**Restrictions touchant les oppositions**

**(4)** Malgré le paragraphe (1), si une personne a produit un avis d'opposition à une cotisation (appelée « cotisation antérieure » au présent paragraphe) et que le ministre établit, en application du paragraphe (8), une cotisation donnée par suite de l'avis, sauf si la cotisation antérieure a été établie en conformité avec l'ordonnance d'un tribunal qui annule, modifie ou rétablit une cotisation ou renvoie une cotisation au ministre pour nouvel examen et nouvelle cotisation, la personne peut faire opposition à la cotisation donnée relativement à une question à trancher :

**a)** seulement si, relativement à cette question, elle s'est conformée au paragraphe (2) dans l'avis;

**b)** seulement à l'égard du redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question.

**Application du paragraphe (4)**

**(5)** Le paragraphe (4) n'a pas pour effet de limiter le droit de la personne de s'opposer à la cotisation donnée relativement à une question sur laquelle porte cette cotisation mais non la cotisation antérieure.

**Limitation on objections**

**(6)** Despite subsection (1), no objection may be made by a person in respect of an issue for which the right of objection has been waived in writing by the person.

**Acceptance of objection**

**(7)** The Minister may accept a notice of objection even though it was not filed in the prescribed form and manner.

**Consideration of objection**

**(8)** On receipt of a notice of objection, the Minister must, without delay, reconsider the assessment and vacate or confirm it or make a reassessment.

**Waiving reconsideration**

**(9)** If, in a notice of objection, a person that wishes to appeal directly to the Tax Court of Canada requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

**Notice of decision**

**(10)** After reconsidering an assessment under subsection (8) or confirming an assessment under subsection (9), the Minister must notify the person objecting to the assessment of the Minister's decision in writing.

**Extension of time by Minister**

**98 (1)** If no objection to an assessment is filed under section 97 within the time limited under this Act, a person may make an application to the Minister to extend the time for filing a notice of objection and the Minister may grant the application.

**Contents of application**

**(2)** An application must set out the reasons why the notice of objection was not filed within the time limited under this Act for doing so.

**How application made**

**(3)** An application must be made by delivering or mailing, to the Assistant Commissioner of the Appeals Branch of the Canada Revenue Agency, the application accompanied by a copy of the notice of objection.

**Defect in application**

**(4)** The Minister may accept an application even though it was not made in accordance with subsection (3).

**Restriction**

**(6)** Malgré le paragraphe (1), aucune opposition ne peut être faite par une personne relativement à une question pour laquelle elle a renoncé par écrit à son droit d'opposition.

**Acceptation de l'opposition**

**(7)** Le ministre peut accepter l'avis d'opposition qui n'a pas été produit en la forme et selon les modalités qu'il détermine.

**Examen de l'opposition**

**(8)** Sur réception d'un avis d'opposition, le ministre doit, sans délai, examiner la cotisation de nouveau et l'annuler ou la confirmer ou établir une nouvelle cotisation.

**Renonciation au nouvel examen**

**(9)** Le ministre peut confirmer une cotisation sans l'examiner de nouveau sur demande de la personne qui lui fait part, dans son avis d'opposition, de son intention d'en appeler directement à la Cour canadienne de l'impôt.

**Avis de décision**

**(10)** Après avoir examiné de nouveau une cotisation en vertu du paragraphe (8) ou confirmé une cotisation en vertu du paragraphe (9), le ministre fait part de sa décision par écrit à la personne qui a fait opposition à la cotisation.

**Prorogation du délai par le ministre**

**98 (1)** Le ministre peut proroger le délai pour produire un avis d'opposition dans le cas où la personne qui n'a pas fait opposition à une cotisation en vertu de l'article 97 dans le délai imparti en application de la présente loi lui présente une demande à cet effet.

**Contenu de la demande**

**(2)** La demande doit indiquer les raisons pour lesquelles l'avis d'opposition n'a pas été produit dans le délai imparti en application de la présente loi.

**Modalités**

**(3)** La demande, accompagnée d'un exemplaire de l'avis d'opposition, est livrée ou envoyée au sous-commissaire de la Direction générale des appels de l'Agence du revenu du Canada.

**Demande non conforme**

**(4)** Le ministre peut recevoir la demande qui n'a pas été faite en conformité avec le paragraphe (3).

**Duties of Minister**

**(5)** On receipt of an application, the Minister must, without delay, consider the application and grant or refuse it, and must notify the person of the decision in writing.

**Date of objection if application granted**

**(6)** If an application is granted, the notice of objection is deemed to have been filed on the day of the decision of the Minister.

**Conditions — grant of application**

**(7)** An application is not to be granted under this section unless

**(a)** the application is made within one year after the expiry of the time limited under this Act for objecting; and

**(b)** the person demonstrates that

**(i)** within the time limited under this Act for objecting, the person

**(A)** was unable to act or to give a mandate to act in their name, or

**(B)** had a *bona fide* intention to object to the assessment,

**(ii)** given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

**(iii)** the application was made as soon as circumstances permitted it to be made.

**Obligations du ministre**

**(5)** Sur réception de la demande, le ministre doit, sans délai, l'examiner et y faire droit ou la rejeter. Dès lors, il avise la personne de sa décision par écrit.

**Date de production de l'avis d'opposition**

**(6)** S'il est fait droit à la demande, l'avis d'opposition est réputé produit à la date de la décision du ministre.

**Conditions d'acceptation de la demande**

**(7)** Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

**a)** la demande est présentée dans l'année suivant l'expiration du délai imparti en application de la présente loi pour faire opposition;

**b)** la personne démontre ce qui suit :

**(i)** dans le délai d'opposition imparti en application de la présente loi, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention de faire opposition à la cotisation,

**(ii)** compte tenu des raisons indiquées dans la demande et des circonstances en l'espèce, il est juste et équitable de faire droit à la demande,

**(iii)** la demande a été présentée dès que les circonstances l'ont permis.

## SUBDIVISION G

## Appeal

**Extension of time by Tax Court of Canada**

**99 (1)** A person that has made an application under section 98 may apply to the Tax Court of Canada to have the application granted after either

**(a)** the Minister has refused the application, or

**(b)** 90 days have elapsed after the day on which the application was made and the Minister has not notified the person of the Minister's decision.

## SOUS-SECTION G

## Appel

**Prorogation du délai par la Cour canadienne de l'impôt**

**99 (1)** La personne qui a présenté une demande en vertu de l'article 98 peut demander à la Cour canadienne de l'impôt d'y faire droit après :

**a)** le rejet de la demande par le ministre;

**b)** l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le ministre n'a pas avisé la personne de sa décision dans ce délai.

**When application may not be made**

**(2)** No application may be made after the expiry of 30 days after the day on which the decision referred to in subsection 98(5) is sent to the person.

**How application made**

**(3)** An application must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, three copies of the documents delivered or mailed under subsection 98(3).

**Copy to Commissioner**

**(4)** The Tax Court of Canada must send a copy of the application to the Commissioner.

**Powers of Tax Court of Canada**

**(5)** The Tax Court of Canada may dispose of an application by dismissing or granting it and, in granting it, the Court may impose any terms that it considers just or order that the notice of objection be deemed to be a valid objection as of the date of the order.

**When application to be granted**

**(6)** An application must not be granted under this section unless

**(a)** the application under subsection 98(1) was made within one year after the expiry of the time limited under this Act for objecting; and

**(b)** the person demonstrates that

**(i)** within the time limited under this Act for objecting, the person

**(A)** was unable to act or to give a mandate to act in their name, or

**(B)** had a *bona fide* intention to object to the assessment,

**(ii)** given the reasons set out in the application under this section and the circumstances of the case, it would be just and equitable to grant the application, and

**(iii)** the application under subsection 98(1) was made as soon as circumstances permitted it to be made.

**Appeal to Tax Court of Canada**

**100 (1)** Subject to subsection (2), a person that has filed a notice of objection to an assessment may appeal to the

**Irrecevabilité**

**(2)** La demande est toutefois irrecevable une fois expiré un délai de trente jours suivant l'envoi à la personne de la décision visée au paragraphe 98(5).

**Modalités**

**(3)** La demande se fait par dépôt auprès du greffe de la Cour canadienne de l'impôt, conformément à la *Loi sur la Cour canadienne de l'impôt*, de trois exemplaires des documents livrés ou envoyés en vertu du paragraphe 98(3).

**Copie au commissaire**

**(4)** La Cour canadienne de l'impôt envoie copie de la demande au commissaire.

**Pouvoirs de la Cour canadienne de l'impôt**

**(5)** La Cour canadienne de l'impôt peut rejeter la demande ou y faire droit. Dans ce dernier cas, elle peut imposer les conditions qu'elle estime justes ou ordonner que l'avis d'opposition soit réputé valide à compter de la date de l'ordonnance.

**Conditions d'acceptation de la demande**

**(6)** Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

**a)** la demande prévue au paragraphe 98(1) a été présentée dans l'année suivant l'expiration du délai imparti en application de la présente loi pour faire opposition;

**b)** la personne démontre ce qui suit :

**(i)** dans le délai d'opposition imparti en application de la présente loi, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention de faire opposition à la cotisation,

**(ii)** compte tenu des raisons indiquées dans la demande prévue au présent article et des circonstances en l'espèce, il est juste et équitable de faire droit à la demande,

**(iii)** la demande prévue au paragraphe 98(1) a été présentée dès que les circonstances l'ont permis.

**Appel**

**100 (1)** Sous réserve du paragraphe (2), la personne qui a produit un avis d'opposition à une cotisation peut interjeter appel à la Cour canadienne de l'impôt pour faire

Tax Court of Canada to have the assessment vacated or a reassessment made after

**(a)** the Minister has confirmed the assessment or has reassessed; or

**(b)** 180 days have elapsed after the day on which the notice of objection was filed and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed.

annuler la cotisation ou en faire établir une nouvelle dans les cas suivants :

**a)** la cotisation est confirmée par le ministre ou une nouvelle cotisation est établie;

**b)** un délai de cent-quatre-vingts jours suivant la production de l'avis a expiré sans que le ministre ait notifié la personne du fait qu'il a annulé ou confirmé la cotisation ou procédé à une nouvelle cotisation.

**No appeal**

**(2)** No appeal under subsection (1) may be instituted after the expiry of 90 days after the day on which notice that the Minister has reassessed or confirmed the assessment is sent to the person under subsection 97(10).

**Aucun appel**

**(2)** Nul appel ne peut être interjeté après l'expiration d'un délai de quatre-vingt-dix jours suivant l'envoi à la personne, en vertu du paragraphe 97(10), d'un avis portant que le ministre a confirmé la cotisation ou procédé à une nouvelle cotisation.

**Amendment of appeal**

**(3)** The Tax Court of Canada may, on any terms that it sees fit, authorize a person that has instituted an appeal in respect of a matter to amend the appeal to include any further assessment in respect of the matter that the person is entitled under this section to appeal.

**Modification de l'appel**

**(3)** La Cour canadienne de l'impôt peut, de la manière qu'elle estime indiquée, autoriser une personne ayant interjeté appel sur une question à modifier l'appel de façon à ce qu'il porte sur toute cotisation ultérieure concernant la question qui peut faire l'objet d'un appel en application du présent article.

**Extension of time to appeal**

**101 (1)** If no appeal to the Tax Court of Canada under section 100 has been instituted within the time limited by that section for doing so, a person may make an application to the Tax Court of Canada for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose any terms that it considers just.

**Prorogation du délai d'appel**

**101 (1)** La personne qui n'a pas interjeté appel en vertu de l'article 100 dans le délai imparti peut présenter à la Cour canadienne de l'impôt une demande de prorogation du délai pour interjeter appel. La Cour peut faire droit à la demande et imposer les conditions qu'elle estime justes.

**Contents of application**

**(2)** An application must set out the reasons why the appeal was not instituted within the time limited under section 100 for doing so.

**Contenu de la demande**

**(2)** La demande doit indiquer les raisons pour lesquelles l'appel n'a pas été interjeté dans le délai imparti en vertu de l'article 100.

**How application made**

**(3)** An application must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, three copies of the application together with three copies of the notice of appeal.

**Modalités**

**(3)** La demande, accompagnée de trois exemplaires de l'avis d'appel, doit être déposée en trois exemplaires auprès du greffe de la Cour canadienne de l'impôt conformément à la *Loi sur la Cour canadienne de l'impôt*.

**Copy to Deputy Attorney General of Canada**

**(4)** The Tax Court of Canada must send a copy of the application to the office of the Deputy Attorney General of Canada.

**Copie au sous-procureur général du Canada**

**(4)** La Cour canadienne de l'impôt envoie copie de la demande au bureau du sous-procureur général du Canada.

**When order to be made**

**(5)** An order must not be made under this section unless

**Conditions d'acceptation de la demande**

**(5)** Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

**(a)** the application is made within one year after the expiry of the time limited under section 100 for appealing; and

**(b)** the person demonstrates that

**(i)** within the time limited under section 100 for appealing, the person

**(A)** was unable to act or to give a mandate to act in their name, or

**(B)** had a *bona fide* intention to appeal,

**(ii)** given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

**(iii)** the application was made as soon as circumstances permitted it to be made, and

**(iv)** there are reasonable grounds for the appeal.

**a)** la demande a été présentée dans l'année suivant l'expiration du délai d'appel imparti en vertu de l'article 100;

**b)** la personne démontre ce qui suit :

**(i)** dans le délai d'appel imparti en vertu de l'article 100, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention d'interjeter appel,

**(ii)** compte tenu des raisons indiquées dans la demande et des circonstances en l'espèce, il est juste et équitable de faire droit à la demande,

**(iii)** la demande a été présentée dès que les circonstances l'ont permis,

**(iv)** l'appel est raisonnablement fondé.

### Limitation on appeals to Tax Court of Canada

**102 (1)** Despite section 100, if a person has filed a notice of objection to an assessment, the person may appeal to the Tax Court of Canada to have the assessment vacated, or a reassessment made, only with respect to

**(a)** an issue in respect of which the person has complied with subsection 97(2) in the notice and the relief sought in respect of the issue as specified by the person in the notice; or

**(b)** an issue described in subsection 97(5) if the person was not required to file a notice of objection to the assessment that gave rise to the issue.

### Restriction touchant les appels

**102 (1)** Malgré l'article 100, la personne qui a produit un avis d'opposition à une cotisation ne peut interjeter appel devant la Cour canadienne de l'impôt pour faire annuler la cotisation, ou en faire établir une nouvelle, qu'à l'égard des questions suivantes :

**a)** une question relativement à laquelle elle s'est conformée au paragraphe 97(2) dans l'avis et le redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question;

**b)** une question visée au paragraphe 97(5), si elle n'était pas tenue de produire un avis d'opposition à la cotisation qui a donné lieu à la question.

### No appeal if waiver

**(2)** Despite section 100, a person may not appeal to the Tax Court of Canada to have an assessment vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the person.

### Restriction — renonciation

**(2)** Malgré l'article 100, aucun appel ne peut être interjeté par une personne devant la Cour canadienne de l'impôt pour faire annuler ou modifier une cotisation visant une question pour laquelle elle a renoncé par écrit à son droit d'opposition ou d'appel.

### Institution of appeals

**103** An appeal to the Tax Court of Canada under this Act must be instituted in accordance with the *Tax Court of Canada Act*.

### Modalités de l'appel

**103** Tout appel à la Cour canadienne de l'impôt en application de la présente loi est interjeté conformément à la *Loi sur la Cour canadienne de l'impôt*.

### Disposition of appeal

**104** The Tax Court of Canada may dispose of an appeal from an assessment by

**(a)** dismissing it; or

### Règlement d'appel

**104** La Cour canadienne de l'impôt peut statuer sur un appel concernant une cotisation en le rejetant ou en l'accueillant. Dans ce dernier cas, elle peut annuler la

**(b)** allowing it and

**(i)** vacating the assessment, or

**(ii)** referring the assessment back to the Minister for reconsideration and reassessment.

cotisation ou la renvoyer au ministre pour nouvel examen et nouvelle cotisation.

**References to Tax Court of Canada**

**105 (1)** If the Minister and another person agree in writing that a question arising under this Act, in respect of any assessment or proposed assessment of the person, should be determined by the Tax Court of Canada, that question must be determined by that Court.

**Renvoi à la Cour canadienne de l'impôt**

**105 (1)** La Cour canadienne de l'impôt doit statuer sur toute question portant sur une cotisation, réelle ou projetée, découlant de l'application de la présente loi, que le ministre et la personne visée par la cotisation conviennent, par écrit, de lui soumettre.

**Time during consideration not to count**

**(2)** For the purpose of making an assessment of a person that agreed in writing to the determination of a question, filing a notice of objection to an assessment or instituting an appeal from an assessment, the time between the day on which proceedings are instituted in the Tax Court of Canada to have a question determined and the day on which the question is finally determined must not be counted in the computation of

**(a)** the four-year period referred to in subsection 96(1);

**(b)** the period within which a notice of objection to an assessment may be filed under section 97; or

**(c)** the period within which an appeal may be instituted under section 100.

**Exclusion du délai d'examen**

**(2)** La période commençant à la date où une question est soumise à la Cour canadienne de l'impôt et se terminant à la date où il est définitivement statué sur la question est exclue du calcul des délais ci-après en vue, selon le cas, d'établir une cotisation à l'égard de la personne qui a accepté de soumettre la question, de produire un avis d'opposition à cette cotisation ou d'en appeler de celle-ci :

**a)** le délai de quatre ans prévu au paragraphe 96(1);

**b)** le délai de production d'un avis d'opposition à une cotisation en vertu de l'article 97;

**c)** le délai d'appel en vertu de l'article 100.

**Reference of common questions to Tax Court of Canada**

**106 (1)** If the Minister is of the opinion that a question arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court of Canada for a determination of the question.

**Renvoi à la Cour canadienne de l'impôt de questions communes**

**106 (1)** Si le ministre est d'avis qu'une même opération, un même événement ou une même série d'opérations ou d'événements soulève une question qui se rapporte à des cotisations, réelles ou projetées, relatives à plusieurs personnes, il peut demander à la Cour canadienne de l'impôt de statuer sur la question.

**Contents of application**

**(2)** An application must set out

**(a)** the question in respect of which the Minister requests a determination;

**(b)** the names of the persons that the Minister seeks to have bound by the determination; and

**(c)** the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of each person named in the application.

**Contenu de la demande**

**(2)** La demande doit comporter les renseignements suivants :

**a)** la question sur laquelle le ministre demande une décision;

**b)** le nom des personnes qu'il souhaite voir liées par la décision;

**c)** les faits et motifs sur lesquels il s'appuie et sur lesquels il fonde ou a l'intention de fonder la cotisation de chaque personne nommée dans la demande.

**Service**

**(3)** A copy of the application must be served by the Minister on each of the persons named in it and on any other person that, in the opinion of the Tax Court of Canada, is likely to be affected by the determination of the question.

**Determination by Tax Court of Canada of question**

**(4)** If the Tax Court of Canada is satisfied that a determination of a question set out in an application will affect assessments or proposed assessments in respect of two or more persons that have been served with a copy of the application and that are named in an order of the Tax Court of Canada under this subsection, it may

**(a)** if none of the persons named in the order has appealed from such an assessment, proceed to determine the question in any manner that it considers appropriate; or

**(b)** if one or more of the persons named in the order has or have appealed, make any order that it considers appropriate joining a party or parties to that appeal or those appeals and proceed to determine the question.

**Determination final and conclusive**

**(5)** Subject to subsection (6), if a question set out in an application is determined by the Tax Court of Canada, the determination is final and conclusive for the purposes of any assessments of persons named by the Court under subsection (4).

**Appeal**

**(6)** If a question set out in an application is determined by the Tax Court of Canada, the Minister or any of the persons that have been served with a copy of the application and that are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from or applications for judicial review of decisions of the Tax Court of Canada, appeal from the determination.

**Parties to appeal**

**(7)** The parties that are bound by a determination are parties to any appeal from the determination.

**Time during consideration not counted**

**(8)** For the purpose of making an assessment of a person, filing a notice of objection to an assessment or

**Signification**

**(3)** Le ministre signifie un exemplaire de la demande à chacune des personnes qui y sont nommées et à toute autre personne qui, de l'avis de la Cour canadienne de l'impôt, est susceptible d'être touchée par la décision.

**Décision de la Cour canadienne de l'impôt**

**(4)** Dans le cas où la Cour canadienne de l'impôt est convaincue que la décision rendue sur la question exposée dans une demande a un effet sur les cotisations, réelles ou projetées, relatives à plusieurs personnes à qui une copie de la demande a été signifiée et qui sont nommées dans une ordonnance de la Cour rendue en application du présent paragraphe, elle peut :

**a)** si aucune des personnes nommées dans l'ordonnance n'en a appelé d'une de ces cotisations, entreprendre de statuer sur la question selon les modalités qu'elle juge indiquées;

**b)** si une ou plusieurs des personnes nommées dans l'ordonnance ont interjeté appel, rendre toute ordonnance qu'elle juge indiquée groupant dans cet ou ces appels les parties appelantes et entreprendre de statuer sur la question.

**Décision définitive**

**(5)** Sous réserve du paragraphe (6), la décision rendue par la Cour canadienne de l'impôt sur une question soumise dans une demande dont elle a été saisie est définitive et sans appel aux fins d'établissement de toute cotisation à l'égard des personnes nommées par la Cour en vertu du paragraphe (4).

**Appel**

**(6)** Dans le cas où la Cour canadienne de l'impôt statue sur une question soumise dans une demande dont elle a été saisie, le ministre ou l'une des personnes à qui une copie de la demande a été signifiée et qui est nommée dans une ordonnance de la Cour rendue en vertu du paragraphe (4) peut interjeter appel de la décision conformément aux dispositions de la présente loi, de la *Loi sur la Cour canadienne de l'impôt* ou de la *Loi sur les Cours fédérales* concernant les appels de décisions de la Cour canadienne de l'impôt et les demandes de contrôle judiciaire de ces décisions.

**Parties à un appel**

**(7)** Les parties liées par une décision sont parties à un appel de cette décision.

**Exclusion du délai d'examen**

**(8)** La période visée au paragraphe (9) est exclue du calcul des délais ci-après lorsqu'ils ont trait à

instituting an appeal from an assessment, the periods described in subsection (9) must not be counted in the computation of

**(a)** the four-year period referred to in subsection 96(1);

**(b)** the period within which a notice of objection to an assessment may be filed under section 97; or

**(c)** the period within which an appeal may be instituted under section 100.

**Excluded periods**

**(9)** The period that is not to be counted in the computation of the periods described in paragraphs (8)(a) to (c) is the time between the day on which an application that is made under this section is served on a person under subsection (3) and

**(a)** in the case of a person named in an order of the Tax Court of Canada under subsection (4), the day on which the determination becomes final and conclusive and not subject to any appeal; and

**(b)** in the case of any other person, the day on which the person is served with a notice that the person has not been named in an order of the Tax Court of Canada under subsection (4).

l'établissement d'une cotisation à l'égard de la personne, à la production d'un avis d'opposition à cette cotisation ou à l'interjection d'un appel de celle-ci :

**a)** le délai de quatre ans prévu au paragraphe 96(1);

**b)** le délai de production d'un avis d'opposition à une cotisation en vertu de l'article 97;

**c)** le délai d'appel en vertu de l'article 100.

**Période exclue**

**(9)** Est exclue du calcul des délais visés aux alinéas (8)a) à c) la période commençant à la date où une demande présentée en application du présent article est signifiée à une personne en vertu du paragraphe (3) et se terminant à la date applicable suivante :

**a)** dans le cas d'une personne nommée dans une ordonnance rendue par la Cour canadienne de l'impôt en vertu du paragraphe (4), la date où la décision devient définitive et sans appel;

**b)** dans le cas d'une autre personne, la date où il lui est signifié un avis portant qu'elle n'a pas été nommée dans une telle ordonnance.

## SUBDIVISION H

## Penalties

**Failure to file return**

**107** Every person that fails to file a return (other than an information return) for a reporting period as and when required under this Act is liable to a penalty equal to the sum of

**(a)** an amount equal to 1% of the total of all amounts each of which is an amount that is required to be paid for the reporting period and was not paid on the day on which the return was required to be filed; and

**(b)** the amount obtained when one quarter of the amount determined under paragraph (a) is multiplied by the number of complete months, not exceeding 12, from the day on which the return was required to be filed to the day on which the return is filed.

## SOUS-SECTION H

## Pénalités

**Défaut de produire une déclaration**

**107** Quiconque omet de produire une déclaration, sauf une déclaration de renseignements, pour une période de déclaration, dans le délai et selon les modalités prévus par la présente loi, est tenu de payer une pénalité égale au total des montants suivants :

**a)** le montant correspondant à 1 % du total des sommes représentant chacune une somme qui est à payer pour la période, mais qui ne l'a pas été au plus tard à la date limite où la déclaration devait être produite;

**b)** le produit du quart du montant déterminé en vertu de l'alinéa a) par le nombre de mois entiers, jusqu'à concurrence de douze, compris dans la période commençant à la date limite où la déclaration devait être produite et se terminant le jour où elle est effectivement produite.

**Failure to file by electronic transmission**

**108** In addition to any other penalty under this Act, every person that fails to file a return under this Act for a reporting period as required by subsection 74(3) is liable to a penalty equal to an amount determined in prescribed manner.

**Failure to register**

**109** Every person that is required to be registered under Division 5 of Part 1 but does not apply for registration under that Division as and when required is liable to a penalty of $2,000.

**Penalty — false statement**

**110** Despite any other provision of this Act, if a vendor sells a subject item to a purchaser, if an exemption certificate applies in respect of the sale in accordance with section 36, if a declaration referred to in subparagraph 36(1)(b)(ii) is included in the exemption certificate and if that declaration is false, the following rules apply:

**(a)** the purchaser is liable, in addition to any other penalty under this Act, to a penalty equal to the greater of $1,000 and 150% of the total of

**(i)** the amount of tax in respect of the subject item that would have been payable under section 18 if the exemption certificate had not applied to the sale, and

**(ii)** the amount of tax in respect of the subject item that would have been payable by the purchaser under section 29 if the exemption certificate had not applied to the sale; and

**(b)** if the vendor knows, or ought to have known, that the declaration is false, the purchaser and the vendor are jointly and severally, or solidarily, liable for the payment of the penalty under paragraph (a) and any related interest.

**Penalty for false declaration — special import certificate**

**111** Despite any other provision of this Act, if a person imports a subject item, if a special import certificate in respect of the importation is in effect in accordance with section 38, if the person, when applying under subsection 38(1) for the special import certificate in respect of the subject item, made a declaration required under paragraph 38(2)(a) to be included in the application and if that declaration is false at the time of importation, the person is liable to, in addition to any other penalty under

**Défaut de produire par voie électronique**

**108** Quiconque ne produit pas de déclaration en application de la présente loi pour une période de déclaration comme l'exige le paragraphe 74(3) est passible, en plus de toute autre pénalité prévue par la présente loi, d'une pénalité égale au montant déterminé selon les modalités réglementaires.

**Défaut de s'inscrire**

**109** Quiconque doit s'inscrire en application de la section 5 de la partie 1 et omet de le faire dans le délai et selon les modalités prévus est passible d'une pénalité de 2 000 $.

**Pénalité pour fausse déclaration**

**110** Malgré les autres dispositions de la présente loi, si un vendeur vend un bien assujetti à un acheteur, si un certificat d'exemption s'applique relativement à la vente conformément à l'article 36, si le certificat d'exemption inclut une déclaration visée au sous-alinéa 36(1)b)(ii) et si cette déclaration est fausse, les règles suivantes s'appliquent :

**a)** l'acheteur est passible, en plus de toute autre pénalité prévue par la présente loi, d'une pénalité de 1 000 $ ou, s'il est plus élevé, d'un montant égal à 150 % du total des montants suivants :

**(i)** le montant de taxe relative au bien assujetti qui aurait été payable en application de l'article 18 si le certificat d'exemption ne s'était pas appliqué à la vente,

**(ii)** le montant de taxe relative au bien assujetti qui aurait été payable par l'acheteur en application de l'article 29 si le certificat d'exemption ne s'était pas appliqué à la vente;

**b)** si le vendeur sait, ou aurait dû savoir, que la déclaration est fausse, l'acheteur et le vendeur sont solidairement responsables du paiement de la pénalité prévue à l'alinéa a) et des intérêts y afférents.

**Pénalité pour fausse déclaration — certificat d'importation spécial**

**111** Malgré les autres dispositions de la présente loi, si une personne importe un bien assujetti, si un certificat d'importation spécial relatif à l'importation est en vigueur conformément à l'article 38, si la personne a, lors de la demande prévue au paragraphe 38(1) pour le certificat d'importation spécial relatif au bien assujetti, fait une déclaration prévue à l'alinéa 38(2)a) qui doit être incluse dans la demande et si cette déclaration est fausse au moment de l'importation, la personne est passible, en plus de toute autre pénalité prévue par la présente loi, d'une

this Act, a penalty equal to the greater of $1,000 and 150% of the total of

**(a)** the amount of tax in respect of the subject item that would have been payable by the person under section 20 if the special import certificate in respect of the importation had not been issued by the Minister; and

**(b)** the amount of tax in respect of the subject item that would have been payable by the person under section 30 if the special import certificate in respect of the importation had not been issued by the Minister.

pénalité de 1 000 $ ou, s'il est plus élevé, d'un montant égal à 150 % du total des montants suivants :

**a)** le montant de taxe relative au bien assujetti qui aurait été payable par la personne en application de l'article 20 si le certificat d'importation spécial relatif à l'importation n'avait pas été délivré par le ministre;

**b)** le montant de taxe relative au bien assujetti qui aurait été payable par la personne en application de l'article 30 si le certificat d'importation spécial relatif à l'importation n'avait pas été délivré par le ministre.

**Failure to apply — tax certificate**

**112** Every person that is required to apply for a tax certificate under section 37 and fails to do so as and when required is liable to a penalty of $1,000.

**Défaut de demander un certificat**

**112** Quiconque est tenu en vertu de l'article 37 de demander un certificat fiscal et omet de le faire dans le délai et selon les modalités prévus est passible d'une pénalité de 1 000 $.

**Failure to notify — tax certificate**

**113** Every person that is required to provide a notification to the Minister under subsection 37(9) and fails to do so as and when required is liable to a penalty of $1,000.

**Défaut d'avis**

**113** Quiconque est tenu d'aviser le ministre en vertu du paragraphe 37(9) et omet de le faire dans le délai et selon les modalités prévus est passible d'une pénalité de 1 000 $.

**Penalty — unregistered importer**

**114** If tax is payable by a person under section 20 and, at the time the tax became payable, the person was required to be registered under Division 5 of Part 1 but has not applied for registration under that Division, the person is liable to, in addition to any other penalty under this Act, a penalty equal to the greater of $1,000 and 50% of the amount of tax payable under section 20 in respect of the subject item.

**Pénalité — importateur non inscrit**

**114** Si la taxe est payable par une personne en vertu de l'article 20 et, au moment où elle est devenue payable, la personne était tenue d'être inscrite en vertu de la section 5 de la partie 1, mais n'a pas présenté une demande d'inscription en vertu de cette section, celle-ci est passible, en plus de toute autre pénalité prévue par la présente loi, d'une pénalité de 1 000 $ ou, s'il est plus élevé, d'un montant égal à 50 % du montant de taxe payable en application de l'article 20 relativement au bien assujetti.

**Failure to answer demand**

**115** Every person that fails to file a return as and when required under a demand issued under section 77 is liable to a penalty of $1,000.

**Défaut de donner suite à une mise en demeure**

**115** Quiconque ne se conforme pas à une mise en demeure exigeant la production d'une déclaration en application de l'article 77 est passible d'une pénalité de 1 000 $.

**Failure to provide information**

**116** Every person that fails to provide any information or record as and when required under this Act is liable to a penalty of $1,000 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information.

**Défaut de présenter des renseignements**

**116** Quiconque ne fournit pas des renseignements ou des registres dans le délai et selon les modalités prévus par la présente loi est passible d'une pénalité de 1 000 $ pour chaque défaut à moins que, s'il s'agit de renseignements concernant une autre personne, il ne se soit raisonnablement appliqué à les obtenir.

**Failure to provide information**

**117** Every person that fails to report an amount prescribed by regulation, or to provide information prescribed by regulation, in a return prescribed by

**Défaut de transmettre des renseignements**

**117** Toute personne qui omet de déclarer un montant visé par règlement, ou de transmettre des renseignements visés par règlement, dans une déclaration visée

regulation as and when required, or that misstates such an amount or such information in such a return, is liable to a penalty, in addition to any other penalty under this Act, equal to an amount determined in prescribed manner for each such failure or misstatement by the person.

par règlement dans les délais et selon les modalités prévus, ou qui indique un tel montant ou de tels renseignements de façon erronée dans une telle déclaration, est passible, en plus de toute autre pénalité prévue par la présente loi, d'une pénalité égale à un montant déterminé selon les modalités réglementaires pour chaque défaut ou indication erronée.

**False statements or omissions**

**118** Every person that knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") is liable to a penalty of the greater of $1,000 and 25% of the total of

**(a)** if the false statement or omission is relevant to the determination of an amount payable under this Act by the person, the amount, if any, by which

**(i)** the amount payable

exceeds

**(ii)** the amount that would be payable by the person if the amount payable were determined on the basis of the information provided in the return, and

**(b)** if the false statement or omission is relevant to the determination of a rebate or any other payment that may be obtained under this Act, the amount, if any, by which

**(i)** the amount that would be the rebate or other payment payable to the person if the rebate or other payment were determined on the basis of the information provided in the return

exceeds

**(ii)** the amount of the rebate or other payment payable to the person.

**Faux énoncés ou omissions**

**118** Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, une facture ou une réponse — appelés « déclaration » au présent article —, ou y participe, y consent ou y acquiesce, est passible d'une pénalité de 1 000 $ ou, s'il est plus élevé, d'un montant égal à 25 % du total des montants suivants :

**a)** si le faux énoncé ou l'omission a trait au calcul d'un montant payable par la personne en application de la présente loi, l'excédent éventuel de ce montant sur la somme qui correspondrait à ce montant s'il était déterminé d'après les renseignements indiqués dans la déclaration;

**b)** si le faux énoncé ou l'omission a trait au calcul d'un montant de remboursement ou d'un autre paiement pouvant être obtenu en application de la présente loi, l'excédent éventuel du remboursement ou autre paiement qui serait à payer à la personne, s'il était déterminé d'après les renseignements indiqués dans la déclaration, sur le remboursement ou autre paiement à payer à la personne.

**General penalty**

**119** Every person that fails to comply with any provision of this Act for which no other penalty is specified is liable to a penalty of

**(a)** in the case of a prescribed provision, $100; and

**(b)** in any other case, $1,000.

**Pénalité générale**

**119** Quiconque omet de se conformer à une disposition de la présente loi pour laquelle aucune autre pénalité n'est prévue est passible d'une pénalité de 1 000 $.

**a)** dans la cas d'une disposition visée par règlement, 100 $;

**b)** dans les autres cas, 1 000 $.

#### Waiving or cancelling penalties

**120 (1)** The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel all or any portion of any penalty under this Act payable by the person in respect of the reporting period.

#### Interest if amount waived or cancelled

**(2)** If a person has paid an amount of penalty and the Minister waives or cancels that amount under subsection (1), the Minister must pay interest on the amount paid by the person beginning on the day that is 30 days after the day on which the Minister received a request in a manner satisfactory to the Minister to apply that subsection and ending on the day on which the amount is rebated to the person.

### SUBDIVISION I

## Offences and Punishment

#### Offence for failure to file return or to comply with demand or order

**121 (1)** Every person that fails to file or make a return as and when required under this Act or that fails to comply with an obligation under subsection 88(6) or (9) or section 90, or an order made under section 126, is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to a fine of not less than $2,000 and not more than $40,000 or to imprisonment for a term not exceeding 12 months, or to both.

#### Saving

**(2)** A person that is convicted of an offence under subsection (1) for a failure to comply with a provision of this Act is not liable to pay a penalty under this Act for the same failure, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

#### Offences for false or deceptive statement

**122 (1)** Every person commits an offence that

**(a)** makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a return, application, certificate, statement, document, record or answer filed or made as required under this Act;

#### Renonciation ou annulation — pénalité pour production tardive

**120 (1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler tout ou partie d'une pénalité payable par la personne en application de la présente loi relativement à la période de déclaration, ou y renoncer.

#### Intérêts sur montant annulé ou auquel il est renoncé

**(2)** Si une personne a payé un montant de pénalité que le ministre a annulé, ou auquel il a renoncé, en vertu du paragraphe (1), le ministre paie des intérêts sur le montant payé par la personne, pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de ce paragraphe et se terminant le jour où le montant est remboursé à la personne.

### SOUS-SECTION I

## Infractions et peines

#### Défaut de produire une déclaration ou d'observer une obligation ou une ordonnance

**121 (1)** Toute personne qui ne produit pas ou ne remplit pas une déclaration dans le délai et selon les modalités prévus par la présente loi ou qui ne remplit pas une obligation prévue aux paragraphes 88(6) ou (9) ou à l'article 90 ou encore qui contrevient à une ordonnance rendue en application de l'article 126 commet une infraction et, en plus de toute pénalité prévue par ailleurs, est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende minimale de 2 000 $ et maximale de 40 000 $ et d'un emprisonnement maximal de douze mois ou de l'une de ces peines.

#### Réserve

**(2)** La personne déclarée coupable d'une infraction prévue au paragraphe (1) n'est passible d'une pénalité prévue à la présente loi relativement aux mêmes faits que si un avis de cotisation concernant la pénalité a été envoyé avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité n'ait été déposée ou faite.

#### Déclarations fausses ou trompeuses

**122 (1)** Commet une infraction quiconque, selon le cas :

**a)** fait des déclarations fausses ou trompeuses, ou participe ou consent à leur énonciation, dans une déclaration, une demande, un certificat, un état, un document, un registre ou une réponse produits ou faits en application de la présente loi;

**(b)** for the purposes of evading payment of any amount payable under this Act, or obtaining a rebate or other payment payable under this Act to which the person is not entitled,

**(i)** destroys, alters, mutilates, conceals or otherwise disposes of any records of a person, or

**(ii)** makes, or assents to or acquiesces in the making of, a false or deceptive entry, or omits, or assents to or acquiesces in the omission, to enter a material particular in the records of a person;

**(c)** intentionally, in any manner, evades or attempts to evade compliance with this Act or payment of an amount payable under this Act;

**(d)** intentionally, in any manner, obtains or attempts to obtain a rebate or other payment payable under this Act to which the person is not entitled; or

**(e)** conspires with any person to commit an offence described in any of paragraphs (a) to (d).

**b)** pour éluder le paiement d'une somme payable en application de la présente loi ou pour obtenir un remboursement ou autre paiement qui serait à payer à la personne sans qu'elle y ait droit aux termes de celle-ci :

**(i)** détruit, modifie, mutile ou cache les registres d'une personne, ou en dispose autrement,

**(ii)** fait des inscriptions fausses ou trompeuses, ou consent à leur accomplissement, ou omet d'inscrire un détail important dans les registres d'une personne, ou consent à cette omission;

**c)** délibérément, de quelque manière que ce soit, élude ou tente d'éluder l'observation de la présente loi ou le paiement d'une somme payable en application de celle-ci;

**d)** délibérément, de quelque manière que ce soit, obtient ou tente d'obtenir un remboursement ou autre paiement qui serait à payer à la personne sans qu'elle y ait droit aux termes de la présente loi;

**e)** conspire avec une personne pour commettre l'une des infractions prévues aux alinéas a) à d).

**Punishment**

**(2)** Every person that commits an offence under subsection (1) is guilty of an offence punishable on summary conviction and, in addition to any penalty otherwise provided, is liable to

**(a)** a fine of not less than 50%, and not more than 200%, of the amount payable that was sought to be evaded, or of the rebate or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than $2,000 and not more than $40,000;

**(b)** imprisonment for a term not exceeding two years; or

**(c)** both a fine referred to in paragraph (a) and imprisonment for a term not exceeding two years.

**Peine**

**(2)** Quiconque commet l'infraction prévue au paragraphe (1) est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et, en plus de toute pénalité prévue par ailleurs, est passible :

**a)** soit d'une amende au moins égale au montant représentant 50 % de la somme payable qu'il a tenté d'éluder, ou du remboursement ou autre paiement qu'il a cherché à obtenir, sans dépasser le montant représentant 200 % de cette somme ou de ce remboursement ou autre paiement, ou, si cette somme n'est pas vérifiable, d'une amende minimale de 2 000 $ et maximale de 40 000 $;

**b)** soit d'un emprisonnement maximal de deux ans;

**c)** soit de l'amende prévue à l'alinéa a) et d'un emprisonnement maximal de deux ans.

**Prosecution on indictment**

**(3)** Every person that is charged with an offence described in subsection (1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

**(a)** a fine of not less than 100%, and not more than 200%, of the amount payable that was sought to be

**Poursuite par voie de mise en accusation**

**(3)** Toute personne accusée de l'infraction prévue au paragraphe (1) peut, au choix du procureur général du Canada, être poursuivie par voie de mise en accusation et, si elle est déclarée coupable, encourt, outre toute pénalité prévue par ailleurs :

**a)** soit une amende minimale de 100 % et maximale de 200 % de la somme payable qu'elle a tenté d'éluder ou

evaded, or of the rebate or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than $5,000 and not more than $100,000;

**(b)** imprisonment for a term not exceeding five years; or

**(c)** both a fine referred to in paragraph (a) and imprisonment for a term not exceeding five years.

du remboursement ou autre paiement qu'elle a cherché à obtenir ou, si le montant n'est pas vérifiable, une amende minimale de 5 000 $ et maximale de 100 000 $;

**b)** soit d'un emprisonnement maximal de cinq ans;

**c)** soit de l'amende prévue à l'alinéa a) et d'un emprisonnement maximal de cinq ans.

**Penalty on conviction**

**(4)** A person that is convicted of an offence under this section is not liable to pay a penalty imposed under this Act for the same evasion or attempt unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

**Pénalité sur déclaration de culpabilité**

**(4)** La personne déclarée coupable d'une infraction visée au présent article n'est passible d'une pénalité prévue à la présente loi pour la même évasion ou la même tentative d'évasion que si un avis de cotisation pour cette pénalité a été envoyé avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité ait été déposée ou faite.

**Stay of appeal**

**(5)** If, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and, upon that filing, the proceedings before the Tax Court of Canada are stayed pending a final determination of the outcome of the prosecution.

**Suspension d'appel**

**(5)** Le ministre peut demander la suspension d'un appel interjeté en application de la présente loi devant la Cour canadienne de l'impôt lorsque les faits qui y sont débattus sont pour la plupart les mêmes que ceux qui font l'objet de poursuites entamées en vertu du présent article. Dès lors, l'appel est suspendu en attendant le résultat des poursuites.

**Definition of *confidential information***

**123 (1)** In this section, ***confidential information*** has the same meaning as in subsection 91(1).

**Définition de *renseignement confidentiel***

**123 (1)** Au présent article, ***renseignement confidentiel*** s'entend au sens du paragraphe 91(1).

**Offence — confidential information**

**(2)** A person is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both, if that person

**(a)** contravenes subsection 91(2); or

**(b)** knowingly contravenes an order made under subsection 91(12).

**Communication non autorisée de renseignements**

**(2)** Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 $ et un emprisonnement maximal de douze mois, ou l'une de ces peines, quiconque, selon le cas :

**a)** contrevient au paragraphe 91(2);

**b)** contrevient sciemment à une ordonnance rendue en application du paragraphe 91(12).

**Offence — confidential information**

**(3)** Every person to whom confidential information has been provided for a particular purpose under subsection 91(6) and that for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

**Communication non autorisée de renseignements**

**(3)** Toute personne à qui un renseignement confidentiel a été fourni à une fin précise en conformité avec le paragraphe 91(6) et qui, sciemment, utilise ce renseignement, le fournit ou en permet la fourniture ou l'accès à une autre fin commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 $ et un emprisonnement maximal de douze mois, ou l'une de ces peines.

**Failure to pay tax**

**124** Every person that intentionally fails to pay an amount of tax as and when required under this Act is guilty of an offence punishable on summary conviction and, in addition to any penalty or interest otherwise provided, is liable to

**(a)** a fine not exceeding the aggregate of $1,000 and an amount equal to 50% of the amount of tax that should have been paid;

**(b)** imprisonment for a term not exceeding 12 months; or

**(c)** both a fine referred to in paragraph (a) and imprisonment for a term not exceeding 12 months.

**General offence**

**125** Every person that fails to comply with any provision of this Act for which no other offence is specified in this Act is guilty of an offence punishable on summary conviction and liable to a fine of not more than $100,000 or to imprisonment for a term of not more than 12 months, or to both.

**Compliance orders**

**126** If a person is convicted by a court of an offence for a failure to comply with a provision of this Act, the court may make any order that it deems appropriate to enforce compliance with the provision.

**Officers of corporations, etc.**

**127** If a person other than an individual commits an offence under this Act, every officer, director or representative of the person that directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.

**No power to decrease punishment**

**128** Despite the *Criminal Code* or any other law, the court has, in any prosecution or proceeding under this Act, neither the power to impose less than the minimum fine fixed under this Act nor the power to suspend sentence.

**Information or complaint**

**129 (1)** An information or complaint under this Act may be laid or made by any officer of the Canada Revenue Agency, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the

**Défaut de payer la taxe**

**124** Quiconque omet délibérément de payer un montant de taxe dans le délai et selon les modalités prévus par la présente loi commet une infraction punissable sur déclaration de culpabilité par procédure sommaire et, en plus de toute pénalité ou tous intérêts prévus par ailleurs, est passible :

**a)** soit d'une amende ne dépassant pas la somme de 1 000 $ et du montant représentant 50 % de la taxe qui aurait dû être payée;

**b)** soit d'un emprisonnement maximal de 12 mois;

**c)** soit de l'amende prévue à l'alinéa a) et d'un emprisonnement maximal de 12 mois.

**Infraction générale**

**125** Quiconque ne se conforme pas à une disposition de la présente loi pour laquelle aucune autre infraction n'est prévue par la présente loi commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 100 000 $ et un emprisonnement maximal de douze mois, ou l'une de ces peines.

**Ordonnance d'exécution**

**126** Le tribunal qui déclare une personne coupable d'une infraction à la présente loi peut rendre toute ordonnance qu'il juge appropriée pour qu'il soit remédié au défaut visé par l'infraction.

**Cadres de personnes morales**

**127** En cas de perpétration par une personne, autre qu'un particulier, d'une infraction prévue par la présente loi, ceux de ses dirigeants, administrateurs ou représentants qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et sont passibles, sur déclaration de culpabilité, de la peine prévue, que la personne ait été ou non poursuivie ou déclarée coupable.

**Pouvoir de diminuer les peines**

**128** Malgré le *Code criminel* ou toute autre règle de droit, le tribunal ne peut, dans une poursuite ou une procédure en application de la présente loi, ni imposer moins que l'amende minimale que fixe la présente loi ni suspendre une sentence.

**Dénonciation ou plainte**

**129 (1)** Toute dénonciation ou plainte en application de la présente loi peut être déposée ou faite par tout préposé de l'Agence du revenu du Canada, par un membre de la Gendarmerie royale du Canada ou par toute personne

Minister and, if an information or complaint purports to have been laid or made under this Act, it is deemed to have been laid or made by a person so authorized by the Minister and must not be called into question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for Her Majesty in right of Canada.

qui y est autorisée par le ministre. La dénonciation ou plainte déposée ou faite en application de la présente loi est réputée l'avoir été par une personne qui y est autorisée par le ministre, et seul le ministre ou une personne agissant en son nom ou au nom de Sa Majesté du chef du Canada peut la mettre en doute pour défaut de compétence du dénonciateur ou plaignant.

#### Two or more offences

**(2)** An information or complaint in respect of an offence under this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

#### Deux infractions ou plus

**(2)** La dénonciation ou plainte à l'égard d'une infraction à la présente loi peut viser une ou plusieurs infractions. Aucune dénonciation, aucune plainte, aucun mandat, aucune déclaration de culpabilité ou autre procédure dans une poursuite intentée en application de la présente loi n'est susceptible d'opposition ou n'est insuffisant du fait que deux infractions ou plus sont visées.

#### Territorial jurisdiction

**(3)** An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court having territorial jurisdiction where the accused is resident, carrying on a commercial activity, found, apprehended or in custody, despite that the matter of the information or complaint did not arise within that territorial jurisdiction.

#### District judiciaire

**(3)** La dénonciation ou plainte à l'égard d'une infraction à la présente loi peut être entendue, jugée ou décidée par tout tribunal compétent du district judiciaire où l'accusé réside, exerce une activité commerciale ou est trouvé, appréhendé ou détenu, bien que l'objet de la dénonciation ou de la plainte n'y ait pas pris naissance.

#### Limitation of prosecutions

**(4)** No proceeding by way of summary conviction in respect of an offence under this Act may be instituted more than five years after the day on which the subject matter of the proceedings arose, unless the prosecutor and the defendant agree that they may be instituted after the five years.

#### Prescription des poursuites

**(4)** La poursuite visant une infraction à la présente loi punissable sur déclaration de culpabilité par procédure sommaire se prescrit par cinq ans à compter de sa perpétration, à moins que le poursuivant et le défendeur ne consentent au prolongement de ce délai.

### SUBDIVISION J

## Inspections

### SOUS-SECTION J

## Inspections

#### Definition of *dwelling-house*

**130 (1)** In this section, ***dwelling-house*** means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence and includes

**(a)** a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

**(b)** a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

#### Définition de *maison d'habitation*

**130 (1)** Au présent article, ***maison d'habitation*** s'entend de tout ou partie d'un bâtiment ou d'une construction tenu ou occupé comme résidence permanente ou temporaire, y compris :

**a)** un bâtiment qui se trouve dans la même enceinte qu'une maison d'habitation et qui y est relié par une baie de porte ou par un passage couvert et clos;

**b)** une unité conçue pour être mobile et pour être utilisée comme résidence permanente ou temporaire et qui est ainsi utilisée.

**Inspections**

**(2)** A person authorized by the Minister to do so may, at all reasonable times and for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the records, processes, property or premises of a person that may be relevant in determining the obligations of that or any other person under this Act, or the amount of any rebate to which that or any other person is entitled under this Act and whether that person or any other person is in compliance with this Act.

**Powers of authorized person**

**(3)** Subject to subsection (4), the authorized person may, at all reasonable times, for any purpose related to the administration of enforcement of this Act

**(a)** enter any place in which the authorized person reasonably believes the person keeps or should keep records, carries on any activity to which this Act applies or does anything in relation to that activity;

**(b)** require any person to give to the authorized person all reasonable assistance, to answer all proper questions relating to the administration or enforcement of this Act and

**(i)** to attend with the authorized person at a place designated by the authorized person, or by videoconference or by another form of electronic communication, and to answer the questions orally, and

**(ii)** to answer the questions in writing, in any form specified by the authorized person; and

**(c)** require any person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

**Prior authorization**

**(4)** If any place referred to in subsection (3) is a dwelling-house, the authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (5).

**Warrant to enter dwelling-house**

**(5)** A judge may issue a warrant authorizing a person to enter a dwelling-house subject to the conditions specified in the warrant if, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

**Inspection**

**(2)** Quiconque est autorisé par le ministre peut, à toute heure convenable, pour l'application ou l'exécution de la présente partie, inspecter, vérifier ou examiner les registres, les procédés, les biens ou les locaux d'une personne permettant de déterminer ses obligations ou celles de toute autre personne en application de la présente partie ou le remboursement auquel cette personne ou toute autre personne a droit en application de la présente loi et de déterminer si cette personne ou toute autre personne agit en conformité avec la présente loi.

**Pouvoirs de la personne autorisée**

**(3)** Sous réserve du paragraphe (4), la personne autorisée peut, à toute heure convenable, pour l'application ou l'exécution de la présente loi :

**a)** pénétrer dans tout lieu où elle croit, pour des motifs raisonnables, que la personne tient ou devrait tenir des registres, exerce une activité à laquelle s'applique la présente loi ou accomplit un acte relativement à cette activité;

**b)** exiger de toute personne de lui prêter toute l'assistance raisonnable, de répondre à toutes les questions pertinentes à l'application ou à l'exécution de la présente loi et

**(i)** d'accompagner la personne autorisée à un lieu désigné par celle-ci, ou de participer par vidéoconférence ou toute autre forme de communication électronique, et de répondre aux questions de vive voix,

**(ii)** de répondre aux questions par écrit, sous quelque forme qu'elle indique;

**c)** exiger de toute personne de lui prêter toute l'assistance raisonnable relativement à toute chose que la personne autorisée est autorisée à faire en vertu de la présente loi.

**Autorisation préalable**

**(4)** Si le lieu visé au paragraphe (3) est une maison d'habitation, la personne autorisée ne peut y pénétrer sans la permission de l'occupant, à moins d'y être autorisée par un mandat décerné en vertu du paragraphe (5).

**Mandat**

**(5)** Sur requête *ex parte* du ministre, le juge saisi peut décerner un mandat qui autorise une personne à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur la foi d'une

**(a)** there are reasonable grounds to believe that the dwelling-house is a place referred to in subsection (3);

**(b)** entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act; and

**(c)** entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

**Orders if entry not authorized**

**(6)** If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

**(a)** order the occupant of the dwelling-house to provide a person with reasonable access to any record or property that is or should be kept in the dwelling-house; and

**(b)** make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

**Compliance order**

**131 (1)** On summary application by the Minister, a judge may, despite section 126, order a person to provide any access, assistance, information or record sought by the Minister under section 90 or 130 if the judge is satisfied that the person was required under section 90 or 130 to provide the access, assistance, information or record and did not do so.

**Notice required**

**(2)** An application under subsection (1) is not to be heard before the end of five clear days from the day on which the notice of application is served on the person against which the order is sought.

**Judge may impose conditions**

**(3)** The judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

**Contempt of court**

**(4)** If a person fails or refuses to comply with an order, a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

dénonciation faite sous serment, que les éléments suivants sont réunis :

**a)** il existe des motifs raisonnables de croire que la maison d'habitation est un lieu visé au paragraphe (3);

**b)** il est nécessaire d'y pénétrer pour l'application ou l'exécution de la présente loi;

**c)** un refus d'y pénétrer a été opposé, ou il est raisonnable de croire qu'un tel refus sera opposé.

**Ordonnance en cas de refus**

**(6)** Dans la mesure où un refus de pénétrer dans une maison d'habitation a été opposé ou pourrait l'être et où des registres ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'application ou l'exécution de la présente loi peut, à la fois :

**a)** ordonner à l'occupant de la maison d'habitation de permettre à une personne d'avoir raisonnablement accès à tous registres ou biens qui y sont gardés ou devraient l'être;

**b)** rendre toute autre ordonnance indiquée en l'espèce pour l'application de la présente loi.

**Ordonnance**

**131 (1)** Sur demande sommaire du ministre, un juge peut, malgré l'article 126, ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les registres que le ministre cherche à obtenir en vertu des articles 90 ou 130 s'il est convaincu que la personne n'a pas fourni l'accès, l'aide, les renseignements ou les registres bien qu'elle en soit tenue par les articles 90 ou 130.

**Avis**

**(2)** La demande n'est entendue qu'une fois écoulés cinq jours francs après signification d'un avis de la demande à la personne à l'égard de laquelle l'ordonnance est demandée.

**Conditions**

**(3)** Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.

**Outrage**

**(4)** Quiconque refuse ou fait défaut de se conformer à l'ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.

**Appeal**

**(5)** An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

**Search warrant**

**132 (1)** A judge may, on *ex parte* application by the Minister, issue a warrant authorizing any person named in the warrant to enter and search any building, receptacle or place for any record or thing that may afford evidence of the commission of an offence under this Act and to seize the record or thing and, as soon as is practicable, bring it before, or make a report in respect of the record or thing to, the judge or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

**Evidence on oath**

**(2)** An application under subsection (1) must be supported by information on oath establishing the facts on which the application is based.

**Issue of warrant**

**(3)** A judge may issue a warrant referred to in subsection (1) if the judge is satisfied that there are reasonable grounds to believe that

**(a)** an offence under this Act has been committed;

**(b)** a record or thing that may afford evidence of the commission of the offence is likely to be found; and

**(c)** the building, receptacle or place specified in the application is likely to contain a record or thing referred to in paragraph (b).

**Contents of warrant**

**(4)** A warrant issued under subsection (1) must refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person that is alleged to have committed the offence, and it must be reasonably specific as to any record or thing to be searched for and seized.

**Seizure**

**(5)** Any person that executes a warrant issued under subsection (1) may seize, in addition to the record or thing referred to in that subsection, any other record or thing

**Appel**

**(5)** L'ordonnance visée au paragraphe (1) est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet de suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

**Requête pour mandat de perquisition**

**132 (1)** Sur requête *ex parte* du ministre, un juge peut décerner un mandat qui autorise toute personne qui y est nommée à pénétrer dans tout bâtiment, contenant ou endroit et y perquisitionner pour y chercher des registres ou choses qui peuvent constituer des éléments de preuve de la perpétration d'une infraction à la présente loi, à saisir ces registres ou choses et, dès que matériellement possible, soit à les apporter au juge ou, en cas d'incapacité d'agir de celui-ci, à un autre juge du même tribunal, soit à lui en faire rapport, pour que le juge en dispose conformément au présent article.

**Preuve sous serment**

**(2)** La requête doit être appuyée par une dénonciation sous serment qui expose les faits au soutien de la requête.

**Mandat décerné**

**(3)** Le juge saisi de la requête peut décerner le mandat s'il est convaincu qu'il existe des motifs raisonnables de croire ce qui suit :

**a)** une infraction prévue par la présente loi a été commise;

**b)** des registres ou choses qui peuvent constituer des éléments de preuve de la perpétration de l'infraction seront vraisemblablement trouvés;

**c)** le bâtiment, contenant ou endroit précisé dans la requête contient vraisemblablement de tels registres ou choses visés à l'alinéa b).

**Contenu du mandat**

**(4)** Le mandat doit indiquer l'infraction pour laquelle il est décerné, dans quel bâtiment, contenant ou endroit perquisitionner ainsi que la personne accusée d'avoir commis l'infraction. Il doit donner suffisamment de précisions sur les registres ou choses à chercher et à saisir.

**Saisie**

**(5)** Quiconque exécute le mandat peut saisir, outre les registres ou choses mentionnés au paragraphe (1), tous autres registres ou choses qu'il croit, pour des motifs

that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and must, as soon as is practicable, bring the record or thing before, or make a report in respect of the record or thing, the judge that issued the warrant or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

**Retention**

**(6)** Subject to subsection (7), if any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge must, unless the Minister waives retention, order that it be retained by the Minister, that must take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the record or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.

**Return of records or things seized**

**(7)** If any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge may, on the judge's own motion or on summary application by a person with an interest in the record or thing on three clear days notice of application to the Deputy Attorney General of Canada, order that the record or thing be returned to the person from which it was seized or the person that is otherwise legally entitled to the record or thing, if the judge is satisfied that the record or thing

**(a)** will not be required for an investigation or a criminal proceeding; or

**(b)** was not seized in accordance with the warrant or this section.

**Access and copies**

**(8)** The person from which any record or thing is seized under this section is entitled, at all reasonable times and subject to any reasonable conditions that may be imposed by the Minister, to inspect the record or thing and, in the case of a document, to obtain one copy of the record at the expense of the Minister.

**Definition of *foreign-based information or record***

**133 (1)** For the purposes of this section, ***foreign-based information or record*** means any information or record that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act.

raisonnables, constituer des éléments de preuve de la perpétration d'une infraction à la présente loi. Il doit, dès que matériellement possible, soit apporter ces registres ou choses au juge qui a décerné le mandat ou, en cas d'incapacité d'agir de celui-ci, à un autre juge du même tribunal, soit lui en faire rapport, pour que le juge en dispose conformément au présent article.

**Rétention**

**(6)** Sous réserve du paragraphe (7), lorsque des registres ou choses saisis en vertu des paragraphes (1) ou (5) sont apportés à un juge ou qu'il en est fait rapport à un juge, ce juge ordonne que le ministre les retienne sauf si celui-ci y renonce. Le ministre qui retient des registres ou choses doit en prendre raisonnablement soin pour s'assurer de leur conservation jusqu'à la fin de toute enquête sur l'infraction en rapport avec laquelle les registres ou choses ont été saisis ou jusqu'à ce que leur production soit exigée aux fins d'une procédure criminelle.

**Restitution des registres ou choses saisis**

**(7)** Le juge à qui des registres ou choses saisis en vertu des paragraphes (1) ou (5) sont apportés ou à qui il en est fait rapport peut, d'office ou sur requête sommaire d'une personne ayant un droit dans ces registres ou choses avec avis au sous-procureur général du Canada trois jours francs avant qu'il y soit procédé, ordonner que ces registres ou choses soient restitués à la personne à qui ils ont été saisis ou à la personne qui y a légalement droit par ailleurs, s'il est convaincu que ces registres ou choses :

**a)** soit ne seront pas nécessaires à une enquête ou à une procédure criminelle;

**b)** soit n'ont pas été saisis conformément au mandat ou au présent article.

**Accès aux registres et copies**

**(8)** La personne à qui des registres ou choses sont saisis en application du présent article a le droit, en tout temps raisonnable et aux conditions raisonnables que peut imposer le ministre, d'examiner ces registres ou choses et d'obtenir une copie unique des registres aux frais du ministre.

**Définition de *renseignement ou registre étranger***

**133 (1)** Au présent article, ***renseignement ou registre étranger*** s'entend d'un renseignement accessible, ou d'un registre situé, en dehors du Canada, qui peut être pris en compte pour l'application ou l'exécution de la présente loi.

**Requirement to provide foreign-based information**

**(2)** Despite any other provision of this Act, the Minister may, by a notice served or sent in accordance with subsection (4), require a person resident in Canada or a non-resident person that carries on business in Canada to provide any foreign-based information or record.

**Notice**

**(3)** A notice referred to in subsection (2) must set out

**(a)** a reasonable period of time of not less than 90 days for the provision of the information or record;

**(b)** a description of the information or record being sought; and

**(c)** the consequences under subsection (9) to the person of the failure to provide the information or record being sought within the period of time set out in the notice.

**Notice**

**(4)** A notice referred to in subsection (2) may be

**(a)** served personally;

**(b)** sent by confirmed delivery service; or

**(c)** sent electronically to a bank or credit union that has provided written consent to receive notices under subsection (2) electronically.

**Review of foreign information requirement**

**(5)** If a person is served or sent a notice of a requirement under subsection (2), the person may, within 90 days after the day on which the notice was served or sent, apply to a judge for a review of the requirement.

**Powers on review**

**(6)** On hearing an application under subsection (5) in respect of a requirement, a judge may

**(a)** confirm the requirement;

**(b)** vary the requirement if the judge is satisfied that it is appropriate in the circumstances; or

**(c)** set aside the requirement if the judge is satisfied that it is unreasonable.

**Obligation de présenter des renseignements et registres étrangers**

**(2)** Malgré les autres dispositions de la présente loi, le ministre peut, par avis signifié ou envoyé conformément au paragraphe (4), mettre en demeure une personne résidant au Canada ou une personne n'y résidant pas mais y exploitant une entreprise de produire des renseignements ou registres étrangers.

**Contenu de l'avis**

**(3)** L'avis doit :

**a)** indiquer le délai raisonnable, d'au moins quatre-vingt-dix jours, dans lequel les renseignements ou registres étrangers doivent être produits;

**b)** décrire les renseignements ou registres étrangers recherchés;

**c)** préciser les conséquences prévues au paragraphe (9) du non-respect de la mise en demeure.

**Avis**

**(4)** L'avis visé au paragraphe (2) peut être :

**a)** soit signifié à personne;

**b)** soit envoyé par service de messagerie;

**c)** soit envoyé par voie électronique à une banque ou une caisse de crédit qui a consenti par écrit à recevoir les avis prévus au paragraphe (2) par voie électronique.

**Révision par un juge**

**(5)** La personne à qui l'avis est signifié ou envoyé peut contester, par requête à un juge, la mise en demeure dans les quatre-vingt-dix jours suivant la date de signification ou d'envoi.

**Pouvoir de révision**

**(6)** À l'audition de la requête, le juge peut confirmer la mise en demeure, la modifier de la façon qu'il estime indiquée dans les circonstances ou la déclarer sans effet s'il est convaincu qu'elle est déraisonnable.

**Related person**

**(7)** For the purposes of subsection (6), a requirement to provide information or a record is not to be considered to be unreasonable because the information or record is under the control of, or available to, a non-resident person that is not controlled by the person served with the notice of the requirement under subsection (2) if that person is related to the non-resident person.

**Time during consideration not to count**

**(8)** The period of time between the day an application for the review of a requirement is made under subsection (5) and the day the review is decided must not be counted in the computation of

**(a)** the period of time set out in the notice of the requirement; and

**(b)** the period of time within which an assessment may be made under section 92 or 93.

**Consequence of failure**

**(9)** If a person fails to comply substantially with a notice served under subsection (2) and if the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act must, on motion of the Minister, prohibit the introduction by that person of any foreign-based information or record covered by that notice.

**Copies**

**134** If any record is seized, inspected, audited, examined or provided under any of sections 81, 90 and 130 to 132, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any officer of the Canada Revenue Agency may make or cause to be made one or more copies of it and, in the case of an electronic record, make or cause to be made a print-out of the electronic record, and any record purporting to be certified by the Minister or an authorized person to be a copy of the record, or to be a print-out of an electronic record, made under this section is evidence of the nature and content of the original record and has the same probative force as the original record would have if it were proven in the ordinary way.

**Compliance**

**135** Every person must, unless the person is unable to do so, do everything the person is required to do by or pursuant to any of sections 90 and 130 to 134 and no

**Personne liée**

**(7)** Pour l'application du paragraphe (6), la mise en demeure de produire des renseignements ou registres étrangers qui sont accessibles à une personne non résidante ou situés chez une personne non résidante qui n'est pas contrôlée par la personne à qui l'avis est signifié ou envoyé, ou qui sont sous la garde de cette personne non résidante, n'est pas de ce seul fait déraisonnable si les deux personnes sont liées.

**Suspension du délai**

**(8)** Le délai qui court entre le jour où une requête est présentée en vertu du paragraphe (5) et le jour où il est décidé de la requête ne compte pas dans le calcul :

**a)** du délai indiqué dans l'avis correspondant à la mise en demeure qui a donné lieu à la requête;

**b)** du délai dans lequel une cotisation peut être établie en vertu des articles 92 ou 93.

**Conséquence du défaut**

**(9)** Tout tribunal saisi d'une affaire civile portant sur l'application ou l'exécution de la présente loi doit, sur requête du ministre, refuser le dépôt en preuve par une personne de tout renseignement ou registre étranger visé par une mise en demeure qui n'est pas déclarée sans effet dans le cas où la personne ne produit pas la totalité ou la presque totalité des renseignements et registres étrangers visés par la mise en demeure.

**Copies**

**134** Lorsque, en vertu de l'un des articles 81, 90 et 130 à 132, des registres font l'objet d'une opération de saisie, d'inspection, de vérification ou d'examen ou sont produits, la personne qui effectue cette opération ou auprès de qui est faite cette production ou tout fonctionnaire de l'Agence du revenu du Canada peut en faire ou en faire faire des copies et, s'il s'agit de registres électroniques, les imprimer ou les faire imprimer. Les registres présentés comme registres que le ministre ou une personne autorisée atteste être des copies des registres, ou des imprimés de registres électroniques, faits conformément au présent article font preuve de la nature et du contenu des registres originaux et ont la même force probante qu'auraient ceux-ci si leur authenticité était prouvée de la façon usuelle.

**Observation**

**135** Quiconque est tenu par les articles 90 et 130 à 134 de faire quelque chose doit le faire, sauf impossibilité. Nul ne peut, physiquement ou autrement, entraver, rudoyer ou contrecarrer, ou tenter d'entraver, de rudoyer ou de

person is to, physically or otherwise, do or attempt to do any of the following:

**(a)** interfere with, hinder or molest any *official* as defined in section 91 doing anything the official is authorized to do under this Act; or

**(b)** prevent any official from doing anything the official is authorized to do under this Act.

contrecarrer, un *fonctionnaire*, au sens de l'article 91, qui fait une chose qu'il est autorisé à faire en application de la présente loi, ni empêcher ou tenter d'empêcher un fonctionnaire de faire une telle chose.

#### Information respecting non-resident persons

**136** Every person that is liable, at any time in a calendar year, to pay an amount of tax under this Act must, in respect of each non-resident person with which it was not, in prescribed circumstances, dealing at arm's length at any time in the year, file with the Minister, within six months after the end of the year, prescribed information for the year in respect of transactions with that person.

#### Renseignements concernant certaines personnes non résidantes

**136** Toute personne qui est redevable, au cours d'une année civile, d'un montant de taxe en application de la présente loi doit, relativement à chaque personne non résidante avec laquelle elle a un lien de dépendance, dans les circonstances prévues par règlement, au cours de l'année, présenter au ministre, dans les six mois suivant l'année, les renseignements qu'il détermine relativement à cette année, sur ses opérations avec cette personne.

### SUBDIVISION K

## Collection

### SOUS-SECTION K

## Recouvrement

#### Definitions

**137 (1)** The following definitions apply in this section.

***action*** means an action to collect a tax debt of a person and includes a proceeding in a court and anything done by the Minister under any of sections 141 to 146. (*action*)

***legal representative*** of a person means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with any property, business, commercial activity or estate or succession that belongs or belonged to, or that is or was held for the benefit of, the person or the person's estate or succession. (*représentant légal*)

***tax debt*** means any amount payable by a person under this Act. (*dette fiscale*)

#### Définitions

**137 (1)** Les définitions qui suivent s'appliquent au présent article.

***action*** Toute action en recouvrement d'une dette fiscale d'une personne, y compris les procédures judiciaires et toute mesure prise par le ministre en vertu de l'un des articles 141 à 146. (*action*)

***dette fiscale*** Toute somme payable par une personne en application de la présente loi. (*tax debt*)

***représentant légal*** Syndic de faillite, cessionnaire, liquidateur, curateur, séquestre de tout genre, fiduciaire, héritier, administrateur du bien d'autrui, liquidateur de succession, exécuteur testamentaire, curateur ou autre personne semblable, qui administre, liquide ou contrôle, en qualité de représentant ou de fiduciaire, les biens, les affaires, les activités commerciales ou les actifs qui appartiennent ou appartenaient à une personne ou à sa succession, ou qui sont ou étaient détenus pour leur compte, ou qui, en cette qualité, s'en occupe de toute autre façon. (*legal representative*)

#### Debts to Her Majesty

**(2)** A tax debt is a debt due to Her Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act.

#### Créances de Sa Majesté

**(2)** Toute dette fiscale est une créance de Sa Majesté du chef du Canada et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente loi.

**Court proceedings**

**(3)** The Minister may not commence a proceeding in a court to collect a tax debt of a person in respect of an amount that may be assessed under this Act, unless when the proceeding is commenced the person has been or may be assessed for that amount.

**No actions after limitation period**

**(4)** The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

**Limitation period**

**(5)** The limitation period for the collection of a tax debt of a person

**(a)** begins

**(i)** if a notice of assessment in respect of the tax debt, or a notice referred to in subsection 147(1) in respect of the tax debt, is sent to or served on the person, on the last day on which one of those notices is sent or served, and

**(ii)** if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served, on the earliest day on which the Minister can commence an action to collect that tax debt; and

**(b)** ends, subject to subsection (9), on the day that is 10 years after the day on which it begins.

**Limitation period restarted**

**(6)** The limitation period described in subsection (5) for the collection of a tax debt of a person restarts (and ends, subject to subsection (9), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which

**(a)** the person acknowledges the tax debt in accordance with subsection (7);

**(b)** all or part of the tax debt is deemed under section 70 to have been paid;

**(c)** the Minister commences an action to collect the tax debt; or

**(d)** the Minister assesses, under this Act, another person in respect of the tax debt.

**Procédures judiciaires**

**(3)** Une procédure judiciaire en vue du recouvrement de la dette fiscale d'une personne à l'égard d'une somme qui peut faire l'objet d'une cotisation en application de la présente loi ne peut être intentée par le ministre que si, au moment où la procédure est intentée, la personne a fait l'objet d'une cotisation pour cette somme ou peut en faire l'objet.

**Prescription**

**(4)** Une action en recouvrement d'une dette fiscale ne peut être entreprise par le ministre après l'expiration du délai de prescription pour le recouvrement de la dette fiscale.

**Délai de prescription**

**(5)** Le délai de prescription pour le recouvrement d'une dette fiscale d'une personne :

**a)** commence à courir :

**(i)** si un avis de cotisation, ou un avis visé au paragraphe 147(1), concernant la dette fiscale est envoyé ou signifié à la personne, le dernier en date des jours où l'un de ces avis est envoyé ou signifié,

**(ii)** si aucun des avis visés au sous-alinéa (i) n'a été envoyé ou signifié, le premier jour où le ministre peut entreprendre une action en recouvrement de la dette fiscale;

**b)** prend fin, sous réserve du paragraphe (9), dix ans après le jour de son début.

**Reprise du délai de prescription**

**(6)** Le délai de prescription pour le recouvrement d'une dette fiscale d'une personne recommence à courir — et prend fin, sous réserve du paragraphe (9), dix ans plus tard — le jour, antérieur à celui où il prendrait fin par ailleurs, où, selon le cas :

**a)** la personne reconnaît la dette fiscale conformément au paragraphe (7);

**b)** la dette fiscale, ou une partie de celle-ci, est réputée avoir été payée en vertu de l'article 70;

**c)** le ministre entreprend une action en recouvrement de la dette fiscale;

**d)** le ministre établit, en application de la présente loi, une cotisation à l'égard d'une autre personne relativement à la dette fiscale.

**Acknowledgement of tax debts**

**(7)** A person acknowledges a tax debt if the person

**(a)** promises, in writing, to pay the tax debt;

**(b)** makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

**(c)** makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

**Agent or mandatary or legal representative**

**(8)** For the purposes of this section, an acknowledgement made by a person's agent or mandatary or legal representative has the same effect as if it were made by the person.

**Extension of limitation period**

**(9)** In computing the day on which a limitation period ends, there must be added the number of days on which one or more of the following is the case:

**(a)** the Minister has postponed collection action against the person under subsection (12) in respect of the tax debt;

**(b)** the Minister has accepted and holds security in lieu of payment of the tax debt;

**(c)** if the person was resident in Canada on the applicable date described in paragraph (5)(a) in respect of the tax debt, the person is non-resident;

**(d)** the Minister may not, because of any of subsections 139(2) to (5), take any of the actions described in subsection 139(1) in respect of the tax debt; or

**(e)** an action that the Minister may otherwise take in respect of the tax debt is restricted or not permitted under any provision of the *Bankruptcy and Insolvency Act*, of the *Companies' Creditors Arrangement Act* or of the *Farm Debt Mediation Act*.

**Assessment before collection**

**(10)** The Minister may not take any collection action under sections 141 to 146 in respect of any amount payable by a person that may be assessed under this Act, other than interest under section 82, unless the amount has been assessed.

**Reconnaissance de dette fiscale**

**(7)** Se reconnaît débitrice d'une dette fiscale la personne qui, selon le cas :

**a)** promet, par écrit, de régler la dette fiscale;

**b)** reconnaît la dette fiscale par écrit, que cette reconnaissance soit ou non rédigée en des termes qui permettent de déduire une promesse de règlement et renferme ou non un refus de payer;

**c)** fait un paiement au titre de la dette fiscale, y compris un prétendu paiement fait au moyen d'un titre négociable qui fait l'objet d'un refus de paiement.

**Mandataire ou représentant légal**

**(8)** Pour l'application du présent article, la reconnaissance faite par le mandataire ou le représentant légal d'une personne a la même valeur que si elle était faite par celle-ci.

**Prorogation du délai de prescription**

**(9)** Le nombre de jours où au moins un des faits ci-après se vérifie prolonge d'autant la durée du délai de prescription :

**a)** le ministre a reporté, en vertu du paragraphe (12), les mesures de recouvrement concernant la dette fiscale;

**b)** le ministre a accepté et détient une garantie pour le paiement de la dette fiscale;

**c)** la personne, qui résidait au Canada à la date applicable visée à l'alinéa (5)a) relativement à la dette fiscale, est un non-résident;

**d)** en raison de l'un des paragraphes 139(2) à (5), le ministre n'est pas en mesure d'exercer les actions visées au paragraphe 139(1) relativement à la dette fiscale;

**e)** l'une des actions que le ministre peut exercer par ailleurs relativement à la dette fiscale est limitée ou interdite en vertu d'une disposition de la *Loi sur la faillite et l'insolvabilité*, de la *Loi sur les arrangements avec les créanciers des compagnies* ou de la *Loi sur la médiation en matière d'endettement agricole*.

**Cotisation avant recouvrement**

**(10)** Le ministre ne peut, outre exiger des intérêts en vertu de l'article 82, prendre des mesures de recouvrement en vertu des articles 141 à 146 relativement à une somme susceptible de cotisation en application de la présente loi que si la somme a fait l'objet d'une cotisation.

**Payment of remainder**

**(11)** If the Minister sends a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.

**Minister may postpone collection**

**(12)** The Minister may, subject to any terms and conditions that the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person.

**Interest on judgments**

**(13)** If a judgment is obtained for any amount payable under this Act, including a certificate registered under section 141, the provisions of this Act by which interest is payable for a failure to pay an amount apply, with any modifications that the circumstances require, to the failure to pay the judgment debt, and the interest is recoverable in like manner as the judgment debt.

**Litigation costs**

**(14)** If an amount is payable by a person to Her Majesty in right of Canada because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, sections 138 and 141 to 147 apply to the amount as if it were payable under this Act.

**Security**

**138 (1)** The Minister may, if the Minister considers it advisable, accept security in an amount and a form satisfactory to the Minister for the payment of any amount that is or may become payable under this Act.

**Surrender of excess security**

**(2)** If a person that has given security, or on whose behalf security has been given, under this section requests in writing that the Minister surrender the security or any part of it, the Minister must surrender the security to the extent that its value exceeds, at the time the request is received by the Minister, the amount that is sought to be secured.

**Collection restrictions**

**139 (1)** If a person is liable for the payment of an amount under this Act, the Minister must not, for the purpose of collecting the amount, take any of the following actions until the end of 90 days after the date of a

**Paiement du solde**

**(11)** La partie impayée d'une cotisation visée par un avis de cotisation est payable immédiatement au receveur général.

**Report des mesures de recouvrement**

**(12)** Sous réserve des modalités qu'il établit, le ministre peut reporter les mesures de recouvrement concernant tout ou partie du montant d'une cotisation qui fait l'objet d'un litige.

**Intérêts à la suite de jugements**

**(13)** Dans le cas où un jugement est obtenu pour une somme à payer en application de la présente loi, y compris un certificat enregistré en vertu de l'article 141, les dispositions de la présente loi en application desquelles des intérêts sont payables pour défaut de paiement de la somme s'appliquent, compte tenu des adaptations de circonstance, au défaut de paiement de la créance constatée par jugement, et les intérêts sont recouvrables de la même manière que cette créance.

**Frais de justice**

**(14)** Dans le cas où une somme doit être payée par une personne à Sa Majesté du chef du Canada en exécution d'une ordonnance, d'un jugement ou d'une décision d'un tribunal concernant l'attribution des frais de justice relatifs à une question régie par la présente loi, les articles 138 et 141 à 147 s'appliquent à la somme comme si elle était payable en application de la présente loi.

**Garantie**

**138 (1)** Le ministre peut, s'il l'estime souhaitable, accepter une garantie, d'un montant et sous une forme acceptables pour lui, du paiement d'une somme qui est à payer, ou peut le devenir, en application de la présente loi.

**Remise de la garantie**

**(2)** Sur demande écrite de la personne qui a donné une garantie, ou au nom de laquelle une garantie a été donnée, en vertu du présent article, le ministre doit remettre tout ou partie de la garantie dans la mesure où la valeur de celle-ci dépasse, au moment où il reçoit la demande, la somme objet de la garantie.

**Restrictions au recouvrement**

**139 (1)** Lorsqu'une personne est redevable d'une somme en application de la présente loi, le ministre, pour recouvrer la somme, ne peut, avant le lendemain du quatre-vingt-dixième jour suivant la date d'un avis de

notice of assessment under this Act in respect of the amount:

**(a)** commence legal proceedings in a court;

**(b)** certify the amount under section 141;

**(c)** require a person to make a payment under subsection 142(1);

**(d)** require an institution or a person to make a payment under subsection 142(2);

**(e)** require a person to turn over moneys under subsection 145(1); or

**(f)** give a notice, issue a certificate or make a direction under subsection 146(1).

**No action after service of notice of objection**

**(2)** If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) until the end of 90 days after the date of the notice to the person that the Minister has confirmed or varied the assessment.

**No action after making appeal to Tax Court of Canada**

**(3)** If a person has appealed to the Tax Court of Canada from an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before the earlier of the day on which a copy of the decision of the Court is mailed to the person and the day on which the person discontinues the appeal.

**No action pending determination by Tax Court of Canada**

**(4)** If a person has agreed under subsection 105(1) that a question should be determined by the Tax Court of Canada, or if a person is served with a copy of an application made under subsection 106(1) to that Court for the determination of a question, the Minister must not take any of the actions described in subsection (1) for the purpose of collecting that part of an amount assessed, the liability for payment of which could be affected by the determination of the question, before the day on which the question is determined by the Court.

cotisation en vertu de la présente loi délivré relativement à la somme :

**a)** entamer une poursuite devant un tribunal;

**b)** attester la somme dans un certificat, en vertu de l'article 141;

**c)** obliger une personne à faire un paiement, en vertu du paragraphe 142(1);

**d)** obliger une institution ou une personne à faire un paiement, en vertu du paragraphe 142(2);

**e)** obliger une personne à verser des sommes, en vertu du paragraphe 145(1);

**f)** donner un avis, délivrer un certificat ou donner un ordre, en vertu du paragraphe 146(1).

**Mesures postérieures à la signification d'un avis d'opposition**

**(2)** Lorsqu'une personne signifie en application de la présente loi un avis d'opposition à une cotisation pour une somme payable en application de la présente loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures mentionnées au paragraphe (1) avant le lendemain du quatre-vingt-dixième jour suivant la date de l'avis à la personne portant qu'il confirme ou modifie la cotisation.

**Mesures postérieures à un appel devant la Cour canadienne de l'impôt**

**(3)** Lorsqu'une personne interjette appel auprès de la Cour canadienne de l'impôt d'une cotisation pour une somme payable en application de la présente loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures mentionnées au paragraphe (1) avant le premier en date de la date d'envoi à la personne d'une copie de la décision de la cour et de la date où la personne se désiste de l'appel.

**Aucune mesure en attendant la décision de la Cour canadienne de l'impôt**

**(4)** Lorsqu'une personne convient de faire statuer en vertu du paragraphe 105(1) la Cour canadienne de l'impôt sur une question ou qu'il est signifié à une personne copie d'une demande présentée en vertu du paragraphe 106(1) devant cette cour pour qu'elle statue sur une question, le ministre, pour recouvrer la partie du montant d'une cotisation dont la personne pourrait être redevable selon ce que la cour statuera, ne peut prendre aucune des mesures mentionnées au paragraphe (1) avant que la cour ne statue sur la question.

**Action after judgment**

**(5)** Despite any other provision in this section, if a person has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the person, the Minister may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of it, determined in a manner consistent with the judgment of the Court in the other action at any time after the Minister notifies the person in writing that the judgment has been given by the Court in the other action.

**Collection of large amounts**

**(6)** Despite subsections (1) to (5), if, at any time, the total of all amounts that a person has been assessed under this Act and that remain unpaid exceeds $1,000,000, the Minister may collect up to 50% of the total.

**Over $10,000,000 — security**

**140 (1)** The Minister may, by sending a notice to a person, require security in a form satisfactory to the Minister and in an amount up to a specified amount that is the greater of zero dollars and the amount that is determined by the formula

**[(A/2) – B] – $10,000,000**

where

**A** is the total of all amounts, each of which is an amount that the person has been assessed under this Act in respect of which a portion remains unpaid; and

**B** is the greater of zero dollars and the amount that is determined by the formula

**C – (D/2)**

where

**C** is the total of all amounts that the person has paid against the amount determined for A, and

**D** is the amount determined for A.

**When security to be given**

**(2)** The security required under subsection (1)

**Mesures postérieures à un jugement**

**(5)** Malgré les autres dispositions du présent article, lorsqu'une personne signifie, en application de la présente loi, un avis d'opposition à une cotisation ou interjette appel d'une cotisation auprès de la Cour canadienne de l'impôt et qu'elle convient par écrit avec le ministre de retarder la procédure d'opposition ou la procédure d'appel jusqu'à ce que la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada rende jugement dans une autre action qui soulève la même question, ou essentiellement la même, que celle soulevée dans l'opposition ou l'appel par la personne, le ministre peut prendre les mesures mentionnées au paragraphe (1) pour recouvrer tout ou partie du montant de la cotisation établi de la façon envisagée par le jugement rendu dans cette autre action, à tout moment après que le ministre a avisé la personne par écrit que le tribunal a rendu jugement dans l'autre action.

**Recouvrement de sommes importantes**

**(6)** Malgré les paragraphes (1) à (5), le ministre peut recouvrer jusqu'à 50 % du total des sommes visées par les cotisations établies à l'égard d'une personne en application de la présente loi si la partie impayée du total de ces sommes dépasse 1 000 000 $.

**Montant supérieur à 10 000 000 $ — caution**

**140 (1)** Le ministre peut, par avis envoyé à une personne, exiger que soit fournie sous une forme qu'il juge acceptable une caution d'un montant qui ne peut dépasser le montant qui correspond au plus élevé de zéro dollar et du montant obtenu par la formule suivante :

**[(A/2) – B] – 10 000 000 $**

où :

**A** représente le total des montants dont chacun est une somme visée par une cotisation établie à l'égard de la personne en application de la présente loi et dont une partie demeure impayée;

**B** le plus élevé de zéro dollar et du montant obtenu par la formule suivante :

**C – (D/2)**

où :

**C** représente le total des sommes que la personne a payées en réduction du montant correspondant à la valeur de l'élément A,

**D** la valeur de l'élément A.

**Délai — caution**

**(2)** La caution exigée en vertu du paragraphe (1) doit être fournie au ministre :

**(a)** must be given to the Minister not later than 60 days after the day on which the Minister required the security; and

**(b)** must be in a form satisfactory to the Minister.

**a)** dans un délai de soixante jours suivant la date à laquelle le ministre l'a exigée;

**b)** sous une forme qu'il juge acceptable.

### Failure to comply

**(3)** Despite subsections 139(1) to (5), the Minister may collect an amount equivalent to the amount of security that was required under subsection (1) if the security required under that subsection is not given to the Minister as set out in this section.

### Défaut de se conformer

**(3)** Malgré les paragraphes 139(1) à (5), le ministre peut recouvrer une somme équivalant au montant de la caution exigée en vertu du paragraphe (1) si cette dernière ne lui est pas fournie conformément au présent article.

### Certificates

**141 (1)** Any amount payable by a person (in this section referred to as the "debtor") under this Act that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

### Certificats

**141 (1)** Toute somme payable par une personne (appelée « débiteur » au présent article) en application de la présente loi qui n'a pas été payée dans les délais et selon les modalités prévus par la présente loi peut, par certificat du ministre, être déclarée payable par le débiteur.

### Registration in court

**(2)** On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor must be registered in the Court and when so registered has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty in right of Canada and enforceable as such.

### Enregistrement à la Cour fédérale

**(2)** Sur production à la Cour fédérale, le certificat fait en vertu du paragraphe (1) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette de la somme attestée dans le certificat, augmentée des intérêts courus comme le prévoit la présente loi jusqu'au jour du paiement, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Pour ce qui est de ces procédures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une créance de Sa Majesté du chef du Canada.

### Costs

**(3)** All reasonable costs and charges incurred or paid for the registration in the Federal Court of a certificate made under subsection (1) or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

### Frais et dépens

**(3)** Les frais et dépens raisonnables engagés ou payés pour l'enregistrement à la Cour fédérale d'un certificat fait en vertu du paragraphe (1) ou pour l'exécution des procédures de recouvrement de la somme qui y est attestée sont recouvrables de la même manière que s'ils avaient été inclus dans cette somme au moment de l'enregistrement du certificat.

### Charge on property

**(4)** A document issued by the Federal Court evidencing a registered certificate in respect of a debtor, a writ of that Court issued pursuant to the certificate or any notification of the document or writ (which document, writ or notification is in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in property in a province, or any interest in, or for civil law any right in, such property, held by the debtor, in the same manner as a document evidencing

### Charge sur un bien

**(4)** Tout document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur, tout bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (le document, le bref ou la notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge un bien du débiteur situé dans une province, ou un intérêt ou, pour l'application du droit civil, un droit sur un tel bien, de la même manière

**(a)** a judgment of the superior court of the province against a person for a debt owing by the person, or

**(b)** an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

**Creation of charge**

**(5)** If a memorial has been filed, registered or otherwise recorded under subsection (4),

**(a)** a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in, or for civil law any right in, such property, held by the debtor, or

**(b)** such property, or interest or right in the property, is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created is subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

**Proceedings in respect of memorial**

**(6)** If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

**(a)** to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

**(i)** the filing, registration or other recording of the memorial, and

**(ii)** proceedings taken to collect the amount,

**(b)** to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

**(c)** to cancel or withdraw the memorial wholly or in respect of any of the property, or interests or rights, affected by the memorial, or

que peut l'être, au titre ou en application du droit provincial, un document faisant preuve :

**a)** soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;

**b)** soit d'une somme à payer ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

**Charge sur un bien**

**(5)** Une fois l'extrait produit, enregistré ou autrement inscrit en vertu du paragraphe (4), une sûreté, une priorité ou une autre charge grève un bien du débiteur situé dans la province, ou un intérêt ou, pour l'application du droit civil, un droit sur un tel bien, de la même manière et dans la même mesure que si l'extrait était un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b). Cette sûreté, priorité ou charge prend rang après toute autre sûreté, priorité ou charge à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont été prises avant la production, l'enregistrement ou autre inscription de l'extrait.

**Procédures engagées à la faveur d'un extrait**

**(6)** L'extrait produit, enregistré ou autrement inscrit dans une province en vertu du paragraphe (4) peut, de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b), faire l'objet dans la province de procédures visant notamment :

**a)** à exiger le paiement de la somme attestée par l'extrait, des intérêts y afférents et des frais et dépens payés ou engagés en vue de la production, de l'enregistrement ou autre inscription de l'extrait ou en vue de l'exécution des procédures de recouvrement de la somme;

**b)** à renouveler ou autrement prolonger l'effet de la production, de l'enregistrement ou autre inscription de l'extrait;

**c)** à annuler ou à retirer l'extrait dans son ensemble ou uniquement en ce qui concerne un ou plusieurs

**(d)** to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, or interest or rights, affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), except that, if in any such proceeding or as a condition precedent to any such proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

**Presentation of documents**

**(7)** If

**(a)** a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (6), to any official in the land registry system, personal property or movable property registry system, or other registry system, of a province, or

**(b)** access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document must be accepted for filing, registration or other recording or the access must be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

biens ou intérêts ou droits sur lesquels l'extrait a une incidence;

**d)** à différer l'effet de la production, de l'enregistrement ou autre inscription de l'extrait en faveur d'un droit, d'une sûreté, d'une priorité ou d'une autre charge qui a été ou qui sera produit, enregistré ou autrement inscrit à l'égard d'un bien ou d'un intérêt ou d'un droit sur lequel l'extrait a une incidence.

Toutefois, dans le cas où la loi provinciale exige — soit dans le cadre de ces procédures, soit préalablement à leur exécution — l'obtention d'une ordonnance, d'une décision ou d'un consentement de la cour supérieure de la province ou d'un juge ou d'un fonctionnaire de celle-ci, la Cour fédérale ou un juge ou un fonctionnaire de celle-ci peut rendre une telle ordonnance ou décision ou donner un tel consentement. Cette ordonnance, cette décision ou ce consentement a alors le même effet dans le cadre des procédures que s'il était rendu ou donné par la cour supérieure de la province ou par un juge ou un fonctionnaire de celle-ci.

**Présentation des documents**

**(7)** L'extrait qui est présenté pour production, enregistrement ou autre inscription en vertu du paragraphe (4), ou un document concernant l'extrait qui est présenté pour production, enregistrement ou autre inscription dans le cadre des procédures mentionnées au paragraphe (6), à un agent d'un régime d'enregistrement foncier ou des droits sur des biens meubles ou personnels ou autres droits d'une province est accepté pour production, enregistrement ou autre inscription de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b) dans le cadre de procédures semblables. Pour ce qui est de la production, de l'enregistrement ou autre inscription de cet extrait ou ce document, l'accès à une personne, à un endroit ou à une chose situé dans une province est donné de la même manière et dans la même mesure que si l'extrait ou le document était un document semblable ainsi délivré ou établi. Si l'extrait ou le document est délivré par la Cour fédérale ou porte la signature ou fait l'objet d'un certificat d'un juge ou d'un fonctionnaire de cette cour, tout affidavit, toute déclaration ou tout autre élément de preuve qui doit, selon la loi provinciale, être fourni avec l'extrait ou le document ou l'accompagner dans le cadre des procédures est réputé avoir été ainsi fourni ou accompagner ainsi l'extrait ou le document.

**Prohibition — sale, etc., without consent**

**(8)** Despite any law of Canada or of a province, a sheriff or other person must not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs. However, if that consent is subsequently given, any property that would have been affected by that process, charge, lien, priority or binding interest if the Minister's consent had been given at the time that process was issued or the charge, lien, priority or binding interest was created, as the case may be, is bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time that process was issued or the charge, lien, priority or binding interest was created, as the case may be.

**Interdiction — vente sans consentement**

**(8)** Malgré les lois fédérales et provinciales, ni le shérif ni aucune autre personne ne peut, sans le consentement écrit du ministre, vendre un bien ou autrement en disposer ou publier un avis concernant la vente ou la disposition d'un bien ou autrement l'annoncer, par suite de l'émission d'un bref ou de la création d'une sûreté, d'une priorité ou d'une autre charge dans le cadre de procédures de recouvrement d'une somme attestée dans un certificat fait en vertu du paragraphe (1), des intérêts y afférents et des frais et dépens. Toutefois, si ce consentement est obtenu ultérieurement, tout bien sur lequel ce bref ou cette sûreté, priorité ou charge aurait une incidence si ce consentement avait été obtenu au moment de l'émission du bref ou de la création de la sûreté, priorité ou charge, selon le cas, est saisi ou autrement grevé comme si le consentement avait été obtenu à ce moment.

**Completion of notices, etc.**

**(9)** If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person must complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information must be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with this Act, regulation or rule requiring the information to be set out in the minute, notice or document.

**Établissement des avis**

**(9)** Dans le cas où des renseignements qu'un shérif ou une autre personne doit indiquer dans un procès-verbal, un avis ou un document à établir à une fin quelconque ne peuvent, en raison du paragraphe (8), être ainsi indiqués sans le consentement écrit du ministre, le shérif ou l'autre personne doit établir le procès-verbal, l'avis ou le document en omettant les renseignements en question. Une fois le consentement du ministre obtenu, un autre procès-verbal, avis ou document indiquant tous les renseignements doit être établi à la même fin. S'il se conforme au présent paragraphe, le shérif ou l'autre personne est réputé se conformer à la loi, à la disposition réglementaire ou à la règle qui exige que les renseignements soient indiqués dans le procès-verbal, l'avis ou le document.

**Application for order**

**(10)** A sheriff or other person that is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

**Demande d'ordonnance**

**(10)** S'il ne peut se conformer à une loi ou à une règle de pratique en raison des paragraphes (8) ou (9), le shérif ou l'autre personne est lié par toute ordonnance rendue, sur requête *ex parte* du ministre, par un juge de la Cour fédérale visant à donner effet à des procédures ou à une sûreté, une priorité ou une autre charge.

**Secured claims**

**(11)** If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

**(a)** to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

**Réclamation garantie**

**(11)** La sûreté, la priorité ou l'autre charge créée en vertu du paragraphe (5) par la production, l'enregistrement ou autre inscription d'un extrait en vertu du paragraphe (4) qui est enregistrée en conformité avec le paragraphe 87(1) de la *Loi sur la faillite et l'insolvabilité* est réputée, à la fois :

**(b)** to also be a claim referred to in paragraph 86(2)(a) of that Act.

**a)** être une réclamation garantie et, sous réserve du paragraphe 87(2) de cette loi, prendre rang comme réclamation garantie aux termes de cette loi;

**b)** être une réclamation visée à l'alinéa 86(2)a) de cette loi.

**Details in certificates and memorials**

**(12)** Despite any law of Canada or of a province, in any certificate in respect of a debtor, any memorial evidencing a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

**(a)** to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

**(b)** to refer to the rate of interest or penalty to be charged on the separate amounts making up the amount payable in general terms

**(i)** in the case of interest, as interest at the specified rate under this Act applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period, and

**(ii)** in the case of a penalty, the penalty calculated under section 107 on amounts payable to the Receiver General.

**Contenu des certificats et extraits**

**(12)** Malgré les lois fédérales et provinciales, dans le certificat fait à l'égard d'un débiteur, dans l'extrait faisant preuve du contenu d'un tel certificat ou encore dans le bref ou document délivré en vue du recouvrement d'une somme attestée dans un tel certificat, il suffit, à toutes fins utiles :

**a)** d'une part, d'indiquer, comme somme payable par le débiteur, le total des sommes payables par celui-ci et non les sommes distinctes qui forment ce total;

**b)** d'autre part, d'indiquer de façon générale le taux d'intérêt, ou de pénalité, applicable aux montants distincts qui forment la somme à verser au receveur général comme étant :

**(i)** dans le cas d'intérêts, des intérêts calculés au taux réglementaire en application de la présente loi sur les sommes à verser au receveur général, sans détailler les taux d'intérêt applicables à chaque montant distinct ou pour une période donnée,

**(ii)** dans le cas d'une pénalité, la pénalité prévue à l'article 107 sur les sommes à verser au receveur général.

**Garnishment**

**142 (1)** If the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person that is liable to pay an amount under this Act (in this section referred to as a "debtor"), the Minister may, by notice in writing, require the person to pay without delay, if the money is immediately payable, and in any other case, as and when the money is payable, the money otherwise payable to the debtor in whole or in part to the Receiver General on account of the debtor's liability under this Act.

**Saisie-arrêt**

**142 (1)** S'il sait ou soupçonne qu'une personne est, ou sera dans un délai d'un an, tenue de faire un paiement à une autre personne (appelée « débiteur » au présent article) qui elle-même est redevable d'une somme en application de la présente loi, le ministre peut exiger de cette personne, par avis écrit, que tout ou partie des sommes par ailleurs à payer au débiteur soient payées, sans délai si les sommes sont alors à payer, sinon, dès qu'elles deviennent payables, au receveur général au titre de l'obligation du débiteur en application de la présente loi.

**Garnishment of loans or advances**

**(2)** Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

**(a)** a bank, credit union, trust company or other similar person (in this section referred to as an "institution") will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a

**Saisie-arrêt de prêts ou d'avances**

**(2)** Sans que soit limitée la portée générale du paragraphe (1), si le ministre sait ou soupçonne que, dans un délai de quatre-vingt-dix jours, selon le cas :

**a)** une banque, une caisse de crédit, une compagnie de fiducie ou une personne semblable (appelée « institution » au présent article) soit prêtera ou avancera une somme à un débiteur qui a une dette envers

negotiable instrument issued by, a debtor that is indebted to the institution and that has granted security in respect of the indebtedness, or

**(b)** a person, other than an institution, will loan or advance money to, or make a payment on behalf of, a debtor that the Minister knows or suspects

**(i)** is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

**(ii)** if that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by notice in writing, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the debtor's liability under this Act the money that would otherwise be so loaned, advanced or paid.

l'institution et a donné à celle-ci une garantie pour cette dette, soit effectuera un paiement au nom d'un tel débiteur ou au titre d'un effet de commerce émis par un tel débiteur;

**b)** une personne autre qu'une institution prêtera ou avancera une somme à un débiteur, ou effectuera un paiement au nom d'un débiteur, que le ministre sait ou soupçonne :

**(i)** être le salarié de cette personne, ou prestataire de biens ou de services à cette personne, ou qu'elle l'a été ou le sera dans un délai de quatre-vingt-dix jours,

**(ii)** lorsque cette personne est une personne morale, avoir un lien de dépendance avec cette personne,

il peut, par avis écrit, obliger cette institution ou cette personne à payer au receveur général au titre de l'obligation du débiteur en application de la présente loi tout ou partie de la somme qui serait autrement ainsi prêtée, avancée ou payée.

**Effect of receipt**

**(3)** A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

**Récépissé du ministre**

**(3)** Le récépissé du ministre relatif aux sommes payées, comme l'exige le présent article, constitue une quittance valable et suffisante de l'obligation initiale jusqu'à concurrence du paiement.

**Effect of requirement**

**(4)** If the Minister has, under this section, required a person to pay to the Receiver General on account of the liability under this Act of a debtor money otherwise payable by the person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General out of each such payment of any amount that is stipulated by the Minister in a notice in writing.

**Étendue de l'obligation**

**(4)** L'obligation, imposée par le ministre en vertu du présent article, d'une personne de payer au receveur général, au titre d'une somme dont un débiteur est redevable en application de la présente loi, des sommes à payer par ailleurs par cette personne au débiteur à titre d'intérêts, de loyer, de rémunération, de dividende, de rente ou autre paiement périodique s'étend à tous les paiements analogues à être effectués par la personne au débiteur tant que la somme dont celui-ci est redevable n'est pas acquittée. De plus, l'obligation exige que des paiements soient faits au receveur général sur chacun de ces paiements analogues, selon la somme que le ministre établit dans un avis écrit.

**Failure to comply**

**(5)** Every person that fails to comply with a requirement under subsection (1) or (4) is liable to pay to Her Majesty in right of Canada an amount equal to the amount that the person was required under that subsection to pay to the Receiver General.

**Défaut de se conformer**

**(5)** Toute personne qui ne se conforme pas aux paragraphes (1) ou (4) est redevable à Sa Majesté du chef du Canada d'une somme égale à celle qu'elle était tenue de payer au receveur général en vertu de ce paragraphe.

**Failure to comply**

**(6)** Every institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to Her Majesty in right of Canada an amount equal to the lesser of

**(a)** the total of money so loaned, advanced or paid, and

**(b)** the amount that the institution or person was required under that subsection to pay to the Receiver General.

**Assessment**

**(7)** The Minister may assess any person for any amount payable under this section by the person to the Receiver General and, if the Minister sends a notice of assessment, sections 72 and 92 to 106 apply with any modifications that the circumstances require.

**Time limit**

**(8)** An assessment of an amount payable under this section by a person to the Receiver General is not to be made more than four years after the notice from the Minister requiring the payment was received by the person.

**Effect of payment as required**

**(9)** If an amount that would otherwise have been advanced, loaned or paid to or on behalf of a debtor is paid by a person to the Receiver General in accordance with a notice from the Minister issued under this section or with an assessment under subsection (7), the person is deemed for all purposes to have advanced, loaned or paid the amount to or on behalf of the debtor.

**Recovery by deduction or set-off**

**143** If a person is indebted to Her Majesty in right of Canada under this Act, the Minister may require the retention by way of deduction or set-off of any amount that the Minister may specify out of any amount that may be or become payable to that person by Her Majesty in right of Canada.

**Acquisition of debtor's property**

**144** For the purpose of collecting debts owed by a person to Her Majesty in right of Canada under this Act, the Minister may purchase or otherwise acquire any interest in, or for civil law any right in, the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest or right so

**Défaut de se conformer**

**(6)** Toute institution ou personne qui ne se conforme pas au paragraphe (2) est redevable à Sa Majesté du chef du Canada, à l'égard des sommes à prêter, à avancer ou à payer, d'une somme égale au moins élevé des montants suivants :

**a)** le total des sommes ainsi prêtées, avancées ou payées;

**b)** la somme qu'elle était tenue de payer au receveur général en application de ce paragraphe.

**Cotisation**

**(7)** Le ministre peut établir une cotisation pour une somme qu'une personne doit payer au receveur général en vertu du présent article. Dès l'envoi de l'avis de cotisation, les articles 72 et 92 à 106 s'appliquent, avec les adaptations nécessaires.

**Délai**

**(8)** La cotisation ne peut être établie plus de quatre ans suivant le jour de la réception par la personne de l'avis du ministre exigeant le paiement de la somme.

**Effet du paiement**

**(9)** La personne qui, conformément à l'avis du ministre envoyé en vertu du présent article ou à une cotisation établie en vertu du paragraphe (7), paie au receveur général une somme qui aurait par ailleurs été avancée, prêtée ou payée à un débiteur, ou pour son compte, est réputée, à toutes fins utiles, avoir avancé, prêté ou payé la somme au débiteur ou pour son compte.

**Recouvrement par voie de déduction ou de compensation**

**143** Le ministre peut exiger la retenue par voie de déduction ou de compensation du montant qu'il précise sur toute somme qui est à payer par Sa Majesté du chef du Canada, ou qui peut le devenir, à la personne contre qui elle détient une créance en application de la présente loi.

**Acquisition de biens du débiteur**

**144** Pour recouvrer des créances de Sa Majesté du chef du Canada contre une personne en application de la présente loi, le ministre peut acheter ou autrement acquérir tout intérêt ou, pour l'application du droit civil, droit sur les biens de la personne auxquels il a droit par suite de procédures judiciaires ou conformément à l'ordonnance d'un tribunal, ou qui sont offerts en vente ou peuvent

acquired in any manner that the Minister considers reasonable.

#### Money seized from debtor

**145 (1)** If the Minister has knowledge or suspects that a person is holding money that was seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person that is liable to pay any amount under this Act (in this section referred to as the "debtor") and that is restorable to the debtor, the Minister may in writing require the person to turn over the money otherwise restorable to the debtor, in whole or in part, to the Receiver General on account of the debtor's liability under this Act.

#### Receipt issued by Minister

**(2)** A receipt issued by the Minister for money turned over as required under this section is a good and sufficient discharge of the requirement to restore the money to the debtor to the extent of the amount so turned over.

#### Seizure

**146 (1)** If a person fails to pay an amount as required under this Act, the Minister may in writing give 30 days notice to the person, addressed to their latest known address, of the Minister's intention to direct that the person's things be seized and disposed of. If the person fails to make the payment before the expiry of the 30 days, the Minister may issue a certificate of the failure and direct that the person's things be seized.

#### Disposition

**(2)** Things that have been seized under subsection (1) must be kept for 10 days at the expense and risk of the owner. If the owner does not pay the amount due together with all expenses within the 10 days, the Minister may dispose of the things in a manner the Minister considers appropriate in the circumstances.

#### Proceeds of disposition

**(3)** Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, must be paid or returned to the owner of the things seized.

#### Exemptions from seizure

**(4)** Any thing of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

être rachetés, et peut disposer de ces intérêts ou droits de la manière qu'il estime raisonnable.

#### Sommes saisies d'un débiteur

**145 (1)** S'il sait ou soupçonne qu'une personne détient des sommes qui ont été saisies par un officier de police, pour l'application du droit criminel canadien, d'une autre personne (appelée « débiteur » au présent article) redevable de sommes en application de la présente loi et qui doivent être restituées au débiteur, le ministre peut par écrit obliger la personne à verser tout ou partie des sommes autrement restituables au débiteur au receveur général au titre de la somme dont le débiteur est redevable en application de la présente loi.

#### Récépissé du ministre

**(2)** Le récépissé du ministre relatif aux sommes versées en application du présent article constitue une quittance valable et suffisante de l'obligation de restituer les sommes jusqu'à concurrence du versement.

#### Saisie

**146 (1)** Le ministre peut donner à la personne qui n'a pas payé une somme payable en application de la présente loi un préavis écrit de trente jours, envoyé à la dernière adresse connue de la personne, de son intention d'ordonner la saisie et la disposition de choses lui appartenant. Le ministre peut délivrer un certificat de défaut et ordonner la saisie des choses de la personne si, au terme des trente jours, celle-ci est encore en défaut de paiement.

#### Disposition des choses saisies

**(2)** Les choses saisies sont gardées pendant dix jours aux frais et risques du propriétaire. Si le propriétaire ne paie pas la somme due ainsi que les dépenses dans les dix jours, le ministre peut disposer des choses de la manière qu'il estime indiquée dans les circonstances.

#### Produit de la disposition

**(3)** Le surplus de la disposition, déduction faite de la somme due et des dépenses, est payé ou rendu au propriétaire des choses saisies.

#### Restriction

**(4)** Le présent article ne s'applique pas aux choses appartenant à une personne en défaut qui seraient insaisissables malgré la délivrance d'un bref d'exécution par une cour supérieure de la province dans laquelle la saisie est opérée.

**Person leaving Canada or defaulting**

**147 (1)** If the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by confirmed delivery service addressed to their latest known address, demand payment of any amount for which the person is liable under this Act or would be so liable if the time for payment had arrived, and the amount must be paid without delay despite any other provision of this Act.

**Seizure**

**(2)** If a person fails to pay an amount required under subsection (1), the Minister may direct that things of the person be seized, and subsections 146(2) to (4) apply, with any modifications that the circumstances require.

**Definitions**

**148 (1)** The following definitions apply in this section.

***assessed period*** of a person, in respect of an authorization under subsection (2) relating to a particular reporting period of the person, means

**(a)** if the hearing date is before the last day of the particular reporting period, the period beginning on the first day of the particular reporting period and ending on the assessment date; and

**(b)** in any other case, the particular reporting period. (*période visée*)

***assessment date***, in respect of an authorization under subsection (2), means the day immediately before the hearing date. (*date de cotisation*)

***hearing date***, in respect of an authorization under subsection (2), means the day on which a judge hears the application for the authorization. (*date d'audience*)

**Authorization to assess and take collection action**

**(2)** Despite section 139, if, on *ex parte* application by the Minister relating to a particular reporting period of a person, a judge is satisfied that there are reasonable grounds to believe that the net tax for the period, determined without reference to this section, would be a positive amount and that the collection of all or any part of that net tax would be jeopardized by a delay in its collection, the judge must, on any terms that the judge considers reasonable in the circumstances, authorize the Minister to, without delay,

**Personnes quittant le Canada ou en défaut**

**147 (1)** S'il soupçonne qu'une personne a quitté ou s'apprête à quitter le Canada, le ministre peut, avant le jour par ailleurs fixé pour le paiement, par avis signifié à personne ou envoyé par service de messagerie à la dernière adresse connue de la personne, exiger le paiement de toute somme dont celle-ci est redevable en application de la présente loi ou serait ainsi redevable si le paiement était échu. Cette somme doit être payée sans délai malgré les autres dispositions de la présente loi.

**Saisie**

**(2)** Le ministre peut ordonner la saisie de choses appartenant à la personne qui n'a pas payé une somme exigée aux termes du paragraphe (1); dès lors, les paragraphes 146(2) à (4) s'appliquent, avec les adaptations nécessaires.

**Définitions**

**148 (1)** Les définitions qui suivent s'appliquent au présent article.

***date d'audience*** En ce qui concerne l'autorisation prévue au paragraphe (2), le jour où un juge entend la requête la concernant. (*hearing date*)

***date de cotisation*** En ce qui concerne l'autorisation prévue au paragraphe (2), la veille de la date d'audience. (*assessment date*)

***période visée*** En ce qui concerne l'autorisation prévue au paragraphe (2) pour une période de déclaration donnée d'une personne :

**a)** si la date d'audience précède la fin de la période de déclaration donnée, la période commençant le premier jour de cette période et se terminant à la date de cotisation;

**b)** sinon, la période de déclaration donnée. (*assessed period*)

**Recouvrement compromis**

**(2)** Malgré l'article 139, sur requête *ex parte* du ministre concernant une période de déclaration d'une personne, le juge saisi, s'il est convaincu qu'il existe des motifs raisonnables de croire que la taxe nette pour la période, déterminée compte non tenu du présent article, est un montant positif et que le recouvrement de cette taxe serait en tout ou en partie compromis par un délai pour son recouvrement, autorise le ministre à faire ce qui suit sans délai, aux conditions que le juge estime raisonnables dans les circonstances :

**(a)** assess the net tax for the assessed period, determined in accordance with subsection (3); and

**(b)** take any of the actions described in sections 141 to 146 in respect of that amount.

**Effect of authorization**

**(3)** For the purposes of this Act, if an authorization is granted under subsection (2) in respect of an application relating to a particular reporting period of a person,

**(a)** if the hearing date is before the last day of the particular reporting period, the following periods are each deemed to be a separate reporting period of the person:

**(i)** the assessed period, and

**(ii)** the period beginning on the hearing date and ending on the last day of the particular reporting period;

**(b)** the day on or before which the person is required to file a return under section 55 for the assessed period is deemed to be the hearing date;

**(c)** the net tax for the assessed period is deemed to be equal to the amount that would be the net tax for the period if, on the assessment date, the person were to claim in a return filed under section 55 for the period all amounts, each of which is an amount that the person would be entitled on that day to claim as a rebate under Subdivision A of Division 4 of Part 1 or a negative amount that is required to be added in determining the net tax for the period;

**(d)** the net tax for the assessed period is deemed to have become due to the Receiver General on the hearing date;

**(e)** if, in assessing the net tax for the assessed period, the Minister takes into account an amount that the person would be entitled to claim as a rebate under Subdivision A of Division 4 of Part 1 or a negative amount that is required to be added in determining the net tax for the period, the person is deemed to have claimed the amount in a return filed under section 55 for the assessed period; and

**(f)** sections 82, 107, 116, 117 and 119 apply as if the net tax for the assessed period were not required to be paid, and the return for that period were not required to be filed, until the last day of the period described in subsection (9).

**a)** établir une cotisation à l'égard de la taxe nette, déterminée conformément au paragraphe (3), pour la période visée;

**b)** prendre toute mesure visée aux articles 141 à 146 à l'égard du montant en question.

**Effet**

**(3)** Pour l'application de la présente loi, si l'autorisation prévue au paragraphe (2) est accordée relativement à une requête visant une période de déclaration donnée d'une personne, les règles suivantes s'appliquent :

**a)** dans le cas où la date d'audience précède la fin de la période de déclaration donnée, chacune des périodes ci-après est réputée être une période de déclaration distincte de la personne :

**(i)** la période visée,

**(ii)** la période commençant à la date d'audience et se terminant le dernier jour de la période donnée;

**b)** la date limite pour la production de la déclaration de la personne en vertu de l'article 55 pour la période visée est réputée être la date d'audience;

**c)** la taxe nette pour la période visée est réputée égale au montant qui représenterait la taxe nette pour la période si, à la date de cotisation, la personne demandait, dans une déclaration produite en vertu de l'article 55 pour la période, tous les montants qu'elle pourrait alors demander à titre de remboursement en vertu de la sous-section A de la section 4 de la partie 1 pour la période ou à titre de montant négatif qui doit être ajouté dans le calcul de la taxe nette pour la période;

**d)** la taxe nette pour la période visée est réputée être devenue due au receveur général à la date d'audience;

**e)** si, dans le calcul de la taxe nette pour la période visée, le ministre tient compte d'un montant que la personne pourrait demander à titre de remboursement en vertu de la sous-section A de la section 4 de la partie 1 ou à titre de montant négatif qui doit être ajouté dans le calcul de la taxe nette, la personne est réputée avoir demandé le montant dans une déclaration produite en vertu de l'article 55 pour la période visée;

**f)** les articles 82, 107, 116, 117 et 119 s'appliquent comme si la date limite pour le paiement de la taxe nette pour la période visée et pour la production de la déclaration pour cette période était le dernier jour de la période fixée aux termes du paragraphe (9).

**Affidavits**

**(4)** Statements contained in an affidavit filed in the context of an application under this section may be based on belief in which case it must include the grounds for that belief.

**Service of authorization and notice of assessment**

**(5)** An authorization granted under subsection (2) in respect of a person must be served by the Minister on the person within 72 hours after it is granted, except if the judge orders the authorization to be served at some other time specified in the authorization, and a notice of assessment for the assessed period must be served on the person together with the authorization.

**How service effected**

**(6)** For the purpose of subsection (5), service on a person must be effected by personal service on the person or service in accordance with the directions of a judge.

**Application to judge for direction**

**(7)** If service cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

**Review of authorization**

**(8)** If a judge of a court has granted an authorization under subsection (2) in respect of a person, the person may, on six clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

**Limitation period for review application**

**(9)** An application by a person under subsection (8) to review an authorization must be made

**(a)** within 30 days after the day on which the authorization was served on the person in accordance with this section; or

**(b)** within any further time that a judge may allow, on being satisfied that the application was made as soon as practicable.

**Hearing *in camera***

**(10)** An application by a person under subsection (8) may, on the application of the person, be heard in private, if the person establishes to the satisfaction of the judge that the circumstances of the case justify proceedings heard in private.

**Affidavits**

**(4)** Les déclarations contenues dans un affidavit produit dans le cadre de la requête prévue au présent article peuvent être fondées sur une opinion pour autant que celle-ci soit motivée dans l'affidavit.

**Signification de l'autorisation et de l'avis de cotisation**

**(5)** Le ministre signifie à la personne intéressée l'autorisation prévue au paragraphe (2) dans les soixante-douze heures suivant le moment où elle est accordée, sauf si le juge ordonne que l'autorisation soit signifiée dans un autre délai qui y est précisé. L'avis de cotisation pour la période visée est signifié à la personne en même temps que l'autorisation.

**Mode de signification**

**(6)** Pour l'application du paragraphe (5), l'autorisation est signifiée à la personne soit par voie de signification à personne, soit par tout autre mode ordonné par le juge.

**Demande d'instructions du juge**

**(7)** Si la signification ne peut être raisonnablement effectuée conformément au présent article, le ministre peut, dès que matériellement possible, demander d'autres instructions au juge.

**Révision de l'autorisation**

**(8)** Si un juge d'une cour accorde une autorisation prévue au paragraphe (2) à l'égard d'une personne, celle-ci peut, après avoir donné un préavis de six jours francs au sous-procureur général du Canada, présenter à un juge de la cour une requête en révision de l'autorisation.

**Délai de présentation de la requête**

**(9)** La requête doit être présentée dans les trente jours suivant la date où l'autorisation a été signifiée à la personne. Toutefois, elle peut être présentée après l'expiration de ce délai si le juge est convaincu qu'elle a été présentée dès que matériellement possible.

**Huis clos**

**(10)** La requête peut, à la demande de son auteur, être entendue à huis clos si celui-ci démontre, à la satisfaction du juge, que les circonstances le justifient.

**Disposition of application**

**(11)** On an application under subsection (8), the judge must determine the question summarily and may confirm, vary or set aside the authorization and make any other order that the judge considers appropriate.

**Effect of setting aside authorization**

**(12)** If an authorization is set aside under subsection (11), subsection (3) does not apply in respect of the authorization and any assessment made as a result of the authorization is deemed to be void.

**Directions**

**(13)** If any question arises as to the course to be followed in connection with anything done or being done under this section and there is no relevant direction in this section, a judge may give any direction with regard to the course to be followed that, in the opinion of the judge, is appropriate.

**No appeal from review order**

**(14)** No appeal lies from an order of a judge made under subsection (11).

**Compliance by unincorporated bodies**

**149 (1)** If any amount is required to be paid or any other thing is required to be done by or under this Act by a person (in this section referred to as the "body") that is not an individual, estate or succession of a deceased individual, partnership, corporation, trust or joint venture, it is the joint and several, or solidary, liability and responsibility of

**(a)** every member of the body holding office as president, chairperson, treasurer, secretary or similar officer of the body,

**(b)** if there are no officers of the body referred to in paragraph (a), every member of any committee having management of the affairs of the body, and

**(c)** if there are no officers of the body referred to in paragraph (a) and no committee referred to in paragraph (b), every member of the body,

to pay that amount or to comply with the requirement, and if the amount is paid or the requirement is fulfilled by an officer of the body referred to in paragraph (a), a member of a committee referred to in paragraph (b) or a member of the body, it is considered as compliance with the requirement.

**Ordonnance**

**(11)** Le juge saisi de la requête statue sur la question de façon sommaire et peut confirmer, modifier ou annuler l'autorisation et rendre toute autre ordonnance qu'il estime indiquée.

**Effet**

**(12)** Si l'autorisation est annulée en vertu du paragraphe (11), le paragraphe (3) ne s'applique pas à l'autorisation et toute cotisation établie conformément à celle-ci est réputée nulle.

**Mesures non prévues**

**(13)** Si aucune mesure n'est prévue au présent article sur une question à résoudre en rapport avec une chose accomplie ou en voie d'accomplissement en application de cet article, un juge peut décider des mesures qu'il estime les plus aptes à atteindre le but visé.

**Ordonnance sans appel**

**(14)** L'ordonnance visée au paragraphe (11) est sans appel.

**Observation — entités non constituées en personne morale**

**149 (1)** L'entité — ni particulier, ni succession, ni personne morale, ni société de personnes, ni coentreprise, ni fiducie — qui est tenue de payer une somme, ou de remplir une autre exigence, en application de la présente loi est solidairement tenue, avec les personnes ci-après, au paiement de cette somme ou à l'exécution de cette exigence :

**a)** chaque membre de l'entité qui en est le président, le trésorier, le secrétaire ou un cadre occupant un poste similaire;

**b)** si l'entité ne comporte pas de cadres visés à l'alinéa a), chaque membre d'un comité chargé d'administrer ses affaires;

**c)** si l'entité ne comporte pas de cadres visés à l'alinéa a) ni de comité visé à l'alinéa b), chaque membre de l'entité.

Le fait pour un cadre de l'entité visé à l'alinéa a), un membre d'un comité visé à l'alinéa b) ou un membre de l'entité de payer la somme ou de remplir l'exigence vaut observation.

**Assessment**

**(2)** The Minister may assess any person for any amount for which the person is liable under this section and, if the Minister sends a notice of assessment, sections 72 and 92 to 106 are applicable, with any modifications that the circumstances require.

**Limitation**

**(3)** An assessment of a person under subsection (2) must not

**(a)** include any amount that the body was liable to pay before the day the person became jointly and severally, or solidarily, liable;

**(b)** include any amount that the body became liable to pay after the day the person ceased to be jointly and severally, or solidarily, liable; or

**(c)** be made more than two years after the day on which the person ceased to be jointly and severally, or solidarily, liable unless the person was grossly negligent in the carrying out of any obligation imposed on the body by or under this Act or made, or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice or answer made by the body.

**Definition of *transaction***

**150 (1)** In this section, ***transaction*** has the meaning assigned by subsection 68(1).

**Tax liability — transfers not at arm's length**

**(2)** If at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to

**(a)** the transferor's spouse or common-law partner or an individual that has since become the transferor's spouse or common-law partner,

**(b)** an individual that was under 18 years of age, or

**(c)** another person with whom the transferor was not dealing at arm's length,

the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

**(d)** the amount determined by the formula

**A – B**

where

**Cotisation**

**(2)** Le ministre peut établir une cotisation pour toute somme dont une personne est redevable en vertu du présent article. Les articles 72 et 92 à 106 s'appliquent, compte tenu des adaptations de circonstance, dès l'envoi par le ministre d'un avis de cotisation.

**Restriction**

**(3)** La cotisation établie à l'égard d'une personne ne peut :

**a)** inclure de somme dont l'entité devient redevable avant que la personne ne contracte l'obligation solidaire;

**b)** inclure de somme dont l'entité devient redevable après que la personne n'a plus d'obligation solidaire;

**c)** être établie plus de deux ans après la date à laquelle la personne n'a plus d'obligation solidaire, sauf si cette personne a commis une faute lourde dans l'exercice d'une obligation imposée à l'entité en application de la présente loi ou a fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, une facture ou une réponse de l'entité, ou y participe, consent ou acquiesce.

**Définition de *opération***

**150 (1)** Au présent article, ***opération*** s'entend au sens du paragraphe 68(1).

**Transfert entre personnes ayant un lien de dépendance**

**(2)** La personne qui transfère un bien, directement ou indirectement, par le biais d'une fiducie ou par tout autre moyen, à son époux ou conjoint de fait, ou à un particulier qui l'est devenu depuis, à un particulier de moins de dix-huit ans ou à une personne avec laquelle elle a un lien de dépendance, est solidairement tenue, avec le cessionnaire, de payer en application de la présente loi le moins élevé des montants suivants :

**a)** le résultat du calcul suivant :

**A – B**

où :

**A** représente l'excédent éventuel de la juste valeur marchande du bien au moment du transfert sur la juste valeur marchande, à ce moment, de la contrepartie payée par le cessionnaire pour le transfert du bien,

**A** is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property, and

**B** is the amount, if any, by which the amount assessed the transferee under paragraph 97.44(1)(b) of the *Customs Act*, subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001* or subsection 161(3) of the *Greenhouse Gas Pollution Pricing Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

**(e)** the total of all amounts each of which is

**(i)** an amount that the transferor is liable to pay under this Act for the reporting period of the transferor that includes that time or any preceding reporting period of the transferor, or

**(ii)** interest or penalty for which the transferor is liable as of that time,

but nothing in this subsection limits the liability of the transferor under this Act.

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en application de l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise* ou du paragraphe 161(3) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* relativement au bien sur la somme payée par le cédant relativement à ce montant;

**b)** le total des montants représentant chacun :

**(i)** le montant dont le cédant est redevable en application de la présente loi pour sa période de déclaration qui comprend le moment du transfert ou pour ses périodes de déclaration antérieures,

**(ii)** les intérêts ou les pénalités dont le cédant est redevable à ce moment.

Toutefois, le présent paragraphe ne limite en rien l'obligation du cédant découlant de la présente loi.

### Fair market value of undivided interest

**(3)** For the purpose of this section, the fair market value at any time of an undivided interest in a property, expressed as a proportionate interest in that property, is, subject to subsection (6), deemed to be equal to the same proportion of the fair market value of that property at that time.

### Juste valeur marchande d'un droit indivis

**(3)** Pour l'application du présent article, la juste valeur marchande, à un moment donné, d'un droit indivis sur un bien, exprimé sous forme d'un droit proportionnel sur ce bien, est réputée être égale, sous réserve du paragraphe (6), à la proportion correspondante de la juste valeur marchande du bien au moment donné.

### Assessment

**(4)** The Minister may at any time assess a transferee in respect of any amount payable by reason of this section, and the provisions of sections 72 and 92 to 106 apply, with any modifications that the circumstances require.

### Cotisation

**(4)** Le ministre peut, en tout temps, établir une cotisation à l'égard d'un cessionnaire pour tout montant payable en application du présent article. Dès lors, les articles 72 et 92 à 106 s'appliquent, compte tenu des adaptations de circonstance.

### Rules applicable

**(5)** If a transferor and transferee have, by reason of subsection (2), become jointly and severally, or solidarily, liable in respect of part or all of the liability of the transferor under this Act, the following rules apply:

**(a)** a payment by the transferee on account of the transferee's liability must, to the extent of the payment, discharge their liability; and

**(b)** a payment by the transferor on account of the transferor's liability only discharges the transferee's

### Règles applicables

**(5)** Dans le cas où le cédant et le cessionnaire sont solidairement responsables de tout ou partie d'une obligation du cédant en application de la présente loi, les règles suivantes s'appliquent :

**a)** le paiement d'une somme par le cessionnaire au titre de son obligation éteint d'autant leur obligation solidaire;

**b)** le paiement d'une somme par le cédant au titre de son obligation n'éteint l'obligation du cessionnaire que

liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by subsection (2), made jointly and severally, or solidarily, liable.

dans la mesure où il sert à ramener l'obligation du cédant à une somme inférieure à celle dont le paragraphe (2) a rendu le cessionnaire solidairement responsable.

**Transfers to spouse or common-law partner**

**(6)** Despite subsection (2), if at any time an individual transfers property to the individual's spouse or common-law partner under a decree, order or judgment of a competent tribunal or under a written separation agreement and, at that time, the individual and the individual's spouse or common-law partner were separated and living apart as a result of the breakdown of their marriage or *common-law partnership* as defined in subsection 248(1) of the *Income Tax Act*, for the purposes of paragraph (2)(d), the fair market value at that time of the property so transferred is deemed to be nil, but nothing in this subsection limits the liability of the individual under this Act.

**Transferts à l'époux ou au conjoint de fait**

**(6)** Malgré le paragraphe (2), dans le cas où un particulier transfère un bien à son époux ou conjoint de fait — dont il vit séparé au moment du transfert pour cause d'échec du mariage ou de l'*union de fait* au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu* — en vertu d'un décret, d'une ordonnance ou d'un jugement rendu par un tribunal compétent ou en vertu d'un accord écrit de séparation, la juste valeur marchande du bien au moment du transfert est réputée nulle pour l'application de l'alinéa (2)a). Toutefois, le présent paragraphe ne limite en rien l'obligation du cédant découlant de la présente loi.

**Anti-avoidance rules**

**(7)** For the purposes of this section, if a person transfers property to another person as part of a transaction or series of transactions, the following rules apply:

**(a)** the transferor is deemed to not be dealing at arm's length with the transferee at the time of the transfer of the property if

**(i)** the transferor and the transferee do not deal at arm's length at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, and

**(ii)** it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary, liability of the transferee and the transferor under this section for an amount payable under this Act;

**(b)** an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (4) in respect of that amount) is deemed to have become payable in the reporting period of the transferor in which the property was transferred, if it is reasonable to conclude that one of the purposes of the transfer of the property is to avoid the payment of a future charge debt by the transferor or transferee; and

**Règles anti-évitement**

**(7)** Pour l'application du présent article, dans le cas où une personne transfère un bien à une autre personne dans le cadre d'une opération ou d'une série d'opérations, les règles suivantes s'appliquent :

**a)** le cédant est réputé avoir avec le cessionnaire un lien de dépendance au moment du transfert du bien si, à la fois :

**(i)** le cédant et le cessionnaire ont un lien de dépendance au cours de la période commençant immédiatement avant l'opération ou la série d'opérations et se terminant immédiatement après l'opération ou la série d'opérations,

**(ii)** il est raisonnable de conclure que l'un des objets d'entreprendre ou d'organiser l'opération ou la série d'opérations consiste à éviter la responsabilité solidaire du cessionnaire et du cédant en vertu du présent article à l'égard d'une somme à payer en vertu de la présente loi;

**b)** la somme dont le cédant est redevable en vertu de la présente loi (notamment une somme ayant ou non fait l'objet d'une cotisation en application du paragraphe (4) qu'il doit payer en vertu du présent article) est réputée être devenue exigible au cours de sa période de déclaration dans laquelle le bien a été transféré, s'il est raisonnable de conclure que l'un des objets du transfert du bien est d'éviter le paiement d'une dette fiscale future par le cédant ou le cessionnaire;

**(c)** the amount determined for A in paragraph (2)(d) is deemed to be the greater of

**(i)** the amount otherwise determined for A in paragraph (2)(d) without reference to this paragraph, and

**(ii)** the amount determined by the formula

**A – B**

where

**A** is the fair market value of the property at the time of the transfer, and

**B** is the fair market value, at its lowest at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, of the consideration given by the transferee for the transfer of the property (other than any part of the consideration that is in a form that is cancelled or extinguished during that period) provided that the consideration is held by the transferor at that time.

**c)** la valeur de l'élément A de la formule figurant à l'alinéa (2)a) est réputée être la plus élevée des sommes suivantes :

**(i)** le montant déterminé par ailleurs pour l'élément A de la formule figurant à l'alinéa (2)a) compte non tenu du présent alinéa,

**(ii)** le montant obtenu par la formule suivante :

**A – B**

où :

**A** représente la juste valeur marchande du bien au moment du transfert,

**B** la juste valeur marchande, à son plus bas au cours de la période commençant immédiatement avant l'opération ou la série d'opérations et se terminant immédiatement après celle-ci, de la contrepartie qu'un cessionnaire donne pour le transfert du bien (sauf toute partie de la contrepartie qui se présente sous une forme annulée ou éteinte pendant cette période), pourvu qu'elle soit détenue par le cédant à ce moment.

## SUBDIVISION L

## Evidence and Procedure

### Service

**151 (1)** If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that

**(a)** is a partnership, the notice or document may be addressed to the name of the partnership;

**(b)** is a joint venture, the notice or document may be addressed to the name of the joint venture;

**(c)** is a union, the notice or document may be addressed to the name of the union;

**(d)** is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and

**(e)** carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.

### Personal service

**(2)** If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person

## SOUS-SECTION L

## Procédure et preuve

### Signification

**151 (1)** L'avis ou autre document que le ministre a l'autorisation ou l'obligation de signifier, de délivrer ou d'envoyer :

**a)** à une société de personnes peut être adressé à la dénomination de la société;

**b)** à une coentreprise peut être adressé à la dénomination de la coentreprise;

**c)** à un syndicat peut être adressé à la dénomination du syndicat;

**d)** à une société, un club, une association ou un autre organisme peut être adressé à la dénomination de l'organisme;

**e)** à une personne qui exploite une entreprise sous une dénomination ou raison sociale autre que son nom peut être adressé à cette dénomination ou raison.

### Signification à personne

**(2)** L'avis ou autre document que le ministre a l'autorisation ou l'obligation de signifier, de délivrer ou d'envoyer

that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is

**(a)** if the person is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership;

**(b)** if the person is a joint venture, served personally on one of the participants in, or operators of, the joint venture or left with an adult person employed at the place of business of the joint venture; or

**(c)** left with an adult person employed at the place of business of the person.

**Timing of receipt**

**152 (1)** For the purposes of this Act and subject to subsection (2), anything sent by confirmed delivery service or first class mail is deemed to have been received by the person to which it was sent on the day it was mailed or sent.

**Timing of payment**

**(2)** A person that is required under this Act to pay an amount is deemed not to have paid it until it is received by the Receiver General.

**Proof of service**

**153 (1)** If, under this Act, provision is made for sending by confirmed delivery service a request for information, a notice or a demand, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the request, notice or demand if the affidavit sets out that

**(a)** the officer has knowledge of the facts in the particular case;

**(b)** the request, notice or demand was sent by confirmed delivery service on a specified day to a specified person and address; and

**(c)** the officer identifies as exhibits attached to the affidavit a true copy of the request, notice or demand and

**(i)** if the request, notice, or demand was sent by registered or certified mail, the post office certificate of registration of the letter or a true copy of the relevant portion of the certificate, and

**(ii)** in any other case, the record that the document has been sent or a true copy of the relevant portion of the record.

à une personne qui exploite une entreprise est réputé valablement signifié, délivré ou envoyé :

**a)** dans le cas où la personne est une société de personnes, s'il est signifié à l'un des associés ou laissé à une personne adulte employée à l'établissement de la société;

**b)** dans le cas où la personne est une coentreprise, s'il est signifié à l'un de ses participants ou entrepreneurs ou laissé à une personne adulte employée à l'établissement de la coentreprise;

**c)** s'il est laissé à une personne adulte employée à l'établissement de la personne.

**Date de réception**

**152 (1)** Pour l'application de la présente loi, tout envoi en première classe ou par service de messagerie est réputé reçu par le destinataire à la date de sa mise à la poste ou de son envoi.

**Date de paiement**

**(2)** Le paiement qu'une personne est tenue de faire en application de la présente loi n'est réputé effectué que le jour de sa réception par le receveur général.

**Preuve de signification**

**153 (1)** Si la présente loi prévoit l'envoi par service de messagerie d'une demande de renseignements, d'un avis ou d'une mise en demeure, l'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, constitue la preuve de l'envoi ainsi que de la demande, de l'avis ou de la mise en demeure, s'il indique, à la fois :

**a)** que le préposé est au courant des faits en l'espèce;

**b)** que la demande, l'avis ou la mise en demeure a été envoyé par service de messagerie à une date indiquée à une personne dont les nom et adresse sont précisés;

**c)** que le préposé identifie, comme pièce jointe à l'affidavit, une copie conforme de la demande, de l'avis ou de la mise en demeure et, selon le cas :

**(i)** si la demande, l'avis ou la mise en demeure a été envoyé par courrier recommandé ou certifié, le certificat de recommandation remis par le bureau de poste ou une copie conforme de la partie pertinente du certificat,

**Proof of personal service**

**(2)** If, under this Act, provision is made for personal service of a request for information, a notice or a demand, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the personal service and of the request, notice or demand if the affidavit sets out that

**(a)** the officer has knowledge of the facts in the particular case;

**(b)** the request, notice or demand was served personally on a named day on the person to whom it was directed; and

**(c)** the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand.

**Proof of electronic delivery**

**(3)** If, under this Act, provision is made for sending a notice to a person electronically, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

**(a)** the officer has knowledge of the facts in the particular case;

**(b)** the notice was sent electronically to the person on a named day; and

**(c)** the officer identifies as exhibits attached to the affidavit copies of

**(i)** an electronic message confirming that the notice has been sent to the person, and

**(ii)** the notice.

**Proof — failure to comply**

**(4)** If, under this Act, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that, after a careful examination and search of the records, the officer has been unable to find in a given case that the return, application, statement, answer or certificate has been made by that person, is evidence that in that case the

**(ii)** sinon, la preuve documentaire de l'envoi du document ou une copie conforme de la partie pertinente de la preuve.

**Preuve de la signification à personne**

**(2)** Si la présente loi prévoit la signification à personne d'une demande de renseignements, d'un avis ou d'une mise en demeure, l'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, constitue la preuve de la signification à personne ainsi que de la demande, de l'avis ou de la mise en demeure, s'il indique, à la fois :

**a)** que le préposé est au courant des faits en l'espèce;

**b)** que la demande, l'avis ou la mise en demeure a été signifié à l'intéressé à une date indiquée;

**c)** que le préposé identifie, comme pièce jointe à l'affidavit, une copie conforme de la demande, de l'avis ou de la mise en demeure.

**Preuve de livraison par voie électronique**

**(3)** Si la présente loi prévoit l'envoi par voie électronique d'un avis à une personne, l'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou autre personne autorisée à le recevoir, constitue la preuve de l'envoi et de l'avis si l'affidavit indique à la fois :

**a)** que le préposé est au courant des faits en l'espèce;

**b)** que l'avis a été envoyé par voie électronique à la personne à une date indiquée;

**c)** que le préposé identifie, comme pièces jointes à l'affidavit, une copie :

**(i)** d'une part, d'un message électronique confirmant que l'avis a été envoyé à la personne,

**(ii)** d'autre part, de l'avis.

**Preuve de non-observation**

**(4)** Si la présente loi oblige une personne à faire une déclaration, une demande, un état, une réponse ou un certificat, l'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et que, après avoir fait un examen attentif de ceux-ci, il lui a été impossible de constater, dans un cas particulier, que la déclaration, la demande, l'état, la réponse ou le certificat a été fait par la personne, constitue la preuve que la

person did not make the return, application, statement, answer or certificate.

**Proof — time of compliance**

**(5)** If, under this Act, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that, after a careful examination of the records, the officer has found that the return, application, statement, answer or certificate was filed or made on a particular day, is evidence that it was filed or made on that day.

**Proof of documents**

**(6)** An affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document, or a printout of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

**Proof of documents**

**(7)** An affidavit of an officer of the Canada Border Services Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document, or a printout of an electronic document, made by or on behalf of the Minister of Public Safety and Emergency Preparedness or a person exercising the powers of that Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

**Proof of no appeal**

**(8)** An affidavit of an officer of the Canada Revenue Agency or the Canada Border Services Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Canada Revenue Agency or the Canada Border Services Agency, as the case may be, and that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Act and that, after a careful examination and search of the records, the officer has been unable to find that a notice of objection or of appeal from the assessment, as the case may be, was received within the time

personne n'a pas fait de déclaration, de demande, d'état, de réponse ou de certificat.

**Preuve — moment de l'observation**

**(5)** Si la présente loi oblige une personne à faire une déclaration, une demande, un état, une réponse ou un certificat, l'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et que, après avoir fait un examen attentif de ceux-ci, il a constaté que la déclaration, la demande, l'état, la réponse ou le certificat a été fait un jour donné, constitue la preuve que ces documents ont été faits ce jour-là.

**Preuve de documents**

**(6)** L'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et qu'un document qui est annexé à l'affidavit est un document ou la copie conforme d'un document, ou l'imprimé d'un document électronique, fait par le ministre ou pour le ministre ou une autre personne exerçant les pouvoirs de celui-ci, ou par une personne ou pour une personne, constitue la preuve de la nature et du contenu du document.

**Preuve de documents**

**(7)** L'affidavit d'un fonctionnaire de l'Agence des services frontaliers du Canada — souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir — indiquant qu'il a la charge des registres pertinents et qu'un document qui y est annexé est un document ou une copie conforme d'un document, ou l'imprimé d'un document électronique, fait par ou pour le ministre de la Sécurité publique et de la Protection civile ou une autre personne exerçant les pouvoirs de celui-ci, ou par ou pour une personne, fait preuve de la nature et du contenu du document.

**Preuve de l'absence d'appel**

**(8)** Constitue la preuve des énonciations qui y sont renfermées l'affidavit d'un préposé de l'Agence du revenu du Canada ou de l'Agence des services frontaliers du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents, qu'il connaît la pratique de l'Agence du revenu du Canada ou de l'Agence des services frontaliers du Canada, selon le cas, et qu'un examen des registres démontre qu'un avis de cotisation a été posté ou autrement envoyé à une personne un jour donné, en application de la présente loi, et que, après avoir fait un examen attentif des registres, il lui a été impossible de constater qu'un avis d'opposition

allowed, is evidence of the statements contained in the affidavit.

**Presumption**

**(9)** If evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Canada Revenue Agency or the Canada Border Services Agency, it is not necessary to prove the signature of the person or that the person is such an officer, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

**Proof of documents**

**(10)** Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Commissioner or an officer authorized to exercise the powers or perform the duties of the Minister under this Act is deemed to be a document signed, made and issued by the Minister, the Commissioner or the officer, unless it has been called into question by the Minister or a person acting for the Minister or for Her Majesty in right of Canada.

**Proof of documents**

**(11)** Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister of Public Safety and Emergency Preparedness, the President of the Canada Border Services Agency or an officer authorized to exercise the powers or perform the duties of that Minister under this Act is deemed to be a document signed, made and issued by that Minister, the President or the officer, unless it has been called into question by that Minister or a person acting for that Minister or for Her Majesty in right of Canada.

**Mailing or sending date**

**(12)** For the purposes of this Act, if a notice or demand that the Minister is required or authorized under this Act to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, is presumed to be the date of the notice or demand.

**Date electronic notice sent**

**(13)** For the purposes of this Act, if a notice or other communication in respect of a person, other than a notice or other communication that refers to the business number of a person, is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to the

ou d'appel concernant la cotisation a été reçu dans le délai imparti à cette fin.

**Signature ou fonction réputée**

**(9)** Si une preuve est donnée en vertu du présent article par un affidavit d'où il ressort que la personne le souscrivant est un préposé de l'Agence du revenu du Canada ou de l'Agence des services frontaliers du Canada, il n'est pas nécessaire d'attester sa signature ou de prouver qu'il est un tel préposé, ni d'attester la signature ou la qualité de la personne en présence de laquelle l'affidavit a été souscrit.

**Preuve de documents**

**(10)** Tout document paraissant avoir été établi en application de la présente loi, ou dans le cadre de son application ou exécution, au nom ou sous l'autorité du ministre, du commissaire ou d'un préposé autorisé à exercer les pouvoirs ou les fonctions du ministre en application de la présente loi est réputé être un document signé, fait et délivré par le ministre, le commissaire ou le préposé, sauf s'il a été mis en doute par le ministre ou par une autre personne agissant pour lui ou pour Sa Majesté du chef du Canada.

**Preuve de documents**

**(11)** Tout document paraissant avoir été établi en application de la présente loi, ou dans le cadre de son application ou exécution, au nom ou sous l'autorité du ministre de la Sécurité publique et de la Protection civile, du président de l'Agence des services frontaliers du Canada ou d'un fonctionnaire autorisé à exercer les pouvoirs ou les fonctions de ce ministre en application de la présente loi est réputé être un document signé, fait et délivré par ce ministre, le président ou le fonctionnaire, sauf s'il a été mis en doute par ce ministre ou par une autre personne agissant pour lui ou pour Sa Majesté du chef du Canada.

**Date d'envoi ou de mise à la poste**

**(12)** Pour l'application de la présente loi, la date d'envoi ou de mise à la poste d'un avis ou d'une mise en demeure que le ministre a l'obligation ou l'autorisation, en vertu de la présente loi, d'envoyer par voie électronique ou de poster à une personne est présumée être la date de l'avis ou de la mise en demeure.

**Date d'envoi d'un avis électronique**

**(13)** Pour l'application de la présente loi, tout avis ou autre communication concernant une personne, autre que tout avis ou autre communication qui fait état du numéro d'entreprise d'une personne, qui est rendu disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable est présumé être envoyé à la

person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

**Date electronic notice sent — business account**

**(14)** For the purposes of this Act, a notice or other communication in respect of a person that is made available in electronic format such that it can be read or perceived by a person or computer system or other similar device and that refers to the business number of a person is presumed to be sent to the person and received by the person on the date that it is posted by the Minister in the secure electronic account in respect of the business number of the person, unless the person has requested at least 30 days before that date, in a manner specified by the Minister, that such notices or other communications be sent by mail.

**Date assessment made**

**(15)** If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day of sending of the notice of assessment.

**Proof of return**

**(16)** In a prosecution for an offence under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person, is evidence that the return, application, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by or on behalf of that person.

**Proof of return — printouts**

**(17)** For the purposes of this Act, a document presented by the Minister purporting to be a printout of the information in respect of a person received under section 74 by the Minister is to be received as evidence and, in the

personne, et être reçu par elle, à la date où un message électronique est envoyé — à l'adresse électronique la plus récente que la personne a fournie avant cette date au ministre pour l'application du présent paragraphe — pour l'informer qu'un avis ou une autre communication nécessitant son attention immédiate se trouve dans son compte électronique sécurisé. Un avis ou une autre communication est considéré comme étant rendu disponible s'il est affiché par le ministre sur le compte électronique sécurisé de la personne et si celle-ci a donné son autorisation pour que des avis ou d'autres communications soient rendus disponibles de cette manière et n'a pas retiré cette autorisation avant cette date selon les modalités établies par le ministre.

**Date d'envoi d'un avis électronique — compte d'entreprise**

**(14)** Pour l'application de la présente loi, tout avis ou autre communication concernant une personne qui est rendu disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable et qui fait état du numéro d'entreprise d'une personne est présumé être envoyé à la personne, et être reçu par elle, à la date où il est affiché par le ministre sur le compte électronique sécurisé relativement à son numéro d'entreprise, sauf si celle-ci a demandé, au moins trente jours avant cette date, selon les modalités fixées par le ministre, que ces avis ou autres communications soient envoyés par la poste.

**Date d'établissement de la cotisation**

**(15)** Lorsqu'un avis de cotisation a été envoyé par le ministre de la manière prévue par la présente loi, la cotisation est réputée établie à la date d'envoi de l'avis.

**Preuve de déclaration**

**(16)** Dans toute poursuite concernant une infraction à la présente loi, la production d'une déclaration, d'une demande, d'un état, d'une réponse ou d'un certificat, prévu par la présente loi, donné comme ayant été fait par l'accusé ou pour son compte constitue la preuve que la déclaration, la demande, l'état, la réponse ou le certificat a été fait par l'accusé ou pour son compte.

**Preuve de production — imprimés**

**(17)** Pour l'application de la présente loi, un document présenté par le ministre comme étant un imprimé des renseignements concernant une personne qu'il a reçu en vertu de l'article 74 est admissible en preuve et fait foi,

absence of evidence to the contrary, is proof of the return filed by the person under that section.

**Proof of return — production of returns, etc.**

**(18)** In a proceeding under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of a person, is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

**Evidence**

**(19)** In a prosecution for an offence under this Act, an affidavit of an officer of the Canada Revenue Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be paid to the Receiver General has not been received by the Receiver General, is evidence of the statements contained in the affidavit.

**DIVISION 3**

## Regulations

**Regulations**

**154 (1)** The Governor in Council may make regulations

**(a)** prescribing anything that, by this Act, is to be prescribed or is to be determined or regulated by regulation;

**(b)** requiring any person to provide any information, including the person's name, address and registration number, to any class of persons required to make a return containing that information;

**(c)** requiring any person to provide the Minister with the person's Social Insurance Number;

**(d)** requiring any class of persons to make returns respecting any class of information required in connection with the administration or enforcement of this Act;

**(e)** distinguishing among any class of persons, property or activities; and

**(f)** generally to carry out the purposes and provisions of this Act.

sauf preuve contraire, de la déclaration produite par la personne en vertu de cet article.

**Preuve de production — déclarations**

**(18)** Dans toute procédure mise en œuvre en application de la présente loi, la production d'une déclaration, d'une demande, d'un état, d'une réponse ou d'un certificat prévu par la présente loi, donné comme ayant été produit, livré, fait ou signé par une personne ou pour son compte constitue la preuve que la déclaration, la demande, l'état, la réponse ou le certificat a été produit, livré, fait ou signé par la personne ou pour son compte.

**Preuve**

**(19)** Dans toute poursuite concernant une infraction à la présente loi, l'affidavit d'un préposé de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et qu'un examen des registres démontre que le receveur général n'a pas reçu la somme au titre des sommes dont la présente loi exige le versement constitue la preuve des énonciations qui y sont renfermées.

**SECTION 3**

## Règlements

**Règlement**

**154 (1)** Le gouverneur en conseil peut, par règlement :

**a)** prendre toute mesure d'ordre réglementaire prévue par la présente loi;

**b)** obliger une personne à communiquer des renseignements, notamment ses nom, adresse et numéro d'inscription, à une catégorie de personnes tenue de produire une déclaration les renfermant;

**c)** obliger une personne à aviser le ministre de son numéro d'assurance sociale;

**d)** obliger une catégorie de personnes à produire les déclarations relatives à toute catégorie de renseignements nécessaires à l'application ou à l'exécution de la présente loi;

**e)** faire la distinction entre des catégories de personnes, des biens ou des activités;

**f)** prendre toute mesure d'application de la présente loi.

**Amendments to schedule**

**(2)** The Governor in Council may, by regulation, amend the schedule including by adding, deleting, varying or replacing any item in the schedule or by replacing the schedule.

**Effect**

**(3)** A regulation made under this Act is to have effect from the date it is published in the *Canada Gazette* or at such time thereafter as may be specified in the regulation, unless the regulation provides otherwise and

**(a)** has a non-tightening effect only;

**(b)** corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act;

**(c)** is consequential on an amendment to this Act that is applicable before the date the regulation is published in the *Canada Gazette*; or

**(d)** gives effect to a public announcement, in which case the regulation must not, except if any of paragraphs (a) to (c) apply, have effect before the date that the announcement was made.

**Positive or negative amount — regulations**

**155** For greater certainty,

**(a)** in prescribing an amount under subsection 154(1), the Governor in Council may prescribe a positive or negative amount; and

**(b)** in prescribing a manner of determining an amount under subsection 154(1), the Governor in Council may prescribe a manner that could result in a positive or negative amount.

**Incorporation by reference — limitation removed**

**156** The limitation set out in paragraph 18.1(2)(a) of the *Statutory Instruments Act*, to the effect that a document must be incorporated as it exists on a particular date, does not apply to any power to make regulations under this Act.

**Certificates and registrations not statutory instruments**

**157** For greater certainty, any registration or certificate issued under this Act is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

**Modifications de l'annexe**

**(2)** Le gouverneur en conseil peut, par règlement, modifier l'annexe, notamment en ajoutant, supprimant, modifiant ou remplaçant un élément de l'annexe ou en remplaçant l'annexe.

**Effet**

**(3)** Les règlements pris en application de la présente loi ont effet à compter de leur publication dans la *Gazette du Canada* ou après s'ils le prévoient. Un règlement peut toutefois avoir un effet rétroactif, s'il comporte une disposition en ce sens, dans les cas suivants :

**a)** il n'augmente pas le fardeau de la taxe;

**b)** il corrige une disposition ambiguë ou erronée, non conforme à un objet de la présente loi;

**c)** il procède d'une modification de la présente loi applicable avant qu'il ne soit publié dans la *Gazette du Canada*;

**d)** il met en œuvre une mesure annoncée publiquement, auquel cas, si aucun des alinéas a) à c) ne s'applique par ailleurs, il ne peut avoir d'effet avant la date où la mesure est ainsi annoncée.

**Montant positif ou négatif — règlement**

**155** Il est entendu que :

**a)** le gouverneur en conseil peut, en prenant une mesure d'ordre réglementaire en application du paragraphe 154(1) pour viser un montant par règlement, viser un montant positif ou négatif;

**b)** le gouverneur en conseil peut, en prenant une mesure d'ordre réglementaire en application du paragraphe 154(1) pour prévoir des modalités réglementaires selon lesquelles un montant doit être déterminé, prévoir des modalités réglementaires qui pourraient conduire à un résultat qui est un montant positif ou négatif.

**Incorporation par renvoi — suppression de restriction**

**156** La restriction prévue à l'alinéa 18.1(2)a) de la *Loi sur les textes réglementaires* selon laquelle le document doit être incorporé par renvoi dans sa version à une date donnée ne s'applique pas au pouvoir de prendre des règlements conféré par la présente loi.

**Un certificat ou une inscription n'est pas un texte réglementaire**

**157** Il est entendu qu'une inscription ou un certificat en application de la présente loi n'est pas un texte réglementaire au sens de la *Loi sur les textes réglementaires*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**(2.1) Despite subsection (2), the provisions of the *Select Luxury Items Tax Act*, as enacted by subsection (1), that set out the tax on subject aircraft come into force on a day or days to be fixed by order of the Governor in Council, which day or days may not be fixed before September 1, 2022.**

**(3) Despite subsection (2), sections 107 to 119 and 121 to 129 of the *Select Luxury Items Tax Act*, as enacted by subsection (1), come into force on the later of the day on which this Act receives royal assent and September 1, 2022.**

**(4) In applying subsection (2), the following rules apply:**

**(a) if a vendor sells a subject item to a purchaser, within the meaning of section 7 of the *Select Luxury Items Tax Act*, as enacted by subsection (1), and an agreement between the purchaser and the vendor for the sale of the subject item is entered into before September 2022, sections 18 and 29 of that Act, as enacted by subsection (1), apply in respect of the sale if the sale is completed, within the meaning of that section 7, on or after September 1, 2022 unless the purchaser entered into the agreement in writing before 2022 in the course of the vendor's business of offering for sale that type of subject item;**

**(b) section 20 of that Act, as enacted by subsection (1), applies in respect of a subject item if the subject item is imported on or after September 1, 2022 unless the importer entered into an agreement in writing before 2022 with a vendor for the sale of the subject item in the course of the vendor's business of offering for sale that type of subject item;**

**(c) section 23 of that Act, as enacted by subsection (1), applies to a subject vehicle that is registered with the Government of Canada or a province, within the meaning of subsection 12(1) of that Act, as enacted by subsection (1), on or after September 1, 2022;**

**(d) sections 24 and 25 of that Act, as enacted by subsection (1), apply to a subject item in respect of which the right to use the subject item is provided by an owner of the subject item to another person if the other person first has the**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**(2.1) Malgré le paragraphe (2), les dispositions de la *Loi sur la taxe sur certains biens de luxe*, édictées par le paragraphe (1), qui prévoient la taxe sur les aéronefs assujettis entrent en vigueur à la date ou aux dates fixées par décret, lesquelles ne peuvent pas être fixées avant le 1er septembre 2022.**

**(3) Malgré le paragraphe (2), les articles 107 à 119 et 121 à 129 de la *Loi sur la taxe sur certains biens de luxe*, édictés par le paragraphe (1), entrent en vigueur le 1er septembre 2022 ou, si elle est postérieure, à la date de sanction de la présente loi.**

**(4) Pour l'application du paragraphe (2), les règles suivantes s'appliquent :**

**a) si un vendeur vend un bien assujetti à un acheteur, au sens de l'article 7 de la *Loi sur la taxe sur certains biens de luxe*, édicté par le paragraphe (1), et si une convention est conclue entre l'acheteur et le vendeur pour la vente du bien assujetti avant septembre 2022, les articles 18 et 29 de cette loi, édictés par le paragraphe (1), s'appliquent relativement à la vente si la vente est achevée, au sens de cet article 7, après août 2022, à moins que l'acheteur n'ait conclu par écrit la convention avant 2022 dans le cadre de l'entreprise du vendeur de mise en vente de biens assujettis du même type que le bien assujetti;**

**b) l'article 20 de cette loi, édicté par le paragraphe (1), s'applique relativement à un bien assujetti qui est importé après août 2022, à moins que son importateur n'ait conclu par écrit une convention avant 2022 avec un vendeur pour la vente du bien assujetti dans le cadre de l'entreprise du vendeur de mise en vente de biens assujettis du même type que le bien assujetti;**

**c) l'article 23 de cette loi, édicté par le paragraphe (1), s'applique à un véhicule assujetti qui est immatriculé auprès du gouvernement du Canada ou d'une province, au sens du paragraphe 12(1) de cette loi, édicté par la paragraphe (1), après août 2022;**

**d) les articles 24 et 25 de cette loi, édictés par le paragraphe (1), s'appliquent à un bien assujetti relativement auquel le droit d'utilisation a été octroyé par un propriétaire du bien**

**right to use the subject item on or after September 1, 2022;**

**(e) section 26 of that Act, as enacted by subsection (1), applies to a subject item that is used in Canada at a particular time on or after September 1, 2022 unless a person entered into an agreement in writing before 2022 with a vendor for the sale of the subject item in the course of the vendor's business of offering for sale that type of subject item and the person is an owner of the subject item at the particular time;**

**(f) section 27 of that Act, as enacted by subsection (1), applies to a subject item if a person that is an owner of the subject item ceases to be a registered vendor in respect of that type of subject item on or after September 1, 2022;**

**(g) section 28 of that Act, as enacted by subsection (1), applies to a subject item if a person that is an owner of the subject item ceases to be a qualifying aircraft user on or after September 1, 2022; and**

**(h) section 30 of that Act, as enacted by subsection (1), applies to a subject item if tax under any of sections 20 and 23 to 28 of that Act, as enacted by subsection (1), became payable in respect of the subject item on or after September 1, 2022.**

**assujetti à une autre personne si l'autre personne a eu pour la première fois le droit d'utiliser le bien assujetti après août 2022;**

**e) l'article 26 de cette loi, édicté par le paragraphe (1), s'applique à un bien assujetti qui est utilisé au Canada à un moment donné après août 2022, à moins qu'une personne n'ait conclu par écrit une convention avant 2022 avec un vendeur pour la vente du bien assujetti dans le cadre de l'entreprise du vendeur de mise en vente de biens assujettis du même type que le bien assujetti et que la personne ne soit un propriétaire du bien assujetti au moment donné;**

**f) l'article 27 de cette loi, édicté par le paragraphe (1), s'applique à un bien assujetti dont une personne est un propriétaire si la personne cesse d'être un vendeur inscrit relativement à ce type de bien assujetti après août 2022;**

**g) l'article 28 de cette loi, édicté par le paragraphe (1), s'applique à un bien assujetti dont une personne est un propriétaire si la personne cesse d'être un utilisateur admissible d'aéronef après août 2022;**

**h) l'article 30 de cette loi, édicté par le paragraphe (1), s'applique à un bien assujetti si la taxe prévue à l'un des articles 20 et 23 à 28 de cette loi, édictés par le paragraphe (1), est devenue payable relativement au bien assujetti après août 2022.**

## Consequential Amendments

## Modifications corrélatives

R.S., c. A-1

### Access to Information Act

**136 (1) Schedule II to the *Access to Information Act* is amended by adding, in alphabetical order, a reference to**

Select Luxury Items Tax Act
*Loi sur la taxe sur certains biens de luxe*

**and a corresponding reference to "section 91".**

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

L.R., ch. A-1

### Loi sur l'accès à l'information

**136 (1) L'annexe II de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :**

Loi sur la taxe sur certains biens de luxe
*Select Luxury Items Tax Act*

**ainsi que de la mention « article 91 » en regard de ce titre de loi.**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. B-3; 1992, c. 27, s. 2

## Bankruptcy and Insolvency Act

**137 (1) Subsection 149(3) of the *Bankruptcy and Insolvency Act* is amended by striking out "and" at the end of paragraph (f), by adding "and" at the end of paragraph (g) and by adding the following after paragraph (g):**

**(h)** the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

L.R., ch. B-3; 1992, ch. 27, art. 2

## Loi sur la faillite et l'insolvabilité

**137 (1) Le paragraphe 149(3) de la *Loi sur la faillite et l'insolvabilité* est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**h)** la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. C-46

## Criminal Code

**138 Paragraph 462.48(2)(c) of the *Criminal Code* is replaced by the following:**

**(c)** the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001* or the *Select Luxury Items Tax Act* to which access is sought or that is proposed to be examined or communicated; and

L.R., ch. C-46

## Code criminel

**138 L'alinéa 462.48(2)c) du *Code criminel* est remplacé par ce qui suit :**

**c)** désignation du genre de renseignements ou de documents — livre, dossier, texte, rapport ou autre document — qu'a obtenus le ministre du Revenu national — ou qui ont été obtenus en son nom — dans le cadre de l'application de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise* ou de la *Loi sur la taxe sur certains biens de luxe* et dont la communication ou l'examen est demandé;

R.S., c. C-53

## Customs and Excise Offshore Application Act

**139 (1) The portion of the definition *federal customs laws* in subsection 2(1) of the *Customs and Excise Offshore Application Act* after paragraph (c) is replaced by the following:**

that relate to customs or excise, whether those Acts, regulations or rules come into force before or after June 30, 1983 and, for greater certainty but without restricting the generality of the foregoing, includes the following Acts, namely, the *Excise Act*, the *Excise Tax Act*, the *Export and Import Permits Act*, the *Importation of Intoxicating Liquors Act*, the *Special Import Measures Act*, the *Customs Act*, the *Customs Tariff*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act*; (*législation douanière fédérale*)

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

L.R., ch. C-53

## Loi sur la compétence extracôtière du Canada pour les douanes et l'accise

**139 (1) La définition de *législation douanière fédérale*, au paragraphe 2(1) de la *Loi sur la compétence extracôtière du Canada pour les douanes et l'accise*, est remplacée par ce qui suit :**

***législation douanière fédérale*** Sont compris dans cette législation, dans la mesure où ils concernent les douanes ou l'accise, les lois fédérales, les règlements au sens de la *Loi sur les textes réglementaires* et les règles de droit applicables en relation avec ces lois ou règlements, qu'ils existent avant ou après le 30 juin 1983, notamment la *Loi sur l'accise*, la *Loi sur la taxe d'accise*, la *Loi sur les licences d'exportation et d'importation*, la *Loi sur l'importation des boissons enivrantes*, la *Loi sur les mesures spéciales d'importation*, la *Loi sur les douanes*, le *Tarif des douanes*, la *Loi de 2001 sur l'accise* et la *Loi sur la taxe sur certains biens de luxe*. (*federal customs laws*)

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. E-15

## Excise Tax Act

**140 (1) Section 77 of the *Excise Tax Act* is replaced by the following:**

**Restriction on refunds and credits**

**77** A refund shall not be paid, and a credit shall not be allowed, to a person under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**141 (1) Subsection 229(2) of the Act is replaced by the following:**

**Restriction**

**(2)** A net tax refund for a reporting period of a person shall not be paid to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**142 (1) Subsection 230(2) of the Act is replaced by the following:**

**Restriction**

**(2)** An amount paid on account of net tax for a reporting period of a person shall not be refunded to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

L.R., ch. E-15

## Loi sur la taxe d'accise

**140 (1) L'article 77 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**77** Un montant n'est remboursé à une personne, et un crédit ne lui est accordé, en vertu de la présente loi qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**141 (1) Le paragraphe 229(2) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(2)** Le remboursement de taxe nette pour la période de déclaration d'une personne ne lui est versé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**142 (1) Le paragraphe 230(2) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(2)** Un montant payé au titre de la taxe nette d'une personne pour sa période de déclaration ne lui est remboursé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**143 (1) Subparagraph 238.1(2)(c)(iii) of the Act is replaced by the following:**

**(iii)** all amounts required under this Act (other than this Part), sections 21 and 33 of the *Canada Pension Plan*, the *Excise Act*, the *Customs Act*, the *Income Tax Act*, section 82 and Part VII of the *Employment Insurance Act*, the *Customs Tariff*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* to be remitted or paid before that time by the registrant have been remitted or paid, and

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**144 (1) Section 263.02 of the Act is replaced by the following:**

**Restriction on rebate**

**263.02** A rebate under this Part shall not be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**145 (1) Subsection 296(7) of the Act is replaced by the following:**

**Restriction on refunds**

**(7)** An amount under this section shall not be refunded to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**143 (1) Le sous-alinéa 238.1(2)c)(iii) de la même loi est remplacé par ce qui suit :**

**(iii)** les montants à verser ou à payer par l'inscrit avant ce moment en conformité avec la présente loi, sauf la présente partie, les articles 21 et 33 du *Régime de pensions du Canada*, la *Loi sur l'accise*, la *Loi sur les douanes*, la *Loi de l'impôt sur le revenu*, l'article 82 et la partie VII de la *Loi sur l'assurance-emploi*, le *Tarif des douanes*, la *Loi de 2001 sur l'accise* et la *Loi sur la taxe sur certains biens de luxe* ont été versés ou payés,

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**144 (1) L'article 263.02 de la même loi est remplacé par ce qui suit :**

**Restriction**

**263.02** Le montant d'un remboursement prévu par la présente partie n'est versé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**145 (1) Le paragraphe 296(7) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(7)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. E-20; 2001, c. 33, s. 2(F)

## Export Development Act

**146 (1) Paragraph 24.3(2)(c) of the *Export Development Act* is replaced by the following:**

**(c)** to the Minister of National Revenue solely for the purpose of administering or enforcing the *Excise Tax Act*, the *Income Tax Act* or the *Select Luxury Items Tax Act*; or

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

L.R., ch. E-20; 2001, ch. 33, art. 2(F)

## Loi sur le développement des exportations

**146 (1) L'alinéa 24.3(2)c) de la *Loi sur le développement des exportations* est remplacé par ce qui suit :**

**c)** ils sont destinés au ministre du Revenu national uniquement pour l'administration ou l'application de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu* ou de la *Loi sur la taxe sur certains biens de luxe*;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. F-11

## Financial Administration Act

**147 (1) Paragraph 155.2(6)(c) of the *Financial Administration Act* is replaced by the following:**

**(c)** an amount owing by a person to Her Majesty in right of Canada, or payable by the Minister of National Revenue to any person, under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006* or the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

L.R., ch. F-11

## Loi sur la gestion des finances publiques

**147 (1) L'alinéa 155.2(6)c) de la *Loi sur la gestion des finances publiques* est remplacé par ce qui suit :**

**c)** aux sommes à payer par toute personne à Sa Majesté du chef du Canada ou à payer par le ministre du Revenu national à toute personne au titre de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre* ou de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. T-2

## Tax Court of Canada Act

**148 (1) Subsection 12(1) of the *Tax Court of Canada Act* is replaced by the following:**

**Jurisdiction**

**12 (1)** The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part IX of the *Excise Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act*, Part V.1 of the *Customs Act*, the *Income Tax Act*, the *Employment Insurance Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*,

L.R., ch. T-2

## Loi sur la Cour canadienne de l'impôt

**148 (1) Le paragraphe 12(1) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :**

**Compétence**

**12 (1)** La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application du *Régime de pensions du Canada*, de la *Loi sur l'exportation et l'importation de biens culturels*, de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi sur la sécurité de la vieillesse*, de la *Loi de l'impôt sur les revenus pétroliers*, de la partie V.1 de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*,

the *Softwood Lumber Products Export Charge Act, 2006*, the *Disability Tax Credit Promoters Restrictions Act*, Part 1 of the *Greenhouse Gas Pollution Pricing Act* and the *Select Luxury Items Tax Act* when references or appeals to the Court are provided for in those Acts.

de la *Loi sur l'assurance-emploi*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur les restrictions applicables aux promoteurs du crédit d'impôt pour personnes handicapées*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* et de la *Loi sur la taxe sur certains biens de luxe*, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

**(2) Subsections 12(3) and (4) of the Act are replaced by the following:**

**(2) Les paragraphes 12(3) et (4) de la même loi sont remplacés par ce qui suit :**

**Further jurisdiction**

**(3)** The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 310 or 311 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 173 or 174 of the *Income Tax Act*, section 51 or 52 of the *Air Travellers Security Charge Act*, section 204 or 205 of the *Excise Act, 2001*, section 62 or 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 121 or 122 of the *Greenhouse Gas Pollution Pricing Act* or section 105 or 106 of the *Select Luxury Items Tax Act*.

**Autre compétence**

**(3)** La Cour a compétence exclusive pour entendre les questions qui sont portées devant elle en vertu des articles 310 ou 311 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, des articles 173 ou 174 de la *Loi de l'impôt sur le revenu*, des articles 51 ou 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 204 ou 205 de la *Loi de 2001 sur l'accise*, des articles 62 ou 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, des articles 121 ou 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ou des articles 105 ou 106 de la *Loi sur la taxe sur certains biens de luxe*.

**Extensions of time**

**(4)** The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*, section 304 or 305 of the *Excise Tax Act*, section 97.51 or 97.52 of the *Customs Act*, section 166.2 or 167 of the *Income Tax Act*, subsection 103(1) of the *Employment Insurance Act*, section 45 or 47 of the *Air Travellers Security Charge Act*, section 197 or 199 of the *Excise Act, 2001*, section 115 or 117 of the *Greenhouse Gas Pollution Pricing Act* or section 99 or 101 of the *Select Luxury Items Tax Act*.

**Prorogation des délais**

**(4)** La Cour a compétence exclusive pour entendre toute demande de prorogation de délai présentée en vertu du paragraphe 28(1) du *Régime de pensions du Canada*, de l'article 33.2 de la *Loi sur l'exportation et l'importation de biens culturels*, des articles 304 et 305 de la *Loi sur la taxe d'accise*, des articles 97.51 et 97.52 de la *Loi sur les douanes*, des articles 166.2 et 167 de la *Loi de l'impôt sur le revenu*, du paragraphe 103(1) de la *Loi sur l'assurance-emploi*, des articles 45 et 47 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 197 et 199 de la *Loi de 2001 sur l'accise*, des articles 115 et 117 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ou des articles 99 et 101 de la *Loi sur la taxe sur certains biens de luxe*.

**(3) Subsections (1) and (2) come into force, or are deemed to have come into force, on September 1, 2022.**

**(3) Les paragraphes (1) et (2) entrent en vigueur, ou sont réputés être entrés en vigueur, le 1er septembre 2022.**

**149 (1) Paragraph 18.29(3)(a) of the Act is amended by striking out "or" at the end of subparagraph (vii), by replacing "and" at the end of subparagraph (viii) with "or" and by adding the following after subparagraph (viii):**

**149 (1) L'alinéa 18.29(3)a) de la même loi est modifié par adjonction, après le sous-alinéa (viii), de ce qui suit :**

**(ix)** section 99 or 101 of the *Select Luxury Items Tax Act*; and

**(ix)** les articles 99 et 101 de la *Loi sur la taxe sur certains biens de luxe*;

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**150 (1) Subsection 18.31(2) of the Act is replaced by the following:**

**150 (1) Le paragraphe 18.31(2) de la même loi est remplacé par ce qui suit :**

**Determination of a question**

**(2)** If it is agreed under section 310 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 51 of the *Air Travellers Security Act*, section 204 of the *Excise Act, 2001*, section 62 of the *Softwood Lumber Products Export Act, 2006*, section 121 of the *Greenhouse Gas Pollution Pricing Act* or section 105 of the *Select Luxury Items Tax Act* that a question should be determined by the Court, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

**Procédure générale**

**(2)** Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, avec les adaptations nécessaires, aux décisions sur les questions soumises à la Cour en vertu de l'article 310 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, de l'article 51 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 204 de la *Loi de 2001 sur l'accise*, de l'article 62 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 121 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ou de l'article 105 de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**151 (1) Subsection 18.32(2) of the Act is replaced by the following:**

**151 (1) Le paragraphe 18.32(2) de la même loi est remplacé par ce qui suit :**

**Provisions applicable to determination of a question**

**(2)** If an application has been made under section 311 of the *Excise Tax Act*, section 52 of the *Air Travellers Security Charge Act*, section 205 of the *Excise Act, 2001*, section 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 122 of the *Greenhouse Gas Pollution Pricing Act* or section 106 of the *Select Luxury Items Tax Act* for the determination of a question, the application or determination of the question must, subject to section 18.33, be determined in accordance with sections 17.1, 17.2 and 17.4 to 17.8, with any modifications that the circumstances require.

**Dispositions applicables à la détermination d'une question**

**(2)** Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, sous réserve de l'article 18.33 et avec les adaptations nécessaires, à toute demande présentée à la Cour en vertu de l'article 311 de la *Loi sur la taxe d'accise*, de l'article 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 205 de la *Loi de 2001 sur l'accise*, de l'article 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ou de l'article 106 de la *Loi sur la taxe sur certains biens de luxe* et à la détermination de la question en cause.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

R.S., c. 1 (2nd Supp.)

## Customs Act

L.R., ch. 1 (2e suppl.)

## Loi sur les douanes

**152 (1) Subsection 3(1) of the *Customs Act* is replaced by the following:**

**152 (1) Le paragraphe 3(1) de la *Loi sur les douanes* est remplacé par ce qui suit :**

**Duties binding on Her Majesty**

**3 (1)** All duties or taxes levied on imported goods under the *Excise Tax Act*, the *Special Import Measures Act*, the

**Application des droits à Sa Majesté**

**3 (1)** Les droits ou taxes imposés en vertu de la *Loi sur la taxe d'accise*, de la *Loi sur les mesures spéciales*

*Customs Tariff*, the *Excise Act, 2001*, the *Select Luxury Items Tax Act* or any other law relating to customs are binding on Her Majesty in right of Canada or a province in respect of any goods imported by or on behalf of Her Majesty.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**153 (1) Section 44 of the Act is replaced by the following:**

***Ad valorem* rates of duty**

**44** If duties, other than duties or taxes levied under the *Excise Tax Act*, the *Excise Act, 2001* or the *Select Luxury Items Tax Act*, are imposed on goods at a percentage rate, such duties shall be calculated by applying the rate to a value determined in accordance with sections 45 to 55.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**154 (1) Clause 48(5)(b)(ii)(B) of the Act is replaced by the following:**

**(B)** any duties and taxes paid or payable by reason of the importation of the goods or sale of the goods in Canada, including, without limiting the generality of the foregoing, any duties or taxes levied on the goods under the *Excise Tax Act*, the *Special Import Measures Act*, the *Customs Tariff*, the *Excise Act, 2001*, the *Select Luxury Items Tax Act* or any other law relating to customs; and

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**155 (1) Subsection 74(1.2) of the Act is replaced by the following:**

**Duties**

**(1.2)** The duties that may be refunded under paragraph (1)(f) do not include duties or taxes levied under the *Excise Tax Act*, the *Special Import Measures Act*, the *Excise Act, 2001* or the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**156 (1) The description of B in paragraph 97.29(1)(a) of the Act is replaced by the following:**

*d'importation*, du *Tarif des douanes*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur certains biens de luxe* ou de tout autre texte de législation douanière lient Sa Majesté du chef du Canada ou d'une province relativement aux marchandises importées par elle ou en son nom.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**153 (1) L'article 44 de la même loi est remplacé par ce qui suit :**

**Taux des droits *ad valorem***

**44** Les droits, sauf les droits et taxes prévus par la *Loi sur la taxe d'accise*, la *Loi de 2001 sur l'accise* et la *Loi sur la taxe sur certains biens de luxe*, qui sont imposés sur des marchandises selon un certain pourcentage se calculent par l'application du taux à une valeur déterminée conformément aux articles 45 à 55.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**154 (1) La division 48(5)b)(ii)(B) de la même loi est remplacée par ce qui suit :**

**(B)** les droits et taxes payés ou à payer en raison de l'importation ou de la vente des marchandises au Canada et, notamment, les droits ou taxes imposés sur ces marchandises en vertu de la *Loi sur la taxe d'accise*, de la *Loi sur les mesures spéciales d'importation*, du *Tarif des douanes*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur certains biens de luxe* ou de tout autre texte de législation douanière;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**155 (1) Le paragraphe 74(1.2) de la même loi est remplacé par ce qui suit :**

**Droits**

**(1.2)** Les droits qui peuvent être remboursés au titre de l'alinéa (1)f) n'incluent pas les droits et taxes prévus par la *Loi sur la taxe d'accise*, la *Loi sur les mesures spéciales d'importation*, la *Loi de 2001 sur l'accise* et la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**156 (1) L'élément B de la formule figurant à l'alinéa 97.29(1)a) de la même loi est remplacé par ce qui suit :**

**B** is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001* and subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**157 (1) Paragraph 107(5)(g.1) of the Act is replaced by the following:**

**(g.1)** an official of the Canada Revenue Agency solely for a purpose relating to the administration or enforcement of the *Canada Pension Plan*, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Employment Insurance Act*, the *Excise Act, 2001* or the *Select Luxury Items Tax Act*;

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

R.S., c. 1 (5th Supp.)

## Income Tax Act

**158 (1) Paragraph 18(1)(t) of the *Income Tax Act* is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):**

**(iv)** as interest under the *Select Luxury Items Tax Act*;

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**159 (1) Subsection 164(2.01) of the Act is replaced by the following:**

**Withholding of refunds**

**(2.01)** The Minister shall not, in respect of a taxpayer, refund, repay, apply to other debts or set-off amounts under this Act at any time unless all returns of which the Minister has knowledge and that are required to be filed by the taxpayer at or before that time under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en vertu du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise* et du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien sur la somme payée par le cédant relativement à cette cotisation;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**157 (1) L'alinéa 107(5)g.1) de la même loi est remplacé par ce qui suit :**

**g.1)** à un fonctionnaire de l'Agence du revenu du Canada, uniquement pour l'application ou l'exécution du *Régime de pensions du Canada*, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur l'assurance-emploi*, de la *Loi de 2001 sur l'accise* ou de la *Loi sur la taxe sur certains biens de luxe*;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

L.R., ch. 1 (5e suppl.)

## Loi de l'impôt sur le revenu

**158 (1) L'alinéa 18(1)t) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après le sous-alinéa (iii), de ce qui suit :**

**(iv)** à titre d'intérêts en vertu de la *Loi sur la taxe sur certains biens de luxe*;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**159 (1) Le paragraphe 164(2.01) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(2.01)** Une somme n'est remboursée, restituée, appliquée en réduction d'autres dettes ou compensée en vertu de la présente loi à un moment donné relativement à un contribuable qu'une fois présentées au ministre toutes les déclarations dont celui-ci a connaissance et que le contribuable avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**160 (1) The portion of subsection 221.2(2) of the Act before paragraph (a) is replaced by the following:**

**Re-appropriation of amounts**

**(2)** If a particular amount was appropriated to an amount (in this section referred to as the "debt") that is or may become payable by a person under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* or the *Select Luxury Items Tax Act*, the Minister may, on application by the person, appropriate the particular amount, or a part of it, to another amount that is or may become payable under any of those Acts and, for the purposes of any of those Acts,

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

1997, c. 36

## Customs Tariff

**161 (1) Subsection 94(2) of the *Customs Tariff* is replaced by the following:**

**For greater certainty**

**(2)** For greater certainty, in sections 95, 96, 98.1 and 98.2, *customs duties* does not include any duties or taxes levied or imposed on imported goods under the *Excise Tax Act*, the *Special Import Measures Act*, the *Excise Act, 2001* or the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

1999, c. 17; 2005, c. 38, s. 35

## Canada Revenue Agency Act

**162 (1) Paragraph (a) of the definition *program legislation* in section 2 of the *Canada Revenue Agency Act* is replaced by the following:**

**(a)** that the Governor in Council or Parliament authorizes the Minister, the Agency, the Commissioner or an employee of the Agency to administer or enforce, including

**(i)** the *Excise Act*,

**(ii)** the *Excise Tax Act*,

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**160 (1) Le passage du paragraphe 221.2(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Réaffectation de montants**

**(2)** Lorsqu'un montant est affecté à une somme (appelée « dette » au présent article) qui est ou peut devenir payable par une personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* ou de la *Loi sur la taxe sur certains biens de luxe*, le ministre peut, à la demande de la personne, affecter tout ou partie du montant à une autre somme qui est ou peut devenir ainsi payable. Pour l'application de ces lois :

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

1997, ch. 36

## Tarif des douanes

**161 (1) Le paragraphe 94(2) du *Tarif des douanes* est remplacé par ce qui suit :**

**Précision**

**(2)** Il est entendu que, aux articles 95, 96, 98.1 et 98.2, *droits de douane* ne comprend pas les droits ou taxes perçus ou imposés sur les marchandises importées en application de la *Loi sur la taxe d'accise*, de la *Loi sur les mesures spéciales d'importation*, de la *Loi de 2001 sur l'accise* ou de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

1999, ch. 17; 2005, ch. 38, art. 35

## Loi sur l'Agence du revenu du Canada

**162 (1) L'alinéa a) de la définition de *législation fiscale*, à l'article 2 de la *Loi sur l'Agence du revenu du Canada*, est remplacé par ce qui suit :**

**a)** dont le ministre, l'Agence, le commissaire ou un employé de l'Agence est autorisé par le Parlement ou le gouverneur en conseil à assurer ou contrôler l'application, notamment :

**(i)** la *Loi sur l'accise*,

**(ii)** la *Loi sur la taxe d'accise*,

**(iii)** the *Customs Act*,

**(iv)** the *Income Tax Act*,

**(v)** the *Air Travellers Security Charge Act*,

**(vi)** the *Excise Act, 2001*,

**(vii)** the *Softwood Lumber Products Export Charge Act, 2006*,

**(viii)** the *Greenhouse Gas Pollution Pricing Act*, and

**(ix)** the *Select Luxury Items Tax Act*; or

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**(iii)** la *Loi sur les douanes*,

**(iv)** la *Loi de l'impôt sur le revenu*,

**(v)** la *Loi sur le droit pour la sécurité des passagers du transport aérien*,

**(vi)** la *Loi de 2001 sur l'accise*,

**(vii)** la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*,

**(viii)** la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*,

**(ix)** la *Loi sur la taxe sur certains biens de luxe*;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

2002, c. 9, s. 5

## Air Travellers Security Charge Act

**163 (1) Subsection 40(4) of the *Air Travellers Security Charge Act* is replaced by the following:**

**Restriction**

**(4)** A refund shall not be paid until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

2002, ch. 9, art. 5

## Loi sur le droit pour la sécurité des passagers du transport aérien

**163 (1) Le paragraphe 40(4) de la *Loi sur le droit pour la sécurité des passagers du transport aérien* est remplacé par ce qui suit :**

**Restriction**

**(4)** Le remboursement n'est versé qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

2002, c. 22

## Excise Act, 2001

**164 (1) Paragraph 188(6)(a) of the *Excise Act, 2001* is replaced by the following:**

**(a)** the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act* and the *Select Luxury Items Tax Act*; or

**(2) Clause 188(7)(b)(ii)(A) of the Act is replaced by the following:**

**(A)** the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air*

2002, ch. 22

## Loi de 2001 sur l'accise

**164 (1) L'alinéa 188(6)a) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :**

**a)** soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien* et de la *Loi sur la taxe sur certains biens de luxe*;

**(2) La division 188(7)b)(ii)(A) de la même loi est remplacée par ce qui suit :**

**(A)** soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe*

*Travellers Security Charge Act* and the *Select Luxury Items Tax Act*, or

**(3) Subsections (1) and (2) come into force, or are deemed to have come into force, on September 1, 2022.**

**165 (1) Subsection 189(4) of the Act is replaced by the following:**

**Restriction**

**(4)** A refund shall not be paid until the person has filed with the Minister or the Minister of Public Safety and Emergency Preparedness all returns and other records of which the Minister has knowledge and that are required to be filed under this Act, the *Excise Act*, the *Excise Tax Act*, the *Customs Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act* and the *Select Luxury Items Tax Act*.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**166 (1) The description of B in paragraph 297(1)(d) of the Act is replaced by the following:**

**B** is the amount, if any, by which the total of all amounts, if any, the transferee was assessed under subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amounts so assessed, and

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

2005, c. 38

## Canada Border Services Agency Act

**167 (1) Paragraph (a) of the definition *program legislation* in section 2 of the *Canada Border Services Agency Act* is replaced by the following:**

**(a)** that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to administer and enforce, including the *Excise Act*, the *Special Import Measures*

*d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien* et de la *Loi sur la taxe sur certains biens de luxe*,

**(3) Les paragraphes (1) et (2) entrent en vigueur, ou sont réputés être entrés en vigueur, le 1er septembre 2022.**

**165 (1) Le paragraphe 189(4) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(4)** Un montant de remboursement n'est versé qu'une fois présentés au ministre ou au ministre de la Sécurité publique et de la Protection civile l'ensemble des déclarations et autres registres dont le ministre a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien* et de la *Loi sur la taxe sur certains biens de luxe*.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**166 (1) L'élément B de la formule figurant à l'alinéa 297(1)a) de la même loi est remplacé par ce qui suit :**

**B** l'excédent éventuel du total des cotisations établies à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu* ou du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien sur la somme payée par le cédant relativement à ces cotisations;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

2005, ch. 38

## Loi sur l'Agence des services frontaliers du Canada

**167 (1) L'alinéa a) de la définition de *législation frontalière*, à l'article 2 de la *Loi sur l'Agence des services frontaliers du Canada*, est remplacé par ce qui suit :**

**a)** dont le ministre, l'Agence, le président ou un employé de l'Agence est autorisé par le Parlement ou le gouverneur en conseil à assurer et contrôler l'application, notamment la *Loi sur l'accise*, la *Loi sur les*

*Act*, the *Customs Act*, the *Customs Tariff*, the *Immigration and Refugee Protection Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act*;

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

2018, c. 12, s. 186

## Greenhouse Gas Pollution Pricing Act

**168 (1) Section 51 of the *Greenhouse Gas Pollution Pricing Act* is replaced by the following:**

**Restriction on rebate**

**51** A rebate under this Division is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**169 (1) Section 54 of the Act is replaced by the following:**

**Restriction — bankruptcy**

**54** If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate or succession of a bankrupt, a rebate under this Part that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required to be filed in respect of the bankrupt under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* in respect of periods ending before the appointment have been filed and all amounts required under this Part and those Acts to be paid by the bankrupt in respect of those periods have been paid.

*mesures spéciales d'importation*, la *Loi sur les douanes*, le *Tarif des douanes*, la *Loi sur l'immigration et la protection des réfugiés*, la *Loi de 2001 sur l'accise,* et la *Loi sur la taxe sur certains biens de luxe*;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

2018, ch. 12, art. 186

## Loi sur la tarification de la pollution causée par les gaz à effet de serre

**168 (1) L'article 51 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* est remplacé par ce qui suit :**

**Restriction**

**51** Un montant visé par la présente section n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**169 (1) L'article 54 de la même loi est remplacé par ce qui suit :**

**Restriction — faillite**

**54** En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif ou de la succession d'un failli, un remboursement prévu par la présente partie auquel le failli avait droit avant la nomination n'est effectué après la nomination que si toutes les déclarations à produire relativement au failli en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* relativement aux périodes qui ont pris fin avant la nomination ont été produites et que si les sommes à payer par le failli en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* relativement à ces périodes ont été payées.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**170 (1) Subsection 108(7) of the Act is replaced by the following:**

**Restriction on rebates**

**(7)** An amount under this section must not be rebated to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**171 (1) Subsection 109(5) of the Act is replaced by the following:**

**Restriction**

**(5)** An amount under this section must not be rebated to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**172 (1) The description of B in paragraph 161(1)(d) of the Act is replaced by the following:**

**B** is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, paragraph 97.44(1)(b) of the *Customs Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

**(2) Subsection (1) comes into force, or is deemed to have come into force, on September 1, 2022.**

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**170 (1) Le paragraphe 108(7) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(7)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**171 (1) Le paragraphe 109(5) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(5)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

**172 (1) L'élément B de la formule figurant à l'alinéa 161(1)a) de la même loi est remplacé par ce qui suit :**

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise*, de l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise* ou du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien sur la somme payée par le cédant relativement à ce montant;

**(2) Le paragraphe (1) entre en vigueur, ou est réputé être entré en vigueur, le 1er septembre 2022.**

# Coordinating Amendments

**Bill C-8**

**173 (1) Subsections (2) to (31) apply if Bill C-8, introduced in the 1st session of the 44th Parliament and entitled the *Economic and Fiscal Update Implementation Act, 2021* (in this section referred to as the "other Act"), receives royal assent.**

**(2) On the first day on which both subsection 12(1) of the other Act and subsection 137(1) of this Act are in force, subsection 149(3) of the *Bankruptcy and Insolvency Act* is amended by striking out "and" at the end of paragraph (g) and by replacing paragraph (h) with the following:**

**(h)** the *Underused Housing Tax Act*; and

**(i)** the *Select Luxury Items Tax Act*.

**(3) On the first day on which both section 13 of the other Act and section 138 of this Act are in force, paragraph 462.48(2)(c) of the *Criminal Code* is replaced by the following:**

**(c)** the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* or the *Select Luxury Items Tax Act* to which access is sought or that is proposed to be examined or communicated; and

**(4) On the first day on which both subsection 14(1) of the other Act and subsection 140(1) of this Act are in force, section 77 of the *Excise Tax Act* is replaced by the following:**

**Restriction on refunds and credits**

**77** A refund shall not be paid, and a credit shall not be allowed, to a person under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

# Dispositions de coordination

**Projet de loi C-8**

**173 (1) Les paragraphes (2) à (31) s'appliquent en cas de sanction du projet de loi C-8, déposé au cours de la 1re session de la 44e législature et intitulé *Loi d'exécution de la mise à jour économique et budgétaire de 2021* (appelé « autre loi » au présent article).**

**(2) Dès le premier jour où le paragraphe 12(1) de l'autre loi et le paragraphe 137(1) de la présente loi sont tous deux en vigueur, l'alinéa 149(3)h) de la *Loi sur la faillite et l'insolvabilité* est remplacé par ce qui suit :**

**h)** la *Loi sur la taxe sur les logements sous-utilisés*;

**i)** la *Loi sur la taxe sur certains biens de luxe*.

**(3) Dès le premier jour où l'article 13 de l'autre loi et l'article 138 de la présente loi sont tous deux en vigueur, l'alinéa 462.48(2)c) du *Code criminel* est remplacé par ce qui suit :**

**c)** désignation du genre de renseignements ou de documents — livre, dossier, texte, rapport ou autre document — qu'a obtenus le ministre du Revenu national — ou qui ont été obtenus en son nom — dans le cadre de l'application de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* ou de la *Loi sur la taxe sur certains biens de luxe* et dont la communication ou l'examen est demandé;

**(4) Dès le premier jour où le paragraphe 14(1) de l'autre loi et le paragraphe 140(1) de la présente loi sont tous deux en vigueur, l'article 77 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**77** Un montant n'est remboursé à une personne, et un crédit ne lui est accordé, en vertu de la présente loi qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*.

**(5) On the first day on which both subsection 15(1) of the other Act and subsection 141(1) of this Act are in force, subsection 229(2) of the *Excise Tax Act* is replaced by the following:**

**Restriction**

**(2)** A net tax refund for a reporting period of a person shall not be paid to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(6) On the first day on which both subsection 16(1) of the other Act and subsection 142(1) of this Act are in force, subsection 230(2) of the *Excise Tax Act* is replaced by the following:**

**Restriction**

**(2)** An amount paid on account of net tax for a reporting period of a person shall not be refunded to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(7) On the first day on which both subsection 17(1) of the other Act and subsection 143(1) of this Act are in force, subparagraph 238.1(2)(c)(iii) of the *Excise Tax Act* is replaced by the following:**

**(iii)** all amounts required under this Act (other than this Part), sections 21 and 33 of the *Canada Pension Plan*, the *Excise Act*, the *Customs Act*, the *Income Tax Act*, section 82 and Part VII of the *Employment Insurance Act*, the *Customs Tariff*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* to be remitted or paid before that time by the registrant have been remitted or paid, and

**(5) Dès le premier jour où le paragraphe 15(1) de l'autre loi et le paragraphe 141(1) de la présente loi sont tous deux en vigueur, le paragraphe 229(2) de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**(2)** Le remboursement de taxe nette pour la période de déclaration d'une personne ne lui est versé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(6) Dès le premier jour où le paragraphe 16(1) de l'autre loi et le paragraphe 142(1) de la présente loi sont tous deux en vigueur, le paragraphe 230(2) de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**(2)** Un montant payé au titre de la taxe nette d'une personne pour sa période de déclaration ne lui est remboursé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(7) Dès le premier jour où le paragraphe 17(1) de l'autre loi et le paragraphe 143(1) de la présente loi sont tous deux en vigueur, le sous-alinéa 238.1(2)c)(iii) de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**(iii)** les montants à verser ou à payer par l'inscrit avant ce moment en conformité avec la présente loi, sauf la présente partie, les articles 21 et 33 du *Régime de pensions du Canada*, la *Loi sur l'accise*, la *Loi sur les douanes*, la *Loi de l'impôt sur le revenu*, l'article 82 et la partie VII de la *Loi sur l'assurance-emploi*, le *Tarif des douanes*, la *Loi de 2001 sur l'accise*, la *Loi sur la taxe sur les logements sous-utilisés* et la *Loi sur la taxe sur certains biens de luxe* ont été versés ou payés,

**(8) On the first day on which both subsection 18(1) of the other Act and subsection 144(1) of this Act are in force, section 263.02 of the *Excise Tax Act* is replaced by the following:**

**Restriction on rebate**

**263.02** A rebate under this Part shall not be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(8) Dès le premier jour où le paragraphe 18(1) de l'autre loi et le paragraphe 144(1) de la présente loi sont tous deux en vigueur, l'article 263.02 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**263.02** Le montant d'un remboursement prévu par la présente partie n'est versé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(9) On the first day on which both subsection 19(1) of the other Act and subsection 145(1) of this Act are in force, subsection 296(7) of the *Excise Tax Act* is replaced by the following:**

**Restriction on refunds**

**(7)** An amount under this section shall not be refunded to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**(9) Dès le premier jour où le paragraphe 19(1) de l'autre loi et le paragraphe 145(1) de la présente loi sont tous deux en vigueur, le paragraphe 296(7) de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**(7)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(10) On the first day on which both subsection 20(1) of the other Act and subsection 147(1) of this Act are in force, paragraph 155.2(6)(c) of the *Financial Administration Act* is replaced by the following:**

**(c)** an amount owing by a person to Her Majesty in right of Canada, or payable by the Minister of National Revenue to any person, under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006*, the *Underused Housing Tax Act* or the *Select Luxury Items Tax Act*.

**(10) Dès le premier jour où le paragraphe 20(1) de l'autre loi et le paragraphe 147(1) de la présente loi sont tous deux en vigueur, l'alinéa 155.2(6)c) de la *Loi sur la gestion des finances publiques* est remplacé par ce qui suit :**

**c)** aux sommes à payer par toute personne à Sa Majesté du chef du Canada ou à payer par le ministre du Revenu national à toute personne au titre de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur la taxe sur les logements sous-utilisés* ou de la *Loi sur la taxe sur certains biens de luxe*.

**(11) On the first day on which both subsection 21(1) of the other Act and subsection 148(1) of this**

**(11) Dès le premier jour où le paragraphe 21(1) de l'autre loi et le paragraphe 148(1) de la**

**Act are in force, subsection 12(1) of the *Tax Court of Canada Act* is replaced by the following:**

**Jurisdiction**

**12 (1)** The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part IX of the *Excise Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act*, Part V.1 of the *Customs Act*, the *Income Tax Act*, the *Employment Insurance Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006*, the *Disability Tax Credit Promoters Restrictions Act*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* when references or appeals to the Court are provided for in those Acts.

**(12) On the first day on which both subsection 21(2) of the other Act and subsection 148(2) of this Act are in force, subsections 12(3) and (4) of the *Tax Court of Canada Act* are replaced by the following:**

**Further jurisdiction**

**(3)** The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 310 or 311 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 173 or 174 of the *Income Tax Act*, section 51 or 52 of the *Air Travellers Security Charge Act*, section 204 or 205 of the *Excise Act, 2001*, section 62 or 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 121 or 122 of the *Greenhouse Gas Pollution Pricing Act*, section 45 or 46 of the *Underused Housing Tax Act* or section 105 or 106 of the *Select Luxury Items Tax Act*.

**Extensions of time**

**(4)** The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*, section 304 or 305 of the *Excise Tax Act*, section 97.51 or 97.52 of the *Customs Act*, section 166.2 or 167 of the *Income Tax Act*, subsection 103(1) of the *Employment*

**présente loi sont tous deux en vigueur, le paragraphe 12(1) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :**

**Compétence**

**12 (1)** La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application du *Régime de pensions du Canada*, de la *Loi sur l'exportation et l'importation de biens culturels*, de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi sur la sécurité de la vieillesse*, de la *Loi de l'impôt sur les revenus pétroliers*, de la partie V.1 de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur l'assurance-emploi*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur les restrictions applicables aux promoteurs du crédit d'impôt pour personnes handicapées*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

**(12) Dès le premier jour où le paragraphe 21(2) de l'autre loi et le paragraphe 148(2) de la présente loi sont tous deux en vigueur, les paragraphes 12(3) et (4) de la *Loi sur la Cour canadienne de l'impôt* sont remplacés par ce qui suit :**

**Autre compétence**

**(3)** La Cour a compétence exclusive pour entendre les questions qui sont portées devant elle en vertu des articles 310 ou 311 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, des articles 173 ou 174 de la *Loi de l'impôt sur le revenu*, des articles 51 ou 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 204 ou 205 de la *Loi de 2001 sur l'accise*, des articles 62 ou 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, des articles 121 ou 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, des articles 45 ou 46 de la *Loi sur la taxe sur les logements sous-utilisés* ou des articles 105 ou 106 de la *Loi sur la taxe sur certains biens de luxe*.

**Prorogation des délais**

**(4)** La Cour a compétence exclusive pour entendre toute demande de prorogation de délai présentée en vertu du paragraphe 28(1) du *Régime de pensions du Canada*, de l'article 33.2 de la *Loi sur l'exportation et l'importation de biens culturels*, des articles 304 et 305 de la *Loi sur la taxe d'accise*, des articles 97.51 et 97.52 de la *Loi sur les douanes*, des articles 166.2 et 167 de la *Loi de l'impôt sur*

*Insurance Act*, section 45 or 47 of the *Air Travellers Security Charge Act*, section 197 or 199 of the *Excise Act, 2001*, section 115 or 117 of the *Greenhouse Gas Pollution Pricing Act*, section 39 or 41 of the *Underused Housing Tax Act* or section 99 or 101 of the *Select Luxury Items Tax Act*.

**(13) On the first day on which both subsection 22(1) of the other Act and subsection 149(1) of this Act are in force, paragraph 18.29(3)(a) of the *Tax Court of Canada Act* is amended by striking out "or" at the end of subparagraph (viii) and by replacing subparagraph (ix) with the following:**

**(ix)** section 39 or 41 of the *Underused Housing Tax Act*, or

**(x)** section 99 or 101 of the *Select Luxury Items Tax Act*; and

**(14) On the first day on which both subsection 23(1) of the other Act and subsection 150(1) of this Act are in force, subsection 18.31(2) of the *Tax Court of Canada Act* is replaced by the following:**

**Determination of a question**

**(2)** If it is agreed under section 310 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 51 of the *Air Travellers Security Act*, section 204 of the *Excise Act, 2001*, section 62 of the *Softwood Lumber Products Export Act, 2006*, section 121 of the *Greenhouse Gas Pollution Pricing Act*, section 45 of the *Underused Housing Tax Act* or section 105 of the *Select Luxury Items Tax Act* that a question should be determined by the Court, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

**(15) On the first day on which both subsection 24(1) of the other Act and subsection 151(1) of this Act are in force, subsection 18.32(2) of the *Tax Court of Canada Act* is replaced by the following:**

**Provisions applicable to determination of a question**

**(2)** If an application has been made under section 311 of the *Excise Tax Act*, section 52 of the *Air Travellers Security Charge Act*, section 205 of the *Excise Act, 2001*, section 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 122 of the *Greenhouse Gas Pollution*

*le revenu*, du paragraphe 103(1) de la *Loi sur l'assurance-emploi*, des articles 45 et 47 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 197 et 199 de la *Loi de 2001 sur l'accise*, des articles 115 et 117 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, des articles 39 et 41 de la *Loi sur la taxe sur les logements sous-utilisés* ou des articles 99 et 101 de la *Loi sur la taxe sur certains biens de luxe*.

**(13) Dès le premier jour où le paragraphe 22(1) de l'autre loi et le paragraphe 149(1) de la présente loi sont tous deux en vigueur, le sous-alinéa 18.29(3)a)(ix) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :**

**(ix)** les articles 39 et 41 de la *Loi sur la taxe sur les logements sous-utilisés*,

**(x)** les articles 99 et 101 de la *Loi sur la taxe sur certains biens de luxe*;

**(14) Dès le premier jour où le paragraphe 23(1) de l'autre loi et le paragraphe 150(1) de la présente loi sont tous deux en vigueur, le paragraphe 18.31(2) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :**

**Procédure générale**

**(2)** Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, avec les adaptations nécessaires, aux décisions sur les questions soumises à la Cour en vertu de l'article 310 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, de l'article 51 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 204 de la *Loi de 2001 sur l'accise*, de l'article 62 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 121 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de l'article 45 de la *Loi sur la taxe sur les logements sous-utilisés* ou de l'article 105 de la *Loi sur la taxe sur certains biens de luxe*.

**(15) Dès le premier jour où le paragraphe 24(1) de l'autre loi et le paragraphe 151(1) de la présente loi sont tous deux en vigueur, le paragraphe 18.32(2) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :**

**Dispositions applicables à la détermination d'une question**

**(2)** Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, sous réserve de l'article 18.33 et avec les adaptations nécessaires, à toute demande présentée à la Cour en vertu de l'article 311 de la *Loi sur la taxe d'accise*, de l'article 52 de la *Loi sur le droit pour la sécurité des passagers du*

*Pricing Act*, section 46 of the *Underused Housing Tax Act* or section 106 of the *Select Luxury Items Tax Act* for the determination of a question, the application or determination of the question must, subject to section 18.33, be determined in accordance with sections 17.1, 17.2 and 17.4 to 17.8, with any modifications that the circumstances require.

**(16) On the first day on which both subsection 25(1) of the other Act and subsection 156(1) of this Act are in force, the description of B in paragraph 97.29(1)(a) of the *Customs Act* is replaced by the following:**

**B** is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 80(3) of the *Underused Housing Tax Act* and subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

**(17) On the first day on which both subsection 26(1) of the other Act and subsection 157(1) of this Act are in force, paragraph 107(5)(g.1) of the *Customs Act* is replaced by the following:**

**(g.1)** an official of the Canada Revenue Agency solely for a purpose relating to the administration or enforcement of the *Canada Pension Plan*, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Employment Insurance Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* or the *Select Luxury Items Tax Act*;

**(18) On the first day on which both subsection 27(1) of the other Act and subsection 158(1) of this Act are in force, paragraph 18(1)(t) of the *Income Tax Act* is amended by striking out "or" at the end of subparagraph (iii) and by replacing subparagraph (iv) with the following:**

**(iv)** as interest under the *Underused Housing Tax Act*, or

**(v)** as interest under the *Select Luxury Items Tax Act*;

**(19) On the first day on which both subsection 28(1) of the other Act and subsection 159(1) of this**

*transport aérien*, de l'article 205 de la *Loi de 2001 sur l'accise*, de l'article 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de l'article 46 de la *Loi sur la taxe sur les logements sous-utilisés* ou de l'article 106 de la *Loi sur la taxe sur certains biens de luxe* et à la détermination de la question en cause.

**(16) Dès le premier jour où le paragraphe 25(1) de l'autre loi et le paragraphe 156(1) de la présente loi sont tous deux en vigueur, l'élément B de la formule figurant à l'alinéa 97.29(1)a) de la *Loi sur les douanes* est remplacé par ce qui suit :**

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en vertu du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise*, du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* et du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien sur la somme payée par le cédant relativement à cette cotisation;

**(17) Dès le premier jour où le paragraphe 26(1) de l'autre loi et le paragraphe 157(1) de la présente loi sont tous deux en vigueur, l'alinéa 107(5)g.1) de la *Loi sur les douanes* est remplacé par ce qui suit :**

**g.1)** à un fonctionnaire de l'Agence du revenu du Canada, uniquement pour l'application ou l'exécution du *Régime de pensions du Canada*, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur l'assurance-emploi*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* ou de la *Loi sur la taxe sur certains biens de luxe*;

**(18) Dès le premier jour où le paragraphe 27(1) de l'autre loi et le paragraphe 158(1) de la présente loi sont tous deux en vigueur, le sous-alinéa 18(1)t)(iv) de la *Loi de l'impôt sur le revenu* est remplacé par ce qui suit :**

**(iv)** à titre d'intérêts en vertu de la *Loi sur la taxe sur les logements sous-utilisés*,

**(v)** à titre d'intérêts en vertu de la *Loi sur la taxe sur certains biens de luxe*;

**(19) Dès le premier jour où le paragraphe 28(1) de l'autre loi et le paragraphe 159(1) de la présente loi sont tous deux en vigueur, le**

**Act are in force, subsection 164(2.01) of the *Income Tax Act* is replaced by the following:**

**Withholding of refunds**

**(2.01)** The Minister shall not, in respect of a taxpayer, refund, repay, apply to other debts or set-off amounts under this Act at any time unless all returns of which the Minister has knowledge and that are required to be filed by the taxpayer at or before that time under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**paragraphe 164(2.01) de la *Loi de l'impôt sur le revenu* est remplacé par ce qui suit :**

**Restriction**

**(2.01)** Une somme n'est remboursée, restituée, appliquée en réduction d'autres dettes ou compensée en vertu de la présente loi à un moment donné relativement à un contribuable qu'une fois présentées au ministre toutes les déclarations dont celui-ci a connaissance et que le contribuable avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*.

**(20) On the first day on which both subsection 29(1) of the other Act and subsection 160(1) of this Act are in force, the portion of subsection 221.2(2) of the *Income Tax Act* before paragraph (a) is replaced by the following:**

**Re-appropriation of amounts**

**(2)** If a particular amount was appropriated to an amount (in this section referred to as the "debt") that is or may become payable by a person under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* or the *Select Luxury Items Tax Act*, the Minister may, on application by the person, appropriate the particular amount, or a part of it, to another amount that is or may become payable under any of those Acts and, for the purposes of any of those Acts,

**(20) Dès le premier jour où le paragraphe 29(1) de l'autre loi et le paragraphe 160(1) de la présente loi sont tous deux en vigueur, le passage du paragraphe 221.2(2) de la *Loi de l'impôt sur le revenu* précédent l'alinéa a) est remplacé par ce qui suit :**

**Réaffectation de montants**

**(2)** Lorsqu'un montant est affecté à une somme (appelée « dette » au présent article) qui est ou peut devenir payable par une personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* ou de la *Loi sur la taxe sur certains biens de luxe*, le ministre peut, à la demande de la personne, affecter tout ou partie du montant à une autre somme qui est ou peut devenir ainsi payable. Pour l'application de ces lois :

**(21) On the first day on which both subsection 30(1) of the other Act and subsection 162(1) of this Act are in force, paragraph (a) of the definition *program legislation* in section 2 of the *Canada Revenue Agency Act* is amended by striking out "and" at the end of subparagraph (viii) and by replacing subparagraph (ix) with the following:**

**(ix)** the *Underused Housing Tax Act*, and

**(x)** the *Select Luxury Items Tax Act*; or

**(21) Dès le premier jour où le paragraphe 30(1) de l'autre loi et le paragraphe 162(1) de la présente loi sont tous deux en vigueur, le sous-alinéa a)(ix) de la définition de *législation fiscale*, à l'article 2 de la *Loi sur l'Agence du revenu du Canada*, est remplacé par ce qui suit :**

**(ix)** la *Loi sur la taxe sur les logements sous-utilisés*,

**(x)** la *Loi sur la taxe sur certains biens de luxe*;

**(22) On the first day on which both subsection 31(1) of the other Act and subsection 163(1) of this Act are in force, subsection 40(4) of the *Air Travellers Security Charge Act* is replaced by the following:**

**(22) Dès le premier jour où le paragraphe 31(1) de l'autre loi et le paragraphe 163(1) de la présente loi sont tous deux en vigueur, le paragraphe 40(4) de la *Loi sur le droit pour la sécurité des passagers du transport aérien* est remplacé par ce qui suit :**

**Restriction**

**(4)** A refund shall not be paid until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

**(23) On the first day on which both subsection 32(1) of the other Act and subsection 164(1) of this Act are in force, paragraph 188(6)(a) of the *Excise Act, 2001* is replaced by the following:**

**(a)** the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*; or

**(24) On the first day on which both subsection 33(1) of the other Act and subsection 164(2) of this Act are in force, clause 188(7)(b)(ii)(A) of the *Excise Act, 2001* is replaced by the following:**

**(A)** the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*, or

**(25) On the first day on which both subsection 34(1) of the other Act and subsection 165(1) of this Act are in force, subsection 189(4) of the *Excise Act, 2001* is replaced by the following:**

**Restriction**

**(4)** A refund shall not be paid until the person has filed with the Minister or the Minister of Public Safety and Emergency Preparedness all returns and other records of which the Minister has knowledge and that are required to be filed under this Act, the *Excise Act*, the *Excise Tax Act*, the *Customs Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

**(26) On the first day on which both subsection 35(1) of the other Act and subsection 166(1) of this**

**Restriction**

**(4)** Le remboursement n'est versé qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*.

**(23) Dès le premier jour où le paragraphe 32(1) de l'autre loi et le paragraphe 164(1) de la présente loi sont tous deux en vigueur, l'alinéa 188(6)a) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :**

**a)** soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*;

**(24) Dès le premier jour où le paragraphe 33(1) de l'autre loi et le paragraphe 164(2) de la présente loi sont tous deux en vigueur, la division 188(7)b)(ii)(A) de la *Loi de 2001 sur l'accise* est remplacée par ce qui suit :**

**(A)** soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*,

**(25) Dès le premier jour où le paragraphe 34(1) de l'autre loi et le paragraphe 165(1) de la présente loi sont tous deux en vigueur, le paragraphe 189(4) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :**

**Restriction**

**(4)** Un montant de remboursement n'est versé qu'une fois présentés au ministre ou au ministre de la Sécurité publique et de la Protection civile l'ensemble des déclarations et autres registres dont le ministre a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*.

**(26) Dès le premier jour où le paragraphe 35(1) de l'autre loi et le paragraphe 166(1) de la**

**Act are in force, the description of B in paragraph 297(1)(d) of the *Excise Act, 2001* is replaced by the following:**

**B** is the amount, if any, by which the total of all amounts, if any, the transferee was assessed under subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act*, subsection 80(3) of the *Underused Housing Tax Act* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amounts so assessed, and

**présente loi sont tous deux en vigueur, l'élément B de la formule figurant à l'alinéa 297(1)a) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :**

**B** l'excédent éventuel du total des cotisations établies à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* ou du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien sur la somme payée par le cédant relativement à ces cotisations;

**(27) On the first day on which both subsection 36(1) of the other Act and subsection 168(1) of this Act are in force, section 51 of the *Greenhouse Gas Pollution Pricing Act* is replaced by the following:**

**(27) Dès le premier jour où le paragraphe 36(1) de l'autre loi et le paragraphe 168(1) de la présente loi sont tous deux en vigueur, l'article 51 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* est remplacé par ce qui suit :**

**Restriction on rebate**

**51** A rebate under this Division is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**Restriction**

**51** Un montant visé par la présente section n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(28) On the first day on which both subsection 37(1) of the other Act and subsection 169(1) of this Act are in force, section 54 of the *Greenhouse Gas Pollution Pricing Act* is replaced by the following:**

**(28) Dès le premier jour où le paragraphe 37(1) de l'autre loi et le paragraphe 169(1) de la présente loi sont tous deux en vigueur, l'article 54 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* est remplacé par ce qui suit :**

**Restriction — bankruptcy**

**54** If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate or succession of a bankrupt, a rebate under this Part that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required to be filed in respect of the bankrupt under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* in respect of periods ending before the appointment have been filed and all amounts required under this Part and those Acts to be paid by the bankrupt in respect of those periods have been paid.

**Restriction — faillite**

**54** En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif ou de la succession d'un failli, un remboursement prévu par la présente partie auquel le failli avait droit avant la nomination n'est effectué après la nomination que si toutes les déclarations à produire relativement au failli en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* relativement aux périodes qui ont pris fin avant la nomination ont été produites et que si les sommes à payer par le failli en

application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* relativement à ces périodes ont été payées.

**(29) On the first day on which both subsection 38(1) of the other Act and subsection 170(1) of this Act are in force, subsection 108(7) of the *Greenhouse Gas Pollution Pricing Act* is replaced by the following:**

**(29) Dès le premier jour où le paragraphe 38(1) de l'autre loi et le paragraphe 170(1) de la présente loi sont tous deux en vigueur, le paragraphe 108(7) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* est remplacé par ce qui suit :**

**Restriction on rebates**

**(7)** An amount under this section must not be rebated to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**Restriction**

**(7)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(30) On the first day on which both subsection 39(1) of the other Act and subsection 171(1) of this Act are in force, subsection 109(5) of the *Greenhouse Gas Pollution Pricing Act* is replaced by the following:**

**(30) Dès le premier jour où le paragraphe 39(1) de l'autre loi et le paragraphe 171(1) de la présente loi sont tous deux en vigueur, le paragraphe 109(5) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* est remplacé par ce qui suit :**

**Restriction**

**(5)** An amount under this section must not be rebated to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Part, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act* have been filed with the Minister.

**Restriction**

**(5)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente partie, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe* ont été présentées au ministre.

**(31) On the first day on which both subsection 40(1) of the other Act and subsection 172(1) of this Act are in force, the description of B in paragraph 161(1)(d) of the *Greenhouse Gas Pollution Pricing Act* is replaced by the following:**

**(31) Dès le premier jour où le paragraphe 40(1) de l'autre loi et le paragraphe 172(1) de la présente loi sont tous deux en vigueur, l'élément B de la formule figurant à l'alinéa 161(1)a) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* est remplacé par ce qui suit :**

**B** is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, paragraph 97.44(1)(b) of the

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise*, de

*Customs Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 80(3) of the *Underused Housing Tax Act* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise*, du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* ou du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien sur la somme payée par le cédant relativement à ce montant;

## PART 5

# Various Measures

### DIVISION 1

## Provisions Relating to Canadian Pacific Railway Company Tax Exemption

**Clause 16 — no force or effect**

**174 (1) Clause 16 of the contract that is set out in the schedule to *An Act respecting the Canadian Pacific Railway*, chapter 1 of the Statutes of Canada, 1881, is deemed to be of no force or effect as of August 29, 1966.**

**Obligations, rights, etc. extinguished**

**(2) All obligations and liabilities of Her Majesty in right of Canada and all rights and privileges of the Canadian Pacific Railway Company under that clause 16 arising out of or acquired under the contract referred to in subsection (1), any Act of Parliament or any instrument made in the exercise of a power conferred under an Act of Parliament are deemed to have been extinguished on August 29, 1966.**

**No liability**

**175 No action or other proceeding that is based on or is in respect of clause 16 of the contract referred to in subsection 174(1) lies or may be instituted or continued by anyone against Her Majesty in right of Canada.**

**No compensation**

**176 No one is entitled to any compensation from Her Majesty in right of Canada in connection with the coming into force of section 174.**

## PARTIE 5

# Mesures diverses

### SECTION 1

## Dispositions relatives à une exonération fiscale de la Compagnie de chemin de fer Canadien Pacifique

**Disposition inopérante — article 16**

**174 (1) Est réputé inopérant, en date du 29 août 1966, l'article 16 du contrat figurant à l'annexe de l'*Acte concernant le chemin de fer Canadien du Pacifique*, chapitre 1 des Statuts du Canada (1881).**

**Extinction des obligations, droits, etc.**

**(2) Sont réputés éteints, en date du 29 août 1966, toutes les obligations et responsabilités de Sa Majesté du chef du Canada ainsi que tous les droits et privilèges conférés à la Compagnie de chemin de fer Canadien Pacifique en vertu de cet article 16, qui découlent de l'application du contrat, de toute loi fédérale ou de tout texte pris dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale.**

**Immunité**

**175 Aucune action ou autre procédure fondée sur l'article 16 du contrat visé au paragraphe 174(1) ou y étant liée ne peut être intentée ou continuée contre Sa Majesté du chef du Canada.**

**Absence d'indemnité**

**176 Nul ne peut obtenir d'indemnité contre Sa Majesté du chef du Canada en raison de l'entrée en vigueur de l'article 174.**

## DIVISION 2

2000, c. 7

# Nisga'a Final Agreement Act

**177 (1) Subsections 14(1) and (2) of the *Nisga'a Final Agreement Act* are replaced by the following:**

**Taxation Agreement**

**14 (1)** The Taxation Agreement is approved, given effect and declared valid and, during the period that the Taxation Agreement is, by its terms, in force, it has the force of law.

**(2) Subsection 14(5) of the Act is repealed.**

## SECTION 2

2000, ch. 7

# Loi sur l'Accord définitif nisga'a

**177 (1) Les paragraphes 14(1) et (2) de la *Loi sur l'Accord définitif nisga'a* sont remplacés par ce qui suit :**

**Accord fiscal**

**14 (1)** L'accord fiscal est approuvé, mis en vigueur et déclaré valide; il a force de loi pour la durée stipulée par celui-ci.

**(2) Le paragraphe 14(5) de la même loi est abrogé.**

## DIVISION 3

# Safe Drinking Water for First Nations

2013, c. 21

## Safe Drinking Water for First Nations Act

**Repeal**

**178 The *Safe Drinking Water for First Nations Act*, chapter 21 of the Statutes of Canada, 2013, is repealed.**

R.S., c. 1 (5th Supp.)

## Income Tax Act

**179 (1) Subparagraph 81(1)(g.3)(i) of the *Income Tax Act* is amended by striking out "or" at the end of clause (B), by striking out "and" at the end of that subparagraph, by adding "or" at the end of clause (C) and by adding the following after clause (C):**

**(D)** the Settlement Agreement entered into by Her Majesty in Right of Canada on September 15, 2021 in respect of the class action relating to long-term drinking water quality for impacted First Nations, and

**(2) Subsection (1) applies to the 2022 and subsequent taxation years.**

## SECTION 3

# Salubrité de l'eau potable des Premières Nations

2013, ch. 21

## Loi sur la salubrité de l'eau potable des Premières Nations

**Abrogation**

**178 La *Loi sur la salubrité de l'eau potable des Premières Nations*, chapitre 21 des Lois du Canada (2013), est abrogée.**

L.R., ch. 1 (5e suppl.)

## Loi de l'impôt sur le revenu

**179 (1) Le sous-alinéa 81(1)g.3)(i) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après la division (C), de ce qui suit :**

**(D)** l'entente de règlement conclue par Sa Majesté du chef du Canada le 15 septembre 2021 relativement au recours collectif sur la qualité à long terme de l'eau potable des premières nations touchées,

**(2) Le paragraphe (1) s'applique aux années d'imposition 2022 et suivantes.**

## DIVISION 4

# Payments in Relation to Transit and Housing

**Maximum payment of $750 million**

**180 (1) The Minister of Finance may make payments to the provinces, the total of which may not exceed $750 million, for the purpose of addressing municipal and other transit shortfalls and needs and improving housing supply and affordability. The amount of each payment is to be determined by the Minister of Finance.**

**Payments out of C.R.F.**

**(2) Any amount payable under subsection (1) may be paid by the Minister of Finance out of the Consolidated Revenue Fund at the times and in the manner, and on any terms and conditions, that the Minister of Finance considers appropriate.**

**Report**

**(3) If the Minister of Finance makes a payment to a province under subsection (1), the Minister must, within three months after the day on which the payment is made, prepare a report indicating the amount of the payment and describing any terms or conditions established under subsection (2) in relation to the payment and must cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed.**

## SECTION 4

# Paiements en matière de transport en commun et de logement

**Paiement maximal de 750 000 000 $**

**180 (1) Le ministre des Finances peut verser aux provinces une somme totale n'excédant pas sept cent cinquante millions de dollars pour faire face aux déficits et besoins — municipaux ou autres — en matière de transport en commun et améliorer l'offre de logements et l'accès à des logements abordables. Il détermine le montant de chaque versement.**

**Paiements sur le Trésor**

**(2) Le ministre des Finances peut prélever sur le Trésor, selon les conditions et modalités — de temps et autres — qu'il estime indiquées, les sommes à payer au titre du paragraphe (1).**

**Rapport**

**(3) Si le ministre des Finances verse une somme à une province en vertu du paragraphe (1), il établit, dans les trois mois suivant la date du versement, un rapport indiquant le montant versé et décrivant toute condition ou modalité fixée au titre du paragraphe (2) relativement au versement. Il fait déposer le rapport devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant son achèvement.**

## DIVISION 5

R.S., c. C-3

# Canada Deposit Insurance Corporation Act

**181 (1) Paragraph 5(1)(a) of the *Canada Deposit Insurance Corporation Act* is replaced by the following:**

**(a)** the person appointed as the Chairperson under subsection 6(1);

**(a.1)** the person appointed as the President and Chief Executive Officer of the Corporation under subsection 105(5) of the *Financial Administration Act*;

## SECTION 5

L.R., ch. C-3

# Loi sur la Société d'assurance-dépôts du Canada

**181 (1) L'alinéa 5(1)a) de la *Loi sur la Société d'assurance-dépôts du Canada* est remplacé par ce qui suit :**

**a)** la personne nommée en vertu du paragraphe 6(1) à titre de président;

**a.1)** la personne nommée en vertu du paragraphe 105(5) de la *Loi sur la gestion des finances publiques* à titre de président et premier dirigeant de la Société;

**(2) Paragraph 5(1)(c) of the Act is replaced by the following:**

**(c)** not more than six other members appointed by the Minister with the approval of the Governor in Council.

## DIVISION 6

R.S., c. F-8; 1995, c. 17, s. 45

# Federal-Provincial Fiscal Arrangements Act

**182 The *Federal-Provincial Fiscal Arrangements Act* is amended by adding the following after section 24.72:**

### Total payment of $2 billion

**24.73** The Minister may pay an additional cash payment equal to

**(a)** for Ontario, $775,500,000;

**(b)** for Quebec, $450,006,000;

**(c)** for Nova Scotia, $51,800,000;

**(d)** for New Brunswick, $41,238,000;

**(e)** for Manitoba, $72,437,000;

**(f)** for British Columbia, $272,434,000;

**(g)** for Prince Edward Island, $8,574,000;

**(h)** for Saskatchewan, $61,759,000;

**(i)** for Alberta, $232,332,000;

**(j)** for Newfoundland and Labrador, $27,227,000;

**(k)** for Yukon, $2,244,000;

**(l)** for the Northwest Territories, $2,387,000; and

**(m)** for Nunavut, $2,062,000.

**(2) L'alinéa 5(1)c) de la même loi est remplacé par ce qui suit :**

**c)** au plus six autres administrateurs nommés par le ministre avec l'agrément du gouverneur en conseil.

## SECTION 6

L.R., ch. F-8; 1995, ch. 17, art. 45

# Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces

**182 La *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* est modifiée par adjonction, après l'article 24.72, de ce qui suit :**

### Paiement total de 2 000 000 000 $

**24.73** Le ministre peut verser aux provinces ci-après la somme supplémentaire figurant en regard de leur nom :

**a)** Ontario : 775 500 000 $;

**b)** Québec : 450 006 000 $;

**c)** Nouvelle-Écosse : 51 800 000 $;

**d)** Nouveau-Brunswick : 41 238 000 $;

**e)** Manitoba : 72 437 000 $;

**f)** Colombie-Britannique : 272 434 000 $;

**g)** Île-du-Prince-Édouard : 8 574 000 $;

**h)** Saskatchewan : 61 759 000 $;

**i)** Alberta : 232 332 000 $;

**j)** Terre-Neuve-et-Labrador : 27 227 000 $;

**k)** Yukon : 2 244 000 $;

**l)** Territoires du Nord-Ouest : 2 387 000 $;

**m)** Nunavut : 2 062 000 $.

## DIVISION 7

# Borrowings

2017, c. 20, s. 103

## Borrowing Authority Act

**183 Paragraphs 5(a) and (b) of the *Borrowing Authority Act* are replaced by the following:**

**(a)** amounts borrowed by the Minister under an order made under paragraph 46.1(c) of the *Financial Administration Act*, other than those borrowed under such an order made during the period beginning on March 23, 2021 and ending on May 6, 2021; and

**(b)** amounts borrowed by the Minister under an order made under paragraph 46.1(a) of that Act for the payment of any amount in respect of a debt that was originally incurred under an order made under paragraph 46.1(c) of that Act, other than in respect of a debt that was originally incurred under such an order made during the period beginning on March 23, 2021 and ending on May 6, 2021.

**184 Section 8 of the Act is amended by adding the following after subsection (2):**

**Amounts not included**

**(3)** For the purposes of subsection (2), any amounts borrowed by the Minister during the period beginning on March 23, 2021 and ending on May 6, 2021 under an order made under paragraph 46.1(c) of the *Financial Administration Act* do not count in the calculation of the amounts referred to in paragraph (1)(b).

R.S., c. F-11

## Financial Administration Act

**185 Paragraph 49(1)(a.1) of the *Financial Administration Act* is replaced by the following:**

**(a.1)** the money that is borrowed under an order made under paragraph 46.1(c) of the *Financial Administration Act*, other than that borrowed under such an order made during the period beginning on March 23, 2021 and ending on May 6, 2021, and that is due at the end of the fiscal year to which the Public Accounts relate; and

## SECTION 7

# Emprunts

2017, ch. 20, art. 103

## Loi autorisant certains emprunts

**183 Les alinéas 5a) et b) de la *Loi autorisant certains emprunts* sont remplacés par ce qui suit :**

**a)** ceux contractés par le ministre en vertu de tout décret pris en vertu de l'alinéa 46.1c) de la *Loi sur la gestion des finances publiques*, sauf ceux contractés en vertu d'un tel décret pris pendant la période commençant le 23 mars 2021 et se terminant le 6 mai 2021;

**b)** ceux contractés par le ministre en vertu de tout décret pris en vertu de l'alinéa 46.1a) de cette loi en vue du paiement de toute somme relativement à une dette à l'origine contractée au titre de tout décret pris en vertu de l'alinéa 46.1c) de cette loi, sauf si cette dette a été contractée en vertu d'un tel décrit pris pendant la période commençant le 23 mars 2021 et se terminant le 6 mai 2021.

**184 L'article 8 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Emprunts exclus**

**(3)** Pour l'application du paragraphe (2), il n'est pas tenu compte dans le calcul du total des emprunts visés à l'alinéa (1)b) des emprunts contractés par le ministre en vertu d'un décret pris en vertu de l'alinéa 46.1c) de la *Loi sur la gestion des finances publiques* pendant la période commençant le 23 mars 2021 et se terminant le 6 mai 2021.

L.R., ch. F-11

## Loi sur la gestion des finances publiques

**185 L'alinéa 49(1)a.1) de la *Loi sur la gestion des finances publiques* est remplacé par ce qui suit :**

**a.1)** des sommes empruntées au titre d'un décret pris en vertu de l'alinéa 46.1c), sauf celles empruntées en vertu d'un tel décret pris pendant la période commençant le 23 mars 2021 et se terminant le 6 mai 2021, et qui demeurent exigibles à la fin de l'exercice en cause;

## DIVISION 8

R.S., c. 32 (2nd Supp.)

# Pension Benefits Standards Act, 1985

## Amendments to the Act

**186 The *Pension Benefits Standards Act, 1985* is amended by adding the following after section 9.16:**

## Solvency Reserve Accounts

### Establishment

**9.17 (1)** Subject to the regulations, a defined benefit plan, other than a negotiated contribution plan, may provide for the establishment of a solvency reserve account in the plan's pension fund.

### Payments into account

**(2)** Subject to the regulations, an employer may make payments into the solvency reserve account.

### Restriction on transfers

**(3)** The administrator shall not transfer into the solvency reserve account, nor permit to be transferred into that account, any moneys that are held in the pension fund outside of that account.

### Withdrawals

**(4)** Despite any terms of the pension plan or any document that creates or supports the plan or the pension fund, amounts may be withdrawn from the solvency reserve account in accordance with the regulations.

### Non-application

**(5)** Section 9.2 does not apply with respect to a withdrawal from the solvency reserve account.

**187 Section 10 of the Act is amended by adding the following after subsection (6):**

### Governance policy

**(7)** The administrator of a pension plan shall

**(a)** establish, before the plan is filed for registration, a governance policy that contains the prescribed information; and

## SECTION 8

L.R., ch. 32 (2e suppl.)

# Loi de 1985 sur les normes de prestation de pension

## Modification de la loi

**186 La *Loi de 1985 sur les normes de prestation de pension* est modifiée par adjonction, après l'article 9.16, de ce qui suit :**

## Compte de réserve de solvabilité

### Institution

**9.17 (1)** Sous réserve des règlements, un régime à prestations déterminées, autre qu'un régime à cotisations négociées, peut prévoir l'institution d'un compte de réserve de solvabilité du fonds de pension.

### Versements au compte

**(2)** Sous réserve des règlements, l'employeur peut verser des sommes au compte.

### Restriction quant aux transferts

**(3)** L'administrateur ne peut effectuer le transfert de sommes du fonds de pension détenues à l'extérieur du compte vers celui-ci.

### Retraits

**(4)** Malgré toute disposition du régime de pension ou d'un document constitutif ou à l'appui du régime ou du fonds de pension, les sommes peuvent être retirées du compte conformément aux règlements.

### Non-application

**(5)** L'article 9.2 ne s'applique pas à l'égard des retraits effectués à partir de ce compte.

**187 L'article 10 de la même loi est modifié par adjonction, après le paragraphe (6), de ce qui suit :**

### Politique sur la gouvernance

**(7)** Avant le dépôt pour agrément du régime de pension, l'administrateur établit une politique sur la gouvernance du régime, laquelle contient les renseignements réglementaires. Il est également tenu de s'assurer de la conformité de la politique avec la présente loi et les règlements.

**(b)** ensure that the policy complies with this Act and the regulations.

**Filing not required**

**(8)** The administrator is not required to file the governance policy for the purposes of subsection (1) or to file any amendment to the policy for the purposes of subsection 10.1(1).

**Transitional provision**

**(9)** An administrator of a pension plan that was registered or was filed for registration under this section before the day on which subsection (7) comes into force shall, within one year after that day, establish the governance policy for the plan.

**188 (1) Subsection 39(1) of the Act is amended by adding the following after paragraph (h):**

**(h.01)** respecting solvency reserve accounts;

**(2) Subsection 39(1) of the Act is amended by adding the following after paragraph (n.1):**

**(n.11)** respecting the investment of the assets of a pension fund;

## Coordinating Amendments

**2021, c. 23**

**189 (1) In this section, *other Act* means the *Budget Implementation Act, 2021, No. 1*.**

**(2) If section 188 of the other Act comes into force before section 187 of this Act, then**

**(a) that section 187 is replaced by the following:**

**187 Section 10 of the Act is amended by adding the following after subsection (10):**

**Governance policy**

**(11)** The administrator of a pension plan shall

**(a)** establish, before the plan is filed for registration, a governance policy that contains the prescribed information; and

**(b)** ensure that the policy complies with this Act and the regulations.

**Dépôt non requis**

**(8)** Ni la politique sur la gouvernance du régime ni les modifications apportées à celle-ci n'ont à être déposées au titre, respectivement, des paragraphes (1) et 10.1(1).

**Disposition transitoire**

**(9)** L'administrateur du régime de pension agréé ou déposé pour agrément aux termes du présent article avant la date d'entrée en vigueur du paragraphe (7) dispose d'un délai d'un an après cette date pour établir la politique sur la gouvernance du régime.

**188 (1) Le paragraphe 39(1) de la même loi est modifié par adjonction, après l'alinéa h), de ce qui suit :**

**h.01)** régir les comptes de réserve de solvabilité;

**(2) Le paragraphe 39(1) de la même loi est modifié par adjonction, après l'alinéa n.1), de ce qui suit :**

**n.11)** régir le placement de l'actif d'un fonds de pension;

## Dispositions de coordination

**2021, ch. 23**

**189 (1) Au présent article, *autre loi* s'entend de la *Loi nº 1 d'exécution du budget de 2021*.**

**(2) Si l'article 188 de l'autre loi entre en vigueur avant l'article 187 de la présente loi :**

**a) cet article 187 est remplacé par ce qui suit :**

**187 L'article 10 de la même loi est modifié par adjonction, après le paragraphe (10), de ce qui suit :**

**Politique sur la gouvernance**

**(11)** Avant le dépôt pour agrément du régime de pension, l'administrateur établit une politique sur la gouvernance du régime, laquelle contient les renseignements réglementaires. Il est également tenu de s'assurer de la conformité de la politique avec la présente loi et les règlements.

**Filing not required**

**(12)** The administrator is not required to file the governance policy for the purposes of subsection (1) or to file any amendment to the policy for the purposes of subsection 10.1(1).

**Transitional provision — governance policy**

**(13)** An administrator of a pension plan, other than a negotiated contribution plan, that was registered or was filed for registration under this section before the day on which subsection (11) comes into force shall, within one year after that day, establish the governance policy for the plan.

**(b) on the day on which that section 187 comes into force, subsections 10(7) to (10) of the *Pension Benefits Standards Act, 1985* are replaced by the following:**

**Funding policy**

**(7)** The administrator of a negotiated contribution plan shall, before the plan is filed for registration, establish a funding policy that contains the prescribed information.

**Filing not required**

**(8)** The administrator is not required to file the funding policy for the purposes of subsection (1) or to file any amendment to the policy for the purposes of subsection 10.1(1).

**Compliance — funding policy**

**(9)** The administrator shall ensure that the funding policy complies with this Act and the regulations.

**Transitional provision — negotiated contribution plans**

**(10)** An administrator of a negotiated contribution plan that was registered or was filed for registration under this section before the day on which subsection (7), as enacted by section 188 of the *Budget Implementation Act, 2021, No. 1*, comes into force shall, within one year after that day, establish the funding policy referred to in subsection (7) and the governance policy referred to in subsection (11).

**(3) If section 187 of this Act comes into force before section 188 of the other Act, then that section 188 is replaced by the following:**

**188 Section 10 of the *Pension Benefits Standards Act, 1985* is amended by adding the following after subsection (9):**

**Dépôt non requis**

**(12)** Ni la politique sur la gouvernance du régime ni les modifications apportées à celle-ci n'ont à être déposées au titre, respectivement, des paragraphes (1) et 10.1(1).

**Disposition transitoire — politique sur la gouvernance**

**(13)** L'administrateur du régime de pension, autre qu'un régime à cotisations négociées, agréé ou déposé pour agrément aux termes du présent article avant la date d'entrée en vigueur du paragraphe (11), dispose d'un délai d'un an après cette date pour établir la politique sur la gouvernance du régime.

**b) à la date d'entrée en vigueur de cet article 187, les paragraphes 10(7) à (10) de la *Loi de 1985 sur les normes de prestation de pension* sont remplacés par ce qui suit :**

**Politique sur la capitalisation**

**(7)** Avant le dépôt pour agrément du régime à cotisations négociées, l'administrateur établit une politique sur la capitalisation du régime, laquelle contient les renseignements réglementaires.

**Dépôt non requis**

**(8)** Ni la politique sur la capitalisation du régime ni les modifications apportées à celle-ci n'ont à être déposées au titre, respectivement, des paragraphes (1) et 10.1(1).

**Conformité — politique sur la capitalisation**

**(9)** L'administrateur est tenu de s'assurer de la conformité de la politique sur la capitalisation du régime avec la présente loi et les règlements.

**Disposition transitoire — régime à cotisations négociées**

**(10)** L'administrateur du régime à cotisations négociées agréé ou déposé pour agrément aux termes du présent article avant la date d'entrée en vigueur du paragraphe (7), édicté par l'article 188 de la *Loi nº 1 d'exécution du budget de 2021*, dispose d'un délai d'un an après cette date pour établir la politique sur la capitalisation du régime visée au paragraphe (7) et la politique sur la gouvernance du régime visée au paragraphe (11).

**(3) Si l'article 187 de la présente loi entre en vigueur avant l'article 188 de l'autre loi, cet article 188 est remplacé par ce qui suit :**

**188 L'article 10 de la *Loi de 1985 sur les normes de prestation de pension* est modifié par adjonction, après le paragraphe (9), de ce qui suit :**

#### Funding policy

**(10)** The administrator of a negotiated contribution plan shall

**(a)** establish, before the plan is filed for registration, a funding policy that contains the prescribed information; and

**(b)** ensure that the policy complies with this Act and the regulations.

#### Filing not required

**(11)** The administrator is not required to file the funding policy for the purposes of subsection (1) or to file any amendment to the policy for the purposes of subsection 10.1(1).

#### Transitional provision — funding policy

**(12)** An administrator of a negotiated contribution plan that was registered or was filed for registration under this section before the day on which subsection (10) comes into force shall establish the funding policy within one year after that day.

**(4) If section 188 of the other Act comes into force on the same day as section 187 of this Act, then that section 187 is deemed to have come into force before that section 188 and subsection (3) applies as a consequence.**

## Coming into Force

#### Order in council

**190 (1) Section 186 and subsection 188(1) come into force on a day to be fixed by order of the Governor in Council.**

#### Order in council

**(2) Section 187 comes into force on a day to be fixed by order of the Governor in Council.**

#### Politique sur la capitalisation

**(10)** Avant le dépôt pour agrément du régime à cotisations négociées, l'administrateur établit une politique sur la capitalisation du régime, laquelle contient les renseignements réglementaires. Il est également tenu de s'assurer de la conformité de la politique avec la présente loi et les règlements.

#### Dépôt non requis

**(11)** Ni la politique sur la capitalisation du régime ni les modifications apportées à celle-ci n'ont à être déposées au titre, respectivement, des paragraphes (1) et 10.1(1).

#### Disposition transitoire — politique sur la capitalisation

**(12)** L'administrateur du régime à cotisations négociées agréé ou déposé pour agrément aux termes du présent article avant la date d'entrée en vigueur du paragraphe (10) dispose d'un délai d'un an après cette date pour établir la politique sur la capitalisation du régime.

**(4) Si l'entrée en vigueur de l'article 188 de l'autre loi et celle de l'article 187 de la présente loi sont concomitantes, cet article 187 est réputé être entré en vigueur avant cet article 188, le paragraphe (3) s'appliquant en conséquence.**

## Entrée en vigueur

#### Décret

**190 (1) L'article 186 et le paragraphe 188(1) entrent en vigueur à la date fixée par décret.**

#### Décret

**(2) L'article 187 entre en vigueur à la date fixée par décret.**

## DIVISION 9

# Trade Remedies

R.S., c. S-15

## Special Import Measures Act

### Amendments to the Act

**191 Section 2 of the *Special Import Measures Act* is amended by adding the following after subsection (10):**

**Assessment of injury — impacts on workers**

**(11)** In any assessment of injury under this Act, any impacts on workers employed in the domestic industry shall be taken into account.

**Assessment of retardation — impacts on jobs**

**(12)** In any assessment of retardation under this Act, any impacts on jobs shall be taken into account.

**192 The Act is amended by adding the following before section 3:**

**Definition of *massive importation***

**2.1** In this Part, ***massive importation*** includes a series of importations into Canada that in the aggregate are massive and have occurred within a relatively short period of time.

**193 The portion of paragraph 5(a) of the Act after subparagraph (i) is replaced by the following:**

**(ii)** injury has been caused by a massive importation of the goods into Canada and the goods are likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1); and

**194 Subparagraphs 6(a)(i) and (ii) of the Act are replaced by the following:**

**(i)** injury has been caused by a massive importation of the goods into Canada, and

**(ii)** the goods are likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1),

**195 Subsection 31(6) of the Act is replaced by the following:**

## SECTION 9

# Recours commerciaux

L.R., ch. S-15

## Loi sur les mesures spéciales d'importation

### Modification de la loi

**191 L'article 2 de la *Loi sur les mesures spéciales d'importation* est modifié par adjonction, après le paragraphe (10), de ce qui suit :**

**Évaluation d'un dommage : incidence sur les travailleurs**

**(11)** Est prise en compte, dans toute évaluation d'un dommage prévue par la présente loi, l'incidence sur les travailleurs de la branche de production nationale.

**Évaluation d'un retard : incidence sur les emplois**

**(12)** Est prise en compte, dans toute évaluation d'un retard prévue par la présente loi, l'incidence sur les emplois.

**192 La même loi est modifiée par adjonction, avant l'article 3, de ce qui suit :**

**Définition de *importation massive***

**2.1** Dans la présente partie, ***importation massive*** s'entend notamment d'une série d'importations, massives dans l'ensemble, qui se sont produites sur une période relativement courte.

**193 Le passage de l'alinéa 5a) de la même loi suivant le sous-alinéa (i) est remplacé par ce qui suit :**

**(ii)** d'autre part, un dommage a été causé par l'importation massive des marchandises et celles-ci sont susceptibles de compromettre gravement l'effet correctif des droits visés au paragraphe 3(1);

**194 Les sous-alinéas 6a)(i) et (ii) de la même loi sont remplacés par ce qui suit :**

**(i)** d'une part, un dommage a été causé par l'importation massive des marchandises,

**(ii)** d'autre part, elles sont susceptibles de compromettre gravement l'effet correctif des droits visés au paragraphe 3(1);

**195 Le paragraphe 31(6) de la même loi est remplacé par ce qui suit :**

#### Extension of 30-day period

**(6)** The period of 30 days referred to in subsection (1) is extended to 45 days if, before the expiry of the 30 days, the President causes written notice to be given to the complainant that the period of 30 days is insufficient to determine whether there is compliance with the conditions referred to in subsection (2) or the condition referred to in subsection 31.1(1).

#### Prolongement du délai de trente jours

**(6)** Le délai de trente jours visé au paragraphe (1) est prolongé à quarante-cinq jours si, avant l'expiration de ce délai, le président avise par écrit le plaignant que la période de trente jours est insuffisante pour déterminer si les conditions prévues au paragraphe (2) ou celle prévue au paragraphe 31.1(1) sont remplies.

**196 (1) Paragraphs 32(1)(a) and (b) of the Act are replaced by the following:**

**(a)** if the complaint is properly documented, cause the complainant to be informed in writing that the complaint was received and that it is properly documented; or

**(b)** if the complaint is not properly documented, cause the complainant to be informed in writing that the complaint was received and indicate the information and material needed in order for the complaint to be properly documented.

**196 (1) Les alinéas 32(1)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** si le dossier est un dossier complet, en informe par écrit le plaignant;

**b)** si le dossier n'est pas un dossier complet, en informe par écrit le plaignant et précise les renseignements et pièces complémentaires à fournir pour qu'il le soit.

**(2) Section 32 of the Act is amended by adding the following after subsection (1):**

#### Notice of complaint

**(1.1)** If the President receives a properly documented written complaint under subsection (1), the President shall cause the government of the country of export to be notified in writing that the complaint was received and that it is properly documented.

**(2) L'article 32 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

#### Avis : plainte

**(1.1)** En présence d'un dossier complet, le président avise par écrit le gouvernement du pays d'exportation de l'existence de la plainte et du fait que le dossier est complet.

#### Timing of notice

**(1.2)** The notice shall be provided no later than

**(a)** in the case of a complaint respecting the dumping of goods, seven days before the day on which the President decides whether or not to cause an investigation to be initiated; and

**(b)** in the case of a complaint respecting the subsidizing of goods, 20 days before the day on which the President decides whether or not to cause an investigation to be initiated.

#### Délai de transmission

**(1.2)** L'avis est transmis dans les délais suivants :

**a)** s'agissant d'une plainte concernant le dumping de marchandises, au plus tard sept jours avant la date à laquelle le président décide de faire ouvrir ou non une enquête;

**b)** s'agissant d'une plainte concernant le subventionnement de marchandises, au plus tard vingt jours avant la date à laquelle le président décide de faire ouvrir ou non une enquête.

**197 (1) The portion of subsection 42(1) of the Act before paragraph (a) is replaced by the following:**

#### Tribunal to make inquiry

**42 (1)** The Tribunal, forthwith after receipt of a notice of a preliminary determination under subsection 38(3), shall make inquiry with respect to the following matters:

**197 (1) Le passage du paragraphe 42(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

#### Enquête du Tribunal

**42 (1)** Dès réception de l'avis de décision provisoire prévu au paragraphe 38(3), le Tribunal fait enquête sur les questions ci-après, à savoir :

**(2) The portion of paragraph 42(1)(b) of the Act after subparagraph (i) is replaced by the following:**

**(ii)** injury has been caused by a massive importation of the goods into Canada and the goods are likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1); and

**(3) Subparagraphs 42(1)(c)(i) and (ii) of the Act are replaced by the following:**

**(i)** injury has been caused by a massive importation of the goods into Canada, and

**(ii)** the goods are likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1).

**198 Paragraph 71(c) of the Act is replaced by the following:**

**(c)** the change in trade pattern is caused by the imposition of anti-dumping or countervailing duties.

**199 Subsection 72(1) of the Act is replaced by the following:**

**Initiation of investigation**

**72 (1)** The President shall cause an investigation to be initiated respecting the circumvention of an order or finding of the Tribunal, or an order of the Governor in Council imposing a countervailing duty under section 7, on the President's own initiative or, if he or she receives a written complaint respecting the circumvention, within 45 days after the day on which that complaint is received, if he or she is of the opinion that there is evidence disclosing a reasonable indication that circumvention is occurring.

**200 Subsection 76.01(7) of the Act is replaced by the following:**

**Expiry of order**

**(7)** An order made on the completion of an interim review, other than an order rescinding an order or finding, expires on the day on which the Tribunal makes an order under subsection 76.03(12).

**201 (1) The portion of subsection 76.03(1) of the Act before paragraph (a) is replaced by the following:**

**(2) Le passage de l'alinéa 42(1)b) de la même loi suivant le sous-alinéa (i) est remplacé par ce qui suit :**

**(ii)** d'autre part, un dommage a été causé par l'importation massive des marchandises et celles-ci sont susceptibles de compromettre gravement l'effet correctif des droits visés au paragraphe 3(1);

**(3) Les sous-alinéas 42(1)c)(i) et (ii) de la même loi sont remplacés par ce qui suit :**

**(i)** d'une part, un dommage a été causé par l'importation massive des marchandises,

**(ii)** d'autre part, elles sont susceptibles de compromettre gravement l'effet correctif des droits visés au paragraphe 3(1).

**198 L'alinéa 71c) de la même loi est remplacé par ce qui suit :**

**c)** le changement à la configuration des échanges a été causé par l'imposition de droits antidumping ou compensateurs.

**199 Le paragraphe 72(1) de la même loi est remplacé par ce qui suit :**

**Ouverture d'enquête**

**72 (1)** De sa propre initiative ou, s'il reçoit une plainte écrite, dans les quarante-cinq jours suivant la date de réception de la plainte, le président fait ouvrir une enquête portant sur le contournement d'une ordonnance ou des conclusions du Tribunal ou sur un décret imposant des droits compensateurs au titre de l'article 7 s'il est d'avis que des éléments de preuve fournissent une indication raisonnable de contournement.

**200 Le paragraphe 76.01(7) de la même loi est remplacé par ce qui suit :**

**Expiration de l'ordonnance**

**(7)** L'ordonnance rendue à la fin d'un réexamen intermédiaire, sauf celle annulant l'ordonnance ou les conclusions, expire à la date à laquelle le Tribunal rend une ordonnance au titre du paragraphe 76.03(12).

**201 (1) Le passage du paragraphe 76.03(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

#### Review

**76.03 (1)** The Tribunal shall initiate an expiry review with respect to an order or finding described in any of subsections 3(1) and (2) and sections 4 to 6 before the expiry of five years after whichever of the following days is applicable:

**(2) Subsections 76.03(2) to (5) of the Act are replaced by the following:**

#### Termination of review

**(2)** The Tribunal may terminate an expiry review at any time if, in the Tribunal's opinion, the review is not supported by domestic producers. Upon terminating a review, the Tribunal shall without delay cause notice of the termination to be given to the President and all other persons and governments specified in the rules of the Tribunal.

**(3) The portion of subsection 76.03(6) of the Act before subparagraph (a)(i) is replaced by the following:**

#### Notice

**(6)** Upon initiating an expiry review, the Tribunal shall without delay

**(a)** cause notice of the review to be given to

**(4) Subsection 76.03(6) of the Act is amended by adding "and" at the end of paragraph (a) and by repealing paragraph (b).**

**(5) The portion of subsection 76.03(7) of the Act before paragraph (a) is replaced by the following:**

#### President's determination and notice

**(7)** Unless the expiry review is terminated under subsection (2), the President shall

**(6) Paragraph 76.03(12)(a) of the Act is amended by striking out "or" at the end of subparagraph (i) and by adding the following after subparagraph (ii):**

**(iii)** in respect of which it terminated an expiry review under subsection (2); or

#### Réexamen

**76.03 (1)** Le Tribunal procède au réexamen relatif à l'expiration des ordonnances ou des conclusions visées à l'un ou l'autre des paragraphes 3(1) ou (2) ou des articles 4 à 6, au plus tard cinq ans après :

**(2) Les paragraphes 76.03(2) à (5) de la même loi sont remplacés par ce qui suit :**

#### Fin du réexamen

**(2)** Le Tribunal peut mettre fin au réexamen relatif à l'expiration s'il est d'avis que les producteurs nationaux ne soutiennent pas ce réexamen. Il avise alors sans délai le président et toute autre personne et gouvernement mentionnés dans ses règles que le réexamen a pris fin.

**(3) Le passage du paragraphe 76.03(6) de la même loi précédant l'alinéa b) est remplacé par ce qui suit :**

#### Avis

**(6)** Dès l'ouverture du réexamen relatif à l'expiration, le Tribunal doit :

**a)** en aviser le président et toute autre personne ou gouvernement mentionnés dans ses règles;

**(4) L'alinéa 76.03(6)b) de la même loi est abrogé.**

**(5) Le passage du paragraphe 76.03(7) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

#### Décision et avis du président

**(7)** Sauf s'il est mis fin au réexamen en application du paragraphe (2), le président :

**(6) L'alinéa 76.03(12)a) de la même loi est remplacé par ce qui suit :**

**a)** soit d'annuler l'ordonnance ou les conclusions à l'égard des marchandises visées au paragraphe (8), de celles pour lesquelles l'expiration de l'ordonnance ou des conclusions ne causera vraisemblablement pas de dommage ou de retard ou encore de celles dont le réexamen a pris fin en application du paragraphe (2);

**(7) Paragraph 76.03(13)(a) of the Act is replaced by the following:**

**(a)** an order made by the Tribunal under section 75.3 or subsection 75.4(8) or 75.6(7) amending the order or finding under review, if that order is made on or after the day on which the review is initiated under subsection (1) but before the day on which the order of the Tribunal is made under subsection (12); and

**(8) Subsection 76.03(14) of the Act is replaced by the following:**

**Expiry of anti-circumvention order**

**(14)** An order made as a result of a decision by the President setting out a finding of circumvention or an interim review decision of the President relating to a finding of circumvention, other than an order rescinding the extension of duties or exempting an exporter from the extension of duties, expires on the day on which the Tribunal makes an order under subsection (12).

**202 Paragraph (g) of the definition *definitive decisions* in subsection 77.01(1) of the Act is replaced by the following:**

**(g)** an order of the Tribunal under subsection 76.01(4),

**203 Paragraph (g) of the definition *definitive decision* in subsection 77.1(1) of the Act is replaced by the following:**

**(g)** an order of the Tribunal under subsection 76.01(4),

**204 Section 88.1 of the Act is repealed.**

**205 Paragraph 96.1(1)(d) of the Act is replaced by the following:**

**(d)** an order of the Tribunal under subsection 76.01(4);

**206 Subparagraph 97(1)(a.1)(v) of the Act is replaced by the following:**

**(v)** whether a change in a pattern of trade is caused by the imposition of an anti-dumping or countervailing duty, and

**(7) L'alinéa 76.03(13)a) de la même loi est remplacé par ce qui suit :**

**a)** l'ordonnance rendue par le Tribunal au titre de l'article 75.3 ou des paragraphes 75.4(8) et 75.6(7) et modifiant l'ordonnance ou les conclusions qui font l'objet du réexamen si elle a été rendue à la date d'ouverture du réexamen prévu au paragraphe (1) ou à une date ultérieure, mais avant la date à laquelle l'ordonnance du Tribunal est rendue au titre du paragraphe (12);

**(8) Le paragraphe 76.03(14) de la même loi est remplacé par ce qui suit :**

**Expiration de l'ordonnance : décision sur le contournement**

**(14)** Sauf s'il s'agit d'une ordonnance annulant l'extension de droits ou exonérant un exportateur de celle-ci, l'ordonnance rendue à la suite d'une décision du président concluant à un acte de contournement ou une décision suivant un réexamen intermédiaire se rapportant à une décision concluant à un contournement expire à la date à laquelle le Tribunal rend une ordonnance au titre du paragraphe (12).

**202 L'alinéa g) de la définition de *décisions finales*, au paragraphe 77.01(1) de la même loi, est remplacé par ce qui suit :**

**g)** l'ordonnance rendue par le Tribunal au titre du paragraphe 76.01(4);

**203 L'alinéa g) de la définition de *décisions finales*, au paragraphe 77.1(1) de la même loi, est remplacée par ce qui suit :**

**g)** l'ordonnance rendue par le Tribunal au titre du paragraphe 76.01(4);

**204 L'article 88.1 de la même loi est abrogé.**

**205 L'alinéa 96.1(1)d) de la même loi est remplacé par ce qui suit :**

**d)** l'ordonnance rendue par le Tribunal au titre du paragraphe 76.01(4);

**206 Le sous-alinéa 97(1)a.1)(v) de la même est remplacé par ce qui suit :**

**(v)** si un changement à la configuration des échanges a été causé par l'imposition de droits antidumping ou de droits compensateurs,

## Transitional Provisions

### Definitions

**207 (1) The following definitions apply in this section and sections 208 to 211.**

***commencement day*** **means the day on which this Act receives royal assent. (*date de référence*)**

***former Act*** **means the *Special Import Measures Act* as it read on the day before the commencement day. (*ancienne loi*)**

### Words and expressions

**(2) Words and expressions used in sections 208 to 211 have the same meaning as in the *Special Import Measures Act*.**

### Disposition of complaints

**208 If, before the commencement day, the President receives a written complaint respecting the dumping or subsidizing of goods under subsection 31(1) of the former Act, any proceeding, process or action in respect of the complaint is to be continued and disposed of in accordance with that Act.**

### Anti-circumvention complaints

**209 If, before the commencement day, the President receives a written complaint under subsection 72(1) of the former Act respecting the circumvention of an order or finding of the Tribunal, or an order of the Governor in Council imposing a countervailing duty under section 7 of that Act, any proceeding, process or action in respect of the complaint is to be continued and disposed of in accordance with that Act.**

### Interim reviews — on request

**210 (1) If, before the commencement day, the Tribunal receives a request to conduct an interim review of an order or finding, or any aspect of an order or finding, under subsection 76.01(1) of the former Act, any interim review is to be initiated — or, if already initiated, continued — and disposed of in accordance with that Act.**

### Interim reviews — Tribunal's initiative

**(2) If, before the commencement day, the Tribunal initiates, on its own initiative, an interim review of an order or finding, or any aspect of an order or finding, under subsection 76.01(1) of the**

## Dispositions transitoires

### Définitions

**207 (1) Les définitions qui suivent s'appliquent au présent article et aux articles 208 à 211 :**

***ancienne loi*** **La *Loi sur les mesures spéciales d'importation*, dans sa version antérieure à la date de référence. (*former Act*)**

***date de référence*** **La date de sanction de la présente loi. (*commencement day*)**

### Terminologie

**(2) Les termes utilisés aux articles 208 à 211 s'entendent au sens de la *Loi sur les mesures spéciales d'importation*.**

### Plaintes

**208 Dans les cas où le président reçoit par écrit, avant la date de référence, une plainte concernant le dumping ou le subventionnement de marchandises au titre du paragraphe 31(1) de l'ancienne loi, les mesures — procédures, décisions et autres — relatives à cette plainte se poursuivent et sont prises sous le régime de cette loi.**

### Plainte portant sur le contournement

**209 Dans les cas où le président reçoit par écrit, avant la date de référence, une plainte visée au paragraphe 72(1) de l'ancienne loi concernant le contournement d'une ordonnance ou des conclusions du Tribunal ou portant sur un décret imposant des droits compensateurs en vertu de l'article 7 de cette loi, les mesures — procédures, décisions et autres — relatives à cette plainte se poursuivent et sont prises sous le régime de cette loi.**

### Réexamen intermédiaire : sur demande

**210 (1) Si le Tribunal, pour donner suite à une demande à cet effet reçue avant la date de référence, décide de procéder, en vertu du paragraphe 76.01(1) de l'ancienne loi, à un réexamen intermédiaire soit d'une ordonnance ou de conclusions soit d'un de leurs aspects, ce réexamen commence ou, s'il est déjà commencé, se poursuit sous le régime de cette loi.**

### Réexamen intermédiaire : initiative du Tribunal

**(2) Si, avant la date de référence, le Tribunal décide, de sa propre initiative, de procéder, en vertu du paragraphe 76.01(1) de l'ancienne loi, à un réexamen intermédiaire soit d'une ordonnance**

**former Act, the interim review is to be continued and disposed of in accordance with that Act.**

**Expiry reviews**

**211 If, before the commencement day, a notice of expiry respecting an order or finding has been published under subsection 76.03(2) of the former Act, any expiry review in respect of the order or finding is to be initiated — or, if already initiated, continued — and disposed of in accordance with that Act.**

**ou de conclusions soit d'un de leurs aspects, ce réexamen se poursuit sous le régime de cette loi.**

**Réexamen relatif à l'expiration**

**211 Si, avant la date de référence, un avis d'expiration a été publié au titre du paragraphe 76.03(2) de l'ancienne loi, tout réexamen relatif à l'expiration de l'ordonnance ou des conclusions commence ou, s'il est déjà commencé, se poursuit sous le régime de cette loi.**

R.S., c. 47 (4th Supp.)

## Canadian International Trade Tribunal Act

**212 Subsection 2(1) of the *Canadian International Trade Tribunal Act* is amended by adding the following in alphabetical order:**

***trade union*** means an employee organization that has been certified under federal or provincial law, or recognized by the employer, as a bargaining agent; (*syndicat*)

**213 Paragraph 16(b) of the Act is replaced by the following:**

**(b)** consider complaints and extension requests filed with the Tribunal under this Act by domestic producers of like or directly competitive goods or by trade unions whose members are engaged in the Canadian production of like or directly competitive goods and, if appropriate, conduct inquiries into the complaints and extension requests and report on them;

**214 (1) Subsection 23(1) of the Act is replaced by the following:**

**Filing of complaint**

**23 (1)** Any of the following may file a written complaint with the Tribunal alleging that goods are being imported into Canada in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods:

**(a)** a domestic producer of the like or directly competitive goods;

**(b)** a person or association acting on behalf of the domestic producer;

L.R., ch. 47 (4e suppl.)

## Loi sur le Tribunal canadien du commerce extérieur

**212 Le paragraphe 2(1) de la *Loi sur le Tribunal canadien du commerce extérieur* est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***syndicat*** Organisation d'employés accréditée comme agent négociateur sous le régime d'une loi fédérale ou provinciale ou reconnue comme agent négociateur par l'employeur. (*trade union*)

**213 L'alinéa 16b) de la même loi est remplacé par ce qui suit :**

**b)** d'étudier les plaintes et les demandes de prorogation déposées sous le régime de la présente loi par les syndicats dont les membres sont engagés dans la production canadienne de marchandises similaires ou directement concurrentes ou par les producteurs nationaux de telles marchandises et, s'il y a lieu, d'enquêter et de faire rapport à leur égard;

**214 (1) Le paragraphe 23(1) de la même loi est remplacé par ce qui suit :**

**Dépôt**

**23 (1)** Une plainte écrite peut être déposée devant le Tribunal par l'une des personnes ci-après, si elle estime que certaines marchandises sont importées en quantité tellement accrue et à des conditions telles que leur importation cause ou menace de causer un dommage grave aux producteurs nationaux de marchandises similaires ou directement concurrentes :

**a)** un producteur concerné;

**b)** une personne ou une association représentant un tel producteur;

**(c)** a trade union whose members are engaged in the Canadian production of the like or directly competitive goods.

**(2) Paragraphs 23(2)(b) and (c) of the Act are replaced by the following:**

**(b)** in the case of a complaint filed by or on behalf of a domestic producer, state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by the producer;

**(b.1)** in the case of a complaint filed by a trade union,

**(i)** state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by its members, and

**(ii)** provide evidence that one or more domestic producers of the like or directly competitive goods support the complaint and state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by those producers; and

**(c)** make any other representations that the complainant considers relevant to the matter.

**(3) Paragraph 23(3)(a) of the English version of the Act is replaced by the following:**

**(a)** such information as is available to the complainant to prove the facts referred to in paragraph (2)(a) and to substantiate the estimates referred to in paragraph (2)(b) or (b.1); and

**215 Paragraph 26(1)(b) of the Act is replaced by the following:**

**(b)** that the complaint is made by or on behalf of, or with the support of, domestic producers who produce a major proportion of domestic production of the like or directly competitive goods; and

**216 Section 30.04 of the Act is amended by adding the following after subsection (1):**

**c)** un syndicat dont les membres sont engagés dans la production canadienne de marchandises similaires ou directement concurrentes.

**(2) Le paragraphe 23(2) de la même loi est remplacé par ce qui suit :**

**Teneur**

**(2)** La plainte comporte les éléments suivants :

**a)** un énoncé suffisamment détaillé des faits sur lesquels elle se fonde;

**b)** s'agissant d'une plainte déposée par un producteur national ou en son nom, une estimation du pourcentage de sa production par rapport à la production canadienne de marchandises similaires ou directement concurrentes;

**b.1)** s'agissant d'une plainte déposée par un syndicat, elle comporte également :

**(i)** une estimation du pourcentage de la production de ses membres par rapport à la production canadienne de marchandises similaires ou directement concurrentes,

**(ii)** une preuve de l'appui d'un ou de plusieurs producteurs nationaux de marchandises similaires ou directement concurrentes à l'égard de la plainte déposée et une estimation du pourcentage de la production de ceux-ci par rapport à la production canadienne de marchandises similaires ou directement concurrentes;

**c)** toute autre observation jugée utile en l'espèce par le plaignant.

**(3) L'alinéa 23(3)a) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(a)** such information as is available to the complainant to prove the facts referred to in paragraph (2)(a) and to substantiate the estimates referred to in paragraph (2)(b) or (b.1); and

**215 L'alinéa 26(1)b) de la même loi est remplacé par ce qui suit :**

**b)** que la plainte est présentée ou appuyée par les producteurs nationaux d'une part importante des marchandises similaires ou directement concurrentes produites au Canada ou qu'elle est présentée en leur nom;

**216 L'article 30.04 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Requests — trade unions**

**(1.1)** An extension request may also be filed by a trade union whose members are engaged in the Canadian production of the like or directly competitive goods.

**217 (1) Paragraphs 30.05(1)(b) and (c) of the Act are replaced by the following:**

**(b)** in the case of an extension request filed by or on behalf of a domestic producer, state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by the producer;

**(b.1)** in the case of an extension request filed by a trade union,

**(i)** state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by its members, and

**(ii)** provide evidence that one or more domestic producers of the like or directly competitive goods support the request and state an estimate of the total percentage of Canadian production of the like or directly competitive goods that is produced by those producers; and

**(c)** make any other representations that the requester considers relevant to the matter.

**(2) Paragraph 30.05(2)(a) of the English version of the Act is replaced by the following:**

**(a)** such information as is available to the requester to prove the facts referred to in paragraph (1)(a) and to substantiate the estimates referred to in paragraph (1)(b) or (b.1); and

**218 Paragraph 30.07(1)(b) of the Act is replaced by the following:**

**(b)** that the extension request is made by or on behalf of, or with the support of, domestic producers who produce a major proportion of domestic production of the like or directly competitive goods.

**Dépôt par un syndicat**

**(1.1)** La demande peut également être déposée par un syndicat dont les membres sont engagés dans la production canadienne de marchandises similaires ou directement concurrentes.

**217 (1) Le paragraphe 30.05(1) de la même loi est remplacé par ce qui suit :**

**Teneur : demande de prorogation**

**30.05 (1)** La demande de prorogation comporte les éléments suivants :

**a)** un énoncé suffisamment détaillé des faits sur lesquels elle se fonde;

**b)** s'agissant d'une demande déposée par un producteur national ou en son nom, une estimation du pourcentage de sa production par rapport à la production canadienne de marchandises similaires ou directement concurrentes;

**b.1)** s'agissant d'une demande déposée par un syndicat, elle comporte également :

**(i)** une estimation du pourcentage de la production de ses membres par rapport à la production canadienne de marchandises similaires ou directement concurrentes,

**(ii)** une preuve de l'appui d'un ou de plusieurs producteurs nationaux de marchandises similaires ou directement concurrentes à l'égard de la demande et une estimation du pourcentage de la production de ceux-ci par rapport à la production canadienne de marchandises similaires ou directement concurrentes;

**c)** toute autre observation jugée utile en l'espèce par le plaignant.

**(2) L'alinéa 30.05(2)a) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(a)** such information as is available to the requester to prove the facts referred to in paragraph (1)(a) and to substantiate the estimates referred to in paragraph (1)(b) or (b.1); and

**218 L'alinéa 30.07(1)b) de la même loi est remplacé par ce qui suit :**

**b)** que la demande est présentée ou appuyée par les producteurs nationaux d'une part importante des marchandises similaires ou directement concurrentes produites au Canada, ou qu'elle est présentée en leur nom.

**219 Paragraph 39(1)(c) of the Act is replaced by the following:**

**(c)** specifying any additional information that must accompany a complaint filed under any of subsections 23(1) to (1.1), 30.01(2), 30.011(1), 30.012(2), 30.11(1), 30.22(1) and 30.23(1) or an extension request filed under subsection 30.04(1) or (1.1) or 30.25(3); and

**219 L'alinéa 39(1)c) de la même loi est remplacé par ce qui suit :**

**c)** préciser le complément d'information à fournir à l'occasion d'une plainte fondée sur les paragraphes 23(1) à (1.1), 30.01(2), 30.011(1), 30.012(2), 30.11(1), 30.22(1) et 30.23(1) ou d'une demande de prorogation déposée en vertu des paragraphes 30.04(1) ou (1.1) ou 30.25(3);

## DIVISION 10

# Corporate Governance of Financial Institutions

1991, c. 45

## Trust and Loan Companies Act

**220 Subsection 160.04(1) of the *Trust and Loan Companies Act* is replaced by the following:**

### Mandatory solicitation

**160.04 (1)** Subject to subsections (2) and 143(2), the management of a company shall, concurrently with sending notice of a meeting of shareholders, send a form of proxy that is in accordance with the regulations to each shareholder entitled to receive notice of the meeting.

**221 (1) Subsections 160.05(1) and (2) of the Act are replaced by the following:**

### Soliciting proxies

**160.05 (1)** A person shall not solicit proxies unless a proxy circular that is in accordance with the regulations is sent to the auditor of the company, to each shareholder whose proxy is solicited and, in the case set out in paragraph (b), to the company as follows:

**(a)** in the case of solicitation by or on behalf of the management of a company, a management proxy circular, either as an appendix to or as a separate document accompanying the notice of the meeting; and

**(b)** in the case of any other solicitation, a dissident's proxy circular stating the purposes of the solicitation.

### Exception — solicitation to 15 or fewer shareholders

**(1.1)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the company, without sending a dissident's proxy circular, if

## SECTION 10

# Gouvernance des institutions financières

1991, ch. 45

## Loi sur les sociétés de fiducie et de prêt

**220 Le paragraphe 160.04(1) de la *Loi sur les sociétés de fiducie et de prêt* est remplacé par ce qui suit :**

### Sollicitation obligatoire

**160.04 (1)** Sous réserve des paragraphes (2) et 143(2), la direction de la société envoie, avec l'avis de l'assemblée des actionnaires, un formulaire de procuration conforme aux règlements aux actionnaires qui ont le droit de recevoir l'avis.

**221 (1) Les paragraphes 160.05(1) et (2) de la même loi sont remplacés par ce qui suit :**

### Sollicitation de procuration

**160.05 (1)** Les procurations ne peuvent être sollicitées qu'à l'aide de circulaires, conformes aux règlements, envoyées au vérificateur, aux actionnaires faisant l'objet de la sollicitation et, en cas d'application de l'alinéa b), à la société ainsi :

**a)** dans le cas d'une sollicitation effectuée par la direction de la société ou pour son compte, sous forme d'annexe ou de document distinct de l'avis de l'assemblée;

**b)** dans les autres cas, dans une circulaire de procuration d'opposant qui mentionne l'objet de la sollicitation.

### Exception : sollicitation restreinte

**(1.1)** Malgré le paragraphe (1), il n'est pas nécessaire, sauf lorsque la sollicitation est effectuée par la direction ou pour son compte, d'envoyer des circulaires aux

the total number of shareholders whose proxies are solicited is 15 or fewer, two or more joint holders being counted as one shareholder.

**Exception — solicitation by public broadcast**

**(1.2)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the company, without sending a dissident's proxy circular if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication.

**Copy to Superintendent**

**(2)** A person who sends a management proxy circular or dissident's proxy circular shall concurrently send to the Superintendent a copy of it together with the form of proxy, any other documents for use in connection with the meeting and, in the case of a management proxy circular, a copy of the notice of meeting.

**(2) Subsection 160.05(4) of the Act is replaced by the following:**

**Publication**

**(4)** The Superintendent shall publish in a publication generally available to the public, a notice of a decision made by the Superintendent granting an exemption under subsection (3).

**222 Section 160.071 of the Act is replaced by the following:**

**Regulations**

**160.071** The Governor in Council may make regulations

**(a)** respecting the powers that may be granted by a shareholder in a form of proxy;

**(b)** respecting proxy circulars and forms of proxy, including the form and content of those documents; and

**(c)** respecting the conditions under which a company is exempt from any of the requirements of sections 160.02 to 160.07.

actionnaires dont les procurations sont sollicitées lorsque leur nombre ne dépasse pas quinze, les codétenteurs d'une action étant comptés comme un seul actionnaire.

**Exception : sollicitation par diffusion publique**

**(1.2)** Malgré le paragraphe (1), il n'est pas nécessaire, sauf lorsque la sollicitation est effectuée par la direction ou pour son compte, d'envoyer des circulaires pour effectuer une sollicitation lorsque celle-ci est, dans les circonstances réglementaires, transmise par diffusion publique, discours ou publication.

**Copie au surintendant**

**(2)** La personne qui envoie une circulaire de sollicitation émanant de la direction ou d'un opposant doit, en même temps, en envoyer un exemplaire au surintendant accompagné du formulaire de procuration, de tout autre document utile à l'assemblée et, dans le cas où elle émane de la direction, d'une copie de l'avis d'assemblée.

**(2) Le paragraphe 160.05(4) de la même loi est remplacé par ce qui suit :**

**Publication des dispenses**

**(4)** Le surintendant publie, dans une publication destinée au grand public, un avis de chaque décision où il accorde une dispense en vertu du paragraphe (3).

**222 L'article 160.071 de la même loi est remplacé par ce qui suit :**

**Règlement**

**160.071** Le gouverneur en conseil peut prendre des règlements concernant :

**a)** les pouvoirs que peut accorder un actionnaire dans un formulaire de procuration;

**b)** le formulaire de procuration et la circulaire de procuration, notamment la forme et le contenu de ces documents;

**c)** les conditions que doit remplir une société afin de se soustraire à l'application des exigences énoncées aux articles 160.02 à 160.07.

1991, c. 47

## Insurance Companies Act

**223 Subsection 164.03(1) of the *Insurance Companies Act* is replaced by the following:**

1991, ch. 47

## Loi sur les sociétés d'assurances

**223 Le paragraphe 164.03(1) de *Loi sur les sociétés d'assurances* est remplacé par ce qui suit :**

**Mandatory solicitation**

**164.03 (1)** Subject to subsections (2) and 144(2), the management of a company shall, concurrently with sending notice of a meeting of shareholders and policyholders, send a form of proxy that is in accordance with the regulations to each shareholder entitled to receive notice of the meeting and to each policyholder entitled to receive notice of the meeting under section 143.

**224 (1) Subsections 164.04(1) and (2) of the Act are replaced by the following:**

**Soliciting proxies**

**164.04 (1)** A person shall not solicit proxies unless a proxy circular that is in accordance with the regulations is sent to the auditor of the company, to each shareholder or policyholder whose proxy is solicited and, in the case set out in paragraph (b), to the company as follows:

**(a)** in the case of solicitation by or on behalf of the management of a company, a management proxy circular, either as an appendix to or as a separate document accompanying the notice of the meeting; and

**(b)** in the case of any other solicitation, a dissident's proxy circular stating the purposes of the solicitation.

**Exception — limited solicitation**

**(1.1)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the company, without sending a dissident's proxy circular, if the total number of shareholders and policyholders whose proxies are solicited is 15 or fewer, with two or more joint holders being counted as one shareholder.

**Exception — solicitation by public broadcast**

**(1.2)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the company, without sending a dissident's proxy circular if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication.

**Copy to Superintendent**

**(2)** A person who sends a management proxy circular or dissident's proxy circular shall concurrently send to the Superintendent a copy of it together with the form of proxy, any other documents for use in connection with the meeting and, in the case of a management proxy circular, a copy of the notice of meeting.

**(2) Subsection 164.04(4) of the Act is replaced by the following:**

**Sollicitation obligatoire**

**164.03 (1)** Sous réserve des paragraphes (2) et 144(2), la direction de la société envoie, avec l'avis de l'assemblée des actionnaires et des souscripteurs, un formulaire de procuration conforme aux règlements aux actionnaires qui ont le droit de recevoir l'avis et aux souscripteurs qui ont le droit de recevoir l'avis dans le cadre de l'article 143.

**224 (1) Les paragraphes 164.04(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Sollicitation de procuration**

**164.04 (1)** Les procurations ne peuvent être sollicitées qu'à l'aide de circulaires, conformes aux règlements, envoyées au vérificateur, aux actionnaires ou aux souscripteurs faisant l'objet de la sollicitation et, en cas d'application de l'alinéa b), à la société ainsi :

**a)** dans le cas d'une sollicitation effectuée par la direction de la société ou pour son compte, sous forme d'annexe ou de document distinct de l'avis de l'assemblée;

**b)** dans les autres cas, dans une circulaire de procuration d'opposant qui mentionne l'objet de la sollicitation.

**Exception : sollicitation restreinte**

**(1.1)** Malgré le paragraphe (1), il n'est pas nécessaire, sauf lorsque la sollicitation est effectuée par la direction ou pour son compte, d'envoyer des circulaires aux actionnaires ou aux souscripteurs dont les procurations sont sollicitées lorsque leur nombre ne dépasse pas quinze, les codétenteurs d'une action étant comptés comme un seul actionnaire.

**Exception : sollicitation par diffusion publique**

**(1.2)** Malgré le paragraphe (1), il n'est pas nécessaire, sauf lorsque la sollicitation est effectuée par la direction ou pour son compte, d'envoyer des circulaires pour effectuer une sollicitation lorsque celle-ci est, dans les circonstances réglementaires, transmise par diffusion publique, discours ou publication.

**Copie au surintendant**

**(2)** La personne qui envoie une circulaire de sollicitation émanant de la direction ou d'un opposant doit, en même temps, en envoyer un exemplaire au surintendant accompagné du formulaire de procuration, de tout autre document utile à l'assemblée et, dans le cas où elle émane de la direction, d'une copie de l'avis d'assemblée.

**(2) Le paragraphe 164.04(4) de la même loi est remplacé par ce qui suit :**

**Reporting exemptions**

**(4)** The Superintendent shall publish in a publication generally available to the public, a notice of a decision made by the Superintendent granting an exemption under subsection (3).

**225 Section 164.061 of the Act is replaced by the following:**

**Regulations**

**164.061** The Governor in Council may make regulations

**(a)** respecting the powers that may be granted by a shareholder or a policyholder in a form of proxy;

**(b)** respecting proxy circulars and forms of proxy, including the form and content of those documents; and

**(c)** respecting the conditions under which a company is exempt from any of the requirements of sections 164.01 to 164.06.

**226 Subsection 788(1) of the Act is replaced by the following:**

**Mandatory solicitation**

**788 (1)** Subject to subsections (2) and 768(2), the management of an insurance holding company shall, concurrently with sending notice of a meeting of shareholders, send a form of proxy that is in accordance with the regulations to each shareholder entitled to receive notice of the meeting under section 767.

**227 (1) Subsections 789(1) and (2) of the Act are replaced by the following:**

**Soliciting proxies**

**789 (1)** A person shall not solicit proxies unless a proxy circular that is in accordance with the regulations is sent to the auditor of the insurance holding company, to each shareholder whose proxy is solicited and, in the case set out in paragraph (b), to the bank as follows:

**(a)** in the case of solicitation by or on behalf of the management of an insurance holding company, a management proxy circular, either as an appendix to or as a separate document accompanying the notice of the meeting; and

**(b)** in the case of any other solicitation, a dissident's proxy circular stating the purposes of the solicitation.

**Publication des dispenses**

**(4)** Le surintendant publie, dans une publication destinée au grand public, un avis de chaque décision où il accorde une dispense en vertu du paragraphe (3).

**225 L'article 164.061 de la même loi est remplacé par ce qui suit :**

**Règlement**

**164.061** Le gouverneur en conseil peut prendre des règlements concernant :

**a)** les pouvoirs que peut accorder un actionnaire ou un souscripteur dans un formulaire de procuration;

**b)** le formulaire de procuration et la circulaire de procuration, notamment la forme et le contenu de ces documents;

**c)** les conditions que doit remplir une société afin de se soustraire à l'application des exigences énoncées aux articles 164.01 à 164.06.

**226 Le paragraphe 788(1) de la même loi est remplacé par ce qui suit :**

**Sollicitation obligatoire**

**788 (1)** Sous réserve des paragraphes (2) et 768(2), la direction de la société de portefeuille d'assurances envoie, avec l'avis de l'assemblée des actionnaires, un formulaire de procuration conforme aux règlements aux actionnaires qui ont le droit de recevoir l'avis dans le cadre de l'article 767.

**227 (1) Les paragraphes 789(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Sollicitation de procuration**

**789 (1)** Les procurations ne peuvent être sollicitées qu'à l'aide de circulaires, conformes aux règlements, envoyées au vérificateur, aux actionnaires faisant l'objet de la sollicitation et, en cas d'application de l'alinéa b), à la société de portefeuille d'assurances ainsi :

**a)** dans le cas d'une sollicitation effectuée par la direction de la société de portefeuille d'assurances ou pour son compte, sous forme d'annexe ou de document distinct de l'avis de l'assemblée;

**b)** dans les autres cas, dans une circulaire de procuration d'opposant qui mentionne l'objet de la sollicitation.

**Exception — limited solicitation**

**(1.1)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the insurance holding company, without sending a dissident's proxy circular, if the total number of shareholders whose proxies are solicited is 15 or fewer, with two or more joint holders being counted as one shareholder.

**Exception — solicitation by public broadcast**

**(1.2)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the insurance holding company, without sending a dissident's proxy circular if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication.

**Copy to Superintendent**

**(2)** A person who sends a management proxy circular or dissident's proxy circular shall concurrently send to the Superintendent a copy of it together with the form of proxy, any other documents for use in connection with the meeting and, in the case of a management proxy circular, a copy of the notice of meeting.

**(2) Subsection 789(4) of the Act is replaced by the following:**

**Reporting exemptions**

**(4)** The Superintendent shall publish in a publication generally available to the public, a notice of a decision made by the Superintendent granting an exemption under subsection (3).

**228 Section 791.1 of the Act is replaced by the following:**

**Regulations**

**791.1** The Governor in Council may make regulations

**(a)** respecting the powers that may be granted by a shareholder in a form of proxy;

**(b)** respecting proxy circulars and forms of proxy, including the form and content of those documents; and

**(c)** respecting the conditions under which an insurance holding company is exempt from any of the requirements of sections 786 to 791.

**Exception : sollicitation restreinte**

**(1.1)** Malgré le paragraphe (1), il n'est pas nécessaire, sauf lorsque la sollicitation est effectuée par la direction d'une société ou pour son compte, d'envoyer des circulaires aux actionnaires dont les procurations sont sollicitées lorsque leur nombre ne dépasse pas quinze, les codétenteurs d'une action étant comptés comme un seul actionnaire.

**Exemption : sollicitation par diffusion publique**

**(1.2)** Malgré le paragraphe (1), il n'est pas nécessaire, sauf lorsque la sollicitation est effectuée par la direction d'une société ou pour son compte, d'envoyer des circulaires pour effectuer une sollicitation lorsque celle-ci est, dans les circonstances réglementaires, transmise par diffusion publique, discours ou publication.

**Copie au surintendant**

**(2)** La personne qui envoie une circulaire de sollicitation émanant de la direction ou d'un opposant doit, en même temps, en envoyer un exemplaire au surintendant accompagné du formulaire de procuration, de tout autre document utile à l'assemblée et, dans le cas où elle émane de la direction, d'une copie de l'avis d'assemblée.

**(2) Le paragraphe 789(4) de la même loi est remplacé par ce qui suit :**

**Publication des dispenses**

**(4)** Le surintendant publie, dans une publication destinée au grand public, un avis de chaque décision où il accorde une dispense en vertu du paragraphe (3).

**228 L'article 791.1 de la même loi est remplacé par ce qui suit :**

**Règlement**

**791.1** Le gouverneur en conseil peut prendre des règlements concernant :

**a)** les pouvoirs que peut accorder un actionnaire dans un formulaire de procuration;

**b)** le formulaire de procuration et la circulaire de procuration, notamment la forme et le contenu de ces documents;

**c)** les conditions que doit remplir une société afin de se soustraire à l'application des exigences énoncées aux articles 786 à 791.

2005, c. 54

## An Act to amend certain Acts in relation to financial institutions

**229 Subsection 239(2) of the English version of *An Act to amend certain Acts in relation to financial institutions* is amended by replacing the subparagraphs (a)(i) and (ii) of the definition *solicitation* that it enacts with the following:**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**230 Subsection 322(2) of the English version of the Act is amended by replacing the subparagraphs (a)(i) and (ii) of the definition *solicitation* that it enacts with the following:**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**231 Subsection 392(2) of the English version of the Act is amended by replacing the subparagraphs (a)(i) and (ii) of the definition *solicitation* that it enacts with the following:**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

## Coordinating Amendments

**2005, c. 54**

**232 (1) In this section, *other Act* means the *An Act to amend certain Acts in relation to financial institutions*.**

**(2) If subsection 239(2) of the other Act comes into force before section 229 of this Act, then**

**(a) that section 229 is deemed never to have come into force and is repealed; and**

2005, ch. 54

## Loi modifiant certaines lois relatives aux institutions financières

**229 Le paragraphe 239(2) de la version anglaise de la *Loi modifiant certaines lois relatives aux institutions financières* est modifié par remplacement des sous-alinéas a)(i) et (ii) de la définition de *solicitation* qui y est édictée par ce qui suit :**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**230 Le paragraphe 322(2) de la version anglaise de la même loi est modifié par remplacement des sous-alinéas a)(i) et (ii) de la définition de *solicitation* qui y est édictée par ce qui suit :**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**231 Le paragraphe 392(2) de la version anglaise de la même loi est modifié par remplacement des sous-alinéas a)(i) et (ii) de la définition de *solicitation* qui y est édictée par ce qui suit :**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

## Dispositions de coordination

**2005, ch. 54**

**232 (1) Au présent article, *autre loi* s'entend de la *Loi modifiant certaines lois relatives aux institutions financières*.**

**(2) Si le paragraphe 239(2) de l'autre loi entre en vigueur avant l'article 229 de la présente loi :**

**a) cet article 229 est réputé ne pas être entré en vigueur et est abrogé;**

**(b) subparagraphs (a)(i) and (ii) of the definition *solicitation* in section 164 of the English version of the *Insurance Companies Act* are replaced by the following:**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**(3) If subsection 239(2) of the other Act comes into force on the same day as section 229 of this Act, then that section 229 is deemed to have come into force before that subsection 239(2).**

**(4) If subsection 322(2) of the other Act comes into force before section 230 of this Act, then**

**(a) that section 230 is deemed never to have come into force and is repealed; and**

**(b) subparagraphs (a)(i) and (ii) of the definition *solicitation* in section 785 of the English version of the *Insurance Companies Act* are replaced by the following:**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**(5) If subsection 322(2) of the other Act comes into force on the same day as section 230 of this Act, then that section 230 is deemed to have come into force before that subsection 322(2).**

**(6) If subsection 392(2) of the other Act comes into force before section 231 of this Act, then**

**(a) that section 231 is deemed never to have come into force and is repealed; and**

**(b) subparagraphs (a)(i) and (ii) of the definition *solicitation* in section 160.01 of the English version of the *Trust and Loan Companies Act* are replaced by the following:**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**b) les sous-alinéas a)(i) et (ii) de la définition de *solicitation*, à l'article 164 de la version anglaise de la *Loi sur les sociétés d'assurances*, sont remplacés par ce qui suit :**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**(3) Si l'entrée en vigueur du paragraphe 239(2) de l'autre loi et celle de l'article 229 de la présente loi sont concomitantes, cet article 229 est réputé être entré en vigueur avant ce paragraphe 239(2).**

**(4) Si le paragraphe 322(2) de l'autre loi entre en vigueur avant l'article 230 de la présente loi :**

**a) cet article 230 est réputé ne pas être entré en vigueur et est abrogé;**

**b) les sous-alinéas a)(i) et (ii) de la définition de *solicitation*, à l'article 785 de la version anglaise de la *Loi sur les sociétés d'assurances*, sont remplacés par ce qui suit :**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**(5) Si l'entrée en vigueur du paragraphe 322(2) de l'autre loi et celle de l'article 230 de la présente loi sont concomitantes, cet article 230 est réputé être entré en vigueur avant ce paragraphe 322(2).**

**(6) Si le paragraphe 392(2) de l'autre loi entre en vigueur avant l'article 231 de la présente loi :**

**a) cet article 231 est réputé ne pas être entré en vigueur et est abrogé;**

**b) les sous-alinéas a)(i) et (ii) de la définition de *solicitation*, à l'article 160.01 de la version anglaise de la *Loi sur les sociétés de fiducie et de prêt*, sont remplacés par ce qui suit :**

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**(7) If subsection 392(2) of the other Act comes into force on the same day as section 231 of this Act, then that section 231 is deemed to have come into force before that subsection 392(2).**

**(7) Si l'entrée en vigueur du paragraphe 392(2) de l'autre loi et celle de l'article 231 de la présente loi sont concomitantes, cet article 231 est réputé être entré en vigueur avant ce paragraphe 392(2).**

## DIVISION 11

## SECTION 11

1991, c. 47

# Insurance Companies Act

1991, ch. 47

# Loi sur les sociétés d'assurances

## Amendment to the Act

## Modification de la loi

**233 Section 476 of the *Insurance Companies Act* is renumbered as subsection 476(1) and is amended by adding the following:**

**233 L'article 476 de la *Loi sur les sociétés d'assurances* devient le paragraphe 476(1) et est modifié par adjonction de ce qui suit :**

### Exception

**(2)** A property and casualty company, or a marine company, need not include in the aggregate amount calculated for the purposes of subsection (1) the value of any debt obligation if the value of the debt obligation is included as part of the regulatory capital of the company.

### Exception

**(2)** La société d'assurances multirisques ou la société d'assurance maritime n'est pas tenue d'inclure dans le calcul de la somme visée au paragraphe (1) la valeur d'un titre de créance qui fait partie de son capital réglementaire.

## Coming into Force

## Entrée en vigueur

### January 1, 2023

**234 This Division comes into force on January 1, 2023.**

### 1er janvier 2023

**234 La présente section entre en vigueur le 1er janvier 2023.**

## DIVISION 12

## SECTION 12

# Prohibition on the Purchase of Residential Property by Non-Canadians Act

# Loi sur l'interdiction d'achat d'immeubles résidentiels par des non-Canadiens

## Enactment of Act

## Édiction de la loi

### Enactment

**235 The *Prohibition on the Purchase of Residential Property by Non-Canadians Act* is enacted as follows:**

An Act to prohibit the purchase of residential property by non-Canadians

### Short title

**1** This Act may be cited as the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*.

### Édiction

**235 Est édictée la *Loi sur l'interdiction d'achat d'immeubles résidentiels par des non-Canadiens*, dont le texte suit :**

Loi portant interdiction faite aux non-Canadiens d'acheter des immeubles résidentiels

### Titre abrégé

**1** *Loi sur l'interdiction d'achat d'immeubles résidentiels par des non-Canadiens*.

**Definitions**

**2** The following definitions apply in this Act.

***common-law partner***, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*)

***control*** has the meaning assigned by the regulations. (*contrôle*)

***dwelling unit*** means a residential unit that contains private kitchen facilities, a private bath and a private living area. (*local d'habitation*)

***Minister*** means the federal minister designated under section 3. (*ministre*)

***non-Canadian*** means

**(a)** an individual who is neither a Canadian citizen nor a person registered as an Indian under the *Indian Act* nor a permanent resident;

**(b)** a corporation that is incorporated otherwise than under the laws of Canada or a province;

**(c)** a corporation incorporated under the laws of Canada or a province whose shares are not listed on a stock exchange in Canada for which a designation under section 262 of the *Income Tax Act* is in effect and that is controlled by a person referred to in paragraph (a) or (b); and

**(d)** a prescribed person or entity. (*non-Canadien*)

***permanent resident*** has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act*. (*résident permanent*)

***prescribed*** means prescribed by regulation. (*Version anglaise seulement*)

***residential property*** means any real property or immovable, other than a prescribed real property or immovable, that is situated in Canada and that is

**(a)** a detached house or similar building, containing not more than three dwelling units, together with that proportion of the appurtenances to the building and the land subjacent or immediately contiguous to the building that is reasonably necessary for its use and enjoyment as a place of residence for individuals;

**(b)** a part of a building that is a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a

**Définitions**

**2** Les définitions qui suivent s'appliquent à la présente loi.

***conjoint de fait*** La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

***contrôle*** S'entend au sens prévu par règlement. (*control*)

***immeuble résidentiel*** Immeuble ou bien réel, autre qu'un immeuble ou bien réel visé par règlement, situé au Canada et qui est :

**a)** une maison individuelle ou un bâtiment similaire, comprenant au plus trois locaux d'habitation, y compris la proportion des dépendances et du fonds sous-jacent ou contigu au bâtiment qui est raisonnablement nécessaire à son usage résidentiel;

**b)** une partie d'un bâtiment qui constitue une maison jumelée ou en rangée, un logement en copropriété ou un local semblable qui est, ou est destiné à être, une parcelle séparée ou une autre division d'un immeuble ou d'un bien réel sur laquelle il y a, ou il est prévu qu'il y ait, un droit de propriété distinct des droits de propriété des autres parties du bâtiment, y compris la proportion des parties communes et des dépendances du bâtiment, et du fonds sous-jacent ou contigu à celui-ci, qui est attribuable à la maison, au logement ou au local et qui est raisonnablement nécessaire à son usage résidentiel;

**c)** un immeuble ou un bien réel visés par règlement. (*residential property*)

***local d'habitation*** Habitation dotée d'une cuisine, d'une salle de bains et d'une pièce d'habitation privées. (*dwelling unit*)

***ministre*** Le ministre fédéral désigné en vertu de l'article 3. (*Minister*)

***non-Canadien***

**a)** Individu autre qu'un citoyen canadien, qu'une personne inscrite à titre d'Indien sous le régime de la *Loi sur les Indiens* ou qu'un résident permanent;

**b)** société constituée autrement que par une loi fédérale ou provinciale;

**c)** société constituée par une loi fédérale ou provinciale dont les actions ne sont pas cotées à une bourse de valeurs désignée en vertu de l'article 262 de la *Loi*

separate parcel or other division of real property or immovable owned, or intended to be owned, apart from any other unit in the building, together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the house, unit or premises and that is reasonably necessary for its use and enjoyment as a place of residence for individuals; or

**(c)** any prescribed real property or immovable. (*immeuble résidentiel*)

*de l'impôt sur le revenu* et qui est contrôlée par une personne visée aux alinéas a) ou b);

**d)** personne ou entité visée par règlement. (*non-Canadian*)

***résident permanent*** S'entend au sens donné à ce terme au paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*. (*permanent resident*)

### Designation of Minister

**3** The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of this Act.

### Désignation du ministre

**3** Le gouverneur en conseil peut, par décret, désigner tout ministre fédéral à titre de ministre chargé de l'application de la présente loi.

### Prohibition

**4 (1)** Despite section 34 of the *Citizenship Act*, it is prohibited for a non-Canadian to purchase, directly or indirectly, any residential property.

### Interdiction

**4 (1)** Malgré l'article 34 de la *Loi sur la citoyenneté*, il est interdit à tout non-Canadien d'acheter, directement ou indirectement, tout immeuble résidentiel.

### Exception — persons

**(2)** Subsection (1) does not apply to

**(a)** a temporary resident within the meaning of the *Immigration and Refugee Protection Act* who satisfies prescribed conditions;

**(b)** a protected person within the meaning of subsection 95(2) of that Act;

**(c)** an individual who is a non-Canadian and who purchases residential property in Canada with their spouse or common-law partner if the spouse or common law-partner is a Canadian citizen, person registered as an Indian under the *Indian Act*, permanent resident or person referred to in paragraph (a) or (b); or

**(d)** a person of a prescribed class of persons.

### Exception — circumstances

**(3)** Subsection (1) does not apply in prescribed circumstances.

### Foreign state

**(4)** For greater certainty, nothing in subsection (1) is to be construed as hindering a foreign state from purchasing residential property for diplomatic or consular purposes.

### Exception — personnes

**(2)** Le paragraphe (1) ne s'applique pas aux personnes suivantes :

**a)** le résident temporaire, au sens de la *Loi sur l'immigration et la protection des réfugiés*, qui satisfait aux conditions prévues par règlement;

**b)** la personne protégée, au sens du paragraphe 95(2) de cette loi;

**c)** l'individu qui est un non-Canadien et qui fait l'achat d'un immeuble résidentiel avec son époux ou conjoint de fait, si l'époux ou le conjoint de fait est un citoyen canadien, une personne inscrite à titre d'Indien sous le régime de la *Loi sur les Indiens*, un résident permanent ou une personne visée aux alinéas a) ou b);

**d)** la personne appartenant à une catégorie de personnes visée par règlement.

### Exceptions — situations

**(3)** Le paragraphe (1) ne s'applique pas aux situations visées par règlement.

### État étranger

**(4)** Il est entendu que le paragraphe (1) n'a pas pour effet d'empêcher un État étranger d'acheter un immeuble résidentiel à des fins diplomatiques ou consulaires.

**Non-application**

**(5)** Subsection (1) does not apply if the non-Canadian becomes liable or assumes liability under an agreement of purchase and sale of the residential property before the day on which this Act comes into force.

**Validity**

**5** The contravention of section 4 does not affect the validity of the sale of the residential property to which the contravention relates.

**Offence**

**6 (1)** Every non-Canadian that contravenes section 4 and every person or entity that counsels, induces, aids or abets or attempts to counsel, induce, aid or abet a non-Canadian to purchase, directly or indirectly, any residential property knowing that the non-Canadian is prohibited under this Act from purchasing the residential property is guilty of an offence and liable on summary conviction to a fine of not more than $10,000.

**Party to offence**

**(2)** If a corporation or entity commits an offence, any of the following persons that directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and liable for the offence whether or not the corporation or entity has been prosecuted or convicted:

**(a)** an officer, director or agent or mandatary of the corporation or entity;

**(b)** a senior official of the corporation or entity;

**(c)** any individual authorized to exercise managerial or supervisory functions on behalf of the corporation or entity.

**Order**

**7 (1)** If a non-Canadian is convicted of having contravened section 4, the superior court of the province in which the residential property to which the contravention relates is situated may, on application of the Minister, order the residential property to be sold in the prescribed manner and under prescribed conditions.

**Terms**

**(2)** Subject to the regulations, the superior court may make the order subject to any terms that it considers appropriate.

**Non-application**

**(5)** Le paragraphe (1) ne s'applique pas si, aux termes d'une convention d'achat-vente, le non-Canadien devient responsable de l'immeuble résidentiel ou en assume la responsabilité avant la date d'entrée en vigueur de la présente loi.

**Validité**

**5** La contravention à l'article 4 n'affecte en rien la validité de la vente de l'immeuble résidentiel en cause.

**Infraction**

**6 (1)** Tout non-Canadien qui contrevient à l'article 4 et toute personne ou entité qui conseille, incite, aide ou encourage ou tente de conseiller, d'inciter, d'aider ou d'encourager un non-Canadien à acheter, directement ou indirectement, un immeuble résidentiel, tout en sachant que la présente loi en interdit l'achat à ce dernier, est coupable d'une infraction et passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de dix mille dollars.

**Coauteurs de l'infraction**

**(2)** En cas de commission d'une infraction par une société ou une entité, les personnes mentionnées ci-après qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérées comme des coauteurs de l'infraction que la société ou l'entité ait été ou non poursuivie ou condamnée au titre de la présente loi :

**a)** les dirigeants, administrateurs, cadres ou mandataires de la société ou de l'entité;

**b)** ses cadres supérieurs;

**c)** les individus autorisés à exercer des fonctions de gestion ou de surveillance pour son compte.

**Ordonnance de vente**

**7 (1)** En cas de condamnation d'un non-Canadien pour contravention à l'article 4, la juridiction supérieure de la province où se trouve l'immeuble résidentiel auquel se rapporte la contravention peut rendre une ordonnance, sur demande du ministre, obligeant la vente de l'immeuble résidentiel de la manière et selon les conditions prévues par règlement.

**Conditions**

**(2)** Sous réserve des règlements, la juridiction supérieure peut assortir l'ordonnance des conditions qu'elle estime indiquées.

**Regulations**

**8 (1)** The Governor in Council may, on the recommendation of the Minister after consultation with the Minister of Finance, make regulations

**(a)** defining "control" for the purposes of this Act;

**(b)** respecting what constitutes a purchase for the purposes of this Act;

**(c)** respecting the making of orders under section 7; and

**(d)** prescribing anything that by this Act is to be prescribed.

**Paragraph (1)(c)**

**(2)** Regulations made under paragraph (1)(c) must provide that no non-Canadian receive from the proceeds that results from a sale of a residential property ordered under section 7 more than the purchase price they paid for the residential property.

## Repeal

**Repeal**

**236 The *Prohibition on the Purchase of Residential Property by Non-Canadians Act* is repealed.**

## Coming into Force

**Coming into force**

**237 (1) Section 235 comes into force on January 1, 2023.**

**Second anniversary**

**(2) Section 236 comes into force on the second anniversary of the day on which section 235 comes into force.**

### DIVISION 13

R.S., c. P-1

# Parliament of Canada Act

## Amendments to the Act

**238 Subsection 19.1(3) of the *Parliament of Canada Act* is replaced by the following:**

**Règlements**

**8 (1)** Le gouverneur en conseil peut, sur recommandation du ministre faite après consultation du ministre des Finances, par règlement :

**a)** définir le terme « contrôle » pour l'application de la présente loi;

**b)** régir ce qui constitue un achat pour l'application de la présente loi;

**c)** régir la prise des ordonnances visées à l'article 7;

**d)** prendre toute mesure d'ordre réglementaire prévue par la présente loi.

**Alinéa (1)c)**

**(2)** Tout règlement pris en vertu de l'alinéa (1)c) doit prévoir qu'un non-Canadien ne peut recevoir du produit de la vente de l'immeuble résidentiel, résultant d'une ordonnance rendue en vertu de l'article 7, plus que la somme représentant le prix d'achat qu'il a payée pour cet immeuble.

## Abrogation

**Abrogation**

**236 La *Loi sur l'interdiction d'achat d'immeubles résidentiels par des non-Canadiens* est abrogée.**

## Entrée en vigueur

**Entrée en vigueur**

**237 (1) L'article 235 entre en vigueur le 1er janvier 2023.**

**Deuxième anniversaire**

**(2) L'article 236 entre en vigueur au deuxième anniversaire de l'entrée en vigueur de l'article 235.**

### SECTION 13

L.R., ch. P-1

# Loi sur le Parlement du Canada

## Modification de la loi

**238 Le paragraphe 19.1(3) de la *Loi sur le Parlement du Canada* est remplacé par ce qui suit :**

**Composition of Committee**

**(3)** The Leader of the Government in the Senate or Government Representative in the Senate, or his or her nominee, the Leader of the Opposition in the Senate, or his or her nominee, and the Leader or Facilitator of every other recognized party or parliamentary group in the Senate, or his or her nominee, may, in accordance with the rules of the Senate, change the membership of the Committee from time to time, including during periods of prorogation or dissolution.

**239 Section 20.1 of the Act is replaced by the following:**

**Appointment**

**20.1** The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and after approval of the appointment by resolution of the Senate.

**240 The Act is amended by adding the following after section 62.3:**

## Additional Annual Allowances of Senators Beginning on July 1, 2022

**Additional annual allowances — senators**

**62.4 (1)** Despite section 62.3, beginning on July 1, 2022 there shall be paid to the following senators the following additional annual allowances:

**(a)** the senator occupying the position of Leader of the Government in the Senate or Government Representative in the Senate, unless he or she is in receipt of a salary under the *Salaries Act*, $90,500;

**(b)** the senator occupying the position of Leader of the Opposition in the Senate, $42,800;

**(c)** the senator occupying the position of Leader or Facilitator of the recognized party or parliamentary group in the Senate that consists of the greatest number of senators, other than the recognized party or parliamentary group to which a senator referred to in paragraph (a) or (b) belongs, $42,800;

**Composition du comité**

**(3)** Le leader ou représentant du gouvernement au Sénat, ou son délégué, le leader de l'opposition au Sénat, ou son délégué, et le leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat, ou son délégué, peuvent, même en cas de prorogation ou de dissolution du Parlement, apporter des changements dans la composition du comité conformément au Règlement du Sénat.

**239 L'article 20.1 de la même loi est remplacé par ce qui suit :**

**Nomination**

**20.1** Le gouverneur en conseil nomme le conseiller sénatorial en éthique par commission sous le grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat et du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et après approbation par résolution du Sénat.

**240 La même loi est modifiée par adjonction, après l'article 62.3, de ce qui suit :**

## Indemnités annuelles supplémentaires de certains sénateurs : à compter du 1er juillet 2022

**Indemnités annuelles supplémentaires : sénateurs**

**62.4 (1)** Malgré l'article 62.3, les personnes ci-après reçoivent, à compter du 1er juillet 2022, les indemnités annuelles supplémentaires suivantes :

**a)** le sénateur occupant le poste de leader ou représentant du gouvernement au Sénat, sauf s'il reçoit un traitement prévu par la *Loi sur les traitements*, 90 500 $;

**b)** le sénateur occupant le poste de leader de l'opposition au Sénat, 42 800 $;

**c)** le sénateur occupant le poste de leader ou facilitateur du parti ou groupe parlementaire reconnu au Sénat qui est formé du plus grand nombre de sénateurs — autre que le parti ou groupe auquel appartient un sénateur visé aux alinéas a) ou b) —, 42 800 $;

**d)** le sénateur occupant le poste de leader ou facilitateur du parti ou groupe parlementaire reconnu au

**(d)** the senator occupying the position of Leader or Facilitator of the recognized party or parliamentary group in the Senate that consists of the second greatest number of senators, other than the recognized party or parliamentary group to which a senator referred to in paragraph (a) or (b) belongs, $21,300;

**(e)** the senator occupying the position of Leader or Facilitator of the recognized party or parliamentary group in the Senate that consists of the third greatest number of senators, other than the recognized party or parliamentary group to which a senator referred to in paragraph (a) or (b) belongs, $21,300;

**(f)** the senator occupying the position of Deputy Leader of the Government in the Senate or Legislative Deputy to the Government Representative in the Senate, $42,800;

**(g)** the senator occupying the position of Deputy Leader of the Opposition in the Senate, $27,000;

**(h)** the senator occupying the position of Deputy Leader or Deputy Facilitator to the senator referred to in paragraph (c), $27,000;

**(i)** the senator occupying the position of Deputy Leader or Deputy Facilitator to the senator referred to in paragraph (d), $13,400;

**(j)** the senator occupying the position of Deputy Leader or Deputy Facilitator to the senator referred to in paragraph (e), $13,400;

**(k)** the senator occupying the position of Government Whip in the Senate or Government Liaison in the Senate, $12,900;

**(l)** the senator occupying the position of Opposition Whip in the Senate, $7,400;

**(m)** the senator occupying the position of Whip or Liaison of the recognized party or parliamentary group in the Senate whose Leader or Facilitator is referred to in paragraph (c), $7,400;

**(n)** the senator occupying the position of Whip or Liaison of the recognized party or parliamentary group in the Senate whose Leader or Facilitator is referred to in paragraph (d), $3,700;

**(o)** the senator occupying the position of Whip or Liaison of the recognized party or parliamentary group in the Senate whose Leader or Facilitator is referred to in paragraph (e), $3,700;

Sénat qui est formé du deuxième plus grand nombre de sénateurs — autre que le parti ou groupe auquel appartient un sénateur visé aux alinéas a) ou b) —, 21 300 $;

**e)** le sénateur occupant le poste de leader ou facilitateur du parti ou groupe parlementaire reconnu au Sénat qui est formé du troisième plus grand nombre de sénateurs — autre que le parti ou groupe auquel appartient un sénateur visé aux alinéas a) ou b) —, 21 300 $;

**f)** le sénateur occupant le poste de leader adjoint du gouvernement au Sénat ou coordonnateur législatif auprès du représentant du gouvernement au Sénat, 42 800 $;

**g)** le sénateur occupant le poste de leader adjoint de l'opposition au Sénat, 27 000 $;

**h)** le sénateur occupant le poste de leader adjoint ou facilitateur adjoint auprès du sénateur visé à l'alinéa c), 27 000 $;

**i)** le sénateur occupant le poste de leader adjoint ou facilitateur adjoint auprès du sénateur visé à l'alinéa d), 13 400 $;

**j)** le sénateur occupant le poste de leader adjoint ou facilitateur adjoint auprès du sénateur visé à l'alinéa e), 13 400 $;

**k)** le sénateur occupant le poste de whip du gouvernement ou agent de liaison du gouvernement au Sénat, 12 900 $;

**l)** le sénateur occupant le poste de whip de l'opposition au Sénat, 7 400 $;

**m)** le sénateur occupant le poste de whip ou agent de liaison du parti ou groupe parlementaire reconnu au Sénat dont le leader ou facilitateur est visé à l'alinéa c), 7 400 $;

**n)** le sénateur occupant le poste de whip ou agent de liaison du parti ou groupe parlementaire reconnu au Sénat dont le leader ou facilitateur est visé à l'alinéa d), 3 700 $;

**o)** le sénateur occupant le poste de whip ou agent de liaison du parti ou groupe parlementaire reconnu au Sénat dont le leader ou facilitateur est visé à l'alinéa e), 3 700 $;

**p)** le sénateur occupant le poste de président du caucus du gouvernement au Sénat, 7 400 $;

**(p)** the senator occupying the position of Chair of the Caucus of the Government in the Senate, $7,400;

**(q)** the senator occupying the position of Chair of the Caucus of the Opposition in the Senate, $6,400;

**(r)** the senator occupying the position of Deputy Whip or Deputy Liaison of the recognized party or parliamentary group in the Senate whose Leader or Facilitator is referred to in paragraph (c), $3,200;

**(s)** the senator occupying the position of Deputy Whip or Deputy Liaison of the recognized party or parliamentary group in the Senate whose Leader or Facilitator is referred to in paragraph (d), $1,500;

**(t)** the senator occupying the position of Deputy Whip or Deputy Liaison of the recognized party or parliamentary group in the Senate whose Leader or Facilitator is referred to in paragraph (e), $1,500;

**(u)** the senator occupying the position of Deputy Government Whip in the Senate or Deputy Government Liaison in the Senate, $6,400; and

**(v)** the senator occupying the position of Deputy Opposition Whip in the Senate, $3,200.

**q)** le sénateur occupant le poste de président du caucus de l'opposition au Sénat, 6 400 $;

**r)** le sénateur occupant le poste de whip adjoint ou agent de liaison adjoint du parti ou groupe parlementaire reconnu au Sénat dont le leader ou facilitateur est visé à l'alinéa c), 3 200 $;

**s)** le sénateur occupant le poste de whip adjoint ou agent de liaison adjoint du parti ou groupe parlementaire reconnu au Sénat dont le leader ou facilitateur est visé à l'alinéa d), 1 500 $;

**t)** le sénateur occupant le poste de whip adjoint ou agent de liaison adjoint du parti ou groupe parlementaire reconnu au Sénat dont le leader ou facilitateur est visé à l'alinéa e), 1 500 $;

**u)** le sénateur occupant le poste de whip adjoint du gouvernement ou agent de liaison adjoint du gouvernement au Sénat, 6 400 $;

**v)** le sénateur occupant le poste de whip adjoint de l'opposition au Sénat, 3 200 $.

#### Subsequent fiscal years

**(2)** Despite section 62.3, the additional annual allowance that shall be paid for each fiscal year after March 31, 2023 to a senator referred to in subsection (1) is the additional annual allowance for the previous fiscal year plus the amount obtained by multiplying that additional annual allowance by the index described in section 67.1 for the previous calendar year.

#### Exercices postérieurs

**(2)** Malgré l'article 62.3, les sénateurs visés au paragraphe (1) reçoivent, pour chaque exercice postérieur au 31 mars 2023, une indemnité annuelle supplémentaire égale à la somme du montant de l'indemnité annuelle supplémentaire de l'exercice précédent et du produit de ce montant par l'indice, défini à l'article 67.1, pour l'année civile précédente.

### 241 Sections 67 and 67.1 of the Act are replaced by the following:

### 241 Les articles 67 et 67.1 de la même loi sont remplacés par ce qui suit :

#### Rounding of amounts

**67** The salaries and allowances payable to members of the Senate and the House of Commons under sections 55.1 and 62.1 to 62.4 of this Act and section 4.1 of the *Salaries Act* shall be rounded down to the nearest hundred dollars.

#### Arrondissement des sommes

**67** Les traitements et indemnités que reçoivent les parlementaires en vertu des articles 55.1 et 62.1 à 62.4 de la présente loi et de l'article 4.1 de la *Loi sur les traitements* sont arrondis à la centaine de dollars inférieure.

#### Index

**67.1** The index referred to in paragraph 55.1(2)(b) and subsections 62.1(2), 62.2(2), 62.3(2) and (4) and 62.4(2) for a calendar year is the index of the average percentage increase in base-rate wages for the calendar year, resulting from major settlements negotiated with bargaining units of 500 or more employees in the private sector in Canada, as published by the Department of Employment

#### Indice

**67.1** L'indice visé à l'alinéa 55.1(2)b) et aux paragraphes 62.1(2), 62.2(2), 62.3(2) et (4) et 62.4(2) est la moyenne, en pourcentage, des rajustements des taux des salaires de base, pour toute année civile, issus des principales ententes conclues à l'égard d'unités de négociation de cinq cents employés et plus dans le secteur privé au Canada, publiée par le ministère de l'Emploi et du

and Social Development within three months after the end of that calendar year.

**242 The portion of subsection 71.1(1) of the Act before paragraph (a) is replaced by the following:**

**Entitlement**

**71.1 (1)** A member of the Senate or the House of Commons who resigns by reason of disability may elect to receive an annual disability allowance equal to 70% of their annual salaries and allowances under sections 55.1 and 62.1 to 62.4 of this Act and section 4.1 of the *Salaries Act*, on the date of resignation, if at the time of their resignation, the member

**243 Paragraph 79.1(1)(a) of the Act is replaced by the following:**

**(a)** the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the Leader or Facilitator of every other recognized party or parliamentary group in the Senate; and

Développement social au cours du trimestre suivant la fin de l'année civile en cause.

**242 Le passage du paragraphe 71.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Admissibilité**

**71.1 (1)** Le sénateur ou le député qui démissionne pour raison d'invalidité peut choisir de recevoir une allocation d'invalidité annuelle égale à 70 % des traitements et indemnités annuels auxquels il avait droit en vertu des articles 55.1 et 62.1 à 62.4 de la présente loi et de l'article 4.1 de la *Loi sur les traitements*, à la date de sa démission, si :

**243 L'alinéa 79.1(1)a) de la même loi est remplacé par ce qui suit :**

**a)** le leader ou représentant du gouvernement au Sénat, le leader de l'opposition au Sénat et le leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat;

R.S., c. M-5

## Consequential Amendment to the Members of Parliament Retiring Allowances Act

**244 The definition *annual allowance* in subsection 2(1) of the *Members of Parliament Retiring Allowances Act* is replaced by the following:**

***annual allowance*** means an annual allowance payable to a member under section 62, 62.3 or 62.4 of the *Parliament of Canada Act* or payable to a member under an appropriation Act as Deputy Chair or Assistant Deputy Chair of a committee. (*indemnité annuelle*)

L.R., ch. M-5

## Modification corrélative à la Loi sur les allocations de retraite des parlementaires

**244 La définition de *indemnité annuelle*, au paragraphe 2(1) de la *Loi sur les allocations de retraite des parlementaires*, est remplacée par ce qui suit :**

***indemnité annuelle*** Indemnité annuelle à payer à un parlementaire au titre des articles 62, 62.3 ou 62.4 de la *Loi sur le Parlement du Canada* ou, en qualité de vice-président ou vice-président adjoint de comité, au titre d'une loi de crédits fédérale. (*annual allowance*)

## Related Amendments

## Modifications connexes

R.S., c. A-1

### Access to Information Act

**245 Subsection 54(1) of the *Access to Information Act* is replaced by the following:**

**Appointment**

**54 (1)** The Governor in Council shall, by commission under the Great Seal, appoint an Information Commissioner after consultation with the Leader of the Government in the Senate or Government Representative in the

L.R., ch. A-1

### Loi sur l'accès à l'information

**245 Le paragraphe 54(1) de la *Loi sur l'accès à l'information* est remplacé par ce qui suit :**

**Nomination**

**54 (1)** Le gouverneur en conseil nomme le Commissaire à l'information par commission sous le grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat, du

Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et du chef de chacun des partis reconnus à la Chambre des communes et approbation par résolution du Sénat et de la Chambre des communes.

R.S., c. A-17

Auditor General Act

**246 Subsection 3(1) of the *Auditor General Act* is replaced by the following:**

**Appointment**

**3 (1)** The Governor in Council shall, by commission under the Great Seal, appoint an Auditor General of Canada after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

L.R., ch. A-17

Loi sur le vérificateur général

**246 Le paragraphe 3(1) de la *Loi sur le vérificateur général* est remplacé par ce qui suit :**

**Nomination**

**3 (1)** Le gouverneur en conseil nomme un vérificateur général du Canada par commission sous le grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat, du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et du chef de chacun des partis reconnus à la Chambre des communes et approbation par résolution du Sénat et de la Chambre des communes.

R.S., c. P-21

Privacy Act

**247 Subsection 53(1) of the *Privacy Act* is replaced by the following:**

**Appointment**

**53 (1)** The Governor in Council shall, by commission under the Great Seal, appoint a Privacy Commissioner after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

L.R., ch. P-21

Loi sur la protection des renseignements personnels

**247 Le paragraphe 53(1) de la *Loi sur la protection des renseignements personnels* est remplacé par ce qui suit :**

**Nomination**

**53 (1)** Le gouverneur en conseil nomme le Commissaire à la protection de la vie privée par commission sous le grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat, du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et du chef de chacun des partis reconnus à la Chambre des communes et approbation par résolution du Sénat et de la Chambre des communes.

R.S., c. 22 (4th Supp.)

Emergencies Act

**248 Subsection 62(2) of the *Emergencies Act* is replaced by the following:**

**Membership**

**(2)** The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of 12 or more persons in that House and at least the Leader of the

L.R., ch. 22 (4e suppl.)

Loi sur les mesures d'urgence

**248 Le paragraphe 62(2) de la *Loi sur les mesures d'urgence* est remplacé par ce qui suit :**

**Composition du comité**

**(2)** Siègent au comité d'examen parlementaire au moins un député de chaque parti dont l'effectif reconnu à la Chambre des communes comprend au moins douze personnes, et au moins le leader ou représentant du

Government in the Senate or Government Representative in the Senate, or his or her nominee, the Leader of the Opposition in the Senate, or his or her nominee, and the Leader or Facilitator who is referred to in any of paragraphs 62.4(1)(c) to (e) of the *Parliament of Canada Act*, or his or her nominee.

gouvernement au Sénat, ou son délégué, le leader de l'opposition au Sénat, ou son délégué, et le leader ou facilitateur visé à l'un ou l'autre des alinéas 62.4(1)c) à e) de la *Loi sur le Parlement du Canada*, ou son délégué.

R.S., c. 31 (4th Supp.)

Official Languages Act

**249 Subsection 49(1) of the *Official Languages Act* is replaced by the following:**

**Appointment**

**49 (1)** The Governor in Council shall, by commission under the Great Seal, appoint a Commissioner of Official Languages for Canada after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

L.R., ch. 31 (4e suppl.)

Loi sur les langues officielles

**249 Le paragraphe 49(1) de la *Loi sur les langues officielles* est remplacé par ce qui suit :**

**Nomination**

**49 (1)** Le gouverneur en conseil nomme le commissaire aux langues officielles du Canada par commission sous le grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat, du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et du chef de chacun des partis reconnus à la Chambre des communes et approbation par résolution du Sénat et de la Chambre des communes.

R.S., c. 44 (4th Supp.); 2006, c. 9, s. 66

Lobbying Act

**250 Subsection 4.1(1) of the *Lobbying Act* is replaced by the following:**

**Commissioner of Lobbying**

**4.1 (1)** The Governor in Council shall, by commission under the Great Seal, appoint a Commissioner of Lobbying after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

L.R., ch. 44 (4e suppl.); 2006, ch. 9, art. 66

Loi sur le lobbying

**250 Le paragraphe 4.1(1) de la *Loi sur le lobbying* est remplacé par ce qui suit :**

**Commissaire au lobbying**

**4.1 (1)** Le gouverneur en conseil nomme le commissaire au lobbying par commission sous le grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat, du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et du chef de chacun des partis reconnus à la Chambre des communes et approbation par résolution du Sénat et de la Chambre des communes.

2005, c. 46

Public Servants Disclosure Protection Act

**251 Subsection 39(1) of the *Public Servants Disclosure Protection Act* is replaced by the following:**

**Appointment**

**39 (1)** The Governor in Council shall, by commission under the Great Seal, appoint a Public Sector Integrity

2005, ch. 46

Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles

**251 Le paragraphe 39(1) de la *Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles* est remplacé par ce qui suit :**

**Nomination**

**39 (1)** Le gouverneur en conseil nomme le commissaire à l'intégrité du secteur public par commission sous le

Commissioner after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

grand sceau, après consultation du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat, du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat et du chef de chacun des partis reconnus à la Chambre des communes et approbation par résolution du Sénat et de la Chambre des communes.

2017, c. 15

## National Security and Intelligence Committee of Parliamentarians Act

**252 Subsection 5(2) of the *National Security and Intelligence Committee of Parliamentarians Act* is replaced by the following:**

**Consultation**

**(2)** A member of the Senate may be appointed to the Committee only after the Prime Minister has consulted with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the Leader or Facilitator of every other recognized party or parliamentary group in the Senate.

2017, ch. 15

## Loi sur le Comité des parlementaires sur la sécurité nationale et le renseignement

**252 Le paragraphe 5(2) de la *Loi sur le Comité des parlementaires sur la sécurité nationale et le renseignement* est remplacé par ce qui suit :**

**Consultation**

**(2)** Un sénateur ne peut être nommé membre du Comité qu'après consultation par le premier ministre du leader ou représentant du gouvernement au Sénat, du leader de l'opposition au Sénat et du leader ou facilitateur de chacun des autres partis ou groupes parlementaires reconnus au Sénat.

2019, c. 13, s. 2

## National Security and Intelligence Review Agency Act

**253 Paragraphs 4(2)(a) and (b) of the *National Security and Intelligence Review Agency Act* are replaced by the following:**

**(a)** the Leader of the Government in the Senate or Government Representative in the Senate and the Leader of the Opposition in the Senate;

**(b)** the Leader or Facilitator of every recognized party or parliamentary group in the Senate;

2019, ch. 13, art. 2

## Loi sur l'Office de surveillance des activités en matière de sécurité nationale et de renseignement

**253 Les alinéas 4(2)a) et b) de la *Loi sur l'Office de surveillance des activités en matière de sécurité nationale et de renseignement* sont remplacés par ce qui suit :**

**a)** le leader ou représentant du gouvernement au Sénat et le leader de l'opposition au Sénat;

**b)** le leader ou facilitateur de chacun des partis ou groupes parlementaires reconnus au Sénat;

## Coming into Force

**Order in council**

**254 This Division comes into force on a day to be fixed by order of the Governor in Council.**

## Entrée en vigueur

**Décret**

**254 La présente section entre en vigueur à la date fixée par décret.**

## DIVISION 14

R.S., c. F-11

# Financial Administration Act

**255 Section 7 of the *Financial Administration Act* is amended by adding the following after subsection (3):**

**Services to departments, Crown corporations and other entities**

**(4)** The Treasury Board may, in carrying out its responsibilities under subsection (1), provide services to departments and Crown corporations. With the authorization of the Governor in Council, it may also provide these services to a provincial government, a municipality in Canada, a provincial or municipal public body or any other public body performing a function of government in Canada.

***Access to Information Act***

**(5)** For greater certainty, for the purposes of the *Access to Information Act*, the records of an entity to which the Treasury Board provides services under subsection (4) that are, on behalf of that entity, contained in or carried on the Treasury Board's information technology systems are not under the control of the Treasury Board.

***Privacy Act***

**(6)** For greater certainty, for the purposes of the *Privacy Act*, personal information that is collected by an entity to which the Treasury Board provides services under subsection (4) and that is, on behalf of that entity, contained in or carried on the Treasury Board's information technology systems is not under the control of the Treasury Board.

## DIVISION 15

R.S., c. C-34; R.S., c. 19 (2nd Supp.), s. 19

# Competition Act

## Amendments to the Act

**256 (1) Subsection 11(2) of the *Competition Act* is replaced by the following:**

## SECTION 14

L.R., ch. F-11

# Loi sur la gestion des finances publiques

**255 L'article 7 de la *Loi sur la gestion des finances publiques* est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Services aux ministères, sociétés d'État et autres entités**

**(4)** Le Conseil du Trésor peut, dans l'exercice des attributions que lui confère le paragraphe (1), fournir des services aux ministères et aux sociétés d'État. Il peut également fournir, avec l'autorisation du gouverneur en conseil, ces services à un gouvernement d'une province, une municipalité au Canada ou un organisme public provincial ou municipal ou tout autre organisme public exerçant une fonction gouvernementale au Canada.

**Précision : *Loi sur l'accès à l'information***

**(5)** Pour l'application de la *Loi sur l'accès à l'information*, il est entendu que les documents de toute entité à qui le Conseil du Trésor fournit des services en vertu du paragraphe (4), qui, pour le compte de cette entité, sont conservés dans les systèmes de technologie de l'information du Conseil du Trésor ou transitent par ces systèmes ne relèvent pas du Conseil du Trésor.

**Précision : *Loi sur la protection des renseignements personnels***

**(6)** Pour l'application de la *Loi sur la protection des renseignements personnels*, il est entendu que les renseignements personnels qui sont recueillis par toute entité à qui le Conseil du Trésor fournit des services en vertu du paragraphe (4), qui, pour le compte de cette entité, sont conservés dans les systèmes de technologie de l'information du Conseil du Trésor ou transitent par ces systèmes ne relèvent pas du Conseil du Trésor.

## SECTION 15

L.R., ch. C-34; L.R., ch. 19 (2e suppl.), art. 19

# Loi sur la concurrence

## Modification de la loi

**256 (1) Le paragraphe 11(2) de la *Loi sur la concurrence* est remplacé par ce qui suit :**

**Records or information in possession of affiliate**

**(2)** If the person against whom an order is sought under paragraph (1)(b) or (c) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has or is likely to have records or information relevant to the inquiry, the judge may order the corporation to

**(a)** produce the records; or

**(b)** make and deliver a written return of the information.

**Documents ou renseignements en possession d'une affiliée**

**(2)** Lorsque, en rapport avec une enquête, la personne contre qui une ordonnance est demandée en application des alinéas (1)b) ou c) est une personne morale et que le juge à qui la demande est faite aux termes du paragraphe (1) est convaincu, d'après une dénonciation faite sous serment ou affirmation solennelle, qu'une affiliée de cette personne morale a ou a vraisemblablement des documents ou des renseignements qui sont pertinents à l'enquête, il peut, sans égard au fait que l'affiliée soit située au Canada ou ailleurs, ordonner à la personne morale :

**a)** de produire les documents en question;

**b)** de préparer et de donner une déclaration écrite énonçant les renseignements.

**(2) Section 11 of the Act is amended by adding the following after subsection (4):**

**(2) L'article 11 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Person outside Canada**

**(5)** An order may be made under subsection (1) against a person outside Canada who carries on business in Canada or sells products into Canada.

**Personne hors du Canada**

**(5)** Une ordonnance peut être rendue en vertu du paragraphe (1) contre une personne hors du Canada qui exploite une entreprise au Canada ou qui vend des produits en direction du Canada.

**257 (1) Subsections 45(2) and (3) of the Act are replaced by the following:**

**257 (1) Les paragraphes 45(2) et (3) de la même loi sont remplacés par ce qui suit :**

**Conspiracies, agreements or arrangements regarding employment**

**(1.1)** Every person who is an employer commits an offence who, with another employer who is not affiliated with that person, conspires, agrees or arranges

**(a)** to fix, maintain, decrease or control salaries, wages or terms and conditions of employment; or

**(b)** to not solicit or hire each other's employees.

**Complot, accord ou arrangement en matière d'emploi**

**(1.1)** Commet une infraction une personne qui est un employeur qui, avec un employeur qui ne lui est pas affilié, complote ou conclut un accord ou un arrangement :

**a)** pour fixer, maintenir, réduire ou contrôler les salaires, les traitements ou les conditions d'emploi;

**b)** pour ne pas solliciter ou embaucher les employés de l'autre employeur.

**Penalty**

**(2)** Every person who commits an offence under subsection (1) or (1.1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine in the discretion of the court, or to both.

**Peine**

**(2)** Quiconque commet l'infraction prévue aux paragraphes (1) ou (1.1) est coupable d'un acte criminel et encourt un emprisonnement maximal de quatorze ans et une amende dont le montant est fixé par le tribunal, ou l'une de ces peines.

**Evidence of conspiracy, agreement or arrangement**

**(3)** In a prosecution under subsection (1) or (1.1), the court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties to it, but, for greater certainty,

**Preuve du complot, de l'accord ou de l'arrangement**

**(3)** Dans les poursuites intentées en vertu des paragraphes (1) ou (1.1), le tribunal peut déduire l'existence du complot, de l'accord ou de l'arrangement en se basant sur une preuve circonstancielle, avec ou sans preuve directe de communication entre les présumées parties au

the conspiracy, agreement or arrangement must be proved beyond a reasonable doubt.

**(2) The portion of subsection 45(4) of the Act before paragraph (a) is replaced by the following:**

**Defence**

**(4)** No person shall be convicted of an offence under subsection (1) or (1.1) in respect of a conspiracy, agreement or arrangement that would otherwise contravene that subsection if

**(3) Subsection 45(7) of the Act is replaced by the following:**

**Common law principles — regulated conduct**

**(7)** The rules and principles of the common law that render a requirement or authorization by or under another Act of Parliament or the legislature of a province a defence to a prosecution under subsection (1), as it read immediately before the coming into force of this section, continue in force and apply in respect of a prosecution under subsection (1) or (1.1).

**258 Section 52 of the Act is amended by adding the following after subsection (1.2):**

**Drip pricing**

**(1.3)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

**259 Section 74.01 of the Act is amended by adding the following after subsection (1):**

**Drip pricing**

**(1.1)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

**260 Subparagraphs 74.1(1)(c)(i) and (ii) of the Act are replaced by the following:**

complot, à l'accord ou à l'arrangement, mais il demeure entendu que le complot, l'accord ou l'arrangement doit être prouvé hors de tout doute raisonnable

**(2) Le passage du paragraphe 45(4) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Défense**

**(4)** Nul ne peut être déclaré coupable d'une infraction prévue aux paragraphes (1) ou (1.1) à l'égard d'un complot, d'un accord ou d'un arrangement qui aurait par ailleurs contrevenu à ce paragraphe si, à la fois :

**(3) Le paragraphe 45(7) de la même loi est remplacé par ce qui suit :**

**Principes de la common law — comportement réglementé**

**(7)** Les règles et principes de la common law qui font d'une exigence ou d'une autorisation prévue par une autre loi fédérale ou une loi provinciale, ou par l'un de ses règlements, un moyen de défense contre des poursuites intentées en vertu du paragraphe (1) dans sa version antérieure à la date d'entrée en vigueur du présent article, demeurent en vigueur et s'appliquent à l'égard des poursuites intentées en vertu des paragraphes (1) ou (1.1).

**258 L'article 52 de la même loi est modifié par adjonction, après le paragraphe (1.2), de ce qui suit :**

**Indication de prix partiel**

**(1.3)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale.

**259 L'article 74.01 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Indication de prix partiel**

**(1.1)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale.

**260 Les sous-alinéas 74.1(1)c)(i) et (ii) de la même loi sont remplacés par ce qui suit :**

**(i)** in the case of an individual, the greater of

**(A)** $750,000 and, for each subsequent order, $1,000,000, and

**(B)** three times the value of the benefit derived from the deceptive conduct, if that amount can be reasonably determined, or

**(ii)** in the case of a corporation, the greater of

**(A)** $10,000,000 and, for each subsequent order, $15,000,000, and

**(B)** three times the value of the benefit derived from the deceptive conduct, or, if that amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenues; and

**(i)** dans le cas d'une personne physique, correspondant au plus élevé des montants suivants :

**(A)** 750 000 $ pour la première ordonnance et 1 000 000 $ pour toute ordonnance subséquente,

**(B)** trois fois la valeur du bénéfice tiré du comportement trompeur, si ce montant peut être déterminé raisonnablement,

**(ii)** dans le cas d'une personne morale, correspondant au plus élevé des montants suivants :

**(A)** 10 000 000 $ pour la première ordonnance et 15 000 000 $ pour toute ordonnance subséquente,

**(B)** trois fois la valeur du bénéfice tiré du comportement trompeur ou, si ce montant ne peut pas être déterminé raisonnablement, trois pour cent des recettes globales brutes annuelles de la personne morale;

**261 (1) The portion of subsection 78(1) of the Act before paragraph (a) is replaced by the following:**

**261 (1) Le passage du paragraphe 78(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Definition of *anti-competitive act***

**78 (1)** For the purposes of section 79, ***anti-competitive act*** means any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition, and includes any of the following acts:

**Définition de *agissement anti-concurrentiel***

**78 (1)** Pour l'application de l'article 79, ***agissement anti-concurrentiel*** s'entend de tout agissement destiné à avoir un effet négatif visant l'exclusion, l'éviction ou la mise au pas d'un concurrent, ou à nuire à la concurrence, notamment les agissements suivants :

**(2) Subsection 78(1) of the Act is amended by striking out "and" at the end of paragraph (h), by adding "and" at the end of paragraph (i) and by adding the following after paragraph (i):**

**(2) Le paragraphe 78(1) de la même loi est modifié par adjonction, après l'alinéa i), de ce qui suit :**

**j)** a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market.

**j)** la réponse sélective ou discriminatoire à un concurrent actuel ou potentiel, visant à entraver ou à empêcher l'entrée ou l'expansion d'un concurrent sur un marché ou à l'éliminer du marché.

**262 (1) The portion of subsection 79(1) of the Act before paragraph (a) is replaced by the following:**

**262 (1) Le passage du paragraphe 79(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Prohibition if abuse of dominant position**

**79 (1)** If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

**Ordonnance d'interdiction : abus de position dominante**

**79 (1)** Lorsque, à la suite d'une demande du commissaire ou d'une personne à qui a été accordée en vertu de l'article 103.1 la permission de présenter une demande, il conclut à l'existence de la situation suivante :

**(2) Subsection 79(3.1) of the Act is replaced by the following:**

**Administrative monetary penalty**

**(3.1)** If the Tribunal makes an order against a person under subsection (1) or (2), it may also order them to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding the greater of

**(a)** $10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding $15,000,000, and

**(b)** three times the value of the benefit derived from the anti-competitive practice, or, if that amount cannot be reasonably determined, 3% of the person's annual worldwide gross revenues.

**(3) Subsection 79(4) of the Act is replaced by the following:**

**Factors to be considered**

**(4)** In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal shall consider whether the practice is a result of superior competitive performance and may consider

**(a)** the effect of the practice on barriers to entry in the market, including network effects;

**(b)** the effect of the practice on price or non-price competition, including quality, choice or consumer privacy;

**(c)** the nature and extent of change and innovation in a relevant market; and

**(d)** any other factor that is relevant to competition in the market that is or would be affected by the practice.

**(4) Section 79 of the Act is amended by adding the following after subsection (7):**

**Inferences**

**(8)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

**(2) Le paragraphe 79(3.1) de la même loi est remplacé par ce qui suit :**

**Sanction administrative pécuniaire**

**(3.1)** S'il rend une ordonnance en vertu des paragraphes (1) ou (2), le Tribunal peut aussi ordonner à la personne visée de payer, selon les modalités qu'il peut préciser, une sanction administrative pécuniaire maximale qui ne peut dépasser le plus élevé des montants suivants :

**a)** 10 000 000 $ et, pour toute ordonnance subséquente rendue en vertu de l'un de ces paragraphes, 15 000 000 $;

**b)** trois fois la valeur du bénéfice sur lequel la pratique a eu une incidence ou, si ce montant ne peut pas être déterminé raisonnablement, trois pour cent des recettes globales brutes annuelles de cette personne.

**(3) Le paragraphe 79(4) de la même loi est remplacé par ce qui suit :**

**Facteurs à considérer**

**(4)** Pour l'application du paragraphe (1), lorsque le Tribunal décide de la question de savoir si une pratique a eu, a ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, il doit évaluer si la pratique résulte du rendement concurrentiel supérieur et peut également tenir compte des facteurs suivants :

**a)** les entraves à l'accès au marché, y compris les effets de réseau;

**b)** tout effet de la pratique sur la concurrence hors prix ou par les prix, notamment la qualité, le choix ou la vie privée des consommateurs;

**c)** la nature et la portée des changements et des innovations dans tout marché pertinent;

**d)** tout autre facteur qui est relatif à la concurrence dans le marché et qui est ou serait touché par la pratique.

**(4) L'article 79 de la même loi est modifié par adjonction, après le paragraphe (7), de ce qui suit :**

**Application**

**(8)** Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

**263 Subsection 90.1(2) of the Act is amended by striking out "and" after paragraph (g) and by adding the following after that paragraph:**

**(g.1)** network effects within the market;

**(g.2)** whether the agreement or arrangement would contribute to the entrenchment of the market position of leading incumbents;

**(g.3)** any effect of the agreement or arrangement on price or non-price competition, including quality, choice or consumer privacy; and

**263 Le paragraphe 90.1(2) de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**g.1)** les effets de réseau dans le marché;

**g.2)** le fait que l'accord ou l'arrangement contribuerait au renforcement de la position sur le marché des principales entreprises en place;

**g.3)** tout effet de l'accord ou de l'arrangement sur la concurrence hors prix ou par les prix, notamment la qualité, le choix ou la vie privée des consommateurs;

**264 Section 93 of the Act is amended by striking out "and" after paragraph (g) and by adding the following after that paragraph:**

**(g.1)** network effects within the market;

**(g.2)** whether the merger or proposed merger would contribute to the entrenchment of the market position of leading incumbents;

**(g.3)** any effect of the merger or proposed merger on price or non-price competition, including quality, choice or consumer privacy; and

**264 L'article 93 de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**g.1)** les effets de réseau dans le marché;

**g.2)** le fait que le fusionnement réalisé ou proposé contribuerait au renforcement de la position sur le marché des principales entreprises en place;

**g.3)** tout effet du fusionnement réalisé ou proposé sur la concurrence hors prix ou par les prix, notamment la qualité, le choix ou la vie privée des consommateurs;

**265 Paragraph 100(1)(b) of the Act is replaced by the following:**

**(b)** the Tribunal finds, on application by the Commissioner, that the completion of the proposed merger would result in a contravention of section 114.

**265 L'alinéa 100(1)b) de la même loi est remplacé par ce qui suit :**

**b)** à la demande du commissaire, il conclut que la réalisation du fusionnement proposé serait une contravention de l'article 114.

**266 (1) Subsections 103.1(1) and (2) of the Act are replaced by the following:**

**Leave to make application under section 75, 76, 77 or 79**

**103.1 (1)** Any person may apply to the Tribunal for leave to make an application under section 75, 76, 77 or 79. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

**Notice**

**(2)** The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75, 76, 77 or 79, as the case may be, is sought.

**266 (1) Les paragraphes 103.1(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Permission de présenter une demande : articles 75, 76, 77 ou 79**

**103.1 (1)** Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 75, 76, 77 ou 79. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde.

**Signification**

**(2)** L'auteur de la demande en fait signifier une copie au commissaire et à chaque personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 75, 76, 77 ou 79, selon le cas.

**(2) Paragraph 103.1(3)(b) of the Act is replaced by the following:**

**(b)** was the subject of an inquiry that has been discontinued because of a settlement between the

**(2) L'alinéa 103.1(3)b) de la même loi est remplacé par ce qui suit :**

**b)** soit ont fait l'objet d'une telle enquête qui a été discontinuée à la suite d'une entente intervenue entre le

Commissioner and the person against whom the order under section 75, 76, 77 or 79, as the case may be, is sought.

**(3) Subsection 103.1(4) of the Act is replaced by the following:**

**Application discontinued**

**(4)** The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75, 76, 77 or 79.

**(4) Subsection 103.1(7) of the Act is replaced by the following:**

**Granting leave**

**(7)** The Tribunal may grant leave to make an application under section 75, 77 or 79 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section.

**(5) Subsection 103.1(8) of the English version of the Act is replaced by the following:**

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 75, 76, 77 or 79 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

**(6) Subsection 103.1(10) of the Act is replaced by the following:**

**Limitation**

**(10)** The Commissioner may not make an application for an order under section 75, 76, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7) or (7.1), if the person granted leave has already applied to the Tribunal under section 75, 76, 77 or 79.

**267 Section 103.2 of the Act is replaced by the following:**

**Intervention by Commissioner**

**103.2** If a person granted leave under subsection 103.1(7) or (7.1) makes an application under section 75,

commissaire et la personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 75, 76, 77 ou 79, selon le cas.

**(3) Le paragraphe 103.1(4) de la même loi est remplacé par ce qui suit :**

**Rejet**

**(4)** Le Tribunal ne peut être saisi d'une demande portant sur des questions visées aux alinéas (3)a) ou b) ou portant sur une question qui fait l'objet d'une demande que lui a présentée le commissaire en vertu des articles 75, 76, 77 ou 79.

**(4) Le paragraphe 103.1(7) de la même loi est remplacé par ce qui suit :**

**Octroi de la demande**

**(7)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75, 77 ou 79 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles.

**(5) Le paragraphe 103.1(8) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 75, 76, 77 or 79 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

**(6) Le paragraphe 103.1(10) de la même loi est remplacé par ce qui suit :**

**Limite applicable au commissaire**

**(10)** Le commissaire ne peut, en vertu des articles 75, 76, 77 ou 79, présenter une demande fondée sur des faits qui seraient les mêmes ou essentiellement les mêmes que ceux qui ont été allégués dans la demande de permission accordée en vertu des paragraphes (7) ou (7.1) si la personne à laquelle la permission a été accordée a déposé une demande en vertu des articles 75, 76, 77 ou 79.

**267 L'article 103.2 de la même loi est remplacé par ce qui suit :**

**Intervention du commissaire**

**103.2** Le commissaire est autorisé à intervenir devant le Tribunal dans les cas où une personne autorisée en vertu

76, 77 or 79, the Commissioner may intervene in the proceedings.

**268 Subsection 104(1) of the Act is replaced by the following:**

**Interim order**

**104 (1)** If an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75, 76, 77 or 79, may issue any interim order that it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

**269 Subsection 106.1(1) of the Act is replaced by the following:**

**Consent agreement — parties to a private action**

**106.1 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75, 76, 77 or 79 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

**270 Section 108 of the Act is amended by adding the following after subsection (2):**

**Computation of time**

**(3)** In this Part, a time period is calculated in accordance with sections 26 to 30 of the *Interpretation Act* except that the following days are also considered to be a *holiday* as defined in subsection 35(1) of that Act:

**(a)** Saturday;

**(b)** if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday; and

**(c)** if another holiday falls on a Saturday or Sunday, the following Monday.

**Submission after 5:00 p.m.**

**(4)** For the purposes of this Part, anything submitted to the Commissioner after 5:00 p.m. (Eastern Time) is deemed to be received by the Commissioner on the next day that is not a holiday.

des paragraphes 103.1(7) ou (7.1) présente une demande en vertu des articles 75, 76, 77 ou 79.

**268 Le paragraphe 104(1) de la même loi est remplacé par ce qui suit :**

**Ordonnance provisoire**

**104 (1)** Lorsqu'une demande d'ordonnance a été faite en application de la présente partie, sauf en ce qui concerne les ordonnances provisoires en vertu des articles 100 ou 103.3, le Tribunal peut, à la demande du commissaire ou d'une personne qui a présenté une demande en vertu des articles 75, 76, 77 ou 79, rendre toute ordonnance provisoire qu'il considère justifiée conformément aux principes normalement pris en considération par les cours supérieures en matières interlocutoires et d'injonction.

**269 Le paragraphe 106.1(1) de la même loi est remplacé par ce qui suit :**

**Consentement**

**106.1 (1)** Lorsqu'une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu des articles 75, 76, 77 ou 79, que cette personne et la personne à l'égard de laquelle l'ordonnance est demandée s'entendent sur son contenu et que l'entente est compatible avec les autres dispositions de la présente loi, un consentement peut être déposé auprès du Tribunal pour enregistrement.

**270 L'article 108 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Calcul du temps**

**(3)** Dans la présente partie, les périodes de temps sont calculées conformément aux articles 26 à 30 de la *Loi d'interprétation*. Toutefois, un *jour férié*, au sens du paragraphe 35(1) de cette loi, s'entend également des jours suivants :

**a)** le samedi;

**b)** si le jour de Noël tombe un samedi ou un dimanche, le lundi et le mardi suivants;

**c)** si un autre jour férié tombe un samedi ou un dimanche, le lundi suivant.

**Remise après dix-sept heures**

**(4)** Pour l'application de la présente partie, tout objet remis au commissaire après dix-sept heures (heure de l'Est) un jour non férié est réputé avoir été reçu par lui le jour non férié suivant.

**271 The Act is amended by adding the following after section 113:**

## Anti-avoidance

### Application of sections 114 to 123.1

**113.1** If a transaction or proposed transaction is designed to avoid the application of this Part, sections 114 to 123.1 apply to the substance of the transaction or proposed transaction.

**272 Subsection 114(3) of the Act is replaced by the following:**

### Unsolicited bid

**(3)** If a proposed transaction is an unsolicited or hostile take-over bid in respect of an entity and the Commissioner receives prescribed information supplied under subsection (1) by a person who has commenced or has announced an intention to commence a take-over bid, the Commissioner shall, if he or she has not already received the prescribed information from the entity, immediately notify the entity that the Commissioner has received the prescribed information from that person and the entity shall supply the Commissioner with the prescribed information within 10 days after being so notified.

**273 Paragraph 123(1)(a) of the English version of the Act is replaced by the following:**

**(a)** 30 days after the day on which the information required under subsection 114(1) has been received by the Commissioner, if the Commissioner has not, within that time, required additional information to be supplied under subsection 114(2); or

**274 Subsection 124.2(3) of the Act is replaced by the following:**

### Reference by agreement of parties to a private action

**(3)** A person granted leave under section 103.1 and the person against whom an order is sought under section 75, 76, 77 or 79 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

**271 La même loi est modifiée par adjonction, après l'article 113, de ce qui suit :**

## Anti-évitement

### Application des articles 114 à 123.1

**113.1** Lorsqu'une transaction ou une transaction proposée est conçue dans le but d'éviter l'application de la présente partie, les articles 114 à 123.1 s'appliquent à l'objet de la transaction ou de la transaction proposée.

**272 Le paragraphe 114(3) de la même loi est remplacé par ce qui suit :**

### Offre non sollicitée

**(3)** Dans le cas où la transaction proposée est une offre d'achat visant à la mainmise non sollicitée ou hostile concernant une entité, si le commissaire reçoit les renseignements réglementaires prévus au paragraphe (1) d'une personne qui a commencé — ou a annoncé son intention de commencer — une offre d'achat visant à la mainmise et qu'il n'a toujours pas reçu de l'entité les renseignements réglementaires, il en avise immédiatement l'entité et celle-ci est alors tenue de les produire auprès de lui dans les dix jours suivant la réception de cet avis.

**273 L'alinéa 123(1)a) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(a)** 30 days after the day on which the information required under subsection 114(1) has been received by the Commissioner, if the Commissioner has not, within that time, required additional information to be supplied under subsection 114(2); or

**274 Le paragraphe 124.2(3) de la même loi est remplacé par ce qui suit :**

### Renvois par des parties privées

**(3)** La personne autorisée en vertu de l'article 103.1 et la personne visée par la demande qu'elle présente en vertu des articles 75, 76, 77 ou 79 peuvent, d'un commun accord, mais avec la permission du Tribunal, soumettre au Tribunal toute question de droit ou toute question mixte de droit et de fait liée à l'application ou l'interprétation de la partie VIII. Elles font parvenir un avis de leur demande de renvoi au commissaire, celui-ci étant alors autorisé à intervenir dans les procédures.

## Coming into Force

**First anniversary**

**275 Section 257 comes into force on the first anniversary of the day on which this Act receives royal assent.**

## Entrée en vigueur

**Premier anniversaire**

**275 L'article 257 entre en vigueur au premier anniversaire de la sanction de la présente loi.**

## DIVISION 16

R.S., c. C-42

# Copyright Act

## Amendments to the Act

**276 Section 6 of the *Copyright Act* is replaced by the following:**

**Term of copyright**

**6** Except as otherwise expressly provided by this Act, the term for which copyright subsists is the life of the author, the remainder of the calendar year in which the author dies, and a period of 70 years following the end of that calendar year.

**277 Subsection 6.2(2) of the Act is replaced by the following:**

**Identity of author commonly known**

**(2)** If, during any term referred to in subsection (1), the identity of one or more of the authors becomes commonly known, copyright subsists for the life of whichever of those authors dies last, the remainder of the calendar year in which that author dies and a period of 70 years following the end of that calendar year.

**278 Section 7 of the Act is replaced by the following:**

**Term of copyright in certain posthumous works**

**7 (1)** Subject to subsection (2), in the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author — or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last — but which has not been published or, in the case of a lecture or a dramatic or musical work, been performed in public or communicated to the public by telecommunication, before that date, copyright subsists for the longer of

**(a)** the period until publication, or performance in public or communication to the public by

## SECTION 16

L.R., ch. C-42

# Loi sur le droit d'auteur

## Modification de la loi

**276 L'article 6 de la *Loi sur le droit d'auteur* est remplacé par ce qui suit :**

**Durée du droit d'auteur**

**6** Sauf disposition contraire expresse de la présente loi, le droit d'auteur subsiste pendant la vie de l'auteur, puis jusqu'à la fin de la soixante-dixième année suivant celle de son décès.

**277 Le paragraphe 6.2(2) de la même loi est remplacé par ce qui suit :**

**Identité généralement connue d'un coauteur**

**(2)** Lorsque, durant toute période visée au paragraphe (1), l'identité d'un ou plusieurs des coauteurs devient généralement connue, le droit d'auteur subsiste pendant la vie du dernier survivant de ces auteurs, puis jusqu'à la fin de la soixante-dixième année suivant celle de son décès.

**278 L'article 7 de la même loi est remplacé par ce qui suit :**

**Durée du droit d'auteur sur certaines œuvres posthumes**

**7 (1)** Sous réserve du paragraphe (2), lorsqu'une œuvre littéraire, dramatique ou musicale, ou une gravure, qui est encore protégée à la date de la mort de l'auteur ou, dans le cas d'une œuvre créée en collaboration, à la date de la mort de l'auteur qui décède le dernier n'a pas été publiée ni, en ce qui concerne une conférence ou une œuvre dramatique ou musicale, exécutée ou représentée en public ou communiquée au public par télécommunication avant cette date, le droit d'auteur subsiste, selon la plus longue des périodes suivantes :

**a)** jusqu'à sa publication, ou jusqu'à son exécution ou sa représentation en public ou sa communication au

telecommunication, whichever may first happen, as well as the remainder of the calendar year of the publication or of the performance in public or communication to the public by telecommunication, as the case may be, and for a period of 50 years following the end of that calendar year, and

**(b)** the life of the author — or, in the case of a work of joint authorship, the life of the author who dies last — as well as the remainder of the calendar year in which that author dies and a period of 70 years following the end of the calendar year in which that author dies.

public par télécommunication, selon l'événement qui se produit en premier lieu, puis jusqu'à la fin de la cinquantième année suivant celle de cette publication ou de cette exécution ou représentation en public ou communication au public par télécommunication;

**b)** jusqu'à la fin de la soixante-dixième année suivant celle du décès de l'auteur ou, dans le cas d'une œuvre créée en collaboration, du dernier survivant des coauteurs.

**Application of subsection (1)**

**(2)** Subsection (1) applies only if the work in question was published or performed in public or communicated to the public by telecommunication, as the case may be, before December 31, 1998.

**Application du paragraphe (1)**

**(2)** Le paragraphe (1) ne s'applique que dans les cas où l'œuvre a été publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication, selon le cas, avant le 31 décembre 1998.

**Transitional provision**

**(3)** If a work was not published or performed in public or communicated to the public by telecommunication before December 31, 1998, if subsection (1) would apply to that work had it been published or performed in public or communicated to the public by telecommunication before that day, and if the relevant death referred to in subsection (1) occurred during the period of 50 years immediately before that day, copyright subsists in the work, whether or not the work is published or performed in public or communicated to the public by telecommunication on or after that day,

**(a)** until December 31, 2048; or

**(b)** for the life of the author — or, in the case of a work of joint authorship, the life of the author who dies last — as well as the remainder of the calendar year in which that author dies and a period of 70 years following the end of that calendar year, if that period ends after December 31, 2048.

**Disposition transitoire**

**(3)** L'œuvre, dans le cas où elle n'a pas été publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication avant le 31 décembre 1998, où le paragraphe (1) s'y appliquerait si elle l'avait été et où le décès mentionné au paragraphe (1) est survenu au cours des cinquante années précédant cette date, continue d'être protégée par le droit d'auteur, qu'elle soit ou non publiée, ou exécutée ou représentée en public ou communiquée au public par télécommunication à cette date ou après celle-ci, selon le cas :

**a)** jusqu'au 31 décembre 2048;

**b)** jusqu'à la fin de la soixante-dixième année suivant celle du décès de l'auteur ou, dans le cas d'une œuvre créée en collaboration, du dernier survivant des coauteurs, si cette période se termine après le 31 décembre 2048.

**279 Section 9 of the Act is replaced by the following:**

**279 L'article 9 de la même loi est remplacé par ce qui suit :**

**Cases of joint authorship**

**9** In the case of a work of joint authorship, except as provided in section 6.2 or subsection 7(1) or (3), copyright subsists during the life of the author who dies last, for the remainder of the calendar year in which that author dies, and for a period of 70 years following the end of that calendar year, and references in this Act to the period after the expiration of any specified number of years from the end of the calendar year of the death of the author shall be construed as references to the period after the

**Œuvres créées en collaboration**

**9** Sous réserve de l'article 6.2 et des paragraphes 7(1) et (3), lorsqu'il s'agit d'une œuvre créée en collaboration, le droit d'auteur subsiste pendant la vie du dernier survivant des coauteurs, puis jusqu'à la fin de la soixante-dixième année suivant celle de son décès. Toute mention dans la présente loi de la période qui suit l'expiration d'un nombre spécifié d'années après l'année de la mort de l'auteur doit s'interpréter comme une mention de la période qui suit l'expiration d'un nombre égal d'années

expiration of the like number of years from the end of the calendar year of the death of the author who dies last.

## Transitional Provision

**No revival of copyright**

**280 Section 6, subsections 6.2(2) and 7(1) and (3) and section 9 of the *Copyright Act*, as enacted by sections 276 to 279, do not have the effect of reviving the copyright in any work in which the copyright had expired before the day on which sections 276 to 279 come into force.**

## Coming into Force

**Order in council**

**281 This Division comes into force on a day to be fixed by order of the Governor in Council.**

## DIVISION 17

2018, c. 27, s. 247; 2014, c. 20, s. 366(1)(E)

# College of Patent Agents and Trademark Agents Act

**282 Subsection 5(2) of the *College of Patent Agents and Trademark Agents Act* is replaced by the following:**

**Act not applicable to College**

**(2)** Subject to any regulations made under paragraph 76(1)(a.1), the *Canada Not-for-profit Corporations Act* does not apply to the College.

**283 Section 8 of the Act is replaced by the following:**

**Capacity**

**8** In carrying out its purpose, the College has the capacity and the rights, powers and privileges of a natural person, including the power to

**(a)** purchase or otherwise acquire, or lease, any real or personal property or immovable or movable;

**(b)** sell or otherwise dispose of, or lease, any of its acquired or leased property; and

**(c)** borrow money.

après l'année du décès du dernier survivant des coauteurs.

## Disposition transitoire

**Aucune réactivation du droit d'auteur**

**280 L'article 6, les paragraphes 6.2(2) et 7(1) et (3) et l'article 9 de la *Loi sur le droit d'auteur*, édictés par les articles 276 à 279, n'ont pas pour effet de réactiver le droit d'auteur sur une œuvre si ce droit était éteint à la date d'entrée en vigueur des articles 276 à 279.**

## Entrée en vigueur

**Décret**

**281 La présente section entre en vigueur à la date fixée par décret.**

## SECTION 17

2018, ch. 27, art. 247; 2014, ch. 20, par. 366(1)(A)

# Loi sur le Collège des agents de brevets et des agents de marques de commerce

**282 Le paragraphe 5(2) de la *Loi sur le Collège des agents de brevets et des agents de marques de commerce* est remplacé par ce qui suit :**

**Non-application de la Loi au Collège**

**(2)** Sous réserve de tout règlement pris en vertu de l'alinéa 76(1)a.1), la *Loi canadienne sur les organisations à but non lucratif* ne s'applique pas au Collège.

**283 L'article 8 de la même loi est remplacé par ce qui suit :**

**Capacité**

**8** Pour l'accomplissement de sa mission, le Collège dispose de la capacité et des droits, pouvoirs et privilèges d'une personne physique et peut, notamment :

**a)** acheter ou acquérir de toute autre façon, ou louer, des biens réels ou personnels;

**b)** disposer, notamment par vente, ou louer tout ou partie des biens ainsi acquis ou loués;

**c)** contracter des emprunts.

**284 Section 15 of the Act is amended by adding the following after subsection (4):**

**Vacancies during term**

**(5)** If an elected director has ceased to hold office before the expiry of their term, the Board may, in accordance with the by-laws, appoint an individual to fill that vacancy for the unexpired portion of that term or for any shorter period that the Board fixes.

**285 The Act is amended by adding the following after section 20:**

**Power to act on College's behalf**

**20.1** For the purposes of this Act, the Board may act on the College's behalf and may, by by-law, authorize the College's directors, the members of its committees, the Registrar, the investigators and any officers or employees of the College to act on behalf of the College.

**286 Section 22 of the Act is renumbered as subsection 22(1) and is amended by adding the following:**

**Delegation**

**(2)** Subject to the regulations, the Registrar may delegate any of the powers, duties and functions conferred on the Registrar under this Act.

**287 The Act is amended by adding the following after section 23:**

## Immunity

**Responsibility for damages — directors and others**

**23.1** No action or other proceeding for damages lies or may be instituted against any of the following persons for anything done or omitted to be done in good faith in the exercise or purported exercise of any power, or in the performance or purported performance of any duty or function, conferred on that person under the Act:

**(a)** a current or former director of the Board;

**(b)** a current or former member of a committee of the College;

**(c)** the Registrar or a former Registrar;

**(d)** a current or former investigator;

**(e)** a current or former officer, employee, agent or mandatary of the College; and

**284 L'article 15 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Vacance en cours de mandat**

**(5)** En cas de vacance en cours de mandat d'un administrateur élu, le conseil peut, conformément aux règlements administratifs, nommer un remplaçant pour le reste du mandat ou pour une période plus courte qu'il fixe.

**285 La même loi est modifiée par adjonction, après l'article 20, de ce qui suit :**

**Pouvoir d'agir pour le compte du Collège**

**20.1** Pour l'application de la présente loi, le conseil peut agir pour le compte du Collège et peut, par règlement administratif, autoriser un administrateur, un membre d'un comité, le registraire, un enquêteur, un dirigeant ou un employé du Collège à agir pour le compte du Collège.

**286 L'article 22 de la même loi devient le paragraphe 22(1) et est modifié par adjonction de ce qui suit :**

**Délégation**

**(2)** Sous réserve des règlements, le registraire peut déléguer les attributions qui lui sont conférées sous le régime de la présente loi.

**287 La même loi est modifiée par adjonction, après l'article 23, de ce qui suit :**

## Immunité

**Responsabilité pour dommages-intérêts : administrateurs et autres**

**23.1** Aucune action ni autre procédure en dommages-intérêts ne peut être intentée contre une personne qui est ou a été administrateur, membre d'un comité, registraire, enquêteur, dirigeant, employé ou mandataire du Collège, ou qui est ou a été engagée par le Collège, pour les actes ou omissions commis de bonne foi dans l'exercice effectif ou censé tel des attributions qui lui ont été conférées sous le régime de la présente loi.

**(f)** a person who is or has been engaged by the College.

**Right of indemnification**

**23.2** The College must indemnify the persons referred to in section 23.1 against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by them in respect of any civil, criminal, administrative or other proceeding in which they are involved for anything done or omitted to be done in good faith in the exercise or purported exercise of any power, or in the performance or purported performance of any duty or function, conferred on that person under the Act.

**Responsibility for damages — complainant or others**

**23.3** No action or other proceeding for damages lies or may be instituted against a person for disclosing any information or document to the College or to an investigator in good faith, or for making a complaint about a licensee to the College in good faith.

**288 The Act is amended by adding the following after section 37:**

**Powers**

**37.1 (1)** The Investigations Committee may take any of the following actions in respect of a licensee who is under investigation if it is satisfied that it is necessary for the protection of the public:

**(a)** impose conditions on a licence of the licensee;

**(b)** impose restrictions on the licensee's entitlement to represent persons under section 27 or 30;

**(c)** suspend a licence of the licensee.

**Notice**

**(2)** The Investigations Committee must notify the licensee in writing of any action taken in respect of the licensee and must inform them of their right to make an application for a review by the Discipline Committee at any time.

**Action is provisional**

**(3)** Any action taken under subsection (1) is provisional and ceases to have effect if

**(a)** the Discipline Committee makes a decision under subsection 37.2(2) that amends or revokes the action;

**Droit à l'indemnisation**

**23.2** Le Collège indemnise les personnes visées à l'article 23.1 de tous leurs frais et dépenses raisonnables — y compris les sommes versées pour le règlement à l'amiable d'un procès ou l'exécution d'un jugement — entraînés par des poursuites civiles, pénales, administratives ou autres dans lesquelles elles étaient impliquées en raison des actes ou omissions commis de bonne foi dans l'exercice effectif ou censé tel des attributions qui leur ont été conférées sous le régime de la présente loi.

**Responsabilité pour dommages-intérêts : plaignant et autres**

**23.3** Aucune action ni autre procédure en dommages-intérêts ne peut être intentée contre une personne relativement à toute plainte qu'elle a formulée de bonne foi au Collège à l'égard d'un titulaire de permis ou pour tout renseignement ou document qu'elle a fourni de bonne foi au Collège ou à l'enquêteur.

**288 La même loi est modifiée par adjonction, après l'article 37, de ce qui suit :**

**Pouvoirs**

**37.1 (1)** Le comité d'enquête peut prendre, à l'égard d'un titulaire de permis faisant l'objet d'une enquête, l'une ou l'autre des mesures ci-après s'il est convaincu que cela est nécessaire pour la protection du public :

**a)** assujettir à des conditions tout permis du titulaire de permis;

**b)** imposer des restrictions au droit du titulaire de permis de représenter des personnes en vertu des articles 27 ou 30;

**c)** suspendre tout permis du titulaire de permis.

**Avis**

**(2)** Le comité d'enquête avise par écrit le titulaire de permis des mesures prises à son égard et l'informe, dans l'avis, de son droit de présenter, à tout moment, une demande de révision au comité de discipline.

**Mesures provisoires**

**(3)** Toute mesure prise en vertu du paragraphe (1) est provisoire et cesse d'avoir effet dans les cas suivants :

**a)** le comité de discipline rend une décision au titre du paragraphe 37.2(2) qui modifie la mesure ou l'annule;

**(b)** the Investigations Committee dismisses the matter under subsection 49(1);

**(c)** the Investigations Committee withdraws the application under section 50;

**(d)** the Discipline Committee exercises its powers under section 56; or

**(e)** the Discipline Committee renders a decision under section 57.

**b)** le comité d'enquête clôt l'affaire au titre du paragraphe 49(1);

**c)** le comité d'enquête retire sa demande aux termes de l'article 50;

**d)** le comité de discipline exerce les pouvoirs prévus à l'article 56;

**e)** le comité de discipline rend une décision au titre de l'article 57.

**Request for review**

**37.2 (1)** A licensee who receives a notice under subsection 37.1(2) may, at any time, request a review of the decision of the Investigations Committee made under subsection 37.1(1) by making an application to the Discipline Committee.

**Demande de révision**

**37.2 (1)** Le titulaire de permis qui reçoit l'avis visé au paragraphe 37.1(2) peut, à tout moment, faire réviser la décision du comité d'enquête rendue au titre du paragraphe 37.1(1) en présentant une demande à cet effet au comité de discipline.

**Decision**

**(2)** On completion of the review, the Discipline Committee may confirm, amend or revoke any action taken by the Investigations Committee. If the Discipline Committee amends the actions, they cease to have effect in the circumstances referred to in paragraphs 37.1(3)(b) to (e).

**Décision**

**(2)** Au terme de la révision, le comité de discipline peut confirmer, modifier ou annuler les mesures prises par le comité d'enquête. S'il les modifie, celles-ci cessent d'avoir effet dans les cas visés aux alinéas 37.1(3)b) à e).

**Notice**

**(3)** The Discipline Committee must, in writing, notify the licensee and the Investigations Committee of its decision and the reasons for it.

**Avis**

**(3)** Le comité de discipline avise par écrit le titulaire de permis et le comité d'enquête de la décision qu'il rend au terme de la révision et joint ses motifs à l'avis.

**289 Section 39 of the Act is replaced by the following:**

**289 L'article 39 de la même loi est remplacé par ce qui suit :**

**Dismissal or referral**

**38.1 (1)** The Registrar must consider all complaints received by the College relating to professional misconduct or incompetence by a licensee and may, subject to and in accordance with the by-laws, dismiss any complaint, in whole or in part, for any of the reasons set out in the regulations, but if they do not dismiss the complaint the Registrar must refer it to the Investigations Committee for consideration.

**Rejet ou renvoi**

**38.1 (1)** Le registraire étudie les plaintes reçues par le Collège portant sur un manquement professionnel commis par un titulaire de permis ou sur l'incompétence d'un titulaire de permis et peut, sous réserve des règlements administratifs et conformément à ceux-ci, rejeter toute plainte, en tout ou en partie, pour toute raison prévue par règlement. S'il ne la rejette pas, il la renvoie au comité d'enquête pour étude.

**Notice of dismissal**

**(2)** If the Registrar dismisses the complaint, the Registrar must notify the complainant in writing of the decision and the reasons for the dismissal and the notice must inform the complainant of their right to appeal the decision to the Investigations Committee within 30 days after the date of the notice.

**Avis du rejet**

**(2)** S'il rejette la plainte, le registraire en avise par écrit le plaignant, motifs à l'appui, et l'informe, dans l'avis, de son droit d'appeler de la décision au comité d'enquête dans les trente jours suivant la date de l'avis.

#### Limitation

**(3)** The Registrar is not permitted to disclose privileged information in their notice to the complainant.

#### Appeal

**(4)** The complainant who receives a notice under subsection (2) may, within 30 days after the date of the notice, request an appeal of the Registrar's decision to the Investigations Committee.

#### Decision

**(5)** The Investigations Committee must dispose of the appeal by dismissing it or allowing it and, if they allow it, they must consider the complaint.

#### Role of Investigations Committee

**39** The Investigations Committee must consider all complaints that are referred to it by the Registrar and make a determination in respect of all appeals requested under subsection 38.1(4).

**290 Section 63 of the Act is replaced by the following:**

## Practice and Procedure

#### Rules

**63** The Investigations Committee and the Discipline Committee may make rules respecting the practice and procedure before them and rules for carrying out their work and for the management of their internal affairs.

**291 (1) Paragraph 75(1)(c) of the Act is replaced by the following:**

**(c)** respecting the filling of vacancies among elected directors;

**(2) Subsection 75(1) of the Act is amended by adding the following after paragraph (f):**

**(f.1)** respecting the creation of committees;

**(3) Subsection 75(1) of the Act is amended by adding the following after paragraph (i):**

**(i.1)** defining the terms "professional misconduct" and "incompetence" for the purposes of this Act;

#### Limite

**(3)** Le registraire ne peut, dans l'avis ou les motifs, communiquer au plaignant des renseignements protégés.

#### Appel

**(4)** Le plaignant qui a reçu l'avis prévu au paragraphe (2) peut, dans les trente jours suivant la date de l'avis, interjeter appel de la décision du registraire au comité d'enquête.

#### Décision

**(5)** Le comité d'enquête statue sur l'appel en le rejetant ou en l'accueillant. Dans ce dernier cas, il étudie la plainte.

#### Rôle du comité d'enquête

**39** Le comité d'enquête étudie les plaintes qui lui sont envoyées par le registraire et statue sur les appels portés devant lui au titre du paragraphe 38.1(4).

**290 L'article 63 de la même loi est remplacé par ce qui suit :**

## Pratique et procédure

#### Règles

**63** Le comité d'enquête et le comité de discipline peuvent établir des règles de pratique et de procédure et des règles concernant l'accomplissement de leurs travaux et la gestion de leurs affaires internes.

**291 (1) L'alinéa 75(1)c) de la même loi est remplacé par ce qui suit :**

**c)** concernant les vacances à combler parmi les postes des administrateurs élus;

**(2) Le paragraphe 75(1) de la même loi est modifié par adjonction, après l'alinéa f), de ce qui suit :**

**f.1)** concernant la création de comités;

**(3) Le paragraphe 75(1) de la même loi est modifié par adjonction, après l'alinéa i), de ce qui suit :**

**i.1)** définissant les termes « manquement professionnel » et « incompétence » pour l'application de la présente loi;

**(4) Subsection 75(1) of the Act is amended by striking out "and" at the end of paragraph (t) and by adding the following after that paragraph:**

**(t.1)** prescribing the circumstances in which the Registrar must not dismiss a complaint or the reasons for which the Registrar must not dismiss a complaint;

**(t.2)** respecting the form and manner in which the Registrar may dismiss a complaint; and

**(5) Subsections 75(2) and (3) of the Act are replaced by the following:**

**Different treatment**

**(2)** The by-laws made under paragraphs (1)(j) to (t) and (u) may distinguish among classes of licensees or licences.

**For greater certainty**

**(3)** For greater certainty, by-laws made under paragraphs (1)(i.1) to (u) are regulations for the purposes of the *Statutory Instruments Act*.

**292 (1) Subsection 76(1) of the Act is amended by adding the following after paragraph (a):**

**(a.1)** respecting the application of any provisions of the *Canada Not-for-profit Corporations Act* to the College;

**(a.2)** limiting the powers, duties and functions that may be delegated by the Registrar and the persons to whom they may be delegated;

**(2) Subsection 76(1) of the Act is amended by adding the following after paragraph (g):**

**(g.1)** prescribing the reasons for which the Registrar may dismiss a complaint;

**(3) Subsection 76(2) of the Act is replaced by the following:**

**Authorization**

**(2)** Regulations made under paragraph (1)(a.2) may authorize the Board or any committee of the College, and those made under paragraphs (1)(c), (d), (f) and (g) may authorize the Board, the Registrar or any committee of the College, to make by-laws with respect to all or part of the subject matter of the regulations and, for greater certainty, those by-laws are regulations for the purposes of the *Statutory Instruments Act*.

**(4) Le paragraphe 75(1) de la même loi est modifié par adjonction, après l'alinéa t), de ce qui suit :**

**t.1)** prévoyant les circonstances dans lesquelles le registraire ne doit pas rejeter une plainte ou les raisons pour lesquelles il ne doit pas la rejeter;

**t.2)** concernant les modalités applicables au rejet des plaintes par le registraire;

**(5) Les paragraphes 75(2) et (3) de la même loi sont remplacés par ce qui suit :**

**Traitement différent**

**(2)** Les règlements administratifs pris au titre des alinéas (1)j) à t) et u) peuvent traiter différemment les catégories de permis ou de titulaires de permis.

**Précision**

**(3)** Il est entendu que les règlements administratifs pris au titre des alinéas (1)i.1) à u) sont des règlements pour l'application de la *Loi sur les textes réglementaires*.

**292 (1) Le paragraphe 76(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** concernant l'application de toute disposition de la *Loi canadienne sur les organisations à but non lucratif* au Collège;

**a.2)** limitant les attributions que peut déléguer le registraire ainsi que les personnes à qui il peut les déléguer;

**(2) Le paragraphe 76(1) de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**g.1)** prévoyant les raisons pour lesquelles le registraire peut rejeter une plainte;

**(3) Le paragraphe 76(2) de la même loi est remplacé par ce qui suit :**

**Autorisation**

**(2)** Les règlements pris au titre de l'alinéa (1)a.2) peuvent autoriser le conseil ou tout comité du Collège — et ceux pris au titre des alinéas (1)c), d), f) et g) peuvent autoriser le conseil, le registraire ou tout comité du Collège — à prendre des règlements administratifs relativement à toute matière traitée dans les règlements. Il est entendu que ces règlements administratifs sont des règlements pour l'application de la *Loi sur les textes réglementaires*.

**293 The Act is amended by adding the following after section 86:**

**By-laws**

**87** All by-laws that are made by the College before the coming into force of this section are deemed to have been made by the Board.

**Deemed authority**

**88** All regulations authorizing the College to make by-laws under subsection 76(2), as it read immediately before the coming into force of this section, are deemed to authorize the Board to make the by-laws.

**293 La même loi est modifiée par adjonction, après l'article 86, de ce qui suit :**

**Règlements administratifs**

**87** Tout règlement administratif pris par le Collège avant la date d'entrée en vigueur du présent article est réputé avoir été pris par le conseil.

**Autorisation réputée**

**88** Tout règlement qui autorise, en vertu du paragraphe 76(2), dans sa version antérieure à la date d'entrée en vigueur du présent article, le Collège à prendre des règlements administratifs est réputé autoriser le conseil à les prendre.

## DIVISION 18

# Civil Lunar Gateway Agreement Implementation Act

## Enactment of Act

**Enactment**

**294 The *Civil Lunar Gateway Agreement Implementation Act* is enacted as follows:**

An Act to implement the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway and to make related amendments to other Acts

## Short Title

**Short title**

**1** This Act may be cited as the *Civil Lunar Gateway Agreement Implementation Act*.

## Interpretation

**Definitions**

**2** The following definitions apply in this Act.

***Agreement*** means the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway, entered into on December 15, 2020, as amended from time to time under article 22 of the Agreement. (*Accord*)

## SECTION 18

# Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway

## Édiction de la loi

**Édiction**

**294 Est édictée la *Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway*, dont le texte suit :**

Loi portant sur la mise en œuvre du Mémorandum d'accord entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique sur la coopération relative à la station lunaire civile Gateway et apportant des modifications connexes à d'autres lois

## Titre abrégé

**Titre abrégé**

**1** *Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway*.

## Définitions

**Définitions**

**2** Les définitions qui suivent s'appliquent à la présente loi.

***Accord*** Le Mémorandum d'accord entre le Gouvernement du Canada et le Gouvernement des États-Unis d'Amérique concernant la coopération relative à la station lunaire civile Gateway intervenu le 15 décembre

***Minister***, in respect of any provision of this Act, means the member or members of the Queen's Privy Council for Canada designated as the Minister or Ministers for the purpose of that provision. (*ministre*)

# General

### Purpose

**3** The purpose of this Act is to fulfil Canada's obligations under the Agreement.

### Binding on Her Majesty

**4** This Act is binding on Her Majesty in right of Canada or a province.

### Order designating Minister

**5** The Governor in Council may, by order, designate one or more members of the Queen's Privy Council for Canada as the Minister or Ministers for the purpose of any provision of this Act.

### Delegation of powers

**6** The Minister may delegate any powers, duties and functions conferred on the Minister by or under this Act to one or more persons who are to exercise those powers and perform those duties and functions, subject to any terms and conditions that the Minister specifies.

# Information

### Power to order production

**7 (1)** The Minister may, by order, require any person that the Minister believes, on reasonable grounds, has information or documents relevant to the administration or enforcement of this Act, to provide that information or those documents to the Minister or any person that the Minister designates.

### Order

**(2)** Every person to whom an order under subsection (1) is directed must provide the information or documents that are required by the order in the time and manner specified in it.

### Non-application of *Statutory Instruments Act*

**(3)** The *Statutory Instruments Act* does not apply to an order issued under subsection (1).

2020, ainsi que ses modifications successives effectuées au titre de son article 22. (*Agreement*)

***ministre*** Le ou les membres du Conseil privé de la Reine pour le Canada chargés de l'application de telle des dispositions de la présente loi. (*Minister*)

# Dispositions générales

### Objet

**3** La présente loi porte sur l'exécution des obligations du Canada découlant de l'Accord.

### Obligation de Sa Majesté

**4** La présente loi lie Sa Majesté du chef du Canada ou d'une province.

### Décret : désignation du ministre

**5** Le gouverneur en conseil peut, par décret, désigner tout membre du Conseil privé de la Reine pour le Canada à titre de ministre chargé de l'application de telle des dispositions de la présente loi.

### Délégation de pouvoirs

**6** Le ministre peut déléguer à quiconque telle de ses attributions. Le mandat est à exécuter en conformité avec la délégation.

# Renseignements

### Pouvoir d'ordonner la communication

**7 (1)** Le ministre peut, par arrêté, ordonner à toute personne qu'il croit, pour des motifs raisonnables, être en possession de renseignements ou de documents utiles à l'exécution ou au contrôle d'application de la présente loi, de les lui communiquer ou de les communiquer à la personne qu'il désigne.

### Arrêté

**(2)** La personne visée par l'arrêté pris en vertu du paragraphe (1) communique, dans le délai et selon les modalités qui y sont précisés, les renseignements ou les documents qui sont visés par l'arrêté.

### Non-application de la *Loi sur les textes réglementaires*

**(3)** La *Loi sur les textes réglementaires* ne s'applique pas aux arrêtés pris en vertu du paragraphe (1).

### Prohibition

**8 (1)** It is prohibited for a person who obtained information or a document under this Act or the Agreement that is subject to a claim that it is confidential to communicate it, allow its recommunication or allow any person to have access to it without the written consent of the person who provided it.

### Exceptions

**(2)** Despite subsection (1), a person may communicate or allow any person to have access to information or a document that has been provided under this Act or the Agreement and that is subject to a claim that it is confidential if

**(a)** the public interest in the communication or access in relation to public health or public safety outweighs in importance any financial loss or prejudice to the competitive position of any person or any harm to the privacy interests, reputation or human dignity of any individual likely to be caused by that communication or access; or

**(b)** the communication or access is necessary for the purpose of the administration or enforcement of this Act or any other Act of Parliament or of giving effect to the Agreement.

### Compelled production

**(3)** Despite any other Act or law, a person is not to be compelled to give or produce evidence relating to information or a document that has been provided under this Act or the Agreement and that is subject to a claim that it is confidential, unless the proceeding in which the evidence is sought to be compelled relates to the enforcement of this Act or another Act of Parliament.

### Goods and data

**9** Despite any other Act or law, any person who receives goods or data referred to in Article 19.4 of the Agreement must, upon completion of the activities to which they relate, destroy or return them in accordance with the instructions of the party that provided them.

### Compliance order

**10 (1)** If the Minister believes on reasonable grounds that a person who has received information or documents under the Agreement is contravening, or is likely to contravene, section 8 or 9, the Minister may, by order, require the person to return the information or the documents in question to the person who provided them or to dispose of them in the manner the Minister deems appropriate in the circumstances.

### Interdiction

**8 (1)** Nul ne peut communiquer des renseignements ou des documents obtenus en vertu de la présente loi ou de l'Accord et présentés comme confidentiels, ni en autoriser la communication ou l'accès sans le consentement écrit de la personne de qui ils ont été obtenus.

### Exceptions

**(2)** La communication des renseignements ou des documents ou l'accès à ceux-ci sans le consentement sont toutefois permis dans les cas suivants :

**a)** la communication ou l'accès sont dans l'intérêt public en ce qui concerne la santé ou la sécurité publiques, et cet intérêt l'emporte clairement sur les pertes financières pouvant en découler pour toute personne ou le préjudice pouvant être causé à la position concurrentielle de celle-ci, ou sur le préjudice pouvant être causé à la vie privée, la réputation ou la dignité de tout individu;

**b)** la communication ou l'accès sont nécessaires à l'exécution ou au contrôle d'application de la présente loi ou de toute autre loi fédérale ou à la mise en œuvre de l'Accord.

### Production obligatoire

**(3)** Malgré toute autre loi ou règle de droit, nul n'est tenu, sauf lorsque la procédure concerne le contrôle d'application de la présente loi ou d'une autre loi fédérale, de témoigner ou de produire quoi que ce soit relativement aux renseignements ou documents obtenus en vertu de la présente loi ou de l'Accord et présentés comme confidentiels.

### Biens et données

**9** Malgré toute autre loi ou règle de droit, toute personne qui reçoit des biens ou des données visés à l'article 19.4 de l'Accord est tenue, une fois les activités auxquelles ils se rapportent terminées, de les détruire ou de les restituer à la partie qui les a fourni, conformément à ses instructions.

### Pouvoir d'ordonner la conformité

**10 (1)** S'il a des motifs raisonnables de croire qu'une personne — qui a obtenu des renseignements ou des documents en vertu de l'Accord — contrevient ou est susceptible de contrevenir aux articles 8 ou 9, le ministre peut, par arrêté, ordonner à cette personne de les restituer à celle qui les a fournis ou d'en disposer de la manière qu'il estime indiquée dans les circonstances.

**Order**

**(2)** Every person to whom an order under subsection (1) is directed must return the information or documents, or dispose of them, in the time and manner specified in the order.

**Non-application of *Statutory Instruments Act***

**(3)** The *Statutory Instruments Act* does not apply to an order issued under subsection (1).

**Interpretation**

**11** For the purposes of sections 7, 8 and 10, information and documents are deemed to include goods or data referred to in Article 19.4 of the Agreement.

# Regulations

**Regulations**

**12** The Governor in Council may make regulations that the Governor in Council considers necessary for carrying out the purposes of this Act or giving effect to the Agreement, including the code of conduct, memorandums of understanding and other implementing arrangements that the Agreement refers to.

## Related Amendments

R.S., c. C-46

### Criminal Code

**295 Paragraph 2.3(1)(a) of the *Criminal Code* is replaced by the following:**

**(a)** proceedings in relation to an offence under subsection 7(2.01), (2.3), (2.31), (2.35) or (2.36) or section 57, 58, 83.12, 103, 104, 121.1, 380, 382, 382.1, 391, 400, 424.1, 431.1, 467.11 or 467.111 or in relation to any terrorism offence;

**296 (1) Subsections 7(2.3) and (2.31) of the French version of the Act are replaced by the following:**

**Station spatiale : membres d'équipage canadiens**

**(2.3)** Malgré les autres dispositions de la présente loi ou de toute autre loi, le membre d'équipage canadien qui est l'auteur, hors du Canada et au cours d'un vol spatial soit à bord d'un élément de vol de la station spatiale ou relativement à tel élément, soit à bord d'un moyen de transport effectuant la navette avec la station, d'un fait — acte ou omission — qui, s'il était commis au Canada, constituerait un acte criminel, est réputé avoir commis ce fait au Canada.

**Arrêté**

**(2)** La personne visée par l'arrêté pris en vertu du paragraphe (1) est tenue de restituer les renseignements ou les documents, ou d'en disposer dans le délai et selon les modalités qui y sont précisés.

**Non-application de la *Loi sur les textes réglementaires***

**(3)** La *Loi sur les textes réglementaires* ne s'applique pas aux arrêtés pris en vertu du paragraphe (1).

**Interprétation**

**11** Pour l'application des articles 7, 8 et 10, les biens et les données visés à l'article 19.4 de l'Accord sont assimilés aux documents et renseignements.

# Règlements

**Règlements**

**12** Le gouverneur en conseil peut prendre les règlements qu'il estime nécessaires pour l'application de la présente loi ou pour donner effet à l'Accord, notamment au code de conduite, aux mémorandums d'accord et aux arrangements d'exécution visés par l'Accord.

## Modifications connexes

L.R., ch. C-46

### Code criminel

**295 L'alinéa 2.3(1)a) du *Code criminel* est remplacé par ce qui suit :**

**a)** celles relatives à toute infraction visée aux paragraphes 7(2.01), (2.3), (2.31), (2.35) ou (2.36) ou aux articles 57, 58, 83.12, 103, 104, 121.1, 380, 382, 382.1, 391, 400, 424.1, 431.1, 467.11 ou 467.111 ou à toute infraction de terrorisme;

**296 (1) Les paragraphes 7(2.3) et (2.31) de la version française de la même loi sont remplacés par ce qui suit :**

**Station spatiale : membres d'équipage canadiens**

**(2.3)** Malgré les autres dispositions de la présente loi ou de toute autre loi, le membre d'équipage canadien qui est l'auteur, hors du Canada et au cours d'un vol spatial soit à bord d'un élément de vol de la station spatiale ou relativement à tel élément, soit à bord d'un moyen de transport effectuant la navette avec la station, d'un fait — acte ou omission — qui, s'il était commis au Canada, constituerait un acte criminel, est réputé avoir commis ce fait au Canada.

**Station spatiale : membres d'équipage d'un État partenaire**

**(2.31)** Malgré les autres dispositions de la présente loi ou de toute autre loi, le membre d'équipage d'un État partenaire qui est l'auteur, hors du Canada et au cours d'un vol spatial soit à bord d'un élément de vol de la station spatiale ou relativement à tel élément, soit à bord d'un moyen de transport spatial effectuant la navette avec la station, d'un fait — acte ou omission — qui, s'il était commis au Canada, constituerait un acte criminel, est réputé avoir commis ce fait au Canada dans les cas suivants :

**a)** le fait porte atteinte à la vie ou à la sécurité d'un membre d'équipage canadien;

**b)** le fait est commis à bord d'un élément de vol fourni par le Canada, ou relativement à tel élément, ou l'endommage.

**(2) Paragraph (b) of the definition *crew member of a Partner State* in subsection 7(2.34) of the Act is replaced by the following:**

**(b)** a citizen of a state, other than Canada or a Partner State, who is authorized by a Partner State to act as a crew member for a space flight on, or in relation to, a flight element. (*membre d'équipage d'un État partenaire*)

**(3) The definition *Space Station* in subsection 7(2.34) of the Act is replaced by the following:**

***Space Station*** means the civil international Space Station that is a multi-use facility in low-earth orbit, with flight elements and dedicated ground elements provided by, or on behalf of, Canada or the Partner States. (*station spatiale*)

**(4) Section 7 of the Act is amended by adding the following after subsection (2.34):**

**Lunar Gateway — Canadian crew members**

**(2.35)** Despite anything in this Act or any other Act, a Canadian crew member who, during a space flight, commits an act or omission outside Canada that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission is committed

**(a)** on, or in relation to, a flight element of the Lunar Gateway;

**Station spatiale : membres d'équipage d'un État partenaire**

**(2.31)** Malgré les autres dispositions de la présente loi ou de toute autre loi, le membre d'équipage d'un État partenaire qui est l'auteur, hors du Canada et au cours d'un vol spatial soit à bord d'un élément de vol de la station spatiale ou relativement à tel élément, soit à bord d'un moyen de transport spatial effectuant la navette avec la station, d'un fait — acte ou omission — qui, s'il était commis au Canada, constituerait un acte criminel, est réputé avoir commis ce fait au Canada dans les cas suivants :

**a)** le fait porte atteinte à la vie ou à la sécurité d'un membre d'équipage canadien;

**b)** le fait est commis à bord d'un élément de vol fourni par le Canada, ou relativement à tel élément, ou l'endommage.

**(2) L'alinéa b) de la définition de *membre d'équipage d'un État partenaire*, au paragraphe 7(2.34) de la même loi, est remplacé par ce qui suit :**

**b)** soit un citoyen ressortissant d'un État autre que le Canada ou un État partenaire qui est habilité par celui-ci à agir au cours d'un vol spatial en tant que membre d'équipage à bord d'un élément de vol ou relativement à tel élément. (*crew member of a Partner State*)

**(3) La définition de *station spatiale*, au paragraphe 7(2.34) de la même loi, est remplacée par ce qui suit :**

***station spatiale*** La Station spatiale internationale civile, une installation polyvalente placée sur orbite terrestre basse et composée d'éléments de vol et d'éléments au sol spécifiques fournis par le Canada ou les États partenaires ou pour leur compte. (*Space Station*)

**(4) L'article 7 de la même loi est modifié par adjonction, après le paragraphe (2.34), de ce qui suit :**

**Station lunaire Gateway : membres d'équipage canadiens**

**(2.35)** Malgré les autres dispositions de la présente loi ou de toute autre loi, le membre d'équipage canadien qui est l'auteur, hors du Canada et au cours d'un vol spatial soit à bord d'un élément de vol de la station lunaire Gateway ou relativement à tel élément, soit à bord d'un moyen de transport spatial effectuant la navette avec la station, soit sur la surface de la Lune, d'un fait — acte ou omission — qui, s'il était commis au Canada,

**(b)** on any means of transportation to or from the Lunar Gateway; or

**(c)** on the surface of the Moon.

**Lunar Gateway — crew members of Partner States**

**(2.36)** Despite anything in this Act or any other Act, a crew member of a Partner State who commits an act or omission outside Canada during a space flight on, or in relation to, a flight element of the Lunar Gateway, on any means of transportation to and from the Lunar Gateway or on the surface of the Moon that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission

**(a)** threatens the life or security of a Canadian crew member; or

**(b)** is committed on or in relation to, or damages, a flight element provided by Canada.

**Consent of Attorney General of Canada**

**(2.37)** No proceedings in relation to an offence referred to in subsection (2.35) or (2.36) may be instituted without the consent of the Attorney General of Canada.

**Definitions**

**(2.38)** The definitions in this subsection apply in this subsection and in subsections (2.35) and (2.36).

***Agreement*** has the same meaning as in section 2 of the *Civil Lunar Gateway Agreement Implementation Act*. (*Accord*)

***Canadian crew member*** means a crew member of the Lunar Gateway who is

**(a)** a Canadian citizen; or

**(b)** a citizen of a foreign state, other than a Partner State, who is authorized by Canada to act as a crew member for a space flight on, or in relation to, a flight element. (*membre d'équipage canadien*)

***crew member of a Partner State*** means a crew member of the Lunar Gateway who is

**(a)** a citizen of a Partner State; or

**(b)** a citizen of a state, other than Canada or a Partner State, who is authorized by a Partner State to act as a crew member for a space flight on, or in relation to, a

constituerait un acte criminel, est réputé avoir commis ce fait au Canada.

**Station lunaire Gateway : membres d'équipage d'un État partenaire**

**(2.36)** Malgré les autres dispositions de la présente loi ou de toute autre loi, le membre d'équipage d'un État partenaire qui est l'auteur, hors du Canada et au cours d'un vol spatial soit à bord d'un élément de vol de la station lunaire Gateway ou relativement à tel élément, soit à bord d'un moyen de transport spatial effectuant la navette avec la station, soit sur la surface de la Lune, d'un fait — acte ou omission — qui, s'il était commis au Canada, constituerait un acte criminel, est réputé avoir commis ce fait au Canada dans les cas suivants :

**a)** le fait porte atteinte à la vie ou à la sécurité d'un membre d'équipage canadien;

**b)** le fait est commis à bord d'un élément de vol fourni par le Canada, ou relativement à tel élément, ou l'endommage.

**Consentement du procureur général du Canada**

**(2.37)** Les poursuites pour une infraction visée aux paragraphes (2.35) ou (2.36) ne peuvent être intentées qu'avec le consentement du procureur général du Canada.

**Définitions**

**(2.38)** Les définitions qui suivent s'appliquent au présent paragraphe et aux paragraphes (2.35) et (2.36).

***Accord*** S'entend au sens de la définition de ce terme à l'article 2 de la *Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway*. (*Agreement*)

***élément de vol*** Élément de la station lunaire Gateway fourni par le Canada ou par un État partenaire dans le cadre de l'Accord et de tout mémorandum d'accord ou arrangement d'exécution conclu pour la mise en œuvre de l'Accord. (*flight element*)

***État partenaire*** État, autre que le Canada, qui est un partenaire de la station lunaire Gateway au sens de l'article 3.1 de l'Accord. (*Partner State*)

***membre d'équipage canadien*** Tout membre de l'équipage de la station lunaire Gateway qui est :

**a)** soit un citoyen canadien;

**b)** soit un citoyen étranger ressortissant d'un État autre qu'un État partenaire qui est habilité par le Canada à agir, au cours d'un vol spatial, en tant que

flight element. (*membre d'équipage d'un État partenaire*)

***flight element*** means a Lunar Gateway element provided by Canada or by a Partner State under the Agreement and under any memorandum of understanding or implementing arrangement entered into to carry out the Agreement. (*élément de vol*)

***Lunar Gateway*** means the civil Lunar Gateway that is a multi-use facility in orbit around the Moon, with flight elements and dedicated ground elements provided by, or on behalf of, Canada or the Partner States. (*station lunaire Gateway*)

***Partner State*** means a State, other than Canada, that is a Gateway Partner as defined in Article 3.1 of the Agreement. (*État partenaire*)

***space flight*** means a flight that spans the period beginning with the launching of a crew member of the Lunar Gateway, continuing during their stay in orbit around or on the surface of the Moon and ending with their landing on earth. (*vol spatial*)

membre d'équipage à bord d'un élément de vol ou relativement à tel élément. (*Canadian crew member*)

***membre d'équipage d'un État partenaire*** Tout membre de l'équipage de la station lunaire Gateway qui est :

**a)** soit un citoyen d'un État partenaire;

**b)** soit un citoyen ressortissant d'un État autre que le Canada ou un État partenaire et qui est habilité par celui-ci à agir, au cours d'un vol spatial, en tant que membre d'équipage à bord d'un élément de vol ou relativement à tel élément. (*crew member of a Partner State*)

***station lunaire Gateway*** La station spatiale lunaire civile Gateway, une installation polyvalente placée en orbite de la Lune et composée d'éléments de vol et d'éléments au sol spécifiques fournis par le Canada ou les États partenaires ou pour leur compte. (*Lunar Gateway*)

***vol spatial*** Vol couvrant la période commençant au moment du lancement d'un membre d'équipage de la station lunaire Gateway, se poursuivant pendant son séjour en orbite de la Lune ou sur sa surface et se terminant au moment de son retour sur terre. (*space flight*)

R.S., c. G-5

## Government Employees Compensation Act

**297 Subsection 9.1(3) of the *Government Employees Compensation Act* is replaced by the following:**

**Subrogation**

**(3)** If the employee or their dependants elect to claim compensation under this Act, the employer shall be subrogated to the rights of the employee or their dependants and may, subject to the Agreements implemented by the *Civil International Space Station Agreement Implementation Act* and the *Civil Lunar Gateway Agreement Implementation Act*, maintain an action, against the third party, in its own name or in the name of the employee or their dependants.

L.R., ch. G-5

## Loi sur l'indemnisation des agents de l'État

**297 Le paragraphe 9.1(3) de la *Loi sur l'indemnisation des agents de l'État* est remplacé par ce qui suit :**

**Subrogation**

**(3)** Dans les cas où l'agent de l'État ou les personnes à sa charge optent pour l'indemnité prévue par la présente loi, l'employeur est subrogé dans leurs droits et peut, sous réserve des accords mis en œuvre par la *Loi de mise en œuvre de l'Accord sur la Station spatiale internationale civile* et par la *Loi de mise en œuvre de l'Accord sur la station lunaire civile Gateway*, intenter une action contre le tiers, en leur nom ou en son propre nom.

## Coming into Force

**Order in council**

**298 This Division comes into force on a day to be fixed by order of the Governor in Council.**

## Entrée en vigueur

**Décret**

**298 La présente section entre en vigueur à la date fixée par décret.**

## DIVISION 19

1992, c. 20

# Corrections and Conditional Release Act

## Amendments to the Act

**299 Section 51 of the *Corrections and Conditional Release Act* is replaced by the following:**

**Detention in dry cell**

**51 (1)** If the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in their rectum, the institutional head may authorize in writing the detention of the inmate in a cell without plumbing fixtures on the expectation that the contraband will be expelled.

**Visits by registered health care professional**

**(2)** An inmate detained under subsection (1) must be visited at least once every day by a registered health care professional.

**Use of X-ray**

**(3)** If the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity, the institutional head may authorize in writing the use of an X-ray machine by a qualified X-ray technician to find the contraband, if the consent of the inmate and of a qualified medical practitioner is obtained.

**300 Subsection 65(1) of the Act is replaced by the following:**

**Power to seize**

**65 (1)** A staff member may seize contraband, or evidence relating to a disciplinary or criminal offence, found in the course of a search conducted under sections 47 to 64, except a body cavity search or a search described in subsection 51(3).

## Coordinating Amendments

**2019, c. 27**

**301 (1) In this section, *other Act* means *An Act to amend the Corrections and Conditional Release Act and another Act*, chapter 27 of the Statutes of Canada, 2019.**

## SECTION 19

1992, ch. 20

# Loi sur le système correctionnel et la mise en liberté sous condition

## Modification de la loi

**299 L'article 51 de la *Loi sur le système correctionnel et la mise en liberté sous condition* est remplacé par ce qui suit :**

**Détention en cellule nue**

**51 (1)** Le directeur peut, s'il est convaincu qu'il existe des motifs raisonnables de croire qu'un détenu a dissimulé dans son rectum ou ingéré un objet interdit, autoriser par écrit la détention en cellule dépourvue d'installation sanitaire dans l'attente de l'expulsion de l'objet.

**Visite par un professionnel de la santé agréé**

**(2)** Le détenu visé au paragraphe (1) reçoit au moins une fois par jour la visite d'un professionnel de la santé agréé.

**Radiographies**

**(3)** Le directeur peut, s'il est convaincu qu'il existe des motifs raisonnables de croire qu'un détenu a dissimulé dans une cavité corporelle ou ingéré un objet interdit, autoriser par écrit, avec le consentement de l'intéressé et d'un médecin compétent, la prise de radiographies par un technicien compétent afin de déceler l'objet.

**300 Le paragraphe 65(1) de la même loi est remplacé par ce qui suit :**

**Pouvoirs de l'agent**

**65 (1)** L'agent peut saisir tout objet interdit ou tout élément de preuve relatif à la perpétration d'une infraction criminelle ou disciplinaire trouvés au cours d'une fouille effectuée en vertu des articles 47 à 64, à l'exception de ceux trouvés lors d'un examen des cavités corporelles ou décelés par radiographie en vertu du paragraphe 51(3).

## Dispositions de coordination

**2019, ch. 27**

**301 (1) Au présent article, *autre loi* s'entend de la *Loi modifiant la Loi sur le système correctionnel et la mise en liberté sous condition et une autre loi*, chapitre 27 des Lois du Canada (2019).**

**(2) On the first day on which both section 16 of the other Act and section 299 of this Act are in force, section 51 of the *Corrections and Conditional Release Act* is replaced by the following:**

**Detention in dry cell**

**51 (1)** If the institutional head is satisfied that there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in their rectum, the institutional head may authorize in writing the detention of the inmate in a cell without plumbing fixtures, on the expectation that the contraband will be expelled.

**Visits by registered health care professional**

**(2)** The inmate must be visited at least once every day by a registered health care professional.

**(3) If section 22 of the other Act comes into force before section 300 of this Act, then that section 300 is deemed never to have come into force and is repealed.**

**(4) If section 22 of the other Act comes into force on the same day as section 300 of this Act, then that section 300 is deemed to have come into force before that section 22.**

**(2) Dès le premier jour où l'article 16 de l'autre loi et l'article 299 de la présente loi sont tous deux en vigueur, l'article 51 de la *Loi sur le système correctionnel et la mise en liberté sous condition* est remplacé par ce qui suit :**

**Détention en cellule nue**

**51 (1)** Le directeur peut, s'il est convaincu qu'il existe des motifs raisonnables de croire qu'un détenu a dissimulé dans son rectum ou ingéré un objet interdit, autoriser par écrit la détention en cellule dépourvue d'installation sanitaire dans l'attente de l'expulsion de l'objet.

**Visite par un professionnel de la santé agréé**

**(2)** Le détenu reçoit au moins une fois par jour la visite d'un professionnel de la santé agréé.

**(3) Si l'article 22 de l'autre loi entre en vigueur avant l'article 300 de la présente loi, cet article 300 est réputé ne pas être entré en vigueur et est abrogé.**

**(4) Si l'entrée en vigueur de l'article 22 de l'autre loi et celle de l'article 300 de la présente loi sont concomitantes, cet article 300 est réputé être entré en vigueur avant cet article 22.**

## DIVISION 20

R.S., c. 1 (2nd Supp.)

# Customs Act

## Amendments to the Act

**302 (1) The definition *réglementaire* in subsection 2(1) of the French version of the *Customs Act* is replaced by the following:**

***réglementaire*** Prévu par règlement ou déterminé en conformité avec les règles prévues par règlement. (*French version only*)

**(2) Paragraph (c) of the definition *prescribed* in subsection 2(1) of the English version of the Act is replaced by the following:**

**(c)** in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

and for the purposes of paragraphs (a) and (b), form is not limited to a single record or document with blank spaces to be filled out; (*Version anglaise seulement*)

## SECTION 20

L.R., ch. 1 (2e suppl.)

# Loi sur les douanes

## Modification de la loi

**302 (1) La définition de *réglementaire*, au paragraphe 2(1) de la version française de la *Loi sur les douanes*, est remplacée par ce qui suit :**

***réglementaire*** Prévu par règlement ou déterminé en conformité avec les règles prévues par règlement. (*French version only*)

**(2) L'alinéa c) de la définition de *prescribed*, au paragraphe 2(1) de la version anglaise de la même loi, est remplacé par ce qui suit :**

**(c)** in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation;

and for the purposes of paragraphs (a) and (b), form is not limited to a single record or document with blank spaces to be filled out; (*Version anglaise seulement*)

**303 Section 3.5 of the Act and the heading before it are replaced by the following:**

## Payments

### Payments

**3.5** Except in the circumstances that the Minister may specify, every person who makes a payment under this Act shall make the payment to the account of the Receiver General in the prescribed manner, within the prescribed time and at the prescribed place.

**304 Section 8.1 of the Act and the heading before it are replaced by the following:**

## Electronic Administration and Enforcement

### Electronic administration and enforcement

**8.1 (1)** This Act may be administered and enforced using electronic means. Any person on whom powers, duties or functions are conferred under this Act may exercise any of those powers or perform any of those duties or functions using the electronic means made available or specified by the Minister.

### Authorization

**(2)** Any person who has been authorized to exercise any power or perform any duty or function conferred on a person referred to in subsection (1) under this Act may do so using the electronic means that are made available or specified by the Minister.

### Provision of information

**8.2** For the purposes of sections 8.3 to 8.6, providing information includes providing a signature and serving, filing or otherwise providing a record or document.

### Conditions for electronic version

**8.3** A requirement under this Act to provide information or security — in any form or manner or by any means — is satisfied by providing the electronic version of the information or security if

**(a)** the electronic version is provided by the electronic means, including an electronic system, that are made available or specified by the Minister, if any; and

**303 L'article 3.5 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :**

## Paiements

### Paiements

**3.5** Sauf dans les cas précisés par le ministre, toute personne qui effectue un paiement au titre de la présente loi le porte au compte du receveur général dans le délai réglementaire et selon les modalités réglementaires de lieu ou autres.

**304 L'article 8.1 de la même loi et l'intertitre le précédant sont remplacés par ce qui suit :**

## Exécution et contrôle d'application par des moyens électroniques

### Exécution et contrôle d'application par des moyens électroniques

**8.1 (1)** L'exécution et le contrôle d'application de la présente loi peuvent être assurés par des moyens électroniques. De même, toute personne à qui des attributions sont conférées sous le régime de la présente loi peut, dans l'exercice de ces attributions, utiliser les moyens électroniques que le ministre met à sa disposition ou précise.

### Autorisation

**(2)** Les personnes autorisées à exercer les attributions conférées à une personne visée au paragraphe (1) sous le régime de la présente loi peuvent, lorsqu'elles les exercent, utiliser les moyens électroniques que le ministre met à leur disposition ou précise.

### Fourniture de renseignements

**8.2** Pour l'application des articles 8.3 à 8.6, la fourniture de renseignements vise également la fourniture d'une signature ou d'un document ou la signification ou la production d'un document.

### Conditions : version électronique

**8.3** Lorsque la présente loi exige que des renseignements ou une garantie soient fournis — selon des modalités ou par tout moyen — la fourniture d'une version électronique de ceux-ci satisfait à l'exigence si les conditions suivantes sont réunies :

**a)** la version électronique est fournie par le moyen électronique, notamment un système électronique, que le ministre peut mettre à disposition ou préciser, le cas échéant;

**(b)** any prescribed requirements with respect to electronic communications or electronic means have been met.

**Deemed timing of receipt**

**8.4** Any information or security provided by electronic means, including an electronic system, in accordance with section 8.1 or 8.3, is deemed to be received

**(a)** if the regulations provide for a day, on that day;

**(b)** if the regulations provide for a day and time, on that day and at that time; or

**(c)** if the regulations do not provide for a day or a day and a time, on the day and at the time that the information or security is sent.

**For greater certainty**

**8.5** For greater certainty, by virtue of section 12 of the *Customs Tariff*, sections 8.1 to 8.4 apply, with any modifications that the circumstances require, to the administration and enforcement of that Act and regulations made under it.

**Regulations**

**8.6 (1)** The Governor in Council may, on the recommendation of the Minister, make regulations in respect of electronic communications and electronic means, including electronic systems, or any other technology to be used in the administration or enforcement of this Act or the *Customs Tariff*, including regulations respecting

**(a)** the provision of information or security for any purpose under this Act or the *Customs Tariff* in electronic or other form;

**(b)** the payment of amounts under this Act or the *Customs Tariff* by electronic instructions; and

**(c)** the manner in which and the extent to which any provision of this Act, the *Customs Tariff* or their regulations applies to the electronic communications or electronic means, including electronic systems, and adapting any such provision for the purpose of applying it.

**Classes**

**(2)** Regulations made for the purpose of section 8.3 may establish classes and distinguish among those classes.

**b)** les exigences réglementaires visant les communications par voie électronique ou les moyens électroniques ont été remplies.

**Réception réputée**

**8.4** Les renseignements ou la garantie fournis par des moyens électroniques, notamment un système électronique, conformément à l'article 8.1 ou 8.3, sont réputés reçus à la date — et, le cas échéant, à l'heure — prévue par règlement ou, à défaut, à la date et à l'heure où ils ont été envoyés.

**Précision**

**8.5** Il est entendu que, en application de l'article 12 du *Tarif des douanes*, les articles 8.1 à 8.4 s'appliquent, avec les adaptations nécessaires, à l'exécution et au contrôle d'application de cette loi et de ses règlements.

**Règlements**

**8.6 (1)** Sur recommandation du ministre, le gouverneur en conseil peut prendre des règlements portant sur les communications par voie électronique et les moyens électroniques, notamment tout système électronique, ou tout autre moyen technique devant servir à l'exécution ou au contrôle d'application de la présente loi ou du *Tarif des douanes*, notamment des règlements concernant :

**a)** la fourniture de renseignements ou d'une garantie à toute fin prévue par la présente loi ou le *Tarif des douanes*, sous forme électronique ou autre;

**b)** le versement de sommes, sous le régime de la présente loi ou du *Tarif des douanes*, selon les instructions données par voie électronique;

**c)** les modalités et l'étendue de l'application des dispositions de la présente loi, du *Tarif des douanes* ou de leurs règlements aux communications par voie électronique et aux moyens électroniques, notamment aux systèmes électroniques, et l'adaptation de ces dispositions à cette fin.

**Catégories**

**(2)** Les règlements pris pour l'application de l'article 8.3 peuvent prévoir des catégories et les traiter différemment.

**305 Subsection 12(6) of the English version of the Act is replaced by the following:**

**Written report**

**(6)** If goods are required by the regulations to be reported under subsection (1) in writing, they shall be reported in the prescribed form with the prescribed information or in such form and with such information as is satisfactory to the Minister.

**306 (1) Subsection 12.1(3) of the French version of the Act is replaced by the following:**

**Code de transporteur — exigences**

**(3)** La demande de code de transporteur est présentée en la forme et avec les renseignements déterminés par le ministre.

**(2) Subsection 12.1(4) of the Act is replaced by the following:**

**Carrier code — issuance**

**(4)** The Minister shall issue a carrier code to a person who applies for it if the application meets the requirements referred to in subsection (3) and the Minister is satisfied that the requirements and conditions prescribed under paragraph (8)(e) for the carrier code to be issued have been met.

**307 Subsection 17(3) of the Act is replaced by the following:**

**Liability**

**(3)** Whenever the importer of the goods that have been released or any person authorized under paragraph 32(6)(a) or subsection 32(7) to account for goods becomes liable under this Act to pay duties on those goods, the owner of the goods at the time of release and the importer of record become jointly and severally, or solidarily, liable, with the importer or person authorized, to pay the duties.

**Definition of *importer of record***

**(4)** In this section, ***importer of record*** means the person identified as the importer when goods are accounted for under subsection 32(1), (2), (3) or (5).

**308 The portion of subsection 19(2) of the French version of the Act before paragraph (a) is replaced by the following:**

**305 Le paragraphe 12(6) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Written report**

**(6)** If goods are required by the regulations to be reported under subsection (1) in writing, they shall be reported in the prescribed form with the prescribed information or in such form and with such information as is satisfactory to the Minister.

**306 (1) Le paragraphe 12.1(3) de la version française de la même loi est remplacé par ce qui suit :**

**Code de transporteur : exigences**

**(3)** La demande de code de transporteur est présentée en la forme et avec les renseignements déterminés par le ministre.

**(2) Le paragraphe 12.1(4) de la même loi est remplacé par ce qui suit :**

**Demande : code de transporteur**

**(4)** Le ministre délivre un code de transporteur à toute personne dont la demande satisfait aux exigences visées au paragraphe (3), s'il est convaincu que les exigences et les conditions prévues par règlement pris en vertu de l'alinéa (8)e) pour la délivrance d'un tel code sont remplies.

**307 Le paragraphe 17(3) de la même loi est remplacé par ce qui suit :**

**Solidarité**

**(3)** Dès que l'importateur de marchandises dédouanées ou quiconque est autorisé à faire une déclaration en détail ou provisoire de marchandises conformément à l'alinéa 32(6)a) ou au paragraphe 32(7) devient redevable, en vertu de la présente loi, des droits afférents, la personne qui est propriétaire des marchandises au moment du dédouanement et l'importateur officiel deviennent solidaires du paiement des droits.

**Définition de *importateur officiel***

**(4)** Au présent article, ***importateur officiel*** s'entend de la personne identifiée comme l'importateur dans la déclaration en détail ou provisoire au titre des paragraphes 32(1), (2), (3) ou (5).

**308 Le passage du paragraphe 19(2) de la version française de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Destination des marchandises documentées**

**(2)** Sous réserve de l'article 20, si les marchandises déclarées conformément à l'article 12 ont été mentionnées sur un formulaire déterminé par le ministre, à un bureau de douane doté des attributions prévues à cet effet, toute personne qui y est autorisée par l'agent ou selon les modalités réglementaires peut :

**309 Subsection 19.1(2) of the Act is replaced by the following:**

**Prescribed form**

**(2)** The statistical code referred to in subsection (1) shall be furnished in the prescribed form and manner of filing with the prescribed information.

**310 (1) Paragraph 32(1)(a) of the English version of the Act is replaced by the following:**

**(a)** they have been accounted for by the importer or owner of the goods in the prescribed manner and, if they are to be accounted for in writing, in the prescribed form with the prescribed information; and

**(2) Paragraph 32(2)(a) of the Act is replaced by the following:**

**(a)** the importer or owner of the goods makes an interim accounting in the prescribed manner and in the prescribed form with the prescribed information or in the form and with the information that is satisfactory to the Minister; or

**311 Subsection 32.1(2) of the Act is replaced by the following:**

**Prescribed form**

**(2)** The statistical code referred to in subsection (1) shall be furnished in the prescribed form and manner of filing with the prescribed information.

**312 (1) Paragraph 32.2(1)(a) of the Act is replaced by the following:**

**(a)** make a correction to the declaration of origin in the prescribed manner and in the prescribed form with the prescribed information; and

**(2) Paragraph 32.2(2)(a) of the French version of the Act is replaced by the following:**

**a)** de corriger la déclaration selon les modalités réglementaires et en la forme et avec les renseignements déterminés par le ministre;

**Destination des marchandises documentées**

**(2)** Sous réserve de l'article 20, si les marchandises déclarées conformément à l'article 12 ont été mentionnées sur un formulaire déterminé par le ministre, à un bureau de douane doté des attributions prévues à cet effet, toute personne qui y est autorisée par l'agent ou selon les modalités réglementaires peut :

**309 Le paragraphe 19.1(2) de la même loi est remplacé par ce qui suit :**

**Modalités**

**(2)** Le code statistique est fourni en la forme, selon les modalités et avec les renseignements déterminés par le ministre.

**310 (1) L'alinéa 32(1)a) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(a)** they have been accounted for by the importer or owner of the goods in the prescribed manner and, if they are to be accounted for in writing, in the prescribed form with the prescribed information; and

**(2) L'alinéa 32(2)a) de la même loi est remplacé par ce qui suit :**

**a)** l'importateur ou le propriétaire des marchandises fait une déclaration provisoire selon les modalités réglementaires et en la forme et avec les renseignements déterminés par le ministre ou satisfaisants pour lui;

**311 Le paragraphe 32.1(2) de la même loi est remplacé par ce qui suit :**

**Modalités**

**(2)** Le code statistique est fourni en la forme, selon les modalités et avec les renseignements déterminés par le ministre.

**312 (1) L'alinéa 32.2(1)a) de la même loi est remplacé par ce qui suit :**

**a)** corriger la déclaration conformément aux modalités réglementaires et en la forme et avec les renseignements déterminés par le ministre;

**(2) L'alinéa 32.2(2)a) de la version française de la même loi est remplacé par ce qui suit :**

**a)** de corriger la déclaration selon les modalités réglementaires et en la forme et avec les renseignements déterminés par le ministre;

**313 Paragraph 32.3(b) of the Act is replaced by the following:**

**(b)** account for the goods in the prescribed manner and in the prescribed form with the prescribed information; and

**313 L'alinéa 32.3b) de la même loi est remplacé par ce qui suit :**

**b)** de faire une déclaration en détail des marchandises selon les modalités réglementaires et en la forme et avec les renseignements déterminés par le ministre;

**314 The portion of subsection 35.02(2) of the English version of the Act before paragraph (a) is replaced by the following:**

**Notice requiring marking or compliance**

**(2)** The Minister or any officer designated by the President for the purposes of this section may, by notice served personally or by registered or certified mail, require any person

**314 Le passage du paragraphe 35.02(2) de la version anglaise de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Notice requiring marking or compliance**

**(2)** The Minister or any officer designated by the President for the purposes of this section may, by notice served personally or by registered or certified mail, require any person

**315 (1) Subsection 35.1(1) of the English version of the Act is replaced by the following:**

**Proof of origin**

**35.1 (1)** Subject to any regulations made under subsection (4), proof of origin, in the prescribed form with the prescribed information and with the information, statements or proof required by any regulations made under subsection (4), shall be furnished in respect of all goods that are imported.

**315 (1) Le paragraphe 35.1(1) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Proof of origin**

**35.1 (1)** Subject to any regulations made under subsection (4), proof of origin, in the prescribed form with the prescribed information and with the information, statements or proof required by any regulations made under subsection (4), shall be furnished in respect of all goods that are imported.

**(2) Subsection 35.1(3.1) of the English version of the Act is replaced by the following:**

**Certificate of origin completed by importer**

**(3.1)** If an importer of goods for which preferential tariff treatment under the CPTPP or CUSMA will be claimed is the person who certifies that the goods meet the rules of origin set out in, or contemplated by, the CPTPP or CUSMA, the importer shall do so in writing, in the prescribed form with the prescribed information, and on the basis of supporting documents that the importer has or supporting documents that are provided by the exporter or producer.

**(2) Le paragraphe 35.1(3.1) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Certificate of origin completed by importer**

**(3.1)** If an importer of goods for which preferential tariff treatment under the CPTPP or CUSMA will be claimed is the person who certifies that the goods meet the rules of origin set out in, or contemplated by, the CPTPP or CUSMA, the importer shall do so in writing, in the prescribed form with the prescribed information, and on the basis of supporting documents that the importer has or supporting documents that are provided by the exporter or producer.

**(3) Paragraph 35.1(4)(b) of the Act is replaced by the following:**

**(b)** specifying, for the purpose of subsection (1), the information, statements or proof required in addition to the prescribed information; and

**(3) L'alinéa 35.1(4)b) de la même loi est remplacé par ce qui suit :**

**b)** préciser, pour l'application du paragraphe (1), les renseignements — en plus de ceux déterminés par le ministre — ainsi que les déclarations ou justificatifs requis;

**316 The portion of subsection 43.1(1) of the Act before paragraph (a) is replaced by the following:**

**316 Le passage du paragraphe 43.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Advance rulings**

**43.1 (1)** Any officer, or any officer within a class of officers, designated by the President for the purposes of this section shall, before goods are imported, on application by any member of a prescribed class that is made within the prescribed time, in the prescribed form and manner of filing with the prescribed information, give an advance ruling with respect to

**317 Subsection 58(2) of the French version of the Act is replaced by the following:**

**Détermination présumée**

**(2)** Pour l'application de la présente loi, l'origine, le classement tarifaire et la valeur en douane des marchandises importées qui n'ont pas été déterminés conformément au paragraphe (1) sont considérés comme ayant été déterminés selon les énonciations portées par l'auteur de la déclaration en détail en la forme prévue sous le régime de l'alinéa 32(1)a). Cette détermination est réputée avoir été faite au moment de la déclaration en détail faite en vertu des paragraphes 32(1), (3) ou (5).

**318 Subsection 60(3) of the Act is replaced by the following:**

**How request to be made**

**(3)** A request under this section must be made to the President in the prescribed form and manner of filing with the prescribed information.

**319 Subsection 60.1(3) of the Act is replaced by the following:**

**How application made**

**(3)** The application must be made to the President in the prescribed form and manner of filing with the prescribed information.

**320 The portion of paragraph 74(3)(b) of the Act before subparagraph (i) is replaced by the following:**

**(b)** an application for the refund, including such evidence in support of the application as may be prescribed, is made to an officer in the prescribed manner and in the prescribed form with the prescribed information within

**321 Subsection 95(4) of the Act is replaced by the following:**

**Décisions anticipées**

**43.1 (1)** L'agent chargé par le président, individuellement ou au titre de son appartenance à une catégorie d'agents, de l'application du présent article est tenu, sur demande d'un membre d'une catégorie réglementaire présentée dans le délai réglementaire et en la forme, selon les modalités et avec les renseignements déterminés par le ministre, de rendre, avant l'importation de marchandises, une décision anticipée :

**317 Le paragraphe 58(2) de la version française de la même loi est remplacé par ce qui suit :**

**Détermination présumée**

**(2)** Pour l'application de la présente loi, l'origine, le classement tarifaire et la valeur en douane des marchandises importées qui n'ont pas été déterminés conformément au paragraphe (1) sont considérés comme ayant été déterminés selon les énonciations portées par l'auteur de la déclaration en détail en la forme prévue sous le régime de l'alinéa 32(1)a). Cette détermination est réputée avoir été faite au moment de la déclaration en détail faite en vertu des paragraphes 32(1), (3) ou (5).

**318 Le paragraphe 60(3) de la même loi est remplacé par ce qui suit :**

**Présentation de la demande**

**(3)** La demande prévue au présent article est présentée au président en la forme, selon les modalités et avec les renseignements déterminés par le ministre.

**319 Le paragraphe 60.1(3) de la même loi est remplacé par ce qui suit :**

**Modalités**

**(3)** La demande de prorogation est envoyée au président en la forme, selon les modalités et avec les renseignements déterminés par le ministre.

**320 Le passage de l'alinéa 74(3)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**b)** d'autre part, soit adressée à l'agent une demande de remboursement, présentée selon les modalités et assortie des justificatifs réglementaires, et établie en la forme et avec les renseignements déterminés par le ministre dans le délai ci-après suivant la déclaration en détail des marchandises en application des paragraphes 32(1), (3) ou (5) :

**321 Le paragraphe 95(4) de la même loi est remplacé par ce qui suit :**

**Written report**

**(4)** If goods are required to be reported in writing, they shall be reported in the prescribed form with the prescribed information or in such form and with such information as is satisfactory to the Minister.

**322 Subsection 95.1(2) of the Act is replaced by the following:**

**Prescribed form**

**(2)** The statistical code referred to in subsection (1) shall be furnished in the prescribed form and manner of filing with the prescribed information.

**323 (1) Subsection 97.1(1) of the English version of the Act is replaced by the following:**

**Certificate of Origin of goods exported to free trade partner**

**97.1 (1)** Every exporter of goods to a free trade partner for which preferential tariff treatment under a free trade agreement will be claimed in accordance with the laws of that free trade partner shall certify in writing, in the prescribed manner and in the prescribed form with the prescribed information, that goods exported or to be exported from Canada to that free trade partner meet the rules of origin set out in, or contemplated by, the applicable free trade agreement and, if the exporter is not the producer of the goods, the certificate shall be completed and signed by the exporter on the basis of the prescribed criteria.

**(2) The portion of subsection 97.1(1.1) of the English version of the Act before paragraph (a) is replaced by the following:**

**Certificate of Origin — CPTPP or CUSMA**

**(1.1)** If an exporter or producer of goods that are exported to a CPTPP country or CUSMA country and for which preferential tariff treatment under the CPTPP or CUSMA will be claimed in accordance with the laws of that country is the person who certifies that the goods meet the rules of origin set out in, or contemplated by, the CPTPP or CUSMA, the exporter or producer shall do so in writing, in the prescribed form with the prescribed information, and

**324 Paragraph 97.211(1)(a) of the Act is replaced by the following:**

**(a)** the powers provided for in paragraphs (a) and (b) of the definition *prescribed* in subsection 2(1) as well as those provided for in subsections 3.3(1) and (2),

**Déclaration écrite**

**(4)** Les déclarations de marchandises à faire par écrit sont à établir en la forme et avec les renseignements déterminés par le ministre ou satisfaisants pour lui.

**322 Le paragraphe 95.1(2) de la même loi est remplacé par ce qui suit :**

**Modalités**

**(2)** Le code statistique est fourni en la forme, selon les modalités et avec les renseignements déterminés par le ministre.

**323 (1) Le paragraphe 97.1(1) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Certificate of Origin of goods exported to a free trade partner**

**97.1 (1)** Every exporter of goods to a free trade partner for which preferential tariff treatment under a free trade agreement will be claimed in accordance with the laws of that free trade partner shall certify in writing, in the prescribed manner and in the prescribed form with the prescribed information, that goods exported or to be exported from Canada to that free trade partner meet the rules of origin set out in, or contemplated by, the applicable free trade agreement and, if the exporter is not the producer of the goods, the certificate shall be completed and signed by the exporter on the basis of the prescribed criteria.

**(2) Le passage du paragraphe 97.1(1.1) de la version anglaise de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Certificate of Origin — CPTPP or CUSMA**

**(1.1)** If an exporter or producer of goods that are exported to a CPTPP country or CUSMA country and for which preferential tariff treatment under the CPTPP or CUSMA will be claimed in accordance with the laws of that country is the person who certifies that the goods meet the rules of origin set out in, or contemplated by, the CPTPP or CUSMA, the exporter or producer shall do so in writing, in the prescribed form with the prescribed information, and

**324 L'alinéa 97.211(1)a) de la même loi est remplacé par ce qui suit :**

**a)** les pouvoirs de déterminer des formes, des modalités et des renseignements pour l'application de la présente loi ainsi que les pouvoirs prévus aux

sections 8.1 and 8.3 and subsections 43(1) and 115(1); and

**325 Paragraph 97.34(4)(a) of the Act is replaced by the following:**

**(a)** the decision of the Canadian International Trade Tribunal or Federal Court in that action has been received by the Minister of Public Safety and Emergency Preparedness;

**326 Subsection 97.47(3) of the French version of the Act is replaced by the following:**

**Garantie pour opposition ou appel**

**(3)** Dans le cas où une personne fait opposition à une cotisation ou en interjette appel en vertu de la présente partie, le ministre accepte la garantie, dont il juge satisfaisants le montant et la forme, qui lui est donnée par cette personne ou en son nom pour le paiement d'une somme en litige.

**327 (1) Subsection 97.48(1) of the English version of the Act is replaced by the following:**

**Objection to assessment**

**97.48 (1)** Any person who has been assessed under section 97.44 and who objects to the assessment may, within 90 days after the day the notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner of filing setting out the reasons for the objection and all relevant facts.

**(2) Subsection 97.48(7) of the French version of the Act is replaced by the following:**

**Acceptation de l'opposition**

**(7)** Le ministre peut accepter l'avis d'opposition qui n'a pas été produit selon les modalités qu'il a déterminées.

**(3) Subsection 97.48(10) of the Act is replaced by the following:**

**Notice of decision**

**(10)** After reconsidering or confirming an assessment, the Minister must send to the person objecting a written notice of the Minister's decision by registered or certified mail.

**328 Section 150 of the Act is replaced by the following:**

paragraphes 3.3(1) et (2), aux articles 8.1 et 8.3 et aux paragraphes 43(1) et 115(1);

**325 L'alinéa 97.34(4)a) de la même loi est remplacé par ce qui suit :**

**a)** il a reçu la décision du Tribunal canadien du commerce extérieur ou de la Cour fédérale dans l'action;

**326 Le paragraphe 97.47(3) de la version française de la même loi est remplacé par ce qui suit :**

**Garantie pour opposition ou appel**

**(3)** Dans le cas où une personne fait opposition à une cotisation ou en interjette appel en vertu de la présente partie, le ministre accepte la garantie, dont il juge satisfaisants le montant et la forme, qui lui est donnée par cette personne ou en son nom pour le paiement d'une somme en litige.

**327 (1) Le paragraphe 97.48(1) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Objection to assessment**

**97.48 (1)** Any person who has been assessed under section 97.44 and who objects to the assessment may, within 90 days after the day the notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner of filing setting out the reasons for the objection and all relevant facts.

**(2) Le paragraphe 97.48(7) de la version française de la même loi est remplacé par ce qui suit :**

**Acceptation de l'opposition**

**(7)** Le ministre peut accepter l'avis d'opposition qui n'a pas été produit selon les modalités qu'il a déterminées.

**(3) Le paragraphe 97.48(10) de la même loi est remplacé par ce qui suit :**

**Avis de décision**

**(10)** Après avoir examiné de nouveau ou confirmé la cotisation, le ministre fait part de sa décision en envoyant un avis écrit par courrier recommandé ou certifié à la personne qui a fait opposition.

**328 L'article 150 de la même loi est remplacé par ce qui suit :**

**Copies of documents**

**150** Copies of documents, including electronic documents, made under this or any other Act of Parliament prohibiting, controlling or regulating the importation or exportation of goods, that are duly certified by an officer are admissible in evidence in any proceeding taken under this Act in the same manner as if they were the originals of such documents.

**329 Section 164 of the Act is amended by adding the following after subsection (2):**

**Regulations under paragraph (1)(i) — section 3.5**

**(3)** The regulations made under paragraph (1)(i) for the purposes of section 3.5 may distinguish among sums according to their amount and the class of goods to which those sums relate.

**330 (1) Paragraphs 166(1)(a) and (b) of the Act are replaced by the following:**

**(a)** prescribing the amount or authorizing the Minister to determine the amount of any deposit, bond or other security required to be given under this Act or the regulations; and

**(b)** prescribing the nature and the terms and conditions of any such deposit, bond or other security.

**(2) Subsection 166(2) of the Act is replaced by the following:**

**Forms**

**(2)** Any deposit, bond or other security required under this Act shall be in a form satisfactory to the Minister.

## Coming into Force

**Order in council**

**331 Sections 302 to 330 come into force on a day or days to be fixed by order of the Governor in Council.**

**DIVISION 21**

R.S., c. C-46

## Criminal Code

**332 (1) Section 319 of the *Criminal Code* is amended by adding the following after subsection (2):**

**Copies**

**150** Dans toute procédure engagée sous le régime de la présente loi, ont la même force probante que les originaux les copies des documents, notamment des documents électroniques, établis sous le régime de la présente loi ou de toute autre loi fédérale prohibant, contrôlant ou réglementant l'importation ou l'exportation des marchandises, lorsqu'elles sont régulièrement certifiées conformes par l'agent.

**329 L'article 164 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Règlements pris en vertu de l'alinéa (1)i) — article 3.5**

**(3)** Les règlements pris en vertu de l'alinéa (1)i) pour l'application de l'article 3.5 peuvent traiter différemment les paiements selon leur montant et selon la catégorie de marchandises à laquelle ils se rapportent.

**330 (1) Les alinéas 166(1)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** fixer, ou autoriser le ministre à déterminer, le montant des consignations, cautions ou autres garanties prévues par la présente loi ou ses règlements;

**b)** préciser la nature et les conditions de ces consignations, cautions ou autres garanties.

**(2) Le paragraphe 166(2) de la même loi est remplacé par ce qui suit :**

**Forme**

**(2)** Les consignations, cautions ou autres garanties exigées en vertu de la présente loi sont à constituer en la forme jugée satisfaisante par le ministre.

## Entrée en vigueur

**Décret**

**331 Les articles 302 à 330 entrent en vigueur à la date ou aux dates fixées par décret.**

**SECTION 21**

L.R., ch. C-46

## Code criminel

**332 (1) L'article 319 du *Code criminel* est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Wilful promotion of antisemitism**

**(2.1)** Everyone who, by communicating statements, other than in private conversation, wilfully promotes antisemitism by condoning, denying or downplaying the Holocaust

**(a)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

**(b)** is guilty of an offence punishable on summary conviction.

**(2) Subsections 319(4) to (6) of the Act are replaced by the following:**

**Defences — subsection (2.1)**

**(3.1)** No person shall be convicted of an offence under subsection (2.1)

**(a)** if they establish that the statements communicated were true;

**(b)** if, in good faith, they expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;

**(c)** if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds they believed them to be true; or

**(d)** if, in good faith, they intended to point out, for the purpose of removal, matters producing or tending to produce feelings of antisemitism toward Jews.

**Forfeiture**

**(4)** If a person is convicted of an offence under subsection (1), (2) or (2.1) or section 318, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the presiding provincial court judge or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

**Exemption from seizure of communication facilities**

**(5)** Subsections 199(6) and (7) apply, with any modifications that the circumstances require, to subsection (1), (2) or (2.1) or section 318.

**Fomenter volontairement l'antisémitisme**

**(2.1)** Quiconque, par la communication de déclarations autrement que dans une conversation privée, fomente volontairement l'antisémitisme en cautionnant, en niant ou en minimisant l'Holocauste est coupable :

**a)** soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans;

**b)** soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

**(2) Les paragraphes 319(4) à (6) de la même loi sont remplacés par ce qui suit :**

**Défenses — paragraphe (2.1)**

**(3.1)** Nul ne peut être déclaré coupable d'une infraction prévue au paragraphe (2.1) dans les cas suivants :

**a)** il établit que les déclarations communiquées étaient vraies;

**b)** il a, de bonne foi, exprimé une opinion sur un sujet religieux ou une opinion fondée sur un texte religieux auquel il croit, ou a tenté d'en établir le bien-fondé par argument;

**c)** les déclarations se rapportaient à une question d'intérêt public dont l'examen était fait dans l'intérêt du public et, pour des motifs raisonnables, il les croyait vraies;

**d)** de bonne foi, il voulait attirer l'attention, afin qu'il y soit remédié, sur des questions provoquant ou de nature à provoquer des sentiments antisémites à l'égard des Juifs.

**Confiscation**

**(4)** Lorsqu'une personne est déclarée coupable d'une infraction prévue aux paragraphes (1), (2) ou (2.1) ou à l'article 318, le juge de la cour provinciale ou le juge qui préside peut ordonner que toutes choses au moyen desquelles ou en liaison avec lesquelles l'infraction a été commise soient, outre toute autre peine imposée, confisquées au profit de Sa Majesté du chef de la province où elle est déclarée coupable, pour qu'il en soit disposé conformément aux instructions du procureur général.

**Installations de communication exemptes de saisie**

**(5)** Les paragraphes 199(6) et (7) s'appliquent, compte tenu des adaptations de circonstance, aux paragraphes (1), (2) et (2.1) et à l'article 318.

**Consent**

**(6)** No proceeding for an offence under subsection (2) or (2.1) shall be instituted without the consent of the Attorney General.

**(3) Subsection 319(7) of the Act is amended by adding the following in alphabetical order:**

***Holocaust*** means the planned and deliberate state-sponsored persecution and annihilation of European Jewry by the Nazis and their collaborators from 1933 to 1945; (*Holocauste*)

**DIVISION 22**

## Judges and Prothonotaries

R.S., c. J-1

### Judges Act

**333 (1) The definitions *age of retirement* and *survivor* in section 2 of the *Judges Act* are replaced by the following:**

***age of retirement*** of a judge or of a prothonotary means the age, fixed by law, at which the judge or prothonotary ceases to hold office; (*mise à la retraite d'office*)

***survivor***, in relation to a judge or to a prothonotary, means a person who was married to the judge or prothonotary at the time of the judge's or prothonotary's death or who establishes that he or she was cohabiting with the judge or prothonotary in a conjugal relationship at the time of the judge's or prothonotary's death and had so cohabited for a period of at least one year. (*survivant*)

**(2) Section 2 of the Act is amended by adding the following in alphabetical order:**

***prothonotary*** means a prothonotary of the Federal Court or a prothonotary of the Tax Court of Canada and includes a supernumerary prothonotary; (*protonotaire*)

**(3) The definition *prothonotary* in section 2 of the Act is repealed.**

**(4) Section 2 of the Act is amended by adding the following in alphabetical order:**

***associate judge*** means an associate judge of the Federal Court or an associate judge of the Tax Court of Canada

**Consentement**

**(6)** Il ne peut être engagé de poursuites pour une infraction prévue aux paragraphes (2) ou (2.1) sans le consentement du procureur général.

**(3) Le paragraphe 319(7) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***Holocauste*** La persécution et l'anéantissement délibérés et planifiés, parrainés par l'État, des Juifs européens par les nazis et leurs collaborateurs entre les années 1933 et 1945. (*Holocaust*)

**SECTION 22**

## Juges et protonotaires

L.R., ch. J-1

### Loi sur les juges

**333 (1) Les définitions de *mise à la retraite d'office* et *survivant*, à l'article 2 de la *Loi sur les juges*, sont remplacées par ce qui suit :**

***mise à la retraite d'office*** Mesure intervenant lorsque le juge ou le protonotaire a atteint la limite d'âge légale. (*age of retirement*)

***survivant*** La personne qui était unie par les liens du mariage à un juge ou à un protonotaire à son décès ou qui établit qu'elle vivait dans une relation conjugale depuis au moins un an avec un juge ou un protonotaire à son décès. (*survivor*)

**(2) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***protonotaire*** Protonotaire de la Cour fédérale ou protonotaire de la Cour canadienne de l'impôt. La présente définition vise également le protonotaire surnuméraire. (*prothonotary*)

**(3) La définition de *protonotaire*, à l'article 2 de la même loi, est abrogée.**

**(4) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***juge adjoint*** Juge adjoint de la Cour fédérale ou juge adjoint de la Cour canadienne de l'impôt. La présente

and includes a supernumerary associate judge; (*juge adjoint*)

**334 Section 2.1 of the Act is replaced by the following:**

**Application to prothonotaries**

**2.1 (1)** Subject to subsection (2), sections 26 to 26.3, 34 and 39, paragraphs 40(1)(a) and (b), subsection 40(2), sections 41, 41.2 to 42, 43.1 to 56 and 57, paragraph 60(2)(b), subsections 63(1) and (2) and sections 64 to 66 also apply to a prothonotary.

**Prothonotary who made election**

**(2)** Sections 41.2, 41.3, 42 and 43.1 to 52.22 do not apply to a prothonotary who made an election under the *Economic Action Plan 2014 Act, No. 2* to continue to be deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

**335 The heading of Part I of the Act is replaced by the following:**

# Judges and Prothonotaries

**336 Paragraphs 9(a) and (b) of the Act are replaced by the following:**

**(a)** the Chief Justice of Canada, $435,600; and

**(b)** the eight puisne judges, $403,300 each.

**337 Paragraphs 10(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of the Federal Court of Appeal, $371,400;

**(b)** the other judges of the Federal Court of Appeal, $338,800 each;

**(c)** the Chief Justice and the Associate Chief Justice of the Federal Court, $371,400 each; and

**(d)** the other judges of the Federal Court, $338,800 each.

**338 Section 10.2 of the Act is replaced by the following:**

**Court Martial Appeal Court**

**10.2** The yearly salary of the Chief Justice of the Court Martial Appeal Court of Canada shall be $371,400.

définition vise également le juge adjoint surnuméraire. (*associate judge*)

**334 L'article 2.1 de la même loi est remplacé par ce qui suit :**

**Application aux protonotaires**

**2.1 (1)** Sous réserve du paragraphe (2), les articles 26 à 26.3, 34 et 39, les alinéas 40(1)a) et b), le paragraphe 40(2), les articles 41, 41.2 à 42, 43.1 à 56 et 57, l'alinéa 60(2)b), les paragraphes 63(1) et (2) et les articles 64 à 66 s'appliquent également aux protonotaires.

**Protonotaires ayant fait un choix**

**(2)** Les articles 41.2, 41.3, 42 et 43.1 à 52.22 ne s'appliquent pas aux protonotaires qui ont fait le choix en vertu de la *Loi nº 2 sur le plan d'action économique de 2014* de continuer d'être réputé appartenir à la fonction publique pour l'application de la *Loi sur la pension de la fonction publique*.

**335 Le titre de la partie I de la même loi est remplacé par ce qui suit :**

# Juges et protonotaires

**336 Les alinéas 9a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef du Canada : 435 600 $;

**b)** s'agissant de chacun des huit autres juges : 403 300 $.

**337 Les alinéas 10a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de la Cour d'appel fédérale : 371 400 $;

**b)** s'agissant de chacun des autres juges de la Cour d'appel fédérale : 338 800 $;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Cour fédérale : 371 400 $;

**d)** s'agissant de chacun des autres juges de la Cour fédérale : 338 800 $.

**338 L'article 10.2 de la même loi est remplacé par ce qui suit :**

**Cour d'appel de la cour martiale**

**10.2** Le juge en chef de la Cour d'appel de la cour martiale du Canada reçoit un traitement annuel de 371 400 $.

**339 Paragraphs 11(a) to (c) of the Act are replaced by the following:**

**(a)** the Chief Justice, $371,400;

**(b)** the Associate Chief Justice, $371,400; and

**(c)** the other judges, $338,800 each.

**340 The Act is amended by adding the following after section 11:**

**Tax Court of Canada prothonotaries**

**11.1** The yearly salaries of the prothonotaries of the Tax Court of Canada shall be 80% of the yearly salaries, calculated in accordance with section 25, of the judges referred to in paragraph 11(c).

**341 Paragraphs 12(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice and the Associate Chief Justice of Ontario, $371,400 each;

**(b)** the 14 Justices of Appeal, $338,800 each;

**(c)** the Chief Justice and the Associate Chief Justice of the Superior Court of Justice, $371,400 each; and

**(d)** the 212 other judges of the Superior Court of Justice, $338,800 each.

**342 Paragraphs 13(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Quebec, $371,400;

**(b)** the 19 puisne judges of the Court of Appeal, $338,800 each;

**(c)** the Chief Justice, the Senior Associate Chief Justice and the Associate Chief Justice of the Superior Court, $371,400 each; and

**(d)** the 144 puisne judges of the Superior Court, $338,800 each.

**343 Paragraphs 14(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Nova Scotia, $371,400;

**(b)** the seven other judges of the Court of Appeal, $338,800 each;

**339 Les alinéas 11a) à c) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef : 371 400 $;

**b)** s'agissant du juge en chef adjoint : 371 400 $;

**c)** s'agissant de chacun des autres juges : 338 800 $.

**340 La même loi est modifiée par adjonction, après l'article 11, de ce qui suit :**

**Protonotaires de la Cour canadienne de l'impôt**

**11.1** Les protonotaires de la Cour canadienne de l'impôt reçoivent un traitement annuel égal à quatre-vingts pour cent du traitement annuel, calculé en conformité avec l'article 25, d'un juge visé à l'alinéa 11c).

**341 Les alinéas 12a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef et du juge en chef adjoint de l'Ontario : 371 400 $;

**b)** s'agissant de chacun des quatorze autres juges d'appel : 338 800 $;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Cour supérieure de justice : 371 400 $;

**d)** s'agissant de chacun des deux cent douze autres juges de la Cour supérieure de justice : 338 800 $.

**342 Les alinéas 13a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef du Québec : 371 400 $;

**b)** s'agissant de chacun des dix-neuf autres juges de la Cour d'appel : 338 800 $;

**c)** s'agissant du juge en chef, du juge en chef associé et du juge en chef adjoint de la Cour supérieure : 371 400 $;

**d)** s'agissant de chacun des cent quarante-quatre autres juges de la Cour supérieure : 338 800 $.

**343 Les alinéas 14a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de la Nouvelle-Écosse : 371 400 $;

**b)** s'agissant de chacun des sept autres juges de la Cour d'appel : 338 800 $;

**(c)** the Chief Justice and the Associate Chief Justice of the Supreme Court, $371,400 each; and

**(d)** the 23 other judges of the Supreme Court, $338,800 each.

**344 Paragraphs 15(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of New Brunswick, $371,400;

**(b)** the five other judges of the Court of Appeal, $338,800 each;

**(c)** the Chief Justice and the Associate Chief Justice of the Court of Queen's Bench, $371,400 each; and

**(d)** the 20 other judges of the Court of Queen's Bench, $338,800 each.

**345 Paragraphs 16(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Manitoba, $371,400;

**(b)** the six Judges of Appeal, $338,800 each;

**(c)** the Chief Justice, the Senior Associate Chief Justice and the Associate Chief Justice of the Court of Queen's Bench, $371,400 each; and

**(d)** the 31 puisne judges of the Court of Queen's Bench, $338,800 each.

**346 Paragraphs 17(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of British Columbia, $371,400;

**(b)** the 12 Justices of Appeal, $338,800 each;

**(c)** the Chief Justice and the Associate Chief Justice of the Supreme Court, $371,400 each; and

**(d)** the 86 other judges of the Supreme Court, $338,800 each.

**347 Paragraphs 18(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Prince Edward Island, $371,400;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Cour suprême : 371 400 $;

**d)** s'agissant de chacun des vingt-trois autres juges de la Cour suprême : 338 800 $.

**344 Les alinéas 15a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef du Nouveau-Brunswick : 371 400 $;

**b)** s'agissant de chacun des cinq autres juges de la Cour d'appel : 338 800 $;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Cour du Banc de la Reine : 371 400 $;

**d)** s'agissant de chacun des vingt autres juges de la Cour du Banc de la Reine : 338 800 $.

**345 Les alinéas 16a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef du Manitoba : 371 400 $;

**b)** s'agissant de chacun des six autres juges d'appel : 338 800 $;

**c)** s'agissant du juge en chef, du juge en chef associé et du juge en chef adjoint de la Cour du Banc de la Reine : 371 400 $;

**d)** s'agissant de chacun des trente et un autres juges de la Cour du Banc de la Reine : 338 800 $.

**346 Les alinéas 17a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de la Colombie-Britannique : 371 400 $;

**b)** s'agissant de chacun des douze autres juges d'appel : 338 800 $;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Cour suprême : 371 400 $;

**d)** s'agissant de chacun des quatre-vingt-six autres juges de la Cour suprême : 338 800 $.

**347 Les alinéas 18a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de l'Île-du-Prince-Édouard : 371 400 $;

**(b)** the two other judges of the Court of Appeal, $338,800 each;

**(c)** the Chief Justice of the Supreme Court, $371,400; and

**(d)** the three other judges of the Supreme Court, $338,800 each.

**348 Paragraphs 19(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Saskatchewan, $371,400;

**(b)** the seven Judges of Appeal, $338,800 each;

**(c)** the Chief Justice and the Associate Chief Justice of the Court of Queen's Bench, $371,400 each; and

**(d)** the 33 other judges of the Court of Queen's Bench, $338,800 each.

**349 Paragraphs 20(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Alberta, $371,400;

**(b)** the 10 Justices of Appeal, $338,800 each;

**(c)** the Chief Justice and the two Associate Chief Justices of the Court of Queen's Bench, $371,400 each; and

**(d)** the 70 other Justices of the Court of Queen's Bench, $338,800 each.

**350 Paragraphs 21(a) to (d) of the Act are replaced by the following:**

**(a)** the Chief Justice of Newfoundland and Labrador, $371,400;

**(b)** the five Judges of Appeal, $338,800 each;

**(c)** the Chief Justice and the Associate Chief Justice of the Trial Division, $371,400 each; and

**(d)** the 18 other judges of the Trial Division, $338,800 each.

**351 (1) Paragraphs 22(1)(a) and (b) of the Act are replaced by the following:**

**(a)** the Chief Justice, $371,400; and

**b)** s'agissant de chacun des deux autres juges de la Cour d'appel : 338 800 $;

**c)** s'agissant du juge en chef de la Cour suprême : 371 400 $;

**d)** s'agissant de chacun des trois autres juges de la Cour suprême : 338 800 $.

**348 Les alinéas 19a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de la Saskatchewan : 371 400 $;

**b)** s'agissant de chacun des sept autres juges d'appel : 338 800 $;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Cour du Banc de la Reine : 371 400 $;

**d)** s'agissant de chacun des trente-trois autres juges de la Cour du Banc de la Reine : 338 800 $.

**349 Les alinéas 20a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de l'Alberta : 371 400 $;

**b)** s'agissant de chacun des dix autres juges d'appel : 338 800 $;

**c)** s'agissant du juge en chef et de chacun des deux juges en chef adjoints de la Cour du Banc de la Reine : 371 400 $;

**d)** s'agissant de chacun des soixante-dix autres juges de la Cour du Banc de la Reine : 338 800 $.

**350 Les alinéas 21a) à d) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef de Terre-Neuve-et-Labrador : 371 400 $;

**b)** s'agissant de chacun des cinq autres juges d'appel : 338 800 $;

**c)** s'agissant du juge en chef et du juge en chef adjoint de la Section de première instance : 371 400 $;

**d)** s'agissant de chacun des dix-huit autres juges de la Section de première instance : 338 800 $.

**351 (1) Les alinéas 22(1)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef : 371 400 $;

**(b)** the two other judges, $338,800 each.

**(2) Paragraphs 22(2)(a) and (b) of the Act are replaced by the following:**

**(a)** the Chief Justice, $371,400; and

**(b)** the two other judges, $338,800 each.

**(3) Paragraphs 22(2.1)(a) and (b) of the Act are replaced by the following:**

**(a)** the Chief Justice, $371,400; and

**(b)** the five other judges, $338,800 each.

**352 (1) Subsection 25(1) of the Act is replaced by the following:**

**Annual adjustment of salary**

**25 (1)** The yearly salaries referred to in sections 9 to 22 apply in respect of the twelve-month period beginning on April 1, 2020.

**(2) The portion of subsection 25(2) of the Act before paragraph (a) is replaced by the following:**

**Annual adjustment of salary**

**(2)** The salary annexed to an office of judge referred to in sections 9, 10, 10.2, 11 and 12 to 22 for the twelve-month period beginning on April 1, 2021, and for each subsequent twelve-month period, shall be the amount obtained by multiplying

**353 Section 26.11 of the Act is replaced by the following:**

**Definition of *judiciary***

**26.11** In sections 26 and 26.1, ***judiciary*** includes prothonotaries.

**354 Subsections 26.4(1) and (2) of the Act are replaced by the following:**

**Costs payable to representative of prothonotaries**

**26.4 (1)** The Commission may identify one representative of the prothonotaries of the Federal Court and one representative of the prothonotaries of the Tax Court of Canada participating in an inquiry of the Commission to whom costs shall be paid in accordance with this section.

**b)** s'agissant de chacun des deux autres juges : 338 800 $.

**(2) Les alinéas 22(2)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef : 371 400 $;

**b)** s'agissant de chacun des deux autres juges : 338 800 $.

**(3) Les alinéas 22(2.1)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** s'agissant du juge en chef : 371 400 $;

**b)** s'agissant de chacun des cinq autres juges : 338 800 $.

**352 (1) Le paragraphe 25(1) de la même loi est remplacé par ce qui suit :**

**Rajustement annuel**

**25 (1)** Les traitements annuels mentionnés aux articles 9 à 22 s'appliquent pour la période de douze mois commençant le 1er avril 2020.

**(2) Le passage du paragraphe 25(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Rajustement annuel**

**(2)** Le traitement des juges visés aux articles 9, 10, 10.2, 11 et 12 à 22, pour chaque période de douze mois commençant le 1er avril 2021, est égal au produit des facteurs suivants :

**353 L'article 26.11 de la même loi est remplacé par ce qui suit :**

**Définition de *magistrature***

**26.11** Aux articles 26 et 26.1, sont assimilés à la ***magistrature*** les protonotaires.

**354 Les paragraphes 26.4(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Détermination par la Commission : représentant des protonotaires**

**26.4 (1)** La Commission identifie le représentant des protonotaires de la Cour fédérale et le représentant des protonotaires de la Cour canadienne de l'impôt qui participent à une enquête devant elle et auxquels des dépens peuvent être versés en vertu du présent article.

**Entitlement to payment of costs**

**(2)** The representatives identified under subsection (1) are entitled to be paid, out of the Consolidated Revenue Fund, 95% of the costs determined under subsection (3) in respect of their participation.

**355 The heading before section 27 of the English version of the Act is replaced by the following:**

## Special and Representational Allowances

**356 (1) Subsections 27(1) and (1.1) of the Act are replaced by the following:**

**Allowance for incidental expenditures actually incurred**

**27 (1)** On and after April 1, 2020, every judge in receipt of a salary under this Act is entitled to be paid, up to a maximum of $7,500 for each year, for reasonable incidental expenditures that the fit and proper execution of the office of judge may require, to the extent that the judge has actually incurred the expenditures and is not entitled to be reimbursed for them under any other provision of this Act.

**Allowance for incidental expenditures by prothonotaries**

**(1.1)** On and after April 1, 2020, every prothonotary is entitled to be paid, up to a maximum of $7,500 for each year, for reasonable incidental expenditures that the fit and proper execution of the office of prothonotary may require, to the extent that the prothonotary has actually incurred the expenditures and is not entitled to be reimbursed for them under any other provision of this Act.

**(2) Section 27 of the Act is amended by adding the following after subsection (2):**

**Allowance — medical or dental treatment**

**(2.1)** If a judge referred to in subsection (2) is required to travel for the purpose of receiving a non-elective medical or dental treatment that is required without delay and unavailable at or in the immediate vicinity of the place where the judge resides, the judge is entitled to be paid an allowance for reasonable expenses actually incurred while travelling for that purpose, to the extent that the judge may not be reimbursed for them under any other provision of this Act.

**(3) Subsection 27(6) of the Act is replaced by the following:**

**Droit au paiement des dépens**

**(2)** Les représentants identifiés au titre du paragraphe (1) qui participent à une enquête de la Commission ont droit au paiement sur le Trésor de quatre-vingt-quinze pour cent des dépens liés à leur participation, déterminés en conformité avec le paragraphe (3).

**355 L'intertitre précédant l'article 27 de la version anglaise de la même loi est remplacé par ce qui suit :**

## Special and Representational Allowances

**356 (1) Les paragraphes 27(1) et (1.1) de la même loi sont remplacés par ce qui suit :**

**Indemnisation des faux frais**

**27 (1)** À compter du 1er avril 2020, les juges rémunérés aux termes de la présente loi ont droit à une indemnité annuelle maximale de 7 500 $ pour les faux frais non remboursables en vertu d'une autre disposition de la présente loi, qu'ils exposent dans l'accomplissement de leurs fonctions.

**Indemnisation des faux frais : protonotaires**

**(1.1)** À compter du 1er avril 2020, les protonotaires ont droit à une indemnité annuelle maximale de 7 500 $ pour les faux frais non remboursables en vertu d'une autre disposition de la présente loi, qu'ils exposent dans l'accomplissement de leurs fonctions.

**(2) L'article 27 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Indemnité — traitement médical ou dentaire**

**(2.1)** Les juges visés au paragraphe (2) ont droit à une indemnité pour les frais raisonnables non remboursables au titre d'une autre disposition de la présente loi qu'ils exposent dans le cadre d'un déplacement pour recevoir un traitement médical ou dentaire non facultatif qui est requis d'urgence et qui n'est pas offert dans leur lieu de résidence ou à proximité de celui-ci.

**(3) Le paragraphe 27(6) de la même loi est remplacé par ce qui suit :**

**Representational allowance**

**(6)** On and after April 1, 2020, each of the following judges is entitled to be paid, as a representational allowance, reasonable travel and other expenses actually incurred by the judge or the spouse or common-law partner of the judge in discharging the special extra-judicial obligations and responsibilities that devolve on the judge, to the extent that those expenses may not be reimbursed under any other provision of this Act and their aggregate amount does not exceed in any year the maximum amount indicated below in respect of the judge:

**(a)** the Chief Justice of Canada, $25,000;

**(b)** each puisne judge of the Supreme Court of Canada, $15,000;

**(c)** the Chief Justice of the Federal Court of Appeal and each chief justice described in sections 12 to 21 as the chief justice of a province, $17,500;

**(d)** each other chief justice referred to in sections 10 to 21, $15,000;

**(e)** the Chief Justices of the Court of Appeal of Yukon, the Court of Appeal of the Northwest Territories, the Court of Appeal of Nunavut, the Supreme Court of Yukon, the Supreme Court of the Northwest Territories and the Nunavut Court of Justice, $15,000 each;

**(f)** the Chief Justice of the Court Martial Appeal Court of Canada, $15,000; and

**(g)** the Senior Judge of the Family Court, and each regional senior judge, of the Superior Court of Justice in and for the Province of Ontario, $7,500.

**Frais de représentation**

**(6)** À compter du 1er avril 2020, les juges ci-après ont droit, à titre de frais de représentation et pour les dépenses de déplacement ou autres entraînées, pour eux ou leur époux ou conjoint de fait, par l'accomplissement de leurs fonctions extrajudiciaires et qui ne sont pas remboursables aux termes d'une autre disposition de la présente loi, aux indemnités maximales annuelles suivantes :

**a)** le juge en chef du Canada : 25 000 $;

**b)** les autres juges de la Cour suprême du Canada : 15 000 $;

**c)** le juge en chef de la Cour d'appel fédérale et les juges en chef des provinces, mentionnés aux articles 12 à 21 : 17 500 $;

**d)** les autres juges en chef mentionnés aux articles 10 à 21 : 15 000 $;

**e)** les juges en chef des cours d'appel du Yukon, des Territoires du Nord-Ouest et du Nunavut et le juge en chef de la Cour suprême du Yukon, celui de la Cour suprême des Territoires du Nord-Ouest et celui de la Cour de justice du Nunavut : 15 000 $;

**f)** le juge en chef de la Cour d'appel de la cour martiale du Canada : 15 000 $;

**g)** les juges principaux régionaux de la Cour supérieure de justice de l'Ontario, ainsi que le juge principal de la Cour de la famille de la Cour supérieure de justice de l'Ontario : 7 500 $.

**357 The heading before section 28 of the Act is replaced by the following:**

## Supernumerary Judges and Prothonotaries

**357 L'intertitre précédant l'article 28 de la même loi est remplacé par ce qui suit :**

## Juges et protonotaires surnuméraires

**358 The Act is amended by adding the following after section 29:**

**Supernumerary prothonotaries**

**30 (1)** If a prothonotary notifies the Minister of Justice of Canada of his or her election to give up regular judicial duties and hold office only as a supernumerary prothonotary, the prothonotary shall hold the office of supernumerary prothonotary from the time notice is given until he or she reaches the age of retirement, resigns or is removed from or otherwise ceases to hold office, or until the end of five years from the date of the election,

**358 La même loi est modifiée par adjonction, après l'article 29, de ce qui suit :**

**Protonotaires surnuméraires**

**30 (1)** Les protonotaires peuvent, en avisant le ministre de la Justice du Canada de leur décision, abandonner leurs fonctions judiciaires normales pour n'exercer leur charge qu'à titre de protonotaire surnuméraire; le cas échéant, ils occupent ce poste, à compter de la date de l'avis, et touchent le traitement correspondant jusqu'à la cessation de leurs fonctions, notamment par mise à la

whichever occurs earlier, and shall be paid the salary annexed to that office.

**Restriction on election**

**(2)** An election may be made under subsection (1) only by a prothonotary

**(a)** who has continued in judicial office for at least 15 years and whose combined age and number of years in judicial office is not less than 80; or

**(b)** who has attained the age of 70 years and has continued in judicial office for at least 10 years.

**Duties of prothonotary**

**(3)** A prothonotary who has made the election referred to in subsection (1) shall hold himself or herself available to perform such special judicial duties as may be assigned to the prothonotary by the chief justice or the associate chief justice of the court to which he or she is appointed.

**Salary of supernumerary prothonotary**

**(4)** The salary of each supernumerary prothonotary is the salary annexed to the office of a prothonotary.

**Deemed election and notice**

**(5)** For the purposes of subsection (1), if a prothonotary gives notice to the Minister of Justice of Canada of the prothonotary's election to be effective on a future day specified in the notice, being a day on which the prothonotary will be eligible to make the election, the prothonotary is, effective on that day, deemed to have elected and given notice of the election on that day.

**359 Subsection 42(4) of the Act is replaced by the following:**

**Definition of *judicial office***

**(4)** In this section, ***judicial office*** means the office of a judge of a superior or county court or the office of a prothonotary.

**360 The definition *judicial office* in subsection 43.1(6) of the Act is replaced by the following:**

***judicial office*** includes the office of a prothonotary. (*magistrature*)

**361 Subsection 50(5) of the Act is replaced by the following:**

retraite d'office, démission ou révocation, et ce, pour une période d'au plus cinq ans.

**Décision restreinte**

**(2)** La faculté visée au paragraphe (1) ne peut être exercée par le protonotaire que dans l'un ou l'autre des cas suivants :

**a)** il a exercé des fonctions judiciaires pendant au moins quinze ans et le chiffre obtenu par l'addition de son âge et du nombre d'années d'exercice est d'au moins quatre-vingts;

**b)** il a atteint l'âge de soixante-dix ans et a exercé des fonctions judiciaires pendant au moins dix ans.

**Fonctions**

**(3)** Le protonotaire qui a choisi d'exercer les fonctions de protonotaire surnuméraire doit être prêt à exercer les fonctions judiciaires spéciales que peuvent lui assigner le juge en chef ou le juge en chef adjoint du tribunal auquel il appartient.

**Traitement**

**(4)** Les protonotaires surnuméraires reçoivent le même traitement que les protonotaires.

**Date de l'avis : présomption**

**(5)** Pour l'application du paragraphe (1), si le protonotaire avise le ministre de la Justice du Canada de sa décision avant de pouvoir la mettre à exécution mais précise la date ultérieure où elle prendra effet, date qui est celle où lui-même sera en mesure d'exercer sa faculté de choix, c'est cette dernière qui est réputée être la date de l'avis.

**359 Le paragraphe 42(4) de la même loi est remplacé par ce qui suit :**

**Définition de *fonctions judiciaires***

**(4)** Au présent article, ***fonctions judiciaires*** s'entend des fonctions de juge d'une juridiction supérieure ou d'une cour de comté ou des fonctions de protonotaire.

**360 La définition de *magistrature*, au paragraphe 43.1(6) de la même loi, est remplacée par ce qui suit :**

***magistrature*** Sont assimilés à la magistrature les protonotaires. (*judicial office*)

**361 Le paragraphe 50(5) de la même loi est remplacé par ce qui suit :**

**Definition of *judicial office***

**(5)** In this section, ***judicial office*** includes the office of a prothonotary.

**362 Paragraph 69(1)(a) of the Act is replaced by the following:**

**(a)** a judge of a superior court or a prothonotary, or

**363 Section 71 of the Act is replaced by the following:**

**Powers, rights or duties not affected**

**71** Nothing in, or done or omitted to be done under the authority of, any of sections 63 to 70 affects any power, right or duty of the House of Commons, the Senate or the Governor in Council in relation to the removal from office of a judge, a prothonotary or any other person in relation to whom an inquiry may be conducted under any of those sections.

R.S., c. F-7; 2002, c. 8, s. 14

## Federal Courts Act

**364 The definition *federal board, commission or other tribunal* in subsection 2(1) of the *Federal Courts Act* is replaced by the following:**

***federal board, commission or other tribunal*** means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made under a prerogative of the Crown, other than the Tax Court of Canada or any of its judges or prothonotaries, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*; (*office fédéral*)

**365 Subsection 5(1) of the Act is replaced by the following:**

**Constitution of Federal Court of Appeal**

**5 (1)** The Federal Court of Appeal consists of a chief justice called the Chief Justice of the Federal Court of Appeal, who is the president of the Federal Court of Appeal, and 14 other judges.

**366 (1) Section 12 of the Act is amended by adding the following after subsection (1):**

**Définition de *fonctions judiciaires***

**(5)** Au présent article, ***fonctions judiciaires*** s'entend également des fonctions de protonotaire.

**362 L'alinéa 69(1)a) de la même loi est remplacé par ce qui suit :**

**a)** juges des juridictions supérieures ou des protonotaires;

**363 L'article 71 de la même loi est remplacé par ce qui suit :**

**Maintien du pouvoir de révocation**

**71** Les articles 63 à 70 n'ont pas pour effet de porter atteinte aux attributions de la Chambre des communes, du Sénat ou du gouverneur en conseil en matière de révocation des juges, des protonotaires ou des autres titulaires de poste susceptibles de faire l'objet des enquêtes qui y sont prévues.

L.R., ch. F-7; 2002, ch. 8, art. 14

## Loi sur les Cours fédérales

**364 La définition de *office fédéral*, au paragraphe 2(1) de la *Loi sur les Cours fédérales*, est remplacée par ce qui suit :**

***office fédéral*** Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges et protonotaires, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*. (*federal board, commission or other tribunal*)

**365 Le paragraphe 5(1) de la même loi est remplacé par ce qui suit :**

**Composition de la Cour d'appel fédérale**

**5 (1)** La Cour d'appel fédérale se compose du juge en chef, appelé juge en chef de la Cour d'appel fédérale, qui en est le président, et de quatorze autres juges.

**366 (1) L'article 12 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Number of prothonotaries**

**(2)** The Governor in Council may, by regulation, fix the number of prothonotaries that may be appointed under subsection (1).

**Supernumerary prothonotaries**

**(2.1)** For each office of prothonotary of the Federal Court, there is an additional office of supernumerary prothonotary that a prothonotary of the Federal Court may elect under the *Judges Act* to hold.

**(2) Section 12 of the Act is amended by adding the following after subsection (4):**

**Workload — supernumerary prothonotaries**

**(5)** The Governor in Council may, by regulation, fix the workload of a supernumerary prothonotary as a percentage of the workload of a prothonotary.

R.S., c. T-2

## Tax Court of Canada Act

**367 Paragraph 4(1)(c) of the *Tax Court of Canada Act* is replaced by the following:**

**(c)** not more than 23 other judges.

**368 The Act is amended by adding the following after section 11:**

# Prothonotaries

**Prothonotaries**

**11.1 (1)** The Governor in Council may appoint as prothonotaries of the Court any fit and proper persons who are barristers or advocates in a province and who are, in the opinion of the Governor in Council, necessary for the efficient performance of the work of that court that, under the rules of the Court, is to be performed by them.

**Number of prothonotaries**

**(2)** The Governor in Council may, by regulation, fix the number of prothonotaries that may be appointed under subsection (1).

**Nombre de protonotaires**

**(2)** Le gouverneur en conseil peut, par règlement, fixer le nombre de protonotaires qui peuvent être nommés en vertu du paragraphe (1).

**Protonotaires surnuméraires**

**(2.1)** La charge de protonotaire de la Cour fédérale comporte également un poste de protonotaire surnuméraire, qui peut être occupé, conformément à la *Loi sur les juges*, par un protonotaire de ce tribunal.

**(2) L'article 12 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Charge de travail — protonotaires surnuméraires**

**(5)** Le gouverneur en conseil peut, par règlement, fixer la proportion — exprimée en pourcentage — de la charge de travail des protonotaires surnuméraires par rapport à celle des protonotaires.

L.R., ch. T-2

## Loi sur la Cour canadienne de l'impôt

**367 Le passage du paragraphe 4(1) de la *Loi sur la Cour canadienne de l'impôt* précédant l'alinéa a) est remplacé par ce qui suit :**

**Composition**

**4 (1)** La Cour se compose d'un juge en chef, d'un juge en chef adjoint et d'au plus vingt-trois autres juges respectivement désignés :

**368 La même loi est modifiée par adjonction, après l'article 11, de ce qui suit :**

# Protonotaires

**Protonotaires**

**11.1 (1)** Le gouverneur en conseil peut nommer protonotaires de la Cour tous avocats remplissant, à son avis, les conditions voulues pour l'exécution des travaux de celle-ci qui, aux termes des règles de la Cour, incombent à cette catégorie de personnel.

**Nombre de protonotaires**

**(2)** Le gouverneur en conseil peut, par règlement, fixer le nombre de protonotaires qui peut être nommé en vertu du paragraphe (1).

**Supernumerary prothonotaries**

**(3)** For each office of prothonotary there shall be the additional office of supernumerary prothonotary that a prothonotary of the Court may elect under the *Judges Act* to hold.

**Powers and duties**

**(4)** The powers, duties and functions of the prothonotaries shall be determined by the rules of the Court.

**Salary, allowances and annuities**

**(5)** Each prothonotary shall be paid a salary, and the allowances and annuities, provided for under the *Judges Act*.

**Workload — supernumerary prothonotaries**

**(6)** The Governor in Council may, by regulation, fix the workload of a supernumerary prothonotary as a percentage of the workload of a prothonotary.

**Immunity from liability**

**(7)** A prothonotary shall have the same immunity from liability as a judge of the Court.

**Term of office**

**(8)** A prothonotary shall hold office during good behaviour but may be removed by the Governor in Council for cause.

**Cessation of office**

**(9)** A prothonotary shall cease to hold office on becoming 75 years old.

**369 Subsection 20(1.1) of the Act is amended by striking out "and" at the end of paragraph (k), by adding "and" at the end of paragraph (l) and by adding the following after paragraph (l):**

**(m)** empowering a prothonotary to exercise any jurisdiction or powers, even though the jurisdiction or powers may be of a judicial nature.

**370 Paragraph 22(1)(c) of the Act is replaced by the following:**

**(c)** three judges and one prothonotary of the Court that are designated from time to time by the Chief Justice;

**Protonotaires surnuméraires**

**(3)** Est attaché à chaque poste de protonotaire de la Cour un poste de protonotaire surnuméraire. Un protonotaire peut, conformément à la *Loi sur les juges*, décider d'occuper ce poste.

**Pouvoirs et fonctions**

**(4)** Les pouvoirs et fonctions des protonotaires sont fixés par les règles de la Cour.

**Traitement, indemnités et pensions**

**(5)** Les protonotaires reçoivent les traitements, indemnités et pensions prévus par la *Loi sur les juges*.

**Charge de travail — protonotaires surnuméraires**

**(6)** Le gouverneur en conseil peut, par règlement, fixer la proportion — exprimée en pourcentage — de la charge de travail des protonotaires surnuméraires par rapport à celle des protonotaires.

**Immunité**

**(7)** Les protonotaires bénéficient de la même immunité de poursuite que les juges de la Cour.

**Mandat**

**(8)** Les protonotaires sont nommés à titre inamovible, sous réserve de révocation motivée de la part du gouverneur en conseil.

**Limite d'âge**

**(9)** La limite d'âge pour l'exercice de la charge de protonotaire est de soixante-quinze ans.

**369 Le paragraphe 20(1.1) de la même loi est modifié par adjonction, après l'alinéa l), de ce qui suit :**

**m)** le pouvoir des protonotaires d'exercer une compétence ou des pouvoirs, même d'ordre judiciaire.

**370 L'alinéa 22(1)c) de la même loi est remplacé par ce qui suit :**

**c)** trois juges et un protonotaire de la Cour désignés par le juge en chef;

## Terminology Changes

**Replacement of "prothonotary" and "prothonotaries"**

**371 Every reference to "prothonotary" and "prothonotaries" is replaced by a reference to "associate judge" and "associate judges", respectively, in the following provisions:**

**(a) in the *Federal Courts Act*,**

**(i) the definition *federal board, commission or other tribunal* in subsection 2(1),**

**(ii) section 12 and the heading before it,**

**(iii) paragraph 45.1(1)(b), and**

**(iv) paragraphs 46(1)(h) and (i);**

**(b) in the *Garnishment, Attachment and Pension Diversion Act*,**

**(i) paragraph (a) of the definition *salary* in section 4, and**

**(ii) section 5;**

**(c) in the *Judges Act*,**

**(i) the definitions *age of retirement* and *survivor* in section 2,**

**(ii) section 2.1,**

**(iii) the heading of Part I,**

**(iv) section 10.1,**

**(v) section 11.1,**

**(vi) section 26.11,**

**(vii) subsection 26.3(3),**

**(viii) subsections 26.4(1) and (3),**

**(ix) subsection 27(1.1),**

**(x) the heading before section 28,**

**(xi) section 30,**

**(xii) subsection 42(4),**

**(xiii) the definition *judicial office* in subsection 43.1(6),**

## Modifications terminologiques

**Remplacement de « protonotaire » et « protonotaires »**

**371 Dans les passages ci-après, « protonotaire » et « protonotaires » sont respectivement remplacés par « juge adjoint » et « juges adjoints » :**

**a) dans la *Loi sur les Cours fédérales* :**

**(i) la définition de *office fédéral* au paragraphe 2(1),**

**(ii) l'article 12 et l'intertitre le précédant,**

**(iii) l'alinéa 45.1(1)b),**

**(iv) les alinéas 46(1)h) et i);**

**b) dans la *Loi sur la saisie-arrêt et la distraction de pensions* :**

**(i) l'alinéa a) de la définition de *traitement* à l'article 4,**

**(ii) l'article 5;**

**c) dans la *Loi sur les juges* :**

**(i) les définitions de *mise à la retraite d'office* et *survivant* à l'article 2,**

**(ii) l'article 2.1,**

**(iii) le titre de la partie I,**

**(iv) l'article 10.1,**

**(v) l'article 11.1,**

**(vi) l'article 26.11,**

**(vii) le paragraphe 26.3(3),**

**(viii) les paragraphes 26.4(1) et (3),**

**(ix) le paragraphe 27(1.1),**

**(x) l'intertitre précédant l'article 28,**

**(xi) l'article 30,**

**(xii) le paragraphe 42(4),**

**(xiii) la définition de *magistrature* au paragraphe 43.1(6),**

**(xiv) le paragraphe 50(5),**

**(xiv) subsection 50(5),**

**(xv) paragraph 69(1)(a), and**

**(xvi) section 71;**

**(d) in the *Tax Court of Canada Act*,**

**(i) section 11.1 and the heading before it,**

**(ii) paragraph 20(1.1)(m), and**

**(iii) paragraph 22(1)(c); and**

**(e) subsection 13(4) of the *Expenditure Restraint Act*.**

## Transitional Provisions

### Prothonotaries

**372 For greater certainty, every person who, immediately before the day on which this section comes into force, holds office as prothonotary of the Federal Court, supernumerary prothonotary of the Federal Court, prothonotary of the Tax Court of Canada or supernumerary prothonotary of the Tax Court of Canada continues in office as associate judge of the Federal Court, supernumerary associate judge of the Federal Court, associate judge of the Tax Court of Canada or supernumerary associate judge of the Tax Court of Canada, as the case may be.**

### *Judges Act*

**373 For greater certainty, for the purposes of the *Judges Act*, nothing in section 371 of this Act affects the number of years during which a person who held office as prothonotary, as defined in that Act as it read immediately before the day on which this section comes into force, has continued in judicial office.**

### *Tax Court of Canada Act*

**374 Despite paragraph 22(1)(c) of the *Tax Court of Canada Act*, the rules committee referred to in that Act may exercise its powers and perform its duties without the designation, as a member of the rules committee, of a person appointed under section 11.1 of that Act until a person is first appointed under that section.**

**(xv) l'alinéa 69(1)a),**

**(xvi) l'article 71;**

**d) dans la *Loi sur la Cour canadienne de l'impôt* :**

**(i) l'article 11.1 et l'intertitre le précédant,**

**(ii) l'alinéa 20(1.1)m),**

**(iii) l'alinéa 22(1)c);**

**e) le paragraphe 13(4) de la *Loi sur le contrôle des dépenses*.**

## Dispositions transitoires

### Protonotaires

**372 Il est entendu que les personnes qui, immédiatement avant la date d'entrée en vigueur du présent article, occupent un poste de protonotaire de la Cour fédérale, de protonotaire surnuméraire de la Cour fédérale, de protonotaire de la Cour canadienne de l'impôt ou de protonotaire surnuméraire de la Cour canadienne de l'impôt restent respectivement en fonction à titre de juge adjoint de la Cour fédérale, de juge adjoint surnuméraire de la Cour fédérale, de juge adjoint de la Cour canadienne de l'impôt ou de juge adjoint surnuméraire de la Cour canadienne de l'impôt.**

### *Loi sur les juges*

**373 Il est entendu que, pour l'application de la *Loi sur les juges*, l'article 371 de la présente loi n'affecte en rien le nombre d'années d'ancienneté des personnes ayant occupé une charge de protonotaire, au sens de cette loi, dans sa version antérieure à la date d'entrée en vigueur du présent article.**

### *Loi sur la Cour canadienne de l'impôt*

**374 Malgré l'alinéa 22(1)c) de la *Loi sur la Cour canadienne de l'impôt*, le comité des règles visé par cette loi peut, jusqu'à la première nomination faite en vertu de l'article 11.1 de cette loi, exercer ses attributions sans que soit désignée, à titre de membre du comité, une personne nommée en vertu de cet article.**

## Coordinating Amendments

### Bill C-9

**375 (1) Subsections (2) to (10) apply if Bill C-9, introduced in the 1st session of the 44th Parliament and entitled *An Act to amend the Judges Act* (in this section referred to as the "other Act"), receives royal assent.**

**(2) The reference to "Minister of Justice of Canada" is replaced with "Minister" in section 30 of the *Judges Act*.**

**(3) If section 2 of the other Act comes into force before subparagraph 371(c)(ii) of this Act, then subsection 2.1(1) of the *Judges Act* is replaced by the following:**

#### Application to prothonotaries

**2.1 (1)** Subject to subsection (2), sections 26 to 26.3, 34 and 39, paragraphs 40(1)(a) and (b), subsection 40(2), sections 41, 41.2 to 42, 43.1 to 56 and 57, paragraph 60(2)(b) and Part IV also apply to a prothonotary.

**(4) If subparagraph 371(c)(ii) of this Act comes into force before section 2 of the other Act, then subsection 2.1(1) of the *Judges Act* is replaced by the following:**

#### Application to associate judges

**2.1 (1)** Subject to subsection (2), sections 26 to 26.3, 34 and 39, paragraphs 40(1)(a) and (b), subsection 40(2), sections 41, 41.2 to 42, 43.1 to 56 and 57, paragraph 60(2)(b) and Part IV also apply to an associate judge.

**(5) If section 2 of the other Act comes into force on the same day as subparagraph 371(c)(ii) of this Act, then that subparagraph 371(c)(ii) is deemed to have come into force before that section 2 and subsection (4) applies as a consequence.**

**(6) If section 10 of the other Act comes into force before section 362 of this Act, then**

**(a) that section 362 and section 363 of this Act are deemed never to have come into force and are repealed;**

**(b) section 79 of the *Judges Act* is replaced by the following:**

## Dispositions de coordination

### Projet de loi C-9

**375 (1) Les paragraphes (2) à (10) s'appliquent en cas de sanction du projet de loi C-9, déposé au cours de la 1re session de la 44e législature et intitulé *Loi modifiant la Loi sur les juges* (appelé « autre loi » au présent article).**

**(2) À l'article 30 de la *Loi sur les juges*, « ministre de la Justice du Canada » est remplacé par « ministre ».**

**(3) Si l'article 2 de l'autre loi entre en vigueur avant le sous-alinéa 371c)(ii) de la présente loi, le paragraphe 2.1(1) de la *Loi sur les juges* est remplacé par ce qui suit :**

#### Application aux protonotaires

**2.1 (1)** Sous réserve du paragraphe (2), les articles 26 à 26.3, 34 et 39, les alinéas 40(1)a) et b), le paragraphe 40(2), les articles 41, 41.2 à 42, 43.1 à 56 et 57, l'alinéa 60(2)b) ainsi que la partie IV s'appliquent également aux protonotaires.

**(4) Si le sous-alinéa 371c)(ii) de la présente loi entre en vigueur avant l'article 2 de l'autre loi, le paragraphe 2.1(1) de la *Loi sur les juges* est remplacé par ce qui suit :**

#### Application aux juges adjoints

**2.1 (1)** Sous réserve du paragraphe (2), les articles 26 à 26.3, 34 et 39, les alinéas 40(1)a) et b), le paragraphe 40(2), les articles 41, 41.2 à 42, 43.1 à 56 et 57, l'alinéa 60(2)b) ainsi que la partie IV s'appliquent également aux juges adjoints.

**(5) Si l'entrée en vigueur de l'article 2 de l'autre loi et celle du sous-alinéa 371c)(ii) de la présente loi sont concomitantes, ce sous-alinéa 371c)(ii) est réputé être entré en vigueur avant cet article 2, le paragraphe (4) s'appliquant en conséquence.**

**(6) Si l'article 10 de l'autre loi entre en vigueur avant l'article 362 de la présente loi :**

**a) cet article 362 et l'article 363 de la présente loi sont réputés ne pas être entrés en vigueur et sont abrogés;**

**b) l'article 79 de la *Loi sur les juges* est remplacé par ce qui suit :**

**Definition of *judicial office***

**79** In this Division, ***judicial office*** includes the office of a prothonotary.

**(c) paragraph 371(c) of this Act is amended by adding "and" after subparagraph (xiv) and by replacing subparagraphs (xv) and (xvi) with the following:**

**(xv) section 79;**

**(7) If section 362 of this Act comes into force before section 10 of the other Act and that section 10 comes into force before subparagraph 371(c)(xv) of this Act, then**

**(a) section 79 of the *Judges Act* is replaced by the following:**

**Definition of *judicial office***

**79** In this Division, ***judicial office*** includes the office of a prothonotary.

**(b) paragraph 371(c) of this Act is amended by adding "and" after subparagraph (xiv) and by replacing subparagraphs (xv) and (xvi) with the following:**

**(xv) section 79;**

**(8) If section 10 of the other Act comes into force on the same day as section 362 of this Act, then that section 10 is deemed to have come into force before that section 362 and subsection (6) applies as a consequence.**

**(9) If paragraph 371(c) of this Act comes into force before section 12 of the other Act, then section 79 of the *Judges Act* is replaced by the following:**

**Definition of *judicial office***

**79** In this Division, ***judicial office*** includes the office of an associate judge.

**(10) If section 12 of the other Act comes into force on the same day as paragraph 371(c) of this Act, then that paragraph 371(c) is deemed to have come into force before that section 12 and subsection (9) applies as a consequence.**

**Définition de *charge de juge***

**79** Pour l'application de la présente section, ***charge de juge*** s'entend notamment de la charge des protonotaires.

**c) les sous-alinéas 371c)(xv) et (xvi) de la présente loi sont remplacés par ce qui suit :**

**(xv) l'article 79;**

**(7) Si l'article 362 de la présente loi entre en vigueur avant l'article 10 de l'autre loi et que cet article 10 entre en vigueur avant le sous-alinéa 371c)(xv) de la présente loi :**

**a) l'article 79 de la *Loi sur les juges* est remplacé par ce qui suit :**

**Définition de *charge de juge***

**79** Pour l'application de la présente section, ***charge de juge*** s'entend notamment de la charge des protonotaires.

**b) les sous-alinéas 371c)(xv) et (xvi) de la présente loi sont remplacés par ce qui suit :**

**(xv) l'article 79;**

**(8) Si l'entrée en vigueur de l'article 10 de l'autre loi et celle de l'article 362 de la présente loi sont concomitantes, cet article 10 est réputé être entré en vigueur avant cet article 362, le paragraphe (6) s'appliquant en conséquence.**

**(9) Si l'alinéa 371c) de la présente loi entre en vigueur avant l'article 12 de l'autre loi, l'article 79 de la *Loi sur les juges* est remplacé par ce qui suit :**

**Définition de *charge de juge***

**79** Pour l'application de la présente section, ***charge de juge*** s'entend notamment de la charge des juges adjoints.

**(10) Si l'entrée en vigueur de l'article 12 de l'autre loi et celle de l'alinéa 371c) de la présente loi sont concomitantes, cet alinéa 371c) est réputé être entré en vigueur avant cet article 12, le paragraphe (9) s'appliquant en conséquence.**

## Coming into Force

**Order in council**

**376 Subsections 333(3) and (4) and sections 371 to 373 come into force on a day to be fixed by order of the Governor in Council.**

## Entrée en vigueur

**Décret**

**376 Les paragraphes 333(3) et (4) et les articles 371 à 373 entrent en vigueur à la date fixée par décret.**

## DIVISION 23

2001, c. 27

# Immigration and Refugee Protection Act

## Amendments to the Act

**377 (1) Paragraph 10.3(1)(a) of the French version of the *Immigration and Refugee Protection Act* is replaced by the following:**

**a)** les catégories auxquelles le paragraphe 10.1(1) s'applique;

**(2) Paragraphs 10.3(1)(h) to (j) of the Act are replaced by the following:**

**(h)** the basis on which an eligible foreign national may be ranked;

**(h.1)** subject to subsection (1.01), the establishment of categories of eligible foreign nationals for the purposes of ranking, which groupings may consist of

**(i)** all eligible foreign nationals,

**(ii)** eligible foreign nationals who are eligible to be members of a class referred to in an instruction given under paragraph (a), or

**(iii)** eligible foreign nationals who are eligible to be members of a category established in an instruction given under paragraph (h.2);

**(h.2)** the establishment of categories for the purposes of ranking and the criteria for eligibility to be a member of a category;

**(i)** the rank within a grouping that an eligible foreign national must occupy to be invited to make an application in respect of a class referred to in an instruction given under paragraph (a);

**(j)** the number of invitations that may be issued within a specified period in respect of a grouping;

## SECTION 23

2001, ch. 27

# Loi sur l'immigration et la protection des réfugiés

## Modification de la loi

**377 (1) L'alinéa 10.3(1)a) de la version française de la *Loi sur l'immigration et la protection des réfugiés* est remplacé par ce qui suit :**

**a)** les catégories auxquelles le paragraphe 10.1(1) s'applique;

**(2) Les alinéas 10.3(1)h) à j) de la même loi sont remplacés par ce qui suit :**

**h)** la base sur laquelle peuvent être classés les étrangers qui peuvent être invités à présenter une demande;

**h.1)** sous réserve du paragraphe (1.01), l'établissement, à des fins de classification, de groupes d'étrangers qui peuvent être invités à présenter une demande, lesquels peuvent comprendre :

**(i)** tous les étrangers qui peuvent être invités à présenter une demande,

**(ii)** les étrangers qui peuvent être invités à présenter une demande et qui peuvent être membres d'une catégorie visée par une instruction donnée en vertu de l'alinéa a),

**(iii)** les étrangers qui peuvent être invités à présenter une demande et qui peuvent être membres d'un ensemble établi dans une instruction donnée en vertu de l'alinéa h.2);

**h.2)** l'établissement, à des fins de classification, d'ensembles ainsi que les critères que l'étranger doit remplir pour être membre des ensembles établis;

**i)** le rang qu'un étranger doit occuper dans un groupe pour être invité à présenter une demande au titre

**(j.1)** the class referred to in an instruction given under paragraph (a) in respect of which an eligible foreign national who is invited to make an application must apply, if the foreign national is eligible to be a member of more than one class;

**(3) Subsection 10.3(2) of the Act is replaced by the following:**

**Category — condition**

**(1.01)** An instruction given under paragraph (1)(h.1) must not establish a category in respect of which a public consultation process referred to in subsection 10.5(1) has not been given the opportunity to provide advice and recommendations.

**Category — economic goal**

**(1.1)** If the Minister establishes a category in an instruction given under paragraph (1)(h.2), the Minister shall set out, in the instruction, the economic goal that the Minister seeks to support in establishing the category.

**Clarification**

**(2)** For greater certainty, an instruction given under paragraph (1)(j) may provide that the number of invitations that may be issued in any specified period in respect of a grouping be zero.

**377.1 The Act is amended by adding the following after section 10.4:**

**Consultation process**

**10.5 (1)** For the purpose of establishing categories of eligible foreign nationals under subparagraph 10.3(1)(h.1)(iii), the Minister must engage in a public consultation process with stakeholders, including provinces and territories, industry, unions, employers, workers, worker advocacy groups, settlement provider organizations and immigration researchers and practitioners, to obtain information, advice and recommendations in respect of the labour market conditions, including occupations expected to face shortage conditions, as well as on how categories can be formed to meet economic goals.

**Advice and recommendations**

**(2)** The advice and recommendations from the public consultation process must be based on written

d'une catégorie visée par une instruction donnée en vertu de l'alinéa a);

**j)** le nombre d'invitations pouvant être formulées au cours d'une période précisée à l'égard d'un groupe;

**j.1)** la catégorie visée par une instruction donnée en vertu de l'alinéa a) à l'égard de laquelle un étranger qui peut être invité à présenter une demande doit le faire, s'il peut être membre de plus d'une catégorie;

**(3) Le paragraphe 10.3(2) de la même loi est remplacé par ce qui suit :**

**Condition**

**(1.01)** Les instructions données en vertu de l'alinéa (1)h.1) ne peuvent établir que des catégories à l'égard desquelles un processus de consultations publiques mis sur pied au titre du paragraphe 10.5(1) a eu la possibilité de fournir des conseils et des recommandations.

**Ensemble — objectif économique**

**(1.1)** Les instructions données en vertu de l'alinéa (1)h.2) qui établissent un ensemble décrivent aussi l'objectif économique dont le ministre cherche, en établissant l'ensemble, à favoriser l'atteinte.

**Précision**

**(2)** Il est entendu que les instructions données en vertu de l'alinéa (1)j) peuvent préciser que le nombre d'invitations pouvant être formulées au cours d'une période précisée à l'égard d'un groupe est de zéro.

**377.1 La même loi est modifiée par adjonction, après l'article 10.4, de ce qui suit :**

**Processus de consultations**

**10.5 (1)** Aux fins de l'établissement de catégories d'étrangers qui peuvent être invités à présenter une demande en vertu du sous-alinéa 10.3(1)h.1)(iii), le ministre met sur pied un processus de consultations publiques avec les intervenants, y compris les provinces et les territoires, l'industrie, les syndicats, les employeurs, les travailleurs, les groupes de défense des travailleurs, les organismes d'aide à l'établissement et les chercheurs et praticiens en immigration pour obtenir de l'information, des conseils et des recommandations concernant les conditions du marché du travail, y compris les professions susceptibles d'être en pénurie de main-d'œuvre, ainsi que sur la façon dont les catégories peuvent être formées pour atteindre des objectifs économiques.

**Conseils et recommandations**

**(2)** Les conseils et les recommandations du processus de consultations publiques sont fondés sur des observations

submissions provided by relevant industry members and stakeholders.

**Report**

**(3)** The Minister shall cause to be tabled before each House of Parliament, not later than the fifth sitting day of that House after January 31 following the end of each fiscal year, a report containing the list of the categories of eligible foreign nationals established in an instruction made under paragraph 10.3(1)(h.1) and the selection criteria and the process applied for the establishment of those categories.

**Referral**

**(4)** After it is tabled, the report stands referred to the committee of the Senate, the House of Commons or both Houses of Parliament that may be designated or established for the purpose of reviewing the report.

**378 (1) Subsection 11.2(1) of the Act is replaced by the following:**

**Visa or other document not to be issued**

**11.2 (1)** An officer may not issue a visa or other document in respect of an application for permanent residence to a foreign national who was issued an invitation under Division 0.1 to make that application if — at the time the invitation was issued or at the time the officer received their application — the foreign national

**(a)** did not meet the criteria set out in an instruction given under paragraph 10.3(1)(e);

**(b)** did not have the qualifications on the basis of which they were ranked under an instruction given under paragraph 10.3(1)(h) and were issued the invitation; or

**(c)** did not meet the criteria for membership in a category that was established in an instruction given under paragraph 10.3(1)(h.2), if they were issued an invitation on the basis that they were eligible to be a member of that category.

**(2) Paragraph 11.2(2)(a) of the Act is replaced by the following:**

**(a)** the foreign national did not meet the criteria set out in an instruction given under paragraph 10.3(1)(e) — or they did not have the qualifications on the basis of which they were ranked under an instruction given under paragraph 10.3(1)(h) or did not meet the criteria for membership in a category that was established in an instruction given under paragraph 10.3(1)(h.2) —

écrites fournies par des partenaires et autres intéressés de l'industrie.

**Rapport**

**(3)** Le ministre fait déposer devant chaque chambre du Parlement, dans les cinq premiers jours de séance de celle-ci suivant le 31 janvier, un rapport pour l'exercice précédent contenant la liste des catégories d'étrangers qui peuvent être invités à présenter une demande au titre d'instructions données en vertu de l'alinéa 10.3(1)h.1) ainsi que les critères de sélection et le processus appliqués pour l'établissement de ces catégories.

**Renvoi**

**(4)** Le rapport est, après son dépôt, renvoyé devant le comité, soit du Sénat, soit de la Chambre des communes, soit mixte, chargé de son examen.

**378 (1) Le paragraphe 11.2(1) de la même loi est remplacé par ce qui suit :**

**Visa ou autre document ne pouvant être délivré**

**11.2 (1)** Ne peut être délivré à l'étranger à qui une invitation à présenter une demande de résidence permanente a été formulée en vertu de la section 0.1 un visa ou autre document à l'égard de la demande si, lorsque l'invitation a été formulée ou que la demande a été reçue par l'agent :

**a)** il ne répondait pas aux critères prévus dans une instruction donnée en vertu de l'alinéa 10.3(1)e);

**b)** il n'avait pas les attributs sur la base desquels il a été classé au titre d'une instruction donnée en vertu de l'alinéa 10.3(1)h) et sur la base desquels cette invitation a été formulée;

**c)** dans le cas où l'invitation lui a été formulée sur la base du fait qu'il pouvait être membre d'un ensemble établi dans une instruction donnée en vertu de l'alinéa 10.3(1)h.2), il ne répondait pas aux critères requis pour être membre de l'ensemble en question.

**(2) L'alinéa 11.2(2)a) de la même loi est remplacé par ce qui suit :**

**a)** il ne répondait pas aux critères prévus dans une instruction donnée en vertu de l'alinéa 10.3(1)e), il n'avait pas les attributs sur la base desquels il a été classé au titre d'une instruction donnée en vertu de l'alinéa 10.3(1)h) ou il ne répondait pas aux critères requis pour être membre d'un ensemble établi dans une instruction donnée en vertu de l'alinéa 10.3(1)h.2), en

because the foreign national's birthday occurred after the invitation was issued; or

**(3) Paragraph 11.2(2)(b) of the Act is amended by striking out "and" at the end of subparagraph (i) and by adding the following after that subparagraph:**

**(i.1)** they met the criteria for membership of a category established in an instruction given under paragraph 10.3(1)(h.2), if they were issued the invitation on the basis that they were eligible to be a member of that category, and

**379 Subsection 94(2) of the Act is amended by adding the following after paragraph (a):**

**(a.1)** any instructions given under paragraph 10.3(1)(h.2) that establish a category of eligible foreign nationals, the economic goal sought to be supported in establishing the category and the number of foreign nationals invited to make an application for permanent residence in respect of the category;

raison du fait que l'anniversaire de l'étranger a eu lieu après la formulation de l'invitation;

**(3) L'alinéa 11.2(2)b) de la même loi est modifié par adjonction, après le sous-alinéa (i), de ce qui suit :**

**(i.1)** s'il a reçu l'invitation sur la base du fait qu'il pouvait être membre d'un ensemble établi dans une instruction donnée en vertu de l'alinéa 10.3(1)h.2), il répondait aux critères requis pour être membre de l'ensemble en question,

**379 Le paragraphe 94(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** les instructions données au titre de l'alinéa 10.3(1)h.2) qui établissent un ensemble d'étrangers qui peuvent être invités à présenter une demande, l'objectif économique dont le ministre cherche, en établissant l'ensemble, à favoriser l'atteinte et le nombre d'étrangers qui ont été invités à présenter une demande de résidence permanente sur la base du fait qu'ils pouvaient être membres de l'ensemble établi;

## DIVISION 24

R.S., c. O-9

# Old Age Security Act

## Amendment to the Act

**380 Subparagraph (c)(i.1) of the definition *income* in section 2 of the *Old Age Security Act* is replaced by the following:**

**(i.1)** the amount of the payment under the program referred to in section 275 of the *Budget Implementation Act, 2021, No. 1*,

## Coming into Force

**June 29, 2021**

**381 This Division is deemed to have come into force on June 29, 2021.**

## SECTION 24

L.R., ch. O-9

# Loi sur la sécurité de la vieillesse

## Modification de la loi

**380 Le sous-alinéa c)(i.1) de la définition de *revenu* à l'article 2 de la *Loi sur la sécurité de la vieillesse* est remplacé par ce qui suit :**

**(i.1)** le paiement versé au titre du programme mentionné à l'article 275 de la *Loi nº1 d'exécution du budget de 2021*,

## Entrée en vigueur

**29 juin 2021**

**381 La présente section est réputée être entrée en vigueur le 29 juin 2021.**

## DIVISION 25

# COVID-19 Benefits Adjustments

2020, c. 5, s. 8

## Canada Emergency Response Benefit Act

**382 Subparagraph 6(1)(b)(ii) of the *Canada Emergency Response Benefit Act* is replaced by the following:**

**(ii)** *benefits*, as defined in subsection 2(1) of the *Employment Insurance Act*, or an employment insurance emergency response benefit referred to in section 153.7 of that Act,

**383 The Act is amended by adding the following after section 14:**

### Receipt of benefits, allowances or money

**15 (1)** If, for any four-week period, the Minister determines that a worker received an income support payment for which they were not eligible by reason only that they received one or more payments of benefits, allowances or money referred to in subparagraph 6(1)(b)(ii) or (iii), the Minister is deemed to have determined under subsection 12(2) that the amount that the worker must repay under subsection 12(1) is the amount determined by the formula

**$2,000 × (A ÷ 4)**

where

**A** is the number of weeks for which the worker received such benefits, allowances or money during that four-week period.

### Non-application

**(2)** Subsection (1) does not apply in respect of an employment insurance emergency response benefit received by the worker if the Canada Employment Insurance Commission informs the Minister that subsection (1) should not apply in respect of that benefit and, if the Commission does so, the worker is, despite subparagraph 6(1)(b)(ii), deemed to have been eligible to receive the income support payment.

## SECTION 25

# Ajustement de prestations — COVID-19

2020, ch. 5, art. 8

## Loi sur la prestation canadienne d'urgence

**382 Le sous-alinéa 6(1)b)(ii) de la *Loi sur la prestation canadienne d'urgence* est remplacé par ce qui suit :**

**(ii)** de *prestations*, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, ou la prestation d'assurance-emploi d'urgence visée à l'article 153.7 de cette loi,

**383 La même loi est modifiée par adjonction, après l'article 14, de ce qui suit :**

### Prestations, allocations ou autres sommes reçues

**15 (1)** S'il estime que le travailleur a reçu, pour toute période de quatre semaines, une allocation de soutien du revenu à laquelle il n'était pas admissible en raison seulement du fait qu'il recevait une ou plusieurs des prestations, allocations ou autres sommes visées aux sous-alinéas 6(1)b)(ii) ou (iii), le ministre est réputé avoir établi, au titre du paragraphe 12(2), que le trop-perçu à restituer par le travailleur, en application du paragraphe 12(1), est la somme obtenue par la formule suivante :

**2 000 $ × (A ÷ 4)**

où :

**A** représente le nombre de semaines comprises dans cette période pour lesquelles le travailleur a reçu de telles prestations, allocations ou autres sommes.

### Non-application

**(2)** Le paragraphe (1) ne s'applique pas à l'égard de toute prestation d'assurance-emploi d'urgence reçue par le travailleur si la Commission de l'assurance-emploi du Canada avise le ministre que ce paragraphe ne devrait pas s'appliquer à l'égard de cette prestation. Le cas échéant, le travailleur est, malgré le sous-alinéa 6(1)b)(ii), réputé avoir été admissible à l'allocation de soutien du revenu.

2020, c. 7

## Canada Emergency Student Benefit Act

**384 The *Canada Emergency Student Benefit Act* is amended by adding the following after section 15:**

### Receipt of benefits, allowances or money

**15.1 (1)** If, for any four-week period, the Minister determines that a student received a Canada emergency student benefit for which they were not eligible by reason only that they received one or more payments of benefits, allowances or money referred to in subparagraph 6(1)(b)(ii) or (iii), the Minister is deemed to have determined under subsection 13(2) that the amount that the worker must repay under subsection 13(1) is, despite subsection 13(1), the amount determined by the formula

**A × (B ÷ 4)**

where

**A** is

**(a)** $2,000, in the case of a student with a dependant or a student with a disability, and

**(b)** $1,250, in any other case; and

**B** is the number of weeks for which the student received such benefits, allowances or money during that four-week period.

### Non-application

**(2)** Subsection (1) does not apply in respect of an employment insurance emergency response benefit received by the student if the Canada Employment Insurance Commission informs the Minister that subsection (1) should not apply in respect of that benefit and, if the Commission does so, the student is, despite subparagraph 6(1)(b)(ii), deemed to have been eligible to receive the income support payment.

2020, ch. 7

## Loi sur la prestation canadienne d'urgence pour étudiants

**384 La *Loi sur la prestation canadienne d'urgence pour étudiants* est modifiée par adjonction, après l'article 15, de ce qui suit :**

### Prestations, allocations ou autres sommes reçues

**15.1 (1)** S'il estime que l'étudiant a reçu, pour toute période de quatre semaines, une prestation canadienne d'urgence pour étudiants à laquelle il n'était pas admissible en raison seulement du fait qu'il recevait une ou plusieurs des prestations, allocations ou autres sommes visées aux sous-alinéas 6(1)b)(ii) ou (iii), le ministre est réputé avoir établi, au titre du paragraphe 13(2), que le trop-perçu à restituer par l'étudiant, en application du paragraphe 13(1), est la somme obtenue par la formule suivante :

**A × (B ÷ 4)**

où :

**A** représente :

**a)** 2 000 $ pour l'étudiant ayant un handicap ou une personne à charge;

**b)** 1 250 $ pour tout autre étudiant;

**B** le nombre de semaines comprises dans cette période pour lesquelles l'étudiant a reçu de telles prestations, allocations ou autres sommes.

### Non-application

**(2)** Le paragraphe (1) ne s'applique pas à l'égard de toute prestation d'assurance-emploi d'urgence reçue par l'étudiant si la Commission de l'assurance-emploi du Canada avise le ministre que ce paragraphe ne devrait pas s'appliquer à l'égard de cette prestation. Le cas échéant, l'étudiant est, malgré le sous-alinéa 6(1)b)(ii), réputé avoir été admissible à l'allocation de soutien du revenu.

1996, c. 23

## Employment Insurance Act

**385 Section 153.9 of the *Employment Insurance Act* is amended by adding the following after subsection (4):**

### Receipt of income support payment

**(5)** If, for any week, a claimant received an employment insurance emergency response benefit for which they were not eligible by reason only of paragraph (2)(c), the claimant, despite that paragraph, is deemed to have been eligible for the benefit unless the Commission has, under

1996, ch. 23

## Loi sur l'assurance-emploi

**385 L'article 153.9 de la *Loi sur l'assurance-emploi* est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

### Allocation de soutien du revenu reçue

**(5)** S'il a reçu, pour toute semaine, une prestation d'assurance-emploi d'urgence à laquelle il n'était pas admissible par le seul effet de l'alinéa (2)c), le prestataire est, malgré cet alinéa, réputé avoir été admissible à la prestation à moins que la Commission ait avisé, au titre du

subsection 15(2) of the *Canada Emergency Response Benefit Act*, informed the *Minister*, as defined in section 2 of that Act, that subsection 15(1) of that Act should not apply in respect of the claimant.

**Receipt of Canada emergency student benefit**

**(6)** If, for any week, a claimant received an employment insurance emergency response benefit for which they were not eligible by reason only of paragraph (2)(d), the claimant, despite that paragraph, is deemed to have been eligible for the benefit unless the Commission has, under subsection 15.1(2) of the *Canada Emergency Student Benefit Act*, informed the *Minister*, as defined in section 2 of that Act, that subsection 15.1(1) of that Act should not apply in respect of the claimant.

## Coming into Force

**March 15, 2020**

**386 Section 382 is deemed to have come into force on March 15, 2020.**

### DIVISION 26

1996, c. 23

# Employment Insurance Act

## Amendments to the Act

**387 (1) The definition *employment benefits* in subsection 2(1) of the *Employment Insurance Act* is repealed.**

**(2) The definition *benefits* in subsection 2(1) of the Act is replaced by the following:**

***benefits*** means unemployment benefits payable under Part I, VII.1 or VIII; (*prestation*)

**(3) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:**

***employment support measure*** means a measure established under section 59; (*mesure de soutien à l'emploi*)

**388 (1) Paragraph 5(1)(e) of the Act is replaced by the following:**

**(e)** employment in Canada of an individual as the sponsor or co-ordinator of an employment support measure other than one referred to in paragraph 59(c) or (d).

paragraphe 15(2) de la *Loi sur la prestation canadienne d'urgence*, le *ministre*, au sens de l'article 2 de cette loi, que le paragraphe 15(1) de cette loi ne devrait pas s'appliquer à l'égard du prestataire.

**Prestation canadienne d'urgence pour étudiants reçue**

**(6)** S'il a reçu, pour toute semaine, une prestation d'assurance-emploi d'urgence à laquelle il n'était pas admissible par le seul effet de l'alinéa (2)d), le prestataire est, malgré cet alinéa, réputé avoir été admissible à la prestation à moins que la Commission ait avisé, au titre du paragraphe 15.1(2) de la *Loi sur la prestation canadienne d'urgence pour étudiants*, le *ministre*, au sens de l'article 2 de cette loi, que le paragraphe 15.1(1) de cette loi ne devrait pas s'appliquer à l'égard du prestataire.

## Entrée en vigueur

**15 mars 2020**

**386 L'article 382 est réputé être entré en vigueur le 15 mars 2020.**

### SECTION 26

1996, ch. 23

# Loi sur l'assurance-emploi

## Modification de la loi

**387 (1) La définition de *prestation d'emploi*, au paragraphe 2(1) de la *Loi sur l'assurance-emploi*, est abrogée.**

**(2) La définition de *prestation*, au paragraphe 2(1) de la même loi, est remplacée par ce qui suit :**

***prestation*** Prestation de chômage à payer en application des parties I, VII.1 ou VIII. (*benefits*)

**(3) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***mesure de soutien à l'emploi*** Mesure mise sur pied en vertu de l'article 59. (*employment support measure*)

**388 (1) L'alinéa 5(1)e) de la même loi est remplacé par ce qui suit :**

**e)** l'emploi d'un particulier au Canada à titre de promoteur ou coordonnateur d'un projet dans le cadre d'une mesure de soutien à l'emploi autre que celle prévue aux alinéas 59c) ou d).

**(2) Paragraph 5(6)(f) of the Act is replaced by the following:**

**(f)** any employment provided under regulations made under section 24 or under an employment support measure other than one referred to in paragraph 59(c) or (d).

**389 Paragraph 8(2)(c) of the Act is replaced by the following:**

**(c)** receiving assistance under an employment support measure other than one referred to in paragraph 59(c) or (d); or

**390 Subsection 19(4) of the Act is replaced by the following:**

**Earnings and allowances from employment support measures, courses and programs**

**(4)** Earnings from employment under an employment support measure other than one referred to in paragraph 59(c) or (d) and earnings or allowances payable to a claimant for attending a course or program of instruction or training shall not be deducted under this section except in accordance with the regulations.

**391 The heading before section 25 of the Act is replaced by the following:**

## Courses, Programs and Employment Support Measures

**392 (1) Paragraph 25(1)(a) of the Act is replaced by the following:**

**(a)** attending a course or program of instruction or training — at the claimant's own expense, under an employment support measure referred to in paragraph 59(a) or under a measure that is the subject of an agreement under section 63 — to which the Commission, or an authority that the Commission designates, has referred the claimant; or

**(2) Subparagraph 25(1)(b)(i) of the Act is replaced by the following:**

**(i)** for which assistance has been provided for the claimant under a prescribed employment support measure — other than one referred to in paragraph 59(a) or (c) — or a prescribed measure that is the subject of an agreement under section 63, and

**(2) L'alinéa 5(6)f) de la même loi est remplacé par ce qui suit :**

**f)** l'emploi fourni en vertu des règlements d'application de l'article 24 ou d'une mesure de soutien à l'emploi autre que celle prévue aux alinéas 59c) ou d).

**389 L'alinéa 8(2)c) de la même loi est remplacé par ce qui suit :**

**c)** elle recevait de l'aide dans le cadre d'une mesure de soutien à l'emploi autre que celle prévue aux alinéas 59c) ou d);

**390 Le paragraphe 19(4) de la même loi est remplacé par ce qui suit :**

**Rémunération — mesure de soutien à l'emploi, cours ou programme**

**(4)** La rémunération qu'un prestataire reçoit pour un emploi dans le cadre d'une mesure de soutien à l'emploi autre que celle prévue aux alinéas 59c) ou d), de même que la rémunération ou l'allocation qu'il reçoit pour tout cours ou programme d'instruction ou de formation, ne sont déduites que conformément aux règlements.

**391 L'intertitre précédant l'article 25 de la même loi est remplacé par ce qui suit :**

## Cours, programmes et mesures de soutien à l'emploi

**392 (1) L'alinéa 25(1)a) de la même loi est remplacé par ce qui suit :**

**a)** il suit, à ses frais ou dans le cadre d'une mesure de soutien à l'emploi prévue à l'alinéa 59a) ou d'une mesure faisant l'objet d'un accord visé à l'article 63, un cours ou programme d'instruction ou de formation vers lequel il a été dirigé par la Commission ou l'autorité qu'elle peut désigner;

**(2) L'alinéa 25(1)b) de la même loi est remplacé par ce qui suit :**

**b)** il participe à toute autre activité d'emploi :

**(i)** d'une part, pour laquelle il reçoit de l'aide dans le cadre d'une mesure de soutien à l'emploi — autre que celle prévue aux alinéas 59a) ou c) — prévue par règlement ou d'une mesure faisant l'objet d'un accord visé à l'article 63 prévue par règlement,

**(ii)** d'autre part, vers laquelle il a été dirigé par la Commission ou l'autorité qu'elle peut désigner.

**393 Section 26 of the Act is replaced by the following:**

**393 L'article 26 de la même loi est remplacé par ce qui suit :**

**Benefits are not earnings**

**26** For the purposes of this Part, Part IV, the *Income Tax Act* and the *Canada Pension Plan*, benefits paid to a claimant while employed under an employment support measure — other than one referred to in paragraph 59(c) or (d) — or under a measure that is the subject of an agreement under section 63 are not earnings from employment.

**Prestations non considérées comme rémunération**

**26** Pour l'application de la présente partie, de la partie IV, de la *Loi de l'impôt sur le revenu* et du *Régime de pensions du Canada*, les prestations reçues par un prestataire dans le cadre d'une mesure de soutien à l'emploi — autre que celle prévue aux alinéas 59c) ou d) — ou d'une mesure faisant l'objet d'un accord visé à l'article 63 ne sont pas considérées comme rémunération provenant d'un emploi.

**394 Paragraph 27(1.1)(a) of the Act is replaced by the following:**

**394 L'alinéa 27(1.1)a) de la même loi est remplacé par ce qui suit :**

**(a)** the Commission or an authority that the Commission designates has, with the agreement of the claimant, referred the claimant to a course or program of instruction or training or to any other employment activity for which assistance has been provided under an employment support measure other than one referred to in paragraph 59(c); and

**a)** la Commission ou l'autorité qu'elle désigne a dirigé le prestataire, avec son accord, vers un cours ou programme d'instruction ou de formation ou une autre activité d'emploi à l'égard de laquelle de l'aide lui était fournie dans le cadre d'une mesure de soutien à l'emploi autre que celle prévue à l'alinéa 59c);

**395 The heading of Part II of the Act is replaced by the following:**

**395 Le titre de la partie II de la même loi est remplacé par ce qui suit :**

# Employment Support Measures and National Employment Service

# Mesures de soutien à l'emploi et service national de placement

**396 Section 56 of the Act is replaced by the following:**

**396 L'article 56 de la même loi est remplacé par ce qui suit :**

**Purpose**

**56** The purpose of this Part is to help maintain a sustainable employment insurance system through the establishment of employment support measures and the maintenance of a national employment service.

**Objet**

**56** La présente partie a pour objet d'aider à maintenir un régime d'assurance-emploi durable par la mise sur pied de mesures de soutien à l'emploi et par le maintien d'un service national de placement.

**397 (1) The portion of subsection 57(1) of the Act before paragraph (a) is replaced by the following:**

**397 (1) Le passage du paragraphe 57(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Guidelines**

**57 (1)** Employment support measures under this Part shall be established in accordance with the following guidelines:

**Lignes directrices**

**57 (1)** Les mesures de soutien à l'emploi prévues par la présente partie doivent être mises sur pied conformément aux lignes directrices suivantes :

**(2) Paragraph 57(1)(a) of the French version of the Act is replaced by the following:**

**a)** l'harmonisation des mesures avec les projets d'emploi provinciaux en vue d'éviter tout double emploi et tout chevauchement;

**(3) Paragraph 57(1)(d.1) of the Act is replaced by the following:**

**(d.1)** availability of assistance under the measures in either official language where there is significant demand for that assistance in that language;

**(4) The portion of paragraph 57(1)(e) of the Act before subparagraph (i) is replaced by the following:**

**(e)** commitment by persons receiving assistance under the measures to

**(5) Paragraph 57(1)(f) of the Act is replaced by the following:**

**(f)** implementation of the measures within a framework for evaluating their success in assisting persons to obtain or keep employment.

**(6) Subsections 57(2) and (3) of the Act are replaced by the following:**

**Working in concert and consultations**

**(2)** To give effect to the purpose and guidelines of this Part, the Commission shall work in concert with provincial governments and consult with workers and employers to align employment support measures with labour market needs.

**398 Paragraphs 58(a) and (b) of the Act are replaced by the following:**

**(a)** an insured person who requests assistance under an employment support measure and, when requesting the assistance, is a person for whom a benefit period is established or whose benefit period has ended within the previous 60 months or a person who paid, in at least 3 of the last 10 years, employee's premiums that did not entitle them to a refund under subsection 96(4); and

**(b)** an insured person who requests assistance under an employment support measure and, when requesting assistance, is a person who was in receipt of the employment insurance emergency response benefit within the previous 60 months.

**(2) L'alinéa 57(1)a) de la version française de la même loi est remplacé par ce qui suit :**

**a)** l'harmonisation des mesures avec les projets d'emploi provinciaux en vue d'éviter tout double emploi et tout chevauchement;

**(3) L'alinéa 57(1)d.1) de la même loi est remplacé par ce qui suit :**

**d.1)** la possibilité de recevoir de l'aide dans le cadre des mesures dans l'une ou l'autre des langues officielles là où l'importance de la demande le justifie;

**(4) Le passage de l'alinéa 57(1)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**e)** l'engagement des personnes bénéficiant d'une aide au titre des mesures :

**(5) L'alinéa 57(1)f) de la même loi est remplacé par ce qui suit :**

**f)** la mise en œuvre des mesures selon une structure permettant d'évaluer la pertinence de l'aide fournie pour obtenir ou conserver un emploi.

**(6) Les paragraphes 57(2) et (3) de la même loi sont remplacés par ce qui suit :**

**Concertation et consultation**

**(2)** Pour mettre en œuvre l'objet et les lignes directrices de la présente partie, la Commission doit travailler de concert avec les gouvernements provinciaux et consulter les travailleurs et les employeurs afin d'harmoniser les mesures de soutien à l'emploi avec les besoins du marché du travail.

**398 Les alinéas 58a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** de l'assuré qui demande de l'aide dans le cadre d'une mesure de soutien à l'emploi et qui, à la date de la demande, est soit une personne à l'égard de qui une période de prestations a été établie ou a pris fin au cours des soixante derniers mois, soit une personne ayant versé, pendant au moins trois des dix dernières années, des cotisations ouvrières ne donnant pas droit à un remboursement au titre du paragraphe 96(4);

**b)** de l'assuré qui demande de l'aide dans le cadre d'une mesure de soutien à l'emploi et qui, à la date de la demande, est une personne à qui a été versée la prestation d'assurance-emploi d'urgence dans les soixante mois précédents.

**399 Section 59 of the Act is replaced by the following:**

**Employment support measures**

**59** The Commission may establish employment support measures to help insured participants and other workers, including workers in groups underrepresented in the labour market, to obtain or keep employment, including measures to

**(a)** provide insured participants with courses or programs of instruction or training;

**(b)** provide insured participants with employment opportunities or provide employment support;

**(c)** provide workers with employment assistance services; and

**(d)** support research, innovation or partnerships related to helping workers to prepare for, obtain or keep employment and to be productive participants in the labour market.

**400 Subsections 60(4) and (5) of the Act are repealed.**

**401 Sections 61 and 62 of the Act are replaced by the following:**

**Financial assistance**

**61** The Commission may, in accordance with terms and conditions approved by the Treasury Board, provide financial assistance for the purpose of implementing employment support measures.

**Agreements for administering employment support measures**

**62** The Commission may, with the approval of the Minister, enter into an agreement or arrangement for the administration of employment support measures on its behalf by a department, board or agency of the Government of Canada, another government or government agency in Canada or any other public or private organization.

**402 Paragraphs 63(1)(a) and (b) of the Act are replaced by the following:**

**(a)** any costs of measures implemented by the government, government agency or organization that are consistent with the purpose and guidelines of this Part; and

**399 L'article 59 de la même loi est remplacé par ce qui suit :**

**Mesures de soutien à l'emploi**

**59** La Commission peut mettre sur pied des mesures de soutien à l'emploi afin d'aider les participants et autres travailleurs — notamment les membres des groupes sous-représentés sur le marché du travail — à obtenir ou à conserver un emploi, notamment des mesures visant :

**a)** à dispenser aux participants des cours ou programmes d'instruction ou de formation;

**b)** à fournir aux participants des occasions d'emploi ou à fournir du soutien à l'emploi;

**c)** à fournir aux travailleurs des services d'aide à l'emploi;

**d)** à soutenir la recherche, l'innovation ou des partenariats liés à l'aide offerte aux travailleurs pour qu'ils obtiennent ou conservent un emploi, ou encore deviennent aptes à en occuper un, et qu'ils soient des membres productifs du marché du travail.

**400 Les paragraphes 60(4) et (5) de la même loi sont abrogés.**

**401 Les articles 61 et 62 de la même loi sont remplacés par ce qui suit :**

**Soutien financier**

**61** La Commission peut, conformément aux modalités approuvées par le Conseil du Trésor, fournir un soutien financier en vue de mettre en œuvre des mesures de soutien à l'emploi.

**Accord d'administration des mesures de soutien à l'emploi**

**62** La Commission peut, avec l'approbation du ministre, conclure un accord ou un arrangement avec un ministère ou organisme du gouvernement du Canada, un gouvernement ou un organisme public canadien ou tout autre organisme pour qu'il administre une mesure de soutien à l'emploi pour son compte.

**402 Les alinéas 63(1)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** des frais liés à des mesures qui sont mises en œuvre par le gouvernement ou l'organisme et qui correspondent à l'objet et aux lignes directrices qui sont prévus par la présente partie;

**b)** des frais liés à l'administration de ces mesures par le gouvernement ou l'organisme.

**(b)** any administration costs that the government, government agency or organization incurs in implementing the measures.

**403 Section 64 of the Act is replaced by the following:**

**No appeal**

**64** A decision of the Commission made in relation to employment support measures, other than a decision under section 65.1, is not subject to review under section 112.

**404 (1) Paragraph 75(d) of the Act is replaced by the following:**

**(d)** received as repayments of overpayments by the Commission under section 61 for employment support measures authorized by Part II;

**(2) Paragraph 75(e) of the French version of the Act is replaced by the following:**

**e)** reçues à titre de remboursement de versements excédentaires faits par la Commission aux termes d'accords conclus au titre de l'article 63;

**405 Paragraph 77(1)(b) of the Act is replaced by the following:**

**(b)** all amounts paid under section 61 for employment support measures;

## Transitional Provision

**Agreements or arrangements**

**406 The *Employment Insurance Act*, as it read immediately before the day on which this Division comes into force, continues to apply to agreements or arrangements entered into under Part II of that Act that are in force on that day.**

R.S., c. 1 (5th Supp.)

## Consequential Amendment to the Income Tax Act

**407 Subparagraph 56(1)(r)(iii) of the *Income Tax Act* is amended by adding "and" at the end of clause (A) and by repealing clause (B).**

**403 L'article 64 de la même loi est remplacé par ce qui suit :**

**Absence d'appel**

**64** Aucune décision de la Commission relative à une mesure de soutien à l'emploi, autre qu'une décision prise au titre de l'article 65.1, n'est susceptible de révision au titre de l'article 112.

**404 (1) L'alinéa 75d) de la même loi est remplacé par ce qui suit :**

**d)** reçues à titre de remboursement de versements excédentaires faits par la Commission au titre de l'article 61 à l'égard de mesures de soutien à l'emploi prévues à la partie II;

**(2) L'alinéa 75e) de la version française de la même loi est remplacé par ce qui suit :**

**e)** reçues à titre de remboursement de versements excédentaires faits par la Commission aux termes d'accords conclus au titre de l'article 63;

**405 L'alinéa 77(1)b) de la même loi est remplacé par ce qui suit :**

**b)** toutes les sommes versées au titre de l'article 61 à l'égard de mesures de soutien à l'emploi;

## Disposition transitoire

**Accords ou arrangements**

**406 La *Loi sur l'assurance-emploi*, dans sa version antérieure à la date d'entrée en vigueur de la présente section, continue de s'appliquer aux accords ou arrangements conclus en vertu de la partie II de cette loi qui, à cette date, sont en vigueur.**

L.R., ch. 1 (5e suppl.)

## Modification corrélative à la Loi de l'impôt sur le revenu

**407 La division 56(1)r)(iii)(B) de la *Loi de l'impôt sur le revenu* est abrogée.**

## DIVISION 27

# Benefits Related to Employment

1996, c. 23

## Employment Insurance Act

### Amendments to the Act

**408 Subsections 12(2.3) to (2.5) of the *Employment Insurance Act* are replaced by the following:**

**General maximum — exception for seasonal workers**

**(2.3)** Despite subsection (2), the maximum number of weeks for which benefits may be paid in a benefit period to a claimant because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table set out in Schedule V by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period if

**(a)** the following conditions are met:

**(i)** the date on which a benefit period for the claimant is established falls within the period beginning on September 26, 2021 and ending on October 28, 2023,

**(ii)** on the date on which the benefit period is established, the claimant is ordinarily resident in a region described in Schedule VI,

**(iii)** in the 260 weeks before the date on which the benefit period referred to in subparagraph (i) begins, at least three benefit periods were established during which regular benefits were paid or payable, and

**(iv)** at least two of the benefit periods referred to in subparagraph (iii) began around the same time of year as the benefit period referred to in subparagraph (i) began; or

**(b)** the conditions referred to in subparagraphs (a)(i) and (ii) are met and the claimant had met the criteria set out in paragraphs 77.992(2)(b) to (d) of the *Employment Insurance Regulations* — taking into account subsections 77.992(3) and (4) of those Regulations — in respect of a benefit period established for the claimant on a date within the period referred to in paragraph 77.992(2)(a) of those Regulations.

## SECTION 27

# Prestations liées à l'emploi

1996, ch. 23

## Loi sur l'assurance-emploi

### Modification de la loi

**408 Les paragraphes 12(2.3) à (2.5) de la *Loi sur l'assurance-emploi* sont remplacés par ce qui suit :**

**Maximum : exception pour travailleurs saisonniers**

**(2.3)** Malgré le paragraphe (2), le nombre maximal de semaines pour lesquelles des prestations peuvent être versées au prestataire au cours d'une période de prestations — à l'exception de celles qui peuvent être versées pour l'une des raisons prévues au paragraphe (3) — est déterminé selon le tableau prévu à l'annexe V en fonction du taux régional de chômage applicable au prestataire et du nombre d'heures pendant lesquelles il a occupé un emploi assurable au cours de sa période de référence si :

**a)** soit les conditions ci-après sont remplies :

**(i)** la date à laquelle la période de prestations est établie à son profit tombe dans la période commençant le 26 septembre 2021 et se terminant le 28 octobre 2023,

**(ii)** à la date à laquelle la période de prestations est établie à son profit, il réside habituellement dans une région qui est décrite à l'annexe VI,

**(iii)** au cours des deux cent soixante semaines précédant la date de début de la période de prestations visée au sous-alinéa (i) au moins trois périodes de prestations ont été établies à son profit, à l'égard desquelles des prestations régulières lui ont été payées ou doivent l'être,

**(iv)** au moins deux des périodes de prestations visées au sous-alinéa (iii) ont commencé environ au même moment de l'année que celui auquel la période de prestations visée au sous-alinéa (i) commence;

**b)** soit les conditions prévues aux sous-alinéas a)(i) et (ii) sont remplies et le prestataire remplissait les conditions prévues aux alinéas 77.992(2)b) à d) du *Règlement sur l'assurance-emploi* — compte tenu des paragraphes 77.992(3) et (4) de ce règlement — à l'égard d'une période de prestations établie à son

profit à une date tombant dans la période visée à l'alinéa 77.992(2)a) de ce règlement.

**Establishment of benefit period — presumption**

**(2.4)** For the purposes of subparagraph (2.3)(a)(iii), a claimant's benefit period established before the beginning of the 260-week period is considered to have been established within the 260-week period if the claimant received a notification of payment or non-payment with respect to any week that falls within that 260-week period.

**Établissement de la période de prestations — présomption**

**(2.4)** Pour l'application du sous-alinéa (2.3)a)(iii), une période de prestations établie au profit du prestataire avant le début de la période de deux cent soixante semaines est considérée comme ayant été établie au cours de cette période si celui-ci a reçu un avis de paiement ou de non-paiement à l'égard d'une semaine qui tombe dans cette période.

**Beginning of benefit period — presumption**

**(2.5)** For the purposes of subparagraph (2.3)(a)(iv), a benefit period in a previous year is considered to have begun around the same time of year if it began during the period that begins eight weeks before and ends eight weeks after the week that is

**(a)** 52 weeks before the first week of the benefit period referred to in subparagraph (2.3)(a)(i);

**(b)** 104 weeks before the first week of the benefit period referred to in subparagraph (2.3)(a)(i);

**(c)** 156 weeks before the first week of the benefit period referred to in subparagraph (2.3)(a)(i);

**(d)** 208 weeks before the first week of the benefit period referred to in subparagraph (2.3)(a)(i); or

**(e)** 260 weeks before the first week of the benefit period referred to in subparagraph (2.3)(a)(i).

**Début de la période de prestations — présomption**

**(2.5)** Pour l'application du sous-alinéa (2.3)a)(iv), une période de prestations d'une année antérieure est considérée comme ayant commencé environ au même moment de l'année si elle a commencé durant la période commençant huit semaines avant la semaine ci-après et se terminant huit semaines après celle-ci, selon le cas :

**a)** celle qui tombe cinquante-deux semaines avant la première semaine de la période de prestations visée au sous-alinéa (2.3)a)(i);

**b)** celle qui tombe cent quatre semaines avant la première semaine de la période de prestations visée au sous-alinéa (2.3)a)(i);

**c)** celle qui tombe cent cinquante-six semaines avant la première semaine de la période de prestations visée au sous-alinéa (2.3)a)(i);

**d)** celle qui tombe deux cent huit semaines avant la première semaine de la période de prestations visée au sous-alinéa (2.3)a)(i);

**e)** celle qui tombe deux cent soixante semaines avant la première semaine de la période de prestations visée au sous-alinéa (2.3)a)(i).

**409 Schedule V to the Act is replaced by the Schedule V set out in Schedule 3 to this Act.**

**409 L'annexe V de la même loi est remplacée par l'annexe V figurant à l'annexe 3 de la présente loi.**

**410 Schedule VI to the Act is amended by replacing the reference after the heading "SCHEDULE VI" with the following:**

(Subparagraph 12(2.3)(a)(ii))

**410 Le renvoi qui suit le titre « ANNEXE VI », à l'annexe VI de la même loi, est remplacé par ce qui suit :**

(sous-alinéa 12(2.3)a)(ii))

## Transitional Provision

## Disposition transitoire

**Continued application — before September 25, 2022**

**411 Schedule V to the *Employment Insurance Act*, as it read immediately before September 25, 2022, continues to apply in respect of a *claimant***

**Application continue — avant le 25 septembre 2022**

**411 L'annexe V de la *Loi sur l'assurance-emploi*, dans sa version antérieure au 25 septembre 2022, continue de s'appliquer à l'égard du *prestataire***

**whose *benefit period*, as those terms are defined in subsection 2(1) of that Act, begins before September 25, 2022.**

2021, c. 23

## Budget Implementation Act, 2021, No. 1

**412 The *Budget Implementation Act, 2021, No. 1* is amended by adding the following after section 350:**

### Transitional Provisions

**Continued application — before September 25, 2022**

**350.1 (1) Subsection 35(6), paragraph 35(7)(g) and section 36 of the former Regulations continue to apply in respect of a claimant's earnings if, but for this subsection, the earnings would be allocated under subsection 36(9) or (10) of the new Regulations to a number of weeks the first week of which falls within the period beginning on September 26, 2021 and ending on September 24, 2022.**

**Definitions**

**(2) The following definitions apply in this section.**

***claimant*** **has the same meaning as in subsection 2(1) of the *Employment Insurance Act*. (*prestataire*)**

***earnings*** **means the earnings referred to in subsections 36(9) and (10) of the new Regulations. (*rémunération*)**

***former Regulations*** **means the *Employment Insurance Regulations* as they read immediately before September 25, 2022. (*ancien règlement*)**

***new Regulations*** **means the *Employment Insurance Regulations* as they read on September 25, 2022. (*nouveau règlement*)**

## Coordinating Amendments

**Bill C-8**

**413 (1) Subsections (2) to (4) apply if Bill C-8, introduced in the 1st session of the 44th Parliament and entitled the *Economic and Fiscal Update Implementation Act, 2021* (in this section referred to as the "other Act"), receives royal assent.**

**dont la *période de prestations*, au sens du paragraphe 2(1) de cette loi, commence avant le 25 septembre 2022.**

2021, ch. 23

## Loi nº 1 d'exécution du budget de 2021

**412 La *Loi nº 1 d'exécution du budget de 2021* est modifiée par adjonction, après l'article 350, de ce qui suit :**

### Dispositions transitoires

**Application continue — avant le 25 septembre 2022**

**350.1 (1) Le paragraphe 35(6), l'alinéa 35(7)g) et l'article 36 de l'ancien règlement continuent à s'appliquer à l'égard de la rémunération du prestataire qui, n'eût été le présent paragraphe, serait répartie conformément aux paragraphes 36(9) ou (10) du nouveau règlement sur un nombre de semaines dont la première est comprise dans la période débutant le 26 septembre 2021 et se terminant le 24 septembre 2022.**

**Définitions**

**(2) Les définitions qui suivent s'appliquent au présent article.**

***ancien règlement*** **Le *Règlement sur l'assurance-emploi*, dans sa version antérieure au 25 septembre 2022. (*former Regulations*)**

***nouveau règlement*** **Le *Règlement sur l'assurance-emploi*, dans sa version au 25 septembre 2022. (*new Regulations*)**

***prestataire*** **S'entend au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*. (*claimant*)**

***rémunération*** **S'entend de la rémunération visée aux paragraphes 36(9) et (10) du nouveau règlement. (*earnings*)**

## Dispositions de coordination

**Projet de loi C-8**

**413 (1) Les paragraphes (2) à (4) s'appliquent en cas de sanction du projet de loi C-8, déposé au cours de la 1re session de la 44e législature et intitulé *Loi d'exécution de la mise à jour économique et budgétaire de 2021* (appelé « autre loi » au présent article).**

**(2) If section 47 of the other Act comes into force before section 408 of this Act, then**

**(a) sections 408 and 410 of this Act are deemed never to have come into force and are repealed; and**

**(b) subparagraph 12(2.3)(a)(i) of the *Employment Insurance Act* is replaced by the following:**

**(i)** the date on which a benefit period for the claimant is established falls within the period beginning on September 26, 2021 and ending on October 28, 2023,

**(3) If section 408 of this Act comes into force before section 47 of the other Act, then sections 47 and 48 of the other Act are deemed never to have come into force and are repealed.**

**(4) If section 47 of the other Act comes into force on the same day as section 408 of this Act, then sections 47 and 48 of the other Act are deemed never to have come into force and are repealed.**

## Coming into Force

**September 25, 2022**

**414 (1) Sections 409 and 411 come into force, or are deemed to have come into force, on September 25, 2022.**

**Royal assent or September 25, 2022**

**(2) Section 412 comes into force on the day on which this Act receives royal assent or, if that day is after September 25, 2022, is deemed to have come into force on September 25, 2022.**

### DIVISION 28

R.S., c. C-8

# Canada Pension Plan

## Amendments to the Act

**415 The definition *contributory period* in subsection 2(1) of the *Canada Pension Plan* is replaced by the following:**

***contributory period*** of a contributor has, subject to paragraph 44(2)(b) and subsections 44(5) and 56(5), the meaning assigned by section 49; (*période cotisable*)

**(2) Si l'article 47 de l'autre loi entre en vigueur avant l'article 408 de la présente loi :**

**a) cet article 408 et l'article 410 de la présente loi sont réputés ne pas être entrés en vigueur et sont abrogés;**

**b) le sous-alinéa 12(2.3)a)(i) de la *Loi sur l'assurance-emploi* est remplacé par ce qui suit :**

**(i)** la date à laquelle la période de prestations est établie à son profit tombe dans la période commençant le 26 septembre 2021 et se terminant le 28 octobre 2023,

**(3) Si l'article 408 de la présente loi entre en vigueur avant l'article 47 de l'autre loi, cet article 47 et l'article 48 de l'autre loi sont réputés ne pas être entrés en vigueur et sont abrogés.**

**(4) Si l'entrée en vigueur de l'article 47 de l'autre loi et celle de l'article 408 de la présente loi sont concomitantes, cet article 47 et l'article 48 de l'autre loi sont réputés ne pas être entrés en vigueur et sont abrogés.**

## Entrée en vigueur

**25 septembre 2022**

**414 (1) Les articles 409 et 411 entrent en vigueur ou sont réputés être entrés en vigueur le 25 septembre 2022.**

**Sanction ou 25 septembre 2022**

**(2) L'article 412 entre en vigueur à la sanction de la présente loi ou, si cette date est postérieure au 25 septembre 2022, est réputé être entré en vigueur le 25 septembre 2022.**

### SECTION 28

L.R., ch. C-8

# Régime de pensions du Canada

## Modification de la loi

**415 La définition de *période cotisable*, au paragraphe 2(1) du *Régime de pensions du Canada*, est remplacée par ce qui suit :**

***période cotisable*** À l'égard d'un cotisant, s'entend, sous réserve de l'alinéa 44(2)b) et des paragraphes 44(5) et 56(5), au sens de l'article 49. (*contributory period*)

**416 (1) Paragraph 44(1)(h) of the Act is replaced by the following:**

**(h)** a post-retirement disability benefit shall be paid to a beneficiary of a retirement pension who has not reached 65 years of age and is disabled if

**(i)** the beneficiary has made base contributions for not less than the minimum qualifying period and that period ends after 2018,

**(ii)** the beneficiary is a contributor to whom a post-retirement disability benefit would have been payable at the time the contributor is deemed to have become disabled if an application for a post-retirement disability benefit had been received before the application was actually received, or

**(iii)** the beneficiary is a contributor to whom a post-retirement disability benefit would have been payable at the time the contributor is deemed to have become disabled if a division of unadjusted pensionable earnings that was made under section 55 or 55.1 had not been made.

**416 (1) L'alinéa 44(1)h) de la même loi est remplacé par ce qui suit :**

**h)** une prestation d'invalidité après-retraite doit, dans les cas ci-après, être payée au bénéficiaire d'une pension de retraite qui n'a pas atteint l'âge de soixante-cinq ans et est invalide :

**(i)** il a versé des cotisations de base pendant au moins la période minimale d'admissibilité et cette période se termine après 2018,

**(ii)** il est un cotisant à qui une telle prestation aurait été payable au moment où il est réputé être devenu invalide, si une demande à cet effet avait été reçue avant le moment où elle l'a effectivement été,

**(iii)** il est un cotisant à qui une telle prestation aurait été payable au moment où il est réputé être devenu invalide, si un partage des gains non ajustés ouvrant droit à pension n'avait pas été effectué en application des articles 55 et 55.1.

**(2) The portion of subsection 44(4) of the Act before paragraph (c) is replaced by the following:**

**Calculation of minimum qualifying period — post-retirement disability benefit**

**(4)** For the purposes of paragraph (1)(h) and, if a post-retirement disability benefit is payable to a contributor, paragraph (1)(e), the contributor is deemed to have made base contributions for not less than the minimum qualifying period only if the contributor has made base contributions during their contributory period on earnings that are not less than the contributor's basic exemption, calculated without regard to subsection 20(2),

**(a)** for at least four of the last six calendar years included either wholly or partly in the contributor's contributory period;

**(b)** for at least 25 calendar years included either wholly or partly in the contributor's contributory period, of which at least three are in the last six calendar years included either wholly or partly in the contributor's contributory period; or

**(2) Le passage du paragraphe 44(4) de la même loi précédant l'alinéa c) est remplacé par ce qui suit :**

**Calcul de la période minimale d'admissibilité dans le cas d'une prestation d'invalidité après-retraite**

**(4)** Pour l'application de l'alinéa (1)h) et, si une prestation d'invalidité après-retraite doit lui être payée, de l'alinéa (1)e), le cotisant n'est réputé avoir versé des cotisations de base pendant au moins la période minimale d'admissibilité que s'il a versé des cotisations de base au cours de sa période cotisable sur des gains qui sont au moins égaux à son exemption de base, compte non tenu du paragraphe 20(2), selon le cas :

**a)** pendant au moins quatre des six dernières années civiles comprises, en tout ou en partie, dans sa période cotisable;

**b)** pendant au moins vingt-cinq années civiles comprises, en tout ou en partie, dans sa période cotisable, dont au moins trois dans les six dernières années civiles comprises, en tout ou en partie, dans sa période cotisable;

**(3) Section 44 of the Act is amended by adding the following after subsection (4):**

**(3) L'article 44 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Contributory period — post-retirement disability benefit**

**(5)** For the purposes of subsection (4), the contributory period of a contributor is the period

**(a)** commencing when they reach 18 years of age, and

**(b)** ending with the month in which they are determined to have become disabled for the purpose of paragraph (1)(h),

but excluding

**(c)** any month that was excluded from the contributor's contributory period under this Act or under a provincial pension plan by reason of disability, and

**(d)** in relation to any benefits payable under this Act for any month after December 1977, any month for which the contributor was a family allowance recipient in a year for which the contributor's base unadjusted pensionable earnings are less than the contributor's basic exemption for the year, calculated without regard to subsection 20(2).

**417 The portion of paragraph 49(b) of the Act before subparagraph (i) is replaced by the following:**

**(b)** where a benefit other than a disability pension or a post-retirement disability benefit commences after the end of 1986, with the earliest of

**418 (1) The portion of paragraph (a) of the description of G in section 51.1 of the Act before the formula is replaced by the following:**

**(a)** the lesser of 1 and the number determined by the formula

**(2) The description of M7 in section 51.1 of the Act is replaced by the following:**

**M7** is the number of months in the contributor's first additional contributory period in the year in which they were deemed to have become disabled that are before the month following the month in which they were deemed to have become disabled; and

**(3) Section 51.1 of the Act is renumbered as subsection 51.1(1) and is amended by adding the following:**

**Période cotisable — prestation d'invalidité après-retraite**

**(5)** Pour l'application du paragraphe (4), la période cotisable du cotisant est la période qui :

**a)** commence au moment où il atteint l'âge de dix-huit ans;

**b)** se termine avec le mois au cours duquel il est déclaré invalide dans le cadre de l'alinéa (1)h);

mais ne comprend pas :

**c)** un mois qui, en raison d'une invalidité, a été exclu de la période cotisable de ce cotisant conformément à la présente loi ou à un régime provincial de pensions;

**d)** en ce qui concerne une prestation payable en application de la présente loi à l'égard d'un mois postérieur à décembre 1977, un mois relativement auquel il était bénéficiaire d'une allocation familiale dans une année à l'égard de laquelle ses gains non ajustés de base ouvrant droit à pension étaient inférieurs à son exemption de base pour l'année, compte non tenu du paragraphe 20(2).

**417 Le passage de l'alinéa 49b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**b)** dans les cas où une prestation, autre qu'une pension d'invalidité ou une prestation d'invalidité après-retraite, commence après la fin de 1986, avec le premier des mois suivants à survenir :

**418 (1) Le passage de l'alinéa a) de l'élément G de la première formule figurant à l'article 51.1 de la même loi précédant la deuxième formule est remplacé par ce qui suit :**

**a)** 1 ou, s'il est inférieur, le nombre obtenu au moyen de la formule suivante :

**(2) L'élément M7 des formules figurant à l'article 51.1 de la même loi est remplacé par ce qui suit :**

**M7** le nombre de mois dans la première période cotisable supplémentaire du cotisant pour l'année au cours de laquelle celui-ci est réputé être devenu invalide qui précèdent le mois suivant celui au cours duquel il est réputé être devenu invalide;

**(3) L'article 51.1 de la même loi devient le paragraphe 51.1(1) et est modifié par adjonction de ce qui suit :**

**Year in which first additional contributory period begins**

**(2)** For the purposes of the descriptions of A to F in subsection (1), if the contributor's first additional contributory period begins in the six years before the year in which they were deemed to have become disabled, the Year's Maximum Pensionable Earnings for the year in which their first additional contributory period begins is replaced by the prorated portion determined by the formula

**A x (M ÷ 12)**

where

**A** is the Year's Maximum Pensionable Earnings for the year in which the contributor's first additional contributory period begins; and

**M** is the number of months in that year that are included in the contributor's first additional contributory period.

**419 (1) The portion of paragraph (a) of the description of G in section 51.2 of the Act before the formula is replaced by the following:**

**(a)** the lesser of 1 and the number determined by the formula

**(2) The description of M7 in section 51.2 of the Act is replaced by the following:**

**M7** is the number of months in the contributor's second additional contributory period in the year in which they were deemed to have become disabled that are before the month following the month in which they were deemed to have become disabled; and

**(3) Section 51.2 of the Act is renumbered as subsection 51.2(1) and is amended by adding the following:**

**Year in which second additional contributory period begins**

**(2)** For the purposes of the descriptions of A to F in subsection (1), if the contributor's second additional contributory period begins in the six years before the year in which they were deemed to have become disabled, the Year's Maximum Pensionable Earnings for the year in which their second additional contributory period begins is replaced by the prorated portion determined by the formula

**A x (M ÷ 12)**

where

**Année où commence la première période cotisable supplémentaire**

**(2)** Pour l'application des éléments A à F de la première formule figurant au paragraphe (1), si la première période cotisable supplémentaire du cotisant commence dans les six ans qui précèdent l'année au cours de laquelle il est réputé être devenu invalide, le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa première période cotisable supplémentaire commence est remplacé par la part proportionnelle déterminée par la formule suivante :

**A x (M ÷ 12)**

où :

**A** représente le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa première période cotisable supplémentaire commence;

**M** le nombre de mois de cette année qui sont inclus dans cette période.

**419 (1) Le passage de l'alinéa a) de l'élément G de la première formule figurant à l'article 51.2 de la même loi précédant la deuxième formule est remplacé par ce qui suit :**

**a)** 1 ou, s'il est inférieur, le nombre obtenu au moyen de la formule suivante :

**(2) L'élément M7 des formules figurant à l'article 51.2 de la même loi est remplacé par ce qui suit :**

**M7** le nombre de mois dans la deuxième période cotisable supplémentaire du cotisant pour l'année au cours de laquelle celui-ci est réputé être devenu invalide qui précèdent le mois suivant celui au cours duquel il est réputé être devenu invalide;

**(3) L'article 51.2 de la même loi devient le paragraphe 51.2(1) et est modifié par adjonction de ce qui suit :**

**Année où commence la deuxième période cotisable supplémentaire**

**(2)** Pour l'application des éléments A à F de la première formule figurant au paragraphe (1), si la deuxième période cotisable supplémentaire du cotisant commence dans les six ans qui précèdent l'année au cours de laquelle il est réputé être devenu invalide, le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa deuxième période cotisable supplémentaire commence est remplacé par la part proportionnelle déterminée par la formule suivante :

**A x (M ÷ 12)**

**A** is the Year's Maximum Pensionable Earnings for the year in which the contributor's second additional contributory period begins; and

**M** is the number of months in that year that are included in the contributor's second additional contributory period.

**420 Section 53.3 of the Act is amended by adding the following after subsection (4):**

**Year in which first additional contributory period begins**

**(5)** For the purposes of the descriptions of A to E in subsection (1), if the contributor's first additional contributory period begins in the five years before the year in which they became a family allowance recipient, the Year's Maximum Pensionable Earnings for the year in which their first additional contributory period begins is replaced by the prorated portion determined by the formula

**A x (M ÷ 12)**

where

**A** is the Year's Maximum Pensionable Earnings for the year in which the contributor's first additional contributory period begins; and

**M** is the number of months in that year that are included in the contributor's first additional contributory period.

**421 Section 53.4 of the Act is amended by adding the following after subsection (3):**

**Year in which second additional contributory period begins**

**(4)** For the purposes of the descriptions of A to E in subsection (1), if the contributor's second additional contributory period begins in the five years before the year in which they became a family allowance recipient,

**(a)** the Year's Maximum Pensionable Earnings for the year in which their second additional contributory period begins is replaced by the prorated portion determined by the formula

**A x (M ÷ 12)**

where

où :

**A** représente le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa deuxième période cotisable supplémentaire commence;

**M** le nombre de mois de cette année qui sont inclus dans cette période.

**420 L'article 53.3 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Cas particulier : année où commence la première période cotisable supplémentaire**

**(5)** Pour l'application des éléments A à E de la première formule figurant au paragraphe (1), si la première période cotisable supplémentaire du cotisant commence dans les cinq ans qui précèdent l'année au cours de laquelle il est devenu bénéficiaire d'une allocation familiale, le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa première période cotisable supplémentaire commence est remplacé par la part proportionnelle déterminée par la formule suivante :

**A x (M ÷ 12)**

où :

**A** représente le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa première période cotisable supplémentaire commence;

**M** le nombre de mois de cette année qui sont inclus dans cette période.

**421 L'article 53.4 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Cas particulier : année où commence la deuxième période cotisable supplémentaire**

**(4)** Pour l'application des éléments A à E de la première formule figurant au paragraphe (1), si la deuxième période cotisable supplémentaire du cotisant commence dans les cinq ans qui précèdent l'année au cours de laquelle il est devenu bénéficiaire d'une allocation familiale :

**a)** le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa deuxième période cotisable supplémentaire commence est remplacé par la part proportionnelle déterminée par la formule suivante :

**A x (M ÷ 12)**

**A** is the Year's Maximum Pensionable Earnings for the year in which the contributor's second additional contributory period begins, and

**M** is the number of months in that year that are included in the contributor's second additional contributory period; and

**(b)** the Year's Additional Maximum Pensionable Earnings for the year in which their second additional contributory period begins is replaced by the prorated portion determined by the formula

**A x (M ÷ 12)**

where

**A** is the Year's Additional Maximum Pensionable Earnings for the year in which the contributor's second additional contributory period begins, and

**M** is the number of months in that year that are included in the contributor's second additional contributory period.

où :

**A** représente le maximum des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa deuxième période cotisable supplémentaire commence,

**M** le nombre de mois de cette année qui sont inclus dans cette période;

**b)** le maximum supplémentaire des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa deuxième période cotisable supplémentaire commence est remplacé par la part proportionnelle déterminée par la formule suivante :

**A x (M ÷ 12)**

où :

**A** représente le maximum supplémentaire des gains annuels ouvrant droit à pension pour l'année au cours de laquelle sa deuxième période cotisable supplémentaire commence,

**M** le nombre de mois de cette année qui sont inclus dans cette période.

## Coming into Force

### Non-application — subsection 114(2) of *Canada Pension Plan*

**422 (1) Subsection 114(2) of the *Canada Pension Plan* does not apply in respect of the amendments to that Act contained in this Division.**

### Order in council

**(2) This Division comes into force, in accordance with subsection 114(4) of the *Canada Pension Plan*, on a day to be fixed by order of the Governor in Council.**

## Entrée en vigueur

### Non-application du paragraphe 114(2) du *Régime de pensions du Canada*

**422 (1) Le paragraphe 114(2) du *Régime de pensions du Canada* ne s'applique pas aux modifications qui sont apportées à cette loi par la présente section.**

### Décret

**(2) La présente section entre en vigueur, conformément au paragraphe 114(4) du *Régime de pensions du Canada*, à la date fixée par décret.**

## DIVISION 29

# Medical Leave with Pay

2021, c. 27

## An Act to amend the Criminal Code and the Canada Labour Code

**423 (1) Subsection 7(1) of *An Act to amend the Criminal Code and the Canada Labour Code* is amended by replacing the subsection 239(1.2) that it enacts with the following:**

## SECTION 29

# Congé payé pour raisons médicales

2021, ch. 27

## Loi modifiant le Code criminel et le Code canadien du travail

**423 (1) Le paragraphe 7(1) de la *Loi modifiant le Code criminel et le Code canadien du travail* est modifié par remplacement du paragraphe 239(1.2) qui y est édicté par ce qui suit :**

**Leave with pay**

**(1.2)** Subject to subsection (1.21) and the regulations, an employee earns, as of the first day on which this subsection applies to the employee,

**(a)** after completing 30 days of continuous employment with an employer, three days of medical leave of absence with pay; and

**(b)** following the period of 30 days referred to in paragraph (a), at the beginning of each month after completing one month of continuous employment with the employer, one day of medical leave of absence with pay.

**Maximum of 10 days**

**(1.21)** Subject to the regulations, an employee is entitled to earn up to 10 days of medical leave of absence with pay in a calendar year.

**(2) Subsection 7(1) of the Act is amended by replacing the subsection 239(1.4) that it enacts with the following:**

**Annual carry forward**

**(1.4)** Subject to the regulations, each day of medical leave of absence with pay that an employee does not take in a calendar year is to be carried forward to January 1 of the following calendar year and decreases, by one, the maximum number of days that can be earned in that calendar year under subsection (1.21).

**(3) Subsection 7(1) of the Act is amended by replacing the subsections 239(1.6) and (2) that it enacts with the following:**

**Certificate**

**(2)** The employer may, in writing and no later than 15 days after the return to work of an employee who has taken a medical leave of absence of at least five consecutive days, require the employee to provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of their medical leave of absence.

**(4) Subsection 7(2) of the Act is amended by amending the subsection 239(13) that it enacts by striking out "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:**

**(b)** modifying subsection (1.2), (1.21) or (1.4) if, in the opinion of the Governor in Council, employees or classes of employees will, despite the modification, earn periods of medical leave of absence with pay that

**Congé payé**

**(1.2)** Sous réserve du paragraphe (1.21) et des règlements, l'employé acquiert, dès le premier jour où le présent paragraphe s'applique à lui :

**a)** après trente jours de travail sans interruption pour l'employeur, trois jours de congé payé pour raisons médicales;

**b)** après l'expiration de cette période de trente jours, au début de chaque mois suivant un mois durant lequel il a travaillé sans interruption pour lui, un jour de congé payé pour raisons médicales.

**Maximum de dix jours**

**(1.21)** Sous réserve des règlements, l'employé a droit d'acquérir jusqu'à dix jours de congé payé pour raisons médicales dans une année civile.

**(2) Le paragraphe 7(1) de la même loi est modifié par remplacement du paragraphe 239(1.4) qui y est édicté par ce qui suit :**

**Report annuel**

**(1.4)** Sous réserve des règlements, les jours de congé payé pour raisons médicales non pris par l'employé dans l'année civile sont reportés au 1er janvier de l'année civile suivante et sont soustraits du nombre maximum de jours pouvant être acquis dans cette année au titre du paragraphe (1.21).

**(3) Le paragraphe 7(1) de la même loi est modifié par remplacement des paragraphes 239(1.6) et (2) qui y sont édictés par ce qui suit :**

**Certificat**

**(2)** L'employeur peut, par écrit et au plus tard quinze jours après le retour au travail de l'employé qui a pris un congé pour raisons médicales d'au moins cinq jours consécutifs, exiger que celui-ci lui présente un certificat délivré par un professionnel de la santé attestant qu'il était incapable de travailler pendant son congé.

**(4) Le paragraphe 7(2) de la même loi est modifié par remplacement de l'alinéa 239(13)b) qui y est édicté par ce qui suit :**

**b)** adapter les paragraphes (1.2), (1.21) ou (1.4) s'il estime que des employés ou des catégories d'employés acquerront, malgré l'adaptation, des périodes de congé

are substantially equivalent to the period provided for in subsection (1.21); and

**(c)** providing for employees or classes of employees to earn periods of medical leave of absence with pay other than in accordance with subsection (1.2) if, in the opinion of the Governor in Council, the periods of medical leave of absence with pay are substantially equivalent to the period provided for in subsection (1.21).

**(5) Subsection 7(2) of the Act is amended by adding, after the subsection 239(13) that it enacts, the following:**

**Application of section 189**

**(14)** Section 189 applies for the purposes of this Division.

**424 The Act is amended by adding the following after section 7:**

**7.1 The Act is amended by adding the following after section 239:**

**Application — 100 or more employees**

**239.001** The provisions of this Division respecting the medical leave of absence with pay apply to an employer and its employees beginning on the first day on which, as of the day on which this section comes into force, the employer has 100 or more employees, even if the number of employees falls below 100 after that first day.

**425 (1) Subsection 8(2) of the Act is replaced by the following:**

**Order in council or December 1, 2022**

**(2) Sections 6 and 7 come into force on a day to be fixed by order of the Governor in Council, but no later than December 1, 2022.**

**(2) Section 8 of the Act is amended by adding the following after subsection (3):**

**Order in council**

**(4) Section 7.1 comes into force on a day to be fixed by order of the Governor in Council.**

R.S., c. L-2

## Related Amendment to the Canada Labour Code

**426 Section 239.001 of the *Canada Labour Code* is repealed.**

payé pour raisons médicales qui sont essentiellement équivalentes à celle prévue au paragraphe (1.21);

**c)** prévoir que des employés ou des catégories d'employés acquièrent des périodes de congé payé pour raisons médicales autrement qu'en conformité avec le paragraphe (1.2), s'il estime qu'ils acquerront des périodes qui sont essentiellement équivalentes à celle prévue au paragraphe (1.21).

**(5) Le paragraphe 7(2) de la même loi est modifié par adjonction, après le paragraphe 239(13) qui y est édicté, de ce qui suit :**

**Application de l'article 189**

**(14)** L'article 189 s'applique dans le cadre de la présente section.

**424 La même loi est modifiée par adjonction, après l'article 7, de ce qui suit :**

**7.1 La même loi est modifiée par adjonction, après l'article 239, de ce qui suit :**

**Application — cent employés ou plus**

**239.001** Les dispositions de la présente section concernant le congé payé pour raisons médicales s'appliquent à tout employeur et à ses employés dès le premier jour où, à compter de la date d'entrée en vigueur du présent article, il compte cent employés ou plus, et continuent de s'appliquer même si ce nombre d'employés devient subséquemment inférieur à cent.

**425 (1) Le paragraphe 8(2) de la même loi est remplacé par ce qui suit :**

**Décret ou 1er décembre 2022**

**(2) Les articles 6 et 7 entrent en vigueur à la date fixée par décret, mais au plus tard le 1er décembre 2022.**

**(2) L'article 8 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Décret**

**(4) L'article 7.1 entre en vigueur à la date fixée par décret.**

L.R., ch. L-2

## Modification connexe au Code canadien du travail

**426 L'article 239.001 du *Code canadien du travail* est abrogé.**

## Transitional Provision

### Personal leave

**427 Paragraph 206.6(1)(a) of the *Canada Labour Code*, as it read immediately before the day on which section 6 of *An Act to amend the Criminal Code and the Canada Labour Code*, chapter 27 of the Statutes of Canada, 2021, comes into force, continues to apply to every employer and its employees to which section 239.001 of the *Canada Labour Code*, as enacted by section 7.1 of *An Act to amend the Criminal Code and the Canada Labour Code*, chapter 27 of the Statutes of Canada, 2021, does not apply, until the day on which section 426 of this Act comes into force.**

## Coordinating Amendments

### 2021, c. 27

**428 (1) In this section, *other Act* means *An Act to amend the Criminal Code and the Canada Labour Code*, chapter 27 of the Statutes of Canada, 2021.**

**(2) If section 7 of the other Act comes into force before section 423 of this Act, then**

**(a) sections 423 to 427 and 429 of this Act are deemed never to have come into force and are repealed;**

**(b) subsection 239(1.2) of the *Canada Labour Code* is replaced by the following:**

### Leave with pay

**(1.2)** Subject to subsection (1.21) and the regulations, an employee earns, as of the day on which this subsection comes into force,

**(a)** after completing 30 days of continuous employment with an employer, three days of medical leave of absence with pay; and

**(b)** following the period of 30 days referred to in paragraph (a), at the beginning of each month after completing one month of continuous employment with the employer, one day of medical leave of absence with pay.

### Maximum of 10 days

**(1.21)** Subject to the regulations, an employee is entitled to earn up to 10 days of medical leave of absence with pay in a calendar year.

## Disposition transitoire

### Congé personnel

**427 L'alinéa 206.6(1)a) du *Code canadien du travail*, dans sa version antérieure à la date d'entrée en vigueur de l'article 6 de la *Loi modifiant le Code criminel et le Code canadien du travail*, chapitre 27 des Lois du Canada (2021), continue de s'appliquer aux employeurs et à leurs employés qui ne sont pas assujettis à l'article 239.001 du *Code canadien du travail*, édicté par l'article 7.1 de la *Loi modifiant le Code criminel et le Code canadien du travail*, chapitre 27 des Lois du Canada (2021), jusqu'à la date d'entrée en vigueur de l'article 426 de la présente loi.**

## Dispositions de coordination

### 2021, ch. 27

**428 (1) Au présent article, *autre loi* s'entend de la *Loi modifiant le Code criminel et le Code canadien du travail*, chapitre 27 des Lois du Canada (2021).**

**(2) Si l'article 7 de l'autre loi entre en vigueur avant l'article 423 de la présente loi :**

**a) les articles 423 à 427 et 429 de la présente loi sont réputés ne pas être entrés en vigueur et sont abrogés;**

**b) le paragraphe 239(1.2) du *Code canadien du travail* est remplacé par ce qui suit :**

### Congé payé

**(1.2)** Sous réserve du paragraphe (1.21) et des règlements, l'employé acquiert, à compter de la date d'entrée en vigueur du présent paragraphe :

**a)** après trente jours de travail sans interruption pour l'employeur, trois jours de congé payé pour raisons médicales;

**b)** après l'expiration de cette période de trente jours, au début de chaque mois suivant un mois durant lequel il a travaillé sans interruption pour lui, un jour de congé payé pour raisons médicales.

### Maximum de dix jours

**(1.21)** Sous réserve des règlements, l'employé a droit d'acquérir jusqu'à dix jours de congé payé pour raisons médicales dans une année civile.

**(c) subsection 239(1.4) of the *Canada Labour Code* is replaced by the following:**

**Annual carry forward**

**(1.4)** Subject to the regulations, each day of medical leave of absence with pay that an employee does not take in a calendar year is to be carried forward to January 1 of the following calendar year and decreases, by one, the maximum number of days that can be earned in that calendar year under subsection (1.21).

**(d) subsections 239(1.6) and (2) of the *Canada Labour Code* are replaced by the following:**

**Certificate**

**(2)** The employer may, in writing and no later than 15 days after the return to work of an employee who has taken a medical leave of absence of at least five consecutive days, require the employee to provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of their medical leave of absence.

**(e) subsection 239(13) of the *Canada Labour Code* is amended by striking out "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:**

**(b)** modifying subsection (1.2), (1.21) or (1.4) if, in the opinion of the Governor in Council, employees or classes of employees will, despite the modification, earn periods of medical leave of absence with pay that are substantially equivalent to the period provided for in subsection (1.21); and

**(c)** providing for employees or classes of employees to earn periods of medical leave of absence with pay other than in accordance with subsection (1.2) if, in the opinion of the Governor in Council, the periods of medical leave of absence with pay are substantially equivalent to the period provided for in subsection (1.21).

**(f) section 239 of the *Canada Labour Code* is amended by adding the following after subsection (13):**

**Application of section 189**

**(14)** Section 189 applies for the purposes of this Division.

**(3) If section 423 of this Act comes into force on the same day as section 7 of the other Act, then that section 423 is deemed to have come into force before that section 7.**

**c) le paragraphe 239(1.4) du *Code canadien du travail* est remplacé par ce qui suit :**

**Report annuel**

**(1.4)** Sous réserve des règlements, les jours de congé payé pour raisons médicales non pris par l'employé dans l'année civile sont reportés au 1er janvier de l'année civile suivante et sont soustraits du nombre maximum de jours pouvant être acquis dans cette année au titre du paragraphe (1.21).

**d) les paragraphes 239(1.6) et (2) du *Code canadien du travail* sont remplacés par ce qui suit :**

**Certificat**

**(2)** L'employeur peut, par écrit et au plus tard quinze jours après le retour au travail de l'employé qui a pris un congé pour raisons médicales d'au moins cinq jours consécutifs, exiger que celui-ci lui présente un certificat délivré par un professionnel de la santé attestant qu'il était incapable de travailler pendant son congé.

**e) l'alinéa 239(13)b) du *Code canadien du travail* est remplacé par ce qui suit :**

**b)** adapter les paragraphes (1.2), (1.21) ou (1.4) s'il estime des employés ou des catégories d'employés acquerront, malgré l'adaptation, des périodes de congé payé pour raisons médicales qui sont essentiellement équivalentes à celle prévue au paragraphe (1.21);

**c)** prévoir que des employés ou des catégories d'employés acquièrent des périodes de congé payé pour raisons médicales autrement qu'en conformité avec le paragraphe (1.2), s'il estime qu'ils acquerront des périodes qui sont essentiellement équivalentes à celle prévue au paragraphe (1.21).

**f) l'article 239 du *Code canadien du travail* est modifié par adjonction, après le paragraphe (13), de ce qui suit :**

**Application de l'article 189**

**(14)** L'article 189 s'applique dans le cadre de la présente section.

**(3) Si l'entrée en vigueur de l'article 423 de la présente loi et celle de l'article 7 de l'autre loi sont concomitantes, cet article 423 est réputé être entré en vigueur avant cet article 7.**

## Coming into Force

**Order in council**

**429 Section 426 comes into force on a day to be fixed by order of the Governor in Council.**

## Entrée en vigueur

**Décret**

**429 L'article 426 entre en vigueur à la date fixée par décret.**

### DIVISION 30

R.S., c. C-44; 1994, c. 24, s. 1(F)

# Canada Business Corporations Act

## Amendments to the Act

**430 Subsection 21.1(7) of the *Canada Business Corporations Act* is replaced by the following:**

**Non-application**

**(7)** This section does not apply to a corporation

**(a)** that is a reporting issuer or an *émetteur assujetti* under an Act of the legislature of a province relating to the regulation of securities;

**(b)** any of the securities of which are listed and posted for trading on a *designated stock exchange*, as defined in subsection 248(1) of the *Income Tax Act*; or

**(c)** that is a member of a prescribed class.

**431 The Act is amended by adding the following after section 21.2:**

**Sending of information to Director**

**21.21 (1)** A corporation to which section 21.1 applies shall

**(a)** on an annual basis, send to the Director the information in its register of individuals with significant control over the corporation, in the form and within the period that the Director fixes; and

**(b)** within 15 days after the day on which it records information under subsection 21.1(3), send the information to the Director, in the form that the Director fixes.

**Sending of information — certificates issued**

**(2)** On or after the date shown on a certificate referred to in section 8, subsection 185(4) or 187(4), a corporation to

### SECTION 30

L.R., ch. C-44; 1994, ch. 24, art. 1(F)

# Loi canadienne sur les sociétés par actions

## Modification de la loi

**430 Le paragraphe 21.1(7) de la *Loi canadienne sur les sociétés par actions* est remplacé par ce qui suit :**

**Non-application**

**(7)** Le présent article ne s'applique pas, selon le cas :

**a)** à la société qui est un émetteur assujetti ou un *reporting issuer* au titre d'une loi provinciale relative à la réglementation des valeurs mobilières;

**b)** à la société dont des valeurs mobilières sont cotées et négociables à une *bourse de valeurs désignée*, au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu*;

**c)** à la société qui appartient à une catégorie réglementaire.

**431 La même loi est modifiée par adjonction, après l'article 21.2, de ce qui suit :**

**Remise de renseignements au directeur**

**21.21 (1)** La société assujettie à l'article 21.1 envoie au directeur ce qui suit :

**a)** les renseignements figurant dans le registre des particuliers ayant un contrôle important de la société, et ce annuellement, en la forme et dans le délai établis par le directeur;

**b)** les renseignements inscrits au registre en application du paragraphe 21.1(3), et ce dans les quinze jours suivant la date de leur inscription, en la forme établie par le directeur.

**Remise de renseignements — certificats délivrés**

**(2)** À compter de la date indiquée sur le certificat visé à l'article 8 ou aux paragraphes 185(4) ou 187(4), la société

which section 21.1 applies shall send to the Director the information referred to in paragraphs 21.1(1)(a) to (f) in relation to individuals with significant control over the corporation, in the form and within the period that the Director fixes.

**Period for keeping and producing information**

**(3)** The Director is not required to keep or produce any information received under subsection (1) or (2) after the end of the six-year period following the day on which it is received.

**432 The Act is amended by adding the following after section 21.3:**

**Provision of information by Director**

**21.301** The Director may provide all or part of the information received under section 21.21 to an investigative body referred to in subsection 21.31(2), the Financial Transactions and Reports Analysis Centre of Canada or any prescribed entity.

**433 Section 266 of the Act is replaced by the following:**

**Inspection**

**266 (1)** A person who has paid the required fee is entitled during usual business hours to examine a document required by this Act or the regulations to be sent to the Director, except any information sent under section 21.21 and a report sent to the Director under subsection 230(2), and to make copies of or extracts from it.

**Copies or extracts**

**(2)** The Director shall furnish any person with a copy, extract, certified copy or certified extract of a document required by this Act or the regulations to be sent to the Director, except any information sent under section 21.21 and a report sent under subsection 230(2).

## Coordinating Amendment

**2018, c. 8**

**434 On the first day on which both section 44 of *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act and the Competition Act*, chapter 8 of the Statutes of Canada, 2018, and section 433 of this Act are in force, section 266 of the *Canada Business Corporations Act* is replaced by the following:**

assujettie à l'article 21.1 est tenue d'envoyer au directeur les renseignements visés aux alinéas 21.1(1)a) à f) à l'égard des particuliers ayant un contrôle important de celle-ci, et ce en la forme et dans le délai établis par le directeur.

**Période de conservation et de production — renseignements**

**(3)** Le directeur n'est pas tenu de conserver ou de produire les renseignements qu'il reçoit au titre des paragraphes (1) ou (2) au delà du sixième anniversaire de la date de leur réception.

**432 La même loi est modifiée par adjonction, après l'article 21.3, de ce qui suit :**

**Fourniture de renseignements par le directeur**

**21.301** Le directeur peut fournir tout ou partie des renseignements reçus au titre de l'article 21.21 à un organisme d'enquête visé au paragraphe 21.31(2), au Centre d'analyse des opérations et déclarations financières du Canada ou à une entité réglementaire.

**433 L'article 266 de la même loi est remplacé par ce qui suit :**

**Consultation**

**266 (1)** Sur paiement des droits requis, il est possible de consulter, pendant les heures normales d'ouverture, les documents dont l'envoi au directeur est requis par la présente loi ou ses règlements d'application, à l'exception de tout renseignement envoyé en application de l'article 21.21 et des rapports envoyés en application du paragraphe 230(2), et d'en prendre des copies ou extraits.

**Copies ou extraits**

**(2)** Le directeur doit fournir, à toute personne, une copie ou un extrait — certifiés conformes ou non — des documents dont l'envoi est requis par la présente loi ou les règlements, à l'exception de tout renseignement envoyé en application de l'article 21.21 et des rapports envoyés en application du paragraphe 230(2).

## Disposition de coordination

**2018, ch. 8**

**434 Dès le premier jour où l'article 44 de la *Loi modfiant la Loi canadienne sur les sociétés par actions, la Loi canadienne sur les coopératives, la Loi canadienne sur les organisations à but non lucratif et la Loi sur la concurrence*, chapitre 8 des Lois du Canada (2018), et l'article 433 de la présente loi sont tous deux en vigueur,**

**Inspection**

**266 (1)** A person who has paid the required fee is entitled during usual business hours to examine and make copies of or take extracts from a document, except any information sent under section 21.21 and a report sent to the Director under subsection 230(2), that is required to be sent to the Director under this Act or that was required to be sent to a person performing a similar function under prior legislation.

**Copies or extracts**

**(2)** The Director shall, on request, provide any person with a copy, extract, certified copy or certified extract of a document that may be examined under subsection (1).

## Coming into Force

**Order in council**

**435 This Division, except sections 430 and 434, comes into force on a day to be fixed by order of the Governor in Council.**

### DIVISION 31

## Economic Sanctions

1992, c. 17

## Special Economic Measures Act

**436 The definition *property* in section 2 of the *Special Economic Measures Act* is replaced by the following:**

***property*** means any type of property, whether real or personal or immovable or movable, or tangible or intangible or corporeal or incorporeal, and includes money, funds, currency, digital assets and virtual currency; (*bien*)

**437 The Act is amended by adding the following after section 3:**

**l'article 266 de la *Loi canadienne sur les sociétés par actions* est remplacé par ce qui suit :**

**Consultation**

**266 (1)** Sur paiement des droits exigibles, toute personne peut, pendant les heures normales d'ouverture des bureaux, consulter et prendre des copies ou extraits des documents dont l'envoi au directeur est requis sous le régime de la présente loi — sauf tout renseignement envoyé en application de l'article 21.21 et les rapports envoyés en application du paragraphe 230(2) — ou dont l'envoi à la personne qui occupait des fonctions semblables à celles du directeur était requis sous le régime de la législation antérieure.

**Copies ou extraits**

**(2)** Le directeur fournit à toute personne qui en fait la demande une copie ou un extrait — certifiés conformes ou non — des documents qui peuvent être consultés en vertu du paragraphe (1).

## Entrée en vigueur

**Décret**

**435 La présente section, à l'exception des articles 430 et 434, entre en vigueur à la date fixée par décret.**

### SECTION 31

## Sanctions économiques

1992, ch. 17

## Loi sur les mesures économiques spéciales

**436 La définition de *bien*, à l'article 2 de la *Loi sur les mesures économiques spéciales*, est remplacée par ce qui suit :**

***bien*** Bien de toute nature, meuble ou immeuble, réel ou personnel, corporel ou incorporel, tangible ou intangible, notamment de l'argent, des fonds, de la monnaie, des actifs numériques et de la monnaie virtuelle. (*property*)

**437 La même loi est modifiée par adjonction, après l'article 3, de ce qui suit :**

# Purpose

### Purpose of Act

**3.1** The purpose of this Act is to enable the Government of Canada to take economic measures against certain persons in circumstances where an international organization of states or association of states of which Canada is a member calls on its members to do so, a grave breach of international peace and security has occurred, gross and systematic human rights violations have been committed in a foreign state or acts of significant corruption involving a national of a foreign state have been committed.

**438 (1) Subsection 4(1) of the Act is replaced by the following:**

### Orders and regulations

**4 (1)** The Governor in Council may, if the Governor in Council is of the opinion that any of the circumstances described in subsection (1.1) has occurred,

**(a)** make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection (2) in relation to a foreign state that the Governor in Council considers necessary; and

**(b)** by order, cause to be seized or restrained in the manner set out in the order any property situated in Canada that is owned — or that is held or controlled, directly or indirectly — by

**(i)** a foreign state,

**(ii)** any person in that foreign state, or

**(iii)** a national of that foreign state who does not ordinarily reside in Canada.

**(2) Paragraph 4(2)(a) of the Act is replaced by the following:**

**(a)** any dealing by any person in Canada or Canadian outside Canada in any property, wherever situated, that is owned — or that is held or controlled, directly or indirectly — by that foreign state, any person in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada;

**(3) Subsections 4(4) and (5) of the Act are replaced by the following:**

# Objet

### Objet de la loi

**3.1** La présente loi a pour objet de permettre au gouvernement du Canada de prendre des mesures économiques contre certaines personnes dans le cas où une organisation internationale d'États ou une association d'États dont le Canada est membre incite ses membres à prendre de telles mesures, une rupture sérieuse de la paix et de la sécurité internationales a eu lieu, des violations graves et systématiques des droits de la personne ont été commises dans un État étranger ou des actes de corruption à grande échelle impliquant un national d'un État étranger ont été commis.

**438 (1) Le paragraphe 4(1) de la même loi est remplacé par ce qui suit :**

### Décrets et règlements

**4 (1)** S'il juge que s'est produit l'un ou l'autre des faits prévus au paragraphe (1.1), le gouverneur en conseil peut :

**a)** prendre les décrets et règlements qu'il estime nécessaires concernant la restriction ou l'interdiction, à l'égard d'un État étranger, des activités énumérées au paragraphe (2);

**b)** par décret, faire saisir ou bloquer, de la façon prévue par le décret, tout bien situé au Canada et appartenant à un État étranger, à une personne qui s'y trouve ou à un de ses nationaux qui ne réside pas habituellement au Canada ou détenu ou contrôlé, même indirectement, par lui.

**(2) L'alinéa 4(2)a) de la même loi est remplacé par ce qui suit :**

**a)** toute opération effectuée par quiconque se trouvant au Canada ou par un Canadien se trouvant à l'étranger portant sur un bien, indépendamment de la situation de celui-ci, appartenant à l'État étranger visé, à une autre personne qui s'y trouve ou à un de ses nationaux qui ne réside pas habituellement au Canada ou détenu ou contrôlé, même indirectement, par lui;

**(3) Les paragraphes 4(4) et (5) de la même loi sont remplacés par ce qui suit :**

**Order authorizing Minister**

**(4)** The Governor in Council may, by order, authorize the Minister to

**(a)** issue to any person in Canada or Canadian outside Canada a permit to carry out a specified activity or transaction, or class of activity or transaction, that is restricted or prohibited under this Act or any order or regulations made under this Act; or

**(b)** issue a general permit allowing any person in Canada or Canadian outside Canada to carry out a specified activity or transaction, or class of activity or transaction, that is restricted or prohibited under this Act or any order or regulations made under this Act.

**Exemptions**

**(4)** Le gouverneur en conseil peut, par décret, conférer au ministre le pouvoir :

**a)** de délivrer à une personne se trouvant au Canada ou à un Canadien se trouvant à l'étranger un permis l'autorisant à réaliser une activité ou une catégorie d'activités ou à procéder à une opération ou à une catégorie d'opérations qui fait l'objet d'une interdiction ou d'une restriction au titre de la présente loi ou d'un décret ou règlement pris en vertu de celle-ci;

**b)** de délivrer un permis d'application générale autorisant toute personne se trouvant au Canada ou tout Canadien se trouvant à l'étranger à réaliser une activité ou une catégorie d'activités ou à procéder à une opération ou à une catégorie d'opérations qui fait l'objet d'une interdiction ou d'une restriction au titre de la présente loi ou d'un décret ou règlement pris en vertu de celle-ci.

**Ministerial permit**

**(5)** The Minister may issue a permit or general permit, subject to any terms and conditions that are, in the opinion of the Minister, consistent with this Act and any order or regulations made under this Act.

**Permis**

**(5)** Le ministre peut délivrer un permis ou un permis d'application générale sous réserve des modalités qu'il estime compatibles avec la présente loi et les décrets et règlements pris en vertu de celle-ci.

**439 Section 5 of the Act is replaced by the following:**

**439 L'article 5 de la même loi est remplacé par ce qui suit :**

**Costs**

**5** Any costs incurred by or on behalf of Her Majesty in right of Canada in relation to the seizure or restraint of property under an order made under paragraph 4(1)(b) or the disposal of property forfeited under section 5.4 are the liability of the owner of the property and constitute a debt due to Her Majesty in right of Canada that may be recovered in any court of competent jurisdiction.

**Frais**

**5** Les frais exposés par Sa Majesté du chef du Canada ou en son nom à l'occasion de la saisie ou du blocage d'un bien qui découlent d'un décret pris en vertu de l'alinéa 4(1)b) ou de la disposition d'un bien confisqué au titre de l'article 5.4 sont à la charge du propriétaire du bien visé; ils sont recouvrables à titre de créance de Sa Majesté du chef du Canada devant toute juridiction compétente.

**Application for review**

**5.1 (1)** A person whose property is the subject of an order made under paragraph 4(1)(b) may, unless the property is the subject of a forfeiture order, apply at any time to the Minister in writing to request that the property cease being the subject of the order made under that paragraph.

**Demande de révision**

**5.1 (1)** La personne dont le bien est visé par un décret pris en vertu de l'alinéa 4(1)b) peut, sauf si ce bien fait l'objet d'une ordonnance de confiscation, demander à tout moment par écrit au ministre que le décret cesse de s'appliquer à l'égard du bien.

**Reasonable grounds**

**(2)** On receipt of an application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the property cease to be the subject of the order.

**Motifs raisonnables**

**(2)** Sur réception de la demande, le ministre décide s'il existe des motifs raisonnables de recommander au gouverneur en conseil que le décret cesse de s'appliquer à l'égard du bien.

**Ranking**

**5.2** All secured and unsecured rights and interests in any property that is the subject of an order made under paragraph 4(1)(b) that are held by a person are entitled to the same ranking that they would have been entitled to had the order not been made, unless

**(a)** the person is

**(i)** the foreign state identified in the order,

**(ii)** a person in that state, or

**(iii)** a national of that state who does not ordinarily reside in Canada; or

**(b)** the property is forfeited to Her Majesty in right of Canada under section 5.4.

**Rang**

**5.2** La prise d'un décret en vertu de l'alinéa 4(1)b) ne porte pas atteinte au rang des droits et intérêts — garantis ou non — détenus par des personnes sur les biens visés par le décret, à moins, selon le cas :

**a)** qu'il ne s'agisse de l'une ou l'autre des personnes suivantes :

**(i)** l'État étranger visé par le décret,

**(ii)** une personne qui s'y trouve,

**(iii)** un de ses nationaux ne résidant pas habituellement au Canada;

**b)** que les biens ne soient confisqués au profit de Sa Majesté du chef du Canada au titre de l'article 5.4.

# Forfeiture Orders

**Definitions**

**5.3** The following definitions apply in sections 5.4 to 5.6.

***judge*** means a judge of a superior court of the province where property described in an order made under paragraph 4(1)(b) is situated. (*juge*)

***Minister*** means the Minister responsible under section 6 for the administration of an order made under paragraph 4(1)(b). (*ministre*)

**Forfeiture**

**5.4 (1)** On application by the Minister, a judge shall order that the property that is the subject of the application be forfeited to Her Majesty in right of Canada if the judge determines, based on the evidence presented, that the property

**(a)** is described in an order made under paragraph 4(1)(b); and

**(b)** is owned by the person referred to in that order or is held or controlled, directly or indirectly, by that person.

**Notice**

**(2)** Before making the order in relation to the property, the court shall require notice to be given to any person who, in the court's opinion, appears to have an interest in or right to the property, and the court may hear any such person.

# Ordonnances de confiscation

**Définitions**

**5.3** Les définitions qui suivent s'appliquent aux articles 5.4 à 5.6.

***juge*** Juge de la cour supérieure de la province où se trouve le bien visé par le décret pris en vertu de l'alinéa 4(1)b). (*judge*)

***ministre*** Le ministre chargé, au titre de l'article 6, d'assurer l'exécution du décret pris en vertu de l'alinéa 4(1)b). (*Minister*)

**Confiscation**

**5.4 (1)** Sur demande du ministre, le juge ordonne la confiscation du bien faisant l'objet de la demande au profit de Sa Majesté du chef du Canada s'il conclut, à partir de la preuve déposée devant lui, que les conditions suivantes sont réunies :

**a)** le bien est visé par le décret pris en vertu de l'alinéa 4(1)b);

**b)** il appartient à la personne visée par ce décret ou est détenu ou contrôlé, même indirectement, par elle.

**Avis**

**(2)** Avant de rendre l'ordonnance à l'égard du bien, le tribunal exige qu'un avis soit donné aux personnes qui, selon lui, semblent avoir un droit ou un intérêt sur le bien; il peut aussi les entendre.

**Manner of giving notice**

**(3)** The notice shall

**(a)** be given in the manner that the court directs or that may be specified in the rules of the court;

**(b)** specify the period that the court considers reasonable or that may be set out in the rules of the court during which a person may, before the order in relation to the property is made, make an application to the court asserting their interest in or right to the property; and

**(c)** set out a description of the property.

**Application by person**

**(4)** Any person — other than a person referred to in any of subparagraphs 5.2(a)(i) to (iii) — who claims an interest in or right to property that is forfeited to Her Majesty under subsection (1) may, within 30 days after the day on which the property is forfeited, apply in writing to a judge for an order declaring that their interest or right is not affected by the forfeiture, declaring the nature and extent of the interest or right and directing the Minister to pay to the person an amount equal to the value of their interest or right.

**Not a Crown corporation**

**5.5** If the property that is the subject of a forfeiture order consists of all of the shares of a corporation, the corporation is deemed not to be a *Crown corporation* as defined in subsection 83(1) of the *Financial Administration Act*.

**Payment out of Proceeds Account**

**5.6** After consulting with the Minister of Finance and the Minister of Foreign Affairs, the Minister may — at the times and in the manner, and on any terms and conditions, that the Minister considers appropriate — pay out of the *Proceeds Account*, as defined in section 2 of the *Seized Property Management Act*, amounts not exceeding the net proceeds from the disposition of property forfeited under section 5.4, but only for any of the following purposes:

**(a)** the reconstruction of a foreign state adversely affected by a grave breach of international peace and security;

**(b)** the restoration of international peace and security; and

**(c)** the compensation of victims of a grave breach of international peace and security, gross and systematic

**Modalités**

**(3)** L'avis satisfait aux exigences suivantes :

**a)** il est donné selon les modalités précisées par le tribunal ou prévues par les règles de celui-ci;

**b)** il précise le délai que le tribunal estime raisonnable ou que fixent les règles de celui-ci dans lequel toute personne peut, avant que l'ordonnance ne soit rendue, présenter une demande alléguant un droit ou un intérêt sur le bien;

**c)** il comporte une description du bien.

**Demandes des tiers intéressés**

**(4)** Toute personne qui prétend avoir un droit ou un intérêt sur un bien confisqué au profit de Sa Majesté au titre du paragraphe (1) — à l'exception de celle visée à l'un des sous-alinéas 5.2a)(i) à (iii) — peut, dans les trente jours suivant la date de la confiscation, demander par écrit à un juge de rendre en sa faveur une ordonnance portant que son droit ou son intérêt n'est pas modifié par la confiscation, déclarant la nature et l'étendue de ce droit ou de cet intérêt et exigeant du ministre qu'il verse à la personne une somme égale à la valeur de son droit ou de son intérêt.

**Pas une société d'État**

**5.5** Si le bien visé par l'ordonnance de confiscation consiste en la totalité des actions d'une personne morale, celle-ci est réputée ne pas être une *société d'État* au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques*.

**Prélèvement sur le compte des biens saisis**

**5.6** Après consultation du ministre des Finances et du ministre des Affaires étrangères, le ministre peut, selon les conditions et modalités — de temps et autres — qu'il estime indiquées, prélever sur le *compte des biens saisis*, au sens de l'article 2 de la *Loi sur l'administration des biens saisis*, une somme égale ou inférieure au produit net de la disposition du bien confisqué au titre de l'article 5.4, mais uniquement si elle est destinée :

**a)** à la reconstruction d'un État étranger lésé par une rupture sérieuse de la paix et de la sécurité internationales;

**b)** au rétablissement de la paix et de la sécurité internationales;

**c)** à l'indemnisation des victimes d'une rupture sérieuse de la paix et de la sécurité internationales, de

human rights violations or acts of significant corruption.

**440 Subsection 6(1) of the French version of the Act is replaced by the following:**

**Ministre**

**6 (1)** Sous réserve du paragraphe (2), le ministre des Affaires étrangères est chargé de l'exécution et du contrôle d'application de la présente loi.

**441 The Act is amended by adding the following after section 6:**

**Sharing of information**

**6.1** The following persons may assist the Minister in matters relating to the making, administration or enforcement of an order or regulation referred to in subsection 4(1) and, for that purpose, may collect information from and disclose information to each other:

**(a)** the Minister of Foreign Affairs;

**(b)** the Minister of Finance;

**(c)** the Minister of Public Works and Government Services;

**(d)** the Minister of Public Safety and Emergency Preparedness;

**(e)** the Director of the Canadian Security Intelligence Service;

**(f)** the Chief of the Communications Security Establishment;

**(g)** the President of the Canada Border Services Agency; and

**(h)** the Superintendent of Financial Institutions.

**RCMP**

**6.2 (1)** The Commissioner of the Royal Canadian Mounted Police may assist the Minister in matters related to the making of an order under paragraph 4(1)(b), the seizure or restraint of any property that is the subject of such an order or the making of an application for forfeiture of the property under section 5.4 and, for that purpose, may collect information from and disclose information to the persons referred to in section 6.1.

**For greater certainty**

**(2)** For greater certainty, nothing in subsection (1) is to be construed as affecting the powers of a peace officer that are conferred under legislation or the common law.

violations graves et systématiques des droits de la personne ou d'actes de corruption à grande échelle.

**440 Le paragraphe 6(1) de la version française de la même loi est remplacé par ce qui suit :**

**Ministre**

**6 (1)** Sous réserve du paragraphe (2), le ministre des Affaires étrangères est chargé de l'exécution et du contrôle d'application de la présente loi.

**441 La même loi est modifiée par adjonction, après l'article 6, de ce qui suit :**

**Échange de renseignements**

**6.1** Les personnes ci-après peuvent assister le ministre en matière de prise, d'exécution ou de contrôle d'application d'un décret ou règlement visé au paragraphe 4(1) et, à cette fin, peuvent recueillir des renseignements les unes auprès des autres ou se les communiquer :

**a)** le ministre des Affaires étrangères;

**b)** le ministre des Finances;

**c)** le ministre des Travaux publics et des Services gouvernementaux;

**d)** le ministre de la Sécurité publique et de la Protection civile;

**e)** le directeur du Service canadien du renseignement de sécurité;

**f)** le chef du Centre de la sécurité des télécommunications;

**g)** le président de l'Agence des services frontaliers du Canada;

**h)** le surintendant des institutions financières.

**GRC**

**6.2 (1)** Le commissaire de la Gendarmerie royale du Canada peut assister le ministre en matière de prise d'un décret en vertu de l'alinéa 4(1)b), de saisie ou de blocage d'un bien visé par un tel décret ou de présentation d'une demande de confiscation d'un bien au titre de l'article 5.4 et, à cette fin, peut recueillir des renseignements auprès des personnes visées à l'article 6.1 ou les leur communiquer.

**Précision**

**(2)** Il est entendu que le paragraphe (1) n'a pas pour effet de porter atteinte aux pouvoirs qui sont conférés aux

agents de la paix sous le régime d'une loi ou au titre de la common law.

**Provision of information**

**6.3 (1)** The Minister of Foreign Affairs may require any person to provide to that Minister any information that that Minister believes on reasonable grounds is relevant for the purposes of the making, administration or enforcement of an order or regulation referred to in subsection 4(1).

**Fourniture de renseignements**

**6.3 (1)** Le ministre des Affaires étrangères peut exiger de toute personne qu'elle lui fournisse les renseignements dont il a des motifs raisonnables de croire qu'ils sont utiles à la prise, à l'exécution ou au contrôle d'application d'un décret ou règlement visé au paragraphe 4(1).

**Duty to comply**

**(2)** Every person who is required to provide information under subsection (1) shall comply with the requirement within the time and in the form and manner specified by that Minister.

**Obligation de se conformer**

**(2)** Toute personne qui est tenue de fournir des renseignements aux termes du paragraphe (1) se conforme à cette obligation dans le délai et selon les modalités précisés par le ministre.

**442 Subsection 7(1) of the Act is replaced by the following:**

**442 Le paragraphe 7(1) de la même loi est remplacé par ce qui suit :**

**Tabling in Parliament**

**7 (1)** Every order and regulation made under paragraph 4(1)(a) shall be laid before each House of Parliament by a member of the Queen's Privy Council for Canada within five sitting days of that House after it is made.

**Dépôt devant le Parlement**

**7 (1)** Les décrets et règlements pris en vertu de l'alinéa 4(1)a) sont déposés devant chaque chambre du Parlement par un membre du Conseil privé de la Reine pour le Canada dans les cinq jours de séance de cette chambre qui suivent leur prise.

**443 The Act is amended by adding the following after section 7:**

**443 La même loi est modifiée par adjonction, après l'article 7, de ce qui suit :**

**Agreements**

**7.1** The Minister of Foreign Affairs may, with the approval of the Governor in Council, enter into an agreement with the government of any foreign state respecting the use by the foreign state, for any of the following purposes, of amounts that may be paid out under section 5.6:

**(a)** the reconstruction of the foreign state adversely affected by a grave breach of international peace and security;

**(b)** the restoration of international peace and security; and

**(c)** the compensation of victims of a grave breach of international peace and security, gross and systematic human rights violations or acts of significant corruption.

**Accords**

**7.1** Le ministre des Affaires étrangères peut, avec l'agrément du gouverneur en conseil, conclure avec le gouvernement d'un État étranger un accord concernant l'utilisation, aux fins ci-après, par l'État étranger, de toute somme pouvant être prélevée en vertu de l'article 5.6 :

**a)** la reconstruction de l'État étranger lésé par une rupture sérieuse de la paix et de la sécurité internationales;

**b)** le rétablissement de la paix et de la sécurité internationales;

**c)** l'indemnisation des victimes d'une rupture sérieuse de la paix et de la sécurité internationales, de violations graves et systématiques des droits de la personne ou d'actes de corruption à grande échelle.

2017, c. 21

## Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)

**444 (1) The definition *Minister* in section 2 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* is repealed.**

**(2) Section 2 of the Act is amended by adding the following in alphabetical order:**

***property*** means any type of property, whether real or personal or immovable or movable, or tangible or intangible or corporeal or incorporeal, and includes money, funds, currency, digital assets and virtual currency. (*bien*)

**445 The Act is amended by adding the following after section 2:**

**Minister**

**2.1 (1)** Subject to subsection (2), the Minister of Foreign Affairs is responsible for the administration and enforcement of this Act.

**Designation**

**(2)** The Governor in Council may, by order, designate one or more Ministers of the Crown to discharge any responsibilities that the Governor in Council may specify with respect to the administration or enforcement of any of the provisions of this Act or any order or regulations made under this Act.

**446 Paragraph 4(1)(b) of the Act is replaced by the following:**

**(b)** by order, cause to be seized or restrained in the manner set out in the order any property situated in Canada that is owned — or that is held or controlled, directly or indirectly — by the foreign national.

**447 Section 5 of the Act is replaced by the following:**

## Forfeiture Orders

**Definitions**

**4.1** The following definitions apply in sections 4.2 to 4.4.

2017, ch. 21

## Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)

**444 (1) La définition de *ministre*, à l'article 2 de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*, est abrogée.**

**(2) L'article 2 de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***bien*** Bien de toute nature, meuble ou immeuble, réel ou personnel, corporel ou incorporel, tangible ou intangible, notamment de l'argent, des fonds, de la monnaie, des actifs numériques et de la monnaie virtuelle. (*property*)

**445 La même loi est modifiée par adjonction, après l'article 2, de ce qui suit :**

**Ministre**

**2.1 (1)** Sous réserve du paragraphe (2), le ministre des Affaires étrangères est chargé de l'exécution et du contrôle d'application de la présente loi.

**Désignation**

**(2)** Le gouverneur en conseil peut, par décret, désigner un ou plusieurs ministres pour assurer l'exécution et le contrôle d'application de telle disposition de la présente loi ou d'un règlement ou décret pris sous son régime.

**446 L'alinéa 4(1)b) de la même loi est remplacé par ce qui suit :**

**b)** par décret, faire saisir ou bloquer, de la façon prévue par le décret, tout bien situé au Canada et appartenant à l'étranger ou détenu ou contrôlé, même indirectement, par lui.

**447 L'article 5 de la même loi est remplacé par ce qui suit :**

## Ordonnances de confiscation

**Définitions**

**4.1** Les définitions qui suivent s'appliquent aux articles 4.2 à 4.4.

***judge*** means a judge of a superior court of the province where property described in an order made under paragraph 4(1)(b) is situated. (*juge*)

***Minister*** means the Minister responsible under section 2.1 for the administration of an order made under paragraph 4(1)(b). (*ministre*)

***juge*** Juge de la cour supérieure de la province où se trouve le bien visé par le décret pris en vertu de l'alinéa 4(1)b). (*judge*)

***ministre*** Le ministre chargé, au titre de l'article 2.1, d'assurer l'exécution du décret pris en vertu de l'alinéa 4(1)b). (*Minister*)

**Forfeiture**

**4.2 (1)** On application by the Minister, a judge must order that the property that is the subject of the application be forfeited to Her Majesty in right of Canada if the judge determines, based on the evidence presented, that the property

**(a)** is described in an order made under paragraph 4(1)(b); and

**(b)** is owned by the foreign national referred to in that order or is held or controlled, directly or indirectly, by that foreign national.

**Confiscation**

**4.2 (1)** Sur demande du ministre, le juge ordonne la confiscation du bien faisant l'objet de la demande au profit de Sa Majesté du chef du Canada s'il conclut, à partir de la preuve déposée devant lui, que les conditions suivantes sont réunies :

**a)** le bien est visé par le décret pris en vertu de l'alinéa 4(1)b);

**b)** il appartient à l'étranger visé par ce décret ou est détenu ou contrôlé, même indirectement, par lui.

**Notice**

**(2)** Before making the order in relation to the property, the court must require notice to be given to any person who, in the court's opinion, appears to have an interest in or right to the property, and the court may hear any such person.

**Avis**

**(2)** Avant de rendre l'ordonnance à l'égard du bien, le tribunal exige qu'un avis soit donné aux personnes qui, selon lui, semblent avoir un droit ou un intérêt sur le bien; il peut aussi les entendre.

**Manner of giving notice**

**(3)** The notice must

**(a)** be given in the manner that the court directs or that may be specified in the rules of the court;

**(b)** specify the period that the court considers reasonable or that may be set out in the rules of the court during which a person may, before the order in relation to the property is made, make an application to the court asserting their interest in or right to the property; and

**(c)** set out a description of the property.

**Modalités**

**(3)** L'avis satisfait aux exigences suivantes :

**a)** il est donné selon les modalités précisées par le tribunal ou prévues par les règles de celui-ci;

**b)** il précise le délai que le tribunal estime raisonnable ou que fixent les règles de celui-ci dans lequel toute personne peut, avant que l'ordonnance ne soit rendue, présenter une demande alléguant un droit ou un intérêt sur le bien;

**c)** il comporte une description du bien.

**Application by person**

**(4)** Any person — other than a foreign national described in any of paragraphs 4(2)(a) to (d) — who claims an interest in or right to property that is forfeited to Her Majesty under subsection (1) may, within 30 days after the day on which the property is forfeited, apply in writing to a judge for an order declaring that their interest or right is not affected by the forfeiture, declaring the nature and extent of the interest or right and directing the Minister to pay to the person an amount equal to the value of their interest or right.

**Demandes des tiers intéressés**

**(4)** Toute personne qui prétend avoir un droit ou un intérêt sur un bien confisqué au profit de Sa Majesté au titre du paragraphe (1) — à l'exception d'un étranger visé à l'un des alinéas 4(2)a) à d) — peut, dans les trente jours suivant la date de la confiscation, demander par écrit à un juge de rendre en sa faveur une ordonnance portant que son droit ou son intérêt n'est pas modifié par la confiscation, déclarant la nature et l'étendue de ce droit ou de cet intérêt et exigeant du ministre qu'il verse à la

**Not a Crown corporation**

**4.3** If the property that is the subject of a forfeiture order consists of all of the shares of a corporation, the corporation is deemed not to be a *Crown corporation* as defined in subsection 83(1) of the *Financial Administration Act*.

**Payment out of Proceeds Account**

**4.4** After consulting with the Minister of Finance and the Minister of Foreign Affairs, the Minister may — at the times and in the manner, and on any terms and conditions, that the Minister considers appropriate — pay out of the *Proceeds Account*, as defined in section 2 of the *Seized Property Management Act*, amounts not exceeding the net proceeds from the disposition of property forfeited under section 4.2, but only to compensate victims of the circumstances described in subsection 4(2).

# Tabling in Parliament

**Order or regulation**

**5** A copy of each order or regulation made under paragraph 4(1)(a) must be tabled in each House of Parliament within 15 days after it is made. It may be sent to the Clerk of the House if the House is not sitting.

**448 The Act is amended by adding the following after section 7:**

**Sharing of information**

**7.1** The following persons may assist the Minister in matters relating to the making, administration or enforcement of an order or regulation referred to in subsection 4(1) and, for that purpose, may collect information from and disclose information to each other:

**(a)** the Minister of Foreign Affairs;

**(b)** the Minister of Finance;

**(c)** the Minister of Public Works and Government Services;

**(d)** the Minister of Public Safety and Emergency Preparedness;

**(e)** the Director of the Canadian Security Intelligence Service;

personne une somme égale à la valeur de son droit ou de son intérêt.

**Pas une société d'État**

**4.3** Si le bien visé par l'ordonnance de confiscation consiste en la totalité des actions d'une personne morale, celle-ci est réputée ne pas être une *société d'État* au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques*.

**Prélèvement sur le compte des biens saisis**

**4.4** Après consultation du ministre des Finances et du ministre des Affaires étrangères, le ministre peut, selon les conditions et modalités — de temps et autres — qu'il estime indiquées, prélever sur le *compte des biens saisis*, au sens de l'article 2 de la *Loi sur l'administration des biens saisis*, une somme égale ou inférieure au produit net de la disposition du bien confisqué au titre de l'article 4.2, mais uniquement si elle est destinée à indemniser les victimes des faits visés au paragraphe 4(2).

# Dépôt devant le Parlement

**Décret ou règlement**

**5** Une copie de tout décret ou règlement pris en vertu de l'alinéa 4(1)a) est déposée devant chaque chambre du Parlement dans les quinze jours suivant sa prise et communiquée au greffier de cette chambre dans le cas où celle-ci ne siège pas.

**448 La même loi est modifiée par adjonction, après l'article 7, de ce qui suit :**

**Échange de renseignements**

**7.1** Les personnes ci-après peuvent assister le ministre en matière de prise, d'exécution ou de contrôle d'application d'un décret ou règlement visé au paragraphe 4(1) et, à cette fin, peuvent recueillir des renseignements les unes auprès des autres ou se les communiquer :

**a)** le ministre des Affaires étrangères;

**b)** le ministre des Finances;

**c)** le ministre des Travaux publics et des Services gouvernementaux;

**d)** le ministre de la Sécurité publique et de la Protection civile;

**e)** le directeur du Service canadien du renseignement de sécurité;

**(f)** the Chief of the Communications Security Establishment;

**(g)** the President of the Canada Border Services Agency; and

**(h)** the Superintendent of Financial Institutions.

**f)** le chef du Centre de la sécurité des télécommunications;

**g)** le président de l'Agence des services frontaliers du Canada;

**h)** le surintendant des institutions financières.

**RCMP**

**7.2 (1)** The Commissioner of the Royal Canadian Mounted Police may assist the Minister in matters related to the making of an order under paragraph 4(1)(b), the seizure or restraint of any property that is the subject of such an order or the making of an application for forfeiture of the property under section 4.2 and, for that purpose, may collect information from and disclose information to the persons referred to in section 7.1.

**GRC**

**7.2 (1)** Le commissaire de la Gendarmerie royale du Canada peut assister le ministre en matière de prise d'un décret en vertu de l'alinéa 4(1)b), de saisie ou de blocage d'un bien visé par un tel décret ou de présentation d'une demande de confiscation d'un bien au titre de l'article 4.2 et, à cette fin, peut recueillir des renseignements auprès des personnes visées à l'article 7.1 ou les leur communiquer.

**For greater certainty**

**(2)** For greater certainty, nothing in subsection (1) is to be construed as affecting the powers of a peace officer that are conferred under legislation or the common law.

**Précision**

**(2)** Il est entendu que le paragraphe (1) n'a pas pour effet de porter atteinte aux pouvoirs qui sont conférés aux agents de la paix sous le régime d'une loi ou au titre de la common law.

**Provision of information**

**7.3 (1)** The Minister of Foreign Affairs may require any person to provide to that Minister any information that that Minister believes on reasonable grounds is relevant for the purposes of the making, administration or enforcement of an order or regulation referred to in subsection 4(1).

**Fourniture de renseignements**

**7.3 (1)** Le ministre des Affaires étrangères peut exiger de toute personne qu'elle lui fournisse les renseignements dont il a des motifs raisonnables de croire qu'ils sont utiles à la prise, à l'exécution ou au contrôle d'application d'un décret ou règlement visé au paragraphe 4(1).

**Duty to comply**

**(2)** Every person who is required to provide information under subsection (1) must comply with the requirement within the time and in the form and manner specified by that Minister.

**Obligation de se conformer**

**(2)** Toute personne qui est tenue de fournir des renseignements aux termes du paragraphe (1) se conforme à cette obligation dans le délai et selon les modalités précisés par le ministre.

**449 Subsections 8(1) and (2) of the Act are replaced by the following:**

**449 Les paragraphes 8(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Application**

**8 (1)** A foreign national who is the subject of an order or regulation made under paragraph 4(1)(a) may apply in writing to the Minister to cease being the subject of the order or regulation.

**Demande**

**8 (1)** L'étranger visé par un décret ou règlement pris en vertu de l'alinéa 4(1)a) peut demander par écrit au ministre de cesser d'être visé par le décret ou règlement.

**Property**

**(1.1)** A foreign national whose property is the subject of an order made under paragraph 4(1)(b) may, unless the property is the subject of a forfeiture order, apply at any time in writing to the Minister to request that the property cease being the subject of the order made under that paragraph.

**Bien**

**(1.1)** L'étranger dont le bien est visé par un décret pris en vertu de l'alinéa 4(1)b) peut, sauf si ce bien fait l'objet d'une ordonnance de confiscation, demander à tout moment par écrit au ministre que le décret cesse de s'appliquer à l'égard du bien.

**Reasonable grounds**

**(2)** On receipt of the application, the Minister must decide whether there are reasonable grounds to recommend to the Governor in Council that the order or regulation be amended or repealed, as the case may be, so that the applicant or their property ceases to be the subject of it.

**450 Section 13 of the Act is replaced by the following:**

**Ranking**

**13** All secured and unsecured rights and interests in any property that is the subject of an order made under paragraph 4(1)(b) that are held by a person are entitled to the same ranking that they would have been entitled to had the order not been made, unless

**(a)** the person is a foreign national described in any of paragraphs 4(2)(a) to (d); or

**(b)** the property is forfeited to Her Majesty in right of Canada under section 4.2.

**Costs**

**13.1** Any costs incurred by or on behalf of Her Majesty in right of Canada in relation to the seizure or restraint of property under an order made under paragraph 4(1)(b) or the disposal of property forfeited under section 4.2 are the liability of the owner of the property and constitute a debt due to Her Majesty in right of Canada that may be recovered in any court of competent jurisdiction.

**Agreements**

**13.2** The Minister of Foreign Affairs may, with the approval of the Governor in Council, enter into an agreement with a person respecting the use by the person, for the compensation of victims of the circumstances described in subsection 4(2), of amounts that may be paid out under section 4.4.

1993, c. 37

## Seized Property Management Act

**451 Subsection 13(3) of the *Seized Property Management Act* is amended by striking out "and" at the end of paragraph (b) and by adding the following after paragraph (c):**

**(d)** amounts paid under section 5.6 of the *Special Economic Measures Act*; and

**Motifs raisonnables**

**(2)** Sur réception de la demande, le ministre décide s'il existe des motifs raisonnables de recommander au gouverneur en conseil de modifier ou d'abroger, selon le cas, le décret ou le règlement afin que le demandeur ou son bien cesse d'y être visé.

**450 L'article 13 de la même loi est remplacé par ce qui suit :**

**Rang**

**13** La prise d'un décret en vertu de l'alinéa 4(1)b) ne porte pas atteinte au rang des droits et intérêts — garantis ou non — détenus par des personnes sur les biens visés par le décret, à moins, selon le cas :

**a)** qu'il ne s'agisse d'étrangers visés à l'un des alinéas 4(2)a) à d);

**b)** que les biens ne soient confisqués au profit de Sa Majesté du chef du Canada au titre de l'article 4.2.

**Frais**

**13.1** Les frais exposés par Sa Majesté du chef du Canada ou en son nom à l'occasion de la saisie ou du blocage d'un bien qui découlent d'un décret pris en vertu de l'alinéa 4(1)b) ou de la disposition d'un bien confisqué au titre de l'article 4.2 sont à la charge du propriétaire du bien visé; ils sont recouvrables à titre de créance de Sa Majesté du chef du Canada devant toute juridiction compétente.

**Accords**

**13.2** Le ministre des Affaires étrangères peut, avec l'agrément du gouverneur en conseil, conclure avec une personne un accord concernant l'utilisation, aux fins d'indemnisation des victimes des faits visés au paragraphe 4(2), par la personne, de toute somme pouvant être prélevée en vertu de l'article 4.4.

1993, ch. 37

## Loi sur l'administration des biens saisis

**451 Le paragraphe 13(3) de la *Loi sur l'administration des biens saisis* est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**d)** les sommes prélevées en vertu de l'article 5.6 de la *Loi sur les mesures économiques spéciales*;

**(e)** amounts paid under section 4.4 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

**e)** les sommes prélevées en vertu de l'article 4.4 de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*.

## SCHEDULE 1

**(Section 80)**

## SCHEDULE 8

(Sections 158.57, 158.6, 158.61, 218.2, 233.2, 234.2, 237 and 238.01)

# Duty on Vaping Products

**1** Vaping products that are vaping devices that contain vaping substances or that are vaping substances in immediate containers: for each vaping device or immediate container of vaping substance

**(a)** if the vaping substance is in liquid form, the amount equal to the total of

**(i)** for the first 10 millilitres of vaping substance in the vaping device or immediate container, $1.00 per 2 millilitres of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance in the vaping device or immediate container, $1.00 per 10 millilitres of vaping substance or fraction thereof; and

**(b)** if the vaping substance is in solid form, the amount equal to the total of

**(i)** for the first 10 grams of vaping substance in the vaping device or immediate container, $1.00 per 2 grams of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance in the vaping device or immediate container, $1.00 per 10 grams of vaping substance or fraction thereof.

**2** Vaping products that are vaping substances not in any vaping device or immediate container:

**(a)** if the vaping substance is in liquid form, the amount equal to the total of

**(i)** for the first 10 millilitres of vaping substance, $1.00 per 2 millilitres of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance, $1.00 per 10 millilitres of vaping substance or fraction thereof; and

**(b)** if the vaping substance is in solid form, the amount equal to the total of

**(i)** for the first 10 grams of vaping substance, $1.00 per 2 grams of vaping substance or fraction thereof, and

**(ii)** for any additional amount of vaping substance, $1.00 per 10 grams of vaping substance or fraction thereof.

## ANNEXE 1

**(article 80)**

## ANNEXE 8

(articles 158.57, 158.6, 158.61, 218.2, 233.2, 234.2, 237 et 238.01)

# Droit sur les produits de vapotage

**1** Les produits de vapotage qui sont des dispositifs de vapotage qui contiennent des substances de vapotage ou qui sont des substances de vapotage dans des contenants immédiats : pour chaque dispositif de vapotage ou contenant immédiat de substance de vapotage :

**a)** si la substance de vapotage est sous forme liquide, le total des montants suivants :

**(i)** pour les 10 premiers millilitres de substance de vapotage dans le dispositif de vapotage ou le contenant immédiat : 1,00 $ par quantité de 2 millilitres de substance de vapotage ou fraction de cette quantité,

**(ii)** pour chaque quantité supplémentaire de substance de vapotage dans le dispositif de vapotage ou le contenant immédiat : 1,00 $ par quantité de 10 millilitres de substance de vapotage ou fraction de cette quantité;

**b)** si la substance de vapotage est sous forme solide, le total des montants suivants :

**(i)** pour les 10 premiers grammes de substance de vapotage dans le dispositif de vapotage ou le contenant immédiat : 1,00 $ par quantité de 2 grammes de substance de vapotage ou fraction de cette quantité,

**(ii)** pour chaque quantité supplémentaire de substance de vapotage dans le dispositif de vapotage ou le contenant immédiat : 1,00 $ par quantité de 10 grammes de substance de vapotage ou fraction de cette quantité.

**2** Les produits de vapotage qui sont des substances de vapotage qui ne sont ni dans des dispositifs de vapotage ni dans des contenants immédiats :

**a)** si la substance de vapotage est sous forme liquide, le total des montants suivants :

**(i)** pour les 10 premiers millilitres de substance de vapotage : 1,00 $ par quantité de 2 millilitres de substance de vapotage ou fraction de cette quantité,

**(ii)** pour chaque quantité supplémentaire de substance de vapotage : 1,00 $ par quantité de 10 millilitres de substance de vapotage ou fraction de cette quantité;

**b)** si la substance de vapotage est sous forme solide, le total des montants suivants :

**(i)** pour les 10 premiers grammes de substance de vapotage : 1,00 $ par quantité de 2 grammes de substance de vapotage ou fraction de cette quantité,

**(ii)** pour chaque quantité supplémentaire de substance de vapotage : 1,00 $ par quantité de 10 grammes de substance de vapotage ou fraction de cette quantité.

**SCHEDULE 2**

**(Section 135)**

**SCHEDULE**

(Subsections 10(3) and 154(2))

# Remote Communities — Qualifying Flight

## Ontario

Attawapiskat First Nation
Bearskin Lake First Nation
Cat Lake First Nation
Deer Lake First Nation
Eabametoong First Nation
Fort Albany First Nation
Fort Severn First Nation
Kasabonika Lake First Nation
Kashechewan First Nation
Keewaywin First Nation
Kingfisher First Nation
Kitchenuhmaykoosib Inninuwug First Nation (Big Trout Lake First Nation)
Marten Falls First Nation
Muskrat Dam Lake First Nation
Neskantaga First Nation
Nibinamik First Nation (Summer Beaver Band)
North Caribou Lake First Nation (Round Lake First Nation)
North Spirit Lake First Nation
Peawanuck
Pikangikum First Nation
Poplar Hill First Nation
Sachigo Lake First Nation
Sandy Lake First Nation
Slate Falls First Nation
Wapekeka First Nation
Webequie First Nation
Wunnumin Lake First Nation

## Quebec

Akulivik
Aupaluk

**ANNEXE 2**

**(article 135)**

**ANNEXE**

(paragraphes 10(3) et 154(2))

# Collectivités éloignées — vol admissible

## Ontario

Peawanuck
Première nation d'Attawapiskat
Première nation d'Eabametoong
Première nation de Bearskin Lake
Première nation de Cat Lake
Première nation de Deer Lake
Première nation de Fort Albany
Première nation de Fort Severn
Première nation de Kashechewan
Première nation de Keewaywin
Première nation de Kingfisher
Première nation de Kitchenuhmaykoosib Inninuwug (Première nation de lac Big Trout)
Première nation de Marten Falls
Première nation de Muskrat Dam Lake
Première nation de Neskantaga
Première nation de Nibinamik (bande de Summer Beaver)
Première nation de North Spirit Lake
Première nation de Pikangikum
Première nation de Poplar Hill
Première nation de Sachigo Lake
Première nation de Sandy Lake
Première nation de Slate Falls
Première nation de Wapekeka
Première nation de Webequie
Première nation du Kasabonika Lake
Première nation du lac North Caribou (Première nation de Round Lake)
Première nation du lac Wunnumin

## Québec

Akulivik
Aupaluk

Chevery
Chisasibi
Eastmain River
Îles-de-la-Madeleine
Inukjuak
Ivujivik
Kangiqsualujjuaq
Kangiqsujuaq
Kangirsuk
Kuujjuaq
Kuujjuarapik
La Romaine
La Tabatière
Port-Menier
Puvirnituq
Quaqtaq
Saint-Augustin
Salluit
Schefferville
Tasiujaq
Tête-à-La-Baleine
Umiujaq
Waskaganish
Wemindji

## Manitoba

Berens River
Brochet
Churchill
Cross Lake
Elk Island
God's Lake Narrows
God's River
Island Lake
Lac Brochet
Little Grand Rapids
Norway House
Oxford House
Pauingassi
Poplar River First Nation
Pukatawagan
Red Sucker Lake
Shamattawa

Chevery
Chisasibi
Îles-de-la-Madeleine
Inukjuak
Ivujivik
Kangiqsualujjuaq
Kangiqsujuaq
Kangirsuk
Kuujjuaq
Kuujjuarapik
La Romaine
La Tabatière
Port-Menier
Puvirnituq
Quaqtaq
Rivière Eastmain
Saint-Augustin
Salluit
Schefferville
Tasiujaq
Tête-à-La-Baleine
Umiujaq
Waskaganish
Wemindji

## Manitoba

Berens River
Brochet
Churchill
Cross Lake
Elk Island
God's Lake Narrows
God's River
Island Lake
Lac Brochet
Little Grand Rapids
Norway House
Oxford House
Pauingassi
Première nation de la rivière Poplar
Première nation de York Factory
Pukatawagan
Red Sucker Lake

South Indian Lake
St. Theresa Point
Tadoule Lake
York Factory First Nation

## British Columbia

Ahousaht
Alert Bay
Bella Bella
Bella Coola
Dawson's Landing
Dease Lake
Echo Bay
Ehattesaht
Fort Nelson
Fort Ware
Hartley Bay
Hot Springs Cove
Iskut
Kingcome Village
Kitasoo
Kitkatla
Klemtu
Kyuquot
Masset
Minstrel Island
Ocean Falls
Oona River
Port Simpson (Lax Kw'Alaams)
Sandspit
Sullivan Bay
Telegraph Creek
Tsay Keh
Uclucje/Ucluelet
Wuikinuxv Village
Yuquot

## Saskatchewan

Camsell Portage
Fond-du-Lac
Stony Rapids
Uranium City
Wollaston Lake

Shamattawa
South Indian Lake
St. Theresa Point
Tadoule Lake

## Colombie-Britannique

Ahousaht
Alert Bay
Bella Bella
Bella Coola
Dawson's Landing
Dease Lake
Echo Bay
Ehattesaht
Fort Nelson
Fort Ware
Hartley Bay
Hot Springs Cove
Iskut
Kingcome Village
Kitasoo
Kitkatla
Klemtu
Kyuquot
Masset
Minstrel Island
Ocean Falls
Oona River
Port Simpson (Lax Kw'Alaams)
Sandspit
Sullivan Bay
Telegraph Creek
Tsay Keh
Uclucje/Ucluelet
Wuikinuxv Village
Yuquot

## Saskatchewan

Camsell Portage
Fond-du-Lac
Stony Rapids
Uranium City
Wollaston Lake

## Alberta

Chipewyan Lake
Fort Chipewyan
Fox Lake

## Newfoundland and Labrador

Black Tickle
Hopedale
Makkovik
Nain
Natuashish
Postville
Rigolet
Williams Harbour

## Yukon

Beaver Creek
Burwash Landing
Carcross
Carmacks
Dawson
Eagle Plains
Faro
Fort Selkirk
Keno
Mayo
Old Crow
Pelly Crossing
Ross River
Watson Lake
Whitehorse

## Northwest Territories

Aklavik
Colville Lake
Deline
Fort Good Hope
Fort McPherson
Fort Simpson
Fort Smith
Gamèti
Hay River

## Alberta

Chipewyan Lake
Fort Chipewyan
Fox Lake

## Terre-Neuve-et-Labrador

Black Tickle
Hopedale
Makkovik
Nain
Natuashish
Postville
Rigolet
Williams Harbour

## Yukon

Beaver Creek
Burwash Landing
Carcross
Carmacks
Dawson
Eagle Plains
Faro
Fort Selkirk
Keno
Mayo
Old Crow
Pelly Crossing
Ross River
Watson Lake
Whitehorse

## Territoires du Nord-Ouest

Aklavik
Colville Lake
Deline
Fort Good Hope
Fort McPherson
Fort Simpson
Fort Smith
Gamèti
Hay River

Inuvik
Lutselk'e
Nahanni Butte
Norman Wells
Paulatuk
Sachs Harbour
Sambaa K'e
Tuktoyaktuk
Tulita
Ulukhaktok
Wekweeti
Whatì
Wrigley

## Nunavut

Arctic Bay
Arviat
Baker Lake
Cambridge Bay
Chesterfield Inlet
Clyde River
Coral Harbour
Gjoa Haven
Grise Fiord
Hall Beach (Sanirajak)
Igloolik
Iqaluit
Kimmirut
Kinngait
Kugaaruk
Kuglutuk
Naujaat
Pangnirtung
Pond Inlet
Qikiqtarjuaq
Rankin Inlet
Resolute
Sanikiluaq
Taloyoak
Whale Cove

Inuvik
Lutselk'e
Nahanni Butte
Norman Wells
Paulatuk
Sachs Harbour
Sambaa K'e
Tuktoyaktuk
Tulita
Ulukhaktok
Wekweeti
Whatì
Wrigley

Nunavut

Arctic Bay
Arviat
Baker Lake
Cambridge Bay
Chesterfield Inlet
Clyde River
Coral Harbour
Gjoa Haven
Grise Fiord
Hall Beach (Sanirajak)
Igloolik
Iqaluit
Kimmirut
Kinngait
Kugaaruk
Kuglutuk
Naujaat
Pangnirtung
Pond Inlet
Qikiqtarjuaq
Rankin Inlet
Resolute
Sanikiluaq
Taloyoak
Whale Cove

## SCHEDULE 3

**(Section 409)**

## SCHEDULE V

(Subsection 12(2.3))

# Table of Weeks of Benefits — Seasonal Workers

| | Regional Unemployment Rate | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Number of hours of insurable employment in qualifying period | 6% and under | More than 6% but not more than 7% | More than 7% but not more than 8% | More than 8% but not more than 9% | More than 9% but not more than 10% | More than 10% but not more than 11% | More than 11% but not more than 12% | More than 12% but not more than 13% | More than 13% but not more than 14% | More than 14% but not more than 15% | More than 15% but not more than 16% | More than 16% |
| 420 - 454 | | | | | | | | | 31 | 33 | 35 | 37 |
| 455 - 489 | | | | | | | | 29 | 31 | 33 | 35 | 37 |
| 490 - 524 | | | | | | | 28 | 30 | 32 | 34 | 36 | 38 |
| 525 - 559 | | | | | | 26 | 28 | 30 | 32 | 34 | 36 | 38 |
| 560 - 594 | | | | | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 |
| 595 - 629 | | | | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 |
| 630 - 664 | | | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 |
| 665 - 699 | | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 |
| 700 - 734 | 19 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 |
| 735 - 769 | 19 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 |
| 770 - 804 | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 |
| 805 - 839 | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 |
| 840 - 874 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 |
| 875 - 909 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 |
| 910 - 944 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 |
| 945 - 979 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 |
| 980 - 1014 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 |
| 1015 - 1049 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 |
| 1050 - 1084 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 |
| 1085 - 1119 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 |
| 1120 - 1154 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 |
| 1155 - 1189 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 |
| 1190 - 1224 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 |
| 1225 - 1259 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 |
| 1260 - 1294 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 |
| 1295 - 1329 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 |
| 1330 - 1364 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 |
| 1365 - 1399 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 |
| 1400 - 1434 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 |
| 1435 - 1469 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 |
| 1470 - 1504 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 |
| 1505 - 1539 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 |
| 1540 - 1574 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1575 - 1609 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1610 - 1644 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1645 - 1679 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |

| | Regional Unemployment Rate | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Number of hours of insurable employment in qualifying period | 6% and under | More than 6% but not more than 7% | More than 7% but not more than 8% | More than 8% but not more than 9% | More than 9% but not more than 10% | More than 10% but not more than 11% | More than 11% but not more than 12% | More than 12% but not more than 13% | More than 13% but not more than 14% | More than 14% but not more than 15% | More than 15% but not more than 16% | More than 16% |
| 1680 - 1714 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1715 - 1749 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1750 - 1784 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1785 - 1819 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1820 - | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |

## ANNEXE 3

**(article 409)**

## ANNEXE V

(paragraphe 12(2.3))

# Tableau des semaines de prestations — travailleurs saisonniers

| | Taux régional de chômage | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Nombre d'heures d'emploi assurable au cours de la période de référence | 6 % et moins | Plus de 6 % mais au plus 7 % | Plus de 7 % mais au plus 8 % | Plus de 8 % mais au plus 9 % | Plus de 9 % mais au plus 10 % | Plus de 10 % mais au plus 11 % | Plus de 11 % mais au plus 12 % | Plus de 12 % mais au plus 13 % | Plus de 13 % mais au plus 14 % | Plus de 14 % mais au plus 15 % | Plus de 15 % mais au plus 16 % | Plus de 16 % |
| 420 - 454 | | | | | | | | | 31 | 33 | 35 | 37 |
| 455 - 489 | | | | | | | | 29 | 31 | 33 | 35 | 37 |
| 490 - 524 | | | | | | | 28 | 30 | 32 | 34 | 36 | 38 |
| 525 - 559 | | | | | | 26 | 28 | 30 | 32 | 34 | 36 | 38 |
| 560 - 594 | | | | | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 |
| 595 - 629 | | | | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 |
| 630 - 664 | | | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 |
| 665 - 699 | | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 |
| 700 - 734 | 19 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 |
| 735 - 769 | 19 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 |
| 770 - 804 | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 |
| 805 - 839 | 20 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 |
| 840 - 874 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 |
| 875 - 909 | 21 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 |
| 910 - 944 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 |
| 945 - 979 | 22 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 |
| 980 - 1014 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 |
| 1015 - 1049 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 |
| 1050 - 1084 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 |
| 1085 - 1119 | 24 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 |
| 1120 - 1154 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 |
| 1155 - 1189 | 25 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 |
| 1190 - 1224 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 |
| 1225 - 1259 | 26 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 |
| 1260 - 1294 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 |
| 1295 - 1329 | 27 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 |
| 1330 - 1364 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 |
| 1365 - 1399 | 28 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 |
| 1400 - 1434 | 29 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 |
| 1435 - 1469 | 30 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 |
| 1470 - 1504 | 31 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 |
| 1505 - 1539 | 32 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 |
| 1540 - 1574 | 33 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1575 - 1609 | 34 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1610 - 1644 | 35 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |

| | Taux régional de chômage | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Nombre d'heures d'emploi assurable au cours de la période de référence | 6 % et moins | Plus de 6 % mais au plus 7 % | Plus de 7 % mais au plus 8 % | Plus de 8 % mais au plus 9 % | Plus de 9 % mais au plus 10 % | Plus de 10 % mais au plus 11 % | Plus de 11 % mais au plus 12 % | Plus de 12 % mais au plus 13 % | Plus de 13 % mais au plus 14 % | Plus de 14 % mais au plus 15 % | Plus de 15 % mais au plus 16 % | Plus de 16 % |
| 1645 - 1679 | 36 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1680 - 1714 | 37 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1715 - 1749 | 38 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1750 - 1784 | 39 | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1785 - 1819 | 40 | 42 | 44 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |
| 1820 - | 41 | 43 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 | 45 |

**2016**

**2017**

# 31

First Session, Forty-fourth Parliament,
70-71 Elizabeth II – 1-2 Charles III, 2021-2022-2023-2024

# STATUTES OF CANADA 2024

## CHAPTER 15

An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023

**ASSENTED TO**

JUNE 20, 2024

BILL C-59

Première session, quarante-quatrième législature,
70-71 Elizabeth II – 1-2 Charles III, 2021-2022-2023-2024

# LOIS DU CANADA (2024)

## CHAPITRE 15

Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023

**SANCTIONNÉE**

LE 20 JUIN 2024

PROJET DE LOI C-59

## RECOMMENDATION

Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*".

## SUMMARY

Part 1 implements certain measures in respect of the *Income Tax Act* and the *Income Tax Regulations* by

**(a)** limiting the deductibility of net interest and financing expenses by certain corporations and trusts, consistent with certain Organisation for Economic Co-operation and Development and the Group of Twenty Base Erosion and Profit Shifting project recommendations;

**(b)** implementing hybrid mismatch rules consistent with the Organisation for Economic Co-operation and Development and the Group of Twenty Base Erosion and Profit Shifting project recommendations regarding cross-border tax avoidance structures that exploit differences in the income tax laws of two or more countries to produce "deduction/non-inclusion mismatches";

**(c)** allowing expenditures incurred in the exploration and development of all lithium to qualify as Canadian exploration expenses and Canadian development expenses;

**(d)** ensuring that only genuine intergenerational business transfers are excluded from the anti-surplus stripping rule in section 84.1 of the *Income Tax Act*;

**(e)** denying the dividend received deduction for dividends received by Canadian financial institutions on certain shares that are held as mark-to-market property;

**(f)** increasing the rate of the rural supplement for Climate Action Incentive payments (CAIP) from 10% to 20% for the 2023 and subsequent taxation years as well as referencing the 2016 census data for the purposes of the CAIP rural supplement eligibility for the 2023 and 2024 taxation years;

**(g)** providing a refundable investment tax credit to qualifying businesses for eligible carbon capture, utilization and storage equipment;

**(h)** providing a refundable investment tax credit to qualifying businesses for eligible clean technology equipment;

**(i)** introducing, under certain circumstances, labour requirements in relation to the new refundable investment tax credits for eligible carbon capture, utilization and storage equipment as well as eligible clean technology equipment;

## RECOMMANDATION

Son Excellence la gouverneure générale recommande à la Chambre des communes l'affectation de deniers publics dans les circonstances, de la manière et aux fins prévues dans une mesure intitulée « *Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023* ».

## SOMMAIRE

La partie 1 met en œuvre certaines mesures relatives à la *Loi de l'impôt sur le revenu* et au *Règlement de l'impôt sur le revenu* pour :

**a)** limiter la déductibilité de dépenses d'intérêts et de financement nettes de certaines sociétés ou fiducies, conformément aux recommandations du projet de lutte contre l'érosion de la base d'imposition et le transfert de bénéfices de l'Organisation de coopération et de développement économiques et du Groupe des Vingt;

**b)** mettre en œuvre des règles sur les dispositifs hybrides conformes aux recommandations du projet de lutte contre l'érosion de la base d'imposition et le transfert de bénéfices de l'Organisation de coopération et de développement économiques et du Groupe des Vingt concernant les stratégies d'évitement fiscal transfrontalières qui exploitent les différences entre les lois de l'impôt sur le revenu de deux ou plusieurs pays pour créer une « asymétrie déduction/non-inclusion »;

**c)** permettre aux dépenses engagées dans l'exploration et l'aménagement de tout le lithium d'être considérées comme des frais d'exploration au Canada et des frais d'aménagement au Canada;

**d)** veiller à ce que seuls les véritables transferts intergénérationnels d'entreprises soient exclus de la règle contre le dépouillement de surplus de l'article 84.1 de la *Loi de l'impôt sur le revenu*;

**e)** refuser la déduction des dividendes reçus pour les dividendes reçus par les institutions financières canadiennes sur certaines actions détenues à titre de biens évalués à la valeur du marché;

**f)** augmenter le taux du supplément rural pour les paiements de l'Incitatif à agir pour le climat (IAC) de 10 % à 20 % pour les années d'imposition 2023 et suivantes et faire référence aux données du recensement de 2016 aux fins d'admissibilité au supplément rural de l'IAC pour les années d'imposition 2023 et 2024;

**g)** accorder un crédit d'impôt à l'investissement remboursable aux entreprises admissibles pour l'équipement admissible de captage, d'utilisation et de stockage du carbone;

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**www.ourcommons.ca**

Disponible sur le site Web de la Chambre des communes à l'adresse suivante :
**www.noscommunes.ca**

**(j)** removing the requirement that credit unions derive no more than 10% of their revenue from sources other than certain specified sources;

**(k)** permitting a qualifying family member to acquire rights as successor of a holder of a Registered Disability Savings Plan following the death of that plan's last remaining holder who was also a qualifying family member;

**(l)** implementing consequential changes of a technical nature to facilitate the operation of the existing rules for First Home Savings Accounts;

**(m)** introducing a tax of 2% on the net value of equity repurchases by certain Canadian corporations, trusts and partnerships whose equity is listed on a designated stock exchange;

**(n)** exempting certain fees from the refundable tax applicable to contributions under retirement compensation arrangements;

**(o)** introducing a technical amendment to the provision that authorizes the sharing of taxpayer information for the purposes of the Canadian Dental Care Plan;

**(p)** implementing a number of amendments to the general anti-avoidance rule (GAAR) as well as introducing a new penalty applicable to transactions subject to the GAAR and extending the normal reassessment period for the GAAR by three years in certain circumstances;

**(q)** facilitating the creation of employee ownership trusts;

**(r)** introducing specific anti-avoidance rules in relation to corporations referred to as substantive CCPCs; and

**(s)** extending the phase-out by three years, and expanding the eligible activities, in relation to the reduced tax rates for certain zero-emission technology manufacturers.

It also makes related and consequential amendments to the *Excise Tax Act* and the *Excise Act, 2001*.

Part 2 enacts the *Digital Services Tax Act* and its regulations. That Act provides for the implementation of an annual tax of 3% on certain types of digital services revenue earned by businesses that meet certain revenue thresholds. It sets out rules for the purposes of establishing liability for the tax and also sets out applicable reporting and filing requirements. To promote compliance with its provisions, that Act includes modern administration and enforcement provisions generally aligned with those found in other taxation statutes. Finally, this Part also makes related and consequential amendments to other texts to ensure proper implementation of the tax and cohesive and efficient administration by the Canada Revenue Agency.

Part 3 implements certain Goods and Services Tax/Harmonized Sales Tax (GST/HST) measures by

**h)** accorder un crédit d'impôt à l'investissement remboursable aux entreprises admissibles relativement à l'équipement de technologie propre admissible;

**i)** prévoir, dans certaines circonstances, des exigences en matière de main-d'œuvre concernant les nouveaux crédits d'impôt à l'investissement remboursables pour l'équipement admissible de captage, d'utilisation et de stockage du carbone ainsi que pour l'équipement de technologie propre admissible;

**j)** éliminer l'exigence selon laquelle les caisses de crédit ne peuvent pas tirer plus de 10 % de leurs revenus de sources autres que certaines sources désignées;

**k)** permettre à un membre de la famille admissible d'acquérir des droits à titre de successeur d'un titulaire d'un Régime enregistré d'épargne-invalidité après le décès du dernier titulaire restant de ce régime qui était également un membre de la famille admissible;

**l)** mettre en œuvre des changements corrélatifs de nature technique pour faciliter le fonctionnement des règles existantes pour les comptes d'épargne libre d'impôt pour l'achat d'une première propriété;

**m)** instaurer un impôt de 2 % sur la valeur nette des rachats de capitaux propres effectués par certaines sociétés, fiducies et sociétés de personnes canadiennes dont les capitaux propres sont cotés à une bourse de valeurs désignée;

**n)** exempter certains frais de l'impôt remboursable applicable aux cotisations versées en vertu de conventions de retraite;

**o)** apporter une modification de nature technique à la disposition qui autorise la communication des renseignements des contribuables pour l'application du Régime canadien de soins dentaires;

**p)** mettre en œuvre un certain nombre de modifications à la règle générale anti-évitement (RGAÉ), instaurer une nouvelle pénalité applicable aux transactions assujetties à la RGAÉ et prolonger de trois ans la période normale de nouvelle cotisation pour la RGAÉ dans certaines circonstances;

**q)** faciliter la création de fiducies collectives des employés;

**r)** instaurer des règles anti-évitement spécifiques à l'égard des sociétés qui sont appelées SPCC en substance;

**s)** prolonger de trois ans l'élimination progressive et élargir les activités admissibles en ce qui concerne les taux d'imposition réduits pour certains fabricants de technologies à zéro émission.

Elle apporte également des modifications connexes et corrélatives à la *Loi sur la taxe d'accise* et à la *Loi de 2001 sur l'accise*.

La partie 2 édicte la *Loi sur la taxe sur les services numériques* et son règlement. Cette loi prévoit la mise en œuvre d'une taxe annuelle de 3 % sur certains types de revenus provenant des services numériques des entreprises qui atteignent certains seuils de revenu. Cette loi énonce les règles permettant d'établir l'assujettissement à cette taxe et établit également des exigences en matière de déclaration et de production. Pour favoriser l'observation de ses dispositions, cette loi prévoit des dispositions d'application et d'exécution modernes et généralement conformes à celles qui se trouvent dans d'autres lois fiscales. Enfin, cette partie apporte des modifications corrélatives et connexes à d'autres textes pour assurer la mise en œuvre adéquate de la taxe et pour permettre à l'Agence du revenu du Canada de les appliquer de façon cohérente et efficace.

La partie 3 met en œuvre certaines mesures relatives à la taxe sur les produits et services/taxe de vente harmonisée (TPS/TVH) pour :

**(a)** ensuring that an interest in a corporation that does not have its capital divided into shares is treated as a financial instrument for GST/HST purposes;

**(b)** ensuring that interest and dividend income from a closely related partnership is not included in the determination of whether a person is a *de minimis* financial institution for GST/HST purposes;

**(c)** ensuring that an election related to supplies made within a closely related group of persons that includes a financial institution may not be revoked on a retroactive basis without the permission of the Minister of National Revenue;

**(d)** making technical amendments to an election that allows electing members of a closely related group to treat certain supplies made between them as having been made for nil consideration;

**(e)** ensuring that certain supplies between the members of a closely related group are not inadvertently taxed under the imported taxable supply rules that apply to financial institutions;

**(f)** raising the income threshold for the requirement to file an information return by certain financial institutions;

**(g)** allowing up to seven years to assess the net tax adjustments owing by certain financial institutions in respect of the imported taxable supply rules;

**(h)** expanding the GST/HST exemption for services rendered to individuals by certain health care practitioners to include professional services rendered by psychotherapists and counselling therapists;

**(i)** providing relief in relation to the GST/HST treatment of payment card clearing services;

**(j)** allowing the joint venture election to be made in respect of the operation of a pipeline, rail terminal or truck terminal that is used for the transportation of oil, natural gas or related products;

**(k)** raising the input tax credit (ITC) documentation thresholds from $30 to $100 and from $150 to $500 and allowing billing agents to be treated as intermediaries for the purposes of the ITC information rules; and

**(l)** extending the 100% GST rebate in respect of new purpose-built rental housing to certain cooperative housing corporations.

It also implements an excise tax measure by creating a joint election mechanism to specify who is eligible to claim a rebate of excise tax for goods purchased by provinces for their own use.

Part 4 implements certain excise measures by

**(a)** allowing vaping product licensees to import packaged vaping products for stamping by the licensee and entry into the Canadian duty-paid market as of January 1, 2024;

**(b)** permitting all cannabis licensees to elect to remit excise duties on a quarterly rather than a monthly basis, starting from the quarter that began on April 1, 2023;

**(c)** amending the marking requirements for vaping products to ensure that the volume of the vaping substance is marked on the package;

**a)** veiller à ce qu'une participation dans une société de personnes dont le capital n'est pas divisé en actions soit considérée comme un instrument financier relativement à la TPS/TVH;

**b)** veiller à ce que le revenu d'intérêts et de dividendes d'une société de personnes étroitement liée ne soit pas pris en compte lorsqu'il s'agit de déterminer si une personne est une institution financière visée par la règle du seuil relativement à la TPS/TVH;

**c)** veiller à ce qu'un choix lié à des fournitures effectuées au sein d'un groupe de personnes étroitement lié, dont une institution financière est membre, ne soit pas révoqué rétroactivement sans l'autorisation du ministre du Revenu national;

**d)** apporter des modifications techniques à un choix permettant aux membres d'un groupe étroitement lié ayant fait le choix de considérer certaines fournitures effectuées entre eux comme effectuées sans contrepartie;

**e)** veiller à ce que certaines fournitures effectuées entre les membres d'un groupe étroitement lié ne soient pas taxées par inadvertance en vertu des règles sur les fournitures taxables importées s'appliquant aux institutions financières;

**f)** augmenter le seuil de revenu pour satisfaire à l'exigence de production d'une déclaration de renseignements par certaines institutions financières;

**g)** permettre un délai maximal de sept ans pour procéder à une cotisation des redressements de taxe nette due par certaines institutions financières à l'égard des règles sur les fournitures taxables importées;

**h)** étendre l'exonération de TPS/TVH visant les services rendus à des particuliers par certains praticiens du domaine de la santé aux services professionnels rendus par les psychothérapeutes et les conseillers thérapeutiques;

**i)** accorder un allègement relativement au traitement des services de compensation relatifs aux cartes de paiement sous le régime de la TPS/TVH;

**j)** permettre qu'un choix concernant les coentreprises soit fait relativement à l'exploitation d'un pipeline, d'un terminal ferroviaire ou d'un terminal de camions qui sert au transport du pétrole, du gaz naturel ou de produits connexes;

**k)** accroître les seuils de documents relatifs au crédit de taxe sur les intrants (CTI) de 30 $ à 100 $ et de 150 $ à 500 $, et permettre aux agents de facturation d'être considérés comme des intermédiaires pour l'application des règles en matière d'information touchant les CTI;

**l)** rendre accessible à certaines coopératives d'habitation le remboursement de 100 % de la TPS pour les nouveaux logements construits spécialement pour la location.

Elle met également en œuvre une mesure relative à la taxe d'accise en créant un mécanisme de choix conjoint pour préciser qui a le droit à un remboursement de la taxe d'accise visant les marchandises achetées par des provinces pour leur propre usage.

La partie 4 met en œuvre certaines mesures relatives à l'accise pour :

**a)** permettre à un titulaire de licence de produits de vapotage d'importer des produits de vapotage emballés pour estampillage par le titulaire de licence et en vue de leur entrée dans le marché canadien des marchandises acquittées à compter du 1er janvier 2024;

**b)** permettre à tous les titulaires de licence de cannabis de faire le choix de verser les droits d'accise chaque trimestre plutôt que chaque mois, à compter du trimestre ayant commencé le 1er avril 2023;

**(d)** requiring that a person importing vaping products must be at least 18 years old; and

**(e)** introducing administrative penalties for certain infractions related to the vaping taxation framework.

Part 5 enacts and amends several Acts in order to implement various measures.

Subdivision A of Division 1 of Part 5 amends Subdivision A of Division 16 of Part 6 of the *Budget Implementation Act, 2018, No. 1* to clarify the scope of certain non-financial activities in which federal financial institutions may engage and to remove certain discrepancies between the English and French versions of that Act.

Subdivision B of Division 1 of Part 5 amends the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* to, among other things, permit federal financial institutions governed by those Acts to hold certain meetings by virtual means without having to obtain a court order and to permit voting during those meetings by virtual means.

Division 2 of Part 5 amends the *Canada Labour Code* to, among other things, provide a leave of absence of three days in the event of a pregnancy loss and modify certain provisions related to bereavement leave.

Division 3 of Part 5 enacts the *Canada Water Agency Act*. That Act establishes the Canada Water Agency, whose role is to assist the Minister of the Environment in exercising or performing that Minister's powers, duties and functions in relation to fresh water. The Division also makes consequential amendments to other Acts.

Division 4 of Part 5 amends the *Tobacco and Vaping Products Act* to, among other things,

**(a)** authorize the making of regulations respecting fees or charges to be paid by tobacco and vaping product manufacturers for the purpose of recovering the costs incurred by His Majesty in right of Canada in relation to the carrying out of the purpose of that Act;

**(b)** provide for related administration and enforcement measures; and

**(c)** require information relating to the fees or charges to be made available to the public.

Division 5 of Part 5 amends the *Canadian Payments Act* to, among other things, provide that additional persons are entitled to be members of the Canadian Payments Association and clarify the composition of that Association's Stakeholder Advisory Council.

Division 6 of Part 5 amends the *Competition Act* to, among other things,

**(a)** modernize the merger review regime, including by modifying certain notification rules, clarifying that Act's application to labour markets, allowing the Competition Tribunal to consider the effect of changes in market share and the likelihood of coordination between competitors following a merger, extending the limitation period for mergers that were not the subject of a notification to the Commissioner of Competition and placing a temporary restraint on the completion of certain mergers until the Tribunal has disposed of any application for an interim order;

**(b)** improve the effectiveness of the provisions that address anti-competitive conduct, including by allowing the Commissioner to review the effects of past agreements and arrangements, ensuring that an order related to a refusal to deal may

**c)** modifier les exigences de marquage relatives aux produits de vapotage afin de veiller à ce que le volume de la substance de vapotage soit indiqué sur l'emballage;

**d)** exiger qu'une personne qui importe des produits de vapotage soit âgée d'au moins 18 ans;

**e)** introduire des sanctions administratives pour certaines infractions liées au cadre de taxation du vapotage.

La partie 5 met en œuvre diverses mesures, notamment par l'édiction et la modification de plusieurs lois.

La sous-section A de la section 1 de la partie 5 modifie la sous-section A de la section 16 de la partie 6 de la *Loi n° 1 d'exécution du budget de 2018* pour préciser la portée de certaines activités non financières pouvant être exercées par des institutions financières fédérales et éliminer certaines divergences entre les versions anglaise et française de cette loi.

La sous-section B de la section 1 de la partie 5 modifie la *Loi sur les sociétés de fiducie et de prêt*, la *Loi sur les banques* et la *Loi sur les sociétés d'assurances* pour, notamment, permettre aux institutions financières fédérales régies par ces lois de tenir certaines assemblées de façon virtuelle sans obtenir d'ordonnance du tribunal à cet effet et d'y voter de cette façon.

La section 2 de la partie 5 modifie le *Code canadien du travail* pour, notamment, prévoir un congé de trois jours en cas de perte de grossesse et modifier certaines dispositions concernant le congé de décès.

La section 3 de la partie 5 édicte la *Loi sur l'Agence canadienne de l'eau*. Cette loi constitue l'Agence canadienne de l'eau, dont le rôle est d'assister le ministre de l'Environnement dans l'exercice de ses attributions relatives à l'eau douce. Elle apporte également des modifications corrélatives à d'autres lois.

La section 4 de la partie 5 modifie la *Loi sur le tabac et les produits de vapotage* pour, notamment :

**a)** permettre la prise de règlements concernant les frais et les redevances à payer par les fabricants de produits du tabac et de produits de vapotage afin de recouvrer les frais exposés par Sa Majesté du chef du Canada qui sont liés à la réalisation de l'objet de cette loi;

**b)** prévoir des mesures connexes d'exécution et de contrôle d'application;

**c)** exiger que soient mis à la disposition du public des renseignements concernant les frais et les redevances.

La section 5 de la partie 5 modifie la *Loi canadienne sur les paiements* pour, notamment, élargir l'admissibilité à titre de membre de l'Association canadienne des paiements et clarifier la composition du comité consultatif des intervenants de l'Association.

La section 6 de la partie 5 modifie la *Loi sur la concurrence* pour, notamment :

**a)** moderniser le régime d'examen des fusionnements, notamment en modifiant certaines règles sur les préavis, en clarifiant l'application de cette loi au marché du travail, en permettant au Tribunal de la concurrence d'examiner les effets de la variation des parts de marché et la probabilité d'une coordination entre les concurrents à la suite d'un fusionnement, en prolongeant le délai de prescription pour les fusionnements qui n'ont pas fait l'objet d'un préavis au commissaire de la concurrence et en imposant une restriction temporaire à la réalisation de certains fusionnements jusqu'à ce que le Tribunal ait statué sur la demande d'ordonnance provisoire;

**b)** améliorer l'efficacité des dispositions qui traitent de comportement anti-concurrentiel, notamment en permettant au commissaire d'examiner les effets des accords et des

address a refusal to supply a means of diagnosis or repair and ensuring that representations of a product's benefits for protecting or restoring the environment must be supported by adequate and proper tests and that representations of a business or business activity for protecting or restoring the environment must be supported by adequate and proper substantiation;

**(c)** strengthen the enforcement framework, including by creating new remedial orders, such as administrative monetary penalties, with respect to those collaborations that harm competition, by creating a civilly enforceable procedure to address non-compliance with certain provisions of that Act and by broadening the classes of persons who may bring private cases before the Tribunal and providing for the availability of monetary payments as a remedy in those cases; and

**(d)** provide for new procedures, such as the certification of agreements or arrangements related to protecting the environment and a remedial process for reprisal actions.

The Division also amends the *Competition Tribunal Act* to prevent the Competition Tribunal from awarding costs against His Majesty in right of Canada, except in specified circumstances.

Finally, the Division makes a consequential amendment to one other Act.

Division 7 of Part 5 amends the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* to exclude from their application prescribed public post-secondary educational institutions.

Subdivision A of Division 8 of Part 5 amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to, among other things,

**(a)** provide that, if a person or entity referred to in section 5 of that Act has reasonable grounds to suspect possible sanctions evasion, the relevant information is reported to the Financial Transactions and Reports Analysis Centre of Canada;

**(b)** add reporting requirements for persons and entities providing certain services in respect of private automatic banking machines;

**(c)** require declarations respecting money laundering, the financing of terrorist activities and sanctions evasion to be made in relation to the importation and exportation of goods; and

**(d)** authorize the Financial Transactions and Reports Analysis Centre of Canada to disclose designated information to the Department of the Environment and the Department of Fisheries and Oceans, subject to certain conditions.

It also amends the *Budget Implementation Act, 2023, No. 1* in relation to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and makes consequential amendments to other Acts and a regulation.

Subdivision B of Division 8 of Part 5 amends the *Criminal Code* to, among other things,

**(a)** in certain circumstances, provide that a court may infer the knowledge or belief or recklessness required in relation to the offence of laundering proceeds of crime and specify that it is not necessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the designated offence;

arrangements antérieurs, en veillant à ce que l'ordonnance rendue en cas de refus de vendre puisse permettre de remédier au refus de fournir un moyen de diagnostic ou de réparation et en exigeant que les indications visant les avantages d'un produit pour la protection ou la restauration de l'environnement soient appuyées par des épreuves suffisantes et appropriées et que les indications visant les avantages d'une entreprise ou de ses activités pour la protection ou la restauration de l'environnement soient appuyées par des éléments corroboratifs suffisants et appuyés;

**c)** renforcer le cadre d'application de cette loi, notamment en créant de nouvelles ordonnances correctives, lesquelles peuvent prévoir des sanctions administratives pécuniaires pour les collaborations qui nuisent à la concurrence, en créant une procédure non pénale contre les défauts de conformité à certaines dispositions de cette loi, en élargissant les catégories de personnes pouvant porter des affaires privées devant le Tribunal et en prévoyant la possibilité de paiements pécuniaires en guise de réparation dans ces affaires;

**d)** prévoir de nouvelles procédures, notamment la certification d'accords ou d'arrangements visant la protection de l'environnement, et un processus correctif pour les représailles.

Elle modifie également la *Loi sur le Tribunal de la concurrence* pour empêcher le Tribunal de la concurrence de rendre une ordonnance contre Sa Majesté du chef du Canada pour le paiement des frais, sauf dans des circonstances particulières.

Enfin, elle apporte une modification corrélative à une autre loi.

La section 7 de la partie 5 modifie la *Loi sur la faillite et l'insolvabilité* et la *Loi sur les arrangements avec les créanciers des compagnies* afin d'exclure de leur application les établissements publics d'enseignement postsecondaire prévus par règlement.

La sous-section A de la section 8 de la partie 5 modifie la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* pour, notamment :

**a)** que, lorsqu'une personne ou entité visée à l'article 5 de cette loi a des motifs raisonnables de soupçonner un possible contournement de sanctions, les renseignements pertinents soient fournis au Centre d'analyse des opérations et déclarations financières du Canada;

**b)** créer de nouvelles exigences de déclaration pour les personnes et les entités qui offrent des services relativement à des guichets automatiques privés;

**c)** exiger qu'une déclaration concernant le recyclage des produits de la criminalité, le financement des activités terroristes et le contournement de sanctions soit faite relativement à l'importation et à l'exportation de marchandises;

**d)** autoriser le Centre d'analyse des opérations et déclarations financières du Canada à communiquer des renseignements désignés au ministère de l'Environnement et au ministère des Pêches et des Océans, à certaines conditions.

Elle modifie également la *Loi nº 1 d'exécution du budget de 2023* en ce qui a trait à la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* et apporte des modifications corrélatives à d'autres lois et à un règlement.

La sous-section B de la section 8 de la partie 5 modifie le *Code criminel* pour, notamment :

**a)** en certaines circonstances, prévoir que le tribunal peut déduire l'existence de la connaissance, de la croyance ou de l'insouciance requise à l'égard de l'infraction de recyclage des produits de la criminalité et préciser que le poursuivant n'a pas à établir que l'accusé connaissait ou croyait connaître la nature exacte de l'infraction désignée, ou ne s'en souciait pas;

**(b)** remove, in the context of the special warrants and restraint order in relation to proceeds of crime, the requirement for the Attorney General to give an undertaking, as well as permit a judge to attach conditions to a special warrant for search and seizure of property that is proceeds of crime; and

**(c)** modify certain provisions relating to the production order for financial data to include elements specific to accounts associated with digital assets.

It also makes consequential amendments to the *Seized Property Management Act* and the *Forfeited Property Sharing Regulations*.

Division 9 of Part 5 retroactively amends section 42 of the *Federal-Provincial Fiscal Arrangements Act* to specify the payments about which information must be published on a Government of Canada website, as well as the information that must be published.

Division 10 of Part 5 amends the *Public Sector Pension Investment Board Act* to increase the number of directors in the Public Sector Pension Investment Board, as well as to provide for consultation with the portion of the National Joint Council of the Public Service of Canada that represents employees when certain candidates are included on the list for proposed appointment as directors.

Division 11 of Part 5 enacts the *Department of Housing, Infrastructure and Communities Act*, which establishes the Department of Housing, Infrastructure and Communities, confers on the Minister of Infrastructure and Communities various responsibilities relating to public infrastructure and confers on the Minister of Housing various responsibilities relating to housing and the reduction and prevention of homelessness. The Division also makes consequential amendments to other Acts and repeals the *Canada Strategic Infrastructure Fund Act*.

Division 12 of Part 5 amends the *Employment Insurance Act* to, among other things, create a benefit of 15 weeks for claimants who are carrying out responsibilities related to

**(a)** the placement with the claimant of one or more children for the purpose of adoption; or

**(b)** the arrival of one or more new-born children of the claimant into the claimant's care, in the case where the person who will be giving or gave birth to the child or children is not, or is not intended to be, a parent of the child or children.

The Division also amends the *Canada Labour Code* to create a leave of absence of up to 16 weeks for an employee to carry out such responsibilities.

**b)** supprimer l'exigence pour le procureur général de prendre des engagements dans le contexte des mandats spéciaux et de l'ordonnance de blocage concernant les produits de la criminalité, ainsi que permettre au juge d'assortir de conditions le mandat spécial de perquisition et de saisie de biens constituant des produits de la criminalité;

**c)** modifier certaines des dispositions relatives à l'ordonnance de communication de données financières afin d'y inclure des éléments propres aux comptes associés à des actifs numériques.

Elle apporte également des modifications corrélatives à la *Loi sur l'administration des biens saisis* et au *Règlement sur le partage du produit de l'aliénation des biens confisqués*.

La section 9 de la partie 5 modifie rétroactivement l'article 42 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* pour préciser les versements à propos desquels des renseignements doivent être publiés sur un site Internet du gouvernement du Canada ainsi que les renseignements à publier.

La section 10 de la partie 5 modifie la *Loi sur l'Office d'investissement des régimes de pensions du secteur public* pour augmenter le nombre d'administrateurs de l'Office d'investissement des régimes de pensions du secteur public et prévoir la consultation des représentants des salariés au sein du Conseil national mixte de la fonction publique du Canada lorsque des candidats sont choisis pour figurer sur la liste de personnes compétentes pour remplir les fonctions d'administrateur.

La section 11 de la partie 5 édicte la *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*, qui constitue le ministère du Logement, de l'Infrastructure et des Collectivités et confie diverses responsabilités au ministre de l'Infrastructure et des Collectivités, en ce qui a trait à l'infrastructure publique, et au ministre du Logement, en ce qui a trait au logement et à la lutte contre l'itinérance. En outre, elle apporte des modifications corrélatives à d'autres lois et abroge la *Loi sur le Fonds canadien sur l'infrastructure stratégique*.

La section 12 de la partie 5 modifie la *Loi sur l'assurance-emploi* pour, notamment, créer une prestation de quinze semaines pour le prestataire qui s'acquitte de toute obligation se rapportant :

**a)** soit au placement chez lui d'un ou de plusieurs enfants en vue de leur adoption;

**b)** soit à l'arrivée chez lui de son ou de ses nouveau-nés, dans le cas où la personne qui leur donnera naissance ou qui leur a donné naissance n'est pas — ou n'est pas censée être — l'un des parents.

Elle modifie également le *Code canadien du travail* pour créer un congé d'au plus seize semaines pour l'employé qui s'acquitte de telles obligations.

**2026**

## TABLE OF PROVISIONS

**An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023**



## TABLE ANALYTIQUE

**Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023**

# CHAPTER 15

An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023

[*Assented to 20th June, 2024*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## Short Title

**Short title**

**1** This Act may be cited as the *Fall Economic Statement Implementation Act, 2023*.

**PART 1**

## Amendments to the Income Tax Act and to Other Legislation

R.S., c. 1 (5th Supp.)

### Income Tax Act

**2 (1) Subsection 12(1) of the *Income Tax Act* is amended by adding the following after paragraph (l.1):**

**Partnership — interest and financing expenses add back**

**(l.2)** the amount determined by the formula

**A × B**

where

**A** is the total of all amounts each of which is an amount determined under paragraph (h) of the description of A in the definition *interest and*

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# CHAPITRE 15

Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023

[*Sanctionnée le 20 juin 2024*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

## Titre abrégé

**Titre abrégé**

**1** *Loi d'exécution de l'énoncé économique de l'automne 2023*.

**PARTIE 1**

## Modification de la Loi de l'impôt sur le revenu et de textes connexes

L.R., ch. 1 (5e suppl.)

### Loi de l'impôt sur le revenu

**2 (1) Le paragraphe 12(1) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après l'alinéa l.1), de ce qui suit :**

**Société de personnes — réintégration des dépenses d'intérêts et de financement**

**l.2)** la somme obtenue par la formule suivante :

**A × B**

où :

**A** représente le total des sommes dont chacune représente une somme déterminée selon l'alinéa h) de l'élément A dans la définition de *dépenses d'intérêts et de financement* au paragraphe

*financing expenses* in subsection 18.2(1) in respect of the taxpayer for the taxation year, and

**B** is

**(i)** if the taxpayer is an *excluded entity* for the year (as defined in subsection 18.2(1)), nil, and

**(ii)** in any other case, the proportion determined under the first formula in subsection 18.2(2) in respect of the taxpayer for the year;

**(2) Paragraph 12(1)(n.3) of the Act is replaced by the following:**

**Retirement compensation arrangement**

**(n.3)** the total of all amounts received by the taxpayer in the year in the course of a business out of or under a retirement compensation arrangement (including amounts received in respect of the arrangement under subsection 207.71(3)) to which the taxpayer, another person who carried on a business that was acquired by the taxpayer, or any person with whom the taxpayer or that other person does not deal at arm's length, has contributed an amount that was deductible under paragraph 20(1)(r) in computing the contributor's income for a taxation year;

**(3) Paragraph 12(1)(t) of the Act is replaced by the following:**

**Investment tax credit**

**(t)** the amount deducted under subsection 127(5) or (6) or 127.44(3) in respect of a property acquired or an expenditure made in a preceding taxation year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), subparagraph 53(2)(c)(vi), (c)(vi.1) or (h)(ii) or for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);

**(4) Paragraph 12(1)(t) of the Act, as enacted by subsection (3), is replaced by the following:**

**Investment tax credit**

**(t)** the amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) in respect of a property acquired or an expenditure made in a preceding taxation

18.2(1) relativement au contribuable pour l'année d'imposition;

**B** selon le cas :

**(i)** si le contribuable est une *entité exclue* pour l'année (au sens du paragraphe 18.2(1)), zéro,

**(ii)** dans les autres cas, la proportion déterminée par la première formule figurant au paragraphe 18.2(2) relativement au contribuable pour l'année;

**(2) L'alinéa 12(1)n.3) de la même loi est remplacé par ce qui suit :**

**Convention de retraite**

**n.3)** le total des montants que le contribuable reçoit au cours de l'année, dans le cours des activités d'une entreprise et provenant d'une convention de retraite (y compris les montants reçus relatifs à la convention en vertu du paragraphe 207.71(3)) dans le cadre de laquelle lui-même, une autre personne qui exploitait une entreprise qu'il a acquise ou une personne avec laquelle lui-même ou cette autre personne a un lien de dépendance a versé un montant déductible en vertu de l'alinéa 20(1)r) dans le calcul du revenu du cotisant pour une année d'imposition;

**(3) L'alinéa 12(1)t) de la même loi est remplacé par ce qui suit :**

**Crédit d'impôt à l'investissement**

**t)** la somme déduite en application des paragraphes 127(5) ou (6) ou 127.44(3) dans le calcul de l'impôt payable par le contribuable pour une année d'imposition antérieure au titre d'un bien acquis ou d'une dépense effectuée au cours d'une année d'imposition antérieure, dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu de l'alinéa 13(7.1)e) ou 37(1)e) ou du sous-alinéa 53(2)c)(vi), c)(vi.1) ou h)(ii), ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6);

**(4) L'alinéa 12(1)t) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :**

**Crédit d'impôt à l'investissement**

**t)** la somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) dans le calcul de l'impôt payable par le contribuable pour une année

year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), subparagraph 53(2)(c)(vi) to (c)(vi.2) or (h)(ii) or for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);

d'imposition antérieure au titre d'un bien acquis ou d'une dépense effectuée au cours d'une année d'imposition antérieure, dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu de l'alinéa 13(7.1)e) ou 37(1)e) ou du sous-alinéa 53(2)c)(vi) à c)(vi.2) ou h)(ii), ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6);

**(5) Subsection 12(2.02) of the Act is replaced by the following:**

**Source of income**

**(2.02)** For the purposes of this Act, if a particular amount is included in computing the income of a taxpayer for a taxation year because of paragraph (1)(l.1) or (l.2) and the particular amount is in respect of another amount that is deductible by a partnership in computing its income from a particular source or from sources in a particular place, the particular amount is deemed to be from the particular source or from sources in the particular place, as the case may be.

**(5) Le paragraphe 12(2.02) de la même loi est remplacé par ce qui suit :**

**Source du revenu**

**(2.02)** Pour l'application de la présente loi, toute somme donnée incluse dans le calcul du revenu d'un contribuable pour une année d'imposition par l'effet des alinéas (1)l.1) ou l.2) au titre d'une autre somme qui est déductible par une société de personnes dans le calcul de son revenu tiré d'une source donnée ou de sources situées dans un endroit donné est réputée être tirée de la source donnée ou de sources situées dans l'endroit donné, selon le cas.

**(6) The definition *investment contract* in subsection 12(11) of the Act is amended by adding the following after paragraph (d.1):**

**(d.2)** a FHSA,

**(6) La définition de *contrat de placement*, au paragraphe 12(11) de la même loi, est modifiée par adjonction, après l'alinéa d.1), de ce qui suit :**

**d.2)** les CELIAPP;

**(7) Subsections (1) and (5) apply in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsections (1) and (5) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection (1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**(7) Les paragraphes (1) et (5) s'appliquent relativement aux années d'imposition d'un contribuable commençant à compter du 1er octobre 2023 ou après. Toutefois, les paragraphes (1) et (5) s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe (1), ou l'application des articles 18.2 ou**

**(8) Subsection (2) applies to the 2024 and subsequent taxation years.**

**(9) Subsection (3) is deemed to have come into force on January 1, 2022.**

**(10) Subsection (4) is deemed to have come into force on March 28, 2023.**

**(11) Subsection (6) is deemed to have come into force on April 1, 2023.**

**3 (1) The Act is amended by adding the following after section 12.6:**

**Hybrid mismatch arrangements — definitions**

**12.7 (1)** The definitions in subsection 18.4(1) apply in this section.

**Secondary rule — conditions for application**

**(2)** Subsection (3) applies in respect of a payment of which a taxpayer is a recipient if

**(a)** the payment arises under a hybrid mismatch arrangement; and

**(b)** there is a foreign deduction component of the hybrid mismatch arrangement.

**Secondary rule — consequences**

**(3)** Subject to subsection 18.4(5), if this subsection applies in respect of a payment of which a taxpayer is a recipient, an amount equal to the hybrid mismatch amount in respect of the payment shall be

**(a)** included in computing the taxpayer's income from the same source as the payment; and

**(b)** included in computing the taxpayer's income for the last taxation year of the taxpayer that begins at or before the end of the first foreign taxation year of any entity in which an amount in respect of the payment, in the absence of any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible in computing relevant foreign income or profits of the entity.

**(2) Subsection (1) applies in respect of payments arising on or after July 1, 2022, except that**

**18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**(8) Le paragraphe (2) s'applique aux années d'imposition 2024 et suivantes.**

**(9) Le paragraphe (3) est réputé être entré en vigueur le 1er janvier 2022.**

**(10) Le paragraphe (4) est réputé être entré en vigueur le 28 mars 2023.**

**(11) Le paragraphe (6) est réputé être entré en vigueur le 1er avril 2023.**

**3 (1) La même loi est modifiée par adjonction, après l'article 12.6, de ce qui suit :**

**Dispositifs hybrides — définitions**

**12.7 (1)** Les définitions figurant au paragraphe 18.4(1) s'appliquent au présent article.

**Règle secondaire — conditions d'application**

**(2)** Le paragraphe (3) s'applique relativement à un paiement dont le contribuable est un bénéficiaire si, à la fois :

**a)** le paiement découle d'un dispositif hybride;

**b)** il y a une composante de déduction étrangère du dispositif hybride.

**Règle secondaire — conséquences**

**(3)** Sous réserve du paragraphe 18.4(5), lorsque le présent paragraphe s'applique relativement à un paiement dont le contribuable est un bénéficiaire, une somme correspondant au montant de l'asymétrie hybride relative au paiement doit :

**a)** être incluse dans le calcul du revenu du contribuable provenant d'une source identique à la source du paiement;

**b)** être incluse dans le calcul du revenu du contribuable pour la dernière année d'imposition du contribuable qui commence au plus tard à la fin de la première année d'imposition étrangère d'une entité au cours de laquelle une somme relative au paiement, en l'absence de toute règle étrangère de restriction des dépenses, serait, ou dont on pourrait raisonnablement s'attendre à ce qu'elle soit, déductible dans le calcul des revenus ou bénéfices étrangers pertinents de l'entité.

**(2) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022.**

**subsection 12.7(3) of the Act, as enacted by subsection (1), does not apply to the portion of a payment that**

**(a) arises because of subsection 18.4(9) of the Act, as enacted by subsection 8(1); and**

**(b) relates to the portion of a notional interest expense that is computed in respect of a period of time that precedes January 1, 2023.**

**Toutefois, le paragraphe 12.7(3) de la même loi, édicté par le paragraphe (1), ne s'applique pas à la partie d'un paiement qui, à la fois :**

**a) se produit en raison de l'application du paragraphe 18.4(9) de la même loi, édicté par le paragraphe 8(1);**

**b) se rapporte à la partie d'une dépense en intérêts théorique calculée pour une période antérieure au 1er janvier 2023.**

**4 (1) The portion of subsection 13(7.1) of the Act before paragraph (a) is replaced by the following:**

**4 (1) Le passage du paragraphe 13(7.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Deemed capital cost of certain property**

**(7.1)** For the purposes of this Act, where section 80 applied to reduce the capital cost to a taxpayer of a depreciable property or a taxpayer deducted an amount under subsection 127(5) or (6) or 127.44(3) in respect of a depreciable property or received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

**Coût en capital présumé de certains biens**

**(7.1)** Pour l'application de la présente loi, lorsque l'article 80 a eu pour effet de réduire le coût en capital d'un bien amortissable pour un contribuable ou qu'un contribuable a déduit un montant en vertu des paragraphes 127(5) ou (6) ou 127.44(3) relativement à un bien amortissable ou a reçu ou est en droit de recevoir une aide d'un gouvernement, d'une municipalité ou d'une autre administration relativement à des biens amortissables ou en vue d'en acquérir, sous forme de prime, de subvention, de prêt à remboursement conditionnel, de déduction de l'impôt ou d'allocation de placement, ou sous toute autre forme, à l'exception des sommes et montants suivants :

**(2) The portion of subsection 13(7.1) of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:**

**(2) Le passage du paragraphe 13(7.1) de la même loi précédant l'alinéa a), édicté par le paragraphe (1), est remplacé par ce qui suit :**

**Deemed capital cost of certain property**

**(7.1)** For the purposes of this Act, where section 80 applied to reduce the capital cost to a taxpayer of a depreciable property or a taxpayer deducted an amount under subsection 127(5) or (6), 127.44(3) or 127.45(6) in respect of a depreciable property or received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

**Coût en capital présumé de certains biens**

**(7.1)** Pour l'application de la présente loi, lorsque l'article 80 a eu pour effet de réduire le coût en capital d'un bien amortissable pour un contribuable ou qu'un contribuable a déduit un montant en vertu des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) relativement à un bien amortissable ou a reçu ou est en droit de recevoir une aide d'un gouvernement, d'une municipalité ou d'une autre administration relativement à des biens amortissables ou en vue d'en acquérir, sous forme de prime, de subvention, de prêt à remboursement conditionnel, de déduction de l'impôt ou d'allocation de placement, ou sous toute autre forme, à l'exception des sommes et montants suivants :

**(3) Paragraph 13(7.1)(e) of the Act is replaced by the following:**

**(e)** where the property was acquired in a taxation year ending before the particular time, all amounts deducted under subsection 127(5) or (6) or 127.44(3) by the

**(3) L'alinéa 13(7.1)e) de la même loi est remplacé par ce qui suit :**

**e)** si le bien a été acquis au cours d'une année d'imposition se terminant avant le moment donné, les montants déduits par le contribuable en application des

taxpayer for a taxation year ending before the particular time,

**(4) Paragraph 13(7.1)(e) of the Act, as enacted by subsection (3), is replaced by the following:**

**(e)** where the property was acquired in a taxation year ending before the particular time, all amounts deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) by the taxpayer for a taxation year ending before the particular time,

**(5) Section 13 of the Act is amended by adding the following after subsection (7.5):**

**Capital expenditures — Classes 59 and 60**

**(7.6)** If a taxpayer has incurred an expenditure on account of capital, and the amount of the expenditure would have been included in the taxpayer's undepreciated capital cost of property included in Class 59 or 60 of Schedule II to the *Income Tax Regulations* if the taxpayer had acquired a property as a result of the expenditure, then the taxpayer is deemed to have acquired a property, included in Class 59 or 60, as the case may be, at a cost equal to the amount of the expenditure, at the time that the expenditure is incurred.

**(6) The description of I in the definition *undepreciated capital cost* in subsection 13(21) of the Act is replaced by the following:**

**I** is the total of all amounts deducted under subsection 127(5) or (6) or 127.44(3), in respect of a depreciable property of the class of the taxpayer, in computing the taxpayer's tax payable for a taxation year ending before that time and subsequent to the disposition of that property by the taxpayer,

**(7) The description of I in the definition *undepreciated capital cost* in subsection 13(21) of the Act, as enacted by subsection (6), is replaced by the following:**

**I** is the total of all amounts deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6), in respect of a depreciable property of the class of the taxpayer, in computing the taxpayer's tax payable for a taxation year ending before that time and subsequent to the disposition of that property by the taxpayer,

paragraphes 127(5) ou (6) ou 127.44(3) pour toute année d'imposition se terminant avant le moment donné;

**(4) L'alinéa 13(7.1)e) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :**

**e)** si le bien a été acquis au cours d'une année d'imposition se terminant avant le moment donné, les montants déduits par le contribuable en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) pour toute année d'imposition se terminant avant le moment donné;

**(5) L'article 13 de la même loi est modifié par adjonction, après le paragraphe (7.5), de ce qui suit :**

**Dépenses en capital — catégories 59 et 60**

**(7.6)** Si un contribuable a engagé une dépense en capital, et que le montant de la dépense aurait été inclus dans la fraction non amortie du coût en capital des biens inclus dans les catégories 59 ou 60 de l'annexe II du *Règlement de l'impôt sur le revenu* du contribuable si ce dernier avait acquis un bien par suite de la dépense, il est réputé avoir acquis un bien, inclus dans les catégories 59 ou 60, selon le cas, à un coût égal au montant de la dépense au moment où celle-ci est engagée.

**(6) L'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital*, au paragraphe 13(21) de la même loi, est remplacé par ce qui suit :**

**I** le total des sommes dont chacune est une somme déduite en application des paragraphes 127(5) ou (6) ou 127.44(3), au titre d'un bien amortissable de cette catégorie, dans le calcul de l'impôt payable par le contribuable pour une année d'imposition se terminant avant ce moment et après qu'il a disposé de ces biens;

**(7) L'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) de la même loi, édicté par le paragraphe (6), est remplacé par ce qui suit :**

**I** le total des sommes dont chacune est une somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6), au titre d'un bien amortissable de cette catégorie, dans le calcul de l'impôt payable par le contribuable pour une année d'imposition se terminant avant ce moment et après qu'il a disposé de ces biens;

**(8) The portion of paragraph 13(24)(a) of the Act before subparagraph (i) is replaced by the following:**

**(a)** subject to paragraph (b), for the purposes of the description of A in the definition *undepreciated capital cost* in subsection (21) and of sections 127, 127.1 and 127.44, the property is deemed

**(9) The portion of paragraph 13(24)(a) of the Act before subparagraph (i), as enacted by subsection (8), is replaced by the following:**

**(a)** subject to paragraph (b), for the purposes of the description of A in the definition *undepreciated capital cost* in subsection (21) and of sections 127, 127.1, 127.44 and 127.45, the property is deemed

**(10) Subsections (1), (3), (5), (6) and (8) are deemed to have come into force on January 1, 2022.**

**(11) Subsections (2), (4), (7) and (9) are deemed to have come into force on March 28, 2023.**

**5 (1) Section 15 of the Act is amended by adding the following after subsection (2.5):**

**When s. 15(2) not to apply — employee ownership trusts**

**(2.51)** Subsection (2) does not apply to a loan made or a debt that arose in respect of a qualifying business transfer if

**(a)** immediately following the qualifying business transfer,

**(i)** the lender or creditor is a qualifying business, and

**(ii)** the borrower is the employee ownership trust that controls the qualifying business described in subparagraph (i);

**(b)** the sole purpose of the loan or the debt is to facilitate the qualifying business transfer; and

**(c)** at the time the loan was made or the debt incurred, *bona fide* arrangements were made for repayment of the loan or debt within 15 years of the qualifying business transfer.

**(8) Le passage de l'alinéa 13(24)a) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**a)** sous réserve de l'alinéa b), pour l'application de l'élément A de la formule figurant à la définition de *fraction non amortie du coût en capital*, au paragraphe (21), et des articles 127, 127.1 et 127.44, le bien est réputé :

**(9) Le passage de l'alinéa 13(24)a) de la même loi précédant le sous-alinéa (i), édicté par le paragraphe (8), est remplacé par ce qui suit :**

**a)** sous réserve de l'alinéa b), pour l'application de l'élément A de la formule figurant à la définition de *fraction non amortie du coût en capital*, au paragraphe (21), et des articles 127, 127.1, 127.44 et 127.45, le bien est réputé :

**(10) Les paragraphes (1), (3), (5), (6) et (8) sont réputés être entrés en vigueur le 1er janvier 2022.**

**(11) Les paragraphes (2), (4), (7) et (9) sont réputés être entrés en vigueur le 28 mars 2023.**

**5 (1) L'article 15 de la même loi est modifié par adjonction, après le paragraphe (2.5), de ce qui suit :**

**Inapplication du paragraphe 15(2) — fiducies collectives des employés**

**(2.51)** Le paragraphe (2) ne s'applique pas à un prêt consenti, ou à une dette contractée, relativement à un transfert admissible d'entreprise si les conditions suivantes sont réunies :

**a)** immédiatement après le transfert admissible d'entreprise :

**(i)** le prêteur ou le créancier est une entreprise admissible,

**(ii)** l'emprunteur est la fiducie collective des employés qui contrôle l'entreprise admissible visée au sous-alinéa (i);

**b)** le prêt ou la dette a pour unique but de faciliter le transfert admissible d'entreprise;

**c)** au moment où le prêt est consenti ou la dette contractée, des arrangements ont été conclus de bonne foi en vue du remboursement du prêt ou de la dette dans un délai de 15 ans suivant le transfert admissible d'entreprise.

**(2) Subsection (1) applies in respect of transactions that occur on or after January 1, 2024.**

**6 (1) The portion of subsection 18(4) of the Act before paragraph (a) is replaced by the following:**

**Limitation on deduction of interest**

**(4)** Notwithstanding any other provision of this Act (other than subsection (8)), in computing the income for a taxation year of a corporation or a trust from a business (other than the Canadian banking business of an authorized foreign bank) or property, no deduction shall be made in respect of that proportion of any amount that would, in the absence of this subsection and section 18.2, be deductible in computing that income in respect of interest paid or payable by it on outstanding debts to specified non-residents that

**(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**7 (1) The Act is amended by adding the following after section 18.1:**

**Definitions**

**18.2 (1)** The following definitions apply in this section and section 18.21.

***absorbed capacity*** of a taxpayer for a taxation year means the lesser of

**(a)** the taxpayer's cumulative unused excess capacity for the year, determined as if the taxpayer's absorbed capacity for the year were nil, and

**(2) Le paragraphe (1) s'applique aux opérations se produisant après le 31 décembre 2023.**

**6 (1) Le passage du paragraphe 18(4) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Plafond de la déduction d'intérêts**

**(4)** Malgré les autres dispositions de la présente loi, à l'exception du paragraphe (8), aucune déduction ne peut être faite, dans le calcul du revenu pour une année d'imposition qu'une société ou une fiducie tire d'une entreprise (sauf l'entreprise bancaire canadienne d'une banque étrangère autorisée) ou d'un bien, relativement à la proportion des sommes qui seraient, compte non tenu du présent paragraphe et de l'article 18.2, déductibles dans le calcul de ce revenu au titre d'intérêts payés ou payables par elle sur des dettes impayées envers des non-résidents déterminés que représente le rapport entre :

**(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, le paragraphe (1) s'applique aussi relativement à une année d'imposition commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**7 (1) La même loi est modifiée par adjonction, après l'article 18.1, de ce qui suit :**

**Définitions**

**18.2 (1)** Les définitions qui suivent s'appliquent au présent article et à l'article 18.21.

***administration du secteur public*** Sa Majesté du chef du Canada, d'une province, une entité visée à l'un des alinéas 149(1)c) à d.6), une *administration hospitalière* (au sens du paragraphe 123(1) de la *Loi sur la taxe d'accise*) ou un organisme de bienfaisance enregistré qui est une *administration scolaire*, un *collège public* ou une

**(b)** the amount determined by the formula

**A – (B + C)**

where

**A** is the taxpayer's interest and financing expenses for the year,

**B** is

**(i)** if subsection 18.21(2) applies in respect of the taxpayer for the year, the amount determined in respect of the taxpayer for the year under that subsection, and

**(ii)** in any other case, the amount determined by the formula

**D × E**

where

**D** is the taxpayer's ratio of permissible expenses for the year, and

**E** is the taxpayer's adjusted taxable income for the year, and

**C** is the taxpayer's interest and financing revenues for the year. (*capacité absorbée*)

***adjusted taxable income*** of a taxpayer for a taxation year means the amount determined by the formula

**A + B – C**

where

**A** is the positive or negative amount determined by the formula

**D – E**

where

**D** is

**(a)** if the taxpayer is non-resident, the taxpayer's taxable income earned in Canada for the year (determined without regard to subsection (2) and paragraphs 12(1)(l.2) and 111(1)(a.1)), and

**(b)** in any other case, the taxpayer's taxable income for the year (determined without regard to subsection (2), paragraphs 12(1)(l.2) and 111(1)(a.1) and clause 95(2)(f.11)(ii)(D)), and

**E** is the total of

**(a)** the taxpayer's non-capital loss for the year (determined without regard to subsection (2), paragraphs 12(1)(l.2) and 111(1)(a.1) and clause 95(2)(f.11)(ii)(D)), and

**(b)** the total of all amounts each of which is, in respect of a corporation that is a controlled *université* (chacun s'entendant au sens du paragraphe 123(1) de la *Loi sur la taxe d'accise*). (*public sector authority*)

***année d'imposition de la société affiliée*** À l'égard d'une société étrangère affiliée contrôlée d'un contribuable, la période dans le cadre de laquelle les comptes de la société affiliée sont habituellement dressés, cette période ne pouvant cependant excéder 53 semaines. (*affiliate taxation year*)

***bail exclu*** S'entend, pour une année d'imposition d'un contribuable, d'un bail qui remplit l'une des conditions suivantes :

**a)** les règles du paragraphe 16.1(1) s'appliquent au bail;

**b)** il ne serait pas considéré comme un bail pour une durée de plus d'un an pour l'application de l'alinéa b) de la définition de *bien de location déterminé* au paragraphe 1100(1.11) du *Règlement de l'impôt sur le revenu*;

**c)** il vise un bien qui :

**(i)** soit ne serait pas considéré, au moment de la conclusion du bail, comme ayant une juste valeur marchande supérieure à 25 000 $ pour l'application de l'alinéa c) de cette définition,

**(ii)** soit serait considéré, à tous les moments de l'année, comme des biens exonérés pour l'application du paragraphe 1100(1.13) du *Règlement de l'impôt sur le revenu*. (*excluded lease*)

***capacité absorbée*** En ce qui concerne un contribuable pour une année d'imposition, la moins élevée des sommes suivantes :

**a)** la capacité excédentaire cumulative inutilisée du contribuable pour l'année, déterminée comme si la capacité absorbée du contribuable pour l'année était nulle,

**b)** la somme obtenue par la formule suivante :

**A – (B + C)**

où :

**A** représente les dépenses d'intérêts et de financement du contribuable pour l'année,

**B** :

**(i)** si le paragraphe 18.21(2) s'applique relativement au contribuable pour l'année, la somme

foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year — or a controlled foreign affiliate of a partnership, of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member, at the end of an affiliate taxation year ending in a fiscal period of the partnership — an amount determined by the formula

**T × U ÷ V**

where

**T** is the lesser of

**(i)** the affiliate's foreign accrual property loss (determined without regard to clause 95(2)(f.11)(ii)(D)) for the affiliate taxation year, and

**(ii)** the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year exceeds the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year,

**U** is the amount that is included in the taxpayer's interest and financing expenses for the year in respect of the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

**V** is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year;

**B** is the total of all amounts (subject to paragraph (k), other than an amount that can reasonably be considered to be in respect of exempt interest and financing expenses) each of which is

**(a)** the taxpayer's interest and financing expenses for the year,

**(b)** an amount deducted by the taxpayer in computing its income for the year under paragraph 20(1)(a) or 59.1(a) or subsection 66(4), 66.1(2) or (3), 66.2(2), 66.21(4), 66.4(2) or 66.7(1), (2), (2.3), (3), (4) or (5), other than any portion of that amount that is described in subparagraph (c)(ii) of the description of A in the definition *interest and financing expenses*,

**(c)** an amount deducted by the taxpayer in computing its income for the year under subsection 20(16), other than any portion of that amount that is described in paragraph (d) of the description of A in the definition *interest and financing expenses*,

déterminée selon ce paragraphe relativement au contribuable pour l'année,

**(ii)** dans les autres cas, la somme obtenue par la formule suivante :

**D × E**

où :

**D** représente le ratio des dépenses admissibles du contribuable pour l'année,

**E** le revenu imposable rajusté du contribuable pour l'année,

**C** ses revenus d'intérêts et de financement pour l'année. (*absorbed capacity*)

***capacité excédentaire*** En ce qui concerne un contribuable pour une année d'imposition, l'une des sommes suivantes :

**a)** si le paragraphe 18.21(2) s'applique relativement au contribuable pour l'année, zéro;

**b)** dans les autres cas, la somme obtenue par la formule suivante :

**A – B – C**

où :

**A** représente la somme obtenue par la formule suivante :

**D × E + F**

où :

**D** représente le ratio des dépenses admissibles du contribuable pour l'année,

**E** le revenu imposable rajusté du contribuable pour l'année,

**F** la somme obtenue par la formule suivante :

**G – H × I**

où

**G** représente les revenus d'intérêts et de financement du contribuable pour l'année,

**H** le ratio des dépenses admissibles du contribuable pour l'année,

**I** le moindre des montants suivants :

**(i)** l'excédent des revenus d'intérêts et de financement du contribuable pour l'année sur les dépenses d'intérêts et de financement du contribuable pour l'année,

**(ii)** selon le cas :

**(d)** in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

**F × G – H**

where

**F** is the total of all amounts, each of which is an amount deducted by the partnership under paragraph 20(1)(a) or subsection 20(16) in computing its income or loss from the source, or the source in a particular place, for the fiscal period, other than any portion of that amount that is described in subparagraph (c)(ii) of the description of A in the definition *interest and financing expenses*,

**G** is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place", and

**H** is the portion of an amount referred to in the description of F that can reasonably be considered to not be deductible in computing the taxpayer's income for the year, or to not be included in computing the taxpayer's non-capital loss for the year, because of subsection 96(2.1),

**(e)** the portion of an amount deducted under paragraph 111(1)(e) for the year, in respect of a partnership of which the taxpayer is a member, that can reasonably be considered to be attributable to an amount referred to in the description of H in paragraph (d) in respect of a fiscal period of the partnership ending in a preceding taxation year of the taxpayer,

**(f)** an amount deducted by the taxpayer under paragraph 110(1)(k) in computing its taxable income for the year,

**(g)** an amount deducted by the taxpayer under subsection 104(6) in computing its income for the year, except to the extent of any portion of the amount that has been designated under subsection 104(19) for the year,

**(h)** an amount determined by the formula

**I × J ÷ K**

where

**I** is the amount deducted by the taxpayer under paragraph 111(1)(a) in computing its taxable income for the year, in respect of the taxpayer's non-capital loss (other than a specified

**(A)** si le revenu imposable rajusté du contribuable pour l'année était, compte non tenu de l'article 257, une somme négative, la valeur absolue de la somme négative,

**(B)** dans les autres cas, zéro,

**B** les dépenses d'intérêts et de financement du contribuable pour l'année,

**C** la somme déductible par le contribuable en application de l'alinéa 111(1)a.1) dans l'année. (*excess capacity*)

***capacité excédentaire cumulative inutilisée*** En ce qui concerne un contribuable pour une année d'imposition donnée, le total des sommes dont chacune représente :

**a)** soit, la capacité excédentaire du contribuable pour l'année donnée;

**b)** soit, la capacité excédentaire du contribuable pour l'une des trois années d'imposition précédentes, si la capacité excédentaire du contribuable pour chacune de ces années est déterminée selon les règles suivantes :

**(i)** lorsque le contribuable a un montant de capacité transférée pour une année d'imposition (appelée « année de transfert » dans la présente définition) antérieure à l'année donnée :

**(A)** la capacité excédentaire du contribuable doit faire l'objet de réductions pour l'année de transfert et les trois années d'imposition précédant l'année de transfert (chacune appelée « année pertinente » au présent sous-alinéa) d'un montant total égal au total des sommes dont chacune est un montant de capacité transférée du contribuable dans l'année de transfert (appelé « montant total de capacité transférée » dans la présente définition),

**(B)** la somme dont la capacité excédentaire du contribuable pour une année pertinente donnée doit être réduite, correspond au moindre de :

**(I)** la capacité excédentaire du contribuable pour l'année pertinente donnée, déterminée en prenant en compte des réductions à cette capacité excédentaire prévues, selon le cas :

**1** au présent sous-alinéa, relativement aux montants de capacité transférée pour les années antérieures à l'année de transfert,

pre-regime loss of the taxpayer in respect of the year) for another taxation year (referred to in this paragraph as the "taxpayer loss year"),

**J** is the lesser of

**(i)** the non-capital loss for the taxpayer loss year, and

**(ii)** the amount determined by the formula

**W – X – Y**

where

**W** is the total of all amounts, each of which is an amount that is

**(A)** the interest and financing expenses of the taxpayer for the taxpayer loss year, determined without regard to any amount or portion of an amount that is not deductible because of subsection (2) or clause 95(2)(f.11)(ii)(D),

**(B)** described in any of paragraphs (b) to (g) or (j) to (m) of the description of B for the taxpayer loss year, or

**(C)** deducted by the taxpayer under paragraph 111(1)(a.1) in computing its taxable income for the taxpayer loss year,

**X** is the total of all amounts, each of which is an amount

**(A)** described in any of paragraphs (a) to (f), (h) or (j) of the description of C for the taxpayer loss year, or

**(B)** included in the income of the taxpayer for the taxpayer loss year by reason of paragraph 12(1)(l.2), and

**Y** is the total of all amounts, each of which is an amount determined by the formula

**Z × Z.1 ÷ Z.2**

where

**Z** is the lesser of

**(A)** the foreign accrual property loss, for an affiliate taxation year, of a corporation (referred to throughout the description of Y as the "affiliate") that, at the end of the affiliate taxation

**2** au sous-alinéa (ii), relativement aux montants de capacité absorbée pour l'année de transfert et les années antérieures à l'année de transfert,

**(II)** l'excédent éventuel du total du montant de capacité transférée pour l'année de transfert sur les réductions, en vertu du présent sous-alinéa relativement au total du montant de capacité transférée, à la capacité excédentaire du contribuable pour les années pertinentes antérieures à l'année pertinente donnée,

**(ii)** si le contribuable a un montant de capacité absorbée pour une année d'imposition (appelée « année de capacité absorbée » dans la présente définition) :

**(A)** la capacité excédentaire du contribuable doit faire l'objet de réductions pour les trois années d'imposition qui précèdent l'année de capacité absorbée (chacune appelée « année pertinente » au présent sous-alinéa) d'un montant total égal au montant de capacité absorbée pour l'année de capacité absorbée,

**(B)** la somme dont la capacité excédentaire du contribuable pour une année pertinente donnée doit être réduite, correspond au moindre de :

**(I)** la capacité excédentaire du contribuable pour l'année pertinente donnée, déterminée en prenant en compte des réductions à cette capacité excédentaire prévues, selon le cas :

**1** au sous-alinéa (i), relativement aux montants de capacité transférée pour les années antérieures à l'année de capacité absorbée,

**2** au présent sous-alinéa, relativement aux montants de capacité absorbée pour les années antérieures à l'année de capacité absorbée,

**(II)** l'excédent éventuel du montant de capacité absorbée pour l'année de capacité absorbée sur les réductions, en vertu du présent sous-alinéa relativement au montant de capacité absorbée, à la capacité excédentaire du contribuable pour les années pertinentes antérieures à l'année pertinente donnée. (*cumulative unused excess capacity*)

year, is a controlled foreign affiliate of the taxpayer, or is a controlled foreign affiliate of a partnership of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member at any time, and

**(B)** the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year (determined without regard to any amount or portion of an amount that is not deductible because of clause 95(2)(f.11)(ii)(D)) exceeds the total of all amounts, each of which is

**(I)** the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year, or

**(II)** an amount included under subclause 95(2)(f.11)(ii)(D)(II) in respect of the affiliate for the affiliate taxation year,

**Z.1** is the amount that is included in the taxpayer's interest and financing expenses for the taxpayer loss year in respect of the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

**Z.2** is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

**K** is the non-capital loss for the taxpayer loss year,

**(i)** 25% of the amount deducted, in respect of a specified pre-regime loss of the taxpayer in respect of the year, by the taxpayer under paragraph 111(1)(a) in computing its taxable income for the year,

**(j)** in respect of a corporation (referred to in this paragraph as the "affiliate") that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year — or that is a controlled foreign affiliate of a partnership, of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member at any time, at the

***capacité reçue*** Montant de capacité reçue d'un cessionnaire pour une année d'imposition déterminé en application du paragraphe (4). (*received capacity*)

***capacité transférée*** Montant de capacité transférée d'un cédant pour une année d'imposition déterminé en application du paragraphe (4). (*transferred capacity*)

***contribuable*** S'entend au sens du paragraphe 248(1), mais ne vise pas une personne physique ou une société de personnes. (*taxpayer*)

***dépenses d'intérêts et de financement*** S'entend, relativement à un contribuable pour une année d'imposition donnée, de la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente le total des sommes (sauf une somme qui est incluse dans les dépenses d'intérêts et de financement exonérées) dont chacune représente :

**a)** une somme qui, à la fois :

**(i)** est payée ou payable au cours d'une année, à titre ou en paiement intégral ou partiel d'intérêts (sauf les intérêts exclus pour l'année donnée ou une somme qui est réputée être des intérêts en vertu du paragraphe 137(4.1)),

**(ii)** serait, en l'absence du présent article, déductible (autre qu'en vertu d'une disposition visée au sous-alinéa c)(i)) par le contribuable dans le calcul de son revenu pour l'année donnée,

**(iii)** n'est pas visée à tout autre alinéa de la présente définition;

**b)** une somme qui, en l'absence du présent article et à supposer qu'elle ne soit pas déductible en vertu d'une autre disposition de la présente loi (à l'exception des dispositions visées au sous-alinéa c)(i)), serait déductible dans le calcul du revenu du contribuable pour l'année donnée selon l'un des sous-alinéas 20(1)e)(ii) à (ii.2) et des alinéas 20(1)e.1) à f);

**c)** la partie d'une somme, si les conditions ci-après sont réunies :

**(i)** la somme, en l'absence du présent article, serait déductible dans le calcul du revenu du contribuable pour l'année donnée et est demandée par celui-ci en application de l'alinéa 20(1)a), des paragraphes 66(4), 66.1(2) ou (3), 66.2(2), 66.21(4), 66.4(2) ou 66.7(1), (2), (2.3), (3), (4) ou (5),

end of an affiliate taxation year ending in a fiscal period of the partnership — the additional amount that would be included in the taxpayer's income, either under subsection 91(1) or because an amount would be included in the income of a partnership under that subsection, in respect of the affiliate's foreign accrual property income for the affiliate taxation year, if the affiliate's foreign accrual property income for the affiliate taxation year were increased by the amount determined by the formula

**L × M ÷ N**

where

**L** is the amount that, in computing the foreign accrual property income of the affiliate for the affiliate taxation year, is the prescribed amount for the description of F in the definition *foreign accrual property income* in subsection 95(1), in respect of a foreign accrual property loss of the affiliate for another affiliate taxation year (referred to in this paragraph as the "affiliate loss year"),

**M** is the lesser of

**(i)** the affiliate's foreign accrual property loss for the affiliate loss year, and

**(ii)** the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate loss year (determined without regard to any amount or portion of an amount that is not deductible because of clause 95(2)(f.11)(ii)(D)) exceeds the total of all amounts, each of which is

**(A)** the affiliate's relevant affiliate interest and financing revenues for the affiliate loss year, or

**(B)** an amount included under subclause 95(2)(f.11)(ii)(D)(II) in respect of the affiliate for the affiliate loss year, and

**N** is the affiliate's foreign accrual property loss for the affiliate loss year,

**(k)** the amount that would be the taxpayer's loss for the year, or that would be the taxpayer's share of the loss of a partnership of which the taxpayer is a member, if the taxpayer or partnership had no income or loss other than a loss that can reasonably be considered to be incurred by the taxpayer or the partnership in respect of activities funded by a borrowing (within the meaning of the definition *exempt interest and financing expenses*)

**(ii)** il est raisonnable d'attribuer la partie à une somme payée ou à payer au plus tôt le 4 février 2022 qui :

**(A)** soit est visée au sous-alinéa a)(i),

**(B)** soit aurait été déductible par ailleurs au cours d'une année d'imposition en vertu d'une disposition visée à l'alinéa b), n'eût été l'application d'une autre disposition de la présente loi,

**d)** la partie d'une somme qui, en l'absence du présent article, serait déductible dans le calcul du revenu du contribuable pour l'année donnée en vertu du paragraphe 20(16), jusqu'à concurrence de la fraction que l'on peut raisonnablement considérer comme visée au sous-alinéa c)(ii);

**e)** une somme qui est payée ou payable par le contribuable au cours d'une année ou qui est une perte ou une perte en capital qu'il a subie pour une année, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, si les conditions suivantes sont remplies :

**(i)** la somme, compte non tenu du présent article, selon le cas :

**(A)** serait déductible (exception faite du sous-alinéa 20(1)e)(i)) dans le calcul du revenu du contribuable pour l'année donnée,

**(B)** dans le cas d'une perte en capital, réduirait la somme déterminée selon l'alinéa 3b) relativement au contribuable ou serait déductible dans le calcul du revenu imposable du contribuable pour l'année donnée (sauf dans la mesure où elle a déjà été prise en compte en application du présent alinéa pour une année antérieure),

**(ii)** la convention ou l'arrangement est conclu relativement à un emprunt ou un autre financement conclu par le contribuable ou une personne ou une société de personnes ayant un lien de dépendance avec le contribuable, que ce soit actuellement ou pour l'avenir et conditionnellement ou non,

**(iii)** il est raisonnable de considérer la somme comme augmentant le coût de financement, ou en faisant partie, à l'égard de l'emprunt ou de l'autre financement (y compris à la suite de toute couverture du coût de financement ou de l'emprunt ou de l'autre financement) du contribuable ou d'une personne ou société de personnes ayant avec le contribuable un lien de dépendance;

that results in exempt interest and financing expenses of the taxpayer or the partnership,

**(I)** an amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) in respect of a property acquired in a preceding taxation year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it

**(i)** is included in an amount determined under paragraph 13(7.1)(e) or subparagraph 53(2)(c)(vi) to (vi.2) or (h)(ii) or for I in the definition *undepreciated capital cost* in subsection 13(21), and

**(ii)** was not included

**(A)** in computing the taxpayer's income for the year or a preceding taxation year, and

**(B)** under this paragraph in calculating the taxpayer's adjusted taxable income for a preceding taxation year, or

**(m)** an amount described in clause 12(1)(x)(i)(C) or subparagraph 12(1)(x)(ii) that is received by the taxpayer in the year to the extent that it

**(i)** reduces the cost or capital cost of a property,

**(ii)** is not included in computing the income of the taxpayer for the year under paragraph 12(1)(x), and

**(iii)** would be included in computing the income of the taxpayer for the year under paragraph 12(1)(x) if that paragraph were read without reference to its subparagraphs (vi) and (vii); and

**C** is the total of all amounts each of which is

**(a)** the taxpayer's interest and financing revenues for the year,

**(b)** an amount included under subsection 13(1) in computing the taxpayer's income for the year,

**(c)** in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

**O × P**

where

**O** is an amount that is included by the partnership under subsection 13(1) in computing its income or loss from the source, or the source in a particular place, for the fiscal period, and

**P** is the taxpayer's specified proportion, if the references in the definition *specified*

**f)** une somme donnée qui remplit les conditions suivantes :

**(i)** est relative à une convention ou un arrangement qui donne lieu à, ou dont on peut raisonnablement s'attendre à ce qu'il donne lieu à, une somme qui, selon le cas :

**(A)** est incluse dans le calcul des dépenses d'intérêts et de financement du contribuable pour une année d'imposition en application de l'alinéa e),

**(B)** réduit les dépenses d'intérêts et de financement du contribuable pour une année d'imposition selon la description de l'élément B,

**(ii)** serait, en l'absence du présent article, déductible par le contribuable dans le calcul de son revenu pour l'année donnée,

**(iii)** n'est pas déductible en application des dispositions visées à l'alinéa b),

**(iv)** représente une dépense ou des frais payables en vertu de la convention ou de l'arrangement ou une dépense qui est engagée en prévision de la convention ou de l'arrangement ou dans le cadre de, ou relativement à, celle-ci ou celui-ci;

**g)** un montant du crédit-bail (sauf s'il s'agit d'un bail exclu pour l'année donnée) qui, à la fois :

**(i)** serait, en l'absence du présent article, déductible par le contribuable dans le calcul de son revenu pour l'année donnée,

**(ii)** ne représente pas des intérêts exclus pour l'année donnée;

**h)** relativement au revenu ou à la perte d'une société de personnes, pour un exercice se terminant dans l'année donnée, tiré d'une source ou de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

**C × D – E – F**

où :

**C** représente le total des sommes dont chacune représente une somme qui, selon le cas :

**(i)** serait déductible par la société de personnes dans le calcul de son revenu ou de sa perte tiré de la source, ou de la source située dans un endroit donné, pour un exercice, et qui serait visée à l'un des alinéas a) à g) si la mention « contribuable » était remplacée par la mention « société de personnes »,

*proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place",

**(d)** an amount included under subsection 59(1) or (3.2) or paragraph 59.1(b) in computing the taxpayer's income for the year,

**(e)** in the case of a corporation

**(i)** 100/28 of the total of the amounts that would be deductible by it under subsection 126(1) from its tax for the year otherwise payable under this Part if those amounts were determined without reference to sections 123.3 and 123.4, or

**(ii)** the amount determined by multiplying the total of the amounts that would be deductible by it under subsection 126(2) from its tax for the year otherwise payable under this Part, if those amounts were determined without reference to section 123.4, by the relevant factor for the year,

**(f)** in the case of a trust, the amount determined by the formula

**Q × (1 ÷ (R × S))**

where

**Q** is the total of the amounts deductible by it under subsection 126(1) or (2) from its tax for the year otherwise payable under this Part for the year,

**R** is the percentage (expressed as a decimal fraction) referred to in paragraph 122(1)(a) in respect of the year, and

**S** is 1 plus the percentage (expressed as a decimal fraction) referred to in subsection 120(1) in respect of the year,

**(g)** an amount included under section 110.5 in computing the taxpayer's taxable income for the year,

**(h)** an amount included under subsection 104(13) in computing the taxpayer's income for the year, except to the extent of any portion of the amount that

**(i)** has been designated under subsection 104(19) for the year, or

**(ii)** gives rise to a deduction under paragraph 94.2(3)(a) in computing the foreign accrual property income for an affiliate taxation year of an entity that is a controlled foreign affiliate of the taxpayer at the end of the affiliate taxation year,

**(ii)** serait incluse en application de l'alinéa j) dans le calcul des dépenses d'intérêts et de financement de la société de personnes dans le but de calculer son revenu ou sa perte tiré de la source ou de la source située dans un endroit donné, pour l'exercice, si la société de personnes était un contribuable pour l'application du présent article,

**D** la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »,

**E** la somme incluse dans le calcul du revenu du contribuable en vertu de l'alinéa 12(1)l.1) relativement au montant visé à l'élément C,

**F** la partie d'une somme visée à l'élément C qu'il est raisonnable de considérer comme non déductible dans le calcul du revenu du contribuable pour l'année donnée, et qu'elle ne peut être incluse dans le calcul de sa perte autre qu'une perte en capital pour l'année donnée, par l'effet du paragraphe 96(2.1),

**i)** la partie d'une somme qui, en l'absence du présent article, serait déductible dans le calcul du revenu imposable du contribuable pour l'année donnée et est demandée par le contribuable en application de l'alinéa 111(1)e) relativement à une société de personnes dont le contribuable est un associé et qu'il est raisonnable de considérer comme étant attribuable à une somme visée à l'élément F de l'alinéa h) relativement à un exercice de la société de personnes se terminant dans une autre année d'imposition du contribuable,

**j)** relativement à une société qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée se terminant dans l'année donnée, une somme obtenue par la formule suivante :

**G × H**

où :

**G** représente les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée,

**(i)** an amount of the taxpayer's taxable income for the year that is not, because of an Act of Parliament, subject to tax under this Part, or

**(j)** the amount that would be the taxpayer's income for the year, or that would be the taxpayer's share of the income of a partnership of which the taxpayer is a member, if the taxpayer or partnership had no income or loss other than income that can reasonably be considered to be earned by the taxpayer or the partnership in respect of activities funded by a borrowing (within the meaning of the definition *exempt interest and financing expenses*) that results in exempt interest and financing expenses of the taxpayer or the partnership. (*revenu imposable rajusté*)

***affiliate taxation year*** of a controlled foreign affiliate means the period for which the accounts of the affiliate have been ordinarily made up, but no such period may exceed 53 weeks. (*année d'imposition de la société affiliée*)

***cumulative unused excess capacity*** of a taxpayer for a particular taxation year means the total of all amounts each of which is

**(a)** the excess capacity of the taxpayer for the particular year, or

**(b)** the excess capacity of the taxpayer for any of the three immediately preceding taxation years, if the taxpayer's excess capacity for each of those years is determined according to the following rules:

**(i)** if the taxpayer has an amount of transferred capacity for any taxation year (referred to in this definition as the "transfer year") preceding the particular year,

**(A)** there are to be reductions to the taxpayer's excess capacity for the transfer year and the three taxation years immediately preceding the transfer year (each referred to in this subparagraph as a "relevant year") in a total amount equal to the total of all amounts each of which is an amount of transferred capacity of the taxpayer for the transfer year (referred to in this definition as the "total transferred capacity amount"), and

**(B)** the amount by which the taxpayer's excess capacity for a particular relevant year is to be reduced is equal to the lesser of

**(I)** the taxpayer's excess capacity for the particular relevant year, determined taking into

**H** le pourcentage de participation déterminé du contribuable à l'égard de la société affiliée pour l'année d'imposition de la société affiliée;

**B** le total des sommes dont chacune représente :

**a)** une somme reçue ou à recevoir (à l'exclusion d'un dividende ou relativement à des dépenses d'intérêts et de financement exonérées) par le contribuable au cours d'une année ou un gain du contribuable pour l'année, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, dans la mesure où, à la fois :

**(i)** la somme est incluse dans le calcul du revenu du contribuable pour l'année donnée,

**(ii)** la convention ou l'arrangement est conclu :

**(A)** soit à titre d'emprunt ou un autre financement du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

**(B)** soit relativement à un emprunt ou un autre financement du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable pour couvrir le coût de financement ou l'emprunt ou l'autre financement,

**(iii)** il est raisonnable de considérer la somme comme réduisant le coût du financement relativement à l'emprunt ou autre financement du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

**(iv)** il n'est pas raisonnable de considérer que la somme est exclue, réduite, compensée ou autrement effectivement à l'abri de l'impôt en application de la présente partie parce qu'un montant peut être déduit

**(A)** en application de l'un des paragraphes 20(11) à (12.1) et 126(1) et (2),

**(B)** au titre de l'impôt sur le revenu ou sur les bénéfices payé à un pays étranger et :

**(I)** qu'il est raisonnable de considérer comme ayant été payé relativement à cette somme,

**(II)** il n'est pas un impôt substantiellement semblable à l'impôt en vertu du paragraphe 212(1),

**b)** au titre du revenu ou de la perte d'une société de personnes, pour un exercice se terminant dans l'année donnée, tiré d'une source quelconque ou

consideration any reductions to that excess capacity under

**1** this subparagraph, in respect of amounts of transferred capacity for years preceding the transfer year, and

**2** subparagraph (ii), in respect of amounts of absorbed capacity for the transfer year and any years preceding the transfer year, and

**(II)** the amount, if any, by which the total transferred capacity amount for the transfer year exceeds the reductions, under this subparagraph in respect of that total transferred capacity amount, to the taxpayer's excess capacity for any relevant years preceding the particular relevant year, and

**(ii)** if the taxpayer has an amount of absorbed capacity for a taxation year (referred to in this definition as the "absorbed capacity year"),

**(A)** there are to be reductions to the taxpayer's excess capacity for the three taxation years immediately preceding the absorbed capacity year (each referred to in this subparagraph as a "relevant year") in a total amount equal to the amount of absorbed capacity for the absorbed capacity year, and

**(B)** the amount by which the taxpayer's excess capacity for a particular relevant year is to be reduced is equal to the lesser of

**(I)** the taxpayer's excess capacity for the particular relevant year, determined taking into account any reductions to that excess capacity under

**1** subparagraph (i), in respect of amounts of transferred capacity for years preceding the absorbed capacity year, and

**2** this subparagraph, in respect of amounts of absorbed capacity for years preceding the absorbed capacity year, and

**(II)** the amount, if any, by which the amount of absorbed capacity for the absorbed capacity year exceeds the reductions under this subparagraph in respect of that amount of absorbed capacity to the taxpayer's excess capacity for the relevant years preceding the particular relevant year. (*capacité excédentaire cumulative inutilisée*)

de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

**I × J**

où :

**I** représente une somme qui serait visée à l'alinéa a) si, à la fois :

**(i)** la mention « contribuable » à cet alinéa était remplacée par la mention « société de personnes »,

**(ii)** la mention « revenu du contribuable pour l'année donnée » au sous-alinéa a)(i) était remplacée par la mention « revenu ou perte de la société de personnes tiré de la source ou de la source dans un endroit donné, pour l'exercice »,

**J** la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné ». (*interest and financing expenses*)

***dépenses d'intérêts et de financement de la société affiliée pertinentes*** À l'égard d'une société étrangère affiliée contrôlée d'un contribuable (calculées comme si la définition de *contribuable* au présent paragraphe n'incluait pas le passage « ou une société de personnes ») pour une année d'imposition de la société affiliée, sous réserve du paragraphe (19), le total des sommes (autre qu'une somme qui est déductible dans le calcul du revenu ou de la perte de la société affiliée qui est inclus dans le calcul du revenu ou de la perte de la société affiliée provenant d'une entreprise exploitée activement en application de l'alinéa 95(2)a) ou une somme qui est visée par la division 95(2)a)(ii)(D) et réputée nulle aux fins du calcul de la valeur des éléments A ou D de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1), dont chacune représente des dépenses d'intérêts et de financement de la société affiliée (compte non tenu de l'alinéa j) de l'élément A de la formule figurant à la définition de *dépenses d'intérêts et de financement*) pour l'année d'imposition de la société affiliée dans le but de calculer, relativement au contribuable pour l'année d'imposition de la société affiliée, chaque montant visé aux sous-alinéas 95(2)f)(i) ou (ii), si :

***eligible group entity***, in respect of a taxpayer resident in Canada, at any time, means a corporation, or a trust, resident in Canada

**(a)** that is, at that time, related (other than because of a right referred to in paragraph 251(5)(b)) to the taxpayer;

**(b)** that would, at that time, be affiliated with the taxpayer if section 251.1 were read without reference to the definition *controlled* in subsection 251.1(3);

**(c)** that is a trust in respect of which the taxpayer's interest in the trust is not a *fixed interest* (as defined in subsection 94(1)); or

**(d)** that is a beneficiary of the taxpayer, if the taxpayer is a trust, whose interest in the taxpayer is not a *fixed interest* (as defined in subsection 94(1)) (other than a beneficiary that is a registered charity, or a non-profit organization, with whom the taxpayer deals at arm's length). (*entité admissible du groupe*)

***excess capacity*** of a taxpayer for a taxation year means

**(a)** if subsection 18.21(2) applies in respect of the taxpayer for the year, nil; and

**(b)** in any other case, the amount determined by the formula

**A – B – C**

where

**A** is the amount determined by the formula

**D × E + F**

where

**D** is the ratio of permissible expenses of the taxpayer for the year,

**E** is the adjusted taxable income of the taxpayer for the year, and

**F** is the amount determined by the formula

**G – H × I**

where

**G** is the interest and financing revenues of the taxpayer for the year,

**H** is the ratio of permissible expenses of the taxpayer for the year, and

**I** is the lesser of

**(i)** the amount by which the interest and financing revenues of the taxpayer for the year exceed the interest and

**a)** la mention de « en l'absence du présent article » dans la définition de *dépenses d'intérêts et de financement* valait mention de « en l'absence de la division 95(2)f.11)(ii)(D) »;

**b)** la division 95(2)f.11)(ii)(A) était lue sans la mention du paragraphe 18.2(2). (*relevant affiliate interest and financing expenses*)

***dépenses d'intérêts et de financement exonérées*** S'entend, pour une année d'imposition d'un contribuable, du total des montants dont chacun serait inclus, s'il n'était pas tenu compte des « dépenses d'intérêts et de financement exonérées » de l'élément A de la formule figurant à la définition de *dépenses d'intérêts et de financement*, dans les dépenses d'intérêts et de financement du contribuable pour cette année et qui ont été engagés relativement à un emprunt ou un autre financement (appelé « emprunt » à la présente définition), si les conditions ci-après sont remplies :

**a)** le contribuable ou une société de personnes dont il est un associé a conclu une convention avec une administration du secteur public pour concevoir, construire et financer, ou concevoir, construire, financer, maintenir et exploiter des biens dont l'administration du secteur public, ou une autre administration du secteur public, est propriétaire, sur lesquels elle détient un droit de tenure à bail ou qu'elle a le droit d'acquérir;

**b)** l'emprunt a été contracté relativement à la convention;

**c)** il est raisonnable de considérer que la totalité ou la presque totalité du montant est directement ou indirectement assumée par une administration du secteur public visée à l'alinéa a);

**d)** le montant a été payé ou était payable :

**(i)** soit à une personne qui n'a pas de lien de dépendance avec le contribuable ou la société de personnes dont il est un associé,

**(ii)** soit à une personne donnée avec laquelle le contribuable ou la société de personnes dont il est un associé a un lien de dépendance s'il est raisonnable de considérer que la totalité ou la presque totalité du montant payé ou payable à la personne donnée a été payé ou était payable par la personne donnée à une ou plusieurs personnes qui n'ont pas de lien de dépendance avec le contribuable ou la société de personnes dont il est un associé. (*exempt interest and financing expenses*)

financing expenses of the taxpayer for the year, and

**(ii)** either

**(A)** if the adjusted taxable income of the taxpayer for the year would, in the absence of section 257, be a negative amount, the absolute value of the negative amount, or

**(B)** in any other case, nil,

**B** is the interest and financing expenses of the taxpayer for the year, and

**C** is the amount deductible by the taxpayer under paragraph 111(1)(a.1) in the year. (*capacité excédentaire*)

***excluded entity*** for a particular taxation year means

**(a)** a corporation that is throughout the particular year a Canadian-controlled private corporation in respect of which the amount determined for C in paragraph 125(5.1)(a) for the year is less than $50,000,000;

**(b)** a particular taxpayer resident in Canada, if $1,000,000 is not less than the amount determined by the formula

**A – B**

where

**A** is the total of all amounts, each of which is the interest and financing expenses or the exempt interest and financing expenses of

**(i)** the particular taxpayer for the particular taxation year, or

**(ii)** another taxpayer resident in Canada for a taxation year (referred to in this subparagraph as the "relevant taxation year") ending in the particular taxation year, if the other taxpayer is an eligible group entity in respect of the particular taxpayer at the end of the relevant taxation year, and

**B** is the amount that would be determined for A if

**(i)** the reference in the description of A to "the interest and financing expenses or the exempt interest and financing expenses" were read as a reference to "the interest and financing revenues", and

**(ii)** the interest and financing revenues of a financial institution group entity were excluded; or

**(c)** a taxpayer resident in Canada if

***entité admissible du groupe*** En ce qui concerne un contribuable résidant au Canada, à un moment donné, s'entend d'une société ou d'une fiducie, résidant au Canada, qui, selon le cas :

**a)** est, à ce moment, liée au contribuable (autrement qu'en vertu d'un droit visé à l'alinéa 251(5)b));

**b)** serait, à ce moment, affiliée au contribuable si l'article 251.1 s'appliquait s'il n'était pas tenu compte de la définition de *contrôlé* au paragraphe 251.1(3);

**c)** est une fiducie, à l'égard de laquelle la participation du contribuable dans la fiducie n'est pas une *participation fixe* (au sens du paragraphe 94(1));

**d)** est un bénéficiaire du contribuable, si le contribuable est une fiducie, dont la participation dans le contribuable n'est pas une *participation fixe* (au sens du paragraphe 94(1)) (sauf un bénéficiaire qui est un organisme de bienfaisance enregistré, ou une organisation à but non lucratif, avec lequel le contribuable n'a aucun lien de dépendance). (*eligible group entity*)

***entité du groupe d'institutions financières*** Contribuable qui est, à un moment d'une année d'imposition, l'une des entités suivantes :

**a)** une banque;

**b)** une caisse de crédit;

**c)** une compagnie d'assurance;

**d)** une entité autorisée par la législation fédérale ou provinciale à exploiter une entreprise d'offre au public de services de fiduciaire;

**e)** une entité dont l'entreprise principale consiste en une ou plusieurs des activités suivantes :

**(i)** le prêt d'argent à des personnes avec lesquelles elle n'a aucun lien de dépendance,

**(ii)** l'achat de titres de créance émis par des personnes avec lesquelles elle n'a aucun lien de dépendance,

**(iii)** des activités qui donnent principalement lieu aux sommes visées aux alinéas a) à d) de l'élément A de la définition de *revenus d'intérêts et de financement* et qui sont principalement menées avec des personnes avec lesquelles elle n'a aucun lien de dépendance;

**(i)** all or substantially all of the businesses, if any, and all or substantially all of the undertakings and activities of

**(A)** the taxpayer are, throughout the particular year, carried on in Canada, and

**(B)** each eligible group entity in respect of the taxpayer are, throughout the eligible group entity's taxation year that ends in the particular year, carried on in Canada,

**(ii)** throughout the year, it is the case that

$$A \geq B$$

where

**A** is $5,000,000, and

**B** is the greater of

**(A)** the total of all amounts, each of which is the amount at which the shares of the capital stock of a foreign affiliate of the taxpayer, a foreign affiliate of an eligible group entity in respect of the taxpayer or a foreign affiliate of a partnership of which the taxpayer or an eligible group entity in respect of the taxpayer is a member, would be valued for the purpose of the balance sheet of the taxpayer or the eligible group entity if that balance sheet were prepared in accordance with generally accepted accounting principles used in Canada, other than any amount or portion of an amount that is already included under this clause because the value of the shares of the capital stock of a particular foreign affiliate reflects the value of shares of the capital stock of another foreign affiliate that is owned, directly or indirectly, by the particular foreign affiliate, or

**(B)** the total of all amounts, each of which is the amount that can reasonably be considered to be the proportionate share, of the taxpayer or an eligible group entity in respect of the taxpayer, of the fair market value of all property of a foreign affiliate of the taxpayer, a foreign affiliate of an eligible group entity in respect of the taxpayer or a foreign affiliate of a partnership of which the taxpayer or an eligible group entity in respect of the taxpayer is a member, other than a property that is shares of the capital stock of another corporation that is a foreign affiliate of the taxpayer, a foreign affiliate of an eligible group entity in respect of the taxpayer or a foreign affiliate of a partnership of

**f)** une entité donnée qui est une entité admissible du groupe relativement à une entité visée à l'un des alinéas a) à e), si l'entité donnée, ou une société de personnes dont l'entité donnée est un associé et de laquelle elle tire principalement son revenu, selon le cas :

**(i)** est autorisée en vertu de la législation provinciale sur les valeurs mobilières à se livrer, et se livre principalement, selon le cas :

**(A)** au commerce des valeurs mobilières,

**(B)** à la fourniture de services de gestion de portefeuille, de conseils en placement, d'administration de fonds ou de gestion de fonds,

**(ii)** se livre principalement à la fourniture de services de gestion de portefeuille, de conseils en placement, d'administration de fonds ou de gestion de fonds, y compris les services reliés à ces activités, relativement aux biens immeubles;

**g)** une entité donnée (sauf une société de portefeuille financière) qui est une entité admissible du groupe relativement à une entité visée à l'un des alinéas a) à f) si la totalité ou la presque totalité des activités de l'entité donnée sont accessoires aux activités exercées ou à l'entreprise exploitée par une ou plusieurs entités visées aux alinéas a) à f) qui sont des entités admissibles du groupe relativement à l'entité donnée. (*financial institution group entity*)

***entité exclue*** S'entend, pour une année d'imposition donnée :

**a)** d'une société qui est une société privée sous contrôle canadien tout au long de l'année donnée à l'égard de laquelle la valeur de l'élément C de la formule figurant à l'alinéa 125(5.1)a) pour l'année est inférieure à 50 000 000 $;

**b)** d'un contribuable donné résidant au Canada, si la somme de 1 000 000 $ n'est pas inférieure à la somme obtenue par la formule suivante :

$$A - B$$

où :

**A** représente le total des montants dont chacun représente les dépenses d'intérêts et de financement ou les dépenses d'intérêts et de financement exonérées :

**(i)** du contribuable donné pour l'année d'imposition donnée,

which the taxpayer or an eligible group entity in respect of the taxpayer is a member,

**(iii)** no person or partnership is, at any time in the particular year,

**(A)** a *specified shareholder* or a *specified beneficiary* (as those terms are defined in subsection 18(5)) of the taxpayer, or of any eligible group entity in respect of the taxpayer, that is not resident in Canada, or

**(B)** a partnership more than 50% of the fair market value of all interests in which can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by non-resident persons, if the property of the partnership includes,

**(I)** if the taxpayer or the eligible group entity in respect of the taxpayer is a corporation, shares, or a right to acquire shares, of the capital stock of the taxpayer or an eligible group entity in respect of the taxpayer that, either alone or together with shares, or rights to acquire shares, held by persons or partnerships with whom the partnership does not deal at arm's length,

**1** provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, or

**2** have 25% or more of the fair market value of all capital stock in the corporation, or

**(II)** if the taxpayer or the eligible group entity in respect of the taxpayer is a trust, an interest, or a right to acquire an interest, as a beneficiary in the taxpayer or an eligible group entity in respect of the taxpayer that, either alone or together with interests, or rights to acquire interests, held by persons or partnerships with whom the partnership does not deal at arm's length, has 25% or more of the fair market value of all interests as a beneficiary in the trust, and

**(iv)** all or substantially all of the interest and financing expenses of the taxpayer and of each eligible group entity in respect of the taxpayer for the particular year are paid or payable to persons or partnerships that are not, at any time in the particular year, tax-indifferent persons or partnerships that do not deal at arm's length with the taxpayer or

**(ii)** d'un autre contribuable résidant au Canada pour une année d'imposition (appelée l'« année d'imposition pertinente » au présent sous-alinéa) se terminant au cours de l'année d'imposition donnée, si l'autre contribuable est une entité admissible du groupe relativement au contribuable donné à la fin de l'année d'imposition pertinente,

**B** le montant qui représenterait l'élément A si, selon le cas :

**(i)** la mention « les dépenses d'intérêts et de financement ou les dépenses d'intérêts et de financement exonérées » à l'élément A était remplacée par « les revenus d'intérêts et de financement »,

**(ii)** les revenus d'intérêts et de financement d'une entité du groupe d'institutions financières étaient exclus;

**c)** d'un contribuable résidant au Canada qui remplit les conditions suivantes :

**(i)** la totalité ou la presque totalité des entreprises, le cas échéant, et la totalité ou la presque totalité des activités :

**(A)** du contribuable sont, tout au long de l'année donnée, exploitées au Canada,

**(B)** de chaque entité admissible du groupe à l'égard du contribuable sont, tout au long de l'année d'imposition de l'entité admissible du groupe qui se termine dans l'année donnée, exploitées au Canada,

**(ii)** tout au long de l'année, les faits ci-après s'avèrent :

$$\mathbf{A} \geq \mathbf{B}$$

où :

**A** représente 5 000 000 $,

**B** la plus élevée des sommes suivantes :

**(A)** le total des sommes dont chacune représente la somme à laquelle les actions du capital-actions d'une société étrangère affiliée du contribuable, d'une société étrangère affiliée d'une entité admissible du groupe relativement au contribuable ou d'une société étrangère affiliée d'une société de personnes dont le contribuable ou une entité admissible du groupe relativement au contribuable est un associé, serait évaluée en vue de l'établissement du bilan du contribuable ou de l'entité admissible du groupe si ce bilan était

any eligible group entity in respect of the taxpayer. (*entité exclue*)

***excluded interest***, for a taxation year or fiscal period, means an amount of interest or a lease financing amount, if

**(a)** the amount is paid in, or payable in or in respect of, the year or period by a corporation or partnership (in this definition referred to as the "payer") to another corporation or partnership (in this definition referred to as the "payee") in respect of a debt or a lease in respect of a particular property;

**(b)** throughout the period during which the amount accrued (in this definition referred to as the "relevant period")

**(i)** if the amount is interest, the debt is owed by the payer to the payee, or

**(ii)** if the amount is a lease financing amount, the lease is between the payer and payee;

**(c)** where the payer is not a financial institution group entity, the payee is not a financial institution group entity;

**(d)** throughout the relevant period and at the time of payment

**(i)** each of the payer and payee is

**(A)** a taxable Canadian corporation, or

**(B)** a partnership, no member of which is a natural person, a trust or a corporation that is not a taxable Canadian corporation, and

**(ii)** one of the following conditions is met:

**(A)** if the payee is a partnership, all the members of the payee (other than another partnership) are eligible group entities in respect of

**(I)** if the payer is a partnership, each member of the payer (other than another partnership), and

**(II)** in any other case, the payer, or

**(B)** if the payee is not a partnership, the payee is an eligible group entity in respect of

**(I)** if the payer is a partnership, each member of the payer (other than another partnership), and

dressé conformément aux principes comptables généralement reconnus utilisés au Canada, autre qu'une somme ou partie d'une somme qui est déjà incluse en vertu de la présente division en raison du fait que la valeur des actions du capital-actions d'une société étrangère affiliée donnée comprend la valeur des actions du capital-actions d'une autre société étrangère affiliée qui est détenue, directement ou indirectement, par la société étrangère affiliée donnée,

**(B)** le total des sommes dont chacune représente la somme qu'il est raisonnable de considérer comme étant la part proportionnelle, du contribuable ou d'une entité admissible du groupe relativement au contribuable, sur la juste valeur marchande de l'ensemble des biens d'une société étrangère affiliée du contribuable, d'une société étrangère affiliée d'une entité admissible du groupe relativement au contribuable ou d'une société étrangère affiliée d'une société de personnes dont le contribuable ou une entité admissible du groupe relativement au contribuable est un associé, autre que des actions du capital-actions d'une autre société qui est une société étrangère affiliée du contribuable, une société étrangère affiliée d'une entité admissible du groupe relativement au contribuable ou une société étrangère affiliée d'une société de personnes dont le contribuable, ou dont une entité admissible du groupe relativement au contribuable, est un associé,

**(iii)** aucune personne ou société de personnes n'est, à un moment donné de l'année donnée :

**(A)** un *actionnaire déterminé* ou un *bénéficiaire déterminé* (au sens du paragraphe 18(5)) du contribuable ou de toute entité admissible du groupe à l'égard du contribuable, qui ne réside pas au Canada,

**(B)** une société de personnes dont il est raisonnable de considérer que plus de 50 % de la juste valeur marchande de l'ensemble des participations dans celle-ci sont détenues, directement ou indirectement, par l'entremise d'une ou de plusieurs fiducies ou sociétés de personnes, par des personnes non-résidentes, si les biens de la société de personnes comprennent :

**(I)** si le contribuable ou l'entité admissible du groupe à l'égard du contribuable est une société, les actions, ou le droit d'acquérir des

**(II)** in any other case, the payer; and

**(e)** the payer — or, if the payer is a partnership, each member of the payer — and the payee — or, if the payee is a partnership, each member of the payee — file with the Minister, in respect of the year or period of both the payer and the payee, a joint election in writing in prescribed manner under this paragraph that

**(i)** specifies

**(A)** the amount of the interest or lease financing amount,

**(B)** if the amount is interest, the amounts outstanding, at the beginning and end of the relevant period, as or on account of the debt in respect of which this paragraph applies, and

**(C)** if the amount is a lease financing amount, the fair market value of the particular property at the time the lease began, and

**(ii)** is filed on or before the earliest of the filing-due date of

**(A)** the payer for its year,

**(B)** the payee for its year, and

**(C)** if the payer or the payee is a partnership, any member of the payer or payee for the member's taxation year that includes the end of the fiscal period of the payer or the payee, as the case may be. (*intérêts exclus*)

***excluded lease*** for a taxation year of a taxpayer means a lease

**(a)** to which the rules in subsection 16.1(1) apply;

**(b)** that would not be considered to be a lease for a term of more than one year for purposes of paragraph (b) of the definition *specified leasing property* in subsection 1100(1.11) of the *Income Tax Regulations*; or

**(c)** that is in respect of property

**(i)** that would not be considered, at the time the lease was entered into, to have a fair market value in excess of $25,000 for purposes of paragraph (c) of that definition, or

**(ii)** that would be considered, at all times in the taxation year, exempt property for purposes of

actions, du capital-actions du contribuable ou d'une entité admissible du groupe à l'égard du contribuable qui, seul ou avec des actions, ou des droits d'acquérir des actions, détenues par des personnes ou des sociétés de personnes avec lesquelles la société de personnes a un lien de dépendance, selon le cas :

**1** confère au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires de la société,

**2** confère au moins 25 % de la juste valeur marchande de l'ensemble du capital-actions dans la société,

**(II)** si le contribuable ou l'entité admissible du groupe à l'égard du contribuable est une fiducie, une participation, ou un droit d'acquérir une participation, à titre de bénéficiaire dans le contribuable ou une entité admissible du groupe à l'égard du contribuable qui, seul ou avec des participations, ou des droits d'acquérir des participations, détenues par des personnes ou des sociétés de personnes avec lesquelles la société de personnes a un lien de dépendance, détient au moins 25 % de la juste valeur marchande de l'ensemble des participations à titre de bénéficiaire dans la fiducie,

**(iv)** la totalité ou la presque totalité des dépenses d'intérêts et de financement du contribuable et de chaque entité admissible du groupe à l'égard du contribuable pour l'année donnée sont payées ou payables aux personnes ou aux sociétés de personnes qui ne sont pas, au cours de l'année donnée, des personnes ou des sociétés de personnes indifférentes relativement à l'impôt qui ont un lien de dépendance avec le contribuable ou une entité admissible du groupe à l'égard du contribuable. (*excluded entity*)

***fiducie commerciale à participation fixe*** Fiducie résidant au Canada qui, à un moment donné, remplit les conditions suivantes :

**a)** les seuls bénéficiaires qui peuvent, pour tout motif que ce soit, recevoir, à ce moment ou après, et directement de la fiducie, tout revenu ou capital de la fiducie sont les bénéficiaires qui détiennent une *participation fixe* (au sens du paragraphe 94(1)) dans la fiducie;

**b)** l'une des conditions prévues aux divisions h)(ii)(A) à (C) de la définition de *fiducie étrangère exempte* au paragraphe 94(1) est remplie. (*fixed interest commercial trust*)

subsection 1100(1.13) of the *Income Tax Regulations*. (*bail exclu*)

***exempt interest and financing expenses*** of a taxpayer for a taxation year means the total of all amounts, each of which would, if the description of A in the definition *interest and financing expenses* were read without reference to "exempt interest and financing expenses", be included in interest and financing expenses of the taxpayer for that year, and that is incurred in respect of a borrowing or other financing (referred to in this definition as the "borrowing"), if

**(a)** the taxpayer or a partnership of which the taxpayer is a member entered into an agreement with a public sector authority to design, build and finance — or to design, build, finance, maintain and operate — property that the public sector authority, or another public sector authority, owns or has a leasehold interest in or right to acquire;

**(b)** the borrowing was entered into in respect of the agreement;

**(c)** it can reasonably be considered that all or substantially all of the amount is directly or indirectly borne by a public sector authority referred to in paragraph (a); and

**(d)** the amount was paid or payable to

**(i)** a person that deals at arm's length with the taxpayer or the partnership of which the taxpayer is a member, or

**(ii)** a particular person that does not deal at arm's length with the taxpayer or the partnership of which the taxpayer is a member if it may reasonably be considered that all or substantially all of the amount paid or payable to the particular person was paid or payable by the particular person to one or more persons that deal at arm's length with the taxpayer or the partnership of which the taxpayer is a member. (*dépenses d'intérêts et de financement exonérées*)

***financial holding corporation***, for a taxation year, means a corporation (other than a corporation described in any of paragraphs (a) to (f) of the definition *financial institution group entity*) if, throughout the year,

**(a)** the fair market value of the capital stock of the corporation is primarily attributable to any combination of shares or indebtedness of one or more entities described in any of paragraphs (a) to (f) of the definition

***indifférent relativement à l'impôt*** Personne ou société de personnes qui est, selon le cas :

**a)** une personne exonérée d'impôt en vertu de l'article 149;

**b)** une personne non-résidente;

**c)** une société de personnes dont plus de 50 % de la juste valeur marchande de l'ensemble des participations dans la société de personnes peut raisonnablement être considérée comme étant détenue, directement ou indirectement par l'entremise d'une ou de plusieurs fiducies ou sociétés de personnes, par une ou plusieurs des personnes visées à l'un des alinéas a) ou b);

**d)** une fiducie résidant au Canada si plus de 50 % de la juste valeur marchande de l'ensemble des participations des bénéficiaires dans la fiducie peut raisonnablement être considéré comme étant détenu, directement ou indirectement par l'entremise d'une ou de plusieurs fiducies ou sociétés de personnes, par une ou plusieurs des personnes visées aux alinéas a) ou b). (*tax-indifferent*)

***intérêts exclus*** Montant des intérêts ou montant du crédit-bail, pour une année d'imposition ou un exercice, si toutes les conditions ci-après sont réunies :

**a)** le montant est payé au cours de, ou payable au cours de ou relativement à, l'année ou l'exercice par une société ou une société de personnes (appelée « payeur » dans la présente définition) à une autre société ou société de personnes (appelée « bénéficiaire » dans la présente définition) relativement à une dette ou à un bail relativement à un bien donné;

**b)** tout au long de la période durant laquelle le montant s'est accumulé (appelée « période pertinente » dans la présente définition) :

**(i)** si le montant représente des intérêts, le payeur doit la dette au bénéficiaire,

**(ii)** si le montant est un montant du crédit-bail, le bail existe entre le payeur et le bénéficiaire;

**c)** si le payeur n'est pas une entité du groupe d'institutions financières, le bénéficiaire n'est pas une entité du groupe d'institutions financières;

**d)** tout au long de la période pertinente et au moment du paiement :

**(i)** le payeur et le bénéficiaire sont tous deux, selon le cas :

*financial institution group entity* that are controlled by the corporation; or

**(b)** the corporation is incorporated under the *Insurance Companies Act* and shares of the capital stock of the corporation are listed on a designated stock exchange. (*société de portefeuille financière*)

***financial institution group entity*** means a taxpayer that at any time in a taxation year is

**(a)** a bank;

**(b)** a credit union;

**(c)** an insurance corporation;

**(d)** an entity authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public;

**(e)** an entity whose principal business consists of one or more of

**(i)** the lending of money to persons with whom the entity deals at arm's length,

**(ii)** the purchasing of debt obligations issued by persons with whom the entity deals at arm's length, or

**(iii)** activities which principally give rise to amounts described in paragraphs (a) to (d) of the description of A in the definition *interest and financing revenues* and are principally conducted with persons with whom the entity deals at arm's length;

**(f)** a particular entity that is an eligible group entity in respect of an entity described in any of paragraphs (a) to (e), if the particular entity, or a partnership of which the particular entity is a member and from which the particular entity primarily derives its income,

**(i)** is authorized under provincial securities laws to engage in, and primarily engages in, the business of

**(A)** dealing in securities, or

**(B)** providing portfolio management, investment advice, fund administration or fund management; or

**(ii)** primarily engages in the business of providing portfolio management, investment advice, fund administration or fund management, including any

**(A)** une société canadienne imposable,

**(B)** une société de personnes dont aucun associé n'est une personne physique, une fiducie ou une société qui n'est pas une société canadienne imposable,

**(ii)** l'une des conditions suivantes est remplie :

**(A)** si le bénéficiaire est une société de personnes, tous les associés du bénéficiaire (sauf une autre société de personnes) sont des entités admissibles du groupe à l'égard :

**(I)** de chaque associé du payeur (sauf une autre société de personnes), si le payeur est une société de personnes,

**(II)** du payeur dans les autres cas,

**(B)** si le bénéficiaire n'est pas une société de personnes, le bénéficiaire est une entité admissible du groupe à l'égard :

**(I)** de chaque associé du payeur (sauf une autre société de personnes) si le payeur est une société de personnes,

**(II)** du payeur dans les autres cas;

**e)** le payeur — ou, si le payeur est une société de personnes, chaque associé du payeur — et le bénéficiaire — ou, si le bénéficiaire est une société de personnes, chaque associé du bénéficiaire — présentent au ministre, relativement à l'année ou l'exercice du payeur et du bénéficiaire, un choix conjoint en vertu du présent alinéa selon les modalités réglementaires, dans un document qui :

**(i)** détermine :

**(A)** le montant des intérêts ou le montant du crédit-bail,

**(B)** si le montant représente des intérêts, les sommes impayées, au début et à la fin de la période pertinente, au titre de la dette relativement à laquelle s'applique le présent alinéa,

**(C)** si le montant est un montant du crédit-bail, la juste valeur marchande du bien donné au moment où le bail commence,

**(ii)** est présenté au premier en date de la date d'échéance de production qui est applicable :

**(A)** au payeur pour son année,

services connected to those activities, in respect of real estate; or

**(g)** a particular entity (other than a financial holding corporation) that is an eligible group entity in respect of any entity described in any of paragraphs (a) to (f) if all or substantially all of the activities of the particular entity are ancillary to the activities or business carried on by one or more entities described in paragraphs (a) to (f) that are eligible group entities in respect of the particular entity. (*entité du groupe d'institutions financières*)

***fixed interest commercial trust*** at any time means a trust resident in Canada, if at that time

**(a)** the only beneficiaries that may for any reason receive, at or after that time and directly from the trust, any of the income or capital of the trust are beneficiaries that hold *fixed interests* (as defined in subsection 94(1)) in the trust; and

**(b)** any of the conditions set out in clauses (h)(ii)(A) to (C) in the definition *exempt foreign trust* in subsection 94(1) is met. (*fiducie commerciale à participation fixe*)

***foreign accrual property loss*** of a foreign affiliate for an affiliate taxation year has the meaning assigned by subsection 5903(3) of the *Income Tax Regulations*. (*perte étrangère accumulée, relative à des biens*)

***interest and financing expenses*** of a taxpayer for a particular taxation year means the amount determined by the formula

**A – B**

where

**A** is the total of all amounts (other than an amount that is included in exempt interest and financing expenses), each of which is

**(a)** an amount that

**(i)** is paid in, or payable in or in respect of, a year as, on account of, in lieu of payment of or in satisfaction of, interest (other than excluded interest for the particular year or an amount that is deemed to be interest under subsection 137(4.1)),

**(ii)** would, in the absence of this section, be deductible (other than under a provision referred to in subparagraph (c)(i)) by the taxpayer in computing its income for the particular year, and

**(B)** au bénéficiaire pour son année,

**(C)** si le payeur ou le bénéficiaire est une société de personnes, à tout associé du payeur ou du bénéficiaire pour son année d'imposition qui inclut la fin de l'exercice du payeur ou du bénéficiaire selon le cas. (*excluded interest*)

***intérêts pertinents entre sociétés affiliées*** Relativement à une société étrangère affiliée contrôlée d'un contribuable pour une année d'imposition de la société affiliée, s'entend d'un montant d'intérêts dans la mesure où le montant, à la fois :

**a)** est payé ou payable par la société affiliée à une société étrangère affiliée contrôlée (appelée « autre société affiliée » à la présente définition), ou reçu ou à recevoir par la société affiliée d'une autre société, selon le cas :

**(i)** du contribuable

**(ii)** d'un contribuable qui est une entité admissible du groupe relativement au contribuable;

**b)** serait, en l'absence du paragraphe (19), inclus, selon le cas :

**(i)** si le montant est payé ou payable par la société affiliée, dans ses dépenses d'intérêts et de financement de la société affiliée pertinentes pour l'année d'imposition de la société affiliée et dans les revenus d'intérêts et de financement de la société affiliée pertinents de l'autre société affiliée pour une année d'imposition de la société affiliée,

**(ii)** si le montant est reçu ou à recevoir par la société affiliée, dans ses revenus d'intérêts et de financement de la société affiliée pertinents pour l'année d'imposition de la société affiliée et dans les dépenses d'intérêts et de financement de la société affiliée pertinentes de l'autre société affiliée pour une année d'imposition de la société affiliée. (*relevant inter-affiliate interest*)

***montant du crédit-bail*** Somme représentant la partie d'un paiement donné relativement à un bail donné conclu par un contribuable qui serait considéré au titre des intérêts si les conditions ci-après sont réunies :

**a)** le preneur avait reçu un prêt au moment où le bail donné a commencé et le principal correspond à la juste valeur marchande du bien à ce moment qui est assujetti au bail donné;

**b)** des intérêts, composés semestriellement et non à l'avance, avaient été imputés sur le principal du prêt à

**(iii)** is not described in any other paragraph in this definition,

**(b)** an amount that, in the absence of this section and on the assumption that it is not deductible under another provision of this Act (other than any of the provisions referred to in subparagraph (c)(i)), would be deductible in computing the taxpayer's income for the particular year under any of subparagraphs 20(1)(e)(ii) to (ii.2) and paragraphs 20(1)(e.1) to (f),

**(c)** the portion of an amount, if

**(i)** the amount, in the absence of this section, would be deductible in computing the taxpayer's income for the particular year and is claimed by the taxpayer under paragraph 20(1)(a) or subsection 66(4), 66.1(2) or (3), 66.2(2), 66.21(4), 66.4(2) or 66.7(1), (2), (2.3), (3), (4) or (5), and

**(ii)** the portion can reasonably be considered to be attributable to an amount paid or payable on or after February 4, 2022 that either

**(A)** is described in subparagraph (a)(i), or

**(B)** would otherwise have been deductible in a taxation year under a provision referred to in paragraph (b), but for the application of another provision of this Act,

**(d)** the portion of an amount that would, in the absence of this section, be deductible in computing the taxpayer's income for the particular year under subsection 20(16), to the extent that the portion can reasonably be considered to be described in subparagraph (c)(ii),

**(e)** an amount that is paid or payable by the taxpayer in a year or that is a loss or a capital loss of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement, if

**(i)** the amount would, in the absence of this section

**(A)** be deductible (other than under subparagraph 20(1)(e)(i)) in computing the taxpayer's income for the particular year, or

**(B)** in the case of a capital loss, reduce the amount determined under paragraph 3(b) in respect of the taxpayer or be deductible in computing the taxpayer's taxable income for the particular year (except to the extent it has already been included under this paragraph for a previous year),

**(ii)** the agreement or arrangement is entered into as or in relation to a borrowing or other

rembourser au taux établi conformément à l'article 4302 du *Règlement de l'impôt sur le revenu* en vigueur au moment visé à l'alinéa a);

**c)** le paiement donné était un paiement de principal et d'intérêts, calculé conformément à l'alinéa b), sur le prêt appliqué d'abord en réduction des intérêts sur le principal, ensuite en réduction des intérêts sur les intérêts impayés et enfin en réduction du principal. (*lease financing amount*)

***opération*** Comprend les arrangements ou les événements. (*transaction*)

***perte antérieure au régime déterminée*** À l'égard d'un contribuable pour une année d'imposition, s'entend des pertes autres qu'en capital du contribuable relativement à une année d'imposition antérieure, si, à la fois :

**a)** l'année antérieure se termine avant le 4 février 2022;

**b)** le contribuable présente au ministre, relativement à la perte, un choix écrit en vertu de la présente définition selon les modalités réglementaires;

**c)** le choix précise les sommes suivantes :

**(i)** la perte,

**(ii)** chaque montant déduit, relativement à la perte, par le contribuable en vertu de l'alinéa 111(1)a) dans le calcul de son revenu imposable :

**(A)** pour l'année,

**(B)** chaque année d'imposition antérieure à l'année,

**(iii)** le revenu imposable rajusté du contribuable pour l'année;

**d)** le choix est présenté au plus tard à la date d'échéance de production qui lui est applicable pour l'année. (*specified pre-regime loss*)

***perte étrangère accumulée, relative à des biens*** À l'égard d'une société étrangère affiliée pour une année d'imposition de la société affiliée, a le sens que lui confère le paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*. (*foreign accrual property loss*)

***pourcentage de participation déterminé*** En ce qui concerne un contribuable à l'égard d'une société étrangère affiliée contrôlée du contribuable pour une année d'imposition de la société affiliée, le pourcentage qui serait le *pourcentage de participation total* (au sens du

financing that the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer enters into, whether currently or in the future, and absolutely or contingently, and

**(iii)** the amount can reasonably be considered to increase (or be part of) the cost of funding with respect to the borrowing or other financing (including as a result of any hedge of the cost of funding or of the borrowing or other financing) of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer;

**(f)** a particular amount that

**(i)** is in respect of an agreement or arrangement that gives rise to, or can reasonably be expected to give rise to, an amount that

**(A)** is included in computing a taxpayer's interest and financing expenses for a taxation year under paragraph (e), or

**(B)** reduces the taxpayer's interest and financing expenses for a taxation year under the description of B,

**(ii)** would, in the absence of this section, be deductible by the taxpayer in computing its income for the particular year,

**(iii)** is not deductible under any of the provisions listed in paragraph (b), and

**(iv)** is an expense or fee payable under the agreement or arrangement or an expense that is incurred in contemplation of, in the course of entering into or in relation to, the agreement or arrangement,

**(g)** a lease financing amount (other than in respect of an excluded lease for the particular year) that

**(i)** would, in the absence of this section, be deductible by the taxpayer in computing its income for the particular year, and

**(ii)** is not excluded interest for the particular year,

**(h)** in respect of the income or loss of a partnership, for a fiscal period that ends in the particular year, from any source or from sources in a particular place, an amount determined by the formula

**C × D – E – F**

where

**C** is the total of all amounts, each of which is an amount that

paragraphe 91(1.3)) du contribuable, calculé compte non tenu de la division 95(2)f.11)(ii)(D), à l'égard de la société affiliée pour l'année d'imposition de la société affiliée, si la définition de *pourcentage de participation* au paragraphe 95(1) était lue sans la mention :

**a)** de son alinéa a);

**b)** du passage de son alinéa b) qui précède son sous-alinéa b)(i). (*specified participating percentage*)

***ratio des dépenses admissibles*** En ce qui concerne un contribuable pour une année d'imposition, le pourcentage qui est, à la fois :

**a)** si l'année d'imposition du contribuable commence le 1er octobre 2023 ou après, et avant le 1er janvier 2024, 40 %, sauf lorsqu'il s'agit de déterminer sa capacité excédentaire cumulative inutilisée pour une année d'imposition qui commence le 1er janvier 2024 ou après;

**b)** si l'année d'imposition du contribuable commence le 1er janvier 2024 ou après, et aux fins visées à l'alinéa a) pour lesquelles 40 % n'est pas le pourcentage applicable, 30 %. (*ratio of permissible expenses*)

***revenus d'intérêts et de financement*** S'entend, relativement à un contribuable pour une année d'imposition, de la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente le total des sommes, sauf toute somme incluse dans l'élément B de la définition de *dépenses d'intérêts et de financement*, dont chacune représente :

**a)** une somme reçue ou à recevoir au titre ou en paiement intégral ou partiel des intérêts (sauf les intérêts exclus pour l'année, une somme réputée être des intérêts en vertu du paragraphe 137(4.1) ou tout montant visé par tout autre alinéa de la présente définition) qui sont inclus par le contribuable dans le calcul de son revenu pour l'année;

**b)** une somme qui est incluse par le contribuable dans le calcul du revenu pour l'année par l'effet du paragraphe 12(9) ou de l'article 17.1 (sauf tout montant visé par tout autre alinéa de la présente définition);

**c)** des frais ou une somme similaire relativement à une garantie, ou un soutien au crédit similaire, fourni par le contribuable pour le paiement de toute somme sur une créance due par une autre personne ou société de personnes qui sont inclus

**(i)** is deductible by the partnership in computing its income or loss from the source, or the source in a particular place, for a fiscal period, and that would be described in any of paragraphs (a) to (g) if the references to the taxpayer were read as references to the partnership, or

**(ii)** would be included under paragraph (j) in determining the interest and financing expenses of the partnership for the purposes of determining its income or loss from the source, or the source in a particular place, for the fiscal period, if the partnership were a taxpayer for the purposes of this section,

**D** is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place",

**E** is the amount, if any, included in computing the taxpayer's income under paragraph 12(1)(l.1) in respect of the amount referred to in the description of C, and

**F** is the portion of an amount determined for C that can reasonably be considered to not be deductible in computing the taxpayer's income for the particular year, and to not be included in computing the taxpayer's non-capital loss for the particular year, because of subsection 96(2.1),

**(i)** the portion of an amount that, in the absence of this section, would be deductible in computing the taxpayer's taxable income for the particular year and is claimed by the taxpayer under paragraph 111(1)(e) in respect of a partnership of which the taxpayer is a member that can reasonably be considered to be attributable to an amount referred to in the description of F in paragraph (h) in respect of a fiscal period of the partnership ending in another taxation year of the taxpayer, or

**(j)** in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the particular year, an amount determined by the formula

**G × H**

where

**G** is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

dans le calcul du revenu du contribuable pour l'année (sauf tout montant visé par tout autre alinéa de la présente définition);

**d)** une somme reçue ou à recevoir (à l'exclusion d'un dividende) par le contribuable ou un gain du contribuable, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, si les conditions ci-après sont réunies :

**(i)** la somme est incluse dans le calcul du revenu du contribuable pour l'année,

**(ii)** la convention ou l'arrangement est conclu relativement à un prêt ou autre financement dû au contribuable ou une personne ou société de personnes ayant un lien de dépendance avec le contribuable ou fourni par l'un de ceux-ci,

**(iii)** il est raisonnable de considérer la somme comme augmentant le rendement (ou faisant partie du rendement) du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable à l'égard du prêt ou d'un autre financement (y compris à la suite de toute couverture du rendement ou du prêt ou d'un autre financement);

**e)** un montant du crédit-bail (sauf s'il s'agit d'un bail qui serait un bail exclu pour l'année s'il n'était pas tenu compte de l'alinéa a) de la définition de *bail exclu*) qui, à la fois :

**(i)** est inclus dans le calcul du revenu du contribuable pour l'année,

**(ii)** ne représente pas des intérêts exclus pour l'année;

**f)** relativement au revenu ou à la perte d'une société de personnes, pour un exercice se terminant dans l'année, tiré d'une source ou de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

**C × D**

où :

**C** représente le total des sommes dont chacune représente une somme :

**(i)** qui est incluse par la société de personnes dans le calcul de son revenu ou de sa perte tiré de la source ou de la source située dans un endroit donné, pour un exercice, et qui serait visée aux alinéas a) à e) si la mention « contribuable » était remplacée par la mention « société de personnes »,

**(ii)** qui serait incluse en vertu de l'alinéa g) dans le calcul des revenus d'intérêts et de financement de la société de personnes

**H** is the taxpayer's specified participating percentage in respect of the affiliate for the affiliate taxation year; and

**B** is the total of all amounts, each of which is

**(a)** an amount received or receivable (other than as a dividend or in respect of exempt interest and financing expenses) by the taxpayer in a year, or a gain of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement to the extent that

**(i)** the amount is included in computing the taxpayer's income for the particular year,

**(ii)** the agreement or arrangement is entered into

**(A)** as a borrowing or other financing of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer, or

**(B)** in relation to a borrowing or other financing of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer to hedge the cost of funding or the borrowing or other financing,

**(iii)** the amount can reasonably be considered to reduce the cost of funding with respect to the borrowing or other financing of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer, and

**(iv)** the amount cannot reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from tax under this Part because

**(A)** an amount is deductible under any of subsections 20(11) to (12.1) and 126(1) and (2), and

**(B)** an amount is deductible in respect of income or profits tax paid to a country other than Canada that

**(I)** can reasonably be considered to have been paid in respect of the amount, and

**(II)** is not a tax substantially similar to tax under subsection 212(1), or

**(b)** in respect of the income or loss of a partnership, for a fiscal period that ends in the particular year, from any source or from sources in a particular place, an amount determined by the formula

**I × J**

where

dans le but d'en calculer le revenu ou la perte tiré de la source ou de la source située dans un endroit donné, pour l'exercice, si la société de personnes était un contribuable pour l'application du présent article,

**D** la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »;

**g)** relativement à une société qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée qui se termine dans l'année, une somme obtenue par la formule suivante :

**E × F – G**

où :

**E** représente les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée pour l'année d'imposition de la société affiliée,

**F** le pourcentage de participation déterminée du contribuable à l'égard de la société affiliée pour l'année d'imposition de la société affiliée,

**G** un montant (autre que toute partie du montant relativement à l'impôt sur le revenu payé en vertu du paragraphe 212(1)) déduit en application du paragraphe 91(4) dans le calcul du revenu du contribuable pour toute année d'imposition à l'égard de l'*impôt étranger accumulé* (au sens du paragraphe 95(1)) applicable à une somme qui est incluse dans le revenu du contribuable en vertu du paragraphe 91(1) à l'égard des revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée pour l'année d'imposition de la société affiliée;

**B** le total des sommes dont chacune représente :

**a)** une somme payée ou payable par le contribuable ou une perte ou une perte en capital du contribuable, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, dans la mesure où, à la fois :

**(i)** la somme

**I** is an amount that would be described in paragraph (a) if

**(i)** the references to the taxpayer in that paragraph were read as references to the partnership, and

**(ii)** the reference in subparagraph (a)(i) to "the taxpayer's income for the particular year" were read as "the partnership's income or loss from the source, or the source in a particular place, for a fiscal period", and

**J** is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place". (*dépenses d'intérêts et de financement*)

***interest and financing revenues*** of a taxpayer for a taxation year means the amount determined by the formula

**A – B**

where

**A** is the total of all amounts (other than any amount included under the description of B in the definition *interest and financing expenses*), each of which is

**(a)** an amount received or receivable as, on account of, in lieu of payment or in satisfaction of, interest (other than excluded interest for the year, an amount that is deemed to be interest under subsection 137(4.1) or any amount described in any other paragraph in this definition) that is included in computing the taxpayer's income for the year,

**(b)** an amount that is included in computing the taxpayer's income for the year because of subsection 12(9) or section 17.1 (other than any amount described in any other paragraph in this definition),

**(c)** a fee or similar amount in respect of a guarantee, or similar credit support, provided by the taxpayer for the payment of any amount on a debt obligation owing by another person or partnership that is included in computing the taxpayer's income for the year (other than any amount described in any other paragraph in this definition),

**(d)** an amount received or receivable (other than as a dividend) by the taxpayer, or a gain of the taxpayer, as the case may be, under or as a result of an agreement or arrangement, if

**(A)** est déductible dans le calcul du revenu du contribuable pour l'année,

**(B)** dans le cas d'une perte en capital, réduit la somme déterminée selon l'alinéa 3b) relativement au contribuable ou est déductible dans le calcul du revenu imposable du contribuable pour l'année (sauf dans la mesure où il a déjà été pris en compte dans la détermination d'une somme en application du présent alinéa pour une année antérieure),

**(ii)** la convention ou l'arrangement est conclu :

**(A)** soit à titre de prêt ou autre financement dû au contribuable, ou une personne ou société de personnes ayant avec le contribuable un lien de dépendance, ou fourni par l'un de ceux-ci,

**(B)** soit relativement à un prêt ou autre financement dû au contribuable, ou une personne ou société de personnes ayant avec le contribuable un lien de dépendance, ou fourni par l'un de ceux-ci, pour couvrir le coût du financement ou l'emprunt ou autre financement,

**(iii)** il est raisonnable de considérer la somme comme réduisant le rendement du contribuable, ou d'une personne ou société de personnes ayant avec le contribuable un lien de dépendance, à l'égard du prêt ou d'autre financement;

**b)** au titre du revenu ou de la perte d'une société de personnes, pour un exercice se terminant dans l'année, tiré d'une source quelconque ou de sources situées dans un endroit donné, la somme obtenue par le formule suivante :

**H × I**

où :

**H** représente une somme qui serait visée à l'alinéa a) si :

**(i)** la mention « contribuable » à cet alinéa était remplacée par la mention « société de personnes »,

**(ii)** la mention « revenu du contribuable pour l'année donnée » au sous-alinéa a)(i) était remplacée par la mention « revenu ou perte de la société de personnes tiré de la source ou de la source dans un endroit donné, pour l'exercice »,

**I** la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte

**(i)** the amount is included in computing the taxpayer's income for the year,

**(ii)** the agreement or arrangement is entered into as or in relation to a loan or other financing owing to or provided by the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer, and

**(iii)** the amount can reasonably be considered to increase (or be part of) the return of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer with respect to the loan or other financing (including as a result of any hedge of the return or of the loan or other financing),

**(e)** a lease financing amount (other than in respect of a lease that would be an excluded lease for the year, if the definition *excluded lease* were read without regard to its paragraph (a)) that

**(i)** is included in computing the taxpayer's income for the year, and

**(ii)** is not excluded interest for the year,

**(f)** in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

**C × D**

where

**C** is the total of all amounts, each of which is an amount that

**(i)** is included by the partnership in computing its income or loss from the source, or the source in a particular place, for a fiscal period and that would be described in paragraphs (a) to (e) if the references to the taxpayer were read as references to the partnership, or

**(ii)** would be included under paragraph (g) in determining the interest and financing revenues of the partnership for the purposes of determining its income or loss from the source, or the source in a particular place, for the fiscal period, if the partnership were a taxpayer for the purposes of this section, and

**D** is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place", or

totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »;

**c)** la partie de toute somme de l'élément A (appelée « somme en cause » au présent alinéa) qu'il est raisonnable de considérer comme étant exclue, réduite, compensée ou autrement effectivement à l'abri de l'impôt en application de la présente partie parce qu'un montant peut être déduit :

**(i)** en application de l'un des paragraphes 20(11) à (12.1) et 126(1) et (2),

**(ii)** au titre de l'impôt sur le revenu ou sur les bénéfices payé à un pays étranger et :

**(A)** qu'il est raisonnable de considérer comme ayant été payé relativement à la somme en cause,

**(B)** il n'est pas un impôt substantiellement semblable à l'impôt en vertu du paragraphe 212(1);

**d)** la partie de toute somme de l'élément A qui n'est pas assujettie à l'impôt en vertu de la présente partie par l'effet de quelque loi fédérale. (*interest and financing revenues*)

***revenus d'intérêts et de financement de la société affiliée pertinents*** À l'égard d'une société étrangère affiliée contrôlée d'un contribuable (calculés comme si la définition de *contribuable* au présent paragraphe n'incluait pas le passage « ou une société de personnes ») pour une année d'imposition de la société affiliée, sous réserve du paragraphe (19), le total des sommes (sauf toute somme incluse dans le calcul du revenu ou de la perte de la société affiliée provenant d'une entreprise exploitée activement pour l'application des alinéas 95(2)a) ou (2.44)b)), dont chacune représente les revenus d'intérêts et de financement de la société affiliée (compte non tenu de l'alinéa g) de l'élément A de la définition de *revenus d'intérêts et de financement*) pour l'année d'imposition de la société affiliée aux fins du calcul, relativement au contribuable pour l'année d'imposition de la société affiliée, chaque montant mentionné aux sous-alinéas 95(2)f)(i) ou (ii), si la division 95(2)f.11)(ii)(A) était lue sans la mention du paragraphe 18.2(2). (*relevant affiliate interest and financing revenues*)

***revenu imposable rajusté*** En ce qui concerne un contribuable pour une année d'imposition, la somme obtenue par la formule suivante :

**(g)** in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year, an amount determined by the formula

**E × F – G**

where

**E** is the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year,

**F** is the taxpayer's specified participating percentage in respect of the affiliate for the affiliate taxation year, and

**G** is an amount (other than any portion of the amount that is in respect of income tax paid under subsection 212(1)) that is deducted under subsection 91(4) in computing the taxpayer's income for any taxation year in respect of *foreign accrual tax* (as defined in subsection 95(1)) applicable to an amount that is included in the taxpayer's income under subsection 91(1) in respect of the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year, and

**B** is the total of all amounts, each of which is

**(a)** an amount paid or payable by the taxpayer, or a loss or a capital loss of the taxpayer, as the case may be, under or as a result of an agreement or arrangement, to the extent that

**(i)** the amount

**(A)** is deductible in computing the taxpayer's income for the year, or

**(B)** in the case of a capital loss, reduces the amount determined under paragraph 3(b) in respect of the taxpayer or is deductible in computing the taxpayer's taxable income for the year (except to the extent it has already been taken into account in determining an amount under this paragraph for a previous year),

**(ii)** the agreement or arrangement is entered into

**(A)** as a loan or other financing owing to or provided by the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, or

**(B)** in relation to a loan or other financing owing to or provided by the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, to hedge the

**A + B – C**

où :

**A** représente la somme positive ou négative obtenue par la formule :

**D – E**

où :

**D** représente :

**a)** lorsque le contribuable est un non-résident, son revenu imposable gagné au Canada pour l'année (déterminé compte non tenu du paragraphe (2) et des alinéas 12(1)l.2) et 111(1)a.1)),

**b)** dans les autres cas, son revenu imposable pour l'année (déterminé compte non tenu du paragraphe (2), des alinéas 12(1)l.2) et 111(1)a.1) et de la division 95(2)f.11)(ii)(D)),

**E** le total des sommes suivantes :

**a)** la perte autre qu'une perte en capital du contribuable pour l'année (déterminée compte non tenu du paragraphe (2), des alinéas 12(1)l.2) et 111(1)a.1) et de la division 95(2)f.11)(ii)(D)),

**b)** le total des sommes dont chacune représente, relativement à une société qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée se terminant dans l'année – ou une société étrangère affiliée contrôlée d'une société de personnes dont le contribuable ou une société étrangère affiliée contrôlée du contribuable est associé, à la fin d'une année d'imposition de la société affiliée se terminant au cours d'un exercice de la société de personnes – la somme obtenue par la formule suivante :

**T × U ÷ V**

où :

**T** représente la moindre des sommes suivantes :

**(i)** la perte étrangère accumulée, relative à des biens (déterminée compte non tenu de la division 95(2)f.11)(ii)(D)) pour l'année d'imposition de la société affiliée,

**(ii)** l'excédent des dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée sur ses revenus d'intérêts et de

cost of funding or the borrowing or other financing, and

**(iii)** the amount can reasonably be considered to reduce the return of the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, in respect of the loan or other financing;

**(b)** in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

**H × I**

where

**H** is an amount that would be described in paragraph (a) if

**(i)** the references to the taxpayer in that paragraph were read as references to the partnership, and

**(ii)** the reference in subparagraph (a)(i) to "the taxpayer's income for the year" were read as "the partnership's income or loss from the source, or the source in a particular place, for a fiscal period", and

**I** is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place",

**(c)** the portion of any amount included under the description of A (referred to in this paragraph as the "subject amount") that can reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from tax under this Part because an amount is deductible

**(i)** under any of subsections 20(11) to (12.1) and 126(1) and (2), and

**(ii)** in respect of income or profits tax paid to a country other than Canada that

**(A)** can reasonably be considered to have been paid in respect of the subject amount, and

**(B)** is not a tax substantially similar to tax under subsection 212(1),

**(d)** the portion of any amount included under A that is not, because of an Act of Parliament, subject to tax under this Part. (*revenus d'intérêts et de financement*)

***lease financing amount*** means an amount that is the portion of a particular payment in respect of a particular

financement de la société affiliée pertinents pour l'année d'imposition de la société affiliée,

**U** la somme qui est incluse dans les dépenses d'intérêts et de financement du contribuable pour l'année relativement aux dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée,

**V** les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée;

**B** le total des sommes (sauf, sous réserve de l'alinéa k), une somme qu'il est raisonnable de considérer comme relative aux dépenses d'intérêts et de financement exonérées) dont chacune représente :

**a)** les dépenses d'intérêts et de financement du contribuable pour l'année;

**b)** une somme que le contribuable a déduite dans le calcul de son revenu pour l'année en application des alinéas 20(1)a) et 59.1a), des paragraphes 66(4), 66.1(2) ou (3), 66.2(2), 66.21(4), 66.4(2) ou 66.7(1), (2), (2.3), (3), (4) ou (5), sauf toute fraction de cette somme visée au sous-alinéa c)(ii) de l'élément A dans la définition de *dépenses d'intérêts et de financement*;

**c)** une somme que le contribuable a déduite dans le calcul de son revenu pour l'année en application du paragraphe 20(16), sauf toute fraction de cette somme visée à l'alinéa d) de l'élément A dans la définition de *dépenses d'intérêts et de financement*;

**d)** au titre du revenu ou de la perte d'une société de personnes, pour un exercice se terminant dans l'année, tiré d'une source quelconque ou de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

**F × G – H**

où :

**F** représente le total des sommes dont chacune est une somme déduite par la société de personnes selon l'alinéa 20(1)a) ou le paragraphe 20(16) dans le calcul de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné, pour l'exercice, sauf toute fraction de cette somme visée au sous-alinéa c)(ii) de l'élément A dans la définition de *dépenses d'intérêts et de financement*,

lease entered into by a taxpayer that would be considered to be on account of interest if

**(a)** the lessee had received a loan at the time the particular lease began and in a principal amount equal to the fair market value at that time of the property that is the subject of the particular lease;

**(b)** interest had been charged on the principal amount of the loan outstanding from time to time at the rate — determined in accordance with section 4302 of the *Income Tax Regulations* — in effect at the time described in paragraph (a), compounded semi-annually not in advance; and

**(c)** the particular payment was a blended payment of principal and interest, calculated in accordance with paragraph (b), on the loan applied firstly on account of interest on principal, secondly on account of interest on unpaid interest and thirdly on account of principal. (*montant du crédit-bail*)

***public sector authority*** means His Majesty in right of Canada, His Majesty in right of a province, an entity referred to in any of paragraphs 149(1)(c) to (d.6), a *hospital authority* (as defined in subsection 123(1) of the *Excise Tax Act*) or a registered charity that is a *public college*, *school authority* or *university* (each as defined in subsection 123(1) of the *Excise Tax Act*). (*administration du secteur public*)

***ratio of permissible expenses*** of a taxpayer for a taxation year means the percentage that is

**(a)** if the taxpayer's taxation year begins on or after October 1, 2023, and before January 1, 2024, 40%, other than for the purpose of determining the taxpayer's cumulative unused excess capacity for any taxation year that begins on or after January 1, 2024; and

**(b)** if the taxpayer's taxation year begins on or after January 1, 2024, and for the purposes referred to in paragraph (a) for which 40% is not the applicable percentage, 30%. (*ratio des dépenses admissibles*)

***received capacity*** means an amount of received capacity of a transferee for a taxation year as determined under subsection (4). (*capacité reçue*)

***relevant affiliate interest and financing expenses*** of a controlled foreign affiliate of a taxpayer (determined as though the definition *taxpayer* in this subsection did not include the words "or a partnership") for an affiliate taxation year means, subject to subsection (19), the total of all amounts (other than an amount that is deductible in computing any income or loss of the affiliate that is

**G** la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » faites dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »,

**H** la partie d'un montant visé à l'élément F qu'il est raisonnable de considérer comme non déductible dans le calcul du revenu du contribuable pour l'année, ou exclu du calcul de sa perte autre qu'une perte en capital pour l'année, par l'effet du paragraphe 96(2.1);

**e)** la partie d'une somme déduite selon l'alinéa 111(1)e) pour l'année, relativement à une société de personnes dont le contribuable est associé, qu'il est raisonnable de considérer comme étant attribuable à une somme visée à l'élément H de l'alinéa d) relativement à un exercice de la société de personnes qui se termine dans une année d'imposition précédente du contribuable;

**f)** une somme déduite par le contribuable en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année;

**g)** une somme déduite par le contribuable en application du paragraphe 104(6) dans le calcul de son revenu pour l'année, sauf dans la mesure où une fraction de la somme a été désignée en application du paragraphe 104(19) pour l'année;

**h)** une somme obtenue par la formule suivante :

**I × J ÷ K**

où :

**I** représente la somme déduite par le contribuable en application de l'alinéa 111(1)a) dans le calcul de son revenu imposable pour l'année, relativement à sa perte autre qu'une perte en capital (autre qu'une perte antérieure au régime déterminée du contribuable relativement à l'année) pour une autre année d'imposition (appelée « année de perte du contribuable » au présent alinéa),

**J** la moindre des sommes suivantes :

**(i)** la perte autre qu'une perte en capital pour l'année de perte du contribuable,

**(ii)** la somme obtenue par la formule suivante :

**W – X – Y**

included in computing the affiliate's income or loss from an active business because of paragraph 95(2)(a) or an amount that is described in clause 95(2)(a)(ii)(D) and treated as nil for the purposes of determining an amount for A or D in the definition *foreign accrual property income* in subsection 95(1)), each of which would be the affiliate's interest and financing expenses (determined without regard to paragraph (j) of the description of A in the definition *interest and financing expenses*) for the affiliate taxation year for the purposes of determining, in respect of the taxpayer for the affiliate taxation year, each amount referred to in subparagraph 95(2)(f)(i) or (ii), if

**(a)** the references in the definition *interest and financing expenses* to "in the absence of this section" were read as references to "in the absence of clause 95(2)(f.11)(ii)(D)"; and

**(b)** clause 95(2)(f.11)(ii)(A) were read without regard to the reference to subsection 18.2(2). (*dépenses d'intérêts et de financement de la société affiliée pertinentes*)

***relevant affiliate interest and financing revenues*** of a controlled foreign affiliate of a taxpayer (determined as though the definition *taxpayer* in this subsection did not include the words "or a partnership") for an affiliate taxation year means, subject to subsection (19), the total of all amounts (other than an amount included in computing the affiliate's income or loss from an active business under paragraph 95(2)(a) or (2.44)(b)), each of which would be the affiliate's interest and financing revenues (determined without regard to paragraph (g) of the description of A in the definition *interest and financing revenues*) for the affiliate taxation year for the purposes of determining, in respect of the taxpayer for the affiliate taxation year, each amount referred to in subparagraph 95(2)(f)(i) or (ii), if clause 95(2)(f.11)(ii)(A) were read without regard to the reference to subsection 18.2(2). (*revenus d'intérêts et de financement de la société affiliée pertinents*)

***relevant inter-affiliate interest***, of a controlled foreign affiliate of a taxpayer for an affiliate taxation year, means an amount of interest to the extent that the amount

**(a)** is paid or payable by the affiliate to, or received or receivable by the affiliate from, a controlled foreign affiliate (in this definition referred to as the "other affiliate") of

**(i)** the taxpayer, or

**(ii)** a taxpayer that is an eligible group entity in respect of the taxpayer; and

où :

**W** représente le total des sommes dont chacune est une somme qui, selon le cas :

**(A)** représente les dépenses d'intérêts et de financement du contribuable pour l'année de perte du contribuable, déterminées compte non tenu de toute somme ou fraction d'une somme qui n'est pas déductible par l'effet du paragraphe (2) ou de la division 95(2)f.11)(ii)(D),

**(B)** est visée à l'un des alinéas b) à g) ou j) à m) de l'élément B pour l'année de perte du contribuable,

**(C)** est déduite par le contribuable en vertu de l'alinéa 111(1)a.1) lors du calcul de son revenu imposable pour l'année de perte du contribuable,

**X** le total des sommes dont chacune est une somme qui est, selon le cas :

**(A)** visée à l'un des alinéas a) à f), h) ou j) de l'élément C pour l'année de perte du contribuable,

**(B)** incluse dans le revenu du contribuable pour l'année de perte du contribuable par l'effet de l'alinéa 12(1)l.2),

**Y** le total des sommes, dont chacune est une somme obtenue par la formule suivante :

**Z × Z.1 ÷ Z.2**

où :

**Z** représente la moindre des sommes suivantes :

**(A)** la perte étrangère accumulée, relative à des biens, pour une année d'imposition de la société affiliée, d'une société (appelée « société affiliée » tout au long de l'élément Y) qui, à la fin de l'année d'imposition de la société affiliée, est une société étrangère affiliée contrôlée du contribuable, ou est une société étrangère affiliée contrôlée d'une société de personnes dont le contribuable ou une société étrangère affiliée contrôlée du

**(b)** would, in the absence of subsection (19), be included in

**(i)** if the amount is paid or payable by the affiliate, the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year and the other affiliate's relevant affiliate interest and financing revenues for an affiliate taxation year, or

**(ii)** if the amount is received or receivable by the affiliate, the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year and the other affiliate's relevant affiliate interest and financing expenses for an affiliate taxation year. (*intérêts pertinents entre sociétés affiliées*)

***special purpose loss corporation***, for a taxation year, means a particular corporation that

**(a)** is an eligible group entity in respect of a financial holding corporation to which the particular corporation has interest paid or payable in the year;

**(b)** is formed or exists solely for the purpose of generating a loss of the particular corporation; and

**(c)** would, in the absence of this section, have a loss for the year that is, or will be, utilized by a financial institution group entity that is an eligible group entity in respect of the particular corporation. (*société à usage déterminé ayant subi des pertes*)

***specified participating percentage*** of a taxpayer, in respect of a controlled foreign affiliate of the taxpayer for an affiliate taxation year, means the percentage that would be the taxpayer's *aggregate participating percentage* (as defined in subsection 91(1.3)), determined without regard to clause 95(2)(f.11)(ii)(D), in respect of the affiliate for the affiliate taxation year, if the definition *participating percentage* in subsection 95(1) were read without reference to

**(a)** its paragraph (a); and

**(b)** the portion of its paragraph (b) before its subparagraph (b)(i). (*pourcentage de participation déterminé*)

***specified pre-regime loss*** of a taxpayer, in respect of a taxation year, means the taxpayer's non-capital loss for a preceding taxation year, if

**(a)** the preceding year ends before February 4, 2022;

**(b)** the taxpayer files with the Minister, in respect of the loss, an election in writing in prescribed manner under this definition;

contribuable est un associé à un moment donné,

**(B)** l'excédent des dépenses d'intérêts et de financement de la société affiliée pertinentes pour l'année d'imposition de la société affiliée (déterminé compte non tenu de toute somme ou fraction d'une somme qui n'est pas déductible par l'effet de la division 95(2)f.11)(ii)(D)) sur le total des sommes représentant chacune, selon le cas :

**I)** les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée pour l'année d'imposition de la société affiliée,

**II)** une somme incluse en application de la subdivision 95(2)f.11)(ii)(D)(II) relativement à la société affiliée pour l'année d'imposition de la société affiliée,

**Z.1** la somme qui est incluse dans les dépenses d'intérêts et de financement du contribuable pour l'année de perte du contribuable relativement aux dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée,

**Z.2** les dépenses d'intérêts et de financement de la société affiliée pertinentes pour l'année d'imposition de la société affiliée;

**K** la perte autre qu'une perte en capital pour l'année de perte du contribuable,

**i)** 25 % du montant déduit, relativement à la perte antérieure au régime déterminée du contribuable relativement à l'année, par le contribuable en vertu de l'alinéa 111(1)a) lors du calcul de son revenu imposable pour l'année;

**j)** relativement à une société (appelée « société affiliée » au présent alinéa) qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée se terminant dans l'année – ou qui est une société étrangère affiliée contrôlée d'une société de

**(c)** the election specifies

**(i)** the loss,

**(ii)** each amount deducted, in respect of the loss, by the taxpayer under paragraph 111(1)(a) in computing its taxable income

**(A)** for the year, and

**(B)** each taxation year that precedes the year, and

**(iii)** the taxpayer's adjusted taxable income for the year; and

**(d)** the election is filed on or before the filing-due date of the taxpayer for the year. (*perte antérieure au régime déterminée*)

***tax-indifferent*** means a person or partnership that is

**(a)** a person exempt from tax under section 149;

**(b)** a non-resident person;

**(c)** a partnership more than 50% of the fair market value of all interests in which can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by any combination of persons described in paragraph (a) or (b); or

**(d)** a trust resident in Canada if more than 50% of the fair market value of all interests as beneficiaries under the trust can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by any combination of persons described in paragraph (a) or (b). (*indifférent relativement à l'impôt*)

***taxpayer*** has the meaning assigned by subsection 248(1), but does not include a natural person or a partnership. (*contribuable*)

***transaction*** includes an arrangement or event. (*opération*)

***transferred capacity*** means an amount of transferred capacity of a transferor for a taxation year as determined under subsection (4). (*capacité transférée*)

personnes dont le contribuable ou une société étrangère affiliée contrôlée du contribuable est un associé à un moment donné, à la fin d'une année d'imposition de la société affiliée se terminant dans un exercice de la société de personnes – la somme supplémentaire qui serait incluse dans le revenu du contribuable, en vertu du paragraphe 91(1) ou en raison d'une somme qui serait incluse dans le revenu d'une société de personnes en vertu de ce paragraphe, relativement au revenu étranger accumulé, tiré de biens de la société affiliée pour l'année d'imposition de la société affiliée, si ce revenu augmentait de la somme obtenue par la formule suivante :

**L × M ÷ N**

où :

**L** représente la somme qui, dans le calcul du revenu étranger accumulé, tiré de biens de la société affiliée pour l'année d'imposition de la société affiliée, est la somme visée par règlement à l'élément F de la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1), relativement à la perte étrangère accumulée, relative à des biens de la société affiliée pour une autre année d'imposition de la société affiliée (appelé « année de perte de la société affiliée » au présent alinéa),

**M** la moindre des sommes suivantes :

**(i)** la perte étrangère accumulée, relative à des biens de la société affiliée pour l'année de perte de la société affiliée,

**(ii)** l'excédent des dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année de perte de la société affiliée (déterminé compte non tenu de toute somme ou fraction d'une somme qui n'est pas déductible par l'effet de la division 95(2)f.11)(ii)(D)) sur le total des sommes dont chacune représente :

**(A)** soit les revenus d'intérêts et de financement de la société affiliée pertinents pour l'année de perte de la société affiliée,

**(B)** soit une somme incluse en application de la subdivision 95(2)f.11)(ii)(D)(II) relativement à la société affiliée pour l'année de perte de la société affiliée,

**N** la perte étrangère accumulée, relative à des biens de la société affiliée pour l'année de perte de la société affiliée;

**k)** le montant qui serait la perte du contribuable pour l'année, ou qui serait sa part de la perte d'une société de personnes dont il est associé, si le contribuable ou la société de personnes n'avait aucun revenu ou aucune perte autre qu'une perte qu'il est raisonnable de considérer comme subie par le contribuable ou la société de personnes relativement à des activités financées par un emprunt (au sens de la définition de *dépenses d'intérêts et de financement exonérées*) qui entraîne des dépenses d'intérêts et de financement exonérées du contribuable ou de la société de personnes;

**l)** une somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) relativement à un bien acquis au cours d'une année d'imposition précédente dans le calcul de l'impôt payable par le contribuable pour une année d'imposition précédente, dans la mesure où :

**(i)** elle est incluse dans une somme déterminée en vertu de l'alinéa 13(7.1)e) ou des sous-alinéas 53(2)c)(vi) à (vi.2) ou h)(ii), ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21),

**(ii)** elle n'a pas été incluse, à la fois :

**(A)** dans le calcul du revenu du contribuable pour l'année ou une année d'imposition précédente,

**(B)** dans le calcul du revenu imposable rajusté du contribuable pour une année d'imposition antérieure en application du présent alinéa;

**m)** une somme visée à la division 12(1)x)(i)(C) ou au sous-alinéa 12(1)x)(ii) que le contribuable reçoit au cours de l'année dans la mesure où, à la fois :

**(i)** elle réduit le coût ou le coût en capital d'un bien,

**(ii)** elle n'est pas incluse dans le calcul du revenu du contribuable pour l'année en vertu de l'alinéa 12(1)x),

**(iii)** elle serait incluse dans le calcul du revenu du contribuable pour l'année en vertu de l'alinéa 12(1)x), si cet alinéa s'appliquait compte non tenu de ses sous-alinéas (vi) et (vii);

**C** le total des sommes dont chacune représente :

**a)** les revenus d'intérêts et de financement du contribuable pour l'année;

**b)** une somme incluse, en application du paragraphe 13(1), dans le calcul du revenu du contribuable pour l'année;

**c)** relativement aux revenus ou aux pertes d'une société de personnes, pour un exercice qui se termine dans l'année, tirés de toute source ou de sources dans un endroit donné, une somme obtenue par la formule suivante :

**O × P**

où :

**O** représente une somme que la société de personnes inclut, en application du paragraphe 13(1), dans le calcul de son revenu ou de sa perte tiré d'une source ou de sources situées dans un endroit donné, pour l'exercice,

**P** la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » faites dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »;

**d)** une somme incluse, en application des paragraphes 59(1) ou (3.2) ou de l'alinéa 59.1b), dans le calcul du revenu du contribuable pour l'année;

**e)** dans le cas d'une société :

**(i)** les 100/28$^{e}$ du total des sommes qui seraient déductibles, en application du paragraphe 126(1), de l'impôt payable par ailleurs par la société pour l'année en vertu de la présente partie si elles étaient déterminées compte non tenu des articles 123.3 et 123.4,

**(ii)** le résultat de la multiplication du total des sommes qui seraient déductibles, en application du paragraphe 126(2), de l'impôt payable par ailleurs par la société pour l'année en vertu de la présente partie si elles étaient déterminées compte non tenu de l'article 123.4, par le facteur de référence pour l'année;

**f)** dans le cas d'une fiducie, la somme obtenue par la formule suivante :

**Q × (1 ÷ (R × S))**

où :

**Q** représente le total des sommes qu'elle pouvait déduire en application des paragraphes 126(1)

ou (2) de son impôt payable par ailleurs pour l'année en vertu de la présente partie,

**R** le pourcentage exprimé en fraction décimale visé à l'alinéa 122(1)a) relativement à l'année,

**S** 1 plus le pourcentage exprimé en fraction décimale visé au paragraphe 120(1) pour l'année;

**g)** un montant inclus en application de l'article 110.5 dans le calcul du revenu imposable du contribuable pour l'année;

**h)** un montant inclus en application du paragraphe 104(13) dans le calcul du revenu du contribuable pour l'année, sauf dans la mesure de toute fraction du montant qui, selon le cas :

**(i)** a été désignée en application du paragraphe 104(19) pour l'année,

**(ii)** donne lieu à une déduction en application de l'alinéa 94.2(3)a) dans le calcul du revenu étranger accumulé, tiré de biens pour l'année d'imposition d'une société affiliée d'une entité qui est une société étrangère affiliée contrôlée du contribuable à la fin de l'année d'imposition de la société affiliée;

**i)** un montant du revenu imposable du contribuable pour l'année qui n'est pas assujetti à l'impôt en vertu de la présente partie par l'effet de quelque loi fédérale;

**j)** le montant qui serait le revenu du contribuable pour l'année, ou qui serait sa part du revenu d'une société de personnes dont il est associé, si le contribuable ou la société de personnes n'avait aucun revenu ou perte autre qu'un revenu qu'il est raisonnable de considérer comme gagné par le contribuable ou la société de personnes relativement à des activités financées par un emprunt (au sens de la définition de *dépenses d'intérêts et de financement exonérées*) qui entraîne des dépenses d'intérêts et de financement exonérées du contribuable ou de la société de personnes. (*adjusted taxable income*)

***société à usage déterminé ayant subi des pertes*** Société donnée qui, pour une année d'imposition, à la fois :

**a)** est une entité admissible du groupe relativement à une société de portefeuille financière à l'égard de laquelle la société donnée a des intérêts payés ou à payer dans l'année;

**b)** est constituée ou existe uniquement aux fins de générer une perte de la société donnée;

**c)** subirait, en l'absence du présent article, une perte pour l'année qui est, ou qui sera, utilisée par une entité du groupe d'institutions financières qui est une entité admissible du groupe relativement à la société donnée. (*special purpose loss corporation*)

***société de portefeuille financière*** Société (sauf celle visée à l'un des alinéas a) à f) de la définition de *entité du groupe d'institutions financières*) si, tout au long d'une année d'imposition, selon le cas :

**a)** la juste valeur marchande du capital-actions de la société est principalement attribuable à tout ensemble d'actions ou de dettes d'une ou plusieurs entités visées à l'un des alinéas a) à f) de la définition de *entité du groupe d'institutions financières* que la société contrôle;

**b)** la société est constituée sous le régime de la *Loi sur les sociétés d'assurances* et les actions du capital-actions de la société sont inscrites à la cote d'une bourse de valeurs désignée. (*financial holding corporation*)

**Excessive interest and financing expenses limitation**

**(2)** Notwithstanding any other provision of this Act, in computing the income for a taxation year of a taxpayer (other than an excluded entity for the year) from a business or property or the taxable income of the taxpayer for the year, no deduction shall be made — and in determining the amount under paragraph 3(b) in respect of the taxpayer for the year, no reduction shall be made — in respect of any amount that is described in any of paragraphs (a) to (g) and (i) of the description of A in the definition *interest and financing expenses* in subsection (1) that would, in the absence of this section, be deductible in computing that income or taxable income — or would reduce that amount determined under paragraph 3(b) — to the extent of the proportion of that amount that is determined by the formula

**(A – (B + C + D + E)) ÷ F**

where

**A** is the taxpayer's interest and financing expenses for the year;

**B** is

**(a)** if subsection 18.21(2) applies in respect of the taxpayer for the year, the amount determined in respect of the taxpayer for the year under that subsection, and

**(b)** in any other case, the amount determined by the formula

**G × H**

**Restriction des dépenses excessives d'intérêts et de financement**

**(2)** Malgré les autres dispositions de la présente loi, aucune déduction ne peut être faite, dans le calcul du revenu pour une année d'imposition d'un contribuable (sauf une entité exclue pour l'année) provenant d'une entreprise ou d'un bien, ou du revenu imposable du contribuable pour l'année — et aucune réduction ne peut être faite, dans le calcul du montant en application de l'alinéa 3b), relativement au contribuable pour l'année — relativement à une somme visée à l'un des alinéas a) à g) et i) de l'élément A de la définition de *dépenses d'intérêts et de financement* au paragraphe (1) qui serait, en l'absence du présent article, déductible dans le calcul de ce revenu ou ce revenu imposable — ou qui réduirait ce montant déterminé en application de l'alinéa 3b) — jusqu'à concurrence de la proportion de cette somme qui est obtenue par la formule :

**(A – (B + C + D + E)) ÷ F**

où :

**A** représente les dépenses d'intérêts et de financement du contribuable pour l'année,

**B** selon le cas :

**a)** si le paragraphe 18.21(2) s'applique relativement au contribuable pour l'année, la somme déterminée à l'égard du contribuable selon ce paragraphe pour l'année;

**b)** dans les autres cas, la somme obtenue par la formule :

**G × H**

where

**G** is the taxpayer's ratio of permissible expenses for the year, and

**H** is the taxpayer's adjusted taxable income for the year;

**C** is the taxpayer's interest and financing revenues for the year;

**D** is the amount by which the total of all amounts each of which is an amount of received capacity of the taxpayer for the year, as determined under subsection (4), exceeds the total amount deductible under paragraph 111(1)(a.1) for the year;

**E** is the amount of the taxpayer's absorbed capacity for the year; and

**F** is

**(a)** if no amount is included in the taxpayer's interest and financing expenses for the year under paragraph (j) of the description of A of that definition, or under paragraph (h) of the description of A of that definition in respect of a controlled foreign affiliate of a partnership of which the taxpayer is a member, the amount determined for A in that definition for the taxpayer for the year, or

**(b)** in any other case, the amount that would be determined for A in the definition *interest and financing expenses* in subsection (1) for the taxpayer for the year if the reference to "the affiliate's interest and financing expenses" in the definition *relevant affiliate interest and financing expenses* were read as a reference to "an amount determined for A in the definition *interest and financing expenses* for the affiliate".

où :

**G** représente le ratio des dépenses admissibles du contribuable pour l'année,

**H** le revenu imposable rajusté du contribuable pour l'année;

**C** les revenus d'intérêts et de financement du contribuable pour l'année;

**D** l'excédent du total des sommes représentant chacune un montant de capacité reçue du contribuable pour l'année, établi en vertu du paragraphe (4), sur le total du montant déductible en application de l'alinéa 111(1)a.1) pour l'année;

**E** la capacité absorbée du contribuable pour l'année;

**F** :

**a)** si aucune somme n'est incluse dans les dépenses d'intérêts et de financement du contribuable pour l'année en vertu de l'alinéa j) de l'élément A de la formule figurant à cette définition, ou en vertu de l'alinéa h) de l'élément A de la formule figurant à cette définition relativement à une société étrangère affiliée contrôlée d'une société de personnes dont le contribuable est associé, la somme obtenue pour l'élément A de cette définition pour le contribuable pour l'année;

**b)** dans les autres cas, la somme qui serait obtenue pour l'élément A de la définition de *dépenses d'intérêts et de financement* au paragraphe (1) pour le contribuable pour l'année si la mention de « dépenses d'intérêts et de financement de la société affiliée » à la définition de *dépenses d'intérêts et de financement de la société affiliée pertinentes* valait mention de « somme obtenue pour l'élément A de la définition de *dépenses d'intérêts et de financement* pour la société affiliée ».

**Amount deemed deducted**

**(3)** All or any portion, of a particular amount described in paragraph (c) or (d) of the description of A in the definition *interest and financing expenses* in subsection (1), that would, in the absence of subsection (2), have been deducted in computing the income of a taxpayer for a taxation year but that is not deductible because of subsection (2), is deemed to have been deductible and to have been deducted in the year for purposes of determining, in respect of any taxpayer at any time, such of the following amounts to which the particular amount relates:

**(a)** the *total depreciation* (as defined in subsection 13(21)) allowed for property of a prescribed class;

**Montant réputé déduit**

**(3)** Tout ou partie, d'une somme donnée visée aux alinéas c) ou d) de l'élément A de la définition de *dépenses d'intérêts et de financement* au paragraphe (1), qui aurait, en l'absence du paragraphe (2), été déduite dans le calcul du revenu d'un contribuable pour une année d'imposition, mais qui n'est pas déductible par l'effet du paragraphe (2), est réputée avoir été déductible et déduite dans l'année aux fins de la détermination, relativement à un contribuable à un moment donné, celles des sommes suivantes auxquelles la somme donnée se rapporte :

**a)** l'*amortissement total* (au sens du paragraphe 13(21)) accordé pour les biens d'une catégorie prescrite;

**(b)** the amount the taxpayer may deduct under subsection 66(4);

**(c)** the *cumulative Canadian exploration expense* (as defined in subsection 66.1(6));

**(d)** the *cumulative Canadian development expense* (as defined in subsection 66.2(5));

**(e)** the *cumulative foreign resource expense* (as defined in subsection 66.21(1)) in respect of a country;

**(f)** the *cumulative Canadian oil and gas property expense* (as defined in subsection 66.4(5)); and

**(g)** the amount the taxpayer may deduct under subsections 66.7(1), (2) or (2.3) to (5).

**b)** la somme que le contribuable peut déduire en application du paragraphe 66(4);

**c)** les *frais cumulatifs d'exploration au Canada* (au sens du paragraphe 66.1(6));

**d)** les *frais cumulatifs d'aménagement au Canada* (au sens du paragraphe 66.2(5));

**e)** les *frais cumulatifs relatifs à des ressources à l'étranger* (au sens du paragraphe 66.21(1)) se rapportant à un pays;

**f)** les *frais cumulatifs à l'égard de biens canadiens relatifs au pétrole et au gaz* (au sens du paragraphe 66.4(5));

**g)** la somme que le contribuable peut déduire en application des paragraphes 66.7(1), (2) ou (2.3) à (5).

**Transfer of cumulative unused excess capacity**

**(4)** For the purposes of this section, a taxpayer and another taxpayer (referred to in this section as the "transferor" and the "transferee", respectively) may jointly elect in prescribed form to designate an amount equal to all or a portion of the transferor's cumulative unused excess capacity, and that amount is an amount of transferred capacity of the transferor for a taxation year and an amount of received capacity of the transferee for a taxation year, if

**(a)** the taxation year of the transferor ends in the taxation year of the transferee;

**(b)** each of the transferor and the transferee is

**(i)** a taxable Canadian corporation or a fixed interest commercial trust throughout its taxation year, and

**(ii)** an eligible group entity in respect of the other at the end of its taxation year;

**(c)** where the transferor is a financial institution group entity or a financial holding corporation for its taxation year, the transferee is, for its taxation year,

**(i)** a financial institution group entity,

**(ii)** a financial holding corporation, or

**(iii)** a special purpose loss corporation;

**(d)** the election or amended election

**Transfert de la capacité excédentaire cumulative inutilisée**

**(4)** Pour l'application du présent article, un contribuable et un autre contribuable (appelée le « cédant » et le « cessionnaire » respectivement au présent article) peuvent faire un choix conjoint, sur le formulaire prescrit, de désigner un montant égal à la totalité ou à une partie de la capacité excédentaire cumulative inutilisée du cédant, et ce montant est un montant de capacité transférée du cédant pour une année d'imposition et un montant de capacité reçue du cessionnaire pour une année d'imposition si les conditions ci-après sont remplies :

**a)** l'année d'imposition du cédant se termine dans l'année d'imposition du cessionnaire;

**b)** le cédant et le cessionnaire sont chacun, à la fois :

**(i)** une société canadienne imposable ou une fiducie commerciale à participation fixe tout au long de son année d'imposition,

**(ii)** une entité admissible du groupe relativement à l'autre à la fin de son année d'imposition;

**c)** si le cédant est une entité du groupe d'institutions financières ou une société de portefeuille financière pour son année d'imposition, le cessionnaire est, pour son année d'imposition, selon le cas :

**(i)** une entité du groupe d'institutions financières,

**(ii)** une société de portefeuille financière,

**(iii)** une société à usage déterminé ayant subi des pertes;

**(i)** specifies the amount of the transferred capacity, and

**(ii)** is filed with the Minister by the transferor

**(A)** on or before the later of the filing-due date of

**(I)** the transferor for its taxation year, and

**(II)** the transferee for its taxation year, or

**(B)** on or before the day that is 90 days after the day of sending of

**(I)** a notice of assessment of tax payable under this Part by the transferor or the transferee for their respective taxation years, or

**(II)** a notification that no tax is payable under this Part by the transferor or the transferee for their respective taxation years;

**(e)** the total of all amounts each of which would, if this subsection were read without reference to this paragraph, be an amount of transferred capacity of the transferor for its taxation year in respect of any transferee, does not exceed the transferor's cumulative unused excess capacity for the year;

**(f)** if the transferee is a financial holding corporation and the transferor is a financial institution group entity, it is the case that

$$A \geq B$$

where

**A** is the total of all amounts, each of which is an amount that is included in computing the income of the financial holding corporation for its taxation year in respect of excluded interest, the payer of which is, for the taxation year of the payer in which the interest is payable,

**(i)** a financial institution group entity, or

**(ii)** a special purpose loss corporation, if the amount gives rise to a loss of the special purpose loss corporation that is, or will be, utilized solely by a financial institution group entity, and

**B** is the total of all amounts, each of which would, in the absence of this paragraph, be an amount that is both

**(i)** received capacity of the financial holding corporation for its taxation year, and

**d)** le choix ou le choix modifié :

**(i)** précise le montant de capacité transférée,

**(ii)** est présenté au ministre par le cédant :

**(A)** soit au plus tard au dernier en date de la date d'échéance de production :

**(I)** du cédant pour son année d'imposition,

**(II)** du cessionnaire pour son année d'imposition,

**(B)** au plus tard le quatre-vingt-dixième jour suivant la date d'envoi des documents suivants :

**(I)** un avis de cotisation concernant l'impôt payable en vertu de la présente partie par le cédant ou le cessionnaire pour leurs années d'imposition respectives,

**(II)** un avis au cédant ou au cessionnaire portant qu'aucun impôt n'est payable en vertu de la présente partie pour leurs années d'imposition respectives;

**e)** le total des montants dont chacun représenterait, compte non tenu du présent alinéa, un montant de capacité transférée du cédant pour son année d'imposition à l'égard de tout cessionnaire, ne dépasse la capacité excédentaire cumulative inutilisée du cédant pour l'année;

**f)** si le cessionnaire est une société de portefeuille financière et le cédant est une entité du groupe d'institutions financières, la condition ci-après est remplie :

$$A \geq B$$

où :

**A** représente le total des sommes dont chacune représente une somme qui est incluse dans le calcul du revenu de la société de portefeuille financière pour son année d'imposition relativement aux intérêts exclus, dont le payeur est, pour l'année d'imposition du payeur dans laquelle les intérêts sont payables :

**(i)** une entité du groupe d'institutions financières,

**(ii)** une société à usage déterminé ayant subi des pertes, si la somme donne lieu à une perte subie par la société à usage déterminé ayant subi des pertes qui est, ou qui sera, utilisée uniquement par une entité du groupe d'institutions financières,

**(ii)** transferred capacity of a financial institution group entity for one of its taxation years;

**(g)** if the transferee is a special purpose loss corporation and the transferor is a financial institution group entity, it is the case that

**C ≥ D**

where

**C** is the total of all amounts, each of which is an amount that

**(i)** would, in the absence of this section, be deductible in computing the income of the special purpose loss corporation for its taxation year,

**(ii)** is paid or payable to a financial holding corporation,

**(iii)** meets the conditions set out in paragraphs (a) to (d) of the definition *excluded interest*, and

**(iv)** would, in the absence of this section, give rise to a loss that is, or will be, utilized solely by a financial institution group entity, and

**D** is the total of all amounts, each of which would, in the absence of this paragraph, be an amount that is both

**(i)** received capacity of the special purpose loss corporation for its taxation year, and

**(ii)** transferred capacity of a financial institution group entity for one of its taxation years;

**(h)** an amended election has not been filed in accordance with this section;

**(i)** where the election is an amended election,

**(i)** the following conditions are met:

**(A)** in the absence of any assessment, the condition set out in paragraph (e) would be met in respect of a prior election under this subsection made by the transferor and transferee for their respective taxation years, and

**(B)** subsection (9) does not apply to a tax benefit in respect of a prior election for the taxation year of the transferor or transferee, or

**(ii)** the Minister grants permission to amend the prior election under subsection (5); and

**(j)** the transferee files an information return in accordance with subsection (6) for the calendar year in which the transferee's taxation year ends.

**B** le total des sommes dont chacune serait, en l'absence du présent alinéa, à la fois :

**(i)** un montant de capacité reçue de la société de portefeuille financière pour son année d'imposition,

**(ii)** un montant de capacité transférée d'une entité du groupe d'institutions financières pour une de ses années d'imposition;

**g)** si le cessionnaire est une société à usage déterminé ayant subi des pertes et le cédant est une entité du groupe d'institutions financières, la condition ci-après est remplie :

**C ≥ D**

où :

**C** représente le total des sommes dont chacune représente une somme qui, à la fois :

**(i)** serait, en l'absence du présent article, déductible dans le calcul du revenu de la société à usage déterminé ayant subi des pertes pour son année d'imposition,

**(ii)** est payée ou payable à une société de portefeuille financière,

**(iii)** remplit les conditions des alinéas a) à d) de la définition de *intérêts exclus*,

**(iv)** donnerait lieu, en l'absence du présent article, à une perte qui est, ou qui sera, utilisée uniquement par une entité du groupe d'institutions financières,

**D** le total des sommes dont chacune serait, en l'absence du présent alinéa, à la fois :

**(i)** un montant de capacité reçue de la société ayant subi des pertes à usage déterminé pour son année d'imposition,

**(ii)** un montant de capacité transférée d'une entité du groupe d'institutions financières pour une de ses années d'imposition;

**h)** un choix modifié n'a pas été produit conformément au présent article;

**i)** lorsque le choix est un choix modifié :

**(i)** soit les conditions ci-après sont remplies :

**(A)** en l'absence d'une cotisation, la condition de l'alinéa e) serait remplie relativement à un choix antérieur prévu au présent paragraphe fait par le cédant et le cessionnaire pour leurs années d'imposition respectives,

**(B)** le paragraphe (9) ne s'applique pas à un avantage fiscal relativement à un choix antérieur pour l'année d'imposition du cédant ou du cessionnaire,

**(ii)** soit le ministre accorde l'autorisation de modifier le choix antérieur en vertu du paragraphe (5);

**j)** le cessionnaire produit une déclaration de renseignements conformément au paragraphe (6) pour l'année civile dans laquelle son année d'imposition se termine.

**Late or amended election**

**(5)** The Minister may extend the time for making an election, or grant permission to amend an election, under subsection (4) if

**(a)** the transferor and the transferee demonstrate to the satisfaction of the Minister that

**(i)** the transferor, the transferee and each other eligible group entity in respect of the transferor and transferee made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election, and

**(ii)** the election or amended election, as the case may be, is filed as soon as circumstances permit; and

**(b)** in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made or amended.

**Choix modifié ou produit en retard**

**(5)** Le ministre peut proroger le délai pour faire le choix prévu au paragraphe (4), ou permettre que ce choix soit modifié, si les conditions suivantes sont réunies :

**a)** le cédant et le cessionnaire démontrent, à la satisfaction du ministre, que, à la fois :

**(i)** le cédant, le cessionnaire et chaque autre entité admissible du groupe relativement au cédant et au cessionnaire ont fait des efforts voulus pour déterminer toutes les sommes qu'il est raisonnable de considérer comme pertinentes pour faire le choix,

**(ii)** le choix ou le choix modifié, selon le cas, est produit dès que les circonstances le permettent;

**b)** selon le ministre, les circonstances sont telles qu'il serait juste et équitable de permettre que le choix soit fait ou modifié.

**Summary — cumulative unused excess capacity transfers**

**(6)** If one or more elections are filed under subsection (4), in which amounts are designated as received capacity of a particular transferee for a taxation year ending in a calendar year, the particular transferee shall file with the Minister for the calendar year an information return in prescribed form within six months after the end of the calendar year in respect of

**(a)** each such election; and

**(b)** each election filed under subsection (4) for a taxation year ending in the calendar year, by any other transferee that is an eligible group entity in respect of the particular transferee at the end of the other transferee's taxation year.

**Sommaire — transferts de la capacité excédentaire cumulative inutilisée**

**(6)** Si un ou plusieurs choix sont produits en vertu du paragraphe (4), dans lesquels les montants sont désignés comme capacité reçue d'un cessionnaire donné pour une année d'imposition se terminant dans une année civile, le cessionnaire donné est tenu de présenter au ministre pour l'année civile une déclaration de renseignements sur un formulaire prescrit, dans les six mois suivant la fin de l'année civile relativement à ce qui suit :

**a)** chacun de ces choix;

**b)** chaque choix produit en vertu du paragraphe (4) pour une année d'imposition se terminant dans l'année civile, par un autre cessionnaire qui est une entité admissible du groupe relativement au cessionnaire donné à la fin de l'année d'imposition de l'autre cessionnaire.

**Summary — filing by designated filer**

**(7)** For the purposes of this section, if any taxpayer is required to file an information return for a calendar year under subsection (6), the taxpayer is deemed to have filed the information return if

**(a)** an information return under subsection (6) is filed for the calendar year by any other taxpayer (in this subsection referred to as the "designated filer" in respect of the taxpayer for the year) that is an eligible group entity in respect of the taxpayer at the end of the taxpayer's taxation year ending in the calendar year; and

**(b)** the taxpayer jointly elects, with each other transferee described in paragraph (6)(b), to designate under this paragraph the designated filer to be a designated filer in respect of the taxpayer and each other transferee for the calendar year.

**Assessment**

**(8)** If an election or an amended election has been made under subsection (4), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election.

**Anti-avoidance — group status**

**(9)** If, at any time, a particular taxpayer is, becomes or ceases to be an eligible group entity, in respect of another taxpayer, a financial institution group entity or a financial holding corporation and it may reasonably be considered, having regard to all the circumstances, that one of the main purposes of the particular taxpayer being, becoming or ceasing to be an eligible group entity, in respect of the other taxpayer, a financial institution group entity or a financial holding corporation is to enable any taxpayer to obtain a tax benefit (within the meaning of subsection 245(1)), the particular taxpayer is deemed not to be, to have become, or to remain, as the case may be, an eligible group entity, in respect of the other taxpayer, a financial institution group entity or a financial holding corporation, as the case may be, at that time.

**Benefits conferred**

**(10)** For the purposes of this Part, if a transferor and a transferee file an election (including an amended election) under subsection (4), no benefit is considered to

**Sommaire — production par un déclarant désigné**

**(7)** Pour l'application du présent article, si un contribuable est tenu de produire une déclaration de renseignements pour une année civile en vertu du paragraphe (6), le contribuable est réputé avoir produit la déclaration de renseignements si, à la fois :

**a)** la déclaration de renseignements produite conformément au paragraphe (6) est produite pour l'année civile par un autre contribuable (appelé « déclarant désigné » au présent paragraphe relativement au contribuable pour l'année) qui est une entité admissible du groupe relativement au contribuable à la fin de l'année d'imposition du contribuable se terminant dans l'année civile;

**b)** le contribuable fait le choix conjoint, avec chaque autre cessionnaire visé à l'alinéa (6)b), de désigner le déclarant désigné comme tel en vertu du présent alinéa relativement au contribuable et chaque autre cessionnaire pour l'année civile.

**Cotisation**

**(8)** En cas de choix ou de choix modifié fait en vertu du paragraphe (4), le ministre, malgré les paragraphes 152(4) et (5), établit les cotisations ou les nouvelles cotisations concernant l'impôt, les intérêts et les pénalités payables en application de la présente loi par tout contribuable pour toute année d'imposition pertinente afin de rendre applicable le choix ou le choix modifié.

**Anti-évitement — statut du groupe**

**(9)** Si, à un moment donné, un contribuable donné est ou devient une entité admissible du groupe, relativement à un autre contribuable, une entité du groupe d'institutions financières ou une société de portefeuille financière, ou cesse de l'être, et il est raisonnable de considérer, compte tenu de toutes les circonstances, que l'un des principaux objets pour lequel le contribuable donné est ou devient ainsi une entité admissible du groupe, relativement à un autre contribuable, une entité du groupe d'institutions financières ou une société de portefeuille financière, ou cesse de l'être, est de permettre à un contribuable d'obtenir un avantage fiscal (au sens du paragraphe 245(1)), le contribuable donné est réputé ne pas être, ne pas être devenu, ou ne pas demeurer, selon le cas, une entité admissible du groupe relativement à l'autre contribuable, une entité du groupe d'institutions financières ou une société de portefeuille financière, selon le cas, à ce moment.

**Avantages conférés**

**(10)** Pour l'application de la présente partie, si un cédant et un cessionnaire produisent un choix (y compris un choix modifié) en vertu du paragraphe (4), aucun

have been conferred on the transferee as a consequence of the election.

**Consideration for election**

**(11)** For the purposes of this Part, if property is acquired at any time by a transferor as consideration for filing an election or amended election with a transferee under subsection (4)

**(a)** where the property was owned by the transferee immediately before that time,

**(i)** the transferee is deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and

**(ii)** no amount may be deducted in computing the transferee's income as a consequence of the transfer of the property, except any amount arising as a consequence of subparagraph (i);

**(b)** the cost at which the property was acquired by the transferor at that time is deemed to be equal to the fair market value of the property at that time; and

**(c)** the transferor is not required to add an amount in computing income solely because of the acquisition at that time of the property.

**Partnerships**

**(12)** For the purposes of this section,

**(a)** a person or partnership that is (or is deemed by this paragraph to be) a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership; and

**(b)** a person's share of the income or loss of a partnership includes the person's direct or indirect, through one or more other partnerships, share of that income or loss.

**Anti-avoidance — interest and financing revenues and expenses**

**(13)** A particular amount that would, in the absence of this subsection, be included under the description of A in the definition *interest and financing revenues*, or the description of B in the definition *interest and financing expenses*, in computing the income or loss of a taxpayer for a taxation year, must not be so included, if

**(a)** an amount in respect of the particular amount is deductible in computing the foreign accrual property income of a corporation that is a foreign affiliate, but

avantage n'est considéré comme ayant été conféré au cessionnaire du fait qu'il a produit le choix.

**Contrepartie du choix**

**(11)** Pour l'application de la présente partie, lorsqu'un bien est acquis à un moment donné par un cédant en contrepartie de la production d'un choix ou d'un choix modifié avec un cessionnaire en application du paragraphe (4) :

**a)** si le bien appartenait au cessionnaire immédiatement avant ce moment :

**(i)** le cessionnaire est réputé avoir disposé du bien à ce moment pour un produit égal à sa juste valeur marchande à ce moment,

**(ii)** seuls les montants découlant de l'application du sous-alinéa (i) sont déductibles dans le calcul du revenu du cessionnaire par suite du transfert du bien;

**b)** le coût auquel le cédant a acquis le bien à ce moment est réputé égal à sa juste valeur marchande à ce moment;

**c)** le cédant n'est pas tenu d'ajouter un montant dans le calcul de son revenu du seul fait qu'il a acquis le bien à ce moment.

**Sociétés de personnes**

**(12)** Pour l'application du présent article :

**a)** toute personne ou société de personnes qui est (ou est réputée être) en vertu du présent alinéa un associé d'une société de personnes donnée qui est un associé d'une autre société de personnes est réputée être un associé de cette dernière;

**b)** la part d'une personne sur le revenu ou la perte d'une société de personnes comprend la part directe ou indirecte de la personne par l'intermédiaire d'une ou de plusieurs sociétés de personnes, de ce revenu ou cette perte.

**Anti-évitement — revenus et dépenses d'intérêts et de financement**

**(13)** Une somme donnée qui serait, compte non tenu du présent paragraphe, incluse dans l'élément A de la formule figurant à la définition de *revenus d'intérêts et de financement* ou dans l'élément B de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte d'un contribuable pour une année d'imposition, ne doit être incluse si, selon le cas :

not a controlled foreign affiliate, of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer;

**(b)** the particular amount is received or receivable, directly or indirectly and in whole or in part, by the taxpayer, or a partnership of which it is a member, from

**(i)** a person that does not deal at arm's length with the taxpayer and that is

**(A)** an excluded entity,

**(B)** a natural person, or

**(C)** if the taxpayer is not a financial institution group entity or a financial holding corporation, a financial institution group entity or a financial holding corporation, or

**(ii)** a partnership of which a person described in subparagraph (i) is a member; or

**(c)** one of the main purposes of a transaction or series of transactions is to include the particular amount under the description of A in the definition *interest and financing revenues*, or the description of B in the definition *interest and financing expenses*, in computing the income or loss of the taxpayer for a taxation year and

**(i)** the transaction or series results in an amount that

**(A)** is not included in the description of B in the definition *interest and financing revenues*, or the description of A in the definition *interest and financing expenses*, in computing the income or loss of the taxpayer, or of a person not dealing at arm's length with the taxpayer, for a taxation year, and

**(B)** is deductible in computing the income of loss for a taxation year of the taxpayer or a person or partnership not dealing at arm's length with the taxpayer, or

**(ii)** it can reasonably be considered that, in the absence of the transaction or series, the particular amount or an amount for which the particular amount was substituted

**(A)** would have been included in computing the income or loss for a taxation year (other than as a dividend) of the taxpayer, or a person or partnership not dealing at arm's length with the taxpayer, and

**a)** une somme relative à la somme donnée est déductible dans le calcul du revenu étranger accumulé, tiré de biens d'une société qui est une société étrangère affiliée, autre qu'une société étrangère affiliée contrôlée, du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable;

**b)** la somme donnée est reçue ou à recevoir, directement ou indirectement et en tout ou en partie, par le contribuable ou par une société de personnes dont il est associé :

**(i)** soit d'une personne ayant un lien de dépendance avec le contribuable et qui est, selon le cas :

**(A)** une entité exclue,

**(B)** une personne physique,

**(C)** si le contribuable n'est pas une entité du groupe d'institutions financières ou une société de portefeuille financière, une entité du groupe d'institutions financières ou une société de portefeuille financière,

**(ii)** soit d'une société de personnes dont une personne visée au sous-alinéa (i) est un associé;

**c)** l'un des principaux objets d'une opération ou d'une série d'opérations consiste à inclure la somme donnée dans l'élément A de la formule figurant à la définition de *revenus d'intérêts et de financement* ou dans l'élément B de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte du contribuable pour une année d'imposition et, selon le cas :

**(i)** l'opération ou la série donne lieu à une somme qui, à la fois :

**(A)** n'est pas incluse dans l'élément B de la formule figurant à la définition de *revenus d'intérêts et de financement* ou de l'élément A de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte du contribuable ou d'une personne ayant avec lui un lien de dépendance pour une année d'imposition,

**(B)** est déductible dans le calcul du revenu ou de la perte pour une année d'imposition du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

**(B)** would not have been included under the description of A in the definition *interest and financing revenues*, or the description of B in the definition *interest and financing expenses*, in computing the income or loss of the taxpayer or a person not dealing at arm's length with the taxpayer.

**(ii)** il est raisonnable de considérer que, en l'absence de l'opération ou de la série, la somme donnée ou une somme à laquelle la somme donnée est substituée, à la fois :

**(A)** aurait été incluse dans le calcul du revenu ou de la perte pour une année d'imposition (à l'exclusion d'un dividende) du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

**(B)** n'aurait pas été incluse dans l'élément A de la formule figurant à la définition de *revenus d'intérêts et de financement* ou dans l'élément B de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte du contribuable ou d'une personne ayant avec lui un lien de dépendance.

**Anti-avoidance — excluded entity**

**(14)** For the purposes of subparagraph (c)(iv) of the definition *excluded entity*, a person or partnership is deemed to be tax-indifferent and not to deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer throughout a taxation year of the taxpayer if

**(a)** any portion of the interest and financing expenses of the taxpayer for the year is paid or payable by the taxpayer or any eligible group entity in respect of the taxpayer to the person or partnership as part of a transaction or series of transactions; and

**(b)** it can reasonably be considered that one of the main purposes of the transaction or series is to avoid that portion of the interest and financing expenses being paid or payable to a person or partnership that is tax-indifferent and does not deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer.

**Anti-évitement — entité exclue**

**(14)** Pour l'application du sous-alinéa c)(iv) de la définition de *entité exclue*, une personne ou une société de personnes est réputée être indifférente relativement à l'impôt et avoir un lien de dépendance avec le contribuable ou toute entité admissible du groupe à l'égard du contribuable tout au long d'une année d'imposition de celui-ci si, à la fois :

**a)** toute partie des dépenses d'intérêts et de financement du contribuable pour l'année est payée ou payable par le contribuable ou par toute entité admissible du groupe à l'égard du contribuable à la personne ou la société de personnes dans le cadre d'une opération ou d'une série d'opérations;

**b)** il est raisonnable de considérer que l'un des principaux objets de l'opération ou de la série est d'éviter que cette partie des dépenses d'intérêts et de financement soit payée ou payable à une personne ou une société de personnes indifférente relativement à l'impôt qui a un lien de dépendance avec le contribuable ou toute entité admissible du groupe à l'égard du contribuable.

**Deemed eligible group entities**

**(15)** If two taxpayers are eligible group entities in respect of a third taxpayer, they are deemed to be eligible group entities in respect of each other.

**Entités admissibles du groupe réputées**

**(15)** Lorsque deux contribuables sont des entités admissibles du groupe à l'égard d'un troisième contribuable, ils sont réputés être des entités admissibles du groupe les uns à l'égard des autres.

**Eligible group entities — related**

**(16)** For the purposes of paragraph (a) of the definition *eligible group entity* in subsection (1)

**Entités admissibles du groupe — liées**

**(16)** Pour l'application de l'alinéa a) de la définition de *entité admissible du groupe* au paragraphe (1) :

**(a)** despite subsection 104(1), a reference to a person that is a trust does not include a reference to the trustee or other persons that own or control the trust property; and

**(b)** a corporation or a trust is deemed not to be related to a taxpayer where the corporation or trust would, but for this paragraph, be related to the taxpayer solely because the taxpayer is controlled by His Majesty in right of Canada, His Majesty in right of a province or an entity referred to in any of paragraphs 149(1)(c) to (d.6).

**a)** malgré le paragraphe 104(1), la mention d'une personne qui est une fiducie ne vaut pas mention du fiduciaire ou d'autres personnes qui ont la propriété ou le contrôle des biens de la fiducie;

**b)** une société ou une fiducie est réputée ne pas être liée à un contribuable lorsque la société ou la fiducie serait, n'eût été le présent alinéa, liée au contribuable uniquement parce que celui-ci est contrôlé par Sa Majesté du Chef du Canada, Sa Majesté du chef d'une province ou une entité visée aux alinéas 149(1)c) à d.6).

**Eligible group entities — affiliated**

**(17)** For the purposes of paragraph (b) of the definition *eligible group entity* in subsection (1), a corporation or a trust is deemed not to be affiliated with a taxpayer where that corporation or trust would, but for this subsection, be affiliated with the taxpayer solely because

**(a)** the taxpayer is controlled by His Majesty in right of Canada, His Majesty in right of a province or an entity referred to in any of paragraphs 149(1)(c) to (d.6); or

**(b)** if the corporation or trust is a registered charity or a non-profit organization with whom the taxpayer deals at arm's length, the corporation or trust is a *majority-interest beneficiary* (within the meaning of subsection 251.1(3)) of the taxpayer.

**Entités admissibles du groupe — affiliées**

**(17)** Pour l'application de l'alinéa b) de la définition de *entité admissible du groupe* au paragraphe (1), une société ou une fiducie est réputée ne pas être affiliée à un contribuable lorsque cette société ou fiducie serait, n'eût été le présent paragraphe, affiliée au contribuable uniquement parce que, selon le cas :

**a)** le contribuable est contrôlé par Sa Majesté du Chef du Canada Sa Majesté du chef d'une province ou une entité visée aux alinéas 149(1)c) à d.6);

**b)** si la société ou la fiducie est un organisme de bienfaisance enregistré ou une organisation à but non lucratif avec laquelle le contribuable n'a aucun lien de dépendance, la société ou fiducie est un *bénéficiaire détenant une participation majoritaire* (au sens du paragraphe 251.1(3)) du contribuable.

**Filing requirement**

**(18)** Each taxpayer shall file with its return of income for the taxation year a prescribed form containing prescribed information for the purpose of determining the deductibility of its interest and financing expenses and determining its exempt interest and financing expenses.

**Exigence relative à la production de déclarations de revenus**

**(18)** Chaque contribuable est tenu de produire, avec sa déclaration de revenu pour l'année d'imposition, un formulaire prescrit contenant les renseignements prescrits pour déterminer la déductibilité de ses dépenses d'intérêts et de financement et déterminer ses dépenses d'intérêts et de financement exonérées.

**Relevant inter-affiliate interest**

**(19)** If an amount is paid or payable by a controlled foreign affiliate (referred to in this subsection as the "payer affiliate") of a taxpayer and received or receivable by a controlled foreign affiliate (referred to in this subsection as the "recipient affiliate") of the taxpayer, or a taxpayer that is an eligible group entity in respect of the taxpayer, and the amount is relevant inter-affiliate interest of the payer affiliate for an affiliate taxation year (referred to in this subsection as the "payer affiliate year") and of the recipient affiliate for an affiliate taxation year (referred to in this subsection as the "recipient affiliate year"),

**Intérêts pertinents entre sociétés affiliées**

**(19)** Si un montant est payé ou payable par une société étrangère affiliée contrôlée (appelée « société affiliée payeuse » au présent paragraphe) d'un contribuable et est reçu ou à recevoir par une société étrangère affiliée contrôlée (appelée « société affiliée bénéficiaire » au présent paragraphe) du contribuable, ou d'un contribuable qui est une entité admissible du groupe relativement au contribuable, et le montant correspond à des intérêts pertinents entre sociétés affiliées de la société affiliée payeuse pour une année d'imposition de la société affiliée (appelée « année de la société affiliée payeuse » au présent paragraphe) et de la société affiliée bénéficiaire pour une année d'imposition de la société affiliée (appelée

**(a)** the amount included, in respect of the relevant inter-affiliate interest, in the payer affiliate's relevant affiliate interest and financing expenses for the payer affiliate year is the lesser of

**(i)** the relevant inter-affiliate interest, and

**(ii)** the amount determined by the formula

**A + B**

where

**A** is the amount determined by the formula

**(C – D) × E ÷ C**

where

**C** is the total of all amounts, each of which would — if the relevant inter-affiliate interest were not paid or payable — be, in respect of the payer affiliate for the payer affiliate year, the specified participating percentage of

**(A)** the taxpayer, or

**(B)** another taxpayer that is an eligible group entity in respect of the taxpayer, and

**D** is the total of all amounts, each of which is, in respect of the recipient affiliate for the recipient affiliate year, the specified participating percentage of

**(A)** the taxpayer, or

**(B)** another taxpayer that is an eligible group entity in respect of the taxpayer, and

**E** is the relevant inter-affiliate interest, and

**B** is the lesser of

**(A)** the relevant inter-affiliate interest, and

**(B)** the amount determined by the formula

**(F – G) × H ÷ I**

where

**F** is the payer affiliate's relevant affiliate interest and financing revenues for the payer affiliate year,

**G** is the amount that would be the payer affiliate's relevant affiliate interest and financing expenses for the payer affiliate year if the payer affiliate had no relevant inter-affiliate interest for the payer affiliate year,

**H** is the amount determined for E, and

« année de la société affiliée bénéficiaire » au présent paragraphe) :

**a)** le montant inclus, relativement aux intérêts pertinents entre sociétés affiliées, dans les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée payeuse pour l'année de la société affiliée payeuse est le moins élevé des montants suivants :

**(i)** les intérêts pertinents entre sociétés affiliées,

**(ii)** le montant obtenu par la formule suivante :

**A + B**

où :

**A** représente le montant obtenu par la formule suivante :

**(C – D) × E ÷ C**

où :

**C** représente le total de tous les montants dont chacun représenterait — si les intérêts pertinents entre sociétés affiliées n'avaient pas été payés ou n'étaient pas payables — relativement à la société affiliée payeuse pour l'année de la société affiliée payeuse, le pourcentage de participation déterminé :

**(A)** soit du contribuable,

**(B)** soit d'un autre contribuable qui est une entité admissible du groupe relativement au contribuable,

**D** le total des montants dont chacun représente, relativement à la société affiliée bénéficiaire pour l'année de la société affiliée bénéficiaire, le pourcentage de participation déterminé :

**(A)** soit du contribuable,

**(B)** soit d'un autre contribuable qui est une entité admissible du groupe relativement au contribuable,

**E** les intérêts pertinents entre sociétés affiliées,

**B** le moindre des montants suivants :

**(A)** les intérêts pertinents entre sociétés affiliées,

**(B)** le montant obtenu par la formule suivante :

**(F – G) × H ÷ I**

où :

**I** is the total of all amounts, each of which is an amount of relevant inter-affiliate interest of the payer affiliate for the payer affiliate year that would, in the absence of this paragraph, be included in the payer affiliate's relevant affiliate interest and financing expenses; and

**(b)** the amount included, in respect of the relevant inter-affiliate interest, in the recipient affiliate's relevant affiliate interest and financing revenues for the recipient affiliate year is the lesser of

**(i)** the amount referred to in E, and

**(ii)** the amount determined by the formula

**J × K ÷ L**

where

**J** is the amount determined for B,

**K** is the amount determined for C, and

**L** is the amount determined for D.

**F** représente les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée payeuse pour l'année de la société affiliée payeuse,

**G** le montant qui serait des dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée payeuse pour l'année de la société affiliée payeuse si la société affiliée payeuse n'avait pas d'intérêts pertinents entre sociétés affiliées pour l'année de la société affiliée payeuse,

**H** la valeur de l'élément E,

**I** le total des montants dont chacun représente un montant d'intérêts pertinents entre sociétés affiliées de la société affiliée payeuse pour l'année de la société affiliée payeuse qui serait, en l'absence du présent alinéa, inclus dans les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée payeuse;

**b)** le montant inclus, relativement aux intérêts pertinents entre sociétés affiliées, dans les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée bénéficiaire pour l'année de la société affiliée bénéficiaire est le moindre des montants suivants :

**(i)** la somme visée à l'élément E,

**(ii)** la somme déterminée par la formule suivante :

**J × K ÷ L**

où :

**J** représente la valeur de l'élément B,

**K** la valeur de l'élément C,

**L** la valeur de l'élément D.

**Group ratio — definitions**

**18.21 (1)** The following definitions apply in this section.

***acceptable accounting standards*** means International Financial Reporting Standards and the generally accepted accounting principles of

**(a)** Canada;

**(b)** Australia;

**(c)** Brazil;

**(d)** member states of the European Union;

**Ratio de groupe — définitions**

**18.21 (1)** Les définitions qui suivent s'appliquent au présent article.

***bénéfice net comptable rajusté du groupe*** En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente la somme obtenue par la formule suivante :

**C + D + E + F + G**

**(e)** member states of the European Economic Area;

**(f)** Hong Kong (China);

**(g)** Japan;

**(h)** Mexico;

**(i)** New Zealand;

**(j)** the People's Republic of China;

**(k)** the Republic of India;

**(l)** the Republic of Korea;

**(m)** Singapore;

**(n)** Switzerland;

**(o)** the United Kingdom; and

**(p)** the United States. (*principes comptables acceptables*)

***consolidated financial statements*** means financial statements prepared in accordance with a relevant acceptable accounting standard in which the assets, liabilities, income, expenses and cash flows of two or more entities are presented as those of a single economic entity and, for greater certainty, the financial statements include the notes to the financial statements. (*états financiers consolidés*)

***consolidated group*** means two or more entities, other than an equity-accounted entity but including an ultimate parent, (each such entity referred to in this section as a "member of the consolidated group") in respect of which consolidated financial statements are required to be prepared for financial reporting purposes or would be so required if the entities were subject to International Financial Reporting Standards. (*groupe consolidé*)

***equity-accounted entity*** means an entity the net income or loss of which is included in the consolidated financial statements of a consolidated group under the equity method of accounting. (*entité comptabilisée à la valeur de consolidation*)

***equity interest*** means

**(a)** a share of the capital stock of a corporation;

**(b)** an interest as a beneficiary under a trust;

**(c)** an interest as a member of a partnership; or

où :

**C** représente le montant éventuel de revenu net déclaré dans les états financiers consolidés du groupe pour la période,

**D** le montant éventuel des charges d'impôts déclaré dans ces états,

**E** la somme qui serait les dépenses d'intérêts déterminées du groupe pour la période si la définition de ***dépenses d'intérêts déterminées*** s'appliquait compte non tenu de l'alinéa b) de l'élément A,

**F** le total des montants qui entrent dans le calcul des sommes déclarées dans ces états dont chacun représente le montant :

**a)** d'un amortissement ou d'une charge d'amortissement relativement à un bien,

**b)** d'une charge relative à la dépréciation ou à la radiation d'un actif visé à l'alinéa a),

**c)** d'une perte sur la disposition d'un élément d'actif visé à l'alinéa a),

**d)** si un choix est fait en vertu du paragraphe (4) et que le montant de la juste valeur net pour la période est négatif, de la valeur absolue du montant de la juste valeur net,

**e)** de frais, de dépenses, de déduction ou de perte qui est semblable à l'un de ces éléments visés aux alinéas a) à d),

**G** le total des montants visés aux éléments D ou F qui sont inclus dans le calcul du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette;

**B** la somme obtenue par la formule suivante :

**H + I + J + K + L + M + N**

où :

**H** représente le montant éventuel de la perte nette déclarée dans ces états,

**I** le montant éventuel de l'impôt recouvrable déclaré dans ces états,

**J** les revenus d'intérêts déterminés du groupe pour la période,

**K** si un choix est fait en vertu du paragraphe (4) et que le montant de la juste valeur net pour la période est positif, le montant de la juste valeur net,

**L** le total des montants qui entrent dans le calcul des montants déclarés dans ces états

**(d)** any similar interest in respect of any entity. (*participation au capital*)

***fair value amount*** means any amount reflected in the net income or net loss reported in the consolidated financial statements of a consolidated group for a relevant period where

**(a)** the carrying value of any asset or liability of the consolidated group is measured using the fair value method of accounting; and

**(b)** the amount reflects a change in the carrying value of the asset or liability during the relevant period and is included in either the description of C or H in the definition *group adjusted net book income*. (*montant de la juste valeur*)

***group adjusted net book income***, of a consolidated group for a relevant period, means the amount determined by the formula

**A – B**

where

**A** is the amount determined by the formula

**C + D + E + F + G**

where

**C** is the amount, if any, of net income reported in the consolidated financial statements of the group for the period,

**D** is the amount, if any, of income tax expense reported in those statements,

**E** is the amount that would be the specified interest expense of the group for the period if the definition *specified interest expense* were read without reference to paragraph (b) of the description of A,

**F** is the total of all amounts used in determining the amounts reported in those statements each of which is the amount of

**(a)** a depreciation or amortization expense in respect of an asset,

**(b)** a charge in respect of the impairment or write-off of an asset referred to in paragraph (a),

**(c)** a loss on the disposal of an asset referred to in paragraph (a),

**(d)** if an election is made under subsection (4) and the net fair value amount for the period is negative, the absolute value of the net fair value amount, and

représentant chacun le montant d'un gain sur la disposition d'un élément d'actif visé à l'alinéa a) de l'élément F, dans la mesure ou le produit des ventes ne dépasse pas le coût initial de l'élément d'actif,

**M** le total des montants visés aux éléments I, K et L qui est pris en compte dans la détermination du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette,

**N** le total des montants représentant chacun la fraction du revenu net déclaré dans ces états qu'il est raisonnable de considérer comme ayant été gagné par un emprunteur (au sens de la définition de *dépenses d'intérêts et de financement exonérées* au paragraphe 18.2(1)) relativement à un emprunt (au sens de la définition de *dépenses d'intérêts et de financement exonérées* au paragraphe 18.2(1)) qui entraîne des dépenses d'intérêts et de financement exonérées de celui-ci. (*group adjusted net book income*)

***dépenses d'intérêts déterminées*** En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente le total des montants (sauf les montants qui sont inclus dans les dépenses d'intérêts et de financement exonérées) représentant chacun :

**a)** un montant de dépenses d'intérêts qui entre dans le calcul des montants déclarés dans les états financiers consolidés du groupe consolidé pour la période pertinente,

**b)** un montant d'intérêts capitalisés qui entre dans le calcul des montants déclarés dans ces états,

**c)** le montant des frais de garantie, des frais pour droit d'usage, de la commission d'arrangement ou d'autres frais semblables payés ou payables qui entre dans le calcul des montants déclarés dans ces états et qui n'est pas visé aux alinéas a) ou b),

**d)** un montant visé à l'un des alinéas a) à c) qui est pris en compte dans la détermination du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette,

**B** le total des montants représentant chacun le montant d'un dividende pris en compte dans la

**(e)** an expense, charge, deduction or loss that is similar to any of those referred to in paragraphs (a) to (d), and

**G** is the total of all amounts referred to in the description of D or F that are included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss; and

**B** is the amount determined by the formula

**H + I + J + K + L + M + N**

where

**H** is the amount, if any, of net loss reported in those statements,

**I** is the amount, if any, of income tax recoverable reported in those statements,

**J** is the specified interest income of the group for the period,

**K** if an election is made under subsection (4) and the net fair value amount for the period is positive, the net fair value amount,

**L** is the total of all amounts used in determining the amounts reported in those statements each of which is the amount of a gain on the disposal of an asset referred to in paragraph (a) of the description of F, to the extent that the sale proceeds do not exceed the original cost of the asset,

**M** is the total of all amounts referred to in the descriptions of I, K and L that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss, and

**N** is the total of all amounts, each of which is the portion of net income reported in those statements that can reasonably be considered to be earned by a borrower (within the meaning of the definition *exempt interest and financing expenses* in subsection 18.2(1)) in respect of a borrowing (within the meaning of the definition *exempt interest and financing expenses* in subsection 18.2(1)) that results in exempt interest and financing expenses of the borrower. (*bénéfice net comptable rajusté du groupe*)

***group net interest expense***, of a consolidated group for a relevant period, means the amount determined by the formula

**A – B**

where

**A** is the amount determined by the formula

détermination d'une somme visée à l'un des alinéas a) à d) de l'élément A. (*specified interest expense*)

***dépenses nettes d'intérêts du groupe*** En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente la somme obtenue par la formule suivante :

**C – D**

où :

**C** représente les dépenses d'intérêts déterminées du groupe pour la période,

**D** les revenus d'intérêts déterminés du groupe pour la période,

**B** le total des montants représentant chacun la somme obtenue par la formule suivante à l'égard d'un non-membre déterminé du groupe :

**E – F**

où :

**E** représente la partie du montant de dépenses d'intérêts déterminées du groupe pour la période qui est payée ou payable au non-membre déterminé,

**F** la partie du montant de revenus d'intérêts déterminés du groupe pour la période qui est reçue ou à recevoir du non-membre déterminé. (*group net interest expense*)

***entité comptabilisée à la valeur de consolidation*** Entité dont le revenu net ou la perte nette est inclus dans les états financiers consolidés d'un groupe consolidé selon la méthode de la comptabilisation à la valeur de consolidation. (*equity-accounted entity*)

***états financiers consolidés*** États financiers établis conformément à un principe comptable acceptable pertinent dans lesquels les actifs, les passifs, le revenu, les dépenses et les flux de trésorerie de plusieurs entités sont présentés comme étant ceux d'une seule entité économique. Il est entendu que les états financiers comprennent les notes qui leur sont afférentes. (*consolidated financial statements*)

***groupe consolidé*** Plusieurs entités, autre qu'une entité comptabilisée à la valeur de consolidation, mais incluant une mère ultime, (chaque entité appelée « membre du groupe consolidé » au présent article) à l'égard desquelles des états financiers consolidés sont tenus d'être établis aux fins de présentation de l'information

**C – D**

where

**C** is the specified interest expense of the group for the period, and

**D** is the specified interest income of the group for the period; and

**B** is the total of all amounts each of which is an amount determined, in respect of a specified non-member of the group, by the formula

**E – F**

where

**E** is the portion of the amount of the specified interest expense of the group for the period that is paid or payable to the specified non-member, and

**F** is the portion of the amount of the specified interest income of the group for the period that is received or receivable from the specified non-member. (*dépenses nettes d'intérêts du groupe*)

***group ratio***, of a consolidated group for a relevant period, means

**(a)** except where paragraph (b) applies, the percentage determined by the formula

**1.1 × A ÷ B**

where

**A** is the group net interest expense of the consolidated group for the relevant period, and

**B** is the group adjusted net book income of the consolidated group for the relevant period; and

**(b)** if the group adjusted net book income of the consolidated group for the relevant period is nil, nil. (*ratio de groupe*)

***net fair value amount*** means the positive or negative amount that is the total of all amounts, each of which is a positive or negative fair value amount in the consolidated financial statements of the consolidated group for a relevant period. (*montant de la juste valeur net*)

***relevant period*** means a period in respect of which the consolidated financial statements of a consolidated group are presented. (*période pertinente*)

***specified interest expense***, of a consolidated group for a relevant period, means the amount determined by the formula

**A – B**

financière ou seraient ainsi tenus de l'être si les entités étaient assujetties aux normes internationales d'information financière. (*consolidated group*)

***mère ultime*** S'entend d'une entité donnée si les conditions suivantes sont réunies :

**a)** l'entité donnée n'est pas Sa Majesté du chef du Canada, Sa Majesté du chef d'une province ou une entité visée à l'un des alinéas 149(1)c) à d.6);

**b)** elle détient directement ou indirectement une participation dans une ou plusieurs autres entités à l'égard desquelles elle est tenue d'établir des états financiers consolidés à des fins de présentation de l'information financière, ou le serait si elle était assujettie aux normes internationales d'information financière;

**c)** aucune entité (autre qu'une entité visée à l'alinéa a)) ne détient, directement ou indirectement, dans l'entité donnée une participation visée à l'alinéa b). (*ultimate parent*)

***montant de la juste valeur*** Tout montant reflété dans le revenu net ou la perte nette déclaré dans les états financiers consolidés d'un groupe consolidé pour une période pertinente où, à la fois :

**a)** la valeur comptable d'un actif ou d'un passif du groupe consolidé est mesurée à l'aide de la méthode de la comptabilisation de la juste valeur;

**b)** le montant reflète une variation de la valeur comptable de l'actif ou du passif au cours de la période pertinente et est pris en compte dans les éléments C ou H de la définition de *bénéfice net comptable rajusté du groupe*. (*fair value amount*)

***montant de la juste valeur net*** Le montant positif ou négatif représentant le total des sommes dont chacune représente un montant de la juste valeur positif ou négatif dans les états financiers consolidés du groupe consolidé pour une période pertinente. (*net fair value amount*)

***non-membre déterminé*** En ce qui concerne un groupe consolidé pour une période pertinente, une personne ou une société de personnes donnée qui n'est pas membre du groupe consolidé et qui, à un moment de la période :

**a)** a un lien de dépendance avec un membre du groupe;

**b)** seule ou avec d'autres personnes ou sociétés de personnes avec lesquelles la personne ou la société de personnes donnée a un lien de dépendance détient, ou a le droit d'acquérir, une ou plusieurs participations

where

**A** is the total of all amounts (other than amounts that are included in exempt interest and financing expenses), each of which is

**(a)** an amount of interest expense used in determining the amounts reported in the consolidated financial statements of the consolidated group for the relevant period,

**(b)** an amount of capitalized interest used in determining the amounts reported in those statements,

**(c)** the amount of a guarantee fee, standby charge, arrangement fee or similar fee paid or payable that is used in determining the amounts reported in those statements and that is not included in paragraph (a) or (b), or

**(d)** an amount referred to in any of paragraphs (a) to (c) that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss; and

**B** is the total of all amounts each of which is the amount of a dividend included in the determination of an amount referred to in any of paragraphs (a) to (d) of the description of A. (*dépenses d'intérêts déterminées*)

***specified interest income***, of a consolidated group for a relevant period, means the amount determined by the formula

**A – B**

where

**A** is the total of all amounts, each of which is

**(a)** an amount of interest income used in determining the amounts reported in the consolidated financial statements of the consolidated group for the relevant period,

**(b)** the amount of a guarantee fee, standby charge, arrangement fee or similar fee received or receivable that is used in determining the amounts reported in those statements and that is not included in paragraph (a), or

**(c)** an amount referred to in paragraph (a) or (b) that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that income or loss; and

**B** is the total of all amounts each of which is the amount of a dividend included in the determination of an amount referred to in any of paragraphs (a) to

au capital dans un membre du groupe qui, selon le cas :

**(i)** confère au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires du membre, si ce dernier est une société,

**(ii)** a au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans le membre;

**c)** est une personne ou une société de personnes à l'égard de laquelle un membre du groupe, seul ou avec d'autres personnes ou sociétés de personnes avec lesquelles il a un lien de dépendance, détient, ou a le droit d'acquérir, une ou plusieurs participations au capital dans la personne ou la société de personnes donnée qui, selon le cas :

**(i)** confère au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires de la personne donnée, si cette dernière est une société,

**(ii)** a au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans la personne ou la société de personnes donnée. (*specified non-member*)

***participation au capital*** S'entend, selon le cas :

**a)** d'une action du capital-actions d'une société;

**b)** d'une participation à titre de bénéficiaire d'une fiducie;

**c)** d'une participation à titre d'associé d'une société de personnes;

**d)** de tout intérêt similaire à l'égard de toute entité. (*equity interest*)

***période pertinente*** Période relativement à laquelle les états financiers consolidés d'un groupe consolidé sont présentés. (*relevant period*)

***principes comptables acceptables*** S'entend des normes internationales d'information financière et des principes comptables généralement reconnus dans les pays suivants :

**a)** Canada;

**b)** Australie;

**c)** Brésil;

(c) of the description of A. (*revenus d'intérêts déterminés*)

***specified non-member***, of a consolidated group for a relevant period, means a particular person or partnership that is not a member of the consolidated group and that, at any time in the period,

**(a)** does not deal at arm's length with a member of the group;

**(b)** alone or together with persons or partnerships with whom the particular person or partnership does not deal at arm's length owns, or has the right to acquire, one or more equity interests in a member of the group that

**(i)** provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the member, if the member is a corporation, or

**(ii)** have 25% or more of the fair market value of all equity interests in the member; or

**(c)** is a person or partnership in respect of which a member of the group — alone or together with persons or partnerships with whom the member does not deal at arm's length — owns, or has the right to acquire, one or more equity interests in the particular person or partnership that

**(i)** provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the particular person, if the particular person is a corporation, or

**(ii)** have 25% or more of the fair market value of all equity interests in the particular person or partnership. (*non-membre déterminé*)

***ultimate parent*** means a particular entity if

**(a)** the particular entity is not His Majesty in right of Canada, His Majesty in right of a province or an entity referred to in any of paragraphs 149(1)(c) to (d.6);

**(b)** it holds directly or indirectly an interest in one or more other entities in respect of which it is required to prepare consolidated financial statements for financial reporting purposes, or would be so required if it was subject to International Financial Reporting Standards; and

**(c)** no entity (other than an entity described in paragraph (a)) holds, directly or indirectly, in the particular entity an interest that is described in paragraph (b). (*mère ultime*)

**d)** pays membres de l'Union européenne;

**e)** pays membres de l'Espace économique européen;

**f)** Hong Kong (Chine);

**g)** Japon;

**h)** Mexique;

**i)** Nouvelle-Zélande;

**j)** République populaire de Chine;

**k)** République de l'Inde;

**l)** République de Corée;

**m)** Singapour;

**n)** Suisse;

**o)** Royaume-Uni;

**p)** États-Unis. (*acceptable accounting standards*)

***ratio de groupe*** En ce qui concerne un groupe consolidé pour une période pertinente, selon le cas :

**a)** sauf si l'alinéa b) s'applique, le pourcentage obtenu par la formule suivante :

**1,1 × A ÷ B**

où :

**A** représente les dépenses nettes d'intérêts du groupe relativement au groupe consolidé pour la période pertinente,

**B** le bénéfice net comptable rajusté du groupe relativement au groupe consolidé pour la période pertinente,

**b)** si le bénéfice net comptable rajusté du groupe relativement au groupe consolidé pour la période pertinente est zéro, zéro. (*group ratio*)

***revenus d'intérêts déterminés*** En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente le total des montants représentant chacun :

**a)** un montant de revenus d'intérêts qui entre dans le calcul des montants déclarés dans les états

financiers consolidés du groupe consolidé pour la période pertinente,

**b)** le montant des frais de garantie, des frais d'utilisation, de la commission d'arrangement ou d'autres frais semblables reçus ou à recevoir qui entre dans le calcul des montants déclarés dans ces états et qui n'est pas visé à l'alinéa a),

**c)** un montant visé aux alinéas a) ou b) qui est pris en compte dans la détermination du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette,

**B** le total des montants représentant chacun le montant d'un dividende pris en compte dans la détermination d'une somme visée à l'un des alinéas a) à c) de l'élément A. (*specified interest income*)

**Allocated group ratio amount**

**(2)** A taxpayer and each corporation or trust that is, throughout the relevant period, an eligible group entity in respect of that taxpayer and a member of the same consolidated group as the taxpayer (the taxpayer and each of the corporations or trusts being referred to in this subsection and subsection (4) as a "Canadian group member") may, if the taxpayer is a taxpayer described in subsection (7), elect, and otherwise jointly elect in respect of their taxation years ending in the relevant period (each referred to in this subsection and subsection (4) as a "relevant taxation year") to allocate amounts in respect of each relevant taxation year and the amount allocated to a member for a relevant taxation year is the amount determined in respect of that member for that relevant taxation year for the purposes of this section and subsection 18.2(2), if

**(a)** the consolidated financial statements of the consolidated group for the relevant period are audited financial statements;

**(b)** the election or amended election

**(i)** specifies the amount allocated to each Canadian group member for each relevant taxation year, and

**(ii)** is filed with the Minister by the taxpayer or a Canadian group member of the taxpayer on or before

**(A)** the latest filing-due date of a Canadian group member for a relevant taxation year, or

**(B)** the day that is 90 days after the sending of

**Montant attribué du ratio de groupe**

**(2)** Un contribuable et chaque société ou fiducie qui est, tout au long de la période pertinente, une entité admissible du groupe relativement à ce contribuable et un membre du même groupe consolidé que le contribuable (le contribuable et chacune de celles-ci étant appelés individuellement au présent paragraphe et au paragraphe (4) un « membre canadien du groupe »), peuvent, si le contribuable est visé au paragraphe (7), faire un choix, et autrement faire un choix conjoint relativement à leurs années d'imposition se terminant dans la période pertinente (chacune étant appelée au présent paragraphe et au paragraphe (4) une « année d'imposition pertinente ») pour attribuer les montants relativement à chaque année d'imposition pertinente et le montant attribué à un membre pour une année d'imposition pertinente est le montant déterminé relativement à ce membre pour cette année d'imposition pertinente pour l'application du présent article et du paragraphe 18.2(2), si les conditions suivantes sont réunies :

**a)** les états financiers consolidés du groupe consolidé pour la période pertinente sont des états financiers vérifiés;

**b)** le choix ou le choix modifié, à la fois :

**(i)** précise le montant attribué à chaque membre canadien du groupe pour chaque année d'imposition pertinente,

**(ii)** est présenté au ministre par le contribuable ou un membre canadien du groupe du contribuable au plus tard :

**(I)** a notice of assessment of tax payable under this Part by a Canadian group member for a relevant taxation year, or

**(II)** a notification that no tax is payable under this Part by a Canadian group member for a relevant taxation year;

**(c)** the total of all amounts, each of which is an amount allocated to a Canadian group member for a relevant taxation year, does not exceed the least of

**(i)** the total of all amounts in respect of a member each of which is determined by the formula

**A × B**

where

**A** is the group ratio of the consolidated group for the relevant period, and

**B** is the adjusted taxable income of the member for each relevant taxation year,

**(ii)** the group net interest expense of the consolidated group in respect of the relevant period, and

**(iii)** the total of all amounts, each of which would, in the absence of section 257, be the adjusted taxable income of a member for each relevant taxation year;

**(d)** an amended election has not been filed in accordance with this section; and

**(e)** where the election is an amended election,

**(i)** the following conditions are met:

**(A)** in the absence of any assessment, the condition set out in paragraph (c) would be met in respect of a prior election under this subsection made by the Canadian group members for a relevant taxation year under this subsection, and

**(B)** subsection 18.2(9) does not apply to a tax benefit in respect of a prior election for the relevant period, or

**(ii)** the Minister grants permission to amend the prior election under subsection (3).

**(A)** à la dernière date d'échéance de production d'un membre canadien du groupe pour une année d'imposition pertinente,

**(B)** le quatre-vingt-dixième jour suivant la date d'envoi des documents suivants :

**(I)** un avis de cotisation concernant l'impôt payable en vertu de la présente partie par un membre canadien du groupe pour une année d'imposition pertinente,

**(II)** un avis portant qu'aucun impôt n'est payable en vertu de la présente partie par un membre canadien du groupe pour une année d'imposition pertinente;

**c)** le total des montants dont chacun représente un montant attribué à un membre canadien du groupe pour une année d'imposition pertinente n'excède pas le moindre des montants suivants :

**(i)** le total des montants relativement à un membre dont chacun est déterminé selon la formule suivante :

**A × B**

où :

**A** représente le ratio de groupe du groupe consolidé pour la période pertinente,

**B** le revenu imposable rajusté du membre pour chaque année d'imposition pertinente,

**(ii)** les dépenses nettes d'intérêts du groupe consolidé relativement à la période pertinente,

**(iii)** le total des montants dont chacun représenterait, compte non tenu de l'article 257, le revenu imposable rajusté d'un membre pour chaque année d'imposition pertinent;

**d)** un choix modifié n'a pas été produit conformément au présent article;

**e)** lorsque le choix est un choix modifié :

**(i)** soit les conditions ci-après sont remplies :

**(A)** en l'absence de toute cotisation, la condition de l'alinéa c) serait remplie relativement à un choix antérieur fait par les membres canadiens du groupe pour une année d'imposition pertinente en vertu du présent paragraphe,

**(B)** le paragraphe 18.2(9) ne s'applique pas à un avantage fiscal relativement à un choix antérieur pour la période pertinente,

**(ii)** soit le ministre accorde l'autorisation de modifier le choix en vertu du paragraphe (3).

**Late or amended election**

**(3)** The Minister may extend the time for making an election or grant permission to amend or revoke an election under subsection (2) if

**(a)** the Canadian group members demonstrate to the satisfaction of the Minister that

**(i)** they made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election, and

**(ii)** the election or amended election, as the case may be, is filed as soon as circumstances permit; and

**(b)** in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made, amended or revoked.

**Choix modifié ou produit en retard**

**(3)** Le ministre peut proroger le délai pour faire le choix prévu au paragraphe (2), ou permettre que ce choix soit modifié ou annulé, si les conditions suivantes sont réunies :

**a)** les membres canadiens du groupe démontrent que, à la satisfaction du ministre, à la fois :

**(i)** ils ont fait des efforts voulus pour déterminer toutes les sommes qu'il est raisonnable de considérer comme pertinentes pour faire le choix,

**(ii)** le choix ou le choix modifié, selon le cas, est produit dès que les circonstances le permettent;

**b)** selon le ministre, les circonstances sont telles qu'il serait juste et équitable de permettre que le choix soit fait, modifié ou annulé.

**Fair value adjustments — election**

**(4)** For the purposes of calculating group adjusted net book income, the following rules apply:

**(a)** no amounts may be included in paragraph (d) of the description of F or in the description of K in the definition *group adjusted net book income* for any relevant period unless the Canadian group members jointly elect, for the first relevant taxation year in respect of which the Canadian group members jointly elect under subsection (2), to include net fair value amounts in calculating group adjusted net book income for the relevant period in which the first relevant taxation year ends;

**(b)** if an election to include net fair value amounts in the calculation is not made in the first relevant taxation year, each Canadian group member is deemed not to have so elected in that taxation year and any subsequent taxation year; and

**(c)** if an election to include net fair value amounts in the calculation is made in the first relevant taxation year, each Canadian group member is deemed to have so elected in that taxation year and any subsequent taxation year.

**Ajustements de la juste valeur — choix**

**(4)** Aux fins du calcul du bénéfice net comptable rajusté du groupe, les règles ci-après s'appliquent :

**a)** aucun montant ne peut être inclus dans l'alinéa d) de l'élément F ou dans l'élément K de la définition de *bénéfice net comptable rajusté du groupe* pour toute période pertinente, sauf si les membres canadiens du groupe font un choix conjoint, pour la première année d'imposition pertinente relativement à laquelle les membres canadiens du groupe font un choix conjoint en application du paragraphe (2), d'inclure les montants de la juste valeur nets dans le calcul du bénéfice net comptable rajusté du groupe pour la période pertinente au cours de laquelle la première année d'imposition pertinente se termine;

**b)** si le choix d'inclure les montants de la juste valeur nets dans le calcul n'est pas fait au cours de la première année d'imposition pertinente, chaque membre canadien du groupe est réputé ne pas avoir ainsi fait le choix au cours de cette année d'imposition et des années d'imposition subséquentes;

**c)** si le choix d'inclure les montants de la juste valeur nets dans le calcul est fait au cours de la première année d'imposition pertinente, chaque membre canadien du groupe est réputé avoir ainsi fait le choix au cours

**Assessment**

**(5)** If an election or amended election has been made under subsection (2), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election.

**Use of accounting terms**

**(6)** For the purposes of the definitions *consolidated financial statements*, *consolidated group*, *equity-accounted entity*, *fair value amount*, *group adjusted net book income*, *specified interest expense*, *specified interest income* and *ultimate parent* in subsection (1), a term that is not defined under this Act has the meaning assigned to the term for financial reporting purposes under the relevant acceptable accounting standards.

**Single member group**

**(7)** For the purposes of this section, if a taxpayer resident in Canada is not a member of a consolidated group for a relevant period,

**(a)** the taxpayer is deemed to be an eligible group entity in respect of itself;

**(b)** the taxpayer is deemed to be

**(i)** a member of a consolidated group that comprises only itself, and

**(ii)** the ultimate parent of the group; and

**(c)** the taxpayer's financial statements are deemed to be consolidated financial statements.

**Anti-avoidance — specified non-member**

**(8)** A particular person or partnership that is not a member of a consolidated group for a relevant period is deemed to be a specified non-member in respect of the group for the period if a portion of the amount of the specified interest expense of the group is paid or payable by a member of the group to the particular person or partnership as part of a transaction or series of transactions where it can reasonably be considered that one of the main purposes of the transaction or series is to avoid the inclusion of that portion in the determination of the amount for E in the definition *group net interest expense* in subsection (1).

de cette année d'imposition et des années d'imposition subséquentes.

**Cotisation**

**(5)** En cas de choix ou de choix modifié fait en vertu du paragraphe (2), le ministre, malgré les paragraphes 152(4) et (5), établit les cotisations ou les nouvelles cotisations concernant l'impôt, les intérêts et les pénalités payables en application de la présente loi par tout contribuable pour toute année d'imposition pertinente afin de rendre applicable le choix ou le choix modifié.

**Utilisation des termes comptables**

**(6)** Pour l'application des définitions de *bénéfice net comptable rajusté du groupe*, *dépenses d'intérêts déterminées*, *entité comptabilisée à la valeur de consolidation*, *états financiers consolidés*, *groupe consolidé*, *mère ultime*, *montant de la juste valeur* et *revenus d'intérêts déterminés* au paragraphe (1), un terme non défini en vertu de la présente loi a le sens qui lui est attribué aux fins de présentation de l'information financière selon les principes comptables acceptables pertinents.

**Groupe avec membre unique**

**(7)** Pour l'application du présent article, si un contribuable résidant au Canada n'est pas un membre d'un groupe consolidé pour une période pertinente :

**a)** le contribuable est réputé être une entité admissible du groupe relativement à lui-même;

**b)** le contribuable est réputé être :

**(i)** un membre d'un groupe consolidé dont il est le seul membre,

**(ii)** la mère ultime du groupe;

**c)** les états financiers du contribuable sont réputés être des états financiers consolidés.

**Anti-évitement — non-membre déterminé**

**(8)** Une personne ou une société de personnes donnée qui n'est pas un membre d'un groupe consolidé pour une période pertinente est réputée être un non-membre déterminé relativement au groupe pour la période si une partie du montant des dépenses d'intérêts déterminées du groupe est payée ou payable par un membre du groupe à la personne ou la société de personnes donnée dans le cadre d'une opération ou d'une série d'opérations lorsqu'il est raisonnable de considérer que l'un des principaux objets de l'opération ou de la série est d'éviter l'inclusion de cette partie dans la détermination de la valeur de l'élément E figurant à la définition de *dépenses nettes d'intérêts du groupe* au paragraphe (1).

**(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023, except that**

**(a) sections 18.2 and 18.21 of the Act, as enacted by subsection (1), also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if**

**(i) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series, and**

**(ii) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of section 18.2 or 18.21 of the Act, as enacted by subsection (1), or the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), to the taxpayer or to increase an amount of excess capacity of any taxpayer determined under paragraphs (c) and (d);**

**(b) paragraph (a) of the definition *ratio of permissible expenses* in subsection 18.2(1) of the Act, as enacted by subsection (1), is to be read, in respect of a taxpayer, as if its reference to "40%" were a reference to "30%" if**

**(i) any taxation year of the taxpayer that begins after 2022 but before 2024 is, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series, and**

**(ii) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph (b) of that definition to the taxpayer;**

**(c) for the purpose of determining the cumulative unused excess capacity of a taxpayer that is a corporation or a fixed interest commercial trust for a particular taxation year, the taxpayer's excess capacity for each of the three taxation years (in this paragraph and paragraph (d), each referred to as a "pre-regime year") immediately preceding the first taxation year of the taxpayer in respect of which subsection (1) applies (in this paragraph and paragraph (d) referred to as the "first regime year" of the taxpayer) is deemed to be nil unless**

**(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois :**

**a) les articles 18.2 et 18.21 de la même loi, édictés par le paragraphe (1), s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**(i) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série,**

**(ii) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe (1), ou l'application de l'alinéa 12(1)l.2), édicté par le paragraphe 2(1), au contribuable ou d'augmenter le montant de la capacité excédentaire d'un contribuable déterminée selon les alinéas c) et d);**

**b) l'alinéa a) de la définition de *ratio des dépenses admissibles* au paragraphe 18.2(1) de la même loi, édicté par le paragraphe (1), s'applique, relativement à un contribuable, comme si la mention de « 40 % » était remplacée par « 30 % » si, à la fois :**

**(i) toute année d'imposition du contribuable commençant après 2022, mais se termine avant 2024 est, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série,**

**(ii) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa b) de cette définition au contribuable;**

**c) pour déterminer la capacité excédentaire cumulative inutilisée d'un contribuable qui est une société ou une fiducie commerciale à participation fixe pour une année d'imposition donnée, la capacité excédentaire du contribuable, pour chacune des trois années**

**(i) the taxpayer and each corporation or fixed interest commercial trust that is an eligible group entity in respect of the taxpayer at the end of the first regime year (in this subsection referred to as an "eligible pre-regime group entity") jointly elect in prescribed form to have paragraph (d) apply in respect of the taxpayer,**

**(ii) the election or amended election is filed with the Minister by the taxpayer or by an eligible pre-regime group entity of the taxpayer on or before the earliest filing-due date for the first regime year of the taxpayer or of any eligible pre-regime group entity of the taxpayer, and**

**(iii) in the election the taxpayer and the eligible pre-regime group entities**

**(A) allocate to the taxpayer or eligible pre-regime group entities in respect of the taxpayer, for the purpose of determining the taxpayer's cumulative unused excess capacity for the particular taxation year and any other taxation year in which the taxpayer's ratio of permissible expenses is the same as in the particular year, one or more portions of the *group net excess capacity* (as defined in subparagraph (d)(vi)) for the pre-regime years that is determined for that purpose, and**

**(B) set out, for the taxpayer and each eligible pre-regime group entity, the *excess interest* (as defined in subparagraph (d)(ii)) for each pre-regime year, the *excess capacity otherwise determined* (as defined in subparagraph (d)(iii)) for each pre-regime year and the *net excess capacity* (as defined in subparagraph (d)(v)) for the pre-regime years; and**

**(d) if the conditions set out in subparagraphs (c)(i) to (iii) are satisfied, for the purpose of determining the taxpayer's cumulative unused excess capacity for a particular taxation year and any other taxation year in which the taxpayer's ratio of permissible expenses is the same as in the particular year, the taxpayer's excess capacity for a pre-regime year (other than for the purposes of this paragraph) is determined in accordance with the following rules:**

**d'imposition (chacune appelée « année antérieure au régime » au présent alinéa et à l'alinéa d)) qui précède immédiatement la première année d'imposition du contribuable relativement à laquelle le paragraphe (1) s'applique (appelée « première année du régime » du contribuable au présent alinéa et à l'alinéa d)), est réputée nulle, sauf si les faits ci-après se vérifient :**

**(i) le contribuable et chaque société ou fiducie commerciale à participation fixe qui est une entité admissible du groupe relativement au contribuable à la fin de la première année du régime (appelée « entité admissible du groupe antérieure au régime » au présent paragraphe) font un choix conjoint sur le formulaire prescrit afin que l'alinéa d) s'applique relativement au contribuable,**

**(ii) le choix ou le choix modifié est présenté au ministre par le contribuable ou par une entité admissible du groupe antérieure au régime du contribuable au plus tard à la date de production la plus rapprochée pour la première année du régime du contribuable ou d'une entité admissible du groupe antérieure au régime du contribuable,**

**(iii) dans le document concernant le choix, le contribuable et les entités admissibles du groupe antérieures au régime, à la fois :**

**(A) attribuent au contribuable ou aux entités admissibles du groupe antérieures au régime relativement au contribuable, afin de déterminer la capacité excédentaire cumulative inutilisée du contribuable pour l'année d'imposition donnée ou pour toute autre année d'imposition dans laquelle le ratio des dépenses admissibles du contribuable est identique à celui de l'année donnée, une ou plusieurs parties de la *capacité excédentaire nette du groupe* (au sens du sous-alinéa d)(vi)) pour les années antérieures au régime qui est déterminée à cette fin,**

**(B) mentionnent, pour le contribuable et chaque entité admissible du groupe antérieure, les *intérêts excédentaires* (au sens du sous-alinéa d)(ii)) pour chaque année antérieure au régime, la *capacité excédentaire déterminée par ailleurs* (au sens du sous-alinéa d)(iii)) pour chaque année antérieure au régime et la *capacité***

**(i) for the purposes of this paragraph, the determination of whether a corporation or a fixed interest commercial trust is an eligible pre-regime group entity in respect of the taxpayer is to be made at the end of the taxpayer's first regime year,**

**(ii) the *excess interest*, of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer, for a pre-regime year, means the amount that would be determined for the pre-regime year under paragraph (b) of the definition *absorbed capacity* in subsection 18.2(1) of the Act, as enacted by subsection (1),**

**(iii) the *excess capacity otherwise determined* means the amount that would be the excess capacity of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer for a pre-regime year, if that amount were determined under the definition *excess capacity* in subsection 18.2(1) of the Act, as enacted by subsection (1),**

**(iv) for the purposes of this paragraph, if the taxpayer or an eligible pre-regime group entity in respect of the taxpayer was subject to a loss restriction event at the beginning of any of its pre-regime years, its excess capacity otherwise determined and its excess interest for any pre-regime year that precedes that year are deemed to be nil,**

**(v) the *net excess capacity* of a taxpayer for its pre-regime years means the amount, if any, by which the total of all amounts each of which is the excess capacity otherwise determined of the taxpayer for a pre-regime year exceeds the total of all amounts each of which is the excess interest of the taxpayer for a pre-regime year,**

**(vi) the *group net excess capacity* for the pre-regime years means the amount, if any, by which the total of all amounts each of which is the excess capacity otherwise determined of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer (other than a taxpayer or eligible pre-regime group entity that is, at any time in a pre-regime year, a financial institution group entity or a person exempt from tax under Part I of the Act) for a pre-regime year exceeds the total of all amounts each of which is the excess interest of the taxpayer or an *excédentaire nette* (au sens du sous-alinéa d)(v)) pour les années antérieures au régime;**

**d) si les conditions énoncées aux sous-alinéas c)(i) à (iii) sont remplies, pour déterminer la capacité excédentaire cumulative inutilisée du contribuable pour une année d'imposition donnée ou pour toute autre année d'imposition dans laquelle le ratio des dépenses admissibles du contribuable est identique à celui de l'année donnée, sa capacité excédentaire pour une année antérieure au régime, sauf pour l'application du présent alinéa, est déterminée conformément aux règles suivantes :**

**(i) pour l'application du présent alinéa, la question de savoir si une société ou une fiducie commerciale à participation fixe est une entité admissible du groupe antérieure au régime relativement au contribuable doit être déterminée à la fin de la première année du régime du contribuable,**

**(ii) les *intérêts excédentaires* du contribuable ou d'une entité admissible du groupe antérieure au régime relativement au contribuable, pour une année antérieure au régime, s'entendent du montant qui serait déterminé pour l'année antérieure au régime, en vertu de l'alinéa b) de la définition de *capacité absorbée* au paragraphe 18.21(1) de la même loi, édicté par le paragraphe (1),**

**(iii) la *capacité excédentaire déterminée par ailleurs* s'entend du montant qui serait la capacité excédentaire du contribuable ou d'une entité admissible du groupe antérieure au régime relativement au contribuable pour une année antérieure au régime, si ce montant était déterminé selon la définition de *capacité excédentaire* au paragraphe 18.2(1) de la même loi, édicté par le paragraphe (1),**

**(iv) pour l'application du présent alinéa, si le contribuable ou une entité admissible du groupe antérieure au régime relativement au contribuable était assujetti à un fait lié à la restriction de pertes au début de l'une de ses années antérieures au régime, sa capacité excédentaire déterminée par ailleurs et ses intérêts excédentaires pour toute année antérieure au régime précédant cette année sont réputés nuls,**

**eligible pre-regime group entity (other than a taxpayer or eligible pre-regime group entity that is, at any time in a pre-regime year, a financial institution group entity or a person exempt from tax under Part I of the Act) for a pre-regime year,**

**(vii) for the purposes of determining the excess capacity otherwise determined or the excess interest of the taxpayer or an eligible pre-regime group entity for a pre-regime year, the net excess capacity of the taxpayer or an eligible pre-regime group entity for its pre-regime years and the group net excess capacity for pre-regime years,**

**(A) the ratio of permissible expenses is the same as the taxpayer's ratio of permissible expenses for the particular year, and**

**(B) if it is the case that, in respect of a pre-regime year, the conditions set out in subsection 18.21(2) of the Act, as enacted by subsection (1), would be met in respect of the taxpayer and each eligible pre-regime group entity that is a member of the same consolidated group in respect of the year — if the reference in subsection 18.21(2) to the "filing–due date of a Canadian group member for the year" were read as a reference to the "filing-due date of any Canadian group member for its first regime year" — then subsection 18.21(2) of the Act, as enacted by subsection (1), applies in respect of the taxpayer and each such eligible pre-regime group entity for the pre-regime year,**

**(viii) the taxpayer's excess capacity for a pre-regime year is deemed to be**

**(A) if the taxpayer's net excess capacity for its pre-regime years is not a positive amount, nil, and**

**(B) in any other case, the lesser of**

**(I) the taxpayer's excess capacity otherwise determined for the pre-regime year, and**

**(II) the portion, if any, of the group net excess capacity allocated to the taxpayer for the year in the joint election under paragraph (c), and**

**(v) la *capacité excédentaire nette* d'un contribuable pour ses années antérieures au régime s'entend de l'excédent éventuel du total des montants dont chacun représente la capacité excédentaire déterminée par ailleurs du contribuable pour une année antérieure au régime sur le total des montants dont chacun représente ses intérêts excédentaires pour une année antérieure au régime,**

**(vi) la *capacité excédentaire nette du groupe* pour les années antérieures au régime s'entend de l'excédent éventuel du total des montants dont chacun représente la capacité excédentaire déterminée par ailleurs du contribuable ou d'une entité admissible du groupe antérieure au régime relativement au contribuable (sauf un contribuable ou une entité admissible du groupe antérieure au régime qui est, à un moment donné au cours d'une année antérieure au régime, une entité du groupe d'institutions financières ou une personne exonérée d'impôt en vertu de la partie I de la même loi) pour une année antérieure au régime sur le total des montants dont chacun représente les intérêts excédentaires du contribuable ou d'une entité admissible du groupe antérieure au régime (sauf un contribuable ou une entité admissible du groupe antérieure au régime qui est, à un moment donné au cours d'une année antérieure au régime, une entité du groupe d'institutions financières ou une personne exonérée d'impôt en vertu de la partie I de la même loi) pour une année antérieure au régime,**

**(vii) pour déterminer la capacité excédentaire déterminée par ailleurs ou les intérêts excédentaires du contribuable ou d'une entité admissible du groupe antérieure au régime pour une année antérieure au régime, la capacité excédentaire nette du contribuable ou d'une entité admissible du groupe antérieure au régime pour ses années antérieures au régime et la capacité excédentaire nette du groupe pour les années antérieures au régime :**

**(A) le ratio des dépenses admissibles est identique à celui du contribuable pour l'année donnée,**

**(B) s'il s'avère que, relativement à une année antérieure au régime, les conditions**

**(ix) notwithstanding subparagraph (viii), the taxpayer's excess capacity for each pre-regime year is deemed to be nil if**

**(A) the total of all amounts each of which is a portion of the group net excess capacity that is allocated to the taxpayer or an eligible pre-regime group entity in respect of the taxpayer for a pre-regime year in the joint election under paragraph (c) is greater than the group net excess capacity, or**

**(B) the total of all amounts each of which is a portion of the group net excess capacity that is allocated to the taxpayer for a pre-regime year under the joint election is greater than the taxpayer's net excess capacity for its pre-regime years;**

**(e) an amended election is deemed to be filed in accordance with subparagraph (c)(ii) if**

**(i) as a result of an assessment or reassessment, the amount of excess interest or excess capacity otherwise determined of the taxpayer, or any eligible pre-regime group entity (other than a financial institution group entity or a person exempt from tax under Part I of the Act) in respect of the taxpayer, is different from the amount reported by the taxpayer or eligible group entity in a prior election under this subsection,**

**(ii) in the absence of the assessment or reassessment, the taxpayer's excess capacity for each pre-regime year would not be deemed to be nil under subparagraph (d)(ix) based on a prior election, and**

**(iii) the amended election is filed within 90 days of the reassessment;**

**(f) if an election or amended election has been made under paragraph (c), the Minister shall, despite subsections 152(4) and (5) of the Act, assess or reassess the tax, interest or penalties payable under the Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election; and**

**(g) despite paragraphs (c) and (e), the Minister may accept an election or amended election if**

**(i) the taxpayer and the eligible pre-regime group entities in respect of the taxpayer**

**énoncées au paragraphe 18.21(2) de la même loi, édicté par le paragraphe (1), étaient remplies relativement au contribuable et chaque entité admissible du groupe antérieure au régime qui est un membre du même groupe consolidé pour l'année — si la mention « date d'échéance de production d'un membre du groupe canadien pour l'année » à ce paragraphe était remplacée par la mention « date d'échéance de production d'un membre canadien du groupe pour sa première année du régime » — ce paragraphe 18.21(2) de la même loi, édicté par le paragraphe (1), s'applique relativement au contribuable et à chaque entité admissible du groupe antérieure au régime pour l'année antérieure au régime,**

**(viii) la capacité excédentaire du contribuable pour une année antérieure au régime est réputée :**

**(A) si la capacité excédentaire nette du contribuable pour ses années antérieures au régime n'est pas un montant positif, nulle,**

**(B) dans les autres cas, le moins élevé des montants suivants :**

**(I) la capacité excédentaire déterminée par ailleurs du contribuable pour l'année antérieure au régime,**

**(II) la partie éventuelle de la capacité excédentaire nette du groupe attribuée au contribuable pour l'année dans le choix prévu à l'alinéa c),**

**(ix) malgré le sous-alinéa (viii), la capacité excédentaire du contribuable pour chaque année antérieure au régime est réputée nulle si, selon le cas :**

**(A) le total des montants représentant chacun une partie de la capacité excédentaire nette du groupe qui est attribuée au contribuable ou à une entité admissible du groupe antérieure au régime relativement au contribuable pour une année antérieure au régime dans le choix prévu à l'alinéa c) est supérieur à la capacité excédentaire nette du groupe,**

**(B) le total des montants représentant chacun une partie de la capacité**

**demonstrate to the satisfaction of the Minister that**

**(A) they made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election or amended election, and**

**(B) the election or amended election, as the case may be, is filed as soon as circumstances permit, and**

**(ii) in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made or amended.**

**excédentaire nette du groupe qui est attribuée au contribuable pour une année antérieure au régime en vertu du choix conjoint est supérieur à sa capacité excédentaire nette pour ses années antérieures au régime;**

**e) un choix modifié est réputé être présenté conformément au sous-alinéa c)(ii) si, à la fois :**

**(i) par suite d'une cotisation ou d'une nouvelle cotisation, le montant des intérêts excédentaires ou de la capacité excédentaire déterminé par ailleurs du contribuable ou de toute entité admissible du groupe antérieure au régime (sauf une entité du groupe d'institutions financières ou une personne exonérée d'impôt en vertu de la partie I de la même loi) relativement au contribuable diffère du montant déclaré par le contribuable ou l'entité admissible du groupe dans un choix antérieur prévu au présent paragraphe,**

**(ii) en l'absence de la cotisation ou de la nouvelle cotisation, la capacité excédentaire du contribuable pour chaque année antérieure au régime ne serait pas réputé nulle en vertu du sous-alinéa d)(ix) selon un choix antérieur,**

**(iii) le choix modifié est produit dans les quatre-vingt-dix jours suivant la nouvelle cotisation;**

**f) en cas de choix ou de choix modifié fait conformément à l'alinéa c), le ministre, malgré les paragraphes 152(4) et (5) de la même loi, établit les cotisation et nouvelle cotisation voulues, pour rendre le choix ou le choix modifié applicable, concernant l'impôt, les intérêts et les pénalités payables par tout contribuable en application de la même loi pour toute année d'imposition pertinente;**

**g) malgré les alinéas c) et e), le ministre peut accepter un choix ou un choix modifié si, à la fois :**

**(i) le contribuable et les entités admissibles du groupe antérieures au régime relativement au contribuable démontrent, à la satisfaction du ministre, que, à la fois :**

**(A) ils ont fait des efforts voulus pour déterminer toutes les sommes qu'il est**

**raisonnable de considérer comme pertinentes pour faire le choix ou le choix modifié,**

**(B) le choix ou le choix modifié, selon le cas, est produit dès que les circonstances le permettent,**

**(ii) selon le ministre, les circonstances sont telles qu'il serait juste et équitable de permettre que le choix soit fait ou modifié.**

**8 (1) The Act is amended by adding the following after section 18.3:**

**Hybrid mismatch arrangements — definitions**

**18.4 (1)** The following definitions apply in this section and paragraph 20(1)(yy).

***Canadian ordinary income***, of a taxpayer for a taxation year in respect of a payment, means an amount that is

**(a)** if the taxpayer is not a partnership, included in respect of the payment in computing, in the case of a taxpayer resident in Canada, the income of the taxpayer for the purposes of this Part — or, in the case of a taxpayer that is a non-resident person, the taxable income earned in Canada of the taxpayer — for the year, except to the extent that

**(i)** the amount is included in the Canadian ordinary income of any taxpayer under paragraph (b) or (c),

**(ii)** the taxpayer is entitled to a deduction under section 112 or 113 in respect of the payment, or

**(iii)** the amount can otherwise reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from tax under this Part by reason of any exemption, exclusion, deduction, credit (other than a credit for a tax substantially similar to tax under Part XIII) or other form of relief under this Act that

**(A)** applies specifically in respect of all or a portion of the amount and not in computing income generally, or

**(B)** arises in respect of the payment;

**(b)** if the taxpayer is a partnership, determined by the formula

**A × B ÷ C – D**

where

**8 (1) La même loi est modifiée par adjonction, après l'article 18.3, de ce qui suit :**

**Dispositifs hybrides — définitions**

**18.4 (1)** Les définitions qui suivent s'appliquent au présent article et à l'alinéa 20(1)yy).

***année d'imposition étrangère*** La période d'une entité dans le cadre de laquelle ses comptes sont habituellement dressés pour le calcul des revenus ou bénéfices étrangers pertinents, cette période ne pouvant cependant dépasser 53 semaines. (*foreign taxation year*)

***bénéficiaire*** S'agissant d'un paiement, comprend toute entité qui a droit à se faire verser, porter à son crédit ou conférer un paiement par une entité, dans l'immédiat ou pour l'avenir et conditionnellement ou non. (*recipient*)

***déductible*** À l'égard d'une somme relativement à un paiement, dans le calcul des revenus ou bénéfices étrangers pertinents, comprend tout allègement qui découle du paiement et qui a un effet équivalent à une déduction, notamment :

**a)** une exonération ou une exclusion dans le calcul des revenus ou bénéfices étrangers pertinents;

**b)** un remboursement ou un crédit qui peut être appliqué pour réduire ou compenser de l'impôt sur le revenu ou sur les bénéfices payé ou payable à un gouvernement d'un pays étranger relativement aux revenus ou bénéfices étrangers pertinents. (*deductible*)

***dispositif hybride*** S'entend de l'un des dispositifs ci-après duquel un paiement découle :

**a)** un dispositif d'instrument financier hybride;

**b)** un dispositif de transfert hybride;

**c)** un dispositif de paiement par substitution. (*hybrid mismatch arrangement*)

***dispositif structuré*** Opération ou série d'opérations pour laquelle les conditions ci-après sont réunies :

**A** is an amount that is included in respect of the payment in computing the income or loss of the partnership from any source, or from sources in a particular place, for the year, except to the extent that the amount

**(i)** is included in the Canadian ordinary income of any taxpayer under paragraph (c), or

**(ii)** can reasonably be considered to be excluded, reduced, offset or otherwise sheltered by any reason described in subparagraph (a)(iii),

**B** is the total of all amounts, each of which is, in respect of the partnership's income or loss from that source or the sources in the particular place for the year,

**(i)** the share of a member of the partnership that is a person resident in Canada, or

**(ii)** the share of a member of the partnership that is a non-resident person to the extent it is included in computing the non-resident person's taxable income earned in Canada,

**C** is the income or loss of the partnership from the source, or the sources in the particular place, for the year, and

**D** is the total of all amounts, each of which is an amount deductible, in respect of the payment, by a member of the partnership under section 112 or 113; or

**(c)** determined by the formula

**E × F**

where

**E** is the amount determined by the formula

**G × H**

where

**G** is an amount that is included in respect of the payment in computing the foreign accrual property income of a controlled foreign affiliate of the taxpayer for a *taxation year* (as defined in subsection 95(1)) of the affiliate ending in the year, except to the extent the amount can reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered for any reason described in subparagraph (a)(iii), and

**H** is the *aggregate participating percentage* (as defined in subsection 91(1.3)) of the taxpayer in respect of the affiliate for the taxation year of the affiliate, and

**F** is

**a)** l'opération ou la série comprend un paiement qui donne lieu à une asymétrie de déduction/non-inclusion;

**b)** compte tenu de l'ensemble des faits et circonstances, notamment les modalités de l'opération ou de la série, il est raisonnable de considérer que, selon le cas :

**(i)** la totalité ou une partie d'un avantage économique découlant de l'asymétrie de déduction/non-inclusion est reflétée dans l'établissement du prix de l'opération ou de la série,

**(ii)** l'opération ou la série est par ailleurs, directement ou indirectement, conçue afin de donner lieu à une asymétrie de déduction/non-inclusion. (*structured arrangement*)

***entité*** S'entend au sens du paragraphe 95(1). (*entity*)

***entité déterminée*** Relativement à une autre entité à un moment donné, s'entend d'une entité donnée, compte tenu des règles énoncées au paragraphe (17), si, selon le cas :

**a)** l'entité donnée, à ce moment donné, soit seule, soit avec des entités avec lesquelles elle a un lien de dépendance, détient directement ou indirectement des participations au capital dans l'autre entité qui, selon le cas :

**(i)** confèrent au moins 25 % des voix pouvant être exprimées à une assemblée annuelle des actionnaires, si cette autre entité est une société,

**(ii)** représentent au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans cette autre entité;

**b)** la condition énoncée à l'alinéa a) serait remplie si, à cet alinéa, la mention « entité donnée » était remplacée par la mention « autre entité » et si la mention « autre entité » était remplacée par la mention « entité donnée »;

**c)** une troisième entité, à ce moment donné, soit seule, soit avec des entités avec lesquelles elle a un lien de dépendance, détient directement ou indirectement des participations au capital dans l'entité donnée et dans l'autre entité qui, relativement à chacune de celles-ci, selon le cas :

**(i)** confèrent au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires, si l'entité donnée ou l'autre entité, selon le cas, est une société,

**(i)** if the taxpayer is a partnership, the amount determined by the formula

**I ÷ E**

where

**I** is the total of all amounts each of which is a share of the amount determined for E of a member of the partnership that is a person resident in Canada, and

**(ii)** in any other case, 1. (*revenu ordinaire canadien*)

***controlled foreign company tax regime*** means a set of provisions under the tax laws of a particular country other than Canada under which a direct or indirect shareholder of an entity that is located in a country other than the particular country is subject to current taxation in respect of its share of all or part of the income earned by the entity, irrespective of whether that income is distributed currently to the shareholder. (*régime fiscal des sociétés étrangères contrôlées*)

***deductible***, in relation to an amount in respect of a payment, in computing relevant foreign income or profits, includes any relief that arises in respect of the payment and is equivalent in effect to a deduction, including

**(a)** an exemption or exclusion in computing the relevant foreign income or profits; and

**(b)** a refund of, or credit that can be applied to reduce or offset, income or profits tax paid or payable to a government of a country other than Canada in respect of the relevant foreign income or profits. (*déductible*)

***entity*** has the same meaning as in subsection 95(1). (*entité*)

***equity interest*** means any of the following:

**(a)** a share of the capital stock of a corporation;

**(b)** an interest as a beneficiary under a trust;

**(c)** an interest as a member of a partnership; or

**(d)** any similar interest in respect of any entity. (*participation au capital*)

***equity or financing return*** means a payment that can reasonably be considered to be in respect of, or determined by reference to,

**(a)** revenue, profit, cash flow, commodity price or any other similar criterion;

**(ii)** représentent au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans l'entité donnée ou l'autre entité, selon le cas. (*specified entity*)

***instrument financier*** S'entend :

**a)** d'une dette;

**b)** d'une participation au capital ou de tout droit qui peut raisonnablement être considéré comme reproduisant un droit de participation aux bénéfices ou aux gains d'une entité;

**c)** de tout autre dispositif donnant lieu à un rendement financier ou de capitaux propres. (*financial instrument*)

***montant de l'asymétrie hybride*** Relativement à un paiement, s'entend de l'un des montants suivants :

**a)** si le paiement découle d'un dispositif d'instrument financier hybride, le montant de l'asymétrie d'instrument financier hybride relativement au paiement;

**b)** si le paiement découle d'un dispositif de transfert hybride, le montant de l'asymétrie de transfert hybride relativement au paiement;

**c)** si le paiement découle d'un dispositif de paiement par substitution, le montant de l'asymétrie de paiement par substitution relativement au paiement. (*hybrid mismatch amount*)

***opération*** Sont assimilés aux opérations les arrangements et les événements. (*transaction*)

***paiement*** Comprend toute somme ou tout avantage qu'une entité à l'obligation de payer à une entité, de porter à son crédit ou de lui conférer, dans l'immédiat ou pour l'avenir et conditionnellement ou non. (*payment*)

***paiement compensatoire (courtier) exonéré*** Paiement, à la fois :

**a)** qui représente un *paiement compensatoire (courtier)* (au sens du paragraphe 260(1));

**b)** qu'un courtier en valeurs mobilières inscrit résidant au Canada reçoit, en compensation d'un dividende imposable versé sur une action du capital-actions d'une société publique, d'une société non-résidente (appelée « société affiliée » dans la présente définition) qui, au moment où le paiement est reçu, à la fois :

**(i)** est une société étrangère affiliée contrôlée :

**(b)** dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation, or income or capital paid or payable to any member of a partnership or beneficiary under a trust, or any other distribution in respect of any entity; or

**(c)** an amount that is, or is on account of, in lieu of payment of or in satisfaction of, interest, or that is otherwise compensation for the use of money. (*rendement financier ou de capitaux propres*)

***exempt dealer compensation payment*** means a payment that

**(a)** is a *dealer compensation payment* (as defined in subsection 260(1));

**(b)** is received by a registered securities dealer resident in Canada, as compensation for a taxable dividend paid on a share of the capital stock of a public corporation, from a non-resident corporation (referred to in this definition as the "affiliate") that, at the time the payment is received,

**(i)** is a controlled foreign affiliate of

**(A)** the registered securities dealer, or

**(B)** another taxpayer that does not deal at arm's length with the registered securities dealer,

**(ii)** has a substantial market presence in a particular country other than Canada,

**(iii)** makes the payment in the ordinary course of a business of trading in securities, if

**(A)** the business is carried on by the affiliate as a *foreign bank* (as defined in subsection 95(1)), a trust company, a credit union, an insurance corporation or a trader or dealer in securities,

**(B)** the activities of the business are regulated under the laws of

**(I)** the particular country,

**(II)** another country under the laws of which the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment, or

**(III)** if the affiliate is related to a corporation, another country under the laws of which the

**(A)** soit du courtier en valeurs mobilières inscrit,

**(B)** soit d'un autre contribuable ayant un lien de dépendance avec le courtier en valeurs mobilières inscrit,

**(ii)** a une présence importante sur les marchés d'un pays étranger donné,

**(iii)** fait le paiement dans le cours normal d'une entreprise d'opérations sur valeurs, si, à la fois :

**(A)** elle exploite l'entreprise en tant que *banque étrangère* (au sens du paragraphe 95(1)), société de fiducie, caisse de crédit, compagnie d'assurance ou négociateur ou courtier en valeurs mobilières,

**(B)** les activités de l'entreprise sont réglementées en vertu des lois, selon le cas :

**(I)** du pays donné,

**(II)** d'un autre pays sous le régime des lois duquel la société affiliée est régie et, selon le cas, existe, a été constituée ou organisée (sauf si elle a été prorogée dans un territoire quelconque) ou a été prorogée la dernière fois et de chaque pays où l'entreprise est exploitée par l'intermédiaire d'un établissement stable,

**(III)** si la société affiliée est liée à une société, un autre pays sous le régime des lois duquel la société liée est régie et, selon le cas, existe, a été constituée ou organisée (sauf si elle a été prorogée dans un territoire quelconque) ou a été prorogée la dernière fois, si ces lois sont reconnues par les lois du pays où l'entreprise est principalement exploitée et si ces pays sont tous membres de l'Union européenne,

**(iv)** mène les activités de l'entreprise, directement ou indirectement, à la fois :

**(A)** principalement avec des personnes qui, à la fois :

**(I)** n'ont aucun lien de dépendance avec la société affiliée,

**(II)** résident dans le pays donné ou y exploitent une entreprise par l'intermédiaire d'un établissement stable,

**(B)** font concurrence avec d'autres entités qui, à la fois :

related corporation is governed and any of exists, was (unless the related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

**(iv)** conducts the business, directly or indirectly,

**(A)** principally with persons that

**(I)** deal at arm's length with the affiliate, and

**(II)** are resident, or carry on business through a permanent establishment, in the particular country, and

**(B)** in competition with other entities that

**(I)** deal at arm's length with the affiliate, and

**(II)** have a substantial market presence in the particular country; and

**(c)** does not arise under, or in connection with, a structured arrangement. (*paiement compensatoire (courtier) exonéré*)

***financial instrument*** means

**(a)** a debt;

**(b)** an equity interest or any right that may reasonably be considered to replicate a right to participate in profits or gain of any entity; or

**(c)** any other arrangement that gives rise to an equity or financing return. (*instrument financier*)

***foreign expense restriction rule*** means a provision under the tax laws of a country other than Canada that can reasonably be considered to

**(a)** have an effect, or be intended to have an effect, that is substantially similar to that of subsection 18(4); or

**(b)** have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part,

**(i)** any of the recommendations set out in *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2016 Update*,

**(I)** n'ont aucun lien de dépendance avec la société affiliée,

**(II)** ont une présence importante sur les marchés du pays donné;

**c)** qui ne découle pas d'un dispositif structuré ou ne s'y rapporte pas. (*exempt dealer compensation payment*)

***participation au capital*** S'entend :

**a)** d'une action du capital-actions d'une société;

**b)** d'une participation à titre de bénéficiaire d'une fiducie;

**c)** d'une participation à titre d'associé d'une société de personnes;

**d)** d'une participation semblable relativement à une entité. (*equity interest*)

***payeur*** S'agissant d'un paiement, comprend toute entité qui a l'obligation de payer à une entité, de porter à son crédit ou de lui conférer le paiement, dans l'immédiat ou pour l'avenir et conditionnellement ou non. (*payer*)

***régime fiscal des sociétés étrangères contrôlées*** S'entend d'un ensemble de dispositions des lois fiscales d'un pays donné, autre que le Canada, en vertu desquelles un actionnaire direct ou indirect d'une entité qui se trouve dans un pays autre que le pays donné est assujetti à l'impôt courant relativement à sa part sur la totalité ou une partie du revenu gagné par l'entité, que ce revenu ait été ou non distribué à l'actionnaire. (*controlled foreign company tax regime*)

***régime fiscal minimum déterminé*** S'entend, selon le cas, des :

**a)** dispositions relatives au revenu mondial incorporel faiblement imposé (*global intangible low-taxed income*) au sens de l'article 951A de la loi des États-Unis intitulée *Internal Revenue Code of 1986* avec ses modifications successives;

**b)** dispositions des lois fiscales d'un pays qui peuvent raisonnablement être considérées comme édictées ou mises en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie, les *Règles globales anti-érosion de la base d'imposition* énoncées dans *Les défis fiscaux soulevés par la numérisation de l'économie – Règles globales anti-érosion de la base d'imposition (Pilier Deux)*, publiées par l'Organisation de coopération et de développement économiques;

published by the Organisation for Economic Co-operation and Development, or

**(ii)** the *Global Anti-Base Erosion Model Rules* set out in *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*, published by the Organisation for Economic Co-operation and Development. (*règle étrangère de restriction des dépenses*)

***foreign hybrid mismatch rule*** means a provision, under the tax laws of a country other than Canada, that can reasonably be considered to

**(a)** have an effect that is substantially similar to that of a provision under this section, section 12.7 or subsection 113(5); or

**(b)** have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report* published by the Organisation for Economic Co-operation and Development, as amended from time to time. (*règle étrangère d'asymétrie hybride*)

***foreign ordinary income***, of an entity for a foreign taxation year in respect of a payment, means an amount that is determined by the formula

**A – B – C – D – E – F**

where

**A** is an amount (referred to in this definition as the "relevant amount") that is included in respect of the payment in computing relevant foreign income or profits of the entity for the year (other than income or profits in respect of which the entity is subject to a tax substantially similar to tax under Part XIII, or a tax under a controlled foreign company tax regime or a specified minimum tax regime) because the entity is a recipient of the payment or has a direct or indirect equity interest in a recipient of the payment;

**B** is

**(a)** if the relevant amount is included in computing relevant foreign income or profits in respect of which the entity is subject to an income or profits tax that is charged at a nil rate, the relevant amount, or

**(b)** in any other case, nil;

**C** is any portion of the relevant amount that is included in computing relevant foreign income or profits of the entity for the year because of any foreign hybrid

**c)** dispositions des lois fiscales d'un pays qui peuvent raisonnablement être considérées comme édictées ou mises en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie, un *impôt complémentaire minimum qualifié prélevé localement* (au sens des règles types visées à l'alinéa b)). (*specified minimum tax regime*)

***règle étrangère d'asymétrie hybride*** S'entend d'une disposition des lois fiscales d'un pays étranger qui peut raisonnablement être considérée, selon le cas :

**a)** comme ayant un effet substantiellement semblable à celui d'une disposition du présent article, de l'article 12.7 ou du paragraphe 113(5);

**b)** comme étant édictée ou mise en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie, le rapport intitulé *Neutraliser les effets des dispositifs hybrides, Action 2 – Rapport final 2015* de l'Organisation de coopération et développement économiques publié avec ses modifications successives. (*foreign hybrid mismatch rule*)

***règle étrangère de restriction des dépenses*** S'entend d'une disposition des lois fiscales d'un pays étranger qui peut raisonnablement être considérée, selon le cas :

**a)** comme ayant un effet, ou étant destinée à avoir un effet, substantiellement semblable à celui du paragraphe 18(4);

**b)** comme étant édictée ou mise en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie,

**(i)** l'une des recommandations énoncées dans *Limiter l'érosion de la base d'imposition faisant intervenir les déductions d'intérêts et d'autres frais financiers Action 4 – Version actualisée 2016*, publiées par l'Organisation de coopération et de développement économiques,

**(ii)** les *Règles globales anti-érosion de la base d'imposition* énoncées dans *Les défis fiscaux soulevés par la numérisation de l'économie – Règles globales anti-érosion de la base d'imposition (Pilier Deux)*, publiées par l'Organisation de coopération et de développement économiques. (*foreign expense restriction rule*)

***rendement financier ou de capitaux propres*** S'entend d'un paiement qu'il est raisonnable de considérer comme se rapportant à l'un des éléments ci-après ou déterminé en fonction de ceux-ci :

mismatch rule (other than any rule that is substantially similar in effect to subsection 113(5));

**D** is any portion of the relevant amount that can reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from income or profits tax by reason of any exemption, exclusion, deduction, credit (other than a credit for tax payable under Part XIII) or other form of relief that

**(a)** applies specifically in respect of all or a portion of the relevant amount and not in computing the entity's relevant foreign income or profits in general, or

**(b)** arises in respect of the payment;

**E** is the amount determined by the formula

**(A – C – D) × G ÷ H**

where

**G** is the total of all amounts, each of which is an amount that

**(i)** meets the following conditions:

**(A)** is repaid or repayable in respect of income or profits tax paid or payable by the entity to the government of a country other than Canada in respect of the relevant foreign income or profits for the year, and

**(B)** is not repaid or repayable because a loss is used to reduce or offset the relevant foreign income or profits for the year, or

**(ii)** is paid or payable in respect of a credit that can reasonably be considered to reduce or offset, directly or indirectly, the income or profits tax referred to in clause (i)(A), and

**H** is the total amount of the income or profits tax referred to in clause (i)(A) of the description of G; and

**F** is the amount determined by the formula

**(A – C – D – E) × (1 – I ÷ J)**

where

**I** is the rate at which the income or profits tax referred to in clause (i)(A) in the description of G is charged in respect of the relevant amount, and

**J** is the highest rate at which an income or profits tax imposed by the government of the country is charged in respect of an amount of income in respect of a financial instrument. (*revenu ordinaire étranger*)

***foreign taxation year*** of an entity means the period for which the accounts of the entity have been ordinarily made up for the purpose of computing relevant foreign

**a)** les revenus, les bénéfices, les flux de trésorerie, le prix des marchandises ou tout autre critère semblable;

**b)** les dividendes versés ou payables aux actionnaires d'une catégorie d'actions du capital-actions d'une société, le revenu ou le capital payé ou payable à tout associé d'une société de personnes ou tout bénéficiaire d'une fiducie, ou toute autre distribution relativement à toute entité;

**c)** une somme d'intérêts, à titre ou en paiement intégral ou partiel d'intérêts, ou une somme qui est autrement une compensation pour l'utilisation de l'argent. (*equity or financing return*)

***revenu ordinaire canadien*** Relativement à un contribuable pour une année d'imposition relativement à un paiement, un montant qui est, selon le cas :

**a)** si le contribuable n'est pas une société de personnes, inclus relativement au paiement dans le calcul, pour un contribuable résidant au Canada, de son revenu pour l'application de la présente partie, ou, pour un contribuable qui est une personne non-résidente, de son revenu imposable gagné au Canada, pour l'année, sauf dans la mesure où, selon le cas :

**(i)** le montant est inclus dans le revenu ordinaire canadien d'un contribuable en vertu des alinéas b) ou c),

**(ii)** le contribuable a droit à une déduction en vertu des articles 112 ou 113 relativement au paiement,

**(iii)** il est par ailleurs raisonnable de considérer le montant exclu, réduit, compensé ou autrement à l'abri de l'impôt en application de la présente partie en raison d'une exemption, d'une exclusion, d'une déduction, d'un crédit (sauf un crédit pour un impôt substantiellement semblable à l'impôt en vertu de la partie XIII) ou d'une autre forme d'allègement en vertu de la présente loi qui :

**(A)** soit s'applique particulièrement à la totalité ou à une partie du montant et non au calcul du revenu de façon générale,

**(B)** soit découle du paiement;

**b)** si le contribuable est une société de personnes, obtenu par la formule suivante :

**A × B ÷ C – D**

où :

**A** représente un montant qui est inclus relativement au paiement dans le calcul du revenu ou de la perte de la société de personnes, tiré d'une source

income or profits of the entity, but no such period may exceed 53 weeks. (*année d'imposition étrangère*)

***hybrid mismatch amount***, in respect of a payment, means

**(a)** if the payment arises under a hybrid financial instrument arrangement, the amount of the hybrid financial instrument mismatch in respect of the payment;

**(b)** if the payment arises under a hybrid transfer arrangement, the amount of the hybrid transfer mismatch in respect of the payment; or

**(c)** if the payment arises under a substitute payment arrangement, the amount of the substitute payment mismatch in respect of the payment. (*montant de l'asymétrie hybride*)

***hybrid mismatch arrangement*** under which a payment arises means

**(a)** a hybrid financial instrument arrangement under which the payment arises;

**(b)** a hybrid transfer arrangement under which the payment arises; or

**(c)** a substitute payment arrangement under which the payment arises. (*dispositif hybride*)

***payer*** of a payment includes any entity that has an obligation to pay, credit or confer, either immediately or in the future and either absolutely or contingently, the payment to an entity. (*payeur*)

***payment*** includes any amount or benefit that any entity has an obligation to pay, credit or confer, either immediately or in the future and either absolutely or contingently, to an entity. (*paiement*)

***recipient*** of a payment includes any entity that has an entitlement to be paid, credited or conferred, either immediately or in the future and either absolutely or contingently, the payment by an entity. (*bénéficiaire*)

***relevant foreign income or profits*** of an entity means income or profits in respect of which the entity is subject to an income or profits tax that is imposed by the government of a country other than Canada. (*revenus ou bénéfices étrangers pertinents*)

***specified entity***, in respect of another entity at any time, means a particular entity if, taking into consideration the rules in subsection (17),

quelconque ou de sources situées dans un endroit donné, pour l'année, sauf dans la mesure où :

**(i)** soit le montant est inclus dans le revenu ordinaire canadien d'un contribuable en vertu de l'alinéa c),

**(ii)** soit il est raisonnable de le considérer comme exclu, réduit, compensé ou autrement à l'abri de l'impôt pour l'un ou l'autre des motifs visés au sous-alinéa a)(iii),

**B** le total des sommes dont chacune représente, relativement au revenu ou à la perte de la société de personnes de cette source ou de ces sources dans l'endroit donné pour l'année, selon le cas :

**(i)** la part d'un associé de la société de personnes qui est une personne résidant au Canada,

**(ii)** la part d'un associé de la société de personnes qui est une personne non-résidente, dans la mesure où elle est incluse dans le calcul du revenu imposable de la personne non-résidente gagné au Canada,

**C** le revenu ou la perte de la société de personnes tiré de la source, ou des sources, située dans un endroit donné, pour l'année,

**D** le total des sommes représentant chacune une somme déductible, relativement au paiement, par un associé de la société de personnes en vertu des articles 112 ou 113;

**c)** obtenu par la formule suivante :

**E × F**

où :

**E** représente la somme obtenue par la formule suivante :

**G × H**

où :

**G** représente une somme incluse relativement au paiement dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée contrôlée du contribuable pour une *année d'imposition* (au sens du paragraphe 95(1)) de la société affiliée qui se termine dans l'année, sauf dans la mesure où le montant peut raisonnablement être considéré exclu, réduit, compensé ou autrement abrité pour l'un ou l'autre des motifs visés au sous-alinéa a)(iii),

**H** le *pourcentage de participation total* (au sens du paragraphe 91(1.3)) du contribuable

**(a)** the particular entity at that time, either alone or together with entities with whom the particular entity does not deal at arm's length, owns directly or indirectly equity interests in the other entity that

**(i)** provide 25% or more of the votes that could be cast at an annual meeting of the shareholders, if the other entity is a corporation, or

**(ii)** have 25% or more of the fair market value of all equity interests in the other entity;

**(b)** the condition in paragraph (a) would be satisfied if the references in that paragraph to "particular entity" were read as references to "other entity" and the references to "other entity" were read as references to "particular entity"; or

**(c)** a third entity at that time, either alone or together with entities with which the third entity does not deal at arm's length, owns directly or indirectly equity interests in the particular entity and the other entity that, in respect of each of the particular entity and the other entity,

**(i)** provide 25% or more of the votes that could be cast at an annual meeting of the shareholders, if the particular entity or the other entity, as the case may be, is a corporation, or

**(ii)** have 25% or more of the fair market value of all equity interests in the particular entity or the other entity, as the case may be. (*entité déterminée*)

***specified minimum tax regime*** means

**(a)** any provisions in respect of *global intangible low-taxed income* (as defined in section 951A of the *Internal Revenue Code of 1986* of the United States, as amended from time to time);

**(b)** any provisions under the tax laws of a country that can reasonably be considered to have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part, the *Global Anti-Base Erosion Model Rules* set out in *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*, published by the Organisation for Economic Co-operation and Development; or

**(c)** any provisions under the tax laws of a country that can reasonably be considered to have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part, a *Qualified Domestic Minimum Top-up Tax* (as defined in

relativement à la société affiliée pour l'année d'imposition de cette dernière,

**F** :

**(i)** si le contribuable est une société de personnes, la somme obtenue par la formule suivante :

**I ÷ E**

où :

**I** représente le total des sommes représentant chacune une part de la somme déterminée pour l'élément E, d'un associé de la société de personnes qui est une personne résidant au Canada,

**(ii)** dans les autres cas, 1. (*Canadian ordinary income*)

***revenu ordinaire étranger*** S'agissant d'une entité pour une année d'imposition étrangère relativement à un paiement, une somme obtenue par la formule suivante :

**A – B – C – D – E – F**

où :

**A** représente une somme (appelée « somme pertinente » à la présente définition) qui est incluse relativement au paiement dans le calcul des revenus ou bénéfices étrangers pertinents de l'entité pour l'année (autre que le revenu ou les bénéfices à l'égard desquels l'entité est assujettie à un impôt sensiblement le même que l'impôt en vertu de la partie XIII ou à un impôt en vertu d'un régime fiscal des sociétés étrangères contrôlées ou d'un régime fiscal minimum déterminé) parce que l'entité est un bénéficiaire du paiement ou détient une participation au capital directe ou indirecte dans un bénéficiaire du paiement;

**B** :

**a)** si la somme pertinente est incluse dans le calcul des revenus ou bénéfices étrangers pertinents à l'égard desquels l'entité est assujettie à l'impôt sur le revenu ou sur les bénéfices qui est prélevé à un taux nul, la somme pertinente,

**b)** dans les autres cas, zéro;

**C** toute partie de la somme pertinente qui est incluse dans le calcul des revenus ou bénéfices étrangers pertinents de l'entité pour l'année par l'effet d'une règle étrangère d'asymétrie hybride (sauf toute règle dont l'effet est sensiblement le même que celui obtenu par l'application du paragraphe 113(5));

**D** toute partie de la somme pertinente qui peut raisonnablement être considérée comme exclue, réduite, compensée ou par ailleurs effectivement à l'abri de l'impôt sur le revenu ou sur les bénéfices en

the model rules referred to in paragraph (b)). (*régime fiscal minimum déterminé*)

***structured arrangement*** means any transaction, or series of transactions, if

**(a)** the transaction or series includes a payment that gives rise to a deduction/non-inclusion mismatch; and

**(b)** it can reasonably be considered, having regard to all the facts and circumstances, including the terms or conditions of the transaction or series, that

**(i)** portion of any economic benefit arising from the deduction/non-inclusion mismatch is reflected in the pricing of the transaction or series, or

**(ii)** the transaction or series was otherwise designed to, directly or indirectly, give rise to the deduction/non-inclusion mismatch. (*dispositif structuré*)

***transaction*** includes an arrangement or event. (*opération*)

application de toute exemption, exclusion, déduction, crédit (autre qu'un crédit pour l'impôt payable en vertu de la partie XIII) ou toute autre forme d'allègement, qui :

**a)** soit s'applique relativement à la totalité ou à une partie de la somme en particulier et non dans le calcul des revenus ou bénéfices étrangers pertinents en général,

**b)** soit découle du paiement;

**E** la somme obtenue par la formule suivante :

**(A – C – D) × G ÷ H**

où :

**G** représente le total des sommes représentant chacune une somme qui, selon le cas :

**(i)** remplit les conditions suivantes :

**(A)** elle est remboursée ou remboursable relativement à l'impôt sur le revenu ou les bénéfices payé ou payable par l'entité au gouvernement d'un pays étranger relativement aux revenus ou bénéfices étrangers pertinents pour l'année,

**(B)** elle n'est pas remboursée ou remboursable parce qu'une perte est utilisée pour réduire ou compenser les revenus ou bénéfices étrangers pertinents pour l'année,

**(ii)** elle est payée ou payable relativement à un crédit qui peut raisonnablement être considéré comme réduisant ou compensant, directement ou indirectement, l'impôt sur le revenu ou les bénéfices visé à la division (i)(A),

**H** le montant total de l'impôt sur le revenu ou les bénéfices visé à la division (i)(A) de l'élément G;

**F** la somme obtenue par la formule suivante :

**(A – C – D – E) × (1 – I ÷ J)**

où :

**I** représente le taux auquel l'impôt sur le revenu ou les bénéfices visé à la division (i)(A) de l'élément G est imputé relativement au montant pertinent,

**J** le taux le plus élevé auquel l'impôt sur le revenu ou les bénéfices imposé par le gouvernement du pays est exigé relativement à un montant de revenu relativement à un instrument financier. (*foreign ordinary income*)

***revenus ou bénéfices étrangers pertinents*** S'agissant d'une entité, le revenu ou les bénéfices pour lesquels l'entité est assujettie à un impôt sur le revenu ou les

bénéfices imposé par le gouvernement d'un pays étranger. (*relevant foreign income or profits*)

**Interpretation**

**(2)** This section, section 12.7 and subsection 113(5), as well as related provisions of the Act and the *Income Tax Regulations*, relate to the implementation of *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 — 2015 Final Report* published by the Organisation for Economic Co-operation and Development and, unless the context otherwise requires, are to be interpreted consistently with that report, as amended from time to time.

**Interprétation**

**(2)** Le présent article, l'article 12.7 et le paragraphe 113(5), ainsi que les dispositions connexes de la loi et du *Règlement de l'impôt sur le revenu*, traitent de la mise en œuvre du rapport intitulé *Neutraliser les effets des dispositifs hybrides, Action 2 – Rapport final 2015* de l'Organisation de coopération et développement économiques publié et, sauf si le contexte l'exige, ils doivent être interprétés conformément à ce rapport, avec ses modifications successives.

**Primary rule — conditions for application**

**(3)** Subsection (4) applies in respect of a payment if

**(a)** in the absence of this section and subsection 18(4), an amount would be deductible, in respect of the payment, in computing a taxpayer's income from a business or property for a taxation year; and

**(b)** that amount is the deduction component of a hybrid mismatch arrangement under which the payment arises.

**Règle primaire — conditions d'application**

**(3)** Le paragraphe (4) s'applique relativement à un paiement si les énoncés ci-après se vérifient :

**a)** en l'absence du présent article et du paragraphe 18(4), un montant serait déductible, relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition;

**b)** ce montant correspond à la composante de déduction d'un dispositif hybride dont découle le paiement.

**Primary rule — consequences**

**(4)** If this subsection applies in respect of a payment, notwithstanding any other provision of this Act, in computing a taxpayer's income from a business or property for a taxation year, no deduction shall be made in respect of the payment to the extent of the hybrid mismatch amount in respect of the payment.

**Règle primaire — conséquences**

**(4)** Si le présent paragraphe s'applique relativement à un paiement, malgré les autres dispositions de la présente loi, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition, aucune déduction ne peut être faite relativement au paiement jusqu'à concurrence du montant de l'asymétrie hybride relativement au paiement.

**Structured arrangements — exception**

**(5)** If subsection (4) or 12.7(3) would, in the absence of this subsection, apply in respect of a payment in computing a taxpayer's income from a business or property for a taxation year, that subsection does not apply in respect of the payment if

**(a)** there would be no hybrid mismatch arrangement in respect of the payment if the payment did not arise under, or in connection with, a structured arrangement;

**(b)** at the time that the taxpayer entered into, or acquired an interest in any part of a transaction that is, or is part of, the structured arrangement, it was not reasonable to expect that any of the following entities were aware of the deduction/non-inclusion mismatch arising from the payment:

**Dispositifs structurés — exception**

**(5)** Si, en l'absence du présent paragraphe, les paragraphes (4) ou 12.7(3) s'appliqueraient relativement à un paiement dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition, ces paragraphes ne s'appliquent pas relativement au paiement si les énoncés ci-après se vérifient :

**a)** aucun dispositif hybride ne serait établi relativement au paiement si celui-ci ne découlait pas d'un dispositif structuré ou ne s'y rapportait pas;

**b)** au moment où le contribuable conclut l'opération, ou a acquis un intérêt dans une partie de celle-ci, qui est le dispositif structuré, ou en fait partie, il n'était pas raisonnable de s'attendre à ce que l'une des entités ci-après soit au courant de l'asymétrie de déduction/non-inclusion découlant du paiement :

**(i)** the taxpayer,

**(ii)** an entity with which the taxpayer does not deal at arm's length, or

**(iii)** a specified entity in respect of the taxpayer; and

**(c)** none of the entities described in subparagraphs (b)(i) to (iii) shared in the value of any economic benefit resulting from the deduction/non-inclusion mismatch.

**(i)** le contribuable,

**(ii)** une entité avec laquelle le contribuable a un lien de dépendance,

**(iii)** une entité déterminée relativement au contribuable;

**c)** aucune des entités visées aux sous-alinéas b)(i) à (iii) n'a participé à la valeur de tout avantage économique découlant de l'asymétrie de déduction/non-inclusion.

**Deduction/non-inclusion mismatch — conditions**

**(6)** For the purposes of this section and section 12.7, a payment gives rise to a deduction/non-inclusion mismatch if

**(a)** the following condition is met:

**A > B**

where

**A** is the total of all amounts, each of which would, in the absence of this section and subsection 18(4), be deductible in respect of the payment, in computing the income of a taxpayer from a business or property under this Part for a taxation year (referred to in this paragraph as the "relevant year"), and

**B** is the total of all amounts each of which, in respect of the payment,

**(i)** can reasonably be expected to be — and actually is — foreign ordinary income of an entity for a foreign taxation year that begins on or before the day that is 12 months after the end of the relevant year, or

**(ii)** is Canadian ordinary income of a taxpayer for a taxation year that begins on or before the day that is 12 months after the end of the relevant year; or

**(b)** the following condition is met:

**C > D**

where

**C** is the total of all amounts, each of which, in the absence of any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible, in respect of the payment, in computing relevant foreign income or profits of an entity for a foreign taxation year (referred to in this paragraph as the "relevant foreign year"), and

**D** is the total of all amounts, each of which, in respect of the payment,

**Asymétrie de déduction/non-inclusion — conditions**

**(6)** Pour l'application du présent article et de l'article 12.7, un paiement donne lieu à une asymétrie de déduction/non-inclusion si, selon le cas :

**a)** la condition ci-après est remplie :

**A > B**

où :

**A** représente le total des sommes dont chacune serait, en l'absence du présent article et du paragraphe 18(4), déductible relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien en vertu de la présente partie pour une année d'imposition (appelée « année pertinente » au présent alinéa),

**B** le total des sommes, relativement au paiement, selon le cas :

**(i)** dont il est raisonnable de s'attendre à ce que chacune soit du revenu ordinaire étranger, et l'est effectivement, d'une entité pour une année d'imposition étrangère qui commence au plus tard le jour qui suit de douze mois la fin de l'année pertinente,

**(ii)** dont chacune représente le revenu ordinaire canadien d'un contribuable pour une année d'imposition qui commence au plus tard le jour qui suit de douze mois la fin de l'année pertinente;

**b)** la condition ci-après est remplie :

**C > D**

où :

**C** représente le total des sommes dont chacune (compte non tenu de toute règle étrangère de restriction des dépenses) serait, ou dont on pourrait raisonnablement s'attendre à ce qu'elle soit, déductible, relativement au paiement, dans le calcul des revenus ou bénéfices étrangers pertinents d'une entité pour une année d'imposition

**(i)** would, in the absence of section 12.7, be Canadian ordinary income of a taxpayer for a taxation year that begins on or before the day that is 12 months after the end of the relevant foreign year, or

**(ii)** can reasonably be expected to be — and actually is — foreign ordinary income of another entity for a foreign taxation year that begins on or before the day that is 12 months after the end of the relevant foreign year.

étrangère (appelée « année étrangère pertinente » au présent alinéa),

**D** le total des sommes, relativement au paiement, selon le cas :

**(i)** dont chacune représenterait (en l'absence de l'article 12.7) le revenu ordinaire canadien d'un contribuable pour une année d'imposition qui commence au plus tard le jour qui suit de douze mois la fin de l'année étrangère pertinente,

**(ii)** dont on peut raisonnablement s'attendre à ce que chacune soit, et est effectivement, du revenu ordinaire étranger d'une autre entité pour une année d'imposition étrangère qui commence au plus tard le jour qui suit de douze mois la fin de l'année étrangère pertinente.

**Deduction/non-inclusion mismatch — application**

**(7)** For the purposes of this section and section 12.7, if a payment gives rise to a deduction/non-inclusion mismatch,

**(a)** the amount, if any, determined for A in paragraph (6)(a) in respect of the payment is the deduction component of the deduction/non-inclusion mismatch;

**(b)** the amount, if any, determined for C in paragraph (6)(b) in respect of the payment is the foreign deduction component of the deduction/non-inclusion mismatch; and

**(c)** the amount of the deduction/non-inclusion mismatch arising from the payment is determined by the formula

**A – B**

where

**A** is

**(i)** if paragraph (6)(a) applies in respect of the payment, the deduction component of the deduction/non-inclusion mismatch, or

**(ii)** if paragraph (6)(b) applies in respect of the payment, the foreign deduction component of the deduction/non-inclusion mismatch, and

**B** is

**(i)** if subparagraph (i) of the description of A applies,

**(A)** where the amount determined for B in paragraph (6)(a) in respect of the payment is equal to 10% or less of the amount determined for A, nil, and

**Asymétrie de déduction/non-inclusion — application**

**(7)** Pour l'application du présent article et de l'article 12.7, si un paiement donne lieu à une asymétrie de déduction/non-inclusion, les règles ci-après s'appliquent :

**a)** la valeur de l'élément A de la formule figurant à l'alinéa (6)a) relativement au paiement est la composante de déduction de l'asymétrie de déduction/non-inclusion;

**b)** la valeur de l'élément C de la formule figurant à l'alinéa (6)b) relativement au paiement est la composante de déduction étrangère de l'asymétrie de déduction/non-inclusion;

**c)** la somme de l'asymétrie de déduction/non-inclusion découlant du paiement est obtenue par la formule suivante :

**A – B**

où :

**A** représente :

**(i)** si l'alinéa (6)a) s'applique relativement au paiement, la composante de déduction de l'asymétrie de déduction/non-inclusion,

**(ii)** si l'alinéa (6)b) s'applique relativement au paiement, la composante de déduction étrangère de l'asymétrie de déduction/non-inclusion,

**B** :

**(i)** si le sous-alinéa (i) de l'élément A s'applique :

**(A)** lorsque la valeur de l'élément B de la formule figurant à l'alinéa (6)a) relativement

**(B)** in any other case, the amount determined for B in paragraph (6)(a) in respect of the payment, or

**(ii)** if subparagraph (ii) of the description of A applies,

**(A)** where the amount determined for D in paragraph (6)(b) in respect of the payment is equal to 10% or less of the amount determined for A, nil, and

**(B)** in any other case, the amount determined for D in paragraph (6)(b) in respect of the payment.

au paiement est égale ou inférieure à 10 % de la somme obtenue pour l'élément A, zéro,

**(B)** dans les autres cas, la valeur de l'élément B de la formule figurant à l'alinéa (6)a) relativement au paiement,

**(ii)** si le sous-alinéa (ii) de l'élément A s'applique :

**(A)** lorsque la valeur de l'élément D de la formule figurant à l'alinéa (6)b) relativement au paiement est égale ou inférieure à 10 % de la somme obtenue pour l'élément A, zéro,

**(B)** dans les autres cas, la valeur de l'élément D de la formule figurant à l'alinéa (6)b) relativement au paiement.

**No double counting**

**(8)** Any amount that has already been included, directly or indirectly, in computing foreign ordinary income or Canadian ordinary income of a particular entity in respect of a payment shall not be included, directly or indirectly, in computing foreign ordinary income or Canadian ordinary income of the particular entity or any other entity in respect of the payment.

**Aucun double comptage**

**(8)** Est exclu, directement ou indirectement, du calcul de revenu ordinaire étranger ou de revenu ordinaire canadien d'une entité donnée ou de toute autre entité relativement au paiement, tout montant ayant déjà été inclus, directement ou indirectement, dans le calcul de revenu ordinaire étranger ou de revenu ordinaire canadien de l'entité donnée relativement au paiement.

**Notional interest expense — deemed payment**

**(9)** For the purposes of this section (other than this subsection) and section 12.7, if, in the absence of any foreign expense restriction rule, an amount (referred to in this subsection as the "deductible amount") would be, or can reasonably be expected to be, deductible in respect of a notional interest expense on a debt in computing the relevant foreign income or profits of an entity for a foreign taxation year

**(a)** the entity is deemed to make a payment in the year under the debt to the creditor in respect of the debt, in an amount equal to the deductible amount, and the creditor is deemed to be a recipient of the payment;

**(b)** the deductible amount is deemed to be in respect of the payment;

**(c)** any amount that is foreign ordinary income or Canadian ordinary income of the creditor in respect of notional interest income on the debt, that is calculated in respect of the same time period as the notional interest expense, is deemed to arise in respect of the payment; and

**(d)** any deduction/non-inclusion mismatch arising from the payment is deemed to satisfy the condition in paragraph (10)(d).

**Dépenses en intérêts théoriques — paiement réputé**

**(9)** Pour l'application du présent article (à l'exception du présent paragraphe) et de l'article 12.7, si, en l'absence d'une règle étrangère de restriction des dépenses, une somme (appelée « somme déductible » au présent paragraphe) serait, ou dont il est raisonnable de s'attendre à ce qu'elle soit, déductible à l'égard d'une dépense en intérêts théorique sur une dette, dans le calcul des revenus ou bénéfices étrangers pertinents d'une entité pour une année d'imposition étrangère, les règles ci-après s'appliquent :

**a)** l'entité est réputée effectuer un paiement dans l'année au titre de la dette au créancier relativement à la dette d'une somme égale à la somme déductible, et le créancier est réputé être un bénéficiaire de ce paiement;

**b)** la somme déductible est réputée être relative au paiement;

**c)** tout montant qui est du revenu ordinaire étranger ou du revenu ordinaire canadien du créancier relativement aux revenus d'intérêts théoriques sur la dette, qui est calculé relativement à la même période comme la dépense en intérêts théorique, est réputé découler du paiement;

**d)** toute asymétrie de déduction/non-inclusion découlant du paiement est réputée remplir la condition énoncée à l'alinéa (10)d).

**Hybrid financial instrument arrangement — conditions**

**(10)** For the purposes of this section and section 12.7, a payment arises under a hybrid financial instrument arrangement if

**(a)** the payment (other than a payment described in paragraphs (14)(a) to (d)) arises under, or in connection with, a financial instrument;

**(b)** any of the following conditions is satisfied:

**(i)** a payer of the payment does not deal at arm's length with, or is a specified entity in respect of, a recipient of the payment, or

**(ii)** the payment arises under, or in connection with, a structured arrangement;

**(c)** the payment gives rise to a deduction/non-inclusion mismatch; and

**(d)** it can reasonably be considered that the deduction/non-inclusion mismatch

**(i)** arises in whole or in part because of a difference in the treatment of the financial instrument — or of one or more transactions, either alone or together, where the transaction or transactions are part of a transaction or series of transactions that includes the payment or relates to the financial instrument — for tax purposes under the laws of more than one country that is attributable to the terms or conditions of the financial instrument or transaction or transactions, or

**(ii)** would arise in whole or in part because of a difference described in subparagraph (i), if any other reason for the deduction/non-inclusion mismatch were disregarded.

**Dispositif d'instrument financier hybride — conditions**

**(10)** Pour l'application du présent article et de l'article 12.7, un paiement découle d'un dispositif d'instrument financier hybride si les conditions ci-après sont réunies :

**a)** le paiement (sauf un paiement visé aux alinéas (14)a) à d)) découle d'un instrument financier, ou s'y rapporte;

**b)** l'une des conditions suivantes est remplie :

**(i)** un payeur du paiement a un lien de dépendance avec un bénéficiaire du paiement, ou est une entité déterminée relativement à un bénéficiaire du paiement,

**(ii)** le paiement découle d'un dispositif structuré, ou s'y rapporte;

**c)** le paiement donne lieu à une asymétrie de déduction/non-inclusion;

**d)** il est raisonnable de considérer que l'asymétrie de déduction/non-inclusion :

**(i)** soit découle en tout ou en partie d'une différence dans le traitement de l'instrument financier (ou d'une ou de plusieurs opérations, seules ou ensemble, lorsque l'opération ou les opérations font partie d'une opération ou d'une série d'opérations qui incluent le paiement ou qui se rapportent à l'instrument financier) à des fins fiscales en vertu des lois de plus d'un pays qui est attribuable aux modalités de l'instrument financier ou à une opération ou à des opérations,

**(ii)** soit découlerait en tout ou en partie d'une différence décrite au sous-alinéa (i), s'il n'était pas tenu compte de toute autre raison pour l'asymétrie de déduction/non-inclusion.

**Hybrid financial instrument arrangement — amount**

**(11)** For the purposes of this section and section 12.7, if a payment arises under a hybrid financial instrument arrangement,

**(a)** the amount of the hybrid financial instrument mismatch, in respect of the payment, is the portion of the amount of the deduction/non-inclusion mismatch arising from the payment that meets the condition in subparagraph (10)(d)(i) or (ii);

**Dispositif d'instrument financier hybride — montant**

**(11)** Pour l'application du présent article et de l'article 12.7, si un paiement découle d'un dispositif d'instrument financier hybride, les règles ci-après s'appliquent :

**a)** le montant de l'asymétrie d'instrument financier hybride, relativement au paiement, correspond à la partie de la somme de l'asymétrie de déduction/non-inclusion découlant du paiement qui remplit la condition énoncée aux sous-alinéas (10)d)(i) ou (ii);

**(b)** the deduction component, if any, of the deduction/non-inclusion mismatch is the deduction component of the hybrid financial instrument arrangement in respect of the payment; and

**(c)** the foreign deduction component, if any, of the deduction/non-inclusion mismatch is the foreign deduction component of the hybrid financial instrument arrangement in respect of the payment.

**Hybrid transfer arrangement — conditions**

**(12)** For the purposes of this section and section 12.7, a payment (other than an exempt dealer compensation payment) arises under a hybrid transfer arrangement if

**(a)** the payment arises under, or in connection with,

**(i)** a transaction or series of transactions (referred to in this subsection as the "transfer arrangement") that includes a loan or a disposition or other transfer by an entity to another entity (referred to in this subsection as the "transferor" and "transferee", respectively) of all or a portion of a financial instrument (referred to in this subsection as the "transferred instrument"), or

**(ii)** the transferred instrument;

**(b)** any of the following conditions is satisfied:

**(i)** at any time during the transfer arrangement

**(A)** a payer of the payment does not deal at arm's length with, or is a specified entity in respect of, a recipient of the payment, or

**(B)** the transferor does not deal at arm's length with, or is a specified entity in respect of, the transferee, or

**(ii)** the payment arises under, or in connection with, a structured arrangement;

**(c)** the payment gives rise to a deduction/non-inclusion mismatch; and

**(d)** it can reasonably be considered that the deduction/non-inclusion mismatch arises (or would arise, if any reason for the mismatch other than the reasons described in subparagraphs (i) and (ii) were disregarded), in whole or in part, because

**(i)** if the payment arises as compensation for a particular payment under the transferred instrument,

**b)** la composante de déduction, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction du dispositif d'instrument financier hybride relativement au paiement;

**c)** la composante de déduction étrangère, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction étrangère du dispositif d'instrument financier hybride relativement au paiement.

**Dispositif de transfert hybride — conditions**

**(12)** Pour l'application du présent article et de l'article 12.7, un paiement (sauf un paiement compensatoire (courtier) exonéré) découle d'un dispositif de transfert hybride, si les circonstances ci-après s'avèrent :

**a)** le paiement découle de l'un des éléments ci-après ou s'y rapporte :

**(i)** une opération ou série d'opérations (appelée « dispositif de transfert » au présent paragraphe) qui inclut un prêt ou une disposition ou autre transfert par une entité à une autre entité (appelées respectivement « cédant » et « cessionnaire » au présent paragraphe) de la totalité ou d'une partie d'un instrument financier (appelée « instrument transféré » au présent paragraphe),

**(ii)** l'instrument transféré;

**b)** une ou plusieurs des conditions ci-après sont remplies :

**(i)** à un moment donné durant le dispositif de transfert :

**(A)** soit un payeur du paiement a un lien de dépendance avec un bénéficiaire du paiement, ou est une entité déterminée relativement à un bénéficiaire du paiement,

**(B)** soit le cédant a un lien de dépendance avec le cessionnaire, ou est une entité déterminée relativement au cessionnaire,

**(ii)** le paiement découle d'un dispositif structuré ou s'y rapporte;

**c)** le paiement donne lieu à une asymétrie de déduction/non-inclusion;

**d)** il est raisonnable de considérer que l'asymétrie de déduction/non-inclusion se produit (ou se produirait compte non tenu de toute raison expliquant l'asymétrie, sauf celles décrites aux sous-alinéas (i) et (ii)), en tout ou en partie, car :

**(A)** the tax laws of one country treat all or a portion of the payment as though it has the same character as, or represents, the particular payment, in determining the tax consequences to an entity that is a recipient of the payment but not of the particular payment, and

**(B)** the tax laws of another country treat all or a portion of the payment as a deductible expense of another entity, or

**(ii)** in any other case,

**(A)** the tax laws of one country treat one or more transactions included in the transfer arrangement, either alone or together, as or as equivalent to a borrowing or other indebtedness, or treat all or a portion of the payment as arising under, or in connection with, a borrowing or other indebtedness, and the tax laws of another country do not treat the transaction or transactions, or the payment, as the case may be, in that manner, or

**(B)** the tax laws of one country treat the payment, or any other payment arising under, or in connection with, the transfer arrangement or transferred instrument, as though the payment or other payment, as the case may be, was derived by one entity and the tax laws of another country treat the payment or other payment, as the case may be, as though it was derived by another entity, because of a difference in how the countries treat one or more transactions included in the transfer arrangement, either alone or together.

**(i)** si le paiement se produit en tant que compensation pour un paiement donné en vertu de l'instrument transféré, à la fois :

**(A)** les lois fiscales d'un pays traitent la totalité ou une partie du paiement comme si elle était de la même nature que le paiement donné, ou le représentait, dans le cadre de la détermination des conséquences fiscales pour une entité qui est bénéficiaire du paiement, mais pas du paiement donné,

**(B)** les lois fiscales d'un autre pays traitent la totalité ou une partie du paiement comme une dépense déductible d'une autre entité,

**(ii)** dans les autres cas :

**(A)** soit les lois fiscales d'un pays traitent une ou plusieurs opérations incluses dans le dispositif de transfert, seules ou ensemble, comme un emprunt ou autre dette ou leur équivalent, ou traitent la totalité ou une partie du paiement comme découlant d'un emprunt ou autre dette ou s'y rapportant, et les lois fiscales d'un autre pays ne traitent pas l'opération ou les opérations, ou le paiement, selon le cas, de cette manière,

**(B)** soit les lois fiscales d'un pays traitent le paiement, ou tout autre paiement découlant du dispositif de transfert ou de l'instrument transféré, ou s'y rapportant, comme si le paiement ou l'autre paiement, selon le cas, était tiré par une entité et les lois fiscales d'un autre pays traitent le paiement ou l'autre paiement, selon le cas, comme s'il était tiré par une autre entité, en raison d'une différence dans la façon dont les pays traitent seules ou ensemble une ou plusieurs opérations incluses dans le dispositif de transfert.

**Hybrid transfer arrangement — amount**

**(13)** For the purposes of this section and section 12.7, if a payment arises under a hybrid transfer arrangement,

**(a)** the amount of the hybrid transfer mismatch, in respect of the payment, is the portion of the amount of the deduction/non-inclusion mismatch arising from the payment that meets a condition in subparagraph (12)(d)(i) or (ii);

**(b)** the deduction component, if any, of the deduction/non-inclusion mismatch is the deduction component of the hybrid transfer arrangement in respect of the payment; and

**Dispositif de transfert hybride — montant**

**(13)** Pour l'application du présent article et de l'article 12.7, si un paiement découle d'un dispositif de transfert hybride, les règles ci-après s'appliquent :

**a)** le montant de l'asymétrie de transfert hybride, relativement au paiement, correspond à la partie de la somme de l'asymétrie de déduction/non-inclusion découlant du paiement qui satisfait à une condition prévue aux sous-alinéas (12)d)(i) ou (ii);

**b)** la composante de déduction, le cas échéant, de l'asymétrie de déduction/non-inclusion est la

**(c)** the foreign deduction component, if any, of the deduction/non-inclusion mismatch is the foreign deduction component of the hybrid transfer arrangement in respect of the payment.

**Substitute payment arrangement — conditions**

**(14)** For the purposes of this section and section 12.7, a payment arises under a substitute payment arrangement if

**(a)** the payment arises under, or in connection with, an arrangement under which all or a portion of a financial instrument is loaned or disposed of or otherwise transferred by an entity to another entity (referred to in this subsection as the "transferor" and "transferee", respectively);

**(b)** the transferee, or an entity that does not deal at arm's length with the transferee, is a payer of the payment;

**(c)** the transferor, or an entity that does not deal at arm's length with the transferor, is a recipient of the payment;

**(d)** all or a portion of the payment can reasonably be considered to represent or otherwise reflect, or be determined by reference to

**(i)** another payment (referred to in this subsection and subsection (15) as the "underlying return") that arises under, or in connection with, the financial instrument, or

**(ii)** revenue, profit, cash flow, commodity price or any other similar criterion;

**(e)** any of the following conditions is satisfied:

**(i)** at any time during that series of transactions that includes the arrangement,

**(A)** a payer of the payment does not deal at arm's length with, or is a specified entity in respect of, a recipient of the payment, or

**(B)** the transferor does not deal at arm's length with, or is a specified entity in respect of, the transferee, or

**(ii)** the payment arises under, or in connection with, a structured arrangement;

**(f)** the payment

composante de déduction du dispositif de transfert hybride relativement au paiement;

**c)** la composante de déduction étrangère, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction étrangère du dispositif de transfert hybride relativement au paiement.

**Dispositif de paiement par substitution — conditions**

**(14)** Pour l'application du présent article et de l'article 12.7, un paiement découle d'un dispositif de paiement par substitution si les conditions suivantes sont remplies :

**a)** le paiement découle d'un dispositif en vertu duquel la totalité ou une partie d'un instrument financier est prêtée ou disposée ou autrement transférée par une entité à une autre entité (appelées respectivement « cédant » et « cessionnaire » au présent paragraphe) ou s'y rapporte;

**b)** le cessionnaire, ou une entité qui a un lien de dépendance avec ce dernier, est un payeur du paiement;

**c)** le cédant, ou une entité qui a un lien de dépendance avec ce dernier, est un bénéficiaire du paiement;

**d)** il est raisonnable de considérer que la totalité ou une partie du paiement représente ou autrement reflète, ou est déterminée par rapport à :

**(i)** soit un autre paiement (appelé « rendement sous-jacent » au présent paragraphe et au paragraphe (15)) qui découle de l'instrument financier, ou qui s'y rapporte,

**(ii)** soit les revenus, les bénéfices, le flux de trésorerie, le prix des marchandises ou tout autre critère semblable;

**e)** l'une des conditions suivantes est remplie :

**(i)** à un moment donné dans le cadre de la série d'opérations qui inclut le dispositif, selon le cas :

**(A)** un payeur du paiement a un lien de dépendance avec un bénéficiaire du paiement ou est une entité déterminée relativement à un bénéficiaire du paiement,

**(B)** le cédant a un lien de dépendance avec le cessionnaire ou est une entité déterminée relativement au cessionnaire,

**(ii)** le paiement découle d'un dispositif structuré ou s'y rapporte;

**(i)** would give rise to a deduction/non-inclusion mismatch if any Canadian ordinary income of a taxpayer for a taxation year and any foreign ordinary income of an entity for a foreign taxation year, in respect of the payment, were limited to the portion of those amounts that can reasonably be considered to relate to the portion of the payment that is described in paragraph (d), or

**(ii)** if the condition in subparagraph (i) is not met, would meet the condition in that subparagraph if any amount that, in the absence of this section, subsection 18(4) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return were instead considered to be deductible in respect of the payment, to the extent that the amount

**(A)** would be — or would reasonably be expected to be — deductible by the transferee in computing its income from a business or property for a taxation year or its relevant foreign income or profits for a foreign taxation year, as the case may be, and

**(B)** would be — or would reasonably be expected to be — so deductible because the underlying return accrued (or is considered to accrue) for a period before the transfer;

**(g)** one of the following conditions is satisfied:

**(i)** the transferee or an entity that does not deal at arm's length with the transferee is a recipient of the underlying return — or, if subparagraph (d)(ii) applies, a distribution under the financial instrument — and the amount of the underlying return or the distribution, as the case may be, exceeds the total of all amounts, in respect of the underlying return or the distribution, as the case may be, each of which can reasonably be expected to be — and actually is — foreign ordinary income for a foreign taxation year or Canadian ordinary income for a taxation year, as the case may be, of the recipient,

**(ii)** the condition in subparagraph (i) would be satisfied if the transferee were the recipient of the underlying return, or, if subparagraph (d)(ii) applies, a distribution under the financial instrument, or

**(iii)** if the transferor were the recipient of the underlying return, or, if subparagraph (d)(ii) applies, a distribution under the financial instrument,

**(A)** an amount in respect of the underlying return or distribution, as the case may be, would

**f)** le paiement, selon le cas :

**(i)** donnerait lieu à une asymétrie de déduction/non-inclusion, si tout revenu ordinaire canadien d'un contribuable pour une année d'imposition et tout revenu ordinaire étranger d'une entité pour une année d'imposition étrangère, relativement au paiement, étaient limités à la partie de ces montants qui peut raisonnablement être considérée comme se rapportant à la partie du paiement visée à l'alinéa d),

**(ii)** si la condition énoncée au sous-alinéa (i) n'est pas remplie, remplirait la condition énoncée à ce sous-alinéa, si toute somme qui, en l'absence du présent article, du paragraphe 18(4) ou de toute règle étrangère de restriction des dépenses, était, ou dont il est raisonnable de s'attendre à ce qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent était plutôt considérée comme déductible relativement au paiement, dans la mesure où, à la fois :

**(A)** la somme serait, ou il serait raisonnable de s'attendre à ce qu'elle soit, déductible par le cessionnaire dans le calcul de son revenu tiré d'une entreprise ou d'un bien pour une année d'imposition ou de ses revenus ou bénéfices étrangers pertinents pour une année d'imposition étrangère, selon le cas,

**(B)** la somme serait, ou il est raisonnable de s'attendre à ce qu'elle soit, déductible parce que le rendement sous-jacent s'est accumulé (ou est considéré s'accumuler) pendant une période précédant le transfert;

**g)** l'une des conditions ci-après est remplie :

**(i)** le cessionnaire ou une entité qui a un lien de dépendance avec le cessionnaire est un bénéficiaire du rendement sous-jacent ou, en cas d'application du sous-alinéa d)(ii), d'une distribution effectuée dans le cadre de l'instrument financier, et le montant du rendement sous-jacent ou de la distribution, le cas échéant, dépasse le total des montants, relativement au rendement sous-jacent ou à la distribution, le cas échéant, dont il est raisonnable de s'attendre à ce que chacun soit, et effectivement est, du revenu ordinaire étranger pour une année d'imposition étrangère ou du revenu ordinaire canadien pour une année d'imposition, selon le cas, du bénéficiaire,

**(ii)** la condition énoncée au sous-alinéa (i) serait remplie si le cessionnaire était le bénéficiaire du

reasonably be expected to be foreign ordinary income for a foreign taxation year or Canadian ordinary income for a taxation year, as the case may be, of the transferor,

**(B)** the underlying return or distribution, as the case may be, would arise under a hybrid mismatch arrangement, or

**(C)** a foreign hybrid mismatch rule would reasonably be expected to apply in respect of the underlying return or distribution, as the case may be; and

**(h)** one of the following entities is not resident in Canada:

**(i)** the transferor,

**(ii)** the transferee,

**(iii)** a recipient of the payment,

**(iv)** a payer of the payment,

**(v)** the issuer of the financial instrument,

**(vi)** a recipient of the underlying return, and

**(vii)** if an entity described in any of subparagraphs (i) to (vi) is a partnership, a member of that entity.

rendement sous-jacent, ou, si le sous-alinéa d)(ii) s'applique, d'une distribution effectuée dans le cadre de l'instrument financier,

**(iii)** si le cédant était le bénéficiaire du rendement sous-jacent ou, en cas d'application du sous-alinéa d)(ii), d'une distribution effectuée dans le cadre de l'instrument financier, selon le cas :

**(A)** relativement au rendement sous-jacent ou à la distribution, le cas échéant, il est raisonnable de s'attendre à ce qu'une somme soit du revenu ordinaire étranger pour une année d'imposition étrangère ou du revenu ordinaire canadien pour une année d'imposition, selon le cas, du cédant,

**(B)** le rendement sous-jacent ou la distribution, selon le cas, découlerait d'un dispositif hybride,

**(C)** il est raisonnable de s'attendre à ce qu'une règle étrangère d'asymétrie hybride s'applique relativement au rendement sous-jacent ou à la distribution, selon le cas;

**h)** l'une des entités ci-après ne réside pas au Canada :

**(i)** le cédant,

**(ii)** le cessionnaire,

**(iii)** un bénéficiaire du paiement,

**(iv)** un payeur du paiement,

**(v)** l'émetteur de l'instrument financier,

**(vi)** un bénéficiaire du rendement sous-jacent,

**(vii)** si une entité visée à l'un des sous-alinéas (i) à (vi) est une société de personnes, un associé de cette entité.

**Substitute payment arrangement — amount**

**(15)** For the purposes of this section and section 12.7, if a payment arises under a substitute payment arrangement,

**(a)** the amount of the substitute payment mismatch, in respect of the payment, is the lesser of

**(i)** the amount of the deduction/non-inclusion mismatch arising from the payment,

**(A)** if the condition in subparagraph (14)(f)(i) applies, determined based on the assumption in that subparagraph, or

**Dispositif de paiement par substitution — montant**

**(15)** Pour l'application du présent article et de l'article 12.7, si un paiement découle d'un dispositif de paiement par substitution, les règles ci-après s'appliquent :

**a)** le montant de l'asymétrie de paiement par substitution, relativement au paiement, est le moins élevé des montants suivants :

**(i)** le montant de l'asymétrie de déduction/non-inclusion découlant du paiement :

**(A)** si la condition énoncée au sous-alinéa (14)f)(i) s'applique, déterminé selon l'hypothèse énoncée à ce sous-alinéa,

**(B)** if the condition in subparagraph (14)(f)(ii) applies, determined based on the assumption in that subparagraph, and

**(ii)** the amount of the payment, or the portion of the payment, as the case may be, described in paragraph (14)(d);

**(b)** the deduction component, if any, of the deduction/non-inclusion mismatch is the deduction component of the substitute payment arrangement in respect of the payment;

**(c)** the foreign deduction component, if any, of the deduction/non-inclusion mismatch is the foreign deduction component of the substitute payment arrangement in respect of the payment; and

**(d)** if the condition in subparagraph (14)(f)(ii) is met in respect of the payment, any amount that, in the absence of this section, subsection 18(4) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return that meets the conditions in clauses (14)(f)(ii)(A) and (B) is deemed to be deductible by the transferee in respect of the payment for the purposes of applying subsections (3) and (4) and section 12.7.

**(B)** si la condition énoncée au sous-alinéa (14)f)(ii) s'applique, déterminé selon l'hypothèse énoncée à ce sous-alinéa,

**(ii)** le montant du paiement, ou la partie de celui-ci, le cas échéant, visé à l'alinéa (14)d);

**b)** la composante de déduction, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction du dispositif de paiement par substitution relativement au paiement;

**c)** la composante de déduction étrangère, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction étrangère du dispositif de paiement par substitution relativement au paiement;

**d)** si la condition énoncée au sous-alinéa (14)f)(ii) est remplie relativement au paiement, toute somme qui, en l'absence du présent article, du paragraphe 18(4) ou de toute règle étrangère de restriction des dépenses, serait, ou dont il est raisonnable de s'attendre à qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent qui remplit les conditions énoncées aux divisions (14)f)(ii)(A) et (B) est réputée être déductible par le cessionnaire relativement au paiement pour l'application des paragraphes (3) et (4) et de l'article 12.7.

**Substituted instruments**

**(16)** For the purposes of this section and section 12.7, any financial instrument that is substituted for a particular financial instrument is deemed to be the particular financial instrument.

**Instruments substitués**

**(16)** Pour l'application du présent article et de l'article 12.7, tout instrument financier qui est substitué à un instrument financier donné est réputé être l'instrument financier donné.

**Specified entity — deeming rules**

**(17)** For the purposes of the definition *specified entity* in subsection (1), the following rules apply:

**(a)** in determining the equity interests owned, directly or indirectly, by any entity (in this paragraph referred to as the "first entity") in any other entity at any time,

**(i)** the rights of the first entity, and any entities with which it does not deal at arm's length, that are rights referred to in the portion of the definition *specified shareholder* in subsection 18(5) after paragraph (b) of that definition or in paragraph (a) or (b) of the definition *specified beneficiary* in that subsection, or that are similar rights in respect of partnerships or any other entity, are deemed to be immediate and absolute and to have been exercised at that time, and

**Entité déterminée – règles spéciales**

**(17)** Pour l'application de la définition de *entité déterminée* au paragraphe (1), les règles suivantes s'appliquent :

**a)** pour déterminer les participations au capital détenues, directement ou indirectement, par une entité (appelée « première entité » au présent alinéa) dans une autre entité à un moment donné, à la fois :

**(i)** les droits de la première entité et de toute entité avec laquelle elle a un lien de dépendance qui sont des droits mentionnés dans le passage après l'alinéa b) de la définition de *actionnaire déterminé* au paragraphe 18(5) ou dans les alinéas a) ou b) de la définition de *bénéficiaire déterminé* à ce paragraphe, ou qui sont des droits similaires relativement aux sociétés de personnes ou toute autre entité, sont réputés être immédiats et absolus et avoir été exercés à ce moment donné,

**(ii)** paragraph (c) of the definition *specified beneficiary* in subsection 18(5) is deemed to apply at that time and the references in that definition to "particular person" are to be read as references to "first entity"; and

**(b)** notwithstanding paragraph (a), a particular entity is deemed not to be a specified entity in respect of another entity at any time if

**(i)** the particular entity would, but for this paragraph, be a specified entity in respect of the other entity at that time,

**(ii)** there was in effect at that time an agreement or arrangement under which, on the satisfaction of a condition or the occurrence of an event that it is reasonable to expect will be satisfied or will occur, the particular entity will cease to be a specified entity in respect of the other entity, and

**(iii)** the purpose for which the particular entity became a specified entity was the safeguarding of rights or interests of the particular entity or an entity with which the particular entity is not dealing at arm's length in respect of any indebtedness owing at any time to the particular entity or an entity with which the particular entity is not dealing at arm's length.

**(ii)** l'alinéa c) de la définition de *bénéficiaire déterminé* au paragraphe 18(5) est réputé s'appliquer à ce moment donné et la mention « personne donnée » à cette définition vaut mention de « première entité »;

**b)** malgré l'alinéa a), une entité donnée est réputée ne pas être une entité déterminée relativement à une autre entité à un moment donné si les conditions ci-après sont réunies :

**(i)** l'entité serait à ce moment, en l'absence du présent alinéa, une entité déterminée relativement à l'autre entité,

**(ii)** est en vigueur à ce moment un contrat ou un arrangement qui stipule que, à la réalisation d'une condition ou d'un événement auquel il est raisonnable de s'attendre, l'entité cessera d'être une entité déterminée relativement à l'autre entité,

**(iii)** la raison pour laquelle l'entité est devenue une entité déterminée est la sauvegarde de ses droits ou des droits d'une entité avec laquelle elle a un lien de dépendance, afférents à tout titre de créance dont elle est créancière, ou dont une entité avec laquelle elle a un lien de dépendance est créancière, à un moment quelconque.

**Tiered partnerships**

**(18)** For the purposes of this section and section 12.7, a person or partnership that is a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership, and the person or partnership is deemed to have, directly, rights to the income or capital of the other partnership to the extent of the person or partnership's direct and indirect rights to that income or capital.

**Paliers de sociétés de personnes**

**(18)** Pour l'application du présent article et de l'article 12.7, une personne ou une société de personnes qui est ou est réputée être, en vertu du présent paragraphe, l'associé d'une société de personnes donnée qui est elle-même l'associé d'une autre société de personnes est réputée être l'associé de cette dernière et est réputée avoir, directement, des droits sur le revenu ou le capital de l'autre société de personnes, jusqu'à concurrence de ses droits directs ou indirects sur ce revenu ou ce capital.

**Multiple recipients**

**(19)** For the purposes of this section and section 12.7, if there would, in the absence of this subsection, be multiple recipients of a particular payment, each portion of the particular payment that arises to each recipient is deemed to be a separate payment.

**Bénéficiaires multiples**

**(19)** Pour l'application du présent article et de l'article 12.7, s'il y avait, en l'absence du présent paragraphe, des bénéficiaires multiples d'un paiement donné, chaque portion du paiement donné qui se produit pour chaque bénéficiaire est réputée être un paiement distinct.

**Anti-avoidance**

**(20)** The *tax consequences* (as defined in subsection 245(1)) to a person shall be determined in order to deny a *tax benefit* (as defined in subsection 245(1)) to the extent necessary to eliminate any deduction/non-inclusion mismatch, or other outcome that is substantially similar to a

**Anti-évitement**

**(20)** Les *attributs fiscaux* (au sens du paragraphe 245(1)) pour une personne doivent être déterminés de façon à supprimer un *avantage fiscal* (au sens du paragraphe 245(1)) dans la mesure nécessaire pour éliminer toute asymétrie de déduction/non-inclusion ou un autre résultat qui est substantiellement semblable à une

deduction/non-inclusion mismatch, arising from a payment if

**(a)** it can reasonably be considered that one of the main purposes of a transaction or series of transactions that includes the payment is to avoid or limit the application of subsection (4), 12.7(3) or 113(5) in respect of the payment; and

**(b)** any of the following conditions is met:

**(i)** the payment is a dividend and an amount would be — or would reasonably be expected to be — deductible in respect of the payment in computing relevant foreign income or profits of an entity for a foreign taxation year,

**(ii)** the mismatch or other outcome arises in whole or in part because of a difference in tax treatment of any transaction or series of transactions under the laws of more than one country that is attributable to the terms or conditions of the transaction or one or more transactions included in the series, or

**(iii)** the mismatch or other outcome would arise in whole or in part because of a difference described in subparagraph (ii), if any other reason for the mismatch or other outcome were disregarded.

asymétrie de déduction/non-inclusion, découlant d'un paiement si, à la fois :

**a)** il est raisonnable de considérer que l'un des principaux objets d'une opération ou d'une série d'opérations qui comprend le paiement est de permettre d'éviter ou de restreindre l'application des paragraphes (4), 12.7(3) ou 113(5) relativement au paiement;

**b)** l'une des conditions suivantes est remplie :

**(i)** le paiement est un dividende et une somme serait, ou il serait raisonnable de s'attendre à ce qu'elle soit, déductible relativement au paiement dans le calcul des revenus ou bénéfices étrangers pertinents d'une entité pour une année d'imposition étrangère,

**(ii)** l'asymétrie ou l'autre résultat découle en tout ou en partie d'une différence dans le traitement fiscal d'une opération ou d'une série d'opérations en vertu des lois de plus d'un pays qui est attribuable aux modalités de l'opération ou de l'une ou de plusieurs opérations comprises dans la série,

**(iii)** l'asymétrie ou l'autre résultat découlerait en tout ou en partie d'une différence visée au sous-alinéa (ii), à condition que tout autre motif pour l'asymétrie ou un autre résultat ne soit pas pris en compte.

**Filing Requirement**

**(21)** Each taxpayer shall file with its return of income for a taxation year a prescribed form containing prescribed information if, in computing the taxpayer's income for the taxation year,

**(a)** an amount is not deductible in respect of a payment because of subsection (4); or

**(b)** subsection 12.7(3) includes an amount in respect of a payment.

**Exigence relative à la production de déclarations de revenus**

**(21)** Chaque contribuable est tenu de produire, avec sa déclaration de revenu pour une année d'imposition, un formulaire prescrit contenant les renseignements prescrits si, dans le calcul de son revenu pour l'année, selon le cas :

**a)** une somme n'est pas déductible au titre d'un paiement par l'effet du paragraphe (4);

**b)** le paragraphe 12.7(3) inclut une somme relativement à un paiement.

**(2) Paragraph (a) of the definition *foreign expense restriction rule* in subsection 18.4(1) of the Act, as enacted by subsection (1), is replaced by the following:**

**(a)** have an effect, or be intended to have an effect, that is substantially similar to subsection 18(4) or 18.2(2); or

**(2) L'alinéa a) de la définition *règle étrangère de restriction des dépenses*, au paragraphe 18.4(1) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**a)** ayant un effet, ou étant destinée à avoir un effet, substantiellement semblable aux paragraphes 18(4) ou 18.2(2);

**(3) Paragraph 18.4(3)(a) of the Act, as enacted by subsection (1), is replaced by the following:**

**(3) L'alinéa 18.4(3)a) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**(a)** in the absence of this section and subsections 18(4) and 18.2(2), an amount would be deductible, in respect of the payment, in computing a taxpayer's income from a business or property for a taxation year; and

**(4) The description of A in paragraph 18.4(6)(a) of the Act, as enacted by subsection (1), is replaced by the following:**

**A** is the total of all amounts, each of which would, in the absence of this section and subsections 18(4) and 18.2(2), be deductible in respect of the payment, in computing the income of a taxpayer from a business or property under this Part for a taxation year (referred to in this paragraph as the "relevant year"), and

**(5) The portion of subparagraph 18.4(14)(f)(ii) of the Act before clause (A), as enacted by subsection (1), is replaced by the following:**

**(ii)** if the condition in subparagraph (i) is not met, would meet the condition in that subparagraph if any amount that, in the absence of this section, subsections 18(4) and 18.2(2) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return were instead considered to be deductible in respect of the payment, to the extent that the amount

**(6) Paragraph 18.4(15)(d) of the Act, as enacted by subsection (1), is replaced by the following:**

**(d)** if the condition in subparagraph (14)(f)(ii) is met in respect of the payment, any amount that, in the absence of this section, subsections 18(4) and 18.2(2) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return that meets the conditions in clauses 14(f)(ii)(A) and (B) is deemed to be deductible by the transferee in respect of the payment for the purposes of applying subsections (3) and (4) and section 12.7.

**(7) Subsection (1) applies in respect of payments arising on or after July 1, 2022, except that subsection 18.4(21) of the Act, as enacted by subsection (1), does not apply in respect of a payment that arises before July 1, 2023.**

**(8) Subsections (2) to (6) apply in respect of taxation years of a taxpayer that begin on or after**

**a)** en l'absence du présent article et des paragraphes 18(4) et 18.2(2), un montant serait déductible, relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition;

**(4) L'élément A de la formule figurant à l'alinéa 18.4(6)a) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**A** représente le total des sommes dont chacune serait, en l'absence du présent article et des paragraphes 18(4) et 18.2(2), déductible relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien en vertu de la présente partie pour une année d'imposition (appelée « année pertinente » au présent alinéa),

**(5) Le passage du sous-alinéa 18.4(14)f)(ii) de la même loi précédant la division (A), édicté par le paragraphe (1), est remplacé par ce qui suit :**

**(ii)** si la condition énoncée au sous-alinéa (i) n'est pas remplie, remplirait la condition énoncée à ce sous-alinéa, si toute somme qui, en l'absence du présent article, des paragraphes 18(4) et 18.2(2), ou toute règle étrangère de restriction des dépenses, serait, ou dont on pourrait raisonnablement s'attendre à ce qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent était plutôt considérée comme déductible relativement au paiement, dans la mesure où, à la fois :

**(6) L'alinéa 18.4(15)d) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**d)** si la condition énoncée au sous-alinéa (14)f)(ii) est remplie relativement au paiement, toute somme qui, en l'absence du présent article, des paragraphes 18(4) et 18.2(2) ou de toute règle étrangère de restriction des dépenses, serait, ou dont on pourrait raisonnablement s'attendre à qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent qui remplit les conditions énoncées aux divisions (14)f)(ii)(A) et (B) est réputée être déductible par le cessionnaire relativement au paiement pour l'application des paragraphes (3) et (4) et de l'article 12.7.

**(7) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022. Toutefois, le paragraphe 18.4(21) de la même loi, édicté par le paragraphe (1), ne s'applique pas relativement à un paiement qui se produit avant le 1er juillet 2023.**

**(8) Les paragraphes (2) à (6) s'appliquent relativement aux années d'imposition d'un**

**October 1, 2023. However, subsections (2) to (6) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**9 (1) Subsection 20(1) of the Act is amended by striking out "and" at the end of paragraph (ww), by adding "and" at the end of paragraph (xx) and by adding the following after paragraph (xx):**

**Adjustment for hybrid mismatch**

**(yy)** if subsection 18.4(4) has applied to deny a taxpayer a deduction, for the year or a preceding taxation year, for all or a portion of an amount in respect of a payment arising under a hybrid mismatch arrangement, and the taxpayer demonstrates that an amount is foreign ordinary income of an entity in respect of the payment (other than any amount of foreign ordinary income already taken into account in determining the amount of the deduction that was previously denied or a deduction under this paragraph) for a foreign taxation year that ends on or before the day that is 12 months after the end of the year,

**(i)** the lesser of

**(A)** the amount by which the deduction that was denied exceeds the total of all amounts already deducted under this paragraph in respect of the payment for the year or any previous year, and

**(B)** the amount of the foreign ordinary income, and

**(ii)** the amount that is deductible under this paragraph is deemed to be deductible in respect of the payment.

**(2) Subsection (1) applies in respect of payments arising on or after July 1, 2022.**

**contribuable commençant après septembre 2023. Toutefois, ils s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**9 (1) Le paragraphe 20(1) de la même loi est modifié par adjonction, après l'alinéa xx), de ce qui suit :**

**Ajustement de l'asymétrie hybride**

**yy)** si le paragraphe 18.4(4) s'est appliqué pour refuser à un contribuable une déduction, pour l'année ou une année d'imposition précédente, pour la totalité ou une partie d'une somme relative à un paiement découlant d'un dispositif hybride, et que le contribuable démontre qu'une somme constitue du revenu ordinaire étranger d'une entité relativement au paiement (sauf tout montant de revenu ordinaire étranger déjà pris en compte dans le calcul du montant de la déduction qui a été refusée antérieurement ou d'une déduction en application du présent alinéa) pour une année d'imposition étrangère qui se termine au plus tard le jour qui suit de douze mois la fin de l'année :

**(i)** la moindre des sommes suivantes :

**(A)** l'excédent du montant de la déduction refusée sur le total des sommes déjà déduites en application du présent alinéa relativement au paiement pour l'année ou toute année antérieure,

**(B)** la somme du revenu ordinaire étranger,

**(ii)** la somme qui est déductible en application du présent alinéa est réputée être déductible relativement au paiement.

**(2) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022.**

**10 (1) The portion of subparagraph 40(1)(a)(iii) of the Act before clause (A) is replaced by the following:**

**(iii)** subject to subsections (1.1) to (1.3), such amount as the taxpayer may claim

**(2) Section 40 of the Act is amended by adding the following after subsection (1.1):**

**Reserve — intergenerational business transfers**

**(1.2)** In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) on a disposition of shares of the capital stock of a corporation resident in Canada to another corporation, that subparagraph is to be read as if the references to "1/5" and "4" were references to "1/10" and "9" respectively, if the conditions set out in subsection 84.1(2.31) or (2.32) are satisfied in respect of the disposition.

**Reserve — dispositions to employee ownership trusts**

**(1.3)** In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer's gain from the disposition of a share of the capital stock of a qualifying business, that subparagraph is to be read as if the references in that subparagraph to "1/5" and "4" were references to "1/10" and "9" respectively, if the shares of the qualifying business were disposed of by the taxpayer to an employee ownership trust, or to a Canadian-controlled private corporation that is controlled and wholly-owned by an employee ownership trust, pursuant to a qualifying business transfer.

**(3) Subsections (1) and (2) apply in respect of transactions that occur on or after January 1, 2024.**

**11 (1) Subparagraph 53(1)(e)(xiii) of the Act is replaced by the following:**

**(xiii)** any amount required by subsection 127(30) or section 211.92 to be added to the taxpayer's tax otherwise payable under this Part for a taxation year that ended before that time in respect of the interest in the partnership;

**10 (1) Le passage du sous-alinéa 40(1)a)(iii) de la même loi précédant la division (A) est remplacé par ce qui suit :**

**(iii)** sous réserve des paragraphes (1.1) à (1.3), le montant dont il peut demander la déduction, dans le cas d'un particulier – à l'exclusion d'une fiducie –, sur le formulaire prescrit présenté avec la déclaration de revenu prévue à la présente partie pour l'année et, dans les autres cas, dans la déclaration de revenu produite en vertu de la présente partie pour l'année, jusqu'à concurrence du moins élevé des montants suivants :

**(2) L'article 40 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :**

**Transferts intergénérationnels d'entreprises**

**(1.2)** Pour le calcul de la somme dont un contribuable peut demander la déduction, en vertu du sous-alinéa (1)a)(iii), lors de la disposition d'actions du capital-actions d'une société résidant au Canada en faveur d'une autre société, les mentions « 1/5 » et « 4 » à ce sous-alinéa valent mention respectivement de « 1/10 » et « 9 » si les conditions des paragraphes 84.1(2.31) ou (2.32) sont remplies relativement à la disposition.

**Dispositions en faveur de fiducies collectives des employés**

**(1.3)** Pour le calcul de la somme dont un contribuable peut demander la déduction, selon le sous-alinéa (1)a)(iii), dans le calcul de son gain provenant de la disposition d'une action du capital-actions d'une entreprise admissible, les mentions « 1/5 » et « 4 » à ce sous-alinéa valent mention respectivement de « 1/10 » et « 9 » si le contribuable a disposé des actions de l'entreprise admissible en faveur d'une fiducie collective des employés, ou d'une société privée sous contrôle canadien dont les actions sont détenues à cent pour cent par une fiducie collective des employés et qui est contrôlée par celle-ci, conformément à un transfert admissible d'entreprise.

**(3) Les paragraphes (1) et (2) s'appliquent aux opérations se produisant après le 31 décembre 2023.**

**11 (1) Le sous-alinéa 53(1)e)(xiii) de la même loi est remplacé par ce qui suit :**

**(xiii)** tout montant à ajouter, en application du paragraphe 127(30) ou de l'article 211.92, à l'impôt payable par ailleurs par le contribuable en vertu de la présente partie pour une année d'imposition s'étant terminée avant ce moment relativement à la participation dans la société de personnes;

**(2) Subparagraph 53(1)(e)(xiii) of the Act, as amended by subsection (1), is replaced by the following:**

**(xiii)** any amount required by subsection 127(30) or 127.45(17) or section 211.92 to be added to the taxpayer's tax otherwise payable under this Part for a taxation year that ended before that time in respect of the interest in the partnership;

**(3) Paragraph 53(2)(c) of the Act is amended by adding the following after subparagraph (vi):**

**(vi.1)** an amount equal to that portion of all amounts of a CCUS tax credit deducted under subsection 127.44(3) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the tax credit of the taxpayer because of subsection 127.44(11),

**(4) Paragraph 53(2)(c) of the Act, as amended by subsection (3), is amended by adding the following after subparagraph (vi.1):**

**(vi.2)** an amount equal to that portion of all amounts of a clean technology investment tax credit deducted under subsection 127.45(6) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the tax credit of the taxpayer because of subsection 127.45(8),

**(5) Subsections (1) and (3) are deemed to have come into force on January 1, 2022.**

**(6) Subsections (2) and (4) are deemed to have come into force on March 28, 2023.**

**12 (1) Paragraphs (f.1) and (g) of the definition *principal-business corporation* in subsection 66(15) of the Act are replaced by the following:**

**(f.1)** the production or marketing of calcium chloride, gypsum, kaolin, lithium, sodium chloride or potash,

**(2) Le sous-alinéa 53(1)e)(xiii) de la même loi, modifié par le paragraphe (1), est remplacé par ce qui suit :**

**(xiii)** tout montant à ajouter, en application des paragraphes 127(30) ou 127.45(17) ou de l'article 211.92, à l'impôt payable par ailleurs par le contribuable en vertu de la présente partie pour une année d'imposition s'étant terminée avant ce moment relativement à la participation dans la société de personnes;

**(3) L'alinéa 53(2)c) de la même loi est modifié par adjonction, après le sous-alinéa (vi), de ce qui suit :**

**(vi.1)** une somme égale à la fraction des montants d'un crédit d'impôt pour le CUSC déduits en vertu du paragraphe 127.44(3) dans le calcul de l'impôt par ailleurs payable par le contribuable en vertu de la présente partie pour ses années d'imposition se terminant avant ce moment qu'il est raisonnable d'attribuer aux montants ajoutés dans le calcul du crédit d'impôt du contribuable en vertu du paragraphe 127.44(11),

**(4) L'alinéa 53(2)c) de la même loi, modifié par le paragraphe (3), est modifié par adjonction, après le sous-alinéa (vi.1), de ce qui suit :**

**(vi.2)** une somme égale à la fraction des montants d'un crédit d'impôt à l'investissement dans les technologies propres déduits en vertu du paragraphe 127.45(6) dans le calcul de l'impôt par ailleurs payable par le contribuable en vertu de la présente partie pour ses années d'imposition se terminant avant ce moment qu'il est raisonnable d'attribuer aux montants ajoutés dans le calcul du crédit d'impôt du contribuable en vertu du paragraphe 127.45(8),

**(5) Les paragraphes (1) et (3) sont réputés être entrés en vigueur le 1er janvier 2022.**

**(6) Les paragraphes (2) et (4) sont réputés être entrés en vigueur le 28 mars 2023.**

**12 (1) Les alinéas f.1) et g) de la définition de *société exploitant une entreprise principale*, au paragraphe 66(15) de la même loi, sont remplacés par ce qui suit :**

**f.1)** la production ou la commercialisation du chlorure de calcium, du gypse, du kaolin, du lithium, du chlorure de sodium ou de la potasse;

**(g)** the manufacturing of products, where the manufacturing involves the processing of calcium chloride, gypsum, kaolin, lithium, sodium chloride or potash,

**(2) Section 66 of the Act is amended by adding the following after subsection (20):**

**Lithium brine well**

**(21)** For the purposes of paragraph (f) of the definition *Canadian exploration expense* in subsection 66.1(6) and paragraphs (c.2) and (d) of the definition *Canadian development expense* in subsection 66.2(5),

**(a)** a mine includes a well for the extraction of material from a lithium brine deposit;

**(b)** all wells of a taxpayer for the extraction of material from one or more lithium brine deposits, the material produced from which is sent to the same plant for processing, are deemed to be one mine of the taxpayer; and

**(c)** all wells of a taxpayer for the extraction of material from one or more lithium brine deposits that the Minister, in consultation with the Minister of Natural Resources, determines constitute one project, are deemed to be one mine of the taxpayer.

**(3) Subsections (1) and (2) are deemed to have come into force on March 28, 2023.**

**13 (1) Paragraphs (c.2) and (d) of the definition *Canadian development expense* in subsection 66.2(5) of the Act are replaced by the following:**

**(c.2)** any expense, or portion of any expense, that is not a Canadian exploration expense, incurred by the taxpayer after March 20, 2013 for the purpose of bringing a new mine in a mineral resource in Canada, other than a bituminous sands deposit or an oil shale deposit, into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft, constructing an adit or other underground entry or drilling a well for the extraction of lithium from brines,

**(d)** any expense (other than an amount included in the capital cost of depreciable property) incurred by the taxpayer after 1987

**g)** la fabrication de produits nécessitant le traitement du chlorure de calcium, du gypse, du kaolin, du lithium, du chlorure de sodium ou de la potasse;

**(2) L'article 66 de la même loi est modifié par adjonction, après le paragraphe (20), de ce qui suit :**

**Puits de saumure qui contient du lithium**

**(21)** Pour l'application de l'alinéa f) de la définition de *frais d'exploration au Canada* au paragraphe 66.1(6) et des alinéas c.2) et d) de la définition de *frais d'aménagement au Canada* au paragraphe 66.2(5) :

**a)** une mine comprend un puits pour l'extraction de matières à partir d'un gisement de saumure contenant du lithium;

**b)** tous les puits d'un contribuable d'où sont extraites des matières provenant d'un ou de plusieurs gisements de saumure contenant du lithium, qui sont envoyées à la même usine pour traitement, sont réputés constituer une seule mine du contribuable;

**c)** tous les puits d'un contribuable d'où sont extraites des matières provenant d'un ou de plusieurs gisements de saumure contenant du lithium et qui, tel que déterminé par le ministre en consultation avec le ministre des Ressources naturelles, constituent un seul projet, sont réputés constituer une seule mine du contribuable.

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 28 mars 2023.**

**13 (1) Les alinéas c.2) et d) de la définition de *frais d'aménagement au Canada*, au paragraphe 66.2(5) de la même loi, sont remplacés par ce qui suit :**

**c.2)** toute dépense ou partie de dépense, ne représentant pas des frais d'exploration au Canada, engagée par le contribuable après le 20 mars 2013 en vue d'amener une nouvelle mine, située dans une ressource minérale au Canada, sauf un gisement de sables bitumineux ou de schiste bitumineux, au stade de la production en quantités commerciales raisonnables, mais avant l'entrée en production de cette mine en de telles quantités; sont compris parmi ces dépenses les frais de déblaiement, d'enlèvement des terrains de couverture, de dépouillement, de creusage d'un puits de mine, de construction d'une galerie à flanc de coteau ou d'une autre entrée souterraine et de forage de puits pour l'extraction de lithium à partir de saumures;

**(i)** in sinking or excavating a mine shaft, main haulage way or similar underground work designed for continuing use, for a mine in a mineral resource in Canada built or excavated after the mine came into production,

**(ii)** in extending any such shaft, haulage way or work referred to in subparagraph (i), or

**(iii)** in drilling or completing a well for the extraction of lithium from brines in Canada after the mine came into production,

**d)** une dépense (à l'exclusion d'un montant inclus dans le coût en capital de biens amortissables) engagée par le contribuable après 1987 en vue de, selon le cas :

**(i)** creuser un puits de mine, une voie principale de roulage ou d'autres travaux souterrains semblables destinés à un usage continu, creusés ou construits après l'entrée en production d'une mine située dans une ressource minérale au Canada,

**(ii)** prolonger ces puits, voies ou travaux visés au sous-alinéa (i),

**(iii)** forer ou achever un puits pour l'extraction de lithium à partir de saumures au Canada après l'entrée en production de la mine;

**(2) Subsection (1) applies in respect of expenses incurred on or after March 28, 2023.**

**(2) Le paragraphe (1) s'applique relativement aux dépenses engagées à compter du 28 mars 2023.**

**14 (1) Subclause 66.8(1)(a)(ii)(B)(I) of the Act is replaced by the following:**

**(I)** the total of all amounts required by subsections 127(8) and 127.44(11) in respect of the partnership to be added in computing the investment tax credit or the *CCUS tax credit* (as defined in subsection 127.44(1)) of the taxpayer in respect of the fiscal period, and

**14 (1) La subdivision 66.8(1)a)(ii)(B)(I) de la même loi est remplacée par ce qui suit :**

**(I)** le total des montants déterminés à l'égard de la société de personnes que les paragraphes 127(8) et 127.44(11) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement ou du *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) du contribuable pour l'exercice,

**(2) Subclause 66.8(1)(a)(ii)(B)(I) of the Act, as amended by subsection (1), is replaced by the following:**

**(I)** the total of all amounts required by subsections 127(8), 127.44(11) and 127.45(8) in respect of the partnership to be added in computing the investment tax credit, the *CCUS tax credit* (as defined in subsection 127.44(1)) or the *clean technology investment tax credit* (as defined in subsection 127.45(1)) of the taxpayer in respect of the fiscal period, and

**(2) La subdivision 66.8(1)a)(ii)(B)(I) de la même loi, modifiée par le paragraphe (1), est remplacée par ce qui suit :**

**(I)** le total des montants déterminés à l'égard de la société de personnes que les paragraphes 127(8), 127.44(11) et 127.45(8) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement, du *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) ou du *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)) du contribuable pour l'exercice,

**(3) Subsection (1) is deemed to have come into force on January 1, 2022.**

**(3) Le paragraphe (1) est réputé être entré en vigueur le 1 janvier 2022.**

**(4) Subsection (2) is deemed to have come into force on March 28, 2023.**

**(4) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.**

**15 (1) The portion of the definition *commercial debt obligation* in subsection 80(1) of the Act after paragraph (b) is replaced by the following:**

**15 (1) Le passage de la définition de *créance commerciale* précédant l'alinéa a), au paragraphe 80(1) de la même loi, est remplacé par ce qui suit :**

an amount in respect of the interest was or would have been deductible in computing the debtor's income, taxable income or taxable income earned in Canada, as the case may be, if this Act were read without reference to paragraph 18(1)(g), subsections 18(2), (3.1) and (4) and 18.2(2) and section 21; (*créance commerciale*)

**(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023.**

**16 (1) Subsection 80.4(3) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):**

**(c)** that satisfies the conditions set out in subsection 15(2.51) and is repaid within 15 years after the qualifying business transfer referred to in that subsection.

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**17 (1) Paragraph 84.1(2)(e) of the Act is replaced by the following:**

**(e)** notwithstanding any other paragraph in this subsection, if this paragraph applies because of subsection (2.31) or (2.32) to a disposition of subject shares by a taxpayer to a purchaser corporation, the taxpayer and the purchaser corporation are deemed to deal with each other at arm's length at the time of the disposition of the subject shares.

**(2) Subsection 84.1(2.3) of the Act is replaced by the following:**

**Rules for subsections (2.31) and (2.32)**

**(2.3)** For the purposes of this subsection and subsections (2.31) and (2.32),

**(a)** a *child* of a taxpayer has the same meaning as in subsection 70(10) and also includes

**(i)** a niece or nephew of the taxpayer,

**(ii)** a niece or nephew of the taxpayer's spouse or common-law partner,

**(iii)** a spouse or common-law partner of a niece or nephew referred to in subparagraph (i) or (ii), and

**(iv)** a child of a niece or nephew referred to in subparagraph (i) or (ii);

***créance commerciale*** Créance émise par un débiteur et sur laquelle un montant au titre d'intérêts est déductible dans le calcul du revenu, du revenu imposable ou du revenu imposable gagné au Canada du débiteur compte non tenu de l'alinéa 18(1)g), des paragraphes 18(2), (3.1), (4) et 18.2(2) et de l'article 21, si ces intérêts :

**(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023.**

**16 (1) Le paragraphe 80.4(3) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**c)** qui remplit les conditions énoncées au paragraphe 15(2.51) et dont le montant est remboursé dans les 15 ans suivant le transfert d'entreprise admissible visé à ce paragraphe.

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**17 (1) L'alinéa 84.1(2)e) de la même loi est remplacé par ce qui suit :**

**e)** malgré tout autre alinéa du présent paragraphe, si le présent alinéa s'applique compte tenu des paragraphes (2.31) ou (2.32) à la disposition d'actions concernées par un contribuable en faveur d'un acheteur, le contribuable et l'acheteur sont réputés ne pas avoir entre eux de lien de dépendance au moment de la disposition des actions concernées.

**(2) Le paragraphe 84.1(2.3) de la même loi est remplacé par ce qui suit :**

**Application des paragraphes (2.31) et (2.32)**

**(2.3)** Pour l'application du présent paragraphe et des paragraphes (2.31) et (2.32) :

**a)** un *enfant* d'un contribuable s'entend au sens du paragraphe 70(10) et y sont assimilées les personnes suivantes :

**(i)** sa nièce ou son neveu,

**(ii)** une nièce ou un neveu de son époux ou conjoint de fait,

**(iii)** un époux ou conjoint de fait d'une nièce ou d'un neveu visé aux sous-alinéas (i) ou (ii),

**(iv)** un enfant d'une nièce ou d'un neveu visé aux sous-alinéas (i) ou (ii);

**(b)** in applying subparagraphs (2.31)(c)(iii) and (2.32)(c)(iii), if the relevant group entity is a partnership,

**(i)** the partnership is deemed to be a corporation (in this paragraph referred to as the "deemed corporation"),

**(ii)** the deemed corporation is deemed to have a capital stock of a single class of shares, with a total of 100 issued and outstanding shares,

**(iii)** each member (in this paragraph referred to as a "deemed shareholder") of the partnership is deemed to be a shareholder of the deemed corporation,

**(iv)** each deemed shareholder of the deemed corporation is deemed to hold a number of shares in the capital stock of the deemed corporation determined by the formula

**A × 100**

where

**A** is equal to

**(A)** the deemed shareholder's specified proportion for the last fiscal period of the deemed corporation, or

**(B)** if the deemed shareholder does not have a specified proportion described in clause (A), the proportion that is the fair market value of the deemed shareholder's interest in the deemed corporation at that time relative to the fair market value of all interests in the deemed corporation at that time, and

**(v)** the deemed corporation's fiscal period is deemed to be its taxation year;

**(c)** ***own, directly or indirectly***, in respect of a property, means

**(i)** direct ownership of the property, and

**(ii)** an ownership interest or, for civil law, a right in the shares of a corporation, an interest in a partnership or an interest in a trust that has a direct or indirect interest or, for civil law, a right, in the property, except that for the purposes of paragraphs (2.31)(d) and (e) and (2.32)(d) and (e), this subparagraph does not apply as a look-through rule for an interest, or for civil law, a right in non-voting preferred shares or debt of

**b)** pour l'application des sous-alinéas (2.31)c)(iii) et (2.32)c)(iii), si l'entité pertinente du groupe est une société de personnes :

**(i)** la société de personnes est réputée être une société (appelée « société réputée » au présent alinéa),

**(ii)** la société réputée est réputée avoir un capital-actions constitué d'une seule catégorie d'actions, avec un total de 100 actions émises et en circulation,

**(iii)** chaque associé (appelé « actionnaire réputé » au présent alinéa) de la société de personnes est réputé être un actionnaire de la société réputée,

**(iv)** chaque actionnaire réputé de la société réputée est réputé détenir un nombre d'actions du capital-actions de la société réputée déterminé par la formule suivante :

**A × 100**

où :

**A** représente :

**(A)** la proportion déterminée de l'actionnaire réputé pour le dernier exercice de la société réputée,

**(B)** si l'actionnaire réputé n'a pas de proportion déterminée visée à la division (A), la proportion que représente la juste valeur marchande de la participation de l'actionnaire réputé dans la société réputée à ce moment relativement à la juste valeur marchande de l'ensemble des participations dans la société réputée à ce moment,

**(v)** l'exercice de la société réputée est réputé être son année d'imposition;

**c)** ***détient, directement ou indirectement*** relativement à un bien s'entend de ce qui suit :

**(i)** la propriété directe du bien,

**(ii)** une participation dans les actions d'une société, une participation dans une société de personnes ou une participation dans une fiducie ayant une participation directe ou indirecte, ou, pour l'application du droit civil, un droit sur le bien, sauf pour l'application des alinéas (2.31)d) et e) ainsi que (2.32)d) et e), le présent sous-alinéa ne s'applique pas comme une règle de transparence relativement à un intérêt, ou pour l'application du droit civil, un droit sur une action privilégiée sans droit de vote ou une dette, selon le cas :

**(A)** the purchaser corporation (within the meaning of subsections (2.31) and (2.32)),

**(B)** the subject corporation (within the meaning of subsections (2.31) and (2.32)), or

**(C)** any relevant group entity (within the meaning of subsections (2.31) and (2.32));

**(d)** if a person or partnership's share of the accumulating income or capital of a trust in respect of which the person or partnership has an interest as a beneficiary depends on the exercise by a person (in this paragraph referred to as a "trustee") of, or the failure by any trustee to exercise, a discretionary power, that trustee is deemed to have fully exercised the power, or to have failed to exercise the power, as the case may be;

**(e)** if one or more children referred to in

**(i)** subparagraph (2.31)(f)(i) have disposed of, or caused the disposition of, all of the shares in the capital stock of the purchaser corporation, the subject corporation or all relevant group entities to an arm's length person or group of persons, the conditions set out in paragraphs (2.31)(f) and (g) are deemed to be met as of the time of the disposition, provided that all equity interests in all relevant businesses owned, directly or indirectly, by each child referred to in subparagraph (2.31)(f)(i) are included in the disposition, or

**(ii)** subparagraph (2.32)(g)(i) have disposed of, or caused the disposition of, all of the shares in the capital stock of the purchaser corporation, the subject corporation or all relevant group entities to an arm's length person or group of persons, the conditions set out in paragraphs (2.32)(g) and (h) are deemed to be met as of the time of the disposition, provided that all equity interests in all relevant businesses owned, directly or indirectly, by each child referred to in subparagraph (2.32)(g)(i) are included in the disposition; and

**(f)** if one or more children referred to in

**(i)** subparagraph (2.31)(f)(i) have disposed of, or caused the disposition of, any of the shares in the capital stock of the purchaser corporation, the subject corporation or a relevant group entity to another child or group of children of the taxpayer (in this paragraph referred to as the "new child" or the "new children"), the conditions set out in paragraphs (2.31)(f) and (g) are deemed

**(A)** de l'acheteur (au sens des paragraphes (2.31) et (2.32)),

**(B)** de la société en cause (au sens des paragraphes (2.31) et (2.32)),

**(C)** de toute entité pertinente du groupe (au sens des paragraphes (2.31) et (2.32));

**d)** si la part d'une personne ou société de personnes du revenu ou du capital accumulés d'une fiducie dans laquelle elle détient une participation à titre de bénéficiaire est fonction de l'exercice ou de l'absence d'exercice, par une personne (appelée « fiduciaire » au présent alinéa), d'un pouvoir discrétionnaire, le fiduciaire est réputé avoir exercé entièrement ce pouvoir, ou avoir fait défaut de l'exercer, selon le cas;

**e)** si un ou plusieurs des enfants visés :

**(i)** au sous-alinéa (2.31)f)(i), ont disposé ou ont donné lieu à la disposition de toutes les actions du capital-actions de l'acheteur, de la société en cause ou de toutes les entités pertinentes du groupe en faveur d'une personne ou d'un groupe de personnes sans lien de dépendance, les conditions visées aux alinéas (2.31)f) et g) sont réputées avoir été remplies au moment de la disposition pourvu que toutes les participations dans toutes les entreprises pertinentes détenues, directement ou indirectement, par chaque enfant visé à l'alinéa (2.31)f)(i), soient incluses dans la disposition,

**(ii)** au sous-alinéa (2.32)g)(i), ont disposé ou ont donné lieu à la disposition de toutes les actions du capital-actions de l'acheteur, de la société en cause ou de toutes les entités pertinentes du groupe en faveur d'une personne ou d'un groupe de personnes sans lien de dépendance, les conditions visées aux alinéas (2.32)g) et h) sont réputées avoir été remplies au moment de la disposition pourvu que toutes les participations dans toutes les entreprises pertinentes détenues, directement ou indirectement, par chaque enfant visé à l'alinéa (2.32)g)(i), soient incluses dans la disposition;

**f)** si un ou plusieurs des enfants visés :

**(i)** au sous-alinéa (2.31)f)(i), ont disposé ou ont donné lieu à la disposition de toute action du capital-actions de l'acheteur, de la société en cause ou des entités pertinentes du groupe en faveur d'un autre enfant ou groupe d'enfants du contribuable (appelés « nouvel enfant » ou « nouveaux enfants » au présent alinéa), les conditions des alinéas (2.31)f) et g) sont réputées :

**(A)** to be met as of the time of the disposition, and

**(B)** to continue to apply to the new child (or the new children) and any other member of the group of children that controls the subject corporation and the purchaser corporation at the time of the disposition, or

**(ii)** subparagraph (2.32)(g)(i) have disposed of, or caused the disposition of, any of the shares in the capital stock of the purchaser corporation, the subject corporation, or a relevant group entity to another child or group of children of the taxpayer (in this paragraph referred to as the "new child" or the "new children"), the conditions set out in paragraphs (2.32)(g) and (h) are deemed

**(A)** to be met as of the time of the disposition, and

**(B)** to continue to apply to the new child (or the new children) and any other member of the group of children that controls the subject corporation and the purchaser corporation at the time of the disposition;

**(g)** if a child, or each of the children, referred to in

**(i)** subparagraph (2.31)(f)(ii) has died or has, after the disposition of the subject shares, suffered one or more severe and prolonged impairments in physical or mental functions, the conditions set out in paragraphs (2.31)(f) and (g) are deemed to be met as of the time of the death or mental or physical impairment, or

**(ii)** subparagraph (2.32)(g)(ii) has died or has, after the disposition of the subject shares, suffered one or more severe and prolonged impairments in physical or mental functions, the conditions set out in paragraphs (2.32)(g) and (h) are deemed to be met as of the time of the death or mental or physical impairment;

**(h)** if a business of a subject corporation or a relevant group entity has ceased to be carried on due to the disposition of all of the assets that were used to carry on the business in order to satisfy debts owed to creditors of the corporation or of the entity, the conditions set out in respect of the business in subparagraphs (2.31)(f)(ii) and (iii) and (2.31)(g)(i) or (2.32)(g)(ii) and (iii) and (2.32)(h)(i), as applicable, are deemed to be met as of the time of the disposition; and

**(i)** in applying paragraphs (2.31)(g) and (2.32)(h), ***management*** refers to the direction or supervision of

**(A)** avoir été remplies au moment de la disposition,

**(B)** continuer de s'appliquer au nouvel enfant (ou aux nouveaux enfants) et les autres membres du groupe d'enfants qui contrôle la société en cause et l'acheteur au moment de la disposition;

**(ii)** au sous-alinéa (2.32)g)(i) ont disposé ou ont donné lieu à la disposition de toute action du capital-actions de l'acheteur, de la société en cause ou des entités pertinentes du groupe en faveur d'un autre enfant ou groupe d'enfants du contribuable (appelés « nouvel enfant » ou « nouveaux enfants » au présent alinéa), les conditions des alinéas (2.32)g) et h) sont réputées :

**(A)** avoir été remplies au moment de la disposition,

**(B)** continuer de s'appliquer au nouvel enfant (ou aux nouveaux enfants) et les autres membres du groupe d'enfants qui contrôle la société en cause et l'acheteur au moment de la disposition;

**g)** si un ou chacun des enfants visés :

**(i)** au sous-alinéa (2.31)f)(ii) est décédé ou a subi, après la disposition des actions concernées, une ou plusieurs déficiences graves et prolongées des fonctions physiques ou mentales, les conditions prévues aux alinéas (2.31)f) et g) sont réputées avoir été remplies au moment du décès ou de la déficience physique ou mentale,

**(ii)** au sous-alinéa (2.32)g)(ii) est décédé ou a subi, après la disposition des actions concernées, une ou plusieurs déficiences graves et prolongées des fonctions physiques ou mentales, les conditions prévues aux alinéas (2.32)g) et h) sont réputées avoir été remplies au moment du décès ou de la déficience physique ou mentale;

**h)** si une entreprise d'une société en cause ou d'une entité pertinente du groupe a cessé d'être exploitée en raison de la disposition de tous les éléments d'actif qui servaient à l'exploitation de l'entreprise en acquittement des dettes dues aux créanciers de la société ou de l'entité, les conditions énoncées, relativement à l'entreprise, aux alinéas (2.31)f)(ii) et (iii) et (2.31)g)(i) ou (2.32)g)(ii) et (iii) et (2.32)h)(i), selon le cas, sont réputées avoir été remplies au moment de la disposition;

**i)** pour l'application des alinéas (2.31)g) et (2.32)h), la ***gestion*** renvoie à la direction ou supervision des activités de l'entreprise, mais n'inclut pas la prestation de conseils.

business activities but does not include the provision of advice.

**Immediate intergenerational business transfer**

**(2.31)** Paragraph (2)(e) applies at the time of a disposition of subject shares (in this subsection referred to as the "disposition time") by a taxpayer to a purchaser corporation if the following conditions are met:

**(a)** the taxpayer has not previously, at any time after 2023, sought an exception to the application of subsection (1) under paragraph (2)(e) in respect of a disposition of shares that, at that time, derived their value from an active business that is relevant to the determination of whether the subject shares satisfy the condition set out in subparagraph (b)(iii);

**(b)** at the disposition time,

**(i)** the taxpayer is an individual (other than a trust),

**(ii)** the purchaser corporation is controlled by one or more children (within the meaning of paragraph (2.3)(a), in this subsection referred to as the "child" or "children") of the taxpayer, each of whom is 18 years of age or older, and

**(iii)** the subject shares are *qualified small business corporation shares* or *shares of the capital stock of a family farm or fishing corporation* (as those terms are defined in subsection 110.6(1));

**(c)** at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common-law partner of the taxpayer — control, directly or indirectly in any manner whatever,

**(i)** the subject corporation,

**(ii)** the purchaser corporation, or

**(iii)** any other person or partnership (in this subsection referred to as a "relevant group entity") that carries on, at the disposition time, an active business (referred to in this subsection as a "relevant business") that is relevant to the determination of whether the subject shares satisfy the condition set out in subparagraph (b)(iii);

**(d)** at all times after the disposition time, the taxpayer does not – either alone or together with a spouse or common law partner of the taxpayer – own, directly or indirectly,

**(i)** 50% or more of any class of shares, other than shares of a *specified class* as defined in subsection

**Transferts intergénérationnels d'entreprises immédiats**

**(2.31)** L'alinéa (2)e) s'applique au moment de la disposition d'actions concernées (appelé « moment de la disposition » au présent paragraphe) par un contribuable en faveur d'un acheteur si les conditions ci-après sont remplies :

**a)** le contribuable n'a jamais demandé après 2023 d'exception à l'application du paragraphe (1) en vertu de l'alinéa (2)e) relativement à la disposition d'actions dont la valeur, à ce moment, découle d'une entreprise exploitée activement qui est pertinente pour déterminer si les actions concernées remplissent la condition énoncée au sous-alinéa b)(iii);

**b)** au moment de la disposition, à la fois :

**(i)** le contribuable est un particulier (autre qu'une fiducie),

**(ii)** l'acheteur est contrôlé par un ou plusieurs enfants (au sens de l'alinéa (2.3)a), appelés « enfant » ou « enfants » au présent paragraphe) du contribuable, dont chacun est âgé de 18 ans ou plus,

**(iii)** les actions concernées sont des *actions admissibles de petite entreprise* ou des *actions du capital-actions d'une société agricole ou de pêche familiale* (au sens du paragraphe 110.6(1));

**c)** à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne contrôle pas directement ou indirectement, de quelque manière que ce soit, selon le cas :

**(i)** la société en cause,

**(ii)** l'acheteur,

**(iii)** toute autre personne ou société de personnes (appelées « entité pertinente du groupe » au présent paragraphe) qui exploite, au moment de la disposition, une entreprise exploitée activement (appelée « entreprise pertinente » au présent paragraphe) qui est pertinente pour déterminer si les actions concernées remplissent la condition énoncée au sous-alinéa b)(iii);

**d)** à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne possède pas, directement ou indirectement, selon le cas :

256(1.1) (in this subsection referred to as "non-voting preferred shares"), of the capital stock of the subject corporation or of the purchaser corporation, or

**(ii)** 50% or more of any class of equity interest (other than non-voting preferred shares) in any relevant group entity;

**(e)** within 36 months after the disposition time and at all times thereafter, the taxpayer and a spouse or common-law partner of the taxpayer do not own, directly or indirectly,

**(i)** any shares, other than non-voting preferred shares of the capital stock of the subject corporation or of the purchaser corporation, or

**(ii)** any equity interest (other than non-voting preferred shares) in any relevant group entity;

**(f)** subject to subsection (2.3), from the disposition time until 36 months after that time,

**(i)** the child or group of children, as the case may be, controls the purchaser corporation,

**(ii)** the child, or at least one member of the group of children, as the case may be, is actively engaged on a regular, continuous and substantial basis (within the meaning of paragraph 120.4(1.1)(a)) in a relevant business of the subject corporation or a relevant group entity, and

**(iii)** each relevant business of the subject corporation and any relevant group entity is carried on as an active business;

**(g)** subject to subsection (2.3), within 36 months after the disposition time or such greater period as is reasonable in the circumstances, the taxpayer and a spouse or common-law partner of the taxpayer take reasonable steps to

**(i)** transfer management of each relevant business of the subject corporation and any relevant group entity to the child or at least one member of the group of children referred to in subparagraph (f)(ii), and

**(ii)** permanently cease to manage each relevant business of the subject corporation and any relevant group entity; and

**(h)** the taxpayer and the child, or the taxpayer and each member of the group of children, as the case may be,

**(i)** 50 % ou plus d'une catégorie d'actions, sauf des actions d'une *catégorie exclue* au sens du paragraphe 256(1.1) (appelées « actions privilégiées sans droit de vote » au présent paragraphe), du capital-actions de la société en cause ou de l'acheteur,

**(ii)** 50 % ou plus d'une catégorie de participations (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

**e)** dans les trente-six mois suivant le moment de la disposition et à tout moment postérieur, le contribuable et son époux ou conjoint de fait ne possèdent, directement ou indirectement, selon le cas :

**(i)** aucune action, sauf des actions privilégiées sans droit de vote du capital-actions de la société en cause ou de l'acheteur,

**(ii)** aucune participation (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

**f)** sous réserve du paragraphe (2.3), au cours des trente-six mois suivant le moment de la disposition, à la fois :

**(i)** l'enfant ou le groupe d'enfants, selon le cas, contrôle l'acheteur,

**(ii)** l'enfant ou au moins un membre du groupe d'enfants, selon le cas, participe activement, de façon régulière, continue et importante (au sens de l'alinéa 120.4(1.1)a)) à une entreprise pertinente de la société en cause ou d'une entité pertinente du groupe,

**(iii)** chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe est exploitée en tant qu'entreprise exploitée activement;

**g)** sous réserve du paragraphe (2.3), dans les trente-six mois suivant le moment de la disposition ou toute période plus longue étant raisonnable dans les circonstances, le contribuable et son époux ou conjoint de fait prennent des mesures raisonnables pour, à la fois :

**(i)** transférer la gestion de chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe à l'enfant ou à au moins l'un des membres du groupe d'enfants visés au sous-alinéa f)(ii),

**(ii)** cesser de façon permanente de gérer chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe;

**(i)** jointly elect, in prescribed form, for paragraph (2)(e) to apply in respect of the disposition of the subject shares, and

**(ii)** file the election with the Minister on or before the taxpayer's filing-due date for the taxation year that includes the disposition time.

**h)** le contribuable et l'enfant, ou le contribuable et chaque membre du groupe d'enfants, remplissent les conditions suivantes :

**(i)** ils font un choix conjoint d'appliquer l'alinéa (2)e), sur le formulaire prescrit, relativement à la disposition des actions concernées,

**(ii)** ils produisent le choix auprès du ministre au plus tard à la date d'échéance de production du contribuable pour l'année d'imposition qui comprend le moment de la disposition.

**Gradual intergenerational business transfer**

**(2.32)** Paragraph (2)(e) applies at the time of a disposition of subject shares (referred to in this subsection as the "disposition time") by a taxpayer to a purchaser corporation if the following conditions are met:

**(a)** the taxpayer has not previously, at any time after 2023, sought an exception to the application of subsection (1) pursuant to paragraph (2)(e) in respect of a disposition of shares that, at that time, derived their value from an active business that is relevant to the determination of whether the subject shares satisfy the condition set out in subparagraph (b)(iii);

**(b)** at the disposition time,

**(i)** the taxpayer is an individual (other than a trust),

**(ii)** the purchaser corporation is controlled by one or more children (within the meaning of paragraph (2.3)(a), and referred to in this subsection as the "child" or "children") of the taxpayer, each of whom is 18 years of age or older, and

**(iii)** the subject shares are *qualified small business corporation shares* or *shares of the capital stock of a family farm or fishing corporation* (as those terms are defined in subsection 110.6(1));

**(c)** at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common-law partner of the taxpayer — control

**(i)** the subject corporation,

**(ii)** the purchaser corporation, or

**(iii)** any person or partnership (referred to in this subsection as a "relevant group entity") that carries on, at the disposition time, an active business (referred to in this subsection as a "relevant business") that is relevant to the determination of whether the subject shares satisfy the condition in subparagraph (b)(iii);

**Transfert intergénérationnel d'entreprises progressif**

**(2.32)** L'alinéa (2)e) s'applique au moment de la disposition d'actions concernées (appelé « moment de la disposition » au présent paragraphe) par un contribuable en faveur d'un acheteur si les conditions ci-après sont remplies :

**a)** le contribuable n'a jamais demandé après 2023 d'exception à l'application du paragraphe (1) conformément à l'alinéa (2)e) relativement à la disposition d'actions dont la valeur, à ce moment, découle d'une entreprise exploitée activement pertinente aux fins de déterminer si les actions concernées remplissent la condition énoncée au sous-alinéa b)(iii);

**b)** au moment de la disposition, à la fois :

**(i)** le contribuable est un particulier (autre qu'une fiducie),

**(ii)** l'acheteur est contrôlé par un ou plusieurs enfants (au sens de l'alinéa (2.3)a), appelé « enfant » ou « enfants » au présent paragraphe) du contribuable, dont chacun est âgé de 18 ans ou plus,

**(iii)** les actions concernées sont des *actions admissibles de petite entreprise* ou des *actions du capital-actions d'une société agricole ou de pêche familiale* (au sens du paragraphe 110.6(1));

**c)** à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne contrôle pas, selon le cas :

**(i)** la société en cause,

**(ii)** l'acheteur,

**(iii)** toute personne ou société de personnes (appelées « entité pertinente du groupe » au présent paragraphe) qui exploite, au moment de la disposition, une entreprise exploitée activement (appelée « entreprise pertinente » au présent paragraphe) qui est pertinente pour déterminer si les actions

**(d)** at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common-law partner of the taxpayer — own, directly or indirectly,

**(i)** 50% or more of any class of shares, other than shares of a *specified class* as defined in subsection 256(1.1) (in this subsection referred to as "non-voting preferred shares"), of the capital stock of the subject corporation or of the purchaser corporation, or

**(ii)** 50% or more of any class of equity interest (other than non-voting preferred shares) in any relevant group entity;

**(e)** within 36 months after the disposition time and at all times thereafter, the taxpayer and a spouse or common-law partner of the taxpayer do not own, directly or indirectly,

**(i)** any shares, other than non-voting preferred shares of the capital stock of the subject corporation or of the purchaser corporation, or

**(ii)** any equity interest (other than non-voting preferred shares) in any relevant group entity;

**(f)** within 10 years after the disposition time (referred to in this subsection as the "final sale time") and at all times after the final sale time, the taxpayer and a spouse or common-law partner of the taxpayer do not own, directly or indirectly,

**(i)** in the case of a disposition of subject shares that are, at the disposition time, *shares of the capital stock of a family farm or fishing corporation* (as those terms are defined in subsection 110.6(1)), interests (including any debt or equity interest) in any of the subject corporation, the purchaser corporation, and any relevant group entity with a fair market value that exceeds 50% of the fair market value of all the interests that were owned, directly or indirectly, by the taxpayer and a spouse or common-law partner of the taxpayer immediately before the disposition time, or

**(ii)** in the case of a disposition of subject shares that are, at the disposition time, *qualified small business corporation shares* as those terms are defined in subsection 110.6(1) (other than subject shares described in subparagraph (i)), interests (including any debt or equity interest) in any of the subject corporation, the purchaser corporation and any relevant group entity with a fair market value that exceeds 30% of the fair market value of all the concernées remplissent la condition énoncée au sous-alinéa b)(iii);

**d)** à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne possède pas, directement ou indirectement, selon le cas :

**(i)** 50 % ou plus d'une catégorie d'actions, sauf des actions d'une *catégorie exclue* au sens du paragraphe 256(1.1) (appelées « actions privilégiées sans droit de vote » au présent paragraphe), du capital-actions de la société en cause ou de l'acheteur,

**(ii)** 50 % ou plus d'une catégorie de participations (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

**e)** dans les trente-six mois suivant le moment de la disposition et à tout moment postérieur, le contribuable et son époux ou conjoint de fait ne possèdent, directement ou indirectement, selon le cas :

**(i)** aucune action, sauf des actions privilégiées sans droit de vote du capital-actions de la société en cause ou de l'acheteur,

**(ii)** aucune participation (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

**f)** dans les 10 ans suivant le moment de la disposition (appelé « moment de la vente finale » au présent paragraphe) et à tout moment postérieur au moment de la vente finale, le contribuable et son époux ou conjoint de fait ne possèdent pas, directement ou indirectement :

**(i)** dans le cas d'une disposition d'actions concernées qui sont, au moment de la disposition, des *actions du capital-actions d'une société agricole ou de pêche familiale* (au sens du paragraphe 110.6(1)), des intérêts (y compris des dettes ou participations) dans la société en cause, l'acheteur et toute entité pertinente du groupe ayant une juste valeur marchande qui excède 50 % de la juste valeur marchande de tous les intérêts qui étaient détenus, directement ou indirectement, par le contribuable et son époux ou conjoint de fait immédiatement avant le moment de la disposition,

**(ii)** dans le cas d'une disposition d'actions concernées qui sont, au moment de la disposition, des *actions admissibles de petite entreprise* au sens du paragraphe 110.6(1) (sauf des actions concernées visées au sous-alinéa (i)), des intérêts (y compris des dettes ou participations) dans la société en

interests that were owned, directly or indirectly, by the taxpayer and a spouse or common-law partner of the taxpayer immediately before the disposition time;

**(g)** subject to subsection (2.3), from the disposition time until the later of 60 months after the disposition time and the final sale time,

**(i)** the child or group of children, as the case may be, controls the purchaser corporation,

**(ii)** the child, or at least one member of the group of children, as the case may be, is actively engaged on a regular, continuous and substantial basis (within the meaning of paragraph 120.4(1.1)(a)) in a relevant business of the subject corporation or a relevant group entity, and

**(iii)** any relevant business of the subject corporation and any relevant group entity is carried on as an active business;

**(h)** subject to subsection (2.3), within 60 months of the disposition time or such greater period as is reasonable in the circumstances, the taxpayer and a spouse or common-law partner of the taxpayer take reasonable steps to

**(i)** transfer management of each relevant business of the subject corporation and any relevant group entity to the child or at least one member of the group of children referred to in subparagraph (g)(ii), and

**(ii)** permanently cease to manage each relevant business of the subject corporation and any relevant group entity; and

**(i)** the taxpayer and the child, or the taxpayer and each member of the group of children, as the case may be,

**(i)** jointly elect, in prescribed form, for paragraph (2)(e) to apply in respect of the disposition of the subject shares, and

**(ii)** file the election with the Minister on or before the taxpayer's filing-due date for the taxation year that includes the disposition time.

cause, l'acheteur et toute entité pertinente du groupe ayant une juste valeur marchande qui excède 30 % de la juste valeur marchande de tous les intérêts qui étaient détenus, directement ou indirectement, par le contribuable et son époux ou conjoint de fait immédiatement avant le moment de la disposition;

**g)** sous réserve du paragraphe (2.3), à compter du moment de la disposition et jusqu'au dernier en date de soixante mois après le moment de la disposition et le moment de la vente finale, à la fois :

**(i)** l'enfant ou le groupe d'enfants, selon le cas, contrôle l'acheteur,

**(ii)** l'enfant ou au moins un membre du groupe d'enfants, selon le cas, participe activement, de façon régulière, continue et importante (au sens de l'alinéa 120.4(1.1)a)) à une entreprise pertinente de la société en cause ou d'une entité pertinente du groupe,

**(iii)** chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe est exploitée activement;

**h)** sous réserve du paragraphe (2.3), dans les soixante mois suivant le moment de la disposition ou toute période plus longue étant raisonnable dans les circonstances, le contribuable et son époux ou conjoint de fait prennent des mesures raisonnables pour, à la fois :

**(i)** transférer la gestion de chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe à l'enfant ou à au moins l'un des membres du groupe d'enfants visés au sous-alinéa g)(ii),

**(ii)** cesser de façon permanente de gérer chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe;

**i)** le contribuable et l'enfant, ou le contribuable et chaque membre du groupe d'enfants, remplissent les conditions suivantes :

**(i)** ils font un choix conjoint d'appliquer l'alinéa (2)e), sur le formulaire prescrit, relativement à la disposition des actions concernées,

**(ii)** ils produisent le choix auprès du ministre au plus tard à la date d'échéance de production du contribuable pour l'année d'imposition qui comprend le moment de la disposition.

**(3) Subsections (1) and (2) apply to dispositions of shares that occur on or after January 1, 2024.**

**18 (1) Paragraph 87(2)(j.6) of the Act is replaced by the following:**

**Continuing corporation**

**(j.6)** for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1), (v) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11), 84.1(2.31) and (2.32) and 127(10.2), section 139.1, subsection 152(4.3), the determination of D in the definition *undepreciated capital cost* in subsection 13(21) and the determination of L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

**(2) Subsection 87(2) of the Act is amended by adding the following after paragraph (qq):**

**Certain investment tax credits**

**(qq.1)** for the purposes of section 127.44 and Part XII.7, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

**(3) Paragraph 87(2)(qq.1) of the Act, as enacted by subsection (2), is replaced by the following:**

**Certain investment tax credits**

**(qq.1)** for the purposes of sections 127.44 and 127.45 and Part XII.7, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

**(4) Paragraph 87(2.1)(a) of the Act is replaced by the following:**

**(a)** determining the new corporation's non-capital loss, net capital loss, restricted farm loss, farm loss, limited partnership loss or restricted interest and financing expense, as the case may be, for any taxation year,

**(5) Subsection 87(2.1) of the Act is amended by adding the following after paragraph (a):**

**(3) Les paragraphes (1) et (2) s'appliquent aux dispositions d'actions se produisant après le 31 décembre 2023.**

**18 (1) L'alinéa 87(2)j.6) de la même loi est remplacé par ce qui suit :**

**Continuation**

**j.6)** pour l'application des alinéas 12(1)t) et x), des paragraphes 12(2.2) et 13(7.1), (7.4) et (24), des alinéas 13(27)b) et (28)c), des paragraphes 13(29) et 18(9.1), des alinéas 20(1)e), e.1), v) et hh), des articles 20.1 et 32, de l'alinéa 37(1)c), du paragraphe 39(13), des sous-alinéas 53(2)c)(vi) et h)(ii), de l'alinéa 53(2)s), des paragraphes 53(2.1), 66(11.4), 66.7(11), 84.1(2.31) et (2.32) et 127(10.2), de l'article 139.1, du paragraphe 152(4.3), de l'élément D de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) et de l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6), la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

**(2) Le paragraphe 87(2) de la même loi est modifié par adjonction, après l'alinéa qq), de ce qui suit :**

**Certains crédits d'impôt à l'investissement**

**qq.1)** pour l'application de l'article 127.44 et de la partie XII.7, la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

**(3) L'alinéa 87(2)qq.1) de la même loi, édicté par le paragraphe (2), est remplacé par ce qui suit :**

**Certains crédits d'impôt à l'investissement**

**qq.1)** pour l'application des articles 127.44 et 127.45 et de la partie XII.7, la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

**(4) L'alinéa 87(2.1)a) de la même loi est remplacé par ce qui suit :**

**a)** déterminer la perte autre qu'une perte en capital, la perte en capital nette, la perte agricole restreinte, la perte agricole, la perte comme commanditaire ou la dépense d'intérêts et de financement restreinte de la nouvelle société, selon le cas, pour une année d'imposition;

**(5) Le paragraphe 87(2.1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**(a.1)** determining, for any taxation year, the new corporation's absorbed capacity, excess capacity and transferred capacity in determining its cumulative unused excess capacity for a taxation year, and

**(a.1)** déterminer, pour une année d'imposition la capacité absorbée, la capacité excédentaire et la capacité transférée de la nouvelle société pour le calcul de sa capacité excédentaire cumulative inutilisée pour une année d'imposition;

**(6) Paragraph 87(2.1)(b) of the Act is replaced by the following:**

**(b)** determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(c) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss, limited partnership loss or restricted interest and financing expense, as the case may be,

**(6) L'alinéa 87(2.1)b) de la même loi est remplacé par ce qui suit :**

**b)** déterminer dans quelle mesure les paragraphes 111(3) à (5.4) et l'alinéa 149(10)c) s'appliquent de manière que soit restreint le montant que la nouvelle société peut déduire à titre de perte autre qu'une perte en capital, de perte en capital nette, de perte agricole restreinte, de perte agricole, de perte comme commanditaire ou de dépense d'intérêts et de financement restreinte, selon le cas;

**(7) Paragraph 87(2.1)(d) of the Act is replaced by the following:**

**(d)** the income of the new corporation (other than as a result of an amount of interest and financing expenses being deductible by the new corporation because of paragraph (a.1)) or any of its predecessors, or

**(7) L'alinéa 87(2.1)d) de la même loi est remplacé par ce qui suit :**

**d)** du revenu de la nouvelle société (autrement que par suite d'un montant de dépenses d'intérêts et de financement que la nouvelle société peut déduire par l'effet de l'alinéa a.1)), ou de toute société remplacée;

**(8) Subsection 87 of the Act is amended by adding the following after subsection (2.11):**

**Adjusted taxable income — non-capital losses**

**(2.12)** Where there has been an amalgamation of two or more corporations, for the purpose of determining the amount for paragraph (h) in the description of B in the definition *adjusted taxable income* in subsection 18.2(1) in respect of an amount deducted by the new corporation under paragraph 111(1)(a) in computing its taxable income for a taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, a particular predecessor corporation if it may reasonably be considered that

**(a)** the amount deducted is in respect of all or any portion of a non-capital loss for another taxation year; and

**(b)** the non-capital loss or the portion of the non-capital loss, as the case may be, is a non-capital loss of the particular predecessor corporation for the other taxation year.

**(8) Le paragraphe 87 de la même loi est modifié par adjonction, après le paragraphe (2.11), de ce qui suit :**

**Revenu imposable rajusté — pertes autres que des pertes en capital**

**(2.12)** En cas de fusion de deux ou de plusieurs sociétés, aux fins de calcul de la somme à l'alinéa h) de la formule figurant à l'élément B de la définition de *revenu imposable rajusté* au paragraphe 18.2(1) relativement à une somme déduite par la nouvelle société en application de l'alinéa 111(1)a) dans le calcul de son revenu imposable pour une année d'imposition, la nouvelle société est réputée être la même société que chaque société remplacée donnée et en être la continuation s'il est raisonnable de considérer que, à la fois :

**a)** la somme déduite est au titre de la totalité ou d'une partie d'une perte autre qu'une perte en capital pour une autre année d'imposition;

**b)** la perte autre qu'une perte en capital ou la partie de la perte autre qu'une perte en capital, selon le cas, est une perte autre qu'une perte en capital de la société remplacée donnée pour l'autre année d'imposition.

**(9) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**(9) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**(10) Subsection (2) is deemed to have come into force on January 1, 2022.**

**(11) Subsection (3) is deemed to have come into force on March 28, 2022.**

**(12) Subsections (4) and (6) apply in respect of amalgamations that occur on or after October 1, 2023.**

**(13) Subsections (5), (7) and (8) apply in respect of amalgamations that occur in any taxation year.**

**19 (1) Subsection 88(1) of the Act is amended by adding the following after paragraph (e.3):**

**(e.31)** for the purposes of section 127.44 and Part XII.7 at the end of any particular taxation year ending after the subsidiary was wound up, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

**(2) Paragraph 88(1)(e.31) of the Act, as enacted by subsection (1), is replaced by the following:**

**(e.31)** for the purposes of sections 127.44 and 127.45 and Part XII.7 at the end of any particular taxation year ending after the subsidiary was wound up, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

**(3) The portion of subsection 88(1.1) of the Act before paragraph (a) is replaced by the following:**

**Non-capital losses, etc., of subsidiary**

**(1.1)** Where a Canadian corporation (in this subsection and subsection (1.11) referred to as the "subsidiary") has been wound up and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection and subsection (1.11) referred to as the "parent") and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm's length, for the purpose of computing the taxable income of the parent under this Part and the tax payable under Part IV by the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on a particular business (in this subsection

**(10) Le paragraphe (2) est réputé être entré en vigueur le 1er janvier 2022.**

**(11) Le paragraphe (3) est réputé être entré en vigueur le 28 mars 2023.**

**(12) Les paragraphes (4) et (6) s'appliquent relativement aux fusions qui se produisent après septembre 2023.**

**(13) Les paragraphes (5), (7) et (8) s'appliquent relativement aux fusions qui se produisent au cours d'une année d'imposition.**

**19 (1) Le paragraphe 88(1) de la même loi est modifié par adjonction, après l'alinéa e.3), de ce qui suit :**

**e.31)** pour l'application de l'article 127.44 et de la partie XII.7 à la fin d'une année d'imposition donnée se terminant après la liquidation de la filiale, la société mère est réputée être la même société que la filiale, et en être la continuation;

**(2) L'alinéa 88(1)e.31) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**e.31)** pour l'application des articles 127.44 et 127.45 et de la partie XII.7 à la fin d'une année d'imposition donnée se terminant après la liquidation de la filiale, la société mère est réputée être la même société que la filiale, et en être la continuation;

**(3) Le passage du paragraphe 88(1.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Pertes autres que des pertes en capital, etc. de filiale**

**(1.1)** Lorsqu'une société canadienne (appelée « filiale » au présent paragraphe et au paragraphe (1.11)) a été liquidée, qu'au moins 90 % des actions émises de chaque catégorie du capital-actions de la filiale appartenaient, immédiatement avant la liquidation, à une autre société canadienne (appelée « société mère » au présent paragraphe et au paragraphe (1.11)) et que toutes les actions de la filiale n'appartenant pas à la société mère immédiatement avant la liquidation appartenaient à ce moment à une ou plusieurs personnes avec lesquelles la société mère n'avait aucun de dépendance, pour le calcul du revenu imposable de la société mère en vertu de la présente partie et de l'impôt payable par elle en vertu de la partie IV pour toute année d'imposition commençant après le début de la liquidation, la fraction d'une perte autre qu'une perte en capital, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire subie par la filiale qu'il est raisonnable de

referred to as the "subsidiary's loss business") and any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5 for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), and the portion of the restricted interest and financing expense of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's expense year") that may reasonably be regarded as an expense or loss incurred by the subsidiary in the course of carrying on a particular business (in this subsection referred to as the "subsidiary's expense business") and any other portion of the restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, to the extent that it

considérer comme résultant de l'exploitation d'une entreprise donnée (appelée « entreprise déficitaire de la filiale » au présent paragraphe), de même que toute autre fraction d'une perte autre qu'une perte en capital ou d'une perte comme commanditaire subie par la filiale qu'il est raisonnable de considérer comme dérivant d'une autre source et toute autre fraction d'une perte autre qu'une perte en capital subie par la filiale qu'il est raisonnable de considérer comme relative à une demande faite en vertu de l'article 110.5 pour une année d'imposition donnée de la filiale (appelée « année de la perte subie par la filiale » au présent paragraphe), et la fraction d'une dépense d'intérêts et de financement restreinte de la filiale pour une année d'imposition de celle-ci (appelée « année de dépenses de la filiale » au présent paragraphe), qu'il est raisonnable de considérer comme une dépense engagée ou la perte qu'elle a subie dans l'exploitation d'une entreprise donnée (appelée « entreprise de dépenses de la filiale » au présent paragraphe) et toute autre fraction d'une dépense d'intérêts et de financement restreinte de la filiale qu'il est raisonnable de considérer comme engagée relativement à une autre source, dans la mesure où la fraction :

**(4) The portion of subsection 88(1.1) of the Act after paragraph (b) and before paragraph (c) is replaced by the following:**

shall, for the purposes of this subsection, paragraphs 111(1)(a), (a.1), (c), (d) and (e), subsection 111(3) and Part IV,

**(4) Le passage du paragraphe 88(1.1) de la même loi suivant l'alinéa b) et précédant l'alinéa c) est remplacé par ce qui suit :**

est, pour l'application du présent paragraphe, des alinéas 111(1)a), a.1), c), d) et e), du paragraphe 111(3) et de la partie IV :

**(5) Subsection 88(1.1) of the Act is amended by striking out "and" at the end of paragraph (d) and by adding the following after paragraph (d.1):**

**(d.2)** in the case of the portion of any restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in carrying on the subsidiary's expense business, be deemed, for the taxation year of the parent in which the subsidiary's expense year ended, to be a restricted interest and financing expense of the parent from carrying on the subsidiary's expense business that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, and

**(d.3)** in the case of any other portion of any restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, be deemed, for the taxation year of the parent in which the subsidiary's expense year ended, to be a restricted interest and financing expense of the parent that was incurred in respect of that other source and that was not deductible by the

**(5) Le paragraphe 88(1.1) de la même loi est modifié par adjonction, après l'alinéa d.1), de ce qui suit :**

**d.2)** dans le cas de la fraction d'une dépense d'intérêts et de financement restreinte de la filiale qu'il est raisonnable de considérer comme engagée dans l'exploitation de l'entreprise de dépenses de celle-ci, réputée être, pour l'année d'imposition de la société mère au cours de laquelle s'est terminée l'année de dépenses de la filiale, d'une dépense d'intérêts et de financement restreinte de la société mère provenant de l'exploitation de l'entreprise de dépenses de la filiale qui n'était pas déductible par la société mère dans le calcul de son revenu imposable pour toute année d'imposition qui a commencé avant le début de la liquidation;

**d.3)** dans le cas d'une autre fraction d'une dépense d'intérêts et de financement restreinte de la filiale qu'il est raisonnable de considérer comme engagée relativement à une autre source, réputée être, pour l'année d'imposition de la société mère au cours de laquelle s'est terminée l'année de dépenses de la filiale, d'une dépense d'intérêts et de financement restreinte de la

parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

**(6) The portion of paragraph 88(1.1)(e) of the Act before subparagraph (i) is replaced by the following:**

**(e)** if control of the parent has been acquired by a person or group of persons at any time after the commencement of the winding-up, or control of the subsidiary has been acquired by a person or group of persons at any time whatever, no amount in respect of the subsidiary's non-capital loss, farm loss or restricted interest and financing expense for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business, or restricted interest and financing expense as may reasonably be regarded as being the subsidiary's expense or loss incurred in the course of carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year, is deductible only

**(7) The portion of paragraph 88(1.1)(e) of the Act after subparagraph (ii) is replaced by the following:**

and for the purpose of this paragraph, where this subsection applied to the winding-up of another corporation in respect of which the subsidiary was the parent and this paragraph applied in respect of losses and restricted interest and financing expenses of that other corporation, the subsidiary shall be deemed to be the same corporation as, and a continuation of, that other corporation with respect to those losses and restricted interest and financing expenses,

**(8) Subsection 88(1.1) of the Act is amended by adding "and" at the end of paragraph (f) and by adding the following after that paragraph:**

**(g)** any portion of a restricted interest and financing expense of the subsidiary that would otherwise be

société mère engagée relativement à cette autre source et qui n'était pas déductible par la société mère dans le calcul de son revenu imposable pour toute année d'imposition qui a commencé avant le début de la liquidation;

**(6) Le passage de l'alinéa 88(1.1)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**e)** en cas d'acquisition du contrôle de la société mère par une personne ou un groupe de personnes après le début de la liquidation, ou en cas d'acquisition du contrôle de la filiale par une personne ou un groupe de personnes à un moment quelconque, aucun montant n'est déductible au titre de la perte autre qu'une perte en capital, de la perte agricole ou de la dépense d'intérêts et de financement restreinte de la filiale pour une année d'imposition se terminant avant le moment de l'acquisition, dans le calcul du revenu imposable de la société mère pour une année d'imposition donnée se terminant après ce moment; toutefois, la fraction de la perte autre qu'une perte en capital ou de la perte agricole de la filiale qu'il est raisonnable de considérer comme résultant de l'exploitation d'une entreprise, ou de la dépense d'intérêts et de financement restreinte qu'il est raisonnable de considérer comme étant la dépense engagée ou la perte subie par la filiale dans l'exploitation d'une entreprise, si la filiale exploitait une entreprise au cours de cette année, la fraction de la perte autre qu'une perte en capital qu'il est raisonnable de considérer comme se rapportant à un montant déductible en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année, sont déductibles :

**(7) Le passage de l'alinéa 88(1.1)e) de la même loi suivant le sous-alinéa (ii) est remplacé par ce qui suit :**

pour l'application du présent alinéa, dans le cas où le présent paragraphe s'applique à la liquidation d'une autre société dont la filiale était la société mère et où le présent alinéa s'applique aux pertes et aux dépenses d'intérêts et de financement restreintes de cette autre société, la filiale est réputée être la même société que cette autre société et en être la continuation en ce qui concerne ces pertes et ces dépenses d'intérêts et de financement restreintes;

**(8) Le paragraphe 88(1.1) de la même loi est modifié par adjonction, après l'alinéa f), de ce qui suit :**

**g)** toute partie d'une dépense d'intérêts et de financement restreinte de la filiale qui par ailleurs serait

deemed by paragraph (d.2) or (d.3) to be a restricted interest and financing expense of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purpose of computing the parent's taxable income for taxation years beginning after the commencement of the winding-up, to be a restricted interest and financing expense of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

**(9) Section 88 of the Act is amended by adding the following after subsection (1.1):**

**Cumulative unused excess capacity of subsidiary**

**(1.11)** If a subsidiary has been wound up in the circumstances described in subsection (1.1), for the purpose of computing the cumulative unused excess capacity of the parent for any taxation year of the parent that commenced after the commencement of the winding up, the absorbed capacity, the excess capacity and any transferred capacity, of the subsidiary for any particular taxation year are deemed to be an amount of absorbed capacity, an amount of excess capacity and an amount of transferred capacity, respectively, of the parent for the taxation year of the parent in which the subsidiary's particular taxation year ended.

**Adjusted taxable income — non-capital losses of subsidiary**

**(1.12)** If paragraph (1.1)(c), (d) or (d.1) deems a particular portion of a non-capital loss for a taxation year (referred to in this paragraph as the "subsidiary loss year") of a subsidiary that has been wound up to be the parent's non-capital loss for a taxation year (referred to in this paragraph as the "parent loss year") and the parent deducts an amount in respect of the parent's non-capital loss under paragraph 111(1)(a) in computing taxable income for a particular taxation year, for the purpose of determining the amount included under paragraph (h) of the description of B in the definition *adjusted taxable income* in subsection 18.2(1) in respect of the parent's non-capital loss in computing the parent's adjusted taxable income for the particular taxation year, any amount of the subsidiary for the subsidiary loss year that is referred to in the description of W or X in the definition *adjusted taxable income* in subsection 18.2(1) and that relates to the source from which the particular portion is derived (and any amount deemed by this subsection to be an amount of the subsidiary for the subsidiary loss

réputée, par les alinéas d.2) ou d.3), être une dépense d'intérêts et de financement de la société mère pour une année d'imposition donnée commençant après le début de la liquidation est réputée, aux fins du calcul du revenu imposable de la société mère pour les années d'imposition commençant après le début de la liquidation, être une dépense d'intérêts et de financement restreinte de la société mère pour son année d'imposition qui précède l'année donnée et non pour l'année donnée, lorsque la société mère fait un choix, dans sa déclaration de revenu en vertu de la présente partie pour l'année donnée.

**(9) L'article 88 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :**

**Capacité excédentaire cumulative inutilisée de la filiale**

**(1.11)** Si une filiale a été liquidée dans les circonstances visées au paragraphe (1.1), pour le calcul de la capacité excédentaire cumulative inutilisée de la société mère pour toute année d'imposition de celle-ci commençant après le début de la liquidation, la capacité absorbée, la capacité excédentaire et tout montant de capacité transférée de la filiale pour une année d'imposition donnée sont réputés être une capacité absorbée, une capacité excédentaire et un montant de capacité transférée respectivement de la société mère pour l'année d'imposition de celle-ci dans laquelle l'année d'imposition donnée de la filiale s'est terminée.

**Revenu imposable rajusté — pertes autres qu'une perte en capital d'une filiale**

**(1.12)** Si, selon les alinéas (1.1)c), d) ou d.1), une partie donnée d'une perte autre qu'une perte en capital pour une année d'imposition (appelée « année de perte de la filiale » au présent alinéa) d'une filiale liquidée est réputée être la perte autre qu'une perte en capital de la société mère pour une année d'imposition (appelée « année de perte de la société mère » au présent alinéa), et la société mère déduit une somme au titre de sa perte autre qu'une perte en capital en application de l'alinéa 111(1)a) dans le calcul du revenu imposable pour une année d'imposition donnée, pour le calcul de la somme incluse en application de l'alinéa h) de l'élément B de la formule figurant à la définition de *revenu imposable rajusté* au paragraphe 18.2(1) relativement à la perte autre qu'une perte en capital de la société mère dans le calcul de son revenu imposable rajusté pour l'année, toute somme de la filiale pour l'année de perte de la filiale visée à l'élément W ou X de la formule figurant à la définition de *revenu imposable rajusté* au paragraphe 18.2(1) et qui se rapporte à la source d'où est tirée la partie donnée (et toute somme réputée par le présent paragraphe être une somme de la

year relating to the source) is deemed to be an amount of the parent relating to the source for the parent loss year.

**(10) Paragraph 88(2)(c) of the Act is replaced by the following:**

**(c)** for the purpose of computing the income of the corporation for its taxation year that includes the particular time, paragraph 12(1)(t) shall be read as follows:

**"12(1)(t)** the amount deducted under subsection 127(5) or (6) or 127.44(3) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included under this paragraph in computing the taxpayer's income for a preceding taxation year or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi), (c)(vi.1) or (h)(ii) or the amount determined for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);".

**(11) Paragraph 88(2)(c) of the Act, as amended by subsection (10), is replaced by the following:**

**(c)** for the purpose of computing the income of the corporation for its taxation year that includes the particular time, paragraph 12(1)(t) shall be read as follows:

**"12(1)(t)** the amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included under this paragraph in computing the taxpayer's income for a preceding taxation year or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) to (c)(vi.2) or (h)(ii) or the amount determined for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);".

**(12) Subsections (1) and (10) are deemed to have come into force on January 1, 2022.**

**(13) Subsections (2) and (11) are deemed to have come into force on March 28, 2023.**

filiale pour l'année de perte de la filiale relativement à la source) est réputée être un montant de la société mère relativement à la source pour l'année de perte de celle-ci.

**(10) L'alinéa 88(2)c) de la même loi est remplacé par ce qui suit :**

**c)** pour le calcul du revenu de la société pour son année d'imposition qui comprend le moment donné, l'alinéa 12(1)t) est remplacé par ce qui suit :

**« 12(1)t)** la somme déduite en application des paragraphes 127(5) ou (6) ou 127.44(3) dans le calcul de l'impôt payable par le contribuable pour l'année ou pour une année d'imposition antérieure dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu des alinéas 13(7.1)e) ou 37(1)e) ou des sous-alinéas 53(2)c)(vi), c)(vi.1) ou h)(ii) ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6); ».

**(11) L'alinéa 88(2)c) de la même loi, modifié par le paragraphe (10), est remplacé par ce qui suit :**

**c)** pour le calcul du revenu de la société pour son année d'imposition qui comprend le moment donné, l'alinéa 12(1)t) est remplacé par ce qui suit :

**« 12(1)t)** la somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) dans le calcul de l'impôt payable par le contribuable pour l'année ou pour une année d'imposition antérieure dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu des alinéas 13(7.1)e) ou 37(1)e) ou des sous-alinéas 53(2)c)(vi) à c)(vi.2) ou h)(ii) ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6); ».

**(12) Les paragraphes (1) et (10) sont réputés être entrés en vigueur le 1er janvier 2022.**

**(13) Les paragraphes (2) et (11) sont réputés être entrés en vigueur le 28 mars 2023.**

**(14) Subsections (3) to (8) apply in respect of windings-up that begin on or after October 1, 2023.**

**(15) Subsection (9) applies in respect of windings-up that begin in any taxation year.**

**20 (1) Paragraph (a) of the description of D in the definition *low rate income pool* in subsection 89(1) of the Act is replaced by the following:**

**(a)** if the non-CCPC was a substantive CCPC at any time in its preceding taxation year or would, but for paragraph (d) of the definition *Canadian-controlled private corporation* in subsection 125(7), be a Canadian-controlled private corporation in its preceding taxation year, 80% of its aggregate investment income for its preceding taxation year, and

**(2) The description of G in the definition *low rate income pool* in subsection 89(1) of the Act is replaced by the following:**

**G** is the total of all amounts each of which is a taxable dividend (other than an eligible dividend, a capital gains dividend within the meaning assigned by subsection 130.1(4) or 131(1) or a taxable dividend deductible by the non-CCPC under subsection 130.1(1) in computing its income for the particular taxation year or for its preceding taxation year) that became payable by the non-CCPC

**(a)** in the particular taxation year but before the particular time, or

**(b)** in the preceding taxation year, but only to the extent of the lesser of

**(i)** the amount included under the description of D in the particular taxation year, and

**(ii)** the portion of the taxable dividend that did not reduce the non-CCPC's low rate income pool in the preceding taxation year, and

**(3) Subsections (1) and (2) apply to taxation years that begin on or after April 7, 2022.**

**21 (1) The portion of subsection 91(1.2) of the Act before paragraph (a) is replaced by the following:**

**(14) Les paragraphes (3) à (8) s'appliquent relativement aux liquidations commençant après septembre 2023.**

**(15) Le paragraphe (9) s'applique relativement aux liquidations commençant au cours d'une année d'imposition.**

**20 (1) L'alinéa a) de l'élément D de la formule figurant à la définition de *compte de revenu à taux réduit*, au paragraphe 89(1) de la même loi, est remplacé par ce qui suit :**

**a)** dans le cas où la société donnée était une SPCC en substance à un moment donné au cours de son année d'imposition précédente ou serait, en l'absence de l'alinéa d) de la définition de *société privée sous contrôle canadien* au paragraphe 125(7), une société privée sous contrôle canadien au cours de son année d'imposition précédente, 80 % de son revenu de placement total pour son année d'imposition précédente,

**(2) L'élément G de la formule figurant à la définition de *compte de revenu à taux réduit*, au paragraphe 89(1) de la même loi, est remplacé par ce qui suit :**

**G** le total des sommes représentant chacune un dividende imposable (sauf un dividende déterminé, un dividende sur les gains en capital au sens des paragraphes 130.1(4) ou 131(1) et un dividende imposable déductible par la société donnée en application du paragraphe 130.1(1) dans le calcul de son revenu pour l'année donnée ou pour son année d'imposition précédente) qui est devenu payable par la société donnée :

**a)** soit au cours de l'année donnée mais avant le moment donné,

**b)** soit au cours de l'année d'imposition précédente, mais seulement jusqu'à concurrence du moins élevé des montants suivants :

**(i)** le montant inclus à l'élément D au cours de l'année donnée,

**(ii)** la fraction du dividende imposable qui n'a pas réduit le compte de revenu à taux réduit de la société donnée dans l'année d'imposition précédente;

**(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition commençant à compter du 7 avril 2022.**

**21 (1) Le passage du paragraphe 91(1.2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Deemed year-end**

**(1.2)** If this subsection applies at a particular time in respect of a foreign affiliate of a particular taxpayer resident in Canada, then for the purposes of this section, sections 18.2 and 92 and clause 95(2)(f.11)(ii)(D),

**(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**22 (1) Paragraph 92(1)(a) of the Act is replaced by the following:**

**(a)** there shall be added in respect of that share any amount included in respect of that share under subsection 91(1) or (3) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been required to have been so included in computing the taxpayer's income but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), except that, if the amount so included is greater than it otherwise would have been because of the application of clause 95(2)(f.11)(ii)(D), the amount added under this paragraph shall be the amount that would have been so included in the absence of that clause; and

**(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign**

**Présomption de fin d'année**

**(1.2)** En cas d'application du présent paragraphe à un moment donné relativement à une société étrangère affiliée d'un contribuable donné résidant au Canada, les règles ci-après s'appliquent au présent article, aux articles 18.2 et 92 et à la division 95(2)f.11)(ii)(D) :

**(2) Le paragraphe (1) s'applique relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**22 (1) L'alinéa 92(1)a) de la même loi est remplacé par ce qui suit :**

**a)** est ajoutée relativement à l'action toute somme qui est incluse relativement à l'action, en application des paragraphes 91(1) ou (3), dans le calcul du revenu du contribuable pour l'année ou pour une année d'imposition antérieure (ou qui aurait été à inclure dans ce calcul en l'absence du paragraphe 56(4.1) et des articles 74.1 à 75 de la présente loi et de l'article 74 de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952). Toutefois, si la somme ainsi incluse est supérieure à celle qui l'aurait été par l'effet de l'application de la division 95(2)f.11)(ii)(D), la somme ajoutée en vertu du présent alinéa est celle qui aurait été ainsi incluse en l'absence de cette division;

**(2) Le paragraphe (1) s'applique relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, il**

**affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**23 (1) The portion of subsection 94.2(2) of the Act before paragraph (a) is replaced by the following:**

**Deemed corporation**

**(2)** If this subsection applies at any time to a beneficiary under, or a particular person in respect of, a trust, then for the purposes of applying this section, section 18.2, subsections 91(1) to (4), paragraph 94.1(1)(a), section 95, the definition *restricted interest and financing expense* in subsection 111(8) and section 233.4 to the beneficiary under, and, if applicable, to the particular person in respect of, the trust

**(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**s'applique aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**23 (1) Le passage du paragraphe 94.2(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Société réputée**

**(2)** En cas d'application du présent paragraphe à un moment donné au bénéficiaire d'une fiducie ou à une personne donnée relativement à une fiducie, pour l'application du présent article, de l'article 18.2, des paragraphes 91(1) à (4), de l'alinéa 94.1(1)a), de l'article 95, de la définition de *dépense d'intérêts et de financement restreinte* au paragraphe 111(8) et de l'article 233.4 au bénéficiaire et, le cas échéant, à la personne donnée relativement à la fiducie :

**(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou**

**18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**24 (1) Paragraph (b) of the description of A in the definition *foreign accrual property income* in subsection 95(1) of the Act is replaced by the following:**

**(b)** a dividend from another foreign affiliate of the taxpayer, except for any portion of the dividend that would be deemed under subsection 113(5) not to be a dividend received by the affiliate on a share of the capital stock of the other affiliate for the purposes of section 113, if the affiliate were a corporation resident in Canada,

**24 (1) L'alinéa b) de l'élément A de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens*, au paragraphe 95(1) de la même loi, est remplacé par ce qui suit :**

**b)** d'un dividende d'une autre société étrangère affiliée du contribuable, sauf une partie du dividende qui serait réputée, en vertu du paragraphe 113(5), ne pas être un dividende reçu par la société affiliée sur une action du capital-actions de l'autre société affiliée pour l'application de l'article 113, si la société affiliée était une société résidant au Canada,

**(2) Paragraph (a) of the description of H in the definition *foreign accrual property income* in subsection 95(1) of the Act is replaced by the following:**

**(a)** if the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and the partnership received a dividend at a particular time in that fiscal period from a corporation that would be, if the reference in subsection 93.1(1) to "corporation resident in Canada" were a reference to "taxpayer resident in Canada", a foreign affiliate of the taxpayer for the purposes of sections 93 and 113 at that particular time, then the portion of the amount of that dividend that

**(i)** is included in the value determined for A in respect of the affiliate for the year and that would be, if the reference in subsection 93.1(2) to "corporation resident in Canada" were a reference to "taxpayer resident in Canada", deemed by paragraph 93.1(2)(a) to have been received by the affiliate for the purposes of sections 93 and 113, and

**(ii)** would not be deemed under subsection 113(5) not to be a dividend received by the affiliate on a share of the capital stock of the other affiliate for the purposes of section 113, if the affiliate were a corporation resident in Canada, and

**(2) L'alinéa a) de l'élément H de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens*, au paragraphe 95(1) de la même loi, est remplacé par ce qui suit :**

**a)** si la société affiliée est un associé d'une société de personnes à la fin de l'exercice de celle-ci s'étant terminé dans l'année et que la société de personnes a reçu, à un moment donné de cet exercice, un dividende d'une société qui serait une société étrangère affiliée du contribuable à ce moment pour l'application des articles 93 et 113 si le passage « une société résidant au Canada » au paragraphe 93.1(1) était remplacé par « un contribuable résidant au Canada », la partie de ce dividende qui, à la fois :

**(i)** est incluse dans la valeur de l'élément A relativement à la société affiliée pour l'année et qui serait réputée, en vertu de l'alinéa 93.1(2)a), avoir été reçue par elle pour l'application de ces articles si le passage « une société résidant au Canada » au paragraphe 93.1(2) était remplacé par « un contribuable résidant au Canada », avec les adaptations grammaticales nécessaires,

**(ii)** ne serait pas réputée, en vertu du paragraphe 113(5), ne pas être un dividende reçu par la société affiliée sur une action du capital-actions de l'autre société affiliée pour l'application de l'article 113, si la société affiliée était une société résidant au Canada,

**(3) Clause 95(2)(f.11)(ii)(A) of the Act is replaced by the following:**

**(A)** this Act is to be read without reference to subsections 12.7(3), 17(1), 18(4) and 18.4(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign

**(3) La division 95(2)f.11)(ii)(A) de la même loi est remplacée par ce qui suit :**

**(A)** la présente loi s'applique compte non tenu des paragraphes 12.7(3), 17(1), 18(4) et 18.4(4) et de l'article 91; toutefois, lorsque la société affiliée est l'associé d'une société de personnes, le revenu ou la perte de la société de personnes est déterminé selon l'article 91 et la part de ce revenu

affiliate's share of that income or loss of the partnership,

**(4) Clause 95(2)(f.11)(ii)(A) of the Act, as enacted by subsection (3), is replaced by the following:**

**(A)** this Act is to be read without reference to subsections 12.7(3), 17(1), 18(4), 18.2(2) and 18.4(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership,

**(5) Clause 95(2)(f.11)(ii)(A) of the Act, as enacted by subsection (4), is replaced by the following:**

**(A)** this Act is to be read without reference to subsections 17(1), 18(4), 18.2(2) and 18.4(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership,

**(6) Subparagraph 95(2)(f.11)(ii) of the Act is amended by striking out "and" at the end of clause (B) and by adding the following after clause (C):**

**(D)** if the foreign affiliate is a controlled foreign affiliate of the taxpayer at the end of the taxation year, and the taxpayer is not an *excluded entity* (as defined in subsection 18.2(1)) for its taxation year (referred to in this clause as the "taxpayer year") in which the taxation year ends,

**(I)** notwithstanding any other provision of this Act, no deduction shall be made in respect of any amount that is included in the affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year, to the extent of the proportion of that amount that is determined by the first formula in subsection 18.2(2) in respect of the taxpayer for the taxpayer year, and

**(II)** an amount is to be included, in determining the amount described in subparagraph

ou de cette perte qui revient à la société affiliée est déterminée selon le paragraphe 96(1),

**(4) La division 95(2)f.11)(ii)(A) de la même loi, édictée par le paragraphe (3), est remplacée par ce qui suit :**

**(A)** la présente loi s'applique compte non tenu des paragraphes 12.7(3), 17(1), 18(4), 18.2(2), 18.4(4) et de l'article 91; toutefois, lorsque la société affiliée est l'associé d'une société de personnes, le revenu ou la perte de la société de personnes est déterminé selon l'article 91 et la part de ce revenu ou de cette perte qui revient à la société affiliée est déterminée selon le paragraphe 96(1),

**(5) La division 95(2)f.11)(ii)(A) de la même loi, édictée par le paragraphe (4), est remplacée par ce qui suit :**

**(A)** la présente loi s'applique compte non tenu des paragraphes 17(1), 18(4), 18.2(2) et 18.4(4) et de l'article 91; toutefois, lorsque la société affiliée est l'associé d'une société de personnes, le revenu ou la perte de la société de personnes est déterminé selon l'article 91 et la part de ce revenu ou de cette perte qui revient à la société affiliée est déterminée selon le paragraphe 96(1),

**(6) Le sous-alinéa 95(2)f.11)(ii) de la même loi est modifié par adjonction, après la division (C), de ce qui suit :**

**(D)** si la société étrangère affiliée est une société étrangère affiliée contrôlée du contribuable à la fin de l'année d'imposition et que le contribuable n'est pas une *entité exclue* (au sens du paragraphe 18.2(1)) pour son année d'imposition (appelée « année du contribuable » à la présente division) dans laquelle prend fin l'année d'imposition :

**(I)** malgré toute autre disposition de la présente loi, aucune déduction ne peut être faite, relativement à toute somme incluse dans les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société affiliée pour l'année d'imposition, jusqu'à concurrence de la proportion de cette somme obtenue par la première formule figurant au paragraphe 18.2(2) relativement au contribuable pour l'année du contribuable,

(f)(ii) for the taxation year, that is equal to the amount that would be included under paragraph 12(1)(l.2) in determining the amount described in subparagraph (f)(ii) for the taxation year if

**1** clause (A) were read without regard to its reference to subsection 18.2(2), and

**2** the proportion that applied for the purposes of subparagraph (ii) of the description of B in paragraph 12(1)(l.2) were the proportion that is determined by the first formula in subsection 18.2(2) in respect of the taxpayer for the taxpayer year, and

**(E)** notwithstanding any other provision of this Act, no deduction shall be made in respect of one or more amounts (each referred to in this clause as an "elected amount") if

**(I)** the elected amount would, in the absence of this clause, clause (D) and subsection 18.2(19),

**1** be included in the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year, and

**2** be deductible in determining the amount described in subparagraph (f)(ii),

**(II)** the total of the elected amounts is equal to the lesser of the following amounts (determined without regard to this clause, clause (D) and subsection 18.2(19)):

**1** the foreign affiliate's *foreign accrual property loss* (as defined in subsection 5903(3) of the *Income Tax Regulations*) for the taxation year, and

**2** the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year,

**(III)** the taxpayer files with the Minister, in respect of the elected amounts, an election in writing in prescribed manner under this clause,

**(IV)** the election specifies

**1** each of the elected amounts,

**(II)** une somme égale à la somme qui serait incluse en vertu de l'alinéa 12(1)l.2) dans le calcul de la somme visée au sous-alinéa f)(ii) pour l'année d'imposition doit être incluse dans le calcul de la somme visée au sous-alinéa f)(ii) pour l'année d'imposition si, à la fois :

**1** la division (A) s'appliquait compte non tenu de la mention du paragraphe 18.2(2),

**2** la proportion qui s'appliquait pour l'application du sous-alinéa (ii) de l'élément B de la formule figurant à l'alinéa 12(1)(l.2) était celle obtenue par la première formule figurant au paragraphe 18.2(2) relativement au contribuable pour l'année du contribuable,

**(E)** malgré les autres dispositions de la présente loi, aucune déduction ne peut être faite relativement à un ou plusieurs montants (chacun étant appelé « montant choisi » au présent paragraphe) si, à la fois :

**(I)** le montant choisi, en l'absence de la présente division, de la division (D) et du paragraphe 18.2(19) :

**1** était inclus dans les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée pour l'année d'imposition,

**2** était déduit lors du calcul du montant visé au sous-alinéa f)(ii),

**(II)** le total des montants choisis correspond au moins élevé des montants suivants (calculé compte non tenu de la présente division, de la division (D) et du paragraphe 18.2(19)) :

**1** la *perte étrangère accumulée, relative à des biens* (au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*) de la société étrangère affiliée pour l'année d'imposition,

**2** les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée pour l'année d'imposition,

**(III)** le contribuable présente au ministre, relativement aux montants choisis, un choix

**2** the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) (determined without regard to this clause and subsection 18.2(19)) for the taxation year,

**3** the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year,

**4** the foreign affiliate's *foreign accrual property loss* (as defined in subsection 5903(3) of the *Income Tax Regulations*) (determined without regard to this clause, clause (D) and subsection 18.2(19)) for the taxation year, and

**5** the foreign affiliate's *foreign accrual property loss* (as defined in subsection 5903(3) of the *Income Tax Regulations*) or foreign accrual property income, as the case may be, for the taxation year, and

**(V)** the election is filed on or before the filing-due date of the taxpayer for its taxation year in which the taxation year ends;

écrit en vertu de la présente division selon les modalités réglementaires,

**(IV)** le choix précise les montants suivants :

**1** chacun des montants choisis,

**2** les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée (calculées compte non tenu de la présente division et du paragraphe 18.2(19)) pour l'année d'imposition,

**3** les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée pour l'année d'imposition,

**4** la *perte étrangère accumulée, relative à des biens* (au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*) de la société étrangère affiliée (calculée compte non tenu de la présente division, de la division (D) et du paragraphe 18.2(19)) pour l'année d'imposition,

**5** la *perte étrangère accumulée, relative à des biens* (au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*) ou le revenu étranger accumulé, tiré de biens de la société étrangère affiliée, selon le cas, pour l'année d'imposition,

**(V)** le choix est présenté au plus tard à la date d'échéance de production applicable au contribuable pour son année d'imposition dans laquelle l'année d'imposition prend fin;

**(7) Subparagraph 95(2)(f.11)(ii) of the Act, as amended by subsection (6), is amended by striking out "and" at the end of clause (D), by adding "and" at the end of clause (E) and by adding the following after clause (E):**

**(F)** the following rules apply for the purposes of applying subsection 12.7(3) and the related provisions of section 18.4 in respect of a payment of which the foreign affiliate, or a partnership of which the foreign affiliate is a member, is a recipient:

**(I)** the definitions in subsection 18.4(1) apply for the purposes of this clause,

**(7) Le sous-alinéa 95(2)f.11)(ii) de la même loi, modifié par le paragraphe (6), est modifié par adjonction, après la division (E), de ce qui suit :**

**(F)** les règles suivantes s'appliquent aux fins de l'application du paragraphe 12.7(3) et des dispositions connexes de l'article 18.4 relativement à un paiement dont la société étrangère affiliée, ou une société de personnes dont celle-ci est un associé, est bénéficiaire :

**(I)** les définitions figurant au paragraphe 18.4(1) s'appliquent aux fins de l'application de la présente division,

**(II)** subsection 12.7(3) is deemed not to apply in respect of the payment if

**1** the foreign affiliate's income or loss derived from the payment is included under subparagraph (a)(ii) in computing the foreign affiliate's income or loss from an active business for a taxation year, or

**2** in the case of a payment that subsection 18.4(9) deems to be made to the foreign affiliate or the partnership by a particular entity in respect of a notional interest expense on a particular debt, any income or loss that were derived by the foreign affiliate from the payment would, based on the relevant assumptions in respect of the payment, be included under subparagraph (a)(ii) in computing the foreign affiliate's income or loss from an active business for a taxation year,

**(III)** for the purposes of sub-subclause (II)2, the relevant assumptions in respect of the payment are

**1** the payment is an amount of interest paid by the particular entity to the foreign affiliate or the partnership, as the case may be, under a legal obligation to pay interest on the particular debt in the taxation year of the foreign affiliate or the partnership in which an amount in respect of the payment would, in the absence of subclause (II), be included under subsection 12.7(3) in the income of the foreign affiliate or partnership, and

**2** any amount that is deductible, in respect of the notional interest expense, is an amount deductible in respect of an expenditure for which the payment was made, and

**(IV)** the definition *Canadian ordinary income* in subsection 18.4(1) is to be read as if

**1** its subparagraph (a)(ii) read as follows:

**"(ii)** the amount is described in paragraph (b) or (c) of the description of A in the definition *foreign accrual property income* in subsection 95(1), or", and

**2** the description of D in its paragraph (b) read as follows:

**(II)** le paragraphe 12.7(3) est réputé ne pas s'appliquer relativement au paiement si, selon le cas :

**1** le revenu ou la perte de la société étrangère affiliée provenant du paiement est inclus dans le calcul du revenu ou de la perte de la société affiliée provenant d'une entreprise exploitée activement pour une année d'imposition en application du sous-alinéa a)(ii),

**2** dans le cas d'un paiement qui est réputé, selon le paragraphe 18.4(9), être fait à la société étrangère affiliée ou à la société de personnes par une entité donnée relativement à une dépense d'intérêts théorique sur une dette donnée, tout revenu ou toute perte de la société étrangère affiliée provenant du paiement serait, selon les hypothèses pertinentes relatives au paiement, inclus dans le calcul de son revenu ou de sa perte provenant d'une entreprise exploitée activement pour une année d'imposition en application du sous-alinéa a)(ii),

**(III)** pour l'application de la sous-subdivision (II)2, les hypothèses pertinentes relatives au paiement sont les suivantes :

**1** le paiement représente un montant d'intérêt payé par l'entité donnée à la société étrangère affiliée ou à la société de personnes, selon le cas, en vertu d'une obligation légale de payer des intérêts sur la dette donnée au cours de l'année d'imposition de la société étrangère affiliée ou de la société de personnes dans laquelle une somme relative au paiement serait, en l'absence de la subdivision (II), incluse dans son revenu en application du paragraphe 12.7(3),

**2** toute somme qui est déductible, à l'égard de la dépense d'intérêt théorique, est une somme déductible au titre d'une dépense pour laquelle le paiement est effectué,

**(IV)** la définition de *revenu ordinaire canadien* au paragraphe 18.4(1) s'applique comme si :

**1** son sous-alinéa a)(ii) était remplacé par ce qui suit :

**« (ii)** la somme est visée aux alinéas b) ou c) de l'élément A de la formule figurant à la définition de

**"D** is the total of all amounts, each of which is an amount, in respect of the payment, that is included in the description of H in the definition *foreign accrual property income* in subsection 95(1) in computing the foreign accrual property income of a member of the partnership for a taxation year; or";

*revenu étranger accumulé, tiré de biens* au paragraphe 95(1), »,

**2** l'élément D de la formule figurant à son alinéa b) était remplacé par ce qui suit :

**« D** le total des sommes représentant chacune un montant, relativement au paiement, qui est inclus dans l'élément H de la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1) dans le calcul du revenu étranger accumulé, tiré de biens d'un associé de la société de personnes pour une année d'imposition; »;

**(8) Subsections (1) and (2) apply in respect of any dividend received on or after July 1, 2024.**

**(8) Les paragraphes (1) et (2) s'appliquent à tout dividende reçu après le 30 juin 2024.**

**(9) Subsection (3) applies in respect of payments arising on or after July 1, 2022.**

**(9) Le paragraphe (3) s'applique aux paiements se produisant après le 30 juin 2022.**

**(10) Subsections (4) and (6) apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsections (4) and (6) also apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**(10) Les paragraphes (4) et (6) s'appliquent relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, ils s'appliquent aussi relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**(11) Subsections (5) and (7) apply in respect of payments arising on or after July 1, 2024.**

**(11) Les paragraphes (5) et (7) s'appliquent aux paiements se produisant après le 30 juin 2024.**

**25 (1) Subparagraph 96(2.1)(b)(ii) of the Act is replaced by the following:**

**(ii)** the amount required by subsection 127(8) or 127.44(11) in respect of the partnership to be added in computing the investment tax credit or the

**25 (1) Le sous-alinéa 96(2.1)b)(ii) de la même loi est remplacé par ce qui suit :**

**(ii)** la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8) ou 127.44(11) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement ou du *crédit d'impôt*

*CCUS tax credit* (as defined in subsection 127.44(1)) of the taxpayer for the taxation year,

**(2) Subparagraph 96(2.1)(b)(ii) of the Act, as enacted by subsection (1), is replaced by the following:**

**(ii)** the amount required by subsections 127(8), 127.44(11) or 127.45(8) in respect of the partnership to be added in computing the investment tax credit, the *CCUS tax credit* (as defined in subsection 127.44(1)) or the *clean technology investment tax credit* (as defined in subsection 127.45(1)) of the taxpayer for the taxation year,

**(3) The portion of subsection 96(2.2) of the Act before paragraph (a) is replaced by the following:**

**At-risk amount**

**(2.2)** For the purposes of this section and sections 111, 127, 127.44 and 127.47, the at-risk amount of a taxpayer, in respect of a partnership of which the taxpayer is a limited partner, at any particular time is the amount, if any, by which the total of

**(4) The portion of subsection 96(2.2) of the Act before paragraph (a), as enacted by subsection (3), is replaced by the following:**

**At-risk amount**

**(2.2)** For the purposes of this section and sections 111, 127, 127.44, 127.45 and 127.47, the at-risk amount of a taxpayer, in respect of a partnership of which the taxpayer is a limited partner, at any particular time is the amount, if any, by which the total of

**(5) The portion of subsection 96(2.4) of the Act before paragraph (a) is replaced by the following:**

**Limited partner**

**(2.4)** For the purposes of this section and sections 111, 127, 127.44 and 127.47 a taxpayer who is a member of a partnership at a particular time is a limited partner of the partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within three years after that time,

*pour le CUSC* (au sens du paragraphe 127.44(1)) du contribuable pour l'année,

**(2) Le sous-alinéa 96(2.1)b)(ii) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**(ii)** la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8), 127.44(11) ou 127.45(8) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement, du *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) ou du *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)) du contribuable pour l'année,

**(3) Le passage du paragraphe 96(2.2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Fraction à risques d'un intérêt dans une société de personnes**

**(2.2)** Pour l'application du présent article et des articles 111, 127, 127.44 et 127.47, la fraction à risques de l'intérêt d'un contribuable dans une société de personnes dont il est commanditaire à un moment donné correspond à l'excédent éventuel du total des montants suivants :

**(4) Le passage du paragraphe 96(2.2) de la même loi précédant l'alinéa a), édicté par le paragraphe (3), est remplacé par ce qui suit :**

**Fraction à risques d'un intérêt dans une société de personnes**

**(2.2)** Pour l'application du présent article et des articles 111, 127, 127.44, 127.45 et 127.47, la fraction à risques de l'intérêt d'un contribuable dans une société de personnes dont il est commanditaire à un moment donné correspond à l'excédent éventuel du total des montants suivants :

**(5) Le passage du paragraphe 96(2.4) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Commanditaire**

**(2.4)** Pour l'application du présent article et des articles 111, 127, 127.44 et 127.47, le contribuable qui est, à un moment donné, un associé d'une société de personnes est commanditaire de cette société de personnes si sa participation dans celle-ci n'est pas, à ce moment, une participation exonérée au sens du paragraphe (2.5) et si, à ce moment ou dans les trois ans suivants :

**(6) The portion of subsection 96(2.4) of the Act before paragraph (a), as enacted by subsection (5), is replaced by the following:**

**Limited partner**

**(2.4)** For the purposes of this section and sections 111, 127, 127.44, 127.45 and 127.47 a taxpayer who is a member of a partnership at a particular time is a limited partner of the partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within three years after that time,

**(6) Le passage du paragraphe 96(2.4) de la même loi précédant l'alinéa a), édicté par le paragraphe (5), est remplacé par ce qui suit :**

**Commanditaire**

**(2.4)** Pour l'application du présent article et des articles 111, 127, 127.44, 127.45 et 127.47, le contribuable qui est, à un moment donné, un associé d'une société de personnes est commanditaire de cette société de personnes si sa participation dans celle-ci n'est pas, à ce moment, une participation exonérée au sens du paragraphe (2.5) et si, à ce moment ou dans les trois ans suivants :

**(7) The portion of subsection 96(3) of the Act before paragraph (a) is replaced by the following:**

**Agreement or election of partnership members**

**(3)** If a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 10.1(1), 13(4), (4.2) and (16), the definition *excluded interest* in subsection 18.2(1), subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5) and (9) to (11), section 80.04, subsections 86.1(2), 88(3.1), (3.3) and (3.5) and 90(3), the definition *relevant cost base* in subsection 95(4) and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, if this Act were read without reference to this subsection, would be a valid agreement, designation or election,

**(7) Le passage du paragraphe 96(3) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Convention ou choix d'un associé**

**(3)** Si un contribuable qui est l'associé d'une société de personnes au cours d'un exercice a fait ou signé un choix ou une convention à une fin quelconque liée au calcul de son revenu tiré de la société de personnes pour l'exercice, ou a indiqué une somme à une telle fin, en application de l'un des paragraphes 10.1(1), 13(4), (4.2) et (16), de la définition de *intérêts exclus* au paragraphe 18.2(1), des paragraphes 20(9) et 21(1) à (4), de l'article 22, du paragraphe 29(1), de l'article 34, de la division 37(8)a)(ii)(B), des paragraphes 44(1) et (6), 50(1) et 80(5) et (9) à (11), de l'article 80.04, des paragraphes 86.1(2), 88(3.1), (3.3) et (3.5) et 90(3), de la définition de *prix de base approprié* au paragraphe 95(4) et des paragraphes 97(2), 139.1(16) et (17) et 249.1(4) et (6), lequel choix ou laquelle convention ou indication de somme serait valide en l'absence du présent paragraphe, les règles ci-après s'appliquent :

**(8) Subsections (1), (3) and (5) are deemed to have come into force on January 1, 2022.**

**(8) Les paragraphes (1), (3) et (5) sont réputés être entrés en vigueur le 1er janvier 2022.**

**(9) Subsections (2), (4) and (6) are deemed to have come into force on March 28, 2023.**

**(9) Les paragraphes (2), (4) et (6) sont réputés être entrés en vigueur le 28 mars 2023.**

**(10) Subsection (7) applies in respect of taxation years that begin on or after October 1, 2023.**

**(10) Le paragraphe (7) s'applique relativement aux années d'imposition commençant après septembre 2023.**

**26 (1) Paragraph (a.1) of the definition *trust* in subsection 108(1) of the Act is replaced by the following:**

**(a.1)** a trust (other than a trust described in paragraph (a), (d) or (h), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with

**26 (1) L'alinéa a.1) de la définition de *fiducie*, au paragraphe 108(1) de la même loi, est remplacé par ce qui suit :**

**a.1)** la fiducie (sauf celle visée aux alinéas a), d) ou h), celle à laquelle les paragraphes 7(2) ou (6) s'appliquent et celle qui est visée par règlement pour l'application du paragraphe 107(2)) dont la totalité ou la presque totalité des biens sont détenus en vue d'assurer des prestations à des particuliers auxquels des

benefits in respect of, or because of, an office or employment or former office or employment of any individual,

**(2) The definition *trust* in subsection 108(1) of the Act is amended by striking out "or" at the end of paragraph (f), by adding "or" at the end of paragraph (g) and by adding the following after paragraph (g):**

**(h)** an employee ownership trust.

**(3) Subsections (1) and (2) apply in respect of transactions that occur on or after January 1, 2024.**

**27 (1) Subsection 111(1) of the Act is amended by adding the following after paragraph (a):**

**Restricted interest and financing expenses**

**(a.1)** restricted interest and financing expenses for taxation years preceding the year, but no amount is deductible for the year in respect of restricted interest and financing expenses except to the extent of the amount determined by the formula

**A + B**

where

**A** is the amount that would be the taxpayer's excess capacity for the year if the amount determined for C in paragraph (b) of the definition *excess capacity* in subsection 18.2(1) were nil, and

**B** is the total of all amounts, each of which is an amount of *received capacity* (as defined in subsection 18.2(1)) of the taxpayer for the year;

**(2) Clause 111(1)(e)(ii)(A) of the Act is replaced by the following:**

**(A)** the amount required by subsection 127(8) or 127.44(11) in respect of the partnership to be added in computing the investment tax credit or the *CCUS tax credit* (as defined in subsection 127.44(1)) of the taxpayer for the taxation year,

**(3) Clause 111(1)(e)(ii)(A) of the Act, as enacted by subsection (2), is replaced by the following:**

**(A)** the amount required by subsections 127(8), 127.44(11) or 127.45(8) in respect of the partnership to be added in computing the investment

prestations sont assurées dans le cadre ou au titre de la charge ou de l'emploi actuel ou ancien d'un particulier;

**(2) La définition de *fiducie*, au paragraphe 108(1) de la même loi, est modifiée par adjonction, après l'alinéa g), de ce qui suit :**

**h)** une fiducie collective des employés.

**(3) Les paragraphes (1) et (2) s'appliquent aux opérations se produisant après le 31 décembre 2023.**

**27 (1) Le paragraphe 111(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**Dépenses d'intérêts et de financement restreintes**

**a.1)** ses dépenses d'intérêts et de financement restreintes pour les années d'imposition précédant l'année; toutefois, la somme déductible pour l'année à titre de dépenses d'intérêts et de financement restreintes ne peut excéder la somme obtenue par la formule suivante :

**A + B**

où :

**A** représente le montant qui serait la capacité excédentaire du contribuable pour l'année si la valeur de l'élément C de l'alinéa b) de la formule figurant à la définition de *capacité excédentaire* au paragraphe 18.2(1) était nulle,

**B** le total des montants représentant chacun un montant de *capacité reçue* (au sens du paragraphe 18.2(1)) du contribuable pour l'année;

**(2) La division 111(1)e)(ii)(A) de la même loi est remplacée par ce qui suit :**

**(A)** la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8) ou 127.44(11) prévoient d'ajouter au crédit d'impôt à l'investissement ou au *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) du contribuable pour l'année,

**(3) La division 111(1)e)(ii)(A) de la même loi, édictée par le paragraphe (2), est remplacée par ce qui suit :**

**(A)** la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8), 127.44(11) ou 127.45(8) prévoient

tax credit, the *CCUS tax credit* (as defined in subsection 127.44(1)) or the *clean technology investment tax credit* (as defined in subsection 127.45(1)) of the taxpayer for the taxation year,

d'ajouter au crédit d'impôt à l'investissement, au *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) ou au *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)) du contribuable pour l'année,

**(4) The portion of subsection 111(3) of the Act before subparagraph (a)(i.1) is replaced by the following:**

**(4) Le passage du paragraphe 111(3) de la même loi précédant le sous-alinéa a)(i.1) est remplacé par ce qui suit :**

**Limitation on deductibility**

**(3)** For the purposes of subsection (1),

**Restriction des déductions**

**(3)** Pour l'application du paragraphe (1) :

**(a)** an amount in respect of a non-capital loss, restricted interest and financing expense, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible, and an amount in respect of a net capital loss for a taxation year may be claimed, in computing the taxable income of a taxpayer for a particular taxation year only to the extent that it exceeds the total of

**a)** une somme au titre d'une perte autre qu'une perte en capital, d'une dépense d'intérêts et de financement restreinte, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire pour une année d'imposition n'est déductible, et la déduction d'une somme au titre d'une perte en capital nette pour une année d'imposition ne peut être demandée, dans le calcul du revenu imposable d'un contribuable pour une année d'imposition donnée que dans la mesure où la somme dépasse le total des montants suivants :

**(i)** amounts deducted under this section in respect of that non-capital loss, restricted interest and financing expense, restricted farm loss, farm loss or limited partnership loss in computing taxable income (or, in the case of a restricted interest and financing expense, in computing a non-capital loss) for taxation years preceding the particular taxation year,

**(i)** les sommes déduites selon le présent article, au titre de cette perte autre qu'une perte en capital, de cette dépense d'intérêts et de financement restreinte, de cette perte agricole restreinte, perte agricole ou perte comme commanditaire, dans le calcul du revenu imposable (ou, dans le cas d'une dépense d'intérêts et de financement restreinte, dans le calcul d'une perte autre qu'une perte en capital) pour les années d'imposition antérieures à l'année donnée,

**(5) Paragraph 111(3)(a) of the Act is amended by striking out "and" at the end of subparagraph (i.1) and by adding the following after subparagraph (ii):**

**(5) L'alinéa 111(3)a) de la même loi est modifié par adjonction, après le sous-alinéa (ii), de ce qui suit :**

**(iii)** amounts claimed in respect of that limited partnership loss in computing taxable income for taxation years preceding the particular taxation year to the extent that subsection 18.2(2) denied a deduction in respect of those amounts for the preceding taxation year; and

**(iii)** les sommes demandées relativement à cette perte comme commanditaire dans le calcul du revenu imposable pour les années d'imposition précédant l'année d'imposition donnée dans la mesure où le paragraphe 18.2(2) a refusé une déduction relativement à ces sommes pour l'année d'imposition précédente;

**(6) The portion of paragraph 111(3)(b) of the Act before subparagraph (i) is replaced by the following:**

**(6) Le passage de l'alinéa 111(3)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**(b)** no amount is deductible in respect of a non-capital loss, restricted interest and financing expense, net

**b)** aucune somme n'est déductible au titre d'une perte autre qu'une perte en capital, d'une dépense d'intérêts

capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year until

et de financement restreinte, d'une perte en capital nette, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire pour une année d'imposition avant que :

**(7) Paragraph 111(3)(b) of the Act is amended by adding the following after subparagraph (i):**

**(7) L'alinéa 111(3)b) de la même loi est modifié par adjonction, après le sous-alinéa (i), ce qui suit :**

**(i.1)** in the case of a restricted interest and financing expense, the restricted interest and financing expenses,

**(i.1)** dans le cas d'une dépense d'intérêts et de financement restreinte, les dépenses d'intérêts et de financement restreintes,

**(8) The portion of subsection 111(5) of the Act before subparagraph (a)(i) is replaced by the following:**

**(8) Le passage du paragraphe 111(5) de la même loi précédant le sous-alinéa a)(i) est remplacé par ce qui suit :**

**Loss restriction event — certain losses and expenses**

**Fait lié à la restriction de pertes — certaines pertes et certaines dépenses**

**(5)** If at any time a taxpayer is subject to a loss restriction event,

**(5)** Si à un moment donné un contribuable est assujetti à un fait lié à la restriction de pertes :

**(a)** no amount in respect of the taxpayer's non-capital loss, restricted interest and financing expense or farm loss for a taxation year that ended before that time is deductible by the taxpayer for a taxation year that ends after that time, except that the portion of the taxpayer's non-capital loss, restricted interest and financing expense or farm loss, as the case may be, for a taxation year that ended before that time as may reasonably be regarded as the taxpayer's loss from carrying on a business or the taxpayer's expense or loss incurred in the course of carrying on a business, as the case may be, and, if a business was carried on by the taxpayer in that year, the portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing the taxpayer's taxable income for that year is deductible by the taxpayer for a particular taxation year that ends after that time

**a)** aucune somme au titre d'une perte autre qu'une perte en capital, d'une dépense d'intérêts et de financement restreinte ou d'une perte agricole pour une année d'imposition s'étant terminée avant ce moment n'est déductible par le contribuable pour une année d'imposition se terminant après ce moment; toutefois, la partie de la perte autre qu'une perte en capital, de la dépense d'intérêts et de financement restreinte ou de la perte agricole, selon le cas, du contribuable pour une année d'imposition s'étant terminée avant ce moment qu'il est raisonnable de considérer comme étant la perte du contribuable provenant de l'exploitation d'une entreprise ou la dépense engagée ou la perte subie par le contribuable dans le cadre de l'exploitation d'une entreprise, selon le cas, et, si le contribuable exploitait une entreprise au cours de cette année, la partie de la perte autre qu'une perte en capital qu'il est raisonnable de considérer comme se rapportant à une somme déductible en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année, ne sont déductibles par le contribuable pour une année d'imposition donnée se terminant après ce moment :

**(9) Section 111 of the Act is amended by adding the following after subsection (5):**

**(9) L'article 111 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :**

**Loss restriction event – cumulative unused excess capacity**

**Fait lié à la restriction de pertes — capacité excédentaire cumulative inutilisée**

**(5.01)** If at any time a particular taxpayer is subject to a loss restriction event, the cumulative unused excess capacity of any taxpayer for any taxation year that ends after that time shall be determined without regard to any absorbed capacity, excess capacity or transferred capacity

**(5.01)** Si un contribuable donné est assujetti à un fait lié à la restriction de pertes à un moment donné, la capacité excédentaire cumulative inutilisée de tout contribuable pour toute année d'imposition qui se termine après ce moment est déterminée compte non tenu de toute

of the particular taxpayer for any taxation year that ended before that time.

**(10) Paragraph (b) of the description of E in the definition *non-capital loss* in subsection 111(8) of the Act is replaced by the following:**

**(b)** an amount deducted under paragraph (1)(a.1) or (b) or section 110.6, or deductible under any of paragraphs 110(1)(d) to (d.3), (f), (g) and (k), section 112 and subsections 113(1) and 138(6), in computing the taxpayer's taxable income for the year, or

**(11) Subsection 111(8) of the Act is amended by adding the following in alphabetical order:**

***restricted interest and financing expense*** of a taxpayer for a taxation year means the amount determined by the formula

**A + B + C**

where

**A** is the total of all amounts each of which is the portion of an amount that is not deductible in computing the income for the taxation year of the taxpayer from a business or property, or the taxable income of the taxpayer for the year, or does not reduce the amount determined under paragraph 3(b) in respect of the taxpayer for the year, because of subsection 18.2(2),

**B** is the amount determined under paragraph 12(1)(l.2) in respect of the taxpayer for the taxation year, and

**C** is the total of all amounts, each of which is an amount determined by the formula

**D × E**

where

**D** is the portion of an amount that is not deductible because of subclause 95(2)(f.11)(ii)(D)(I), or an amount that is included because of subclause 95(2)(f.11)(ii)(D)(II), in determining, in respect of the taxpayer for an *affiliate taxation year* (as defined in subsection 18.2(1)) of a controlled foreign affiliate of the taxpayer ending in the taxation year, an amount of the affiliate that is described in subparagraph 95(2)(f)(ii), and

**E** is the taxpayer's *specified participating percentage* (as defined in subsection 18.2(1)) in respect of the affiliate for the affiliate taxation year; (*dépense d'intérêts et de financement restreinte*)

capacité absorbée, capacité excédentaire ou capacité transférée du contribuable donné pour une année d'imposition qui s'est terminée avant ce moment.

**(10) L'alinéa b) de l'élément E de la deuxième formule figurant à la définition de *perte autre qu'une perte en capital*, au paragraphe 111(8) de la même loi, est remplacé par ce qui suit :**

**b)** une somme déduite en application des alinéas (1)a.1) ou b) de l'article 110.6, ou déductible en application de l'un des alinéas 110(1)d) à d.3), f), g) et k), de l'article 112 et des paragraphes 113(1) et 138(6), dans le calcul de son revenu imposable pour l'année,

**(11) Le paragraphe 111(8) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***dépense d'intérêts et de financement restreinte*** Quant à un contribuable pour une année d'imposition, s'entend de la somme obtenue par la formule suivante :

**A + B + C**

où :

**A** représente le total des sommes dont chacune représente la fraction d'un montant qui n'est pas déductible dans le calcul du revenu du contribuable pour l'année d'imposition provenant d'une entreprise ou d'un bien, ou le revenu imposable du contribuable, ou ne réduit pas la somme déterminée selon l'alinéa 3b) relativement au contribuable pour l'année, pour l'année, par l'effet du paragraphe 18.2(2);

**B** la somme déterminée selon l'alinéa 12(1)l.2) relativement au contribuable pour l'année d'imposition;

**C** le total des sommes dont chacune représente une somme obtenue par la formule suivante :

**D × E**

où :

**D** représente la fraction d'une somme qui n'est pas déductible par l'effet de la subdivision 95(2)f.11)(ii)(D)(I), ou une somme qui est incluse par l'effet de la subdivision 95(2)f.11)(ii)(D)(II), dans le calcul, relativement au contribuable pour une *année d'imposition de la société affiliée* (au sens du paragraphe 18.2(1)) d'une société étrangère affiliée contrôlée du contribuable se terminant dans l'année d'imposition, une somme de la société affiliée visée au sous-alinéa 95(2)f)(ii);

**E** le *pourcentage de participation déterminé* (au sens du paragraphe 18.2(1)) du contribuable relativement à la société affiliée pour l'année

d'imposition de la société affiliée. (*restricted interest and financing expense*)

**(12) The portion of subsection 111(9) of the Act before paragraph (a) is replaced by the following:**

**Exception**

**(9)** In this section, a taxpayer's non-capital loss, restricted interest and financing expense, net capital loss, restricted farm loss, farm loss and limited partnership loss for a taxation year during which the taxpayer was not resident in Canada shall be determined as if

**(12) Le passage du paragraphe 111(9) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Exception**

**(9)** Au présent article, la perte autre qu'une perte en capital, la dépense d'intérêts et de financement restreinte, la perte en capital nette, la perte agricole restreinte, la perte agricole et la perte comme commanditaire engagée ou subies par un contribuable pour une année d'imposition pendant laquelle il ne résidait pas au Canada sont calculées comme si :

**(13) Subsections (1) and (4) to (12) apply in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsections (1) to (10) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**(13) Les paragraphes (1) et (4) à (12) s'appliquent relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, les paragraphes (1) à (10) s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**(14) Subsection (2) is deemed to have come into force on January 1, 2022.**

**(14) Le paragraphe (2) est réputé être entré en vigueur le 1er janvier 2022.**

**(15) Subsection (3) is deemed to have come into force on March 28, 2023.**

**(15) Le paragraphe (3) est réputé être entré en vigueur le 28 mars 2023.**

**28 (1) Section 112 of the Act is amended by adding the following after subsection (2):**

**Mark-to-market property**

**(2.01)** No deduction may be made under subsection (1) or (2) or 138(6) in computing the taxable income of a corporation for a taxation year in respect of a dividend received on a share if

**28 (1) L'article 112 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Bien évalué à la valeur du marché**

**(2.01)** Aucune déduction ne peut être faite en application des paragraphes (1) ou (2) ou 138(6) dans le calcul du revenu imposable d'une société pour une année d'imposition à l'égard d'un dividende reçu sur une action si, à la fois :

**(a)** the corporation is a financial institution at any time in the year; and

**(b)** the share

**(i)** is a mark-to-market property of the corporation for the year, or

**(ii)** would be a mark-to-market property of the corporation for the year if the share was held at any time in the year by the corporation.

**Tracking property and preferred shares**

**(2.02)** For the purpose of paragraph (2.01)(b),

**(a)** a share (other than a share of a financial institution) is deemed to be a mark-to-market property of the corporation for the year if the share

**(i)** is a tracking property of the corporation at any time in the year, or

**(ii)** would be a tracking property of the corporation if the share was held at any time in the year by the corporation; and

**(b)** a taxable preferred share is deemed not to be a mark-to-market property of the corporation for the year unless the share would be described in subparagraph (a)(i) or (ii) if paragraph (a) were read without reference to "(other than a share of a financial institution)".

**(2.03)** Subsection (2.01) does not apply to a dividend received by an insurance corporation in a taxation year that is

**(a)** either

**(i)** received on a share (other than a share described in subparagraph (2.02)(a)(i)) held by the corporation in connection with an insurance contract entered into, issued or acquired in the ordinary course of an insurance business of the corporation, or

**(ii)** deemed to be received by the corporation as a result of a designation by a mutual fund trust under subsection 104(19) in respect of a unit of the trust that is held by the corporation in connection with an insurance contract entered into, issued or acquired in the ordinary course of an insurance business of the corporation; and

**(b)** identified in the corporation's return of income under this Part for the year.

**a)** la société est une institution financière à un moment donné de l'année;

**b)** l'action, selon le cas :

**(i)** est un bien évalué à la valeur du marché de la société pour l'année,

**(ii)** serait un bien évalué à la valeur du marché de la société pour l'année dans le cas où l'action était détenue à un moment donné de l'année par la société.

**Bien à évaluer et actions privilégiées**

**(2.02)** Pour l'application de l'alinéa (2.01)b) :

**a)** une action (sauf une action d'une institution financière) est réputée être un bien évalué à la valeur du marché de la société pour l'année si l'action, selon le cas :

**(i)** est un bien à évaluer de la société à un moment donné de l'année,

**(ii)** serait un bien à évaluer de la société dans le cas où l'action était détenue à un moment donné de l'année par la société;

**b)** une action privilégiée imposable est réputée ne pas être un bien évalué à la valeur du marché de la société pour l'année, sauf si l'action était visée aux sous-alinéas a)(i) ou (ii) si l'alinéa a) s'appliquait compte non tenu de son passage « (sauf une action d'une institution financière) ».

**(2.03)** Le paragraphe (2.01) ne s'applique pas à un dividende reçu par une compagnie d'assurance au cours d'une année d'imposition qui est, à la fois :

**a)** soit

**(i)** reçu sur une action (sauf une action visée au sous-alinéa (2.02)a)(i)) détenue par la compagnie en lien avec un contrat d'assurance conclu, émis ou acquis dans le cours normal d'une entreprise d'assurance de la compagnie,

**(ii)** réputé avoir été reçu par la compagnie à la suite d'une désignation par une fiducie de fonds commun de placement visée au paragraphe 104(19) relativement à une part de la fiducie qui est détenue par la compagnie en lien avec un contrat d'assurance conclu, émis ou acquis dans le cours normal d'une entreprise d'assurance de la compagnie;

**b)** identifié dans la déclaration de revenu de la compagnie produite en vertu de la présente partie pour l'année.

**(2) Paragraph 112(6)(c) of the Act is replaced by the following:**

**(c)** *financial institution*, *mark-to-market property* and *tracking property* have the same meaning as in subsection 142.2(1).

**(3) Subsections (1) and (2) apply in respect of dividends received after 2023.**

**29 (1) Subsection 113(3) of the Act is amended by adding the following definitions in alphabetical order:**

***deductible***, in relation to an amount in respect of a payment, in computing relevant foreign income or profits, has the same meaning as in subsection 18.4(1). (*déductible*)

***entity*** has the same meaning as in subsection 95(1). (*entité*)

***equity interest*** has the same meaning as in subsection 18.4(1). (*participation au capital*)

***foreign expense restriction rule*** has the same meaning as in subsection 18.4(1). (*régle étrangère de restriction des dépenses*)

***foreign hybrid mismatch rule*** has the same meaning as in subsection 18.4(1). (*règle étrangère d'asymétrie hybride*)

***foreign taxation year*** of an entity has the same meaning as in subsection 18.4(1). (*année d'imposition étrangère*)

***relevant foreign income or profits*** of an entity for a foreign taxation year has the same meaning as in subsection 18.4(1). (*revenus ou bénéfices étrangers pertinents*)

**(2) Section 113 of the Act is amended by adding the following after subsection (4):**

**Deduction restriction**

**(5)** Any amount that, in the absence of this subsection, would be a dividend received by a corporation resident in Canada on a share owned by it of the capital stock of a foreign affiliate of the corporation is deemed, for the purposes of this section (other than this subsection), not to be a dividend received by the corporation on a share of the capital stock of the affiliate to the extent of the total of all amounts, each of which, in respect of the dividend,

**(2) L'alinéa 112(6)c) de la même loi est remplacé par ce qui suit :**

**c)** les expressions *bien à évaluer*, *bien évalué à la valeur du marché* et *institution financière* s'entendent au sens du paragraphe 142.2(1).

**(3) Les paragraphes (1) et (2) s'appliquent relativement aux dividendes reçus après 2023.**

**29 (1) Le paragraphe 113(3) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***année d'imposition étrangère*** S'agissant d'une entité, s'entend au sens du paragraphe 18.4(1). (*foreign taxation year*)

***déductible*** À l'égard d'une somme relativement à un paiement, dans le calcul des revenus ou bénéfices étrangers pertinents, s'entend au sens du paragraphe 18.4(1). (*deductible*)

***entité*** S'entend au sens du paragraphe 95(1). (*entity*)

***participation au capital*** S'entend au sens du paragraphe 18.4(1). (*equity interest*)

***règle étrangère d'asymétrie hybride*** S'entend au sens du paragraphe 18.4(1). (*foreign hybrid mismatch rule*)

***règle étrangère de restriction des dépenses*** S'entend au sens du paragraphe 18.4(1). (*foreign expense restriction rule*)

***revenus ou bénéfices étrangers pertinents*** S'agissant d'une entité pour une année d'imposition étrangère, s'entend au sens du paragraphe 18.4(1). (*relevant foreign income or profits*)

**(2) L'article 113 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Limitation de la déduction**

**(5)** Toute somme qui, en l'absence du présent paragraphe, serait un dividende reçu par une société résidant au Canada sur une action lui appartenant du capital-actions d'une société étrangère affiliée de la société est réputée, pour l'application du présent article, à l'exception du présent paragraphe, ne pas être un dividende reçu par la société sur une action du capital-actions de la société étrangère affiliée, dans la mesure où le total des montants dont chacun, relativement au dividende, selon le cas :

**(a)** is an amount that is or can reasonably be expected to be deductible in computing

**(i)** relevant foreign income or profits, for a foreign taxation year, of

**(A)** the affiliate, or

**(B)** another entity (other than the corporation) because that entity has a direct or indirect equity interest in the affiliate, or

**(ii)** income or profits of the affiliate that are taken into account in determining relevant foreign income or profits of another entity for a foreign taxation year; or

**(b)** would, in the absence of any foreign hybrid mismatch rule or foreign expense restriction rule, be described in paragraph (a).

**a)** représente un montant qui est déductible, ou dont il raisonnable de s'attendre à ce qu'il le soit, dans le calcul des montants suivants, selon le cas :

**(i)** les revenus ou bénéfices étrangers pertinents, pour une année d'imposition étrangère, de ce qui suit :

**(A)** soit la société affiliée,

**(B)** soit une autre entité (autre que la société) du fait que celle-ci détient une participation au capital directe ou indirecte dans la société affiliée,

**(ii)** les revenus ou bénéfices de la société affiliée qui sont pris en compte dans le calcul des revenus ou bénéfices étrangers pertinents d'une autre entité pour une année d'imposition étrangère;

**b)** serait, en l'absence d'une règle étrangère d'asymétrie hybride ou d'une règle étrangère de restriction des dépenses, visé à l'alinéa a).

**Deduction for foreign taxes**

**(6)** If, for the purposes of this section (other than subsection (5)), all or any portion of a particular amount is deemed by subsection (5) not to be a dividend received by a corporation on a share of the capital stock of a foreign affiliate in a taxation year of the corporation, there may be deducted from the corporation's income for the taxation year for the purpose of computing its taxable income for the year an amount equal to the lesser of

**(a)** the particular amount or portion of the particular amount, as the case may be, and

**(b)** the amount determined by the formula

**A × B**

where

**A** is the non-business-income tax paid by the corporation applicable to the particular amount or portion of the particular amount, as the case may be, and

**B** is the corporation's relevant tax factor for the year.

**Déduction au titre d'impôts étrangers**

**(6)** Si, pour l'application du présent article (sauf le paragraphe (5)), la totalité ou une partie d'un montant donné est réputée par le paragraphe (5) ne pas être un dividende reçu par une société sur une action du capital-actions d'une société étrangère affiliée dans une année d'imposition de la société, une somme égale à la moins élevée des sommes ci-après peut être déduite du revenu pour l'année d'imposition de la société pour le calcul de son revenu imposable pour l'année :

**a)** la somme donnée ou la partie de celle-ci, selon le cas;

**b)** la somme obtenue par la formule suivante :

**A × B**

où :

**A** représente l'impôt sur le revenu ne provenant pas d'une entreprise payé par la société et applicable à la somme donnée ou à la partie de celle-ci, selon le cas,

**B** le facteur fiscal approprié à la société pour l'année.

**Filing Requirement**

**(7)** Each corporation shall file with its return of income for a taxation year a prescribed form containing prescribed information if subsection (5) deems an amount not to be a dividend received by the corporation on a share of the capital stock of a foreign affiliate.

**Exigence relative à la production de déclarations de revenus**

**(7)** Chaque société est tenue de produire, avec sa déclaration de revenu pour une année d'imposition, un formulaire prescrit contenant les renseignements prescrits si, selon le paragraphe (5), une somme est réputée ne pas

être un dividende que la société reçoit sur une action du capital-actions d'une société étrangère affiliée.

**(3) Subsections (1) and (2) apply in respect of any dividend received by a corporation resident in Canada on a share owned by the corporation of the capital stock of a foreign affiliate of the corporation on or after July 1, 2022, except that subsection 113(7) of the Act, as enacted by subsection (2), does not apply in respect of any dividend received before July 1, 2023.**

**(3) Les paragraphes (1) et (2) s'appliquent relativement à tout dividende reçu par une société résidant au Canada sur une action détenue par la société du capital-actions d'une société étrangère affiliée de la société après le 30 juin 2022. Toutefois, le paragraphe 113(7) de la même loi, édicté par le paragraphe (2), ne s'applique pas relativement à tout dividende reçu avant le 1er juillet 2023.**

**30 (1) Subsection 122.8(1) of the Act is amended by adding the following in alphabetical order:**

**30 (1) Le paragraphe 122.8(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***relevant census*** means

**(a)** for the 2023 and 2024 taxation years, the 2016 census published by Statistics Canada; and

**(b)** in any other case, the last census published by Statistics Canada before the taxation year. (*recensement pertinent*)

***recensement pertinent***

**a)** pour les années d'imposition 2023 et 2024, le recensement de 2016 publié par Statistique Canada;

**b)** sinon, le dernier recensement publié par Statistique Canada avant l'année d'imposition. (*relevant census*)

**(2) Paragraph (a) of the description of E in subsection 122.8(4) of the Act is replaced by the following:**

**(a)** 1.2, if there is a census metropolitan area, as determined in the relevant census, in the relevant province and the individual does not reside in a census metropolitan area at the beginning of the specified month, and

**(2) L'alinéa a) de l'élément E de la formule figurant au paragraphe 122.8(4) de la même loi est remplacé par ce qui suit :**

**a)** si la province visée compte une région métropolitaine de recensement, selon le recensement pertinent, et que le particulier ne réside pas dans une telle région au début du mois déterminé, 1,2,

**(3) Subsections (1) and (2) apply to the 2023 and subsequent taxation years.**

**(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition 2023 et suivantes.**

**31 (1) The portion of section 123.3 of the Act before paragraph (a) is replaced by the following:**

**31 (1) Le passage de l'article 123.3 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Refundable tax — CCPC or substantive CCPC**

**123.3** There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation that is a Canadian-controlled private corporation throughout the year — or a substantive CCPC at any time in the year — an amount equal to 10 2/3% of the lesser of

**Impôt remboursable — SPCC ou SPCC en substance**

**123.3** Est à ajouter à l'impôt payable par ailleurs en vertu de la présente partie pour chaque année d'imposition par une société qui est une société privée sous contrôle canadien tout au long de l'année — ou une SPCC en substance à un moment donné au cours de l'année — le montant représentant 10 2/3 % du moins élevé des montants suivants :

**(2) Subsection (1) applies to taxation years that end on or after April 7, 2022.**

**(2) Le paragraphe (1) s'applique aux années d'imposition se terminant à compter du 7 avril 2022.**

**32 (1) The portion of paragraph (b) of the definition *full rate taxable income* in subsection 123.4(1) of the Act before subparagraph (i) is replaced by the following:**

**(b)** if the corporation is a Canadian-controlled private corporation throughout the year or a substantive CCPC at any time in the year, the amount by which that portion of the corporation's taxable income for the year that is subject to tax under subsection 123(1) exceeds the total of

**(2) Subsection (1) applies to taxation years that end on or after April 7, 2022.**

**33 (1) The description of A in subsection 125.2(2) of the Act is replaced by the following:**

**A** is

**(a)** 0.075, if the taxation year begins after 2021 and before 2032,

**(b)** 0.05625, if the taxation year begins after 2031 and before 2033,

**(c)** 0.0375, if the taxation year begins after 2032 and before 2034,

**(d)** 0.01875, if the taxation year begins after 2033 and before 2035, and

**(e)** nil, in any other case;

**(2) The description of C in subsection 125.2(2) of the Act is replaced by the following:**

**C** is

**(a)** 0.045, if the taxation year begins after 2021 and before 2032,

**(b)** 0.03375, if the taxation year begins after 2031 and before 2033,

**(c)** 0.0225, if the taxation year begins after 2032 and before 2034,

**(d)** 0.01125, if the taxation year begins after 2033 and before 2035, and

**(e)** nil, in any other case; and

**34 (1) Paragraph 127(8.1)(b) of the Act is replaced by the following:**

**(b)** the taxpayer's at-risk amount in respect of the partnership, less the total of all amounts required by a *clean economy allocation provision* (as defined in subsection 127.47(1)) to be added in computing a *clean economy tax credit* (as defined in subsection

**32 (1) Le passage de l'alinéa b) de la définition de *revenu imposable au taux complet*, précédant le sous-alinéa (i), au paragraphe 123.4(1) de la même loi est remplacé par ce qui suit :**

**b)** si la société est une société privée sous contrôle canadien tout au long de l'année ou une SPCC en substance à un moment donné au cours de l'année, l'excédent de la partie de son revenu imposable pour l'année qui est assujettie à l'impôt prévu au paragraphe 123(1) sur le total des montants suivants :

**(2) Le paragraphe (1) s'applique aux années d'imposition se terminant à compter du 7 avril 2022.**

**33 (1) L'élément A de la formule figurant au paragraphe 125.2(2) de la même loi est remplacé par ce qui suit :**

**A** représente :

**a)** 0,075, si l'année d'imposition commence après 2021 et avant 2032,

**b)** 0,05625, si l'année d'imposition commence après 2031 et avant 2033,

**c)** 0,0375, si l'année d'imposition commence après 2032 et avant 2034,

**d)** 0,01875, si l'année d'imposition commence après 2033 et avant 2035,

**e)** zéro, dans les autres cas;

**(2) L'élément C de la formule figurant au paragraphe 125.2(2) de la même loi est remplacé par ce qui suit :**

**C** :

**a)** 0,045, si l'année d'imposition commence après 2021 et avant 2032,

**b)** 0,03375, si l'année d'imposition commence après 2031 et avant 2033,

**c)** 0,0225, si l'année d'imposition commence après 2032 et avant 2034,

**d)** 0,01125, si l'année d'imposition commence après 2033 et avant 2035,

**e)** zéro, dans les autres cas;

**34 (1) L'alinéa 127(8.1)b) de la même loi est remplacé par ce qui suit :**

**b)** la fraction à risques de l'intérêt du contribuable dans la société de personnes, moins le total des sommes à ajouter, en vertu d'une *disposition d'allocation pour l'économie propre* (au sens du paragraphe 127.47(1)), au calcul d'un *crédit d'impôt pour*

127.47(1)) of the taxpayer at the end of that fiscal period.

**(2) The definition *government assistance* in subsection 127(9) of the Act is replaced by the following:**

***government assistance*** means assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, other than as a deduction under subsection (5) or (6) or a deemed payment on account of tax payable under subsection 127.44(2); (*aide gouvernementale*)

**(3) The definition *government assistance* in subsection 127(9) of the Act, as amended by subsection (2), is replaced by the following:**

***government assistance*** means assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, other than as a deduction under subsection (5) or (6) or a deemed payment on account of tax payable under subsection 127.44(2) or 127.45(2); (*aide gouvernementale*)

**(4) The definition *non-government assistance* in subsection 127(9) of the Act is replaced by the following:**

***non-government assistance*** means an amount (other than an amount received directly from a government, municipality or other public authority) that would be included in income under paragraph 12(1)(x) if that paragraph were read without reference to subparagraphs 12(1)(x)(v) to (vii); (*aide non gouvernementale*)

**(5) Subsections (1) and (2) are deemed to have come into force on January 1, 2022.**

**(6) Subsection (3) is deemed to have come into force on March 28, 2023.**

**35 (1) The Act is amended by adding the following after section 127.43:**

**Definitions**

**127.44 (1)** The following definitions apply in this section, Part XII.7 and in Schedule II to the *Income Tax Regulations*.

***captured carbon*** means captured carbon dioxide that

*l'économie propre* (au sens du paragraphe 127.47(1)) du contribuable à la fin de l'exercice en cause.

**(2) La définition de *aide gouvernementale*, au paragraphe 127(9) de la même loi, est remplacée par ce qui suit :**

***aide gouvernementale*** Aide reçue d'un gouvernement, d'une municipalité ou d'une autre administration sous forme de prime, subvention, prêt à remboursement conditionnel, déduction de l'impôt ou allocation de placement ou sous toute autre forme, à l'exclusion d'une déduction prévue aux paragraphes (5) ou (6) ou d'un paiement réputé au titre de l'impôt payable en vertu du paragraphe 127.44(2). (*government assistance*)

**(3) La définition de *aide gouvernementale*, au paragraphe 127(9) de la même loi, modifiée par le paragraphe (2), est remplacée par ce qui suit :**

***aide gouvernementale*** Aide reçue d'un gouvernement, d'une municipalité ou d'une autre administration sous forme de prime, subvention, prêt à remboursement conditionnel, déduction de l'impôt ou allocation de placement ou sous toute autre forme, à l'exclusion d'une déduction prévue aux paragraphes (5) ou (6) ou d'un paiement réputé au titre de l'impôt payable en vertu des paragraphes 127.44(2) ou 127.45(2). (*government assistance*)

**(4) La définition de *aide non gouvernementale*, au paragraphe 127(9) de la même loi, est remplacée par ce qui suit :**

***aide non gouvernementale*** Somme (autre qu'une somme reçue directement d'un gouvernement, d'une municipalité ou d'une autre autorité publique) qui serait incluse dans le revenu en application de l'alinéa 12(1)x) si cet alinéa s'appliquait compte non tenu de ses sous-alinéas (v) à (vii). (*non-government assistance*)

**(5) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2022.**

**(6) Le paragraphe (3) est réputé être entré en vigueur le 28 mars 2023.**

**35 (1) La même loi est modifiée par adjonction, après l'article 127.43, de ce qui suit :**

**Définitions**

**127.44 (1)** Les définitions qui suivent s'appliquent au présent article, à la partie XII.7 et à l'annexe II du *Règlement de l'impôt sur le revenu*.

**(a)** would otherwise be released into the atmosphere; or

**(b)** is captured directly from the ambient air. (*carbone capté*)

***CCUS process*** means the process of carbon capture, utilization and storage that includes the

**(a)** capture of carbon dioxide

**(i)** that would otherwise be released into the atmosphere, or

**(ii)** directly from the ambient air; and

**(b)** storage or use of the captured carbon. (*processus de CUSC*)

***CCUS project*** means a project that is intended to support a CCUS process by

**(a)** capturing carbon dioxide

**(i)** that would otherwise be released into the atmosphere, or

**(ii)** directly from the ambient air;

**(b)** transporting captured carbon; or

**(c)** storing or using captured carbon. (*projet de CUSC*)

***CCUS tax credit*** means an amount deemed under subsection (2) to have been paid by a taxpayer on account of its tax payable under this Part for the year. (*crédit d'impôt pour le CUSC*)

***dedicated geological storage***, in respect of a CCUS project, means a geological formation that is located in a jurisdiction that was a designated jurisdiction at the time that the first qualified CCUS expenditure was made in respect of the project and that is, at the time a relevant expenditure is incurred,

**(a)** capable of permanently storing captured carbon;

**(b)** authorized and regulated for the storage of captured carbon under the laws of the designated jurisdiction; and

**(c)** a formation in which no captured carbon is used for enhanced oil recovery. (*stockage géologique dédié*)

***designated jurisdiction*** means

***aide non gouvernementale*** S'entend au sens du paragraphe 127(9). (*non-government assistance*)

***carbone capté*** Dioxyde de carbone capté qui, selon le cas :

**a)** serait par ailleurs relâché dans l'atmosphère;

**b)** est capté directement de l'air ambiant. (*captured carbon*)

***contribuable admissible*** Société canadienne imposable. (*qualifying taxpayer*)

***crédit d'impôt pour le CUSC*** Montant qui est réputé en vertu du paragraphe (2) avoir été payé par un contribuable au titre de son impôt payable en vertu de la présente partie pour l'année. (*CCUS tax credit*)

***dépense admissible pour le captage du carbone*** Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant la partie d'une dépense qu'il engage pour acquérir un bien dans l'année relativement à un projet de CUSC admissible du contribuable obtenue par la formule suivante :

**A × (B + C + D + E) × F**

où :

**A** relativement au bien acquis par le contribuable dans l'année (sauf un bien situé à l'étranger), représente, selon le cas :

**a)** le coût en capital du bien qui est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant décrit) :

**(i)** soit à l'alinéa a) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**(ii)** soit à l'un des alinéas d) à g) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au matériel visé à l'alinéa a) de cette catégorie;

**b)** la fraction du coût en capital du matériel à double usage qui, selon le cas :

**(i)** si le matériel est visé au sous-alinéa a)(i) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la quantité d'énergie devant être produite à des fins d'utilisation dans le cadre d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la quantité totale d'énergie que le matériel devrait produire au cours de cette période (déterminée compte

**(a)** the provinces of British Columbia, Saskatchewan and Alberta; and

**(b)** any other jurisdiction within Canada (including the exclusive economic zone of Canada) or the United States for which a designation by the Minister of the Environment under subsection (13) is in effect. (*juridiction désignée*)

***dual-use equipment*** means equipment that is part of a CCUS project of a taxpayer and that is described in any of the following paragraphs (and, in the case of property acquired before the first day of commercial operations of the CCUS project, is verified by the Minister of Natural Resources as being described in any of the following paragraphs):

**(a)** equipment that is not used for natural gas processing or acid gas injection, and that

**(i)** generates electrical energy, heat energy or a combination of electrical and heat energy, if more than 50% of either the electrical energy or heat energy that is expected to be produced over the total CCUS project review period, based on the most recent project plan, is expected (not including equipment that supports the qualified CCUS project indirectly by way of an electrical utility grid) to directly support

**(A)** a qualified CCUS project, unless the equipment uses fossil fuels and emits carbon dioxide that is not subject to capture by a qualified CCUS project, or

**(B)** hydrogen production from electrolysis or natural gas as long as emissions are abated by a qualified CCUS project, unless the equipment uses fossil fuels and emits carbon dioxide that is not subject to capture by a qualified CCUS project,

**(ii)** delivers, collects, recovers, treats or recirculates water, or a combination of any of those activities, in support of a qualified CCUS project,

**(iii)** is transmission equipment that directly transmits electrical energy from a system described in subparagraph (a)(i) to a qualified CCUS project and more than 50% of the electrical energy to be transmitted by the equipment over the total CCUS project review period, based on the most recent project plan, is expected to support the qualified CCUS project or hydrogen production from electrolysis or natural gas as long as emissions are abated by a qualified CCUS project, or

non tenu de l'énergie que le matériel produit et consomme dans le processus de production d'énergie), selon le dernier plan de projet pour le projet,

**(ii)** si le matériel est visé au sous-alinéa a)(ii) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la masse d'eau qui devrait être retournée d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la masse totale d'eau devant être retournée au matériel au cours de cette période, selon le dernier plan de projet pour le projet,

**(iii)** si le matériel est visé au sous-alinéa a)(iii) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la quantité d'énergie électrique que le matériel devrait transmettre à des fins d'utilisation dans le cadre d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la quantité totale d'énergie électrique que le matériel devrait transmettre au cours de cette période (déterminée compte non tenu de l'énergie électrique que le matériel consomme dans le processus de transmission), selon le dernier plan de projet pour le projet,

**(iv)** si le matériel est visé au sous-alinéa a)(iv) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la quantité d'énergie électrique ou thermique que le matériel devrait distribuer (ou s'il s'agit de matériel de distribution qui accroît la capacité du matériel existant, l'énergie électrique ou thermique que le matériel existant et le nouveau matériel devraient distribuer) à des fins d'utilisation dans le cadre d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la quantité totale d'énergie électrique ou thermique que le matériel (ou le matériel existant et le nouveau matériel) devrait distribuer au cours de cette période (déterminée compte non tenu de l'énergie que le matériel consomme dans le processus de distribution), selon le dernier plan de projet pour le projet;

**B** :

**a)** si le moment où la dépense est engagée est postérieur à la première période du projet, 0,

**b)** sinon, le pourcentage d'utilisation admissible prévu pour la première période du projet;

**(iv)** is distribution equipment that distributes electrical or heat energy;

**(b)** equipment that is physically and functionally integrated with the equipment described in paragraph (a) (for greater certainty, excluding construction equipment, furniture, office equipment and vehicles) and that is ancillary equipment used solely to support the functioning of equipment described in paragraph (a) within a CCUS process as part of

**(i)** an electrical system,

**(ii)** a fuel supply system,

**(iii)** a liquid delivery and distribution system,

**(iv)** a cooling system,

**(v)** a process material storage and handling and distribution system,

**(vi)** a process venting system,

**(vii)** a process waste management system, or

**(viii)** a utility air or nitrogen distribution system;

**(c)** equipment that is

**(i)** used as part of a control, monitoring or safety system solely to support the equipment described in paragraphs (a) or (b),

**(ii)** a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment described in paragraph (a), (b) or subparagraph (i), or

**(iii)** used solely to convert another property that would not otherwise be described in paragraph (a) or (b) or subparagraphs (i) and (ii) if the conversion causes the other property to satisfy the description in the paragraphs (a) or (b) or subparagraphs (i) or (ii); or

**(d)** equipment used solely to refurbish property described in paragraphs (a) or (b) or subparagraphs (c)(i) and (ii) that is part of the CCUS project of the taxpayer. (*matériel à double usage*)

***eligible use*** means

**(a)** the storage of captured carbon in dedicated geological storage; or

**C** :

**a)** si le moment où la dépense est engagée est postérieur à la deuxième période du projet, 0,

**b)** sinon, le pourcentage d'utilisation admissible prévu pour la deuxième période du projet;

**D** :

**a)** si le moment où la dépense est engagée est postérieur à la troisième période du projet, 0,

**b)** sinon, le pourcentage d'utilisation admissible prévu pour la troisième période du projet;

**E** le pourcentage d'utilisation admissible prévu pour la quatrième période du projet;

**F** :

**a)** si le moment où la dépense est engagée est antérieur à la deuxième période du projet, 0,25,

**b)** si le moment où la dépense est engagée est au cours de la deuxième période du projet, 0,33,

**c)** si le moment où la dépense est engagée est au cours de la troisième période du projet, 0,5,

**d)** si le moment où la dépense est engagée est au cours de la quatrième période du projet, 1. (*qualified carbon capture expenditure*)

***dépense admissible pour le stockage du carbone*** Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant le coût en capital engagé par le contribuable afin d'acquérir dans l'année, relativement à un projet de CUSC admissible du contribuable, un bien (sauf un bien situé à l'étranger) qui, à la fois :

**a)** devrait, selon le dernier plan de projet du projet de CUSC admissible avant le moment où la dépense est engagée, prendre en charge le stockage du carbone capté, uniquement de la manière visée à l'alinéa a) de la définition de *utilisation admissible*,

**b)** est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant un bien qui est décrit) :

**(i)** soit à l'alinéa c) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**(ii)** soit à l'un des alinéas d) à g) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au matériel visé à l'alinéa c) de cette catégorie. (*qualified carbon storage expenditure*)

**(b)** the use of captured carbon in producing concrete in Canada or the United States using a qualified concrete storage process. (*utilisation admissible*)

***first day of commercial operations*** means the day that is 120 days after the day on which captured carbon dioxide is first delivered to a carbon transportation, carbon storage or carbon use system for the purpose of storage or use on an ongoing operational basis. (*premier jour des activités commerciales*)

***ineligible use*** means

**(a)** the emission of captured carbon into the atmosphere, other than

**(i)** for the purposes of system integrity or safety, or

**(ii)** incidental emission made in the ordinary course of operations;

**(b)** the storage or use of captured carbon for enhanced oil recovery; and

**(c)** any other storage or use that is not an eligible use. (*utilisation non admissible*)

***non-government assistance*** has the same meaning as in subsection 127(9). (*aide non gouvernementale*)

***preliminary CCUS work activity*** means an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of property described in Class 57 or 58 in Schedule II to the *Income Tax Regulations* in respect of the taxpayer's CCUS project including, but not limited to, a preliminary activity that is

**(a)** obtaining permits or regulatory approvals;

**(b)** performing front-end design or engineering work, including front-end engineering design studies (or equivalent studies as determined by the Minister of Natural Resources) but excluding detailed design or engineering work in relation to specific property included in Class 57 or Class 58;

**(c)** conducting feasibility studies or pre-feasibility studies (or equivalent studies as determined by the Minister of Natural Resources);

**(d)** conducting environmental assessments; or

**(e)** clearing or excavating land. (*travaux préliminaires de CUSC*)

***dépense admissible pour le transport du carbone*** Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant la partie d'une dépense qu'il engage pour acquérir un bien dans l'année relativement à un projet de CUSC admissible du contribuable, obtenue par la formule suivante :

**A × (B + C + D + E) × F**

où :

**A** relativement au bien acquis par le contribuable dans l'année (sauf un bien situé à l'étranger), représente le coût en capital du bien qui est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant un bien qui est décrit)

**a)** soit à l'alinéa b) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**b)** soit à l'un des alinéas d) à g) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au matériel visé à l'alinéa b) de cette catégorie;

**B** :

**a)** si le moment où la dépense est engagée est postérieur à la première période du projet, 0,

**b)** sinon, le pourcentage d'utilisation admissible prévu pour la première période du projet;

**C** :

**a)** si le moment où la dépense est engagée est postérieur à la deuxième période du projet, 0,

**b)** sinon, le pourcentage d'utilisation admissible prévu pour la deuxième période du projet;

**D** :

**a)** si le moment où la dépense est engagée est postérieur à la troisième période du projet, 0,

**b)** sinon, le pourcentage d'utilisation admissible prévu pour la troisième période du projet;

**E** le pourcentage d'utilisation admissible prévu pour la quatrième période du projet;

**F** :

**a)** si le moment où la dépense est engagée est antérieur à la deuxième période du projet, 0,25,

**b)** si le moment où la dépense est engagée est au cours de la deuxième période du projet, 0,33,

**c)** si le moment où la dépense est engagée est au cours de la troisième période du projet, 0,5,

***projected eligible use percentage***, in respect of a CCUS project, for a period is the amount, expressed as a percentage, determined by the formula

**A ÷ B**

where

**A** is the quantity of captured carbon that the CCUS project is expected, based on the project's most recent project plan, to support for storage or use in eligible use during the period; and

**B** is the total quantity of captured carbon that the CCUS project is expected, based on the project's most recent project plan, to support for storage or use in both eligible use and ineligible use during the period. (*pourcentage d'utilisation admissible prévu*)

***project plan*** means a plan for a CCUS project that

**(a)** reflects a front-end engineering design study (or an equivalent study as determined by the Minister of Natural Resources) for the CCUS project;

**(b)** describes the quantity of captured carbon that the CCUS project is expected to support for storage or use in each calendar year over its total CCUS project review period, in

**(i)** eligible use, and

**(ii)** ineligible use;

**(c)** contains information required in guidelines published by the Minister of Natural Resources; and

**(d)** is filed with the Minister of Natural Resources, in the form and manner determined by that Minister, before the project's first day of commercial operations. (*plan de projet*)

***qualified carbon capture expenditure*** of a taxpayer for a taxation year means an amount that is the portion of an expenditure incurred by the taxpayer to acquire a property in the year, in respect of a qualified CCUS project of the taxpayer, determined by the formula

**A × (B + C + D + E) × F**

where

**A** is, in respect of property acquired by the taxpayer in the year (other than property situated outside of Canada),

**(a)** the capital cost of property described in (and, in the case of property acquired before the first day of commercial operations of the project,

**d)** si le moment où la dépense est engagée est au cours de la quatrième période du projet, 1. (*qualified carbon transportation expenditure*)

***dépense admissible pour l'utilisation du carbone*** Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant le coût en capital engagé par le contribuable afin d'acquérir dans l'année, relativement à un projet de CUSC admissible, un bien (sauf un bien situé à l'étranger) qui, à la fois :

**a)** est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant un bien qui est décrit) à l'un des alinéas a) à e) de la catégorie 58 de l'annexe II du *Règlement de l'impôt sur le revenu*;

**b)** devrait, selon le dernier plan de projet du projet de CUSC admissible avant le moment où la dépense est engagée, prendre en charge le stockage ou l'utilisation du carbone capté, uniquement de la manière visée à l'alinéa b) de la définition de *utilisation admissible*. (*qualified carbon use expenditure*)

***dépense de CUSC admissible*** L'une ou l'autre des dépenses suivantes :

**a)** une dépense admissible pour le captage du carbone;

**b)** une dépense admissible pour le transport du carbone;

**c)** une dépense admissible pour le stockage du carbone;

**d)** une dépense admissible pour l'utilisation du carbone. (*qualified CCUS expenditure*)

***juridiction désignée*** L'une ou l'autre des juridictions suivantes :

**a)** les provinces de la Colombie-Britannique, la Saskatchewan et l'Alberta;

**b)** toute autre juridiction à l'intérieur du Canada (notamment la zone économique exclusive du Canada) ou des États-Unis pour lesquels une désignation par le ministre de l'Environnement en vertu du paragraphe (13) est en vigueur. (*designated jurisdiction*)

***matériel à double usage*** Matériel compris dans un projet de CUSC d'un contribuable et visé à l'un des alinéas ci-après (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet de

verified by the Minister of Natural Resources as being property described in)

**(i)** paragraph (a) of Class 57 in Schedule II to the *Income Tax Regulations*, or

**(ii)** any of paragraphs (d) to (g) of Class 57 in Schedule II to the *Income Tax Regulations* in relation to equipment described in paragraph (a) of that Class, or

**(b)** the proportion of the capital cost of dual-use equipment that,

**(i)** if the equipment is described in subparagraph (a)(i) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the amount of energy expected to be produced for use in a qualified CCUS project over the project's total CCUS project review period is of the total amount of energy expected to be produced by the equipment in that period (determined without regard to energy produced and consumed by the equipment in the process of producing energy), based on the project's most recent project plan,

**(ii)** if the equipment is described in subparagraph (a)(ii) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the mass of water expected to be returned from a qualified CCUS project over the project's total CCUS project review period is of the total mass of water expected to be returned to the equipment in that period, based on the project's most recent project plan,

**(iii)** if the equipment is described in subparagraph (a)(iii) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the amount of electrical energy expected to be transmitted by the equipment for use in a qualified CCUS project over the total CCUS project review period is of the total amount of electrical energy expected to be transmitted by the equipment in that period (determined without regard to electrical energy consumed by the equipment in the process of transmission), based on the project's most recent project plan, and

**(iv)** if the equipment is described in subparagraph (a)(iv) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the amount of electrical or heat energy expected to be distributed by the equipment (or if it is distribution equipment that expands the capacity of existing

CUSC, tel que confirmé par le ministre des Ressources naturelles comme étant visé à l'un des alinéas suivants) :

**a)** le matériel qui n'est pas destiné à la transformation du gaz naturel ou à l'injection de gaz acide et qui, selon le cas :

**(i)** produit de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, si plus de 50 % de soit l'énergie électrique, soit de l'énergie thermique qui devrait être produite au cours de la période totale d'examen du projet de CUSC, selon le dernier plan de projet (à l'exclusion du matériel qui supporte indirectement le projet de CUSC admissible à titre de réseau électrique), devrait appuyer directement, selon le cas :

**(A)** un projet de CUSC admissible, sauf si le matériel utilise des combustibles fossiles et émet du dioxyde de carbone non soumis au captage au moyen d'un projet de CUSC admissible,

**(B)** la production d'hydrogène par électrolyse ou à partir de gaz naturel tant que les émissions sont réduites au moyen d'un projet de CUSC admissible, sauf si le matériel utilise des combustibles fossiles et émet du dioxyde de carbone non soumis au captage au moyen d'un processus de CUSC admissible,

**(ii)** distribue, recueille, récupère, traite ou recircule l'eau, ou une combinaison de ces activités, à l'appui d'un projet de CUSC admissible,

**(iii)** constitue du matériel de transmission qui transmet directement de l'énergie électrique à partir d'un système visé au sous-alinéa a)(i) à un projet de CUSC admissible et plus de 50 % de l'énergie électrique qui sera transmise par le matériel au cours de la période totale d'examen du projet de CUSC, selon le dernier plan de projet, devrait appuyer le projet de CUSC admissible ou la production d'hydrogène par électrolyse ou à partir de gaz naturel tant que les émissions sont réduites au moyen d'un projet de CUSC admissible,

**(iv)** constitue du matériel de distribution qui distribue de l'énergie électrique ou thermique;

**b)** le matériel qui est physiquement et fonctionnellement intégré au matériel visé à l'alinéa a) (à l'exclusion du matériel de construction, du mobilier, de l'équipement de bureau et des véhicules) et qui est du matériel auxiliaire qui ne sert qu'à soutenir le matériel visé à l'alinéa a) dans l'exécution de ses tâches fonctionnelles dans un processus de CUSC dans le cadre :

equipment, the electrical or heat energy expected to be distributed by the existing and new equipment) for use in a qualified CCUS project over the total CCUS project review period is of the total amount of electrical or heat energy expected to be distributed by the equipment (or the existing and new equipment) in that period (determined without regard to energy consumed by the equipment in the process of distribution), based on the project's most recent project plan;

**B** is

**(a)** if the time of the expenditure is after the first project period, nil, or

**(b)** in any other case, the projected eligible use percentage for the first project period;

**C** is

**(a)** if the time of the expenditure is after the second project period, nil, or

**(b)** in any other case, the projected eligible use percentage for the second project period;

**D** is

**(a)** if the time of the expenditure is after the third project period, nil, or

**(b)** in any other case, the projected eligible use percentage for the third project period;

**E** is the projected eligible use percentage for the fourth project period; and

**F** is

**(a)** if the time of the expenditure is before the second project period, 0.25,

**(b)** if the time of the expenditure is during the second project period, 0.33,

**(c)** if the time of the expenditure is during the third project period, 0.5, and

**(d)** if the time of the expenditure is during the fourth project period, 1. (*dépense admissible pour le captage du carbone*)

***qualified carbon storage expenditure*** of a taxpayer for a taxation year means an amount that is the capital cost incurred by the taxpayer to acquire in the year, in respect of a qualified CCUS project of the taxpayer, a property (other than property situated outside of Canada) that is

**(a)** expected, based on the qualified CCUS project's most recent project plan before the time the expenditure is incurred, to support storage of captured carbon

**(i)** d'un système électrique,

**(ii)** d'un système d'alimentation en carburant,

**(iii)** d'un système de livraison et de distribution de liquide,

**(iv)** d'un système de refroidissement,

**(v)** d'un système de stockage, de manutention et de distribution des matériaux de processus,

**(vi)** d'un système de ventilation de procédés,

**(vii)** d'un système de gestion des déchets de procédés,

**(viii)** d'un réseau de distribution d'air utilitaire ou d'azote;

**c)** le matériel qui est, selon le cas :

**(i)** utilisé dans le cadre d'un système de contrôle, de surveillance ou de sécurité uniquement pour soutenir le matériel visé aux alinéas a) ou b),

**(ii)** un bâtiment ou une autre structure dont la totalité ou la presque totalité est utilisée, ou sera utilisée, pour l'installation ou l'exploitation de matériel visé aux alinéas a) ou b) ou au sous-alinéa (i),

**(iii)** utilisé uniquement pour convertir un autre bien qui ne serait pas autrement visé aux alinéas a) ou b) ou aux sous-alinéas (i) et (ii) si la conversion fait en sorte que l'autre bien satisfait à la description aux alinéas a) ou b) ou aux sous-alinéas (i) ou (ii);

**d)** le matériel qui servira uniquement à remettre en état un bien visé aux alinéas a) ou b) ou aux sous-alinéas c)(i) et (ii) qui est compris dans le projet de CUSC du contribuable. (*dual-use equipment*)

***période totale d'examen du projet de CUSC*** Période qui commence le premier jour des activités commerciales d'un projet de CUSC et qui se termine le dernier jour de la quatrième période du projet. (*total CCUS project review period*)

***plan de projet*** Plan qui vise un projet de CUSC et qui, à la fois :

**a)** s'appuie sur une étude initiale d'ingénierie et de conception (ou d'une étude équivalente déterminée par le ministre des Ressources naturelles) pour le projet de CUSC;

solely in a manner described in paragraph (a) of the definition of *eligible use*; and

**(b)** described in (and, in the case of property acquired before the first day of commercial operations of the project, verified by the Minister of Natural Resources as being property described in)

**(i)** paragraph (c) of Class 57 in Schedule II to the *Income Tax Regulations*, or

**(ii)** any of paragraphs (d) to (g) of Class 57 in Schedule II to the *Income Tax Regulations* in relation to equipment described in paragraph (c) of that Class. (*dépense admissible pour le stockage du carbone*)

***qualified carbon transportation expenditure*** of a taxpayer for a taxation year means an amount that is the portion of an expenditure incurred by the taxpayer to acquire a property in the year in respect of a qualified CCUS project of the taxpayer, determined by the formula

**A × (B + C + D + E) × F**

where

**A** is, in respect of property acquired by the taxpayer in the year (other than property situated outside of Canada), the capital cost of property described in (and, in the case of property acquired before the first day of commercial operations of the project, verified by the Minister of Natural Resources as being property described in)

**(a)** paragraph (b) of Class 57 in Schedule II to the *Income Tax Regulations*, or

**(b)** any of paragraphs (d) to (g) of Class 57 in Schedule II to the *Income Tax Regulations* in relation to equipment described in paragraph (b) of that Class;

**B** is

**(a)** if the time of the expenditure is after the first project period, nil, or

**(b)** in any other case, the projected eligible use percentage for the first project period;

**C** is

**(a)** if the time of the expenditure is after the second project period, nil, or

**(b)** in any other case, the projected eligible use percentage for the second project period;

**D** is

**(a)** if the time of the expenditure is after the third project period, nil, or

**b)** décrit la quantité de carbone capté que le projet de CUSC devrait prendre en charge en vue de son stockage ou de son utilisation, pour chaque année civile sur la période totale d'examen du projet de CUSC, pour :

**(i)** une utilisation admissible,

**(ii)** une utilisation non admissible;

**c)** contient les renseignements requis par les lignes directrices publiées par le ministre des Ressources naturelles;

**d)** est déposé auprès du ministre des Ressources naturelles, selon les modalités prévues par ce ministre, avant le premier jour des activités commerciales du projet. (*project plan*)

***pourcentage déterminé*** L'un ou l'autre des pourcentages ci-après relativement aux dépenses suivantes :

**a)** une dépense admissible pour le captage du carbone si celle-ci est engagée pour capter le carbone selon l'une des méthodes suivantes :

**(i)** directement de l'air ambiant :

**(A)** après 2021 et avant 2031, 60 %,

**(B)** après 2030 et avant 2041, 30 %,

**(C)** après 2040, 0 %,

**(ii)** autrement que directement de l'air ambiant :

**(A)** après 2021 et avant 2031, 50 %,

**(B)** après 2030 et avant 2041, 25 %,

**(C)** après 2040, 0 %;

**b)** une dépense admissible pour le transport du carbone, une dépense admissible pour le stockage du carbone ou une dépense admissible pour l'utilisation du carbone, si elle est engagée :

**(i)** après 2021 et avant 2031, 37 1/2 %,

**(ii)** après 2030 et avant 2041, 18 3/4 %,

**(iii)** après 2040, 0 %. (*specified percentage*)

***pourcentage d'utilisation admissible prévu*** Montant, exprimé en pourcentage, obtenu par la formule ci-après relativement à un projet de CUSC pour une période :

**A ÷ B**

**(b)** in any other case, the projected eligible use percentage for the third project period;

**E** is the projected eligible use percentage for the fourth project period; and

**F** is

**(a)** if the time of the expenditure is before the second project period, 0.25,

**(b)** if the time of the expenditure is during the second project period, 0.33,

**(c)** if the time of the expenditure is during the third project period, 0.5, and

**(d)** if the time of the expenditure is during the fourth project period, 1. (*dépense admissible pour le transport du carbone*)

***qualified carbon use expenditure*** of a taxpayer for a taxation year means an amount that is the capital cost incurred by the taxpayer to acquire in the year, in respect of a qualified CCUS project of the taxpayer, a property (other than property situated outside of Canada) that is

**(a)** described in (and, in the case of property acquired before the first day of commercial operations of the project, verified by the Minister of Natural Resources as being property described in) any of paragraphs (a) to (e) of Class 58 in Schedule II to the *Income Tax Regulations*; and

**(b)** expected, based on the qualified CCUS project's most recent project plan before the time the expenditure is incurred, to support storage or use of captured carbon solely in a manner described in paragraph (b) of the definition of *eligible use*. (*dépense admissible pour l'utilisation du carbone*)

***qualified CCUS expenditure*** means a

**(a)** qualified carbon capture expenditure;

**(b)** qualified carbon transportation expenditure;

**(c)** qualified carbon storage expenditure; or

**(d)** qualified carbon use expenditure. (*dépense de CUSC admissible*)

***qualified CCUS project*** means a CCUS project of a taxpayer that meets the following conditions:

**(a)** it is expected, based on the project's most recent project plan, to support the capture of carbon dioxide in Canada for a period that is at least equal to the total CCUS project review period for the project;

où :

**A** représente la quantité de carbone capté que le projet de CUSC devrait, selon le dernier plan de projet pour le projet, prendre en charge à des fins de stockage ou d'utilisation dans le cadre d'une utilisation admissible au cours de la période;

**B** la quantité totale de carbone capté que le projet de CUSC devrait, selon le dernier plan de projet pour le projet, prendre en charge à des fins de stockage ou d'utilisation dans le cadre à la fois d'une utilisation admissible et non admissible au cours de la période. (*projected eligible use percentage*)

***premier jour des activités commerciales*** Jour qui suit de cent vingt jours le jour où le dioxyde de carbone capté est livré pour la première fois à un système de transport, de stockage ou d'utilisation du carbone aux fins de stockage ou d'utilisation sur une base opérationnelle continue. (*first day of commercial operations*)

***processus de CUSC*** Processus de captage, d'utilisation et de stockage du carbone qui inclut, à la fois :

**a)** le captage du dioxyde de carbone qui, selon le cas :

**(i)** serait par ailleurs relâché dans l'atmosphère,

**(ii)** est capté directement de l'air ambiant;

**b)** le stockage ou l'utilisation du carbone capté. (*CCUS process*)

***processus de stockage dans le béton admissible*** Processus qui est évalué en fonction de la norme ISO 14034:2016 *Management environnemental — Vérification des technologies environnementales* pour laquelle un énoncé de validation confirmant qu'au moins 60 % du carbone capté qui est injecté dans le béton devrait se minéraliser et être stocké dans le béton en permanence a été émis par un professionnel ou une organisation qui, à la fois :

**a)** est accrédité comme organisme de vérification selon la norme ISO 14034:2016 *Management environnemental — Vérification des technologies environnementales* et ISO/IEC 17020:2012 *Évaluation de la conformité — Exigences pour le fonctionnement de différents types d'organismes procédant à l'inspection* par le Conseil canadien des normes, l'ANSI National Accreditation Board (U.S.) ou tout autre organisme d'accréditation qui est membre de l'International Accreditation Forum;

**b)** satisfait aux exigences d'un organisme de contrôle tiers qui est décrit dans la norme ISO/IEC 17020:2012 *Évaluation de la conformité — Exigences pour le*

**(b)** an initial project evaluation has been issued by the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources, in respect of the project;

**(c)** based on the most recent project plan for the project, its projected eligible use percentage equals or exceeds 10% in each of the following periods:

**(i)** if the first project period begins after September of a calendar year, the period beginning on the first day of commercial operations and ending on December 31 of the following calendar year, and

**(ii)** each calendar year of the project's total CCUS project review period, other than a period that includes a year referred to in subparagraph (i); and

**(d)** it is not a project that is

**(i)** operated to service a *unit* (as defined under the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*) for which the *commissioning date* (as defined under the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*) was on or before April 7, 2022, and

**(ii)** undertaken for the purpose of complying with emission standards that apply, or will apply, under the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*. (*projet de CUSC admissible*)

***qualified concrete storage process*** means a process evaluated against the ISO 14034:2016 standard *Environmental management — Environmental technology verification* for which a validation statement confirming that at least 60% of the captured carbon that is injected into concrete is expected to be mineralized and permanently stored in the concrete has been issued by a professional or organization that

**(a)** is accredited as a verification body, under ISO 14034:2016, *Environmental management – Environmental technology verification* and ISO/IEC 17020:2012, *Conformity assessment — Requirements for the operation of various types of bodies performing inspection*, by the Standards Council of Canada, the ANSI National Accreditation Board (U.S.) or any other accreditation organization that is a member of the International Accreditation Forum; and

**(b)** meets the requirements of a third-party inspection body described in ISO/IEC 17020:2012, *Conformity assessment — Requirements for the operation of fonctionnement de différents types d'organismes procédant à l'inspection*. (*qualified concrete storage process*)

***projet de CUSC*** Projet qui a pour but d'appuyer un processus de CUSC de la façon suivante, selon le cas :

**a)** par le captage du dioxyde de carbone qui, selon le cas :

**(i)** serait par ailleurs relâché dans l'atmosphère,

**(ii)** est capté directement de l'air ambiant;

**b)** par le transport du carbone capté;

**c)** par le stockage ou l'utilisation du carbone capté. (*CCUS project*)

***projet de CUSC admissible*** Projet de CUSC d'un contribuable qui remplit les conditions suivantes :

**a)** il devrait, selon le plus récent plan de projet pour le projet, prendre en charge le captage du dioxyde de carbone au Canada pendant une période au moins égale à la période totale d'examen du projet de CUSC pour le projet;

**b)** le ministre des Ressources naturelles a émis une évaluation initiale du projet, selon les modalités prévues par celui-ci, relativement au projet;

**c)** selon le dernier plan de projet pour le projet, son pourcentage d'utilisation admissible prévu est égal ou supérieur à 10 % au cours de chacune des périodes suivantes :

**(i)** si la première période du projet commence après le mois de septembre d'une année civile, la période commençant le premier jour des activités commerciales et se terminant le 31 décembre de l'année civile suivante,

**(ii)** chaque année civile de la période totale d'examen du projet de CUSC, à l'exception d'une période qui inclut une année visée au sous-alinéa (i);

**d)** il ne s'agit pas d'un projet qui est, à la fois :

**(i)** exploité pour desservir un groupe (au sens du *Règlement sur la réduction des émissions de dioxyde de carbone — secteur de l'électricité thermique au charbon*) dont la date de mise en service (au sens du *Règlement sur la réduction des émissions de dioxyde de carbone — secteur de l'électricité thermique au charbon*) était au plus tard le 7 avril 2022,

*various types of bodies performing inspection*. (*processus de stockage dans le béton admissible*)

***qualifying taxpayer*** means a taxable Canadian corporation. (*contribuable admissible*)

***specified percentage*** means, in respect of a

**(a)** qualified carbon capture expenditure if incurred to capture carbon

**(i)** directly from ambient air

**(A)** after 2021 and before 2031, 60%,

**(B)** after 2030 and before 2041, 30%, or

**(C)** after 2040, 0%, or

**(ii)** other than directly from ambient air

**(A)** after 2021 and before 2031, 50%,

**(B)** after 2030 and before 2041, 25%, or

**(C)** after 2040, 0%; and

**(b)** qualified carbon transportation expenditure, qualified carbon storage expenditure or qualified carbon use expenditure if incurred

**(i)** after 2021 and before 2031, 37 1/2%,

**(ii)** after 2030 and before 2041, 18 3/4%, or

**(iii)** after 2040, 0%. (*pourcentage déterminé*)

***total CCUS project review period***, in respect of a CCUS project, means the period beginning on the first day of commercial operations of the project and ending on the last day of the fourth project period. (*période totale d'examen du projet de CUSC*)

**(ii)** entrepris dans le but de se conformer aux normes d'émissions qui s'appliquent ou s'appliqueront en vertu du *Règlement sur la réduction des émissions de dioxyde de carbone — secteur de l'électricité thermique au charbon*. (*qualified CCUS project*)

***stockage géologique dédié*** Relativement à un projet de CUSC, s'entend d'une formation géologique laquelle est située dans une juridiction qui était une juridiction désignée au moment où la première dépense de CUSC admissible était effectuée relativement au projet et laquelle est, au moment où une dépense pertinente est engagée, à la fois :

**a)** en mesure de stocker en permanence le carbone capté;

**b)** autorisée et réglementée pour le stockage du carbone capté en vertu des lois de la juridiction désignée;

**c)** une formation dans laquelle le carbone capté n'est pas utilisé pour la récupération assistée du pétrole. (*dedicated geological storage*)

***travaux préliminaires de CUSC*** Activité préalable à l'acquisition, à la construction, à la fabrication ou à l'installation, par un contribuable ou pour son compte, de biens compris dans l'une des catégories 57 ou 58 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au projet de CUSC du contribuable qui comprend, notamment, une activité préalable qui est, selon le cas :

**a)** l'obtention des permis ou des autorisations réglementaires;

**b)** les travaux initiaux de conception ou d'ingénierie, notamment les études initiales d'ingénierie et de conception (ou des études équivalentes déterminées par le ministre des Ressources naturelles), à l'exclusion des travaux détaillés de conception ou d'ingénierie en lien avec un bien particulier compris dans les catégories 57 ou 58;

**c)** les études de faisabilité ou les études de préfaisabilité (ou des études équivalentes déterminées par le ministre des Ressources naturelles);

**d)** les évaluations environnementales;

**e)** le nettoyage ou l'excavation des terrains. (*preliminary CCUS work activity*)

***utilisation admissible*** L'une ou l'autre des utilisations suivantes :

**a)** le stockage du carbone capté dans un stockage géologique dédié;

**b)** l'utilisation du carbone capté pour produire du béton au Canada ou aux États-Unis au moyen d'un processus de stockage dans le béton admissible. (*eligible use*)

***utilisation non admissible*** Les utilisations suivantes :

**a)** l'émission de carbone capté dans l'atmosphère, selon le cas :

**(i)** sauf aux fins d'intégrité ou de sécurité du système,

**(ii)** autre qu'une émission accessoire réalisée dans le cours normal des activités;

**b)** le stockage ou l'utilisation du carbone capté pour la récupération assistée du pétrole;

**c)** tout autre stockage ou utilisation qui n'est pas une utilisation admissible. (*ineligible use*)

**Tax credit**

**(2)** Where a qualifying taxpayer files a prescribed form containing prescribed information on or before its filing-due date for a taxation year, the taxpayer is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to the total of

**(a)** the amount, if any, by which the taxpayer's cumulative CCUS development tax credit for the year exceeds its cumulative CCUS development tax credit for the immediately preceding taxation year, and

**(b)** the taxpayer's CCUS refurbishment tax credit for the year.

**Crédit d'impôt**

**(2)** Lorsqu'un contribuable admissible produit un formulaire prescrit contenant des renseignements prescrits au plus tard à sa date d'échéance de production pour une année d'imposition, il est réputé avoir payé, à la date d'exigibilité du solde qui lui est applicable pour l'année, une somme au titre de son impôt payable pour l'année en vertu de la présente partie égale au total des montants suivants :

**a)** l'excédent éventuel du crédit d'impôt cumulatif pour le développement du CUSC du contribuable pour l'année sur son crédit d'impôt cumulatif pour le développement du CUSC pour l'année d'imposition précédente;

**b)** le crédit d'impôt pour la remise en état du CUSC du contribuable pour l'année.

**Deemed deduction**

**(3)** For the purposes of this section, paragraph 12(1)(t), subsection 13(7.1), the description of I in the definition *undepreciated capital cost* in subsection 13(21), subsection 53(2), section 127.45 and Part XII.7, the amount deemed under subsection (2) to have been paid by a taxpayer for a taxation year is deemed to have been deducted from the taxpayer's tax otherwise payable under this Part for the year.

**Déduction réputée**

**(3)** Pour l'application du présent article, de l'alinéa 12(1)t), du paragraphe 13(7.1), de l'élément I de la définition de *fraction non amortie du coût en capital* au paragraphe 13(21), du paragraphe 53(2), de l'article 127.45 et de la partie XII.7, le montant réputé avoir été payé par un contribuable en application du paragraphe (2) pour une année d'imposition est réputé avoir été déduit de son impôt payable par ailleurs en vertu de la présente partie pour l'année.

**Cumulative CCUS development tax credit**

**(4)** For the purposes of this Act, a taxpayer's cumulative CCUS development tax credit for a taxation year is the total of all amounts, each of which is, in respect of an expenditure incurred for a qualified CCUS project of the taxpayer before the first day of commercial operations of the CCUS project

**(a)** a qualified CCUS expenditure incurred in the year or a previous taxation year by the taxpayer multiplied by the applicable specified percentage; or

**(b)** an amount required because of subsection (11) to be added in computing the taxpayer's cumulative CCUS development tax credit at the end of the year or a previous year.

**Crédit d'impôt cumulatif pour le développement du CUSC**

**(4)** Pour l'application de la présente loi, le crédit d'impôt cumulatif pour le développement du CUSC d'un contribuable pour une année d'imposition correspond au total des montants représentant chacun, relativement à une dépense qu'il engage à un moment donné pour un projet de CUSC admissible du contribuable en vue d'acquérir un bien avant le premier jour des activités commerciales du projet de CUSC :

**a)** soit le produit d'une dépense de CUSC admissible qu'il engage en vue d'acquérir un bien dans l'année ou dans une année d'imposition antérieure par le pourcentage déterminé applicable;

**b)** soit un montant à ajouter, par l'effet du paragraphe (11), au calcul du crédit d'impôt cumulatif pour le développement du CUSC du contribuable à la fin de l'année ou d'une année antérieure.

**CCUS refurbishment tax credit**

**(5)** For the purposes of this Act, a CCUS refurbishment tax credit of a taxpayer for a taxation year is the total of all amounts, each of which is, in respect of an expenditure incurred for a qualified CCUS project of the taxpayer in the year and during the total CCUS project review period

**(a)** a qualified CCUS expenditure incurred in the year by the taxpayer multiplied by the applicable specified percentage; or

**(b)** an amount required because of subsection (11) to be added in computing the taxpayer's CCUS refurbishment tax credit at the end of the year.

**Crédit d'impôt pour la remise en état du CUSC**

**(5)** Pour l'application de la présente loi, le crédit d'impôt pour la remise en état du CUSC d'un contribuable pour une année d'imposition correspond au total des montants représentant chacun, relativement à une dépense qu'il engage à un moment donné de l'année en vue d'acquérir un bien pour un projet de CUSC admissible du contribuable au cours de la période totale d'examen du projet de CUSC :

**a)** soit le produit d'une dépense de CUSC admissible qu'il engage dans l'année par le pourcentage déterminé applicable;

**b)** soit un montant à ajouter, par l'effet du paragraphe (11), au calcul du crédit d'impôt pour la remise en état du CUSC du contribuable à la fin de l'année.

**Changes to project or eligible use**

**(6)** A taxpayer with a qualified CCUS project shall file, within 90 days after the occurrence of either of the events described in paragraph (a) or (b), a revised project plan for the project with the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources if, before the first day of commercial operations of the project,

**(a)** the Minister of Natural Resources determines that there has been a material change to the project and requests that the taxpayer file a revised project plan for the project; or

**(b)** there has been a reduction (as compared to the most recent project plan for the project) of more than five percentage points in the projected eligible use

**Changements au projet ou à l'utilisation admissible**

**(6)** Le contribuable menant un projet de CUSC admissible doit produire, dans les quatre-vingt-dix jours suivant la survenance de l'un des événements visés aux alinéas a) ou b), un plan de projet révisé pour le projet auprès du ministre des Ressources naturelles, selon les modalités établies par celui-ci, si avant le premier jour des activités commerciales du projet, selon le cas :

**a)** le ministre des Ressources naturelles détermine que le projet a subi un changement important et demande au contribuable de produire un plan de projet révisé pour le projet;

**b)** il y a eu une baisse de plus de cinq points de pourcentage (comparativement au dernier plan de projet

percentage in respect of the project during any project period.

**Revised project evaluation**

**(7)** If a taxpayer files a revised project plan in accordance with subsection (6), the Minister of Natural Resources shall issue a revised project evaluation with all due dispatch.

**Qualified CCUS project determination**

**(8)** For the purposes of this section and Part XII.7,

**(a)** the Minister may, in consultation with the Minister of Natural Resources, determine that one or more CCUS projects is one project or multiple projects

**(i)** at any time before an initial project evaluation of a CCUS project has been issued by the Minister of Natural Resources, or

**(ii)** if the Minister of Natural Resources has requested the filing of a revised project plan for the project, after the revised project plan has been submitted, but before a revised project evaluation has been issued by the Minister of Natural Resources in respect of the revised project plan,

**(b)** any determination under paragraph (a) is deemed to result in the CCUS project or CCUS projects, as the case may be, being one project or multiple projects, as the case may be;

**(c)** for each project determined under paragraph (a), a project plan shall be filed by a taxpayer with the Minister of Natural Resources (in the form and manner determined by the Minister of Natural Resources) on or before the day that is 180 days after the determination is made; and

**(d)** the Minister of Natural Resources may request from a taxpayer all reasonable documentation and information necessary for the Minister of Natural Resources to fulfill a responsibility under this section, including final detailed engineering designs, and may refuse to verify an expenditure or issue an initial project evaluation or a revised project evaluation under this section if such documentation or information is not provided by the taxpayer on or before the day that is 180 days after it was requested.

pour le projet) du pourcentage d'utilisation admissible prévu pour le projet au cours d'une période de projet.

**Évaluation de projet révisée**

**(7)** Si un contribuable produit un plan de projet révisé conformément au paragraphe (6), le ministre des Ressources naturelles doit émettre une évaluation de projet révisée de manière diligente.

**Détermination d'un projet de CUSC admissible**

**(8)** Pour l'application du présent article et de la partie XII.7 :

**a)** le ministre peut, en consultation avec le ministre des Ressources naturelles, déterminer qu'un ou plusieurs projets de CUSC constituent un ou plusieurs projets, selon le cas :

**(i)** à un moment donné, avant une évaluation initiale du projet d'un projet de CUSC émise par le ministre des Ressources naturelles,

**(ii)** si le ministre des Ressources naturelles a demandé la production d'un plan de projet révisé pour le projet, après que le plan de projet révisé ait été soumis, mais avant que celui-ci n'ait émis une évaluation du projet révisé relativement au plan de projet révisé,

**b)** toute détermination en vertu de l'alinéa a) est réputée faire en sorte que le projet ou les projets de CUSC, selon le cas, forment un seul projet ou plusieurs projets, selon le cas;

**c)** pour chaque projet déterminé en vertu de l'alinéa a), un plan de projet doit être produit par le contribuable auprès du ministre des Ressources naturelles (selon les modalités établies par ce dernier), au plus tard cent quatre-vingts jours après le jour de la détermination;

**d)** le ministre des Ressources naturelles peut demander au contribuable de fournir tous les documents raisonnables et les renseignements nécessaires afin que le ministre des Ressources naturelles s'acquitte d'une responsabilité en vertu du présent article, notamment en ce qui concerne les conceptions d'ingénierie détaillées finales, et peut refuser de vérifier une dépense ou d'émettre une évaluation initiale du projet en vertu du présent article si le contribuable ne fournit pas ces documents ou renseignements au plus tard cent-quatre-vingt jours après qu'ils aient été demandés.

**Special rules — adjustments**

**(9)** For the purposes of this section and Part XII.7,

**(a)** the capital cost to a taxpayer of a property of Class 57 or 58 in Schedule II to the *Income Tax Regulations* shall be

**(i)** determined without reference to subsections 13(7.1) and (7.4), and

**(ii)** reduced by the amount of any non-government assistance that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive in respect of the property;

**(b)** the amount of a qualified CCUS expenditure of a taxpayer in a taxation year in respect of a CCUS project shall not include

**(i)** any amount in respect of an expenditure incurred by the taxpayer before 2022 or after 2040,

**(ii)** any amount in respect of any expenditure incurred

**(A)** to acquire property that has been used for any purpose by any person or partnership before it was acquired by the taxpayer,

**(B)** for which a tax credit was previously deducted under this section, by any person in respect of the property to which the expenditure relates (other than an expenditure for repair or replacement of that property), or

**(C)** for which an investment tax credit is claimed under section 127 or a clean technology investment tax credit is claimed under section 127.45,

**(iii)** any amount in respect of an expenditure incurred for a preliminary CCUS work activity,

**(iv)** any amount that has, by virtue of section 21, been added to the cost of a property,

**(v)** an expenditure that is incurred by a taxpayer on or after the first day of commercial operations of the CCUS project to the extent that the total of all such amounts exceeds 10% of the total of all qualified CCUS expenditures incurred by the taxpayer before the first day of commercial operations of the CCUS project, or

**(vi)** except where subsection 211.92(11) applies, an expenditure incurred by a taxpayer to acquire a

**Règles spéciales — ajustements**

**(9)** Pour l'application du présent article et de la partie XII.7 :

**a)** le coût en capital d'un bien de la catégorie 57 ou 58 pour un contribuable est, à la fois :

**(i)** déterminé compte non tenu des paragraphes 13(7.1) et (7.4),

**(ii)** réduit du montant de toute aide non gouvernementale que le contribuable, au moment de produire sa déclaration de revenu en vertu de la présente partie pour l'année d'imposition, a reçu, a le droit de recevoir ou peut raisonnablement s'attendre à recevoir relativement au bien;

**b)** le montant d'une dépense de CUSC admissible d'un contribuable dans une année d'imposition relativement à un projet de CUSC ne doit pas inclure les sommes suivantes :

**(i)** toute somme relative à une dépense engagée par le contribuable avant 2022 ou après 2040,

**(ii)** toute somme relative à une dépense, selon le cas :

**(A)** qui est engagée pour acquérir un bien qui a été utilisé par une personne ou une société de personnes avant son acquisition par le contribuable,

**(B)** au titre de laquelle un crédit d'impôt a été déduit antérieurement en vertu du présent article par une personne relativement au bien auquel se rapporte la dépense (sauf les dépenses de réparation ou de remplacement de ce bien),

**(C)** au titre de laquelle un crédit d'impôt à l'investissement est réclamé en vertu de l'article 127 ou un crédit d'impôt à l'investissement dans les technologies propres est réclamé en vertu de l'article 127.45,

**(iii)** toute somme relative à une dépense engagée pour les travaux préliminaires de CUSC,

**(iv)** toute somme qui, en vertu de l'article 21, a été ajoutée au coût d'un bien,

**(v)** une dépense qui est engagée par un contribuable au plus tôt le premier jour des activités commerciales du projet de CUSC dans la mesure où le total de ces montants excède 10 % du total des dépenses de CUSC admissibles engagées par le

property that is disposed of, or exported from Canada, by the taxpayer in the same taxation year as it was acquired;

**(c)** except for the purposes of subparagraph (b)(i), and subject to subsection (12), if a taxpayer has acquired property outside Canada, the expenditure is deemed to have been incurred, and the property acquired, at the time it is imported into Canada;

**(d)** subsections 127(11.6) to (11.8) apply in this section in respect of an expenditure or cost to a taxpayer except that

**(i)** the reference in subsection 127(11.6) to subsection 127(11.5) shall be read as a reference to section 127.44,

**(ii)** the reference in subsection 127(11.6) to subsection 127(26) shall be read as a reference to subsection 127.44(12), and

**(iii)** the term "qualified expenditure" is to be read as "qualified CCUS expenditure";

**(e)** if an expenditure of a taxpayer would be a qualified CCUS expenditure, except that the expenditure is incurred in a different taxation year from the year in which the related property is acquired, the expenditure is deemed to be incurred, and the property is deemed to be acquired, in the later of the two years;

**(f)** for the purposes of determining whether a process is a CCUS process, whether a property is described in Class 57 or 58 of Schedule II to the *Income Tax Regulations* or whether a property is dual-use equipment, the technical guide published by the Department of Natural Resources shall apply conclusively with respect to engineering and scientific matters;

**(g)** if the taxpayer has failed to file a revised project plan required to be filed under subsection (6) by the deadline in that subsection,

**(i)** subject to subparagraph (ii), a taxpayer's projected eligible use percentage for a CCUS project is deemed to be nil for the total CCUS project review period until such time as the taxpayer has filed the revised project plan, and

**(ii)** once the taxpayer has filed the revised project plan, subparagraph (i) is deemed never to have applied.

contribuable avant le premier jour des activités commerciales du projet de CUSC,

**(vi)** sauf en cas d'application du paragraphe 211.92(11), une dépense engagée par un contribuable pour acquérir un bien dont il dispose ou qu'il exporte du Canada dans l'année d'imposition lors de laquelle il l'a acquis;

**c)** sauf pour l'application du sous-alinéa b)(i), et sous réserve du paragraphe (12), si un contribuable acquiert un bien à l'étranger, la dépense est réputée être engagée, et le bien être acquis, au moment de son importation au Canada;

**d)** les paragraphes 127(11.6) à (11.8) s'appliquent au présent article relativement à une dépense ou à un coût pour un contribuable, sauf que :

**(i)** la mention au paragraphe 127(11.6) du paragraphe 127(11.5) vaut mention de l'article 127.44,

**(ii)** la mention au paragraphe 127(11.6) du paragraphe 127(26) vaut mention du paragraphe 127.44(12),

**(iii)** le terme « dépense admissible » vaut mention de « dépense de CUSC admissible »;

**e)** si une dépense d'un contribuable était une dépense de CUSC admissible, sauf que la dépense est engagée au cours d'une année d'imposition différente de l'année où le bien connexe est acquis, la dépense est réputée être engagée, et le bien est réputé être acquis, dans la dernière des deux années;

**f)** le guide technique publié par le ministère des Ressources naturelles s'applique de manière concluante en matière d'ingénierie et de science lorsqu'il s'agit de déterminer si un processus est un processus de CUSC, si le bien est décrit aux catégories 57 ou 58 de l'annexe II du *Règlement de l'impôt sur le revenu* ou si le bien est du matériel à double usage;

**g)** si le contribuable n'a pas produit un plan de projet révisé, tel que requis en vertu du paragraphe (6), au plus tard à la date d'échéance indiquée dans ce paragraphe :

**(i)** sous réserve du sous-alinéa (ii), le pourcentage d'utilisation admissible prévu d'un contribuable pour un projet de CUSC est réputé être nul pour la période totale d'examen du projet de CUSC jusqu'à ce qu'il ait produit le plan de projet révisé,

**(ii)** une fois le plan de projet révisé produit, le sous-alinéa (i) est réputé ne s'être jamais appliqué.

**Repayment of assistance**

**(10)** If a taxpayer has, in a particular taxation year, repaid (or has not received and can no longer reasonably be expected to receive) an amount of non-government assistance that was applied to reduce the capital cost of a property under subparagraph (9)(a)(ii) for a preceding taxation year, the amount repaid (or no longer expected to be received) shall be added to the capital cost to the taxpayer of a property acquired for the purpose of determining the taxpayer's *qualified CCUS expenditure* (under the relevant paragraph of that definition) for the particular year.

**Partnerships**

**(11)** Subject to section 127.47, if, in a particular taxation year of a qualifying taxpayer who is a member of a partnership, an amount would be determined under subsection (2) in respect of the partnership, for its taxation year that ends in the particular year, if the partnership were a taxable Canadian corporation and its fiscal period were its taxation year, the portion of that amount that can reasonably be considered to be the taxpayer's share thereof shall be added in computing the tax credit of the taxpayer under subsection (2) at the end of the particular year.

**Unpaid amounts**

**(12)** For the purposes of this section, a taxpayer's expenditure that is unpaid on the day that is 180 days after the end of the taxation year in which the expenditure is otherwise incurred is deemed

**(a)** not to have been incurred in the year; and

**(b)** to be incurred at the time it is paid.

**Designation of jurisdiction**

**(13)** For the purposes of this section and Part XII.7, the following rules apply in relation to the definition *designated jurisdiction* in subsection (1):

**(a)** if the Minister of the Environment determines that a jurisdiction within Canada or the United States has sufficient environmental laws and enforcement governing the permanent storage of captured carbon

**(i)** the Minister of the Environment may designate the jurisdiction for the purposes of this section and Part XII.7,

**(ii)** the designation under subparagraph (i) shall specify the time at and after which it is in effect,

**Remboursement d'un montant d'aide**

**(10)** Lorsqu'au cours d'une année d'imposition donnée, un contribuable rembourse (ou n'a pas reçu ou ne peut raisonnablement plus s'attendre à recevoir) un montant d'aide non gouvernementale qui a été appliqué pour réduire le coût en capital d'un bien en vertu du sous-alinéa (9)a)(ii) pour une année d'imposition antérieure, le montant remboursé (ou que le contribuable ne peut raisonnablement plus s'attendre à recevoir) est ajouté au coût en capital, pour le contribuable, d'un bien acquis afin de déterminer ses *dépenses de CUSC admissibles* (selon l'alinéa pertinent de cette définition) pour l'année donnée.

**Sociétés de personnes**

**(11)** Sous réserve de l'article 127.47, dans le cas où, au cours d'une année d'imposition donnée d'un contribuable admissible qui est l'associé d'une société de personnes, un montant serait déterminé en vertu du paragraphe (2) relativement à la société de personnes, pour son année d'imposition qui se termine dans l'année donnée, si la société de personnes était une société canadienne imposable et son exercice constituait son année d'imposition, la partie de ce montant qu'il est raisonnable de considérer comme la part qui revient au contribuable est à ajouter dans le calcul de son crédit d'impôt en vertu du paragraphe (2) à la fin de l'année donnée.

**Montants impayés**

**(12)** Pour l'application du présent article, la dépense d'un contribuable qui est impayée le cent quatre-vingtième jour suivant la fin de l'année d'imposition au cours de laquelle elle est par ailleurs engagée est réputée, à la fois :

**a)** ne pas être engagée au cours de l'année;

**b)** être engagée au moment où elle est payée.

**Désignation d'une juridiction**

**(13)** Pour l'application du présent article et de la partie XII.7, les règles ci-après s'appliquent relativement à la définition de *juridiction désignée* au paragraphe (1) :

**a)** si le ministre de l'Environnement détermine qu'une juridiction au Canada ou aux États-Unis dispose de lois environnementales et d'organismes d'application de la loi régissant le stockage permanent du carbone capté qui sont suffisants, à la fois :

**(i)** le ministre de l'Environnement peut désigner la juridiction pour l'application du présent article et de la partie XII.7,

which time may, for greater certainty, precede the time at which the designation is made, and

**(iii)** the Minister of the Environment shall publish on a website maintained by the Government of Canada the designation referred to in subparagraph (i); and

**(b)** the provinces of British Columbia, Saskatchewan and Alberta are deemed to have been designated by the Minister of the Environment in accordance with this subsection.

**(ii)** la date de prise d'effet de la désignation visée au sous-alinéa (i) doit être précisée dans la désignation. Il est entendu que cette date peut être antérieure à celle de la désignation,

**(iii)** le ministre de l'Environnement publie sur un site Web, tenu à jour par le gouvernement du Canada, la désignation visée au sous-alinéa (i);

**b)** les provinces de la Colombie-Britannique, de la Saskatchewan et de l'Alberta sont réputées avoir été désignées par le ministre de l'Environnement conformément au présent paragraphe.

### Revocation of designation

**(14)** If a jurisdiction makes significant changes to its environmental laws or enforcement governing the permanent storage of captured carbon, and the Minister of the Environment determines that as a result of those changes a jurisdiction designated pursuant to subsection (13) has ceased to have sufficient environmental laws or enforcement governing the permanent storage of captured carbon, the following rules apply:

**(a)** the Minister of the Environment may revoke the designation of the jurisdiction designated under subsection (13);

**(b)** the revocation under paragraph (a) shall specify the time at and after which it is in effect, which time shall not begin sooner than 30 days after the revocation is made; and

**(c)** the Minister of the Environment shall publish on a website maintained by the Government of Canada the revocation referred to in paragraph (a).

### Révocation de la désignation

**(14)** Lorsqu'une juridiction fait des changements importants à ses lois environnementales ou organismes d'application de la loi régissant le stockage permanent du carbone capté, et le ministre de l'Environnement établit que, par suite de ces changements, une juridiction désignée en vertu du paragraphe (13) a cessé de disposer de lois environnementales ou d'organismes d'application régissant le stockage permanent du carbone capté suffisants, les règles suivantes s'appliquent :

**a)** le ministre de l'Environnement peut révoquer la désignation de la juridiction désignée en vertu du paragraphe (13);

**b)** la date de prise d'effet de la révocation visée à l'alinéa a) doit être précisée dans la révocation. Cette date ne peut être antérieure au trentième jour suivant la date de la révocation;

**c)** le ministre de l'Environnement publie sur un site Web, tenu à jour par le gouvernement du Canada, la révocation visée à l'alinéa a).

### Purpose

**(15)** The purpose of this section and Part XII.7 is to encourage the investment of capital in the development and operation of carbon capture, transportation, utilization and storage capacity in Canada.

### Objet

**(15)** Le présent article et la partie XII.7 visent à encourager l'investissement de capitaux dans le développement et l'exploitation de projets de captage, de transport, d'utilisation et de capacité de stockage du carbone au Canada.

### Tax shelter investment

**(16)** Subsections (2) and (3) do not apply in respect of a CCUS project if a property used in the project — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law, a right in, a property used in the project — is a tax shelter investment for the purpose of section 143.2.

### Abri fiscal déterminé

**(16)** Les paragraphes (2) et (3) ne s'appliquent pas relativement à un projet de CUSC si un bien utilisé dans le cadre du projet — ou une participation dans une personne ou une société de personnes qui a, directement ou indirectement, un intérêt ou, pour l'application du droit civil, un droit sur un bien utilisé dans le cadre du projet — est un abri fiscal déterminé pour l'application de l'article 143.2.

**Late filing**

**(17)** The Minister may accept the late filing by a qualifying taxpayer of the prescribed form referred to in subsection (2) until one year after the filing-due date referred to in subsection (2), but no payment by the taxpayer is deemed to arise under that subsection until the form has been filed with the Minister.

**(2) Subsection (1) is deemed to have come into force on January 1, 2022, except that, before March 28, 2023, subsection 127.44(3) of the Act, as enacted by subsection (1), is to be read without reference to section 127.45 and clause 127.44(9)(b)(ii)(C) of the Act, as enacted by subsection (1), is to be read without the words "or a clean technology investment tax credit is claimed under section 127.45".**

**36 (1) The Act is amended by adding the following after section 127.44, as enacted by subsection 35(1):**

**Definitions**

**127.45 (1)** The following definitions apply in this section.

***clean technology investment tax credit*** of a qualifying taxpayer for a taxation year means

**(a)** the total of all amounts each of which is the specified percentage of the capital cost to the taxpayer of clean technology property acquired by the taxpayer in the year; and

**(b)** the total of amounts required by subsection (8) to be added in computing the taxpayer's clean technology investment tax credit at the end of the year. (*crédit d'impôt à l'investissement dans les technologies propres*)

***clean technology property*** means property

**(a)** situated in Canada (including property described in subparagraph (d)(v) or (xiv) of Class 43.1 in Schedule II to the *Income Tax Regulations* that is installed in the exclusive economic zone of Canada) and intended for use exclusively in Canada;

**(b)** that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer;

**(c)** that, if it is to be leased by the taxpayer to another person or partnership, is

**Présentation tardive**

**(17)** Le ministre peut accepter la présentation tardive du formulaire prescrit visé au paragraphe (2) par un contribuable admissible jusqu'à une année suivant la date d'échéance de production visée au paragraphe (2), mais aucun paiement effectué par celui-ci n'est réputé découler de l'application de ce paragraphe tant que le formulaire n'est pas présenté au ministre.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022. Toutefois, avant le 28 mars 2023, le paragraphe 127.44(3) de la même loi, édicté par le paragraphe (1), s'applique compte non tenu de l'article 127.45 et la division 127.44(9)b)(ii)(C) de la même loi, édictée par le paragraphe (1), s'applique compte tenu du passage « ou un crédit d'impôt à l'investissement dans les technologies propres est réclamé en vertu de l'article 127.45 ».**

**36 (1) La même loi est modifiée par adjonction, après l'article 127.44, édicté par le paragraphe 35(1), de ce qui suit :**

**Définitions**

**127.45 (1)** Les définitions qui suivent s'appliquent au présent article.

***aide gouvernementale*** S'entend au sens du paragraphe 127(9). (*government assistance*)

***aide non gouvernementale*** S'entend au sens du paragraphe 127(9). (*non-government assistance*)

***bien de technologie propre*** S'entend d'un bien qui remplit les conditions suivantes :

**a)** il est situé au Canada (y compris un bien visé aux sous-alinéas d)(v) ou (xiv) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu* qui est installé dans la zone économique exclusive du Canada) et destiné à être utilisé exclusivement au Canada;

**b)** il n'a été utilisé à aucune fin ni acquis pour être utilisé ou loué à quelque fin que ce soit avant son acquisition par le contribuable;

**c)** il, s'il est destiné à être loué à une autre personne ou une société de personnes par le contribuable, est loué, à la fois :

**(i)** à un contribuable admissible ou à une société de personnes dont tous les membres sont des sociétés canadiennes imposables,

**(i)** leased to a qualifying taxpayer or a partnership all the members of which are taxable Canadian corporations, and

**(ii)** leased in the ordinary course of carrying on a business in Canada by the taxpayer whose principal business is selling or servicing property of that type, or whose principal business is leasing property, lending money, purchasing conditional sales contracts, accounts receivable, bills of sale, chattel mortgages or hypothecary claims on movables, bills of exchange or other obligations representing all or part of the sale price of merchandise or services, or any combination thereof; and

**(d)** that is

**(i)** equipment used to generate electricity from solar, wind and water energy that is described in subparagraph (d)(ii), (iii.1), (v), (vi) or (xiv) of Class 43.1 in Schedule II to the *Income Tax Regulations*,

**(ii)** stationary electricity storage equipment that is described in subparagraph (d)(xviii) or (xix) of Class 43.1 in Schedule II to the *Income Tax Regulations*, but excluding equipment that uses any fossil fuel in operation,

**(iii)** active solar heating equipment, air-source heat pumps and ground-source heat pumps that are described in subparagraph (d)(i) of Class 43.1 in Schedule II to the *Income Tax Regulations*,

**(iv)** a non-road zero-emission vehicle described in Class 56 in Schedule II to the *Income Tax Regulations* and charging or refuelling equipment described in subparagraph (d)(xxi) of Class 43.1 in Schedule II to the *Income Tax Regulations* or subparagraph (b)(ii) of Class 43.2 in Schedule II to the *Income Tax Regulations* that in each case is used primarily for such vehicles,

**(v)** equipment used exclusively for the purpose of generating electrical energy or heat energy, or a combination of electrical energy and heat energy, solely from geothermal energy, that is described in subparagraph (d)(vii) of Class 43.1 in Schedule II to the *Income Tax Regulations*, but excluding any equipment that is part of a system that extracts fossil fuel for sale,

**(vi)** concentrated solar energy equipment, or

**(vii)** a small modular nuclear reactor. (*bien de technologie propre*)

**(ii)** dans le cours normal de l'exploitation d'une entreprise au Canada par le contribuable dont l'entreprise principale consiste à vendre ou entretenir des biens semblables, ou dont l'entreprise principale consiste à louer des biens, à prêter de l'argent, à acheter des contrats de vente conditionnelle, des comptes clients, des contrats de vente, des créances hypothécaires mobilières, des lettres de change, des sûretés mobilières ou d'autres créances qui représentent tout ou partie du prix de vente de marchandises ou de services, ou consiste en une combinaison de ces activités;

**d)** il consiste en, selon le cas :

**(i)** du matériel servant à produire de l'électricité à partir d'énergie solaire, éolienne et hydraulique décrit aux sous-alinéas d)(ii), (iii.1), (v), (vi) ou (xiv) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**(ii)** du matériel fixe de stockage d'électricité décrit aux sous-alinéas d)(xviii) ou (xix) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*, mais qui n'est pas alimenté par des combustibles fossiles,

**(iii)** du matériel de chauffage solaire actif, des thermopompes à air et des thermopompes géothermiques qui sont décrits au sous-alinéa d)(i) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**(iv)** un véhicule zéro émission non routier décrit à la catégorie 56 de l'annexe II du *Règlement de l'impôt sur le revenu* et le matériel de recharge ou de ravitaillement décrit au sous-alinéa d)(xxi) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu* ou au sous-alinéa b)(ii) de la catégorie 43.2 de l'annexe II du *Règlement de l'impôt sur le revenu* qui est utilisé principalement pour ces véhicules,

**(v)** du matériel servant exclusivement à produire de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, uniquement à partir d'énergie géothermique, décrit au sous-alinéa d)(vii) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*, à l'exclusion du matériel faisant partie d'un système qui permet d'extraire des combustibles fossiles aux fins de vente,

**(vi)** du matériel d'énergie solaire concentrée,

**(vii)** un petit réacteur modulaire nucléaire. (*clean technology property*)

***concentrated solar energy equipment*** means equipment, other than excluded equipment, used all or substantially all to generate heat or electricity, or a combination of heat and electricity, exclusively from concentrated sunlight, including

**(a)** reflectors and related solar tracking systems;

**(b)** thermal receivers;

**(c)** thermal energy storage equipment;

**(d)** electrical generating equipment;

**(e)** heat transfer fluid systems;

**(f)** electrical energy storage equipment;

**(g)** transmission equipment;

**(h)** equipment for the distribution of heat energy;

**(i)** structures whose sole function is to support or house concentrated solar energy equipment; and

**(j)** ancillary instrumentation and controls including weather monitoring systems. (*matériel d'énergie solaire concentrée*)

***excluded equipment*** means

**(a)** auxiliary heating or electrical generating equipment that uses any fossil fuel;

**(b)** buildings or structures other than those structures described in paragraph (i) of the definition of *concentrated solar energy equipment*;

**(c)** distribution equipment;

**(d)** property included in Class 10 in Schedule II to the *Income Tax Regulations*; and

**(e)** property that would be included in Class 17 in Schedule II to the *Income Tax Regulations* if that Class were read without reference to its paragraph (a.1). (*matériel non admissible*)

***government assistance*** has the meaning assigned by subsection 127(9). (*aide gouvernementale*)

***non-clean technology use*** means a use of a particular property at a particular time that would, if the property were acquired at that time, result in the property ceasing to be a clean technology property, determined without reference to paragraph (b) of the definition *clean*

***contribuable admissible*** S'entend d'une société canadienne imposable ou d'une fiducie de fonds commun de placement qui est une *fiducie de placement immobilier* (au sens du paragraphe 122.1(1)). (*qualifying taxpayer*)

***crédit d'impôt à l'investissement dans les technologies propres*** Relativement à un contribuable admissible pour une année d'imposition, s'entend, à la fois :

**a)** du total des sommes représentant chacune le pourcentage déterminé du coût en capital, pour le contribuable, d'un bien de technologie propre qu'il a acquis au cours de l'année;

**b)** du total des sommes à ajouter, conformément au paragraphe (8), dans le calcul de son crédit d'impôt à l'investissement dans les technologies propres à la fin de l'année. (*clean technology investment tax credit*)

***matériel d'énergie solaire concentrée*** S'entend du matériel, autre que le matériel non admissible, dont la totalité ou presque est utilisée pour produire de la chaleur, de l'électricité, ou une combinaison de chaleur et d'électricité, exclusivement à partir de lumière solaire concentrée, y compris :

**a)** des réflecteurs et systèmes de suivi du soleil connexes;

**b)** des thermorécepteurs;

**c)** du matériel de stockage d'énergie thermique;

**d)** du matériel générateur d'électricité;

**e)** des systèmes de fluides caloporteurs;

**f)** du matériel de stockage d'énergie électrique;

**g)** du matériel de transmission;

**h)** du matériel de distribution d'énergie thermique;

**i)** des structures ayant pour seule fonction de prendre en charge ou de contenir du matériel d'énergie solaire concentrée;

**j)** des instruments et contrôles auxiliaires, y compris les systèmes de surveillance météorologique. (*concentrated solar energy equipment*)

***matériel non admissible*** S'entend, à la fois :

**a)** du matériel auxiliaire générateur de chaleur ou d'électricité qui utilise des combustibles fossiles;

*technology property* in this subsection. (*utilisation non concernée par la technologie propre*)

***non-government assistance*** has the meaning assigned by subsection 127(9). (*aide non gouvernementale*)

***qualifying taxpayer*** means a taxable Canadian corporation or a mutual fund trust that is a *real estate investment trust* (as defined in subsection 122.1(1)). (*contribuable admissible*)

***small modular nuclear reactor*** means equipment that is used all or substantially all to generate electrical energy or heat energy, or a combination of electrical energy and heat energy, from nuclear fission — including reactors, reactor vessels, reactor control rods, moderators, cooling systems, control systems, nuclear fission fuel handling equipment, containment structures, electrical generating equipment and equipment for the distribution of heat energy — that

**(a)** is part of a system that has a gross rated generating capacity not exceeding 300 megawatts electric, or an energy balance equivalent gross rated generating capacity of electricity or heat equivalent of 1,000 megawatts thermal;

**(b)** is part of a system all or substantially all of which is comprised of modules that are factory-assembled and transported pre-built to the installation site; and

**(c)** is not

**(i)** nuclear fission fuel,

**(ii)** equipment for nuclear waste disposal and nuclear waste disposal sites,

**(iii)** transmission equipment,

**(iv)** distribution equipment,

**(v)** property included in Class 10 in Schedule II to the *Income Tax Regulations*, or

**(vi)** property that would be included in Class 17 in Schedule II to the *Income Tax Regulations* if that Class were read without reference to its paragraph (a.1). (*petit réacteur modulaire nucléaire*)

***specified percentage*** means, in respect of a clean technology property of the taxpayer that is acquired

**(a)** before March 28, 2023, determined without reference to subsection (4), nil;

**b)** des immeubles ou structures autres que les structures visées à l'alinéa i) de la définition de *matériel d'énergie solaire concentrée*;

**c)** du matériel de distribution;

**d)** des biens qui font partie de la catégorie 10 de l'annexe II du *Règlement de l'impôt sur le revenu*;

**e)** des biens qui seraient inclus dans la catégorie 17 de l'annexe II du *Règlement de l'impôt sur le revenu* s'il n'était pas tenu compte de son alinéa a.1). (*excluded equipment*)

***petit réacteur modulaire nucléaire*** S'entend du matériel dont la totalité ou presque est utilisée pour produire de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, uniquement à partir de la fission nucléaire — y compris les réacteurs, cuves de réacteurs, barres de commande pour réacteurs, modérateurs, systèmes de refroidissement, systèmes de contrôle, matériel de manutention d'un combustible de fission nucléaire, enceintes de confinement, matériel de production d'électricité et matériel de distribution d'énergie thermique — qui, à la fois :

**a)** fait partie d'un système qui a une capacité brute de production n'excédant pas 300 mégawatts d'électricité, ou une capacité brute de production d'électricité ou de chaleur dont le bilan énergétique équivaut à 1 000 mégawatts thermiques;

**b)** fait partie d'un système dont la totalité ou presque est constituée de modules qui sont assemblés en usine et transportés dans un état préfabriqué au lieu d'installation;

**c)** n'est pas :

**(i)** un combustible de fission nucléaire,

**(ii)** du matériel pour le stockage des déchets nucléaires et des sites de stockage des déchets nucléaires,

**(iii)** du matériel de transmission,

**(iv)** du matériel de distribution,

**(v)** un bien inclus dans la catégorie 10 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**(vi)** un bien qui serait inclus dans la catégorie 17 de l'annexe II du *Règlement de l'impôt sur le revenu*, s'il n'était pas tenu compte de son alinéa a.1). (*small modular nuclear reactor*)

**(b)** on or after March 28, 2023 and before January 1, 2034, 30%;

**(c)** after December 31, 2033 and before January 1, 2035, 15%; and

**(d)** after December 31, 2034, nil. (*pourcentage déterminé*)

***pourcentage déterminé*** S'entend de l'un des pourcentages suivants, selon le cas, relativement à un bien de technologie propre que le contribuable acquiert :

**a)** avant le 28 mars 2023, déterminé compte non tenu du paragraphe (4), zéro;

**b)** le 28 mars 2023 ou après et avant le 1er janvier 2034, 30 %;

**c)** après le 31 décembre 2033 et avant le 1er janvier 2035, 15 %;

**d)** après le 31 décembre 2034, zéro. (*specified percentage*)

***utilisation non concernée par la technologie propre*** S'entend de l'utilisation d'un bien déterminé à un moment déterminé qui ferait en sorte que, s'il était acquis à ce moment, il cesserait d'être un bien de technologie propre, déterminé compte non tenu de l'alinéa b) de la définition de *bien de technologie propre* au présent paragraphe. (*non-clean technology use*)

**Clean technology investment tax credit**

**(2)** If a qualifying taxpayer files with its return of income for a taxation year a prescribed form containing prescribed information, the taxpayer is deemed to have paid on its balance-due day for the year an amount on account of the taxpayer's tax payable under this Part for the year equal to the taxpayer's clean technology investment tax credit for the year.

**Crédit d'impôt dans les technologies propres**

**(2)** Si un contribuable admissible joint à sa déclaration de revenu pour une année d'imposition un formulaire prescrit contenant les renseignements prescrits, le contribuable est réputé avoir payé, à la date d'exigibilité du solde qui lui est applicable pour l'année, un montant au titre de son impôt payable en vertu de la présente partie égal à son crédit d'impôt à l'investissement dans les technologies propres pour l'année.

**Time limit for application**

**(3)** A payment on account of tax payable shall not be deemed to be paid under subsection (2) if the taxpayer does not file with the Minister a prescribed form containing prescribed information in respect of the amount on or before the day that is one year after the taxpayer's filing-due date for the year.

**Délai d'application**

**(3)** Un montant au titre de l'impôt à payer ne doit pas être réputé avoir été payé en vertu du paragraphe (2) si le contribuable ne produit pas auprès du ministre le formulaire prescrit contenant les renseignements prescrits relativement au montant en cause au plus tard le jour qui suit d'une année la date d'échéance de production qui est applicable au contribuable pour l'année.

**Time of acquisition**

**(4)** For the purpose of this section, clean technology property is deemed not to have been acquired by a taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(c) and (28)(d).

**Moment de l'acquisition**

**(4)** Pour l'application du présent article, un bien de technologie propre est réputé ne pas avoir été acquis par un contribuable avant que le bien soit considéré comme devenu prêt à être mis en service par le contribuable, déterminé compte non tenu des alinéas 13(27)c) et (28)d).

**Special rules — adjustments**

**(5)** For the purpose of the definition *clean technology investment tax credit* in subsection (1), the capital cost of clean technology property shall

**Règles spéciales — redressements**

**(5)** Pour l'application de la définition de *crédit d'impôt à l'investissement dans les technologies propres* au paragraphe (1), le coût en capital d'un bien de technologie propre, à la fois :

**(a)** not include any amount in respect of a capital property

**(i)** for which an amount was previously deducted under this section by any person,

**(ii)** in respect of which a CCUS tax credit was deducted under section 127.44 by any person, or

**(iii)** that has, by virtue of section 21, been added to the cost of a property;

**(b)** be determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance or non-government assistance that can reasonably be considered to be in respect of the property and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the property was acquired by the taxpayer or partnership, the taxpayer or partnership has received, is entitled to receive or can reasonably be expected to receive; and

**(c)** be determined with reference to subsections 127(11.6) to (11.8) in respect of an expenditure or cost to a taxpayer except that

**(i)** the reference in subsection 127(11.6) to subsection 127(11.5) is to be read as a reference to section 127.45,

**(ii)** the reference in subsection 127(11.6) to subsection 127(26) is to be read as a reference to subsection 127.45(9), and

**(iii)** the term "qualified expenditure" is to be read as an expenditure eligible to be added to the capital cost of a clean technology property.

**a)** ne doit pas inclure de montant relativement à une immobilisation, selon le cas :

**(i)** pour laquelle une personne a déduit antérieurement un montant en vertu du présent article,

**(ii)** à l'égard de laquelle une personne a déduit un crédit d'impôt pour le CUSC en application de l'article 127.44,

**(iii)** qui a été ajouté au coût d'un bien en vertu de l'article 21;

**b)** doit être déterminé compte non tenu des paragraphes 13(7.1) et (7.4), moins le montant de quelque aide gouvernementale ou aide non gouvernementale qu'il est raisonnable de considérer comme se rapportant au bien et, au moment de la production de sa déclaration de revenu en vertu de la présente partie pour l'année d'imposition où le bien est acquis par le contribuable ou la société de personnes, que le contribuable ou la société de personnes a reçu, est en droit de recevoir ou peut vraisemblablement s'attendre à recevoir;

**c)** doit être déterminé compte tenu des paragraphes 127(11.6) à (11.8) relativement à une dépense ou un coût pour le contribuable. Toutefois :

**(i)** la mention au paragraphe 127(11.6) du paragraphe 127(11.5) vaut mention de l'article 127.45,

**(ii)** la mention au paragraphe 127(11.6) du paragraphe 127(26) vaut mention du paragraphe 127.45(9),

**(iii)** le terme « dépense admissible » vaut mention d'une dépense admissible à ajouter au coût en capital d'un bien de technologie propre.

### Deemed deduction

**(6)** For the purposes of this section, paragraph 12(1)(t), subsection 13(7.1), the description of I in the definition *undepreciated capital cost* in subsection 13(21) and subsection 53(2), the amount deemed under subsection (2) to have been paid by a taxpayer for a taxation year is deemed to have been deducted from the taxpayer's tax otherwise payable under this Part for the year.

### Déduction réputée

**(6)** Pour l'application du présent article, de l'alinéa 12(1)t), du paragraphe 13(7.1), de l'élément I de la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) et du paragraphe 53(2), le montant réputé avoir été payé par un contribuable en application du paragraphe (2) pour une année d'imposition est réputé avoir été déduit de son impôt payable par ailleurs en vertu de la présente partie pour l'année.

### Repayment of assistance

**(7)** Where a taxpayer has, in a particular taxation year, repaid (or has not received and can no longer reasonably be expected to receive) an amount of government assistance or non-government assistance that was applied to reduce the cost of a property under paragraph (5)(b) for a preceding taxation year, the amount repaid (or no longer

### Remboursement d'un montant d'aide

**(7)** Le contribuable qui, au cours d'une année d'imposition donnée, rembourse (ou n'a pas reçu ou ne peut raisonnablement plus s'attendre à recevoir) un montant d'aide gouvernementale ou d'aide non gouvernementale qui a été appliqué pour réduire le coût d'un bien selon l'alinéa (5)b) pour une année d'imposition antérieure, le

expected to be received) is to be added to the cost to the taxpayer of a property acquired in the particular year for the purpose of determining the taxpayer's clean technology investment tax credit for the year.

**Partnerships**

**(8)** Subject to section 127.47, where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined under subsection (2) in respect of the partnership, for its taxation year that ends in the particular year, if the partnership were a taxable Canadian corporation and its fiscal period were its taxation year, the portion of that amount that can reasonably be considered to be the taxpayer's share thereof shall be added in computing the clean technology investment tax credit of the taxpayer at the end of the particular year.

**Unpaid amounts**

**(9)** For the purposes of this section, where any part of the capital cost of a taxpayer's clean technology property is unpaid on the day that is 180 days after the end of the taxation year in which a deduction in respect of a clean technology investment tax credit would otherwise be available in respect of the property, such amount is to be

**(a)** excluded from the capital cost of such property in the year; and

**(b)** added to the capital cost of such property at the time it is paid.

**Tax shelter investment**

**(10)** Subsection (2) does not apply if a clean technology property — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law, a right in, such property — is a tax shelter investment for the purpose of section 143.2.

**Recapture — conditions for application**

**(11)** Subsection (12) applies in a taxation year if

**(a)** a taxpayer acquired a clean technology property in the year or any of the preceding 10 calendar years;

**(b)** the taxpayer became entitled to a clean technology investment tax credit in respect of the capital cost, or a portion of the capital cost, of the particular property; and

montant remboursé (ou que le contribuable ne peut raisonnablement plus s'attendre à recevoir) est ajouté au coût, pour le contribuable, d'un bien qu'il a acquis au cours de l'année donnée pour le calcul du crédit d'impôt à l'investissement dans les technologies propres pour l'année.

**Société de personnes**

**(8)** Sous réserve de l'article 127.47, dans le cas où, au cours d'une année d'imposition donnée d'un contribuable qui est un associé d'une société de personnes, un montant serait déterminé selon le paragraphe (2) relativement à la société de personnes, pour son année d'imposition qui se termine dans l'année donnée, si la société de personnes était une société canadienne imposable et son exercice constituait son année d'imposition, la partie de ce montant qu'il est raisonnable de considérer comme la part qui revient au contribuable est à ajouter dans le calcul de son crédit d'impôt à l'investissement dans les technologies propres à la fin de l'année donnée.

**Sommes impayées**

**(9)** Pour l'application du présent article, dans le cas où une partie du coût en capital d'un bien de technologie propre d'un contribuable est impayée le cent-quatre-vingtième jour suivant la fin de l'année d'imposition au cours de laquelle une déduction relativement à un crédit d'impôt à l'investissement dans les technologies propres pourrait par ailleurs être demandée relativement au bien, ce montant est, à la fois :

**a)** exclus du coût en capital du bien dans l'année;

**b)** ajouté au coût en capital du bien au moment où il est payé.

**Abri fiscal déterminé**

**(10)** Le paragraphe (2) ne s'applique pas si un bien de technologie propre — ou une participation dans une personne ou une société de personnes qui a, directement ou indirectement, un intérêt ou, pour l'application du droit civil, un droit sur le bien — est un abri fiscal déterminé pour l'application de l'article 143.2.

**Récupération — conditions d'application**

**(11)** Le paragraphe (12) s'applique dans une année d'imposition si les conditions suivantes sont remplies :

**a)** un contribuable a acquis un bien de technologie propre au cours de l'année ou au cours des dix années civiles précédentes;

**b)** le contribuable est en droit de recevoir un crédit d'impôt à l'investissement dans les technologies

**(c)** in the year, the particular property (or another property that incorporates the particular property) is converted to a non-clean technology use, is exported from Canada or is disposed of without having been previously exported or converted to a non-clean technology use.

**c)** au cours de l'année, le bien donné (ou un autre bien auquel il est incorporé) est affecté à une utilisation non concernée par la technologie propre, est exporté du Canada, ou fait l'objet d'une disposition sans avoir été précédemment exporté ou affecté à une utilisation non concernée par la technologie propre.

**Recapture of credit**

**(12)** If this subsection applies, there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

**(a)** the amount of the taxpayer's clean technology investment tax credit in respect of the particular property, and

**(b)** the amount determined by the formula

**A × (B ÷ C)**

where

**A** is the amount of the taxpayer's clean technology investment tax credit in respect of the particular property,

**B** is

**(i)** in the case where the particular property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of the property, or

**(ii)** in the case where the particular property is disposed of to a person who does not deal at arm's length with the taxpayer, is converted to a non-clean technology use or is exported from Canada, the fair market value of the property, and

**C** is the capital cost of the particular property on which the clean technology investment tax credit was deducted.

**Récupération du crédit**

**(12)** Si le présent paragraphe s'applique, il est ajouté à l'impôt payable par ailleurs par le contribuable en vertu de la présente partie pour l'année le moindre des montants suivants :

**a)** le montant du crédit d'impôt à l'investissement dans les technologies propres relativement au bien donné,

**b)** le montant obtenu par la formule suivante :

**A × (B ÷ C)**

où :

**A** représente le montant du crédit d'impôt à l'investissement dans les technologies propres relativement au bien donné,

**B** selon le cas :

**(i)** dans le cas où le bien donné fait l'objet d'une disposition en faveur d'une personne n'ayant pas de lien de dépendance avec le contribuable, le produit de disposition du bien,

**(ii)** dans le cas où le bien donné fait l'objet d'une disposition en faveur d'une personne ayant un lien de dépendance avec le contribuable, est converti en une utilisation non concernée par la technologie propre ou est exporté du Canada, la juste valeur marchande du bien,

**C** le coût en capital du bien donné auquel la déduction du crédit d'impôt à l'investissement dans les technologies propres a été appliquée.

**Certain non-arm's length transfers**

**(13)** Subsections (11) and (12) do not apply to a taxpayer that is a taxable Canadian corporation (in this subsection referred to as the "transferor") that disposes of a property to another taxable Canadian corporation (in this subsection referred to as the "purchaser") related to the transferor if the purchaser acquired the property in circumstances where the property would be *clean technology*

**Certains transferts entre parties ayant un lien de dépendance**

**(13)** Les paragraphes (11) et (12) ne s'appliquent pas à un contribuable qui est une société canadienne imposable (appelé « cédant » au présent paragraphe) qui dispose d'un bien en faveur d'une autre société canadienne imposable (appelée « acheteur » au présent paragraphe) qui est liée au cédant si l'acheteur a acquis le bien dans des circonstances où le bien aurait été, pour lui, un *bien*

*property* to the purchaser but for paragraph (b) of that definition.

**Certain non-arm's length transfers — recapture deferred**

**(14)** If subsection (13) applies, subsection 127(34) applies with such modifications as the circumstances require, including that the reference to subsection 127(33) be read as a reference to subsection 127.45(13).

**Recapture event reporting requirement**

**(15)** If subsection (11) or (13) applies to a taxpayer for a particular year, the taxpayer shall notify the Minister in prescribed form and manner on or before the taxpayer's filing-due date for the year.

**Recapture of credit for partnerships**

**(16)** Subsection (17) applies in a fiscal period of a partnership if

**(a)** the partnership acquired a particular clean technology property in the fiscal period or in any of the 10 preceding calendar years;

**(b)** the cost, or a portion of the cost, of the particular property is included in an amount, a percentage of which can reasonably be considered to have been included in computing the amount determined under subsection (8) in respect of the partnership at the end of a fiscal period; and

**(c)** in the fiscal period, the particular property (or another property that incorporates the particular property) is converted to a non-clean technology use, is exported from Canada or is disposed of without having been previously exported or converted to a non-clean technology use.

**Addition to tax**

**(17)** If this subsection applies to a fiscal period of a partnership, where a taxpayer is a member of the partnership during the fiscal period, there shall be added to the taxpayer's tax otherwise payable under this Part for the taxpayer's taxation year in which the fiscal period ends the amount that can reasonably be considered to be the taxpayer's share of the amount, if any, equal to the lesser of

**(a)** the amount that can reasonably be considered to have been included in respect of the particular property in computing the amount determined under subsection (8) in respect of the partnership, and

*de technologie propre* n'eût été l'alinéa b) de cette définition.

**Certains transferts entre parties ayant un lien de dépendance — récupération différée**

**(14)** Si le paragraphe (13) s'applique, le paragraphe 127(34) s'applique avec les modifications nécessaires, notamment, la mention du paragraphe 127(33) vaut mention du paragraphe 127.45(13).

**Événement de récupération — exigences en matière de déclaration**

**(15)** Si les paragraphes (11) ou (13) s'appliquent à un contribuable pour une année donnée, le contribuable est tenu d'en aviser le ministre sur le formulaire prescrit et selon les modalités prescrites au plus tard à la date d'échéance de production qui lui est applicable pour l'année.

**Récupération du crédit — sociétés de personnes**

**(16)** Le paragraphe (17) s'applique au cours d'un exercice d'une société de personnes si les conditions suivantes sont remplies :

**a)** la société de personnes a acquis un bien de technologie propre donné au cours de l'exercice ou au cours des dix années civiles précédentes;

**b)** la totalité ou une partie du coût du bien donné est comprise dans un montant dont un pourcentage peut raisonnablement être considéré comme ayant été inclus dans le calcul du montant déterminé selon le paragraphe (8) à l'égard de la société de personnes à la fin d'un exercice;

**c)** au cours de l'exercice, le bien donné (ou un autre bien auquel il est incorporé) est affecté à une utilisation non concernée par la technologie propre, est exporté du Canada ou fait l'objet d'une disposition sans avoir été précédemment exporté ou affecté à une utilisation non concernée par la technologie propre.

**Somme à ajouter à l'impôt**

**(17)** Si le présent paragraphe s'applique à un exercice d'une société de personnes, lorsqu'un contribuable est un associé de la société de personnes au cours de l'exercice, est ajoutée à son impôt par ailleurs payable en vertu de la présente partie pour son année d'imposition dans laquelle l'exercice prend fin le montant qu'il est raisonnable de considérer comme sa part du montant égal au moindre des montants suivants :

**a)** le montant qu'il est raisonnable de considérer comme ayant été inclus relativement au bien donné

**(b)** the percentage described in paragraph (16)(b) of

**(i)** where the particular property (or the other property) is disposed of to a person who deals at arm's length with the partnership, the proceeds of disposition of the property, and

**(ii)** in any other case, the fair market value of the particular property (or the other property) at the time of the conversion, export or disposition.

dans le calcul du montant déterminé selon le paragraphe (8) à l'égard de la société de personnes;

**b)** le pourcentage visé à l'alinéa (16)b) multiplié par le montant applicable suivant :

**(i)** s'il est disposé du bien donné (ou de l'autre bien) en faveur d'une personne sans lien de dépendance avec la société de personnes, le produit de disposition du bien,

**(ii)** dans les autres cas, la juste valeur marchande du bien donné (ou de l'autre bien) au moment de son affectation, de son exportation ou de sa disposition.

**Information return — partnerships**

**(18)** If subsections (16) and (17) apply with respect to the property of a partnership for a particular fiscal period, the partnership shall notify the Minister in prescribed form and manner on or before the day when a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period.

**Déclaration de renseignements — société de personnes**

**(18)** Si les paragraphes (16) et (17) s'appliquent à l'égard du bien d'une société de personnes pour un exercice donné, la société de personnes est tenue d'aviser le ministre sur le formulaire prescrit et selon les modalités prescrites au plus tard à la date où une déclaration doit être produite en vertu de l'article 229 du *Règlement de l'impôt sur le revenu* pour l'exercice.

**Clean technology investment tax credit — purpose**

**(19)** The purpose of this section is to encourage the investment of capital in the adoption and operation of clean technology property in Canada.

**Crédit d'impôt à l'investissement dans les technologies propres — but**

**(19)** Le présent article vise à encourager l'investissement de capitaux dans l'adoption et l'exploitation de biens de technologie propre au Canada.

**Authority of the Minister of Natural Resources**

**(20)** For the purpose of determining whether a property is a clean technology property, any technical guide, published by the Department of Natural Resources and as amended from time to time, is to apply conclusively with respect to engineering and scientific matters.

**Pouvoir du ministre des Ressources naturelles**

**(20)** Tout guide technique publié par le ministère des Ressources naturelles avec ses modifications successives s'applique de manière concluante en matière d'ingénierie et de science lorsqu'il s'agit de déterminer si un bien est un bien de technologie propre.

**(2) Subsection (1) is deemed to have come into force on March 28, 2023.**

**(2) Le paragraphe (1) est réputé être entré en vigueur le 28 mars 2023.**

**37 (1) The Act is amended by adding the following after section 127.45, as enacted by subsection 36(1):**

**37 (1) La même loi est modifiée par adjonction, après l'article 127.45, édicté par le paragraphe 36(1), de ce qui suit :**

**Definitions**

**127.46 (1)** The following definitions apply in this section.

***apprenticeship requirements*** means the requirements set out in subsection (5). (*exigences à l'égard d'apprentis*)

**Définitions**

**127.46 (1)** Les définitions qui suivent s'appliquent au présent article.

***année d'imposition de l'installation*** Relativement à un crédit d'impôt déterminé, s'entend d'une année d'imposition au cours de laquelle la préparation ou l'installation de biens déterminés se produit. (*installation taxation year*)

***benefits*** means vacation, pension, health and welfare benefits required to be provided by employers to or for employees under an eligible collective agreement. (*avantages sociaux*)

***covered worker*** means an individual (other than a trust)

**(a)** who is engaged in the preparation or installation of specified property at a designated work site as an employee of an incentive claimant or of another person or partnership;

**(b)** whose work or duties in respect of the designated work site are primarily manual or physical in nature; and

**(c)** who is not

**(i)** an administrative, clerical or executive employee, or

**(ii)** a *business visitor to Canada* as described in section 187 of the *Immigration and Refugee Protection Regulations*. (*travailleur visé*)

***designated work site*** in a taxation year of an incentive claimant means a work site where specified property of an incentive claimant is located during the year and includes the site of a *CCUS project* (as defined in section 127.44) of the incentive claimant. (*chantier désigné*)

***eligible collective agreement*** means

**(a)** in Quebec,

**(i)** a collective agreement negotiated in accordance with applicable provincial law, or

**(ii)** a prescribed agreement; and

**(b)** in any other case,

**(i)** the most recent multi-employer collective bargaining agreement negotiated with a trade union that is an affiliate of Canada's Building Trades Unions for a given trade in a region or province,

**(ii)** a project labour agreement established with a trade union in accordance with applicable provincial law that covers the work associated with the investments eligible for specified tax credits and that provides for wages and benefits for covered workers in a given trade that are at least equal to the regular wages (without taking into account overtime) and benefits provided for covered workers in an agreement described in subparagraph (i), or

***avantages sociaux*** S'entend des congés payés, des prestations de pension, des avantages sociaux en matière de santé et de bien-être que les employeurs doivent offrir aux employés en vertu d'une convention collective admissible. (*benefits*)

***bien déterminé*** S'entend d'un bien dont une partie ou la totalité du coût peut faire l'objet d'un crédit d'impôt déterminé. (*specified property*)

***chantier désigné*** Au cours d'une année d'imposition d'un demandeur d'incitatif, s'entend d'un chantier où se situe le bien déterminé d'un demandeur d'incitatif pendant l'année et comprend le chantier d'un *projet de CUSC* (au sens de l'article 127.44) du demandeur d'incitatif. (*designated work site*)

***convention collective admissible*** S'entend :

**a)** au Québec, selon le cas :

**(i)** d'une convention collective négociée conformément à la loi provinciale applicable,

**(ii)** d'une convention visée par règlement;

**b)** sinon, selon le cas :

**(i)** de la dernière convention collective interentreprises négociée par un syndicat rattaché aux Syndicats des métiers de la construction du Canada pour un métier donné, dans une région ou une province,

**(ii)** d'une convention collective pour un projet conclue par un syndicat conformément à la loi provinciale applicable qui vise le travail associé aux investissements donnant droit aux crédits d'impôt déterminés et qui prévoit les salaires et avantages sociaux pour les travailleurs visés d'un métier donné qui équivalent au moins aux salaires réguliers (compte non tenu des heures supplémentaires) et aux avantages sociaux fournis aux travailleurs visés dans une convention visée au sous-alinéa (i),

**(iii)** d'une convention visée par règlement. (*eligible collective agreement*)

***crédit d'impôt déterminé*** S'entend du *crédit d'impôt pour le CUSC* en vertu de l'article 127.44 et du *crédit d'impôt à l'investissement dans les technologies propres* en vertu de l'article 127.45. (*specified tax credit*)

***demandeur d'incitatif*** Personne ou société de personnes dont au moins un associé envisage de demander

**(iii)** a prescribed agreement. (*convention collective admissible*)

***incentive claimant*** means a person that, or a partnership at least one member of which, plans to claim or has claimed a specified tax credit for a taxation year. (*demandeur d'incitatif*)

***installation taxation year***, in respect of a specified tax credit, means a taxation year during which preparation or installation of specified property occurs. (*année d'imposition de l'installation*)

***prevailing wage requirements*** means the requirements set out in subsection (3). (*exigences relatives au salaire prévalant*)

***Red Seal trade*** means, for a province using the Red Seal Program for a particular trade, the relevant Red Seal trade managed by the Canadian Council of Directors of Apprenticeship and, in any other case, an equivalent provincially registered trade. (*métier désigné Sceau rouge*)

***Red Seal worker*** means a covered worker whose duties are, or are equivalent to, those duties normally performed by workers in a Red Seal trade. (*travailleur Sceau rouge*)

***reduced tax credit rate*** means the regular tax credit rate minus 10 percentage points. (*taux du crédit d'impôt réduit*)

***regular tax credit rate*** means the *specified percentage* (as defined in subsections 127.44(1) and 127.45(1), as the case may be). (*taux du crédit d'impôt régulier*)

***specified property*** means property all or a portion of the cost of which qualifies for a specified tax credit. (*bien déterminé*)

***specified tax credit*** means the *CCUS tax credit* under section 127.44 and the *clean technology investment tax credit* under section 127.45. (*crédit d'impôt déterminé*)

**Reduced or regular rate**

**(2)** Despite sections 127.44 and 127.45, the applicable rate for each specified tax credit of an incentive claimant is the reduced tax credit rate unless the incentive claimant elects in prescribed form and manner to meet

ou a demandé un crédit d'impôt déterminé pour une année d'imposition. (*incentive claimant*)

***exigences à l'égard d'apprentis*** S'entend des exigences énoncées au paragraphe (5). (*apprenticeship requirements*)

***exigences relatives au salaire prévalant*** S'entend des exigences énoncées au paragraphe (3). (*prevailing wage requirements*)

***métier désigné Sceau rouge*** S'entend, pour une province qui utilise le Programme du Sceau rouge pour un métier donné, du métier désigné Sceau rouge pertinent géré par le Conseil canadien des directeurs de l'apprentissage ou, dans les autres cas, d'un métier équivalent agréé par une province. (*Red Seal trade*)

***taux du crédit d'impôt réduit*** S'entend du taux du crédit d'impôt régulier moins dix points de pourcentage. (*reduced tax credit rate*)

***taux du crédit d'impôt régulier*** S'entend du *pourcentage déterminé* (au sens des paragraphes 127.44(1) et 127.45(1), selon le cas). (*regular tax credit rate*)

***travailleur Sceau rouge*** S'entend d'un travailleur visé dont les fonctions sont, ou équivalent à, celles normalement exercées par des travailleurs dans un métier désigné Sceau rouge. (*Red Seal worker*)

***travailleur visé*** S'entend d'un particulier (sauf une fiducie), à la fois :

**a)** qui participe à la préparation ou à l'installation de biens déterminés sur un chantier désigné à titre d'employé d'un demandeur d'incitatif ou d'une autre personne ou société de personnes;

**b)** dont le travail ou les fonctions relatifs au chantier désigné sont principalement manuels ou physiques;

**c)** qui n'est, selon le cas :

**(i)** ni un salarié administratif, un employé de bureau ou un cadre,

**(ii)** ni un *visiteur commercial au Canada* visé à l'article 187 du *Règlement sur l'immigration et la protection des réfugiés*. (*covered worker*)

**Taux réduit ou régulier**

**(2)** Malgré les articles 127.44 et 127.45, le taux applicable pour chaque crédit d'impôt déterminé d'un demandeur d'incitatif correspond au taux du crédit d'impôt réduit, sauf si le demandeur d'incitatif choisit sur le formulaire

the prevailing wage requirements under subsection (3) and the apprenticeship requirements under subsection (5) for each installation taxation year in respect of the specified tax credit.

**Prevailing wage requirements**

**(3)** For the purposes of this section, the prevailing wage requirements for an incentive claimant for an installation taxation year are

**(a)** if prescribed circumstances exist, prescribed conditions; and

**(b)** in any other case, the following conditions:

**(i)** each covered worker at a designated work site of an incentive claimant must be compensated for their work on the preparation or installation of specified property

**(A)** in accordance with the terms of an eligible collective agreement that applies to the worker, or

**(B)** in an amount that is at least equal to the amount of the regular wages (without taking into account overtime) and benefits as specified in the eligible collective agreement that most closely aligns with the covered worker's experience level, tasks and location, calculated on a per-hour or similar basis;

**(ii)** the incentive claimant attests, in prescribed form and manner, that it has met the prevailing wage requirement in subparagraph (i) for its own employees who are covered workers, if any, and that it has taken reasonable steps to ensure that any covered workers employed by any other person or partnership at the designated work site are compensated in accordance with subparagraph (i); and

**(iii)** it has communicated, either in a poster or notice, in a manner readily visible to and accessible by covered workers at the designated work site or by electronic means, a notice confirming that the work site is a work site subject to prevailing wage requirements in relation to covered workers, including a plain language explanation of what that means for workers and information regarding how to report failures to pay prevailing wages to the Minister.

prescrit et selon les modalités prescrites de satisfaire aux exigences relatives au salaire prévalant en vertu du paragraphe (3) et aux exigences à l'égard d'apprentis en vertu du paragraphe (5) pour chaque année d'imposition de l'installation relativement au crédit d'impôt déterminé.

**Exigences relatives au salaire prévalant**

**(3)** Pour l'application du présent article, les exigences relatives au salaire prévalant pour un demandeur d'incitatif pour une année d'imposition de l'installation sont les suivantes :

**a)** si les circonstances prévues par règlement s'avèrent, les conditions visées par règlement;

**b)** dans les autres cas, les conditions suivantes :

**(i)** chaque travailleur visé sur un chantier désigné d'un demandeur d'incitatif doit être rémunéré pour son travail dans le cadre de la préparation ou de l'installation de biens déterminés :

**(A)** soit conformément aux conditions d'une convention collective admissible qui s'applique au travailleur,

**(B)** soit d'un montant qui équivaut au moins au montant de salaires réguliers (compte non tenu des heures supplémentaires) et d'avantages sociaux précisés dans la convention collective admissible qui correspond le plus étroitement au niveau d'expérience du travailleur visé, à ses tâches et à son lieu de travail, calculé selon un taux horaire ou sur une base similaire,

**(ii)** le demandeur d'incitatif atteste, sur le formulaire prescrit et selon les modalités prescrites, qu'il a satisfait à l'exigence relative au salaire prévalant énoncée au sous-alinéa (i) en ce qui concerne ses propres employés qui sont des travailleurs visés, le cas échéant, et qu'il a pris les mesures raisonnables pour veiller à ce que tout travailleur visé qui est employé par toute autre personne ou société de personnes sur le chantier désigné soit rémunéré conformément au sous-alinéa (i),

**(iii)** il a communiqué, soit sur une affiche, soit dans un avis, d'une manière facilement visible pour les travailleurs visés, et accessible par ceux-ci, sur le chantier désigné ou par voie électronique, un avis confirmant qu'il s'agit d'un chantier soumis aux exigences relatives au salaire prévalant relativement aux travailleurs visés, y compris une explication dans un langage clair de ce que cela représente pour les travailleurs et des renseignements sur la

façon de signaler les omissions de verser les salaires prévalant au ministre.

**Indexation of prevailing wages**

**(4)** Where an eligible collective agreement that is used to calculate the prevailing wage requirement under subparagraph (3)(b)(i) is expired, then the amounts of wages and benefits stipulated in the agreement shall be adjusted by the average Consumer Price Index in the manner set out in section 117.1 for each calendar year that begins after the expiration of the eligible collective agreement.

**Indexation des salaires prévalant**

**(4)** Lorsqu'une convention collective admissible servant à calculer l'exigence relative au salaire prévalant en vertu du sous-alinéa (3)b)(i) est expirée, les montants de salaires et d'avantages sociaux stipulés dans la convention sont ajustés en fonction de l'indice moyen des prix à la consommation selon les modalités visées à l'article 117.1 pour chaque année civile commençant après l'expiration de la convention collective admissible.

**Apprenticeship requirements**

**(5)** For the purposes of this section, the apprenticeship requirements for an incentive claimant for an installation taxation year are that

**(a)** subject to paragraph (b), the incentive claimant makes reasonable efforts to ensure that apprentices registered in a Red Seal trade work at least 10% of the total hours that are worked during the year by Red Seal workers at a designated work site of the incentive claimant on the preparation or installation of specified property;

**(b)** if an applicable law or collective agreement that specifies a maximum ratio of apprentices to journeypersons, or otherwise restricts the number of apprentices employed at a designated work site, prevents the condition in paragraph (a) from being met, the incentive claimant makes reasonable efforts to ensure that the highest possible percentage of the total labour hours, performed during the year by Red Seal workers on the preparation or installation of specified property, is performed by apprentices registered in a Red Seal trade while respecting the applicable labour law or collective agreement; and

**(c)** the incentive claimant attests in prescribed form and manner that it has met the apprenticeship requirements in paragraph (a) or (b) in respect of covered workers at the designated work site.

**Exigences à l'égard d'apprentis**

**(5)** Pour l'application du présent article, les exigences à l'égard d'apprentis pour un demandeur d'incitatif au titre d'une année d'imposition de l'installation sont les suivantes :

**a)** sous réserve de l'alinéa b), le demandeur d'incitatif fait des efforts sérieux pour s'assurer que les apprentis inscrits à un métier désigné Sceau rouge travaillent au moins 10 % du total des heures de travail effectuées par des travailleurs Sceau rouge au cours de l'année sur un chantier désigné du demandeur d'incitatif dans le cadre de la préparation ou de l'installation de biens déterminés;

**b)** si une loi ou une convention collective applicable qui précise un rapport maximum entre les apprentis et les compagnons, ou qui limite autrement le nombre d'apprentis employés sur un chantier désigné, empêche la condition mentionnée à l'alinéa a) d'être respectée, le demandeur d'incitatif fait des efforts sérieux pour s'assurer que le pourcentage le plus élevé possible du total des heures de travail effectuées par des travailleurs Sceau rouge au cours de l'année dans le cadre de la préparation ou de l'installation de biens déterminés soit effectué par des apprentis inscrits à un métier désigné Sceau rouge en respectant la loi sur le travail ou la convention collective applicable;

**c)** le demandeur d'incitatif atteste, sur le formulaire prescrit et selon les modalités prescrites, qu'il satisfait aux exigences à l'égard d'apprentis énoncées aux alinéas a) ou b) relativement aux travailleurs visés sur le chantier désigné.

**Addition to tax — wage requirement**

**(6)** Unless subsection (9) applies, if an incentive claimant claims a specified tax credit at a regular tax credit rate in a taxation year but does not meet the prevailing wage requirements in respect of a covered worker for one or more days in an installation taxation year in respect of

**Somme à ajouter à l'impôt — exigence relative au salaire**

**(6)** Sauf si le paragraphe (9) s'applique, si un demandeur d'incitatif demande un crédit d'impôt déterminé à un taux du crédit d'impôt régulier au cours d'une année d'imposition, mais ne satisfait pas aux exigences relatives au salaire prévalant relativement à un travailleur visé

that specified tax credit, there shall be added to the tax payable under this Part for the installation taxation year by the incentive claimant an amount equal to $20 for each day in the installation taxation year on which the covered worker was not paid the prevailing wage.

**Addition to tax — apprenticeship requirement**

**(7)** Unless subsection (9) applies, if an incentive claimant claims a specified tax credit at a regular tax credit rate in a taxation year in respect of a designated work site, but less than 10% of the total hours that are worked during an installation taxation year in respect of that specified tax credit at the designated work site on the preparation or installation of specified property are worked by apprentices registered in a Red Seal trade, there shall be added to the tax payable under this Part for the installation taxation year by the incentive claimant the amount determined by the formula

**$50 × (A – B)**

where

**A** is the total number of hours of labour required to be performed by apprentices registered in a Red Seal trade for the installation taxation year at the designated work site of the incentive claimant as described in paragraph (5)(a) or (b), as applicable, in each case read without reference to the words "the incentive claimant makes reasonable efforts to ensure that"; and

**B** is the total number of actual hours of labour performed by apprentices registered in a Red Seal trade for the installation taxation year at the designated work site of the incentive claimant on the preparation or installation of specified property plus any other hours of labour for which the incentive claimant has met the apprenticeship requirements in paragraph (5)(a) or (b), as applicable.

**Indexation**

**(8)** The dollar amounts in subsections (6) and (7) shall be adjusted for inflation in each calendar year commencing after 2023 in the manner set out in section 117.1.

**Gross negligence**

**(9)** If an incentive claimant has claimed a specified tax credit at the regular tax credit rate in a taxation year (referred to in this subsection as the "claim year") but has

pendant un ou plusieurs jours d'une année d'imposition de l'installation pour ce crédit d'impôt déterminé, il doit être ajouté à l'impôt à payer en vertu de la présente partie pour l'année d'imposition de l'installation par le demandeur d'incitatif, une somme égale à 20 $ pour chaque jour de cette année d'imposition de l'installation où le salaire prévalant n'a pas été versé au travailleur visé.

**Somme à ajouter à l'impôt — exigence à l'égard d'apprentis**

**(7)** Sauf si le paragraphe (9) s'applique, si un demandeur d'incitatif demande un crédit d'impôt déterminé à un taux du crédit d'impôt régulier au cours d'une année d'imposition relativement à un chantier désigné, mais que moins de 10 % du total des heures effectuées au cours d'une année d'imposition de l'installation pour ce crédit d'impôt déterminé sur le chantier désigné dans le cadre de la préparation ou de l'installation de biens déterminés sont effectuées par des apprentis inscrits à un métier désigné Sceau rouge, il doit être ajouté à l'impôt à payer en vertu de la présente partie pour l'année d'imposition de l'installation par le demandeur d'incitatif, la somme obtenue par la formule suivante :

**50 $ × (A – B)**

où :

**A** représente le nombre total d'heures de travail devant être effectuées par des apprentis inscrits à un métier désigné Sceau rouge pour l'année d'imposition de l'installation sur le chantier désigné du demandeur d'incitatif visé aux alinéas (5)a) ou b), selon le cas, dans chaque cas compte non tenu du passage « le demandeur d'incitatif fait des efforts sérieux pour s'assurer que »;

**B** le nombre total d'heures de travail réellement effectuées par des apprentis inscrits à un métier désigné Sceau rouge pour l'année d'imposition de l'installation sur le chantier désigné du demandeur d'incitatif dans le cadre de la préparation ou de l'installation de biens déterminés plus toutes les autres heures de travail pour lesquelles celui-ci a respecté les exigences à l'égard d'apprentis énoncées aux alinéas (5)a) ou b), le cas échéant.

**Indexation**

**(8)** Les montants en dollars aux paragraphes (6) et (7) doivent être ajustés en fonction de l'inflation pour chaque année civile commençant après 2023 selon les modalités visées à l'article 117.1.

**Faute lourde**

**(9)** Si un demandeur d'incitatif a demandé un crédit d'impôt déterminé au taux du crédit d'impôt régulier au cours d'une année d'imposition (appelée « année de la

failed to meet the prevailing wage requirements or the apprenticeship requirements for an installation taxation year in respect of that specified tax credit and the Minister determines that the incentive claimant knowingly or in circumstances amounting to gross negligence failed to meet those requirements, then

**(a)** the incentive claimant is not entitled to the regular tax credit rate, and is entitled to not more than the reduced tax credit rate, for the specified tax credit; and

**(b)** the incentive claimant is liable to a penalty for the claim year equal to the amount determined by the formula

**50% × (A – B)**

where

**A** is the amount of the specified tax credit claimed by the incentive claimant at the regular tax credit rate for the claim year, and

**B** is the amount that the incentive claimant would have been entitled to claim as a specified tax credit at the reduced tax credit rate for the claim year.

**CCUS refurbishment credit**

**(10)** Subsection (9) does not apply in respect of a CCUS refurbishment tax credit.

**Corrective measures — prevailing wage requirement**

**(11)** Unless subsection (9) applies, if an incentive claimant receives a notification from the Minister specifying that the incentive claimant did not meet the prevailing wage requirements for a designated work site for a taxation year, the incentive claimant may within one year after receipt of the notification, or such longer period as is acceptable to the Minister, cause each covered worker to be paid the top-up amount determined under subsection (12).

**Top-up amount**

**(12)** For each covered worker in respect of an incentive claimant, the top-up amount referred to in subsection (11) for a taxation year shall equal or exceed the amount determined by the formula

**A – B + C**

where

**A** is the amount that the covered worker would have received or benefited from, in respect of the worker's

demande » au présent paragraphe), mais n'a pas respecté les exigences relatives au salaire prévalant ou les exigences à l'égard d'apprentis pour une année d'imposition de l'installation relativement à ce crédit d'impôt déterminé, et le ministre établit qu'il a sciemment ou dans des circonstances équivalant à faute lourde omis de satisfaire à ces exigences, à la fois :

**a)** pour le crédit d'impôt déterminé, le demandeur d'incitatif n'a ni droit au taux du crédit d'impôt régulier, ni à un taux supérieur au taux du crédit d'impôt réduit;

**b)** le demandeur d'incitatif est passible d'une pénalité pour l'année de la demande égale à la somme obtenue par la formule suivante :

**50 % × (A – B)**

où :

**A** représente le montant du crédit d'impôt déterminé demandé par le demandeur d'incitatif au taux du crédit d'impôt régulier pour l'année de la demande;

**B** la somme que le demandeur d'incitatif aurait eu le droit de demander à titre de crédit d'impôt déterminé au taux du crédit d'impôt réduit pour l'année de la demande.

**Crédit pour la remise en état du CUSC**

**(10)** Le paragraphe (9) ne s'applique pas relativement à un crédit d'impôt pour la remise en état du CUSC.

**Mesures correctives — exigence relative au salaire prévalant**

**(11)** Sauf si le paragraphe (9) s'applique, si un demandeur d'incitatif reçoit un avis du ministre précisant qu'il n'a pas satisfait aux exigences relatives au salaire prévalant concernant un chantier désigné pour une année d'imposition, il peut, dans un délai d'un an suivant la réception de l'avis, ou au cours d'une période plus longue que le ministre estime acceptable, faire verser à chaque travailleur visé le montant complémentaire déterminé en vertu du paragraphe (12).

**Montant complémentaire**

**(12)** En ce qui concerne chaque travailleur visé relativement à un demandeur d'incitatif, le montant complémentaire visé au paragraphe (11) pour une année d'imposition est égal ou supérieur à la somme obtenue par la formule suivante :

**A – B + C**

où :

employment at the designated work site during the taxation year, had the covered worker been paid in accordance with the prevailing wage requirements in paragraph (3)(a) or subparagraph (3)(b)(i), as applicable;

**B** is the amount that the worker actually received or benefited from, in respect of the worker's employment at the designated work site during the taxation year; and

**C** is interest on the difference between the description of A and the description of B, calculated from the beginning of the taxation year to the time of payment at the prescribed rate specified in paragraph 4301(a) of the *Income Tax Regulations*.

**A** représente la somme que le travailleur visé aurait reçue ou dont il aurait bénéficié, relativement à son emploi sur le chantier désigné au cours de l'année d'imposition, s'il avait été rémunéré conformément aux exigences relatives au salaire prévalant énoncées à l'alinéa (3)a) ou au sous-alinéa (3)b)(i), le cas échéant;

**B** la somme que le travailleur a réellement reçue ou dont il a bénéficié, relativement à son emploi sur le chantier désigné au cours de l'année d'imposition;

**C** les intérêts sur la différence entre l'élément A et l'élément B, calculés du début de l'année d'imposition jusqu'au moment du paiement au taux prescrit déterminé à l'alinéa 4301a) du *Règlement de l'impôt sur le revenu*.

**Top-up payment not made**

**(13)** For any covered worker in respect of whom a top-up amount is not paid under subsection (11), the incentive claimant shall pay to the Receiver General, as a penalty under this Act, 120% of the amount determined by the formula in subsection (12).

**Non-versement du paiement complémentaire**

**(13)** Pour tout travailleur visé à l'égard de qui un montant complémentaire n'est pas versé en vertu du paragraphe (11), le demandeur d'incitatif doit verser au receveur général, à titre de pénalité en vertu de la présente loi, 120 % de la somme obtenue par la formule figurant au paragraphe (12).

**Tax treatment of top-up amount**

**(14)** A top-up amount that is paid to a covered worker

**(a)** is deemed to be

**(i)** salary and wages of the worker for the year in which it is received, and

**(ii)** deductible in computing income by the payor for the year in which it is paid; and

**(b)** does not qualify for any specified tax credit.

**Traitement fiscal du montant complémentaire**

**(14)** Un montant complémentaire qui est versé à un travailleur visé, à la fois :

**a)** est réputé être, à la fois :

**(i)** les traitement et salaire du travailleur pour l'année dans laquelle le montant est reçu,

**(ii)** déductible dans le calcul du revenu par le payeur pour l'année dans laquelle il est payé;

**b)** n'est pas admissible à un crédit d'impôt déterminé.

**Exception**

**(15)** This section does not apply to a specified tax credit claimed for the acquisition of off-road zero emission vehicles or to the acquisition and installation of low carbon heat equipment.

**Exception**

**(15)** Le présent article ne s'applique pas à un crédit d'impôt déterminé demandé en vue de l'acquisition de véhicules zéro émission hors route ou à l'acquisition et à l'installation de matériel de chauffage à faibles émissions de carbone.

**Deemed reasonable efforts**

**(16)** For the purposes of this section, an incentive claimant is deemed to have satisfied the requirement in paragraph (5)(a) or (b), as the case may be, in respect of hours of labour at a designated work site for an installation taxation year if the following conditions are met:

**(a)** at least every four months, the incentive claimant

**Efforts sérieux réputés**

**(16)** Pour l'application du présent article, un demandeur d'incitatif est réputé avoir respecté l'exigence énoncée aux alinéas (5)a) ou b), selon le cas, relativement aux heures de travail effectuées sur un chantier désigné au titre d'une année d'imposition de l'installation si les conditions suivantes sont réunies :

**(i)** posts a *bona fide* job advertisement, seeking sufficient apprentices to perform those hours of labour in respect of the designated work site, that

**(A)** includes a commitment to facilitate participation of apprentices in a Red Seal trade program and a statement that the job opportunity is open to both existing employees and new hires, and

**(B)** is open and readily accessible on the Job Bank website of the Government of Canada and at least two other websites either

**(I)** on a continuous basis throughout the year, or

**(II)** for at least 30 days from the time of posting,

**(ii)** communicates with a trade union (which, if the designated work site is in Quebec, is a trade union recognized under applicable provincial law and, if the designated work site is outside of Quebec, is an affiliate of Canada's Building Trades Unions) and at least one secondary school or post-secondary educational institution for the purpose of facilitating the hiring of the apprentice positions described in the job advertisement, and

**(iii)** receives from the trade union confirmation in writing that the trade union has provided as many apprentices as reasonably possible for work at the designated work site during the installation year, unless the trade union fails to respond within five business days of a request;

**(b)** the incentive claimant reviews and duly considers all applications received in response to the advertisement for apprenticeship opportunities that are offered directly by the incentive claimant and takes reasonable steps to ensure that other applications are reviewed and duly considered; and

**(c)** the incentive claimant attests in prescribed form and manner that it has complied with paragraphs (a) and (b).

**a)** au moins une fois tous les quatre mois, le demandeur d'incitatif, à la fois :

**(i)** publie une offre d'emploi véritable, recherchant ainsi un nombre suffisant d'apprentis pour effectuer ces heures de travail relativement au chantier désigné qui, à la fois :

**(A)** comprend un engagement à faciliter la participation des apprentis à un programme du métier désigné Sceau rouge et un énoncé selon lequel l'offre d'emploi est ouverte tant aux employés en fonction qu'aux nouveaux,

**(B)** est ouverte et facilement accessible sur le site Web du Guichet-Emplois du gouvernement du Canada et sur au moins deux autres sites Web :

**(I)** soit de façon continue tout au long de l'année,

**(II)** soit pendant au moins trente jours à compter du moment de sa publication,

**(ii)** communique avec au moins une école secondaire ou un établissement d'enseignement post-secondaire et avec un syndicat (qui, si le chantier désigné se situe au Québec, est un syndicat reconnu en vertu des lois applicables de la province ou qui, si le chantier désigné se situe à l'extérieur du Québec, est un syndicat rattaché aux Syndicats des métiers de la construction du Canada) afin de faciliter l'embauche des apprentis pour les postes décrits dans l'offre d'emploi,

**(iii)** reçoit du syndicat une confirmation écrite qu'il a fourni autant d'apprentis que raisonnablement possible pour les travaux sur le chantier désigné au cours de l'année d'imposition de l'installation, à moins que le syndicat ne réponde pas dans les cinq jours ouvrables suivant une demande;

**b)** le demandeur d'incitatif examine et prend dûment en compte toutes les demandes reçues en réponse à l'offre d'emploi concernant les possibilités d'apprentissage qui sont offertes directement par lui et prend des mesures raisonnables afin de s'assurer que les autres demandes soient examinées et dûment prises en compte;

**c)** le demandeur d'incitatif atteste, sur le formulaire prescrit et selon les modalités prescrites, qu'il satisfait aux exigences énoncées aux alinéas a) et b).

**Partnerships**

**(17)** If subsection (6), (7), (9) or (13) applies to an incentive claimant that is a partnership

**(a)** any member of the partnership may elect to pay the amount of the relevant tax or penalty liability on behalf of the partnership;

**(b)** if no election has been made under paragraph (a), the portion of the relevant tax or penalty liability that can reasonably be considered to be each member's share thereof is payable by each member; and

**(c)** each member of the partnership is jointly and severally, or for civil law, solidarily, liable for any portion of the amount of the relevant tax or penalty liability that is not paid in accordance with paragraph (a) or allocated to and payable by a member under paragraph (b).

**Sociétés de personnes**

**(17)** Si les paragraphes (6), (7), (9) ou (13) s'appliquent à un demandeur d'incitatif qui est une société de personnes, à la fois :

**a)** un associé de la société de personnes peut faire le choix de payer le montant de la pénalité ou de l'impôt à payer pertinent pour le compte de celle-ci;

**b)** si aucun choix n'a été fait en vertu de l'alinéa a), la partie du montant de la pénalité ou de l'impôt à payer pertinent qu'il est raisonnable de considérer comme la part qui revient à chaque associé est payable par chaque associé;

**c)** chaque associé de la société de personnes est solidairement responsable d'une partie du montant de la pénalité ou de l'impôt à payer pertinent qui n'est ni payée conformément à l'alinéa a) ni attribuée à un associé et payable par celui-ci en vertu de l'alinéa b).

**(2) Subsection (1) applies in respect of specified property prepared or installed on or after November 28, 2023.**

**(2) Le paragraphe (1) s'applique aux biens déterminés préparés ou installés à compter du 28 novembre 2023.**

**38 (1) The Act is amended by adding the following after section 127.46, as enacted by subsection 37(1):**

**38 (1) La même loi est modifiée par adjonction, après l'article 127.46, édicté par le paragraphe 37(1), de ce qui suit :**

**Definitions**

**127.47 (1)** The following definitions apply in this section.

***at-risk amount*** has the meaning assigned by subsection 96(2.2). (*fraction à risques*)

***clean economy allocation provision*** means

**(a)** subsection 127.44(11); or

**(b)** subsection 127.45(8). (*disposition d'allocation pour l'économie propre*)

***clean economy expenditure*** means

**(a)** a qualified CCUS expenditure as determined under section 127.44; or

**(b)** the capital cost of clean technology property as determined under section 127.45. (*dépense pour l'économie propre*)

***clean economy provision*** means

**(a)** this section;

**(b)** section 127.44 and Part XII.7;

**Définitions**

**127.47 (1)** Les définitions qui suivent s'appliquent au présent article.

***commanditaire*** S'entend au sens du paragraphe 96(2.4) compte non tenu du passage « si sa participation dans celle-ci n'est pas, à ce moment, une participation exonérée au sens du paragraphe (2.5) et ». (*limited partner*)

***crédit d'impôt pour l'économie propre*** L'un des crédits d'impôt suivants :

**a)** le *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1));

**b)** le *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)). (*clean economy tax credit*)

***dépense pour l'économie propre*** L'un des montants suivants :

**a)** une dépense admissible pour le CUSC déterminée selon l'article 127.44;

**(c)** section 127.45; or

**(d)** section 127.46. (*disposition pour l'économie propre*)

***clean economy tax credit*** means

**(a)** a *CCUS tax credit* (as defined in subsection 127.44(1)); or

**(b)** a *clean technology investment tax credit* (as defined in subsection 127.45(1)). (*crédit d'impôt pour l'économie propre*)

***limited partner*** has the meaning assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and". (*commanditaire*)

**b)** le coût en capital d'un bien de technologie propre déterminé selon l'article 127.45. (*clean economy expenditure*)

***disposition d'allocation pour l'économie propre*** L'une des dispositions suivantes :

**a)** le paragraphe 127.44(11);

**b)** le paragraphe 127.45(8). (*clean economy allocation provision*)

***disposition pour l'économie propre*** L'une des dispositions suivantes :

**a)** le présent article;

**b)** l'article 127.44 et la partie XII.7;

**c)** l'article 127.45;

**d)** l'article 127.46. (*clean economy provision*)

***fraction à risques*** S'entend au sens du paragraphe 96(2.2). (*at-risk amount*)

**Credits in unreasonable proportions**

**(2)** If the members of a partnership agree to share the amount of a clean economy tax credit of the partnership and the share of any member of that amount is not reasonable in the circumstances having regard to the capital invested in or work performed for the partnership by the members of the partnership or such other factors as may be relevant, that share shall, notwithstanding any agreement, be deemed to be the amount that is reasonable in the circumstances.

**Crédits en proportions déraisonnables**

**(2)** Si les associés d'une société de personnes conviennent de partager le montant d'un crédit d'impôt pour l'économie propre de la société de personnes et que la part de ce montant revenant à l'un de ces associés n'est pas raisonnable dans les circonstances, compte tenu du capital qu'il a investi dans la société de personnes, du travail qu'il a accompli pour elle ou de tout autre facteur pertinent, cette part est réputée, indépendamment de toute convention, être le montant qui est raisonnable dans les circonstances.

**Limited partners**

**(3)** Notwithstanding subsection (2), if a taxpayer is a limited partner of a partnership at the end of a fiscal period of the partnership, the total of all clean economy tax credits allocated to the taxpayer by the partnership in respect of that fiscal period shall not exceed the taxpayer's at-risk amount in respect of the partnership at the end of that fiscal period.

**Commanditaires**

**(3)** Malgré le paragraphe (2), si un contribuable est commanditaire d'une société de personnes à la fin d'un exercice de celle-ci, le total des crédits d'impôt pour l'économie propre qui lui est attribué par la société de personnes relativement à cet exercice ne peut dépasser la fraction à risques de l'intérêt du contribuable dans la société de personnes à la fin de l'exercice en cause.

**Apportionment rule**

**(4)** The amount required by any clean economy allocation provision to be added in computing a particular clean economy tax credit of a taxpayer in respect of a partnership for the taxation year in which the partnership's fiscal period ends is deemed to be the portion of the amount otherwise determined under this section in

**Règle relative à la répartition**

**(4)** La somme à ajouter, en vertu d'une disposition d'allocation pour l'économie propre, dans le calcul d'un crédit d'impôt pour l'économie propre donné d'un contribuable relativement à une société de personnes pour l'année d'imposition au cours de laquelle son exercice se termine est réputée correspondre à la partie de la somme déterminée par ailleurs en application du présent article

respect of the taxpayer that is reasonably attributable to each particular clean economy tax credit.

**Assistance received by member of partnership**

**(5)** For the purposes of computing a clean economy tax credit, if, at a particular time, a taxpayer that is a member of a partnership has received, is entitled to receive or can reasonably be expected to receive *government assistance* or *non-government assistance* (as defined in subsection 127(9)), the amount of that assistance that may reasonably be considered to be in respect of a clean economy expenditure of the partnership shall be deemed to have been received at that time by the partnership as government assistance or non-government assistance, as the case may be, in respect of the expenditure.

**Credit received by member of partnership**

**(6)** For the purposes of subsection 13(7.1), if, pursuant to an allocation from a partnership under a clean economy allocation provision, an amount is added in computing a clean economy tax credit of a taxpayer at the end of the taxpayer's taxation year, the amount shall be deemed to have been received by the partnership at the end of its fiscal period in respect of which the allocation was made as assistance from a government for the acquisition of depreciable property.

**Tiered partnerships**

**(7)** For the purposes of each clean economy provision, a person or partnership that is (or is deemed by this subsection to be) a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership.

**(2) Subsection (1) is deemed to have come into force on January 1, 2022, except that**

**(a) before March 28, 2023, the definitions *clean economy allocation provision*, *clean economy expenditure*, *clean economy provision* and *clean economy tax credit* in subsection 127.47(1) of the Act, as enacted by subsection (1), are to be read as follows:**

***clean economy allocation provision*** means subsection 127.44(11). (*disposition d'allocation pour l'économie propre*)

relativement au contribuable qu'il est raisonnable d'attribuer à chaque crédit d'impôt pour l'économie propre donné.

**Réception d'un montant d'aide — associé d'une société de personnes**

**(5)** Pour le calcul d'un crédit d'impôt pour l'économie propre, si, à un moment donné, un contribuable qui est un associé d'une société de personnes a reçu, est en droit de recevoir ou peut raisonnablement s'attendre à recevoir une *aide gouvernementale* ou une *aide non gouvernementale* (au sens du paragraphe 127(9)), le montant de cette aide qu'il est raisonnable de considérer comme relatif à une dépense pour l'économie propre de la société de personnes est réputé être reçu à ce moment par la société de personnes à titre d'aide gouvernementale ou d'aide non gouvernementale, selon le cas, à l'égard de la dépense.

**Réception de crédit — associé d'une société de personnes**

**(6)** Pour l'application du paragraphe 13(7.1), si un montant, conformément à une allocation par une société de personnes en vertu d'une disposition d'allocation pour l'économie propre, est ajouté au calcul d'un crédit d'impôt pour l'économie propre d'un contribuable à la fin de son année d'imposition, le montant est réputé être reçu par la société de personnes à la fin de l'exercice à l'égard duquel l'allocation a été faite, à titre d'aide d'un gouvernement relativement à l'acquisition de biens amortissables.

**Paliers de sociétés de personnes**

**(7)** Pour l'application de chaque disposition pour l'économie propre, une personne ou une société de personnes qui est ou est réputée, en vertu du présent paragraphe, être l'associé d'une société de personnes donnée qui est elle-même l'associé d'une autre société de personnes est réputée être l'associé de cette dernière.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022. Toutefois :**

**a) avant le 28 mars 2023, les définitions de *crédit d'impôt pour l'économie propre*, *dépense pour l'économie propre*, *disposition d'allocation pour l'économie propre* et *disposition pour l'économie propre* au paragraphe 127.47(1) de la même loi, édictées par le paragraphe (1), sont réputées avoir le libellé suivant :**

***crédit d'impôt pour l'économie propre*** Le *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)). (*clean economy tax credit*)

***clean economy expenditure*** means a qualified CCUS expenditure as determined under section 127.44. (*dépense pour l'économie propre*)

***clean economy provision*** means

**(a)** this section; or

**(b)** section 127.44 and Part XII.7. (*disposition pour l'économie propre*)

***clean economy tax credit*** means a *CCUS tax credit* (as defined in subsection 127.44(1)). (*crédit d'impôt pour l'économie propre*)

**(b) for the period that begins on March 28, 2023 and ends on November 27, 2023, the definition *clean economy provision* in subsection 127.47(1) of the Act, as enacted by subsection (1), is to be read as follows:**

***clean economy provision*** means

**(a)** this section;

**(b)** section 127.44 and Part XII.7; or

**(c)** section 127.45. (*disposition pour l'économie propre*)

**39 (1) Subsection 128(2) of the Act is amended by adding the following after paragraph (d.2):**

**(d.3)** where, by reason of paragraph (d), a taxation year of the individual is not a calendar year,

**(i)** for the purposes of the application of subsection 146.6(1) and the definition *excess FHSA amount* in subsection 207.01(1) to each taxation year ending in the calendar year, references to "taxation year" are to be read as references to "calendar year", and

**(ii)** for the purposes of the application of subsection 146.6(5) to each taxation year ending in the calendar year, the description of A in paragraph 146.6(5)(a) is to be read as follows:

**"A** is the total of all amounts each of which is the taxpayer's annual FHSA limit for the calendar year that includes the taxation year and each preceding calendar year, and"

***dépense pour l'économie propre*** Dépense admissible pour le CUSC déterminée selon l'article 127.44. (*clean economy expenditure*)

***disposition d'allocation pour l'économie propre*** Le paragraphe 127.44(11). (*clean economy allocation provision*)

***disposition pour l'économie propre*** L'une des dispositions suivantes :

**a)** le présent article;

**b)** l'article 127.44 et la partie XII.7. (*clean economy provision*)

**b) pour la période commençant le 28 mars 2023 et se terminant le 27 novembre 2023, la définition de *disposition pour l'économie propre* au paragraphe 127.47(1), édictée par le paragraphe (1), est réputée avoir le libellé suivant :**

***disposition pour l'économie propre*** L'une des dispositions suivantes :

**a)** le présent article;

**b)** l'article 127.44 et la partie XII.7;

**c)** l'article 127.45. (*clean economy provision*)

**39 (1) Le paragraphe 128(2) de la même loi est modifié par adjonction, après l'alinéa d.2), de ce qui suit :**

**d.3)** dans le cas où, par l'effet de l'alinéa d), l'année d'imposition du particulier n'est pas une année civile, les règles ci-après s'appliquent :

**(i)** pour l'application du paragraphe 146.6(1) et de la définition de *excédent de CELIAPP* au paragraphe 207.01(1) à chaque année d'imposition se terminant au cours de l'année civile, toute mention de « année d'imposition » vaut mention de « année civile »,

**(ii)** pour l'application du paragraphe 146.6(5) à chaque année d'imposition se terminant au cours de l'année civile, l'élément A de la formule figurant à l'alinéa 146.6(5)a) est réputé avoir le libellé suivant :

**« A** représente le total des sommes représentant chacune le plafond annuel au titre du CELIAPP du contribuable pour l'année civile au cours de laquelle l'année d'imposition se termine et chaque année civile précédente, »

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**40 (1) Paragraph 129(1)(b) of the Act is replaced by the following:**

**(b)** shall, with all due dispatch, make the dividend refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed

**(i)** under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a), or

**(ii)** under subsection 152(4.31) to assess tax payable under Part IV by the corporation for the year if the Minister has assessed the corporation's tax payable under that Part for the year under subsection 152(4.31).

**(2) The definition *eligible portion* in subsection 129(4) of the Act is replaced by the following:**

***eligible portion*** of a corporation's taxable capital gains or allowable capital losses for a taxation year is the total of all amounts each of which is the portion of a taxable capital gain or an allowable capital loss, as the case may be, of the corporation for the year from a disposition of a property that, except where the property was a designated property (within the meaning assigned by subsection 89(1)), cannot reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, a substantive CCPC, an investment corporation, a mortgage investment corporation or a mutual fund corporation. (*fraction admissible*)

**(3) The portion of paragraph (a) of the definition *non-eligible refundable dividend tax on hand* in subsection 129(4) of the Act before subparagraph (i) is replaced by the following:**

**(a)** if the corporation was a Canadian-controlled private corporation throughout the year or a substantive CCPC at any time in the year, the least of

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**40 (1) L'alinéa 129(1)b) de la même loi est remplacé par ce qui suit :**

**b)** doit effectuer le remboursement au titre de dividendes avec diligence après avoir envoyé l'avis de cotisation, si la société en fait la demande par écrit au cours de la période pendant laquelle le ministre pourrait établir, selon le cas :

**(i)** aux termes du paragraphe 152(4), une cotisation concernant l'impôt payable en vertu de la présente partie par la société pour l'année si ce paragraphe s'appliquait compte non tenu de son alinéa a),

**(ii)** aux termes du paragraphe 152(4.31), une cotisation concernant l'impôt payable en vertu de la partie IV par la société pour l'année si le ministre a établi une cotisation concernant l'impôt payable par la société en vertu de cette partie pour l'année en vertu du paragraphe 152(4.31).

**(2) La définition de *fraction admissible*, au paragraphe 129(4) de la même loi, est remplacée par ce qui suit :**

***fraction admissible*** Le total des montants représentant chacun la fraction d'un gain en capital imposable ou d'une perte en capital déductible, selon le cas, d'une société pour une année d'imposition résultant de la disposition d'un bien, qu'il n'est pas raisonnable de considérer (sauf si le bien est un bien désigné, au sens du paragraphe 89(1)) comme s'étant accumulée pendant que le bien, ou un bien de remplacement, appartenait à une société qui n'est pas une société privée sous contrôle canadien, une SPCC en substance, une société de placement, une société de placement hypothécaire ou une société de placement à capital variable. (*eligible portion*)

**(3) Le passage de l'alinéa a) de la définition de *impôt en main remboursable au titre de dividendes non déterminés* précédant le sous-alinéa (i), au paragraphe 129(4) de la même loi, est remplacé par ce qui suit :**

**a)** si la société était une société privée sous contrôle canadien tout au long de l'année ou une SPCC en substance à un moment donné au cours de l'année, la moins élevée des sommes suivantes :

**(4) Subsections (1) to (3) apply to taxation years that end on or after April 7, 2022.**

**41 (1) Paragraph 135.2(4)(f) and the portion of paragraph 135.2(4)(g) of the Act before subparagraph (ii) are replaced by the following:**

**(f)** any *security* (in this paragraph and paragraph (g), as defined in subsection 122.1(1)) of the trust that is held by a trust governed by a deferred profit sharing plan, FHSA, RDSP, RESP, RRIF, RRSP or TFSA (referred to in this paragraph and paragraph (g) as the "registered plan trust") is deemed not to be a qualified investment for the registered plan trust;

**(g)** if a registered plan trust governed by a TFSA or FHSA acquires at any time a security of the trust, Part XI.01 applies in respect of the security as though the acquisition is an advantage

**(i)** in relation to the TFSA or the FHSA, as the case may be, that is extended at that time to the controlling individual of the registered plan trust, and

**(2) Subsection (1) is deemed to have come into force on August 4, 2023.**

**42 (1) Paragraph (a) of the definition *credit union* in subsection 137(6) of the Act is replaced by the following:**

**(a)** it is

**(i)** a federal credit union, or

**(ii)** a provider of financial services that is organized on cooperative principles and incorporated by or under an Act of the legislature of a province,

**(2) Subparagraph (b)(i) of the definition *credit union* in subsection 137(6) of the Act is replaced by the following:**

**(i)** incorporated as credit unions or cooperative credit societies, each of which is described in paragraph (a), or all or substantially all of the members of which were credit unions, cooperatives or a combination of those entities,

**(3) Paragraph (b) of the definition *member* in subsection 137(6) of the Act is replaced by the following:**

**(4) Les paragraphes (1) à (3) s'appliquent aux années d'imposition se terminant à compter du 7 avril 2022.**

**41 (1) L'alinéa 135.2(4)f) et le passage de l'alinéa 135.2(4)g) de la même loi avant le sous-alinéa (ii) sont remplacés par ce qui suit :**

**f)** tout *titre* (s'entendant, au présent alinéa et à l'alinéa g), au sens du paragraphe 122.1(1)) de la fiducie qui est détenu par une fiducie régie par un régime de participation différée aux bénéfices, un CELI, un CELIAPP, un FERR, un REEI, un REER ou un REEE (appelée « fiducie régie par un régime enregistré » au présent alinéa et à l'alinéa g)) est réputé ne pas être un placement admissible pour la fiducie régie par un régime enregistré;

**g)** si une fiducie régie par un régime enregistré dans le cadre d'un CELI ou d'un CELIAPP acquiert, à un moment donné, un titre de la fiducie, la partie XI.01 s'applique relativement au titre comme si l'acquisition représentait un avantage qui :

**(i)** d'une part, est relatif au CELI ou au CELIAPP, selon le cas, accordé à ce moment au particulier contrôlant de la fiducie régie par un régime enregistré,

**(2) Le paragraphe (1) est réputé être entré en vigueur le 4 août 2023.**

**42 (1) L'alinéa a) de la définition de *caisse de crédit*, au paragraphe 137(6) de la même loi, est remplacé par ce qui suit :**

**a)** il s'agit, selon le cas :

**(i)** d'une coopérative de crédit fédérale,

**(ii)** d'un fournisseur de services financiers fondé sur le principe coopératif et constitué par une loi provinciale ou sous son régime,

**(2) Le sous-alinéa b)(i) de la définition de *caisse de crédit*, au paragraphe 137(6) de la même loi, est remplacé par ce qui suit :**

**(i)** constituées en caisses de crédit ou associations coopératives de crédit, dont chacune est visée à l'alinéa a) ou dont la totalité, ou presque, des membres est composée de caisses de crédit, de coopératives ou des deux,

**(3) L'alinéa b) de la définition de *membre*, au paragraphe 137(6) de la même loi, est remplacé par ce qui suit :**

**(b)** a registered retirement savings plan, a registered retirement income fund, a TFSA, a FHSA or a registered education savings plan, the annuitant, holder or subscriber under which is a person described in paragraph (a). (*membre*)

**(4) Subsections (1) and (2) are deemed to have come into force on January 1, 2016.**

**(5) Subsection (3) is deemed to have come into force on April 1, 2023.**

**43 (1) Paragraph (b) of the definition *excluded premium* in subsection 146.01(1) of the Act is replaced by the following:**

**(b)** was an amount transferred directly from a FHSA, registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan,

**(2) Subsection (1) is deemed to have come into force on November 28, 2023.**

**44 (1) Paragraph (c) of the definition *excluded premium* in subsection 146.02(1) of the Act is replaced by the following:**

**(c)** was an amount transferred directly from a FHSA, registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan; or

**(2) Subsection (1) is deemed to have come into force on November 28, 2023.**

**45 (1) The portion of paragraph (c) of the definition *qualifying person* in subsection 146.4(1) of the Act before subparagraph (ii) is replaced by the following:**

**(c)** an individual who is a qualifying family member in relation to the beneficiary if

**(i)** at or before that time, the beneficiary has attained the age of majority and, other than for the purposes of paragraph (4)(b.1), is not a beneficiary under a disability savings plan,

**(2) The portion of subsection 146.4(1.5) of the Act before paragraph (a) is replaced by the following:**

**b)** tout régime enregistré d'épargne-retraite, fonds enregistré de revenu de retraite, compte d'épargne libre d'impôt, compte d'épargne libre d'impôt pour l'achat d'une première propriété ou régime enregistré d'épargne-études dont le rentier, le titulaire ou le souscripteur, selon le cas, est une personne visée à l'alinéa a). (*member*)

**(4) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2016.**

**(5) Le paragraphe (3) est réputé être entré en vigueur le 1er avril 2023.**

**43 (1) L'alinéa b) de la définition de *prime exclue*, au paragraphe 146.01(1) de la même loi, est remplacé par ce qui suit :**

**b)** il s'agit d'un montant transféré directement d'un CELIAPP, d'un régime enregistré d'épargne-retraite, d'un régime de pension agréé, d'un fonds enregistré de revenu de retraite ou d'un régime de participation différée aux bénéfices;

**(2) Le paragraphe (1) est réputé être entré en vigueur le 28 novembre 2023.**

**44 (1) L'alinéa c) de la définition de *prime exclue*, au paragraphe 146.02(1) de la même loi, est remplacé par ce qui suit :**

**c)** est un montant transféré directement d'un CELIAPP, d'un régime enregistré d'épargne-retraite, d'un régime de pension agréé, d'un fonds enregistré de revenu de retraite ou d'un régime de participation différée aux bénéfices;

**(2) Le paragraphe (1) est réputé être entré en vigueur le 28 novembre 2023.**

**45 (1) Le passage de l'alinéa c) de la définition de *responsable* précédant le sous-alinéa (ii), au paragraphe 146.4(1) de la même loi, est remplacé par ce qui suit :**

**c)** tout particulier qui est un membre de la famille admissible relativement au bénéficiaire dans des circonstances où les faits ci-après s'avèrent :

**(i)** à ce moment ou antérieurement, le bénéficiaire a atteint l'âge de la majorité et, sauf pour l'application de l'alinéa (4)b.1), n'est pas bénéficiaire d'un régime d'épargne-invalidité,

**(2) Le passage du paragraphe 146.4(1.5) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Beneficiary replacing holder**

**(1.5)** Any holder of a disability savings plan who was a qualifying person in relation to the beneficiary under the plan at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1), or who was a successor holder because of paragraph (4)(b.1), ceases to be a holder of the plan and the beneficiary becomes the holder of the plan if

**(3) The portion of subsection 146.4(1.6) of the Act before paragraph (a) is replaced by the following:**

**Entity replacing holder**

**(1.6)** If an entity described in subparagraph (a)(ii) or (iii) of the definition *qualifying person* in subsection (1) is appointed in respect of a beneficiary of a disability savings plan and a holder of the plan was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of that definition, or was a successor holder because of paragraph (4)(b.1),

**(4) Subsection 146.4(1.7) of the Act is replaced by the following:**

**Rules applicable in case of dispute**

**(1.7)** If a dispute arises as a result of an issuer's acceptance of a qualifying family member who was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1), or who was a successor holder because of paragraph (4)(b.1), as a holder of a disability savings plan, from the time the dispute arises until the time that the dispute is resolved or an entity becomes the holder of the plan under subsection (1.5) or (1.6), the holder of the plan shall use their best efforts to avoid any reduction in the fair market value of the property held by the plan trust, having regard to the reasonable needs of the beneficiary under the plan.

**(5) Subparagraph 146.4(4)(b)(iv) of the Act is replaced by the following:**

> **(iv)** a qualifying person (other than a person described in paragraph (c) of the definition *qualifying person* in subsection (1)) in relation to the beneficiary at the time the rights are acquired, or

**Remplacement du titulaire par le bénéficiaire**

**(1.5)** Le titulaire d'un régime d'épargne-invalidité qui était le responsable du bénéficiaire du régime au moment de sa conclusion (ou de la conclusion d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1), ou qui était le titulaire remplaçant par l'effet de l'alinéa (4)b.1), cesse d'être titulaire du régime, et le bénéficiaire le devient, si les conditions ci-après sont réunies :

**(3) Le passage du paragraphe 146.4(1.6) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Remplacement du titulaire par une entité**

**(1.6)** Si une entité visée aux sous-alinéas a)(ii) ou (iii) de la définition de *responsable* au paragraphe (1) est désignée relativement au bénéficiaire d'un régime d'épargne-invalidité et que l'un des titulaires du régime était le responsable du bénéficiaire au moment de la conclusion du régime (ou d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de cette définition, ou était le titulaire remplaçant par l'effet de l'alinéa (4)b.1), les règles ci-après s'appliquent :

**(4) Le paragraphe 146.4(1.7) de la même loi est remplacé par ce qui suit :**

**Règles applicables en cas de différend**

**(1.7)** En cas de différend au sujet de l'acceptation par l'émetteur d'un régime d'épargne-invalidité, à titre de titulaire du régime, d'un membre de la famille admissible qui était le responsable du bénéficiaire du régime au moment de sa conclusion (ou de la conclusion d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1), ou qui était le titulaire remplaçant par l'effet de l'alinéa (4)b.1), depuis le moment où le différend prend naissance jusqu'au moment où, selon le cas, le différend est réglé ou une entité devient titulaire du régime en raison de l'application des paragraphes (1.5) ou (1.6), le titulaire du régime doit faire de son mieux pour éviter toute baisse de la juste valeur marchande des biens détenus par la fiducie de régime, compte tenu des besoins raisonnables du bénéficiaire.

**(5) Le sous-alinéa 146.4(4)b)(iv) de la même loi est remplacé par ce qui suit :**

> **(iv)** le responsable (autre qu'une personne visée à l'alinéa c) de la définition de *responsable* au paragraphe (1)) du bénéficiaire au moment où les droits sont acquis,

**(6) Subsection 146.4(4) of the Act is amended by adding the following after paragraph (b):**

**(b.1)** before 2027, as a consequence of the death of a qualifying family member who was the remaining holder of the plan immediately before death, the plan may allow one qualifying family member — in respect of which the conditions set out in paragraph (c) of the definition *qualifying person* in subsection (1) are met — to acquire rights as a successor of the holder of the plan;

**(7) The portion of paragraph 146.4(13)(e) of the Act before subparagraph (i) is replaced by the following:**

**(e)** if the issuer enters into the plan with a qualifying family member who was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1), or who was a successor holder because of paragraph (4)(b.1),

**(8) Subsection 146.4(14) of the Act is replaced by the following:**

**Issuer's liability**

**(14)** If, after reasonable inquiry, an issuer of a disability savings plan is of the opinion that an individual's contractual competence to enter into a disability savings plan is in doubt, no action lies against the issuer for

**(a)** entering into a plan, under which the individual is the beneficiary, with a qualifying family member who was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1); or

**(b)** allowing a qualifying family member to acquire rights as a successor of the holder of the plan under paragraph (4)(b.1).

**46 (1) The definition *survivor* in subsection 146.6(1) of the Act is replaced by the following:**

***survivor*** of a holder means another individual who is, immediately before the holder's death, a spouse or common-law partner of the holder. (*survivant*)

**(6) Le paragraphe 146.4(4) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**b.1)** avant 2027, par suite du décès d'un membre de la famille admissible qui était le dernier titulaire du régime immédiatement avant son décès, le régime peut permettre à un membre de la famille admissible, à l'égard duquel les conditions énoncées à l'alinéa c) de la définition de *responsable* au paragraphe (1) sont remplies, d'acquérir les droits à titre de successeur du titulaire du régime;

**(7) Le passage de l'alinéa 146.4(13)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**e)** ayant conclu le régime avec un membre de la famille admissible, lequel était le responsable du bénéficiaire du régime au moment de sa conclusion (ou de la conclusion d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1), ou lequel était un titulaire remplaçant par l'effet de l'alinéa (4)b.1) :

**(8) Le paragraphe 146.4(14) de la même loi est remplacé par ce qui suit :**

**Responsabilité de l'émetteur**

**(14)** Si, après enquête raisonnable, l'émetteur d'un régime d'épargne-invalidité est d'avis qu'il y a doute quant à la capacité d'un particulier de contracter un régime d'épargne-invalidité, nulle action ne peut être intentée contre lui pour, selon le cas :

**a)** avoir conclu le régime, dont le particulier est bénéficiaire, avec un membre de la famille admissible qui était le responsable du bénéficiaire au moment de la conclusion du régime (ou d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1);

**b)** avoir permis à un membre de famille admissible d'acquérir des droits à titre de successeur du titulaire du régime en application de l'alinéa (4)b.1).

**46 (1) La définition de *survivant*, au paragraphe 146.6(1) de la même loi, est remplacée par ce qui suit :**

***survivant*** Le particulier qui, immédiatement avant le décès du titulaire, était son époux ou conjoint de fait. (*survivor*)

**(2) The definition *bénéficiaire* in subsection 146.6(1) of the French version of the Act is replaced by the following:**

***bénéficiaire*** Relativement à un CELIAPP, s'entend d'un particulier (y compris une succession) ou d'un donataire reconnu qui a droit à une distribution du CELIAPP après le décès du titulaire du CELIAPP. (*beneficiary*)

**(3) Paragraph (b) of the definition *annual FHSA limit* in subsection 146.6(1) of the Act is replaced by the following:**

**(b)** the amount determined by the formula

**$8,000 + D – (E – F)**

where

**D** is the amount of the FHSA carryforward for the taxation year,

**E** is the taxpayer's net RRSP-to-FHSA transfer amount at the end of the taxation year, and

**F** is the total of all amounts, each of which is an amount determined in respect of each preceding taxation year that is

**(i)** if the taxpayer had not started their maximum participation period in the year, nil, or

**(ii)** in any other case, the lesser of

**(A)** the amount determined by the formula

**G – H**

where

**G** is the amount determined for E in the year, and

**H** is the amount determined for F in the year, and

**(B)** $8,000 plus the amount of the FHSA carryforward for the year, and

**(4) The description of B in paragraph (b) of the definition *FHSA carryforward* in subsection 146.6(1) of the Act is replaced by the following:**

**B** is the amount determined in paragraph (a) of the definition *annual FHSA limit* for the preceding taxation year plus the total of all contributions made to a FHSA in the preceding taxation year by the taxpayer after the taxpayer's first qualifying withdrawal from a FHSA, and

**(2) La définition de *bénéficiaire*, au paragraphe 146.6(1) de la version française de la même loi, est remplacée par ce qui suit :**

***bénéficiaire*** Relativement à un CELIAPP, s'entend d'un particulier (y compris une succession) ou d'un donataire reconnu qui a droit à une distribution du CELIAPP après le décès du titulaire du CELIAPP. (*beneficiary*)

**(3) L'alinéa b) de la définition de *plafond annuel au titre du CELIAPP*, au paragraphe 146.6(1) de la même loi, est remplacé par ce qui suit :**

**b)** le montant obtenu par la formule suivante :

**8 000 $ + D – (E – F)**

où :

**D** représente le montant des cotisations reporté pour l'année d'imposition;

**E** le montant net de transfert de REER à CELIAPP du contribuable à la fin de l'année d'imposition;

**F** le total des sommes dont chacune représente une somme calculée relativement à chacune des années d'imposition précédente qui est :

**(i)** zéro, si la période de participation maximale du contribuable n'a pas commencé dans l'année d'imposition précédente,

**(ii)** dans les autres cas, la moins élevée des sommes suivantes :

**(A)** la somme obtenue par la formule suivante :

**G – H**

où :

**G** représente la somme obtenue pour l'élément E dans l'année d'imposition,

**H** la somme obtenue pour l'élément F dans l'année d'imposition,

**(B)** 8 000 $ plus le montant des cotisations reporté pour l'année d'imposition;

**(4) L'élément B de la formule figurant à l'alinéa b) de la définition *montant des cotisations reporté*, au paragraphe 146.6(1) de la même loi, est remplacé par ce qui suit :**

**B** la somme obtenue pour l'alinéa a) de la définition de *plafond annuel au titre du CELIAPP* pour l'année d'imposition précédente plus la somme des cotisations que le contribuable a versées dans un CELIAPP au cours de l'année d'imposition précédente après le premier retrait admissible d'un CELIAPP par le contribuable;

**(5) Subsection 146.6(1) of the Act is amended by adding the following in alphabetical order:**

***net RRSP-to-FHSA transfer amount*** of a holder at a particular time means the amount by which

**(a)** the total of all amounts transferred under paragraph 146(16)(a.2), at or before that time, to a FHSA of the holder

exceeds

**(b)** the total of all amounts designated by the holder under paragraph (a) of the definition *designated amount* in subsection 207.01(1) at or before that time. (*montant net de transfert de REER à CELIAPP*)

**(6) Section 146.6 of the Act is amended by adding the following after subsection (3):**

**Amount credited to a deposit**

**(3.1)** An amount that is credited or added to a deposit that is a FHSA as interest or other income in respect of the FHSA is deemed not to be received by the holder of the FHSA or any other person solely because of that crediting or adding.

**(7) Subparagraph 146.6(5)(b)(ii) of the Act is replaced by the following:**

**(ii)** the taxpayer's net RRSP-to-FHSA transfer amount as at the end of the year.

**(8) The descriptions of A and B in paragraph 146.6(7)(c) of the Act are replaced by the following:**

**A** is the amount that is the total fair market value, immediately before the particular time, of all property held by a FHSA under which the last holder of the transferor FHSA is the last holder, and

**B** is the *excess FHSA amount* (as defined in subsection 207.01(1)) of the last holder of the transferor FHSA immediately before the particular time.

**(9) Paragraphs 146.6(13)(a) and (b) of the Act are replaced by the following:**

**(a)** the survivor is a qualifying individual at that time and

**(i)** no contributions or transfers are made to the FHSA by the survivor after that time,

**(5) Le paragraphe 146.6(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***montant net de transfert de REER à CELIAPP*** Relativement à un titulaire, à un moment donné, l'excédent éventuel du total visé à l'alinéa a) sur le total visé à l'alinéa b) :

**a)** le total des sommes transférées en vertu de l'alinéa 146(16)a.2), au plus tard au moment donné, à un CELIAPP du titulaire;

**b)** le total des montants désignés par le titulaire visés à l'alinéa a) de la définition de *montant désigné* au paragraphe 207.01(1) au plus tard au moment donné. (*net RRSP-to-FHSA transfer amount*)

**(6) L'article 146.6 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Somme portée au crédit d'un dépôt**

**(3.1)** Toute somme qui est ajoutée à un dépôt qui est un CELIAPP, ou qui est portée au crédit d'un tel dépôt, à titre d'intérêts ou d'autres revenus relatifs au compte est réputée ne pas être reçue par le titulaire du compte ou toute autre personne en raison seulement de cet ajout ou de ce crédit.

**(7) Le sous-alinéa 146.6(5)b)(ii) de la même loi est remplacé par ce qui suit :**

**(ii)** le montant net de transfert de REER à CELIAPP du contribuable à la fin de l'année.

**(8) Les éléments A et B de la formule figurant à l'alinéa 146.6(7)c) de la même loi sont remplacés par ce qui suit :**

**A** représente la juste valeur marchande totale, immédiatement avant le moment donné, de tous les biens détenus par un CELIAPP dans le cadre duquel le dernier titulaire du CELIAPP donné est le dernier titulaire;

**B** l'*excédent de CELIAPP* (au sens du paragraphe 207.01(1)) du dernier titulaire du CELIAPP donné immédiatement avant le moment donné.

**(9) Les alinéas 146.6(13)a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** le survivant est un particulier déterminé à ce moment et, à la fois :

**(i)** aucune cotisation ni aucun transfert n'est fait au CELIAPP par le survivant après ce moment,

**(ii)** no qualifying withdrawals are made from the FHSA after that time, and

**(iii)** the balance of the FHSA is transferred to a RRSP or RRIF of the survivor or distributed to the survivor in accordance with subsection (14), by the end of the year following the year of death; or

**(b)** the survivor is not a qualifying individual at that time, in which case the balance of the FHSA is to be transferred to a FHSA, RRSP or RRIF of the survivor, or distributed to the survivor in accordance with subsection (14), by the end of the year following the year of death.

**(10) Paragraph 146.6(15)(a) of the Act is replaced by the following:**

**(a)** if a payment is made from the estate to a FHSA, RRSP or RRIF of the survivor, the payment is deemed to be a transfer from the FHSA to the extent that it is so designated jointly by the legal representative and the survivor in prescribed form filed with the Minister;

**(11) Paragraphs 146.6(17)(a) to (c) of the Act are replaced by the following:**

**(a)** subsections (3) and (3.1) do not apply in respect of that arrangement after the particular time;

**(b)** if the taxpayer who was the last holder under the arrangement is not deceased at the particular time, an amount equal to the fair market value of all the property of the arrangement, determined at that time, is deemed for the purposes of subsection 146.6(6) to be received at that time by the taxpayer out of or under the FHSA;

**(c)** if the last holder is deceased at the particular time, the proportion of the fair market value of all the property of the arrangement that a beneficiary is entitled to, determined at that time, is deemed for the purposes of subsection 146.6(14) to be distributed at that time from the FHSA to the beneficiary;

**(d)** if the arrangement governs a trust,

**(i)** the trust is deemed to have disposed, immediately before the particular time, of each property held by the trust for proceeds equal to the property's fair market value immediately before the particular time,

**(ii)** the trust is deemed to have acquired, at the particular time, each such property at a cost equal to that fair market value,

**(ii)** aucun retrait admissible n'est fait au CELIAPP après ce moment,

**(iii)** le solde du CELIAPP est transféré au REER ou au FERR du survivant ou lui est distribué conformément au paragraphe (14), avant la fin de l'année qui suit l'année du décès;

**b)** le survivant n'est pas un particulier déterminé à ce moment, auquel cas, le solde du CELIAPP doit être transféré au CELIAPP, au REER ou au FERR du survivant ou lui être distribué conformément au paragraphe (14), avant la fin de l'année qui suit l'année du décès.

**(10) L'alinéa 146.6(15)a) de la même loi est remplacé par ce qui suit :**

**a)** si un paiement est effectué par la succession à un CELIAPP, un REER ou un FERR du survivant, le paiement est réputé être un transfert du CELIAPP dans la mesure où il est ainsi désigné conjointement par le représentant légal et le survivant dans le formulaire prescrit déposé auprès du ministre;

**(11) Les alinéas 146.6(17)a) à c) de la même loi sont remplacés par ce qui suit :**

**a)** les paragraphes (3) et (3.1) ne s'appliquent pas à l'égard de cet arrangement après le moment donné;

**b)** si le contribuable qui était le dernier titulaire de l'arrangement immédiatement avant qu'il cesse d'être un CELIAPP n'est pas décédé au moment donné, un montant égal à la juste valeur marchande de tous les biens de l'arrangement, déterminé à ce moment, est réputé, pour l'application du paragraphe 146.6(6), être reçu à ce moment par le contribuable dans le cadre du CELIAPP;

**c)** si le dernier titulaire est décédé au moment donné, la proportion de la juste valeur marchande de tous les biens de l'arrangement auquel un bénéficiaire a droit, déterminée à ce moment, est réputée, pour l'application du paragraphe 146.6(14), être distribuée à ce moment du CELIAPP au bénéficiaire;

**d)** si l'arrangement régit une fiducie, à la fois :

**(i)** la fiducie est réputée avoir disposé, immédiatement avant le moment donné, de chaque bien qu'elle détient pour un produit égal à la juste valeur marchande du bien immédiatement avant le moment donné,

**(iii)** the trust's last taxation year that began before the particular time is deemed to have ended immediately before the particular time, and

**(iv)** a taxation year of the trust is deemed to begin at the particular time; and

**(e)** if the arrangement is a deposit or contract,

**(i)** the arrangement is deemed to have been disposed of immediately before the particular time for proceeds equal to its fair market value immediately before the particular time,

**(ii)** if the arrangement is an annuity contract, the contract is deemed to be a separate annuity contract issued and effected at the particular time otherwise than pursuant to or as a FHSA, and

**(iii)** each person who has an interest or, for civil law, a right in the separate annuity contract or deposit, as the case may be, at the particular time is deemed to acquire the interest at the particular time at a cost equal to its fair market value at the particular time.

**(ii)** la fiducie est réputée avoir acquis, au moment donné, chacun de ces biens à un coût égal à cette juste valeur marchande,

**(iii)** la dernière année d'imposition de la fiducie qui a commencé avant le moment donné est réputée avoir pris fin immédiatement avant le moment donné,

**(iv)** une année d'imposition de la fiducie est réputée commencer au moment donné;

**e)** si l'arrangement est un dépôt ou un contrat, à la fois :

**(i)** l'arrangement est réputé avoir fait l'objet d'une disposition immédiatement avant le moment donné pour un produit égal à sa juste valeur marchande immédiatement avant le moment donné,

**(ii)** si l'arrangement est un contrat de rente, il est réputé être un contrat de rente distinct établi et souscrit au moment donné autrement que dans le cadre d'un CELIAPP,

**(iii)** chaque personne qui a un intérêt ou, pour l'application du droit civil, un droit sur le contrat de rente distinct ou le dépôt, selon le cas, au moment donné est réputée acquérir le droit à ce moment à un coût égal à sa juste valeur marchande à ce même moment.

**(12) Subsections (1) to (11) are deemed to have come into force on April 1, 2023.**

**(12) Les paragraphes (1) à (11) sont réputés être entrés en vigueur le 1er avril 2023.**

**47 (1) Paragraph 152(1)(b) of the Act is replaced by the following:**

**(b)** the amount of tax, if any, deemed by any of subsections 120(2) or (2.2), 122.5(3) to (3.003), 122.51(2), 122.7(2) or (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

**47 (1) L'alinéa 152(1)b) de la même loi est remplacé par ce qui suit :**

**b)** le montant d'impôt qui est réputé, en application des paragraphes 120(2) ou (2.2), 122.5(3) à (3.003), 122.51(2), 122.7(2) ou (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année.

**(2) Paragraph 152(1)(b) of the Act, as enacted by subsection (1), is replaced by the following:**

**(b)** the amount of tax, if any, deemed by any of subsections 120(2) or (2.2), 122.5(3) to (3.003), 122.51(2), 122.7(2) or (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2), 127.45(2) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

**(2) L'alinéa 152(1)b) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**b)** le montant d'impôt qui est réputé, en application des paragraphes 120(2) ou (2.2), 122.5(3) à (3.003), 122.51(2), 122.7(2) ou (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2), 127.45(2) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année.

**(3) The portion of subsection 152(3.1) of the Act before paragraph (a) is replaced by the following:**

**Definition of *normal reassessment period***

**(3.1)** For the purposes of subsections (4), (4.01), (4.2), (4.3), (4.31), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

**(3) Le passage du paragraphe 152(3.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Période normale de nouvelle cotisation**

**(3.1)** Pour l'application des paragraphes (4), (4.01), (4.2), (4.3), (4.31), (5) et (9), la période normale de nouvelle cotisation applicable à un contribuable pour une année d'imposition s'étend sur les périodes suivantes :

**(4) Paragraph 152(4)(b) of the Act is amended by striking out "or" at the end of subparagraph (vi), by adding "or" at the end of subparagraph (vii) and by adding the following after subparagraph (vii):**

**(viii)** is made to give effect to the application of section 245 in respect of a transaction, unless the transaction was disclosed by the taxpayer to the Minister in accordance with section 237.3 or 237.4;

**(4) L'alinéa 152(4)b) de la même loi est modifié par adjonction, après le sous-alinéa (vii), de ce qui suit :**

**(viii)** est établie en vue de l'application de l'article 245 relativement à une opération, sauf si le contribuable a divulgué l'opération au ministre conformément aux articles 237.3 ou 237.4;

**(5) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.7):**

**(b.8)** a prescribed form that is required to be filed under subsection 18.2(18) is not filed as and when required, and the assessment, reassessment or additional assessment is

**(i)** made before the day that is

**(A)** in the case of a taxpayer described in paragraph (3.1)(a), four years after the day on which the prescribed form containing the prescribed information is filed, and

**(B)** in any other case, three years after the day on which the prescribed form containing the prescribed information is filed, and

**(ii)** in respect of the application of paragraph 12(1)(l.2), subsection 18.2(2), clause 95(2)(f.11)(ii)(D) or (E) or paragraph 111(1)(a.1);

**(5) Le paragraphe 152(4) de la même loi est modifié par adjonction, après l'alinéa b.7), de ce qui suit :**

**b.8)** un formulaire prescrit qui doit être produit en vertu du paragraphe 18.2(18) n'est pas produit selon les modalités et dans les délais prévus, et la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est :

**(i)** établie avant la date qui suit, selon le cas :

**(A)** dans le cas du contribuable visé à l'alinéa (3.1)a), de quatre ans le jour où le formulaire prescrit contenant les renseignements prescrits est produit,

**(B)** dans les autres cas, de trois ans le jour où le formulaire prescrit contenant les renseignements prescrits est produit,

**(ii)** relativement à l'application de l'alinéa 12(1)(l.2), du paragraphe 18.2(2), des divisions 95(2)f.11)(ii)(D) ou (E) ou de l'alinéa 111(1)a.1);

**(6) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.8), as enacted by subsection (5):**

**(b.9)** the assessment, reassessment or additional assessment

**(i)** is made before the day that is three years after the end of the normal reassessment period for the taxpayer in respect of the year and made in respect of a disposition, in the year, of shares of the capital

**(6) Le paragraphe 152(4) de la même loi est modifié par adjonction, après l'alinéa b.8), édicté par le paragraphe (5), de ce qui suit :**

**b.9)** la cotisation, la nouvelle cotisation ou la cotisation supplémentaire :

**(i)** est établie avant la date qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et vise une disposition dans l'année d'actions du

stock of a corporation resident in Canada in respect of which the taxpayer filed an election under paragraph 84.1(2.31)(h), or

**(ii)** is made before the day that is 10 years after the end of the normal reassessment period for the taxpayer in respect of the year and made in respect of a disposition, in the year, of shares of the capital stock of a corporation resident in Canada in respect of which the taxpayer filed an election under paragraph 84.1(2.32)(i);

**(7) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.9), as enacted by subsection (6):**

**(b.10)** a prescribed form that is required to be filed by the taxpayer, or a partnership of which the taxpayer is a member, under subsection 127.45(15) or (18) is not filed as and when required, and the assessment, reassessment or additional assessment is made in relation to transactions or events described in subsections 127.45(11) to (14) or (16) and (17) before the day that is

**(i)** in the case of a taxpayer described in paragraph (3.1)(a), four years after the day on which the form is filed, and

**(ii)** in any other case, three years after the day on which the form is filed;

**(8) Paragraph 152(4.01)(b) of the Act is amended by striking out "or" at the end of subparagraph (ix) and by adding the following after subparagraph (x):**

**(xi)** the transaction referred to in subparagraph (4)(b)(viii), or

**(xii)** the transactions or events referred to in paragraph (4)(b.10);

**(9) Section 152 of the Act is amended by adding the following after subsection (4.3):**

**Consequential assessment of Part IV tax**

**(4.31)** Notwithstanding subsections (4), (4.1) and (5), if a taxpayer in a taxation year receives a taxable dividend from a corporation that, as a result of having paid the dividend, is entitled to a dividend refund, the Minister may, within one year after the expiration of the normal reassessment period for the taxpayer in respect of the year, assess or reassess the tax, interest or penalties

capital-actions d'une société résidant au Canada à l'égard de laquelle le contribuable a produit un choix en vertu de l'alinéa 84.1(2.31)h),

**(ii)** est établie avant la date qui suit de dix ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et vise une disposition dans l'année d'actions du capital-actions d'une société résidant au Canada à l'égard de laquelle le contribuable a produit un choix en vertu de l'alinéa 84.1(2.32)i);

**(7) Le paragraphe 152(4) de la même loi est modifié par adjonction, après l'alinéa b.9), édicté par le paragraphe (6) de ce qui suit :**

**b.10)** un formulaire prescrit qui doit être produit en vertu des paragraphes 127.45(15) ou (18) par le contribuable, ou une société de personnes dont il est associé, n'est pas produit selon les modalités et dans les délais prévus, et la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est établie relativement aux opérations ou aux événements visés aux paragraphes 127.45(11) à (14) ou (16) et (17) avant la date qui suit, selon le cas :

**(i)** dans le cas du contribuable visé à l'alinéa (3.1)a), de quatre ans le jour où le formulaire est produit,

**(ii)** dans les autres cas, de trois ans le jour où le formulaire est produit;

**(8) L'alinéa 152(4.01)b) de la même loi est modifié par adjonction, après le sous-alinéa (x), de ce qui suit :**

**(xi)** l'opération visée au sous-alinéa (4)b)(viii),

**(xii)** les opérations ou événements visés à l'alinéa (4)b.10);

**(9) L'article 152 de la même loi est modifié par adjonction, après le paragraphe (4.3), de ce qui suit :**

**Cotisation corrélative de l'impôt de la partie IV**

**(4.31)** Malgré les paragraphes (4), (4.1) et (5), lorsqu'un contribuable reçoit, dans une année d'imposition, un dividende imposable d'une société qui, par l'effet du paiement du dividende, a droit à un remboursement au titre de dividendes, le ministre peut, dans un délai d'un an suivant l'expiration de la période normale de nouvelle cotisation du contribuable pour l'année, établir une cotisation ou une nouvelle cotisation à l'égard de l'impôt, des

payable under Part IV by the taxpayer in respect of the taxable dividend.

**(10) Subsection (1) is deemed to have come into force on January 1, 2022.**

**(11) Subsection (2) is deemed to have come into force on March 28, 2023.**

**(12) Subsections (3) and (9) apply to assessments or reassessments of taxpayers for taxation years that end on or after April 7, 2022.**

**(13) Subsection (4) applies to transactions that occur on or after January 1, 2024.**

**(14) Subsection (5) applies in respect of taxation years that begin on or after October 1, 2023.**

**(15) Subsection (6) comes into force or is deemed to have come into force on January 1, 2024.**

**(16) Subparagraph 152(4.01)(b)(xi) of the Act, as enacted by subsection (8), applies to transactions that occur on or after January 1, 2024.**

**48 (1) Paragraph 153(1)(v) of the Act is replaced by the following:**

**(v)** a payment out of or under a FHSA, if the amount is required by section 146.6 to be included in computing a taxpayer's income

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**49 (1) Paragraph 157(3)(e) of the Act is replaced by the following:**

**(e)** 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3) or 127.44(2) to have been paid on account of the corporation's tax payable under this Part for the year.

**(2) Paragraph 157(3)(e) of the Act, as enacted by subsection (1), is replaced by the following:**

**(e)** 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2) or 127.45(2) to have been paid on account of the corporation's tax payable under this Part for the year.

intérêts ou des pénalités payables par le contribuable en vertu de la partie IV à l'égard du dividende imposable.

**(10) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**(11) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.**

**(12) Les paragraphes (3) et (9) s'appliquent aux cotisations ou aux nouvelles cotisations de contribuables pour les années d'imposition se terminant à compter du 7 avril 2022.**

**(13) Le paragraphe (4) s'applique aux opérations se produisant à compter du 1er janvier 2024.**

**(14) Le paragraphe (5) s'applique relativement aux années d'imposition commençant après septembre 2023.**

**(15) Le paragraphe (6) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**(16) Le sous-alinéa 152(4.01)b)(xi) de la même loi, modifié par le paragraphe (8), s'applique aux opérations se produisant à compter du 1er janvier 2024.**

**48 (1) L'alinéa 153(1)v) de la même loi est remplacé par ce qui suit :**

**v)** un paiement provenant soit d'un CELIAPP, si le montant est à inclure dans le calcul du revenu d'un contribuable pour l'application de l'article 146.6;

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**49 (1) L'alinéa 157(3)e) de la même loi est remplacé par ce qui suit :**

**e)** le douzième du total des montants dont chacun est réputé, par les paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3) ou 127.44(2), avoir été payé au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

**(2) L'alinéa 157(3)e) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**e)** le douzième du total des montants dont chacun est réputé, par les paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2) ou 127.45(2), avoir été payé au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

**(3) Paragraph 157(3.1)(c) of the Act is replaced by the following:**

**(c)** 1/4 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3) or 127.44(2) to have been paid on account of the corporation's tax payable under this Part for the taxation year.

**(4) Paragraph 157(3.1)(c) of the Act, as enacted by subsection (3), is replaced by the following:**

**(c)** 1/4 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2) or 127.45(2) to have been paid on account of the corporation's tax payable under this Part for the taxation year.

**(5) Subsections (1) and (3) are deemed to have come into force on January 1, 2022.**

**(6) Subsections (2) and (4) are deemed to have come into force on March 28, 2023.**

**50 (1) Section 160 of the Act is amended by adding the following after subsection (1.4):**

**Joint liability — intergenerational business transfer**

**(1.5)** If a taxpayer and one or more other taxpayers have jointly elected under

**(a)** paragraph 84.1(2.31)(h) in respect of a disposition of shares of the capital stock of a corporation resident in Canada, they are jointly and severally, or solidarily, liable for the tax payable by the taxpayer under this Part to the extent that the tax payable by the taxpayer is greater than it would have been if the disposition had satisfied the conditions of subsection 84.1(2.31); or

**(b)** paragraph 84.1(2.32)(i) in respect of a disposition of shares of the capital stock of a corporation resident in Canada, they are jointly and severally, or solidarily, liable for the tax payable by the taxpayer under this Part to the extent that the tax payable by the taxpayer is greater than it would have been if the disposition had satisfied the conditions of subsection 84.1(2.32).

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**51 (1) Subsection 160.2(2.3) of the Act is repealed.**

**(3) L'alinéa 157(3.1)c) de la même loi est remplacé par ce qui suit :**

**c)** le quart du total des sommes dont chacune est réputée en vertu des paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3) ou 127.44(2) avoir été payée au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

**(4) L'alinéa 157(3.1)c) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :**

**c)** le quart du total des sommes dont chacune est réputée en vertu des paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2) ou 127.45(2) avoir été payée au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

**(5) Les paragraphes (1) et (3) sont réputés être entrés en vigueur le 1er janvier 2022.**

**(6) Les paragraphes (2) et (4) sont réputés être entrés en vigueur le 28 mars 2023.**

**50 (1) L'article 160 de la même loi est modifié par adjonction, après le paragraphe (1.4), de ce qui suit :**

**Responsabilité solidaire — transferts intergénérationnels d'entreprises**

**(1.5)** Si un contribuable et un ou plusieurs autres contribuables ont fait un choix conjoint relativement à une disposition d'actions du capital-actions d'une société résidant au Canada en vertu de :

**a)** l'alinéa 84.1(2.31)h), ils sont solidairement responsables du paiement de l'impôt payable par le contribuable en vertu de la présente partie, dans la mesure où cet impôt est supérieur à ce qu'il aurait été si la disposition avait rempli les conditions énoncées au paragraphe 84.1(2.31);

**b)** l'alinéa 84.1(2.32)i), ils sont solidairement responsables du paiement de l'impôt payable par le contribuable en vertu de la présente partie, dans la mesure où cet impôt est supérieur à ce qu'il aurait été si la disposition avait rempli les conditions énoncées au paragraphe 84.1(2.32).

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**51 (1) Le paragraphe 160.2(2.3) de la même loi est abrogé.**

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**52 (1) Subsection 163(2) of the Act is amended by adding the following after paragraph (d):**

**(d.1)** the amount, if any, by which

**(i)** the amount that would be deemed by subsection 127.44(2) to be paid for the year by the person if that amount were calculated by reference to the information provided in the return or form filed for the year under that subsection

exceeds

**(ii)** the amount that is deemed by subsection 127.44(2) to be paid for the year by the person,

**(2) Paragraph 163(2)(d.1) of the Act, as enacted by subsection (1), is replaced by the following:**

**(d.1)** the amount, if any, by which

**(i)** the amount that would be deemed by subsection 127.44(2) or 127.45(2), as the case may be, to be paid for the year by the person if that amount were calculated by reference to the information provided in the return or form filed for the year under that subsection

exceeds

**(ii)** the amount that is deemed by subsection 127.44(2) or 127.45(2), as the case may be, to be paid for the year by the person,

**(3) Subsection (1) is deemed to have come into force on January 1, 2022.**

**(4) Subsection (2) is deemed to have come into force on March 28, 2023.**

**53 (1) The Act is amended by adding the following after section 183.2:**

## PART II.2

# Tax on Repurchases of Equity

### Definitions

**183.3 (1)** The following definitions apply in this Part.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**52 (1) Le paragraphe 163(2) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :**

**d.1)** l'excédent éventuel du montant visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

**(i)** le montant qui, s'il était calculé d'après les renseignements indiqués dans la déclaration produite ou le formulaire présenté conformément au paragraphe 127.44(2), serait réputé par ce paragraphe payé pour l'année par cette personne,

**(ii)** le montant réputé par ce paragraphe payé pour l'année par cette personne;

**(2) L'alinéa 163(2)d.1) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**d.1)** l'excédent éventuel du montant visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

**(i)** le montant qui, s'il était calculé d'après les renseignements indiqués dans la déclaration produite ou le formulaire présenté conformément aux paragraphes 127.44(2) ou 127.45(2), selon le cas, serait réputé par ce paragraphe payé pour l'année par cette personne,

**(ii)** le montant réputé par les paragraphes 127.44(2) ou 127.45(2), selon le cas, payé pour l'année par cette personne;

**(3) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**(4) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.**

**53 (1) La même loi est modifiée par adjonction, après l'article 183.2, de ce qui suit :**

## PARTIE II.2

# Impôt sur les rachats de capitaux propres

### Définitions

**183.3 (1)** Les définitions qui suivent s'appliquent à la présente partie.

***covered entity*** for a taxation year, means an entity that is a corporation, trust or partnership if at any time in the taxation year

**(a)** equity of the entity is listed on a designated stock exchange; and

**(b)** the entity is

**(i)** a corporation resident in Canada (other than a mutual fund corporation),

**(ii)** a trust that

**(A)** is a *real estate investment trust* (as defined in subsection 122.1(1)),

**(B)** is a SIFT trust, or

**(C)** would be a SIFT trust (other than a mutual fund trust that has one or more classes of units in continuous distribution) if

**(I)** each reference in paragraph (a) of the definition *non-portfolio property* in subsection 122.1(1) to "subject entity" were read as "corporation, partnership or trust" and paragraph (c) of that definition were read without reference to the words "in Canada",

**(II)** paragraph (a) of the definition *Canadian real, immovable or resource property* in subsection 248(1) were read without reference to the words "situated in Canada", and

**(III)** the definitions *timber resource property* in subsection 13(21) and *Canadian resource property* in subsection 66(15) were read without references to the words "in Canada", or

**(iii)** a partnership that

**(A)** is a SIFT partnership, or

**(B)** would be a SIFT partnership if

**(I)** each reference in paragraph (a) of the definition *non-portfolio property* in subsection 122.1(1) to "subject entity" were read as "corporation, partnership or trust" and paragraph (c) of that definition were read without reference to the words "in Canada",

**(II)** paragraph (a) of the definition *Canadian real, immovable or resource property* in

***capitaux propres*** Relativement à une entité, s'entend des biens suivants :

**a)** si elle est une société, une action de son capital-actions;

**b)** si elle est une fiducie, une participation au revenu ou au capital de la fiducie;

**c)** si elle est une société de personnes, une participation à titre d'associé de la société de personnes. (*equity*)

***dette substantielle*** Relativement à une entité visée, s'entend de capitaux propres qui, conformément à leurs modalités, à la fois :

**a)** ne sont pas convertibles ou échangeables, sauf contre, selon le cas :

**(i)** des capitaux propres qui, s'ils étaient émis, constitueraient une dette substantielle de la même entité visée,

**(ii)** une obligation ou un billet de l'entité visée, dont la juste valeur marchande n'excède pas le total des montants visés aux sous-alinéas d)(i) à (iv),

**(iii)** des capitaux propres qui seraient émis seulement à la suite d'un événement déclencheur au titre d'une disposition relative aux fonds propres d'urgence en cas de non-viabilité comprise dans les modalités des capitaux propres afin de respecter les exigences réglementaires en matière de capital applicables à l'entité visée;

**b)** ne confèrent pas de droit de vote d'élire les membres du conseil d'administration, les fiduciaires ou le commandité (le cas échéant) de l'entité visée, sauf en cas d'inexécution des conditions des capitaux propres;

**c)** exige que la somme de tout dividende ou autre distribution payable soit calculée :

**(i)** soit en tant que montant fixe,

**(ii)** soit en fonction du pourcentage d'une somme égale à la juste valeur marchande de la contrepartie de l'émission des capitaux propres si le pourcentage est :

**(A)** soit fixe,

**(B)** soit déterminé en fonction du taux d'intérêt du marché (y compris les bons du Trésor du

subsection 248(1) were read without reference to the words "situated in Canada", and

**(III)** the definitions *timber resource property* in subsection 13(21) and *Canadian resource property* in subsection 66(15) were read without references to the words "in Canada". (*entité visée*)

***equity*** of an entity, means, if the entity is

**(a)** a corporation, a share of the capital stock of the corporation;

**(b)** a trust, an income or capital interest in the trust; and

**(c)** a partnership, an interest as a member of the partnership. (*capitaux propres*)

***qualifying issuance*** means any portion of an issuance that is made

**(a)** in exchange for

**(i)** cash,

**(ii)** a bond, debenture, note or other security (other than equity) of the covered entity that was issued solely for cash consideration, the terms of which confer on the holder the right to make the exchange, or

**(iii)** any combination of properties described in subparagraph (i) or (ii);

**(b)** to an employee of the covered entity (or an entity related to the covered entity) in the course of the employee's employment; or

**(c)** to a person or partnership, with which the covered entity deals at arm's length and is not affiliated, in exchange for property used in the covered entity's active business. (*émission admissible*)

***reorganization transaction*** means a redemption, acquisition or cancellation of equity by a covered entity that is made

**(a)** on an exchange of equity by a holder for consideration that includes equity (other than substantive debt) of

**(i)** the covered entity,

gouvernement du Canada), plus un montant fixe, le cas échéant;

**d)** donnent droit au détenteur des capitaux propres de recevoir au rachat, à l'acquisition ou à l'annulation des capitaux propres par l'entité visée ou par une personne ou une société de personnes avec laquelle l'entité visée a un lien de dépendance ou à laquelle l'entité visée est affiliée, un montant qui ne dépasse pas le total des montants suivants :

**(i)** la juste valeur marchande de la contrepartie pour laquelle les capitaux propres ont été émis,

**(ii)** le montant des distributions ou des dividendes impayés sur les capitaux propres qui sont payables au détenteur,

**(iii)** la prime payable au détenteur uniquement en raison du rachat anticipé, de l'annulation ou de l'acquisition anticipée des capitaux propres,

**(iv)** tout autre montant relativement à une somme visée aux sous-alinéas (i) à (iii) attribuable à une augmentation de la valeur d'une monnaie (sauf la monnaie canadienne) par rapport à la monnaie canadienne. (*substantive debt*)

***émission admissible*** Toute partie d'une émission qui est effectuée, selon le cas :

**a)** en échange, selon le cas :

**(i)** d'une somme d'argent,

**(ii)** d'une obligation, d'une débenture, d'un billet ou autre titre (autre que des capitaux propres) de l'entité visée émis uniquement en contrepartie d'une somme d'argent, dont les conditions confèrent à son détenteur un tel droit d'échange;

**(iii)** de toute combinaison d'un ou plusieurs des biens visés aux sous-alinéas (i) ou (ii);

**(b)** à un employé de l'entité visée (ou d'une entité qui lui est liée) dans le cadre de son emploi;

**(c)** à une personne ou société de personnes, avec laquelle l'entité visée n'a aucun lien de dépendance et n'est pas affiliée, en échange de biens utilisés dans l'entreprise exploitée activement de l'entité visée. (*qualifying issuance*)

***entité affiliée déterminée*** Relativement à une entité visée à un moment donné, s'entend d'une société, fiducie ou société de personnes (appelée « entité affiliée » à la présente définition) si, à ce moment, selon le cas :

**(ii)** another entity that is related to the covered entity immediately before the exchange and is a covered entity immediately after the exchange, or

**(iii)** another covered entity that controls the covered entity (or an amalgamated successor entity of the covered entity) immediately after the exchange;

**(b)** on an amalgamation of the covered entity with one or more other predecessor corporations to which subsection 87(1) applies if a holder of that equity, immediately before the amalgamation, receives consideration that includes equity (other than substantive debt) of the new corporation (within the meaning of subsection 87(1)) for the disposition of their equity on the amalgamation;

**(c)** on a winding-up of the covered entity during which all or substantially all of the property owned by the covered entity is distributed to the equity holders of the covered entity;

**(d)** in the course of a reorganization to which paragraph 55(3)(a) or (b) applies;

**(e)** on a *qualifying disposition* (as defined in subsection 107.4(1));

**(f)** on a *qualifying exchange* (as defined in subsection 132.2(1));

**(g)** at the demand of a holder in accordance with the conditions referred to in paragraph 108(2)(a), included in the issued units of the trust, for an amount that does not exceed the fair market value of the equity at the time of the redemption, acquisition or cancellation; or

**(h)** pursuant to the exercise of a statutory right of dissent by a holder of the equity. (*opération de réorganisation*)

***specified affiliate*** at any time, of a covered entity, means a corporation, trust or partnership (in this definition referred to as an "affiliate") where, at that time,

**(a)** if the affiliate is a corporation, the covered entity

**(i)** controls the corporation, or

**(ii)** has a direct or indirect interest in the equity of the corporation having a fair market value equal to more than 50% of the fair market value of the total equity of the corporation;

**(b)** if the affiliate is a trust, the covered entity

**a)** si l'entité affiliée est une société, l'entité visée, selon le cas :

**(i)** contrôle la société,

**(ii)** a une participation directe ou indirecte dans les capitaux propres de la société dont la juste valeur marchande est égale à plus de 50 % de la juste valeur marchande du total des capitaux propres de la société;

**b)** si l'entité affiliée est une fiducie, l'entité visée, selon le cas :

**(i)** est un *bénéficiaire détenant une participation majoritaire* (au sens du paragraphe 251.1(3)) de la fiducie,

**(ii)** a une participation directe ou indirecte dans les capitaux propres de la fiducie dont la juste valeur marchande est égale à plus de 50 % de la juste valeur marchande du total des capitaux propres de la fiducie;

**c)** si l'entité affiliée est une société de personnes, l'entité visée, selon le cas :

**(i)** est un associé détenant une participation majoritaire de la société de personnes,

**(ii)** a une participation directe ou indirecte dans les capitaux propres de la société de personnes dont la juste valeur marchande est égale à plus de 50 % de la juste valeur marchande du total des capitaux propres de la société de personnes. (*specified affiliate*)

***entité visée*** Est une entité visée pour une année d'imposition l'entité qui est une société, une fiducie ou une société de personnes si, à un moment donné de l'année :

**a)** les capitaux propres de l'entité sont inscrits à la cote d'une bourse de valeurs désignée;

**b)** l'entité est :

**(i)** une société résidant au Canada (sauf une société de placement à capital variable),

**(ii)** une fiducie qui, selon le cas :

**(A)** est une *fiducie de placement immobilier* (au sens du paragraphe 122.1(1)),

**(B)** est une fiducie intermédiaire de placement déterminée,

**(i)** is a *majority-interest beneficiary* (as defined in subsection 251.1(3)) of the trust, or

**(ii)** has a direct or indirect interest in the equity of the trust having a fair market value equal to more than 50% of the fair market value of the total equity of the trust; and

**(c)** if the affiliate is a partnership, the covered entity

**(i)** is a majority-interest partner of the partnership, or

**(ii)** has a direct or indirect interest in the equity of the partnership having a fair market value equal to more than 50% of the fair market value of the total equity of the partnership. (*entité affiliée déterminée*)

***substantive debt*** of a covered entity means equity that, in accordance with its terms

**(a)** is not convertible or exchangeable other than for

**(i)** equity that if issued would be substantive debt of the same covered entity,

**(ii)** a bond, debenture or note of the covered entity, the fair market value of which does not exceed the total of the amounts referred to in subparagraphs (d)(i) to (iv), or

**(iii)** equity that would be issued only after the occurrence of a trigger event pursuant to a non-viability contingent capital provision included in the terms of the equity to satisfy regulatory capital requirements applicable to the covered entity;

**(b)** is non-voting in respect of the election of the board of directors, the trustees or the general partner (as applicable) of the covered entity, except in the event of a failure or default under the terms or conditions of the equity;

**(c)** requires the amount of any dividend or other distribution payable to be calculated

**(i)** as a fixed amount, or

**(ii)** by reference to a percentage of an amount equal to the fair market value of the consideration for which the equity was issued if the percentage is

**(A)** fixed, or

**(C)** serait une fiducie intermédiaire de placement déterminée (sauf une fiducie de fonds commun de placement ayant une ou plusieurs catégories d'unités en distribution continue) si :

**(I)** la mention « entité déterminée » à l'alinéa a) de la définition de *bien hors portefeuille* au paragraphe 122.1(1) était remplacée par « société de personnes, fiducie ou société » et qu'il n'était pas tenu compte du passage « au Canada » à l'alinéa c) de cette définition,

**(II)** il n'était pas tenu compte du passage « situé au Canada » à l'alinéa a) de la définition de *bien canadien immeuble, réel ou minier* au paragraphe 248(1),

**(III)** il n'était pas tenu compte du passage « du Canada » dans la définition de *avoir forestier* au paragraphe 13(21) et des passages « au Canada » et « situé au Canada » dans la définition de *avoir minier canadien* au paragraphe 66(15),

**(iii)** une société de personnes qui, selon le cas :

**(A)** est une société de personnes intermédiaire de placement déterminée,

**(B)** serait une société de personnes intermédiaire de placement déterminée si :

**(I)** la mention « entité déterminée » à l'alinéa a) de la définition de *bien hors portefeuille* au paragraphe 122.1(1) était remplacée par « société de personnes, fiducie ou société » et qu'il n'était pas tenu compte du passage « au Canada » à l'alinéa c) de cette définition,

**(II)** il n'était pas tenu compte du passage « situé au Canada » à l'alinéa a) de la définition de *bien canadien immeuble, réel ou minier* au paragraphe 248(1),

**(III)** il n'était pas tenu compte du passage « du Canada » dans la définition de *avoir forestier* au paragraphe 13(21) et des passages « au Canada » et « situé au Canada » dans la définition de *avoir minier canadien* au paragraphe 66(15). (*covered entity*)

***opération de réorganisation*** S'entend d'un rachat, d'une acquisition ou d'une annulation de capitaux propres par l'entité visée qui est effectué soit :

**a)** lors d'un échange de capitaux propres par un détenteur pour une contrepartie qui comprend des

**(B)** determined by reference to a market interest rate (including a Government of Canada Treasury Bill) plus a fixed amount, if any; and

**(d)** entitles any holder of the equity to receive, on the redemption, cancellation or acquisition of the equity by the covered entity or by a person or partnership with whom the covered entity does not deal at arm's length or is affiliated, an amount that does not exceed the total of the following amounts:

**(i)** the fair market value of the consideration for which the equity was issued,

**(ii)** any unpaid distributions or dividends on the equity that are payable to the holder,

**(iii)** any premium that is payable to the holder solely due to the early redemption, cancellation or acquisition of the equity, and

**(iv)** any other amount in respect of an amount described in subparagraphs (i) to (iii) that is attributable to an increase in the value of a currency other than Canadian currency relative to Canadian currency. (*dette substantielle*)

capitaux propres (sauf une dette substantielle), selon le cas :

**(i)** de l'entité visée,

**(ii)** d'une autre entité qui était liée à l'entité visée immédiatement avant l'échange et qui est une entité visée immédiatement après l'échange,

**(iii)** d'une autre entité visée qui contrôle l'entité visée (ou une entité fusionnée remplaçante de l'entité visée) immédiatement après l'échange;

**b)** lors d'une fusion de l'entité visée avec une ou plusieurs autres sociétés remplacées à laquelle s'applique le paragraphe 87(1) si un détenteur des capitaux propres immédiatement avant la fusion reçoit une contrepartie comprenant des capitaux propres (sauf une dette substantielle) de la nouvelle société (au sens du paragraphe 87(1)) pour la disposition de ses capitaux propres lors de la fusion;

**c)** lors d'une liquidation de l'entité visée au cours de laquelle, la totalité, ou presque, de ses biens sont distribués à ses détenteurs de capitaux propres;

**d)** dans le cadre d'une réorganisation à laquelle s'appliquent les alinéas 55(3)a) ou b);

**e)** lors d'une *disposition admissible* (au sens du paragraphe 107.4(1));

**f)** lors d'un *échange admissible* (au sens du paragraphe 132.2(1));

**g)** à la demande d'un détenteur conformément aux conditions visées à l'alinéa 108(2)a), comprises dans les unités émises de la fiducie, en contrepartie d'une somme n'excédant pas la juste valeur marchande des capitaux propres au moment du rachat, de l'acquisition ou de l'annulation;

**h)** par suite de l'exercice d'un droit de dissidence prévu par une loi par le détenteur des capitaux propres. (*reorganization transaction*)

**Tax payable**

**(2)** Each person or partnership that is a covered entity for a taxation year shall pay a tax for the taxation year equal to the amount determined by the formula

**0.02 × (A + B – C)**

where

**A** is the total fair market value of equity (other than substantive debt) of the covered entity that is

**Impôt payable**

**(2)** Chaque personne ou société de personnes qui est une entité visée pour une année d'imposition doit pour l'année d'imposition payer un impôt équivalent au montant obtenu par la formule suivante :

**0,02 × (A + B – C)**

où :

**A** représente la juste valeur marchande totale des capitaux propres (sauf une dette substantielle) de l'entité

redeemed, acquired or cancelled in the taxation year by the covered entity, other than equity that is

**(a)** redeemed, acquired or cancelled in a reorganization transaction, or

**(b)** acquired from a specified affiliate, if that equity was previously deemed by subsection (5) to have been acquired by the covered entity and was previously included in the description of A;

**B** is

**(a)** if equity of a covered entity (other than substantive debt) is redeemed, acquired or cancelled in the taxation year pursuant to a *reorganization transaction* described in paragraph (a) or (b) of that definition and any portion of the consideration received by a holder for the equity is not equity consideration described in paragraph (a) or (b) of the definition *reorganization transaction*, the amount determined by the formula

**D – E**

where

**D** is the total fair market value of the equity of the covered entity (other than substantive debt) that is redeemed, acquired or cancelled in a reorganization transaction described in this paragraph; and

**E** is the total fair market value of any equity consideration described in paragraph (a) or (b) of the definition *reorganization transaction* that is received by a holder as consideration for the equity that is redeemed, acquired or cancelled in a reorganization transaction described in this paragraph; and

**(b)** in any other case, nil; and

**C** is the total fair market value of equity (other than substantive debt) of the covered entity that is

**(a)** issued in a qualifying issuance in the taxation year, or

**(b)** disposed of in the taxation year by a specified affiliate of the covered entity (except a disposition to the covered entity or another specified affiliate of the covered entity), if that equity was previously deemed by subsection (5) to have been acquired by the covered entity and was previously included in the description of A.

visée qui sont rachetés, acquis ou annulés au cours de l'année d'imposition par l'entité visée, à l'exception des capitaux propres qui sont :

**a)** soit rachetés, acquis ou annulés dans le cadre d'une opération de réorganisation,

**b)** soit acquis auprès d'une entité affiliée déterminée, si ces capitaux propres étaient antérieurement réputés, en vertu du paragraphe (5), avoir été acquis par l'entité visée et antérieurement inclus dans la valeur de l'élément A;

**B** :

**a)** si les capitaux propres d'une entité visée (sauf une dette substantielle) sont rachetés, acquis ou annulés au cours de l'année d'imposition conformément à une *opération de réorganisation* visée aux alinéas a) ou b) de cette définition et toute partie de la contrepartie qu'un détenteur reçoit pour les capitaux propres n'est pas une contrepartie comprenant des capitaux propres visée aux alinéas a) ou b) de la définition de *opération de réorganisation*, la somme obtenue par la formule suivante :

**D – E**

où :

**D** représente le total de la juste valeur marchande des capitaux propres de l'entité visée (sauf une dette substantielle) qui sont rachetés, acquis ou annulés dans le cadre d'une opération de réorganisation visée au présent alinéa;

**E** la juste valeur marchande totale de toute contrepartie comprenant des capitaux propres visée aux alinéas a) ou b) de la définition de *opération de réorganisation* qu'un détenteur reçoit à titre de contrepartie pour les capitaux propres qui sont rachetés, acquis ou annulés dans le cadre d'une opération de réorganisation visée au présent alinéa;

**b)** dans les autres cas, zéro;

**C** la juste valeur marchande totale des capitaux propres (sauf une dette substantielle) de l'entité visée qui sont :

**a)** soit émis dans le cadre d'une émission admissible au cours de l'année d'imposition,

**b)** soit disposés au cours de l'année d'imposition par une entité affiliée déterminée de l'entité visée (à l'exception d'une disposition effectuée en faveur de l'entité visée ou d'une autre entité affiliée déterminée de l'entité visée) si ces capitaux propres étaient antérieurement réputés, en vertu

**Tax payable — anti-avoidance**

**(3)** Equity that is redeemed, acquired or cancelled, or that is issued by a covered entity, as part of a *transaction* (as defined in subsection 245(1)) or series of transactions shall be included in the description of A or B or excluded from the description of C in subsection (2) (as the case may be) if it is reasonable to consider that the primary purpose of the transaction or series is to cause a decrease in the amount referred to in the description of A or B in that subsection or an increase in the amount referred to in the description of C in that subsection.

***De minimis* rule**

**(4)** Despite subsection (2), if the total of the amounts determined for A and B in subsection (2) for a taxation year is less than $1,000,000 (prorated based upon the number of days in the taxation year if the taxation year is less than 365 days), no tax is payable under this Part for the taxation year.

**Similar transactions**

**(5)** For the purposes of subsection (2), if a specified affiliate of a covered entity acquires equity of the covered entity, the equity is deemed to be acquired by the covered entity unless the specified affiliate is

**(a)** a registered securities dealer that

**(i)** acquires the equity in the capacity of an agent in the ordinary course of business, and

**(ii)** disposes of the equity, other than to the covered entity or another specified affiliate of the covered entity, within a reasonable period of time that is consistent with the holding of equity in the ordinary course of business;

**(b)** a trust established for the benefit of employees and former employees of the covered entity (or of a specified affiliate of the covered entity) that satisfies the following conditions

**(i)** the trust is an employee benefit plan, and

**(ii)** the terms of the trust provide that any equity of the covered entity acquired or held by the trust cannot be transferred to, or otherwise be available for the benefit of, the covered entity or any specified affiliate of the covered entity;

du paragraphe (5), avoir été acquis par l'entité visée et antérieurement inclus dans la valeur de l'élément A.

**Impôt payable — anti-évitement**

**(3)** Les capitaux propres rachetés, acquis ou annulés, ou émis par une entité visée, dans le cadre d'une *opération* (au sens du paragraphe 245(1)) ou d'une série d'opérations sont inclus dans la valeur de l'élément A ou B ou exclus de la valeur de l'élément C du paragraphe (2), selon le cas, s'il est raisonnable de considérer que l'objet principal de l'opération ou de la série est la réduction de la somme visée à l'élément A ou B ou l'augmentation de la somme visée à l'élément C de ce paragraphe.

**Seuil minimum**

**(4)** Malgré le paragraphe (2), lorsque le total des sommes déterminées pour les éléments A et B de la formule figurant au paragraphe (2) pour une année d'imposition est inférieure à 1 000 000 $ (calculée au prorata en fonction du nombre de jours de l'année d'imposition si elle est inférieure à trois cent soixante-cinq jours), aucun impôt n'est payable en vertu de la présente partie pour l'année d'imposition.

**Opérations semblables**

**(5)** Pour l'application du paragraphe (2), lorsqu'une entité affiliée déterminée d'une entité visée acquiert des capitaux propres de l'entité visée, les capitaux propres sont réputés être acquis par l'entité visée, sauf si l'entité affiliée déterminée, selon le cas :

**a)** est un courtier en valeurs mobilières inscrit qui, à la fois :

**(i)** acquiert les capitaux propres comme mandataire dans le cours normal des activités d'une entreprise,

**(ii)** dispose des capitaux propres, sauf en faveur de l'entité visée ou d'une autre entité affiliée déterminée de l'entité visée, dans un délai raisonnable conforme à la détention de capitaux propres dans le cours normal des activités d'une entreprise;

**b)** est une fiducie établie au profit des employés et des anciens employés de l'entité visée (ou d'une entité affiliée déterminée de l'entité visée) qui remplit les conditions suivantes :

**(i)** elle est un régime de prestations aux employés,

**(ii)** l'acte de fiducie prévoit que les capitaux propres de l'entité visée acquis ou détenus par la fiducie ne

**(c)** a trust governed by an employees profit sharing plan; or

**(d)** a trust governed by a deferred profit sharing plan.

peuvent être transférés ou autrement mis à la disposition de l'entité visée ou l'une de ses entités affiliées déterminées;

**c)** est une fiducie régie par un régime de participation des employés aux bénéfices;

**d)** est une fiducie régie par un régime de participation différée aux bénéfices.

**Similar transactions — anti-avoidance**

**(6)** If it is reasonable to consider that one of the main purposes of a *transaction* (as defined in subsection 245(1)) or series of transactions is to cause a person or partnership to acquire equity of a covered entity to avoid the tax otherwise payable under this Part, the person or partnership shall be deemed to be a specified affiliate of the covered entity from the time that the transaction or series commenced until immediately after the time the transaction or series ends.

**Opérations semblables — anti-évitement**

**(6)** S'il est raisonnable de considérer que l'un des objets principaux d'une *opération* (au sens du paragraphe 245(1)) ou d'une série d'opérations est l'acquisition par une personne ou une société de personnes de capitaux propres d'une entité visée afin d'éviter l'impôt autrement payable en vertu de la présente partie, la personne ou la société de personnes est réputée être une entité affiliée déterminée de l'entité visée à compter du début de l'opération ou de la série jusqu'au moment immédiatement après sa fin.

**Return**

**183.4 (1)** If a covered entity redeems, acquires or cancels equity of the entity in a taxation year,

**(a)** if the entity is a corporation, on or before the day it is required to file its return of income under Part I for the year, the corporation shall file with the Minister a return for the year under this Part in prescribed form;

**(b)** if the entity is a trust, within 90 days after the end of the taxation year, the trustee of the trust shall file with the Minister a return for the year under this Part in prescribed form; and

**(c)** if the entity is a partnership, a member of the partnership that has authority to act for the partnership shall file with the Minister a return for the year under this Part in prescribed form on or before the earlier of

**(i)** the day that is five months after the end of the taxation year, and

**(ii)** March 31 in the calendar year immediately following the calendar year in which the taxation year ended.

**Déclaration**

**183.4 (1)** Si une entité visée rachète, acquiert ou annule ses capitaux propres au cours d'une année d'imposition, elle doit remplir les conditions suivantes :

**a)** lorsqu'elle est une société, elle produit, au plus tard le jour où elle est tenue de produire sa déclaration de revenu en vertu de la partie I pour l'année, auprès du ministre une déclaration pour l'année en vertu de la présente partie selon le formulaire prescrit;

**b)** lorsqu'elle est une fiducie, dans les quatre-vingt-dix jours qui suivent la fin de l'année d'imposition, le fiduciaire produit auprès du ministre une déclaration pour l'année en vertu de la présente partie selon le formulaire prescrit;

**c)** lorsqu'elle est une société de personnes, un associé de la société de personnes qui a le pouvoir d'agir au nom de celle-ci produit auprès du ministre une déclaration pour l'année en vertu de la présente partie selon le formulaire prescrit au plus tard au premier en date des jours suivants :

**(i)** le jour qui tombe cinq mois après la fin de l'année d'imposition,

**(ii)** le 31 mars de l'année civile qui suit celle où se termine l'année d'imposition.

**Payment**

**(2)** Every covered entity that is liable to pay tax under this Part for a taxation year, shall

**Paiement**

**(2)** Toute entité tenue de payer de l'impôt en vertu de la présente partie pour une année d'imposition doit :

**(a)** if the entity is a corporation or trust, pay its tax payable under this Part for the year to the Receiver General on or before its balance-due day for the year; and

**(b)** if the entity is a partnership, pay its tax payable under this Part for the year to the Receiver General on or before the day which the partnership is required to file a return for the year under paragraph (1)(c).

**Provisions applicable to Part**

**(3)** Subsections 150(2) and (3), sections 152, 158 and 159, subsections 160.1(1) and 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

**(2) Subsection (1) applies to transactions that occur after 2023.**

**54 (1) Subparagraph (a)(iii) of the description of I in subsection 204.2(1.2) of the Act is replaced by the following:**

**(iii)** an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 146.6(7), 147(19), 147.3(1) and (4) to (7) and 147.5(21) or in circumstances to which subsection 146(21) applies,

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**55 (1) The definition *excess FHSA amount* in subsection 207.01(1) of the Act is replaced by the following:**

***excess FHSA amount*** of an individual at a particular time in a taxation year means

**(a)** the amount determined by the formula

**A + B + C – D – E – F**

where

**A** is

**(i)** nil, if the individual had not started their maximum participation period in the preceding taxation year, and

**(ii)** the individual's excess FHSA amount determined at the end of the immediately preceding taxation year, in any other case;

**B** is the total of all amounts each of which is a contribution made to a FHSA by the individual in the taxation year at or before the particular time;

**a)** si elle est une société ou une fiducie, payer ses impôts en vertu de la présente partie pour l'année au receveur général au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année;

**b)** si elle est une société de personnes, payer ses impôts en vertu de la présente partie pour l'année au receveur général au plus tard le jour où la société de personnes est tenue de produire une déclaration pour l'année en application de l'alinéa (1)c).

**Dispositions applicables**

**(3)** Les paragraphes 150(2) et (3), les articles 152, 158 et 159, les paragraphes 160.1(1) et 161(1) et (11), les articles 162 à 167 et la section J de la partie I s'appliquent à la présente partie, avec les adaptations nécessaires.

**(2) Le paragraphe (1) s'applique aux opérations se produisant après 2023.**

**54 (1) Le sous-alinéa a)(iii) de l'élément I de la formule figurant au paragraphe 204.2(1.2) de la même loi est remplacé par ce qui suit :**

**(iii)** d'une somme transférée au régime pour le compte du particulier conformément à l'un des paragraphes 146(16), 146.6(7), 147(19), 147.3(1) et (4) à (7) et 147.5(21) ou dans les circonstances visées au paragraphe 146(21),

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**55 (1) La définition de *excédent de CELIAPP*, au paragraphe 207.01(1) de la même loi, est remplacée par ce qui suit :**

***excédent de CELIAPP*** Relativement à un particulier à un moment donné d'une année d'imposition, s'entend :

**a)** de la somme obtenue par la formule suivante :

**A + B + C – D – E – F**

où :

**A** représente :

**(i)** zéro, si la période de participation maximale du particulier n'a pas commencé dans l'année d'imposition précédente,

**(ii)** dans les autres cas, l'excédent de CELIAPP du particulier déterminé à la fin de l'année d'imposition précédente;

**B** le total des sommes représentant chacune une cotisation versée par le particulier à un CELIAPP dans l'année d'imposition au plus tard au moment donné;

**C** is the total of all amounts transferred in the taxation year under paragraph 146(16)(a.2), at or before the particular time, to a FHSA under which the individual is the holder;

**D** is the lesser of

**(i)** $8,000 plus an amount that would have been the individual's FHSA carryforward for the taxation year if each amount that was included in that individual's income under subsection 146.6(6) and could have been, immediately prior to the time it was received, a designated amount, had been designated by the individual as a designated amount, and

**(ii)** the amount determined by the formula

**$40,000 – G**

where

**G** is the total of all amounts that were deducted, could have been deducted or would have been deductible by the individual under subsection 146.6(5) in respect of all preceding taxation years if

**(A)** no amounts were transferred under paragraph 146(16)(a.2) to a FHSA of the individual, and

**(B)** notwithstanding clause (A), an amount had been contributed by the individual to a FHSA in each preceding taxation year that is the amount by which the individual's net RRSP-to-FHSA transfer amount at the end of that year exceeds the individual's net RRSP-to-FHSA transfer amount at the start of that year;

**E** is the total of all amounts each of which is a designated amount in respect of a transfer or withdrawal made by the individual in the taxation year before the particular time or an amount required to be included in computing the income of the individual under subsection 146.6(6) in the taxation year before the particular time; and

**F** is the total of all amounts, each of which is the portion of an amount required to be included in computing the income of the individual under subsection 146.6(6) in any preceding taxation year, to the extent that it did not reduce what otherwise would have been the individual's excess FHSA amount in any preceding taxation year; or

**(b)** where the Minister determines that the formula in paragraph (a) does not yield an appropriate result having regard to the circumstances of the individual, a

**C** le total des sommes transférées en vertu de l'alinéa 146(16)a.2) dans l'année d'imposition, au plus tard au moment donné, à un CELIAPP dont le particulier est le titulaire;

**D** la moins élevée des sommes suivantes :

**(i)** 8 000 $ plus un montant qui aurait été le montant des cotisations reporté du particulier pour l'année d'imposition si chaque somme qui était incluse dans son revenu en vertu du paragraphe 146.6(6) et qui aurait pu être, immédiatement avant le moment où elle est reçue, un montant désigné, a été désigné comme un montant désigné par le particulier,

**(ii)** la somme obtenue par la formule suivante :

**40 000 $ – G**

où :

**G** représente le total des sommes qui sont déduites, auraient pu être déduites ou auraient été déductibles en vertu du paragraphe 146.6(5) relativement aux années d'imposition précédentes si, à la fois :

**(A)** aucun montant n'avait été transféré à un CELIAPP du particulier en vertu de l'alinéa 146(16)a.2),

**(B)** malgré la division (A), un montant qui représente l'excédent du montant net de transferts de REER à CELIAPP du particulier à la fin de l'année sur le montant net de transferts de REER à CELIAPP du particulier au début de l'année avait été versé par le contribuable à un CELIAPP dans chaque année d'imposition précédente;

**E** le total des montants désignés dont chacun représente un montant relativement à un transfert ou à un retrait effectué par le particulier dans l'année d'imposition avant le moment donné ou une somme à inclure dans le calcul du revenu du particulier en vertu du paragraphe 146.6(6) pour l'année d'imposition avant le moment donné;

**F** le total des montants dont chacun représente la fraction d'un montant à inclure dans le calcul du revenu du particulier en vertu du paragraphe 146.6(6) dans une année d'imposition précédente dans la mesure où ce montant n'a pas réduit ce qui autrement aurait été l'excédent de CELIAPP du particulier dans une année d'imposition précédente;

**b)** si le ministre détermine que la somme obtenue par la formule figurant à l'alinéa a) devrait être moins élevée compte tenu des circonstances du particulier, de la

lower amount that, in the Minister's opinion, is appropriate in the circumstances. (*excédent de CELIAPP*)

**(2) Paragraph (a) of the definition *designated amount* in subsection 207.01(1) of the Act is replaced by the following:**

**(a)** a transfer in accordance with subparagraph 146.6(7)(b)(ii), to the extent that it does not exceed the total of all amounts transferred under paragraph 146(16)(a.2) to a FHSA under which the individual is the holder on or before the date of the designation less the total of all amounts previously designated under this paragraph; or

**(3) Paragraph (b) of the definition *swap transaction* in subsection 207.01(1) of the Act is amended by striking out "or" at the end of subparagraph (ii), by adding "or" at the end of subparagraph (iii) and by adding the following after subparagraph (iii):**

**(iv)** an amount transferred in accordance with paragraph 146(16)(a.2) or to which subsection 146.6(7) applies;

**(4) Subparagraph (d)(i) of the definition *swap transaction* in subsection 207.01(1) of the Act is replaced by the following:**

**(i)** both registered plans are RRIFs or RRSPs,

**(5) Paragraph (d) of the definition *swap transaction* in subsection 207.01(1) of the Act is amended by striking out "or" at the end of subparagraph (iii), by adding "or" at the end of subparagraph (iv) and by adding the following after subparagraph (iv):**

**(v)** both registered plans are FHSAs;

**(6) Subsections (1) to (3) are deemed to have come into force on April 1, 2023.**

**(7) Subsections (4) and (5) are deemed to have come into force on August 4, 2023.**

**56 (1) Paragraph (a) of the definition *refundable tax* in subsection 207.5(1) of the Act is replaced by the following:**

**(a)** 50% of all contributions (other than an excluded contribution made on or after March 28, 2023) made under the arrangement while it was a retirement compensation arrangement and before the end of the year, and

somme qui, de l'avis du ministre, convient dans les circonstances. (*excess FHSA amount*)

**(2) L'alinéa a) de la définition de *montant désigné*, au paragraphe 207.01(1) de la même loi, est remplacé par ce qui suit :**

**a)** soit d'un transfert conformément au sous-alinéa 146.6(7)b)(ii), dans la mesure où il ne dépasse pas le total des sommes transférées en vertu de l'alinéa 146(16)a.2) à un CELIAPP dont le particulier est le titulaire au plus tard au moment de la désignation, moins le total des sommes désignées antérieurement en application du présent alinéa;

**(3) L'alinéa b) de la définition de *opération de swap*, au paragraphe 207.01(1) de la même loi, est modifié par adjonction, après le sous-alinéa (iii), de ce qui suit :**

**(iv)** une somme transférée dans l'avis conformément à l'alinéa 146(16)a.2) ou à laquelle le paragraphe 146.6(7) s'applique;

**(4) Le sous-alinéa d)(i) de la définition de *opération de swap*, au paragraphe 207.01(1) de la même loi, est remplacé par ce qui suit :**

**(i)** des FEER ou des REER,

**(5) L'alinéa d) de la définition de *opération de swap*, au paragraphe 207.01(1) de la même loi, est modifié par adjonction, après le sous-alinéa (iv), de ce qui suit :**

**(v)** des CELIAPP;

**(6) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 1er avril 2023.**

**(7) Les paragraphes (4) et (5) sont réputés être entrés en vigueur le 4 août 2023.**

**56 (1) L'alinéa a) de la définition de *impôt remboursable*, au paragraphe 207.5(1) de la même loi, est remplacé par ce qui suit :**

**a)** la moitié des cotisations versées (sauf une cotisation exclue versée après le 27 mars 2023) dans le cadre de la convention avant la fin de l'année alors qu'elle était une convention de retraite;

**(2) Subsection 207.5(1) of the Act is amended by adding the following in alphabetical order:**

***excluded contribution*** means an amount paid or payable under a specified arrangement to obtain or renew a letter of credit or surety bond issued by a financial institution for the purposes of securing future retirement benefit payments out of or under the arrangement; (*cotisation exclue*)

***specified arrangement*** means a retirement compensation arrangement of which the primary purpose is to provide annual or more frequent periodic retirement benefit payments that are paid

**(a)** as supplemental benefits provided out of or under

**(i)** a registered pension plan,

**(ii)** a registered retirement savings plan,

**(iii)** a deferred profit sharing plan,

**(iv)** a pooled registered pension plan, or

**(v)** any combination of plans described in subparagraphs (i) to (iv), or

**(b)** under an arrangement that would, in the absence of subsection 147.1(8) and section 8504 of the *Income Tax Regulations*, substantially comply with the prescribed conditions for registration for a registered pension plan under section 8501 of those Regulations; (*convention déterminée*)

**(3) Subsections (1) and (2) are deemed to have come into force on March 28, 2023.**

**57 (1) The Act is amended by adding the following after section 207.7:**

**Definitions**

**207.71 (1)** The following definitions apply in this section.

***eligible employer*** means an employer that paid an amount, or that has a *predecessor employer* (as defined in subsection 8500(1) of the *Income Tax Regulations*) that paid an amount, before March 28, 2023, under a specified arrangement that is an excluded contribution. (*employeur admissible*)

**(2) Le paragraphe 207.5(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***convention déterminée*** Une convention de retraite dont l'objet principal est de prévoir des paiements de prestation de retraite à effectuer périodiquement à intervalles ne dépassant pas un an qui sont versés, selon le cas :

**a)** comme prestations complémentaires prévues dans le cadre :

**(i)** d'un régime de pension agréé,

**(ii)** d'un régime enregistré d'épargne-retraite,

**(iii)** d'un régime de participation différée,

**(iv)** d'un régime de pension agréé collectif,

**(v)** de toute combinaison des régimes visés aux sous-alinéas (i) à (iv);

**b)** aux termes d'une convention qui, en l'absence du paragraphe 147.1(8) et de l'article 8504 du *Règlement de l'impôt sur le revenu*, se conforment pour l'essentiel aux conditions d'agrément réglementaires pour un régime de pension agréé en vertu de l'article 8501 du même règlement. (*specified arrangement*)

***cotisation exclue*** Une somme payée ou payable dans le cadre d'une convention déterminée pour obtenir ou renouveler une lettre de crédit ou un cautionnement émis par une institution financière pour garantir les futurs paiements de prestation de retraite aux termes de la convention. (*excluded contribution*)

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 28 mars 2023.**

**57 (1) La même loi est modifiée par adjonction, après l'article 207.7, de ce qui suit :**

**Définitions**

**207.71 (1)** Les définitions qui suivent s'appliquent au présent article.

***employeur admissible*** Est un employeur qui a payé une somme, ou qui a un *employeur remplacé* (au sens du paragraphe 8500(1) du *Règlement de l'impôt sur le revenu*) qui a payé une somme, avant le 28 mars 2023, dans le cadre d'une convention déterminée qui est une cotisation exclue. (*eligible employer*)

***specified refundable tax*** of a specified arrangement at the end of a taxation year means the amount, if any, determined by the formula

**A – B**

where

**A** is the amount elected under paragraph (2)(c); and

**B** is the total of all amounts, if any, each of which is a refund as determined under subsection (3), in respect of a preceding taxation year. (*impôt remboursable déterminé*)

***impôt remboursable déterminé*** Relativement à une convention déterminée à la fin d'une année d'imposition, s'entend de la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente le montant choisi en vertu de l'alinéa (2)c);

**B** le total des montants éventuels dont chacun est un remboursement déterminé en vertu du paragraphe (3) relativement à une année d'imposition antérieure. (*specified refundable tax*)

**Election**

**(2)** Subsection (3) applies to a specified arrangement if

**(a)** an eligible employer, or the custodian of the arrangement, paid a refundable tax under this Part with respect to an excluded contribution made under the arrangement before March 28, 2023;

**(b)** the eligible employer files an election with the Minister in prescribed form and manner; and

**(c)** the election includes an elected amount that does not exceed the total amount of refundable tax paid with respect to excluded contributions made under the arrangement before March 28, 2023.

**Choix**

**(2)** Le paragraphe (3) s'applique à une convention déterminée si les conditions ci-après sont réunies :

**a)** un employeur admissible, ou le dépositaire de la convention, a payé un impôt remboursable prévu à la présente partie à l'égard d'une cotisation exclue versée aux termes de la convention avant le 28 mars 2023;

**b)** l'employeur admissible présente un choix au ministre, selon le formulaire prescrit et les modalités prescrites;

**c)** le choix comprend une somme choisie n'excédant pas le total de l'impôt remboursable versé à l'égard des cotisations exclues versées dans le cadre de la convention avant le 28 mars 2023.

**Amount of refund**

**(3)** If this subsection applies to a specified arrangement, the Minister may refund to the eligible employer, or to the custodian of the arrangement, an amount claimed on the return for a taxation year described in subsection 207.7(3), not exceeding the lesser of

**(a)** 50% of all retirement benefits paid in the taxation year directly by the eligible employer for the benefit of beneficiaries whose retirement benefits were secured under the specified arrangement with a letter of credit or surety bond issued by a financial institution, and

**(b)** the specified refundable tax of the specified arrangement at the end of the taxation year.

**Montant du remboursement**

**(3)** Si le présent paragraphe s'applique à une convention déterminée, le ministre peut rembourser à un employeur admissible, ou au dépositaire de la convention, un montant demandé dans la déclaration pour une année d'imposition visée au paragraphe 207.7(3), n'excédant pas le moindre des montants suivants :

**a)** la moitié des prestations de retraite versées dans l'année d'imposition directement par l'employeur admissible au profit des bénéficiaires dont les prestations de retraite ont été garanties dans le cadre de la convention déterminée par une lettre de crédit ou un cautionnement émis par une institution financière;

**b)** l'impôt remboursable déterminé de la convention déterminée à la fin de l'année d'imposition.

**Refundable tax definition**

**(4)** If an eligible employer claims a refund under subsection (3) for a taxation year, paragraph (c) of the definition *refundable tax* in subsection 207.5(1) is to be read as follows:

**Définition de impôt remboursable**

**(4)** Si un employeur admissible demande un remboursement en vertu du paragraphe (3) pour une année d'imposition, l'alinéa c) de la définition de *impôt remboursable* au paragraphe 207.5(1) est réputé avoir le libellé suivant :

**(c)** the total of

**(i)** 50% of all amounts paid as distributions to one or more persons (including amounts that are required by paragraph 12(1)(n.3) to be included in computing the recipient's income) under the arrangement while it was a retirement compensation arrangement and before the end of the year, other than a distribution paid where it is established, by subsequent events or otherwise, that the distribution was paid as part of a series of payments and refunds of contributions under the arrangement, and

**(ii)** all amounts determined under subsection 207.71(3) in respect of the specified arrangement for the year and a preceding year;

**(2) Subsection (1) applies to the 2024 and subsequent taxation years.**

**58 (1) The Act is amended by adding the following after section 211.91:**

**PART XII.7**

# Carbon Capture, Utilization and Storage

**Definitions**

**211.92 (1)** The following definitions apply in this Part and in section 127.44.

***actual eligible use percentage***, in respect of a CCUS project, for a period means the amount, expressed as a percentage, determined by the formula

**A ÷ B**

where

**A** is the quantity of captured carbon that the CCUS project supported for storage or use in eligible use during the period, and

**B** is the total quantity of captured carbon that the CCUS project supported for storage or use in both eligible use and ineligible use during the period. (*pourcentage réel d'utilisation admissible*)

***exempt corporation*** at any time, means a corporation that does not have an ownership interest, whether directly or indirectly, in a qualified CCUS project in respect of which $20 million or more of qualified CCUS expenditures are expected to be incurred (based on the most recent project evaluation issued by the Minister of Natural Resources for the project). (*société exonérée*)

**c)** le total des montants suivants :

**(i)** la moitié des montants payés attribués à une personne ou répartis entre plusieurs — y compris les montants qui doivent être inclus dans le calcul du revenu du bénéficiaire en vertu de l'alinéa 12(1)n.3) — provenant de la convention avant la fin de l'année alors qu'elle était une convention de retraite, sauf s'il est établi, par des événements ultérieurs ou autrement, que les montants ainsi payés font partie d'une série de cotisations et de remboursements de cotisations dans le cadre de la convention,

**(ii)** le total des montants déterminés en vertu du paragraphe 207.71(3) relativement à la convention déterminée pour l'année et une année précédente;

**(2) Le paragraphe (1) s'applique aux années d'imposition 2024 et suivantes.**

**58 (1) La même loi est modifiée par adjonction, après l'article 211.91, de ce qui suit :**

**PARTIE XII.7**

# Captage, utilisation et stockage du carbone

**Définitions**

**211.92 (1)** Les définitions qui suivent s'appliquent à la présente partie et à l'article 127.44.

***année d'imposition de la déclaration*** S'entend, à la fois :

**a)** de la première année d'imposition d'un contribuable au cours de laquelle un crédit d'impôt pour le CUSC est déduit relativement à un projet de CUSC du contribuable;

**b)** de chaque année d'imposition qui :

**(i)** commence après une année d'imposition visée à l'alinéa a),

**(ii)** se termine avant la vingt-et-unième année civile suivant la fin de l'année d'imposition qui comprend le premier jour des activités commerciales du projet de CUSC. (*reporting taxation year*)

***année d'imposition de recouvrement*** Relativement à un projet de CUSC, s'entend de la première année d'imposition de recouvrement, de la deuxième année d'imposition de recouvrement, de la troisième année

***first project period***, in respect of a CCUS project, means the period that begins on the first day of commercial operations — or, if the project has not yet commenced operations, the day on which, according to the most recent project plan, operations are expected to begin — and ends

**(a)** if that day is before October of a calendar year, on December 31 of the calendar year that includes the fourth anniversary of that day; or

**(b)** if that day is after September of a calendar year, on December 31 of the calendar year that includes the fifth anniversary of that day. (*première période du projet*)

***first recovery taxation year***, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the first project period. (*première année d'imposition de recouvrement*)

***fourth project period***, in respect of a CCUS project, means the five calendar years following the end of the third project period. (*quatrième période du projet*)

***fourth recovery taxation year***, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the fourth project period. (*quatrième année d'imposition de recouvrement*)

***knowledge sharing CCUS project*** means a qualified CCUS project that

**(a)** is expected to incur qualified CCUS expenditures of $250 million or more based on the most recent project evaluation issued by the Minister of Natural Resources for the project; or

**(b)** has incurred $250 million or more of qualified CCUS expenditures before the first day of commercial operations of the project. (*projet de CUSC requérant l'échange de connaissances*)

***knowledge sharing report***, in respect of a CCUS project, means

**(a)** an annual operations knowledge sharing report containing the information described by the Minister of Natural Resources in the *CCUS-ITC Technical Guidance Document* as published by the Minister of Natural Resources and amended from time to time, in the form annexed to the *CCUS-ITC Technical Guidance Document*; and

**(b)** the construction and completion knowledge sharing report containing the information described in the

d'imposition de recouvrement et de la quatrième année d'imposition de recouvrement. (*recovery taxation year*)

***contribuable échangeant des connaissances*** S'entend d'un contribuable qui a réclamé un crédit d'impôt pour le CUSC pour une année d'imposition se terminant avant le jour du début du projet d'un projet de CUSC requérant l'échange de connaissances. (*knowledge sharing taxpayer*)

***date d'échéance du rapport*** S'entend, à la fois :

**a)** relativement au rapport annuel sur la divulgation des risques climatiques, du jour qui suit de neuf mois le jour où l'année d'imposition visée par le rapport se termine;

**b)** relativement au rapport annuel sur l'échange de connaissances d'exploitation, selon le cas :

**(i)** s'il s'agit du premier rapport et que, selon le cas :

**(A)** le jour du début du projet est antérieur au 1er octobre d'une année civile, du 30 juin de l'année civile qui suit,

**(B)** le jour du début du projet est postérieur au 30 septembre d'une année civile, du 30 juin de la deuxième année civile qui suit l'année civile qui comprend le jour du début du projet,

**(ii)** s'il ne s'agit pas du premier rapport, du 30 juin des quatre premières années civiles qui suivent l'année civile qui comprend le 30 juin visé au sous-alinéa (i);

**c)** relativement au rapport sur l'échange de connaissances de la construction et la réalisation, du dernier jour du sixième mois commençant après le jour du début du projet. (*reporting-due day*)

***deuxième année d'imposition de recouvrement*** Relativement à une période de projet de CUSC, s'entend de l'année d'imposition qui inclut le dernier jour de la deuxième période du projet. (*second recovery taxation year*)

***deuxième période du projet*** Relativement à un projet de CUSC, s'entend des cinq années civiles suivant la fin de la première période du projet. (*second project period*)

***jour du début du projet*** Le cent-vingtième jour précédant le premier jour des activités commerciales. (*project start-up date*)

*CCUS-ITC Technical Guidance Document* referred to in paragraph (a). (*rapport sur l'échange de connaissances*)

***knowledge sharing taxpayer*** means a taxpayer that claimed a CCUS tax credit for a taxation year ending before the project start-up date of a knowledge sharing CCUS project. (*contribuable échangeant des connaissances*)

***project period***, in respect of a CCUS project, means any of the first project period, the second project period, the third project period and the fourth project period. (*période de projet*)

***project start-up date*** means the day that is 120 days before the first day of commercial operations. (*jour du début du projet*)

***recovery taxation year***, in respect of a CCUS project, means any of the first recovery taxation year, the second recovery taxation year, the third recovery taxation year and the fourth recovery taxation year. (*année d'imposition de recouvrement*)

***relevant project period*** means

**(a)** in respect of the first recovery taxation year, the first project period;

**(b)** in respect of the second recovery taxation year, the second project period;

**(c)** in respect of the third recovery taxation year, the third project period; and

**(d)** in respect of the fourth recovery taxation year, the fourth project period. (*période de projet pertinente*)

***reporting-due day*** means

**(a)** in respect of an annual climate risk disclosure report, the day that is nine months after the day on which the reporting taxation year for the report ends;

**(b)** in respect of an annual operations knowledge sharing report,

**(i)** if the report is the first such report,

**(A)** where the project start-up date is before October 1 in a calendar year, June 30 of the following calendar year, and

**(B)** where the project start-up date is after September 30 in a calendar year, June 30 of the

***période de déclaration*** S'entend, à la fois :

**a)** relativement au rapport sur l'échange de connaissances de la construction et la réalisation, de la période commençant le premier jour où une dépense pour un projet de CUSC est engagée et se terminant le jour du début du projet pour le projet de CUSC requérant l'échange de connaissances;

**b)** relativement à un rapport annuel sur l'échange de connaissances d'exploitation, de chaque période commençant le jour du début du projet et se terminant le dernier jour de l'année civile se terminant immédiatement avant la date d'échéance du rapport annuel sur l'échange de connaissances d'exploitation. (*reporting period*)

***période de projet*** Relativement à un projet de CUSC, s'entend de la première période du projet, de la deuxième période du projet, de la troisième période du projet et de la quatrième période du projet. (*project period*)

***période de projet pertinente*** S'entend :

**a)** relativement à la première année d'imposition de recouvrement, de la première période du projet;

**b)** relativement à la deuxième année d'imposition de recouvrement, de la deuxième période du projet;

**c)** relativement à la troisième année d'imposition de recouvrement, de la troisième période du projet;

**d)** relativement à la quatrième année d'imposition de recouvrement, de la quatrième période du projet. (*relevant project period*)

***pourcentage réel d'utilisation admissible*** Relativement à un projet de CUSC pour une période, s'entend du montant, exprimé en pourcentage, obtenu par la formule suivante :

**A ÷ B**

où :

**A** représente la quantité de carbone capté que le projet de CUSC a pris en charge à des fins de stockage ou d'utilisation dans le cadre d'une utilisation admissible au cours de la période;

**B** la quantité totale de carbone capté que le projet de CUSC a pris en charge à des fins de stockage ou d'utilisation dans le cadre à la fois d'une utilisation admissible et non admissible au cours de la période. (*actual eligible use percentage*)

***première année d'imposition de recouvrement*** Relativement à une période de projet d'un projet de CUSC,

second calendar year after the calendar year which includes the the project start-up date, and

**(ii)** if the report is not the first report, each June 30 of the first four calendar years immediately following the calendar year which includes the June 30 referred to in subparagraph (i); and

**(c)** in respect of the construction and completion knowledge sharing report, the last day of the sixth month beginning after the project start-up date. (*date d'échéance du rapport*)

***reporting period*** means

**(a)** in respect of the construction and completion knowledge sharing report, the period that begins on the first day an expenditure for a CCUS project is incurred and ends on the project start-up date of the knowledge sharing CCUS project; and

**(b)** in respect of an annual operations knowledge sharing report, each period that begins on the project start-up date and ends on the last day of the calendar year ending immediately before the reporting-due day for the annual operations knowledge sharing report. (*période de déclaration*)

***reporting taxation year*** means

**(a)** the first taxation year of a taxpayer in which a CCUS tax credit was deducted, in respect of a CCUS project of the taxpayer; and

**(b)** each taxation year that

**(i)** begins after a taxation year referred to in paragraph (a), and

**(ii)** ends before the twenty-first calendar year after the end of the taxation year which includes the first day of commercial operations of the CCUS project. (*année d'imposition de la déclaration*)

***second project period***, in respect of a CCUS project, means the five calendar years following the end of the first project period. (*deuxième période du projet*)

***second recovery taxation year***, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the second project period. (*deuxième année d'imposition de recouvrement*)

***third project period***, in respect of a CCUS project, means the five calendar years following the end of the second project period. (*troisième période du projet*)

s'entend de l'année d'imposition qui inclut le dernier jour de la première période du projet. (*first recovery taxation year*)

***première période du projet*** Relativement à un projet de CUSC, s'entend de la période qui commence le premier jour des activités commerciales – ou, si les activités n'ont pas encore commencé, le jour où les activités devraient commencer selon le dernier plan de projet – et se termine, selon le cas :

**a)** si ce jour est antérieur au mois d'octobre d'une année civile, le 31 décembre de l'année civile qui inclut le quatrième anniversaire de ce jour;

**b)** si ce jour est postérieur au mois de septembre d'une année civile, le 31 décembre de l'année civile qui inclut le cinquième anniversaire de ce jour. (*first project period*)

***projet de CUSC requérant l'échange de connaissances*** S'entend d'un projet de CUSC admissible qui, selon le cas :

**a)** devrait occasionner des dépenses de CUSC admissibles d'au moins 250 millions de dollars selon l'évaluation la plus récente du projet émise par le ministre des Ressources naturelles pour le projet;

**b)** a occasionné des dépenses de CUSC admissibles d'au moins 250 millions de dollars avant le premier jour des activités commerciales du projet. (*knowledge sharing CCUS project*)

***quatrième année d'imposition de recouvrement*** Relativement à une période de projet d'un projet de CUSC, s'entend de l'année d'imposition qui inclut le dernier jour de la quatrième période du projet. (*fourth recovery taxation year*)

***quatrième période du projet*** Relativement à un projet de CUSC, s'entend des cinq années civiles suivant la fin de la troisième période du projet. (*fourth project period*)

***rapport sur l'échange de connaissances*** S'entend, relativement à un projet de CUSC :

**a)** du rapport annuel sur l'échange de connaissances d'exploitation contenant les renseignements visés par le ministre des Ressources naturelles dans le *CUSC-CII Document technique* et publié par ce ministre, avec ses modifications successives, selon le modèle annexé au document *CUSC-CII Document technique*;

***third recovery taxation year***, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the third project period. (*troisième année d'imposition de recouvrement*)

**Recovery of development tax credit**

**(2)** A taxpayer shall pay a tax under this Part, for a particular taxation year that includes the first day of commercial operations of a CCUS project, or for any preceding year, equal to the amount, if any, by which the taxpayer's cumulative CCUS development tax credit for the immediately preceding taxation year exceeds its cumulative CCUS development tax credit for the particular taxation year.

**Acceleration of recovery tax**

**(3)** If the actual eligible use percentage for a CCUS project for any period described in subparagraph (c)(i) or (ii) of the definition *qualified CCUS project* in subsection 127.44(1) is less than 10%, then for the purposes of applying subsections (4) and (5)

**(a)** the actual eligible use percentage of the project for the relevant project period to which the period relates, and for each subsequent project period, is deemed to be nil;

**(b)** the relevant project period for the particular recovery taxation year is deemed to include each subsequent project period; and

**(c)** those subsections do not apply to a subsequent recovery taxation year in respect of the project.

**b)** du rapport sur l'échange de connaissances de la construction et la réalisation contenant les renseignements visés dans le document *CUSC-CII Document technique* visé à l'alinéa a). (*knowledge sharing report*)

***société exonérée*** S'entend d'une société qui, à un moment donné, ne détient pas de participation, directement ou indirectement, dans un projet de CUSC admissible relativement auquel des dépenses de CUSC admissibles d'au moins 20 millions de dollars devraient être engagées (selon la plus récente évaluation de projet émise par le ministre des Ressources naturelles pour le projet). (*exempt corporation*)

***troisième année d'imposition de recouvrement*** Relativement à une période de projet de CUSC, s'entend de l'année d'imposition qui inclut le dernier jour de la troisième période du projet. (*third recovery taxation year*)

***troisième période du projet*** Relativement à un projet de CUSC, s'entend des cinq années civiles suivant la fin de la deuxième période du projet. (*third project period*)

**Recouvrement du crédit d'impôt pour le développement**

**(2)** Tout contribuable doit payer, pour une année d'imposition donnée qui comprend le premier jour des activités commerciales du projet de CUSC, ou pour toute année antérieure, un impôt en vertu de la présente partie égal à l'excédent éventuel du crédit d'impôt cumulatif pour le développement du CUSC pour l'année d'imposition précédente sur son crédit d'impôt cumulatif pour le développement du CUSC pour l'année d'imposition donnée.

**Accélération du recouvrement de l'impôt**

**(3)** Si le pourcentage réel d'utilisation admissible pour un projet de CUSC pour toute période visée à l'un des sous-alinéas c)(i) ou (ii) de la définition de *projet de CUSC admissible* au paragraphe 127.44(1) est inférieur à 10 %, pour l'application des paragraphes (4) et (5) :

**a)** le pourcentage réel d'utilisation admissible du projet pour la période de projet pertinente à laquelle se rapporte la période, et pour chaque période de projet ultérieure, est réputé nul;

**b)** la période de projet pertinente pour l'année d'imposition de recouvrement donnée est réputée comprendre chaque période de projet ultérieure;

**c)** ces paragraphes ne s'appliquent pas à l'année d'imposition de recouvrement ultérieure relativement au projet.

**Development credits recovery amount**

**(4)** If the projected eligible use percentage of a CCUS project for the relevant project period in respect of a particular recovery taxation year exceeds the actual eligible use percentage of the CCUS project for that period by more than five percentage points, there shall be added to the tax otherwise payable under this Part for the particular recovery taxation year by a taxpayer that deducted a CCUS tax credit in respect of the CCUS project an amount equal to the amount determined by the formula

**A – B – C**

where

**A** is the amount of the taxpayer's cumulative CCUS development tax credit for the taxation year that includes the first day of commercial operations;

**B** is the amount that would be determined for A if the projected eligible use percentage for the relevant project period were equal to its actual eligible use percentage; and

**C** is the total of all amounts, each of which is an amount previously paid by the taxpayer as a tax under this Part in respect of the disposition or export of a property in relation to the project because of subsection (9), to the extent that the amount did not reduce the tax payable by the taxpayer under this subsection in a preceding taxation year.

**Refurbishment credits recovery amount**

**(5)** If the projected eligible use percentage of a CCUS project for the relevant project period in respect of a particular recovery taxation year exceeds the actual eligible use percentage of the CCUS project for that period by more than five percentage points, there shall be added to the tax otherwise payable under this Part for the particular recovery taxation year by a taxpayer that deducted a CCUS tax credit in respect of the CCUS project, an amount equal to the amount determined by the formula

**A – B – C**

where

**A** is the total of all amounts, each of which is the amount that is the taxpayer's CCUS refurbishment tax credit under subsection 127.44(5) for the year or a previous taxation year;

**B** is the amount that would be determined for A if the projected eligible use percentage for the relevant

**Montant du recouvrement des crédits pour le développement**

**(4)** Si le pourcentage d'utilisation admissible prévu d'un projet de CUSC pour la période de projet pertinente relativement à une année d'imposition de recouvrement donnée excède le pourcentage réel d'utilisation admissible du projet de CUSC de plus de cinq points de pourcentage pour cette période, il est ajouté à l'impôt par ailleurs payable en vertu de la présente partie pour l'année d'imposition de recouvrement donnée par le contribuable qui a déduit un crédit d'impôt pour le CUSC relativement au projet de CUSC une somme égale à la somme obtenue par la formule suivante :

**A – B – C**

où :

**A** représente le montant du crédit d'impôt cumulatif pour développement du CUSC du contribuable pour l'année d'imposition qui comprend le premier jour des activités commerciales;

**B** le montant qui serait déterminé pour l'élément A si le pourcentage d'utilisation admissible prévu pour la période de projet pertinente était égal à son pourcentage réel d'utilisation admissible;

**C** le total des montants représentant chacun un montant d'impôt payé précédemment en vertu de la présente partie par le contribuable relativement à la disposition ou l'exportation d'un bien relatif au projet en vertu du paragraphe (9), dans la mesure où le montant n'a pas réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

**Montant du recouvrement des crédits pour la remise en état**

**(5)** Si le pourcentage d'utilisation admissible prévu d'un projet de CUSC pour la période de projet pertinente relativement à une année d'imposition de recouvrement donnée excède le pourcentage réel d'utilisation admissible du projet de CUSC de plus de cinq points de pourcentage pour cette période, il est ajouté à l'impôt par ailleurs payable en vertu de la présente partie pour l'année d'imposition de recouvrement donnée par le contribuable qui a déduit un crédit d'impôt pour le CUSC relativement au projet de CUSC une somme égale à la somme obtenue par la formule suivante :

**A – B – C**

où :

**A** représente le total des montants représentant chacun le montant du crédit d'impôt pour la remise en état du CUSC du contribuable pour l'année ou pour une année d'imposition antérieure en vertu du paragraphe 127.44(5);

project period were equal to its actual eligible use percentage; and

**C** is the total of all amounts, each of which is an amount previously paid by the taxpayer as a tax under this Part in respect of the disposition or export of a property in relation to the project because of subsection (10), to the extent that the amount did not reduce the tax payable by the taxpayer under this subsection in a preceding taxation year.

**B** le montant qui serait déterminé pour l'élément A si le pourcentage d'utilisation admissible prévu pour la période de projet pertinente était égal à son pourcentage réel d'utilisation admissible;

**C** le total des montants représentant chacun un montant d'impôt payé précédemment en vertu de la présente partie par le contribuable relativement à la disposition ou l'exportation d'un bien relatif au projet en vertu du paragraphe (10), dans la mesure où le montant n'a pas réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

**Extraordinary eligible use reduction**

**(6)** For the purposes of determining a taxpayer's liability for tax under this Part for a taxation year, subsection (7) applies if

**(a)** the actual eligible use percentage for a qualified CCUS project during a project period is significantly reduced due to extraordinary circumstances, for *bona fide* reasons outside the control of the taxpayer and each person or partnership that does not deal at arm's length with the taxpayer;

**(b)** the taxpayer requests in writing, on or before the taxpayer's filing-due date for the year, that the Minister consider the potential application of this subsection and subsection (7); and

**(c)** the Minister is satisfied that the taxpayer has taken all reasonable steps to attempt to rectify the extraordinary circumstances, and that it is appropriate, having regard to all the circumstances, to apply this subsection and subsection (7).

**Réduction d'utilisation admissible extraordinaire**

**(6)** Pour déterminer l'impôt à payer d'un contribuable en vertu de la présente partie pour une année d'imposition, le paragraphe (7) s'applique si les énoncés ci-après se vérifient :

**a)** le pourcentage réel d'utilisation admissible pour un projet de CUSC admissible pendant une période de projet est réduit considérablement en raison de circonstances extraordinaires, pour des objets véritables hors du contrôle du contribuable et de chaque personne ou société de personnes avec laquelle il a un lien de dépendance;

**b)** le contribuable demande par écrit au ministre d'envisager l'application éventuelle du présent paragraphe et du paragraphe (7), au plus tard à la date d'échéance de production qui lui est applicable pour l'année;

**c)** le ministre est convaincu que le contribuable a pris toutes les mesures raisonnables pour tenter de rectifier les circonstances extraordinaires, et qu'il est approprié, compte tenu de toutes les circonstances, d'appliquer le présent paragraphe et le paragraphe (7).

**Effect of extraordinary circumstances**

**(7)** If the conditions set out in subsection (6) are met for a taxation year,

**(a)** if the qualified CCUS project's operations are affected by extraordinary circumstances for all or substantially all of the project period, then no amount is payable by the taxpayer for the year under subsections (3) to (5) in respect of the project; and

**(b)** in any other case, the portion of the project period during which the project's operations are affected by the extraordinary circumstances shall be disregarded for the purpose of calculating the actual eligible use percentage for the project period.

**Effet des circonstances extraordinaires**

**(7)** Lorsque les conditions énoncées au paragraphe (6) sont satisfaites pour une année d'imposition :

**a)** si des circonstances extraordinaires ont un effet sur les activités du projet de CUSC admissible pour la totalité ou la presque totalité de la période de projet, aucun montant n'est payable par le contribuable pour l'année en vertu des paragraphes (3) à (5) relativement au projet;

**b)** sinon, il n'est pas tenu compte de la partie de la période de projet au cours de laquelle les circonstances extraordinaires ont un effet sur les activités du projet dans le calcul du pourcentage réel d'utilisation admissible pour la période de projet.

**Shutdown**

**(8)** For the purposes of determining a taxpayer's liability for tax under this Part for a recovery taxation year, if a qualified CCUS project is inoperative for all or a portion of a relevant project period,

**(a)** if the project is inoperative for all or substantially all of the period, then no amount is payable by the taxpayer for the year under subsections (3) to (5) in respect of the project; and

**(b)** in any other case, the portion of the project period during which the project is inoperative shall be disregarded for the purpose of calculating the actual eligible use percentage for the project period.

**Development property disposition**

**(9)** Except where subsection (11) applies, if at any time in a particular taxation year a taxpayer disposes of or exports from Canada a property for which the taxpayer's qualified CCUS expenditure resulted in the determination of a cumulative CCUS development tax credit for a previous taxation year, or would so result for the particular year but for this subsection, the following rules apply:

**(a)** if the time is before the total CCUS project review period of the CCUS project to which the expenditure relates, the expenditure is deemed not to be a qualified CCUS expenditure in respect of the CCUS project for the purpose of determining the taxpayer's cumulative CCUS development tax credit for the particular year and any subsequent taxation years; and

**(b)** if the time is during the total CCUS project review period of the CCUS project to which the expenditure relates, there shall be added to the tax otherwise payable by the taxpayer under this Part for the year the amount determined by the formula

**A × B × C ÷ D – E**

where

**A** is the qualified CCUS expenditure in respect of the property as determined for the taxation year that includes the first day of commercial operations,

**B** is the appropriate specified percentage,

**C** is the amount, not exceeding the amount determined for D, equal to

**(i)** if the property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of the property, or

**(ii)** if the property is disposed of to a person who does not deal at arm's length with the taxpayer, or is exported from Canada but not

**Arrêt**

**(8)** Pour déterminer l'impôt à payer d'un contribuable en vertu de la présente partie pour une année d'imposition de recouvrement, lorsqu'un projet de CUSC admissible est non opérationnel pour la totalité ou une partie d'une période de projet pertinente :

**a)** si le projet est non opérationnel pour la totalité ou la presque totalité de la période, aucun montant n'est payable par le contribuable pour l'année en vertu des paragraphes (3) à (5) relativement au projet;

**b)** sinon, il n'est pas tenu compte de la partie de la période du projet au cours de laquelle le projet est non opérationnel dans le calcul du pourcentage réel d'utilisation admissible pour la période de projet.

**Disposition des biens pour le développement**

**(9)** Sauf en cas d'application du paragraphe (11), si, à un moment donné d'une année d'imposition donnée, un contribuable dispose ou exporte du Canada un bien pour lequel la dépense de CUSC admissible a donné lieu à la détermination d'un crédit d'impôt cumulatif pour le développement du CUSC pour une année d'imposition antérieure ou y donnerait lieu pour l'année donnée, n'eût été le présent paragraphe, les règles ci-après s'appliquent :

**a)** si le moment est antérieur à la période totale d'examen du projet de CUSC du projet de CUSC auquel la dépense se rapporte, la dépense est réputée ne pas être une dépense de CUSC admissible relativement au projet de CUSC lorsqu'il s'agit de déterminer le crédit d'impôt cumulatif pour le développement du CUSC du contribuable pour l'année donnée et les années d'imposition suivantes;

**b)** si le moment est au cours de la période totale d'examen du projet de CUSC du projet de CUSC auquel la dépense se rapporte, il doit être ajouté à l'impôt par ailleurs payable par le contribuable en vertu de la présente partie pour l'année la somme obtenue par la formule suivante :

**A × B × C ÷ D – E**

où :

**A** représente la dépense de CUSC admissible relative au bien telle qu'elle est calculée pour l'année d'imposition qui comprend le premier jour des activités commerciales,

**B** le pourcentage déterminé approprié,

**C** le montant, ne dépassant pas la valeur pour l'élément D, selon le cas :

disposed of, the fair market value of the property at that time,

**D** is the taxpayer's capital cost of the property, and

**E** is the total of all amounts, each of which can reasonably be considered to be the portion of any amount previously paid by the taxpayer because of subsection (4) in respect of the property, to the extent that the amount did not reduce the tax payable by the taxpayer under this subsection in a preceding taxation year.

**(i)** si le contribuable dispose du bien en faveur d'une personne avec laquelle il n'a pas de lien de dépendance, le produit de disposition du bien,

**(ii)** si le contribuable dispose du bien en faveur d'une personne avec laquelle il a un lien de dépendance, ou l'exporte du Canada sans en avoir disposé, la juste valeur marchande du bien à ce moment,

**D** le coût en capital du bien pour le contribuable,

**E** le total des montants représentant chacun un montant pouvant raisonnablement être considéré comme étant la partie d'un montant payé précédemment par le contribuable en vertu du paragraphe (4) relativement au bien, dans la mesure où le montant n'a pas réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

**Refurbishment property disposition**

**(10)** Except where subsection (11) applies, if at any time in a particular taxation year during the total project review period of a CCUS project a taxpayer disposes of or removes from Canada a property for which the taxpayer's qualified CCUS expenditure resulted in the determination of a CCUS refurbishment tax credit for the year or a previous taxation year, then there shall be added to the tax otherwise payable by the taxpayer under this Part for the year the amount determined by the formula

**A × B × C ÷ D – E**

where

**A** is the qualified CCUS expenditure in respect of the property;

**B** is the appropriate specified percentage;

**C** is the amount, not exceeding the amount determined for D, equal to

**(a)** if the property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of the property, or

**(b)** if the property is disposed of to a person who does not deal at arm's length with the taxpayer, or is exported from Canada, the fair market value of the property;

**D** is the taxpayer's capital cost of the property; and

**E** is the total of all amounts, each of which can reasonably be considered to be the portion of any amount previously paid by the taxpayer because of subsection (5) in respect of the property, to the extent that the amount did not reduce the tax payable by the

**Disposition de biens de remise en état**

**(10)** Sauf en cas d'application du paragraphe (11), si à un moment donné d'une année d'imposition donnée au cours de la période totale d'examen du projet de CUSC, un contribuable dispose ou exporte du Canada un bien pour lequel la dépense de CUSC admissible a donné lieu à la détermination d'un crédit d'impôt pour la remise en état du CUSC pour l'année ou une année d'imposition antérieure, il doit être ajouté à l'impôt payable par ailleurs en vertu de la présente partie pour l'année le montant déterminé par la formule suivante :

**A × B × C ÷ D – E**

où :

**A** représente la dépense de CUSC admissible relative au bien;

**B** le pourcentage déterminé approprié;

**C** le montant, ne dépassant pas la valeur pour l'élément D, selon le cas :

**a)** si le contribuable dispose du bien en faveur d'une personne avec laquelle il n'a pas de lien de dépendance, le produit de disposition du bien,

**b)** si le contribuable dispose du bien en faveur d'une personne avec laquelle il a un lien de dépendance, ou l'exporte du Canada, la juste valeur marchande du bien;

**D** le coût en capital du bien pour le contribuable;

**E** le total des montants représentant chacun un montant pouvant raisonnablement être considéré comme étant la partie d'un montant payé précédemment par le contribuable en vertu du paragraphe (5) relativement au bien, dans la mesure où le montant n'a pas

taxpayer under this subsection in a preceding taxation year.

**Election — CCUS project sale**

**(11)** If at any time a qualifying taxpayer (referred to in this subsection as the "vendor") disposes of all or substantially all of its property that is part of a qualified CCUS project of the taxpayer to another taxable Canadian corporation (referred to in this subsection as the "purchaser") and the vendor and the purchaser jointly elect in prescribed form to have this subsection apply, the following rules apply:

**(a)** the purchaser is deemed to have made the qualifying expenditures of the vendor at the times incurred by the vendor;

**(b)** the provisions of this Act that applied to the vendor in respect of the property that are relevant to the application of the Act in respect of the property after that time are deemed to have applied to the purchaser and, for greater certainty, the purchaser is deemed to have claimed the tax credits determined under section 127.44 that could have been claimed by the vendor, before that time, in respect of the CCUS project;

**(c)** any project plans that were prepared or filed by the vendor in respect of the CCUS project before that time are deemed to have been filed by the purchaser;

**(d)** the purchaser is or will be liable for amounts in respect of the property for which the vendor would be liable under this Part in respect of actions, transactions or events that occur after that time as if the vendor had undertaken them or otherwise participated in them; and

**(e)** subsections (9) and (10) do not apply to the vendor in respect of the disposition of property to the purchaser.

**Partnerships**

**(12)** Subject to section 127.47, if subsection 127.44(11) has at any time applied to add an amount in computing the CCUS tax credit of a member of the partnership, then for the purposes of this Part, subsections (2) to (11) shall apply to determine amounts in respect of the partnership as if the partnership were a taxable Canadian corporation, its fiscal period were its taxation year and it had deducted all of the CCUS tax credits that were previously added in computing the CCUS tax credit of any member of the partnership under subsection 127.44(2) because of

réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

**Choix — vente du projet de CUSC**

**(11)** Si, à un moment donné, un contribuable admissible (appelé « vendeur » au présent paragraphe) dispose de la totalité ou de la presque totalité de ses biens faisant partie d'un projet de CUSC admissible de ce dernier en faveur d'une autre société canadienne imposable (appelée « acheteur » au présent paragraphe), et que le vendeur et l'acheteur font un choix conjoint, sur le formulaire prescrit, afin que le présent paragraphe s'applique, les règles suivantes s'appliquent :

**a)** l'acheteur est réputé avoir effectué les dépenses admissibles du vendeur aux moments où celles-ci ont été engagées par ce dernier;

**b)** les dispositions de la Loi qui s'appliquent au vendeur relativement au bien et qui sont pertinentes pour l'application de la Loi relativement au bien après ce moment sont réputées avoir été appliquées à l'acheteur. Il est entendu que l'acheteur est réputé avoir réclamé les crédits d'impôt déterminés en vertu de l'article 127.44 que le vendeur aurait pu demander avant ce moment relativement au projet de CUSC;

**c)** tout plan de projet ayant été préparé ou présenté par le vendeur relativement au projet de CUSC avant ce moment est réputé avoir été présenté par l'acheteur;

**d)** l'acheteur est ou sera responsable des montants relatifs au bien dont le vendeur serait redevable en vertu de la présente partie relativement aux actions, transactions ou événements qui se produisent après ce moment comme si le vendeur les avait entrepris ou y avait autrement participé;

**e)** les paragraphes (9) et (10) ne s'appliquent pas au vendeur relativement à la disposition d'un bien à l'acheteur.

**Sociétés de personnes**

**(12)** Sous réserve de l'article 127.47, si le paragraphe 127.44(11) s'est appliqué pour ajouter un montant dans le calcul du crédit d'impôt pour le CUSC d'un associé de la société de personnes, pour l'application de la présente partie, les paragraphes (2) à (11) s'appliquent afin de déterminer les montants relatifs à la société de personnes comme si la société de personnes était une société canadienne imposable, son exercice constituait son année d'imposition et qu'elle avait déduit tous les crédits d'impôt pour le CUSC ayant été ajoutés précédemment au calcul du crédit d'impôt pour le CUSC d'un associé de la

the application of subsection 127.44(11) in respect of its partnership interest.

**Member's share of tax**

**(13)** Unless subsection (14) applies, if, in a taxation year, a taxpayer is a member of a partnership, the amount that can reasonably be considered to be the taxpayer's share of any amount of tax determined because of subsection (12) in respect of the partnership for its fiscal period ending in the taxation year shall be added to the taxpayer's tax otherwise payable under this Part for the taxation year.

**Election by member to pay tax**

**(14)** A taxable Canadian corporation that is a member of a partnership during a fiscal period of the partnership may elect, in prescribed form and manner, to add to its tax payable under this Part for its taxation year that includes the end of the fiscal period the total amount of tax determined for that fiscal period because of subsection (12) in respect of the partnership.

**Joint, several and solidary liability**

**(15)** Each member of a partnership is jointly and severally, or for civil law, solidarily, liable for any portion of the amount of tax — determined because of subsection (12) in respect of the partnership for a taxation year — that is not added to the tax payable

**(a)** of a member of the partnership under subsection (13); or

**(b)** of a taxable Canadian corporation because of subsection (14) and paid by the corporation by its filing-due date for the year.

**Reporting requirements**

**211.93 (1)** A taxpayer shall

**(a)** if the taxpayer is a knowledge sharing taxpayer, submit in respect of each reporting period a knowledge sharing report to the Minister of Natural Resources on or before the reporting-due day for the report; and

**(b)** if the taxpayer is a corporation that is not an exempt corporation, on or before the reporting-due day for each reporting taxation year, make available to the public, in prescribed manner, a climate risk disclosure report for the year that

société de personnes en vertu du paragraphe 127.44(2) par l'effet de l'application du paragraphe 127.44(11) relativement à sa participation dans la société de personnes.

**Part d'impôt revenant à l'associé**

**(13)** Sauf si le paragraphe (14) s'applique, dans le cas où, au cours d'une année d'imposition, un contribuable est un associé d'une société de personnes, le montant qu'il est raisonnable de considérer comme la part qui revient au contribuable d'un montant d'impôt déterminé en vertu du paragraphe (12) relativement à la société de personnes pour son exercice se terminant dans l'année d'imposition est à ajouter à l'impôt par ailleurs payable du contribuable en vertu de la présente partie pour l'année d'imposition.

**Choix de l'associé de payer l'impôt**

**(14)** Une société canadienne imposable qui est un associé d'une société de personnes au cours d'un exercice de la société de personnes peut faire un choix, sur le formulaire prescrit et selon les modalités prescrites, d'ajouter à son impôt payable en vertu de la présente partie pour son année d'imposition qui inclut la fin de l'exercice le montant total d'impôt déterminé pour cet exercice selon le paragraphe (12) relativement à la société de personnes.

**Solidarité**

**(15)** Chaque associé d'une société de personnes est solidairement responsable de toute partie d'un montant d'impôt — déterminé selon le paragraphe (12) relativement à la société de personnes pour l'année d'imposition — qui n'est pas ajouté à l'impôt payable, selon le cas :

**a)** par un associé de la société de personnes en vertu du paragraphe (13);

**b)** par une société canadienne imposable selon le paragraphe (14) et payé par la société au plus tard à sa date d'échéance de production pour l'année.

**Exigences en matière de déclaration**

**211.93 (1)** Un contribuable doit, à la fois :

**a)** s'il est un contribuable échangeant des connaissances, soumettre relativement à chaque période de déclaration, au plus tard à la date d'échéance du rapport applicable au rapport, un rapport sur l'échange de connaissances auprès du ministre des Ressources naturelles;

**b)** s'il est une société qui n'est pas une société exonérée, au plus tard à la date d'échéance du rapport pour chaque année d'imposition de la déclaration, mettre à la disposition du public, selon les modalités prescrites,

**(i)** describes the climate-related risks and opportunities for the corporation based on the following thematic areas:

**(A)** the corporation's governance in respect of climate-related risks and opportunities,

**(B)** the actual and potential impacts of climate-related risks and opportunities on the corporation's businesses, strategy and financial planning, if such information is material,

**(C)** the processes used by the corporation to identify, assess and manage climate related risks, and

**(D)** the metrics and targets used by the corporation to assess and manage relevant climate-related risks and opportunities, and

**(ii)** explains how the corporation's governance, strategies, policies and practices contribute to achieving Canada's

**(A)** commitments under the Paris Agreement made on December 12, 2015, and

**(B)** goal of net-zero emissions by 2050.

un rapport sur la divulgation des risques climatiques pour l'année qui, à la fois :

**(i)** décrit les possibilités et les risques liés au climat pour la société en fonction des thèmes suivants :

**(A)** la gouvernance de la société relativement aux risques et opportunités liés au climat,

**(B)** les impacts réels et potentiels des opportunités et des risques liés au climat sur les entreprises, la stratégie et la planification financière de la société, lorsque de tels renseignements sont importants,

**(C)** les processus adoptés par la société pour identifier, évaluer et gérer les risques liés au climat,

**(D)** les paramètres et les cibles utilisés par la société pour évaluer et gérer les opportunités et les risques liés au climat pertinents,

**(ii)** explique de quelle façon la gouvernance, les stratégies, les politiques et les pratiques de la société contribuent à la réalisation, à la fois :

**(A)** des engagements du Canada en vertu de l'Accord de Paris conclu le 12 décembre 2015,

**(B)** de l'objectif du Canada d'atteindre la carboneutralité d'ici 2050.

**Publication**

**(2)** For the purposes of subsection (1), a climate risk disclosure report is deemed to have been made public in a prescribed manner if the report includes the date it was published and is made publicly available by, or on behalf of, the corporation on the website of the corporation or a related person for a period of at least three years after the reporting-due day.

**Publication**

**(2)** Pour l'application du paragraphe (1), un rapport sur la divulgation des risques climatiques est réputé avoir été mis à la disposition du public selon les modalités prescrites, si le rapport inclut sa date de publication et est rendu public par la société, ou pour son compte, sur son site Web ou sur celui d'une personne liée pour une période d'au moins trois ans suivant la date d'échéance du rapport.

**Shared filing**

**(3)** If a person is required by subsection (1) to submit a knowledge sharing report in respect of a knowledge sharing CCUS project, the submission with full and accurate disclosure by any such person of the report is deemed to have been made by each person to whom subsection (1) applies in respect of the report.

**Production partagée**

**(3)** Si, en vertu du paragraphe (1), une personne est tenue de soumettre un rapport sur l'échange de connaissances relativement au projet de CUSC requérant l'échange de connaissances, la soumission du rapport par une telle personne, lorsqu'elle constitue une divulgation complète et exacte, est réputée avoir été faite par chaque personne à laquelle s'applique le paragraphe (1) relativement au rapport.

**Penalty — non-compliance with reporting requirements**

**(4)** Every knowledge sharing taxpayer that fails to provide the knowledge sharing report required under paragraph (1)(a) in respect of a reporting period is liable to a penalty in the amount of $2 million payable the day after the reporting-due day.

**Failure to disclose**

**(5)** Every taxpayer that fails to make available the climate risk disclosure report as required under paragraph (1)(b) in respect of a reporting taxation year is liable to a penalty in the amount that is the lesser of

**(a)** 4% of the total of all amounts, each of which is the amount of a CCUS tax credit of the corporation in respect of each taxation year that ended before the reporting-due day for the reporting taxation year, and

**(b)** $1 million.

**Report disclosure**

**(6)** The Department of Natural Resources shall publish on a website, maintained by the Government of Canada, each knowledge sharing report referred to in subsection (1) as soon as practicable after a taxpayer has submitted the report.

**Eligible use reporting**

**(7)** If a CCUS tax credit was deducted for a taxation year by a taxpayer in respect of a CCUS project that began commercial operations in the year or a prior taxation year, the actual eligible use percentage for a relevant project period in respect of the CCUS project is deemed to be nil until the taxpayer has filed in prescribed form, with each of its returns of income for taxation years that include any part of the relevant project period, a report stating

**(a)** the actual amount of carbon captured, during the calendar year ending in the taxation year, for storage or use in eligible use; and

**(b)** the total quantity of captured carbon during that calendar year that supported storage or use in both eligible use and ineligible use.

**Pénalité — non-respect des exigences de déclaration**

**(4)** Tout contribuable échangeant des connaissances qui omet de produire le rapport sur l'échange de connaissances qu'il est tenu de produire en application de l'alinéa (1)a) relativement à une période de déclaration est passible d'une pénalité d'un montant de 2 millions de dollars payable le jour suivant la date d'échéance du rapport.

**Omission de divulguer**

**(5)** Tout contribuable qui omet de rendre disponible le rapport sur la divulgation des risques climatiques qu'il est tenu de produire en application de l'alinéa (1)b) relativement à l'année d'imposition de la déclaration est passible d'une pénalité qui est égale au moindre des montants suivants :

**a)** 4 % du total des sommes représentant chacune un crédit d'impôt pour le CUSC de la société relativement à chaque année d'imposition s'étant terminée avant la date d'échéance du rapport pour l'année d'imposition de la déclaration;

**b)** 1 million de dollars.

**Divulgation de rapport**

**(6)** Le ministère des Ressources naturelles publie sur un site Web, tenu à jour par le gouvernement du Canada, chaque rapport sur l'échange de connaissances visé au paragraphe (1) dès que possible après qu'un contribuable a soumis le rapport.

**Déclaration d'utilisation admissible**

**(7)** Si un crédit d'impôt pour le CUSC a été déduit par un contribuable pour une année d'imposition relativement à un projet de CUSC qui a commencé ses activités commerciales dans l'année ou dans une année d'imposition antérieure, le pourcentage réel d'utilisation admissible pour une période de projet pertinente relativement au projet de CUSC est réputé nul jusqu'à ce que le contribuable ait présenté sur le formulaire prescrit, avec chacune de ses déclarations de revenus pour les années d'imposition qui comprennent une partie de la période de projet pertinente, un rapport indiquant les éléments suivants :

**a)** la quantité réelle de carbone capté à des fins de stockage ou d'utilisation dans le cadre d'une utilisation admissible au cours de l'année civile se terminant dans l'année d'imposition;

**b)** la quantité totale de carbone capté ayant pris en charge le stockage ou l'utilisation dans le cadre à la fois d'une utilisation admissible et non admissible au cours de cette année civile.

#### Administration

**211.94** Subsection 150(2) and (3), sections 152, 158, 159 and 161 to 167 and Division J of Part I apply to this Part, with such modification as the circumstances require, except that, in the application of subsection 161(1) to an amount of tax payable under section 211.92, the balance-due day of a taxpayer in respect of a recovery taxation year is deemed to be the balance-due day of the taxation year for the related CCUS tax credit under subsection 127.44(2).

#### Records and books

**211.95** Every person required by section 230 to keep records and books of account on behalf of a taxpayer shall retain all records and books of account referred to in that section as are necessary to verify information regarding CCUS tax credits of the taxpayer under section 127.44 or amounts payable by the taxpayer under this Part, in respect of a CCUS project, until the end of the later of

**(a)** the period referred to in paragraph 230(4)(b), and

**(b)** 26 years after the end of the taxpayer's last taxation year for which an amount was deemed to have been paid under subsection 127.44(2) by reason of its paragraph (a).

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**59 (1) The portion of subsection 214(17) of the Act before paragraph (a) is replaced by the following:**

#### Deemed interest payments

**(17)** For the purposes of subsections (16) and (18),

**(2) Section 214 of the Act is amended by adding the following after subsection (17):**

#### Hybrid mismatch arrangements — deemed dividend

**(18)** For the purposes of this Part, an amount paid or credited as interest by a corporation resident in Canada in a taxation year of the corporation to a non-resident person is deemed to have been paid by the corporation as a dividend, and not to have been paid or credited by the corporation as interest, to the extent that an amount in respect of the interest is not deductible in computing the income of the corporation for the year because of subsection 18.4(4).

#### Administration

**211.94** Les paragraphes 150(2) et (3), les articles 152, 158, 159 et 161 à 167 et la section J de la partie I s'appliquent à la présente partie, avec les adaptations nécessaires, sauf que, pour l'application du paragraphe 161(1) à l'impôt payable en vertu de l'article 211.92, la date d'exigibilité du solde d'un contribuable relativement à une année d'imposition de recouvrement est réputée être la date d'exigibilité du solde pour l'année d'imposition relative au crédit d'impôt pour le CUSC en application du paragraphe 127.44(2).

#### Livres de comptes et registres

**211.95** Quiconque est obligé, par l'article 230, de tenir des registres et livres de comptes pour le compte d'un contribuable doit conserver tous les registres et livres comptables visés à cet article nécessaires à la vérification des renseignements concernant les crédits d'impôt pour le CUSC du contribuable en vertu de l'article 127.44 ou les montants payables par le contribuable en vertu de la présente partie, relativement à un projet de CUSC, jusqu'à l'expiration de la dernière des périodes suivantes :

**a)** la période visée à l'alinéa 230(4)b);

**b)** vingt-six ans à compter de la fin de la dernière année d'imposition du contribuable à l'égard de laquelle une somme est réputée avoir été payée en vertu du paragraphe 127.44(2) en application de son alinéa a).

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**59 (1) Le passage du paragraphe 214(17) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

#### Paiements d'intérêts réputés

**(17)** Pour l'application des paragraphes (16) et (18) :

**(2) L'article 214 de la même loi est modifié par adjonction, après le paragraphe (17), de ce qui suit :**

#### Dispositifs hybrides — dividende réputé

**(18)** Pour l'application de la présente partie, toute somme qu'une société résidant au Canada paie à une personne non-résidente, ou porte à son crédit, à titre d'intérêts au cours d'une année d'imposition de la société est réputée avoir été payée par la société à titre de dividende, et ne pas avoir été payée ou créditée par la société à titre d'intérêts, dans la mesure où une somme relative aux intérêts n'est pas déductible dans le calcul du revenu de la société pour l'année par l'effet du paragraphe 18.4(4).

**(3) Subsections (1) and (2) apply in respect of payments arising on or after July 1, 2022.**

**60 (1) Subsection 216(1) of the Act is amended by striking out "and" at the end of paragraph (c), by adding "and" at the end of paragraph (d) and by adding the following after paragraph (d):**

**(e)** the definitions *eligible group entity*, *excluded entity* and *fixed interest commercial trust* in subsection 18.2(1) and section 18.21 do not apply in computing the non-resident person's income.

**(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023.**

**61 (1) Subsection 220(2.2) of the Act is replaced by the following:**

**Exception**

**(2.2)** Subsection (2.1) does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11), paragraph (m) of the definition *investment tax credit* in subsection 127(9) or subsection 127.44(17).

**(2) Subsection 220(2.2) of the Act, as enacted by subsection (1), is replaced by the following:**

**Exception**

**(2.2)** Subsection (2.1) does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11), paragraph (m) of the definition *investment tax credit* in subsection 127(9), subsection 127.44(17) or 127.45(3).

**(3) Subsection (1) is deemed to have come into force on January 1, 2022.**

**(4) Subsection (2) is deemed to have come into force on March 28, 2023.**

**62 Subsection 225.1(1.1) of the Act is amended by striking out "and" at the end of paragraph (b) and by adding the following after that paragraph:**

**(3) Les paragraphes (1) et (2) s'appliquent relativement aux paiements se produisant après le 30 juin 2022.**

**60 (1) Le paragraphe 216(1) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :**

**e)** les définitions de *entité admissible du groupe*, *entité exclue* et *fiducie commerciale à participation fixe* au paragraphe 18.2(1) et l'article 18.21 ne s'appliquent pas au calcul du revenu de la personne non-résidente.

**(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023.**

**61 (1) Le paragraphe 220(2.2) de la même loi est remplacé par ce qui suit :**

**Exception**

**(2.2)** Le paragraphe (2.1) ne s'applique pas au formulaire prescrit, au reçu ou au document, ni aux renseignements prescrits, qui sont présentés au ministre à compter de l'expiration du délai fixé au paragraphe 37(11), à l'alinéa m) de la définition de *crédit d'impôt à l'investissement* au paragraphe 127(9) ou au paragraphe 127.44(17).

**(2) Le paragraphe 220(2.2) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**Exception**

**(2.2)** Le paragraphe (2.1) ne s'applique pas au formulaire prescrit, au reçu ou au document, ni aux renseignements prescrits, qui sont présentés au ministre à compter de l'expiration du délai fixé au paragraphe 37(11), à l'alinéa m) de la définition de *crédit d'impôt à l'investissement* au paragraphe 127(9) ou aux paragraphes 127.44(17) ou 127.45(3).

**(3) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**(4) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.**

**62 Le paragraphe 225.1(1.1) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**(b.1)** in the case of an amount payable under any of subsections 211.92(2) to (5), in respect of the day on which the notice of assessment is sent,

**(i)** for one-fifth of the amount, one year after that day,

**(ii)** for two-fifths of the amount, two years after that day,

**(iii)** for three-fifths of the amount, three years after that day,

**(iv)** for four-fifths of the amount, four years after that day, and

**(v)** for the entire amount, five years after that day; and

**b.1)** dans le cas d'un montant payable en vertu de l'un des paragraphes 211.92(2) à (5), relativement à la date d'envoi de l'avis de cotisation :

**(i)** pour le cinquième du montant, une année après cette date,

**(ii)** pour les deux cinquièmes du montant, deux années après cette date,

**(iii)** pour les trois cinquièmes du montant, trois années après cette date,

**(iv)** pour les quatre cinquièmes du montant, quatre années après cette date,

**(v)** pour la totalité du montant, cinq années après cette date;

**63 (1) Section 227 of the Act is amended by adding the following after subsection (6.2):**

**63 (1) L'article 227 de la même loi est modifié par adjonction, après le paragraphe (6.2), de ce qui suit :**

**Hybrid mismatch adjustment**

**(6.3)** If, in respect of a *payment* (as defined in subsection 18.4(1)) arising under or in connection with a *hybrid mismatch arrangement* (as defined in that subsection), an amount was paid to the Receiver General under Part XIII on behalf of a person because an amount was deemed to have been paid by a corporation to the person as a dividend under subsection 214(18) and a deduction is allowed in respect of the payment or a portion of it, as the case may be, under paragraph 20(1)(yy),

**(a)** subject to paragraph (b), the Minister shall, on written application made no later than two years after the day on which the assessment is made in respect of the application of paragraph 20(1)(yy), pay to the person the amount determined by the formula

**A – B**

where

**A** is the lesser of

**(i)** the total of all amounts, if any, paid to the Receiver General on or prior to the day the written application was made on behalf of the person and in respect of the liability of the person to pay an amount under Part XIII in respect of the payment or the portion of it, as the case may be, and

**(ii)** the amount that would be payable to the Receiver General under Part XIII if an amount equal to the amount deductible under paragraph 20(1)(yy) were paid by the corporation to the person as a dividend described in

**Ajustement des dispositifs hybrides**

**(6.3)** Si, relativement à un *paiement* (au sens du paragraphe 18.4(1)) se produisant en vertu ou dans le cadre d'un *dispositif hybride* (au sens de ce paragraphe), un montant a été versé au receveur général en vertu de la partie XIII pour le compte d'une personne du fait qu'une somme est réputée lui avoir été payée par une société sous forme de dividende en vertu du paragraphe 214(18) et une déduction est permise au titre du paiement ou d'une partie de celui-ci, selon le cas, en application de l'alinéa 20(1)yy), les règles suivantes s'appliquent :

**a)** sous réserve de l'alinéa b), le ministre doit, sur demande écrite faite au plus tard deux ans après le jour où la cotisation est établie relativement à l'application de l'alinéa 20(1)yy), payer à cette personne la somme déterminée par la formule suivante :

**A – B**

où :

**A** représente la moins élevée des sommes suivantes :

**(i)** le total des sommes, le cas échéant, versées au receveur général, au plus tard le jour où la demande écrite a été faite, au nom de la personne et au titre d'une somme à payer par la personne relativement au paiement ou à une partie de celui-ci, selon le cas, en vertu de la partie XIII,

**(ii)** la somme qui serait payable au receveur général en vertu de la partie XIII si une somme égale au montant déductible en application de l'alinéa 20(1)yy) était payée par la société à la

paragraph 212(2)(a) at the end of the taxation year in which the amount is deductible under paragraph 20(1)(yy), and

**B** is the amount that would be payable to the Receiver General under Part XIII (if this Act were read without reference to subsection 214(18)) if an amount equal to the amount deductible under paragraph 20(1)(yy) had been paid or credited as interest by the corporation to the person at the end of the taxation year in which the amount is deductible under paragraph 20(1)(yy); and

**(b)** if the person is or is about to become liable to make a payment to His Majesty in right of Canada, the Minister may apply the amount otherwise payable under paragraph (a) to that liability and notify the person of that action.

**(2) Subsection 227(7.1) of the Act is replaced by the following:**

**Application for determination**

**(7.1)** Where, on application under subsection (6.1) or (6.3) by or on behalf of a person to the Minister in respect of an amount paid under Part XIII to the Receiver General, the Minister is not satisfied that the person is entitled to the amount claimed, the Minister shall, at the person's request, determine, with all due dispatch, the amount, if any, payable under subsection (6.1) or (6.3), as the case may be, to the person and shall send a notice of determination to the person, and sections 150 to 163, subsections 164(1) and 164(1.4) to 164(7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

**(3) Subsections (1) and (2) apply in respect of payments arising on or after July 1, 2022.**

**64 (1) Section 237.3 of the Act is amended by adding the following after subsection (12):**

**Optional disclosure — GAAR**

**(12.1)** If subsection (2) does not apply to a taxpayer in respect of a transaction or series of transactions of which the transaction is a part, the taxpayer may file an information return in prescribed form and containing prescribed information in respect of the transaction or series on or before the taxpayer's filing-due date for the taxation year in which the transaction occurs.

personne à titre de dividende à l'alinéa 212(2)a) à la fin de l'année d'imposition dans laquelle le montant est déductible en vertu de l'alinéa 20(1)yy),

**B** la somme qui serait payable au receveur général en vertu de la partie XIII en l'absence du paragraphe 214(18) si une somme égale au montant déductible en application de l'alinéa 20(1)yy) avait été payée à la personne, ou portée à son crédit, par la société à titre d'intérêts à la fin de l'année d'imposition dans laquelle le montant est déductible en vertu de l'alinéa 20(1)yy);

**b)** si la personne est tenue de faire un paiement à Sa Majesté du chef du Canada, ou est sur le point de l'être, le ministre peut appliquer le montant par ailleurs payable selon l'alinéa a) à ce paiement et aviser la personne en conséquence.

**(2) Le paragraphe 227(7.1) de la même loi est remplacé par ce qui suit :**

**Demande de détermination**

**(7.1)** Si, après étude d'une demande faite par une personne, ou en son nom, en application des paragraphes (6.1) ou (6.3) relativement à un montant versé au receveur général en vertu de la partie XIII, le ministre n'est pas convaincu que la personne a droit au montant demandé, il doit, à la demande de cette personne, déterminer, avec diligence, le montant éventuel qui lui est payable en vertu des paragraphes (6.1) ou (6.3), selon le cas, et aviser la personne de sa décision. Les articles 150 à 163, les paragraphes 164(1) et (1.4) à (7), les articles 164.1 à 167 et la section J de la partie I s'appliquent alors, avec les adaptations nécessaires.

**(3) Les paragraphes (1) et (2) s'appliquent relativement aux paiements se produisant après le 30 juin 2022.**

**64 (1) L'article 237.3 de la même loi est modifié par adjonction, après le paragraphe (12), de ce qui suit :**

**Choix de divulguer — RGAE**

**(12.1)** Si le paragraphe (2) ne s'applique pas à un contribuable relativement à une opération ou une série d'opérations dont l'opération fait partie, le contribuable peut produire une déclaration de renseignements sur le formulaire prescrit contenant les renseignements prescrits concernant l'opération ou la série au plus tard à la date d'échéance de production qui lui est applicable pour l'année d'imposition au cours de laquelle l'opération se produit.

**Late filing — GAAR**

**(12.2)** Despite subsection (12.1), a taxpayer may file the information return referred to in subsection (12.1) up to one year after the deadline referred to in that subsection, in which case

**(a)** for the purpose of applying subparagraphs 152(4)(b)(viii) and (4.01)(b)(xi) to the transaction referred to in subsection (12.1), the reference to "3 years" in paragraph 152(4)(b) is to be read as "1 year"; and

**(b)** for the purpose of applying subsection 245(5.1) to the transaction, the information return is deemed to have been filed within the time required by this section.

**(2) Subsection (1) applies to transactions that occur on or after January 1, 2024.**

**65 (1) Subparagraph 241(4)(d)(vi.1) of the Act is replaced by the following:**

**(vi.1)** to an official of the Department of Natural Resources solely for the purposes of determining whether

**(A)** property is *prescribed energy conservation property* (as defined in Part LXXXII of the *Income Tax Regulations*) or whether an outlay or expense is a *Canadian renewable and conservation expense* (as defined in section 66.1),

**(B)** a process is a *CCUS process* (as defined in section 127.44), whether property is *dual-use equipment* (as defined in section 127.44), whether a project is a *qualified CCUS project* (as defined in section 127.44) or whether a property is described in Class 57 or 58 of Schedule II to the *Income Tax Regulations*,

**(C)** a property is a *clean technology property* (as defined in section 127.45), and

**(D)** a cost is a *ZETM cost of capital* or a *ZETM cost of labour* (as defined in section 125.2) and activities are *qualified zero-emission technology manufacturing activities* (as defined in Part LII of the *Income Tax Regulations*),

**(2) Clause 241(4)(d)(xx.1)(A) of the Act is replaced by the following:**

**Présentation tardive — RGAE**

**(12.2)** Malgré le paragraphe (12.1), un contribuable peut produire la déclaration de renseignements visée au paragraphe (12.1) jusqu'à un an après le délai prévu à ce paragraphe, auquel cas :

**a)** pour l'application des sous-alinéas 152(4)(b)(viii) et (4.01)(b)(xi) à l'opération visée au paragraphe (12.1), la mention « trois ans » figurant à l'alinéa 152(4)b) vaut mention de « un an »;

**b)** pour l'application du paragraphe 245(5.1) à l'opération, la déclaration de renseignements est réputée avoir été produite dans le délai imparti en vertu du présent article.

**(2) Le paragraphe (1) s'applique aux opérations se produisant à compter du 1er janvier 2024.**

**65 (1) Le sous-alinéa 241(4)d)(vi.1) de la même loi est remplacé par ce qui suit :**

**(vi.1)** à un fonctionnaire du ministère des Ressources naturelles uniquement aux fins de déterminer si, à la fois :

**(A)** un bien constitue un *bien économisant l'énergie visé par règlement* (au sens de la partie LXXXII du *Règlement de l'impôt sur le revenu*) ou si une dépense engagée ou effectuée constitue des *frais liés aux énergies renouvelables et à l'économie d'énergie au Canada* (au sens de l'article 66.1),

**(B)** un processus est un *processus de CUSC* (au sens de l'article 127.44), si un bien constitue un *matériel à double usage* (au sens de l'article 127.44), si un projet est un *projet de CUSC admissible* (au sens de l'article 127.44) ou si le bien est décrit aux catégories 57 ou 58 de l'annexe II du *Règlement de l'impôt sur le revenu*,

**(C)** un bien constitue un *bien de technologie propre* (au sens de l'article 127.45),

**(D)** un coût constitue un coût en capital de FTZE ou un *coût en main-d'œuvre de FTZE* (au sens de l'article 125.2) et les activités sont des *activités admissibles de fabrication de technologies à zéro émission* (au sens de la partie LII du *Règlement de l'impôt sur le revenu*),

**(2) La division 241(4)d)(xx.1)(A) de la même loi est remplacée par ce qui suit :**

**(A)** the Department of Employment and Social Development, the Department of Health or the Department of Public Works and Government Services, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the *Department of Health Act* in respect of dental service for individuals, or

**(A)** du ministère de l'Emploi et du Développement social, du ministère de la Santé ou du ministère des Travaux publics et des Services gouvernementaux, mais uniquement en vue de l'application ou de l'exécution du Régime canadien de soins dentaires établi sous le régime de la *Loi sur le ministère de la Santé* relativement aux services de soins dentaires pour les particuliers,

**66 (1) Section 245 of the Act is amended by adding the following before subsection (1):**

**66 (1) L'article 245 de la même loi est modifié par adjonction, avant le paragraphe (1), de ce qui suit :**

**Preamble**

**245 (0.1)** This section of the Act contains the general anti-avoidance rule, which

**Préambule**

**245 (0.1)** Le présent article de la présente loi contient la règle générale anti-évitement, laquelle :

**(a)** applies to deny the tax benefit of avoidance transactions that result directly or indirectly either in a misuse of provisions of the Act (or any of the enactments listed in subparagraphs (4)(a)(ii) to (v)) or an abuse having regard to those provisions read as a whole, while not preventing taxpayers from obtaining tax benefits contemplated by Parliament; and

**a)** s'applique pour refuser les avantages fiscaux des opérations d'évitement qui entraînent directement ou indirectement un abus des dispositions de la présente loi (ou de l'un des textes figurant aux sous-alinéas (4)a)(ii) à (v)) ou un abus eu égard à ces dispositions lues dans leur ensemble sans empêcher les contribuables d'obtenir les avantages fiscaux visés par le Parlement;

**(b)** strikes a balance between

**b)** établit un équilibre entre, à la fois :

**(i)** the Government of Canada's responsibility to protect the tax base and the fairness of the tax system, and

**(i)** la responsabilité du gouvernement du Canada en matière de protection de l'assiette fiscale et de l'équité du régime fiscal,

**(ii)** taxpayers' need for certainty in planning their affairs.

**(ii)** le besoin de certitude des contribuables dans la planification de leurs affaires.

**(2) Subsection 245(3) of the Act is replaced by the following:**

**(2) Le paragraphe 245(3) de la même loi est remplacé par ce qui suit :**

**Avoidance transaction**

**(3)** Unless it may reasonably be considered that obtaining the tax benefit is not one of the main purposes for undertaking or arranging a transaction, the transaction is an avoidance transaction if the transaction

**Opération d'évitement**

**(3)** Sauf s'il est raisonnable de considérer que l'obtention de l'avantage fiscal n'est pas l'un des principaux objets d'entreprendre ou d'organiser l'opération, l'opération est une opération d'évitement si, selon le cas :

**(a)** but for this section, would result, directly or indirectly, in a tax benefit; or

**a)** en l'absence du présent article, elle donnait lieu à un avantage fiscal, directement ou indirectement;

**(b)** is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit.

**b)** elle fait partie d'une série d'opérations dont, en l'absence du présent article, découlerait, directement ou indirectement, un avantage fiscal.

**(3) Section 245 of the Act is amended by adding the following after subsection (4):**

**(3) L'article 245 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Economic substance — effect**

**(4.1)** If an avoidance transaction — or a series of transactions that includes the avoidance transaction — is significantly lacking in economic substance, this is an important consideration that tends to indicate that the transaction results in a misuse under paragraph (4)(a) or an abuse under paragraph (4)(b).

**Economic substance — meaning**

**(4.2)** Factors that establish that a transaction or series of transactions is significantly lacking in economic substance may include, but are not limited to, any of the following:

**(a)** all or substantially all of the opportunity for gain or profit and risk of loss of the taxpayer — taken together with those of all non-arm's length taxpayers (other than those non-arm's length taxpayers who can reasonably be considered, having regard to the circumstances viewed as a whole, to have economic interests that are largely adverse from those of the taxpayer) — remains unchanged, including because of

**(i)** a circular flow of funds,

**(ii)** offsetting financial positions,

**(iii)** the timing between steps in a series, or

**(iv)** the use of an accommodation party;

**(b)** it is reasonable to conclude that, at the time the transaction or series was entered into, the expected value of the tax benefit exceeded the expected non-tax economic return (which excludes both the tax benefit and any tax advantages connected to another jurisdiction); and

**(c)** it is reasonable to conclude that the entire, or almost entire, purpose for undertaking or arranging the transaction or series was to obtain the tax benefit.

**(4) Section 245 of the Act is amended by adding the following after subsection (5):**

**Penalty**

**(5.1)** If subsection (2) applies to determine the tax consequences to a person for a taxation year in respect of a transaction that was not disclosed by the person to the Minister in accordance with section 237.3 or 237.4, the person is liable to a penalty for the taxation year equal to the amount determined by the formula

**(A + B) × 25% – C**

**Substance économique — effet**

**(4.1)** Si une opération d'évitement — ou une série d'opérations comprenant l'opération d'évitement — manque considérablement de substance économique, il s'agit d'un facteur important qui tend à indiquer que l'opération constitue un abus en vertu des alinéas (4)a) ou b).

**Substance économique — sens**

**(4.2)** Les facteurs qui établissent qu'une opération ou une série d'opérations manque considérablement de substance économique peuvent comprendre, notamment, l'un des éléments suivants :

**a)** la totalité, ou la presque totalité des possibilités pour le contribuable de réaliser des gains ou des bénéfices et de subir des pertes, conjointement avec celles des contribuables ayant un lien de dépendance (sauf ceux qu'il est raisonnable de considérer, compte tenu des circonstances prises dans leur ensemble, comme ayant des intérêts économiques largement opposés à ceux du contribuable), reste inchangée, notamment en raison des éléments suivants :

**(i)** les flux circulaires de fonds,

**(ii)** la compensation des situations financières,

**(iii)** le délai entre les étapes d'une série,

**(iv)** le recours à une partie accommodante;

**b)** il est raisonnable de conclure que, au moment où l'opération ou la série était conclue, la valeur de l'avantage fiscal escomptée dépassait le rendement économique non fiscal escompté, lequel exclut aussi bien l'avantage fiscal que tout avantage fiscal se rattachant à une autre juridiction;

**c)** il est raisonnable de conclure que la totalité, ou la presque totalité, des objets d'entreprendre ou d'organiser l'opération ou la série était d'obtenir l'avantage fiscal.

**(4) L'article 245 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :**

**Pénalité**

**(5.1)** Si le paragraphe (2) s'applique pour déterminer les attributs fiscaux d'une personne pour une année d'imposition relativement à une opération, laquelle n'a pas été divulguée par la personne au ministre en application des articles 237.3 ou 237.4, celle-ci est passible, pour l'année d'imposition, d'une pénalité égale à la somme déterminée par la formule suivante :

where

**A** is the amount by which the tax payable by the person under this Act for the year exceeds the amount that would have been payable by the person under this Act for the year if subsection (2) had not applied in respect of the transaction;

**B** is the amount by which the total of all amounts, each of which is an amount that would have been deemed to be paid on account of the person's tax payable under Part I for the year if subsection (2) had not applied in respect of the transaction, exceeds the total of all amounts that are deemed to be paid on account of the person's tax payable under Part I for the year; and

**C** is the amount of any penalty payable by the person under subsection 163(2), to the extent that the amount is in respect of the transaction or a series that includes the transaction and did not reduce the penalty payable by the person under this subsection in a preceding taxation year.

**Penalty — exception**

**(5.2)** Subsection (5.1) does not apply to a person in respect of a transaction if the person demonstrates that, at the time that the transaction was entered into, it was reasonable for the person to have concluded that subsection (2) would not apply to the transaction in reliance on the transaction or a series that includes the transaction being identical or almost identical to a transaction or series that was the subject of

**(a)** published administrative guidance or statements made by the Minister or another relevant governmental authority; or

**(b)** one or more court decisions.

**Provisions applicable**

**(5.3)** Sections 152, 158, 159, 160.1, 164 to 167 and Division J of Part I apply to subsection (5.1) with such modifications as the circumstances require.

**(5) Subsections (2) and (3) apply to transactions that occur on or after January 1, 2024.**

**(6) Subsection (4) applies to transactions that occur on or after the later of January 1, 2024 and the day on which this Act receives royal assent.**

**67 (1) Subparagraph (f)(vi) of the definition *disposition* in subsection 248(1) of the Act is replaced by the following:**

**(A + B) × 25 % – C**

où :

**A** représente l'excédent de l'impôt payable par la personne pour l'année en vertu de la présente loi sur la somme qui aurait été payable par la personne pour l'année en vertu de la présente loi si le paragraphe (2) ne s'était pas appliqué à l'opération;

**B** l'excédent du total des sommes représentant chacune une somme qui aurait été réputée payée au titre de l'impôt payable par la personne en vertu de la partie I pour l'année si le paragraphe (2) ne s'était pas appliqué à l'opération sur le total des sommes réputées payées au titre de l'impôt par la personne en vertu de la partie I pour l'année;

**C** la somme de toute pénalité payable par la personne en vertu du paragraphe 163(2), dans la mesure où la somme se rapporte à l'opération ou à une série qui comprend l'opération et n'a pas réduit la pénalité payable par la personne en vertu de ce paragraphe dans une année d'imposition antérieure.

**Pénalité — exception**

**(5.2)** Le paragraphe (5.1) ne s'applique pas à une personne relativement à une opération lorsque la personne démontre que, au moment où l'opération était conclue, il lui était raisonnable de conclure que le paragraphe (2) ne s'appliquerait pas à l'opération, en s'appuyant sur le fait que l'opération ou qu'une série qui comprend l'opération est identique ou presque identique à une opération ou une série qui a fait l'objet :

**a)** de directives administratives ou déclarations publiées qui sont produites par le ministre ou une autre autorité gouvernementale compétente;

**b)** d'une ou de plusieurs décisions de tribunaux.

**Dispositions applicables**

**(5.3)** Les articles 152, 158, 159, 160.1, 164 à 167 et la section J de la partie I s'appliquent au paragraphe (5.1), avec les adaptations nécessaires.

**(5) Les paragraphes (2) et (3) s'appliquent aux opérations se produisant à compter du 1er janvier 2024.**

**(6) Le paragraphe (4) s'applique aux opérations se produisant après décembre 2023 ou, si elle est postérieure, à compter de la date de sanction de la présente loi.**

**67 (1) Le sous-alinéa f)(vi) de la définition de *disposition*, au paragraphe 248(1) de la même loi, est remplacé par ce qui suit :**

**(vi)** if the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, a trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a FHSA, a registered disability savings plan, a registered education savings plan, a registered supplementary unemployment benefit plan or a TFSA, the transferee is the same type of trust, and

**(vi)** si le cédant est une fiducie au profit d'un athlète amateur, une fiducie pour l'entretien d'un cimetière, une fiducie d'employés, une fiducie réputée par le paragraphe 143(1) exister à l'égard d'une congrégation qui est une partie constituante d'un organisme religieux, une fiducie créée à l'égard du fonds réservé (au sens de l'article 138.1 au présent alinéa), une fiducie visée à l'alinéa 149(1)o.4) ou une fiducie régie par un arrangement de services funéraires, un régime de participation des employés aux bénéfices, un compte d'épargne libre d'impôt pour l'achat d'une première propriété, un régime enregistré d'épargne-invalidité, un régime enregistré d'épargne-études, un régime enregistré de prestations supplémentaires de chômage ou un compte d'épargne libre d'impôt, le cessionnaire est une fiducie du même type,

**(2) The definition *employee benefit plan* in subsection 248(1) of the Act is amended by adding the following after paragraph (b):**

**(b.1)** an employee ownership trust,

**(2) La définition de *régime de prestations aux employés*, au paragraphe 248(1) de la même loi, est modifiée par adjonction, après l'alinéa b), de ce qui suit :**

**b.1)** une fiducie collective des employés;

**(3) The portion of the definition *employee trust* in subsection 248(1) of the Act before paragraph (a) is replaced by the following:**

***employee trust*** means an arrangement (other than an employee ownership trust, an employees profit sharing plan, a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan") established after 1979

**(3) Le passage de la définition de *fiducie d'employés* précédant l'alinéa a), au paragraphe 248(1) de la même loi, est remplacé par ce qui suit :**

***fiducie d'employés*** Arrangement (autre qu'une fiducie collective des employés, un régime de participation des employés aux bénéfices, un régime de participation différée aux bénéfices ou un régime appelé « régime dont l'agrément est retiré » au paragraphe 147(15)) constitué après 1979 et remplissant les conditions suivantes :

**(4) Subparagraph (d)(ii) of the definition *mineral resource* in subsection 248(1) of the Act is replaced by the following:**

**(ii)** the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin, lithium or sylvite, or

**(4) Le sous-alinéa d)(ii) de la définition de *matières minérales*, au paragraphe 248(1) de la même loi, est remplacé par ce qui suit :**

**(ii)** le principal minéral extrait est l'ammonite, le chlorure de calcium, le diamant, le gypse, l'halite, le kaolin, le lithium ou la sylvine,

**(5) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:**

***substantive CCPC*** means a private corporation (other than a Canadian-controlled private corporation) that

**(a)** is controlled, directly or indirectly in any manner whatever, by one or more individuals resident in Canada, or

**(b)** would, if each share of the capital stock of a corporation that is owned by a Canadian resident individual

**(5) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***SPCC en substance*** Société privée (à l'exception d'une société privée sous contrôle canadien) qui :

**a)** soit est contrôlée, directement ou indirectement, de quelque manière que ce soit, par un ou plusieurs particuliers résidant au Canada;

**b)** soit, si chaque action du capital-actions d'une société appartenant à un particulier résidant au Canada

were owned by a particular individual, be controlled by the particular individual; (*SPCC en substance*)

**(6) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:**

***absorbed capacity*** has the same meaning as in subsection 18.2(1); (*capacité absorbée*)

***cumulative unused excess capacity*** has the same meaning as in subsection 18.2(1); (*capacité excédentaire cumulative inutilisée*)

***excess capacity*** has the same meaning as in subsection 18.2(1); (*capacité excédentaire*)

***interest and financing expenses*** has the same meaning as in subsection 18.2(1), except for the purposes of the definition *economic profit* in subsection 126(7); (*dépenses d'intérêts et de financement*)

***interest and financing revenues*** has the same meaning as in subsection 18.2(1); (*revenus d'intérêts et de financement*)

***restricted interest and financing expense*** has the same meaning as in subsection 111(8); (*dépense d'intérêts et de financement restreinte*)

***transferred capacity*** has the same meaning as in subsection 18.2(1); (*capacité transférée*)

**(7) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:**

***distribution equipment*** has the same meaning as in subsection 1104(13) of the *Income Tax Regulations*; (*matériel de distribution*)

***fossil fuel*** has the same meaning as in subsection 1104(13) of the *Income Tax Regulations*; (*combustible fossile*)

***transmission equipment*** has the same meaning as in subsection 1104(13) of the *Income Tax Regulations*; (*matériel de transmission*)

**(8) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:**

***employee ownership trust*** means an irrevocable trust that, at all relevant times, satisfies the following conditions:

appartenait à un particulier donné, serait contrôlée par ce dernier. (*substantive CCPC*)

**(6) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***capacité absorbée*** S'entend au sens du paragraphe 18.2(1). (*absorbed capacity*)

***capacité excédentaire*** S'entend au sens du paragraphe 18.2(1). (*excess capacity*)

***capacité excédentaire cumulative inutilisée*** S'entend au sens du paragraphe 18.2(1). (*cumulative unused excess capacity*)

***capacité transférée*** S'entend au sens du paragraphe 18.2(1). (*transferred capacity*)

***dépenses d'intérêts et de financement*** S'entend au sens du paragraphe 18.2(1). (*interest and financing expenses*)

***dépense d'intérêts et de financement restreinte*** S'entend au sens du paragraphe 111(8). (*restricted interest and financing expense*)

***revenus d'intérêts et de financement*** S'entend au sens du paragraphe 18.2(1). (*interest and financing revenues*)

**(7) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***combustible fossile*** S'entend au sens du paragraphe 1104(13) du *Règlement de l'impôt sur le revenu*. (*fossil fuel*)

***matériel de distribution*** S'entend au sens du paragraphe 1104(13) du *Règlement de l'impôt sur le revenu*. (*distribution equipment*)

***matériel de transmission*** S'entend au sens du paragraphe 1104(13) du *Règlement de l'impôt sur le revenu*. (*transmission equipment*)

**(8) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***entreprise admissible*** S'entend, à un moment donné, d'une société contrôlée par une fiducie qui remplit les conditions suivantes :

**(a)** the trust is resident in Canada (determined without reference to subsection 94(3)),

**(b)** the trust is exclusively for the benefit of all individuals each of whom

**(i)** is either

**(A)** an employee of one or more qualifying businesses controlled by the trust (other than an employee who has not completed an applicable probationary period, which may not exceed 12 months), or

**(B)** if the trust permits, an individual (or the estate of an individual) who is a former employee (other than a former employee who did not complete an applicable probationary period, of up to 12 months, during their employment) of one or more qualifying businesses controlled by the trust and who was an employee of the qualifying business while the trust controlled the qualifying business,

**(ii)** does not own, directly or indirectly (other than through an interest in the trust), shares of a class of the capital stock of a qualifying business controlled by the trust, the value of which is equal to or greater than 10% of the fair market value of the class,

**(iii)** does not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, shares of a class of the capital stock of a qualifying business controlled by the trust, the value of which is equal to or greater than 50% of the fair market value of the class, and

**(iv)** immediately before the time of a qualifying business transfer to the trust, did not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, shares of the capital stock or indebtedness of the qualifying business, the value of which is equal to or greater than 50% of the fair market value of the shares of the capital stock and indebtedness of the qualifying business,

**(c)** the capital and income interests of each beneficiary described in clause (b)(i)(A) or (B) are determined in the same manner as the other beneficiaries described in those clauses, as applicable, based solely on any combination of the following criteria:

**(i)** the total hours of employment service provided by the beneficiary to the qualifying business in respect of a particular time period,

**a)** elle est une société privée sous contrôle canadien;

**b)** au plus 40 % de ses administrateurs sont composés de personnes qui, immédiatement avant le moment où la fiducie en a acquis le contrôle, détenaient, directement ou indirectement, seules ou avec une personne ou société de personnes liée ou affiliée, au moins 50 % de la juste valeur marchande des actions de son capital-actions ou de ses dettes;

**c)** elle n'a aucun lien de dépendance et n'est pas affiliée à une personne ou société de personnes qui, immédiatement avant le moment où la fiducie en a acquis le contrôle, détenait, directement ou indirectement, au moins 50 % de la juste valeur marchande des actions de son capital-actions ou de ses dettes. (*qualifying business*)

***fiducie collective des employés*** S'entend d'une fiducie irrévocable qui, à tout moment considéré, remplit les conditions suivantes :

**a)** elle réside au Canada (la résidence étant déterminée compte non tenu du paragraphe 94(3));

**b)** elle est exclusivement au profit des personnes dont chacune, à la fois :

**(i)** est soit :

**(A)** un employé d'une ou de plusieurs entreprises admissibles contrôlées par la fiducie (sauf un employé qui n'a pas complété une période probatoire applicable, laquelle ne peut se prolonger au-delà de douze mois),

**(B)** si la fiducie le permet, une personne (ou la succession d'une personne) qui est un ancien employé (autre qu'un ancien employé qui n'a pas complété une période probatoire applicable pouvant atteindre douze mois pendant son emploi) d'une ou de plusieurs entreprises admissibles contrôlées par la fiducie et qui était un employé de l'entreprise admissible pendant que la fiducie contrôlait celle-ci,

**(ii)** ne détient pas, directement ou indirectement (autre que par l'entremise d'une participation dans la fiducie), des actions d'une catégorie du capital-actions d'une entreprise admissible contrôlée par la fiducie, dont la valeur est égale ou supérieure à 10 % de la juste valeur marchande de la catégorie,

**(iii)** ne détient pas, directement ou indirectement, seule ou avec une personne ou société de personnes liée ou affiliée, des actions d'une catégorie du capital-actions d'une entreprise admissible contrôlée

**(ii)** the total salary, wages and other remuneration paid or payable to the beneficiary by the qualifying business in respect of a particular time period, not exceeding, for any calendar year in the particular time period, twice the first dollar amount referred to in paragraph 117(2)(e), as adjusted by section 117.1, for the year (prorated based upon the number of days of the calendar year in the particular time period), and

**(iii)** the total period of employment service the beneficiary has provided to the qualifying business since a particular time,

**(d)** the trustees are prohibited from exercising their discretion to act in the interest of one beneficiary (or group of beneficiaries) to the prejudice of another beneficiary (or group of beneficiaries),

**(e)** each trustee of the trust is either a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee or an individual (other than a trust),

**(f)** each trustee has an equal vote in the conduct of the affairs of the trust,

**(g)** at least one-third of the trustees must be beneficiaries described in clause (b)(i)(A),

**(h)** if any trustee is appointed (other than by an election within the last five years by the beneficiaries described in clause (b)(i)(A)), at least 60% of all trustees must be persons that deal at arm's length with each person who has, directly or indirectly in any manner whatever, as part of a transaction or event or series of transactions or events, sold shares of a qualifying business to the trust (or to any person or partnership affiliated with the trust) prior to or in connection with the trust acquiring control of the qualifying business,

**(i)** more than 50% of the beneficiaries of the trust described in clause (b)(i)(A) must approve each of the following transactions or events prior to their occurrence:

**(i)** any transaction or event or series of transactions or events that causes at least 25% of the beneficiaries to lose their status as beneficiaries under clause (b)(i)(A) (unless the change in status is in respect of a termination of employment for cause), and

**(ii)** a winding-up, amalgamation or merger of a qualifying business (other than in the course of a transaction or event or a series of transactions or

par la fiducie, dont la valeur est égale ou supérieure à 50 % de la juste valeur marchande de la catégorie,

**(iv)** immédiatement avant le moment d'un transfert admissible d'entreprise à la fiducie, elle ne détenait pas, directement ou indirectement, seule ou avec une personne ou société de personnes liée ou affiliée, des actions du capital-actions ou des dettes de l'entreprise admissible, dont la valeur est égale ou supérieure à 50 % de la juste valeur marchande des actions du capital-actions et des dettes de l'entreprise admissible;

**c)** la participation au capital et au revenu de chaque bénéficiaire visé aux divisions b)(i)(A) ou (B) est déterminée de la même manière que pour les autres bénéficiaires visés à ces divisions, selon le cas, uniquement en fonction d'une combinaison des critères suivants :

**(i)** le total des heures travaillées par le bénéficiaire pour l'entreprise admissible pour une période donnée,

**(ii)** le total du traitement, du salaire ou de toute autre rémunération versé ou payable au bénéficiaire par l'entreprise admissible pour une période donnée, ne dépassant pas, pour une année civile de la période donnée, deux fois la première somme visée à l'alinéa 117(2)e), ajustée par l'article 117.1, pour l'année (calculée au prorata en fonction du nombre de jours de l'année civile de la période donnée),

**(iii)** la période de service d'emploi totale que le bénéficiaire a offert à l'entreprise admissible depuis un moment donné;

**d)** il est interdit aux fiduciaires d'exercer leur pouvoir discrétionnaire afin d'agir dans l'intérêt d'un bénéficiaire (ou d'un groupe de bénéficiaires) au détriment d'un autre bénéficiaire (ou d'un groupe de bénéficiaires);

**e)** chaque fiduciaire de la fiducie est soit une société résidant au Canada qui est autorisée, par permis ou autrement, en vertu des lois fédérales ou provinciales, à exploiter au Canada une entreprise d'offre au public de services de fiduciaire soit un particulier (sauf une fiducie);

**f)** chaque fiduciaire de la fiducie a le même droit de vote dans la conduite des affaires de la fiducie;

**g)** au moins le tiers des fiduciaires sont des bénéficiaires visés à la division b)(i)(A);

events that involves only persons or partnerships that are affiliated with the qualifying business), and

**(j)** all or substantially all the fair market value of the property of the trust is attributable to shares of the capital stock of one or more qualifying businesses that the trust controls; (*fiducie collective des employés*)

***qualifying business***, at a particular time, means a corporation controlled by a trust

**(a)** that is a Canadian-controlled private corporation,

**(b)** not more than 40% of the directors of which consist of individuals that, immediately before the time that the trust acquired control of the corporation, owned, directly or indirectly, together with any person or partnership that is related to or affiliated with the director, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation, and

**(c)** that deals at arm's length and is not affiliated with any person or partnership that owned, directly or indirectly, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation immediately before the time the trust acquired control of the corporation; (*entreprise admissible*)

***qualifying business transfer*** means a disposition by a taxpayer of shares of the capital stock of a corporation (in this definition referred to as the "subject corporation") to a trust, or to a Canadian-controlled private corporation (in this definition referred to as the "purchaser corporation") that is controlled and wholly-owned by a trust, if

**(a)** immediately before the disposition, all or substantially all the fair market value of the assets of the subject corporation is attributable to assets (other than an interest in a partnership) that are used principally in an active business (referred to in this definition as the "business") carried on by the subject corporation or a corporation that is controlled and wholly-owned by the subject corporation,

**(b)** at the time of the disposition,

**(i)** the taxpayer deals at arm's length with the trust and any purchaser corporation,

**(ii)** the trust acquires control of the subject corporation, and

**(iii)** the trust is an employee ownership trust, the beneficiaries of which are employed in the business, and

**h)** si un fiduciaire est nommé (autrement que par élection au cours des cinq dernières années par les fiduciaires visés à la division b)(i)(A)), au moins 60 % de tous les fiduciaires sont des personnes qui n'ont pas de lien de dépendance les uns avec chacune des personnes qui aurait, directement ou indirectement et de quelque manière que ce soit, dans le cadre d'une opération, d'un événement ou d'une série d'opérations ou d'événements, vendu des actions d'une entreprise admissible à la fiducie (ou à toute personne ou société de personnes qui est affiliée à la fiducie) avant l'acquisition par la fiducie du contrôle de l'entreprise admissible ou lors de cette acquisition;

**i)** plus de la moitié des bénéficiaires de la fiducie visés à la division b)(i)(A) doivent approuver chacune des opérations ou chacun des événements suivants avant qu'ils ne surviennent :

**(i)** une opération ou un événement, ou une série d'opérations ou d'événements, par suite de laquelle au moins 25 % des bénéficiaires perdront leur statut de bénéficiaire en vertu de la division b)(i)(A) (sauf si le changement de statut est relativement à un licenciement motivé),

**(ii)** la liquidation, la fusion ou l'unification d'une entreprise admissible (sauf dans le cadre d'une opération, d'un événement ou d'une série d'opérations ou d'événements qui ne vise que des personnes ou sociétés de personnes qui sont affiliées à l'entreprise admissible);

**j)** la totalité, ou presque, de la juste valeur marchande des biens de la fiducie est attribuable à des actions du capital-actions d'une ou de plusieurs entreprises admissibles que la fiducie contrôle. (*employee ownership trust*)

***transfert admissible d'entreprise*** S'entend d'une disposition d'actions du capital-actions d'une société (appelée « société en cause » à la présente définition) par un contribuable en faveur d'une fiducie, ou d'une société privée sous contrôle canadien (appelée « acheteur » à la présente définition) dont les actions appartiennent à cent pour cent à la fiducie et qui est contrôlée par celle-ci, si les conditions suivantes sont réunies :

**a)** immédiatement avant la disposition, la totalité ou presque de la juste valeur marchande des éléments d'actif de la société en cause est attribuable, à ce moment, à des éléments d'actif (sauf une participation dans une société de personnes) qui sont utilisés principalement dans une entreprise (appelée l'« entreprise » à la présente définition) que la société en cause, ou une société dont les actions appartiennent à

**(c)** at all times after the disposition,

**(i)** the taxpayer deals at arm's length with the subject corporation, the trust and any purchaser corporation, and

**(ii)** the taxpayer does not retain any right or influence that, if exercised, would allow the taxpayer (whether alone or together with any person or partnership that is related to or affiliated with the taxpayer) to control, directly or indirectly in any manner whatever, the subject corporation, the trust, or any purchaser corporation; (*transfert admissible d'entreprise*)

cent pour cent à la société en cause et qui est contrôlée par celle-ci, exploite activement;

**b)** au moment de la disposition, les conditions suivantes sont remplies :

**(i)** le contribuable n'a pas de lien de dépendance avec la fiducie (ou un acheteur),

**(ii)** la fiducie acquiert le contrôle de la société en cause,

**(iii)** la fiducie est une fiducie collective des employés dont les bénéficiaires sont employés dans l'entreprise;

**c)** à tout moment après la disposition, les conditions suivantes sont remplies :

**(i)** le contribuable n'a aucun lien de dépendance avec la société en cause, la fiducie ou un acheteur,

**(ii)** le contribuable ne conserve pas un droit ou une influence dont l'exercice lui permettrait (seul ou avec une personne ou une société de personnes qui lui est liée ou affiliée) de contrôler, directement ou indirectement, de quelque manière que ce soit, la société en cause, la fiducie ou un acheteur. (*qualifying business transfer*)

**(9) Paragraph 248(3.2)(d) of the Act is replaced by the following:**

**(d)** presented as an arrangement in respect of which the corporation is to take action for the arrangement to become a FHSA, a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan or a TFSA.

**(9) L'alinéa 248(3.2)d) de la même loi est remplacé par ce qui suit :**

**d)** il est présenté à titre d'arrangement à l'égard duquel la société doit faire en sorte qu'il devienne un compte d'épargne libre d'impôt pour l'achat d'une première propriété, un régime enregistré d'épargne-invalidité, un régime enregistré d'épargne-études, un fonds enregistré de revenu de retraite, un régime enregistré d'épargne-retraite ou un compte d'épargne libre d'impôt.

**(10) Section 248 of the Act is amended by adding the following after subsection (42):**

**Substantive CCPC — anti-avoidance**

**(43)** For the purposes of this Act, if it is reasonable to consider that one of the purposes of any *transaction* (as defined in subsection 245(1)), or series of transactions, is to cause a corporation that is resident in Canada (other than a Canadian-controlled private corporation or a corporation that is, in absence of this subsection, a substantive CCPC) to avoid tax otherwise payable under section 123.3 on the corporation's aggregate investment income, the corporation is deemed to be a substantive CCPC from

**(10) L'article 248 de la même loi est modifié par adjonction, après le paragraphe (42), de ce qui suit :**

**SPCC en substance — anti-évitement**

**(43)** Pour l'application de la présente loi, s'il est raisonnable de considérer que l'un des objets d'une *opération* (au sens du paragraphe 245(1)), ou d'une série d'opérations, est de faire en sorte qu'une société qui réside au Canada (autre qu'une société privée sous contrôle canadien ou qu'une société qui est, en l'absence du présent paragraphe, une SPCC en substance) évite l'impôt autrement payable en vertu de l'article 123.3 sur le revenu de placement total de la société, celle-ci est réputée être une

the time that the transaction or series of transactions commenced until the earliest time at which the corporation

**(a)** becomes a Canadian-controlled private corporation;

**(b)** is subject to a loss restriction event; or

**(c)** ceases to be resident in Canada.

**(11) Subsections (1) and (9) are deemed to have come into force on April 1, 2023.**

**(12) Subsections (2), (3) and (8) come into force or are deemed to have come into force on January 1, 2024.**

**(13) Subsection (4) is deemed to have come into force on March 28, 2023 and, for greater certainty, subsection (4) does not apply in respect of expenses incurred before March 28, 2023.**

**(14) Subsections (5) and (10) apply to**

**(a) taxation years of a corporation that begin on or after April 7, 2022, if**

**(i) the corporation's first taxation year that ends on or after April 7, 2022 ends due to a loss restriction event caused by a sale of all or substantially all of the shares of a corporation to a purchaser before 2023,**

**(ii) the purchaser deals at arm's length (determined without reference to a right referred to in paragraph 251(5)(b) of the Act) with the corporation immediately prior to the loss restriction event, and**

**(iii) the sale occurs pursuant to a written purchase and sale agreement entered into before April 7, 2022; and**

**(b) taxation years that end on or after April 7, 2022, in any other case.**

**(15) Subsection (6) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (6) also applies in respect of a taxation year that begins before, and ends after October 1, 2023 if**

SPCC en substance à compter du début de l'opération ou de la série d'opérations jusqu'au jour où la première des éventualités ci-après se produit :

**a)** la société devient une société privée sous contrôle canadien;

**b)** la société est assujettie à un fait lié à la restriction de pertes;

**c)** la société cesse de résider au Canada.

**(11) Les paragraphes (1) et (9) sont réputés être entrés en vigueur le 1er avril 2023.**

**(12) Les paragraphes (2), (3) et (8) entrent en vigueur ou sont réputés être entrés en vigueur le 1er janvier 2024.**

**(13) Le paragraphe (4) est réputé être entré en vigueur le 28 mars 2023. Il est entendu qu'il ne s'applique pas relativement aux dépenses engagées avant cette date.**

**(14) Les paragraphes (5) et (10) s'appliquent :**

**a) aux années d'imposition d'une société commençant à compter du 7 avril 2022 si, à la fois :**

**(i) la première année d'imposition de la société se terminant à compter du 7 avril 2022 se termine en raison d'un fait lié à la restriction de pertes causé par la vente de la totalité, ou presque, des actions d'une société à un acquéreur avant 2023,**

**(ii) l'acquéreur n'a pas de lien de dépendance (déterminé compte non tenu d'un droit auquel il est fait référence à l'alinéa 251(5)b) de la même loi) avec la société immédiatement avant le fait lié à la restriction de pertes,**

**(iii) la vente survient en vertu d'une convention d'achat-vente écrite conclue avant le 7 avril 2022;**

**b) aux années d'imposition se terminant à compter du 7 avril 2022, dans les autres cas.**

**(15) Le paragraphe (6) s'applique relativement aux années d'imposition d'un contribuable commençant à compter du 1er octobre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition commençant avant le 1er octobre 2023 et se terminant après cette date si, à la fois :**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**(16) Subsection (7) is deemed to have come into force on March 28, 2023.**

**68 (1) Subsection 256(7) of the Act is amended by striking out "and" at the end of paragraph (h), by adding "and" at the end of paragraph (i), and by adding the following after paragraph (i):**

**(j)** if an employee ownership trust controls a qualifying business, control of the qualifying business is deemed not to be acquired solely because of a change in the trustee having ownership or control of the trust's property if the trust remains an employee ownership trust immediately after the change of trustee.

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**69 (1) The definition *specified provision* in subsection 256.1(1) of the Act is replaced by the following:**

***specified provision*** means any of subsections 10(10) and 13(24), paragraph 37(1)(h), subsections 66(11.4) and (11.5), 66.7(10) and (11), 69(11) and 111(4), (5), (5.01), (5.1) and (5.3), paragraphs (j) and (k) of the definition *investment tax credit* in subsection 127(9), subsections 181.1(7) and 190.1(6) and any provision of similar effect. (*dispositions déterminées*)

**(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**(16) Le paragraphe (7) est réputé être entré en vigueur le 28 mars 2023.**

**68 (1) Le paragraphe 256(7) de la même loi est modifié par adjonction, après l'alinéa i), de ce qui suit :**

**j)** si une fiducie collective des employés contrôle une entreprise admissible, le contrôle de l'entreprise admissible est réputé ne pas être acquis en raison seulement du remplacement du fiduciaire ayant la propriété ou le contrôle des biens de la fiducie si celle-ci demeure une fiducie collective des employés immédiatement après le remplacement du fiduciaire.

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**69 (1) La définition de *dispositions déterminées*, au paragraphe 256.1(1) de la même loi, est remplacée par ce qui suit :**

***dispositions déterminées*** Les paragraphes 10(10) et 13(24), l'alinéa 37(1)h), les paragraphes 66(11.4) et (11.5), 66.7(10) et (11), 69(11) et 111(4), (5), (5.01), (5.1) et (5.3), les alinéas j) et k) de la définition de *crédit d'impôt à l'investissement* au paragraphe 127(9), les paragraphes 181.1(7) et 190.1(6) et toute disposition ayant un effet similaire. (*specified provision*)

**(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série**

**the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**70 (1) Section 260 of the Act is amended by adding the following after subsection (6.2):**

**70 (1) L'article 260 de la même loi est modifié par adjonction, après le paragraphe (6.2), de ce qui suit :**

**Subsections 112(2.01) and (2.3) — ordering**

**(6.3)** For the purposes of paragraphs (6.1)(b) and (6.2)(b), the amount of any dividends received by a corporation in respect of which no amount was deductible because of subsection 112(2.3) includes an amount that was not deductible under both subsections 112(2.01) and (2.3).

**Paragraphes 112(2.01) et (2.3) — ordre**

**(6.3)** Pour l'application des alinéas (6.1)b) et (6.2)b), le montant de dividendes qu'une société reçoit à l'égard duquel aucun montant n'était déductible, par l'effet du paragraphe 112(2.3), inclut un montant qui n'était pas déductible en vertu à la fois des paragraphes 112(2.01) et (2.3).

**(2) Subsection (1) applies in respect of dividends received after 2023.**

**(2) Le paragraphe (1) s'applique relativement aux dividendes reçus après 2023.**

R.S., c. E-15

## Excise Tax Act

L.R., ch. E-15

## Loi sur la taxe d'accise

**71 Clause 295(5)(d)(xi.1)(A) of the *Excise Tax Act* is replaced by the following:**

**71 La division 295(5)d)(xi.1)(A) de la *Loi sur la taxe d'accise* est remplacée par ce qui suit :**

**(A)** the Department of Employment and Social Development, the Department of Health or the Department of Public Works and Government Services, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the *Department of Health Act* in respect of dental service for individuals, or

**(A)** du ministère de l'Emploi et du Développement social, du ministère de la Santé ou du ministère des Travaux publics et des Services gouvernementaux, mais uniquement en vue de l'application ou de l'exécution du Régime canadien de soins dentaires établi sous le régime de la *Loi sur le ministère de la Santé* relativement aux services de soins dentaires pour les particuliers,

2002, c. 22

## Excise Act, 2001

2002, ch. 22

## Loi de 2001 sur l'accise

**72 Clause 211(6)(e)(xii.1)(A) of the *Excise Act, 2001* is replaced by the following:**

**72 La division 211(6)e)(xii.1)(A) de la *Loi de 2001 sur l'accise* est remplacée par ce qui suit :**

**(A)** the Department of Employment and Social Development, the Department of Health or the Department of Public Works and Government Services, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the

**(A)** du ministère de l'Emploi et du Développement social, du ministère de la Santé ou du ministère des Travaux publics et des Services gouvernementaux, mais uniquement en vue de l'application ou de l'exécution du Régime canadien de soins dentaires établi sous le régime de la *Loi*

*Department of Health Act* in respect of dental service for individuals, or

*sur le ministère de la Santé* relativement aux services de soins dentaires pour les particuliers,

C.R.C., c. 945

## Income Tax Regulations

**73 (1) Paragraph 103(7)(a) of the *Income Tax Regulations* is amended by striking out "or" at the end of subparagraph (ii) and by adding the following after subparagraph (iii):**

**(iv)** a contribution that is an *excluded contribution* (as defined in subsection 207.5(1) of the Act); or

**(2) Subsection (1) is deemed to have come into force on March 28, 2023.**

**74 (1) Subsection 204(3) of the Regulations is amended by striking out "or" at the end of paragraph (f), by adding "or" at the end of paragraph (g) and by adding the following after paragraph (g):**

**(h)** governed by a FHSA.

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**75 (1) Subsection 205(3) of the Regulations is amended by deleting the following:**

First Home Savings Account (FHSA) Annual Information Return

**(2) Subsection 205(3) of the Regulations is amended by adding the following in alphabetical order:**

| | |
|---|---|
| First Home Savings Account Statement | T4FHSA |

**(3) Subsections (1) and (2) are deemed to have come into force on April 1, 2023.**

**76 (1) Subsection 205.1(1) of the Regulations is amended by deleting the following:**

First Home Savings Account (FHSA) Annual Information Return

**(2) Subsection 205.1(1) of the Regulations is amended by adding the following in alphabetical order:**

| | |
|---|---|
| First Home Savings Account Statement | T4FHSA |

**(3) Subsections (1) and (2) are deemed to have come into force on April 1, 2023.**

C.R.C., ch. 945

## Règlement de l'impôt sur le revenu

**73 (1) L'alinéa 103(7)a) du *Règlement de l'impôt sur le revenu* est modifié par adjonction, après le sous-alinéa (iii), de ce qui suit :**

**(iv)** la cotisation qui est une *cotisation exclue* (au sens du paragraphe 207.5(1) de la Loi);

**(2) Le paragraphe (1) est réputé être entré en vigueur le 28 mars 2023.**

**74 (1) Le paragraphe 204(3) du même règlement est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**h)** régie par un CELIAPP.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**75 (1) Le paragraphe 205(3) du même règlement est modifié par suppression de ce qui suit :**

Déclaration de renseignements annuelle sur un compte d'épargne libre d'impôt pour l'achat d'une première propriété (CELIAPP)

**(2) Le paragraphe 205(3) du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

| | |
|---|---|
| État du compte d'épargne libre d'impôt pour l'achat d'une première propriété | T4FHSA |

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er avril 2023.**

**76 (1) Le paragraphe 205.1(1) du même règlement est modifié par suppression de ce qui suit :**

Déclaration de renseignements annuelle sur un compte d'épargne libre d'impôt pour l'achat d'une première propriété (CELIAPP)

**(2) Le paragraphe 205.1(1) du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

| | |
|---|---|
| État du compte d'épargne libre d'impôt pour l'achat d'une première propriété | T4FHSA |

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er avril 2023.**

**77 (1) The portion of subsection 209(5) of the Regulations before paragraph (a) is replaced by the following:**

**(5)** A person may provide a Statement of Remuneration Paid (T4) information return, a Tuition and Enrolment Certificate, a First Home Savings Account Statement (T4FHSA) information return, a Statement of Pension, Retirement, Annuity, and Other Income (T4A) information return or a Statement of Investment Income (T5) information return, as required under subsection (1), as a single document in an electronic format (instead of the two copies required under subsection (1)) to the taxpayer to whom the return relates, on or before the date on which the return is to be filed with the Minister, unless

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**78 (1) Paragraph 304(1)(a) of the Regulations is replaced by the following:**

**(a)** an annuity contract that is, or is issued pursuant to, an arrangement described in any of paragraphs 148(1)(a) to (b.4) and (d) of the Act;

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**79 (1) Paragraph 1100(1)(a) of the Regulations is amended by striking out "and" at the end of subparagraph (xli) and by adding the following after subparagraph (xlii):**

**(xliii)** of Class 57, 8 per cent,

**(xliv)** of Class 58, 20 per cent,

**(xlv)** of Class 59, 100 per cent, and

**(xlvi)** of Class 60, 30 per cent,

**(2) Paragraph (a) of the description of A in subsection 1100(2) of the Regulations is replaced by the following:**

**(a)** if the property is not included in paragraph (1)(v) or in any of Classes 12, 13, 14, 15, 43.1, 43.2, 53, 54, 55, 56, 59 or in Class 43 in the circumstances described in paragraph (d),

**(3) Subsections (1) and (2) apply to property acquired after 2021.**

**77 (1) Le passage du paragraphe 209(5) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(5)** La personne qui est tenue de transmettre à un contribuable deux copies de la déclaration de renseignements intitulée État de la rémunération payée (T4), du Certificat pour frais de scolarité et d'inscription, une déclaration de renseignements intitulée État du compte d'épargne libre d'impôt pour l'achat d'une première propriété (T4FHSA), une déclaration de renseignements intitulée État du revenu de pension, de retraite, de rente ou d'autres sources (T4A) ou une déclaration de renseignements intitulée État des revenus de placements (T5), comme le prévoit le paragraphe (1), peut plutôt lui en fournir une copie par voie électronique au plus tard à la date où elle doit produire la déclaration au ministre, sauf si, selon le cas :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**78 (1) L'alinéa 304(1)a) du même règlement est remplacé par ce qui suit :**

**a)** le contrat de rente qui est un arrangement visé à l'un des alinéas 148(1)a) à b.4) et d) de la Loi ou qui est émis aux termes d'un tel arrangement;

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**79 (1) L'alinéa 1100(1)a) du même règlement est modifié par adjonction, après le sous-alinéa (xlii), de ce qui suit :**

**(xliii)** de la catégorie 57, 8 pour cent,

**(xliv)** de la catégorie 58, 20 pour cent,

**(xlv)** de la catégorie 59, 100 pour cent,

**(xlvi)** de la catégorie 60, 30 pour cent,

**(2) L'alinéa a) de l'élément A de la première formule figurant au paragraphe 1100(2) du même règlement est remplacé par ce qui suit :**

**a)** si le bien n'est pas compris à l'alinéa (1)v) ou dans l'une des catégories 12, 13, 14, 15, 43.1, 43.2, 53, 54, 55, 56 et 59 ou dans la catégorie 43 dans les circonstances prévues à l'alinéa d) :

**(3) Les paragraphes (1) et (2) s'appliquent aux biens acquis après 2021.**

**80 (1) The definition *governing plan* in subsection 4901(2) of the Regulations is replaced by the following:**

***governing plan*** means a deferred profit sharing plan or a revoked plan, a FHSA, a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan or a TFSA; (*régime d'encadrement*)

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**81 (1) Clause (a)(i)(I) of the definition *qualified zero-emission technology manufacturing activities* in section 5202 of the Regulations is replaced by the following:**

**(I)** equipment that is a component of property included in clauses (A) to (H) or (L) to (O), if such equipment is purpose-built or designed exclusively to form an integral part of that property,

**(2) Subparagraph (a)(i) of the definition *qualified zero-emission technology manufacturing activities* in section 5202 of the Regulations is amended by striking out "and" at the end of clause (J), by striking out "and" at the end of clause (K) and by adding the following after clause (K):**

**(L)** nuclear energy equipment,

**(M)** heavy water used for nuclear energy generation,

**(N)** nuclear fuels used for nuclear energy generation, and

**(O)** nuclear fuel rods, and

**(3) Subsections (1) and (2) apply to taxation years that begin after 2023.**

**82 (1) The portion of subsection 5903(5) of the Regulations before paragraph (a) is replaced by the following:**

**(5)** For the purposes of this section, section 5903.1 and section 18.2 of the Act,

**(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign**

**80 (1) La définition de *régime d'encadrement*, au paragraphe 4901(2) du même règlement, est remplacée par ce qui suit :**

***régime d'encadrement*** Régime de participation différée aux bénéfices ou régime dont l'agrément est retiré, CELIAPP, régime enregistré d'épargne-invalidité, régime enregistré d'épargne-études, fonds enregistré de revenu de retraite, régime enregistré d'épargne-retraite ou compte d'épargne libre d'impôt. (*governing plan*)

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**81 (1) La division a)(i)(I) de la définition de *activités admissibles de fabrication de technologies à zéro émission*, à l'article 5202 du même règlement, est remplacée par ce qui suit :**

**(I)** de matériel constituant un composant de biens visés aux divisions (A) à (H) ou (L) à (O), si celui-ci est conçu à une fin particulière ou exclusivement pour faire partie intégrante de ce bien,

**(2) Le sous-alinéa a)(i) de la définition de *activités admissibles de fabrication de technologies à zéro émission*, à l'article 5202 du même règlement, est modifié par adjonction, après la division (K), de ce qui suit :**

**(L)** de matériel lié à l'énergie nucléaire,

**(M)** d'eau lourde servant à la production d'énergie nucléaire,

**(N)** de combustibles nucléaires servant à la production d'énergie nucléaire,

**(O)** de barres de combustible nucléaire,

**(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition commençant après 2023.**

**82 (1) Le passage du paragraphe 5903(5) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(5)** Les règles ci-après s'appliquent au présent article, à l'article 5903.1 et à l'article 18.2 de la Loi :

**(2) Le paragraphe (1) s'applique relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, il**

**affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**s'applique aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**83 (1) Subparagraph (a)(iii) of the definition *earnings* in subsection 5907(1) of the Regulations is replaced by the following:**

**(iii)** in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 12.7(3), 18(4), 18.4(4), 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

**83 (1) Le sous-alinéa a)(iii) de la définition de *gains*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :**

**(iii)** dans les autres cas, le montant qui représenterait le revenu tiré de l'entreprise pour l'année en vertu de la partie I de la Loi si la société affiliée résidait au Canada, l'entreprise était exploitée au Canada et s'il n'était pas tenu compte des paragraphes 12.7(3), 18(4), 18.4(4), 80(3) à (12), (15) et (17) et 80.01(5) à (11) ni des articles 80.02 à 80.04 de la Loi;

**(2) Subparagraph (a)(iii) of the definition *earnings* in subsection 5907(1) of the Regulations, as enacted by subsection (1), is replaced by the following:**

**(iii)** in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 12.7(3), 18(4), 18.2(2), 18.4(4), 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

**(2) Le sous-alinéa a)(iii) de la définition de *gains*, au paragraphe 5907(1) du même règlement, édicté par le paragraphe (1), est remplacé par ce qui suit :**

**(iii)** dans les autres cas, le montant qui représenterait le revenu tiré de l'entreprise pour l'année en vertu de la partie I de la Loi si la société affiliée résidait au Canada, l'entreprise était exploitée au Canada et s'il n'était pas tenu compte des paragraphes 12.7(3), 18(4), 18.2(2), 18.4(4), 80(3) à (12), (15) et (17) et 80.01(5) à (11) ni des articles 80.02 à 80.04 de la Loi;

**(3) Subparagraph (iii) of the description of A in the definition *exempt surplus* in subsection 5907(1) of the Regulations is replaced by the following:**

**(iii)** the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the

**(3) Le sous-alinéa (iii) de l'élément A de la formule figurant à la définition de *surplus exonéré*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :**

**(iii)** la fraction d'un dividende que la société affiliée déterminée a reçu, au cours de la période et avant le moment donné, d'une autre société étrangère

corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that

**(A)** was prescribed by paragraph 5900(1)(a) to have been paid out of the payer affiliate's exempt surplus in respect of the corporation,

**(B)** does not give rise to the application of subsection 12.7(3) in computing the foreign accrual property income of a foreign affiliate of a taxpayer, and

**(C)** would not be deemed under subsection 113(5) of the Act not to be a dividend received by the subject affiliate on a share of the capital stock of the payer affiliate for the purposes of section 113 of the Act, if the subject affiliate were a corporation resident in Canada,

**(4) Subparagraph (iv) of the description of A in the definition *hybrid surplus* in subsection 5907(1) of the Regulations is replaced by the following:**

**(iv)** the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed under subsection 5905(7) to have been received by the subject affiliate) that

**(A)** was prescribed under paragraph 5900(1)(a.1) to have been paid out of the payer affiliate's hybrid surplus in respect of the corporation,

**(B)** does not give rise to the application of subsection 12.7(3) in computing the foreign accrual property income of a foreign affiliate of a taxpayer, and

**(C)** would not be deemed under subsection 113(5) of the Act not to be a dividend received by the subject affiliate on a share of the capital stock of the payer affiliate for the purposes of section 113 of the Act, if the subject affiliate were a corporation resident in Canada, or

**(5) Paragraph (b) of the definition *net earnings* in subsection 5907(1) of the Regulations is replaced by the following:**

**(b)** in respect of foreign accrual property income is the amount that would be its foreign accrual property income for the year, if the formula in the definition

affiliée de la société — y compris tout dividende qu'elle est réputée avoir reçu en vertu du paragraphe 5905(7) — qui, à la fois :

**(A)** est reputée, selon l'alinéa 5900(1)a), avoir été prélevée sur le surplus exonéré de l'autre société affiliée à l'égard de la société,

**(B)** ne donne pas lieu à l'application du paragraphe 12.7(3) dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée d'un contribuable,

**(C)** ne serait pas réputée en vertu du paragraphe 113(5) de la Loi ne pas être un dividende que la société affilié déterminée a reçu sur une action du capital-actions de la société affiliée payeuse pour l'application de l'article 113 de la Loi, si la société affiliée déterminée était une société résidant au Canada,

**(4) Le sous-alinéa (iv) de l'élément A de la formule figurant à l'alinéa c) de la définition de *surplus hybride,* au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :**

**(iv)** la partie de tout dividende que la société affiliée déterminée a reçu, au cours de la période et avant le moment donné, d'une autre société étrangère affiliée de la société (y compris tout dividende qu'elle est réputée avoir reçu en vertu du paragraphe 5905(7)) qui, à la fois :

**(A)** selon l'alinéa 5900(1)a.1), est considérée comme ayant été versée sur le surplus hybride de l'autre société affiliée relativement à la société,

**(B)** ne donne pas lieu à l'application du paragraphe 12.7(3) dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée d'un contribuable,

**(C)** ne serait pas réputée en vertu du paragraphe 113(5) de la Loi ne pas être un dividende que la société affiliée déterminée a reçu sur une action du capital-actions de la société affiliée payeuse pour l'application de l'article 113 de la Loi, si la société affiliée déterminée était une société résidant au Canada,

**(5) L'alinéa b) de la définition de *gains nets*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :**

**b)** s'agissant des gains nets relatifs au revenu étranger accumulé, tiré de biens, le montant qui représenterait le revenu étranger accumulé, tiré de biens de la société

*foreign accrual property income* in subsection 95(1) of the Act were read without reference to F and F.1 in that formula and the amount determined for E in that formula were the amount determined under paragraph (a) of the description of E in that formula and the Act were read without regard to its clause 95(2)(f.11)(ii)(D), minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of that income,

**(6) Subclause (b)(i)(A)(I) of the definition *net loss* in subsection 5907(1) of the Regulations is replaced by the following:**

**(I)** the amount that would be determined for D in the formula in the definition *foreign accrual property income* in subsection 95(1) of the Act for the year, if the Act were read without regard to its clauses 95(2)(f.11)(ii)(D) and (E),

**(7) Subparagraph (iii) of the description of A in the definition *taxable surplus* in subsection 5907(1) of the Regulations is replaced by the following:**

**(iii)** the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that

**(A)** was prescribed by paragraph 5900(1)(b) to have been paid out of the payer affiliate's taxable surplus in respect of the corporation,

**(B)** does not give rise to the application of subsection 12.7(3) in computing the foreign accrual property income of a foreign affiliate of a taxpayer, and

**(C)** would not be deemed under subsection 113(5) of the Act not to be a dividend received by the subject affiliate on a share of the capital stock of the payer affiliate for the purposes of section 113 of the Act, if the subject affiliate were a corporation resident in Canada,

**(8) Subsection (1) applies in respect of payments arising on or after July 1, 2022.**

affiliée pour l'année s'il n'était pas tenu compte des éléments F et F.1 de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1) de la Loi et si la valeur de l'élément E de cette formule correspondait à la somme déterminée selon l'alinéa a) de l'élément E de cette formule, et si la Loi s'appliquait compte non tenu de sa division 95(2)f.11)(ii)(D), moins la fraction de l'impôt sur le revenu ou sur les bénéfices qu'elle a payé pour l'année au gouvernement d'un pays qu'il est raisonnable de considérer comme un impôt sur ce revenu;

**(6) La subdivision b)(i)(A)(I) de la définition de *perte nette*, au paragraphe 5907(1) du même règlement, est remplacée par ce qui suit :**

**(I)** la valeur de l'élément D de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1) de la Loi pour l'année, si la Loi s'appliquait compte non tenu de ses divisions 95(2)f.11)(ii)(D) et (E),

**(7) Le sous-alinéa (iii) de l'élément A de la formule figurant à la définition de *surplus imposable*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :**

**(iii)** la fraction d'un dividende que la société affiliée déterminée a reçu, au cours de la période et avant le moment donné, d'une autre société étrangère affiliée de la société — y compris tout dividende qu'elle est réputée avoir reçu en vertu du paragraphe 5905(7) — qui, à la fois :

**(A)** est réputée, selon l'alinéa 5900(1)b), avoir été prélevée sur le surplus imposable de l'autre société affiliée à l'égard de la société,

**(B)** ne donne pas lieu à l'application du paragraphe 12.7(3) dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée d'un contribuable,

**(C)** ne serait pas réputée en vertu du paragraphe 113(5) de la Loi ne pas être un dividende que la société affiliée déterminée a reçu sur une action du capital-actions de la société affiliée payeuse pour l'application de l'article 113 de la Loi, si la société affiliée déterminée était une société résidant au Canada,

**(8) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022.**

**(9) Subsections (2), (5) and (6) apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsections (2), (5) and (6) also apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if**

**(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and**

**(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.**

**(9) Les paragraphes (2), (5) et (6) s'appliquent relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, ils s'appliquent aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :**

**a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;**

**b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.**

**(10) Subsections (3), (4) and (7) apply in respect of any dividend received on or after July 1, 2024.**

**(10) Les paragraphes (3), (4) et (7) s'appliquent relativement à tout dividende reçu après le 30 juin 2024.**

**84 (1) Section 9005 of the Regulations is amended by striking out "and" at the end of paragraph (n), by adding "and" at the end of paragraph (o) and by adding the following after paragraph (o):**

**(p)** a FHSA.

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**84 (1) L'article 9005 du même règlement est modifié par adjonction, après l'alinéa o), de ce qui suit :**

**p)** un CELIAPP.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**85 (1) Section 9006 of the Regulations is amended by striking out "and" at the end of paragraph (j), by adding "and" at the end of paragraph (k) and by adding the following after paragraph (k):**

**(l)** a FHSA.

**(2) Subsection (1) is deemed to have come into force on April 1, 2023.**

**85 (1) L'article 9006 du même règlement est modifié par adjonction, après l'alinéa k), de ce qui suit :**

**l)** un CELIAPP.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.**

**86 (1) The portion of Class 8 in Schedule II to the Regulations after the heading "(20 per cent)" and before paragraph (a) is replaced by the following:**

**86 (1) Le passage de la catégorie 8 de l'annexe II du même règlement suivant l'intertitre « (20 pour cent) » et précédant l'alinéa a) est remplacé par ce qui suit :**

Property not included in Class 1, 2, 7, 9, 11, 17, 30, 57 or 58 that is

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**87 (1) The portion of Class 17 in Schedule II to the Regulations after the heading "(8 per cent)" and before paragraph (a) is replaced by the following:**

Property that would otherwise be included in another class in this Schedule (other than property included in Class 57 or 58) that is

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**88 (1) The portion of Class 41 in Schedule II to the Regulations after the heading "Class 41" and before paragraph (a) is replaced by the following:**

Property (other than property included in Class 41.1, 41.2, 57 or 58)

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**89 (1) The portion of Class 41.1 in Schedule II to the Regulations after the heading "Class 41.1" and before paragraph (a) is replaced by the following:**

Oil sands property (other than specified oil sands property or property included in Class 57 or 58) that

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**90 (1) The portion of Class 41.2 in Schedule II to the Regulations after the heading "Class 41.2" and before paragraph (a) is replaced by the following:**

Property, other than specified oil sands property, eligible mine development property or property included in Class 57 or 58,

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**91 (1) The portion of Class 43 in Schedule II to the Regulations after the heading "Class 43" and before paragraph (a) is replaced by the following:**

Les biens non compris dans les catégories 1, 2, 7, 9, 11, 17, 30, 57 ou 58 qui sont constitués par :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**87 (1) Le passage de la catégorie 17 de l'annexe II du même règlement suivant l'intertitre « (8 pour cent) » et précédant l'alinéa a) est remplacé par ce qui suit :**

Les biens qui autrement seraient compris dans une autre catégorie de la présente annexe (à l'exclusion des biens compris dans les catégories 57 ou 58) et qui sont constitués par :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**88 (1) Le passage de la catégorie 41 de l'annexe II du même règlement qui suivant l'intertitre « Catégorie 41 » et précédant l'alinéa a) est remplacé par ce qui suit :**

Les biens (sauf ceux compris dans les catégories 41.1, 41.2, 57 ou 58) qui :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**89 (1) Le passage de la catégorie 41.1 de l'annexe II du même règlement qui suivant l'intertitre « Catégorie 41.1 » et précédant l'alinéa a) est remplacé par ce qui suit :**

Les biens de sables bitumineux (sauf les biens de sables bitumineux déterminés et les biens compris dans les catégories 57 ou 58) qui, selon le cas :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**90 (1) Le passage de la catégorie 41.2 de l'annexe II du même règlement suivant l'intertitre « Catégorie 41.2 » et précédant l'alinéa a) est remplacé par ce qui suit :**

Les biens (sauf les biens de sables bitumineux déterminés, les biens admissibles liés à l'aménagement d'une mine et les biens compris dans les catégories 57 ou 58) :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**91 (1) Le passage de la catégorie 43 de l'annexe II du même règlement suivant l'intertitre « Catégorie 43 » et précédant l'alinéa a) est remplacé par ce qui suit :**

Property acquired after February 25, 1992 (other than property included in Class 57 or 58) that

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**92 (1) The portion of clause (d)(xviii)(A) of Class 43.1 in Schedule II to the Regulations before subclause (I) is replaced by the following:**

**(A)** is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of storing and discharging electrical energy

**(2) Subclause (d)(xviii)(B)(I) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(I)** the electrical energy to be stored and discharged is generated from other property that is described in paragraph (c) or in any other subparagraph of this paragraph, or

**(3) The portion of subparagraph (d)(xix) of Class 43.1 in Schedule II to the Regulations before clause (A) is replaced by the following:**

**(xix)** a pumped hydroelectric energy storage installation all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to store and discharge electrical energy including reversing turbines, transmission equipment, dams, reservoirs and related structures, and that meets the condition in either subclause (d)(xviii)(B)(I) or (II) in this Class, but not including

**(4) Subparagraph (e)(i) of Class 43.1 in Schedule II to the Regulations is replaced by the following:**

**(i)** is situated in Canada, including property described in subparagraph (d)(v) or (d)(xiv) that is installed in the exclusive economic zone of Canada,

**93 (1) The portion of Class 49 in Schedule II to the Regulations after the heading "Class 49" and before paragraph (a) is replaced by the following:**

Property (other than property included in Class 57 or 58) that is a pipeline, including control and monitoring devices, valves and other equipment ancillary to the pipeline, that

Les biens acquis après le 25 février 1992 (à l'exclusion des biens compris dans les catégories 57 ou 58) qui, selon le cas :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**92 (1) Le passage de la division d)(xviii)(A) de la catégorie 43.1 de l'annexe II du même règlement, précédant la subdivision (I), est remplacé par ce qui suit :**

**(A)** ils sont utilisés par le contribuable, ou par son preneur, principalement aux fins de stockage et d'émission d'énergie électrique et :

**(2) La subdivision d)(xviii)(B)(I) de la catégorie 43.1 de l'annexe II du même règlement est remplacée par ce qui suit :**

**(I)** l'énergie électrique à être stockée et émise est produite à partir d'autres biens visés à l'alinéa c) ou à tout autre sous-alinéa du présent alinéa,

**(3) Le passage du sous-alinéa d)(xix) de la catégorie 43.1 de l'annexe II du même règlement, précédant la division (A), est remplacé par ce qui suit :**

**(xix)** une installation d'accumulation d'énergie hydroélectrique par pompage dont la totalité, ou presque, de l'utilisation par le contribuable, ou par son preneur, est destinée au stockage et à l'émission d'énergie électrique, y compris les turbines réversibles, l'équipement de transmission, les barrages, les réservoirs et les structures connexes, et qui remplit les conditions énoncées aux subdivisions d)(xviii)(B)(I) ou (II) dans la présente catégorie, à l'exclusion :

**(4) Le sous-alinéa e)(i) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :**

**(i)** ils sont situés au Canada, y compris un bien visé aux sous-alinéas d)(v) ou d)(xiv) qui est installé dans la zone économique exclusive du Canada,

**93 (1) Le passage de la catégorie 49 de l'annexe II du même règlement suivant l'intertitre « Catégorie 49 » et précédant l'alinéa a) est remplacé par ce qui suit :**

Les biens (à l'exclusion des biens compris dans les catégories 57 ou 58) qui constituent un pipeline, y compris les appareils de contrôle et de surveillance, les valves et les autres appareils auxiliaires du pipeline qui, selon le cas :

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**94 (1) The portion of Class 53 in Schedule II to the Regulations after the heading "Class 53" and before paragraph (a) is replaced by the following:**

Property acquired after 2015 and before 2026 (other than property included in Class 57 or 58) that is not included in Class 29, but that would otherwise be included in that class if

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**95 (1) Schedule II to the Regulations is amended by adding the following after Class 56:**

## CLASS 57

Property that is part of a CCUS project of a taxpayer and that is

**(a)** equipment that is not expected to be used for hydrogen production, natural gas processing or acid gas injection and that

**(i)** is not oxygen production equipment and is to be used solely for capturing carbon dioxide

**(A)** that would otherwise be released into the atmosphere, or

**(B)** directly from the ambient air,

**(ii)** prepares or compresses captured carbon for transportation,

**(iii)** generates or distributes electrical energy, heat energy or a combination of electrical and heat energy, that directly and solely supports a qualified CCUS project, unless the equipment uses fossil fuels and emits carbon dioxide that is not subject to capture by a qualified CCUS project, and for greater certainty, not including equipment that supports the qualified CCUS project indirectly by way of an electrical utility grid or distribution equipment that expands the capacity of existing distribution equipment that supports the qualified CCUS project,

**(iv)** is transmission equipment that solely supports a qualified CCUS project by directly transmitting electrical energy from electrical generation equipment described in subparagraph (a)(iii) to the qualified CCUS project, or

**(v)** delivers, collects, recovers, treats or recirculates water, or a combination of any of those activities, that solely supports a qualified CCUS project;

**(b)** equipment that is to be used solely for transportation of captured carbon, including equipment used for the transportation system safety and integrity;

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**94 (1) Le passage de la catégorie 53 de l'annexe II du même règlement suivant l'intertitre « Catégorie 53 » et précédant l'alinéa a) est remplacé par ce qui suit :**

Les biens acquis après 2015 et avant 2026 (à l'exclusion des biens compris dans les catégories 57 ou 58) qui ne sont pas compris dans la catégorie 29, mais qui y seraient compris si, à la fois :

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**95 (1) L'annexe II du même règlement est modifiée par adjonction, après la catégorie 56, de ce qui suit :**

## CATÉGORIE 57

Les biens compris dans un projet de CUSC d'un contribuable et qui constituent :

**a)** du matériel qui ne devrait pas servir à la production d'hydrogène, à la transformation du gaz naturel ou à l'injection de gaz acide et qui, selon le cas :

**(i)** n'est pas du matériel de production d'oxygène et doit servir uniquement au captage du dioxyde de carbone, selon le cas :

**(A)** qui serait relâché par ailleurs dans l'atmosphère,

**(B)** directement de l'air ambiant,

**(ii)** prépare ou comprime le carbone capté en vue du transport,

**(iii)** produit ou distribue de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, directement et uniquement à l'appui d'un projet de CUSC admissible, sauf si le matériel utilise des combustibles fossiles et émet du dioxyde de carbone non soumis au captage au moyen d'un projet de CUSC admissible, étant entendu que le matériel qui appuie indirectement le projet de CUSC admissible, à titre de réseau électrique, ou le matériel de distribution qui accroît la capacité du matériel existant à l'appui du projet de CUSC admissible est exclu,

**(iv)** constitue du matériel de transmission qui est uniquement à l'appui d'un projet de CUSC admissible en transmettant directement de l'énergie électrique à partir de matériel générateur d'électricité visé au sous-alinéa a)(iii) au projet de CUSC admissible,

**(v)** distribue, recueille, récupère, traite ou recircule l'eau, ou une combinaison de ces activités, uniquement à l'appui d'un projet de CUSC admissible;

**(c)** equipment that is to be used solely for storage of captured carbon in a geological formation, including equipment used for the storage system safety and integrity, but not including equipment used for enhanced oil recovery;

**(d)** property that is physically and functionally integrated with the equipment described in any of paragraphs (a) to (c) (for greater certainty, excluding construction equipment, furniture, office equipment and vehicles) and that is ancillary equipment used solely to support the functioning of equipment described in any of paragraphs (a) to (c) within a CCUS process as part of

**(i)** an electrical system,

**(ii)** a fuel supply system,

**(iii)** a liquid delivery and distribution system,

**(iv)** a cooling system,

**(v)** a process material storage and handling and distribution system,

**(vi)** a process venting system,

**(vii)** a process waste management system, or

**(viii)** a utility air or nitrogen distribution system;

**(e)** equipment used for system safety and integrity or as part of a control or monitoring system solely to support the equipment described in any of paragraphs (a) to (d); or

**(f)** a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment described in any of paragraphs (a) to (e); or

**(g)** property that is used solely to

**(i)** convert another property that would not otherwise be described in any of paragraphs (a) to (f) if the conversion causes the other property to satisfy the description in any of paragraphs (a) to (f), or

**(ii)** refurbish property described in any of paragraphs (a) to (f) that is part of a CCUS project of the taxpayer.

**b)** du matériel qui ne servira qu'au transport du carbone capté, notamment du matériel utilisé pour la sécurité et l'intégrité du système de transport;

**c)** du matériel qui ne servira qu'au stockage du carbone capté dans une formation géologique, notamment du matériel utilisé pour la sécurité et l'intégrité du système de stockage, à l'exclusion du matériel servant à la récupération assistée du pétrole;

**d)** un bien physiquement et fonctionnellement intégré au matériel visé à l'un des alinéas a) à c) (à l'exclusion du matériel de construction, du mobilier, de l'équipement de bureau et des véhicules) et qui est du matériel auxiliaire qui ne sert qu'à soutenir le matériel visé à l'un des alinéas a) à c) dans l'exécution de ses tâches fonctionnelles dans un processus de CUSC dans le cadre :

**(i)** d'un système électrique,

**(ii)** d'un système d'alimentation en carburant,

**(iii)** d'un système de livraison et de distribution de liquide,

**(iv)** d'un système de refroidissement,

**(v)** d'un système de stockage, de manutention et de distribution des matériaux de processus,

**(vi)** d'un système de ventilation de procédés,

**(vii)** d'un système de gestion des déchets de procédés,

**(viii)** d'un réseau de distribution d'air utilitaire ou d'azote;

**e)** du matériel ne servant qu'à soutenir le matériel visé à l'un des alinéas a) à d) dans le cadre d'un système de contrôle, de surveillance ou de sécurité ou utilisé pour la sécurité et l'intégrité du système;

**f)** un bâtiment ou une autre structure dont la totalité, ou la presque totalité, sert ou servira à l'installation ou à l'opération du matériel visé à l'un des alinéas a) à e);

**g)** un bien qui servira uniquement à :

**(i)** convertir un autre bien qui ne serait pas par ailleurs visé à l'un des alinéas a) à f) si la conversion fait en sorte que l'autre bien corresponde à l'un des alinéas a) à f),

**(ii)** remettre en état un bien visé à l'un des alinéas a) à f) qui est compris dans un projet de CUSC du contribuable.

## CLASS 58

Property that is part of a CCUS project of a taxpayer, and that is

**(a)** equipment to be used solely for using captured carbon in industrial production (including for enhanced oil recovery);

**(b)** property that is physically and functionally integrated with the equipment described in paragraph (a) (for greater certainty, excluding construction

## CATÉGORIE 58

Un bien qui fait partie d'un projet de CUSC d'un contribuable et qui constitue, selon le cas :

**a)** du matériel qui ne servira qu'à l'utilisation du carbone capté dans la production industrielle (y compris pour la récupération assistée du pétrole);

**b)** un bien physiquement et fonctionnellement intégré au matériel visé à l'alinéa a) (à l'exclusion du matériel de construction, du mobilier, de l'équipement de

equipment, furniture, office equipment and vehicles) and that is ancillary equipment used solely to support the functioning of equipment described in paragraph (a) within a CCUS process as part of

**(i)** an electrical system,

**(ii)** a fuel supply system,

**(iii)** a liquid delivery and distribution system,

**(iv)** a cooling system,

**(v)** a process material storage and handling and distribution system,

**(vi)** a process venting system,

**(vii)** a process waste management system, or

**(viii)** a utility air or nitrogen distribution system;

**(c)** equipment used as part of a control, monitoring or safety system solely to support the equipment described in paragraph (a) or (b);

**(d)** a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment described in any of paragraphs (a) to (c); or

**(e)** property that is used solely to

**(i)** convert another property that would not otherwise be described in any of paragraphs (a) to (d) if the conversion causes the other property to satisfy the description in any of paragraphs (a) to (d), or

**(ii)** refurbish property described in any of paragraphs (a) to (d) that is part of a CCUS project of the taxpayer.

bureau et des véhicules) et qui est du matériel auxiliaire qui ne sert qu'à soutenir le matériel visé à l'alinéa a) dans l'exécution de ses tâches fonctionnelles dans un processus de CUSC dans le cadre :

**(i)** d'un système électrique,

**(ii)** d'un système d'alimentation en carburant,

**(iii)** d'un système de livraison et de distribution de liquide,

**(iv)** d'un système de refroidissement,

**(v)** d'un système de stockage, de manutention et de distribution des matériaux de processus,

**(vi)** d'un système de ventilation de procédés,

**(vii)** d'un système de gestion des déchets de procédés,

**(viii)** d'un réseau de distribution d'air utilitaire ou d'azote;

**c)** du matériel ne servant qu'à soutenir le matériel visé aux alinéas a) ou b) dans le cadre d'un système de contrôle, de surveillance ou de sécurité;

**d)** un bâtiment ou une autre structure dont la totalité, ou la presque totalité, sert ou servira à l'installation ou à l'opération du matériel visé à l'un des alinéas a) à c);

**e)** un bien qui servira uniquement à :

**(i)** convertir un autre bien qui ne serait pas par ailleurs visé à l'un des alinéas a) à d) si la conversion fait en sorte que l'autre bien corresponde à l'un des alinéas a) à d),

**(ii)** remettre en état un bien visé à l'un des alinéas a) à d) qui fait partie d'un projet de CUSC du contribuable.

## CLASS 59

Intangible property (including property deemed to have been acquired under subsection 13(7.6) of the Act) that is not included in any other class and that is

**(a)** acquired for the purpose of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon (other than for enhanced oil recovery) in Canada, including property acquired as a result of undertaking environmental studies or community consultations (including studies or consultations that are undertaken to obtain a right, licence or privilege for the purpose of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon (other than for enhanced oil recovery)); and

**(b)** not acquired for the purpose of drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well.

## CATÉGORIE 59

Un bien intangible (y compris les biens réputés avoir été acquis en vertu du paragraphe 13(7.6) de la Loi) qui n'est pas compris dans toute autre catégorie, et qui, à la fois :

**a)** est acquis en vue de déterminer l'existence, l'emplacement, l'étendue ou la qualité d'une formation géologique afin de stocker en permanence le carbone capté (sauf pour la récupération assistée du pétrole) au Canada, y compris un bien acquis après avoir engagé des études environnementales ou des consultations auprès des collectivités (y compris les études ou les consultations qui sont engagées en vue d'obtenir un droit, une licence ou un privilège dans le but de déterminer l'existence, l'emplacement, l'étendue ou la qualité d'une formation géologique afin de stocker en permanence le carbone capté (sauf pour la récupération assistée du pétrole));

**b)** n'est ni acquis pour le forage ou l'achèvement d'un puits de pétrole ou de gaz, ou pour la construction d'une voie d'accès temporaire à, ou visant à préparer un chantier relativement à, un tel puits.

**CLASS 60**

Intangible property (including property deemed to have been acquired under subsection 13(7.6) of the Act) not included in any other class that is

**(a)** acquired for the purposes of

**(i)** drilling or converting a well in Canada for the permanent storage of captured carbon (other than for enhanced oil recovery),

**(ii)** drilling or completing a well for the permanent storage of captured carbon (other than for enhanced oil recovery) in Canada, building a temporary access road to the well or preparing a site in respect of the well, or

**(iii)** drilling or converting a well in Canada for the purposes of monitoring pressure changes or other phenomena in a geological formation in which captured carbon is permanently stored (other than for enhanced oil recovery); or

**(b)** a right, licence or privilege

**(i)** for the purposes of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon (other than for enhanced oil recovery), or

**(ii)** to permanently store captured carbon in dedicated geological storage.

**(2) Subsection (1) is deemed to have come into force on January 1, 2022.**

**CATÉGORIE 60**

Un bien intangible (y compris les biens réputés avoir été acquis en vertu du paragraphe 13(7.6) de la Loi) non compris dans une autre catégorie qui est, selon le cas :

**a)** acquis à l'une des fins suivantes :

**(i)** de forage ou de conversion d'un puits au Canada en vue du stockage permanent du carbone capté (sauf pour la récupération assistée du pétrole),

**(ii)** de forage ou d'achèvement d'un puits visant le stockage permanent du carbone capté (sauf pour la récupération assistée du pétrole) au Canada, la construction d'une voie d'accès temporaire au puits ou la préparation d'un chantier relativement au puits,

**(iii)** de forage ou de conversion d'un puits au Canada dans le but de surveiller les changements de pression ou autre phénomène dans une formation géologique dans laquelle le carbone capté est stocké en permanence (sauf pour la récupération assistée du pétrole);

**b)** un droit, une licence ou un privilège, selon le cas :

**(i)** en vue de déterminer l'existence, l'emplacement, l'étendue ou la qualité d'une formation géologique afin de stocker en permanence le carbone capté (sauf pour la récupération assistée du pétrole),

**(ii)** afin de stocker en permanence le carbone capté dans un stockage géologique dédié.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.**

**PART 2**

# Digital Services Tax Act

## Enactment of Act

**Enactment**

**96 (1) The *Digital Services Tax Act* is enacted as follows:**

An Act respecting a digital services tax

# Short Title

**Short title**

**1** This Act may be cited as the *Digital Services Tax Act*.

**PARTIE 2**

# Loi sur la taxe sur les services numériques

## Édiction de la loi

**Édiction**

**96 (1) Est édictée la *Loi sur la taxe sur les services numériques*, dont le texte suit :**

Loi mettant en œuvre la taxe sur les services numériques

# Titre abrégé

**Titre abrégé**

**1** *Loi sur la taxe sur les services numériques*.

## PART 1

# Interpretation and Application

### Definitions

**2** The following definitions apply in this Act.

***acceptable accounting principles*** means

**(a)** International Financial Reporting Standards; and

**(b)** other country-specific generally accepted accounting principles relevant for corporations that are traded on a public securities exchange outside Canada and that require two or more entities to prepare consolidated financial statements in a manner similar to International Financial Reporting Standards. (*principes comptables acceptables*)

***assessment*** means an assessment or a reassessment under this Act. (*cotisation*)

***bankrupt*** has the same meaning as in section 2 of the *Bankruptcy and Insolvency Act*. (*failli*)

***Canadian digital services revenue*** means a taxpayer's Canadian digital services revenue determined in accordance with Part 3. (*revenu canadien de services numériques*)

***consolidated financial statements*** means financial statements in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity. (*états financiers consolidés*)

***consolidated group*** means an ultimate parent entity and one or more other entities that are required to prepare consolidated financial statements for financial reporting purposes under acceptable accounting principles, or would be so required if equity interests in the ultimate parent entity were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles. (*groupe consolidé*)

***constituent entity***, of a consolidated group, means

**(a)** any entity of the group that

**(i)** is included in the consolidated financial statements of the group prepared in accordance with acceptable accounting principles, or

## PARTIE 1

# Définitions, interprétation et application

### Définitions

**2** Les définitions qui suivent s'appliquent à la présente loi.

***bien*** Tout bien — réel ou personnel, meuble ou immeuble, tangible ou intangible, corporel ou incorporel — y compris un droit ou intérêt quelconque, une action ou une part et de l'argent. (*property*)

***contenu numérique***

**a)** Texte, vidéo, image ou enregistrement sonore codé numériquement;

**b)** logiciel;

**c)** toute autre chose qui est codée numériquement et transmissible par voie électronique.

La présente définition ne comprend pas un instrument financier. (*digital content*)

***contribuable*** Entité, même celle non tenue de payer la taxe imposée en application de la présente loi, qui n'est pas une société, commission ou toute association dont la totalité des actions ou le capital est détenu, directement ou indirectement, par sa Majesté du chef du Canada ou d'une province ou par plusieurs de ces personnes. (*taxpayer*)

***cotisation*** Cotisation ou nouvelle cotisation établie en vertu de la présente loi. (*assessment*)

***données d'utilisateurs*** Toute forme de représentation d'informations ou de concepts générés par l'effet de l'interaction directe ou indirecte, de quelque manière que ce soit, d'un utilisateur avec une interface numérique ou recueillis par l'effet d'une telle interaction. (*user data*)

***effet financier*** Les effets suivants :

**a)** un titre qui est :

**(i)** une action du capital-actions d'une société,

**(ii)** une participation au revenu ou au capital d'une fiducie,

**(iii)** un billet, une obligation, un effet ou une autre preuve de créance,

**(ii)** if the group is not required to prepare consolidated financial statements, or the statements are not prepared in accordance with acceptable accounting principles, would be required to be included in the consolidated financial statements of the group if equity interests in the ultimate parent entity of the group were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles; and

**(b)** any entity that is excluded from the group's consolidated financial statements solely because of size or materiality or on the grounds that it is held for sale. (*entité constitutive*)

***digital content*** means

**(a)** a digitally encoded text, video, image or sound recording;

**(b)** computer software; or

**(c)** any other thing that is digitally encoded and electronically transmittable.

It does not include a financial instrument. (*contenu numérique*)

***digital interface*** means a website, application or other electronic medium through which data or digital content is collected, viewed, consumed, delivered or interacted with. (*interface numérique*)

***entity*** means a person other than an individual. (*entité*)

***financial instrument*** means

**(a)** a security that is

**(i)** a share of the capital stock of a corporation,

**(ii)** an income or capital interest in a trust,

**(iii)** a note, bond, debenture or other evidence of indebtedness, or

**(iv)** an interest in a partnership;

**(b)** money and a money market instrument that is a cheque, bill, certificate of deposit or derivative;

**(c)** property that is a digital representation of value that functions as a medium of exchange and that only exists at a digital address of a publicly distributed ledger, other than property that

**(i)** confers a right, whether immediate or future and whether absolute or contingent, to exchange or

**(iv)** une participation dans une société de personnes;

**b)** de l'argent et tout instrument de marché monétaire qui est un chèque, un billet, un certificat de dépôt ou un produit dérivé;

**c)** un bien qui est une représentation numérique d'une valeur qui fonctionne comme moyen d'échange et qui existe seulement à une adresse numérique d'un registre distribué public, à l'exception d'un bien qui, selon le cas :

**(i)** confère un droit, immédiat ou futur et conditionnel ou non, à l'échange ou au rachat de ce bien contre des biens ou services spécifiques ou à la conversion de ce bien en biens ou services spécifiques,

**(ii)** est destiné à être utilisé principalement dans le cadre d'une plateforme de jeu, d'un programme d'affinité ou de récompenses ou d'une plateforme ou d'un programme semblable,

**(iii)** est un bien visé par règlement;

**d)** un contrat d'assurance;

**e)** un contrat de rente;

**f)** un métal précieux;

**g)** une marchandise;

**h)** un contrat d'échange de taux d'intérêt, de devises, de taux de référence, de marchandises ou de créances contre des actifs, un contrat de garantie de taux plafond ou de taux plancher, un contrat sur indice boursier ou un autre accord similaire;

**i)** une garantie, acceptation ou indemnité relativement à un effet visé aux alinéas a), f), g) ou h);

**j)** toute participation ou tout droit (y compris un contrat à terme ou contrat à terme de gré à gré ou une option) attaché à une fourniture future d'un effet visé à l'un des alinéas a) à i);

**k)** tout autre bien visé par règlement. (*financial instrument*)

***entité*** Personne autre qu'un particulier. (*entity*)

***entité constitutive*** Relativement à un groupe consolidé, les entités suivantes :

**a)** une entité du groupe qui, selon le cas :

redeem the property for specific property or services or to convert the property into specific property or services,

**(ii)** is primarily for use within, or as part of, a gaming platform, an affinity or rewards program or a similar platform or program, or

**(iii)** is property prescribed by regulation;

**(d)** an insurance contract;

**(e)** an annuity contract;

**(f)** a precious metal;

**(g)** a commodity;

**(h)** an interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap or other similar agreement;

**(i)** a guarantee, acceptance or indemnity in respect of anything described in paragraph (a), (f), (g) or (h);

**(j)** any interest or right (including a futures or forward contract or option) in a future supply of anything described in any of paragraphs (a) to (i); and

**(k)** any other property prescribed by regulation. (*effet financier*)

***first year of application*** means the calendar year that includes the day on which this Act comes into force or a subsequent calendar year, if any, prescribed by regulation in respect of a taxpayer. (*première année d'application*)

***fiscal year*** means

**(a)** in the case of a taxpayer, an accounting period with respect to which the taxpayer prepares its financial statements; and

**(b)** in the case of a consolidated group, an accounting period with respect to which the ultimate parent entity of the group prepares its financial statements. (*exercice*)

***global revenue threshold*** means an amount prescribed by regulation. (*seuil de revenu global*)

***in-scope revenue threshold*** means an amount prescribed by regulation. (*seuil de revenu dans le champ d'application*)

**(i)** fait partie des états financiers consolidés du groupe établis conformément à des principes comptables acceptables,

**(ii)** si le groupe n'est pas tenu d'établir des états financiers consolidés, ou que ceux-ci ne sont pas établis conformément à des principes comptables acceptables, serait tenu de faire partie des états financiers consolidés du groupe si des participations dans l'entité mère ultime du groupe étaient cotées en bourse de valeurs ouverte au public où les échanges exigent le recours à des principes comptables acceptables;

**b)** une entité qui ne fait pas partie des états financiers consolidés du groupe uniquement pour des raisons de taille ou d'importance relative ou parce qu'elle est destinée à être vendue. (*constituent entity*)

***entité mère ultime*** Une entité à l'égard de laquelle les conditions ci-après sont remplies :

**a)** l'entité détient, directement ou indirectement, une participation suffisante dans une ou plusieurs autres entités de sorte qu'elle est tenue d'établir des états financiers consolidés selon des principes comptables acceptables ou qu'elle serait tenue de le faire si les participations dans l'entité étaient cotées en bourse de valeurs ouverte au public où les échanges exigent le recours à des principes comptables acceptables;

**b)** aucune autre entité ne détient, directement ou indirectement, une participation visée à l'alinéa a) dans l'entité. (*ultimate parent entity*)

***états financiers consolidés*** États financiers dans lesquels les actifs, les passifs, le revenu, les dépenses et les flux de trésorerie des membres d'un groupe sont présentés comme s'il s'agissait d'une seule entité économique. (*consolidated financial statements*)

***exercice***

**a)** Dans le cas d'un contribuable, une période comptable pour laquelle le contribuable établit ses états financiers;

**b)** dans le cas d'un groupe consolidé, une période comptable pour laquelle l'entité mère ultime du groupe établit ses états financiers. (*fiscal year*)

***failli*** S'entend au sens de l'article 2 de la *Loi sur la faillite de l'insolvabilité*. (*bankrupt*)

***fourniture*** Livraison de biens ou prestation de services, notamment par vente, transfert, troc, échange, licence, louage, bail, donation ou aliénation. (*supply*)

***Minister*** means the Minister of National Revenue. (*ministre*)

***online marketplace*** means a digital interface that allows users to interact with other users and facilitates the supply of property or services, including digital content, between those users, but does not include a digital interface

**(a)** that has a single supplier of such property or services; or

**(b)** the main purpose of which is to

**(i)** provide payment services by facilitating the electronic transfer of funds,

**(ii)** make advances, grant credit or lend money, or

**(iii)** facilitate the supply of financial instruments. (*marché en ligne*)

***online search engine*** means a digital interface that allows users to search the Web for digital content of multiple unrelated websites. (*moteur de recherche en ligne*)

***online targeted advertisement*** means an advertisement — including, for greater certainty, any content that is prominently placed for the purpose of promotion — that

**(a)** consists of digital content;

**(b)** is placed on, or transmitted through, a digital interface; and

**(c)** is targeted at users based on any part of the user data associated with the users. (*publicité en ligne ciblée*)

***person*** includes an individual, a trust, a partnership, a corporation and any other body of persons or organization of any kind. (*personne*)

***prescribed*** means

**(a)** in the case of a form or the manner of filing a form, authorized by the Minister;

**(b)** in the case of the information to be given on or with a form, specified by the Minister;

**(c)** in the case of the manner of making or filing an election, authorized by the Minister; and

***groupe consolidé*** Une entité mère ultime et une ou plusieurs autres entités qui sont tenues d'établir des états financiers consolidés à des fins d'information financière selon des principes comptables acceptables ou qui le seraient si des participations dans l'entité mère ultime étaient cotées en bourse de valeurs ouverte au public où les échanges exigent le recours à des principes comptables acceptables. (*consolidated group*)

***interface numérique*** Site Web, application ou autre support électronique par l'entremise duquel des données ou du contenu numérique sont recueillis, visualisés, consommés ou livrés ou par l'entremise duquel une interaction est effectuée avec des données ou du contenu numérique. (*digital interface*)

***marché en ligne*** Interface numérique qui permet aux utilisateurs d'interagir avec d'autres utilisateurs et facilite la fourniture de produits ou de services, y compris du contenu numérique, entre ces utilisateurs, mais ne comprend pas une interface numérique, selon le cas :

**a)** qui a un seul fournisseur de tels biens ou services;

**b)** dont l'objet principal consiste à, selon le cas :

**(i)** fournir des services de paiement en facilitant le transfert électronique de fonds,

**(ii)** fournir des avances, octroyer du crédit ou prêter de l'argent,

**(iii)** faciliter la fourniture d'effets financiers. (*online marketplace*)

***ministre*** Le ministre du Revenu national. (*Minister*)

***moteur de recherche en ligne*** Interface numérique qui permet aux utilisateurs de rechercher sur le Web du contenu numérique de plusieurs sites Web sans rapport entre eux. (*online search engine*)

***personne*** Comprend un particulier, une fiducie, une société de personnes, une société et tout autre groupement de personnes ou organisation. (*person*)

***plateforme de médias sociaux*** Interface numérique dont l'objet principal est de permettre aux utilisateurs de trouver et d'interagir avec d'autres utilisateurs ou avec du contenu numérique généré par d'autres utilisateurs. (*social media platform*)

***première année d'application*** Année civile qui comprend la date d'entrée en vigueur de la présente loi ou une année civile ultérieure, s'il y a lieu, visée par

**(d)** in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation. (*Version anglaise seulement*)

***property*** means any property, whether real or personal, movable or immovable, tangible or intangible or corporeal or incorporeal, and includes a right or interest of any kind, a share, a chose in action and, for greater certainty, money. (*bien*)

***regulation*** means a regulation made under this Act. (*règlement*)

***social media platform*** means a digital interface the main purpose of which is to allow users to find and interact with other users or with digital content generated by other users. (*plateforme de médias sociaux*)

***supply*** means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition. (*fourniture*)

***taxable Canadian digital services revenue*** means a taxpayer's taxable Canadian digital services revenue determined in accordance with Part 4. (*revenu canadien de services numériques imposable*)

***taxpayer*** means an entity, whether or not the entity is liable to pay tax under this Act, that is not a corporation, commission or association all of the shares, or the capital, of which is held, directly or indirectly, by one or more persons each of whom is His Majesty in right of Canada or a province. (*contribuable*)

***total consolidated group revenue***, of a consolidated group for a fiscal year, means the revenue reported in the group's consolidated financial statements for the year or, if the statements are not prepared in accordance with acceptable accounting principles or no statements are prepared, the revenue that would be reported if the statements were prepared in accordance with International Financial Reporting Standards. However, total consolidated group revenue does not include the revenue of any entity that is not a taxpayer. (*revenu consolidé total du groupe*)

***ultimate parent entity*** means an entity in respect of which the following conditions are met:

**(a)** the entity holds directly or indirectly a sufficient interest in one or more other entities so that it is required to prepare consolidated financial statements under acceptable accounting principles or would be so required if the equity interests in the entity were traded on a public securities exchange, the trading on

règlement relativement à un contribuable. (*first year of application*)

***principes comptables acceptables***

**a)** Normes internationales d'information financière;

**b)** les principes comptables généralement reconnus propres à un pays qui sont pertinents aux sociétés cotées en bourse de valeurs ouverte au public à l'étranger et qui obligent que deux entités ou plus établissent des états financiers consolidés d'une manière similaire aux Normes internationales d'information financière. (*acceptable accounting principles*)

***publicité en ligne ciblée*** Publicité — étant entendu que le contenu placé en évidence à des fins promotionnelles en fait partie — présentant toutes les caractéristiques suivantes :

**a)** elle est constituée de contenu numérique;

**b)** elle est affichée sur une interface numérique ou est transmise au moyen d'une telle interface;

**c)** elle cible les utilisateurs en fonction de toute partie des données d'utilisateurs qui sont associées à ces derniers. (*online targeted advertisement*)

***règlement*** Règlement pris en vertu de la présente loi. (*regulation*)

***revenu canadien de services numériques*** Revenu canadien de services numériques d'un contribuable calculé conformément à la partie 3. (*Canadian digital services revenue*)

***revenu canadien de services numériques imposable*** Revenu canadien de services numériques imposable d'un contribuable calculé conformément à la partie 4. (*taxable Canadian digital services revenue*)

***revenu consolidé total du groupe*** Relativement à un groupe consolidé pour un exercice, le revenu indiqué dans les états financiers consolidés du groupe pour l'exercice ou, si ces états financiers ne sont pas établis conformément à des principes comptables acceptables ou si des états financiers consolidés ne sont pas établis, le revenu qui serait indiqué dans des états financiers consolidés établis conformément aux Normes internationales d'information financière. Cependant, le revenu consolidé total du groupe ne comprend pas le revenu d'une entité qui n'est pas un contribuable. (*total consolidated group revenue*)

which requires the use of acceptable accounting principles; and

**(b)** no other entity holds, directly or indirectly, an interest, as described in paragraph (a), in the entity. (*entité mère ultime*)

***user*** means any individual (other than an individual acting in the course of an entity's business) or entity (including an individual acting in the course of the entity's business) that interacts (directly or indirectly in any manner whatever) with a digital interface, but does not include

**(a)** the person that operates the digital interface;

**(b)** if an entity operates the digital interface and the entity is a constituent entity of a consolidated group, another constituent entity of the group; or

**(c)** an employee of an individual or entity described in paragraph (a) or (b) acting in the course of the individual's or entity's business. (*utilisateur*)

***user data*** means representations, in any form, of information or concepts generated by, or collected from, a user's interaction (directly or indirectly in any manner whatever) with a digital interface. (*données d'utilisateurs*)

***seuil de revenu dans le champ d'application*** Un montant visé par règlement. (*in-scope revenue threshold*)

***seuil de revenu global*** Un montant visé par règlement. (*global revenue threshold*)

***utilisateur*** Un particulier (autre qu'un particulier agissant dans le cadre des activités d'une entreprise d'une entité) ou une entité (y compris un particulier agissant dans le cadre des activités d'une entreprise de l'entité) qui interagit (directement ou indirectement, de quelque manière que ce soit) avec une interface numérique, à l'exclusion des personnes suivantes :

**a)** la personne qui opère l'interface numérique;

**b)** si une entité opère l'interface numérique et que l'entité est une entité constitutive d'un groupe consolidé, une autre entité constitutive du groupe;

**c)** un employé d'un particulier ou d'une entité visé aux alinéas a) ou b) agissant dans le cadre des activités d'une entreprise du particulier ou de l'entité. (*user*)

### Negative or undefined results

**3** An amount or number that is required under this Act to be determined in accordance with an algebraic formula is deemed to be nil if

**(a)** the amount or number so determined would, in the absence of this section, be a negative amount or number; or

**(b)** the result of the formula would be mathematically undefined.

### Résultat négatif ou indéfini

**3** Tout montant ou nombre dont la présente loi prévoit le calcul selon une formule algébrique est égal à zéro si, selon le cas :

**a)** le montant ou le nombre ainsi calculé serait, en l'absence du présent article, un montant ou nombre négatif;

**b)** le résultat de la formule serait mathématiquement indéfini.

### Determination of revenue

**4 (1)** For the purposes of this Act, revenue of a taxpayer is to be determined in accordance with the acceptable accounting principles used in the preparation of the financial statements of the taxpayer or, if the statements are not prepared in accordance with acceptable accounting principles or no statements are prepared, in accordance with

**(a)** in the case of a taxpayer that is a constituent entity of a consolidated group,

**(i)** the acceptable accounting principles, if any, used in the preparation of the consolidated financial statements of the group, or

### Détermination du revenu

**4 (1)** Pour l'application de la présente loi, le revenu d'un contribuable doit être déterminé conformément aux principes comptables acceptables utilisés pour établir ses états financiers ou, si ces états ne sont pas établis conformément aux principes comptables acceptables ou qu'ils ne sont pas établis, conformément aux principes suivants :

**a)** dans le cas d'un contribuable qui est une entité constitutive d'un groupe consolidé, les principes comptables acceptables, s'il y a lieu, utilisés pour établir les états financiers consolidés du groupe, ou les Normes internationales d'information financière;

**(ii)** International Financial Reporting Standards; and

**(b)** in any other case, International Financial Reporting Standards.

**b)** dans les autres cas, les Normes internationales d'information financière.

**Currency of revenue — conversion**

**(2)** For the purposes of Part 2, if total revenue or total consolidated group revenue is expressed in a particular currency other than the currency in which the global revenue threshold is denominated, the amount is to be converted from the particular currency to that other currency using a rate of exchange that is acceptable to the Minister.

**Devise du revenu — conversion**

**(2)** Pour l'application de la partie 2, si le revenu total ou le revenu consolidé total du groupe est exprimé dans une devise autre que la devise dans laquelle le seuil de revenu global est libellé, le montant doit être converti en cette autre devise en appliquant un taux de change que le ministre estime acceptable.

**Currency of revenue — Canadian dollar conversion**

**(3)** For the purposes of Part 3, if an amount of revenue is expressed in a currency other than Canadian dollars, the amount is to be converted from that currency to Canadian dollars using a rate of exchange that is acceptable to the Minister.

**Devise du revenu — conversion en dollar canadien**

**(3)** Pour l'application de la partie 3, si un montant du revenu est exprimé dans une devise autre que le dollar canadien, le montant doit être converti en dollar canadien en appliquant un taux de change que le ministre estime acceptable.

**Short fiscal year — global revenue threshold**

**5** For the purposes of this Act, if a fiscal year is shorter than 12 months, a reference to the "global revenue threshold" in respect of the fiscal year is to be read as a reference to the amount determined by the formula

**A × B ÷ 365**

where

**A** is the global revenue threshold; and

**B** is the number of days in the fiscal year.

**Exercice court — seuil de revenu global**

**5** Pour l'application de la présente loi, si un exercice compte moins de douze mois, la mention du « seuil de revenu global » relativement à l'exercice vaut mention du montant obtenu par la formule suivante :

**A × B ÷ 365**

où :

**A** représente le seuil de revenu global;

**B** le nombre de jours dans l'exercice.

**Continuity of consolidated group**

**6** For the purposes of this Act, a consolidated group, at any time, is the same consolidated group at another time if at both times, and all times between those times, the ultimate parent entity of the group is the same.

**Continuation d'un groupe consolidé**

**6** Pour l'application de la présente loi, un groupe consolidé, à un moment donné, est le même groupe consolidé à un autre moment si l'entité mère ultime du groupe est la même à ces deux moments et en tout temps entre ces deux moments.

**Mergers**

**7** If, in a calendar year, there is a merger or combination of two or more corporations (referred to in this section as the "predecessor corporations") to form one corporate entity (referred to in this section as the "new corporation"),

**(a)** for the purposes of this Act, subject to paragraphs (b) and (c), the new corporation is deemed to be a separate person from each of the predecessor corporations;

**Fusions**

**7** En cas de l'unification ou de la combinaison de plusieurs sociétés (appelées « sociétés remplacées » au présent article) au cours d'une année civile pour former une seule société (appelée « nouvelle société » au présent article) :

**a)** pour l'application de la présente loi, sous réserve des alinéas b) et c), la nouvelle société est réputée être une personne distincte de chacune des sociétés remplacées;

**(b)** for the purposes of Part 6, the new corporation is deemed to be the same corporation as and a continuation of each predecessor corporation; and

**(c)** for the purposes of section 6,

**(i)** if only one of the predecessor corporations is an ultimate parent entity of a consolidated group, the new corporation is deemed to be the same corporation as the ultimate parent entity, and

**(ii)** if two or more of the predecessor corporations are each an ultimate parent entity of a consolidated group, the new corporation is deemed to be the same corporation as the ultimate parent entity of the consolidated group that had the greatest amount of total consolidated group revenue for a fiscal year of the group that ended in the immediately preceding calendar year.

**b)** pour l'application de la partie 6, la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

**c)** pour l'application de l'article 6 :

**(i)** si une seule des sociétés remplacées est une entité mère ultime d'un groupe consolidé, la nouvelle société est réputée être la même société que l'entité mère ultime,

**(ii)** si plusieurs des sociétés remplacées constituent chacune une entité mère ultime d'un groupe consolidé, la nouvelle société est réputée être la même société que l'entité mère ultime du groupe consolidé qui avait le montant le plus élevé de revenu consolidé total du groupe pour un exercice du groupe qui s'est terminé au cours de l'année civile précédente.

**Arm's length**

**8 (1)** For the purposes of this Act,

**(a)** related persons are deemed not to deal with each other at arm's length; and

**(b)** it is a question of fact whether persons not related to each other are, at any time, dealing with each other at arm's length.

**Related persons**

**(2)** For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsection 6(2) of the *Excise Act, 2001*.

**His Majesty**

**9** This Act is binding on His Majesty in right of Canada or a province.

**Lien de dépendance**

**8 (1)** Pour l'application de la présente loi :

**a)** des personnes liées sont réputées avoir entre elles un lien de dépendance;

**b)** la question de savoir si des personnes non liées entre elles n'ont aucun lien de dépendance à un moment donné est une question de fait.

**Personnes liées**

**(2)** Pour l'application de la présente loi, des personnes sont liées si elles sont des personnes liées au sens du paragraphe 6(2) de la *Loi de 2001 sur l'accise*.

**Sa Majesté**

**9** La présente loi lie Sa Majesté du chef du Canada ou d'une province.

## PART 2

# Liability for Tax

**Tax payable**

**10 (1)** Every taxpayer must pay a tax in respect of a particular calendar year (other than the first year of application) equal to 3% of the taxpayer's taxable Canadian digital services revenue for the particular calendar year if

**(a)** the taxpayer

**(i)** had total revenue equal to or greater than the global revenue threshold during a fiscal year of the

## PARTIE 2

# Assujettissement à la taxe

**Taxe payable**

**10 (1)** Tout contribuable est tenu de payer une taxe pour une année civile donnée (sauf la première année d'application) égale à 3 % de son revenu canadien de services numériques imposable pour l'année civile donnée si les conditions ci-après sont remplies :

**a)** le contribuable remplit l'une des conditions suivantes :

taxpayer that ended in the immediately preceding calendar year,

**(ii)** was, at any time in the immediately preceding calendar year, a constituent entity of a consolidated group that had total consolidated group revenue equal to or greater than the global revenue threshold during a fiscal year of the group that ended in that immediately preceding calendar year, or

**(iii)** is, at any time in the particular calendar year, a constituent entity of a consolidated group that had total consolidated group revenue equal to or greater than the global revenue threshold during a fiscal year of the group that ended in the immediately preceding calendar year; and

**(b)** at least one of the following conditions is met:

**(i)** the Canadian digital services revenue of the taxpayer for the particular calendar year is greater than the in-scope revenue threshold, and

**(ii)** in respect of any consolidated group of which the taxpayer is a constituent entity at any time in the particular calendar year, the total of all amounts — each of which is the Canadian digital services revenue for the particular calendar year of an entity that is a constituent entity of the group at any time in the particular calendar year — is greater than the in-scope revenue threshold.

**(i)** il avait un revenu total égal ou supérieur au seuil de revenu global pour un exercice du contribuable qui s'est terminé au cours de l'année civile précédente,

**(ii)** il était, à un moment donné au cours de l'année civile précédente, une entité constitutive d'un groupe consolidé dont le revenu consolidé total du groupe était égal ou supérieur au seuil de revenu global pour un exercice de ce groupe qui s'est terminé au cours de cette année civile précédente,

**(iii)** il est, à un moment donné au cours de l'année civile donnée, une entité constitutive d'un groupe consolidé dont le revenu consolidé total du groupe était égal ou supérieur au seuil de revenu global pour un exercice de ce groupe qui s'est terminé au cours de l'année civile précédente;

**b)** au moins une des conditions ci-après est remplie :

**(i)** le revenu canadien de services numériques du contribuable pour l'année civile donnée est supérieur au seuil de revenu dans le champ d'application,

**(ii)** relativement à un groupe consolidé à l'égard duquel le contribuable est une entité constitutive à un moment donné au cours de l'année civile donnée, le total des sommes — représentant chacune le revenu canadien de services numériques pour l'année civile donnée d'une entité qui est une entité constitutive du groupe à un moment donné au cours de l'année civile donnée — est supérieur au seuil de revenu dans le champ d'application.

**Tax payable for first year of application**

**(2)** A taxpayer must pay, in respect of the first year of application, a tax equal to the amount determined by the formula

**A + B**

where

**A** is

**(a)** 3% of the taxpayer's taxable Canadian digital services revenue for the first year of application, if the taxpayer satisfies the conditions set out in paragraphs (1)(a) and (b) in respect of that year, and

**(b)** nil, in any other case; and

**B** is

**(a)** the amount determined by multiplying the rate prescribed by regulation in respect of the taxpayer by the total of all amounts each of which is

**Taxe payable pour la première année d'application**

**(2)** Un contribuable est tenu de payer, relativement à la première année d'application, une taxe correspondant à la somme obtenue par la formule suivante :

**A + B**

où :

**A** représente :

**a)** 3 % du revenu canadien de service numériques imposable du contribuable pour la première année d'application, si le contribuable remplit les conditions énoncées aux alinéas (1)a) et b) relativement à cette année,

**b)** zéro, dans les autres cas;

**B** :

**a)** le produit de la multiplication du taux visé par règlement relativement au contribuable par le total des montants représentant chacun le revenu

the taxpayer's taxable Canadian digital services revenue for a calendar year

**(i)** for which the taxpayer satisfies the conditions set out in paragraphs (1)(a) and (b), and

**(ii)** that is after 2021 and before the first year of application, and

**(b)** nil, if no calendar year meets the conditions set out in subparagraphs (a)(i) and (ii).

canadien de services numériques imposable du contribuable pour une année civile relativement à laquelle les conditions ci-après sont remplies :

**(i)** le contribuable remplit les conditions énoncées aux alinéas (1)a) et b) relativement à l'année,

**(ii)** l'année est postérieure à 2021 et antérieure à la première année d'application,

**b)** zéro, si aucune année civile ne remplie les conditions énoncées aux sous-alinéas a)(i) et (ii).

**PART 3**

# Canadian Digital Services Revenue

**PARTIE 3**

# Revenu canadien de services numériques

### Definitions

**11** The following definitions apply in this Part.

***user located in Canada***, at any time, means a user in respect of which it is reasonable to conclude — based on the taxpayer's user data associated with the user (including any of the billing, delivery or shipping address, or the phone number area code, most recently provided by the user, global navigation satellite systems data and Internet Protocol address data) — that the user is

**(a)** located in Canada at that time, in the case of

**(i)** online advertising services revenue that is in respect of an online targeted advertisement for which the targeting is based on the real-time location of users, and

**(ii)** user data revenue that is based on the real-time location of users; and

**(b)** normally located in Canada at that time, in any other case. (*utilisateur situé au Canada*)

***user located outside Canada***, at any time, means a user (other than a user located in Canada) in respect of which it is reasonable to conclude — based on the taxpayer's user data associated with the user (including any of the billing, delivery or shipping address, or the phone number area code, most recently provided by the user, global navigation satellite systems data and Internet Protocol address data) — that the user is

**(a)** located outside Canada at that time, in the case of

**(i)** online advertising services revenue that is in respect of an online targeted advertisement for which

### Définitions

**11** Les définitions qui suivent s'appliquent à la présente partie.

***utilisateur dont l'emplacement est déterminable*** À un moment donné, un utilisateur qui est, à ce moment, un utilisateur situé au Canada ou un utilisateur situé à l'extérieur du Canada. (*user of determinable location*)

***utilisateur situé à l'extérieur du Canada*** À un moment donné, un utilisateur (autre qu'un utilisateur situé au Canada) à l'égard duquel il est raisonnable de conclure, selon les données d'utilisateurs du contribuable associées à cet utilisateur (y compris l'une des données suivantes : l'adresse de facturation, de livraison ou d'expédition, ou l'indicatif régional du numéro de téléphone, le plus récemment fourni par l'utilisateur, les données de systèmes mondiaux de navigation par satellite et les données d'adresse de Protocole Internet), qu'il est :

**a)** situé à l'extérieur du Canada, à ce moment, dans le cas du :

**(i)** revenu provenant de services de publicité en ligne à l'égard d'une publicité en ligne ciblée pour laquelle le ciblage est fondé sur l'emplacement en temps réel des utilisateurs,

**(ii)** revenu provenant de données d'utilisateurs qui est fondé sur l'emplacement en temps réel des utilisateurs;

**b)** normalement situé à l'extérieur du Canada à ce moment, dans les autres cas. (*user located outside Canada*)

the targeting is based on the real-time location of users, and

**(ii)** user data revenue that is based on the real-time location of users; and

**(b)** normally located outside Canada at that time, in any other case. (*utilisateur situé à l'extérieur du Canada*)

***user of determinable location***, at any time, means a user that is, at that time, a user located in Canada or a user located outside Canada. (*utilisateur dont l'emplacement est déterminable*)

***utilisateur situé au Canada*** À un moment donné, un utilisateur à l'égard duquel il est raisonnable de conclure, selon les données d'utilisateurs du contribuable associées à cet utilisateur (y compris l'une des données suivantes : l'adresse de facturation, de livraison ou d'expédition, ou l'indicatif régional du numéro de téléphone, le plus récemment fourni par l'utilisateur, les données de systèmes mondiaux de navigation par satellite et les données d'adresse de Protocole Internet), qu'il est :

**a)** situé au Canada, à ce moment, dans le cas du :

**(i)** revenu provenant de services de publicité en ligne à l'égard d'une publicité en ligne ciblée pour laquelle le ciblage est fondé sur l'emplacement en temps réel des utilisateurs,

**(ii)** revenu provenant de données d'utilisateurs qui est fondé sur l'emplacement en temps réel des utilisateurs;

**b)** normalement situé au Canada à ce moment, dans les autres cas. (*user located in Canada*)

**Basic rule**

**12 (1)** A taxpayer's Canadian digital services revenue for a calendar year is the amount determined by the formula

**A + B + C + D**

where

**A** is the taxpayer's Canadian online marketplace services revenue for the calendar year as determined in accordance with Division A of this Part;

**B** is the taxpayer's Canadian online advertising services revenue for the calendar year as determined in accordance with Division B of this Part;

**C** is the taxpayer's Canadian social media services revenue for the calendar year as determined in accordance with Division C of this Part; and

**D** is the taxpayer's Canadian user data revenue for the calendar year as determined in accordance with Division D of this Part.

**Règle de base**

**12 (1)** Le revenu canadien de services numériques d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

**A + B + C + D**

où :

**A** représente le revenu canadien provenant de services de marché en ligne du contribuable pour l'année civile déterminé conformément à la section A de la présente partie;

**B** le revenu canadien provenant de services de publicité en ligne du contribuable pour l'année civile déterminé conformément à la section B de la présente partie;

**C** le revenu canadien provenant de services de médias sociaux du contribuable pour l'année civile déterminé conformément à la section C de la présente partie;

**D** le revenu canadien provenant de données d'utilisateurs du contribuable pour l'année civile déterminé conformément à la section D de la présente partie.

**Election**

**(2)** Despite subsection (1), a taxpayer may elect in respect of a particular calendar year that is before the first year of application (by making an election on or before June 30 of the calendar year following the first year of application in the form and manner, and containing the information, prescribed by the Minister) that subsection (1) not to apply in respect of the particular calendar year, and that the taxpayer's Canadian digital services revenue

**Choix**

**(2)** Malgré le paragraphe (1), un contribuable peut choisir, relativement à une année civile donnée qui précède la première année d'application (au moyen d'un choix exercé au plus tard le 30 juin de l'année civile qui suit la première année d'application selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier), que le paragraphe (1) ne s'applique pas à l'égard de l'année civile donnée, et

for the particular calendar year to be determined by the formula

**A ÷ B × C**

where

**A** is the taxpayer's Canadian digital services revenue for the first year of application;

**B** is the taxpayer's total revenue for the first year of application; and

**C** is the taxpayer's total revenue for the particular calendar year.

#### Election — restriction

**(3)** A taxpayer is not permitted to elect under subsection (2) in respect of a particular calendar year after 2022 if the taxpayer did not make an election under subsection (2) for a calendar year after 2021 that precedes the particular calendar year and for which the conditions set out in paragraphs 10(1)(a) and (b) are met.

## DIVISION A

# Canadian Online Marketplace Services Revenue

#### Definition of *online marketplace services revenue*

**13 (1)** In this Part and Part 5 and subject to subsection (2) and Division E, ***online marketplace services revenue***, of a taxpayer, means revenue earned by the taxpayer in respect of an online marketplace of the taxpayer (or of another constituent entity of a consolidated group of which the taxpayer is, at the time the revenue is earned, a constituent entity) from

**(a)** the provision of access to, or the use of, the online marketplace;

**(b)** commissions and other fees for the facilitation of a supply between users of the online marketplace and for services ancillary to the supply;

**(c)** the provision of premium services, preferential listing services and other optional enhancements to the basic function, or changes to the standard commercial terms, of the services provided in respect of the online marketplace; and

**(d)** sources prescribed by regulation.

que son revenu canadien de services numériques pour l'année civile donnée corresponde au montant obtenu par la formule suivant :

**A ÷ B × C**

où :

**A** représente le revenu canadien de services numériques du contribuable pour la première année d'application;

**B** son revenu total pour la première année d'application;

**C** son revenu total pour l'année civile donnée.

#### Choix — restriction

**(3)** Un contribuable ne peut exercer un choix en vertu du paragraphe (2) relativement à une année civile donnée postérieure à 2022 s'il n'a pas effectué un choix en vertu du paragraphe (2) pour une année civile postérieure à 2021 qui précède l'année civile donnée et pour laquelle les conditions énoncées aux alinéas 10(1)a) et b) sont remplies.

## SECTION A

# Revenu canadien provenant de services de marché en ligne

#### Définition de *revenu provenant de services de marché en ligne*

**13 (1)** Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de services de marché en ligne*** d'un contribuable s'entend du revenu gagné par le contribuable relativement à un marché en ligne du contribuable (ou d'une autre entité constitutive d'un groupe consolidé à l'égard duquel le contribuable est, au moment où le revenu est gagné, une entité constitutive) qui provient :

**a)** de l'octroi d'accès au marché en ligne ou de son utilisation;

**b)** des commissions et d'autres frais relatifs à la facilitation d'une fourniture entre des utilisateurs du marché en ligne et à des services accessoires à cette fourniture;

**c)** de la prestation de services supérieurs, de services de liste de préférences et de la fourniture d'autres améliorations optionnelles à la fonction de base, ou de changements aux modalités commerciales habituelles, des services offerts relativement au marché en ligne;

**d)** de sources visées par règlement.

**Interpretation — revenue exclusion**

**(2)** For the purpose of the definition *online marketplace services revenue* in subsection (1), revenue earned by a taxpayer in respect of an online marketplace does not include revenue

**(a)** from the provision of storage or shipping services, to the extent that the revenue reflects a reasonable rate of remuneration for the service;

**(b)** earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

**(c)** from sources prescribed by regulation.

**Canadian online marketplace services revenue**

**14** A taxpayer's Canadian online marketplace services revenue for a calendar year is the amount determined by the formula

**A + B + C**

where

**A** is the total of all amounts each of which is an amount of online marketplace services revenue of the taxpayer for the calendar year that is in respect of a supply, between users of an online marketplace, of a service

**(a)** physically performed and received in Canada,

**(b)** in respect of real property situated in Canada, or

**(c)** in respect of tangible personal property that is normally situated in Canada and that is situated in Canada at the time the service is performed;

**B** is the total of all amounts each of which is an amount, in respect of a supply between users of an online marketplace (other than a supply that would be a supply described in paragraph (a) of the description of A if the reference to "Canada" were read as a reference to "the same country", paragraph (b) of the description of A if the reference to "Canada" were read as a reference to "any country" or paragraph (c) of the description of A if the first reference to "Canada" were read as a reference to "any country" and the second reference to "Canada" were read as a reference to "that country"), determined by the formula

**D × E ÷ 2**

where

**D** is the taxpayer's online marketplace services revenue for the calendar year that is in respect of the supply, and

**E** is

**Exclusion du revenu**

**(2)** Pour l'application de la définition de *revenu provenant de services de marché en ligne* au paragraphe (1), le revenu gagné par un contribuable relativement à un marché en ligne ne comprend pas le revenu :

**a)** provenant de la prestation de services de stockage ou d'expédition, dans la mesure où le revenu reflète un taux raisonnable de rémunération pour le service;

**b)** gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

**c)** provenant de sources visées par règlement.

**Revenu canadien — marché en ligne**

**14** Le revenu canadien provenant de services de marché en ligne d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

**A + B + C**

où :

**A** représente le total des montants représentant chacun un montant de revenu provenant de services de marché en ligne du contribuable pour l'année civile relativement à la fourniture, entre les utilisateurs d'un marché en ligne, d'un service :

**a)** soit physiquement exécuté et reçu au Canada,

**b)** soit relativement à un bien immobilier situé au Canada,

**c)** soit relativement à un bien meuble corporel qui est normalement situé au Canada et qui est situé au Canada au moment de la prestation du service;

**B** le total des montants représentant chacun une somme, relativement à une fourniture entre les utilisateurs d'un marché en ligne (autre qu'une fourniture qui serait une fourniture visée à l'alinéa a) de l'élément A si la mention de « au Canada » vaut mention de « dans le même pays », à l'alinéa b) de l'élément A si la mention de « au Canada » vaut mention de « dans tout pays » et à l'alinéa c) de l'élément A si la première mention de « au Canada » vaut mention de « dans tout pays » et la deuxième mention de « au Canada » vaut mention de « dans ce pays »), obtenue par la formule suivante :

**D × E ÷ 2**

où :

**D** représente le revenu provenant de services de marché en ligne du contribuable pour l'année civile relativement à la fourniture,

**E** selon le cas :

**(a)** 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user located in Canada,

**(b)** 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user located in Canada, and

**(c)** nil, in any other case; and

**C** is the total of all amounts each of which is an amount, in respect of an online marketplace, determined by the formula

**F × G ÷ H**

where

**F** is the taxpayer's online marketplace services revenue (other than revenue that is in respect of a supply between users) for the calendar year that is in respect of the online marketplace,

**G** is the total number of relevant users in respect of supplies between users of the online marketplace during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer), where the number of relevant users in respect of any supply is

**(a)** 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user located in Canada,

**(b)** 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user located in Canada, and

**(c)** nil, in any other case, and

**H** is the total number of relevant users in respect of supplies between users of the online marketplace during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer), where the number of relevant users in respect of any supply is

**(a)** 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user of determinable location,

**(b)** 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user of determinable location, and

**(c)** nil, in any other case.

**a)** 2, si le fournisseur et l'acheteur à l'égard de la fourniture sont tous les deux, au moment de celle-ci, des utilisateurs situés au Canada,

**b)** 1, si seul le fournisseur ou seul l'acheteur à l'égard de la fourniture est, au moment de celle-ci, un utilisateur situé au Canada,

**c)** zéro, dans les autres cas;

**C** le total des montants représentant chacun une somme, relativement à un marché en ligne, obtenue par la formule suivante :

**F × G ÷ H**

où :

**F** représente le revenu provenant de services de marché en ligne (autre que le revenu relatif à une fourniture entre des utilisateurs) du contribuable pour l'année civile relativement au marché en ligne,

**G** le nombre total d'utilisateurs pertinents relativement aux fournitures entre les utilisateurs du marché en ligne au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, au cours de la période visée du contribuable), où le nombre d'utilisateurs pertinents relativement à une fourniture donnée est :

**a)** 2, si le fournisseur et l'acheteur à l'égard de la fourniture sont tous les deux, au moment de celle-ci, des utilisateurs situés au Canada,

**b)** 1, si seul le fournisseur ou seul l'acheteur à l'égard de la fourniture est, au moment de celle-ci, un utilisateur situé au Canada,

**c)** zéro, dans les autres cas,

**H** le nombre total d'utilisateurs pertinents relativement aux fournitures entre les utilisateurs du marché en ligne au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, au cours de la période visée du contribuable), où le nombre d'utilisateurs pertinents relativement à une fourniture donnée est :

**a)** 2, si le fournisseur et l'acheteur à l'égard de la fourniture sont tous les deux, au moment de celle-ci, des utilisateurs dont l'emplacement est déterminable,

**b)** 1, si seul le fournisseur ou seul l'acheteur à l'égard de la fourniture est, au moment de celle-ci, un utilisateur dont l'emplacement est déterminable,

**c)** zéro, dans les autres cas.

## DIVISION B

# Canadian Online Advertising Services Revenue

### Definition of *online advertising services revenue*

**15 (1)** In this Part and Part 5 and subject to subsection (2) and Division E, ***online advertising services revenue***, of a taxpayer, means revenue earned by the taxpayer from

**(a)** the facilitation through a digital interface of the delivery of an online targeted advertisement;

**(b)** the supply of digital space for an online targeted advertisement; and

**(c)** sources prescribed by regulation in respect of online targeted advertisements.

### Interpretation — revenue exclusion

**(2)** For the purpose of the definition *online advertising services revenue* in subsection (1), revenue earned by a taxpayer does not include revenue

**(a)** described in any of paragraphs 13(1)(a) to (d);

**(b)** in respect of an online targeted advertisement to the extent of any payment made by the taxpayer (or by another constituent entity of a consolidated group, if at the time the revenue is earned, the taxpayer is a constituent entity of the group) to another entity if the payment

**(i)** is in respect of the online targeted advertisement, and

**(ii)** would be online advertising services revenue of the other entity, if this section were read without reference to this paragraph or to section 21;

**(c)** earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

**(d)** from sources prescribed by regulation.

## SECTION B

# Revenu canadien provenant de services de publicité en ligne

### Définition de *revenu provenant de services de publicité en ligne*

**15 (1)** Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de services de publicité en ligne*** d'un contribuable s'entend du revenu gagné par le contribuable qui provient de :

**a)** la facilitation par l'entremise d'une interface numérique de la parution d'une publicité en ligne ciblée;

**b)** la fourniture d'un espace numérique destiné à une publicité en ligne ciblée;

**c)** sources visées par règlement relativement à des publicités en ligne ciblées.

### Exclusion du revenu

**(2)** Pour l'application de la définition de *revenu provenant de services de publicité en ligne* au paragraphe (1), le revenu gagné par un contribuable ne comprend pas le revenu :

**a)** visé à l'un des alinéas 13(1)a) à d);

**b)** qui se rapporte à une publicité en ligne ciblée jusqu'à concurrence de tout paiement effectué par le contribuable (ou par une entité constitutive d'un groupe consolidé, si au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe) à une autre entité, si les faits ci-après s'avèrent :

**(i)** le paiement se rapporte à la publicité en ligne ciblée,

**(ii)** le paiement serait inclus dans le revenu provenant de services de publicité en ligne de l'autre entité, s'il n'était pas tenu compte du présent alinéa ou de l'article 21;

**c)** gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

**d)** qui provient de sources visées par règlement.

### Canadian online advertising services revenue

**16** A taxpayer's Canadian online advertising services revenue for a calendar year is the amount determined by the formula

**A + B**

where

**A** is the total of all amounts each of which is an amount of online advertising services revenue of the taxpayer for the calendar year that is directly attributable to an instance of a display of an online targeted advertisement to a user, or an instance of a user's interaction with an online targeted advertisement, if the user is a user located in Canada at the time of the display or interaction; and

**B** is the total of all amounts each of which is an amount in respect of an online targeted advertisement (other than an advertisement for which revenue of the taxpayer is directly attributable to an instance of a display of the advertisement to a user or directly attributable to an instance of a user's interaction with the advertisement, if the user is a user of determinable location at the time of the display or interaction) determined by the formula

**C × D ÷ E**

where

**C** is the taxpayer's online advertising services revenue for the calendar year that is in respect of the online targeted advertisement,

**D** is the number of times during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) that the online targeted advertisement is displayed to a user that is, at the time of display, a user located in Canada, and

**E** is the number of times during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) that the online targeted advertisement is displayed to a user that is, at the time of display, a user of determinable location.

### Revenu canadien — publicité en ligne

**16** Le revenu canadien provenant de services de publicité en ligne d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

**A + B**

où :

**A** représente le total des montants représentant chacun un montant de revenu provenant de services de publicité en ligne du contribuable pour l'année civile qui est directement attribuable à une occurrence d'affichage d'une publicité en ligne ciblée auprès d'un utilisateur, ou à une occurrence d'interaction d'un utilisateur avec une publicité en ligne ciblée, lorsque l'utilisateur est un utilisateur situé au Canada au moment de l'affichage ou de l'interaction;

**B** le total des montants représentant chacun une somme, relativement à une publicité en ligne ciblée (autre qu'une publicité à l'égard de laquelle un revenu du contribuable est directement attribuable à une occurrence d'affichage de la publicité auprès d'un utilisateur ou directement attribuable à une occurrence d'interaction d'un utilisateur avec la publicité, lorsque l'utilisateur est un utilisateur dont l'emplacement est déterminable au moment de l'affichage ou de l'interaction), obtenue par la formule suivante :

**C × D ÷ E**

où :

**C** représente le revenu provenant de services de publicité en ligne du contribuable pour l'année civile, relativement à la publicité en ligne ciblée,

**D** le nombre de fois pendant l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable) où la publicité en ligne ciblée est affichée auprès d'un utilisateur qui est, au moment de l'affichage, un utilisateur situé au Canada,

**E** le nombre de fois pendant l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable) où la publicité en ligne ciblée est affichée auprès d'un utilisateur qui est, au moment de l'affichage, un utilisateur dont l'emplacement est déterminable.

## DIVISION C

# Canadian Social Media Services Revenue

### Definition of *social media services revenue*

**17 (1)** In this Part and Part 5 and subject to subsection (2) and Division E, ***social media services revenue***, of a taxpayer, means revenue earned by the taxpayer in respect of a social media platform of the taxpayer (or of another constituent entity of a consolidated group of which the taxpayer is, at the time the revenue is earned, a constituent entity) from

**(a)** the provision of access to, or the use of, the social media platform;

**(b)** the provision of premium services and other optional enhancements to the basic function, or changes to the standard commercial terms, of the services provided in respect of the social media platform;

**(c)** the facilitation of an interaction between users, or between a user and digital content generated by other users, on the social media platform; and

**(d)** sources prescribed by regulation.

### Interpretation — revenue exclusion

**(2)** For the purpose of the definition *social media services revenue* in subsection (1), revenue earned by a taxpayer in respect of a social media platform does not include revenue

**(a)** described in any of paragraphs 13(1)(a) to (d) and 15(1)(a) to (c);

**(b)** from the provision of private communication services comprised of any combination of video calling, voice calling, email or instant messaging, if the sole purpose of the platform is to provide those services;

**(c)** earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

**(d)** from sources prescribed by regulation.

## SECTION C

# Revenu canadien provenant de services de médias sociaux

### Définition de *revenu provenant de services de médias sociaux*

**17 (1)** Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de services de médias sociaux*** d'un contribuable s'entend du revenu gagné par le contribuable relativement à une plateforme de médias sociaux du contribuable (ou d'une autre entité constitutive d'un groupe consolidé à l'égard duquel le contribuable est, au moment où le revenu est gagné, une entité constitutive) qui provient de :

**a)** l'octroi d'accès à la plateforme de médias sociaux ou de son utilisation;

**b)** la prestation de services supérieurs et d'autres améliorations optionnelles à la fonction de base, ou de changements aux modalités commerciales habituelles, des services offerts relativement à la plateforme de médias sociaux;

**c)** la facilitation d'une interaction entre des utilisateurs, ou entre un utilisateur et du contenu numérique généré par d'autres utilisateurs, sur la plateforme de médias sociaux;

**d)** sources visées par règlement.

### Exclusion du revenu

**(2)** Pour l'application de la définition de *revenu provenant de services de médias sociaux* au paragraphe (1), le revenu gagné par un contribuable relativement à une plateforme de médias sociaux ne comprend pas le revenu :

**a)** visé à l'un des alinéas 13(1)a) à d) et 15(1)a) à c);

**b)** provenant de la prestation de services de communication privés comprenant toute combinaison des appels vidéo, des appels vocaux, des courriels et de la messagerie instantanée, si l'unique but de la plateforme est de fournir ces services;

**c)** gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

**d)** qui provient de sources visées par règlement.

**Canadian social media services revenue**

**18** A taxpayer's Canadian social media services revenue for a calendar year is the total of all amounts each of which is an amount, in respect of a social media platform, determined by the formula

**A × B ÷ C**

where

**A** is the taxpayer's social media services revenue for the calendar year that is in respect of the social media platform;

**B** is the total number of social media accounts on the social media platform that are accessed at any time during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) by a user that is, at that time, a user located in Canada; and

**C** is the total number of social media accounts on the social media platform that are accessed at any time during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) by a user that is, at that time, a user of determinable location.

**Revenu canadien de médias sociaux**

**18** Le revenu canadien provenant de services de médias sociaux d'un contribuable pour une année civile correspond au total des montants représentant chacune une somme, relativement à une plateforme de médias sociaux, obtenue par la formule suivante :

**A × B ÷ C**

où :

**A** représente le revenu provenant de services de médias sociaux du contribuable pour l'année civile relativement à la plateforme de médias sociaux;

**B** le nombre total de comptes de médias sociaux sur la plateforme de médias sociaux auxquels accède, à un moment donné au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable), un utilisateur qui est, à ce moment, un utilisateur situé au Canada;

**C** le nombre total de comptes de médias sociaux sur la plateforme de médias sociaux auxquels accède, à un moment donné au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable), un utilisateur qui est, à ce moment, un utilisateur dont l'emplacement est déterminable.

## DIVISION D

# Canadian User Data Revenue

**Definition of *user data revenue***

**19 (1)** In this Part and Part 5 and subject to subsection (2) and Division E, ***user data revenue***, of a taxpayer, means revenue earned by the taxpayer in respect of user data collected from a user by the taxpayer (or collected from a user by another constituent entity of a consolidated group of which the taxpayer is, at the time the taxpayer obtains access to the data, a constituent entity) from

**(a)** if the user data is collected from an online marketplace, a social media platform or an online search engine,

**(i)** the sale of the user data, or

**(ii)** the granting of access to the user data; and

**(b)** sources prescribed by regulation.

## SECTION D

# Revenu canadien provenant de données d'utilisateurs

**Définition de *revenu provenant de données d'utilisateurs***

**19 (1)** Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de données d'utilisateurs*** d'un contribuable s'entend du revenu gagné par le contribuable relativement aux données d'utilisateurs recueillies auprès d'un utilisateur par le contribuable (ou recueillies auprès d'un utilisateur par une autre entité constitutive d'un groupe consolidé à l'égard duquel le contribuable est, au moment où il obtient l'accès aux données, une entité constitutive) qui provient :

**a)** si les données d'utilisateurs sont recueillies auprès d'un marché en ligne, d'une plateforme de médias sociaux ou d'un moteur de recherche en ligne, selon le cas :

**(i)** de la vente des données d'utilisateurs,

**(ii)** de l'octroi de l'accès aux données d'utilisateurs;

**Interpretation — revenue exclusion**

**(2)** For the purpose of the definition *user data revenue* in subsection (1), revenue earned by a taxpayer in respect of user data does not include revenue

**(a)** described in any of paragraphs 13(1)(a) to (d), 15(1)(a) to (c) and 17(1)(a) to (d);

**(b)** earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

**(c)** from sources prescribed by regulation.

**Canadian user data revenue**

**20** A taxpayer's Canadian user data revenue for a calendar year is the amount determined by the formula

**A + B**

where

**A** is the total of all amounts each of which is an amount of the taxpayer's user data revenue for the calendar year that is in respect of the user data of a single user that is, at the time the user data is collected, a user located in Canada; and

**B** is the total of all amounts each of which is an amount, in respect of a set of user data of multiple users, determined by the formula

**C × D ÷ E**

where

**C** is the taxpayer's user data revenue (other than revenue that is in respect of the user data of a single user that is, at the time the user data is collected, a user of determinable location) for the calendar year that is in respect of the set of user data,

**D** is the number of users to which the set of user data relates that are, at the time the user data is collected, a user located in Canada, and

**E** is the number of users to which the set of user data relates that are, at the time the user data is collected, a user of determinable location.

**b)** de sources visées par règlement.

**Exclusion du revenu**

**(2)** Pour l'application de la définition de *revenu provenant de données d'utilisateurs* au paragraphe (1), le revenu gagné par un contribuable relativement à des données d'utilisateurs ne comprend pas le revenu :

**a)** visé à l'un des alinéas 13(1)a) à d), 15(1)a) à c) et 17(1)a) à d);

**b)** gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

**c)** qui provient de sources visées par règlement.

**Revenu canadien provenant de données d'utilisateurs**

**20** Le revenu canadien provenant de données d'utilisateurs d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

**A + B**

où :

**A** représente le total des montants représentant chacun un montant de revenu provenant de données d'utilisateurs du contribuable pour l'année civile relativement aux données d'utilisateurs d'un seul utilisateur qui est, au moment où ces données sont recueillies, un utilisateur situé au Canada;

**B** le total des montants représentant chacun une somme, relativement à un ensemble de données d'utilisateurs de plusieurs utilisateurs, obtenue par la formule suivante :

**C × D ÷ E**

où :

**C** représente le revenu provenant de données d'utilisateurs (sauf un revenu relativement aux données d'utilisateurs d'un seul utilisateur qui est, au moment où ces données sont recueillies, un utilisateur dont l'emplacement est déterminable) du contribuable pour l'année civile relativement à l'ensemble des données d'utilisateurs,

**D** le nombre d'utilisateurs auxquels se rapporte l'ensemble des données d'utilisateurs qui sont, au moment où ces données sont recueillies, des utilisateurs situés au Canada,

**E** le nombre d'utilisateurs auxquels se rapporte l'ensemble des données d'utilisateurs qui sont, au moment où ces données sont recueillies, des utilisateurs dont l'emplacement est déterminable.

## DIVISION E

# Rules Relating to Determination of Canadian Digital Services Revenue

### Revenue of new constituent entities

**21 (1)** If a taxpayer meets the condition set out in subparagraph 10(1)(a)(iii) for a particular calendar year, and does not meet at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) for the particular calendar year, then online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue of the taxpayer for the particular calendar year do not include revenue earned by the taxpayer before the first moment in the particular calendar year when the taxpayer becomes a constituent entity of a consolidated group described in subparagraph 10(1)(a)(iii).

### Definition of *in-scope period*

**(2)** If subsection (1) applies to a taxpayer for a particular calendar year, in this Part and in the definition *relevant time* in Part 4, the ***in-scope period***, of the taxpayer, means the period during the particular calendar year beginning at the first moment in the particular calendar year when the taxpayer becomes a constituent entity of a consolidated group described in subparagraph 10(1)(a)(iii) and ending on December 31.

### Attribution of activity

**22** Revenue of a particular constituent entity of a consolidated group is deemed to be Canadian digital services revenue of the particular entity if the revenue

**(a)** is in respect of the provision of a service, or the selling or granting of access to user data, by another constituent entity of the group; and

**(b)** would be Canadian digital services revenue of that other entity if the revenue were earned by the other entity.

## PART 4

# Taxable Canadian Digital Services Revenue

### Definitions

**23** The following definitions apply in this Part.

## SECTION E

# Règles relatives au calcul du revenu canadien de services numériques

### Revenu de nouvelles entités constitutives

**21 (1)** Si un contribuable remplit la condition énoncée au sous-alinéa 10(1)a)(iii) pour une année civile donnée et qu'il ne remplit pas au moins une des conditions énoncées au sous-alinéa 10(1)a)(i) et (ii) pour l'année civile donnée, le revenu provenant de services de marché en ligne, le revenu provenant de services de publicité en ligne, le revenu provenant de services de médias sociaux et le revenu provenant de données d'utilisateurs du contribuable pour l'année civile donnée ne comprend pas le revenu du contribuable gagné avant le premier moment de l'année civile donnée où le contribuable devient une entité constitutive d'un groupe consolidé visé au sous-alinéa 10(1)a)(iii).

### Définition de *période visée*

**(2)** Si le paragraphe (1) s'applique à un contribuable pour une année civile donnée, dans la présente partie et dans la définition de *moment pertinent* à la partie 4, la ***période visée*** du contribuable s'entend de la période durant l'année civile donnée commençant au premier moment de l'année civile donnée où le contribuable devient une entité constitutive d'un groupe consolidé visé au sous-alinéa 10(1)a)(iii) et se terminant le 31 décembre.

### Attribution d'activités

**22** Le revenu d'une entité constitutive donnée d'un groupe consolidé est réputé être un revenu canadien de services numériques de l'entité donnée si le revenu remplit les conditions suivantes :

**a)** il se rapporte à la prestation d'un service ou à la vente ou à l'octroi d'accès à des données d'utilisateurs par une autre entité constitutive du groupe;

**b)** il s'agirait d'un revenu canadien de services numériques de cette autre entité s'il était gagné par l'autre entité.

## PARTIE 4

# Revenu canadien de services numériques imposable

### Définitions

**23** Les définitions qui suivent s'appliquent à la présente partie.

***deduction amount*** means an amount prescribed by regulation. (*montant de la déduction*)

***relevant interval***, of a taxpayer in a calendar year, means any period from one relevant time of the taxpayer in the year to the next relevant time of the taxpayer in the year. (*intervalle pertinent*)

***relevant time***, of a particular taxpayer in a calendar year, means

**(a)** the first moment of

**(i)** the in-scope period of the particular taxpayer if section 21 applies to the particular taxpayer for the calendar year, or

**(ii)** January 1 in any other case;

**(b)** the last moment of December 31;

**(c)** any time between the time referred to in paragraph (a) and the time referred to in paragraph (b) at which the particular taxpayer becomes, or ceases to be, a constituent entity of a consolidated group; and

**(d)** any time between the time referred to in paragraph (a) and the time referred to in paragraph (b) at which

**(i)** the particular taxpayer is a constituent entity of a consolidated group, and

**(ii)** any other taxpayer becomes, or ceases to be, a constituent entity of the group. (*moment pertinent*)

**Determination**

**24** A particular taxpayer's taxable Canadian digital services revenue for a calendar year is the amount determined by the formula

**A – B**

where

**A** is the particular taxpayer's Canadian digital services revenue for the calendar year; and

**B** is

**(a)** if the particular taxpayer is not, at any time in the calendar year, a constituent entity of a consolidated group, the deduction amount, and

**(b)** in any other case, the total of all amounts each of which is an amount in respect of a relevant interval of the particular taxpayer in the calendar year determined by the formula

***intervalle pertinent*** Relativement à un contribuable au cours d'une année civile, s'entend de toute période commençant à un moment pertinent du contribuable au cours de l'année civile et se terminant au prochain moment pertinent du contribuable au cours de l'année civile. (*relevant interval*)

***moment pertinent*** Relativement à un contribuable donné au cours d'une année civile, s'entend :

**a)** du premier moment :

**(i)** de la période visée du contribuable donné si l'article 21 s'applique au contribuable donné pour l'année civile,

**(ii)** du 1er janvier dans les autres cas;

**b)** du dernier moment du 31 décembre;

**c)** de tout moment entre le moment visé à l'alinéa a) et le moment visé à l'alinéa b) où le contribuable donné devient une entité constitutive d'un groupe consolidé, ou cesse de l'être;

**d)** de tout moment entre le moment visé à l'alinéa a) et le moment visé à l'alinéa b) où, à la fois :

**(i)** le contribuable donné est une entité constitutive d'un groupe consolidé,

**(ii)** un autre contribuable devient une entité constitutive du groupe ou cesse de l'être. (*relevant time*)

***montant de la déduction*** Un montant visé par règlement. (*deduction amount*)

**Calcul**

**24** Le revenu canadien de services numériques imposable d'un contribuable donné pour une année civile correspond à la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente le revenu canadien de services numériques du contribuable donné pour l'année civile;

**B** :

**a)** si le contribuable donné n'est, à aucun moment au cours de l'année civile, une entité constitutive d'un groupe consolidé, le montant de la déduction,

**b)** dans les autres cas, le total des montants dont chacun représente une somme relative à un intervalle pertinent du contribuable donné au cours de l'année civile déterminée par la formule suivante :

**C × (D ÷ 365) × (E ÷ F)**

where

**C** is the deduction amount,

**D** is the number of days in the relevant interval,

**E** is the particular taxpayer's Canadian digital services revenue for the calendar year, and

**F** is

**(i)** if the particular taxpayer is a constituent entity of a consolidated group during the relevant interval, the total of all amounts each of which is the Canadian digital services revenue for the calendar year of a taxpayer that is a constituent entity of the consolidated group during the relevant interval (or, if the particular taxpayer does not determine all those amounts, nil), and

**(ii)** in any other case, the amount determined for E.

**C × (D ÷ 365) × (E ÷ F)**

où :

**C** représente le montant de la déduction,

**D** le nombre de jours dans l'intervalle pertinent,

**E** le revenu canadien de services numériques du contribuable donné pour l'année civile,

**F** :

**(i)** si le contribuable donné est une entité constitutive d'un groupe consolidé au cours de l'intervalle pertinent, le total des montants dont chacun représente le revenu canadien de services numériques pour l'année civile d'un contribuable qui est une entité constitutive du groupe consolidé au cours de l'intervalle pertinent (ou, si le contribuable donné ne calcule pas un tel montant, zéro),

**(ii)** dans les autres cas, la valeur de l'élément E.

## PART 5

# Miscellaneous

## DIVISION A

## Trustees and Receivers

### Definitions

**25** The following definitions apply in this Division.

***bankruptcy day***, of a taxpayer, means a day on which a trustee becomes the trustee in bankruptcy of the taxpayer. (*jour de la faillite*)

***bankruptcy period***, of a taxpayer in respect of a bankruptcy day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on the day after the bankruptcy day and ending on the earlier of the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and December 31. (*période de faillite*)

***bankrupt year***, of a taxpayer in respect of a bankruptcy day of the taxpayer, means any calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the

## PARTIE 5

# Divers

## SECTION A

## Syndics et séquestres

### Définitions

**25** Les définitions qui suivent s'appliquent à la présente section.

***actif pertinent*** Relativement à un séquestre, la partie des biens, des entreprises, des affaires et des éléments d'actifs d'une personne auxquels se rapporte le pouvoir du séquestre. (*relevant assets*)

***année sous séquestre*** S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, toute année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) entre l'année civile au cours de laquelle le jour de mise sous séquestre se produit et celle dans laquelle le séquestre cesse d'agir à ce titre pour le contribuable. (*year in receivership*)

***année de faillite*** S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, toute année civile (pour laquelle le contribuable remplit au moins une

condition set out in paragraph 10(1)(b)) between the calendar year in which the bankruptcy day occurs and the calendar year in which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*. (*année de faillite*)

***business*** includes a part of a business. (*entreprise*)

***pre-bankruptcy period***, of a taxpayer in respect of a bankruptcy day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on January 1 and ending on the bankruptcy day. (*période de pré-faillite*)

***pre-cease period***, of a taxpayer in respect of a receivership day of the taxpayer, means the period during a particular calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) after the year in which the receivership day occurs beginning on January 1 of the particular calendar year and ending on the day on which the receiver ceases to act as receiver of the taxpayer. (*période antérieure à la cessation*)

***pre-discharge period***, of a taxpayer in respect of a bankruptcy day of the taxpayer, means the period during a particular calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) after the year in which the bankruptcy day occurs beginning on January 1 of the particular calendar year and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*. (*période antérieure à la libération*)

***pre-receivership period***, of a taxpayer in respect of a receivership day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on January 1 and ending on the receivership day. (*période antérieure à la mise sous séquestre*)

***receiver*** means a person that

**(a)** under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;

des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) entre l'année civile au cours de laquelle le jour de la faillite se produit et celle de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité*. (*bankrupt year*)

***entreprise*** Est assimilée à une entreprise toute partie de celle-ci. (*business*)

***jour de la faillite*** Relativement à un contribuable, jour où un syndic devient le syndic de faillite du contribuable. (*bankruptcy day*)

***jour de mise sous séquestre*** Relativement à un contribuable, le premier jour où un séquestre, à la fois :

**a)** est investi du pouvoir de gérer, d'exploiter ou de liquider l'entreprise ou les biens du contribuable, ou de gérer ses affaires et ses éléments d'actifs;

**b)** est en possession, ou contrôle et gère, les affaires et les éléments d'actifs du contribuable. (*receivership day*)

***période antérieure à la cessation*** S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, la période au cours d'une année civile donnée (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) suivant l'année dans laquelle le jour de mise sous séquestre se produit, commençant le 1er janvier de l'année civile donnée et se terminant le jour où le séquestre cesse d'agir à ce titre pour le contribuable. (*pre-cease period*)

***période antérieure à la libération*** S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, la période au cours d'une année civile donnée (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) suivant l'année au cours de laquelle le jour de la faillite se produit, commençant le 1er janvier de l'année civile donnée et se terminant le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité*. (*pre-discharge period*)

***période antérieure à la mise sous séquestre*** S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)), commençant le 1er janvier et se terminant le jour de mise sous séquestre. (*pre-receivership period*)

**(b)** is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;

**(c)** is appointed by a *bank* or an *authorized foreign bank*, as those terms are defined in section 2 of the *Bank Act*, to act as an agent or mandatary of the bank in the exercise of the authority of the bank under subsection 426(3) of that Act in respect of property of another person; or

**(d)** is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation.

It includes a person that is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, but, if a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, it does not include that creditor. (*séquestre*)

***receivership day***, of a taxpayer, means the earliest day on which a receiver

**(a)** is vested with authority to manage, operate, liquidate or wind up any business or property or to manage and care for the affairs and assets of the taxpayer; and

**(b)** is in possession of or controls and manages the affairs and assets of the taxpayer. (*jour de mise sous séquestre*)

***receivership period***, of a taxpayer in respect of a receivership day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on the day after the receivership day and ending on the earlier of the day on which the receiver ceases to act as receiver of the taxpayer and December 31. (*période de mise sous séquestre*)

***relevant assets*** of a receiver means the part of the properties, businesses, affairs or assets of a person to which the receiver's authority relates. (*actif pertinent*)

***year in receivership***, of a taxpayer in respect of a receivership day of the taxpayer, means any calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) between the calendar year in which the receivership day occurs and the calendar year in which the receiver ceases

***période de faillite*** S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) commençant le lendemain du jour de la faillite et se terminant la première en date des dates suivantes : le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité* et le 31 décembre. (*bankruptcy period*)

***période de mise sous séquestre*** S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) commençant le lendemain du jour de mise sous séquestre et se terminant la première en date des dates suivantes : le jour où le séquestre cesse d'agir à ce titre pour le contribuable et le 31 décembre. (*receivership period*)

***période de pré-faillite*** S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)), commençant le 1er janvier de l'année et se terminant le jour de la faillite. (*pre-bankruptcy period*)

***séquestre*** Personne qui, selon le cas :

**a)** par application d'une obligation ou d'un autre titre de créance, de l'ordonnance d'un tribunal ou d'une loi fédérale ou provinciale, a le pouvoir de gérer ou d'exploiter les entreprises ou les biens d'une autre personne;

**b)** est nommée par un fiduciaire aux termes d'un acte de fiducie relativement à un titre de créance, pour exercer le pouvoir du fiduciaire de gérer ou d'exploiter les entreprises ou les biens du débiteur du titre;

**c)** est nommée par une *banque* ou par une *banque étrangère autorisée*, au sens de l'article 2 de la *Loi sur les banques*, à titre de mandataire de la banque lors de l'exercice du pouvoir de celle-ci visé au paragraphe 426(3) de cette loi relativement aux biens d'une autre personne;

**d)** est nommée à titre de liquidateur pour liquider les biens ou les affaires d'une personne morale.

Est assimilée au séquestre la personne nommée pour exercer le pouvoir d'un créancier, aux termes d'une

to act as receiver of the taxpayer. (*année sous séquestre*)

**Trustee as agent or mandatary**

**26** If a taxpayer has become a bankrupt and a trustee becomes the trustee in bankruptcy of the taxpayer, the trustee is deemed to be the agent or mandatary of the bankrupt for all purposes of this Act and any revenue of the trustee from carrying on the business of the bankrupt is deemed to be revenue of the bankrupt and not of the trustee.

**Tax payable for bankruptcy**

**27 (1)** If during a particular calendar year there is a bankruptcy day of a taxpayer,

**(a)** section 10 does not apply in respect of the particular calendar year, any bankrupt year or a calendar year during which the pre-discharge period, if any, occurs;

**(b)** the taxpayer must pay a tax in respect of the pre-bankruptcy period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the pre-bankruptcy period determined in accordance with section 31;

**(c)** subject to subsection (2), the trustee, and not the taxpayer, must pay a tax in respect of each of the bankruptcy period and, if any, the pre-discharge period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the period determined in accordance with section 31; and

**(d)** subject to subsection (2), the trustee, and not the taxpayer, must pay a tax in respect of any bankrupt year equal to 3% of the taxpayer's taxable Canadian digital services revenue for the year.

**Trustee — exception**

**(2)** A trustee is not liable for the payment of any amount for which a receiver is liable under section 29.

**Filing and payment**

**28 (1)** If section 27 applies in respect of a bankruptcy day of a taxpayer during a particular calendar year,

**(a)** sections 45 and 49 do not apply to the taxpayer in respect of the particular calendar year, any bankrupt year or a calendar year during which the pre-discharge period, if any, occurs;

obligation ou d'un autre titre de créance, de gérer ou d'exploiter les entreprises ou les biens d'une autre personne, à l'exclusion du créancier. (*receiver*)

**Syndic agissant à titre de mandataire**

**26** Lorsqu'un contribuable est en faillite, et qu'un syndic devient son syndic de faillite, pour l'application générale de la présente loi, le syndic de faillite est réputé être le mandataire du failli et tout revenu de celui-ci tiré de l'exploitation de l'entreprise du failli est réputé être le revenu du failli et non du syndic.

**Taxe à payer pour la faillite**

**27 (1)** Si une année civile donnée comprend un jour de la faillite d'un contribuable, à la fois :

**a)** l'article 10 ne s'applique pas relativement à l'année civile donnée, à toute année de faillite ou à une année civile comprenant la période antérieure à la libération, s'il y a lieu;

**b)** le contribuable est tenu de payer une taxe pour la période de pré-faillite égale à 3 % de son revenu canadien de services numériques imposable pour la période de pré-faillite calculé conformément à l'article 31;

**c)** sous réserve du paragraphe (2), le syndic, et non le contribuable, est tenu de payer une taxe pour la période de faillite et, le cas échéant, pour la période antérieure à la libération égale à 3 % du revenu canadien de services numériques imposable du contribuable pour ces périodes, calculé conformément à l'article 31;

**d)** sous réserve du paragraphe (2), le syndic, et non le contribuable, est tenu de payer une taxe pour toute année de faillite égale à 3 % du revenu canadien de services numériques imposable du contribuable pour l'année.

**Syndic — exception**

**(2)** Le syndic n'est pas responsable du paiement des sommes pour lesquelles un séquestre est responsable en vertu de l'article 29.

**Production et paiement**

**28 (1)** Si l'article 27 s'applique relativement à un jour de la faillite d'un contribuable au cours d'une année civile donnée :

**a)** les articles 45 et 49 ne s'appliquent pas au contribuable relativement à l'année civile donnée, à toute année de faillite ou à une année civile comprenant la période antérieure à la libération, s'il y a lieu;

**(b)** subject to subsection (2), the trustee must file all returns — in the form and manner, and containing the information, prescribed by the Minister — in respect of any year or period referred to in paragraph 27(1)(c) or (d) for which the trustee is liable to pay tax greater than nil, and pay the tax payable under this Act in respect of the year or period, on or before the day that is 90 days after the last day of the year or period; and

**(c)** subject to subsection (2), the trustee must, unless the Minister waives the requirement in writing, file any return that is required to be filed by the taxpayer in respect of the calendar year immediately preceding the particular calendar year or in respect of the pre-bankruptcy period — in the form and manner, and containing the information, prescribed by the Minister — on or before the day that is 90 days after the bankruptcy day.

**b)** sous réserve du paragraphe (2), le syndic est tenu de produire toute déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — relativement à toute année ou à toute période visée aux alinéas 27(1)c) ou d) pour laquelle le syndic est tenu de payer un montant positif de taxe, et de payer toute taxe en vertu de la présente loi relativement à cette année ou période, au plus tard le quatre-vingt-dixième jour suivant le dernier jour de l'année ou de la période;

**c)** sous réserve du paragraphe (2), le syndic est tenu de présenter au ministre — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — toute déclaration que le contribuable est tenu de produire relativement à l'année civile précédant l'année civile donnée ou relativement à la période de pré-faillite, au plus tard le quatre-vingt-dixième jour suivant le jour de la faillite, sauf si le ministre renonce par écrit à exiger ces déclarations du syndic.

**Trustee — exception**

**(2)** If there is a receiver with authority in respect of any business, property, affairs or assets of a taxpayer referred to in subsection (1), the trustee is not required to include in any return any information that the receiver is required under section 30 to include in a return.

**Syndic — exception**

**(2)** Lorsqu'un séquestre est investi de pouvoirs relativement à une entreprise, à un bien, aux affaires ou à des éléments d'actifs du contribuable visés au paragraphe (1), le syndic n'est pas tenu d'inclure dans une déclaration les renseignements que le séquestre est tenu d'inclure dans une déclaration conformément à l'article 30.

**Tax payable for receivership**

**29** If during a particular calendar year there is a receivership day of a taxpayer,

**(a)** if the receiver is a receiver-manager,

**(i)** section 10 does not apply in respect of the particular calendar year, any year in receivership or a calendar year during which the pre-cease period, if any, occurs,

**(ii)** the taxpayer must pay a tax in respect of the pre-receivership period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the pre-receivership period determined in accordance with section 31,

**(iii)** the receiver-manager, and not the taxpayer, must pay a tax in respect of each of the receivership period and, if any, the pre-cease period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the period determined in accordance with section 31, and

**Taxe à payer pour la mise sous séquestre**

**29** Si une année civile donnée comprend un jour de mise sous séquestre d'un contribuable :

**a)** si le séquestre est un séquestre-gérant, à la fois :

**(i)** l'article 10 ne s'applique pas relativement à l'année civile donnée, à toute année sous séquestre ou à une année civile comprenant la période antérieure à la cessation, s'il y a lieu,

**(ii)** le contribuable est tenu de payer une taxe pour la période antérieure à la mise sous séquestre égale à 3 % de son revenu canadien de services numériques imposable pour la période calculé conformément à l'article 31,

**(iii)** le séquestre-gérant, et non le contribuable, est tenu de payer une taxe pour la période de mise sous séquestre et, le cas échéant, pour la période antérieure à la cessation égale à 3 % du revenu canadien de services numériques imposable du contribuable pour ces périodes, calculé conformément à l'article 31,

**(iv)** the receiver-manager, and not the taxpayer, must pay a tax in respect of any year in receivership equal to 3% of the taxpayer's taxable Canadian digital services revenue for the year; and

**(b)** in any other case,

**(i)** the receiver must pay

**(A)** a tax in respect of each of the receivership period and, if any, the pre-cease period equal to 3% of the portion of the taxpayer's Canadian digital services revenue for the period (determined in accordance with section 31) that is online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue earned by the taxpayer for the period that can reasonably be considered to relate to the relevant assets of the receiver, and

**(B)** a tax in respect of any year in receivership, equal to 3% of the portion of the taxpayer's Canadian digital services revenue for the year that is online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue earned by the taxpayer for the year that can reasonably be considered to relate to the relevant assets of the receiver, and

**(ii)** for the purpose of section 10, the taxpayer's taxable Canadian digital services revenue in respect of the particular calendar year, any years in receivership and a calendar year during which the pre-cease period, if any, occurs is determined as if online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue of the taxpayer for the year did not include revenue that is included in the portion of Canadian digital services revenue described in clause (b)(i)(A) or (B).

**(iv)** le séquestre-gérant, et non le contribuable, est tenu de payer une taxe pour toute année sous séquestre égale à 3 % du revenu canadien de services numériques imposable du contribuable pour l'année;

**b)** dans les autres cas :

**(i)** le séquestre est tenu de payer une taxe, à la fois :

**(A)** pour la période de mise sous séquestre et, le cas échéant, pour la période antérieure à la cessation égale à 3 % de la partie du revenu canadien de services numériques du contribuable pour ces périodes (calculé conformément à l'article 31) qui représente du revenu provenant de services d'un marché en ligne, du revenu provenant de services de publicité en ligne, du revenu provenant de services de médias sociaux et du revenu provenant de données d'utilisateurs gagnés par ce dernier pour ces périodes qu'il est raisonnable de considérer comme se rapportant à l'actif pertinent du séquestre,

**(B)** pour toute année sous séquestre, égale à 3 % de la partie du revenu canadien de services numériques du contribuable pour l'année qui représente du revenu provenant de services d'un marché en ligne, du revenu provenant de services de publicité en ligne, du revenu provenant de services de médias sociaux et du revenu provenant de données d'utilisateurs gagnés par ce dernier pour l'année qu'il est raisonnable de considérer comme se rapportant à l'actif pertinent du séquestre,

**(ii)** pour l'application de l'article 10, le revenu canadien de services numériques du contribuable relativement à l'année civile donnée, aux années sous séquestre et à une année civile comprenant la période antérieure à la cessation, le cas échéant, est calculé comme si le revenu provenant de services d'un marché en ligne, le revenu provenant de services de publicité en ligne, le revenu provenant de services de médias sociaux et le revenu provenant de données d'utilisateurs du contribuable pour l'année n'incluaient pas du revenu compris dans la partie du revenu canadien de services numériques visé aux divisions b)(i)(A) ou (B).

### Filing and payment

**30** If section 29 applies in respect of a receivership day of a taxpayer during a particular calendar year,

**(a)** if the receiver is a receiver-manager,

### Production et paiement

**30** Si l'article 29 s'applique relativement à un jour de mise sous séquestre d'un contribuable au cours d'une année civile donnée :

**a)** si le séquestre est un séquestre-gérant, à la fois :

**(i)** sections 45 and 49 do not apply to the taxpayer in respect of the particular calendar year, any year in receivership or a calendar year during which the pre-cease period, if any, occurs,

**(ii)** the receiver-manager must file all returns — in the form and manner, and containing the information, prescribed by the Minister — in respect of any year or period referred to in subparagraph 29(a)(iii) or (iv) for which the receiver-manager is liable to pay tax greater than nil, and pay the tax payable under this Act in respect of the year or period, on or before the day that is 90 days after the last day of the year or period, and

**(iii)** the receiver-manager must, unless the Minister waives the requirement in writing, file any return that is required to be filed by the taxpayer in respect of the calendar year immediately preceding the particular calendar year or in respect of the pre-receivership period — in the form and manner, and containing the information, prescribed by the Minister — on or before the day that is 90 days after the receivership day; and

**(b)** in any other case, the receiver must file all returns — in the form and manner, and containing the information, prescribed by the Minister — in respect of any year or period referred to in subparagraph 29(b)(i) for which the receiver is liable to pay tax greater than nil, and pay the tax payable under this Act in respect of the year or period, on or before the day that is 90 days after the last day of the year or period.

**(i)** les articles 45 et 49 ne s'appliquent pas au contribuable relativement à l'année civile donnée, à toute année sous séquestre ou à une année civile comprenant la période antérieure à la cessation, s'il y a lieu,

**(ii)** le séquestre-gérant est tenu de produire toute déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — relativement à toute année ou période visée aux sous-alinéas 29a)(iii) ou (iv) pour laquelle le séquestre-gérant est tenu de payer un montant positif de taxe, et de payer toute taxe en vertu de la présente loi relativement à cette année ou période, au plus tard le quatre-vingt-dixième jour suivant le dernier jour de l'année ou de la période,

**(iii)** le séquestre-gérant est tenu de présenter au ministre — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — toute déclaration que le contribuable est tenu de produire relativement à l'année civile précédant l'année civile donnée ou relativement à la période antérieure à la mise sous séquestre, au plus tard le quatre-vingt-dixième jour suivant le jour de mise sous séquestre, sauf si le ministre renonce par écrit à exiger ces déclarations du séquestre-gérant;

**b)** dans les autres cas, le séquestre est tenu de produire toute déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — relativement à toute année ou période visée au sous-alinéa 29b)(i) pour laquelle le séquestre est tenu de payer un montant positif de taxe, et de payer toute taxe en vertu de la présente loi relativement à cette année ou période, au plus tard le quatre-vingt-dixième jour suivant le dernier jour de l'année ou de la période.

### Non-calendar year periods

**31 (1)** For the purposes of sections 27 and 29, a taxpayer's taxable Canadian digital services revenue or Canadian digital services revenue for a pre-bankruptcy period, bankruptcy period, pre-discharge period, pre-receivership period, receivership period or pre-cease period is the taxable Canadian digital services revenue or Canadian digital services revenue of the taxpayer, determined in accordance with Parts 3 and 4, with the following modifications:

**(a)** the references in Parts 3 and 4 to "calendar year" (except in the descriptions of E and F in section 24) are to be read as references to "pre-bankruptcy period", "bankruptcy period", "pre-discharge period",

### Périodes hors année civile

**31 (1)** Pour l'application des articles 27 et 29, le revenu canadien de services numériques imposable d'un contribuable ou son revenu canadien de services numériques pour une période de pré-faillite, une période de faillite, une période antérieure à la libération, une période antérieure à la mise sous séquestre, une période de mise sous séquestre ou une période antérieure à la cessation représente son revenu canadien de services numériques imposable ou son revenu canadien de services numériques calculé conformément aux parties 3 et 4 sous réserve des adaptions suivantes :

**a)** les mentions de « année civile » aux parties 3 et 4 (sauf dans les éléments E et F de la formule figurant à

"pre-receivership period", "receivership period" or "pre-cease period", as the case may be;

**(b)** the references in Parts 3 and 4 to "year" (except in the descriptions of E and F in section 24) are to be read as references to "period";

**(c)** paragraphs (a) and (b) of the definition *relevant time* in section 23 are to be read as follows:

**"(a)** the first moment of the first day of the period;

**(b)** the last moment of the last day of the period;"

**(d)** paragraph (a) of the description of B in section 24 does not apply; and

**(e)** subsections 12(2) and (3) do not apply.

l'article 24) valent mention de « période de prédéfaillite », « période de faillite », « période antérieure à la libération », « période antérieure à la mise sous séquestre », « période de mise sous séquestre » ou « période antérieure à la cessation », selon le cas;

**b)** les mentions de « année » aux parties 3 et 4 (sauf dans les éléments E et F de la formule figurant à l'article 24) valent mention de « période »;

**c)** les alinéas a) et b) de la définition de *moment pertinent* à l'article 23 sont réputés avoir le libellé suivant :

**« a)** du premier moment du premier jour de la période;

**b)** du dernier moment du dernier jour de la période; »

**d)** l'alinéa a) de l'élément B de la formule figurant à l'article 24 ne s'applique pas;

**e)** les paragraphes 12(2) et (3) ne s'appliquent pas.

**Administration and enforcement**

**(2)** Except as otherwise provided in this Division, Part 6 applies, with any modifications that the circumstances require, to any taxpayer, trustee or receiver in respect of any year or period referred to in this Division.

**Application et exécution**

**(2)** Sauf disposition contraire de la présente section, la partie 6 s'applique, avec les adaptations nécessaires, à tout contribuable, syndic ou séquestre relativement à toute année ou période visée à la présente section.

**Certificates for receivers**

**32 (1)** Every receiver that controls property of a taxpayer that is, or can reasonably be expected to become, required to pay any amount under this Act must, before distributing the property to any person, obtain a certificate from the Minister certifying that the following amounts have been paid, or that security for the payment of them has been accepted by the Minister, in accordance with this Act:

**(a)** all amounts that are payable under this Act by the taxpayer or the receiver (in that capacity) in respect of any calendar year, or period, preceding the calendar year, or period, during which the distribution is made; and

**(b)** all amounts that can reasonably be expected to become payable under this Act by the taxpayer or the receiver (in that capacity) in respect of the calendar year or period during which the distribution is made, or any previous calendar year or period.

**Certificats pour les séquestres**

**32 (1)** Le séquestre qui contrôle les biens d'un contribuable tenu de payer des montants en application de la présente loi, ou dont il est raisonnable de s'attendre à ce qu'il le devienne, est tenu d'obtenir du ministre, avant de distribuer les biens à quiconque, un certificat confirmant que les montants ci-après ont été payés, ou qu'une garantie pour leur paiement a été acceptée par le ministre, conformément à la présente loi :

**a)** les montants qui sont payables par le contribuable ou par le séquestre à ce titre en application de la présente loi pour toute année civile ou période précédant l'année civile ou période qui comprend le moment de la distribution;

**b)** les montants dont il est raisonnable de s'attendre à ce qu'ils deviennent payables par le contribuable ou le séquestre à ce titre en application de la présente loi pour l'année civile ou la période qui comprend le moment de la distribution ou pour une année civile ou période antérieure.

**Liability for failure to obtain certificate**

**(2)** Any receiver that distributes property without obtaining a certificate in respect of the amounts referred to

**Obligation d'obtenir un certificat**

**(2)** Le séquestre qui distribue des biens sans obtenir le certificat visé au paragraphe (1) est personnellement

in subsection (1) is personally liable for the payment of those amounts to the extent of the value of the property so distributed.

## DIVISION B

# Partnerships

### Partnerships

**33 (1)** For the purposes of this Act, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

### Joint and several or solidary liability

**(2)** A partnership and each member or former member (each of which is referred to in this subsection as the "member") of the partnership (other than a member that is a limited partner and is not a general partner) are jointly and severally, or solidarily, liable for

**(a)** the payment of all amounts that are required to be paid by the partnership under this Act before or during the period during which the member is a member of the partnership or, if the member was a member of the partnership at the time the partnership was dissolved, after the dissolution of the partnership, except that

**(i)** the member is liable for the payment of amounts that become payable before the period only to the extent of the property that is regarded as property of the partnership under the relevant laws of general application to partnerships in force in a province or other jurisdiction, and

**(ii)** the payment by the partnership or by any member of the partnership of an amount in respect of the liability discharges their liability to the extent of that amount; and

**(b)** all other obligations under this Act that arose before or during that period for which the partnership is liable or, if the member was a member of the partnership at the time the partnership was dissolved, the obligations that arose upon or as a consequence of the dissolution.

tenu au paiement des montants en cause, jusqu'à concurrence de la valeur des biens ainsi distribués.

## SECTION B

# Sociétés de personnes

### Sociétés de personnes

**33 (1)** Pour l'application de la présente loi, tout acte accompli par une personne à titre d'associé d'une société de personnes est réputé avoir été accompli par celle-ci dans le cadre de ses activités et non par la personne.

### Responsabilité solidaire

**(2)** Une société de personnes et chacun de ses associés ou anciens associés (chacun étant appelé « associé » au présent paragraphe), à l'exception d'un associé qui est un commanditaire mais qui n'est pas un commandité, sont solidairement responsables de ce qui suit :

**a)** le paiement des montants que doit payer la société de personnes en application de la présente loi avant ou pendant la période au cours de laquelle l'associé en est un associé ou, si l'associé était un associé de la société au moment de la dissolution de celle-ci, après cette dissolution, toutefois :

**(i)** l'associé n'est tenu au paiement des montants devenus payables avant la période que jusqu'à concurrence des biens qui sont considérés comme étant ceux de la société selon les lois pertinentes d'application générale concernant les sociétés de personnes qui sont en vigueur dans une province ou dans une autre juridiction,

**(ii)** le paiement par la société ou par un de ses associés d'un montant au titre de l'obligation réduit d'autant leur obligation;

**b)** les autres obligations de la société en application de la présente loi qui ont pris naissance avant ou pendant la période visée à l'alinéa a) ou, si l'associé est un associé de la société au moment de la dissolution de celle-ci, les obligations qui découlent de cette dissolution.

## DIVISION C

# Anti-avoidance

### Definitions

**34 (1)** The following definitions apply in this Division.

***tax benefit*** means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act. (*avantage fiscal*)

***tax consequences*** to a person means the amount of tax or other amount payable by, or refundable to, the person under this Act, or any other amount that is relevant for the purposes of computing that amount. (*attribut fiscal*)

***transaction*** includes an arrangement or event. (*opération*)

### General anti-avoidance rule

**(2)** If a transaction is an avoidance transaction, the tax consequences to a person are to be determined as is reasonable in the circumstances in order to deny a tax benefit that, in the absence of this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

### Avoidance transaction

**(3)** An ***avoidance transaction*** means any transaction

**(a)** that, in the absence of this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

**(b)** that is part of a series of transactions, which series, in the absence of this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

## SECTION C

# Anti-évitement

### Définitions

**34 (1)** Les définitions qui suivent s'appliquent à la présente section.

***attribut fiscal*** S'agissant des attributs fiscaux d'une personne, taxe ou autre montant payable par cette personne, ou montant qui lui est remboursable, en application de la présente loi, ainsi que tout montant à prendre en compte pour calculer la taxe ou l'autre montant payable par cette personne ou le montant qui lui est remboursable. (*tax consequences*)

***avantage fiscal*** Réduction, évitement ou report de taxe ou d'un autre montant exigible en application de la présente loi ou augmentation d'un remboursement de taxe ou d'un autre montant visé par la présente loi. (*tax benefit*)

***opération*** Sont assimilés à une opération une convention, un mécanisme ou un événement. (*transaction*)

### Règle générale anti-évitement

**(2)** En cas d'opération d'évitement, les attributs fiscaux d'une personne doivent être déterminés de façon raisonnable dans les circonstances de façon à supprimer un avantage fiscal qui, en l'absence du présent article, découlerait, directement ou indirectement, de cette opération ou d'une série d'opérations dont cette opération fait partie.

### Opération d'évitement

**(3)** L'***opération d'évitement*** s'entend :

**a)** soit de l'opération dont, en l'absence du présent article, découlerait, directement ou indirectement, un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables, l'obtention de l'avantage fiscal n'étant pas considérée comme un objet véritable;

**b)** soit de l'opération qui fait partie d'une série d'opérations dont, en l'absence du présent article, découlerait, directement ou indirectement, un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables, l'obtention de l'avantage fiscal n'étant pas considérée comme un objet véritable.

**Application of subsection (2)**

**(4)** Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

**(a)** would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of

**(i)** this Act,

**(ii)** the *Digital Services Tax Regulations*, or

**(iii)** any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

**(b)** would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

**Determination of tax consequences**

**(5)** Without restricting the generality of subsection (2) and despite any other enactment, in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, in the absence of this section, result directly or indirectly from an avoidance transaction

**(a)** any deduction, exemption or exclusion in computing Canadian digital services revenue, taxable Canadian digital services revenue or tax payable or any part thereof may be allowed or disallowed in whole or in part;

**(b)** any such deduction, exemption or exclusion, any revenue or other amount or part thereof may be allocated to any person;

**(c)** the nature of any payment or other amount may be recharacterized; and

**(d)** the tax effects that would otherwise result from the application of other provisions of this Act may be ignored.

**Request for adjustments**

**(6)** If, with respect to a transaction, a notice of assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, then any person (other than a person to which such a notice has been sent) is entitled, within 180 days after the day of

**Application du paragraphe (2)**

**(4)** Le paragraphe (2) ne s'applique qu'à l'opération dont il est raisonnable de considérer, selon le cas :

**a)** qu'elle entraînerait, directement ou indirectement, s'il n'était pas tenu compte du présent article, un abus dans l'application des dispositions d'un ou de plusieurs des textes suivants :

**(i)** la présente loi,

**(ii)** le *Règlement sur la taxe sur les services numériques*,

**(iii)** tout autre texte législatif qui est utile soit pour le calcul de la taxe ou de toute autre somme exigible ou remboursable sous le régime de la présente loi, soit pour la détermination de toute somme à prendre en compte dans ce calcul;

**b)** qu'elle entraînerait, directement ou indirectement, un abus dans l'application de ces dispositions, compte non tenu du présent article, lues dans leur ensemble.

**Attributs fiscaux à déterminer**

**(5)** Sans préjudice de la portée générale du paragraphe (2) et malgré tout autre texte législatif, dans le cadre de la détermination des attributs fiscaux d'une personne de façon raisonnable dans les circonstances de façon à supprimer l'avantage fiscal qui, en l'absence du présent article, découlerait directement ou indirectement d'une opération d'évitement :

**a)** toute déduction, exemption ou exclusion dans le calcul de tout ou partie du revenu canadien de services numériques, du revenu canadien de services numériques imposable ou de la taxe payable peut être en totalité ou en partie admise ou refusée;

**b)** tout ou partie de cette déduction, exemption ou exclusion ainsi que tout ou partie d'un revenu ou d'un autre montant peuvent être attribués à une personne;

**c)** la nature d'un paiement ou d'un autre montant peut être qualifiée autrement;

**d)** les effets fiscaux qui découleraient par ailleurs de l'application des autres dispositions de la présente loi peuvent ne pas être pris en compte.

**Demande en vue de déterminer les attributs fiscaux**

**(6)** Dans les cent quatre-vingts jours suivant l'envoi à une personne d'un avis de cotisation qui tient compte du paragraphe (2) en ce qui concerne une opération, toute personne autre qu'une personne à laquelle un tel avis a été envoyé a le droit de demander par écrit au ministre

sending of the notice, to request in writing that the Minister make an assessment applying subsection (2) with respect to that transaction.

**Exception**

**(7)** Despite any other provision of this Act, the tax consequences to any person, following the application of this section, are only to be determined through a notice of assessment involving the application of this section.

**Duties of Minister**

**(8)** On receipt of a request by a person under subsection (6), the Minister must, without delay, consider the request and, despite subsection 70(1), assess the person. However, an assessment may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6).

**Series of transactions**

**35** For the purposes of this Division, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

**PART 6**

# General Provisions, Administration and Enforcement

**Definitions**

**36 (1)** The following definitions apply in this Part.

***Agency*** means the Canada Revenue Agency continued by subsection 4(1) of the *Canada Revenue Agency Act*. (*Agence*)

***bank*** means a *bank* or an *authorized foreign bank*, as those terms are defined in section 2 of the *Bank Act*, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act. (*banque*)

***business number*** means any number (other than a Social Insurance Number) used by the Minister to identify a person for the purposes of this Act. (*numéro d'entreprise*)

***Commissioner*** means, except in sections 39, 105 and 122, the Commissioner of Revenue appointed under section 25 of the *Canada Revenue Agency Act*. (*commissaire*)

d'établir à son égard une cotisation en application du paragraphe (2) en ce qui concerne l'opération.

**Exception**

**(7)** Malgré les autres dispositions de la présente loi, les attributs fiscaux d'une personne, par suite de l'application du présent article, ne peuvent être déterminés que par avis de cotisation compte tenu du présent article.

**Obligations du ministre**

**(8)** Sur réception d'une demande présentée par une personne conformément au paragraphe (6), le ministre doit, dès que possible, examiner la demande et, malgré le paragraphe 70(1), établir une cotisation au nom de la personne. Toutefois, une cotisation ne peut être établie en application du présent paragraphe que s'il est raisonnable de considérer que la cotisation concerne l'opération visée au paragraphe (6).

**Série d'opérations**

**35** Pour l'application de la présente section, toute série d'opérations est réputée comprendre les opérations liées terminées en vue de réaliser la série.

**PARTIE 6**

# Dispositions générales, application et exécution

**Définitions**

**36 (1)** Les définitions qui suivent s'appliquent à la présente partie.

***Agence*** L'Agence du revenu du Canada, prorogée par le paragraphe 4(1) de la *Loi sur l'Agence du revenu du Canada*. (*Agency*)

***banque*** *Banque*, au sens de l'article 2 de la *Loi sur les banques*, ou *banque étrangère autorisée*, au sens de cet article, qui ne fait pas l'objet des restrictions et exigences visées au paragraphe 524(2) de cette loi. (*bank*)

***commissaire*** Sauf aux articles 39, 105 et 122, le commissaire du revenu, nommé au titre de l'article 25 de la *Loi sur l'Agence du revenu du Canada*. (*Commissioner*)

***fonctionnaire*** Personne qui est ou a été employée par Sa Majesté du chef du Canada ou d'une province, qui occupe ou a occupé une fonction de responsabilité à son service

***judge***, in respect of any matter, means a judge of a superior court having jurisdiction in the province in which the matter arises or a judge of the Federal Court. (*juge*)

***official*** means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, His Majesty in right of Canada or a province, or a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged. (*fonctionnaire*)

***record*** means any material on which representations, in any form, of information or concepts are recorded or marked and that is capable of being read or understood by an individual or a computer system or other device. (*registre*)

***registration threshold*** means the amount prescribed by regulation. (*seuil d'inscription*)

**Person resident in Canada**

**(2)** For the purposes of this Part, a person is deemed to be resident in Canada at any time

**(a)** in the case of a corporation, if the corporation is

**(i)** incorporated in Canada and not continued elsewhere, or

**(ii)** continued in Canada;

**(b)** in the case of a partnership, an unincorporated society, a club, an association or organization, or a branch thereof, if the member or participant, or a majority of the members or participants, having management and control thereof is or are resident in Canada at that time;

**(c)** in the case of a labour union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time; and

**(d)** in the case of an individual, if the individual is deemed under any of paragraphs 250(1)(a) to (f) of the *Income Tax Act* to be resident in Canada at that time.

**Administration or enforcement**

**(3)** For greater certainty, a reference in this Part to the administration or enforcement of this Act includes the collection of any amount payable under this Act.

ou qui est ou a été engagée par elle ou en son nom. (*official*)

***juge*** Relativement à une affaire, juge d'une cour supérieure de la province où l'affaire prend naissance ou juge de la Cour fédérale. (*judge*)

***numéro d'entreprise*** Le numéro, sauf le numéro d'assurance sociale, utilisé par le ministre pour identifier une personne pour l'application de la présente loi. (*business number*)

***registre*** Tout support sur lequel des représentations d'information ou de notions sont enregistrées ou inscrites et qui peut être lu ou compris par un particulier ou par un système informatique ou un autre dispositif. (*record*)

***seuil d'inscription*** Un montant visé par règlement. (*registration threshold*)

**Personne résidant au Canada**

**(2)** Pour l'application de la présente partie, sont réputés résider au Canada à un moment donné :

**a)** la personne morale :

**(i)** constituée au Canada et non prorogée à l'étranger,

**(ii)** prorogée au Canada;

**b)** la société de personnes, le club, l'association ou l'organisation non dotée de la personnalité morale, ou une succursale de ceux-ci, dont le membre ou le participant, ou la majorité des membres ou des participants, qui en assurent la gestion et le contrôle résident au Canada à ce moment;

**c)** le syndicat ouvrier qui exerce au Canada des activités à ce titre et y a une unité ou section locale à ce moment;

**d)** le particulier qui est réputé, en vertu de l'un des alinéas 250(1)a) à f) de la *Loi de l'impôt sur le revenu*, résider au Canada à ce moment.

**Application ou exécution**

**(3)** Il est entendu que toute mention à la présente partie quant à l'application ou à l'exécution de la présente loi comprend le recouvrement de tout montant payable en vertu de la présente loi.

**DIVISION A**

## Duties of Minister

**Minister's duty**

**37** The Minister must administer and enforce this Act and the Commissioner may exercise the powers and perform the duties of the Minister under this Act.

**Staff**

**38 (1)** The persons that are necessary to administer and enforce this Act are to be appointed, employed or engaged in the manner authorized by law.

**Delegation of powers**

**(2)** The Minister may authorize any person who is employed or engaged by the Agency, or occupies a position of responsibility in the Agency, to exercise powers or perform duties of the Minister under this Act, including any judicial or quasi-judicial power or duty.

**Administration of oaths**

**39** Any person, if so designated by the Minister, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of, or incidental to, the administration or enforcement of this Act, and every person so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

**Waiving the filing of documents**

**40** If any provision of this Act or a regulation requires a person to file a form or other document in the form and manner prescribed by the Minister (other than a return or a form, or other document, with respect to an election) or to provide information, prescribed by the Minister, the Minister may waive the requirement, but at the Minister's request the person must provide the document or information by the date set out in the request.

**DIVISION B**

## Registration

**Requirement to register**

**41 (1)** A taxpayer must apply to register under this Act on or before the earliest of

**(a)** January 31 of the year following the first year of application, if the taxpayer

**SECTION A**

## Fonctions du ministre

**Fonctions du ministre**

**37** Le ministre assure l'application et l'exécution de la présente loi. Le commissaire peut exercer les pouvoirs et les fonctions conférés au ministre par la présente loi.

**Personnel**

**38 (1)** Sont nommées, employées ou engagées de la manière autorisée par la loi les personnes nécessaires à l'application et à l'exécution de la présente loi.

**Fonctionnaire désigné**

**(2)** Le ministre peut autoriser toute personne employée ou engagée par l'Agence, ou occupant une fonction de responsabilité au sein de celle-ci, à exercer les attributions que lui confère la présente loi, notamment en matière judiciaire ou quasi judiciaire.

**Déclaration sous serment**

**39** Toute personne peut, si le ministre l'a désignée à cette fin, faire prêter les serments et recevoir les déclarations sous serment, solennelles ou autres, exigés pour l'application ou l'exécution de la présente loi, ou qui y sont accessoires. À cet effet, la personne ainsi désignée dispose des pouvoirs d'un commissaire à l'assermentation.

**Renonciation**

**40** Le ministre peut renoncer à exiger qu'une personne produise un formulaire ou autre document en la forme et selon les modalités déterminées par le ministre (autre qu'une déclaration ou un formulaire, ou autre document, relativement à un choix), ou fournisse des renseignements, déterminés par le ministre, aux termes d'une disposition de la présente loi ou d'un règlement, mais la personne doit, à la demande du ministre, fournir le document ou les renseignements au plus tard à la date figurant dans la demande.

**SECTION B**

## Inscription

**Demande d'inscription**

**41 (1)** Un contribuable doit présenter une demande d'inscription en vertu de la présente loi au plus tard à la première des dates suivantes :

**a)** le 31 janvier de l'année suivant la première année d'application, si le contribuable, à la fois :

**(i)** has Canadian digital services revenue greater than nil

**(A)** for the first year of application, or

**(B)** if the rate referred to in the description of B in subsection 10(2) is greater than nil, for any calendar year that is after 2021 and before the first year of application, and

**(ii)** would meet the conditions set out in paragraphs 10(1)(a) and (b) in respect of a calendar year for which the condition set out in subparagraph (i) is satisfied if the references to "in-scope revenue threshold" in paragraph 10(1)(b) were read as references to "registration threshold"; and

**(b)** January 31 of the year following a calendar year, after the first year of application, for which calendar year the taxpayer

**(i)** has Canadian digital services revenue greater than nil, and

**(ii)** would meet the conditions set out in paragraphs 10(1)(a) and (b) if the references to "in-scope revenue threshold" in paragraph 10(1)(b) were read as references to "registration threshold".

**(i)** a un revenu canadien de services numériques supérieur à zéro :

**(A)** soit pour la première année d'application,

**(B)** soit si le taux visé à l'élément B de la formule figurant au paragraphe 10(2) est supérieur à zéro, pour une année civile postérieure à 2021 et antérieure à la première année d'application,

**(ii)** remplirait les conditions énoncées aux alinéas 10(1)a) et b) relativement à une année civile pour laquelle la condition énoncée au sous-alinéa (i) est remplie, si les mentions de « seuil de revenu dans le champ d'application » à l'alinéa 10(1)b) valent mentions de « seuil d'inscription »;

**b)** le 31 janvier de l'année suivant une année civile postérieure à la première année d'application si pour cette année civile le contribuable, à la fois :

**(i)** a un revenu canadien de services numériques supérieur à zéro,

**(ii)** remplirait les conditions énoncées aux alinéas 10(1)a) et b) si les mentions de « seuil de revenu dans le champ d'application » à l'alinéa 10(1)b) valent mentions de « seuil d'inscription ».

**Waiving requirement under subsection (1)**

**(2)** The Minister may waive a taxpayer's requirement under subsection (1), but at the Minister's request the taxpayer must apply to register by the date set out in the request.

**Dispense de l'obligation prévue au paragraphe (1)**

**(2)** Le ministre peut renoncer à exiger qu'un contribuable présente une demande d'inscription prévue au paragraphe (1). Le contribuable est néanmoins tenu de présenter une telle demande à la demande du ministre.

**Application to register**

**42 (1)** An application for registration under this Division must be made in the form and manner, and contain the information, prescribed by the Minister.

**Demande d'inscription**

**42 (1)** Une demande d'inscription en vertu de la présente section doit être présentée selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier.

**Notification**

**(2)** The Minister may register any taxpayer that applies for registration under this Act and, if the Minister does so, the Minister must notify the taxpayer of the effective date of the registration and of the registration number assigned to the taxpayer.

**Avis d'inscription**

**(2)** Le ministre peut inscrire tout contribuable qui fait une demande d'inscription en vertu de la présente loi et, le cas échéant, doit aviser le contribuable de la date de prise d'effet de l'inscription et du numéro d'inscription qui lui est attribué.

**De-registration**

**43 (1)** The Minister may, upon request by a taxpayer, de-register the taxpayer at any time if the Minister is satisfied that the taxpayer would not have met the conditions set out in paragraphs 10(1)(a) and (b) — in respect of any of the three calendar years immediately preceding that time — if the references to "in-scope revenue

**Retrait de l'inscription**

**43 (1)** Le ministre peut, à la demande d'un contribuable, radier l'inscription de ce dernier à tout moment s'il est convaincu que le contribuable n'aurait pas rempli les conditions énoncées aux alinéas 10(1)a) et b) — relativement à l'une des trois années civiles précédant ce moment — si les mentions de « seuil de revenu dans le

threshold" in paragraph 10(1)(b) were read as references to "registration threshold".

**Consequences of de-registration**

**(2)** A taxpayer that is, at a particular time, de-registered under subsection (1) is deemed for the purpose of applying subsection 41(1) at any time subsequent to the particular time

**(a)** not to have applied for registration before the particular time; and

**(b)** not to have met the conditions set out in paragraph 41(1)(b) before the particular time.

**Notification**

**(3)** If the Minister de-registers a taxpayer under this section, the Minister must notify the taxpayer of the de-registration and the effective date of the de-registration.

**Notice of intent**

**44 (1)** If the Minister has reason to believe that a taxpayer that is not registered under this Act is required to apply to register and has failed to do so as and when required, the Minister may send a notice of intent in writing to the taxpayer that the Minister proposes to register the taxpayer under this Act.

**Notice of intent — requirement to register**

**(2)** On receipt of a notice of intent, a taxpayer must apply to register or establish to the satisfaction of the Minister that the taxpayer is not required to do so.

**Notice of intent — notification of registration**

**(3)** If, after 60 days after the day on which a notice of intent was sent by the Minister to a taxpayer, the taxpayer has not applied to register and the Minister is not satisfied that the taxpayer is not required to apply to register, the Minister may register the taxpayer and, on doing so, must notify the taxpayer of the effective date of the registration and the registration number assigned to the taxpayer.

## DIVISION C

# Returns

**Requirement to file return**

**45** A taxpayer must file a return — in the form and manner, and containing the information, prescribed by the

champ d'application » à l'alinéa 10(1)b) valent mentions de « seuil d'inscription ».

**Conséquences du retrait**

**(2)** Un contribuable dont l'inscription est, à un moment donné, radiée en vertu du paragraphe (1) est réputé, pour l'application du paragraphe 41(1) à tout moment postérieur au moment donné, à la fois :

**a)** ne pas avoir présenté une demande d'inscription avant le moment donné;

**b)** ne pas avoir rempli les conditions énoncées à l'alinéa 41(1)b) avant le moment donné.

**Avis de radiation**

**(3)** Si le ministre radie l'inscription d'un contribuable en application du présent article, il doit aviser le contribuable de la radiation et de la date d'entrée en vigueur de la radiation.

**Avis d'intention**

**44 (1)** Si le ministre a des raisons de croire qu'un contribuable qui n'est pas inscrit en vertu de la présente loi est tenu de présenter une demande d'inscription, mais a omis de le faire dans le délai et selon les modalités prévus, il peut lui envoyer par écrit un avis d'intention selon lequel le ministre propose de l'inscrire en vertu de la présente loi.

**Avis d'intention — demande d'inscription**

**(2)** À la réception d'un avis d'intention, un contribuable doit présenter une demande d'inscription ou convaincre le ministre qu'il n'est pas tenu de le faire.

**Avis d'intention — avis d'inscription**

**(3)** Si, au terme des soixante jours suivant l'envoi par le ministre d'un avis d'intention à un contribuable, celui-ci n'a pas présenté une demande d'inscription et le ministre n'est pas convaincu que le contribuable n'est pas tenu de présenter une telle demande, le ministre peut inscrire le contribuable. Le cas échéant, le ministre doit aviser le contribuable de la date d'entrée en vigueur de l'inscription et du numéro d'inscription qui lui est attribué.

## SECTION C

# Déclarations

**Obligation de produire une déclaration**

**45** Un contribuable doit produire une déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier

Minister — for a particular calendar year, on or before June 30 of the following calendar year, if

**(a)** the particular calendar year is the first year of application and the taxpayer

**(i)** has Canadian digital services revenue greater than nil

**(A)** for the first year of application, or

**(B)** if the rate referred to in the description of B in subsection 10(2) is greater than nil, for any calendar year that is after 2021 and before the first year of application, and

**(ii)** meets the conditions set out in paragraphs 10(1)(a) and (b) in respect of a calendar year for which the condition set out in subparagraph (i) is satisfied; or

**(b)** the particular calendar year is after the first year of application and the taxpayer

**(i)** has Canadian digital services revenue greater than nil for the particular calendar year, and

**(ii)** meets the conditions set out in paragraphs 10(1)(a) and (b) in respect of the particular calendar year.

— pour une année civile donnée, au plus tard le 30 juin de l'année civile suivante, dans les circonstances suivantes :

**a)** si l'année civile donnée est la première année d'application, le contribuable remplit les conditions suivantes :

**(i)** il a un revenu canadien de services numériques supérieur à zéro :

**(A)** soit pour la première année d'application,

**(B)** soit si le taux visé à l'élément B de la formule figurant au paragraphe 10(2) est supérieur à zéro, pour toute année civile postérieure à 2021 et antérieure à la première année d'application,

**(ii)** il remplit les conditions énoncées aux alinéas 10(1)a) et b) relativement à une année civile pour laquelle la condition énoncée au sous-alinéa (i) est remplie;

**b)** si l'année civile donnée est postérieure à la première année d'application, le contribuable remplit les conditions suivantes :

**(i)** il a un revenu canadien de services numériques supérieur à zéro pour l'année civile donnée,

**(ii)** il remplit les conditions énoncées aux alinéas 10(1)a) et b) relativement à l'année civile donnée.

**Election — designated entity**

**46 (1)** A taxpayer that is a constituent entity of a consolidated group at any time in a particular calendar year (other than a taxpayer that is a constituent entity of more than one consolidated group during the particular calendar year) may jointly elect, in respect of the particular calendar year, with one or more other constituent entities of the group (including a particular constituent entity) to designate the particular constituent entity (referred to in this Act as the "designated entity") by making an election on or before June 30 of the following calendar year in the form and manner, and containing the information, prescribed by the Minister.

**Choix — entité désignée**

**46 (1)** Un contribuable qui est une entité constitutive d'un groupe consolidé à tout moment au cours d'une année civile donnée (sauf le contribuable qui est une entité constitutive de plus d'un groupe consolidé durant l'année civile donnée) peut faire un choix conjoint, relativement à l'année civile donnée, avec une ou plusieurs autres entités constitutives du groupe (y compris une entité constitutive donnée) de désigner l'entité constitutive donnée (appelée « entité désignée » dans la présente loi) en effectuant le choix au plus tard le 30 juin de l'année civile suivante selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier.

**Election — consequences**

**(2)** If a taxpayer elects to designate an entity under subsection (1) in respect of a calendar year

**(a)** the designated entity must act on behalf of the taxpayer for the purposes of this Part in respect of the year;

**Choix — conséquences**

**(2)** Si un contribuable choisit de désigner une entité en vertu du paragraphe (1) relativement à une année civile :

**a)** l'entité désignée doit agir pour le compte du contribuable pour l'application de la présente partie relativement à l'année;

**(b)** any action taken by the designated entity on behalf of the taxpayer for the purposes of this Part in respect of the year is deemed to have been performed by the taxpayer; and

**(c)** the Minister must direct to the designated entity and the taxpayer any communication for the purposes of this Part as it applies to the taxpayer in respect of the year.

**b)** toute mesure prise par l'entité désignée pour le compte du contribuable pour l'application de la présente partie relativement à l'année est réputée avoir été exécutée par le contribuable;

**c)** le ministre est tenu de diriger toute communication à l'entité désignée et au contribuable pour l'application de la présente partie telle qu'elle s'applique au contribuable relativement à l'année.

### Application for registration — designated entity

**(3)** If a taxpayer elects to designate an entity under subsection (1) that is not registered under this Act, the designated entity must, at the time of the election, make an application to register in the form and manner, and containing the information, prescribed by the Minister.

### Demande d'inscription – entité désignée

**(3)** Si un contribuable choisit de désigner une entité en vertu du paragraphe (1) qui n'est pas inscrite en vertu de la présente loi, l'entité désignée est tenue, au moment du choix, de présenter une demande d'inscription selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier.

### Extension of time

**47 (1)** The Minister may at any time extend the time for filing a return, form or other document, providing information, or making an election under this Act.

### Prorogation

**47 (1)** Le ministre peut en tout temps proroger le délai fixé pour produire une déclaration, un formulaire ou un autre document, communiquer des renseignements ou faire un choix en application de la présente loi.

### Effect of extension

**(2)** If the Minister extends the time for filing a return, form or other document, providing information or making an election under subsection (1),

**(a)** the return, form or other document must be filed, the information must be provided or the election must be made within the time so extended; and

**(b)** in the case of a return, any penalty payable under section 84 in respect of the return must be determined as though the return were required to be filed on the day on which the extended time expires.

### Effet de la prorogation

**(2)** Les règles ci-après s'appliquent en cas de prorogation d'un délai par le ministre en vertu du paragraphe (1) :

**a)** la déclaration, le formulaire ou l'autre document doit être produit, les renseignements doivent être communiqués ou le choix doit être effectué dans le délai prorogé;

**b)** dans le cas d'une déclaration, toute pénalité payable en vertu de l'article 84 relativement à la déclaration doit être calculée comme si la déclaration devait être produite au plus tard à l'expiration du délai prorogé.

### Demand for return

**48** A taxpayer must, on demand sent by the Minister, file, within any reasonable time that may be specified in the demand, a return under this Act for any calendar year that is designated in the demand.

### Mise en demeure de produire une déclaration

**48** Tout contribuable doit, sur mise en demeure du ministre, produire, dans le délai raisonnable fixé par la mise en demeure, une déclaration en application de la présente loi visant toute année civile précisée dans la mise en demeure.

## DIVISION D

# Payments

### Payments

**49** The tax payable under this Act by a taxpayer in respect of a calendar year must be paid on or before June 30 of the following calendar year.

### Manner and form of payments

**50** Every person that is required under this Act to pay tax or any other amount must make the payment to the account of the Receiver General for Canada in the manner and form prescribed by the Minister.

### Assessment of another constituent entity

**51 (1)** The Minister may assess a particular constituent entity of a consolidated group in respect of tax and other amounts payable under this Act by another constituent entity of the group. If such an assessment is made, the particular constituent entity is jointly and severally, or solidarily, liable with the other constituent entity to pay the amount assessed and this Part applies to the particular constituent entity in respect of the amount assessed with any modifications that the circumstances require.

### Limitation

**(2)** Subsection (1) does not limit the liability of the other constituent entity under any other provision of this Act or the liability of the particular constituent entity for the interest that the particular constituent entity is liable to pay under this Act on an assessment in respect of the amount that the particular constituent entity is liable to pay because of that subsection.

### Rules applicable

**(3)** If a particular constituent entity of a consolidated group and another constituent entity of the group become, because of subsection (1), jointly and severally, or solidarily, liable in respect of part or all of the liability of the other constituent entity under this Act, the following rules apply:

**(a)** a payment by the particular constituent entity on account of the particular constituent entity's liability discharges, to the extent of the payment, the joint liability; and

**(b)** a payment by the other constituent entity on account of the other constituent entity's liability discharges the particular constituent entity's liability only to the extent that the payment operates to reduce that

## SECTION D

# Paiements

### Paiements

**49** La taxe exigible en vertu de la présente loi par un contribuable relativement à une année civile doit être payée au plus tard le 30 juin de l'année civile suivante.

### Forme et modalités des paiements

**50** Quiconque est tenu par la présente loi de payer la taxe ou tout autre montant doit le faire au compte du receveur général du Canada selon les modalités déterminées par le ministre.

### Cotisation à l'égard d'une autre entité constitutive

**51 (1)** Le ministre peut, à tout moment, établir une cotisation à l'égard d'une entité constitutive donnée d'un groupe consolidé concernant la taxe et tout autre montant payable en application de la présente loi d'une autre entité constitutive du groupe. Si une telle cotisation est établie, l'entité constitutive donnée et l'autre entité constitutive sont solidairement responsables de payer le montant établi par la cotisation et la présente partie s'applique à l'entité constitutive donnée à l'égard du montant établi avec les adaptations nécessaires.

### Restriction

**(2)** Le paragraphe (1) n'a pas pour effet de limiter la responsabilité de l'autre entité constitutive en vertu de toute autre disposition de la présente loi ou la responsabilité de l'entité constitutive donnée pour l'intérêt dont cette dernière est tenue de payer en vertu de la présente loi conformément à une cotisation établie à l'égard du montant que l'entité constitutive donnée doit payer en raison de ce paragraphe.

### Règles applicables

**(3)** Lorsqu'une entité constitutive donnée d'un groupe consolidé et une autre entité constitutive du groupe sont devenues, par l'effet du paragraphe (1), solidairement responsables de tout ou partie d'une obligation de l'autre entité constitutive en vertu de la présente loi, les règles suivantes s'appliquent :

**a)** tout paiement fait par l'entité constitutive donnée au titre de son obligation éteint d'autant leur obligation solidaire;

**b)** tout paiement fait par l'autre entité constitutive au titre de son obligation n'éteint l'obligation de l'entité constitutive donnée que dans la mesure où il sert à réduire l'obligation de l'autre entité constitutive à une somme inférieure à celle à laquelle l'entité constitutive

liability to an amount less than the amount in respect of which the particular constituent entity is, because of subsection (1), jointly and severally, or solidarily, liable.

**Definition of *transaction***

**52 (1)** In this section and section 87, a ***transaction*** includes an arrangement or event.

**Tax liability — property transferred not at arm's length**

**(2)** If at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to another person with which the transferor was not, at that time, dealing at arm's length, the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

**(a)** the amount determined by the formula

**A – (B – C)**

where

**A** is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property,

**B** is the total of all amounts, if any, the transferee was assessed under subsection 325(2) of the *Excise Tax Act*, paragraph 97.44(1)(b) of the *Customs Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 161(3) of the *Greenhouse Gas Pollution Pricing Act*, subsection 80(3) of the *Underused Housing Tax Act* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property, and

**C** is the amount paid by the transferor in respect of the amount determined for B, and

**(b)** the total of all amounts each of which is

**(i)** an amount that the transferor is liable to pay under this Act in respect of

**(A)** the calendar year that includes that time, or

**(B)** any preceding calendar year, or

**(ii)** interest or penalties (other than amounts included in subparagraph (i)) for which the transferor is liable at that time.

donnée est, par l'effet du paragraphe (1), solidairement responsable.

**Définition de *opération***

**52 (1)** Pour l'application du présent article et de l'article 87, sont assimilés à une ***opération*** un mécanisme ou un évènement.

**Assujettissement — transfert de biens entre personnes ayant un lien de dépendance**

**(2)** La personne qui transfère un bien, directement ou indirectement, par le biais d'une fiducie ou par tout autre moyen, à une autre personne avec laquelle elle a un lien de dépendance est solidairement tenue, avec le bénéficiaire du transfert, de payer en application de la présente loi le moins élevé des montants suivants :

**a)** la somme obtenue par la formule suivante :

**A – (B – C)**

où :

**A** représente l'excédent éventuel de la juste valeur marchande du bien au moment du transfert sur la juste valeur marchande, à ce moment, de la contrepartie payée par le bénéficiaire du transfert pour le transfert du bien,

**B** le total des montants éventuels pour lesquels une cotisation a été établie à l'égard du bénéficiaire du transfert en vertu du paragraphe 325(2) de la *Loi sur la taxe d'accise*, de l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise*, du paragraphe 161(3) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* ou du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien,

**C** le montant payé par l'auteur du transfert relativement au montant représenté par l'élément B;

**b)** le total des montants représentant chacun :

**(i)** le montant dont l'auteur du transfert est redevable en application de la présente loi relativement à l'année civile qui comprend le moment du transfert ou toute année civile antérieure,

**(ii)** les intérêts ou les pénalités (sauf les montants inclus au sous-alinéa (i)) dont l'auteur du transfert est redevable au moment du transfert.

**Limitation**

**(3)** Subsection (2) does not limit the liability of the transferor under any other provision of this Act or the liability of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of that subsection.

**Fair market value of undivided interest or right**

**(4)** For the purposes of this section, the fair market value at any time of an undivided interest in, or for civil law an undivided right in, a property that is expressed as a proportionate interest or right in that property is deemed to be equal to the same proportion of the fair market value of that property at that time.

**Assessment**

**(5)** Despite subsection 70(1), the Minister may at any time assess a transferee in respect of any amount payable because of this section and this Part applies to the transferee with any modifications that the circumstances require.

**Rules applicable**

**(6)** If a transferor and transferee become, because of subsection (2), jointly and severally, or solidarily, liable in respect of part or all of the liability of the transferor under this Act, the following rules apply:

**(a)** a payment by the transferee on account of the transferee's liability discharges, to the extent of the payment, the joint liability; and

**(b)** a payment by the transferor on account of the transferor's liability discharges the transferee's liability only to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee is, because of subsection (2), jointly and severally, or solidarily, liable.

**Anti-avoidance rules**

**(7)** For the purposes of subsections (1) to (6), if a person (referred to in this section as the "transferor") has transferred property either directly or indirectly, by means of a trust or by any other means whatever to another person (referred to in this section as the "transferee") in a transaction or as part of a series of transactions, the following rules apply:

**Limitation**

**(3)** Le paragraphe (2) n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de toute autre disposition de la présente loi ou celle du bénéficiaire du transfert pour l'intérêt dont ce dernier est tenu de payer en vertu de la présente loi conformément à une cotisation établie à l'égard du montant que le bénéficiaire du transfert doit payer en raison de ce paragraphe.

**Juste valeur marchande d'un intérêt ou droit indivis**

**(4)** Pour l'application du présent article, la juste valeur marchande, à un moment donné, de tout intérêt indivis, ou pour l'application du droit civil de tout droit indivis, sur un bien, exprimé sous forme d'un intérêt ou droit proportionnel sur ce bien, est réputée être égale à la proportion correspondante de la juste valeur marchande du bien à ce moment.

**Cotisation**

**(5)** Malgré le paragraphe 70(1), le ministre peut, à tout moment, établir à l'égard d'un bénéficiaire du transfert une cotisation pour tout montant payable en application du présent article. Dès lors, la présente partie s'applique au bénéficiaire du transfert avec les adaptations nécessaires.

**Règles applicables**

**(6)** Lorsqu'un auteur du transfert et un bénéficiaire du transfert sont devenus, par l'effet du paragraphe (2), solidairement responsables de tout ou partie d'une obligation de l'auteur du transfert en vertu de la présente loi, les règles suivantes s'appliquent :

**a)** tout paiement fait par le bénéficiaire du transfert au titre de son obligation éteint d'autant leur obligation solidaire;

**b)** tout paiement fait par l'auteur du transfert au titre de son obligation n'éteint l'obligation du bénéficiaire du transfert que dans la mesure où il sert à réduire l'obligation de l'auteur du transfert à une somme inférieure à celle à laquelle le bénéficiaire du transfert est, par l'effet du paragraphe (2), solidairement responsable.

**Règles anti-évitement**

**(7)** Pour l'application des paragraphes (1) à (6), lorsqu'une personne (appelée « auteur du transfert » au présent article) a transféré des biens, directement ou indirectement, par le biais d'une fiducie ou par tout autre moyen, à une autre personne (appelée « bénéficiaire du transfert » au présent article) par une opération, ou dans le cadre d'une série d'opérations, les règles ci-après s'appliquent :

**(a)** the transferor is deemed to not be dealing at arm's length with the transferee at all times in the transaction or series of transactions if

**(i)** the transferor and the transferee do not deal at arm's length at any time during the period beginning immediately before the transaction or series of transactions and ending immediately after the transaction or series of transactions, and

**(ii)** it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary, liability of the transferee and the transferor under this section for an amount payable under this Act;

**(b)** an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (5) in respect of that amount) is deemed to have become payable in the calendar year in which the property was transferred, if it is reasonable to conclude that one of the purposes of the transfer of the property is to avoid the payment of a future amount payable under this Act by the transferor or transferee; and

**(c)** the amount determined for A in paragraph (2)(a) is deemed to be the greater of

**(i)** the amount otherwise determined for A in paragraph (2)(a) without reference to this paragraph, and

**(ii)** the amount determined by the formula

**A – B**

where

**A** is the fair market value of the property at the time of the transfer, and

**B** is

**(A)** the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately before the transaction or series of transactions and ending immediately after the transaction or series of transactions, or

**(B)** if the consideration is in a form that is cancelled or extinguished during the period referred to in clause (A),

**a)** l'auteur du transfert est réputé avoir un lien de dépendance avec le bénéficiaire du transfert à tout moment dans le cadre de l'opération ou de la série d'opérations si, à la fois :

**(i)** à un moment au cours de la période commençant immédiatement avant l'opération ou la série d'opérations et se terminant immédiatement après l'opération ou la série d'opérations, l'auteur du transfert et le bénéficiaire du transfert ont entre eux un lien de dépendance,

**(ii)** il est raisonnable de conclure que l'un des objets d'entreprendre ou d'organiser l'opération ou la série d'opérations consiste à éviter la responsabilité solidaire du bénéficiaire du transfert et de l'auteur du transfert à l'égard d'une somme à payer en vertu de la présente loi;

**b)** une somme que l'auteur du transfert est tenu de payer en vertu de la présente loi (notamment, étant entendu que, s'agissant d'un montant ayant ou non fait l'objet d'une cotisation en application du paragraphe (5) qu'il doit payer en vertu du présent article) est réputée être devenue exigible au cours de l'année civile au cours de laquelle les biens ont été transférés, s'il est raisonnable de conclure que l'un des objets du transfert des biens consiste à éviter le paiement d'un montant futur payable en vertu de la présente loi par l'auteur du transfert ou le bénéficiaire du transfert;

**c)** la valeur de l'élément A de la formule figurant à l'alinéa (2)a) est réputée être la plus élevée des sommes suivantes :

**(i)** la somme déterminée par ailleurs pour l'élément A de la formule figurant à l'alinéa (2)a) compte non tenu du présent alinéa,

**(ii)** la somme obtenue par la formule suivante :

**A – B**

où :

**A** représente la juste valeur marchande du bien au moment du transfert,

**B** selon le cas :

**(A)** la plus petite juste valeur marchande de la contrepartie (qui est détenue par l'auteur du transfert) donnée pour le bien à un moment donné au cours de la période commençant immédiatement avant l'opération ou la série d'opérations et se terminant immédiatement après l'opération ou la série d'opérations,

**(I)** the amount that is the lower of the amount determined under clause (A) and the fair market value during that period of any property, other than property that is cancelled or extinguished during the period, that is substituted for the consideration referred to in clause (A), or

**(II)** if no property is substituted for the consideration referred to in clause (A), other than property that is cancelled or extinguished during the period, nil.

**(B)** si la contrepartie est sous une forme qui est annulée ou éteinte au cours de la période visée à la division (A) :

**(I)** la moindre des valeurs entre la juste valeur marchande déterminée à la division (A) et la juste valeur marchande au cours de la période de tout bien, autre qu'un bien qui est annulé ou éteint au cours de la période, qui est substitué à la contrepartie visée à la division (A),

**(II)** si aucun bien n'est substitué à la contrepartie visée à la division (A), autre qu'un bien qui est annulé ou éteint durant la période, zéro.

**Payment in Canadian dollars**

**53 (1)** Every person that is required under this Act to pay an amount to the Receiver General for Canada must pay the amount in Canadian dollars.

**Exception**

**(2)** The Minister may, at any time, waive the requirement under subsection (1) and accept a currency other than Canadian dollars. If such a waiver is granted, the amount is to be converted from Canadian dollars to the other currency using a rate of exchange that is acceptable to the Minister.

**Paiement en dollars canadiens**

**53 (1)** Quiconque est tenu en application de la présente loi de verser au receveur général du Canada une somme doit la payer en dollars canadiens.

**Exception**

**(2)** Le ministre peut, en tout temps, dispenser le contribuable de l'obligation prévue au paragraphe (1) et accepter une devise autre que le dollar canadien. Si une telle dispense est accordée, la somme doit être convertie du dollar canadien à l'autre devise en appliquant un taux de change que le ministre estime acceptable.

**Definition of *electronic payment***

**54 (1)** In this section, ***electronic payment*** means any payment to the Receiver General for Canada that is made through electronic services offered by a person described in any of paragraphs (2)(a) to (d) or by any electronic means specified by the Minister.

**Définition de *paiement électronique***

**54 (1)** Au présent article, ***paiement électronique*** s'entend d'un paiement au receveur général du Canada qui est effectué par l'entremise des services électroniques offerts par une personne visée à l'un des alinéas (2)a) à d) ou sous une forme électronique de la manière que le ministre précise.

**Electronic payment**

**(2)** Every person that is required under this Act to pay an amount to the Receiver General for Canada must, if the amount is $10,000 or more, make the payment by way of electronic payment, unless the person cannot reasonably pay the amount in that manner, to the account of the Receiver General for Canada at or through

**(a)** a bank;

**(b)** a credit union;

**(c)** a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or

**(d)** a corporation that is authorized under the laws of Canada or a province to accept deposits from the

**Paiement électronique**

**(2)** Quiconque est tenu par la présente loi de payer un montant au receveur général du Canada doit, dans le cas où le montant est de 10 000 $ ou plus, le payer par voie de paiement électronique, sauf si la personne qui effectue le paiement ne peut raisonnablement l'effectuer de cette manière, au compte du receveur général du Canada à ou par l'entremise de l'une des personnes suivantes :

**a)** une banque;

**b)** une caisse de crédit;

**c)** une personne morale qui est autorisée par la législation fédérale ou provinciale à exploiter une entreprise d'offre au public de services de fiduciaire;

public and that carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or hypothecs on immovables.

**d)** une personne morale qui est autorisée par la législation fédérale ou provinciale à accepter du public des dépôts et qui exploite une entreprise soit de prêts d'argent garantis sur des biens immeubles ou réels, soit de placements dans des dettes garanties par des hypothèques relatives à des biens immeubles ou réels.

#### Small amounts owing by a person

**55 (1)** If, at any time, the total of all unpaid amounts owing by a person to the Receiver General for Canada under this Act does not exceed $2.00, the amount owing by the person is deemed to be nil.

#### Sommes minimes

**55 (1)** La somme dont une personne est redevable au receveur général du Canada en application de la présente loi est réputée nulle si, à un moment donné, le total des sommes dont elle est ainsi redevable est égal ou inférieur à 2 $.

#### Small amounts payable to a person

**(2)** If, at any time, the total of all amounts payable by the Minister to a person under this Act does not exceed $2.00, the Minister may apply those amounts against any amount owing, at that time, by the person to His Majesty in right of Canada. However, if the person, at that time, does not owe any amount to His Majesty in right of Canada, those amounts payable are deemed to be nil.

#### Sommes minimes payables à la personne

**(2)** Si, à un moment donné, le total des sommes à payer par le ministre à une personne en application de la présente loi est égal ou inférieur à 2 $, le ministre peut les déduire de toute somme dont la personne est alors redevable à Sa Majesté du chef du Canada. Toutefois, si la personne n'est alors redevable d'aucune somme à Sa Majesté du chef du Canada, les sommes à payer par le ministre sont réputées nulles.

### DIVISION E

## Interest

### SECTION E

## Intérêts

#### Compound interest

**56 (1)** If a person fails to pay an amount to the Receiver General for Canada as and when required under this Act, the person must pay to the Receiver General for Canada interest on the amount. The interest must be compounded daily at the rate prescribed by regulation and determined for the period beginning on the first day after the day on or before which the amount was required to be paid and ending on the day on which the amount is paid.

#### Intérêts composés

**56 (1)** La personne qui ne verse pas une somme au receveur général du Canada dans le délai et selon les modalités prévus par la présente loi est tenue de payer des intérêts, au taux visé par règlement, calculés et composés quotidiennement sur cette somme pour la période commençant le lendemain de l'expiration du jour prévu pour le versement et se terminant le jour du versement.

#### Payment of compounded interest

**(2)** For the purposes of subsection (1), interest that is compounded on a particular day on an unpaid amount of a person is deemed to be required to be paid by the person to the Receiver General for Canada at the end of the particular day and, if the person has not paid the interest so determined by the end of the day after the particular day, the interest must be added to the unpaid amount at the end of the particular day.

#### Paiement des intérêts composés

**(2)** Pour l'application du paragraphe (1), les intérêts qui sont composés un jour donné sur le montant impayé d'une personne sont réputés être à verser par elle au receveur général du Canada à la fin du jour donné. Si la personne ne paie pas ces intérêts au plus tard à la fin du jour suivant, ils sont ajoutés au montant impayé à la fin du jour donné.

#### Period when interest not payable

**(3)** If the Minister has served a demand that a person pay on or before a specified day all amounts payable by the person under this Act on the date of the demand, and the person pays the amount demanded on or before the

#### Intérêts non exigibles

**(3)** Si le ministre met une personne en demeure de verser dans un délai précis la totalité des sommes dont elle est redevable en application de la présente loi à la date de la mise en demeure, et que la personne s'exécute, il doit

specified day, the Minister must waive any interest that would otherwise apply in respect of the amount demanded for the period beginning on the first day after the date of the demand and ending on the day of payment.

#### Interest and penalty amounts of $25 or less

**(4)** If, at any time, a person pays an amount that is not less than the total of all amounts, other than interest and penalties, owing at that time to His Majesty in right of Canada under this Act in respect of a calendar year and the total amount of interest and penalties payable by the person under this Act in respect of the year is not more than $25, the Minister may cancel the interest and penalties.

#### Waiving or cancelling interest

**57 (1)** The Minister may, on or before the day that is 10 calendar years after the end of a particular calendar year, or on application by a person on or before that day, waive, cancel or reduce any interest otherwise payable by the person under this Act on an amount that is required to be paid by the person in respect of the particular calendar year, and may despite subsection 70(1), make any assessment of the interest payable by the person that is necessary to take into account the waiver, cancellation or reduction of the interest.

#### Interest on amounts waived or cancelled

**(2)** If a person has paid an amount of interest and the Minister waives, cancels or reduces any portion of that amount under subsection (1), the Minister must refund the portion of the amount and pay interest on it at the rate prescribed by regulation beginning on the day that is 30 days after the day on which the Minister received an application in a manner satisfactory to the Minister to apply that subsection (or, if there is no such application, on the day on which the Minister waives, cancels or reduces the portion of the amount) and ending on the day on which the portion of the amount is paid as a refund or applied against another amount owed by the person to His Majesty in right of Canada.

renoncer aux intérêts qui s'appliqueraient par ailleurs au montant visé par la mise en demeure pour la période commençant le lendemain de la date de la mise en demeure et se terminant le jour du versement.

#### Intérêts et pénalités de 25 $ ou moins

**(4)** Si, à un moment donné, une personne paie une somme égale ou supérieure au total des sommes, sauf les intérêts et pénalités, dont elle est débitrice à ce moment envers Sa Majesté du chef du Canada en vertu de la présente loi relativement à une année civile et que le total des intérêts et pénalités à payer par elle en vertu de la présente loi relativement à l'année n'excède pas 25 $, le ministre peut annuler ces intérêts et pénalités.

#### Renonciation ou annulation — intérêts

**57 (1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une année civile donnée ou sur demande d'une personne faite au plus tard ce jour-là, annuler ou réduire des intérêts payables par la personne sur toute somme dont elle est redevable en application de la présente loi pour l'année civile, ou y renoncer. Malgré le paragraphe 70(1), le ministre peut établir les cotisations voulues concernant les intérêts payables par la personne pour tenir compte d'une pareille renonciation, annulation ou réduction.

#### Intérêts sur somme réduite ou annulée

**(2)** Si une personne a payé un montant d'intérêts et le ministre a réduit ou a annulé toute partie de ce montant, ou y a renoncé, en vertu du paragraphe (1), le ministre rembourse la partie du montant et paie des intérêts au taux visé par règlement sur la partie du montant, pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de ce paragraphe (ou en l'absence d'une telle demande, le jour où il annule ou réduit la partie du montant ou y renonce) et se terminant le jour où la partie du montant est versée à titre de remboursement à la personne ou déduite d'une autre somme dont elle est redevable à Sa Majesté du chef du Canada.

## DIVISION F

# Administrative Charge under Financial Administration Act

#### Dishonoured instruments

**58** For the purposes of this Act and section 155.1 of the *Financial Administration Act*, any charge that is payable at any time by a person under the *Financial Administration Act* in respect of an instrument tendered in payment or settlement of an amount that is payable under this Act

## SECTION F

# Frais en application de la Loi sur la gestion des finances publiques

#### Effets refusés

**58** Pour l'application de la présente loi et de l'article 155.1 de la *Loi sur la gestion des finances publiques*, les frais qui deviennent payables par une personne à un moment donné en application de la *Loi sur la gestion des finances publiques* relativement à un effet offert en

is deemed to be an amount that is payable by the person at that time under this Act. In addition, Part II of the *Interest and Administrative Charges Regulations* does not apply to the charge and any debt under subsection 155.1(3) of the *Financial Administration Act* in respect of the charge is deemed to be extinguished at the time the total of the amount and any applicable interest under this Act is paid.

## DIVISION G

# Refunds

### Statutory recovery rights

**59** Except as specifically provided under this Act or the *Financial Administration Act*, no person has a right to recover any money that has been paid to His Majesty in right of Canada as or on account of, or that has been taken into account by His Majesty in right of Canada as, an amount payable under this Act.

### Refund — payment in error

**60 (1)** If a person, otherwise than because of an assessment, has paid any moneys in error to His Majesty in right of Canada, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account by His Majesty in right of Canada as taxes, penalties, interest or other amounts under this Act, then an amount equal to the amount of the moneys must, subject to this Act, be refunded to the person if the person applies for the refund of the amount within two years after the day on which the moneys were paid.

### Form and contents of application

**(2)** An application under subsection (1) must be made in the form and manner, and containing the information, prescribed by the Minister.

### Determination

**(3)** On receipt of an application made under subsection (1), the Minister must, without delay, consider the application and determine the amount of the refund, if any, payable to the applicant.

### Minister not bound

**(4)** In considering an application made under subsection (1), the Minister is not bound by any application made or information provided by or on behalf of any person.

paiement ou en règlement d'une somme à payer en application de la présente loi sont réputés être une somme qui devient payable par la personne à ce moment en application de la présente loi. En outre, la partie II du *Règlement sur les intérêts et les frais administratifs* ne s'applique pas aux frais et toute créance relative à ces frais, visée au paragraphe 155.1(3) de la *Loi sur la gestion des finances publiques*, est réputée avoir été éteinte au moment où le total de la somme et des intérêts applicables en application de la présente loi est versé.

## SECTION G

# Remboursements

### Droits de recouvrement créés par une loi

**59** Il est interdit de recouvrer de l'argent qui a été versé à Sa Majesté du chef du Canada au titre d'une somme payable en application de la présente loi ou qu'elle a pris en compte à ce titre, à moins qu'il ne soit expressément permis de le faire en application de la présente loi ou de la *Loi sur la gestion des finances publiques*.

### Remboursement — somme payée par erreur

**60 (1)** Si une personne, autrement qu'en vertu d'une cotisation, a versé des sommes d'argent par erreur de fait ou de droit ou autrement à Sa Majesté du chef du Canada, et que ces sommes ont été prises en compte par celle-ci à titre de taxes, de pénalités, d'intérêts ou d'autres sommes en vertu de la présente loi, un montant égal à ces sommes est versé à la personne, sous réserve des autres dispositions de la présente loi, si elle en fait la demande dans les deux ans suivant le paiement de ces sommes.

### Forme et contenu de la demande

**(2)** Une demande en vertu du paragraphe (1) doit être faite en la forme et les modalités que le ministre détermine et contenant les renseignements qu'il détermine.

### Décision

**(3)** Le ministre saisi d'une demande doit, sans délai, l'examiner et déterminer le montant du remboursement éventuel à verser au demandeur.

### La demande ne lie pas le ministre

**(4)** Lors de l'examen d'une demande, le ministre n'est pas lié par une demande présentée ni par un renseignement fourni par une personne ou au nom de celle-ci.

**Notice and payment**

**(5)** After considering an application made under subsection (1), the Minister must

**(a)** send to the applicant a notice of the determination made under subsection (3); and

**(b)** pay to the applicant the amount of the refund, if any, payable to the applicant.

**Objections and appeals**

**(6)** For the purposes of Divisions J and K and subsections 67(5) and 122(7) and (13), a determination made under subsection (3) is deemed to be an assessment.

**Interest on payment**

**(7)** If an amount is paid to an applicant under subsection (5), the Minister must pay interest, at the rate prescribed by regulation, to the applicant on the amount for the period beginning on the day that is 30 days after the day on which the application was received (or deemed received under subsection 67(4)) by the Minister and ending on the day on which the amount is paid.

**Determination valid and binding**

**(8)** A determination made under subsection (3), subject to being varied or vacated on an objection or appeal under this Act and subject to an assessment, is deemed to be valid and binding despite any irregularity, informality, error, defect or omission in the notice of the determination or in any proceeding under this Act relating to the determination.

**Restriction — application to other debts**

**61** Instead of paying to a person a refund that might otherwise be paid under this Act, the Minister may, if the person is, or is about to become, liable to make any payment to His Majesty in right of Canada or a province, apply the amount of the refund to that liability and notify the person of that action.

**Restriction — unfulfilled filing requirements**

**62** The Minister must not, in respect of a person, refund, repay, apply to other debts or set off amounts under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act 2001*, the *Air Travellers Security Charge Act*, the *Greenhouse Gas*

**Avis de paiement**

**(5)** Après avoir examiné une demande, le ministre doit :

**a)** envoyer au demandeur un avis de décision établi en vertu du paragraphe (3);

**b)** verser au demandeur le montant du remboursement éventuel qui lui est payable.

**Opposition et appel**

**(6)** Pour l'application des sections J et K et des paragraphes 67(5) et 122(7) et (13), une décision en vertu du paragraphe (3) est réputée être une cotisation.

**Intérêts sur le paiement**

**(7)** Si un montant est versé à un demandeur en application du paragraphe (5), le ministre paie des intérêts, au taux visé par règlement, au demandeur sur ce montant, pour la période commençant le trentième jour suivant celui où la demande a été reçue (ou réputée avoir été reçue en application du paragraphe 67(4)) par le ministre et se terminant le jour du paiement.

**Décision valide et exécutoire**

**(8)** Une décision en vertu du paragraphe (3), sous réserve d'une modification ou d'une annulation lors d'une opposition ou d'un appel fait en vertu de la présente loi et sous réserve d'une cotisation, est réputée être valide et exécutoire même si la décision, ou une procédure s'y rapportant prévue à la présente loi, est entachée d'une irrégularité, d'un vice de forme, d'une erreur, d'un défaut ou d'une omission.

**Restriction — imputation du remboursement sur d'autres créances**

**61** Au lieu de verser à une personne un montant à rembourser qui pourrait autrement être versé en vertu de la présente loi, le ministre peut, lorsque la personne est tenue de faire un paiement à Sa Majesté du chef du Canada ou d'une province, ou est sur le point de l'être, imputer sur cette obligation la somme qui serait par ailleurs remboursable et en aviser la personne.

**Restriction — non-respect des exigences de production**

**62** Une somme n'est remboursée, restituée, appliquée en réduction d'autres dettes ou compensée à une personne en vertu de la présente loi qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur la taxe d'accise*, de la *Loi de 2001 sur l'accise*, de la *Loi sur le droit pour la sécurité des passagers du*

*Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

*transport aérien*, de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*.

**Restriction — trustees**

**63** If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund under this Act that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required under this Act to be filed before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt have been paid.

**Restriction — syndics**

**63** En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif d'un failli, tout remboursement prévu par la présente loi auquel le failli avait droit avant la nomination n'est effectué après la nomination que si toutes les déclarations à produire en application de la présente loi ont été produites et que les sommes à verser par le failli en application de la présente loi ont été versées.

**Overpayment of refund or interest**

**64** If an amount is paid to, or applied to a liability of, a person as a refund or as interest under this Act and the person is not entitled to the refund or interest or the amount paid or applied exceeds the refund or interest to which the person is entitled, the Minister may, despite subsection 70(1), assess the person at any time and the person must pay to the Receiver General for Canada an amount equal to the refund, interest or excess on the day on which the refund, interest or excess is paid to, or applied to a liability of, the person.

**Montant remboursé en trop ou intérêts payés en trop**

**64** Lorsqu'est payé à une personne, ou imputé sur une somme dont elle est redevable, un montant au titre d'un remboursement ou d'intérêts prévus à la présente loi auxquels la personne n'a pas droit ou qui excède le montant auquel elle a droit, malgré le paragraphe 70(1) le ministre peut, à tout moment, établir une cotisation à l'égard de la personne et celle-ci doit verser au receveur général du Canada un montant égal au montant remboursé, aux intérêts ou à l'excédent le jour du paiement ou de l'imputation.

## DIVISION H

# Records and Information

## SECTION H

# Registres et renseignements

**Keeping records**

**65 (1)** A person must keep all records that are necessary to determine whether the person has complied with this Act and, if the person is or was a constituent entity of a consolidated group, all of that person's records that are necessary to determine whether other entities of the group have complied with this Act.

**Obligation de tenir des registres**

**65 (1)** Toute personne doit tenir tous les registres permettant de vérifier si elle s'est conformée à la présente loi et, si elle est ou était une entité constitutive d'un groupe consolidé, tous les registres de cette personne permettant de vérifier si toutes les autres entités du groupe se sont conformées à la présente loi.

**Minister may specify information**

**(2)** The Minister may specify the form that a record is to take and any information that the record must contain.

**Forme et contenu**

**(2)** Le ministre peut préciser la forme d'un registre ainsi que les renseignements qu'il doit contenir.

**Electronic records**

**(3)** Every person required under this section to keep a record that does so electronically must ensure that all equipment and software necessary to make the record intelligible are available during the retention period required for the record.

**Registres électroniques**

**(3)** Quiconque tient un registre, comme l'y oblige le présent article, par voie électronique doit veiller à ce que le matériel et les logiciels nécessaires à son intelligibilité soient accessibles pendant la durée de conservation exigée quant à ce registre.

**General period for retention**

**(4)** Subject to subsection (5), every person that is required to keep records must retain them for a period of

**Durée de conservation**

**(4)** Sous réserve de paragraphe (5), la personne obligée de tenir des registres doit les conserver pendant une

eight years after the end of the calendar year to which they relate or for any other period that may be prescribed by regulation.

**Exception — general period for retention**

**(5)** If, for a calendar year, a person has not filed a return as and when required by section 45 and subsequently files a return for the year, then the person must retain the records that are required by this section to be kept and that relate to the year for a period of eight years after the day on which the return is filed.

**Inadequate records**

**(6)** If a person fails to keep adequate records for the purposes of this Act, the Minister may require the person to keep any records that the Minister may specify and the person must keep the records specified.

**Objection or appeal**

**(7)** If a person that is required under this section to keep records serves a notice of objection, or is a party to an appeal or reference, under this Act, the person must retain every record that pertains to the subject matter of the objection, appeal or reference until the objection, appeal or reference is finally disposed of.

**Demand by Minister**

**(8)** If the Minister is of the opinion that it is necessary for the administration or enforcement of this Act, the Minister may, by a demand served personally, sent by confirmed delivery service or sent electronically, require any person to keep records and retain them for any period that is specified in the demand, and the person must comply with the demand.

**Permission for earlier disposal**

**(9)** A person that is required under this section to keep records may dispose of them before the expiry of the period during which they are required to be kept if permission for their disposal is given by the Minister.

**Requirement to provide information or records**

**66 (1)** Subject to subsection (2), but despite any other provision of this Act, the Minister may — for any purpose related to the administration or enforcement of this Act by notice served personally, sent by confirmed delivery service or sent electronically — require that any person provide the Minister, within such reasonable time as is specified in the notice, with any information or record.

**Unnamed persons**

**(2)** The Minister must not impose on any person (in this section referred to as a "third party") a requirement to

période de huit ans suivant la fin de l'année civile qu'ils visent ou pendant toute autre période visée par règlement.

**Exception — période de conservation**

**(5)** La personne qui n'a pas produit une déclaration selon les modalités et dans le délai prévus à l'article 45 et qui produit par la suite une déclaration pour l'année civile est tenue de conserver les registres devant être tenus se rapportant à cette année pendant huit ans suivant la date de production de la déclaration.

**Registres insuffisants**

**(6)** Le ministre peut exiger que la personne qui ne tient pas les registres nécessaires à l'application de la présente loi tienne ceux qu'il précise. Dès lors, la personne est tenue d'obtempérer.

**Opposition ou appel**

**(7)** La personne obligée de tenir des registres en application du présent article qui signifie un avis d'opposition ou qui est partie à un appel ou à un renvoi en application de la présente loi doit conserver les registres concernant l'objet de celui-ci jusqu'à ce qu'il en soit décidé de façon définitive.

**Mise en demeure**

**(8)** Le ministre peut exiger, par mise en demeure signifiée à personne, envoyée par service de messagerie ou par voie électronique, qu'une personne tienne des registres et les conserve pour la période précisée dans la mise en demeure, s'il est d'avis que cela est nécessaire pour l'application ou l'exécution de la présente loi. Dès lors, la personne est tenue d'obtempérer.

**Autorisation de se départir des registres**

**(9)** Le ministre peut autoriser une personne à se départir des registres qu'elle doit tenir en application du présent article avant la fin de la période déterminée pour leur conservation.

**Obligation de produire des renseignements ou registres**

**66 (1)** Sous réserve du paragraphe (2) et malgré les autres dispositions de la présente loi, le ministre peut — pour l'exécution ou l'application de la présente loi, par avis signifié à personne, envoyé par service de messagerie ou envoyé par voie électronique — exiger de toute personne qu'elle lui fournisse, dans le délai raisonnable que précise l'avis, tout renseignement ou registre.

**Personnes non désignées nommément**

**(2)** Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la production de

provide information or any record relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

**Judicial authorization**

**(3)** A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person, or a group of unnamed persons, if the judge is satisfied by information on oath that

**(a)** the unnamed person or the group is ascertainable; and

**(b)** the requirement is imposed to verify compliance by the unnamed person, or persons in the group, with any obligation under this Act.

**Time period not to count**

**(4)** If a person is sent or served with a notice of requirement under subsection (1), the period between the day on which an application for judicial review in respect of the requirement is made and the day on which the application is finally disposed of is not to be counted in the computation of the period within which an assessment of the person may be made under subsection 70(1).

**DIVISION I**

## Assessments

**Assessment**

**67 (1)** The Minister may assess a person for any tax or other amount payable by the person under this Act and may, despite any previous assessment covering, in whole or in part, the same matter, vary the assessment, reassess the person or make any additional assessments that the circumstances require.

**Liability not affected**

**(2)** The liability of a person to pay an amount under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

**Minister not bound**

**(3)** The Minister is not bound by any return, application or information provided by or on behalf of any person

renseignements ou de registres concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

**Autorisation judiciaire**

**(3)** Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la production de renseignements ou de registres prévue au paragraphe (1) concernant une personne non désignée nommément ou un groupe de personnes non désignées nommément s'il est convaincu, sur dénonciation sous serment, de ce qui suit :

**a)** cette personne non désignée nommément ou ce groupe est identifiable;

**b)** la production est exigée pour vérifier si cette personne non désignée nommément ou les personnes de ce groupe ont respecté toute obligation prévue par la présente loi.

**Suspension du délai**

**(4)** Si l'avis visé au paragraphe (1) est signifié ou envoyé à une personne, le délai qui court entre le jour où une demande de contrôle judiciaire est présentée relativement à l'avis et le jour où il est définitivement statué sur la demande ne compte pas dans le calcul du délai dans lequel une cotisation de la personne peut être établie en vertu du paragraphe 70(1).

**SECTION I**

## Cotisations

**Cotisation**

**67 (1)** Le ministre peut établir une cotisation pour déterminer la taxe ou les autres montants exigibles d'une personne en vertu de la présente loi et peut, malgré toute cotisation antérieure portant, en tout ou en partie, sur la même question, modifier la cotisation, en établir une nouvelle ou établir des cotisations supplémentaires, selon les circonstances.

**Responsabilité inchangée**

**(2)** L'inexactitude, l'insuffisance ou l'absence d'une cotisation ne change rien aux montants dont une personne est redevable en vertu de la présente loi.

**Ministre non lié**

**(3)** Le ministre n'est pas lié par quelque déclaration, demande ou renseignement fourni par une personne ou en

and may make an assessment despite any return, application or information provided or not provided.

**Determination of refunds**

**(4)** In assessing a person under subsection (1), the Minister may determine whether a refund under section 60 is payable to the person. If the Minister makes such a determination, the person is deemed to have made an application under section 60 within two years after the day on which the moneys were paid and the Minister is deemed to have received the application on the date of the notice of assessment.

**Irregularities**

**(5)** No assessment is to be vacated or varied on an appeal by reason only of an irregularity, informality, error, defect or omission by any person in the observance of any directory provision of this Act.

**Notice of assessment**

**68 (1)** After assessing a person under this Act, the Minister must send to the person a notice of the assessment.

**Payment of remainder**

**(2)** If the Minister has assessed a person for an amount, any portion of that amount remaining unpaid is payable to the Receiver General for Canada as of the date of the notice of assessment.

**Payment by Minister on assessment**

**69** Subject to subsections 72(11), 82(2) and 90(2), if an assessment of a person in respect of a particular calendar year establishes that the person has paid an amount in excess of the amount determined on that assessment to be payable in respect of the particular calendar year by the person, the Minister must pay to the person a refund of the amount of the excess together with interest, at the rate prescribed by regulation, on the amount of the excess for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which the excess was paid and ending on the day on which the refund is paid.

**Limitation period for assessments**

**70 (1)** Subject to subsections (2) to (5) and (10), no assessment in respect of any tax or other amount payable by a person under this Act is permitted more than seven years after the day on which the return to which the tax or other amount payable relates was filed under section 45.

son nom; il peut établir une cotisation indépendamment du fait que quelque déclaration, demande ou renseignement ait été fourni.

**Détermination des remboursements**

**(4)** En établissant une cotisation en application du paragraphe (1), le ministre peut déterminer si un remboursement en vertu de l'article 60 est à payer à la personne faisant l'objet de la cotisation. Si le ministre prend une telle décision, la personne est réputée avoir présenté une demande en vertu de l'article 60 dans les deux ans suivant la date du paiement de ces sommes, et le ministre est réputé avoir reçu la demande à la date de l'avis de cotisation.

**Irrégularités**

**(5)** Une cotisation ne peut être annulée ni modifiée lors d'un appel uniquement par suite d'une irrégularité, d'un vice de forme, d'une omission d'un défaut ou d'une erreur de la part d'une personne lors de l'application d'instructions prévues par la présente loi.

**Avis de cotisation**

**68 (1)** Une fois une cotisation établie à l'égard d'une personne en application de la présente loi, le ministre lui envoie un avis de cotisation.

**Paiement du solde**

**(2)** Si le ministre a établi une cotisation à l'égard d'une personne, la partie impayée de la cotisation doit être payée au receveur général du Canada à la date de l'avis de cotisation.

**Paiement par le ministre**

**69** Sous réserve des paragraphes 72(11), 82(2) et 90(2), si une cotisation à l'égard d'une personne relativement à une année civile donnée établit que celle-ci a payé un montant qui excède celui qui était exigible dans cette cotisation relativement à l'année civile donnée, le ministre doit lui verser un remboursement équivalent à l'excédent, ainsi que les intérêts, au taux visé par règlement, sur celui-ci pour la période commençant à la dernière date en date du 30 juillet de l'année civile suivante et la date à laquelle l'excédent a été payé et se terminant à la date du remboursement.

**Prescription des cotisations**

**70 (1)** Sous réserve des paragraphes (2) à (5) et (10), l'établissement des cotisations à l'égard de la taxe ou de toute autre somme payable par une personne en vertu de la présente loi se prescrit par sept ans à compter de la date de production de la déclaration, à laquelle se

**Exception — objection or appeal**

**(2)** An assessment in respect of any tax or other amount payable by a person under this Act may be made at any time if the assessment is made

**(a)** to give effect to a decision on an objection or appeal;

**(b)** with the written consent of an appellant to dispose of an appeal; or

**(c)** to give effect to an alternative basis or argument advanced by the Minister under subsection (5).

**Exception — neglect or fraud**

**(3)** An assessment in respect of any matter may be made at any time if the person to be assessed or the person filing a return has, in respect of that matter,

**(a)** made a misrepresentation that is attributable to neglect, carelessness or wilful default; or

**(b)** committed fraud in filing a return or an application for a refund or in providing any information under this Act.

**Exception — other period**

**(4)** If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount in respect of a particular calendar year that was in fact payable in respect of another calendar year, the Minister may at any time make an assessment for that other calendar year in respect of that matter.

**Alternative basis or argument**

**(5)** The Minister may advance an alternative basis or argument in support of an assessment of a person, or in support of all or any portion of the total amount determined on assessment to be payable by a person under this Act, at any time after the period otherwise limited by subsection (1) for making the assessment unless, on an appeal under this Act,

**(a)** there is relevant evidence that the person is no longer able to adduce without leave of the court; and

rapporte la taxe ou une autre somme payable, conformément à l'article 45.

**Exception — opposition ou appel**

**(2)** Une cotisation concernant la taxe ou toute autre somme payable par une personne en application de la présente loi peut être établie à tout moment lorsqu'elle l'est aux fins suivantes :

**a)** en vue d'exécuter la décision rendue par suite d'une opposition ou d'un appel;

**b)** avec le consentement écrit d'un appelant, en vue de régler un appel;

**c)** pour tenir compte d'un nouveau fondement ou d'un nouvel argument mis de l'avant par le ministre en vertu du paragraphe (5).

**Exception — négligence ou fraude**

**(3)** Une cotisation peut être établie à tout moment si la personne devant faire l'objet de la cotisation ou la personne produisant une déclaration a, relativement à l'objet de la cotisation, selon le cas :

**a)** fait une présentation erronée des faits attribuable à sa négligence, son inattention ou son omission volontaire;

**b)** commis une fraude en produisant une déclaration ou une demande de remboursement ou en fournissant quelque renseignements en application de la présente loi.

**Exception — autre période**

**(4)** Si le ministre constate, lors de l'établissement d'une cotisation, qu'une personne a payé, au titre de tout objet, un montant pour une année civile donnée qui était à payer pour une autre année civile, il peut établir à tout moment une cotisation pour l'autre année civile relativement à cet objet.

**Nouveau fondement ou nouvel argument**

**(5)** Le ministre peut mettre de l'avant un nouveau fondement ou un nouvel argument à l'appui d'une cotisation établie à l'égard d'une personne, ou à l'appui de tout ou partie du montant total déterminé lors de l'établissement d'une cotisation comme étant payable par une personne en application de la présente loi, à tout moment après l'expiration de la période prévue au paragraphe (1) pour l'établissement de la cotisation, sauf si, sur appel interjeté en application de la présente loi :

**(b)** it is not appropriate in the circumstances for the court to order that the evidence be adduced.

**a)** d'une part, il existe des éléments de preuve pertinents que la personne n'est plus en mesure de produire sans l'autorisation du tribunal;

**b)** d'autre part, il ne convient pas que le tribunal ordonne la production des éléments de preuve dans les circonstances.

**Limitation — alternative basis or argument**

**(6)** If a reassessment of a person gives effect to an alternative basis or argument advanced by the Minister under subsection (5) in support of a particular assessment of the person, the Minister is not to reassess for an amount that is greater than the total amount of the particular assessment.

**Restriction — nouveau fondement ou nouvel argument**

**(6)** Si une nouvelle cotisation est établie à l'égard d'une personne pour tenir compte d'un nouveau fondement ou d'un nouvel argument mis de l'avant par le ministre en vertu du paragraphe (5) à l'appui d'une cotisation donnée établie à l'égard de la personne, le ministre ne peut établir la nouvelle cotisation pour un montant supérieur au montant total de la cotisation donnée.

**Exception — alternative basis or argument**

**(7)** Subsection (6) does not apply to any portion of an amount determined on reassessment that the Minister would, if this Act were read without reference to subsection (5), be entitled to reassess under this Act at any time after the period otherwise limited by subsection (1) for making the reassessment.

**Exception — nouveau fondement ou nouvel argument**

**(7)** Le paragraphe (6) ne s'applique à aucune partie d'un montant déterminé lors de l'établissement d'une nouvelle cotisation à l'égard duquel le ministre pourrait établir une nouvelle cotisation en application de la présente loi à tout moment après l'expiration de la période prévue au paragraphe (1) pour l'établissement de la nouvelle cotisation, s'il n'était pas tenu compte du paragraphe (5).

**Filing waiver**

**(8)** A person may, within the period otherwise limited by subsection (1) for an assessment, waive the application of that subsection by filing with the Minister a waiver, in the form and manner prescribed by the Minister, specifying the period for which, and the matter in respect of which, the person waives the application of that subsection.

**Présentation de la renonciation**

**(8)** Toute personne peut, dans le délai prévu par ailleurs au paragraphe (1) pour l'établissement d'une cotisation à son égard, renoncer à l'application de ce paragraphe en présentant au ministre une renonciation en la forme et selon les modalités déterminées par celui-ci qui précise l'objet de la renonciation ainsi que sa période d'application.

**Revoking waiver**

**(9)** Any person that has filed a waiver may revoke it by filing with the Minister a notice of revocation in the form and manner prescribed by the Minister. The waiver remains in effect for 180 days after the day on which the notice is filed.

**Révocation de la renonciation**

**(9)** La renonciation est révocable selon la forme et les modalités déterminées par le ministre. La renonciation demeure en vigueur pendant cent quatre-vingts jours suivant la date de la présentation de l'avis de révocation.

**Exception — waiver**

**(10)** An assessment in respect of any matter specified in a waiver filed under subsection (8) may be made at any time within the period specified in the waiver unless the waiver has been revoked under subsection (9), in which case an assessment may be made at any time during the 180 days that the waiver remains in effect.

**Exception — renonciation**

**(10)** Une cotisation portant sur une question précisée dans une renonciation présentée en vertu du paragraphe (8) peut être établie à tout moment dans le délai indiqué dans la renonciation ou, en cas de révocation de la renonciation en vertu du paragraphe (9), à tout moment dans les cent quatre-vingts jours pendant lesquels la renonciation demeure en vigueur.

**Assessment deemed valid and binding**

**71** An assessment is, subject to being varied or vacated on an objection or appeal under this Act and subject to a reassessment, deemed to be valid and binding despite any irregularity, informality, error, defect or omission in the assessment or in any proceeding under this Act relating to the assessment.

**Présomption de validité de la cotisation**

**71** Sous réserve des modifications qui peuvent y être apportées, ou de son annulation, lors d'une opposition ou d'un appel fait en vertu de la présente loi et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire même si la cotisation, ou une procédure s'y rapportant prévue à la présente loi, est entachée d'une irrégularité, d'un vice de forme, d'une erreur, d'un défaut ou d'une omission.

## DIVISION J

# Objections to Assessment

**Objections to assessment**

**72 (1)** A person that has been assessed and that objects to the assessment may, within 90 days after the date of the notice of the assessment, file with the Minister a notice of objection, in the form and manner prescribed by the Minister, setting out the reasons for the objection and all relevant facts.

**Issue to be decided**

**(2)** A notice of objection must

**(a)** reasonably describe each issue to be decided;

**(b)** specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

**(c)** provide the facts and reasons relied on by the person in respect of each issue.

**Late compliance**

**(3)** Despite subsection (2), if a notice of objection does not include the information required under paragraph (2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may request that the person provide the information, and that paragraph is deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

**Limitation on objections**

**(4)** Despite subsection (1), if a person has filed a notice of objection to an assessment (in this section referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) as a result of the notice of objection, the person may object to the particular assessment in respect of an issue only

## SECTION J

# Opposition aux cotisations

**Opposition à la cotisation**

**72 (1)** La personne qui fait opposition à la cotisation établie à son égard peut, dans les quatre-vingt-dix jours suivant la date de l'avis de cotisation, présenter au ministre un avis d'opposition, en la forme et selon les modalités qu'il détermine, exposant les motifs de son opposition et tous les faits pertinents.

**Question à trancher**

**(2)** L'avis d'opposition que produit une personne doit contenir les éléments suivants pour chaque question à trancher :

**a)** une description suffisante;

**b)** le redressement demandé, sous la forme du montant qui représente le changement apporté à un montant à prendre en compte aux fins de cotisation;

**c)** les motifs et les faits sur lesquels se fonde la personne.

**Observation tardive**

**(3)** Malgré le paragraphe (2), dans le cas où un avis d'opposition ne contient pas les renseignements prévus aux alinéas (2)b) ou c) relativement à une question à trancher qui est décrite dans l'avis, le ministre peut demander à la personne de fournir ces renseignements. La personne est réputée s'être conformée à l'alinéa applicable relativement à la question à trancher si, dans les soixante jours suivant la demande par le ministre, elle communique à celui-ci par écrit les renseignements requis.

**Restrictions touchant les oppositions**

**(4)** Malgré le paragraphe (1), si une personne a produit un avis d'opposition à une cotisation (appelée « cotisation antérieure » au présent article) et que le ministre établit, en application du paragraphe (8), une cotisation donnée par suite de l'avis, la personne peut faire opposition à la cotisation donnée relativement à une question à

**(a)** if the person complied with subsection (2) in the notice with respect to that issue; and

**(b)** with respect to the relief sought in respect of that issue as specified by the person in the notice.

**Application of limitations**

**(5)** If a particular assessment is made under subsection (8) as a result of an objection made by a person to an earlier assessment, subsection (4) does not limit the right of the person to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

**Limitation on objections**

**(6)** Despite subsection (1), a person is not permitted to make an objection in respect of an issue for which the person has waived the right of objection.

**Acceptance of objection**

**(7)** The Minister may accept a notice of objection even if it was not filed in the form and manner prescribed by the Minister.

**Consideration of objection**

**(8)** On receipt of a notice of objection, the Minister must, without delay, reconsider the assessment and vacate, confirm or vary it or make a reassessment.

**Waiving reconsideration**

**(9)** If, in a notice of objection, a person that wishes to appeal directly to the Tax Court of Canada requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

**Notice of decision**

**(10)** After reconsidering an assessment under subsection (8) or confirming an assessment under subsection (9), the Minister must, in writing, notify the person objecting to the assessment of the Minister's decision.

**Payment by Minister on objection**

**(11)** If the variation of an assessment for a particular calendar year as a result of an objection establishes that a person has paid an amount in excess of the amount determined on that assessment to be payable by the person, the Minister must pay to the person a refund of the amount of the excess together with interest, at the rate prescribed by regulation, on the amount of the excess for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which

trancher seulement si, relativement à cette question, elle s'est conformée au paragraphe (2) dans l'avis et seulement à l'égard du redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question.

**Application des restrictions**

**(5)** Dans le cas où une cotisation donnée est établie en application du paragraphe (8) par suite d'une opposition faite par une personne à une cotisation antérieure, le paragraphe (4) n'a pas pour effet de limiter le droit de la personne de s'opposer à la cotisation donnée relativement à une question sur laquelle porte cette cotisation mais non la cotisation antérieure.

**Restriction touchant les oppositions**

**(6)** Malgré le paragraphe (1), aucune opposition ne peut être faite par une personne relativement à une question pour laquelle il a renoncé à son droit d'opposition.

**Acceptation de l'opposition**

**(7)** Le ministre peut accepter l'avis d'opposition qui n'a pas été présenté en la forme et selon les modalités qu'il détermine.

**Examen de l'opposition**

**(8)** Sans délai après avoir reçu l'avis d'opposition, le ministre examine la cotisation de nouveau et l'annule, la confirme ou la modifie, ou établit une nouvelle.

**Renonciation au nouvel examen**

**(9)** Le ministre peut confirmer une cotisation sans l'examiner de nouveau sur demande de la personne qui lui fait part, dans son avis d'opposition, de son intention d'en appeler directement à la Cour canadienne de l'impôt.

**Avis de décision**

**(10)** Après avoir examiné de nouveau ou confirmé une cotisation, le ministre fait part de sa décision par écrit à la personne qui y a fait opposition.

**Paiement par le ministre**

**(11)** Lorsque la modification d'une cotisation relativement à une année civile donnée, à la suite d'une opposition, établit que l'opposant a payé un montant qui excède celui qui était exigible dans cette cotisation, le ministre doit lui verser un remboursement équivalent à l'excédent, ainsi que les intérêts au taux visé par règlement, sur celui-ci pour la période commençant à la dernière date en date du 30 juillet de l'année civile suivante et la date à laquelle l'excédent a été payé, et se terminant à la date du remboursement.

the excess was paid and ending on the day on which the refund is paid.

**Extension of time by Minister**

**73 (1)** If no objection to an assessment is filed under section 72 within the time limited by this Act, a person may apply to the Minister for an extension of the time for filing a notice of objection and the Minister may grant the application.

**Contents of application**

**(2)** An application under subsection (1) must set out the reasons for which the notice of objection was not filed within the time limited by this Act for doing so.

**How application made**

**(3)** An application under subsection (1) must be made to the Assistant Commissioner of the Appeals Branch of the Agency in the form and manner prescribed by the Minister and must be accompanied by a copy of the notice of objection.

**Defect in application**

**(4)** The Minister may accept an application under subsection (1) even though it was not made in accordance with subsection (3).

**Duties of Minister**

**(5)** On receipt of an application under subsection (1), the Minister must, without delay, consider the application and grant or refuse it, and notify the person in writing of the decision.

**Date of objection if application granted**

**(6)** If an application under subsection (1) is granted, the notice of objection is deemed to have been filed on the day of the decision of the Minister.

**Conditions for grant of application**

**(7)** An application may be granted under this section only if

**(a)** the application is made within one year after the expiry of the time limited by this Act for objecting; and

**(b)** the person demonstrates that

**(i)** within the time limited by this Act for objecting, the person

**(A)** was unable to act or to give a mandate to act in the person's name, or

**Prorogation du délai par le ministre**

**73 (1)** Le ministre peut proroger le délai pour produire un avis d'opposition dans le cas où la personne qui n'a pas fait opposition à une cotisation en vertu de l'article 72 dans le délai imparti par la présente loi lui présente une demande à cet effet.

**Contenu de la demande**

**(2)** La demande doit indiquer les raisons pour lesquelles l'avis d'opposition n'a pas été produit dans le délai imparti par la présente loi.

**Modalités**

**(3)** La demande, accompagnée d'un exemplaire de l'avis d'opposition, est présentée auprès du sous-commissaire de la Direction générale des appels de l'Agence, selon la forme et les modalités déterminées par le ministre.

**Demande non conforme**

**(4)** Le ministre peut accepter la demande qui n'a pas été faite en conformité avec le paragraphe (3).

**Obligations du ministre**

**(5)** Sans délai après avoir reçu une demande, le ministre l'examine et y fait droit ou la rejette. Dès lors, il avise la personne par écrit de sa décision.

**Date de production de l'avis d'opposition**

**(6)** S'il est fait droit à la demande, l'avis d'opposition est réputé avoir été présenté à la date de la décision du ministre.

**Conditions d'acceptation de la demande**

**(7)** Il n'est fait droit à la demande présentée en application du présent article que si les conditions suivantes sont réunies :

**a)** la demande est présentée dans l'année suivant l'expiration du délai imparti par la présente loi pour faire opposition;

**b)** la personne démontre ce qui suit :

**(i)** dans le délai d'opposition imparti par la présente loi, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention de s'opposer à la cotisation,

**(B)** had a *bona fide* intention to object to the assessment,

**(ii)** given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

**(iii)** the application was made as soon as circumstances permitted.

**(ii)** compte tenu des raisons indiquées dans la demande et des circonstances en l'espèce, il est juste et équitable d'y faire droit,

**(iii)** la demande a été présentée dès que les circonstances l'ont permis.

## DIVISION K

# Appeal

### Extension of time by Tax Court of Canada

**74 (1)** A person that has made an application under section 73 may apply to the Tax Court of Canada to have the application granted after either

**(a)** the Minister has refused the application; or

**(b)** 90 days have elapsed after the day on which the application was made and the Minister has not notified the person of the Minister's decision.

### When application may not be made

**(2)** A person is not permitted to make an application under subsection (1) after the expiry of 30 days after the day on which notification of the decision referred to in subsection 73(5) was sent to the person.

### How application made

**(3)** An application under subsection (1) must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the documents referred to in subsection 73(3) and the notification, if any, referred to in subsection 73(5).

### Copy to the Commissioner

**(4)** The Tax Court of Canada must send a copy of any application received under subsection (3) to the Commissioner.

### Powers of Tax Court of Canada

**(5)** The Tax Court of Canada may dispose of an application received under subsection (3) by dismissing or granting it and, in granting it, the Court may impose any terms that it considers just or order that the notice of objection be deemed to be a valid objection as of the date of the order.

## SECTION K

# Appel

### Prorogation par la Cour canadienne de l'impôt

**74 (1)** Une personne qui a présenté une demande en vertu de l'article 73 peut demander à la Cour canadienne de l'impôt d'y faire droit après :

**a)** le rejet de la demande par le ministre;

**b)** l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le ministre n'a pas avisé la personne de sa décision dans ce délai.

### Irrecevabilité

**(2)** La demande est toutefois irrecevable après l'expiration d'un délai de trente jours suivant l'envoi de l'avis de la décision visée au paragraphe 73(5) à la personne.

### Modalités

**(3)** La demande présentée en application du paragraphe (1) se fait par dépôt au greffe de la Cour canadienne de l'impôt, conformément à la *Loi sur la Cour canadienne de l'impôt*, des documents visés au paragraphe 73(3) et de l'avis, s'il y a lieu, visé au paragraphe 73(5).

### Copie au commissaire

**(4)** La Cour canadienne de l'impôt envoie une copie de la demande au commissaire.

### Pouvoirs de la Cour canadienne de l'impôt

**(5)** La Cour canadienne de l'impôt peut rejeter la demande ou y faire droit. Dans ce dernier cas, elle peut imposer les conditions qu'elle estime justes ou ordonner que l'avis d'opposition soit réputé valide à compter de la date de l'ordonnance.

**Conditions for grant of application**

**(6)** An application is to be granted by the Tax Court of Canada under this section only if

**(a)** the application under subsection 73(1) is made within one year after the expiry of the time limited by this Act for objecting; and

**(b)** the person demonstrates that

**(i)** within the time limited by this Act for objecting, the person

**(A)** was unable to act or to give a mandate to act in the person's name, or

**(B)** had a *bona fide* intention to object to the assessment,

**(ii)** given the reasons set out in the application under this section and the circumstances of the case, it would be just and equitable to grant the application, and

**(iii)** the application under subsection 73(1) was made as soon as circumstances permitted.

**Conditions d'acceptation de la demande**

**(6)** La Cour canadienne de l'impôt ne peut faire droit à la demande présentée en application du présent article que si les conditions suivantes sont réunies :

**a)** la demande prévue au paragraphe 73(1) est présentée dans l'année suivant l'expiration du délai imparti par la présente loi pour faire opposition;

**b)** la personne démontre ce qui suit :

**(i)** dans le délai d'opposition imparti par la présente loi, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention s'opposer à la cotisation,

**(ii)** compte tenu des raisons indiquées dans la demande prévue au présent article et des circonstances en l'espèce, il est juste et équitable d'y faire droit,

**(iii)** la demande prévue au paragraphe 73(1) a été présentée dès que les circonstances l'ont permis.

**Appeal to Tax Court of Canada**

**75 (1)** Subject to subsection (2), a person that has filed a notice of objection to an assessment may appeal to the Tax Court of Canada to have the assessment varied or vacated, or a reassessment made, after either

**(a)** the Minister has confirmed the assessment or has made a reassessment, or

**(b)** 180 days have elapsed after the day on which the notice of objection was filed and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has made a reassessment.

**Appel**

**75 (1)** Sous réserve du paragraphe (2), la personne qui a présenté un avis d'opposition à une cotisation peut interjeter appel à la Cour canadienne de l'impôt pour faire modifier ou annuler la cotisation, ou en faire établir une nouvelle, dans les cas suivants :

**a)** le ministre a confirmé la cotisation ou en a établi une nouvelle;

**b)** un délai de cent quatre-vingts jours après la présentation de l'avis a expiré sans que le ministre ait avisé la personne du fait qu'il a annulé ou confirmé la cotisation ou en a établi une nouvelle.

**No appeal**

**(2)** A person is not permitted to institute an appeal under subsection (1) after the expiry of 90 days after the day on which the notice that the Minister has confirmed the assessment or made a reassessment is sent to the person under subsection 72(10).

**Aucun appel**

**(2)** Nul appel ne peut être interjeté après l'expiration d'un délai de quatre-vingt-dix jours suivant la date de l'envoi à la personne, en vertu du paragraphe 72(10), d'un avis portant que le ministre a confirmé la cotisation ou procédé à une nouvelle cotisation.

**Amendment of appeal**

**(3)** The Tax Court of Canada may, on any terms that it sees fit, authorize a person that has instituted an appeal in respect of a matter to amend the appeal to include any further assessment in respect of the matter that the person is entitled under this section to appeal.

**Modification de l'appel**

**(3)** La Cour canadienne de l'impôt peut, de la manière qu'elle estime indiquée, autoriser une personne ayant interjeté appel sur une question à modifier l'appel de façon à ce qu'il porte sur toute cotisation ultérieure concernant la question qui peut faire l'objet d'un appel en application du présent article.

**Extension of time to appeal**

**76 (1)** If no appeal to the Tax Court of Canada under section 75 has been instituted within the time limited by that section for doing so, a person may make an application to the Tax Court of Canada for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose any terms that it considers just.

**Contents of application**

**(2)** An application under subsection (1) must set out the reasons why the appeal was not instituted within the time limited by section 75 for doing so.

**How application made**

**(3)** An application under subsection (1) must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the application and the notice of appeal.

**Copy to Deputy Attorney General of Canada**

**(4)** The Tax Court of Canada must send a copy of any application under subsection (1) to the office of the Deputy Attorney General of Canada.

**Conditions for order to be made**

**(5)** An order may be made under this section only if

**(a)** the application under subsection (1) is made within one year after the expiry of the time limited by section 75 for appealing; and

**(b)** the person demonstrates that

**(i)** within the time limited by section 75 for appealing, the person

**(A)** was unable to act or to give a mandate to act in the person's name, or

**(B)** had a *bona fide* intention to appeal,

**(ii)** given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

**(iii)** the application was made as soon as circumstances permitted, and

**(iv)** there are reasonable grounds for the appeal.

**Limitation on appeals**

**77 (1)** Despite section 75, if a person has filed a notice of objection to an assessment, the person may appeal to the

**Prorogation du délai d'appel**

**76 (1)** La personne qui n'a pas interjeté appel en vertu de l'article 75 dans le délai imparti peut présenter à la Cour canadienne de l'impôt une demande de prorogation du délai pour interjeter appel. La Cour peut faire droit à la demande et imposer les conditions qu'elle estime justes.

**Contenu de la demande**

**(2)** La demande doit indiquer les raisons pour lesquelles l'appel n'a pas été interjeté dans le délai imparti en vertu de l'article 75.

**Modalités**

**(3)** La demande est faite en déposant la demande ainsi que l'avis d'appel au greffe de la Cour canadienne de l'impôt conformément à la *Loi sur la Cour canadienne de l'impôt*.

**Copie au sous-procureur général du Canada**

**(4)** La Cour canadienne de l'impôt envoie une copie de la demande au bureau du sous-procureur général du Canada.

**Conditions d'acceptation de la demande**

**(5)** Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

**a)** la demande est présentée dans l'année suivant l'expiration du délai d'appel imparti en vertu de l'article 75;

**b)** la personne démontre ce qui suit :

**(i)** dans le délai d'appel imparti en vertu de l'article 75, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention d'interjeter appel,

**(ii)** compte tenu des raisons indiquées dans la demande et des circonstances en l'espèce, il est juste et équitable d'y faire droit,

**(iii)** la demande a été présentée dès que les circonstances l'ont permis,

**(iv)** l'appel est raisonnablement fondé.

**Restriction touchant les appels**

**77 (1)** Malgré l'article 75, la personne qui a présenté un avis d'opposition à une cotisation ne peut interjeter appel devant la Cour canadienne de l'impôt pour faire annuler

Tax Court of Canada to have the assessment vacated, or a reassessment made, only with respect to

**(a)** an issue in respect of which the person has complied with subsection 72(2) in the notice and the relief sought in respect of the issue as specified in the notice; or

**(b)** an issue referred to in subsection 72(5), if the person was not required to file a notice of objection to the assessment that gave rise to the issue.

**No appeal if waiver**

**(2)** Despite section 75, a person is not permitted to appeal to the Tax Court of Canada to have an assessment vacated or varied in respect of an issue for which the person has waived the right of objection or appeal.

**Institution of appeals**

**78** An appeal to the Tax Court of Canada under this Act must be instituted in accordance with the *Tax Court of Canada Act*.

**Disposition of appeal**

**79 (1)** The Tax Court of Canada may dispose of an appeal from an assessment by

**(a)** dismissing it; or

**(b)** allowing it and

**(i)** vacating the assessment,

**(ii)** varying the assessment, or

**(iii)** referring the assessment back to the Minister for reconsideration and reassessment.

**Partial disposition of appeal**

**(2)** If an appeal raises more than one issue, the Tax Court of Canada may, with the written consent of the parties to the appeal, dispose of a particular issue by

**(a)** dismissing the appeal with respect to the particular issue; or

**(b)** allowing the appeal with respect to the particular issue and

**(i)** varying the assessment, or

**(ii)** referring the assessment back to the Minister for reconsideration and reassessment.

la cotisation, ou en faire établir une nouvelle, qu'à l'égard des questions suivantes :

**a)** une question relativement à laquelle elle s'est conformée au paragraphe 72(2) dans l'avis et le redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question;

**b)** une question visée au paragraphe 72(5), si elle n'était pas tenue de produire un avis d'opposition à la cotisation qui a donné lieu à la question.

**Restriction — renonciation**

**(2)** Malgré l'article 75, aucun appel ne peut être interjeté par une personne devant la Cour canadienne de l'impôt pour faire annuler ou modifier une cotisation visant une question pour laquelle elle a renoncé à son droit d'opposition ou d'appel.

**Modalités de l'appel**

**78** Tout appel à la Cour canadienne de l'impôt en application de la présente loi est interjeté conformément à la *Loi sur la Cour canadienne de l'impôt*.

**Règlement d'appel**

**79 (1)** La Cour canadienne de l'impôt peut statuer sur un appel concernant une cotisation :

**a)** en le rejetant;

**b)** en y faisant droit et en :

**(i)** annulant la cotisation,

**(ii)** modifiant la cotisation,

**(iii)** renvoyant la cotisation au ministre pour nouvel examen et nouvelle cotisation.

**Règlement partiel d'un appel**

**(2)** Si un appel porte sur plus d'une question, la Cour canadienne de l'impôt peut, avec le consentement écrit des parties, statuer sur une question donnée :

**a)** en rejetant l'appel en ce qui concerne cette question;

**b)** en admettant l'appel en ce qui concerne cette question, auquel cas elle peut modifier la cotisation ou la renvoyer au ministre pour nouvel examen et nouvelle cotisation.

**Disposal of remaining issues**

**(3)** If a particular issue has been disposed of under subsection (2), the appeal with respect to the remaining issues may continue.

**Appeal to Federal Court of Appeal**

**(4)** If the Tax Court of Canada has disposed of a particular issue under subsection (2), the parties to the appeal may, in accordance with the provisions of the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal the disposition to the Federal Court of Appeal as if it were a final judgment of the Tax Court of Canada.

**References to Tax Court of Canada**

**80 (1)** The Minister and a person may agree that a question arising under this Act, in respect of any assessment or proposed assessment of the person, should be determined by the Tax Court of Canada.

**Time during consideration not to count**

**(2)** For the purposes of making an assessment, filing a notice of objection to an assessment or instituting an appeal from an assessment, the period beginning on the day on which proceedings are instituted in the Tax Court of Canada to have a question determined under subsection (1) and ending on the day on which the question is finally determined is not to be counted in the computation of

**(a)** the seven-year period referred to in subsection 70(1);

**(b)** the period within which a notice of objection to an assessment may be filed under section 72; and

**(c)** the period within which an appeal may be instituted under section 75.

**Reference of common questions to Tax Court**

**81 (1)** If the Minister is of the opinion that a question arising out of one and the same transaction or occurrence, or series of transactions or occurrences, is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court of Canada for a determination of the question.

**Contents of application**

**(2)** An application under subsection (1) must set out

**(a)** the question in respect of which the Minister requests a determination;

**Continuation de l'appel**

**(3)** S'il a été statué sur une question donnée en vertu du paragraphe (2), l'appel peut se poursuivre en ce qui concerne les autres questions sur lesquelles il porte.

**Appel à la Cour d'appel fédérale**

**(4)** Si la Cour canadienne de l'impôt a statué sur une question donnée en vertu du paragraphe (2), les parties à l'appel peuvent, conformément aux dispositions de la *Loi sur la Cour canadienne de l'impôt* ou de la *Loi sur les Cours fédérales* applicables aux appels de décisions de la Cour canadienne de l'impôt, interjeter appel de la décision devant la Cour d'appel fédérale comme s'il s'agissait d'un jugement définitif de la Cour canadienne de l'impôt.

**Renvoi à la Cour canadienne de l'impôt**

**80 (1)** Le ministre et une personne peuvent convenir qu'une question portant sur une cotisation, réelle ou projetée, découlant de l'application de la présente loi, devrait être tranchée par la Cour canadienne de l'impôt.

**Exclusion du délai d'examen**

**(2)** La période commençant à la date où une procédure est introduite à la Cour canadienne de l'impôt afin qu'une question y soit tranchée en application du paragraphe (1) et se terminant à la date où il est définitivement statué sur la question est exclue du calcul des délais ci-après lorsqu'ils ont trait, selon le cas, à l'établissement d'une cotisation, à la présentation d'un avis d'opposition à une cotisation ou à l'interjection d'un appel :

**a)** le délai de sept ans prévu au paragraphe 70(1);

**b)** le délai de présentation d'un avis d'opposition à une cotisation prévu à l'article 72;

**c)** le délai d'appel prévu à l'article 75.

**Renvoi de questions communes**

**81 (1)** Si le ministre est d'avis qu'une même opération, un même événement ou une même série d'opérations ou d'événements soulève une question commune qui se rapporte à des cotisations, réelles ou projetées, relatives à deux personnes ou plus, il peut demander à la Cour canadienne de l'impôt de statuer sur la question.

**Contenu de la demande**

**(2)** La demande comporte les renseignements suivants :

**a)** la question sur laquelle le ministre demande une décision;

**(b)** the names of the persons that the Minister seeks to have bound by the determination; and

**(c)** the facts and reasons on which the Minister relies and on which the Minister based or intends to base the assessments of each person named in the application.

**b)** le nom des personnes qu'il souhaite voir liées par la décision;

**c)** les faits et motifs sur lesquels il s'appuie et sur lesquels il fonde ou a l'intention de fonder la cotisation de chaque personne nommée dans la demande.

**Service**

**(3)** A copy of any application under subsection (1) must be served by the Minister on each person named in the application and on any other person that, in the opinion of the Tax Court of Canada, is likely to be affected by the determination of the question.

**Signification**

**(3)** Le ministre signifie un exemplaire de la demande à chacune des personnes qui y sont nommées et à toute autre personne qui, de l'avis de la Cour canadienne de l'impôt, est susceptible d'être touchée par la décision.

**Determination of question by Tax Court**

**(4)** If the Tax Court of Canada is satisfied that a determination of a question set out in an application under subsection (1) will affect assessments or proposed assessments in respect of two or more persons that have been served with a copy of the application, the Tax Court of Canada may make an order naming the persons in respect of which the question will be determined and may

**(a)** if none of the persons named in the order has appealed from such an assessment, proceed to determine the question in any manner that it considers appropriate; or

**(b)** if one or more of the persons named in the order has or have appealed, make any order that it considers appropriate joining a party or parties to that appeal or those appeals and proceed to determine the question in any manner that it considers appropriate.

**Décision de la Cour canadienne de l'impôt**

**(4)** Dans le cas où la Cour canadienne de l'impôt est convaincue que la décision rendue sur la question exposée dans une demande aura un effet sur les cotisations, réelles ou projetées, relatives à deux personnes ou plus à qui une copie de la demande a été signifiée, elle peut rendre une ordonnance nommant les personnes à l'égard desquelles la question sera tranchée et elle peut :

**a)** si aucune des personnes nommées dans l'ordonnance n'en a appelé d'une de ces cotisations, entreprendre de statuer sur la question de la façon qu'elle juge indiquée;

**b)** si une ou plusieurs des personnes nommées dans l'ordonnance ont interjeté appel, rendre toute ordonnance qu'elle juge indiquée groupant dans cet ou ces appels les parties appelantes et entreprendre de statuer sur la question de la façon qu'elle juge indiquée.

**Determination final and conclusive**

**(5)** Subject to subsection (6), if a question set out in an application under subsection (1) is determined by the Tax Court of Canada, the determination is final and conclusive for the purposes of any assessments of persons named in an order by the Court under subsection (4).

**Décision définitive**

**(5)** Sous réserve du paragraphe (6), la décision rendue par la Cour canadienne de l'impôt sur une question soumise dans une demande est définitive et sans appel aux fins d'établissement de toute cotisation à l'égard des personnes qui y sont nommées dans une ordonnance.

**Appeal**

**(6)** If a question set out in an application under subsection (1) is determined by the Tax Court of Canada, the Minister or any of the persons that have been served with a copy of the application and that are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal from the determination.

**Appel**

**(6)** Dans le cas où la Cour canadienne de l'impôt statue sur une question soumise dans une demande, le ministre ou l'une des personnes à qui une copie de la demande a été signifiée et qui est nommée dans une ordonnance de la Cour rendue en vertu du paragraphe (4) peut interjeter appel de la décision conformément aux dispositions de la présente loi, de la *Loi sur la Cour canadienne de l'impôt* ou de la *Loi sur les Cours fédérales* concernant les appels des décisions de la Cour canadienne de l'impôt.

**Parties to appeal**

**(7)** The parties that are bound by a determination under subsection (4) are parties to any appeal from the determination.

**Time during consideration not to count**

**(8)** For the purposes of making an assessment, filing a notice of objection to an assessment or instituting an appeal from an assessment, the period referred to in subsection (9) must not be counted in the computation of

**(a)** the seven-year period referred to in subsection 70(1);

**(b)** the period within which a notice of objection to an assessment may be filed under section 72; and

**(c)** the period within which an appeal may be instituted under section 75.

**Excluded periods**

**(9)** The period that is not to be counted in the computation of the periods referred to in paragraphs (8)(a) to (c) is the period beginning on the day on which a copy of an application made under this section is served on a person under subsection (3) and

**(a)** in the case of a person named in an order of the Tax Court of Canada under subsection (4), ending on the day on which the determination becomes final and conclusive; and

**(b)** in the case of any other person, ending on the day on which the person is served with a notice that the person has not been named in an order of the Tax Court of Canada under subsection (4).

**Payment by the Minister on appeal**

**82 (1)** If the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a person, referred an assessment back to the Minister for reconsideration and reassessment, or varied or vacated an assessment, the Minister must, without delay, whether or not an appeal from the decision of the Court has been or may be instituted,

**(a)** where the assessment has been referred back to the Minister, reconsider the assessment and make a reassessment in accordance with the decision of the Court unless otherwise directed in writing by the person; and

**Parties à un appel**

**(7)** Les parties liées par une décision prise en vertu du paragraphe (4) sont parties à un appel de cette décision.

**Exclusion du délai d'examen**

**(8)** La période visée au paragraphe (9) est exclue du calcul des délais ci-après lorsqu'ils ont trait, selon le cas, à l'établissement d'une cotisation à l'égard d'une personne, à la présentation d'un avis d'opposition ou à l'interjection d'un appel :

**a)** le délai de sept ans prévu au paragraphe 70(1);

**b)** le délai de présentation d'un avis d'opposition à une cotisation prévu à l'article 72;

**c)** le délai d'appel prévu à l'article 75.

**Période exclue**

**(9)** Est exclue du calcul des délais visés aux alinéas (8)a) à c) la période commençant à la date où une copie d'une demande présentée en application du présent article est signifiée à une personne en vertu du paragraphe (3) et se terminant à la date applicable suivante :

**a)** dans le cas d'une personne nommée dans une ordonnance rendue par la Cour canadienne de l'impôt en vertu du paragraphe (4), la date où la décision devient définitive et sans appel;

**b)** dans le cas d'une autre personne, la date où il lui est signifié un avis portant qu'elle n'a pas été nommée dans une telle ordonnance.

**Paiement à la suite d'un appel**

**82 (1)** Si la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada, en statuant sur un appel concernant des taxes, intérêts ou pénalités payables en vertu de la présente loi par une personne, ordonne soit le renvoi d'une cotisation au ministre pour réexamen et pour l'établissement d'une nouvelle cotisation, soit la modification ou l'annulation d'une cotisation, le ministre doit, sans délai, qu'un appel de la décision de la Cour ait été ou puisse être interjeté ou non :

**a)** d'une part, réexaminer la cotisation et en établir une nouvelle conformément à la décision de la Cour, sauf instruction écrite contraire de la personne, dans le cas du renvoi d'une cotisation au ministre;

**b)** d'autre part, rembourser tout paiement en trop qui découle de la modification ou de l'annulation d'une

**(b)** refund any overpayment resulting from the variation, vacation or reassessment.

The Minister may repay any tax, interest or penalties or surrender any security accepted by the Minister for tax, interest or penalties to that person or any other person that has filed another objection or instituted another appeal if, having regard to the reasons given on the disposition of the appeal, the Minister is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, the *Federal Courts Act* or the *Supreme Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court of Appeal, appeal from the decision of the Court despite any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph (a).

**Interest on refund**

**(2)** If a refund is made under subsection (1) in respect of an assessment for a particular calendar year, interest at the rate prescribed by regulation must be paid for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which the overpayment referred to in that subsection was paid and ending on the day on which the refund is paid.

## DIVISION L

# Penalties

**Failure to register when required**

**83** A taxpayer that does not apply to register as and when required under section 41 is liable to a penalty of $20,000 for each of

**(a)** the calendar year in which it was required to apply to register;

**(b)** the calendar year in which it registers (or is registered under section 44), if the year is different from the year referred to in paragraph (a); and

**(c)** the calendar years, if any, between the years referred to in paragraphs (a) and (b).

**Failure to file return when required**

**84 (1)** A taxpayer that fails to file a return in respect of a calendar year as and when required under section 45 is liable to a penalty equal to the total of

cotisation, ou de l'établissement d'une nouvelle cotisation.

De plus, le ministre peut rembourser toute taxe, tout intérêt ou toute pénalité ou remettre toute garantie qu'il a acceptée, pour ceux-ci, à cette personne ou à une autre personne qui a fait opposition ou interjeté appel, s'il est convaincu, compte tenu des motifs exposés dans le prononcé sur l'appel, qu'il serait juste et équitable de faire ce remboursement ou cette remise; il est entendu toutefois que le ministre peut en appeler de la décision de la Cour conformément aux dispositions de la présente loi, de la *Loi sur la Cour canadienne de l'impôt*, de la *Loi sur les Cours fédérales* ou de la *Loi sur la Cour suprême* relatives à l'appel d'une décision de la Cour canadienne de l'impôt ou de la Cour d'appel fédérale, malgré la modification ou l'annulation de la cotisation par la Cour ou l'établissement d'une nouvelle cotisation par le ministre en vertu de l'alinéa a).

**Intérêts sur remboursement**

**(2)** Des intérêts au taux visé par règlement calculés sur le remboursement versé en application du paragraphe (1) pour une année civile donnée doivent être payés pour la période commençant à la dernière date en date du 30 juillet de l'année civile suivante et la date à laquelle le paiement en trop visé à ce paragraphe est versé, et se terminant à la date du remboursement.

## SECTION L

# Pénalités

**Défaut de s'inscrire**

**83** Tout contribuable qui doit présenter une demande d'inscription en vertu de l'article 41 et omet de le faire dans le délai et selon les modalités prévus est passible d'une pénalité de 20 000 $ pour chacune des périodes suivantes :

**a)** l'année civile dans laquelle il était tenu de présenter une demande d'inscription;

**b)** l'année civile dans laquelle il s'inscrit (ou dans laquelle il est inscrit en vertu de l'article 44), si celle-ci est différente de celle visée à l'alinéa a);

**c)** les années civiles comprises entre celles visées aux alinéas a) et b), le cas échéant.

**Défaut de produire une déclaration**

**84 (1)** Tout contribuable qui omet de produire une déclaration pour une année civile, dans le délai et selon les modalités prévus par l'article 45, est passible d'une pénalité égale au total des montants suivants :

**(a)** an amount equal to 5% of the taxpayer's tax payable under this Act in respect of the year that was unpaid on the day on which the return was required to be filed, and

**(b)** the amount obtained when 1% of that unpaid tax is multiplied by the number of complete months, not exceeding 12, beginning on the day on which the return was required to be filed and ending on the day on which the return is filed.

**Repeated failure to file — conditions**

**(2)** Subsection (3) applies to a taxpayer in respect of a calendar year, if the taxpayer

**(a)** fails to file a return in respect of the year as and when required by section 45;

**(b)** fails to comply with a demand sent under section 48 for a return in respect of the year; and

**(c)** was, before the day on which the return referred to in paragraph (a) was required to be filed, liable to a penalty under subsection (1) for a return in respect of any of the three preceding calendar years.

**Repeated failure to file — penalty**

**(3)** If subsection (2) applies to a taxpayer in respect of a calendar year, the taxpayer is liable to a penalty equal to the total of

**(a)** an amount equal to 10% of the taxpayer's tax payable under this Act in respect of the year that was unpaid on the day on which the return was required to be filed, and

**(b)** the amount obtained when 2% of that unpaid tax is multiplied by the number of complete months, not exceeding 20, beginning on the day on which the return was required to be filed and ending on the day on which the return is filed.

**False statements or omissions**

**(4)** A person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to, or acquiesces in the making of, a false statement or omission in a return, application, form, certificate, statement, document, invoice, record or answer (each of which is in this subsection referred to as a "return") is liable to a penalty equal to the greater of $5,000 and 25% of the total of

**(a)** if the false statement or omission is relevant to the determination of an amount payable under this Act by the person, the amount, if any, by which

**a)** 5 % de la taxe payable, relativement à l'année en vertu de la présente loi, qui était impayée à la date où la déclaration devait être produite;

**b)** le produit de 1 % de cette taxe impayée multiplié par le nombre de mois entiers, jusqu'à concurrence de douze, compris dans la période commençant le jour où la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

**Récidive — conditions**

**(2)** Le paragraphe (3) s'applique à un contribuable à l'égard d'une année civile, s'il remplit les conditions suivantes :

**a)** il ne produit pas de déclaration pour l'année selon les modalités et dans le délai prévus à l'article 45;

**b)** il a été mis en demeure de le faire conformément à l'article 48 et n'a pas obtempéré;

**c)** avant la date où la déclaration visée à l'alinéa a) devait être produite, il devait payer une pénalité en application du paragraphe (1) pour l'une des trois années civiles précédant le défaut.

**Récidive — pénalité**

**(3)** Si le paragraphe (2) s'applique à un contribuable à l'égard d'une année civile, il est passible d'une pénalité égale au total des montants suivants :

**a)** 10 % de la taxe payable relativement à l'année en vertu de la présente loi et qui était impayée à la date où, au plus tard, la déclaration devait être produite;

**b)** le produit de 2 % de cette taxe impayée multiplié par le nombre de mois entiers, jusqu'à concurrence de vingt, compris dans la période commençant à la date où, au plus tard, la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

**Faux énoncés ou omissions**

**(4)** Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, un document, une facture, un registre ou une réponse (appelés « déclaration » au présent paragraphe), ou participe, consent ou acquiesce au faux énoncé ou à l'omission, est passible d'une pénalité égale à 5 000 $ ou, si elle est plus élevée, à la somme correspondant à 25 % du total des montants suivants :

**(i)** the amount that is payable

exceeds

**(ii)** the amount that would be payable if it were determined on the basis of the information provided in the return, and

**(b)** if the false statement or omission is relevant to the determination of a refund or any other payment that may be obtained under this Act, the amount, if any, by which

**(i)** the amount that would be the refund or other payment that would be payable if it were determined on the basis of the information provided in the return

exceeds

**(ii)** the amount of the refund or other payment that is payable to the person.

**a)** si le faux énoncé ou l'omission a trait au calcul d'une somme exigible de la personne en vertu de la présente loi, l'excédent éventuel de cette somme sur la somme qui serait exigible de la personne si elle était déterminée d'après sa déclaration;

**b)** si le faux énoncé ou l'omission a trait au calcul d'un remboursement ou d'un autre paiement pouvant être obtenu en vertu de la présente loi, l'excédent éventuel du remboursement ou autre paiement qui serait à payer à la personne, s'il était déterminé d'après sa déclaration, sur le remboursement ou autre paiement à payer à la personne.

### Failure to provide information

**85** A person that fails to provide any information or record as and when required under this Act, or as prescribed by regulation, is liable to a penalty of $2,500 for each such failure, in addition to any other penalty under this Act. However, the person is not liable in the case of any information or record required in respect of another person under subsection 66(1) or section 104 if a reasonable effort was made by the person to obtain the information or record.

### Unreasonable appeal

**86** If the Tax Court of Canada disposes of an appeal by a person in respect of an amount payable under this Act or if such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not the Court awards costs, order the person to pay to the Receiver General for Canada an amount not exceeding 10% of any part of the amount that was in controversy in respect of which the Court determines that there were no reasonable grounds for the appeal, if in the opinion of the Court one of the main purposes for instituting or maintaining any part of the appeal was to defer the payment of any amount payable under this Act.

### Definitions

**87 (1)** The following definitions apply in this section.

***planning activity*** includes

### Défaut de présenter des renseignements

**85** Toute personne qui ne fournit pas des renseignements ou des registres selon les modalités et dans le délai prévus par la présente loi, ou visés par règlement, est passible d'une pénalité de 2 500 $, pour chaque manquement, outre les autres pénalités prévues par la présente loi, à moins, s'il s'agit de renseignements ou registres concernant une autre personne requis en vertu du paragraphe 66(1) ou de l'article 104, que la personne ait fait des efforts raisonnables pour les obtenir.

### Appel non fondé

**86** Lorsque la Cour canadienne de l'impôt se prononce sur un appel interjeté par une personne à l'égard d'un montant payable en vertu de la présente loi ou lorsqu'il y a désistement ou rejet sans procès de l'appel, la Cour peut, sur demande du ministre et qu'elle accorde ou non des dépens, ordonner à la personne de verser au receveur général du Canada un montant ne dépassant pas 10 % de toute partie de la somme en litige à l'égard de laquelle elle juge que l'appel n'était pas raisonnablement fondé, si la Cour est d'avis qu'une des principales raisons pour lesquelles une partie quelconque de l'appel a été interjeté ou poursuivi était de reporter le paiement d'un montant payable en vertu de la présente loi.

### Définition

**87 (1)** Les définitions qui suivent s'appliquent au présent article.

***activité de planification*** S'entend notamment des activités suivantes :

**(a)** organizing or creating, or assisting in the organization or creation of, an arrangement, an entity, a plan or a scheme; and

**(b)** participating, directly or indirectly, in the selling of an interest in, or the promotion of, an arrangement, an entity, a plan, a property or a scheme. (*activité de planification*)

***section 52 avoidance planning*** by a transferor or a transferee, means planning activity in respect of a transaction or series of transactions

**(a)** that is, or is part of, a section 52 avoidance transaction; and

**(b)** for which one of the purposes of the transaction or series of transactions is to reduce

**(i)** a transferee's joint and several, or solidary, liability for tax owing under this Act by the transferor, or

**(ii)** the transferor's or transferee's ability to pay any amount that is or that may become owing under this Act. (*planification d'évitement en vertu de l'article 52*)

***section 52 avoidance transaction*** means a transaction or series of transactions in respect of which

**(a)** the conditions set out in paragraph 52(7)(a) or (b) are met; or

**(b)** if subsection 52(7) applied to the transaction or series of transactions, the amount determined under subparagraph 52(7)(c)(ii) would exceed the amount determined under subparagraph 52(7)(c)(i). (*opération d'évitement en vertu de l'article 52*)

***transferee*** refers to "transferee" as used in subsections 52(2) and (7). (*bénéficiaire du transfert*)

***transferor*** refers to "transferor" as used in subsections 52(2) and (7). (*auteur du transfert*)

**Section 52 avoidance penalty**

**(2)** Every transferor or transferee that engages in, participates in, assents to or acquiesces in planning activity that the transferor or transferee, as the case may be, knows is section 52 avoidance planning, or would

**a)** le fait d'organiser ou de créer un arrangement, une entité, un mécanisme, un plan, un régime ou d'aider à son organisation ou à sa création;

**b)** le fait de participer, directement ou indirectement, à la vente d'un droit dans un arrangement, un bien, une entité, un mécanisme, un plan ou un régime ou à la promotion d'un arrangement, d'une entité, d'un mécanisme, d'un plan ou d'un régime. (*planning activity*)

***auteur du transfert*** S'entend de l'auteur du transfert visé aux paragraphes 52(2) et (7). (*transferor*)

***bénéficiaire du transfert*** S'entend du bénéficiaire du transfert visé aux paragraphes 52(2) et (7). (*transferee*)

***opération d'évitement en vertu de l'article 52*** S'entend d'une opération ou d'une série d'opérations, relativement à laquelle, selon le cas :

**a)** les conditions énoncées aux alinéas 52(7)a) ou b) sont satisfaites;

**b)** lorsque le paragraphe 52(7) s'applique à l'opération ou à la série d'opérations, la somme déterminée en vertu du sous-alinéa 52(7)c)(ii) excéderait la somme déterminée en vertu du sous-alinéa 52(7)c)(i). (*section 52 avoidance transaction*)

***planification d'évitement en vertu de l'article 52*** S'entend d'une activité de planification par un auteur du transfert ou un bénéficiaire du transfert, relativement à une opération ou à une série d'opérations, qui remplit les conditions suivantes :

**a)** elle est ou fait partie d'une opération d'évitement en vertu de l'article 52;

**b)** l'un des objets de l'opération ou de la série d'opérations est de réduire :

**(i)** soit la responsabilité solidaire d'un bénéficiaire du transfert à l'égard de la taxe que l'auteur du transfert doit en vertu de la présente loi,

**(ii)** soit la capacité de l'auteur du transfert ou du bénéficiaire du transfert à payer un montant dû, ou qui pourrait arriver à échéance, en vertu de la présente loi. (*section 52 avoidance planning*)

**Pénalité pour évitement en vertu de l'article 52**

**(2)** Tout auteur du transfert ou bénéficiaire du transfert qui se livre, participe, consent ou acquiesce à une activité de planification dont il sait ou aurait vraisemblablement su, n'eussent été les circonstances équivalant à une faute

reasonably be expected to know is section 52 avoidance planning, but for circumstances amounting to gross negligence, is liable to a penalty that is the lesser of

**(a)** 50% of the amount payable under this Act (determined without reference to this subsection), the joint and several, or solidary liability for which was sought to be avoided through the planning, and

**(b)** $100,000.

**General penalty**

**88** A person that fails to comply with any provision of this Act, or the regulations made under this Act, for which no other penalty is specified in this Act is liable to a penalty of $2,500.

**Payment of penalties**

**89** A person that is required to pay a penalty under this Act must pay it,

**(a)** in the case of a penalty payable under section 83, on the day on which the taxpayer was required to apply to register;

**(b)** in the case of a penalty payable under section 84, on the day on which the taxpayer was required to file the return; and

**(c)** in any other case, on the day on which the notice of original assessment of the penalty was sent.

**Waiving or cancelling penalties**

**90 (1)** The Minister may, on or before the day that is 10 calendar years after the end of a calendar year in which a penalty became payable under this Act by a person, or on application by the person on or before that day, waive or cancel all or any portion of that penalty, and may despite subsection 70(1), make any assessment of the penalty payable by the person that is necessary to take into account the waiver or cancellation of the penalty.

**Refund of amount waived or cancelled**

**(2)** If a person has paid an amount of penalty and the Minister waives or cancels any portion of that amount under subsection (1), the Minister must refund the portion of the amount and pay interest on it at the rate prescribed by regulation beginning on the day that is 30 days after the day on which the Minister received an application in a manner satisfactory to the Minister to apply that subsection (or, if there is no such application, on the day on which the Minister waives or cancels the portion of the amount) and ending on the day on which the portion of the amount is paid as a refund or applied against

lourde, qu'elle est une planification d'évitement en vertu de l'article 52, est passible d'une pénalité correspondant à la moins élevée des sommes suivantes :

**a)** 50 % du montant exigible en vertu de la présente loi (déterminé compte non tenu du présent paragraphe) pour lequel il y a eu tentative d'esquiver la responsabilité solidaire au moyen de la planification;

**b)** 100 000 $.

**Pénalité pour tout autre défaut**

**88** Toute personne qui omet de se conformer à une disposition de la présente loi ou de ses règlements pour laquelle aucune autre pénalité n'est prévue en vertu de la présente loi est passible d'une pénalité de 2 500 $.

**Paiement des pénalités**

**89** Une personne qui est tenue de payer une pénalité en vertu de la présente loi est tenue de la payer :

**a)** dans le cas d'une pénalité payable en vertu de l'article 83, à la date à laquelle le contribuable était tenu de présenter une demande d'inscription;

**b)** dans le cas d'une pénalité payable en vertu de l'article 84, à la date à laquelle le contribuable était tenu de produire la déclaration;

**c)** dans tous les autres cas, à la date à laquelle le premier avis de cotisation de la pénalité a été envoyé.

**Renonciation ou annulation**

**90 (1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une année civile dans laquelle une pénalité est devenue payable par une personne en vertu de la présente loi ou sur demande de la personne faite au plus tard ce jour-là, annuler tout ou partie de cette pénalité, ou y renoncer. Malgré le paragraphe 70(1), le ministre établit les cotisations voulues concernant les pénalités payables par la personne pour tenir compte de pareille renonciation ou annulation.

**Remboursement — somme annulée**

**(2)** Si une personne a payé un montant de pénalité et que le ministre a annulé toute partie de ce montant, ou y a renoncé, en vertu du paragraphe (1), le ministre rembourse la partie du montant et paie des intérêts au taux visé par règlement sur la partie du montant, pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de ce paragraphe (ou en l'absence d'une telle demande, le jour où il annule la partie du montant ou y renonce) et se terminant le jour où la partie du montant est versée à titre de remboursement à la personne ou

another amount owed by the person to His Majesty in right of Canada.

## DIVISION M

# Offences and Punishment

### Failure to file or comply

**91 (1)** A person that fails to file a return as and when required under this Act or that fails to comply with an obligation under subsection 65(6) or (8) or section 66, or an order made under section 97, is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on summary conviction to a fine of not less than $2,000 and not more than $40,000.

### Saving

**(2)** A person that is convicted of an offence under subsection (1) for a failure to comply with a provision of this Act is not liable to a penalty imposed under this Act for the same failure, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

### Offences for false or deceptive statement

**92 (1)** A person commits an offence that

**(a)** makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a return, application, form, certificate, statement, document, invoice, record or answer filed or made under this Act;

**(b)** for the purposes of evading payment of any amount payable under this Act, or obtaining a refund or other payment payable under this Act to which the person is not entitled,

**(i)** destroys, alters, mutilates, conceals or otherwise disposes of any records of a person, or

**(ii)** makes, or assents to or acquiesces in the making of, a false or deceptive entry, or omits, or assents to or acquiesces in the omission, to enter a material particular in the records of a person;

**(c)** intentionally, in any manner, evades or attempts to evade compliance with this Act or payment of an amount payable under this Act;

déduite d'une autre somme dont elle est redevable à Sa Majesté du chef du Canada.

## SECTION M

# Infractions et peines

### Omission de rendre compte

**91 (1)** Toute personne qui omet de produire une déclaration dans le délai et selon les modalités prévus par la présente loi, qui ne respecte pas une obligation prévue aux paragraphes 65(6) ou (8) ou à l'article 66 ou qui contrevient à une ordonnance rendue en application de l'article 97 commet une infraction et, en plus de toute pénalité prévue par ailleurs, est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende minimale de 2 000 $ et maximale de 40 000 $.

### Réserve

**(2)** La personne déclarée coupable d'une infraction prévue au paragraphe (1) n'est passible d'une pénalité prévue par la présente loi relativement aux mêmes faits que si un avis de cotisation concernant la pénalité a été envoyé avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité n'ait été déposée ou faite.

### Infractions pour déclarations fausses ou trompeuses

**92 (1)** Commet une infraction quiconque, selon le cas :

**a)** fait des déclarations fausses ou trompeuses, ou participe, consent ou acquiesce à leur énonciation, dans une déclaration, une demande, un formulaire, un certificat, un état, un document, une facture, un registre ou une réponse produits, présentés ou faits en application de la présente loi;

**b)** pour éluder le paiement d'une somme payable en application de la présente loi ou pour obtenir un remboursement ou un autre paiement qui serait à payer en application de la présente loi sans que la personne y ait droit aux termes de celle-ci :

**(i)** détruit, modifie, mutile ou cache les registres d'une personne, ou en dispose autrement,

**(ii)** fait des inscriptions fausses ou trompeuses, ou consent à leur accomplissement, ou omet d'inscrire un détail important dans les registres d'une personne, ou consent à cette omission;

**c)** délibérément, de quelque manière que ce soit, élude ou tente d'éluder l'observation de la présente loi

**(d)** intentionally, in any manner, obtains or attempts to obtain a refund or other payment payable under this Act to which the person is not entitled; or

**(e)** conspires with any person to commit an offence described in any of paragraphs (a) to (d).

**d)** délibérément, de quelque manière que ce soit, obtient ou tente d'obtenir un remboursement ou un autre paiement qui serait à payer en application de la présente loi sans que la personne y ait droit aux termes de la présente loi;

**e)** conspire avec une personne pour commettre l'une des infractions prévues aux alinéas a) à d).

**Punishment**

**(2)** A person that commits an offence under subsection (1) is guilty of an offence punishable on summary conviction and, in addition to any penalty otherwise provided under this Act, is liable to a fine of not less than 50% and not more than 200% of the amount payable that was sought to be evaded, or of the refund or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than $2,000 and not more than $40,000.

**Peine**

**(2)** Quiconque commet l'infraction prévue au paragraphe (1) est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et, en plus de toute pénalité prévue par ailleurs en application de la présente loi, est passible d'une amende au moins égale au montant représentant 50 % de la somme payable qu'il a tenté d'éluder, ou du remboursement ou un autre paiement qu'il a cherché à obtenir, sans dépasser le montant représentant 200 % de cette somme ou de ce remboursement ou autre paiement, ou, si cette somme n'est pas vérifiable, d'une amende minimale de 2 000 $ et maximale de 40 000 $.

**Prosecution on indictment**

**(3)** A person that is charged with an offence described in subsection (1) may, at the election of Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided for under this Act, liable to a fine of not less than 100% and not more than 200% of the amount payable that was sought to be evaded, or of the refund or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than $5,000 and not more than $100,000.

**Poursuite par voie de mise en accusation**

**(3)** La personne accusée de l'infraction prévue au paragraphe (1) peut, au choix du procureur général du Canada, être poursuivie par voie de mise en accusation et, si elle est déclarée coupable, encourt, outre toute pénalité prévue par ailleurs en application de la présente loi, une amende minimale de 100 % et maximale de 200 % de la somme payable qu'elle a tenté d'éluder ou du remboursement ou autre paiement qu'elle a cherché à obtenir ou, si cette somme n'est pas vérifiable, une amende minimale de 5 000 $ et maximale de 100 000 $.

**Penalty on conviction**

**(4)** A person that is convicted of an offence under subsection (1) is not liable to a penalty imposed under this Act for the same evasion or attempt unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

**Pénalité sur déclaration de culpabilité**

**(4)** La personne déclarée coupable d'une infraction visée au paragraphe (1) n'est passible d'une pénalité prévue à la présente loi pour la même évasion ou la même tentative d'évasion que si un avis de cotisation pour cette pénalité a été envoyé avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité ait été déposée ou faite.

**Stay of appeal**

**(5)** If, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and, on that filing, the proceedings before the Tax Court of Canada are stayed pending a final determination of the outcome of the prosecution.

**Suspension d'appel**

**(5)** Le ministre peut demander la suspension d'un appel interjeté en vertu de la présente loi à la Cour canadienne de l'impôt si les faits qui y sont débattus sont pour la plupart les mêmes que ceux qui font l'objet de poursuites entamées en vertu du présent article. Dès lors, l'appel est suspendu en attendant le résultat des poursuites.

**Failure to pay tax**

**93** A person that intentionally fails to pay tax as and when required under this Act is guilty of an offence punishable on summary conviction and, in addition to any penalty or interest otherwise provided for under this Act, is liable to a fine not exceeding 20% of the amount of the tax that should have been paid.

**Offence — confidential information**

**94 (1)** A person is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 if the person

**(a)** contravenes subsection 108(2); or

**(b)** knowingly contravenes an order made under subsection 108(7).

**Offence — confidential information**

**(2)** A person to whom confidential information has been provided for a particular purpose under subsection 108(6) and that for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000.

**Definition of *confidential information***

**(3)** In subsection (2), ***confidential information*** has the same meaning as in subsection 108(1).

**General offence**

**95** A person that fails to comply with any provision of this Act, or the regulations made under this Act, for which no other offence is specified in this Act is guilty of an offence punishable on summary conviction and is liable to a fine of not more than $100,000.

**Defence of due diligence**

**96** No person is to be convicted of an offence under section 91 or 95 of this Act if the person establishes that they exercised all due diligence to prevent the commission of the offence.

**Compliance orders**

**97** If a person is convicted by a court of an offence for a failure to comply with a provision of this Act, the court may make any order that it deems appropriate to enforce compliance with the provision.

**Défaut du paiement de la taxe**

**93** Quiconque omet délibérément de payer la taxe selon les modalités et dans les délais prévus par la présente loi est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et, en plus de toute pénalité ou tous intérêts prévus par ailleurs en application de la présente loi, est passible d'une amende maximale de 20 % de la taxe que cette personne aurait dû payer.

**Infraction — renseignements confidentiels**

**94 (1)** Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 $ quiconque, selon le cas :

**a)** contrevient au paragraphe 108(2);

**b)** contrevient sciemment à une ordonnance rendue en application du paragraphe 108(7).

**Infraction — renseignements confidentiels**

**(2)** Toute personne à qui un renseignement confidentiel est fourni à une fin précise en conformité avec le paragraphe 108(6) et qui, sciemment, utilise ce renseignement, le fournit, le met à disposition ou en permet l'accès à une autre fin commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 $.

**Définition de *renseignements confidentiels***

**(3)** Au paragraphe (2), ***renseignements confidentiels*** s'entend au sens du paragraphe 108(1).

**Infraction générale**

**95** Toute personne qui omet de se conformer à une disposition de la présente loi ou de ses règlements pour laquelle aucune autre infraction n'est prévue commet une infraction et est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de 100 000 $.

**Disculpation**

**96** Nul ne peut être déclaré coupable d'une infraction visée aux articles 91 ou 95 à la présente loi s'il établit qu'il a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Ordonnance d'exécution**

**97** Le tribunal qui déclare une personne coupable d'une infraction à la présente loi peut rendre toute ordonnance qu'il juge appropriée afin qu'il soit remédié au défaut visé par l'infraction.

**Officers of corporations, etc.**

**98** If a person other than an individual commits an offence under this Act, every officer, director or representative of the person who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and is guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.

**Power to decrease punishment**

**99** Despite the *Criminal Code* or any other law, the court does not have the power to impose less than the minimum fine fixed under this Act in any prosecution or proceeding under this Act.

**Information or complaint**

**100 (1)** An information or complaint under this Act may be laid or made by any official of the Agency, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister and, if an information or complaint purports to have been laid or made under this Act, it is deemed to have been laid or made by a person so authorized by the Minister and is not to be called in question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for His Majesty in right of Canada.

**Two or more offences**

**(2)** An information or complaint in respect of an offence under this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

**Territorial jurisdiction**

**(3)** An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court having territorial jurisdiction where the accused is resident, carrying on a commercial activity, found, apprehended or in custody, even if the matter of the information or complaint did not arise within that territorial jurisdiction.

**Limitation of prosecutions**

**(4)** No proceeding by way of summary conviction in respect of an offence under this Act may be instituted more than eight years after the day on which the subject matter of the proceeding arose, unless the prosecutor and the defendant agree that it may be instituted after the eight years.

**Cadres de personnes morales**

**98** En cas de perpétration par une personne, autre qu'un particulier, d'une infraction prévue par la présente loi, ceux de ses dirigeants, administrateurs ou représentants qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et sont passibles, sur déclaration de culpabilité, de la peine prévue, que la personne ait été ou non poursuivie ou déclarée coupable.

**Pouvoir de diminuer les peines**

**99** Malgré le *Code criminel* ou toute autre loi, le tribunal ne peut, dans toute poursuite ou procédure, imposer une amende moindre que l'amende minimale prévue par la présente loi.

**Dénonciation ou plainte**

**100 (1)** Toute dénonciation ou plainte faite ou déposée en vertu de la présente loi peut l'être par tout fonctionnaire de l'Agence, par un membre de la Gendarmerie royale du Canada ou par toute personne qui y est autorisée par le ministre. La dénonciation ou la plainte faite ou déposée en vertu de la présente loi est réputée l'avoir été par une personne qui y est autorisée par le ministre, et seul le ministre ou une personne agissant en son nom ou au nom de Sa Majesté du chef du Canada peut la mettre en doute pour défaut de compétence du dénonciateur ou du plaignant.

**Deux infractions ou plus**

**(2)** La dénonciation ou la plainte faite à l'égard d'une infraction à la présente loi peut viser une ou plusieurs infractions. Aucune dénonciation, plainte, aucun mandat, aucune déclaration de culpabilité ou autre procédure dans une poursuite intentée en vertu de la présente loi n'est susceptible d'opposition ou n'est insuffisant du fait que deux infractions ou plus sont visées.

**District judiciaire**

**(3)** La dénonciation ou plainte à l'égard d'une infraction à la présente loi peut être entendue ou jugée ou faire l'objet d'une décision par tout tribunal compétent du district judiciaire où l'accusé réside, exerce une activité commerciale, est trouvé, appréhendé ou détenu, bien que l'objet de la dénonciation ou de la plainte n'y ait pas pris naissance.

**Prescription des poursuites**

**(4)** La poursuite visant une infraction à la présente loi, punissable sur déclaration de culpabilité par procédure sommaire, se prescrit par huit ans à compter de sa perpétration, à moins que le poursuivant et le défendeur ne consentent au prolongement de ce délai.

## DIVISION N

# Inspections

### Authorized person

**101 (1)** A person authorized by the Minister (in this section referred to as an "authorized person") to do so may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the records, processes, property or premises of a particular person that may be relevant in determining the obligations of the particular person, or any other person, under this Act and whether the particular person, or any such other person, is in compliance with this Act.

### Powers of authorized person

**(2)** Subject to subsection (3), an authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act

**(a)** enter any place in which the authorized person reasonably believes that the particular person keeps or should keep records, carries on any activity to which this Act applies or does anything in relation to that activity;

**(b)** require any individual to give the authorized person all reasonable assistance, to answer all proper questions relating to the administration or enforcement of this Act and

**(i)** to attend with the authorized person at a place designated by the authorized person, or by videoconference or by another form of electronic communication, and to answer the questions orally, and

**(ii)** to answer the questions in writing, in any form specified by the authorized person; and

**(c)** require any person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

### Prior authorization

**(3)** If any place referred to in subsection (2) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (4).

### Warrant to enter dwelling-house

**(4)** A judge may on *ex parte* application by the Minister, issue a warrant authorizing a person to enter a dwelling-house subject to the conditions specified in the warrant if the judge is satisfied by information on oath that

## SECTION N

# Inspection

### Inspection

**101 (1)** Quiconque est autorisé par le ministre (appelée « personne autorisée » dans le présent article) peut, à toute heure convenable, pour l'application ou l'exécution de la présente loi, inspecter, vérifier ou examiner les registres, les procédés, les biens ou les locaux d'une personne permettant de déterminer ses obligations ou celles de toute autre personne en application de la présente loi et de déterminer si cette personne ou toute autre personne agit en conformité avec la présente loi.

### Pouvoirs de la personne autorisée

**(2)** Sous réserve du paragraphe (3), la personne autorisée peut, à toute heure convenable, pour l'application ou l'exécution de la présente loi :

**a)** pénétrer dans tout lieu où elle croit, pour des motifs raisonnables, que la personne tient ou devrait tenir des registres, exerce une activité à laquelle s'applique la présente loi ou accomplit un acte relativement à cette activité;

**b)** requérir toute personne de lui fournir toute l'aide raisonnable et de répondre à toutes les questions pertinentes à l'application ou l'exécution de la présente loi ainsi que :

**(i)** de l'accompagner à un lieu désigné par celle-ci, de participer avec elle par vidéoconférence ou par tout autre moyen de communication électronique, et de répondre à ses questions de vive voix,

**(ii)** de répondre aux questions par écrit, en la forme qu'elle précise;

**c)** requérir toute personne de lui fournir toute l'aide raisonnable concernant tout ce qu'elle est autorisée à accomplir en vertu de la présente loi.

### Autorisation préalable

**(3)** Si le lieu visé au paragraphe (2) est une maison d'habitation, la personne autorisée ne peut y pénétrer sans la permission de l'occupant, à moins d'y être autorisée par un mandat décerné en vertu du paragraphe (4).

### Mandat

**(4)** Sur requête *ex parte* du ministre, le juge saisi peut décerner un mandat qui autorise une personne à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur la foi d'une

**(a)** there are reasonable grounds to believe that the dwelling-house is a place referred to in subsection (2);

**(b)** entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act; and

**(c)** entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

**Orders if entry refused**

**(5)** If a judge is not satisfied that entry into a dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

**(a)** order the occupant of the dwelling-house to provide a person with reasonable access to any record or property that is or should be kept in the dwelling-house; and

**(b)** make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

**Definition of *dwelling-house***

**(6)** In this section, ***dwelling-house*** means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

**(a)** a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

**(b)** a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

**Compliance order**

**102 (1)** On application by the Minister, a judge may, despite section 97, order a person to provide any access, assistance, information or record sought by the Minister under section 66 or 101 if the judge is satisfied that the person was required under section 66 or 101 to provide the access, assistance, information or record and did not do so.

**Notice required**

**(2)** An application under subsection (1) must not be heard before the end of five clear days after the day on

dénonciation faite sous serment, que les éléments suivants sont réunis :

**a)** il existe des motifs raisonnables de croire que la maison d'habitation est un lieu visé au paragraphe (2);

**b)** il est nécessaire d'y pénétrer pour l'application ou l'exécution de la présente loi;

**c)** un refus d'y pénétrer a été opposé, ou il est raisonnable de croire qu'un tel refus sera opposé.

**Ordonnance en cas de refus**

**(5)** Dans la mesure où un refus de pénétrer dans une maison d'habitation a été opposé ou pourrait l'être et où des registres ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'application ou l'exécution de la présente loi peut, à la fois :

**a)** ordonner à l'occupant de la maison d'habitation de permettre à une personne d'avoir raisonnablement accès à tous registres ou biens qui y sont gardés ou devraient l'être;

**b)** rendre toute autre ordonnance indiquée en l'espèce pour l'application de la présente loi.

**Définition de *maison d'habitation***

**(6)** Au présent article, ***maison d'habitation*** s'entend de tout ou partie d'un bâtiment ou d'une construction tenu ou occupé comme résidence permanente ou temporaire, y compris :

**a)** un bâtiment qui se trouve dans la même enceinte qu'une maison d'habitation et qui y est relié par une baie de porte ou par un passage couvert et clos;

**b)** une unité conçue pour être mobile et pour être utilisée comme résidence permanente ou temporaire et qui est ainsi utilisée.

**Ordonnance d'exécution**

**102 (1)** Sur demande du ministre, un juge peut, malgré l'article 97, ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les registres que le ministre cherche à obtenir en vertu des articles 66 ou 101 s'il est convaincu que la personne n'a pas fourni l'accès, l'aide, les renseignements ou les registres bien qu'elle en soit tenue par les articles 66 ou 101.

**Avis**

**(2)** La demande n'est entendue qu'une fois écoulés cinq jours francs après signification d'un avis de la demande à

which the notice of application is served on the person against which the order is sought.

**Judge may impose conditions**

**(3)** A judge who makes an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

**Contempt of court**

**(4)** If a person fails or refuses to comply with an order under subsection (1), a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

**Appeal**

**(5)** An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

**Time period not to count**

**(6)** If an application is commenced by the Minister under subsection (1) to order a person to provide any access, assistance, information, or record, the period between the day on which the person files a notice of appearance, or otherwise opposes the application, and the day on which the application is finally disposed of is not to be counted in the computation of the period within which, under subsection 70(1), an assessment may be made.

**Search warrants**

**103 (1)** A judge may, on *ex parte* application by the Minister, issue a warrant authorizing any person named in the warrant to enter and search any building, receptacle or place for any record or thing that may afford evidence of the commission of an offence under this Act and to seize the record or thing and, as soon as is practicable, bring it before, or make a report in respect of it to, the judge or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

**Evidence on oath**

**(2)** An application under subsection (1) must be supported by information on oath establishing the facts on which the application is based.

la personne à l'égard de laquelle l'ordonnance est demandée.

**Conditions**

**(3)** Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.

**Outrage**

**(4)** Quiconque refuse ou fait défaut de se conformer à l'ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.

**Appel**

**(5)** L'ordonnance est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet de suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

**Suspension du délai**

**(6)** Si la demande est déposée par le ministre pour qu'il soit ordonné à une personne de fournir tout accès, toute aide ou tous renseignements ou registres, le délai qui court entre le jour où la personne dépose un avis de comparution, ou conteste par ailleurs la demande, et le jour où il est définitivement statué sur la demande ne compte pas dans le calcul du délai dans lequel, en vertu du paragraphe 70(1), une cotisation peut être établie.

**Requête pour mandat de perquisition**

**103 (1)** Sur requête *ex parte* du ministre, un juge peut décerner un mandat qui autorise toute personne qui y est nommée à pénétrer dans tout bâtiment, contenant ou endroit et y perquisitionner pour y chercher des registres ou choses qui peuvent constituer des éléments de preuve de la perpétration d'une infraction à la présente loi, à saisir ces registres ou choses et, dès que matériellement possible, soit à les apporter au juge ou, en cas d'incapacité d'agir de celui-ci, à un autre juge du même tribunal, soit à lui en faire rapport, pour que le juge en dispose conformément au présent article.

**Preuve sous serment**

**(2)** La requête doit être appuyée par une dénonciation sous serment qui expose les faits au soutien de la requête.

**Issue of warrants**

**(3)** A judge may issue a warrant under subsection (1) if the judge is satisfied that there are reasonable grounds to believe that

**(a)** an offence under this Act has been committed;

**(b)** a record or thing that may afford evidence of the commission of the offence is likely to be found; and

**(c)** the building, receptacle or place specified in the application is likely to contain a record or thing referred to in paragraph (b).

**Contents of warrant**

**(4)** A warrant issued under subsection (1) must refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person that is alleged to have committed the offence, and it must be reasonably specific as to any record or thing to be searched for and seized.

**Seizure**

**(5)** Any person that executes a warrant issued under subsection (1) may seize, in addition to the record or thing referred to in that subsection, any other record or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and must, as soon as is practicable, bring the record or thing before, or make a report in respect of the record or thing to, the judge that issued the warrant or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

**Retention**

**(6)** Subject to subsection (7), if any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge must, unless the Minister waives retention, order that the record or thing be retained by the Minister and the Minister must take reasonable care to ensure that the record or thing is preserved until the conclusion of any investigation into the offence in relation to which it was seized or until it is required to be produced for the purposes of a criminal proceeding.

**Return of records or things seized**

**(7)** If any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge may, on the judge's own motion or on application by a person with an interest in the record or thing on three clear days notice

**Mandat décerné**

**(3)** Le juge saisi de la requête peut décerner le mandat s'il est convaincu qu'il existe des motifs raisonnables de croire ce qui suit :

**a)** une infraction prévue par la présente loi a été commise;

**b)** des registres ou choses qui peuvent constituer des éléments de preuve de la perpétration de l'infraction seront vraisemblablement trouvés;

**c)** le bâtiment, contenant ou l'endroit précisé dans la requête contient vraisemblablement des registres ou choses visés à l'alinéa b).

**Contenu du mandat**

**(4)** Le mandat doit renvoyer à l'infraction pour laquelle il est décerné, mentionner dans quel bâtiment, contenant ou endroit perquisitionner ainsi que fournir le nom de la personne accusée d'avoir commis l'infraction. Il doit donner suffisamment de précisions sur les registres ou choses à chercher et à saisir.

**Saisie**

**(5)** Quiconque exécute le mandat peut saisir, outre les registres ou choses mentionnés au paragraphe (1), tous autres registres ou choses qu'il croit, pour des motifs raisonnables, constituer des éléments de preuve de la perpétration d'une infraction à la présente loi. Il doit, dès que matériellement possible, soit apporter ces registres ou choses au juge qui a décerné le mandat ou, en cas d'incapacité d'agir de celui-ci, à un autre juge du même tribunal, soit lui en faire rapport, pour que le juge en dispose conformément au présent article.

**Rétention**

**(6)** Sous réserve du paragraphe (7), lorsque des registres ou choses saisis en vertu des paragraphes (1) ou (5) sont apportés à un juge ou qu'il en est fait rapport à un juge, ce juge ordonne que le ministre les retienne sauf si celui-ci y renonce. Le ministre qui retient des registres ou choses doit en prendre raisonnablement soin pour s'assurer de leur conservation jusqu'à la fin de toute enquête sur l'infraction en rapport avec laquelle les registres ou choses ont été saisis ou jusqu'à ce que leur production soit exigée pour une procédure criminelle.

**Restitution des registres ou choses saisis**

**(7)** Le juge à qui des registres ou choses saisis en vertu des paragraphes (1) ou (5) sont apportés ou à qui il en est fait rapport peut, d'office ou sur requête d'une personne ayant un droit sur ces registres ou choses avec avis au sous-procureur général du Canada trois jours francs

of application to the Deputy Attorney General of Canada, order that the record or thing be returned to the person from which the record or thing was seized or to the person that is otherwise legally entitled to the record or thing, if the judge is satisfied that the record or thing

**(a)** will not be required for an investigation or a criminal proceeding; or

**(b)** was not seized in accordance with the warrant or this section.

**Access and copies**

**(8)** A person from which any record or thing is seized under this section is entitled, at all reasonable times and subject to any reasonable conditions that may be imposed by the Minister, to inspect the record or thing and, in the case of a document, to obtain one copy of the record at the expense of the Minister.

**Definition of *foreign-based information or record***

**104 (1)** For the purposes of this section, ***foreign-based information or record*** means any information or record that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act.

**Requirement to provide foreign-based information**

**(2)** Despite any other provision of this Act, the Minister may, by notice served personally, sent by confirmed delivery service or sent electronically, require a person resident in Canada or a non-resident person that carries on business in Canada to provide any foreign-based information or record.

**Content of notice**

**(3)** A notice referred to in subsection (2) must set out

**(a)** a reasonable period of not less than 90 days for the provision of the information or record;

**(b)** a description of the information or record being sought; and

**(c)** the consequences under subsection (8) to the person of the failure to provide the information or record being sought within the period set out in the notice.

**Review by judge**

**(4)** If a person is served or sent a notice of a requirement under subsection (2), the person may, within 90 days after the day on which the notice was served or sent, apply to a judge for a review of the requirement.

avant qu'il y soit procédé, ordonner que ces registres ou choses soient restitués au saisi ou à la personne qui y a légalement droit par ailleurs, s'il est convaincu que ces registres ou choses :

**a)** soit ne seront pas nécessaires à une enquête ou à une procédure criminelle;

**b)** soit n'ont pas été saisis conformément au mandat ou au présent article.

**Accès aux registres et copies**

**(8)** La personne à qui des registres ou choses sont saisis en application du présent article a le droit, en tout temps raisonnable et aux conditions raisonnables que peut imposer le ministre, d'examiner ces registres ou choses et d'obtenir une copie unique des registres aux frais du ministre.

**Définition de *renseignement ou registre étranger***

**104 (1)** Au présent article, ***renseignement ou registre étranger*** s'entend d'un renseignement accessible, ou d'un registre situé, en dehors du Canada, qui peut être pris en compte pour l'application ou l'exécution de la présente loi.

**Présentation des renseignements étrangers**

**(2)** Malgré les autres dispositions de la présente loi, le ministre peut, par avis signifié à personne, envoyé par service de messagerie ou envoyé par voie électronique, mettre en demeure une personne résidant au Canada ou une personne n'y résidant pas mais y exploitant une entreprise de produire des renseignements ou registres étrangers.

**Contenu de l'avis**

**(3)** L'avis doit :

**a)** indiquer le délai raisonnable, d'au moins quatre-vingt-dix jours, dans lequel les renseignements ou registres étrangers doivent être produits;

**b)** décrire les renseignements ou registres étrangers recherchés;

**c)** préciser les conséquences du non-respect de la mise en demeure prévues au paragraphe (8).

**Révision par un juge**

**(4)** La personne à qui l'avis est signifié ou envoyé peut, dans les quatre-vingt-dix jours suivant la date de signification ou d'envoi, contester la mise en demeure par requête à un juge.

**Powers on review**

**(5)** On hearing an application under subsection (4) in respect of a requirement, a judge may

**(a)** confirm the requirement;

**(b)** vary the requirement if the judge is satisfied that it is appropriate to do so in the circumstances; or

**(c)** set aside the requirement if the judge is satisfied that it is unreasonable.

**Pouvoir de révision**

**(5)** À l'audition de la requête, le juge peut confirmer la mise en demeure, la modifier de la façon qu'il estime indiquée dans les circonstances ou la déclarer sans effet s'il est convaincu qu'elle est déraisonnable.

**Related person**

**(6)** For the purposes of subsection (5), a requirement to provide information or a record is not to be considered unreasonable because the information or record is under the control of, or available to, a non-resident person that is not controlled by the person on which the notice of the requirement under subsection (2) is served, or to which that notice is sent, if that person is related to the non-resident person.

**Personne liée**

**(6)** Pour l'application du paragraphe (5), la mise en demeure de produire des renseignements ou registres étrangers qui sont accessibles à une personne non résidante ou situés chez une personne non résidante qui n'est pas contrôlée par la personne à qui l'avis est signifié ou envoyé, ou qui sont sous la garde de cette personne non résidante, n'est pas de ce seul fait déraisonnable si les deux personnes sont liées.

**Time during consideration not to count**

**(7)** The period between the day on which an application for review of a requirement is made under subsection (4) and the day on which the review is decided is not to be counted in the computation of

**(a)** the period set out in the notice of the requirement; and

**(b)** the period within which an assessment may be made under section 70.

**Suspension du délai**

**(7)** Le délai qui court entre le jour où une requête est présentée en vertu du paragraphe (4) et le jour où il est décidé de la requête ne compte pas dans le calcul :

**a)** du délai indiqué dans l'avis correspondant à la mise en demeure qui a donné lieu à la requête;

**b)** du délai dans lequel une cotisation peut être établie en vertu de l'article 70.

**Consequence of failure**

**(8)** If a person fails to comply substantially with a notice served or sent under subsection (2) and if the requirement is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act must, on motion of the Minister, prohibit the introduction by that person (or by another constituent entity of a consolidated group of which the person is, at any time between the time the notice was served or sent under subsection (2) and the time the motion is heard, a constituent entity) of any foreign-based information or record covered by that notice.

**Conséquence du défaut**

**(8)** Tout tribunal saisi d'une affaire civile portant sur l'application ou l'exécution de la présente loi doit, sur requête du ministre, refuser le dépôt en preuve par une personne (ou par une autre entité constitutive d'un groupe consolidé à l'égard duquel la personne est une entité constitutive à un moment donné entre le moment où une mise en demeure est signifiée ou envoyée en application du paragraphe (2) et le moment où la requête est entendue) de tout renseignement ou registre étranger visé par la mise en demeure qui n'est pas déclarée sans effet en application du paragraphe (5) dans le cas où la personne ne produit pas la totalité ou la presque totalité des renseignements et registres étrangers visés par la mise en demeure.

**Inquiry**

**105 (1)** The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an official of the Agency, to make any inquiry that the Minister may deem

**Enquête**

**105 (1)** Le ministre peut, pour l'application et l'exécution de la présente loi, autoriser une personne, qu'il s'agisse ou non d'un fonctionnaire de l'Agence, à faire toute enquête que celui-ci estime nécessaire sur quoi que

necessary with reference to anything relating to the administration or enforcement of this Act.

**Appointment of hearing officer**

**(2)** If the Minister, under subsection (1), authorizes a person to make an inquiry, the Minister must, without delay, apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

**Powers of hearing officer**

**(3)** For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation to the inquiry has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.

**When powers to be exercised**

**(4)** A hearing officer appointed under subsection (2) in relation to an inquiry must exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to any persons that the person authorized to make the inquiry considers appropriate for the conduct of the inquiry. However, the hearing officer is not to exercise the power to punish any person unless, on application by the hearing officer, a judge, including a judge of a county court, certifies that the power may be exercised in the matter disclosed in the application and the hearing officer has given to the person in respect of whom the power is proposed to be exercised 24 hours notice of the hearing of the application, or any shorter notice that the judge considers reasonable.

**Rights of witnesses**

**(5)** Any person that gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence.

**Rights of person investigated**

**(6)** Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2), on application by the Minister or a person giving evidence, orders otherwise in relation to all or any part of the inquiry on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

ce soit qui se rapporte à l'application et à l'exécution de la présente loi.

**Nomination d'un président d'enquête**

**(2)** Le ministre qui autorise une personne à faire une enquête doit, sans délai, demander à la Cour canadienne de l'impôt une ordonnance nommant le président d'enquête.

**Pouvoirs du président d'enquête**

**(3)** Pour les besoins de l'enquête, le président d'enquête a tous les pouvoirs conférés à un commissaire par les articles 4 et 5 de la *Loi sur les enquêtes* et ceux qui sont susceptibles de l'être par l'article 11 de cette loi.

**Exercice des pouvoirs du président d'enquête**

**(4)** Le président d'enquête exerce les pouvoirs conférés à un commissaire par l'article 4 de la *Loi sur les enquêtes* à l'égard des personnes que la personne autorisée à faire enquête considère comme appropriées pour la conduite de celle-ci. Toutefois, le président d'enquête ne peut exercer le pouvoir de punir une personne que si, à la requête de celui-ci, un juge, y compris un juge de comté, atteste que ce pouvoir peut être exercé dans l'affaire exposée dans la requête et que le président d'enquête donne à la personne à l'égard de laquelle il est proposé d'exercer ce pouvoir un avis de l'audition de la requête 24 heures avant ou dans le délai plus court que le juge estime raisonnable.

**Droits des témoins**

**(5)** Le témoin à l'enquête a le droit d'être représenté par avocat et, sur demande faite au ministre par le témoin, de recevoir la transcription de sa déposition.

**Droits des personnes visées par une enquête**

**(6)** Toute personne dont les affaires donnent lieu à l'enquête a le droit d'être présente et d'être représentée par avocat tout au long de l'enquête. Sur demande du ministre ou d'un témoin, le président d'enquête peut en décider autrement pour tout ou partie de l'enquête, pour le motif que la présence de cette personne et de son avocat, ou de l'un ou l'autre, nuirait à la bonne conduite de l'enquête.

### Copies

**106** If any record is seized, inspected, audited, examined or provided under any of sections 66, 101 to 103 and 105, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any official of the Agency may make or cause to be made one or more copies of it and, in the case of an electronic record, make or cause to be made a print-out of the electronic record, and any copy or print-out of the record purporting to be certified by the Minister or an authorized person to be a copy or print-out made under this section is evidence of the nature and content of the original record and has the same probative force as the original record would have if it were proven in the ordinary way.

### Compliance

**107** A person must, unless the person is unable to do so, do everything the person is required to do under any of sections 66, 101 to 104 and 106 and no person is to, physically or otherwise, do or attempt to do any of the following:

**(a)** interfere with, hinder or molest any official doing anything the official is authorized to do under this Act; and

**(b)** prevent any official from doing anything the official is authorized to do under this Act.

## DIVISION O

# Confidentiality of Information

### Definitions

**108 (1)** The following definitions apply in this section.

***authorized person*** means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of His Majesty in right of Canada to assist in carrying out the provisions of this Act. (*personne autorisée*)

***confidential information*** means information of any kind and in any form that relates to one or more persons and that is

**(a)** obtained by or on behalf of the Minister for the purposes of this Act; or

**(b)** prepared from information referred to in paragraph (a).

### Copies

**106** Lorsque, en vertu de l'un des articles 66, 101 à 103 et 105, des registres font l'objet d'une opération de saisie, d'inspection, de vérification ou d'examen ou sont produits, la personne qui effectue cette opération ou auprès de qui est faite cette production ou tout fonctionnaire de l'Agence peut en faire ou en faire faire des copies et, s'il s'agit de registres électroniques, les imprimer ou les faire imprimer. Les registres présentés comme registres que le ministre ou une personne autorisée atteste être des copies des registres, ou des imprimés de registres électroniques, faits conformément au présent article font preuve de la nature et du contenu des registres originaux et ont la même force probante qu'auraient ceux-ci si leur authenticité était prouvée de la façon usuelle.

### Observation

**107** Quiconque est tenu par l'un des articles 66, 101 à 104 et 106 de faire quelque chose doit le faire, sauf impossibilité. Nul ne peut, physiquement ou autrement, entraver, rudoyer ou contrecarrer, ou tenter d'entraver, de rudoyer ou de contrecarrer, un fonctionnaire qui fait une chose qu'il est autorisé à faire en application de la présente loi, ni empêcher ou tenter d'empêcher un fonctionnaire de faire une telle chose.

## SECTION O

# Renseignements confidentiels

### Définitions

**108 (1)** Les définitions qui suivent s'appliquent au présent article.

***cour d'appel*** S'entend au sens de l'article 2 du *Code criminel*. (*court of appeal*)

***personne autorisée*** Personne qui est ou a été engagée ou employée par Sa Majesté du chef du Canada, ou en son nom, pour aider à l'application des dispositions de la présente loi. (*authorized person*)

***renseignement confidentiel*** Renseignement de toute nature et sous toute forme concernant une ou plusieurs personnes et qui soit est obtenu par le ministre ou en son nom pour l'application de la présente loi, soit est tiré d'un renseignement ainsi obtenu. Est exclu de la présente définition le renseignement qui ne révèle pas, même indirectement, l'identité de la personne en cause. (*confidential information*)

It does not include information that does not directly or indirectly reveal the identity of the person to whom it relates. (*renseignement confidentiel*)

***court of appeal*** has the same meaning as in section 2 of the *Criminal Code*. (*cour d'appel*)

**Provision of confidential information**

**(2)** Except as authorized under this section, an official must not knowingly

**(a)** provide, or allow to be provided, to any person any confidential information;

**(b)** allow any person to have access to any confidential information; or

**(c)** use any confidential information other than in the course of the administration or enforcement of this Act.

**Confidential information evidence not compellable**

**(3)** Despite any other Act of Parliament or other law, no official is required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

**Communications — proceedings**

**(4)** Subsections (2) and (3) do not apply in respect of

**(a)** criminal proceedings, by way of either indictment or summary conviction, that have been commenced by the laying of an information or the preferring of an indictment under an Act of Parliament;

**(b)** any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the payment of a tax or duty, before a court of record, including a court of record in a jurisdiction outside Canada; or

**(c)** any legal proceedings under an international agreement relating to trade before

**(i)** a court of record, including a court of record in a jurisdiction outside Canada,

**(ii)** an international organization, or

**(iii)** a dispute settlement panel or an appellate body created under an international agreement relating to trade.

**Communication de renseignements**

**(2)** Sauf autorisation prévue au présent article, il est interdit à un fonctionnaire :

**a)** de fournir sciemment à quiconque tout renseignement confidentiel ou d'en permettre sciemment la fourniture;

**b)** de permettre sciemment à quiconque d'avoir accès à tout renseignement confidentiel;

**c)** d'utiliser sciemment tout renseignement confidentiel en dehors du cadre de l'application ou de l'exécution de la présente loi.

**Communication de renseignements dans le cadre d'une instance**

**(3)** Malgré toute autre loi fédérale et toute règle de droit, nul fonctionnaire ne peut être requis, dans le cadre d'une procédure judiciaire, de témoigner ou de produire quoi que ce soit relativement à un renseignement confidentiel.

**Communication**

**(4)** Les paragraphes (2) et (3) ne s'appliquent :

**a)** ni aux poursuites criminelles, sur déclaration de culpabilité par procédure sommaire ou sur acte d'accusation, engagées par le dépôt d'une dénonciation ou d'un acte d'accusation, en vertu d'une loi fédérale;

**b)** ni aux procédures judiciaires ayant trait à l'application ou à l'exécution de la présente loi, du *Régime de pensions du Canada*, de la *Loi sur l'assurance-emploi* ou de toute autre loi fédérale ou provinciale qui prévoit le paiement d'une taxe ou d'un droit, engagées devant une cour d'archives, notamment une cour d'archives hors du ressort canadien;

**c)** ni aux instances engagées, au titre d'un accord commercial international, devant :

**(i)** une cour d'archives, notamment une cour d'archives hors du ressort canadien,

**(ii)** une organisation internationale,

**(iii)** un organe de règlement de différends ou une juridiction d'appel constituée sous le régime d'un accord commercial international.

**Authorized provision of confidential information**

**(5)** The Minister may provide appropriate persons with any confidential information that may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual.

**Disclosure of confidential information**

**(6)** An official may

**(a)** provide to a person any confidential information that may reasonably be regarded as necessary for the purpose of

**(i)** the administration or enforcement of this Act, solely for that purpose, or

**(ii)** determining any liability or obligation of the person or any refund or other payment to which the person is or may become entitled under this Act;

**(b)** provide, allow to be provided, or allow inspection of or access to any confidential information to or by

**(i)** any person, or any person within a class of persons, that the Minister may authorize, subject to any conditions that the Minister may specify, or

**(ii)** any person otherwise legally entitled to the information because of an Act of Parliament, solely for the purposes for which that person is entitled to the information;

**(c)** provide confidential information

**(i)** to an official of the Department of Finance solely for the purposes of the administration of a federal-provincial agreement made under the *Federal-Provincial Fiscal Arrangements Act*,

**(ii)** to an official solely for the purpose of the formulation, evaluation or implementation of a fiscal or trade policy or for the purposes of the administration or enforcement of any Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or an international agreement relating to trade,

**(iii)** to an official solely for the purposes of the negotiation or implementation of an international agreement relating to trade, a tax treaty or an agreement for the exchange of information for tax purposes,

**(iv)** to an official as to the name, address, occupation, size or type of business of a person, solely for

**Personnes en danger**

**(5)** Le ministre peut fournir, uniquement à une fin reliée à la vie, à la santé ou à la sécurité d'un particulier, aux personnes compétentes tout renseignement confidentiel qui peut raisonnablement être considéré comme nécessaire.

**Communication d'un renseignement confidentiel**

**(6)** Un fonctionnaire peut :

**a)** fournir à toute personne tout renseignement confidentiel qu'il est raisonnable de considérer comme nécessaire à l'application ou à l'exécution de la présente loi, mais uniquement à cette fin, ou à la détermination de toute somme dont la personne est redevable ou du montant de tout remboursement auquel elle a droit ou pourrait avoir droit en vertu de la présente loi;

**b)** d'une part, fournir ou permettre que soit fourni tout renseignement confidentiel à toute personne que le ministre autorise, ou qui fait partie d'une catégorie de personnes que le ministre autorise, aux conditions précisées par celui-ci, ou à toute personne qui y a par ailleurs légalement droit par l'effet d'une loi fédérale et, d'autre part, lui en permettre l'examen ou l'accès, mais uniquement aux fins auxquelles elle y a droit;

**c)** fournir tout renseignement confidentiel :

**(i)** à tout fonctionnaire du ministère des Finances, mais uniquement en vue de l'administration de tout accord fédéral-provincial conclu au titre de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*,

**(ii)** à tout fonctionnaire, mais uniquement en vue de la formulation, de l'évaluation et de la mise en œuvre de toute politique fiscale ou commerciale ou en vue de l'exécution ou du contrôle d'application de toute loi fédérale ou provinciale qui prévoit l'imposition ou la perception d'un impôt, d'une taxe ou d'un droit ou de tout accord commercial international,

**(iii)** à tout fonctionnaire, mais uniquement en vue de la négociation et de la mise en œuvre de tout accord commercial international, de toute convention fiscale ou de tout accord sur l'échange de renseignements à des fins fiscales,

**(iv)** à tout fonctionnaire, quant aux nom, adresse et profession d'une personne et à la taille et au genre de son entreprise, mais uniquement en vue de permettre au ministère ou à l'organisme de recueillir des données statistiques pour la recherche et l'analyse,

the purposes of enabling that department or agency to obtain statistical data for research and analysis,

**(v)** to an official solely for the purposes of setting off, against any sum of money that may be payable by His Majesty in right of Canada, a debt due to

**(A)** His Majesty in right of Canada, or

**(B)** His Majesty in right of a province on account of taxes payable to the province if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province, or

**(vi)** to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;

**(d)** provide confidential information to an official or any person employed by or representing the government of a foreign state, an international organization established by the governments of states, a community of states, or an institution of any such government or organization, in accordance with an international convention, agreement or other written arrangement relating to trade between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement;

**(e)** provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a *listed international agreement* or in a *tax treaty* (as those terms are defined in subsection 248(1) of the *Income Tax Act*);

**(f)** provide confidential information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;

**(g)** use confidential information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates;

**(h)** use, or provide to any person, confidential information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by His Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of His Majesty in right of Canada to assist in the administration or enforcement of this Act, to the extent that the information is relevant for that purpose;

**(v)** à tout fonctionnaire, mais uniquement en vue de procéder, par voie de compensation, à la retenue, sur toute somme due par Sa Majesté du chef du Canada, de toute somme correspondant à une créance :

**(A)** soit de Sa Majesté du chef du Canada,

**(B)** soit de Sa Majesté du chef d'une province s'il s'agit de taxes ou d'impôts provinciaux visés par un accord entre le Canada et la province en vertu duquel le Canada est autorisé à percevoir les impôts ou taxes à verser à la province,

**(vi)** à tout fonctionnaire, mais uniquement pour l'application de l'article 7.1 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*;

**d)** fournir tout renseignement confidentiel à tout fonctionnaire, à tout employé ou à tout représentant du gouvernement d'un État étranger, d'une organisation internationale créée par les gouvernements de divers États, d'une communauté internationale ou d'une institution d'un tel gouvernement ou d'une telle organisation, conformément à une convention, une entente ou un autre accord commercial international écrit conclu entre le gouvernement du Canada ou l'une de ses institutions et le gouvernement de l'État étranger, l'organisation, la communauté ou l'institution, aux seules fins qui y sont énoncées;

**e)** fournir tout renseignement confidentiel, ou en permettre l'examen ou l'accès, mais uniquement pour l'application d'une disposition figurant dans une *convention fiscale* ou dans un *accord international désigné* (au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu*);

**f)** fournir tout renseignement confidentiel, mais uniquement pour l'application des articles 23 à 25 de la *Loi sur la gestion des finances publiques*;

**g)** utiliser tout renseignement confidentiel en vue de compiler des renseignements sous une forme qui ne révèle pas, même indirectement, l'identité de la personne en cause;

**h)** utiliser ou fournir tout renseignement confidentiel, mais uniquement à une fin liée à la surveillance ou à l'évaluation, par Sa Majesté du chef du Canada, d'une personne autorisée ou liée à des mesures disciplinaires prises par elle à l'endroit de cette personne relativement à une période au cours de laquelle celle-ci était soit employée par elle, soit engagée par elle ou en son nom pour aider à l'exécution ou au contrôle

**(i)** provide access to records of confidential information to the Librarian and Archivist of Canada or a person acting on behalf of or under the direction of the Librarian and Archivist, solely for the purposes of section 12 of the *Library and Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 13 of that Act;

**(j)** use confidential information relating to a person to provide information to that person;

**(k)** provide confidential information to a *police officer*, as defined in subsection 462.48(17) of the *Criminal Code*, solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, if

**(i)** that information can reasonably be regarded as being relevant for the purpose of ascertaining the circumstances in which an offence under the *Criminal Code* may have been committed, or the identity of the person or persons who may have committed an offence, with respect to an official, or with respect to any person related to that official,

**(ii)** the official was or is engaged in the administration or enforcement of this Act, and

**(iii)** the offence can reasonably be considered to be related to that administration or enforcement; and

**(l)** provide information to a law enforcement officer of an appropriate police organization in the circumstances described in subsection 211(6.4) of the *Excise Act, 2001*.

d'application de la présente loi, dans la mesure où le renseignement a rapport à cette fin;

**i)** donner accès à des registres renfermant des renseignements confidentiels au bibliothécaire et à l'archiviste du Canada ou à toute personne agissant en son nom ou sur son ordre, mais uniquement pour l'application de l'article 12 de la *Loi sur la Bibliothèque et les Archives du Canada*, et transférer de tels registres sous la garde et la responsabilité de ces personnes, mais uniquement pour l'application de l'article 13 de cette loi;

**j)** utiliser tout renseignement confidentiel concernant une personne en vue de lui fournir un renseignement;

**k)** fournir tout renseignement confidentiel à tout *policier*, au sens du paragraphe 462.48(17) du *Code criminel*, mais uniquement en vue de déterminer si une infraction visée à cette loi a été commise ou en vue du dépôt d'une dénonciation ou d'un acte d'accusation, si, à la fois :

**(i)** il est raisonnable de considérer que le renseignement est nécessaire pour confirmer les circonstances dans lesquelles l'infraction au *Code criminel* peut avoir été commise, ou l'identité de la ou des personnes pouvant avoir commis l'infraction, à l'égard d'un fonctionnaire ou de toute personne qui lui est liée,

**(ii)** le fonctionnaire est ou était chargé de l'application ou de l'exécution de la présente loi,

**(iii)** il est raisonnable de considérer que l'infraction est liée à cette application ou cette exécution;

**l)** fournir des renseignements à un agent d'exécution de la loi d'une organisation policière pertinente dans les circonstances visées au paragraphe 211(6.4) de la *Loi de 2001 sur l'accise*.

**Measures to prevent unauthorized use or disclosure**

**(7)** The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order any measures that are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including

**(a)** holding a hearing *in camera*;

**(b)** banning the publication of the information;

**(c)** concealing the identity of the person to whom the information relates; and

**Prévention de l'utilisation non autorisée**

**(7)** La personne qui préside une instance concernant la surveillance ou l'évaluation d'une personne autorisée ou des mesures disciplinaires prises à son endroit peut ordonner la mise en œuvre de mesures nécessaires pour éviter qu'un renseignement confidentiel soit utilisé ou fourni à toute fin étrangère à la procédure, notamment :

**a)** la tenue d'une audience à huis clos;

**b)** la non-publication du renseignement;

**c)** la non-divulgation de l'identité de la personne en cause;

**(d)** sealing the records of the proceeding.

**Disclosure to person or on consent**

**(8)** An official may provide confidential information relating to a person

**(a)** to that person; and

**(b)** with the consent of that person, to any other person.

**Appeal from order or direction**

**(9)** An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed without delay by the Minister or by the person against whom the order or direction is made to

**(a)** the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

**(b)** the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

**Disposition of appeal**

**(10)** The court to which an appeal is taken under subsection (9) may allow the appeal and quash the order or direction appealed from or dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts apply, with such modifications as the circumstances require, to an appeal instituted under that subsection.

**Stay**

**(11)** An appeal instituted under subsection (9) stays the operation of the order or direction appealed from until judgment is pronounced.

## DIVISION P

# Collection

**Definitions**

**109 (1)** The following definitions apply in this section.

**d)** la mise sous scellé du procès-verbal des délibérations.

**Divulgation d'un renseignement confidentiel**

**(8)** Un fonctionnaire peut fournir un renseignement confidentiel :

**a)** à la personne en cause;

**b)** à toute autre personne, avec le consentement de la personne en cause.

**Appel d'une ordonnance ou d'une directive**

**(9)** Le ministre ou la personne contre laquelle une ordonnance est rendue, ou à l'égard de laquelle une directive est donnée, dans le cadre ou à l'occasion d'une procédure judiciaire enjoignant à un fonctionnaire de témoigner, ou de produire quoi que ce soit, relativement à un renseignement confidentiel peut sans délai, par avis signifié aux parties intéressées, interjeter appel de l'ordonnance ou de la directive devant :

**a)** la cour d'appel de la province dans laquelle l'ordonnance est rendue ou la directive est donnée, s'il s'agit d'une ordonnance ou d'une directive émanant d'un tribunal établi en application des lois de la province, que ce tribunal exerce ou non une compétence conférée par les lois fédérales;

**b)** la Cour d'appel fédérale, s'il s'agit d'une ordonnance ou d'une directive émanant d'une cour ou d'un autre tribunal établi en application des lois fédérales.

**Décision d'appel**

**(10)** Le tribunal saisi de l'appel visé au paragraphe (9) peut soit accueillir celui-ci et annuler l'ordonnance ou la directive en cause, soit le rejeter; les règles de pratique et de procédure régissant les appels devant les tribunaux judiciaires s'appliquent à l'appel avec les adaptations nécessaires.

**Sursis**

**(11)** L'application de l'ordonnance ou de la directive objet de l'appel est différée jusqu'au prononcé du jugement.

## SECTION P

# Recouvrement

**Définitions**

**109 (1)** Les définitions qui suivent s'appliquent au présent article.

***action*** means an action to collect a tax debt of a person and includes a proceeding in a court and anything done by the Minister under any of sections 112 to 117. (*action*)

***legal representative*** of a person means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other similar person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with any property, business, commercial activity or estate or succession that belongs or belonged to, or that is or was held for the benefit of, the person or the person's estate or succession. (*représentant légal*)

***tax debt*** means any amount payable by a person under this Act. (*dette fiscale*)

***action*** Toute action en recouvrement d'une dette fiscale d'une personne, y compris les procédures judiciaires et toute mesure prise par le ministre en vertu de l'un des articles 112 à 117. (*action*)

***dette fiscale*** Toute somme payable par une personne en application de la présente loi. (*tax debt*)

***représentant légal*** Syndic de faillite, cessionnaire, liquidateur, curateur, séquestre de tout genre, fiduciaire, héritier, administrateur du bien d'autrui, exécuteur testamentaire, liquidateur de succession, curateur ou autre personne semblable, qui administre, liquide ou contrôle, en qualité de représentant ou de fiduciaire, les biens, les affaires, les activités commerciales ou les actifs qui appartiennent ou appartenaient à une personne ou à sa succession, ou qui sont ou étaient détenus pour leur compte, ou qui, en cette qualité, s'en occupe de toute autre façon. (*legal representative*)

**Debts to His Majesty**

**(2)** A tax debt is a debt due to His Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act.

**Créances de Sa Majesté**

**(2)** Toute dette fiscale est une créance de Sa Majesté du chef du Canada et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente loi.

**Court proceedings**

**(3)** The Minister may not commence a proceeding in a court to collect a tax debt of a person in respect of an amount that may be assessed under this Act unless when the proceeding is commenced the person has been assessed for that amount.

**Procédures judiciaires**

**(3)** Une procédure judiciaire en vue du recouvrement de la dette fiscale d'une personne à l'égard d'une somme qui peut faire l'objet d'une cotisation en application de la présente loi ne peut être intentée par le ministre que si, au moment où la procédure est intentée, la personne a fait l'objet d'une cotisation pour cette somme.

**No actions after limitation period**

**(4)** The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

**Prescription**

**(4)** Une action en recouvrement d'une dette fiscale ne peut être entreprise par le ministre après l'expiration du délai de prescription pour le recouvrement de la dette fiscale.

**Limitation period**

**(5)** The limitation period for the collection of a tax debt of a person

**(a)** begins

**(i)** if a notice of assessment in respect of the tax debt, or a notice referred to in subsection 118(1) in respect of the tax debt, is sent to or served on the person, on the day that is 90 days after the day on which the last one of those notices is sent or served, and

**(ii)** if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served, on the

**Délai de prescription**

**(5)** Le délai de prescription pour le recouvrement d'une dette fiscale d'une personne :

**a)** commence à courir :

**(i)** si un avis de cotisation, ou un avis visé au paragraphe 118(1), concernant la dette fiscale est envoyé ou signifié à la personne, quatre-vingt-dix jours suivant le dernier en date des jours où l'un de ces avis est envoyé ou signifié,

**(ii)** si aucun des avis visés au sous-alinéa (i) n'a été envoyé ou signifié, le premier jour où le ministre

earliest day on which the Minister can commence an action to collect that tax debt, and

**(b)** ends, subject to subsection (9), on the day that is 10 years after the day on which it begins.

**Limitation period restarted**

**(6)** The limitation period referred to in subsection (5) for the collection of a tax debt of a person restarts (and ends, subject to subsection (9), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which

**(a)** the person acknowledges the tax debt in accordance with subsection (7);

**(b)** all or part of the tax debt is reduced by the application of a refund under section 61;

**(c)** the Minister commences an action to collect the tax debt; or

**(d)** the Minister assesses, under this Act, another person in respect of the tax debt.

**Acknowledgement of tax debts**

**(7)** A person acknowledges a tax debt if the person

**(a)** promises, in writing, to pay the tax debt;

**(b)** makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

**(c)** makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

**Agent or mandatary or legal representative**

**(8)** For the purposes of this section, an acknowledgement made by a person's agent or mandatary or legal representative has the same effect as if it were made by the person.

**Extension of limitation period**

**(9)** In computing the day on which a limitation period ends, there must be added the number of days on which one or more of the following is the case:

**(a)** the Minister has postponed the collection action against the person under subsection (11) in respect of the tax debt;

peut entreprendre une action en recouvrement de la dette fiscale;

**b)** prend fin, sous réserve du paragraphe (9), dix ans après le jour de son début.

**Reprise du délai de prescription**

**(6)** Le délai de prescription recommence à courir — et prend fin, sous réserve du paragraphe (9), dix ans plus tard — le jour, antérieur à celui où il prendrait fin par ailleurs, où, selon le cas :

**a)** la personne reconnaît la dette fiscale conformément au paragraphe (7);

**b)** la dette fiscale, ou une partie de celle-ci, est réduite par un remboursement en vertu de l'article 61;

**c)** le ministre entreprend une action en recouvrement de la dette fiscale;

**d)** le ministre établit, en application de la présente loi, une cotisation à l'égard d'une autre personne relativement à la dette fiscale.

**Reconnaissance des dettes fiscales**

**(7)** Se reconnaît débitrice d'une dette fiscale la personne qui, selon le cas :

**a)** promet, par écrit, de régler la dette fiscale;

**b)** reconnaît la dette fiscale par écrit, que cette reconnaissance soit ou non rédigée en des termes qui permettent de déduire une promesse de règlement et renferment ou non un refus de payer;

**c)** fait un paiement au titre de la dette fiscale, y compris un prétendu paiement fait au moyen d'un titre négociable qui fait l'objet d'un refus de paiement.

**Mandataire ou représentant légal**

**(8)** Pour l'application du présent article, la reconnaissance faite par le mandataire ou le représentant légal d'une personne a la même valeur que si elle était faite par la personne.

**Prorogation du délai de prescription**

**(9)** Le nombre de jours où au moins un des faits suivants se vérifie prolonge d'autant la durée du délai de prescription :

**a)** le ministre a reporté, en vertu du paragraphe (11), les mesures de recouvrement concernant la dette fiscale;

**(b)** the Minister has accepted and holds security in lieu of payment of the tax debt;

**(c)** if the person was resident in Canada on the applicable day referred to in paragraph (5)(a) in respect of the tax debt, the person is non-resident;

**(d)** the Minister may not, because of any of subsections 110(2) to (5), take any of the actions referred to in subsection 110(1) in respect of the tax debt; and

**(e)** an action that the Minister may otherwise take in respect of the tax debt is restricted or not permitted under any provision of the *Bankruptcy and Insolvency Act*, of the *Companies' Creditors Arrangement Act* or of the *Farm Debt Mediation Act*.

**b)** le ministre a accepté et détient une garantie pour le paiement de la dette fiscale;

**c)** la personne, qui résidait au Canada à la date applicable visée à l'alinéa (5)a) relativement à la dette fiscale, est un non-résident;

**d)** en raison de l'un des paragraphes 110(2) à (5), le ministre n'est pas en mesure d'exercer les actions visées au paragraphe 110(1) relativement à la dette fiscale;

**e)** l'une des actions que le ministre peut exercer par ailleurs relativement à la dette fiscale est limitée ou interdite en vertu d'une disposition de la *Loi sur la faillite et l'insolvabilité*, de la *Loi sur les arrangements avec les créanciers des compagnies* ou de la *Loi sur la médiation en matière d'endettement agricole*.

**Assessment before collection**

**(10)** The Minister may not take any collection action under sections 112 to 117 in respect of any amount payable by a person that may be assessed under this Act, other than interest under section 56, unless the amount has been or may be assessed.

**Cotisation avant recouvrement**

**(10)** Le ministre ne peut, outre exiger des intérêts en vertu de l'article 56, prendre des mesures de recouvrement en vertu des articles 112 à 117 relativement à une somme susceptible de cotisation en application de la présente loi que si la somme a fait l'objet ou peut faire l'objet d'une cotisation.

**Postponement of collection**

**(11)** The Minister may, subject to any terms and conditions that the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person.

**Report des mesures de recouvrement**

**(11)** Sous réserve des modalités qu'il fixe, le ministre peut reporter les mesures de recouvrement concernant tout ou partie du montant d'une cotisation qui fait l'objet d'un litige entre une personne et lui.

**Interest on judgments**

**(12)** If a judgment is obtained for any amount payable under this Act, including by the registration of a certificate under section 112, the provisions of this Act under which interest is payable for a failure to pay an amount apply, with any modifications that the circumstances require, to the failure to pay the judgment debt and the interest is recoverable in the same manner as the judgment debt.

**Intérêts à la suite de jugements**

**(12)** Dans le cas où un jugement est obtenu pour une somme à payer en application de la présente loi, y compris l'enregistrement d'un certificat en vertu de l'article 112, les dispositions de la présente loi en application desquelles des intérêts sont payables pour défaut de paiement de la somme s'appliquent, avec les adaptations nécessaires, au défaut de paiement de la créance constatée par le jugement, et les intérêts sont recouvrables de la même manière que cette créance.

**Litigation costs**

**(13)** If an amount is payable by a person to His Majesty in right of Canada because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, sections 112 to 118 apply to the amount as if it were payable under this Act.

**Frais de justice**

**(13)** Dans le cas où une somme doit être payée par une personne à Sa Majesté du chef du Canada en exécution d'une ordonnance, d'un jugement ou d'une décision d'un tribunal concernant l'attribution des frais de justice relatifs à une question régie par la présente loi, les articles 112 à 118 s'appliquent à la somme comme si elle était payable en application de la présente loi.

**Collection restrictions**

**110 (1)** If a person is liable for the payment of an amount under this Act, the Minister must not, for the purpose of collecting the amount, take any of the following actions until the end of 90 days after the date of a notice of assessment issued under this Act in respect of the amount:

**(a)** commence legal proceedings in a court;

**(b)** certify the amount under section 112;

**(c)** require a person to make a payment under subsection 113(1);

**(d)** require an institution (within the meaning of subsection 113(2)) or a person to make a payment under subsection 113(2);

**(e)** require a person to turn over moneys under subsection 116(1); and

**(f)** give a notice, issue a certificate or make a direction under subsection 117(1).

**No action after service of notice of objection**

**(2)** If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions referred to in subsection (1) until the end of 90 days after the date of the notice to the person that the Minister has confirmed or varied the assessment.

**No action after appeal**

**(3)** If a person has appealed to the Tax Court of Canada from an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions referred to in subsection (1) before the earlier of the day on which a copy of the decision of the Court is mailed to the person and the day on which the person discontinues the appeal.

**No action pending determination**

**(4)** If a person has agreed under subsection 80(1) that a question should be determined by the Tax Court of Canada, or if a person is served with a copy of an application made under subsection 81(1) to that Court for the determination of a question, the Minister must not take any of the actions referred to in subsection (1) for the purpose of collecting that part of an amount assessed, the liability for payment of which could be affected by the

**Restrictions au recouvrement**

**110 (1)** Lorsqu'une personne est redevable d'une somme en application de la présente loi, le ministre, pour recouvrer la somme, ne peut, avant le lendemain du quatre-vingt-dixième jour suivant la date d'un avis de cotisation en vertu de la présente loi délivré relativement à la somme :

**a)** entamer une poursuite devant un tribunal;

**b)** attester la somme dans un certificat, en vertu de l'article 112;

**c)** obliger une personne à faire un paiement, en vertu du paragraphe 113(1);

**d)** obliger une institution (au sens du paragraphe 113(2)) ou une personne à faire un paiement, en vertu du paragraphe 113(2);

**e)** obliger une personne à verser des sommes, en vertu du paragraphe 116(1);

**f)** donner un avis, délivrer un certificat ou donner un ordre, en vertu du paragraphe 117(1).

**Signification d'un avis d'opposition**

**(2)** Lorsqu'une personne signifie un avis d'opposition à une cotisation pour une somme exigible en vertu de la présente loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées au paragraphe (1) avant le lendemain du quatre-vingt-dixième jour suivant la date de l'avis à la personne portant qu'il confirme ou modifie la cotisation.

**Appel devant la Cour canadienne de l'impôt**

**(3)** Lorsqu'une personne interjette appel auprès de la Cour canadienne de l'impôt d'une cotisation pour une somme exigible en application de la présente loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures mentionnées au paragraphe (1) avant la première en date des dates suivantes : la date d'envoi à la personne d'une copie de la décision de la Cour et la date où la personne se désiste de l'appel.

**Appel à la Cour canadienne de l'impôt**

**(4)** Lorsqu'une personne convient de faire statuer, en vertu du paragraphe 80(1), la Cour canadienne de l'impôt sur une question ou qu'une personne se voit signifier une copie d'une demande présentée en vertu du paragraphe 81(1) devant cette cour pour qu'elle statue sur une question, le ministre, pour recouvrer la partie du montant d'une cotisation dont la personne pourrait être redevable selon ce que la cour statuera, ne peut prendre aucune des

determination of the question, before the day on which the question is determined by the Court.

**Action after judgment**

**(5)** Despite any other provision of this section, if a person has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same, or substantially the same, as that raised in the objection or appeal of the person, the Minister may take any of the actions referred to in subsection (1) for the purpose of collecting the amount assessed, or a part of it, determined in a manner consistent with the judgment of the Court in the other action at any time after the Minister notifies the person in writing that the judgment has been given by the Court in the other action.

**Collection of large amounts**

**(6)** Despite subsections (1) to (5), if, at any time, the total of all amounts that a person has been assessed under this Act and that remain unpaid exceeds $1,000,000, the Minister may collect up to 50% of the total.

**Security**

**111 (1)** The Minister may, if the Minister considers it advisable, accept security in an amount and a form satisfactory to the Minister for the payment of any amount that is or may become payable under this Act.

**Surrender of excess security**

**(2)** If a person that has given security, or on whose behalf security has been given, under this section requests in writing that the Minister surrender the security or any part of it, the Minister must surrender the security to the extent that its value exceeds, at the time the request is received by the Minister, the amount that is sought to be secured.

**Additional security**

**(3)** The adequacy of security furnished by or on behalf of a person under subsection (1) is to be determined by the Minister, and the Minister may require additional security to be given or maintained from time to time by or on behalf of the person if the Minister determines that the security that has been given or maintained is no longer adequate.

mesures mentionnées au paragraphe (1) avant que la cour ne statue sur la question.

**Mesures postérieures à un jugement**

**(5)** Malgré les autres dispositions du présent article, lorsqu'une personne signifie, conformément à la présente loi, un avis d'opposition à une cotisation ou interjette appel à l'égard d'une cotisation auprès de la Cour canadienne de l'impôt et qu'elle convient par écrit avec le ministre de retarder la procédure d'opposition ou d'appel jusqu'à ce que la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada rende jugement dans une autre action qui soulève la même question, ou essentiellement la même, que celle soulevée dans l'opposition ou l'appel, le ministre peut prendre les mesures visées au paragraphe (1) pour recouvrer tout ou partie du montant de la cotisation établie de la façon envisagée par le jugement rendu dans cette autre action, à tout moment après qu'il a avisé la personne par écrit que le tribunal a rendu jugement dans l'autre action.

**Recouvrement de sommes importantes**

**(6)** Malgré les paragraphes (1) à (5), le ministre peut recouvrer jusqu'à 50 % du total des sommes visées par les cotisations établies à l'égard d'une personne en application de la présente loi si la partie impayée du total de ces sommes dépasse 1 000 000 $.

**Garanties**

**111 (1)** Le ministre peut, s'il le juge opportun, accepter des garanties dont le montant et la forme lui sont acceptables pour le paiement d'un montant qui est ou pourrait devenir payable en vertu de la présente loi.

**Remise d'une garantie**

**(2)** Sur demande écrite de la personne qui a donné une garantie, ou au nom de laquelle une garantie a été donnée, le ministre doit remettre tout ou partie de la garantie dans la mesure où la valeur de celle-ci dépasse, au moment où il reçoit la demande, la somme objet de la garantie.

**Garantie supplémentaire**

**(3)** Le ministre détermine la suffisance de la garantie fournie par une personne en application du paragraphe (1) ou en son nom, et il peut exiger qu'une garantie supplémentaire soit donnée ou maintenue de temps à autre par la personne ou en son nom lorsqu'il détermine que la garantie donnée ou maintenue ne suffit plus.

### Certificates

**112 (1)** Any amount payable by a person (in this section referred to as the "debtor") under this Act that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

### Registration in court

**(2)** On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor is to be registered in the Court and, when so registered, has the same effect, and all proceedings may be taken on the certificate as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to His Majesty in right of Canada and enforceable as such.

### Costs

**(3)** All reasonable costs and charges incurred or paid for the registration in the Federal Court of a certificate made under subsection (1), or in respect of any proceedings taken to collect the amount certified, are recoverable in the same manner as if they had been included in the amount certified in the certificate when it was registered.

### Charge on property

**(4)** A document issued by the Federal Court that is evidence of a registered certificate in respect of a debtor, a writ of that Court issued in accordance with the certificate or any notification of the document or writ (which document, writ or notification is in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in, or for civil law any right in, such property, held by the debtor, in the same manner as a document that is evidence of

**(a)** a judgment of the superior court of the province against a person for a debt owing by the person, or

**(b)** an amount payable or required to be remitted by a person in the province in respect of a debt owing to His Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

### Certificat

**112 (1)** Toute somme exigible d'une personne (appelée « débiteur » au présent article) en vertu de la présente loi qui n'a pas été payée selon les modalités et dans le délai prévus en application de la présente loi peut, par certificat du ministre, être déclarée exigible du débiteur.

### Enregistrement à la Cour fédérale

**(2)** Sur production à la Cour fédérale, le certificat fait en vertu du paragraphe (1) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette de la somme attestée dans le certificat, augmentée des intérêts courus comme le prévoit la présente loi jusqu'au jour du paiement, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Pour ce qui est de ces procédures, le certificat est réputé être un jugement exécutoire de la cour contre le débiteur pour une créance de Sa Majesté du chef du Canada.

### Frais et dépens

**(3)** Les frais et dépens raisonnables engagés ou payés pour l'enregistrement à la Cour fédérale d'un certificat, ou pour l'exécution des procédures de recouvrement de la somme qui y est attestée sont recouvrables de la même manière que s'ils avaient été inclus dans cette somme au moment de l'enregistrement du certificat.

### Charge sur un bien

**(4)** Tout document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur, tout bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (le document, le bref ou la notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge sur un bien du débiteur situé dans une province, ou un intérêt ou, pour l'application du droit civil, un droit sur un tel bien, de la même manière que peut l'être, au titre ou en application du droit provincial, un document faisant preuve :

**a)** soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;

**b)** soit d'une somme à payer ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

**Creation of charge**

**(5)** If a memorial has been filed, registered or otherwise recorded under subsection (4),

**(a)** a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in, or for civil law any right in, such property, held by the debtor, or

**(b)** such property, or interest or right in the property, is otherwise bound,

in the same manner and to the same extent as if the memorial were a document that is evidence of a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created is subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the day on which the memorial was filed, registered or otherwise recorded.

**Charge sur un bien**

**(5)** Une fois l'extrait produit, enregistré ou autrement inscrit en application du paragraphe (4), une sûreté, une priorité ou une autre charge grève un bien du débiteur situé dans la province, ou un intérêt ou, pour l'application du droit civil, un droit sur un tel bien, de la même manière et dans la même mesure que si l'extrait était un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b). Cette sûreté, priorité ou charge prend rang après toute autre sûreté, priorité ou charge à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont été prises avant la production, l'enregistrement ou toute autre inscription de l'extrait.

**Proceedings in respect of memorial**

**(6)** If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

**(a)** to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

**(i)** the filing, registration or other recording of the memorial, and

**(ii)** proceedings taken to collect the amount,

**(b)** to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

**(c)** to cancel or withdraw the memorial wholly or in respect of any of the property, or interests or rights, affected by the memorial, or

**(d)** to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, or interest or rights, affected by the memorial,

in the same manner and to the same extent as if the memorial were a document that is evidence of a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b). However, if in any such proceeding or as a condition precedent to any such

**Procédure engagée à la faveur d'un extrait**

**(6)** L'extrait produit, enregistré ou autrement inscrit dans une province en vertu du paragraphe (4) peut, de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b), faire l'objet dans la province de procédures visant notamment les mesures suivantes :

**a)** exiger le paiement de la somme attestée par l'extrait, des intérêts y afférents et des frais et dépens payés ou engagés en vue de la production, de l'enregistrement ou autre inscription de l'extrait ou en vue de l'exécution des procédures de recouvrement de la somme;

**b)** renouveler ou autrement prolonger l'effet de la production, de l'enregistrement ou autre inscription de l'extrait;

**c)** annuler ou retirer l'extrait dans son ensemble ou uniquement en ce qui concerne un ou plusieurs biens ou intérêts ou droits sur lesquels l'extrait a une incidence;

**d)** différer l'effet de la production, de l'enregistrement ou autre inscription de l'extrait en faveur d'un droit, d'une sûreté, d'une priorité ou d'une autre charge qui a été ou qui sera produit, enregistré ou autrement inscrit à l'égard d'un bien ou d'un intérêt ou d'un droit sur lequel l'extrait a une incidence.

Toutefois, dans le cas où la loi provinciale exige — soit dans le cadre de ces procédures, soit préalablement à leur exécution — l'obtention d'une ordonnance, d'une

proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a similar order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

**Presentation of documents**

**(7)** If

**(a)** a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding referred to in subsection (6), to any official in the land registry system, personal property or movable property registry system, or other registry system, of a province, or

**(b)** access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document must be accepted for filing, registration or other recording or the access must be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document that is evidence of a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a similar proceeding. However, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

**Prohibition — sale, etc., without consent**

**(8)** Despite any other law of Canada or law of a province, a sheriff or other person must not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property as a result of any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs. However, if that consent is subsequently given, any property that would have been affected by that process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien,

décision ou d'un consentement de la cour supérieure de la province ou d'un juge ou d'un fonctionnaire de celle-ci, la Cour fédérale ou un juge ou un fonctionnaire de celle-ci peut rendre une telle ordonnance ou décision ou donner un tel consentement. Cette ordonnance, cette décision ou ce consentement a alors le même effet dans le cadre des procédures que s'il était rendu ou donné par la cour supérieure de la province ou par un juge ou un fonctionnaire de celle-ci.

**Présentation des documents**

**(7)** L'extrait qui est présenté pour production, enregistrement ou autre inscription en vertu du paragraphe (4), ou un document concernant l'extrait qui est présenté pour production, enregistrement ou autre inscription dans le cadre des procédures mentionnées au paragraphe (6), à un agent d'un régime d'enregistrement foncier ou des droits sur des biens meubles ou personnels ou autres droits d'une province est accepté pour production, enregistrement ou autre inscription de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b) dans le cadre de procédures semblables. Pour ce qui est de la production, de l'enregistrement ou autre inscription de cet extrait ou ce document, l'accès à une personne, à un endroit ou à une chose situé dans une province est donné de la même manière et dans la même mesure que si l'extrait ou le document était un document semblable ainsi délivré ou établi. Si l'extrait ou le document est délivré par la Cour fédérale ou porte la signature ou fait l'objet d'un certificat d'un juge ou d'un fonctionnaire de cette cour, tout affidavit, toute déclaration ou tout autre élément de preuve qui doit, selon la loi provinciale, être fourni avec l'extrait ou le document ou l'accompagner dans le cadre des procédures est réputé avoir été ainsi fourni ou accompagner ainsi l'extrait ou le document.

**Interdiction — vente sans consentement**

**(8)** Malgré les autres lois fédérales et les lois provinciales, ni le shérif ni aucune autre personne ne peut, sans le consentement écrit du ministre, vendre un bien ou autrement en disposer ou publier un avis concernant la vente ou la disposition d'un bien ou autrement l'annoncer, par suite de l'émission d'un bref ou de la création d'une sûreté, d'une priorité ou d'une autre charge dans le cadre de procédures de recouvrement d'une somme attestée dans un certificat fait en application du paragraphe (1), des intérêts y afférents et des dépens et frais. Toutefois, si ce consentement est obtenu ultérieurement, tout bien sur lequel un tel bref ou une telle sûreté, priorité ou charge aurait une incidence si ce consentement

priority or binding interest was created, as the case may be, is to be bound, seized, attached, charged or otherwise affected as it would have been if that consent had been given at the time that process was issued or the charge, lien, priority or binding interest was created, as the case may be.

avait été obtenu au moment de l'émission du bref ou de la création de la sûreté, priorité ou charge, selon le cas, est saisi ou autrement grevé comme si le consentement avait été obtenu à ce moment.

**Completion of notices, etc.**

**(9)** If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person must complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information must be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

**Établissement des avis**

**(9)** Dans le cas où des renseignements qu'un shérif ou une autre personne doit indiquer dans un procès-verbal, un avis ou un document à établir à une fin quelconque ne peuvent, en raison du paragraphe (8), être ainsi indiqués sans le consentement écrit du ministre, le shérif ou l'autre personne doit établir le procès-verbal, l'avis ou le document en omettant les renseignements en question. Une fois le consentement du ministre obtenu, un autre procès-verbal, avis ou document indiquant tous les renseignements doit être établi à la même fin. S'il se conforme au présent paragraphe, le shérif ou l'autre personne est réputé se conformer à la loi, à la disposition réglementaire ou à la règle qui exige que les renseignements soient indiqués dans le procès-verbal, l'avis ou le document.

**Application for order**

**(10)** A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

**Demande d'ordonnance**

**(10)** S'il ne peut se conformer à une loi ou à une règle de pratique en raison des paragraphes (8) ou (9), le shérif ou l'autre personne est lié par toute ordonnance rendue, sur requête *ex parte* du ministre, par un juge de la Cour fédérale visant à donner effet à des procédures ou à une sûreté, une priorité ou une autre charge.

**Deemed security**

**(11)** If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

**(a)** to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

**(b)** to also be a claim referred to in paragraph 86(2)(a) of that Act.

**Présomption de garantie**

**(11)** La sûreté, la priorité ou l'autre charge créée selon le paragraphe (5) par la production, l'enregistrement ou autre inscription d'un extrait en application du paragraphe (4) qui est enregistrée en conformité avec le paragraphe 87(1) de la *Loi sur la faillite et l'insolvabilité* est réputée, à la fois :

**a)** être une réclamation garantie et, sous réserve du paragraphe 87(2) de cette loi, prendre rang comme réclamation garantie aux termes de cette loi;

**b)** être une réclamation visée à l'alinéa 86(2)a) de cette loi.

**Details in certificates and memorials**

**(12)** Despite any other law of Canada or a province, in any certificate made under subsection (1) in respect of a debtor, any memorial that is evidence of a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

**Contenu des certificats et extraits**

**(12)** Malgré les lois fédérales et provinciales, dans le certificat fait à l'égard d'un débiteur, dans l'extrait faisant preuve du contenu d'un tel certificat ou encore dans le bref ou document délivré en vue du recouvrement de la perception d'un montant attesté dans un tel certificat, il suffit, à toutes fins utiles :

**(a)** to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

**(b)** to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed by regulation applicable from time to time on amounts payable to the Receiver General for Canada, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period.

**a)** d'une part, d'indiquer, comme montant payable par le débiteur, le total des montants payables par celui-ci et non les montants distincts qui forment ce total;

**b)** d'autre part, d'indiquer de façon générale le taux d'intérêt applicable aux montants distincts qui forment le montant payable au receveur général du Canada comme étant des intérêts calculés au taux prévu par la réglementation applicable sur les montants payables au receveur général, sans détailler les taux d'intérêt applicables à chaque montant distinct ou pour toute période.

### Garnishment

**113 (1)** If the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person that is liable to pay an amount under this Act (in this section referred to as a "debtor"), the Minister may, by notice in writing, require the person to pay without delay, if the money is immediately payable, and in any other case, as and when the money becomes payable, the money otherwise payable to the debtor in whole or in part to the Receiver General for Canada on account of the debtor's liability under this Act.

### Garnishment of loans or advances

**(2)** Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

**(a)** a bank, credit union, trust company or other similar person (in this section referred to as an "institution") will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor that is indebted to the institution and that has granted security in respect of the indebtedness, or

**(b)** a person, other than an institution, will loan or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects

**(i)** is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

**(ii)** if that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by notice in writing, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General for Canada on account of the debtor's liability under this Act the money that would otherwise be so loaned, advanced or paid.

### Saisie-arrêt

**113 (1)** S'il sait ou soupçonne qu'une personne est, ou sera dans un délai d'un an, tenue de faire un paiement à une autre personne (appelée « débiteur » au présent article) qui elle-même est redevable d'une somme en application de la présente loi, le ministre peut exiger de cette personne, par avis écrit, que tout ou partie des sommes par ailleurs à payer au débiteur soient versées, sans délai si les sommes sont alors à payer, sinon, dès qu'elles le deviennent, au receveur général du Canada au titre de l'obligation du débiteur en application de la présente loi.

### Saisie-arrêt de prêts ou d'avances

**(2)** Sans que soit limitée la portée générale du paragraphe (1), le ministre peut, par avis écrit, obliger les institutions et personnes ci-après à verser au receveur général du Canada, au titre de l'obligation du débiteur en application de la présente loi, tout ou partie de la somme qui serait autrement prêtée, avancée ou payée au nom du débiteur, s'il sait ou soupçonne que, dans les quatre-vingt-dix jours, selon le cas :

**a)** une banque, une caisse de crédit, une compagnie de fiducie ou une personne semblable (appelée « institution » au présent article) prêtera ou avancera une somme au débiteur qui a une dette garantie envers elle, ou effectuera un paiement au nom d'un tel débiteur ou au titre d'un effet de commerce émis par un tel débiteur;

**b)** une personne autre qu'une institution prêtera ou avancera une somme à un débiteur, ou effectuera un paiement en son nom, dont le ministre sait ou soupçonne :

**(i)** qu'il est le salarié de cette personne, ou le fournisseur de biens ou de services à cette personne, ou qu'il l'a été ou le sera dans les quatre-vingt-dix jours,

**(ii)** si cette personne est une personne morale, qu'il a un lien de dépendance avec cette personne.

**Effect of receipt**

**(3)** A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

**Effect of requirement**

**(4)** If the Minister has, under this section, required a person to pay to the Receiver General for Canada on account of a debtor's liability under this Act money otherwise payable by the person to the debtor as interest, rent, remuneration, a dividend, an annuity or another periodic payment, the requirement applies to all such payments to be made by the person to the debtor until the liability under this Act is satisfied and the requirement operates to require payments to the Receiver General for Canada out of each such payment of any amount that is specified by the Minister in a notice in writing.

**Failure to comply**

**(5)** A person that fails to comply with a requirement under subsection (1) or (4) is liable to pay to His Majesty in right of Canada an amount equal to the amount that the person was required under that subsection to pay to the Receiver General for Canada.

**Other failures to comply**

**(6)** An institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to His Majesty in right of Canada an amount equal to the lesser of

**(a)** the total of money so loaned, advanced or paid, and

**(b)** the amount that the institution or person was required under that subsection to pay to the Receiver General for Canada.

**Assessment**

**(7)** The Minister may assess any person for any amount payable under this section by the person to the Receiver General for Canada and, if the Minister sends a notice of assessment, sections 55 and 67 to 82 apply with any modifications that the circumstances require.

**Time limit**

**(8)** An assessment of an amount payable under this section by a person to the Receiver General for Canada is not to be made more than four years after the person

**Récépissé du ministre**

**(3)** Le récépissé du ministre relatif aux sommes versées comme l'exige le présent article constitue une quittance valable et suffisante de l'obligation initiale jusqu'à concurrence du paiement.

**Étendue de l'obligation**

**(4)** L'obligation, imposée par le ministre, d'une personne de verser au receveur général du Canada, au titre d'une somme dont un débiteur est redevable en application de la présente loi, des sommes à payer par ailleurs par cette personne au débiteur à titre d'intérêts, de loyer, de rémunération, de dividende, de rente ou autre paiement périodique s'étend à tous les paiements analogues à être effectués par la personne au débiteur tant que la somme dont celui-ci est redevable n'est pas acquittée. De plus, l'obligation exige que des paiements soient versés au receveur général du Canada sur chacun de ces paiements analogues, selon la somme que le ministre établit dans un avis écrit.

**Défaut de se conformer**

**(5)** Toute personne qui ne se conforme pas aux paragraphes (1) ou (4) est redevable à Sa Majesté du chef du Canada d'une somme égale à celle qu'elle était tenue de verser au receveur général du Canada en application de ces paragraphes.

**Défaut de se conformer**

**(6)** Toute institution ou personne qui ne se conforme pas au paragraphe (2) est redevable à Sa Majesté du chef du Canada, à l'égard des sommes à prêter, à avancer ou à payer, d'une somme égale à la moins élevée des sommes suivantes :

**a)** le total des sommes ainsi prêtées, avancées ou payées;

**b)** la somme qu'elle était tenue de verser au receveur général du Canada en application de ce paragraphe.

**Cotisation**

**(7)** Le ministre peut établir une cotisation pour une somme qu'une personne est tenue de payer au receveur général du Canada en application du présent article. Les articles 55 et 67 à 82 s'appliquent, avec les adaptations nécessaires, dès l'envoi par le ministre de l'avis de cotisation.

**Délai**

**(8)** La cotisation ne peut être établie plus de quatre ans après le jour de la réception, par la personne, de l'avis du ministre exigeant le paiement de la somme.

receives the notice from the Minister requiring the payment.

**Effect of payment as required**

**(9)** If an amount that would otherwise have been advanced, loaned or paid to or on behalf of a debtor is paid by a person to the Receiver General for Canada in accordance with a notice from the Minister issued under this section, or with an assessment under subsection (7), the person is deemed for all purposes to have advanced, loaned or paid the amount to or on behalf of the debtor.

**Recovery by deduction or set-off**

**114** If a person is indebted to His Majesty in right of Canada under this Act, the Minister may require the retention by way of deduction or set-off of any amount that the Minister may specify out of any amount that may be or become payable to that person by His Majesty in right of Canada.

**Acquisition of debtor's property**

**115** For the purpose of collecting debts owed by a person to His Majesty in right of Canada under this Act, the Minister may purchase or otherwise acquire any interest in, or for civil law any right in, the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest or right so acquired in any manner that the Minister considers reasonable.

**Money seized from debtor**

**116 (1)** If the Minister has knowledge or suspects that a person is holding money that was seized by a police officer, in the course of administering or enforcing the criminal law of Canada, from another person that is liable to pay any amount under this Act (in this section referred to as the "debtor") and that is restorable to the debtor, the Minister may in writing require the person to turn over the money otherwise restorable to the debtor, in whole or in part, to the Receiver General for Canada on account of the debtor's liability under this Act.

**Receipt of Minister**

**(2)** A receipt issued by the Minister for money turned over as required under this section is a good and sufficient discharge of the requirement to restore the money to the debtor to the extent of the amount so turned over.

**Seizure if failure to pay**

**117 (1)** If a person fails to pay an amount as required under this Act, the Minister may in writing give 30 days notice to the person, addressed to their latest known address, of the Minister's intention to direct that the

**Effet du paiement**

**(9)** La personne qui, conformément à l'avis du ministre envoyé aux termes du présent article ou à une cotisation établie en vertu du paragraphe (7), paie au receveur général du Canada une somme qui aurait par ailleurs été avancée, prêtée ou payée à un débiteur, ou pour son compte, est réputée, à toutes fins utiles, avoir avancé, prêté ou payé la somme au débiteur ou pour son compte.

**Déduction ou compensation**

**114** Le ministre peut exiger la retenue par voie de déduction ou de compensation de la somme qu'il précise sur toute somme qui est à payer par Sa Majesté du chef du Canada, ou qui peut le devenir, à la personne contre qui elle détient une créance en vertu de la présente loi.

**Acquisition de biens du débiteur**

**115** Pour recouvrer des créances de Sa Majesté du chef du Canada contre une personne en application de la présente loi, le ministre peut acheter ou autrement acquérir tout intérêt ou, pour l'application du droit civil, droit sur les biens de la personne auxquels il a droit par suite de procédure judiciaire ou conformément à l'ordonnance d'un tribunal, ou qui sont offerts en vente ou peuvent être rachetés, et peut disposer de ces intérêts ou droits de la manière qu'il estime raisonnable.

**Sommes saisies d'un débiteur**

**116 (1)** S'il sait ou soupçonne qu'une personne détient des sommes qui ont été saisies par un agent de police, pour l'application du droit criminel canadien, d'une autre personne (appelée « débiteur » au présent article) redevable de sommes en application de la présente loi et qui doivent être restituées au débiteur, le ministre peut par écrit obliger la personne à verser tout ou partie des sommes autrement restituables au débiteur au receveur général du Canada au titre de la somme dont le débiteur est redevable en application de la présente loi.

**Récépissé du ministre**

**(2)** Le récépissé du ministre relatif aux sommes versées, tel qu'exigé par le présent article, constitue une quittance valable et suffisante de l'obligation de restituer les sommes jusqu'à concurrence du versement.

**Saisie — non-paiement**

**117 (1)** Le ministre peut donner à la personne qui n'a pas payé une somme payable en application de la présente loi un préavis écrit de trente jours, envoyé à la dernière adresse connue de la personne, de son intention

person's goods and chattels, or moveable property, be seized and disposed of. If the person fails to make the payment before the expiry of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels, or movable property, be seized.

**Disposition**

**(2)** Property that has been seized under subsection (1) must be kept for 10 days at the expense and risk of the owner. If the owner does not pay the amount due together with all expenses within the 10 days, the Minister may dispose of the property in a manner that the Minister considers appropriate in the circumstances.

**Proceeds of disposition**

**(3)** Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, must be paid or returned to the owner of the property seized.

**Exemptions from seizure**

**(4)** Goods and chattels, or moveable property, of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

**Person leaving Canada**

**118 (1)** If the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by confirmed delivery service addressed to their latest known address, demand payment of any amount for which the person is liable under this Act or would be so liable if the time for payment had arrived, and the amount must be paid without delay despite any other provision of this Act.

**Seizure**

**(2)** If a person fails to pay an amount required under subsection (1), the Minister may direct that goods and chattels, or movable property, of the person be seized, and subsections 117(2) to (4) apply, with any modifications that the circumstances require.

**Authorization to proceed without delay**

**119 (1)** Despite section 110, if, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a person would be jeopardized by a delay in its collection, the judge must, on any terms that the judge considers reasonable in the circumstances, authorize the Minister to, without

d'ordonner la saisie et la disposition de biens meubles ou personnels de cette personne. Il peut délivrer un certificat de défaut et ordonner la saisie des biens meubles ou personnels de cette personne si, au terme des trente jours, la personne est encore en défaut de paiement.

**Disposition des choses saisies**

**(2)** Les biens saisis en vertu du paragraphe (1) sont gardés pendant dix jours aux frais et risques du propriétaire. Si le propriétaire ne paie pas la somme due ainsi que les dépenses dans les dix jours, le ministre peut disposer des biens de la manière qu'il estime indiquée dans les circonstances.

**Produit de la disposition**

**(3)** Le surplus de la disposition, déduction faite de la somme due et des dépenses, est payé ou rendu au propriétaire des biens saisis.

**Restriction**

**(4)** Le présent article ne s'applique pas aux biens meubles ou personnels appartenant à la personne en défaut qui seraient insaisissables malgré la délivrance d'un bref d'exécution par une cour supérieure de la province dans laquelle la saisie est opérée.

**Personnes quittant le Canada**

**118 (1)** S'il soupçonne qu'une personne a quitté ou s'apprête à quitter le Canada, le ministre peut, avant le jour par ailleurs fixé pour le paiement, par avis signifié à personne ou envoyé par service de messagerie à la dernière adresse connue de la personne, exiger le paiement de toute somme dont celle-ci est redevable en vertu de la présente loi ou serait ainsi redevable si le paiement était échu. Cette somme doit être payée sans délai malgré les autres dispositions de la présente loi.

**Saisie**

**(2)** Le ministre peut ordonner la saisie des biens meubles ou personnels appartenant à la personne qui n'a pas payé une somme exigée aux termes du paragraphe (1); dès lors, les paragraphes 117(2) à (4) s'appliquent avec les adaptations nécessaires.

**Recouvrement compromis**

**119 (1)** Malgré l'article 110, sur requête *ex parte* du ministre, le juge saisi autorise celui-ci à prendre sans tarder toute mesure visée aux articles 112 à 117 à l'égard du montant d'une cotisation établie relativement à la personne en cause, aux conditions qu'il estime raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à cette

delay, take any of the actions referred to in sections 112 to 117 in respect of that amount.

**Notice of assessment not sent**

**(2)** An authorization under subsection (1) in respect of an amount assessed in respect of a person may be granted by a judge even if a notice of assessment in respect of that amount has not been sent to the person at or before the time the application is made if the judge is satisfied that the receipt of the notice of assessment by the person would likely further jeopardize the collection of the amount. For the purposes of sections 109, 112, 113, 114, 116 and 117, the amount in respect of which the authorization is granted is deemed to be an amount payable under this Act.

**Affidavits**

**(3)** Statements contained in an affidavit of a person filed in the context of an application under this section may be based on belief, in which case the affidavit must include the grounds for that belief.

**Service of authorization and notice of assessment**

**(4)** An authorization granted under this section in respect of a person must be served by the Minister on the person within 72 hours after it is granted, unless the judge orders the authorization to be served at some other time specified in the authorization, and, if a notice of assessment has not been sent to the person at or before the time of the application, a notice of assessment for the assessed period must be served on the person together with the authorization.

**How service effected**

**(5)** For the purposes of subsection (4), service on a person must be effected by

**(a)** personal service on the person; or

**(b)** service in accordance with the directions, if any, of a judge.

**Application to judge for direction**

**(6)** If service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

**Review of authorization**

**(7)** If a judge of a court has granted an authorization under this section in respect of a person, the person may, on six clear days notice to the Deputy Attorney General of

personne d'un délai pour payer la somme compromettrait le recouvrement de tout ou partie de celle-ci.

**Recouvrement compromis par la réception d'un avis de cotisation**

**(2)** Le juge saisi peut accorder l'autorisation visée au paragraphe (1), même si un avis de cotisation pour le montant de la cotisation établie à l'égard d'une personne n'a pas été envoyé à cette dernière au plus tard à la date de la présentation de la requête, s'il est convaincu que la réception de cet avis par cette dernière compromettrait davantage, selon toute vraisemblance, le recouvrement du montant. Pour l'application des articles 109, 112, 113, 114, 116 et 117, le montant visé par l'autorisation est réputé être un montant payable en vertu de la présente loi.

**Affidavits**

**(3)** Les déclarations contenues dans un affidavit produit dans le cadre de la requête prévue au présent article peuvent être fondées sur une opinion pour autant que celle-ci soit motivée dans l'affidavit.

**Signification de l'autorisation et de l'avis de cotisation**

**(4)** Le ministre signifie à la personne intéressée l'autorisation visée au présent article dans les soixante-douze heures suivant le moment où elle est accordée, sauf si le juge ordonne qu'elle soit signifiée dans un autre délai qui y est précisé. L'avis de cotisation est signifié en même temps que l'autorisation s'il n'a pas été envoyé à la personne au plus tard au moment de la présentation de la requête.

**Mode de signification**

**(5)** Pour l'application du paragraphe (4), l'autorisation est signifiée à la personne soit par voie de signification à personne, soit par tout autre mode ordonné par le juge.

**Demande d'instructions au juge**

**(6)** Si la signification à la personne ne peut être raisonnablement effectuée conformément au présent article, le ministre peut, dès que matériellement possible, demander d'autres instructions au juge.

**Révision de l'autorisation**

**(7)** Si le juge saisi accorde l'autorisation visée au présent article à l'égard d'une personne, celle-ci peut, après avis

Canada, apply to a judge of the court to review the authorization.

**Limitation period for review application**

**(8)** An application under subsection (7) to review an authorization must be made

**(a)** within 30 days after the day on which the authorization was served on the person in accordance with this section; or

**(b)** within any further time that a judge may allow, on being satisfied that the application was made as soon as practicable.

**Hearing *in camera***

**(9)** An application under subsection (7) may, on the application of the person, be heard *in camera*, if the person establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

**Disposition of application**

**(10)** On an application under subsection (7), the judge must determine the question summarily and may confirm, vary or set aside the authorization and make any other order that the judge considers appropriate.

**Directions**

**(11)** If any question arises as to the course to be followed in connection with anything done or being done under this section and there is no relevant direction in this section, a judge may give any direction with regard to the course to be followed that the judge considers appropriate.

**No appeal from review order**

**(12)** No appeal lies from an order of a judge made under subsection (10).

de six jours francs au sous-procureur général du Canada, demander à un juge de la cour de réviser l'autorisation.

**Délai de présentation de la requête**

**(8)** La requête visée au paragraphe (7) doit être présentée :

**a)** dans les trente jours suivant la date où l'autorisation a été signifiée à la personne;

**b)** dans le délai supplémentaire que le juge peut accorder s'il est convaincu que l'intéressé a présenté la requête dès que cela a été matériellement possible.

**Huis clos**

**(9)** La requête de révision peut, à la demande de l'intéressé, être entendue à huis clos si celui-ci établit, à la satisfaction du juge, que les circonstances le justifient.

**Ordonnance**

**(10)** Le juge saisi de la requête de révision tranche la question de façon sommaire et peut confirmer, annuler ou modifier l'autorisation et rendre toute autre ordonnance qu'il juge indiquée.

**Mesures non prévues**

**(11)** Si aucune mesure n'est prévue au présent article sur une question à résoudre en rapport avec une chose accomplie ou en voie d'accomplissement en application de cet article, un juge peut décider des mesures qu'il estime les plus aptes à atteindre le but recherché.

**Ordonnance sans appel**

**(12)** L'ordonnance rendue en vertu du paragraphe (10) est sans appel.

## DIVISION Q

# Evidence and Procedure

**Service**

**120 (1)** If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that

**(a)** is a partnership, the notice or document may be addressed to the name of the partnership;

**(b)** is a union, the notice or document may be addressed to the name of the union;

## SECTION Q

# Procédure et preuve

**Signification**

**120 (1)** L'avis ou autre document que le ministre a l'autorisation ou l'obligation de signifier, de délivrer ou d'envoyer :

**a)** à une société de personnes peut être adressé à la dénomination de la société de personnes;

**b)** à un syndicat peut être adressé à la dénomination du syndicat;

**(c)** is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and

**(d)** carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.

**c)** à une société, un club, une association ou un autre organisme peut être adressé à la dénomination de l'organisme;

**d)** à une personne qui exploite une entreprise sous une dénomination ou raison sociale autre que son nom peut être adressé à cette dénomination ou raison.

**Personal service**

**(2)** If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is

**(a)** if the person is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or

**(b)** left with an adult person employed at the place of business of the person.

**Signification à personne**

**(2)** L'avis ou autre document que le ministre a l'autorisation ou l'obligation de signifier, de délivrer ou d'envoyer à une personne qui exploite une entreprise est réputé valablement signifié, délivré ou envoyé :

**a)** dans le cas où la personne est une société de personnes, s'il est signifié à l'un des associés ou laissé à une personne adulte employée à l'établissement de la société;

**b)** s'il est laissé à une personne adulte employée à l'établissement de la personne.

**Timing of receipt**

**121 (1)** For the purposes of this Act and subject to subsection (2), anything sent by confirmed delivery service or first class mail is deemed to have been received by the person to which it was sent on the day it was mailed or sent.

**Date de réception**

**121 (1)** Pour l'application de la présente loi et sous réserve de paragraphe (2), tout envoi en première classe ou par service de messagerie est réputé reçu par le destinataire à la date de sa mise à la poste ou de son envoi.

**Timing of payment**

**(2)** A person that is required under this Act to pay an amount is deemed not to have paid it until it is received by the Receiver General for Canada.

**Date de paiement**

**(2)** Le paiement qu'une personne est tenue de faire en application de la présente loi n'est réputé avoir été effectué que le jour de sa réception par le receveur général du Canada.

**Proof of sending or service by mail**

**122 (1)** If, under this Act, provision is made for sending by confirmed delivery service a request for information, a notice or a demand, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the request, notice or demand if the affidavit sets out that

**(a)** the official has knowledge of the facts in the particular case;

**(b)** the request, notice or demand was sent by confirmed delivery service on a specified day to a specified person and address; and

**(c)** the official identifies as exhibits attached to the affidavit a true copy of the request, notice or demand and

**Preuve de signification**

**122 (1)** Si la présente loi prévoit l'envoi par service de messagerie d'une demande de renseignements, d'un avis ou d'une mise en demeure, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, constitue la preuve de l'envoi ainsi que de la demande, de l'avis ou de la mise en demeure, si l'affidavit indique, à la fois :

**a)** que le fonctionnaire est au courant des faits en l'espèce;

**b)** que la demande, l'avis ou la mise en demeure a été envoyé par service de messagerie à une date précise à une personne dont les nom et adresse sont précisés;

**(i)** if the request, notice or demand was sent by registered or certified mail, the post office certificate of registration of the letter or a true copy of the relevant portion of the certificate, or

**(ii)** in any other case, the record that the document has been sent or a true copy of the relevant portion of the record.

**c)** que le fonctionnaire reconnaît, comme pièce jointe à l'affidavit, une copie conforme de la demande, de l'avis ou de la mise en demeure et, selon le cas :

**(i)** si la demande, l'avis ou la mise en demeure a été envoyé par courrier recommandé ou certifié, le certificat de recommandation remis par le bureau de poste ou une copie conforme de la partie pertinente du certificat,

**(ii)** sinon, la preuve documentaire de l'envoi du document ou une copie conforme de la partie pertinente de la preuve.

**Proof of personal service**

**(2)** If, under this Act, provision is made for personal service of a request for information, a notice or a demand, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the personal service and of the request, notice or demand if the affidavit sets out that

**(a)** the official has knowledge of the facts in the particular case;

**(b)** the request, notice or demand was served personally on a named day on the person to which it was directed; and

**(c)** the official identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand.

**Preuve de la signification à personne**

**(2)** Si la présente loi prévoit la signification à personne d'une demande de renseignements, d'un avis ou d'une mise en demeure, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, constitue la preuve de la signification à personne ainsi que de la demande, de l'avis ou de la mise en demeure, si l'affidavit indique, à la fois :

**a)** que le fonctionnaire est au courant des faits en l'espèce;

**b)** que la demande, l'avis ou la mise en demeure a été signifié à l'intéressé à une date précise;

**c)** que le fonctionnaire reconnaît, comme pièce jointe à l'affidavit, une copie conforme de la demande, de l'avis ou de la mise en demeure.

**Proof of electronic delivery**

**(3)** If, under this Act, provision is made for sending a notice to a person electronically, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

**(a)** the official has knowledge of the facts in the particular case;

**(b)** the notice was sent electronically to the person on a named day; and

**(c)** the official identifies as exhibits attached to the affidavit copies of

**(i)** an electronic message confirming that the notice has been sent to the person, and

**(ii)** the notice.

**Preuve de livraison par voie électronique**

**(3)** Si la présente loi prévoit l'envoi par voie électronique d'un avis à une personne, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou autre personne autorisée à le recevoir, constitue la preuve de l'envoi et de l'avis si l'affidavit indique, à la fois :

**a)** que le fonctionnaire est au courant des faits en l'espèce;

**b)** que l'avis a été envoyé par voie électronique à la personne à une date précise;

**c)** que le fonctionnaire reconnaît, comme pièces jointes à l'affidavit, une copie :

**(i)** d'une part, d'un message électronique confirmant que l'avis a été envoyé à la personne,

**(ii)** d'autre part, de l'avis.

**Proof of failure to comply**

**(4)** If, under this Act, a person is required to file a return or make an application, a statement, an answer or a certificate, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that, after a careful examination of the records, the official has been unable to find in a given case that the return, application, statement, answer or certificate has been filed or made by that person is evidence that in that case the person did not file the return or make the application, statement, answer or certificate.

**Proof of time of compliance**

**(5)** If, under this Act, a person is required to file a return or make an application, a statement, an answer or a certificate, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that, after a careful examination of the records, the official has found that the return, application, statement, answer or certificate was filed or made on a particular day is evidence that it was filed or made on that day.

**Proof of documents**

**(6)** An affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document, or a printout of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

**Proof of no appeal**

**(7)** An affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and has knowledge of the practice of the Agency, that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Act, and that, after a careful examination of the records, the official has been unable to find that a notice of objection to or of appeal from the assessment was received within the time allowed is evidence of the statements contained in the affidavit.

**Preuve de non-observation**

**(4)** Si la présente loi oblige une personne à produire une déclaration ou à faire une demande, un état, une réponse ou un certificat, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et que, après avoir fait un examen attentif de ceux-ci, il lui a été impossible de constater, dans un cas particulier, que la déclaration, la demande, l'état, la réponse ou le certificat a été fait par la personne, constitue la preuve que la personne n'a pas fait de déclaration, de demande, d'état, de réponse ou de certificat.

**Preuve — moment de l'observation**

**(5)** Si la présente loi oblige une personne à produire une déclaration ou à faire une demande, un état, une réponse ou un certificat, l'affidavit d'un fonctionnaire de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et que, après avoir fait un examen attentif de ceux-ci, il a constaté que la déclaration, la demande, l'état, la réponse ou le certificat a été fait un jour donné, constitue la preuve que ces documents ont été faits ce jour-là.

**Preuve de documents**

**(6)** L'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et qu'un document qui est annexé à l'affidavit est un document ou la copie conforme d'un document, ou l'imprimé d'un document électronique, fait par le ministre ou pour le ministre ou une autre personne exerçant les pouvoirs de celui-ci, ou par une personne ou pour une personne, constitue la preuve de la nature et du contenu du document.

**Preuve de l'absence d'appel**

**(7)** Constitue la preuve des énonciations qui y sont renfermées l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents, qu'il connaît la pratique de l'Agence, et qu'un examen des registres démontre qu'un avis de cotisation a été posté ou autrement envoyé à une personne un jour donné, en application de la présente loi, et que, après avoir fait un examen attentif des registres, il lui a été impossible de constater qu'un avis d'opposition ou d'appel concernant la cotisation a été reçu dans le délai imparti à cette fin.

**Presumption**

**(8)** If evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an official of the Agency, it is not necessary to prove the signature of the person or that the person is such an official, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

**Proof of documents**

**(9)** Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Commissioner or an official authorized to exercise the powers or perform the duties of the Minister under this Act is deemed to be a document signed, made and issued by the Minister, the Commissioner or the official, unless it has been called into question by the Minister or a person acting for the Minister or for His Majesty in right of Canada.

**Mailing or sending date**

**(10)** For the purposes of this Act, if a notice or demand that the Minister is required or authorized under this Act to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, is presumed to be the date of the notice or demand.

**Date electronic notice sent**

**(11)** For the purposes of this Act, if a notice or other communication in respect of a person, other than a notice or other communication that refers to the business number of the person, is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to and received by the person on the day on which an electronic message is sent, to the electronic address most recently provided before that day by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account and the person has authorized that notices or other communications may be made available in this manner and has not before that day revoked that authorization in a manner specified by the Minister.

**Signature ou fonction réputée**

**(8)** Si une preuve est donnée en vertu du présent article par un affidavit d'où il ressort que la personne le souscrivant est un fonctionnaire de l'Agence, il n'est pas nécessaire d'attester sa signature ou de prouver qu'il est un tel fonctionnaire, ni d'attester la signature ou la qualité de la personne en présence de laquelle l'affidavit a été souscrit.

**Preuve de documents**

**(9)** Tout document paraissant avoir été établi en application de la présente loi, ou dans le cadre de son application ou exécution, au nom ou sous l'autorité du ministre, du commissaire ou d'un fonctionnaire autorisé à exercer les pouvoirs ou les fonctions du ministre en application de la présente loi est réputé être un document signé, fait et délivré par le ministre, le commissaire ou le fonctionnaire, sauf s'il a été mis en doute par le ministre ou par une autre personne agissant pour lui ou pour Sa Majesté du chef du Canada.

**Date d'envoi ou de mise à la poste**

**(10)** Pour l'application de la présente loi, la date d'envoi ou de mise à la poste d'un avis ou d'une mise en demeure que le ministre a l'obligation ou l'autorisation, en vertu de la présente loi, d'envoyer par voie électronique ou par la poste à une personne est présumée être la date de l'avis ou de la mise en demeure.

**Date d'envoi d'un avis électronique**

**(11)** Pour l'application de la présente loi, tout avis ou autre communication concernant une personne, autre que tout avis ou autre communication qui fait état du numéro d'entreprise de la personne, qui est rendue disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable est présumé être envoyé à la personne, et être reçu par elle, à la date où un message électronique est envoyé — à l'adresse électronique la plus récente que la personne a fournie avant cette date au ministre pour l'application du présent paragraphe — pour l'informer qu'un avis ou une autre communication nécessitant son attention immédiate se trouve dans son compte électronique sécurisé. Un avis ou une autre communication est considéré comme étant rendu disponible s'il est affiché par le ministre sur le compte électronique sécurisé de la personne et si celle-ci a donné son autorisation pour que des avis ou d'autres communications soient rendus disponibles de cette manière et n'a pas retiré cette autorisation avant cette date selon les modalités établies par le ministre.

**Date electronic notice sent — business account**

**(12)** For the purposes of this Act, a notice or other communication in respect of a person that refers to the business number of the person and is made available in electronic format such that it can be read or perceived by a person or computer system or other similar device is presumed to be sent to and received by the person on the day on which it is posted by the Minister in the secure electronic account in respect of the person's business number, unless the person has requested, at least 30 days before that day, in a manner specified by the Minister, that such notices or other communications be sent by mail.

**Date d'envoi d'un avis électronique — compte d'entreprise**

**(12)** Pour l'application de la présente loi, tout avis ou autre communication concernant une personne qui fait état du numéro d'entreprise de la personne et qui est rendu disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable est présumé être envoyé à la personne, et être reçu par elle, à la date où il est envoyé par le ministre dans un compte électronique sécurisé relativement au numéro d'entreprise de la personne, sauf si la personne a demandé, au moins trente jours avant cette date, selon les modalités établies par le ministre, que ces avis ou autres communications soient envoyés par la poste.

**Date of assessment**

**(13)** If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day on which the notice of assessment was sent.

**Date d'établissement de la cotisation**

**(13)** Lorsqu'un avis de cotisation a été envoyé par le ministre de la manière prévue par la présente loi, la cotisation est réputée établie à la date d'envoi de l'avis.

**Proof of return — prosecutions**

**(14)** In a prosecution for an offence under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of the person charged with the offence is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

**Preuve de déclaration**

**(14)** Dans toute poursuite concernant une infraction à la présente loi, la production d'une déclaration, d'une demande, d'un état, d'une réponse ou d'un certificat, prévu par la présente loi, donné comme ayant été produit, livré, fait ou signé par l'accusé ou pour son compte constitue la preuve que la déclaration, la demande, l'état, la réponse ou le certificat a été produit, livré, fait ou signé par l'accusé ou pour son compte.

**Proof of return — production of returns, etc.**

**(15)** In a proceeding under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of a person is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

**Preuve de production — déclarations**

**(15)** Dans toute procédure mise en œuvre en application de la présente loi, la production d'une déclaration, d'une demande, d'un état, d'une réponse ou d'un certificat prévu par la présente loi, donné comme ayant été produit, livré, fait ou signé par une personne ou pour son compte constitue la preuve que la déclaration, la demande, l'état, la réponse ou le certificat a été produit, livré, fait ou signé par la personne ou pour son compte.

**Evidence**

**(16)** In a prosecution for an offence under this Act, an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be paid to the Receiver General for Canada has not been received by the Receiver General for Canada is evidence of the statements contained in the affidavit.

**Preuve**

**(16)** Dans toute poursuite concernant une infraction à la présente loi, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et qu'un examen des registres démontre que le receveur général du Canada n'a pas reçu la somme au titre des sommes dont la présente loi exige le versement constitue la preuve des énonciations qui y sont renfermées.

## PART 7

# Regulations

### Regulations

**123 (1)** The Governor in Council may make regulations

**(a)** prescribing anything that, by this Act, is to be prescribed, determined or regulated by regulation;

**(b)** requiring any taxpayer to provide its registration number to any class of persons required to make a return containing that registration number;

**(c)** requiring any person to provide any information, including the person's name and address, to any class of persons required to make a return containing that information;

**(d)** requiring any individual to provide the Minister with the individual's Social Insurance Number;

**(e)** prescribing the evidence required to establish facts relevant to assessments under this Act;

**(f)** requiring any class of persons to make information returns respecting any class of information required in connection with the administration or enforcement of this Act;

**(g)** distinguishing among any class of persons, property or activities; and

**(h)** generally to carry out the purposes and provisions of this Act.

### Effect

**(2)** A regulation made under this Act has effect from the day on which it is published in the *Canada Gazette* or at any later time that may be specified in the regulation, unless it provides otherwise and

**(a)** has a relieving effect only;

**(b)** corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act or the *Digital Services Tax Regulations*;

**(c)** is consequential on an amendment to this Act that is applicable before the day on which the regulation is published in the *Canada Gazette*; or

**(d)** gives effect to a budgetary or other public announcement, in which case the regulation is not,

## PARTIE 7

# Règlement

### Règlement

**123 (1)** Le gouverneur en conseil peut, par règlement :

**a)** prendre toute mesure d'ordre réglementaire prévue par la présente loi;

**b)** obliger un contribuable à communiquer son numéro d'inscription à une catégorie de personnes tenue de produire une déclaration renfermant ce numéro d'inscription;

**c)** obliger une personne à communiquer des renseignements, notamment ses nom et adresse à une catégorie de personnes tenue de produire une déclaration les renfermant;

**d)** obliger une personne à aviser le ministre de son numéro d'assurance sociale;

**e)** déterminer les éléments de preuve requis pour l'établissement des faits se rapportant aux cotisations prévues à la présente loi;

**f)** obliger une catégorie de personnes à produire les déclarations relatives à toute catégorie de renseignements nécessaires à l'application ou à l'exécution de la présente loi;

**g)** faire la distinction entre des catégories de personnes, de biens ou d'activités;

**h)** prendre toute mesure d'application de la présente loi.

### Effet

**(2)** Les règlements pris en application de la présente loi prennent effet à compter de leur publication dans la *Gazette du Canada* ou après s'ils le prévoient. Un règlement peut toutefois avoir un effet rétroactif, s'il comporte une disposition en ce sens, dans les cas suivants :

**a)** il a pour seul résultat d'alléger une charge;

**b)** il corrige une disposition ambiguë ou erronée, non conforme à un objet de la présente loi ou du *Règlement sur la taxe sur les services numériques*;

**c)** il procède d'une modification de la présente loi applicable avant qu'il ne soit publié dans la *Gazette du Canada*;

unless paragraph (a), (b) or (c) applies, to have effect before the day on which the announcement was made.

**d)** il met en œuvre une mesure annoncée publiquement, auquel cas, si aucun des alinéas a), b) ou c) ne s'applique par ailleurs, il ne peut avoir d'effet avant la date où la mesure est ainsi annoncée.

### Positive or negative amount — regulations

**124** For greater certainty,

**(a)** in prescribing an amount under subsection 123(1), the Governor in Council may prescribe a positive or negative amount; and

**(b)** in prescribing a manner of determining an amount under subsection 123(1), the Governor in Council may prescribe a manner that could result in a positive or negative amount.

### Montant positif ou négatif — règlement

**124** Il est entendu que :

**a)** le gouverneur en conseil peut, en prenant une mesure d'ordre réglementaire en application du paragraphe 123(1) pour viser un montant par règlement, viser un montant positif ou négatif;

**b)** le gouverneur en conseil peut, en prenant une mesure d'ordre réglementaire en application du paragraphe 123(1) pour prévoir des modalités réglementaires selon lesquelles un montant doit être déterminé, prévoir des modalités réglementaires qui pourraient conduire à un résultat qui est un montant positif ou négatif.

### Incorporation by reference — limitation removed

**125** The limitation set out in paragraph 18.1(2)(a) of the *Statutory Instruments Act*, to the effect that a document must be incorporated as it exists on a particular date, does not apply to any power to make regulations under this Act.

### Incorporation par renvoi — suppression de restriction

**125** La restriction prévue à l'alinéa 18.1(2)a) de la *Loi sur les textes réglementaires* selon laquelle le document doit être incorporé par renvoi dans sa version à une date donnée ne s'applique pas au pouvoir de prendre des règlements conféré par la présente loi.

### Certificates and registrations not statutory instruments

**126** For greater certainty, any registration or certificate issued under this Act is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

### Un certificat ou une inscription n'est pas un texte réglementaire

**126** Il est entendu qu'une inscription ou un certificat en application de la présente loi n'est pas un texte réglementaire au sens de la *Loi sur les textes réglementaires*.

### Coming into force

**(2) Subsection (1) comes into force on the day that is fixed by order of the Governor in Council, but not earlier than January 1, 2024. In fixing that day, the Governor in Council must consider**

**(a) the intent of the October 8, 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy; and**

**(b) Canada's preference for a multilateral approach to addressing the tax challenges arising from the digitalization of the economy and the status of international negotiations and implementation in respect of such an approach.**

### Entrée en vigueur

**(2) Le paragraphe (1) entre en vigueur à la date fixée par ordre du gouverneur en conseil, mais pas plus tôt que le 1er janvier 2024. En fixant cette date, le gouverneur en conseil doit considérer :**

**a) l'objet de la Déclaration sur une solution reposant sur deux piliers pour résoudre les défis fiscaux soulevés par la numérisation de l'économie, datée du 8 octobre 2021;**

**b) la préférence du Canada pour une approche multilatérale pour résoudre les défis fiscaux soulevés par la numérisation de l'économie et le statut des négociations internationales et de la mise en œuvre relativement à une telle approche.**

## Making of Regulations

**Making**

**97 (1) The *Digital Services Tax Regulations* are made as follows:**

**Digital Services Tax Regulations**

# Interpretation

**Definitions**

**1** The following definitions apply in these Regulations.

***Act*** means the *Digital Services Tax Act*. (*Loi*)

***quarter*** means any period of three consecutive months beginning on January 1, April 1, July 1 or October 1. (*trimestre*)

# Prescribed Rates of Interest

**Interest to be paid to the Receiver General**

**2 (1)** For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General for Canada, the prescribed rate in effect during any particular quarter is the total of

**(a)** the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage if the mean is not a whole percentage, of all amounts each of which is the average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at auctions of Government of Canada Treasury Bills during the first month of the quarter preceding the particular quarter, and

**(b)** 4%.

**Interest to be paid by the Minister**

**(2)** For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid or applied on an amount payable by the Minister to a person, the prescribed rate in effect during any particular quarter is the rate determined under paragraph (1)(a) in respect of the particular quarter.

## Prise du règlement

**Prise**

**97 (1) Est pris le *Règlement sur la taxe sur les services numériques*, dont le texte suit :**

**Règlement sur la taxe sur les services numériques**

# Interprétation

**Définitions**

**1** Les définitions qui suivent s'appliquent au présent règlement.

***Loi*** La *Loi sur la taxe sur les services numériques*. (*Act*)

***trimestre*** Toute période de trois mois consécutifs commençant à l'une des dates suivantes : le 1er janvier, le 1er avril, le 1er juillet ou le 1er octobre. (*quarter*)

# Taux d'intérêt

**Intérêts à verser au receveur général**

**2 (1)** Pour l'application des dispositions de la Loi selon lesquelles des intérêts calculés au taux visé par règlement sont à payer au receveur général du Canada, le taux d'intérêt applicable à un trimestre donné correspond au total des taux suivants :

**a)** le taux qui représente la moyenne arithmétique simple exprimée en pourcentage annuel et arrondie au point de pourcentage supérieur, des pourcentages dont chacun représente le taux de rendement moyen, exprimé en pourcentage annuel, des bons du Trésor du gouvernement du Canada qui arrivent à échéance environ trois mois après la date de leur émission et qui sont vendus au cours d'adjudication de bons du Trésor pendant le premier mois du trimestre qui précède le trimestre donné;

**b)** 4 %.

**Intérêts à payer par le ministre**

**(2)** Pour l'application des dispositions de la Loi selon lesquelles des intérêts calculés au taux visé par règlement sont à payer ou à imputer sur un montant que le ministre verse à une personne, le taux d'intérêt applicable à un trimestre donné correspond au taux déterminé selon l'alinéa (1)a) pour le trimestre donné.

# Prescribed Thresholds

### Global revenue threshold

**3** For the purposes of the Act, the amount of the "global revenue threshold" is €750,000,000.

### In-scope revenue threshold

**4** For the purposes of the Act, the amount of the "in-scope revenue threshold" is $20,000,000.

### Registration threshold

**5** For the purposes of Part 6 of the Act, the amount of the "registration threshold" is $10,000,000.

# Prescribed Rate of Tax

### Rate

**6** For the purpose of the description of B in subsection 10(2) of the Act, the rate prescribed in respect of a taxpayer is 3%.

# Prescribed Deduction

### Deduction amount

**7** For the purpose of Part 4 of the Act, the "deduction amount" is $20,000,000.

**(2) The *Digital Services Tax Regulations*, as made by subsection (1), come into force on the same day as subsection 96(1) of this Act.**

**(3) The *Digital Services Tax Regulations*, as made by subsection (1), are deemed**

**(a) to have been made under section 123 of the *Digital Services Tax Act*;**

**(b) for the purposes of subsection 5(1) of the *Statutory Instruments Act*, to have been transmitted to the Clerk of the Privy Council for registration; and**

**(c) to have met the publication requirements of subsection 11(1) of the *Statutory Instruments Act*.**

# Seuils

### Seuil de revenu global

**3** Pour l'application de la Loi, le montant du « seuil de revenu global » est 750 000 000 euros.

### Seuil de revenu dans le champ d'application

**4** Pour l'application de la Loi, le montant du « seuil de revenu dans le champ d'application » est 20 000 000 $.

### Seuil d'inscription

**5** Pour l'application de la partie 6 de la Loi, le montant du « seuil d'inscription » est 10 000 000 $.

# Taux de taxe

### Taux

**6** Pour l'application de l'élément B de la formule figurant au paragraphe 10(2) de la Loi, le taux visé relativement à un contribuable est 3 %.

# Déduction

### Montant de la déduction

**7** Pour l'application de la partie 4 de la Loi, le « montant de la déduction » est 20 000 000 $.

**(2) Le *Règlement sur la taxe sur les services numériques*, pris en vertu du paragraphe (1), entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**(3) Le *Règlement sur la taxe sur les services numériques*, pris en vertu du paragraphe (1), est réputé, à la fois :**

**a) avoir été pris en vertu de l'article 123 de la *Loi sur la taxe sur les services numériques*;**

**b) pour l'application du paragraphe 5(1) de la *Loi sur les textes réglementaires*, avoir été transmis au greffier du Conseil privé pour enregistrement;**

**c) avoir rempli les exigences de publication prévues au paragraphe 11(1) de la *Loi sur les textes réglementaires*.**

# Consequential Amendments

R.S., c. A-1

## Access to Information Act

**98 (1) Schedule II to the *Access to Information Act* is amended by adding, in alphabetical order, a reference to**

Digital Services Tax Act
*Loi sur la taxe sur les services numériques*

**and a corresponding reference to "section 108".**

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

R.S., c. B-3; 1992, c. 27, s. 2

## Bankruptcy and Insolvency Act

**99 (1) Subsection 149(3) of the *Bankruptcy and Insolvency Act* is amended by striking out "and" at the end of paragraph (h), by adding "and" at the end of paragraph (i) and by adding the following after paragraph (i):**

**(j)** the *Digital Services Tax Act*.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

R.S., c. C-46

## Criminal Code

**100 (1) Paragraph 462.48(2)(c) of the *Criminal Code* is replaced by the following:**

**(c)** the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act* to which access is sought or that is proposed to be examined or communicated; and

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

# Modifications corrélatives

L.R., ch. A-1

## Loi sur l'accès à l'information

**98 (1) L'annexe II de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :**

Loi sur la taxe sur les services numériques
*Digital Services Tax Act*

**ainsi que de la mention « article 108 » en regard de ce titre de loi.**

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

L.R., ch. B-3; 1992, ch. 27, art. 2

## Loi sur la faillite et l'insolvabilité

**99 (1) Le paragraphe 149(3) de la *Loi sur la faillite et l'insolvabilité* est modifié par adjonction, après l'alinéa i), de ce qui suit :**

**j)** la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

L.R., ch. C-46

## Code criminel

**100 (1) L'alinéa 462.48(2)c) du *Code criminel* est remplacé par ce qui suit :**

**c)** désignation du genre de renseignements ou de documents — livre, dossier, texte, rapport ou autre document — qu'a obtenus le ministre du Revenu national — ou qui ont été obtenus en son nom — dans le cadre de l'application de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques* et dont la communication ou l'examen est demandé;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

R.S., c. E-15

## Excise Tax Act

**101 (1) Section 77 of the *Excise Tax Act* is replaced by the following:**

**Restriction on refunds and credits**

**77** A refund shall not be paid, and a credit shall not be allowed, to a person under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**102 (1) Subsection 229(2) of the Act is replaced by the following:**

**Restriction**

**(2)** A net tax refund for a reporting period of a person shall not be paid to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**103 (1) Subsection 230(2) of the Act is replaced by the following:**

**Restriction**

**(2)** An amount paid on account of net tax for a reporting period of a person shall not be refunded to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing*

L.R., ch. E-15

## Loi sur la taxe d'accise

**101 (1) L'article 77 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Restriction**

**77** Un montant n'est remboursé à une personne, et un crédit ne lui est accordé, en vertu de la présente loi qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**102 (1) Le paragraphe 229(2) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(2)** Le remboursement de taxe nette pour la période de déclaration d'une personne ne lui est versé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**103 (1) Le paragraphe 230(2) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(2)** Un montant payé au titre de la taxe nette d'une personne pour sa période de déclaration ne lui est remboursé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur*

*Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**104 (1) Subparagraph 238.1(2)(c)(iii) of the Act is replaced by the following:**

**(iii)** all amounts required under this Act (other than this Part), sections 21 and 33 of the *Canada Pension Plan*, the *Excise Act*, the *Customs Act*, the *Income Tax Act*, section 82 and Part VII of the *Employment Insurance Act*, the *Customs Tariff*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* to be remitted or paid before that time by the registrant have been remitted or paid, and

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**105 (1) Section 263.02 of the Act is replaced by the following:**

**Restriction on rebate**

**263.02** A rebate under this Part shall not be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**106 (1) Subsection 296(7) of the Act is replaced by the following:**

**Restriction on refunds**

**(7)** An amount under this section shall not be refunded to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the

*l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**104 (1) Le sous-alinéa 238.1(2)c)(iii) de la même loi est remplacé par ce qui suit :**

**(iii)** les montants à verser ou à payer par l'inscrit avant ce moment en conformité avec la présente loi, sauf la présente partie, les articles 21 et 33 du *Régime de pensions du Canada*, la *Loi sur l'accise*, la *Loi sur les douanes*, la *Loi de l'impôt sur le revenu*, l'article 82 et la partie VII de la *Loi sur l'assurance-emploi*, le *Tarif des douanes*, la *Loi de 2001 sur l'accise*, la *Loi sur la taxe sur les logements sous-utilisés*, la *Loi sur la taxe sur certains biens de luxe* et la *Loi sur la taxe sur les services numériques* ont été versés ou payés,

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**105 (1) L'article 263.02 de la même loi est remplacé par ce qui suit :**

**Restriction**

**263.02** Le montant d'un remboursement prévu par la présente partie n'est versé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**106 (1) Le paragraphe 296(7) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(7)** Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en

*Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

R.S., c. E-20; 2001, c. 33, s. 2(F)

## Export Development Act

**107 (1) Paragraph 24.3(2)(c) of the *Export Development Act* is replaced by the following:**

**(c)** to the Minister of National Revenue solely for the purpose of administering or enforcing the *Excise Tax Act*, the *Income Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act*; or

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

L.R., ch. E-20; 2001, ch. 33, art. 2(F)

## Loi sur le développement des exportations

**107 (1) L'alinéa 24.3(2)c) de la *Loi sur le développement des exportations* est remplacé par ce qui suit :**

**c)** ils sont destinés au ministre du Revenu national uniquement pour l'administration ou l'application de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques*;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

R.S., c. F-11

## Financial Administration Act

**108 (1) Paragraph 155.2(6)(c) of the *Financial Administration Act* is replaced by the following:**

**(c)** an amount owing by a person to Her Majesty in right of Canada, or payable by the Minister of National Revenue to any person, under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act*.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

L.R., ch. F-11

## Loi sur la gestion des finances publiques

**108 (1) L'alinéa 155.2(6)c) de la *Loi sur la gestion des finances publiques* est remplacé par ce qui suit :**

**c)** aux sommes à payer par toute personne à Sa Majesté du chef du Canada ou à payer par le ministre du Revenu national à toute personne au titre de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

R.S., c. T-2

## Tax Court of Canada Act

**109 (1) Subsection 12(1) of the *Tax Court of Canada Act* is replaced by the following:**

**Jurisdiction**

**12 (1)** The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part IX of the *Excise Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act*, Part V.1 of the *Customs Act*, the *Income Tax Act*, the *Employment Insurance Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006*, the *Disability Tax Credit Promoters Restrictions Act*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* when references or appeals to the Court are provided for in those Acts.

**(2) Subsections 12(3) and (4) of the Act are replaced by the following:**

**Further jurisdiction**

**(3)** The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 310 or 311 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 173 or 174 of the *Income Tax Act*, section 51 or 52 of the *Air Travellers Security Charge Act*, section 204 or 205 of the *Excise Act, 2001*, section 62 or 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 121 or 122 of the *Greenhouse Gas Pollution Pricing Act*, section 45 or 46 of the *Underused Housing Tax Act*, section 105 or 106 of the *Select Luxury Items Tax Act* or section 80 or 81 of the *Digital Services Tax Act*.

**Extensions of time**

**(4)** The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*,

L.R., ch. T-2

## Loi sur la Cour canadienne de l'impôt

**109 (1) Le paragraphe 12(1) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :**

**Compétence**

**12 (1)** La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application du *Régime de pensions du Canada*, de la *Loi sur l'exportation et l'importation de biens culturels*, de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi sur la sécurité de la vieillesse*, de la *Loi de l'impôt sur les revenus pétroliers*, de la partie V.1 de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur l'assurance-emploi*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur les restrictions applicables aux promoteurs du crédit d'impôt pour personnes handicapées*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

**(2) Les paragraphes 12(3) et (4) de la même loi sont remplacés par ce qui suit :**

**Autre compétence**

**(3)** La Cour a compétence exclusive pour entendre les questions qui sont portées devant elle en vertu des articles 310 ou 311 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, des articles 173 ou 174 de la *Loi de l'impôt sur le revenu*, des articles 51 ou 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 204 ou 205 de la *Loi de 2001 sur l'accise*, des articles 62 ou 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, des articles 121 ou 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, des articles 45 ou 46 de la *Loi sur la taxe sur les logements sous-utilisés*, des articles 105 ou 106 de la *Loi sur la taxe sur certains biens de luxe* ou des articles 80 ou 81 de la *Loi sur la taxe sur les services numériques*.

**Prorogation des délais**

**(4)** La Cour a compétence exclusive pour entendre toute demande de prorogation de délai présentée en vertu du paragraphe 28(1) du *Régime de pensions du Canada*, de l'article 33.2 de la *Loi sur l'exportation et l'importation*

section 304 or 305 of the *Excise Tax Act*, section 97.51 or 97.52 of the *Customs Act*, section 166.2 or 167 of the *Income Tax Act*, subsection 103(1) of the *Employment Insurance Act*, section 45 or 47 of the *Air Travellers Security Charge Act*, section 197 or 199 of the *Excise Act, 2001*, section 115 or 117 of the *Greenhouse Gas Pollution Pricing Act*, section 39 or 41 of the *Underused Housing Tax Act*, section 99 or 101 of the *Select Luxury Items Tax Act* or section 74 or 76 of the *Digital Services Tax Act*.

**(3) Subsections (1) and (2) come into force on the same day as subsection 96(1) of this Act.**

**110 (1) Paragraph 18.29(3)(a) of the Act is amended by striking out "or" at the end of subparagraph (ix), by replacing "and" at the end of subparagraph (x) with "or" and by adding the following after subparagraph (x):**

**(xi)** section 74 or 76 of the *Digital Services Tax Act*; and

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**111 (1) Subsection 18.31(2) of the Act is replaced by the following:**

**Determination of a question**

**(2)** If it is agreed under section 310 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 51 of the *Air Travellers Security Act*, section 204 of the *Excise Act, 2001*, section 62 of the *Softwood Lumber Products Export Act, 2006*, section 121 of the *Greenhouse Gas Pollution Pricing Act*, section 45 of the *Underused Housing Tax Act*, section 105 of the *Select Luxury Items Tax Act* or section 80 of the *Digital Services Tax Act* that a question should be determined by the Court, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**112 (1) Subsection 18.32(2) of the Act is replaced by the following:**

*de biens culturels*, des articles 304 et 305 de la *Loi sur la taxe d'accise*, des articles 97.51 et 97.52 de la *Loi sur les douanes*, des articles 166.2 et 167 de la *Loi de l'impôt sur le revenu*, du paragraphe 103(1) de la *Loi sur l'assurance-emploi*, des articles 45 et 47 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 197 et 199 de la *Loi de 2001 sur l'accise*, des articles 115 et 117 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, des articles 39 ou 41 de la *Loi sur la taxe sur les logements sous-utilisés*, des articles 99 et 101 de la *Loi sur la taxe sur certains biens de luxe* ou des articles 74 ou 76 de la *Loi sur la taxe sur les services numériques*.

**(3) Les paragraphes (1) et (2) entrent en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**110 (1) L'alinéa 18.29(3)a) de la même loi est modifié par adjonction, après le sous-alinéa (x), de ce qui suit :**

**(xi)** les articles 74 et 76 de la *Loi sur la taxe sur les services numériques*;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**111 (1) Le paragraphe 18.31(2) de la même loi est remplacé par ce qui suit :**

**Procédure générale**

**(2)** Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, avec les adaptations nécessaires, aux décisions sur les questions soumises à la Cour en vertu de l'article 310 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, de l'article 51 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 204 de la *Loi de 2001 sur l'accise*, de l'article 62 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 121 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de l'article 45 de la *Loi sur la taxe sur les logements sous-utilisés*, de l'article 105 de la *Loi sur la taxe sur certains biens de luxe* ou de l'article 80 de la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**112 (1) Le paragraphe 18.32(2) de la même loi est remplacé par ce qui suit :**

**Provisions applicable to determination of a question**

**(2)** If an application has been made under section 311 of the *Excise Tax Act*, section 52 of the *Air Travellers Security Charge Act*, section 205 of the *Excise Act, 2001*, section 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 122 of the *Greenhouse Gas Pollution Pricing Act*, section 46 of the *Underused Housing Tax Act*, section 106 of the *Select Luxury Items Tax Act* or section 81 of the *Digital Services Tax Act* for the determination of a question, the application or determination of the question must, subject to section 18.33, be determined in accordance with sections 17.1, 17.2 and 17.4 to 17.8, with any modifications that the circumstances require.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**Dispositions applicables à la détermination d'une question**

**(2)** Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, sous réserve de l'article 18.33 et avec les adaptations nécessaires, à toute demande présentée à la Cour en vertu de l'article 311 de la *Loi sur la taxe d'accise*, de l'article 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 205 de la *Loi de 2001 sur l'accise*, de l'article 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* de l'article 46 de la *Loi sur la taxe sur les logements sous-utilisés*, de l'article 106 de la *Loi sur la taxe sur certains biens de luxe* ou de l'article 81 de la *Loi sur la taxe sur les services numériques* et à la détermination de la question en cause.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

R.S., c. 1 (2nd Supp.)

## Customs Act

**113 (1) The description of B in paragraph 97.29(1)(a) of the *Customs Act* is replaced by the following:**

**B** is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act* and subsection 297(3) of the *Excise Act, 2001* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

L.R., ch. 1 (2e suppl.)

## Loi sur les douanes

**113 (1) L'élément B de la formule figurant à l'alinéa 97.29(1)a) de la *Loi sur les douanes* est remplacée par ce qui suit :**

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en vertu du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu* et du paragraphe 297(3) de la *Loi de 2001 sur l'accise* relativement au bien sur la somme payée par le cédant relativement à cette cotisation;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

R.S., c. 1 (5th Supp.)

## Income Tax Act

**114 (1) Paragraph 18(1)(t) of the *Income Tax Act* is amended by striking out "or" at the end of subparagraph (iv), by adding "or" at the end of subparagraph (v) and by adding the following after subparagraph (v):**

**(vi)** as interest under the *Digital Services Tax Act*;

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

L.R., ch. 1 (5e suppl.)

## Loi de l'impôt sur le revenu

**114 (1) L'alinéa 18(1)t) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après le sous-alinéa (v), de ce qui suit :**

**(vi)** à titre d'intérêts en vertu de la *Loi sur la taxe sur les services numériques*;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**115 (1) Subsection 164(2.01) of the Act is replaced by the following:**

**Withholding of refunds**

**(2.01)** The Minister shall not, in respect of a taxpayer, refund, repay, apply to other debts or set-off amounts under this Act at any time unless all returns of which the Minister has knowledge and that are required to be filed by the taxpayer at or before that time under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**116 (1) The portion of subsection 221.2(2) of the Act before paragraph (a) is replaced by the following:**

**Re-appropriation of amounts**

**(2)** If a particular amount was appropriated to an amount (in this section referred to as the "debt") that is or may become payable by a person under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act*, the Minister may, on application by the person, appropriate the particular amount, or a part of it, to another amount that is or may become payable under any of those Acts and, for the purposes of any of those Acts,

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

1999, c. 17; 2005, c. 38, s. 35

## Canada Revenue Agency Act

**117 (1) Paragraph (a) of the definition *program legislation* in section 2 of the *Canada Revenue Agency Act* is amended by striking out "and" at the end of subparagraph (ix), by replacing "or" at the end of subparagraph (x) with "and" and by adding the following after subparagraph (x):**

**(xi)** the *Digital Services Tax Act*; or

**115 (1) Le paragraphe 164(2.01) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(2.01)** Une somme n'est remboursée, restituée, appliquée en réduction d'autres dettes ou compensée en vertu de la présente loi à un moment donné relativement à un contribuable qu'une fois présentées au ministre toutes les déclarations dont celui-ci a connaissance et que le contribuable avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**116 (1) Le passage du paragraphe 221.2(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Réaffectation de montants**

**(2)** Lorsqu'un montant est affecté à une somme (appelée « dette » au présent article) qui est ou peut devenir payable par une personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques*, le ministre peut, à la demande de la personne, affecter tout ou partie du montant à une autre somme qui est ou peut devenir ainsi payable. Pour l'application de ces lois :

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

1999, ch. 17; 2005, ch. 38, art. 35

## Loi sur l'Agence du revenu du Canada

**117 (1) L'alinéa a) de la définition de *législation fiscale*, à l'article 2 de la *Loi sur l'Agence du revenu du Canada*, est modifié par adjonction, après le sous-alinéa (x), ce qui suit :**

**(xi)** la *Loi sur la taxe sur les services numériques*;

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

2002, c. 9, s. 5

## Air Travellers Security Charge Act

**118 (1) Subsection 40(4) of the *Air Travellers Security Charge Act* is replaced by the following:**

**Restriction**

**(4)** A refund shall not be paid until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

2002, ch. 9, art. 5

## Loi sur le droit pour la sécurité des passagers du transport aérien

**118 (1) Le paragraphe 40(4) de la *Loi sur le droit pour la sécurité des passagers du transport aérien* est remplacé par ce qui suit :**

**Restriction**

**(4)** Le remboursement n'est versé qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

2002, c. 22

## Excise Act, 2001

**119 (1) Paragraph 188(6)(a) of the *Excise Act, 2001* is replaced by the following:**

**(a)** the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*; or

**(2) Clause 188(7)(b)(ii)(A) of the Act is replaced by the following:**

**(A)** the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*, or

**(3) Subsections (1) and (2) come into force on the same day as subsection 96(1) of this Act.**

2002, ch. 22

## Loi de 2001 sur l'accise

**119 (1) L'alinéa 188(6)a) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :**

**a)** soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*;

**(2) La division 188(7)b)(ii)(A) de la même loi est remplacée par ce qui suit :**

**(A)** soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*,

**(3) Les paragraphes (1) et (2) entrent en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**120 (1) Subsection 189(4) of the Act is replaced by the following:**

**Restriction**

**(4)** A refund shall not be paid until the person has filed with the Minister or the Minister of Public Safety and Emergency Preparedness all returns and other records of which the Minister has knowledge and that are required to be filed under this Act, the *Excise Act*, the *Excise Tax Act*, the *Customs Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**121 (1) The description of B in paragraph 297(1)(d) of the Act is replaced by the following:**

**B** is the amount, if any, by which the total of all amounts, if any, the transferee was assessed under subsection 325(2) of the *Excise Tax Act* or subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amounts so assessed, and

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

2022, c. 5, s. 10

## Underused Housing Tax Act

**122 (1) Section 34 of the *Underused Housing Tax Act* is replaced by the following:**

**Restriction on payment by Minister**

**34** An amount under section 33 is not to be paid to a person by the Minister at any time, unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**120 (1) Le paragraphe 189(4) de la même loi est remplacé par ce qui suit :**

**Restriction**

**(4)** Un montant de remboursement n'est versé qu'une fois présentés au ministre ou au ministre de la Sécurité publique et de la Protection civile l'ensemble des déclarations et autres registres dont le ministre a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**121 (1) L'élément B de la formule figurant à l'alinéa 297(1)a) de la même loi est remplacé par ce qui suit :**

**B** l'excédent éventuel du total des cotisations établies à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise* ou du paragraphe 160(2) de la *Loi de l'impôt sur le revenu* relativement au bien sur la somme payée par le cédant relativement à ces cotisations;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

2022, ch. 5, art. 10

## Loi sur la taxe sur les logements sous-utilisés

**122 (1) L'article 34 de la *Loi sur la taxe sur les logements sous-utilisés* est remplacé par ce qui suit :**

**Restriction visant les paiements par le ministre**

**34** Un montant prévu à l'article 33 n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à présenter au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

2022, c. 10, s. 135

## Select Luxury Items Tax Act

**123 (1) Section 45 of the *Select Luxury Items Tax Act* is replaced by the following:**

**Restriction on rebate**

**45** A rebate under this Subdivision is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**124 (1) Section 48 of the Act is replaced by the following:**

**Restriction — bankruptcy**

**48** If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate or succession of a bankrupt, a rebate under this Division that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required to be filed in respect of the bankrupt under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* in respect of periods ending before the appointment have been filed and all amounts required under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* to be paid by the bankrupt in respect of those periods have been paid.

2022, ch. 10, art. 135

## Loi sur la taxe sur certains biens de luxe

**123 (1) L'article 45 de la *Loi sur la taxe sur certains biens de luxe* est remplacé par ce qui suit :**

**Restriction — remboursements**

**45** Le montant d'un remboursement visé à la présente sous-section n'est payé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne doit produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**124 (1) L'article 48 de la même loi est remplacé par ce qui suit :**

**Restriction — faillite**

**48** En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif ou de la succession d'un failli, un remboursement prévu par la présente section auquel le failli avait droit avant la nomination n'est payé après la nomination que si toutes les déclarations à produire relativement au failli en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* relativement aux périodes qui ont pris fin avant la nomination ont été produites et que si les montants à payer par le failli en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la*

*taxe sur les services numériques* relativement à ces périodes ont été payés.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**125 (1) The portion of subsection 53(3) of the Act before the formula is replaced by the following:**

**125 (1) Le passage du paragraphe 53(3) de la même loi précédant la formule est remplacé par ce qui suit :**

**Failure to comply**

**(3)** If, at any time, a person referred to in subsection (1) or (2) fails to give or maintain security in an amount satisfactory to the Minister, the Minister may retain as security, out of any amount that may be or may become payable to the person under this Act, the *Excise Tax Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* or the *Digital Services Tax Act*, an amount not exceeding the amount determined by the formula

**Défaut de se conformer**

**(3)** Si, à un moment donné, la personne mentionnée aux paragraphes (1) ou (2) omet de donner ou de maintenir une garantie d'un montant que le ministre estime acceptable, le ministre peut retenir comme garantie, sur un montant qui peut être ou peut devenir payable à la personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* ou de la *Loi sur la taxe sur les services numériques*, un montant ne dépassant pas le montant obtenu par la formule suivante :

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**126 (1) Subsection 57(6) of the Act is replaced by the following:**

**126 (1) Le paragraphe 57(6) de la même loi est remplacé par ce qui suit :**

**Restriction — rebate of net tax**

**(6)** A rebate under subsection (4) is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**Restriction — remboursement de la taxe nette**

**(6)** Un remboursement prévu au paragraphe (4) n'est payé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien,* de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* ont été produites au ministre.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**127 (1) Section 94 of the Act is replaced by the following:**

**127 (1) L'article 94 de la même loi est remplacé par ce qui suit :**

**Restriction on payment by Minister**

**94** An amount under section 92 or 93 is not to be paid to a person by the Minister at any time, unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**128 (1) The description of B in paragraph 150(2)(d) of the Act is replaced by the following:**

**B** is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, paragraph 97.44(1)(b) of the *Customs Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 161(3) of the *Greenhouse Gas Pollution Pricing Act* or subsection 80(3) of the *Underused Housing Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

**(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.**

**Restriction visant les paiements par le ministre**

**94** Un montant en application de l'article 92 ou 93 n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

**128 (1) L'élément B de la formule figurant à l'alinéa 150(2)a) de la même loi est remplacé par ce qui suit :**

**B** l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise*, de l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise*, du paragraphe 161(3) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ou du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* relativement au bien sur la somme payée par le cédant relativement à ce montant;

**(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.**

## PART 3

# Amendments to the Excise Tax Act and to Related Legislation

R.S., c. E-15

## Excise Tax Act

**129 (1) Section 68.19 of the *Excise Tax Act* is replaced by the following:**

**Payment — use by province**

**68.19 (1)** If tax under Part III has been paid in respect of any goods that His Majesty in right of a province has purchased or imported, an amount equal to the amount

## PARTIE 3

# Modification de la Loi sur la taxe d'accise et de textes connexes

L.R., ch. E-15

## Loi sur la taxe d'accise

**129 (1) L'article 68.19 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**Utilisation par une province**

**68.19 (1)** Si la taxe a été payée en vertu de la partie III à l'égard de marchandises que Sa Majesté du chef d'une province a achetées ou importées, une somme égale au

of that tax shall, subject to this Part, be paid to His Majesty in right of the province if His Majesty in right of the province has purchased or imported those goods for any purpose other than

**(a)** resale;

**(b)** use by any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province; or

**(c)** use by His Majesty in right of the province, or by any agents or servants of His Majesty in right of the province, in connection with the manufacture or production of goods or use for other commercial or mercantile purposes.

**Application**

**(1.1)** No amount shall be paid under subsection (1) in respect of goods purchased or imported by His Majesty in right of a province unless an application for the payment is made within two years after His Majesty in right of the province purchased or imported those goods.

**Election**

**(1.2)** His Majesty in right of a province and the particular person that is, as the case may require, the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer in respect of goods that His Majesty in right of the province purchases or imports may jointly elect, in prescribed form containing prescribed information, to have the following rules apply in respect of the purchase or importation:

**(a)** the particular person, and not His Majesty in right of the province, is entitled to apply for a payment under subsection (1) in respect of the purchase or importation; and

**(b)** the amount payable by the Minister under subsection (1) in respect of the purchase or importation shall be paid to the particular person, and not to His Majesty in right of the province.

**Limitation**

**(1.3)** No more than one election under subsection (1.2) may be made by His Majesty in right of a province in respect of a particular purchase or importation of goods.

montant de cette taxe doit, sous réserve des autres dispositions de la présente partie, être versée à Sa Majesté du chef de la province si celle-ci a acheté ou importé les marchandises à une fin autre que :

**a)** la revente;

**b)** l'utilisation par un conseil, une commission, un chemin de fer, un service public, une université, une usine, une compagnie ou un organisme que le gouvernement de la province possède, contrôle ou exploite, ou sous l'autorité de la législature ou du lieutenant-gouverneur en conseil de la province;

**c)** l'utilisation par Sa Majesté du chef de la province, ou par ses mandataires ou préposés, relativement à la fabrication ou la production de marchandises, ou pour d'autres fins commerciales ou mercantiles.

**Demande de paiement**

**(1.1)** Nulle somme ne sera versée en application du paragraphe (1) relativement à des marchandises que Sa Majesté du chef d'une province a achetées ou importées à moins qu'une demande de paiement ne soit faite dans les deux ans suivant l'achat ou l'importation des marchandises par Sa Majesté du chef de la province.

**Choix**

**(1.2)** Sa Majesté du chef d'une province et la personne donnée qui est, selon le cas, l'importateur, le cessionnaire, le fabricant, le producteur, le marchand en gros, l'intermédiaire ou un autre commerçant relativement à des marchandises que Sa Majesté du chef de la province a achetées ou importées peuvent faire un choix conjoint, sur formulaire prescrit contenant les renseignements prescrits, pour que les règles ci-après s'appliquent relativement à l'achat ou à l'importation :

**a)** la personne donnée, et non Sa Majesté du chef de la province, a le droit de demander un paiement en vertu du paragraphe (1) relativement à l'achat ou à l'importation;

**b)** la somme payable par le ministre en vertu du paragraphe (1) relativement à l'achat ou à l'importation doit être versée à la personne donnée et non à Sa Majesté du chef de la province.

**Restriction**

**(1.3)** Sa Majesté du chef d'une province ne peut faire qu'un seul choix en vertu du paragraphe (1.2) relativement à un achat ou à une importation de marchandises donné.

**Exception**

**(2)** Subsection (1.2) does not apply in respect of goods purchased or imported by His Majesty in right of a province at a time when a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act* is in force in respect of the province.

**Non-application of subsection 68.2(1)**

**(3)** For greater certainty, if an application for a payment in respect of goods can be made by any person in accordance with subsection (1), subsection 68.2(1) does not apply in respect of the goods.

**(2) Subsection (1) applies in respect of any goods purchased or imported after 2021.**

**130 (1) The definition *financial instrument* in subsection 123(1) of the Act is amended by adding the following after paragraph (b):**

**(b.1)** a right (other than a right as a creditor), whether absolute or contingent, conferred by a corporation that does not have capital divided into shares to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, revenue or income of the corporation,

**(2) Paragraph (h) of the definition *financial instrument* in subsection 123(1) of the Act is replaced by the following:**

**(h)** a guarantee, an acceptance or an indemnity in respect of anything described in any of paragraphs (a) to (b.1), (d), (e) and (g), or

**(3) Subsections (1) and (2) are deemed to have come into force on August 10, 2022.**

**131 (1) Subsection 149(4) of the Act is replaced by the following:**

**Exclusion of interest and dividend**

**(4)** In determining a total for a person under paragraph (1)(b) or (c), there shall not be included interest, or any dividend, from

**(a)** if the person is a partnership, a corporation that is controlled by

**(i)** the person,

**(ii)** a corporation that is controlled by the person,

**(iii)** a corporation that is related to a corporation described in subparagraph (ii), or

**Exception**

**(2)** Le paragraphe (1.2) ne s'applique pas relativement aux marchandises achetées ou importées par Sa Majesté du chef d'une province à un moment où la province est liée par un accord de réciprocité fiscale prévu à l'article 32 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*.

**Non-application du paragraphe 68.2(1)**

**(3)** Il est entendu que le paragraphe 68.2(1) ne s'applique pas si un paiement relatif aux marchandises peut être demandé en application du paragraphe (1).

**(2) Le paragraphe (1) s'applique relativement aux marchandises achetées ou importées après 2021.**

**130 (1) La définition de *effet financier*, au paragraphe 123(1) de la même loi, est modifiée par adjonction, après l'alinéa b), de ce qui suit :**

**b.1)** un droit (sauf un droit à titre de créancier), absolu ou conditionnel, conféré par une personne morale dont le capital n'est pas divisé en actions de recevoir, dans l'immédiat ou dans le futur, une somme qu'il est raisonnable de considérer comme représentant tout ou partie de son capital ou de son revenu;

**(2) L'alinéa h) de la définition de *effet financier*, au paragraphe 123(1) de la même loi, est remplacé par ce qui suit :**

**h)** garantie, acceptation ou indemnité visant un effet visé à l'un des alinéas a) à b.1), d), e) et g);

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 10 août 2022.**

**131 (1) Le paragraphe 149(4) de la même loi est remplacé par ce qui suit :**

**Éléments à exclure**

**(4)** Sont exclus du calcul du total visé aux alinéas (1)b) ou c) pour une personne les intérêts et les dividendes provenant, selon le cas :

**a)** si la personne est une société de personnes, d'une personne morale qui est contrôlée par, selon le cas :

**(i)** la personne,

**(ii)** une personne morale qui est contrôlée par la personne,

**(iv)** a combination of persons described in subparagraphs (i) to (iii); or

**(b)** in any other case, a corporation related to the person.

**(iii)** une personne morale qui est liée à une personne morale visée au sous-alinéa (ii),

**(iv)** une combinaison de personnes visées aux sous-alinéas (i) à (iii);

**b)** dans les autres cas, d'une personne morale liée à la personne.

**(2) Subsection (1) applies to taxation years that begin after August 9, 2022.**

**(2) Le paragraphe (1) s'applique aux années d'imposition commençant après le 9 août 2022.**

**132 (1) Paragraph 150(4)(c) of the Act is replaced by the following:**

**(c)** the day specified in the revocation of the election, which day is at least 365 days after the day specified in the election.

**132 (1) L'alinéa 150(4)c) de la même loi est remplacé par ce qui suit :**

**c)** le jour précisé dans un avis de révocation du choix, lequel jour tombe au moins 365 jours après le jour précisé dans le choix.

**(2) Section 150 of the Act is amended by adding the following after subsection (4):**

**(2) L'article 150 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Form of revocation**

**(4.1)** A revocation of an election made under subsection (1) by a member of a closely related group and a corporation shall

**(a)** be made jointly in prescribed form containing prescribed information by the member and the corporation;

**(b)** specify the day on which the revocation is to become effective; and

**(c)** be filed with the Minister in prescribed manner on or before

**(i)** the particular day that is the earlier of

**(A)** the day on or before which the member is required to file a return under Division V for the reporting period of the member that includes the day specified in the revocation, and

**(B)** the day on or before which the corporation is required to file a return under Division V for the reporting period of the corporation that includes the day specified in the revocation, or

**(ii)** any day after the particular day that the Minister may allow.

**Forme de la révocation**

**(4.1)** La révocation d'un choix fait par un membre d'un groupe étroitement lié et une personne morale :

**a)** est faite conjointement par le membre et la personne morale en la forme déterminée par le ministre et contenant les renseignements qu'il détermine;

**b)** précise la date de son entrée en vigueur;

**c)** est présentée au ministre, selon les modalités qu'il détermine, au plus tard :

**(i)** à celle des dates ci-après qui est antérieure à l'autre :

**(A)** la date où le membre est tenu, au plus tard, de produire une déclaration aux termes de la section V pour sa période de déclaration qui comprend la date précisée dans la révocation,

**(B)** la date où la personne morale est tenue, au plus tard, de produire une déclaration aux termes de la section V pour sa période de déclaration qui comprend la date précisée dans la révocation,

**(ii)** à toute date postérieure que fixe le ministre.

**(3) Subsections (1) and (2) are deemed to have come into force on August 10, 2022.**

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 10 août 2022.**

**133 (1) The definition *Canadian partnership* in subsection 156(1) of the Act is repealed.**

**(2) Paragraph (b) of the definition *qualifying group* in subsection 156(1) of the Act is replaced by the following:**

**(b)** a group of specified partnerships, or of specified partnerships and corporations, each member of which is closely related, within the meaning of this section, to each other member of the group. (*groupe admissible*)

**(3) The portion of the definition *qualifying member* in subsection 156(1) of the Act before paragraph (a) is replaced by the following:**

***qualifying member*** of a qualifying group means a registrant that is a corporation resident in Canada or a specified partnership, each member of which is resident in Canada, and that meets the following conditions:

**(4) The portion of the definition *temporary member* in subsection 156(1) of the Act before paragraph (a) is replaced by the following:**

***temporary member*** of a qualifying group means a particular corporation

**(5) Paragraph (f) of the definition *temporary member* in subsection 156(1) of the Act is replaced by the following:**

**(f)** that receives a supply of property that meets the following conditions:

**(i)** the supply is made by another corporation that is a qualifying member of the qualifying group and in contemplation of a distribution made in the course of a reorganization whereby the shares of the particular corporation are to be transferred upon the distribution to one or more corporations (in this definition referred to as the "transferee corporations"),

**(ii)** the supplied property includes property that is neither a financial instrument nor property having a nominal value, and

**(iii)** all or substantially all of the supplied property (other than financial instruments and property having a nominal value)

**133 (1) La définition de *société de personnes canadienne*, au paragraphe 156(1) de la même loi, est abrogée.**

**(2) L'alinéa b) de la définition de *groupe admissible*, au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :**

**b)** groupe de sociétés de personnes déterminées, ou de sociétés de personnes déterminées et de personnes morales, dont chaque membre est étroitement lié, au sens du présent article, à chacun des autres membres du groupe. (*qualifying group*)

**(3) Le passage de la définition de *membre admissible* précédant l'alinéa a), au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :**

***membre admissible*** Est membre admissible d'un groupe admissible l'inscrit qui est une personne morale résidant au Canada, ou une société de personnes déterminée, dont chaque associé réside au Canada, et qui répond aux conditions suivantes :

**(4) Le passage de la définition de *membre temporaire* précédant l'alinéa a), au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :**

***membre temporaire*** Est membre temporaire d'un groupe admissible la personne morale donnée qui répond aux conditions suivantes :

**(5) L'alinéa f) de la définition de *membre temporaire*, au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :**

**f)** elle reçoit une fourniture de biens qui répond aux conditions suivantes :

**(i)** la fourniture est effectuée par une autre personne morale qui est un membre admissible du groupe et en prévision d'une attribution faite dans le cadre d'une réorganisation selon laquelle les actions de la personne morale donnée doivent faire l'objet d'un transfert à une ou plusieurs personnes morales (appelées « personnes morales bénéficiaires » dans la présente définition) au moment de l'attribution,

**(ii)** les biens fournis incluent des biens qui ne sont ni des effets financiers ni des biens d'une valeur nominale,

**(iii)** la totalité ou la presque totalité des biens fournis (autres que des effets financiers et des biens

**(A)** was last manufactured, produced, acquired or imported by the other corporation for consumption, use or supply exclusively in the course of the commercial activities of the other corporation,

**(B)** is not consumed, used or supplied by the particular corporation otherwise than exclusively in the course of its commercial activities, and

**(C)** may reasonably be expected to be consumed, used or supplied by the transferee corporations exclusively in the course of their commercial activities within 12 months after the time the supply is made;

d'une valeur nominale) répondent aux conditions suivantes :

**(A)** ils ont été fabriqués, produits, acquis ou importés, la dernière fois, par l'autre personne morale pour les consommer, les utiliser ou les fournir exclusivement dans le cadre de ses activités commerciales,

**(B)** ils ne sont ni consommés, ni utilisés ni fournis par la personne morale donnée autrement qu'exclusivement dans le cadre de ses activités commerciales,

**(C)** il est raisonnable de s'attendre à ce que les personnes morales bénéficiaires les consomment, les utilisent ou les fournissent exclusivement dans le cadre de leurs activités commerciales dans les douze mois à compter du moment où la fourniture est effectuée;

**(6) Paragraph (h) of the definition *temporary member* in subsection 156(1) of the Act is replaced by the following:**

**(h)** the shares of which are transferred to the transferee corporations upon the distribution referred to in subparagraph (f)(i). (*membre temporaire*)

**(6) L'alinéa h) de la définition de *membre temporaire*, au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :**

**h)** ses actions sont transférées aux personnes morales bénéficiaires au moment de l'attribution mentionnée au sous-alinéa f)(i). (*temporary member*)

**(7) Subsection 156(1) of the Act is amended by adding the following in alphabetical order:**

***specified partnership*** means a partnership each member of which is a corporation or a partnership. (*société de personnes déterminée*)

**(7) Le paragraphe 156(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***société de personnes déterminée*** Société de personnes dont chaque associé est une personne morale ou une société de personnes. (*specified partnership*)

**(8) The portion of subsection 156(1.1) of the Act before subparagraph (a)(i) is replaced by the following:**

**Closely related persons**

**(1.1)** For the purposes of this section, a particular specified partnership and another person that is a specified partnership or a corporation are closely related to each other at any time if, at that time,

**(a)** in the case where the other person is a specified partnership,

**(8) Le passage du paragraphe 156(1.1) de la même loi précédant le sous-alinéa a)(i) est remplacé par ce qui suit :**

**Personnes étroitement liées**

**(1.1)** Pour l'application du présent article, une société de personnes déterminée donnée et une autre personne — société de personnes déterminée ou personne morale — sont étroitement liées l'une à l'autre à un moment donné si, à ce moment :

**a)** dans le cas où l'autre personne est une société de personnes déterminée, l'une des situations suivantes se vérifie :

**(9) Clause 156(1.1)(a)(i)(B) of the Act is replaced by the following:**

**(9) La division 156(1.1)a)(i)(B) de la même loi est remplacée par ce qui suit :**

**(B)** a corporation, or a specified partnership, that is a member of a qualifying group of which the particular partnership is a member, or

**(10) Clause 156(1.1)(a)(ii)(B) of the Act is replaced by the following:**

**(B)** holds all or substantially all of the interest in a specified partnership that is a member of a qualifying group of which the other person is a member; and

**(11) Clause 156(1.1)(b)(i)(B) of the Act is replaced by the following:**

**(B)** a corporation, or a specified partnership, that is a member of a qualifying group of which the particular partnership is a member, or

**(12) Clause 156(1.1)(b)(iii)(B) of the Act is replaced by the following:**

**(B)** a corporation, or a specified partnership, that is a member of a qualifying group of which the other person is a member, or

**(13) Subparagraph 156(1.1)(b)(iv) of the Act is replaced by the following:**

**(iv)** all or substantially all of the interest in a specified partnership is held by

**(A)** if the specified partnership is a member of a qualifying group of which the particular partnership is a member, the other person, and

**(B)** if the specified partnership is a member of a qualifying group of which the other person is a member, the particular partnership.

**(14) Subsection 156(1.2) of the Act is replaced by the following:**

**Persons closely related to the same person**

**(1.2)** If, under subsection (1.1), two persons are closely related to the same corporation or specified partnership, the two persons are closely related to each other for the purposes of this section.

**(15) Paragraph 156(2.1)(c) of the Act is replaced by the following:**

**(B)** soit par une personne morale, ou une société de personnes déterminée, qui est membre d'un groupe admissible dont la société de personnes donnée est membre,

**(10) La division 156(1.1)a)(ii)(B) de la même loi est remplacée par ce qui suit :**

**(B)** détient la totalité ou la presque totalité des participations dans une société de personnes déterminée qui est membre d'un groupe admissible dont l'autre personne est membre;

**(11) La division 156(1.1)b)(i)(B) de la même loi est remplacée par ce qui suit :**

**(B)** une personne morale, ou une société de personnes déterminée, qui est membre d'un groupe admissible dont la société de personnes donnée est membre,

**(12) La division 156(1.1)b)(iii)(B) de la même loi est remplacée par ce qui suit :**

**(B)** soit par une personne morale, ou une société de personnes déterminée, qui est membre d'un groupe admissible dont l'autre personne est membre,

**(13) Le sous-alinéa 156(1.1)b)(iv) de la même loi est remplacé par ce qui suit :**

**(iv)** la totalité ou la presque totalité des participations dans une société de personnes déterminée sont détenues :

**(A)** par l'autre personne, si la société de personnes déterminée est membre d'un groupe admissible dont la société de personnes donnée est membre,

**(B)** par la société de personnes donnée, si la société de personnes déterminée est membre d'un groupe admissible dont l'autre personne est membre.

**(14) Le paragraphe 156(1.2) de la même loi est remplacé par ce qui suit :**

**Personnes étroitement liées à la même personne**

**(1.2)** Sont étroitement liées l'une à l'autre pour l'application du présent article les personnes qui, aux termes du paragraphe (1.1), sont étroitement liées à la même personne morale ou société de personnes déterminée.

**(15) L'alinéa 156(2.1)c) de la même loi est remplacé par ce qui suit :**

**(c)** a supply that is not a supply of property that meets the conditions set out in paragraph (f) of the definition *temporary member* in subsection (1), if the recipient of the supply is a temporary member.

**(16) Subsections (1) to (3) and (7) to (14) are deemed to have come into force on August 10, 2022.**

**(17) Subsections (4) to (6) are deemed to have come into force on August 9, 2022.**

**(18) Subsection (15) applies in respect of any supply made on or after August 9, 2022.**

**134 (1) Paragraph (k) of the definition *permitted deduction* in section 217 of the Act is replaced by the following:**

**(k)** consideration (other than interest referred to in paragraph (g), dividends referred to in paragraph (h) or consideration referred to in paragraph (k.1) or (k.2)) for a specified non-arm's length supply made to the qualifying taxpayer less the total of all amounts, each of which is a part of the value of the consideration and is loading;

**(2) The definition *permitted deduction* in section 217 of the Act is amended by adding the following after paragraph (k.1):**

**(k.2)** consideration (other than interest referred to in paragraph (g) or dividends referred to in paragraph (h)) for a supply that is deemed by subsection 150(1) to be a supply of a financial service and that is made to the qualifying taxpayer by another person, if the other person is a qualifying taxpayer throughout each specified year of the other person during which the other person makes an outlay, or incurs an expense, outside Canada for the purpose of making the supply;

**(3) Subsections (1) and (2) apply to any specified year of a person that ends after November 16, 2005, except that for the purposes of applying the definition *permitted deduction* in section 217 of the Act, as amended by subsections (1) and (2), in respect of an amount of consideration for a specified non-arm's length supply that became due, or was paid without having become due, on or before that day, paragraph (k) of that definition is to be read without reference to the words "less the total of all amounts, each of which is a part of the value of the consideration and is loading".**

**c)** la fourniture qui n'est pas une fourniture de biens qui répond aux conditions de l'alinéa f) de la définition de *membre temporaire* au paragraphe (1), si l'acquéreur de la fourniture est un membre temporaire.

**(16) Les paragraphes (1) à (3) et (7) à (14) sont réputés être entrés en vigueur le 10 août 2022.**

**(17) Les paragraphes (4) à (6) sont réputés être entrés en vigueur le 9 août 2022.**

**(18) Le paragraphe (15) s'applique relativement à toute fourniture effectuée après le 8 août 2022.**

**134 (1) L'alinéa k) de la définition de *déduction autorisée*, à l'article 217 de la même loi, est remplacé par ce qui suit :**

**k)** la contrepartie — à l'exclusion des intérêts visés à l'alinéa g), des dividendes visés à l'alinéa h) et de la contrepartie visée aux alinéas k.1) ou k.2) — d'une fourniture déterminée entre personnes ayant un lien de dépendance effectuée au profit du contribuable moins le total des montants dont chacun représente du chargement et une partie de la valeur de la contrepartie;

**(2) La définition de *déduction autorisée*, à l'article 217 de la même loi, est modifiée par adjonction, après l'alinéa k.1), de ce qui suit :**

**k.2)** la contrepartie, à l'exclusion des intérêts visés à l'alinéa g) et des dividendes visés à l'alinéa h), d'une fourniture qui est réputée par le paragraphe 150(1) être une fourniture de services financiers et qui est effectuée au profit du contribuable admissible par une autre personne si l'autre personne est un contribuable admissible tout au long de chacune de ses années déterminées au cours desquelles elle engage ou effectue une dépense à l'étranger dans le but d'effectuer la fourniture;

**(3) Les paragraphes (1) et (2) s'appliquent aux années déterminées d'une personne se terminant après le 16 novembre 2005. Toutefois, pour l'application de la définition de *déduction autorisée* à l'article 217 de la même loi, modifiée par les paragraphes (1) et (2), relativement à la contrepartie, même partielle, pour une fourniture déterminée entre personnes ayant un lien de dépendance qui est devenue due, ou qui a été payée sans être devenue due, au plus tard à cette date, il n'est pas tenu compte, à l'alinéa k) de cette définition, du passage « moins le total des montants**

dont chacun représente du chargement et une partie de la valeur de la contrepartie ».

**(4)** If, in assessing under section 296 of the Act tax payable by a person under Division IV of Part IX of the Act for a particular specified year of the person, an amount was taken into consideration as an external charge or as qualifying consideration for the particular specified year and as a result of the application of the definition ***permitted deduction*** in section 217 of the Act, as amended by subsections (1) and (2), the amount or part of the amount is neither qualifying consideration for any specified year of the person nor an external charge for any specified year of the person for which an election under subsection 217.2(1) of the Act is in effect, the person is entitled until the day that is one year after the day on which this Act receives royal assent to request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the amount or the part of the amount, as the case may be, is neither, if an election under subsection 217.2(1) of the *Excise Tax Act* is in effect for the particular specified year, an external charge for the particular specified year nor, in any other case, qualifying consideration for the particular specified year and, on receipt of the request, the Minister must with all due dispatch

**(a)** consider the request; and

**(b)** under section 296 of the Act, assess, reassess or make an additional assessment of the tax payable by the person under Division IV of Part IX of the Act for any specified year of the person and of any interest, penalty or other obligation of the person, solely for the purpose of taking into account that the amount or the part of the amount, as the case may be, is neither, if an election under subsection 217.2(1) of the Act is in effect for the particular specified year, an external charge for the particular specified year nor, in any other case, qualifying consideration for the particular specified year.

**(4)** Si, lors de l'établissement d'une cotisation en vertu de l'article 296 de la même loi concernant la taxe payable par une personne en application de la section IV de la partie IX de la même loi pour une année déterminée donnée de la personne, un montant a été pris en compte à titre de frais externes ou de contrepartie admissible pour cette année et que, par l'effet de l'application de la définition de ***déduction autorisée*** à l'article 217 de la même loi, modifiée par les paragraphes (1) et (2), ce montant ou une partie de ce montant ne constitue pas une contrepartie admissible pour une année déterminée de la personne ni des frais externes pour une année déterminée de la personne pour laquelle le choix prévu au paragraphe 217.2(1) de la même loi est en vigueur, la personne peut demander par écrit au ministre du Revenu national, au plus tard un an après la date de sanction de la présente loi, d'établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire afin de tenir compte du fait que le montant ou la partie du montant, selon le cas, ne représente pas, si le choix prévu au paragraphe 217.2(1) de la *Loi sur la taxe d'accise* est en vigueur pour l'année déterminée donnée, des frais externes pour cette année ni, dans les autres cas, une contrepartie admissible pour cette année. Dès réception de la demande, le ministre, avec diligence :

**a)** examine la demande;

**b)** établit, en vertu de l'article 296 de la même loi, une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant la taxe payable par la personne en vertu de la section IV de la partie IX de la même loi pour une année déterminée de la personne et les intérêts, pénalités ou autres obligations de celle-ci, mais seulement afin de déterminer que le montant ou la partie du montant, selon le cas, ne constitue pas, si le choix prévu au paragraphe 217.2(1) de la même loi est en vigueur pour l'année déterminée donnée, des frais externes pour cette année ni, dans les autres cas, une contrepartie admissible pour cette année.

**135 (1)** The formula in paragraph 273.2(2)(c) of the Act is replaced by the following:

$$\$2,000,000 \times A \div 365$$

**135 (1)** La formule figurant à l'alinéa 273.2(2)c) de la même loi est remplacée par ce qui suit :

$$2\,000\,000\,\$ \times A \div 365$$

**(2) Subsection (1) applies in respect of fiscal years of a person that end after August 9, 2022.**

**136 (1) Subsection 298(1) of the Act is amended by adding the following after paragraph (a):**

**(a.01)** despite paragraph (a), in the case of an assessment of the net tax of the person for a reporting period of the person that is made solely to take into account an amount of tax payable under section 218.01, more than seven years after the later of the day on or before which the person was required under section 238 to file a return for the period and the day the return was filed;

**(2) Subsection (1) is deemed to have come into force on August 4, 2023.**

**137 (1) The portion of the definition *practitioner* in section 1 of Part II of Schedule V to the Act before paragraph (b) is replaced by the following:**

***practitioner***, in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric, osteopathic, audiological, speech-language pathology, occupational therapy, psychological, psychotherapy, counselling therapy, midwifery, dietetic, acupuncture or naturopathic services, means a person who

**(a)** practises the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech-language pathology, occupational therapy, psychology, psychotherapy, counselling therapy, midwifery, dietetics, acupuncture or naturopathy as a naturopathic doctor, as the case may be,

**(2) Section 7 of Part II of Schedule V to the Act is amended by adding the following after paragraph (j):**

**(j.1)** psychotherapy services;

**(j.2)** counselling therapy services;

SOR/91-26; SOR/2011-56, s. 4; SOR/2013-71, s. 17

## Financial Services and Financial Institutions (GST/HST) Regulations

**138 (1) The *Financial Services and Financial Institutions (GST/HST) Regulations* are amended by adding the following after section 3.1:**

**(2) Le paragraphe (1) s'applique relativement aux exercices d'une personne se terminant après le 9 août 2022.**

**136 (1) Le paragraphe 298(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.01)** malgré l'alinéa a), s'agissant d'une cotisation visant la taxe nette de la personne pour sa période de déclaration établie afin de tenir compte uniquement d'un montant de taxe payable en vertu de l'article 218.01, sept ans après le dernier en date du jour où la personne était tenue par l'article 238 de produire une déclaration pour la période de déclaration et du jour de la production de la déclaration;

**(2) Le paragraphe (1) est réputé être entré en vigueur le 4 août 2023.**

**137 (1) Le passage de la définition *praticien* précédant l'alinéa b), à l'article 1 de la partie II de l'annexe V de la même loi, est remplacé par ce qui suit :**

***praticien*** Quant à la fourniture de services d'optométrie, de chiropraxie, de physiothérapie, de chiropodie, de podiatrie, d'ostéopathie, d'audiologie, d'orthophonie, d'ergothérapie, de psychologie, de psychothérapie, de counseling thérapeutique, de sage-femme, de diététique, d'acupuncture ou de naturopathie, personne qui répond aux conditions suivantes :

**a)** elle exerce l'optométrie, la chiropraxie, la physiothérapie, la chiropodie, la podiatrie, l'ostéopathie, l'audiologie, l'orthophonie, l'ergothérapie, la psychologie, la psychothérapie, la profession de conseiller thérapeutique, la profession de sage-femme, la diététique, l'acupuncture ou la naturopathie à titre de docteur en naturopathie, selon le cas;

**(2) L'article 7 de la partie II de l'annexe V de la même loi est modifié par adjonction, après l'alinéa j), de ce qui suit :**

**j.1)** services de psychothérapie;

**j.2)** services de counseling thérapeutique;

DORS/91-26; DORS/2011-56, art. 4; DORS/2013-71, art. 17

## Règlement sur les services financiers et les institutions financières (TPS/TVH)

**138 (1) Le *Règlement sur les services financiers et les institutions financières (TPS/TVH)* est**

**3.2 (1)** In this section, ***acquirer***, ***issuer***, ***payment card***, ***payment card network*** and ***payment card network operator*** have the same meanings as in section 3 of the *Payment Card Networks Act*.

**(2)** The following services are prescribed for the purposes of paragraph (r.6) of the definition *financial service* in subsection 123(1) of the Act:

**(a)** a service that

**(i)** is supplied by a payment card network operator in its capacity as the acquirer for a transaction made by payment card, and

**(ii)** is supplied to the person that accepted the payment card used for the transaction or to a *payment service provider* (as defined in section 2 of the *Retail Payment Activities Act*) engaged by that person;

**(b)** a service that is rendered to a holder of a payment card and that is supplied by a payment card network operator in its capacity as the issuer of the payment card;

**(c)** a service, in respect of the settlement of a transaction made by payment card, that is supplied

**(i)** by a payment card network operator, in its capacity as the acquirer for the transaction, to the issuer of the payment card, or

**(ii)** by a payment card network operator, in its capacity as the issuer of the payment card, to the acquirer for the transaction; and

**(d)** a service, in respect of the settlement of a transaction made by payment card, that is supplied by a payment card network operator to the acquirer for the transaction and that consists of paying to the acquirer the amount charged to the payment card in respect of the transaction, but only if the issuer of the payment card supplies to the payment card network operator a service, in respect of the settlement of the transaction, of paying to the payment card network operator the amount charged to the payment card in respect of the transaction.

**(2) Subsection (1) applies to a supply of a service for which**

**modifié par adjonction, après l'article 3.1, de ce qui suit :**

**3.2 (1)** Au présent article, ***acquéreur***, ***carte de paiement***, ***émetteur***, ***exploitant de réseau de cartes de paiement*** et ***réseau de cartes de paiement*** s'entendent au sens de l'article 3 de la *Loi sur les réseaux de cartes de paiement*.

**(2)** Pour l'application de l'alinéa r.6) de la définition de *service financier*, au paragraphe 123(1) de la Loi, sont visés les services suivants :

**a)** un service qui, à la fois :

**(i)** est fourni par un exploitant de réseau de cartes de paiement en sa qualité d'acquéreur pour une transaction effectuée par carte de paiement,

**(ii)** est fourni à la personne ayant accepté la carte de paiement utilisée pour la transaction ou à un *fournisseur de services de paiement* (au sens de l'article 2 de la *Loi sur les activités associées aux paiements de détail*) engagé par celle-ci;

**b)** un service qui est rendu à un détenteur d'une carte de paiement et qui est fourni par un exploitant de réseau de cartes de paiement en sa qualité d'émetteur de la carte de paiement;

**c)** un service, relativement au règlement d'une transaction effectuée par carte de paiement, qui est fourni, selon le cas :

**(i)** par un exploitant de réseau de cartes de paiement, en sa qualité d'acquéreur pour la transaction, à l'émetteur de la carte de paiement,

**(ii)** par un exploitant de réseau de cartes de paiement, en sa qualité d'émetteur de la carte de paiement, à l'acquéreur pour la transaction;

**d)** un service, relativement au règlement d'une transaction effectuée par carte de paiement, qui est fourni par un exploitant de réseau de cartes de paiement à l'acquéreur pour la transaction et qui consiste à lui verser le montant imputé à la carte de paiement au titre de la transaction, mais seulement si l'émetteur de la carte de paiement fournit un service à l'exploitant de réseau de cartes de paiement, relativement au règlement de la transaction, de versement à ce dernier du montant imputé à la carte de paiement relativement à la transaction.

**(2) Le paragraphe (1) s'applique à la fourniture d'un service à l'égard duquel, selon le cas :**

**(a) any consideration becomes due after March 28, 2023 or is paid after that day without having become due; or**

**(b) all of the consideration became due or was paid before March 29, 2023.**

**139 Section 4.1 of the Regulations, as made by section 6 of the *Regulations Amending Various GST/HST Regulations, No. 11*, is renumbered as section 4.2 and that section — and the heading before that section, as made by section 6 of those Regulations — are repositioned accordingly.**

SOR/91-36; SOR/2006-162, s. 2

## Joint Venture (GST/HST) Regulations

**140 (1) Subsection 3(1) of the *Joint Venture (GST/HST) Regulations* is amended by striking out "and" at the end of paragraph (o), by adding "and" at the end of paragraph (p) and by adding the following after paragraph (p):**

**(q)** the operation of a pipeline, rail terminal or truck terminal if the pipeline, rail terminal or truck terminal is used for the transportation of oil, natural gas or related or ancillary products.

**(2) Subsection (1) is deemed to have come into force on January 1, 1991.**

SOR/91-45; SOR/2000-180, s. 1; SOR/2014-248, s. 15

## Input Tax Credit Information (GST/HST) Regulations

**141 (1) The definition *intermediary* in section 2 of the *Input Tax Credit Information (GST/HST) Regulations* is replaced by the following:**

***intermediary*** of a person, means, in respect of a supply made by the person, a registrant

**(a)** that, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply, or

**(b)** that is deemed under subsection 177(1.11) of the Act to have acted as agent of the person in making the supply; (*intermédiaire*)

**a) tout ou partie de la contrepartie devient due après le 28 mars 2023 ou est payée après ce jour sans être devenue due;**

**b) la totalité de la contrepartie est devenue due ou a été payée avant le 29 mars 2023.**

**139 L'article 4.1 du même règlement, édicté par l'article 6 du *Règlement nº 11 modifiant divers règlements relatifs à la TPS/TVH*, devient l'article 4.2 et cet article — et l'intertitre précédant cet article, édicté par l'article 6 de ce règlement — sont déplacés en conséquence.**

DORS/91-36; DORS/2006-162, art. 2

## Règlement sur les coentreprises (TPS/TVH)

**140 (1) Le paragraphe 3(1) du *Règlement sur les coentreprises (TPS/TVH)* est modifié par adjonction, après l'alinéa p), de ce qui suit :**

**q)** l'exploitation d'un pipeline, d'un terminal ferroviaire ou d'un terminal de camions si le pipeline, le terminal ferroviaire ou le terminal de camions sert au transport du pétrole, du gaz naturel ou de produits connexes ou accessoires.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 1991.**

DORS/91-45; DORS/2000-180, art. 1; DORS/2014-248, art. 15

## Règlement sur les renseignements nécessaires à une demande de crédit de taxe sur les intrants (TPS/TVH)

**141 (1) La définition de *intermédiaire*, à l'article 2 du *Règlement sur les renseignements nécessaires à une demande de crédit de taxe sur les intrants (TPS/TVH)*, est remplacée par ce qui suit :**

***intermédiaire*** Inscrit qui, à l'égard d'une fourniture effectuée par une personne :

**a)** soit, agissant à titre de mandataire de la personne ou aux termes d'une convention conclue avec la personne, permet à cette dernière d'effectuer la fourniture ou en facilite la réalisation;

**b)** soit, est réputé, en vertu du paragraphe 177(1.11) de la Loi, avoir effectué la fourniture à titre de mandataire de la personne. (*intermediary*)

**(2) Subsection (1) is deemed to have come into force on April 20, 2021.**

**(2) Le paragraphe (1) est réputé être entré en vigueur le 20 avril 2021.**

**142 (1) The portion of paragraph 3(a) of the Regulations before subparagraph (i) is replaced by the following:**

**142 (1) Le passage de l'alinéa 3a) du même règlement précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**(a)** where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than $100,

**a)** lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de moins de 100 $ :

**(2) The portion of paragraph 3(b) of the Regulations before subparagraph (i) is replaced by the following:**

**(2) Le passage de l'alinéa 3b) du même règlement précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**(b)** where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $100 or more and less than $500,

**b)** lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 100 $ ou plus et de moins de 500 $ :

**(3) The portion of paragraph 3(c) of the Regulations before subparagraph (i) is replaced by the following:**

**(3) Le passage de l'alinéa 3c) du même règlement précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**(c)** where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $500 or more,

**c)** lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 500 $ ou plus :

**(4) Subsections (1) to (3) are deemed to have come into force on April 20, 2021.**

**(4) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 20 avril 2021.**

# Coordinating Amendments

# Dispositions de coordination

### Bill C-56

**143 (1) If Bill C-56, introduced in the 1st session of the 44th Parliament and entitled the *Affordable Housing and Groceries Act*, receives royal assent, then section 256.2 of the *Excise Tax Act* is amended by adding the following after subsection (2):**

### Projet de loi C-56

**143 (1) En cas de sanction du projet de loi C-56, déposé au cours de la 1re session de la 44e législature et intitulé *Loi sur le logement et l'épicerie à prix abordable*, l'article 256.2 de la *Loi sur la taxe d'accise* est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

#### Purpose-built rental housing — cooperative housing corporation

**(2.1)** For the purposes of applying subsections (3) and (5) and section 255 in respect of a taxable supply to a person that is a cooperative housing corporation of property that is prescribed for the purposes of subsection (3.1), if the taxable supply and the property meet the conditions

#### Logements construits spécialement pour la location — coopérative d'habitation

**(2.1)** Pour l'application des paragraphes (3) et (5) et de l'article 255 relativement à une fourniture taxable d'un bien visé par règlement pour l'application du paragraphe (3.1) à une personne qui est une coopérative d'habitation, si la fourniture taxable et le bien satisfont aux conditions

described in paragraph (3.1)(a) or (b) and if prescribed conditions are met, the person is deemed not to be a co-operative housing corporation in respect of the taxable supply.

**(2) If subsection (1) has produced its effects, subsection 256.2(2.1) of the *Excise Tax Act*, as enacted by subsection (1), is deemed to have come into force on September 14, 2023.**

visées aux alinéas (3.1)a) ou b) et si les conditions visées par règlement sont réunies, la personne est réputée ne pas être une coopérative d'habitation relativement à la fourniture taxable.

**(2) Si le paragraphe (1) a produit ses effets, le paragraphe 256.2(2.1) de la *Loi sur la taxe d'accise*, édicté par ce paragraphe (1), est réputé être entré en vigueur le 14 septembre 2023.**

### Bill C-323

**144 (1) Subsections (2) to (4) apply if Bill C-323, introduced in the 1st session of the 44th Parliament and entitled *An Act to amend the Excise Tax Act (mental health services)* (in this section referred to as the "other Act"), receives royal assent.**

**(2) If section 1 of the other Act comes into force before section 137 of this Act, then**

**(a) subsection 137(2) of this Act is deemed never to have come into force and is repealed; and**

**(b) paragraph 7(j.2) of Part II of Schedule V to the *Excise Tax Act* is replaced by the following:**

**(j.2)** counselling therapy services;

**(3) If section 137 of this Act comes into force before section 1 of the other Act, then that section 1 is repealed.**

**(4) If section 1 of the other Act comes into force on the same day as section 137 of this Act, then that section 1 is deemed to have come into force before that section 137 and subsection (2) applies as a consequence.**

**(5) For greater certainty, if this Act receives royal assent, then the other Act is deemed never to have produced its effects.**

### Projet de loi C-323

**144 (1) Les paragraphes (2) à (4) s'appliquent en cas de sanction du projet de loi C-323, déposé au cours de la 1re session de la 44e législature et intitulé *Loi modifiant la Loi sur la taxe d'accise (services de santé mentale)* (appelé « autre loi » au présent article).**

**(2) Si l'article 1 de l'autre loi entre en vigueur avant l'article 137 de la présente loi :**

**a) le paragraphe 137(2) de la présente loi est réputé ne pas être entré en vigueur et est abrogé;**

**b) l'alinéa 7j.2) de la partie II de l'annexe V de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :**

**j.2)** services de counseling thérapeutique;

**(3) Si l'article 137 de la présente loi entre en vigueur avant l'article 1 de l'autre loi, cet article 1 est abrogé.**

**(4) Si l'entrée en vigueur de l'article 1 de l'autre loi et celle de l'article 137 de la présente loi sont concomitantes, cet article 1 est réputé être entré en vigueur avant cet article 137, le paragraphe (2) s'appliquant en conséquence.**

**(5) Il est entendu que l'autre loi est réputée ne pas avoir produit ses effets si la présente loi est sanctionnée.**

**PART 4**

# Amendments to the Excise Act, 2001 and to Related Legislation

2002, c. 22

## Excise Act, 2001

**145 (1) Paragraph 14(1)(f) of the *Excise Act, 2001* is replaced by the following:**

**(f)** a vaping product licence, authorizing the person to

**(i)** manufacture vaping products, or

**(ii)** import packaged vaping products for stamping by the person.

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**(3) For greater certainty, a vaping product licence issued to a person before January 1, 2024 under paragraph 14(1)(f) of the Act, as it read immediately before that day, also authorizes the person under subparagraph 14(1)(f)(ii) of the Act, as enacted by subsection (1), as of that day.**

**146 (1) Section 158.46 of the Act is amended by adding "and" at the end of paragraph (b) and by replacing paragraphs (c) and (d) with the following:**

**(c)** before the end of the second calendar month following the calendar month in which the licensee packages the vaping product,

**(i)** the vaping product is stamped by the licensee to indicate that vaping duty has been paid, and

**(ii)** if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped by the licensee to indicate that additional vaping duty in respect of the specified vaping province has been paid.

**(2) Section 158.46 of the Act is renumbered as subsection 158.46(1) and is amended by adding the following:**

**PARTIE 4**

# Modification de la Loi de 2001 sur l'accise et de textes connexes

2002, ch. 22

## Loi de 2001 sur l'accise

**145 (1) L'alinéa 14(1)f) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :**

**f)** une licence de produits de vapotage, autorisant son titulaire :

**(i)** à fabriquer des produits de vapotage,

**(ii)** à importer des produits de vapotage emballés pour estampillage par son titulaire.

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**(3) Il est entendu qu'une licence de produits de vapotage délivrée à son titulaire avant le 1er janvier 2024 en vertu de l'alinéa 14(1)f) de la même loi, dans sa version antérieure à cette date, confère également à celui-ci une autorisation en vertu du sous-alinéa 14(1)f)(ii) de la même loi, édicté par le paragraphe (1), à compter de cette date.**

**146 (1) Les alinéas 158.46c) et d) de la même loi sont remplacés par ce qui suit :**

**c)** avant la fin du deuxième mois civil suivant celui au cours duquel il emballe les produits de vapotage, les conditions suivantes sont réunies :

**(i)** le produit de vapotage est estampillé par lui pour indiquer que le droit sur le vapotage a été acquitté,

**(ii)** si le produit de vapotage est destiné au marché des marchandises acquittées d'une province déterminée de vapotage, le produit de vapotage est estampillé par lui pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

**(2) L'article 158.46 de la même loi devient le paragraphe 158.46(1) et est modifié par adjonction de ce qui suit :**

**Stamping of imported packaged vaping products**

**(2)** A vaping product licensee that imports a packaged vaping product for stamping shall not enter the vaping product into the duty-paid market unless

**(a)** the vaping product is packaged in a package that has printed on it prescribed information; and

**(b)** before the end of the second calendar month following the calendar month in which the vaping product is released under the *Customs Act*,

**(i)** the vaping product is stamped by the licensee to indicate that vaping duty has been paid, and

**(ii)** if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped by the licensee to indicate that additional vaping duty in respect of the specified vaping province has been paid.

**Estampillage des produits de vapotage emballés importés**

**(2)** Le titulaire de licence de produits de vapotage qui importe un produit de vapotage emballé pour estampillage ne peut le mettre sur le marché des marchandises acquittées que si les conditions suivantes sont réunies :

**a)** le produit de vapotage est présenté dans un emballage portant les mentions prévues par règlement;

**b)** avant la fin du deuxième mois civil suivant celui au cours duquel le dédouanement du produit de vapotage est effectué en vertu de la *Loi sur les douanes*, les conditions suivantes sont réunies :

**(i)** le produit de vapotage est estampillé par le titulaire de licence pour indiquer que le droit sur le vapotage a été acquitté,

**(ii)** si le produit de vapotage est destiné au marché des marchandises acquittées d'une province déterminée de vapotage, le produit de vapotage est estampillé par le titulaire de licence pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

**(3) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023.**

**(3) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023.**

**(4) Subsection (2) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**(4) Le paragraphe (2) s'applique relativement aux produits de vapotage importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**147 (1) Subsection 158.47(2) of the Act is amended by adding the following after paragraph (a):**

**147 (1) Le paragraphe 158.47(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**(a.1)** that is a packaged vaping product imported by a vaping product licensee for stamping by the licensee;

**a.1)** les produits de vapotage emballés qui sont importés par un titulaire de licence de produits de vapotage pour estampillage par lui;

**(2) Subsection (1) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**(2) Le paragraphe (1) s'applique relativement aux produits de vapotage importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**148 (1) Section 158.49 of the Act is replaced by the following:**

**148 (1) L'article 158.49 de la même loi est remplacé par ce qui suit :**

**Unstamped products to be warehoused**

**158.49** If vaping products (other than vaping product drugs) manufactured in Canada are not stamped by a vaping product licensee, the vaping product licensee must

**Entreposage de produits non estampillés**

**158.49** Le titulaire de licence de produits de vapotage qui n'estampille pas des produits de vapotage (sauf des

immediately enter the vaping products into its excise warehouse.

**(2) Section 158.49 of the Act, as amended by subsection (1), is replaced by the following:**

**Unstamped products to be warehoused**

**158.49 (1)** If vaping products manufactured in Canada are not stamped by a vaping product licensee before the end of the particular calendar month that is the second calendar month following the calendar month in which the vaping product licensee packages the vaping products, the vaping product licensee must enter the vaping products into its excise warehouse before the end of the particular calendar month.

**Imported unstamped packaged products to be warehoused**

**(2)** If a vaping product licensee imports packaged vaping products for stamping but does not stamp the vaping products before the end of the particular calendar month that is the second calendar month following the calendar month in which the vaping products are released under the *Customs Act*, the vaping product licensee must enter the vaping products into its excise warehouse before the end of the particular calendar month.

**Exceptions**

**(3)** Subsections (1) and (2) do not apply

**(a)** in respect of vaping product drugs; or

**(b)** in prescribed circumstances.

**(3) Subsection (1) is deemed to have come into force on October 1, 2022.**

**(4) Subsection (2) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**149 (1) Section 158.5 of the Act is amended by adding the following after subsection (1):**

**Vaping product markings — exports and accredited representatives**

**(1.1)** Subject to subsection (4), no person shall remove a container of vaping products that are not stamped from the premises of a vaping product licensee for export or for delivery to an accredited representative unless the

drogues de produit de vapotage) fabriqués au Canada doit aussitôt les déposer dans son entrepôt d'accise.

**(2) L'article 158.49 de la même loi, modifié par le paragraphe (1), est remplacé par ce qui suit :**

**Entreposage de produits non estampillés**

**158.49 (1)** Le titulaire de licence de produits de vapotage qui n'estampille pas des produits de vapotage fabriqués au Canada avant la fin du mois civil donné qui est le deuxième mois civil suivant celui au cours duquel il emballe les produits de vapotage doit les déposer dans son entrepôt d'accise avant la fin du mois civil donné.

**Entreposage de produits emballés non estampillés importés**

**(2)** Le titulaire de licence de produits de vapotage qui importe des produits de vapotage emballés pour estampillage, mais qui ne les estampille pas avant la fin du mois civil donné qui est le deuxième mois civil suivant celui au cours duquel ils sont dédouanés en vertu de la *Loi sur les douanes*, doit les déposer dans son entrepôt d'accise avant la fin du mois civil donné.

**Exceptions**

**(3)** Les paragraphes (1) et (2) ne s'appliquent :

**a)** ni relativement aux drogues de produit de vapotage;

**b)** ni dans les circonstances prévues par règlement.

**(3) Le paragraphe (1) est réputé être entré en vigueur le 1er octobre 2022.**

**(4) Le paragraphe (2) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**149 (1) L'article 158.5 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Mentions obligatoires — produits exportés et représentants accrédités**

**(1.1)** Sous réserve du paragraphe (4), il est interdit à quiconque de sortir des contenants de produits de vapotage non estampillés des locaux d'un titulaire de licence de produits de vapotage pour exportation ou pour livraison

container has printed on it, or affixed to it, vaping product markings and other prescribed information.

**(2) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**150 (1) Subsection 158.51(3) of the Act is replaced by the following:**

**Exceptions**

**(3)** Subsections (1) and (2) do not apply

**(a)** in respect of a packaged vaping product that is imported by a vaping product licensee for stamping by the vaping product licensee; or

**(b)** in prescribed circumstances.

**(2) Subsection (1) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**151 (1) The Act is amended by adding the following after section 158.51:**

**Imports for stamping — delivery to premises**

**158.511** If a vaping product licensee imports a packaged vaping product for stamping by the vaping product licensee, the vaping product licensee shall, immediately after the vaping product is released under the *Customs Act*, deliver the vaping product to its premises for stamping.

**(2) Subsection (1) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**152 (1) Paragraphs 158.57(a) and (b) of the Act are replaced by the following:**

**(a)** in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are stamped;

**(a.1)** in the case of packaged vaping products that are imported by a vaping product licensee for stamping by the vaping product licensee, by the vaping product licensee and at the time they are stamped; and

à un représentant accrédité à moins que les mentions obligatoires pour vapotage et autres mentions prévues par règlement y aient été imprimées ou apposées.

**(2) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**150 (1) Le paragraphe 158.51(3) de la même loi est remplacé par ce qui suit :**

**Exceptions**

**(3)** Les paragraphes (1) et (2) ne s'appliquent :

**a)** ni relativement à un produit de vapotage emballé qui est importé par un titulaire de licence de produits de vapotage pour estampillage par lui;

**b)** ni dans les circonstances visées par règlement.

**(2) Le paragraphe (1) s'applique relativement aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**151 (1) La même loi est modifiée par adjonction, après l'article 158.51, de ce qui suit :**

**Importation pour estampillage — livraison dans les locaux**

**158.511** Si le titulaire de licence de produits de vapotage importe un produit de vapotage emballé pour estampillage par lui, il doit, aussitôt après son dédouanement en vertu de la *Loi sur les douanes*, le livrer dans ses locaux pour estampillage.

**(2) Le paragraphe (1) s'applique relativement aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**152 (1) Les alinéas 158.57a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a emballés et au moment de leur estampillage;

**a.1)** dans le cas de produits de vapotage emballés qui sont importés par un titulaire de licence de produits de vapotage pour estampillage par lui, du titulaire de

**(b)** in the case of any other imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

**(2) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**153 (1) Paragraphs 158.58(a) and (b) of the Act are replaced by the following:**

**(a)** in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are stamped;

**(a.1)** in the case of packaged vaping products that are imported by a vaping product licensee for stamping by the vaping product licensee, by the vaping product licensee and at the time they are stamped; and

**(b)** in the case of any other imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

**(2) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.**

**154 (1) Section 158.59 of the Act is replaced by the following:**

**Application of *Customs Act***

**158.59** The duties imposed under paragraphs 158.57(b) and 158.58(b) on imported vaping products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*, and, for those purposes,

licence de produits de vapotage et au moment de leur estampillage;

**b)** dans le cas de tous autres produits de vapotage importés, de l'importateur, du propriétaire ou d'une autre personne qui est tenue, aux termes de la *Loi sur les douanes*, de payer les droits perçus en vertu de l'article 20 du *Tarif des douanes* ou qui serait tenue de payer ces droits sur les produits de vapotage s'ils y étaient assujettis.

**(2) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**153 (1) Les alinéas 158.58a) et b) de la même loi sont remplacés par ce qui suit :**

**a)** dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a emballés et au moment de leur estampillage;

**a.1)** dans le cas de produits de vapotage emballés qui sont importés par un titulaire de licence de produits de vapotage pour estampillage par lui, du titulaire de licence de produits de vapotage et au moment de leur estampillage;

**b)** dans le cas de tous autres produits de vapotage importés, de l'importateur, du propriétaire ou d'une autre personne qui est tenu, aux termes de la *Loi sur les douanes*, de payer les droits perçus en vertu de l'article 20 du *Tarif des douanes* ou qui serait tenu de payer ces droits sur les produits de vapotage s'ils y étaient assujettis.

**(2) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.**

**154 (1) L'article 158.59 de la même loi est remplacé par ce qui suit :**

**Application de la *Loi sur les douanes***

**158.59** Les droits imposés en vertu des alinéas 158.57b) et 158.58b) sur les produits de vapotage importés sont payés et perçus aux termes de la *Loi sur les douanes*. Des intérêts et pénalités sont imposés, calculés, payés et perçus aux termes de cette loi comme si les droits étaient des droits perçus en vertu de l'article 20 du *Tarif des*

the *Customs Act* applies with any modifications that the circumstances require.

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**155 (1) Subsections 159.2(1) and (2) of the Act are replaced by the following:**

**Definition of *calendar quarter***

**159.2 (1)** In this section, ***calendar quarter*** means a period of three months beginning on the first day of January, April, July or October.

**Reporting period — calendar quarters**

**(2)** On application by a cannabis licensee, the Minister may, in writing, authorize the reporting periods of the cannabis licensee to be calendar quarters, beginning on the first day of a calendar quarter.

**(2) Subsection 159.2(4) of the Act is repealed.**

**(3) Subsections 159.2(6) and (7) of the Act are replaced by the following:**

**Notice of revocation**

**(6)** If the Minister revokes an authorization in respect of a cannabis licensee, the following rules apply:

**(a)** the Minister shall send a notice in writing of the revocation to the cannabis licensee and shall specify in the notice the fiscal month of the cannabis licensee for which the revocation becomes effective; and

**(b)** if the revocation becomes effective before the last day of a calendar quarter, the period beginning on the first day of the calendar quarter and ending immediately before the first day of that fiscal month is deemed to be a reporting period of the cannabis licensee.

**(4) Subsections (1) to (3) are deemed to have come into force on April 1, 2023.**

**156 The Act is amended by adding the following after section 233.2:**

**Contravention of section 158.47**

**233.3** Every person that is liable to pay a duty imposed under paragraph 158.57(b) on a vaping product is liable to a penalty equal to the amount determined by the following formula if the vaping product is released under

*douanes*. À ces fins, la *Loi sur les douanes* s'applique avec les adaptations nécessaires.

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**155 (1) Les paragraphes 159.2(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Définition de *trimestre civil***

**159.2 (1)** Au présent article, ***trimestre civil*** s'entend d'une période de trois mois débutant le premier jour de janvier, avril, juillet ou octobre.

**Période de déclaration — trimestres civils**

**(2)** Sur demande d'un titulaire de licence de cannabis, le ministre peut donner son autorisation écrite pour que la période de déclaration du titulaire de licence de cannabis corresponde à un trimestre civil, à compter du premier jour d'un trimestre civil.

**(2) Le paragraphe 159.2(4) de la même loi est abrogé.**

**(3) Les paragraphes 159.2(6) et (7) de la même loi sont remplacés par ce qui suit :**

**Avis de révocation**

**(6)** Si le ministre révoque une autorisation relativement à un titulaire de licence de cannabis, les règles suivantes s'appliquent :

**a)** le ministre l'en avise par écrit et précise dans l'avis son mois d'exercice pour lequel la révocation prend effet;

**b)** si la révocation prend effet avant la fin d'un trimestre civil, la période commençant le premier jour du trimestre civil et se terminant immédiatement avant le premier jour de ce mois d'exercice est réputée être une période de déclaration du titulaire de licence de cannabis.

**(4) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 1er avril 2023.**

**156 La même loi est modifiée par adjonction, après l'article 233.2, de ce qui suit :**

**Contravention — article 158.47**

**233.3** Quiconque est tenu d'acquitter un droit imposé en vertu de l'alinéa 158.57b) sur un produit de vapotage est passible d'une pénalité égale à la somme obtenue par la formule ci-après si le produit de vapotage est dédouané en vertu de la *Loi sur les douanes* en vue de son entrée

the *Customs Act* for entry into the duty paid market in contravention of section 158.47:

**(A + B) × 200%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the contravention occurred; and

**B** is

**(a)** if the contravention occurred in a specified vaping province, the amount determined for A, and

**(b)** in any other case, 0.

**157 The portion of section 234.2 of the Act before the formula is replaced by the following:**

**Contravention — sections 158.35 and 158.43 to 158.45**

**234.2** Every person that contravenes section 158.35, 158.43, 158.44 or 158.45 is liable to a penalty equal to the amount determined by the formula

**158 The Act is amended by adding the following after section 249:**

**Contravention of section 158.511**

**249.1** Every person that contravenes section 158.511 is liable to a penalty equal to the amount determined by the formula

**(A + B) × 50%**

where

**A** is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

**B** is

**(a)** if the contravention occurred in a specified vaping province, the amount determined for A, and

**(b)** in any other case, 0.

**159 Schedule 8 to the Act is amended by replacing the references after the heading "SCHEDULE 8" with the following:**

(Sections 158.57, 158.6, 158.61, 218.2, 233.2, 233.3, 234.2, 237, 238.01 and 249.1)

dans le marché des marchandises acquittées en contravention de l'article 158.47 :

**(A + B) × 200 %**

où :

**A** représente la somme déterminée selon l'annexe 8 relativement au produit de vapotage, d'après les taux applicables au moment où la contravention a été commise;

**B** :

**a)** si la contravention est commise dans une province déterminée de vapotage, la valeur de l'élément A,

**b)** sinon, zéro.

**157 Le passage de l'article 234.2 de la même loi précédant la formule est remplacé par ce qui suit :**

**Contravention — articles 158.35 et 158.43 à 158.45**

**234.2** Quiconque contrevient aux articles 158.35, 158.43, 158.44 ou 158.45 est passible d'une pénalité égale à la somme obtenue par la formule suivante :

**158 La même loi est modifiée par adjonction, après l'article 249, de ce qui suit :**

**Contravention — article 158.511**

**249.1** Quiconque contrevient à l'article 158.511 est passible d'une pénalité égale à la somme obtenue par la formule suivante :

**(A + B) × 50 %**

où :

**A** représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage auxquels la contravention se rapporte, d'après les taux applicables au moment où la contravention a été commise;

**B** :

**a)** si la contravention est commise dans une province déterminée de vapotage, la valeur de l'élément A,

**b)** sinon, zéro.

**159 Les renvois qui suivent le titre « ANNEXE 8 », à l'annexe 8 de la même loi, sont remplacés par ce qui suit :**

(articles 158.57, 158.6, 158.61, 218.2, 233.2, 233.3, 234.2, 237, 238.01 et 249.1)

SOR/98-61

## Returning Persons Exemption Regulations

**160 Paragraph 3(2)(b) of the *Returning Persons Exemption Regulations* is replaced by the following:**

**(b)** tobacco or vaping products (other than a *vaping product drug* as defined in section 2 of the *Excise Act, 2001*) imported by a person who has not attained 18 years of age.

SOR/2003-115

## Regulations Respecting Excise Licences and Registrations

**161 (1) The portion of subsection 5(1) of the English version of the *Regulations Respecting Excise Licences and Registrations* before paragraph (a) is replaced by the following:**

**5 (1)** For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence must be an amount of not less than $5,000 and

**(2) Subsection 5(1) of the Regulations is amended by striking out "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:**

**(b)** in the case of a tobacco licence or a vaping product licence, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence; and

**(c)** in the case of a cannabis licence,

**(i)** if the licensee is authorized under subsection 159.2(2) of the Act to have reporting periods that are calendar quarters, be sufficient to ensure payment of one-third of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence, and

**(ii)** in any other case, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence.

**(3) Subsections (1) and (2) are deemed to have come into force on April 1, 2023.**

DORS/98-61

## Règlement sur l'exemption accordée aux personnes revenant au Canada

**160 L'alinéa 3(2)b) du *Règlement sur l'exemption accordée aux personnes revenant au Canada* est remplacé par ce qui suit :**

**b)** au tabac ou aux produits de vapotage (sauf une *drogue de produit de vapotage* au sens de l'article 2 de la *Loi de 2001 sur l'accise*) importés par une personne qui n'a pas atteint l'âge de dix-huit ans.

DORS/2003-115

## Règlement sur les licences, agréments et autorisations d'accise

**161 (1) Le passage du paragraphe 5(1) de la version anglaise du *Règlement sur les licences, agréments et autorisations d'accise* précédant l'alinéa a) est remplacé par ce qui suit :**

**5 (1)** For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence must be an amount of not less than $5,000 and

**(2) L'alinéa 5(1)b) du même règlement est remplacé par ce qui suit :**

**b)** dans le cas d'une licence de tabac ou d'une licence de produits de vapotage, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, des droits visés à l'alinéa 160b) de la Loi;

**c)** dans le cas d'une licence de cannabis :

**(i)** si le titulaire d'une telle licence est autorisé en vertu du paragraphe 159.2(2) de la Loi à faire correspondre ses périodes de déclaration à des trimestres civils, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, d'un tiers des droits visés à l'alinéa 160b) de la Loi,

**(ii)** sinon, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, des droits visés à l'alinéa 160b) de la Loi.

**(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er avril 2023.**

SOR/2003-288; 2018, c. 12, s. 108; 2022, c. 10, s. 116

# Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

**162 (1) The portion of section 3.6 of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* before paragraph (a) is replaced by the following:**

**3.6** For the purposes of paragraphs 158.46(1)(b) and (2)(a) of the Act, the prescribed information is

**(2) Section 3.6 of the Regulations, as amended by subsection (1), is replaced by the following:**

**3.6** For the purposes of paragraphs 158.46(1)(b) and (2)(a) of the Act, the prescribed information is

**(a)** one of the following:

**(i)** the vaping product licensee's name and address,

**(ii)** the vaping product licensee's licence number, or

**(iii)** if the vaping product is packaged by the vaping product licensee for another person, the person's name and the address of their principal place of business; and

**(b)** the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package and the number of vaping devices and immediate containers in the package.

**(3) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**(4) Subsection (2) comes into force on the day that is six months after the first day of the month following the month in which this Act receives royal assent.**

**163 (1) Section 3.7 of the Regulations is replaced by the following:**

**3.7** For the purposes of paragraph 158.47(1)(a) of the Act, the prescribed information is

DORS/2003-288; 2018, ch. 12, art. 108; 2022, ch. 10, art. 116

# Règlement sur l'estampillage et le marquage des produits du tabac, du cannabis et de vapotage

**162 (1) Le passage de l'article 3.6 du *Règlement sur l'estampillage et le marquage des produits du tabac, du cannabis et de vapotage*, précédant l'alinéa a), est remplacé par ce qui suit :**

**3.6** Pour l'application des alinéas 158.46(1)b) et (2)a) de la Loi, les mentions réglementaires sont l'une ou l'autre des mentions suivantes :

**(2) L'article 3.6 du même règlement, modifié par le paragraphe (1), est remplacé par ce qui suit :**

**3.6** Pour l'application des alinéas 158.46(1)b) et (2)a) de la Loi, les mentions ci-après sont les mentions réglementaires :

**a)** l'une des mentions suivantes :

**(i)** les nom et adresse du titulaire de licence de produits de vapotage,

**(ii)** le numéro de licence du titulaire de licence de produits de vapotage,

**(iii)** si les produits de vapotage sont emballés par le titulaire de licence de produits de vapotage pour une autre personne, le nom de cette personne et l'adresse de son principal établissement;

**b)** le volume en millilitres des substances de vapotage sous forme liquide, et le poids en grammes des substances de vapotage sous forme solide, contenues dans chaque dispositif de vapotage ou contenant immédiat dans l'emballage et le nombre de dispositifs de vapotage et contenants immédiats que l'emballage contient.

**(3) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**(4) Le paragraphe (2) entre en vigueur le jour qui suit de six mois le premier jour du mois suivant celui de la sanction de la présente loi.**

**163 (1) L'article 3.7 du même règlement est remplacé par ce qui suit :**

**3.7** Pour l'application de l'alinéa 158.47(1)a) de la Loi, les mentions ci-après sont les mentions réglementaires :

**(a)** if the vaping product was imported by a vaping product licensee, the licensee's name and address or vaping product licence number;

**(b)** if the vaping product was imported by a person other than a vaping product licensee, the person's name and address; and

**(c)** the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package and the number of vaping devices and immediate containers in the package.

**(2) Subsection (1) comes into force on the day that is six months after the first day of the month following the month in which this Act receives royal assent.**

**164 (1) The portion of section 3.8 of the Regulations before paragraph (a) is replaced by the following:**

**3.8** For the purposes of paragraphs 158.46(1)(b) and (2)(a) and 158.47(1)(a) of the Act, the following information is prescribed for cases of vaping products:

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**165 (1) Paragraph 4(4)(b) of the Regulations is replaced by the following:**

**(b)** a person that has in their possession vaping excise stamps only for the purpose of applying adhesive to the stamps on behalf of the person to which the stamps are issued.

**(2) Subsection (1) is deemed to have come into force on June 23, 2022.**

**166 Section 5.1 of the Regulations, as enacted by section 122 of the *Budget Implementation Act, 2022, No. 1*, is renumbered as section 5.01 and that section is repositioned immediately after section 5 of the Regulations.**

**167 (1) The portion of subsection 8(1) of the Regulations before paragraph (a) is replaced by the following:**

**8 (1)** For the purposes of subsections 158.5(1) and (1.1) of the Act, the required vaping product markings are

**a)** si les produits de vapotage ont été importés par un titulaire de licence de produits de vapotage, son nom et son adresse ou le numéro de sa licence;

**b)** si les produits de vapotage ont été importés par une personne autre qu'un titulaire de licence de produits de vapotage, les nom et adresse de celle-ci;

**c)** le volume en millilitres des substances de vapotage sous forme liquide, et le poids en grammes des substances de vapotage sous forme solide, contenues dans chaque dispositif de vapotage ou contenant immédiat dans l'emballage et le nombre de dispositifs de vapotage et contenants immédiats que l'emballage contient.

**(2) Le paragraphe (1) entre en vigueur le jour qui suit de six mois le premier jour du mois suivant celui de la sanction de la présente loi.**

**164 (1) Le passage de l'article 3.8 du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**3.8** Pour l'application des alinéas 158.46(1)b) et (2)a) et 158.47(1)a) de la Loi, les mentions ci-après sont des mentions réglementaires à l'égard de caisses de produit de vapotage :

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

**165 (1) L'alinéa 4(4)b) du même règlement est remplacé par ce qui suit :**

**b)** la personne qui a en sa possession des timbres d'accise de vapotage dans le seul but d'y appliquer un adhésif pour le compte de la personne à qui les timbres ont été émis.

**(2) Le paragraphe (1) est réputé être entré en vigueur le 23 juin 2022.**

**166 L'article 5.1 du même règlement, édicté par l'article 122 de la *Loi nº 1 d'exécution du budget de 2022*, devient l'article 5.01 et est déplacé immédiatement après l'article 5 du même règlement.**

**167 (1) Le passage du paragraphe 8(1) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**8 (1)** Pour l'application des paragraphes 158.5(1) et (1.1) de la Loi, les mentions obligatoires pour vapotage sont les suivantes :

**(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.**

**(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.**

## PART 5

# Various Measures

## DIVISION 1

## Federal Financial Institutions

### SUBDIVISION A

### Information Technology Activities

2018, c.12

Budget Implementation Act, 2018, No. 1

**168 (1) Subsection 310(1) of the *Budget Implementation Act, 2018, No. 1* is amended by replacing the portion of the subparagraph 410(1)(c)(ii) that it enacts before clause (A) with the following:**

**(ii)** designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

**(2) Subsection 310(5) of the Act is amended by replacing the paragraph 410(3)(c) that it enacts with the following:**

**(c)** respecting the circumstances in which a company may engage in the activities referred to in paragraphs (1)(b.1) and (c), including the circumstances in which it may collect, manipulate and transmit information under subparagraph (1)(c)(i).

**169 Subsection 312(1) of the French version of the Act is amended by replacing the paragraphs 453(2.2)(b) and (c) that it enacts with the following:**

**b)** assortir de conditions l'acquisition par la société, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en

## PARTIE 5

# Mesures diverses

## SECTION 1

## Institutions financières fédérales

### SOUS-SECTION A

### Activités liées aux technologies de l'information

2018, ch. 12

Loi n° 1 d'exécution du budget de 2018

**168 (1) Le paragraphe 310(1) de la *Loi n° 1 d'exécution du budget de 2018* est modifié par remplacement du sous-alinéa 410(1)c)(ii) qui y est édicté par ce qui suit :**

**(ii)** la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe qui est exercée par la société ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

**(2) Le paragraphe 310(5) de la même loi est modifié par remplacement de l'alinéa 410(3)c) qui y est édicté par ce qui suit :**

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut exercer les activités visées aux alinéas (1)b.1) et c), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)c)(i).

**169 Le paragraphe 312(1) de la version française de la même loi est modifié par remplacement des alinéas 453(2.2)b) et c) qui y sont édictés par ce qui suit :**

**b)** assortir de conditions l'acquisition par la société, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en

vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**170 Section 313 of the French version of the Act is amended by replacing the paragraphs 453.1(a) and (b) that it enacts with the following:**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**171 (1) Subsection 316(1) of the Act is amended by replacing the portion of the subparagraph 410(1)(c)(ii) that it enacts before clause (A) with the following:**

**(ii)** designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

**(2) Subsection 316(5) of the French version of the Act is amended by replacing the paragraph 410(3)(c) that it enacts with the following:**

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut exercer les activités visées aux alinéas (1)b.1) et c), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)c)(i).

**172 Subsection 318(1) of the French version of the Act is amended by replacing the paragraphs**

vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**170 L'article 313 de la version française de la même loi est modifié par remplacement des alinéas 453.1a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**171 (1) Le paragraphe 316(1) de la même loi est modifié par remplacement du sous-alinéa 410(1)c)(ii) qui y est édicté par ce qui suit :**

**(ii)** la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe qui est exercée par la banque ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

**(2) Le paragraphe 316(5) de la version française de la même loi est modifié par remplacement de l'alinéa 410(3)c) qui y est édicté par ce qui suit :**

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut exercer les activités visées aux alinéas (1)b.1) et c), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)c)(i).

**172 Le paragraphe 318(1) de la version française de la même loi est modifié par remplacement des**

**468(2.2)(b) and (c) that it enacts with the following:**

**b)** assortir de conditions l'acquisition par la banque, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette banque, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**173 Section 319 of the French version of the Act is amended by replacing the paragraphs 468.1(a) and (b) that it enacts with the following:**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la banque du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette banque, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**174 Section 321 of the French version of the Act is amended by replacing the paragraphs 522.08(1.2)(a) and (b) that it enacts with the following:**

**a)** assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité canadienne — ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1);

**b)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne — ou acquérir ou détenir un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1).

**alinéas 468(2.2)b) et c) qui y sont édictés par ce qui suit :**

**b)** assortir de conditions l'acquisition par la banque, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette banque, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**173 L'article 319 de la version française de la même loi est modifié par remplacement des alinéas 468.1a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la banque du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette banque, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**174 L'article 321 de la version française de la même loi est modifié par remplacement des alinéas 522.08(1.2)a) et b) qui y sont édictés par ce qui suit :**

**a)** assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité canadienne — ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1);

**b)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne — ou acquérir ou détenir un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1).

**175 Section 322 of the French version of the Act is amended by replacing the paragraphs 522.081(a) and (b) that it enacts with the following:**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou détenir un intérêt de groupe financier dans une telle entité;

**b)** assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité.

**175 L'article 322 de la version française de la même loi est modifié par remplacement des alinéas 522.081a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou détenir un intérêt de groupe financier dans une telle entité;

**b)** assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité.

**176 (1) Subsection 324(1) of the Act is amended by replacing the portion of the subparagraph 539(1)(b.2)(ii) that it enacts before clause (A) with the following:**

**(ii)** designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

**176 (1) Le paragraphe 324(1) de la même loi est modifié par remplacement du sous-alinéa 539(1)b.2)(ii) qui y est édicté par ce qui suit :**

**(ii)** la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe qui est exercée par la banque étrangère autorisée ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

**(2) Subsection 324(3) of the Act is amended by replacing the paragraph 539(3)(c) that it enacts with the following:**

**(c)** respecting the circumstances in which an authorized foreign bank may engage in the activities referred to in paragraphs (1)(b.1) and (b.2), including the circumstances in which it may collect, manipulate and transmit information under subparagraph (1)(b.2)(i).

**(2) Le paragraphe 324(3) de la même loi est modifié par remplacement de l'alinéa 539(3)c) qui y est édicté par ce qui suit :**

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère autorisée peut exercer les activités visées aux alinéas (1)b.1) et b.2), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)b.2)(i).

**177 Subsection 326(1) of the French version of the Act is amended by replacing the paragraphs 930(2.2)(a) and (b) that it enacts with the following:**

**a)** assortir de conditions l'acquisition par la société de portefeuille bancaire, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**177 Le paragraphe 326(1) de la version française de la même loi est modifié par remplacement des alinéas 930(2.2)a) et b) qui y sont édictés par ce qui suit :**

**a)** assortir de conditions l'acquisition par la société de portefeuille bancaire, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**b)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**178 Section 327 of the French version of the Act is amended by replacing the paragraphs 930.1(a) and (b) that it enacts with the following:**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société de portefeuille bancaire du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

**179 (1) Subsection 329(1) of the Act is amended by replacing the portion of the subparagraph 441(1)(d)(ii) that it enacts before clause (A) with the following:**

**(ii)** designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

**(2) Subsection 329(5) of the French version of the Act is amended by replacing the paragraph 441(4)(c) that it enacts with the following:**

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut exercer les activités visées aux alinéas (1)c.1) et d), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)d)(i).

**180 (1) Subsection 331(1) of the French version of the Act is amended by replacing the paragraphs 495(2.2)(b) and (c) that it enacts with the following:**

**b)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**178 L'article 327 de la version française de la même loi est modifié par remplacement des alinéas 930.1a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société de portefeuille bancaire du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

**179 (1) Le paragraphe 329(1) de la même loi est modifié par remplacement du sous-alinéa 441(1)d)(ii) qui y est édicté par ce qui suit :**

**(ii)** la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe ou au paragraphe (1.1) qui est exercée par la société ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

**(2) Le paragraphe 329(5) de la version française de la même loi est modifié par remplacement de l'alinéa 441(4)c) qui y est édicté par ce qui suit :**

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut exercer les activités visées aux alinéas (1)c.1) et d), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)d)(i).

**180 (1) Le paragraphe 331(1) de la version française de la même loi est modifié par remplacement des alinéas 495(2.2)b) et c) qui y sont édictés par ce qui suit :**

**b)** assortir de conditions l'acquisition par la société d'assurance-vie, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurance-vie peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**(2) Subsection 331(3) of the French version of the Act is amended by replacing the paragraphs 495(4.2)(a) and (b) that it enacts with the following:**

**a)** assortir de conditions l'acquisition par la société d'assurances multirisques ou la société d'assurance maritime, en vertu du paragraphe (4.1), d'une entité ou l'acquisition ou l'augmentation par l'une de ces sociétés, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**b)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurances multirisques ou la société d'assurance maritime peut, en vertu du paragraphe (4.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**181 Section 332 of the French version of the Act is amended by replacing the paragraphs 495.1(a) and (b) that it enacts with the following:**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**182 Subsection 335(1) of the French version of the Act is amended by replacing the paragraphs 554(2.2)(b) and (c) that it enacts with the following:**

**b)** assortir de conditions l'acquisition par la société d'assurance-vie, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurance-vie peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**(2) Le paragraphe 331(3) de la version française de la même loi est modifié par remplacement des alinéas 495(4.2)a) et b) qui y sont édictés par ce qui suit :**

**a)** assortir de conditions l'acquisition par la société d'assurances multirisques ou la société d'assurance maritime, en vertu du paragraphe (4.1), d'une entité ou l'acquisition ou l'augmentation par l'une de ces sociétés, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**b)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurances multirisques ou la société d'assurance maritime peut, en vertu du paragraphe (4.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**181 L'article 332 de la version française de la même loi est modifié par remplacement des alinéas 495.1a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**182 Le paragraphe 335(1) de la version française de la même loi est modifié par remplacement des alinéas 554(2.2)b) et c) qui y sont édictés par ce qui suit :**

**b)** assortir de conditions l'acquisition par la société de secours, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**183 Section 336 of the French version of the Act is amended by replacing the paragraphs 554.1(a) and (b) that it enacts with the following:**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut acquérir le contrôle d'une entité qui exerce des activités qu'une société d'assurances multirisques est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société de secours du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**184 Subsection 337(1) of the French version of the Act is amended by replacing the paragraphs 971(2.2)(b) and (c) that it enacts with the following:**

**b)** assortir de conditions l'acquisition par la société de portefeuille d'assurances, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**185 Section 338 of the French version of the Act is amended by replacing the paragraphs 971.1(a) and (b) that it enacts with the following:**

**b)** assortir de conditions l'acquisition par la société de secours, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**183 L'article 336 de la version française de la même loi est modifié par remplacement des alinéas 554.1a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut acquérir le contrôle d'une entité qui exerce des activités qu'une société d'assurances multirisques est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

**b)** assortir de conditions l'acquisition par la société de secours du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

**184 Le paragraphe 337(1) de la version française de la même loi est modifié par remplacement des alinéas 971(2.2)b) et c) qui y sont édictés par ce qui suit :**

**b)** assortir de conditions l'acquisition par la société de portefeuille d'assurances, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

**c)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

**185 L'article 338 de la version française de la même loi est modifié par remplacement des alinéas 971.1a) et b) qui y sont édictés par ce qui suit :**

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité;

**b)** assortir de conditions l'acquisition par une société de portefeuille d'assurances du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

## SUBDIVISION B

## Virtual Meetings

1991, c. 45

Trust and Loan Companies Act

**186 (1) Subsection 139(1) of the French version of the *Trust and Loan Companies Act* is replaced by the following:**

**Lieu des assemblées**

**139 (1)** Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Subsection 139(2) of the Act is replaced by the following:**

**Participation by electronic means**

**(2)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Act to be present at the meeting.

**Meeting held by electronic means**

**(2.1)** If the directors or shareholders of a company call a meeting of shareholders under this Act, those directors or shareholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate

**a)** prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité;

**b)** assortir de conditions l'acquisition par une société de portefeuille d'assurances du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

## SOUS-SECTION B

## Assemblées virtuelles

1991, ch. 45

Loi sur les sociétés de fiducie et de prêt

**186 (1) Le paragraphe 139(1) de la version française de la *Loi sur les sociétés de fiducie et de prêt* est remplacé par ce qui suit :**

**Lieu des assemblées**

**139 (1)** Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Le paragraphe 139(2) de la même loi est remplacé par ce qui suit :**

**Participation aux assemblées par moyen de communication électronique**

**(2)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société. Elle est alors réputée, pour l'application de la présente loi, avoir assisté à l'assemblée.

**Tenue d'assemblées par moyen de communication électronique**

**(2.1)** Les administrateurs ou les actionnaires qui convoquent une assemblée des actionnaires conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les

adequately with each other during the meeting, if the by-laws so provide.

**187 Subsection 154(4) of the Act is replaced by the following:**

**Voting while participating electronically**

**(4)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders under subsection 139(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the company has made available for that purpose.

1991, c. 46

Bank Act

**188 (1) Subsection 136(1) of the French version of the *Bank Act* is replaced by the following:**

**Lieu des assemblées**

**136 (1)** Les assemblées des actionnaires ou des membres se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Subsection 136(2) of the Act is replaced by the following:**

**Participation by electronic means**

**(2)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders or members may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the bank makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Act to be present at the meeting.

**Meeting held by electronic means**

**(2.1)** If the directors, shareholders or members of a bank call a meeting of shareholders or members under this Act, those directors, shareholders or members may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits

participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

**187 Le paragraphe 154(4) de la même loi est remplacé par ce qui suit :**

**Vote en cas de participation par moyen de communication électronique**

**(4)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires de la manière prévue aux paragraphes 139(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

1991, ch. 46

Loi sur les banques

**188 (1) Le paragraphe 136(1) de la version française de la *Loi sur les banques* est remplacé par ce qui suit :**

**Lieu des assemblées**

**136 (1)** Les assemblées des actionnaires ou des membres se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Le paragraphe 136(2) de la même loi est remplacé par ce qui suit :**

**Participation aux assemblées par moyen de communication électronique**

**(2)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires ou des membres peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la banque. Elle est alors réputée, pour l'application de la présente loi, avoir assisté à l'assemblée.

**Tenue d'assemblées par moyen de communication électronique**

**(2.1)** Les administrateurs, les actionnaires ou les membres qui convoquent une assemblée des actionnaires ou des membres conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer

all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

**189 Subsection 151(4) of the Act is replaced by the following:**

**Voting while participating electronically**

**(4)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting under subsection 136(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the bank has made available for that purpose.

**190 (1) Subsection 725(1) of the French version of the Act is replaced by the following:**

**Lieu des assemblées**

**725 (1)** Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Subsection 725(2) of the Act is replaced by the following:**

**Participation by electronic means**

**(2)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the bank holding company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Part to be present at the meeting.

**Meeting held by electronic means**

**(2.1)** If the directors or shareholders of a bank holding company call a meeting of shareholders under this Act, those directors or shareholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

**191 Subsection 740(4) of the Act is replaced by the following:**

adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

**189 Le paragraphe 151(4) de la même loi est remplacé par ce qui suit :**

**Vote en cas de participation par moyen de communication électronique**

**(4)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée de la manière prévue aux paragraphes 136(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la banque à cette fin.

**190 (1) Le paragraphe 725(1) de la version française de la même loi est remplacé par ce qui suit :**

**Lieu des assemblées**

**725 (1)** Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Le paragraphe 725(2) de la même loi est remplacé par ce qui suit :**

**Participation aux assemblées par moyen de communication électronique**

**(2)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société de portefeuille bancaire. Elle est alors réputée, pour l'application de la présente partie, avoir assisté à l'assemblée.

**Tenue d'assemblées par moyen de communication électronique**

**(2.1)** Les administrateurs ou les actionnaires qui convoquent une assemblée des actionnaires conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

**191 Le paragraphe 740(4) de la même loi est remplacé par ce qui suit :**

**Voting while participating electronically**

**(4)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders under subsection 725(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the bank holding company has made available for that purpose.

1991, c. 47

Insurance Companies Act

**192 (1) Subsection 140(1) of the French version of the *Insurance Companies Act* is replaced by the following:**

**Lieu des assemblées**

**140 (1)** Les assemblées des actionnaires ou des souscripteurs se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Subsection 140(2) of the Act is replaced by the following:**

**Participation by electronic means**

**(2)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders or policyholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Act to be present at the meeting.

**Meeting held by electronic means**

**(2.1)** If the directors, shareholders or policyholders of a company call a meeting of shareholders or policyholders under this Act, those directors, shareholders or policyholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

**193 Subsection 157(4) of the Act is replaced by the following:**

**Vote en cas de participation par moyen de communication électronique**

**(4)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires de la manière prévue aux paragraphes 725(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

1991, ch. 47

Loi sur les sociétés d'assurances

**192 (1) Le paragraphe 140(1) de la version française de la *Loi sur les sociétés d'assurances* est remplacé par ce qui suit :**

**Lieu des assemblées**

**140 (1)** Les assemblées des actionnaires ou des souscripteurs se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Le paragraphe 140(2) de la même loi est remplacé par ce qui suit :**

**Participation aux assemblées par moyen de communication électronique**

**(2)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires ou des souscripteurs peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société. Elle est alors réputée, pour l'application de la présente loi, avoir assisté à l'assemblée.

**Tenue d'assemblées par moyen de communication électronique**

**(2.1)** Les administrateurs, les actionnaires ou les souscripteurs qui convoquent une assemblée des actionnaires ou des souscripteurs conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

**193 Le paragraphe 157(4) de la même loi est remplacé par ce qui suit :**

**Voting while participating electronically**

**(4)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders or policyholders under subsection 140(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the company has made available for that purpose.

**194 (1) Subsection 764(1) of the French version of the Act is replaced by the following:**

**Lieu des assemblées**

**764 (1)** Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Subsection 764(2) of the Act is replaced by the following:**

**Participation by electronic means**

**(2)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the insurance holding company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Part to be present at the meeting.

**Meeting held by electronic means**

**(2.1)** If the directors or shareholders of an insurance holding company call a meeting of shareholders under this Act, those directors or shareholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

**195 Subsection 778(4) of the Act is replaced by the following:**

**Voting while participating electronically**

**(4)** Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders under subsection 764(2) or (2.1) and entitled to vote at that meeting may vote by

**Vote en cas de participation par moyen de communication électronique**

**(4)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires ou des souscripteurs de la manière prévue aux paragraphes 140(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

**194 (1) Le paragraphe 764(1) de la version française de la même loi est remplacé par ce qui suit :**

**Lieu des assemblées**

**764 (1)** Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

**(2) Le paragraphe 764(2) de la même loi est remplacé par ce qui suit :**

**Participation aux assemblées par moyen de communication électronique**

**(2)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société de portefeuille d'assurances. Elle est alors réputée, pour l'application de la présente partie, avoir assisté à l'assemblée.

**Tenue d'assemblées par moyen de communication électronique**

**(2.1)** Les administrateurs ou les actionnaires qui convoquent une assemblée des actionnaires conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

**195 Le paragraphe 778(4) de la même loi est remplacé par ce qui suit :**

**Vote en cas de participation par moyen de communication électronique**

**(4)** Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires de la manière prévue aux paragraphes 764(2) ou (2.1) et

means of the telephonic, electronic or other communication facility that the insurance holding company has made available for that purpose.

habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

### Coming into Force

### Entrée en vigueur

**Order in council**

**196 This Subdivision comes into force on a day to be fixed by order of the Governor in Council.**

**Décret**

**196 La présente sous-section entre en vigueur à la date fixée par décret.**

## DIVISION 2

# Leave Related to Pregnancy Loss and Bereavement Leave

R.S., c. L-2

## Canada Labour Code

**197 Section 187.1 of the *Canada Labour Code* is amended by adding the following after subsection (2):**

**Application of section 210.2**

**(2.1)** If an employee interrupts a vacation to take leave under Division VIII and resumes the vacation immediately at the end of that leave, section 210.2 applies to them as if they did not resume the vacation before returning to work.

**198 The Act is amended by adding the following after section 206.5:**

### Leave Related to Pregnancy Loss

**Definitions**

**206.51 (1)** The following definitions apply in this section.

***common-law partner***, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*)

***stillbirth*** means the complete expulsion or extraction of a foetus from a person on or after the 20th week of pregnancy or after the foetus has attained at least 500 g, without any breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle from the foetus after the expulsion or extraction. (*mortinaissance*)

## SECTION 2

# Congé en cas de perte de grossesse et congé de décès

L.R., ch. L-2

## Code canadien du travail

**197 L'article 187.1 du *Code canadien du travail* est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Application de l'article 210.2**

**(2.1)** Si l'employé a interrompu son congé annuel afin de prendre congé au titre de la section VIII et a repris son congé annuel immédiatement après la fin de ce congé, l'article 210.2 s'applique à lui comme s'il n'avait pas repris son congé annuel avant son retour au travail.

**198 La même loi est modifiée par adjonction, après l'article 206.5, de ce qui suit :**

### Congé en cas de perte de grossesse

**Définitions**

**206.51 (1)** Les définitions qui suivent s'appliquent au présent article.

***conjoint de fait*** La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

***mortinaissance*** Expulsion ou extraction complète du foetus du corps d'une personne, à compter de la vingtième semaine de grossesse ou après que le foetus a atteint un poids d'au moins 500 g, sans qu'il y ait, chez le foetus, respiration, battement de cœur, pulsation du cordon ombilical ou contraction volontaire d'un muscle après cette expulsion ou extraction. (*stillbirth*)

**Eligible employees**

**(2)** An employee is eligible for the leave of absence referred to in subsection (3) if

**(a)** their pregnancy does not result in a live birth;

**(b)** the pregnancy of their spouse or common-law partner does not result in a live birth; or

**(c)** they intended to be the legal parent of the child that would have been born had another person's pregnancy resulted in a live birth.

**Entitlement to leave**

**(3)** An employee who is eligible for a leave of absence under subsection (2) is entitled to and shall be granted a leave of absence of up to

**(a)** eight weeks, if the pregnancy resulted in a stillbirth; or

**(b)** three days, in any other case.

**Pregnancy with multiples**

**(4)** For the purposes of this section, the following apply in respect of a pregnancy of more than one foetus:

**(a)** an employee may take only one leave of absence under subsection (3) in respect of the pregnancy; and

**(b)** a pregnancy that does not result in a live birth includes a pregnancy that has ended without a live birth in respect of at least one foetus.

**Period when leave may be taken**

**(5)** The period during which the employee may take a leave of absence begins on the day on which the pregnancy does not result in a live birth and ends 26 weeks after that day.

**Leave with pay**

**(6)** If the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of leave with pay at their regular rate of wages for their normal hours of work, and such pay shall for all purposes be considered to be wages.

**Division of leave**

**(7)** The leave of absence may be taken in one or two periods. The employer may require that each period of leave be not less than one day's duration.

**Employés en cause**

**(2)** Ont droit au congé prévu au paragraphe (3) les employés suivants :

**a)** l'employée dont la grossesse se termine sans naissance vivante;

**b)** l'employé dont l'épouse ou la conjointe de fait voit sa grossesse se terminer sans naissance vivante;

**c)** l'employé qui avait l'intention d'être le parent légal de l'enfant qui serait né de la grossesse d'une autre personne si cette grossesse s'était terminée par une naissance vivante.

**Droit à un congé**

**(3)** Tout employé visé au paragraphe (2) a droit à un congé :

**a)** d'au plus huit semaines, dans le cas d'une mortinaissance;

**b)** d'au plus trois jours, dans tout autre cas.

**Grossesse multiple**

**(4)** Pour l'application du présent article, les dispositions qui suivent s'appliquent à l'égard d'une grossesse multiple :

**a)** l'employé n'a droit qu'à un seul congé au titre du paragraphe (3) à l'égard de la grossesse;

**b)** la grossesse se termine sans naissance vivante notamment dans le cas où elle se termine sans naissance vivante à l'égard d'au moins un des foetus.

**Période de congé**

**(5)** La période au cours de laquelle l'employé peut prendre le congé commence à la date où la grossesse se termine sans naissance vivante et se termine vingt-six semaines après cette date.

**Rémunération**

**(6)** Si l'employé travaille pour l'employeur sans interruption depuis au moins trois mois, les trois premiers jours du congé lui sont payés au taux régulier de salaire pour une journée normale de travail; l'indemnité de congé qui est ainsi accordée est assimilée à un salaire.

**Division du congé**

**(7)** Le congé peut être pris en une ou deux périodes; l'employeur peut toutefois exiger que chaque période de congé soit d'une durée minimale d'une journée.

#### Regulations

**(8)** The Governor in Council may make regulations defining any expression for the purposes of this section, including the expressions "regular rate of wages" and "normal hours of work".

#### Règlements

**(8)** Le gouverneur en conseil peut, par règlement, définir tout terme pour l'application du présent article, notamment « taux régulier de salaire » et « journée normale de travail ».

**199 (1) Subsection 207.3(3) of the Act is replaced by the following:**

**199 (1) Le paragraphe 207.3(3) de la même loi est remplacé par ce qui suit :**

#### Notice — leave of more than four weeks

**(3)** If the length of the leave taken under any of sections 206.3 to 206.5, paragraph 206.51(3)(a) or section 206.9 is more than four weeks, the notice in writing of any change in the length of the leave shall be provided on at least four weeks' notice, unless there is a valid reason why that cannot be done.

#### Préavis — congé de plus de quatre semaines

**(3)** Sauf motif valable, le préavis doit être d'au moins quatre semaines si le congé pris en vertu de l'un des articles 206.3 à 206.5, de l'alinéa 206.51(3)a) ou de l'article 206.9 est de plus de quatre semaines.

**(2) Subsection 207.3(5) of the Act is replaced by the following:**

**(2) Le paragraphe 207.3(5) de la même loi est remplacé par ce qui suit :**

#### Return to work postponed

**(5)** If an employee who takes a leave of more than four weeks under any of sections 206.3 to 206.5 or paragraph 206.51(3)(a) wishes to shorten the length of the leave but does not provide the employer with four weeks' notice, the employer may postpone the employee's return to work for a period of up to four weeks after the day on which the employee informs the employer of the new end date of the leave. If the employer informs the employee that their return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

#### Report de la date de retour au travail

**(5)** Si l'employé qui a pris un congé de plus de quatre semaines en vertu de l'un des articles 206.3 à 206.5 ou de l'alinéa 206.51(3)a) désire en raccourcir la durée mais omet de fournir le préavis exigé au paragraphe (3), l'employeur peut retarder le retour au travail d'une période d'au plus quatre semaines suivant le jour où l'employé l'informe de la nouvelle date de la fin du congé. Si l'employeur avise l'employé que le retour au travail est retardé, l'employé ne peut retourner au travail avant la date précisée.

**200 (1) Paragraph 209.4(a) of the Act is replaced by the following:**

**200 (1) L'alinéa 209.4a) de la même loi est remplacé par ce qui suit :**

**(a)** specifying the absences from employment that are deemed not to have interrupted continuous employment referred to in any of sections 206.51 to 206.8;

**a)** préciser les absences qui sont réputées ne pas interrompre la continuité de l'emploi pour l'application des articles 206.51 à 206.8;

**(2) Paragraph 209.4(g) of the Act is replaced by the following:**

**(2) L'alinéa 209.4g) de la même loi est remplacé par ce qui suit :**

**(g)** prescribing shorter periods of consecutive months of continuous employment for the purposes of subsections 206.51(6), 206.6(2), 206.7(2.1) and 206.8(1);

**g)** préciser des périodes plus courtes de travail sans interruption pour l'application des paragraphes 206.51(6), 206.6(2), 206.7(2.1) et 206.8(1);

**201 (1) Subsection 210(1.3) of the Act is replaced by the following:**

**201 (1) Le paragraphe 210(1.3) de la même loi est remplacé par ce qui suit :**

#### Notice to employer

**(1.3)** Every employee who takes the leave of absence shall, as soon as possible, provide the employer with a notice in writing of the beginning of any period of leave

#### Avis à l'employeur

**(1.3)** L'employé qui prend le congé informe dès que possible l'employeur par écrit du moment où chaque période de congé commence ainsi que des raisons et de la durée du congé qu'il entend prendre.

of absence, the reasons for the leave and the length of the leave that they intend to take.

**Notice — change in length of leave**

**(1.4)** Every employee who is on the leave of absence shall, as soon as possible, provide the employer with a notice in writing of any change in the length of the leave that they intend to take.

**Notice — leave of more than four weeks**

**(1.5)** If the length of the leave of absence is more than four weeks, the notice in writing of any change in the length of the leave shall be provided on at least four weeks' notice, unless there is a valid reason why that cannot be done.

**Return to work postponed**

**(1.6)** If an employee who takes the leave of absence for more than four weeks wishes to shorten the length of the leave but does not provide the employer with four weeks' notice, the employer may postpone the employee's return to work for a period of up to four weeks after the day on which the employee informs the employer of the new end date of the leave. If the employer informs the employee that their return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

**Deemed part of leave**

**(1.7)** The period of the postponement is deemed to be part of the leave.

**(2) Subsection 210(3) of the Act is repealed.**

**202 The Act is amended by adding the following after section 210:**

**Right to notice of employment opportunities**

**210.1** An employee who takes a leave of absence from employment under this Division is entitled, on written request, to be informed in writing of every employment, promotion or training opportunity that arises during the period when the employee is on the leave of absence and for which the employee is qualified, and on receiving the request, every employer of the employee shall inform the employee accordingly.

**Resumption of employment in same position**

**210.2 (1)** An employee who takes a leave of absence from employment under this Division is entitled to be reinstated in the position that the employee occupied when the leave of absence commenced, and the employer of the

**Préavis — modification de la durée du congé**

**(1.4)** Toute modification de la durée prévue du congé est portée dès que possible à l'attention de l'employeur par un préavis écrit.

**Préavis — congé de plus de quatre semaines**

**(1.5)** Sauf motif valable, le préavis doit être d'au moins quatre semaines si le congé est de plus de quatre semaines.

**Report de la date de retour au travail**

**(1.6)** Si l'employé qui a pris un congé de plus de quatre semaines désire en raccourcir la durée mais omet de fournir le préavis exigé au paragraphe (1.5), l'employeur peut retarder le retour au travail d'une période d'au plus quatre semaines suivant le jour où l'employé l'informe de la nouvelle date de la fin du congé. Si l'employeur avise l'employé que le retour au travail est retardé, l'employé ne peut retourner au travail avant la date précisée.

**Période incluse**

**(1.7)** La période d'attente qui précède le retour au travail est réputée faire partie du congé.

**(2) Le paragraphe 210(3) de la même loi est abrogé.**

**202 La même loi est modifiée par adjonction, après l'article 210, de ce qui suit :**

**Information quant aux possibilités d'emploi**

**210.1** L'employé qui prend un congé aux termes de la présente section a le droit, sur demande écrite, d'être informé par écrit de toutes les possibilités d'emploi, d'avancement et de formation qui surviennent pendant son congé et qui sont en rapport avec ses qualifications professionnelles, l'employeur étant tenu de fournir l'information.

**Reprise de l'emploi**

**210.2 (1)** L'employé a le droit de reprendre l'emploi qu'il a quitté pour prendre son congé, l'employeur étant tenu de l'y réintégrer à la fin du congé.

employee shall reinstate the employee in that position at the end of the leave.

**Comparable position**

**(2)** If for any valid reason an employer cannot reinstate an employee in the position referred to in subsection (1), the employer shall reinstate the employee in a comparable position with the same wages and benefits and in the same location.

**Wages and benefits affected by reorganization**

**(3)** If an employee takes leave under this Division and, during the period of that leave, the wages and benefits of the group of employees of which that employee is a member are changed as part of a plan to reorganize the industrial establishment in which that group is employed, that employee is entitled, on being reinstated in employment under this section, to receive the wages and benefits in respect of that employment that the employee would have been entitled to receive had they been working when the reorganization took place.

**Notice of changes in wages and benefits**

**(4)** The employer of every employee who is on a leave of absence under this Division and whose wages and benefits would be changed as a result of a reorganization referred to in subsection (3) shall notify the employee in writing of that change as soon as possible.

**Right to benefits**

**210.3 (1)** The pension, health and disability benefits and the seniority of any employee who takes a leave of absence from employment under this Division accumulate during the entire period of the leave.

**Contributions by employee**

**(2)** If contributions are required from an employee in order for the employee to be entitled to a benefit referred to in subsection (1), the employee is responsible for and shall, within a reasonable time, pay those contributions for the period of any leave of absence under this Division unless, before or within a reasonable time after taking the leave, the employee notifies the employer of the employee's intention to discontinue contributions during that period.

**Contributions by employer**

**(3)** An employer who pays contributions in respect of a benefit referred to in subsection (1) shall continue to pay those contributions during an employee's leave of absence under this Division in at least the same proportion as if the employee were not on leave unless the employee

**Emploi comparable**

**(2)** Faute — pour un motif valable — de pouvoir réintégrer l'employé dans son poste antérieur, l'employeur lui fournit un emploi comparable, au même endroit, au même salaire et avec les mêmes avantages.

**Modifications consécutives à une réorganisation**

**(3)** Si, pendant sa période de congé, le salaire et les avantages du groupe dont il fait partie sont modifiés dans le cadre de la réorganisation de l'établissement où ce groupe travaille, l'employé, à sa reprise du travail, a droit au salaire et aux avantages afférents à l'emploi qu'il réoccupe comme s'il avait travaillé au moment de la réorganisation.

**Avis de modification**

**(4)** Dans le cas visé au paragraphe (3), l'employeur avise par écrit l'employé en congé de la modification du salaire et des avantages de son poste, et ce dans les meilleurs délais.

**Calcul des prestations**

**210.3 (1)** Les périodes pendant lesquelles l'employé prend congé aux termes de la présente section sont prises en compte pour le calcul des prestations de retraite, de maladie et d'invalidité et pour la détermination de l'ancienneté.

**Versement des cotisations de l'employé**

**(2)** Il incombe à l'employé, quand il est normalement responsable du versement des cotisations ouvrant droit à ces prestations, de les payer dans un délai raisonnable sauf si, avant de prendre le congé ou dans un délai raisonnable, il avise son employeur de son intention de cesser les versements pendant le congé.

**Versement des cotisations de l'employeur**

**(3)** L'employeur qui verse des cotisations pour que l'employé ait droit aux prestations doit, pendant le congé, poursuivre ses versements dans au moins la même proportion que si l'employé n'était pas en congé, sauf si ce dernier ne verse pas dans un délai raisonnable les cotisations qui lui incombent.

does not pay the employee's contributions, if any, within a reasonable time.

**Failure to pay contributions**

**(4)** For the purposes of calculating the pension, health and disability benefits of an employee in respect of whom contributions have not been paid as required under subsections (2) and (3), the benefits do not accumulate during the leave of absence and employment on the employee's return to work is deemed to be continuous with employment before the employee's absence.

**Deemed continuous employment**

**(5)** For the purposes of calculating benefits, other than benefits referred to in subsection (1), of an employee who takes a leave of absence under this Division, employment on the employee's return to work is deemed to be continuous with employment before the employee's absence.

**Effect of leave**

**210.4** Despite the provisions of any income-replacement scheme or any insurance plan in force at the workplace, an employee who takes a leave of absence from employment under this Division is entitled to benefits under the scheme or plan on the same terms as any employee who is absent from work for health-related reasons and is entitled to benefits under the scheme or plan.

**Prohibition**

**210.5** No employer shall

**(a)** dismiss, suspend, lay off, demote or discipline an employee because the employee applies for, intends to take or has taken a leave of absence from employment under this Division; or

**(b)** take into account the fact that an employee applies for, intends to take or has taken a leave of absence from employment under this Division in any decision to promote or train that employee.

**Regulations**

**210.6** The Governor in Council may make regulations

**(a)** defining the expression "immediate family" for the purposes of subsection 210(1);

**(b)** for the purposes of subsection 210(2),

**(i)** defining the expressions "regular rate of wages" and "normal hours of work", and

**(ii)** prescribing shorter periods of consecutive months of continuous employment;

**Défaut de versement**

**(4)** Pour le calcul des prestations, en cas de défaut de versement des cotisations visées aux paragraphes (2) et (3), la durée de l'emploi est réputée ne pas avoir été interrompue, la période de congé n'étant toutefois pas prise en compte.

**Continuité d'emploi**

**(5)** Pour le calcul des avantages — autres que les prestations citées au paragraphe (1) — de l'employé en situation de congé sous le régime de la présente section, la durée de l'emploi est réputée ne pas avoir été interrompue, la période de congé n'étant toutefois pas prise en compte.

**Conséquence du congé**

**210.4** Malgré les dispositions du régime de remplacement de revenu ou du régime d'assurance en vigueur à son lieu de travail, l'employé qui prend un congé aux termes de la présente section est admissible aux avantages que le régime prévoit aux mêmes conditions que tout employé qui s'absente pour cause de maladie et qui y est admissible.

**Interdiction**

**210.5** L'employeur ne peut invoquer le fait qu'un employé a présenté une demande de congé aux termes de la présente section ou a l'intention de prendre ou a pris un tel congé pour le congédier, le suspendre, le mettre à pied, le rétrograder ou prendre des mesures disciplinaires contre lui, ni en tenir compte dans ses décisions en matière d'avancement ou de formation.

**Règlements**

**210.6** Le gouverneur en conseil peut, par règlement :

**a)** préciser, pour l'application du paragraphe 210(1), le sens de « proche parent »;

**b)** préciser, pour l'application du paragraphe 210(2) :

**(i)** le sens de « taux régulier de salaire » et de « journée normale de travail »,

**(ii)** des périodes plus courtes de travail sans interruption;

**(c)** specifying what does not constitute a valid reason for not reinstating an employee in the position referred to in subsection 210.2(2);

**(d)** for the purposes of this Division, specifying the absences from employment that are deemed not to have interrupted continuity of employment;

**(e)** specifying the circumstances in which a leave under this Division may be interrupted; and

**(f)** extending the period within which a leave under this Division may be taken.

**203 Subsection 246.1(1) of the Act is amended by adding the following after paragraph (a):**

**(a.1)** the employer has taken action against the employee in contravention of paragraph 210.5(a) or (b);

**c)** préciser, pour l'application du paragraphe 210.2(2), ce qui ne constitue pas un motif valable pour ne pas réintégrer un employé dans son poste antérieur;

**d)** préciser, pour l'application de la présente section, les cas d'absence qui n'ont pas pour effet d'interrompre le service chez un employeur;

**e)** préciser les cas où le congé prévu par la présente section peut être interrompu;

**f)** prolonger la période au cours de laquelle peut être pris le congé prévu par la présente section.

**203 Le paragraphe 246.1(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** toute mesure contrevenant à l'article 210.5;

2021, c. 27

## An Act to amend the Criminal Code and the Canada Labour Code

**204 (1) Section 6.1 of *An Act to amend the Criminal Code and the Canada Labour Code* is amended by replacing the subsection 210(1) that it enacts with the following:**

**Employee entitled**

**210 (1)** Except when subsection (1.01) applies, every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of that deceased person occurs.

**(2) Section 6.1 of the Act is amended by replacing the subsections 210(1.02) and (1.03) that it enacts with the following:**

**Definition of *child***

**(1.02)** In subsection (1.01), ***child*** means

**(a)** a person who is under 18 years of age; or

**(b)** a person in respect of whom the employee or their spouse or common-law partner, as the case may be, is entitled to the Canada caregiver credit under paragraph 118(1)(d) of the *Income Tax Act*.

2021, ch. 27

## Loi modifiant le Code criminel et le Code canadien du travail

**204 (1) L'article 6.1 de la *Loi modifiant le Code criminel et le Code canadien du travail* est modifié par remplacement du paragraphe 210(1) qui y est édicté par ce qui suit :**

**Droit**

**210 (1)** Sauf lorsque le paragraphe (1.01) s'applique, en cas de décès d'un proche parent ou d'un membre de la famille relativement auquel il est, au moment du décès, en congé au titre des articles 206.3 ou 206.4, l'employé a droit à un congé d'au plus dix jours qui peut être pris pendant la période qui commence à la date du décès et se termine six semaines après la date des funérailles de la personne décédée, de son inhumation ou du service commémoratif tenu à son égard, selon celle qui est la plus éloignée.

**(2) L'article 6.1 de la même loi est modifié par remplacement des paragraphes 210(1.02) et (1.03) qui y sont édictés par ce qui suit :**

**Définition de *enfant***

**(1.02)** Au paragraphe (1.01), ***enfant*** s'entend d'une personne qui est âgée de moins de dix-huit ans ou à l'égard de qui l'employé ou son époux ou conjoint de fait, selon le cas, est admissible au crédit canadien pour aidant naturel au titre de l'alinéa 118(1)d) de la *Loi de l'impôt sur le revenu*.

**205 Subsection 8(3) of the Act is replaced by the following:**

**Section 6.1**

**(3) Section 6.1 comes into force on the day on which section 198 of the *Fall Economic Statement Implementation Act, 2023* comes into force.**

## Transitional Provision

**Subsection 210(1.3)**

**206 Subsection 210(1.3) of the *Canada Labour Code*, as enacted by subsection 201(1), applies only with respect to leaves under section 210 of that Act that begin on or after the day on which that subsection 201(1) comes into force.**

## Coordinating Amendments

**2021, c. 27**

**207 (1) In this section, *other Act* means *An Act to amend the Criminal Code and the Canada Labour Code*, chapter 27 of the Statutes of Canada, 2021.**

**(2) If section 6.1 of the other Act comes into force before section 204 of this Act, then**

**(a) sections 204 and 205 of this Act are deemed never to have come into force and are repealed;**

**(b) subsection 210(1) of the *Canada Labour Code* is replaced by the following:**

**Employee entitled**

**210 (1)** Except when subsection (1.01) applies, every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of that deceased person occurs.

**(c) subsections 210(1.02) and (1.03) of the *Canada Labour Code* are replaced by the following:**

**205 Le paragraphe 8(3) de la même loi est remplacé par ce qui suit :**

**Article 6.1**

**(3) L'article 6.1 entre en vigueur à la date d'entrée en vigueur de l'article 198 de la *Loi d'exécution de l'énoncé économique de l'automne 2023*.**

## Disposition transitoire

**Paragraphe 210(1.3)**

**206 Le paragraphe 210(1.3) du *Code canadien du travail*, édicté par le paragraphe 201(1), ne s'applique qu'aux congés pris aux termes de l'article 210 de cette loi qui commencent à la date d'entrée en vigueur de ce paragraphe 201(1) ou après cette date.**

## Dispositions de coordination

**2021, ch. 27**

**207 (1) Au présent article, *autre loi* s'entend de la *Loi modifiant le Code criminel et le Code canadien du travail*, chapitre 27 des Lois du Canada (2021).**

**(2) Si l'article 6.1 de l'autre loi entre en vigueur avant l'article 204 de la présente loi :**

**a) les articles 204 et 205 de la présente loi sont réputés ne pas être entrés en vigueur et sont abrogés;**

**b) le paragraphe 210(1) du *Code canadien du travail* est remplacé par ce qui suit :**

**Droit**

**210 (1)** Sauf lorsque le paragraphe (1.01) s'applique, en cas de décès d'un proche parent ou d'un membre de la famille relativement auquel il est, au moment du décès, en congé au titre des articles 206.3 ou 206.4, l'employé a droit à un congé d'au plus dix jours qui peut être pris pendant la période qui commence à la date du décès et se termine six semaines après la date des funérailles de la personne décédée, de son inhumation ou du service commémoratif tenu à son égard, selon celle qui est la plus éloignée.

**c) les paragraphes 210(1.02) et (1.03) du *Code canadien du travail* sont remplacés par ce qui suit :**

**Definition of *child***

**(1.02)** In subsection (1.01), ***child*** means

**(a)** a person who is under 18 years of age; or

**(b)** a person in respect of whom the employee or their spouse or common-law partner, as the case may be, is entitled to the Canada caregiver credit under paragraph 118(1)(d) of the *Income Tax Act*.

**(3) If section 6.1 of the other Act and section 204 of this Act come into force on the same day, then that section 204 is deemed to have come into force before that section 6.1.**

## Coming into Force

**540th day or order in council**

**208 Sections 197 to 203 come into force on the 540th day after the day on which this Act receives royal assent or on an earlier day to be fixed by order of the Governor in Council.**

**DIVISION 3**

# Canada Water Agency Act

## Enactment of Act

**Enactment**

**209 The *Canada Water Agency Act* is enacted as follows:**

An Act respecting the Canada Water Agency

**Preamble**

Whereas the Government of Canada recognizes the importance of taking action to respond to the growing challenges threatening the health and sustainable management of freshwater ecosystems;

Whereas the Government of Canada wishes to foster collaboration with respect to freshwater issues;

Whereas the Government of Canada wishes to contribute to the protection, conservation and restoration of the quality of fresh water and the health of freshwater ecosystems in Canada and to take other collaborative measures, including the development of policy and the promotion of sound governance with respect to fresh water, as well as the improvement of the ease of access to and use of relevant data;

**Définition de *enfant***

**(1.02)** Au paragraphe (1.01), ***enfant*** s'entend d'une personne qui est âgée de moins de dix-huit ans ou à l'égard de qui l'employé ou son époux ou conjoint de fait, selon le cas, est admissible au crédit canadien pour aidant naturel au titre de l'alinéa 118(1)d) de la *Loi de l'impôt sur le revenu*.

**(3) Si l'entrée en vigueur de l'article 6.1 de l'autre loi et celle de l'article 204 de la présente loi sont concomitantes, cet article 204 est réputé être entré en vigueur avant cet article 6.1.**

## Entrée en vigueur

**Cinq cent quarantième jour ou décret**

**208 Les articles 197 à 203 entrent en vigueur le cinq cent quarantième jour suivant la date de sanction de la présente loi ou, si elle est antérieure, à la date fixée par décret.**

**SECTION 3**

# Loi sur l'Agence canadienne de l'eau

## Édiction de la loi

**Édiction**

**209 Est édictée la *Loi sur l'Agence canadienne de l'eau*, dont le texte suit :**

Loi concernant l'Agence canadienne de l'eau

**Préambule**

Attendu :

que le gouvernement du Canada reconnaît l'importance d'agir pour faire face aux défis croissants qui mettent en péril la santé et la gestion durable des écosystèmes d'eau douce;

qu'il entend encourager la collaboration à l'égard des enjeux relatifs à l'eau douce;

qu'il entend contribuer à la protection, la conservation et la restauration de la qualité de l'eau douce et de la santé des écosystèmes d'eau douce au Canada et prendre d'autres mesures collaboratives, notamment le développement de politiques relatives à l'eau douce, la promotion d'une saine gouvernance dans le domaine de l'eau douce et l'amélioration de l'accessibilité aux données pertinentes de leur utilisation;

Whereas the Government of Canada recognizes the importance of relying on scientific knowledge related to fresh water and of relying, through cooperation with the Indigenous peoples of Canada, on Indigenous knowledge related to fresh water;

Whereas the Government of Canada wishes to coordinate federal policies and programs with respect to freshwater issues;

Whereas the Government of Canada is committed, in the course of exercising and performing its powers, duties and functions with respect to fresh water, to fostering reconciliation with the Indigenous peoples of Canada and to ensuring respect for their rights recognized and affirmed under section 35 of the *Constitution Act, 1982*;

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas the Government of Canada is committed to promoting cooperation with respect to freshwater issues with provincial and territorial governments and the Indigenous peoples of Canada;

Whereas the Government of Canada wishes to promote cooperation with respect to freshwater issues with foreign governments, international organizations and interested persons and organizations;

And whereas the Government of Canada considers that the creation of the Canada Water Agency will contribute to the coordination of federal efforts to promote sustainable freshwater management;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

qu'il reconnaît l'importance de s'appuyer sur les connaissances scientifiques en matière d'eau douce et de s'appuyer, en coopérant avec les peuples autochtones du Canada, sur les connaissances autochtones à ce même sujet;

qu'il entend coordonner les politiques et les programmes de l'administration publique fédérale relatifs à l'eau douce;

qu'il s'engage, dans l'exercice de ses attributions relatives à l'eau douce, à promouvoir la réconciliation avec les peuples autochtones du Canada et à veiller au respect de leurs droits reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*;

qu'il s'engage à mettre en œuvre la Déclaration des Nations Unies sur les droits des peuples autochtones;

qu'il s'engage à favoriser la coopération, en ce qui concerne les enjeux liés à l'eau douce, avec les gouvernements provinciaux et territoriaux et les peuples autochtones du Canada;

qu'il entend favoriser la coopération, en ce qui concerne les enjeux liés à l'eau douce, avec les gouvernements étrangers et les organisations internationales ainsi que les organismes et les personnes intéressés;

qu'il estime que la création de l'Agence canadienne de l'eau contribuera à coordonner l'action fédérale exercée en vue de promouvoir une gestion durable de l'eau douce,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

# Short Title

### Short title

**1** This Act may be cited as the *Canada Water Agency Act*.

# Titre abrégé

### Titre abrégé

**1** *Loi sur l'Agence canadienne de l'eau*.

# Definitions

### Definitions

**2** The following definitions apply in this Act.

***Agency*** means the Canada Water Agency established by section 3. (*Agence*)

***Minister*** means the Minister of the Environment. (*ministre*)

# Définitions

### Définitions

**2** Les définitions qui suivent s'appliquent à la présente loi.

***Agence*** L'Agence canadienne de l'eau constituée par l'article 3. (*Agency*)

***ministre*** Le ministre de l'Environnement. (*Minister*)

***President*** means the President of the Agency appointed under section 7. (*président*)

# Canada Water Agency

### Establishment

**3** The Canada Water Agency is established for the purpose of assisting the Minister in exercising or performing the Minister's powers, duties and functions in relation to fresh water under any Act of Parliament, including the *Department of the Environment Act* and the *Canada Water Act*.

### Head office

**4** The head office of the Agency is to be at a place in Canada that is designated by the Governor in Council.

### Minister to preside

**5** The Minister presides over the Agency and has the management and direction of it.

### Delegation to Agency

**6 (1)** The Minister may, subject to any terms and conditions that the Minister specifies, delegate to an officer or employee of the Agency any power, duty or function that the Minister is authorized to exercise or perform under any Act of Parliament in relation to fresh water.

### Restriction

**(2)** However, the Minister is not authorized to delegate a power to make regulations or a power to delegate under subsection (1).

# President

### Appointment

**7** The President of the Agency is to be appointed by the Governor in Council to hold office during pleasure for a renewable term of up to five years.

### Chief executive officer

**8** The President is the chief executive officer of the Agency and has the rank and status of a deputy head of a department.

### Remuneration

**9** The President is to be paid the remuneration fixed by the Governor in Council.

***président*** Le président de l'Agence nommé en vertu de l'article 7. (*President*)

# Agence canadienne de l'eau

### Constitution

**3** Est constituée l'Agence canadienne de l'eau, chargée d'assister le ministre dans l'exercice de ses attributions relatives à l'eau douce au titre de toute loi fédérale, notamment la *Loi sur le ministère de l'Environnement* et la *Loi sur les ressources en eau du Canada*.

### Siège

**4** Le siège de l'Agence est situé au Canada, au lieu désigné par le gouverneur en conseil.

### Autorité du ministre

**5** L'Agence est placée sous l'autorité du ministre; il en assure la direction et la gestion.

### Délégation d'attributions à l'Agence

**6 (1)** Le ministre peut, selon les modalités qu'il fixe, déléguer à tout dirigeant ou employé de l'Agence les attributions relatives à l'eau douce qui lui sont conférées sous le régime de toute loi fédérale.

### Réserve

**(2)** Il ne peut toutefois déléguer le pouvoir de prendre des règlements ni le pouvoir de délégation prévu au paragraphe (1).

# Président

### Nomination

**7** Le gouverneur en conseil nomme le président de l'Agence, à titre amovible, pour un mandat renouvelable d'au plus cinq ans.

### Premier dirigeant

**8** Le président est le premier dirigeant de l'Agence; il a rang et statut d'administrateur général de ministère.

### Rémunération

**9** Le président reçoit la rémunération fixée par le gouverneur en conseil.

# General Provisions

### Officers and employees

**10** The officers and employees necessary for the proper conduct of the work of the Agency are to be appointed in accordance with the *Public Service Employment Act*.

### Other government services and facilities

**11 (1)** A department, board or agency of the Government of Canada may provide to the Agency services and facilities that are necessary for carrying out the Agency's purpose.

### Use of services and facilities

**(2)** In exercising its powers and performing its duties and functions, the Agency must, where appropriate, make use of those services and facilities.

### Provision of services and facilities

**12** The Agency may provide services and facilities to departments, boards and agencies of the Government of Canada.

### Committees

**13 (1)** The Minister may establish advisory committees in relation to fresh water and provide for their membership, duties, functions and operation.

### Remuneration

**(2)** The Minister may fix the remuneration that members of a committee are to be paid for the performance of their duties and functions.

### Reimbursement

**(3)** The Minister may determine whether members of a committee are to be reimbursed for the travel, living and other expenses incurred in the performance of their duties and functions while absent from their ordinary place of residence. Any such reimbursement is to be paid in accordance with Treasury Board directives.

# Transitional Provisions

### Definitions

**14** The following definitions apply in sections 15 to 18.

***former agency*** means the portion of the federal public administration, within the Department of the Environment, known as the Canada Water Agency. (*ancienne agence*)

# Dispositions générales

### Personnel

**10** Le personnel nécessaire à l'exécution des travaux de l'Agence est nommé conformément à la *Loi sur l'emploi dans la fonction publique*.

### Autres services fédéraux et installations fédérales

**11 (1)** Les ministères et organismes fédéraux peuvent fournir à l'Agence les services et les installations qui sont nécessaires à la réalisation de sa mission.

### Usage de services et d'installations

**(2)** Dans l'exercice de ses attributions, l'Agence fait usage, au besoin, de ces services et installations.

### Fourniture de services et d'installations

**12** L'Agence peut fournir des services et des installations aux ministères et organismes fédéraux.

### Comités

**13 (1)** Le ministre peut constituer des comités consultatifs en matière d'eau douce et en prévoir la composition, les attributions et le fonctionnement.

### Rémunération

**(2)** Le ministre peut fixer la rémunération que les membres des comités reçoivent pour l'exercice de leurs attributions.

### Indemnités

**(3)** Le ministre peut déterminer si les membres des comités sont indemnisés des frais de déplacement, de séjour et autres entraînés par l'exercice de leurs attributions hors de leur lieu habituel de résidence. Les indemnités sont versées conformément aux directives du Conseil du Trésor.

# Dispositions transitoires

### Définitions

**14** Les définitions qui suivent s'appliquent aux articles 15 à 18.

***ancienne agence*** Le secteur de l'administration publique fédérale faisant partie du ministère de l'Environnement et appelé l'Agence canadienne de l'eau. (*former agency*)

***new agency*** means the Canada Water Agency established by section 3. (*nouvelle agence*)

***nouvelle agence*** L'Agence canadienne de l'eau constituée par l'article 3. (*new agency*)

**Position**

**15 (1)** Nothing in this Act is to be construed as affecting the status of an employee who, immediately before the coming into force of this section, occupied a position in the former agency, except that the employee, on that coming into force, is to occupy that position in the new agency.

**Postes**

**15 (1)** La présente loi ne change rien à la situation des fonctionnaires qui occupaient un poste au sein de l'ancienne agence à la date d'entrée en vigueur du présent article, à la différence près que, à compter de cette date, ils l'occupent au sein de la nouvelle agence.

**Definition of *employee***

**(2)** In subsection (1), ***employee*** has the same meaning as in subsection 2(1) of the *Public Service Employment Act*.

**Définition de *fonctionnaire***

**(2)** Au paragraphe (1), ***fonctionnaire*** s'entend au sens du paragraphe 2(1) de la *Loi sur l'emploi dans la fonction publique*.

**Appropriations**

**16** Any amount that is appropriated by an Act of Parliament, for the fiscal year in which this section comes into force, to defray the expenditures of the former agency and that is unexpended on the day on which this section comes into force is deemed to be an amount appropriated to defray the expenditures of the new agency.

**Transfert de crédits**

**16** Les sommes affectées — et non déboursées —, pour l'exercice en cours à la date d'entrée en vigueur du présent article, par toute loi fédérale aux dépenses de l'ancienne agence sont, à cette date, réputées être affectées aux dépenses de la nouvelle agence.

**Transfer of powers, duties and functions**

**17** Any power, duty or function that is exercisable by an officer or employee of the former agency under any Act, order, rule or regulation or under any contract, lease, licence or other document, is to be exercised by the appropriate officer or employee of the new agency.

**Transfert d'attributions**

**17** Les attributions conférées, en vertu de toute loi, de tout règlement, de tout décret, de tout arrêté, de toute ordonnance ou de toute règle, ou au titre de tout contrat, bail, permis ou autre document, à un dirigeant ou employé de l'ancienne agence sont transférées, selon le cas, au dirigeant ou à l'employé compétent de la nouvelle agence.

**Clarification**

**18** For greater certainty, the powers, duties and functions referred to in section 17 include those related to the administration, in whole or in part, of any contract, lease, licence or other document that relates to the activities, management or operation of the former agency.

**Précision**

**18** Il est entendu que l'article 17 vise notamment les attributions liées à l'administration, en tout ou en partie, de tout contrat, bail, permis ou autre document qui se rapporte aux activités, à la gestion ou au fonctionnement de l'ancienne agence.

## Consequential Amendments

## Modifications corrélatives

R.S., c. A-1

Access to Information Act

L.R., ch. A-1

Loi sur l'accès à l'information

**210 Schedule I to the *Access to Information Act* is amended by adding the following, in alphabetical order, under the heading "Other Government Institutions":**

Canada Water Agency
*Agence canadienne de l'eau*

**210 L'annexe I de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Autres institutions fédérales », de ce qui suit :**

Agence canadienne de l'eau
*Canada Water Agency*

R.S., c. F-11

Financial Administration Act

**211 Schedule I.1 to the *Financial Administration Act* is amended by adding, in alphabetical order in column I, a reference to**

Canada Water Agency
*Agence canadienne de l'eau*

**and a corresponding reference in column II to "Minister of the Environment."**

**212 Schedule IV to the Act is amended by adding the following in alphabetical order:**

Canada Water Agency
*Agence canadienne de l'eau*

**213 Part II of Schedule VI to the Act is amended by adding, in alphabetical order in column I, a reference to**

Canada Water Agency
*Agence canadienne de l'eau*

**and a corresponding reference in column II to "President."**

R.S., c. P-21

Privacy Act

**214 The schedule to the *Privacy Act* is amended by adding the following, in alphabetical order, under the heading "Other Government Institutions":**

Canada Water Agency
*Agence canadienne de l'eau*

R.S., c. P-36

Public Service Superannuation Act

**215 Part I of Schedule I to the *Public Service Superannuation Act* is amended by adding the following in alphabetical order:**

Canada Water Agency
*Agence canadienne de l'eau*

## Coming into Force

**Order in council**

**216 The provisions of the *Canada Water Agency Act*, as enacted by section 209, and sections 210 to 215, come into force on a day or days to be fixed by order of the Governor in Council.**

L.R., ch. F-11

Loi sur la gestion des finances publiques

**211 L'annexe I.1 de la *Loi sur la gestion des finances publiques* est modifiée par adjonction, selon l'ordre alphabétique, dans la colonne I, de ce qui suit :**

Agence canadienne de l'eau
*Canada Water Agency*

**ainsi que de la mention « Le ministre de l'Environnement », dans la colonne II, en regard de ce secteur.**

**212 L'annexe IV de la même loi est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :**

Agence canadienne de l'eau
*Canada Water Agency*

**213 La partie II de l'annexe VI de la même loi est modifiée par adjonction, selon l'ordre alphabétique, dans la colonne I, de ce qui suit :**

Agence canadienne de l'eau
*Canada Water Agency*

**ainsi que de la mention « Président », dans la colonne II, en regard de ce ministère.**

L.R., ch. P-21

Loi sur la protection des renseignements personnels

**214 L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Autres institutions fédérales », de ce qui suit :**

Agence canadienne de l'eau
*Canada Water Agency*

L.R., ch. P-36

Loi sur la pension de la fonction publique

**215 La partie I de l'annexe I de la *Loi sur la pension de la fonction publique* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :**

Agence canadienne de l'eau
*Canada Water Agency*

## Entrée en vigueur

**Décret**

**216 Les dispositions de la *Loi sur l'Agence canadienne de l'eau*, édictée par l'article 209, et les articles 210 à 215 entrent en vigueur à la date ou aux dates fixées par décret.**

## DIVISION 4

1997, c. 13; 2018, c. 9, s. 2

# Tobacco and Vaping Products Act

**217 The *Tobacco and Vaping Products Act* is amended by adding the following after section 42:**

## PART V.01

# Fees and Charges

### Regulations by Minister

**42.1 (1)** The Minister may make regulations respecting fees or charges to be paid by manufacturers for the purpose of recovering the costs incurred by His Majesty in right of Canada in relation to the carrying out of the purpose of this Act, including regulations

**(a)** fixing the fees or charges or providing for the manner of calculating them;

**(b)** requiring manufacturers to submit to the Minister information for the calculation of the fees or charges and prescribing the information that manufacturers must submit as well as the form and manner in which and the time within which the information must be submitted;

**(c)** respecting the payment of the fees or charges, including the time and manner of payment;

**(d)** respecting, for the purposes of section 42.13, the information that the Minister must make available to the public, including

**(i)** the name of each manufacturer who is required to pay the fees or charges,

**(ii)** information relating to whether each manufacturer has paid the fees or charges,

**(iii)** information relating to whether each manufacturer has submitted the information required under this Part, and

**(iv)** information relating to the measures taken in respect of each manufacturer who has failed to pay the fees or charges or submit the information required under this Part; and

## SECTION 4

1997, ch. 13; 2018, ch. 9, art. 2

# Loi sur le tabac et les produits de vapotage

**217 La *Loi sur le tabac et les produits de vapotage* est modifiée par adjonction, après l'article 42, de ce qui suit :**

## PARTIE V.01

# Frais et redevances

### Règlements ministériels

**42.1 (1)** Afin de recouvrer les frais exposés par Sa Majesté du chef du Canada et liés à la réalisation de l'objet de la présente loi, le ministre peut prendre des règlements concernant les frais et les redevances à payer par les fabricants, notamment des règlements :

**a)** fixant les frais et les redevances ou prévoyant leur mode de calcul;

**b)** exigeant des fabricants qu'ils transmettent au ministre des renseignements en vue du calcul des frais et des redevances et prévoyant les renseignements qu'ils doivent transmettre ainsi que les délais, la forme et les modalités à respecter à cet égard;

**c)** concernant le paiement des frais et des redevances, notamment en ce qui a trait aux délais et aux modalités à respecter à cet égard;

**d)** concernant, pour l'application de l'article 42.13, les renseignements que le ministre doit mettre à la disposition du public, notamment :

**(i)** le nom des fabricants assujettis aux frais ou aux redevances,

**(ii)** des renseignements concernant la question de savoir quels fabricants ont payé les frais et les redevances et lesquels ont omis de le faire,

**(iii)** des renseignements concernant la question de savoir quels fabricants ont transmis au ministre les renseignements exigés sous le régime de la présente partie et lesquels ont omis de le faire,

**(iv)** des renseignements concernant les mesures prises à l'égard de chacun des fabricants qui ont omis de payer les frais ou les redevances ou de

**(e)** prescribing anything that by this Part is to be prescribed.

**e)** prévoyant toute autre mesure réglementaire prévue par la présente partie.

**Consultation**

**(2)** Before making regulations, the Minister must consult with any persons or entities that the Minister considers to be interested in the matter.

**Consultations**

**(2)** Avant de prendre le règlement, le ministre consulte les personnes ou entités qu'il estime intéressées en l'occurrence.

**Remission**

**42.11 (1)** The Minister may, by order, remit all or part of any fee or charge provided for under this Part or the interest on it.

**Remise**

**42.11 (1)** Le ministre peut, par arrêté, faire remise de tout ou partie du paiement des frais ou des redevances prévus sous le régime de la présente partie ou des intérêts exigibles.

**Remission may be conditional**

**(2)** A remission may be conditional.

**Remise conditionnelle**

**(2)** Les remises peuvent être conditionnelles.

**Conditional remission**

**(3)** If a remission is conditional and the condition is not fulfilled, then the remission is cancelled and is deemed never to have been granted.

**Inexécution d'une condition**

**(3)** En cas d'inexécution d'une condition de la remise, cette remise est annulée et réputée ne jamais avoir été faite.

**Documents to be kept**

**42.12 (1)** Every manufacturer must keep, in the prescribed manner and for the prescribed time, all documents that they used in order to submit the information required under this Part to the Minister.

**Conservation des documents**

**42.12 (1)** Le fabricant conserve, durant la période et selon les modalités réglementaires, les documents utilisés en vue de transmettre au ministre les renseignements exigés sous le régime de la présente partie.

**Keeping and providing documents**

**(2)** The manufacturer must keep the documents at their place of business in Canada or at any prescribed place and must, on written request, provide them to the Minister.

**Lieu de conservation et fourniture**

**(2)** Le fabricant les conserve à son établissement au Canada ou en tout lieu réglementaire et, sur demande écrite, les fournit au ministre.

**Public disclosure by Minister**

**42.13** The Minister must make available to the public, within the prescribed time, the information relating to the fees and charges provided for under this Part that is required by the regulations.

**Communication par le ministre**

**42.13** Le ministre met à la disposition du public, dans les délais réglementaires, les renseignements exigés par les règlements en ce qui touche les frais et les redevances prévus sous le régime de la présente partie.

**Debt to His Majesty**

**42.14 (1)** Any fees or charges payable under this Part constitute a debt due to His Majesty in right of Canada that may be recovered in a court of competent jurisdiction.

**Créances de Sa Majesté**

**42.14 (1)** Les frais et les redevances à payer sous le régime de la présente partie constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**Limitation period or prescription**

**(2)** No proceedings to recover a debt due to His Majesty in right of Canada under subsection (1) may be

**Prescription**

**(2)** Le recouvrement en vertu du paragraphe (1) de toute créance de Sa Majesté du chef du Canada se prescrit par

commenced later than five years after the day on which the debt became payable.

**Certificate of default**

**42.15 (1)** Any debt that may be recovered under subsection 42.14(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Minister.

**Judgment**

**(2)** On production to the Federal Court, a certificate made under subsection (1) must be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in the certificate and all reasonable costs and charges attendant in the registration of the certificate.

**Prohibition on sale**

**42.16 (1)** The Minister may, by order, prohibit the sale of a tobacco product or vaping product by a manufacturer who fails to pay the fees or charges payable under this Part or submit the information required under this Part.

***Statutory Instruments Act***

**(2)** An order made under subsection (1) is not a statutory instrument within the meaning of the *Statutory Instruments Act*.

**218 The Act is amended by adding the following after section 46:**

**Offences related to fees and charges**

**46.1** Every manufacturer who contravenes subsection 42.12(1) or (2) or an order made under subsection 42.16(1) is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

## DIVISION 5

R.S., c. C-21; S.C. 2001, c. 9, s. 218

# Canadian Payments Act

## Amendments to the Act

**219 (1) Paragraph (b) of the definition *central cooperative credit society* and *central* in subsection 2(1) of the English version of the *Canadian Payments Act* is replaced by the following:**

cinq ans après la date à laquelle la créance est devenue exigible.

**Certificat de non-paiement**

**42.15 (1)** Le ministre peut établir un certificat de non-paiement pour la partie impayée des créances dont le recouvrement peut être poursuivi en vertu du paragraphe 42.14(1).

**Enregistrement en Cour fédérale**

**(2)** L'enregistrement à la Cour fédérale confère au certificat la valeur d'un jugement de cette juridiction pour la somme visée et les frais afférents.

**Interdiction de vendre**

**42.16 (1)** Si le fabricant omet de payer des frais ou des redevances exigibles sous le régime de la présente partie ou de transmettre au ministre des renseignements exigés sous le régime de celle-ci, le ministre peut, par arrêté, lui interdire de vendre tout produit du tabac ou tout produit de vapotage.

***Loi sur les textes réglementaires***

**(2)** L'arrêté n'est pas un texte réglementaire au sens de la *Loi sur les textes réglementaires*.

**218 La même loi est modifiée par adjonction, après l'article 46, de ce qui suit :**

**Infractions — frais et redevances**

**46.1** Le fabricant qui contrevient aux paragraphes 42.12(1) ou (2) ou à tout arrêté pris en vertu du paragraphe 42.16(1) commet une infraction et est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de 50 000 $.

## SECTION 5

L.R., ch. C-21; 2001, ch. 9, art. 218

# Loi canadienne sur les paiements

## Modification de la loi

**219 (1) L'alinéa b) de la définition de *central cooperative credit society* et *central*, au paragraphe 2(1) de la version anglaise de la *Loi canadienne sur les paiements*, est remplacé par ce qui suit :**

**(b)** whose directors are wholly or primarily individuals elected or appointed by local cooperative credit societies; (*société coopérative de crédit centrale* ou *centrale*)

**(2) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:**

***entity*** includes a corporation, trust, partnership, fund, agency and unincorporated association or organization; (*entité*)

***person*** includes an entity; (*personne*)

**220 (1) Paragraph 4(2)(a) of the Act is replaced by the following:**

**(a)** a central, a trust company, a loan company, a local and any other person that accepts deposits transferable by order;

**(b)** a *clearing house*, as defined in section 2 of the *Payment Clearing and Settlement Act*, of a clearing and settlement system designated under subsection 4(1) of that Act;

**(2) Subsection 4(2) of the Act is amended by striking out "and" at the end of paragraph (g), by adding "and" at the end of paragraph (h) and by adding the following after paragraph (h):**

**(i)** a *payment service provider*, as defined in section 2 of the *Retail Payment Activities Act*, that performs *retail payment activities*, as defined in that section.

**221 The portion of subsection 9(1) of the English version of the Act before paragraph (a) is replaced by the following:**

**Ineligibility**

**9 (1)** No individual is eligible to be a director if they are

**222 (1) Subparagraph 18(1)(k)(ii) of the Act is replaced by the following:**

**(ii)** the remuneration of directors referred to in paragraph 8(1)(d) and of individuals referred to in subsection 21.2(7),

**(b)** whose directors are wholly or primarily individuals elected or appointed by local cooperative credit societies; (*société coopérative de crédit centrale* ou *centrale*)

**(2) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***entité*** Vise notamment les personnes morales, les fiducies, les sociétés de personnes, les fonds, les agences et toutes associations ou organisations non dotées de la personnalité morale. (*entity*)

***personne*** Vise notamment une entité. (*person*)

**220 (1) L'alinéa 4(2)a) de la même loi est remplacé par ce qui suit :**

**a)** une centrale, une société de fiducie, une société de prêt, une société coopérative de crédit locale et toute autre personne qui acceptent les dépôts transférables par ordre;

**b)** une *chambre de compensation*, au sens de l'article 2 de la *Loi sur la compensation et le règlement des paiements*, d'un système de compensation et de règlement qui, aux termes du paragraphe 4(1) de cette loi, est assujetti par désignation à la partie I de celle-ci;

**(2) Le paragraphe 4(2) de la même loi est modifié par adjonction, après l'alinéa h), de ce qui suit :**

**i)** un *fournisseur de services de paiement*, au sens de l'article 2 de la *Loi sur les activités associées aux paiements de détail*, qui exécute une *activité associée aux paiements de détail* au sens de cet article.

**221 Le passage du paragraphe 9(1) de la version anglaise de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Ineligibility**

**9 (1)** No individual is eligible to be a director if they are

**222 (1) Le sous-alinéa 18(1)k)(ii) de la même loi est remplacé par ce qui suit :**

**(ii)** la rémunération des administrateurs visés à l'alinéa 8(1)d) et des personnes physiques visées au paragraphe 21.2(7),

**(2) Subparagraph 18(1)(k)(iii) of the English version of the Act is replaced by the following:**

**(iii)** the procedures for the nomination, selection and appointment of individuals to be members of the Stakeholder Advisory Council or the Member Advisory Council.

**(2) Le sous-alinéa 18(1)k)(iii) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(iii)** the procedures for the nomination, selection and appointment of individuals to be members of the Stakeholder Advisory Council or the Member Advisory Council.

**223 Subsection 20(1) of the French version of the Act is replaced by the following:**

**Comité de nomination**

**20 (1)** Le conseil constitue un comité de nomination chargé de désigner des candidats compétents et de proposer leur candidature à l'élection d'administrateurs.

**223 Le paragraphe 20(1) de la version française de la même loi est remplacé par ce qui suit :**

**Comité de nomination**

**20 (1)** Le conseil constitue un comité de nomination chargé de désigner des candidats compétents et de proposer leur candidature à l'élection d'administrateurs.

**224 Section 21 of the Act is replaced by the following:**

**Other committees**

**21** The Board may, subject to the regulations, establish other committees consisting of such individuals as the Board considers appropriate.

**224 L'article 21 de la même loi est remplacé par ce qui suit :**

**Autres comités**

**21** Le conseil peut, sous réserve des règlements, constituer d'autres comités composés de personnes physiques qu'il estime indiquées.

**225 (1) Subsection 21.2(1) of the Act is replaced by the following:**

**Stakeholder Advisory Council**

**21.2 (1)** There shall be a Stakeholder Advisory Council consisting of individuals who are independent of the Association and of its members and are appointed by the Board in consultation with the Minister.

**225 (1) Le paragraphe 21.2(1) de la même loi est remplacé par ce qui suit :**

**Comité consultatif des intervenants**

**21.2 (1)** Est constitué le comité consultatif des intervenants, composé de personnes physiques qui sont indépendantes de l'Association et de ses membres et qui sont nommées par le conseil en consultation avec le ministre.

**(2) Subsection 21.2(5) of the Act is replaced by the following:**

**Representative character**

**(5)** The Council shall be broadly representative of users and payment service providers that are not members of the Association.

**(2) Le paragraphe 21.2(5) de la même loi est remplacé par ce qui suit :**

**Représentativité**

**(5)** Le comité consultatif est, dans l'ensemble, représentatif des usagers et des fournisseurs de services de paiement qui ne sont pas membres de l'Association.

**(3) The portion of subsection 21.2(7) of the Act before paragraph (a) is replaced by the following:**

**Remuneration**

**(7)** The Association may pay the remuneration that is fixed by by-law to the following individuals:

**(3) Le passage du paragraphe 21.2(7) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Rémunération**

**(7)** L'Association peut verser la rémunération fixée par règlement administratif aux personnes physiques suivantes :

**(4) Paragraph 21.2(7)(b) of the Act is replaced by the following:**

**(4) L'alinéa 21.2(7)b) de la même loi est remplacé par ce qui suit :**

**(b)** any individual who represents the interests of such a member or who is represented by such a member.

**226 Subsection 21.4(1) of the Act is replaced by the following:**

**Member Advisory Council**

**21.4 (1)** There shall be a Member Advisory Council consisting of individuals appointed by the Board.

**227 Paragraph 35(1)(b) of the English version of the Act is replaced by the following:**

**(b)** respecting the election of directors of the Association, including the eligibility of individuals to be elected as directors, and defining *independent* for the purposes of paragraph 8(1)(d);

**228 Paragraph 40(1)(a) of the English version of the Act is replaced by the following:**

**(a)** the conditions an entity must meet to become a participant in the designated payment system;

**229 Section 49 of the Act is replaced by the following:**

**Review**

**50** On the fourth anniversary of the day on which this section comes into force, the Minister shall cause to be conducted a review of this Act and its operation and cause a report on the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the review is completed.

## Coming into Force

**Order in council**

**230 Sections 219 to 228 come into force on a day or days to be fixed by order of the Governor in Council.**

**DIVISION 6**

# Measures Related to Competition

R.S., c. C-34; R.S., c. 29 (2nd Supp.), s. 19

## Competition Act

**231 Subsections 19(4) and (5) of the *Competition Act* are replaced by the following:**

**b)** toute personne physique qui représente les intérêts d'un tel membre ou qui est représentée par un tel membre.

**226 Le paragraphe 21.4(1) de la même loi est remplacé par ce qui suit :**

**Comité consultatif des membres**

**21.4 (1)** Est constitué le comité consultatif des membres, composé de personnes physiques nommées par le conseil.

**227 L'alinéa 35(1)b) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(b)** respecting the election of directors of the Association, including the eligibility of individuals to be elected as directors, and defining *independent* for the purposes of paragraph 8(1)(d);

**228 L'alinéa 40(1)a) de la version anglaise de la même loi est remplacé par ce qui suit :**

**(a)** the conditions an entity must meet to become a participant in the designated payment system;

**229 L'article 49 de la même loi est remplacé par ce qui suit :**

**Examen**

**50** Au quatrième anniversaire de l'entrée en vigueur du présent article, le ministre veille à ce que la présente loi et son application fassent l'objet d'un examen; il fait ensuite déposer un rapport de l'examen devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant la fin de l'examen.

## Entrée en vigueur

**Décret**

**230 Les articles 219 à 228 entrent en vigueur à la date ou aux dates fixées par décret.**

**SECTION 6**

# Mesures liées à la concurrence

L.R., ch. C-34; L.R., ch. 19 (2e suppl.), art. 19

## Loi sur la concurrence

**231 Les paragraphes 19(4) et (5) de la *Loi sur la concurrence* sont remplacés par ce qui suit :**

**Determination of claim to privilege**

**(4)** A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting *in camera*, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found if notice of the application has been given by the applicant to all other persons entitled to make application.

**Détermination du caractère confidentiel**

**(4)** Le juge d'une cour supérieure ou d'une cour de comté dans la province où le document placé sous garde en vertu du présent article doit être produit selon l'ordonnance rendue à son égard ou dans celle où il a été trouvé, ou encore le juge de la Cour fédérale, siégeant à huis clos, peut, en ce qui concerne ce document, trancher la question de la protection du secret professionnel liant l'avocat à son client sur demande présentée conformément aux règles de la cour par le commissaire, le propriétaire du document ou la personne qui l'avait en sa possession lorsqu'il a été trouvé, pourvu qu'un avis de la demande ait été transmis par le demandeur à toutes les personnes qui ont qualité pour présenter une telle demande.

**232 Section 45.1 of the Act is replaced by the following:**

**232 L'article 45.1 de la même loi est remplacé par ce qui suit :**

**Application made under section 76, 79, 90.1 or 92**

**45.1** No proceedings may be commenced under subsection 45(1) or (1.1) against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

**Procédures en vertu des articles 76, 79, 90.1 ou 92**

**45.1** Aucune poursuite ne peut être intentée à l'endroit d'une personne en application des paragraphes 45(1) ou (1.1) si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien de l'ordonnance que le commissaire a demandée à l'endroit de cette personne en vertu des articles 76, 79, 90.1 ou 92.

**233 Subsection 52(7) of the Act is replaced by the following:**

**233 Le paragraphe 52(7) de la même loi est remplacé par ce qui suit :**

**Duplication of proceedings**

**(7)** No proceedings may be commenced under this section against a person against whom an order is, on application by the Commissioner, sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

**Une seule poursuite**

**(7)** Il ne peut être intenté de poursuite en vertu du présent article contre une personne contre laquelle le commissaire a demandé une ordonnance aux termes de la partie VII.1, si les faits qui seraient allégués au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux qui l'ont été au soutien de la demande.

**233.1 Subsection 52(1.3) of the Act is replaced by the following:**

**233.1 Le paragraphe 52(1.3) de la même loi est remplacé par ce qui suit :**

**Drip pricing**

**(1.3)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.

**Indication de prix partiel**

**(1.3)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé au paragraphe (1).

**234 (1) Section 52.01 of the Act is amended by adding the following after subsection (4):**

**234 (1) L'article 52.01 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

**Drip pricing**

**(4.1)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsections (1) to (3) by or under an Act of Parliament or the legislature of a province.

**(2) Subsection 52.01(8) of the Act is replaced by the following:**

**Application made under Part VII.1**

**(8)** No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is, on application by the Commissioner, sought under Part VII.1.

**235 Subsection 67(4) of the Act is replaced by the following:**

**Corporations — trials with or without jury**

**(4)** Despite anything in the *Criminal Code* or in any other statute or law, the following rules apply to corporations charged with an offence under this Act:

**(a)** if one or more corporations are charged and no individual is charged in the same indictment, the corporation or corporations are to be tried without a jury;

**(b)** if one or more corporations and a single individual are charged in the same indictment, then, unless the court is satisfied that the ends of justice require otherwise, the corporation or corporations are to be tried

**(i)** without a jury if the individual elects or re-elects to be tried without a jury, or

**(ii)** with a jury if the individual elects or re-elects to be tried with a jury; and

**(c)** if one or more corporations and two or more individuals are charged in the same indictment, then, unless the court is satisfied that the ends of justice require otherwise, the corporation or corporations are to be tried

**(i)** without a jury if all the individuals elect or re-elect to be tried without a jury,

**(ii)** with a jury if all the individuals elect or re-elect to be tried with a jury, or

**Indication de prix partiel**

**(4.1)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé aux paragraphes (1) à (3).

**(2) Le paragraphe 52.01(8) de la même loi est remplacé par ce qui suit :**

**Procédures en vertu de la partie VII.1**

**(8)** Aucune poursuite ne peut être intentée à l'endroit d'une personne en application du présent article si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien de l'ordonnance que le commissaire a demandée à l'endroit de cette personne en vertu de la partie VII.1.

**235 Le paragraphe 67(4) de la même loi est remplacé par ce qui suit :**

**Personnes morales jugées devant jury ou sans jury**

**(4)** Malgré le *Code criminel* ou toute autre loi, les règles ci-après s'appliquent aux personnes morales accusées d'une infraction visée à la présente loi :

**a)** si une ou plusieurs personnes morales — mais aucune personne physique — sont inculpées dans le même acte d'accusation, la ou les personnes morales sont jugées sans jury;

**b)** si une ou plusieurs personnes morales et une seule personne physique sont inculpées dans le même acte d'accusation, à moins que le tribunal ne soit convaincu que les fins de la justice exigent qu'il en soit autrement, la ou les personnes morales sont jugées :

**(i)** sans jury, dans le cas où la personne physique choisit, lors d'un premier ou nouveau choix, d'être jugée sans jury,

**(ii)** devant jury, dans le cas où la personne physique choisit, lors d'un premier ou nouveau choix, d'être jugée devant jury;

**c)** si une ou plusieurs personnes morales et deux ou plusieurs personnes physiques sont inculpées dans le même acte d'accusation, à moins que le tribunal ne soit convaincu que les fins de la justice exigent qu'il en soit autrement, la ou les personnes morales sont jugées :

**(iii)** either with or without a jury, as determined by the Attorney General of Canada for each corporation, if some but not all of the individuals elect or re-elect to be tried without a jury.

**(i)** sans jury, dans le cas où toutes les personnes physiques choisissent, lors d'un premier ou nouveau choix, d'être jugées sans jury,

**(ii)** devant jury, dans le cas où toutes les personnes physiques choisissent, lors d'un premier ou nouveau choix, d'être jugées devant jury,

**(iii)** devant jury ou sans jury, selon ce que décide le procureur général du Canada pour chaque personne morale, dans le cas où seules certaines des personnes physiques choisissent, lors d'un premier ou nouveau choix, d'être jugées sans jury.

**236 (1) Subsection 74.01(1) of the Act is amended by striking out "or" at the end of paragraph (b) and by adding the following after that paragraph:**

**(b.1)** makes a representation to the public in the form of a statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation;

**(b.2)** makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation; or

**236 (1) Le paragraphe 74.01(1) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**b.1)** ou bien, sous la forme d'une déclaration ou d'une garantie visant les avantages d'un produit pour la protection ou la restauration de l'environnement ou l'atténuation des causes ou des effets environnementaux, sociaux et écologiques des changements climatiques, des indications qui ne se fondent pas sur une épreuve suffisante et appropriée, dont la preuve incombe à la personne qui donne les indications;

**b.2)** ou bien des indications sur les avantages d'une entreprise ou de l'activité d'une entreprise pour la protection ou la restauration de l'environnement ou l'atténuation des causes ou des effets environnementaux et écologiques des changements climatiques si les indications ne se fondent pas sur des éléments corroboratifs suffisants et appropriés obtenus au moyen d'une méthode reconnue à l'échelle internationale, dont la preuve incombe à la personne qui donne les indications;

**(1.1) Subsection 74.01(1.1) of the Act is replaced by the following:**

**Drip pricing**

**(1.1)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.

**(1.1) Le paragraphe 74.01(1.1) de la même loi est remplacé par ce qui suit :**

**Indication de prix partiel**

**(1.1)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé au paragraphe (1).

**(2) Subsection 74.01(3) of the Act is replaced by the following:**

**Ordinary price: supplier's own**

**(3)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply

**(2) Le paragraphe 74.01(3) de la même loi est remplacé par ce qui suit :**

**Prix habituel : fournisseur particulier**

**(3)** Est susceptible d'examen le comportement de quiconque donne, de quelque manière que ce soit, aux

or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means, makes a representation to the public as to the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation unless that person, having regard to the nature of the product and the relevant geographic market, establishes that

**(a)** they have sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; or

**(b)** they have offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**237 Section 74.011 of the Act is amended by adding the following after subsection (3):**

**Drip pricing**

**(3.1)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsections (1) to (3) by or under an Act of Parliament or the legislature of a province.

**Proof of deception not required**

**(3.2)** For greater certainty, in determining whether or not the person who made the representation engaged in the reviewable conduct, it is not necessary to establish that any person was deceived or misled.

**238 Section 74.09 of the Act is replaced by the following:**

**Definition of *court***

**74.09** In sections 74.1 to 74.14 and 74.18, ***court*** means

**(a)** in respect of an application by the Commissioner, the Tribunal, the Federal Court or the superior court of a province; and

**(b)** in respect of an application made by a person granted leave under section 103.1, the Tribunal.

**239 (1) The portion of subsection 74.1(1) of the Act before paragraph (a) is replaced by the following:**

fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, des indications au public relativement au prix auquel il a fourni, fournit ou fournira habituellement un produit ou des produits similaires, à moins que, compte tenu de la nature du produit et du marché géographique pertinent, il établisse :

**a)** soit qu'il a vendu une quantité importante du produit à ce prix ou à un prix plus élevé pendant une période raisonnable antérieure ou postérieure à la communication des indications;

**b)** soit qu'il a offert de bonne foi le produit à ce prix ou à un prix plus élevé pendant une période importante précédant de peu ou suivant de peu la communication des indications.

**237 L'article 74.011 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Indication de prix partiel**

**(3.1)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé aux paragraphes (1) à (3).

**Preuve non nécessaire**

**(3.2)** Il est entendu qu'il n'est pas nécessaire, pour déterminer si le comportement est susceptible d'examen, d'établir qu'une personne a été trompée ou induite en erreur.

**238 L'article 74.09 de la même loi est remplacé par ce qui suit :**

**Définition de *tribunal***

**74.09** Aux articles 74.1 à 74.14 et 74.18, ***tribunal*** s'entend :

**a)** s'agissant d'une demande du commissaire, du Tribunal, de la Cour fédérale ou de la cour supérieure d'une province;

**b)** s'agissant d'une demande d'une personne autorisée en vertu de l'article 103.1, du Tribunal.

**239 (1) Le passage du paragraphe 74.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Determination of reviewable conduct and judicial order**

**74.1 (1)** If, on application by the Commissioner or a person granted leave under section 103.1, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

**(2) The portion of subsection 74.1(6) of the Act before paragraph (a) is replaced by the following:**

**Meaning of subsequent order**

**(6)** For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b), (b.1) or (c), subsection 74.01(2) or (3) or section 74.011, 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

**(3) Paragraph 74.1(6)(c) of the Act is replaced by the following:**

**(c)** in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a) or section 74.011, the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or

**(4) Section 74.1 of the Act is amended by adding the following after subsection (9):**

**Inferences**

**(10)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

**240 Section 74.11 of the Act is replaced by the following:**

**Temporary order**

**74.11 (1)** On application by the Commissioner or a person granted leave under section 103.1, a court may order a person who it appears to the court is engaging in conduct that is reviewable under this Part not to engage in that conduct or substantially similar reviewable conduct if it appears to the court that

**(a)** serious harm is likely to ensue unless the order is issued; and

**Décision et ordonnance**

**74.1 (1)** Le tribunal qui conclut, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, qu'une personne a ou a eu un comportement susceptible d'examen visé à la présente partie peut ordonner à celle-ci :

**(2) Le passage du paragraphe 74.1(6) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Sens de l'ordonnance subséquente**

**(6)** Pour l'application de l'alinéa (1)c), l'ordonnance rendue contre une personne à l'égard d'un comportement susceptible d'examen en application des alinéas 74.01(1)a), b), b.1) ou c), des paragraphes 74.01(2) ou (3) ou des articles 74.011, 74.02, 74.04, 74.05 ou 74.06 constitue une ordonnance subséquente dans les cas suivants :

**(3) L'alinéa 74.1(6)c) de la même loi est remplacé par ce qui suit :**

**c)** dans le cas d'une ordonnance rendue à l'égard du comportement susceptible d'examen visé à l'alinéa 74.01(1)a) ou à l'article 74.011, la personne a déjà été déclarée coupable d'une infraction à l'article 52, ou à l'alinéa 52(1)a) dans sa version antérieure à l'entrée en vigueur de la présente partie;

**(4) L'article 74.1 de la même loi est modifié par adjonction, après le paragraphe (9), de ce qui suit :**

**Application**

**(10)** Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

**240 L'article 74.11 de la même loi est remplacé par ce qui suit :**

**Ordonnance temporaire**

**74.11 (1)** Sur demande présentée par le commissaire ou par une personne autorisée en vertu de l'article 103.1, le tribunal peut ordonner à toute personne qui, d'après lui, a un comportement susceptible d'examen visé par la présente partie de ne pas se comporter ainsi ou d'une manière essentiellement semblable s'il constate que, en l'absence de l'ordonnance, un dommage grave sera vraisemblablement causé et que, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**(b)** the balance of convenience favours issuing the order.

**Temporary order — supply of a product**

**(1.1)** On application by the Commissioner or a person granted leave under section 103.1, a court may order any person named in the application to refrain from supplying to another person a product that it appears to the court is or is likely to be used to engage in conduct that is reviewable under this Part, or to do any act or thing that it appears to the court could prevent a person from engaging in such conduct, if it appears to the court that

**(a)** serious harm is likely to ensue unless the order is issued; and

**(b)** the balance of convenience favours issuing the order.

**Duration**

**(2)** Subject to subsection (5), an order made under subsection (1) or (1.1) has effect, or may be extended on application by the Commissioner or a person granted leave under section 103.1, for any period that the court considers sufficient to meet the circumstances of the case.

**Notice of application**

**(3)** Subject to subsection (4), at least 48 hours' notice of an application referred to in subsection (1), (1.1) or (2) must be given by or on behalf of the Commissioner or the person granted leave under section 103.1 to the person in respect of whom the order or extension is sought.

***Ex parte* application**

**(4)** The court may proceed *ex parte* with an application made by the Commissioner under subsection (1) or (1.1) if it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

**Duration of *ex parte* order**

**(5)** An order issued *ex parte* as the result of an application made by the Commissioner under subsection (1) or (1.1) has effect for the period that is specified in it, not exceeding seven days unless, on further application made by the Commissioner on notice as provided in subsection (3), the court extends the order for any additional period that it considers necessary and sufficient.

**Ordonnance temporaire — fourniture d'un produit**

**(1.1)** Sur demande présentée par le commissaire ou par une personne autorisée en vertu de l'article 103.1, le tribunal peut également ordonner à toute personne nommément désignée dans la demande de s'abstenir de fournir à une autre personne un produit qui, d'après lui, est ou sera vraisemblablement utilisé pour l'adoption d'un comportement susceptible d'examen visé à la présente partie ou d'accomplir tout acte qu'il estime susceptible d'empêcher un tel comportement s'il constate que, en l'absence de l'ordonnance, un dommage grave sera vraisemblablement causé et que, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**Durée d'application**

**(2)** Sous réserve du paragraphe (5), l'ordonnance rendue en vertu des paragraphes (1) ou (1.1) a effet — ou peut être prorogée à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1 — pour la période que le tribunal estime suffisante pour répondre aux besoins en l'occurrence.

**Préavis**

**(3)** Sous réserve du paragraphe (4), le commissaire ou la personne autorisée en vertu de l'article 103.1, ou la personne agissant pour son compte, donne un préavis d'au moins quarante-huit heures à la personne à l'égard de laquelle est demandée l'ordonnance ou la prorogation prévue aux paragraphes (1), (1.1) ou (2).

**Audition *ex parte***

**(4)** Le tribunal peut entendre *ex parte* la demande présentée par le commissaire en vertu des paragraphes (1) ou (1.1) s'il est convaincu que le paragraphe (3) ne peut vraisemblablement pas être observé ou que la situation est à ce point urgente que la signification du préavis aux termes du paragraphe (3) ne servirait pas l'intérêt public.

**Durée d'application**

**(5)** L'ordonnance rendue *ex parte* à la suite d'une demande présentée par le commissaire en vertu des paragraphes (1) ou (1.1) a effet pour la période d'au plus sept jours qui y est fixée, sauf si, sur demande ultérieure présentée par le commissaire après le préavis prévu au paragraphe (3), elle est prorogée pour la période supplémentaire que le tribunal estime nécessaire et suffisante.

#### Duty of Commissioner

**(6)** If an order issued under this section as the result of an application made by the Commissioner under subsection (1) or (1.1) is in effect, the Commissioner must proceed as expeditiously as possible to complete the inquiry under section 10 arising out of the conduct in respect of which the order was issued.

### 241 (1) Subsections 74.111(1) to (6) of the Act are replaced by the following:

#### Interim injunction

**74.111 (1)** If, on application by the Commissioner or a person granted leave under section 103.1, a court finds a strong *prima facie* case that a person is engaging in or has engaged in conduct that is reviewable under paragraph 74.01(1)(a), and the court is satisfied that the person owns or has possession or control of articles within the jurisdiction of the court and is disposing of or is likely to dispose of them by any means, and that the disposal of the articles will substantially impair the enforceability of an order made under paragraph 74.1(1)(d), the court may issue an interim injunction forbidding the person or any other person from disposing of or otherwise dealing with the articles, other than in the manner and on the terms specified in the injunction.

#### Statement to be included

**(2)** Any application for an injunction under subsection (1) must include a statement that the Commissioner or the person granted leave under section 103.1 has applied for an order under paragraph 74.1(1)(d), or that the Commissioner or the person intends to apply for an order under that paragraph if the Commissioner or the person applies for an order under paragraph 74.1(1)(a).

#### Duration

**(3)** Subject to subsection (6), the injunction has effect, or may be extended on application by the Commissioner or the person granted leave under section 103.1, for any period that the court considers sufficient to meet the circumstances of the case.

#### Notice of application

**(4)** Subject to subsection (5), at least 48 hours' notice of an application referred to in subsection (1) or (3) must be given by or on behalf of the Commissioner or the person granted leave under section 103.1 to the person in respect of whom the injunction or extension is sought.

#### Obligations du commissaire

**(6)** Lorsque l'ordonnance rendue à la suite d'une demande présentée par le commissaire en vertu des paragraphes (1) ou (1.1) a effet aux termes du présent article, le commissaire, avec toute la diligence possible, mène à terme l'enquête visée à l'article 10 à l'égard du comportement qui fait l'objet de l'ordonnance.

### 241 (1) Les paragraphes 74.111(1) à (6) de la même loi sont remplacés par ce qui suit :

#### Ordonnance d'injonction provisoire

**74.111 (1)** S'il constate, à la suite d'une demande présentée par le commissaire ou par une personne autorisée en vertu de l'article 103.1, l'existence d'une preuve *prima facie* convaincante établissant qu'une personne a ou a eu un comportement susceptible d'examen visé à l'alinéa 74.01(1)a) et s'il est convaincu, d'une part, que cette personne a entrepris de disposer ou disposera vraisemblablement de quelque façon que ce soit d'articles qui se trouvent dans son ressort et dont elle est propriétaire ou dont elle a la possession ou le contrôle et, d'autre part, que la disposition des articles nuira considérablement à l'exécution de l'ordonnance rendue en vertu de l'alinéa 74.1(1)d), le tribunal peut prononcer une injonction provisoire interdisant à cette personne ou à toute autre personne d'effectuer quelque opération à leur égard, notamment d'en disposer, si ce n'est de la manière et aux conditions précisées dans l'ordonnance d'injonction.

#### Mention à ajouter

**(2)** Le commissaire, ou la personne autorisée en vertu de l'article 103.1, signale, dans sa demande d'injonction, qu'il a présenté une demande d'ordonnance en vertu de l'alinéa 74.1(1)d) ou, s'il demande l'ordonnance au titre de l'alinéa 74.1(1)a), qu'il a l'intention de demander l'ordonnance au titre de l'alinéa 74.1(1)d).

#### Durée d'application

**(3)** Sous réserve du paragraphe (6), l'ordonnance d'injonction a effet — ou peut être prorogée à la demande du commissaire ou de la personne autorisée en vertu de l'article 103.1 — pour la période que le tribunal estime suffisante pour répondre aux besoins en l'occurrence.

#### Préavis

**(4)** Sous réserve du paragraphe (5), le commissaire ou la personne autorisée en vertu de l'article 103.1, ou la personne agissant pour son compte, donne un préavis d'au moins quarante-huit heures à la personne à l'égard de laquelle est demandée l'ordonnance d'injonction prévue au paragraphe (1) ou la prorogation visée au paragraphe (3).

#### *Ex parte* application

**(5)** The court may proceed *ex parte* with an application made by the Commissioner under subsection (1) if it is satisfied that subsection (4) cannot reasonably be complied with or that the urgency of the situation is such that service of the notice in accordance with subsection (4) might defeat the purpose of the injunction or would otherwise not be in the public interest.

#### Duration of *ex parte* injunction

**(6)** An injunction issued *ex parte* as the result of an application made by the Commissioner under subsection (1) has effect for the period that is specified in it, not exceeding seven days unless, on further application made by the Commissioner on notice as provided in subsection (4), the court extends the injunction for any additional period that it considers sufficient.

### (2) Subsection 74.111(8) of the Act is replaced by the following:

#### Duty of Commissioner

**(8)** If an injunction issued under this section as the result of an application made by the Commissioner under subsection (1) is in effect, the Commissioner must proceed as expeditiously as possible to complete any inquiry under section 10 arising out of the conduct in respect of which the injunction was issued.

### 242 The Act is amended by adding the following after section 74.12:

#### Failure to comply with consent agreement

**74.121 (1)** If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to comply or is likely to fail to comply with a consent agreement registered under subsection 74.12(3), the court may

**(a)** prohibit the person from doing anything that, in the court's opinion, may constitute a failure to comply with the agreement;

**(b)** order the person to take any action that is necessary to comply with the agreement;

**(c)** order the person to pay, in any manner that the court specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to comply with the agreement, determined by the court after taking into account any evidence of the following:

**(i)** the person's financial position,

#### Audition *ex parte*

**(5)** Le tribunal peut entendre *ex parte* la demande présentée par le commissaire en vertu du paragraphe (1) s'il est convaincu que le paragraphe (4) ne peut vraisemblablement pas être observé ou que la situation est à ce point urgente que la signification du préavis aux termes du paragraphe (4) pourrait rendre l'ordonnance inutile ou ne servirait pas par ailleurs l'intérêt public.

#### Durée d'application

**(6)** L'ordonnance d'injonction rendue *ex parte* à la suite d'une demande présentée par le commissaire en vertu du paragraphe (1) a effet pour la période d'au plus sept jours qui y est fixée, sauf si, sur demande ultérieure présentée par le commissaire après le préavis prévu au paragraphe (4), elle est prorogée pour la période supplémentaire que le tribunal estime suffisante.

### (2) Le paragraphe 74.111(8) de la même loi est remplacé par ce qui suit :

#### Obligation du commissaire

**(8)** Lorsque l'ordonnance d'injonction rendue à la suite d'une demande présentée par le commissaire en vertu du paragraphe (1) a effet, le commissaire, avec toute la diligence possible, mène à terme l'enquête visée à l'article 10 à l'égard du comportement qui fait l'objet de l'ordonnance.

### 242 La même loi est modifiée par adjonction, après l'article 74.12, de ce qui suit :

#### Omission de se conformer au consentement

**74.121 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis ou omettra vraisemblablement de se conformer au consentement enregistré au titre du paragraphe 74.12(3), le tribunal peut :

**a)** interdire à la personne d'accomplir tout acte qui, à son avis, pourrait constituer une omission de se conformer au consentement;

**b)** ordonner à la personne de prendre les mesures nécessaires pour se conformer au consentement;

**c)** ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de se conformer au consentement, sanction qu'il fixe après avoir tenu compte des éléments suivants :

**(i)** la situation financière de la personne,

**(ii)** the person's history of compliance with this Act,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(d)** grant any other relief that the court considers appropriate.

**(ii)** le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

**(iii)** la durée de l'omission,

**(iv)** tout autre élément pertinent;

**d)** accorder toute autre réparation qu'il considère justifiée.

**Purpose of order**

**(2)** The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

**But de l'ordonnance**

**(2)** Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

**Unpaid monetary penalty**

**(3)** The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**Sanctions administratives pécuniaires impayées**

**(3)** Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**243 The Act is amended by adding the following after section 74.13:**

**243 La même loi est modifiée par adjonction, après l'article 74.13, de ce qui suit :**

**Consent agreement — parties to a private action**

**74.131 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 74.1 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

**Consentement — parties privées**

**74.131 (1)** Si une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu de l'article 74.1, que cette personne et la personne à l'égard de laquelle l'ordonnance est demandée s'entendent sur son contenu et que l'entente est compatible avec les dispositions de la présente loi, un consentement peut être déposé auprès du Tribunal pour enregistrement.

**Notice to Commissioner**

**(2)** On filing the consent agreement with the Tribunal for registration, the parties shall serve a copy of it on the Commissioner without delay.

**Signification au commissaire**

**(2)** Les signataires du consentement en font signifier une copie sans délai au commissaire.

**Publication**

**(3)** The consent agreement must be published without delay in the *Canada Gazette*.

**Publication**

**(3)** Le consentement est publié sans délai dans la *Gazette du Canada*.

**Registration**

**(4)** The consent agreement must be registered within 30 days after its publication unless a third party makes an application to the Tribunal before then to cancel the agreement or replace it with an order of the Tribunal.

**Enregistrement**

**(4)** Le consentement est enregistré à l'expiration d'un délai de trente jours suivant sa publication, sauf si, avant l'expiration de ce délai, un tiers présente une demande au Tribunal en vue d'annuler le consentement ou de le remplacer par une ordonnance du Tribunal.

**Effect of registration**

**(5)** On registration, the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

**Commissioner may intervene**

**(6)** On application by the Commissioner, the Tribunal may vary or rescind a registered consent agreement if it finds that the agreement is not in conformity with the purposes of this Part.

**Notice**

**(7)** The Commissioner must give notice of an application under subsection (6) to the parties to the consent agreement.

**Failure to comply with consent agreement**

**74.132 (1)** If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to comply or is likely to fail to comply with a consent agreement registered under subsection 74.131(4), the Tribunal may

**(a)** prohibit the person from doing anything that, in the Tribunal's opinion, may constitute a failure to comply with the agreement;

**(b)** order the person to take any action that is necessary to comply with the agreement;

**(c)** order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to comply with the agreement, determined by the Tribunal after taking into account any evidence of the following:

**(i)** the person's financial position,

**(ii)** the person's history of compliance with this Act,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(d)** grant any other relief that the Tribunal considers appropriate.

**Purpose of order**

**(2)** The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the

**Effet de l'enregistrement**

**(5)** Une fois enregistré, le consentement a la même valeur et produit les mêmes effets qu'une ordonnance du Tribunal, notamment quant à l'engagement des procédures.

**Intervention du commissaire**

**(6)** Le Tribunal peut, sur demande du commissaire, modifier ou annuler le consentement enregistré dans les cas où il conclut que celui-ci n'est pas compatible avec les objectifs de la présente partie.

**Préavis**

**(7)** Le commissaire fait parvenir aux signataires du consentement un préavis de la demande qu'il présente en vertu du paragraphe (6).

**Omission de se conformer au consentement**

**74.132 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis ou omettra vraisemblablement de se conformer au consentement enregistré au titre du paragraphe 74.131(4), le Tribunal peut :

**a)** interdire à la personne d'accomplir tout acte qui, à son avis, pourrait constituer une omission de se conformer au consentement;

**b)** ordonner à la personne de prendre les mesures nécessaires pour se conformer au consentement;

**c)** ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de se conformer au consentement, sanction qu'il fixe après avoir tenu compte des éléments suivants :

**(i)** la situation financière de la personne,

**(ii)** le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

**(iii)** la durée de l'omission,

**(iv)** tout autre élément pertinent;

**d)** accorder toute autre réparation qu'il considère justifiée.

**But de l'ordonnance**

**(2)** Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la

person that is in conformity with the purposes of this Act and not with a view to punishment.

**Unpaid monetary penalty**

**(3)** The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**Service of agreement on Commissioner**

**74.133 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 74.1 and the person discontinues the application by reason of having entered into an agreement with any other person, the parties to the agreement must serve a copy of it on the Commissioner within 10 days after the day on which it is entered into.

**Commissioner may intervene**

**(2)** On application by the Commissioner, the Tribunal may vary or rescind the agreement if it finds that the agreement is not in conformity with the purposes of this Part.

**Notice**

**(3)** The Commissioner must give notice of an application under subsection (2) to the parties to the agreement.

**Failure to serve**

**74.134 (1)** If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to serve a copy of an agreement on the Commissioner in accordance with subsection 74.133(1), the Tribunal may

**(a)** order the person to serve the Commissioner with a copy of the agreement;

**(b)** issue an interim order prohibiting any person from doing anything that, in the Tribunal's opinion, may constitute or be directed toward the implementation of the agreement;

**(c)** order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to serve a copy of the agreement on the Commissioner, determined by the Tribunal after taking into account any evidence of the following:

**(i)** the person's financial position,

**(ii)** the person's history of compliance with this Act,

personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

**Sanctions administratives pécuniaires impayées**

**(3)** Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**Signification d'un accord au commissaire**

**74.133 (1)** Si une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu de l'article 74.1, mais s'en désiste du fait qu'elle a conclu un accord avec une autre personne, les parties à l'accord en font signifier une copie au commissaire dans les dix jours suivant la date de sa conclusion.

**Intervention du commissaire**

**(2)** Le Tribunal peut, sur demande du commissaire, modifier ou annuler l'accord dans les cas où il conclut que celui-ci est incompatible avec les objectifs de la présente partie.

**Préavis**

**(3)** Le commissaire fait parvenir aux parties à l'accord un préavis de la demande qu'il présente en vertu du paragraphe (2).

**Omission de signifier un accord**

**74.134 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis de signifier une copie de l'accord au commissaire en application du paragraphe 74.133(1), le Tribunal peut :

**a)** ordonner à la personne de signifier une copie de l'accord au commissaire;

**b)** rendre une ordonnance provisoire interdisant à toute personne d'accomplir tout acte qui, à son avis, pourrait constituer la mise en œuvre de l'accord ou y tendre;

**c)** ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de signifier une copie de l'accord au commissaire, sanction qu'il fixe après avoir tenu compte des éléments suivants :

**(i)** la situation financière de la personne,

**(ii)** le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(d)** grant any other relief that the Tribunal considers appropriate.

**(iii)** la durée de l'omission,

**(iv)** tout autre élément pertinent;

**d)** accorder toute autre réparation qu'il considère justifiée.

**Purpose of order**

**(2)** The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

**But de l'ordonnance**

**(2)** Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

**Unpaid monetary penalty**

**(3)** The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**Sanctions administratives pécuniaires impayées**

**(3)** Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**244 (1) Subsection 75(1) of the Act is replaced by the following:**

**244 (1) Le paragraphe 75(1) de la même loi est remplacé par ce qui suit :**

**Jurisdiction of Tribunal — cases of refusal to deal**

**75 (1)** The Tribunal may, on application by the Commissioner or a person granted leave under section 103.1, order one or more suppliers of a product, including a means of diagnosis or repair, in a market to accept a person as a customer, or to make the means of diagnosis or repair available to a person, within a specified period and on the terms that the Tribunal considers appropriate if the Tribunal finds that

**(a)** the person is substantially affected in the whole or part of their business or is precluded from carrying on business due to their inability to obtain adequate supplies of the product anywhere in the market on usual trade terms;

**(b)** the person is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market;

**(c)** the person is willing and able to meet the usual trade terms of the supplier or suppliers of the product;

**(d)** the product is in ample supply or, in the case of a means of diagnosis or repair, can be readily supplied; and

**(e)** the refusal to deal is having or is likely to have an adverse effect on competition in a market.

**Compétence du Tribunal dans les cas de refus de vendre**

**75 (1)** Le Tribunal peut, sur demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, ordonner qu'un ou plusieurs fournisseurs d'un produit, y compris un moyen de diagnostic ou de réparation, sur un marché acceptent une personne comme client, ou fournissent à une personne un moyen de diagnostic ou de réparation, dans un délai déterminé et aux conditions qu'il estime indiquées, s'il conclut, à la fois :

**a)** que la personne est sensiblement gênée dans tout ou partie de son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer le produit en quantité suffisante où que ce soit sur le marché, aux conditions de commerce normales;

**b)** que la personne est incapable de se procurer le produit en quantité suffisante en raison de l'insuffisance de la concurrence entre les fournisseurs de ce produit sur le marché;

**c)** que la personne accepte et est en mesure de respecter les conditions de commerce normales imposées par le ou les fournisseurs de ce produit;

**d)** que le produit est disponible en quantité amplement suffisante ou, dans le cas d'un moyen de diagnostic ou de réparation, peut être facilement fourni;

**e)** que le refus de vendre a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché.

**Non-application**

**(1.1)** An order made under subsection (1) does not apply in the case of an article if, within the specified time, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

**(2) Section 75 of the Act is amended by adding the following after subsection (1.1):**

**Additional order — person granted leave**

**(1.2)** If the Tribunal makes an order under subsection (1) as the result of an application by a person granted leave under section 103.1, it may also order any supplier in respect of whom the order applies to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

**Implementation of the order**

**(1.3)** The Tribunal may specify in an order made under subsection (1.2) any term that it considers necessary for the order's implementation, including a term

**(a)** specifying how the payment is to be administered;

**(b)** respecting the appointment of an administrator to administer the payment and specifying the terms of administration;

**(c)** requiring the person against whom the order is made to pay the administrative costs related to the payment as well as the fees to be paid to an administrator;

**(d)** requiring that potential claimants be notified in the time and manner specified by the Tribunal;

**(e)** specifying the time and manner for making claims;

**(f)** specifying the conditions for the eligibility of claimants, including conditions relating to the return of the products to the person against whom the order is made; and

**(g)** providing for the manner in which, and the terms on which, any amount of the payment that remains unclaimed or undistributed is to be dealt with.

**Non-application**

**(1.1)** L'ordonnance rendue en vertu du paragraphe (1) ne s'applique pas dans le cas d'un article si, au cours du délai déterminé, les droits de douane qui lui sont applicables sont supprimés, réduits ou remis de façon à mettre la personne sur un pied d'égalité avec d'autres personnes qui sont capables de se procurer l'article en quantité suffisante au Canada.

**(2) L'article 75 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :**

**Ordonnance additionnelle — personne autorisée**

**(1.2)** S'il rend une ordonnance en vertu du paragraphe (1) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à tout fournisseur visé par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

**Exécution de l'ordonnance**

**(1.3)** Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (1.2), préciser les conditions qu'il estime nécessaires à son exécution, notamment :

**a)** prévoir comment la somme à payer doit être administrée;

**b)** nommer un administrateur chargé d'administrer cette somme et préciser les modalités d'administration;

**c)** mettre à la charge de la personne contre qui l'ordonnance est rendue les frais d'administration de la somme ainsi que les honoraires de l'administrateur;

**d)** exiger que les réclamants éventuels soient avisés selon les modalités de forme et de temps qu'il précise;

**e)** préciser les modalités de forme et de temps quant à la présentation de toute réclamation;

**f)** établir les critères d'admissibilité des réclamants, notamment toute exigence relative au retour des produits à la personne contre qui l'ordonnance est rendue;

**g)** prévoir la manière dont la somme éventuellement non réclamée ou non distribuée doit être traitée et les conditions afférentes.

**(3) Subsection 75(3) of the Act is replaced by the following:**

**Trade secrets**

**(2.1)** Nothing in this section is to be interpreted as requiring the disclosure of any information that is a trade secret.

**Definitions**

**(3)** The following definitions apply in this section.

***means of diagnosis or repair*** includes diagnostic, maintenance, repair and calibration information, technical updates, diagnostic software or tools and any related documentation and service parts. (*moyen de diagnostic ou de réparation*)

***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements. (*conditions de commerce*)

**245 (1) Paragraph 76(11)(b) of the Act is replaced by the following:**

**(b)** an order against that person has been made under section 79 or 90.1.

**(2) Section 76 of the Act is amended by adding the following after subsection (11):**

**Additional order — person granted leave**

**(11.1)** If the Tribunal makes an order under subsection (2) as the result of an application by a person granted leave under section 103.1, it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

**Implementation of the order**

**(11.2)** The Tribunal may specify in an order made under subsection (11.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

**246 Subsection 77(3.1) of the Act is replaced by the following:**

**(3) Le paragraphe 75(3) de la même loi est remplacé par ce qui suit :**

**Secrets industriels**

**(2.1)** Le présent article n'a pas pour effet d'exiger la communication de secrets industriels.

**Définitions**

**(3)** Les définitions qui suivent s'appliquent au présent article.

***conditions de commerce*** Conditions relatives au paiement, aux quantités unitaires d'achat et aux exigences raisonnables d'ordre technique ou d'entretien. (*trade terms*)

***moyen de diagnostic ou de réparation*** S'entend notamment des renseignements relatifs au diagnostic, à l'entretien, à la réparation et à l'ajustage, des mises à jour techniques, des logiciels ou outils de diagnostic et de toute documentation connexe et des pièces de rechange. (*means of diagnosis or repair*)

**245 (1) L'alinéa 76(11)b) de la même loi est remplacé par ce qui suit :**

**b)** d'une ordonnance rendue contre cette personne en vertu des articles 79 ou 90.1.

**(2) L'article 76 de la même loi est modifié par adjonction, après le paragraphe (11), de ce qui suit :**

**Ordonnance additionnelle — personne autorisée**

**(11.1)** S'il rend l'ordonnance prévue au paragraphe (2) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à la personne visée par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

**Exécution de l'ordonnance**

**(11.2)** Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (11.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

**246 Le paragraphe 77(3.1) de la même loi est remplacé par ce qui suit :**

#### Additional order — person granted leave

**(3.1)** If the Tribunal makes an order under subsection (2) or (3) as the result of an application by a person granted leave under section 103.1, it may also order any supplier in respect of whom the order applies to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

#### Implementation of the order

**(3.2)** The Tribunal may specify in an order made under subsection (3.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

**247 (1) Subsection 79(3.2) of the Act is amended by adding the following after paragraph (d):**

**(d.1)** the amount that the person against whom the order is made is required to pay under an order made under subsection (4.1);

**(2) Section 79 of the Act is amended by adding the following after subsection (4):**

#### Additional order — person granted leave

**(4.1)** If, as the result of an application by a person granted leave under section 103.1, the Tribunal makes an order under subsection (1) or (2), it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the practice that is the subject of the order, to be distributed among the applicant and any other person affected by the practice, in any manner that the Tribunal considers appropriate.

#### Implementation of the order

**(4.2)** The Tribunal may specify in an order made under subsection (4.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

**(3) Paragraph 79(7)(b) of the Act is replaced by the following:**

**(b)** an order against that person has been made under section 76, 90.1 or 92.

**248 (1) The portion of subsection 90.1(1) of the Act before paragraph (a) is replaced by the following:**

#### Ordonnance additionnelle — personne autorisée

**(3.1)** S'il rend une ordonnance en vertu des paragraphes (2) ou (3) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à tout fournisseur visé par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

#### Exécution de l'ordonnance

**(3.2)** Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (3.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

**247 (1) Le paragraphe 79(3.2) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :**

**d.1)** la somme que la personne visée par l'ordonnance est tenue de payer au titre d'une ordonnance rendue en vertu du paragraphe (4.1);

**(2) L'article 79 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :**

#### Ordonnance additionnelle — personne autorisée

**(4.1)** Si, à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, il rend une ordonnance en vertu des paragraphes (1) ou (2), le Tribunal peut également ordonner à la personne visée par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré de la pratique visée par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par la pratique.

#### Exécution de l'ordonnance

**(4.2)** Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (4.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

**(3) L'alinéa 79(7)b) de la même loi est remplacé par ce qui suit :**

**b)** d'une ordonnance rendue contre cette personne en vertu des articles 76, 90.1 ou 92.

**248 (1) Le passage du paragraphe 90.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Order**

**90.1 (1)** If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement or a proposed agreement or arrangement between persons of whom two or more are competitors prevents or lessens, has prevented or lessened or is likely to prevent or lessen competition substantially in a market, the Tribunal may make an order

**(2) The portion of subsection 90.1(1) of the Act before paragraph (a) is replaced by the following:**

**Order**

**90.1 (1)** If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that an agreement or arrangement or a proposed agreement or arrangement between persons of whom two or more are competitors prevents or lessens, has prevented or lessened or is likely to prevent or lessen competition substantially in a market, the Tribunal may make an order

**(3) Section 90.1 of the Act is amended by adding the following after subsection (1):**

**Additional or alternative order**

**(1.1)** If, on an application under subsection (1), the Tribunal finds that an agreement or arrangement has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take actions, including the divestiture of assets or shares, that are reasonable and as are necessary to overcome the effects of the agreement or arrangement in that market.

**Limitation**

**(1.2)** In making an order under subsection (1.1), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

**Administrative monetary penalty**

**(1.3)** If the Tribunal makes an order against a person under subsection (1) or (1.1), it may also order them to pay,

**Ordonnance**

**90.1 (1)** Dans le cas où, à la suite d'une demande du commissaire, il conclut qu'un accord ou un arrangement — conclu ou proposé — entre des personnes dont au moins deux sont des concurrents empêche ou diminue sensiblement la concurrence dans un marché, a eu cet effet ou aura vraisemblablement cet effet, le Tribunal peut rendre une ordonnance :

**(2) Le passage du paragraphe 90.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Ordonnance**

**90.1 (1)** Dans le cas où, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, il conclut qu'un accord ou un arrangement — conclu ou proposé — entre des personnes dont au moins deux sont des concurrents empêche ou diminue sensiblement la concurrence dans un marché, a eu cet effet ou aura vraisemblablement cet effet, le Tribunal peut rendre une ordonnance :

**(3) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Ordonnance supplémentaire ou substitutive**

**(1.1)** Dans les cas où, à la suite de la demande visée au paragraphe (1), il conclut qu'un accord ou un arrangement a eu ou a pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché et qu'une ordonnance rendue aux termes du paragraphe (1) n'aura vraisemblablement pas pour effet de rétablir la concurrence dans ce marché, le Tribunal peut, en sus ou au lieu de rendre l'ordonnance prévue au paragraphe (1), rendre une ordonnance enjoignant à l'une ou l'autre ou à l'ensemble des personnes visées par la demande d'ordonnance de prendre des mesures raisonnables et nécessaires dans le but d'enrayer les effets de l'accord ou de l'arrangement sur le marché en question et, notamment, de se départir d'éléments d'actif ou d'actions.

**Restriction**

**(1.2)** Lorsque le Tribunal rend une ordonnance en vertu du paragraphe (1.1), il le fait aux conditions qui, à son avis, ne porteront atteinte aux droits de la personne visée par cette ordonnance ou à ceux des autres personnes touchées par cette ordonnance que dans la mesure de ce qui est nécessaire à la réalisation de l'objet de l'ordonnance.

**Sanction administrative pécuniaire**

**(1.3)** S'il rend une ordonnance en vertu des paragraphes (1) ou (1.1), le Tribunal peut aussi ordonner à la

in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding the greater of

**(a)** $10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding $15,000,000, and

**(b)** three times the value of the benefit derived from the agreement or arrangement, or, if that amount cannot be reasonably determined, 3% of the person's annual worldwide gross revenues.

**Aggravating or mitigating factors**

**(1.4)** In determining the amount of an administrative monetary penalty, the Tribunal shall take into account any evidence of the following:

**(a)** the effect on competition in the relevant market;

**(b)** the gross revenue from sales affected by the agreement or arrangement;

**(c)** any actual or anticipated profits affected by the agreement or arrangement;

**(d)** the financial position of the person against whom the order is made;

**(e)** the history of compliance with this Act by the person against whom the order is made; and

**(f)** any other relevant factor.

**Purpose of order**

**(1.5)** The purpose of an order made against a person under subsection (1.3) is to promote practices by that person that are in conformity with the purposes of this section and not to punish that person.

**(4) Subsection 90.1(1.4) of the Act is amended by adding the following after paragraph (d):**

**(d.1)** any amount that the person against whom the order is made is required to pay under an order made under subsection (10.1);

**(5) Section 90.1 of the Act is amended by adding the following after subsection (9):**

personne visée de payer, selon les modalités qu'il peut préciser, une sanction administrative pécuniaire maximale qui ne peut dépasser le plus élevé des montants suivants :

**a)** 10 000 000 $ et, pour toute ordonnance subséquente rendue en vertu de l'un de ces paragraphes, 15 000 000 $;

**b)** trois fois la valeur du bénéfice sur lequel l'accord ou l'arrangement a eu une incidence ou, si ce montant ne peut pas être déterminé raisonnablement, trois pour cent des recettes globales brutes annuelles de cette personne.

**Facteurs à prendre en compte**

**(1.4)** Pour la détermination du montant de la sanction administrative pécuniaire, le Tribunal prend en compte les éléments suivants :

**a)** l'effet sur la concurrence dans le marché pertinent;

**b)** le revenu brut provenant des ventes sur lesquelles l'accord ou l'arrangement a eu une incidence;

**c)** les bénéfices réels ou prévus sur lesquels l'accord ou l'arrangement a eu une incidence;

**d)** la situation financière de la personne visée par l'ordonnance;

**e)** le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

**f)** tout autre élément pertinent.

**But de la sanction**

**(1.5)** La sanction prévue au paragraphe (1.3) vise à encourager la personne à adopter des pratiques compatibles avec les objectifs du présent article et non pas à la punir.

**(4) Le paragraphe 90.1(1.4) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :**

**d.1)** toute somme que la personne visée par l'ordonnance est tenue de payer au titre d'une ordonnance rendue en vertu du paragraphe (10.1);

**(5) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (9), de ce qui suit :**

**Limitation period**

**(9.1)** No application may be made under this section in respect of an agreement or arrangement that has been terminated for more than three years.

**Unpaid monetary penalty**

**(9.2)** The administrative monetary penalty imposed on a person under subsection (1.3) is a debt due to His Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

**(6) Paragraph 90.1(10)(b) of the Act is replaced by the following:**

**(b)** an order against that person has been made under section 76, 79 or 92.

**(7) Section 90.1 of the Act is amended by adding the following after subsection (10):**

**Additional order — person granted leave**

**(10.1)** If the Tribunal makes an order under subsection (1) as the result of an application by a person granted leave under section 103.1, it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

**Implementation of the order**

**(10.2)** The Tribunal may specify in an order made under subsection (10.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

**Inferences**

**(10.3)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

**249 (1) Paragraphs 92(1)(b) and (c) of the Act are replaced by the following:**

**(b)** among the sources from which a trade, industry or profession obtains a product, including labour,

**(c)** among the outlets through which a trade, industry or profession disposes of a product, including labour, or

**Prescription**

**(9.1)** Aucune demande ne peut être présentée en vertu du présent article à l'égard d'un accord ou d'un arrangement si celui-ci a pris fin depuis plus de trois ans.

**Sanctions administratives pécuniaires impayées**

**(9.2)** Les sanctions administratives pécuniaires imposées au titre du paragraphe (1.3) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**(6) L'alinéa 90.1(10)b) de la même loi est remplacé par ce qui suit :**

**b)** d'une ordonnance rendue contre cette personne en vertu des articles 76, 79 ou 92.

**(7) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (10), de ce qui suit :**

**Ordonnance additionnelle — personne autorisée**

**(10.1)** S'il rend une ordonnance en vertu du paragraphe (1) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à toute personne visée par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

**Exécution de l'ordonnance**

**(10.2)** Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (10.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

**Application**

**(10.3)** Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

**249 (1) Les alinéas 92(1)b) et c) de la même loi sont remplacés par ce qui suit :**

**b)** entre les sources d'approvisionnement auprès desquelles un commerce, une industrie ou une profession se procure un produit, notamment du personnel;

**(e)** in the case of a completed merger, in order to restore competition to the level that would have prevailed but for the merger, order any party to the merger or any other person

**c)** entre les débouchés par l'intermédiaire desquels un commerce, une industrie ou une profession écoule un produit, notamment du personnel;

**(1.1) The portion of paragraph 92(1)(e) of the Act before subparagraph (i) is replaced by the following:**

**(1.1) Le passage de l'alinéa 92(1)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**(f)** in the case of a proposed merger, in order to preserve the level of competition that would prevail but for the merger, make an order directed against any party to the proposed merger or any other person

**e)** dans le cas d'un fusionnement réalisé, afin de rétablir la concurrence au niveau qui aurait existé sans le fusionnement, rendre une ordonnance enjoignant à toute personne, que celle-ci soit partie au fusionnement ou non :

**(1.2) The portion of paragraph 92(1)(f) of the Act before subparagraph (i) is replaced by the following:**

**(1.2) Le passage de l'alinéa 92(1)f) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**(A)** prohibiting the person against whom the order is directed, should the merger or part thereof be completed, from doing any act or thing the prohibition of which the Tribunal determines to be necessary to ensure that the merger or part thereof does not prevent or lessen competition, or

**f)** dans le cas d'un fusionnement proposé, afin de préserver le niveau de concurrence qui existerait sans le fusionnement, rendre, contre toute personne, que celle-ci soit partie au fusionnement proposé ou non, une ordonnance enjoignant :

**(1.3) Clause 92(1)(f)(iii)(A) of the Act is replaced by the following:**

**(1.3) La division 92(1)f)(iii)(A) de la même loi est remplacée par ce qui suit :**

**(A)** à la personne qui fait l'objet de l'ordonnance, de s'abstenir, si le fusionnement était éventuellement complété en tout ou en partie, de faire quoi que ce soit dont l'interdiction est, selon ce que conclut le Tribunal, nécessaire pour que le fusionnement, même partiel, n'empêche ni ne diminue la concurrence,

**(2) Subsection 92(2) of the Act is replaced by the following:**

**(2) Le paragraphe 92(2) de la même loi est remplacé par ce qui suit :**

**Evidence**

**(2)** For the purpose of this section, if the Tribunal finds, on a balance of probabilities, that a merger or proposed merger results or is likely to result in a significant increase in concentration or market share, the Tribunal shall also find that the merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, unless the contrary is proved on a balance of probabilities by the parties to the merger or proposed merger.

**Preuve**

**(2)** Pour l'application du présent article, lorsque le Tribunal conclut, selon la prépondérance des probabilités, qu'un fusionnement réalisé ou proposé entraîne ou entraînera vraisemblablement une augmentation importante de la concentration ou de la part du marché, il conclut également que le fusionnement réalisé ou proposé empêche ou diminue sensiblement la concurrence, ou aura vraisemblablement cet effet, sauf preuve contraire, selon la prépondérance des probabilités, par les parties au fusionnement réalisé ou proposé.

**Significant increase in concentration or market share**

**(3)** A merger or proposed merger results or is likely to result in a significant increase in concentration or market share if, in any relevant market, as a result of the merger or proposed merger,

**Augmentation importante — concentration ou part du marché**

**(3)** Le fusionnement réalisé ou proposé entraîne ou entraînera vraisemblablement une augmentation importante de la concentration ou de la part du marché si, dans

**(a)** the concentration index increases or is likely to increase by more than 100; and

**(b)** either

**(i)** the concentration index is or is likely to be more than 1,800, or

**(ii)** the market share of the parties to the merger or proposed merger is or is likely to be more than 30%.

**Definition of *concentration index***

**(4)** In subsection (3), ***concentration index*** means, in any relevant market, the sum of the squares of the market shares of the suppliers or customers.

**Regulations — different values**

**(5)** The Governor in Council may by regulation prescribe different values than those provided in subsection (3).

**250 (1) Paragraph 93(g.1) of the Act is replaced by the following:**

**(g.1)** network effects within a market;

**(2) Section 93 of the Act is amended by striking out "and" at the end of paragraph (g.3) and by adding the following after that paragraph:**

**(g.4)** the change in concentration or market share that the merger or proposed merger has brought about or is likely to bring about;

**(g.5)** any likelihood that the merger or proposed merger will or would result in express or tacit coordination between competitors in a market; and

**251 Section 97 of the Act is replaced by the following:**

**Limitation period**

**97** No application may be made under section 92,

**(a)** in respect of a merger that was the subject of a request for a certificate under section 102 or a notification under section 114, more than one year after the merger has been substantially completed; or

**(b)** in respect of any other merger, more than three years after the merger has been substantially completed.

**252 Paragraph 98(b) of the Act is replaced by the following:**

tout marché pertinent, en raison du fusionnement réalisé ou proposé, à la fois :

**a)** l'indice de concentration augmente ou augmentera vraisemblablement de plus de 100;

**b)** l'indice de concentration est ou sera vraisemblablement supérieur à 1 800, ou la part du marché des parties au fusionnement réalisé ou proposé est ou sera vraisemblablement supérieure à 30 %.

**Définition de *indice de concentration***

**(4)** Au paragraphe (3), ***indice de concentration*** correspond, dans tout marché pertinent, à la somme des carrés des parts du marché des fournisseurs ou des clients.

**Règlements — valeurs différentes**

**(5)** Le gouverneur en conseil peut, par règlement, établir des valeurs différentes de celles que prévoit le paragraphe (3).

**250 (1) L'alinéa 93g.1) de la même loi est remplacé par ce qui suit :**

**g.1)** les effets de réseau dans un marché;

**(2) L'article 93 de la même loi est modifié par adjonction, après l'alinéa g.3), de ce qui suit :**

**g.4)** la variation de la concentration ou des parts de marché entraînée ou vraisemblablement entraînée par le fusionnement réalisé ou proposé;

**g.5)** la possibilité que le fusionnement réalisé ou proposé entraîne ou puisse entraîner une coordination expresse ou tacite entre les concurrents dans un marché;

**251 L'article 97 de la même loi est remplacé par ce qui suit :**

**Prescription**

**97** Aucune demande ne peut être présentée au titre de l'article 92 à l'égard d'un fusionnement visé par la demande de certificat prévue à l'article 102 ou par l'avis donné en vertu de l'article 114 qui est en substance réalisé depuis plus d'un an, ni à l'égard de tout autre fusionnement qui est en substance réalisé depuis plus de trois ans.

**252 L'alinéa 98b) de la même loi est remplacé par ce qui suit :**

**(b)** an order against that person has been made under section 79 or 90.1.

**253 Section 100 of the Act is amended by adding the following after subsection (3):**

**Effect of application for interim order**

**(3.1)** If an application for an interim order is made under subsection (1) in respect of a proposed merger, the merger shall not be completed until the application has been disposed of by the Tribunal.

**254 (1) Subsections 103.1(1) and (2) of the Act are replaced by the following:**

**Leave to make application under section 74.1, 75, 76, 77, 79 or 90.1**

**103.1 (1)** Any person may apply to the Tribunal for leave to make an application under section 74.1, 75, 76, 77, 79 or 90.1. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

**Notice**

**(2)** The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order is sought under section 74.1, 75, 76, 77, 79 or 90.1, as the case may be.

**(2) Paragraph 103.1(3)(b) of the Act is replaced by the following:**

**(b)** was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order is sought under section 74.1, 75, 76, 77, 79 or 90.1, as the case may be.

**(3) Subsection 103.1(4) of the Act is replaced by the following:**

**Application discontinued**

**(4)** The Tribunal is not to consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 74.1, 75, 76, 77, 79 or 90.1.

**(4) Subsection 103.1(7) of the Act is replaced by the following:**

**b)** d'une ordonnance rendue contre cette personne en vertu des articles 79 ou 90.1.

**253 L'article 100 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Effet d'une demande d'ordonnance provisoire**

**(3.1)** Lorsqu'une demande d'ordonnance provisoire est présentée au titre du paragraphe (1) à l'égard d'un fusionnement proposé, le fusionnement ne peut être réalisé tant que le Tribunal n'a pas statué sur la demande.

**254 (1) Les paragraphes 103.1(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Permission de présenter une demande : articles 74.1, 75, 76, 77, 79 ou 90.1**

**103.1 (1)** Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde.

**Signification**

**(2)** L'auteur de la demande en fait signifier une copie au commissaire et à chaque personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1, selon le cas.

**(2) L'alinéa 103.1(3)b) de la même loi est remplacé par ce qui suit :**

**b)** soit ont fait l'objet d'une telle enquête qui a été discontinuée à la suite d'une entente intervenue entre le commissaire et la personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1, selon le cas.

**(3) Le paragraphe 103.1(4) de la même loi est remplacé par ce qui suit :**

**Rejet**

**(4)** Le Tribunal ne peut être saisi d'une demande portant sur des questions visées aux alinéas (3)a) ou b) ou portant sur une question qui fait l'objet d'une demande que lui a présentée le commissaire en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1.

**(4) Le paragraphe 103.1(7) de la même loi est remplacé par ce qui suit :**

**Granting leave — section 74.1**

**(6.1)** The Tribunal may grant leave to make an application under section 74.1 if it is satisfied that it is in the public interest to do so.

**Granting leave — sections 75, 77, 79 or 90.1**

**(7)** The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or if it is satisfied that it is in the public interest to do so.

**(5) Section 103.1 of the Act is amended by adding the following after subsection (7.1):**

**Granting leave — section 90.1**

**(7.2)** The Tribunal is not to consider an application for leave in respect of an application under section 90.1 that relates to an agreement or arrangement for which a certificate issued under subsection 124.3(1) is valid and registered.

**(6) Subsection 103.1(8) of the English version of the Act is replaced by the following:**

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 74.1, 75, 76, 77, 79 or 90.1 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

**(7) Subsection 103.1(10) of the Act is replaced by the following:**

**Limitation**

**(10)** The Commissioner may not make an application for an order under section 74.1, 75, 76, 77, 79 or 90.1 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (6.1), (7) or (7.1), if the person granted leave has already applied to the Tribunal under one of those sections.

**255 Section 103.2 of the Act is replaced by the following**

**Octroi de la demande : article 74.1**

**(6.1)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu de l'article 74.1 s'il est convaincu que cela servirait l'intérêt public.

**Octroi de la demande : articles 75, 77, 79 ou 90.1**

**(7)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75, 77, 79 ou 90.1 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans tout ou partie de son entreprise en raison de l'existence de l'un ou l'autre des comportements qui pourraient faire l'objet d'une ordonnance en vertu de l'un de ces articles ou s'il est convaincu que cela servirait l'intérêt public.

**(5) L'article 103.1 de la même loi est modifié par adjonction, après le paragraphe (7.1), de ce qui suit :**

**Rejet de la demande : article 90.1**

**(7.2)** Le Tribunal ne peut être saisi d'une demande de permission de présenter, en vertu de l'article 90.1, une demande qui concerne un accord ou un arrangement faisant l'objet d'un certificat délivré en vertu du paragraphe 124.3(1) qui est valide et enregistré.

**(6) Le paragraphe 103.1(8) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 74.1, 75, 76, 77, 79 or 90.1 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

**(7) Le paragraphe 103.1(10) de la même loi est remplacé par ce qui suit :**

**Limite applicable au commissaire**

**(10)** Le commissaire ne peut, en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1, présenter une demande fondée sur des faits qui seraient les mêmes ou essentiellement les mêmes que ceux qui ont été allégués dans la demande de permission accordée en vertu des paragraphes (6.1), (7) ou (7.1) si la personne à laquelle la permission a été accordée a déposé une demande en vertu de l'un de ces articles.

**255 L'article 103.2 de la même loi est remplacé par ce qui suit :**

#### Intervention by Commissioner

**103.2** If a person granted leave under subsection 103.1(6.1), (7) or (7.1) makes an application under section 74.1, 75, 76, 77, 79 or 90.1, the Commissioner may intervene in the proceedings.

#### Intervention du commissaire

**103.2** Le commissaire est autorisé à intervenir devant le Tribunal dans les cas où une personne autorisée en vertu des paragraphes 103.1(6.1), (7) ou (7.1) présente une demande en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1.

**256 (1) Subsection 104(1) of the Act is replaced by the following:**

**256 (1) Le paragraphe 104(1) de la même loi est remplacé par ce qui suit :**

#### Interim order

**104 (1)** If an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75, 76, 77, 79 or 90.1, may issue any interim order that it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

#### Ordonnance provisoire

**104 (1)** Lorsqu'une demande d'ordonnance a été faite en application de la présente partie, sauf en ce qui concerne les ordonnances provisoires en vertu des articles 100 ou 103.3, le Tribunal peut, à la demande du commissaire ou d'une personne qui a présenté une demande en vertu des articles 75, 76, 77, 79 ou 90.1, rendre toute ordonnance provisoire qu'il considère justifiée conformément aux principes normalement pris en considération par les cours supérieures en matières interlocutoires et d'injonction.

**(2) Section 104 of the Act is amended by adding the following after subsection (1):**

**(2) L'article 104 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

#### Effect of application for interim order

**(1.1)** If an application for an interim order is made under subsection (1) in respect of a proposed merger, the merger shall not be completed until the application has been disposed of by the Tribunal.

#### Effet d'une demande d'ordonnance provisoire

**(1.1)** Lorsqu'une demande d'ordonnance provisoire est présentée au titre du paragraphe (1) à l'égard d'un fusionnement proposé, le fusionnement ne peut être réalisé tant que le Tribunal n'a pas statué sur la demande.

**257 Subsection 106.1(1) of the Act is replaced by the following:**

**257 Le paragraphe 106.1(1) de la même loi est remplacé par ce qui suit :**

#### Consent agreement — parties to a private action

**106.1 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75, 76, 77, 79 or 90.1 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

#### Consentement — parties privées

**106.1 (1)** Lorsqu'une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu des articles 75, 76, 77, 79 ou 90.1, que cette personne et la personne à l'égard de laquelle l'ordonnance est demandée s'entendent sur son contenu et que l'entente est compatible avec les dispositions de la présente loi, un consentement peut être déposé auprès du Tribunal pour enregistrement.

**258 The Act is amended by adding the following after section 106.1:**

**258 La même loi est modifiée par adjonction, après l'article 106.1, de ce qui suit :**

#### Failure to comply with consent agreement

**106.2 (1)** If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to comply or is likely to fail to comply with a consent agreement registered under subsection 105(3) or 106.1(4), the Tribunal may

#### Omission de se conformer au consentement

**106.2 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis ou omettra vraisemblablement de se conformer au consentement enregistré au titre des paragraphes 105(3) ou 106.1(4), le Tribunal peut :

**(a)** prohibit the person from doing anything that, in the Tribunal's opinion, may constitute a failure to comply with the agreement;

**(b)** order the person to take any action that is necessary to comply with the agreement;

**(c)** order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to comply with the agreement, determined by the Tribunal after taking into account any evidence of the following:

**(i)** the person's financial position,

**(ii)** the person's history of compliance with this Act,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(d)** grant any other relief that the Tribunal considers appropriate.

**a)** interdire à la personne d'accomplir tout acte qui, à son avis, pourrait constituer une omission de se conformer au consentement;

**b)** ordonner à la personne de prendre les mesures nécessaires pour se conformer au consentement;

**c)** ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de se conformer au consentement, sanction qu'il fixe après avoir tenu compte des éléments suivants :

**(i)** la situation financière de la personne,

**(ii)** le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

**(iii)** la durée de l'omission,

**(iv)** tout autre élément pertinent;

**d)** accorder toute autre réparation qu'il considère justifiée.

**Purpose of order**

**(2)** The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

**But de l'ordonnance**

**(2)** Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

**Unpaid monetary penalty**

**(3)** The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**Sanctions administratives pécuniaires impayées**

**(3)** Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**259 The Act is amended by adding the following after section 106.2:**

**259 La même loi est modifiée par adjonction, après l'article 106.2, de ce qui suit :**

**Service of agreement on Commissioner**

**106.3 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75, 76, 77, 79 or 90.1 and the person discontinues the application by reason of having entered into an agreement with any other person, the parties to the agreement must serve a copy of it on the Commissioner within 10 days after the day on which it was entered into.

**Signification d'un accord au commissaire**

**106.3 (1)** Si une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu des articles 75, 76, 77, 79 ou 90.1, mais s'en désiste du fait qu'elle a conclu un accord avec une autre personne, les parties à l'accord en font signifier une copie au commissaire dans les dix jours suivant la date de sa conclusion.

**Commissioner may intervene**

**(2)** On application by the Commissioner, the Tribunal may vary or rescind the agreement if it finds that the agreement has or is likely to have anti-competitive effects.

**Intervention du commissaire**

**(2)** Le Tribunal peut, sur demande du commissaire, modifier ou annuler l'accord dans les cas où il conclut qu'il a ou aurait vraisemblablement des effets anti-concurrentiels.

**Notice**

**(3)** The Commissioner must give notice of an application under subsection (2) to the parties to the agreement.

**Failure to serve**

**106.4 (1)** If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to serve a copy of an agreement on the Commissioner in accordance with subsection 106.3(1), the Tribunal may

**(a)** order the person to serve the Commissioner with a copy of the agreement;

**(b)** issue an interim order prohibiting any person from doing anything that, in the Tribunal's opinion, may constitute or be directed toward the implementation of the agreement;

**(c)** order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to serve a copy of the agreement on the Commissioner, determined by the Tribunal after taking into account any evidence of the following:

**(i)** the person's financial position,

**(ii)** the person's history of compliance with this Act,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(d)** grant any other relief that the Tribunal considers appropriate.

**Purpose of order**

**(2)** The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

**Unpaid monetary penalty**

**(3)** The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**260 The Act is amended by adding the following after section 107:**

**Préavis**

**(3)** Le commissaire fait parvenir aux parties à l'accord un préavis de la demande qu'il présente en vertu du paragraphe (2).

**Omission de signifier un accord**

**106.4 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis de signifier une copie d'un accord au commissaire en application du paragraphe 106.3(1), le Tribunal peut :

**a)** ordonner à la personne de signifier une copie de l'accord au commissaire;

**b)** rendre une ordonnance provisoire interdisant à toute personne d'accomplir tout acte qui, à son avis, pourrait constituer la mise en œuvre de l'accord ou y tendre;

**c)** ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de signifier une copie de l'accord au commissaire, sanction qu'il fixe après avoir tenu compte des éléments suivants :

**(i)** la situation financière de la personne,

**(ii)** le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

**(iii)** la durée de l'omission,

**(iv)** tout autre élément pertinent;

**d)** accorder toute autre réparation qu'il considère justifiée.

**But de l'ordonnance**

**(2)** Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

**Sanctions administratives pécuniaires impayées**

**(3)** Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**260 La même loi est modifiée par adjonction, après l'article 107, de ce qui suit :**

**PART VIII.1**

# Matters Reviewable by a Court

## Definitions

**Definitions**

**107.1** The following definitions apply in this Part:

***court*** means the Federal Court or the superior court of a province. (*tribunal*)

***reprisal action*** means an action taken by a person to penalize, punish, discipline, harass or disadvantage another person because of that person's communications with the Commissioner or because that person has cooperated, testified or assisted, or has expressed an intention to cooperate, testify or assist in an investigation or proceeding under this Act. (*représailles*)

## Reprisal Action

**Prohibition orders**

**107.2** If, following an application by the Commissioner or a person directly and substantially affected by an alleged reprisal action, a court concludes that a person is engaging, has engaged or is likely to engage in a reprisal action, it may make an order prohibiting the person from engaging in that action.

**Administrative Monetary Penalties**

**107.3** If the court makes an order against a person under section 107.2 on the basis that the person is engaging in or has engaged in a reprisal action, it may also order them to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding

**(a)** in the case of an individual, $750,000 and for each subsequent order, $1,000,000; or

**(b)** in the case of a corporation, $10,000,000 and for each subsequent order, $15,000,000.

**Purpose of order**

**107.4** The terms of an order made against a person under section 107.3 are to be determined with a view to

**PARTIE VIII.1**

# Affaires qu'un tribunal peut examiner

## Définitions

**Définitions**

**107.1** Les définitions qui suivent s'appliquent à la présente partie.

***représailles*** Toutes mesures prises par une personne pour pénaliser, punir, discipliner, harceler ou désavantager une autre personne en raison des communications de celle-ci avec le commissaire ou parce que celle-ci a coopéré, témoigné ou autrement aidé, ou a exprimé son intention de coopérer, de témoigner ou d'aider autrement une enquête ou une procédure en vertu de la présente loi. (*reprisal action*)

***tribunal*** La Cour fédérale ou la cour supérieure d'une province. (*court*)

## Représailles

**Interdictions**

**107.2** Dans le cas où, à la suite d'une demande du commissaire ou d'une personne qui allègue avoir été directement et sensiblement touchée par des représailles, il conclut qu'une personne se livre ou s'est livrée à des représailles, ou risque vraisemblablement de s'y livrer, le tribunal peut rendre une ordonnance interdisant à cette personne de se livrer à une telle activité.

**Sanction administrative pécuniaire**

**107.3** S'il rend une ordonnance en vertu de l'article 107.2, le tribunal peut aussi ordonner à la personne qui se livre ou qui s'est livrée à des représailles de payer, selon les modalités que le tribunal peut préciser, une sanction administrative pécuniaire maximale :

**a)** dans le cas d'une personne physique, de 750 000 $ pour la première ordonnance et de 1 000 000 $ pour toute ordonnance subséquente;

**b)** dans le cas d'une personne morale, de 10 000 000 $ pour la première ordonnance et de 15 000 000 $ pour toute ordonnance subséquente.

**But de l'ordonnance**

**107.4** Les conditions de l'ordonnance rendue en vertu de l'article 107.3 sont fixées de façon à encourager la

promoting conduct by that person that is in conformity with the purposes of this Act and not with a view to punishment.

**Aggravating or mitigating factors**

**107.5** Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under section 107.3:

**(a)** the frequency and duration of the conduct;

**(b)** the vulnerability of the class of persons likely to be adversely affected by the conduct;

**(c)** the financial position of the person against whom the order is made;

**(d)** the history of compliance with this Act by the person against whom the order is made; and

**(e)** any other relevant factor.

**Unpaid monetary penalty**

**107.6** The administrative monetary penalty imposed under section 107.3 is a debt due to His Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

**261 (1) Subsection 110(2) of the Act is replaced by the following:**

**Acquisition of assets**

**(2)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of any of the assets in Canada and, if any, outside Canada, of an operating business if the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, or the gross revenues from sales in, from or into Canada generated from all the assets proposed to be acquired, determined for the annual period and in the manner that is prescribed, would exceed the amount determined under subsection (7) or (8), as the case may be.

**(2) Subparagraph 110(3)(a)(ii) of the Act is replaced by the following:**

**(ii)** the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that are owned by the corporation or by

personne visée à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

**Circonstances aggravantes ou atténuantes**

**107.5** Pour la détermination du montant de la sanction administrative pécuniaire prévue à l'article 107.3, il est tenu compte des éléments suivants :

**a)** la fréquence et la durée du comportement;

**b)** la vulnérabilité des catégories de personnes susceptibles de souffrir du comportement;

**c)** la situation financière de la personne visée par l'ordonnance;

**d)** le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

**e)** tout autre élément pertinent.

**Sanctions administratives pécuniaires impayées**

**107.6** Les sanctions administratives pécuniaires imposées au titre de l'article 107.3 constituent des créances de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**261 (1) Le paragraphe 110(2) de la même loi est remplacé par ce qui suit :**

**Acquisition d'éléments d'actif**

**(2)** Sous réserve des articles 111 et 113, la présente partie s'applique à l'égard de l'acquisition proposée d'éléments d'actif au Canada et, le cas échéant, à l'extérieur du Canada, d'une entreprise en exploitation si la valeur totale des éléments d'actif au Canada, déterminée selon les modalités réglementaires de forme et de temps, ou si le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif dont l'acquisition est proposée, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

**(2) Le sous-alinéa 110(3)a)(ii) de la même loi est remplacé par ce qui suit :**

**(ii)** soit le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif qui sont la propriété de la personne morale

entities controlled by that corporation would exceed the amount determined under subsection (7) or (8), as the case may be; and

ou d'entités que contrôle cette personne morale, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

**(3) Section 110 of the Act is amended by adding the following after subsection (3):**

**(3) L'article 110 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Acquisition of assets and shares**

**(3.1)** If a proposed transaction would be completed through an acquisition of assets referred to in subsection (2) and shares referred to in subsection (3),

**(a)** the value of the assets calculated under subsection (2) and the value of the assets calculated under subparagraph (3)(a)(i) are to be aggregated for the purpose of determining if those assets exceed in aggregate value the amount determined under subsection (8); and

**(b)** the gross revenues calculated under subsection (2) and the gross revenues calculated under subparagraph (3)(a)(ii) are to be aggregated for the purpose of determining if those gross revenues exceed in aggregate value the amount determined under subsection (8).

**Acquisition d'éléments d'actif et d'actions**

**(3.1)** Si une transaction proposée se réalisait dans le cadre de l'acquisition d'éléments d'actifs visés au paragraphe (2) et d'actions visées au paragraphe (3) :

**a)** la valeur totale des éléments d'actif calculée au titre du paragraphe (2) et celle calculée au titre du sous-alinéa (3)a)(i) sont additionnées afin de déterminer si la valeur totale ainsi obtenue dépasse la somme obtenue par application du paragraphe (8);

**b)** le revenu brut calculé au titre du paragraphe (2) et celui calculé au titre du sous-alinéa (3)a)(ii) sont additionnés afin de déterminer si la valeur totale du revenu brut ainsi obtenue dépasse la somme obtenue par application du paragraphe (8).

**(4) Paragraph 110(4)(b) of the Act is replaced by the following:**

**(b)** the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that would be owned by the continuing entity that would result from the amalgamation or by entities controlled by the continuing entity would exceed the amount determined under subsection (7) or (8), as the case may be.

**(4) L'alinéa 110(4)b) de la même loi est remplacé par ce qui suit :**

**b)** le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif dont seraient propriétaires l'entité devant résulter de la fusion ou les entités qu'elle contrôle, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

**(5) The portion of subsection 110(5) of the Act before paragraph (a) is replaced by the following:**

**(5) Le passage du paragraphe 110(5) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Combination**

**(5)** Subject to sections 112 and 113, this Part applies in respect of a proposed combination of two or more persons to carry on business otherwise than through a corporation if one or more of those persons, or one or more of their affiliates, proposes to contribute to the combination assets that form all or part of an operating business carried on by those persons or affiliates, and if

**Associations d'intérêts**

**(5)** Sous réserve des articles 112 et 113, la présente partie s'applique à l'égard de l'association d'intérêts proposée entre plusieurs personnes dans le but d'exercer une entreprise autrement que par l'intermédiaire d'une personne morale dans les cas où au moins une de ces personnes ou de leurs affiliées propose de fournir à l'association d'intérêts des éléments d'actif constituant tout ou partie d'une entreprise en exploitation exploitée par ces personnes ou affiliées, et si :

**(6) Paragraph 110(5)(b) of the Act is replaced by the following:**

**(b)** the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that are the subject matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be.

**(6) L'alinéa 110(5)b) de la même loi est remplacé par ce qui suit :**

**b)** le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif qui font l'objet de l'association d'intérêts, établi selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

**(7) Subparagraph 110(6)(a)(ii) of the Act is replaced by the following:**

**(ii)** the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that are the subject matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be; and

**(7) Le sous-alinéa 110(6)a)(ii) de la même loi est remplacé par ce qui suit :**

**(ii)** soit le revenu brut provenant de ventes au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif qui font l'objet de l'association d'intérêts, établi selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasserait la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

**262 Paragraph 113(c) of the Act is replaced by the following:**

**(c)** a transaction in respect of which the Commissioner or a person authorized by the Commissioner has waived, during the year preceding the day on which the transaction was completed, the obligation under this Part to notify the Commissioner and supply information because substantially similar information was previously supplied in relation to a request for a certificate under section 102; and

**262 L'alinéa 113c) de la même loi est remplacé par ce qui suit :**

**c)** une transaction à l'égard de laquelle le commissaire ou son délégué a, au cours de l'année précédant la date de réalisation de la transaction, renoncé à l'avis et à la fourniture de renseignements prévus par la présente partie parce que des renseignements essentiellement semblables ont été fournis antérieurement relativement à la demande de certificat prévue à l'article 102;

**263 The portion of subsection 123.1(1) of the Act before paragraph (a) is replaced by the following:**

**Failure to comply**

**123.1 (1)** If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has completed or is likely to complete a proposed transaction before the end of the applicable period referred to in section 123 or without having given the notice or information required under subsection 114(1), the court may

**263 Le passage du paragraphe 123.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Défaut de respecter des exigences**

**123.1 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a réalisé ou réalisera vraisemblablement une transaction proposée avant l'expiration du délai applicable prévu à l'article 123 ou sans avoir donné l'avis ou fourni les renseignements exigés en vertu du paragraphe 114(1), le tribunal peut :

**264 Subsection 124.2(3) of the Act is replaced by the following:**

**264 Le paragraphe 124.2(3) de la même loi est remplacé par ce qui suit :**

**Reference by agreement of parties to a private action**

**(3)** A person granted leave under section 103.1 and the person against whom an order is sought under section 74.1, 75, 76, 77, 79 or 90.1 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VII.1 or VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

**265 The Act is amended by adding the following after section 124.2:**

## Agreements and Arrangements Related to Protecting the Environment

**Certificate**

**124.3 (1)** If the Commissioner is satisfied by a party or parties that propose to enter into an agreement or arrangement that it is for the purpose of protecting the environment and that it is not likely to prevent or lessen competition substantially in a market, they may issue a certificate that they are so satisfied.

**Duty of Commissioner**

**(2)** The Commissioner must consider any request for a certificate under this section as soon as practicable.

**Duty of party or parties**

**(3)** The party or parties seeking a certificate must, on request, provide to the Commissioner any information related to the agreement or arrangement.

**Content of certificate**

**(4)** The Commissioner must specify in the certificate the names of the parties to the agreement or arrangement as well as a description of the agreement or arrangement's content.

**Terms**

**(5)** The Commissioner may specify in the certificate any terms that the Commissioner considers appropriate.

**Period of validity**

**(6)** The Commissioner must specify in the certificate its period of validity, which is not to exceed 10 years, and on request of the parties may extend that period for one or more additional periods not exceeding 10 years.

**Renvois par des parties privées**

**(3)** La personne autorisée en vertu de l'article 103.1 et la personne visée par la demande qu'elle présente en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1 peuvent, d'un commun accord, mais avec la permission du Tribunal, soumettre au Tribunal toute question de droit ou toute question mixte de droit et de fait liée à l'application ou l'interprétation des parties VII.1 ou VIII. Elles font parvenir un avis de leur demande de renvoi au commissaire, celui-ci étant alors autorisé à intervenir dans les procédures.

**265 La même loi est modifiée par adjonction, après l'article 124.2, de ce qui suit :**

## Accords et arrangements relatifs à la protection de l'environnement

**Certificat**

**124.3 (1)** S'il est convaincu par une ou plusieurs parties qui se proposent de conclure un accord ou un arrangement que celui-ci a pour but de protéger l'environnement et n'aura vraisemblablement pas pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, le commissaire peut délivrer un certificat attestant cette conviction.

**Obligation du commissaire**

**(2)** Il examine la demande de certificat dans les meilleurs délais.

**Obligation des parties**

**(3)** La ou les parties à l'accord ou à l'arrangement fournissent au commissaire, sur demande, tout renseignement relatif à l'accord ou à l'arrangement.

**Contenu du certificat**

**(4)** Le commissaire précise dans le certificat le nom des parties à l'accord ou à l'arrangement et y inclut une description du contenu de celui-ci.

**Conditions**

**(5)** Il peut préciser, dans le certificat, les conditions qu'il estime indiquées.

**Période de validité**

**(6)** Il précise, dans le certificat, la période de validité de celui-ci, laquelle ne peut excéder dix ans, et peut, sur demande des parties, proroger celle-ci pour une ou plusieurs périodes supplémentaires ne pouvant excéder dix ans.

**Registration**

**124.4** The Commissioner must file a certificate issued under subsection 124.3(1) with the Tribunal for immediate registration.

**Non-application of sections 45, 46, 47, 49 and 90.1**

**124.5** Sections 45, 46, 47, 49 and 90.1 do not apply in respect of an agreement or arrangement that is the subject of a certificate issued under subsection 124.3(1) that is valid and registered.

**Notice of termination**

**124.6 (1)** The parties to an agreement or arrangement that is the subject of a valid certificate issued under subsection 124.3(1) must, within 15 days of the day on which they terminate the agreement or arrangement, give notice of the termination to the Commissioner and the Tribunal.

**Rescission of certificate**

**(2)** The Tribunal must, without delay after receiving the notice, rescind the certificate.

**Rescission or variation of certificate**

**124.7** The Tribunal may rescind or vary a certificate issued under subsection 124.3(1) if, on application by the Commissioner, the parties to the agreement or arrangement that is the subject of the certificate or a person directly and substantially affected in the whole or part of their business by the agreement or arrangement, the Tribunal finds that

**(a)** the parties have terminated the agreement or arrangement without giving notice of the termination in accordance with subsection 124.6(1);

**(b)** the parties have agreed, with the Commissioner's consent, to vary the agreement or arrangement;

**(c)** the agreement or arrangement is not being implemented in accordance with the description of it in the certificate;

**(d)** the parties have failed to comply with the terms specified in the certificate; or

**(e)** the agreement or arrangement prevents or lessens, or is likely to prevent or lessen, competition substantially in a market.

**Dépôt et enregistrement**

**124.4** Le commissaire dépose le certificat délivré en vertu du paragraphe 124.3(1) auprès du Tribunal qui est tenu de l'enregistrer immédiatement.

**Non-application des articles 45, 46, 47, 49 et 90.1**

**124.5** Les articles 45, 46, 47, 49 et 90.1 ne s'appliquent pas à l'accord ou à l'arrangement qui fait l'objet d'un certificat délivré en vertu du paragraphe 124.3(1) qui est valide et enregistré.

**Avis de fin de l'accord ou de l'arrangement**

**124.6 (1)** Les parties qui mettent fin à un accord ou à un arrangement qui fait l'objet d'un certificat valide délivré en vertu du paragraphe 124.3(1) en avisent le commissaire et le Tribunal dans les quinze jours suivant la date de la fin de l'accord ou de l'arrangement.

**Annulation du certificat**

**(2)** Sur réception de l'avis, le Tribunal annule le certificat sans délai.

**Annulation ou modification du certificat**

**124.7** Le Tribunal peut annuler ou modifier un certificat délivré en vertu du paragraphe 124.3(1) si, sur demande du commissaire, des parties à l'accord ou à l'arrangement qui fait l'objet du certificat ou d'une personne qui est directement et sensiblement gênée dans tout ou partie de son entreprise en raison de l'existence de l'accord ou de l'arrangement, il conclut que, selon le cas :

**a)** les parties ont mis fin à l'accord ou à l'arrangement sans donner l'avis conformément au paragraphe 124.6(1);

**b)** les parties ont convenu, avec le consentement du commissaire, de modifier l'accord ou l'arrangement;

**c)** l'accord ou l'arrangement n'est pas mis en œuvre conformément à la description de celui-ci dans le certificat;

**d)** les parties ne se conforment pas aux conditions précisées dans le certificat;

**e)** l'accord ou l'arrangement empêche ou diminue sensiblement la concurrence dans un marché, ou aura vraisemblablement cet effet.

R.S., c. 19 (2nd Supp.)

## Competition Tribunal Act

**266 Subsection 8.1(3) of the *Competition Tribunal Act* is replaced by the following:**

**No award against the Crown**

**(3)** Despite any other Act of Parliament, the Tribunal shall not award costs against His Majesty in right of Canada unless it is satisfied

**(a)** that an award is necessary to maintain confidence in the administration of justice; or

**(b)** that the absence of an award would have a substantial adverse effect on the other party's ability to carry on business.

L.R., ch. 19 (2e suppl.)

## Loi sur le Tribunal de la concurrence

**266 Le paragraphe 8.1(3) de la *Loi sur le Tribunal de la concurrence* est remplacé par ce qui suit :**

**Aucuns frais à la charge de la Couronne**

**(3)** Malgré toute autre loi fédérale, le Tribunal ne peut ordonner à Sa Majesté du chef du Canada de payer des frais, sauf s'il est convaincu :

**a)** soit que l'ordonnance est nécessaire pour ne pas miner la confiance du public envers l'administration de la justice;

**b)** soit que l'absence d'ordonnance aurait un effet négatif important sur la capacité de l'autre partie d'exploiter son entreprise.

## Transitional Provisions

**Subsection 67(4) of the *Competition Act***

**267 Subsection 67(4) of the *Competition Act*, as enacted by section 235, applies only in respect of corporations that are charged with an offence under that Act on or after the day on which this Act receives royal assent.**

**Subsection 92(2) of the *Competition Act***

**268 Subsection 92(2) of the *Competition Act*, as that subsection read before the day on which subsection 249(2) comes into force, continues to apply after that day in respect of a proposed transaction that was the subject of a notification provided under section 114 of that Act before that day or to a merger that is substantially completed before that day.**

**Subsection 8.1(3) of the *Competition Tribunal Act***

**269 Subsection 8.1(3) of the *Competition Tribunal Act*, as that subsection read before the day on which section 266 comes into force, continues to apply after that day in respect of any proceeding referred to in subsection 8.1(1) of that Act that commenced before that day.**

## Dispositions transitoires

**Paragraphe 67(4) de la *Loi sur la concurrence***

**267 Le paragraphe 67(4) de la *Loi sur la concurrence*, édicté par l'article 235, ne s'applique qu'aux personnes morales accusées d'une infraction visée à cette loi à la date de sanction de la présente loi ou après cette date.**

**Paragraphe 92(2) de la *Loi sur la concurrence***

**268 Le paragraphe 92(2) de la *Loi sur la concurrence*, dans sa version antérieure à la date d'entrée en vigueur du paragraphe 249(2), continue de s'appliquer après cette date à l'égard des transactions proposées pour lesquelles l'avis visé à l'article 114 de cette loi a été donné avant cette date, ainsi qu'à l'égard des fusionnements en substance réalisés avant cette date.**

**Paragraphe 8.1(3) de la *Loi sur le Tribunal de la concurrence***

**269 Le paragraphe 8.1(3) de la *Loi sur le Tribunal de la concurrence*, dans sa version antérieure à la date d'entrée en vigueur de l'article 266, continue de s'appliquer après cette date à l'égard des procédures visées au paragraphe 8.1(1) de cette loi commencées avant cette date.**

2010, c. 23

## Consequential Amendment to An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage ...

**270 Paragraph 20(3)(d) of the *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* is replaced by the following:**

**(d)** the person's history with respect to any previous undertaking entered into under subsection 21(1) and any previous consent agreement signed under subsection 74.12(1) or 74.131(1) of the *Competition Act* that relates to acts or omissions that constitute conduct that is reviewable under section 74.011 of that Act;

## Coordinating Amendment

### Bill C-56

**271 If Bill C-56, introduced in the 1st session of the 44th Parliament and entitled the *Affordable Housing and Groceries Act* (in this section referred to as the "other Act"), receives royal assent, then, on the first day on which both subsection 8(1) of the other Act and subsection 248(3) of this Act are in force,**

**(a) subsection 90.1(1.1) of the *Competition Act*, as enacted by subsection 8(1) of the other Act, is renumbered as subsection 90.1(1.01) and is repositioned accordingly if required; and**

**(b) subsection 90.1(11) of the *Competition Act* is replaced by the following:**

### Definition of *competitor*

**(11)** In subsections (1) and (1.01), ***competitor*** includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement.

2010, ch. 23

## Modification corrélative à la Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent...

**270 L'alinéa 20(3)d) de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications* est remplacé par ce qui suit :**

**d)** ses antécédents au regard des engagements contractés en vertu du paragraphe 21(1) et des consentements signés en vertu des paragraphes 74.12(1) ou 74.131(1) de la *Loi sur la concurrence* concernant des actes ou omissions qui constituent des comportements susceptibles d'examen visés à l'article 74.011 de cette loi;

## Disposition de coordination

### Projet de loi C-56

**271 En cas de sanction du projet de loi C-56, déposé au cours de la 1re session de la 44e législature et intitulé *Loi sur le logement et l'épicerie à prix abordable* (appelé « autre loi » au présent article), dès le premier jour où le paragraphe 8(1) de l'autre loi et le paragraphe 248(3) de la présente loi sont tous deux en vigueur :**

**a) le paragraphe 90.1(1.1) de la *Loi sur la concurrence*, édicté par le paragraphe 8(1) de l'autre loi, devient le paragraphe 90.1(1.01) et, au besoin, est déplacé en conséquence;**

**b) le paragraphe 90.1(11) de la *Loi sur la concurrence* est remplacé par ce qui suit :**

### Définition de *concurrent*

**(11)** Aux paragraphes (1) et (1.01), ***concurrent*** s'entend notamment de toute personne qui, en toute raison, ferait vraisemblablement concurrence à une autre personne à l'égard d'un produit en l'absence de l'accord ou de l'arrangement.

## Coming into Force

**First anniversary of royal assent**

**272 Section 238, subsections 239(1) and (4), sections 240, 241 and 243, subsections 244(2) and 245(2), section 246, subsections 247(1) and (2) and 248(2), (4) and (7), sections 254 and 255, subsection 256(1) and sections 257, 259, 264 and 270 come into force on the first anniversary of the day on which this Act receives royal assent.**

## Entrée en vigueur

**Premier anniversaire de la sanction**

**272 L'article 238, les paragraphes 239(1) et (4), les articles 240, 241 et 243, les paragraphes 244(2) et 245(2), l'article 246, les paragraphes 247(1) et (2) et 248(2), (4) et (7), les articles 254 et 255, le paragraphe 256(1) et les articles 257, 259, 264 et 270 entrent en vigueur au premier anniversaire de la sanction de la présente loi.**

**DIVISION 7**

# Public Post-Secondary Educational Institutions

**SECTION 7**

# Établissements publics d'enseignement postsecondaire

R.S., c. B-3; 1992, c. 27, s. 2

## Bankruptcy and Insolvency Act

**273 The definition *corporation* in section 2 of the *Bankruptcy and Insolvency Act* is replaced by the following:**

***corporation*** means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies, loan companies or prescribed public post-secondary educational institutions; (*personne morale*)

L.R., ch. B-3; 1992, ch. 27, art. 2

## Loi sur la faillite et l'insolvabilité

**273 La définition de *personne morale*, à l'article 2 de la *Loi sur la faillite et l'insolvabilité*, est remplacée par ce qui suit :**

***personne morale*** Personne morale qui est autorisée à exercer des activités au Canada ou qui y a un établissement ou y possède des biens, ainsi que toute fiducie de revenu. Sont toutefois exclues les banques, banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*, compagnies d'assurance, sociétés de fiducie ou sociétés de prêt constituées en personnes morales ou établissements publics d'enseignement postsecondaire prescrits. (*corporation*)

R.S., c. C-36

## Companies' Creditors Arrangement Act

**274 The definition *company* in subsection 2(1) of the *Companies' Creditors Arrangement Act* is replaced by the following:**

***company*** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies, companies to which the *Trust and Loan*

L.R., ch. C-36

## Loi sur les arrangements avec les créanciers des compagnies

**274 La définition de *compagnie*, au paragraphe 2(1) de la *Loi sur les arrangements avec les créanciers des compagnies*, est remplacée par ce qui suit :**

***compagnie*** Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*, les compagnies de télégraphe, les compagnies d'assurances, les sociétés auxquelles s'applique la *Loi sur les sociétés de fiducie et de prêt* et les établissements publics

*Companies Act* applies and prescribed public post-secondary educational institutions; (*compagnie*)

d'enseignement postsecondaire prévus par règlement. (*company*)

## Transitional Provisions

### *Bankruptcy and Insolvency Act*

**275 The definition *corporation* in section 2 of the *Bankruptcy and Insolvency Act*, as enacted by section 273, applies only in respect of proceedings that are commenced under that Act on or after the day on which that section 273 comes into force.**

### *Companies' Creditors Arrangement Act*

**276 The definition *company* in subsection 2(1) of the *Companies' Creditors Arrangement Act*, as enacted by section 274, applies only in respect of proceedings that are commenced under that Act on or after the day on which that section 274 comes into force.**

## Coming into Force

### Second anniversary or order in council

**277 Sections 273 and 274 come into force on the second anniversary of the day on which this Act receives royal assent or on an earlier day to be fixed by order of the Governor in Council.**

## Dispositions transitoires

### *Loi sur la faillite et l'insolvabilité*

**275 La définition de *personne morale*, à l'article 2 de la *Loi sur la faillite et l'insolvabilité*, édictée par l'article 273, ne s'applique qu'à l'égard des procédures intentées sous le régime de cette loi à la date d'entrée en vigueur de cet article 273 ou après cette date.**

### *Loi sur les arrangements avec les créanciers des compagnies*

**276 La définition de *compagnie*, au paragraphe 2(1) de la *Loi sur les arrangements avec les créanciers des compagnies*, édictée par l'article 274, ne s'applique qu'à l'égard des procédures intentées sous le régime de cette loi à la date d'entrée en vigueur de cet article 274 ou après cette date.**

## Entrée en vigueur

### Deuxième anniversaire ou décret

**277 Les articles 273 et 274 entrent en vigueur au deuxième anniversaire de la sanction de la présente loi ou, si elle est antérieure, à la date fixée par décret.**

## DIVISION 8

# Money Laundering, Terrorist Financing, Sanctions Evasion and Other Measures

## SUBDIVISION A

2000, c. 17; 2001, c. 41, s. 48

## Proceeds of Crime (Money Laundering) and Terrorist Financing Act

### Amendments to the Act

**278 (1) The definition *Minister* in subsection 2(1) of the *Proceeds of Crime (Money Laundering)***

## SECTION 8

# Recyclage des produits de la criminalité, financement des activités terroristes, contournement de sanctions et autres mesures

## SOUS-SECTION A

2000, ch. 17; 2001, ch. 41, art. 48

## Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes

### Modification de la loi

**278 (1) La définition de *ministre*, au paragraphe 2(1) de la *Loi sur le recyclage des produits de la***

***and Terrorist Financing Act* is replaced by the following:**

***Minister*** means, in relation to sections 24.1 to 39 and 39.13 to 39.39, the Minister of Public Safety and Emergency Preparedness and, in relation to any other provision of this Act, the Minister of Finance. (*ministre*)

**(2) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:**

***sanctions evasion offence*** means an offence arising from the contravention of a restriction or prohibition established by an order or a regulation made under the *United Nations Act*, the *Special Economic Measures Act* or the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. (*infraction de contournement de sanctions*)

**(3) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:**

***acquirer*** means an entity that connects a private automated banking machine to a *payment card network*, as defined in section 3 of the *Payment Card Networks Act*, to facilitate transactions. (*acquéreur*)

***private automated banking machine*** means any automated banking machine that is not owned or operated by a *bank* as defined in section 2 of the *Bank Act*, by an association regulated by the *Cooperative Credit Associations Act* or by a cooperative credit society, a savings and credit union or a caisse populaire regulated by a provincial Act. (*guichet automatique privé*)

**279 (1) Paragraph 5(h) of the Act is amended by striking out "or" at the end of subparagraph (iv) and by adding the following after that subparagraph:**

**(iv.1)** in relation to a private automated banking machine, acquirer services, or

**(2) Paragraph 5(h.1) of the Act is amended by striking out "or" at the end of subparagraph (iv) and by adding the following after that subparagraph:**

**(iv.1)** in relation to a private automated banking machine, acquirer services, or

**280 Section 7 of the Act is amended by striking out "or" at the end of paragraph (a), by adding**

***criminalité et le financement des activités terroristes*, est remplacée par ce qui suit :**

***ministre*** Le ministre de la Sécurité publique et de la Protection civile pour l'application des articles 24.1 à 39 et 39.13 à 39.39, et le ministre des Finances pour l'application des autres dispositions de la présente loi. (*Minister*)

**(2) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***infraction de contournement de sanctions*** S'entend de la contravention à toute restriction ou toute interdiction prévue par un décret ou un règlement pris en vertu de la *Loi sur les Nations Unies*, de la *Loi sur les mesures économiques spéciales* ou de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*. (*sanctions evasion offence*)

**(3) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :**

***acquéreur*** Entité qui connecte un guichet automatique privé à un *réseau de cartes de paiement*, au sens de l'article 3 de la *Loi sur les réseaux de cartes de paiement*, pour faciliter les transactions. (*acquirer*)

***guichet automatique privé*** Guichet automatique qui n'est ni détenu ni exploité par une *banque*, au sens de l'article 2 de la *Loi sur les banques*, une association régie par la *Loi sur les associations coopératives de crédit* ou une coopérative de crédit, une caisse d'épargne et de crédit ou une caisse populaire régie par une loi provinciale. (*private automated banking machine*)

**279 (1) L'alinéa 5h) de la même loi est modifié par adjonction, après le sous-alinéa (iv), de ce qui suit :**

**(iv.1)** relativement à un guichet automatique privé, tout service d'un acquéreur,

**(2) L'alinéa 5h.1) de la même loi est modifié par adjonction, après le sous-alinéa (iv), de ce qui suit :**

**(iv.1)** relativement à un guichet automatique privé, tout service d'un acquéreur,

**280 L'article 7 de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**"or" at the end of paragraph (b) and by adding the following after paragraph (b):**

**(c)** the transaction is related to the commission or the attempted commission of a sanctions evasion offence.

**281 Paragraph 9.5(a) of the Act is replaced by the following:**

**(a)** include with the transfer any prescribed information and, as the case may be,

**(i)** the name, address and account number of the holder of the account from which the funds for the transfer are withdrawn, or

**(ii)** the name, address and reference number of the person or entity that requested the transfer;

**282 Section 10 of the Act is replaced by the following:**

**Immunity**

**10** No criminal or civil proceedings lie against a person or an entity for making a report in good faith under section 7, 7.1 or 9, or for providing the Centre with information about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion.

**283 Subsection 11.42(4) of the Act is amended by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):**

**(d)** there is a risk that a foreign state, a foreign entity or a person or entity referred to in section 5 may be facilitating sanctions evasion and, as a result, the Minister is of the opinion that there could be an adverse impact on the integrity of the Canadian financial system or a reputational risk to that system.

**284 Subsection 11.49(3) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):**

**(c)** if the risk of sanctions evasion being facilitated by or in that foreign state or by means of that foreign entity or entity referred to in paragraph 5(e.1) is significant and, as a result, the Minister is of the opinion that there could be an adverse impact on the integrity of the Canadian financial system or a reputational risk to that system.

**285 The Act is amended by adding the following after section 39:**

**c)** d'une infraction de contournement de sanctions.

**281 L'alinéa 9.5a) de la même loi est remplacé par ce qui suit :**

**a)** d'inclure avec le télévirement tout renseignement prévu par règlement et, selon le cas :

**(i)** les nom, adresse et numéro de compte du titulaire du compte duquel les fonds sont prélevés,

**(ii)** les nom, adresse et numéro de référence de la personne ou de l'entité qui demande le télévirement;

**282 L'article 10 de la même loi est remplacé par ce qui suit :**

**Immunité**

**10** Nul ne peut être poursuivi pour avoir fait de bonne foi une déclaration au titre des articles 7, 7.1 ou 9 ou pour avoir fourni au Centre des renseignements qui se rapportent à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions.

**283 Le paragraphe 11.42(4) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**d)** le fait qu'un État étranger, qu'une entité étrangère ou qu'une personne ou entité visée à l'article 5 risque de faciliter le contournement de sanctions, ce qui, de l'avis du ministre, pourrait porter atteinte à l'intégrité ou poser un risque d'atteinte à la réputation du système financier canadien.

**284 Le paragraphe 11.49(3) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :**

**c)** le fait que le risque que le contournement de sanctions soit facilité dans l'État étranger ou par celui-ci, ou par l'entremise de l'entité étrangère ou de l'entité visée à l'alinéa 5e.1) est élevé, ce qui, selon le ministre, pourrait porter atteinte à l'intégrité ou poser un risque d'atteinte à la réputation du système financier canadien.

**285 La même loi est modifiée par adjonction, après l'article 39, de ce qui suit :**

**PART 2.1**

# Reporting of Goods

## Interpretation

### Definitions

**39.01** The following definitions apply in this Part.

***goods*** has the same meaning as in subsection 2(1) of the *Customs Act*. (*marchandises*)

***officer*** has the same meaning as in subsection 2(1) of the *Customs Act*. (*agent*)

## Reporting

### Reporting

**39.02 (1)** Every person or entity referred to in subsection (3) that reports the importation or exportation of goods under section 12 or 95 of the *Customs Act* shall declare to an officer, in accordance with the regulations,

**(a)** whether the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are goods relating to money laundering, to the financing of terrorist activities or to sanctions evasion; and

**(b)** that the goods are actually being imported or exported, as the case may be.

### Limitation

**(2)** A person or entity is not required to make a declaration under subsection (1) if the prescribed conditions are met in respect of the person, entity, importation or exportation, and if the person or entity satisfies an officer that those conditions have been met.

### Who must report

**(3)** Goods shall be declared under subsection (1)

**(a)** in the case of goods in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;

**(b)** in the case of goods imported into Canada by courier or as mail, by the exporter of the goods or, on

**PARTIE 2.1**

# Déclaration des marchandises

## Interprétation

### Définitions

**39.01** Les définitions qui suivent s'appliquent à la présente partie.

***agent*** S'entend au sens de *agent* ou *agent des douanes* du paragraphe 2(1) de la *Loi sur les douanes*. (*officer*)

***marchandises*** S'entend au sens du paragraphe 2(1) de la *Loi sur les douanes*. (*goods*)

## Déclaration

### Déclaration

**39.02 (1)** Les personnes ou entités visées au paragraphe (3) qui déclarent l'importation ou l'exportation de marchandises en application des articles 12 ou 95 de la *Loi sur les douanes* sont tenues de déclarer à l'agent, conformément aux règlements :

**a)** s'il s'agit ou non de *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou de marchandises liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions;

**b)** que les marchandises sont effectivement importées ou exportées, selon le cas.

### Exception

**(2)** Une personne ou une entité n'est pas tenue de faire une déclaration au titre du paragraphe (1) si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

### Déclarant

**(3)** Le déclarant est, selon le cas :

**a)** la personne ayant en sa possession effective ou parmi ses bagages les marchandises se trouvant à bord du moyen de transport par lequel elle arrive au Canada ou quitte le pays ou la personne qui, dans les circonstances réglementaires, est responsable du moyen de transport;

**b)** s'agissant de marchandises importées par messager ou par courrier, l'exportateur étranger ou, sur

receiving notice under subsection 39.03(2), by the importer;

**(c)** in the case of goods exported from Canada by courier or as mail, by the exporter of the goods;

**(d)** in the case of goods, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and

**(e)** in any other case, by the person or entity on whose behalf the goods are imported or exported.

réception de l'avis visé au paragraphe 39.03(2), l'importateur;

**c)** l'exportateur des marchandises exportées par messager ou par courrier;

**d)** le responsable du moyen de transport arrivé au Canada ou qui a quitté le pays et à bord duquel se trouvent des marchandises autres que celles visées à l'alinéa a) ou importées ou exportées par courrier;

**e)** dans les autres cas, la personne ou l'entité pour le compte de laquelle les marchandises sont importées ou exportées.

### Payment for goods

**(4)** A declaration referred to in subsection (1) must be made in respect of any financial transaction purporting to pay for goods being imported or exported in respect of which such declaration is required under that subsection.

### Paiement pour marchandises

**(4)** La déclaration visée au paragraphe (1) doit être faite relativement à toute opération financière censée payer pour des marchandises importées ou exportées à l'égard desquelles une telle déclaration doit être faite en application de ce paragraphe.

### Duty to answer

**(5)** Every person or entity referred to in subsection (3) that reports the importation or exportation of goods shall answer any questions asked by an officer in the exercise of their powers and the performance of their duties and functions under this Part.

### Obligation de répondre

**(5)** Toute personne ou entité mentionnée au paragraphe (3) qui déclare l'importation ou l'exportation de marchandises répond aux questions que l'agent lui pose dans l'exercice des attributions que lui confère la présente partie.

### Records

**(6)** Any person or entity that imports or exports goods or that causes or arranges for goods to be imported or exported — for sale or for any industrial, occupational, commercial, institutional or other like use, or any other use that may be prescribed — or that produces, supplies, distributes or consumes those goods for such a purpose shall keep at the person or entity's place of business in Canada, or at any other place that the Minister may designate, any records in respect of the goods in any manner and for any period of time that may be prescribed. The person or entity shall, if an officer so requests, make the records available to the officer, within the time specified by the officer, and answer any questions asked by the officer in respect of them.

### Documents

**(6)** Toute personne ou entité qui importe, exporte, fait importer ou exporter ou prend des mesures pour importer ou exporter des marchandises en vue de leur vente ou d'usages industriels, professionnels, commerciaux ou collectifs, ou à d'autres fins analogues ou prévues par règlement, ou qui produit, fournit, distribue ou consomme ces marchandises à ces fins est tenue de conserver en son établissement au Canada ou en un autre lieu désigné par le ministre, selon les modalités et pendant le délai réglementaires, les documents réglementaires relatifs aux marchandises et de communiquer ces documents à l'agent, à sa demande et dans le délai qu'il précise, et de répondre aux questions qu'il lui pose à leur sujet.

### *Customs Act*

**(7)** Subsection 40(2) and sections 42 and 43 of the *Customs Act* apply, with any modifications that the circumstances require, to a person or entity that is required to keep records under subsection (6).

### *Loi sur les douanes*

**(7)** Le paragraphe 40(2) et les articles 42 et 43 de la *Loi sur les douanes* s'appliquent, avec les adaptations nécessaires, à la personne ou à l'entité tenue de conserver des documents au titre du paragraphe (6).

**Obligation to provide accurate information**

**(8)** Any information provided to an officer in the administration or enforcement of this Part shall be true, accurate and complete.

## Retention

**Temporary retention**

**39.03 (1)** Subject to subsections (2) to (5), if a person or an entity indicates to an officer that they have goods to declare under section 39.02 but the declaration has not yet been completed, the officer may, after giving notice in the prescribed manner to the person or entity, retain the goods for the prescribed period.

**Importation or exportation by courier or as mail**

**(2)** In the case of goods imported or exported by courier or as mail, the officer shall, within the prescribed period, give the notice to the exporter if the exporter's address is known, or, if the exporter's address is not known, to the importer.

**Limitation**

**(3)** Goods may no longer be retained under subsection (1) if the officer is satisfied that the goods have been the subject of a declaration under section 39.02.

**Content of notice**

**(4)** The notice referred to in subsection (1) must state

**(a)** the period for which the goods may be retained;

**(b)** that if, within that period, the goods are declared under section 39.02, they may no longer be retained; and

**(c)** that goods retained at the end of that period are forfeited to His Majesty in right of Canada at that time.

**Forfeiture**

**(5)** Goods that are retained by an officer under subsection (1) are forfeited to His Majesty in right of Canada at the end of the period referred to in that subsection.

## Searches

**Search of person**

**39.04 (1)** If an officer suspects on reasonable grounds that they have secreted on or about their person goods that have not been declared in accordance with section

**Obligation de fournir des renseignements exacts**

**(8)** Les renseignements fournis à un agent pour l'application et l'exécution de la présente partie doivent être véridiques, exacts et complets.

## Rétention

**Rétention temporaire**

**39.03 (1)** Sous réserve des paragraphes (2) à (5), si la personne ou l'entité indique à l'agent qu'elle a des marchandises à déclarer en application de l'article 39.02 mais que la déclaration n'a pas encore été faite, l'agent peut, moyennant avis à la personne ou à l'entité selon les modalités réglementaires, retenir les marchandises pour la période réglementaire.

**Importation ou exportation par messager ou par courrier**

**(2)** Dans le cas où les marchandises sont importées ou exportées par messager ou par courrier, l'avis est donné, dans le délai réglementaire, à l'exportateur si son adresse est connue ou, dans le cas contraire, à l'importateur.

**Restriction**

**(3)** Les marchandises ne peuvent plus être retenues en vertu du paragraphe (1) si l'agent constate qu'elles ont été déclarées conformément à l'article 39.02.

**Contenu de l'avis**

**(4)** L'avis doit contenir les éléments suivants :

**a)** la période de rétention;

**b)** la mention qu'il est mis fin à la rétention des marchandises si, pendant cette période, elles sont déclarées conformément à l'article 39.02;

**c)** la mention qu'à la fin de cette période, les marchandises retenues seront confisquées au profit de Sa Majesté du chef du Canada.

**Confiscation**

**(5)** Les marchandises retenues en vertu du paragraphe (1) sont confisquées au profit de Sa Majesté du chef du Canada à l'expiration de la période visée à ce paragraphe.

## Fouilles et perquisitions

**Fouille de personnes**

**39.04 (1)** S'il la soupçonne, pour des motifs raisonnables, de dissimuler sur elle ou près d'elle des marchandises qui n'ont pas été déclarées conformément à l'article

39.02 or that are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are goods relating to money laundering, to the financing of terrorist activities or to sanctions evasion, the officer may search

**(a)** any person who has arrived in Canada, within a reasonable time after their arrival in Canada;

**(b)** any person who is about to leave Canada, at any time before their departure; or

**(c)** any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after they leave the area.

**Person taken before senior officer**

**(2)** An officer who is about to search a person under this section shall, on the person's request, without delay take the person before the senior officer at the place where the search is to take place.

**Discharge or search**

**(3)** A senior officer before whom a person is taken under subsection (2) shall, if the senior officer believes there are no reasonable grounds for suspicion under subsection (1), discharge the person or, if the senior officer believes otherwise, direct that the person be searched.

**Search by same sex**

**(4)** No person shall be searched under this section by a person who is not of the same sex, and if there is no officer of the same sex at the place where the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.

***Customs Act***

**39.05** Paragraphs 99(1)(a) to (c.1), (e) and (f), subsection 99(4) and paragraph 99.1(2)(b) of the *Customs Act* apply, with any modifications that the circumstances require, to goods that must be declared under section 39.02.

## Seizures

**Seizure and forfeiture**

**39.06 (1)** If an officer has reasonable grounds to believe that goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, the financing of terrorist activities or sanctions evasion, the officer may seize as forfeit the goods.

39.02, qui sont des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou qui sont liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, l'agent peut fouiller :

**a)** toute personne entrée au Canada, dans un délai justifiable suivant son arrivée;

**b)** toute personne sur le point de sortir du Canada, à tout moment avant son départ;

**c)** toute personne qui a eu accès à une zone réservée aux personnes sur le point de sortir du Canada et qui quitte cette zone sans sortir du Canada, dans un délai justifiable après son départ de cette zone.

**Conduite devant l'agent principal**

**(2)** Sur demande de la personne qu'il entend fouiller en vertu du présent article, l'agent la conduit aussitôt devant l'agent principal du lieu de la fouille.

**Latitude de l'agent principal**

**(3)** L'agent principal, selon qu'il estime qu'il y a ou non des motifs raisonnables pour procéder à la fouille, fait fouiller ou relâcher la personne conduite devant lui en application du paragraphe (2).

**Identité de sexe**

**(4)** L'agent ne peut fouiller une personne de sexe opposé. Faute de collègue du même sexe que celle-ci sur le lieu de la fouille, il peut autoriser toute personne de ce sexe présentant les qualités voulues à y procéder.

***Loi sur les douanes***

**39.05** Les alinéas 99(1)a) à c.1), e) et f), le paragraphe 99(4) et l'alinéa 99.1(2)b) de la *Loi sur les douanes* s'appliquent, avec les adaptations nécessaires, relativement aux marchandises qui doivent être déclarées conformément à l'article 39.02.

## Saisie

**Saisie et confiscation**

**39.06 (1)** S'il a des motifs raisonnables de croire que les marchandises sont des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou qu'elles sont liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, l'agent peut les saisir à titre de confiscation.

**Notice of seizure**

**(2)** An officer who seizes goods under subsection (1) shall

**(a)** if the goods were not imported or exported as mail, give the person from whom they were seized written notice of the seizure and the right to review and appeal set out in sections 39.14 and 39.21;

**(b)** if the goods were imported or exported as mail and the address of the exporter is known, give the exporter written notice of the seizure and the right to review and appeal set out in sections 39.14 and 39.21; and

**(c)** take the measures that are reasonable in the circumstances to give notice of the seizure to any person or entity that the officer believes on reasonable grounds is entitled to make an application under section 39.23 in respect of the goods.

**Avis de la saisie**

**(2)** L'agent qui procède à la saisie-confiscation :

**a)** donne au saisi, dans le cas où les marchandises sont importées ou exportées autrement que par courrier, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 39.14 et 39.21;

**b)** donne à l'exportateur, dans le cas où les marchandises sont importées ou exportées par courrier et son adresse est connue, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 39.14 et 39.21;

**c)** prend les mesures convenables, eu égard aux circonstances, pour aviser de la saisie toute personne ou entité dont il croit, pour des motifs raisonnables, qu'elle est recevable à présenter, à l'égard des marchandises saisies, la requête visée à l'article 39.23.

**Service of notice**

**(3)** The service of a notice under paragraph (2)(b) is sufficient if it is sent by registered mail addressed to the exporter.

**Signification de l'avis**

**(3)** Il suffit, pour que l'avis visé à l'alinéa (2)b) soit considéré comme signifié, qu'il soit envoyé en recommandé à l'exportateur.

**Power to call in aid**

**39.07** An officer may call on other persons to assist the officer in exercising any power of search, seizure or retention that the officer is authorized under this Part to exercise, and any person so called on is authorized to exercise that power.

**Main-forte**

**39.07** L'agent peut requérir main-forte pour se faire assister dans l'exercice des pouvoirs de fouille, de rétention ou de saisie que lui confère la présente partie. Toute personne ainsi requise est autorisée à exercer ces pouvoirs.

**Recording of reasons for decision**

**39.08** If an officer decides to exercise powers under subsection 39.06(1), the officer shall record in writing reasons for the decision.

**Enregistrement des motifs**

**39.08** L'agent qui décide d'exercer les pouvoirs conférés par le paragraphe 39.06(1) est tenu de consigner par écrit les motifs à l'appui de sa décision.

**Report to President**

**39.09** If the goods have been seized under section 39.06, the officer who seized them shall without delay report the circumstances of the seizure to the President.

**Rapport au président**

**39.09** L'agent qui a saisi les marchandises en vertu de l'article 39.06 fait aussitôt un rapport au président sur les circonstances de la saisie.

## Transfer to the Minister of Public Works and Government Services

## Remise au ministre des Travaux publics et des Services gouvernementaux

**Forfeiture under subsection 39.03(5)**

**39.1 (1)** An officer who retains goods forfeited under subsection 39.03(5) shall send the goods to the Minister of Public Works and Government Services.

**Confiscation aux termes du paragraphe 39.03(5)**

**39.1 (1)** En cas de confiscation aux termes du paragraphe 39.03(5) des marchandises retenues, l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

**Seizure**

**(2)** An officer who seizes goods shall send the goods to the Minister of Public Works and Government Services.

## Forfeiture

**Time of forfeiture**

**39.11** Subject to sections 39.14 to 39.22, goods seized under subsection 39.06(1) are forfeited to His Majesty in right of Canada from the time of the contravention in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

## Review and Appeal

**Review of forfeiture**

**39.12** The forfeiture of goods seized under this Part is final and is not subject to review and is not to be set aside or otherwise dealt with, except to the extent and in the manner provided by sections 39.13 and 39.14.

**Corrective measures**

**39.13** The Minister, or any officer delegated by the President for the purposes of this section, may, within 90 days after a seizure made under subsection 39.06(1), cancel the seizure if the Minister is satisfied that there was no contravention.

**Request for Minister's decision**

**39.14** A person or entity from which goods were seized under subsection 39.06(1), or the lawful owner of the goods, may, within 90 days after the date of the seizure, request a decision of the Minister as to whether the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, to the financing of terrorist activities or to sanctions evasion by giving notice to the Minister in writing or by any other means satisfactory to the Minister.

**Extension of time by Minister**

**39.15 (1)** If no request is made under section 39.14 within the period provided in that section, the person, entity or lawful owner referred to in that section may apply to the Minister in writing or by any other means satisfactory to the Minister for an extension of the time for making the request.

**Saisie**

**(2)** En cas de saisie des marchandises, l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

## Confiscation

**Moment de la confiscation**

**39.11** Sous réserve des articles 39.14 à 39.22, les marchandises saisies en vertu du paragraphe 39.06(1) sont confisquées au profit de Sa Majesté du chef du Canada à compter de la contravention qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

## Révision et appel

**Révision de la saisie-confiscation**

**39.12** La saisie-confiscation de marchandises effectuée en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues aux articles 39.13 et 39.14.

**Mesures de redressement**

**39.13** Le ministre ou l'agent que le président délègue pour l'application du présent article peut, dans les quatre-vingt-dix jours suivant la saisie effectuée en vertu du paragraphe 39.06(1) si le ministre est convaincu qu'aucune contravention n'a eu lieu, annuler la saisie.

**Demande de révision par le ministre**

**39.14** La personne ou l'entité entre les mains de qui ont été saisies des marchandises en vertu du paragraphe 39.06(1) ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander par écrit au ministre ou de toute autre manière que celui-ci juge indiquée de décider si les marchandises sont ou non des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou si elles sont ou non liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions.

**Prorogation du délai par le ministre**

**39.15 (1)** La personne, l'entité ou le propriétaire légitime visé à l'article 39.14 qui n'a pas présenté la demande de révision visée à cet article dans le délai qui y est prévu peut demander au ministre, par écrit ou de toute autre manière que celui-ci juge indiquée, de proroger ce délai.

**Content**

**(2)** An application shall set out the reasons why the request was not made on time.

**Burden of proof**

**(3)** The burden of proof that an application has been made under subsection (1) lies on the person, entity or lawful owner claiming to have made it.

**Notice of decision**

**(4)** The Minister shall, without delay after making a decision in respect of an application, notify the applicant in writing of the decision.

**Conditions for granting application**

**(5)** The application is not to be granted unless

**(a)** it is made within one year after the end of the period provided in section 39.14; and

**(b)** the applicant demonstrates that

**(i)** within the period provided in section 39.14, they were unable to act or to instruct another person to act in their name or had a *bona fide* intention to request a decision,

**(ii)** it would be just and equitable to grant the application, and

**(iii)** the application was made as soon as circumstances permitted.

**Extension of time by Federal Court**

**39.16 (1)** The person, entity or lawful owner referred to in section 39.14 may apply to the Federal Court to have their application under section 39.15 granted

**(a)** within the period of 90 days after the Minister dismisses that application, if it is dismissed; or

**(b)** after 90 days have expired after that application was made, if the Minister has not notified the person, entity or lawful owner of a decision made in respect of it.

**Application process**

**(2)** The application shall be made by filing in the Federal Court a copy of the application made under section 39.15, and any notice given in respect of it. The applicant shall notify the Minister that they have filed the application immediately after having filed it.

**Contenu**

**(2)** La demande de prorogation énonce les raisons pour lesquelles la demande de révision n'a pas été présentée dans le délai prévu.

**Fardeau de la preuve**

**(3)** Il incombe à la personne, à l'entité ou au propriétaire légitime qui affirme avoir présenté la demande de prorogation visée au paragraphe (1) de prouver qu'il l'a présentée.

**Décision du ministre**

**(4)** Dès qu'il a rendu sa décision, le ministre en avise par écrit l'auteur de la demande.

**Conditions d'acceptation de la demande**

**(5)** Il n'est fait droit à la demande de prorogation que si les conditions ci-après sont réunies :

**a)** la demande est présentée dans l'année suivant l'expiration du délai prévu à l'article 39.14;

**b)** l'auteur de la demande établit ce qui suit :

**(i)** au cours du délai prévu à l'article 39.14, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de demander qu'une décision soit rendue,

**(ii)** il serait juste et équitable de faire droit à la demande,

**(iii)** la demande a été présentée dès que possible.

**Prorogation du délai par la Cour fédérale**

**39.16 (1)** La personne, l'entité ou le propriétaire légitime qui a présenté une demande de prorogation en vertu de l'article 39.15 peut, dans le délai ci-après, demander à la Cour fédérale d'y faire droit :

**a)** soit dans les quatre-vingt-dix jours suivant le rejet de la demande par le ministre;

**b)** soit à l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le ministre ne l'a pas avisé de sa décision.

**Modalités**

**(2)** La demande se fait par dépôt auprès de la Cour fédérale d'une copie de la demande de prorogation présentée en vertu de l'article 39.15 et de tout avis donné à son égard. L'auteur de la demande avise immédiatement le ministre du dépôt.

**Powers of the Court**

**(3)** The Court may grant or dismiss the application and, if it grants the application, may impose any terms that it considers just or order that the request made under section 39.14 be deemed to have been made on the date the order was made.

**Conditions for granting application**

**(4)** The application is not to be granted unless

**(a)** the application under section 39.15 was made within one year after the end of the period provided in section 39.14; and

**(b)** the applicant demonstrates that

**(i)** within the period provided in section 39.14, they were unable to act or to instruct another person to act in their name or had a *bona fide* intention to request a decision,

**(ii)** it would be just and equitable to grant the application, and

**(iii)** the application was made as soon as circumstances permitted.

**Notice of President**

**39.17 (1)** If a request for a decision is a made under section 39.14, the President shall without delay serve on the person, entity or lawful owner who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

**Evidence**

**(2)** The person, entity or lawful owner may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

**Decision of Minister**

**39.18 (1)** Within 90 days after the expiry of the period referred to in subsection 39.17(2), the Minister shall decide whether the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, to the financing of terrorist activities or to sanctions evasion.

**Deferral of decision**

**(2)** If charges are laid with respect to a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence in respect of the goods seized, the Minister may defer making a decision but shall make it in

**Pouvoirs de la Cour**

**(3)** La Cour peut rejeter la demande ou y faire droit. Dans ce dernier cas, elle peut imposer les conditions qu'elle estime justes ou ordonner que la demande de révision présentée en vertu de l'article 39.14 soit réputée avoir été présentée à la date de l'ordonnance.

**Conditions d'acceptation de la demande**

**(4)** Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

**a)** la demande de prorogation a été présentée en vertu de l'article 39.15 dans l'année suivant l'expiration du délai prévu à l'article 39.14;

**b)** l'auteur de la demande établit ce qui suit :

**(i)** au cours du délai prévu à l'article 39.14, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de demander qu'une décision soit rendue,

**(ii)** il serait juste et équitable de faire droit à la demande,

**(iii)** la demande a été présentée dès que possible.

**Signification du président**

**39.17 (1)** Le président signifie sans délai par écrit à la personne, à l'entité ou au propriétaire légitime qui a présenté la demande de révision visée à l'article 39.14 un avis exposant les circonstances de la saisie à l'origine de la demande.

**Moyens de preuve**

**(2)** Le demandeur dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

**Décision du ministre**

**39.18 (1)** Dans les quatre-vingt-dix jours qui suivent l'expiration du délai mentionné au paragraphe 39.17(2), le ministre décide si les marchandises sont ou non des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou si elles sont ou non liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions.

**Report de la décision**

**(2)** Dans le cas où des poursuites pour infraction de recyclage des produits de la criminalité, pour infraction de financement des activités terroristes ou pour infraction de contournement de sanctions ont été intentées

any case no later than 30 days after the conclusion of all court proceedings in respect of those charges.

**Notice of decision**

**(3)** The Minister shall, without delay after making a decision, serve on the person, entity or lawful owner who requested it a written notice of the decision together with the reasons for it.

**Return of goods**

**39.19** If the Minister decides that the goods are not *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* and are not related to money laundering, to the financing of terrorist activities or to sanctions evasion, the Minister of Public Works and Government Services shall, on being informed of the Minister's decision, return the goods or an amount of money equal to their value at the time of the seizure, as the case may be.

**Confirmation of forfeiture**

**39.2** If the Minister decides that the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, to the financing of terrorist activities or to sanctions evasion, the Minister may, subject to the terms and conditions that the Minister may determine, subject to any order made under section 39.24 or 39.25, confirm that the goods are forfeited to His Majesty in right of Canada.

**Appeal to Federal Court**

**39.21 (1)** A person, entity or lawful owner who makes a request under section 39.14 for a decision of the Minister may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which they are the plaintiff and the Minister is the defendant.

**Ordinary action**

**(2)** The *Federal Courts Act* and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

**Delivery after final order**

**(3)** The Minister of Public Works and Government Services shall give effect to the decision of the Court on being informed of it.

relativement aux marchandises saisies, le ministre peut reporter la décision, mais celle-ci doit être prise dans les trente jours suivant l'issue des poursuites.

**Avis de la décision**

**(3)** Le ministre signifie sans délai par écrit à la personne, à l'entité ou au propriétaire légitime qui a fait la demande de révision un avis de la décision, motifs à l'appui.

**Restitution des marchandises**

**39.19** Si le ministre décide que les marchandises ne sont ni des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ni liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, le ministre des Travaux publics et des Services gouvernementaux, dès qu'il est informé de la décision du ministre, restitue les marchandises ou la valeur de celles-ci au moment de la saisie, selon le cas.

**Confiscation des marchandises**

**39.2** S'il décide que les marchandises sont des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou qu'elles sont liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, le ministre peut, aux conditions qu'il fixe, confirmer la confiscation des marchandises au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 39.24 ou 39.25.

**Cour fédérale**

**39.21 (1)** La personne, l'entité ou le propriétaire légitime qui a demandé, en vertu de l'article 39.14, que soit rendue une décision peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

**Action ordinaire**

**(2)** La *Loi sur les Cours fédérales* et les règles établies en vertu de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

**Restitution au requérant**

**(3)** Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en est informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

**Limit on amount paid**

**(4)** If the goods were sold or otherwise disposed of under the *Seized Property Management Act*, the total amount that can be paid under subsection (3) shall not exceed the proceeds of the sale or disposition, if any, less any costs incurred by His Majesty in right of Canada in respect of the goods.

**Service of notices**

**39.22** The service of the President's notice under section 39.17 or the notice of the Minister's decision under section 39.18 is sufficient if it is sent by registered mail addressed to the person or entity on which it is to be served at their latest known address.

## Third Party Claims

**Interest as owner**

**39.23 (1)** If goods have been seized as forfeit under this Part, any person or entity, other than the person or entity in whose possession the goods were when seized, that claims in respect of the goods an interest as owner or, in Quebec, a right as owner or trustee may, within 90 days after the seizure, apply by notice in writing to the court for an order under section 39.24.

**Date of hearing**

**(2)** A judge of the court to which an application is made under this section shall fix a day, not less than 30 days after the date of the filing of the application, for the hearing.

**Notice to President**

**(3)** The applicant shall serve notice of the application and of the hearing on the President, or an officer delegated by the President for the purpose of this section, not later than 15 days after a day is fixed under subsection (2) for the hearing of the application.

**Service of notice**

**(4)** The service of a notice under subsection (3) is sufficient if it is sent by registered mail addressed to the President.

**Definition of *court***

**(5)** In this section and sections 39.24 and 39.25, ***court*** means

**(a)** in the Province of Ontario, the Superior Court of Justice;

**Limitation du montant versé**

**(4)** En cas de vente ou autre forme de disposition des marchandises en vertu de la *Loi sur l'administration des biens saisis*, le montant de toute somme qui peut être versée en vertu du paragraphe (3) ne peut être supérieur au produit éventuel de la vente ou de la disposition, duquel sont soustraits les frais afférents exposés par Sa Majesté du chef du Canada; à défaut de produit de la disposition, aucun paiement n'est effectué.

**Signification des avis**

**39.22** Il suffit, pour que les avis visés aux articles 39.17 et 39.18 soient considérés comme respectivement signifiés par le président ou le ministre, qu'il en soit fait envoi en recommandé à la dernière adresse connue du destinataire.

## Revendication des tiers

**Droits de propriété**

**39.23 (1)** En cas de saisie-confiscation effectuée en vertu de la présente partie, toute personne ou entité, autre que le saisi, qui revendique sur les marchandises un intérêt en qualité de propriétaire ou, au Québec, un droit en qualité de propriétaire ou de fiduciaire peut, dans les quatre-vingt-dix jours suivant la saisie, requérir par avis écrit le tribunal de rendre l'ordonnance visée à l'article 39.24.

**Date de l'audition**

**(2)** Le juge du tribunal saisi conformément au présent article fixe à une date postérieure d'au moins trente jours à celle de la requête l'audition de celle-ci.

**Signification au président**

**(3)** Dans les quinze jours suivant la date ainsi fixée, le requérant signifie au président, ou à l'agent que celui-ci délègue pour l'application du présent article, un avis de la requête et de l'audition.

**Signification de l'avis**

**(4)** Il suffit, pour que l'avis prévu au paragraphe (3) soit considéré comme signifié, qu'il soit envoyé en recommandé au président.

**Définition de *tribunal***

**(5)** Au présent article et aux articles 39.24 et 39.25, ***tribunal*** s'entend :

**a)** dans la province d'Ontario, de la Cour supérieure de justice;

**(b)** in the Province of Quebec, the Superior Court;

**(c)** in the Provinces of Nova Scotia, British Columbia, Prince Edward Island and Newfoundland and Labrador, in Yukon and in the Northwest Territories, the Supreme Court;

**(d)** in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of King's Bench; and

**(e)** in Nunavut, the Nunavut Court of Justice.

**b)** dans la province de Québec, de la Cour supérieure;

**c)** dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique, de l'Île-du-Prince-Édouard et de Terre-Neuve-et-Labrador, au Yukon et dans les Territoires du Nord-Ouest, de la Cour suprême;

**d)** dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et de l'Alberta, de la Cour du Banc du Roi;

**e)** dans le Nunavut, de la Cour de justice du Nunavut.

### Order

**39.24** On the hearing of an application made under subsection 39.23(1), the applicant is entitled to an order declaring that their interest or right is not affected by the seizure and declaring the nature and extent of their interest or right at the time of the contravention that resulted in the seizure if the court is satisfied

**(a)** that the applicant acquired the interest or right in good faith before the contravention;

**(b)** that the applicant is innocent of any complicity in the contravention and of any collusion in relation to it; and

**(c)** that the applicant exercised all reasonable care to ensure that any person permitted to obtain possession of the goods seized would declare them in accordance with section 39.02.

### Ordonnance

**39.24** Après l'audition de la requête visée au paragraphe 39.23(1), le requérant est en droit d'obtenir une ordonnance disposant que la saisie ne porte pas atteinte à son droit ou à ses intérêts et précisant la nature et l'étendue de l'un comme des autres au moment de la contravention qui a entraîné la saisie si le tribunal constate qu'il remplit les conditions suivantes :

**a)** il a acquis son droit ou ses intérêts de bonne foi avant la contravention;

**b)** il est innocent de toute complicité relativement à la contravention ou de toute collusion à l'égard de celle-ci;

**c)** il a pris des précautions suffisantes concernant toute personne admise à la possession des marchandises saisies pour que celles-ci soient déclarées conformément à l'article 39.02.

### Appeal

**39.25 (1)** A person or entity that makes an application under section 39.23 or His Majesty in right of Canada may appeal to the court of appeal from an order made under section 39.24 and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a court.

### Définition de *cour d'appel*

**(2)** Au présent article, ***cour d'appel*** s'entend au sens de l'article 2 du *Code criminel* relativement à la province où est rendue l'ordonnance visée au paragraphe (1).

### Appel

**39.25 (1)** L'ordonnance visée à l'article 39.24 est susceptible d'appel, de la part du requérant ou de Sa Majesté du chef du Canada, à la cour d'appel. Le cas échéant, l'affaire est entendue et jugée selon la procédure ordinaire régissant les appels interjetés devant cette juridiction contre les ordonnances ou décisions du tribunal.

### Definition of *court of appeal*

**(2)** In this section, ***court of appeal*** means, in the province in which an order referred to in subsection (1) is made, the court of appeal for that province as defined in section 2 of the *Criminal Code*.

### Delivery after final order

**39.26 (1)** The Minister of Public Works and Government Services shall, after the forfeiture of goods has become final and on being informed by the President that a person or entity has obtained a final order under section

### Restitution au requérant

**39.26 (1)** Le ministre des Travaux publics et des Services gouvernementaux, une fois la confiscation devenue définitive et dès qu'il a été informé par le président que la personne ou l'entité a, en vertu des articles 39.24 ou 39.25, obtenu une ordonnance définitive au sujet des

39.24 or 39.25 in respect of the goods, give to the person or entity

**(a)** the goods; or

**(b)** an amount calculated on the basis of the interest of the applicant in the goods at the time of the contravention in respect of which they were seized, as declared in the order.

**Limit on amount paid**

**(2)** The total amount paid under paragraph (1)(b) shall, if the goods were sold or otherwise disposed of under the *Seized Property Management Act*, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by His Majesty in right of Canada in respect of the goods.

## Disclosure and Use of Information

**Prohibition**

**39.27 (1)** Subject to this section and subsection 12(1) of the *Privacy Act*, no official shall disclose the following:

**(a)** information set out in a declaration made under section 39.02, whether or not it is completed;

**(b)** any other information obtained for the purposes of this Part; or

**(c)** information prepared from information referred to in paragraph (a) or (b).

**Use of information**

**(2)** An officer may use information referred to in subsection (1) if the officer has reasonable grounds to suspect that the information is relevant to determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 91, 117 to 119, 126 or 127 of that Act.

**Disclosure of relevant information**

**(3)** If an officer has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, the officer may disclose the information to

marchandises saisies, fait remettre à cette personne ou entité :

**a)** soit les marchandises;

**b)** soit une somme dont le montant est basé sur la valeur de son droit sur les marchandises au moment de la contravention qui a entraîné la saisie, telle qu'elle est fixée dans l'ordonnance.

**Limitation du montant versé**

**(2)** En cas de vente ou autre forme de disposition des marchandises en vertu de la *Loi sur l'administration des biens saisis*, le montant de la somme versée en vertu de l'alinéa (1)b) ne peut être supérieur au produit éventuel de la vente ou de la disposition, duquel sont soustraits les frais afférents exposés par Sa Majesté du chef du Canada; à défaut de produit de la disposition, aucun paiement n'est effectué.

## Communication et utilisation de renseignements

**Interdiction**

**39.27 (1)** Sous réserve des autres dispositions du présent article et du paragraphe 12(1) de la *Loi sur la protection des renseignements personnels*, il est interdit au fonctionnaire de communiquer les renseignements :

**a)** contenus dans une déclaration faite au titre de l'article 39.02, qu'elle soit complétée ou non;

**b)** obtenus pour l'application de la présente partie;

**c)** préparés à partir de renseignements visés aux alinéas a) ou b).

**Utilisation des renseignements**

**(2)** L'agent peut utiliser les renseignements visés au paragraphe (1) s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles afin d'établir si une personne est visée par les articles 34 à 42 de la *Loi sur l'immigration et la protection des réfugiés* ou qu'ils se rapportent à toute infraction prévue à l'un des articles 91, 117 à 119, 126 et 127 de cette loi.

**Communication : renseignements utiles**

**(3)** S'il a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, l'agent peut communiquer les renseignements visés au paragraphe (1) :

**(a)** the appropriate police force;

**(b)** the Canada Revenue Agency, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence of obtaining or attempting to obtain a rebate, refund or credit to which a person or entity is not entitled, or of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue;

**(c)** the Agence du revenu du Québec, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence of obtaining or attempting to obtain a rebate, refund or credit to which a person or entity is not entitled, or of evading or attempting to evade paying taxes imposed under an Act of Parliament or of the legislature of Quebec administered by the Minister of Revenue of Quebec;

**(d)** the Canada Revenue Agency, if the officer also has reasonable grounds to suspect that the information is relevant to determining

**(i)** whether a *registered charity*, as defined in subsection 248(1) of the *Income Tax Act*, has ceased to comply with the requirements of that Act for its registration as such,

**(ii)** whether a person or entity that the officer has reasonable grounds to suspect has applied to be a *registered charity*, as defined in subsection 248(1) of the *Income Tax Act*, is eligible to be registered as such, or

**(iii)** whether a person or entity that the officer has reasonable grounds to suspect may apply to be a *registered charity*, as defined in subsection 248(1) of the *Income Tax Act*,

**(A)** has made or will make available any resources, directly or indirectly, to a *listed entity* as defined in subsection 83.01(1) of the *Criminal Code*,

**(B)** has made available any resources, directly or indirectly, to an *entity* as defined in subsection 83.01(1) of the *Criminal Code* that was at that time, and continues to be, engaged in *terrorist activities* as defined in that subsection or activities in support of them, or

**(C)** has made or will make available any resources, directly or indirectly, to an *entity* as defined in subsection 83.01(1) of the *Criminal Code*

**a)** aux forces policières compétentes;

**b)** à l'Agence du revenu du Canada, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, relative à l'obtention illicite d'un remboursement ou d'un crédit ou à l'évasion fiscale, y compris le non-paiement de droits, définie par une loi fédérale dont l'application relève du ministre du Revenu national;

**c)** à l'Agence du revenu du Québec, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, relative à l'obtention illicite d'un remboursement ou d'un crédit ou à l'évasion fiscale, définie par une loi fédérale ou de la législature du Québec dont l'application relève du ministre du Revenu du Québec;

**d)** à l'Agence du revenu du Canada, si en outre il a des motifs raisonnables de soupçonner que les renseignements sont utiles :

**(i)** pour établir si un *organisme de bienfaisance enregistré* au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu* a cessé de se conformer aux exigences de cette loi relatives à son enregistrement comme tel,

**(ii)** pour établir l'admissibilité au statut d'*organisme de bienfaisance enregistré* au sens de ce paragraphe 248(1) de toute personne ou entité qu'il soupçonne, pour des motifs raisonnables, d'avoir fait une demande d'enregistrement à cet effet,

**(iii)** pour établir qu'une personne ou une entité qu'il soupçonne, pour des motifs raisonnables, de pouvoir faire une demande d'enregistrement comme *organisme de bienfaisance enregistré* au sens de ce paragraphe 248(1), selon le cas :

**(A)** a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une *entité inscrite* au sens du paragraphe 83.01(1) du *Code criminel*,

**(B)** a mis, directement ou indirectement, des ressources à la disposition d'une *entité* au sens de ce paragraphe 83.01(1), qui se livrait à ce moment et se livre encore à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer,

**(C)** a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une

that engages or will engage in *terrorist activities* as defined in that subsection or activities in support of them;

**(e)** the Communications Security Establishment, if the officer also determines that the information is relevant to the foreign intelligence aspect of the Communications Security Establishment's mandate, referred to in section 16 of the *Communications Security Establishment Act*;

**(f)** the Competition Bureau, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act* or an attempt to commit such an offence;

**(g)** an agency or body that administers the securities legislation of a province, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under that legislation;

**(h)** the Minister of Foreign Affairs or a Minister designated under subsection 6(2) of the *Special Economic Measures Act*, if the officer also determines that the information is relevant to the making, administration or enforcement of an order or regulation referred to in subsection 4(1) of that Act;

**(i)** the Minister of Foreign Affairs or a Minister designated under subsection 2.1(2) of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, if the officer also determines that the information is relevant to the making, administration or enforcement of an order or regulation referred to in subsection 4(1) of that Act;

**(j)** the Department of the Environment, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act administered by the Minister of the Environment or an attempt to commit such an offence; and

**(k)** the Department of Fisheries and Oceans, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act administered by the Minister of Fisheries and Oceans or an attempt to commit such an offence.

*entité*, au sens de ce paragraphe 83.01(1), qui se livre ou se livrera à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer;

**e)** au Centre de la sécurité des télécommunications, si en outre il estime que les renseignements concernent le volet de son mandat, visé à l'article 16 de la *Loi sur le Centre de la sécurité des télécommunications*, touchant le renseignement étranger;

**f)** au Bureau de la concurrence, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par la *Loi sur la concurrence*, la *Loi sur l'emballage et l'étiquetage des produits de consommation*, la *Loi sur l'étiquetage des textiles* ou la *Loi sur le poinçonnage des métaux précieux*;

**g)** à un organisme chargé de l'application de la législation en valeurs mobilières d'une province, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction à cette législation;

**h)** au ministre des Affaires étrangères ou à tout ministre désigné en vertu du paragraphe 6(2) de la *Loi sur les mesures économiques spéciales*, si en outre il estime que les renseignements sont utiles à la prise, à l'exécution ou au contrôle d'application d'un décret ou d'un règlement visé au paragraphe 4(1) de cette loi;

**i)** au ministre des Affaires étrangères ou à tout ministre désigné en vertu du paragraphe 2.1(2) de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*, si en outre il estime que les renseignements sont utiles à la prise, à l'exécution ou au contrôle d'application d'un décret ou d'un règlement visé au paragraphe 4(1) de cette loi;

**j)** au ministère de l'Environnement, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre de l'Environnement;

**k)** au ministère des Pêches et des Océans, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre des Pêches et des Océans.

**Disclosure — threats to security of Canada**

**(4)** If an officer has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to threats to the security of Canada, the officer may disclose the information to

**(a)** the Canadian Security Intelligence Service;

**(b)** the appropriate police force, if the officer also has reasonable grounds to suspect that the information is relevant to investigating or prosecuting an offence under Canadian law that the officer has reasonable grounds to suspect arises out of conduct constituting such a threat;

**(c)** the Department of National Defence and the Canadian Forces, if the officer also has reasonable grounds to suspect that the information is relevant to the conduct of the Department's or the Canadian Forces' investigative activities related to such a threat; and

**(d)** the Office of the Superintendent of Financial Institutions, if the officer also has reasonable grounds to suspect that the information is relevant to the exercise of the powers or the performance of the duties and functions of the Superintendent under the *Office of the Superintendent of Financial Institutions Act*.

**Communication : menaces envers la sécurité du Canada**

**(4)** S'il a des motifs raisonnables de soupçonner qu'ils se rapporteraient à des menaces envers la sécurité du Canada, l'agent peut communiquer les renseignements visés au paragraphe (1) :

**a)** au Service canadien du renseignement de sécurité;

**b)** aux forces policières compétentes, si en outre il a des motifs raisonnables de soupçonner que les renseignements sont utiles aux fins d'enquête ou de poursuite relativement à une infraction en droit canadien dont il a des motifs de soupçonner qu'elle se rapporte à des activités constituant une menace envers la sécurité du Canada;

**c)** au ministère de la Défense nationale et aux Forces canadiennes, si en outre il a des motifs raisonnables de soupçonner que les renseignements se rapportent à la conduite d'activités d'enquête du ministère ou des Forces liées à une menace envers la sécurité du Canada;

**d)** au Bureau du surintendant des institutions financières, si en outre il a des motifs raisonnables de soupçonner que les renseignements sont utiles à l'exercice des attributions conférées au surintendant sous le régime de la *Loi sur le Bureau du surintendant des institutions financières*.

**Disclosure of information to Centre**

**(5)** An officer may disclose to the Centre information referred to in subsection (1) if the officer has reasonable grounds to suspect that it would be of assistance to the Centre in the detection, prevention or deterrence of money laundering, of the financing of terrorist activities or of sanctions evasion.

**Communication au Centre**

**(5)** L'agent peut communiquer au Centre les renseignements visés au paragraphe (1) s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles pour la détection, la prévention ou la dissuasion en matière de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions.

**Recording of reasons for decision**

**(6)** If an officer decides to disclose information under subsection (3), (4) or (5), the officer shall record in writing the reasons for the decision.

**Enregistrement des motifs**

**(6)** L'agent qui décide de communiquer des renseignements en vertu des paragraphes (3), (4) ou (5) est tenu de consigner par écrit les motifs à l'appui de sa décision.

**Powers, duties and functions**

**(7)** An official may disclose information referred to in subsection (1) for the purpose of exercising powers or performing duties and functions under this Part.

**Attributions**

**(7)** Le fonctionnaire peut communiquer les renseignements visés au paragraphe (1) dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie.

**Immunity from compulsory processes**

**(8)** Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, an official is required to comply with a subpoena, an order for

**Non-contraignabilité**

**(8)** Sous réserve de l'article 36 de la *Loi sur l'accès à l'information* et des articles 34 et 37 de la *Loi sur la protection des renseignements personnels*, le fonctionnaire ne peut être contraint par citation, assignation, sommation,

production of documents, a summons or any other compulsory process only if it is issued in the course of

**(a)** criminal proceedings under an Act of Parliament that have been commenced by the laying of an information or the preferring of an indictment; or

**(b)** any legal proceedings that relate to the administration or enforcement of this Part.

**Definition of *official***

**(9)** In this section and section 39.28, ***official*** means a person who obtained or who has or had access to information referred to in subsection (1) in the course of exercising powers or performing duties and functions under this Part.

**Use of information**

**39.28** No official shall use information referred to in subsection 39.27(1) for any purpose other than exercising powers or performing duties and functions under this Part or for the purposes of the *Special Economic Measures Act*, the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, the *Customs Act* or any other law relating to customs.

**Feedback, research and public education**

**39.29 (1)** The Canada Border Services Agency may

**(a)** inform persons and entities that have provided a declaration under section 39.02 about measures that have been taken with respect to those declarations;

**(b)** conduct research into trends and developments in the area of money laundering, the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada relating to the importation and exportation of goods and into improved ways of detecting, preventing and deterring money laundering, the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada; and

**(c)** undertake measures to inform the public, any persons and entities referred to in section 39.02, any authorities engaged in the investigation and prosecution of money laundering offences, terrorist activity financing offences and sanctions evasion offences and any others with respect to

**(i)** their obligations under this Part,

ordonnance ou autre acte de procédure obligatoire à comparaître ou à produire des documents, sauf s'ils sont délivrés ou rendus dans le cadre :

**a)** de poursuites criminelles intentées en vertu d'une loi fédérale, à l'égard desquelles une dénonciation ou une mise en accusation a été déposée;

**b)** de toute procédure judiciaire concernant l'administration ou l'application de la présente partie.

**Définition de *fonctionnaire***

**(9)** Au présent article et à l'article 39.28, ***fonctionnaire*** s'entend de toute personne qui a obtenu des renseignements visés au paragraphe (1) ou y a ou a eu accès dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie.

**Utilisation des renseignements**

**39.28** Le fonctionnaire ne peut utiliser les renseignements visés au paragraphe 39.27(1) que dans la mesure où il en a besoin dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie ou pour l'application de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*, de la *Loi sur les mesures économiques spéciales*, de la *Loi sur les douanes* et de tout autre texte législatif concernant les douanes.

**Rétroaction, recherche et sensibilisation**

**39.29 (1)** L'Agence des services frontaliers du Canada peut :

**a)** informer des mesures prises les personnes ou entités qui ont fait une déclaration au titre de l'article 39.02;

**b)** faire des recherches sur les tendances et les développements en matière de recyclage des produits de la criminalité, de financement des activités terroristes, de financement des menaces envers la sécurité du Canada ou de contournement de sanctions liés à l'importation ou à l'exportation de marchandises et sur les meilleurs moyens de détection, de prévention et de dissuasion à l'égard de ces activités criminelles;

**c)** prendre des mesures visant à sensibiliser le public, les personnes et les entités visées à l'article 39.02, les autorités chargées de procéder aux enquêtes et aux poursuites relatives aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes et aux infractions de contournement de sanctions et tout intéressé, au sujet :

**(ii)** the nature and extent of money laundering inside and outside Canada relating to the importation and exportation of goods,

**(iii)** the nature and extent of the financing of terrorist activities inside and outside Canada relating to the importation and exportation of goods,

**(iv)** the nature and extent of the financing, inside and outside Canada, of threats to the security of Canada relating to the importation and exportation of goods,

**(v)** the nature and extent of sanctions evasion inside and outside Canada relating to the importation and exportation of goods, and

**(vi)** measures that have been or might be taken to detect, prevent and deter money laundering — as well as the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada — inside or outside Canada, and the effectiveness of those measures.

**Limitation**

**(2)** The Canada Border Services Agency shall not disclose under subsection (1) any information that would directly or indirectly identify any of the following persons or entities:

**(a)** a person who provided a report or information to the Canada Border Services Agency;

**(b)** a Canadian citizen or a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* about whom a report or information was provided;

**(c)** a person in Canada or an entity that has a place of business in Canada about whom a report or information was provided.

**(i)** des obligations prévues par la présente partie,

**(ii)** de la nature et de la portée du recyclage des produits de la criminalité, au Canada et à l'étranger, lié à l'importation ou à l'exportation de marchandises,

**(iii)** de la nature et de la portée du financement des activités terroristes, au Canada et à l'étranger, lié à l'importation ou à l'exportation de marchandises,

**(iv)** de la nature et de la portée du financement, au Canada et à l'étranger, des menaces envers la sécurité du Canada lié à l'importation ou à l'exportation de marchandises,

**(v)** de la nature et de la portée du contournement de sanctions, au Canada et à l'étranger, lié à l'importation ou à l'exportation de marchandises,

**(vi)** des mesures de détection, de prévention et de dissuasion qui ont été ou peuvent être prises, ainsi que de leur efficacité.

**Restrictions**

**(2)** Toutefois, l'Agence des services frontaliers du Canada ne peut divulguer aucun renseignement visé au paragraphe (1) qui permettrait d'identifier, même indirectement, les personnes et entités suivantes :

**a)** la personne qui a fait une déclaration ou communiqué des renseignements à l'Agence des services frontaliers du Canada;

**b)** tout citoyen canadien ou un *résident permanent*, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués;

**c)** toute personne se trouvant au Canada ou toute entité qui a un établissement au Canada à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués.

## Agreements for Exchange of Information

**Agreements with foreign states**

**39.3** The Minister, with the consent of the Minister designated for the purposes of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has reporting requirements similar to those set out in this Part, whereby

## Accords de réciprocité

**Accord avec des États étrangers**

**39.3** Le ministre, avec le consentement du ministre chargé de l'application de l'article 42, peut conclure, avec le gouvernement d'un État étranger — ou un organisme de celui-ci — qui exige des déclarations similaires à celles que prévoit la présente partie, un accord écrit stipulant que :

**(a)** information set out in a declaration made under section 39.02, and any other related information, in respect of goods imported into Canada from that state will be provided to a department, institution or agency of that state that has powers and duties similar to those of the Canada Border Services Agency in respect of the reporting of goods; and

**(b)** information contained in reports, and any other related information, in respect of goods imported into that state from Canada will be provided to the Canada Border Services Agency.

**a)** les renseignements figurant dans les déclarations faites au titre de l'article 39.02, et tout autre renseignement connexe, à l'égard des marchandises importées de cet État au Canada sont communiqués à un ministère ou organisme de cet État dont les attributions sont similaires à celles de l'Agence des services frontaliers du Canada en matière de déclarations à l'égard des marchandises importées;

**b)** les renseignements figurant dans les déclarations, et tout autre renseignement connexe, à l'égard des marchandises importées dans cet État du Canada sont communiqués à l'Agence des services frontaliers du Canada.

#### Agreements with foreign states

**39.31** The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has powers and duties similar to those of the Canada Border Services Agency, whereby the Canada Border Services Agency may, if it has reasonable grounds to believe that information collected under this Part would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, provide that information to that government, institution or agency.

#### Accord avec des États étrangers

**39.31** Le ministre, avec le consentement du ministre chargé de l'application de l'article 42, peut conclure, avec le gouvernement d'un État étranger ou un organisme de celui-ci dont les attributions sont similaires à celles de l'Agence des services frontaliers du Canada, un accord écrit stipulant que celle-ci peut fournir à ce gouvernement ou à cet organisme les renseignements recueillis sous le régime de la présente partie, si elle a des motifs raisonnables de croire que ces renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions.

## Delegation

#### Minister's duties

**39.32 (1)** The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial powers or duties of the Minister, under this Part.

#### President's duties

**(2)** The President may authorize an officer or a class of officers to exercise powers or perform duties of the President under this Part.

## Délégation

#### Pouvoirs et fonction du ministre

**39.32 (1)** Le ministre peut autoriser un agent ou une catégorie d'agents à exercer les pouvoirs et fonctions, y compris les pouvoirs et fonctions judiciaires ou quasi judiciaires, qui lui sont conférés en vertu de la présente partie.

#### Pouvoirs et fonctions du président

**(2)** Le président peut autoriser un agent ou une catégorie d'agents à exercer les pouvoirs et fonctions qui lui sont conférés en vertu de la présente partie.

## Forms

#### Declaration

**39.33** The Minister may include on any form a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is true, accurate and complete.

## Formulaires

#### Déclaration

**39.33** Le ministre peut inclure sur tout formulaire une déclaration à signer par l'intéressé, où celui-ci atteste la véracité, l'exactitude et l'intégralité des renseignements qu'il a donnés.

# Electronic Administration and Enforcement

### Electronic administration and enforcement

**39.34 (1)** This Part may be administered and enforced using electronic means. Any person on whom powers, duties or functions are conferred under this Part may exercise any of those powers or perform any of those duties or functions using the electronic means made available or specified by the Minister.

### Authorization

**(2)** Any person who has been authorized to exercise any power or perform any duty or function conferred on a person referred to in subsection (1) under this Part may do so using the electronic means that are made available or specified by the Minister.

### Provision of information

**39.35** For the purposes of sections 39.36 to 39.38, providing information includes providing a signature and serving, filing or otherwise providing a record or document.

### Conditions for electronic version

**39.36** A requirement under this Part to provide information — in any form or manner or by any means — is satisfied by providing the electronic version of the information if

**(a)** the electronic version is provided by the electronic means, including an electronic system, that are made available or specified by the Minister, if any; and

**(b)** any prescribed requirements with respect to electronic communications or electronic means have been met.

### Deemed timing of receipt

**39.37** Any information provided by electronic means, including an electronic system, in accordance with section 39.34 or 39.36, is deemed to be received

**(a)** if the regulations provide for a day, on that day;

**(b)** if the regulations provide for a day and time, on that day and at that time; or

# Exécution et contrôle d'application par des moyens électroniques

### Exécution et contrôle d'application par des moyens électroniques

**39.34 (1)** L'exécution et le contrôle d'application de la présente partie peuvent être assurés par des moyens électroniques. De même, toute personne à qui des attributions sont conférées sous le régime de la présente partie peut, dans l'exercice de ces attributions, utiliser les moyens électroniques que le ministre met à sa disposition ou précise.

### Autorisation

**(2)** Les personnes autorisées à exercer les attributions conférées à une personne visée au paragraphe (1) sous le régime de la présente partie peuvent, lorsqu'elles les exercent, utiliser les moyens électroniques que le ministre met à leur disposition ou précise.

### Fourniture de renseignements

**39.35** Pour l'application des articles 39.36 à 39.38, la fourniture de renseignements vise également la fourniture d'une signature ou d'un document ou la signification ou la production d'un document.

### Conditions : version électronique

**39.36** Lorsque la présente partie exige que des renseignements soient fournis — selon des modalités ou par tout moyen — la fourniture d'une version électronique de ceux-ci satisfait à l'exigence si les conditions suivantes sont réunies :

**a)** la version électronique est fournie par le moyen électronique, notamment un système électronique, que le ministre met à disposition ou précise, le cas échéant;

**b)** les exigences réglementaires visant les communications par voie électronique ou les moyens électroniques ont été remplies.

### Réception réputée

**39.37** Les renseignements fournis par des moyens électroniques, notamment un système électronique, conformément aux articles 39.34 ou 39.36, sont réputés reçus à la date — et, le cas échéant, à l'heure — prévue par règlement ou, à défaut, à la date et à l'heure où ils ont été envoyés.

**(c)** if the regulations do not provide for a day or a day and a time, on the day and at the time that the information is sent.

**Regulations**

**39.38 (1)** The Governor in Council may, on the recommendation of the Minister, make regulations in respect of electronic communications and electronic means, including electronic systems, or any other technology to be used in the administration or enforcement of this Part, including regulations respecting

**(a)** the provision of information for any purpose under this Part in electronic or other form;

**(b)** the payment of amounts under this Part by electronic instructions; and

**(c)** the manner in which and the extent to which any provision of this Part, or its regulations, applies to the electronic communications or electronic means, including electronic systems, and adapting any such provision for the purpose of applying it.

**Classes**

**(2)** Regulations made for the purpose of section 39.36 may establish classes and distinguish among those classes.

## Administrative Monetary Penalties

**Regulations**

**39.39 (1)** The Governor in Council may make regulations establishing an administrative monetary penalties scheme for the purpose of promoting compliance with this Part, including regulations

**(a)** designating as a violation the contravention of a specified provision of this Part;

**(b)** classifying each violation or series of violations;

**(c)** respecting the penalties that may be imposed for a violation, including in relation to

**(i)** the amount, or range of amounts, of the penalties that may be imposed on persons or entities or classes of persons or entities,

**(ii)** the factors to be taken into account in imposing a penalty,

**Règlements**

**39.38 (1)** Sur recommandation du ministre, le gouverneur en conseil peut prendre des règlements portant sur les communications par voie électronique et les moyens électroniques, y compris tout système électronique, ou tout autre moyen technique devant servir à l'exécution ou au contrôle d'application de la présente partie, notamment des règlements concernant :

**a)** la fourniture de renseignements à toute fin prévue par la présente partie, sous forme électronique ou autre;

**b)** le versement de sommes, sous le régime de la présente partie, selon les instructions données par voie électronique;

**c)** les modalités et l'étendue de l'application des dispositions de la présente partie ou de ses règlements aux communications par voie électronique et aux moyens électroniques, notamment aux systèmes électroniques, et l'adaptation de ces dispositions à cette fin.

**Catégories**

**(2)** Les règlements pris pour l'application de l'article 39.36 peuvent prévoir des catégories et les traiter différemment.

## Sanctions administratives pécuniaires

**Règlement**

**39.39 (1)** Le gouverneur en conseil peut prendre des règlements établissant un régime de sanctions administratives pécuniaires qui vise à favoriser le respect de la présente partie, notamment des règlements :

**a)** désignant comme violation la contravention à telle ou telle disposition de la présente partie;

**b)** classifiant les violations ou séries de violations;

**c)** concernant la sanction à imposer, notamment en ce qui a trait à ce qui suit :

**(i)** le montant de la sanction à imposer, ou le barème de sanctions à appliquer, en fonction des personnes ou entités ou des catégories de personnes ou d'entités,

**(iii)** the payment of penalties that have been imposed, and

**(iv)** the recovery, as a debt, of unpaid penalties and any additional penalty to be paid in respect of those unpaid penalties;

**(d)** respecting the powers, duties and functions of the Canada Border Services Agency and of any person or class of persons who may exercise powers or perform duties or functions with respect to the scheme, including the designation of such persons or classes of persons by the President of the Agency;

**(e)** respecting the proceedings in respect of a violation, including in relation to

**(i)** commencing the proceedings,

**(ii)** the defences that may be available in respect of a violation, and

**(iii)** the circumstances in which the proceedings may be brought to an end; and

**(f)** respecting reviews or appeals of any orders or decisions in the proceedings.

**(ii)** les critères à prendre en compte pour la détermination de la sanction,

**(iii)** le paiement de la sanction imposée,

**(iv)** le recouvrement, à titre de créance, de toute sanction impayée et l'imposition de toute sanction additionnelle à en cas de défaut de paiement;

**d)** concernant les attributions de l'Agence des services frontaliers du Canada et les personnes, individuellement ou par catégorie, qui peuvent exercer des attributions relativement au régime, notamment la désignation de telles personnes ou catégories de personnes par le président;

**e)** concernant les procédures en violation, notamment en ce qui a trait à ce qui suit :

**(i)** l'introduction de la procédure,

**(ii)** les défenses pouvant être invoquées à l'égard de la violation,

**(iii)** les circonstances pouvant mettre fin à la procédure;

**f)** concernant la révision ou l'appel des ordonnances ou des décisions dans le cadre de la procédure.

**Violation or offence**

**(2)** If an act or omission may be proceeded with as a violation or as an offence, proceeding with it in one manner precludes proceeding with it in the other.

**Cumul interdit**

**(2)** S'agissant d'un acte ou d'une omission qualifiable à la fois de violation et d'infraction, la procédure en violation et la procédure pénale s'excluent l'une l'autre.

**286 (1) Paragraph 40(b) of the Act is replaced by the following:**

**(b)** collects, analyses, assesses and discloses information in order to assist in the detection, prevention and deterrence of money laundering, of the financing of terrorist activities and of sanctions evasion, and in order to assist the Minister in carrying out the Minister's powers and duties under Part 1.1;

**286 (1) L'alinéa 40b) de la même loi est remplacé par ce qui suit :**

**b)** recueille, analyse, évalue et communique des renseignements utiles pour la détection, la prévention et la dissuasion en matière de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions ainsi que des renseignements susceptibles d'aider le ministre à exercer les attributions que lui confère la partie 1.1;

**(2) Paragraph 40(d) of the Act is replaced by the following:**

**(d)** operates to enhance public awareness and understanding of matters related to money laundering, the financing of terrorist activities and sanctions evasion; and

**(2) L'alinéa 40d) de la même loi est remplacé par ce qui suit :**

**d)** sensibilise le public aux questions liées au recyclage des produits de la criminalité, au financement des activités terroristes et au contournement de sanctions;

**287 (1) Paragraph 54(1)(a) of the Act is replaced by the following:**

**287 (1) L'alinéa 54(1)a) de la même loi est remplacé par ce qui suit :**

**(a)** shall receive reports made under section 7, 7.1, 9, 12 or 20, or in accordance with a directive issued under Part 1.1, incomplete reports sent under subsection 14(5), reports referred to in section 9.1, information provided to the Centre by any agency of another country that has powers and duties similar to those of the Centre, information provided to the Centre by law enforcement agencies or government institutions or agencies, and other information voluntarily provided to the Centre about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion;

**(2) The portion of paragraph 54(1)(b) of the Act before subparagraph (i) is replaced by the following:**

**(b)** may collect information that the Centre considers relevant to money laundering activities, the financing of terrorist activities and activities relating to sanctions evasion that

**(3) Subsection 54(2) of the Act is replaced by the following:**

**Destruction of certain information**

**(2)** The Centre shall destroy any information contained in a document, whether in written form or in any other form, that it receives that purports to be a report made under section 7, 7.1, 9 or 12, made in accordance with a directive issued under Part 1.1, sent under subsection 14(5) or referred to in section 9.1, and that it determines, in the normal course of its activities, relates to a financial transaction or circumstance that is not required to be reported to the Centre under this Act, and shall destroy any information voluntarily provided to the Centre by the public that it determines, in the normal course of its activities, is not about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion. The Centre shall destroy the information within a reasonable time after the determination is made.

**288 (1) Paragraph 55(1)(d) of the Act is replaced by the following:**

**(d)** information voluntarily provided to the Centre about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion;

**(2) The portion of subsection 55(3) of the Act before paragraph (a) is replaced by the following:**

**a)** recueille les rapports ou déclarations faits conformément aux articles 7, 7.1, 9, 12 ou 20 ou à toute directive donnée au titre de la partie 1.1 et les déclarations incomplètes qui lui sont transmises conformément au paragraphe 14(5), les rapports visés à l'article 9.1, les renseignements qui lui sont fournis soit par des organismes étrangers ayant des attributions semblables aux siennes, soit par des organismes chargés de l'application de la loi ou autres autorités publiques, ainsi que tout renseignement qui lui est transmis volontairement et qui se rapporte à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions;

**(2) Le passage de l'alinéa 54(1)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**b)** peut recueillir tout renseignement qu'il croit se rapporter à des activités de recyclage des produits de la criminalité, au financement des activités terroristes ou à des activités de contournement de sanctions et qui est :

**(3) Le paragraphe 54(2) de la même loi est remplacé par ce qui suit :**

**Destruction de certains renseignements**

**(2)** Le Centre détruit dans un délai raisonnable les renseignements qu'il a reçus qui se trouvent dans un document — quel qu'en soit la forme ou le support — et qui sont présentés comme un rapport ou une déclaration visé aux articles 7, 7.1, 9 ou 12, une directive donnée au titre de la partie 1.1, une déclaration incomplète transmise conformément au paragraphe 14(5) ou un rapport visé à l'article 9.1 lorsqu'il conclut, dans le cours normal de ses activités, que ces renseignements se rapportent à une opération financière ou à un cas dont la présente loi n'exige pas qu'ils lui soient communiqués dans un rapport ou une déclaration ou, si ces renseignements lui sont fournis volontairement par le public, qu'ils ne se rapportent pas à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions.

**288 (1) L'alinéa 55(1)d) de la même loi est remplacé par ce qui suit :**

**d)** se rapportant à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions qui lui sont transmis volontairement;

**(2) Le passage du paragraphe 55(3) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Disclosure of designated information**

**(3)** If the Centre, on the basis of its analysis and assessment under paragraph 54(1)(c), has reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, the Centre shall disclose the information to

**(3) Clause 55(3)(c)(iii)(C) of the French version of the Act is replaced by the following:**

> **(C)** a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une *entité*, au sens de ce paragraphe 83.01(1), qui se livre ou se livrera à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer;

**(4) Subsection 55(3) of the Act is amended by striking out "and" at the end of paragraph (h) and by adding the following after paragraph (i):**

> **(j)** the Department of the Environment, if the Centre also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act administered by the Minister of the Environment or an attempt to commit such an offence; and
>
> **(k)** the Department of Fisheries and Oceans, if the Centre also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act an Act administered by the Minister of Fisheries and Oceans or an attempt to commit such an offence.

**(5) Subsection 55(6.1) of the Act is replaced by the following:**

**Publication**

**(6.1)** After a person has been determined by a court to be guilty of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or has been determined by a foreign court to be guilty of an offence that is substantially similar to any of those offences, whether on acceptance of a plea of guilty or on a finding of guilt, the Centre may, if it has disclosed designated information under subsection (3) with respect to the investigation or prosecution of the offence, make public the fact that it made such a disclosure.

**Communication de renseignements désignés**

**(3)** S'il a des motifs raisonnables de soupçonner, à la lumière de l'analyse et de l'appréciation faite en application de l'alinéa 54(1)c), qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, le Centre communique les renseignements désignés :

**(3) La division 55(3)c)(iii)(C) de la version française de la même loi est remplacée par ce qui suit :**

> **(C)** a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une *entité*, au sens de ce paragraphe 83.01(1), qui se livre ou se livrera à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer;

**(4) Le paragraphe 55(3) de la même loi est modifié par adjonction, après l'alinéa i), de ce qui suit :**

> **j)** au ministère de l'Environnement, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre de l'Environnement;
>
> **k)** au ministère des Pêches et des Océans, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre des Pêches et des Océans.

**(5) Le paragraphe 55(6.1) de la même loi est remplacé par ce qui suit :**

**Publication**

**(6.1)** Lorsqu'un tribunal déclare qu'une personne est coupable d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions ou qu'un tribunal étranger déclare qu'une personne est coupable d'une infraction essentiellement similaire, soit par acceptation de son plaidoyer de culpabilité soit par une déclaration de culpabilité, si le Centre a communiqué des renseignements désignés visés au paragraphe (3) se rapportant à l'enquête ou à la poursuite de cette infraction, il peut rendre ce fait public.

**(6) The portion of subsection 55(7) of the Act before paragraph (a.1) is replaced by the following:**

**Definition of *designated information***

**(7)** For the purposes of subsection (3), ***designated information*** means, in respect of a report made under section 7.1 or of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments, as the case may be,

**(a)** the name of any person or entity that is identified in the report or that is involved in the transaction, attempted transaction, importation or exportation or of any person or entity acting on their behalf;

**(7) Paragraph 55(7)(n) of the Act is replaced by the following:**

**(n)** indicators of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence related to the transaction, attempted transaction, importation or exportation;

**(8) Paragraph 55(7)(q) of the Act is replaced by the following:**

**(q)** information about the transaction, attempted transaction, importation or exportation, received by the Centre from an institution or agency under an agreement or arrangement referred to in section 56, that constitutes the institution's or agency's reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences;

**(9) Subsection 55(7) of the Act is amended by striking out "and" at the end of paragraph (s), by adding "and" at the end of paragraph (t) and by adding the following after paragraph (t):**

**(u)** any other information set out in a report made under section 7.1.

**289 (1) The portion of subsection 55.1(3) of the Act before paragraph (a.1) is replaced by the following:**

**(6) Le passage du paragraphe 55(7) de la même loi précédant l'alinéa a.1) est remplacé par ce qui suit :**

**Définition de *renseignements désignés***

**(7)** Pour l'application du paragraphe (3), ***renseignements désignés*** s'entend, relativement à une déclaration visée à l'article 7.1 ou à toute opération financière effectuée ou tentée ou à l'importation ou à l'exportation d'espèces ou d'effets, selon le cas, des renseignements suivants :

**a)** le nom de toute personne ou entité précisé dans la déclaration ou de toute personne ou entité qui participe à l'opération financière effectuée ou tentée ou à l'importation ou à l'exportation, ou de toute personne ou entité agissant pour leur compte;

**(7) L'alinéa 55(7)n) de la même loi est remplacé par ce qui suit :**

**n)** les indices de toute infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes ou infraction de contournement de sanctions entachant l'opération financière effectuée ou tentée, l'importation ou l'exportation;

**(8) L'alinéa 55(7)q) de la même loi est remplacé par ce qui suit :**

**q)** les renseignements relatifs à l'opération financière effectuée ou tentée, à l'importation ou à l'exportation qui sont reçus par le Centre par l'entremise d'un organisme en vertu d'un accord visé à l'article 56 et sur lesquels reposent les motifs raisonnables de cet organisme de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

**(9) Le paragraphe 55(7) de la même loi est modifié par adjonction, après l'alinéa t), de ce qui suit :**

**u)** tout autre renseignement contenu dans une déclaration visée à l'article 7.1.

**289 (1) Le passage du paragraphe 55.1(3) de la même loi précédant l'alinéa a.1) est remplacé par ce qui suit :**

**Definition of *designated information***

**(3)** For the purposes of subsection (1), ***designated information*** means, in respect of a report made under section 7.1, a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments, as the case may be,

**(a)** the name of any person or entity that is identified in the report or that is involved in the transaction, attempted transaction, importation or exportation or of any person or entity acting on their behalf;

**(2) Paragraph 55.1(3)(n) of the Act is replaced by the following:**

**(n)** indicators of a money laundering offence, a terrorist activity financing offence, a sanctions evasion offence or a threat to the security of Canada related to the transaction, attempted transaction, importation or exportation;

**(3) Paragraph 55.1(3)(q) of the Act is replaced by the following:**

**(q)** information about the transaction, attempted transaction, importation or exportation, received by the Centre from an institution or agency under an agreement or arrangement referred to in section 56, that constitutes the institution's or agency's reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences;

**(4) Subsection 55.1(3) of the Act is amended by striking out "and" at the end of paragraph (s), by adding "and" at the end of paragraph (t) and by adding the following after paragraph (t):**

**(u)** any other information set out in a report made under section 7.1.

**290 (1) Subsections 56(1) and (2) of the Act are replaced by the following:**

**Agreements and arrangements**

**56 (1)** The Minister may enter into an agreement or arrangement, in writing, with the government of a foreign state or an international organization regarding the exchange, between the Centre and any institution or agency of that state or organization that has powers and duties

**Définition de *renseignements désignés***

**(3)** Pour l'application du paragraphe (1), ***renseignements désignés*** s'entend, relativement à toute déclaration visée à l'article 7.1, à toute opération financière effectuée ou tentée ou à l'importation ou à l'exportation d'espèces ou d'effets, selon le cas, des renseignements suivants :

**a)** le nom de toute personne ou entité précisé dans la déclaration ou de toute personne ou entité qui participe à l'opération financière effectuée ou tentée ou à l'importation ou à l'exportation, ou de toute personne ou entité agissant pour son compte;

**(2) L'alinéa 55.1(3)n) de la même loi est remplacé par ce qui suit :**

**n)** les indices de toute infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes, infraction de contournement de sanctions ou de menaces envers la sécurité du Canada entachant l'opération financière effectuée ou tentée, l'importation ou l'exportation;

**(3) L'alinéa 55.1(3)q) de la même loi est remplacé par ce qui suit :**

**q)** les renseignements relatifs à l'opération financière effectuée ou tentée, à l'importation ou à l'exportation qui sont reçus par le Centre par l'entremise d'un organisme en vertu d'un accord visé à l'article 56 et sur lesquels reposent les motifs raisonnables de cet organisme de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

**(4) Le paragraphe 55.1(3) de la même loi est modifié par adjonction, après l'alinéa t), de ce qui suit :**

**u)** tout autre renseignement contenu dans une déclaration visée à l'article 7.1.

**290 (1) Les paragraphes 56(1) et (2) de la même loi sont remplacés par ce qui suit :**

**Accord de collaboration**

**56 (1)** Le ministre peut conclure par écrit un accord avec le gouvernement d'un État étranger ou une organisation internationale concernant l'échange, entre le Centre et un organisme — relevant de cet État étranger ou de cette organisation internationale — ayant des

similar to those of the Centre, of information that the Centre, institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences.

attributions similaires à celles du Centre, de renseignements dont le Centre ou l'organisme a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire.

**Agreements and arrangements — Centre**

**(2)** The Centre may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with an institution or agency of a foreign state that has powers and duties similar to those of the Centre, regarding the exchange, between the Centre and the institution or agency, of information that the Centre, institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences.

**Accord de collaboration — Centre**

**(2)** Le Centre peut, avec l'approbation du ministre, conclure par écrit, avec un organisme d'un État étranger ayant des attributions similaires à celles du Centre, un accord concernant l'échange de renseignements dont le Centre ou l'organisme a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire.

**(2) Paragraph 56(3)(a) of the Act is replaced by the following:**

**(a)** restrict the use of information to purposes relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences; and

**(2) L'alinéa 56(3)a) de la même loi est remplacé par ce qui suit :**

**a)** précisent les fins auxquelles les renseignements peuvent être utilisés, lesquelles doivent être utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

**291 (1) Paragraph 56.1(1)(a) of the Act is replaced by the following:**

**(a)** the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences; and

**291 (1) L'alinéa 56.1(1)a) de la même loi est remplacé par ce qui suit :**

**a)** d'une part, il a des motifs raisonnables de soupçonner que les renseignements désignés seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

**(2) Paragraph 56.1(2)(a) of the Act is replaced by the following:**

**(a)** the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences; and

**(2) L'alinéa 56.1(2)a) de la même loi est remplacé par ce qui suit :**

**a)** d'une part, il a des motifs raisonnables de soupçonner que les renseignements désignés seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

**(3) Subsection 56.1(4.1) of the Act is replaced by the following:**

**Publication**

**(4.1)** After a person has been determined by a court to be guilty of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or has been determined by a foreign court to be guilty of an offence that is substantially similar to any of those offences, whether on acceptance of a plea of guilty or on a finding of guilt, the Centre may, if it has disclosed designated information under subsection (1) or (2) with respect to the investigation or prosecution of the offence, make public the fact that it made such a disclosure.

**(4) The portion of subsection 56.1(5) of the Act before paragraph (a.1) is replaced by the following:**

**Definition of *designated information***

**(5)** For the purposes of this section, ***designated information*** means, in respect of a report made under section 7.1 or of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments, as the case may be

**(a)** the name of any person or entity that is identified in the report or that is involved in the transaction, attempted transaction, importation or exportation or of any person or entity acting on their behalf;

**(5) Paragraph 56.1(5)(n) of the Act is replaced by the following:**

**(n)** indicators of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence related to the transaction, attempted transaction, importation or exportation;

**(6) Subsection 56.1(5) of the Act is amended by striking out "and" at the end of paragraph (r), by adding "and" at the end of paragraph (s) and by adding the following after paragraph (s):**

**(t)** any other information set out in a report made under section 7.1.

**292 (1) Paragraph 58(1)(b) of the Act is replaced by the following:**

**(b)** conduct research into trends and developments in the area of money laundering, the financing of

**(3) Le paragraphe 56.1(4.1) de la même loi est remplacé par ce qui suit :**

**Publication**

**(4.1)** Lorsqu'un tribunal déclare qu'une personne est coupable d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions ou qu'un tribunal étranger déclare qu'une personne est coupable d'une infraction essentiellement similaire, soit par acceptation de son plaidoyer de culpabilité soit par une déclaration de culpabilité, si le Centre a communiqué des renseignements désignés visés aux paragraphes (1) ou (2) se rapportant à l'enquête ou à la poursuite de cette infraction, il peut rendre ce fait public.

**(4) Le passage du paragraphe 56.1(5) de la même loi précédant l'alinéa a.1) est remplacé par ce qui suit :**

**Définition de *renseignements désignés***

**(5)** Pour l'application du présent article, ***renseignements désignés*** s'entend, relativement à une déclaration visée à l'article 7.1 ou à toute opération financière effectuée ou tentée ou à l'importation ou à l'exportation d'espèces ou d'effets, selon le cas, des renseignements suivants :

**a)** le nom de toute personne ou entité précisé dans la déclaration ou de toute personne ou entité qui participe à l'opération financière effectuée ou tentée ou à l'importation ou à l'exportation, ou de toute personne ou entité agissant pour leur compte;

**(5) L'alinéa 56.1(5)n) de la même loi est remplacé par ce qui suit :**

**n)** les indices de toute infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes ou infraction de contournement de sanctions entachant l'opération financière effectuée ou tentée, l'importation ou l'exportation;

**(6) Le paragraphe 56.1(5) de la même loi est modifié par adjonction, après l'alinéa s), de ce qui suit :**

**t)** tout autre renseignement contenu dans une déclaration visée à l'article 7.1.

**292 (1) L'alinéa 58(1)b) de la même loi est remplacé par ce qui suit :**

**b)** faire des recherches sur les tendances et les développements en matière de recyclage des produits de la

terrorist activities, sanctions evasion and the financing of threats to the security of Canada and into improved ways of detecting, preventing and deterring money laundering, the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada; and

**(2) The portion of paragraph 58(1)(c) of the Act before subparagraph (i) is replaced by the following:**

**(c)** undertake measures to inform the public, persons and entities referred to in section 5, authorities engaged in the investigation and prosecution of money laundering offences, terrorist activity financing offences and sanctions evasion offences, and others, with respect to

**(3) Paragraph 58(1)(c) of the Act is amended by striking out "and" at the end of subparagraph (ii.2) and by adding the following after that subparagraph:**

**(ii.3)** the nature and extent of sanctions evasion inside and outside Canada, and

**(4) Subsection 58(2) of the Act is replaced by the following:**

**Limitation**

**(2)** The Centre shall not disclose under subsection (1) any information that would directly or indirectly identify any of the following persons or entities:

**(a)** a person who provided a report or information to the Centre;

**(b)** a Canadian citizen or a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* about whom a report or information was provided;

**(c)** a person in Canada or an entity that has a place of business in Canada about whom a report or information was provided.

**293 Subsection 59(1) of the Act is replaced by the following:**

**Immunity from compulsory processes**

**59 (1)** Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, the Centre,

criminalité, de financement des activités terroristes, de contournement de sanctions et de financement des menaces envers la sécurité du Canada et sur les meilleurs moyens de détection, de prévention et de dissuasion à l'égard de ces activités criminelles;

**(2) Le passage de l'alinéa 58(1)c) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**c)** prendre des mesures visant à sensibiliser le public, les personnes et les entités visées à l'article 5, les autorités chargées de procéder aux enquêtes et aux poursuites relatives aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes et aux infractions de contournement de sanctions et tout intéressé, au sujet :

**(3) L'alinéa 58(1)c) de la même loi est modifié par adjonction, après le sous-alinéa (ii.2), de ce qui suit :**

**(ii.3)** de la nature et de la portée du contournement de sanctions au Canada et à l'étranger,

**(4) Le paragraphe 58(2) de la même loi est remplacé par ce qui suit :**

**Restrictions**

**(2)** Toutefois, le Centre ne peut divulguer aucun renseignement visé au paragraphe (1) qui permettrait d'identifier, même indirectement, les personnes et entités suivantes :

**a)** la personne qui a fait une déclaration ou communiqué des renseignements au Centre;

**b)** un citoyen canadien ou un *résident permanent*, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués;

**c)** une personne se trouvant au Canada ou une entité qui a un établissement au Canada à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués.

**293 Le paragraphe 59(1) de la même loi est remplacé par ce qui suit :**

**Non-contraignabilité**

**59 (1)** Sous réserve de l'article 36 de la *Loi sur l'accès à l'information* et des articles 34 et 37 de la *Loi sur la*

and any person who has obtained or who has or had access to any information or documents in the course of exercising powers or performing duties and functions under this Act, other than Parts 2 and 2.1, is required to comply with a subpoena, a summons, an order for production of documents, or any other compulsory process only if it is issued in the course of court proceedings in respect of a money laundering offence, a terrorist activity financing offence, a sanctions evasion offence or an offence under this Act in respect of which an information has been laid or an indictment preferred or, in the case of an order for production of documents, if it is issued under section 60, 60.1 or 60.3.

*protection des renseignements personnels*, le Centre, ainsi que toute personne qui a obtenu un renseignement ou document, ou y a ou a eu accès dans le cadre de l'exercice des attributions qui lui sont conférées sous le régime de la présente loi, à l'exception des parties 2 et 2.1, ne peut être contraint, que ce soit par citation, assignation, sommation, ordonnance ou autre acte obligatoire, à comparaître ou à produire un tel document, sauf dans le cadre de poursuites intentées pour infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes, infraction de contournement de sanctions ou infraction à la présente loi à l'égard desquelles une dénonciation ou une mise en accusation a été déposée ou dans le cadre d'une ordonnance de production de documents rendue en vertu des articles 60, 60.1 ou 60.3.

**294 (1) Subsection 60(2) of the Act is replaced by the following:**

**Purpose of application**

**(2)** The Attorney General may, for the purposes of an investigation in respect of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, make an application under subsection (3) for an order for disclosure of information.

**294 (1) Le paragraphe 60(2) de la même loi est remplacé par ce qui suit :**

**Fins de l'ordonnance**

**(2)** Le procureur général peut demander une ordonnance de communication dans le cadre d'une enquête sur une infraction de recyclage des produits de la criminalité, une infraction de financement des activités terroristes ou une infraction de contournement de sanctions.

**(2) Paragraph 60(3)(d) of the Act is replaced by the following:**

**(d)** the facts relied on to justify the belief, on reasonable grounds, that the person or entity referred to in paragraph (b) has committed or benefited from the commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to an investigation in respect of any of those offences;

**(2) L'alinéa 60(3)d) de la même loi est remplacé par ce qui suit :**

**d)** les faits sur lesquels reposent les motifs raisonnables de croire que la personne ou entité mentionnée à l'alinéa b) a commis une infraction de recyclage des produits de la criminalité, une infraction de financement des activités terroristes ou une infraction de contournement de sanctions ou en a bénéficié, et que les renseignements ou documents demandés ont vraisemblablement une valeur importante, en soi ou avec d'autres éléments, pour l'enquête mentionnée dans la demande;

**(3) Paragraph 60(8)(a) of the Act is replaced by the following:**

**(a)** the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence or an offence that is substantially similar to any of those offences;

**(3) L'alinéa 60(8)a) de la même loi est remplacé par ce qui suit :**

**a)** soit qu'un accord bilatéral ou international en matière de partage de renseignements relatifs aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes ou aux infractions de contournement de sanctions, ou à des infractions essentiellement similaires, que le gouvernement du Canada a signé, interdit au directeur de les communiquer;

**295 Paragraph 60.1(7)(a) of the Act is replaced by the following:**

**295 L'alinéa 60.1(7)a) de la même loi est remplacé par ce qui suit :**

**(a)** the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence or an offence that is substantially similar to any of those offences;

**a)** soit qu'un accord bilatéral ou international en matière de partage de renseignements relatifs aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes ou aux infractions de contournement de sanctions, ou à des infractions essentiellement similaires, que le gouvernement du Canada a signé, interdit au directeur de les communiquer;

**296 Paragraph 73(1)(k) of the Act is replaced by the following:**

**296 L'alinéa 73(1)k) de la même loi est remplacé par ce qui suit :**

**(k)** respecting the reports referred to in section 12(1) and the declarations referred to in section 39.02; and

**k)** régir les déclarations visées au paragraphe 12(1) et à l'article 39.02;

**297 The portion of subsection 74(1) of the Act before paragraph (a) is replaced by the following:**

**297 Le passage du paragraphe 74(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**General offences**

**74 (1)** Every person or entity that knowingly contravenes any of sections 6, 6.1 and 9.1 to 9.31, subsection 9.4(2), sections 9.5 to 9.7, 11.1, 11.43, 11.44 and 11.6, subsections 12(1) and (4) and 36(1), section 37, subsections 39.02(1), (4), (5) and (8) and 39.27(1), section 39.28, subsections 55(1) and (2), section 57 and subsections 62(2), 63.1(2) and 64(3) or the regulations is guilty of an offence and liable

**Infractions générales**

**74 (1)** Toute personne ou entité qui contrevient sciemment à l'un ou l'autre des articles 6, 6.1 et 9.1 à 9.31, du paragraphe 9.4(2), des articles 9.5 à 9.7, 11.1, 11.43, 11.44 et 11.6, des paragraphes 12(1) et (4) et 36(1), de l'article 37, des paragraphes 39.02(1), (4), (5) et (8) et 39.27(1), de l'article 39.28, des paragraphes 55(1) et (2), de l'article 57 et des paragraphes 62(2), 63.1(2) et 64(3) ou aux règlements commet une infraction passible, sur déclaration de culpabilité :

**298 Paragraph 77.3(2)(a) of the Act is replaced by the following:**

**298 L'alinéa 77.3(2)a) de la même loi est remplacé par ce qui suit :**

**(a)** cause a person or entity referred to in section 5 to be in receipt of cash or virtual currency or involve the initiation of an international electronic funds transfer or the making of a disbursement, in any of the following transactions:

**a)** impliquent que la personne ou l'entité visée à l'article 5 reçoive des sommes en espèces ou en monnaie virtuelle, qu'un télévirement international soit amorcé ou qu'un déboursement soit effectué au cours de l'une ou l'autre des opérations suivantes :

**(i)** the redemption of chips, tokens or plaques,

**(i)** le rachat de jetons ou de plaques,

**(ii)** a front cash withdrawal,

**(ii)** le retrait d'une somme initiale,

**(iii)** a safekeeping withdrawal,

**(iii)** le retrait d'une somme confiée à la garde d'un casino,

**(iv)** an advance on any form of credit, including an advance by a marker or a counter cheque,

**(iv)** l'octroi d'une avance sur toute forme de crédit, notamment par reconnaissance de dette ou par chèque au porteur,

**(v)** a payment on a bet, including a slot jackpot,

**(v)** le paiement de paris, notamment la cagnotte de machines à sous,

**(vi)** a payment to a client of funds received for credit to that client or another client,

**(vi)** le paiement à un client de fonds préalablement reçus en vue de l'octroi de crédit à celui-ci ou à un autre client,

**(vii)** the cashing of a cheque or the redemption of another negotiable instrument,

**(viii)** a reimbursement to a client of travel or entertainment expenses;

**(vii)** l'encaissement d'un chèque ou le rachat d'un autre titre négociable,

**(viii)** le remboursement à un client de frais de déplacement ou de représentation;

2023, c. 26

## Budget Implementation Act, 2023, No. 1

**299 Section 181 of the *Budget Implementation Act, 2023, No. 1* is amended by replacing the paragraph 7.1(1)(b) that it enacts with the following:**

**(b)** an order or regulation made under the *United Nations Act*;

**300 Subsection 204(2) of the Act is amended by replacing the subsection 81(2) that it enacts with the following:**

**Time limitation — eight years**

**(2)** Proceedings under paragraph 77.3(3)(a) or 77.4(a) may be instituted within, but not after, eight years after the time when the subject-matter of the proceedings arose.

### Consequential Amendments

R.S., c. 1 (2nd Supp.)

## Customs Act

**301 (1) Paragraph 107(3)(a) of the *Customs Act* is replaced by the following:**

**(a)** for the purposes of administering or enforcing this Act, the *Customs Tariff*, the *Excise Act, 2001*, the *Special Imports Measures Act* or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or for any purpose set out in subsection (4), (5) or (7);

**(2) The portion of paragraph 107(4)(b) of the Act before subparagraph (i) is replaced by the following:**

**(b)** will be used solely in or to prepare for any legal proceedings relating to the administration or enforcement of an international agreement relating to trade, this Act, the *Customs Tariff*, the *Special Import Measures Act*, any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, before

2023, ch. 26

## Loi nº 1 d'exécution du budget de 2023

**299 L'article 181 de la *Loi nº 1 d'exécution du budget de 2023* est remplacé par remplacement de l'alinéa 7.1(1)b) qui y est édicté par ce qui suit :**

**b)** d'un décret ou d'un règlement pris en vertu de la *Loi sur les Nations Unies*;

**300 Le paragraphe 204(2) de la même loi est modifié par remplacement du paragraphe 81(2) qui y est édicté par ce qui suit :**

**Prescription : huit ans**

**(2)** Les poursuites fondées sur les alinéas 77.3(3)a) ou 77.4a) se prescrivent par huit ans à compter du fait en cause.

### Modifications corrélatives

L.R., ch. 1 (2e suppl.)

## Loi sur les douanes

**301 (1) L'alinéa 107(3)a) de la *Loi sur les douanes* est remplacé par ce qui suit :**

**a)** pour l'application ou l'exécution de la présente loi, du *Tarif des douanes*, de la *Loi de 2001 sur l'accise*, de la *Loi sur les mesures spéciales d'importation* ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* ou à toute autre fin mentionnée aux paragraphes (4), (5) ou (7);

**(2) Le passage de l'alinéa 107(4)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :**

**b)** le renseignement sera utilisé uniquement pour les besoins d'une instance judiciaire engagée devant les institutions ci-après, relativement à l'application ou à l'exécution d'un accord commercial international, de la présente loi, du *Tarif des douanes*, de la *Loi sur les mesures spéciales d'importation* ou de toute autre loi fédérale ou d'une province prescrivant l'imposition ou le prélèvement d'une taxe ou de droits, ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la*

**(3) Paragraph 107(4)(c) of the Act is replaced by the following:**

**(c)** may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act*, the *Special Import Measures Act* or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* by an official of the Agency;

**(4) Paragraph 107(4)(f) of the Act is replaced by the following:**

**(f)** will be used solely for a purpose relating to the supervision, evaluation or discipline of a specified person by His Majesty in right of Canada in respect of a period during which the person was employed or engaged by, or occupied a position of responsibility in the service of, His Majesty in right of Canada to administer or enforce this Act, the *Customs Tariff*, the *Special Import Measures Act* or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to the extent that the information is relevant for that purpose;

1993, c. 37

Seized Property Management Act

**302 (1) Paragraph 4(1)(b.1) of the *Seized Property Management Act* is replaced by the following:**

**(b.1)** forfeited under subsection 14(5) or 39.03(5), seized under subsection 18(1) or 39.06(1) or paid under subsection 18(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

**(2) Paragraph 4(1)(b.3) of the Act is replaced by the following:**

**(b.3)** if the Minister agrees to be responsible for its custody and management, forfeited under any Act of Parliament, other than under subsection 14(5) or 39.03(5) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or subparagraph

*criminalité et le financement des activités terroristes*, ou pour préparer une telle instance :

**(3) L'alinéa 107(4)c) de la même loi est remplacé par ce qui suit :**

**c)** le renseignement peut raisonnablement être considéré comme nécessaire uniquement à l'application ou à l'exécution de la présente loi, du *Tarif des douanes*, de la *Loi sur l'accise*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les licences d'exportation et d'importation*, de la *Loi sur l'immigration et la protection des réfugiés*, de la *Loi sur les mesures spéciales d'importation* ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* par un fonctionnaire de l'Agence;

**(4) L'alinéa 107(4)f) de la même loi est remplacé par ce qui suit :**

**f)** le renseignement ne sera utilisé qu'à une fin liée à la surveillance ou à l'évaluation d'une personne déterminée, ou à des mesures disciplinaires prises à son endroit, par Sa Majesté du chef du Canada relativement à une période au cours de laquelle cette personne était soit employée par Sa Majesté du chef du Canada, soit engagée par elle ou occupait une fonction de responsabilité à son service, pour l'application ou l'exécution de la présente loi, du *Tarif des douanes*, de la *Loi sur les mesures spéciales d'importation* ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*, dans la mesure où le renseignement se rapporte à cette fin;

1993, ch. 37

Loi sur l'administration des biens saisis

**302 (1) L'alinéa 4(1)b.1) de la *Loi sur l'administration des biens saisis* est remplacé par ce qui suit :**

**b.1)** les biens confisqués, saisis ou payés respectivement aux termes des paragraphes 14(5) ou 39.03(5), 18(1) ou 39.06(1) ou 18(2) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*;

**(2) L'alinéa 4(1)b.3) de la même loi est remplacé par ce qui suit :**

**b.3)** si le ministre accepte d'être responsable de leur garde et de leur administration, les biens soit confisqués en vertu d'une loi fédérale, à l'exception de ceux confisqués au titre des paragraphes 14(5) ou 39.03(5) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* ou du

715.34(1)(e)(i) of the *Criminal Code* or forfeited under any Act of the legislature of a province; or

sous-alinéa 715.34(1)e)(i) du *Code criminel*, soit confisqués en vertu d'une loi provinciale;

SOR/2001-317; SOR/2002-185, s. 1

## Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations

**303 Section 9 of the *Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations* is replaced by the following:**

**9 (1)** Subject to section 11, a report made under section 7 of the Act concerning a financial transaction or attempted financial transaction in respect of which there are reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence shall contain the information set out in Schedule 1.

**(2)** The person or entity shall send the report to the Centre as soon as practicable after they have taken measures that enable them to establish that there are reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence.

**304 Item 1 of Part G of Schedule 1 to the Regulations is replaced by the following:**

| | | |
|---|---|---|
| 1* | Detailed description of grounds to suspect that transaction or attempted transaction is related to the commission or attempted commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence | |

DORS/2001-317; DORS/2002-185, art. 1

## Règlement sur la déclaration des opérations douteuses — recyclage des produits de la criminalité et financement des activités terroristes

**303 L'article 9 du *Règlement sur la déclaration des opérations douteuses — recyclage des produits de la criminalité et financement des activités terroristes* est remplacé par ce qui suit :**

**9 (1)** Sous réserve de l'article 11, la déclaration faite en application de l'article 7 de la Loi relativement à une opération ou tentative d'opération financière à l'égard de laquelle il y a des motifs raisonnables de soupçonner qu'elle est liée à la perpétration d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions doit contenir les renseignements figurant à l'annexe 1.

**(2)** La déclaration est transmise au Centre aussitôt que possible après que la personne ou entité a pris les mesures qui lui ont permis d'établir qu'il existe des motifs raisonnables de soupçonner que l'opération ou la tentative d'opération est liée à la perpétration d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions.

**304 L'article 1 de la partie G de l'annexe 1 du même règlement est remplacé par ce qui suit :**

| | | |
|---|---|---|
| 1* | Un énoncé détaillé des motifs de soupçonner que l'opération ou la tentative d'opération est liée à la perpétration ou à la tentative de perpétration d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions | |

## Coordinating Amendments

**2023, c. 26**

**305 (1) In subsections (2) and (3), *other Act* means the *Budget Implementation Act, 2023, No. 1*.**

**(2) If section 181 of the other Act comes into force before section 299 of this Act, then**

**(a) that section 299 is deemed never to have come into force and is repealed; and**

## Dispositions de coordination

**2023, ch. 26**

**305 (1) Aux paragraphes (2) et (3), *autre loi* s'entend de la *Loi nº 1 d'exécution du budget de 2023*.**

**(2) Si l'article 181 de l'autre loi entre en vigueur avant l'article 299 de la présente loi :**

**a) cet article 299 est réputé ne pas être entré en vigueur et est abrogé;**

**(b) paragraph 7.1(1)(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is replaced by the following:**

**(b)** an order or regulation made under the *United Nations Act*;

**(3) If section 181 of the other Act comes into force on the same day as section 299 of this Act, then that section 299 is deemed to have come into force before that section 181.**

## Coming into Force

### Order in council

**306 (1) Subsection 278(1) and sections 285, 296, 297, 301 and 302 come into force on a day to be fixed by order of the Governor in Council.**

### Order in council

**(2) Subsection 278(3) and section 279 come into force on a day to be fixed by order of the Governor in Council.**

### 60 days after royal assent

**(3) Sections 280, 303 and 304 come into force on the 60th day after the day on which this Act receives royal assent.**

## SUBDIVISION B

R.S., c. C-46

# Criminal Code

## Amendments to the Act

**307 Subsection 83.13(11) of the *Criminal Code* is replaced by the following:**

### Procedure

**(11)** Subsection 462.32(4), sections 462.34 to 462.35 and 462.4, subsection 487(3) and section 488 apply, with any modifications that the circumstances require, to a warrant issued under paragraph (1)(a). Any peace officer who executes the warrant must have authority to act as a peace officer in the place where it is executed.

**308 Section 462.31 of the Act is amended by adding the following after subsection (1):**

**b) l'alinéa 7.1(1)b) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* est remplacé par ce qui suit :**

**b)** d'un décret ou d'un règlement pris en vertu de la *Loi sur les Nations Unies*;

**(3) Si l'entrée en vigueur de l'article 181 de l'autre loi et celle de l'article 299 de la présente loi sont concomitantes, cet article 299 est réputé être entré en vigueur avant cet article 181.**

## Entrée en vigueur

### Décret

**306 (1) Le paragraphe 278(1) et les articles 285, 296, 297, 301 et 302 entrent en vigueur à la date fixée par décret.**

### Décret

**(2) Le paragraphe 278(3) et l'article 279 entrent en vigueur à la date fixée par décret.**

### Soixante jours après la sanction

**(3) Les articles 280, 303 et 304 entrent en vigueur le soixantième jour suivant la date de sanction de la présente loi.**

## SOUS-SECTION B

L.R., ch. C-46

# Code criminel

## Modification de la loi

**307 Le paragraphe 83.13(11) du *Code criminel* est remplacé par ce qui suit :**

### Dispositions applicables

**(11)** Le paragraphe 462.32(4), les articles 462.34 à 462.35 et 462.4, le paragraphe 487(3) et l'article 488 s'appliquent, avec les adaptations nécessaires, au mandat délivré en vertu de l'alinéa (1)a). Tout agent de la paix qui exécute le mandat doit être habilité à agir à ce titre dans le lieu où celui-ci est exécuté.

**308 L'article 462.31 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Prosecution**

**(1.1)** Subject to subsection (1.3), in a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the designated offence.

**Inference**

**(1.2)** Subject to subsection (1.3), the court may infer that an accused had the knowledge or belief or demonstrated the recklessness referred to in subsection (1) if it is satisfied, given the circumstances of the offence, that the manner in which the accused dealt with the property or its proceeds is markedly unusual or the accused's dealings are inconsistent with lawful activities typical of the sector in which they take place, including business activities.

**Exception**

**(1.3)** Subsections (1.1) and (1.2) do not apply in cases where the accused is also charged with the designated offence.

**309 (1) Subsection 462.32(1) of the Act is replaced by the following:**

**Special search warrant**

**462.32 (1)** Subject to subsection (3), if a judge, on application of the Attorney General, is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in any building, receptacle or place any property that is proceeds of crime, the judge may issue a warrant authorizing a person named in the warrant or a peace officer to

**(a)** search the building, receptacle or place for that property; and

**(b)** seize that property and any other property that that person or peace officer believes, on reasonable grounds, is proceeds of crime.

**(2) Section 462.32 of the Act is amended by adding the following after subsection (2):**

**Conditions**

**(2.01)** A warrant issued under subsection (1) may be subject to any reasonable conditions that the judge thinks fit.

**Poursuite**

**(1.1)** Sous réserve du paragraphe (1.3), dans une poursuite pour l'infraction prévue au paragraphe (1), le poursuivant n'a pas à établir que l'accusé connaissait ou croyait connaître la nature exacte de l'infraction désignée, ou ne s'en souciait pas.

**Déduction**

**(1.2)** Sous réserve du paragraphe (1.3), le tribunal peut déduire que l'accusé avait la connaissance ou la croyance visée au paragraphe (1) ou a fait preuve de l'insouciance visée à ce paragraphe s'il est convaincu, compte tenu des circonstances de l'infraction, que la manière dont l'accusé a effectué l'opération à l'égard des biens ou de leurs produits est nettement inhabituelle ou que l'opération est incompatible avec les activités légitimes typiques du domaine dans lequel elles sont exercées, notamment en matière commerciale.

**Exception**

**(1.3)** Les paragraphes (1.1) et (1.2) ne s'appliquent pas lorsque l'accusé est aussi inculpé de l'infraction désignée.

**309 (1) Le paragraphe 462.32(1) de la même loi est remplacé par ce qui suit :**

**Mandat spécial**

**462.32 (1)** Sous réserve du paragraphe (3) et à la demande du procureur général, le juge qui est convaincu, à la lumière des renseignements qui lui sont présentés sous serment selon la formule 1, qu'il existe des motifs raisonnables de croire que se trouvent dans un bâtiment, contenant ou lieu des biens qui constituent des produits de la criminalité peut décerner un mandat autorisant la personne qui y est nommée ou un agent de la paix :

**a)** d'une part, à perquisitionner dans le bâtiment, contenant ou lieu;

**b)** d'autre part, à saisir les biens en question ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire qu'il constitue des produits de la criminalité.

**(2) L'article 462.32 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Conditions**

**(2.01)** Le mandat décerné en vertu du paragraphe (1) peut être assorti des conditions raisonnables que le juge estime indiquées.

**(3) Subsection 462.32(6) of the Act is repealed.**

**310 (1) The portion of subsection 462.321(1) of the Act before paragraph (a) is replaced by the following:**

**Special warrant — digital assets**

**462.321 (1)** If, on an application of the Attorney General, a judge is satisfied by information on oath in Form 1, varied to suit the case, that there are reasonable grounds to believe that any digital assets, including virtual currency, are proceeds of crime, the judge may issue a warrant authorizing a person named in the warrant or a peace officer to

**(2) Paragraph 462.321(1)(b) of the Act is replaced by the following:**

**(b)** seize — including by taking control of the right to access — the digital assets, as well as any other digital assets found during that search that the person or peace officer believes, on reasonable grounds, are proceeds of crime.

**(3) Subsection 462.321(2) of the Act is replaced by the following:**

**Conditions**

**(2)** A warrant issued under subsection (1) may be subject to any reasonable conditions that the judge thinks fit.

**(4) Section 462.321 of the Act is amended by adding the following after subsection (3):**

**Execution in Canada**

**(3.1)** A warrant issued under subsection (1) may be executed at any place in Canada. Any peace officer who executes the warrant must have authority to act as a peace officer in the place where it is executed.

**(5) Subsection 462.321(7) of the Act is repealed.**

**311 (1) Paragraph 462.33(2)(c) of the Act is replaced by the following:**

**(c)** the grounds for the belief that the property is proceeds of crime;

**(2) Subsection 462.33(3) of the Act is replaced by the following:**

**(3) Le paragraphe 462.32(6) de la même loi est abrogé.**

**310 (1) Le passage du paragraphe 462.321(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Mandat spécial : actifs numériques**

**462.321 (1)** À la demande du procureur général, le juge qui est convaincu, à la lumière des renseignements qui lui sont présentés sous serment selon la formule 1 — ajustée selon les circonstances —, qu'il existe des motifs raisonnables de croire que des actifs numériques, notamment de la monnaie virtuelle, constituent des produits de la criminalité peut décerner un mandat autorisant la personne qui y est nommée ou un agent de la paix :

**(2) L'alinéa 462.321(1)b) de la même loi est remplacé par ce qui suit :**

**b)** d'autre part, à saisir, notamment en prenant le contrôle des droits d'accès, les actifs numériques trouvés au cours de la recherche de même que tout autre actif numérique trouvé ainsi dont cette personne ou l'agent a des motifs raisonnables de croire qu'il constitue des produits de la criminalité.

**(3) Le paragraphe 462.321(2) de la même loi est remplacé par ce qui suit :**

**Conditions**

**(2)** Le mandat décerné en vertu du paragraphe (1) peut être assorti des conditions raisonnables que le juge estime indiquées.

**(4) L'article 462.321 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :**

**Exécution au Canada**

**(3.1)** Le mandat décerné en vertu du paragraphe (1) peut être exécuté en tout lieu au Canada. Tout agent de la paix qui exécute le mandat doit être habilité à agir à ce titre dans le lieu où celui-ci est exécuté.

**(5) Le paragraphe 462.321(7) de la même loi est abrogé.**

**311 (1) L'alinéa 462.33(2)c) de la même loi est remplacé par ce qui suit :**

**c)** exposé des motifs de croire que le bien visé constitue des produits de la criminalité;

**(2) Le paragraphe 462.33(3) de la même loi est remplacé par ce qui suit :**

#### Restraint order

**(3)** A judge who hears an application for a restraint order made under subsection (1) may, if the judge is satisfied that there are reasonable grounds to believe that there exists any property that is proceeds of crime, make an order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in the manner that may be specified in the order.

**(3) Subsection 462.33(7) of the Act is repealed.**

**312 (1) Paragraph 487.018(1)(a) of the Act is replaced by the following:**

**(a)** the account number of a person named in the order or the name of a person whose account number is specified in the order, as well as, in the case of digital assets, including virtual currency, the name and account number of a person whose identifier associated with digital assets is specified in the order;

**(2) The portion of subsection 487.018(2) of the Act before paragraph (b) is replaced by the following:**

#### Identification of person

**(2)** For the purpose of confirming the identity of a person who is named or whose account number or identifier associated with digital assets is specified in the order, the order may also require the institution, person or entity to prepare and produce a document setting out the following data that is in their possession or control:

**(a)** the date of birth of a person who is named or whose account number or identifier associated with digital assets is specified in the order;

**313 Form 1 of Part XXVIII of the Act is amended by replacing the references after the heading "FORM 1" with the following:**

(Sections 320.29, 462.32, 462.321 and 487)

## Consequential Amendments

1993, c. 37

## Seized Property Management Act

**314 Paragraph 13(3)(b) of the *Seized Property Management Act* is repealed.**

**315 Section 16 of the Act is replaced by the following:**

#### Ordonnance de blocage

**(3)** Le juge saisi de la demande peut rendre une ordonnance de blocage s'il est convaincu qu'il existe des motifs raisonnables de croire qu'existent des biens qui constituent des produits de la criminalité; l'ordonnance prévoit qu'il est interdit à toute personne de se départir des biens mentionnés dans l'ordonnance ou d'effectuer des opérations sur les droits qu'elle détient sur ceux-ci, sauf dans la mesure où l'ordonnance le prévoit.

**(3) Le paragraphe 462.33(7) de la même loi est abrogé.**

**312 (1) L'alinéa 487.018(1)a) de la même loi est remplacé par ce qui suit :**

**a)** le numéro de compte de la personne nommée dans l'ordonnance ou le nom de celle dont le numéro de compte y est mentionné ainsi que, dans le cas d'actifs numériques, notamment de monnaie virtuelle, le nom et le numéro de compte de la personne dont l'identifiant associé aux actifs numériques y est mentionné;

**(2) Le passage du paragraphe 487.018(2) de la même loi précédant l'alinéa b) est remplacé par ce qui suit :**

#### Identification d'une personne

**(2)** Afin que l'identité de la personne qui y est nommée ou de celle dont le numéro de compte ou l'identifiant associé aux actifs numériques y est mentionné puisse être confirmée, l'ordonnance peut aussi exiger que l'institution financière, la personne ou l'entité établisse et communique un document énonçant les données ci-après qui sont en sa possession ou à sa disposition :

**a)** la date de naissance de la personne qui y est nommée ou dont le numéro de compte ou l'identifiant associé aux actifs numériques y est mentionné;

**313 Les renvois qui suivent le titre « FORMULE 1 », à la formule 1 de la partie XXVIII de la même loi, sont remplacés par ce qui suit :**

(articles 320.29, 462.32, 462.321 et 487)

## Modifications corrélatives

1993, ch. 37

## Loi sur l'administration des biens saisis

**314 L'alinéa 13(3)b) de la *Loi sur l'administration des biens saisis* est abrogé.**

**315 L'article 16 de la même loi est remplacé par ce qui suit :**

**Credit of excess to account**

**16** At the prescribed times, all amounts credited to the Proceeds Account that are not shared under sections 10 and 11, less the amounts that are reserved for future losses and for ongoing expenses, shall be credited to the prescribed account in the accounts of Canada.

SOR/95-76

Forfeited Property Sharing Regulations

**316 Subparagraph 5(b)(ii) of the *Forfeited Property Sharing Regulations* is repealed.**

Coming into Force

**90 days after royal assent**

**317 This Subdivision comes into force on the 90th day after the day on which this Act receives royal assent.**

## DIVISION 9

R.S., c. F-8; 1995, c. 17, s. 45

# Federal-Provincial Fiscal Arrangements Act

## Amendment to the Act

**318 Section 42 of the *Federal-Provincial Fiscal Arrangements Act* is replaced by the following:**

**Payments under Parts I, I.1, II and V.1**

**42** The Minister shall publish the following information on a Government of Canada website as soon as feasible after the payment of an amount under Part I, I.1, II or V.1:

**(a)** the amount;

**(b)** the name of the province to which the payment was made; and

**(c)** the date of the payment.

**Attribution des sommes non partagées**

**16** Aux moments fixés par règlement, les sommes portées au crédit du compte des biens saisis qui n'ont pas été partagées conformément aux articles 10 et 11, desquelles sont soustraites les sommes réservées aux pertes anticipées et aux dépenses de fonctionnement, sont portées au crédit du compte du Canada désigné par règlement.

DORS/95-76

Règlement sur le partage du produit de l'aliénation des biens confisqués

**316 Le sous-alinéa 5b)(ii) du *Règlement sur le partage du produit de l'aliénation des biens confisqués* est abrogé.**

Entrée en vigueur

**Quatre-vingt-dix jours après la sanction**

**317 La présente sous-section entre en vigueur le quatre-vingt-dixième jour suivant la date de sanction de la présente loi.**

## SECTION 9

L.R., ch. F-8; 1995, ch. 17, art. 45

# Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces

## Modification de la loi

**318 L'article 42 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* est remplacé par ce qui suit :**

**Versements de sommes : parties I, I.1, II et V.1**

**42** Dès que possible après le versement de toute somme sous le régime des parties I, I.1, II ou V.1, le ministre publie les renseignements ci-après sur un site Internet du gouvernement du Canada :

**a)** le montant du versement;

**b)** le nom de la province à laquelle le versement a été fait;

**c)** la date du versement.

## Coming into Force

**June 22, 2023**

**319 Section 318 is deemed to have come into force on June 22, 2023.**

## DIVISION 10

1999, c. 34

# Public Sector Pension Investment Board Act

**320 (1) Subsection 6(1) of the *Public Sector Pension Investment Board Act* is replaced by the following:**

**Board of directors**

**6 (1)** The Board shall be managed by a board of 13 directors, including the Chairperson.

**(2) Subsection 6(2) of the Act is amended by adding the following after paragraph (g):**

**(g.1)** a person who is a member of an advisory committee established under section 41 of the *Public Service Superannuation Act*, section 49.1 of the *Canadian Forces Superannuation Act* or section 25.1 of the *Royal Canadian Mounted Police Superannuation Act*;

**321 Section 9 of the Act is amended by adding the following after subsection (2):**

**Recommendations for certain directors**

**(3)** For two of the directors, the Minister's recommendation under subsection (1) shall be made from among the candidates who are included on the list in accordance with subsection 10(6).

**322 Section 10 of the Act is amended by adding the following after subsection (5):**

**Inclusion of certain candidates**

**(6)** When including a candidate who the Minister may recommend under subsection 9(3) on a list of qualified candidates for proposed appointment as directors, the nominating committee shall consult the portion of the National Joint Council of the Public Service that represents employees and shall have regard to any factors for

## Entrée en vigueur

**22 juin 2023**

**319 L'article 318 est réputé être entré en vigueur le 22 juin 2023.**

## SECTION 10

1999, ch. 34

# Loi sur l'Office d'investissement des régimes de pensions du secteur public

**320 (1) Le paragraphe 6(1) de la *Loi sur l'Office d'investissement des régimes de pensions du secteur public* est remplacé par ce qui suit :**

**Conseil d'administration**

**6 (1)** Le conseil d'administration de l'Office se compose de treize administrateurs, dont le président.

**(2) Le paragraphe 6(2) de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :**

**g.1)** qui est membre d'un comité consultatif constitué au titre de l'article 41 de la *Loi sur la pension de la fonction publique*, de l'article 49.1 de la *Loi sur la pension de retraite des Forces canadiennes* ou de l'article 25.1 de la *Loi sur la pension de retraite de la Gendarmerie royale du Canada*;

**321 L'article 9 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :**

**Recommandation concernant certains administrateurs**

**(3)** En ce qui concerne deux des administrateurs, le ministre ne peut recommander que des candidats qui sont choisis conformément au paragraphe 10(6) pour figurer sur la liste.

**322 L'article 10 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :**

**Choix des candidats**

**(6)** Lorsque, dans le cadre de l'établissement de la liste, il choisit des candidats pouvant être recommandés par le ministre conformément au paragraphe 9(3), le comité consulte les représentants des salariés au sein du Conseil national mixte de la fonction publique et tient compte de tout facteur que ceux-ci lui fournissent.

consideration provided by that portion of the National Joint Council.

**DIVISION 11**

# Department of Housing, Infrastructure and Communities Act

## Enactment of Act

**Enactment**

**323 The *Department of Housing, Infrastructure and Communities Act* is enacted as follows:**

An Act to establish the Department of Housing, Infrastructure and Communities

**Preamble**

Whereas public infrastructure and housing are essential for communities to be complete, inclusive and environmentally sustainable;

Whereas these types of communities foster a stronger national economy in which the people of Canada can prosper and thrive;

Whereas advancing public infrastructure and housing outcomes is best achieved through cooperation between governments as well as the meaningful involvement of local communities;

Whereas effective support for infrastructure plays a key role in improving housing outcomes;

And whereas promoting the use of innovative financial tools helps attract investment from the private sector and institutional investors in public infrastructure projects;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

# Short Title

**Short title**

**1** This Act may be cited as the *Department of Housing, Infrastructure and Communities Act*.

**SECTION 11**

# Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités

## Édiction de la loi

**Édiction**

**323 Est édictée la *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*, dont le texte suit :**

Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités

**Préambule**

Attendu :

que les infrastructures publiques et le logement revêtent un caractère essentiel pour que les collectivités soient complètes, englobantes et durables du point de vue de l'environnement;

que de telles collectivités renforcent l'économie nationale, ce qui permet à la population du Canada de prospérer et de s'épanouir;

que la meilleure façon d'améliorer la situation en matière d'infrastructure publique et de logement est de faire en sorte que les gouvernements collaborent entre eux tout en assurant une participation significative des collectivités locales;

que le soutien efficace des infrastructures joue un rôle clé dans l'amélioration de la situation en matière de logement;

qu'une approche qui préconise des véhicules financiers innovateurs permet d'attirer les investissements du secteur privé et des investisseurs institutionnels dans les projets d'infrastructures publiques,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

# Titre abrégé

**Titre abrégé**

**1** *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*.

# Definition

**Definition of *Department***

**2** In this Act, ***Department*** means the department established under section 3.

# Department of Housing, Infrastructure and Communities

**Department established**

**3** A department of the Government of Canada, called the Department of Housing, Infrastructure and Communities, is established and is to be presided over by the Minister of Infrastructure and Communities.

**Deputy Minister**

**4** The Governor in Council may appoint a Deputy Minister of Housing, Infrastructure and Communities to hold office during pleasure and to be the deputy head of the Department.

# Minister of Infrastructure and Communities

**Minister of Infrastructure and Communities**

**5** The Minister of Infrastructure and Communities, appointed by commission under the Great Seal, holds office during pleasure and has the management and direction of the Department.

**Powers, duties and functions**

**6 (1)** The powers, duties and functions of the Minister of Infrastructure and Communities extend to and include all matters relating to public infrastructure over which Parliament has jurisdiction and that are not by law assigned to any other department, board or agency of the Government of Canada.

**Particulars**

**(2)** Without restricting the generality of subsection (1), the Minister of Infrastructure and Communities' duties and functions include supporting and promoting infrastructure projects and initiatives that are in the public interest in order to foster the prosperity, inclusivity and environmental sustainability of communities.

# Définition

**Définition de *ministère***

**2** Dans la présente loi, ***ministère*** s'entend du ministère constitué par l'article 3.

# Ministère du Logement, de l'Infrastructure et des Collectivités

**Constitution**

**3** Est constitué le ministère du Logement, de l'Infrastructure et des Collectivités, placé sous l'autorité du ministre de l'Infrastructure et des Collectivités.

**Sous-ministre**

**4** Le gouverneur en conseil peut nommer, à titre amovible, un sous-ministre du Logement, de l'Infrastructure et des Collectivités; celui-ci est l'administrateur général du ministère.

# Ministre de l'Infrastructure et des Collectivités

**Ministre de l'Infrastructure et des Collectivités**

**5** Le ministre de l'Infrastructure et des Collectivités, nommé par commission sous le grand sceau, occupe sa charge à titre amovible et assure la direction et la gestion du ministère.

**Attributions**

**6 (1)** Les attributions du ministre de l'Infrastructure et des Collectivités s'étendent d'une façon générale à tous les domaines de compétence du Parlement ayant trait à l'infrastructure publique non attribués de droit à d'autres ministères ou organismes fédéraux.

**Précisions**

**(2)** Le ministre de l'Infrastructure et des Collectivités est notamment chargé de soutenir des projets et initiatives en infrastructure qui sont dans l'intérêt du public et de promouvoir de tels projets et initiatives afin de favoriser la prospérité des collectivités, leur caractère englobant et leur durabilité du point de vue de l'environnement.

# Minister of Housing

### Appointment

**7** A Minister of Housing may be appointed by commission under the Great Seal to hold office during pleasure.

### Powers, duties and functions

**8 (1)** The powers, duties and functions of the Minister of Housing extend to and include all matters relating to housing and the reduction and prevention of homelessness over which Parliament has jurisdiction and that are not by law assigned to any other Minister, department, board or agency of the Government of Canada.

### Particulars

**(2)** Without restricting the generality of subsection (1), the Minister of Housing's duties and functions include advancing national housing priorities and reducing and preventing homelessness to foster the prosperity, inclusivity and environmental sustainability of communities.

### Use of departmental services and facilities

**9** The Minister of Housing is to make use of the Department services and facilities and may authorize employees of the Department to exercise any power or perform any duty or function of the Minister of Housing.

# Provisions Applicable to Both Ministers

### No Minister appointed

**10** If no Minister is appointed under section 7,

**(a)** the Minister of Infrastructure and Communities is to exercise the powers and perform the duties and functions of the Minister of Housing; and

**(b)** every reference to the Minister of Housing in any Act of Parliament or in any order, regulation or other instrument made under an Act of Parliament is to be read as a reference to the Minister of Infrastructure and Communities, unless the context otherwise requires.

### General duties and powers

**11** The Minister of Infrastructure and Communities or the Minister of Housing, as the case may be, may, in exercising their powers and performing their duties and functions,

**(a)** establish, recommend, coordinate and implement initiatives, programs and projects;

# Ministre du Logement

### Nomination

**7** Il peut être nommé à titre amovible, par commission sous le grand sceau, un ministre du Logement.

### Attributions

**8 (1)** Les attributions du ministre du Logement s'étendent d'une façon générale à tous les domaines de compétence du Parlement ayant trait au logement et à la lutte contre l'itinérance non attribués de droit à d'autres ministres, ministères ou organismes fédéraux.

### Précisions

**(2)** Le ministre du Logement est notamment chargé d'avancer les objectifs nationaux en matière de logement et de lutte contre l'itinérance afin de favoriser la prospérité des collectivités, leur caractère englobant et leur durabilité du point de vue de l'environnement.

### Utilisation des services et installations du ministère

**9** Le ministre du Logement fait usage des services et installations du ministère et peut autoriser les fonctionnaires du ministère à exercer ses attributions.

# Dispositions communes

### Absence de nomination

**10** Si aucune nomination n'est faite au titre de l'article 7 :

**a)** le ministre de l'Infrastructure et des Collectivités exerce les attributions du ministre du Logement;

**b)** la mention du ministre du Logement dans les lois fédérales ainsi que dans leurs textes d'application vaut mention, sauf indication contraire du contexte, du ministre de l'Infrastructure et des Collectivités.

### Exercice des attributions

**11** Dans l'exercice de ses attributions, le ministre de l'Infrastructure et des Collectivités ou le ministre du Logement, selon le cas, peut :

**a)** concevoir, recommander, coordonner et mettre en œuvre des initiatives, des programmes et des projets;

**(b)** make grants and contributions;

**(c)** collaborate or enter into agreements or other arrangements with other federal, provincial or territorial departments, boards and agencies, local governments, Indigenous bodies or any institution or person;

**(d)** undertake, coordinate and promote research activities; and

**(e)** subject to the *Statistics Act*, collect, analyze, interpret, publish or distribute information.

**b)** accorder des subventions et verser des contributions;

**c)** collaborer avec d'autres ministères ou organismes fédéraux, provinciaux ou territoriaux ainsi qu'avec toute administration locale, organisation autochtone, institution ou personne ou conclure des accords ou autres arrangements avec ceux-ci;

**d)** entreprendre, coordonner ou promouvoir des activités de recherche;

**e)** sous réserve de la *Loi sur la statistique*, recueillir, analyser, interpréter, publier ou diffuser tout renseignement.

#### Committees

**12 (1)** The Minister of Infrastructure and Communities or the Minister of Housing, as the case may be, may establish advisory and other committees and provide for their membership, duties, functions and operation.

#### Comités

**12 (1)** Le ministre de l'Infrastructure et des Collectivités ou le ministre du Logement, selon le cas, peut constituer des comités consultatifs ou autres, et en prévoir la composition, les attributions et le fonctionnement.

#### Remuneration

**(2)** The Minister of Infrastructure and Communities or the Minister of Housing, as the case may be, may fix the remuneration that members of a committee are to be paid for the performance of their duties and functions.

#### Rémunération

**(2)** Le ministre de l'Infrastructure et des Collectivités ou le ministre du Logement, selon le cas, peut fixer la rémunération que les membres des comités reçoivent pour l'exercice de leurs attributions.

#### Travel, living and other expenses

**(3)** Members of a committee are entitled to be reimbursed, in accordance with Treasury Board directives, for the travel, living and other expenses incurred for the performance of their duties and functions while absent from their ordinary place of residence.

#### Indemnités

**(3)** Ils sont indemnisés des frais de déplacement, de séjour et autres entraînés par l'exercice de leurs attributions hors de leur lieu de résidence habituel, conformément aux directives du Conseil du Trésor.

## Transitional Provisions

## Dispositions transitoires

#### Deputy Minister

**324 (1) Any person who, immediately before the day on which this section comes into force, holds the office of Deputy Head of Infrastructure and Communities, styled as Deputy Minister of Infrastructure and Communities, is deemed, as of that day, to have been appointed as the Deputy Minister referred to in section 4 of the *Department of Housing, Infrastructure and Communities Act*, as enacted by section 323.**

#### Sous-ministre

**324 (1) La personne occupant, à la date d'entrée en vigueur du présent article, la charge d'administrateur général de l'Infrastructure et des Collectivités portant le titre de sous-ministre de l'Infrastructure et des Collectivités est, à compter de cette date, réputée avoir été nommée sous-ministre en vertu de l'article 4 de la *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*, édictée par l'article 323.**

#### Persons who occupy a position

**(2) Nothing in the *Department of Housing, Infrastructure and Communities Act* is to be construed as affecting the status of any person who, immediately before the day on which this section comes into force, occupies or is assigned to a**

#### Titulaires d'un poste

**(2) La *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités* ne change rien à la situation des personnes qui, à la date d'entrée en vigueur du présent article, occupent un poste — ou y sont affectées — au sein du Bureau de**

**position in the Office of Infrastructure of Canada, except that, as of that day, the person occupies or is assigned to their position in the Department of Housing, Infrastructure and Communities.**

**Transfer of appropriations**

**325 Any amount that is appropriated by an Act of Parliament for the fiscal year in which this section comes into force to defray the expenditures of the public service of Canada within the Office of Infrastructure of Canada and that is unexpended on the day on which this section comes into force is deemed to be an amount appropriated to defray the expenditures of the public service of Canada within the Department of Housing, Infrastructure and Communities.**

**References**

**326 On the day on which this section comes into force, every reference to the Office of Infrastructure of Canada in any agreement, contract, instrument or act or other document is to be read as a reference to the Department of Housing, Infrastructure and Communities, unless the context requires otherwise.**

## Consequential Amendments

R.S., c. A-1

### Access to Information Act

**327 Schedule I to the *Access to Information Act* is amended by adding the following in alphabetical order under the heading "Departments and Ministries of State":**

Department of Housing, Infrastructure and Communities
*Ministère du Logement, de l'Infrastructure et des Collectivités*

**328 Schedule I to the Act is amended by striking out the following under the heading "Other Government Institutions":**

Office of Infrastructure of Canada
*Bureau de l'infrastructure du Canada*

R.S., c. F-11

### Financial Administration Act

**329 Schedule I to the *Financial Administration Act* is amended by adding the following in alphabetical order:**

**l'infrastructure du Canada, à la différence près que, à compter de cette date, elles occupent leur poste — ou y sont affectées — au sein du ministère du Logement, de l'Infrastructure et des Collectivités.**

**Transfert de crédits**

**325 Les sommes affectées — et non déboursées —, pour l'exercice en cours à la date d'entrée en vigueur du présent article, par toute loi de crédits, aux dépenses de l'administration publique fédérale à l'égard du Bureau de l'infrastructure du Canada sont, à compter de cette date, réputées être affectées aux dépenses de l'administration publique fédérale à l'égard du ministère du Logement, de l'Infrastructure et des Collectivités.**

**Mentions**

**326 Sauf indication contraire du contexte, à la date d'entrée en vigueur du présent article, dans les accords, contrats, actes ou autres documents, la mention du Bureau de l'infrastructure du Canada vaut mention du ministère du Logement, de l'Infrastructure et des Collectivités.**

## Modifications corrélatives

L.R., ch. A-1

### Loi sur l'accès à l'information

**327 L'annexe I de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Ministères et départements d'État », de ce qui suit :**

Ministère du Logement, de l'Infrastructure et des Collectivités
*Department of Housing, Infrastructure and Communities*

**328 L'annexe I de la même loi est modifiée par suppression, sous l'intertitre « Autres institutions fédérales », de ce qui suit :**

Bureau de l'infrastructure du Canada
*Office of Infrastructure of Canada*

L.R., ch. F-11

### Loi sur la gestion des finances publiques

**329 L'annexe I de la *Loi sur la gestion des finances publiques* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :**

Department of Housing, Infrastructure and Communities
*Ministère du Logement, de l'Infrastructure et des Collectivités*

**330 Schedule I.1 to the Act is amended by striking out, in column I, the reference to**

Office of Infrastructure of Canada
*Bureau de l'infrastructure du Canada*

**and the corresponding reference in column II to "Minister of Infrastructure and Communities".**

**331 Schedule IV to the Act is amended by striking out the following:**

Office of Infrastructure of Canada
*Bureau de l'infrastructure du Canada*

**332 Part I of Schedule VI to the Act is amended by adding the following in alphabetical order:**

Department of Housing, Infrastructure and Communities
*Ministère du Logement, de l'Infrastructure et des Collectivités*

**333 Part II of Schedule VI to the Act is amended by striking out, in column I, the reference to**

Office of Infrastructure of Canada
*Bureau de l'infrastructure du Canada*

**and the corresponding reference in column II to "Deputy Head".**

R.S., c. P-21

Privacy Act

**334 The schedule to the *Privacy Act* is amended by adding the following in alphabetical order under the heading "Departments and Ministries of State":**

Department of Housing, Infrastructure and Communities
*Ministère du Logement, de l'Infrastructure et des Collectivités*

**335 The schedule to the Act is amended by striking out the following under the heading "Other Government Institutions":**

Office of Infrastructure of Canada
*Bureau de l'infrastructure du Canada*

Ministère du Logement, de l'Infrastructure et des Collectivités
*Department of Housing, Infrastructure and Communities*

**330 L'annexe I.1 de la même loi est modifiée par suppression, dans la colonne I, de ce qui suit :**

Bureau de l'infrastructure du Canada
*Office of Infrastructure of Canada*

**ainsi que de la mention « Le ministre de l'Infrastructure et des Collectivités » dans la colonne II, en regard de ce secteur.**

**331 L'annexe IV de la même loi est modifiée par suppression de ce qui suit :**

Bureau de l'infrastructure du Canada
*Office of Infrastructure of Canada*

**332 La partie I de l'annexe VI de la même loi est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :**

Ministère du Logement, de l'Infrastructure et des Collectivités
*Department of Housing, Infrastructure and Communities*

**333 La partie II de l'annexe VI de la même loi est modifiée par suppression, dans la colonne I, de ce qui suit :**

Bureau de l'infrastructure du Canada
*Office of Infrastructure of Canada*

**ainsi que de la mention « Administrateur général » dans la colonne II, en regard de ce ministère.**

L.R., ch. P-21

Loi sur la protection des renseignements personnels

**334 L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Ministères et départements d'État », de ce qui suit :**

Ministère du Logement, de l'Infrastructure et des Collectivités
*Department of Housing, Infrastructure and Communities*

**335 L'annexe de la même loi est modifiée par suppression, sous l'intertitre « Autres institutions fédérales », de ce qui suit :**

Bureau de l'infrastructure du Canada
*Office of Infrastructure of Canada*

R.S., c. S-3

Salaries Act

**336 Subsection 4.1(3) of the *Salaries Act* is amended by adding the following after paragraph (z.25):**

**(z.26)** the Minister of Housing;

L.R., ch. S-3

Loi sur les traitements

**336 Le paragraphe 4.1(3) de la *Loi sur les traitements* est modifié par adjonction, après l'alinéa z.25), de ce qui suit :**

**z.26)** le ministre du Logement;

1991, c. 30

Public Sector Compensation Act

**337 Schedule I to the *Public Sector Compensation Act* is amended by adding the following in alphabetical order under the heading "Departments":**

Department of Housing, Infrastructure and Communities
*Ministère du Logement, de l'Infrastructure et des Collectivités*

1991, ch. 30

Loi sur la rémunération du secteur public

**337 L'annexe I de la *Loi sur la rémunération du secteur public* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Ministères », de ce qui suit :**

Ministère du Logement, de l'Infrastructure et des Collectivités
*Department of Housing, Infrastructure and Communities*

2011, c. 24

Keeping Canada's Economy and Jobs Growing Act

**338 Subsection 161(1) of the *Keeping Canada's Economy and Jobs Growing Act* is replaced by the following:**

**Maximum payment**

**161 (1) There may be paid out of the Consolidated Revenue Fund for each fiscal year beginning on or after April 1, 2014, on the requisition of the Minister of Infrastructure and Communities or of the Minister of Indigenous Services, in accordance with terms and conditions approved by the Treasury Board, a sum of not more than the amount determined in accordance with subsection (2) to provinces, territories, municipalities, municipal associations, provincial, territorial and municipal entities and First Nations for the purpose of municipal, regional and First Nations infrastructure.**

2011, ch. 24

Loi sur le soutien de la croissance de l'économie et de l'emploi au Canada

**338 Le paragraphe 161(1) de la *Loi sur le soutien de la croissance de l'économie et de l'emploi au Canada* est remplacé par ce qui suit :**

**Paiement maximal**

**161 (1) À la demande du ministre de l'Infrastructure et des Collectivités ou du ministre des Services aux Autochtones et aux conditions approuvées par le Conseil du Trésor, il peut être payé sur le Trésor aux provinces, territoires, municipalités et associations municipales, aux organismes provinciaux, territoriaux et municipaux et aux premières nations, pour l'exercice commençant le 1er avril 2014 et chacun des exercices suivants, une somme n'excédant pas celle déterminée conformément au paragraphe (2) pour les infrastructures des municipalités, des régions et des Premières Nations.**

2019, c. 29

National Housing Strategy Act

**339 Section 12 of the *National Housing Strategy Act* is replaced by the following:**

**Administrative support**

**12** The Minister is to provide the National Housing Council with any administrative services and facilities

2019, ch. 29

Loi sur la stratégie nationale sur le logement

**339 L'article 12 de la *Loi sur la stratégie nationale sur le logement* est remplacé par ce qui suit :**

**Soutien administratif**

**12** Le ministre fournit au Conseil national du logement les services administratifs et installations dont il a besoin pour exercer ses fonctions.

that are necessary to assist the Council in performing its duties and functions.

## Repeal

**Repeal**

**340 The *Canada Strategic Infrastructure Fund Act*, section 47 of chapter 9 of the Statutes of Canada, 2002, is repealed.**

## Coming into Force

**Second anniversary or order in council**

**341 (1) Section 339 comes into force on the second anniversary of the day on which this Act receives royal assent or on an earlier day to be fixed by order of the Governor in Council.**

**Order in council**

**(2) Section 340 comes into force on a day to be fixed by order of the Governor in Council.**

## Abrogation

**Abrogation**

**340 La *Loi sur le Fonds canadien sur l'infrastructure stratégique*, article 47 du chapitre 9 des Lois du Canada (2002), est abrogée.**

## Entrée en vigueur

**Deuxième anniversaire ou décret**

**341 (1) L'article 339 entre en vigueur au deuxième anniversaire de la sanction de la présente loi ou, si elle est antérieure, à la date fixée par décret.**

**Décret**

**(2) L'article 340 entre en vigueur à la date fixée par décret.**

**DIVISION 12**

# Measures Related to Placement or Arrival of Children

1996, c. 23

## Employment Insurance Act

### Amendments to the Act

**342 (1) Section 10 of the *Employment Insurance Act* is amended by adding the following after subsection (11):**

**Extension of benefit period — placement or arrival delayed**

**(11.1)** If the placement or arrival of the child or children referred to in subsection 22.1(1) is delayed, the benefit period is extended by the number of weeks during which the placement or arrival is delayed.

**(2) Paragraph 10(13.01)(c) of the Act is replaced by the following:**

**(c)** benefits were not paid for any reason mentioned in paragraph 12(3)(a), (a.1), (c), (d), (e) or (f).

**SECTION 12**

# Mesures relatives au placement ou à l'arrivée d'enfants

1996, ch. 23

## Loi sur l'assurance-emploi

### Modification de la loi

**342 (1) L'article 10 de la *Loi sur l'assurance-emploi* est modifié par adjonction, après le paragraphe (11), de ce qui suit :**

**Prolongation de la période de prestations : retard du placement ou de l'arrivée**

**(11.1)** Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe 22.1(1) est retardé, la période de prestations est prolongée du nombre de semaines que dure le retard.

**(2) Le paragraphe 10(13.01) de la même loi est remplacé par ce qui suit :**

**Prolongation de la période de prestations : raison mentionnée à l'alinéa 12(3)b)**

**(13.01)** Si, au cours de la période de prestations d'un prestataire, aucune prestation régulière ni aucune prestation pour les raisons mentionnées aux alinéas 12(3)a), a.1), c), d), e) ou f) ne lui a été versée et que des

prestations lui ont été versées pour la raison mentionnée à l'alinéa 12(3)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 12(3)b)(ii), la période de prestations est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

**343 (1) Subsection 12(3) of the Act is amended by adding the following after paragraph (a):**

**(a.1)** because the claimant is carrying out the responsibilities described in subsection 22.1(1) is 15;

**343 (1) Le paragraphe 12(3) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** dans le cas où le prestataire s'acquitte de toute obligation visée au paragraphe 22.1(1), quinze semaines;

**(2) Subsection 12(4) of the Act is amended by striking out "and" at the end of paragraph (a) and by adding the following after that paragraph:**

**(a.1)** for carrying out the responsibilities described in subsection 22.1(1) in relation to the placement of one or more children for the purpose of adoption as a result of a single placement or the arrival of one or more new-born children as a result of a single pregnancy is 15; and

**(2) Le paragraphe 12(4) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** dans le cas où le prestataire s'acquitte de toute obligation visée au paragraphe 22.1(1) relativement au placement d'un ou de plusieurs enfants en vue de leur adoption ou à l'arrivée d'un ou de plusieurs nouveaunés d'une même grossesse, pendant plus de quinze semaines;

**344 Subsection 18(2) of the Act is replaced by the following:**

**Exception**

**(2)** A claimant to whom benefits are payable under any of sections 22.1 to 23.3 is not disentitled under paragraph (1)(b) for failing to prove that they would have been available for work were it not for the illness, injury or quarantine.

**344 Le paragraphe 18(2) de la même loi est remplacé par ce qui suit :**

**Exception**

**(2)** Le prestataire à qui des prestations doivent être payées au titre de l'un des articles 22.1 à 23.3 n'est pas inadmissible au titre de l'alinéa (1)b) parce qu'il ne peut prouver qu'il aurait été disponible pour travailler n'eût été la maladie, la blessure ou la mise en quarantaine.

**345 The Act is amended by adding the following after section 22:**

**Benefit for responsibilities related to child's placement or arrival**

**22.1 (1)** Despite section 18, but subject to this section, benefits are payable to a major attachment claimant for carrying out responsibilities related to

**(a)** the placement with the claimant of one or more children for the purpose of adoption under the laws governing adoption in the province in which the claimant resides; or

**(b)** the arrival of one or more new-born children of the claimant into the claimant's care, in the case where the person who will be giving or gave birth to the child or children is not, or is not intended to be, a parent of the child or children.

**345 La même loi est modifiée par adjonction, après l'article 22, de ce qui suit :**

**Prestations : obligations relatives au placement ou à l'arrivée d'un enfant**

**22.1 (1)** Malgré l'article 18, mais sous réserve des autres dispositions du présent article, des prestations doivent être payées au prestataire de la première catégorie qui s'acquitte de toute obligation se rapportant :

**a)** soit au placement chez lui d'un ou de plusieurs enfants en vue de leur adoption en conformité avec les lois régissant l'adoption dans la province où il réside;

**b)** soit à l'arrivée chez lui de son ou de ses nouveaunés, dans le cas où la personne qui leur donnera naissance ou qui leur a donné naissance n'est pas — ou n'est pas censée être — l'un des parents.

**Weeks for which benefits may be paid**

**(2)** Subject to section 12, benefits under this section are payable for each week of unemployment in the period

**(a)** that begins the earlier of

**(i)** five weeks before the week in which the placement of the child or children with the claimant for the purpose of adoption is expected or the new-born child or children of the claimant are expected to arrive into the claimant's care, and

**(ii)** the week in which the child or children are actually placed with the claimant for the purpose of adoption or the new-born child or children of the claimant actually arrive into the claimant's care; and

**(b)** that ends 17 weeks after the week in which the child or children are actually placed with the claimant for the purpose of adoption or the new-born child or children of the claimant actually arrive into the claimant's care.

**Limitation — delay of placement or arrival**

**(3)** If the placement or arrival of the child or children referred to in subsection (1) is delayed, the period referred to in subsection (2) must not, subject to any extension under subsection (4), exceed 52 weeks after the week in which the placement or arrival was expected.

**Extension of period — children in hospital**

**(4)** If the child or children referred to in subsection (1) are hospitalized during the period that begins the week referred to in subparagraph (2)(a)(ii) and that ends 17 weeks after that week, the period referred to in subsection (2) is extended by the number of weeks during which the child or children are hospitalized.

**Limitation — children in hospital**

**(5)** The extended period shall end no later than 52 weeks after the week referred to in subparagraph (2)(a)(ii).

**Limitation**

**(6)** If benefits are payable to a claimant for the reasons set out in this section and any allowances, money or other benefits are payable to the claimant for the same reasons under a provincial law, the benefits payable to the claimant under this Act are to be reduced or eliminated as prescribed.

**Semaines pour lesquelles des prestations peuvent être payées**

**(2)** Sous réserve de l'article 12, les prestations prévues au présent article doivent être payées pour chaque semaine de chômage comprise dans la période qui :

**a)** commence :

**(i)** soit cinq semaines avant la semaine au cours de laquelle est prévu le placement du ou des enfants chez le prestataire en vue de leur adoption ou l'arrivée chez le prestataire de son ou de ses nouveau-nés,

**(ii)** soit, si elle est antérieure, la semaine au cours de laquelle le ou les enfants sont réellement placés chez le prestataire en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le prestataire;

**b)** se termine dix-sept semaines après la semaine au cours de laquelle le ou les enfants sont réellement placés chez le prestataire en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le prestataire.

**Restriction : retard dans le placement ou l'arrivée**

**(3)** Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe (1) est retardé, la période prévue au paragraphe (2) ne peut, sous réserve de toute prolongation au titre du paragraphe (4), excéder les cinquante-deux semaines qui suivent la semaine au cours de laquelle le placement ou l'arrivée était prévu.

**Prolongation de la période en cas d'hospitalisation des enfants**

**(4)** Si l'enfant ou les enfants visés au paragraphe (1) sont hospitalisés au cours de la période commençant la semaine visée au sous-alinéa (2)a)(ii) et se terminant dix-sept semaines plus tard, la période prévue au paragraphe (2) est prolongée du nombre de semaines que dure l'hospitalisation.

**Restriction : hospitalisation des enfants**

**(5)** La période prolongée au titre du paragraphe (4) ne peut excéder les cinquante-deux semaines qui suivent la semaine visée au sous-alinéa (2)a)(ii).

**Restriction**

**(6)** Si des prestations doivent être payées à un prestataire pour les raisons visées au présent article et que des allocations, des prestations ou d'autres sommes doivent lui être payées en vertu d'une loi provinciale pour les mêmes raisons, les prestations à payer au titre de la

**Application of section 18**

**(7)** For the purposes of section 13, the provisions of section 18 do not apply to the week that immediately precedes the period described in subsection (2).

**Division of weeks of benefits**

**(8)** If two major attachment claimants each make a claim for benefits under this section — or if one major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.041 — in respect of the same child or children, the weeks of benefits payable under this section, under section 152.041 or under both those sections may be divided between them up to a maximum of 15. If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules.

**Maximum number of weeks that can be divided**

**(9)** For greater certainty, if, in respect of the same child or children, a major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.041, the total number of weeks of benefits payable under this section and section 152.041 that may be divided between them may not exceed 15.

**Deferral of waiting period**

**(10)** A major attachment claimant who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period, otherwise than under this section, if

**(a)** the claimant has already made a claim for benefits under this section in respect of the same child or children and has served the waiting period;

**(b)** another major attachment claimant has made a claim for benefits under this section in respect of the same child or children and that other claimant has served or is serving their waiting period;

**(c)** another major attachment claimant is making a claim for benefits under this section in respect of the same child or children at the same time as the claimant and that other claimant elects to serve the waiting period; or

présente loi sont réduites ou supprimées de la manière prévue par règlement.

**Application de l'article 18**

**(7)** Pour l'application de l'article 13, l'article 18 ne s'applique pas à la semaine qui précède la période visée au paragraphe (2).

**Partage des semaines de prestations**

**(8)** Si deux prestataires de la première catégorie présentent chacun une demande de prestations au titre du présent article — ou si un prestataire de la première catégorie présente une telle demande et qu'un particulier présente une demande de prestations au titre de l'article 152.041 — relativement au même enfant ou aux mêmes enfants, les semaines de prestations qui doivent être payées au titre du présent article, de l'article 152.041 ou de ces deux articles peuvent être partagées entre eux, jusqu'à concurrence de quinze semaines. S'ils n'arrivent pas à s'entendre, le partage des semaines de prestations doit être effectué conformément aux règles prévues par règlement.

**Nombre maximal de semaines pouvant être partagées**

**(9)** Il est entendu que, dans le cas où un prestataire de la première catégorie présente une demande de prestations au titre du présent article et où un particulier présente une demande de prestations au titre de l'article 152.041 relativement au même enfant ou aux mêmes enfants, le nombre total de semaines de prestations qui doivent être payées au titre du présent article et de l'article 152.041 qui peuvent être partagées entre eux ne peut dépasser quinze semaines.

**Report du délai de carence**

**(10)** Le prestataire de la première catégorie qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article si, selon le cas :

**a)** il a déjà présenté une demande de prestations au titre du présent article relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

**b)** un autre prestataire de la première catégorie a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

**c)** un autre prestataire de la première catégorie présente une telle demande relativement au même enfant

**(d)** the claimant or another major attachment claimant meets the prescribed requirements.

**Exception**

**(11)** If a major attachment claimant makes a claim under this section and an individual makes a claim under section 152.041 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

**(a)** if the major attachment claimant is not the one who served or elected to serve the waiting period, that claimant is not required to serve a waiting period; or

**(b)** if the individual is not the one who served or elected to serve the waiting period, that claimant may have their waiting period deferred in accordance with section 152.041.

**346 (1) Paragraph 23(3.21)(c) of the Act is replaced by the following:**

**(c)** benefits were not paid for any reason mentioned in paragraph 12(3)(a), (a.1), (c), (d), (e) or (f).

**(2) The portion of subsection 23(5) of the Act before paragraph (d) is replaced by the following:**

**Deferral of waiting period**

**(5)** A major attachment claimant who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period, otherwise than under this section or section 22 or 22.1, if

**(a)** the claimant has already made a claim for benefits under this section or section 22 or 22.1 in respect of the same child or children and has served the waiting period;

ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

**d)** lui-même ou un autre prestataire de la première catégorie répond aux exigences prévues par règlement.

**Exception**

**(11)** Si un prestataire de la première catégorie présente une demande de prestations au titre du présent article et qu'un particulier présente une demande de prestations au titre de l'article 152.041 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

**a)** dans le cas où le prestataire de la première catégorie ne l'a pas purgé ou n'a pas choisi de le purger, il n'est pas tenu de le faire;

**b)** dans le cas où le particulier ne l'a pas purgé ou n'a pas choisi de le purger, il peut faire reporter cette obligation en conformité avec l'article 152.041.

**346 (1) Le paragraphe 23(3.21) de la même loi est remplacé par ce qui suit :**

**Prolongation de la période : raison mentionnée à l'alinéa 12(3)b)**

**(3.21)** Si, au cours de la période de prestations d'un prestataire, aucune prestation régulière ni aucune prestation pour les raisons mentionnées aux alinéas 12(3)a), a.1), c), d), e) ou f) ne lui a été versée et que des prestations lui ont été versées pour la raison mentionnée à l'alinéa 12(3)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 12(3)b)(ii), la période prévue au paragraphe (2) est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

**(2) Le passage du paragraphe 23(5) de la même loi précédant l'alinéa d) est remplacé par ce qui suit :**

**Report du délai de carence**

**(5)** Le prestataire de la première catégorie qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article ou aux articles 22 ou 22.1 si, selon le cas :

**a)** il a déjà présenté une demande de prestations au titre du présent article ou des articles 22 ou 22.1 relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

**(b)** another major attachment claimant has made a claim for benefits under this section or section 22 or 22.1 in respect of the same child or children and that other claimant has served or is serving their waiting period;

**(c)** another major attachment claimant is making a claim for benefits under this section or section 22 or 22.1 in respect of the same child or children at the same time as the claimant and that other claimant elects to serve the waiting period; or

**(3) The portion of subsection 23(6) of the Act before paragraph (a) is replaced by the following:**

**Exception**

**(6)** If a major attachment claimant makes a claim under this section or section 22 or 22.1 and an individual makes a claim under section 152.04, 152.041 or 152.05 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

**(4) Paragraph 23(6)(b) of the Act is replaced by the following:**

**(b)** if the individual is not the one who served or elected to serve the waiting period, that claimant may have their waiting period deferred in accordance with section 152.041 or 152.05, as the case may be.

**347 Paragraph 54(f.7) of the Act is replaced by the following:**

**(f.7)** prescribing rules for the purposes of subsections 22.1(8), 23(4), 23.1(9), 23.2(8), 23.3(6), 152.041(8), 152.05(12), 152.06(7), 152.061(8) and 152.062(6);

**348 (1) Paragraph 69(1)(a) of the Act is replaced by the following:**

**(a)** the payment of any allowances, money or other benefits because of illness, injury, quarantine, pregnancy, responsibilities related to a child's placement or arrival, child care, compassionate care, a child's critical illness or an adult's critical illness under a plan that covers insured persons employed by the employer, other than one established under a provincial law,

**b)** un autre prestataire de la première catégorie a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

**c)** un autre prestataire de la première catégorie présente une telle demande relativement au même enfant ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

**(3) Le passage du paragraphe 23(6) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Exception**

**(6)** Si un prestataire de la première catégorie présente une demande de prestations au titre du présent article ou des articles 22 ou 22.1 et qu'un particulier présente une demande de prestations au titre des articles 152.04, 152.041 ou 152.05 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

**(4) L'alinéa 23(6)b) de la même loi est remplacé par ce qui suit :**

**b)** dans le cas où le particulier ne l'a pas purgé ou n'a pas choisi de le purger, il peut faire reporter cette obligation en conformité avec les articles 152.041 ou 152.05, selon le cas.

**347 L'alinéa 54f.7) de la même loi est remplacé par ce qui suit :**

**f.7)** prévoyant les règles relatives au partage des semaines de prestations pour l'application des paragraphes 22.1(8), 23(4), 23.1(9), 23.2(8), 23.3(6), 152.041(8), 152.05(12), 152.06(7), 152.061(8) et 152.062(6);

**348 (1) Le paragraphe 69(1) de la même loi est remplacé par ce qui suit :**

**Réduction de la cotisation patronale : régimes d'assurance-salaire**

**69 (1)** La Commission prend, avec l'agrément du gouverneur en conseil, des règlements prévoyant un mode de réduction de la cotisation patronale lorsque le paiement d'allocations, de prestations ou d'autres sommes en cas de maladie, de blessure, de mise en quarantaine, de grossesse, d'obligations relatives au placement ou à l'arrivée d'un enfant ou de soins à donner aux enfants ou aux membres de la famille ou en cas de maladie grave d'un

would have the effect of reducing the special benefits payable to the insured persons; and

enfant ou d'un adulte en vertu d'un régime autre qu'un régime établi en vertu d'une loi provinciale, qui couvre des assurés exerçant un emploi au service d'un employeur, aurait pour effet de réduire les prestations spéciales qui doivent être payées à ces assurés si ces assurés exerçant un emploi au service de l'employeur obtiennent une fraction de la réduction de la cotisation patronale égale à cinq douzièmes au moins de cette réduction.

**(2) Subsection 69(2) of the Act is replaced by the following:**

**Provincial plans**

**(2)** The Commission shall, with the approval of the Governor in Council, make regulations to provide a system for reducing the employer's and employee's premiums, the premiums under Part VII.1 or all those premiums, when the payment of any allowances, money or other benefits because of illness, injury, quarantine, pregnancy, responsibilities related to a child's placement or arrival, child care, compassionate care, a child's critical illness or an adult's critical illness under a provincial law to insured persons or to self-employed persons, as the case may be, would have the effect of reducing or eliminating the special benefits payable to those insured persons or the benefits payable to those self-employed persons.

**(2) Le paragraphe 69(2) de la même loi est remplacé par ce qui suit :**

**Régimes provinciaux**

**(2)** La Commission prend, avec l'agrément du gouverneur en conseil, des règlements prévoyant un mode de réduction des cotisations patronale et ouvrière, des cotisations prévues par la partie VII.1 ou de toutes ces cotisations lorsque le paiement d'allocations, de prestations ou d'autres sommes à des assurés ou des travailleurs indépendants en vertu d'une loi provinciale en cas de maladie, de blessure, de mise en quarantaine, de grossesse, d'obligations relatives au placement ou à l'arrivée d'un enfant ou de soins à donner aux enfants ou aux membres de la famille ou en cas de maladie grave d'un enfant ou d'un adulte aurait pour effet de réduire ou de supprimer les prestations spéciales auxquelles ces assurés auraient droit ou les prestations auxquelles ces travailleurs indépendants auraient droit.

**349 Subsection 152.03(1.1) of the Act is replaced by the following:**

**Exception**

**(1.1)** A self-employed person to whom benefits are payable under any of sections 152.041 to 152.062 is entitled to benefits under subsection (1) even though the person did not cease to work as a self-employed person because of a prescribed illness, injury or quarantine and would not be working even without the illness, injury or quarantine.

**349 Le paragraphe 152.03(1.1) de la même loi est remplacé par ce qui suit :**

**Exception**

**(1.1)** Le travailleur indépendant à qui des prestations doivent être payées au titre de l'un des articles 152.041 à 152.062 est admissible aux prestations visées au paragraphe (1) même s'il n'a pas cessé de travailler à ce titre par suite d'une maladie, d'une blessure ou d'une mise en quarantaine prévues par règlement et n'aurait pas travaillé même en l'absence de maladie, de blessure ou de mise en quarantaine.

**350 The Act is amended by adding the following after section 152.04:**

**Benefit for responsibilities related to child's placement or arrival**

**152.041 (1)** Subject to this Part, benefits are payable to a self-employed person for carrying out responsibilities related to

**(a)** the placement with the self-employed person of one or more children for the purpose of adoption under the laws governing adoption in the province in which the person resides; or

**350 La même loi est modifiée par adjonction, après l'article 152.04, de ce qui suit :**

**Prestations : obligations relatives au placement ou à l'arrivée d'un enfant**

**152.041 (1)** Sous réserve de la présente partie, des prestations doivent être payées au travailleur indépendant qui s'acquitte de toute obligation se rapportant :

**a)** soit au placement chez lui d'un ou de plusieurs enfants en vue de leur adoption en conformité avec les lois régissant l'adoption dans la province où il réside;

**(b)** the arrival of one or more new-born children of the self-employed person into the self-employed person's care, in the case where the person who will be giving or gave birth to the child or children is not, or is not intended to be, a parent of the child or children.

**Weeks for which benefits may be paid**

**(2)** Subject to section 152.14, benefits under this section are payable for each week of unemployment in the period

**(a)** that begins the earlier of

**(i)** five weeks before the week in which the placement of the child or children with the self-employed person for the purpose of adoption is expected or the new-born child or children of the self-employed person are expected to arrive into the self-employed person's care, and

**(ii)** the week in which the child or children are actually placed with the self-employed person for the purpose of adoption or the new-born child or children of the self-employed person actually arrive into the self-employed person's care; and

**(b)** that ends 17 weeks after the week in which the child or children are actually placed with the self-employed person for the purpose of adoption or the new-born child or children of the self-employed person actually arrive into the self-employed person's care.

**Limitation — delay of placement or arrival**

**(3)** If the placement or arrival of the child or children referred to in subsection (1) is delayed, the period referred to in subsection (2) must not, subject to any extension under subsection (4), exceed 52 weeks after the week in which the placement or arrival was expected.

**Extension of period — children in hospital**

**(4)** If the child or children referred to in subsection (1) are hospitalized during the period that begins the week referred to in subparagraph (2)(a)(ii) and that ends 17 weeks after that week, the period referred to in subsection (2) is extended by the number of weeks during which the child or children are hospitalized.

**Limitation — children in hospital**

**(5)** The extended period shall end no later than 52 weeks after the week referred to in subparagraph (2)(a)(ii).

**b)** soit à l'arrivée chez lui de son ou de ses nouveau-nés, dans le cas où la personne qui leur donnera naissance ou qui leur a donné naissance n'est pas — ou n'est pas censée être — l'un des parents.

**Semaines pour lesquelles des prestations peuvent être payées**

**(2)** Sous réserve de l'article 152.14, les prestations prévues au présent article doivent être payées pour chaque semaine de chômage comprise dans la période qui :

**a)** commence :

**(i)** soit cinq semaines avant la semaine au cours de laquelle est prévu le placement du ou des enfants chez le travailleur indépendant en vue de leur adoption ou l'arrivée chez le travailleur indépendant de son ou de ses nouveau-nés,

**(ii)** soit, si elle est antérieure, la semaine au cours de laquelle le ou les enfants sont réellement placés chez le travailleur indépendant en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le travailleur indépendant;

**b)** se termine dix-sept semaines après la semaine au cours de laquelle le ou les enfants sont réellement placés chez le travailleur indépendant en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le travailleur indépendant.

**Restriction : retard dans le placement ou l'arrivée**

**(3)** Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe (1) est retardé, la période prévue au paragraphe (2) ne peut, sous réserve de toute prolongation au titre du paragraphe (4), excéder les cinquante-deux semaines qui suivent la semaine au cours de laquelle le placement ou l'arrivée était prévu.

**Prolongation de la période en cas d'hospitalisation des enfants**

**(4)** Si l'enfant ou les enfants visés au paragraphe (1) sont hospitalisés au cours de la période commençant la semaine visée au sous-alinéa (2)a)(ii) et se terminant dix-sept semaines plus tard, la période prévue au paragraphe (2) est prolongée du nombre de semaines que dure l'hospitalisation.

**Restriction : hospitalisation des enfants**

**(5)** La période prolongée au titre du paragraphe (4) ne peut excéder les cinquante-deux semaines qui suivent la semaine visée au sous-alinéa (2)a)(ii).

**Limitation**

**(6)** If benefits are payable to a self-employed person for the reasons set out in this section and any allowances, money or other benefits are payable to the self-employed person for the same reasons under a provincial law, the benefits payable to the self-employed person under this Part are to be reduced or eliminated as prescribed.

**Presumption**

**(7)** With regard to serving the waiting period under section 152.15, the week that immediately precedes the period described in subsection (2) is deemed to be a week that is included in that period.

**Division of weeks of benefits**

**(8)** If two self-employed persons each make a claim for benefits under this section — or if one self-employed person makes a claim for benefits under this section and another person makes a claim for benefits under section 22.1 — in respect of the same child or children, the weeks of benefits payable under this section, under section 22.1 or under both those sections may be divided between them up to a maximum of 15. If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules.

**Maximum number of weeks that can be divided**

**(9)** For greater certainty, if, in respect of the same child or children, a self-employed person makes a claim for benefits under this section and another person makes a claim for benefits under section 22.1, the total number of weeks of benefits payable under this section and section 22.1 that may be divided between them may not exceed 15.

**Deferral of waiting period**

**(10)** A self-employed person who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period, otherwise than under this section, if

**(a)** the self-employed person has already made a claim for benefits under this section in respect of the same child or children and has served the waiting period;

**(b)** another self-employed person has made a claim for benefits under this section in respect of the same child or children and that other self-employed person has served or is serving their waiting period;

**Restriction**

**(6)** Si des prestations doivent être payées à un travailleur indépendant pour les raisons visées au présent article et que des allocations, des prestations ou d'autres sommes doivent lui être payées au titre d'une loi provinciale pour les mêmes raisons, les prestations à payer au titre de la présente partie sont réduites ou supprimées de la manière prévue par règlement.

**Présomption**

**(7)** Relativement à l'obligation de purger le délai de carence prévu à l'article 152.15, la semaine qui précède la période visée au paragraphe (2) est réputée être une semaine comprise dans cette période.

**Partage des semaines de prestations**

**(8)** Si deux travailleurs indépendants présentent chacun une demande de prestations au titre du présent article — ou si un travailleur indépendant présente une telle demande et qu'une autre personne présente une demande de prestations au titre de l'article 22.1 — relativement au même enfant ou aux mêmes enfants, les semaines de prestations qui doivent être payées au titre du présent article, de l'article 22.1 ou de ces deux articles peuvent être partagées entre eux, jusqu'à concurrence de quinze semaines. S'ils n'arrivent pas à s'entendre, le partage des semaines de prestations doit être effectué conformément aux règles prévues par règlement.

**Nombre maximal de semaines pouvant être partagées**

**(9)** Il est entendu que, dans le cas où un travailleur indépendant présente une demande de prestations au titre du présent article et où une autre personne présente une demande de prestations au titre de l'article 22.1 relativement au même enfant ou aux mêmes enfants, le nombre total de semaines de prestations qui doivent être payées au titre du présent article et de l'article 22.1 qui peuvent être partagées entre eux ne peut dépasser quinze semaines.

**Report du délai de carence**

**(10)** Le travailleur indépendant qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article si, selon le cas :

**a)** il a déjà présenté une demande de prestations au titre du présent article relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

**(c)** another self-employed person is making a claim for benefits under this section in respect of the same child or children at the same time as the self-employed person and that other self-employed person elects to serve the waiting period; or

**(d)** the self-employed person or another self-employed person meets the prescribed requirements.

**Exception**

**(11)** If a self-employed person makes a claim under this section and an another person makes a claim under section 22.1 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

**(a)** if the self-employed person is not the one who served or elected to serve the waiting period, the self-employed person is not required to serve a waiting period; or

**(b)** if the person making the claim under section 22.1 is not the one who served or elected to serve the waiting period, the person may have their waiting period deferred in accordance with section 22.1.

**351 (1) Subsection 152.05(5.1) of the Act is replaced by the following:**

**Extension of period — reason mentioned in paragraph 152.14(1)(b)**

**(5.1)** If, during a self-employed person's benefit period, benefits were not paid for any reason mentioned in paragraph 152.14(1)(a), (a.1), (c), (d), (e) or (f) and benefits were paid to the person for the reason mentioned in paragraph 152.14(1)(b) in the case where the applicable maximum number of weeks is established under subparagraph 152.14(1)(b)(ii), the period referred to in subsection (2) is extended by 26 weeks so that benefits may be paid up to that maximum number of weeks.

**(2) The portion of subsection 152.05(14) of the Act before paragraph (d) is replaced by the following:**

**Deferral of waiting period**

**(14)** A self-employed person who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the

**b)** un autre travailleur indépendant a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

**c)** un autre travailleur indépendant présente une telle demande relativement au même enfant ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

**d)** lui-même ou un autre travailleur indépendant répond aux exigences prévues par règlement.

**Exception**

**(11)** Si un travailleur indépendant présente une demande de prestations au titre du présent article et qu'une autre personne présente une demande de prestations au titre de l'article 22.1 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

**a)** dans le cas où le travailleur indépendant ne l'a pas purgé ou n'a pas choisi de le purger, il n'est pas tenu de le faire;

**b)** dans le cas où la personne qui présente une demande de prestations au titre de l'article 22.1 ne l'a pas purgé ou n'a pas choisi de le purger, elle peut faire reporter cette obligation en conformité avec l'article 22.1.

**351 (1) Le paragraphe 152.05(5.1) de la même loi est remplacé par ce qui suit :**

**Prolongation de la période : raison mentionnée à l'alinéa 152.14(1)b)**

**(5.1)** Si, au cours de la période de prestations d'un travailleur indépendant, aucune prestation pour les raisons mentionnées aux alinéas 152.14(1)a), a.1), c), d), e) ou f) ne lui a été versée et que des prestations lui ont été versées pour la raison mentionnée à l'alinéa 152.14(1)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 152.14(1)b)(ii), la période prévue au paragraphe (2) est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

**(2) Le passage du paragraphe 152.05(14) de la même loi précédant l'alinéa d) est remplacé par ce qui suit :**

**Report du délai de carence**

**(14)** Le travailleur indépendant qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement

same benefit period, otherwise than under this section or section 152.04 or 152.041, if

**(a)** the self-employed person has already made a claim for benefits under this section or section 152.04 or 152.041 in respect of the same child or children and has served the waiting period;

**(b)** another self-employed person has made a claim for benefits under this section or section 152.04 or 152.041 in respect of the same child or children and that other self-employed person has served or is serving their waiting period;

**(c)** another self-employed person is making a claim for benefits under this section or section 152.04 or 152.041 in respect of the same child or children at the same time as the self-employed person and that other self-employed person elects to serve the waiting period; or

**(3) The portion of subsection 152.05(15) of the Act before paragraph (a) is replaced by the following:**

**Exception**

**(15)** If a self-employed person makes a claim under this section or section 152.04 or 152.041 and another person makes a claim under section 22, 22.1 or 23 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

**(4) Paragraph 152.05(15)(b) of the Act is replaced by the following:**

**(b)** if the person making the claim under section 22, 22.1 or 23 is not the one who served or elected to serve the waiting period, the person may have their waiting period deferred in accordance with section 22.1 or 23, as the case may be.

**352 Subsection 152.09(2) of the Act is amended by adding the following after paragraph (a):**

**(a.1)** carrying out the responsibilities described in subsection 152.041(1);

**353 (1) Section 152.11 of the Act is amended by adding the following after subsection (12):**

présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article ou aux articles 152.04 ou 152.041 si, selon le cas :

**a)** il a déjà présenté une demande de prestations au titre du présent article ou des articles 152.04 ou 152.041 relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

**b)** un autre travailleur indépendant a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

**c)** un autre travailleur indépendant présente une telle demande relativement au même enfant ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

**(3) Le passage du paragraphe 152.05(15) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Exception**

**(15)** Si un travailleur indépendant présente une demande de prestations au titre du présent article ou des articles 152.04 ou 152.041 et qu'une autre personne présente une demande de prestations au titre des articles 22, 22.1 ou 23 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

**(4) L'alinéa 152.05(15)b) de la même loi est remplacé par ce qui suit :**

**b)** dans le cas où la personne qui présente une demande de prestations au titre des articles 22, 22.1 ou 23 ne l'a pas purgé ou n'a pas choisi de le purger, elle peut faire reporter cette obligation en conformité avec les articles 22.1 ou 23, selon le cas.

**352 Le paragraphe 152.09(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** obligations visées au paragraphe 152.041(1);

**353 (1) L'article 152.11 de la même loi est modifié par adjonction, après le paragraphe (12), de ce qui suit :**

**Extension of benefit period — placement or arrival delayed**

**(12.1)** If the placement or arrival of the child or children referred to in subsection 152.041(1) is delayed, the benefit period is extended by the number of weeks during which the placement or arrival is delayed.

**(2) Subsection 152.11(14.1) of the Act is replaced by the following:**

**Extension of benefit period — reason mentioned in paragraph 152.14(1)(b)**

**(14.1)** If, during a self-employed person's benefit period, benefits were not paid for any reason mentioned in paragraph 152.14(1)(a), (a.1), (c), (d), (e) or (f), and benefits were paid to the person for the reason mentioned in paragraph 152.14(1)(b) in the case where the applicable maximum number of weeks is established under subparagraph 152.14(1)(b)(ii), the benefit period is extended by 26 weeks so that benefits may be paid up to that maximum number of weeks.

**354 (1) Subsection 152.14(1) of the Act is amended by adding the following after paragraph (a):**

**(a.1)** because the self-employed person is carrying out the responsibilities described in subsection 152.041(1) is 15;

**(2) Subsection 152.14(2) of the Act is amended by striking out "and" at the end of paragraph (a) and by replacing paragraph (a) with the following:**

**(a.1)** for carrying out the responsibilities described in subsection 152.041(1) in relation to the placement of one or more children for the purpose of adoption as a result of a single placement or the arrival of one or more new-born children as a result of a single pregnancy is 15; and

Transitional Provision

**Benefit for responsibilities related to child's placement or arrival**

**355 The *Employment Insurance Act*, as it read immediately before the day on which sections 345 and 350 come into force, continues to apply to a claimant for the purpose of paying benefits under that Act in respect of a child or children who have, before that day,**

**(a) been placed with the claimant for the purpose of adoption under the laws governing**

**Prolongation de la période de prestations : retard du placement ou de l'arrivée**

**(12.1)** Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe 152.041(1) est retardé, la période de prestations est prolongée du nombre de semaines que dure le retard.

**(2) Le paragraphe 152.11(14.1) de la même loi est remplacé par ce qui suit :**

**Prolongation de la période de prestations : raison mentionnée à l'alinéa 152.14(1)b)**

**(14.1)** Si, au cours de la période de prestations d'un travailleur indépendant, aucune prestation pour les raisons mentionnées aux alinéas 152.14(1)a), a.1), c), d), e) ou f) ne lui a été versée et que des prestations lui ont été versées pour la raison mentionnée à l'alinéa 152.14(1)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 152.14(1)b)(ii), la période de prestations est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

**354 (1) Le paragraphe 152.14(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** dans le cas où le travailleur indépendant s'acquitte de toute obligation visée au paragraphe 152.041(1), quinze semaines;

**(2) Le paragraphe 152.14(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :**

**a.1)** dans le cas où le travailleur indépendant s'acquitte de toute obligation visée au paragraphe 152.041(1) relativement au placement d'un ou de plusieurs enfants en vue de leur adoption ou à l'arrivée d'un ou de plusieurs nouveau-nés d'une même grossesse, quinze semaines;

Disposition transitoire

**Prestations : obligations relatives au placement ou à l'arrivée d'un enfant**

**355 La *Loi sur l'assurance-emploi*, dans sa version antérieure à la date d'entrée en vigueur des articles 345 et 350, continue de s'appliquer au prestataire en ce qui concerne le versement des prestations visées par cette loi relativement à l'enfant ou aux enfants qui, avant cette date, ont été placés chez le prestataire en vue de leur adoption en conformité avec les lois régissant l'adoption dans la province où il réside ou sont arrivés chez le prestataire.**

**adoption in the province in which the claimant resides; or**

**(b) arrived into the care of the claimant.**

R.S., c. L-2

## Canada Labour Code

### Amendments to the Act

**356 Subsection 187.1(2) of the *Canada Labour Code* is replaced by the following:**

**Application of section 209.1**

**(2)** If an employee interrupts a vacation to take leave under any of sections 205.1, 206 to 206.1 and 206.3 to 206.9 and resumes the vacation immediately at the end of that leave, section 209.1 applies to them as if they did not resume the vacation before returning to work.

**357 The Act is amended by adding the following after section 206:**

### Leave for Placement of Child

**Definitions**

**206.01 (1)** The following definitions apply in this section.

***placement*** means

**(a)** the placement of a child into the actual care of an employee for the purposes of adoption under the laws governing adoption in the province in which the employee resides;

**(b)** the arrival of a new-born child of an employee into the employee's actual care, in the case where the person who gave birth to the child is not, or is not intended to be, a parent of the child; or

**(c)** any other case prescribed by regulation. (*placement*)

***week*** means the period between midnight on Saturday and midnight on the immediately following Saturday. (*semaine*)

**Entitlement to leave**

**(2)** Subject to subsections (7) and (8), every employee is entitled to and shall be granted a leave of absence from employment of up to 16 weeks for carrying out responsibilities related to a placement.

L.R., ch. L-2

## Code canadien du travail

### Modification de la loi

**356 Le paragraphe 187.1(2) du *Code canadien du travail* est remplacé par ce qui suit :**

**Application de l'article 209.1**

**(2)** Si l'employé a interrompu son congé annuel afin de prendre congé au titre de l'un des articles 205.1, 206 à 206.1 ou 206.3 à 206.9 et a repris son congé annuel immédiatement après la fin de ce congé, l'article 209.1 s'applique à lui comme s'il n'avait pas repris son congé annuel avant son retour au travail.

**357 La même loi est modifiée par adjonction, après l'article 206, de ce qui suit :**

### Congé pour placement d'un enfant

**Définitions**

**206.01 (1)** Les définitions qui suivent s'appliquent au présent article.

***placement***

**a)** Soit le placement d'un enfant chez l'employé en vue de son adoption en conformité avec les lois régissant l'adoption dans la province où l'employé réside;

**b)** soit l'arrivée chez l'employé de son nouveau-né, dans le cas où la personne qui a donné naissance au nouveau-né n'est pas — ou n'est pas censée être — l'un des parents;

**c)** soit tout autre cas prévu par règlement. (*placement*)

***semaine*** Période commençant à zéro heure le dimanche et se terminant à vingt-quatre heures le samedi suivant. (*week*)

**Modalités d'attribution**

**(2)** Sous réserve des paragraphes (7) et (8), a droit à un congé d'au plus seize semaines l'employé qui s'acquitte d'obligations relatives à un placement.

**Period when leave may be taken**

**(3)** The leave of absence may only be taken during the period

**(a)** beginning no earlier than six weeks before the week of the estimated date of the placement or, if the actual date of the placement is earlier than the estimated date, no earlier than the week of that actual date; and

**(b)** ending no later than 17 weeks following the week of the actual date of that placement.

**Delayed placement**

**(4)** If the placement is delayed, the period referred to in subsection (3) must not, subject to any extension under subsection (5), end later than 52 weeks following the week of the estimated date referred to in paragraph (3)(a).

**Extension of period — child in hospital**

**(5)** If, after placement, the child is hospitalized during the period referred to in subsection (3), the period is extended by the number of weeks during which the child is hospitalized.

**Restriction**

**(6)** An extension under subsection (5) must not result in the period referred to in subsection (3) ending later than 52 weeks following the week of the actual date of the placement.

**Aggregate leave — employees**

**(7)** The aggregate amount of leave that may be taken by more than one employee under this section in respect of the same placement must not exceed 16 weeks.

**If placement will not occur**

**(8)** If, during a leave of absence under this section, the employee is informed that the placement will not occur, the leave may continue until the end of the week after the week in which the employee is so informed.

**358 The Act is amended by adding the following after section 206.2:**

**Aggregate leave — leave for placement of child and parental leave**

**206.21** The aggregate amount of leave that may be taken by more than one employee under sections 206.01 and 206.1 in respect of the same child shall not exceed 85 weeks, but the aggregate amount of leave that may be

**Période de congé**

**(3)** Le droit au congé ne peut être exercé qu'au cours de la période qui :

**a)** commence au plus tôt six semaines avant la semaine au cours de laquelle le placement de l'enfant est prévu ou, si elle est antérieure, la semaine au cours de laquelle le placement de l'enfant a eu lieu;

**b)** se termine au plus tard dix-sept semaines après la semaine au cours de laquelle le placement de l'enfant a eu lieu.

**Placement retardé**

**(4)** Si le placement est retardé, la période prévue au paragraphe (3) ne peut, sous réserve de toute prolongation au titre du paragraphe (5), excéder les cinquante-deux semaines qui suivent la semaine visée à l'alinéa (3)a) au cours de laquelle le placement était prévu.

**Prolongation de la période : hospitalisation**

**(5)** Si, après son placement, l'enfant est hospitalisé au cours de la période prévue au paragraphe (3), celle-ci est prolongée du nombre de semaines que dure l'hospitalisation.

**Restriction**

**(6)** Aucune prolongation au titre du paragraphe (5) ne peut avoir pour effet de prolonger la période prévue au paragraphe (3) au-delà des cinquante-deux semaines qui suivent la semaine au cours de laquelle le placement de l'enfant a eu lieu.

**Durée maximale du congé : employés**

**(7)** La durée maximale de l'ensemble des congés que peuvent prendre plusieurs employés au titre du présent article à l'occasion du même placement est de seize semaines.

**Placement n'ayant pas lieu**

**(8)** Si l'employé en congé au titre du présent article est informé que le placement n'aura pas lieu, le congé peut se poursuivre jusqu'à la fin de la semaine qui suit celle où l'employé est informé de ce fait.

**358 La même loi est modifiée par adjonction, après l'article 206.2, de ce qui suit :**

**Cumul des congés : congé parental et congé pour placement d'un enfant**

**206.21** La durée maximale de l'ensemble des congés que peuvent prendre plusieurs employés en vertu des articles 206.01 et 206.1 à l'égard d'un même enfant est de quatre-vingt-cinq semaines, étant entendu que la durée

taken by one employee under those sections in respect of the same child shall not exceed 77 weeks.

**359 (1) The portion of subsection 207(1) of the Act before paragraph (a) is replaced by the following:**

**Notification to employer**

**207 (1)** Every employee who intends to take a leave of absence from employment under any of sections 206 to 206.1 shall

**(2) Subsection 207(2) of the English version of the Act is replaced by the following:**

**Change in length of leave**

**(2)** Every employee who intends to take or who is on a leave of absence from employment under any of sections 206 to 206.1 shall provide the employer with notice in writing of at least four weeks of any change in the length of leave intended to be taken, unless there is a valid reason why that notice cannot be given, in which case the employee shall provide the employer with notice in writing as soon as possible.

**360 Section 207.01 of the Act is replaced by the following:**

**Minimum periods of leave**

**207.01** Subject to the regulations, a leave of absence under any of sections 206.01 and 206.3 to 206.5 may only be taken in one or more periods of not less than one week's duration.

**361 Subsection 207.02(1) of the Act is replaced by the following:**

**Interruption**

**207.02 (1)** An employee may interrupt a leave of absence referred to in any of sections 206.01 and 206.3 to 206.5 in order to be absent due to a reason referred to in subsection 239(1) or 239.1(1).

**362 (1) Subsection 207.2(1) of the Act is replaced by the following:**

**Notification to employer — interruption for child's hospitalization**

**207.2 (1)** An employee who intends to interrupt their maternity or parental leave or their leave for the placement of a child in order to return to work as a result of the hospitalization of their child shall provide the employer with a notice in writing of the interruption as soon as possible.

maximale du congé que peut prendre un employé au titre de ces dispositions à l'égard d'un même enfant est de soixante-dix-sept semaines.

**359 (1) Le passage du paragraphe 207(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :**

**Préavis à l'employeur**

**207 (1)** L'employé qui entend prendre l'un des congés prévus aux articles 206 à 206.1 :

**(2) Le paragraphe 207(2) de la version anglaise de la même loi est remplacé par ce qui suit :**

**Change in length of leave**

**(2)** Every employee who intends to take or who is on a leave of absence from employment under any of sections 206 to 206.1 shall provide the employer with notice in writing of at least four weeks of any change in the length of leave intended to be taken, unless there is a valid reason why that notice cannot be given, in which case the employee shall provide the employer with notice in writing as soon as possible.

**360 L'article 207.01 de la même loi est remplacé par ce qui suit :**

**Durée minimale d'une période**

**207.01** Sous réserve des règlements, le droit au congé visé à l'un des articles 206.01 et 206.3 à 206.5 peut être exercé en une ou plusieurs périodes d'une durée minimale d'une semaine chacune.

**361 Le paragraphe 207.02(1) de la même loi est remplacé par ce qui suit :**

**Interruption**

**207.02 (1)** L'employé peut interrompre l'un des congés prévus aux articles 206.01 et 206.3 à 206.5 afin de s'absenter pour l'une des raisons mentionnées aux paragraphes 239(1) ou 239.1(1).

**362 (1) Le paragraphe 207.2(1) de la même loi est remplacé par ce qui suit :**

**Préavis à l'employeur — interruption pour l'hospitalisation de l'enfant**

**207.2 (1)** L'employé qui entend interrompre son congé de maternité, son congé pour placement d'un enfant ou son congé parental en raison de l'hospitalisation de son enfant pour retourner au travail en informe dès que possible l'employeur par un préavis écrit.

**(2) Subsection 207.2(3) of the Act is replaced by the following:**

**Refusal**

**(3)** If the employer refuses the interruption or does not advise the employee within the week referred to in subsection (2), the leave under any of sections 206 to 206.1 is extended by the number of weeks during which the child is hospitalized. The aggregate amounts of leave referred to in subsections 206.01(7) and 206.1(3) and sections 206.2 and 206.21 are extended by the same number of weeks.

**(3) Subsection 207.2(5) of the Act is replaced by the following:**

**End of interruption**

**(5)** An employee who intends to return to their leave after the interruption shall, as soon as possible, advise the employer in writing of the date on which the leave is to resume.

**363 (1) Paragraph 209.4(a.2) of the Act is replaced by the following:**

**(a.2)** prescribing the maximum number of periods of leave of absence that an employee may take under any of sections 206.01 and 206.3 to 206.5;

**(2) Section 209.4 of the Act is amended by adding the following after paragraph (c):**

**(c.1)** prescribing cases for the purposes of paragraph (c) of the definition *placement* in subsection 206.01(1);

**(c.2)** defining, for the purposes of section 206.01, any word or expression that is used but not defined in that section;

## Transitional Provisions

**Definition of *Act***

**364 (1) In this section, *Act* means the *Canada Labour Code*.**

**Interruption of parental leave**

**(2) An employee who, on the day on which section 357 comes into force, is on parental leave under section 206.1 of the Act and is eligible for leave for the placement of a child under section 206.01 of the Act may interrupt their parental leave to take leave for the placement of a child. Their parental leave resumes immediately after the interruption ends.**

**(2) Le paragraphe 207.2(3) de la même loi est remplacé par ce qui suit :**

**Refus**

**(3)** Si l'employeur refuse que l'employé interrompe son congé ou qu'il ne l'avise pas dans le délai prévu au paragraphe (2), le congé prévu à l'un des articles 206 à 206.1 est prolongé du nombre de semaines que dure l'hospitalisation. La durée maximale de l'ensemble des congés prévue aux paragraphes 206.01(7) ou 206.1(3) ou aux articles 206.2 ou 206.21 est prolongée du même nombre de semaines.

**(3) Le paragraphe 207.2(5) de la même loi est remplacé par ce qui suit :**

**Fin de l'interruption**

**(5)** L'employé qui entend poursuivre son congé à la suite de l'interruption en informe dès que possible l'employeur par un préavis écrit précisant la date à laquelle le congé se poursuivra.

**363 (1) L'alinéa 209.4a.2) de la même loi est remplacé par ce qui suit :**

**a.2)** préciser le nombre maximal de périodes de congé que peut prendre un employé en vertu de l'article 206.01 ou de l'un des articles 206.3 à 206.5;

**(2) L'article 209.4 de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :**

**c.1)** préciser les cas pour l'application de l'alinéa c) de la définition de *placement* au paragraphe 206.01(1);

**c.2)** définir, pour l'application de l'article 206.01, tout terme qui y est utilisé mais qui n'y est pas défini;

## Dispositions transitoires

**Définition de *Loi***

**364 (1) Au présent article, *Loi* s'entend du *Code canadien du travail*.**

**Interruption du congé parental**

**(2) L'employé qui, à la date d'entrée en vigueur de l'article 357, est en congé parental au titre de l'article 206.1 de la Loi et est admissible au congé pour placement d'un enfant au titre de l'article 206.01 de la Loi peut interrompre son congé parental afin de prendre le congé pour placement d'un enfant. Le congé parental se poursuit dès la fin de l'interruption.**

**Notice of interruption**

**(3) Section 207.1 of the Act applies, with any necessary modifications, with respect to an interruption under subsection (2).**

**Words and expressions**

**(4) Words and expressions used in this section have the same meaning as in the Act.**

## Coming into Force

**Order in council**

**365 This Division comes into force on a day to be fixed by order of the Governor in Council.**

**Avis : interruption**

**(3) L'article 207.1 de la Loi s'applique, avec les adaptations nécessaires, à l'interruption visée au paragraphe (2).**

**Terminologie**

**(4) Les termes employés au présent article s'entendent au sens de la Loi.**

## Entrée en vigueur

**Décret**

**365 La présente section entre en vigueur à la date fixée par décret.**

# 32

CANADA

CONSOLIDATION

CODIFICATION

# Competition Act

# Loi sur la concurrence

R.S.C., 1985, c. C-34

L.R.C. (1985), ch. C-34

Current to June 19, 2024

Last amended on December 15, 2023

À jour au 19 juin 2024

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

**Published consolidation is evidence**

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

**Inconsistencies in Acts**

**(2)** In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

**Codifications comme élément de preuve**

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

**Incompatibilité — lois**

**(2)** Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

This consolidation is current to June 19, 2024. The last amendments came into force on December 15, 2023. Any amendments that were not in force as of June 19, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

## NOTE

Cette codification est à jour au 19 juin 2024. Les dernières modifications sont entrées en vigueur le 15 décembre 2023. Toutes modifications qui n'étaient pas en vigueur au 19 juin 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

## TABLE OF PROVISIONS

**An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition**



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R.S.C., 1985, c. C-34

# An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition

## Short Title

### Short title

**1** This Act may be cited as the *Competition Act*.

R.S., 1985, c. C-34, s. 1; R.S., 1985, c. 19 (2nd Supp.), s. 19.

**PART I**

## Purpose and Interpretation

### Purpose

#### Purpose of Act

**1.1** The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

R.S., 1985, c. 19 (2nd Supp.), s. 19.

### Interpretation

#### Definitions

**2 (1)** In this Act,

***article*** means real and personal property of every description including

**(a)** money,

L.R.C., 1985, ch. C-34

# Loi portant réglementation générale du commerce en matière de complots, de pratiques commerciales et de fusionnements qui touchent à la concurrence

## Titre abrégé

### Titre abrégé

**1** *Loi sur la concurrence*.

L.R. (1985), ch. C-34, art. 1; L.R. (1985), ch. 19 (2e suppl.), art. 19.

**PARTIE I**

## Objet et définitions

### Objet

#### Objet

**1.1** La présente loi a pour objet de préserver et de favoriser la concurrence au Canada dans le but de stimuler l'adaptabilité et l'efficience de l'économie canadienne, d'améliorer les chances de participation canadienne aux marchés mondiaux tout en tenant simultanément compte du rôle de la concurrence étrangère au Canada, d'assurer à la petite et à la moyenne entreprise une chance honnête de participer à l'économie canadienne, de même que dans le but d'assurer aux consommateurs des prix compétitifs et un choix dans les produits.

L.R. (1985), ch. 19 (2e suppl.), art. 19.

### Définitions

#### Définitions

**2 (1)** Les définitions qui suivent s'appliquent à la présente loi.

***article*** Biens meubles et immeubles de toute nature, y compris :

**(b)** deeds and instruments relating to or evidencing the title or right to property or an interest, immediate, contingent or otherwise, in a corporation or in any assets of a corporation,

**(c)** deeds and instruments giving a right to recover or receive property,

**(d)** tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation, and

**(e)** energy, however generated; (*article*)

***business*** includes the business of

**(a)** manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and

**(b)** acquiring, supplying and otherwise dealing in services.

It also includes the raising of funds for charitable or other non-profit purposes. (*entreprise*)

***Commission*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***Commissioner*** means the Commissioner of Competition appointed under subsection 7(1); (*commissaire*)

***computer system*** has the same meaning as in subsection 342.1(2) of the *Criminal Code*; (*ordinateur*)

***data*** means representations, including signs, signals or symbols, that are capable of being understood by an individual or processed by a computer system or other device; (*données*)

***Director*** [Repealed, 1999, c. 2, s. 1]

***electronic message*** means a message sent by any means of telecommunication, including a text, sound, voice or image message; (*message électronique*)

***entity*** means a corporation or a partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business; (*entité*)

***information*** includes data; (*renseignement*)

***locator*** means a name or information used to identify a source of data on a computer system, and includes a URL; (*localisateur*)

***merger*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

**a)** de l'argent;

**b)** des titres et actes concernant ou constatant un droit de propriété ou autre droit relatif à des biens ou un intérêt, actuel, éventuel ou autre, dans une personne morale ou dans des éléments de l'actif d'une personne morale;

**c)** des titres et actes donnant le droit de recouvrer ou de recevoir des biens;

**d)** des billets ou pièces de même genre attestant le droit d'être présent en un lieu donné à un ou certains moments donnés ou des titres de transport;

**e)** de l'énergie, quelle que soit la façon dont elle est produite. (*article*)

***commerce, industrie ou profession*** Y est assimilée toute catégorie, division ou branche d'un commerce, d'une industrie ou d'une profession. (*trade, industry or profession*)

***commissaire*** Le commissaire de la concurrence nommé en vertu du paragraphe 7(1). (*Commissioner*)

***Commission*** [Abrogée, L.R. (1985), ch. 19 (2e suppl.), art. 20]

***directeur*** [Abrogée, 1999, ch. 2, art. 1]

***document*** Tout support sur lequel sont enregistrés ou inscrits des renseignements. (*record*)

***données*** Représentations, notamment signes, signaux ou symboles, qui peuvent être comprises par une personne physique ou traitées par un ordinateur ou un autre dispositif. (*data*)

***entité*** Personne morale ou société de personnes, entreprise individuelle, fiducie ou autre organisation non constituée en personne morale qui est en mesure d'exploiter une entreprise. (*entity*)

***entreprise*** Sont comprises parmi les entreprises les entreprises :

**a)** de fabrication, de production, de transport, d'acquisition, de fourniture, d'emmagasinage et de tout autre commerce portant sur des articles;

**b)** d'acquisition, de prestation de services et de tout autre commerce portant sur des services.

Est également comprise parmi les entreprises la collecte de fonds à des fins de charité ou à d'autres fins non lucratives. (*business*)

***Minister*** means the Minister of Industry; (*ministre*)

***monopoly*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***product*** includes an article and a service; (*produit*)

***record*** means a medium on which information is registered or marked; (*document*)

***sender information*** means the part of an electronic message — including the data relating to source, routing, addressing or signalling — that identifies or purports to identify the sender or the origin of the message; (*renseignements sur l'expéditeur*)

***service*** means a service of any description whether industrial, trade, professional or otherwise; (*service*)

***subject matter information*** means the part of an electronic message that purports to summarize the contents of the message or to give an indication of them; (*objet*)

***supply*** means,

**(a)** in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and

**(b)** in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service; (*fournir* ou *approvisionner*)

***trade, industry or profession*** includes any class, division or branch of a trade, industry or profession; (*commerce, industrie ou profession*)

***Tribunal*** means the Competition Tribunal established by subsection 3(1) of the *Competition Tribunal Act*. (*Tribunal*)

***fournir*** ou ***approvisionner***

**a)** Relativement à un article, vendre, louer ou donner à bail l'article, ou un intérêt ou droit y afférent, ou en disposer d'une autre façon ou offrir d'en disposer ainsi;

**b)** relativement à un service, vendre, louer ou autrement fournir un service ou offrir de le faire. (*supply*)

***fusion*** [Abrogée, L.R. (1985), ch. 19 (2e suppl.), art. 20]

***localisateur*** Toute chaîne de caractères normalisés ou tout renseignement servant à identifier une source de données dans un ordinateur, notamment l'adresse URL. (*locator*)

***message électronique*** Message envoyé par tout moyen de télécommunication, notamment un message alphabétique, sonore, vocal ou image. (*electronic message*)

***ministre*** Le ministre de l'Industrie. (*Minister*)

***monopole*** [Abrogée, L.R. (1985), ch. 19 (2e suppl.), art. 20]

***objet*** Partie du message électronique qui contient des renseignements censés résumer le contenu du message ou donner une indication à l'égard de ce contenu. (*subject matter information*)

***ordinateur*** S'entend au sens du paragraphe 342.1(2) du *Code criminel*. (*computer system*)

***produit*** Sont assimilés à un produit un article et un service. (*product*)

***renseignement*** S'entend notamment de données. (*information*)

***renseignements sur l'expéditeur*** Partie du message électronique, notamment les données liées à la source, au routage, à l'adressage ou à la signalisation, qui contient ou qui est censée contenir l'identité de l'expéditeur ou l'origine du message. (*sender information*)

***service*** Service industriel, commercial, professionnel ou autre. (*service*)

***Tribunal*** Le Tribunal de la concurrence, constitué en application du paragraphe 3(1) de la *Loi sur le Tribunal de la concurrence*. (*Tribunal*)

**Affiliation**

**(2)** For the purposes of this Act,

**Affiliation**

**(2)** Pour l'application de la présente loi :

**(a)** one entity is affiliated with another entity if one of them is the subsidiary of the other or both are subsidiaries of the same entity or each of them is controlled by the same entity or individual;

**(b)** if two entities are affiliated with the same entity at the same time, they are deemed to be affiliated with each other; and

**(c)** an individual is affiliated with an entity if the individual controls the entity.

**a)** une entité est affiliée à une autre si l'une d'elles est la filiale de l'autre, si toutes deux sont des filiales d'une même entité ou encore si chacune d'elles est contrôlée par la même entité ou la même personne physique;

**b)** si deux entités sont affiliées à la même entité au même moment, elles sont réputées être affiliées l'une à l'autre;

**c)** une personne physique est affiliée à une entité si elle la contrôle.

### Subsidiary entity

**(3)** For the purposes of this Act, an entity is a subsidiary of another entity if it is controlled by that other entity.

### Filiale

**(3)** Pour l'application de la présente loi, une entité est une filiale d'une autre entité si elle est contrôlée par cette autre entité.

### Control

**(4)** For the purposes of this Act,

**(a)** a corporation is controlled by an entity or an individual other than Her Majesty if

**(i)** securities of the corporation to which are attached more than 50% of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that entity or individual, and

**(ii)** the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

**(b)** a corporation is controlled by Her Majesty in right of Canada or a province if

**(i)** the corporation is controlled by Her Majesty in the manner described in paragraph (a), or

**(ii)** in the case of a corporation without share capital, a majority of the directors of the corporation, other than *ex officio* directors, are appointed by

**(A)** the Governor in Council or the Lieutenant Governor in Council of the province, as the case may be, or

**(B)** a Minister of the government of Canada or the province, as the case may be; and

**(c)** an entity other than a corporation is controlled by an entity or individual if the entity or individual, directly or indirectly, whether through one or more

### Contrôle

**(4)** Pour l'application de la présente loi :

**a)** une personne morale est contrôlée par une entité ou par une personne physique autre que Sa Majesté si :

**(i)** des valeurs mobilières de cette personne morale comportant plus de cinquante pour cent des votes qui peuvent être exercés lors de l'élection des administrateurs de la personne morale en question sont détenues, directement ou indirectement, notamment par l'intermédiaire d'une ou de plusieurs filiales, autrement qu'à titre de garantie uniquement, par cette entité ou cette personne physique ou pour son bénéfice,

**(ii)** les votes que comportent ces valeurs mobilières sont suffisants, en supposant leur exercice, pour élire une majorité des administrateurs de la personne morale;

**b)** une personne morale est contrôlée par Sa Majesté du chef du Canada ou d'une province si :

**(i)** la personne morale est contrôlée par Sa Majesté de la manière décrite à l'alinéa a),

**(ii)** dans le cas d'une personne morale sans capital-actions, une majorité des administrateurs de la personne morale, autres que les administrateurs d'office, sont nommés par :

**(A)** soit le gouverneur en conseil ou le lieutenant-gouverneur en conseil de la province, selon le cas,

subsidiaries or otherwise, holds an interest in the entity that is not a corporation that entitles them to receive more than 50% of the profits of that entity or more than 50% of its assets on dissolution.

R.S., 1985, c. C-34, s. 2; R.S., 1985, c. 19 (2nd Supp.), s. 20; 1992, c. 1, s. 145(F); 1995, c. 1, s. 62; 1999, c. 2, s. 1, c. 31, s. 44(F); 2010, c. 23, s. 70; 2014, c. 31, ss. 28, 46; 2018, c. 8, s. 109.

**(B)** soit un ministre du gouvernement du Canada ou de la province, selon le cas;

**c)** contrôle une entité autre qu'une personne morale l'entité ou la personne physique qui détient dans cette entité — directement ou indirectement, notamment par l'intermédiaire d'une ou de plusieurs filiales — des titres de participation lui donnant droit de recevoir plus de cinquante pour cent des bénéfices de cette entité ou plus de cinquante pour cent des éléments d'actif de celle-ci au moment de sa dissolution.

L.R. (1985), ch. C-34, art. 2; L.R. (1985), ch. 19 (2e suppl.), art. 20; 1992, ch. 1, art. 145(F); 1995, ch. 1, art. 62; 1999, ch. 2, art. 1, ch. 31, art. 44(F); 2010, ch. 23, art. 70; 2014, ch. 31, art. 28 et 46; 2018, ch. 8, art. 109.

### Binding on agents of Her Majesty in certain cases

**2.1** This Act is binding on and applies to an agent of Her Majesty in right of Canada or a province that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons to the extent that it would apply if the agent were not an agent of Her Majesty.

R.S., 1985, c. 19 (2nd Supp.), s. 21.

### Obligation des mandataires de Sa Majesté

**2.1** Les personnes morales mandataires de Sa Majesté du chef du Canada ou d'une province sont, au même titre que si elles n'étaient pas des mandataires de Sa Majesté, liées par la présente loi et assujetties à son application à l'égard des activités commerciales qu'elles exercent en concurrence, réelle ou potentielle, avec d'autres personnes.

L.R. (1985), ch. 19 (2e suppl.), art. 21.

### Defects of form

**3** No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

R.S., c. C-23, s. 3.

### Vice de forme

**3** Nulle procédure engagée sous le régime de la présente loi n'est réputée invalide à cause d'un vice de forme ou d'une irrégularité technique.

S.R., ch. C-23, art. 3.

### Collective bargaining activities

**4 (1)** Nothing in this Act applies in respect of

**(a)** combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;

**(b)** contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or

**(c)** contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

### Activités relatives aux négociations collectives

**4 (1)** La présente loi ne s'applique pas :

**a)** aux coalitions d'ouvriers ou d'employés, formées en vue de leur assurer une protection professionnelle convenable, ni à leurs activités à cette fin;

**b)** aux contrats, accords ou arrangements que des pêcheurs, ou leurs associations, concluent avec des personnes, ou leurs associations, qui achètent ou traitent le poisson, sur les conditions de prix, de rémunération ou autres régissant la prise par ces pêcheurs du poisson destiné à approvisionner ces personnes;

**c)** aux contrats, accords ou arrangements que concluent deux employeurs au moins, appartenant à un secteur commercial, industriel ou professionnel, directement entre eux ou par l'intermédiaire d'une personne morale ou d'une association dont ils font partie, au sujet des négociations collectives portant sur les traitements, salaires et conditions d'emploi de leurs employés.

### Limitation

**(2)** Nothing in this section exempts from the application of any provision of this Act a contract, agreement or arrangement entered into by an employer to withhold any product from any person, or to refrain from acquiring from any person any product other than the services of workmen or employees.

R.S., c. C-23, s. 4; 1974-75-76, c. 76, s. 2.

**4.1** [Repealed, 2009, c. 2, s. 407]

### Underwriters

**5 (1)** Section 45 does not apply in respect of an agreement or arrangement between persons who are members of a class of persons who ordinarily engage in the business of dealing in securities or between such persons and the issuer of a specific security, in the case of a primary distribution, or the vendor of a specific security, in the case of a secondary distribution, if the agreement or arrangement has a reasonable relationship to the underwriting of a specific security.

### Definition of *underwriting*

**(2)** For the purposes of this section, ***underwriting*** of a security means the primary or secondary distribution of the security, in respect of which distribution

**(a)** a prospectus is required to be filed, accepted or otherwise approved pursuant to a law enacted in Canada or in a jurisdiction outside Canada for the supervision or regulation of trade in securities; or

**(b)** a prospectus would be required to be filed, accepted or otherwise approved but for an express exemption contained in or given pursuant to a law mentioned in paragraph (a).

R.S., 1985, c. C-34, s. 5; 1999, c. 2, s. 2; 2009, c. 2, s. 408.

### Amateur sport

**6 (1)** This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport.

### Definition of *amateur sport*

**(2)** For the purposes of this section, ***amateur sport*** means sport in which the participants receive no remuneration for their services as participants.

1974-75-76, c. 76, s. 2.

### Restriction

**(2)** Le présent article n'a pas pour effet d'exempter de l'application de la présente loi les contrats, accords ou arrangements conclus, par un employeur, en vue de refuser un produit à une personne ou d'empêcher une personne de fournir un produit autre que des services par des ouvriers ou des employés.

S.R., ch. C-23, art. 4; 1974-75-76, ch. 76, art. 2.

**4.1** [Abrogé, 2009, ch. 2, art. 407]

### Souscripteurs à forfait

**5 (1)** L'article 45 ne s'applique pas à l'accord ou l'arrangement, soit entre des personnes qui appartiennent à une catégorie de personnes faisant habituellement le commerce de valeurs, soit entre ces personnes et l'émetteur d'une valeur particulière dans le cas d'une distribution primaire ou le vendeur d'une valeur particulière dans le cas d'une distribution secondaire, qui a un rapport raisonnable avec la souscription de l'émission d'une valeur particulière.

### Définition de *souscription*

**(2)** Pour l'application du présent article, ***souscription*** d'une émission de valeurs s'entend de la distribution primaire ou secondaire de ces valeurs pour laquelle l'approbation, notamment par voie de dépôt ou d'acceptation d'un prospectus :

**a)** ou bien est requise en vertu ou en application d'un texte de loi édicté au Canada ou à l'étranger pour la surveillance ou la réglementation du commerce des valeurs;

**b)** ou bien serait requise en l'absence d'exemption expressément prévue au texte mentionné à l'alinéa a) ou donnée sous son régime.

L.R. (1985), ch. C-34, art. 5; 1999, ch. 2, art. 2; 2009, ch. 2, art. 408.

### Sport amateur

**6 (1)** La présente loi ne s'applique pas aux accords ou arrangements conclus entre équipes, clubs et ligues dans le domaine de la participation au sport amateur.

### Définition de *sport amateur*

**(2)** Pour l'application du présent article, ***sport amateur*** s'entend d'un sport auquel la participation n'est pas rémunérée.

1974-75-76, ch. 76, art. 2.

**PART II**

# Administration

### Commissioner of Competition

**7 (1)** The Governor in Council may appoint an officer to be known as the Commissioner of Competition, who shall be responsible for

**(a)** the administration and enforcement of this Act; and

**(b)** the administration and enforcement of the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* and the *Textile Labelling Act*.

**(c)** [Repealed, 2012, c. 24, s. 79]

**(d)** [Repealed, 2012, c. 24, s. 79]

### Oath of office

**(2)** The Commissioner shall, before taking up the duties of the Commissioner, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of Competition. (*In the case where an oath is taken add* "So help me God".)

### Salary

**(3)** The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

R.S., 1985, c. C-34, s. 7; 1999, c. 2, ss. 4, 37; 2012, c. 24, s. 79.

### Deputy Commissioners

**8 (1)** One or more persons may be appointed Deputy Commissioners of Competition in the manner authorized by law.

### Powers of Deputy

**(2)** The Governor in Council may authorize a Deputy Commissioner to exercise the powers and perform the duties of the Commissioner whenever the Commissioner is absent or unable to act or whenever there is a vacancy in the office of Commissioner.

### Powers of other persons

**(3)** The Governor in Council may authorize any person to exercise the powers and perform the duties of the Commissioner whenever the Commissioner and the Deputy Commissioners are absent or unable to act or, if one or

**PARTIE II**

# Application

### Commissaire de la concurrence

**7 (1)** Le commissaire de la concurrence est nommé par le gouverneur en conseil; il est chargé :

**a)** d'assurer et de contrôler l'application de la présente loi;

**b)** d'assurer et de contrôler l'application de la *Loi sur l'emballage et l'étiquetage des produits de consommation*, de la *Loi sur le poinçonnage des métaux précieux* et de la *Loi sur l'étiquetage des textiles*.

**c)** [Abrogé, 2012, ch. 24, art. 79]

**d)** [Abrogé, 2012, ch. 24, art. 79]

### Serment professionnel

**(2)** Préalablement à son entrée en fonctions, le commissaire prête et souscrit ou fait, selon le cas, le serment ou l'affirmation solennelle, tels qu'ils sont formulés ci-après, devant le greffier du Conseil privé, au bureau duquel il est déposé :

Je jure d'exercer (ou affirme solennellement que j'exercerai) avec fidélité, sincérité et impartialité, et au mieux de mon jugement, de mon habileté et de ma capacité, les fonctions et attributions qui me sont dévolues en ma qualité de commissaire de la concurrence. (*Ajouter, en cas de prestation de serment* : « Ainsi Dieu me soit en aide ».)

### Traitement

**(3)** Le commissaire reçoit le traitement fixé par le gouverneur en conseil.

L.R. (1985), ch. C-34, art. 7; 1999, ch. 2, art. 4 et 37; 2012, ch. 24, art. 79.

### Sous-commissaires

**8 (1)** Le ou les sous-commissaires de la concurrence sont nommés de la manière autorisée par la loi.

### Pouvoirs du sous-commissaire

**(2)** Le gouverneur en conseil peut autoriser un sous-commissaire à exercer les pouvoirs et fonctions du commissaire en cas d'absence ou d'empêchement de celui-ci ou de vacance de son poste.

### Autres intérimaires

**(3)** Le gouverneur en conseil peut autoriser toute autre personne à exercer les pouvoirs et fonctions du commissaire en cas d'absence ou d'empêchement de celui-ci et des sous-commissaires ou de vacance de leurs postes.

more of those offices are vacant, whenever the holders of the other of those offices are absent or unable to act.

**Inquiry by Deputy**

**(4)** The Commissioner may authorize a Deputy Commissioner to make inquiry regarding any matter into which the Commissioner has power to inquire, and when so authorized a Deputy Commissioner shall perform the duties and may exercise the powers of the Commissioner in respect of that matter.

**Powers of Commissioner unaffected**

**(5)** The exercise, pursuant to this Act, of any of the powers or the performance of any of the duties of the Commissioner by a Deputy Commissioner or other person does not in any way limit, restrict or qualify the powers or duties of the Commissioner, either generally or with respect to any particular matter.

R.S., 1985, c. C-34, s. 8; 1999, c. 2, s. 5.

**Application for inquiry**

**9 (1)** Any six persons resident in Canada who are not less than eighteen years of age and who are of the opinion that

**(a)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

**(b)** grounds exist for the making of an order under Part VII.1 or VIII, or

**(c)** an offence under Part VI or VII has been or is about to be committed,

may apply to the Commissioner for an inquiry into the matter.

**Material to be submitted**

**(2)** An application made under subsection (1) shall be accompanied by a statement in the form of a solemn or statutory declaration showing

**(a)** the names and addresses of the applicants, and at their election the name and address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

**(b)** the nature of

**(i)** the alleged contravention,

**(ii)** the grounds alleged to exist for the making of an order, or

**Enquête par le sous-commissaire**

**(4)** Le commissaire peut autoriser un sous-commissaire à faire enquête sur toute question que le commissaire a le pouvoir d'examiner; lorsqu'il a reçu cette autorisation, un sous-commissaire exerce les pouvoirs et fonctions du commissaire en l'espèce.

**Absence d'effet sur les pouvoirs du commissaire**

**(5)** L'exercice, selon la présente loi, de quelque pouvoir ou fonction du commissaire par un sous-commissaire ou une autre personne n'a pas pour effet de limiter, de restreindre ou d'atténuer les pouvoirs ou fonctions du commissaire, d'une manière générale ou à l'égard d'une affaire déterminée.

L.R. (1985), ch. C-34, art. 8; 1999, ch. 2, art. 5.

**Demande d'enquête**

**9 (1)** Six personnes résidant au Canada et âgées de dix-huit ans au moins peuvent demander au commissaire de procéder à une enquête dans les cas où elles sont d'avis, selon le cas :

**a)** qu'une personne a contrevenu à une ordonnance rendue en application des articles 32, 33 ou 34, ou des parties VII.1 ou VIII;

**b)** qu'il existe des motifs justifiant une ordonnance en vertu des parties VII.1 ou VIII;

**c)** qu'une infraction visée à la partie VI ou VII a été perpétrée ou est sur le point de l'être.

**Détails à fournir**

**(2)** La demande est accompagnée d'un exposé, sous forme de déclaration solennelle, indiquant :

**a)** les noms et adresses des requérants et, à leur choix, les nom et adresse de l'un d'entre eux ou d'un procureur, avocat ou conseil qu'ils peuvent, pour recevoir toutes communications prévues par la présente loi, avoir autorisé à les représenter;

**b)** la nature :

**(i)** soit de la prétendue contravention,

**(ii)** soit des motifs permettant de rendre une ordonnance,

**(iii)** soit de la prétendue infraction,

**(iii)** the alleged offence

and the names of the persons believed to be concerned therein and privy thereto; and

**(c)** a concise statement of the evidence supporting their opinion.

R.S., 1985, c. C-34, s. 9; R.S., 1985, c. 19 (2nd Supp.), s. 22; 1999, c. 2, ss. 6, 37.

et les noms des personnes qu'on croit y être intéressées et complices;

**c)** un résumé des éléments de preuve à l'appui de leur opinion.

L.R. (1985), ch. C-34, art. 9; L.R. (1985), ch. 19 (2e suppl.), art. 22; 1999, ch. 2, art. 6 et 37.

### Inquiry by Commissioner

**10 (1)** The Commissioner shall

**(a)** on application made under section 9,

**(b)** whenever the Commissioner has reason to believe that

**(i)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or Part VIII,

**(ii)** grounds exist for the making of an order under Part VII.1 or Part VIII, or

**(iii)** an offence under Part VI or VII has been or is about to be committed, or

**(c)** whenever directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b)(i) to (iii) exists,

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

### Enquête par le commissaire

**10 (1)** Le commissaire fait étudier, dans l'un ou l'autre des cas suivants, toutes questions qui, d'après lui, nécessitent une enquête en vue de déterminer les faits :

**a)** sur demande faite en vertu de l'article 9;

**b)** chaque fois qu'il a des raisons de croire :

**(i)** soit qu'une personne a contrevenu à une ordonnance rendue en application des articles 32, 33 ou 34, ou des parties VII.1 ou VIII,

**(ii)** soit qu'il existe des motifs justifiant une ordonnance en vertu des parties VII.1 ou VIII,

**(iii)** soit qu'une infraction visée à la partie VI ou VII a été perpétrée ou est sur le point de l'être;

**c)** chaque fois que le ministre lui ordonne de déterminer au moyen d'une enquête si l'un des faits visés aux sous-alinéas b)(i) à (iii) existe.

### Information on inquiry

**(2)** The Commissioner shall, on the written request of any person whose conduct is being inquired into under this Act or any person who applies for an inquiry under section 9, inform that person or cause that person to be informed as to the progress of the inquiry.

### Renseignements concernant les enquêtes

**(2)** À la demande écrite d'une personne dont les activités font l'objet d'une enquête en application de la présente loi ou d'une personne qui a demandé une enquête conformément à l'article 9, le commissaire instruit ou fait instruire cette personne de l'état du déroulement de l'enquête.

### Inquiries to be in private

**(3)** All inquiries under this section shall be conducted in private.

R.S., 1985, c. C-34, s. 10; R.S., 1985, c. 19 (2nd Supp.), s. 23; 1999, c. 2, ss. 7, 37, c. 31, s. 45.

### Enquêtes en privé

**(3)** Les enquêtes visées au présent article sont conduites en privé.

L.R. (1985), ch. C-34, art. 10; L.R. (1985), ch. 19 (2e suppl.), art. 23; 1999, ch. 2, art. 7 et 37, ch. 31, art. 45.

### Market or industry inquiry

**10.1 (1)** The Commissioner may, after consulting the Minister, conduct an inquiry into the state of competition in a market or industry if the Commissioner is of the opinion that it is in the public interest to do so.

### Enquête sur un marché ou une industrie

**10.1 (1)** Le commissaire peut, après consultation du ministre, mener une enquête pour examiner l'état de concurrence dans un marché ou une industrie, s'il estime qu'il serait dans l'intérêt public de le faire.

**Direction to conduct inquiry**

**(2)** The Minister may direct the Commissioner to conduct an inquiry into the state of competition in a market or industry if the Minister is of the opinion that it is in the public interest that such an inquiry be conducted. Before making the direction, the Minister must consult the Commissioner to determine whether the inquiry would be feasible, including with regard to its cost.

**Proposed terms of reference**

**(3)** If, after the consultation referred to in subsection (1) or (2), it is decided to proceed with the inquiry, the Commissioner must prepare proposed terms of reference for the inquiry and publish them on a publicly available website and invite the public to provide comments during a period of not less than 15 days.

**Final terms of reference**

**(4)** After having taken into account any comments received from the public, the Commissioner must submit to the Minister for approval the Commissioner's final terms of reference and, if they are approved, the Commissioner must publish them on a publicly available website.

**Duration of inquiry**

**(5)** The inquiry commences on the day on which the final terms of reference are published and the Commissioner must complete the inquiry and publish a report of the Commissioner's findings on a publicly available website before the expiry of the period specified by the Minister, which period, subject to subsection (6), is not to exceed 18 months.

**Extension**

**(6)** The Minister may extend the specified period for periods of up to three months.

**Sending draft to certain persons**

**(7)** Before the report is published, the Commissioner must send to every person who was required to do anything under an order made under subsection 11(1) a complete or partial draft of the report and inform the person that they may, within three working days after the day on which it was sent, provide the Commissioner with the person's concerns regarding factual inaccuracies or confidential information that should not be disclosed in the final report.

2023, c. 31, s. 3.

**Order for oral examination, production or written return**

**11 (1)** If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of

**Ordre de mener une enquête**

**(2)** Le ministre peut ordonner au commissaire d'examiner, au moyen d'une enquête, l'état de concurrence dans un marché ou une industrie, s'il estime qu'il serait dans l'intérêt public de le faire. Avant d'ordonner l'enquête, le ministre consulte le commissaire afin de vérifier si elle est réalisable, notamment au regard des coûts qu'elle entraînerait.

**Projet de mandat**

**(3)** Si, après la consultation visée aux paragraphes (1) ou (2), il est décidé que l'enquête sera menée, le commissaire élabore un projet de mandat pour la conduite de l'enquête, le publie sur un site Web accessible au public et invite les membres du public à présenter leurs observations dans un délai d'au moins quinze jours.

**Mandat final**

**(4)** Après avoir tenu compte des observations du public, le commissaire soumet au ministre le mandat final pour approbation et, s'il est approuvé, le publie sur un site Web accessible au public.

**Durée de l'enquête**

**(5)** L'enquête débute à la date de la publication visée au paragraphe (4) et le commissaire dispose du délai spécifié par le ministre, lequel ne peut, sous réserve du paragraphe (6), excéder dix-huit mois, pour mener son enquête et publier un rapport de ses conclusions sur un site Web accessible au public.

**Prolongation**

**(6)** Le ministre peut prolonger le délai spécifié pour des périodes maximales de trois mois.

**Envoi d'une ébauche à certaines personnes**

**(7)** Avant la publication du rapport, le commissaire envoie à toute personne visée par une ordonnance rendue au titre du paragraphe 11(1) une ébauche — complète ou non — du rapport et l'avise qu'elle dispose de trois jours ouvrables après la date d'envoi pour lui faire part de ses préoccupations concernant des inexactitudes factuelles ou des renseignements confidentiels qui ne devraient pas être divulgués dans le rapport final.

2023, ch. 31, art. 3.

**Ordonnance exigeant une déposition orale ou une déclaration écrite**

**11 (1)** Sur demande *ex parte* du commissaire ou de son représentant autorisé, un juge d'une cour supérieure ou

a superior or county court is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 or 10.1 and that a person has or is likely to have information that is relevant to the inquiry, the judge may order the person to

**(a)** attend as specified in the order and be examined on oath or solemn affirmation by the Commissioner or the authorized representative of the Commissioner on any matter that is relevant to the inquiry before a person, in this section and sections 12 to 14 referred to as a "presiding officer", designated in the order;

**(b)** produce to the Commissioner or the authorized representative of the Commissioner within a time and at a place specified in the order, a record, a copy of a record certified by affidavit to be a true copy, or any other thing, specified in the order; or

**(c)** make and deliver to the Commissioner or the authorized representative of the Commissioner, within a time specified in the order, a written return under oath or solemn affirmation showing in detail such information as is by the order required.

**Records or information in possession of affiliate**

**(2)** If the person against whom an order is sought under paragraph (1)(b) or (c) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has or is likely to have records or information relevant to the inquiry, the judge may order the corporation to

**(a)** produce the records; or

**(b)** make and deliver a written return of the information.

**No person excused from complying with order**

**(3)** No person shall be excused from complying with an order under subsection (1) or (2) on the ground that the testimony, record or other thing or return required of the person may tend to criminate the person or subject him to any proceeding or penalty, but no testimony given by an individual pursuant to an order made under paragraph (1)(a), or return made by an individual pursuant to an order made under paragraph (1)(c), shall be used or received against that individual in any criminal

d'une cour de comté peut, lorsqu'il est convaincu d'après une dénonciation faite sous serment ou affirmation solennelle qu'une enquête est menée en application des articles 10 ou 10.1 et qu'une personne détient ou détient vraisemblablement des renseignements pertinents à l'enquête en question, ordonner à cette personne :

**a)** de comparaître, selon ce que prévoit l'ordonnance de sorte que, sous serment ou affirmation solennelle, elle puisse, concernant toute question pertinente à l'enquête, être interrogée par le commissaire ou son représentant autorisé devant une personne désignée dans l'ordonnance et qui, pour l'application du présent article et des articles 12 à 14, est appelée « fonctionnaire d'instruction »;

**b)** de produire auprès du commissaire ou de son représentant autorisé, dans le délai et au lieu que prévoit l'ordonnance, les documents — originaux ou copies certifiées conformes par affidavit — ou les autres choses dont l'ordonnance fait mention;

**c)** de préparer et de donner au commissaire ou à son représentant autorisé, dans le délai que prévoit l'ordonnance, une déclaration écrite faite sous serment ou affirmation solennelle et énonçant en détail les renseignements exigés par l'ordonnance.

**Documents ou renseignements en possession d'une affiliée**

**(2)** Lorsque, en rapport avec une enquête, la personne contre qui une ordonnance est demandée en application des alinéas (1)b) ou c) est une personne morale et que le juge à qui la demande est faite aux termes du paragraphe (1) est convaincu, d'après une dénonciation faite sous serment ou affirmation solennelle, qu'une affiliée de cette personne morale a ou a vraisemblablement des documents ou des renseignements qui sont pertinents à l'enquête, il peut, sans égard au fait que l'affiliée soit située au Canada ou ailleurs, ordonner à la personne morale :

**a)** de produire les documents en question;

**b)** de préparer et de donner une déclaration écrite énonçant les renseignements.

**Nul n'est dispensé de se conformer à l'ordonnance**

**(3)** Nul n'est dispensé de se conformer à une ordonnance visée au paragraphe (1) ou (2) au motif que le témoignage oral, le document, l'autre chose ou la déclaration qu'on exige de lui peut tendre à l'incriminer ou à l'exposer à quelque procédure ou pénalité, mais un témoignage oral qu'un individu a rendu conformément à une ordonnance prononcée en application de l'alinéa (1)a) ou une déclaration qu'il a faite en conformité avec une ordonnance prononcée en application de l'alinéa (1)c) ne peut être utilisé

proceedings thereafter instituted against him, other than a prosecution under section 132 or 136 of the *Criminal Code*.

**Effect of order**

**(4)** An order made under this section has effect anywhere in Canada.

**Person outside Canada**

**(5)** An order may be made under subsection (1) against a person outside Canada who carries on business in Canada or sells products into Canada.

R.S., 1985, c. C-34, s. 11; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 8, s. 126, c. 16, s. 1; 2022, c. 10, s. 256; 2023, c. 31, s. 4.

**Witness competent and compellable**

**12 (1)** Any person summoned to attend pursuant to paragraph 11(1)(a) is competent and may be compelled to give evidence.

**Fees**

**(2)** Every person summoned to attend pursuant to paragraph 11(1)(a) is entitled to the like fees and allowances for so doing as if summoned to attend before a superior court of the province in which the person is summoned to attend.

**Representation by counsel**

**(3)** A presiding officer shall permit a person who is being examined pursuant to an order under paragraph 11(1)(a) and any person whose conduct is being inquired into to be represented by counsel.

**Attendance of person whose conduct is being inquired into**

**(4)** Any person whose conduct is being inquired into at an examination pursuant to an order under paragraph 11(1)(a) and that person's counsel are entitled to attend the examination unless the Commissioner or the authorized representative of the Commissioner, or the person being examined or his employer, establishes to the satisfaction of the presiding officer that the presence of the person whose conduct is being inquired into would

**(a)** be prejudicial to the effective conduct of the examination or the inquiry; or

**(b)** result in the disclosure of confidential commercial information that relates to the business of the person being examined or his employer.

R.S., 1985, c. C-34, s. 12; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

ou admis contre celui-ci dans le cadre de poursuites criminelles intentées contre lui par la suite sauf en ce qui concerne une poursuite prévue à l'article 132 ou 136 du *Code criminel*.

**Effet de l'ordonnance**

**(4)** Une ordonnance rendue en application du présent article a effet partout au Canada.

**Personne hors du Canada**

**(5)** Une ordonnance peut être rendue en vertu du paragraphe (1) contre une personne hors du Canada qui exploite une entreprise au Canada ou qui vend des produits en direction du Canada.

L.R. (1985), ch. C-34, art. 11; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37; 2002, ch. 8, art. 126, ch. 16, art. 1; 2022, ch. 10, art. 256; 2023, ch. 31, art. 4.

**Personnes habiles à rendre témoignage**

**12 (1)** Toute personne assignée sous le régime de l'alinéa 11(1)a) est habile à agir comme témoin et peut être contrainte à rendre témoignage.

**Honoraires**

**(2)** Toute personne assignée aux fins de l'alinéa 11(1)a) a droit aux mêmes honoraires et allocations pour ce faire que si elle avait été assignée à comparaître devant une cour supérieure de la province où elle doit comparaître aux termes de l'assignation.

**Représentation par avocat**

**(3)** Un fonctionnaire d'instruction doit permettre que soit représentée par avocat toute personne interrogée aux termes d'une ordonnance rendue en application de l'alinéa 11(1)a) de même que toute personne dont la conduite fait l'objet d'une enquête.

**Présence de la personne dont la conduite fait l'objet d'une enquête lors des interrogatoires**

**(4)** La personne dont la conduite fait l'objet d'une enquête lors d'un interrogatoire prévu à l'alinéa 11(1)a) et son avocat peuvent assister à cet interrogatoire à moins que le commissaire, le représentant autorisé de ce dernier, la personne interrogée ou l'employeur de cette dernière ne convainque le fonctionnaire d'instruction que la présence de la personne dont la conduite fait l'objet d'une enquête :

**a)** entraverait le bon déroulement de l'interrogatoire ou de l'enquête;

**b)** entraînerait la divulgation de renseignements de nature commerciale confidentiels se rapportant à l'entreprise de la personne interrogée ou de son employeur.

L.R. (1985), ch. C-34, art. 12; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37.

### Presiding officer

**13 (1)** Any person may be designated as a presiding officer who is a barrister or advocate of at least ten years standing at the bar of a province or who has been a barrister or advocate at the bar of a province for at least ten years.

### Fonctionnaire d'instruction

**13 (1)** Peut être nommé fonctionnaire d'instruction quiconque est membre en règle du barreau d'une province depuis au moins dix ans ou l'a été pendant au moins dix ans.

### Remuneration and expenses

**(2)** A presiding officer shall be paid such remuneration, and is entitled to be paid such travel and living expenses, and such other expenses, incurred in the performance of his duties under this Act, as may be fixed by the Governor in Council.

R.S., 1985, c. C-34, s. 13; R.S., 1985, c. 19 (2nd Supp.), s. 24.

### Rémunération et frais de déplacement

**(2)** Les fonctionnaires d'instruction reçoivent la rémunération que fixe le gouverneur en conseil et ils sont, également selon ce que fixe ce dernier, indemnisés des frais, notamment de séjour et de déplacement, qu'ils engagent dans l'exercice des fonctions qui leur sont confiées en application de la présente loi.

L.R. (1985), ch. C-34, art. 13; L.R. (1985), ch. 19 (2e suppl.), art. 24.

### Administration of oaths

**14 (1)** The presiding officer may administer oaths and take and receive solemn affirmations for the purposes of examinations pursuant to paragraph 11(1)(a).

### Prestation des serments

**14 (1)** Le fonctionnaire d'instruction peut recevoir les serments et les affirmations solennelles dans le cadre des interrogatoires visés à l'alinéa 11(1)a).

### Orders of presiding officer

**(2)** A presiding officer may make such orders as he considers to be proper for the conduct of an examination pursuant to paragraph 11(1)(a).

### Ordonnance des fonctionnaires d'instruction

**(2)** Un fonctionnaire d'instruction peut rendre toutes les ordonnances qu'il juge utiles pour la conduite des interrogatoires prévus à l'alinéa 11(1)a).

### Application to court

**(3)** A judge of a superior or county court may, on application by a presiding officer, order any person to comply with an order made by the presiding officer under subsection (2).

### Demande à la cour

**(3)** Un juge d'une cour supérieure ou d'une cour de comté peut, à la demande d'un fonctionnaire d'instruction, ordonner à toute personne de se conformer à une ordonnance rendue par le fonctionnaire d'instruction en application du paragraphe (2).

### Notice

**(4)** No order may be made under subsection (3) unless the presiding officer has given to the person in respect of whom the order is sought and the Commissioner twenty-four hours notice of the hearing of the application for the order or such shorter notice as the judge to whom the application is made considers reasonable.

R.S., 1985, c. C-34, s. 14; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 8, s. 127.

### Avis

**(4)** Une ordonnance ne peut pas être rendue en application du paragraphe (3) à moins que le fonctionnaire d'instruction n'ait donné à la personne à l'égard de laquelle l'ordonnance est demandée ainsi qu'au commissaire soit un avis de vingt-quatre heures de l'audition de la demande, soit un avis plus bref jugé raisonnable par le juge à qui la demande est faite.

L.R. (1985), ch. C-34, art. 14; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37; 2002, ch. 8, art. 127.

### Application of *Criminal Code* — preservation demand and orders for preservation or production of data

**14.1 (1)** Sections 487.012, 487.013, 487.015, 487.016 and 487.018 of the *Criminal Code*, which apply to the

### Application du *Code criminel* : ordres de préservation et ordonnances de préservation ou de communication

**14.1 (1)** Les articles 487.012, 487.013, 487.015, 487.016 et 487.018 du *Code criminel*, qui s'appliquent à l'enquête

investigation of offences under any Act of Parliament, also apply, with any modifications that the circumstances require,

**(a)** to an investigation in relation to a contravention of an order made under section 32, 33 or 34 or Part VII.1 or VIII; or

**(b)** to an investigation in relation to whether grounds exist for the making of an order under Part VII.1 or VIII.

**Clarification**

**(2)** The provisions of the *Criminal Code* referred to in subsection (1) apply whether or not an inquiry has been commenced under section 10.

2014, c. 31, s. 29.

**Warrant for entry of premises**

**15 (1)** If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation

**(a)** that there are reasonable grounds to believe that

**(i)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

**(ii)** grounds exist for the making of an order under Part VII.1 or VIII, or

**(iii)** an offence under Part VI or VII has been or is about to be committed, and

**(b)** that there are reasonable grounds to believe that there is, on any premises, any record or other thing that will afford evidence with respect to the circumstances referred to in subparagraph (a)(i), (ii) or (iii), as the case may be,

the judge may issue a warrant under his hand authorizing the Commissioner or any other person named in the warrant to

**(c)** enter the premises, subject to such conditions as may be specified in the warrant, and

**(d)** search the premises for any such record or other thing and copy it or seize it for examination or copying.

relative à une infraction à une loi fédérale, s'appliquent aussi, avec les adaptations nécessaires, à l'une ou l'autre des enquêtes suivantes :

**a)** celle relative à la contravention à une ordonnance rendue en vertu des articles 32, 33 ou 34 ou des parties VII.1 ou VIII;

**b)** celle relative à l'existence de motifs justifiant que soit rendue une ordonnance en vertu des parties VII.1 ou VIII.

**Précision**

**(2)** Les dispositions du *Code criminel* s'appliquent que l'enquête visée à l'article 10 ait commencé ou non.

2014, ch. 31, art. 29.

**Mandat de perquisition**

**15 (1)** À la demande *ex parte* du commissaire ou de son représentant autorisé et si, d'après une dénonciation faite sous serment ou affirmation solennelle, un juge d'une cour supérieure ou d'une cour de comté est convaincu :

**a)** qu'il existe des motifs raisonnables de croire :

**(i)** soit qu'une personne a contrevenu à une ordonnance rendue en application des articles 32, 33 ou 34, ou des parties VII.1 ou VIII,

**(ii)** soit qu'il y a des motifs justifiant que soit rendue une ordonnance aux termes des parties VII.1 ou VIII,

**(iii)** soit qu'une infraction prévue à la partie VI ou VII a été perpétrée ou est sur le point de l'être;

**b)** qu'il y a des motifs raisonnables de croire qu'il existe, en un local quelconque, un document ou une autre chose qui fournira une preuve en ce qui concerne les circonstances visées aux sous-alinéas a)(i), (ii) ou (iii), selon le cas,

celui-ci peut délivrer sous son seing un mandat autorisant le commissaire ou toute autre personne qui y est nommée à :

**c)** pénétrer dans le local, sous réserve des conditions que peut fixer le mandat;

**d)** perquisitionner dans le local en vue soit d'obtenir ce document ou cette autre chose et d'en prendre copie, soit de l'emporter pour en faire l'examen ou en prendre des copies.

**Contents of warrant**

**(2)** A warrant issued under this section shall identify the matter in respect of which it is issued, the premises to be searched and the record or other thing, or the class of records or other things, to be searched for.

**Execution of search warrant**

**(3)** A warrant issued under this section shall be executed between six o'clock in the forenoon and nine o'clock in the afternoon, unless the judge issuing it, by the warrant, authorizes execution of it at another time.

**Idem**

**(4)** A warrant issued under this section may be executed anywhere in Canada.

**Duty of persons in control of premises**

**(5)** Every person who is in possession or control of any premises or record or other thing in respect of which a warrant is issued under subsection (1) shall, on presentation of the warrant, permit the Commissioner or other person named in the warrant to enter the premises, search the premises and examine the record or other thing and to copy it or seize it.

**Where admission or access refused**

**(6)** Where the Commissioner or any other person, in executing a warrant issued under subsection (1), is refused access to any premises, record or other thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who issued the warrant or a judge of the same court, on the *ex parte* application of the Commissioner, may by order direct a peace officer to take such steps as the judge considers necessary to give the Commissioner or other person access.

**Where warrant not necessary**

**(7)** The Commissioner or the authorized representative of the Commissioner may exercise any of the powers set out in paragraph (1)(c) or (d) without a warrant if the conditions set out in paragraphs (1)(a) and (b) exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

**Contenu du mandat**

**(2)** Un mandat délivré en application du présent article fait état de l'affaire à l'égard de laquelle il est délivré et il indique les locaux qui doivent faire l'objet de la perquisition de même que le document, la chose ou la catégorie de documents ou de choses qui doit faire l'objet d'une recherche.

**Exécution du mandat**

**(3)** Un mandat délivré en application du présent article ne peut être exécuté qu'entre six heures du matin et neuf heures du soir à moins que, aux termes de ce mandat, le juge qui le délivre en autorise l'exécution à un autre moment.

**Idem**

**(4)** Un mandat délivré en application du présent article peut être exécuté partout au Canada.

**Devoir de la personne ayant la charge du local**

**(5)** Quiconque est en possession ou a le contrôle d'un local, d'un document ou d'une autre chose que vise un mandat délivré aux termes du paragraphe (1) doit, sur présentation de ce mandat, permettre au commissaire ou à toute autre personne nommée dans le mandat de pénétrer dans ce local, d'y perquisitionner, d'y examiner le document ou la chose, d'en prendre copie ou de l'emporter.

**Entrée ou accès refusés**

**(6)** Lorsque, dans le cadre de l'exécution d'un mandat délivré aux termes du paragraphe (1), le commissaire ou toute autre personne se voit refuser l'accès à un local, à un document ou à une autre chose, ou encore lorsque le commissaire a des motifs raisonnables de croire que l'accès en question lui sera refusé, le juge qui a délivré le mandat ou un juge de la même cour peut, sur demande *ex parte* du commissaire, ordonner à un agent de la paix de prendre les mesures que ce juge estime nécessaires pour donner au commissaire ou à cette autre personne l'accès en question.

**Perquisition sans mandat**

**(7)** Le commissaire ou son représentant autorisé peut exercer sans mandat les pouvoirs visés à l'alinéa (1)c) ou d) lorsque l'urgence de la situation rend difficilement réalisable l'obtention du mandat, sous réserve que les conditions visées aux alinéas a) et b) soient réunies.

**Exigent circumstances**

**(8)** For the purposes of subsection (7), exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (1) would result in the loss or destruction of evidence.

R.S., 1985, c. C-34, s. 15; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, ss. 8, 37; 2002, c. 8, s. 128.

**Operation of computer system**

**16 (1)** A person who is authorized pursuant to subsection 15(1) to search premises for a record may use or cause to be used any computer system on the premises to search any data contained in or available to the computer system, may reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output and may seize the printout or other output for examination or copying.

**Duty of person in control of computer system**

**(2)** Every person who is in possession or control of any premises in respect of which a warrant is issued under subsection 15(1) shall, on presentation of the warrant, permit any person named in the warrant to use or cause to be used any computer system or part thereof on the premises to search any data contained in or available to the computer system for data from which a record that that person is authorized to search for may be produced, to obtain a physical copy thereof and to seize it.

**Order restricting operation of computer system**

**(3)** A judge who issued a warrant under subsection 15(1) or a judge of the same court may, on application by the Commissioner or any person who is in possession or control of a computer system or a part thereof on any premises in respect of which the warrant was issued, make an order

**(a)** specifying the individuals who may operate the computer system and fixing the times when they may do so; and

**(b)** setting out any other terms and conditions on which the computer system may be operated.

**Notice by person in possession or control**

**(4)** No order may be made under subsection (3) on application by a person who is in possession or control of a computer system or part thereof unless that person has

**Situation d'urgence**

**(8)** Pour l'application du paragraphe (7), il y a notamment urgence dans les cas où le délai d'obtention du mandat prévu au paragraphe (1) entraînerait la perte ou la destruction d'éléments de preuve.

L.R. (1985), ch. C-34, art. 15; L.R. (1985), ch. 19 (2$^{e}$ suppl.), art. 24; 1999, ch. 2, art. 8 et 37; 2002, ch. 8, art. 128.

**Usage d'un système informatique**

**16 (1)** Une personne qui est, en vertu du paragraphe 15(1), autorisée à perquisitionner dans un local pour y chercher un document peut soit utiliser ou faire utiliser tout ordinateur se trouvant dans le local en question dans le but de faire la recherche de données se trouvant dans l'ordinateur, ou pouvant lui être fournies, soit, à partir de ces données, reproduire ou faire reproduire le document sous forme d'imprimé ou d'une autre sortie de données intelligible, soit en outre emporter cet imprimé ou cette sortie de données pour les examiner ou en prendre copie.

**Obligation de la personne ayant la possession d'un ordinateur**

**(2)** La personne qui est en possession ou qui a le contrôle d'un local à l'égard duquel un mandat a été délivré en application du paragraphe 15(1) doit, sur présentation du mandat, permettre à toute personne nommée au mandat d'utiliser ou de faire utiliser l'ensemble ou une partie seulement d'un ordinateur se trouvant dans le local en question de sorte que toute donnée se trouvant dans l'ordinateur ou pouvant lui être fournie puisse faire l'objet d'une recherche dans le but de trouver des données à partir desquelles peut être produit un document que la personne nommée au mandat est autorisée à rechercher, de même qu'elle doit permettre à cette dernière d'en obtenir une copie physique et de l'emporter.

**Ordonnance limitant l'usage des ordinateurs**

**(3)** Le juge qui a délivré le mandat visé au paragraphe 15(1) ou un juge de la même cour peut, à la demande du commissaire ou de tout personne qui est en possession ou a le contrôle, en tout ou en partie, d'un ordinateur se trouvant dans un local à l'égard duquel le mandat a été délivré, rendre une ordonnance :

**a)** identifiant les individus qui peuvent faire usage de cet ordinateur et fixant les périodes durant lesquelles ils sont autorisés à le faire;

**b)** précisant les autres conditions et modalités selon lesquelles a lieu l'utilisation de cet ordinateur.

**Avis de la personne qui a le contrôle, etc.**

**(4)** Une ordonnance ne peut pas être rendue en application du paragraphe (3) à la demande d'une personne qui est en possession ou a le contrôle de l'ensemble ou d'une

given the Commissioner twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

**Notice by Commissioner**

**(5)** No order may be made under subsection (3) on application by the Commissioner after a search has begun of the premises in respect of which the order is sought unless the Commissioner has given the person who is in possession or control of the premises twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

**(6)** [Repealed, 2010, c. 23, s. 71]

R.S., 1985, c. C-34, s. 16; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2010, c. 23, s. 71.

**Presentation of or report on record or thing seized**

**17 (1)** Where a record or other thing is seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16, the Commissioner or the authorized representative of the Commissioner shall, as soon as practicable,

**(a)** take the record or other thing before the judge who issued the warrant or a judge of the same court or, if no warrant was issued, before a judge of a superior or county court; or

**(b)** make a report in respect of the record or other thing to a judge determined in accordance with paragraph (a).

**Report**

**(2)** A report to a judge under paragraph (1)(b) in respect of a record or other thing shall include

**(a)** a statement as to whether the record or other thing was seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16;

**(b)** a description of the premises searched;

**(c)** a description of the record or other thing seized; and

**(d)** the location in which it is detained.

partie d'un ordinateur à moins que cette personne n'ait donné au commissaire soit un avis de vingt-quatre heures de l'audition de la demande, soit un avis plus bref que le juge estime raisonnable.

**Avis du commissaire**

**(5)** Une ordonnance ne peut être rendue à la demande du commissaire en application du paragraphe (3) une fois la perquisition commencée que si le commissaire a donné à la personne qui a le contrôle ou qui est en possession du local qui fait l'objet de la demande d'ordonnance un avis de vingt-quatre heures de l'audition de la demande ou tel autre avis plus bref que le juge estime raisonnable.

**(6)** [Abrogé, 2010, ch. 23, art. 71]

L.R. (1985), ch. C-34, art. 16; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37; 2010, ch. 23, art. 71.

**Rapport concernant le document ou la chose saisie**

**17 (1)** Lorsqu'un document ou une autre chose est emporté en application de l'alinéa 15(1)d), du paragraphe 15(7) ou de l'article 16, le commissaire ou son représentant autorisé doit, dès que possible :

**a)** produire ce document ou cette autre chose soit devant le juge qui a délivré le mandat ou devant un juge de la même cour, soit encore, dans les cas où aucun mandat n'a été délivré, devant un juge d'une cour supérieure ou d'une cour de comté;

**b)** faire rapport, concernant ce document ou cette autre chose, à un juge désigné selon les critères prévus à l'alinéa a).

**Rapport**

**(2)** Un rapport à un juge en application de l'alinéa (1)b) concernant un document ou une autre chose doit inclure :

**a)** une déclaration précisant si le document ou cette autre chose a été emporté en application de l'alinéa 15(1)d), du paragraphe 15(7) ou de l'article 16;

**b)** une description du local ayant fait l'objet de la perquisition;

**c)** une description du document ou de l'autre chose emporté;

**d)** une description de l'endroit où ce document ou cette autre chose est gardé.

**Retention or return of thing seized**

**(3)** Where a record or other thing is seized pursuant to section 15 or 16, the judge before whom it is taken or to whom a report is made in respect of it pursuant to this section may, if he is satisfied that the record or other thing is required for an inquiry or any proceeding under this Act, authorize the Commissioner to retain it.

R.S., 1985, c. C-34, s. 17; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 46(F); 2002, c. 8, s. 129.

**Rétention et remise des documents ou choses emportés**

**(3)** Dans les cas où un document ou une autre chose est emporté en application de l'article 15 ou 16, le juge à qui, conformément au présent article, cette chose ou ce document est produit ou à qui un rapport est fait à l'égard de cette chose ou de ce document peut, s'il est convaincu de sa nécessité aux fins d'une enquête ou de procédures en application de la présente loi, autoriser le commissaire à retenir le document ou la chose en question.

L.R. (1985), ch. C-34, art. 17; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37, ch. 31, art. 46(F); 2002, ch. 8, art. 129.

**Commissioner to take reasonable care**

**18 (1)** Where any record or other thing is produced pursuant to section 11 or seized pursuant to section 15 or 16, the Commissioner shall take reasonable care to ensure that it is preserved until it is returned to the person by whom it was produced or from whom it was seized or until it is required to be produced in any proceeding under this Act.

**Commissaire : soin des objets emportés**

**18 (1)** Dans les cas où une chose ou un document est soit produit en application de l'article 11, soit emporté en application de l'article 15 ou 16, le commissaire prend, dans la mesure de ce qui est raisonnable, tous les soins qui assureront que le document ou l'autre chose sera conservé jusqu'à sa remise à la personne qui l'a produit ou de qui on l'a pris, ou encore jusqu'à ce que sa production soit nécessaire dans une procédure en conformité avec la présente loi.

**Certified copies**

**(1.1)** The Commissioner need not return any copy of a record produced under section 11 or obtained under section 15 or 16.

**Copies certifiées conformes**

**(1.1)** Le commissaire n'est pas tenu de retourner les copies qui ont été produites en conformité avec l'article 11 ou obtenues conformément aux articles 15 ou 16.

**Access to records or things**

**(2)** The person by whom a record or other thing is produced pursuant to section 11 or from whom a record or other thing is seized pursuant to section 15 or 16 is entitled, at any reasonable time and subject to such reasonable conditions as may be imposed by the Commissioner, to inspect the record or other thing.

**Accès aux documents**

**(2)** La personne qui produit un document ou une autre chose en application de l'article 11 ou de qui une chose ou un document est pris en application de l'article 15 ou 16 est autorisée à inspecter ce document ou cette autre chose à toute heure convenable et aux conditions raisonnables que peut fixer le commissaire.

**Copy of record where returned**

**(3)** The Commissioner may, before returning any record produced pursuant to section 11 or seized pursuant to section 15 or 16, make or cause to be made, and may retain, a copy thereof.

**Remise de documents et copies**

**(3)** Le commissaire peut, avant de remettre un document produit en application de l'article 11 ou emporté conformément à l'article 15 ou 16, prendre ou faire prendre des copies de ce document et conserver ces copies.

**Detention of things seized**

**(4)** Any record or other thing that is produced pursuant to section 11, or the retention of which is authorized under subsection 17(3), shall be returned to the person by whom it was produced or the person from whom it was seized not later than sixty days after it was produced or its retention was authorized, unless, before the expiration of that period,

**Rétention des objets saisis**

**(4)** Lorsqu'une chose ou un document est produit en application de l'article 11 ou retenu en application du paragraphe 17(3), ce document ou cette chose doit, au plus tard soixante jours suivant sa production ou l'autorisation de sa rétention, être remis à la personne qui l'a produit ou de qui on l'a pris, à moins que, avant l'expiration de ce délai :

**(a)** the person by whom it was produced or from whom it was seized agrees to its further detention for a specified period of time;

**(b)** the judge who authorized its production or retention or a judge of the same court is satisfied on application that, having regard to the circumstances, its further detention for a specified period of time is warranted and the judge so orders; or

**(c)** proceedings are instituted in which the record or thing may be required.

R.S., 1985, c. C-34, s. 18; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 16, s. 2; 2017, c. 26, s. 12.

**a)** soit la personne qui l'a produit ou de qui on l'a pris n'accepte sa rétention pour un délai supplémentaire spécifié;

**b)** soit le juge qui a autorisé sa production ou sa rétention ou un juge de la même cour ne soit convaincu, après une demande à cet effet, que sa rétention pour un délai supplémentaire donné est justifiée dans les circonstances et qu'il n'en ordonne ainsi;

**c)** soit des procédures ne soient entamées au cours desquelles la production du document ou de la chose puisse être exigée.

L.R. (1985), ch. C-34, art. 18; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37; 2002, ch. 16, art. 2; 2017, ch. 26, art. 12.

### Claim to solicitor-client privilege (section 11)

**19 (1)** Where a person is ordered to produce a record pursuant to section 11 and that person claims that there exists a solicitor-client privilege in respect thereof, the person shall place it in a package and seal and identify the package and place it in the custody of a person referred to in subsection (3).

### Secret professionnel : article 11

**19 (1)** Une personne tenue de produire un document en application de l'article 11 et qui soulève l'existence du secret professionnel liant l'avocat à son client à l'égard de ce document doit placer celui-ci dans un paquet, cacheter ce paquet, le marquer et le remettre à la garde d'une personne visée au paragraphe (3).

### Claim to solicitor-client privilege (section 15 or 16)

**(2)** Where, pursuant to section 15 or 16, any person is about to examine, copy or seize or is in the course of examining, copying or seizing any record and a person appearing to be in authority claims that there exists a solicitor-client privilege in respect thereof, the first-mentioned person, unless the person claiming the privilege withdraws the claim or the first-mentioned person desists from examining and copying the record and from seizing it or a copy thereof, shall, without examining or further examining it or making a copy or further copy thereof, place it and any copies of it made by him, and any notes taken in respect of it, in a package, and seal and identify the package and place it in the custody of a person referred to in subsection (3).

### Secret professionnel : article 15 ou 16

**(2)** Dans les cas où une personne, agissant sous l'autorité de l'article 15 ou 16, s'apprête à examiner, copier ou à emporter un document ou qu'elle accomplisse en fait l'une ou l'autre de ces actions et qu'une personne apparemment détentrice d'autorité lui oppose à cet égard le secret professionnel liant l'avocat à son client, la première personne, à moins que la personne apparemment détentrice d'autorité renonce à son opposition ou que la première personne ne renonce à examiner, copier et à emporter le document en question, ou à en emporter une copie, doit, sans examiner, sans continuer d'examiner, sans copier ou sans continuer de copier ce document, placer celui-ci, les copies qu'elle en a faites et les notes qu'elle a prises à son égard dans un paquet qu'elle cachette, marque et confie à la garde d'une personne visée au paragraphe (3).

### Custody of record

**(3)** A record in respect of which a solicitor-client privilege is claimed under subsection (1) or (2) shall be placed in the custody of

**(a)** the registrar, prothonotary or other like officer of a superior or county court in the province in which the record was ordered to be produced or in which it was found, or of the Federal Court;

**(b)** a sheriff of the district or county in which the record was ordered to be produced or in which it was found; or

### Garde des documents

**(3)** Un document à l'égard duquel le secret professionnel liant l'avocat à son client est invoqué aux termes du paragraphe (1) ou (2) est placé sous la garde :

**a)** soit du registraire, du protonotaire ou de tout autre semblable fonctionnaire d'une cour supérieure ou d'une cour de comté dans la province où le document doit être produit selon l'ordonnance rendue à son égard ou dans celle où il a été trouvé, ou encore de la Cour fédérale;

**(c)** some person agreed on between the Commissioner or the authorized representative of the Commissioner and the person who makes the claim of privilege.

**b)** soit d'un shérif du district ou du comté où le document doit être produit, selon l'ordonnance rendue à son égard, ou de celui où il a été trouvé;

**c)** soit d'une personne choisie d'un commun accord entre le commissaire ou son représentant autorisé et la personne qui invoque le droit au secret professionnel liant l'avocat à son client.

**Determination of claim to privilege**

**(4)** A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting *in camera*, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found within thirty days after the day on which the record was placed in custody if notice of the application has been given by the applicant to all other persons entitled to make application.

**Détermination du caractère confidentiel**

**(4)** Un juge d'une cour supérieure ou d'une cour de comté dans la province où le document placé sous garde en vertu du présent article doit être produit selon l'ordonnance rendue à son égard ou dans celle où il a été trouvé, ou encore un juge de la Cour fédérale, siégeant à huis clos, peut, en ce qui concerne ce document, trancher la question de la protection du secret professionnel liant l'avocat à son client sur demande présentée conformément aux règles de la cour par le commissaire, le propriétaire du document ou la personne qui l'avait en sa possession lorsqu'il a été trouvé, pourvu que la demande soit faite dans les trente jours suivant la date de sa mise sous garde et qu'un avis de la demande ait été transmis par le demandeur à toutes les personnes qui ont qualité pour présenter une telle demande.

**Idem**

**(5)** Where no application is made in accordance with subsection (4) within thirty days after the day on which a record is placed in custody under this section, any judge referred to in subsection (4) shall, on *ex parte* application by or on behalf of the Commissioner, order the record to be delivered to the Commissioner.

**Idem**

**(5)** À défaut d'une demande en application du paragraphe (4) dans les trente jours suivant celui où un document est mis sous garde en vertu du présent article, un juge visé au paragraphe (4) doit, à la demande *ex parte* du commissaire ou pour son compte, ordonner la remise du document au commissaire.

**Authority of judge**

**(6)** A judge referred to in subsection (4) may give any directions that the judge deems necessary to give effect to this section, may order delivery up to the judge out of custody of any record in respect of which he is asked to decide a question of solicitor-client privilege and may inspect any such record.

**Pouvoirs du juge**

**(6)** Le juge visé au paragraphe (4) peut prendre toute mesure qu'il estime nécessaire pour donner effet au présent article, se faire remettre le document placé sous garde et à l'égard duquel on lui demande de trancher la question du secret professionnel liant l'avocat à son client et examiner ce document.

**Prohibition**

**(7)** Any person who is about to examine, copy or seize any record pursuant to section 15 or 16 shall not do so without affording a reasonable opportunity for a claim of solicitor-client privilege to be made under this section.

**Interdiction**

**(7)** Personne ne peut, agissant aux termes de l'article 15 ou 16, examiner un document, en prendre copie ou l'emporter sans au préalable donner aux intéressés la possibilité de formuler une objection fondée sur le secret professionnel liant l'avocat à son client conformément au présent article.

**Access to record in custody**

**(8)** At any time while a record is in custody under this section, a judge of a superior or county court in the province in which the record is in custody, or of the

**Autorisation de faire des copies**

**(8)** En tout temps, lorsqu'un document est placé sous garde en application du présent article, un juge d'une cour supérieure ou d'une cour de comté dans la province

Federal Court, may, on an *ex parte* application of a person claiming solicitor-client privilege under this section, authorize that person to examine the record or make a copy of it in the presence of the person who has custody of it or the judge, but any such authorization shall contain provisions to ensure that the record is repackaged and that the package is resealed without alteration or damage.

R.S., 1985, c. C-34, s. 19; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

où est gardé le document, ou encore un juge de la Cour fédérale, peut, à la demande *ex parte* d'une personne qui réclame le bénéfice du secret professionnel liant l'avocat à son client en conformité avec le présent article, autoriser cette personne à examiner le document ou à en prendre une copie en présence de la personne qui en a la garde ou du juge; cependant une telle autorisation doit contenir les dispositions nécessaires pour que le document soit remballé et le paquet scellé à nouveau sans modification ni dommage.

L.R. (1985), ch. C-34, art. 19; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37.

### Inspection of records and things

**20 (1)** All records or other things obtained or received by the Commissioner may be inspected by the Commissioner and also by such persons as he directs.

### Examen des documents et autres choses

**20 (1)** Les documents et autres choses que le commissaire a reçus ou obtenus peuvent être examinés par ce dernier ou par les personnes qu'il désigne à cette fin.

### Copies

**(2)** Copies of any records referred to in subsection (1), made by any process of reproduction, on proof orally or by affidavit that they are true copies, are admissible in evidence in any proceedings under this Act and have the same probative force as the original.

### Copies

**(2)** Les copies d'un document visé au paragraphe (1) obtenues au moyen de tout procédé de reproduction sont, lorsqu'il est démontré au moyen d'un témoignage oral ou d'un affidavit qu'il s'agit de copies conformes, admissibles en preuve dans toute procédure prévue par la présente loi et leur force probante est la même que celle des documents originaux.

### Proof

**(3)** Where proof referred to in subsection (2) is offered by affidavit, it is not necessary to prove the signature or official character of the deponent, if that information is set out in the affidavit, or to prove the signature or official character of the person before whom the affidavit was sworn.

R.S., 1985, c. C-34, s. 20; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2010, c. 23, s. 72.

### Preuve

**(3)** Lorsque la preuve visée au paragraphe (2) est faite au moyen d'un affidavit, il n'est pas nécessaire de prouver l'authenticité de la signature ou la qualité officielle de la personne qui l'a souscrit si ces renseignements se retrouvent dans l'affidavit ni de prouver l'authenticité de la signature ou la qualité officielle de la personne qui a reçu l'affidavit.

L.R. (1985), ch. C-34, art. 20; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37; 2010, ch. 23, art. 72.

### Counsel

**21** Whenever in the opinion of the Commissioner the public interest so requires, the Commissioner may apply to the Attorney General of Canada to appoint and instruct counsel to assist in an inquiry under section 10 or 10.1, and on such an application the Attorney General of Canada may appoint and instruct counsel accordingly.

R.S., 1985, c. C-34, s. 21; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2023, c. 31, s. 5.

### Avocat

**21** Dans les cas où, à son avis, l'intérêt public l'exige, le commissaire peut demander au procureur général du Canada de nommer un avocat et de le charger d'aider dans le cadre d'une enquête visée aux articles 10 ou 10.1 et alors, le procureur général peut nommer un avocat qu'il charge d'aider dans le cadre de cette enquête.

L.R. (1985), ch. C-34, art. 21; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37; 2023, ch. 31, art. 5.

### Discontinuance of inquiry

**22 (1)** At any stage of an inquiry under section 10, if the Commissioner is of the opinion that the matter being inquired into does not justify further inquiry, the Commissioner may discontinue the inquiry.

### Discontinuation de l'enquête

**22 (1)** Le commissaire peut, à toute étape d'une enquête visée à l'article 10, discontinuer l'enquête en question lorsqu'il estime que l'affaire sous étude ne justifie pas la poursuite de l'enquête.

**Report**

**(2)** The Commissioner shall, on discontinuing an inquiry, make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

**Notice to applicant**

**(3)** Where an inquiry made on application under section 9 is discontinued, the Commissioner shall inform the applicants of the decision and give the grounds therefor.

**Review of decision**

**(4)** The Minister may, on the written request of applicants under section 9 or on the Minister's own motion, review any decision of the Commissioner to discontinue an inquiry under section 10, and may, if in the Minister's opinion the circumstances warrant, instruct the Commissioner to make further inquiry.

R.S., 1985, c. C-34, s. 22; R.S., 1985, c. 27 (1st Supp.), s. 187, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 47(F).

**Reference to Attorney General of Canada**

**23 (1)** The Commissioner may, at any stage of an inquiry under section 10, in addition to or in lieu of continuing the inquiry, remit any records, returns or evidence to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed against this Act and for such action as the Attorney General of Canada may wish to take.

**Prosecution by Attorney General of Canada**

**(2)** The Attorney General of Canada may institute and conduct any prosecution or other criminal proceedings under this Act, and for those purposes may exercise all the powers and perform all the duties and functions conferred by the *Criminal Code* on the attorney general of a province.

R.S., 1985, c. C-34, s. 23; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Regulations**

**24 (1)** The Governor in Council may make regulations regulating the practice and procedure in respect of applications, proceedings and orders under sections 11 to 19.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to

**Rapport**

**(2)** Le commissaire, lorsqu'il discontinue une enquête, doit remettre au ministre un rapport écrit qui fait état des renseignements obtenus de même que du motif de la discontinuation de l'enquête.

**Avis au requérant**

**(3)** Dans les cas où une enquête menée à la suite d'une demande faite en vertu de l'article 9 est discontinuée, le commissaire informe le requérant de la décision et il lui en donne les motifs.

**Révision de la décision**

**(4)** Le ministre peut, de sa propre initiative ou à la demande écrite des requérants visés à l'article 9, réviser la décision du commissaire de discontinuer l'enquête prévue à l'article 10 et, s'il estime que les circonstances le justifient, il peut donner au commissaire l'ordre de poursuivre l'enquête.

L.R. (1985), ch. C-34, art. 22; L.R. (1985), ch. 27 (1er suppl.), art. 187, ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37, ch. 31, art. 47(F).

**Cas soumis au procureur général du Canada**

**23 (1)** Le commissaire peut à toute étape d'une enquête menée en application de l'article 10, au lieu ou en plus de cette enquête, remettre les documents, les déclarations ou la preuve au procureur général du Canada tant pour examen concernant la question de savoir si une infraction à la présente loi a été perpétrée ou est sur le point de l'être, qu'en vue de toute mesure que le procureur général veut bien prendre à cet égard.

**Poursuites par le procureur général du Canada**

**(2)** Le procureur général du Canada peut intenter et conduire toutes les poursuites et autres procédures criminelles que prévoit la présente loi; à ces fins, il détient tous les pouvoirs et peut exercer toutes les fonctions que le *Code criminel* attribue au procureur général d'une province.

L.R. (1985), ch. C-34, art. 23; L.R. (1985), ch. 19 (2e suppl.), art. 24; 1999, ch. 2, art. 37.

**Règlements**

**24 (1)** Le gouverneur en conseil peut prendre des règlements régissant la pratique et la procédure en ce qui concerne les demandes, les procédures et les ordonnances prévues aux articles 11 à 19.

**Publication des règlements proposés**

**(2)** Sous réserve du paragraphe (3), les projets de règlements d'application du paragraphe (1) sont publiés dans la *Gazette du Canada* au moins soixante jours avant la date envisagée pour leur entrée en vigueur, les intéressés se voyant accorder la possibilité de présenter des observations à cet égard.

interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. C-34, s. 24; R.S., 1985, c. 19 (2nd Supp.), s. 24.

**Staff**

**25** All officers, clerks and employees required for carrying out this Act shall be appointed in accordance with the *Public Service Employment Act*, except that the Commissioner may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out this Act.

R.S., 1985, c. C-34, s. 25; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37.

**Remuneration of temporary staff**

**26 (1)** Any temporary, technical and special assistants employed by the Commissioner shall be paid such remuneration, and are entitled to be paid such travel and living expenses incurred in the performance of their duties under this Act, as may be fixed by the Governor in Council.

**Remuneration and expenses payable out of appropriations**

**(2)** The remuneration and expenses of the Commissioner and of the temporary, technical and special assistants employed by the Commissioner, and of any counsel instructed under this Act, shall be paid out of money appropriated by Parliament to defray the cost of administering this Act.

***Public Service Employment Act* applies**

**(3)** Subject to this section and section 7, the *Public Service Employment Act* and other Acts relating to the public service, in so far as applicable, apply to the Commissioner and to all other persons employed under this Act.

R.S., 1985, c. C-34, s. 26; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37; 2003, c. 22, s. 225(E).

**Authority of technical or special assistants**

**27** Any technical or special assistant or other person employed under this Act, when so authorized or deputed by the Commissioner, has power and authority to exercise

**Exception**

**(3)** Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (2), même s'ils ont été modifiés à la suite d'observations présentées conformément à ce paragraphe.

L.R. (1985), ch. C-34, art. 24; L.R. (1985), ch. 19 (2e suppl.), art. 24.

**Personnel**

**25** Le personnel nécessaire à l'application de la présente loi est nommé en conformité avec la *Loi sur l'emploi dans la fonction publique* mais le commissaire peut, avec l'approbation du gouverneur en conseil, engager les auxiliaires temporaires, techniques et spéciaux dont les services sont nécessaires en raison de circonstances particulières survenant dans le cadre de l'application de la présente loi.

L.R. (1985), ch. C-34, art. 25; L.R. (1985), ch. 19 (2e suppl.), art. 25; 1999, ch. 2, art. 37.

**Rémunération du personnel temporaire**

**26 (1)** Les auxiliaires temporaires, techniques et spéciaux employés par le commissaire touchent la rémunération que fixe le gouverneur en conseil et sont indemnisés, selon ce que fixe ce dernier, des frais de déplacement et de séjour engagés dans l'exercice des fonctions qui leur sont confiées en application de la présente loi.

**Rémunération et dépenses payables sur les crédits**

**(2)** La rémunération et les dépenses du commissaire, des auxiliaires temporaires, techniques et spéciaux employés par le commissaire, de même que celles des avocats chargés d'agir en application de la présente loi, sont payées sur les fonds que le Parlement affecte à l'application de la présente loi.

**Application de la *Loi sur l'emploi dans la fonction publique***

**(3)** Sous réserve des autres dispositions du présent article et de l'article 7, la *Loi sur l'emploi dans la fonction publique* et les autres lois relatives à la fonction publique, dans la mesure où elles sont applicables, s'appliquent au commissaire ainsi qu'aux autres personnes employées en vertu de la présente loi.

L.R. (1985), ch. C-34, art. 26; L.R. (1985), ch. 19 (2e suppl.), art. 25; 1999, ch. 2, art. 37; 2003, ch. 22, art. 225(A).

**Autorité des adjoints techniques ou spéciaux**

**27** Les adjoints techniques ou spéciaux ou autres personnes employées sous le régime de la présente loi, lorsqu'ils sont ainsi autorisés ou délégués par le

any of the powers and perform any of the duties of the Commissioner under this Act with respect to any particular inquiry, as may be directed by the Commissioner.

R.S., 1985, c. C-34, s. 27; 1999, c. 2, s. 37.

commissaire, possèdent le droit et l'autorité d'exercer les pouvoirs et fonctions du commissaire en vertu de la présente loi, à l'égard de toute enquête particulière, selon les instructions du commissaire.

L.R. (1985), ch. C-34, art. 27; 1999, ch. 2, art. 37.

### Minister may require interim report

**28** The Minister may at any time require the Commissioner to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Commissioner whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Commissioner's opinion as to the effect of the evidence.

R.S., 1985, c. C-34, s. 28; 1999, c. 2, s. 37.

### Le ministre peut requérir un rapport provisoire

**28** Le ministre peut requérir le commissaire de soumettre un rapport provisoire au sujet de toute enquête qu'il poursuit sous le régime de la présente loi, et il incombe au commissaire, lorsqu'il en est requis par le ministre, de présenter un rapport provisoire indiquant les mesures prises, la preuve obtenue et son opinion sur l'effet de la preuve.

L.R. (1985), ch. C-34, art. 28; 1999, ch. 2, art. 37.

### Confidentiality

**29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act

**(a)** the identity of any person from whom information was obtained pursuant to this Act;

**(b)** any information obtained pursuant to section 11, 15, 16 or 114;

**(b.1)** any information obtained under any of sections 53.71 to 53.81 of the *Canada Transportation Act*;

**(c)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114;

**(d)** any information obtained from a person requesting a certificate under section 102; or

**(e)** any information provided voluntarily pursuant to this Act.

### Confidentialité

**29 (1)** Il est interdit à quiconque exerce ou a exercé des fonctions dans le cadre de l'application ou du contrôle d'application de la présente loi de communiquer ou de permettre que soient communiqués à une autre personne, sauf à un organisme canadien chargé du contrôle d'application de la loi ou dans le cadre de l'application ou du contrôle d'application de la présente loi :

**a)** l'identité d'une personne de qui des renseignements ont été obtenus en application de la présente loi;

**b)** l'un quelconque des renseignements obtenus en application de l'article 11, 15, 16 ou 114;

**b.1)** l'un des renseignements obtenus au titre des articles 53.71 à 53.81 de la *Loi sur les transports au Canada*;

**c)** quoi que ce soit concernant la question de savoir si un avis a été donné ou si des renseignements ont été fournis conformément à l'article 114 à l'égard d'une transaction proposée;

**d)** tout renseignement obtenu d'une personne qui demande un certificat conformément à l'article 102;

**e)** des renseignements fournis volontairement dans le cadre de la présente loi.

### Exception

**(2)** This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

R.S., 1985, c. C-34, s. 29; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 16, s. 2.1; 2018, c. 10, s. 83.

### Exception

**(2)** Le présent article ne s'applique ni à l'égard de renseignements qui sont devenus publics ni à l'égard de renseignements dont la communication a été autorisée par la personne les ayant fournis.

L.R. (1985), ch. C-34, art. 29; L.R. (1985), ch. 19 (2e suppl.), art. 26; 2002, ch. 16, art. 2.1; 2018, ch. 10, art. 83.

**Communication to Minister of Transport**

**29.1 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Transport in accordance with subsection (3), communicate or allow to be communicated to that Minister any information referred to in subsection (2) that is specifically requested by that Minister.

**Information**

**(2)** The information that may be communicated under this section is

**(a)** the identity of any person from whom information was obtained under this Act;

**(b)** any information obtained in the course of an inquiry under section 10 or 10.1;

**(c)** any information obtained under section 11, 15, 16 or 114;

**(c.1)** any information obtained under any of sections 53.71 to 53.81 of the *Canada Transportation Act*;

**(d)** any information obtained from a person requesting a certificate under section 102;

**(e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and

**(f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

**Contents of request**

**(3)** Requests under this section must be in writing and must

**(a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required; and

**(b)** state that the Minister of Transport requires the information for the purposes of section 53.1 or 53.2 or any of sections 53.71 to 53.81 of the *Canada Transportation Act* and identify the transaction being considered under that section.

**Communication au ministre des Transports**

**29.1 (1)** Par dérogation au paragraphe 29(1), le commissaire peut, sur demande du ministre des Transports conforme au paragraphe (3), communiquer ou permettre que soient communiqués à celui-ci les renseignements visés au paragraphe (2) qu'il demande.

**Nature des renseignements**

**(2)** Les renseignements que peut communiquer le commissaire sont :

**a)** l'identité d'une personne de qui des renseignements ont été obtenus en application de la présente loi;

**b)** tout renseignement recueilli dans le cours d'une enquête visée aux articles 10 ou 10.1;

**c)** l'un quelconque des renseignements obtenus en application des articles 11, 15, 16 ou 114;

**c.1)** l'un des renseignements obtenus au titre des articles 53.71 à 53.81 de la *Loi sur les transports au Canada*;

**d)** tout renseignement obtenu d'une personne qui demande un certificat conformément à l'article 102;

**e)** quoi que ce soit concernant la question de savoir si un avis a été donné ou si des renseignements ont été fournis conformément à l'article 114 à l'égard d'une transaction proposée;

**f)** tout renseignement, y compris les compilations et analyses, recueilli, reçu ou produit par le commissaire ou en son nom.

**Demande du ministre**

**(3)** La demande du ministre des Transports doit être faite par écrit et :

**a)** préciser les renseignements, parmi ceux qui sont mentionnés aux alinéas (2)a) à f), dont il a besoin;

**b)** indiquer que les renseignements lui sont nécessaires pour l'application des articles 53.1 ou 53.2 ou de l'un des articles 53.71 à 53.81 de la *Loi sur les transports au Canada* et préciser la transaction visée par ces articles.

**Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purposes of section 53.1 or 53.2 or any of sections 53.71 to 53.81, as the case may be, of the *Canada Transportation Act*.

**Confidentiality**

**(5)** No person who performs or has performed duties or functions in the administration or enforcement of the *Canada Transportation Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to persons who perform duties or functions under section 53.1 or 53.2 or any of sections 53.71 to 53.81 of that Act.

2000, c. 15, s. 12; 2007, c. 19, s. 61; 2018, c. 10, s. 84; 2023, c. 31, s. 6.

**Communication to Minister of Finance**

**29.2 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Finance in accordance with subsection (3), communicate or allow to be communicated to the Minister of Finance any information referred to in subsection (2) that is specifically requested by the Minister of Finance.

**Information**

**(2)** The information that may be communicated under this section is

**(a)** the identity of any person from whom information was obtained under this Act;

**(b)** any information obtained in the course of an inquiry under section 10 or 10.1;

**(c)** any information obtained under section 11, 15, 16 or 114;

**(d)** any information obtained from a person requesting a certificate under section 102;

**(e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and

**(f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

**Contents of request**

**(3)** Requests under this section must be in writing and must

**Restriction**

**(4)** Les renseignements ne peuvent être utilisés que pour l'application des articles 53.1 ou 53.2 ou de l'un des articles 53.71 à 53.81 de la *Loi sur les transports au Canada*.

**Confidentialité**

**(5)** Il est interdit à quiconque exerce ou a exercé des fonctions dans le cadre de l'application ou du contrôle d'application de la *Loi sur les transports au Canada* de communiquer ou de permettre que soient communiqués des renseignements communiqués dans le cadre du paragraphe (1), sauf à une personne qui exerce des fonctions sous le régime des articles 53.1 ou 53.2 ou de l'un des articles 53.71 à 53.81 de cette loi.

2000, ch. 15, art. 12; 2007, ch. 19, art. 61; 2018, ch. 10, art. 84; 2023, ch. 31, art. 6.

**Communication au ministre des Finances**

**29.2 (1)** Par dérogation au paragraphe 29(1), le commissaire peut, sur demande du ministre des Finances conforme au paragraphe (3), communiquer ou permettre que soient communiqués à celui-ci les renseignements visés au paragraphe (2) qu'il demande.

**Nature des renseignements**

**(2)** Les renseignements que peut communiquer le commissaire sont :

**a)** l'identité d'une personne de qui des renseignements ont été obtenus en application de la présente loi;

**b)** tout renseignement recueilli dans le cours d'une enquête visée aux articles 10 ou 10.1;

**c)** l'un quelconque des renseignements obtenus en application de l'article 11, 15, 16 ou 114;

**d)** tout renseignement obtenu d'une personne qui demande un certificat conformément à l'article 102;

**e)** quoi que ce soit concernant la question de savoir si un avis a été donné ou si des renseignements ont été fournis conformément à l'article 114 à l'égard d'une transaction proposée;

**f)** les renseignements, y compris les compilations et analyses, recueillis, reçus ou produits par le commissaire ou en son nom.

**Demande du ministre**

**(3)** La demande du ministre des Finances doit être faite par écrit et :

**(a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required;

**(b)** state that the Minister of Finance requires the information

**(i)** to consider a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*, or

**(ii)** to permit the Minister of Finance to determine whether he or she should provide the Commissioner with a certificate described in paragraph 94(b) in respect of such a merger or proposed merger;

and

**(c)** identify the merger or proposed merger.

**a)** préciser les renseignements, parmi ceux qui sont mentionnés aux alinéas (2)a) à f), dont il a besoin;

**b)** indiquer que les renseignements lui sont nécessaires pour lui permettre de décider, selon le cas :

**(i)** s'il doit approuver une fusion ou un projet de fusion dans le cadre de la *Loi sur les banques*, de la *Loi sur les associations coopératives de crédit*, de la *Loi sur les sociétés d'assurances* ou de la *Loi sur les sociétés de fiducie et de prêt*,

**(ii)** s'il doit donner le certificat mentionné à l'alinéa 94b) à l'égard d'une telle fusion ou d'un tel projet de fusion;

**c)** préciser la fusion ou le projet de fusion.

**Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purpose of making a decision in respect of the merger or proposed merger.

**Confidentiality**

**(5)** No person who performs or has performed duties or functions, in the administration or enforcement of the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to other persons who perform those duties or functions.

2001, c. 9, s. 578; 2023, c. 31, s. 7.

**Restriction quant à l'utilisation**

**(4)** Les renseignements ne peuvent être utilisés que pour la prise de la décision concernant la fusion ou le projet de fusion.

**Confidentialité**

**(5)** Il est interdit à quiconque exerce ou a exercé des fonctions dans le cadre de l'application ou du contrôle d'application de la *Loi sur les banques*, de la *Loi sur les associations coopératives de crédit*, de la *Loi sur les sociétés d'assurances* ou de la *Loi sur les sociétés de fiducie et de prêt* de communiquer ou de permettre que soient communiqués les renseignements communiqués dans le cadre du paragraphe (1), sauf à une autre personne qui exerce de telles fonctions.

2001, ch. 9, art. 578; 2023, ch. 31, art. 7.

**PART III**

# Mutual Legal Assistance

## Interpretation

**Definitions**

**30** The definitions in this section apply in this Part.

***agreement*** means a treaty, convention or other international agreement to which Canada is a party that provides for mutual legal assistance in competition matters, other than a matter in respect of which the *Mutual Legal Assistance in Criminal Matters Act* applies. (*accord*)

***conduct*** means conduct or matters within the meaning of the relevant agreement in respect of which mutual

**PARTIE III**

# Entraide juridique

## Définitions

**Définitions**

**30** Les définitions qui suivent s'appliquent à la présente partie.

***accord*** Tout traité, toute convention ou tout autre accord international auquel le Canada est partie et qui traite de l'entraide juridique en matière de concurrence, sauf en ce qui concerne les questions auxquelles la *Loi sur l'entraide juridique en matière criminelle* s'applique. (*agreement*)

legal assistance may be requested in accordance with this Part. (*comportement*)

***data*** [Repealed, 2014, c. 31, s. 32]

***foreign state*** means a country other than Canada, and includes any international organization of states. (*État étranger*)

***judge*** means

**(a)** in Ontario, a judge of the Superior Court of Justice;

**(b)** in Quebec, a judge of the Superior Court;

**(c)** in Nova Scotia, British Columbia, Prince Edward Island, Yukon and the Northwest Territories, a judge of the Supreme Court, and in Nunavut, a judge of the Nunavut Court of Justice;

**(d)** in New Brunswick, Manitoba, Saskatchewan and Alberta, a judge of the Court of Queen's Bench;

**(e)** in Newfoundland and Labrador, a judge of the Trial Division of the Supreme Court; and

**(f)** in any province or territory, a judge of the Federal Court. (*juge*)

R.S., 1985, c. C-34, s. 30; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 7, s. 276(E), c. 8, s. 198, c. 16, s. 3; 2014, c. 31, s. 32; 2015, c. 3, s. 38.

## Functions of the Minister of Justice

### Agreements respecting mutual legal assistance

**30.01** Before Canada enters into an agreement, the Minister of Justice must be satisfied that

**(a)** the laws of the foreign state that address conduct that is similar to conduct prohibited or reviewable under this Act are, in his or her opinion, substantially similar to the relevant provisions of this Act, regardless of whether the conduct is dealt with criminally or otherwise;

**(b)** any record or thing provided by Canada under the agreement will be protected by laws respecting confidentiality that are, in his or her opinion, substantially similar to Canadian laws;

**(c)** the agreement contains provisions in respect of

**(i)** the circumstances in which Canada may refuse, in whole or in part, to approve a request, and

***comportement*** Comportement ou affaire, au sens de l'accord applicable, pour lesquels une demande est présentée dans le cadre de la présente partie. (*conduct*)

***données*** [Abrogée, 2014, ch. 31, art. 32]

***État étranger*** Pays autre que le Canada, y compris une organisation internationale d'États. (*foreign state*)

***juge***

**a)** En Ontario, un juge de la Cour supérieure de justice;

**b)** au Québec, un juge de la Cour supérieure;

**c)** en Nouvelle-Écosse, en Colombie-Britannique, à l'Île-du-Prince-Édouard, au Yukon et dans les Territoires du Nord-Ouest, un juge de la Cour suprême et, au Nunavut, un juge de la Cour de justice;

**d)** au Nouveau-Brunswick, au Manitoba, en Saskatchewan et en Alberta, un juge de la Cour du banc de la Reine;

**e)** à Terre-Neuve-et-Labrador, un juge de la Section de première instance de la Cour suprême;

**f)** dans toute province ou tout territoire, un juge de la Cour fédérale. (*judge*)

L.R. (1985), ch. C-34, art. 30; L.R. (1985), ch. 19 (2e suppl.), art. 26; 2002, ch. 7, art. 276(A), ch. 8, art. 198, ch. 16, art. 3; 2014, ch. 31, art. 32; 2015, ch. 3, art. 38.

## Rôle du ministre de la Justice

### Conclusion d'accords d'entraide juridique

**30.01** Le ministre de la Justice doit, avant qu'un accord ne soit conclu par le Canada, être convaincu de ce qui suit :

**a)** le droit de l'État étranger visant les comportements qui sont semblables à ceux qui sont susceptibles de poursuite ou d'examen en vertu de la présente loi est, à son avis, semblable, au fond, aux dispositions correspondantes de la présente loi, que ces comportements relèvent ou non du droit criminel;

**b)** les documents ou autres choses transmis par le Canada en vertu de l'accord seront protégés par des lois en matière de confidentialité qui sont semblables, au fond, aux lois canadiennes;

**c)** l'accord traitera :

**(i)** des circonstances dans lesquelles le Canada a le droit de refuser, en tout ou en partie, une demande,

**(ii)** the confidentiality protections that will be afforded to any record or thing provided by Canada;

**(c.1)** the agreement contains one of the following undertakings by the foreign state:

**(i)** that any record or thing provided by Canada will be used only for the purpose for which it was requested, or

**(ii)** that any record or thing provided by Canada will be used only for the purpose for which it was requested or for the purpose of making a request under any Act of Parliament or under any treaty, convention or other international agreement to which Canada and the foreign state are parties that provides for mutual legal assistance in civil or criminal matters;

**(d)** the agreement also contains the following undertakings by the foreign state, namely,

**(i)** that it will provide assistance to Canada comparable in scope to that provided by Canada,

**(ii)** [Repealed, 2020, c. 1, s. 22]

**(iii)** that any record or thing provided by Canada will be used subject to any terms and conditions on which it was provided, including conditions respecting applicable rights or privileges under Canadian law,

**(iv)** that, at the conclusion of the investigation or proceedings in respect of which any record or thing was provided by Canada, the foreign state will return the record or thing and any copies to Canada or, with the consent of Canada, return the record or thing to Canada and destroy any copies,

**(v)** subject to paragraph (c.1), that it will, to the greatest extent possible consistent with its laws, keep confidential any record or thing obtained by it pursuant to its request, and oppose any application by a third party for disclosure of the record or thing, and

**(vi)** that it will promptly notify the Minister of Justice in the event that the confidentiality protections contained in the agreement have been breached; and

**(e)** the agreement contains a provision in respect of the manner in which it may be terminated.

2002, c. 16, s. 3; 2020, c. 1, s. 22.

**(ii)** des modalités de protection, en matière de confidentialité, des documents ou autres choses transmis par le Canada;

**c.1)** l'accord comportera l'un ou l'autre des engagements ci-après de la part de l'État étranger :

**(i)** n'utiliser les documents ou autres choses transmis par le Canada qu'aux fins auxquelles ils ont été demandés,

**(ii)** n'utiliser les documents ou autres choses transmis par le Canada qu'aux fins auxquelles ils ont été demandés ou pour présenter une demande en vertu d'une loi fédérale ou en vertu de tout traité, toute convention ou tout autre accord international auquel le Canada et l'État étranger sont parties et qui traite de l'entraide juridique en matière civile ou criminelle;

**d)** l'accord comportera également les engagements ci-après de la part de l'État étranger :

**(i)** donner au Canada une aide comparable à celle que celui-ci lui donne,

**(ii)** [Abrogé, 2020, ch. 1, art. 22]

**(iii)** n'utiliser les documents ou autres choses transmis par le Canada qu'aux conditions — y compris celles qui portent sur les droits et privilèges applicables en droit canadien — et que selon les modalités dont la transmission est assortie,

**(iv)** à la fin de l'enquête ou des procédures, retourner au Canada les documents ou autres choses transmis ainsi que les reproductions de ceux-ci, sauf, dans ce dernier cas, consentement du Canada à leur destruction,

**(v)** sous réserve de l'alinéa c.1) et dans la mesure compatible avec ses lois, préserver la confidentialité des documents ou autres choses obtenus en vertu d'une demande qu'il présente et s'opposer à toute demande de communication de ces documents ou choses faite par un tiers,

**(vi)** notifier sans délai au ministre de la Justice toute violation des dispositions relatives à la protection, en matière de confidentialité, des documents ou autres choses;

**e)** l'accord prévoira les modalités selon lesquelles il peut y être mis fin.

2002, ch. 16, art. 3; 2020, ch. 1, art. 22.

# Publication of Agreements

**Publication in *Canada Gazette***

**30.02 (1)** An agreement must be published in the *Canada Gazette* no later than 60 days after the agreement comes into force, unless it has already been published under subsection (2).

**Publication in *Canada Treaty Series***

**(2)** An agreement may be published in the *Canada Treaty Series* and, if so published, the publication must be no later than 60 days after the agreement comes into force.

**Judicial notice**

**(3)** Agreements published in the *Canada Gazette* or the *Canada Treaty Series* are to be judicially noticed.

2002, c. 16, s. 3.

# Publication des accords

***Gazette du Canada***

**30.02 (1)** À moins qu'il ne soit publié en conformité avec le paragraphe (2), l'accord est publié dans la *Gazette du Canada*, dans les soixante jours suivant son entrée en vigueur.

***Recueil des traités du Canada***

**(2)** L'accord peut être publié dans le *Recueil des traités du Canada*, auquel cas la publication est faite dans les soixante jours suivant son entrée en vigueur.

**Notoriété publique**

**(3)** L'accord ainsi publié dans la *Gazette du Canada* ou dans le *Recueil des traités du Canada* est de notoriété publique.

2002, ch. 16, art. 3.

# Requests Made to Canada from Abroad

## Requests

**Requests**

**30.03** The Minister of Justice is responsible for dealing with a request made by a foreign state under an agreement, in accordance with the agreement and this Part.

2002, c. 16, s. 3.

## Search and Seizure

**Application of sections 15, 16 and 19**

**30.04** Sections 15, 16 and 19 apply, with any modifications that the circumstances require, in respect of a search or a seizure under this Part, except to the extent that those sections are inconsistent with this Part.

2002, c. 16, s. 3.

**Approval of request for search and seizure**

**30.05 (1)** If the Minister of Justice approves a request of a foreign state to have a search and seizure carried out in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for a search warrant.

# Demandes présentées par un État étranger

## Demandes

**Agrément des demandes**

**30.03** Le ministre de la Justice traite les demandes présentées par les États étrangers sous le régime des accords, en conformité avec l'accord applicable et la présente partie.

2002, ch. 16, art. 3.

## Perquisitions et saisies

**Application des articles 15, 16 et 19**

**30.04** Les articles 15, 16 et 19 s'appliquent, compte tenu des adaptations nécessaires, aux perquisitions ou saisies visées par la présente partie, sauf incompatibilité avec celle-ci.

2002, ch. 16, art. 3.

**Autorisation**

**30.05 (1)** Le ministre de la Justice, s'il autorise la demande d'un État étranger d'effectuer une perquisition et une saisie à l'égard d'un comportement visé par la demande, fournit au commissaire les documents ou renseignements nécessaires pour lui permettre de présenter une demande de mandat de perquisition.

### Application for search warrant

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* for a search warrant to a judge.

2002, c. 16, s. 3.

### Warrant for entry of premises

**30.06 (1)** A judge to whom an application is made under subsection 30.05(2) may issue a search warrant authorizing the person named in it to execute it anywhere in Canada where the judge is satisfied by information on oath or solemn affirmation that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place;

**(b)** evidence in respect of the conduct referred to in paragraph (a) will be found in any premises; and

**(c)** it would not, in the circumstances, be appropriate to make an order under subsection 30.11(1).

### Authorization

**(2)** A search warrant issued under subsection (1) authorizes the person named in it to enter the premises specified in the warrant, subject to any conditions that may be specified in the warrant, and to search the premises for any record or thing specified in the warrant and to examine and seize it.

### Hearing re execution

**(3)** A judge who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report referred to in section 30.07.

### Contents of warrant

**(4)** A search warrant issued under subsection (1) must

**(a)** set out the time and place for the hearing mentioned in subsection (3);

**(b)** state that, at that hearing, an order will be sought for the sending to the foreign state of the records or things seized in execution of the warrant; and

**(c)** state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized may make representations at the hearing before any order is made concerning the record or thing.

### Demande

**(2)** Le commissaire ou son représentant autorisé présente une demande *ex parte*, en vue de la délivrance d'un mandat de perquisition, à un juge.

2002, ch. 16, art. 3.

### Mandat de perquisition

**30.06 (1)** Le juge saisi de la demande visée au paragraphe 30.05(2) peut délivrer un mandat de perquisition autorisant la personne qui y est nommée à l'exécuter partout au Canada s'il est convaincu, d'après une dénonciation faite sous serment ou affirmation solennelle, qu'il existe des motifs raisonnables de croire que les conditions suivantes sont réunies :

**a)** un comportement qui fait l'objet de la demande présentée par l'État étranger a lieu, a eu lieu ou est sur le point d'avoir lieu;

**b)** des éléments de preuve relatifs au comportement seront trouvés dans un local;

**c)** il ne serait pas opportun, dans les circonstances, de recourir à l'ordonnance visée au paragraphe 30.11(1).

### Autorisation

**(2)** Le mandat de perquisition autorise la personne qui y est nommée à pénétrer dans le local mentionné, sous réserve des conditions fixées, à perquisitionner en vue d'obtenir les documents ou autres choses mentionnés, à les examiner et à les emporter.

### Audition

**(3)** Le juge qui délivre le mandat de perquisition fixe l'heure, la date et le lieu de l'audition qui sera tenue en vue d'examiner l'exécution du mandat et le rapport visé à l'article 30.07.

### Contenu du mandat

**(4)** Le mandat de perquisition mentionne :

**a)** l'heure, la date et le lieu de l'audition prévue au paragraphe (3);

**b)** le fait qu'à cette audition une ordonnance de transmission à l'État étranger des documents ou autres choses emportés en exécution du mandat sera demandée;

**c)** le fait que la personne de qui les documents ou autres choses ont été pris et toute autre personne qui prétend avoir des droits sur ceux-ci peuvent présenter des observations à l'audition avant qu'une ordonnance

### Duty of persons in control of premises

**(5)** Every person who is in possession or control of any premises, record or thing in respect of which a search warrant is issued under subsection (1) shall, on presentation of the warrant, permit the person named in the warrant to enter the premises, search the premises and examine the record or thing and seize it.

### Where admission or access refused

**(6)** Where a person, in executing a search warrant issued under subsection (1), is refused access to any premises, record or thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who issued the warrant or a judge of the same court, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, may by order direct a peace officer to take any steps that the judge considers necessary to give access to the person named in the warrant.

2002, c. 16, s. 3.

### Report

**30.07 (1)** The person who executes a search warrant shall, at least five days before the time of the hearing to consider its execution, file with the court of which the judge who issued the warrant is a member a written report concerning the execution of the warrant that includes a general description of the records or things seized.

### Copy to Minister of Justice

**(2)** The person who files the report under subsection (1) shall send a copy of it to the Minister of Justice promptly after its filing.

2002, c. 16, s. 3.

### Sending abroad

**30.08 (1)** At the hearing referred to in subsection 30.06(3), after having considered any representations of the Minister of Justice, the Commissioner, the person from whom a record or thing was seized and any person who claims to have an interest in the record or thing, the judge who issued the search warrant or another judge of the same court may

**(a)** where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), order that a record or thing seized be returned to

à l'égard de ces documents ou autres choses ne soit rendue.

### Devoir de la personne ayant la charge du local

**(5)** Quiconque est en possession ou a le contrôle du local, d'un document ou d'une autre chose que vise le mandat de perquisition doit, sur présentation de ce mandat, permettre à la personne nommée dans le mandat de pénétrer dans ce local, d'y perquisitionner, d'y examiner le document ou la chose et de les emporter.

### Entrée ou accès refusés

**(6)** Lorsque, dans le cadre de l'exécution d'un mandat de perquisition, la personne se voit refuser l'accès à un local, à un document ou à une autre chose, ou encore lorsque le commissaire a des motifs raisonnables de croire que l'accès en question lui sera refusé, le juge qui a délivré le mandat ou un juge du même tribunal peut, sur demande *ex parte* du commissaire ou de son représentant autorisé, ordonner à un agent de la paix de prendre les mesures que ce juge estime nécessaires pour donner à la personne nommée dans le mandat l'accès en question.

2002, ch. 16, art. 3.

### Rapport

**30.07 (1)** La personne qui exécute un mandat de perquisition dépose, au moins cinq jours avant le jour qui est fixé pour l'audition visée au paragraphe 30.06(3), auprès du tribunal où siège le juge qui a délivré le mandat un rapport d'exécution comportant une description générale des documents ou autres choses emportés.

### Envoi au ministre de la Justice

**(2)** La personne envoie au ministre de la Justice une copie de son rapport d'exécution immédiatement après l'avoir déposé.

2002, ch. 16, art. 3.

### Transmission

**30.08 (1)** Le juge qui a délivré le mandat ou un autre juge du même tribunal peut, à l'audition visée au paragraphe 30.06(3), après avoir entendu les observations du ministre de la Justice, du commissaire, de la personne de qui on a pris le document ou l'autre chose et de toute autre personne qui prétend avoir des droits sur ceux-ci :

**a)** s'il n'est pas convaincu que le mandat de perquisition a été exécuté en conformité avec ses conditions et modalités, ou s'il est d'avis qu'une ordonnance prévue à l'alinéa b) ne devrait pas être rendue, ordonner que le document ou l'autre chose soient restitués :

**(i)** the person from whom it was seized, if possession of it by that person is lawful, or

**(ii)** the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or

**(b)** in any other case, order that a record or thing seized be sent to the foreign state mentioned in subsection 30.05(1) and include in the order any terms and conditions that the judge considers desirable, including terms and conditions

**(i)** necessary to give effect to the request mentioned in that subsection,

**(ii)** in respect of the preservation and return to Canada of any record or thing seized, and

**(iii)** in respect of the protection of the interests of third parties.

**(i)** à la personne de qui on les a pris, si elle en avait la possession légitime,

**(ii)** dans le cas contraire, au propriétaire ou à la personne qui a droit à leur possession légitime si ces personnes sont connues;

**b)** dans les autres cas, ordonner que le document ou l'autre chose soient transmis à l'État étranger; l'ordonnance de transmission est assortie des conditions et modalités qu'il estime indiquées, notamment en vue :

**(i)** de la suite à donner à la demande présentée par l'État étranger,

**(ii)** de la conservation du document ou de l'autre chose et de leur retour au Canada,

**(iii)** de la protection des droits des tiers.

**Requiring record, etc., at hearing**

**(2)** At the hearing mentioned in subsection (1), the judge may require that a record or thing seized be brought before him or her.

2002, c. 16, s. 3.

**Ajournement**

**(2)** Lors de l'audition, le juge peut ordonner que le document ou l'autre chose emportés lui soient remis.

2002, ch. 16, art. 3.

**Terms and conditions**

**30.09** No record or thing seized that has been ordered under section 30.08 to be sent to a foreign state shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

**Conditions et modalités**

**30.09** Le document ou l'autre chose emportés et visés par une ordonnance rendue en vertu de l'article 30.08 ne peuvent être transmis à l'État étranger avant que le ministre de la Justice ne soit convaincu que cet État accepte de se conformer aux conditions et modalités de l'ordonnance.

2002, ch. 16, art. 3.

## Evidence for Use Abroad

## Éléments de preuve destinés à l'étranger

**Approval of request to obtain evidence**

**30.1 (1)** If the Minister of Justice approves a request of a foreign state to obtain, by means of an order of a judge, evidence in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

**Autorisation**

**30.1 (1)** Le ministre de la Justice, s'il autorise la demande présentée par un État étranger en vue d'obtenir, par l'ordonnance d'un juge, des éléments de preuve à l'égard du comportement visé dans la demande, fournit au commissaire les documents ou renseignements nécessaires pour lui permettre de présenter une demande d'ordonnance.

### Application for order

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the gathering of evidence.

2002, c. 16, s. 3.

### Evidence-gathering order

**30.11 (1)** A judge to whom an application is made under subsection 30.1(2) may make an order for the gathering of evidence where the judge is satisfied that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

**(b)** there will be found in Canada evidence in respect of the conduct referred to in paragraph (a).

### Provisions of order

**(2)** An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 30.1(1) and may

**(a)** order the examination, on oath or otherwise, of a person named in the order, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he or she is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him or her, and order the person so named to bring with him or her any record or thing in his or her possession or control, in order to produce them to the person before whom the examination takes place;

**(b)** order a person named in the order to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his or her possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced; and

**(c)** designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced.

### Demande

**(2)** Le commissaire ou son représentant autorisé présente une demande *ex parte*, en vue de la délivrance d'une ordonnance d'obtention d'éléments de preuve, à un juge.

2002, ch. 16, art. 3.

### Ordonnance d'obtention d'éléments de preuve

**30.11 (1)** Le juge saisi de la demande visée au paragraphe 30.1(2) peut rendre une ordonnance d'obtention d'éléments de preuve s'il est convaincu qu'il existe des motifs raisonnables de croire :

**a)** d'une part, qu'un comportement qui fait l'objet de la demande présentée par l'État étranger a lieu, a eu lieu ou est sur le point d'avoir lieu;

**b)** d'autre part, que des éléments de preuve relatifs au comportement seront trouvés au Canada.

### Conditions et modalités

**(2)** L'ordonnance fixe les modalités d'obtention des éléments de preuve visés afin de donner suite à la demande présentée par l'État étranger; elle peut contenir les dispositions suivantes :

**a)** l'ordre de procéder à l'interrogatoire, sous serment ou d'une autre façon, d'une personne visée et l'ordre à celle-ci de se présenter au lieu que la personne chargée de l'interrogatoire fixe pour celui-ci et de demeurer à disposition ainsi que, s'il y a lieu, l'ordre à la personne visée de faire une copie d'un document ou d'en établir un à partir de données et d'apporter la copie ou le document avec elle, et celui d'apporter avec elle tout document ou autre chose en sa possession ou sous son contrôle afin de les remettre à la personne chargée de l'interrogatoire;

**b)** l'ordre à une personne visée de faire une copie d'un document ou d'en établir un à partir de données et de remettre la copie ou le document à une personne désignée ou celui de remettre à une telle personne tout document ou autre chose en sa possession ou sous son contrôle, ainsi que des indications concernant l'affidavit ou le certificat qui, s'il y a lieu, doit accompagner la copie, le document ou l'autre chose, à la demande de l'État étranger;

**c)** la désignation de la personne chargée de l'interrogatoire visé à l'alinéa a) ou de la réception des documents ou autres choses, copies, affidavits et certificats visés à l'alinéa b).

**Designation of judge**

**(3)** For greater certainty, a judge who makes an order under subsection (1) may designate himself or herself or another person, including a judge of a Canadian or foreign court, under paragraph (2)(c).

**Order effective throughout Canada**

**(4)** An order made under subsection (1) may be executed anywhere in Canada.

**Terms and conditions of order**

**(5)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of a person named in the order and of third parties.

**Variation**

**(6)** The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

**Other laws to apply**

**(7)** A person named in an order made under subsection (1) shall answer questions and produce records or things to the person designated under paragraph (2)(c) in accordance with the laws of evidence and procedure in the foreign state that presented the request, but may refuse if answering the questions or producing the records or things would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

**Execution of order to be completed**

**(8)** If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

**(a)** may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or

**(b)** shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

**Statement of reasons for refusal**

**(9)** A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already

**Désignation du juge**

**(3)** Il demeure entendu, pour l'application de l'alinéa (2)c), que le juge qui rend l'ordonnance peut soit se charger lui-même des fonctions mentionnées à cet alinéa, soit désigner une autre personne — y compris un autre juge d'un tribunal canadien ou étranger — pour ce faire.

**Exécution**

**(4)** L'ordonnance peut être exécutée en tout lieu du Canada.

**Conditions et modalités**

**(5)** Le juge peut assortir l'ordonnance des conditions et modalités qu'il estime indiquées, notamment quant à la protection des droits de la personne qu'elle vise ou des tiers.

**Modifications**

**(6)** Le juge qui a rendu l'ordonnance ou un autre juge du même tribunal peut modifier les conditions et modalités de celle-ci.

**Refus d'obtempérer**

**(7)** La personne visée par l'ordonnance d'obtention d'éléments de preuve répond aux questions et remet certains documents ou autres choses à la personne désignée en conformité avec l'alinéa (2)c) en application des règles de droit sur la preuve et la procédure de l'État étranger qui a présenté la demande, mais peut refuser de le faire dans la mesure où la réponse aux questions et la remise des documents ou des autres choses communiqueraient des renseignements autrement protégés par le droit canadien relatif à la non-divulgation de renseignements ou à l'existence de privilèges.

**Effet non suspensif**

**(8)** En cas de refus de répondre à une question ou de remettre un document ou autre chose, la personne désignée en conformité avec l'alinéa (2)c) :

**a)** si elle est juge d'un tribunal canadien ou étranger, peut rendre sur-le-champ des décisions sur toute objection ou question qui relève de sa compétence;

**b)** sinon, doit poursuivre l'interrogatoire et poser les autres questions ou demander les autres documents ou les autres choses visés par l'ordonnance.

**Exposé des motifs de refus**

**(9)** En cas de refus au titre du paragraphe (7), la personne visée présente dans les sept jours, par écrit, à la personne désignée en conformité avec l'alinéa (2)c), sauf dans le cas où celle-ci est juge d'un tribunal canadien ou étranger qui s'est déjà prononcé sur la question en vertu

ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

**Expenses**

**(10)** A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

**Contents of order**

**(11)** An order made under subsection (1) must state that a person named in the order, and any person who claims an interest in any record or thing provided pursuant to the order, may make representations referred to in subsection 30.13(2) before any order is made under subsection 30.13(1).

2002, c. 16, s. 3.

**Report**

**30.12 (1)** A person designated under paragraph 30.11(2)(c) in an order made under subsection 30.11(1) shall make a report to the judge who made the order, or another judge of the same court, accompanied by

**(a)** a transcript of every examination held under the order;

**(b)** a general description of every record or thing produced to the person under the order and, if the judge so requires, a record or thing itself; and

**(c)** a copy of every statement given under subsection 30.11(9) of the reasons for a refusal to answer any question or to produce any record or thing.

**Copy to Minister of Justice**

**(2)** The person designated under paragraph 30.11(2)(c) shall send a copy of the report to the Minister of Justice promptly after it is made.

**Refusals**

**(3)** If any reasons contained in a statement given under subsection 30.11(9) are based on the Canadian law of non-disclosure of information or privilege, a judge to whom a report is made shall determine whether those reasons are well-founded and, if the judge determines that they are, that determination shall be mentioned in any order that the judge makes under section 30.13, but if

de l'alinéa (8)a), un exposé détaillé des motifs de refus dont elle entend se prévaloir à l'égard de chacune des questions auxquelles elle refuse de répondre ou de chacun des documents ou autres choses qu'elle refuse de remettre.

**Frais**

**(10)** La personne visée par l'ordonnance d'obtention d'éléments de preuve a droit au paiement de ses frais de déplacement et de séjour au même titre qu'un témoin assigné à comparaître devant le juge qui a rendu l'ordonnance.

**Contenu de l'ordonnance**

**(11)** L'ordonnance doit mentionner que toute personne visée par elle et toute autre personne prétendant avoir des droits sur les documents ou autres choses remis en vertu de l'ordonnance peuvent présenter des observations dans le cadre du paragraphe 30.13(2) avant qu'une ordonnance ne soit rendue dans le cadre du paragraphe 30.13(1).

2002, ch. 16, art. 3.

**Rapport**

**30.12 (1)** La personne désignée en conformité avec l'alinéa 30.11(2)c) remet au juge qui a rendu l'ordonnance ou à un autre juge du même tribunal un rapport d'exécution accompagné :

**a)** du procès-verbal de tout interrogatoire fait en conformité avec l'ordonnance;

**b)** d'une description générale de tout document ou de toute autre chose remis en conformité avec l'ordonnance et, si le juge l'exige, du document ou de la chose eux-mêmes;

**c)** le cas échéant, d'une copie de l'exposé des motifs que la personne visée a pu présenter en conformité avec le paragraphe 30.11(9).

**Envoi au ministre de la Justice**

**(2)** La personne désignée en conformité avec l'alinéa 30.11(2)c) envoie immédiatement une copie de son rapport d'exécution au ministre de la Justice.

**Détermination de la validité des refus : droit canadien**

**(3)** Le juge qui reçoit le rapport détermine la validité des motifs de refus fondés sur le droit canadien relatif à la non-divulgation de renseignements ou à l'existence de privilèges; s'il les rejette, il ordonne à la personne visée par l'ordonnance de répondre aux questions auxquelles elle avait refusé de répondre ou, selon le cas, de remettre les documents ou autres choses qu'elle avait refusé de

the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.11(1) answer the questions or produce the records or things.

**Refusals based on foreign law**

**(4)** A copy of every statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state shall be appended to any order that the judge makes under section 30.13.

2002, c. 16, s. 3.

**Sending abroad**

**30.13 (1)** A judge to whom a report is made under subsection 30.12(1) may order that there be sent to the foreign state mentioned in subsection 30.1(1)

**(a)** the report, any transcript referred to in paragraph 30.12(1)(a) and any record or thing produced;

**(b)** a copy of the order made under subsection 30.11(1) accompanied by a copy of any statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state; and

**(c)** any determination made under subsection 30.12(3) that the reasons contained in a statement given under subsection 30.11(9) are well-founded.

**Terms and conditions**

**(2)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, after having considered any representations of the Minister of Justice, the Commissioner, the person who produced any record or thing to the person designated under paragraph 30.11(2)(c) and any person who claims to have an interest in any record or thing so produced, including terms and conditions

**(a)** necessary to give effect to the request mentioned in subsection 30.1(1);

**(b)** in respect of the preservation and return to Canada of any record or thing so produced; and

**(c)** in respect of the protection of the interests of third parties.

**Further execution**

**(3)** The execution of an order made under subsection 30.11(1) that was not completely executed because of a refusal, by reason of a law that applies to the foreign state, to answer one or more questions or to produce

remettre; s'il les accepte, il fait mention de cette décision dans l'ordonnance de transmission qu'il rend en vertu de l'article 30.13.

**Détermination de la validité des refus : droit étranger**

**(4)** Le juge ajoute à l'ordonnance de transmission qu'il rend en vertu de l'article 30.13 une copie de l'exposé des motifs de refus présentés en conformité avec le paragraphe 30.11(9) et fondés sur une règle de droit en vigueur dans l'État étranger.

2002, ch. 16, art. 3.

**Transmission**

**30.13 (1)** Le juge à qui le rapport d'exécution visé au paragraphe 30.12(1) est remis peut ordonner la transmission à l'État étranger :

**a)** du rapport, du procès-verbal visé à l'alinéa 30.12(1)a) et des documents et autres choses remis;

**b)** d'une copie de l'ordonnance visée au paragraphe 30.11(1), accompagnée d'une copie de tout exposé, présenté en conformité avec le paragraphe 30.11(9), des motifs de refus fondés sur une règle de droit en vigueur dans l'État étranger;

**c)** de toute décision qui, en vertu du paragraphe 30.12(3), déclare valides les motifs de refus fondés sur une règle de droit en vigueur au Canada.

**Conditions et modalités**

**(2)** Le juge peut assortir l'ordonnance des conditions et modalités qu'il estime indiquées, après avoir entendu les observations du ministre de la Justice, du commissaire, de la personne qui a remis les documents ou autres choses et de toute autre personne qui prétend avoir des droits sur ceux-ci, notamment en vue :

**a)** de la suite à donner à la demande présentée par l'État étranger;

**b)** de la conservation des documents ou autres choses remis et de leur retour au Canada;

**c)** de la protection des droits des tiers.

**Poursuite de l'exécution de l'ordonnance**

**(3)** Sauf si une décision a déjà été rendue sur le refus en vertu de l'alinéa 30.11(8)a), l'exécution de l'ordonnance d'obtention d'éléments de preuve peut se poursuivre à l'égard des questions auxquelles la personne visée a

certain records or things to the person designated under paragraph 30.11(2)(c) may be continued, unless a ruling has already been made on the objection under paragraph 30.11(8)(a), if a court of the foreign state or a person designated by the foreign state determines that the reasons are not well-founded and the foreign state so advises the Minister of Justice.

**Leave of judge required**

**(4)** No person named in an order made under subsection 30.11(1) whose reasons for refusing to answer a question or to produce a record or thing are determined not to be well-founded, or whose objection has been ruled against under paragraph 30.11(8)(a), shall, during the continued execution of the order or ruling, refuse to answer that question or to produce that record or thing to the person designated under paragraph 30.11(2)(c), except with the permission of the judge who made the order or ruling or another judge of the same court.

2002, c. 16, s. 3.

**Terms and conditions**

**30.14** No record or thing that has been ordered under section 30.13 to be sent to the foreign state mentioned in subsection 30.1(1) shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

**Approval of request to obtain evidence by video link, etc.**

**30.15 (1)** If the Minister of Justice approves a request of a foreign state to compel a person to provide evidence or a statement in respect of conduct that is the subject of the request by means of technology that permits the virtual presence of the person in the territory over which the foreign state has jurisdiction, or that permits the person to be heard and examined, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

**Application for order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the taking of evidence or a statement from the person.

2002, c. 16, s. 3.

**Order for video link, etc.**

**30.16 (1)** A judge to whom an application is made under subsection 30.15(2) may make an order for the taking of evidence or a statement from a person where the judge

refusé de répondre ou des documents ou autres choses qu'elle a refusé de remettre, en raison du droit dans l'État étranger, lorsque les motifs de son refus sont rejetés par un tribunal de cet État ou la personne désignée en l'espèce par celui-ci et que le même État en avise le ministre de la Justice.

**Permission du juge**

**(4)** La personne dont les motifs de refus fondés sur une règle de droit en vigueur au Canada ou dans l'État étranger ont été rejetés, ou dont le refus a fait l'objet d'une décision défavorable aux termes de l'alinéa 30.11(8)a), ne peut refuser de nouveau de répondre aux mêmes questions ou de remettre les documents ou autres choses demandés que si le juge qui a rendu l'ordonnance d'obtention d'éléments de preuve ou la décision ou un autre juge du même tribunal l'y autorise.

2002, ch. 16, art. 3.

**Conditions et modalités**

**30.14** Les documents ou autres choses visés par une ordonnance rendue en vertu de l'article 30.13 ne peuvent être transmis à l'État étranger pour donner suite à la demande de celui-ci avant que le ministre de la Justice ne soit convaincu que cet État accepte de se conformer aux conditions et modalités de cette ordonnance.

2002, ch. 16, art. 3.

**Témoignage à distance**

**30.15 (1)** Le ministre de la Justice, s'il autorise la demande présentée par un État étranger en vue de contraindre une personne à déposer relativement au comportement qui fait l'objet de la demande par l'intermédiaire de moyens technologiques qui permettent sa présence virtuelle sur le territoire de l'État, ou qui permettent de l'interroger, fournit au commissaire les documents ou renseignements nécessaires pour lui permettre de présenter une demande d'ordonnance.

**Demande**

**(2)** Le commissaire ou son représentant autorisé présente à un juge une demande *ex parte* en vue de la délivrance d'une ordonnance pour contraindre la personne visée au paragraphe (1) à déposer.

2002, ch. 16, art. 3.

**Facteurs à considérer**

**30.16 (1)** Le juge rend l'ordonnance demandée dans le cadre du paragraphe 30.15(2) s'il est convaincu qu'il existe des motifs raisonnables de croire :

is satisfied that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

**(b)** the foreign state believes that the person's evidence or statement would be relevant to the investigation or proceedings in respect of the conduct referred to in paragraph (a).

**Provisions of order**

**(2)** An order made under subsection (1) shall order the person

**(a)** to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the foreign state;

**(b)** to answer any questions put to the person by the authorities of the foreign state or by any person authorized by those authorities;

**(c)** to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and

**(d)** to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

**Order effective throughout Canada**

**(3)** An order made under subsection (1) may be executed anywhere in Canada.

**Terms and conditions of order**

**(4)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

**Variation**

**(5)** The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

**Expenses**

**(6)** A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to

**a)** d'une part, qu'un comportement qui fait l'objet de la demande présentée par l'État étranger a lieu, a eu lieu ou est sur le point d'avoir lieu;

**b)** d'autre part, que l'État étranger croit que la déposition de la personne sera utile à l'enquête ou aux procédures relatives à ce comportement.

**Conditions et modalités**

**(2)** L'ordonnance enjoint à la personne :

**a)** de se présenter au lieu que le juge fixe pour la prise de la déposition par l'intermédiaire de moyens technologiques et de demeurer à la disposition de l'État étranger à moins qu'elle n'en soit excusée par les autorités de l'État;

**b)** de répondre aux questions que lui posent les autorités de l'État étranger ou la personne autorisée par cet État;

**c)** de faire, si c'est utile, une copie d'un document ou d'en établir un à partir de données et d'apporter la copie ou le document avec elle;

**d)** d'apporter avec elle, si c'est utile, tout document ou toute autre chose en sa possession ou sous son contrôle afin de les faire voir aux autorités par l'intermédiaire des moyens technologiques.

**Exécution**

**(3)** L'ordonnance peut être exécutée en tout lieu du Canada.

**Conditions et modalités**

**(4)** Le juge peut assortir l'ordonnance des conditions et modalités qu'il estime indiquées, notamment quant à la protection des droits de la personne qu'elle vise ou des tiers.

**Modifications**

**(5)** Le juge qui a rendu l'ordonnance ou un autre juge du même tribunal peut modifier les conditions et modalités de celle-ci.

**Frais**

**(6)** La personne visée par l'ordonnance a droit au paiement de ses frais de déplacement et de séjour au même titre qu'un témoin assigné à comparaître devant le juge qui a rendu l'ordonnance.

2002, ch. 16, art. 3.

which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

2002, c. 16, s. 3.

### Other laws to apply

**30.17 (1)** When a person gives evidence or a statement pursuant to an order made under subsection 30.16(1), the person shall give the evidence or statement as though he or she were physically before the court or tribunal outside Canada, in accordance with the laws of evidence and procedure applicable to that court or tribunal, but may refuse to give evidence or a statement, in whole or in part, if giving the evidence or statement would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

### Statement of reasons for refusal

**(2)** A person named in an order made under subsection 30.16(1) who refuses to give evidence or a statement on the grounds that it would disclose information that is protected by the Canadian law of non-disclosure of information or privilege shall, within seven days, give to the judge who made the order or another judge of the same court a detailed statement in writing of the reasons on which the person bases each refusal.

### Refusals

**(3)** A judge to whom a statement is given under subsection (2) shall determine whether the reasons for refusal are well-founded and, if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.16(1) give the evidence or statement.

### Contempt of court in Canada

**(4)** When a witness gives evidence under section 30.16, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.

2002, c. 16, s. 3.

### Arrest warrant

**30.18 (1)** The judge who made the order under subsection 30.11(1) or 30.16(1) or another judge of the same court may issue a warrant for the arrest of the person named in the order where the judge is satisfied, on an information in writing and under oath or solemn declaration, that

**(a)** the person did not attend or remain in attendance as required by the order or is about to abscond;

### Application du droit étranger

**30.17 (1)** La personne qui dépose par suite d'une ordonnance rendue en vertu du paragraphe 30.16(1) le fait comme si elle se trouvait devant le tribunal étranger, conformément au droit de la preuve et de la procédure qui régit le tribunal, mais elle peut refuser de faire toute déclaration ou de produire tout élément de preuve qui communiqueraient des renseignements autrement protégés par le droit canadien relatif à la non-divulgation de renseignements ou à l'existence de privilèges.

### Exposé des motifs de refus

**(2)** En cas de refus de faire une déclaration ou de produire un élément de preuve qui communiqueraient des renseignements autrement protégés par le droit canadien relatif à la non-divulgation de renseignements ou à l'existence de privilèges, la personne visée par une ordonnance rendue en vertu du paragraphe 30.16(1) présente dans les sept jours, par écrit, au juge qui a rendu l'ordonnance ou à un autre juge du même tribunal, un exposé détaillé des motifs du refus.

### Détermination de la validité des refus : droit canadien

**(3)** Le juge qui reçoit l'exposé détermine la validité des motifs de refus; s'il les rejette, il ordonne à la personne visée par l'ordonnance de faire la déclaration ou de produire l'élément de preuve.

### Outrage au tribunal

**(4)** Le droit canadien en matière d'outrage au tribunal s'applique à la personne qui, déposant dans le cadre de l'article 30.16, refuse de répondre à une question ou de produire tout document ou toute autre chose visés dans l'ordonnance du juge.

2002, ch. 16, art. 3.

### Mandat d'arrestation

**30.18 (1)** Le juge qui a rendu l'ordonnance visée aux paragraphes 30.11(1) ou 30.16(1) ou un autre juge du même tribunal peut délivrer un mandat d'arrestation visant la personne qui a fait l'objet de l'ordonnance s'il est convaincu, par une dénonciation écrite faite sous serment ou affirmation solennelle, que les conditions suivantes sont remplies :

**(b)** the order was personally served on the person; and

**(c)** in the case of an order made under subsection 30.11(1), the person is likely to give material evidence and, in the case of an order made under subsection 30.16(1), the foreign state believes that the testimony of the person would be relevant to the investigation or proceedings in respect of the conduct.

**a)** la personne ne s'est pas présentée ou ne demeure pas à disposition en conformité avec l'ordonnance, ou est sur le point de s'esquiver;

**b)** l'ordonnance a été signifiée personnellement à cette personne;

**c)** la personne rendra vraisemblablement, au titre du paragraphe 30.11(1), un témoignage important ou, au titre du paragraphe 30.16(1), un témoignage que l'État étranger croit utile à l'enquête ou aux procédures relatives au comportement.

#### Warrant effective throughout Canada

**(2)** A warrant issued under subsection (1) may be executed anywhere in Canada by any peace officer.

#### Exécution

**(2)** Le mandat d'arrestation peut être exécuté en tout lieu du Canada par tout agent de la paix.

#### Order

**(3)** A peace officer who arrests a person in execution of a warrant issued under subsection (1) shall, without delay, bring the person or cause the person to be brought before the judge who issued the warrant or another judge of the same court who may, to ensure compliance with the order made under subsection 30.11(1) or 30.16(1), order that the person be detained in custody or issue a *release order*, as defined in section 2 of the *Criminal Code*, the form of which may be adapted to suit the circumstances.

#### Ordonnance

**(3)** L'agent de la paix qui arrête la personne en exécution du mandat la conduit ou la fait conduire immédiatement devant le juge qui a délivré le mandat ou un autre juge du même tribunal; ce juge peut alors, afin de faciliter l'exécution de l'ordonnance rendue en vertu des paragraphes 30.11(1) ou 30.16(1), ordonner que cette personne soit détenue ou rendre une *ordonnance de mise en liberté*, au sens de l'article 2 du *Code criminel*, dont la formule peut être adaptée aux circonstances.

#### Copy of information

**(4)** A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.

2002, c. 16, s. 3; 2019, c. 25, s. 387.

#### Copie de la dénonciation

**(4)** La personne arrêtée en exécution d'un mandat délivré sous le régime du présent article a le droit de recevoir, sur demande, une copie de la dénonciation qui a donné lieu au mandat.

2002, ch. 16, art. 3; 2019, ch. 25, art. 387.

## Lending Exhibits

## Prêt de pièces

#### Approval of loan request

**30.19 (1)** If the Minister of Justice approves a request of a foreign state under an agreement to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Canada or in a proceeding before the Tribunal lent to the foreign state, the Minister shall provide the Commissioner with any documents or information necessary to apply for a loan order.

#### Autorisation

**30.19 (1)** Le ministre de la Justice, s'il autorise la demande d'un État étranger faite dans le cadre d'un accord d'emprunter des pièces admises en preuve dans des procédures à l'égard d'une infraction devant un tribunal canadien ou dans une procédure devant le Tribunal, fournit au commissaire les documents ou renseignements nécessaires pour lui permettre de présenter une demande d'ordonnance de prêt de pièces.

#### Application for loan order

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply for a loan order in respect of the exhibit to the court that has possession of the exhibit, or to the Tribunal if it has possession of the exhibit, after having given reasonable notice to the parties to the proceedings and to

#### Demande

**(2)** Le commissaire ou son représentant autorisé présente une demande en vue de la délivrance de l'ordonnance de prêt au tribunal qui a la possession de ces pièces ou au Tribunal, si c'est lui qui a la possession des pièces, après avoir donné un préavis suffisant aux parties aux procédures et :

**(a)** to the Attorney General of Canada, in the case of an application to the Federal Court or the Federal Court of Appeal;

**(b)** the attorney general of the province in which the exhibit is located, in the case of an application to a court other than the Federal Court or the Federal Court of Appeal; or

**(c)** the Chairman of the Tribunal, in the case of an application to the Tribunal.

**Contents of application**

**(3)** An application made under subsection (2) must

**(a)** contain a description of the exhibit requested to be lent;

**(b)** designate a person or class of persons to whom the exhibit is sought to be given;

**(c)** state the reasons for the request and, if any tests are sought to be performed on the exhibit, contain a description of the tests and a statement of the place where they will be performed;

**(d)** state the place or places to which the exhibit is sought to be removed; and

**(e)** specify the time at or before which the exhibit is to be returned.

2002, c. 8, s. 198, c. 16, s. 3.

**Making of loan order**

**30.2 (1)** If the court or the Tribunal, as the case may be, is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court or Tribunal proposes to include in any loan order, the court or Tribunal may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection 30.19(2), make a loan order.

**Terms of loan order**

**(2)** A loan order made under subsection (1) must

**(a)** contain a description of the exhibit;

**(b)** order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;

**(c)** contain a description of any tests authorized to be performed on the exhibit, as well as a statement of the place where the tests must be performed;

**a)** au procureur général du Canada, s'il s'agit d'une demande à la Cour fédérale ou à la Cour d'appel fédérale;

**b)** au procureur général de la province où se trouvent les pièces, dans le cas d'une demande à un autre tribunal;

**c)** au président du Tribunal, dans le cas d'une demande à celui-ci.

**Contenu de la demande**

**(3)** La demande comporte les éléments suivants :

**a)** la description des pièces demandées;

**b)** la désignation de la personne ou de la catégorie de personnes autorisées à recevoir les pièces;

**c)** un exposé des motifs de la demande et, le cas échéant, une description de l'expertise à laquelle on entend les soumettre et une indication du lieu où celle-ci doit être faite;

**d)** le ou les lieux où l'on entend transporter les pièces;

**e)** la durée maximale prévue du prêt.

2002, ch. 8, art. 198, ch. 16, art. 3.

**Délivrance**

**30.2 (1)** Après avoir entendu les observations des personnes à qui un préavis a été donné en conformité avec le paragraphe 30.19(2), le tribunal ou le Tribunal, selon le cas, peut rendre l'ordonnance de prêt s'il est convaincu que l'État étranger désire emprunter les pièces en cause pour une période déterminée et accepte de se conformer aux conditions dont il entend assortir l'ordonnance.

**Contenu de l'ordonnance**

**(2)** L'ordonnance de prêt comporte les éléments suivants :

**a)** la description des pièces;

**b)** l'ordre à la personne en possession des pièces de les remettre à la personne désignée par l'ordonnance ou qui fait partie d'une catégorie de personnes ainsi désignées;

**(d)** fix the place or places to which the exhibit may be removed; and

**(e)** fix the time at or before which the exhibit must be returned.

**c)** le cas échéant, la description de l'expertise à laquelle les pièces peuvent être soumises et une indication du lieu où celle-ci doit être faite;

**d)** le ou les lieux où les pièces peuvent être transportées;

**e)** la date limite à laquelle les pièces doivent être retournées.

#### Terms and conditions

**(3)** A loan order made under subsection (1) may include any terms or conditions that the court or the Tribunal considers desirable, including those relating to the preservation of the exhibit.

2002, c. 16, s. 3.

#### Conditions et modalités

**(3)** Le tribunal ou le Tribunal, selon le cas, peut assortir l'ordonnance de prêt des conditions et modalités qu'il estime indiquées, notamment quant à la conservation des pièces visées.

2002, ch. 16, art. 3.

#### Variation of loan order

**30.21** A court or the Tribunal may vary the terms and conditions of any loan order made by it.

2002, c. 16, s. 3.

#### Modifications

**30.21** Le tribunal ou le Tribunal, selon le cas, peut modifier les conditions et modalités de l'ordonnance de prêt qu'il a rendue.

2002, ch. 16, art. 3.

#### Copy of order to custodian

**30.22** A copy of a loan order and of an order varying it shall be delivered by the Commissioner to the Minister of Justice and to the person who had possession of the exhibit when the loan order was made.

2002, c. 16, s. 3.

#### Remise

**30.22** Le commissaire remet une copie de l'ordonnance de prêt de pièces ou d'une ordonnance de modification de celle-ci au ministre de la Justice et à celui qui avait la possession des pièces au moment où l'ordonnance originale a été rendue.

2002, ch. 16, art. 3.

#### Presumption of continuity

**30.23** The burden of proving that an exhibit lent to a foreign state pursuant to a loan order made under subsection 30.2(1) and returned to Canada is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit is deemed to have been continuously in the possession of the court that made the loan order or the Tribunal, as the case may be.

2002, c. 16, s. 3.

#### Présomption

**30.23** La partie qui allègue qu'une pièce prêtée à un État étranger a été modifiée ou n'est pas dans l'état où elle était au moment où l'ordonnance a été rendue a la charge de le prouver; en l'absence de preuve à cet effet, la pièce en question est réputée avoir toujours été en la possession du tribunal qui a rendu l'ordonnance de prêt ou du Tribunal, selon le cas.

2002, ch. 16, art. 3.

## Appeal

#### Appeal on question of law

**30.24 (1)** An appeal lies, with leave, on a question of law alone, to the court of appeal, within the meaning of section 2 of the *Criminal Code*, from an order or decision of a judge or a court in Canada made under this Part, other than an order or decision of the Federal Court or a judge of that Court, if the application for leave to appeal is made to a judge of the court of appeal within fifteen days after the order or decision.

## Appel

#### Appel — question de droit

**30.24 (1)** Il peut être interjeté appel, avec son autorisation et sur une question de droit seulement, auprès de la cour d'appel au sens de l'article 2 du *Code criminel* de toute décision ou ordonnance qu'un juge ou un tribunal au Canada — autre qu'un juge de la Cour fédérale ou un juge de cette cour ou que le Tribunal — rend en vertu de

### Appeal on question of law

**(2)** An appeal lies, with leave, on a question of law alone, to the Federal Court of Appeal, from any order or decision of the Federal Court or the Tribunal made under this Part, if the application for leave to appeal is made to a judge of that Court within fifteen days after the order or decision.

2002, c. 8, s. 198, c. 16, s. 3.

## Evidence Obtained by Canada from Abroad

### Evidence

**30.25** The Minister of Justice shall, on receiving evidence sent by a foreign state in response to a request made by Canada under an agreement, send it promptly to the Commissioner.

2002, c. 16, s. 3.

### Foreign records

**30.26 (1)** In a proceeding in respect of which Parliament has jurisdiction, a record or a copy of a record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister of Justice by a foreign state in accordance with a Canadian request under an agreement, is not inadmissible in evidence by reason only that a statement contained in it is hearsay or a statement of opinion.

### Probative value

**(2)** For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under Part VII.1 or VIII, the court hearing the matter, or the Tribunal in proceedings before it, may examine the record or copy, receive evidence orally or by affidavit, or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and may draw any reasonable inference from the form or content of the record or copy.

2002, c. 16, s. 3.

la présente partie, à la condition d'en demander l'autorisation à un juge de la cour d'appel dans les quinze jours suivant la décision ou l'ordonnance.

### Appel — question de droit

**(2)** Il peut être interjeté appel, avec son autorisation et sur une question de droit seulement, auprès de la Cour d'appel fédérale de toute décision ou ordonnance qu'un juge de la Cour fédérale ou le Tribunal rend en vertu de la présente partie, à la condition d'en demander l'autorisation à un juge de la Cour d'appel fédérale dans les quinze jours suivant la décision ou l'ordonnance.

2002, ch. 8, art. 198, ch. 16, art. 3.

## Demandes présentées par le Canada

### Transmission des éléments de preuve au commissaire

**30.25** Il incombe au ministre de la Justice, sur réception d'éléments de preuve reçus dans le cadre d'une demande présentée par le Canada en vertu d'un accord, de les transmettre sans délai au commissaire.

2002, ch. 16, art. 3.

### Documents

**30.26 (1)** Les documents — ou une copie de ceux-ci — ainsi que les affidavits, certificats ou autres déclarations relatifs à ces documents et faits par la personne qui en a la garde ou qui en a connaissance, transmis au ministre de la Justice par un État étranger en conformité avec une demande canadienne présentée sous le régime d'un accord, ne sont pas inadmissibles en preuve dans des procédures qui relèvent de la compétence du Parlement du seul fait qu'ils contiennent un ouï-dire ou expriment une opinion.

### Force probante

**(2)** Le tribunal saisi, ou le Tribunal dans le cas de procédures relevant de lui, peut, afin de décider de la force probante d'un document — ou de sa copie — admis en preuve en vertu des parties VII.1 ou VIII, procéder à son examen ou recevoir une déposition verbale, un affidavit ou un certificat ou autre déclaration portant sur le document, fait, selon le signataire, conformément aux lois de l'État étranger, qu'il soit fait en la forme d'un affidavit rempli devant un agent de l'État, y compris une déposition quant aux circonstances de la rédaction, de l'enregistrement, de la mise en mémoire ou de la reproduction des renseignements contenus dans le document ou la copie, et tirer de sa forme ou de son contenu toute conclusion fondée.

2002, ch. 16, art. 3.

**Foreign things**

**30.27** In a proceeding in respect of which Parliament has jurisdiction, a thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Commissioner by the Minister of Justice in accordance with a Canadian request under an agreement, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

2002, c. 16, s. 3.

**Status of certificate**

**30.28** An affidavit, certificate or other statement mentioned in section 30.26 or 30.27 is, in the absence of evidence to the contrary, proof of the statements contained in it without proof of the signature or official character of the person appearing to have signed it.

2002, c. 16, s. 3.

## General

**Confidentiality of foreign requests and evidence**

**30.29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except for the purposes of the administration or enforcement of this Act,

**(a)** the contents of a request made to Canada from a foreign state or the fact of the request having been made; or

**(b)** the contents of any record or thing obtained from a foreign state pursuant to a Canadian request.

**Confidentiality of Canadian evidence**

**(2)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act, any information obtained under section 30.06 or 30.11.

**Exception**

**(3)** This section does not apply in respect of any information that has been made public.

2002, c. 16, s. 3.

**Choses**

**30.27** Les choses ainsi que les affidavits, certificats ou autres déclarations les concernant faits par une personne à l'étranger et attestant de leur identité et de leur possession à compter de leur obtention jusqu'à leur remise au commissaire par le ministre de la Justice en conformité avec une demande canadienne présentée sous le régime d'un accord, ne sont pas inadmissibles en preuve dans des procédures qui relèvent de la compétence du Parlement du seul fait que les affidavits, certificats ou déclarations contiennent un ouï-dire ou expriment une opinion.

2002, ch. 16, art. 3.

**Admissibilité des affidavits, certificats, etc.**

**30.28** Les affidavits, certificats ou déclarations mentionnés aux articles 30.26 ou 30.27 font foi de leur contenu, sauf preuve contraire, sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

2002, ch. 16, art. 3.

## Dispositions générales

**Confidentialité des demandes et éléments de preuve étrangers**

**30.29 (1)** Il est interdit à quiconque exerce ou a exercé des fonctions dans le cadre de l'application ou du contrôle d'application de la présente loi de communiquer ou de permettre que soient communiqués à une autre personne, sauf dans le cadre de l'application ou du contrôle d'application de la présente loi :

**a)** la teneur d'une demande présentée au Canada par un État étranger ou l'existence de celle-ci;

**b)** la teneur des documents ou autres choses obtenus d'un État étranger en vertu d'une demande canadienne.

**Confidentialité des éléments de preuve canadiens**

**(2)** Il est interdit à quiconque exerce ou a exercé des fonctions dans le cadre de l'application ou du contrôle d'application de la présente loi de communiquer ou de permettre que soit communiqué à une autre personne, sauf à un organisme canadien chargé du contrôle d'application de la loi ou dans le cadre de l'application ou du contrôle d'application de la présente loi, l'un quelconque des renseignements obtenus en application des articles 30.06 ou 30.11.

**Exception**

**(3)** Le présent article ne s'applique pas aux renseignements qui sont devenus publics.

2002, ch. 16, art. 3.

**Records or other things already in Commissioner's possession**

**30.291 (1)** For greater certainty, any evidence requested by a foreign state under an agreement may be obtained for the purposes of giving effect to the request only in accordance with the agreement and the procedure set out in this Part, even in the case of records or other things already in the possession of the Commissioner.

**Exception**

**(2)** This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

2002, c. 16, s. 3.

**Preservation of informal arrangements**

**30.3** Nothing in this Part shall be construed so as to abrogate or derogate from any arrangement or agreement, other than an agreement under this Part, in respect of cooperation between the Commissioner and a foreign authority.

2002, c. 16, s. 3.

**Documents ou autres choses déjà en la possession du commissaire**

**30.291 (1)** Il est entendu que les éléments de preuve faisant l'objet d'une demande faite sous le régime d'un accord ne peuvent être obtenus pour donner suite à la demande qu'en conformité avec l'accord et les modalités prévues à la présente partie même s'il s'agit de documents ou d'autres choses déjà en la possession du commissaire.

**Exception**

**(2)** Le présent article ne s'applique ni à l'égard de renseignements qui sont devenus publics ni à l'égard de renseignements dont la communication a été autorisée par la personne les ayant fournis.

2002, ch. 16, art. 3.

**Maintien des autres arrangements de coopération**

**30.3** La présente partie n'a pas pour effet de porter atteinte aux accords autres que ceux visés par la présente partie, ou aux ententes, visant la coopération entre le commissaire et une autorité étrangère.

2002, ch. 16, art. 3.

## PART IV

# Special Remedies

**Reduction or removal of customs duties**

**31** Whenever, as a result of an inquiry under this Act, a judgment of a court or a decision of the Tribunal, it appears to the satisfaction of the Governor in Council that

**(a)** competition in respect of any article has been prevented or lessened substantially, and

**(b)** the prevention or lessening of competition is facilitated by customs duties imposed on the article, or on any like article, or can be reduced by a removal or reduction of customs duties so imposed,

the Governor in Council may, by order, remove or reduce any such customs duties.

R.S., 1985, c. C-34, s. 31; R.S., 1985, c. 19 (2nd Supp.), s. 27; 1999, c. 31, s. 48(F).

**Powers of Federal Court where certain rights used to restrain trade**

**32 (1)** In any case where use has been made of the exclusive rights and privileges conferred by one or more patents for invention, by one or more certificates of

## PARTIE IV

# Recours spéciaux

**Réduction ou suppression de droits de douane**

**31** Chaque fois que, par suite d'une enquête tenue sous le régime de la présente loi, d'un jugement d'une cour ou d'une décision du Tribunal, le gouverneur en conseil est convaincu :

**a)** que la concurrence relativement à un article a été sensiblement empêchée ou diminuée;

**b)** que cet empêchement ou cette diminution de la concurrence est favorisé par les droits de douane imposés sur cet article ou sur tout article semblable ou pourrait être atténué par la suppression ou la réduction de ces droits,

le gouverneur en conseil peut, par décret, supprimer ou réduire ces droits.

L.R. (1985), ch. C-34, art. 31; L.R. (1985), ch. 19 (2e suppl.), art. 27; 1999, ch. 31, art. 48(F).

**Pouvoirs de la Cour fédérale dans le cas d'usage de certains droits pour restreindre le commerce**

**32 (1)** Chaque fois qu'il a été fait usage des droits et privilèges exclusifs conférés par un ou plusieurs brevets d'invention, par un ou plusieurs certificats de protection

supplementary protection issued under the *Patent Act*, by one or more trademarks, by a copyright or by a registered integrated circuit topography, so as to

**(a)** limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity that may be a subject of trade or commerce,

**(b)** restrain or injure, unduly, trade or commerce in relation to any such article or commodity,

**(c)** prevent, limit or lessen, unduly, the manufacture or production of any such article or commodity or unreasonably enhance the price thereof, or

**(d)** prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity,

the Federal Court may make one or more of the orders referred to in subsection (2) in the circumstances described in that subsection.

**Orders**

**(2)** The Federal Court, on an information exhibited by the Attorney General of Canada, may, for the purpose of preventing any use in the manner defined in subsection (1) of the exclusive rights and privileges conferred by any patents for invention, certificates of supplementary protection issued under the *Patent Act*, trademarks, copyrights or registered integrated circuit topographies relating to or affecting the manufacture, use or sale of any article or commodity that may be a subject of trade or commerce, make one or more of the following orders:

**(a)** declaring void, in whole or in part, any agreement, arrangement or licence relating to that use;

**(b)** restraining any person from carrying out or exercising any or all of the terms or provisions of the agreement, arrangement or licence;

**(c)** directing the grant of licences under any such patent, certificate of supplementary protection, copyright or registered integrated circuit topography to the persons and on the terms and conditions that the court may deem proper or, if the grant and other remedies under this section would appear insufficient to prevent that use, revoking the patent or certificate of supplementary protection;

supplémentaire délivrés en vertu de la *Loi sur les brevets*, par une ou plusieurs marques de commerce, par un droit d'auteur ou par une topographie de circuit intégré enregistrée pour :

**a)** soit limiter indûment les facilités de transport, de production, de fabrication, de fourniture, d'emmagasinage ou de négoce d'un article ou d'une denrée pouvant faire l'objet d'un échange ou d'un commerce,

**b)** soit restreindre indûment l'échange ou le commerce à l'égard d'un tel article ou d'une telle denrée ou lui causer un préjudice indu,

**c)** soit empêcher, limiter ou réduire indûment la fabrication ou la production d'un tel article ou d'une telle denrée, ou en augmenter déraisonnablement le prix,

**d)** soit empêcher ou réduire indûment la concurrence dans la production, la fabrication, l'achat, l'échange, la vente, le transport ou la fourniture d'un tel article ou d'une telle denrée,

la Cour fédérale peut rendre une ou plusieurs des ordonnances visées au paragraphe (2) dans les circonstances qui y sont décrites.

**Ordonnances**

**(2)** La Cour fédérale, sur une plainte exhibée par le procureur général du Canada, peut, en vue d'empêcher tout usage, de la manière définie au paragraphe (1), des droits et privilèges exclusifs conférés par des brevets d'invention, des certificats de protection supplémentaire délivrés en vertu de la *Loi sur les brevets*, des marques de commerce, des droits d'auteur ou des topographies de circuits intégrés enregistrées touchant ou visant la fabrication, l'emploi ou la vente de tout article ou denrée pouvant faire l'objet d'un échange ou d'un commerce, rendre une ou plusieurs des ordonnances suivantes :

**a)** déclarer nul, en totalité ou en partie, tout accord, arrangement ou permis relatif à un tel usage;

**b)** empêcher toute personne d'exécuter ou d'exercer l'ensemble ou l'une des conditions ou stipulations de l'accord, de l'arrangement ou du permis en question;

**c)** prescrire l'octroi de licences d'exploitation du brevet, du certificat de protection supplémentaire, de la topographie de circuit intégré enregistrée ou de licences en vertu d'un droit d'auteur aux personnes et aux conditions que le tribunal juge appropriées, ou, si cet octroi et les autres recours prévus par le présent article semblent insuffisants pour empêcher cet usage, révoquer le brevet ou le certificat de protection supplémentaire;

**(d)** directing that the registration of a trademark in the register of trademarks or the registration of an integrated circuit topography in the register of topographies be expunged or amended; and

**(e)** directing that such other acts be done or omitted as the Court may deem necessary to prevent any such use.

**d)** prescrire la radiation ou la modification de l'enregistrement d'une marque de commerce dans le registre des marques de commerce ou d'une topographie de circuit intégré dans le registre des topographies;

**e)** prescrire que d'autres actes soient faits ou omis selon que le tribunal l'estime nécessaire pour empêcher un tel usage.

**Treaties, etc.**

**(3)** No order shall be made under this section that is at variance with any treaty, convention, arrangement or engagement respecting patents, certificates of supplementary protection, trademarks, copyrights or integrated circuit topographies to which Canada is a party.

R.S., 1985, c. C-34, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 18; 1990, c. 37, s. 29; 2002, c. 16, s. 4(F); 2014, c. 20, s. 366(E); 2017, c. 6, s. 123.

**Traités**

**(3)** Ces ordonnances ne peuvent être rendues que si elles sont compatibles avec les traités, conventions, arrangements ou engagements auxquels le Canada est partie concernant des brevets d'invention, des certificats de protection supplémentaire, des marques de commerce, des droits d'auteur ou des topographies de circuits intégrés.

L.R. (1985), ch. C-34, art. 32; L.R. (1985), ch. 10 (4e suppl.), art. 18; 1990, ch. 37, art. 29; 2002, ch. 16, art. 4(F); 2014, ch. 20, art. 366(A); 2017, ch. 6, art. 123.

**Interim injunction**

**33 (1)** On application by or on behalf of the Attorney General of Canada or the attorney general of a province, a court may issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court could constitute or be directed toward the commission of an offence under Part VI — other than an offence under section 52 involving the use of any means of telecommunication or an offence under section 52.01, 52.1 or 53 — or under section 66, pending the commencement or completion of a proceeding under subsection 34(2) or a prosecution against the person, if it appears to the court that

**(a)** the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence; and

**(b)** if the offence is committed or continued,

**(i)** injury to competition that cannot adequately be remedied under any other provision of this Act will result, or

**(ii)** serious harm is likely to ensue unless the injunction is issued and the balance of convenience favours issuing the injunction.

**Injonction provisoire**

**33 (1)** Le tribunal peut par ordonnance, sur demande présentée par le procureur général du Canada ou le procureur général d'une province ou pour leur compte, prononcer une injonction provisoire interdisant à toute personne nommément désignée dans la demande de faire quoi que ce soit qui, d'après lui, pourrait constituer une infraction visée à la partie VI — à l'exception d'une infraction à l'article 52 comportant l'utilisation d'un moyen de télécommunication ou d'une infraction aux articles 52.01, 52.1 ou 53 — ou à l'article 66, ou tendre à la perpétration d'une telle infraction, en attendant que les procédures prévues au paragraphe 34(2) ou des poursuites soient engagées ou achevées contre la personne en question, s'il constate que, à la fois :

**a)** la personne a accompli, est sur le point d'accomplir ou accomplira vraisemblablement un acte constituant l'infraction, ou tendant à sa perpétration;

**b)** si l'infraction est commise ou se poursuit :

**(i)** ou bien il en résultera, pour la concurrence, un préjudice auquel il ne peut être adéquatement remédié en vertu d'une autre disposition de la présente loi,

**(ii)** ou bien un dommage grave sera vraisemblablement causé en l'absence de l'ordonnance et, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**Injunction — offences involving telecommunication**

**(1.1)** On application by or on behalf of the Attorney General of Canada or the attorney general of a province, a

**Injonction — infraction comportant l'utilisation d'un moyen de télécommunication**

**(1.1)** Le tribunal peut par ordonnance, sur demande présentée par le procureur général du Canada ou le

court may issue an injunction forbidding any person named in the application from doing any act or thing that it appears to the court could constitute or be directed toward the commission of an offence under section 52 involving the use of any means of telecommunication or an offence under section 52.01, 52.1 or 53, if it appears to the court that

**(a)** the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence;

**(b)** if the offence is committed or continued, serious harm is likely to ensue unless the injunction is issued; and

**(c)** the balance of convenience favours issuing the injunction.

**Injunction against third parties — offences involving telecommunication**

**(1.2)** On application by or on behalf of the Attorney General of Canada or the attorney general of a province, a court may issue an injunction ordering any person named in the application to refrain from supplying to another person a product that it appears to the court is or is likely to be used to commit or continue an offence under section 52 involving the use of any means of telecommunication or an offence under section 52.01, 52.1 or 53, or to do any act or thing that it appears to the court could prevent the commission or continuation of such an offence, if it appears to the court that

**(a)** a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of the offence;

**(b)** if the offence is committed or continued, serious harm is likely to ensue unless the injunction is issued; and

**(c)** the balance of convenience favours issuing the injunction.

**Notice of application**

**(2)** Subject to subsection (3), at least 48 hours' notice of an application for an injunction under subsection (1), (1.1) or (1.2) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

procureur général d'une province ou pour leur compte, prononcer une injonction interdisant à toute personne nommément désignée dans la demande de faire quoi que ce soit qui, d'après lui, pourrait constituer une infraction visée à l'article 52 comportant l'utilisation d'un moyen de télécommunication ou aux articles 52.01, 52.1 ou 53, ou tendre à la perpétration d'une telle infraction, s'il constate que, à la fois :

**a)** la personne a accompli, est sur le point d'accomplir ou accomplira vraisemblablement un acte constituant l'infraction, ou tendant à sa perpétration;

**b)** si l'infraction est commise ou se poursuit, un dommage grave sera vraisemblablement causé en l'absence de l'ordonnance;

**c)** après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**Injonction contre des tiers — infraction comportant l'utilisation d'un moyen de télécommunication**

**(1.2)** Le tribunal peut par ordonnance, sur demande présentée par le procureur général du Canada ou le procureur général d'une province ou pour leur compte, prononcer une injonction enjoignant à toute personne nommément désignée dans la demande de s'abstenir de fournir à une autre personne un produit qui, d'après lui, est ou sera vraisemblablement utilisé pour la perpétration ou la continuation d'une infraction à l'article 52 comportant l'utilisation d'un moyen de télécommunication ou d'une infraction aux articles 52.01, 52.1 ou 53, ou lui enjoignant d'accomplir tout acte qu'il estime susceptible d'empêcher la perpétration ou la continuation d'une telle infraction, s'il constate que, à la fois :

**a)** une personne a accompli, est sur le point d'accomplir ou accomplira vraisemblablement un acte constituant l'infraction, ou tendant à sa perpétration;

**b)** si l'infraction est commise ou se poursuit, un dommage grave sera vraisemblablement causé en l'absence de l'ordonnance;

**c)** après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**Préavis**

**(2)** Sous réserve du paragraphe (3), un préavis d'au moins quarante-huit heures de la présentation de la demande d'injonction prévue à l'un des paragraphes (1) à (1.2) doit être donné, par ou pour le procureur général du Canada ou le procureur général d'une province, selon le cas, à chaque personne contre laquelle est demandée cette injonction.

### *Ex parte* application

**(3)** If a court to which an application is made under subsection (1), (1.1) or (1.2) is satisfied that subsection (2) cannot reasonably be complied with, or that the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest, it may proceed with the application *ex parte* but any injunction issued under subsection (1), (1.1) or (1.2) by the court on *ex parte* application has effect only for the period, not exceeding 10 days, that is specified in the order.

### Terms of injunction

**(4)** An injunction issued under subsection (1), (1.1) or (1.2)

**(a)** shall be in the terms that the court that issues it considers necessary and sufficient to meet the circumstances of the case; and

**(b)** subject to subsection (3), has effect for the period that is specified in the order.

### Extension or cancellation of injunction

**(5)** On application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, on at least 48 hours' notice of the application to all other parties to the injunction, a court that issues an injunction under subsection (1), (1.1) or (1.2) may, by order,

**(a)** despite subsections (3) and (4), continue the injunction, with or without modification, for any definite period that is specified in the order; or

**(b)** revoke the injunction.

### Duty of applicant

**(6)** If an injunction is issued under subsection (1), (1.1) or (1.2), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the acts or things on the basis of which the injunction was issued.

### Punishment for disobedience

**(7)** A court may punish any person who contravenes an injunction issued by it under subsection (1), (1.1) or (1.2) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

### Demande *ex parte*

**(3)** Si le tribunal saisi de la demande prévue à l'un des paragraphes (1) à (1.2) est convaincu qu'on ne peut raisonnablement se conformer au paragraphe (2) ou que l'urgence de la situation est telle que la signification du préavis visé au paragraphe (2) serait contraire à l'intérêt public, il peut donner suite à la demande *ex parte*, mais l'injonction qu'il prononce en vertu de l'un des paragraphes (1) à (1.2) sur demande *ex parte* n'a effet que pour la période — d'au plus dix jours — que spécifie l'ordonnance.

### Libellé de l'injonction

**(4)** L'injonction prononcée en vertu de l'un des paragraphes (1) à (1.2) doit :

**a)** être libellée de la manière que le tribunal estime nécessaire et suffisante pour répondre aux besoins en l'occurrence;

**b)** sous réserve du paragraphe (3), avoir effet pendant la période que spécifie l'ordonnance.

### Prolongation ou annulation de l'injonction

**(5)** Sur demande, présentée par le procureur général du Canada ou le procureur général d'une province ou pour leur compte ou par toute personne que vise une injonction prononcée en vertu de l'un des paragraphes (1) à (1.2) ou pour son compte, et sur préavis d'au moins quarante-huit heures donné à toutes les autres parties à l'injonction, le tribunal qui prononce l'injonction peut, par ordonnance :

**a)** malgré les paragraphes (3) et (4), proroger l'injonction, avec ou sans modification, pendant le délai ferme que spécifie l'ordonnance;

**b)** révoquer l'injonction.

### Obligation du requérant

**(6)** Lorsqu'une injonction est prononcée en vertu de l'un des paragraphes (1) à (1.2), le procureur général du Canada ou le procureur général d'une province, selon le cas, doit, avec toute la diligence possible, intenter et mener à terme toute poursuite ou toutes procédures résultant des actes qui ont motivé l'injonction.

### Peine pour transgression

**(7)** Le tribunal peut infliger l'amende qu'il estime indiquée ou un emprisonnement maximal de deux ans à quiconque contrevient à l'injonction qu'il a prononcée en vertu de l'un des paragraphes (1) à (1.2).

**Definition of *court***

**(8)** In this section, ***court*** means the Federal Court or a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 33; 1993, c. 34, s. 50; 1999, c. 2, s. 10; 2002, c. 16, s. 5; 2010, c. 23, s. 73.

**Prohibition orders**

**34 (1)** Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

**Idem**

**(2)** Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

**Prescriptive terms**

**(2.1)** An order made under this section in relation to an offence may require any person

**(a)** to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

**(b)** to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

**Duration of order**

**(2.2)** An order made under this section applies for a period of ten years unless the court specifies a shorter period.

**Définition de *tribunal***

**(8)** Au présent article, ***tribunal*** s'entend de la Cour fédérale ou d'une cour supérieure de juridiction criminelle, au sens du *Code criminel*.

L.R. (1985), ch. C-34, art. 33; 1993, ch. 34, art. 50; 1999, ch. 2, art. 10; 2002, ch. 16, art. 5; 2010, ch. 23, art. 73.

**Interdictions**

**34 (1)** Dès qu'une personne est déclarée coupable d'une infraction visée à la partie VI, le tribunal peut, à la demande du procureur général du Canada ou du procureur général de la province, en sus de toute autre peine infligée à cette personne, interdire la continuation ou la répétition de l'infraction ou l'accomplissement, par cette personne ou par toute autre personne, d'un acte qui tend à la continuation ou à la répétition de l'infraction.

**Idem**

**(2)** Lorsqu'il apparaît à une cour supérieure de juridiction criminelle dans des procédures commencées au moyen d'une plainte du procureur général du Canada ou du procureur général de la province, pour l'application du présent article, qu'une personne a accompli, est sur le point d'accomplir ou accomplira vraisemblablement un acte ou une chose constituant une infraction visée à la partie VI, ou tendant à la perpétration d'une telle infraction, le tribunal peut interdire la perpétration de cette infraction ou l'accomplissement ou la continuation, par cette personne ou toute autre personne, d'un acte ou d'une chose constituant une telle infraction ou tendant à sa perpétration.

**Injonction de faire**

**(2.1)** L'ordonnance rendue en vertu du présent article à l'égard d'une infraction peut enjoindre à une personne de prendre :

**a)** soit les mesures que le tribunal estime nécessaires pour empêcher la perpétration, la continuation ou la répétition de l'infraction;

**b)** soit toutes mesures convenues entre cette personne et le procureur général du Canada ou le procureur général de la province.

**Durée d'application**

**(2.2)** L'ordonnance rendue en vertu du présent article s'applique pendant une période de dix ans ou la période plus courte fixée par le tribunal.

**Variation or rescission**

**(2.3)** An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order

**(a)** where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or

**(b)** where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.

**Other proceedings**

**(2.4)** No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.

**Appeals to courts of appeal and Federal Court**

**(3)** The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order

**(a)** from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or

**(b)** from the Federal Court to the Federal Court of Appeal,

as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

**Appeals to Supreme Court of Canada**

**(3.1)** The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order from the court of appeal of the province or the Federal Court of Appeal, as the case may be, to the Supreme Court of Canada on any ground that involves a question of law or, if leave to appeal is granted by the Supreme

**Annulation ou modification**

**(2.3)** Le tribunal peut annuler ou modifier l'ordonnance qu'il a rendue en vertu du présent article en ce qui concerne une personne à l'égard de laquelle elle a été rendue, dans les cas suivants :

**a)** cette personne et le procureur général du Canada ou le procureur général de la province y consentent;

**b)** il conclut, à la demande de cette personne, du procureur général du Canada ou du procureur général de la province, que les circonstances ayant entraîné l'ordonnance ont changé et que, sur le fondement des circonstances qui existent au moment où la demande est présentée, l'ordonnance n'aurait pas été rendue ou n'aurait pas eu les effets nécessaires à la réalisation de son objet.

**Une seule poursuite**

**(2.4)** Il ne peut être intenté de poursuite en vertu de la partie VI contre une personne contre laquelle l'ordonnance prévue au paragraphe (2) est demandée, si les faits qui seraient allégués au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux qui ont fait l'objet de la demande.

**Appels : cours d'appel et Cour d'appel fédérale**

**(3)** Le procureur général du Canada ou le procureur général de la province ou toute personne contre laquelle est rendue l'ordonnance prévue au présent article peut interjeter appel de l'ordonnance, du refus de rendre une ordonnance ou de l'annulation d'une ordonnance d'une cour supérieure de juridiction criminelle dans la province ou de la Cour fédérale, respectivement, à la cour d'appel de la province ou à la Cour d'appel fédérale pour tout motif comportant une question de droit ou, si l'autorisation d'appel est accordée par le tribunal auprès duquel l'appel est interjeté dans les vingt et un jours suivant le prononcé du jugement faisant l'objet de la demande d'autorisation d'appel ou dans le délai prolongé qu'accorde, pour des raisons spéciales, le tribunal auprès duquel l'appel est interjeté ou un juge de ce tribunal, pour tout motif d'appel jugé suffisant par ce tribunal.

**Motifs d'appel à la Cour suprême**

**(3.1)** Le procureur général du Canada ou le procureur général de la province ou toute personne contre laquelle est rendue l'ordonnance prévue au présent article peut interjeter appel de l'ordonnance, du refus de rendre une ordonnance ou de l'annulation d'une ordonnance de la cour d'appel de la province ou de la Cour d'appel fédérale, selon le cas, à la Cour suprême du Canada pour tout motif comportant une question de droit ou, si

Court, on any ground that appears to that Court to be a sufficient ground of appeal.

**Disposition of appeal**

**(4)** Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

**Procedure**

**(5)** Subject to subsections (3) and (4), Part XXI of the *Criminal Code* applies with such modifications as the circumstances require to appeals under this section.

**Punishment for disobedience**

**(6)** A court may punish any person who contravenes an order made under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding five years.

**Procedure**

**(7)** Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

**Definition of *superior court of criminal jurisdiction***

**(8)** In this section, ***superior court of criminal jurisdiction*** means a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 34; R.S., 1985, c. 19 (2nd Supp.), s. 28, c. 34 (3rd Supp.), s. 8; 1999, c. 2, s. 11; 2002, c. 8, s. 183; 2009, c. 2, s. 409.

**Court may require returns**

**35 (1)** Notwithstanding anything contained in Part VI, where any person is convicted of an offence under that Part, the court before whom the person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business of that person as the court deems advisable, and without restricting the generality of the foregoing, the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

l'autorisation d'appel est accordée par la Cour suprême, pour tout motif d'appel jugé suffisant par cette cour.

**Décisions sur les appels**

**(4)** Lorsque la cour d'appel ou la Cour suprême du Canada permet un appel, elle peut annuler toute ordonnance rendue par le tribunal d'où l'appel est interjeté et peut rendre toute ordonnance qu'à son avis le tribunal d'où l'appel est interjeté aurait pu ou aurait dû rendre.

**Procédure**

**(5)** Sous réserve des paragraphes (3) et (4), la partie XXI du *Code criminel* s'applique, compte tenu des adaptations de circonstance, aux appels prévus au présent article.

**Peine pour désobéissance**

**(6)** Le tribunal peut infliger l'amende qu'il estime indiquée ou un emprisonnement maximal de cinq ans à quiconque contrevient à une ordonnance rendue aux termes du présent article.

**Procédure**

**(7)** Toute procédure engagée sur plainte du procureur général du Canada ou du procureur général d'une province aux termes du présent article est jugée par le tribunal sans jury, et la procédure applicable aux procédures en injonction dans les cours supérieures de la province s'applique dans la mesure du possible.

**Définition de *cour supérieure de juridiction criminelle***

**(8)** Au présent article, ***cour supérieure de juridiction criminelle*** s'entend au sens du *Code criminel*.

L.R. (1985), ch. C-34, art. 34; L.R. (1985), ch. 19 (2e suppl.), art. 28, ch. 34 (3e suppl.), art. 8; 1999, ch. 2, art. 11; 2002, ch. 8, art. 183; 2009, ch. 2, art. 409.

**Demande de rapports**

**35 (1)** Nonobstant la partie VI, lorsqu'une personne est déclarée coupable d'une infraction visée à cette partie, le tribunal devant lequel cette personne a été déclarée coupable et condamnée peut, dans les trois années qui suivent, astreindre la personne déclarée coupable à fournir, quant à ses affaires, les renseignements qu'il estime opportuns. Le tribunal peut, sans que soit limitée la portée générale de ce qui précède, exiger une révélation complète de toutes les transactions, opérations ou activités effectuées depuis la date de l'infraction aux termes ou à l'égard de quelque contrat, accord ou arrangement, réel ou tacite, que la personne déclarée coupable peut avoir conclu à quelque époque avec qui que ce soit, touchant ou concernant les affaires de la personne déclarée coupable.

**Punishment**

**(2)** The court may punish any failure to comply with an order under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

R.S., c. C-23, s. 31.

**Recovery of damages**

**36 (1)** Any person who has suffered loss or damage as a result of

**(a)** conduct that is contrary to any provision of Part VI, or

**(b)** the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

**Evidence of prior proceedings**

**(2)** In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

**Jurisdiction of Federal Court**

**(3)** For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.

**Limitation**

**(4)** No action may be brought under subsection (1),

**(a)** in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

**Peine**

**(2)** Le tribunal peut punir d'une amende fixée à sa discrétion ou d'un emprisonnement maximal de deux ans tout défaut d'obtempérer à une ordonnance rendue aux termes du présent article.

S.R., ch. C-23, art. 31.

**Recouvrement de dommages-intérêts**

**36 (1)** Toute personne qui a subi une perte ou des dommages par suite :

**a)** soit d'un comportement allant à l'encontre d'une disposition de la partie VI;

**b)** soit du défaut d'une personne d'obtempérer à une ordonnance rendue par le Tribunal ou un autre tribunal en vertu de la présente loi,

peut, devant tout tribunal compétent, réclamer et recouvrer de la personne qui a eu un tel comportement ou n'a pas obtempéré à l'ordonnance une somme égale au montant de la perte ou des dommages qu'elle est reconnue avoir subis, ainsi que toute somme supplémentaire que le tribunal peut fixer et qui n'excède pas le coût total, pour elle, de toute enquête relativement à l'affaire et des procédures engagées en vertu du présent article.

**Preuves de procédures antérieures**

**(2)** Dans toute action intentée contre une personne en vertu du paragraphe (1), les procès-verbaux relatifs aux procédures engagées devant tout tribunal qui a déclaré cette personne coupable d'une infraction visée à la partie VI ou l'a déclarée coupable du défaut d'obtempérer à une ordonnance rendue en vertu de la présente loi par le Tribunal ou par un autre tribunal, ou qui l'a punie pour ce défaut, constituent, sauf preuve contraire, la preuve que la personne contre laquelle l'action est intentée a eu un comportement allant à l'encontre d'une disposition de la partie VI ou n'a pas obtempéré à une ordonnance rendue en vertu de la présente loi par le Tribunal ou par un autre tribunal, selon le cas, et toute preuve fournie lors de ces procédures quant à l'effet de ces actes ou omissions sur la personne qui intente l'action constitue une preuve de cet effet dans l'action.

**Compétence de la Cour fédérale**

**(3)** La Cour fédérale a compétence sur les actions prévues au paragraphe (1).

**Restriction**

**(4)** Les actions visées au paragraphe (1) se prescrivent :

**a)** dans le cas de celles qui sont fondées sur un comportement qui va à l'encontre d'une disposition de la

**(i)** a day on which the conduct was engaged in, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

**(b)** in the case of an action based on the failure of any person to comply with an order of the Tribunal or another court, after two years from

**(i)** a day on which the order of the Tribunal or court was contravened, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later.

R.S., 1985, c. C-34, s. 36; R.S., 1985, c. 1 (4th Supp.), s. 11.

partie VI, dans les deux ans qui suivent la dernière des dates suivantes :

**(i)** soit la date du comportement en question,

**(ii)** soit la date où il est statué de façon définitive sur la poursuite;

**b)** dans le cas de celles qui sont fondées sur le défaut d'une personne d'obtempérer à une ordonnance du Tribunal ou d'un autre tribunal, dans les deux ans qui suivent la dernière des dates suivantes :

**(i)** soit la date où a eu lieu la contravention à l'ordonnance du Tribunal ou de l'autre tribunal,

**(ii)** soit la date où il est statué de façon définitive sur la poursuite.

L.R. (1985), ch. C-34, art. 36; L.R. (1985), ch. 1 (4e suppl.), art. 11.

## PART V

# [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 29]

## PARTIE V

# [Abrogée, L.R. (1985), ch. 19 (2e suppl.), art. 29]

## PART VI

# Offences in Relation to Competition

### Conspiracies, agreements or arrangements between competitors

**45 (1)** Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges

**(a)** to fix, maintain, increase or control the price for the supply of the product;

**(b)** to allocate sales, territories, customers or markets for the production or supply of the product; or

**(c)** to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

### Conspiracies, agreements or arrangements regarding employment

**(1.1)** Every person who is an employer commits an offence who, with another employer who is not affiliated with that person, conspires, agrees or arranges

## PARTIE VI

# Infractions relatives à la concurrence

### Complot, accord ou arrangement entre concurrents

**45 (1)** Commet une infraction quiconque, avec une personne qui est son concurrent à l'égard d'un produit, complote ou conclut un accord ou un arrangement :

**a)** soit pour fixer, maintenir, augmenter ou contrôler le prix de la fourniture du produit;

**b)** soit pour attribuer des ventes, des territoires, des clients ou des marchés pour la production ou la fourniture du produit;

**c)** soit pour fixer, maintenir, contrôler, empêcher, réduire ou éliminer la production ou la fourniture du produit.

### Complot, accord ou arrangement en matière d'emploi

**(1.1)** Commet une infraction une personne qui est un employeur qui, avec un employeur qui ne lui est pas affilié, complote ou conclut un accord ou un arrangement :

**(a)** to fix, maintain, decrease or control salaries, wages or terms and conditions of employment; or

**(b)** to not solicit or hire each other's employees.

**Penalty**

**(2)** Every person who commits an offence under subsection (1) or (1.1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine in the discretion of the court, or to both.

**Evidence of conspiracy, agreement or arrangement**

**(3)** In a prosecution under subsection (1) or (1.1), the court may infer the existence of a conspiracy, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties to it, but, for greater certainty, the conspiracy, agreement or arrangement must be proved beyond a reasonable doubt.

**Defence**

**(4)** No person shall be convicted of an offence under subsection (1) or (1.1) in respect of a conspiracy, agreement or arrangement that would otherwise contravene that subsection if

**(a)** that person establishes, on a balance of probabilities, that

**(i)** it is ancillary to a broader or separate agreement or arrangement that includes the same parties, and

**(ii)** it is directly related to, and reasonably necessary for giving effect to, the objective of that broader or separate agreement or arrangement; and

**(b)** the broader or separate agreement or arrangement, considered alone, does not contravene that subsection.

**Defence**

**(5)** No person shall be convicted of an offence under subsection (1) in respect of a conspiracy, agreement or arrangement that relates only to the export of products from Canada, unless the conspiracy, agreement or arrangement

**(a)** has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;

**a)** pour fixer, maintenir, réduire ou contrôler les salaires, les traitements ou les conditions d'emploi;

**b)** pour ne pas solliciter ou embaucher les employés de l'autre employeur.

**Peine**

**(2)** Quiconque commet l'infraction prévue aux paragraphes (1) ou (1.1) est coupable d'un acte criminel et encourt un emprisonnement maximal de quatorze ans et une amende dont le montant est fixé par le tribunal, ou l'une de ces peines.

**Preuve du complot, de l'accord ou de l'arrangement**

**(3)** Dans les poursuites intentées en vertu des paragraphes (1) ou (1.1), le tribunal peut déduire l'existence du complot, de l'accord ou de l'arrangement en se basant sur une preuve circonstancielle, avec ou sans preuve directe de communication entre les présumées parties au complot, à l'accord ou à l'arrangement, mais il demeure entendu que le complot, l'accord ou l'arrangement doit être prouvé hors de tout doute raisonnable

**Défense**

**(4)** Nul ne peut être déclaré coupable d'une infraction prévue aux paragraphes (1) ou (1.1) à l'égard d'un complot, d'un accord ou d'un arrangement qui aurait par ailleurs contrevenu à ce paragraphe si, à la fois :

**a)** il établit, selon la prépondérance des probabilités :

**(i)** que le complot, l'accord ou l'arrangement, selon le cas, est accessoire à un accord ou à un arrangement plus large ou distinct qui inclut les mêmes parties,

**(ii)** qu'il est directement lié à l'objectif de l'accord ou de l'arrangement plus large ou distinct et est raisonnablement nécessaire à la réalisation de cet objectif;

**b)** l'accord ou l'arrangement plus large ou distinct, considéré individuellement, ne contrevient pas au même paragraphe.

**Défense**

**(5)** Nul ne peut être déclaré coupable d'une infraction prévue au paragraphe (1) si le complot, l'accord ou l'arrangement se rattache exclusivement à l'exportation de produits du Canada, sauf dans les cas suivants :

**a)** le complot, l'accord ou l'arrangement a eu pour résultat ou aura vraisemblablement pour résultat de réduire ou de limiter la valeur réelle des exportations d'un produit;

**(b)** has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or

**(c)** is in respect only of the supply of services that facilitate the export of products from Canada.

**b)** il a restreint ou restreindra vraisemblablement les possibilités pour une personne d'entrer dans le commerce d'exportation de produits du Canada ou de développer un tel commerce;

**c)** il ne vise que la fourniture de services favorisant l'exportation de produits du Canada.

**Exception**

**(6)** Subsection (1) does not apply if the conspiracy, agreement or arrangement

**(a)** is entered into only by parties each of which is, in respect of every one of the others, an affiliate;

**(b)** is between federal financial institutions and is described in subsection 49(1); or

**(c)** is an *arrangement*, as defined in section 53.7 of the *Canada Transportation Act*, that has been authorized by the Minister of Transport under subsection 53.73(8) of that Act and for which the authorization has not been revoked, if the conspiracy, agreement or arrangement is directly related to, and reasonably necessary for giving effect to, the objective of the arrangement.

**Exception**

**(6)** Le paragraphe (1) ne s'applique pas au complot, à l'accord ou à l'arrangement :

**a)** intervenu exclusivement entre des parties qui sont chacune des affiliées de toutes les autres;

**b)** conclu entre des institutions financières fédérales et visé au paragraphe 49(1);

**c)** constituant une *entente* au sens de l'article 53.7 de la *Loi sur les transports au Canada*, autorisée par le ministre des Transports en application du paragraphe 53.73(8) de cette loi, dans la mesure où l'autorisation n'a pas été révoquée et le complot, l'accord ou l'arrangement est directement lié à l'objectif de l'entente et raisonnablement nécessaire à la réalisation de cet objectif.

**Common law principles — regulated conduct**

**(7)** The rules and principles of the common law that render a requirement or authorization by or under another Act of Parliament or the legislature of a province a defence to a prosecution under subsection (1), as it read immediately before the coming into force of this section, continue in force and apply in respect of a prosecution under subsection (1) or (1.1).

**Principes de la common law — comportement réglementé**

**(7)** Les règles et principes de la common law qui font d'une exigence ou d'une autorisation prévue par une autre loi fédérale ou une loi provinciale, ou par l'un de ses règlements, un moyen de défense contre des poursuites intentées en vertu du paragraphe (1) dans sa version antérieure à la date d'entrée en vigueur du présent article, demeurent en vigueur et s'appliquent à l'égard des poursuites intentées en vertu des paragraphes (1) ou (1.1).

**Definitions**

**(8)** The following definitions apply in this section.

***competitor*** includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of a conspiracy, agreement or arrangement to do anything referred to in paragraphs (1)(a) to (c). (*concurrent*)

***price*** includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of a product. (*prix*)

R.S., 1985, c. C-34, s. 45; R.S., 1985, c. 19 (2nd Supp.), s. 30; 1991, c. 45, s. 547, c. 46, s. 590, c. 47, s. 714; 2009, c. 2, s. 410; 2018, c. 8, s. 110; 2018, c. 10, s. 85; 2022, c. 10, s. 257.

**Définitions**

**(8)** Les définitions qui suivent s'appliquent au présent article.

***concurrent*** S'entend notamment de toute personne qui, en toute raison, ferait vraisemblablement concurrence à une autre personne à l'égard d'un produit en l'absence d'un complot, d'un accord ou d'un arrangement visant à faire l'une des choses prévues aux alinéas (1)a) à c). (*competitor*)

***prix*** S'entend notamment de tout escompte, rabais, remise, concession de prix ou autre avantage relatif à la fourniture du produit. (*price*)

L.R. (1985), ch. C-34, art. 45; L.R. (1985), ch. 19 (2e suppl.), art. 30; 1991, ch. 45, art. 547, ch. 46, art. 590, ch. 47, art. 714; 2009, ch. 2, art. 410; 2018, ch. 8, art. 110; 2018, ch. 10, art. 85; 2022, ch. 10, art. 257.

### Where application made under section 76, 79, 90.1 or 92

**45.1** No proceedings may be commenced under subsection 45(1) against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

R.S., 1985, c. 19 (2nd Supp.), s. 31; 2009, c. 2, s. 410.

### Foreign directives

**46 (1)** Any corporation, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the corporation, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45, is, whether or not any director or officer of the corporation in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and liable on conviction to a fine in the discretion of the court.

### Limitation

**(2)** No proceedings may be commenced under this section against a particular company where an application has been made by the Commissioner under section 83 for an order against that company or any other person based on the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 46; R.S., 1985, c. 19 (2nd Supp.), s. 32; 1999, c. 2, s. 37.

### Definition of *bid-rigging*

**47 (1)** In this section, ***bid-rigging*** means

**(a)** an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request, or

**(b)** the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers,

### Procédures en vertu des articles 76, 79, 90.1 ou 92

**45.1** Aucune poursuite ne peut être intentée à l'endroit d'une personne en application du paragraphe 45(1) si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien d'une ordonnance à l'endroit de cette personne demandée par le commissaire en vertu des articles 76, 79, 90.1 ou 92.

L.R. (1985), ch. 19 (2e suppl.), art. 31; 2009, ch. 2, art. 410.

### Directives étrangères

**46 (1)** Toute personne morale, où qu'elle ait été constituée, qui exploite une entreprise au Canada et qui applique, en totalité ou en partie au Canada, une directive ou instruction ou un énoncé de politique ou autre communication à la personne morale ou à quelque autre personne, provenant d'une personne se trouvant dans un pays étranger qui est en mesure de diriger ou d'influencer les principes suivis par la personne morale, lorsque la communication a pour objet de donner effet à un complot, une association d'intérêts, un accord ou un arrangement intervenu à l'étranger qui, s'il était intervenu au Canada, aurait constitué une infraction visée à l'article 45, commet, qu'un administrateur ou dirigeant de la personne morale au Canada soit ou non au courant du complot, de l'association d'intérêts, de l'accord ou de l'arrangement, un acte criminel et encourt, sur déclaration de culpabilité, une amende à la discrétion du tribunal.

### Restriction

**(2)** Aucune poursuite ne peut être intentée en vertu du présent article contre une personne morale déterminée lorsque le commissaire a demandé en vertu de l'article 83 de rendre une ordonnance contre cette personne morale ou toute autre personne et que cette demande est fondée sur les mêmes faits ou sensiblement les mêmes faits que ceux qui seraient exposés dans les poursuites intentées en vertu du présent article.

L.R. (1985), ch. C-34, art. 46; L.R. (1985), ch. 19 (2e suppl.), art. 32; 1999, ch. 2, art. 37.

### Définition de *truquage des offres*

**47 (1)** Au présent article, ***truquage des offres*** désigne :

**a)** l'accord ou arrangement entre plusieurs personnes par lequel au moins l'une d'elles consent ou s'engage à ne pas présenter d'offre ou de soumission en réponse à un appel ou à une demande d'offres ou de soumissions ou à en retirer une qui a été présentée dans le cadre d'un tel appel ou d'une telle demande;

**b)** la présentation, en réponse à un appel ou à une demande, d'offres ou de soumissions qui sont le fruit d'un accord ou arrangement entre plusieurs enchérisseurs ou soumissionnaires,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is submitted or withdrawn, as the case may be, by any person who is a party to the agreement or arrangement.

**Bid-rigging**

**(2)** Every person who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both.

**Exception**

**(3)** This section does not apply to

**(a)** an agreement or arrangement that is entered into or a submission that is arrived at only by parties each of which is, in respect of every one of the others, an affiliate; or

**(b)** an agreement or arrangement that is an *arrangement*, as defined in section 53.7 of the *Canada Transportation Act*, or a submission that is arrived at under that arrangement, that has been authorized by the Minister of Transport under subsection 53.73(8) of that Act and for which the authorization has not been revoked, if the agreement, arrangement or submission is directly related to, and reasonably necessary for giving effect to, the objective of the arrangement.

R.S., 1985, c. C-34, s. 47; R.S., 1985, c. 19 (2nd Supp.), s. 33; 2009, c. 2, s. 411; 2018, c. 8, s. 111; 2018, c. 10, s. 86; 2018, c. 10, s. 97.

**Conspiracy relating to professional sport**

**48 (1)** Every one who conspires, combines, agrees or arranges with another person

**(a)** to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate, or

**(b)** to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league

is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

lorsque l'accord ou l'arrangement n'est pas porté à la connaissance de la personne procédant à l'appel ou à la demande, au plus tard au moment de la présentation ou du retrait de l'offre ou de la soumission par une des parties à cet accord ou arrangement.

**Truquage des offres**

**(2)** Quiconque participe à un truquage d'offres commet un acte criminel et encourt, sur déclaration de culpabilité, l'amende que le tribunal estime indiquée et un emprisonnement maximal de quatorze ans, ou l'une de ces peines.

**Restriction**

**(3)** Le présent article ne s'applique pas :

**a)** à un accord, à un arrangement ou à une soumission intervenu exclusivement entre des parties qui sont chacune des affiliées de toutes les autres;

**b)** à un accord ou à un arrangement constituant une *entente*, au sens de l'article 53.7 de la *Loi sur les transports au Canada*, autorisée par le ministre des Transports en application du paragraphe 53.73(8) de cette loi, ou à une soumission intervenue dans le cadre d'une telle entente, dans la mesure où l'autorisation n'a pas été révoquée et l'accord, l'arrangement ou la soumission est directement lié à l'objectif de l'entente et raisonnablement nécessaire à la réalisation de cet objectif.

L.R. (1985), ch. C-34, art. 47; L.R. (1985), ch. 19 (2e suppl.), art. 33; 2009, ch. 2, art. 411; 2018, ch. 8, art. 111; 2018, ch. 10, art. 86; 2018, ch. 10, art. 97.

**Complot relatif au sport professionnel**

**48 (1)** Commet un acte criminel et encourt, sur déclaration de culpabilité, une amende à la discrétion du tribunal et un emprisonnement maximal de cinq ans, ou l'une de ces peines, quiconque complote, se coalise ou conclut un accord ou arrangement avec une autre personne :

**a)** soit pour limiter déraisonnablement les possibilités qu'a une autre personne de participer, en tant que joueur ou concurrent, à un sport professionnel ou pour imposer des conditions déraisonnables à ces participants;

**b)** soit pour limiter déraisonnablement la possibilité qu'a une autre personne de négocier avec l'équipe ou le club de son choix dans une ligue de professionnels et, si l'accord est conclu, de jouer pour cette équipe ou ce club.

**Matters to be considered**

**(2)** In determining whether or not an agreement or arrangement contravenes subsection (1), the court before which the contravention is alleged shall have regard to

**(a)** whether the sport in relation to which the contravention is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

**(b)** the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

**Application**

**(3)** This section applies, and section 45 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs where the agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among those teams, clubs and persons.

1974-75-76, c. 76, s. 15.

**Agreements or arrangements of federal financial institutions**

**49 (1)** Subject to subsection (2), every federal financial institution that makes an agreement or arrangement with another federal financial institution with respect to

**(a)** the rate of interest on a deposit,

**(b)** the rate of interest or the charges on a loan,

**(c)** the amount or kind of any charge for a service provided to a customer,

**(d)** the amount or kind of a loan to a customer,

**(e)** the kind of service to be provided to a customer, or

**(f)** the person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld,

and every director, officer or employee of the federal financial institution who knowingly makes such an agreement or arrangement on behalf of the federal financial institution is guilty of an indictable offence and liable to a

**Éléments à considérer**

**(2)** Pour déterminer si un accord ou un arrangement constitue l'une des infractions visées au paragraphe (1), le tribunal saisi doit :

**a)** d'une part, examiner si le sport qui aurait donné lieu à la violation est organisé sur une base internationale et, dans l'affirmative, si l'une ou plusieurs des restrictions ou conditions alléguées devraient de ce fait être acceptées au Canada;

**b)** d'autre part, tenir compte du fait qu'il est opportun de maintenir un équilibre raisonnable entre les équipes ou clubs appartenant à la même ligue.

**Application**

**(3)** Le présent article s'applique et l'article 45 ne s'applique pas aux accords et arrangements et aux dispositions des accords et arrangements conclus entre des équipes et clubs qui pratiquent le sport professionnel à titre de membres de la même ligue et entre les administrateurs, les dirigeants ou les employés de ces équipes et clubs, lorsque ces accords, arrangements et dispositions se rapportent exclusivement à des sujets visés au paragraphe (1) ou à l'octroi et l'exploitation de franchises dans la ligue; toutefois, c'est l'article 45 et non le présent article qui s'applique à tous les autres accords, arrangements et dispositions d'accords ou d'arrangements conclus entre ces équipes, clubs et personnes.

1974-75-76, ch. 76, art. 15.

**Accords bancaires fixant les intérêts, etc.**

**49 (1)** Sous réserve du paragraphe (2), toute institution financière fédérale qui conclut avec une autre institution financière fédérale un accord ou arrangement relatif, selon le cas :

**a)** au taux d'intérêts sur un dépôt,

**b)** au taux d'intérêts ou aux frais sur un prêt,

**c)** au montant ou type de tous frais réclamés pour un service fourni à un client,

**d)** au montant ou type du prêt consenti à un client,

**e)** au type de service qui doit être fourni à un client,

**f)** à la personne ou aux catégories de personnes auxquelles un prêt sera consenti ou un autre service fourni, ou auxquelles il sera refusé un prêt ou autre service,

et tout administrateur, dirigeant ou employé de l'institution financière fédérale qui sciemment conclut un tel

fine not exceeding ten million dollars or to imprisonment for a term not exceeding five years or to both.

**Exceptions**

**(2)** Subsection (1) does not apply in respect of an agreement or arrangement

**(a)** with respect to a deposit or loan made or payable outside Canada;

**(b)** applicable only in respect of the dealings of or the services rendered between federal financial institutions or by two or more federal financial institutions as regards a customer of each of those federal financial institutions where the customer has knowledge of the agreement or by a federal financial institution as regards a customer thereof, on behalf of that customer's customers;

**(c)** with respect to a bid for or purchase, sale or underwriting of securities by federal financial institutions or a group including federal financial institutions;

**(d)** with respect to the exchange of statistics and credit information, the development and utilization of systems, forms, methods, procedures and standards, the utilization of common facilities and joint research and development in connection therewith, and the restriction of advertising;

**(e)** with respect to reasonable terms and conditions of participation in guaranteed or insured loan programs authorized pursuant to an Act of Parliament or of the legislature of a province;

**(f)** with respect to the amount of any charge for a service or with respect to the kind of service provided to a customer outside Canada, payable or performed outside Canada, or payable or performed in Canada on behalf of a person who is outside Canada;

**(g)** with respect to the persons or classes of persons to whom a loan or other service will be made or provided outside Canada;

**(h)** in respect of which the Minister of Finance has certified to the Commissioner that Minister's request for or approval of the agreement or arrangement for the purposes of financial policy and has certified the names of the parties to the agreement or arrangement; or

accord ou arrangement au nom de l'institution financière fédérale commet un acte criminel et encourt une amende maximale de dix millions de dollars et un emprisonnement maximal de cinq ans, ou l'une de ces peines.

**Exceptions**

**(2)** Le paragraphe (1) ne s'applique pas en ce qui touche un accord ou arrangement :

**a)** relatif à un dépôt ou à un prêt, fait ou payable à l'étranger;

**b)** applicable seulement aux opérations effectuées ou aux services rendus entre institutions financières fédérales ou par plusieurs institutions financières fédérales en ce qui concerne un client de chacune d'elles lorsque le client est au courant de l'accord ou par une institution financière fédérale, en ce qui concerne un de ses clients, pour le compte des clients de ce client;

**c)** relatif à une offre pour des valeurs mobilières, ou à un achat, à une vente ou à une souscription de valeurs mobilières, par des institutions financières fédérales ou par un groupe comprenant des institutions financières fédérales;

**d)** relatif à l'échange de données statistiques et de renseignements de solvabilité, à la mise au point et à l'utilisation de systèmes, formules, méthodes, procédures et normes, à l'utilisation d'installations communes et aux activités communes de recherche et mise au point y afférentes, ainsi qu'à la limitation de la publicité;

**e)** relatif aux modalités et conditions raisonnables de participation à des programmes de prêts garantis ou assurés autorisés en application d'une loi fédérale ou provinciale;

**f)** relatif au montant des frais réclamés pour un service ou au genre de service rendu à un client hors du Canada, payable ou rendu hors du Canada, ou payable ou rendu au Canada pour le compte d'une personne qui est hors du Canada;

**g)** relatif aux personnes ou catégories de personnes auxquelles un prêt sera consenti ou un autre service fourni à l'extérieur du Canada;

**h)** à l'égard duquel le ministre des Finances certifie au commissaire le nom des parties et certifie qu'il a été, aux fins de la politique financière, conclu à sa demande ou avec son autorisation;

**i)** conclu uniquement entre des institutions financières qui font toutes partie du même groupe.

**(i)** that is entered into only by financial institutions each of which is an affiliate of each of the others.

**Definition of *federal financial institution***

**(3)** In this section and section 45, ***federal financial institution*** means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*, a company to which the *Trust and Loan Companies Act* applies or a company or society to which the *Insurance Companies Act* applies.

**Where proceedings commenced under section 76, 79, 90.1 or 92**

**(4)** No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

R.S., 1985, c. C-34, s. 49; R.S., 1985, c. 19 (2nd Supp.), s. 34; 1991, c. 45, s. 548, c. 46, ss. 591, 593, c. 47, s. 715; 1993, c. 34, s. 51; 1999, c. 2, s. 37, c. 28, s. 153, c. 31, s. 49(F); 2009, c. 2, s. 412.

**50** [Repealed, 2009, c. 2, s. 413]

**51** [Repealed, 2009, c. 2, s. 413]

**False or misleading representations**

**52 (1)** No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

**Proof of certain matters not required**

**(1.1)** For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that

**(a)** any person was deceived or misled;

**(b)** any member of the public to whom the representation was made was within Canada; or

**(c)** the representation was made in a place to which the public had access.

**Permitted representations**

**(1.2)** For greater certainty, in this section and in sections 52.01, 52.1, 74.01, 74.011 and 74.02, the making or sending of a representation includes permitting a representation to be made or sent.

**Définition de *institution financière fédérale***

**(3)** Au présent article et à l'article 45, ***institution financière fédérale*** s'entend d'une banque, d'une banque étrangère autorisée, au sens de l'article 2 de la *Loi sur les banques*, d'une société régie par la *Loi sur les sociétés de fiducie et de prêt* ou d'une société ou société de secours régie par la *Loi sur les sociétés d'assurances*.

**Procédures en vertu des articles 76, 79, 90.1 ou 92**

**(4)** Aucune poursuite ne peut être intentée à l'endroit d'une personne en application du présent article si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien d'une ordonnance à l'endroit de cette personne demandée par le commissaire en vertu des articles 76, 79, 90.1 ou 92.

L.R. (1985), ch. C-34, art. 49; L.R. (1985), ch. 19 (2e suppl.), art. 34; 1991, ch. 45, art. 548, ch. 46, art. 591 et 593, ch. 47, art. 715; 1993, ch. 34, art. 51; 1999, ch. 2, art. 37, ch. 28, art. 153, ch. 31, art. 49(F); 2009, ch. 2, art. 412.

**50** [Abrogé, 2009, ch. 2, art. 413]

**51** [Abrogé, 2009, ch. 2, art. 413]

**Indications fausses ou trompeuses**

**52 (1)** Nul ne peut, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques, donner au public, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses sur un point important.

**Preuve non nécessaire**

**(1.1)** Il est entendu qu'il n'est pas nécessaire, afin d'établir qu'il y a eu infraction au paragraphe (1), de prouver :

**a)** qu'une personne a été trompée ou induite en erreur;

**b)** qu'une personne faisant partie du public à qui les indications ont été données se trouvait au Canada;

**c)** que les indications ont été données à un endroit auquel le public avait accès.

**Indications**

**(1.2)** Il est entendu que, pour l'application du présent article et des articles 52.01, 52.1, 74.01, 74.011 et 74.02, le fait de permettre que des indications soient données ou envoyées est assimilé au fait de donner ou d'envoyer des indications.

**Drip pricing**

**(1.3)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

**Representations accompanying products**

**(2)** For the purposes of this section, a representation that is

**(a)** expressed on an article offered or displayed for sale or its wrapper or container,

**(b)** expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

**(c)** expressed on an in-store or other point-of-purchase display,

**(d)** made in the course of in-store or door-to-door selling to a person as ultimate user, or by communicating orally by any means of telecommunication to a person as ultimate user, or

**(e)** contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

**Representations from outside Canada**

**(2.1)** Where a person referred to in subsection (2) is outside Canada, a representation described in paragraph (2)(a), (b), (c) or (e) is, for the purposes of subsection (1), deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

**Deemed representation to public**

**(3)** Subject to subsection (2), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) is deemed to have made that representation to the public.

**Indication de prix partiel**

**(1.3)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale.

**Indications accompagnant un produit**

**(2)** Pour l'application du présent article, sauf le paragraphe (2.1), sont réputées n'être données au public que par la personne de qui elles proviennent les indications qui, selon le cas :

**a)** apparaissent sur un article mis en vente ou exposé pour la vente, ou sur son emballage;

**b)** apparaissent soit sur quelque chose qui est fixé à un article mis en vente ou exposé pour la vente ou à son emballage ou qui y est inséré ou joint, soit sur quelque chose qui sert de support à l'article pour l'étalage ou la vente;

**c)** apparaissent à un étalage d'un magasin ou d'un autre point de vente;

**d)** sont données, au cours d'opérations de vente en magasin, par démarchage ou par communication orale faite par tout moyen de télécommunication, à un usager éventuel;

**e)** se trouvent dans ou sur quelque chose qui est vendu, envoyé, livré ou transmis au public ou mis à sa disposition de quelque manière que ce soit.

**Indications provenant de l'étranger**

**(2.1)** Dans le cas où la personne visée au paragraphe (2) est à l'étranger, les indications visées aux alinéas (2)a), b), c) ou e) sont réputées, pour l'application du paragraphe (1), être données au public par la personne qui importe au Canada l'article, la chose ou l'instrument d'étalage visé à l'alinéa correspondant.

**Idem**

**(3)** Sous réserve du paragraphe (2), quiconque, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques, fournit à un grossiste, détaillant ou autre distributeur d'un produit de la documentation ou autre chose contenant des indications du genre mentionné au paragraphe (1) est réputé avoir donné ces indications au public.

**General impression to be considered**

**(4)** In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

**Offence and punishment**

**(5)** Any person who contravenes subsection (1) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Reviewable conduct**

**(6)** Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

**Duplication of proceedings**

**(7)** No proceedings may be commenced under this section against a person against whom an order is sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 52; 1999, c. 2, s. 12; 2009, c. 2, s. 414; 2010, c. 23, s. 74; 2014, c. 31, s. 33; 2022, c. 10, s. 258.

**False or misleading representation — sender or subject matter information**

**52.01 (1)** No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly send or cause to be sent a false or misleading representation in the sender information or subject matter information of an electronic message.

**False or misleading representation — electronic message**

**(2)** No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly send or cause to be sent in an electronic message a representation that is false or misleading in a material respect.

**Il faut tenir compte de l'impression générale**

**(4)** Dans toute poursuite intentée en vertu du présent article, pour déterminer si les indications sont fausses ou trompeuses sur un point important il faut tenir compte de l'impression générale qu'elles donnent ainsi que de leur sens littéral.

**Infraction et peine**

**(5)** Quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de quatorze ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 200 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

**Comportement susceptible d'examen**

**(6)** Le présent article s'applique au fait de donner des indications constituant, au sens de la partie VII.1, un comportement susceptible d'examen.

**Une seule poursuite**

**(7)** Il ne peut être intenté de poursuite en vertu du présent article contre une personne contre laquelle une ordonnance est demandée aux termes de la partie VII.1, si les faits qui seraient allégués au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux qui l'ont été au soutien de la demande.

L.R. (1985), ch. C-34, art. 52; 1999, ch. 2, art. 12; 2009, ch. 2, art. 414; 2010, ch. 23, art. 74; 2014, ch. 31, art. 33; 2022, ch. 10, art. 258.

**Indications fausses ou trompeuses dans les renseignements sur l'expéditeur ou dans l'objet**

**52.01 (1)** Nul ne peut, aux fins de promouvoir, directement ou indirectement, soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, envoyer ou faire envoyer, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses dans les renseignements sur l'expéditeur ou dans l'objet d'un message électronique.

**Indications fausses ou trompeuses dans un message électronique**

**(2)** Nul ne peut, aux fins de promouvoir, directement ou indirectement, soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, envoyer ou faire envoyer dans un message électronique, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses sur un point important.

**False or misleading representation — locator**

**(3)** No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, knowingly or recklessly make or cause to be made a false or misleading representation in a locator.

**Proof of deception not required**

**(4)** For greater certainty, in establishing that any of subsections (1) to (3) was contravened, it is not necessary to prove that any person was deceived or misled.

**General impression to be considered**

**(5)** In a prosecution for a contravention of any of subsections (1) to (3), the general impression conveyed by a representation as well as its literal meaning are to be taken into account.

**Offence and punishment**

**(6)** Any person who contravenes any of subsections (1) to (3) is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**(b)** liable on summary conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Reviewable conduct**

**(7)** Nothing in Part VII.1 is to be read as excluding the application of this section to the making of a representation that constitutes reviewable conduct within the meaning of that Part.

**Where application made under Part VII.1**

**(8)** No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought under Part VII.1.

**Interpretation**

**(9)** For the purposes of this section,

**(a)** an electronic message is considered to have been sent once its transmission has been initiated; and

**Indications fausses ou trompeuses dans un localisateur**

**(3)** Nul ne peut, aux fins de promouvoir, directement ou indirectement, soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, donner ou faire donner, sciemment ou sans se soucier des conséquences, des indications fausses ou trompeuses dans un localisateur.

**Preuve non nécessaire**

**(4)** Il est entendu qu'il n'est pas nécessaire, afin d'établir qu'il y a eu infraction à l'un ou l'autre des paragraphes (1) à (3), de prouver que quelqu'un a été trompé ou induit en erreur.

**Prise en compte de l'impression générale**

**(5)** Dans toute poursuite intentée en vertu des paragraphes (1) à (3), il est tenu compte de l'impression générale que les indications donnent ainsi que de leur sens littéral.

**Infraction et peine**

**(6)** Quiconque contrevient à l'un ou l'autre des paragraphes (1) à (3) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de quatorze ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 200 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

**Comportement susceptible d'examen**

**(7)** Les dispositions de la partie VII.1 n'ont pas pour effet d'exclure l'application du présent article au fait de donner des indications qui constitue un comportement susceptible d'examen au sens de cette partie.

**Procédures en vertu de la partie VII.1**

**(8)** Aucune poursuite ne peut être intentée à l'endroit d'une personne en application du présent article si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien d'une ordonnance demandée à l'endroit de cette personne en vertu de la partie VII.1.

**Interprétation**

**(9)** Pour l'application du présent article :

**a)** le fait d'amorcer la transmission d'un message électronique est assimilé à l'envoi de celui-ci;

**(b)** it is immaterial whether the electronic address to which an electronic message is sent exists or whether an electronic message reaches its intended destination.

2010, c. 23, s. 75.

**(b)** ne sont pertinents ni le fait que l'adresse électronique à laquelle le message électronique est envoyé existe ou non ni le fait que ce message soit reçu ou non par son destinataire.

2010, ch. 23, art. 75.

### Assisting foreign states

**52.02 (1)** The Commissioner may, for the purpose of assisting an investigation or proceeding in respect of the laws of a foreign state, an international organization of states or an international organization established by the governments of states that address conduct that is substantially similar to conduct prohibited under section 52, 52.01, 52.1, 53, 55 or 55.1,

**(a)** conduct any investigation that the Commissioner considers necessary to collect relevant information, using any powers that the Commissioner may use under this Act or the *Criminal Code* to investigate an offence under any of those sections; and

**(b)** disclose the information to the government of the foreign state or to the international organization, or to any institution of any such government or organization responsible for conducting investigations or initiating proceedings in respect of the laws in respect of which the assistance is being provided, if the government, organization or institution declares in writing that

**(i)** the use of the information will be restricted to purposes relevant to the investigation or proceeding, and

**(ii)** the information will be treated in a confidential manner and, except for the purposes mentioned in subparagraph (i), will not be further disclosed without the Commissioner's express consent.

### Aide aux États étrangers

**52.02 (1)** Le commissaire peut, en vue d'aider une enquête, instance ou poursuite relative à une loi d'un État étranger ou d'une organisation internationale d'États ou de gouvernements visant des comportements essentiellement semblables à ceux interdits par les articles 52, 52.01, 52.1, 53, 55 et 55.1 :

**a)** mener toute enquête qu'il juge nécessaire pour recueillir des renseignements utiles en vertu des pouvoirs que lui confère la présente loi ou le *Code criminel* pour enquêter sur une infraction visée par l'un ou l'autre de ces articles;

**b)** communiquer ces renseignements au gouvernement de l'État étranger ou à l'organisation internationale, ou à tout organisme de ceux-ci qui est chargé de mener des enquêtes ou d'intenter des poursuites relativement à la loi à l'égard de laquelle l'aide est accordée, si le destinataire des renseignements déclare par écrit que ceux-ci :

**(i)** d'une part, ne seront utilisés qu'à des fins se rapportant à cette enquête, instance ou poursuite,

**(ii)** d'autre part, seront traités de manière confidentielle et, sauf pour l'application du sous-alinéa (i), ne seront pas communiqués par ailleurs sans le consentement exprès du commissaire.

### Mutual assistance

**(2)** In deciding whether to provide assistance under subsection (1), the Commissioner shall consider whether the government, organization or institution agrees to provide assistance for investigations or proceedings in respect of any of the sections mentioned in subsection (1).

2010, c. 23, s. 75.

### Réciprocité

**(2)** Pour décider s'il doit accorder son aide en vertu du paragraphe (1), le commissaire vérifie si l'État étranger, l'organisation internationale ou l'organisme accepte d'aider les enquêtes, instances ou poursuites relatives aux articles visés à ce paragraphe.

2010, ch. 23, art. 75.

### Definition of *telemarketing*

**52.1 (1)** In this section, ***telemarketing*** means the practice of communicating orally by any means of telecommunication for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product.

### Définition de *télémarketing*

**52.1 (1)** Au présent article, ***télémarketing*** s'entend de la pratique qui consiste à communiquer oralement par tout moyen de télécommunication pour promouvoir, directement ou indirectement, soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques.

**Required disclosures**

**(2)** No person shall engage in telemarketing unless

**(a)** disclosure is made, in a fair and reasonable manner at the beginning of each communication, of the identity of the person on behalf of whom the communication is made, the nature of the business interest or product being promoted and the purposes of the communication;

**(b)** disclosure is made, in a fair, reasonable and timely manner, of the price of any product whose supply or use is being promoted and any material restrictions, terms or conditions applicable to its delivery; and

**(c)** disclosure is made, in a fair, reasonable and timely manner, of such other information in relation to the product as may be prescribed by the regulations.

**Deceptive telemarketing**

**(3)** No person who engages in telemarketing shall

**(a)** make a representation that is false or misleading in a material respect;

**(b)** conduct or purport to conduct a contest, lottery or game of chance, skill or mixed chance and skill, where

**(i)** the delivery of a prize or other benefit to a participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant, or

**(ii)** adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the person's knowledge, that affects materially the chances of winning;

**(c)** offer a product at no cost, or at a price less than the fair market value of the product, in consideration of the supply or use of another product, unless fair, reasonable and timely disclosure is made of the fair market value of the first product and of any restrictions, terms or conditions applicable to its supply to the purchaser; or

**(d)** offer a product for sale at a price grossly in excess of its fair market value, where delivery of the product is, or is represented to be, conditional on prior payment by the purchaser.

**Divulgation**

**(2)** La pratique du télémarketing est subordonnée :

**a)** à la divulgation, d'une manière juste et raisonnable, au début de chaque communication, de l'identité de la personne pour le compte de laquelle la communication est effectuée, de la nature du produit ou des intérêts commerciaux dont la promotion est faite et du but de la communication;

**b)** à la divulgation, d'une manière juste, raisonnable et opportune, du prix du produit dont est faite la promotion de la fourniture ou de l'utilisation et des restrictions, modalités ou conditions importantes applicables à sa livraison;

**c)** à la divulgation, d'une manière juste, raisonnable et opportune, des autres renseignements sur le produit que prévoient les règlements.

**Télémarketing trompeur**

**(3)** Nul ne peut, par télémarketing :

**a)** donner des indications qui sont fausses ou trompeuses sur un point important;

**b)** tenir ou prétendre tenir un concours, une loterie, un jeu de hasard ou un jeu d'adresse ou un jeu où se mêlent le hasard et l'adresse, si :

**(i)** la remise d'un prix ou d'un autre avantage au participant au concours, à la loterie ou au jeu est conditionnelle au paiement préalable d'une somme d'argent par celui-ci, ou est présentée comme telle,

**(ii)** le nombre et la valeur approximative des prix, les régions auxquelles ils s'appliquent et tout fait — connu de la personne pratiquant le télémarketing — modifiant d'une façon importante les chances de gain ne sont pas convenablement et loyalement divulgués;

**c)** offrir un produit sans frais, ou à un prix inférieur à sa juste valeur marchande, en contrepartie de la fourniture ou de l'utilisation d'un autre produit, si la juste valeur marchande du premier produit et les restrictions, modalités ou conditions de la fourniture de ce produit ne sont pas divulguées à l'acquéreur d'une manière juste, raisonnable et opportune;

**d)** offrir un produit en vente à un prix largement supérieur à sa juste valeur marchande, si la livraison du produit est conditionnelle au paiement préalable du prix par l'acquéreur, ou est présentée comme telle.

**General impression to be considered**

**(4)** In a prosecution for a contravention of paragraph (3)(a), the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

**Time of disclosure**

**(5)** The disclosure of information referred to in paragraph (2)(b) or (c) or (3)(b) or (c) must be made during the course of a communication unless it is established by the accused that the information was disclosed within a reasonable time before the communication, by any means, and the information was not requested during the communication.

**Due diligence**

**(6)** No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

**Offences by employees or agents**

**(7)** Notwithstanding subsection (6), in the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

**Liability of officers and directors**

**(8)** Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

**Offence and punishment**

**(9)** Any person who contravenes subsection (2) or (3) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**Prise en compte de l'impression générale**

**(4)** Dans toute poursuite intentée en vertu de l'alinéa (3)a), pour déterminer si les indications sont fausses ou trompeuses sur un point important il faut tenir compte de l'impression générale qu'elles donnent ainsi que de leur sens littéral.

**Moment de la divulgation**

**(5)** La divulgation de renseignements visée aux alinéas (2)b) ou c) ou (3)b) ou c) doit être faite au cours d'une communication, sauf si l'accusé établit qu'elle a été faite dans un délai raisonnable antérieur à la communication, par n'importe quel moyen, et que les renseignements n'ont pas été demandés au cours de la communication.

**Disculpation**

**(6)** La personne accusée d'avoir commis une infraction au présent article ne peut en être déclarée coupable si elle établit qu'elle a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Infractions par les employés ou mandataires**

**(7)** Malgré le paragraphe (6), dans la poursuite d'une personne morale pour infraction au présent article, il suffit d'établir que l'infraction a été commise par un employé ou un mandataire de la personne morale, que l'employé ou le mandataire soit identifié ou non, sauf si la personne morale établit qu'elle a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Personnes morales et leurs dirigeants**

**(8)** En cas de perpétration par une personne morale d'une infraction au présent article, ceux de ses dirigeants ou administrateurs qui sont en mesure de diriger ou d'influencer les principes qu'elle suit relativement aux actes interdits par cet article sont considérés comme des coauteurs de l'infraction et encourent la peine prévue pour cette infraction, que la personne morale ait été ou non poursuivie ou déclarée coupable, sauf si le dirigeant ou l'administrateur établit qu'il a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Infraction et peine**

**(9)** Quiconque contrevient aux paragraphes (2) ou (3) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de quatorze ans, ou l'une de ces peines;

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Sentencing**

**(10)** In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

**(a)** the use of lists of persons previously deceived by means of telemarketing;

**(b)** characteristics of the persons to whom the telemarketing was directed, including classes of persons who are especially vulnerable to abusive tactics;

**(c)** the amount of the proceeds realized by the person from the telemarketing;

**(d)** previous convictions of the person under this section or under section 52 in respect of conduct prohibited by this section; and

**(e)** the manner in which information is conveyed, including the use of abusive tactics.

1999, c. 2, s. 13; 2009, c. 2, s. 415; 2010, c. 23, s. 76; 2014, c. 31, s. 34.

**Deceptive notice of winning a prize**

**53 (1)** No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, send or cause to be sent by electronic or regular mail or by any other means a document or notice in any form, if the document or notice gives the general impression that the recipient has won, will win, or will on doing a particular act win, a prize or other benefit, and if the recipient is asked or given the option to pay money, incur a cost or do anything that will incur a cost.

**Non-application**

**(2)** Subsection (1) does not apply if the recipient actually wins the prize or other benefit and the person who sends or causes the notice or document to be sent

**(a)** makes adequate and fair disclosure of the number and approximate value of the prizes or benefits, of the area or areas to which they have been allocated and of any fact within the person's knowledge that materially affects the chances of winning;

**(b)** distributes the prizes or benefits without unreasonable delay; and

**b)** par procédure sommaire, une amende maximale de 200 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

**Détermination de la peine**

**(10)** Pour la détermination de la peine à infliger au contrevenant, le tribunal prend notamment en compte les circonstances aggravantes suivantes :

**a)** l'utilisation de listes de personnes trompées antérieurement par télémarketing;

**b)** les caractéristiques des personnes visées par le télémarketing, notamment les catégories de personnes qui sont particulièrement vulnérables aux tactiques abusives;

**c)** le montant des recettes du contrevenant qui proviennent du télémarketing;

**d)** les condamnations antérieures du contrevenant pour infraction au présent article ou à l'article 52 pour des actes interdits par le présent article;

**e)** la façon de communiquer l'information, notamment l'utilisation de tactiques abusives.

1999, ch. 2, art. 13; 2009, ch. 2, art. 415; 2010, ch. 23, art. 76; 2014, ch. 31, art. 34.

**Documentation trompeuse**

**53 (1)** Nul ne peut, pour promouvoir directement ou indirectement soit la fourniture ou l'utilisation d'un produit, soit des intérêts commerciaux quelconques, envoyer ou faire envoyer par la poste, par courriel ou par tout autre mode de communication un avis ou toute documentation — quel que soit leur support —, si l'impression générale qui s'en dégage porte le destinataire à croire qu'il a gagné, qu'il gagnera — ou qu'il gagnera s'il accomplit un geste déterminé — un prix ou autre avantage et si on lui demande ou on lui donne la possibilité de payer une somme d'argent, engager des frais ou accomplir un acte qui lui occasionnera des frais.

**Non-application**

**(2)** Le paragraphe (1) ne s'applique pas si le destinataire gagne véritablement le prix ou autre avantage et si l'auteur de l'avis ou de la documentation, à la fois :

**a)** convenablement et loyalement, donne le nombre et la valeur approximative du prix ou autre avantage, indique la répartition des prix par région et mentionne tout fait qui modifie d'une façon importante, à sa connaissance, les chances de gain;

**b)** remet les prix ou avantages dans un délai raisonnable;

**(c)** selects participants or distributes the prizes or benefits randomly, or on the basis of the participants' skill, in any area to which the prizes or benefits have been allocated.

**(c)** choisit les participants ou distribue les prix ou avantages au hasard — ou selon l'adresse des participants — dans la région à laquelle des prix ou avantages ont été attribués.

**Due diligence**

**(3)** No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

**Disculpation**

**(3)** La personne accusée d'avoir commis une infraction au présent article ne peut en être déclarée coupable si elle établit qu'elle a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Offences by employees or agents**

**(4)** In the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

**Infractions par les employés ou mandataires**

**(4)** Dans la poursuite d'une personne morale pour infraction au présent article, il suffit d'établir que l'infraction a été commise par un employé ou un mandataire de la personne morale, que l'employé ou le mandataire soit identifié ou non, sauf si la personne morale établit qu'elle a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Liability of officers and directors**

**(5)** Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

**Personnes morales et leurs dirigeants**

**(5)** En cas de perpétration par une personne morale d'une infraction au présent article, ceux de ses dirigeants ou administrateurs qui sont en mesure de fixer ou d'influencer les orientations qu'elle suit relativement aux actes interdits par le présent article sont considérés comme des coauteurs de l'infraction et encourent la peine prévue pour cette infraction, que la personne morale ait été ou non poursuivie ou déclarée coupable, sauf si le dirigeant ou l'administrateur établit qu'il a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

**Offence and punishment**

**(6)** Any person who contravenes this section is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Infraction et peine**

**(6)** Quiconque contrevient au présent article commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de quatorze ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 200 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

**Sentencing**

**(7)** In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

**(a)** the use of lists of persons previously deceived by the commission of an offence under section 52.1 or this section;

**Détermination de la peine**

**(7)** Pour la détermination de la peine à infliger au contrevenant, le tribunal prend notamment en compte les circonstances aggravantes suivantes :

**a)** l'utilisation de listes de personnes trompées antérieurement lors de la perpétration d'une infraction à l'article 52.1 ou au présent article;

**(b)** the particular vulnerability of recipients of the notices or documents referred to in subsection (1) to abusive tactics;

**(c)** the amount of the proceeds realized by the person from the commission of an offence under this section;

**(d)** previous convictions of the person under section 52 or 52.1 or this section; and

**(e)** the manner in which information is conveyed, including the use of abusive tactics.

R.S., 1985, c. C-34, s. 53; 1999, c. 2, s. 14; 2002, c. 16, s. 6; 2009, c. 2, s. 416.

**b)** le fait que les destinataires des avis ou de la documentation sont des personnes vulnérables aux tactiques abusives;

**c)** le montant des recettes du contrevenant qui proviennent de la perpétration d'infractions au présent article;

**d)** les condamnations antérieures du contrevenant pour infraction aux articles 52 ou 52.1 ou au présent article;

**e)** la façon de communiquer l'information, notamment l'utilisation de tactiques abusives.

L.R. (1985), ch. C-34, art. 53; 1999, ch. 2, art. 14; 2002, ch. 16, art. 6; 2009, ch. 2, art. 416.

### Double ticketing

**54 (1)** No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

**(a)** on the product, its wrapper or container;

**(b)** on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or

**(c)** on an in-store or other point-of-purchase display or advertisement.

### Offence and punishment

**(2)** Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

1974-75-76, c. 76, s. 18.

### Double étiquetage

**54 (1)** Nul ne peut fournir un produit à un prix qui dépasse le plus bas de deux ou plusieurs prix clairement exprimés, par lui ou pour lui, pour ce produit, pour la quantité dans laquelle celui-ci est ainsi fourni et au moment où il l'est :

**a)** soit sur le produit ou sur son emballage;

**b)** soit sur quelque chose qui est fixé au produit, à son emballage ou à quelque chose qui sert de support au produit pour l'étalage ou la vente, ou sur quelque chose qui y est inséré ou joint;

**c)** soit dans un étalage ou la réclame d'un magasin ou d'un autre point de vente.

### Infraction et peine

**(2)** Quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de dix mille dollars et un emprisonnement maximal d'un an, ou l'une de ces peines.

1974-75-76, ch. 76, art. 18.

### Definition of *multi-level marketing plan*

**55 (1)** For the purposes of this section and section 55.1, ***multi-level marketing plan*** means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

### Representations as to compensation

**(2)** No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations

### Définition de *commercialisation à paliers multiples*

**55 (1)** Pour l'application du présent article et de l'article 55.1, ***commercialisation à paliers multiples*** s'entend d'un système de distribution de produits dans lequel un participant reçoit une rémunération pour la fourniture d'un produit à un autre participant qui, à son tour, reçoit une rémunération pour la fourniture de ce même produit ou d'un autre produit à d'autres participants.

### Assertions quant à la rémunération

**(2)** Il est interdit à l'exploitant d'un système de commercialisation à paliers multiples, ou à quiconque y participe déjà, de faire à d'éventuels participants, quant à la rémunération offerte par le système, des déclarations qui ne

constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

**(a)** compensation actually received by typical participants in the plan; or

**(b)** compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including

**(i)** the nature of the product, including its price and availability,

**(ii)** the nature of the relevant market for the product,

**(iii)** the nature of the plan and similar plans, and

**(iv)** whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization.

constituent ou ne comportent pas des assertions loyales, faites en temps opportun et non exagérées, fondées sur les informations dont il a connaissance concernant la rémunération soit effectivement reçue par les participants ordinaires, soit susceptible de l'être par eux compte tenu de tous facteurs utiles relatifs notamment à la nature du produit, à son prix, à sa disponibilité et à ses débouchés de même qu'aux caractéristiques du système et de systèmes similaires et à la forme juridique de l'exploitation.

**Idem**

**(2.1)** A person who operates a multi-level marketing plan shall ensure that any representations relating to compensation under the plan that are made to a prospective participant in the plan by a participant in the plan or by a representative of the person who operates the plan constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person who operates the plan relating to

**(a)** compensation actually received by typical participants in the plan; or

**(b)** compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including those specified in paragraph (2)(b).

**Idem**

**(2.1)** Il incombe à l'exploitant de veiller au respect, par les participants et ses représentants, de la règle énoncée au paragraphe (2), compte tenu des informations dont il a connaissance.

**Due diligence defence**

**(2.2)** A person accused of an offence under subsection (2.1) shall not be convicted of the offence if the accused establishes that he or she took reasonable precautions and exercised due diligence to ensure

**(a)** that no representations relating to compensation under the plan were made by participants in the plan or by representatives of the accused; or

**(b)** that any representations relating to compensation under the plan that were made by participants in the plan or by representatives of the accused constituted or included fair, reasonable and timely disclosure of the information referred to in that subsection.

**Défense**

**(2.2)** La personne accusée d'avoir contrevenu au paragraphe (2.1) peut se disculper en prouvant qu'elle a pris les mesures utiles et fait preuve de diligence pour que :

**a)** soit ses représentants ou les participants ne fassent aucune déclaration concernant la rémunération versée au titre du système;

**b)** soit leurs déclarations respectent les critères énoncés au paragraphe (2).

**Offence and punishment**

**(3)** Any person who contravenes subsection (2) or (2.1) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. C-34, s. 55; 1992, c. 14, s. 1; 1999, c. 2, s. 15.

**Definition of *scheme of pyramid selling***

**55.1 (1)** For the purposes of this section, ***scheme of pyramid selling*** means a multi-level marketing plan whereby

**(a)** a participant in the plan gives consideration for the right to receive compensation by reason of the recruitment into the plan of another participant in the plan who gives consideration for the same right;

**(b)** a participant in the plan gives consideration, as a condition of participating in the plan, for a specified amount of the product, other than a specified amount of the product that is bought at the seller's cost price for the purpose only of facilitating sales;

**(c)** a person knowingly supplies the product to a participant in the plan in an amount that is commercially unreasonable; or

**(d)** a participant in the plan who is supplied with the product

**(i)** does not have a buy-back guarantee that is exercisable on reasonable commercial terms or a right to return the product in saleable condition on reasonable commercial terms, or

**(ii)** is not informed of the existence of the guarantee or right and the manner in which it can be exercised.

**Pyramid selling**

**(2)** No person shall establish, operate, advertise or promote a scheme of pyramid selling.

**Offence and punishment**

**(3)** Any person who contravenes subsection (2) is guilty of an offence and liable

**Infraction et peine**

**(3)** Quiconque contrevient aux paragraphes (2) ou (2.1) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, une amende dont le montant est fixé par le tribunal et un emprisonnement maximal de cinq ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 200 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

L.R. (1985), ch. C-34, art. 55; 1992, ch. 14, art. 1; 1999, ch. 2, art. 15.

**Définition de *système de vente pyramidale***

**55.1 (1)** Pour l'application du présent article, ***système de vente pyramidale*** s'entend d'un système de commercialisation à paliers multiples dans lequel, selon le cas :

**a)** un participant fournit une contrepartie en échange du droit d'être rémunéré pour avoir recruté un autre participant qui, à son tour, donne une contrepartie pour obtenir le même droit;

**b)** la condition de participation est réalisée par la fourniture d'une contrepartie pour une quantité déterminée d'un produit, sauf quand l'achat est fait au prix coûtant à des fins promotionnelles;

**c)** une personne fournit, sciemment, le produit en quantité injustifiable sur le plan commercial;

**d)** le participant à qui on fournit le produit :

**(i)** soit ne bénéficie pas d'une garantie de rachat ou d'un droit de retour du produit en bon état de vente, à des conditions commerciales raisonnables,

**(ii)** soit n'en a pas été informé ni ne sait comment s'en prévaloir.

**Interdiction**

**(2)** Il est interdit de mettre sur pied, d'exploiter, de promouvoir un système de vente pyramidale ou d'en faire la publicité.

**Infraction et peine**

**(3)** Quiconque contrevient au paragraphe (2) commet une infraction et encourt, sur déclaration de culpabilité :

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

1992, c. 14, s. 1; 1999, c. 2, s. 16.

**56 to 59** [Repealed, 1999, c. 2, s. 17]

**Defence**

**60** Section 54 does not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada if he or she establishes that he or she obtained and recorded the name and address of that other person and accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his or her business.

R.S., 1985, c. C-34, s. 60; 1999, c. 2, s. 17.1.

**61** [Repealed, 2009, c. 2, s. 417]

**Civil rights not affected**

**62** Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action.

R.S., c. C-23, s. 39; 1974-75-76, c. 76, s. 18.

**PART VII**

# Other Offences

## Offences

**63** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 37]

**Obstruction**

**64 (1)** No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

**Offence and punishment**

**(2)** Every person who contravenes subsection (1) is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or

**a)** par mise en accusation, une amende dont le montant est fixé par le tribunal et un emprisonnement maximal de cinq ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 200 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

1992, ch. 14, art. 1; 1999, ch. 2, art. 16.

**56 à 59** [Abrogés, 1999, ch. 2, art. 17]

**Moyen de défense**

**60** L'article 54 ne s'applique pas à la personne qui diffuse, notamment en les imprimant ou en les publiant, des indications ou de la publicité pour le compte d'une autre personne se trouvant au Canada, si elle établit qu'elle a obtenu et consigné le nom et l'adresse de cette autre personne et qu'elle a accepté de bonne foi d'imprimer, de publier ou de diffuser de quelque autre façon ces indications ou cette publicité dans le cadre habituel de son entreprise.

L.R. (1985), ch. C-34, art. 60; 1999, ch. 2, art. 17.1.

**61** [Abrogé, 2009, ch. 2, art. 417]

**Droits civils non atteints**

**62** Sauf disposition contraire de la présente partie, celle-ci n'a pas pour effet de priver une personne d'un droit d'action au civil.

S.R., ch. C-23, art. 39; 1974-75-76, ch. 76, art. 18.

**PARTIE VII**

# Autres infractions

## Infractions

**63** [Abrogé, L.R. (1985), ch. 19 (2e suppl.), art. 37]

**Entrave**

**64 (1)** Nul ne peut d'aucune façon entraver ou empêcher ou tenter d'entraver ou d'empêcher une enquête ou un interrogatoire sous le régime de la présente loi.

**Infraction et peine**

**(2)** Quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de dix ans, ou l'une de ces peines;

**(b)** liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both.

R.S., 1985, c. C-34, s. 64; 2009, c. 2, s. 418.

**(b)** par procédure sommaire, une amende maximale de 100 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines.

L.R. (1985), ch. C-34, art. 64; 2009, ch. 2, art. 418.

### Contravention of Part II provisions

**65 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, fails to comply with an order made under section 11 and every person who contravenes subsection 15(5) or 16(2) is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding two years, or to both; or

**(b)** liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both.

### Peine pour infraction à la partie II

**65 (1)** Quiconque, sans motif valable et suffisant dont la preuve lui incombe, omet de se conformer à une ordonnance rendue aux termes de l'article 11 ou quiconque contrevient aux paragraphes 15(5) ou 16(2) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de deux ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 100 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines.

### Failure to supply information

**(2)** Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 114(1) is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding $50,000.

### Défaut de fournir des renseignements

**(2)** Quiconque, sans motif valable et suffisant dont la preuve lui incombe, contrevient au paragraphe 114(1) commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire ou par mise en accusation, une amende maximale de 50 000 $.

### Destruction or alteration of records or things

**(3)** Every person who destroys or alters, or causes to be destroyed or altered, any record or other thing that is required to be produced under section 11 or in respect of which a warrant is issued under section 15 is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or

**(b)** liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both.

### Destruction ou modification de documents ou autres choses

**(3)** Quiconque détruit ou modifie, ou encore fait détruire ou modifier un document ou une autre chose dont la production est exigée conformément à l'article 11 ou qui est visé à un mandat délivré en application de l'article 15 commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de dix ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 100 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines.

### Liability of directors

**(4)** Where a corporation commits an offence under this section, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

R.S., 1985, c. C-34, s. 65; R.S., 1985, c. 19 (2nd Supp.), s. 38; 1999, c. 2, s. 18; 2009, c. 2, s. 419.

### Personnes morales et leurs dirigeants, etc.

**(4)** En cas de perpétration par une personne morale de l'une des infractions visées au présent article, ceux de ses dirigeants, administrateurs ou mandataires qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et encourent la peine prévue pour cette infraction, que la personne morale ait été ou non poursuivie ou déclarée coupable.

L.R. (1985), ch. C-34, art. 65; L.R. (1985), ch. 19 (2e suppl.), art. 38; 1999, ch. 2, art. 18; 2009, ch. 2, art. 419.

### Contravention of subsection 30.06(5)

**65.1 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 30.06(5) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

### Destruction or alteration of records or things

**(2)** Every person who destroys or alters, or causes to be destroyed or altered, any record or thing in respect of which a search warrant is issued under section 30.06 or that is required to be produced pursuant to an order made under subsection 30.11(1) or 30.16(1) is guilty of an offence and liable

**(a)** on conviction on indictment to a fine not exceeding $50,000 or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding two years, or to both.

2002, c. 16, s. 7.

### Refusal after objection overruled

**65.2 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c) after a judge has ruled against the objection under paragraph 30.11(8)(a), is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

### Refusal where no ruling made on objection

**(2)** Every person is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both, who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c), where no ruling has been made under paragraph 30.11(8)(a),

**(a)** without giving the detailed statement required by subsection 30.11(9); or

### Contravention du paragraphe 30.06(5)

**65.1 (1)** Quiconque, sans motif valable et suffisant dont la preuve lui incombe, contrevient au paragraphe 30.06(5) commet une infraction et encourt, sur déclaration de culpabilité par mise en accusation ou par procédure sommaire, une amende maximale de 5 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines.

### Destruction ou modification de documents ou autres choses

**(2)** Quiconque détruit ou modifie, ou encore fait détruire ou modifier, un document ou une autre chose qui sont visés à un mandat délivré en application de l'article 30.06 ou dont la production est exigée conformément à une ordonnance prévue aux paragraphes 30.11(1) ou 30.16(1) commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, une amende maximale de 50 000 $ et un emprisonnement maximal de cinq ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 25 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines.

2002, ch. 16, art. 7.

### Refus d'obtempérer

**65.2 (1)** Commet une infraction et encourt, sur déclaration de culpabilité par mise en accusation ou par procédure sommaire, une amende maximale de 5 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines, la personne qui, après une décision défavorable d'un juge à l'égard du refus aux termes de l'alinéa 30.11(8)a), refuse, sans motif valable et suffisant dont la preuve lui incombe, de répondre à une question ou de remettre des documents ou autres choses à la personne désignée en conformité avec l'alinéa 30.11(2)c).

### Refus d'obtempérer

**(2)** Commet une infraction et encourt, sur déclaration de culpabilité par mise en accusation ou par procédure sommaire, une amende maximale de 5 000 $ et un emprisonnement maximal de deux ans, ou l'une de ces peines, la personne qui, lorsqu'aucune décision n'a été rendue aux termes de l'alinéa 30.11(8)a), refuse, sans motif valable et suffisant dont la preuve lui incombe, de répondre à une question ou de remettre des documents ou autres choses à la personne désignée en conformité avec l'alinéa 30.11(2)c) :

**a)** soit sans remettre l'exposé détaillé visé au paragraphe 30.11(9);

**(b)** if the person was previously asked the same question or requested to produce the same record or thing and refused to do so and the reasons on which that person based the previous refusal were determined not to be well-founded by

**(i)** a judge, if the reasons were based on the Canadian law of non-disclosure of information or privilege, or

**(ii)** a court of the foreign state or by a person designated by the foreign state, if the reasons were based on a law that applies to the foreign state.

2002, c. 16, s. 7.

**b)** soit après que la question lui a déjà été posée ou qu'on lui a déjà demandé de remettre les documents ou autres choses et que les motifs de refus ont été rejetés :

**(i)** par le juge, s'ils sont fondés sur le droit canadien relatif à la non-divulgation de renseignements et à l'existence de privilèges,

**(ii)** par un tribunal d'un État étranger ou une personne désignée par celui-ci, s'ils sont fondés sur une règle de droit en vigueur dans cet État.

2002, ch. 16, art. 7.

### Contravention of order under Part VII.1 or VIII

**66** Every person who contravenes an order made under Part VII.1, except paragraphs 74.1(1)(c) and (d), or under Part VIII, except subsection 79(3.1), is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $25,000 or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. C-34, s. 66; R.S., 1985, c. 19 (2nd Supp.), s. 39; 1999, c. 2, s. 19; 2009, c. 2, s. 420.

### Ordonnances : parties VII.1 et VIII

**66** Quiconque contrevient à une ordonnance rendue en vertu de la partie VII.1, exception faite des alinéas 74.1(1)c) et d), ou en vertu de la partie VIII, exception faite du paragraphe 79(3.1), commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation, l'amende que le tribunal estime indiquée et un emprisonnement maximal de cinq ans, ou l'une de ces peines;

**b)** par procédure sommaire, une amende maximale de 25 000 $ et un emprisonnement maximal d'un an, ou l'une de ces peines.

L.R. (1985), ch. C-34, art. 66; L.R. (1985), ch. 19 (2e suppl.), art. 39; 1999, ch. 2, art. 19; 2009, ch. 2, art. 420.

### Whistleblowing

**66.1 (1)** Any person who has reasonable grounds to believe that a person has committed or intends to commit an offence under the Act, may notify the Commissioner of the particulars of the matter and may request that his or her identity be kept confidential with respect to the notification.

### Dénonciation

**66.1 (1)** Toute personne qui a des motifs raisonnables de croire qu'une autre personne a commis une infraction à la présente loi, ou a l'intention d'en commettre une, peut notifier au commissaire des détails sur la question et exiger l'anonymat relativement à cette dénonciation.

### Confidentiality

**(2)** The Commissioner shall keep confidential the identity of a person who has notified the Commissioner under subsection (1) and to whom an assurance of confidentiality has been provided by any person who performs duties or functions in the administration or enforcement of this Act.

1999, c. 2, s. 19.

### Caractère confidentiel

**(2)** Le commissaire est tenu de garder confidentielle l'identité du dénonciateur auquel l'assurance de l'anonymat a été donnée par quiconque exerce des attributions sous le régime de la présente loi.

1999, ch. 2, art. 19.

### Prohibition

**66.2 (1)** No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

### Interdiction

**66.2 (1)** Il est interdit à l'employeur de congédier un employé, de le suspendre, de le rétrograder, de le punir, de le harceler ou de lui faire subir tout autre inconvénient ou de le priver d'un bénéfice de son emploi parce que :

**(a)** the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the employer or any other person has committed or intends to commit an offence under this Act;

**(b)** the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is an offence under this Act;

**(c)** the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order that an offence not be committed under this Act; or

**(d)** the employer believes that the employee will do anything referred to in paragraph (a) or (c) or will refuse to do anything referred to in paragraph (b).

**a)** l'employé, agissant de bonne foi et se fondant sur des motifs raisonnables, a informé le commissaire que l'employeur ou une autre personne a commis une infraction à la présente loi, ou a l'intention d'en commettre une;

**b)** l'employé, agissant de bonne foi et se fondant sur des motifs raisonnables, a refusé ou a fait part de son intention de refuser d'accomplir un acte qui constitue une infraction à la présente loi;

**c)** l'employé, agissant de bonne foi et se fondant sur des motifs raisonnables, a accompli ou a fait part de son intention d'accomplir un acte nécessaire pour empêcher la perpétration d'une infraction à la présente loi;

**d)** l'employeur croit que l'employé accomplira un des actes visés aux alinéas a) ou c) ou refusera d'accomplir un acte visé à l'alinéa b).

**Saving**

**(2)** Nothing in this section impairs any right of an employee either at law or under an employment contract or collective agreement.

**Definitions**

**(3)** In this section, ***employee*** includes an independent contractor and ***employer*** has the corresponding meaning.

1999, c. 2, s. 19.

**Précision**

**(2)** Le présent article n'a pas pour effet de restreindre les droits d'un employé, en général ou dans le cadre d'un contrat de travail ou d'une convention collective.

**Définitions**

**(3)** Dans le présent article, ***employé*** s'entend notamment d'un travailleur autonome et « employeur » a un sens correspondant.

1999, ch. 2, art. 19.

## Procedure

**Procedure for enforcing punishment**

**67 (1)** Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects, he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial.

**Application of *Criminal Code***

**(2)** Where an election is made under subsection (1), the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

## Procédure

**Choix de l'inculpé**

**67 (1)** Lorsqu'un acte d'accusation est déclaré fondé contre un prévenu, autre qu'une personne morale, pour infraction à la présente loi, l'inculpé peut choisir de subir son procès sans jury et, lorsqu'il fait un tel choix, l'inculpé doit être jugé par le juge qui préside au tribunal où l'acte d'accusation est déclaré fondé, ou par le juge qui préside à toute session postérieure de ce tribunal, ou à tout tribunal devant lequel s'instruira l'acte d'accusation.

**Application du *Code criminel***

**(2)** Dans le cas d'un tel choix, les procédures ultérieures à ce choix sont régies, autant que possible, par les dispositions du *Code criminel* relatives à l'instruction d'actes criminels par un juge sans jury.

**Jurisdiction of courts**

**(3)** No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

**Corporations to be tried without jury**

**(4)** Notwithstanding anything in the *Criminal Code* or in any other statute or law, a corporation charged with an offence under this Act shall be tried without a jury.

**Option as to procedure under subsection 34(2)**

**(5)** In any case where subsection 34(2) is applicable, the Attorney General of Canada or the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

**Limitation period**

**(6)** Proceedings in respect of an offence that is declared by this Act to be punishable on summary conviction may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

R.S., c. C-23, s. 44; 1974-75-76, c. 76, s. 19.

**Venue of prosecutions**

**68** Notwithstanding any other Act, a prosecution for an offence under Part VI or section 66 may be brought, in addition to any place in which the prosecution may be brought by virtue of the *Criminal Code*,

**(a)** where the accused is a corporation, in any territorial division in which the corporation has its head office or a branch office, whether or not the branch office is provided for in any Act or instrument relating to the incorporation or organization of the corporation; and

**(b)** where the accused is not a corporation, in any territorial division in which the accused resides or has a place of business.

R.S., 1985, c. C-34, s. 68; 1999, c. 2, s. 20.

**Definitions**

**69 (1)** In this section,

***agent of a participant*** means a person who by a record admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative of a participant; (*agent d'un participant*)

***document*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 40]

**Compétence des tribunaux**

**(3)** Nul tribunal autre qu'une cour supérieure de juridiction criminelle, au sens du *Code criminel*, n'a le pouvoir de juger une infraction visée à l'article 45, 46, 47, 48 ou 49.

**Les personnes morales sont jugées sans jury**

**(4)** Nonobstant le *Code criminel* ou toute autre loi, une personne morale accusée d'une infraction visée à la présente loi est jugée sans jury.

**Choix des procédures selon le par. 34(2)**

**(5)** Lorsque le paragraphe 34(2) s'applique, le procureur général du Canada ou le procureur général de la province peut, à sa discrétion, procéder soit au moyen d'une plainte selon ce paragraphe, soit au moyen d'une poursuite.

**Prescription**

**(6)** Les poursuites visant une infraction dont l'auteur est, aux termes de la présente loi, punissable sur déclaration de culpabilité par procédure sommaire se prescrivent par deux ans à compter de sa perpétration.

S.R., ch. C-23, art. 44; 1974-75-76, ch. 76, art. 19.

**Lieu des poursuites**

**68** Nonobstant toute autre loi, une poursuite visant une infraction prévue à la partie VI ou à l'article 66 peut être intentée, soit en tout lieu où une telle poursuite peut être intentée en vertu du *Code criminel*, soit :

**a)** lorsque l'inculpé est une personne morale, dans toute circonscription territoriale où la personne morale a son siège social ou une succursale, que l'existence de cette succursale soit ou non prévue dans une loi ou un acte ayant trait à la constitution ou à l'organisation de la personne morale;

**b)** lorsque l'inculpé n'est pas une personne morale, dans toute circonscription territoriale où il réside ou a un établissement commercial.

L.R. (1985), ch. C-34, art. 68; 1999, ch. 2, art. 20.

**Définitions**

**69 (1)** Les définitions qui suivent s'appliquent au présent article.

***agent d'un participant*** Personne qui, selon un document admis en preuve en application du présent article, paraît être, ou qui, aux termes d'une preuve dont elle fait autrement l'objet, est identifiée comme étant un fonctionnaire, un agent, un préposé, un employé ou un représentant d'un participant. (*agent of a participant*)

***participant*** means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged. (*participant*)

***document*** [Abrogée, L.R. (1985), ch. 19 (2e suppl.), art. 40]

***participant*** Toute personne contre laquelle des procédures ont été intentées en vertu de la présente loi et, dans le cas d'une poursuite, un accusé et toute personne qui, bien que non accusée, aurait, selon les termes de l'inculpation ou de l'acte d'accusation, été l'une des parties au complot ayant donné lieu à l'infraction imputée ou aurait autrement pris part ou concouru à cette infraction. (*participant*)

**Evidence against a participant**

**(2)** In any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act,

**(a)** anything done, said or agreed on by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been done, said or agreed on, as the case may be, with the authority of that participant;

**(b)** a record written or received by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been written or received, as the case may be, with the authority of that participant; and

**(c)** a record proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof

**(i)** that the participant had knowledge of the record and its contents,

**(ii)** that anything recorded in or by the record as having been done, said or agreed on by any participant or by an agent of a participant was done, said or agreed on as recorded and, where anything is recorded in or by the record as having been done, said or agreed on by an agent of a participant, that it was done, said or agreed on with the authority of that participant, and

**(iii)** that the record, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

R.S., 1985, c. C-34, s. 69; R.S., 1985, c. 19 (2nd Supp.), s. 40.

**Preuve contre un participant**

**(2)** Dans toute procédure engagée devant le Tribunal ou dans toute poursuite ou procédure engagée devant un tribunal en vertu ou en application de la présente loi :

**a)** toute chose accomplie, dite ou convenue par un agent d'un participant est, sauf preuve contraire, censée avoir été accomplie, dite ou convenue, selon le cas, avec l'autorisation de ce participant;

**b)** un document écrit ou reçu par un agent d'un participant est, sauf preuve contraire, tenu pour avoir été écrit ou reçu, selon le cas, avec l'autorisation de ce participant;

**c)** s'il est prouvé qu'un document a été en la possession d'un participant, ou dans un lieu utilisé ou occupé par un participant, ou en la possession d'un agent d'un participant, il fait foi sans autre preuve et atteste :

**(i)** que le participant connaissait le document et son contenu,

**(ii)** que toute chose inscrite dans le document ou par celui-ci enregistrée comme ayant été accomplie, dite ou convenue par un participant ou par l'agent d'un participant, l'a été ainsi que le document le mentionne, et, si une chose est inscrite dans le document ou par celui-ci enregistrée comme ayant été accomplie, dite ou convenue par l'agent d'un participant, qu'elle l'a été avec l'autorisation de ce participant,

**(iii)** que le document, s'il paraît avoir été écrit par un participant ou par l'agent d'un participant, l'a ainsi été, et, s'il paraît avoir été écrit par l'agent d'un participant, qu'il a été écrit avec l'autorisation de ce participant.

L.R. (1985), ch. C-34, art. 69; L.R. (1985), ch. 19 (2e suppl.), art. 40.

**Admissibility of statistics**

**70 (1)** A collection, compilation, analysis, abstract or other record or report of statistical information prepared or published under the authority of

**(a)** the *Statistics Act*, or

**(b)** any other enactment of Parliament or of the legislature of a province,

is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

**Idem**

**(2)** On request from the Minister or the Commissioner

**(a)** the Chief Statistician of Canada or an officer of any department or agency of the Government of Canada the functions of which include the gathering of statistics shall, and

**(b)** an officer of any department or agency of the government of a province the functions of which include the gathering of statistics may,

compile from his or its records a statement of statistics relating to any industry or sector thereof, in accordance with the terms of the request, and any such statement is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

**Privileged information not affected**

**(3)** Nothing in this section compels or authorizes the Chief Statistician of Canada or any officer of a department or agency of the Government of Canada to disclose any particulars relating to an individual or business in a manner that is prohibited by any provision of an enactment of Parliament or of a provincial legislature designed for the protection of those particulars.

**Certificate**

**(4)** In any proceedings before the Tribunal, or in any prosecution or proceedings before a court under or pursuant to this Act, a certificate purporting to be signed by the Chief Statistician of Canada or the officer of the department or agency of the Government of Canada or of a province under whose supervision a record, report or statement of statistics referred to in this section was prepared, setting out that the record, report or statement of statistics attached thereto was prepared under his supervision, is evidence of the facts alleged therein without

**Admissibilité en preuve des statistiques**

**70 (1)** Un document contenant des renseignements statistiques recueillis, établis, analysés ou résumés ou autre pièce ou rapport statistique préparés ou publiés en vertu :

**a)** soit de la *Loi sur la statistique*;

**b)** soit de tout autre texte législatif fédéral ou provincial,

est admissible en preuve dans toute procédure dont est saisi le Tribunal ou dans toute poursuite ou procédure dont est saisi un tribunal en vertu ou en application de la présente loi.

**Idem**

**(2)** À la requête du ministre ou du commissaire :

**a)** le statisticien en chef du Canada ou un fonctionnaire d'un ministère ou organisme fédéral dont les fonctions comprennent notamment le rassemblement de statistiques doit,

**b)** un fonctionnaire d'un ministère ou organisme provincial dont les fonctions comprennent notamment le rassemblement de statistiques peut,

établir à partir de ses dossiers un état statistique relatif à une industrie ou à l'un de ses secteurs, conformément aux termes de la requête, et tout état de ce genre est admissible en preuve dans toute procédure dont est saisi le Tribunal ou dans toute poursuite ou procédure dont est saisi un tribunal en vertu ou en application de la présente loi.

**Les renseignements protégés ne sont pas touchés**

**(3)** Le présent article n'a pas pour effet d'obliger ni d'autoriser le statisticien en chef du Canada ou tout fonctionnaire d'un ministère ou organisme fédéral, à divulguer des renseignements concernant un particulier ou une entreprise d'une façon interdite par une disposition d'un texte législatif fédéral ou provincial dont l'objet est de protéger le secret de ces renseignements.

**Certificat**

**(4)** Dans toute procédure dont est saisi le Tribunal, ou dans toute poursuite ou procédure dont est saisi un tribunal en vertu ou en application de la présente loi, un certificat censé signé par le statisticien en chef du Canada ou le fonctionnaire du ministère ou de l'organisme fédéral ou provincial sous le contrôle duquel a été préparé un document, un rapport ou un état statistique mentionné au présent article, et portant que le document, le rapport ou l'état statistique qui y est joint a été préparé sous son contrôle, fait foi de son contenu sans qu'il soit nécessaire

proof of the signature or official character of the person by whom it purports to be signed.

R.S., 1985, c. C-34, s. 70; R.S., 1985, c. 19 (2nd Supp.), s. 41; 1999, c. 2, s. 37.

de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

L.R. (1985), ch. C-34, art. 70; L.R. (1985), ch. 19 (2e suppl.), art. 41; 1999, ch. 2, art. 37.

### Statistics collected by sampling methods

**71** A collection, compilation, analysis, abstract or other record or report of statistics collected by sampling methods by or on behalf of the Commissioner or any other party to proceedings before the Tribunal, or to a prosecution or proceedings before a court under or pursuant to this Act, is admissible in evidence in that prosecution or those proceedings.

R.S., 1985, c. C-34, s. 71; R.S., 1985, c. 19 (2nd Supp.), s. 42; 1999, c. 2, s. 37.

### Statistiques recueillies par échantillonnage

**71** Un document contenant des statistiques recueillies, établies, analysées ou résumées ou autre pièce ou rapport relatif à des statistiques recueillies par échantillonnage par ou pour le commissaire ou toute autre partie à des procédures dont est saisi le Tribunal ou à une poursuite ou procédure dont est saisi un tribunal en vertu ou en application de la présente loi est admissible en preuve dans une telle poursuite ou de telles procédures.

L.R. (1985), ch. C-34, art. 71; L.R. (1985), ch. 19 (2e suppl.), art. 42; 1999, ch. 2, art. 37.

### Notice

**72 (1)** No record, report or statement of statistical information or statistics referred to in section 70 or 71 shall be received in evidence before the Tribunal or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 71, together with the names and qualifications of those persons who participated in the preparation thereof.

### Préavis

**72 (1)** Un document, un rapport ou un état statistique mentionnés aux articles 70 ou 71 ne sont admis en preuve devant le Tribunal ou un tribunal que si la personne qui entend les produire en preuve a donné à la personne à laquelle elle entend les opposer un préavis raisonnable ainsi qu'une copie du document, du rapport ou de l'état et, dans le cas d'un document ou d'un rapport statistique mentionné à l'article 71, communication des noms et qualités des personnes qui ont participé à leur préparation.

### Attendance of statistician

**(2)** Any person against whom a record or report of statistics referred to in section 70 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.

### Présence du statisticien

**(2)** Toute personne à qui on oppose une pièce ou rapport statistiques mentionnés à l'article 70 peut exiger la présence, pour contre-interrogatoire, de toute personne qui a dirigé leur préparation.

### Idem

**(3)** Any person against whom a record or report of statistics referred to in section 71 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report.

R.S., 1985, c. C-34, s. 72; R.S., 1985, c. 19 (2nd Supp.), s. 43.

### Idem

**(3)** Toute personne à qui on oppose une pièce ou rapport statistiques mentionnés à l'article 71 peut exiger la présence, pour contre-interrogatoire, de toute personne qui a participé à leur préparation.

L.R. (1985), ch. C-34, art. 72; L.R. (1985), ch. 19 (2e suppl.), art. 43.

### Jurisdiction of Federal Court

**73 (1)** Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 34, any of sections 45 to 49 or, if the proceedings are on indictment, under section 52, 52.1, 53, 55, 55.1 or 66, in the Federal Court, and for the purposes of the prosecution or other proceedings, the Federal Court has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

### Compétence de la Cour fédérale

**73 (1)** Sous réserve des autres dispositions du présent article, le procureur général du Canada peut entamer et diriger toutes poursuites ou autres procédures prévues par l'article 34, par l'un des articles 45 à 49 ou, lorsqu'il s'agit de procédures par mise en accusation, par les articles 52, 52.1, 53, 55, 55.1 ou 66, devant la Cour fédérale; à l'égard de telles poursuites ou autres procédures, la Cour fédérale possède tous les pouvoirs et la compétence d'une cour supérieure de juridiction criminelle sous le régime du *Code criminel* et de la présente loi.

**No jury**

**(2)** The trial of an offence under Part VI or section 66 in the Federal Court shall be without a jury.

**Appeal**

**(3)** An appeal lies from the Federal Court to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part VI or section 66 of this Act as provided in Part XXI of the *Criminal Code* for appeals from a trial court and from a court of appeal.

**Proceedings optional**

**(4)** Proceedings under subsection 34(2) may in the discretion of the Attorney General of Canada be instituted in either the Federal Court or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court in respect of an offence under Part VI or section 66 without the consent of the individual.

R.S., 1985, c. C-34, s. 73; 1999, c. 2, s. 21; 2002, c. 8, ss. 183, 198, c. 16, s. 8; 2009, c. 2, s. 421.

**74** [Repealed, 1999, c. 2, s. 22]

**PART VII.1**

# Deceptive Marketing Practices

## Reviewable Matters

**Misrepresentations to public**

**74.01 (1)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

**(a)** makes a representation to the public that is false or misleading in a material respect;

**(b)** makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or

**(c)** makes a representation to the public in a form that purports to be

**Absence de jury**

**(2)** Le procès concernant une infraction visée à la partie VI ou à l'article 66, en la Cour fédérale, a lieu sans jury.

**Appel**

**(3)** Un appel peut être interjeté de la Cour fédérale à la Cour d'appel fédérale et de la Cour d'appel fédérale à la Cour suprême du Canada dans toutes poursuites ou procédures visées à la partie VI ou à l'article 66 de la présente loi, conformément à la partie XXI du *Code criminel* pour les appels d'un tribunal de première instance et d'une cour d'appel.

**Procédures facultatives**

**(4)** Des procédures engagées aux termes du paragraphe 34(2) peuvent, à la discrétion du procureur général du Canada, être intentées soit devant la Cour fédérale, soit devant une cour supérieure de juridiction criminelle dans la province, mais aucune poursuite ne peut être intentée contre un particulier devant la Cour fédérale à l'égard d'une infraction visée à la partie VI ou à l'article 66 sans le consentement de ce particulier.

L.R. (1985), ch. C-34, art. 73; 1999, ch. 2, art. 21; 2002, ch. 8, art. 183 et 198, ch. 16, art. 8; 2009, ch. 2, art. 421.

**74** [Abrogé, 1999, ch. 2, art. 22]

**PARTIE VII.1**

# Pratiques commerciales trompeuses

## Comportement susceptible d'examen

**Indications trompeuses**

**74.01 (1)** Est susceptible d'examen le comportement de quiconque donne au public, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques :

**a)** ou bien des indications fausses ou trompeuses sur un point important;

**b)** ou bien, sous la forme d'une déclaration ou d'une garantie visant le rendement, l'efficacité ou la durée utile d'un produit, des indications qui ne se fondent pas sur une épreuve suffisante et appropriée, dont la preuve incombe à la personne qui donne les indications;

**c)** ou bien des indications sous une forme qui fait croire qu'il s'agit :

**(i)** a warranty or guarantee of a product, or

**(ii)** a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

**(i)** soit d'une garantie de produit,

**(ii)** soit d'une promesse de remplacer, entretenir ou réparer tout ou partie d'un article ou de fournir de nouveau ou continuer à fournir un service jusqu'à l'obtention du résultat spécifié,

si cette forme de prétendue garantie ou promesse est trompeuse d'une façon importante ou s'il n'y a aucun espoir raisonnable qu'elle sera respectée.

**Drip pricing**

**(1.1)** For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

**Indication de prix partiel**

**(1.1)** Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale.

**Ordinary price: suppliers generally**

**(2)** Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public concerning the price at which a product or like products have been, are or will be ordinarily supplied where suppliers generally in the relevant geographic market, having regard to the nature of the product,

**(a)** have not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

**(b)** have not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**Prix habituel : fournisseurs en général**

**(2)** Sous réserve du paragraphe (3), est susceptible d'examen le comportement de quiconque donne, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, des indications au public relativement au prix auquel un ou des produits similaires ont été, sont ou seront habituellement fournis, si, compte tenu de la nature du produit, l'ensemble des fournisseurs du marché géographique pertinent n'ont pas, à la fois :

**a)** vendu une quantité importante du produit à ce prix ou à un prix plus élevé pendant une période raisonnable antérieure ou postérieure à la communication des indications;

**b)** offert de bonne foi le produit à ce prix ou à un prix plus élevé pendant une période importante précédant de peu ou suivant de peu la communication des indications.

**Ordinary price: supplier's own**

**(3)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public as to price that is clearly specified to be the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation where that person, having regard to the nature of the product and the relevant geographic market,

**(a)** has not sold a substantial volume of the product at that price or a higher price within a reasonable period

**Prix habituel : fournisseur particulier**

**(3)** Est susceptible d'examen le comportement de quiconque donne, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, des indications au public relativement au prix auquel elle a fourni, fournit ou fournira habituellement un produit ou des produits similaires, si, compte tenu de la nature du produit et du marché géographique pertinent, cette personne n'a pas, à la fois :

of time before or after the making of the representation, as the case may be; and

**(b)** has not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**a)** vendu une quantité importante du produit à ce prix ou à un prix plus élevé pendant une période raisonnable antérieure ou postérieure à la communication des indications;

**b)** offert de bonne foi le produit à ce prix ou à un prix plus élevé pendant une période importante précédant de peu ou suivant de peu la communication des indications.

**References to time in subsections (2) and (3)**

**(4)** For greater certainty, whether the period of time to be considered in paragraphs (2)(a) and (b) and (3)(a) and (b) is before or after the making of the representation depends on whether the representation relates to

**(a)** the price at which products have been or are supplied; or

**(b)** the price at which products will be supplied.

**Périodes visées aux paragraphes (2) et (3)**

**(4)** Il est entendu que la période à prendre en compte pour l'application des alinéas (2)a) et b) et (3)a) et b) est antérieure ou postérieure à la communication des indications selon que les indications sont liées au prix auquel les produits ont été ou sont fournis ou au prix auquel ils seront fournis.

**Saving**

**(5)** Subsections (2) and (3) do not apply to a person who establishes that, in the circumstances, a representation as to price is not false or misleading in a material respect.

**Réserve**

**(5)** Les paragraphes (2) et (3) ne s'appliquent pas à la personne qui établit que, dans les circonstances, les indications sur le prix ne sont pas fausses ou trompeuses sur un point important.

**(6)** [Repealed, 2009, c. 2, s. 422]

1999, c. 2, s. 22; 2009, c. 2, s. 422; 2022, c. 10, s. 259.

**(6)** [Abrogé, 2009, ch. 2, art. 422]

1999, ch. 2, art. 22; 2009, ch. 2, art. 422; 2022, ch. 10, art. 259.

**False or misleading representation — sender or subject matter information**

**74.011 (1)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, sends or causes to be sent a false or misleading representation in the sender information or subject matter information of an electronic message.

**Indications fausses ou trompeuses dans les renseignements sur l'expéditeur ou dans l'objet**

**74.011 (1)** Est susceptible d'examen le comportement de quiconque envoie ou fait envoyer des indications fausses ou trompeuses dans les renseignements sur l'expéditeur ou dans l'objet d'un message électronique aux fins de promouvoir, directement ou indirectement, soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques.

**False or misleading representation — electronic message**

**(2)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, sends or causes to be sent in an electronic message a representation that is false or misleading in a material respect.

**Indications fausses ou trompeuses dans un message électronique**

**(2)** Est susceptible d'examen le comportement de quiconque envoie ou fait envoyer dans un message électronique des indications fausses ou trompeuses sur un point important aux fins de promouvoir, directement ou indirectement, soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques.

**False or misleading representation — locator**

**(3)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business

**Indications fausses ou trompeuses dans un localisateur**

**(3)** Est susceptible d'examen le comportement de quiconque donne ou fait donner des indications fausses ou trompeuses dans un localisateur aux fins de promouvoir, directement ou indirectement, soit la fourniture ou

interest or the supply or use of a product, makes or causes to be made a false or misleading representation in a locator.

**General impression to be considered**

**(4)** In proceedings under this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.

**Interpretation**

**(5)** For the purposes of this section,

**(a)** an electronic message is considered to have been sent once its transmission has been initiated; and

**(b)** it is immaterial whether the electronic address to which an electronic message is sent exists or whether an electronic message reaches its intended destination.

2010, c. 23, s. 77.

**Assisting foreign states**

**74.012 (1)** The Commissioner may, for the purpose of assisting an investigation or proceeding in respect of the laws of a foreign state, an international organization of states or an international organization established by the governments of states that address conduct that is substantially similar to conduct that is reviewable under section 74.01, 74.011, 74.02, 74.04, 74.05 or 74.06,

**(a)** conduct any investigation that the Commissioner considers necessary to collect relevant information, using any powers that the Commissioner may use under this Act to investigate conduct that is reviewable under any of those sections; and

**(b)** disclose the information to the government of the foreign state or to the international organization, or to any institution of any such government or organization responsible for conducting investigations or initiating proceedings in respect of the laws in respect of which the assistance is being provided, if the government, organization or institution declares in writing that

**(i)** the use of the information will be restricted to purposes relevant to the investigation or proceeding, and

**(ii)** the information will be treated in a confidential manner and, except for the purposes mentioned in subparagraph (i), will not be further disclosed without the Commissioner's express consent.

l'usage d'un produit, soit des intérêts commerciaux quelconques.

**Prise en compte de l'impression générale**

**(4)** Dans toute poursuite intentée en vertu du présent article, il est tenu compte, pour déterminer si le comportement est susceptible d'examen, de l'impression générale que les indications donnent ainsi que de leur sens littéral.

**Interprétation**

**(5)** Pour l'application du présent article :

**a)** le fait d'amorcer la transmission d'un message électronique est assimilé à l'envoi de celui-ci;

**b)** ne sont pertinents ni le fait que l'adresse électronique à laquelle le message électronique est envoyé existe ou non ni le fait que ce message soit reçu ou non par son destinataire.

2010, ch. 23, art. 77.

**Aide aux États étrangers**

**74.012 (1)** Le commissaire peut, en vue d'aider une enquête, instance ou poursuite relative à une loi d'un État étranger ou d'une organisation internationale d'États ou de gouvernements visant des comportements essentiellement semblables à ceux susceptibles d'examen au titre des articles 74.01, 74.011, 74.02, 74.04, 74.05 ou 74.06 :

**a)** mener toute enquête qu'il juge nécessaire pour recueillir des renseignements utiles en vertu des pouvoirs que lui confère la présente loi pour enquêter sur un comportement susceptible d'examen au titre de l'un ou l'autre de ces articles;

**b)** communiquer ces renseignements au gouvernement de l'État étranger ou à l'organisation internationale, ou à tout organisme de ceux-ci qui est chargé de mener des enquêtes ou d'intenter des poursuites relativement à la loi à l'égard de laquelle l'aide est accordée, si le destinataire des renseignements déclare par écrit que ceux-ci :

**(i)** d'une part, ne seront utilisés qu'à des fins se rapportant à cette enquête, instance ou poursuite,

**(ii)** d'autre part, seront traités de manière confidentielle et, sauf pour l'application du sous-alinéa (i), ne seront pas communiqués par ailleurs sans le consentement exprès du commissaire.

**Limitation**

**(2)** Subsection (1) does not apply if the contravention of the laws of the foreign state has consequences that would be considered penal under Canadian law.

**Mutual assistance**

**(3)** In deciding whether to provide assistance under subsection (1), the Commissioner shall consider whether the government, organization or institution agrees to provide assistance for investigations or proceedings in respect of any of the sections mentioned in subsection (1).

2010, c. 23, s. 77.

**Representation as to reasonable test and publication of testimonials**

**74.02** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest, makes a representation to the public that a test has been made as to the performance, efficacy or length of life of a product by any person, or publishes a testimonial with respect to a product, unless the person making the representation or publishing the testimonial can establish that

**(a)** such a representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, or

**(b)** such a representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

1999, c. 2, s. 22.

**Representations accompanying products**

**74.03 (1)** For the purposes of sections 74.01 and 74.02, a representation that is

**(a)** expressed on an article offered or displayed for sale or its wrapper or container,

**(b)** expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale,

**Restriction**

**(2)** Le paragraphe (1) ne s'applique pas lorsque la sanction de la contravention de la loi de l'État étranger serait considérée comme pénale sous le régime du droit canadien.

**Réciprocité**

**(3)** Pour décider s'il doit accorder son aide en vertu du paragraphe (1), le commissaire vérifie si l'État étranger, l'organisation internationale ou l'organisme accepte d'aider les enquêtes, instances ou poursuites relatives aux articles visés à ce paragraphe.

2010, ch. 23, art. 77.

**Indications relatives à l'épreuve acceptable et publication d'attestations**

**74.02** Est susceptible d'examen le comportement de quiconque, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, donne au public des indications selon lesquelles une épreuve de rendement, d'efficacité ou de durée utile d'un produit a été effectuée par une personne, ou publie une attestation relative à un produit, sauf si la personne qui donne ces indications peut établir :

**a)** d'une part :

**(i)** soit que ces indications ont été préalablement données ou que cette attestation a été préalablement publiée par la personne ayant effectué l'épreuve ou donné l'attestation,

**(ii)** soit que ces indications ou cette attestation ont été, avant d'être respectivement données ou publiée, approuvées et que la permission de les donner ou de la publier a été donnée par écrit par la personne qui a effectué l'épreuve ou donné l'attestation;

**b)** d'autre part, qu'il s'agit des indications approuvées ou données ou de l'attestation approuvée ou publiée préalablement.

1999, ch. 2, art. 22.

**Indications accompagnant les produits**

**74.03 (1)** Pour l'application des articles 74.01 et 74.02, sous réserve du paragraphe (2), sont réputées n'être données au public que par la personne de qui elles proviennent les indications qui, selon le cas :

**a)** apparaissent sur un article mis en vente ou exposé pour la vente, ou sur son emballage;

its wrapper or container, or anything on which the article is mounted for display or sale,

**(c)** expressed on an in-store or other point-of-purchase display,

**(d)** made in the course of in-store or door-to-door selling to a person as ultimate user, or by communicating orally by any means of telecommunication to a person as ultimate user, or

**(e)** contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

**Representations from outside Canada**

**(2)** Where a person referred to in subsection (1) is outside Canada, a representation described in paragraph (1)(a), (b), (c) or (e) is, for the purposes of sections 74.01 and 74.02, deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

**Deemed representation to public**

**(3)** Subject to subsection (1), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in section 74.01 is deemed to make that representation to the public.

**Certain matters need not be established**

**(4)** For greater certainty, in proceedings under sections 74.01 and 74.02, it is not necessary to establish that

**(a)** any person was deceived or misled;

**(b)** any member of the public to whom the representation was made was within Canada; or

**(c)** the representation was made in a place to which the public had access.

**General impression to be considered**

**(5)** In proceedings under sections 74.01 and 74.02, the general impression conveyed by a representation as well

**b)** apparaissent soit sur quelque chose qui est fixé à un article mis en vente ou exposé pour la vente ou à son emballage ou qui y est inséré ou joint, soit sur quelque chose qui sert de support à l'article pour l'étalage ou la vente;

**c)** apparaissent à un étalage d'un magasin ou d'un autre point de vente;

**d)** sont données, au cours d'opérations de vente en magasin, par démarchage ou par communication orale faite par tout moyen de télécommunication, à un usager éventuel;

**e)** se trouvent dans ou sur quelque chose qui est vendu, envoyé, livré ou transmis au public ou mis à sa disposition de quelque manière que ce soit.

**Indications provenant de l'étranger**

**(2)** Dans le cas où la personne visée au paragraphe (1) est à l'étranger, les indications visées aux alinéas (1)a), b), c) ou e) sont réputées, pour l'application des articles 74.01 et 74.02, être données au public par la personne qui a importé au Canada l'article, la chose ou l'instrument d'étalage visé à l'alinéa correspondant.

**Présomption d'indications données au public**

**(3)** Sous réserve du paragraphe (1), quiconque, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, fournit à un grossiste, détaillant ou autre distributeur d'un produit de la documentation ou autre chose contenant des indications du genre mentionné à l'article 74.01 est réputé donner ces indications au public.

**Preuve non nécessaire**

**(4)** Il est entendu qu'il n'est pas nécessaire, dans toute poursuite intentée en vertu des articles 74.01 et 74.02, d'établir :

**a)** qu'une personne a été trompée ou induite en erreur;

**b)** qu'une personne faisant partie du public à qui les indications ont été données se trouvait au Canada;

**c)** que les indications ont été données à un endroit auquel le public avait accès.

**Prise en compte de l'impression générale**

**(5)** Dans toute poursuite intentée en vertu des articles 74.01 et 74.02, pour déterminer si le comportement est susceptible d'examen, il est tenu compte de l'impression

as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.

1999, c. 2, s. 22; 2009, c. 2, s. 423; 2010, c. 23, s. 78; 2014, c. 31, s. 35.

générale donnée par les indications ainsi que du sens littéral de celles-ci.

1999, ch. 2, art. 22; 2009, ch. 2, art. 423; 2010, ch. 23, art. 78; 2014, ch. 31, art. 35.

### Definition of *bargain price*

**74.04 (1)** For the purposes of this section, ***bargain price*** means

**(a)** a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or

**(b)** a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily supplied.

### Définition de *prix d'occasion*

**74.04 (1)** Pour l'application du présent article, ***prix d'occasion*** s'entend :

**a)** du prix présenté dans une publicité comme étant un prix d'occasion soit par rapport au prix habituel, soit pour d'autres raisons;

**b)** d'un prix qu'une personne qui lit, entend ou voit la publicité prendrait raisonnablement pour un prix d'occasion étant donné les prix auxquels le produit annoncé ou des produits similaires sont habituellement fournis.

### Bait and switch selling

**(2)** A person engages in reviewable conduct who advertises at a bargain price a product that the person does not supply in reasonable quantities having regard to the nature of the market in which the person carries on business, the nature and size of the person's business and the nature of the advertisement.

### Vente à prix d'appel

**(2)** Est susceptible d'examen le comportement de quiconque fait de la publicité portant qu'il offre à un prix d'occasion un produit qu'il ne fournit pas en quantités raisonnables eu égard à la nature du marché où il exploite son entreprise, à la nature et à la dimension de l'entreprise qu'il exploite et à la nature de la publicité.

### Saving

**(3)** Subsection (2) does not apply to a person who establishes that

**(a)** the person took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond the person's control that could not reasonably have been anticipated;

**(b)** the person obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed the person's reasonable expectations; or

**(c)** after becoming unable to supply the product in accordance with the advertisement, the person undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied with it during the time when the bargain price applied, and the person fulfilled the undertaking.

1999, c. 2, s. 22.

### Réserve

**(3)** Le paragraphe (2) ne s'applique pas à la personne qui établit que, selon le cas :

**a)** bien qu'ayant pris des mesures raisonnables pour obtenir en temps voulu le produit en quantités raisonnables eu égard à la nature de la publicité, elle n'a pu obtenir ces quantités par suite d'événements indépendants de sa volonté qu'elle ne pouvait raisonnablement prévoir;

**b)** bien qu'ayant obtenu le produit en quantités raisonnables eu égard à la nature de la publicité, elle n'a pu satisfaire à la demande pour ce produit, celle-ci dépassant ses prévisions raisonnables;

**c)** elle a pris, après s'être trouvée dans l'impossibilité de fournir le produit conformément à la publicité, l'engagement de fournir le même produit, ou un produit équivalent de qualité égale ou supérieure, au prix d'occasion et dans un délai raisonnable à toutes les personnes qui en avaient fait la demande et qui ne l'avaient pas reçu au cours de la période d'application du prix d'occasion et a rempli son engagement.

1999, ch. 2, art. 22.

### Sale above advertised price

**74.05 (1)** A person engages in reviewable conduct who advertises a product for sale or rent in a market and, during the period and in the market to which the advertisement relates, supplies the product at a price that is higher than the price advertised.

### Saving

**(2)** This section does not apply

**(a)** in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained in it are subject to error if the person establishes that the price advertised is in error;

**(b)** in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement;

**(c)** in respect of the supply of a security obtained on the open market during a period when the prospectus relating to that security is still current; or

**(d)** in respect of the supply of a product by or on behalf of a person who is not engaged in the business of dealing in that product.

### Application

**(3)** For the purpose of this section, the market to which an advertisement relates is the market that the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise.

1999, c. 2, s. 22.

### Promotional contests

**74.06** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest, conducts any contest, lottery, game of chance or skill, or mixed chance and skill, or otherwise disposes of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever, where

**(a)** adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the person that affects materially the chances of winning;

**(b)** distribution of the prizes is unduly delayed; or

### Vente au-dessus du prix annoncé

**74.05 (1)** Est susceptible d'examen le comportement de quiconque fait de la publicité pour la vente ou la location d'un produit sur un marché et le fournit, pendant la période et sur le marché visés par la publicité, à un prix supérieur au prix annoncé.

### Réserve

**(2)** Le présent article ne s'applique pas :

**a)** à la publicité figurant dans un catalogue qui prévoit clairement que le prix indiqué peut être inexact, si la personne établit cette inexactitude;

**b)** à la publicité indiquant un prix erroné, mais qui est suivie de près d'une autre publicité corrigeant ce prix;

**c)** à la fourniture d'une valeur mobilière obtenue sur le marché libre alors que le prospectus concernant cette valeur n'est pas encore périmé;

**d)** à la fourniture d'un produit par une personne ou au nom d'une personne qui n'exploite pas une entreprise portant sur ce produit.

### Application

**(3)** Pour l'application du présent article, la publicité ne vise que le marché qu'elle peut raisonnablement atteindre; toutefois, elle peut le limiter notamment à un secteur géographique, à un magasin, à un rayon d'un magasin ou à la vente par catalogue.

1999, ch. 2, art. 22.

### Concours publicitaire

**74.06** Est susceptible d'examen le comportement de quiconque organise, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, un concours, une loterie, un jeu de hasard, un jeu d'adresse ou un jeu où se mêlent le hasard et l'adresse, ou autrement attribue un produit ou autre avantage par un jeu faisant intervenir le hasard, l'adresse ou un mélange des deux sous quelque forme que ce soit dans chacun des cas suivants :

**a)** le nombre et la valeur approximative des prix, les régions auxquelles ils s'appliquent et tout fait connu de la personne modifiant d'une façon importante les chances de gain ne sont pas convenablement et loyalement divulgués;

**b)** la distribution des prix est indûment retardée;

**(c)** selection of participants or distribution of prizes is not made on the basis of skill or on a random basis in any area to which prizes have been allocated.

1999, c. 2, s. 22.

**c)** le choix des participants ou la distribution des prix ne sont pas faits en fonction de l'adresse des participants ou au hasard dans toute région à laquelle des prix ont été attribués.

1999, ch. 2, art. 22.

### Saving

**74.07 (1)** Sections 74.01 to 74.06 do not apply to a person who prints or publishes or otherwise disseminates a representation, including an advertisement, on behalf of another person in Canada, where the person establishes that the person obtained and recorded the name and address of that other person and accepted the representation in good faith for printing, publishing or other dissemination in the ordinary course of that person's business.

### Non-application

**(2)** Sections 74.01 to 74.06 do not apply in respect of conduct prohibited by sections 52.1, 53, 55 and 55.1.

1999, c. 2, s. 22; 2002, c. 16, s. 9.

### Civil rights not affected

**74.08** Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of a civil right of action.

1999, c. 2, s. 22.

## Administrative Remedies

### Definition of *court*

**74.09** In sections 74.1 to 74.14 and 74.18, ***court*** means the Tribunal, the Federal Court or the superior court of a province.

1999, c. 2, s. 22; 2002, c. 8, s. 183.

### Determination of reviewable conduct and judicial order

**74.1 (1)** Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

**(a)** not to engage in the conduct or substantially similar reviewable conduct;

**(b)** to publish or otherwise disseminate a notice, in such manner and at such times as the court may specify, to bring to the attention of the class of persons likely to have been reached or affected by the conduct, the name under which the person carries on business and the determination made under this section, including

**(i)** a description of the reviewable conduct,

### Éditeurs et distributeurs

**74.07 (1)** Les articles 74.01 à 74.06 ne s'appliquent pas à la personne qui diffuse, notamment en les imprimant ou en les publiant, des indications, notamment de la publicité, pour le compte d'une autre personne se trouvant au Canada et qui établit qu'elle a obtenu et consigné le nom et l'adresse de cette autre personne et qu'elle a accepté de bonne foi d'imprimer, de publier ou de diffuser de quelque autre façon ces indications dans le cadre habituel de son entreprise.

### Non-application

**(2)** Les articles 74.01 à 74.06 ne s'appliquent pas aux actes interdits par les articles 52.1, 53, 55 et 55.1.

1999, ch. 2, art. 22; 2002, ch. 16, art. 9.

### Droits civils non atteints

**74.08** Sauf disposition contraire de la présente partie, celle-ci n'a pas pour effet de priver une personne d'un droit d'action au civil.

1999, ch. 2, art. 22.

## Recours administratifs

### Définition de *tribunal*

**74.09** Dans les articles 74.1 à 74.14 et 74.18, ***tribunal*** s'entend du Tribunal, de la Cour fédérale ou de la cour supérieure d'une province.

1999, ch. 2, art. 22; 2002, ch. 8, art. 183.

### Décision et ordonnance

**74.1 (1)** Le tribunal qui conclut, à la suite d'une demande du commissaire, qu'une personne a ou a eu un comportement susceptible d'examen visé à la présente partie peut ordonner à celle-ci :

**a)** de ne pas se comporter ainsi ou d'une manière essentiellement semblable;

**b)** de diffuser, notamment par publication, un avis, selon les modalités de forme et de temps qu'il détermine, visant à informer les personnes d'une catégorie donnée, susceptibles d'avoir été touchées par le comportement, du nom de l'entreprise que le contrevenant exploite et de la décision prise en vertu du présent article, notamment :

**(ii)** the time period and geographical area to which the conduct relates, and

**(iii)** a description of the manner in which any representation or advertisement was disseminated, including, where applicable, the name of the publication or other medium employed;

**(c)** to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding

**(i)** in the case of an individual, the greater of

**(A)** $750,000 and, for each subsequent order, $1,000,000, and

**(B)** three times the value of the benefit derived from the deceptive conduct, if that amount can be reasonably determined, or

**(ii)** in the case of a corporation, the greater of

**(A)** $10,000,000 and, for each subsequent order, $15,000,000, and

**(B)** three times the value of the benefit derived from the deceptive conduct, or, if that amount cannot be reasonably determined, 3% of the corporation's annual worldwide gross revenues; and

**(d)** in the case of conduct that is reviewable under paragraph 74.01(1)(a), to pay an amount, not exceeding the total of the amounts paid to the person for the products in respect of which the conduct was engaged in, to be distributed among the persons to whom the products were sold — except wholesalers, retailers or other distributors, to the extent that they have resold or distributed the products — in any manner that the court considers appropriate.

**(i)** l'énoncé des éléments du comportement susceptible d'examen,

**(ii)** la période et le secteur géographique auxquels le comportement est afférent,

**(iii)** l'énoncé des modalités de diffusion utilisées pour donner les indications ou faire la publicité, notamment, le cas échéant, le nom des médias — notamment de la publication — utilisés;

**c)** de payer, selon les modalités qu'il peut préciser, une sanction administrative pécuniaire maximale :

**(i)** dans le cas d'une personne physique, correspondant au plus élevé des montants suivants :

**(A)** 750 000 $ pour la première ordonnance et 1 000 000 $ pour toute ordonnance subséquente,

**(B)** trois fois la valeur du bénéfice tiré du comportement trompeur, si ce montant peut être déterminé raisonnablement,

**(ii)** dans le cas d'une personne morale, correspondant au plus élevé des montants suivants :

**(A)** 10 000 000 $ pour la première ordonnance et 15 000 000 $ pour toute ordonnance subséquente,

**(B)** trois fois la valeur du bénéfice tiré du comportement trompeur ou, si ce montant ne peut pas être déterminé raisonnablement, trois pour cent des recettes globales brutes annuelles de la personne morale;

**d)** s'agissant du comportement visé à l'alinéa 74.01(1)a), de payer aux personnes auxquelles les produits visés par le comportement ont été vendus — sauf les grossistes, détaillants ou autres distributeurs, dans la mesure où ils ont revendu ou distribué les produits — une somme — ne pouvant excéder la somme totale payée au contrevenant pour ces produits — devant être répartie entre elles de la manière qu'il estime indiquée.

**Duration of order**

**(2)** An order made under paragraph (1)(a) applies for a period of ten years unless the court specifies a shorter period.

**Saving**

**(3)** No order may be made against a person under paragraph (1)(b), (c) or (d) if the person establishes that the person exercised due diligence to prevent the reviewable conduct from occurring.

**Durée d'application**

**(2)** Les ordonnances rendues en vertu de l'alinéa (1)a) s'appliquent pendant une période de dix ans, ou pendant la période plus courte fixée par le tribunal.

**Disculpation**

**(3)** L'ordonnance prévue aux alinéas (1)b), c) ou d) ne peut être rendue si la personne visée établit qu'elle a fait preuve de toute la diligence voulue pour empêcher le comportement reproché.

**Purpose of order**

**(4)** The terms of an order made against a person under paragraph (1)(b), (c) or (d) shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment.

**Aggravating or mitigating factors**

**(5)** Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under paragraph (1)(c):

**(a)** the reach of the conduct within the relevant geographic market;

**(b)** the frequency and duration of the conduct;

**(c)** the vulnerability of the class of persons likely to be adversely affected by the conduct;

**(d)** the materiality of any representation;

**(e)** the likelihood of self-correction in the relevant geographic market;

**(f)** the effect on competition in the relevant market;

**(g)** the gross revenue from sales affected by the conduct;

**(h)** the financial position of the person against whom the order is made;

**(i)** the history of compliance with this Act by the person against whom the order is made;

**(j)** any decision of the court in relation to an application for an order under paragraph (1)(d);

**(k)** any other amounts paid or ordered to be paid by the person against whom the order is made as a refund or as restitution or other compensation in respect of the conduct; and

**(l)** any other relevant factor.

**Meaning of subsequent order**

**(6)** For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b) or (c), subsection 74.01(2) or (3) or section 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

**But de l'ordonnance**

**(4)** Les conditions de l'ordonnance rendue en vertu des alinéas (1)b), c) ou d) sont fixées de façon à encourager le contrevenant à adopter un comportement compatible avec les objectifs de la présente partie et non pas à le punir.

**Circonstances aggravantes ou atténuantes**

**(5)** Pour la détermination du montant de la sanction administrative pécuniaire prévue à l'alinéa (1)c), il est tenu compte des éléments suivants :

**a)** la portée du comportement sur le marché géographique pertinent;

**b)** la fréquence et la durée du comportement;

**c)** la vulnérabilité des catégories de personnes susceptibles de souffrir du comportement;

**d)** l'importance des indications;

**e)** la possibilité d'un redressement de la situation sur le marché géographique pertinent;

**f)** l'effet sur la concurrence dans le marché pertinent;

**g)** le revenu brut provenant des ventes sur lesquelles le comportement a eu une incidence;

**h)** la situation financière de la personne visée par l'ordonnance;

**i)** le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

**j)** toute décision du tribunal à l'égard d'une demande d'ordonnance présentée au titre de l'alinéa (1)d);

**k)** toute somme déjà payée par la personne visée par l'ordonnance ou à payer par elle en vertu d'une ordonnance, à titre de remboursement, de restitution ou de toute autre forme de dédommagement à l'égard du comportement;

**l)** tout autre élément pertinent.

**Sens de l'ordonnance subséquente**

**(6)** Pour l'application de l'alinéa (1)c), l'ordonnance rendue contre une personne à l'égard d'un comportement susceptible d'examen en application des alinéas 74.01(1)a), b) ou c), des paragraphes 74.01(2) ou (3) ou des articles 74.02, 74.04, 74.05 ou 74.06 constitue une ordonnance subséquente dans les cas suivants :

**(a)** an order was previously made against the person under this section in respect of conduct reviewable under the same provision;

**(b)** the person was previously convicted of an offence under the provision of Part VI, as that Part read immediately before the coming into force of this Part, that corresponded to the provision of this Part;

**(c)** in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a), the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or

**(d)** in the case of an order in respect of conduct reviewable under subsection 74.01(2) or (3), the person was previously convicted of an offence under paragraph 52(1)(d) as it read immediately before the coming into force of this Part.

**a)** une ordonnance a été rendue antérieurement en vertu du présent article contre la personne à l'égard d'un comportement susceptible d'examen visé par la même disposition;

**b)** la personne a déjà été déclarée coupable d'une infraction prévue par une disposition de la partie VI, dans sa version antérieure à l'entrée en vigueur de la présente partie, qui correspond à la disposition de la présente partie;

**c)** dans le cas d'une ordonnance rendue à l'égard du comportement susceptible d'examen visé à l'alinéa 74.01(1)a), la personne a déjà été déclarée coupable d'une infraction à l'article 52, ou à l'alinéa 52(1)a) dans sa version antérieure à l'entrée en vigueur de la présente partie;

**d)** dans le cas d'une ordonnance rendue à l'égard du comportement susceptible d'examen visé aux paragraphes 74.01(2) ou (3), la personne a déjà été déclarée coupable d'une infraction à l'alinéa 52(1)d) dans sa version antérieure à l'entrée en vigueur de la présente partie.

**Amounts already paid**

**(7)** In determining an amount to be paid under paragraph (1)(d), the court shall take into account any other amounts paid or ordered to be paid by the person against whom the order is made as a refund or as restitution or other compensation in respect of the products.

**Sommes déjà payées**

**(7)** Dans la détermination de la somme à payer au titre de l'alinéa (1)d), le tribunal tient compte de toute somme déjà payée par le contrevenant ou à payer par lui en vertu d'une ordonnance, à titre de remboursement, de restitution ou de toute autre forme de dédommagement à l'égard des produits.

**Implementation of the order**

**(8)** The court may specify in an order made under paragraph (1)(d) any terms that it considers necessary for the order's implementation, including terms

**(a)** specifying how the payment is to be administered;

**(b)** respecting the appointment of an administrator to administer the payment and specifying the terms of administration;

**(c)** requiring the person against whom the order is made to pay the administrative costs related to the payment as well as the fees to be paid to an administrator;

**(d)** requiring that potential claimants be notified in the time and manner specified by the court;

**(e)** specifying the time and manner for making claims;

**(f)** specifying the conditions for the eligibility of claimants, including conditions relating to the return

**Exécution de l'ordonnance**

**(8)** Le tribunal peut, dans l'ordonnance rendue au titre de l'alinéa (1)d), préciser les conditions qu'il estime nécessaires à son exécution, notamment :

**a)** prévoir comment la somme à payer doit être administrée;

**b)** nommer un administrateur chargé d'administrer cette somme et préciser les modalités d'administration;

**c)** mettre à la charge du contrevenant les frais d'administration de la somme ainsi que les honoraires de l'administrateur;

**d)** exiger que les réclamants éventuels soient avisés selon les modalités de forme et de temps qu'il précise;

**e)** préciser les modalités de forme et de temps quant à la présentation de toute réclamation;

of the products to the person against whom the order is made; and

**(g)** providing for the manner in which, and the terms on which, any amount of the payment that remains unclaimed or undistributed is to be dealt with.

**f)** établir les critères d'admissibilité des réclamants, notamment toute exigence relative au retour des produits au contrevenant;

**g)** prévoir la manière dont la somme éventuellement non réclamée ou non distribuée doit être traitée et les conditions afférentes.

### Variation of terms

**(9)** On application by the Commissioner or the person against whom the order is made, the court may vary any term that is specified under subsection (8).

1999, c. 2, s. 22; 2009, c. 2, s. 424; 2022, c. 10, s. 260.

### Modification des conditions

**(9)** Le tribunal peut, sur demande du commissaire ou de la personne visée par l'ordonnance, modifier les conditions qu'il a précisées en vertu du paragraphe (8).

1999, ch. 2, art. 22; 2009, ch. 2, art. 424; 2022, ch. 10, art. 260.

### Deduction from administrative monetary penalty

**74.101 (1)** If a court determines that a person is engaging in or has engaged in conduct that is reviewable under section 74.011 and orders the person to pay an administrative monetary penalty under paragraph 74.1(1)(c), then the court shall deduct from the amount of the penalty that it determines any amount that the person

**(a)** has been ordered to pay under paragraph 51(1)(b) of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* in respect of the same conduct; or

**(b)** has agreed in a settlement agreement to pay on account of amounts referred to in paragraph 51(1)(b) of that Act in respect of the same conduct.

### Déduction

**74.101 (1)** Lorsque le tribunal conclut qu'une personne a ou a eu un comportement susceptible d'examen visé à l'article 74.011, il déduit de toute sanction administrative pécuniaire qu'il fixe aux termes de l'alinéa 74.1(1)c) toute somme que la personne visée par l'ordonnance, à l'égard du même comportement :

**a)** ou bien a payée ou est tenue de payer en exécution d'une ordonnance rendue en vertu de l'alinéa 51(1)b) de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications*;

**b)** ou bien s'est engagée à payer, dans le cadre d'un règlement à l'amiable, au titre de l'alinéa 51(1)b) de cette loi.

### Restitution and interim injunction

**(2)** If a court determines that a person is engaging in or has engaged in conduct that is reviewable under subsection 74.011(2), it may order the person to pay an amount under paragraph 74.1(1)(d), and may issue an interim injunction under section 74.111, as if the conduct were conduct that is reviewable under paragraph 74.01(1)(a).

2010, c. 23, s. 79.

### Indemnisation et injonction

**(2)** Lorsque le tribunal conclut qu'une personne a ou a eu un comportement susceptible d'examen visé au paragraphe 74.011(2), il peut ordonner à celle-ci de payer une somme au titre de l'alinéa 74.1(1)d) et prononcer une injonction provisoire en vertu de l'article 74.111, comme si le comportement était susceptible d'examen visé à l'alinéa 74.01(1)a).

2010, ch. 23, art. 79.

### Temporary order

**74.11 (1)** On application by the Commissioner, a court may order a person who it appears to the court is engaging in conduct that is reviewable under this Part not to engage in that conduct or substantially similar reviewable conduct if it appears to the court that

### Ordonnance temporaire

**74.11 (1)** Sur demande présentée par le commissaire, le tribunal peut ordonner à toute personne qui, d'après lui, a un comportement susceptible d'examen visé par la présente partie de ne pas se comporter ainsi ou d'une manière essentiellement semblable, s'il constate que, en l'absence de l'ordonnance, un dommage grave sera

**(a)** serious harm is likely to ensue unless the order is issued; and

**(b)** the balance of convenience favours issuing the order.

vraisemblablement causé et que, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**Temporary order — supply of a product**

**(1.1)** On application by the Commissioner, a court may order any person named in the application to refrain from supplying to another person a product that it appears to the court is or is likely to be used to engage in conduct that is reviewable under this Part, or to do any act or thing that it appears to the court could prevent a person from engaging in such conduct, if it appears to the court that

**(a)** serious harm is likely to ensue unless the order is issued; and

**(b)** the balance of convenience favours issuing the order.

**Ordonnance temporaire — fourniture d'un produit ou accomplissement d'un acte**

**(1.1)** Sur demande présentée par le commissaire, le tribunal peut également ordonner à toute personne nommément désignée dans la demande de s'abstenir de fournir à une autre personne un produit qui, d'après lui, est ou sera vraisemblablement utilisé pour l'adoption d'un comportement susceptible d'examen visé à la présente partie ou lui enjoignant d'accomplir tout acte qu'il estime susceptible d'empêcher un tel comportement s'il constate que, en l'absence de l'ordonnance, un dommage grave sera vraisemblablement causé et que, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

**Duration**

**(2)** Subject to subsection (5), an order made under subsection (1) or (1.1) has effect, or may be extended on application by the Commissioner, for any period that the court considers sufficient to meet the circumstances of the case.

**Durée d'application**

**(2)** Sous réserve du paragraphe (5), l'ordonnance rendue en vertu des paragraphes (1) ou (1.1) a effet ou peut être prorogée à la demande du commissaire pour la période que le tribunal estime suffisante pour répondre aux besoins en l'occurrence.

**Notice of application**

**(3)** Subject to subsection (4), at least 48 hours' notice of an application referred to in subsection (1), (1.1) or (2) shall be given by or on behalf of the Commissioner to the person in respect of whom the order or extension is sought.

**Préavis**

**(3)** Sous réserve du paragraphe (4), le commissaire, ou la personne agissant pour son compte, donne un préavis d'au moins quarante-huit heures à la personne à l'égard de laquelle est demandée l'ordonnance ou la prorogation prévue aux paragraphes (1), (1.1) ou (2).

***Ex parte* application**

**(4)** The court may proceed *ex parte* with an application made under subsection (1) or (1.1) if it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

**Audition *ex parte***

**(4)** Le tribunal peut entendre *ex parte* la demande prévue aux paragraphes (1) ou (1.1), s'il est convaincu que le paragraphe (3) ne peut vraisemblablement pas être observé, ou que la situation est à ce point urgente que la signification de l'avis aux termes du paragraphe (3) ne servirait pas l'intérêt public.

**Duration of *ex parte* order**

**(5)** An order issued *ex parte* shall have effect for such period as is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (3), the court extends the order for such additional period as it considers necessary and sufficient.

**Durée d'application**

**(5)** L'ordonnance rendue *ex parte* s'applique pour la période d'au plus sept jours qui y est fixée, sauf si, sur demande ultérieure présentée en donnant le préavis prévu au paragraphe (3), l'ordonnance est prorogée pour la période supplémentaire que le tribunal estime nécessaire et suffisante.

**Duty of Commissioner**

**(6)** Where an order issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 arising out of the conduct in respect of which the order was issued.

1999, c. 2, s. 22; 2002, c. 16, s. 10; 2010, c. 23, s. 80.

**Obligations du commissaire**

**(6)** Lorsqu'une ordonnance a force d'application aux termes du présent article, le commissaire doit, avec toute la diligence possible, mener à terme l'enquête visée à l'article 10 à l'égard du comportement qui fait l'objet de l'ordonnance.

1999, ch. 2, art. 22; 2002, ch. 16, art. 10; 2010, ch. 23, art. 80.

**Interim injunction**

**74.111 (1)** If, on application by the Commissioner, a court finds a strong *prima facie* case that a person is engaging in or has engaged in conduct that is reviewable under paragraph 74.01(1)(a), and the court is satisfied that the person owns or has possession or control of articles within the jurisdiction of the court and is disposing of or is likely to dispose of them by any means, and that the disposal of the articles will substantially impair the enforceability of an order made under paragraph 74.1(1)(d), the court may issue an interim injunction forbidding the person or any other person from disposing of or otherwise dealing with the articles, other than in the manner and on the terms specified in the injunction.

**Ordonnance d'injonction provisoire**

**74.111 (1)** S'il constate, à la suite d'une demande présentée par le commissaire, l'existence d'une preuve *prima facie* convaincante établissant qu'une personne a ou a eu un comportement susceptible d'examen visé à l'alinéa 74.01(1)a) et s'il est convaincu, d'une part, que cette personne a entrepris de disposer ou disposera vraisemblablement de quelque façon que ce soit d'articles qui se trouvent dans son ressort et dont elle est propriétaire ou dont elle a la possession ou le contrôle et, d'autre part, que la disposition des articles nuira considérablement à l'exécution de l'ordonnance rendue en vertu de l'alinéa 74.1(1)d), le tribunal peut prononcer une injonction provisoire interdisant à cette personne ou à toute autre personne d'effectuer quelque opération à leur égard, notamment d'en disposer, si ce n'est de la manière et aux conditions précisées dans l'ordonnance d'injonction.

**Statement to be included**

**(2)** Any application for an injunction under subsection (1) shall include a statement that the Commissioner has applied for an order under paragraph 74.1(1)(d), or that the Commissioner intends to apply for an order under that paragraph if the Commissioner applies for an order under paragraph 74.1(1)(a).

**Mention à ajouter**

**(2)** Le commissaire signale, dans sa demande d'injonction, qu'il a présenté une demande d'ordonnance en vertu de l'alinéa 74.1(1)d) ou, s'il demande l'ordonnance au titre de l'alinéa 74.1(1)a), qu'il a l'intention de demander l'ordonnance au titre de l'alinéa 74.1(1)d).

**Duration**

**(3)** Subject to subsection (6), the injunction has effect, or may be extended on application by the Commissioner, for any period that the court considers sufficient to meet the circumstances of the case.

**Durée d'application**

**(3)** Sous réserve du paragraphe (6), l'ordonnance d'injonction a effet — ou peut être prorogée à la demande du commissaire — pour la période que le tribunal estime suffisante pour répondre aux besoins en l'occurrence.

**Notice of application by Commissioner**

**(4)** Subject to subsection (5), at least 48 hours' notice of an application referred to in subsection (1) or (3) shall be given by or on behalf of the Commissioner to the person in respect of whom the injunction or extension is sought.

**Préavis**

**(4)** Sous réserve du paragraphe (5), le commissaire ou la personne agissant pour son compte donne un préavis d'au moins quarante-huit heures à toute personne à l'égard de laquelle sont demandées l'ordonnance d'injonction prévue au paragraphe (1) ou la prorogation visée au paragraphe (3).

***Ex parte* application**

**(5)** The court may proceed *ex parte* with an application made under subsection (1) if it is satisfied that subsection (4) cannot reasonably be complied with or where the urgency of the situation is such that service of the notice in accordance with subsection (4) might defeat the purpose

**Audition *ex parte***

**(5)** Le tribunal peut entendre *ex parte* la demande présentée au titre du paragraphe (1) s'il est convaincu que le paragraphe (4) ne peut vraisemblablement pas être observé ou si la situation est à ce point urgente que la signification du préavis conformément au paragraphe (4)

of the injunction or would otherwise not be in the public interest.

**Duration of *ex parte* injunction**

**(6)** An injunction issued *ex parte* has effect for the period that is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (4), the court extends the injunction for any additional period that it considers sufficient.

**Submissions to set aside**

**(7)** On application of the person against whom an *ex parte* injunction is made, the court may make an order setting aside the injunction or varying it subject to any conditions that it considers appropriate.

**Duty of Commissioner**

**(8)** If an injunction issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete any inquiry under section 10 arising out of the conduct in respect of which the injunction was issued.

**Definitions**

**(9)** The following definitions apply in this section.

***dispose***, in relation to an article, includes removing it from the jurisdiction of the court, depleting its value, leasing it to another person or creating any security interest in it. (*disposer*)

***security interest*** means any interest or right in property that secures payment or performance of an obligation and includes an interest or right created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, security, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for. (*garantie*)

2009, c. 2, s. 425.

**Consent agreement**

**74.12 (1)** The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part may sign a consent agreement.

**Terms of consent agreement**

**(2)** The consent agreement shall be based on terms that could be the subject of an order of a court against that person, and may include other terms, whether or not they could be imposed by the court.

pourrait rendre l'ordonnance inutile ou ne servirait pas par ailleurs l'intérêt public.

**Durée d'application**

**(6)** L'ordonnance d'injonction rendue *ex parte* a effet pour la période d'au plus sept jours qui y est fixée, sauf si, sur demande ultérieure présentée au moyen du préavis prévu au paragraphe (4), elle est prorogée pour la période supplémentaire que le tribunal estime suffisante.

**Demande d'annulation de l'ordonnance**

**(7)** Sur demande de la personne visée par l'ordonnance d'injonction rendue *ex parte*, le tribunal peut annuler l'ordonnance ou la modifier aux conditions qu'il estime indiquées.

**Obligation du commissaire**

**(8)** Lorsqu'une ordonnance d'injonction a effet, le commissaire, avec toute la diligence possible, mène à terme toute enquête visée à l'article 10 à l'égard du comportement qui fait l'objet de l'ordonnance.

**Définitions**

**(9)** Les définitions qui suivent s'appliquent au présent article.

***disposer*** S'agissant d'un article, s'entend notamment du fait de le retirer du ressort du tribunal, d'en faire diminuer la valeur, de le louer à une autre personne ou de le donner comme garantie. (*dispose*)

***garantie*** Tout droit ou intérêt sur un bien qui garantit le paiement ou l'exécution d'une obligation. Sont notamment visés les droits ou intérêts nés ou découlant de débentures, hypothèques, privilèges, nantissements, sûretés, grèvements, fiducies réputées ou réelles, cessions et charges, quelle qu'en soit la nature, de quelque façon ou à quelque date qu'ils soient créés, réputés exister ou prévus par ailleurs. (*security interest*)

2009, ch. 2, art. 425.

**Consentement**

**74.12 (1)** Le commissaire et la personne à l'égard de laquelle il a demandé ou peut demander une ordonnance en vertu de la présente partie peuvent signer un consentement.

**Contenu du consentement**

**(2)** Le consentement porte sur le contenu de toute ordonnance qui pourrait éventuellement être rendue contre la personne en question par un tribunal; il peut également comporter d'autres modalités, qu'elles puissent ou non être imposées par le tribunal.

### Registration

**(3)** The consent agreement may be filed with the court for immediate registration.

### Effect of registration

**(4)** Upon registration of the consent agreement, the proceedings, if any, are terminated and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the court.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

### Rescission or variation of consent agreement or order

**74.13** The court may rescind or vary a consent agreement that it has registered or an order that it has made under this Part, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the court finds that

**(a)** the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

**(b)** the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

### Evidence

**74.14** In determining whether or not to make an order under this Part, the court shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the court under this Act.

1999, c. 2, s. 22.

### Unpaid monetary penalty

**74.15** The amount of an administrative monetary penalty imposed on a person under paragraph 74.1(1)(c) is a debt due to Her Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

1999, c. 2, s. 22.

### Dépôt et enregistrement

**(3)** Le consentement est déposé auprès du tribunal qui est tenu de l'enregistrer immédiatement.

### Effet de l'enregistrement

**(4)** Une fois enregistré, le consentement met fin aux procédures qui ont pu être engagées, et il a la même valeur et produit les mêmes effets qu'une ordonnance du tribunal, notamment quant à l'engagement des procédures.

1999, ch. 2, art. 22; 2002, ch. 16, art. 11.

### Annulation ou modification du consentement ou de l'ordonnance

**74.13** Le tribunal peut annuler ou modifier un consentement qu'il a enregistré ou une ordonnance qu'il a rendue en application de la présente partie lorsque, à la demande du commissaire ou de la personne qui a signé le consentement, ou de celle à l'égard de laquelle l'ordonnance a été rendue, il conclut que, selon le cas :

**a)** les circonstances ayant entraîné le consentement ou l'ordonnance ont changé et que, sur la base des circonstances qui existent au moment où la demande est faite, le consentement ou l'ordonnance n'aurait pas été signé ou rendue, ou n'aurait pas eu les effets nécessaires à la réalisation de son objet;

**b)** le commissaire et la personne qui a signé le consentement signent un autre consentement ou le commissaire et la personne à l'égard de laquelle l'ordonnance a été rendue ont consenti à une autre ordonnance.

1999, ch. 2, art. 22; 2002, ch. 16, art. 11.

### Preuve

**74.14** Dans sa décision de rendre ou de ne pas rendre une ordonnance en application de la présente partie, le tribunal ne peut refuser de prendre en compte un élément de preuve au seul motif que celui-ci pourrait constituer un élément de preuve à l'égard d'une infraction prévue à la présente loi ou qu'une autre ordonnance pourrait être rendue par le tribunal en vertu de la présente loi à l'égard de cet élément de preuve.

1999, ch. 2, art. 22.

### Sanctions administratives pécuniaires impayées

**74.15** Les sanctions administratives pécuniaires imposées au titre de l'alinéa 74.1(1)c) constituent des créances de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

1999, ch. 2, art. 22.

**Where proceedings commenced under section 52 or 52.01**

**74.16** No application may be made under this Part against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which proceedings have been commenced against that person under section 52 or 52.01.

1999, c. 2, s. 22; 2010, c. 23, s. 81.

## Rules of Procedure

**Power of courts**

**74.17** The rules committee of the Federal Court, or a superior court of a province, may make rules respecting the procedure for the disposition of applications by that court under this Part.

1999, c. 2, s. 22.

## Appeals

**Appeal to Federal Court of Appeal**

**74.18 (1)** An appeal may be brought in the Federal Court of Appeal from any decision or order made under this Part, or from a refusal to make an order, by the Tribunal or the Federal Court.

**Appeal to provincial court of appeal**

**(2)** An appeal may be brought in the court of appeal of a province from any decision or order made under this Part, or from a refusal to make an order, by a superior court of the province.

**Disposition of appeal**

**(3)** Where the Federal Court of Appeal or the court of appeal of the province allows an appeal under this section, it may quash the decision or order appealed from, refer the matter back to the court appealed from or make any decision or order that, in its opinion, that court should have made.

1999, c. 2, s. 22; 2002, c. 8, s. 183.

**Appeal on question of fact**

**74.19** An appeal on a question of fact from a decision or order made under this Part may be brought only with the leave of the Federal Court of Appeal or the court of appeal of the province, as the case may be.

1999, c. 2, s. 22.

**Procédures en vertu des articles 52 ou 52.01**

**74.16** Aucune demande ne peut être présentée à l'endroit d'une personne au titre de la présente partie si les faits au soutien de la demande sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien d'une procédure engagée à l'endroit de cette personne en vertu des articles 52 ou 52.01.

1999, ch. 2, art. 22; 2010, ch. 23, art. 81.

## Règles de procédure

**Pouvoir des tribunaux**

**74.17** Le Comité des règles de la Cour fédérale ou la cour supérieure d'une province peut établir des règles régissant le traitement des demandes prévues par la présente partie.

1999, ch. 2, art. 22.

## Appels

**Appel à la Cour d'appel fédérale**

**74.18 (1)** Il peut être interjeté appel devant la Cour d'appel fédérale d'une décision ou d'une ordonnance rendue en vertu de la présente partie par le Tribunal ou la Cour fédérale.

**Appel à la cour d'appel provinciale**

**(2)** Il peut être interjeté appel devant la cour d'appel d'une province d'une décision ou d'une ordonnance rendue en vertu de la présente partie par la cour supérieure de la province.

**Sort de l'appel**

**(3)** La Cour d'appel fédérale ou la cour d'appel d'une province qui accueille l'appel peut annuler la décision ou l'ordonnance portée en appel, renvoyer l'affaire devant le tribunal qui a rendu la décision ou l'ordonnance ou rendre toute ordonnance qui, à son avis, aurait dû être rendue par celui-ci.

1999, ch. 2, art. 22; 2002, ch. 8, art. 183.

**Questions de fait**

**74.19** L'appel d'une décision ou d'une ordonnance rendue par le tribunal en vertu de la présente partie et portant sur une question de fait est subordonné à l'autorisation de la Cour d'appel fédérale ou de la cour d'appel de la province, selon le cas.

1999, ch. 2, art. 22.

**PART VIII**

# Matters Reviewable by Tribunal

## Restrictive Trade Practices

### Refusal to Deal

#### Jurisdiction of Tribunal where refusal to deal

**75 (1)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

**(a)** a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

**(b)** the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

**(c)** the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

**(d)** the product is in ample supply, and

**(e)** the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

#### When article is a separate product

**(2)** For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trademark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on

**PARTIE VIII**

# Affaires que le Tribunal peut examiner

## Pratiques restrictives du commerce

### Refus de vendre

#### Compétence du Tribunal dans les cas de refus de vendre

**75 (1)** Lorsque, à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, le Tribunal conclut :

**a)** qu'une personne est sensiblement gênée dans son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer un produit de façon suffisante, où que ce soit sur un marché, aux conditions de commerce normales;

**b)** que la personne mentionnée à l'alinéa a) est incapable de se procurer le produit de façon suffisante en raison de l'insuffisance de la concurrence entre les fournisseurs de ce produit sur ce marché;

**c)** que la personne mentionnée à l'alinéa a) accepte et est en mesure de respecter les conditions de commerce normales imposées par le ou les fournisseurs de ce produit;

**d)** que le produit est disponible en quantité amplement suffisante;

**e)** que le refus de vendre a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché,

le Tribunal peut ordonner qu'un ou plusieurs fournisseurs de ce produit sur le marché en question acceptent cette personne comme client dans un délai déterminé aux conditions de commerce normales à moins que, au cours de ce délai, dans le cas d'un article, les droits de douane qui lui sont applicables ne soient supprimés, réduits ou remis de façon à mettre cette personne sur un pied d'égalité avec d'autres personnes qui sont capables de se procurer l'article en quantité suffisante au Canada.

#### Cas où l'article est un produit distinct

**(2)** Pour l'application du présent article, n'est pas un produit distinct sur un marché donné l'article qui se distingue des autres articles de sa catégorie en raison uniquement de sa marque de commerce, de son nom de propriétaire ou d'une semblable particularité à moins que la position de cet article sur ce marché ne soit à ce point

business in that class of articles unless that person has access to the article so differentiated.

**Definition of *trade terms***

**(3)** For the purposes of this section, the expression ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

**Inferences**

**(4)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 75; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 11.1; 2014, c. 20, s. 366(E).

## Price Maintenance

**Price maintenance**

**76 (1)** On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

**(a)** a person referred to in subsection (3) directly or indirectly

**(i)** by agreement, threat, promise or any like means, has influenced upward, or has discouraged the reduction of, the price at which the person's customer or any other person to whom the product comes for resale supplies or offers to supply or advertises a product within Canada, or

**(ii)** has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and

**(b)** the conduct has had, is having or is likely to have an adverse effect on competition in a market.

**Order**

**(2)** The Tribunal may make an order prohibiting the person referred to in subsection (3) from continuing to engage in the conduct referred to in paragraph (1)(a) or requiring them to accept another person as a customer within a specified time on usual trade terms.

dominante qu'elle nuise sensiblement à la faculté d'une personne à exploiter une entreprise se rapportant à cette catégorie d'articles si elle n'a pas accès à l'article en question.

**Définition de *conditions de commerce***

**(3)** Pour l'application du présent article, ***conditions de commerce*** s'entend des conditions relatives au paiement, aux quantités unitaires d'achat et aux exigences raisonnables d'ordre technique ou d'entretien.

**Application**

**(4)** Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

L.R. (1985), ch. C-34, art. 75; L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2002, ch. 16, art. 11.1; 2014, ch. 20, art. 366(A).

## Maintien des prix

**Maintien des prix**

**76 (1)** Sur demande du commissaire ou de toute personne à qui il a accordé la permission de présenter une demande en vertu de l'article 103.1, le Tribunal peut rendre l'ordonnance visée au paragraphe (2) s'il conclut, à la fois :

**a)** que la personne visée au paragraphe (3), directement ou indirectement :

**(i)** soit, par entente, menace, promesse ou quelque autre moyen semblable, a fait monter ou empêché qu'on ne réduise le prix auquel son client ou toute personne qui le reçoit pour le revendre fournit ou offre de fournir un produit ou fait de la publicité au sujet d'un produit au Canada,

**(ii)** soit a refusé de fournir un produit à une personne ou catégorie de personnes exploitant une entreprise au Canada, ou a pris quelque autre mesure discriminatoire à son endroit, en raison de son régime de bas prix;

**b)** que le comportement a eu, a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché.

**Ordonnance**

**(2)** Le Tribunal peut, par ordonnance, interdire à la personne visée au paragraphe (3) de continuer de se livrer au comportement visé à l'alinéa (1)a) ou exiger qu'elle accepte une autre personne comme client dans un délai déterminé aux conditions de commerce normales.

**Persons subject to order**

**(3)** An order may be made under subsection (2) against a person who

**(a)** is engaged in the business of producing or supplying a product;

**(b)** extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards; or

**(c)** has the exclusive rights and privileges conferred by a patent, certificate of supplementary protection issued under the *Patent Act*, trademark, copyright, registered industrial design or registered integrated circuit topography.

**When no order may be made**

**(4)** No order may be made under subsection (2) if the person referred to in subsection (3) and the customer or other person referred to in subparagraph (1)(a)(i) or (ii) are

**(a)** principal and agent or mandator and mandatary;

**(b)** an entity and an individual who controls it or affiliated entities; or

**(c)** directors, agents, mandataries, officers or employees of the same entity or of entities that are affiliated.

**Suggested retail price**

**(5)** For the purposes of this section, a suggestion by a producer or supplier of a product of a resale price or minimum resale price for the product, however arrived at, is proof that the person to whom the suggestion is made is influenced in accordance with the suggestion, in the absence of proof that the producer or supplier, in so doing, also made it clear to the person that they were under no obligation to accept the suggestion and would in no way suffer in their business relations with the producer or supplier or with any other person if they failed to accept the suggestion.

**Advertised price**

**(6)** For the purposes of this section, the publication by a producer or supplier of a product, other than a retailer, of an advertisement that mentions a resale price for the product is proof that the producer or supplier is influencing upward the selling price of any person to whom the

**Personne visée par l'ordonnance**

**(3)** Peut être visée par l'ordonnance prévue au paragraphe (2) la personne qui, selon le cas :

**a)** exploite une entreprise de production ou de fourniture d'un produit;

**b)** offre du crédit au moyen de cartes de crédit ou, d'une façon générale, exploite une entreprise dans le domaine des cartes de crédit;

**c)** détient les droits et privilèges exclusifs que confèrent un brevet, un certificat de protection supplémentaire délivré en vertu de la *Loi sur les brevets*, une marque de commerce, un droit d'auteur, un dessin industriel enregistré ou une topographie de circuit intégré enregistrée.

**Cas où il ne peut être rendu d'ordonnance**

**(4)** L'ordonnance prévue au paragraphe (2) ne peut être rendue lorsque la personne visée au paragraphe (3) et le client ou la personne visés aux sous-alinéas (1)a)(i) ou (ii) se trouvent dans l'une des situations suivantes :

**a)** ils ont entre eux des relations de mandant à mandataire;

**b)** il s'agit d'une entité et d'une personne physique qui la contrôle ou ils sont des entités affiliées;

**c)** ils sont des administrateurs, mandataires, dirigeants ou employés soit de la même entité, soit d'entités qui sont affiliées.

**Prix de détail proposé**

**(5)** Pour l'application du présent article, le fait, pour le producteur ou fournisseur d'un produit, de proposer pour ce produit un prix de revente ou un prix de revente minimal, quelle que soit la façon de déterminer ce prix, lorsqu'il n'est pas prouvé que le producteur ou fournisseur, en faisant la proposition, a aussi précisé à la personne à laquelle il l'a faite que cette dernière n'était nullement obligée de l'accepter et que, si elle ne l'acceptait pas, elle n'en souffrirait en aucune façon dans ses relations commerciales avec ce producteur ou fournisseur ou avec toute autre personne, constitue la preuve qu'il a influencé, dans le sens de la proposition, la personne à laquelle il l'a faite.

**Prix annoncé**

**(6)** Pour l'application du présent article, la publication, par le producteur ou le fournisseur d'un produit qui n'est pas détaillant, d'une réclame mentionnant un prix de revente pour ce produit constitue la preuve qu'il a fait monter le prix de vente demandé par toute personne qui le

product comes for resale, unless the price is expressed in a way that makes it clear to any person whose attention the advertisement comes to that the product may be sold at a lower price.

**Exception**

**(7)** Subsections (5) and (6) do not apply to a price that is affixed or applied to a product or its package or container.

**Refusal to supply**

**(8)** If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that any person, by agreement, threat, promise or any like means, has induced a supplier, whether within or outside Canada, as a condition of doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons, and that the conduct of inducement has had, is having or is likely to have an adverse effect on competition in a market, the Tribunal may make an order prohibiting the person from continuing to engage in the conduct or requiring the person to do business with the supplier on usual trade terms.

**Where no order may be made**

**(9)** No order may be made under subsection (2) in respect of conduct referred to in subparagraph (1)(a)(ii) if the Tribunal is satisfied that the person or class of persons referred to in that subparagraph, in respect of products supplied by the person referred to in subsection (3),

**(a)** was making a practice of using the products as loss leaders, that is to say, not for the purpose of making a profit on those products but for purposes of advertising;

**(b)** was making a practice of using the products not for the purpose of selling them at a profit but for the purpose of attracting customers in the hope of selling them other products;

**(c)** was making a practice of engaging in misleading advertising; or

**(d)** made a practice of not providing the level of servicing that purchasers of the products might reasonably expect.

**Inferences**

**(10)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any

reçoit pour le revendre, à moins que ce prix ne soit exprimé de façon à préciser à quiconque prend connaissance de la publicité que le produit peut être vendu à un prix inférieur.

**Exception**

**(7)** Les paragraphes (5) et (6) ne s'appliquent pas au prix apposé ou inscrit sur un produit ou sur son emballage.

**Refus de fournir**

**(8)** S'il conclut, à la suite d'une demande du commissaire ou de toute personne à qui il a accordé la permission de présenter une demande en vertu de l'article 103.1, qu'une personne, par entente, menace, promesse ou quelque autre moyen semblable, a persuadé un fournisseur, au Canada ou à l'étranger, en en faisant la condition de leurs relations commerciales, de refuser de fournir un produit à une personne donnée ou à une catégorie donnée de personnes en raison du régime de bas prix de cette personne ou catégorie et que la persuasion a eu, a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché, le Tribunal peut, par ordonnance, interdire à la personne de continuer à se comporter ainsi ou exiger qu'elle entretienne des relations commerciales avec le fournisseur en question aux conditions de commerce normales.

**Cas où il ne peut être rendu d'ordonnance**

**(9)** L'ordonnance prévue au paragraphe (2) à l'égard du comportement visé au sous-alinéa (1)a)(ii) ne peut être rendue si le Tribunal est convaincu que la personne ou catégorie de personnes visée au sous-alinéa avait l'habitude, quant aux produits fournis par la personne visée au paragraphe (3) :

**a)** de les sacrifier à des fins de publicité et non d'en tirer profit;

**b)** de les vendre sans profit afin d'attirer les clients dans l'espoir de leur vendre d'autres produits;

**c)** de faire de la publicité trompeuse;

**d)** de ne pas assurer la qualité de service à laquelle leurs acheteurs pouvaient raisonnablement s'attendre.

**Application**

**(10)** Le Tribunal, lorsqu'il est saisi d'une demande présentée par une personne à qui il a accordé la permission

inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

**Where proceedings commenced under section 45, 49, 79 or 90.1**

**(11)** No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought under section 79 or 90.1.

**Definition of *trade terms***

**(12)** For the purposes of this section, ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

R.S., 1985, c. C-34, s. 76; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2009, c. 2, s. 426; 2014, c. 20, s. 366(E); 2017, c. 6, s. 124; 2018, c. 8, s. 112.

## Exclusive Dealing, Tied Selling and Market Restriction

**Definitions**

**77 (1)** For the purposes of this section,

***exclusive dealing*** means

**(a)** any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

**(i)** deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

**(ii)** refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

**(b)** any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs; (*exclusivité*)

de présenter une demande en vertu de l'article 103.1, ne peut tirer quelque conclusion que ce soit du fait que le commissaire a pris des mesures ou non à l'égard de l'objet de la demande.

**Procédures en vertu des articles 45, 49, 79 et 90.1**

**(11)** Aucune demande à l'endroit d'une personne ne peut être présentée au titre du présent article si les faits allégués au soutien de la demande sont les mêmes ou essentiellement les mêmes que ceux qui ont été allégués au soutien :

**a)** d'une procédure engagée à l'endroit de cette personne en vertu des articles 45 ou 49;

**b)** d'une ordonnance demandée à l'endroit de cette personne en vertu des articles 79 ou 90.1.

**Définition de *conditions de commerce***

**(12)** Pour l'application du présent article, ***conditions de commerce*** s'entend des conditions relatives au paiement, aux quantités unitaires d'achat et aux exigences raisonnables d'ordre technique ou d'entretien.

L.R. (1985), ch. C-34, art. 76; L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2009, ch. 2, art. 426; 2014, ch. 20, art. 366(A); 2017, ch. 6, art. 124; 2018, ch. 8, art. 112.

## Exclusivité, ventes liées et limitation du marché

**Définitions**

**77 (1)** Les définitions qui suivent s'appliquent au présent article.

***exclusivité***

**a)** Toute pratique par laquelle le fournisseur d'un produit exige d'un client, comme condition à ce qu'il lui fournisse ce produit, que ce client :

**(i)** soit fasse, seulement ou à titre principal, le commerce de produits fournis ou indiqués par le fournisseur ou la personne qu'il désigne,

**(ii)** soit s'abstienne de faire le commerce d'une catégorie ou sorte spécifiée de produits, sauf ceux qui sont fournis par le fournisseur ou la personne qu'il désigne;

**b)** toute pratique par laquelle le fournisseur d'un produit incite un client à se conformer à une condition énoncée au sous-alinéa a)(i) ou (ii) en offrant de lui fournir le produit selon des modalités et conditions plus favorables s'il convient de se conformer à une

***market restriction*** means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market; (*limitation du marché*)

***tied selling*** means

**(a)** any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to

**(i)** acquire any other product from the supplier or the supplier's nominee, or

**(ii)** refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and

**(b)** any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs. (*ventes liées*)

***limitation du marché*** La pratique qui consiste, pour le fournisseur d'un produit, à exiger d'un client, comme condition à ce qu'il lui fournisse ce produit, que ce client fournisse lui-même un produit quelconque uniquement sur un marché déterminé ou encore à exiger une pénalité de quelque sorte de ce client si ce dernier fournit un produit quelconque hors d'un marché déterminé. (*market restriction*)

***ventes liées***

**a)** Toute pratique par laquelle le fournisseur d'un produit exige d'un client, comme condition à ce qu'il lui fournisse ce produit (le produit « clef »), que ce client :

**(i)** soit acquière du fournisseur ou de la personne que ce dernier désigne un quelconque autre produit,

**(ii)** soit s'abstienne d'utiliser ou de distribuer, avec le produit clef, un autre produit qui n'est pas d'une marque ou fabrication indiquée par le fournisseur ou la personne qu'il désigne;

**b)** toute pratique par laquelle le fournisseur d'un produit incite un client à se conformer à une condition énoncée au sous-alinéa a)(i) ou (ii) en offrant de lui fournir le produit clef selon des modalités et conditions plus favorables s'il convient de se conformer à une condition énoncée à l'un ou l'autre de ces sous-alinéas. (*tied selling*)

**Exclusive dealing and tied selling**

**(2)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

**(a)** impede entry into or expansion of a firm in a market,

**(b)** impede introduction of a product into or expansion of sales of a product in a market, or

**(c)** have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to

**Exclusivité ou ventes liées**

**(2)** Lorsque le Tribunal, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, conclut que l'exclusivité ou les ventes liées, parce que pratiquées par un fournisseur important d'un produit sur un marché ou très répandues sur un marché, auront vraisemblablement :

**a)** soit pour effet de faire obstacle à l'entrée ou au développement d'une firme sur un marché;

**b)** soit pour effet de faire obstacle au lancement d'un produit sur un marché ou à l'expansion des ventes d'un produit sur un marché;

**c)** soit sur un marché quelque autre effet tendant à exclure,

et qu'en conséquence la concurrence est ou sera vraisemblablement réduite sensiblement, le Tribunal peut, par ordonnance, interdire à l'ensemble ou à l'un quelconque des fournisseurs contre lesquels une ordonnance est

overcome the effects thereof in the market or to restore or stimulate competition in the market.

demandée de pratiquer désormais l'exclusivité ou les ventes liées et prescrire toute autre mesure nécessaire, à son avis, pour supprimer les effets de ces activités sur le marché en question ou pour y rétablir ou y favoriser la concurrence.

**Market restriction**

**(3)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that market restriction, because it is engaged in by a major supplier of a product or because it is widespread in relation to a product, is likely to substantially lessen competition in relation to the product, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in market restriction and containing any other requirement that, in its opinion, is necessary to restore or stimulate competition in relation to the product.

**Limitation du marché**

**(3)** Lorsque le Tribunal, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, conclut que la limitation du marché, en étant pratiquée par un important fournisseur d'un produit ou très répandue à l'égard d'un produit, réduira vraisemblablement et sensiblement la concurrence à l'égard de ce produit, le Tribunal peut, par ordonnance, interdire à l'ensemble ou à l'un quelconque des fournisseurs contre lesquels une ordonnance est demandée de se livrer désormais à la limitation du marché et prescrire toute autre mesure nécessaire, à son avis, pour rétablir ou favoriser la concurrence à l'égard de ce produit.

**Damage awards**

**(3.1)** For greater certainty, the Tribunal may not make an award of damages under this section to a person granted leave under subsection 103.1(7).

**Dommages-intérêts**

**(3.1)** Il demeure entendu que le présent article n'autorise pas le Tribunal à accorder des dommages-intérêts à la personne à laquelle une permission est accordée en vertu du paragraphe 103.1(7).

**Where no order to be made and limitation on application of order**

**(4)** The Tribunal shall not make an order under this section where, in its opinion,

**(a)** exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,

**(b)** tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or

**(c)** tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by that person and is reasonably necessary for that purpose,

No order made under this section applies in respect of exclusive dealing, market restriction or tied selling between or among entities that are affiliated.

**Cas où il ne doit pas être rendu d'ordonnance; restriction quant à l'application de l'ordonnance**

**(4)** Le Tribunal ne rend pas l'ordonnance prévue par le présent article, lorsque, à son avis :

**a)** l'exclusivité ou la limitation du marché est ou sera pratiquée uniquement pendant une période raisonnable pour faciliter l'entrée sur un marché soit d'un nouveau fournisseur d'un produit soit d'un nouveau produit;

**b)** les ventes liées qui sont pratiquées sont raisonnables compte tenu de la connexité technologique existant entre les produits qu'elles visent;

**c)** les ventes liées que pratique une personne exploitant une entreprise de prêt d'argent ont pour objet de mieux garantir le remboursement des prêts qu'elle consent et sont raisonnablement nécessaires à cette fin,

Aucune ordonnance rendue en vertu du présent article ne s'applique en ce qui concerne l'exclusivité, la limitation du marché ou les ventes liées entre des entités qui sont affiliées.

**If entity affiliated**

**(5)** For the purposes of subsection (4), in addition to the circumstances specified in paragraph 2(2)(a) or (b) under

**Affiliation d'entités**

**(5)** Pour l'application du paragraphe (4), une entité est affiliée à une autre entité non seulement dans les cas

which two entities are affiliated, an entity is affiliated with another entity in respect of any agreement between them in which one of them grants to the other the right to use a trademark or trade name to identify the business of the grantee, if

**(a)** the business is related to the sale or distribution, in accordance with a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers; and

**(b)** no one product dominates the business.

#### When persons deemed to be affiliated

**(6)** For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the "first" person) supplies or causes to be supplied to another person (the "second" person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then sells in association with a trademark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of the agreement, to be affiliated.

#### Inferences

**(7)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 77; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 23, 37, c. 31, s. 52(F); 2002, c. 16, ss. 11.2, 11.3; 2014, c. 20, s. 366(E); 2018, c. 8, s. 113.

## Abuse of Dominant Position

#### Definition of *anti-competitive act*

**78 (1)** For the purposes of section 79, ***anti-competitive act*** means any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition, and includes any of the following acts:

**(a)** squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;

**(b)** acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier,

prévus aux alinéas 2(2)a) ou b), mais également en ce qui concerne tout accord entre elles par lequel l'une concède à l'autre le droit d'utiliser une marque de commerce ou un nom de commerce pour identifier les affaires du concessionnaire, à la condition :

**a)** que ces affaires soient liées à la vente ou la distribution, conformément à un programme ou système de commercialisation prescrit en substance par le concédant, d'une multiplicité de produits obtenus de sources d'approvisionnement qui sont en concurrence et d'une multiplicité de fournisseurs;

**b)** qu'aucun produit ne soit primordial dans ces affaires.

#### Cas où les personnes sont réputées être affiliées

**(6)** Pour l'application du paragraphe (4) en ce qui concerne la limitation du marché, dans le cadre de tout accord par lequel une personne (la « première » personne) fournit ou fait fournir à une autre personne (la « seconde » personne) un ou des ingrédients que cette dernière transforme, après apport de travail et de matériaux, en aliments ou boissons qu'elle vend sous une marque de commerce appartenant à la première personne ou dont cette dernière est l'usager inscrit, ces deux personnes sont, à l'égard de cet accord, réputées être affiliées.

#### Application

**(7)** Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

L.R. (1985), ch. C-34, art. 77; L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 23 et 37, ch. 31, art. 52(F); 2002, ch. 16, art. 11.2 et 11.3; 2014, ch. 20, art. 366(A); 2018, ch. 8, art. 113.

## Abus de position dominante

#### Définition de *agissement anti-concurrentiel*

**78 (1)** Pour l'application de l'article 79, ***agissement anti-concurrentiel*** s'entend de tout agissement destiné à avoir un effet négatif visant l'exclusion, l'éviction ou la mise au pas d'un concurrent, ou à nuire à la concurrence, notamment les agissements suivants :

**a)** la compression, par un fournisseur intégré verticalement, de la marge bénéficiaire accessible à un client non intégré qui est en concurrence avec ce fournisseur, dans les cas où cette compression a pour but d'empêcher l'entrée ou la participation accrue du client dans un marché ou encore de faire obstacle à cette entrée ou à cette participation accrue;

or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

**(c)** freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;

**(d)** use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

**(e)** pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

**(f)** buying up of products to prevent the erosion of existing price levels;

**(g)** adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

**(h)** requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;

**(i)** selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;

**(j)** a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market; and

**(k)** directly or indirectly imposing excessive and unfair selling prices.

**(2)** [Repealed, 2009, c. 2, s. 427]

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2000, c. 15, s. 13; 2009, c. 2, s. 427; 2022, c. 10, s. 261; 2023, c. 31, s. 7.1.

**b)** l'acquisition par un fournisseur d'un client qui serait par ailleurs accessible à un concurrent du fournisseur, ou l'acquisition par un client d'un fournisseur qui serait par ailleurs accessible à un concurrent du client, dans le but d'empêcher ce concurrent d'entrer dans un marché, dans le but de faire obstacle à cette entrée ou encore dans le but de l'éliminer d'un marché;

**c)** la péréquation du fret en utilisant comme base l'établissement d'un concurrent dans le but d'empêcher son entrée dans un marché ou d'y faire obstacle ou encore de l'éliminer d'un marché;

**d)** l'utilisation sélective et temporaire de marques de combat destinées à mettre au pas ou à éliminer un concurrent;

**e)** la préemption d'installations ou de ressources rares nécessaires à un concurrent pour l'exploitation d'une entreprise, dans le but de retenir ces installations ou ces ressources hors d'un marché;

**f)** l'achat de produits dans le but d'empêcher l'érosion des structures de prix existantes;

**g)** l'adoption, pour des produits, de normes incompatibles avec les produits fabriqués par une autre personne et destinées à empêcher l'entrée de cette dernière dans un marché ou à l'éliminer d'un marché;

**h)** le fait d'inciter un fournisseur à ne vendre uniquement ou principalement qu'à certains clients, ou à ne pas vendre à un concurrent ou encore le fait d'exiger l'une ou l'autre de ces attitudes de la part de ce fournisseur, afin d'empêcher l'entrée ou la participation accrue d'un concurrent dans un marché;

**i)** le fait de vendre des articles à un prix inférieur au coût d'acquisition de ces articles dans le but de discipliner ou d'éliminer un concurrent;

**j)** la réponse sélective ou discriminatoire à un concurrent actuel ou potentiel, visant à entraver ou à empêcher l'entrée ou l'expansion d'un concurrent sur un marché ou à l'éliminer du marché;

**k)** l'imposition directe ou indirecte de prix de vente excessifs et injustes.

**(2)** [Abrogé, 2009, ch. 2, art. 427]

L.R. (1985), ch. 19 (2e suppl.), art. 45; 2000, ch. 15, art. 13; 2009, ch. 2, art. 427; 2022, ch. 10, art. 261; 2023, ch. 31, art. 7.1.

### Prohibition if abuse of dominant position

**79 (1)** On application by the Commissioner or a person granted leave under section 103.1, if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in

**(a)** a practice of anti-competitive acts; or

**(b)** conduct

**(i)** that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest, and

**(ii)** the effect is not a result of superior competitive performance.

### Ordonnance d'interdiction : abus de position dominante

**79 (1)** Lorsque, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, il conclut qu'une ou plusieurs personnes contrôlent sensiblement ou complètement une catégorie ou espèce d'entreprises à la grandeur du Canada ou d'une de ses régions et adoptent ou ont adopté une pratique ou un comportement ci-après, le Tribunal peut rendre une ordonnance leur interdisant d'adopter la pratique ou le comportement :

**a)** une pratique d'agissements anti-concurrentiels;

**b)** un comportement qui a, a eu ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché dans lequel la personne ou les personnes ont un intérêt concurrentiel valable, cet effet ne résultant pas d'un rendement concurrentiel supérieur.

### Additional or alternative order

**(2)** If, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts amounts to conduct that has had or is having the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all persons against whom an order is sought to take actions, including the divestiture of assets or shares, that are reasonable and necessary to overcome the effects of the practice in that market.

### Ordonnance supplémentaire ou substitutive

**(2)** Dans les cas où, à la suite de la demande visée au paragraphe (1), il conclut qu'une pratique d'agissements anti-concurrentiels constitue un comportement qui a eu ou a pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché dans lequel la personne a un intérêt concurrentiel valable et qu'une ordonnance rendue aux termes du paragraphe (1) n'aura vraisemblablement pas pour effet de rétablir la concurrence dans ce marché, le Tribunal peut, en sus ou au lieu de rendre l'ordonnance prévue au paragraphe (1), rendre une ordonnance enjoignant à l'une ou l'autre ou à l'ensemble des personnes visées par la demande d'ordonnance de prendre des mesures raisonnables et nécessaires dans le but d'enrayer les effets de la pratique sur le marché en question et, notamment, de se départir d'éléments d'actif ou d'actions.

### Limitation

**(3)** In making an order under subsection (2), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

### Restriction

**(3)** Lorsque le Tribunal rend une ordonnance en application du paragraphe (2), il le fait aux conditions qui, à son avis, ne porteront atteinte aux droits de la personne visée par cette ordonnance ou à ceux des autres personnes touchées par cette ordonnance que dans la mesure de ce qui est nécessaire à la réalisation de l'objet de l'ordonnance.

### Administrative monetary penalty

**(3.1)** If the Tribunal finds that a person has engaged in or is engaging in a practice of anti-competitive acts that amounts to conduct that has had or is having the effect of preventing or lessening competition substantially in a market in which the person has a plausible competitive

### Sanction administrative pécuniaire

**(3.1)** S'il conclut qu'une personne adopte ou a adopté une pratique d'agissements anti-concurrentiels constituant un comportement qui a eu ou a pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché dans lequel la personne a un intérêt

interest and it makes an order against the person under subsection (1) or (2), it may also order them to pay, in any manner that it specifies, an administrative monetary penalty in an amount not exceeding the greater of

**(a)** $25,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding $35,000,000, and

**(b)** three times the value of the benefit derived from the anti-competitive practice, or, if that amount cannot be reasonably determined, 3% of the person's annual worldwide gross revenues.

**Aggravating or mitigating factors**

**(3.2)** In determining the amount of an administrative monetary penalty, the Tribunal shall take into account any evidence of the following:

**(a)** the effect on competition in the relevant market;

**(b)** the gross revenue from sales affected by the practice;

**(c)** any actual or anticipated profits affected by the practice;

**(d)** the financial position of the person against whom the order is made;

**(e)** the history of compliance with this Act by the person against whom the order is made; and

**(f)** any other relevant factor.

**Purpose of order**

**(3.3)** The purpose of an order made against a person under subsection (3.1) is to promote practices by that person that are in conformity with the purposes of this section and not to punish that person.

**Factors to be considered**

**(4)** In determining, for the purposes of subsections (1) and (2), whether conduct has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal may consider

**(a)** the effect of the conduct on barriers to entry in the market, including network effects;

**(b)** the effect of the conduct on price or non-price competition, including quality, choice or consumer privacy;

concurrentiel valable et rend une ordonnance en vertu de l'un des paragraphes (1) ou (2) contre la personne, le Tribunal peut aussi lui ordonner de payer, selon les modalités qu'il peut préciser, une sanction administrative pécuniaire maximale qui ne peut dépasser le plus élevé des montants suivants :

**a)** 25 000 000 $ et, pour toute ordonnance subséquente rendue en vertu de l'un de ces paragraphes, 35 000 000 $;

**b)** trois fois la valeur du bénéfice sur lequel la pratique a eu une incidence ou, si ce montant ne peut pas être déterminé raisonnablement, trois pour cent des recettes globales brutes annuelles de cette personne.

**Facteurs à prendre en compte**

**(3.2)** Pour la détermination du montant de la sanction administrative pécuniaire, il est tenu compte des éléments suivants :

**a)** l'effet sur la concurrence dans le marché pertinent;

**b)** le revenu brut provenant des ventes sur lesquelles la pratique a eu une incidence;

**c)** les bénéfices réels ou prévus sur lesquels la pratique a eu une incidence;

**d)** la situation financière de la personne visée par l'ordonnance;

**e)** le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

**f)** tout autre élément pertinent.

**But de la sanction**

**(3.3)** La sanction prévue au paragraphe (3.1) vise à encourager la personne visée par l'ordonnance à adopter des pratiques compatibles avec les objectifs du présent article et non pas à la punir.

**Facteurs à considérer**

**(4)** Pour l'application des paragraphes (1) et (2), lorsqu'il décide de la question de savoir si un comportement a eu, a ou aura vraisemblablement pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, le Tribunal peut tenir compte des facteurs suivants :

**a)** les entraves à l'accès au marché, y compris les effets de réseau;

**(c)** the nature and extent of change and innovation in a relevant market; and

**(d)** any other factor that is relevant to competition in the market that is or would be affected by the conduct.

**b)** tout effet du comportement sur la concurrence hors prix ou par les prix, notamment la qualité, le choix ou la vie privée des consommateurs;

**c)** la nature et la portée des changements et des innovations dans tout marché pertinent;

**d)** tout autre facteur qui est relatif à la concurrence dans le marché et qui est ou serait touché par le comportement.

**Exception**

**(5)** For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act*, *Industrial Design Act*, *Integrated Circuit Topography Act*, *Patent Act*, *Trademarks Act* or any other Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act.

**Exception**

**(5)** Pour l'application du présent article, un agissement résultant du seul fait de l'exercice de quelque droit ou de la jouissance de quelque intérêt découlant de la *Loi sur les brevets*, de la *Loi sur les dessins industriels*, de la *Loi sur le droit d'auteur*, de la *Loi sur les marques de commerce*, de la *Loi sur les topographies de circuits intégrés* ou de toute autre loi fédérale relative à la propriété intellectuelle ou industrielle ne constitue pas un agissement anti-concurrentiel.

**Limitation period**

**(6)** No application may be made under this section in respect of a practice of anti-competitive acts or conduct more than three years after the practice or conduct has ceased.

**Prescription**

**(6)** Aucune demande ne peut être présentée en vertu du présent article à l'égard d'une pratique d'agissements anti-concurrentiels ou d'un comportement, si la pratique ou le comportement en question a cessé depuis plus de trois ans.

**Where proceedings commenced under section 45, 49, 76, 90.1 or 92**

**(7)** No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought by the Commissioner under section 76, 90.1 or 92.

**Procédures en vertu des articles 45, 49, 76, 90.1 ou 92**

**(7)** Aucune demande à l'endroit d'une personne ne peut être présentée au titre du présent article si les faits au soutien de la demande sont les mêmes ou essentiellement les mêmes que ceux qui ont été allégués au soutien :

**a)** d'une procédure engagée à l'endroit de cette personne en vertu des articles 45 ou 49;

**b)** d'une ordonnance demandée par le commissaire à l'endroit de cette personne en vertu des articles 76, 90.1 ou 92.

**Inferences**

**(8)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 31; 1999, c. 2, s. 37; 2002, c. 16, s. 11.4; 2009, c. 2, s. 428; 2014, c. 20, s. 366(E); 2022, c. 10, s. 262; 2023, c. 31, s. 7.2.

**Application**

**(8)** Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1990, ch. 37, art. 31; 1999, ch. 2, art. 37; 2002, ch. 16, art. 11.4; 2009, ch. 2, art. 428; 2014, ch. 20, art. 366(A); 2022, ch. 10, art. 262; 2023, ch. 31, art. 7.2.

### Unpaid monetary penalty

**79.1** The amount of an administrative monetary penalty imposed on a person under subsection 79(3.1) is a debt due to Her Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

2002, c. 16, s. 11.5; 2018, c. 8, s. 114(E).

### Sanctions administratives pécuniaires impayées

**79.1** Les sanctions administratives pécuniaires imposées au titre du paragraphe 79(3.1) constituent des créances de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

2002, ch. 16, art. 11.5; 2018, ch. 8, art. 114(A).

## Delivered Pricing

## Prix à la livraison

### Definition of *delivered pricing*

**80 (1)** For the purposes of section 81, ***delivered pricing*** means the practice of refusing a customer, or a person seeking to become a customer, delivery of an article at any place in which the supplier engages in a practice of making delivery of the article to any other of the supplier's customers on the same trade terms that would be available to the first-mentioned customer if his place of business were located in that place.

### Définition de *prix à la livraison*

**80 (1)** Aux fins de l'article 81, ***prix à la livraison*** s'entend de la pratique de refuser à un client, ou à une personne qui cherche à devenir un client, la livraison d'un article en un endroit où le fournisseur s'adonne à une pratique d'effectuer la livraison de cet article à l'un quelconque de ses autres clients aux conditions de commerce qui seraient accessibles au client qui fait l'objet du refus si son entreprise était située à cet endroit.

### Definition of *trade terms*

**(2)** For the purposes of subsection (1), the expression ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

### Définition de *conditions de commerce*

**(2)** Pour l'application du paragraphe (1), ***conditions de commerce*** s'entend des conditions relatives au paiement, aux quantités unitaires d'achat et aux exigences raisonnables d'ordre technique ou d'entretien.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

### Delivered pricing

**81 (1)** Where, on application by the Commissioner, the Tribunal finds that delivered pricing is engaged in by a major supplier of an article in a market or is widespread in a market with the result that a customer, or a person seeking to become a customer, is denied an advantage that would otherwise be available to him in the market, the Tribunal may make an order prohibiting all or any of such suppliers from engaging in delivered pricing.

### Prix à la livraison

**81 (1)** Dans les cas où, à la suite d'une demande du commissaire, le Tribunal conclut que le prix à la livraison est appliqué par un fournisseur important d'un article dans un marché ou qu'il est très répandu dans un marché avec la conséquence qu'un client, ou une personne désirant devenir un client, se voit refuser un avantage qui lui serait autrement accessible dans ce marché, il peut rendre une ordonnance interdisant à l'ensemble ou à l'un quelconque de ces fournisseurs d'appliquer le prix à la livraison.

### Exception where significant capital investment needed

**(2)** No order shall be made against a supplier under this section where the Tribunal finds that the supplier could not accommodate any additional customers at a locality without making significant capital investment at that locality.

### Exception : nécessité d'investissement en capital

**(2)** Le Tribunal ne rend pas d'ordonnance contre un fournisseur en application du présent article s'il conclut que ce fournisseur ne pouvait pas servir de clients supplémentaires en un lieu donné sans pour cela y engager un investissement en capital relativement important.

### Exception where trademark used

**(3)** No order shall be made against a supplier under this section in respect of a practice of refusing a customer delivery of an article that the customer sells in association with a trademark that the supplier owns or in respect of which the supplier is a registered user where the Tribunal

### Exception à l'égard des marques de commerce

**(3)** Une ordonnance ne peut être rendue contre un fournisseur en application du présent article à l'égard d'une pratique qui consiste à refuser à un client la livraison d'un article que ce client vend en association avec une marque de commerce dont le fournisseur est propriétaire

finds that the practice is necessary to maintain a standard of quality in respect of the article.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2014, c. 20, s. 366(E).

ou usager inscrit dans les cas où le Tribunal conclut que la pratique est nécessaire au maintien des normes de qualité qui se rapportent à cet article.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2014, ch. 20, art. 366(A).

## Foreign Judgments and Laws

### Foreign judgments, etc.

**82** Where, on application by the Commissioner, the Tribunal finds that

**(a)** a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by companies incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and

**(b)** the implementation in whole or in part of the judgment, decree, order or other process in Canada, would

**(i)** adversely affect competition in Canada,

**(ii)** adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore or improve that efficiency,

**(iii)** adversely affect the foreign trade of Canada without compensating advantages, or

**(iv)** otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Tribunal may, by order, direct that

**(c)** no measures be taken in Canada to implement the judgment, decree, order or process, or

**(d)** no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs (b)(i) to (iv).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Jugements et droit étrangers

### Jugements étrangers, etc.

**82** Lorsque, à la suite d'une demande du commissaire, il conclut :

**a)** d'une part, qu'un jugement, un décret, une ordonnance, une autre décision ou un autre bref d'un tribunal ou d'un autre organisme d'un pays étranger peut être exécuté, en totalité ou en partie, par des personnes se trouvant au Canada, par des personnes morales constituées aux termes ou en application d'une loi fédérale ou provinciale, ou par des mesures prises au Canada;

**b)** d'autre part, que l'exécution, en totalité ou en partie, du jugement, du décret, de l'ordonnance ou de l'autre décision ou de l'autre bref au Canada :

**(i)** nuirait à la concurrence au Canada,

**(ii)** nuirait à l'efficience du commerce ou de l'industrie au Canada sans engendrer ou accroître au Canada une concurrence qui rétablirait ou améliorerait cette efficience,

**(iii)** nuirait au commerce extérieur du Canada sans apporter d'avantages en compensation,

**(iv)** ferait autrement obstacle ou tort au commerce au Canada sans apporter d'avantages en compensation,

le Tribunal peut rendre une ordonnance interdisant :

**c)** de prendre au Canada des mesures d'exécution du jugement, du décret, de l'ordonnance de l'autre décision ou de l'autre bref;

**d)** de prendre au Canada des mesures d'exécution du jugement, du décret, de l'ordonnance de l'autre décision ou de l'autre bref, sauf selon ce que le Tribunal prescrit afin d'éviter l'une quelconque des conséquences mentionnées aux sous-alinéas b)(i) à (iv).

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

### Foreign laws and directives

**83 (1)** Where, on application by the Commissioner, the Tribunal finds that a decision has been or is about to be made by a person in Canada or a company incorporated

### Législation et directives étrangères

**83 (1)** Lorsque à la suite d'une demande du commissaire, le Tribunal conclut qu'une décision a été ou est sur le point d'être prise par une personne qui se trouve au Canada ou par une personne morale constituée aux

by or pursuant to an Act of Parliament or of the legislature of a province

**(a)** as a result of

**(i)** a law in force in a country other than Canada, or

**(ii)** a directive, instruction, intimation of policy or other communication to that person or company or to any other person from

**(A)** the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or company, or

**(B)** a person in a country other than Canada who is in a position to direct or influence the policies of that person or company,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada,

and that the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 82(b)(i) to (iv), or

**(b)** as a result of a directive, instruction, intimation of policy or other communication to that person or company or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or company, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45,

the Tribunal may, by order, direct that

**(c)** in a case described in paragraph (a) or (b), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication, or

**(d)** in a case described in paragraph (a), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs 82(b)(i) to (iv).

termes ou en application d'une loi fédérale ou provinciale :

**a)** par suite :

**(i)** soit d'une règle de droit en vigueur dans un pays étranger,

**(ii)** soit d'une directive, d'une instruction, d'un énoncé de politique ou d'une autre communication à cette personne, à cette personne morale ou à toute autre personne, provenant :

**(A)** soit du gouvernement d'un pays étranger ou d'une subdivision politique de ce pays qui est en mesure de diriger ou d'influencer les principes suivis par cette personne ou cette personne morale,

**(B)** soit d'une personne qui se trouve dans un pays étranger et qui est en mesure de diriger ou d'influencer les principes suivis par cette personne ou cette personne morale,

lorsque la communication a pour objet de donner effet à une règle de droit en vigueur dans un pays étranger,

et que la décision, si elle était appliquée, aurait ou aurait vraisemblablement l'un des effets mentionnés aux sous-alinéas 82b)(i) à (iv);

**b)** par suite d'une directive, d'une instruction, d'un énoncé de politique ou d'une autre communication à cette personne, à cette personne morale ou à toute autre personne, provenant d'une personne se trouvant dans un pays étranger qui est en mesure de diriger ou d'influencer les principes suivis par cette personne ou cette personne morale, lorsque la communication a pour objet de donner effet à un complot, une association d'intérêts, un accord ou un arrangement intervenu à l'extérieur du Canada qui, s'il était intervenu au Canada, aurait constitué une contravention à l'article 45,

le Tribunal peut rendre une ordonnance qui :

**c)** dans un cas visé à l'alinéa a) ou b), interdit à cette personne ou à cette personne morale de prendre au Canada des mesures d'application de la règle de droit, de la directive, de l'instruction, de l'énoncé de politique ou de l'autre communication;

**d)** dans un cas visé à l'alinéa a), interdit à cette personne ou à cette personne morale de prendre au Canada des mesures d'application de la règle de droit,

**Limitation**

**(2)** No application may be made by the Commissioner for an order under this section against a particular company where proceedings have been commenced under section 46 against that company based on the same or substantially the same facts as would be alleged in the application.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Foreign Suppliers

**Refusal to supply by foreign supplier**

**84** Where, on application by the Commissioner, the Tribunal finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the "first" person) at the instance of and by reason of the exertion of buying power outside Canada by another person, the Tribunal may order any person in Canada (the "second" person) by whom or on whose behalf or for whose benefit the buying power was exerted

**(a)** to sell any such product of the supplier that the second person has obtained or obtains to the first person at the laid-down cost in Canada to the second person of the product and on the same terms and conditions as the second person obtained or obtains from the supplier; or

**(b)** not to deal or to cease to deal, in Canada, in that product of the supplier.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Specialization Agreements

**Definitions**

**85** For the purposes of this section and sections 86 to 90,

***article*** includes each separate type, size, weight and quality in which an article, within the meaning assigned by section 2, is produced; (*article*)

***registered*** means registered in the register maintained pursuant to section 89; (*inscrit*)

de la directive, de l'instruction, de l'énoncé de politique ou de l'autre communication, sauf selon ce que le Tribunal prescrit pour que soit évitée l'une quelconque des conséquences visées aux sous-alinéas 82b)(i) à (iv).

**Restriction**

**(2)** Le commissaire ne peut demander que soit rendue, en vertu du présent article, une ordonnance contre une personne morale déterminée lorsque des procédures ont été entamées en vertu de l'article 46 contre cette personne morale et que ces procédures sont fondées sur les mêmes faits ou en substance les mêmes faits que ceux qui seraient exposés dans la demande.

L.R. (1985), ch. 19 (2$^{e}$ suppl.), art. 45; 1999, ch. 2, art. 37.

## Fournisseurs étrangers

**Refus par un fournisseur étranger**

**84** Si le Tribunal, à la suite d'une demande du commissaire, conclut qu'un fournisseur se trouvant à l'extérieur du Canada établit, à l'égard de la fourniture d'un produit à une personne se trouvant au Canada (la « première » personne), une distinction à l'encontre de cette personne notamment en refusant de lui fournir un produit, à cause de l'exercice par une autre personne d'un pouvoir d'achat à l'extérieur du Canada et à la demande de cette autre personne, il peut ordonner à toute personne se trouvant au Canada (la « seconde » personne) par qui, au nom de qui ou au profit de qui ce pouvoir d'achat a été exercé :

**a)** de vendre à la première personne tout semblable produit du fournisseur que la seconde personne se procure ou s'est procuré, au coût de ce produit pour la seconde personne à l'arrivée du produit au Canada de même qu'aux modalités et conditions que la seconde personne obtient ou a obtenu du fournisseur;

**b)** de ne pas faire ou de cesser de faire, au Canada, le commerce de ce produit du fournisseur.

L.R. (1985), ch. 19 (2$^{e}$ suppl.), art. 45; 1999, ch. 2, art. 37.

## Accords de spécialisation

**Définitions**

**85** Les définitions qui suivent s'appliquent au présent article et aux articles 86 à 90.

***accord de spécialisation*** Accord en vertu duquel chacune des parties s'engage à abandonner la production d'un article ou d'un service qu'elle fabrique ou produit au moment de la conclusion de l'accord à la condition que chacune des autres parties à l'accord s'engage à abandonner la production d'un article ou d'un service qu'elle

***specialization agreement*** means an agreement under which each party thereto agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into on the condition that each other party to the agreement agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into, and includes any such agreement under which the parties also agree to buy exclusively from each other the articles or services that are the subject of the agreement. (*accord de spécialisation*)

R.S., 1985, c. 19 (2nd Supp.), s. 45.

***article*** S'entend également de toute variété de catégorie, de dimension, de poids ou de qualité, dans laquelle est produit un article au sens de l'article 2. (*article*)

***inscrit*** Inscrit au registre tenu en application de l'article 89. (*registered*)

L.R. (1985), ch. 19 (2e suppl.), art. 45.

**Order directing registration**

**86 (1)** Where, on application by any person, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal finds that an agreement that the person who has made the application has entered into or is about to enter into is a specialization agreement and that

**(a)** the implementation of the agreement is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the agreement and the gains in efficiency would not likely be attained if the agreement were not implemented, and

**(b)** no attempt has been made by the persons who have entered or are about to enter into the agreement to coerce any person to become a party to the agreement,

the Tribunal may, subject to subsection (4), make an order directing that the agreement be registered for a period specified in the order.

**Ordonnance portant inscription au registre**

**86 (1)** Dans les cas où, sur demande de toute personne et après avoir donné au commissaire une chance raisonnable de se faire entendre, le Tribunal conclut que cette personne a conclu ou se propose de conclure un accord de spécialisation et que :

**a)** d'une part, la mise en œuvre de l'accord entraînera vraisemblablement des gains en efficience qui surpasseront et neutraliseront les effets de tout empêchement ou de toute diminution de la concurrence qui résulteront ou résulteront vraisemblablement de l'accord et que ces gains en efficience ne seraient vraisemblablement pas réalisés si l'accord n'était pas mis en œuvre;

**b)** d'autre part, les personnes qui ont conclu ou qui sont sur le point de conclure l'accord n'ont pas essayé de forcer quiconque à devenir partie à l'accord,

il peut, sous réserve du paragraphe (4), ordonner que l'accord soit inscrit pour la période fixée par l'ordonnance.

**Factors to be considered**

**(2)** In considering whether an agreement is likely to bring about gains in efficiency described in paragraph (1)(a), the Tribunal shall consider whether those gains will result in

**(a)** a significant increase in the real value of exports; or

**(b)** a significant substitution of domestic articles or services for imported articles or services.

**Éléments à considérer**

**(2)** Le Tribunal, pour apprécier si un accord entraînera vraisemblablement les gains en efficience visés à l'alinéa (1)a), doit estimer si ces gains entraîneront :

**a)** soit une augmentation relativement importante de la valeur réelle des exportations;

**b)** soit la substitution, pour une part relativement importante, d'articles et de services canadiens à des articles et services importés.

**Redistribution of income does not result in gains in efficiency**

**(3)** For the purposes of paragraph (1)(a), the Tribunal shall not find that an agreement is likely to bring about

**Efficience et redistribution du revenu**

**(3)** Pour l'application de l'alinéa (1)a), le Tribunal ne conclut pas qu'un accord entraînera vraisemblablement

gains in efficiency by reason only of a redistribution of income between two or more persons.

**Conditional orders**

**(4)** Where, on an application under subsection (1), the Tribunal finds that an agreement meets the conditions prescribed by paragraphs (a) and (b) of that subsection but also finds that, as a result of the implementation of the agreement, there is not likely to be substantial competition remaining in the market or markets to which the agreement relates, the Tribunal may provide, in an order made under subsection (1), that the order shall take effect only if, within a reasonable period of time specified in the order, there has occurred any of the following events, specified in the order:

**(a)** the divestiture of particular assets, specified in the order;

**(b)** a wider licensing of patents, certificates of supplementary protection issued under the *Patent Act* or registered integrated circuit topographies;

**(c)** a reduction in tariffs;

**(d)** the making of an order in council under section 23 of the *Financial Administration Act* effecting a remission or remissions specified in the order of the Tribunal of any customs duties on an article that is a subject of the agreement; or

**(e)** the removal of import quotas or import licensing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 32; 1999, c. 2, s. 37; 2017, c. 6, s. 125.

**Registration of modifications**

**87 (1)** On application by the parties to a specialization agreement that has been registered, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal may make an order directing that a modification of the agreement be registered.

**Order to remove from register**

**(2)** Where, on application by the Commissioner, the Tribunal finds that the agreement or a modification thereof that has been registered

**(a)** has ceased to meet the conditions prescribed by paragraph 86(1)(a) or (b), or

**(b)** is not being implemented,

des gains en efficience en raison seulement d'une redistribution du revenu entre deux ou plus de deux personnes.

**Autorisation conditionnelle**

**(4)** Lorsque le Tribunal, saisi d'une demande en vertu du paragraphe (1), conclut que, même si un accord satisfait aux conditions prévues aux alinéas a) et b) de ce paragraphe, l'exécution de cet accord aura vraisemblablement pour effet de laisser le ou les marchés concernés par l'accord sans concurrence sensible, il peut, dans une ordonnance visée au paragraphe (1), prévoir que l'ordonnance ne prendra effet que si, dans un délai raisonnable fixé par l'ordonnance, l'une quelconque des conditions suivantes que mentionne l'ordonnance a été réalisée :

**a)** l'exécution de l'obligation de se départir d'éléments d'actif mentionnés dans l'ordonnance;

**b)** une augmentation du nombre des licences d'exploitation d'un brevet, d'un certificat de protection supplémentaire délivré en vertu de la *Loi sur les brevets* ou des topographies de circuits intégrés enregistrées;

**c)** une réduction des tarifs;

**d)** la prise, en vertu de l'article 23 de la *Loi sur la gestion des finances publiques*, d'un décret prévoyant une ou plusieurs remises, visées dans l'ordonnance du Tribunal, de droits de douane imposés à l'égard d'un article soumis à l'accord;

**e)** la suppression de contingentements en matière d'importation ou d'exigences en matière de licences d'importation.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1990, ch. 37, art. 32; 1999, ch. 2, art. 37; 2017, ch. 6, art. 125.

**Inscription des modifications**

**87 (1)** Le Tribunal peut, par ordonnance, ordonner qu'une modification d'un accord de spécialisation inscrit soit elle-même inscrite lorsque les parties à l'accord en font la demande et après avoir, dans la mesure de ce qui est raisonnable, donné au commissaire la possibilité de se faire entendre.

**Radiation**

**(2)** Le Tribunal peut, par ordonnance, exiger la radiation du registre d'un accord de spécialisation qui y a été inscrit, d'une modification de celui-ci elle-même inscrite ainsi que de toute ordonnance se rapportant à cet accord ou à cette modification, lorsque, sur demande du commissaire, il conclut que l'accord ou la modification en question :

the Tribunal may make an order directing that the agreement or modification thereof, and any order relating thereto, be removed from the register.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

### Right of intervention

**88** The attorney general of a province may intervene in any proceedings before the Tribunal under section 86 or 87 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

### Register of specialization agreements

**89 (1)** The Tribunal shall cause to be maintained a register of specialization agreements, and any modifications of those agreements, that the Tribunal has directed be registered, and any such agreements and modifications shall be included in the register for the periods specified in the orders.

### Public register

**(2)** The register shall be accessible to the public.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2014, c. 20, s. 389.

### Non-application of sections 45, 77 and 90.1

**90** Section 45, section 77 as it applies to exclusive dealing, and section 90.1 do not apply in respect of a specialization agreement, or any modification of such an agreement, that is registered.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 429.

## Agreements or Arrangements that Prevent or Lessen Competition Substantially

### Order

**90.1 (1)** If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement — whether existing or proposed — between persons two or more of whom are competitors prevents or lessens, or is likely to prevent or lessen, competition substantially in a market, the Tribunal may make an order

**(a)** prohibiting any person — whether or not a party to the agreement or arrangement — from doing anything under the agreement or arrangement; or

**(b)** requiring any person — whether or not a party to the agreement or arrangement — with the consent of that person and the Commissioner, to take any other action.

**a)** ne respecte plus les conditions prévues à l'alinéa 86(1)a) ou b);

**b)** n'est pas exécuté.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

### Droit d'intervention

**88** Le procureur général d'une province peut intervenir dans toute procédure dont le Tribunal est saisi en vertu de l'article 86 ou 87 pour présenter des observations au nom de la province.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

### Registre des accords de spécialisation

**89 (1)** Le Tribunal voit à ce que soit maintenu un registre des accords de spécialisation et de leurs modifications, dont il a ordonné l'inscription; ces accords et leurs modifications y restent inscrits pour les périodes fixées par les ordonnances.

### Registre public

**(2)** Le registre est accessible au public.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 2014, ch. 20, art. 389.

### Non-application des articles 45, 77 et 90.1

**90** Ni l'article 45, ni l'article 77, dans la mesure où il porte sur l'exclusivité, ni l'article 90.1 ne s'appliquent aux accords de spécialisation ou à leurs modifications lorsque ceux-ci sont inscrits.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 2009, ch. 2, art. 429.

## Accords ou arrangements empêchant ou diminuant sensiblement la concurrence

### Ordonnance

**90.1 (1)** Dans le cas où, à la suite d'une demande du commissaire, il conclut qu'un accord ou un arrangement — conclu ou proposé — entre des personnes dont au moins deux sont des concurrents empêche ou diminue sensiblement la concurrence dans un marché, ou aura vraisemblablement cet effet, le Tribunal peut rendre une ordonnance :

**a)** interdisant à toute personne — qu'elle soit ou non partie à l'accord ou à l'arrangement — d'accomplir tout acte au titre de l'accord ou de l'arrangement;

**b)** enjoignant à toute personne — qu'elle soit ou non partie à l'accord ou à l'arrangement — de prendre

toute autre mesure, si le commissaire et elle y consentent.

**Factors to be considered**

**(2)** In deciding whether to make the finding referred to in subsection (1), the Tribunal may have regard to the following factors:

**(a)** the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the agreement or arrangement;

**(b)** the extent to which acceptable substitutes for products supplied by the parties to the agreement or arrangement are or are likely to be available;

**(c)** any barriers to entry into the market, including

**(i)** tariff and non-tariff barriers to international trade,

**(ii)** interprovincial barriers to trade, and

**(iii)** regulatory control over entry;

**(d)** any effect of the agreement or arrangement on the barriers referred to in paragraph (c);

**(e)** the extent to which effective competition remains or would remain in the market;

**(f)** any removal of a vigorous and effective competitor that resulted from the agreement or arrangement, or any likelihood that the agreement or arrangement will or would result in the removal of such a competitor;

**(g)** the nature and extent of change and innovation in any relevant market;

**(g.1)** network effects within the market;

**(g.2)** whether the agreement or arrangement would contribute to the entrenchment of the market position of leading incumbents;

**(g.3)** any effect of the agreement or arrangement on price or non-price competition, including quality, choice or consumer privacy; and

**(h)** any other factor that is relevant to competition in the market that is or would be affected by the agreement or arrangement.

**Facteurs à considérer**

**(2)** Pour décider s'il arrive à la conclusion visée au paragraphe (1), le Tribunal peut tenir compte des facteurs suivants :

**a)** la mesure dans laquelle des produits ou des concurrents étrangers assurent ou assureront vraisemblablement une concurrence réelle aux entreprises des parties à l'accord ou à l'arrangement;

**b)** la mesure dans laquelle sont ou seront vraisemblablement disponibles des produits pouvant servir de substituts acceptables à ceux fournis par les parties à l'accord ou à l'arrangement;

**c)** les entraves à l'accès à ce marché, notamment :

**(i)** les barrières tarifaires et non tarifaires au commerce international,

**(ii)** les barrières interprovinciales au commerce,

**(iii)** la réglementation de cet accès;

**d)** les effets de l'accord ou de l'arrangement sur les entraves visées à l'alinéa c);

**e)** la mesure dans laquelle il y a ou il y aurait encore de la concurrence réelle dans ce marché;

**f)** le fait que l'accord ou l'arrangement a entraîné la disparition d'un concurrent dynamique et efficace ou qu'il entraînera ou pourrait entraîner une telle disparition;

**g)** la nature et la portée des changements et des innovations dans tout marché pertinent;

**g.1)** les effets de réseau dans le marché;

**g.2)** le fait que l'accord ou l'arrangement contribuerait au renforcement de la position sur le marché des principales entreprises en place;

**g.3)** tout effet de l'accord ou de l'arrangement sur la concurrence hors prix ou par les prix, notamment la qualité, le choix ou la vie privée des consommateurs;

**h)** tout autre facteur pertinent à l'égard de la concurrence dans le marché qui est ou serait touché par l'accord ou l'arrangement.

**Evidence**

**(3)** For the purpose of subsections (1) and (2), the Tribunal shall not make the finding solely on the basis of evidence of concentration or market share.

**Exception where gains in efficiency**

**(4)** The Tribunal shall not make an order under subsection (1) if it finds that the agreement or arrangement has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the agreement or arrangement, and that the gains in efficiency would not have been attained if the order had been made or would not likely be attained if the order were made.

**Restriction**

**(5)** For the purposes of subsection (4), the Tribunal shall not find that the agreement or arrangement has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

**Factors to be considered**

**(6)** In deciding whether the agreement or arrangement is likely to bring about the gains in efficiency described in subsection (4), the Tribunal shall consider whether such gains will result in

**(a)** a significant increase in the real value of exports; or

**(b)** a significant substitution of domestic products for imported products.

**Exception**

**(7)** Subsection (1) does not apply if the agreement or arrangement is entered into, or would be entered into, only by parties each of which is, in respect of every one of the others, an affiliate.

**Exception**

**(8)** Subsection (1) does not apply if the agreement or arrangement relates only to the export of products from Canada, unless the agreement or arrangement

**(a)** has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;

**(b)** has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or

**Preuve**

**(3)** Pour l'application des paragraphes (1) et (2), le Tribunal ne peut fonder sa conclusion uniquement sur des constatations relatives à la concentration ou à la part de marché.

**Exception dans les cas de gains en efficience**

**(4)** Le Tribunal ne rend pas l'ordonnance prévue au paragraphe (1) dans les cas où il conclut que l'accord ou l'arrangement a eu pour effet ou aura vraisemblablement pour effet d'entraîner des gains en efficience, que ces gains surpasseront et neutraliseront les effets de l'empêchement ou de la diminution de la concurrence qui résulteront ou résulteront vraisemblablement de l'accord ou de l'arrangement et que ces gains n'auraient pas été réalisés si l'ordonnance avait été rendue ou ne le seraient vraisemblablement pas si l'ordonnance était rendue.

**Restriction**

**(5)** Pour l'application du paragraphe (4), le Tribunal ne peut fonder uniquement sur une redistribution de revenu entre plusieurs personnes sa conclusion que l'accord ou l'arrangement a eu pour effet ou aura vraisemblablement pour effet d'entraîner des gains en efficience.

**Facteurs pris en considération**

**(6)** Pour décider si l'accord ou l'arrangement aura vraisemblablement pour effet d'entraîner les gains en efficience visés au paragraphe (4), le Tribunal examine si ces gains se traduiront, selon le cas :

**a)** par une augmentation relativement importante de la valeur réelle des exportations;

**b)** par une substitution relativement importante de produits nationaux à des produits étrangers.

**Exception**

**(7)** Le paragraphe (1) ne s'applique pas à l'accord ou à l'arrangement qui est intervenu ou interviendrait exclusivement entre des parties qui sont chacune des affiliées de toutes les autres.

**Exception**

**(8)** Le paragraphe (1) ne s'applique pas à l'accord ou à l'arrangement qui se rattache exclusivement à l'exportation de produits du Canada, sauf dans les cas suivants :

**a)** il a eu pour résultat ou aura vraisemblablement pour résultat une réduction ou une limitation de la valeur réelle des exportations d'un produit;

**b)** il a restreint ou restreindra vraisemblablement les possibilités pour une personne d'entrer dans le

**(c)** has prevented or lessened or is likely to prevent or lessen competition substantially in the supply of services that facilitate the export of products from Canada.

**Exception**

**(9)** The Tribunal shall not make an order under subsection (1) in respect of

**(a)** an agreement or arrangement between federal financial institutions, as defined in subsection 49(3), in respect of which the Minister of Finance has certified to the Commissioner

**(i)** the names of the parties to the agreement or arrangement, and

**(ii)** the Minister of Finance's request for or approval of the agreement or arrangement for the purposes of financial policy;

**(b)** an agreement or arrangement that constitutes a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner

**(i)** the names of the parties to the agreement or arrangement, and

**(ii)** the Minister of Finance's opinion that the merger is in the public interest, or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts;

**(c)** an agreement or arrangement that constitutes a merger or proposed merger approved under subsection 53.2(7) of the *Canada Transportation Act* in respect of which the Minister of Transport has certified to the Commissioner the names of the parties to the agreement or arrangement; or

**(d)** an agreement or arrangement that constitutes an existing or proposed *arrangement*, as defined in section 53.7 of the *Canada Transportation Act*, that has been authorized by the Minister of Transport under subsection 53.73(8) of that Act and for which the authorization has not been revoked.

commerce d'exportation de produits du Canada ou de développer un tel commerce;

**c)** il a sensiblement empêché ou diminué la concurrence dans la fourniture de services visant à favoriser l'exportation de produits du Canada, ou aura vraisemblablement un tel effet.

**Exception**

**(9)** Le Tribunal ne rend pas l'ordonnance prévue au paragraphe (1) en ce qui touche :

**a)** un accord ou un arrangement intervenu entre des institutions financières fédérales, au sens du paragraphe 49(3), à l'égard duquel le ministre des Finances certifie au commissaire le nom des parties et le fait qu'il a été conclu à sa demande ou avec son autorisation pour les besoins de la politique financière;

**b)** un accord ou un arrangement constituant une fusion — réalisée ou proposée — aux termes de la *Loi sur les banques*, de la *Loi sur les associations coopératives de crédit*, de la *Loi sur les sociétés d'assurances* ou de la *Loi sur les sociétés de fiducie et de prêt*, et à l'égard duquel le ministre des Finances certifie au commissaire le nom des parties et le fait que cette fusion est dans l'intérêt public, ou qu'elle le serait compte tenu des conditions qui pourraient être imposées dans le cadre de ces lois;

**c)** un accord ou un arrangement constituant une fusion — réalisée ou proposée — agréée en vertu du paragraphe 53.2(7) de la *Loi sur les transports au Canada* et à l'égard duquel le ministre des Transports certifie au commissaire le nom des parties;

**d)** un accord ou un arrangement constituant une *entente*, au sens de l'article 53.7 de la *Loi sur les transports au Canada*, réalisée ou proposée, autorisée par le ministre des Transport en application du paragraphe 53.73(8) de cette loi, dans la mesure où l'autorisation n'a pas été révoquée.

**Where proceedings commenced under section 45, 49, 76, 79 or 92**

**(10)** No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought by the Commissioner under section 76, 79 or 92.

**Definition of *competitor***

**(11)** In subsection (1), ***competitor*** includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement.

2009, c. 2, s. 429; 2018, c. 8, s. 115; 2018, c. 10, s. 87; 2022, c. 10, s. 263.

## Mergers

**Definition of *merger***

**91** In sections 92 to 100, ***merger*** means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Order**

**92 (1)** Where, on application by the Commissioner, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially

**(a)** in a trade, industry or profession,

**(b)** among the sources from which a trade, industry or profession obtains a product,

**(c)** among the outlets through which a trade, industry or profession disposes of a product, or

**(d)** otherwise than as described in paragraphs (a) to (c),

the Tribunal may, subject to sections 94 and 95,

**Procédures en vertu des articles 45, 49, 76, 79 et 92**

**(10)** Aucune demande à l'endroit d'une personne ne peut être présentée au titre du présent article si les faits au soutien de la demande sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien :

**a)** d'une procédure engagée à l'endroit de cette personne en vertu des articles 45 ou 49;

**b)** d'une ordonnance demandée par le commissaire à l'endroit de cette personne en vertu des articles 76, 79 ou 92.

**Définition de *concurrent***

**(11)** Au paragraphe (1), ***concurrent*** s'entend notamment de toute personne qui, en toute raison, ferait vraisemblablement concurrence à une autre personne à l'égard d'un produit en l'absence de l'accord ou de l'arrangement.

2009, ch. 2, art. 429; 2018, ch. 8, art. 115; 2018, ch. 10, art. 87; 2022, ch. 10, art. 263.

## Fusionnements

**Définition de *fusionnement***

**91** Pour l'application des articles 92 à 100, ***fusionnement*** désigne l'acquisition ou l'établissement, par une ou plusieurs personnes, directement ou indirectement, soit par achat ou location d'actions ou d'éléments d'actif, soit par fusion, association d'intérêts ou autrement, du contrôle sur la totalité ou quelque partie d'une entreprise d'un concurrent, d'un fournisseur, d'un client, ou d'une autre personne, ou encore d'un intérêt relativement important dans la totalité ou quelque partie d'une telle entreprise.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

**Ordonnance en cas de diminution de la concurrence**

**92 (1)** Dans les cas où, à la suite d'une demande du commissaire, le Tribunal conclut qu'un fusionnement réalisé ou proposé empêche ou diminue sensiblement la concurrence, ou aura vraisemblablement cet effet :

**a)** dans un commerce, une industrie ou une profession;

**b)** entre les sources d'approvisionnement auprès desquelles un commerce, une industrie ou une profession se procure un produit;

**c)** entre les débouchés par l'intermédiaire desquels un commerce, une industrie ou une profession écoule un produit;

**(e)** in the case of a completed merger, order any party to the merger or any other person

**(i)** to dissolve the merger in such manner as the Tribunal directs,

**(ii)** to dispose of assets or shares designated by the Tribunal in such manner as the Tribunal directs, or

**(iii)** in addition to or in lieu of the action referred to in subparagraph (i) or (ii), with the consent of the person against whom the order is directed and the Commissioner, to take any other action, or

**(f)** in the case of a proposed merger, make an order directed against any party to the proposed merger or any other person

**(i)** ordering the person against whom the order is directed not to proceed with the merger,

**(ii)** ordering the person against whom the order is directed not to proceed with a part of the merger, or

**(iii)** in addition to or in lieu of the order referred to in subparagraph (ii), either or both

**(A)** prohibiting the person against whom the order is directed, should the merger or part thereof be completed, from doing any act or thing the prohibition of which the Tribunal determines to be necessary to ensure that the merger or part thereof does not prevent or lessen competition substantially, or

**(B)** with the consent of the person against whom the order is directed and the Commissioner, ordering the person to take any other action.

**d)** autrement que selon ce qui est prévu aux alinéas a) à c),

le Tribunal peut, sous réserve des articles 94 et 95 :

**e)** dans le cas d'un fusionnement réalisé, rendre une ordonnance enjoignant à toute personne, que celle-ci soit partie au fusionnement ou non :

**(i)** de le dissoudre, conformément à ses directives,

**(ii)** de se départir, selon les modalités qu'il indique, des éléments d'actif et des actions qu'il indique,

**(iii)** en sus ou au lieu des mesures prévues au sous-alinéa (i) ou (ii), de prendre toute autre mesure, à condition que la personne contre qui l'ordonnance est rendue et le commissaire souscrivent à cette mesure;

**f)** dans le cas d'un fusionnement proposé, rendre, contre toute personne, que celle-ci soit partie au fusionnement proposé ou non, une ordonnance enjoignant :

**(i)** à la personne contre laquelle l'ordonnance est rendue de ne pas procéder au fusionnement,

**(ii)** à la personne contre laquelle l'ordonnance est rendue de ne pas procéder à une partie du fusionnement,

**(iii)** en sus ou au lieu de l'ordonnance prévue au sous-alinéa (ii), cumulativement ou non :

**(A)** à la personne qui fait l'objet de l'ordonnance, de s'abstenir, si le fusionnement était éventuellement complété en tout ou en partie, de faire quoi que ce soit dont l'interdiction est, selon ce que conclut le Tribunal, nécessaire pour que le fusionnement, même partiel, n'empêche ni ne diminue sensiblement la concurrence,

**(B)** à la personne qui fait l'objet de l'ordonnance de prendre toute autre mesure à condition que le commissaire et cette personne y souscrivent.

**Evidence**

**(2)** For the purpose of this section, the Tribunal shall not find that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially solely on the basis of evidence of concentration or market share.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2023, c. 31, s. 9.

**Preuve**

**(2)** Pour l'application du présent article, le Tribunal ne conclut pas qu'un fusionnement, réalisé ou proposé, empêche ou diminue sensiblement la concurrence, ou qu'il aura vraisemblablement cet effet, en raison seulement de la concentration ou de la part du marché.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2023, ch. 31, art. 9.

**Factors to be considered regarding prevention or lessening of competition**

**93** In determining, for the purpose of section 92, whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, the Tribunal may have regard to the following factors:

**(a)** the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the merger or proposed merger;

**(b)** whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail;

**(c)** the extent to which acceptable substitutes for products supplied by the parties to the merger or proposed merger are or are likely to be available;

**(d)** any barriers to entry into a market, including

**(i)** tariff and non-tariff barriers to international trade,

**(ii)** interprovincial barriers to trade, and

**(iii)** regulatory control over entry,

and any effect of the merger or proposed merger on such barriers;

**(e)** the extent to which effective competition remains or would remain in a market that is or would be affected by the merger or proposed merger;

**(f)** any likelihood that the merger or proposed merger will or would result in the removal of a vigorous and effective competitor;

**(g)** the nature and extent of change and innovation in a relevant market;

**(g.1)** network effects within the market;

**(g.2)** whether the merger or proposed merger would contribute to the entrenchment of the market position of leading incumbents;

**(g.3)** any effect of the merger or proposed merger on price or non-price competition, including quality, choice or consumer privacy; and

**Éléments à considérer**

**93** Lorsqu'il détermine, pour l'application de l'article 92, si un fusionnement, réalisé ou proposé, empêche ou diminue sensiblement la concurrence, ou s'il aura vraisemblablement cet effet, le Tribunal peut tenir compte des facteurs suivants :

**a)** la mesure dans laquelle des produits ou des concurrents étrangers assurent ou assureront vraisemblablement une concurrence réelle aux entreprises des parties au fusionnement réalisé ou proposé;

**b)** la déconfiture, ou la déconfiture vraisemblable de l'entreprise ou d'une partie de l'entreprise d'une partie au fusionnement réalisé ou proposé;

**c)** la mesure dans laquelle sont ou seront vraisemblablement disponibles des produits pouvant servir de substituts acceptables à ceux fournis par les parties au fusionnement réalisé ou proposé;

**d)** les entraves à l'accès à un marché, notamment :

**(i)** les barrières tarifaires et non tarifaires au commerce international,

**(ii)** les barrières interprovinciales au commerce,

**(iii)** la réglementation de cet accès,

et tous les effets du fusionnement, réalisé ou proposé, sur ces entraves;

**e)** la mesure dans laquelle il y a ou il y aurait encore de la concurrence réelle dans un marché qui est ou serait touché par le fusionnement réalisé ou proposé;

**f)** la possibilité que le fusionnement réalisé ou proposé entraîne ou puisse entraîner la disparition d'un concurrent dynamique et efficace;

**g)** la nature et la portée des changements et des innovations sur un marché pertinent;

**g.1)** les effets de réseau dans le marché;

**g.2)** le fait que le fusionnement réalisé ou proposé contribuerait au renforcement de la position sur le marché des principales entreprises en place;

**g.3)** tout effet du fusionnement réalisé ou proposé sur la concurrence hors prix ou par les prix, notamment la qualité, le choix ou la vie privée des consommateurs;

**(h)** any other factor that is relevant to competition in a market that is or would be affected by the merger or proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2022, c. 10, s. 264.

**h)** tout autre facteur pertinent à la concurrence dans un marché qui est ou serait touché par le fusionnement réalisé ou proposé.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 2022, ch. 10, art. 264.

### Exception

**94** The Tribunal shall not make an order under section 92 in respect of

**(a)** a merger substantially completed before the coming into force of this section;

**(b)** a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner the names of the parties and that the merger is in the public interest — or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts;

**(c)** a merger or proposed merger approved under subsection 53.2(7) of the *Canada Transportation Act* and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties; or

**(d)** a merger or proposed merger that constitutes an existing or proposed *arrangement*, as defined in section 53.7 of the *Canada Transportation Act*, that has been authorized by the Minister of Transport under subsection 53.73(8) of that Act and for which the authorization has not been revoked.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 549, c. 46, ss. 592, 593, c. 47, s. 716; 1999, c. 2, s. 37; 2000, c. 15, s. 14; 2001, c. 9, s. 579; 2007, c. 19, s. 62; 2018, c. 10, s. 88.

### Exception

**94** Le Tribunal ne rend pas une ordonnance en vertu de l'article 92 à l'égard :

**a)** d'un fusionnement en substance réalisé avant l'entrée en vigueur du présent article;

**b)** d'une fusion réalisée ou proposée aux termes de la *Loi sur les banques*, de la *Loi sur les associations coopératives de crédit*, de la *Loi sur les sociétés d'assurances* ou de la *Loi sur les sociétés de fiducie et de prêt*, et à propos de laquelle le ministre des Finances certifie au commissaire le nom des parties et certifie que cette fusion est dans l'intérêt public ou qu'elle le serait compte tenu des conditions qui pourraient être imposées dans le cadre de ces lois;

**c)** d'une fusion — réalisée ou proposée — agréée en vertu du paragraphe 53.2(7) de la *Loi sur les transports au Canada* et à l'égard de laquelle le ministre des Transports certifie au commissaire le nom des parties;

**d)** d'une fusion — réalisée ou proposée — constituant une *entente*, au sens de l'article 53.7 de la *Loi sur les transports au Canada*, autorisée par le ministre des Transports en application du paragraphe 53.73(8) de cette loi, dans la mesure où l'autorisation n'a pas été révoquée.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1991, ch. 45, art. 549, ch. 46, art. 592 et 593, ch. 47, art. 716; 1999, ch. 2, art. 37; 2000, ch. 15, art. 14; 2001, ch. 9, art. 579; 2007, ch. 19, art. 62; 2018, ch. 10, art. 88.

### Exception for joint ventures

**95 (1)** The Tribunal shall not make an order under section 92 in respect of a combination formed or proposed to be formed, otherwise than through a corporation, to undertake a specific project or a program of research and development if

**(a)** a project or program of that nature

**(i)** would not have taken place or be likely to take place in the absence of the combination, or

**(ii)** would not reasonably have taken place or reasonably be likely to take place in the absence of the combination because of the risks involved in relation to the project or program and the business to which it relates;

### Exceptions pour les entreprises à risques partagés

**95 (1)** Le Tribunal ne rend pas d'ordonnance en application de l'article 92 à l'égard d'une association d'intérêts formée, ou dont la formation est proposée, autrement que par l'intermédiaire d'une personne morale, dans le but d'entreprendre un projet spécifique ou un programme de recherche et développement si les conditions suivantes sont réunies :

**a)** un projet ou programme de cette nature :

**(i)** soit n'aurait pas eu lieu ou n'aurait vraisemblablement pas lieu sans l'association d'intérêts,

**(ii)** soit n'aurait, en toute raison, pas eu lieu ou n'aurait vraisemblablement pas lieu sans l'association d'intérêts en raison des risques attachés à ce

**(b)** no change in control over any party to the combination resulted or would result from the combination;

**(c)** all the persons who formed the combination are parties to an agreement in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;

**(d)** the agreement referred to in paragraph (c) restricts the range of activities that may be carried on pursuant to the combination, and provides that the agreement terminates on the completion of the project or program; and

**(e)** the combination does not prevent or lessen or is not likely to prevent or lessen competition except to the extent reasonably required to undertake and complete the project or program.

**Limitation**

**(2)** For greater certainty, this section does not apply in respect of the acquisition of assets of a combination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**96** [Repealed, 2023, c. 31, s. 10]

**Limitation period**

**97** No application may be made under section 92 in respect of a merger more than one year after the merger has been substantially completed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 430.

**Where proceedings commenced under section 45, 49, 79 or 90.1**

**98** No application may be made under section 92 against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought under section 79 or 90.1.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 430.

projet ou programme et de l'entreprise qu'il concerne;

**b)** aucun changement dans le contrôle d'une des parties à l'association d'intérêts n'a résulté ou ne résulterait de cette association;

**c)** toutes les parties qui ont formé l'association d'intérêts sont parties à une entente écrite qui impose à au moins l'une d'entre elles l'obligation de contribuer des éléments d'actif et qui régit une relation continue entre ces parties;

**d)** l'entente visée à l'alinéa c) limite l'éventail des activités qui peuvent être exercées conformément à l'association d'intérêts et prévoit sa propre expiration au terme du projet ou programme;

**e)** l'association d'intérêts n'a pas, sauf dans la mesure de ce qui est raisonnablement nécessaire pour que le projet ou programme soit entrepris et complété, l'effet d'empêcher ou de diminuer la concurrence ou n'aura vraisemblablement pas cet effet.

**Restriction**

**(2)** Il est entendu que le présent article ne s'applique pas à l'égard de l'acquisition d'éléments d'actif d'une association d'intérêts.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

**96** [Abrogé, 2023, ch. 31, art. 10]

**Prescription**

**97** Le commissaire ne peut présenter une demande en vertu de l'article 92 à l'égard d'un fusionnement qui est essentiellement complété depuis plus d'un an.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 2009, ch. 2, art. 430.

**Procédures en vertu des articles 45, 49, 79 ou 90.1**

**98** Aucune demande à l'endroit d'une personne ne peut être présentée au titre de l'article 92 si les faits au soutien de la demande sont les mêmes ou essentiellement les mêmes que ceux qui ont été allégués au soutien :

**a)** d'une procédure engagée à l'endroit de cette personne en vertu des articles 45 ou 49;

**b)** d'une ordonnance demandée à l'endroit de cette personne en vertu des articles 79 ou 90.1.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 2009, ch. 2, art. 430.

### Conditional orders directing dissolution of a merger

**99 (1)** The Tribunal may provide, in an order made under section 92 directing a person to dissolve a merger or to dispose of assets or shares, that the order may be rescinded or varied if, within a reasonable period of time specified in the order,

**(a)** there has occurred

**(i)** a reduction, removal or remission, specified in the order, of any relevant customs duties, or

**(ii)** a reduction or removal, specified in the order, of prohibitions, controls or regulations imposed by or pursuant to any Act of Parliament on the importation into Canada of an article specified in the order, or

**(b)** that person or any other person has taken any action specified in the order

that will, in the opinion of the Tribunal, prevent the merger from preventing or lessening competition substantially.

### When conditional order may be rescinded or varied

**(2)** Where, on application by any person against whom an order under section 92 is directed, the Tribunal is satisfied that

**(a)** a reduction, removal or remission specified in the order pursuant to paragraph (1)(a) has occurred, or

**(b)** the action specified in the order pursuant to paragraph (1)(b) has been taken,

the Tribunal may rescind or vary the order accordingly.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

### Interim order where no application under section 92

**100 (1)** The Tribunal may issue an interim order forbidding any person named in the application from doing any act or thing that it appears to the Tribunal may constitute or be directed toward the completion or implementation of a proposed merger in respect of which an application has not been made under section 92 or previously under this section, where

**(a)** on application by the Commissioner, certifying that an inquiry is being made under paragraph 10(1)(b) and that, in the Commissioner's opinion, more time is required to complete the inquiry, the Tribunal finds that in the absence of an interim order a

### Ordonnances conditionnelles de dissolution de fusionnements

**99 (1)** Le Tribunal peut déclarer, dans une ordonnance rendue en vertu de l'article 92 et enjoignant à une personne de dissoudre un fusionnement ou de se départir d'éléments d'actif ou d'actions, que l'ordonnance peut être annulée ou modifiée si, dans le délai raisonnable qui y est fixé :

**a)** soit il y a eu :

**(i)** ou bien réduction, suppression ou remise, indiquée dans l'ordonnance, de droits de douane pertinents,

**(ii)** ou bien réduction ou suppression, indiquée dans l'ordonnance, d'interdictions, de contrôles ou de réglementations imposés aux termes ou en vertu d'une loi fédérale et visant l'importation au Canada d'un article mentionné dans l'ordonnance;

**b)** soit la personne en question ou une autre personne a pris toute mesure indiquée à l'ordonnance,

et, qu'en conséquence, selon le Tribunal, le fusionnement n'aura pas pour effet d'empêcher ou de diminuer sensiblement la concurrence.

### Annulation ou modification de l'ordonnance

**(2)** À la demande d'une personne contre qui une ordonnance a été rendue aux termes de l'article 92, le Tribunal peut annuler ou modifier l'ordonnance en question s'il est convaincu que :

**a)** la réduction, la suppression ou la remise prévue à l'ordonnance conformément à l'alinéa (1)a) a eu lieu;

**b)** les mesures prévues à l'ordonnance conformément à l'alinéa (1)b) ont été exécutées.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

### Ordonnance provisoire en l'absence d'une demande en vertu de l'article 92

**100 (1)** Le Tribunal peut rendre une ordonnance provisoire interdisant à toute personne nommée dans la demande de poser tout geste qui, de l'avis du Tribunal, pourrait constituer la réalisation ou la mise en œuvre du fusionnement proposé, ou y tendre, relativement auquel il n'y a pas eu de demande aux termes de l'article 92 ou antérieurement aux termes du présent article, si :

**a)** à la demande du commissaire comportant une attestation de la tenue de l'enquête prévue à l'alinéa 10(1)b) et de la nécessité, selon celui-ci, d'un délai supplémentaire pour l'achever, il conclut qu'une personne, partie ou non au fusionnement proposé, posera

party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition under that section because that action would be difficult to reverse; or

**(b)** the Tribunal finds, on application by the Commissioner, that the completion of the proposed merger would result in a contravention of section 114.

vraisemblablement, en l'absence d'une ordonnance provisoire, des gestes qui, parce qu'ils seraient alors difficiles à contrer, auraient pour effet de réduire sensiblement l'aptitude du Tribunal à remédier à l'influence du fusionnement proposé sur la concurrence, si celui-ci devait éventuellement appliquer cet article à l'égard de ce fusionnement;

**b)** à la demande du commissaire, il conclut que la réalisation du fusionnement proposé serait une contravention de l'article 114.

**Notice of application**

**(2)** Subject to subsection (3), at least forty-eight hours notice of an application for an interim order under subsection (1) shall be given by or on behalf of the Commissioner to each person against whom the order is sought.

**Avis**

**(2)** Sous réserve du paragraphe (3), le commissaire, ou une personne agissant au nom de celui-ci, donne à chaque personne à l'égard de laquelle il entend demander une ordonnance provisoire aux termes du paragraphe (1) un avis d'au moins quarante-huit heures relativement à cette demande.

***Ex parte* application**

**(3)** Where the Tribunal is satisfied, in respect of an application for an interim order under paragraph (1)(b), that

**(a)** subsection (2) cannot reasonably be complied with, or

**(b)** the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte*.

**Audition *ex parte***

**(3)** Si, lors d'une demande d'ordonnance provisoire présentée en vertu de l'alinéa (1)b), le Tribunal est convaincu :

**a)** qu'en toute raison, le paragraphe (2) ne peut pas être observé;

**b)** que la situation est à ce point urgente que la signification de l'avis aux termes du paragraphe (2) ne servirait pas l'intérêt public,

il peut entendre la demande *ex parte*.

**Terms of interim order**

**(4)** An interim order issued under subsection (1)

**(a)** shall be on such terms as the Tribunal considers necessary and sufficient to meet the circumstances of the case; and

**(b)** subject to subsections (5) and (6), shall have effect for such period of time as is specified in it.

**Conditions d'une ordonnance provisoire**

**(4)** Une ordonnance provisoire rendue aux termes du paragraphe (1) :

**a)** prévoit ce qui, de l'avis du Tribunal, est nécessaire et suffisant pour parer aux circonstances de l'affaire;

**b)** sous réserve des paragraphes (5) et (6), a effet pour la période qui y est spécifiée.

**Duration of order: inquiry**

**(5)** The duration of an interim order issued under paragraph (1)(a) shall not exceed thirty days.

**Durée maximale de l'ordonnance provisoire**

**(5)** La durée d'une ordonnance provisoire rendue en application de l'alinéa (1)a) ne peut dépasser trente jours.

**Duration of order: failure to comply**

**(6)** The duration of an interim order issued under paragraph (1)(b) shall not exceed

**(a)** ten days after section 114 is complied with, in the case of an interim order issued on *ex parte* application; or

**Durée maximale de l'ordonnance provisoire**

**(6)** La durée d'une ordonnance provisoire rendue en application de l'alinéa(1)b) ne peut dépasser :

**a)** dans le cas d'une ordonnance provisoire rendue dans le cadre d'une demande *ex parte*, dix jours à

**(b)** thirty days after section 114 is complied with, in any other case.

**b)** dans les autres cas, trente jours à compter du moment où les exigences de l'article 114 ont été respectées.

compter du moment où les exigences de l'article 114 ont été respectées;

### Extension of time

**(7)** Where the Tribunal finds, on application made by the Commissioner on forty-eight hours notice to each person to whom an interim order is directed, that the Commissioner is unable to complete an inquiry within the period specified in the order because of circumstances beyond the control of the Commissioner, the Tribunal may extend the duration of the order to a day not more than sixty days after the order takes effect.

### Prorogation du délai

**(7)** Lorsque le Tribunal conclut, sur demande présentée par le commissaire après avoir donné un avis de quarante-huit heures à chaque personne visée par l'ordonnance provisoire, que celui-ci est incapable, à cause de circonstances indépendantes de sa volonté, d'achever une enquête dans le délai prévu par l'ordonnance, il peut la proroger; la durée d'application maximale de l'ordonnance ainsi prorogée est de soixante jours à compter de sa prise d'effet.

### Completion of inquiry

**(8)** Where an interim order is issued under paragraph (1)(a), the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 in respect of the proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 24, 37; 2022, c. 10, s. 265.

### Achèvement de l'enquête

**(8)** Dans le cas où une ordonnance provisoire est rendue en vertu de l'alinéa (1)a), le commissaire est tenu d'achever l'enquête prévue à l'article 10 avec toute la diligence possible.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 24 et 37; 2022, ch. 10, art. 265.

### Right of intervention

**101** The attorney general of a province may intervene in any proceedings before the Tribunal under section 92 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

### Intervention

**101** Le procureur général d'une province peut intervenir dans les procédures qui se déroulent devant le Tribunal en application de l'article 92 afin d'y faire des représentations pour le compte de la province.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

### Advance ruling certificates

**102 (1)** Where the Commissioner is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds on which to apply to the Tribunal under section 92, the Commissioner may issue a certificate to the effect that he is so satisfied.

### Certificats de décision préalable

**102 (1)** Lorsqu'une ou plusieurs parties à une transaction proposée convainquent le commissaire qu'il n'aura pas de motifs suffisants pour faire une demande au Tribunal en vertu de l'article 92, le commissaire peut délivrer un certificat attestant cette conviction.

### Duty of Commissioner

**(2)** The Commissioner shall consider any request for a certificate under this section as expeditiously as possible.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

### Obligation du commissaire

**(2)** Le commissaire examine les demandes de certificats en application du présent article avec toute la diligence possible.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

### No application under section 92

**103** Where the Commissioner issues a certificate under section 102, the Commissioner shall not, if the transaction to which the certificate relates is substantially completed within one year after the certificate is issued, apply to the Tribunal under section 92 in respect of the transaction solely on the basis of information that is the same or

### Nulle présentation de demande en vertu de l'article 92

**103** Après la délivrance du certificat visé à l'article 102, le commissaire ne peut, si la transaction à laquelle se rapporte le certificat est en substance complétée dans l'année suivant la délivrance du certificat, faire une demande au Tribunal en application de l'article 92 à l'égard de la transaction lorsque la demande est exclusivement

substantially the same as the information on the basis of which the certificate was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

fondée sur les mêmes ou en substance les mêmes renseignements que ceux qui ont justifié la délivrance du certificat.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

# General

# Dispositions générales

**Leave to make application under section 75, 76, 77 or 79**

**103.1 (1)** Any person may apply to the Tribunal for leave to make an application under section 75, 76, 77 or 79. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

**Permission de présenter une demande : articles 75, 76, 77 ou 79**

**103.1 (1)** Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 75, 76, 77 ou 79. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde.

**Notice**

**(2)** The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75, 76, 77 or 79, as the case may be, is sought.

**Signification**

**(2)** L'auteur de la demande en fait signifier une copie au commissaire et à chaque personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 75, 76, 77 ou 79, selon le cas.

**Certification by Commissioner**

**(3)** The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

**(a)** is the subject of an inquiry by the Commissioner; or

**(b)** was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75, 76, 77 or 79, as the case may be, is sought.

**Certificat du commissaire**

**(3)** Quarante-huit heures après avoir reçu une copie de la demande, le commissaire remet au Tribunal un certificat établissant si les questions visées par la demande :

**a)** soit font l'objet d'une enquête du commissaire;

**b)** soit ont fait l'objet d'une telle enquête qui a été discontinuée à la suite d'une entente intervenue entre le commissaire et la personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 75, 76, 77 ou 79, selon le cas.

**Application discontinued**

**(4)** The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75, 76, 77 or 79.

**Rejet**

**(4)** Le Tribunal ne peut être saisi d'une demande portant sur des questions visées aux alinéas (3)a) ou b) ou portant sur une question qui fait l'objet d'une demande que lui a présentée le commissaire en vertu des articles 75, 76, 77 ou 79.

**Notice by Tribunal**

**(5)** The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

**Avis du Tribunal**

**(5)** Le plus rapidement possible après avoir reçu le certificat du commissaire, le Tribunal avise l'auteur de la demande, ainsi que toute personne à l'égard de laquelle une ordonnance pourrait être rendue, du fait qu'il pourra ou non entendre la demande.

**Representations**

**(6)** A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and

**Observations**

**(6)** Les personnes à qui une copie de la demande est signifiée peuvent, dans les quinze jours suivant la réception de l'avis du Tribunal, présenter par écrit leurs

shall serve a copy of the representations on any other person referred to in subsection (2).

**Granting leave**

**(7)** The Tribunal may grant leave to make an application under section 75, 77 or 79 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section.

**Granting leave to make application under section 76**

**(7.1)** The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section.

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 75, 76, 77 or 79 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

**Decision**

**(9)** The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

**Limitation**

**(10)** The Commissioner may not make an application for an order under section 75, 76, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7) or (7.1), if the person granted leave has already applied to the Tribunal under section 75, 76, 77 or 79.

**Inferences**

**(11)** In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

**Inquiry by Commissioner**

**(12)** If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner

observations au Tribunal. Elles sont tenues de faire signifier une copie de leurs observations aux autres personnes mentionnées au paragraphe (2).

**Octroi de la demande**

**(7)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75, 77 ou 79 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles.

**Octroi de la demande**

**(7.1)** Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu de l'article 76 s'il a des raisons de croire que l'auteur de la demande est directement gêné en raison d'un comportement qui pourrait faire l'objet d'une ordonnance en vertu du même article.

**Durée et conditions**

**(8)** Le Tribunal peut fixer la durée de validité de la permission qu'il accorde et l'assortir de conditions. La demande doit être présentée au plus tard un an après que la pratique ou le comportement visé dans la demande a cessé.

**Décision**

**(9)** Le Tribunal rend une décision motivée par écrit et en fait parvenir une copie à l'auteur de la demande, au commissaire et à toutes les personnes visées au paragraphe (2).

**Limite applicable au commissaire**

**(10)** Le commissaire ne peut, en vertu des articles 75, 76, 77 ou 79, présenter une demande fondée sur des faits qui seraient les mêmes ou essentiellement les mêmes que ceux qui ont été allégués dans la demande de permission accordée en vertu des paragraphes (7) ou (7.1) si la personne à laquelle la permission a été accordée a déposé une demande en vertu des articles 75, 76, 77 ou 79.

**Application**

**(11)** Le Tribunal ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

**Enquête du commissaire**

**(12)** Dans le cas où il a déclaré dans le certificat visé au paragraphe (3) que les questions visées par la demande font l'objet d'une enquête et que, par la suite, l'enquête

subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.

2002, c. 16, s. 12; 2009, c. 2, s. 431; 2022, c. 10, s. 266.

### Intervention by Commissioner

**103.2** If a person granted leave under subsection 103.1(7) or (7.1) makes an application under section 75, 76, 77 or 79, the Commissioner may intervene in the proceedings.

2002, c. 16, s. 12; 2009, c. 2, s. 432; 2022, c. 10, s. 267.

### Interim order

**103.3 (1)** Subject to subsection (2), the Tribunal may, on *ex parte* application by the Commissioner in which the Commissioner certifies that an inquiry is being made under paragraph 10(1)(b), issue an interim order

**(a)** to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81, 84 or 90.1; or

**(b)** to prevent the taking of measures under section 82 or 83.

### Limitation

**(2)** The Tribunal may make the interim order if it finds that the conduct or measures could be of the type described in paragraph (1)(a) or (b) and that, in the absence of an interim order,

**(a)** injury to competition that cannot adequately be remedied by the Tribunal is likely to occur;

**(b)** a person is likely to be eliminated as a competitor; or

**(c)** a person is likely to suffer a significant loss of market share, a significant loss of revenue or other harm that cannot be adequately remedied by the Tribunal.

### Consultation

**(3)** Before making an application for an order to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81, 84 or 90.1 by an entity incorporated under the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act* or the *Cooperative Credit Associations Act* or a subsidiary of such an entity, the Commissioner must consult with the Minister of Finance respecting the safety and soundness of the entity.

est discontinuée pour une raison autre que la conclusion d'une entente, le commissaire est tenu, dans les meilleurs délais, d'en informer l'auteur de la demande.

2002, ch. 16, art. 12; 2009, ch. 2, art. 431; 2022, ch. 10, art. 266.

### Intervention du commissaire

**103.2** Le commissaire est autorisé à intervenir devant le Tribunal dans les cas où une personne autorisée en vertu des paragraphes 103.1(7) ou (7.1) présente une demande en vertu des articles 75, 76, 77 ou 79.

2002, ch. 16, art. 12; 2009, ch. 2, art. 432; 2022, ch. 10, art. 267.

### Ordonnance provisoire

**103.3 (1)** Sous réserve du paragraphe (2), le Tribunal peut, sur demande *ex parte* du commissaire dans laquelle il atteste qu'une enquête est en cours en vertu de l'alinéa 10(1)b), rendre une ordonnance provisoire pour interdire :

**a)** soit la poursuite d'un comportement qui pourrait faire l'objet d'une ordonnance en vertu des articles 75 à 77, 79, 81, 84 ou 90.1;

**b)** soit la prise de mesures visées aux articles 82 ou 83.

### Restriction

**(2)** Le Tribunal peut rendre l'ordonnance s'il conclut que le comportement ou les mesures pourraient être du type visé aux alinéas (1)a) ou b) et qu'à défaut d'ordonnance, selon le cas :

**a)** la concurrence subira vraisemblablement un préjudice auquel le Tribunal ne pourra adéquatement remédier;

**b)** un compétiteur sera vraisemblablement éliminé;

**c)** une personne subira vraisemblablement une réduction importante de sa part de marché, une perte importante de revenu ou des dommages auxquels le Tribunal ne pourra adéquatement remédier.

### Consultation obligatoire

**(3)** Le commissaire consulte le ministre des Finances au sujet de la santé financière d'une entité constituée sous le régime de la *Loi sur les banques*, de la *Loi sur les sociétés de fiducie et de prêt*, de la *Loi sur les associations coopératives de crédit* ou de la *Loi sur les sociétés d'assurances* avant de présenter à l'égard de cette entité ou de l'une de ses filiales une demande d'interdiction de poursuite d'un comportement visé aux articles 75 à 77, 79, 81, 84 ou 90.1.

**Duration**

**(4)** Subject to subsections (5) and (6), an interim order has effect for 10 days, beginning on the day on which it is made.

**Extension or revocation of order**

**(5)** The Tribunal may, on application by the Commissioner on 48 hours notice to each person against whom the interim order is directed,

**(a)** extend the interim order once or twice for additional periods of 35 days each; or

**(b)** rescind the order.

**Application to Tribunal for extension**

**(5.1)** The Commissioner may, before the expiry of the second 35-day period referred to in subsection (5) or of the period fixed by the Tribunal under subsection (7), as the case may be, apply to the Tribunal for a further extension of the interim order.

**Notice of application by Commissioner**

**(5.2)** The Commissioner shall give at least 48 hours notice of an application referred to in subsection (5.1) to the person against whom the interim order is made.

**Extension of interim order**

**(5.3)** The Tribunal may order that the effective period of the interim order be extended if

**(a)** the Commissioner establishes that information requested for the purpose of the inquiry has not yet been provided or that more time is needed in order to review the information;

**(b)** the information was requested during the initial period that the interim order had effect, within the first 35 days after an order extending the interim order under subsection (5) had effect, or within the first 35 days after an order extending the interim order made under subsection (7) had effect, as the case may be, and

**(i)** the provision of such information is the subject of a written undertaking, or

**(ii)** the information was ordered to be provided under section 11; and

**(c)** the information is reasonably required to determine whether grounds exist for the Commissioner to

**Durée de l'ordonnance**

**(4)** Sous réserve des paragraphes (5) et (6), l'ordonnance est en vigueur pendant dix jours à compter de celui où elle est rendue.

**Prorogation de l'ordonnance**

**(5)** Le Tribunal peut, à la demande du commissaire, après avoir donné un avis de quarante-huit heures à chaque personne visée par l'ordonnance :

**a)** soit proroger l'ordonnance à deux reprises pour une période supplémentaire de trente-cinq jours chaque fois;

**b)** soit l'annuler.

**Demande de prolongation présentée au Tribunal**

**(5.1)** Le commissaire peut, avant l'expiration de la deuxième période supplémentaire visée au paragraphe (5) ou de la période que le Tribunal fixe en vertu du paragraphe (7), demander au Tribunal une nouvelle prorogation de l'ordonnance provisoire.

**Avis**

**(5.2)** Un préavis de la demande que le commissaire présente en vertu du paragraphe (5.1) doit être donné à la personne visée par l'ordonnance au moins quarante-huit heures avant l'audition.

**Prolongation de l'ordonnance provisoire**

**(5.3)** Le Tribunal peut ordonner que la période de validité de l'ordonnance provisoire soit prorogée si les conditions suivantes sont réunies :

**a)** le commissaire démontre que les renseignements nécessaires à l'enquête n'ont pas encore été fournis ou qu'un délai supplémentaire est nécessaire pour les étudier;

**b)** les renseignements ont été demandés au cours de la période initiale de validité de l'ordonnance provisoire, avant l'expiration de la première période supplémentaire visée au paragraphe (5) ou dans les trente-cinq premiers jours de validité d'une ordonnance de prolongation de l'ordonnance provisoire rendue en vertu du paragraphe (7) et que :

**(i)** soit le commissaire a reçu l'engagement écrit portant que les renseignements en question lui seraient fournis,

**(ii)** soit les renseignements doivent être fournis au titre d'une ordonnance rendue en vertu de l'article 11;

make an application under any section referred to in paragraph (1)(a) or (b).

**Terms**

**(5.4)** An order extending an interim order issued under subsection (5.3) shall have effect for such period as the Tribunal considers necessary to give the Commissioner a reasonable opportunity to receive and review the information referred to in that subsection.

**Effect of application**

**(5.5)** If an application is made under subsection (5.1), the interim order has effect until the Tribunal makes a decision whether to grant an extension under subsection (5.3).

**When application made to Tribunal**

**(6)** If an application is made under subsection (7), an interim order has effect until the Tribunal makes an order under that subsection.

**Confirming or setting aside interim order**

**(7)** A person against whom the Tribunal has made an interim order may apply to the Tribunal in the first 10 days during which the order has effect to have it varied or set aside and the Tribunal shall

**(a)** if it is satisfied that one or more of the situations set out in paragraphs (2)(a) to (c) existed or are likely to exist, make an order confirming the interim order, with or without variation as the Tribunal considers necessary and sufficient to meet the circumstances, and fix the effective period of that order for a maximum of 70 days, beginning on the day on which the order confirming the interim order is made; and

**(b)** if it is not satisfied that any of the situations set out in paragraphs (2)(a) to (c) existed or is likely to exist, make an order setting aside the interim order.

**Notice**

**(8)** A person who makes an application under subsection (7) shall give the Commissioner 48 hours written notice of the application.

**Representations**

**(9)** At the hearing of an application under subsection (7), the Tribunal shall provide the applicant, the Commissioner and any person directly affected by the interim order with a full opportunity to present evidence and make

**c)** les renseignements sont raisonnablement nécessaires pour déterminer s'il existe des motifs suffisants justifiant la présentation par le commissaire d'une demande en vertu de l'un des articles visés aux alinéas (1)a) ou b).

**Modalités**

**(5.4)** L'ordonnance de prolongation visée au paragraphe (5.3) est en vigueur pendant la période que le Tribunal estime nécessaire pour permettre au commissaire de recevoir et étudier les renseignements visés à ce paragraphe.

**Conséquences**

**(5.5)** Si une demande est présentée en vertu du paragraphe (5.1), l'ordonnance provisoire demeure en vigueur jusqu'à ce que le Tribunal décide d'accorder ou non une prolongation en vertu du paragraphe (5.3).

**Durée de l'ordonnance en cas de contestation judiciaire**

**(6)** En cas de présentation de la demande visée au paragraphe (7), l'ordonnance demeure en vigueur jusqu'à la date du prononcé de la décision du Tribunal.

**Modification ou annulation de l'ordonnance**

**(7)** Toute personne faisant l'objet de l'ordonnance peut en demander la modification ou l'annulation au Tribunal pendant les dix premiers jours de validité de l'ordonnance. Le Tribunal :

**a)** confirme l'ordonnance, avec, le cas échéant, les modifications qu'il estime indiquées en l'occurrence, pour une période maximale de soixante-dix jours à compter du prononcé de sa décision, s'il est convaincu qu'une des situations prévues aux alinéas (2)a) à c) s'est produite ou se produira vraisemblablement;

**b)** annule l'ordonnance s'il n'est pas convaincu qu'une des situations prévues aux alinéas (2)a) à c) s'est produite ou se produira vraisemblablement.

**Avis**

**(8)** Dans les quarante-huit heures suivant le moment où il présente sa demande au titre du paragraphe (7), le demandeur en avise par écrit le commissaire.

**Possibilité de présenter des observations**

**(9)** Dans le cadre de l'audition de la demande visée au paragraphe (7), le Tribunal accorde au demandeur, au commissaire et aux personnes directement touchées toute possibilité de présenter des éléments de preuve et

representations before the Tribunal makes an order under that subsection.

**Prohibition of extraordinary relief**

**(10)** Notwithstanding section 13 of the *Competition Tribunal Act*, an interim order shall not be appealed or reviewed in any court except as provided for by subsection (7).

**Duty of Commissioner**

**(11)** When an interim order is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry arising out of the conduct in respect of which the order was made.

2002, c. 16, s. 12; 2017, c. 26, s. 13.

**Interim order**

**104 (1)** If an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75, 76, 77 or 79, may issue any interim order that it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

**Terms of interim order**

**(2)** An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

**Duty of Commissioner**

**(3)** Where an interim order issued under subsection (1) on application by the Commissioner is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 13; 2015, c. 3, s. 39; 2022, c. 10, s. 268.

**104.1** [Repealed, 2009, c. 2, s. 433]

**Consent agreement**

**105 (1)** The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part, other than an interim order under section 103.3, may sign a consent agreement.

des observations sur l'ordonnance attaquée avant de rendre sa décision.

**Interdiction de recours extraordinaire**

**(10)** Par dérogation à l'article 13 de la *Loi sur le Tribunal de la concurrence* mais sous réserve du paragraphe (7), l'ordonnance ne peut faire l'objet d'un appel ou d'une révision judiciaire.

**Obligations du commissaire**

**(11)** Lorsqu'une ordonnance provisoire a force d'application, le commissaire doit, avec toute la diligence possible, mener à terme l'enquête à l'égard du comportement qui fait l'objet de l'ordonnance.

2002, ch. 16, art. 12; 2017, ch. 26, art. 13.

**Ordonnance provisoire**

**104 (1)** Lorsqu'une demande d'ordonnance a été faite en application de la présente partie, sauf en ce qui concerne les ordonnances provisoires en vertu des articles 100 ou 103.3, le Tribunal peut, à la demande du commissaire ou d'une personne qui a présenté une demande en vertu des articles 75, 76, 77 ou 79, rendre toute ordonnance provisoire qu'il considère justifiée conformément aux principes normalement pris en considération par les cours supérieures en matières interlocutoires et d'injonction.

**Conditions des ordonnances provisoires**

**(2)** Une ordonnance provisoire rendue aux termes du paragraphe (1) contient les conditions et a effet pour la durée que le Tribunal estime nécessaires et suffisantes pour parer aux circonstances de l'affaire.

**Obligation du commissaire**

**(3)** Si une ordonnance provisoire est rendue en vertu du paragraphe (1) à la suite d'une demande du commissaire et est en vigueur, le commissaire est tenu d'agir dans les meilleurs délais possible pour terminer les procédures qui, sous le régime de la présente partie, découlent du comportement qui fait l'objet de l'ordonnance.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2002, ch. 16, art. 13; 2015, ch. 3, art. 39; 2022, ch. 10, art. 268.

**104.1** [Abrogé, 2009, ch. 2, art. 433]

**Consentement**

**105 (1)** Le commissaire et la personne à l'égard de laquelle il a demandé ou peut demander une ordonnance en vertu de la présente partie — exception faite de l'ordonnance provisoire prévue à l'article 103.3 — peuvent signer un consentement.

**Terms of consent agreement**

**(2)** The consent agreement shall be based on terms that could be the subject of an order of the Tribunal against that person.

**Registration**

**(3)** The consent agreement may be filed with the Tribunal for immediate registration.

**Effect of registration**

**(4)** Upon registration of the consent agreement, the proceedings, if any, are terminated, and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14; 2009, c. 2, s. 434.

**Rescission or variation of consent agreement or order**

**106 (1)** The Tribunal may rescind or vary a consent agreement or an order made under this Part other than an order under section 103.3 or a consent agreement under section 106.1, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the Tribunal finds that

**(a)** the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

**(b)** the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

**Directly affected persons**

**(2)** A person directly affected by a consent agreement, other than a party to that agreement, may apply to the Tribunal within 60 days after the registration of the agreement to have one or more of its terms rescinded or varied. The Tribunal may grant the application if it finds that the person has established that the terms could not be the subject of an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14; 2009, c. 2, s. 435.

**Consent agreement — parties to a private action**

**106.1 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75, 76, 77 or 79 and the terms of the order are

**Contenu du consentement**

**(2)** Le consentement porte sur le contenu de toute ordonnance qui pourrait éventuellement être rendue contre la personne en question par le Tribunal.

**Dépôt et enregistrement**

**(3)** Le consentement est déposé auprès du Tribunal qui est tenu de l'enregistrer immédiatement.

**Effet de l'enregistrement**

**(4)** Une fois enregistré, le consentement met fin aux procédures qui ont pu être engagées, et il a la même valeur et produit les mêmes effets qu'une ordonnance du Tribunal, notamment quant à l'engagement des procédures.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2002, ch. 16, art. 14; 2009, ch. 2, art. 434.

**Annulation ou modification du consentement ou de l'ordonnance**

**106 (1)** Le Tribunal peut annuler ou modifier le consentement ou l'ordonnance visés à la présente partie, à l'exception de l'ordonnance rendue en vertu de l'article 103.3 et du consentement visé à l'article 106.1, lorsque, à la demande du commissaire ou de la personne qui a signé le consentement, ou de celle à l'égard de laquelle l'ordonnance a été rendue, il conclut que, selon le cas :

**a)** les circonstances ayant entraîné le consentement ou l'ordonnance ont changé et que, sur la base des circonstances qui existent au moment où la demande est faite, le consentement ou l'ordonnance n'aurait pas été signé ou rendue, ou n'aurait pas eu les effets nécessaires à la réalisation de son objet;

**b)** le commissaire et la personne qui a signé le consentement signent un autre consentement ou le commissaire et la personne à l'égard de laquelle l'ordonnance a été rendue ont consenti à une autre ordonnance.

**Personnes directement touchées**

**(2)** Toute personne directement touchée par le consentement — à l'exclusion d'une partie à celui-ci — peut, dans les soixante jours suivant l'enregistrement, demander au Tribunal d'en annuler ou d'en modifier une ou plusieurs modalités. Le Tribunal peut accueillir la demande s'il conclut que la personne a établi que les modalités ne pourraient faire l'objet d'une ordonnance du Tribunal.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2002, ch. 16, art. 14; 2009, ch. 2, art. 435.

**Consentement**

**106.1 (1)** Lorsqu'une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu des articles 75, 76, 77 ou 79, que cette

agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

**Notice to Commissioner**

**(2)** On filing the consent agreement with the Tribunal for registration, the parties shall serve a copy of it on the Commissioner without delay.

**Publication**

**(3)** The consent agreement shall be published without delay in the *Canada Gazette*.

**Registration**

**(4)** The consent agreement shall be registered 30 days after its publication unless a third party makes an application to the Tribunal before then to cancel the agreement or replace it with an order of the Tribunal.

**Effect of registration**

**(5)** Upon registration, the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

**Commissioner may intervene**

**(6)** On application by the Commissioner, the Tribunal may vary or rescind a registered consent agreement if it finds that the agreement has or is likely to have anti-competitive effects.

**Notice**

**(7)** The Commissioner must give notice of an application under subsection (6) to the parties to the consent agreement.

2002, c. 16, s. 14; 2015, c. 3, s. 40; 2022, c. 10, s. 269.

**Evidence**

**107** In determining whether or not to make an order under this Part, the Tribunal shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the Tribunal under this Act.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

personne et la personne à l'égard de laquelle l'ordonnance est demandée s'entendent sur son contenu et que l'entente est compatible avec les autres dispositions de la présente loi, un consentement peut être déposé auprès du Tribunal pour enregistrement.

**Signification au commissaire**

**(2)** Les signataires du consentement en font signifier une copie sans délai au commissaire.

**Publication**

**(3)** Le consentement est publié sans délai dans la *Gazette du Canada*.

**Enregistrement**

**(4)** Le consentement est enregistré à l'expiration d'un délai de trente jours suivant sa publication, sauf si, avant l'expiration de ce délai, un tiers présente une demande au Tribunal en vue d'annuler le consentement ou de le remplacer par une ordonnance du Tribunal.

**Effet de l'enregistrement**

**(5)** Une fois enregistré, le consentement a la même valeur et produit les mêmes effets qu'une ordonnance du Tribunal, notamment quant à l'engagement des procédures.

**Intervention du commissaire**

**(6)** Le Tribunal peut, sur demande du commissaire, modifier ou annuler le consentement enregistré dans les cas où il conclut qu'il a ou aurait vraisemblablement des effets anti-concurrentiels.

**Préavis**

**(7)** Le commissaire fait parvenir aux signataires du consentement un préavis de la demande qu'il présente en vertu du paragraphe (6).

2002, ch. 16, art. 14; 2015, ch. 3, art. 40; 2022, ch. 10, art. 269.

**Preuve**

**107** Dans sa décision de rendre ou de ne pas rendre une ordonnance en application de la présente partie, le Tribunal ne peut refuser de prendre en considération un élément de preuve au seul motif que celui-ci pourrait constituer un élément de preuve à l'égard d'une infraction prévue à la présente loi ou qu'une autre ordonnance pourrait être rendue par le Tribunal en vertu de la présente loi à l'égard de cet élément de preuve.

L.R. (1985), ch. 19 (2$^{e}$ suppl.), art. 45.

**PART IX**

# Notifiable Transactions

## Interpretation

### Definitions

**108 (1)** In this Part,

***equity interest*** means

**(a)** in the case of a corporation, a share in the corporation; and

**(b)** in the case of an entity other than a corporation, an interest that entitles the holder of that interest to receive profits of that entity or assets of that entity on its dissolution; (*intérêt relatif à des capitaux propres*)

***operating business*** means a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work; (*entreprise en exploitation*)

***person*** means an entity, an individual, a trustee, an executor, an administrator or a liquidator of the succession, an administrator of the property of others or a representative, but does not include a bare trustee or a trustee responsible exclusively for preserving and transferring the property of a person; (*personne*)

***prescribed*** means prescribed by regulations made under section 124; (*réglementaire*)

***voting share*** means any share that carries voting rights under all circumstances or by reason of an event that has occurred and is continuing. (*actions comportant droit de vote*)

### Entities controlled by Her Majesty

**(2)** For the purposes of this Part, except section 113, one entity is not affiliated with another entity by reason only of the fact that both entities are controlled by Her Majesty in right of Canada or a province, as the case may be.

### Computation of time

**(3)** In this Part, a time period is calculated in accordance with sections 26 to 30 of the *Interpretation Act* except

**PARTIE IX**

# Transactions devant faire l'objet d'un avis

## Définitions

### Définitions

**108 (1)** Les définitions qui suivent s'appliquent à la présente partie.

***actions comportant droit de vote*** Actions comportant droit de vote en toutes circonstances, ou encore actions comportant droit de vote en raison d'un événement qui a eu lieu et dont les effets pertinents subsistent. (*voting share*)

***entreprise en exploitation*** Entreprise au Canada à laquelle des employés affectés à son exploitation se rendent ordinairement pour les fins de leur travail. (*operating business*)

***intérêt relatif à des capitaux propres***

**a)** S'agissant d'une personne morale, toute action de celle-ci;

**b)** s'agissant d'une entité autre qu'une personne morale, tout titre de participation qui confère à son détenteur le droit de recevoir des bénéfices de cette entité ou des actifs de celle-ci à sa dissolution. (*equity interest*)

***personne*** Entité, personne physique, fiduciaire, exécuteur testamentaire, administrateur successoral, liquidateur d'une succession, administrateur du bien d'autrui ou représentant, à l'exclusion d'un fiduciaire à charge exclusive de conservation et de remise. (*person*)

***réglementaire*** Prescrit par les règlements d'application de l'article 124. (*prescribed*)

### Entités contrôlées par Sa Majesté

**(2)** Pour l'application de la présente partie, à l'exception de l'article 113, une entité n'est pas affiliée à une autre entité du seul fait que ces deux entités sont contrôlées par Sa Majesté du chef du Canada ou d'une province, selon le cas.

### Calcul du temps

**(3)** Dans la présente partie, les périodes de temps sont calculées conformément aux articles 26 à 30 de la *Loi d'interprétation*. Toutefois, un *jour férié*, au sens du

that the following days are also considered to be a *holiday* as defined in subsection 35(1) of that Act:

**(a)** Saturday;

**(b)** if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday; and

**(c)** if another holiday falls on a Saturday or Sunday, the following Monday.

**Submission after 5:00 p.m.**

**(4)** For the purposes of this Part, anything submitted to the Commissioner after 5:00 p.m. (Eastern Time) is deemed to be received by the Commissioner on the next day that is not a holiday.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 25; 2018, c. 8, s. 116; 2022, c. 10, s. 270.

paragraphe 35(1) de cette loi, s'entend également des jours suivants :

**a)** le samedi;

**b)** si le jour de Noël tombe un samedi ou un dimanche, le lundi et le mardi suivants;

**c)** si un autre jour férié tombe un samedi ou un dimanche, le lundi suivant.

**Remise après dix-sept heures**

**(4)** Pour l'application de la présente partie, tout objet remis au commissaire après dix-sept heures (heure de l'Est) un jour non férié est réputé avoir été reçu par lui le jour non férié suivant.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 25; 2018, ch. 8, art. 116; 2022, ch. 10, art. 270.

# Application

**General limit relating to parties**

**109 (1)** This Part does not apply in respect of a proposed transaction unless the parties thereto, together with their affiliates,

**(a)** have assets in Canada that exceed four hundred million dollars in aggregate value, determined as of such time and in such manner as may be prescribed, or such greater amount as may be prescribed; or

**(b)** had gross revenues from sales in, from or into Canada, determined for such annual period and in such manner as may be prescribed, that exceed four hundred million dollars in aggregate value, or such greater amount as may be prescribed.

**Parties to acquisition of shares or interest**

**(2)** For the purposes of this Part,

**(a)** the parties to a proposed acquisition of shares are the person or persons who propose to acquire the shares and the corporation whose shares are to be acquired; and

# Application

**Limite générale applicable aux parties à une transaction**

**109 (1)** La présente partie ne s'applique pas à l'égard d'une transaction proposée sauf si les parties à cette transaction, avec leurs affiliées :

**a)** ont au Canada des éléments d'actif dont la valeur totale dépasse quatre cents millions de dollars, calculé selon ce que les dispositions réglementaires prévoient à cette fin quant au moment à l'égard duquel ces éléments d'actif sont évalués et au mode de leur évaluation, ou telle autre valeur réglementaire plus élevée;

**b)** ont réalisé des revenus bruts provenant de ventes au Canada, en direction du Canada ou en provenance du Canada, dont la valeur totale, calculée selon ce que les dispositions réglementaires prévoient à cette fin quant au mode d'évaluation de ce revenu et à la période annuelle pour laquelle il est évalué, dépasse quatre cents millions de dollars ou telle autre valeur réglementaire plus élevée.

**Parties à une acquisition d'actions ou de titres de participation**

**(2)** Pour l'application de la présente partie, sont parties à une transaction :

**a)** en ce qui concerne une acquisition proposée d'actions, la ou les personnes qui proposent d'acquérir ces actions de même que la personne morale dont les actions font l'objet de l'acquisition proposée;

**b)** en ce qui concerne une acquisition proposée de titres de participation dans une association d'intérêts,

**(b)** the parties to a proposed acquisition of an interest in a combination are the person or persons who propose to acquire the interest and the combination whose interest is to be acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 26; 2018, c. 8, s. 117.

**(b)** la ou les personnes qui proposent d'acquérir ces titres de même que l'association d'intérêts dont les titres font l'objet de l'acquisition proposée.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 26; 2018, ch. 8, art. 117.

### Application of Part

**110 (1)** This Part applies only in respect of proposed transactions described in this section.

### Application de la présente partie

**110 (1)** La présente partie s'applique exclusivement à l'égard des transactions proposées visées au présent article.

### Acquisition of assets

**(2)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of any of the assets in Canada of an operating business if the aggregate value of those assets, determined as of the time and in the manner that is prescribed, or the gross revenues from sales in or from Canada generated from those assets, determined for the annual period and in the manner that is prescribed, would exceed the amount determined under subsection (7) or (8), as the case may be.

### Acquisition d'éléments d'actif

**(2)** Sous réserve des articles 111 et 113, la présente partie s'applique à l'égard de l'acquisition proposée d'éléments d'actif, au Canada, d'une entreprise en exploitation si la valeur totale de ces éléments d'actif, déterminée selon les modalités réglementaires de forme et de temps, ou si le revenu brut provenant de ventes, au Canada ou en provenance du Canada, et réalisé à partir de ces éléments d'actif, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

### Acquisition of shares

**(3)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of voting shares of a corporation that carries on an operating business or controls an entity that carries on an operating business

**(a)** if

**(i)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are owned by the corporation or by entities controlled by that corporation, other than assets that are equity interests in those entities, would exceed the amount set out in subsection (7) or the amount determined under subsection (8), as the case may be, or

**(ii)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in subparagraph (i) would exceed the amount determined under subsection (7) or (8), as the case may be; and

**(b)** if, as a result of the proposed acquisition of the voting shares, the person or persons acquiring the shares, together with their affiliates, would own voting shares of the corporation that in the aggregate carry

### Acquisition d'actions

**(3)** Sous réserve des articles 111 et 113, la présente partie s'applique à l'égard d'une acquisition proposée d'actions comportant droit de vote d'une personne morale qui exploite une entreprise en exploitation ou qui contrôle une entité qui exploite une telle entreprise si :

**a)** d'une part :

**(i)** soit la valeur totale des éléments d'actif, au Canada, qui sont la propriété de la personne morale ou d'entités que contrôle cette personne morale, autres que des éléments d'actif qui sont des intérêts relatifs à des capitaux propres de l'une quelconque de ces entités, déterminée selon les modalités réglementaires de forme et de temps, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas,

**(ii)** soit le revenu brut provenant de ventes, au Canada ou en provenance du Canada, et réalisé à partir des éléments d'actif mentionnés au sous-alinéa (i), déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

**(i)** 20%, if any of the corporation's voting shares are publicly traded,

**(ii)** 35%, if none of the corporation's voting shares are publicly traded, or

**(iii)** 50%, if the person or persons already own more than the percentage set out in subparagraph (i) or (ii), as the case may be, before the proposed acquisition.

**b)** d'autre part, en conséquence de l'acquisition proposée de ces actions, la ou les personnes se portant acquéreurs des actions en question devenaient propriétaires d'actions comportant droit de vote de la personne morale qui, si on leur ajoutait celles dont leurs affiliées sont propriétaires, conféreraient au total plus que les pourcentages ci-après des votes conférés par l'ensemble des actions de la personne morale qui sont en circulation et qui comportent droit de vote :

**(i)** 20 %, dans le cas où certaines actions comportant droit de vote de la personne morale sont négociées publiquement,

**(ii)** 35 %, dans le cas où aucune des actions comportant droit de vote de la personne morale n'est négociée publiquement,

**(iii)** 50 %, si la ou les personnes en question sont déjà, avant l'acquisition proposée, propriétaires d'un pourcentage de votes supérieur à celui mentionné aux sous-alinéas (i) ou (ii), selon le cas.

**Amalgamation**

**(4)** Subject to subsection (4.1) and section 113, this Part applies in respect of a proposed amalgamation of two or more entities if one or more of those entities carries on an operating business, or controls an entity that carries on an operating business, and if

**(a)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that would be owned by the continuing entity that would result from the amalgamation or by entities controlled by the continuing entity, other than assets that are equity interests in those entities, would exceed the amount set out in subsection (7) or the amount determined under subsection (8), as the case may be; or

**(b)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in paragraph (a) would exceed the amount determined under subsection (7) or (8), as the case may be.

**Fusion**

**(4)** Sous réserve du paragraphe (4.1) et de l'article 113, la présente partie s'applique à l'égard de la fusion proposée d'entités dans les cas où au moins une de ces entités exploite une entreprise en exploitation ou contrôle une entité qui exploite une entreprise en exploitation, si :

**a)** la valeur totale des éléments d'actif, au Canada, dont seraient propriétaires l'entité devant résulter de la fusion ou des entités qu'elle contrôle, autres que des éléments d'actif qui sont des intérêts relatifs à des capitaux propres de ces entités, déterminée selon les modalités réglementaires de forme et de temps, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

**b)** le revenu brut provenant de ventes, au Canada ou en provenance du Canada, et réalisé à partir des éléments d'actif mentionnés à l'alinéa a), déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

**General limit — parties to amalgamation**

**(4.1)** This Part does not apply in respect of a proposed amalgamation of two or more entities if one or more of those entities carries on an operating business or controls an entity that carries on an operating business, unless each of at least two of the amalgamating entities, together with its affiliates,

**Limite générale applicable aux parties à une fusion**

**(4.1)** La présente partie ne s'applique pas à l'égard de la fusion proposée d'entités dans les cas où au moins une de ces entités exploite une entreprise en exploitation ou contrôle une entité qui exploite une entreprise en exploitation, sauf si chacune d'au moins deux des entités visées par la fusion, avec ses affiliées :

**(a)** has assets in Canada, determined as of the time and in the manner that is prescribed, that exceed in aggregate value the amount determined under subsection (7) or (8), as the case may be; or

**(b)** has gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, that exceed in aggregate value the amount determined under subsection (7) or (8), as the case may be.

**a)** a au Canada des éléments d'actif dont la valeur totale, déterminée selon les modalités réglementaires de forme et de temps, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

**b)** réalise un revenu brut provenant de ventes au Canada, en direction du Canada ou en provenance du Canada, dont la valeur totale, déterminée selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

**Combination**

**(5)** Subject to sections 112 and 113, this Part applies in respect of a proposed combination of two or more persons to carry on business otherwise than through a corporation if one or more of those persons proposes to contribute to the combination assets that form all or part of an operating business carried on by those persons, or entities controlled by those persons, and if

**(a)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are the subject-matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be; or

**(b)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in paragraph (a) would exceed the amount determined under subsection (7) or (8), as the case may be.

**Associations d'intérêts**

**(5)** Sous réserve des articles 112 et 113, la présente partie s'applique à l'égard de l'association d'intérêts proposée entre plusieurs personnes dans le but d'exercer une entreprise autrement que par l'intermédiaire d'une personne morale dans les cas où au moins une de ces personnes propose de fournir à l'association d'intérêts des éléments d'actif constituant le tout ou une partie seulement d'une entreprise en exploitation exploitée par ces personnes ou par des entités que contrôlent ces personnes, et si :

**a)** la valeur totale des éléments d'actif, au Canada, qui font l'objet de l'association d'intérêts en question, déterminée selon les modalités réglementaires de forme et de temps, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

**b)** le revenu brut provenant de ventes, au Canada ou en provenance du Canada, et réalisé à partir des éléments d'actif visés à l'alinéa a), établi selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

**Combination**

**(6)** Subject to sections 111, 112 and 113, this Part applies in respect of a proposed acquisition of an interest in a combination that carries on an operating business otherwise than through a corporation

**(a)** if

**(i)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are the subject-matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be, or

**Association d'intérêts**

**(6)** Sous réserve des articles 111, 112 et 113, la présente partie s'applique à l'égard de l'acquisition proposée de titres de participation dans une association d'intérêts qui exploite une entreprise en exploitation, sauf par l'intermédiaire d'une personne morale, si :

**a)** d'une part :

**(i)** soit la valeur totale des éléments d'actif au Canada, déterminée selon les modalités réglementaires de forme et de temps, qui font l'objet de l'association d'intérêts, dépasserait la somme prévue

**(ii)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in subparagraph (i) would exceed the amount determined under subsection (7) or (8), as the case may be; and

**(b)** if, as a result of the proposed acquisition of the interest, the person or persons acquiring the interest, together with their affiliates, would hold an aggregate interest in the combination that entitles the person or persons to receive more than 35% of the profits of the combination, or more than 35% of its assets on dissolution, or, if the person or persons acquiring the interest are already so entitled, to receive more than 50% of such profits or assets.

**Amount for notification**

**(7)** In the year in which this subsection comes into force, the amount for the purposes of subsections (2) to (6) is $70,000,000.

**Amount for notification — subsequent years**

**(8)** In any year following the year in which subsection (7) comes into force, the amount for the purposes of any of subsections (2) to (6) is

**(a)** any amount that is prescribed for that subsection; or

**(b)** if no amount has been prescribed for that subsection,

**(i)** the amount determined by the Minister in January of that year by rounding off to the nearest million dollars the amount arrived at by using the formula

**A × (B / C)**

where

**A** is the amount for the previous year,

**B** is the average of the Nominal Gross Domestic Products at market prices for the most recent four consecutive quarters, and

au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas,

**(ii)** soit le revenu brut provenant de ventes au Canada ou en provenance du Canada et réalisé à partir des éléments d'actif visés au sous-alinéa (i), établi selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasserait la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

**b)** d'autre part, en conséquence de l'acquisition proposée de ces titres de participation, la ou les personnes se portant acquéreurs des titres de participation détiendraient ensemble des titres de participation dans l'association d'intérêts qui, si on leur ajoutait ceux dont leurs affiliées sont propriétaires, leur conféreraient le droit de recevoir plus de trente-cinq pour cent des bénéfices de l'association d'intérêts ou plus de trente-cinq pour cent de ses éléments d'actif au moment de la dissolution ou, dans le cas où la ou les personnes qui acquièrent les titres de participation ont déjà ce droit, celui de recevoir plus de cinquante pour cent de ces bénéfices ou éléments d'actif.

**Somme — première année**

**(7)** Pendant l'année au cours de laquelle le présent paragraphe entre en vigueur, la somme correspond, pour l'application des paragraphes (2) à (6), à 70 000 000 $.

**Somme — années subséquentes**

**(8)** Pendant chaque année qui suit celle au cours de laquelle le paragraphe (7) entre en vigueur, la somme correspond, pour l'application de l'un ou l'autre des paragraphes (2) à (6) :

**a)** à la valeur réglementaire prévue à l'égard du paragraphe en question;

**b)** dans les cas où aucune valeur réglementaire n'est prévue à son égard :

**(i)** au résultat de la formule ci-après, calculé par le ministre au mois de janvier de l'année en question et arrondi au million le plus proche :

**A × (B / C)**

où :

**A** représente la somme utilisée pour l'année précédente,

**B** la moyenne des produits intérieurs bruts nominaux aux prix du marché pour les quatre derniers trimestres consécutifs,

**C** is the average of the Nominal Gross Domestic Products at market prices for the four consecutive quarters for the comparable period in the year preceding the year used in calculating B, or

**(ii)** until the Minister has published under subsection (9) an amount for that year determined under subparagraph (i), if the Minister does so at all, the amount for that subsection for the previous year.

**Publication in *Canada Gazette***

**(9)** As soon as possible after determining the amount for any particular year, the Minister shall publish the amount in the *Canada Gazette*.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 27; 2009, c. 2, s. 436; 2018, c. 8, s. 118.

**C** la moyenne des produits intérieurs bruts nominaux aux prix du marché pour les mêmes quatre trimestres consécutifs de l'année précédant celle utilisée pour le calcul de l'élément B,

**(ii)** tant que le ministre ne publie pas le résultat pour l'année en question en application du paragraphe (9), à la somme utilisée pour l'année précédente.

**Publication dans la *Gazette du Canada***

**(9)** Dès que possible après avoir fait ce calcul pour une année donnée, le ministre fait publier le résultat en question dans la *Gazette du Canada*.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 27; 2009, ch. 2, art. 436; 2018, ch. 8, art. 118.

# Exemptions

## Acquisition of Voting Shares, Assets or Interests

**Acquisitions**

**111** The following classes of transactions are exempt from the application of this Part:

**(a)** an acquisition of real property or goods in the ordinary course of business if the person or persons who propose to acquire the assets would not, as a result of the acquisition, hold all or substantially all of the assets of a business or of an operating segment of a business;

**(b)** an acquisition of voting shares or of an interest in a combination solely for the purpose of underwriting the shares or the interest, within the meaning of subsection 5(2);

**(c)** an acquisition of voting shares, an interest in a combination or assets that would result from a gift, intestate succession or testamentary disposition;

**(d)** an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

**(e)** an acquisition of a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, pursuant to an agreement in writing that provides for the transfer of that property to the person or persons acquiring the property only if the person or persons

# Exceptions

## Acquisition d'actions comportant droit de vote, d'éléments d'actif ou de titres de participation

**Acquisitions**

**111** Sont soustraites à l'application de la présente partie les catégories de transactions suivantes :

**a)** l'acquisition de biens immeubles ou d'autres biens dans le cours normal des affaires si la ou les personnes qui proposent d'acquérir les éléments d'actif ne détiennent pas, en supposant la réalisation de l'acquisition, tous ou sensiblement tous les éléments d'actif d'une entreprise ou d'une section en exploitation d'une entreprise;

**b)** l'acquisition d'actions comportant droit de vote ou de titres de participation dans une association d'intérêts uniquement dans le but de souscrire l'émission de ces actions ou de ces titres de participation au sens du paragraphe 5(2);

**c)** l'acquisition d'actions comportant droit de vote, de titres de participation dans une association d'intérêts ou d'éléments d'actif en conséquence d'un don, d'une succession *ab intestat* ou d'une disposition testamentaire;

**d)** l'acquisition de comptes à recevoir ou de garanties ou une acquisition résultant d'une forclusion ou d'un défaut ou encore une acquisition en raison du règlement d'une dette, si l'acquisition est réalisée par un créancier lors ou en conséquence d'une opération de crédit conclue de bonne foi dans le cours normal des affaires;

acquiring the property incur expenses to carry out exploration or development activities with respect to the property; and

**(f)** an acquisition of equity interests in an entity under an agreement in writing that provides for the creation of those equity interests only if the person or persons acquiring them incur expenses to carry out exploration or development activities with respect to a *Canadian resource property*, as defined in subsection 66(15) of the *Income Tax Act*, in respect of which the entity has the right to carry out those activities, if the entity does not have any significant assets other than that property.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 29, c. 31, s. 229; 2018, c. 8, s. 119.

**e)** l'acquisition d'un avoir minier canadien au sens du paragraphe 66(15) de la *Loi de l'impôt sur le revenu* aux termes d'une entente écrite qui prévoit que le transfert de cet avoir à la ou aux personnes qui en font l'acquisition n'a lieu que dans les cas où cette ou ces personnes engagent des frais dans l'exercice d'activités d'exploration ou de développement à l'égard de cet avoir;

**f)** l'acquisition d'intérêts relatifs à des capitaux propres d'une entité aux termes d'une entente écrite qui prévoit que les intérêts relatifs à des capitaux propres en question ne sont octroyés que dans les cas où la ou les personnes qui en font l'acquisition engagent des frais dans l'exercice d'activités d'exploration ou de développement se rapportant à un *avoir minier canadien*, au sens du paragraphe 66(15) de la *Loi de l'impôt sur le revenu*, à l'égard duquel l'entité peut exercer des activités d'exploration ou de développement, dans les cas où cette entité n'a pas d'éléments d'actif importants autres que cet avoir.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 29, ch. 31, art. 229; 2018, ch. 8, art. 119.

## Combinations

### Combinations that are joint ventures

**112** A combination is exempt from the application of this Part if

**(a)** all the persons who propose to form the combination are parties to an agreement in writing or intended to be put in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;

**(b)** no change in control over any party to the combination would result from the combination; and

**(c)** the agreement referred to in paragraph (a) restricts the range of activities that may be carried on pursuant to the combination, and contains provisions that would allow for its orderly termination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

## Association d'intérêts

### Associations d'intérêts : entreprises à risques partagés

**112** Une association d'intérêts est exemptée de l'application de la présente partie si :

**a)** toutes les personnes qui proposent l'association d'intérêts sont parties à une entente, écrite ou dont la préparation par écrit est proposée, qui impose à l'une ou à plusieurs d'entre elles l'obligation de fournir des éléments d'actif et qui régit une relation continue entre ces mêmes parties;

**b)** aucun changement dans le contrôle respectif sur les parties à l'association d'intérêts ne résulte de l'association en question;

**c)** l'entente visée à l'alinéa a) restreint l'éventail des activités qui peuvent être exercées en application de l'association d'intérêts et prévoit sa propre expiration selon un mode organisé.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

## General

### General exemptions

**113** The following classes of transactions are exempt from the application of this Part:

## Dispositions générales

### Exceptions d'application générale

**113** La présente partie ne s'applique pas aux catégories suivantes de transactions :

**(a)** a transaction all the parties to which are affiliates of each other;

**(a.1)** a transaction in respect of which the Minister of Finance has certified to the Commissioner under paragraph 94(b) that it is, or would be, in the public interest;

**(b)** a transaction in respect of which the Commissioner has issued a certificate under section 102;

**(c)** a transaction in respect of which the Commissioner or a person authorized by the Commissioner has waived the obligation under this Part to notify the Commissioner and supply information because substantially similar information was previously supplied in relation to a request for a certificate under section 102; and

**(d)** such other classes of transactions as may be prescribed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 550, c. 46, s. 594, c. 47, s. 717; 1999, c. 2, ss. 30, 37; 2001, c. 9, s. 580.

**a)** une transaction impliquant exclusivement des parties qui sont toutes affiliées entre elles;

**a.1)** une transaction à propos de laquelle le ministre des Finances certifie au commissaire en vertu de l'alinéa 94b) qu'elle est ou serait dans l'intérêt public;

**b)** une transaction à l'égard de laquelle le commissaire a remis un certificat en vertu de l'article 102;

**c)** une transaction à l'égard de laquelle le commissaire ou son délégué a renoncé à l'avis et à la fourniture de renseignements prévus par la présente partie parce que des renseignements essentiellement semblables ont été fournis antérieurement relativement à la demande de certificat prévue à l'article 102;

**d)** toute autre catégorie de transactions que prévoient les règlements.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1991, ch. 45, art. 550, ch. 46, art. 594, ch. 47, art. 717; 1999, ch. 2, art. 30 et 37; 2001, ch. 9, art. 580.

## Anti-avoidance

### Application of sections 114 to 123.1

**113.1** If a transaction or proposed transaction is designed to avoid the application of this Part, sections 114 to 123.1 apply to the substance of the transaction or proposed transaction.

2022, c. 10, s. 271.

## Anti-évitement

### Application des articles 114 à 123.1

**113.1** Lorsqu'une transaction ou une transaction proposée est conçue dans le but d'éviter l'application de la présente partie, les articles 114 à 123.1 s'appliquent à l'objet de la transaction ou de la transaction proposée.

2022, ch. 10, art. 271.

## Notice and Information

### Notice of proposed transaction

**114 (1)** Subject to this Part, the parties to a proposed transaction shall, before the transaction is completed, notify the Commissioner that the transaction is proposed and supply the Commissioner with the prescribed information in accordance with this Part, if

**(a)** a person, or two or more persons pursuant to an agreement or arrangement, propose to acquire assets in the circumstances set out in subsection 110(2), to acquire shares in the circumstances set out in subsection 110(3) or to acquire an interest in a combination in the circumstances set out in subsection 110(6);

**(b)** two or more entities propose to amalgamate in the circumstances set out in subsection 110(4); or

**(c)** two or more persons propose to form a combination in the circumstances set out in subsection 110(5).

## Avis et renseignements

### Avis relatifs aux transactions proposées

**114 (1)** Sous réserve de la présente partie, les parties à une transaction proposée sont tenues, avant que celle-ci soit complétée, d'aviser le commissaire du fait que la transaction est proposée et de fournir à celui-ci les renseignements réglementaires conformément à la présente partie, si :

**a)** une ou plusieurs personnes, en conséquence d'un accord ou d'un arrangement, se proposent d'acquérir des éléments d'actif dans les circonstances visées au paragraphe 110(2), d'acquérir des actions dans les circonstances visées au paragraphe 110(3) ou d'acquérir des titres de participation dans une association d'intérêts dans les circonstances visées au paragraphe 110(6);

**b)** au moins deux entités se proposent de fusionner dans les circonstances visées au paragraphe 110(4);

**c)** au moins deux personnes se proposent de former une association d'intérêts dans les circonstances visées au paragraphe 110(5).

### Additional information

**(2)** The Commissioner or a person authorized by the Commissioner may, within 30 days after receiving the prescribed information, send a notice to the person who supplied the information requiring them to supply additional information that is relevant to the Commissioner's assessment of the proposed transaction.

### Renseignements supplémentaires

**(2)** Le commissaire ou son délégué peut, dans les trente jours suivant la réception des renseignements réglementaires, envoyer à la personne qui les a fournis un avis exigeant qu'elle lui fournisse des renseignements supplémentaires nécessaires à l'examen par le commissaire de la transaction proposée.

### Contents of notice

**(2.1)** The notice shall specify the particular additional information or classes of additional information that are to be supplied.

### Contenu de l'avis

**(2.1)** L'avis précise les renseignements supplémentaires ou catégories de renseignements supplémentaires à fournir.

### Unsolicited bid

**(3)** If a proposed transaction is an unsolicited or hostile take-over bid in respect of an entity and the Commissioner receives prescribed information supplied under subsection (1) by a person who has commenced or has announced an intention to commence a take-over bid, the Commissioner shall, if he or she has not already received the prescribed information from the entity, immediately notify the entity that the Commissioner has received the prescribed information from that person and the entity shall supply the Commissioner with the prescribed information within 10 days after being so notified.

### Offre non sollicitée

**(3)** Dans le cas où la transaction proposée est une offre d'achat visant à la mainmise non sollicitée ou hostile concernant une entité, si le commissaire reçoit les renseignements réglementaires prévus au paragraphe (1) d'une personne qui a commencé — ou a annoncé son intention de commencer — une offre d'achat visant à la mainmise et qu'il n'a toujours pas reçu de l'entité les renseignements réglementaires, il en avise immédiatement l'entité et celle-ci est alors tenue de les produire auprès de lui dans les dix jours suivant la réception de cet avis.

### Notice and information

**(4)** Any of the persons required to give notice and supply information under this section may

**(a)** if duly authorized to do so, give notice or supply information on behalf of and in lieu of any of the others who are so required in respect of the same transaction; or

**(b)** give notice or supply information jointly with any of those others.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 31, c. 31, s. 53(F); 2009, c. 2, s. 437; 2018, c. 8, s. 120; 2022, c. 10, s. 272.

### Avis et renseignements

**(4)** Une des personnes tenues de donner l'avis et de fournir les renseignements prévus par le présent article peut :

**a)** à condition d'y être valablement autorisée, donner l'avis ou fournir les renseignements pour le compte et au lieu des autres personnes qui y sont tenues à l'égard de la même transaction;

**b)** donner l'avis ou fournir les renseignements conjointement avec l'une des autres personnes.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 31, ch. 31, art. 53(F); 2009, ch. 2, art. 437; 2018, ch. 8, art. 120; 2022, ch. 10, art. 272.

### Prior notice of acquisitions

**115 (1)** It is not necessary to comply with section 114 in respect of a proposed acquisition of voting shares or of an interest in a combination where a limit set out in subsection 110(3) or (6) would be exceeded as a result of the proposed acquisition within three years immediately following a previous compliance with section 114 required in relation to the same limit.

### Avis d'acquisition antérieure

**115 (1)** Il n'est pas nécessaire de se conformer à l'article 114 à l'égard d'une acquisition proposée d'actions comportant droit de vote ou de titres de participation dans une association d'intérêts dans les cas où une limite prévue aux paragraphes 110(3) ou (6) serait dépassée en conséquence de l'acquisition proposée dans les trois ans qui suivent le moment où l'on s'est conformé à l'article 114 à l'égard de la même limite.

**Notice of future acquisition**

**(2)** Where a person or persons who propose to acquire voting shares or an interest in a combination are required to comply with section 114 because the twenty or thirty-five per cent limit set out in subsection 110(3) or the thirty-five per cent limit set out in subsection 110(6) would be exceeded as a result of the acquisition, the person or persons may, at the time of the compliance, give notice to the Commissioner of a proposed further acquisition of voting shares or of an interest in a combination that would result in a fifty per cent limit set out in that subsection being exceeded, and supply the Commissioner with a detailed description in writing of the steps to be carried out in the further acquisition.

**Avis d'acquisition future**

**(2)** Dans les cas où une ou des personnes qui proposent d'acquérir des actions comportant droit de vote ou des titres de participation dans une association d'intérêts sont tenues de se conformer à l'article 114 en raison du fait que la limite de vingt ou de trente-cinq pour cent fixée au paragraphe 110(3) ou la limite de trente-cinq pour cent fixée au paragraphe 110(6) serait dépassée en conséquence de l'acquisition, cette ou ces personnes peuvent, au moment de répondre aux exigences de cet article, aviser le commissaire d'une acquisition additionnelle proposée d'actions comportant droit de vote ou des titres de participation dans une association d'intérêts dans les cas où la conséquence de cette acquisition additionnelle serait le dépassement d'une limite de cinquante pour cent prévue à ce paragraphe, ainsi que lui fournir, par écrit, une description détaillée des démarches qui seront entreprises dans le cadre de l'acquisition additionnelle.

**Exemption for further acquisitions of voting shares**

**(3)** It is not necessary to comply with section 114 in respect of a proposed further acquisition referred to in subsection (2) if

**(a)** notice of the further acquisition is given to the Commissioner under subsection (2) and it is carried out in accordance with the description supplied under that subsection; and

**(b)** an additional notice of the further acquisition is given to the Commissioner in writing within twenty-one, and at least seven, days before the further acquisition.

**Exception : acquisitions ultérieures d'actions comportant droit de vote**

**(3)** Il n'est pas obligatoire de se conformer à l'article 114 à l'égard d'une acquisition additionnelle proposée visée au paragraphe (2) si :

**a)** un avis de l'acquisition additionnelle proposée est donné au commissaire aux termes du paragraphe (2) et si celle-ci est mise en œuvre conformément à la description fournie en application de ce paragraphe;

**b)** un avis supplémentaire écrit de l'acquisition additionnelle est, dans les vingt et un jours de cette acquisition, mais au moins sept jours avant celle-ci, donné par écrit au commissaire lors de cette acquisition.

**Limitation**

**(4)** Subsection (3) does not apply in respect of a further acquisition unless the further acquisition is completed within one year after notice of it is given under subsection (2).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 32, 37.

**Restrictions**

**(4)** Le paragraphe (3) ne s'applique pas à l'égard d'une acquisition additionnelle sauf si cette dernière est complétée dans un délai de un an à compter de l'avis donné à son égard aux termes du paragraphe (2).

L.R. (1985), ch. 19 (2$^{e}$ suppl.), art. 45; 1999, ch. 2, art. 32 et 37.

**If information cannot be supplied**

**116 (1)** If any of the information required under section 114 is not known or reasonably obtainable, or cannot be supplied because of the privilege that exists in respect of lawyers and notaries and their clients or because of a confidentiality requirement established by law, the entity or individual who is supplying the information may, instead of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and the reason why it has not been supplied.

**Cas où les renseignements ne peuvent être fournis**

**116 (1)** Dans les cas où l'un ou l'autre des renseignements exigés en vertu de l'article 114 n'est pas connu, ne peut pas être obtenu raisonnablement ou ne peut pas être fourni en raison du secret professionnel de l'avocat ou du notaire et de son client ou d'une norme de confidentialité établie par le droit, l'entité ou la personne physique qui fournit les renseignements peut, au lieu de fournir les renseignements en question, faire connaître au commissaire, sous serment ou affirmation solennelle, les questions au sujet desquelles des renseignements n'ont pas

été fournis ainsi que les motifs pour lesquels ils ne l'ont pas été.

**If information not relevant**

**(2)** If any of the information required under section 114 could not, on any reasonable basis, be considered to be relevant to an assessment by the Commissioner as to whether the proposed transaction would or would be likely to prevent or lessen competition substantially, the entity or individual who is supplying the information may, instead of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and why the information was not considered relevant.

**Cas où les renseignements ne sont pas pertinents**

**(2)** Dans les cas où l'un ou l'autre des renseignements exigés en vertu de l'article 114 ne pouvaient, en toute raison, être jugés pertinents aux fins de l'examen que fait le commissaire de la question de savoir si la transaction proposée empêcherait ou diminuerait sensiblement la concurrence ou aurait vraisemblablement cet effet, l'entité ou la personne physique qui fournit les renseignements peut, au lieu de fournir les renseignements en question, aviser le commissaire, sous serment ou affirmation solennelle, des questions au sujet desquelles des renseignements n'ont pas été fournis ainsi que des motifs pour lesquels ils n'ont pas été considérés comme pertinents.

**If information previously supplied**

**(2.1)** If any of the information required under section 114 has previously been supplied to the Commissioner, the entity or individual who is supplying the information may, instead of supplying it, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has previously been supplied and when it was supplied.

**Cas où les renseignements ont été fournis antérieurement**

**(2.1)** L'entité ou la personne physique qui a fourni antérieurement au commissaire des renseignements exigés en vertu de l'article 114 peut, au lieu de les fournir, informer celui-ci de ce fait, sous serment ou affirmation solennelle, en lui indiquant l'objet de ces renseignements et la date à laquelle ils ont été fournis.

**Commissioner may require information**

**(3)** If an entity or individual chooses not to supply the Commissioner with information required under section 114 and so informs the Commissioner in accordance with subsection (2) or (2.1) and the Commissioner or a person authorized by the Commissioner notifies that entity or individual, within seven days after the Commissioner is so informed, that the information is required, the entity or individual shall supply the Commissioner with the information.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 33, 37; 2009, c. 2, s. 438; 2018, c. 8, s. 121.

**Demande de renseignements par le commissaire**

**(3)** L'entité ou la personne physique qui choisit de ne pas fournir au commissaire les renseignements exigés en vertu de l'article 114 et qui l'informe de ce fait en conformité avec les paragraphes (2) ou (2.1) est néanmoins tenue de le faire si le commissaire ou son délégué exige les renseignements dans les sept jours suivant la date à laquelle il est informé de ce choix.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 33 et 37; 2009, ch. 2, art. 438; 2018, ch. 8, art. 121.

**Saving**

**117 (1)** Nothing in section 114 requires

**(a)** any individual who is a director of a corporation to supply information that is known to that individual by virtue only of their position as a director of an affiliate of the corporation that is neither a wholly-owned affiliate nor a wholly-owning affiliate of the corporation; or

**(b)** any individual who, in respect of an entity other than a corporation, serves in a capacity similar to that of a director to supply information that is known to that individual by virtue only of their serving in that

**Exclusion**

**117 (1)** L'article 114 n'a pas pour effet d'imposer :

**a)** à la personne physique qui est administrateur d'une personne morale l'obligation de fournir des renseignements qui sont parvenus à sa connaissance uniquement parce qu'elle occupe le poste d'administrateur d'une affiliée de la personne morale en question, à condition que cette affiliée ne soit pas une affiliée en propriété exclusive ou une affiliée-propriétaire exclusive de cette personne morale;

**b)** à la personne physique qui exerce des fonctions semblables à celles d'un administrateur à l'égard d'une

capacity with respect to an affiliate of the entity that is neither a wholly-owned affiliate nor a wholly-owning affiliate of the entity.

**Wholly-owned affiliate**

**(2)** For the purposes of subsection (1), one corporation is the wholly-owned affiliate of another corporation if all its outstanding voting shares, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation or each other.

**Wholly-owning affiliate**

**(3)** For the purposes of subsection (1), one corporation is the wholly-owning affiliate of another corporation if it beneficially owns all the outstanding voting shares of that other corporation, other than shares necessary to qualify persons as directors, directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by the corporation or each other.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2018, c. 8, s. 122.

**Information to be certified**

**118** The information supplied to the Commissioner under section 114 shall be certified on oath or solemn affirmation as having been examined by one of the following individuals and as being, to the best of that individual's knowledge and belief, correct and complete in all material respects:

**(a)** in the case of a corporation supplying the information, by an officer of the corporation or other person duly authorized by the board of directors or other governing body of the corporation;

**(b)** in the case of an entity other than a corporation supplying the information, by an individual who serves in a capacity similar to that of an officer of a

entité autre qu'une personne morale l'obligation de fournir des renseignements qui sont parvenus à sa connaissance uniquement parce qu'elle exerce de telles fonctions à l'égard d'une affiliée de l'entité en question, à condition que cette affiliée ne soit pas une affiliée en propriété exclusive ou une affiliée-propriétaire exclusive de cette entité.

**Affiliée en propriété exclusive**

**(2)** Pour l'application du paragraphe (1), une personne morale est une affiliée en propriété exclusive d'une autre personne morale si cette autre personne morale est, directement, la véritable propriétaire de l'ensemble des actions comportant droit de vote en circulation de cette personne morale, à l'exclusion des actions qu'il faut détenir pour devenir administrateur, ou si elle l'est, indirectement, par l'intermédiaire d'une ou de plusieurs affiliées dans les cas où, à l'exclusion des actions qu'il faut détenir pour devenir administrateur, l'ensemble des actions comportant droit de vote en circulation de ces affiliées sont détenues en véritable propriété par cette autre personne morale ou par ces affiliées entre elles.

**Affiliée-propriétaire exclusive**

**(3)** Pour l'application du paragraphe (1), une personne morale est l'affiliée-propriétaire exclusive d'une autre personne morale si elle est, directement, la véritable propriétaire de l'ensemble des actions comportant droit de vote en circulation de cette autre personne morale, à l'exclusion des actions qu'il faut détenir pour devenir administrateur, ou, si elle l'est, indirectement, par l'intermédiaire d'une ou de plusieurs affiliées dans les cas où l'ensemble des actions comportant droit de vote en circulation de ces affiliées, à l'exclusion des actions qu'il faut détenir pour devenir administrateur, sont détenues en véritable propriété par la personne morale ou par ces affiliées entre elles.

L.R. (1985), ch. 19 (2$^{e}$ suppl.), art. 45; 2018, ch. 8, art. 122.

**Attestation des renseignements**

**118** Les renseignements fournis au commissaire en application de l'article 114 sont attestés sous serment ou affirmation solennelle comme ayant été examinés par l'une ou l'autre des personnes physiques ci-après et comme étant, à leur connaissance, exacts et complets sur toute question pertinente :

**a)** dans le cas où une personne morale les fournit, par un de ses dirigeants ou par toute autre personne physique dûment autorisée par le conseil d'administration ou tout autre organisme dirigeant de la personne morale;

**b)** dans le cas où une entité non constituée en personne morale les fournit, par une personne physique

corporation or other individual duly authorized by the governing body of that entity;

**(c)** in the case of an individual supplying the information, by that individual.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2018, c. 8, s. 123.

qui y exerce des fonctions semblables à celles d'un dirigeant d'une personne morale ou par toute autre personne physique dûment autorisée par l'organisme dirigeant de l'entité;

**c)** dans le cas où une personne physique les fournit, par la personne elle-même.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37; 2018, ch. 8, art. 123.

#### Where transaction not completed

**119** Where notice is given and information supplied in respect of a proposed transaction under section 114 but the transaction is not completed within one year thereafter or such longer period as the Commissioner may specify in any particular case, section 114 applies as if no notice were given or information supplied.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

#### Cas où la transaction n'est pas réalisée

**119** Lorsqu'un avis est donné et que des renseignements sont fournis à l'égard d'une transaction proposée en vertu de l'article 114 mais que la transaction n'est pas complétée dans l'année qui suit ou dans tout délai, supérieur à un an, que peut préciser le commissaire dans chaque cas, l'article 114 s'applique comme si aucun avis n'avait été donné et aucun renseignement fourni.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

**120 to 122** [Repealed, 1999, c. 2, s. 34]

**120 à 122** [Abrogés, 1999, ch. 2, art. 34]

## Completion of Proposed Transactions

## Parachèvement des transactions proposées

#### Time when transaction may not proceed

**123 (1)** A proposed transaction referred to in section 114 shall not be completed before the end of

**(a)** 30 days after the day on which the information required under subsection 114(1) has been received by the Commissioner, if the Commissioner has not, within that time, required additional information to be supplied under subsection 114(2); or

**(b)** 30 days after the day on which the information required under subsection 114(2) has been received by the Commissioner, if the Commissioner has within the 30-day period referred to in paragraph (a) required additional information to be supplied under subsection 114(2).

#### Suspension de la transaction

**123 (1)** La transaction proposée visée à l'article 114 ne peut être complétée avant :

**a)** l'expiration d'un délai de trente jours à compter de la réception par le commissaire des renseignements exigés en vertu du paragraphe 114(1), si le commissaire n'a pas, avant l'expiration de ce délai, exigé des renseignements supplémentaires en vertu du paragraphe 114(2);

**b)** si le commissaire a, avant l'expiration du délai de trente jours prévu à l'alinéa a), exigé des renseignements supplémentaires en vertu du paragraphe 114(2), l'expiration d'un délai de trente jours à compter de leur réception.

#### Waiving of waiting period

**(2)** A proposed transaction referred to in section 114 may be completed before the end of a period referred to in subsection (1) if, before the end of that period, the Commissioner or a person authorized by the Commissioner notifies the parties to the transaction that the Commissioner does not, at that time, intend to make an application under section 92 in respect of that proposed transaction.

#### Inapplication des délais

**(2)** La transaction proposée visée à l'article 114 peut être complétée avant l'expiration d'un délai prévu au paragraphe (1) dans les cas où le commissaire ou son délégué, avant l'expiration du délai, avise les parties à la transaction qu'il n'envisage pas, pour le moment, de présenter une demande en vertu de l'article 92 à l'égard de celle-ci.

#### Acquisition of equity interests

**(3)** In the case of an acquisition of equity interests to which subsection 114(3) applies, the periods referred to

#### Acquisition d'intérêts relatifs à des capitaux propres

**(3)** Dans le cas d'une acquisition d'intérêts relatifs à des capitaux propres d'une entité à laquelle le paragraphe

in subsection (1) shall be determined without reference to the day on which the information required under section 114 is received by the Commissioner from the entity whose equity interests are being acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 35; 2009, c. 2, s. 439; 2018, c. 8, s. 124; 2022, c. 10, s. 273(E).

114(3) s'applique, les délais prévus au paragraphe (1) sont fixés compte non tenu de la date à laquelle le commissaire reçoit les renseignements exigés en vertu de l'article 114 de l'entité dont les intérêts relatifs à ses capitaux propres font l'objet de l'acquisition.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 35; 2009, ch. 2, art. 439; 2018, ch. 8, art. 124; 2022, ch. 10, art. 273(A).

### Failure to comply

**123.1 (1)** If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has completed or is likely to complete a proposed transaction before the end of the applicable period referred to in section 123, the court may

**(a)** order the person to submit information required under subsection 114(2);

**(b)** issue an interim order prohibiting any person from doing anything that it appears to the court may constitute or be directed toward the completion or implementation of the proposed transaction;

**(c)** in the case of a completed transaction, order any party to the transaction or any other person, in any manner that the court directs, to dissolve the merger or to dispose of assets or shares designated by the court;

**(d)** in the case of a completed transaction, order the person to pay, in any manner that the court specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they have failed to comply with section 123, determined by the court after taking into account any evidence of the following:

**(i)** the person's financial position,

**(ii)** the person's history of compliance with this Act,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(e)** grant any other relief that the court considers appropriate.

### Purpose of order

**(2)** The terms of an order under paragraph (1)(d) shall be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Part and not with a view to punishment.

### Défaut de respecter le délai

**123.1 (1)** S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a complété ou complétera vraisemblablement une transaction proposée avant l'expiration du délai applicable prévu à l'article 123, le tribunal peut :

**a)** ordonner à la personne de fournir des renseignements exigés en vertu du paragraphe 114(2);

**b)** rendre une ordonnance provisoire interdisant à toute personne d'accomplir un acte qui, à son avis, pourrait constituer la réalisation ou la mise en œuvre de la transaction proposée ou y tendre;

**c)** dans le cas d'une transaction complétée, rendre une ordonnance enjoignant à toute personne, que celle-ci soit partie à la transaction ou non, de dissoudre le fusionnement ou de se départir des éléments d'actif et des actions qu'il indique conformément à ses directives;

**d)** dans le cas d'une transaction complétée, ordonner à la personne de payer, selon les modalités qu'il prévoit, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours duquel elle a omis de se conformer à l'article 123, qu'il fixe après avoir tenu compte des éléments suivants :

**(i)** la situation financière de la personne,

**(ii)** le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

**(iii)** la durée de l'omission de s'y conformer,

**(iv)** tout autre élément pertinent;

**e)** accorder toute autre réparation qu'il considère justifiée.

### But de l'ordonnance

**(2)** Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)d) sont fixées de façon à encourager le contrevenant à adopter un comportement compatible avec les objectifs de la présente partie et non pas à le punir.

**Unpaid monetary penalty**

**(3)** The amount of an administrative monetary penalty imposed under paragraph (1)(d) is a debt due to Her Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**Definition of *court***

**(4)** In this section, ***court*** means the Tribunal, the Federal Court or the superior court of a province.

2009, c. 2, s. 439.

## Regulations

**Regulations**

**124 (1)** The Governor in Council may make regulations prescribing anything that is by this Part to be prescribed.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**PART X**

# General

## Commissioner's Opinions

**Application for written opinion**

**124.1 (1)** Any person may apply to the Commissioner, with supporting information, for an opinion on the applicability of any provision of this Act or the regulations to conduct or a practice that the applicant proposes to engage in, and the Commissioner may provide a written opinion for the applicant's guidance.

**Sanctions administratives pécuniaires impayées**

**(3)** Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)d) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

**Définition de *tribunal***

**(4)** Au présent article, ***tribunal*** s'entend du Tribunal, de la Cour fédérale ou de la cour supérieure d'une province.

2009, ch. 2, art. 439.

## Règlements

**Règlements**

**124 (1)** Le gouverneur en conseil peut, par règlement, prendre toute mesure d'ordre réglementaire prévue par la présente partie.

**Publication des projets de règlement**

**(2)** Sous réserve du paragraphe (3), les projets de règlements d'application du paragraphe (1) sont publiés dans la *Gazette du Canada* au moins soixante jours avant la date envisagée pour leur entrée en vigueur, les intéressés se voyant accorder la possibilité de présenter des observations à cet égard.

**Exception**

**(3)** Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (2), même s'ils ont été modifiés à la suite d'observations présentées conformément à ce paragraphe.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

**PARTIE X**

# Dispositions générales

## Avis du commissaire

**Demandes d'avis**

**124.1 (1)** Toute personne peut, en fournissant les renseignements nécessaires, demander au commissaire de lui donner son avis sur l'applicabilité d'une disposition de la présente loi ou des règlements à un comportement ou une pratique qu'elle envisage de mettre en œuvre; le commissaire peut alors lui remettre un avis écrit à titre d'information.

**Opinion binding**

**(2)** If all the material facts have been submitted by or on behalf of an applicant for an opinion and they are accurate, a written opinion provided under this section is binding on the Commissioner. It remains binding for so long as the material facts on which the opinion was based remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

2002, c. 16, s. 15.

## References to Tribunal

**Reference if parties agree**

**124.2 (1)** The Commissioner and a person who is the subject of an inquiry under section 10 or 10.1 may by agreement refer to the Tribunal for determination any question of law, mixed law and fact, jurisdiction, practice or procedure, in relation to the application or interpretation of Part VII.1 or VIII, whether or not an application has been made under Part VII.1 or VIII.

**Reference by Commissioner**

**(2)** The Commissioner may, at any time, refer to the Tribunal for determination a question of law, jurisdiction, practice or procedure, in relation to the application or interpretation of Parts VII.1 to IX.

**Reference by agreement of parties to a private action**

**(3)** A person granted leave under section 103.1 and the person against whom an order is sought under section 75, 76, 77 or 79 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

**Reference procedure**

**(4)** The Tribunal shall decide the questions referred to it informally and expeditiously, in accordance with any rules on references made under section 16 of the *Competition Tribunal Act*.

2002, c. 16, s. 15; 2015, c. 3, s. 41; 2022, c. 10, s. 274; 2023, c. 31, s. 11.

**Valeur de l'avis**

**(2)** L'avis lie le commissaire dans la mesure où tous les faits importants à l'appui d'une demande d'avis lui ont été communiqués et sont exacts, et tant que ni les faits eux-mêmes, ni la mise en œuvre du comportement ou de la pratique envisagés ne font l'objet d'un changement important.

2002, ch. 16, art. 15.

## Renvois

**Renvois consensuels**

**124.2 (1)** Le commissaire et la personne visée par une enquête sous le régime des articles 10 ou 10.1 peuvent, d'un commun accord, soumettre au Tribunal toute question de droit, question mixte de droit et de fait ou question de compétence, de pratique ou de procédure liée à l'application ou l'interprétation des parties VII.1 ou VIII, qu'une demande ait été présentée ou non en vertu de l'une de ces parties.

**Renvois par le commissaire**

**(2)** Le commissaire peut, en tout temps, soumettre au Tribunal toute question de droit, de compétence, de pratique ou de procédure liée à l'application ou l'interprétation des parties VII.1 à IX.

**Renvois par des parties privées**

**(3)** La personne autorisée en vertu de l'article 103.1 et la personne visée par la demande qu'elle présente en vertu des articles 75, 76, 77 ou 79 peuvent, d'un commun accord, mais avec la permission du Tribunal, soumettre au Tribunal toute question de droit ou toute question mixte de droit et de fait liée à l'application ou l'interprétation de la partie VIII. Elles font parvenir un avis de leur demande de renvoi au commissaire, celui-ci étant alors autorisé à intervenir dans les procédures.

**Procédure**

**(4)** Le Tribunal tranche les questions qui lui sont soumises en vertu du présent article sans formalisme, en procédure expéditive, conformément aux règles sur les renvois prises en vertu de l'article 16 de la *Loi sur le Tribunal de la concurrence*.

2002, ch. 16, art. 15; 2015, ch. 3, art. 41; 2022, ch. 10, art. 274; 2023, ch. 31, art. 11.

# Representations to Boards, Commissions or Other Tribunals

**Representations to federal boards, etc.**

**125 (1)** The Commissioner, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

**Definition of *federal board, commission or other tribunal***

**(2)** For the purposes of this section, ***federal board, commission or other tribunal*** means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Representations to provincial boards, etc.**

**126 (1)** The Commissioner, at the request of any provincial board, commission or other tribunal, or on his own initiative with the consent of the board, commission or other tribunal, may make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

**Definition of *provincial board, commission or other tribunal***

**(2)** For the purposes of this section, ***provincial board, commission or other tribunal*** means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of the legislature of a province with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

# Observations aux offices fédéraux, commissions et autres tribunaux

**Observations aux offices fédéraux etc.**

**125 (1)** Le commissaire peut, à la requête de tout office, de toute commission ou de tout autre tribunal fédéral ou de sa propre initiative, et doit, sur l'ordre du ministre, présenter des observations et soumettre des éléments de preuve devant cet office, cette commission ou ce tribunal, en ce qui concerne la concurrence chaque fois que ces observations ou ces éléments de preuve ont trait à une question dont est saisi cet office, cette commission ou cet autre tribunal et aux facteurs que celui-ci ou celle-ci a le droit d'examiner en vue de régler cette question.

**Définition de *office, commission ou autre tribunal fédéral***

**(2)** Pour l'application du présent article, ***office, commission ou autre tribunal fédéral*** s'entend de tout office, toute commission, tout tribunal ou toute personne qui exerce des activités de réglementation et qui est expressément chargé, par un texte législatif du Parlement ou en application d'un tel texte, de prendre des décisions ou de faire des recommandations afférentes, directement ou indirectement, à la production, la fourniture, l'acquisition ou la distribution d'un produit.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

**Observations aux offices provinciaux**

**126 (1)** Le commissaire, à la demande de tout office, de toute commission ou de tout autre tribunal provincial ou de sa propre initiative avec le consentement de l'office, de la commission ou du tribunal en question, peut présenter des observations et soumettre des éléments de preuve devant cet office, cette commission ou ce tribunal en ce qui concerne la concurrence dans tous les cas où ces représentations ou ces éléments de preuve, selon le cas, sont pertinents aux questions soumises à l'office, à la commission ou au tribunal en question ainsi qu'aux facteurs que cet office, cette commission ou ce tribunal peut prendre en considération dans l'étude de ces questions.

**Définition de *office, commission ou autre tribunal provincial***

**(2)** Pour l'application du présent article, ***office, commission ou autre tribunal provincial*** s'entend de tout office, de toute commission, de tout tribunal ou de toute personne qui exerce des activités de réglementation et qui est expressément chargé par un texte législatif de la législature d'une province, ou en application d'un tel texte, de prendre des décisions ou de faire des recommandations afférentes, directement ou indirectement, à

la production, à la fourniture, à l'acquisition ou à la distribution d'un produit.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 37.

## Report to Parliament

### Annual report

**127** The Commissioner shall report annually to the Minister on the operation of the Acts referred to in subsection 7(1), and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days after the Minister receives the report on which that House is sitting.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 36.

## Rapport au Parlement

### Rapport annuel

**127** Le commissaire présente au ministre un rapport annuel concernant les procédures découlant de l'application des lois visées au paragraphe 7(1). Le ministre le fait déposer devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception.

L.R. (1985), ch. 19 (2e suppl.), art. 45; 1999, ch. 2, art. 36.

## Regulations

### Regulations

**128 (1)** The Governor in Council may make such regulations as are necessary for carrying out this Act and for the efficient administration thereof.

### Publication of proposed regulations

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

### Exception

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

## Règlements

### Règlements

**128 (1)** Le gouverneur en conseil peut, par règlement, prendre toute mesure nécessaire à l'application de la présente loi et à la bonne exécution de celle-ci.

### Publication des projets de règlement

**(2)** Sous réserve du paragraphe (3), les projets de règlements d'application du paragraphe (1) sont publiés dans la *Gazette du Canada* au moins soixante jours avant la date envisagée pour leur entrée en vigueur, les intéressés se voyant accorder la possibilité de présenter des observations à cet égard.

### Exception

**(3)** Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (2), même s'ils ont été modifiés à la suite d'observations présentées conformément à ce paragraphe.

L.R. (1985), ch. 19 (2e suppl.), art. 45.

# RELATED PROVISIONS

— R.S., 1985, c. 19 (2nd Supp.), s. 61

**Orders of the Commission**

**61** For the purposes of the *Competition Act*, as amended by this Act, an order of the Restrictive Trade Practices Commission under Part V, as it read immediately prior to the coming into force of section 29 of this Act, or pursuant to subsection 60(1) shall be deemed to be an order of the Competition Tribunal under the *Competition Act*.

— 1999, c. 2, ss. 38 to 40

**Person holding office of Director**

**38 (1)** The person holding the office of Director of Investigation and Research immediately before the coming into force of section 4 shall continue in office as the Commissioner of Competition referred to in section 7 of the *Competition Act*, as amended by this Act.

**Persons holding office as Deputy Director**

**(2)** Every person holding the office of Deputy Director of Investigation and Research immediately before the coming into force of section 5 shall continue in office as a Deputy Commissioner of Competition referred to in section 8 of the *Competition Act*, as enacted by this Act.

— 1999, c. 2, ss. 38 to 40

**Outstanding prohibition orders**

**39** An order made under section 34 of the *Competition Act* in respect of an offence under any of sections 52, 53 or 57 to 59 of that Act, as those sections read immediately before the coming into force of sections 12, 14 and 17 of this Act, is deemed to have been made under paragraph 74.1(1)(a) of the *Competition Act*, as enacted by section 22 of this Act.

— 1999, c. 2, ss. 38 to 40

**Variation or rescission of orders**

**40** Subsection 34(2.3) of the *Competition Act*, as enacted by subsection 11(2) of this Act, applies in respect of orders made under section 34 of the *Competition Act* whether before or after the coming into force of section 11 of this Act.

# DISPOSITIONS CONNEXES

— L.R. (1985), ch. 19 (2e suppl.), art. 61

**Ordonnances de la Commission**

**61** Pour l'application de la *Loi sur la concurrence*, telle que modifiée par la présente loi, une ordonnance de la Commission sur les pratiques restrictives du commerce rendue aux termes de la partie V, comme cette partie se lisait immédiatement avant l'entrée en vigueur de l'article 29 de la présente loi, ou rendue en conformité avec le paragraphe 60(1), est réputée être une ordonnance du Tribunal sur la concurrence en vertu de la *Loi sur la concurrence*.

— 1999, ch. 2, art. 38 à 40

**Titulaire de la charge de directeur**

**38 (1)** Le titulaire de la charge de directeur des enquêtes et recherches avant l'entrée en vigueur de l'article 4 demeure en fonction comme commissaire de la concurrence visé à l'article 7 de la *Loi sur la concurrence*, dans sa version modifiée par la présente loi.

**Titulaires de la charge de sous-directeur**

**(2)** Les titulaires de la charge de sous-directeur des enquêtes et recherches avant l'entrée en vigueur de l'article 5 demeurent en fonction comme sous-commissaires de la concurrence visés à l'article 8 de la *Loi sur la concurrence*, dans sa version modifiée par la présente loi.

— 1999, ch. 2, art. 38 à 40

**Ordonnances en instance**

**39** Les ordonnances rendues en vertu de l'article 34 de la *Loi sur la concurrence* en ce qui concerne les infractions prévues aux articles 52, 53 ou 57 à 59 de cette loi, dans leur version antérieure à l'entrée en vigueur des articles 12, 14 et 17 de la présente loi, sont réputées rendues en application de l'alinéa 74.1(1)a) de la *Loi sur la concurrence*, édicté par l'article 22 de la présente loi.

— 1999, ch. 2, art. 38 à 40

**Modification ou annulation d'ordonnances**

**40** Le paragraphe 34(2.3) de la *Loi sur la concurrence*, édicté par le paragraphe 11(2) de la présente loi, s'applique aux ordonnances rendues en application de l'article 34 de la *Loi sur la concurrence* avant ou après l'entrée en vigueur de l'article 11 de la présente loi.

— 1999, c. 2, s. 54

**References to "Director"**

**54** Every reference to the Director of Investigation and Research or a Deputy Director of Investigation and Research in any other Act of Parliament or in a regulation, order or other instrument made under any Act of Parliament is deemed to be a reference to the Commissioner of Competition or a Deputy Commissioner of Competition, as the case may be.

— 1999, ch. 2, art. 54

**Mentions de « directeur » et de « sous-directeur »**

**54** Les mentions du directeur des enquêtes et recherches et d'un sous-directeur des enquêtes et recherches dans une autre loi fédérale ou dans ses textes d'application valent respectivement mention du commissaire de la concurrence et d'un sous-commissaire de la concurrence.

— 2009, c. 2, s. 440

**Agreements or arrangements entered into before royal assent**

**440** Any party to an agreement or arrangement entered into before the day on which this Act receives royal assent may, within one year after that day, apply under section 124.1 of the *Competition Act* without payment of any fee for an opinion on the applicability to the agreement or arrangement of section 45 or 90.1 of the *Competition Act*, as enacted by sections 410 and 429, respectively, as if the agreement or arrangement had not yet been entered into and as if that section 45 or 90.1 were in force.

— 2009, ch. 2, art. 440

**Accord ou arrangement conclu avant la sanction**

**440** Toute partie à un accord ou à un arrangement conclu avant la date de sanction de la présente loi peut, dans l'année qui suit cette date, demander au commissaire, en vertu de l'article 124.1 de la *Loi sur la concurrence* et sans être tenue de verser des droits, de lui donner son avis sur l'applicabilité des articles 45 ou 90.1 de cette loi, édictés respectivement par les articles 410 et 429, à l'accord ou à l'arrangement, comme si celui-ci n'avait pas encore été conclu et que ces articles 45 ou 90.1 étaient en vigueur.

— 2023, c. 31, s. 12

**Sections 92 and 96 of the *Competition Act***

**12** Sections 92 and 96 of the *Competition Act*, as they read before the day on which sections 9 and 10 come into force, continue to apply after that day to a proposed transaction notified under section 114 of that Act before that day or to a merger that has been substantially completed before that day.

— 2023, ch. 31, art. 12

**Articles 92 et 96 de la *Loi sur la concurrence***

**12** Les articles 92 et 96 de la *Loi sur la concurrence*, dans leur version antérieure à la date d'entrée en vigueur des articles 9 et 10, continuent de s'appliquer après cette date à l'égard des transactions proposées pour lesquelles l'avis visé à l'article 114 de cette loi a été donné avant cette date, ainsi qu'à l'égard des fusionnements essentiellement complétés avant cette date.

# AMENDMENTS NOT IN FORCE

— 2023, c. 31, s. 8

**8 (1) Section 90.1 of the Act is amended by adding the following after subsection (1):**

**Exception — non competitors**

**(1.1)** If the Tribunal finds that a significant purpose of the agreement or arrangement, or any part of it, is to prevent or lessen competition in any market, it may make an order under subsection (1) even if none of the persons referred to in that subsection are competitors.

**(1.1) Subsections 90.1(4) to (6) of the Act are repealed.**

**(2) Subsection 90.1(11) of the Act is replaced by the following:**

**Definition of *competitor***

**(11)** In subsections (1) and (1.1), ***competitor*** includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement.

— 2023, c. 31, s. 12.1

**Bill C-59**

**12.1 If Bill C-59, introduced in the 1st session of the 44th Parliament and entitled the *Fall Economic Statement Implementation Act, 2023*, receives royal assent, then on the first day on which both subsection 247(2) of that Act and section 7.2 of this Act are in force, subsection 79(4.1) of the *Competition Act* is replaced by the following:**

**Additional order — person granted leave**

**(4.1)** If, as the result of an application by a person granted leave under section 103.1, the Tribunal finds that a person has engaged in or is engaging in a practice of anti-competitive acts that amounts to conduct that has had or is having the effect of preventing or lessening competition substantially in a market in which the person has a plausible competitive interest and it makes an order under subsection (1) or (2) against the person, it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived

# MODIFICATIONS NON EN VIGUEUR

— 2023, ch. 31, art. 8

**8 (1) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :**

**Exception pour les personnes non concurrentes**

**(1.1)** S'il conclut que l'un des objets importants de l'accord ou de l'arrangement — ou d'une partie de celui-ci — est d'empêcher ou de diminuer la concurrence dans un marché, le Tribunal peut rendre l'ordonnance visée au paragraphe (1) même si aucune des personnes visées à ce paragraphe n'est un concurrent.

**(1.1) Les paragraphes 90.1(4) à (6) de la même loi sont abrogés.**

**(2) Le paragraphe 90.1(11) de la même loi est remplacé par ce qui suit :**

**Définition de *concurrent***

**(11)** Aux paragraphes (1) et (1.1), ***concurrent*** s'entend notamment de toute personne qui, en toute raison, ferait vraisemblablement concurrence à une autre personne à l'égard d'un produit en l'absence de l'accord ou de l'arrangement.

— 2023, ch. 31, art. 12.1

**Projet de loi C-59**

**12.1 En cas de sanction du projet de loi C-59, déposé au cours de la 1re session de la 44e législature et intitulé *Loi d'exécution de l'énoncé économique de l'automne 2023*, dès le premier jour où le paragraphe 247(2) de cette loi et l'article 7.2 de la présente loi sont tous deux en vigueur, le paragraphe 79(4.1) de la *Loi sur la concurrence* est remplacé par ce qui suit :**

**Ordonnance additionnelle — personne autorisée**

**(4.1)** Si, à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, il conclut qu'une personne adopte ou a adopté une pratique d'agissements anti-concurrentiels constituant un comportement qui a eu ou a pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché dans lequel la personne a un intérêt concurrentiel valable et rend une ordonnance en vertu des paragraphes (1) ou (2) contre la personne, le Tribunal peut également lui ordonner de payer une somme — ne pouvant excéder la valeur du

from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

# 33

Version of document from 2002-12-31 to 2003-03-31:

# Competition Act

**R.S.C. (Revised Statutes of Canada), 1985, c. C-34**

An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition

# Short Title

**Short title**

**1** This Act may be cited as the *Competition Act*.

R.S., 1985, c. C-34, s. 1; R.S., 1985, c. 19 (2nd Supp.), s. 19.

**PART I**

# Purpose and Interpretation

## Purpose

**Purpose of Act**

**1.1** The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

R.S., 1985, c. 19 (2nd Supp.), s. 19.

## Interpretation

**Definitions**

**2 (1)** In this Act,

***article*** means real and personal property of every description including

**(a)** money,

**(b)** deeds and instruments relating to or evidencing the title or right to property or an interest, immediate, contingent or otherwise, in a corporation or in any assets of a corporation,

**(c)** deeds and instruments giving a right to recover or receive property,

**(d)** tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation, and

**(e)** energy, however generated; (*article*)

***business*** includes the business of

**(a)** manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and

**(b)** acquiring, supplying and otherwise dealing in services.

It also includes the raising of funds for charitable or other non-profit purposes. (*entreprise*)

***Commission*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***Commissioner*** means the Commissioner of Competition appointed under subsection 7(1); (*commissaire*)

***Director*** [Repealed, 1999, c. 2, s. 1]

***merger*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***Minister*** means the Minister of Industry; (*ministre*)

***monopoly*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***product*** includes an article and a service; (*produit*)

***record*** includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy or portion thereof; (*document*)

***service*** means a service of any description whether industrial, trade, professional or otherwise; (*service*)

***supply*** means,

**(a)** in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and

**(b)** in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service; (*fournir* ou *approvisionner*)

***trade, industry or profession*** includes any class, division or branch of a trade, industry or profession; (*commerce, industrie ou profession*)

***Tribunal*** means the Competition Tribunal established by subsection 3(1) of the *Competition Tribunal Act*. (*Tribunal*)

**Affiliated corporation, partnership or sole proprietorship**

**(2)** For the purposes of this Act,

**(a)** one corporation is affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person;

**(b)** if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other; and

**(c)** a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person.

**Subsidiary corporation**

**(3)** For the purposes of this Act, a corporation is a subsidiary of another corporation if it is controlled by that other corporation.

**Control**

**(4)** For the purposes of this Act,

**(a)** a corporation is controlled by a person other than Her Majesty if

**(i)** securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person, and

**(ii)** the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

**(b)** a corporation is controlled by Her Majesty in right of Canada or a province if

**(i)** the corporation is controlled by Her Majesty in the manner described in paragraph (a), or

**(ii)** in the case of a corporation without share capital, a majority of the directors of the corporation, other than *ex officio* directors, are appointed by

**(A)** the Governor in Council or the Lieutenant Governor in Council of the province, as the case may be, or

**(B)** a Minister of the government of Canada or the province, as the case may be; and

**(c)** a partnership is controlled by a person if the person holds an interest in the partnership that entitles the person to receive more than fifty per cent of the profits of the partnership or more than fifty per cent of its assets on dissolution.

R.S., 1985, c. C-34, s. 2; R.S., 1985, c. 19 (2nd Supp.), s. 20; 1992, c. 1, s. 145(F); 1995, c. 1, s. 62; 1999, c. 2, s. 1, c. 31, s. 44(F).

**Binding on agents of Her Majesty in certain cases**

**2.1** This Act is binding on and applies to an agent of Her Majesty in right of Canada or a province that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons to the extent that it would apply if the agent were not an agent of Her Majesty.

R.S., 1985, c. 19 (2nd Supp.), s. 21.

**Defects of form**

**3** No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

R.S., c. C-23, s. 3.

**Collective bargaining activities**

**4 (1)** Nothing in this Act applies in respect of

**(a)** combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;

**(b)** contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or

**(c)** contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

**Limitation**

**(2)** Nothing in this section exempts from the application of any provision of this Act a contract, agreement or arrangement entered into by an employer to withhold any product from any person, or to refrain from acquiring from any person any product other than the services of workmen or employees.

R.S., c. C-23, s. 4; 1974-75-76, c. 76, s. 2.

**Travel agents**

**4.1 (1)** Sections 45 and 61 do not apply in respect of a contract, an agreement or an arrangement that is between or among travel agents and that is only in respect of the negotiation of commissions on ticket sales for domestic flights paid to travel agents by an airline that, with its affiliates, accounts for at least 60% of the revenue passenger-kilometers of all domestic services over the 12 months immediately before the contract, agreement or arrangement was entered into.

**Tribunal certificate**

**(2)** If, on application by an airline, the Tribunal finds that the airline and its affiliates account for less than 60% of the revenue passenger-kilometers of all domestic services over the 12 months immediately before the application, the Tribunal shall issue a certificate to that effect.

**Effect of certificate**

**(3)** Subsection (1) does not apply in respect of an airline that holds a certificate issued under subsection (2).

**Revocation of certificate**

**(4)** If, on application by a travel agent, the Tribunal finds that an airline that holds a certificate issued under subsection (2) and its affiliates account for at least 60% of the revenue passenger-kilometers of all domestic services over the 12 months immediately before the application, the Tribunal shall revoke the certificate.

**Opportunity to be heard**

**(5)** Before issuing a certificate under subsection (2) or revoking a certificate under subsection (4), the Tribunal shall afford the Commissioner and, in the case of revocation, any airline in respect of which the revocation of the certificate is sought, a reasonable opportunity to be heard.

**Definitions**

**(6)** The definitions in this subsection apply in this section.

***airline*** means a person licensed under section 61 of the *Canada Transportation Act* to operate a domestic service. (*ligne aérienne*)

***domestic service*** has the same meaning as in subsection 55(1) of the *Canada Transportation Act*. (*service intérieur*)

***travel agent*** means a person who issues, on behalf of an airline, tickets for travel on a domestic service. (*agent de voyage*)

2000, c. 15, s. 11.

**Underwriters**

**5 (1)** Sections 45 and 61 do not apply in respect of an agreement or arrangement between or among persons who are members of a class of persons who ordinarily engage in the business of dealing in securities or between or among such persons and the issuer of a specific security, in the case of a primary distribution, or the vendor of a specific security, in the case of a secondary distribution, where the agreement or arrangement has a reasonable relationship to the underwriting of a specific security.

**Definition of "underwriting"**

**(2)** For the purposes of this section, “underwriting” of a security means the primary or secondary distribution of the security, in respect of which distribution

**(a)** a prospectus is required to be filed, accepted or otherwise approved pursuant to a law enacted in Canada or in a jurisdiction outside Canada for the supervision or regulation of trade in securities; or

**(b)** a prospectus would be required to be filed, accepted or otherwise approved but for an express exemption contained in or given pursuant to a law mentioned in paragraph (a).

R.S., 1985, c. C-34, s. 5;  1999, c. 2, s. 2.

**Amateur sport**

**6 (1)** This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport.

**Definition of *amateur sport***

**(2)** For the purposes of this section, ***amateur sport*** means sport in which the participants receive no remuneration for their services as participants.

1974-75-76, c. 76, s. 2.

**PART II**

# Administration

**Commissioner of Competition**

**7 (1)** The Governor in Council may appoint an officer to be known as the Commissioner of Competition, who shall be responsible for

**(a)** the administration and enforcement of this Act;

**(b)** the administration of the *Consumer Packaging and Labelling Act*;

**(c)** the enforcement of the *Consumer Packaging and Labelling Act* except as it relates to food, as that term is defined in section 2 of the *Food and Drugs Act*; and

**(d)** the administration and enforcement of the *Precious Metals Marking Act* and the *Textile Labelling Act*.

**Oath of office**

**(2)** The Commissioner shall, before taking up the duties of the Commissioner, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of Competition. (*In the case where an oath is taken add* “So help me God”.)

**Salary**

**(3)** The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.
R.S., 1985, c. C-34, s. 7;  1999, c. 2, ss. 4, 37.

**Deputy Commissioners**

**8 (1)** One or more persons may be appointed Deputy Commissioners of Competition in the manner authorized by law.

**Powers of Deputy**

**(2)** The Governor in Council may authorize a Deputy Commissioner to exercise the powers and perform the duties of the Commissioner whenever the Commissioner is absent or unable to act or whenever there is a vacancy in the office of Commissioner.

**Powers of other persons**

**(3)** The Governor in Council may authorize any person to exercise the powers and perform the duties of the Commissioner whenever the Commissioner and the Deputy Commissioners are absent or unable to act or, if one or more of those offices are vacant, whenever the holders of the other of those offices are absent or unable to act.

**Inquiry by Deputy**

**(4)** The Commissioner may authorize a Deputy Commissioner to make inquiry regarding any matter into which the Commissioner has power to inquire, and when so authorized a Deputy Commissioner shall perform the duties and may exercise the powers of the Commissioner in respect of that matter.

**Powers of Commissioner unaffected**

**(5)** The exercise, pursuant to this Act, of any of the powers or the performance of any of the duties of the Commissioner by a Deputy Commissioner or other person does not in any way limit, restrict or qualify the powers or duties of the Commissioner, either generally or with respect to any particular matter.

R.S., 1985, c. C-34, s. 8; 1999, c. 2, s. 5.

**Application for inquiry**

**9 (1)** Any six persons resident in Canada who are not less than eighteen years of age and who are of the opinion that

**(a)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

**(b)** grounds exist for the making of an order under Part VII.1 or VIII, or

**(c)** an offence under Part VI or VII has been or is about to be committed,

may apply to the Commissioner for an inquiry into the matter.

**Material to be submitted**

**(2)** An application made under subsection (1) shall be accompanied by a statement in the form of a solemn or statutory declaration showing

**(a)** the names and addresses of the applicants, and at their election the name and address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

**(b)** the nature of

**(i)** the alleged contravention,

**(ii)** the grounds alleged to exist for the making of an order, or

**(iii)** the alleged offence

and the names of the persons believed to be concerned therein and privy thereto; and

**(c)** a concise statement of the evidence supporting their opinion.

R.S., 1985, c. C-34, s. 9; R.S., 1985, c. 19 (2nd Supp.), s. 22; 1999, c. 2, ss. 6, 37.

**Inquiry by Commissioner**

**10 (1)** The Commissioner shall

**(a)** on application made under section 9,

**(b)** whenever the Commissioner has reason to believe that

**(i)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or Part VIII,

**(ii)** grounds exist for the making of an order under Part VII.1 or Part VIII, or

**(iii)** an offence under Part VI or VII has been or is about to be committed, or

**(c)** whenever directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b)(i) to (iii) exists,

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

**Information on inquiry**

**(2)** The Commissioner shall, on the written request of any person whose conduct is being inquired into under this Act or any person who applies for an inquiry under section 9, inform that person or cause that person to be informed as to the progress of the inquiry.

**Inquiries to be in private**

**(3)** All inquiries under this section shall be conducted in private.
R.S., 1985, c. C-34, s. 10; R.S., 1985, c. 19 (2nd Supp.), s. 23; 1999, c. 2, ss. 7, 37, c. 31, s. 45.

**Order for oral examination, production or written return**

**11 (1)** Where, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, a judge of a superior or county court or of the Federal Court is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 and that any person has or is likely to have information that is relevant to the inquiry, the judge may order that person to

**(a)** attend as specified in the order and be examined on oath or solemn affirmation by the Commissioner or the authorized representative of the Commissioner on any matter that is relevant to the inquiry before a person, in this section and sections 12 to 14 referred to as a “presiding officer”, designated in the order;

**(b)** produce to the Commissioner or the authorized representative of the Commissioner within a time and at a place specified in the order, a record, a copy of a record certified by affidavit to be a true copy, or any other thing, specified in the order; or

**(c)** make and deliver to the Commissioner or the authorized representative of the Commissioner, within a time specified in the order, a written return under oath or solemn affirmation showing in detail such information as is by the order required.

**Records in possession of affiliate**

**(2)** Where the person against whom an order is sought under paragraph (1)(b) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has records that are relevant to the inquiry, the judge may order the corporation to produce the records.

**No person excused from complying with order**

**(3)** No person shall be excused from complying with an order under subsection (1) or (2) on the ground that the testimony, record or other thing or return required of the person may tend to criminate the person or subject him to any proceeding or penalty, but no testimony given by an individual pursuant to an order made under paragraph (1)(a), or return made by an individual pursuant to an order made under paragraph (1)(c), shall be used or received against that individual in any criminal proceedings thereafter instituted against him, other than a prosecution under section 132 or 136 of the *Criminal Code*.

**Effect of order**

**(4)** An order made under this section has effect anywhere in Canada.
R.S., 1985, c. C-34, s. 11; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 16, s. 1.

**Witness competent and compellable**

**12 (1)** Any person summoned to attend pursuant to paragraph 11(1)(a) is competent and may be compelled to give evidence.

**Fees**

**(2)** Every person summoned to attend pursuant to paragraph 11(1)(a) is entitled to the like fees and allowances for so doing as if summoned to attend before a superior court of the province in which the person is summoned to attend.

**Representation by counsel**

**(3)** A presiding officer shall permit a person who is being examined pursuant to an order under paragraph 11(1)(a) and any person whose conduct is being inquired into to be represented by counsel.

**Attendance of person whose conduct is being inquired into**

**(4)** Any person whose conduct is being inquired into at an examination pursuant to an order under paragraph 11(1)(a) and that person's counsel are entitled to attend the examination unless the Commissioner or the authorized representative of the Commissioner, or the person being examined or his employer, establishes to the satisfaction of the presiding officer that the presence of the person whose conduct is being inquired into would

**(a)** be prejudicial to the effective conduct of the examination or the inquiry; or

**(b)** result in the disclosure of confidential commercial information that relates to the business of the person being examined or his employer.

R.S., 1985, c. C-34, s. 12; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Presiding officer**

**13 (1)** Any person may be designated as a presiding officer who is a barrister or advocate of at least ten years standing at the bar of a province or who has been a barrister or advocate at the bar of a province for at least ten years.

**Remuneration and expenses**

**(2)** A presiding officer shall be paid such remuneration, and is entitled to be paid such travel and living expenses, and such other expenses, incurred in the performance of his duties under this Act, as may be fixed by the Governor in Council.

R.S., 1985, c. C-34, s. 13; R.S., 1985, c. 19 (2nd Supp.), s. 24.

**Administration of oaths**

**14 (1)** The presiding officer may administer oaths and take and receive solemn affirmations for the purposes of examinations pursuant to paragraph 11(1)(a).

**Orders of presiding officer**

**(2)** A presiding officer may make such orders as he considers to be proper for the conduct of an examination pursuant to paragraph 11(1)(a).

**Application to court**

**(3)** A judge of a superior or county court or of the Federal Court may, on application by a presiding officer, order any person to comply with any order made by the presiding officer under subsection (2).

**Notice**

**(4)** No order may be made under subsection (3) unless the presiding officer has given to the person in respect of whom the order is sought and the Commissioner twenty-four hours notice of the hearing of the application for the order or such shorter notice as the judge to whom the application is made considers reasonable.

R.S., 1985, c. C-34, s. 14; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Warrant for entry of premises**

**15 (1)** Where, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, a judge of a superior or county court or of the Federal Court is satisfied by information on oath or solemn affirmation

**(a)** that there are reasonable grounds to believe that

**(i)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

**(ii)** grounds exist for the making of an order under Part VII.1 or VIII, or

**(iii)** an offence under Part VI or VII has been or is about to be committed, and

**(b)** that there are reasonable grounds to believe that there is, on any premises, any record or other thing that will afford evidence with respect to the circumstances referred to in subparagraph (a)(i), (ii) or (iii), as the case may be,

the judge may issue a warrant under his hand authorizing the Commissioner or any other person named in the warrant to

**(c)** enter the premises, subject to such conditions as may be specified in the warrant, and

**(d)** search the premises for any such record or other thing and copy it or seize it for examination or copying.

**Contents of warrant**

**(2)** A warrant issued under this section shall identify the matter in respect of which it is issued, the premises to be searched and the record or other thing, or the class of records or other things, to be searched for.

**Execution of search warrant**

**(3)** A warrant issued under this section shall be executed between six o'clock in the forenoon and nine o'clock in the afternoon, unless the judge issuing it, by the warrant, authorizes execution of it at another time.

**Idem**

**(4)** A warrant issued under this section may be executed anywhere in Canada.

**Duty of persons in control of premises**

**(5)** Every person who is in possession or control of any premises or record or other thing in respect of which a warrant is issued under subsection (1) shall, on presentation of the warrant, permit the Commissioner or other person named in the warrant to enter the premises, search the premises and examine the record or other thing and to copy it or seize it.

**Where admission or access refused**

**(6)** Where the Commissioner or any other person, in executing a warrant issued under subsection (1), is refused access to any premises, record or other thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who

issued the warrant or a judge of the same court, on the *ex parte* application of the Commissioner, may by order direct a peace officer to take such steps as the judge considers necessary to give the Commissioner or other person access.

**Where warrant not necessary**

**(7)** The Commissioner or the authorized representative of the Commissioner may exercise any of the powers set out in paragraph (1)(c) or (d) without a warrant if the conditions set out in paragraphs (1)(a) and (b) exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

**Exigent circumstances**

**(8)** For the purposes of subsection (7), exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (1) would result in the loss or destruction of evidence.

R.S., 1985, c. C-34, s. 15; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, ss. 8, 37.

**Operation of computer system**

**16 (1)** A person who is authorized pursuant to subsection 15(1) to search premises for a record may use or cause to be used any computer system on the premises to search any data contained in or available to the computer system, may reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output and may seize the printout or other output for examination or copying.

**Duty of person in control of computer system**

**(2)** Every person who is in possession or control of any premises in respect of which a warrant is issued under subsection 15(1) shall, on presentation of the warrant, permit any person named in the warrant to use or cause to be used any computer system or part thereof on the premises to search any data contained in or available to the computer system for data from which a record that that person is authorized to search for may be produced, to obtain a physical copy thereof and to seize it.

**Order restricting operation of computer system**

**(3)** A judge who issued a warrant under subsection 15(1) or a judge of the same court may, on application by the Commissioner or any person who is in possession or control of a computer system or a part thereof on any premises in respect of which the warrant was issued, make an order

**(a)** specifying the individuals who may operate the computer system and fixing the times when they may do so; and

**(b)** setting out any other terms and conditions on which the computer system may be operated.

**Notice by person in possession or control**

**(4)** No order may be made under subsection (3) on application by a person who is in possession or control of a computer system or part thereof unless that person has given the Commissioner twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

**Notice by Commissioner**

**(5)** No order may be made under subsection (3) on application by the Commissioner after a search has begun of the premises in respect of which the order is sought unless the Commissioner has given the person who is in possession or control of the premises twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

**Definitions**

**(6)** In this section, "computer system" and "data" have the meanings set out in subsection 342.1(2) of the *Criminal Code*.

R.S., 1985, c. C-34, s. 16; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Presentation of or report on record or thing seized**

**17 (1)** Where a record or other thing is seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16, the Commissioner or the authorized representative of the Commissioner shall, as soon as practicable,

**(a)** take the record or other thing before the judge who issued the warrant or a judge of the same court or, if no warrant was issued, before a judge of a superior or county court or of the Federal Court; or

**(b)** make a report in respect of the record or other thing to a judge determined in accordance with paragraph (a).

**Report**

**(2)** A report to a judge under paragraph (1)(b) in respect of a record or other thing shall include

**(a)** a statement as to whether the record or other thing was seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16;

**(b)** a description of the premises searched;

**(c)** a description of the record or other thing seized; and

**(d)** the location in which it is detained.

**Retention or return of thing seized**

**(3)** Where a record or other thing is seized pursuant to section 15 or 16, the judge before whom it is taken or to whom a report is made in respect of it pursuant to this section may, if he is satisfied that the record or other thing is required for an inquiry or any proceeding under this Act, authorize the Commissioner to retain it.

R.S., 1985, c. C-34, s. 17; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 46(F).

**Commissioner to take reasonable care**

**18 (1)** Where any record or other thing is produced pursuant to section 11 or seized pursuant to section 15 or 16, the Commissioner shall take reasonable care to ensure that it is preserved until it is returned to the person by whom it was produced or from whom it was seized or until it is required to be produced in any proceeding under this Act.

**Certified copies**

**(1.1)** The Commissioner need not return any copy of a record produced pursuant to section 11.

**Access to records or things**

**(2)** The person by whom a record or other thing is produced pursuant to section 11 or from whom a record or other thing is seized pursuant to section 15 or 16 is entitled, at any reasonable time and subject to such reasonable conditions as may be imposed by the Commissioner, to inspect the record or other thing.

**Copy of record where returned**

**(3)** The Commissioner may, before returning any record produced pursuant to section 11 or seized pursuant to section 15 or 16, make or cause to be made, and may retain, a copy thereof.

**Detention of things seized**

**(4)** Any record or other thing that is produced pursuant to section 11, or the retention of which is authorized under subsection 17(3), shall be returned to the person by whom it was produced or the person from whom it was seized not later than sixty days after it was produced or its retention was authorized, unless, before the expiration of that period,

**(a)** the person by whom it was produced or from whom it was seized agrees to its further detention for a specified period of time;

**(b)** the judge who authorized its production or retention or a judge of the same court is satisfied on application that, having regard to the circumstances, its further detention for a specified period of time is warranted and the judge so orders; or

**(c)** proceedings are instituted in which the record or thing may be required.

R.S., 1985, c. C-34, s. 18; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 16, s. 2.

**Claim to solicitor-client privilege (section 11)**

**19 (1)** Where a person is ordered to produce a record pursuant to section 11 and that person claims that there exists a solicitor-client privilege in respect thereof, the person shall place it in a package and seal and identify the package and place it in the custody of a person referred to in subsection (3).

**Claim to solicitor-client privilege (section 15 or 16)**

**(2)** Where, pursuant to section 15 or 16, any person is about to examine, copy or seize or is in the course of examining, copying or seizing any record and a person appearing to be in authority claims that there exists a solicitor-client privilege in respect thereof, the first-mentioned person, unless the person claiming the privilege withdraws the claim or the first-mentioned person desists from examining and copying the record and from seizing it or a copy thereof, shall, without examining or further examining it or making a copy or further copy thereof, place it and any copies of it made by him, and any notes taken in respect of it, in a package, and seal and identify the package and place it in the custody of a person referred to in subsection (3).

**Custody of record**

**(3)** A record in respect of which a solicitor-client privilege is claimed under subsection (1) or (2) shall be placed in the custody of

**(a)** the registrar, prothonotary or other like officer of a superior or county court in the province in which the record was ordered to be produced or in which it was found, or of the Federal Court;

**(b)** a sheriff of the district or county in which the record was ordered to be produced or in which it was found; or

**(c)** some person agreed on between the Commissioner or the authorized representative of the Commissioner and the person who makes the claim of privilege.

**Determination of claim to privilege**

**(4)** A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting *in camera*, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found within thirty days after the day on which the record was placed in custody if notice of the application has been given by the applicant to all other persons entitled to make application.

**Idem**

**(5)** Where no application is made in accordance with subsection (4) within thirty days after the day on which a record is placed in custody under this section, any judge referred to in subsection (4) shall, on *ex parte* application by or on behalf of the Commissioner, order the

record to be delivered to the Commissioner.

**Authority of judge**

**(6)** A judge referred to in subsection (4) may give any directions that the judge deems necessary to give effect to this section, may order delivery up to the judge out of custody of any record in respect of which he is asked to decide a question of solicitor-client privilege and may inspect any such record.

**Prohibition**

**(7)** Any person who is about to examine, copy or seize any record pursuant to section 15 or 16 shall not do so without affording a reasonable opportunity for a claim of solicitor-client privilege to be made under this section.

**Access to record in custody**

**(8)** At any time while a record is in custody under this section, a judge of a superior or county court in the province in which the record is in custody, or of the Federal Court, may, on an *ex parte* application of a person claiming solicitor-client privilege under this section, authorize that person to examine the record or make a copy of it in the presence of the person who has custody of it or the judge, but any such authorization shall contain provisions to ensure that the record is repackaged and that the package is resealed without alteration or damage.

R.S., 1985, c. C-34, s. 19; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Inspection of records and things**

**20 (1)** All records or other things obtained or received by the Commissioner may be inspected by the Commissioner and also by such persons as he directs.

**Copies**

**(2)** Copies of any records referred to in subsection (1), including copies by any process of photographic reproduction, on proof orally or by affidavit that they are true copies, are admissible in evidence in any proceedings under this Act and have the same probative force as the original.

**Proof**

**(3)** Where proof referred to in subsection (2) is offered by affidavit, it is not necessary to prove the signature or official character of the deponent, if that information is set out in the affidavit, or to prove the signature or official character of the person before whom the affidavit was sworn.

R.S., 1985, c. C-34, s. 20; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Counsel**

**21** Whenever in the opinion of the Commissioner the public interest so requires, the Commissioner may apply to the Attorney General of Canada to appoint and instruct counsel to assist in an inquiry under section 10, and on such an application the Attorney General of Canada may appoint and instruct counsel accordingly.

R.S., 1985, c. C-34, s. 21; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Discontinuance of inquiry**

**22 (1)** At any stage of an inquiry under section 10, if the Commissioner is of the opinion that the matter being inquired into does not justify further inquiry, the Commissioner may discontinue the inquiry.

**Report**

**(2)** The Commissioner shall, on discontinuing an inquiry, make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

**Notice to applicant**

**(3)** Where an inquiry made on application under section 9 is discontinued, the Commissioner shall inform the applicants of the decision and give the grounds therefor.

**Review of decision**

**(4)** The Minister may, on the written request of applicants under section 9 or on the Minister's own motion, review any decision of the Commissioner to discontinue an inquiry under section 10, and may, if in the Minister's opinion the circumstances warrant, instruct the Commissioner to make further inquiry.

R.S., 1985, c. C-34, s. 22; R.S., 1985, c. 27 (1st Supp.), s. 187, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 47(F).

**Reference to Attorney General of Canada**

**23 (1)** The Commissioner may, at any stage of an inquiry under section 10, in addition to or in lieu of continuing the inquiry, remit any records, returns or evidence to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed against this Act and for such action as the Attorney General of Canada may wish to take.

**Prosecution by Attorney General of Canada**

**(2)** The Attorney General of Canada may institute and conduct any prosecution or other criminal proceedings under this Act, and for those purposes may exercise all the powers and perform all the duties and functions conferred by the *Criminal Code* on the attorney general of a province.

R.S., 1985, c. C-34, s. 23; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Regulations**

**24 (1)** The Governor in Council may make regulations regulating the practice and procedure in respect of applications, proceedings and orders under sections 11 to 19.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. C-34, s. 24; R.S., 1985, c. 19 (2nd Supp.), s. 24.

**Staff**

**25** All officers, clerks and employees required for carrying out this Act shall be appointed in accordance with the *Public Service Employment Act*, except that the Commissioner may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out this Act.

R.S., 1985, c. C-34, s. 25; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37.

**Remuneration of temporary staff**

**26 (1)** Any temporary, technical and special assistants employed by the Commissioner shall be paid such remuneration, and are entitled to be paid such travel and living expenses incurred in the performance of their duties under this Act, as may be fixed by the Governor in Council.

**Remuneration and expenses payable out of appropriations**

**(2)** The remuneration and expenses of the Commissioner and of the temporary, technical and special assistants employed by the Commissioner, and of any counsel instructed under this Act, shall be paid out of money appropriated by Parliament to defray the cost of administering this Act.

***Public Service Employment Act* applies**

**(3)** Subject to this section and section 7, the *Public Service Employment Act* and other Acts relating to the Public Service, in so far as applicable, apply to the Commissioner and to all other persons employed under this Act.

R.S., 1985, c. C-34, s. 26; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37.

**Authority of technical or special assistants**

**27** Any technical or special assistant or other person employed under this Act, when so authorized or deputed by the Commissioner, has power and authority to exercise any of the powers and perform any of the duties of the Commissioner under this Act with respect to any particular inquiry, as may be directed by the Commissioner.

R.S., 1985, c. C-34, s. 27; 1999, c. 2, s. 37.

**Minister may require interim report**

**28** The Minister may at any time require the Commissioner to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Commissioner whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Commissioner's opinion as to the effect of the evidence.

R.S., 1985, c. C-34, s. 28; 1999, c. 2, s. 37.

**Confidentiality**

**29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act

**(a)** the identity of any person from whom information was obtained pursuant to this Act;

**(b)** any information obtained pursuant to section 11, 15, 16 or 114;

**(c)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114;

**(d)** any information obtained from a person requesting a certificate under section 102; or

**(e)** any information provided voluntarily pursuant to this Act.

**Exception**

**(2)** This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

R.S., 1985, c. C-34, s. 29; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 16, s. 2.1.

**Communication to Minister of Transport**

**29.1 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Transport in accordance with subsection (3), communicate or allow to be communicated to that Minister any information referred to in subsection (2) that is specifically requested by that Minister.

**Information**

**(2)** The information that may be communicated under this section is

**(a)** the identity of any person from whom information was obtained under this Act;

**(b)** any information obtained in the course of an inquiry under section 10;

**(c)** any information obtained under section 11, 15, 16 or 114;

**(d)** any information obtained from a person requesting a certificate under section 102;

**(e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and

**(f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

**Contents of request**

**(3)** Requests under this section must be in writing and must

**(a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required; and

**(b)** state that the Minister of Transport requires the information for the purposes of section 56.1 or 56.2 of the *Canada Transportation Act* and identify the transaction being considered under that section.

**Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purposes of section 56.1 or 56.2, as the case may be, of the *Canada Transportation Act*.

**Confidentiality**

**(5)** No person who performs or has performed duties or functions in the administration or enforcement of the *Canada Transportation Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to persons who perform duties or functions under section 56.1 or 56.2 of that Act.
2000, c. 15, s. 12.

**Communication to Minister of Finance**

**29.2 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Finance in accordance with subsection (3), communicate or allow to be communicated to the Minister of Finance any information referred to in subsection (2) that is specifically requested by the Minister of Finance.

**Information**

**(2)** The information that may be communicated under this section is

**(a)** the identity of any person from whom information was obtained under this Act;

**(b)** any information obtained in the course of an inquiry under section 10;

**(c)** any information obtained under section 11, 15, 16 or 114;

**(d)** any information obtained from a person requesting a certificate under section 102;

**(e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and

**(f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

**Contents of request**

**(3)** Requests under this section must be in writing and must

**(a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required;

**(b)** state that the Minister of Finance requires the information

**(i)** to consider a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*, or

**(ii)** to permit the Minister of Finance to determine whether he or she should provide the Commissioner with a certificate described in paragraph 94(b) in respect of such a merger or proposed merger;

and

**(c)** identify the merger or proposed merger.

**Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purpose of making a decision in respect of the merger or proposed merger.

**Confidentiality**

**(5)** No person who performs or has performed duties or functions, in the administration or enforcement of the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to other persons who perform those duties or functions.
2001, c. 9, s. 578.

**PART III**

# Mutual Legal Assistance

## Interpretation

**Definitions**

**30** The definitions in this section apply in this Part.

***agreement*** means a treaty, convention or other international agreement to which Canada is a party that provides for mutual legal assistance in competition matters, other than a matter in respect of which the *Mutual Legal Assistance in Criminal Matters Act* applies. (*accord*)

***conduct*** means conduct or matters within the meaning of the relevant agreement in respect of which mutual legal assistance may be requested in accordance with this Part. (*comportement*)

***data*** means representations, in any form, of information or concepts. (*données*)

***foreign state*** means a country other than Canada, and includes any international organization of states. (*État étranger*)

***judge*** means

**(a)** in Ontario, a judge of the Superior Court of Justice;

**(b)** in Quebec, a judge of the Superior Court;

**(c)** in Nova Scotia, British Columbia, Newfoundland, the Yukon Territory and the Northwest Territories, a judge of the Supreme Court, and in Nunavut, a judge of the Nunavut Court of Justice;

**(d)** in New Brunswick, Manitoba, Saskatchewan and Alberta, a judge of the Court of Queen’s Bench;

**(e)** in Prince Edward Island, a judge of the trial division of the Supreme Court; and

**(f)** in any province or territory, a judge of the Federal Court — Trial Division. (*juge*)

R.S., 1985, c. C-34, s. 30;  R.S., 1985, c. 19 (2nd Supp.), s. 26;  2002, c. 16, s. 3.

## Functions of the Minister of Justice

**Agreements respecting mutual legal assistance**

**30.01** Before Canada enters into an agreement, the Minister of Justice must be satisfied that

**(a)** the laws of the foreign state that address conduct that is similar to conduct prohibited or reviewable under this Act are, in his or her opinion, substantially similar to the relevant provisions of this Act, regardless of whether the conduct is dealt with criminally or otherwise;

**(b)** any record or thing provided by Canada under the agreement will be protected by laws respecting confidentiality that are, in his or her opinion, substantially similar to Canadian laws;

**(c)** the agreement contains provisions in respect of

**(i)** the circumstances in which Canada may refuse, in whole or in part, to approve a request, and

**(ii)** the confidentiality protections that will be afforded to any record or thing provided by Canada;

**(d)** the agreement contains the following undertakings by the foreign state, namely,

**(i)** that it will provide assistance to Canada comparable in scope to that provided by Canada,

**(ii)** that any record or thing provided by Canada will be used only for the purpose for which it was requested,

**(iii)** that any record or thing provided by Canada will be used subject to any terms and conditions on which it was provided, including conditions respecting applicable rights or privileges under Canadian law,

**(iv)** that, at the conclusion of the investigation or proceedings in respect of which any record or thing was provided by Canada, the foreign state will return the record or thing and any copies to Canada or, with the consent of Canada, return the record or thing to Canada and destroy any copies,

**(v)** subject to subparagraph (ii), that it will, to the greatest extent possible consistent with its laws, keep confidential any record or thing obtained by it pursuant to its request, and oppose any application by a third party for disclosure of the record or thing, and

**(vi)** that it will promptly notify the Minister of Justice in the event that the confidentiality protections contained in the agreement have been breached; and

**(e)** the agreement contains a provision in respect of the manner in which it may be terminated.

2002, c. 16, s. 3.

# Publication of Agreements

**Publication in *Canada Gazette***

**30.02 (1)** An agreement must be published in the *Canada Gazette* no later than 60 days after the agreement comes into force, unless it has already been published under subsection (2).

**Publication in *Canada Treaty Series***

**(2)** An agreement may be published in the *Canada Treaty Series* and, if so published, the publication must be no later than 60 days after the agreement comes into force.

**Judicial notice**

**(3)** Agreements published in the *Canada Gazette* or the *Canada Treaty Series* are to be judicially noticed.

2002, c. 16, s. 3.

# Requests Made to Canada from Abroad

## Requests

**Requests**

**30.03** The Minister of Justice is responsible for dealing with a request made by a foreign state under an agreement, in accordance with the agreement and this Part.

2002, c. 16, s. 3.

## Search and Seizure

**Application of sections 15, 16 and 19**

**30.04** Sections 15, 16 and 19 apply, with any modifications that the circumstances require, in respect of a search or a seizure under this Part, except to the extent that those sections are inconsistent with this Part.

2002, c. 16, s. 3.

**Approval of request for search and seizure**

**30.05 (1)** If the Minister of Justice approves a request of a foreign state to have a search and seizure carried out in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for a search warrant.

**Application for search warrant**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* for a search warrant to a judge.

2002, c. 16, s. 3.

**Warrant for entry of premises**

**30.06 (1)** A judge to whom an application is made under subsection 30.05(2) may issue a search warrant authorizing the person named in it to execute it anywhere in Canada where the judge is satisfied by information on oath or solemn affirmation that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place;

**(b)** evidence in respect of the conduct referred to in paragraph (a) will be found in any premises; and

**(c)** it would not, in the circumstances, be appropriate to make an order under subsection 30.11(1).

**Authorization**

**(2)** A search warrant issued under subsection (1) authorizes the person named in it to enter the premises specified in the warrant, subject to any conditions that may be specified in the warrant, and to search the premises for any record or thing specified in the warrant and to examine and seize it.

**Hearing re execution**

**(3)** A judge who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report referred to in section 30.07.

**Contents of warrant**

**(4)** A search warrant issued under subsection (1) must

**(a)** set out the time and place for the hearing mentioned in subsection (3);

**(b)** state that, at that hearing, an order will be sought for the sending to the foreign state of the records or things seized in execution of the warrant; and

**(c)** state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized may make representations at the hearing before any order is made concerning the record or thing.

**Duty of persons in control of premises**

**(5)** Every person who is in possession or control of any premises, record or thing in respect of which a search warrant is issued under subsection (1) shall, on presentation of the warrant, permit the person named in the warrant to enter the premises, search the premises and examine the record or thing and seize it.

**Where admission or access refused**

**(6)** Where a person, in executing a search warrant issued under subsection (1), is refused access to any premises, record or thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who issued the warrant or a judge of the same

court, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, may by order direct a peace officer to take any steps that the judge considers necessary to give access to the person named in the warrant.

2002, c. 16, s. 3.

**Report**

**30.07 (1)** The person who executes a search warrant shall, at least five days before the time of the hearing to consider its execution, file with the court of which the judge who issued the warrant is a member a written report concerning the execution of the warrant that includes a general description of the records or things seized.

**Copy to Minister of Justice**

**(2)** The person who files the report under subsection (1) shall send a copy of it to the Minister of Justice promptly after its filing.

2002, c. 16, s. 3.

**Sending abroad**

**30.08 (1)** At the hearing referred to in subsection 30.06(3), after having considered any representations of the Minister of Justice, the Commissioner, the person from whom a record or thing was seized and any person who claims to have an interest in the record or thing, the judge who issued the search warrant or another judge of the same court may

**(a)** where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), order that a record or thing seized be returned to

**(i)** the person from whom it was seized, if possession of it by that person is lawful, or

**(ii)** the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or

**(b)** in any other case, order that a record or thing seized be sent to the foreign state mentioned in subsection 30.05(1) and include in the order any terms and conditions that the judge considers desirable, including terms and conditions

**(i)** necessary to give effect to the request mentioned in that subsection,

**(ii)** in respect of the preservation and return to Canada of any record or thing seized, and

**(iii)** in respect of the protection of the interests of third parties.

**Requiring record, etc., at hearing**

**(2)** At the hearing mentioned in subsection (1), the judge may require that a record or thing seized be brought before him or her.

2002, c. 16, s. 3.

**Terms and conditions**

**30.09** No record or thing seized that has been ordered under section 30.08 to be sent to a foreign state shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

## Evidence for Use Abroad

**Approval of request to obtain evidence**

**30.1 (1)** If the Minister of Justice approves a request of a foreign state to obtain, by means of an order of a judge, evidence in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

**Application for order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the gathering of evidence.

2002, c. 16, s. 3.

**Evidence-gathering order**

**30.11 (1)** A judge to whom an application is made under subsection 30.1(2) may make an order for the gathering of evidence where the judge is satisfied that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

**(b)** there will be found in Canada evidence in respect of the conduct referred to in paragraph (a).

**Provisions of order**

**(2)** An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 30.1(1) and may

**(a)** order the examination, on oath or otherwise, of a person named in the order, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he or she is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or

to make a record from data and to bring the copy or record with him or her, and order the person so named to bring with him or her any record or thing in his or her possession or control, in order to produce them to the person before whom the examination takes place;

**(b)** order a person named in the order to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his or her possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced; and

**(c)** designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced.

**Designation of judge**

**(3)** For greater certainty, a judge who makes an order under subsection (1) may designate himself or herself or another person, including a judge of a Canadian or foreign court, under paragraph (2)(c).

**Order effective throughout Canada**

**(4)** An order made under subsection (1) may be executed anywhere in Canada.

**Terms and conditions of order**

**(5)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of a person named in the order and of third parties.

**Variation**

**(6)** The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

**Other laws to apply**

**(7)** A person named in an order made under subsection (1) shall answer questions and produce records or things to the person designated under paragraph (2)(c) in accordance with the laws of evidence and procedure in the foreign state that presented the request, but may refuse if answering the questions or producing the records or things would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

**Execution of order to be completed**

**(8)** If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

**(a)** may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or

**(b)** shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

**Statement of reasons for refusal**

**(9)** A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

**Expenses**

**(10)** A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

**Contents of order**

**(11)** An order made under subsection (1) must state that a person named in the order, and any person who claims an interest in any record or thing provided pursuant to the order, may make representations referred to in subsection 30.13(2) before any order is made under subsection 30.13(1).

2002, c. 16, s. 3.

**Report**

**30.12 (1)** A person designated under paragraph 30.11(2)(c) in an order made under subsection 30.11(1) shall make a report to the judge who made the order, or another judge of the same court, accompanied by

**(a)** a transcript of every examination held under the order;

**(b)** a general description of every record or thing produced to the person under the order and, if the judge so requires, a record or thing itself; and

**(c)** a copy of every statement given under subsection 30.11(9) of the reasons for a refusal to answer any question or to produce any record or thing.

**Copy to Minister of Justice**

**(2)** The person designated under paragraph 30.11(2)(c) shall send a copy of the report to the Minister of Justice promptly after it is made.

**Refusals**

**(3)** If any reasons contained in a statement given under subsection 30.11(9) are based on the Canadian law of non-disclosure of information or privilege, a judge to whom a report is made shall determine whether those reasons are well-founded and, if the judge determines that they are, that determination shall be mentioned in any order that the judge makes under section 30.13, but if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.11(1) answer the questions or produce the records or things.

**Refusals based on foreign law**

**(4)** A copy of every statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state shall be appended to any order that the judge makes under section 30.13.
2002, c. 16, s. 3.

**Sending abroad**

**30.13 (1)** A judge to whom a report is made under subsection 30.12(1) may order that there be sent to the foreign state mentioned in subsection 30.1(1)

**(a)** the report, any transcript referred to in paragraph 30.12(1)(a) and any record or thing produced;

**(b)** a copy of the order made under subsection 30.11(1) accompanied by a copy of any statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state; and

**(c)** any determination made under subsection 30.12(3) that the reasons contained in a statement given under subsection 30.11(9) are well-founded.

**Terms and conditions**

**(2)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, after having considered any representations of the Minister of Justice, the Commissioner, the person who produced any record or thing to the person designated under paragraph 30.11(2)(c) and any person who claims to have an interest in any record or thing so produced, including terms and conditions

**(a)** necessary to give effect to the request mentioned in subsection 30.1(1);

**(b)** in respect of the preservation and return to Canada of any record or thing so produced; and

**(c)** in respect of the protection of the interests of third parties.

**Further execution**

**(3)** The execution of an order made under subsection 30.11(1) that was not completely executed because of a refusal, by reason of a law that applies to the foreign state, to answer one or more questions or to produce certain records or things to the person designated under paragraph 30.11(2)(c) may be continued, unless a ruling has already been made on the objection under paragraph 30.11(8)(a), if a court of the foreign state or a person designated by the foreign state determines that the reasons are not well-founded and the foreign state so advises the Minister of Justice.

**Leave of judge required**

**(4)** No person named in an order made under subsection 30.11(1) whose reasons for refusing to answer a question or to produce a record or thing are determined not to be well-founded, or whose objection has been ruled against under paragraph 30.11(8)(a), shall, during the continued execution of the order or ruling, refuse to answer that question or to produce that record or thing to the person designated under paragraph 30.11(2)(c), except with the permission of the judge who made the order or ruling or another judge of the same court.
2002, c. 16, s. 3.

**Terms and conditions**

**30.14** No record or thing that has been ordered under section 30.13 to be sent to the foreign state mentioned in subsection 30.1(1) shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

**Approval of request to obtain evidence by video link, etc.**

**30.15 (1)** If the Minister of Justice approves a request of a foreign state to compel a person to provide evidence or a statement in respect of conduct that is the subject of the request by means of technology that permits the virtual presence of the person in the territory over which the foreign state has jurisdiction, or that permits the person to be heard and examined, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

**Application for order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the taking of evidence or a statement from the person.

2002, c. 16, s. 3.

**Order for video link, etc.**

**30.16 (1)** A judge to whom an application is made under subsection 30.15(2) may make an order for the taking of evidence or a statement from a person where the judge is satisfied that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

**(b)** the foreign state believes that the person's evidence or statement would be relevant to the investigation or proceedings in respect of the conduct referred to in paragraph (a).

**Provisions of order**

**(2)** An order made under subsection (1) shall order the person

**(a)** to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the foreign state;

**(b)** to answer any questions put to the person by the authorities of the foreign state or by any person authorized by those authorities;

**(c)** to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and

**(d)** to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

**Order effective throughout Canada**

**(3)** An order made under subsection (1) may be executed anywhere in Canada.

**Terms and conditions of order**

**(4)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

**Variation**

**(5)** The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

**Expenses**

**(6)** A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.
2002, c. 16, s. 3.

**Other laws to apply**

**30.17 (1)** When a person gives evidence or a statement pursuant to an order made under subsection 30.16(1), the person shall give the evidence or statement as though he or she were physically before the court or tribunal outside Canada, in accordance with the laws of evidence

and procedure applicable to that court or tribunal, but may refuse to give evidence or a statement, in whole or in part, if giving the evidence or statement would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

**Statement of reasons for refusal**

**(2)** A person named in an order made under subsection 30.16(1) who refuses to give evidence or a statement on the grounds that it would disclose information that is protected by the Canadian law of non-disclosure of information or privilege shall, within seven days, give to the judge who made the order or another judge of the same court a detailed statement in writing of the reasons on which the person bases each refusal.

**Refusals**

**(3)** A judge to whom a statement is given under subsection (2) shall determine whether the reasons for refusal are well-founded and, if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.16(1) give the evidence or statement.

**Contempt of court in Canada**

**(4)** When a witness gives evidence under section 30.16, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.
2002, c. 16, s. 3.

**Arrest warrant**

**30.18 (1)** The judge who made the order under subsection 30.11(1) or 30.16(1) or another judge of the same court may issue a warrant for the arrest of the person named in the order where the judge is satisfied, on an information in writing and under oath or solemn declaration, that

**(a)** the person did not attend or remain in attendance as required by the order or is about to abscond;

**(b)** the order was personally served on the person; and

**(c)** in the case of an order made under subsection 30.11(1), the person is likely to give material evidence and, in the case of an order made under subsection 30.16(1), the foreign state believes that the testimony of the person would be relevant to the investigation or proceedings in respect of the conduct.

**Warrant effective throughout Canada**

**(2)** A warrant issued under subsection (1) may be executed anywhere in Canada by any peace officer.

**Order**

**(3)** A peace officer who arrests a person in execution of a warrant issued under subsection (1) shall, without delay, bring the person or cause the person to be brought before the judge who issued the warrant or another judge of the same court who may, to ensure compliance with the order made under subsection 30.11(1) or 30.16(1), order that the person be detained in custody or released on recognizance, with or without sureties.

**Copy of information**

**(4)** A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.
2002, c. 16, s. 3.

## Lending Exhibits

**Approval of loan request**

**30.19 (1)** If the Minister of Justice approves a request of a foreign state under an agreement to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Canada or in a proceeding before the Tribunal lent to the foreign state, the Minister shall provide the Commissioner with any documents or information necessary to apply for a loan order.

**Application for loan order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply for a loan order in respect of the exhibit to the court that has possession of the exhibit, or to the Tribunal if it has possession of the exhibit, after having given reasonable notice to the parties to the proceedings and to

**(a)** the Attorney General of Canada, in the case of an application to the Federal Court;

**(b)** the attorney general of the province in which the exhibit is located, in the case of an application to a court other than the Federal Court; or

**(c)** the Chairman of the Tribunal, in the case of an application to the Tribunal.

**Contents of application**

**(3)** An application made under subsection (2) must

**(a)** contain a description of the exhibit requested to be lent;

**(b)** designate a person or class of persons to whom the exhibit is sought to be given;

**(c)** state the reasons for the request and, if any tests are sought to be performed on the exhibit, contain a description of the tests and a statement of the place where they will be performed;

**(d)** state the place or places to which the exhibit is sought to be removed; and

**(e)** specify the time at or before which the exhibit is to be returned.

2002, c. 16, s. 3.

**Making of loan order**

**30.2 (1)** If the court or the Tribunal, as the case may be, is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court or Tribunal proposes to include in any loan order, the court or Tribunal may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection 30.19(2), make a loan order.

**Terms of loan order**

**(2)** A loan order made under subsection (1) must

**(a)** contain a description of the exhibit;

**(b)** order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;

**(c)** contain a description of any tests authorized to be performed on the exhibit, as well as a statement of the place where the tests must be performed;

**(d)** fix the place or places to which the exhibit may be removed; and

**(e)** fix the time at or before which the exhibit must be returned.

**Terms and conditions**

**(3)** A loan order made under subsection (1) may include any terms or conditions that the court or the Tribunal considers desirable, including those relating to the preservation of the exhibit.

2002, c. 16, s. 3.

**Variation of loan order**

**30.21** A court or the Tribunal may vary the terms and conditions of any loan order made by it.

2002, c. 16, s. 3.

**Copy of order to custodian**

**30.22** A copy of a loan order and of an order varying it shall be delivered by the Commissioner to the Minister of Justice and to the person who had possession of the exhibit when the loan order was made.

2002, c. 16, s. 3.

**Presumption of continuity**

**30.23** The burden of proving that an exhibit lent to a foreign state pursuant to a loan order made under subsection 30.2(1) and returned to Canada is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit is deemed to have been continuously in the possession of the court that made the loan order or the Tribunal, as the case may be.

2002, c. 16, s. 3.

## Appeal

**Appeal on question of law**

**30.24 (1)** An appeal lies, with leave, on a question of law alone, to the court of appeal, within the meaning of section 2 of the *Criminal Code*, from an order or decision of a judge or a court in Canada made under this Part, other than an order or decision of the Federal Court — Trial Division or a judge of that Court, if the application for leave to appeal is made to a judge of the court of appeal within fifteen days after the order or decision.

**Appeal on question of law**

**(2)** An appeal lies, with leave, on a question of law alone, to the Federal Court of Appeal, from any order or decision of the Federal Court — Trial Division or the Tribunal made under this Part, if the application for leave to appeal is made to a judge of that Court within fifteen days after the order or decision.

2002, c. 16, s. 3.

# Evidence Obtained by Canada from Abroad

**Evidence**

**30.25** The Minister of Justice shall, on receiving evidence sent by a foreign state in response to a request made by Canada under an agreement, send it promptly to the Commissioner.

2002, c. 16, s. 3.

**Foreign records**

**30.26 (1)** In a proceeding in respect of which Parliament has jurisdiction, a record or a copy of a record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister of Justice by a foreign state in accordance with a Canadian request under an agreement, is not inadmissible in evidence by reason only that a statement contained in it is hearsay or a statement of opinion.

**Probative value**

**(2)** For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under Part VII.1 or VIII, the court hearing the matter, or the Tribunal in proceedings before it, may examine the record or copy, receive evidence orally or by affidavit,

or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and may draw any reasonable inference from the form or content of the record or copy.

2002, c. 16, s. 3.

**Foreign things**

**30.27** In a proceeding in respect of which Parliament has jurisdiction, a thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Commissioner by the Minister of Justice in accordance with a Canadian request under an agreement, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

2002, c. 16, s. 3.

**Status of certificate**

**30.28** An affidavit, certificate or other statement mentioned in section 30.26 or 30.27 is, in the absence of evidence to the contrary, proof of the statements contained in it without proof of the signature or official character of the person appearing to have signed it.

2002, c. 16, s. 3.

# General

**Confidentiality of foreign requests and evidence**

**30.29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except for the purposes of the administration or enforcement of this Act,

**(a)** the contents of a request made to Canada from a foreign state or the fact of the request having been made; or

**(b)** the contents of any record or thing obtained from a foreign state pursuant to a Canadian request.

**Confidentiality of Canadian evidence**

**(2)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act, any information obtained under section 30.06 or 30.11.

**Exception**

**(3)** This section does not apply in respect of any information that has been made public.

2002, c. 16, s. 3.

**Records or other things already in Commissioner's possession**

**30.291 (1)** For greater certainty, any evidence requested by a foreign state under an agreement may be obtained for the purposes of giving effect to the request only in accordance with the agreement and the procedure set out in this Part, even in the case of records or other things already in the possession of the Commissioner.

**Exception**

**(2)** This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

2002, c. 16, s. 3.

**Preservation of informal arrangements**

**30.3** Nothing in this Part shall be construed so as to abrogate or derogate from any arrangement or agreement, other than an agreement under this Part, in respect of cooperation between the Commissioner and a foreign authority.

2002, c. 16, s. 3.

**PART IV**

# Special Remedies

**Reduction or removal of customs duties**

**31** Whenever, as a result of an inquiry under this Act, a judgment of a court or a decision of the Tribunal, it appears to the satisfaction of the Governor in Council that

**(a)** competition in respect of any article has been prevented or lessened substantially, and

**(b)** the prevention or lessening of competition is facilitated by customs duties imposed on the article, or on any like article, or can be reduced by a removal or reduction of customs duties so imposed,

the Governor in Council may, by order, remove or reduce any such customs duties.

R.S., 1985, c. C-34, s. 31; R.S., 1985, c. 19 (2nd Supp.), s. 27; 1999, c. 31, s. 48(F).

**Powers of Federal Court where certain rights used to restrain trade**

**32 (1)** In any case where use has been made of the exclusive rights and privileges conferred by one or more patents for invention, by one or more trade-marks, by a copyright or by a registered integrated circuit topography, so as to

**(a)** limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity that may be a subject of trade or commerce,

**(b)** restrain or injure, unduly, trade or commerce in relation to any such article or commodity,

**(c)** prevent, limit or lessen, unduly, the manufacture or production of any such article or commodity or unreasonably enhance the price thereof, or

**(d)** prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity,

the Federal Court may make one or more of the orders referred to in subsection (2) in the circumstances described in that subsection.

**Orders**

**(2)** The Federal Court, on an information exhibited by the Attorney General of Canada, may, for the purpose of preventing any use in the manner defined in subsection (1) of the exclusive rights and privileges conferred by any patents for invention, trade-marks, copyrights or registered integrated circuit topographies relating to or affecting the manufacture, use or sale of any article or commodity that may be a subject of trade or commerce, make one or more of the following orders:

**(a)** declaring void, in whole or in part, any agreement, arrangement or licence relating to that use;

**(b)** restraining any person from carrying out or exercising any or all of the terms or provisions of the agreement, arrangement or licence;

**(c)** directing the grant of licences under any such patent, copyright or registered integrated circuit topography to such persons and on such terms and conditions as the court may deem proper or, if the grant and other remedies under this section would appear insufficient to prevent that use, revoking the patent;

**(d)** directing that the registration of a trade-mark in the register of trade-marks or the registration of an integrated circuit topography in the register of topographies be expunged or amended; and

**(e)** directing that such other acts be done or omitted as the Court may deem necessary to prevent any such use.

**Treaties, etc.**

**(3)** No order shall be made under this section that is at variance with any treaty, convention, arrangement or engagement with any other country respecting patents, trade-marks, copyrights or integrated circuit topographies to which Canada is a party.

R.S., 1985, c. C-34, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 18; 1990, c. 37, s. 29; 2002, c. 16, s. 4(F).

**Interim injunction**

**33 (1)** A court may, on application by or on behalf of the Attorney General of Canada or the attorney general of a province, issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence, pending the commencement or completion of a proceeding under subsection 34(2) or a prosecution against the person, where it appears to the court, that the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI or section 66, and that

**(a)** if the offence is committed or continued

**(i)** injury to competition that cannot adequately be remedied under any other provision of this Act will result, or

**(ii)** a person is likely to suffer, from the commission of the offence, damage for which the person cannot adequately be compensated under any other provision of this Act and that will be substantially greater than any damage that a person named in the application is likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under Part VI or section 66 has not been committed, was not about to be committed and was not likely to be committed; or

**(b)** in the case of an offence under section 52.1 or 53, if the offence is committed or continued,

**(i)** injury to competition will result, or

**(ii)** one or more persons are likely to suffer damage from the commission of the offence that will be substantially greater than any damage that persons named in the application are likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under section 52.1 or 53 has not been committed, was not about to be committed and was not likely to be committed.

**Deceptive telemarketing or notice**

**(1.1)** An injunction issued in respect of an offence under section 52.1 or 53 may forbid any person from supplying to another person a product that is or is likely to be used for the commission or continuation of such an offence, where the person being supplied or, in the case of a corporation, any of its officers or directors was previously

**(a)** convicted of an offence under section 52.1 or 53 or an offence under section 52 in respect of conduct prohibited by section 52.1 or 53; or

**(b)** punished for the contravention of an order made under this section or section 34 in respect of the commission, continuation or repetition of an offence referred to in paragraph (a).

**Notice of application**

**(2)** Subject to subsection (3), at least forty-eight hours notice of an application for an injunction under subsection (1) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

***Ex parte* application**

**(3)** Where a court to which an application is made under subsection (1) is satisfied that

**(a)** subsection (2) cannot reasonably be complied with, or

**(b)** the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte* but any injunction issued under subsection (1) by the court on *ex parte* application shall have effect only for such period, not exceeding ten days, as is specified in the order.

**Terms of injunction**

**(4)** An injunction issued under subsection (1)

**(a)** shall be in such terms as the court that issues it considers necessary and sufficient to meet the circumstances of the case; and

**(b)** subject to subsection (3), shall have effect for such period of time as is specified therein.

**Extension or cancellation of injunction**

**(5)** A court that issues an injunction under subsection (1), at any time and from time to time on application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, notice of which application has been given to all other parties thereto, may by order,

**(a)** notwithstanding subsections (3) and (4), continue the injunction, with or without modification, for such definite period as is stated in the order; or

**(b)** revoke the injunction.

**Duty of applicant**

**(6)** Where an injunction is issued under subsection (1), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the actions on the basis of which the injunction was issued.

**Punishment for disobedience**

**(7)** A court may punish any person who contravenes an injunction issued by it under subsection (1) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

**Definition of *court***

**(8)** In this section, ***court*** means the Federal Court or a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 33; 1993, c. 34, s. 50; 1999, c. 2, s. 10; 2002, c. 16, s. 5.

**Prohibition orders**

**34 (1)** Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

**Idem**

**(2)** Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

**Prescriptive terms**

**(2.1)** An order made under this section in relation to an offence may require any person

**(a)** to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

**(b)** to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

**Duration of order**

**(2.2)** An order made under this section applies for a period of ten years unless the court specifies a shorter period.

**Variation or rescission**

**(2.3)** An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order

**(a)** where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or

**(b)** where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.

**Other proceedings**

**(2.4)** No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.

**Appeals to courts of appeal and Federal Court**

**(3)** The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order

**(a)** from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or

**(b)** from the Federal Court — Trial Division to the Federal Court of Appeal,

as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

**Appeals to Supreme Court of Canada**

**(3.1)** The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order from the court of appeal of the province or the Federal Court of Appeal, as the case may be, to the Supreme Court of Canada on any ground that involves a question of law or, if leave to appeal is granted by the Supreme Court, on any ground that appears to that Court to be a sufficient ground of appeal.

**Disposition of appeal**

**(4)** Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

**Procedure**

**(5)** Subject to subsections (3) and (4), Part XXI of the *Criminal Code* applies with such modifications as the circumstances require to appeals under this section.

**Punishment for disobedience**

**(6)** A court may punish any person who contravenes an order made under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

**Procedure**

**(7)** Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

**Definition of "superior court of criminal jurisdiction"**

**(8)** In this section, “superior court of criminal jurisdiction” means a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 34; R.S., 1985, c. 19 (2nd Supp.), s. 28, c. 34 (3rd Supp.), s. 8; 1999, c. 2, s. 11.

**Court may require returns**

**35 (1)** Notwithstanding anything contained in Part VI, where any person is convicted of an offence under that Part, the court before whom the person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business of that person as the court deems advisable, and without restricting the generality of the foregoing, the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

**Punishment**

**(2)** The court may punish any failure to comply with an order under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

R.S., c. C-23, s. 31.

**Recovery of damages**

**36 (1)** Any person who has suffered loss or damage as a result of

**(a)** conduct that is contrary to any provision of Part VI, or

**(b)** the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not

exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

**Evidence of prior proceedings**

**(2)** In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

**Jurisdiction of Federal Court**

**(3)** For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.

**Limitation**

**(4)** No action may be brought under subsection (1),

**(a)** in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

**(i)** a day on which the conduct was engaged in, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

**(b)** in the case of an action based on the failure of any person to comply with an order of the Tribunal or another court, after two years from

**(i)** a day on which the order of the Tribunal or court was contravened, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later.

R.S., 1985, c. C-34, s. 36; R.S., 1985, c. 1 (4th Supp.), s. 11.

## PART V

# [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 29]

## PART VI

# Offences in Relation to Competition



**Conspiracy**

**45 (1)** Every one who conspires, combines, agrees or arranges with another person

**(a)** to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

**(b)** to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

**(c)** to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

**(d)** to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

**Idem**

**(2)** For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it shall not be necessary to prove that the conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market.

**Evidence of conspiracy**

**(2.1)** In a prosecution under subsection (1), the court may infer the existence of a conspiracy, combination, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties thereto, but, for greater certainty, the conspiracy, combination, agreement or arrangement must be proved beyond a reasonable doubt.

**Proof of intent**

**(2.2)** For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it is necessary to prove that the parties thereto intended to and did enter into the conspiracy, combination, agreement or arrangement, but it is not necessary to prove that the parties intended that the conspiracy, combination, agreement or arrangement have an effect set out in subsection (1).

**Defence**

**(3)** Subject to subsection (4), in a prosecution under subsection (1), the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

**(a)** the exchange of statistics;

**(b)** the defining of product standards;

**(c)** the exchange of credit information;

**(d)** the definition of terminology used in a trade, industry or profession;

**(e)** cooperation in research and development;

**(f)** the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media;

**(g)** the sizes or shapes of the containers in which an article is packaged;

**(h)** the adoption of the metric system of weights and measures; or

**(i)** measures to protect the environment.

**Exception**

**(4)** Subsection (3) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

**(a)** prices,

**(b)** quantity or quality of production,

**(c)** markets or customers, or

**(d)** channels or methods of distribution,

or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

**Defence**

**(5)** Subject to subsection (6), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of products from Canada.

**Exception**

**(6)** Subsection (5) does not apply if the conspiracy, combination, agreement or arrangement

**(a)** has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;

**(b)** has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or

**(c)** has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada.

**(d)** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 30]

**Defences**

**(7)** In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

**(a)** in the practice of a trade or profession relating to the service; or

**(b)** in the collection and dissemination of information relating to the service.

**Exception**

**(7.1)** Subsection (1) does not apply in respect of an agreement or arrangement between federal financial institutions that is described in subsection 49(1).

**Exception**

**(8)** Subsection (1) does not apply in respect of a conspiracy, combination, agreement or arrangement that is entered into only by companies each of which is, in respect of every one of the others, an affiliate.

R.S., 1985, c. C-34, s. 45; R.S., 1985, c. 19 (2nd Supp.), s. 30; 1991, c. 45, s. 547, c. 46, s. 590, c. 47, s. 714.

**Where application made under section 79 or 92**

**45.1** No proceedings may be commenced under subsection 45(1) against a person against whom an order is sought under section 79 or 92 on the basis of the same or substantially the same facts as would be alleged in proceedings under that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 31.

**Foreign directives**

**46 (1)** Any corporation, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the corporation, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention

of section 45, is, whether or not any director or officer of the corporation in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and liable on conviction to a fine in the discretion of the court.

**Limitation**

**(2)** No proceedings may be commenced under this section against a particular company where an application has been made by the Commissioner under section 83 for an order against that company or any other person based on the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 46; R.S., 1985, c. 19 (2nd Supp.), s. 32; 1999, c. 2, s. 37.

**Definition of "bid-rigging"**

**47 (1)** In this section, “bid-rigging” means

**(a)** an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid in response to a call or request for bids or tenders, or

**(b)** the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is made by any person who is a party to the agreement or arrangement.

**Bid-rigging**

**(2)** Every one who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

**Exception**

**(3)** This section does not apply in respect of an agreement or arrangement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate.

R.S., 1985, c. C-34, s. 47; R.S., 1985, c. 19 (2nd Supp.), s. 33.

**Conspiracy relating to professional sport**

**48 (1)** Every one who conspires, combines, agrees or arranges with another person

**(a)** to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate, or

**(b)** to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league

is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

**Matters to be considered**

**(2)** In determining whether or not an agreement or arrangement contravenes subsection (1), the court before which the contravention is alleged shall have regard to

**(a)** whether the sport in relation to which the contravention is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

**(b)** the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

**Application**

**(3)** This section applies, and section 45 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs where the agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among those teams, clubs and persons.

1974-75-76, c. 76, s. 15.

**Agreements or arrangements of federal financial institutions**

**49 (1)** Subject to subsection (2), every federal financial institution that makes an agreement or arrangement with another federal financial institution with respect to

**(a)** the rate of interest on a deposit,

**(b)** the rate of interest or the charges on a loan,

**(c)** the amount or kind of any charge for a service provided to a customer,

**(d)** the amount or kind of a loan to a customer,

**(e)** the kind of service to be provided to a customer, or

**(f)** the person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld,

and every director, officer or employee of the federal financial institution who knowingly makes such an agreement or arrangement on behalf of the federal financial institution is guilty of an indictable offence and liable to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding five years or to both.

**Exceptions**

**(2)** Subsection (1) does not apply in respect of an agreement or arrangement

**(a)** with respect to a deposit or loan made or payable outside Canada;

**(b)** applicable only in respect of the dealings of or the services rendered between federal financial institutions or by two or more federal financial institutions as regards a customer of each of those federal financial institutions where the customer has knowledge of the agreement or by a federal financial institution as regards a customer thereof, on behalf of that customer's customers;

**(c)** with respect to a bid for or purchase, sale or underwriting of securities by federal financial institutions or a group including federal financial institutions;

**(d)** with respect to the exchange of statistics and credit information, the development and utilization of systems, forms, methods, procedures and standards, the utilization of common facilities and joint research and development in connection therewith, and the restriction of advertising;

**(e)** with respect to reasonable terms and conditions of participation in guaranteed or insured loan programs authorized pursuant to an Act of Parliament or of the legislature of a province;

**(f)** with respect to the amount of any charge for a service or with respect to the kind of service provided to a customer outside Canada, payable or performed outside Canada, or payable or performed in Canada on behalf of a person who is outside Canada;

**(g)** with respect to the persons or classes of persons to whom a loan or other service will be made or provided outside Canada;

**(h)** in respect of which the Minister of Finance has certified to the Commissioner that Minister's request for or approval of the agreement or arrangement for the purposes of financial policy and has certified the names of the parties to the agreement or arrangement; or

**(i)** that is entered into only by financial institutions each of which is an affiliate of each of the others.

**Definition of "federal financial institution"**

**(3)** In this section and section 45, “federal financial institution” means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*, a company to which the *Trust and Loan Companies Act* applies or a company or society to which the *Insurance Companies Act* applies.

R.S., 1985, c. C-34, s. 49; R.S., 1985, c. 19 (2nd Supp.), s. 34; 1991, c. 45, s. 548, c. 46, ss. 591, 593, c. 47, s. 715; 1993, c. 34, s. 51; 1999, c. 2, s. 37, c. 28, s. 153, c. 31, s. 49(F).

**Illegal trade practices**

**50 (1)** Every one engaged in a business who

**(a)** is a party or privy to, or assists in, any sale that discriminates to his knowledge, directly or indirectly, against competitors of a purchaser of articles from him in that any discount, rebate, allowance, price concession or other advantage is granted to the purchaser over and above any discount, rebate, allowance, price concession or other advantage that, at the time the articles are sold to the purchaser, is available to the competitors in respect of a sale of articles of like quality and quantity,

**(b)** engages in a policy of selling products in any area of Canada at prices lower than those exacted by him elsewhere in Canada, having the effect or tendency of substantially lessening competition or eliminating a competitor in that part of Canada, or designed to have that effect, or

**(c)** engages in a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have that effect,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

**Defence**

**(2)** It is not an offence under paragraph (1)(a) to be a party or privy to, or assist in, any sale mentioned therein unless the discount, rebate, allowance, price concession or other advantage was granted as part of a practice of discriminating as described in that paragraph.

**Cooperative societies excepted**

**(3)** Paragraph (1)(a) shall not be construed to prohibit a cooperative association, credit union, caisse populaire or cooperative credit society from returning to its members, suppliers or customers the whole or any part of the net surplus made in its operations in proportion to the acquisition or supply of articles from or to its members, suppliers or customers.

R.S., 1985, c. C-34, s. 50; 1999, c. 31, s. 50(F).

**Definition of "allowance"**

**51 (1)** In this section, “allowance” means any discount, rebate, price concession or other advantage that is or purports to be offered or granted for advertising or display purposes and is collateral to a sale or sales of products but is not applied directly to the selling price.

**Grant of allowance prohibited except on proportionate terms**

**(2)** Every one engaged in a business who is a party or privy to the granting of an allowance to any purchaser that is not offered on proportionate terms to other purchasers in competition with the first-mentioned purchaser, which other purchasers are in this section called "competing purchasers", is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

**Definition of proportionate terms**

**(3)** For the purposes of this section, an allowance is offered on proportionate terms only if

**(a)** the allowance offered to a purchaser is in approximately the same proportion to the value of sales to him as the allowance offered to each competing purchaser is to the total value of sales to that competing purchaser;

**(b)** in any case where advertising or other expenditures or services are exacted in return therefor, the cost thereof required to be incurred by a purchaser is in approximately the same proportion to the value of sales to him as the cost of the advertising or other expenditures or services required to be incurred by each competing purchaser is to the total value of sales to that competing purchaser; and

**(c)** in any case where services are exacted in return therefor, the requirements thereof have regard to the kinds of services that competing purchasers at the same or different levels of distribution are ordinarily able to perform or cause to be performed.

R.S., c. C-23, s. 35; 1974-75-76, c. 76, s. 17.

**False or misleading representations**

**52 (1)** No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

**Proof of deception not required**

**(1.1)** For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that any person was deceived or misled.

**Permitted representations**

**(1.2)** For greater certainty, a reference to the making of a representation, in this section or in section 52.1, 74.01 or 74.02, includes permitting a representation to be made.

**Representations accompanying products**

**(2)** For the purposes of this section, a representation that is

**(a)** expressed on an article offered or displayed for sale or its wrapper or container,

**(b)** expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

**(c)** expressed on an in-store or other point-of-purchase display,

**(d)** made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

**(e)** contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

**Representations from outside Canada**

**(2.1)** Where a person referred to in subsection (2) is outside Canada, a representation described in paragraph (2)(a), (b), (c) or (e) is, for the purposes of subsection (1), deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

**Deemed representation to public**

**(3)** Subject to subsection (2), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) is deemed to have made that representation to the public.

**General impression to be considered**

**(4)** In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

**Offence and punishment**

**(5)** Any person who contravenes subsection (1) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Reviewable conduct**

**(6)** Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

**Duplication of proceedings**

**(7)** No proceedings may be commenced under this section against a person against whom an order is sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 52; 1999, c. 2, s. 12.

**Definition of "telemarketing"**

**52.1 (1)** In this section, “telemarketing” means the practice of using interactive telephone communications for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

**Required disclosures**

**(2)** No person shall engage in telemarketing unless

**(a)** disclosure is made, in a fair and reasonable manner at the beginning of each telephone communication, of the identity of the person on behalf of whom the communication is made, the nature of the product or business interest being promoted and the purposes of the communication;

**(b)** disclosure is made, in a fair, reasonable and timely manner, of the price of any product whose supply or use is being promoted and any material restrictions, terms or conditions applicable to its delivery; and

**(c)** disclosure is made, in a fair, reasonable and timely manner, of such other information in relation to the product as may be prescribed by the regulations.

**Deceptive telemarketing**

**(3)** No person who engages in telemarketing shall

**(a)** make a representation that is false or misleading in a material respect;

**(b)** conduct or purport to conduct a contest, lottery or game of chance, skill or mixed chance and skill, where

**(i)** the delivery of a prize or other benefit to a participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant, or

**(ii)** adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the person’s knowledge, that affects materially the chances of winning;

**(c)** offer a product at no cost, or at a price less than the fair market value of the product, in consideration of the supply or use of another product, unless fair, reasonable and timely disclosure is made of the fair market value of the first product and of any restrictions, terms or conditions applicable to its supply to the purchaser; or

**(d)** offer a product for sale at a price grossly in excess of its fair market value, where delivery of the product is, or is represented to be, conditional on prior payment by the purchaser.

**General impression to be considered**

**(4)** In a prosecution for a contravention of paragraph (3)(a), the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

**Exception**

**(5)** The disclosure of information referred to in paragraph (2)(b) or (c) or (3)(b) or (c) must be made during the course of a telephone communication unless it is established by the accused that the information was disclosed within a reasonable time before the communication, by any means, and the information was not requested during the telephone communication.

**Due diligence**

**(6)** No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

**Offences by employees or agents**

**(7)** Notwithstanding subsection (6), in the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

**Liability of officers and directors**

**(8)** Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

**Offence and punishment**

**(9)** Any person who contravenes subsection (2) or (3) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Sentencing**

**(10)** In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

**(a)** the use of lists of persons previously deceived by means of telemarketing;

**(b)** characteristics of the persons to whom the telemarketing was directed, including classes of persons who are especially vulnerable to abusive tactics;

**(c)** the amount of the proceeds realized by the person from the telemarketing;

**(d)** previous convictions of the person under this section or under section 52 in respect of conduct prohibited by this section; and

**(e)** the manner in which information is conveyed, including the use of abusive tactics.

1999, c. 2, s. 13.

**Deceptive notice of winning a prize**

**53 (1)** No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, send or cause to be sent by electronic or regular mail or by any other means a document or notice in any form, if the document or notice gives the general impression that the recipient has won, will win, or will on doing a particular act win, a prize or other benefit, and if the recipient is asked or given the option to pay money, incur a cost or do anything that will incur a cost.

**Non-application**

**(2)** Subsection (1) does not apply if the recipient actually wins the prize or other benefit and the person who sends or causes the notice or document to be sent

**(a)** makes adequate and fair disclosure of the number and approximate value of the prizes or benefits, of the area or areas to which they have been allocated and of any fact within the person’s knowledge that materially affects the chances of winning;

**(b)** distributes the prizes or benefits without unreasonable delay; and

**(c)** selects participants or distributes the prizes or benefits randomly, or on the basis of the participants' skill, in any area to which the prizes or benefits have been allocated.

**Due diligence**

**(3)** No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

**Offences by employees or agents**

**(4)** In the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

**Liability of officers and directors**

**(5)** Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

**Offence and punishment**

**(6)** Any person who contravenes this section is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Sentencing**

**(7)** In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

**(a)** the use of lists of persons previously deceived by the commission of an offence under section 52.1 or this section;

**(b)** the particular vulnerability of recipients of the notices or documents referred to in subsection (1) to abusive tactics;

**(c)** the amount of the proceeds realized by the person from the commission of an offence under this section;

**(d)** previous convictions of the person under section 52 or 52.1 or this section; and

**(e)** the manner in which information is conveyed, including the use of abusive tactics.

R.S., 1985, c. C-34, s. 53; 1999, c. 2, s. 14; 2002, c. 16, s. 6.

**Double ticketing**

**54 (1)** No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

**(a)** on the product, its wrapper or container;

**(b)** on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or

**(c)** on an in-store or other point-of-purchase display or advertisement.

**Offence and punishment**

**(2)** Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.
1974-75-76, c. 76, s. 18.

**Definition of *multi-level marketing plan***

**55 (1)** For the purposes of this section and section 55.1, ***multi-level marketing plan*** means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

**Representations as to compensation**

**(2)** No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

**(a)** compensation actually received by typical participants in the plan; or

**(b)** compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including

**(i)** the nature of the product, including its price and availability,

**(ii)** the nature of the relevant market for the product,

**(iii)** the nature of the plan and similar plans, and

**(iv)** whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization.

**Idem**

**(2.1)** A person who operates a multi-level marketing plan shall ensure that any representations relating to compensation under the plan that are made to a prospective participant in the plan by a participant in the plan or by a representative of the person who operates the plan constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person who operates the plan relating to

**(a)** compensation actually received by typical participants in the plan; or

**(b)** compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including those specified in paragraph (2)(b).

**Due diligence defence**

**(2.2)** A person accused of an offence under subsection (2.1) shall not be convicted of the offence if the accused establishes that he or she took reasonable precautions and exercised due diligence to ensure

**(a)** that no representations relating to compensation under the plan were made by participants in the plan or by representatives of the accused; or

**(b)** that any representations relating to compensation under the plan that were made by participants in the plan or by representatives of the accused constituted or included fair, reasonable and timely disclosure of the information referred to in that subsection.

**Offence and punishment**

**(3)** Any person who contravenes subsection (2) or (2.1) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. C-34, s. 55; 1992, c. 14, s. 1; 1999, c. 2, s. 15.

**Definition of *scheme of pyramid selling***

**55.1 (1)** For the purposes of this section, ***scheme of pyramid selling*** means a multi-level marketing plan whereby

**(a)** a participant in the plan gives consideration for the right to receive compensation by reason of the recruitment into the plan of another participant in the plan who gives consideration for the same right;

**(b)** a participant in the plan gives consideration, as a condition of participating in the plan, for a specified amount of the product, other than a specified amount of the product that is bought at the seller’s cost price for the purpose only of facilitating sales;

**(c)** a person knowingly supplies the product to a participant in the plan in an amount that is commercially unreasonable; or

**(d)** a participant in the plan who is supplied with the product

**(i)** does not have a buy-back guarantee that is exercisable on reasonable commercial terms or a right to return the product in saleable condition on reasonable commercial terms, or

**(ii)** is not informed of the existence of the guarantee or right and the manner in which it can be exercised.

**Pyramid selling**

**(2)** No person shall establish, operate, advertise or promote a scheme of pyramid selling.

**Offence and punishment**

**(3)** Any person who contravenes subsection (2) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

1992, c. 14, s. 1; 1999, c. 2, s. 16.

**56 to 59** [Repealed, 1999, c. 2, s. 17]

**Defence**

**60** Section 54 does not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada if he or she establishes that he or she obtained and recorded the name and address of that other person and accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his or her business.

R.S., 1985, c. C-34, s. 60; 1999, c. 2, s. 17.1.

**Price maintenance**

**61 (1)** No person who is engaged in the business of producing or supplying a product, who extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards, or who has the exclusive rights and privileges conferred by a patent, trade-mark, copyright, registered industrial design or registered integrated circuit topography, shall, directly or indirectly,

**(a)** by agreement, threat, promise or any like means, attempt to influence upward, or to discourage the reduction of, the price at which any other person engaged in business in Canada supplies or offers to supply or advertises a product within Canada; or

**(b)** refuse to supply a product to or otherwise discriminate against any other person engaged in business in Canada because of the low pricing policy of that other person.

**Exception**

**(2)** Subsection (1) does not apply where the person attempting to influence the conduct of another person and that other person are affiliated corporations or directors, agents, officers or employees of

**(a)** the same corporation, partnership or sole proprietorship, or

**(b)** corporations, partnerships or sole proprietorships that are affiliated,

or where the person attempting to influence the conduct of another person and that other person are principal and agent.

**Suggested retail price**

**(3)** For the purposes of this section, a suggestion by a producer or supplier of a product of a resale price or minimum resale price in respect thereof, however arrived at, is, in the absence of proof that the person making the suggestion, in so doing, also made it clear to the person to whom the suggestion was made that he was under no obligation to accept the suggestion and would in no way suffer in his business relations with the person making the suggestion or with any other person if he failed to accept the suggestion, proof of an attempt to influence the person to whom the suggestion is made in accordance with the suggestion.

**Idem**

**(4)** For the purposes of this section, the publication by a supplier of a product, other than a retailer, of an advertisement that mentions a resale price for the product is an attempt to influence upward the selling price of any person into whose hands the product comes for resale unless the price is so expressed as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price.

**Exception**

**(5)** Subsections (3) and (4) do not apply to a price that is affixed or applied to a product or its package or container.

**Refusal to supply**

**(6)** No person shall, by threat, promise or any like means, attempt to induce a supplier, whether within or outside Canada, as a condition of his doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons.

**(7) and (8)** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 36]

**Offence and punishment**

**(9)** Every person who contravenes subsection (1) or (6) is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

**Where no unfavourable inference to be drawn**

**(10)** Where, in a prosecution under paragraph (1)(b), it is proved that the person charged refused or counselled the refusal to supply a product to any other person, no inference unfavourable to the person charged shall be drawn from that evidence if he satisfies the court that he and any one on whose report he depended believed on reasonable grounds

**(a)** that the other person was making a practice of using products supplied by the person charged as loss-leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising;

**(b)** that the other person was making a practice of using products supplied by the person charged not for the purpose of selling the products at a profit but for the purpose of attracting customers to his store in the hope of selling them other products;

**(c)** that the other person was making a practice of engaging in misleading advertising in respect of products supplied by the person charged; or

**(d)** that the other person made a practice of not providing the level of servicing that purchasers of the products might reasonably expect from the other person.

R.S., 1985, c. C-34, s. 61; R.S., 1985, c. 19 (2nd Supp.), s. 36; 1990, c. 37, s. 30; 1999, c. 31, s. 51(F).

**Civil rights not affected**

**62** Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action.

R.S., c. C-23, s. 39; 1974-75-76, c. 76, s. 18.

**PART VII**

# Other Offences

## Offences

**63** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 37]

**Obstruction**

**64 (1)** No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

**Offence and punishment**

**(2)** Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

R.S., c. C-23, s. 41.

**Contravention of Part II provisions**

**65 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, fails to comply with an order made under section 11 and every person who contravenes subsection 15(5) or 16(2) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

**Failure to supply information**

**(2)** Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes section 114 or 123 is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $50,000.

**Destruction or alteration of records or things**

**(3)** Every person who destroys or alters, or causes to be destroyed or altered, any record or other thing that is required to be produced pursuant to section 11 or in respect of which a warrant is issued under section 15 is guilty of an offence and liable

**(a)** on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years or to both; or

**(b)** on conviction on indictment to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding five years or to both.

**Liability of directors**

**(4)** Where a corporation commits an offence under this section, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

R.S., 1985, c. C-34, s. 65; R.S., 1985, c. 19 (2nd Supp.), s. 38; 1999, c. 2, s. 18.

**Contravention of subsection 30.06(5)**

**65.1 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 30.06(5) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

**Destruction or alteration of records or things**

**(2)** Every person who destroys or alters, or causes to be destroyed or altered, any record or thing in respect of which a search warrant is issued under section 30.06 or that is required to be produced pursuant to an order made under subsection 30.11(1) or 30.16(1) is guilty of an offence and liable

**(a)** on conviction on indictment to a fine not exceeding $50,000 or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding two years, or to both.

2002, c. 16, s. 7.

**Refusal after objection overruled**

**65.2 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c) after a judge has ruled against the objection under paragraph 30.11(8)(a), is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

**Refusal where no ruling made on objection**

**(2)** Every person is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both, who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c), where no ruling has been made under paragraph 30.11(8)(a),

**(a)** without giving the detailed statement required by subsection 30.11(9); or

**(b)** if the person was previously asked the same question or requested to produce the same record or thing and refused to do so and the reasons on which that person based the previous refusal were determined not to be well-founded by

**(i)** a judge, if the reasons were based on the Canadian law of non-disclosure of information or privilege, or

**(ii)** a court of the foreign state or by a person designated by the foreign state, if the reasons were based on a law that applies to the foreign state.

2002, c. 16, s. 7.

**Contravention of Part VII.1 or VIII order**

**66** Every person who contravenes an order made under Part VII.1, except paragraph 74.1(1)(c), or under Part VIII is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $25,000 or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. C-34, s. 66; R.S., 1985, c. 19 (2nd Supp.), s. 39; 1999, c. 2, s. 19.

**Whistleblowing**

**66.1 (1)** Any person who has reasonable grounds to believe that a person has committed or intends to commit an offence under the Act, may notify the Commissioner of the particulars of the matter and may request that his or her identity be kept confidential with respect to the notification.

**Confidentiality**

**(2)** The Commissioner shall keep confidential the identity of a person who has notified the Commissioner under subsection (1) and to whom an assurance of confidentiality has been provided by any person who performs duties or functions in the administration or enforcement of this Act.

1999, c. 2, s. 19.

**Prohibition**

**66.2 (1)** No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

**(a)** the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the employer or any other person has committed or intends to commit an offence under this Act;

**(b)** the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is an offence under this Act;

**(c)** the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order that an offence not be committed under this Act; or

**(d)** the employer believes that the employee will do anything referred to in paragraph (a) or (c) or will refuse to do anything referred to in paragraph (b).

**Saving**

**(2)** Nothing in this section impairs any right of an employee either at law or under an employment contract or collective agreement.

**Definitions**

**(3)** In this section, ***employee*** includes an independent contractor and ***employer*** has the corresponding meaning.

1999, c. 2, s. 19.

# Procedure

**Procedure for enforcing punishment**

**67 (1)** Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects, he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial.

**Application of *Criminal Code***

**(2)** Where an election is made under subsection (1), the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

**Jurisdiction of courts**

**(3)** No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

**Corporations to be tried without jury**

**(4)** Notwithstanding anything in the *Criminal Code* or in any other statute or law, a corporation charged with an offence under this Act shall be tried without a jury.

**Option as to procedure under subsection 34(2)**

**(5)** In any case where subsection 34(2) is applicable, the Attorney General of Canada or the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

**Limitation period**

**(6)** Proceedings in respect of an offence that is declared by this Act to be punishable on summary conviction may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

R.S., c. C-23, s. 44; 1974-75-76, c. 76, s. 19.

**Venue of prosecutions**

**68** Notwithstanding any other Act, a prosecution for an offence under Part VI or section 66 may be brought, in addition to any place in which the prosecution may be brought by virtue of the *Criminal Code*,

**(a)** where the accused is a corporation, in any territorial division in which the corporation has its head office or a branch office, whether or not the branch office is provided for in any Act or instrument relating to the incorporation or organization of the corporation; and

**(b)** where the accused is not a corporation, in any territorial division in which the accused resides or has a place of business.

R.S., 1985, c. C-34, s. 68; 1999, c. 2, s. 20.

**Definitions**

**69 (1)** In this section,

***agent of a participant*** means a person who by a record admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative of a participant; (*agent d'un participant*)

***document*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 40]

***participant*** means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged. (*participant*)

**Evidence against a participant**

**(2)** In any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act,

**(a)** anything done, said or agreed on by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been done, said or agreed on, as the case may be, with the authority of that participant;

**(b)** a record written or received by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been written or received, as the case may be, with the authority of that participant; and

**(c)** a record proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof

**(i)** that the participant had knowledge of the record and its contents,

**(ii)** that anything recorded in or by the record as having been done, said or agreed on by any participant or by an agent of a participant was done, said or agreed on as recorded and, where anything is recorded in or by the record as having been done, said or agreed on by an agent of a participant, that it was done, said or agreed on with the authority of that participant, and

**(iii)** that the record, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

R.S., 1985, c. C-34, s. 69; R.S., 1985, c. 19 (2nd Supp.), s. 40.

**Admissibility of statistics**

**70 (1)** A collection, compilation, analysis, abstract or other record or report of statistical information prepared or published under the authority of

**(a)** the *Statistics Act*, or

**(b)** any other enactment of Parliament or of the legislature of a province,

is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

**Idem**

**(2)** On request from the Minister or the Commissioner

**(a)** the Chief Statistician of Canada or an officer of any department or agency of the Government of Canada the functions of which include the gathering of statistics shall, and

**(b)** an officer of any department or agency of the government of a province the functions of which include the gathering of statistics may,

compile from his or its records a statement of statistics relating to any industry or sector thereof, in accordance with the terms of the request, and any such statement is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

**Privileged information not affected**

**(3)** Nothing in this section compels or authorizes the Chief Statistician of Canada or any officer of a department or agency of the Government of Canada to disclose any particulars relating to an individual or business in a manner that is prohibited by any provision of an enactment of Parliament or of a provincial legislature designed for the protection of those particulars.

**Certificate**

**(4)** In any proceedings before the Tribunal, or in any prosecution or proceedings before a court under or pursuant to this Act, a certificate purporting to be signed by the Chief Statistician of Canada or the officer of the department or agency of the Government of Canada or of a province under whose supervision a record, report or statement of statistics referred to in this section was prepared, setting out that the record, report or statement of statistics attached thereto was prepared under his supervision, is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

R.S., 1985, c. C-34, s. 70; R.S., 1985, c. 19 (2nd Supp.), s. 41; 1999, c. 2, s. 37.

**Statistics collected by sampling methods**

**71** A collection, compilation, analysis, abstract or other record or report of statistics collected by sampling methods by or on behalf of the Commissioner or any other party to proceedings before the Tribunal, or to a prosecution or proceedings before a court under or pursuant to this

Act, is admissible in evidence in that prosecution or those proceedings.

R.S., 1985, c. C-34, s. 71; R.S., 1985, c. 19 (2nd Supp.), s. 42; 1999, c. 2, s. 37.

**Notice**

**72 (1)** No record, report or statement of statistical information or statistics referred to in section 70 or 71 shall be received in evidence before the Tribunal or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 71, together with the names and qualifications of those persons who participated in the preparation thereof.

**Attendance of statistician**

**(2)** Any person against whom a record or report of statistics referred to in section 70 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.

**Idem**

**(3)** Any person against whom a record or report of statistics referred to in section 71 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report.

R.S., 1985, c. C-34, s. 72; R.S., 1985, c. 19 (2nd Supp.), s. 43.

**Jurisdiction of Federal Court**

**73 (1)** Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 34, any of sections 45 to 51 and section 61 or, where the proceedings are on indictment, under section 52, 52.1, 53, 55, 55.1 or 66, in the Federal Court — Trial Division, and for the purposes of the prosecution or other proceedings, the Federal Court — Trial Division has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

**No jury**

**(2)** The trial of an offence under Part VI or section 66 in the Federal Court — Trial Division shall be without a jury.

**Appeal**

**(3)** An appeal lies from the Federal Court — Trial Division to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part VI or section 66 of this Act as provided in Part XXI of the *Criminal Code* for appeals from a trial court and from a court of appeal.

**Proceedings optional**

**(4)** Proceedings under subsection 34(2) may in the discretion of the Attorney General of Canada be instituted in either the Federal Court — Trial Division or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court — Trial Division in respect of an offence under Part VI or section 66 without the consent of the individual.

R.S., 1985, c. C-34, s. 73; 1999, c. 2, s. 21; 2002, c. 16, s. 8.

**74** [Repealed, 1999, c. 2, s. 22]

**PART VII.1**

# Deceptive Marketing Practices

## Reviewable Matters

**Misrepresentations to public**

**74.01 (1)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

**(a)** makes a representation to the public that is false or misleading in a material respect;

**(b)** makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or

**(c)** makes a representation to the public in a form that purports to be

**(i)** a warranty or guarantee of a product, or

**(ii)** a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

**Ordinary price: suppliers generally**

**(2)** Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public concerning the price at which a product or like products have been, are or will be ordinarily supplied where suppliers generally in the relevant geographic market, having regard to the nature of the product,

**(a)** have not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

**(b)** have not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**Ordinary price: supplier's own**

**(3)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public as to price that is clearly specified to be the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation where that person, having regard to the nature of the product and the relevant geographic market,

**(a)** has not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

**(b)** has not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**References to time in subsections (2) and (3)**

**(4)** For greater certainty, whether the period of time to be considered in paragraphs (2)(a) and (b) and (3)(a) and (b) is before or after the making of the representation depends on whether the representation relates to

**(a)** the price at which products have been or are supplied; or

**(b)** the price at which products will be supplied.

**Saving**

**(5)** Subsections (2) and (3) do not apply to a person who establishes that, in the circumstances, a representation as to price is not false or misleading in a material respect.

**General impression to be considered**

**(6)** In proceedings under this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.
1999, c. 2, s. 22.

**Representation as to reasonable test and publication of testimonials**

**74.02** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest, makes a representation to the public that a test has been

made as to the performance, efficacy or length of life of a product by any person, or publishes a testimonial with respect to a product, unless the person making the representation or publishing the testimonial can establish that

**(a)** such a representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, or

**(b)** such a representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

1999, c. 2, s. 22.

**Representations accompanying products**

**74.03 (1)** For the purposes of sections 74.01 and 74.02, a representation that is

**(a)** expressed on an article offered or displayed for sale or its wrapper or container,

**(b)** expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

**(c)** expressed on an in-store or other point-of-purchase display,

**(d)** made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

**(e)** contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

**Representations from outside Canada**

**(2)** Where a person referred to in subsection (1) is outside Canada, a representation described in paragraph (1)(a), (b), (c) or (e) is, for the purposes of sections 74.01 and 74.02, deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

**Deemed representation to public**

**(3)** Subject to subsection (1), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in section 74.01 is deemed to make that representation to the public.

1999, c. 2, s. 22.

**Definition of *bargain price***

**74.04 (1)** For the purposes of this section, ***bargain price*** means

**(a)** a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or

**(b)** a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily supplied.

**Bait and switch selling**

**(2)** A person engages in reviewable conduct who advertises at a bargain price a product that the person does not supply in reasonable quantities having regard to the nature of the market in which the person carries on business, the nature and size of the person's business and the nature of the advertisement.

**Saving**

**(3)** Subsection (2) does not apply to a person who establishes that

**(a)** the person took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond the person's control that could not reasonably have been anticipated;

**(b)** the person obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed the person's reasonable expectations; or

**(c)** after becoming unable to supply the product in accordance with the advertisement, the person undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied with it during the time when the bargain price applied, and the person fulfilled the undertaking.

1999, c. 2, s. 22.

**Sale above advertised price**

**74.05 (1)** A person engages in reviewable conduct who advertises a product for sale or rent in a market and, during the period and in the market to which the advertisement relates, supplies the product at a price that is higher than the price advertised.

**Saving**

**(2)** This section does not apply

**(a)** in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained in it are subject to error if the person establishes that the price advertised is in error;

**(b)** in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement;

**(c)** in respect of the supply of a security obtained on the open market during a period when the prospectus relating to that security is still current; or

**(d)** in respect of the supply of a product by or on behalf of a person who is not engaged in the business of dealing in that product.

**Application**

**(3)** For the purpose of this section, the market to which an advertisement relates is the market that the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise.
1999, c. 2, s. 22.

**Promotional contests**

**74.06** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest, conducts any contest, lottery, game of chance or skill, or mixed chance and skill, or otherwise disposes of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever, where

**(a)** adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the person that affects materially the chances of winning;

**(b)** distribution of the prizes is unduly delayed; or

**(c)** selection of participants or distribution of prizes is not made on the basis of skill or on a random basis in any area to which prizes have been allocated.

1999, c. 2, s. 22.

**Saving**

**74.07 (1)** Sections 74.01 to 74.06 do not apply to a person who prints or publishes or otherwise disseminates a representation, including an advertisement, on behalf of another person in Canada, where the person establishes that the person obtained and recorded the name and address of that other person and accepted the representation in good faith for printing, publishing or other dissemination in the ordinary course of that person’s business.

**Non-application**

**(2)** Sections 74.01 to 74.06 do not apply in respect of conduct prohibited by sections 52.1, 53, 55 and 55.1.

1999, c. 2, s. 22; 2002, c. 16, s. 9.

**Civil rights not affected**

**74.08** Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of a civil right of action.

1999, c. 2, s. 22.

# Administrative Remedies

**Definition of "court"**

**74.09** In sections 74.1 to 74.14 and 74.18, “court” means the Tribunal, the Federal Court — Trial Division or the superior court of a province.

1999, c. 2, s. 22.

**Determination of reviewable conduct and judicial order**

**74.1 (1)** Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

**(a)** not to engage in the conduct or substantially similar reviewable conduct;

**(b)** to publish or otherwise disseminate a notice, in such manner and at such times as the court may specify, to bring to the attention of the class of persons likely to have been reached or affected by the conduct, the name under which the person carries on business and the determination made under this section, including

**(i)** a description of the reviewable conduct,

**(ii)** the time period and geographical area to which the conduct relates, and

**(iii)** a description of the manner in which any representation or advertisement was disseminated, including, where applicable, the name of the publication or other medium employed; and

**(c)** to pay an administrative monetary penalty, in such manner as the court may specify, in an amount not exceeding

**(i)** in the case of an individual, $50,000 and, for each subsequent order, $100,000, or

**(ii)** in the case of a corporation, $100,000 and, for each subsequent order, $200,000.

**Duration of order**

**(2)** An order made under paragraph (1)(a) applies for a period of ten years unless the court specifies a shorter period.

**Saving**

**(3)** No order may be made against a person under paragraph (1)(b) or (c) where the person establishes that the person exercised due diligence to prevent the reviewable conduct from occurring.

**Purpose of order**

**(4)** The terms of an order made against a person under paragraph (1)(b) or (c) shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment.

**Aggravating or mitigating factors**

**(5)** Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under paragraph (1)(c):

**(a)** the reach of the conduct within the relevant geographic market;

**(b)** the frequency and duration of the conduct;

**(c)** the vulnerability of the class of persons likely to be adversely affected by the conduct;

**(d)** the materiality of any representation;

**(e)** the likelihood of self-correction in the relevant geographic market;

**(f)** injury to competition in the relevant geographic market;

**(g)** the history of compliance with this Act by the person who engaged in the reviewable conduct; and

**(h)** any other relevant factor.

**Meaning of subsequent order**

**(6)** For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b) or (c), subsection 74.01(2) or (3) or section 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

**(a)** an order was previously made against the person under this section in respect of conduct reviewable under the same provision;

**(b)** the person was previously convicted of an offence under the provision of Part VI, as that Part read immediately before the coming into force of this Part, that corresponded to the provision of this Part;

**(c)** in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a), the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or

**(d)** in the case of an order in respect of conduct reviewable under subsection 74.01(2) or (3), the person was previously convicted of an offence under paragraph 52(1)(d) as it read immediately before the coming into force of this Part.

1999, c. 2, s. 22.

**Temporary order**

**74.11 (1)** Where, on application by the Commissioner, a court finds a strong *prima facie* case that a person is engaging in reviewable conduct under this Part, the court may order the person not to engage in that conduct or substantially similar reviewable conduct if the court is satisfied that

**(a)** serious harm is likely to ensue unless the order is issued; and

**(b)** the balance of convenience favours issuing the order.

**Duration**

**(2)** Subject to subsection (5), the order has effect, or may be extended on application by the Commissioner, for such period as the court considers necessary and sufficient to meet the circumstances of the case.

**Notice of application by Commissioner**

**(3)** Subject to subsection (4), at least forty-eight hours notice of an application referred to in subsection (1) or (2) shall be given by or on behalf of the Commissioner to the person in respect of whom the order or extension is sought.

***Ex parte* application**

**(4)** The court may proceed *ex parte* with an application made under subsection (1) where it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

**Duration of *ex parte* order**

**(5)** An order issued *ex parte* shall have effect for such period as is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (3), the court extends the order for such additional period as it considers necessary and sufficient.

**Duty of Commissioner**

**(6)** Where an order issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 arising out of the conduct in respect of which the order was issued.

1999, c. 2, s. 22; 2002, c. 16, s. 10.

**Consent agreement**

**74.12 (1)** The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part may sign a consent agreement.

**Terms of consent agreement**

**(2)** The consent agreement shall be based on terms that could be the subject of an order of a court against that person, and may include other terms, whether or not they could be imposed by the court.

**Registration**

**(3)** The consent agreement may be filed with the court for immediate registration.

**Effect of registration**

**(4)** Upon registration of the consent agreement, the proceedings, if any, are terminated and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the court.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

**Rescission or variation of consent agreement or order**

**74.13** The court may rescind or vary a consent agreement that it has registered or an order that it has made under this Part, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the court finds that

**(a)** the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

**(b)** the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

**Evidence**

**74.14** In determining whether or not to make an order under this Part, the court shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the court under this Act.

1999, c. 2, s. 22.

**Unpaid monetary penalty**

**74.15** The amount of an administrative monetary penalty imposed on a person under paragraph 74.1(1)(c) is a debt due to Her Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

1999, c. 2, s. 22.

**Proceedings commenced under Part VI**

**74.16** No application may be made by the Commissioner for an order under this Part against a person where proceedings have been commenced under section 52 against that person on the basis of the same or substantially the same facts as would be alleged in proceedings under this Part.

1999, c. 2, s. 22.

# Rules of Procedure

**Power of courts**

**74.17** The rules committee of the Federal Court, or a superior court of a province, may make rules respecting the procedure for the disposition of applications by that court under this Part.

1999, c. 2, s. 22.

# Appeals

**Appeal to Federal Court of Appeal**

**74.18 (1)** An appeal may be brought in the Federal Court of Appeal from any decision or order made under this Part, or from a refusal to make an order, by the Tribunal or the Federal Court — Trial Division.

**Appeal to provincial court of appeal**

**(2)** An appeal may be brought in the court of appeal of a province from any decision or order made under this Part, or from a refusal to make an order, by a superior court of the province.

**Disposition of appeal**

**(3)** Where the Federal Court of Appeal or the court of appeal of the province allows an appeal under this section, it may quash the decision or order appealed from, refer the matter back to the court appealed from or make any decision or order that, in its opinion, that court should have made.

1999, c. 2, s. 22.

**Appeal on question of fact**

**74.19** An appeal on a question of fact from a decision or order made under this Part may be brought only with the leave of the Federal Court of Appeal or the court of appeal of the province, as the case may be.

**PART VIII**

# Matters Reviewable by Tribunal

## Restrictive Trade Practices

### Refusal to Deal

**Jurisdiction of Tribunal where refusal to deal**

**75 (1)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

**(a)** a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

**(b)** the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

**(c)** the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

**(d)** the product is in ample supply, and

**(e)** the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

**When article is a separate product**

**(2)** For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.

**Definition of *trade terms***

**(3)** For the purposes of this section, the expression ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

**Inferences**

**(4)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 75; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 11.1.

## Consignment Selling

**Consignment selling**

**76** Where, on application by the Commissioner, the Tribunal finds that the practice of consignment selling has been introduced by a supplier of a product who ordinarily sells the product for resale, for the purpose of

**(a)** controlling the price at which a dealer in the product supplies the product, or

**(b)** discriminating between consignees or between dealers to whom he sells the product for resale and consignees,

the Tribunal may order the supplier to cease to carry on the practice of consignment selling of the product.

R.S., 1985, c. C-34, s. 76; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Exclusive Dealing, Tied Selling and Market Restriction

**Definitions**

**77 (1)** For the purposes of this section,

***exclusive dealing*** means

**(a)** any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

**(i)** deal only or primarily in products supplied by or designated by the supplier or the supplier's nominee, or

**(ii)** refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

**(b)** any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs; (*exclusivité*)

***market restriction*** means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market; (*limitation du marché*)

***tied selling*** means

**(a)** any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to

**(i)** acquire any other product from the supplier or the supplier's nominee, or

**(ii)** refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and

**(b)** any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs. (*ventes liées*)

**Exclusive dealing and tied selling**

**(2)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

**(a)** impede entry into or expansion of a firm in a market,

**(b)** impede introduction of a product into or expansion of sales of a product in a market, or

**(c)** have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

**Market restriction**

**(3)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that market restriction, because it is engaged in by a major supplier of a product or because it is widespread in relation to a product, is likely to substantially lessen competition in relation to the product, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in market restriction and containing any other requirement that, in its opinion, is necessary to restore or stimulate competition in relation to the product.

**Damage awards**

**(3.1)** For greater certainty, the Tribunal may not make an award of damages under this section to a person granted leave under subsection 103.1(7).

**Where no order to be made and limitation on application of order**

**(4)** The Tribunal shall not make an order under this section where, in its opinion,

**(a)** exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,

**(b)** tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or

**(c)** tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by that person and is reasonably necessary for that purpose,

and no order made under this section applies in respect of exclusive dealing, market restriction or tied selling between or among companies, partnerships and sole proprietorships that are affiliated.

**Where company, partnership or sole proprietorship affiliated**

**(5)** For the purposes of subsection (4),

**(a)** one company is affiliated with another company if one of them is the subsidiary of the other or both are the subsidiaries of the same company or each of them is controlled by the same person;

**(b)** if two companies are affiliated with the same company at the same time, they are deemed to be affiliated with each other;

**(c)** a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person; and

**(d)** a company, partnership or sole proprietorship is affiliated with another company, partnership or sole proprietorship in respect of any agreement between them whereby one party grants to the other party the right to use a trade-mark or trade-name to identify the business of the grantee, if

**(i)** the business is related to the sale or distribution, pursuant to a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers, and

**(ii)** no one product dominates the business.

**When persons deemed to be affiliated**

**(6)** For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the “first” person) supplies or causes to be supplied to another person (the “second” person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then

sells in association with a trade-mark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of the agreement, to be affiliated.

**Inferences**

**(7)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 77; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 23, 37, c. 31, s. 52(F); 2002, c. 16, ss. 11.2, 11.3.

## Abuse of Dominant Position

**Definition of "anti-competitive act"**

**78 (1)** For the purposes of section 79, “anti-competitive act”, without restricting the generality of the term, includes any of the following acts:

**(a)** squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer’s entry into, or expansion in, a market;

**(b)** acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor’s entry into, or eliminating the competitor from, a market;

**(c)** freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor’s entry into, or eliminating the competitor from, a market;

**(d)** use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

**(e)** pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

**(f)** buying up of products to prevent the erosion of existing price levels;

**(g)** adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

**(h)** requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor’s entry into, or expansion in, a market;

**(i)** selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;

**(j)** acts or conduct of a person operating a domestic service, as defined in subsection 55(1) of the *Canada Transportation Act*, that are specified under paragraph (2)(a); and

**(k)** the denial by a person operating a domestic service, as defined in subsection 55(1) of the *Canada Transportation Act*, of access on reasonable commercial terms to facilities or services that are essential to the operation in a market of an air service, as defined in that subsection, or refusal by such a person to supply such facilities or services on such terms.

**Regulations**

**(2)** The Governor in Council may, on the recommendation of the Minister and the Minister of Transport, make regulations

**(a)** specifying acts or conduct for the purpose of paragraph (1)(j); and

**(b)** specifying facilities or services that are essential to the operation of an air service for the purpose of paragraph (1)(k).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2000, c. 15, s. 13.

**Prohibition where abuse of dominant position**

**79 (1)** Where, on application by the Commissioner, the Tribunal finds that

**(a)** one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,

**(b)** that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and

**(c)** the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,

the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

**Additional or alternative order**

**(2)** Where, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take such actions, including the divestiture of assets or shares, as are reasonable and as are necessary to overcome the effects of the practice in that market.

**Limitation**

**(3)** In making an order under subsection (2), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

**Administrative monetary penalty**

**(3.1)** Where the Tribunal makes an order under subsection (1) or (2) against an entity who operates a domestic service, as defined in subsection 55(1) of the *Canada Transportation Act*, it may also order the entity to pay, in such manner as the Tribunal may specify, an administrative monetary penalty in an amount not greater than $15 million.

**Aggravating or mitigating factors**

**(3.2)** In determining the amount of an administrative monetary penalty, the Tribunal shall take into account the following:

**(a)** the frequency and duration of the practice;

**(b)** the vulnerability of the class of persons adversely affected by the practice;

**(c)** injury to competition in the relevant market;

**(d)** the history of compliance with this Act by the entity; and

**(e)** any other relevant factor.

**Purpose of order**

**(3.3)** The purpose of an order under subsection (3.1) is to promote practices that are in conformity with this section, not to punish.

**Superior competitive performance**

**(4)** In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal shall consider whether the practice is a result of superior competitive performance.

**Exception**

**(5)** For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act*, *Industrial Design Act*, *Integrated Circuit Topography Act*, *Patent Act*, *Trade-marks Act* or any other Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act.

**Limitation period**

**(6)** No application may be made under this section in respect of a practice of anti-competitive acts more than three years after the practice has ceased.

**Where proceedings commenced under section 45 or 92**

**(7)** No application may be made under this section against a person

**(a)** against whom proceedings have been commenced under section 45, or

**(b)** against whom an order is sought under section 92

on the basis of the same or substantially the same facts as would be alleged in the proceedings under section 45 or 92, as the case may be.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 31; 1999, c. 2, s. 37; 2002, c. 16, s. 11.4.

**Unpaid monetary penalty**

**79.1** The amount of an administrative monetary penalty imposed on an entity under subsection 79(3.1) is a debt due to Her Majesty in right of Canada and may be recovered as such from that entity in a court of competent jurisdiction.

2002, c. 16, s. 11.5.

## Delivered Pricing

**Definition of *delivered pricing***

**80 (1)** For the purposes of section 81, ***delivered pricing*** means the practice of refusing a customer, or a person seeking to become a customer, delivery of an article at any place in which the supplier engages in a practice of making delivery of the article to any other of the supplier's customers on the same trade terms that would be available to the first-mentioned customer if his place of business were located in that place.

**Definition of *trade terms***

**(2)** For the purposes of subsection (1), the expression ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Delivered pricing**

**81 (1)** Where, on application by the Commissioner, the Tribunal finds that delivered pricing is engaged in by a major supplier of an article in a market or is widespread in a market with the result that a customer, or a person seeking to become a customer, is denied an advantage that would otherwise be available to him in the market, the Tribunal may make an order prohibiting all or any of such suppliers from engaging in delivered pricing.

**Exception where significant capital investment needed**

**(2)** No order shall be made against a supplier under this section where the Tribunal finds that the supplier could not accommodate any additional customers at a locality without making significant capital investment at that locality.

**Exception where trade-mark used**

**(3)** No order shall be made against a supplier under this section in respect of a practice of refusing a customer delivery of an article that the customer sells in association with a trade-mark that the supplier owns or in respect of which the supplier is a registered user where the Tribunal finds that the practice is necessary to maintain a standard of quality in respect of the article.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Foreign Judgments and Laws

**Foreign judgments, etc.**

**82** Where, on application by the Commissioner, the Tribunal finds that

**(a)** a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by companies incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and

**(b)** the implementation in whole or in part of the judgment, decree, order or other process in Canada, would

**(i)** adversely affect competition in Canada,

**(ii)** adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore or improve that efficiency,

**(iii)** adversely affect the foreign trade of Canada without compensating advantages, or

**(iv)** otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Tribunal may, by order, direct that

**(c)** no measures be taken in Canada to implement the judgment, decree, order or process, or

**(d)** no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs (b)(i) to (iv).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Foreign laws and directives**

**83 (1)** Where, on application by the Commissioner, the Tribunal finds that a decision has been or is about to be made by a person in Canada or a company incorporated by or pursuant to an Act of Parliament or of the legislature of a province

**(a)** as a result of

**(i)** a law in force in a country other than Canada, or

**(ii)** a directive, instruction, intimation of policy or other communication to that person or company or to any other person from

**(A)** the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or company, or

**(B)** a person in a country other than Canada who is in a position to direct or influence the policies of that person or company,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada,

and that the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 82(b)(i) to (iv), or

**(b)** as a result of a directive, instruction, intimation of policy or other communication to that person or company or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or company, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45,

the Tribunal may, by order, direct that

**(c)** in a case described in paragraph (a) or (b), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication, or

**(d)** in a case described in paragraph (a), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs 82(b)(i) to (iv).

**Limitation**

**(2)** No application may be made by the Commissioner for an order under this section against a particular company where proceedings have been commenced under section 46 against that company based on the same or substantially the same facts as would be alleged in the application.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Foreign Suppliers

**Refusal to supply by foreign supplier**

**84** Where, on application by the Commissioner, the Tribunal finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the “first” person) at the instance of and by reason of the exertion of

buying power outside Canada by another person, the Tribunal may order any person in Canada (the “second” person) by whom or on whose behalf or for whose benefit the buying power was exerted

**(a)** to sell any such product of the supplier that the second person has obtained or obtains to the first person at the laid-down cost in Canada to the second person of the product and on the same terms and conditions as the second person obtained or obtains from the supplier; or

**(b)** not to deal or to cease to deal, in Canada, in that product of the supplier.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 37.

# Specialization Agreements

**Definitions**

**85** For the purposes of this section and sections 86 to 90,

***article*** includes each separate type, size, weight and quality in which an article, within the meaning assigned by section 2, is produced; (*article*)

***registered*** means registered in the register maintained pursuant to section 89; (*inscrit*)

***specialization agreement*** means an agreement under which each party thereto agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into on the condition that each other party to the agreement agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into, and includes any such agreement under which the parties also agree to buy exclusively from each other the articles or services that are the subject of the agreement. (*accord de spécialisation*)

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Order directing registration**

**86 (1)** Where, on application by any person, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal finds that an agreement that the person who has made the application has entered into or is about to enter into is a specialization agreement and that

**(a)** the implementation of the agreement is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the agreement and the gains in efficiency would not likely be attained if the agreement were not implemented, and

**(b)** no attempt has been made by the persons who have entered or are about to enter into the agreement to coerce any person to become a party to the agreement,

the Tribunal may, subject to subsection (4), make an order directing that the agreement be registered for a period specified in the order.

**Factors to be considered**

**(2)** In considering whether an agreement is likely to bring about gains in efficiency described in paragraph (1)(a), the Tribunal shall consider whether those gains will result in

**(a)** a significant increase in the real value of exports; or

**(b)** a significant substitution of domestic articles or services for imported articles or services.

**Redistribution of income does not result in gains in efficiency**

**(3)** For the purposes of paragraph (1)(a), the Tribunal shall not find that an agreement is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

**Conditional orders**

**(4)** Where, on an application under subsection (1), the Tribunal finds that an agreement meets the conditions prescribed by paragraphs (a) and (b) of that subsection but also finds that, as a result of the implementation of the agreement, there is not likely to be substantial competition remaining in the market or markets to which the agreement relates, the Tribunal may provide, in an order made under subsection (1), that the order shall take effect only if, within a reasonable period of time specified in the order, there has occurred any of the following events, specified in the order:

**(a)** the divestiture of particular assets, specified in the order;

**(b)** a wider licensing of patents or registered integrated circuit topographies;

**(c)** a reduction in tariffs;

**(d)** the making of an order in council under section 23 of the *Financial Administration Act* effecting a remission or remissions specified in the order of the Tribunal of any customs duties on an article that is a subject of the agreement; or

**(e)** the removal of import quotas or import licensing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 32; 1999, c. 2, s. 37.

**Registration of modifications**

**87 (1)** On application by the parties to a specialization agreement that has been registered, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal may make an order directing that a modification of the agreement be registered.

**Order to remove from register**

**(2)** Where, on application by the Commissioner, the Tribunal finds that the agreement or a modification thereof that has been registered

**(a)** has ceased to meet the conditions prescribed by paragraph 86(1)(a) or (b), or

**(b)** is not being implemented,

the Tribunal may make an order directing that the agreement or modification thereof, and any order relating thereto, be removed from the register.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Right of intervention**

**88** The attorney general of a province may intervene in any proceedings before the Tribunal under section 86 or 87 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Register of specialization agreements**

**89 (1)** The Tribunal shall cause to be maintained at its Registry established pursuant to subsection 14(1) of the *Competition Tribunal Act* a register of specialization agreements, and modifications thereof, that the Tribunal has directed be registered, and any such agreements and modifications thereof shall be included in the register for the periods specified in the orders.

**Public access to register**

**(2)** The register shall be kept open to inspection by any person during normal business hours of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Non-application of sections 45 and 77**

**90** Section 45, and section 77 as it applies to exclusive dealing, do not apply in respect of a specialization agreement, or any modification thereof, that is registered.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

# Mergers

**Definition of *merger***

**91** In sections 92 to 100, ***merger*** means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Order**

**92 (1)** Where, on application by the Commissioner, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially

**(a)** in a trade, industry or profession,

**(b)** among the sources from which a trade, industry or profession obtains a product,

**(c)** among the outlets through which a trade, industry or profession disposes of a product, or

**(d)** otherwise than as described in paragraphs (a) to (c),

the Tribunal may, subject to sections 94 to 96,

**(e)** in the case of a completed merger, order any party to the merger or any other person

**(i)** to dissolve the merger in such manner as the Tribunal directs,

**(ii)** to dispose of assets or shares designated by the Tribunal in such manner as the Tribunal directs, or

**(iii)** in addition to or in lieu of the action referred to in subparagraph (i) or (ii), with the consent of the person against whom the order is directed and the Commissioner, to take any other action, or

**(f)** in the case of a proposed merger, make an order directed against any party to the proposed merger or any other person

**(i)** ordering the person against whom the order is directed not to proceed with the merger,

**(ii)** ordering the person against whom the order is directed not to proceed with a part of the merger, or

**(iii)** in addition to or in lieu of the order referred to in subparagraph (ii), either or both

**(A)** prohibiting the person against whom the order is directed, should the merger or part thereof be completed, from doing any act or thing the prohibition of which the Tribunal determines to be necessary to ensure that the merger or part thereof does not prevent or lessen competition substantially, or

**(B)** with the consent of the person against whom the order is directed and the Commissioner, ordering the person to take any other action.

**Evidence**

**(2)** For the purpose of this section, the Tribunal shall not find that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially solely on the basis of evidence of concentration or market share.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Factors to be considered regarding prevention or lessening of competition**

**93** In determining, for the purpose of section 92, whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, the Tribunal may have regard to the following factors:

**(a)** the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the merger or proposed merger;

**(b)** whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail;

**(c)** the extent to which acceptable substitutes for products supplied by the parties to the merger or proposed merger are or are likely to be available;

**(d)** any barriers to entry into a market, including

**(i)** tariff and non-tariff barriers to international trade,

**(ii)** interprovincial barriers to trade, and

**(iii)** regulatory control over entry,

and any effect of the merger or proposed merger on such barriers;

**(e)** the extent to which effective competition remains or would remain in a market that is or would be affected by the merger or proposed merger;

**(f)** any likelihood that the merger or proposed merger will or would result in the removal of a vigorous and effective competitor;

**(g)** the nature and extent of change and innovation in a relevant market; and

**(h)** any other factor that is relevant to competition in a market that is or would be affected by the merger or proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Exception**

**94** The Tribunal shall not make an order under section 92 in respect of

**(a)** a merger substantially completed before the coming into force of this section;

**(b)** a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner the names of the parties and that the merger is in the public interest — or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts; or

**(c)** a merger or proposed merger approved under subsection 56.2(6) of the *Canada Transportation Act* and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 549, c. 46, ss. 592, 593, c. 47, s. 716; 1999, c. 2, s. 37; 2000, c. 15, s. 14; 2001, c. 9, s. 579.

**Exception for joint ventures**

**95 (1)** The Tribunal shall not make an order under section 92 in respect of a combination formed or proposed to be formed, otherwise than through a corporation, to undertake a specific project or a program of research and development if

**(a)** a project or program of that nature

**(i)** would not have taken place or be likely to take place in the absence of the combination, or

**(ii)** would not reasonably have taken place or reasonably be likely to take place in the absence of the combination because of the risks involved in relation to the project or program and the business to which it relates;

**(b)** no change in control over any party to the combination resulted or would result from the combination;

**(c)** all the persons who formed the combination are parties to an agreement in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;

**(d)** the agreement referred to in paragraph (c) restricts the range of activities that may be carried on pursuant to the combination, and provides that the agreement terminates on the completion of the project or program; and

**(e)** the combination does not prevent or lessen or is not likely to prevent or lessen competition except to the extent reasonably required to undertake and complete the project or program.

**Limitation**

**(2)** For greater certainty, this section does not apply in respect of the acquisition of assets of a combination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Exception where gains in efficiency**

**96 (1)** The Tribunal shall not make an order under section 92 if it finds that the merger or proposed merger in respect of which the application is made has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any

prevention or lessening of competition that will result or is likely to result from the merger or proposed merger and that the gains in efficiency would not likely be attained if the order were made.

**Factors to be considered**

**(2)** In considering whether a merger or proposed merger is likely to bring about gains in efficiency described in subsection (1), the Tribunal shall consider whether such gains will result in

**(a)** a significant increase in the real value of exports; or

**(b)** a significant substitution of domestic products for imported products.

**Restriction**

**(3)** For the purposes of this section, the Tribunal shall not find that a merger or proposed merger has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Limitation period**

**97** No application may be made under section 92 in respect of a merger more than three years after the merger has been substantially completed.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Where proceedings commenced under section 45 or 79**

**98** No application may be made under section 92 against a person

**(a)** against whom proceedings have been commenced under section 45, or

**(b)** against whom an order is sought under section 79

on the basis of the same or substantially the same facts as would be alleged in the proceedings under section 45 or 79, as the case may be.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Conditional orders directing dissolution of a merger**

**99 (1)** The Tribunal may provide, in an order made under section 92 directing a person to dissolve a merger or to dispose of assets or shares, that the order may be rescinded or varied if, within a reasonable period of time specified in the order,

**(a)** there has occurred

**(i)** a reduction, removal or remission, specified in the order, of any relevant customs duties, or

**(ii)** a reduction or removal, specified in the order, of prohibitions, controls or regulations imposed by or pursuant to any Act of Parliament on the importation into Canada of an article specified in the order, or

**(b)** that person or any other person has taken any action specified in the order

that will, in the opinion of the Tribunal, prevent the merger from preventing or lessening competition substantially.

**When conditional order may be rescinded or varied**

**(2)** Where, on application by any person against whom an order under section 92 is directed, the Tribunal is satisfied that

**(a)** a reduction, removal or remission specified in the order pursuant to paragraph (1)(a) has occurred, or

**(b)** the action specified in the order pursuant to paragraph (1)(b) has been taken,

the Tribunal may rescind or vary the order accordingly.
R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Interim order where no application under section 92**

**100 (1)** The Tribunal may issue an interim order forbidding any person named in the application from doing any act or thing that it appears to the Tribunal may constitute or be directed toward the completion or implementation of a proposed merger in respect of which an application has not been made under section 92 or previously under this section, where

**(a)** on application by the Commissioner, certifying that an inquiry is being made under paragraph 10(1)(b) and that, in the Commissioner's opinion, more time is required to complete the inquiry, the Tribunal finds that in the absence of an interim order a party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition under that section because that action would be difficult to reverse; or

**(b)** the Tribunal finds, on application by the Commissioner, that there has been a contravention of section 114 in respect of the proposed merger.

**Notice of application**

**(2)** Subject to subsection (3), at least forty-eight hours notice of an application for an interim order under subsection (1) shall be given by or on behalf of the Commissioner to each person against whom the order is sought.

***Ex parte* application**

**(3)** Where the Tribunal is satisfied, in respect of an application for an interim order under paragraph (1)(b), that

**(a)** subsection (2) cannot reasonably be complied with, or

**(b)** the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte*.

**Terms of interim order**

**(4)** An interim order issued under subsection (1)

**(a)** shall be on such terms as the Tribunal considers necessary and sufficient to meet the circumstances of the case; and

**(b)** subject to subsections (5) and (6), shall have effect for such period of time as is specified in it.

**Duration of order: inquiry**

**(5)** The duration of an interim order issued under paragraph (1)(a) shall not exceed thirty days.

**Duration of order: failure to comply**

**(6)** The duration of an interim order issued under paragraph (1)(b) shall not exceed

**(a)** ten days after section 114 is complied with, in the case of an interim order issued on *ex parte* application; or

**(b)** thirty days after section 114 is complied with, in any other case.

**Extension of time**

**(7)** Where the Tribunal finds, on application made by the Commissioner on forty-eight hours notice to each person to whom an interim order is directed, that the Commissioner is unable to complete an inquiry within the period specified in the order because of circumstances beyond the control of the Commissioner, the Tribunal may extend the duration of the order to a day not more than sixty days after the order takes effect.

**Completion of inquiry**

**(8)** Where an interim order is issued under paragraph (1)(a), the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 in respect of the proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 24, 37.

**Right of intervention**

**101** The attorney general of a province may intervene in any proceedings before the Tribunal under section 92 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Advance ruling certificates**

**102 (1)** Where the Commissioner is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds on which to apply to the Tribunal under section 92, the Commissioner may issue a certificate to the effect that he is so satisfied.

**Duty of Commissioner**

**(2)** The Commissioner shall consider any request for a certificate under this section as expeditiously as possible.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**No application under section 92**

**103** Where the Commissioner issues a certificate under section 102, the Commissioner shall not, if the transaction to which the certificate relates is substantially completed within one year after the certificate is issued, apply to the Tribunal under section 92 in respect of the transaction solely on the basis of information that is the same or substantially the same as the information on the basis of which the certificate was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

# General

**Leave to make application under section 75 or 77**

**103.1 (1)** Any person may apply to the Tribunal for leave to make an application under section 75 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under section 75 or 77.

**Notice**

**(2)** The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75 or 77 is sought.

**Certification by Commissioner**

**(3)** The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

**(a)** is the subject of an inquiry by the Commissioner; or

**(b)** was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75 or 77 is sought.

**Application discontinued**

**(4)** The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75 or 77.

**Notice by Tribunal**

**(5)** The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

**Representations**

**(6)** A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2).

**Granting leave to make application under section 75 or 77**

**(7)** The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 75 or 77 must be made. The application must be made no more than one year after the practice that is the subject of the application has ceased.

**Decision**

**(9)** The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

**Limitation**

**(10)** The Commissioner may not make an application for an order under section 75, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7), if the person granted leave has already applied to the Tribunal under section 75 or 77.

**Inferences**

**(11)** In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

**Inquiry by Commissioner**

**(12)** If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.
2002, c. 16, s. 12.

**Intervention by Commissioner**

**103.2** If a person granted leave under subsection 103.1(7) makes an application under section 75 or 77, the Commissioner may intervene in the proceedings.

2002, c. 16, s. 12.

**Interim order**

**103.3 (1)** Subject to subsection (2), the Tribunal may, on *ex parte* application by the Commissioner in which the Commissioner certifies that an inquiry is being made under paragraph 10(1)(b), issue an interim order

**(a)** to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81 or 84; or

**(b)** to prevent the taking of measures under section 82 or 83.

**Limitation**

**(2)** The Tribunal may make the interim order if it finds that the conduct or measures could be of the type described in paragraph (1)(a) or (b) and that, in the absence of an interim order,

**(a)** injury to competition that cannot adequately be remedied by the Tribunal is likely to occur;

**(b)** a person is likely to be eliminated as a competitor; or

**(c)** a person is likely to suffer a significant loss of market share, a significant loss of revenue or other harm that cannot be adequately remedied by the Tribunal.

**Consultation**

**(3)** Before making an application for an order to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81 or 84 by an entity incorporated under the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan Companies Act* or the *Cooperative Credit Associations Act* or a subsidiary of such an entity, the Commissioner must consult with the Minister of Finance respecting the safety and soundness of the entity.

**Duration**

**(4)** Subject to subsections (5) and (6), an interim order has effect for 10 days, beginning on the day on which it is made.

**Extension or revocation of order**

**(5)** The Tribunal may, on application by the Commissioner on 48 hours notice to each person against whom the interim order is directed,

**(a)** extend the interim order once or twice for additional periods of 35 days each; or

**(b)** rescind the order.

**Application to Tribunal for extension**

**(5.1)** The Commissioner may, before the expiry of the second 35-day period referred to in subsection (5) or of the period fixed by the Tribunal under subsection (7), as the case may be, apply to the Tribunal for a further extension of the interim order.

**Notice of application by Commissioner**

**(5.2)** The Commissioner shall give at least 48 hours notice of an application referred to in subsection (5.1) to the person against whom the interim order is made.

**Extension of interim order**

**(5.3)** The Tribunal may order that the effective period of the interim order be extended if

**(a)** the Commissioner establishes that information requested for the purpose of the inquiry has not yet been provided or that more time is needed in order to review the information;

**(b)** the information was requested during the initial period that the interim order had effect, within the first 35 days after an order extending the interim order under subsection (5) had effect, or within the first 35 days after an order extending the interim order made under subsection (7) had effect, as the case may be, and

**(i)** the provision of such information is the subject of a written undertaking, or

**(ii)** the information was ordered to be provided under section 11; and

**(c)** the information is reasonably required to determine whether grounds exist for the Commissioner to make an application under any section referred to in paragraph (1)(a) or (b).

**Terms**

**(5.4)** An order extending an interim order issued under subsection (5.3) shall have effect for such period as the Tribunal considers necessary to give the Commissioner a reasonable opportunity to receive and review the information referred to in that subsection.

**Effect of application**

**(5.5)** If an application is made under subsection (5.1), the interim order has effect until the Tribunal makes a decision whether to grant an extension under subsection (5.3).

**When application made to Tribunal**

**(6)** If an application is made under subsection (7), an interim order has effect until the Tribunal makes an order under that subsection.

**Confirming or setting aside interim order**

**(7)** A person against whom the Tribunal has made an interim order may apply to the Tribunal in the first 10 days during which the order has effect to have it varied or set aside and the Tribunal shall

**(a)** if it is satisfied that one or more of the situations set out in paragraphs (2)(a) to (c) existed or are likely to exist, make an order confirming the interim order, with or without variation as the Tribunal considers necessary and sufficient to meet the circumstances, and fix the effective period of that order for a maximum of 70 days, beginning on the day on which the order confirming the interim order is made; and

**(b)** if it is not satisfied that any of the situations set out in paragraphs (2)(a) to (c) existed or is likely to exist, make an order setting aside the interim order.

**Notice**

**(8)** A person who makes an application under subsection (7) shall give the Commissioner 48 hours written notice of the application.

**Representations**

**(9)** At the hearing of an application under subsection (7), the Tribunal shall provide the applicant, the Commissioner and any person directly affected by the interim order with a full opportunity to present evidence and make representations before the Tribunal makes an order under that subsection.

**Prohibition of extraordinary relief**

**(10)** Notwithstanding section 13 of the *Competition Tribunal Act*, an interim order shall not be appealed or reviewed in any court except as provided for by subsection (7).

**Duty of Commissioner**

**(11)** When an interim order is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry arising out of the conduct in respect of which the order was made.

2002, c. 16, s. 12.

**Interim order**

**104 (1)** Where an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75 or 77, may issue such interim order

as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

**Terms of interim order**

**(2)** An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

**Duty of Commissioner**

**(3)** Where an interim order issued under subsection (1) on application by the Commissioner is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 13.

**Temporary order**

**104.1 (1)** The Commissioner may make a temporary order prohibiting a person operating a domestic service, as defined in subsection 55(1) of the *Canada Transportation Act*, from doing an act or a thing that could, in the opinion of the Commissioner, constitute an anti-competitive act or requiring the person to take the steps that the Commissioner considers necessary to prevent injury to competition or harm to another person if

**(a)** the Commissioner has commenced an inquiry under subsection 10(1) in regard to whether the person has engaged in conduct that is reviewable under section 79; and

**(b)** the Commissioner considers that in the absence of a temporary order

**(i)** injury to competition that cannot adequately be remedied by the Tribunal is likely to occur, or

**(ii)** a person is likely to be eliminated as a competitor, suffer a significant loss of market share, suffer a significant loss of revenue or suffer other harm that cannot be adequately remedied by the Tribunal.

**Notice not required**

**(2)** The Commissioner is not obliged to give notice to or receive representations from any person before making a temporary order.

**Notice to persons affected**

**(3)** On making a temporary order, the Commissioner shall promptly give written notice of the order, together with the grounds for it, to every person against whom it was made or who is directly affected by it.

**Duration of temporary order**

**(4)** Subject to subsections (5) and (6), a temporary order has effect for 20 days.

**Extension and revocation**

**(5)** The Commissioner may extend the 20-day period for one or two periods of 30 days each or may revoke a temporary order. The Commissioner shall promptly give written notice of the extension or revocation to every person to whom notice was given under subsection (3).

**Application to Tribunal for extension**

**(5.1)** The Commissioner may, before the expiry of the second 30-day period referred to in subsection (5) or of the period fixed by the Tribunal under subsection (7), as the case may be, apply to the Tribunal for a further extension of the temporary order.

**Notice of application by Commissioner**

**(5.2)** The Commissioner shall give at least 48 hours notice of an application referred to in subsection (5.1) to the person against whom the temporary order is made.

**Extension of temporary order**

**(5.3)** The Tribunal may order that the effective period of the temporary order be extended if

**(a)** the Commissioner establishes that information requested for the purpose of the inquiry has not yet been provided or that more time is needed in order to review the information;

**(b)** the information was requested within the initial period that the temporary order had effect, within the first 30 days after an order extending the temporary order under subsection (5) had effect, or within the first 30 days after an order extending the temporary order made under subsection (7) had effect, as the case may be, and

**(i)** the provision of such information is the subject of a written undertaking, or

**(ii)** the information was ordered to be provided under section 11; and

**(c)** the information is reasonably required to determine whether grounds exist for the Commissioner to make an application under section 79.

**Terms**

**(5.4)** An order extending a temporary order issued under subsection (5.3) shall have effect for such period as the Tribunal considers necessary to give the Commissioner a reasonable opportunity to receive and review the information referred to in that subsection.

**Effect of application**

**(5.5)** If an application is made under subsection (5.1), the temporary order has effect until the Tribunal makes a decision whether to grant an extension under subsection (5.3).

**When application made to Tribunal**

**(6)** If an application is made under subsection (7), the temporary order has effect until the Tribunal makes an order under that subsection.

**Confirmation**

**(7)** A person against whom the Commissioner has made a temporary order may, within the period referred to in subsection (4), apply to the Tribunal to have the temporary order varied or set aside and the Tribunal shall

**(a)** if it is satisfied that one or more of the conditions set out in paragraph (1)(b) existed or are likely to exist, make an order confirming the temporary order, with or without variation as the Tribunal considers necessary and sufficient to meet the circumstances, and fixing the effective period of its order for a maximum of 60 days after the day on which it is made; and

**(b)** if it is not satisfied that one or more of the conditions set out in paragraph (1)(b) existed or are likely to exist, make an order setting aside the temporary order.

**Notice**

**(8)** The applicant shall give written notice of the application to every person to whom notice was given under subsection (3).

**Commissioner is respondent**

**(9)** In the event of an application under subsection (7), the Commissioner is the respondent.

**Representations**

**(10)** At the hearing of an application under subsection (7), the Tribunal shall provide the applicant, the Commissioner and any person directly affected by the temporary order with a full opportunity to present evidence and make representations before the Tribunal makes an order under that subsection.

**Prohibition of extraordinary relief**

**(11)** Except as provided for by subsection (7),

**(a)** a temporary order made by the Commissioner shall not be questioned or reviewed in any court; and

**(b)** no order shall be made, process entered or proceedings taken in any court, whether by way of injunction, *certiorari*, *mandamus*, prohibition, *quo warranto*, declaratory judgment or otherwise, to question, review, prohibit or restrain the Commissioner in the exercise of the jurisdiction granted by this section.

**Powers and duties not affected by order**

**(12)** The making of a temporary order does not in any way limit, restrict or qualify the powers, duties or responsibilities of the Commissioner under this Act, including the Commissioner's power to conduct inquiries and to make applications to the Tribunal in regard to conduct that is the subject of the temporary order.

**Registration of orders**

**(13)** The Commissioner shall file each temporary order with the Registry of the Tribunal. Once registered, the order is enforceable in the same manner as an order of the Tribunal.

**Duty of Commissioner**

**(14)** When a temporary order is in effect, the Commissioner shall proceed as expeditiously as possible to complete the investigation arising out of the conduct in respect of which the temporary order was made.

**Immunity**

**(15)** No action lies against Her Majesty in right of Canada, the Minister, the Commissioner, any Deputy Commissioner, any person employed in the public service of Canada or any person acting under the direction of the Commissioner for anything done or omitted to be done in good faith under this section.

2000, c. 15, s. 15; 2002, c. 16, s. 13.1.

**Consent agreement**

**105 (1)** The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part, other than an interim order under section 103.3 or a temporary order under section 104.1, may sign a consent agreement.

**Terms of consent agreement**

**(2)** The consent agreement shall be based on terms that could be the subject of an order of the Tribunal against that person.

**Registration**

**(3)** The consent agreement may be filed with the Tribunal for immediate registration.

**Effect of registration**

**(4)** Upon registration of the consent agreement, the proceedings, if any, are terminated, and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14.

**Rescission or variation of consent agreement or order**

**106 (1)** The Tribunal may rescind or vary a consent agreement or an order made under this Part other than an order under section 103.3 or 104.1 or a consent agreement under section 106.1, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the Tribunal finds that

**(a)** the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

**(b)** the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

**Directly affected persons**

**(2)** A person directly affected by a consent agreement, other than a party to that agreement, may apply to the Tribunal within 60 days after the registration of the agreement to have one or more of its terms rescinded or varied. The Tribunal may grant the application if it finds that the person has established that the terms could not be the subject of an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14.

**Consent agreement — parties to a private action**

**106.1 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75 or 77 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

**Notice to Commissioner**

**(2)** On filing the consent agreement with the Tribunal for registration, the parties shall serve a copy of it on the Commissioner without delay.

**Publication**

**(3)** The consent agreement shall be published without delay in the *Canada Gazette*.

**Registration**

**(4)** The consent agreement shall be registered 30 days after its publication unless a third party makes an application to the Tribunal before then to cancel the agreement or replace it with an order of the Tribunal.

**Effect of registration**

**(5)** Upon registration, the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

**Commissioner may intervene**

**(6)** On application by the Commissioner, the Tribunal may vary or rescind a registered consent agreement if it finds that the agreement has or is likely to have anti-competitive effects.

**Notice**

**(7)** The Commissioner must give notice of an application under subsection (6) to the parties to the consent agreement.

2002, c. 16, s. 14.

**Evidence**

**107** In determining whether or not to make an order under this Part, the Tribunal shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the Tribunal under this Act.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**PART IX**

# Notifiable Transactions

## Interpretation

**Definitions**

**108 (1)** In this Part,

***operating business*** means a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work; (*entreprise en exploitation*)

***person*** means an individual, body corporate, unincorporated syndicate, unincorporated organization, trustee, executor, administrator or other legal representative, but does not include a bare trustee; (*personne*)

***prescribed*** means prescribed by regulations made under section 124; (*réglementaire*)

***voting share*** means any share that carries voting rights under all circumstances or by reason of an event that has occurred and is continuing. (*actions comportant droit de vote*)

**Corporations controlled by Her Majesty**

**(2)** For the purposes of this Part, except for the purposes of section 113, one corporation is not affiliated with another corporation by reason only of the fact that both corporations are controlled by Her Majesty in right of Canada or a province, as the case may be.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 25.

**General limit relating to parties**

**109 (1)** This Part does not apply in respect of a proposed transaction unless the parties thereto, together with their affiliates,

**(a)** have assets in Canada that exceed four hundred million dollars in aggregate value, determined as of such time and in such manner as may be prescribed, or such greater amount as may be prescribed; or

**(b)** had gross revenues from sales in, from or into Canada, determined for such annual period and in such manner as may be prescribed, that exceed four hundred million dollars in aggregate value, or such greater amount as may be prescribed.

**Parties to acquisition of shares**

**(2)** For the purposes of this Part, the parties to a proposed acquisition of shares are the person or persons who propose to acquire the shares and the corporation the shares of which are to be acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 26.

**Application of Part**

**110 (1)** This Part applies only in respect of proposed transactions described in this section.

**Acquisition of assets**

**(2)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of any of the assets in Canada of an operating business where the aggregate value of those assets, determined as of such time and in such manner as may be prescribed, or the gross revenues from sales in or from Canada generated from those assets, determined for such annual period and in such manner as may be prescribed, would exceed thirty-five million dollars or such greater amount as may be prescribed.

**Acquisition of shares**

**(3)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of voting shares of a corporation that carries on an operating business or controls a corporation that carries on an operating business

**(a)** where

**(i)** the aggregate value of the assets in Canada, determined as of such time and in such manner as may be prescribed, that are owned by the corporation or by corporations controlled by that corporation, other than assets that are shares of any of those corporations, would exceed thirty-five million dollars, or such greater amount as may be prescribed, or

**(ii)** the gross revenues from sales in or from Canada, determined for such annual period and in such manner as may be prescribed, generated from the assets referred to in subparagraph (i) would exceed thirty-five million dollars, or such greater amount as may be prescribed, and

**(b)** where, as a result of the proposed acquisition of the voting shares, the person or persons acquiring the shares, together with their affiliates, would own voting shares of the corporation that in the aggregate carry more than

**(i)** twenty per cent or, if the person or persons own twenty per cent or more before the proposed acquisition, fifty per cent of the votes attached to all outstanding voting shares of the corporation, in the case of the acquisition of voting shares of a corporation any of the voting shares of which are publicly traded, or

**(ii)** thirty-five per cent or, if the person or persons own thirty-five per cent or more before the proposed acquisition, fifty per cent of the votes attached to all outstanding voting shares of the corporation, in the case of the acquisition of voting shares of a corporation none of the voting shares of which are publicly traded.

**Amalgamation**

**(4)** Subject to section 113, this Part applies in respect of a proposed amalgamation of two or more corporations where one or more of those corporations carries on an operating business or controls a corporation that carries on an operating business where

**(a)** the aggregate value of the assets in Canada, determined as of such time and in such manner as may be prescribed, that would be owned by the continuing corporation that would result from the amalgamation or by corporations controlled by the continuing corporation, other than assets that are shares of any of those corporations, would exceed seventy million dollars, or such greater amount as may be prescribed; or

**(b)** the gross revenues from sales in or from Canada, determined for such annual period and in such manner as may be prescribed, generated from the assets referred to in paragraph (a) would exceed seventy million dollars, or such greater amount as may be prescribed.

**Combination**

**(5)** Subject to sections 112 and 113, this Part applies in respect of a proposed combination of two or more persons to carry on business otherwise than through a corporation where one or more of those persons propose to contribute to the combination assets that form all or part of an operating business carried on by those persons, or corporations controlled by those persons, and where

**(a)** the aggregate value of the assets in Canada, determined as of such time and in such manner as may be prescribed, that are the subject-matter of the combination would exceed thirty-five million dollars, or such greater amount as may be prescribed; or

**(b)** the gross revenues from sales in or from Canada, determined for such annual period and in such manner as may be prescribed, generated from the assets referred to in paragraph (a) would exceed thirty-five million dollars, or such greater amount as may be prescribed.

**Combination**

**(6)** Subject to sections 111, 112 and 113, this Part applies in respect of a proposed acquisition of an interest in a combination that carries on an operating business otherwise than through a corporation

**(a)** where

**(i)** the aggregate value of the assets in Canada, determined as of such time and in such manner as may be prescribed, that are the subject-matter of the combination would exceed thirty-five million dollars or such greater amount as may be prescribed, or

**(ii)** the gross revenues from sales in or from Canada, determined for such annual period and in such manner as may be prescribed, generated from the assets referred to in subparagraph (i) would exceed thirty-five million dollars or such greater amount as may be prescribed, and

**(b)** where, as a result of the proposed acquisition of the interest, the person or persons acquiring the interest, together with their affiliates, would hold an aggregate interest in the combination that entitles the person or persons to receive more than thirty-five per cent of the profits of the combination, or more than thirty-five per cent of its assets on dissolution or, where the person or persons acquiring the interest are already so entitled, to receive more than fifty per cent of such profits or assets.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 27.

# Exemptions

## Acquisition of Voting Shares, Assets or Interests

**Acquisitions**

**111** The following classes of transactions are exempt from the application of this Part:

**(a)** an acquisition of real property or goods in the ordinary course of business if the person or persons who propose to acquire the assets would not, as a result of the acquisition, hold all or substantially all of the assets of a business or of an operating segment of a business;

**(b)** an acquisition of voting shares or of an interest in a combination solely for the purpose of underwriting the shares or the interest, within the meaning of subsection 5(2);

**(c)** an acquisition of voting shares, an interest in a combination or assets that would result from a gift, intestate succession or testamentary disposition;

**(d)** an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

**(e)** an acquisition of a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, pursuant to an agreement in writing that provides for the transfer of that property to the person or persons acquiring the property only if the person or persons acquiring the property incur expenses to carry out exploration or development activities with respect to the property; and

**(f)** an acquisition of voting shares of a corporation pursuant to an agreement in writing that provides for the issuance of those shares only if the person or persons acquiring them incur expenses to carry out exploration or development activities with respect to a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, in respect of which the corporation has the right to carry out those activities where the corporation does not have any significant assets other than that property.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 29, c. 31, s. 229.

## Combinations

**Combinations that are joint ventures**

**112** A combination is exempt from the application of this Part if

**(a)** all the persons who propose to form the combination are parties to an agreement in writing or intended to be put in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;

**(b)** no change in control over any party to the combination would result from the combination; and

**(c)** the agreement referred to in paragraph (a) restricts the range of activities that may be carried on pursuant to the combination, and contains provisions that would allow for its orderly termination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

## General

**General exemptions**

**113** The following classes of transactions are exempt from the application of this Part:

**(a)** a transaction all the parties to which are affiliates of each other;

**(a.1)** a transaction in respect of which the Minister of Finance has certified to the Commissioner under paragraph 94(b) that it is, or would be, in the public interest;

**(b)** a transaction in respect of which the Commissioner has issued a certificate under section 102;

**(c)** a transaction in respect of which the Commissioner or a person authorized by the Commissioner has waived the obligation under this Part to notify the Commissioner and supply information because substantially similar information was previously supplied in relation to a request for a certificate under section 102; and

**(d)** such other classes of transactions as may be prescribed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 550, c. 46, s. 594, c. 47, s. 717; 1999, c. 2, ss. 30, 37; 2001, c. 9, s. 580.

# Notice and Information

**Notice of proposed transaction**

**114 (1)** Subject to this Part, where

**(a)** a person, or two or more persons pursuant to an agreement or arrangement, propose to acquire assets in the circumstances set out in subsection 110(2), to acquire shares in the circumstances set out in subsection 110(3) or to acquire an interest in a combination in the circumstances set out in subsection 110(6),

**(b)** two or more corporations propose to amalgamate in the circumstances set out in subsection 110(4), or

**(c)** two or more persons propose to form a combination in the circumstances set out in subsection 110(5),

the parties to the proposed transaction shall, before the transaction is completed, notify the Commissioner that the transaction is proposed and supply the Commissioner with information in accordance with this Part.

**Information required**

**(2)** The information required under subsection (1) is, at the option of the person supplying the information, prescribed short form information or prescribed long form information but, where a person provides prescribed short form information, the Commissioner or a person authorized by the Commissioner may, within fourteen days after receiving it, require the person to supply the prescribed long form information.

**Corporation whose shares are acquired**

**(3)** Where a proposed transaction is an acquisition of shares and the Commissioner receives information supplied under subsection (1) by a party to the transaction, other than the corporation whose shares are being acquired, before receiving such information from the corporation,

**(a)** the Commissioner shall immediately notify the corporation that the Commissioner has received from that party the prescribed short form information or prescribed long form information, as the case may be;

**(b)** the corporation shall supply the Commissioner with the prescribed short form information within ten days after being notified under paragraph (a) or the prescribed long form information within twenty days after being so notified, as the case may be; and

**(c)** where the corporation supplies the prescribed short form information, the Commissioner may require the corporation to supply the prescribed long form information and the corporation shall supply it within twenty days after being so required by the Commissioner.

**Notice and information**

**(4)** Any of the persons required to give notice and supply information under this section may

**(a)** if duly authorized to do so, give notice or supply information on behalf of and in lieu of any of the others who are so required in respect of the same transaction; or

**(b)** give notice or supply information jointly with any of those others.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 31, c. 31, s. 53(F).

**Prior notice of acquisitions**

**115 (1)** It is not necessary to comply with section 114 in respect of a proposed acquisition of voting shares or of an interest in a combination where a limit set out in subsection 110(3) or (6) would be exceeded as a result of the proposed acquisition within three years immediately following a previous compliance with section 114 required in relation to the same limit.

**Notice of future acquisition**

**(2)** Where a person or persons who propose to acquire voting shares or an interest in a combination are required to comply with section 114 because the twenty or thirty-five per cent limit set out in subsection 110(3) or the thirty-five per cent limit set out in subsection 110(6) would be exceeded as a result of the acquisition, the person or persons may, at the time of the compliance, give notice to the Commissioner of a proposed further acquisition of voting shares or of an interest in a combination that would result in a fifty per cent limit set out in that subsection being exceeded, and supply the Commissioner with a detailed description in writing of the steps to be carried out in the further acquisition.

**Exemption for further acquisitions of voting shares**

**(3)** It is not necessary to comply with section 114 in respect of a proposed further acquisition referred to in subsection (2) if

**(a)** notice of the further acquisition is given to the Commissioner under subsection (2) and it is carried out in accordance with the description supplied under that subsection; and

**(b)** an additional notice of the further acquisition is given to the Commissioner in writing within twenty-one, and at least seven, days before the further acquisition.

**Limitation**

**(4)** Subsection (3) does not apply in respect of a further acquisition unless the further acquisition is completed within one year after notice of it is given under subsection (2).



R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 32, 37.

**Where information cannot be supplied**

**116 (1)** If any of the information required under section 114 is not known or reasonably obtainable, or cannot be obtained without breaching a confidentiality requirement established by law or without creating a significant risk that confidential information will be used for an improper purpose or that information that should, for commercial reasons, be kept confidential will be disclosed to the public, the person who is supplying the information may, in lieu of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and why it has not been obtained.

**Where information not relevant**

**(2)** If any of the information required under section 114 could not, on any reasonable basis, be considered to be relevant to an assessment by the Commissioner as to whether the proposed transaction would or would be likely to prevent or lessen competition substantially, the person who is supplying the information may, in lieu of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and why the information was not considered relevant.

**Where information previously supplied**

**(2.1)** If any of the information required under section 114 has previously been supplied to the Commissioner, the person who is supplying the information may, in lieu of supplying it, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has previously been supplied and when it was supplied.

**Commissioner may require information**

**(3)** Where a person chooses not to supply the Commissioner with information required under section 114 and so informs the Commissioner in accordance with subsection (2) or (2.1) and the Commissioner or a person authorized by the Commissioner notifies that person, within seven days after the Commissioner is so informed, that the information is required, the person shall supply the Commissioner with the information.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 33, 37.

**Saving**

**117 (1)** Nothing in section 114 requires any person who is a director of a corporation to supply information that is known to that person by virtue only of his position as a director of an affiliate of the corporation that is neither a wholly-owned affiliate nor a wholly-owning affiliate of the corporation.

**Wholly-owned affiliate**

**(2)** For the purposes of subsection (1), one corporation is the wholly-owned affiliate of another corporation if all its outstanding voting shares, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation or each other.

**Wholly-owning affiliate**

**(3)** For the purposes of subsection (1), one corporation is the wholly-owning affiliate of another corporation if it beneficially owns all the outstanding voting shares of that other corporation, other than shares necessary to qualify persons as directors, directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by the corporation or each other.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Information to be certified**

**118** The information supplied to the Commissioner under section 114 shall be certified on oath or solemn affirmation

**(a)** in the case of a corporation supplying the information, by an officer thereof or other person duly authorized by the board of directors or other governing body of the corporation, or

**(b)** in the case of any other person supplying the information, by that person,

as having been examined by that person and as being, to the best of his knowledge and belief, correct and complete in all material respects.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Where transaction not completed**

**119** Where notice is given and information supplied in respect of a proposed transaction under section 114 but the transaction is not completed within one year thereafter or such longer period as the Commissioner may specify in any particular case, section 114 applies as if no notice were given or information supplied.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**120 to 122** [Repealed, 1999, c. 2, s. 34]

## Completion of Proposed Transactions

**Time when transaction may not proceed**

**123 (1)** A proposed transaction referred to in section 114 shall not be completed before the expiration of

**(a)** fourteen days after the day on which information required under section 114 has been received by the Commissioner, where the information is prescribed short form information and the Commissioner has not, within that time, required prescribed long form information to be supplied under that section,

**(b)** except as provided in paragraph (c), forty-two days after the day on which information required under section 114 has been received by the Commissioner, where the information is prescribed long form information, or

**(c)** where the proposed transaction is an acquisition of voting shares that is to be effected through the facilities of a stock exchange in Canada and the information supplied is prescribed long form information, twenty-one trading days, or such longer period of time, not exceeding forty-two days, as may be allowed by the rules of the stock exchange before shares must be taken up, after the day on which the information required under section 114 has been received by the Commissioner,

unless the Commissioner or a person authorized by the Commissioner, before the expiration of that time, notifies the persons who are required to give notice and supply information that the Commissioner does not, at that time, intend to make an application under section 92 in respect of the proposed transaction.

**Acquisition of voting shares**

**(2)** In the case of an acquisition of voting shares to which subsection 114(3) applies, the periods of time referred to in subsection (1) shall be determined without reference to the day on which the information required under section 114 is received by the Commissioner from the corporation whose shares are being acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 35.

# Regulations

**Regulations**

**124 (1)** The Governor in Council may make regulations prescribing anything that is by this Part to be prescribed.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**PART X**

# General

## Commissioner's Opinions

**124.1** [Not in force]

## References to Tribunal

**Reference if parties agree**

**124.2 (1)** The Commissioner and a person who is the subject of an inquiry under section 10 may by agreement refer to the Tribunal for determination any question of law, mixed law and fact, jurisdiction, practice or procedure, in relation to the application or interpretation of Part VII.1 or VIII, whether or not an application has been made under Part VII.1 or VIII.

**Reference by Commissioner**

**(2)** The Commissioner may, at any time, refer to the Tribunal for determination a question of law, jurisdiction, practice or procedure, in relation to the application or interpretation of Parts VII.1 to IX.

**Reference by agreement of parties to a private action**

**(3)** A person granted leave under section 103.1 and the person against whom an order is sought under section 75 or 77 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

**Reference procedure**

**(4)** The Tribunal shall decide the questions referred to it informally and expeditiously, in accordance with any rules on references made under section 16 of the *Competition Tribunal Act*.

2002, c. 16, s. 15.

## Representations to Boards, Commissions or Other Tribunals

**Representations to federal boards, etc.**

**125 (1)** The Commissioner, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

**Definition of *federal board, commission or other tribunal***

**(2)** For the purposes of this section, ***federal board, commission or other tribunal*** means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 37.

**Representations to provincial boards, etc.**

**126 (1)** The Commissioner, at the request of any provincial board, commission or other tribunal, or on his own initiative with the consent of the board, commission or other tribunal, may make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

**Definition of *provincial board, commission or other tribunal***

**(2)** For the purposes of this section, ***provincial board, commission or other tribunal*** means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of the legislature of a province with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 37.

# Report to Parliament

**Annual report**

**127** The Commissioner shall report annually to the Minister on the operation of the Acts referred to in subsection 7(1), and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days after the Minister receives the report on which that House is sitting.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 36.

# Regulations

**Regulations**

**128 (1)** The Governor in Council may make such regulations as are necessary for carrying out this Act and for the efficient administration thereof.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

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# 34

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# Competition Act

**R.S.C. (Revised Statutes of Canada), 1985, c. C-34**

An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition

# Short Title

**Short title**

**1** This Act may be cited as the *Competition Act*.

R.S., 1985, c. C-34, s. 1; R.S., 1985, c. 19 (2nd Supp.), s. 19.

**PART I**

# Purpose and Interpretation

## Purpose

**Purpose of Act**

**1.1** The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

R.S., 1985, c. 19 (2nd Supp.), s. 19.

## Interpretation

**Definitions**

**2 (1)** In this Act,

***article*** means real and personal property of every description including

**(a)** money,

**(b)** deeds and instruments relating to or evidencing the title or right to property or an interest, immediate, contingent or otherwise, in a corporation or in any assets of a corporation,

**(c)** deeds and instruments giving a right to recover or receive property,

**(d)** tickets or like evidence of right to be in attendance at a particular place at a particular time or times or of a right to transportation, and

**(e)** energy, however generated; (*article*)

***business*** includes the business of

**(a)** manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in articles, and

**(b)** acquiring, supplying and otherwise dealing in services.

It also includes the raising of funds for charitable or other non-profit purposes. (*entreprise*)

***Commission*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***Commissioner*** means the Commissioner of Competition appointed under subsection 7(1); (*commissaire*)

***Director*** [Repealed, 1999, c. 2, s. 1]

***merger*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***Minister*** means the Minister of Industry; (*ministre*)

***monopoly*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 20]

***product*** includes an article and a service; (*produit*)

***record*** includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy or portion thereof; (*document*)

***service*** means a service of any description whether industrial, trade, professional or otherwise; (*service*)

***supply*** means,

**(a)** in relation to an article, sell, rent, lease or otherwise dispose of an article or an interest therein or a right thereto, or offer so to dispose of an article or interest therein or a right thereto, and

**(b)** in relation to a service, sell, rent or otherwise provide a service or offer so to provide a service; (*fournir* ou *approvisionner*)

***trade, industry or profession*** includes any class, division or branch of a trade, industry or profession; (*commerce, industrie ou profession*)

***Tribunal*** means the Competition Tribunal established by subsection 3(1) of the *Competition Tribunal Act*. (*Tribunal*)

**Affiliated corporation, partnership or sole proprietorship**

**(2)** For the purposes of this Act,

**(a)** one corporation is affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person;

**(b)** if two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other; and

**(c)** a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person.

**Subsidiary corporation**

**(3)** For the purposes of this Act, a corporation is a subsidiary of another corporation if it is controlled by that other corporation.

**Control**

**(4)** For the purposes of this Act,

**(a)** a corporation is controlled by a person other than Her Majesty if

**(i)** securities of the corporation to which are attached more than fifty per cent of the votes that may be cast to elect directors of the corporation are held, directly or indirectly, whether through one or more subsidiaries or otherwise, otherwise than by way of security only, by or for the benefit of that person, and

**(ii)** the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

**(b)** a corporation is controlled by Her Majesty in right of Canada or a province if

**(i)** the corporation is controlled by Her Majesty in the manner described in paragraph (a), or

**(ii)** in the case of a corporation without share capital, a majority of the directors of the corporation, other than *ex officio* directors, are appointed by

**(A)** the Governor in Council or the Lieutenant Governor in Council of the province, as the case may be, or

**(B)** a Minister of the government of Canada or the province, as the case may be; and

**(c)** a partnership is controlled by a person if the person holds an interest in the partnership that entitles the person to receive more than fifty per cent of the profits of the partnership or more than fifty per cent of its assets on dissolution.

R.S., 1985, c. C-34, s. 2; R.S., 1985, c. 19 (2nd Supp.), s. 20; 1992, c. 1, s. 145(F); 1995, c. 1, s. 62; 1999, c. 2, s. 1, c. 31, s. 44(F).

**Binding on agents of Her Majesty in certain cases**

**2.1** This Act is binding on and applies to an agent of Her Majesty in right of Canada or a province that is a corporation, in respect of commercial activities engaged in by the corporation in competition, whether actual or potential, with other persons to the extent that it would apply if the agent were not an agent of Her Majesty.

R.S., 1985, c. 19 (2nd Supp.), s. 21.

**Defects of form**

**3** No proceedings under this Act shall be deemed invalid by reason of any defect of form or any technical irregularity.

R.S., c. C-23, s. 3.

**Collective bargaining activities**

**4 (1)** Nothing in this Act applies in respect of

**(a)** combinations or activities of workmen or employees for their own reasonable protection as such workmen or employees;

**(b)** contracts, agreements or arrangements between or among fishermen or associations of fishermen and persons or associations of persons engaged in the buying or processing of fish relating to the prices, remuneration or other like conditions under which fish will be caught and supplied to those persons by fishermen; or

**(c)** contracts, agreements or arrangements between or among two or more employers in a trade, industry or profession, whether effected directly between or among the employers or through the instrumentality of a corporation or association of which the employers are members, pertaining to collective bargaining with their employees in respect of salary or wages and terms or conditions of employment.

**Limitation**

**(2)** Nothing in this section exempts from the application of any provision of this Act a contract, agreement or arrangement entered into by an employer to withhold any product from any person, or to refrain from acquiring from any person any product other than the services of workmen or employees.

R.S., c. C-23, s. 4; 1974-75-76, c. 76, s. 2.

**4.1** [Repealed, 2009, c. 2, s. 407]

**Underwriters**

**5 (1)** Section 45 does not apply in respect of an agreement or arrangement between persons who are members of a class of persons who ordinarily engage in the business of dealing in securities or between such persons and the issuer of a specific security, in the case of a primary distribution, or the vendor of a specific security, in the case of a secondary distribution, if the agreement or arrangement has a reasonable relationship to the underwriting of a specific security.

**Definition of *underwriting***

**(2)** For the purposes of this section, ***underwriting*** of a security means the primary or secondary distribution of the security, in respect of which distribution

**(a)** a prospectus is required to be filed, accepted or otherwise approved pursuant to a law enacted in Canada or in a jurisdiction outside Canada for the supervision or regulation of trade in securities; or

**(b)** a prospectus would be required to be filed, accepted or otherwise approved but for an express exemption contained in or given pursuant to a law mentioned in paragraph (a).

R.S., 1985, c. C-34, s. 5; 1999, c. 2, s. 2; 2009, c. 2, s. 408.

**Amateur sport**

**6 (1)** This Act does not apply in respect of agreements or arrangements between or among teams, clubs and leagues pertaining to participation in amateur sport.

**Definition of *amateur sport***

**(2)** For the purposes of this section, ***amateur sport*** means sport in which the participants receive no remuneration for their services as participants.

1974-75-76, c. 76, s. 2.

**PART II**

# Administration

**Commissioner of Competition**

**7 (1)** The Governor in Council may appoint an officer to be known as the Commissioner of Competition, who shall be responsible for

**(a)** the administration and enforcement of this Act;

**(b)** the administration of the *Consumer Packaging and Labelling Act*;

**(c)** the enforcement of the *Consumer Packaging and Labelling Act* except as it relates to food, as that term is defined in section 2 of the *Food and Drugs Act*; and

**(d)** the administration and enforcement of the *Precious Metals Marking Act* and the *Textile Labelling Act*.

**Oath of office**

**(2)** The Commissioner shall, before taking up the duties of the Commissioner, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of Competition. (*In the case where an oath is taken add* "So help me God".)

**Salary**

**(3)** The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

R.S., 1985, c. C-34, s. 7; 1999, c. 2, ss. 4, 37.

**Deputy Commissioners**

**8 (1)** One or more persons may be appointed Deputy Commissioners of Competition in the manner authorized by law.

**Powers of Deputy**

**(2)** The Governor in Council may authorize a Deputy Commissioner to exercise the powers and perform the duties of the Commissioner whenever the Commissioner is absent or unable to act or whenever there is a vacancy in the office of Commissioner.

**Powers of other persons**

**(3)** The Governor in Council may authorize any person to exercise the powers and perform the duties of the Commissioner whenever the Commissioner and the Deputy Commissioners are absent or unable to act or, if one or more of those offices are vacant, whenever the holders of the other of those offices are absent or unable to act.

**Inquiry by Deputy**

**(4)** The Commissioner may authorize a Deputy Commissioner to make inquiry regarding any matter into which the Commissioner has power to inquire, and when so authorized a Deputy Commissioner shall perform the duties and may exercise the powers of the Commissioner in respect of that matter.

**Powers of Commissioner unaffected**

**(5)** The exercise, pursuant to this Act, of any of the powers or the performance of any of the duties of the Commissioner by a Deputy Commissioner or other person does not in any way limit, restrict or qualify the powers or duties of the Commissioner, either generally or with respect to any particular matter.

R.S., 1985, c. C-34, s. 8; 1999, c. 2, s. 5.

**Application for inquiry**

**9 (1)** Any six persons resident in Canada who are not less than eighteen years of age and who are of the opinion that

**(a)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

**(b)** grounds exist for the making of an order under Part VII.1 or VIII, or

**(c)** an offence under Part VI or VII has been or is about to be committed,

may apply to the Commissioner for an inquiry into the matter.

**Material to be submitted**

**(2)** An application made under subsection (1) shall be accompanied by a statement in the form of a solemn or statutory declaration showing

**(a)** the names and addresses of the applicants, and at their election the name and address of any one of their number, or of any attorney, solicitor or counsel, whom they may, for the purpose of receiving any communication to be made pursuant to this Act, have authorized to represent them;

**(b)** the nature of

**(i)** the alleged contravention,

**(ii)** the grounds alleged to exist for the making of an order, or

**(iii)** the alleged offence

and the names of the persons believed to be concerned therein and privy thereto; and

**(c)** a concise statement of the evidence supporting their opinion.

R.S., 1985, c. C-34, s. 9; R.S., 1985, c. 19 (2nd Supp.), s. 22; 1999, c. 2, ss. 6, 37.

**Inquiry by Commissioner**

**10 (1)** The Commissioner shall

**(a)** on application made under section 9,

**(b)** whenever the Commissioner has reason to believe that

**(i)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or Part VIII,

**(ii)** grounds exist for the making of an order under Part VII.1 or Part VIII, or

**(iii)** an offence under Part VI or VII has been or is about to be committed, or

**(c)** whenever directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b)(i) to (iii) exists,

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

**Information on inquiry**

**(2)** The Commissioner shall, on the written request of any person whose conduct is being inquired into under this Act or any person who applies for an inquiry under section 9, inform that person or cause that person to be informed as to the progress of the inquiry.

**Inquiries to be in private**

**(3)** All inquiries under this section shall be conducted in private.

R.S., 1985, c. C-34, s. 10; R.S., 1985, c. 19 (2nd Supp.), s. 23; 1999, c. 2, ss. 7, 37, c. 31, s. 45.

**Order for oral examination, production or written return**

**11 (1)** If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 and that a person has or is likely to have information that is relevant to the inquiry, the judge may order the person to

**(a)** attend as specified in the order and be examined on oath or solemn affirmation by the Commissioner or the authorized representative of the Commissioner on any matter that is relevant to the inquiry before a person, in this section and sections 12 to 14 referred to as a “presiding officer”, designated in the order;

**(b)** produce to the Commissioner or the authorized representative of the Commissioner within a time and at a place specified in the order, a record, a copy of a record certified by affidavit to be a true copy, or any other thing, specified in the order; or

**(c)** make and deliver to the Commissioner or the authorized representative of the Commissioner, within a time specified in the order, a written return under oath or solemn affirmation showing in detail such information as is by the order required.

**Records in possession of affiliate**

**(2)** Where the person against whom an order is sought under paragraph (1)(b) in relation to an inquiry is a corporation and the judge to whom the application is made under subsection (1) is satisfied by information on oath or solemn affirmation that an affiliate of the corporation, whether the affiliate is located in Canada or outside Canada, has records that are relevant to the inquiry, the judge may order the corporation to produce the records.

**No person excused from complying with order**

**(3)** No person shall be excused from complying with an order under subsection (1) or (2) on the ground that the testimony, record or other thing or return required of the person may tend to criminate the person or subject him to any proceeding or penalty, but no testimony given by an individual pursuant to an order made under paragraph (1)(a), or return made by an individual pursuant to an order made under paragraph (1)(c), shall be used or received against that individual in any criminal proceedings thereafter instituted against him, other than a prosecution under section 132 or 136 of the *Criminal Code*.

**Effect of order**

**(4)** An order made under this section has effect anywhere in Canada.

R.S., 1985, c. C-34, s. 11; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 8, s. 126, c. 16, s. 1.

**Witness competent and compellable**

**12 (1)** Any person summoned to attend pursuant to paragraph 11(1)(a) is competent and may be compelled to give evidence.

**Fees**

**(2)** Every person summoned to attend pursuant to paragraph 11(1)(a) is entitled to the like fees and allowances for so doing as if summoned to attend before a superior court of the province in which the person is summoned to attend.

**Representation by counsel**

**(3)** A presiding officer shall permit a person who is being examined pursuant to an order under paragraph 11(1)(a) and any person whose conduct is being inquired into to be represented by counsel.

**Attendance of person whose conduct is being inquired into**

**(4)** Any person whose conduct is being inquired into at an examination pursuant to an order under paragraph 11(1)(a) and that person’s counsel are entitled to attend the examination unless the Commissioner or the authorized representative of the Commissioner, or the person being examined or his employer, establishes to the satisfaction of the presiding officer that the presence of the person whose conduct is being inquired into would

**(a)** be prejudicial to the effective conduct of the examination or the inquiry; or

**(b)** result in the disclosure of confidential commercial information that relates to the business of the person being examined or his employer.

R.S., 1985, c. C-34, s. 12; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Presiding officer**

**13 (1)** Any person may be designated as a presiding officer who is a barrister or advocate of at least ten years standing at the bar of a province or who has been a barrister or advocate at the bar of a province for at least ten years.

**Remuneration and expenses**

**(2)** A presiding officer shall be paid such remuneration, and is entitled to be paid such travel and living expenses, and such other expenses, incurred in the performance of his duties under this Act, as may be fixed by the Governor in Council.

R.S., 1985, c. C-34, s. 13; R.S., 1985, c. 19 (2nd Supp.), s. 24.

**Administration of oaths**

**14 (1)** The presiding officer may administer oaths and take and receive solemn affirmations for the purposes of examinations pursuant to paragraph 11(1)(a).

**Orders of presiding officer**

**(2)** A presiding officer may make such orders as he considers to be proper for the conduct of an examination pursuant to paragraph 11(1)(a).

**Application to court**

**(3)** A judge of a superior or county court may, on application by a presiding officer, order any person to comply with an order made by the presiding officer under subsection (2).

**Notice**

**(4)** No order may be made under subsection (3) unless the presiding officer has given to the person in respect of whom the order is sought and the Commissioner twenty-four hours notice of the hearing of the application for the order or such shorter notice as the judge to whom the application is made considers reasonable.

R.S., 1985, c. C-34, s. 14; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 8, s. 127.

**Warrant for entry of premises**

**15 (1)** If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation

**(a)** that there are reasonable grounds to believe that

**(i)** a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or VIII,

**(ii)** grounds exist for the making of an order under Part VII.1 or VIII, or

**(iii)** an offence under Part VI or VII has been or is about to be committed, and

**(b)** that there are reasonable grounds to believe that there is, on any premises, any record or other thing that will afford evidence with respect to the circumstances referred to in subparagraph (a)(i), (ii) or (iii), as the case may be,

the judge may issue a warrant under his hand authorizing the Commissioner or any other person named in the warrant to

**(c)** enter the premises, subject to such conditions as may be specified in the warrant, and

**(d)** search the premises for any such record or other thing and copy it or seize it for examination or copying.

**Contents of warrant**

**(2)** A warrant issued under this section shall identify the matter in respect of which it is issued, the premises to be searched and the record or other thing, or the class of records or other things, to be searched for.

**Execution of search warrant**

**(3)** A warrant issued under this section shall be executed between six o'clock in the forenoon and nine o'clock in the afternoon, unless the judge issuing it, by the warrant, authorizes execution of it at another time.

**Idem**

**(4)** A warrant issued under this section may be executed anywhere in Canada.

**Duty of persons in control of premises**

**(5)** Every person who is in possession or control of any premises or record or other thing in respect of which a warrant is issued under subsection (1) shall, on presentation of the warrant, permit the Commissioner or other person named in the warrant to enter the premises, search the premises and examine the record or other thing and to copy it or seize it.

**Where admission or access refused**

**(6)** Where the Commissioner or any other person, in executing a warrant issued under subsection (1), is refused access to any premises, record or other thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who

issued the warrant or a judge of the same court, on the *ex parte* application of the Commissioner, may by order direct a peace officer to take such steps as the judge considers necessary to give the Commissioner or other person access.

**Where warrant not necessary**

**(7)** The Commissioner or the authorized representative of the Commissioner may exercise any of the powers set out in paragraph (1)(c) or (d) without a warrant if the conditions set out in paragraphs (1)(a) and (b) exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

**Exigent circumstances**

**(8)** For the purposes of subsection (7), exigent circumstances include circumstances in which the delay necessary to obtain a warrant under subsection (1) would result in the loss or destruction of evidence.

R.S., 1985, c. C-34, s. 15; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, ss. 8, 37; 2002, c. 8, s. 128.

**Operation of computer system**

**16 (1)** A person who is authorized pursuant to subsection 15(1) to search premises for a record may use or cause to be used any computer system on the premises to search any data contained in or available to the computer system, may reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output and may seize the printout or other output for examination or copying.

**Duty of person in control of computer system**

**(2)** Every person who is in possession or control of any premises in respect of which a warrant is issued under subsection 15(1) shall, on presentation of the warrant, permit any person named in the warrant to use or cause to be used any computer system or part thereof on the premises to search any data contained in or available to the computer system for data from which a record that that person is authorized to search for may be produced, to obtain a physical copy thereof and to seize it.

**Order restricting operation of computer system**

**(3)** A judge who issued a warrant under subsection 15(1) or a judge of the same court may, on application by the Commissioner or any person who is in possession or control of a computer system or a part thereof on any premises in respect of which the warrant was issued, make an order

**(a)** specifying the individuals who may operate the computer system and fixing the times when they may do so; and

**(b)** setting out any other terms and conditions on which the computer system may be operated.

**Notice by person in possession or control**

**(4)** No order may be made under subsection (3) on application by a person who is in possession or control of a computer system or part thereof unless that person has given the Commissioner twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

**Notice by Commissioner**

**(5)** No order may be made under subsection (3) on application by the Commissioner after a search has begun of the premises in respect of which the order is sought unless the Commissioner has given the person who is in possession or control of the premises twenty-four hours notice of the hearing of the application or such shorter notice as the judge considers reasonable.

**Definitions**

**(6)** In this section, "computer system" and "data" have the meanings set out in subsection 342.1(2) of the *Criminal Code*.

R.S., 1985, c. C-34, s. 16; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Presentation of or report on record or thing seized**

**17 (1)** Where a record or other thing is seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16, the Commissioner or the authorized representative of the Commissioner shall, as soon as practicable,

**(a)** take the record or other thing before the judge who issued the warrant or a judge of the same court or, if no warrant was issued, before a judge of a superior or county court; or

**(b)** make a report in respect of the record or other thing to a judge determined in accordance with paragraph (a).

**Report**

**(2)** A report to a judge under paragraph (1)(b) in respect of a record or other thing shall include

**(a)** a statement as to whether the record or other thing was seized pursuant to paragraph 15(1)(d), subsection 15(7) or section 16;

**(b)** a description of the premises searched;

**(c)** a description of the record or other thing seized; and

**(d)** the location in which it is detained.

**Retention or return of thing seized**

**(3)** Where a record or other thing is seized pursuant to section 15 or 16, the judge before whom it is taken or to whom a report is made in respect of it pursuant to this section may, if he is satisfied that the record or other thing is required for an inquiry or any proceeding under this Act, authorize the Commissioner to retain it.

R.S., 1985, c. C-34, s. 17; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 46(F); 2002, c. 8, s. 129.

**Commissioner to take reasonable care**

**18 (1)** Where any record or other thing is produced pursuant to section 11 or seized pursuant to section 15 or 16, the Commissioner shall take reasonable care to ensure that it is preserved until it is returned to the person by whom it was produced or from whom it was seized or until it is required to be produced in any proceeding under this Act.

**Certified copies**

**(1.1)** The Commissioner need not return any copy of a record produced pursuant to section 11.

**Access to records or things**

**(2)** The person by whom a record or other thing is produced pursuant to section 11 or from whom a record or other thing is seized pursuant to section 15 or 16 is entitled, at any reasonable time and subject to such reasonable conditions as may be imposed by the Commissioner, to inspect the record or other thing.

**Copy of record where returned**

**(3)** The Commissioner may, before returning any record produced pursuant to section 11 or seized pursuant to section 15 or 16, make or cause to be made, and may retain, a copy thereof.

**Detention of things seized**

**(4)** Any record or other thing that is produced pursuant to section 11, or the retention of which is authorized under subsection 17(3), shall be returned to the person by whom it was produced or the person from whom it was seized not later than sixty days after it was produced or its retention was authorized, unless, before the expiration of that period,

**(a)** the person by whom it was produced or from whom it was seized agrees to its further detention for a specified period of time;

**(b)** the judge who authorized its production or retention or a judge of the same court is satisfied on application that, having regard to the circumstances, its further detention for a specified period of time is warranted and the judge so orders; or

**(c)** proceedings are instituted in which the record or thing may be required.

R.S., 1985, c. C-34, s. 18; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37; 2002, c. 16, s. 2.

**Claim to solicitor-client privilege (section 11)**

**19 (1)** Where a person is ordered to produce a record pursuant to section 11 and that person claims that there exists a solicitor-client privilege in respect thereof, the person shall place it in a package and seal and identify the package and place it in the custody of a person referred to in subsection (3).

**Claim to solicitor-client privilege (section 15 or 16)**

**(2)** Where, pursuant to section 15 or 16, any person is about to examine, copy or seize or is in the course of examining, copying or seizing any record and a person appearing to be in authority claims that there exists a solicitor-client privilege in respect thereof, the first-mentioned person, unless the person claiming the privilege withdraws the claim or the first-mentioned person desists from examining and copying the record and from seizing it or a copy thereof, shall, without examining or further examining it or making a copy or further copy thereof, place it and any copies of it made by him, and any notes taken in respect of it, in a package, and seal and identify the package and place it in the custody of a person referred to in subsection (3).

**Custody of record**

**(3)** A record in respect of which a solicitor-client privilege is claimed under subsection (1) or (2) shall be placed in the custody of

**(a)** the registrar, prothonotary or other like officer of a superior or county court in the province in which the record was ordered to be produced or in which it was found, or of the Federal Court;

**(b)** a sheriff of the district or county in which the record was ordered to be produced or in which it was found; or

**(c)** some person agreed on between the Commissioner or the authorized representative of the Commissioner and the person who makes the claim of privilege.

**Determination of claim to privilege**

**(4)** A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting *in camera*, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found within thirty days after the day on which the record was placed in custody if notice of the application has been given by the applicant to all other persons entitled to make application.

**Idem**

**(5)** Where no application is made in accordance with subsection (4) within thirty days after the day on which a record is placed in custody under this section, any judge referred to in subsection (4) shall, on *ex parte* application by or on behalf of the Commissioner, order the

record to be delivered to the Commissioner.

**Authority of judge**

**(6)** A judge referred to in subsection (4) may give any directions that the judge deems necessary to give effect to this section, may order delivery up to the judge out of custody of any record in respect of which he is asked to decide a question of solicitor-client privilege and may inspect any such record.

**Prohibition**

**(7)** Any person who is about to examine, copy or seize any record pursuant to section 15 or 16 shall not do so without affording a reasonable opportunity for a claim of solicitor-client privilege to be made under this section.

**Access to record in custody**

**(8)** At any time while a record is in custody under this section, a judge of a superior or county court in the province in which the record is in custody, or of the Federal Court, may, on an *ex parte* application of a person claiming solicitor-client privilege under this section, authorize that person to examine the record or make a copy of it in the presence of the person who has custody of it or the judge, but any such authorization shall contain provisions to ensure that the record is repackaged and that the package is resealed without alteration or damage.

R.S., 1985, c. C-34, s. 19; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Inspection of records and things**

**20 (1)** All records or other things obtained or received by the Commissioner may be inspected by the Commissioner and also by such persons as he directs.

**Copies**

**(2)** Copies of any records referred to in subsection (1), including copies by any process of photographic reproduction, on proof orally or by affidavit that they are true copies, are admissible in evidence in any proceedings under this Act and have the same probative force as the original.

**Proof**

**(3)** Where proof referred to in subsection (2) is offered by affidavit, it is not necessary to prove the signature or official character of the deponent, if that information is set out in the affidavit, or to prove the signature or official character of the person before whom the affidavit was sworn.

R.S., 1985, c. C-34, s. 20; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Counsel**

**21** Whenever in the opinion of the Commissioner the public interest so requires, the Commissioner may apply to the Attorney General of Canada to appoint and instruct counsel to assist in an inquiry under section 10, and on such an application the Attorney General of Canada may appoint and instruct counsel accordingly.

R.S., 1985, c. C-34, s. 21; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Discontinuance of inquiry**

**22 (1)** At any stage of an inquiry under section 10, if the Commissioner is of the opinion that the matter being inquired into does not justify further inquiry, the Commissioner may discontinue the inquiry.

**Report**

**(2)** The Commissioner shall, on discontinuing an inquiry, make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

**Notice to applicant**

**(3)** Where an inquiry made on application under section 9 is discontinued, the Commissioner shall inform the applicants of the decision and give the grounds therefor.

**Review of decision**

**(4)** The Minister may, on the written request of applicants under section 9 or on the Minister's own motion, review any decision of the Commissioner to discontinue an inquiry under section 10, and may, if in the Minister's opinion the circumstances warrant, instruct the Commissioner to make further inquiry.

R.S., 1985, c. C-34, s. 22; R.S., 1985, c. 27 (1st Supp.), s. 187, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37, c. 31, s. 47(F).

**Reference to Attorney General of Canada**

**23 (1)** The Commissioner may, at any stage of an inquiry under section 10, in addition to or in lieu of continuing the inquiry, remit any records, returns or evidence to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed against this Act and for such action as the Attorney General of Canada may wish to take.

**Prosecution by Attorney General of Canada**

**(2)** The Attorney General of Canada may institute and conduct any prosecution or other criminal proceedings under this Act, and for those purposes may exercise all the powers and perform all the duties and functions conferred by the *Criminal Code* on the attorney general of a province.

R.S., 1985, c. C-34, s. 23; R.S., 1985, c. 19 (2nd Supp.), s. 24; 1999, c. 2, s. 37.

**Regulations**

**24 (1)** The Governor in Council may make regulations regulating the practice and procedure in respect of applications, proceedings and orders under sections 11 to 19.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. C-34, s. 24; R.S., 1985, c. 19 (2nd Supp.), s. 24.

**Staff**

**25** All officers, clerks and employees required for carrying out this Act shall be appointed in accordance with the *Public Service Employment Act*, except that the Commissioner may, with the approval of the Governor in Council, employ such temporary, technical and special assistants as may be required to meet the special conditions that may arise in carrying out this Act.

R.S., 1985, c. C-34, s. 25; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37.

**Remuneration of temporary staff**

**26 (1)** Any temporary, technical and special assistants employed by the Commissioner shall be paid such remuneration, and are entitled to be paid such travel and living expenses incurred in the performance of their duties under this Act, as may be fixed by the Governor in Council.

**Remuneration and expenses payable out of appropriations**

**(2)** The remuneration and expenses of the Commissioner and of the temporary, technical and special assistants employed by the Commissioner, and of any counsel instructed under this Act, shall be paid out of money appropriated by Parliament to defray the cost of administering this Act.

***Public Service Employment Act* applies**

**(3)** Subject to this section and section 7, the *Public Service Employment Act* and other Acts relating to the public service, in so far as applicable, apply to the Commissioner and to all other persons employed under this Act.

R.S., 1985, c. C-34, s. 26; R.S., 1985, c. 19 (2nd Supp.), s. 25; 1999, c. 2, s. 37; 2003, c. 22, s. 225(E).

**Authority of technical or special assistants**

**27** Any technical or special assistant or other person employed under this Act, when so authorized or deputed by the Commissioner, has power and authority to exercise any of the powers and perform any of the duties of the Commissioner under this Act with respect to any particular inquiry, as may be directed by the Commissioner.

R.S., 1985, c. C-34, s. 27; 1999, c. 2, s. 37.

**Minister may require interim report**

**28** The Minister may at any time require the Commissioner to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Commissioner whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Commissioner's opinion as to the effect of the evidence.

R.S., 1985, c. C-34, s. 28; 1999, c. 2, s. 37.

**Confidentiality**

**29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act

**(a)** the identity of any person from whom information was obtained pursuant to this Act;

**(b)** any information obtained pursuant to section 11, 15, 16 or 114;

**(c)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114;

**(d)** any information obtained from a person requesting a certificate under section 102; or

**(e)** any information provided voluntarily pursuant to this Act.

**Exception**

**(2)** This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

R.S., 1985, c. C-34, s. 29; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 16, s. 2.1.

**Communication to Minister of Transport**

**29.1 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Transport in accordance with subsection (3), communicate or allow to be communicated to that Minister any information referred to in subsection (2) that is specifically requested by that Minister.

**Information**

**(2)** The information that may be communicated under this section is

**(a)** the identity of any person from whom information was obtained under this Act;

**(b)** any information obtained in the course of an inquiry under section 10;

**(c)** any information obtained under section 11, 15, 16 or 114;

**(d)** any information obtained from a person requesting a certificate under section 102;

**(e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and

**(f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

**Contents of request**

**(3)** Requests under this section must be in writing and must

**(a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required; and

**(b)** state that the Minister of Transport requires the information for the purposes of section 53.1 or 53.2 of the *Canada Transportation Act* and identify the transaction being considered under that section.

**Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purposes of section 53.1 or 53.2, as the case may be, of the *Canada Transportation Act*.

**Confidentiality**

**(5)** No person who performs or has performed duties or functions in the administration or enforcement of the *Canada Transportation Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to persons who perform duties or functions under section 53.1 or 53.2 of that Act.
2000, c. 15, s. 12; 2007, c. 19, s. 61.

**Communication to Minister of Finance**

**29.2 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Finance in accordance with subsection (3), communicate or allow to be communicated to the Minister of Finance any information referred to in subsection (2) that is specifically requested by the Minister of Finance.

**Information**

**(2)** The information that may be communicated under this section is

**(a)** the identity of any person from whom information was obtained under this Act;

**(b)** any information obtained in the course of an inquiry under section 10;

**(c)** any information obtained under section 11, 15, 16 or 114;

**(d)** any information obtained from a person requesting a certificate under section 102;

**(e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and

**(f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

**Contents of request**

**(3)** Requests under this section must be in writing and must

**(a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required;

**(b)** state that the Minister of Finance requires the information

**(i)** to consider a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*, or

**(ii)** to permit the Minister of Finance to determine whether he or she should provide the Commissioner with a certificate described in paragraph 94(b) in respect of such a merger or proposed merger;

and

**(c)** identify the merger or proposed merger.

**Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purpose of making a decision in respect of the merger or proposed merger.

**Confidentiality**

**(5)** No person who performs or has performed duties or functions, in the administration or enforcement of the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to other persons who perform those duties or functions.
2001, c. 9, s. 578.

**PART III**

# Mutual Legal Assistance

## Interpretation

**Definitions**

**30** The definitions in this section apply in this Part.

***agreement*** means a treaty, convention or other international agreement to which Canada is a party that provides for mutual legal assistance in competition matters, other than a matter in respect of which the *Mutual Legal Assistance in Criminal Matters Act* applies. (*accord*)

***conduct*** means conduct or matters within the meaning of the relevant agreement in respect of which mutual legal assistance may be requested in accordance with this Part. (*comportement*)

***data*** means representations, in any form, of information or concepts. (*données*)

***foreign state*** means a country other than Canada, and includes any international organization of states. (*État étranger*)

***judge*** means

**(a)** in Ontario, a judge of the Superior Court of Justice;

**(b)** in Quebec, a judge of the Superior Court;

**(c)** in Nova Scotia, British Columbia, Newfoundland, Yukon and the Northwest Territories, a judge of the Supreme Court, and in Nunavut, a judge of the Nunavut Court of Justice;

**(d)** in New Brunswick, Manitoba, Saskatchewan and Alberta, a judge of the Court of Queen's Bench;

**(e)** in Prince Edward Island, a judge of the trial division of the Supreme Court; and

**(f)** in any province or territory, a judge of the Federal Court. (*juge*)

R.S., 1985, c. C-34, s. 30; R.S., 1985, c. 19 (2nd Supp.), s. 26; 2002, c. 7, s. 276(E), c. 8, s. 198, c. 16, s. 3.

## Functions of the Minister of Justice

**Agreements respecting mutual legal assistance**

**30.01** Before Canada enters into an agreement, the Minister of Justice must be satisfied that

**(a)** the laws of the foreign state that address conduct that is similar to conduct prohibited or reviewable under this Act are, in his or her opinion, substantially similar to the relevant provisions of this Act, regardless of whether the conduct is dealt with criminally or otherwise;

**(b)** any record or thing provided by Canada under the agreement will be protected by laws respecting confidentiality that are, in his or her opinion, substantially similar to Canadian laws;

**(c)** the agreement contains provisions in respect of

**(i)** the circumstances in which Canada may refuse, in whole or in part, to approve a request, and

**(ii)** the confidentiality protections that will be afforded to any record or thing provided by Canada;

**(d)** the agreement contains the following undertakings by the foreign state, namely,

**(i)** that it will provide assistance to Canada comparable in scope to that provided by Canada,

**(ii)** that any record or thing provided by Canada will be used only for the purpose for which it was requested,

**(iii)** that any record or thing provided by Canada will be used subject to any terms and conditions on which it was provided, including conditions respecting applicable rights or privileges under Canadian law,

**(iv)** that, at the conclusion of the investigation or proceedings in respect of which any record or thing was provided by Canada, the foreign state will return the record or thing and any copies to Canada or, with the consent of Canada, return the record or thing to Canada and destroy any copies,

**(v)** subject to subparagraph (ii), that it will, to the greatest extent possible consistent with its laws, keep confidential any record or thing obtained by it pursuant to its request, and oppose any application by a third party for disclosure of the record or thing, and

**(vi)** that it will promptly notify the Minister of Justice in the event that the confidentiality protections contained in the agreement have been breached; and

**(e)** the agreement contains a provision in respect of the manner in which it may be terminated.

2002, c. 16, s. 3.

# Publication of Agreements

**Publication in *Canada Gazette***

**30.02 (1)** An agreement must be published in the *Canada Gazette* no later than 60 days after the agreement comes into force, unless it has already been published under subsection (2).

**Publication in *Canada Treaty Series***

**(2)** An agreement may be published in the *Canada Treaty Series* and, if so published, the publication must be no later than 60 days after the agreement comes into force.

**Judicial notice**

**(3)** Agreements published in the *Canada Gazette* or the *Canada Treaty Series* are to be judicially noticed.

2002, c. 16, s. 3.

# Requests Made to Canada from Abroad

## Requests

**Requests**

**30.03** The Minister of Justice is responsible for dealing with a request made by a foreign state under an agreement, in accordance with the agreement and this Part.

2002, c. 16, s. 3.

## Search and Seizure

**Application of sections 15, 16 and 19**

**30.04** Sections 15, 16 and 19 apply, with any modifications that the circumstances require, in respect of a search or a seizure under this Part, except to the extent that those sections are inconsistent with this Part.

2002, c. 16, s. 3.

**Approval of request for search and seizure**

**30.05 (1)** If the Minister of Justice approves a request of a foreign state to have a search and seizure carried out in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for a search warrant.

**Application for search warrant**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* for a search warrant to a judge.

2002, c. 16, s. 3.

**Warrant for entry of premises**

**30.06 (1)** A judge to whom an application is made under subsection 30.05(2) may issue a search warrant authorizing the person named in it to execute it anywhere in Canada where the judge is satisfied by information on oath or solemn affirmation that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place;

**(b)** evidence in respect of the conduct referred to in paragraph (a) will be found in any premises; and

**(c)** it would not, in the circumstances, be appropriate to make an order under subsection 30.11(1).

**Authorization**

**(2)** A search warrant issued under subsection (1) authorizes the person named in it to enter the premises specified in the warrant, subject to any conditions that may be specified in the warrant, and to search the premises for any record or thing specified in the warrant and to examine and seize it.

**Hearing re execution**

**(3)** A judge who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report referred to in section 30.07.

**Contents of warrant**

**(4)** A search warrant issued under subsection (1) must

**(a)** set out the time and place for the hearing mentioned in subsection (3);

**(b)** state that, at that hearing, an order will be sought for the sending to the foreign state of the records or things seized in execution of the warrant; and

**(c)** state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized may make representations at the hearing before any order is made concerning the record or thing.

**Duty of persons in control of premises**

**(5)** Every person who is in possession or control of any premises, record or thing in respect of which a search warrant is issued under subsection (1) shall, on presentation of the warrant, permit the person named in the warrant to enter the premises, search the premises and examine the record or thing and seize it.

**Where admission or access refused**

**(6)** Where a person, in executing a search warrant issued under subsection (1), is refused access to any premises, record or thing or where the Commissioner believes on reasonable grounds that access will be refused, the judge who issued the warrant or a judge of the same

court, on the *ex parte* application of the Commissioner or the authorized representative of the Commissioner, may by order direct a peace officer to take any steps that the judge considers necessary to give access to the person named in the warrant.

2002, c. 16, s. 3.

**Report**

**30.07 (1)** The person who executes a search warrant shall, at least five days before the time of the hearing to consider its execution, file with the court of which the judge who issued the warrant is a member a written report concerning the execution of the warrant that includes a general description of the records or things seized.

**Copy to Minister of Justice**

**(2)** The person who files the report under subsection (1) shall send a copy of it to the Minister of Justice promptly after its filing.

2002, c. 16, s. 3.

**Sending abroad**

**30.08 (1)** At the hearing referred to in subsection 30.06(3), after having considered any representations of the Minister of Justice, the Commissioner, the person from whom a record or thing was seized and any person who claims to have an interest in the record or thing, the judge who issued the search warrant or another judge of the same court may

**(a)** where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), order that a record or thing seized be returned to

**(i)** the person from whom it was seized, if possession of it by that person is lawful, or

**(ii)** the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or

**(b)** in any other case, order that a record or thing seized be sent to the foreign state mentioned in subsection 30.05(1) and include in the order any terms and conditions that the judge considers desirable, including terms and conditions

**(i)** necessary to give effect to the request mentioned in that subsection,

**(ii)** in respect of the preservation and return to Canada of any record or thing seized, and

**(iii)** in respect of the protection of the interests of third parties.

**Requiring record, etc., at hearing**

**(2)** At the hearing mentioned in subsection (1), the judge may require that a record or thing seized be brought before him or her.

2002, c. 16, s. 3.

**Terms and conditions**

**30.09** No record or thing seized that has been ordered under section 30.08 to be sent to a foreign state shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

## Evidence for Use Abroad

**Approval of request to obtain evidence**

**30.1 (1)** If the Minister of Justice approves a request of a foreign state to obtain, by means of an order of a judge, evidence in respect of conduct that is the subject of the request, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

**Application for order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the gathering of evidence.

2002, c. 16, s. 3.

**Evidence-gathering order**

**30.11 (1)** A judge to whom an application is made under subsection 30.1(2) may make an order for the gathering of evidence where the judge is satisfied that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

**(b)** there will be found in Canada evidence in respect of the conduct referred to in paragraph (a).

**Provisions of order**

**(2)** An order made under subsection (1) must provide for the manner in which the evidence is to be obtained in order to give effect to the request mentioned in subsection 30.1(1) and may

**(a)** order the examination, on oath or otherwise, of a person named in the order, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he or she is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or

to make a record from data and to bring the copy or record with him or her, and order the person so named to bring with him or her any record or thing in his or her possession or control, in order to produce them to the person before whom the examination takes place;

**(b)** order a person named in the order to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his or her possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced; and

**(c)** designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced.

**Designation of judge**

**(3)** For greater certainty, a judge who makes an order under subsection (1) may designate himself or herself or another person, including a judge of a Canadian or foreign court, under paragraph (2)(c).

**Order effective throughout Canada**

**(4)** An order made under subsection (1) may be executed anywhere in Canada.

**Terms and conditions of order**

**(5)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of a person named in the order and of third parties.

**Variation**

**(6)** The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

**Other laws to apply**

**(7)** A person named in an order made under subsection (1) shall answer questions and produce records or things to the person designated under paragraph (2)(c) in accordance with the laws of evidence and procedure in the foreign state that presented the request, but may refuse if answering the questions or producing the records or things would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

**Execution of order to be completed**

**(8)** If a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (2)(c)

**(a)** may, if he or she is a judge of a Canadian or foreign court, make immediate rulings on any objections or issues within his or her jurisdiction; or

**(b)** shall, in any other case, continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

**Statement of reasons for refusal**

**(9)** A person named in an order made under subsection (1) who, under subsection (7), refuses to answer one or more questions or to produce certain records or things shall, within seven days, give to the person designated under paragraph (2)(c), unless that person has already ruled on the objection under paragraph (8)(a), a detailed statement in writing of the reasons on which the person bases the refusal to answer each question that the person refuses to answer or to produce each record or thing that the person refuses to produce.

**Expenses**

**(10)** A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.

**Contents of order**

**(11)** An order made under subsection (1) must state that a person named in the order, and any person who claims an interest in any record or thing provided pursuant to the order, may make representations referred to in subsection 30.13(2) before any order is made under subsection 30.13(1).

2002, c. 16, s. 3.

**Report**

**30.12 (1)** A person designated under paragraph 30.11(2)(c) in an order made under subsection 30.11(1) shall make a report to the judge who made the order, or another judge of the same court, accompanied by

**(a)** a transcript of every examination held under the order;

**(b)** a general description of every record or thing produced to the person under the order and, if the judge so requires, a record or thing itself; and

**(c)** a copy of every statement given under subsection 30.11(9) of the reasons for a refusal to answer any question or to produce any record or thing.

**Copy to Minister of Justice**

**(2)** The person designated under paragraph 30.11(2)(c) shall send a copy of the report to the Minister of Justice promptly after it is made.

**Refusals**

**(3)** If any reasons contained in a statement given under subsection 30.11(9) are based on the Canadian law of non-disclosure of information or privilege, a judge to whom a report is made shall determine whether those reasons are well-founded and, if the judge determines that they are, that determination shall be mentioned in any order that the judge makes under section 30.13, but if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.11(1) answer the questions or produce the records or things.

**Refusals based on foreign law**

**(4)** A copy of every statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state shall be appended to any order that the judge makes under section 30.13.

2002, c. 16, s. 3.

**Sending abroad**

**30.13 (1)** A judge to whom a report is made under subsection 30.12(1) may order that there be sent to the foreign state mentioned in subsection 30.1(1)

**(a)** the report, any transcript referred to in paragraph 30.12(1)(a) and any record or thing produced;

**(b)** a copy of the order made under subsection 30.11(1) accompanied by a copy of any statement given under subsection 30.11(9) that contains reasons that purport to be based on a law that applies to the foreign state; and

**(c)** any determination made under subsection 30.12(3) that the reasons contained in a statement given under subsection 30.11(9) are well-founded.

**Terms and conditions**

**(2)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, after having considered any representations of the Minister of Justice, the Commissioner, the person who produced any record or thing to the person designated under paragraph 30.11(2)(c) and any person who claims to have an interest in any record or thing so produced, including terms and conditions

**(a)** necessary to give effect to the request mentioned in subsection 30.1(1);

**(b)** in respect of the preservation and return to Canada of any record or thing so produced; and

**(c)** in respect of the protection of the interests of third parties.

**Further execution**

**(3)** The execution of an order made under subsection 30.11(1) that was not completely executed because of a refusal, by reason of a law that applies to the foreign state, to answer one or more questions or to produce certain records or things to the person designated under paragraph 30.11(2)(c) may be continued, unless a ruling has already been made on the objection under paragraph 30.11(8)(a), if a court of the foreign state or a person designated by the foreign state determines that the reasons are not well-founded and the foreign state so advises the Minister of Justice.

**Leave of judge required**

**(4)** No person named in an order made under subsection 30.11(1) whose reasons for refusing to answer a question or to produce a record or thing are determined not to be well-founded, or whose objection has been ruled against under paragraph 30.11(8)(a), shall, during the continued execution of the order or ruling, refuse to answer that question or to produce that record or thing to the person designated under paragraph 30.11(2)(c), except with the permission of the judge who made the order or ruling or another judge of the same court.
2002, c. 16, s. 3.

**Terms and conditions**

**30.14** No record or thing that has been ordered under section 30.13 to be sent to the foreign state mentioned in subsection 30.1(1) shall be so sent until the Minister of Justice is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

2002, c. 16, s. 3.

**Approval of request to obtain evidence by video link, etc.**

**30.15 (1)** If the Minister of Justice approves a request of a foreign state to compel a person to provide evidence or a statement in respect of conduct that is the subject of the request by means of technology that permits the virtual presence of the person in the territory over which the foreign state has jurisdiction, or that permits the person to be heard and examined, the Minister of Justice shall provide the Commissioner with any documents or information necessary to apply for the order.

**Application for order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply *ex parte* to a judge for an order for the taking of evidence or a statement from the person.

2002, c. 16, s. 3.

**Order for video link, etc.**

**30.16 (1)** A judge to whom an application is made under subsection 30.15(2) may make an order for the taking of evidence or a statement from a person where the judge is satisfied that there are reasonable grounds to believe that

**(a)** conduct that is the subject of a request made by a foreign state is taking place, has taken place or is about to take place; and

**(b)** the foreign state believes that the person's evidence or statement would be relevant to the investigation or proceedings in respect of the conduct referred to in paragraph (a).

**Provisions of order**

**(2)** An order made under subsection (1) shall order the person

**(a)** to attend at the place fixed by the judge for the taking of the evidence or statement by means of the technology and to remain in attendance until the person is excused by the authorities of the foreign state;

**(b)** to answer any questions put to the person by the authorities of the foreign state or by any person authorized by those authorities;

**(c)** to make a copy of a record or to make a record from data and to bring the copy or record, when appropriate; and

**(d)** to bring any record or thing in his or her possession or control, when appropriate, in order to show it to the authorities by means of the technology.

**Order effective throughout Canada**

**(3)** An order made under subsection (1) may be executed anywhere in Canada.

**Terms and conditions of order**

**(4)** An order made under subsection (1) may include any terms or conditions that the judge considers desirable, including those relating to the protection of the interests of the person named in it and of third parties.

**Variation**

**(5)** The judge who made the order under subsection (1) or another judge of the same court may vary its terms and conditions.

**Expenses**

**(6)** A person named in an order made under subsection (1) is entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the judge who made the order.
2002, c. 16, s. 3.

**Other laws to apply**

**30.17 (1)** When a person gives evidence or a statement pursuant to an order made under subsection 30.16(1), the person shall give the evidence or statement as though he or she were physically before the court or tribunal outside Canada, in accordance with the laws of evidence

and procedure applicable to that court or tribunal, but may refuse to give evidence or a statement, in whole or in part, if giving the evidence or statement would disclose information that is protected by the Canadian law of non-disclosure of information or privilege.

**Statement of reasons for refusal**

**(2)** A person named in an order made under subsection 30.16(1) who refuses to give evidence or a statement on the grounds that it would disclose information that is protected by the Canadian law of non-disclosure of information or privilege shall, within seven days, give to the judge who made the order or another judge of the same court a detailed statement in writing of the reasons on which the person bases each refusal.

**Refusals**

**(3)** A judge to whom a statement is given under subsection (2) shall determine whether the reasons for refusal are well-founded and, if the judge determines that they are not, the judge shall order that the person named in the order made under subsection 30.16(1) give the evidence or statement.

**Contempt of court in Canada**

**(4)** When a witness gives evidence under section 30.16, the Canadian law relating to contempt of court applies with respect to a refusal by the person to answer a question or to produce a record or thing as ordered by the judge under that section.
2002, c. 16, s. 3.

**Arrest warrant**

**30.18 (1)** The judge who made the order under subsection 30.11(1) or 30.16(1) or another judge of the same court may issue a warrant for the arrest of the person named in the order where the judge is satisfied, on an information in writing and under oath or solemn declaration, that

**(a)** the person did not attend or remain in attendance as required by the order or is about to abscond;

**(b)** the order was personally served on the person; and

**(c)** in the case of an order made under subsection 30.11(1), the person is likely to give material evidence and, in the case of an order made under subsection 30.16(1), the foreign state believes that the testimony of the person would be relevant to the investigation or proceedings in respect of the conduct.

**Warrant effective throughout Canada**

**(2)** A warrant issued under subsection (1) may be executed anywhere in Canada by any peace officer.

**Order**

**(3)** A peace officer who arrests a person in execution of a warrant issued under subsection (1) shall, without delay, bring the person or cause the person to be brought before the judge who issued the warrant or another judge of the same court who may, to ensure compliance with the order made under subsection 30.11(1) or 30.16(1), order that the person be detained in custody or released on recognizance, with or without sureties.

**Copy of information**

**(4)** A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.
2002, c. 16, s. 3.

## Lending Exhibits

**Approval of loan request**

**30.19 (1)** If the Minister of Justice approves a request of a foreign state under an agreement to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Canada or in a proceeding before the Tribunal lent to the foreign state, the Minister shall provide the Commissioner with any documents or information necessary to apply for a loan order.

**Application for loan order**

**(2)** The Commissioner or the authorized representative of the Commissioner shall apply for a loan order in respect of the exhibit to the court that has possession of the exhibit, or to the Tribunal if it has possession of the exhibit, after having given reasonable notice to the parties to the proceedings and to

**(a)** to the Attorney General of Canada, in the case of an application to the Federal Court or the Federal Court of Appeal;

**(b)** the attorney general of the province in which the exhibit is located, in the case of an application to a court other than the Federal Court or the Federal Court of Appeal; or

**(c)** the Chairman of the Tribunal, in the case of an application to the Tribunal.

**Contents of application**

**(3)** An application made under subsection (2) must

**(a)** contain a description of the exhibit requested to be lent;

**(b)** designate a person or class of persons to whom the exhibit is sought to be given;

**(c)** state the reasons for the request and, if any tests are sought to be performed on the exhibit, contain a description of the tests and a statement of the place where they will be performed;

**(d)** state the place or places to which the exhibit is sought to be removed; and

**(e)** specify the time at or before which the exhibit is to be returned.

2002, c. 8, s. 198, c. 16, s. 3.

**Making of loan order**

**30.2 (1)** If the court or the Tribunal, as the case may be, is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court or Tribunal proposes to include in any loan order, the court or Tribunal may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection 30.19(2), make a loan order.

**Terms of loan order**

**(2)** A loan order made under subsection (1) must

**(a)** contain a description of the exhibit;

**(b)** order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;

**(c)** contain a description of any tests authorized to be performed on the exhibit, as well as a statement of the place where the tests must be performed;

**(d)** fix the place or places to which the exhibit may be removed; and

**(e)** fix the time at or before which the exhibit must be returned.

**Terms and conditions**

**(3)** A loan order made under subsection (1) may include any terms or conditions that the court or the Tribunal considers desirable, including those relating to the preservation of the exhibit.

2002, c. 16, s. 3.

**Variation of loan order**

**30.21** A court or the Tribunal may vary the terms and conditions of any loan order made by it.

2002, c. 16, s. 3.

**Copy of order to custodian**

**30.22** A copy of a loan order and of an order varying it shall be delivered by the Commissioner to the Minister of Justice and to the person who had possession of the exhibit when the loan order was made.

2002, c. 16, s. 3.

**Presumption of continuity**

**30.23** The burden of proving that an exhibit lent to a foreign state pursuant to a loan order made under subsection 30.2(1) and returned to Canada is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made is on the party who makes that allegation and, in the absence of that proof, the exhibit is deemed to have been continuously in the possession of the court that made the loan order or the Tribunal, as the case may be.

2002, c. 16, s. 3.

## Appeal

**Appeal on question of law**

**30.24 (1)** An appeal lies, with leave, on a question of law alone, to the court of appeal, within the meaning of section 2 of the *Criminal Code*, from an order or decision of a judge or a court in Canada made under this Part, other than an order or decision of the Federal Court or a judge of that Court, if the application for leave to appeal is made to a judge of the court of appeal within fifteen days after the order or decision.

**Appeal on question of law**

**(2)** An appeal lies, with leave, on a question of law alone, to the Federal Court of Appeal, from any order or decision of the Federal Court or the Tribunal made under this Part, if the application for leave to appeal is made to a judge of that Court within fifteen days after the order or decision.

2002, c. 8, s. 198, c. 16, s. 3.

# Evidence Obtained by Canada from Abroad

**Evidence**

**30.25** The Minister of Justice shall, on receiving evidence sent by a foreign state in response to a request made by Canada under an agreement, send it promptly to the Commissioner.

2002, c. 16, s. 3.

**Foreign records**

**30.26 (1)** In a proceeding in respect of which Parliament has jurisdiction, a record or a copy of a record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister of Justice by a foreign state in accordance with a Canadian request under an agreement, is not inadmissible in evidence by reason only that a statement contained in it is hearsay or a statement of opinion.

**Probative value**

**(2)** For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under Part VII.1 or VIII, the court hearing the matter, or the Tribunal in proceedings before it, may examine the record or copy, receive evidence orally or by affidavit,

or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a foreign state, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the foreign state, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and may draw any reasonable inference from the form or content of the record or copy.

2002, c. 16, s. 3.

**Foreign things**

**30.27** In a proceeding in respect of which Parliament has jurisdiction, a thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Commissioner by the Minister of Justice in accordance with a Canadian request under an agreement, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

2002, c. 16, s. 3.

**Status of certificate**

**30.28** An affidavit, certificate or other statement mentioned in section 30.26 or 30.27 is, in the absence of evidence to the contrary, proof of the statements contained in it without proof of the signature or official character of the person appearing to have signed it.

2002, c. 16, s. 3.

# General

**Confidentiality of foreign requests and evidence**

**30.29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except for the purposes of the administration or enforcement of this Act,

**(a)** the contents of a request made to Canada from a foreign state or the fact of the request having been made; or

**(b)** the contents of any record or thing obtained from a foreign state pursuant to a Canadian request.

**Confidentiality of Canadian evidence**

**(2)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person, except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act, any information obtained under section 30.06 or 30.11.

**Exception**

**(3)** This section does not apply in respect of any information that has been made public.

2002, c. 16, s. 3.

**Records or other things already in Commissioner's possession**

**30.291 (1)** For greater certainty, any evidence requested by a foreign state under an agreement may be obtained for the purposes of giving effect to the request only in accordance with the agreement and the procedure set out in this Part, even in the case of records or other things already in the possession of the Commissioner.

**Exception**

**(2)** This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

2002, c. 16, s. 3.

**Preservation of informal arrangements**

**30.3** Nothing in this Part shall be construed so as to abrogate or derogate from any arrangement or agreement, other than an agreement under this Part, in respect of cooperation between the Commissioner and a foreign authority.

2002, c. 16, s. 3.

**PART IV**

# Special Remedies

**Reduction or removal of customs duties**

**31** Whenever, as a result of an inquiry under this Act, a judgment of a court or a decision of the Tribunal, it appears to the satisfaction of the Governor in Council that

**(a)** competition in respect of any article has been prevented or lessened substantially, and

**(b)** the prevention or lessening of competition is facilitated by customs duties imposed on the article, or on any like article, or can be reduced by a removal or reduction of customs duties so imposed,

the Governor in Council may, by order, remove or reduce any such customs duties.

R.S., 1985, c. C-34, s. 31; R.S., 1985, c. 19 (2nd Supp.), s. 27; 1999, c. 31, s. 48(F).

**Powers of Federal Court where certain rights used to restrain trade**

**32 (1)** In any case where use has been made of the exclusive rights and privileges conferred by one or more patents for invention, by one or more trade-marks, by a copyright or by a registered integrated circuit topography, so as to

**(a)** limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity that may be a subject of trade or commerce,

**(b)** restrain or injure, unduly, trade or commerce in relation to any such article or commodity,

**(c)** prevent, limit or lessen, unduly, the manufacture or production of any such article or commodity or unreasonably enhance the price thereof, or

**(d)** prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity,

the Federal Court may make one or more of the orders referred to in subsection (2) in the circumstances described in that subsection.

**Orders**

**(2)** The Federal Court, on an information exhibited by the Attorney General of Canada, may, for the purpose of preventing any use in the manner defined in subsection (1) of the exclusive rights and privileges conferred by any patents for invention, trade-marks, copyrights or registered integrated circuit topographies relating to or affecting the manufacture, use or sale of any article or commodity that may be a subject of trade or commerce, make one or more of the following orders:

**(a)** declaring void, in whole or in part, any agreement, arrangement or licence relating to that use;

**(b)** restraining any person from carrying out or exercising any or all of the terms or provisions of the agreement, arrangement or licence;

**(c)** directing the grant of licences under any such patent, copyright or registered integrated circuit topography to such persons and on such terms and conditions as the court may deem proper or, if the grant and other remedies under this section would appear insufficient to prevent that use, revoking the patent;

**(d)** directing that the registration of a trade-mark in the register of trade-marks or the registration of an integrated circuit topography in the register of topographies be expunged or amended; and

**(e)** directing that such other acts be done or omitted as the Court may deem necessary to prevent any such use.

**Treaties, etc.**

**(3)** No order shall be made under this section that is at variance with any treaty, convention, arrangement or engagement with any other country respecting patents, trade-marks, copyrights or integrated circuit topographies to which Canada is a party.

R.S., 1985, c. C-34, s. 32; R.S., 1985, c. 10 (4th Supp.), s. 18; 1990, c. 37, s. 29; 2002, c. 16, s. 4(F).

**Interim injunction**

**33 (1)** A court may, on application by or on behalf of the Attorney General of Canada or the attorney general of a province, issue an interim injunction forbidding any person named in the application from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence, pending the commencement or completion of a proceeding under subsection 34(2) or a prosecution against the person, where it appears to the court, that the person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI or section 66, and that

**(a)** if the offence is committed or continued

**(i)** injury to competition that cannot adequately be remedied under any other provision of this Act will result, or

**(ii)** a person is likely to suffer, from the commission of the offence, damage for which the person cannot adequately be compensated under any other provision of this Act and that will be substantially greater than any damage that a person named in the application is likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under Part VI or section 66 has not been committed, was not about to be committed and was not likely to be committed; or

**(b)** in the case of an offence under section 52.1 or 53, if the offence is committed or continued,

**(i)** injury to competition will result, or

**(ii)** one or more persons are likely to suffer damage from the commission of the offence that will be substantially greater than any damage that persons named in the application are likely to suffer from an injunction issued under this subsection in the event that it is subsequently found that an offence under section 52.1 or 53 has not been committed, was not about to be committed and was not likely to be committed.

**Deceptive telemarketing or notice**

**(1.1)** An injunction issued in respect of an offence under section 52.1 or 53 may forbid any person from supplying to another person a product that is or is likely to be used for the commission or continuation of such an offence, where the person being supplied or, in the case of a corporation, any of its officers or directors was previously

**(a)** convicted of an offence under section 52.1 or 53 or an offence under section 52 in respect of conduct prohibited by section 52.1 or 53; or

**(b)** punished for the contravention of an order made under this section or section 34 in respect of the commission, continuation or repetition of an offence referred to in paragraph (a).

**Notice of application**

**(2)** Subject to subsection (3), at least forty-eight hours notice of an application for an injunction under subsection (1) shall be given by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, to each person against whom the injunction is sought.

***Ex parte* application**

**(3)** Where a court to which an application is made under subsection (1) is satisfied that

**(a)** subsection (2) cannot reasonably be complied with, or

**(b)** the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte* but any injunction issued under subsection (1) by the court on *ex parte* application shall have effect only for such period, not exceeding ten days, as is specified in the order.

**Terms of injunction**

**(4)** An injunction issued under subsection (1)

**(a)** shall be in such terms as the court that issues it considers necessary and sufficient to meet the circumstances of the case; and

**(b)** subject to subsection (3), shall have effect for such period of time as is specified therein.

**Extension or cancellation of injunction**

**(5)** A court that issues an injunction under subsection (1), at any time and from time to time on application by or on behalf of the Attorney General of Canada or the attorney general of a province, as the case may be, or by or on behalf of any person to whom the injunction is directed, notice of which application has been given to all other parties thereto, may by order,

**(a)** notwithstanding subsections (3) and (4), continue the injunction, with or without modification, for such definite period as is stated in the order; or

**(b)** revoke the injunction.

**Duty of applicant**

**(6)** Where an injunction is issued under subsection (1), the Attorney General of Canada or the attorney general of a province, as the case may be, shall proceed as expeditiously as possible to institute and conclude any prosecution or proceedings arising out of the actions on the basis of which the injunction was issued.

**Punishment for disobedience**

**(7)** A court may punish any person who contravenes an injunction issued by it under subsection (1) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

**Definition of *court***

**(8)** In this section, ***court*** means the Federal Court or a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 33; 1993, c. 34, s. 50; 1999, c. 2, s. 10; 2002, c. 16, s. 5.

**Prohibition orders**

**34 (1)** Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

**Idem**

**(2)** Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

**Prescriptive terms**

**(2.1)** An order made under this section in relation to an offence may require any person

**(a)** to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

**(b)** to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

**Duration of order**

**(2.2)** An order made under this section applies for a period of ten years unless the court specifies a shorter period.

**Variation or rescission**

**(2.3)** An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order

**(a)** where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or

**(b)** where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.

**Other proceedings**

**(2.4)** No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.

**Appeals to courts of appeal and Federal Court**

**(3)** The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order

**(a)** from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or

**(b)** from the Federal Court to the Federal Court of Appeal,

as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

**Appeals to Supreme Court of Canada**

**(3.1)** The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order from the court of appeal of the province or the Federal Court of Appeal, as the case may be, to the Supreme Court of Canada on any ground that involves a question of law or, if leave to appeal is granted by the Supreme Court, on any ground that appears to that Court to be a sufficient ground of appeal.

**Disposition of appeal**

**(4)** Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

**Procedure**

**(5)** Subject to subsections (3) and (4), Part XXI of the *Criminal Code* applies with such modifications as the circumstances require to appeals under this section.

**Punishment for disobedience**

**(6)** A court may punish any person who contravenes an order made under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding five years.

**Procedure**

**(7)** Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

**Definition of *superior court of criminal jurisdiction***

**(8)** In this section, ***superior court of criminal jurisdiction*** means a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 34; R.S., 1985, c. 19 (2nd Supp.), s. 28, c. 34 (3rd Supp.), s. 8; 1999, c. 2, s. 11; 2002, c. 8, s. 183; 2009, c. 2, s. 409.

**Court may require returns**

**35 (1)** Notwithstanding anything contained in Part VI, where any person is convicted of an offence under that Part, the court before whom the person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business of that person as the court deems advisable, and without restricting the generality of the foregoing, the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

**Punishment**

**(2)** The court may punish any failure to comply with an order under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

R.S., c. C-23, s. 31.

**Recovery of damages**

**36 (1)** Any person who has suffered loss or damage as a result of

**(a)** conduct that is contrary to any provision of Part VI, or

**(b)** the failure of any person to comply with an order of the Tribunal or another court under this Act,

may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not

exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

**Evidence of prior proceedings**

**(2)** In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part VI or convicted of or punished for failure to comply with an order of the Tribunal or another court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part VI or failed to comply with an order of the Tribunal or another court under this Act, as the case may be, and any evidence given in those proceedings as to the effect of those acts or omissions on the person bringing the action is evidence thereof in the action.

**Jurisdiction of Federal Court**

**(3)** For the purposes of any action under subsection (1), the Federal Court is a court of competent jurisdiction.

**Limitation**

**(4)** No action may be brought under subsection (1),

**(a)** in the case of an action based on conduct that is contrary to any provision of Part VI, after two years from

**(i)** a day on which the conduct was engaged in, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later; and

**(b)** in the case of an action based on the failure of any person to comply with an order of the Tribunal or another court, after two years from

**(i)** a day on which the order of the Tribunal or court was contravened, or

**(ii)** the day on which any criminal proceedings relating thereto were finally disposed of,

whichever is the later.

R.S., 1985, c. C-34, s. 36; R.S., 1985, c. 1 (4th Supp.), s. 11.

## PART V

# [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 29]

## PART VI

# Offences in Relation to Competition

**Conspiracy**

**45 (1)** Every one who conspires, combines, agrees or arranges with another person

**(a)** to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,

**(b)** to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,

**(c)** to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or

**(d)** to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both.

**Idem**

**(2)** For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it shall not be necessary to prove that the conspiracy, combination, agreement or arrangement, if carried into effect, would or would be likely to eliminate, completely or virtually, competition in the market to which it relates or that it was the object of any or all of the parties thereto to eliminate, completely or virtually, competition in that market.

**Evidence of conspiracy**

**(2.1)** In a prosecution under subsection (1), the court may infer the existence of a conspiracy, combination, agreement or arrangement from circumstantial evidence, with or without direct evidence of communication between or among the alleged parties thereto, but, for greater certainty, the conspiracy, combination, agreement or arrangement must be proved beyond a reasonable doubt.

**Proof of intent**

**(2.2)** For greater certainty, in establishing that a conspiracy, combination, agreement or arrangement is in contravention of subsection (1), it is necessary to prove that the parties thereto intended to and did enter into the conspiracy, combination, agreement or arrangement, but it is not necessary to prove that the parties intended that the conspiracy, combination, agreement or arrangement have an effect set out in subsection (1).

**Defence**

**(3)** Subject to subsection (4), in a prosecution under subsection (1), the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following:

**(a)** the exchange of statistics;

**(b)** the defining of product standards;

**(c)** the exchange of credit information;

**(d)** the definition of terminology used in a trade, industry or profession;

**(e)** cooperation in research and development;

**(f)** the restriction of advertising or promotion, other than a discriminatory restriction directed against a member of the mass media;

**(g)** the sizes or shapes of the containers in which an article is packaged;

**(h)** the adoption of the metric system of weights and measures; or

**(i)** measures to protect the environment.

**Exception**

**(4)** Subsection (3) does not apply if the conspiracy, combination, agreement or arrangement has lessened or is likely to lessen competition unduly in respect of one of the following:

**(a)** prices,

**(b)** quantity or quality of production,

**(c)** markets or customers, or

**(d)** channels or methods of distribution,

or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade, industry or profession.

**Defence**

**(5)** Subject to subsection (6), in a prosecution under subsection (1) the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of products from Canada.

**Exception**

**(6)** Subsection (5) does not apply if the conspiracy, combination, agreement or arrangement

**(a)** has resulted in or is likely to result in a reduction or limitation of the real value of exports of a product;

**(b)** has restricted or is likely to restrict any person from entering into or expanding the business of exporting products from Canada; or

**(c)** has prevented or lessened or is likely to prevent or lessen competition unduly in the supply of services facilitating the export of products from Canada.

**(d)** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 30]

**Defences**

**(7)** In a prosecution under subsection (1), the court shall not convict the accused if it finds that the conspiracy, combination, agreement or arrangement relates only to a service and to standards of competence and integrity that are reasonably necessary for the protection of the public

**(a)** in the practice of a trade or profession relating to the service; or

**(b)** in the collection and dissemination of information relating to the service.

**Exception**

**(7.1)** Subsection (1) does not apply in respect of an agreement or arrangement between federal financial institutions that is described in subsection 49(1).

**Exception**

**(8)** Subsection (1) does not apply in respect of a conspiracy, combination, agreement or arrangement that is entered into only by companies each of which is, in respect of every one of the others, an affiliate.

R.S., 1985, c. C-34, s. 45; R.S., 1985, c. 19 (2nd Supp.), s. 30; 1991, c. 45, s. 547, c. 46, s. 590, c. 47, s. 714.

**Where application made under section 79 or 92**

**45.1** No proceedings may be commenced under subsection 45(1) against a person against whom an order is sought under section 79 or 92 on the basis of the same or substantially the same facts as would be alleged in proceedings under that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 31.

**Foreign directives**

**46 (1)** Any corporation, wherever incorporated, that carries on business in Canada and that implements, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who is in a position to direct or influence the policies of the corporation, which communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention

of section 45, is, whether or not any director or officer of the corporation in Canada has knowledge of the conspiracy, combination, agreement or arrangement, guilty of an indictable offence and liable on conviction to a fine in the discretion of the court.

**Limitation**

**(2)** No proceedings may be commenced under this section against a particular company where an application has been made by the Commissioner under section 83 for an order against that company or any other person based on the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 46; R.S., 1985, c. 19 (2nd Supp.), s. 32; 1999, c. 2, s. 37.

**Definition of *bid-rigging***

**47 (1)** In this section, ***bid-rigging*** means

**(a)** an agreement or arrangement between or among two or more persons whereby one or more of those persons agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request, or

**(b)** the submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by agreement or arrangement between or among two or more bidders or tenderers,

where the agreement or arrangement is not made known to the person calling for or requesting the bids or tenders at or before the time when any bid or tender is submitted or withdrawn, as the case may be, by any person who is a party to the agreement or arrangement.

**Bid-rigging**

**(2)** Every person who is a party to bid-rigging is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both.

**Exception**

**(3)** This section does not apply in respect of an agreement or arrangement that is entered into or a submission that is arrived at only by companies each of which is, in respect of every one of the others, an affiliate.

R.S., 1985, c. C-34, s. 47; R.S., 1985, c. 19 (2nd Supp.), s. 33; 2009, c. 2, s. 411.

**Conspiracy relating to professional sport**

**48 (1)** Every one who conspires, combines, agrees or arranges with another person

**(a)** to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate, or

**(b)** to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league

is guilty of an indictable offence and liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both.

**Matters to be considered**

**(2)** In determining whether or not an agreement or arrangement contravenes subsection (1), the court before which the contravention is alleged shall have regard to

**(a)** whether the sport in relation to which the contravention is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

**(b)** the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

**Application**

**(3)** This section applies, and section 45 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of those teams and clubs where the agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchises in the league, and section 45 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among those teams, clubs and persons.

1974-75-76, c. 76, s. 15.

**Agreements or arrangements of federal financial institutions**

**49 (1)** Subject to subsection (2), every federal financial institution that makes an agreement or arrangement with another federal financial institution with respect to

**(a)** the rate of interest on a deposit,

**(b)** the rate of interest or the charges on a loan,

**(c)** the amount or kind of any charge for a service provided to a customer,

**(d)** the amount or kind of a loan to a customer,

**(e)** the kind of service to be provided to a customer, or

**(f)** the person or classes of persons to whom a loan or other service will be made or provided or from whom a loan or other service will be withheld,

and every director, officer or employee of the federal financial institution who knowingly makes such an agreement or arrangement on behalf of the federal financial institution is guilty of an indictable offence and liable to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding five years or to both.

**Exceptions**

**(2)** Subsection (1) does not apply in respect of an agreement or arrangement

**(a)** with respect to a deposit or loan made or payable outside Canada;

**(b)** applicable only in respect of the dealings of or the services rendered between federal financial institutions or by two or more federal financial institutions as regards a customer of each of those federal financial institutions where the customer has knowledge of the agreement or by a federal financial institution as regards a customer thereof, on behalf of that customer's customers;

**(c)** with respect to a bid for or purchase, sale or underwriting of securities by federal financial institutions or a group including federal financial institutions;

**(d)** with respect to the exchange of statistics and credit information, the development and utilization of systems, forms, methods, procedures and standards, the utilization of common facilities and joint research and development in connection therewith, and the restriction of advertising;

**(e)** with respect to reasonable terms and conditions of participation in guaranteed or insured loan programs authorized pursuant to an Act of Parliament or of the legislature of a province;

**(f)** with respect to the amount of any charge for a service or with respect to the kind of service provided to a customer outside Canada, payable or performed outside Canada, or payable or performed in Canada on behalf of a person who is outside Canada;

**(g)** with respect to the persons or classes of persons to whom a loan or other service will be made or provided outside Canada;

**(h)** in respect of which the Minister of Finance has certified to the Commissioner that Minister's request for or approval of the agreement or arrangement for the purposes of financial policy and has certified the names of the parties to the agreement or arrangement; or

**(i)** that is entered into only by financial institutions each of which is an affiliate of each of the others.

**Definition of *federal financial institution***

**(3)** In this section and section 45, ***federal financial institution*** means a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*, a company to which the *Trust and Loan Companies Act* applies or a company or society to which the *Insurance Companies Act* applies.

**Where proceedings commenced under section 76, 79, 90.1 or 92**

**(4)** No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

R.S., 1985, c. C-34, s. 49; R.S., 1985, c. 19 (2nd Supp.), s. 34; 1991, c. 45, s. 548, c. 46, ss. 591, 593, c. 47, s. 715; 1993, c. 34, s. 51; 1999, c. 2, s. 37, c. 28, s. 153, c. 31, s. 49(F); 2009, c. 2, s. 412.

**50** [Repealed, 2009, c. 2, s. 413]

**51** [Repealed, 2009, c. 2, s. 413]

**False or misleading representations**

**52 (1)** No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

**Proof of certain matters not required**

**(1.1)** For greater certainty, in establishing that subsection (1) was contravened, it is not necessary to prove that

**(a)** any person was deceived or misled;

**(b)** any member of the public to whom the representation was made was within Canada; or

**(c)** the representation was made in a place to which the public had access.

**Permitted representations**

**(1.2)** For greater certainty, a reference to the making of a representation, in this section or in section 52.1, 74.01 or 74.02, includes permitting a representation to be made.

**Representations accompanying products**

**(2)** For the purposes of this section, a representation that is

**(a)** expressed on an article offered or displayed for sale or its wrapper or container,

**(b)** expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

**(c)** expressed on an in-store or other point-of-purchase display,

**(d)** made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

**(e)** contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2.1).

**Representations from outside Canada**

**(2.1)** Where a person referred to in subsection (2) is outside Canada, a representation described in paragraph (2)(a), (b), (c) or (e) is, for the purposes of subsection (1), deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

**Deemed representation to public**

**(3)** Subject to subsection (2), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in subsection (1) is deemed to have made that representation to the public.

**General impression to be considered**

**(4)** In a prosecution for a contravention of this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

**Offence and punishment**

**(5)** Any person who contravenes subsection (1) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Reviewable conduct**

**(6)** Nothing in Part VII.1 shall be read as excluding the application of this section to a representation that constitutes reviewable conduct within the meaning of that Part.

**Duplication of proceedings**

**(7)** No proceedings may be commenced under this section against a person against whom an order is sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

R.S., 1985, c. C-34, s. 52; 1999, c. 2, s. 12; 2009, c. 2, s. 414.

**Definition of *telemarketing***



**52.1 (1)** In this section, ***telemarketing*** means the practice of using interactive telephone communications for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

**Required disclosures**

**(2)** No person shall engage in telemarketing unless

**(a)** disclosure is made, in a fair and reasonable manner at the beginning of each telephone communication, of the identity of the person on behalf of whom the communication is made, the nature of the product or business interest being promoted and the purposes of the communication;

**(b)** disclosure is made, in a fair, reasonable and timely manner, of the price of any product whose supply or use is being promoted and any material restrictions, terms or conditions applicable to its delivery; and

**(c)** disclosure is made, in a fair, reasonable and timely manner, of such other information in relation to the product as may be prescribed by the regulations.

**Deceptive telemarketing**

**(3)** No person who engages in telemarketing shall

**(a)** make a representation that is false or misleading in a material respect;

**(b)** conduct or purport to conduct a contest, lottery or game of chance, skill or mixed chance and skill, where

**(i)** the delivery of a prize or other benefit to a participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant, or

**(ii)** adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the person's knowledge, that affects materially the chances of winning;

**(c)** offer a product at no cost, or at a price less than the fair market value of the product, in consideration of the supply or use of another product, unless fair, reasonable and timely disclosure is made of the fair market value of the first product and of any restrictions, terms or conditions applicable to its supply to the purchaser; or

**(d)** offer a product for sale at a price grossly in excess of its fair market value, where delivery of the product is, or is represented to be, conditional on prior payment by the purchaser.

**General impression to be considered**

**(4)** In a prosecution for a contravention of paragraph (3)(a), the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

**Exception**

**(5)** The disclosure of information referred to in paragraph (2)(b) or (c) or (3)(b) or (c) must be made during the course of a telephone communication unless it is established by the accused that the information was disclosed within a reasonable time before the communication, by any means, and the information was not requested during the telephone communication.

**Due diligence**

**(6)** No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

**Offences by employees or agents**

**(7)** Notwithstanding subsection (6), in the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

**Liability of officers and directors**

**(8)** Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

**Offence and punishment**

**(9)** Any person who contravenes subsection (2) or (3) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Sentencing**

**(10)** In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

**(a)** the use of lists of persons previously deceived by means of telemarketing;

**(b)** characteristics of the persons to whom the telemarketing was directed, including classes of persons who are especially vulnerable to abusive tactics;

**(c)** the amount of the proceeds realized by the person from the telemarketing;

**(d)** previous convictions of the person under this section or under section 52 in respect of conduct prohibited by this section; and

**(e)** the manner in which information is conveyed, including the use of abusive tactics.

1999, c. 2, s. 13; 2009, c. 2, s. 415.

**Deceptive notice of winning a prize**

**53 (1)** No person shall, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, send or cause to be sent by electronic or regular mail or by any other means a document or notice in any form, if the document or notice gives the general impression that the recipient has won, will win, or will on doing a particular act win, a prize or other benefit, and if the recipient is asked or given the option to pay money, incur a cost or do anything that will incur a cost.

**Non-application**

**(2)** Subsection (1) does not apply if the recipient actually wins the prize or other benefit and the person who sends or causes the notice or document to be sent

**(a)** makes adequate and fair disclosure of the number and approximate value of the prizes or benefits, of the area or areas to which they have been allocated and of any fact within the person's knowledge that materially affects the chances of winning;

**(b)** distributes the prizes or benefits without unreasonable delay; and

**(c)** selects participants or distributes the prizes or benefits randomly, or on the basis of the participants' skill, in any area to which the prizes or benefits have been allocated.

**Due diligence**

**(3)** No person shall be convicted of an offence under this section who establishes that the person exercised due diligence to prevent the commission of the offence.

**Offences by employees or agents**

**(4)** In the prosecution of a corporation for an offence under this section, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the corporation, whether or not the employee or agent is identified, unless the corporation establishes that the corporation exercised due diligence to prevent the commission of the offence.

**Liability of officers and directors**

**(5)** Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

**Offence and punishment**

**(6)** Any person who contravenes this section is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding 14 years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

**Sentencing**

**(7)** In sentencing a person convicted of an offence under this section, the court shall consider, among other factors, the following aggravating factors:

**(a)** the use of lists of persons previously deceived by the commission of an offence under section 52.1 or this section;

**(b)** the particular vulnerability of recipients of the notices or documents referred to in subsection (1) to abusive tactics;

**(c)** the amount of the proceeds realized by the person from the commission of an offence under this section;

**(d)** previous convictions of the person under section 52 or 52.1 or this section; and

**(e)** the manner in which information is conveyed, including the use of abusive tactics.

R.S., 1985, c. C-34, s. 53; 1999, c. 2, s. 14; 2002, c. 16, s. 6; 2009, c. 2, s. 416.

**Double ticketing**

**54 (1)** No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,

**(a)** on the product, its wrapper or container;

**(b)** on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or

**(c)** on an in-store or other point-of-purchase display or advertisement.

**Offence and punishment**

**(2)** Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both.

1974-75-76, c. 76, s. 18.

**Definition of *multi-level marketing plan***

**55 (1)** For the purposes of this section and section 55.1, ***multi-level marketing plan*** means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

**Representations as to compensation**

**(2)** No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

**(a)** compensation actually received by typical participants in the plan; or

**(b)** compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including

**(i)** the nature of the product, including its price and availability,

**(ii)** the nature of the relevant market for the product,

**(iii)** the nature of the plan and similar plans, and

**(iv)** whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization.

**Idem**

**(2.1)** A person who operates a multi-level marketing plan shall ensure that any representations relating to compensation under the plan that are made to a prospective participant in the plan by a participant in the plan or by a representative of the person who operates the plan constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person who operates the plan relating to

**(a)** compensation actually received by typical participants in the plan; or

**(b)** compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including those specified in paragraph (2)(b).

**Due diligence defence**

**(2.2)** A person accused of an offence under subsection (2.1) shall not be convicted of the offence if the accused establishes that he or she took reasonable precautions and exercised due diligence to ensure

**(a)** that no representations relating to compensation under the plan were made by participants in the plan or by representatives of the accused; or

**(b)** that any representations relating to compensation under the plan that were made by participants in the plan or by representatives of the accused constituted or included fair, reasonable and timely disclosure of the information referred to in that subsection.

**Offence and punishment**

**(3)** Any person who contravenes subsection (2) or (2.1) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. C-34, s. 55; 1992, c. 14, s. 1; 1999, c. 2, s. 15.

**Definition of *scheme of pyramid selling***

**55.1 (1)** For the purposes of this section, ***scheme of pyramid selling*** means a multi-level marketing plan whereby

**(a)** a participant in the plan gives consideration for the right to receive compensation by reason of the recruitment into the plan of another participant in the plan who gives consideration for the same right;

**(b)** a participant in the plan gives consideration, as a condition of participating in the plan, for a specified amount of the product, other than a specified amount of the product that is bought at the seller’s cost price for the purpose only of facilitating sales;

**(c)** a person knowingly supplies the product to a participant in the plan in an amount that is commercially unreasonable; or

**(d)** a participant in the plan who is supplied with the product

**(i)** does not have a buy-back guarantee that is exercisable on reasonable commercial terms or a right to return the product in saleable condition on reasonable commercial terms, or

**(ii)** is not informed of the existence of the guarantee or right and the manner in which it can be exercised.

**Pyramid selling**

**(2)** No person shall establish, operate, advertise or promote a scheme of pyramid selling.

**Offence and punishment**

**(3)** Any person who contravenes subsection (2) is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

**(b)** on summary conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding one year, or to both.

1992, c. 14, s. 1; 1999, c. 2, s. 16.

**56 to 59** [Repealed, 1999, c. 2, s. 17]

**Defence**

**60** Section 54 does not apply to a person who prints or publishes or otherwise distributes a representation or an advertisement on behalf of another person in Canada if he or she establishes that he or she obtained and recorded the name and address of that other person and accepted the representation or advertisement in good faith for printing, publishing or other distribution in the ordinary course of his or her business.

R.S., 1985, c. C-34, s. 60; 1999, c. 2, s. 17.1.

**61** [Repealed, 2009, c. 2, s. 417]

**Civil rights not affected**

**62** Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of any civil right of action.

R.S., c. C-23, s. 39; 1974-75-76, c. 76, s. 18.

**PART VII**

# Other Offences

## Offences

**63** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 37]

**Obstruction**

**64 (1)** No person shall in any manner impede or prevent or attempt to impede or prevent any inquiry or examination under this Act.

**Offence and punishment**

**(2)** Every person who contravenes subsection (1) is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or

**(b)** liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both.

R.S., 1985, c. C-34, s. 64; 2009, c. 2, s. 418.

**Contravention of Part II provisions**

**65 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, fails to comply with an order made under section 11 and every person who contravenes subsection 15(5) or 16(2) is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding two years, or to both; or

**(b)** liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both.

**Failure to supply information**

**(2)** Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 114(1) is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding $50,000.

**Destruction or alteration of records or things**

**(3)** Every person who destroys or alters, or causes to be destroyed or altered, any record or other thing that is required to be produced under section 11 or in respect of which a warrant is issued under section 15 is guilty of an offence and

**(a)** liable on conviction on indictment to a fine in the discretion of the court or to imprisonment for a term not exceeding 10 years, or to both; or

**(b)** liable on summary conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding two years, or to both.

**Liability of directors**

**(4)** Where a corporation commits an offence under this section, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

R.S., 1985, c. C-34, s. 65; R.S., 1985, c. 19 (2nd Supp.), s. 38; 1999, c. 2, s. 18; 2009, c. 2, s. 419.

**Contravention of subsection 30.06(5)**

**65.1 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, contravenes subsection 30.06(5) is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

**Destruction or alteration of records or things**

**(2)** Every person who destroys or alters, or causes to be destroyed or altered, any record or thing in respect of which a search warrant is issued under section 30.06 or that is required to be produced pursuant to an order made under subsection 30.11(1) or 30.16(1) is guilty of an offence and liable

**(a)** on conviction on indictment to a fine not exceeding $50,000 or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction to a fine not exceeding $25,000 or to imprisonment for a term not exceeding two years, or to both.

2002, c. 16, s. 7.

**Refusal after objection overruled**

**65.2 (1)** Every person who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c) after a judge has ruled against the objection under paragraph 30.11(8)(a), is guilty of an offence and liable on conviction on indictment or on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both.

**Refusal where no ruling made on objection**

**(2)** Every person is guilty of an offence and liable on summary conviction or on conviction on indictment to a fine not exceeding $5,000 or to imprisonment for a term not exceeding two years, or to both, who, without good and sufficient cause, the proof of which lies on that person, refuses to answer a question or to produce a record or thing to the person designated under paragraph 30.11(2)(c), where no ruling has been made under paragraph 30.11(8)(a),

**(a)** without giving the detailed statement required by subsection 30.11(9); or

**(b)** if the person was previously asked the same question or requested to produce the same record or thing and refused to do so and the reasons on which that person based the previous refusal were determined not to be well-founded by

**(i)** a judge, if the reasons were based on the Canadian law of non-disclosure of information or privilege, or

**(ii)** a court of the foreign state or by a person designated by the foreign state, if the reasons were based on a law that applies to the foreign state.

2002, c. 16, s. 7.

**Contravention of order under Part VII.1 or VIII**

**66** Every person who contravenes an order made under Part VII.1, except paragraphs 74.1(1)(c) and (d), or under Part VIII, except subsection 79(3.1), is guilty of an offence and liable

**(a)** on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years, or to both; or

**(b)** on summary conviction, to a fine not exceeding $25,000 or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. C-34, s. 66; R.S., 1985, c. 19 (2nd Supp.), s. 39; 1999, c. 2, s. 19; 2009, c. 2, s. 420.

**Whistleblowing**

**66.1 (1)** Any person who has reasonable grounds to believe that a person has committed or intends to commit an offence under the Act, may notify the Commissioner of the particulars of the matter and may request that his or her identity be kept confidential with respect to the notification.

**Confidentiality**

**(2)** The Commissioner shall keep confidential the identity of a person who has notified the Commissioner under subsection (1) and to whom an assurance of confidentiality has been provided by any person who performs duties or functions in the administration or enforcement of this Act.

1999, c. 2, s. 19.

**Prohibition**

**66.2 (1)** No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

**(a)** the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the employer or any other person has committed or intends to commit an offence under this Act;

**(b)** the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is an offence under this Act;

**(c)** the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order that an offence not be committed under this Act; or

**(d)** the employer believes that the employee will do anything referred to in paragraph (a) or (c) or will refuse to do anything referred to in paragraph (b).

**Saving**

**(2)** Nothing in this section impairs any right of an employee either at law or under an employment contract or collective agreement.

**Definitions**

**(3)** In this section, ***employee*** includes an independent contractor and ***employer*** has the corresponding meaning.

1999, c. 2, s. 19.

# Procedure

**Procedure for enforcing punishment**

**67 (1)** Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects, he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial.

**Application of *Criminal Code***

**(2)** Where an election is made under subsection (1), the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

**Jurisdiction of courts**

**(3)** No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence under section 45, 46, 47, 48 or 49.

**Corporations to be tried without jury**

**(4)** Notwithstanding anything in the *Criminal Code* or in any other statute or law, a corporation charged with an offence under this Act shall be tried without a jury.

**Option as to procedure under subsection 34(2)**

**(5)** In any case where subsection 34(2) is applicable, the Attorney General of Canada or the attorney general of the province may in his discretion institute proceedings either by way of an information under that subsection or by way of prosecution.

**Limitation period**

**(6)** Proceedings in respect of an offence that is declared by this Act to be punishable on summary conviction may be instituted at any time within but not later than two years after the time when the subject-matter of the proceedings arose.

R.S., c. C-23, s. 44; 1974-75-76, c. 76, s. 19.

**Venue of prosecutions**

**68** Notwithstanding any other Act, a prosecution for an offence under Part VI or section 66 may be brought, in addition to any place in which the prosecution may be brought by virtue of the *Criminal Code*,

**(a)** where the accused is a corporation, in any territorial division in which the corporation has its head office or a branch office, whether or not the branch office is provided for in any Act or instrument relating to the incorporation or organization of the corporation; and

**(b)** where the accused is not a corporation, in any territorial division in which the accused resides or has a place of business.

R.S., 1985, c. C-34, s. 68; 1999, c. 2, s. 20.

**Definitions**

**69 (1)** In this section,

***agent of a participant*** means a person who by a record admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative of a participant; (*agent d'un participant*)

***document*** [Repealed, R.S., 1985, c. 19 (2nd Supp.), s. 40]

***participant*** means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged. (*participant*)

**Evidence against a participant**

**(2)** In any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act,

**(a)** anything done, said or agreed on by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been done, said or agreed on, as the case may be, with the authority of that participant;

**(b)** a record written or received by an agent of a participant shall, in the absence of evidence to the contrary, be deemed to have been written or received, as the case may be, with the authority of that participant; and

**(c)** a record proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof

**(i)** that the participant had knowledge of the record and its contents,

**(ii)** that anything recorded in or by the record as having been done, said or agreed on by any participant or by an agent of a participant was done, said or agreed on as recorded and, where anything is recorded in or by the record as having been done, said or agreed on by an agent of a participant, that it was done, said or agreed on with the authority of that participant, and

**(iii)** that the record, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

R.S., 1985, c. C-34, s. 69; R.S., 1985, c. 19 (2nd Supp.), s. 40.

**Admissibility of statistics**

**70 (1)** A collection, compilation, analysis, abstract or other record or report of statistical information prepared or published under the authority of

**(a)** the *Statistics Act*, or

**(b)** any other enactment of Parliament or of the legislature of a province,

is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

**Idem**

**(2)** On request from the Minister or the Commissioner

**(a)** the Chief Statistician of Canada or an officer of any department or agency of the Government of Canada the functions of which include the gathering of statistics shall, and

**(b)** an officer of any department or agency of the government of a province the functions of which include the gathering of statistics may,

compile from his or its records a statement of statistics relating to any industry or sector thereof, in accordance with the terms of the request, and any such statement is admissible in evidence in any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act.

**Privileged information not affected**

**(3)** Nothing in this section compels or authorizes the Chief Statistician of Canada or any officer of a department or agency of the Government of Canada to disclose any particulars relating to an individual or business in a manner that is prohibited by any provision of an enactment of Parliament or of a provincial legislature designed for the protection of those particulars.

**Certificate**

**(4)** In any proceedings before the Tribunal, or in any prosecution or proceedings before a court under or pursuant to this Act, a certificate purporting to be signed by the Chief Statistician of Canada or the officer of the department or agency of the Government of Canada or of a province under whose supervision a record, report or statement of statistics referred to in this section was prepared, setting out that the record, report or statement of statistics attached thereto was prepared under his supervision, is evidence of the facts alleged therein without proof of the signature or official character of the person by whom it purports to be signed.

R.S., 1985, c. C-34, s. 70; R.S., 1985, c. 19 (2nd Supp.), s. 41; 1999, c. 2, s. 37.

**Statistics collected by sampling methods**

**71** A collection, compilation, analysis, abstract or other record or report of statistics collected by sampling methods by or on behalf of the Commissioner or any other party to proceedings before the Tribunal, or to a prosecution or proceedings before a court under or pursuant to this Act, is admissible in evidence in that prosecution or those proceedings.

R.S., 1985, c. C-34, s. 71; R.S., 1985, c. 19 (2nd Supp.), s. 42; 1999, c. 2, s. 37.

**Notice**

**72 (1)** No record, report or statement of statistical information or statistics referred to in section 70 or 71 shall be received in evidence before the Tribunal or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 71, together with the names and qualifications of those persons who participated in the preparation thereof.

**Attendance of statistician**

**(2)** Any person against whom a record or report of statistics referred to in section 70 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.

**Idem**

**(3)** Any person against whom a record or report of statistics referred to in section 71 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report.

R.S., 1985, c. C-34, s. 72; R.S., 1985, c. 19 (2nd Supp.), s. 43.

**Jurisdiction of Federal Court**

**73 (1)** Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 34, any of sections 45 to 49 or, if the proceedings are on indictment, under section 52, 52.1, 53, 55, 55.1 or 66, in the Federal Court, and for the purposes of the prosecution or other proceedings, the Federal Court has all the powers and jurisdiction of a superior court of criminal jurisdiction under the *Criminal Code* and under this Act.

**No jury**

**(2)** The trial of an offence under Part VI or section 66 in the Federal Court shall be without a jury.

**Appeal**

**(3)** An appeal lies from the Federal Court to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part VI or section 66 of this Act as provided in Part XXI of the *Criminal Code* for appeals from a trial court and from a court of appeal.

**Proceedings optional**

**(4)** Proceedings under subsection 34(2) may in the discretion of the Attorney General of Canada be instituted in either the Federal Court or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court in respect of an offence under Part VI or section 66 without the consent of the individual.
R.S., 1985, c. C-34, s. 73; 1999, c. 2, s. 21; 2002, c. 8, ss. 183, 198, c. 16, s. 8; 2009, c. 2, s. 421.

**74** [Repealed, 1999, c. 2, s. 22]

**PART VII.1**

# Deceptive Marketing Practices

## Reviewable Matters

**Misrepresentations to public**

**74.01 (1)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

**(a)** makes a representation to the public that is false or misleading in a material respect;

**(b)** makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or

**(c)** makes a representation to the public in a form that purports to be

**(i)** a warranty or guarantee of a product, or

**(ii)** a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

**Ordinary price: suppliers generally**

**(2)** Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to

the public concerning the price at which a product or like products have been, are or will be ordinarily supplied where suppliers generally in the relevant geographic market, having regard to the nature of the product,

**(a)** have not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

**(b)** have not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**Ordinary price: supplier's own**

**(3)** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, makes a representation to the public as to price that is clearly specified to be the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation where that person, having regard to the nature of the product and the relevant geographic market,

**(a)** has not sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; and

**(b)** has not offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

**References to time in subsections (2) and (3)**

**(4)** For greater certainty, whether the period of time to be considered in paragraphs (2)(a) and (b) and (3)(a) and (b) is before or after the making of the representation depends on whether the representation relates to

**(a)** the price at which products have been or are supplied; or

**(b)** the price at which products will be supplied.

**Saving**

**(5)** Subsections (2) and (3) do not apply to a person who establishes that, in the circumstances, a representation as to price is not false or misleading in a material respect.

**(6)** [Repealed, 2009, c. 2, s. 422]

1999, c. 2, s. 22; 2009, c. 2, s. 422.

**Representation as to reasonable test and publication of testimonials**

**74.02** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest, makes a representation to the public that a test has been made as to the performance, efficacy or length of life of a product by any person, or publishes a testimonial with respect to a product, unless the person making the representation or publishing the testimonial can establish that



**(a)** such a representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, or

**(b)** such a representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

1999, c. 2, s. 22.

**Representations accompanying products**

**74.03 (1)** For the purposes of sections 74.01 and 74.02, a representation that is

**(a)** expressed on an article offered or displayed for sale or its wrapper or container,

**(b)** expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

**(c)** expressed on an in-store or other point-of-purchase display,

**(d)** made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

**(e)** contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

**Representations from outside Canada**

**(2)** Where a person referred to in subsection (1) is outside Canada, a representation described in paragraph (1)(a), (b), (c) or (e) is, for the purposes of sections 74.01 and 74.02, deemed to be made to the public by the person who imports into Canada the article, thing or display referred to in that paragraph.

**Deemed representation to public**

**(3)** Subject to subsection (1), a person who, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, supplies to a wholesaler, retailer or other distributor of a product any material or thing that contains a representation of a nature referred to in section 74.01 is deemed to make that representation to the public.

**Certain matters need not be established**

**(4)** For greater certainty, in proceedings under sections 74.01 and 74.02, it is not necessary to establish that

**(a)** any person was deceived or misled;

**(b)** any member of the public to whom the representation was made was within Canada; or

**(c)** the representation was made in a place to which the public had access.

**General impression to be considered**

**(5)** In proceedings under sections 74.01 and 74.02, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.
1999, c. 2, s. 22; 2009, c. 2, s. 423.

**Definition of *bargain price***

**74.04 (1)** For the purposes of this section, ***bargain price*** means

**(a)** a price that is represented in an advertisement to be a bargain price by reference to an ordinary price or otherwise; or

**(b)** a price that a person who reads, hears or sees the advertisement would reasonably understand to be a bargain price by reason of the prices at which the product advertised or like products are ordinarily supplied.

**Bait and switch selling**

**(2)** A person engages in reviewable conduct who advertises at a bargain price a product that the person does not supply in reasonable quantities having regard to the nature of the market in which the person carries on business, the nature and size of the person’s business and the nature of the advertisement.

**Saving**

**(3)** Subsection (2) does not apply to a person who establishes that

**(a)** the person took reasonable steps to obtain in adequate time a quantity of the product that would have been reasonable having regard to the nature of the advertisement, but was unable to obtain such a quantity by reason of events beyond the person’s control that could not reasonably have been anticipated;

**(b)** the person obtained a quantity of the product that was reasonable having regard to the nature of the advertisement, but was unable to meet the demand therefor because that demand surpassed the person's reasonable expectations; or

**(c)** after becoming unable to supply the product in accordance with the advertisement, the person undertook to supply the same product or an equivalent product of equal or better quality at the bargain price and within a reasonable time to all persons who requested the product and who were not supplied with it during the time when the bargain price applied, and the person fulfilled the undertaking.

1999, c. 2, s. 22.

**Sale above advertised price**

**74.05 (1)** A person engages in reviewable conduct who advertises a product for sale or rent in a market and, during the period and in the market to which the advertisement relates, supplies the product at a price that is higher than the price advertised.

**Saving**

**(2)** This section does not apply

**(a)** in respect of an advertisement that appears in a catalogue in which it is prominently stated that the prices contained in it are subject to error if the person establishes that the price advertised is in error;

**(b)** in respect of an advertisement that is immediately followed by another advertisement correcting the price mentioned in the first advertisement;

**(c)** in respect of the supply of a security obtained on the open market during a period when the prospectus relating to that security is still current; or

**(d)** in respect of the supply of a product by or on behalf of a person who is not engaged in the business of dealing in that product.

**Application**

**(3)** For the purpose of this section, the market to which an advertisement relates is the market that the advertisement could reasonably be expected to reach, unless the advertisement defines the market more narrowly by reference to a geographical area, store, department of a store, sale by catalogue or otherwise.

1999, c. 2, s. 22.

**Promotional contests**

**74.06** A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product, or for the purpose of promoting, directly or indirectly, any business interest, conducts any contest, lottery, game of chance or skill, or mixed chance

and skill, or otherwise disposes of any product or other benefit by any mode of chance, skill or mixed chance and skill whatever, where

**(a)** adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the knowledge of the person that affects materially the chances of winning;

**(b)** distribution of the prizes is unduly delayed; or

**(c)** selection of participants or distribution of prizes is not made on the basis of skill or on a random basis in any area to which prizes have been allocated.

1999, c. 2, s. 22.

**Saving**

**74.07 (1)** Sections 74.01 to 74.06 do not apply to a person who prints or publishes or otherwise disseminates a representation, including an advertisement, on behalf of another person in Canada, where the person establishes that the person obtained and recorded the name and address of that other person and accepted the representation in good faith for printing, publishing or other dissemination in the ordinary course of that person's business.

**Non-application**

**(2)** Sections 74.01 to 74.06 do not apply in respect of conduct prohibited by sections 52.1, 53, 55 and 55.1.

1999, c. 2, s. 22; 2002, c. 16, s. 9.

**Civil rights not affected**

**74.08** Except as otherwise provided in this Part, nothing in this Part shall be construed as depriving any person of a civil right of action.

1999, c. 2, s. 22.

# Administrative Remedies

**Definition of *court***

**74.09** In sections 74.1 to 74.14 and 74.18, ***court*** means the Tribunal, the Federal Court or the superior court of a province.

1999, c. 2, s. 22; 2002, c. 8, s. 183.

**Determination of reviewable conduct and judicial order**

**74.1 (1)** Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

**(a)** not to engage in the conduct or substantially similar reviewable conduct;

**(b)** to publish or otherwise disseminate a notice, in such manner and at such times as the court may specify, to bring to the attention of the class of persons likely to have been reached or affected by the conduct, the name under which the person carries on business and the determination made under this section, including

**(i)** a description of the reviewable conduct,

**(ii)** the time period and geographical area to which the conduct relates, and

**(iii)** a description of the manner in which any representation or advertisement was disseminated, including, where applicable, the name of the publication or other medium employed;

**(c)** to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding

**(i)** in the case of an individual, $750,000 and, for each subsequent order, $1,000,000, or

**(ii)** in the case of a corporation, $10,000,000 and, for each subsequent order, $15,000,000; and

**(d)** in the case of conduct that is reviewable under paragraph 74.01(1)(a), to pay an amount, not exceeding the total of the amounts paid to the person for the products in respect of which the conduct was engaged in, to be distributed among the persons to whom the products were sold — except wholesalers, retailers or other distributors, to the extent that they have resold or distributed the products — in any manner that the court considers appropriate.

**Duration of order**

**(2)** An order made under paragraph (1)(a) applies for a period of ten years unless the court specifies a shorter period.

**Saving**

**(3)** No order may be made against a person under paragraph (1)(b), (c) or (d) if the person establishes that the person exercised due diligence to prevent the reviewable conduct from occurring.

**Purpose of order**

**(4)** The terms of an order made against a person under paragraph (1)(b), (c) or (d) shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment.

**Aggravating or mitigating factors**

**(5)** Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under paragraph (1)(c):

**(a)** the reach of the conduct within the relevant geographic market;

**(b)** the frequency and duration of the conduct;

**(c)** the vulnerability of the class of persons likely to be adversely affected by the conduct;

**(d)** the materiality of any representation;

**(e)** the likelihood of self-correction in the relevant geographic market;

**(f)** the effect on competition in the relevant market;

**(g)** the gross revenue from sales affected by the conduct;

**(h)** the financial position of the person against whom the order is made;

**(i)** the history of compliance with this Act by the person against whom the order is made;

**(j)** any decision of the court in relation to an application for an order under paragraph (1)(d);

**(k)** any other amounts paid or ordered to be paid by the person against whom the order is made as a refund or as restitution or other compensation in respect of the conduct; and

**(l)** any other relevant factor.

**Meaning of subsequent order**

**(6)** For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b) or (c), subsection 74.01(2) or (3) or section 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

**(a)** an order was previously made against the person under this section in respect of conduct reviewable under the same provision;

**(b)** the person was previously convicted of an offence under the provision of Part VI, as that Part read immediately before the coming into force of this Part, that corresponded to the provision of this Part;

**(c)** in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a), the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or

**(d)** in the case of an order in respect of conduct reviewable under subsection 74.01(2) or (3), the person was previously convicted of an offence under paragraph 52(1)(d) as it read immediately before the coming into force of this Part.

**Amounts already paid**

**(7)** In determining an amount to be paid under paragraph (1)(d), the court shall take into account any other amounts paid or ordered to be paid by the person against whom the order is made as a refund or as restitution or other compensation in respect of the products.

**Implementation of the order**

**(8)** The court may specify in an order made under paragraph (1)(d) any terms that it considers necessary for the order's implementation, including terms

**(a)** specifying how the payment is to be administered;

**(b)** respecting the appointment of an administrator to administer the payment and specifying the terms of administration;

**(c)** requiring the person against whom the order is made to pay the administrative costs related to the payment as well as the fees to be paid to an administrator;

**(d)** requiring that potential claimants be notified in the time and manner specified by the court;

**(e)** specifying the time and manner for making claims;

**(f)** specifying the conditions for the eligibility of claimants, including conditions relating to the return of the products to the person against whom the order is made; and

**(g)** providing for the manner in which, and the terms on which, any amount of the payment that remains unclaimed or undistributed is to be dealt with.

**Variation of terms**

**(9)** On application by the Commissioner or the person against whom the order is made, the court may vary any term that is specified under subsection (8).
1999, c. 2, s. 22; 2009, c. 2, s. 424.

**Temporary order**

**74.11 (1)** Where, on application by the Commissioner, a court finds a strong *prima facie* case that a person is engaging in reviewable conduct under this Part, the court may order the person not to engage in that conduct or substantially similar reviewable conduct if the court is satisfied that

**(a)** serious harm is likely to ensue unless the order is issued; and

**(b)** the balance of convenience favours issuing the order.

**Duration**

**(2)** Subject to subsection (5), the order has effect, or may be extended on application by the Commissioner, for such period as the court considers necessary and sufficient to meet the circumstances of the case.

**Notice of application by Commissioner**

**(3)** Subject to subsection (4), at least forty-eight hours notice of an application referred to in subsection (1) or (2) shall be given by or on behalf of the Commissioner to the person in respect of whom the order or extension is sought.

***Ex parte* application**

**(4)** The court may proceed *ex parte* with an application made under subsection (1) where it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

**Duration of *ex parte* order**

**(5)** An order issued *ex parte* shall have effect for such period as is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (3), the court extends the order for such additional period as it considers necessary and sufficient.

**Duty of Commissioner**

**(6)** Where an order issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 arising out of the conduct in respect of which the order was issued.
1999, c. 2, s. 22; 2002, c. 16, s. 10.

**Interim injunction**

**74.111 (1)** If, on application by the Commissioner, a court finds a strong *prima facie* case that a person is engaging in or has engaged in conduct that is reviewable under paragraph 74.01(1)(a), and the court is satisfied that the person owns or has possession or control of articles within the jurisdiction of the court and is disposing of or is likely to dispose of them by any means, and that the disposal of the articles will substantially impair the enforceability of an order made under paragraph 74.1(1)(d), the court may issue an interim injunction forbidding the person or any other person from disposing of or otherwise dealing with the articles, other than in the manner and on the terms specified in the injunction.

**Statement to be included**

**(2)** Any application for an injunction under subsection (1) shall include a statement that the Commissioner has applied for an order under paragraph 74.1(1)(d), or that the Commissioner intends to apply for an order under that paragraph if the Commissioner applies for an order under paragraph 74.1(1)(a).

**Duration**

**(3)** Subject to subsection (6), the injunction has effect, or may be extended on application by the Commissioner, for any period that the court considers sufficient to meet the circumstances of the case.

**Notice of application by Commissioner**

**(4)** Subject to subsection (5), at least 48 hours' notice of an application referred to in subsection (1) or (3) shall be given by or on behalf of the Commissioner to the person in respect of whom the injunction or extension is sought.

***Ex parte* application**

**(5)** The court may proceed *ex parte* with an application made under subsection (1) if it is satisfied that subsection (4) cannot reasonably be complied with or where the urgency of the situation is such that service of the notice in accordance with subsection (4) might defeat the purpose of the injunction or would otherwise not be in the public interest.

**Duration of *ex parte* injunction**

**(6)** An injunction issued *ex parte* has effect for the period that is specified in it, not exceeding seven days unless, on further application made on notice as provided in subsection (4), the court extends the injunction for any additional period that it considers sufficient.

**Submissions to set aside**

**(7)** On application of the person against whom an *ex parte* injunction is made, the court may make an order setting aside the injunction or varying it subject to any conditions that it considers appropriate.

**Duty of Commissioner**

**(8)** If an injunction issued under this section is in effect, the Commissioner shall proceed as expeditiously as possible to complete any inquiry under section 10 arising out of the conduct in respect of which the injunction was issued.

**Definitions**

**(9)** The following definitions apply in this section.

***dispose***, in relation to an article, includes removing it from the jurisdiction of the court, depleting its value, leasing it to another person or creating any security interest in it. (*disposer*)

***security interest*** means any interest or right in property that secures payment or performance of an obligation and includes an interest or right created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, security, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for. (*garantie*)
2009, c. 2, s. 425.

**Consent agreement**

**74.12 (1)** The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part may sign a consent agreement.

**Terms of consent agreement**

**(2)** The consent agreement shall be based on terms that could be the subject of an order of a court against that person, and may include other terms, whether or not they could be imposed by the court.

**Registration**

**(3)** The consent agreement may be filed with the court for immediate registration.

**Effect of registration**

**(4)** Upon registration of the consent agreement, the proceedings, if any, are terminated and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the court.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

**Rescission or variation of consent agreement or order**

**74.13** The court may rescind or vary a consent agreement that it has registered or an order that it has made under this Part, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the court finds that

**(a)** the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

**(b)** the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

1999, c. 2, s. 22; 2002, c. 16, s. 11.

**Evidence**

**74.14** In determining whether or not to make an order under this Part, the court shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the court under this Act.

1999, c. 2, s. 22.

**Unpaid monetary penalty**

**74.15** The amount of an administrative monetary penalty imposed on a person under paragraph 74.1(1)(c) is a debt due to Her Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

1999, c. 2, s. 22.

**Proceedings commenced under Part VI**

**74.16** No application may be made by the Commissioner for an order under this Part against a person where proceedings have been commenced under section 52 against that person on the basis of the same or substantially the same facts as would be alleged in proceedings under this Part.

1999, c. 2, s. 22.

# Rules of Procedure

**Power of courts**

**74.17** The rules committee of the Federal Court, or a superior court of a province, may make rules respecting the procedure for the disposition of applications by that court under this Part.

1999, c. 2, s. 22.

# Appeals

**Appeal to Federal Court of Appeal**

**74.18 (1)** An appeal may be brought in the Federal Court of Appeal from any decision or order made under this Part, or from a refusal to make an order, by the Tribunal or the Federal Court.

**Appeal to provincial court of appeal**

**(2)** An appeal may be brought in the court of appeal of a province from any decision or order made under this Part, or from a refusal to make an order, by a superior court of the province.

**Disposition of appeal**

**(3)** Where the Federal Court of Appeal or the court of appeal of the province allows an appeal under this section, it may quash the decision or order appealed from, refer the matter back to the court appealed from or make any decision or order that, in its opinion, that court should have made.

1999, c. 2, s. 22; 2002, c. 8, s. 183.

**Appeal on question of fact**

**74.19** An appeal on a question of fact from a decision or order made under this Part may be brought only with the leave of the Federal Court of Appeal or the court of appeal of the province, as the case may be.

1999, c. 2, s. 22.

**PART VIII**

# Matters Reviewable by Tribunal

## Restrictive Trade Practices

### Refusal to Deal

**Jurisdiction of Tribunal where refusal to deal**

**75 (1)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

**(a)** a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

**(b)** the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

**(c)** the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

**(d)** the product is in ample supply, and

**(e)** the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

**When article is a separate product**

**(2)** For the purposes of this section, an article is not a separate product in a market only because it is differentiated from other articles in its class by a trade-mark, proprietary name or the like, unless the article so differentiated occupies such a dominant position in that market as to substantially affect the ability of a person to carry on business in that class of articles unless that person has access to the article so differentiated.

**Definition of *trade terms***

**(3)** For the purposes of this section, the expression ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

**Inferences**

**(4)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 75; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 11.1.

## Price Maintenance

**Price maintenance**

**76 (1)** On application by the Commissioner or a person granted leave under section 103.1, the Tribunal may make an order under subsection (2) if the Tribunal finds that

**(a)** a person referred to in subsection (3) directly or indirectly

**(i)** by agreement, threat, promise or any like means, has influenced upward, or has discouraged the reduction of, the price at which the person's customer or any other person to whom the product comes for resale supplies or offers to supply or advertises a product within Canada, or

**(ii)** has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Canada because of the low pricing policy of that other person or class of persons; and

**(b)** the conduct has had, is having or is likely to have an adverse effect on competition in a market.

**Order**

**(2)** The Tribunal may make an order prohibiting the person referred to in subsection (3) from continuing to engage in the conduct referred to in paragraph (1)(a) or requiring them to accept another person as a customer within a specified time on usual trade terms.

**Persons subject to order**

**(3)** An order may be made under subsection (2) against a person who

**(a)** is engaged in the business of producing or supplying a product;

**(b)** extends credit by way of credit cards or is otherwise engaged in a business that relates to credit cards; or

**(c)** has the exclusive rights and privileges conferred by a patent, trade-mark, copyright, registered industrial design or registered integrated circuit topography.

**Where no order may be made**

**(4)** No order may be made under subsection (2) if the person referred to in subsection (3) and the customer or other person referred to in subparagraph (1)(a)(i) or (ii) are principal and agent or mandator and mandatary, or are affiliated corporations or directors, agents, mandataries, officers or employees of

**(a)** the same corporation, partnership or sole proprietorship; or

**(b)** corporations, partnerships or sole proprietorships that are affiliated.

**Suggested retail price**

**(5)** For the purposes of this section, a suggestion by a producer or supplier of a product of a resale price or minimum resale price for the product, however arrived at, is proof that the person to whom the suggestion is made is influenced in accordance with the suggestion, in the absence of proof that the producer or supplier, in so doing, also made it clear to the person that they were under no obligation to accept the suggestion and would in no way suffer in their business relations with the producer or supplier or with any other person if they failed to accept the suggestion.

**Advertised price**

**(6)** For the purposes of this section, the publication by a producer or supplier of a product, other than a retailer, of an advertisement that mentions a resale price for the product is proof that the producer or supplier is influencing upward the selling price of any person to whom the product comes for resale, unless the price is expressed in a way that makes it clear to any person whose attention the advertisement comes to that the product may be sold at a lower price.

**Exception**

**(7)** Subsections (5) and (6) do not apply to a price that is affixed or applied to a product or its package or container.

**Refusal to supply**

**(8)** If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that any person, by agreement, threat, promise or any like means, has induced a supplier, whether within or outside Canada, as a condition of doing business with the supplier, to refuse to supply a product to a particular person or class of persons because of the low pricing policy of that person or class of persons, and that the conduct of inducement has had, is having or is likely to have an adverse effect on competition in a market, the Tribunal may make an order prohibiting the person from continuing to engage in the conduct or requiring the person to do business with the supplier on usual trade terms.

**Where no order may be made**

**(9)** No order may be made under subsection (2) in respect of conduct referred to in subparagraph (1)(a)(ii) if the Tribunal is satisfied that the person or class of persons referred to in that subparagraph, in respect of products supplied by the person referred to in subsection (3),

**(a)** was making a practice of using the products as loss leaders, that is to say, not for the purpose of making a profit on those products but for purposes of advertising;

**(b)** was making a practice of using the products not for the purpose of selling them at a profit but for the purpose of attracting customers in the hope of selling them other products;

**(c)** was making a practice of engaging in misleading advertising; or

**(d)** made a practice of not providing the level of servicing that purchasers of the products might reasonably expect.

**Inferences**

**(10)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

**Where proceedings commenced under section 45, 49, 79 or 90.1**

**(11)** No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought under section 79 or 90.1.

**Definition of *trade terms***

**(12)** For the purposes of this section, ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.
R.S., 1985, c. C-34, s. 76; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2009, c. 2, s. 426.

## Exclusive Dealing, Tied Selling and Market Restriction

**Definitions**

**77 (1)** For the purposes of this section,

***exclusive dealing*** means

**(a)** any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to

**(i)** deal only or primarily in products supplied by or designated by the supplier or the supplier’s nominee, or

**(ii)** refrain from dealing in a specified class or kind of product except as supplied by the supplier or the nominee, and

**(b)** any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in

either of those subparagraphs; (*exclusivité*)

***market restriction*** means any practice whereby a supplier of a product, as a condition of supplying the product to a customer, requires that customer to supply any product only in a defined market, or exacts a penalty of any kind from the customer if he supplies any product outside a defined market; (*limitation du marché*)

***tied selling*** means

**(a)** any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to

**(i)** acquire any other product from the supplier or the supplier's nominee, or

**(ii)** refrain from using or distributing, in conjunction with the tying product, another product that is not of a brand or manufacture designated by the supplier or the nominee, and

**(b)** any practice whereby a supplier of a product induces a customer to meet a condition set out in subparagraph (a)(i) or (ii) by offering to supply the tying product to the customer on more favourable terms or conditions if the customer agrees to meet the condition set out in either of those subparagraphs. (*ventes liées*)

**Exclusive dealing and tied selling**

**(2)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that exclusive dealing or tied selling, because it is engaged in by a major supplier of a product in a market or because it is widespread in a market, is likely to

**(a)** impede entry into or expansion of a firm in a market,

**(b)** impede introduction of a product into or expansion of sales of a product in a market, or

**(c)** have any other exclusionary effect in a market,

with the result that competition is or is likely to be lessened substantially, the Tribunal may make an order directed to all or any of the suppliers against whom an order is sought prohibiting them from continuing to engage in that exclusive dealing or tied selling and containing any other requirement that, in its opinion, is necessary to overcome the effects thereof in the market or to restore or stimulate competition in the market.

**Market restriction**

**(3)** Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that market restriction, because it is engaged in by a major supplier of a product or because it is widespread in relation to a product, is likely to substantially lessen competition in relation to the product, the Tribunal may make an order directed to all or any of

the suppliers against whom an order is sought prohibiting them from continuing to engage in market restriction and containing any other requirement that, in its opinion, is necessary to restore or stimulate competition in relation to the product.

**Damage awards**

**(3.1)** For greater certainty, the Tribunal may not make an award of damages under this section to a person granted leave under subsection 103.1(7).

**Where no order to be made and limitation on application of order**

**(4)** The Tribunal shall not make an order under this section where, in its opinion,

**(a)** exclusive dealing or market restriction is or will be engaged in only for a reasonable period of time to facilitate entry of a new supplier of a product into a market or of a new product into a market,

**(b)** tied selling that is engaged in is reasonable having regard to the technological relationship between or among the products to which it applies, or

**(c)** tied selling that is engaged in by a person in the business of lending money is for the purpose of better securing loans made by that person and is reasonably necessary for that purpose,

and no order made under this section applies in respect of exclusive dealing, market restriction or tied selling between or among companies, partnerships and sole proprietorships that are affiliated.

**Where company, partnership or sole proprietorship affiliated**

**(5)** For the purposes of subsection (4),

**(a)** one company is affiliated with another company if one of them is the subsidiary of the other or both are the subsidiaries of the same company or each of them is controlled by the same person;

**(b)** if two companies are affiliated with the same company at the same time, they are deemed to be affiliated with each other;

**(c)** a partnership or sole proprietorship is affiliated with another partnership, sole proprietorship or a company if both are controlled by the same person; and

**(d)** a company, partnership or sole proprietorship is affiliated with another company, partnership or sole proprietorship in respect of any agreement between them whereby one party grants to the other party the right to use a trade-mark or trade-name to identify the business of the grantee, if

**(i)** the business is related to the sale or distribution, pursuant to a marketing plan or system prescribed substantially by the grantor, of a multiplicity of products obtained from competing sources of supply and a multiplicity of suppliers, and

**(ii)** no one product dominates the business.

**When persons deemed to be affiliated**

**(6)** For the purposes of subsection (4) in its application to market restriction, where there is an agreement whereby one person (the “first” person) supplies or causes to be supplied to another person (the “second” person) an ingredient or ingredients that the second person processes by the addition of labour and material into an article of food or drink that he then sells in association with a trade-mark that the first person owns or in respect of which the first person is a registered user, the first person and the second person are deemed, in respect of the agreement, to be affiliated.

**Inferences**

**(7)** In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

R.S., 1985, c. C-34, s. 77; R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 23, 37, c. 31, s. 52(F); 2002, c. 16, ss. 11.2, 11.3.

## Abuse of Dominant Position

**Definition of *anti-competitive act***

**78 (1)** For the purposes of section 79, ***anti-competitive act***, without restricting the generality of the term, includes any of the following acts:

**(a)** squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer’s entry into, or expansion in, a market;

**(b)** acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor’s entry into, or eliminating the competitor from, a market;

**(c)** freight equalization on the plant of a competitor for the purpose of impeding or preventing the competitor’s entry into, or eliminating the competitor from, a market;

**(d)** use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;

**(e)** pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;

**(f)** buying up of products to prevent the erosion of existing price levels;

**(g)** adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;

**(h)** requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market; and

**(i)** selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor.

**(j) and (k)** [Repealed, 2009, c. 2, s. 427]

**(2)** [Repealed, 2009, c. 2, s. 427]

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2000, c. 15, s. 13; 2009, c. 2, s. 427.

**Prohibition where abuse of dominant position**

**79 (1)** Where, on application by the Commissioner, the Tribunal finds that

**(a)** one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,

**(b)** that person or those persons have engaged in or are engaging in a practice of anti-competitive acts, and

**(c)** the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,

the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.

**Additional or alternative order**

**(2)** Where, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take such actions, including the divestiture of assets or shares, as are reasonable and as are necessary to overcome the effects of the practice in that market.

**Limitation**

**(3)** In making an order under subsection (2), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

**Administrative monetary penalty**

**(3.1)** If the Tribunal makes an order against a person under subsection (1) or (2), it may also order them to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding $15,000,000.

**Aggravating or mitigating factors**

**(3.2)** In determining the amount of an administrative monetary penalty, the Tribunal shall take into account any evidence of the following:

**(a)** the effect on competition in the relevant market;

**(b)** the gross revenue from sales affected by the practice;

**(c)** any actual or anticipated profits affected by the practice;

**(d)** the financial position of the person against whom the order is made;

**(e)** the history of compliance with this Act by the person against whom the order is made; and

**(f)** any other relevant factor.

**Purpose of order**

**(3.3)** The purpose of an order made against a person under subsection (3.1) is to promote practices by that person that are in conformity with the purposes of this section and not to punish that person.

**Superior competitive performance**

**(4)** In determining, for the purposes of subsection (1), whether a practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market, the Tribunal shall consider whether the practice is a result of superior competitive performance.

**Exception**

**(5)** For the purpose of this section, an act engaged in pursuant only to the exercise of any right or enjoyment of any interest derived under the *Copyright Act*, *Industrial Design Act*, *Integrated Circuit Topography Act*, *Patent Act*, *Trade-marks Act* or any other Act of Parliament pertaining to intellectual or industrial property is not an anti-competitive act.

**Limitation period**

**(6)** No application may be made under this section in respect of a practice of anti-competitive acts more than three years after the practice has ceased.

**Where proceedings commenced under section 45, 49, 76, 90.1 or 92**

**(7)** No application may be made under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought by the Commissioner under section 76, 90.1 or 92.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 31; 1999, c. 2, s. 37; 2002, c. 16, s. 11.4; 2009, c. 2, s. 428.

**Unpaid monetary penalty**

**79.1** The amount of an administrative monetary penalty imposed on an entity under subsection 79(3.1) is a debt due to Her Majesty in right of Canada and may be recovered as such from that entity in a court of competent jurisdiction.

2002, c. 16, s. 11.5.

## Delivered Pricing

**Definition of *delivered pricing***

**80 (1)** For the purposes of section 81, ***delivered pricing*** means the practice of refusing a customer, or a person seeking to become a customer, delivery of an article at any place in which the supplier engages in a practice of making delivery of the article to any other of the supplier's customers on the same trade terms that would be available to the first-mentioned customer if his place of business were located in that place.

**Definition of *trade terms***

**(2)** For the purposes of subsection (1), the expression ***trade terms*** means terms in respect of payment, units of purchase and reasonable technical and servicing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Delivered pricing**

**81 (1)** Where, on application by the Commissioner, the Tribunal finds that delivered pricing is engaged in by a major supplier of an article in a market or is widespread in a market with the result that a customer, or a person seeking to become a customer, is denied an advantage that would otherwise be available to him in the market, the Tribunal may make an order prohibiting all or any of such suppliers from engaging in delivered pricing.

**Exception where significant capital investment needed**

**(2)** No order shall be made against a supplier under this section where the Tribunal finds that the supplier could not accommodate any additional customers at a locality without making significant capital investment at that locality.

**Exception where trade-mark used**

**(3)** No order shall be made against a supplier under this section in respect of a practice of refusing a customer delivery of an article that the customer sells in association with a trade-mark that the supplier owns or in respect of which the supplier is a registered user where the Tribunal finds that the practice is necessary to maintain a standard of quality in respect of the article.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Foreign Judgments and Laws

**Foreign judgments, etc.**

**82** Where, on application by the Commissioner, the Tribunal finds that

**(a)** a judgment, decree, order or other process given, made or issued by or out of a court or other body in a country other than Canada can be implemented in whole or in part by persons in Canada, by companies incorporated by or pursuant to an Act of Parliament or of the legislature of a province, or by measures taken in Canada, and

**(b)** the implementation in whole or in part of the judgment, decree, order or other process in Canada, would

**(i)** adversely affect competition in Canada,

**(ii)** adversely affect the efficiency of trade or industry in Canada without bringing about or increasing in Canada competition that would restore or improve that efficiency,

**(iii)** adversely affect the foreign trade of Canada without compensating advantages, or

**(iv)** otherwise restrain or injure trade or commerce in Canada without compensating advantages,

the Tribunal may, by order, direct that

**(c)** no measures be taken in Canada to implement the judgment, decree, order or process, or

**(d)** no measures be taken in Canada to implement the judgment, decree, order or process except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs (b)(i) to (iv).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Foreign laws and directives**

**83 (1)** Where, on application by the Commissioner, the Tribunal finds that a decision has been or is about to be made by a person in Canada or a company incorporated by or pursuant to an Act of Parliament or of the legislature of a province

**(a)** as a result of

**(i)** a law in force in a country other than Canada, or

**(ii)** a directive, instruction, intimation of policy or other communication to that person or company or to any other person from

**(A)** the government of a country other than Canada or of any political subdivision thereof that is in a position to direct or influence the policies of that person or company, or

**(B)** a person in a country other than Canada who is in a position to direct or influence the policies of that person or company,

where the communication is for the purpose of giving effect to a law in force in a country other than Canada,

and that the decision, if implemented, would have or would be likely to have any of the effects mentioned in subparagraphs 82(b)(i) to (iv), or

**(b)** as a result of a directive, instruction, intimation of policy or other communication to that person or company or to any other person, from a person in a country other than Canada who is in a position to direct or influence the policies of that person or company, where the communication is for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45,

the Tribunal may, by order, direct that

**(c)** in a case described in paragraph (a) or (b), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication, or

**(d)** in a case described in paragraph (a), no measures be taken by the person or company in Canada to implement the law, directive, instruction, intimation of policy or other communication except in such manner as the Tribunal prescribes for the purpose of avoiding an effect referred to in subparagraphs 82(b)(i) to (iv).

**Limitation**

**(2)** No application may be made by the Commissioner for an order under this section against a particular company where proceedings have been commenced under section 46 against that company based on the same or substantially the same facts as would be alleged in the application.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

## Foreign Suppliers

**Refusal to supply by foreign supplier**

**84** Where, on application by the Commissioner, the Tribunal finds that a supplier outside Canada has refused to supply a product or otherwise discriminated in the supply of a product to a person in Canada (the “first” person) at the instance of and by reason of the exertion of

buying power outside Canada by another person, the Tribunal may order any person in Canada (the “second” person) by whom or on whose behalf or for whose benefit the buying power was exerted

**(a)** to sell any such product of the supplier that the second person has obtained or obtains to the first person at the laid-down cost in Canada to the second person of the product and on the same terms and conditions as the second person obtained or obtains from the supplier; or

**(b)** not to deal or to cease to deal, in Canada, in that product of the supplier.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 37.

# Specialization Agreements

**Definitions**

**85** For the purposes of this section and sections 86 to 90,

***article*** includes each separate type, size, weight and quality in which an article, within the meaning assigned by section 2, is produced; (*article*)

***registered*** means registered in the register maintained pursuant to section 89; (*inscrit*)

***specialization agreement*** means an agreement under which each party thereto agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into on the condition that each other party to the agreement agrees to discontinue producing an article or service that he is engaged in producing at the time the agreement is entered into, and includes any such agreement under which the parties also agree to buy exclusively from each other the articles or services that are the subject of the agreement. (*accord de spécialisation*)

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Order directing registration**

**86 (1)** Where, on application by any person, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal finds that an agreement that the person who has made the application has entered into or is about to enter into is a specialization agreement and that

**(a)** the implementation of the agreement is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any prevention or lessening of competition that will result or is likely to result from the agreement and the gains in efficiency would not likely be attained if the agreement were not implemented, and

**(b)** no attempt has been made by the persons who have entered or are about to enter into the agreement to coerce any person to become a party to the agreement,

the Tribunal may, subject to subsection (4), make an order directing that the agreement be registered for a period specified in the order.

**Factors to be considered**

**(2)** In considering whether an agreement is likely to bring about gains in efficiency described in paragraph (1)(a), the Tribunal shall consider whether those gains will result in

**(a)** a significant increase in the real value of exports; or

**(b)** a significant substitution of domestic articles or services for imported articles or services.

**Redistribution of income does not result in gains in efficiency**

**(3)** For the purposes of paragraph (1)(a), the Tribunal shall not find that an agreement is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

**Conditional orders**

**(4)** Where, on an application under subsection (1), the Tribunal finds that an agreement meets the conditions prescribed by paragraphs (a) and (b) of that subsection but also finds that, as a result of the implementation of the agreement, there is not likely to be substantial competition remaining in the market or markets to which the agreement relates, the Tribunal may provide, in an order made under subsection (1), that the order shall take effect only if, within a reasonable period of time specified in the order, there has occurred any of the following events, specified in the order:

**(a)** the divestiture of particular assets, specified in the order;

**(b)** a wider licensing of patents or registered integrated circuit topographies;

**(c)** a reduction in tariffs;

**(d)** the making of an order in council under section 23 of the *Financial Administration Act* effecting a remission or remissions specified in the order of the Tribunal of any customs duties on an article that is a subject of the agreement; or

**(e)** the removal of import quotas or import licensing requirements.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1990, c. 37, s. 32; 1999, c. 2, s. 37.

**Registration of modifications**

**87 (1)** On application by the parties to a specialization agreement that has been registered, and after affording the Commissioner a reasonable opportunity to be heard, the Tribunal may make an order directing that a modification of the agreement be registered.

**Order to remove from register**

**(2)** Where, on application by the Commissioner, the Tribunal finds that the agreement or a modification thereof that has been registered

**(a)** has ceased to meet the conditions prescribed by paragraph 86(1)(a) or (b), or

**(b)** is not being implemented,

the Tribunal may make an order directing that the agreement or modification thereof, and any order relating thereto, be removed from the register.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Right of intervention**

**88** The attorney general of a province may intervene in any proceedings before the Tribunal under section 86 or 87 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Register of specialization agreements**

**89 (1)** The Tribunal shall cause to be maintained at its Registry established pursuant to subsection 14(1) of the *Competition Tribunal Act* a register of specialization agreements, and modifications thereof, that the Tribunal has directed be registered, and any such agreements and modifications thereof shall be included in the register for the periods specified in the orders.

**Public access to register**

**(2)** The register shall be kept open to inspection by any person during normal business hours of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Non-application of sections 45 and 77**

**90** Section 45, and section 77 as it applies to exclusive dealing, do not apply in respect of a specialization agreement, or any modification thereof, that is registered.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

# Mergers

**Definition of *merger***

**91** In sections 92 to 100, ***merger*** means the acquisition or establishment, direct or indirect, by one or more persons, whether by purchase or lease of shares or assets, by amalgamation or by combination or otherwise, of control over or significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Order**

**92 (1)** Where, on application by the Commissioner, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially

**(a)** in a trade, industry or profession,

**(b)** among the sources from which a trade, industry or profession obtains a product,

**(c)** among the outlets through which a trade, industry or profession disposes of a product, or

**(d)** otherwise than as described in paragraphs (a) to (c),

the Tribunal may, subject to sections 94 to 96,

**(e)** in the case of a completed merger, order any party to the merger or any other person

**(i)** to dissolve the merger in such manner as the Tribunal directs,

**(ii)** to dispose of assets or shares designated by the Tribunal in such manner as the Tribunal directs, or

**(iii)** in addition to or in lieu of the action referred to in subparagraph (i) or (ii), with the consent of the person against whom the order is directed and the Commissioner, to take any other action, or

**(f)** in the case of a proposed merger, make an order directed against any party to the proposed merger or any other person

**(i)** ordering the person against whom the order is directed not to proceed with the merger,

**(ii)** ordering the person against whom the order is directed not to proceed with a part of the merger, or

**(iii)** in addition to or in lieu of the order referred to in subparagraph (ii), either or both

**(A)** prohibiting the person against whom the order is directed, should the merger or part thereof be completed, from doing any act or thing the prohibition of which the Tribunal determines to be necessary to ensure that the merger or part thereof does not prevent or lessen competition substantially, or

**(B)** with the consent of the person against whom the order is directed and the Commissioner, ordering the person to take any other action.

**Evidence**

**(2)** For the purpose of this section, the Tribunal shall not find that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially solely on the basis of evidence of concentration or market share.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Factors to be considered regarding prevention or lessening of competition**

**93** In determining, for the purpose of section 92, whether or not a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, the Tribunal may have regard to the following factors:

**(a)** the extent to which foreign products or foreign competitors provide or are likely to provide effective competition to the businesses of the parties to the merger or proposed merger;

**(b)** whether the business, or a part of the business, of a party to the merger or proposed merger has failed or is likely to fail;

**(c)** the extent to which acceptable substitutes for products supplied by the parties to the merger or proposed merger are or are likely to be available;

**(d)** any barriers to entry into a market, including

**(i)** tariff and non-tariff barriers to international trade,

**(ii)** interprovincial barriers to trade, and

**(iii)** regulatory control over entry,

and any effect of the merger or proposed merger on such barriers;

**(e)** the extent to which effective competition remains or would remain in a market that is or would be affected by the merger or proposed merger;

**(f)** any likelihood that the merger or proposed merger will or would result in the removal of a vigorous and effective competitor;

**(g)** the nature and extent of change and innovation in a relevant market; and

**(h)** any other factor that is relevant to competition in a market that is or would be affected by the merger or proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Exception**

**94** The Tribunal shall not make an order under section 92 in respect of

**(a)** a merger substantially completed before the coming into force of this section;

**(b)** a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner the names of the parties and that the merger is in the public interest — or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts; or

**(c)** a merger or proposed merger approved under subsection 53.2(7) of the *Canada Transportation Act* and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 549, c. 46, ss. 592, 593, c. 47, s. 716; 1999, c. 2, s. 37; 2000, c. 15, s. 14; 2001, c. 9, s. 579; 2007, c. 19, s. 62.

**Exception for joint ventures**

**95 (1)** The Tribunal shall not make an order under section 92 in respect of a combination formed or proposed to be formed, otherwise than through a corporation, to undertake a specific project or a program of research and development if

**(a)** a project or program of that nature

**(i)** would not have taken place or be likely to take place in the absence of the combination, or

**(ii)** would not reasonably have taken place or reasonably be likely to take place in the absence of the combination because of the risks involved in relation to the project or program and the business to which it relates;

**(b)** no change in control over any party to the combination resulted or would result from the combination;

**(c)** all the persons who formed the combination are parties to an agreement in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;

**(d)** the agreement referred to in paragraph (c) restricts the range of activities that may be carried on pursuant to the combination, and provides that the agreement terminates on the completion of the project or program; and

**(e)** the combination does not prevent or lessen or is not likely to prevent or lessen competition except to the extent reasonably required to undertake and complete the project or program.

**Limitation**

**(2)** For greater certainty, this section does not apply in respect of the acquisition of assets of a combination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Exception where gains in efficiency**

**96 (1)** The Tribunal shall not make an order under section 92 if it finds that the merger or proposed merger in respect of which the application is made has brought about or is likely to bring about gains in efficiency that will be greater than, and will offset, the effects of any

prevention or lessening of competition that will result or is likely to result from the merger or proposed merger and that the gains in efficiency would not likely be attained if the order were made.

**Factors to be considered**

**(2)** In considering whether a merger or proposed merger is likely to bring about gains in efficiency described in subsection (1), the Tribunal shall consider whether such gains will result in

**(a)** a significant increase in the real value of exports; or

**(b)** a significant substitution of domestic products for imported products.

**Restriction**

**(3)** For the purposes of this section, the Tribunal shall not find that a merger or proposed merger has brought about or is likely to bring about gains in efficiency by reason only of a redistribution of income between two or more persons.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Limitation period**

**97** No application may be made under section 92 in respect of a merger more than one year after the merger has been substantially completed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 430.

**Where proceedings commenced under section 45, 49, 79 or 90.1**

**98** No application may be made under section 92 against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which

**(a)** proceedings have been commenced against that person under section 45 or 49; or

**(b)** an order against that person is sought under section 79 or 90.1.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 2009, c. 2, s. 430.

**Conditional orders directing dissolution of a merger**

**99 (1)** The Tribunal may provide, in an order made under section 92 directing a person to dissolve a merger or to dispose of assets or shares, that the order may be rescinded or varied if, within a reasonable period of time specified in the order,

**(a)** there has occurred

**(i)** a reduction, removal or remission, specified in the order, of any relevant customs duties, or

**(ii)** a reduction or removal, specified in the order, of prohibitions, controls or regulations imposed by or pursuant to any Act of Parliament on the importation into Canada of an article specified in the order, or

**(b)** that person or any other person has taken any action specified in the order

that will, in the opinion of the Tribunal, prevent the merger from preventing or lessening competition substantially.

**When conditional order may be rescinded or varied**

**(2)** Where, on application by any person against whom an order under section 92 is directed, the Tribunal is satisfied that

**(a)** a reduction, removal or remission specified in the order pursuant to paragraph (1)(a) has occurred, or

**(b)** the action specified in the order pursuant to paragraph (1)(b) has been taken,

the Tribunal may rescind or vary the order accordingly.
R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Interim order where no application under section 92**

**100 (1)** The Tribunal may issue an interim order forbidding any person named in the application from doing any act or thing that it appears to the Tribunal may constitute or be directed toward the completion or implementation of a proposed merger in respect of which an application has not been made under section 92 or previously under this section, where

**(a)** on application by the Commissioner, certifying that an inquiry is being made under paragraph 10(1)(b) and that, in the Commissioner's opinion, more time is required to complete the inquiry, the Tribunal finds that in the absence of an interim order a party to the proposed merger or any other person is likely to take an action that would substantially impair the ability of the Tribunal to remedy the effect of the proposed merger on competition under that section because that action would be difficult to reverse; or

**(b)** the Tribunal finds, on application by the Commissioner, that there has been a contravention of section 114 in respect of the proposed merger.

**Notice of application**

**(2)** Subject to subsection (3), at least forty-eight hours notice of an application for an interim order under subsection (1) shall be given by or on behalf of the Commissioner to each person against whom the order is sought.

***Ex parte* application**

**(3)** Where the Tribunal is satisfied, in respect of an application for an interim order under paragraph (1)(b), that

**(a)** subsection (2) cannot reasonably be complied with, or

**(b)** the urgency of the situation is such that service of notice in accordance with subsection (2) would not be in the public interest,

it may proceed with the application *ex parte*.

**Terms of interim order**

**(4)** An interim order issued under subsection (1)

**(a)** shall be on such terms as the Tribunal considers necessary and sufficient to meet the circumstances of the case; and

**(b)** subject to subsections (5) and (6), shall have effect for such period of time as is specified in it.

**Duration of order: inquiry**

**(5)** The duration of an interim order issued under paragraph (1)(a) shall not exceed thirty days.

**Duration of order: failure to comply**

**(6)** The duration of an interim order issued under paragraph (1)(b) shall not exceed

**(a)** ten days after section 114 is complied with, in the case of an interim order issued on *ex parte* application; or

**(b)** thirty days after section 114 is complied with, in any other case.

**Extension of time**

**(7)** Where the Tribunal finds, on application made by the Commissioner on forty-eight hours notice to each person to whom an interim order is directed, that the Commissioner is unable to complete an inquiry within the period specified in the order because of circumstances beyond the control of the Commissioner, the Tribunal may extend the duration of the order to a day not more than sixty days after the order takes effect.

**Completion of inquiry**

**(8)** Where an interim order is issued under paragraph (1)(a), the Commissioner shall proceed as expeditiously as possible to complete the inquiry under section 10 in respect of the proposed merger.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 24, 37.

**Right of intervention**

**101** The attorney general of a province may intervene in any proceedings before the Tribunal under section 92 for the purpose of making representations on behalf of the province.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Advance ruling certificates**

**102 (1)** Where the Commissioner is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds on which to apply to the Tribunal under section 92, the Commissioner may issue a certificate to the effect that he is so satisfied.

**Duty of Commissioner**

**(2)** The Commissioner shall consider any request for a certificate under this section as expeditiously as possible.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**No application under section 92**

**103** Where the Commissioner issues a certificate under section 102, the Commissioner shall not, if the transaction to which the certificate relates is substantially completed within one year after the certificate is issued, apply to the Tribunal under section 92 in respect of the transaction solely on the basis of information that is the same or substantially the same as the information on the basis of which the certificate was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

# General

**Leave to make application under section 75, 76 or 77**

**103.1 (1)** Any person may apply to the Tribunal for leave to make an application under section 75, 76 or 77. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

**Notice**

**(2)** The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order under section 75, 76 or 77, as the case may be, is sought.

**Certification by Commissioner**

**(3)** The Commissioner shall, within 48 hours after receiving a copy of an application for leave, certify to the Tribunal whether or not the matter in respect of which leave is sought

**(a)** is the subject of an inquiry by the Commissioner; or

**(b)** was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order under section 75, 76 or 77, as the case may be, is sought.

**Application discontinued**

**(4)** The Tribunal shall not consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 75, 76 or 77.

**Notice by Tribunal**

**(5)** The Tribunal shall as soon as practicable after receiving the Commissioner's certification under subsection (3) notify the applicant and any person against whom the order is sought as to whether it can hear the application for leave.

**Representations**

**(6)** A person served with an application for leave may, within 15 days after receiving notice under subsection (5), make representations in writing to the Tribunal and shall serve a copy of the representations on any other person referred to in subsection (2).

**Granting leave to make application under section 75 or 77**

**(7)** The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

**Granting leave to make application under section 76**

**(7.1)** The Tribunal may grant leave to make an application under section 76 if it has reason to believe that the applicant is directly affected by any conduct referred to in that section that could be subject to an order under that section.

**Time and conditions for making application**

**(8)** The Tribunal may set the time within which and the conditions subject to which an application under section 75, 76 or 77 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

**Decision**

**(9)** The Tribunal must give written reasons for its decision to grant or refuse leave and send copies to the applicant, the Commissioner and any other person referred to in subsection (2).

**Limitation**

**(10)** The Commissioner may not make an application for an order under section 75, 76, 77 or 79 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (7) or (7.1), if the person granted leave has already applied to the Tribunal under section 75, 76 or 77.

**Inferences**

**(11)** In considering an application for leave, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by it.

**Inquiry by Commissioner**

**(12)** If the Commissioner has certified under subsection (3) that a matter in respect of which leave was sought by a person is under inquiry and the Commissioner subsequently discontinues the inquiry other than by way of settlement, the Commissioner shall, as soon as practicable, notify that person that the inquiry is discontinued.
2002, c. 16, s. 12; 2009, c. 2, s. 431.

**Intervention by Commissioner**

**103.2** If a person granted leave under subsection 103.1(7) or (7.1) makes an application under section 75, 76 or 77, the Commissioner may intervene in the proceedings.

2002, c. 16, s. 12; 2009, c. 2, s. 432.

**Interim order**

**103.3 (1)** Subject to subsection (2), the Tribunal may, on *ex parte* application by the Commissioner in which the Commissioner certifies that an inquiry is being made under paragraph 10(1)(b), issue an interim order

**(a)** to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81 or 84; or

**(b)** to prevent the taking of measures under section 82 or 83.

**Limitation**

**(2)** The Tribunal may make the interim order if it finds that the conduct or measures could be of the type described in paragraph (1)(a) or (b) and that, in the absence of an interim order,

**(a)** injury to competition that cannot adequately be remedied by the Tribunal is likely to occur;

**(b)** a person is likely to be eliminated as a competitor; or

**(c)** a person is likely to suffer a significant loss of market share, a significant loss of revenue or other harm that cannot be adequately remedied by the Tribunal.

**Consultation**

**(3)** Before making an application for an order to prevent the continuation of conduct that could be the subject of an order under any of sections 75 to 77, 79, 81 or 84 by an entity incorporated under the *Bank Act*, the *Insurance Companies Act*, the *Trust and Loan*

*Companies Act* or the *Cooperative Credit Associations Act* or a subsidiary of such an entity, the Commissioner must consult with the Minister of Finance respecting the safety and soundness of the entity.

**Duration**

**(4)** Subject to subsections (5) and (6), an interim order has effect for 10 days, beginning on the day on which it is made.

**Extension or revocation of order**

**(5)** The Tribunal may, on application by the Commissioner on 48 hours notice to each person against whom the interim order is directed,

**(a)** extend the interim order once or twice for additional periods of 35 days each; or

**(b)** rescind the order.

**Application to Tribunal for extension**

**(5.1)** The Commissioner may, before the expiry of the second 35-day period referred to in subsection (5) or of the period fixed by the Tribunal under subsection (7), as the case may be, apply to the Tribunal for a further extension of the interim order.

**Notice of application by Commissioner**

**(5.2)** The Commissioner shall give at least 48 hours notice of an application referred to in subsection (5.1) to the person against whom the interim order is made.

**Extension of interim order**

**(5.3)** The Tribunal may order that the effective period of the interim order be extended if

**(a)** the Commissioner establishes that information requested for the purpose of the inquiry has not yet been provided or that more time is needed in order to review the information;

**(b)** the information was requested during the initial period that the interim order had effect, within the first 35 days after an order extending the interim order under subsection (5) had effect, or within the first 35 days after an order extending the interim order made under subsection (7) had effect, as the case may be, and

**(i)** the provision of such information is the subject of a written undertaking, or

**(ii)** the information was ordered to be provided under section 11; and

**(c)** the information is reasonably required to determine whether grounds exist for the Commissioner to make an application under any section referred to in paragraph (1)(a) or (b).

**Terms**

**(5.4)** An order extending an interim order issued under subsection (5.3) shall have effect for such period as the Tribunal considers necessary to give the Commissioner a reasonable opportunity to receive and review the information referred to in that subsection.

**Effect of application**

**(5.5)** If an application is made under subsection (5.1), the interim order has effect until the Tribunal makes a decision whether to grant an extension under subsection (5.3).

**When application made to Tribunal**

**(6)** If an application is made under subsection (7), an interim order has effect until the Tribunal makes an order under that subsection.

**Confirming or setting aside interim order**

**(7)** A person against whom the Tribunal has made an interim order may apply to the Tribunal in the first 10 days during which the order has effect to have it varied or set aside and the Tribunal shall

**(a)** if it is satisfied that one or more of the situations set out in paragraphs (2)(a) to (c) existed or are likely to exist, make an order confirming the interim order, with or without variation as the Tribunal considers necessary and sufficient to meet the circumstances, and fix the effective period of that order for a maximum of 70 days, beginning on the day on which the order confirming the interim order is made; and

**(b)** if it is not satisfied that any of the situations set out in paragraphs (2)(a) to (c) existed or is likely to exist, make an order setting aside the interim order.

**Notice**

**(8)** A person who makes an application under subsection (7) shall give the Commissioner 48 hours written notice of the application.

**Representations**

**(9)** At the hearing of an application under subsection (7), the Tribunal shall provide the applicant, the Commissioner and any person directly affected by the interim order with a full opportunity to present evidence and make representations before the Tribunal makes an order under that subsection.

**Prohibition of extraordinary relief**

**(10)** Notwithstanding section 13 of the *Competition Tribunal Act*, an interim order shall not be appealed or reviewed in any court except as provided for by subsection (7).

**Duty of Commissioner**

**(11)** When an interim order is in effect, the Commissioner shall proceed as expeditiously as possible to complete the inquiry arising out of the conduct in respect of which the order was made.

2002, c. 16, s. 12.

**Interim order**

**104 (1)** Where an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75 or 77, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

**Terms of interim order**

**(2)** An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

**Duty of Commissioner**

**(3)** Where an interim order issued under subsection (1) on application by the Commissioner is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 13.

**104.1** [Repealed, 2009, c. 2, s. 433]

**Consent agreement**

**105 (1)** The Commissioner and a person in respect of whom the Commissioner has applied or may apply for an order under this Part, other than an interim order under section 103.3, may sign a consent agreement.

**Terms of consent agreement**

**(2)** The consent agreement shall be based on terms that could be the subject of an order of the Tribunal against that person.

**Registration**

**(3)** The consent agreement may be filed with the Tribunal for immediate registration.

**Effect of registration**

**(4)** Upon registration of the consent agreement, the proceedings, if any, are terminated, and the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14; 2009, c. 2, s. 434.

**Rescission or variation of consent agreement or order**

**106 (1)** The Tribunal may rescind or vary a consent agreement or an order made under this Part other than an order under section 103.3 or a consent agreement under section 106.1, on application by the Commissioner or the person who consented to the agreement, or the person against whom the order was made, if the Tribunal finds that

**(a)** the circumstances that led to the making of the agreement or order have changed and, in the circumstances that exist at the time the application is made, the agreement or order would not have been made or would have been ineffective in achieving its intended purpose; or

**(b)** the Commissioner and the person who consented to the agreement have consented to an alternative agreement or the Commissioner and the person against whom the order was made have consented to an alternative order.

**Directly affected persons**

**(2)** A person directly affected by a consent agreement, other than a party to that agreement, may apply to the Tribunal within 60 days after the registration of the agreement to have one or more of its terms rescinded or varied. The Tribunal may grant the application if it finds that the person has established that the terms could not be the subject of an order of the Tribunal.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37; 2002, c. 16, s. 14; 2009, c. 2, s. 435.

**Consent agreement — parties to a private action**

**106.1 (1)** If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75 or 77 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

**Notice to Commissioner**

**(2)** On filing the consent agreement with the Tribunal for registration, the parties shall serve a copy of it on the Commissioner without delay.

**Publication**

**(3)** The consent agreement shall be published without delay in the *Canada Gazette*.

**Registration**

**(4)** The consent agreement shall be registered 30 days after its publication unless a third party makes an application to the Tribunal before then to cancel the agreement or replace it with an order of the Tribunal.

**Effect of registration**

**(5)** Upon registration, the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

**Commissioner may intervene**

**(6)** On application by the Commissioner, the Tribunal may vary or rescind a registered consent agreement if it finds that the agreement has or is likely to have anti-competitive effects.

**Notice**

**(7)** The Commissioner must give notice of an application under subsection (6) to the parties to the consent agreement.

2002, c. 16, s. 14.

**Evidence**

**107** In determining whether or not to make an order under this Part, the Tribunal shall not exclude from consideration any evidence by reason only that it might be evidence in respect of an offence under this Act or in respect of which another order could be made by the Tribunal under this Act.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**PART IX**

# Notifiable Transactions

## Interpretation

**Definitions**

**108 (1)** In this Part,

***operating business*** means a business undertaking in Canada to which employees employed in connection with the undertaking ordinarily report for work; (*entreprise en exploitation*)

***person*** means an individual, body corporate, unincorporated syndicate, unincorporated organization, trustee, executor, administrator or other legal representative, but does not include a bare trustee; (*personne*)

***prescribed*** means prescribed by regulations made under section 124; (*réglementaire*)

***voting share*** means any share that carries voting rights under all circumstances or by reason of an event that has occurred and is continuing. (*actions comportant droit de vote*)

**Corporations controlled by Her Majesty**

**(2)** For the purposes of this Part, except for the purposes of section 113, one corporation is not affiliated with another corporation by reason only of the fact that both corporations are controlled by Her Majesty in right of Canada or a province, as the case may be.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 25.

# Application

**General limit relating to parties**

**109 (1)** This Part does not apply in respect of a proposed transaction unless the parties thereto, together with their affiliates,

**(a)** have assets in Canada that exceed four hundred million dollars in aggregate value, determined as of such time and in such manner as may be prescribed, or such greater amount as may be prescribed; or

**(b)** had gross revenues from sales in, from or into Canada, determined for such annual period and in such manner as may be prescribed, that exceed four hundred million dollars in aggregate value, or such greater amount as may be prescribed.

**Parties to acquisition of shares**

**(2)** For the purposes of this Part, the parties to a proposed acquisition of shares are the person or persons who propose to acquire the shares and the corporation the shares of which are to be acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 26.

**Application of Part**

**110 (1)** This Part applies only in respect of proposed transactions described in this section.

**Acquisition of assets**

**(2)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of any of the assets in Canada of an operating business if the aggregate value of those assets, determined as of the time and in the manner that is prescribed, or the gross revenues from sales in or from Canada generated from those assets, determined for the annual period and in the manner that is prescribed, would exceed the amount determined under subsection (7) or (8), as the case may be.

**Acquisition of shares**

**(3)** Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of voting shares of a corporation that carries on an operating business or controls a corporation that carries on an operating business

**(a)** if

**(i)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are owned by the corporation or by corporations controlled by that corporation, other than assets that are shares of any of those corporations, would exceed the amount determined under subsection (7) or (8), as the case may be, or

**(ii)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in subparagraph (i) would exceed the amount determined under subsection (7) or (8), as the case may be; and

**(b)** if, as a result of the proposed acquisition of the voting shares, the person or persons acquiring the shares, together with their affiliates, would own voting shares of the corporation that in the aggregate carry more than the following percentages of the votes attached to all the corporation's outstanding voting shares:

**(i)** 20%, if any of the corporation's voting shares are publicly traded,

**(ii)** 35%, if none of the corporation's voting shares are publicly traded, or

**(iii)** 50%, if the person or persons already own more than the percentage set out in subparagraph (i) or (ii), as the case may be, before the proposed acquisition.

**Amalgamation**

**(4)** Subject to subsection (4.1) and section 113, this Part applies in respect of a proposed amalgamation of two or more corporations if one or more of those corporations carries on an operating business, or controls a corporation that carries on an operating business, where

**(a)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that would be owned by the continuing corporation that would result from the amalgamation or by corporations controlled by the continuing corporation, other than assets that are shares of any of those corporations, would exceed the amount determined under subsection (7) or (8), as the case may be; or

**(b)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in paragraph (a) would exceed the amount determined under subsection (7) or (8), as the case may be.

**General limit relating to parties to an amalgamation**

**(4.1)** This Part does not apply in respect of a proposed amalgamation of two or more corporations if one or more of those corporations carries on an operating business or controls a corporation that carries on an operating business, unless each of at least two of the amalgamating corporations, together with its affiliates,

**(a)** has assets in Canada, determined as of the time and in the manner that is prescribed, that exceed in aggregate value the amount determined under subsection (7) or (8), as the case may be; or

**(b)** has gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, that exceed in aggregate value the amount determined under subsection (7) or (8), as the case may be.

**Combination**

**(5)** Subject to sections 112 and 113, this Part applies in respect of a proposed combination of two or more persons to carry on business otherwise than through a corporation if one or more of those persons proposes to contribute to the combination assets that form all or part of an operating business carried on by those persons, or corporations controlled by those persons, and if

**(a)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are the subject-matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be; or

**(b)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in paragraph (a) would exceed the amount determined under subsection (7) or (8), as the case may be.

**Combination**

**(6)** Subject to sections 111, 112 and 113, this Part applies in respect of a proposed acquisition of an interest in a combination that carries on an operating business otherwise than through a corporation

**(a)** if

**(i)** the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, that are the subject-matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be, or

**(ii)** the gross revenues from sales in or from Canada, determined for the annual period and in the manner that is prescribed, generated from the assets referred to in subparagraph (i) would exceed the amount determined under subsection (7) or (8), as the case may be; and

**(b)** if, as a result of the proposed acquisition of the interest, the person or persons acquiring the interest, together with their affiliates, would hold an aggregate interest in the combination that entitles the person or persons to receive more than 35% of the profits of the combination, or more than 35% of its assets on dissolution, or, if the person or persons acquiring the interest are already so entitled, to receive more than 50% of such profits or assets.

**Amount for notification**

**(7)** In the year in which this subsection comes into force, the amount for the purposes of subsections (2) to (6) is $70,000,000.

**Amount for notification — subsequent years**

**(8)** In any year following the year in which subsection (7) comes into force, the amount for the purposes of any of subsections (2) to (6) is

**(a)** any amount that is prescribed for that subsection; or

**(b)** if no amount has been prescribed for that subsection,

**(i)** the amount determined by the Minister in January of that year by rounding off to the nearest million dollars the amount arrived at by using the formula

**A × (B / C)**

where

**A** is the amount for the previous year,

**B** is the average of the Nominal Gross Domestic Products at market prices for the most recent four consecutive quarters, and

**C** is the average of the Nominal Gross Domestic Products at market prices for the four consecutive quarters for the comparable period in the year preceding the year used in calculating B, or

**(ii)** until the Minister has published under subsection (9) an amount for that year determined under subparagraph (i), if the Minister does so at all, the amount for that subsection for the previous year.

**Publication in *Canada Gazette***

**(9)** As soon as possible after determining the amount for any particular year, the Minister shall publish the amount in the *Canada Gazette*.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 27; 2009, c. 2, s. 436.

# Exemptions

## Acquisition of Voting Shares, Assets or Interests

**Acquisitions**

**111** The following classes of transactions are exempt from the application of this Part:

**(a)** an acquisition of real property or goods in the ordinary course of business if the person or persons who propose to acquire the assets would not, as a result of the acquisition, hold all or substantially all of the assets of a business or of an operating segment of a business;

**(b)** an acquisition of voting shares or of an interest in a combination solely for the purpose of underwriting the shares or the interest, within the meaning of subsection 5(2);

**(c)** an acquisition of voting shares, an interest in a combination or assets that would result from a gift, intestate succession or testamentary disposition;

**(d)** an acquisition of collateral or receivables, or an acquisition resulting from a foreclosure or default or forming part of a debt work-out, made by a creditor in or pursuant to a credit transaction entered into in good faith in the ordinary course of business;

**(e)** an acquisition of a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, pursuant to an agreement in writing that provides for the transfer of that property to the person or persons acquiring the property only if the person or persons acquiring the property incur expenses to carry out exploration or development activities with respect to the property; and

**(f)** an acquisition of voting shares of a corporation pursuant to an agreement in writing that provides for the issuance of those shares only if the person or persons acquiring them incur expenses to carry out exploration or development activities with respect to a Canadian resource property, as defined in subsection 66(15) of the *Income Tax Act*, in respect of which the corporation has the right to carry out those activities where the corporation does not have any significant assets other than that property.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 29, c. 31, s. 229.

## Combinations

**Combinations that are joint ventures**

**112** A combination is exempt from the application of this Part if

**(a)** all the persons who propose to form the combination are parties to an agreement in writing or intended to be put in writing that imposes on one or more of them an obligation to contribute assets and governs a continuing relationship between those parties;

**(b)** no change in control over any party to the combination would result from the combination; and

**(c)** the agreement referred to in paragraph (a) restricts the range of activities that may be carried on pursuant to the combination, and contains provisions that would allow for its orderly termination.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

## General

**General exemptions**

**113** The following classes of transactions are exempt from the application of this Part:

**(a)** a transaction all the parties to which are affiliates of each other;

**(a.1)** a transaction in respect of which the Minister of Finance has certified to the Commissioner under paragraph 94(b) that it is, or would be, in the public interest;

**(b)** a transaction in respect of which the Commissioner has issued a certificate under section 102;

**(c)** a transaction in respect of which the Commissioner or a person authorized by the Commissioner has waived the obligation under this Part to notify the Commissioner and supply information because substantially similar information was previously supplied in relation to a request for a certificate under section 102; and

**(d)** such other classes of transactions as may be prescribed.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1991, c. 45, s. 550, c. 46, s. 594, c. 47, s. 717; 1999, c. 2, ss. 30, 37; 2001, c. 9, s. 580.

# Notice and Information

**Notice of proposed transaction**

**114 (1)** Subject to this Part, the parties to a proposed transaction shall, before the transaction is completed, notify the Commissioner that the transaction is proposed and supply the Commissioner with the prescribed information in accordance with this Part, if

**(a)** a person, or two or more persons pursuant to an agreement or arrangement, propose to acquire assets in the circumstances set out in subsection 110(2), to acquire shares in the circumstances set out in subsection 110(3) or to acquire an interest in a combination in the circumstances set out in subsection 110(6);

**(b)** two or more corporations propose to amalgamate in the circumstances set out in subsection 110(4); or

**(c)** two or more persons propose to form a combination in the circumstances set out in subsection 110(5).

**Additional information**

**(2)** The Commissioner or a person authorized by the Commissioner may, within 30 days after receiving the prescribed information, send a notice to the person who supplied the information requiring them to supply additional information that is relevant to the Commissioner’s assessment of the proposed transaction.

**Contents of notice**

**(2.1)** The notice shall specify the particular additional information or classes of additional information that are to be supplied.

**Corporation whose shares are acquired**

**(3)** If a proposed transaction is an acquisition of shares and the Commissioner receives information supplied under subsection (1) by a party to the transaction, other than the corporation whose shares are being acquired, before receiving such information from the corporation,

**(a)** the Commissioner shall immediately notify the corporation that the Commissioner has received from that party the prescribed information; and

**(b)** the corporation shall supply the Commissioner with the prescribed information within 10 days after being notified under paragraph (a).

**Notice and information**

**(4)** Any of the persons required to give notice and supply information under this section may

**(a)** if duly authorized to do so, give notice or supply information on behalf of and in lieu of any of the others who are so required in respect of the same transaction; or

**(b)** give notice or supply information jointly with any of those others.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 31, c. 31, s. 53(F); 2009, c. 2, s. 437.

**Prior notice of acquisitions**

**115 (1)** It is not necessary to comply with section 114 in respect of a proposed acquisition of voting shares or of an interest in a combination where a limit set out in subsection 110(3) or (6) would be exceeded as a result of the proposed acquisition within three years immediately following a previous compliance with section 114 required in relation to the same limit.

**Notice of future acquisition**

**(2)** Where a person or persons who propose to acquire voting shares or an interest in a combination are required to comply with section 114 because the twenty or thirty-five per cent limit set out in subsection 110(3) or the thirty-five per cent limit set out in subsection 110(6) would be exceeded as a result of the acquisition, the person or persons may, at the time of the compliance, give notice to the Commissioner of a proposed further acquisition of voting shares or of an interest in a combination that would result in a fifty per cent limit set out in that subsection being exceeded, and supply the Commissioner with a detailed description in writing of the steps to be carried out in the further acquisition.

**Exemption for further acquisitions of voting shares**

**(3)** It is not necessary to comply with section 114 in respect of a proposed further acquisition referred to in subsection (2) if

**(a)** notice of the further acquisition is given to the Commissioner under subsection (2) and it is carried out in accordance with the description supplied under that subsection; and

**(b)** an additional notice of the further acquisition is given to the Commissioner in writing within twenty-one, and at least seven, days before the further acquisition.

**Limitation**

**(4)** Subsection (3) does not apply in respect of a further acquisition unless the further acquisition is completed within one year after notice of it is given under subsection (2).

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 32, 37.

**Where information cannot be supplied**

**116 (1)** If any of the information required under section 114 is not known or reasonably obtainable, or cannot be supplied because of the privilege that exists in respect of lawyers and notaries and their clients or because of a confidentiality requirement established by law, the person who is supplying the information may, instead of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and the reason why it has not been supplied.

**Where information not relevant**

**(2)** If any of the information required under section 114 could not, on any reasonable basis, be considered to be relevant to an assessment by the Commissioner as to whether the proposed transaction would or would be likely to prevent or lessen competition substantially, the person who is supplying the information may, in lieu of supplying the information, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has not been supplied and why the information was not considered relevant.

**Where information previously supplied**

**(2.1)** If any of the information required under section 114 has previously been supplied to the Commissioner, the person who is supplying the information may, in lieu of supplying it, inform the Commissioner under oath or solemn affirmation of the matters in respect of which information has previously been supplied and when it was supplied.

**Commissioner may require information**

**(3)** Where a person chooses not to supply the Commissioner with information required under section 114 and so informs the Commissioner in accordance with subsection (2) or (2.1) and the Commissioner or a person authorized by the Commissioner notifies that person, within seven days after the Commissioner is so informed, that the information is required, the person shall supply the Commissioner with the information.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, ss. 33, 37; 2009, c. 2, s. 438.

**Saving**

**117 (1)** Nothing in section 114 requires any person who is a director of a corporation to supply information that is known to that person by virtue only of his position as a director of an affiliate of the corporation that is neither a wholly-owned affiliate nor a wholly-owning affiliate of the corporation.

**Wholly-owned affiliate**

**(2)** For the purposes of subsection (1), one corporation is the wholly-owned affiliate of another corporation if all its outstanding voting shares, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by that other corporation or each other.

**Wholly-owning affiliate**

**(3)** For the purposes of subsection (1), one corporation is the wholly-owning affiliate of another corporation if it beneficially owns all the outstanding voting shares of that other corporation, other than shares necessary to qualify persons as directors, directly, or indirectly through one or more affiliates where all the outstanding voting shares of the affiliates, other than shares necessary to qualify persons as directors, are beneficially owned by the corporation or each other.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Information to be certified**

**118** The information supplied to the Commissioner under section 114 shall be certified on oath or solemn affirmation

**(a)** in the case of a corporation supplying the information, by an officer thereof or other person duly authorized by the board of directors or other governing body of the corporation, or

**(b)** in the case of any other person supplying the information, by that person,

as having been examined by that person and as being, to the best of his knowledge and belief, correct and complete in all material respects.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Where transaction not completed**

**119** Where notice is given and information supplied in respect of a proposed transaction under section 114 but the transaction is not completed within one year thereafter or such longer period as the Commissioner may specify in any particular case, section 114 applies as if no notice were given or information supplied.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**120 to 122** [Repealed, 1999, c. 2, s. 34]

## Completion of Proposed Transactions

**Time when transaction may not proceed**

**123 (1)** A proposed transaction referred to in section 114 shall not be completed before the end of

**(a)** 30 days after the day on which information required under subsection 114(1) has been received by the Commissioner, if the Commissioner has not, within that time, required additional information to be supplied under subsection 114(2); or

**(b)** 30 days after the day on which the information required under subsection 114(2) has been received by the Commissioner, if the Commissioner has within the 30-day period referred to in paragraph (a) required additional information to be supplied under subsection 114(2).

**Waiving of waiting period**

**(2)** A proposed transaction referred to in section 114 may be completed before the end of a period referred to in subsection (1) if, before the end of that period, the Commissioner or a person authorized by the Commissioner notifies the persons who are required to give notice and supply information that the Commissioner does not, at that time, intend to make an application under section 92 in respect of the proposed transaction.

**Acquisition of voting shares**

**(3)** In the case of an acquisition of voting shares to which subsection 114(3) applies, the periods referred to in subsection (1) shall be determined without reference to the day on which the information required under section 114 is received by the Commissioner from the corporation whose shares are being acquired.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 35; 2009, c. 2, s. 439.

**Failure to comply**

**123.1 (1)** If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has completed or is likely to complete a proposed transaction before the end of the applicable period referred to in section 123, the court may

**(a)** order the person to submit information required under subsection 114(2);

**(b)** issue an interim order prohibiting any person from doing anything that it appears to the court may constitute or be directed toward the completion or implementation of the proposed transaction;

**(c)** in the case of a completed transaction, order any party to the transaction or any other person, in any manner that the court directs, to dissolve the merger or to dispose of assets or shares designated by the court;

**(d)** in the case of a completed transaction, order the person to pay, in any manner that the court specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they have failed to comply with section 123, determined by the court

after taking into account any evidence of the following:

**(i)** the person's financial position,

**(ii)** the person's history of compliance with this Act,

**(iii)** the duration of the period of non-compliance, and

**(iv)** any other relevant factor; or

**(e)** grant any other relief that the court considers appropriate.

**Purpose of order**

**(2)** The terms of an order under paragraph (1)(d) shall be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Part and not with a view to punishment.

**Unpaid monetary penalty**

**(3)** The amount of an administrative monetary penalty imposed under paragraph (1)(d) is a debt due to Her Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

**Definition of *court***

**(4)** In this section, ***court*** means the Tribunal, the Federal Court or the superior court of a province.

2009, c. 2, s. 439.

# Regulations

**Regulations**

**124 (1)** The Governor in Council may make regulations prescribing anything that is by this Part to be prescribed.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

PART X

# General

## Commissioner’s Opinions

**Application for written opinion**

**124.1 (1)** Any person may apply to the Commissioner, with supporting information, for an opinion on the applicability of any provision of this Act or the regulations to conduct or a practice that the applicant proposes to engage in, and the Commissioner may provide a written opinion for the applicant’s guidance.

**Opinion binding**

**(2)** If all the material facts have been submitted by or on behalf of an applicant for an opinion and they are accurate, a written opinion provided under this section is binding on the Commissioner. It remains binding for so long as the material facts on which the opinion was based remain substantially unchanged and the conduct or practice is carried out substantially as proposed.

2002, c. 16, s. 15.

## References to Tribunal

**Reference if parties agree**

**124.2 (1)** The Commissioner and a person who is the subject of an inquiry under section 10 may by agreement refer to the Tribunal for determination any question of law, mixed law and fact, jurisdiction, practice or procedure, in relation to the application or interpretation of Part VII.1 or VIII, whether or not an application has been made under Part VII.1 or VIII.

**Reference by Commissioner**

**(2)** The Commissioner may, at any time, refer to the Tribunal for determination a question of law, jurisdiction, practice or procedure, in relation to the application or interpretation of Parts VII.1 to IX.

**Reference by agreement of parties to a private action**

**(3)** A person granted leave under section 103.1 and the person against whom an order is sought under section 75 or 77 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

**Reference procedure**

**(4)** The Tribunal shall decide the questions referred to it informally and expeditiously, in accordance with any rules on references made under section 16 of the *Competition Tribunal Act*.

2002, c. 16, s. 15.

# Representations to Boards, Commissions or Other Tribunals

**Representations to federal boards, etc.**

**125 (1)** The Commissioner, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

**Definition of *federal board, commission or other tribunal***

**(2)** For the purposes of this section, ***federal board, commission or other tribunal*** means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

**Representations to provincial boards, etc.**

**126 (1)** The Commissioner, at the request of any provincial board, commission or other tribunal, or on his own initiative with the consent of the board, commission or other tribunal, may make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

**Definition of *provincial board, commission or other tribunal***

**(2)** For the purposes of this section, ***provincial board, commission or other tribunal*** means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of the legislature of a province with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.

R.S., 1985, c. 19 (2nd Supp.), s. 45; 1999, c. 2, s. 37.

# Report to Parliament

**Annual report**

**127** The Commissioner shall report annually to the Minister on the operation of the Acts referred to in subsection 7(1), and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days after the Minister receives the report on which that House is sitting.

R.S., 1985, c. 19 (2nd Supp.), s. 45;  1999, c. 2, s. 36.

# Regulations

**Regulations**

**128 (1)** The Governor in Council may make such regulations as are necessary for carrying out this Act and for the efficient administration thereof.

**Publication of proposed regulations**

**(2)** Subject to subsection (3), a copy of each regulation that the Governor in Council proposes to make under subsection (1) shall be published in the *Canada Gazette* at least sixty days before the proposed effective date thereof and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

**Exception**

**(3)** No proposed regulation need be published under subsection (2) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

R.S., 1985, c. 19 (2nd Supp.), s. 45.

**Date modified:**

2024-07-08

# 35

CANADA

CONSOLIDATION

CODIFICATION

# Food and Drug Regulations

# Règlement sur les aliments et drogues

C.R.C., c. 870

C.R.C., ch. 870

Current to June 19, 2024

Last amended on June 17, 2024

À jour au 19 juin 2024

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

**Published consolidation is evidence**

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

**Inconsistencies in regulations**

**(3)** In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

**Codifications comme élément de preuve**

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

**Incompatibilité — règlements**

**(3)** Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

This consolidation is current to June 19, 2024. The last amendments came into force on June 17, 2024. Any amendments that were not in force as of June 19, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

## NOTE

Cette codification est à jour au 19 juin 2024. Les dernières modifications sont entrées en vigueur le 17 juin 2024. Toutes modifications qui n'étaient pas en vigueur au 19 juin 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

## TABLE OF PROVISIONS

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## TABLE ANALYTIQUE

### Règlement concernant les aliments et drogues

**CHAPTER 870**

FOOD AND DRUGS ACT

**Food and Drug Regulations**

**Regulations Respecting Food and Drugs**

**CHAPITRE 870**

LOI SUR LES ALIMENTS ET DROGUES

**Règlement sur les aliments et drogues**

**Règlement concernant les aliments et drogues**

**PART A**

# Administration

## General

**A.01.001** These Regulations may be cited as the *Food and Drug Regulations*.

**A.01.002** These Regulations, where applicable, prescribe the standards of composition, strength, potency, purity, quality or other property of the article of food or drug to which they refer.

**A.01.003** [Repealed, SOR/94-289, s. 1]

## Interpretation

**A.01.010** In these Regulations,

***acceptable method*** means a method of analysis or examination designated by the Minister as acceptable for use in the administration of the Act and these Regulations; (*méthode acceptable*)

***Act*** means the *Food and Drugs Act*, except in Parts G and J; (*Loi*)

***common-law partner*** has the same meaning as in section 2 of the *Criminal Code*; (*conjoint de fait*)

***cubic centimetre*** and its abbreviation ***cc.*** shall be deemed to be interchangeable with the term *millilitre* and its abbreviation *ml.*; (*centimètre cube*)

***Director*** [Repealed, SOR/2018-69, s. 1]

***inner label*** means the label on or affixed to an immediate container of a food or drug; (*étiquette intérieure*)

**PARTIE A**

# Administration

## Dispositions générales

**A.01.001** Le présent règlement peut être cité sous le titre : *Règlement sur les aliments et drogues*.

**A.01.002** Lorsqu'il y a lieu, les dispositions du présent règlement établissent les normes de composition, de concentration, d'activité, de pureté, de qualité ou autre propriété de la substance alimentaire ou de la drogue, auxquelles elles se rapportent.

**A.01.003** [Abrogé, DORS/94-289, art. 1]

## Interprétation

**A.01.010** Dans le présent règlement,

***centimètre cube*** ou son abréviation ***cc.*** sont censées interchangeables avec le mot *millilitre* et son abréviation *ml.*; (*cubic centimetre*)

***conjoint de fait*** S'entend au sens de l'article 2 du *Code criminel*; (*common-law partner*)

***Directeur*** [Abrogée, DORS/2018-69, art. 1]

***drogue sur ordonnance*** Drogue figurant sur la Liste des drogues sur ordonnance, avec ses modifications successives, ou faisant partie d'une catégorie de drogues figurant sur cette liste; (*prescription drug*)

***emballage de sécurité*** désigne un emballage doté d'un dispositif de sûreté qui offre au consommateur une assurance raisonnable que l'emballage n'a pas été ouvert avant l'achat; (*security package*)

***Lot number*** means any combination of letters, figures, or both, by which any food or drug can be traced in manufacture and identified in distribution; (*numéro de lot*)

***manufacturer*** [Repealed, SOR/97-12, s. 1]

***manufacturer*** or ***distributor*** means a person, including an association or partnership, who under their own name, or under a trade-, design or word mark, trade name or other name, word or mark controlled by them, sells a food or drug; (*fabricant* or *distributeur*)

***official method*** means a method of analysis or examination designated as such by Minister for use in the administration of the Act and these Regulations; (*méthode officielle*)

***outer label*** means the label on or affixed to the outside of a package of a food or drug; (*étiquette extérieure*)

***prescription drug*** means a drug that is set out in the Prescription Drug List, as amended from time to time, or a drug that is part of a class of drugs that is set out in it; (*drogue sur ordonnance*)

***Prescription Drug List*** means the list established by the Minister under section 29.1 of the Act; (*Liste des drogues sur ordonnance*)

***principal display panel*** has the same meaning as in the *Consumer Packaging and Labelling Regulations*; (*espace principal*)

***security package*** means a package having a security feature that provides reasonable assurance to consumers that the package has not been opened prior to purchase. (*emballage de sécurité*)

SOR/84-300, s. 1(F); SOR/85-141, s. 1; SOR/89-455, s. 1; SOR/97-12, s. 1; SOR/2000-353, s. 1; SOR/2001-272, s. 5; SOR/2003-135, s. 1; SOR/2013-122, s. 1; SOR/2018-69, ss. 1, 27; SOR/2022-197, s. 1.

***espace principal*** S'entend au sens du *Règlement sur l'emballage et l'étiquetage des produits de consommation*; (*principal display panel*)

***étiquette extérieure*** désigne l'étiquette sur l'extérieur d'un emballage d'aliment ou de drogue, ou y apposée; (*outer label*)

***étiquette intérieure*** désigne l'étiquette sur le récipient immédiat d'un aliment ou d'une drogue, ou y apposée; (*inner label*)

***fabricant*** [Abrogée, DORS/97-12, art. 1]

***fabricant*** ou ***distributeur*** Toute personne, y compris une association ou une société de personnes, qui, sous son propre nom ou sous une marque de commerce, un dessin-marque, un logo, un nom commercial ou un autre nom, dessin ou marque soumis à son contrôle, vend un aliment ou une drogue; (*manufacturer* ou *distributor*)

***Liste des drogues sur ordonnance*** Liste établie par le ministre en vertu de l'article 29.1 de la Loi; (*Prescription Drug List*)

***Loi*** Sauf pour l'application des parties G et J, la *Loi sur les aliments et drogues*; (*Act*)

***méthode acceptable*** Méthode d'analyse ou d'examen désignée par le ministre comme étant acceptable aux fins de l'application de la Loi et du présent règlement; (*acceptable method*)

***méthode officielle*** signifie une méthode d'analyse ou d'examen désignée comme telle par le ministre pour usage dans l'application de la Loi et du présent règlement; (*official method*)

***numéro de lot*** désigne toute combinaison de lettres, de chiffres ou de lettres et de chiffres au moyen de laquelle tout aliment ou une drogue peut être retracé au cours de la fabrication et identifié au cours de la distribution. (*Lot number*)

DORS/84-300, art. 1(F); DORS/85-141, art. 1; DORS/89-455, art. 1; DORS/97-12, art. 1; DORS/2000-353, art. 1; DORS/2001-272, art. 5; DORS/2003-135, art. 1; DORS/2013-122, art. 1; DORS/2018-69, art. 1 et 27; DORS/2022-197, art. 1.

**A.01.011** The Minister shall, upon request, furnish copies of official methods.

SOR/2018-69, s. 27.

**A.01.011** Le ministre doit, sur demande, fournir des exemplaires des méthodes officielles.

DORS/2018-69, art. 27.

**A.01.012** The Minister shall, upon request, indicate that a method is acceptable or otherwise upon its submission to him for a ruling.

SOR/2018-69, s. 27.

**A.01.012** Le ministre doit, sur demande, indiquer si une méthode est acceptable ou non, lorsqu'on la lui présente en vue d'une décision.

DORS/2018-69, art. 27.

**A.01.013** Where a food, drug, vitamin or cosmetic has more than one name, whether proper or common, a reference in these Regulations to the food, drug, vitamin or cosmetic by any of its names is deemed to be a reference to the food, drug or vitamin by all of its names.

**A.01.013** Dans le présent règlement, la mention propre ou usuelle d'un aliment, d'une drogue ou d'une vitamine sous un de ses noms, renvoie à tous ses noms.

**A.01.014** When a lot number is required by these Regulations to appear on any article, container, package or label it shall be preceded by one of the following designations:

**(a)** "Lot number";

**(b)** "Lot No.";

**(c)** "Lot"; or

**(d)** "(L)".

**A.01.014** Quand, suivant le présent règlement, un numéro de lot doit paraître sur tout article, récipient, emballage ou étiquette, ce numéro doit être précédé de l'une des désignations suivantes :

**a)** « Numéro du Lot »;

**b)** « Lot n$^{o}$ »;

**c)** « Lot »; ou

**d)** « (L) ».

**A.01.015 (1)** Subject to subsection (2), any statement, information or declaration that is required by these Regulations to appear on the label of any drug shall be in either the French or the English language in addition to any other language.

**(2)** The adequate directions for use required to be shown on the inner and outer labels of a drug pursuant to subparagraph C.01.004(1)(c)(iii) shall be in both the French and English languages if the drug is available for sale without prescription in an open self-selection area.

SOR/85-140, s. 1.

**A.01.015 (1)** Sous réserve du paragraphe (2), toute mention, tout renseignement ou toute déclaration dont le présent règlement exige l'indication sur l'étiquette d'une drogue doit être soit en anglais soit en français, en plus de toute autre langue.

**(2)** Lorsqu'en vertu du sous-alinéa C.01.004(1)c)(iii), un mode d'emploi doit figurer sur les étiquettes intérieure et extérieure d'une drogue, ce mode d'emploi doit être en anglais et en français si cette drogue est disponible à la vente sans ordonnance à un point de vente libre-service.

DORS/85-140, art. 1.

**A.01.016** All information that is required by these Regulations to appear on a label of a food or a drug, other than a drug for human use in dosage form, shall be

**(a)** clearly and prominently displayed on the label; and

**(b)** readily discernible to the purchaser or consumer under the customary conditions of purchase and use.

SOR/2014-158, s. 1; SOR/2022-143, s. 1(F).

**A.01.016** Tout renseignement qui, aux termes du présent règlement, doit figurer sur l'étiquette d'un aliment ou d'une drogue autre qu'une drogue pour usage humain sous forme posologique doit :

**a)** être clairement présenté et placé bien en vue;

**b)** être facile à apercevoir, pour l'acheteur ou le consommateur, dans les conditions ordinaires d'achat et d'usage.

DORS/2014-158, art. 1; DORS/2022-143, art. 1(F).

**A.01.017** Every label of a drug for human use in dosage form shall meet the following conditions:

**(a)** the information that is required by these Regulations to appear on the label shall be

**(i)** prominently displayed on it,

**(ii)** readily discernible to the purchaser or consumer under the customary conditions of purchase and use, and

**(iii)** expressed in plain language; and

**A.01.017** Toute étiquette d'une drogue pour usage humain sous forme posologique remplit les conditions suivantes :

**a)** les renseignements qui, aux termes du présent règlement, doivent y figurer sont :

**(i)** placés bien en vue,

**(ii)** faciles à apercevoir, pour l'acheteur ou le consommateur, dans les conditions ordinaires d'achat et d'usage,

**(b)** the format of the label, including the manner in which its text and any graphics are displayed on it, shall not impede comprehension of the information referred to in paragraph (a).

SOR/2014-158, s. 2.

## Analysts; Inspectors

**A.01.020 and A.01.021** [Repealed, SOR/81-935, s. 1]

**A.01.022** An inspector shall perform the functions and duties and carry out the responsibilities in respect of foods and drugs prescribed by the Act, and these Regulations.

**A.01.023** The authority of an inspector extends to and includes the whole of Canada.

**A.01.024** The certificate of designation required pursuant to subsection 22(2) of the Act shall

**(a)** certify that the person named therein is an inspector for the purpose of the Act; and

**(b)** be signed by

**(i)** the Minister and the person named in the certificate, in the case of an inspector on the staff of the Department.

**(ii)** [Repealed, SOR/2000-184, s. 60]

SOR/80-500, s. 1; SOR/92-626, s. 1; SOR/95-548, s. 5; SOR/2000-184, s. 60; SOR/2018-69, s. 27.

**A.01.025** If authorized by a regulation made pursuant to the *Broadcasting Act*, inspectors shall act as representatives of the Canadian Radio-television and Telecommunications Commission for the purpose of enforcing the provisions of regulations made by the Canadian Radio-Television and Telecommunications Commission concerning the advertising of any article to which the *Food and Drugs Act* applies, or concerning recommendations for the prevention, treatment or cure of a disease or ailment.

SOR/2022-197, s. 2.

**A.01.026** An inspector may, for the proper administration of the Act or these Regulations, take photographs of

**(a)** any article that is referred to in subsection 23(2) of the Act;

**(b)** any place where, on reasonable grounds, he believes any article referred to in paragraph (a) is

**(iii)** formulés en langage clair;

**b)** son format, notamment la façon dont le texte et tout élément graphique sont présentés, ne doit pas nuire à la compréhension des renseignements visés à l'alinéa a).

DORS/2014-158, art. 2.

## Analystes; inspecteurs

**A.01.020 et A.01.021** [Abrogés, DORS/81-935, art. 1]

**A.01.022** Les devoirs et fonctions des inspecteurs s'exercent au titre des aliments et drogues visés par la Loi et le présent règlement.

**A.01.023** Les attributions d'un inspecteur s'étendent à tout le Canada.

**A.01.024** Le certificat visé au paragraphe 22(2) de la Loi doit :

**a)** établir que la personne qui y est nommée est un inspecteur pour les fins de la Loi; et

**b)** être signé par

**(i)** le ministre et la personne nommée au certificat, dans le cas d'un inspecteur du ministère.

**(ii)** [Abrogé, DORS/2000-184, art. 60]

DORS/80-500, art. 1; DORS/92-626, art. 1; DORS/95-548, art. 5; DORS/2000-184, art. 60; DORS/2018-69, art. 27.

**A.01.025** Lorsque les règlements d'exécution de la *Loi sur la radiodiffusion* les y autorisent, les inspecteurs doivent agir en qualité de représentants du Conseil de la radiodiffusion et des télécommunications canadiennes aux fins d'appliquer les règlements édictés par le Conseil de la radiodiffusion et des télécommunications canadiennes, relativement à la publicité de tout article qui tombe sous le coup de la *Loi sur les aliments et drogues*, ou relativement à toute recommandation quant à la prévention, au traitement ou à la guérison d'une maladie ou affection.

DORS/2022-197, art. 2.

**A.01.026** Un inspecteur peut, pour l'application de la Loi ou du présent règlement, prendre des photographies

**a)** de tout article visé au paragraphe 23(2) de la Loi;

**b)** de tout lieu où il a des motifs raisonnables de croire qu'un article visé à l'alinéa a) y est fabriqué, préparé, conservé, empaqueté ou emmagasiné; et

manufactured, prepared, preserved, packaged or stored; and

**(c)** anything that, on reasonable grounds, he believes is used or capable of being used for the manufacture, preparation, preservation, packaging or storing of any article referred to in paragraph (a).

SOR/90-814, s. 1.

**c)** de toute chose lorsqu'il a des motifs raisonnables de croire, qu'elle sert ou peut servir à la fabrication, la préparation, la conservation, l'empaquetage ou l'emmagasinage d'un article visé à l'alinéa a).

DORS/90-814, art. 1.

## Importations

**A.01.040** Subject to section A.01.044, no person shall import into Canada for sale a food or drug the sale of which in Canada would constitute a violation of the Act or these Regulations.

SOR/92-626, s. 2(F).

**A.01.041** An inspector may examine and take samples of any food or drug sought to be imported into Canada.

**A.01.042** If an inspector examines or takes a sample of a food or drug under section A.01.041, the inspector may submit it to an analyst for analysis or examination.

SOR/2017-18, s. 1(E).

**A.01.043** If an inspector, on examination of a sample of a food or drug or on receipt of a report of an analyst of the result of an analysis or examination of the sample, is of the opinion that the sale of the food or drug in Canada would constitute a violation of the Act or these Regulations, the inspector shall so notify in writing the collector of customs concerned and the importer.

SOR/84-300, s. 2(E); SOR/2017-18, s. 2.

**A.01.044 (1)** Where a person seeks to import a food or drug into Canada for sale and the sale would constitute a violation of the Act or these Regulations, that person may, if the sale of the food or drug would be in conformity with the Act and these Regulations after its relabelling or modification, import it into Canada on condition that

**(a)** the person gives to an inspector notice of the proposed importation; and

**(b)** the food or drug will be relabelled or modified as may be necessary to enable its sale to be lawful in Canada.

**(2)** No person shall sell a food or drug that has been imported into Canada under subsection (1) unless the food or drug has been relabelled or modified within three months after the importation or within such longer period as may be specified by

## Importations

**A.01.040** Sous réserve de l'article A.01.044, il est interdit d'importer pour la vente des aliments ou des drogues dont la vente au Canada enfreindrait la Loi ou le présent règlement.

DORS/92-626, art. 2(F).

**A.01.041** L'inspecteur peut examiner et prélever des échantillons de tout aliment ou drogue destinés à être importés au Canada.

**A.01.042** L'inspecteur peut référer à un analyste, pour examen, les échantillons des aliments ou drogues examinés ou prélevés en vertu de l'article A.01.041.

DORS/2017-18, art. 1(A).

**A.01.043** L'inspecteur qui estime, après examen d'un échantillon de l'aliment ou de la drogue ou réception du rapport de l'analyste, que la vente de l'aliment ou de la drogue au Canada serait contraire à la Loi ou au présent règlement en avise par écrit le percepteur des douanes ainsi que l'importateur.

DORS/84-300, art. 2(A); DORS/2017-18, art. 2.

**A.01.044 (1)** Quiconque cherche à importer pour la vente un aliment ou une drogue dont la vente enfreindrait la Loi ou le présent règlement peut, dans les cas où un nouvel étiquetage ou une modification rendrait cette vente au Canada conforme à la Loi et au présent règlement, importer cet aliment ou cette drogue pour la vente aux conditions suivantes :

**a)** l'importateur avise l'inspecteur de l'importation proposée;

**b)** les aliments ou les drogues font l'objet d'un nouvel étiquetage ou d'une modification propre à rendre légale leur vente au Canada.

**(2)** Il est interdit de vendre un aliment ou une drogue importé au Canada en vertu du paragraphe (1), à moins qu'il n'ait fait l'objet d'un nouvel étiquetage ou d'une modification dans les trois mois suivant la date de l'importation ou dans le délai plus long fixé :

**(a)** in the case of a drug, the Minister; or

**(b)** in the case of food, the Minister or the President of the Canadian Food Inspection Agency.

SOR/92-626, s. 3; SOR/95-548, s. 5; SOR/2000-184, s. 61; SOR/2000-317, s. 18; SOR/2018-69, s. 27.

## Exports

**A.01.045** A certificate referred to in section 37 of the Act shall be signed and issued by the exporter in the form set out in Appendix III.

SOR/80-318, s. 1; SOR/90-814, s. 2.

**A.01.046** An exporter that issues a certificate referred to in paragraph 37(1)(c) of the Act in respect of a drug shall retain a copy of the certificate for five years after the day on which the drug is exported.

SOR/2022-100, s. 1.

**A.01.047 (1)** For the purposes of paragraph 37(1)(d) of the Act, a drug that, by virtue of paragraph A.01.048(a), is required to be fabricated, packaged/labelled, tested, distributed or wholesaled in accordance with an establishment licence must be fabricated, packaged/labelled, tested, distributed or wholesaled by the holder of such a licence that has paid fees in connection with the licence in accordance with the *Fees in Respect of Drugs and Medical Devices Order*.

**(2)** Words and expressions used in this section have the same meaning as in subsection C.01A.001(1).

SOR/2022-100, s. 1.

**A.01.048** For the purposes of subsection 37(1.2) of the Act, the following provisions are prescribed in relation to drugs:

**(a)** the provisions of Division 1A of Part C;

**(b)** the provisions of Division 2 of Part C, except section C.02.003.2 and paragraphs C.02.009(5)(b), C.02.016(3)(b) and C.02.018(3)(c);

**(c)** sections C.03.001 to C.03.013; and

**(d)** the provisions of Division 4 of Part C, except

**(i)** sections C.04.003, C.04.019, C.04.020, C.04.054, C.04.055, C.04.080, C.04.082 to C.04.085 and C.04.091,

**(ii)** sections C.04.101 and C.04.102, paragraph C.04.117(c), sections C.04.118 to C.04.120, C.04.126 and C.04.127, paragraph C.04.128(a) and sections

**a)** par le ministre, s'il s'agit d'une drogue;

**b)** par le ministre ou le président de l'Agence canadienne d'inspection des aliments, s'il s'agit d'un aliment.

DORS/92-626, art. 3; DORS/95-548, art. 5; DORS/2000-184, art. 61; DORS/2000-317, art. 18; DORS/2018-69, art. 27.

## Exportation

**A.01.045** Le certificat visé à l'article 37 de la Loi doit revêtir la forme prévue à l'appendice III et être délivré et signé par l'exportateur.

DORS/80-318, art. 1; DORS/90-814, art. 2.

**A.01.046** L'exportateur qui délivre le certificat visé à l'alinéa 37(1)c) de la Loi à l'égard d'une drogue en conserve une copie pendant cinq ans après la date à laquelle cette drogue est exportée.

DORS/2022-100, art. 1.

**A.01.047 (1)** Pour l'application de l'alinéa 37(1)d) de la Loi, la drogue qui, aux termes de l'alinéa A.01.048a), doit être manufacturée, emballée-étiquetée, analysée, distribuée ou vendue en gros conformément à une licence d'établissement doit l'être par le titulaire de cette licence qui s'est acquitté du prix à payer relativement à celle-ci conformément à l'*Arrêté sur les prix à payer à l'égard des drogues et instruments médicaux*.

**(2)** Les termes du présent article s'entendent au sens du paragraphe C.01A.001(1).

DORS/2022-100, art. 1.

**A.01.048** Pour l'application du paragraphe 37(1.2) de la Loi, les dispositions ci-après s'appliquent concernant les drogues :

**a)** les dispositions du titre 1A de la partie C;

**b)** les dispositions du titre 2 de la partie C, à l'exception de l'article C.02.003.2 et des alinéas C.02.009(5)b), C.02.016(3)b) et C.02.018(3)c);

**c)** les articles C.03.001 à C.03.013;

**d)** les dispositions du titre 4 de la partie C, à l'exception des dispositions suivantes :

**(i)** les articles C.04.003, C.04.019, C.04.020, C.04.054, C.04.055, C.04.080, C.04.082 à C.04.085 et C.04.091,

**(ii)** les articles C.04.101 et C.04.102, l'alinéa C.04.117c), les articles C.04.118 à C.04.120, C.04.126 et C.04.127, l'alinéa C.04.128a) et les articles

C.04.137, C.04.138, C.04.146, C.04.147, C.04.169, C.04.170, C.04.187 and C.04.190,

**(iii)** sections C.04.218 to C.04.220 and C.04.239 to C.04.241,

**(iv)** sections C.04.555, C.04.556, C.04.561, C.04.562, C.04.567, C.04.568, C.04.573, C.04.574, C.04.578, C.04.580, C.04.581, C.04.588, C.04.589, C.04.593, C.04.595 and C.04.596, and

**(v)** sections C.04.601, C.04.602, C.04.650 to C.04.656, C.04.676, C.04.677 and C.04.680 to C.04.683.

SOR/2022-100, s. 1.

C.04.137, C.04.138, C.04.146, C.04.147, C.04.169, C.04.170, C.04.187 et C.04.190,

**(iii)** les articles C.04.218 à C.04.220 et C.04.239 à C.04.241,

**(iv)** les articles C.04.555, C.04.556, C.04.561, C.04.562, C.04.567, C.04.568, C.04.573, C.04.574, C.04.578, C.04.580, C.04.581, C.04.588, C.04.589, C.04.593, C.04.595 et C.04.596,

**(v)** les articles C.04.601, C.04.602, C.04.650 à C.04.656, C.04.676, C.04.677 et C.04.680 à C.04.683.

DORS/2022-100, art. 1.

## Transhipments

**A.01.049** For the purposes of paragraph 38(c) of the Act, all drugs must be in bond.

SOR/2022-100, s. 1.

## Transbordements

**A.01.049** Pour l'application de l'alinéa 38c) de la Loi, toute drogue doit être en douane.

DORS/2022-100, art. 1.

## Sampling

**A.01.050** When taking a sample of an article under paragraph 23(2)(i) of the Act, an inspector shall inform the owner of the article or the person from whom the sample is being obtained of the inspector's intention to submit the sample or a part of it to an analyst for analysis or examination, and

**(a)** where, in the opinion of the inspector, division of the procured quantity would not interfere with analysis or examination

**(i)** divide the quantity into three parts,

**(ii)** identify the three parts as the owner's portion, the sample, and the duplicate sample and where only one part bears the label, that part shall be identified as the sample,

**(iii)** seal each part in such a manner that it cannot be opened without breaking the seal, and

**(iv)** deliver the part identified as the owner's portion to the owner or the person from whom the sample was obtained and forward the sample and the duplicate sample to an analyst for analysis or examination; or

**(b)** where, in the opinion of the inspector, division of the procured quantity would interfere with analysis or examination

**(i)** identify the entire quantity as the sample,

## Échantillons

**A.01.050** L'inspecteur qui prélève un échantillon d'un article en vertu de l'alinéa 23(2)i) de la Loi avise le propriétaire de l'article ou la personne de qui il a obtenu l'échantillon de son intention de soumettre tout ou partie de l'échantillon à un analyste pour analyse ou examen, et :

**a)** lorsque, de l'avis de l'inspecteur, la division de la quantité obtenue ne nuirait pas à l'examen ou à l'analyse, il doit

**(i)** diviser la quantité prélevée en trois parties,

**(ii)** identifier les trois parties comme la partie du propriétaire, l'échantillon et le double de l'échantillon, et si une partie seulement porte l'étiquette, cette partie doit constituer l'échantillon,

**(iii)** sceller chaque partie de manière qu'elle ne puisse être ouverte sans briser le sceau, et

**(iv)** remettre la partie identifiée comme la partie du propriétaire, au propriétaire ou à la personne chez qui l'échantillon a été prélevé et envoyer l'échantillon ainsi que le double à un analyste pour l'examen ou analyse; ou

**b)** lorsque, de l'avis de l'inspecteur, la division de la quantité prélevée nuirait à l'analyse ou à l'examen, il doit

**(i)** identifier la quantité entière de l'échantillon,

**(ii)** seal the sample in such a manner that it cannot be opened without breaking the seal, and

**(iii)** forward the sample to an analyst for analysis or examination.

SOR/90-814, s. 3; SOR/2021-46, s. 1.

**A.01.051** Where the owner or the person from whom the sample was obtained objects to the procedure followed by an inspector under section A.01.050 at the time the sample was obtained, the inspector shall follow both procedures set out in that section if the owner or the person from whom the sample was obtained supplies him with a sufficient quantity of the article.

## Tariff of Fees

**A.01.060** The cost of analysing a sample other than for the purpose of the Act, for a department of the Government of Canada for the purpose of legal action is $15.

## Labelling of Food and Drugs in Pressurized Containers

**A.01.060.1** In sections A.01.061 and A.01.062,

***flame projection*** means the ability of the pressurized contents of an aerosol container to ignite and the length of that ignition, when tested in accordance with official method DO-30, *Determination of Flame Projection*, dated October 15, 1981; (*projection de flamme*)

***flashback*** means that part of the flame projection that extends from its point of ignition back to the aerosol container when tested in accordance with official method DO-30, *Determination of Flame Projection*, dated October 15, 1981; (*retour de flamme*)

***principal display panel*** [Repealed, SOR/2000-353, s. 2]

SOR/92-15, s. 1; SOR/2000-353, s. 2; SOR/2001-272, s. 6.

**A.01.061 (1)** Subject to section A.01.063, in the case of a food or a drug packaged in a disposable metal container designed to release pressurized contents by use of a manually operated valve that forms an integral part of the container, the principal display panel of the inner and outer labels of the food or drug shall display, in accordance with sections 15 to 18 of the *Consumer Chemicals and Containers Regulations*, as they read on September 30, 2001, the following information:

**(ii)** sceller l'échantillon de manière qu'il ne puisse être ouvert sans briser le sceau, et

**(iii)** envoyer l`échantillon à un analyste pour analyse ou examen.

DORS/90-814, art. 3; DORS/2021-46, art. 1.

**A.01.051** Lorsque le propriétaire ou la personne chez qui l'échantillon est prélevé s'oppose à la méthode suivie par un inspecteur en vertu de l'article A.01.050 au moment où l'échantillon est prélevé, l'inspecteur doit suivre les deux méthodes énoncées dans ledit article si le propriétaire ou la personne chez qui l'échantillon a été prélevé lui fournit une quantité suffisante de l'objet en cause.

## Honoraires d'analyse

**A.01.060** Les honoraires d'analyse de tout échantillon, autrement qu'aux fins de la présente Loi ou pour le compte d'un autre ministère du gouvernement du Canada aux fins de poursuites judiciaires, sont de 15 $.

## Étiquetage des contenants d'aliments et de drogues sous pression

**A.01.060.1** Les définitions qui suivent s'appliquent aux articles A.01.061 et A.01.062.

***espace principal*** [Abrogée, DORS/2000-353, art. 2]

***projection de la flamme*** Détermination de la longueur du jet enflammé du contenu sous pression expulsé d'un contenant aérosol lorsque celui-ci est soumis à un essai selon la méthode officielle DO-30, intitulée *Détermination de la projection de la flamme*, en date du 15 octobre 1981. (*flame projection*)

***retour de flamme*** Partie de la projection de la flamme qui va du point d'inflammation jusqu'au contenant aérosol lorsque celui-ci est soumis à un essai selon la méthode officielle DO-30, intitulée *Détermination de la projection de la flamme*, en date du 15 octobre 1981. (*flashback*)

DORS/92-15, art. 1; DORS/2000-353, art. 2; DORS/2001-272, art. 6.

**A.01.061 (1)** Sous réserve de l'article A.01.063, l'étiquette intérieure et l'étiquette extérieure d'un aliment ou d'une drogue emballés dans un contenant métallique non réutilisable, conçu pour permettre de libérer le contenu sous pression au moyen d'une valve actionnée à la main et faisant partie intégrante du contenant, doivent porter dans leur espace principal, conformément aux articles 15 à 18 du *Règlement sur les produits chimiques et contenants destinés aux consommateurs*, dans sa version en vigueur le 30 septembre 2001 :

**(a)** the hazard symbol set out in Column II of item 10 of Schedule II to those Regulations, accompanied by the signal word "CAUTION / ATTENTION"; and

**(b)** the primary hazard statement "CONTAINER MAY EXPLODE IF HEATED. / CE CONTENANT PEUT EXPLOSER S'IL EST CHAUFFÉ.".

**(2)** Subject to section A.01.063, one panel of the inner and outer labels of a food or drug referred to in subsection (1) shall display, in the size required by paragraph 19(1)(b) of the *Consumer Chemicals and Containers Regulations*, as they read on September 30, 2001, the following additional hazard statement:

"Contents under pressure. Do not place in hot water or near radiators, stoves or other sources of heat. Do not puncture or incinerate container or store at temperatures over 50°C.

Contenu sous pression. Ne pas mettre dans l'eau chaude ni près des radiateurs, poêles ou autres sources de chaleur. Ne pas percer le contenant, ni le jeter au feu, ni le conserver à des températures dépassant 50 °C."

**(3)** The requirements of subsections (1) and (2) do not apply in relation to a drug or food if the Minister determines that the design of the container, the materials used in its construction or the incorporation of a safety device eliminate its potential hazard.

SOR/81-616, s. 1; SOR/85-1023, s. 1; SOR/92-15, s. 2; SOR/2001-272, s. 7; SOR/2018-69, s. 2.

**A.01.062 (1)** Subject to section A.01.063, if a food or drug is packaged in a container described in subsection A.01.061(1) and has a flame projection of a length set out in column I of any of items 1 to 3 of the table to this subsection or a flashback as set out in column I of item 4 of that table, as determined by official method DO-30, *Determination of Flame Projection*, dated October 15, 1981, the principal display panel of the inner and outer labels of the food or drug shall display, in accordance with sections 15 to 18 of the *Consumer Chemicals and Containers Regulations*, as they read on September 30, 2001, the following information:

**(a)** the hazard symbol set out in Column II of the same item;

**(b)** in both official languages, the signal word set out in Column III of the same item; and

**(c)** in both official languages, the primary hazard statement set out in Column IV of the same item.

**a)** le signal de danger figurant à la colonne II de l'article 10 de l'annexe II de ce règlement et le mot indicateur « ATTENTION / CAUTION »;

**b)** la mention de danger principale suivante : « CE CONTENANT PEUT EXPLOSER S'IL EST CHAUFFÉ. / CONTAINER MAY EXPLODE IF HEATED. ».

**(2)** Sous réserve de l'article A.01.063, l'étiquette intérieure et l'étiquette extérieure d'un aliment ou d'une drogue visés au paragraphe (1) doivent porter dans un espace quelconque, selon les dimensions prévues à l'alinéa 19(1)b) du *Règlement sur les produits chimiques et contenants destinés aux consommateurs*, dans sa version en vigueur le 30 septembre 2001, la mention de danger additionnelle suivante :

« Contenu sous pression. Ne pas mettre dans l'eau chaude ni près des radiateurs, poêles ou autres sources de chaleur. Ne pas percer le contenant, ni le jeter au feu, ni le conserver à des températures dépassant 50 °C.

Contents under pressure. Do not place in hot water or near radiators, stoves or other sources of heat. Do not puncture or incinerate container or store at temperatures over 50°C. »

**(3)** Les exigences des paragraphes (1) et (2) ne s'appliquent pas à l'égard d'une drogue ou d'un aliment si le ministre conclut que la conception du contenant, les matériaux utilisés pour la fabrication de ce dernier ou la présence d'un dispositif de sécurité éliminent le danger éventuel que présente le contenant.

DORS/81-616, art. 1; DORS/85-1023, art. 1; DORS/92-15, art. 2; DORS/2001-272, art. 7; DORS/2018-69, art. 2.

**A.01.062 (1)** Sous réserve de l'article A.01.063, l'étiquette intérieure et l'étiquette extérieure d'un aliment ou d'une drogue qui est emballé dans un contenant visé au paragraphe A.01.061(1) et qui présente une projection de la flamme d'une longueur visée à la colonne I de l'un des articles 1 à 3 du tableau du présent paragraphe ou un retour de flamme indiqué à la colonne I de l'article 4 de ce tableau, déterminés selon la méthode officielle DO-30, intitulée *Détermination de la projection de la flamme*, en date du 15 octobre 1981, doivent porter dans leur espace principal, conformément aux articles 15 à 18 du *Règlement sur les produits chimiques et contenants destinés aux consommateurs*, dans sa version en vigueur le 30 septembre 2001 :

**a)** le signal de danger correspondant qui figure à la colonne II;

**b)** dans les deux langues officielles, le mot indicateur correspondant qui est précisé à la colonne III;

TABLE IS NOT DISPLAYED, SEE SOR/81-616, S. 2; SOR/92-15, S. 3

**(2)** In addition to the requirements of subsection (1), one panel of the inner label and outer labels of a food or drug referred to in that subsection shall display, in the size required by paragraph 19(1)(b) of the *Consumer Chemicals and Containers Regulations*, as they read on September 30, 2001, the following additional hazard statement:

"Do not use in presence of open flame or spark.

Ne pas utiliser en présence d'une flamme nue ou d'étincelles."

SOR/81-616, s. 2; SOR/82-429, s. 1; SOR/85-1023, s. 2; SOR/92-15, s. 3; SOR/2001-272, s. 8.

**A.01.063 (1)** Where the labelled net contents of a container of a food or drug described in subsection A.01.061(1) or A.01.062(1) does not exceed 60 millilitres or 60 grams, the inner label may show only the information described in paragraph A.01.061(1)(a) or paragraphs A.01.062(1)(a) and (b), as the case may be.

**(2)** Where the labelled net contents of a container of a food or drug described in subsection A.01.061(1) or A.01.062(1) exceeds 60 millilitres or 60 grams but does not exceed 120 millilitres or 120 grams, the inner label may show only the information described in subsection A.01.061(1) or subsection A.01.062(1), as the case may be.

**(3)** Where the labelled net quantity, in a container, of a food or drug referred to in subsection A.01.061(1) or A.01.062(1) is less than 30 mL or 30 g, the hazard symbol shall be of such size as to be capable of being circumscribed by a circle with a diameter of at least 6 mm.

**(4)** Where a container of a food or drug, described in subsection (1) or (2) is sold in a package, the outer label may show only the information described in subsection A.01.061(2) and, where applicable, subsection A.01.062(2).

SOR/81-616, s. 2; SOR/92-15, s. 4.

**A.01.064** [Repealed, SOR/93-243, s. 2]

**c)** dans les deux langues officielles, la mention de danger principale correspondante qui est prévue à la colonne IV.

CE GRAPHIQUE N'EST PAS EXPOSÉ, VOIR DORS/81-616, ART. 2; DORS/92-15, ART. 3

**(2)** En plus des exigences énoncées au paragraphe (1), l'étiquette intérieure et l'étiquette extérieure d'un aliment ou d'une drogue visés à ce paragraphe doivent porter dans un espace quelconque, selon les dimensions prévues à l'alinéa 19(1)b) du *Règlement sur les produits chimiques et contenants destinés aux consommateurs*, dans sa version en vigueur le 30 septembre 2001, la mention de danger additionnelle suivante :

« Ne pas utiliser en présence d'une flamme nue ou d'étincelles.

Do not use in presence of open flame or spark. »

DORS/81-616, art. 2; DORS/82-429, art. 1; DORS/85-1023, art. 2; DORS/92-15, art. 3; DORS/2001-272, art. 8.

**A.01.063 (1)** Lorsque le contenu net étiqueté d'un contenant d'un aliment ou d'une drogue visés aux paragraphes A.01.061(1) ou A.01.062(1) ne dépasse pas 60 millilitres ou 60 grammes, l'étiquette intérieure peut ne porter que les renseignements exigés à l'alinéa A.01.061(1)a) ou aux alinéas A.01.062(1)a) et b), selon le cas.

**(2)** Lorsque le contenu net étiqueté d'un contenant d'un aliment ou d'une drogue visés aux paragraphes A.01.061(1) ou A.01.062(1) est supérieur à 60 millilitres ou 60 grammes mais ne dépasse pas 120 millilitres ou 120 grammes, l'étiquette intérieure peut ne porter que les renseignements exigés aux paragraphes A.01.061(1) ou A.01.062(1), selon le cas.

**(3)** Lorsque la quantité nette figurant sur l'étiquette d'un contenant d'un aliment ou d'une drogue visés aux paragraphes A.01.061(1) ou A.01.062(1) est inférieure à 30 mL ou à 30 g, le signal de danger doit être d'une taille telle qu'il peut être circonscrit par un cercle ayant un diamètre d'au moins 6 mm.

**(4)** Lorsqu'un contenant d'un aliment ou d'une drogue décrit aux paragraphes (1) ou (2) est vendu dans un emballage, l'étiquette extérieure peut ne porter que les renseignements exigés au paragraphe A.01.061(2) et, s'il y a lieu, au paragraphe A.01.062(2).

DORS/81-616, art. 2; DORS/92-15, art. 4.

**A.01.064** [Abrogé, DORS/93-243, art. 2]

# Security Packaging

**A.01.065 (1)** In this section, ***drug for human use*** means a drug that is intended for human use, whether the drug is

**(a)** a mouthwash;

**(b)** to be inhaled, ingested or inserted into the body; or

**(c)** for ophthalmic use.

**(2)** Subject to subsection (3), no person shall sell or import a drug for human use that is packaged and available to the general public in a self-service display, unless the drug is contained in a security package.

**(3)** Subsection (2) does not apply to lozenges.

**(4)** Subject to subsection (5), a statement or illustration that draws attention to the security feature of the security package referred to in subsection (2) shall be carried

**(a)** on the inner label of the package; and

**(b)** if the security feature is a part of the outer package, on the outer label.

**(5)** Subsection (4) does not apply if the security feature of a security package is self-evident and is an integral part of the immediate product container.

SOR/85-141, s. 2; SOR/88-323, s. 1; SOR/92-664, s. 1.

# Exemptions

## Application

**A.01.066** Sections A.01.067 and A.01.068 do not apply to

**(a)** a drug included in Schedule I, II, III, IV or V to the *Controlled Drugs and Substances Act*; or

**(b)** a prescription drug.

SOR/2007-288, s. 1; SOR/2013-122, s. 2.

## Advertising

**A.01.067** A drug is exempt from subsection 3(1) of the Act with respect to its advertisement to the general public as a preventative, but not as a treatment or cure, for any

# Emballage de sécurité

**A.01.065 (1)** Pour l'application du présent article, ***drogue pour usage humain*** s'entend d'une drogue destinée à la consommation humaine, qu'elle soit sous forme de :

**a)** rince-bouche;

**b)** drogue pour usage par inhalation, ingestion ou insertion;

**c)** drogue pour usage ophtalmique.

**(2)** Sous réserve du paragraphe (3), il est interdit de vendre ou d'importer une drogue pour usage humain qui est emballée et qui est offerte à un point de vente libre-service accessible au public, à moins qu'elle ne soit contenue dans un emballage de sécurité.

**(3)** Le paragraphe (2) ne s'applique pas aux pastilles.

**(4)** Sous réserve du paragraphe (5), une mention ou une illustration qui attire l'attention sur le dispositif de sûreté de l'emballage visé au paragraphe (2) doit figurer :

**a)** d'une part, sur l'étiquette intérieure de l'emballage;

**b)** d'autre part, sur l'étiquette extérieure de l'emballage si le dispositif fait partie de l'emballage extérieur.

**(5)** Le paragraphe (4) ne s'applique pas dans le cas où le dispositif est évident et fait partie intégrante du récipient immédiat de la drogue.

DORS/85-141, art. 2; DORS/88-323, art. 1; DORS/92-664, art. 1.

# Exemptions

## Application

**A.01.066** Les articles A.01.067 et A.01.068 ne s'appliquent pas aux drogues suivantes :

**a)** toute drogue qui est inscrite aux annexes I, II, III, IV ou V de la *Loi réglementant certaines drogues et autres substances*;

**b)** toute drogue sur ordonnance.

DORS/2007-288, art. 1; DORS/2013-122, art. 2.

## Publicité

**A.01.067** Est exemptée de l'application du paragraphe 3(1) de la Loi toute drogue dont la publicité est faite, auprès du grand public, à titre de mesure préventive — mais non à titre de traitement ou de moyen de guérison

of the diseases, disorders or abnormal physical states referred to in Schedule A.1 to the Act.

SOR/2007-288, s. 1; SOR/2021-46, s. 10.

## Sale

**A.01.068** A drug is exempt from subsection 3(2) of the Act with respect to its sale by a person where the drug is represented by label or is advertised by that person to the general public as a preventative, but not as a treatment or cure, for any of the diseases, disorders or abnormal physical states referred to in Schedule A.1 to the Act.

SOR/2007-288, s. 1; SOR/2021-46, s. 10.

— d'une maladie, d'un désordre ou d'un état physique anormal énuméré à l'annexe A.1 de la Loi.

DORS/2007-288, art. 1; DORS/2021-46, art. 10.

## Vente

**A.01.068** Est exemptée de l'application du paragraphe 3(2) de la Loi, en ce qui concerne sa vente par une personne, à titre de mesure préventive — mais non à titre de traitement ou de moyen de guérison — d'une maladie, d'un désordre ou d'un état physique anormal énuméré à l'annexe A.1 de la Loi, toute drogue qui est représentée par une étiquette ou dont la publicité auprès du grand public est faite par la personne en cause.

DORS/2007-288, art. 1; DORS/2021-46, art. 10.

# PART B

# Foods

## DIVISION 1

## General

**B.01.001 (1)** In this Part,

***agricultural chemical*** means any substance that is used, or represented for use, in or on a food during its production, storage or transport, and whose use results, or may reasonably be expected to result, in a residue, component or derivative of that substance in or on a food and includes any pest control product as defined in subsection 2(1) of the *Pest Control Products Act*, plant growth regulator, fertilizer or any adjuvant or carrier used with that substance. This definition does not include any

**(a)** food additive that is listed in, and used in accordance with, the tables to section B.16.100,

**(b)** nutritive substance that is used, recognized or commonly sold as food or as an ingredient of food,

**(c)** vitamin, mineral nutrient or amino acid,

**(c.1)** supplemental ingredient,

**(d)** essential oil, flavouring preparation, natural extractive, oleoresin, seasoning or spice,

**(e)** food packaging material or any substance of which that material is composed, or

# PARTIE B

# Aliments

## TITRE 1

## Dispositions générales

**B.01.001 (1)** Dans la présente partie,

***acides gras monoinsaturés***, ***graisses monoinsaturées***, ***gras monoinsaturés***, ***lipides monoinsaturés*** ou ***monoinsaturés*** Acides gras *cis*-monoinsaturés; (*monounsaturated fatty acids*, *monounsaturated fat*, *monounsaturates* or *monounsaturated*)

***acides gras polyinsaturés***, ***graisses polyinsaturées***, ***gras polyinsaturés***, ***lipides polyinsaturés*** ou ***polyinsaturés*** Acides gras polyinsaturés à interruption *cis*-méthylénique; (*polyunsaturated fatty acids*, *polyunsaturated fat*, *polyunsaturates* or *polyunsaturated*)

***acides gras polyinsaturés oméga-3***, ***graisses polyinsaturées oméga-3***, ***gras polyinsaturés oméga-3***, ***lipides polyinsaturés oméga-3***, ***polyinsaturés oméga-3*** ou ***oméga-3*** Selon le cas :

**a)** acide 9-*cis*, 12-*cis*, 15-*cis* octadécatriénoïque ou acide α-linolénique;

**b)** acide 8-*cis*, 11-*cis*, 14-*cis*, 17-*cis* éicosatétraénoïque;

**c)** acide 5-*cis*, 8-*cis*, 11-*cis*, 14-*cis*, 17-*cis* éicosapentaénoïque ou AEP;

**d)** acide 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis*, 19-*cis* docosapentaénoïque;

**(f)** drug recommended for administration to animals that may be consumed as food; (*produit chimique agricole*)

***available display surface***, in respect of a prepackaged product, means

**(a)** the bottom of an ornamental container or the total surface area of both sides of a tag attached to the ornamental container, whichever is greater,

**(b)** the total surface area of both sides of a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, and

**(c)** the total surface area of any other package, excluding the bottom if the contents of the package leak out or are damaged when the package is turned over,

but does not include

**(d)** any area of a package on which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase,

**(e)** any part of a package that is intended to be destroyed when it is opened, other than a package of a food that is intended to be consumed by one person at a single eating occasion, or

**(f)** the area occupied by the universal product code; (*surface exposée disponible*)

***close proximity***, in respect of information that is shown on a label or a sign, means immediately adjacent to the information and without any intervening printed, written or graphic material; (*à proximité*)

***common name*** means, with reference to a food,

**(a)** the name of the food printed in boldface type, but not in italics, in a provision of these Regulations,

**(b)** the name prescribed by any other regulation, or

**(c)** if the name of the food is not so printed or prescribed, the name by which the food is generally known or a name that is not generic and that describes the food; (*nom usuel*)

***Common Names for Ingredients and Components Document*** means the document entitled *Common*

**e)** acide 4-*cis*, 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis*, 19-*cis* docosahexaénoïque ou ADH; (*omega-3 polyunsaturated fatty acids*, *omega-3 polyunsaturated fat*, *omega-3 polyunsaturates*, *omega-3 polyunsaturated* or *omega-3*)

***acides gras polyinsaturés oméga-6***, ***graisses polyinsaturées oméga-6***, ***gras polyinsaturés oméga-6***, ***lipides polyinsaturés oméga-6***, ***polyinsaturés oméga-6*** ou ***oméga-6*** Selon le cas :

**a)** acide 9-*cis*, 12-*cis* octadécadiénoïque ou acide linoléique;

**b)** acide 6-*cis*, 9-*cis*, 12-*cis* octadécatriénoïque;

**c)** acide 8-*cis*, 11-*cis*, 14-*cis* éicosatriénoïque ou acide di-homo-γ-linolénique;

**d)** acide 5-*cis*, 8-*cis*, 11-*cis*, 14-*cis* éicosatétraénoïque ou acide arachidonique;

**e)** acide 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis* docosatétraénoïque;

**f)** acide 4-*cis*, 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis* docosapentaénoïque; (*omega-6 polyunsaturated fatty acids*, *omega-6 polyunsaturated fat*, *omega-6 polyunsaturates*, *omega-6 polyunsaturated* or *omega-6*)

***acides gras saturés***, ***graisses saturées***, ***gras saturés***, ***lipides saturés*** ou ***saturés*** Acides gras ne contenant aucune liaison double; (*saturated fatty acids*, *saturated fat*, *saturates* or *saturated*)

***acides gras trans***, ***graisses trans***, ***gras trans***, ***lipides trans*** ou ***trans*** Acides gras insaturés qui contiennent une ou plusieurs liaisons doubles isolées ou non conjuguées de configuration *trans*; (*trans fatty acids*, *trans fat* or *trans*)

***additif alimentaire*** s'entend de toute substance dont l'emploi est tel ou peut vraisemblablement être tel que cette substance ou ses sous-produits sont intégrés à un aliment ou en modifient les caractéristiques, à l'exclusion de ce qui suit :

**a)** toute substance nutritive qui est employée, reconnue ou vendue couramment comme substance alimentaire ou comme ingrédient d'un aliment,

**b)** vitamines, minéraux nutritifs et acides aminés, autres que ceux qui sont énumérés aux tableaux du Titre 16,

**b.1)** ingrédients supplémentaires,

*Names for Ingredients and Components*, prepared by the Canadian Food Inspection Agency and published on its website, as amended from time to time; (*document sur les noms usuels d'ingrédients et de constituants*)

***component*** means an individual unit of food that is combined as an individual unit of food with one or more other individual units of food to form an ingredient; (*constituant*)

***daily value*** means, in respect of a nutrient, the quantity applicable to the nutrient according to subsection B.01.001.1(2); (*valeur quotidienne*)

***Directory of NFT Formats*** means the document entitled *Nutrition Labelling – Directory of Nutrition Facts Table Formats* published by the Government of Canada on its website, as amended from time to time; (*Répertoire des modèles de TVN*)

***Directory of Nutrition Symbol Specifications*** means the document entitled *Nutrition Labelling — Directory of Nutrition Symbol Specifications*, published by the Government of Canada on its website, as amended from time to time; (*Répertoire des spécifications des symboles nutritionnels*)

***durable life*** means the period, commencing on the day on which a prepackaged product is packaged for retail sale, during which the product, when it is stored under conditions appropriate to that product, will retain, without any appreciable deterioration, its normal wholesomeness, palatability, nutritional value and any other qualities claimed for it by the manufacturer; (*durée de conservation*)

***durable life date*** means the date on which the durable life of a prepackaged product ends; (*date limite de conservation*)

***energy value*** means, in respect of a food, the amount of energy made available to a person's body when the chemical constituents of the food, including protein, fat, carbohydrate and alcohol, are metabolized following ingestion of the food by the person; (*valeur énergétique*)

***extended meat product*** means a meat product to which a meat product extender has been added; (*produit de viande avec allongeur*)

***extended poultry product*** means a poultry product to which a poultry product extender has been added; (*produit de volaille avec allongeur*)

***fish product*** means fish or prepared fish; (*produit de poisson*)

**c)** épices, assaisonnements, préparations aromatisantes, essences, oléorésines et extraits naturels,

**d)** produits chimiques agricoles autres que ceux visés aux tableaux du titre 16,

**e)** matériaux d'emballage des aliments ou toute substance qui entre dans leur composition, et

**f)** produits pharmaceutiques recommandés pour les animaux dont la chair peut être consommée par l'homme; (*food additive*)

***agent édulcorant*** Vise notamment tout aliment qui fait l'objet d'une norme énoncée dans le titre 18, mais non les additifs alimentaires visés aux tableaux du titre 16; (*sweetening agent*)

***agent gélatinisant*** désigne la gélatine, l'agar-agar et la carragénine; (*gelling agent*)

***aliment non normalisé*** désigne tout aliment pour lequel la présente partie ne prescrit pas de norme; (*unstandardized food*)

***aliment supplémenté*** Produit préemballé qui appartient à une catégorie d'aliments figurant à la colonne 1 de la Liste des catégories autorisées d'aliments supplémentés et auquel a été ajouté un ingrédient supplémentaire, à l'exclusion des aliments suivants :

**a)** les *aliments à usage diététique spécial* au sens de l'article B.24.001 qui sont visés à l'un ou l'autre des alinéas B.24.003(1)f) à f.2) et h) à j), même s'ils sont également des aliments sans gluten visés à l'alinéa B.24.003(1)g);

**b)** les aliments étiquetés ou annoncés comme pouvant être consommés par :

**(i)** des *bébés* au sens de l'article B.25.001,

**(ii)** des enfants âgés d'au moins un an mais de moins de quatre ans,

**(iii)** des femmes enceintes ou qui allaitent;

**c)** les aliments ci-après qui figurent à la colonne I du tableau de l'article D.03.002 :

**(i)** ceux qui figurent à l'un des articles 1, 2.1, 2.2, 4, 5, 7, 8, 9.1, 10 à 13, 15, 17 à 19, 21 à 25 et 27,

**(ii)** la glace préemballée;

**d)** les aliments qui n'ont pas été transformés ou qui l'ont minimalement été;

***flavouring preparation*** includes any food for which a standard is provided in Division 10; (*préparation aromatisante*)

***food additive*** means any substance the use of which results, or may reasonably be expected to result, in it or its by-products becoming a part of or affecting the characteristics of a food, but does not include

**(a)** any nutritive material that is used, recognized or commonly sold as an article or ingredient of food;

**(b)** vitamins, mineral nutrients and amino acids, other than those listed in the tables to Division 16,

**(b.1)** supplemental ingredients;

**(c)** spices, seasonings, flavouring preparations, essential oils, oleoresins and natural extractives;

**(d)** agricultural chemicals, other than those listed in the tables to Division 16,

**(e)** food packaging materials and components thereof; and

**(f)** drugs recommended for administration to animals that may be consumed as food; (*additif alimentaire*)

***food colour*** means any colouring agent that is referred to in section 2 of the *Marketing Authorization for Food Additives That May Be Used as Colouring Agents*; (*colorant alimentaire*)

***fully hydrogenated***, in respect of a fat or oil, means a fat or oil that is hydrogenated and has an iodine value of 4 or less; (*entièrement hydrogénée*)

***functional substitute for a sweetening agent*** means, in respect of a prepackaged product, a food — other than any sweetener or sweetening agent, including any sugars — that replaces a sweetening agent and that has one or more of the functions of the sweetening agent including, sweetening, thickening, texturing or caramelizing; (*substitut fonctionnel d'un agent édulcorant*)

***gelling agent*** means gelatin, agar and carrageenan; (*agent gélatinisant*)

***ingredient*** means an individual unit of food that is combined as an individual unit of food with one or more other individual units of food to form an integral unit of food that is sold as a prepackaged product; (*ingrédient*)

***list of cautionary statements*** means the list shown on the label of a supplemented food in accordance with subsection B.29.020(1); (*liste des mises en garde*)

**e)** les boissons dont la teneur en alcool est de plus de 0,5 %; (*supplemented food*)

***allongeur de produit de viande*** désigne un aliment qui est source de protéines et qui est présenté comme devant servir à augmenter le volume de produits de viande; (*meat product extender*)

***allongeur de produit de volaille*** désigne un aliment qui est source de protéines et qui est présenté comme devant servir à augmenter le volume de produits de volaille; (*poultry product extender*)

***apport nutritionnel recommandé pondéré*** Relativement à une vitamine ou à un minéral nutritif figurant à la colonne I du tableau II du titre 1 de la partie D ou à la colonne I du tableau II du titre 2 de cette partie, la quantité indiquée dans la colonne III; (*weighted recommended nutrient intake*)

***apport quotidien recommandé*** [Abrogée, DORS/2016-305, art. 1]

***à proximité*** À l'égard d'un renseignement figurant sur une étiquette ou un écriteau, qui est situé immédiatement à côté de celui-ci, sans texte imprimé ou écrit ni signe graphique intercalé; (*close proximity*)

***autorisation de mise en marché*** Autorisation de mise en marché délivrée par le ministre en vertu du paragraphe 30.3(1) de la Loi; (*marketing authorization*)

***bœuf attendri mécaniquement*** Bœuf coupé solide non cuit conditionné de l'une des façons suivantes :

**a)** sa surface est affaiblie du fait qu'elle est perforée par des lames, des aiguilles ou tout autre instrument similaire;

**b)** une marinade ou toute autre solution attendrissante y est injectée; (*mechanically tenderized beef*)

***colorant alimentaire*** Tout colorant visé à l'article 2 de l'*Autorisation de mise en marché d'additifs alimentaires comme colorants*. (*food colour*)

***constituant*** désigne une unité alimentaire alliée, en tant qu'élément alimentaire individuel, à une ou plusieurs autres unités alimentaires pour former un ingrédient; (*component*)

***date limite de conservation*** désigne la date où la durée de conservation d'un produit préemballé prend fin; (*durable life date*)

***List of Contaminants and Other Adulterating Substances in Foods*** means the *List of Contaminants and Other Adulterating Substances in Foods*, published by the Department of Health on its website, as amended from time to time; (*Liste de contaminants et d'autres substances adultérantes dans les aliments*)

***List of Permitted Supplemental Ingredients*** means the document entitled *List of Permitted Supplemental Ingredients*, published by the Government of Canada on its website, as amended from time to time; (*Liste des ingrédients supplémentaires autorisés*)

***List of Permitted Supplemented Food Categories*** means the document entitled *List of Permitted Supplemented Food Categories*, published by the Government of Canada on its website, as amended from time to time; (*Liste des catégories autorisées d'aliments supplémentés*)

***main dish*** means a combination dish, as set out in the Table of Reference Amounts, that does not require the addition of ingredients, other than water, for its preparation and that contains food from at least two of the following categories:

**(a)** dairy products and their alternatives, except butter, cream, sour cream, ice cream, ice milk, sherbet and alternatives for those foods;

**(b)** meat products, poultry products, marine and fresh water animal products referred to in Division 21, and their alternatives such as eggs, tofu, legumes, nuts, seeds, nut or seed butters and spreads made from legumes;

**(c)** fruits and vegetables except pickles, relishes, olives and garnishes; and

**(d)** breads, breakfast cereals, rice and other grains, and alimentary pastes; (*plat principal*)

***marketing authorization*** means a marketing authorization issued by the Minister under subsection 30.3(1) of the Act; (*autorisation de mise en marché*)

***meal replacement*** means a formulated food that, by itself, can replace one or more daily meals; (*substitut de repas*)

***meat product*** means meat, meat by-product, prepared meat or prepared meat by-product; (*produit de viande*)

***meat product extender*** means a food that is a source of protein and that is represented as being for the purpose

***document sur les noms usuels d'ingrédients et de constituants*** Le document intitulé *Noms usuels d'ingrédients et de constituants*, préparé par l'Agence canadienne d'inspection des aliments et publié sur son site Web, avec ses modifications successives; (*Common Names for Ingredients and Components Document*)

***durée de conservation*** désigne la période, commençant le jour de l'emballage pour la vente au détail, pendant laquelle un produit préemballé qui est en stockage dans des conditions qui conviennent audit produit, retiendra, sans détérioration appréciable, la nature saine, le caractère agréable au goût et la valeur nutritive que possède ordinairement ce produit, ainsi que toute autre qualité revendiquée par le fabricant; (*durable life*)

***édulcorant*** Tout édulcorant visé à l'article 2 de l'*Autorisation de mise en marché d'additifs alimentaires comme édulcorants*; (*sweetener*)

***emballage décoratif*** désigne un emballage sur lequel ne figure, sauf sur le dessous, aucune indication promotionnelle ou publicitaire autre qu'une marque de commerce ou un nom usuel et qui, à cause d'un dessin figurant sur sa surface ou à cause de sa forme ou de son apparence, semble être décoratif et est vendu à titre d'objet décoratif en plus d'être vendu comme emballage du produit; (*ornamental container*)

***entièrement hydrogénée*** se dit d'une graisse ou d'une huile qui est hydrogénée et dont l'indice d'iode est d'au plus 4; (*fully hydrogenated*)

***espace principal*** Malgré la définition de ce terme à l'article A.01.010, vise :

**a)** dans le cas d'une étiquette apposée sur un aliment *de consommation préemballé*, au sens de l'article 1 du *Règlement sur la salubrité des aliments au Canada*, l'*espace principal* visé à l'un des alinéas a) à c) de la définition de ce terme à cet article;

**b)** dans le cas d'une étiquette apposée sur un produit préemballé autre qu'un aliment de consommation préemballé visé par le *Règlement sur la salubrité des aliments au Canada*, la portion de l'étiquette apposée sur tout ou partie de la face ou de la surface de l'emballage qui est exposée ou visible dans les conditions normales ou habituelles de vente ou d'utilisation, et dans les cas où l'emballage ne possède pas une telle face ou surface, la portion de l'étiquette apposée sur toute partie de l'emballage, à l'exclusion du dessous de l'emballage, le cas échéant;

of extending meat products; (*allongeur de produit de viande*)

***mechanically tenderized beef*** means uncooked solid cut beef that is prepared in either of the following ways:

**(a)** the integrity of the surface of the beef is compromised by being pierced by blades, needles or other similar instruments; or

**(b)** the beef is injected with a marinade or other tenderizing solution; (*bœuf attendri mécaniquement*)

***monounsaturated fatty acids***, ***monounsaturated fat***, ***monounsaturates*** or ***monounsaturated*** means *cis*-monounsaturated fatty acids; (*acides gras monoinsaturés*, *graisses monoinsaturées*, *gras monoinsaturés*, *lipides monoinsaturés* ou *monoinsaturés*)

***mutiple-serving prepackaged product*** means a prepackaged product other than a single-serving prepackaged product; (*produit préemballé à portions multiples*)

***nutritional supplement*** means a food sold or represented as a supplement to a diet that may be inadequate in energy and essential nutrients. It does not include a human milk fortifier; (*supplément nutritif*)

***nutrition facts table*** means the nutrition facts table that is required by subsection B.01.401(1) to be carried on the label of a prepackaged product; (*tableau de la valeur nutritive*)

***nutrition symbol*** means a symbol that is carried on the principal display panel of a prepackaged product under subsection B.01.350(1); (*symbole nutritionnel*)

***omega-3 polyunsaturated fatty acids***, ***omega-3 polyunsaturated fat***, ***omega-3 polyunsaturates***, ***omega-3 polyunsaturated*** or ***omega-3*** means

**(a)** 9-*cis*, 12-*cis*, 15-*cis* octadecatrienoic acid or α-linolenic acid,

**(b)** 8-*cis*, 11-*cis*, 14-*cis*, 17-*cis* eicosatetraenoic acid,

**(c)** 5-*cis*, 8-*cis*, 11-*cis*, 14-*cis*, 17-*cis* eicosapentaenoic acid or EPA,

**(d)** 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis*, 19-*cis* docosapentaenoic acid, or

**(e)** 4-*cis*, 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis*, 19-*cis* docosahexaenoic acid or DHA; (*acides gras polyinsaturés oméga-3*, *graisses polyinsaturées oméga-3*, *gras*

**c)** dans le cas d'une étiquette apposée sur un aliment qui n'est pas un produit préemballé, la portion de l'étiquette apposée sur tout ou partie de la face ou de la surface de l'aliment qui est exposée ou visible dans les conditions normales ou habituelles de vente ou d'utilisation. (*principal display panel*)

***identifiant des aliments supplémentés avec mise en garde*** S'entend de l'identifiant que porte l'espace principal d'un aliment supplémenté en application du paragraphe B.29.021(1); (*supplemented food caution identifier*)

***ingrédient*** désigne une unité alimentaire alliée, en tant qu'élément alimentaire, à une ou plusieurs autres unités alimentaires pour former une denrée alimentaire intégrale vendue comme produit préemballé; (*ingredient*)

***ingrédient à base de sucres*** À l'égard d'un produit préemballé :

**a)** l'ingrédient qui est un monosaccharide ou un disaccharide, ou une combinaison de ceux-ci;

**b)** l'ingrédient qui est un agent édulcorant autre que ceux visés à l'alinéa a);

**c)** tout autre ingrédient qui contient un ou plusieurs sucres et qui est ajouté au produit comme substitut fonctionnel d'un agent édulcorant; (*sugars-based ingredient*)

***ingrédient supplémentaire*** S'entend d'un élément nutritif, notamment d'une vitamine, d'un minéral nutritif ou d'un acide aminé, ou de toute autre substance qui figure à la colonne 1 de la Liste des ingrédients supplémentaires autorisés et qui est ajouté à titre d'ingrédient à un aliment conformément aux conditions d'utilisation applicables prévues aux colonnes 2 à 5; (*supplemental ingredient*)

***Liste de contaminants et d'autres substances adultérantes dans les aliments*** La *Liste de contaminants et d'autres substances adultérantes dans les aliments*, publiée par le ministère de la Santé sur son site Web, avec ses modifications successives; (*List of Contaminants and Other Adulterating Substances in Foods*)

***Liste des catégories autorisées d'aliments supplémentés*** Le document intitulé *Liste des catégories autorisées d'aliments supplémentés*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*List of Permitted Supplemented Food Categories*)

*polyinsaturés oméga-3*, *lipides polyinsaturés oméga-3*, *polyinsaturés oméga-3* ou *oméga-3*)

***omega-6 polyunsaturated fatty acids***, ***omega-6 polyunsaturated fat***, ***omega-6 polyunsaturates***, ***omega-6 polyunsaturated*** or ***omega-6*** means

**(a)** 9-*cis*, 12-*cis* octadecadienoic acid or linoleic acid,

**(b)** 6-*cis*, 9-*cis*, 12-*cis* octadecatrienoic acid,

**(c)** 8-*cis*, 11-*cis*, 14-*cis* eicosatrienoic acid or di-homo-γ-linolenic acid,

**(d)** 5-*cis*, 8-*cis*, 11-*cis*, 14-*cis* eicosatetraenoic acid or arachidonic acid,

**(e)** 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis* docosatetraenoic acid, or

**(f)** 4-*cis*, 7-*cis*, 10-*cis*, 13-*cis*, 16-*cis* docosapentaenoic acid; (*acides gras polyinsaturés oméga-6*, *graisses polyinsaturées oméga-6*, *gras polyinsaturés oméga-6*, *lipides polyinsaturés oméga-6*, *polyinsaturés oméga-6* ou *oméga-6*)

***ornamental container*** means a container that, except on the bottom, does not have any promotional or advertising material thereon, other than a trademark or common name and that, because of any design appearing on its surface or because of its shape or texture, appears to be a decorative ornament and is sold as a decorative ornament in addition to being sold as the container of a product; (*emballage décoratif*)

***overage*** means the amount of a vitamin or mineral nutrient that is, within the limits of good manufacturing practice, added to a food in excess of the amount declared on the label, in order to ensure that the amount of the vitamin or mineral nutrient declared on the label is maintained throughout the durable life of the food; (*surtitrage*)

***parts per million*** [Repealed, SOR/2010-94, s. 1]

***parts per million*** or ***p.p.m.*** means parts per million by weight unless otherwise stated; (*parties par million* ou *p.p.m.*)

***per cent*** or ***%*** means per cent by weight, unless otherwise stated; (*pour cent* ou *%*)

***point*** means the unit of measurement for type size that is known as a PostScript point and is equal to 0.3527777778 mm; (*point*)

***Liste des ingrédients supplémentaires autorisés*** Le document intitulé *Liste des ingrédients supplémentaires autorisés*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*List of Permitted Supplemental Ingredients*)

***liste des mises en garde*** Liste qui figure sur l'étiquette d'un aliment supplémenté conformément au paragraphe B.29.020(1); (*list of cautionary statements*)

***nom usuel***, en ce qui a trait à un aliment, désigne

**a)** le nom de l'aliment imprimé en caractères gras mais non italiques dans une disposition du présent règlement,

**b)** le nom prescrit par un autre règlement, ou

**c)** si le nom de l'aliment n'est pas ainsi imprimé ou prescrit, le nom sous lequel l'aliment est généralement connu ou un nom qui n'est pas générique et qui le décrit; (*common name*)

***norme de référence*** [Abrogée, DORS/2016-305, art. 1]

***œuf à jaune substitué*** désigne un aliment qui

**a)** ne contient pas de jaune d'œuf mais qui contient de l'albumen d'œuf liquide, en poudre ou congelé ou un mélange de ces trois formes,

**b)** est destiné à servir de substitut à l'œuf entier, et

**c)** est conforme aux exigences de l'article B.22.032; (*yolk-replaced egg*)

***parties par million*** [Abrogée, DORS/2010-94, art. 1]

***parties par million*** ou ***p.p.m.*** S'entend de parties par million en poids, à moins d'indication contraire; (*parts per million* or *p.p.m.*)

***plat principal*** plat composé selon le Tableau des quantités de référence qui ne requiert pas l'ajout d'ingrédients lors de sa préparation, à l'exception de l'eau, et qui contient des aliments d'au moins deux catégories parmi les suivantes :

**a)** les produits laitiers ainsi que leurs substituts, autres que le beurre, la crème, la crème sure, la crème glacée, le lait glacé, le sorbet laitier et leurs substituts;

**b)** les produits de viande, les produits de volaille et les produits d'animaux marins et d'animaux d'eau douce visés au titre 21 ainsi que leurs substituts, dont les œufs, le tofu, les légumineuses, les fruits à écale, les

***polyunsaturated fatty acids***, ***polyunsaturated fat***, ***polyunsaturates*** or ***polyunsaturated*** means *cis*-methylene interrupted polyunsaturated fatty acids; (*acides gras polyinsaturés*, *graisses polyinsaturées*, *gras polyinsaturés*, *lipides polyinsaturés* ou *polyinsaturés*)

***poultry product*** means poultry meat, prepared poultry meat, poultry meat by-product or prepared poultry meat by-product; (*produit de volaille*)

***poultry product extender*** means a food that is a source of protein and that is represented as being for the purpose of extending poultry products; (*allongeur de produit de volaille*)

***prepackaged meal*** means a prepackaged selection of foods for one individual that requires no preparation other than heating and that contains at least one serving, as described in *Canada's Food Guide to Healthy Eating*, published in 1992 by the Department of Supply and Services by authority of the Minister of National Health and Welfare, of

**(a)** meat, fish, poultry, legumes, nuts, seeds, eggs or milk or milk products other than butter, cream, sour cream, ice-cream, ice milk and sherbet; and

**(b)** vegetables, fruit or grain products; (*repas préemballé*)

***prepackaged product*** means any food that is contained in a package in the manner in which it is ordinarily sold to or used or purchased by a person; (*produit préemballé*)

***principal display panel*** means, despite the meaning assigned to that term in section A.01.010,

**(a)** in the case of a label that is applied to a *consumer prepackaged* food within the meaning of section 1 of the *Safe Food for Canadians Regulations*, the *principal display panel* as described in paragraphs (a) to (c) of the definition of that term in that section,

**(b)** in the case of a label that is applied to a prepackaged product other than a consumer prepackaged food subject to the *Safe Food for Canadians Regulations*, the part of the label that is applied to all or part of any side or surface of the container that is displayed or visible under normal or customary conditions of sale or use and, if the container does not have such a side or surface, the part of the label that is applied to any part of the container except on the bottom, or

graines, les beurres de fruits à écale ou de graines et les tartinades de légumineuses;

**c)** les fruits et les légumes, autres que les pickles, les cornichons, les achards (*relish*), les olives et les garnitures;

**d)** les pains, les céréales à déjeuner, le riz et autres grains et les pâtes alimentaires; (*main dish*)

***point*** Unité de mesure de la force du corps des caractères connu comme point PostScript et qui équivaut à 0,3527777778 mm; (*point*)

***pour cent*** ou ***%*** Pourcentage en poids, à moins d'indication contraire; (*per cent* or *%*)

***préparation aromatisante*** s'applique à tout aliment qui fait l'objet d'une norme du titre 10; (*flavouring preparation*)

***principale surface exposée*** s'agissant d'un produit préemballé :

**a)** si son emballage a une surface exposée ou visible dans les conditions habituelles de vente ou d'utilisation, la totalité de cette surface, à l'exclusion du dessus, le cas échéant;

**b)** si son emballage est muni d'un couvercle qui constitue sa partie exposée ou visible dans les conditions habituelles de vente ou d'utilisation, la totalité de la surface supérieure du couvercle;

**c)** si son emballage n'a pas de surface en particulier qui soit exposée ou visible dans les conditions habituelles de vente ou d'utilisation, 40 % de la surface totale de l'emballage, à l'exclusion du dessus et du dessous, le cas échéant, s'il est possible que cette proportion de la surface soit exposée ou visible dans ces conditions;

**d)** si son emballage est un sac dont les surfaces sont d'égales dimensions, la surface totale de l'une d'elles;

**e)** si son emballage est un sac dont les surfaces sont de dimensions différentes, la surface totale de l'une de ses plus grandes surfaces;

**f)** malgré les alinéas a) à e), si son emballage n'a pas de surface exposée ou visible dans les conditions habituelles de vente ou d'utilisation sur laquelle une étiquette peut être apposée, la surface totale de l'un des côtés de l'étiquette mobile attachée à l'emballage;

**g)** malgré les alinéas a) à e), si l'emballage contient du vin exposé pour la vente, toute partie de la surface de

**(c)** in the case of a label that is applied to a food that is not a prepackaged product, the part of the label that is applied to all or part of the side or surface of the food that is displayed or visible under normal or customary conditions of sale or use; (*espace principal*)

***principal display surface***, in respect of a prepackaged product, means

**(a)** if the package has a surface that is displayed or visible under customary conditions of sale or use, the total area of that surface, excluding any surface that is the top of the package,

**(b)** if the package has a lid that is the part of the package that is displayed or visible under customary conditions of sale or use, the total area of the top surface of the lid,

**(c)** if the package does not have a particular surface that is displayed or visible under customary conditions of sale or use, 40% of the total surface area of the package, excluding any surface area that is its top and bottom, if it is possible for that proportion of the total surface area to be displayed or visible under customary conditions of sale or use,

**(d)** if the package is a bag with surfaces of equal dimensions, the total area of one of the surfaces,

**(e)** if the package is a bag with surfaces of different dimensions, the total area of one of the largest surfaces,

**(f)** despite paragraphs (a) to (e), if the package does not have a surface that is displayed or visible under customary conditions of sale or use to which a label can be applied, the total area of one side of a tag that is attached to the package,

**(g)** despite paragraphs (a) to (e), if the package contains wine that is exposed for sale, any part of the surface of the package, excluding its top and bottom, that can be seen without having to turn the package, and

**(h)** if the package is a wrapper or confining band that is so narrow in relation to the size of the food that it cannot reasonably be considered to have any surface that is displayed or visible under customary conditions of sale or use, the total area of one side of a tag that is attached to the package; (*principale surface exposée*)

***reasonable daily intake***, in respect of a food set out in Column I of an item of Schedule K, means the amount of that food set out in Column II of that item; (*ration quotidienne raisonnable*)

l'emballage, à l'exclusion du dessus et du dessous, qui peut être vue sans qu'il soit nécessaire de tourner l'emballage;

**h)** si son emballage est une enveloppe ou une bande si étroite par rapport à la dimension de l'aliment qu'elle contient qu'il n'est pas raisonnable de considérer que l'emballage a une surface exposée ou visible dans les conditions habituelles de vente ou d'utilisation, la surface totale de l'un des côtés de l'étiquette mobile attachée à l'emballage; (*principal display surface*)

***produit chimique agricole*** Toute substance utilisée ou présentée comme étant utilisable dans un aliment, ou sur sa surface, pendant sa production, son entreposage ou son transport et dont l'utilisation donne lieu, ou dont on peut raisonnablement s'attendre à ce qu'elle donne lieu, à un résidu ou à un composant ou dérivé de la substance dans l'aliment ou sur sa surface, y compris tout produit antiparasitaire au sens du paragraphe 2(1) de la *Loi sur les produits antiparasitaires*, régulateur de croissance des végétaux, fertilisant ou tout adjuvant ou véhicule utilisé avec la substance. Sont toutefois exclus les produits suivants :

**a)** les additifs alimentaires visés aux tableaux de l'article B.16.100 et utilisés conformément à ces tableaux;

**b)** les substances nutritives utilisées, reconnues ou couramment vendues comme aliments ou comme ingrédients d'un aliment;

**c)** les vitamines, minéraux nutritifs et acides aminés;

**c.1)** les ingrédients supplémentaires;

**d)** les assaisonnements, épices, extraits naturels, huiles essentielles, oléorésines et préparations aromatisantes;

**e)** les matériaux d'emballage des aliments ou toute substance qui entre dans leur composition;

**f)** les drogues recommandées pour administration aux animaux pouvant être consommés comme aliments; (*agricultural chemical*)

***produit de poisson*** désigne du poisson ou du poisson préparé; (*fish product*)

***produit de viande*** désigne de la viande, des sous-produits de viande, de la viande préparée ou des sous-produits de viande préparée; (*meat product*)

***produit de viande avec allongeur*** désigne un produit de viande auquel un allongeur de produit de viande a été ajouté; (*extended meat product*)

***recommended daily intake*** [Repealed, SOR/2016-305, s. 1]

***reference amount*** means, in respect of a food set out in column 1 of the Table of Reference Amounts, the amount of that food set out in column 2; (*quantité de référence*)

***reference standard*** [Repealed, SOR/2016-305, s. 1]

***saturated fatty acids***, ***saturated fat***, ***saturates*** or ***saturated*** means all fatty acids that contain no double bonds; (*acides gras saturés, graisses saturées, gras saturés, lipides saturés* ou *saturés*)

***simulated meat product*** means any food that does not contain any meat product, poultry product or fish product but that has the appearance of a meat product; (*simili-produit de viande*)

***simulated poultry product*** means any food that does not contain any poultry product, meat product or fish product but that has the appearance of a poultry product; (*simili-produit de volaille*)

***single-serving prepackaged product*** means a prepackaged product in respect of which the net quantity of food in the package is the serving of stated size for the food as set out in paragraph B.01.002A(1)(b); (*produit préemballé à portion individuelle*)

***sugars*** means all monosaccharides and disaccharides; (*sucres*)

***sugars-based ingredient*** means, in respect of a prepackaged product,

**(a)** an ingredient that is a monosaccharide or disaccharide or a combination of these;

**(b)** an ingredient that is a sweetening agent other than one referred to in paragraph (a); and

**(c)** any other ingredient that contains one or more sugars and that is added to the product as a functional substitute for a sweetening agent; (*ingrédient à base de sucres*)

***supplemental ingredient*** means a nutrient — including a vitamin, mineral nutrient or amino acid — or any other substance listed in column 1 of the List of Permitted Supplemental Ingredients and added as an ingredient to a food in accordance with the applicable conditions of use set out in columns 2 to 5; (*ingrédient supplémentaire*)

***supplemented food*** means a prepackaged product that belongs to a food category set out in column 1 of the List

***produit de volaille*** désigne de la viande de volaille, de la viande de volaille préparée, des sous-produits de viande de volaille ou des sous-produits de viande de volaille préparée; (*poultry product*)

***produit de volaille avec allongeur*** désigne un produit de volaille auquel un allongeur de produit de volaille a été ajouté; (*extended poultry product*)

***produit préemballé*** désigne un aliment contenu dans un emballage de manière à être normalement vendu, utilisé ou acheté par une personne; (*prepackaged product*)

***produit préemballé à portion individuelle*** Produit préemballé dont la quantité nette de l'aliment contenu dans l'emballage correspond à la portion indiquée pour cet aliment, tel qu'il est prévu à l'alinéa B.01.002A(1)b); (*single-serving prepackaged product*)

***produit préemballé à portions multiples*** Produit préemballé autre qu'un produit préemballé à portion individuelle; (*multiple-serving prepackaged product*)

***quantité de référence*** S'agissant d'un aliment figurant à la colonne 1 du Tableau des quantités de référence, la quantité de cet aliment indiquée dans la colonne 2; (*reference amount*)

***ration quotidienne raisonnable***, appliquée à un aliment énuméré à un poste de la colonne I de l'annexe K, désigne la quantité de cet aliment indiquée dans la colonne II de ladite annexe; (*reasonable daily intake*)

***repas préemballé*** Choix préemballé d'aliments destiné à une seule personne, qui ne requiert aucune autre préparation que le réchauffage et qui contient au moins les portions suivantes, selon la description qui en est donnée dans la publication intitulée *Guide alimentaire canadien pour manger sainement*, autorisée par le ministre de la Santé nationale et du Bien-être social et publiée en 1992 par le ministère des Approvisionnements et Services :

**a)** une portion de viande, poisson, volaille, légumineuses, noix, graines, œufs ou lait ou produits du lait autres que le beurre, la crème, la crème sure, la crème glacée, le lait glacé et le sorbet laitier;

**b)** une portion de légumes, fruits ou produits céréaliers; (*prepackaged meal*)

***Répertoire des modèles de TVN*** Le document intitulé *Étiquetage nutritionnel — Répertoire des modèles de tableaux de la valeur nutritive*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*Directory of NFT Formats*)

of Permitted Supplemented Food Categories and to which a supplemental ingredient has been added, but does not include

**(a)** a *food for special dietary use* as defined in section B.24.001 and referred to in any of paragraphs B.24.003(1)(f) to (f.2) and (h) to (j), even if the food for special dietary use is also a gluten-free food referred to in paragraph B.24.003(1)(g);

**(b)** a food that is labelled or advertised for consumption by

**(i)** *infants* as defined in section B.25.001,

**(ii)** children one year of age or older but less than four years of age, or

**(iii)** women who are pregnant or breastfeeding;

**(c)** any of the following foods set out in column I of the Table to section D.03.002:

**(i)** a food referred to in any of items 1, 2.1, 2.2, 4, 5, 7, 8, 9.1, 10 to 13, 15, 17 to 19, 21 to 25 and 27, and

**(ii)** prepackaged ice;

**(d)** a food that has not been processed or that has been minimally processed; or

**(e)** a beverage with an alcohol content of more than 0.5%; (*aliment supplémenté*)

***supplemented food caution identifier*** means the identifier carried on the principal display panel of a supplemented food under subsection B.29.021(1); (*identifiant des aliments supplémentés avec mise en garde*)

***supplemented food facts table*** means the supplemented food facts table required by subsection B.29.002(1) to be carried on the label of a supplemented food; (*tableau des renseignements sur les aliments supplémentés*)

***sweetener*** means any sweetener that is referred to in section 2 of the *Marketing Authorization for Food Additives That May Be Used as Sweeteners*; (*édulcorant*)

***sweetening agent*** includes any food for which a standard is provided in Division 18, but does not include those food additives listed in the tables to Division 16; (*agent édulcorant*)

***Table of Daily Values*** means the document entitled *Nutrition Labelling – Table of Daily Values* published by

***Répertoire des spécifications des symboles nutritionnels*** le document intitulé *Étiquetage nutritionnel — Répertoire des spécifications des symboles nutritionnels*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*Directory of Nutrition Symbol Specifications*)

***simili-produit de viande*** désigne un aliment qui ne contient aucun produit de viande, produit de volaille ni produit de poisson mais qui a l'apparence d'un produit de viande; (*simulated meat product*)

***simili-produit de volaille*** désigne un aliment qui ne contient aucun produit de volaille, produit de viande ni produit de poisson mais qui a l'apparence d'un produit de volaille; (*simulated poultry product*)

***substitut de repas*** Préparation alimentaire qui, à elle seule, peut remplacer au moins un repas quotidien; (*meal replacement*)

***substitut fonctionnel d'un agent édulcorant*** À l'égard d'un produit préemballé, l'aliment — autre que l'édulcorant ou l'agent édulcorant, notamment les sucres — qui remplace un agent édulcorant et qui possède une ou plusieurs des fonctions de ce dernier en termes notamment de pouvoir édulcorant, épaississant, texturant ou caramélisant; (*functional substitute for a sweetening agent*)

***sucres*** désigne tous les monosaccharides et les disaccharides; (*sugars*)

***supplément nutritif*** Aliment vendu ou présenté comme supplément à un régime alimentaire dont l'apport en énergie et en éléments nutritifs essentiels peut ne pas être suffisant. Est exclu de la présente définition le fortifiant pour lait humain; (*nutritional supplement*)

***surface exposée disponible*** Relativement à un produit préemballé, les surfaces suivantes :

**a)** le dessous de tout emballage décoratif ou la totalité de la surface des deux côtés d'une étiquette mobile attachée à l'emballage décoratif, la plus grande surface étant à retenir;

**b)** la totalité de la surface des deux côtés de toute étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat;

the Government of Canada on its website, as amended from time to time; (*Tableau des valeurs quotidiennes*)

***Table of Permitted Nutrient Content Statements and Claims*** means the document entitled *Nutrition Labelling — Table of Permitted Nutrient Content Statements and Claims*, published by the Government of Canada on its website, as amended from time to time; (*Tableau des mentions et des allégations autorisées concernant la teneur nutritive*)

***Table of Reference Amounts*** means the document entitled *Nutrition Labelling – Table of Reference Amounts for Food* published by the Government of Canada on its website, as amended from time to time; (*Tableau des quantités de référence*)

***trans fatty acids***, ***trans fat*** or ***trans*** means unsaturated fatty acids that contain one or more isolated or non-conjugated double bonds in a *trans*-configuration; (*acides gras trans*, *graisses trans*, *gras trans*, *lipides trans* ou *trans*)

***unstandardized food*** means any food for which a standard is not prescribed in this Part; (*aliment non normalisé*)

***weighted recommended nutrient intake***, in respect of a vitamin or mineral nutrient set out in column I of Table II to Division 1 of Part D or in column I of Table II to Division 2 of Part D, means the amount set out in column III; (*apport nutritionnel recommandé pondéré*)

***yolk-replaced egg*** means a food that

**(a)** does not contain egg yolk but contains fluid, dried or frozen egg albumen or mixtures thereof,

**(b)** is intended as a substitute for whole egg, and

**(c)** meets the requirements of section B.22.032; (*œuf à jaune substitué*)

**c)** la totalité de la surface de tout autre emballage, à l'exclusion de son dessous si son contenu fuit ou est endommagé lorsque l'emballage est retourné.

Sont toutefois exclus :

**d)** toute surface de l'emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat;

**e)** toute partie d'un emballage, autre que l'emballage d'un aliment destiné à être consommé par une personne en une seule fois, qui est conçue pour être détruite lors de l'ouverture de celui-ci;

**f)** tout espace occupé par le code universel des produits; (*available display surface*)

***surtitrage*** Quantité d'une vitamine ou d'un minéral nutritif ajoutée à un aliment, dans les limites des bonnes pratiques industrielles, en sus de la quantité déclarée sur l'étiquette, afin d'assurer le maintien de cette dernière pendant toute la durée de conservation; (*overage*)

***symbole nutritionnel*** symbole que porte l'espace principal d'un produit préemballé en application du paragraphe B.01.350(1); (*nutrition symbol*)

***tableau de la valeur nutritive*** Tableau que porte l'étiquette d'un produit préemballé conformément au paragraphe B.01.401(1); (*nutrition facts table*)

***Tableau des mentions et des allégations autorisées concernant la teneur nutritive*** le document intitulé *Étiquetage nutritionnel — Tableau des mentions et des allégations autorisées concernant la teneur nutritive*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*Table of Permitted Nutrient Content Statements and Claims*)

***Tableau des quantités de référence*** Le document intitulé *Étiquetage nutritionnel — Tableau des quantités de référence pour aliments*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*Table of Reference Amounts*)

***tableau des renseignements sur les aliments supplémentés*** Tableau que porte l'étiquette d'un aliment supplémenté conformément au paragraphe B.29.002(1); (*supplemented food facts table*)

***Tableau des valeurs quotidiennes*** Le document intitulé *Étiquetage nutritionnel — Tableau des valeurs quotidiennes*, publié par le gouvernement du Canada sur son

site Web, avec ses modifications successives; (*Table of Daily Values*)

***valeur énergétique*** s'entend, dans le cas d'un aliment, de la quantité d'énergie que peut recevoir une personne lorsqu'elle ingère l'aliment et que les constituants chimiques de cet aliment, dont les protéines, les matières grasses, les glucides et l'alcool, sont métabolisés; (*energy value*)

***valeur quotidienne*** S'agissant d'un élément nutritif, la quantité applicable visée au paragraphe B.01.001.1(2). (*daily value*)

**(2)** The definitions in this subsection apply for the purposes of the Act.

***agricultural chemical*** has the same meaning as in subsection (1). (*produit chimique agricole*)

***food additive*** has the same meaning as in subsection (1). (*additif alimentaire*)

**(2)** Les termes ci-après sont définis comme il suit pour l'application de la Loi.

***additif alimentaire*** S'entend au sens du paragraphe (1). (*food additive*)

***produit chimique agricole*** S'entend au sens du paragraphe (1). (*agricultural chemical*)

**(3)** The following definitions apply in this Division.

***human milk fortifier*** has the same meaning as in section B.25.001. (*fortifiant pour lait humain*)

***human milk substitute*** has the same meaning as in section B.25.001. (*succédané de lait humain*)

**(3)** Les définitions qui suivent s'appliquent au présent titre.

***fortifiant pour lait humain*** S'entend au sens de l'article B.25.001. (*human milk fortifier*)

***succédané de lait humain*** S'entend au sens de l'article B.25.001. (*human milk substitute*)

**(4)** For the purposes of the definitions *supplemental ingredient* and *supplemented food* in subsection (1), if a supplemented food is used as an ingredient in the manufacture of a second supplemented food, a supplemental ingredient in the first supplemented food is deemed to also have been added as a supplemental ingredient to — and not to be a component of an ingredient of — the second supplemented food if it is contained in the second supplemented food in accordance with the applicable conditions of use set out in columns 2 to 5 of the List of Permitted Supplemental Ingredients.

SOR/78-403, s. 1(F); SOR/79-23, s. 1; SOR/81-83, s. 1; SOR/81-617, s. 1; SOR/88-336, s. 1; SOR/88-559, s. 1; SOR/89-175, s. 1; SOR/91-124, s. 1; SOR/91-527, s. 1; SOR/93-276, s. 1; SOR/95-474, s. 1; SOR/98-580, s. 1(F); SOR/2000-353, s. 3; SOR/2003-11, s. 1; err.(E), Vol. 137, No. 5; SOR/2005-98, s. 1; SOR/2008-181, s. 1; SOR/2008-182, s. 1; SOR/2010-94, s. 1; SOR/2011-278, s. 1; 2014, c. 20, s. 366(E); SOR/2014-99, s. 1; SOR/2016-74, s. 1; SOR/2016-305, s. 1; SOR/2018-108, s. 393; SOR/2021-57, s. 1; SOR/2022-143, s. 2; SOR/2022-168, s. 1; SOR/2022-169, s. 1.

**(4)** Pour l'application des définitions de *aliment supplémenté* et *ingrédient supplémentaire*, au paragraphe (1), l'ingrédient supplémentaire d'un aliment supplémenté qui est utilisé comme ingrédient dans la fabrication d'un autre aliment supplémenté est réputé également avoir été ajouté à cet autre aliment supplémenté à titre d'ingrédient supplémentaire et ne pas être un constituant d'un ingrédient de cet autre aliment supplémenté, s'il y est contenu conformément aux conditions d'utilisation applicables prévues aux colonnes 2 à 5 de la Liste des ingrédients supplémentaires autorisés.

DORS/78-403, art. 1(F); DORS/79-23, art. 1; DORS/81-83, art. 1; DORS/81-617, art. 1; DORS/88-336, art. 1; DORS/88-559, art. 1; DORS/89-175, art. 1; DORS/91-124, art. 1; DORS/91-527, art. 1; DORS/93-276, art. 1; DORS/95-474, art. 1; DORS/98-580, art. 1(F); DORS/2000-353, art. 3; DORS/2003-11, art. 1; err.(A), Vol. 137, nº 5; DORS/2005-98, art. 1; DORS/2008-181, art. 1; DORS/2008-182, art. 1; DORS/2010-94, art. 1; DORS/2011-278, art. 1; 2014, ch. 20, art. 366(A); DORS/2014-99, art. 1; DORS/2016-74, art. 1; DORS/2016-305, art. 1; DORS/2018-108, art. 393; DORS/2021-57, art. 1; DORS/2022-143, art. 2; DORS/2022-168, art. 1; DORS/2022-169, art. 1.

**B.01.001.1 (1)** For the purpose of subsection (2), the term *fat* used in the Table of Daily Values means all fatty acids expressed as triglycerides.

**B.01.001.1 (1)** Pour l'application du paragraphe (2), le terme *lipides* qui est utilisé dans le Tableau des valeurs quotidiennes s'entend de tous les acides gras exprimés sous forme de triglycérides.

**(2)** The daily value for a nutrient in a food is

**(2)** La valeur quotidienne d'un élément nutritif contenu dans un aliment est :

**(a)** in the case of a nutrient set out in column 1 of Part 1 of the Table of Daily Values, the quantity

**(i)** set out in column 2, if the food is intended solely for children one year of age or older but less than four years of age, and

**(ii)** set out in column 3, if the food is intended for children one year of age or older but less than four years of age or for children four years of age or older and adults; and

**(b)** in the case of a vitamin or mineral nutrient set out in column 1 of Part 2 of the Table of Daily Values, the quantity

**(i)** set out in column 2, if the food is intended solely for infants six months of age or older but less than one year of age,

**(ii)** set out in column 3, if the food is intended for infants six months of age or older but less than one year of age or for children one year of age or older but less than four years of age, and

**(iii)** set out in column 4, in any other case.

**(3)** Subsection (2) does not apply if the food is

**(a)** a human milk fortifier; or

**(b)** a human milk substitute intended solely for infants less than six months of age.

SOR/2003-11, s. 2; SOR/2016-305, s. 2; SOR/2021-57, s. 2.

**B.01.002** Each provision in this Part in which the symbol **[S]** appears between the provision number and the name of the food described in that provision prescribes the standard of composition, strength, potency, purity, quality or other property of that food and a provision in which the symbol does not appear does not prescribe a standard for a food.

SOR/79-752, s. 1.

**B.01.002A (1)** For the purposes of this Part, a serving of stated size of a food shall be

**(a)** based on the food as offered for sale;

**(b)** in either of the following cases, the net quantity of the food in the package:

**(i)** if the quantity of food in the package can reasonably be consumed by one person at a single eating occasion, or

**a)** s'agissant d'un élément nutritif mentionné à la colonne 1 de la partie 1 du Tableau des valeurs quotidiennes, la quantité qui figure :

**(i)** à la colonne 2, dans le cas d'un aliment destiné exclusivement aux enfants âgés d'au moins un an mais de moins de quatre ans,

**(ii)** à la colonne 3, dans le cas d'un aliment destiné aux enfants âgés d'au moins un an mais de moins de quatre ans ou aux enfants âgés d'au moins quatre ans et aux adultes;

**b)** s'agissant d'une vitamine ou d'un minéral nutritif mentionné à la colonne 1 de la partie 2 du Tableau des valeurs quotidiennes, la quantité de cette vitamine ou de ce minéral nutritif qui figure :

**(i)** à la colonne 2, dans le cas d'un aliment destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an,

**(ii)** à la colonne 3, dans le cas d'un aliment destiné aux bébés âgés d'au moins six mois mais de moins d'un an ou aux enfants âgés d'au moins un an mais de moins de quatre ans,

**(iii)** à la colonne 4, dans les autres cas.

**(3)** Le paragraphe (2) ne s'applique pas si l'aliment est :

**a)** soit un fortifiant pour lait humain;

**b)** soit un succédané de lait humain destiné exclusivement aux bébés âgés de moins de six mois.

DORS/2003-11, art. 2; DORS/2016-305, art. 2; DORS/2021-57, art. 2.

**B.01.002** Dans la présente partie, la présence du symbole **[N]** entre le numéro d'une disposition et le nom de l'aliment visé indique que la disposition prescrit la norme de composition, de concentration, d'activité, de pureté, de qualité ou de toute autre propriété à observer pour cet aliment; l'absence de ce symbole indique qu'aucune norme n'est prescrite à l'égard de l'aliment visé.

DORS/79-752, art. 1.

**B.01.002A (1)** Pour l'application de la présente partie, la portion indiquée d'un aliment est :

**a)** établie en fonction de l'aliment tel qu'il est vendu;

**b)** dans l'un ou l'autre des cas ci-après, la quantité nette de l'aliment dans l'emballage lorsque :

**(i)** cette quantité peut être raisonnablement consommée par une personne en une seule fois,

**(ii)** if the package contains less than 200% of the reference amount for the food; and

**(c)** in all other cases, the amount indicated for the food according to the criteria set out in column 3A of the Table of Reference Amounts.

**(2)** A serving of stated size of a food shall be expressed as follows:

**(a)** in the case of a single-serving prepackaged product to which paragraph (1)(b) applies, per package and using the following units:

**(i)** in grams, if the net quantity of the food is shown on the label by weight or by count, and

**(ii)** in millilitres, if the net quantity of the food is shown on the label by volume; and

**(b)** in the case of a multiple-serving prepackaged product to which paragraph (1)(c) applies, according to the following units set out in column 3B of the Table of Reference Amounts and according to the manner set out in that column:

**(i)** the household measure that applies to the product, and

**(ii)** the metric measure that applies to the product.

SOR/88-559, s. 2; SOR/2003-11, s. 3; SOR/2016-305, s. 3.

**B.01.003 (1)** The following foods shall carry a label when offered for sale:

**(a)** all prepackaged products other than

**(i)** prepackaged confections, commonly known as one bite confections, that are sold individually, and

**(ii)** prepackaged products consisting of fresh fruits or fresh vegetables that are packaged in a wrapper or confining band of less than 1/2 inch in width;

**(b)** meat and meat by-products that are barbecued, roasted or broiled on the retail premises;

**(c)** poultry, poultry meat or poultry meat by-products that are barbecued, roasted or broiled on the retail premises;

**(d)** horse-meat or horse-meat by-product;

**(e)** any substance or mixture of substances for use as a food additive or food additive preparation; and

**(f)** flour and whole wheat flour that has been treated with gamma radiation from Cobalt 60 Source.

**(ii)** l'emballage contient moins de 200 % de la quantité de référence de l'aliment;

**c)** dans les autres cas, la quantité établie selon les critères énoncés à la colonne 3A du Tableau des quantités de référence pour cet aliment.

**(2)** La portion indiquée d'un aliment est exprimée de la façon suivante :

**a)** dans le cas d'un produit préemballé à portion individuelle auquel l'alinéa (1)b) s'applique, par emballage et selon les unités suivantes :

**(i)** en grammes, lorsque la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(ii)** en millilitres, lorsque la quantité nette de l'aliment est mentionnée en volume sur l'étiquette;

**b)** dans le cas d'un produit préemballé à portions multiples auquel l'alinéa (1)c) s'applique, selon les unités ci-après indiquées à la colonne 3B du Tableau des quantités de référence et de la manière dont elles y sont présentées :

**(i)** la mesure domestique applicable au produit,

**(ii)** la mesure métrique applicable au produit.

DORS/88-559, art. 2; DORS/2003-11, art. 3; DORS/2016-305, art. 3.

**B.01.003 (1)** Doivent porter une étiquette lorsqu'ils sont offerts en vente les aliments suivants :

**a)** tous les produits préemballés sauf

**(i)** les confiseries préemballées, appelées couramment bonbons d'une bouchée, qui sont vendues individuellement, et

**(ii)** les fruits ou légumes frais préemballés qui sont emballés dans une enveloppe ou bande ayant moins de 1/2 pouce de largeur;

**b)** les viandes et sous-produits de la viande cuits à la broche, rôtis ou grillés sur les lieux de la vente au détail;

**c)** les volailles, viandes de volaille ou sous-produits de la viande de volaille cuits à la broche, rôtis ou grillés sur les lieux de la vente au détail;

**d)** la viande de cheval ou ses sous-produits;

**e)** toute substance ou tout mélange de substances à utiliser comme additif alimentaire ou préparation d'additif alimentaire; et

**f)** la farine et la farine de blé complet traitées aux rayons gamma provenant d'une source de cobalt 60.

**(2)** [Repealed, SOR/79-23, s. 2]

SOR/79-23, s. 2.

**(2)** [Abrogé, DORS/79-23, art. 2]

DORS/79-23, art. 2.

**B.01.004 (1)** All or part of the label referred to in section B.01.003 shall be applied

**(a)** in the case of a prepackaged product, to the container in which the prepackaged product is sold; and

**(b)** in the case of a food that is not a prepackaged product, to the food itself.

**(2)** The label shall be applied in such a manner that the container of the prepackaged product or the food, as the case may be, will bear the label at the time it is sold.

SOR/84-300, s. 3.

**B.01.004 (1)** L'étiquette visée à l'article B.01.003 doit être apposée en tout ou en partie

**a)** dans le cas d'un produit préemballé, sur l'emballage dans lequel le produit est vendu; et

**b)** dans le cas d'un aliment qui n'est pas un produit préemballé, sur l'aliment même.

**(2)** L'étiquette doit être apposée de manière que l'emballage du produit préemballé ou de l'aliment, selon le cas, porte l'étiquette au moment de la vente.

DORS/84-300, art. 3.

**B.01.005 (1)** Subject to subsections (2) to (5), the information required to be shown on a label shall not be shown on that part of the label, if any, that is applied to the bottom of a food or container.

**(2)** The information required to be shown on a label may be shown on that part of the label, if any, that is applied to the bottom of a food or to the bottom of a container if such information is also shown in those parts of the label that are not applied to the bottom of the food or container.

**(3)** Despite subsection (2), if the container of a prepackaged product is an ornamental container and the label is applied to the bottom of the container, the information required to be shown may be shown on the label that is applied to the bottom of the container.

**(4)** Despite subsection (2), the information required by subparagraph B.01.007(1.1)(b)(i) and paragraphs B.24.103(g), B.24.202(d), B.24.304(h), B.25.020(1)(h) and B.25.057(1)(f) and (2)(f) may be shown on that part of the label that is applied to the bottom of the package if a reference to where that information is located on the label appears elsewhere on the label.

**(4.1)** Despite subsection (2), the information required by paragraph B.27.005(a) may be shown on that part of the label that is applied to the bottom of the package.

**B.01.005 (1)** Sous réserve des paragraphes (2) à (5), les renseignements qui doivent figurer sur l'étiquette ne peuvent figurer sur la portion de l'étiquette qui est apposée sur le dessous de l'emballage ou du produit alimentaire, le cas échéant.

**(2)** Les renseignements dont l'indication sur l'étiquette est prescrite peuvent figurer sur la portion de l'étiquette apposée sur le dessous d'un emballage ou d'un produit alimentaire, le cas échéant, si lesdits renseignements figurent aussi sur les portions de l'étiquette qui ne sont pas apposées sur le dessous de l'emballage ou du produit alimentaire.

**(3)** Malgré le paragraphe (2), lorsque l'emballage d'un produit préemballé est un emballage décoratif et que l'étiquette est apposée sur le dessous de l'emballage, les renseignements dont l'indication est prescrite peuvent figurer sur l'étiquette apposée sur le dessous de l'emballage.

**(4)** Malgré le paragraphe (2), les renseignements exigés par le sous-alinéa B.01.007(1.1)b)(i) et les alinéas B.24.103g), B.24.202d), B.24.304h), B.25.020(1)h) et B.25.057(1)f) et (2)f) peuvent figurer sur la partie de l'étiquette qui est apposée sur le dessous de l'emballage s'il est indiqué ailleurs sur l'étiquette à quel endroit figurent ces renseignements.

**(4.1)** Malgré le paragraphe (2), les renseignements exigés par l'alinéa B.27.005a) peuvent figurer sur la partie de l'étiquette qui est apposée sur le dessous de l'emballage.

**(5)** Despite subsection (2), the nutrition facts table, supplemented food facts table and list of cautionary statements may be shown on that part of the label that is applied to the bottom of the food or container if the available display surface includes the bottom.

SOR/79-529, s. 1; SOR/92-626, s. 4; SOR/2003-11, s. 4; SOR/2021-57, s. 3; SOR/2022-143, s. 3; SOR/2022-169, s. 2.

**B.01.006 (1)** The common name of the food shall be shown on the principal display panel.

**(2)** Notwithstanding subsection (1), the common name of a fresh fruit or fresh vegetable that is prepackaged in such a manner that the fruit or vegetable is visible and identifiable in the package is not required to be shown on the label.

SOR/79-23, s. 3; SOR/92-626, s. 5.

**B.01.006.1** Except as otherwise provided in these Regulations or in the *Safe Food for Canadians Regulations*, if a prepackaged product is likely to be mistaken for another food, words describing the true nature of the prepackaged product so as to distinguish it from the other food shall appear on the principal display panel and may be in regard to

**(a)** its type of liquid packaging medium, including brine, vegetable oil or syrup;

**(b)** its style or form, including firm, extra firm, whole, sliced or diced; and

**(c)** its condition, including dried, concentrated, reconstituted, carbonated or smoked, which, if shown, shall form part of the common name.

SOR/2022-143, s. 4.

**B.01.007 (1)** In this section, ***packaging date*** means

**(a)** the date on which a food is placed for the first time in a package in which it will be offered for sale to a consumer; or

**(b)** the date on which a prepackaged product is weighed by a retailer in a package in which it will be offered for sale for the first time to a consumer.

**(1.1)** The following information shall be shown on any part of the label:

**(a)** the identity and principal place of business of the person by or for whom the food was manufactured or produced;

**(5)** Malgré le paragraphe (2), peuvent figurer sur la portion de l'étiquette qui est apposée sur le dessous de l'emballage ou du produit alimentaire le tableau de la valeur nutritive, le tableau des renseignements sur les aliments supplémentés et la liste des mises en garde, si la surface exposée disponible comprend le dessous.

DORS/79-529, art. 1; DORS/92-626, art. 4; DORS/2003-11, art. 4; DORS/2021-57, art. 3; DORS/2022-143, art. 3; DORS/2022-169, art. 2.

**B.01.006 (1)** Le nom usuel de l'aliment doit figurer sur l'espace principal.

**(2)** Par dérogation au paragraphe (1), le nom usuel des fruits ou légumes frais qui sont préemballés de manière à être visibles et reconnaissables dans leur emballage n'a pas à être indiqué sur l'étiquette.

DORS/79-23, art. 3; DORS/92-626, art. 5.

**B.01.006.1** Sauf disposition contraire du présent règlement ou du *Règlement sur la salubrité des aliments au Canada*, si un produit préemballé est susceptible d'être confondu avec un autre aliment, une mention précisant la nature véritable du produit préemballé doit figurer sur l'espace principal, afin qu'il soit possible de le distinguer de l'autre aliment. La mention peut porter sur ce qui suit :

**a)** le type d'agent d'emballage liquide utilisé, notamment la saumure, l'huile végétale ou le sirop;

**b)** le genre ou la forme du produit préemballé, notamment ferme, extra ferme, entier, tranché ou en dés;

**c)** la condition du produit préemballé, notamment séché, concentré, reconstitué, gazéifié ou fumé, auquel cas la mention fait partie du nom usuel.

DORS/2022-143, art. 4.

**B.01.007 (1)** Dans le présent article, ***date d'emballage*** désigne :

**a)** soit la date à laquelle l'aliment est emballé pour la première fois dans l'emballage dans lequel il sera offert en vente aux consommateurs;

**b)** soit la date à laquelle le produit préemballé est pesé par le détaillant dans l'emballage dans lequel il sera offert en vente aux consommateurs pour la première fois.

**(1.1)** L'étiquette doit comporter les renseignements suivants :

**a)** le nom et l'adresse du principal établissement de la personne par qui ou pour qui l'aliment a été fabriqué ou produit;

**(b)** where a prepackaged product having a durable life of 90 days or less is packaged at a place other than the retail premises from which it is to be sold,

**(i)** the durable life date, and

**(ii)** instructions for the proper storage of the prepackaged product if it requires storage conditions that differ from normal room temperature; and

**(c)** where a prepackaged product having a durable life of 90 days or less is packaged on the retail premises from which it is to be sold,

**(i)** the packaging date, and

**(ii)** the durable life of the food, except when the durable life appears on a poster next to the food.

**(1.2)** The packaging date referred to in paragraph (1.1)(c) shall be shown in the form and manner prescribed for the durable life date by subsections (4) and (5) and the terms "best before" and "meilleur avant" on the label shall be replaced by the terms "packaged on" and "empaqueté le".

**(2)** Paragraph (1.1)(a) does not apply to fresh fruits or fresh vegetables that are prepackaged on retail premises in such a manner that the fruits or vegetables are visible and identifiable in the package.

**(3)** Paragraphs (1.1)(b) and (c) do not apply to

**(a)** prepackaged products consisting of fresh fruits or fresh vegetables;

**(b)** prepackaged individual portions of food that are served by a restaurant or other commercial enterprise with meals or snacks;

**(c)** prepackaged individual servings of food that are prepared by a commissary and sold by automatic vending machines or mobile canteens; or

**(d)** prepackaged donuts.

**(4)** The durable life date shall be shown in the following manner:

**(a)** the words "best before" and "meilleur avant" shall be shown grouped together with the durable life date unless a clear explanation of the significance of the durable life date appears elsewhere on the label;

**b)** dans le cas où le produit préemballé a une durée de conservation de 90 jours ou moins et est emballé ailleurs que sur les lieux de vente au détail où il sera vendu :

**(i)** la date limite de conservation,

**(ii)** le mode d'entreposage du produit préemballé, s'il requiert des conditions d'entreposage différentes des conditions ambiantes normales;

**c)** dans le cas où le produit préemballé a une durée de conservation de 90 jours ou moins et est emballé sur les lieux de vente au détail où il sera vendu :

**(i)** la date d'emballage,

**(ii)** la durée de conservation de l'aliment, sauf si elle est affichée près de l'aliment.

**(1.2)** La date d'emballage visée à l'alinéa (1.1)c) doit répondre aux exigences des paragraphes (4) et (5) sauf en ce qui concerne les expressions « best before » et « meilleur avant » qui doivent être remplacées par celles de « packaged on » et « empaqueté le ».

**(2)** L'alinéa (1.1)a) ne s'applique pas aux fruits ou légumes frais qui sont sur les lieux de vente au détail, sont préemballés de façon à être visibles et identifiables dans l'emballage.

**(3)** Les alinéas (1.1)b) et c) ne s'appliquent pas :

**a)** aux produits préemballés qui sont des fruits ou légumes frais préemballés;

**b)** aux portions individuelles préemballées d'aliments qui sont servies avec des repas ou des casse-croûte par un restaurant ou une autre entreprise commerciale;

**c)** aux portions individuelles préemballées d'aliments qui sont préparées dans un dépôt de vivres et vendues au moyen de distributeurs automatiques ou d'une cantine mobile;

**d)** aux beignets préemballés.

**(4)** La date limite de conservation doit être indiquée de la manière suivante :

**a)** les mots « meilleur avant » et « best before » doivent être regroupés avec la date limite de conservation à moins que cette date ne soit clairement expliquée ailleurs sur l'étiquette;

**(b)** where, for the sake of clarity, it is necessary to show the year in which the durable life date occurs, the year shall be shown first and shall be expressed by at least the last two numbers of the year;

**(c)** the month shall be shown in words after the year, if the year is shown, and may be abbreviated as prescribed by subsection (5); and

**(d)** the day of the month shall be shown after the month and shall be expressed in numbers.

**(5)** The month of the durable life date, when abbreviated, shall be abbreviated as follows and only one such abbreviation shall be used for the English language and the French language:

| | |
|---|---|
| JA | for JANUARY |
| FE | for FEBRUARY |
| MR | for MARCH |
| AL | for APRIL |
| MA | for MAY |
| JN | for JUNE |
| JL | for JULY |
| AU | for AUGUST |
| SE | for SEPTEMBER |
| OC | for OCTOBER |
| NO | for NOVEMBER |
| DE | for DECEMBER |

**(6)** Except as otherwise provided in these Regulations, no person shall use a durable life date marking system on the label of a prepackaged product or in advertising a prepackaged product other than the marking system set out in this section.

**(7)** Paragraph (1.1)(b) does not apply to prepackaged fresh yeast, if

**(a)** the date on which it is estimated that the product has lost its effectiveness is shown on the label in the form and manner prescribed for the durable life date by subsections (4) and (5); and

**(b)** the terms "best before" and "meilleur avant" are replaced by the terms "use by" and "employez avant".

SOR/79-23, s. 4; SOR/79-529, s. 2; SOR/88-291, s. 1; SOR/92-626, s. 6.

**B.01.008 (1)** The following information shall be shown grouped together on any part of the label:

**b)** lorsqu'il est nécessaire, pour des raisons de clarté, d'indiquer l'année de la date limite de conservation, l'année doit être indiquée en premier et doit comprendre au moins les deux derniers chiffres;

**c)** le mois doit figurer en toutes lettres après l'année, si l'année est indiquée, et peut être abrégé comme le paragraphe (5); et

**d)** le jour du mois doit être indiqué après le mois et en chiffres.

**(5)** Le mois de la date limite de conservation, lorsqu'il est abrégé, doit être abrégé de la manière suivante, et une seule abréviation doit être utilisée pour la langue anglaise et la langue française :

| | |
|---|---|
| JA | pour JANVIER |
| FE | pour FÉVRIER |
| MR | pour MARS |
| AL | pour AVRIL |
| MA | pour MAI |
| JN | pour JUIN |
| JL | pour JUILLET |
| AU | pour AOÛT |
| SE | pour SEPTEMBRE |
| OC | pour OCTOBRE |
| NO | pour NOVEMBRE |
| DE | pour DÉCEMBRE |

**(6)** Sauf indication contraire du présent règlement, nul ne doit utiliser, pour marquer une date limite de conservation sur l'étiquette d'un produit préemballé, une autre méthode que la méthode indiquée dans le présent article.

**(7)** L'alinéa (1.1)b) ne s'applique pas à la levure fraîche préemballée si

**a)** la date à laquelle il est prévu que le produit perd son efficacité est indiquée sur l'étiquette de la manière et selon la forme prescrites pour la date limite de conservation en vertu des paragraphes (4) et (5); et

**b)** les termes « best before » et « meilleur avant » sont remplacés par les termes « use by » et « employez avant ».

DORS/79-23, art. 4; DORS/79-529, art. 2; DORS/88-291, art. 1; DORS/92-626, art. 6.

**B.01.008 (1)** Les renseignements suivants doivent être groupés ensemble, sur n'importe quelle partie de l'étiquette :

**(a)** any information required by these Regulations, other than

**(i)** the information required to appear on the principal display panel, nutrition facts table or supplemented food facts table,

**(ii)** the information required by subsection B.01.005(4), sections B.01.007, B.01.301, B.01.305, B.01.311, B.01.503, B.01.513 and B.01.601, paragraphs B.24.103(g), B.24.202(d), B.24.304(h), B.25.020(1)(e), (f) and (h), B.25.057(1)(f) and (2)(f), B.27.005(a) and sections B.29.020 and B.29.026, and

**(iii)** any statement required to be shown on the label of a supplemented food in accordance with column 5 of the List of Permitted Supplemental Ingredients; and

**(b)** where a prepackaged product consists of more than one ingredient, a list of all ingredients, including, subject to section B.01.009, components, if any.

**(2)** Paragraph (1)(b) does not apply to

**(a)** prepackaged products packaged from bulk on retail premises, except prepackaged products that are a mixture of nuts;

**(b)** prepackaged individual portions of food that are intended solely to be served by a restaurant or other commercial enterprise with meals or snacks;

**(c)** prepackaged individual servings of food that are prepared by a commissary and sold by automatic vending machines or mobile canteens;

**(d)** prepackaged meat and meat by-products that are barbecued, roasted or broiled on the retail premises;

**(e)** prepackaged poultry, poultry meat or poultry meat by-products that are barbecued, roasted or broiled on the retail premises;

**(f)** Bourbon whisky and prepackaged products subject to compositional standards in Division 2; or

**(g)** prepackaged products subject to compositional standards in Division 19.

**a)** les renseignements exigés par le présent règlement, autres que :

**(i)** ceux qui doivent figurer sur l'espace principal, dans le tableau de la valeur nutritive ou dans le tableau des renseignements sur les aliments supplémentés,

**(ii)** ceux exigés par le paragraphe B.01.005(4), les articles B.01.007, B.01.301, B.01.305, B.01.311, B.01.503, B.01.513 et B.01.601, les alinéas B.24.103g), B.24.202d), B.24.304h), B.25.020(1)e), f) et h), B.25.057(1)f) et (2)f) et B.27.005a) et les articles B.29.020 et B.29.026,

**(iii)** les mentions devant figurer sur l'étiquette d'un aliment supplémenté conformément à la colonne 5 de la Liste des ingrédients supplémentaires autorisés;

**b)** lorsqu'un produit préemballé se compose de plus d'un ingrédient, une liste de tous les ingrédients, y compris, sous réserve de l'article B.01.009, les constituants, le cas échéant.

**(2)** L'alinéa (1)b) ne s'applique pas

**a)** aux produits préemballés, sauf les noix assorties, dont l'emballage se fait sur les lieux de vente au détail à partir du produit en vrac;

**b)** aux portions individuelles préemballées d'aliment, destinées uniquement à être servies par un restaurant ou une autre entreprise commerciale avec les repas ou casse-croûte;

**c)** aux portions individuelles préemballées d'aliment, préparées dans un dépôt de vivres et vendues au moyen de distributeurs automatiques ou d'une cantine mobile;

**d)** aux viandes et sous-produits de la viande préemballés, cuits à la broche, rôtis ou grillés sur les lieux de la vente au détail;

**e)** aux volailles, viandes de volaille, ou sous-produits de la viande de volaille cuits à la broche, rôtis ou grillés sur les lieux de la vente au détail;

**f)** au bourbon et aux produits préemballés régis par les normes de composition énoncées au titre 2;

**g)** aux produits préemballés régis par les normes de composition du titre 19.

**(3)** Despite paragraph (1)(b), the following items are not required to be shown on the label of a prepackaged product:

**(a)** wax coating compounds and their components, used as an ingredient or component of prepackaged fresh fruit or vegetables;

**(b)** sausage casings, used as an ingredient or component of prepackaged sausages;

**(c)** hydrogen, used as an ingredient or component of a prepackaged product if used for hydrogenation purposes;

**(d)** components of ingredients of a sandwich, if the sandwich is made with bread; and

**(e)** added water used as an ingredient that has been removed during the manufacture of the prepackaged product.

**(4) to (10)** [Repealed, SOR/2016-305, s. 4]

SOR/79-23, s. 5; SOR/88-559, s. 3; SOR/92-626, s. 7; SOR/93-145, s. 1; SOR/2003-11, s. 5; SOR/2011-28, s. 1; SOR/2016-305, s. 4; SOR/2021-57, s. 4; SOR/2022-143, s. 5; SOR/2022-169, s. 3.

**B.01.008.1 (1)** Information appearing on the label of a prepackaged product according to sections B.01.008.2 to B.01.010.4, B.01.014 and B.29.020 shall be shown

**(a)** in a single colour of type that is a visual equivalent of 100% solid black type on a white background or a uniform neutral background with a maximum 5% tint of colour;

**(b)** in a single standard sans serif font that is not decorative and in a manner that the characters never touch each other or any differentiating feature under subsection B.01.008.2(2);

**(c)** in type of normal or condensed width that is not scaled down so that the characters take up less space horizontally and, if a nutrition facts table or supplemented food facts table appears on the label, the width of type must be the same as that required for the type used to show the nutrients that appear in the nutrition facts table or the supplemental ingredients that appear in the supplemented food facts table, as the case may be;

**(d)** in regular type, except as otherwise provided in those sections; and

**(e)** in type that is the same height that is not less than 1.1 mm with identical leading of not less than 2.5 mm, except as otherwise provided in this section or those sections.

**(3)** Malgré l'alinéa (1)b), les éléments ci-après n'ont pas à être indiqués sur l'étiquette d'un produit préemballé :

**a)** les composés d'enduits de cire et leurs constituants utilisés comme ingrédients ou constituants des fruits ou légumes frais préemballés;

**b)** les boyaux de saucisse utilisés comme ingrédients ou constituants des saucisses préemballées;

**c)** l'hydrogène utilisé pour l'hydrogénation, comme ingrédient ou constituant des produits préemballés;

**d)** les constituants des ingrédients d'un sandwich fait avec du pain;

**e)** l'eau ajoutée utilisée comme ingrédient qui a été éliminée pendant la fabrication des produits préemballés.

**(4) à (10)** [Abrogés, DORS/2016-305, art. 4]

DORS/79-23, art. 5; DORS/88-559, art. 3; DORS/92-626, art. 7; DORS/93-145, art. 1; DORS/2003-11, art. 5; DORS/2011-28, art. 1; DORS/2016-305, art. 4; DORS/2021-57, art. 4; DORS/2022-143, art. 5; DORS/2022-169, art. 3.

**B.01.008.1 (1)** Les renseignements qui, aux termes des articles B.01.008.2 à B.01.010.4, B.01.014 et B.29.020, figurent sur l'étiquette d'un produit préemballé sont indiqués en caractères :

**a)** monochromes et équivalent visuellement à de l'imprimerie noire en aplat de 100 % sur un fond blanc ou de couleur de teinte neutre et uniforme d'au plus 5 %;

**b)** normalisés, sans empattement, non décoratifs et inscrits de manière à ce qu'ils ne se touchent pas ni ne touchent à aucun élément de démarcation prévu au paragraphe B.01.008.2(2);

**c)** de chasse normale ou étroite sans qu'elle soit réduite pour qu'ils prennent moins d'espace sur le plan horizontal, et, si un tableau de la valeur nutritive ou un tableau des renseignements sur les aliments supplémentés figure sur l'étiquette, les caractères sont d'une chasse égale à celle qui est exigée pour les caractères des éléments nutritifs figurant dans le tableau de la valeur nutritive ou à celle qui est exigée pour les caractères des ingrédients supplémentaires figurant dans le tableau des renseignements sur les aliments supplémentés, selon le cas;

**d)** ordinaires, sauf disposition contraire prévue à ces articles;

**e)** d'une même hauteur, soit d'au moins 1,1 mm, avec un interligne identique d'au moins 2,5 mm, sauf

disposition contraire prévue au présent article ou à ces articles.

**(2)** Despite paragraph (1)(a), a list of ingredients appearing on the label of the following prepackaged products is not required to be shown on a white background or a uniform neutral background with a maximum 5% tint of colour:

**(a)** a prepackaged product that is intended solely for use as an ingredient in the manufacture of other prepackaged products intended for sale to a consumer at the retail level or as an ingredient in the preparation of food by a commercial or industrial enterprise or an institution; and

**(b)** a prepackaged product that is a ready-to-serve multiple-serving prepackaged product intended solely to be served in a commercial or industrial enterprise or an institution.

**(2)** Malgré l'alinéa (1)a), la liste des ingrédients figurant sur l'étiquette des produits préemballés ci-après n'a pas à être sur un fond blanc ou de couleur de teinte neutre et uniforme d'au plus 5 % :

**a)** tout produit préemballé qui est destiné uniquement à être utilisé comme ingrédient dans la fabrication d'autres produits préemballés destinés à être vendus au consommateur au niveau du commerce de détail ou comme ingrédient dans la préparation d'aliments par une entreprise commerciale ou industrielle ou une institution;

**b)** tout produit préemballé à portions multiples prêt à servir destiné uniquement à être servi par une entreprise commerciale ou industrielle ou une institution.

**(3)** Except as otherwise provided in subsection (4) and sections B.01.008.2 to B.01.010.4, if a nutrition facts table or supplemented food facts table appears on the label of a prepackaged product and the type size of the nutrients shown in the nutrition facts table or the supplemental ingredients shown in the supplemented food facts table is not less than 8 points, the information referred to in subsection (1) must be shown in type that is

**(a)** the same height as the type in which the nutrients are shown in the nutrition facts table or the supplemental ingredients are shown in the supplemented food facts table, as the case may be; and

**(b)** of a height that is not less than 1.4 mm with identical leading of not less than 3.2 mm.

**(3)** Sauf disposition contraire prévue au paragraphe (4) et aux articles B.01.008.2 à B.01.010.4, si un tableau de la valeur nutritive ou un tableau des renseignements sur les aliments supplémentés figure sur l'étiquette d'un produit préemballé et que les éléments nutritifs qui figurent dans le tableau de la valeur nutritive — ou les ingrédients supplémentaires qui figurent dans le tableau des renseignements sur les aliments supplémentés — sont présentés en caractères d'au moins 8 points, les renseignements visés au paragraphe (1) sont indiqués en caractères qui remplissent les exigences suivantes :

**a)** ils sont d'une même hauteur que ceux utilisés pour présenter les éléments nutritifs dans le tableau de la valeur nutritive ou les ingrédients supplémentaires dans le tableau des renseignements sur les aliments supplémentés, selon le cas;

**b)** ils sont d'une hauteur d'au moins 1,4 mm, avec un interligne identique d'au moins 3,2 mm.

**(4)** A title that introduces a list of ingredients, *a food allergen source, gluten source and added sulphites statement* as defined in subsection B.01.010.1(1), a declaration referred to in subsection B.01.010.4(1) or a list of cautionary statements may be shown in type that is of a greater height than the type used to show the information in either of the lists, the statement or the declaration, as the case may be.

**(4)** Le titre utilisé pour présenter la liste des ingrédients, la *mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés* au sens du paragraphe B.01.010.1(1), l'énoncé visé au paragraphe B.01.010.4(1) ou la liste des mises en garde peut être en caractères d'une hauteur plus grande que celle des caractères utilisés pour indiquer les renseignements contenus dans l'une ou l'autre de ces listes, dans la mention ou dans l'énoncé, selon le cas.

**(5)** If more than one of the titles referred to in subsection (4) appears on a label, the characters of each title must be of the same height.

**(5)** Si plus d'un des titres visés au paragraphe (4) figure sur l'étiquette, les caractères de chacun de ces titres doivent être de la même hauteur.

**(6)** For the purpose of this section, the *height* of type means the height of the lower case letter "x".

SOR/2016-305, s. 5; SOR/2022-168, s. 2; SOR/2022-169, s. 4.

**B.01.008.2 (1)** A list of ingredients shall be introduced by a title that shall

**(a)** consist of the term

**(i)** "Ingredients", "Ingredients:" or "Ingredients :" in the English version of the list, and

**(ii)** "Ingrédients", "Ingrédients:" or "Ingrédients:" in the French version of the list;

**(b)** be shown in bold type; and

**(c)** be shown without any intervening printed, written or graphic material appearing between the title and the first ingredient shown in the list.

**(2)** A list of ingredients shall be shown in a manner that clearly differentiates it on the label, by means of one or both of

**(a)** graphics in the form of a solid-line border around the list or one or more solid lines appearing immediately above, below or at the sides of the list that are the same colour as that of the type used to show the information referred to in subsection B.01.008.1(1); and

**(b)** a background colour that creates a contrast between the background colour of the list and the background colour used on the adjacent surface of the label, other than the surface used to display

**(i)** a *food allergen source, gluten source and added sulphites statement* as defined in subsection B.01.010.1(1),

**(ii)** a declaration referred to in subsection B.01.010.4(1),

**(iii)** any statement referred to in subsection B.01.014(1),

**(iv)** a nutrition facts table,

**(v)** a supplemented food facts table, or

**(vi)** a list of cautionary statements.

**(3)** In a list of ingredients, ingredients shall be shown

**(6)** Pour l'application du présent article, la *hauteur* d'un caractère désigne la hauteur de la lettre minuscule « x ».

DORS/2016-305, art. 5; DORS/2022-168, art. 2; DORS/2022-169, art. 4.

**B.01.008.2 (1)** La liste des ingrédients est indiquée par un titre qui, à la fois :

**a)** est formé de la mention :

**(i)** « Ingrédients », « Ingrédients : » ou « Ingrédients : », pour ce qui est de la version française de la liste,

**(ii)** « Ingredients », « Ingredients: » ou « Ingredients : » pour ce qui est de la version anglaise de la liste;

**b)** figure en caractères gras;

**c)** figure sans qu'aucun texte imprimé ou écrit, ni aucun autre signe graphique ne soit intercalé entre le titre et le premier ingrédient mentionné à la liste.

**(2)** La liste des ingrédients est présentée de l'une des manières ci-après, ou des deux, de façon à ce qu'elle se démarque nettement sur l'étiquette :

**a)** elle est encadrée par une bordure ou délimitée par une ou plusieurs lignes continues tracées immédiatement au-dessus, au-dessous ou aux extrémités de la liste, qui sont de la même couleur que celle des caractères utilisés pour indiquer les renseignements visés au paragraphe B.01.008.1(1);

**b)** il y a un contraste entre la couleur de fond de la liste et la couleur de fond de la partie adjacente de l'étiquette, exception faite de la partie où figurent l'un ou l'autre des renseignements suivants :

**(i)** la *mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés* au sens du paragraphe B.01.010.1(1),

**(ii)** l'énoncé visé au paragraphe B.01.010.4(1),

**(iii)** toute mention visée au paragraphe B.01.014(1),

**(iv)** le tableau de la valeur nutritive,

**(v)** le tableau des renseignements sur les aliments supplémentés,

**(vi)** la liste des mises en garde.

**(3)** Les ingrédients figurent dans la liste des ingrédients :

**(a)** in descending order of their proportion by weight of the prepackaged product, determined before they are combined to form the prepackaged product;

**(b)** in lower case letters, except that upper case letters shall be used to show

**(i)** the first letter of each ingredient or, in the case of a food additive or supplemental ingredient shown in whole or in part by an acronym, the entire acronym, and

**(ii)** the alpha-descriptor that forms a part of the common name for a food additive, vitamin, supplemental ingredient or microorganism; and

**(c)** separated by a bullet point or a comma.

**(4)** Despite paragraph (3)(a), the following ingredients may be shown at the end of the list of ingredients, in any order:

**(a)** spices, herbs and other seasonings, other than salt added separately, if the total weight of those other seasonings is no more than two per cent of the total weight of ingredients used in the manufacture of the prepackaged product excluding added water used as an ingredient that has been removed during its manufacture;

**(b)** natural flavours and artificial flavours;

**(c)** flavour enhancers;

**(d)** food additives, except ingredients of food additive preparations or mixtures of substances for use as a food additive;

**(e)** vitamins;

**(f)** salts or derivatives of vitamins;

**(g)** mineral nutrients;

**(h)** salts of mineral nutrients; and

**(i)** supplemental ingredients.

**(5)** In a list of ingredients, the components of an ingredient shall be shown

**(a)** in parentheses, immediately after the ingredient, unless the source of a food allergen or gluten is shown

**a)** dans l'ordre décroissant de leurs proportions respectives, en poids, dans le produit préemballé avant qu'ils ne soient combinés pour former celui-ci;

**b)** en lettres minuscules, sauf dans les cas ci-après où des lettres majuscules sont utilisées :

**(i)** la première lettre de chacun des ingrédients ou, s'il s'agit d'un additif alimentaire ou d'un ingrédient supplémentaire indiqué — en tout ou en partie — par son acronyme, la totalité de l'acronyme,

**(ii)** le descripteur alphabétique utilisé dans le nom usuel d'un additif alimentaire, d'une vitamine, d'un ingrédient supplémentaire ou d'un microorganisme;

**c)** séparés entre eux par une puce ou une virgule.

**(4)** Malgré l'alinéa (3)a), les ingrédients ci-après peuvent figurer dans n'importe quel ordre à la fin de la liste des ingrédients :

**a)** épices, fines herbes et autres assaisonnements, sauf le sel ajouté séparément, lorsque le poids total de ces autres assaisonnements ne dépasse pas deux pour cent du poids total des ingrédients utilisés pour fabriquer le produit préemballé, à l'exception de l'eau ajoutée utilisée comme ingrédient qui a été éliminée pendant la fabrication;

**b)** substances aromatisantes naturelles et substances aromatisantes artificielles;

**c)** substances qui rehaussent le goût;

**d)** additifs alimentaires, sauf les ingrédients de préparation d'additifs alimentaires ou les mélanges de substances devant être utilisés comme additifs alimentaires;

**e)** vitamines;

**f)** sels ou dérivés de vitamines;

**g)** minéraux nutritifs;

**h)** sels de minéraux nutritifs;

**i)** ingrédients supplémentaires.

**(5)** Les constituants d'un ingrédient figurent dans la liste des ingrédients :

**a)** entre parenthèses, immédiatement après l'ingrédient sauf si une source d'allergène alimentaire ou de gluten est indiquée immédiatement après l'ingrédient,

immediately after the ingredient, in which case components of the ingredient shall be shown immediately after that source;

**(b)** in descending order of their proportion by weight of the ingredient, determined before the components are combined to form the ingredient;

**(c)** in lower case letters, except that upper case letters shall be used to show

**(i)** in the case of a food additive or supplemental ingredient shown in whole or in part by an acronym, the entire acronym, and

**(ii)** the alpha-descriptor that forms a part of the common name for a food additive, vitamin, supplemental ingredient or microorganism; and

**(d)** separated by a comma.

**(6)** Despite paragraph B.01.008(1)(b) and paragraphs (5)(a) and (b), but subject to section B.01.009, if one or more components of an ingredient are required by these Regulations to be shown in a list of ingredients, the ingredient is not required to be shown in the list if all components of the ingredient are shown in the list by their common names and in accordance with subsection (3) as if they were ingredients.

**(7)** In a list of ingredients, the source of a food allergen or gluten shall be shown

**(a)** immediately after the ingredient or component to which it applies in accordance with subsections B.01.010.1(8) and (10);

**(b)** entirely in lower case letters; and

**(c)** separated by a comma from any other source of a food allergen or gluten that is shown for the same ingredient or component.

**(8)** If the English and French versions of a list of ingredients appear on the label, they shall be displayed on a continuous surface of the available display surface, but need not be on the same continuous surface of the available display surface.

**(9)** If the English and French versions of a list of ingredients appear on the same continuous surface of the label, the version that follows the other version shall not begin on the same line as that on which the other version ends,

auquel cas les constituants de l'ingrédient figurent plutôt immédiatement après cette source;

**b)** dans l'ordre décroissant de leurs proportions respectives, en poids, dans l'ingrédient avant qu'ils ne soient combinés pour former celui-ci;

**c)** en lettres minuscules, sauf dans les cas ci-après où des lettres majuscules sont utilisées :

**(i)** s'il s'agit d'un additif alimentaire ou d'un ingrédient supplémentaire indiqué — en tout ou en partie — par son acronyme, la totalité de l'acronyme,

**(ii)** le descripteur alphabétique utilisé dans le nom usuel d'un additif alimentaire, d'une vitamine, d'un ingrédient supplémentaire ou d'un microorganisme;

**d)** séparés entre eux par une virgule.

**(6)** Malgré l'alinéa B.01.008(1)b) et les alinéas (5)a) et b) et sous réserve de l'article B.01.009, dans les cas où le présent règlement exige l'indication d'un ou de plusieurs constituants d'un ingrédient dans la liste des ingrédients, le nom de cet ingrédient n'a pas à être inclus dans la liste si tous ses constituants y sont désignés par leur nom usuel et y figurent conformément au paragraphe (3) comme s'ils étaient des ingrédients.

**(7)** Dans le cas où une source d'allergène alimentaire ou de gluten figure à la liste des ingrédients, la source figure :

**a)** immédiatement à la suite de l'ingrédient ou du constituant dont elle indique la source, conformément aux paragraphes B.01.010.1(8) et (10);

**b)** en lettres minuscules uniquement;

**c)** séparée par une virgule de toute autre source d'allergène alimentaire ou de gluten figurant pour un même ingrédient ou constituant.

**(8)** Lorsque les versions française et anglaise de la liste des ingrédients figurent sur l'étiquette, elles sont présentées sur un espace continu de la surface exposée disponible, mais n'ont pas à être présentées sur le même.

**(9)** Lorsque les versions anglaise et française de la liste des ingrédients sont présentées sur un même espace continu de l'étiquette, celle des versions qui suit l'autre

except in the case of a prepackaged product that has an available display surface of less than 100 $cm^2$.

SOR/2016-305, s. 5; SOR/2021-46, s. 2; SOR/2022-143, s. 6; SOR/2022-168, s. 3; SOR/2022-169, s. 5; SOR/2022-197, s. 3.

**B.01.008.3 (1)** If a prepackaged product contains one or more sugars-based ingredients, despite the order of presentation referred to in paragraph B.01.008.2(3)(a), the sugars-based ingredient or ingredients shall be shown in the list of ingredients, in parentheses, immediately following the term

**(a)** "Sugars" in the English version of the list; and

**(b)** "Sucres" in the French version of the list.

**(2)** The term "Sugars" referred to in subsection (1) shall be shown in the list of ingredients

**(a)** in descending order of the proportion by weight of all the sugars-based ingredients in the prepackaged product, before they are combined to form the product; and

**(b)** separated from other ingredients by a bullet point or a comma.

**(3)** Each sugars-based ingredient mentioned immediately following the term "Sugars" shall be shown,

**(a)** despite paragraph B.01.008.2(3)(b), entirely in lower case letters; and

**(b)** in the case of more than one sugars-based ingredient,

**(i)** in descending order of its proportion by weight of the prepackaged product as prescribed by subsection B.01.008.2(3), and

**(ii)** separated by a comma.

**(4)** Subsections (1) to (3) do not apply to the following prepackaged products:

**(a)** a sweetening agent;

**(b)** fruit or vegetable juice or vegetable drink that does not contain any sweetening agent, as well as any mixture of those juices and drinks, including any of those juices and drinks

**(i)** to which fruit or vegetable purée or any mixture of those purées has been added,

ne doit pas débuter sur la même ligne que celle où se termine cette autre version, sauf s'il s'agit d'un produit préemballé dont la surface exposée disponible est de moins de 100 $cm^2$.

DORS/2016-305, art. 5; DORS/2021-46, art. 2; DORS/2022-143, art. 6; DORS/2022-168, art. 3; DORS/2022-169, art. 5; DORS/2022-197, art. 3.

**B.01.008.3 (1)** Lorsqu'un produit préemballé contient un ou plusieurs ingrédients à base de sucres, ces ingrédients doivent, malgré l'ordre de présentation prévu à l'alinéa B.01.008.2(3)a), être regroupés dans la liste des ingrédients, entre parenthèses, immédiatement après la mention :

**a)** « Sucres » pour ce qui est de la version française de la liste;

**b)** « Sugars » pour ce qui est de la version anglaise de la liste.

**(2)** La mention « Sucres » visée au paragraphe (1) figure dans la liste des ingrédients :

**a)** dans l'ordre décroissant de la proportion, en poids, de tous les ingrédients à base de sucres dans le produit préemballé avant qu'ils ne soient combinés pour former celui-ci;

**b)** séparée des autres ingrédients par une puce ou une virgule.

**(3)** Chaque ingrédient à base de sucres indiqué immédiatement après la mention « Sucres » figure :

**a)** malgré l'alinéa B.01.008.2(3)b), uniquement en lettres minuscules;

**b)** dans le cas où plus d'un de ces ingrédients sont indiqués :

**(i)** dans l'ordre décroissant de sa proportion, en poids, dans le produit préemballé, conformément au paragraphe B.01.008.2(3),

**(ii)** séparé par une virgule.

**(4)** Les paragraphes (1) à (3) ne s'appliquent pas aux produits préemballés suivants :

**a)** les agents édulcorants;

**b)** les jus de fruit ou de légume ou les boissons de légumes qui ne contiennent aucun agent édulcorant, ou les mélanges de ces jus ou boissons, y compris :

**(i)** ceux auxquels de la purée de fruit ou de légume, ou de fruits et de légumes, a été ajoutée,

**(ii)** that are reconstituted, or

**(iii)** that are a concentrate intended for dilution and consumption as juice or drink;

**(c)** fruit or vegetable purée that does not contain any sweetening agent as well as any mixture of those purées;

**(d)** prepackaged products that contain only one sugars-based ingredient that contains the word "sugar" in its common name;

**(e)** formulated liquid diets, human milk fortifiers and human milk substitutes; and

**(f)** prepackaged products that contain less than 0.5 g of sugars per serving of stated size.

SOR/2016-305, s. 5; SOR/2021-57, s. 5; SOR/2022-143, s. 7; SOR/2022-197, s. 4.

**B.01.009 (1)** Components of ingredients or of classes of ingredients set out in the following table are not required to be shown on a label:

**TABLE**

| Item | Ingredient |
|---|---|
| 1 | butter |
| 2 | margarine |
| 3 | shortening |
| 4 | lard |
| 5 | leaf lard |
| 6 | monoglycerides |
| 7 | diglycerides |
| 8 | rice |
| 9 | starches or modified starches |
| 10 | breads subject to compositional standards in sections B.13.021 to B.13.029 |
| 11 | flour |
| 12 | soy flour |
| 13 | graham flour |
| 14 | whole wheat flour |
| 15 | baking powder |
| 16 | milks subject to compositional standards in sections B.08.003 to B.08.027 |
| 17 | chewing gumbase |
| 18 | sweetening agents subject to compositional standards in sections B.18.001 to B.18.018 |
| 19 | cocoa, low-fat cocoa |
| 20 | salt |

**(ii)** ceux reconstitués,

**(iii)** les concentrés de ces jus ou boissons à diluer et à consommer sous forme de jus ou de boisson;

**c)** les purées de fruit ou de légume qui ne contiennent aucun agent édulcorant y compris les mélanges de ces purées;

**d)** les produits préemballés qui contiennent seulement un ingrédient à base de sucres dont le nom usuel contient le mot « sucre »;

**e)** les préparations pour régime liquide, les fortifiants pour lait humain et les succédanés de lait humain;

**f)** les produits préemballés qui contiennent moins de 0,5 g de sucres par portion indiquée.

DORS/2016-305, art. 5; DORS/2021-57, art. 5; DORS/2022-143, art. 7; DORS/2022-197, art. 4.

**B.01.009 (1)** Les constituants des ingrédients ou groupes d'ingrédients énumérés dans le tableau du présent paragraphe n'ont pas à être indiqués sur l'étiquette d'un produit.

**TABLEAU**

| Article | Ingrédient |
|---|---|
| 1 | beurre |
| 2 | margarine |
| 3 | shortening |
| 4 | saindoux |
| 5 | saindoux de panne |
| 6 | monoglycérides |
| 7 | diglycérides |
| 8 | riz |
| 9 | amidons ou amidons modifiés |
| 10 | pains régis par les normes de composition énoncées aux articles B.13.021 à B.13.029 |
| 11 | farine |
| 12 | farine de soya |
| 13 | farine Graham |
| 14 | farine de blé entier |
| 15 | levure artificielle (poudre à pâte) |
| 16 | laits régis par les normes de composition énoncées aux articles B.08.003 à B.08.027 |
| 17 | base de gomme à mâcher |
| 18 | agents édulcorants régis par les normes de composition énoncées aux articles B.18.001 à B.18.018 |
| 19 | cacao, cacao faible en gras |
| 20 | sel |

| Item | Ingredient |
|---|---|
| 21 | vinegars subject to compositional standards in sections B.19.003 to B.19.007 |
| 22 | Bourbon whisky and alcoholic beverages subject to compositional standards in sections B.02.001 to B.02.134 |
| 23 | cheese for which a standard is prescribed in Division 8, if the total amount of cheese in a prepackaged product is less than 10 per cent of that packaged product |
| 24 | jams, marmalades and jellies subject to compositional standards in sections B.11.201 to B.11.241 when the total amount of those ingredients is less than 5 per cent of a prepackaged product |
| 25 | olives, pickles, relish and horse-radish when the total amount of those ingredients is less than 10 per cent of a prepackaged product |
| 26 | vegetable or animal fats or oils for which a standard is prescribed in Division 9, and modified, interesterified or fully hydrogenated vegetable or animal fats or oils, if the total quantity of those fats and oils that are contained in a prepackaged product is less than 15 per cent of the prepackaged product |
| 27 | prepared or preserved meat, fish, poultry meat, meat by-product or poultry by-product when the total amount of those ingredients is less than 10 per cent of a prepackaged product that consists of an unstandardized food |
| 28 | alimentary paste that does not contain egg in any form or any flour other than wheat flour |
| 29 | bacterial culture |
| 30 | hydrolyzed plant protein |
| 31 | carbonated water |
| 32 | whey, whey powder, concentrated whey, whey butter and whey butter oil |
| 33 | mould culture |
| 34 | chlorinated water and fluorinated water |
| 35 | gelatin |
| 36 | toasted wheat crumbs used in or as a binder, filler or breading in or on a food product |

**(2)** Subject to subsection (3), where a preparation or mixture set out in the table to this subsection is added to a food, the ingredients and components of the preparation or mixture are not required to be shown on the label of that food.

| Article | Ingrédient |
|---|---|
| 21 | vinaigres régis par les normes de composition énoncées aux articles B.19.003 à B.19.007 |
| 22 | bourbon et boissons alcooliques régies par les normes de composition énoncées aux articles B.02.001 à B.02.134 |
| 23 | fromage faisant l'objet d'une norme prévue au titre 8 et qui, dans un produit préemballé, constitue au total moins de 10 pour cent de celui-ci |
| 24 | confitures, marmelades et gelées régies par les normes de composition énoncées aux articles B.11.201 à B.11.241, lorsque la quantité totale de ces ingrédients constitue moins de 5 pour cent du produit préemballé |
| 25 | olives, marinades, achards (*relish*) et raifort, lorsque la quantité totale de ces ingrédients constitue moins de 10 pour cent du produit préemballé |
| 26 | graisse ou huile végétale ou animale visées par une norme prévue au titre 9 et graisse ou huile végétale ou animale modifiées, interestérifiées ou entièrement hydrogénées dont la quantité totale équivaut à moins de 15 pour cent du produit préemballé |
| 27 | viande, poisson, viande de volaille, sous-produit de viande ou de viande de volaille, préparé ou conservé, lorsque la quantité totale de ces ingrédients constitue moins de 10 pour cent d'un produit préemballé qui est un aliment non normalisé |
| 28 | pâte alimentaire qui ne contient aucun œuf sous quelque forme que ce soit, ni aucune farine autre que de la farine de blé |
| 29 | culture bactérienne |
| 30 | protéine végétale hydrolysée |
| 31 | eau gazéifiée |
| 32 | lactosérum (petit-lait), poudre de lactosérum (petit-lait), lactosérum (petit-lait) concentré, beurre de lactosérum (petit-lait) et huile de beurre de lactosérum (petit-lait) |
| 33 | culture de moisissures |
| 34 | eau chlorée et eau fluorée |
| 35 | gélatine |
| 36 | chapelure de blé grillée utilisée dans ou comme liant, agent de remplissage ou d'enrobage dans ou sur un produit alimentaire |

**(2)** Sous réserve du paragraphe (3), lorsqu'une préparation ou un mélange figurant au tableau du présent paragraphe est ajouté à un aliment, les ingrédients et les constituants de la préparation ou du mélange n'ont pas à être indiqués sur l'étiquette de l'aliment.

**TABLE**

| Item | Preparation/Mixture |
|---|---|
| 1 | food colour preparations |
| 2 | flavouring preparations |
| 3 | artificial flavouring preparations |
| 4 | spice or herb mixtures |
| 5 | seasoning mixtures, other than those set out in item 4 and salt added separately, if the total weight of those seasoning ingredients is no more than 2% of the total weight of ingredients used in the manufacture of the prepackaged product excluding added water used as an ingredient that has been removed during its manufacture |
| 6 | vitamin preparations |
| 7 | mineral preparations |
| 8 | food additive preparations |
| 9 | rennet preparations |
| 10 | food flavour-enhancer preparations |
| 11 | compressed, dry, active or instant yeast preparations |

**(3)** Where a preparation or mixture set out in the table to subsection (2) is added to a food, and the preparation or mixture contains one or more of the following ingredients or components, those ingredients or components shall be shown by their common names in the list of the ingredients of the food to which they are added as if they were ingredients of that food:

**(a)** salt;

**(b)** glutamic acid or its salts;

**(c)** hydrolyzed plant protein;

**(d)** aspartame;

**(e)** potassium chloride;

**(f)** any ingredient or component that performs a function in, or has any effect on, that food; and

**(g)** any supplemental ingredient.

**(4)** Notwithstanding subsections (1) and (2), where any of the following components is contained in an ingredient set out in the tables to those subsections, that component shall be shown in the list of ingredients:

**(a)** peanut oil;

**(b)** fully hydrogenated peanut oil; and

**TABLEAU**

| Article | Préparation ou mélange |
|---|---|
| 1 | préparation de colorants alimentaires |
| 2 | préparation aromatisante |
| 3 | préparation aromatisante artificielle |
| 4 | mélange d'épices ou de fines herbes |
| 5 | mélange d'assaisonnements, autre que celui visé à l'article 4, et le sel ajouté séparément, lorsque le poids total de ces assaisonnements ne dépasse pas 2 % du poids total des ingrédients utilisés pour fabriquer le produit préemballé, à l'exception de l'eau ajoutée utilisée comme ingrédient qui a été éliminée pendant la fabrication |
| 6 | préparation vitaminée |
| 7 | préparation minérale |
| 8 | préparation d'additif alimentaire |
| 9 | préparation de présure |
| 10 | préparation de rehausseur de saveur |
| 11 | préparation de levure pressée, sèche, active ou instantanée |

**(3)** Les ingrédients ou les constituants suivants d'une préparation ou d'un mélange figurant au tableau du paragraphe (2) qui a été ajouté à un aliment doivent figurer sous leur nom usuel dans la liste des ingrédients de l'aliment, comme s'ils étaient des ingrédients de celui-ci :

**a)** sel;

**b)** acide glutamique ou ses sels;

**c)** protéine végétale hydrolysée;

**d)** aspartame;

**e)** chlorure de potassium;

**f)** les ingrédients ou les constituants qui remplissent une fonction dans l'aliment ou qui ont un effet sur celui-ci;

**g)** les ingrédients supplémentaires.

**(4)** Malgré les paragraphes (1) et (2), les constituants suivants, lorsqu'ils sont contenus dans un des ingrédients énumérés au tableau de ces paragraphes, doivent figurer dans la liste des ingrédients :

**a)** l'huile d'arachide;

**b)** l'huile d'arachide entièrement hydrogénée;

**(c)** modified peanut oil.

**(5)** [Repealed, SOR/2011-28, s. 2]

SOR/78-728, s. 1; SOR/79-23, s. 6; SOR/79-662, s. 1; SOR/88-559, s. 4; SOR/92-626, s. 8; SOR/93-145, s. 2; SOR/93-465, s. 1; SOR/95-548, s. 5(F); SOR/97-263, s. 1; SOR/2000-417, s. 1; SOR/2010-143, s. 39(E); SOR/2011-28, s. 2; SOR/2022-143, s. 8; SOR/2022-168, s. 4; SOR/2022-169, s. 6.

**B.01.010 (1)** In this section, ***common name*** includes a name set out in the Common Names for Ingredients and Components Document.

**(2)** An ingredient or component shall be shown in the list of ingredients by its common name.

**(3)** For the purposes of subsection (2),

**(a)** the ingredient or component set out in the Common Names for Ingredients and Components Document shall be shown in the list of ingredients by the common name of that ingredient or component that is set out in that Document; and

**(b)** the ingredient or component set out in the Common Names for Ingredients and Components Document may be shown in the list of ingredients by the common name of that ingredient or component that is set out in that Document.

**(4)** Despite subsection (2) and subsection B.01.008.2(5), if a food contains ingredients of the same class, those ingredients may be shown by a class name if

**(a)** they consist of more than one component and are not listed in the table to subsection B.01.009(1); and

**(b)** their components are shown

**(i)** immediately after the class name of the ingredients of which they are components, in such a manner as to indicate that they are components of the ingredients, and

**(ii)** in descending order of their collective proportion by weight of those ingredients.

SOR/79-23, ss. 7, 8(F); SOR/79-529, s. 3; SOR/80-632, s. 1; SOR/84-300, ss. 4(E), 5(F); SOR/91-124, s. 2; SOR/92-626, s. 9; SOR/92-725, s. 1; SOR/93-243, s. 2(F); SOR/93-465, s. 2; SOR/95-548, s. 5(F); SOR/97-516, s. 1; SOR/98-458, ss. 1, 7(F); SOR/2005-98, s. 7; SOR/2007-302, s. 4(F); SOR/2011-28, s. 3; SOR/2016-305, s. 6; SOR/2021-46, s. 3(E); SOR/2022-143, s. 9.

**B.01.010.1 (1)** The following definitions apply in this section and in sections B.01.010.2 to B.01.010.4.

***food allergen*** means any protein from any of the following foods, or any modified protein, including any protein fraction, that is derived from any of the following foods:

**c)** l'huile d'arachide modifiée.

**(5)** [Abrogé, DORS/2011-28, art. 2]

DORS/78-728, art. 1; DORS/79-23, art. 6; DORS/79-662, art. 1; DORS/88-559, art. 4; DORS/92-626, art. 8; DORS/93-145, art. 2; DORS/93-465, art. 1; DORS/95-548, art. 5(F); DORS/97-263, art. 1; DORS/2000-417, art. 1; DORS/2010-143, art. 39(A); DORS/2011-28, art. 2; DORS/2022-143, art. 8; DORS/2022-168, art. 4; DORS/2022-169, art. 6.

**B.01.010 (1)** Au présent article, ***nom usuel*** s'entend du nom indiqué dans le document sur les noms usuels d'ingrédients et de constituants.

**(2)** Un ingrédient ou constituant doit figurer dans la liste des ingrédients sous son nom usuel.

**(3)** Aux fins du paragraphe (2),

**a)** l'ingrédient ou le constituant mentionné dans le document sur les noms usuels d'ingrédients et de constituants doit figurer dans la liste d'ingrédients sous le nom usuel indiqué dans ce document;

**b)** l'ingrédient ou le constituant mentionné dans le document sur les noms usuels d'ingrédients et de constituants peut figurer dans la liste d'ingrédients sous le nom usuel indiqué dans ce document.

**(4)** Malgré le paragraphe (2) et le paragraphe B.01.008.2(5), lorsqu'un aliment contient des ingrédients de la même catégorie, ceux-ci peuvent être indiqués par un nom de catégorie si :

**a)** ils sont formés de plus d'un constituant et ne sont pas énumérés au tableau du paragraphe B.01.009(1); et

**b)** leurs constituants sont indiqués

**(i)** immédiatement après le nom de catégorie des ingrédients dont ils sont des constituants de manière à indiquer qu'ils sont des constituants de ces ingrédients, et

**(ii)** par ordre décroissant de leur proportion collective, en poids, dans ces ingrédients.

DORS/79-23, art. 7 et 8(F); DORS/79-529, art. 3; DORS/80-632, art. 1; DORS/84-300, art. 4(A) et 5(F); DORS/91-124, art. 2; DORS/92-626, art. 9; DORS/92-725, art. 1; DORS/93-243, art. 2(F); DORS/93-465, art. 2; DORS/95-548, art. 5(F); DORS/97-516, art. 1; DORS/98-458, art. 1 et 7(F) DORS/2005-98, art. 7; DORS/2007-302, art. 4(F); DORS/2011-28, art. 3; DORS/2016-305, art. 6; DORS/2021-46, art. 3(A); DORS/2022-143, art. 9.

**B.01.010.1 (1)** Les définitions ci-après s'appliquent au présent article et aux articles B.01.010.2 à B.01.010.4.

***allergène alimentaire*** Toute protéine provenant d'un des aliments ci-après, ou toute protéine modifiée —– y compris toute fraction protéique — qui est dérivée d'un tel aliment :

**(a)** almonds, Brazil nuts, cashews, hazelnuts, macadamia nuts, pecans, pine nuts, pistachios or walnuts;

**(b)** peanuts;

**(c)** sesame seeds;

**(d)** wheat or triticale;

**(e)** eggs;

**(f)** milk;

**(g)** soybeans;

**(h)** crustaceans;

**(i)** molluscs;

**(j)** fish; or

**(k)** mustard seeds. (*allergène alimentaire*)

***food allergen source, gluten source and added sulphites statement*** means a statement appearing on the label of a prepackaged product that indicates the source of a food allergen or gluten that is present in the product or the presence in the product of added sulphites in a total amount of 10 p.p.m. or more. (*mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés*)

***gluten*** means

**(a)** any gluten protein from the grain of any of the following cereals or from the grain of a hybridized strain that is created from at least one of the following cereals:

**(i)** barley,

**(ii)** oats,

**(iii)** rye,

**(iv)** triticale,

**(v)** wheat; or

**(b)** any modified gluten protein, including any gluten protein fraction, that is derived from the grain of any of the cereals referred to in paragraph (a) or from the grain of a hybridized strain referred to in that paragraph. (*gluten*)

***height***, in respect of type, means the height of the lower case letter "x". (*hauteur*)

**a)** amandes, noix du Brésil, noix de cajou, noisettes, noix de macadamia, pacanes, pignons, pistaches ou noix;

**b)** arachides;

**c)** graines de sésame;

**d)** blé ou triticale;

**e)** œufs;

**f)** lait;

**g)** soja;

**h)** crustacés;

**i)** mollusques;

**j)** poissons;

**k)** graines de moutarde. (*food allergen*)

***gluten***

**a)** Toute protéine de gluten provenant des grains d'une des céréales ci-après ou des grains d'une lignée hybride issue d'au moins une de ces céréales :

**(i)** orge,

**(ii)** avoine,

**(iii)** seigle,

**(iv)** triticale,

**(v)** blé;

**b)** toute protéine de gluten modifiée — y compris toute fraction protéique de gluten — qui est dérivée des grains d'une des céréales mentionnées à l'alinéa a) ou des grains d'une lignée hybride qui est visée à cet alinéa. (*gluten*)

***hauteur*** En ce qui a trait aux caractères, la hauteur de la lettre minuscule « x ». (*height*)

***mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés*** Toute mention figurant sur l'étiquette d'un produit préemballé qui indique les sources d'allergènes alimentaires ou de gluten présentes dans le produit et les sulfites qui y sont ajoutés et présents dans une quantité totale égale ou supérieure à 10 p.p.m. (*food allergen source, gluten source and added sulphites statement*)

**(2)** If a food allergen or gluten is present in a prepackaged product, the source of the food allergen or gluten, as the case may be, must be shown on the label of the product in

**(a)** the list of ingredients; or

**(b)** in a food allergen source, gluten source and added sulphites statement.

**(3)** Subsection (2) does not apply to a food allergen or gluten that is present in a prepackaged product as a result of cross-contamination.

**(4)** Subsection (2) does not apply to a to a food allergen or gluten that is present in a prepackaged product referred to in paragraphs B.01.008(2)(a) to (e) unless a list of ingredients is shown on the product's label.

**(5)** [Repealed, SOR/2019-98, s. 1]

**(6)** The source of a food allergen required to be shown under subsection (2) must be shown

**(a)** for a food allergen from a food referred to in one of paragraphs (a), (b) and (e) of the definition ***food allergen*** in subsection (1) or derived from that food, by the name of the food as shown in the applicable paragraph, expressed in the singular or plural;

**(b)** for a food allergen from the food referred to in paragraph (c) of the definition ***food allergen*** in subsection (1) or derived from that food, by the name "sesame", "sesame seed" or "sesame seeds";

**(c)** for a food allergen from a food referred to in one of paragraphs (d) and (f) of the definition ***food allergen*** in subsection (1) or derived from that food, by the name of the food as shown in the applicable paragraph;

**(d)** for a food allergen from the food referred to in paragraph (g) of the definition ***food allergen*** in subsection (1) or derived from that food, by the name "soy", "soya", "soybean" or "soybeans";

**(e)** for a food allergen from a food referred to in one of paragraphs (h) to (j) of the definition ***food allergen*** in subsection (1) or derived from that food, by the common name of the food that is set out in the Common Names for Ingredients and Components Document; and

**(f)** for a food allergen from the food referred to in paragraph (k) of the definition ***food allergen*** in subsection (1) or derived from that food, by the name "mustard", "mustard seed" or "mustard seeds".

**(2)** Dans le cas où un allergène alimentaire ou du gluten est présent dans un produit préemballé, la source de l'allergène alimentaire ou de gluten, selon le cas, figure sur l'étiquette du produit :

**a)** soit dans la liste des ingrédients;

**b)** soit sous la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés.

**(3)** Le paragraphe (2) ne s'applique pas à l'allergène alimentaire ou au gluten présent dans un produit préemballé par suite de contamination croisée.

**(4)** Le paragraphe (2) ne s'applique pas à l'allergène alimentaire ou au gluten présent dans un produit préemballé visé à l'un des alinéas B.01.008(2)a) à e), sauf si l'étiquette d'un tel produit porte une liste des ingrédients.

**(5)** [Abrogé, DORS/2019-98, art. 1]

**(6)** La source de l'allergène alimentaire devant figurer en application du paragraphe (2) est indiquée :

**a)** s'agissant d'un allergène alimentaire provenant d'un aliment mentionné à l'un des alinéas a), b) et e) de la définition de ***allergène alimentaire***, au paragraphe (1), ou dérivé d'un tel aliment, par le nom de l'aliment tel qu'il est indiqué à l'alinéa applicable, écrit au singulier ou au pluriel;

**b)** s'agissant d'un allergène alimentaire provenant de l'aliment mentionné à l'alinéa c) de la même définition ou dérivé d'un tel aliment, par le nom « sésame », « graine de sésame » ou « graines de sésame »;

**c)** s'agissant d'un allergène alimentaire provenant d'un aliment mentionné à l'un des alinéas d) et f) de la même définition ou dérivé d'un tel aliment, par le nom de l'aliment tel qu'il est indiqué à l'alinéa applicable;

**d)** s'agissant d'un allergène alimentaire provenant de l'aliment mentionné à l'alinéa g) de la même définition ou dérivé d'un tel aliment, par le nom « soja » ou « soya »;

**e)** s'agissant d'un allergène alimentaire provenant d'un aliment mentionné à l'un des alinéas h) à j) de la même définition ou dérivé d'un tel aliment, par le nom usuel de l'aliment indiqué dans le document sur les noms usuels d'ingrédients et de constituants;

**f)** s'agissant d'un allergène alimentaire provenant de l'aliment mentionné à l'alinéa k) de la même définition ou dérivé d'un tel aliment, par le nom « moutarde », « graine de moutarde » ou « graines de moutarde ».

**(7)** The source of gluten required to be shown under subsection (2) must be shown

**(a)** for gluten from the grain of a cereal referred to in one of subparagraphs (a)(i) to (v) of the definition ***gluten*** in subsection (1) or derived from that grain, by the name of the cereal as shown in the applicable subparagraph; and

**(b)** for gluten from the grain of a hybridized strain created from one or more of the cereals referred to in subparagraphs (a)(i) to (v) of the definition ***gluten*** in subsection (1) or derived from that grain, by the names of the cereals as shown in the applicable subparagraphs.

**(8)** For the purpose of paragraph (2)(a), the source of the food allergen or gluten must be shown in the list of ingredients, in parentheses, as follows:

**(a)** immediately after the ingredient that is shown in that list, if the food allergen or gluten

**(i)** is that ingredient,

**(ii)** is present in that ingredient, but is not a component of or present in a component of that ingredient, or

**(iii)** is, or is present in, a component of that ingredient and the component is not shown in the list of ingredients; or

**(b)** immediately after the component that is shown in the list of ingredients, if the food allergen or gluten is that component or is present in that component.

**(9)** Despite subsection (2), the source of the food allergen or gluten must be shown on the label of the product in the food allergen source, gluten source and added sulphites statement if the food allergen or gluten

**(a)** is, or is present in, an ingredient that is not shown in the list of ingredients, but is not a component of that ingredient or present in a component of that ingredient; or

**(b)** is, or is present in, a component and neither the component nor the ingredient in which it is present is shown in the list of ingredients.

**(10)** Despite subsection (8), the source of the food allergen or gluten is not required to be shown in parentheses immediately after the ingredient or component, as the

**(7)** La source de gluten devant figurer en application du paragraphe (2) est indiquée :

**a)** s'agissant du gluten provenant de grains d'une céréale mentionnée à l'un des sous-alinéas a)(i) à (v) de la définition de *gluten*, au paragraphe (1), ou dérivé de tels grains, par le nom de la céréale tel qu'il est indiqué au sous-alinéa applicable;

**b)** s'agissant du gluten provenant de grains d'une lignée hybride issue d'une ou de plusieurs céréales mentionnées aux sous-alinéas a)(i) à (v) de la même définition, ou dérivé de tels grains, par le nom de la ou des céréales tel qu'il est indiqué aux sous-alinéas applicables.

**(8)** Pour l'application de l'alinéa (2)a), la source de l'allergène alimentaire ou de gluten figure dans la liste des ingrédients entre parenthèses :

**a)** immédiatement à la suite de l'ingrédient qui figure dans la liste des ingrédients si l'allergène alimentaire ou le gluten :

**(i)** est cet ingrédient,

**(ii)** est présent dans cet ingrédient mais n'en est pas un constituant ni n'est présent dans un de ses constituants,

**(iii)** est un constituant de cet ingrédient, ou est présent dans un tel constituant, et le constituant ne figure pas dans la liste des ingrédients;

**b)** immédiatement à la suite du constituant qui figure dans la liste des ingrédients si l'allergène alimentaire ou le gluten est ce constituant ou s'il est présent dans celui-ci.

**(9)** Malgré le paragraphe (2), la source de l'allergène alimentaire ou de gluten figure sur l'étiquette du produit sous la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés si l'allergène alimentaire ou le gluten est, selon le cas :

**a)** un ingrédient qui ne figure pas dans la liste des ingrédients, ou est présent dans un tel ingrédient mais n'en n'est pas un constituant ni n'est présent dans un de ses constituants;

**b)** un constituant ou est présent dans un constituant et ni le constituant ni l'ingrédient dans lequel il est présent ne figurent dans la liste des ingrédients.

**(10)** Malgré le paragraphe (8), la source de l'allergène alimentaire ou du gluten n'a pas à figurer entre parenthèses immédiatement à la suite de l'ingrédient ou du

case may be, if the source of the food allergen or gluten appears

**(a)** in the list of ingredients

**(i)** as part of the common name of the ingredient or component, or

**(ii)** in parentheses, under subsection (8), immediately after another ingredient or component; or

**(b)** in the food allergen source, gluten source and added sulphites statement.

**(11)** For greater certainty, nothing in subsection (8) affects how an ingredient or component may be shown in the list of ingredients under paragraph B.01.010(3)(b).

SOR/2011-28, s. 4; SOR/2016-305, ss. 7, 72; SOR/2019-98, s. 1; SOR/2021-46, s. 4(E); SOR/2022-143, s. 10; SOR/2022-168, s. 5.

**B.01.010.2 (1)** In this section and in section B.01.010.3, ***sulphites*** means the food additives that are set out in the Common Names for Ingredients and Components Document and are present in a prepackaged product.

**(2)** For greater certainty, the definition ***sulphites*** in subsection (1) includes only sulphites that are present in the prepackaged product as a result of being added.

**(3)** If sulphites are present in a prepackaged product in a total amount of 10 parts per million or more and none are required to be shown in the list of ingredients under section B.01.008 or B.01.009, the sulphites must be shown on the label of the product in

**(a)** the list of ingredients; or

**(b)** the food allergen source, gluten source and added sulphites statement that complies with the requirements of subsection B.01.010.3(1).

**(4)** Subsection (3) does not apply to sulphites present in the prepackaged products referred to in paragraphs B.01.008(2)(a) to (e) unless a list of ingredients is shown on the product's label.

**(5)** [Repealed, SOR/2019-98, s. 2]

**(6)** Sulphites that are shown on a label of the product under subsection (3) must be shown as follows:

**(a)** if the sulphites are shown in the list of ingredients,

constituant, selon le cas, si elle figure à l'un ou l'autre des endroits suivants :

**a)** dans la liste des ingrédients :

**(i)** soit comme partie du nom usuel de l'ingrédient ou du constituant,

**(ii)** soit entre parenthèses, immédiatement à la suite d'un autre ingrédient ou constituant, conformément au paragraphe (8);

**b)** sous la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés.

**(11)** Il est entendu que le paragraphe (8) est sans effet sur la façon dont les ingrédients ou constituants peuvent être indiqués dans la liste des ingrédients en vertu de l'alinéa B.01.010(3)b).

DORS/2011-28, art. 4; DORS/2016-305, art. 7 et 72; DORS/2019-98, art. 1; DORS/2021-46, art. 4(A); DORS/2022-143, art. 10; DORS/2022-168, art. 5.

**B.01.010.2 (1)** Au présent article et à l'article B.01.010.3, ***sulfites*** s'entend des additifs alimentaires mentionnés dans le document sur les noms usuels d'ingrédients et de constituants qui sont présents dans un produit préemballé.

**(2)** Il est entendu que la définition de ***sulfites*** au paragraphe (1) ne vise que les sulfites dont la présence dans le produit préemballé est le résultat de leur ajout à celui-ci.

**(3)** Si des sulfites sont présents dans un produit préemballé en une quantité totale égale ou supérieure à 10 parties par million et qu'aucun n'a à être indiqué dans la liste des ingrédients en application des articles B.01.008 ou B.01.009, ils figurent sur l'étiquette du produit :

**a)** soit dans la liste des ingrédients;

**b)** soit sous la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés, auquel cas les exigences du paragraphe B.01.010.3(1) doivent être respectées.

**(4)** Le paragraphe (3) ne s'applique pas aux sulfites présents dans les produits préemballés visés aux alinéas B.01.008(2)a) à e), sauf si l'étiquette de ces produits porte une liste des ingrédients.

**(5)** [Abrogé, DORS/2019-98, art. 2]

**(6)** Les sulfites devant figurer sur l'étiquette du produit en application du paragraphe (3) sont indiqués :

**a)** s'ils figurent dans la liste des ingrédients :

**(i)** by one of the common names "sulfites", "sulfiting agents", "sulphites" or "sulphiting agents", or

**(ii)** individually by the name of the food additive that is set out in the Common Names for Ingredients and Components Document, except that the name "sodium dithionite", "sulphur dioxide" or "sulphurous acid" must be followed, in parentheses, by one of the common names "sulfites", "sulfiting agents", "sulphites" or "sulphiting agents"; or

**(b)** if the sulphites are shown in a food allergen source, gluten source and added sulphites statement, by one of the common names "sulfites", "sulfiting agents", "sulphites" or "sulphiting agents".

**(7)** Sulphites that are shown in the list of ingredients under paragraph (6)(a) must be shown as follows:

**(a)** sulphites that are a component of an ingredient that is shown in the list of ingredients must be shown either in parentheses immediately after the ingredient or at the end of that list where they may be shown in any order with the other ingredients that are shown at the end of that list in accordance with subsection B.01.008.2(4); and

**(b)** in all other cases, the sulphites must be shown at the end of the list of ingredients where they may be shown in any order with the other ingredients that are shown at the end of that list in accordance with subsection B.01.008.2(4).

**(8)** If sulphites are present in a prepackaged product in a total amount of 10 parts per million or more and any of them are required to be shown in the list of ingredients under section B.01.008 or B.01.009, in the case of sulphites shown individually by the name "sodium dithionite", "sulphur dioxide" or "sulphurous acid", that name must be followed, in parentheses, by one of the common names "sulfites", "sulfiting agents", "sulphites" or "sulphiting agents".

**(9)** If the total amount of sulphites present in the prepackaged product is 10 parts per million or more, sulphites that are required to be shown in a list of ingredients under section B.01.008 or B.01.009 may also be shown on the label of the product in a food allergen source, gluten source and added sulphites statement that complies with the requirements of subsection B.01.010.3(1).

**(10)** Despite subparagraph (6)(a)(ii) and subsection (8), if sulphites are shown individually in a list of ingredients,

**(i)** soit par l'un des noms usuels « agents de sulfitage » ou « sulfites »,

**(ii)** soit individuellement, par celui des noms d'additifs alimentaires indiqué dans le document sur les noms usuels d'ingrédients et de constituants, sauf lorsqu'il s'agit d'un des noms « dithionite de sodium », « anhydride sulfureux » ou « acide sulfureux », auquel cas ce nom doit être suivi, entre parenthèses, par l'un des noms usuels « agents de sulfitage » ou « sulfites »;

**b)** s'ils figurent sous la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés, par l'un des noms usuels « agents de sulfitage » ou « sulfites ».

**(7)** Les sulfites figurant dans la liste des ingrédients en application de l'alinéa (6)a) sont indiqués :

**a)** s'ils sont des constituants d'un ingrédient figurant dans la liste des ingrédients, soit entre parenthèses immédiatement à la suite de l'ingrédient, soit à la fin de la liste des ingrédients où ils peuvent figurer dans n'importe quel ordre avec les autres ingrédients indiqués à la fin de la liste des ingrédients aux termes du paragraphe B.01.008.2(4);

**b)** dans les autres cas, à la fin de la liste des ingrédients où ils peuvent figurer dans n'importe quel ordre avec les autres ingrédients indiqués à la fin de la liste des ingrédients aux termes du paragraphe B.01.008.2(4).

**(8)** Si des sulfites sont présents dans un produit préemballé en une quantité totale égale ou supérieure à 10 parties par million et qu'un ou plusieurs d'entre eux, d'une part, doivent figurer dans la liste des ingrédients en application des articles B.01.008 ou B.01.009 et, d'autre part, y sont désignés individuellement par celui des noms « dithionite de sodium », « anhydride sulfureux » ou « acide sulfureux » qui s'applique, ce nom doit être suivi, entre parenthèses, de l'un des noms usuels « agents de sulfitage » ou « sulfites ».

**(9)** Si la quantité totale de sulfites présents dans le produit préemballé est égale ou supérieure à 10 parties par million, les sulfites qui doivent figurer dans la liste des ingrédients en application des articles B.01.008 ou B.01.009 peuvent en plus figurer sur l'étiquette du produit sous la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés, auquel cas les exigences du paragraphe B.01.010.3(1) doivent être respectées.

**(10)** Malgré le sous-alinéa (6)a)(ii) et le paragraphe (8), si des sulfites sont désignés individuellement dans la liste

by the name “sodium dithionite”, “sulphur dioxide” or “sulphurous acid”, that name is not required to be followed, in parentheses, by one of the common names “sulfites”, “sulfiting agents”, “sulphites” or “sulphiting agents” if

**(a)** in the list of ingredients,

**(i)** the term “sulfite” or “sulphite” appears in the common name of another sulphite, or

**(ii)** one of the common names “sulfites”, “sulfiting agents”, “sulphites” or “sulphiting agents” is shown in parentheses following another sulphite; or

**(b)** one of the common names “sulfites”, “sulfiting agents”, “sulphites” or “sulphiting agents” is shown in a food allergen source, gluten source and added sulphites statement on the label of the product.

SOR/2011-28, s. 4; SOR/2016-305, ss. 8, 72; SOR/2019-98, s. 2; SOR/2022-143, s. 11; SOR/2022-168, s. 6.

**B.01.010.3 (1)** A food allergen source, gluten source and added sulphites statement must

**a)** be introduced by a title that

**(i)** consists of the terms

**(A)** “Contains”, “Contains:” or “Contains :” in the English version of the statement, and

**(B)** “Contient”, “Contient :” or “Contient :” in the French version of the statement,

**(ii)** is shown in bold type,

**(iii)** is shown without any intervening printed, written or graphic material appearing between it and the rest of the statement, and

**(iv)** if the statement is preceded by a statement referred to in subsection B.01.014(1) and begins on the line on which that statement ends, is shown in a type that is of a height that is at least 0.2 mm greater than the height of the type used in that statement;

**(a.1)** appear, in respect of each linguistic version, immediately after any statement referred to in subsection B.01.014(1) appearing in the same language or, if there is no such statement, immediately after the list of ingredients appearing in the same language and, in either case, without any intervening printed, written or graphic material;

**(a.2)** appear on the same continuous surface as the statement or list that immediately precedes it and be

des ingrédients par l’un des noms « dithionite de sodium », « anhydride sulfureux » ou « acide sulfureux », ce nom n’a pas à être suivi, entre parenthèses, de l’un des noms usuels « agents de sulfitage » ou « sulfites » si, selon le cas :

**a)** dans la liste des ingrédients :

**(i)** la mention « sulfite » figure dans le nom usuel d’un autre sulfite,

**(ii)** l’un des noms usuels « agents de sulfitage » ou « sulfites » figure entre parenthèses à la suite d’un autre sulfite;

**b)** sous la mention des sources d’allergènes alimentaires ou de gluten et des sulfites ajoutés, l’un des noms usuels « agents de sulfitage » ou « sulfites » figure sur l’étiquette du produit.

DORS/2011-28, art. 4; DORS/2016-305, art. 8 et 72; DORS/2019-98, art. 2; DORS/2022-143, art. 11; DORS/2022-168, art. 6.

**B.01.010.3 (1)** La mention des sources d’allergènes alimentaires ou de gluten et des sulfites ajoutés satisfait aux exigences suivantes :

**a)** elle débute par un titre conforme aux précisions suivantes :

**(i)** il est formé des mots suivants :

**(A)** s’agissant de la version française de cette mention, « Contient », « Contient : » ou « Contient : »,

**(B)** s’agissant de la version anglaise de cette même mention, « Contains », « Contains: » ou « Contains : »,

**(ii)** il est en caractères gras,

**(iii)** il figure sans qu’aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé entre lui et le reste de la mention,

**(iv)** si elle est précédée d’une mention visée au paragraphe B.01.014(1) et si elle débute sur la ligne où se termine cette mention, il est présenté en caractères d’une hauteur plus grande d’au moins 0,2 mm que celle des caractères utilisés dans cette autre mention;

**a.1)** elle suit immédiatement, pour chaque version linguistique, toute mention visée au paragraphe B.01.014(1) qui figure dans la même langue ou, à défaut, la liste des ingrédients qui figure dans la même

shown in the same manner as the list of ingredients is shown under subsection B.01.008.2(2);

**(b)** include all of the following information, even if all or part of that information is also shown in the list of ingredients:

**(i)** the source for each food allergen that is present in the prepackaged product,

**(ii)** each source for the gluten that is present in the product, and

**(iii)** one of the common names "sulfites", "sulfiting agents", "sulphites" or "sulphiting agents", if the total amount of sulphites present in the product is 10 parts per million or more; and

**(c)** show information entries in regular or bold type, using lower case letters except for the first letter of each entry, which shall be an upper case letter, and shall use a bullet point or comma to separate each entry.

**(2)** Despite paragraph (1)(b), the following information is not required to be shown in the statement more than once:

**(a)** the same source of a food allergen;

**(b)** the same source of gluten; and

**(c)** one of the common names "sulfites", "sulfiting agents", "sulphites" or "sulphiting agents".

**(3)** If the English and French versions of the statement appear on the same continuous surface of the label, the version that follows the other version shall not begin on the same line as that on which the other version ends, except in the case of a prepackaged product that has an available display surface of less than 100 $cm^2$.

SOR/2011-28, s. 4; SOR/2016-305, s. 9; SOR/2022-168, s. 7.

**B.01.010.4 (1)** If the label of a prepackaged product includes a declaration alerting consumers that, due to a risk of cross-contamination, the product may contain the source of a food allergen or gluten,

**(a)** the declaration must appear immediately after

langue, et, dans les deux cas, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé;

**a.2)** elle est présentée sur le même espace continu que la mention ou la liste qui la précède immédiatement et de la même manière que la liste des ingrédients, conformément au paragraphe B.01.008.2(2);

**b)** elle inclut tous les renseignements ci-après, que l'un ou plusieurs d'entre eux figurent ou non dans la liste des ingrédients :

**(i)** la source de chacun des allergènes alimentaires présents dans le produit préemballé,

**(ii)** chacune des sources de gluten présent dans le produit,

**(iii)** l'un des noms usuels « agents de sulfitage » ou « sulfites », si la quantité totale de sulfites présents dans le produit est égale ou supérieure à 10 parties par million;

**c)** elle indique les renseignements en caractères ordinaires ou gras, en lettres minuscules, sauf pour la première lettre de chacun des renseignements qui est majuscule, chacun des renseignements étant séparé des autres par une puce ou une virgule.

**(2)** Malgré l'alinéa (1)b), les renseignements ci-après n'ont à figurer qu'une seule fois sous la mention applicable :

**a)** une même source d'allergène alimentaire;

**b)** une même source de gluten;

**c)** l'un des noms usuels « agents de sulfitage » ou « sulfites ».

**(3)** Lorsque les versions anglaise et française de la mention sont présentées sur un même espace continu de l'étiquette, celle des versions qui suit l'autre ne doit pas débuter sur la même ligne que celle où se termine cette autre version, sauf s'il s'agit d'un produit préemballé dont la surface exposée disponible est de moins de 100 $cm^2$.

DORS/2011-28, art. 4; DORS/2016-305, art. 9; DORS/2022-168, art. 7.

**B.01.010.4 (1)** Si l'étiquette du produit préemballé porte un énoncé visant à signaler au consommateur la présence possible, dans le produit, d'une source d'allergène alimentaire ou de gluten en raison d'un risque de contamination croisée, l'énoncé doit satisfaire aux exigences suivantes :

**(i)** the food allergen source, gluten source and added sulphites statement, if there is one,

**(ii)** any statement referred to in subsection B.01.014(1), if no food allergen source, gluten source and added sulphites statement appears on the label, or

**(iii)** the list of ingredients, if neither of the statements referred to in subparagraph (ii) appears on the label;

**(b)** the declaration must appear in both English and French if the statement or list immediately preceding it appears in both languages;

**(c)** the declaration must appear on the same continuous surface as the statement or list that immediately precedes it and be shown in the same manner as the list of ingredients is shown under subsection B.01.008.2(2);

**(d)** the declaration must appear without any intervening printed, written or graphic material between it and the statement or list that immediately precedes it, except that a solid line may appear before the declaration if the declaration begins on a different line than the line on which the statement or list ends;

**(e)** the declaration must be shown in bold type if it begins on the line on which the statement or list that immediately precedes it ends and if it is not introduced by a title;

**(f)** any title that introduces the declaration must be shown in bold type if the declaration begins on the line on which the statement or list that immediately precedes it ends; and

**(g)** if the declaration is preceded by a statement referred to in subsection B.01.014(1) and begins on the line on which the statement ends, the title of the declaration — or the declaration itself, if no title appears — must be shown in a type that is of a height that is at least 0.2 mm greater than the height of the type used in the statement.

**(2)** If the English and French versions of the declaration appear on the same continuous surface of the label, the version that follows the other version must not begin on the line on which the other version ends unless the prepackaged product has an available display surface of less than 100 $cm^2$.

SOR/2016-305, s. 10; SOR/2022-168, s. 8.

**B.01.011 (1)** Where it is an acceptable manufacturing practice for a manufacturer to

**a)** il suit immédiatement :

**(i)** la mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés, le cas échéant,

**(ii)** toute mention visée au paragraphe B.01.014(1), si l'étiquette ne contient pas de mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés,

**(iii)** la liste des ingrédients, si l'étiquette ne contient aucune des mentions visées au sous-alinéa (ii);

**b)** il est présenté en français et en anglais, si la mention ou la liste qui le précède immédiatement figure dans les deux langues;

**c)** il est présenté sur le même espace continu que la mention ou la liste qui le précède immédiatement, et de la même manière que la liste des ingrédients, conformément au paragraphe B.01.008.2(2);

**d)** il figure sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé entre lui et la mention ou la liste qui le précède immédiatement, à l'exception d'une ligne continue pouvant figurer avant lui s'il débute sur une ligne distincte de celle où se termine la mention ou la liste;

**e)** il est en caractères gras, s'il débute sur la ligne où se termine la mention ou la liste qui le précède immédiatement et s'il ne débute pas par un titre;

**f)** s'il débute par un titre, celui-ci figure en caractères gras si l'énoncé débute sur la ligne où se termine la mention ou la liste qui le précède immédiatement;

**g)** s'il est précédé d'une mention visée au paragraphe B.01.014(1) et s'il débute sur la ligne où se termine cette mention, son titre ou, à défaut, l'énoncé lui-même est en caractères d'une hauteur plus grande d'au moins 0,2 mm que celle des caractères utilisés dans cette mention.

**(2)** Lorsque les versions française et anglaise de l'énoncé sont présentées sur un même espace continu de l'étiquette, celle des versions qui suit l'autre ne peut débuter sur la ligne où se termine cette autre version, sauf s'il s'agit d'un produit préemballé dont la surface exposée disponible est de moins de 100 $cm^2$.

DORS/2016-305, art. 10; DORS/2022-168, art. 8.

**B.01.011 (1)** Lorsqu'il est reconnu comme une pratique industrielle acceptable pour un fabricant

**(a)** omit from his prepackaged product any food that is ordinarily an ingredient or component, or

**(b)** substitute in whole or in part in his prepackaged product any other food for a food that is ordinarily an ingredient or component,

the list of ingredients for the 12-month period commencing from the time the label is applied to the prepackaged product may show as ingredients or components the foods that may be omitted and the foods that may be used as substitutes if

**(c)** all the foods that may be used as ingredients or components throughout the 12-month period are shown in the list of ingredients;

**(d)** it is clearly stated as part of the list of ingredients that the food shown as an ingredient or component may not be present or that another food may be substituted for a food shown as an ingredient or component; and

**(e)** the foods that may be omitted or substituted are grouped with the same class of foods that are used as ingredients or components and the foods within each such group are listed in descending order of the proportion by weight in which they will probably be used during the 12-month period.

**(2)** Where it is an acceptable manufacturing practice for a manufacturer to vary the proportions of ingredients or components of his prepackaged product, the list of ingredients for the 12-month period commencing from the time the label is applied to the prepackaged product may show the ingredients or components in the same proportions throughout the 12-month period if

**(a)** it is clearly stated as part of the list of ingredients that the proportions indicated are subject to change; and

**(b)** the ingredients or components are listed in descending order of the proportion by weight in which they will probably be used during the 12-month period.

SOR/2022-143, s. 12.

**B.01.012 (1)** In this section,

***local government unit*** means a city, metropolitan government area, town, village, municipality or other area of

**a)** de ne pas inclure dans un produit préemballé un aliment qui est normalement un ingrédient ou constituant de son produit préemballé, ou

**b)** de remplacer en tout ou en partie un aliment qui est normalement un ingrédient ou constituant de son produit préemballé par un autre aliment,

la liste des ingrédients, pour la période de 12 mois à partir du moment où l'étiquette est apposée sur le produit préemballé, peut indiquer comme ingrédients ou constituants les aliments qui peuvent être omis et les aliments utilisables comme aliments de substitution

**c)** si tous les aliments utilisables comme ingrédients ou constituants pendant toute la période de 12 mois sont compris dans la liste d'ingrédients;

**d)** s'il est clairement énoncé dans la liste d'ingrédients que l'aliment indiqué comme ingrédient ou constituant peut être omis du produit préemballé ou qu'un autre aliment peut être substitué à l'aliment figurant comme ingrédient ou constituant; et

**e)** si les aliments qui peuvent être omis ou remplacés sont groupés avec la même catégorie d'aliments utilisés comme ingrédients ou constituants, et si les aliments compris dans chacun de ces groupes sont énumérés dans l'ordre décroissant de leurs proportions respectives, en poids, dans lesquelles ils seront probablement utilisés au cours de la période de 12 mois.

**(2)** Lorsqu'il est reconnu comme une pratique industrielle acceptable pour un fabricant de varier les proportions des ingrédients ou constituants dans un produit préemballé, la liste d'ingrédients, pour la période de 12 mois à compter du moment où l'étiquette est apposée sur le produit préemballé, peut indiquer les ingrédients ou constituants dans les mêmes proportions pendant toute la période de 12 mois

**a)** s'il est clairement énoncé dans la liste d'ingrédients que les proportions indiquées sont susceptibles de modification; et

**b)** si les ingrédients ou constituants sont indiqués dans l'ordre décroissant de leurs proportions respectives, en poids, dans lesquelles ils seront probablement utilisés au cours de la période de 12 mois.

DORS/2022-143, art. 12.

**B.01.012 (1)** Dans le présent article,

***aliment spécial*** Aliment — autre qu'un fortifiant pour lait humain ou un aliment supplémenté — qui est :

local government but does not include any local government unit situated within a bilingual district established under the *Official Languages Act*; (*collectivité locale*)

***local food*** means a food that is manufactured, processed, produced or packaged in a local government unit and sold only in

**(a)** the local government unit in which it is manufactured, processed or packaged,

**(b)** one or more local government units that are immediately adjacent to the one in which it is manufactured, processed, produced or packaged, or

**(c)** the local government unit in which it is manufactured, processed, produced or packaged and in one or more local government units that are immediately adjacent to the one in which it is manufactured, processed, produced or packaged; (*produit alimentaire local*)

***mother tongue*** means the language first learned in childhood by persons in any area of Canada and still understood by them as ascertained by the decennial census taken immediately preceding the date on which the food referred to in subsection (3) is sold to the consumer; (*langue maternelle*)

***official languages*** means the English language and the French language; (*langues officielles*)

***specialty food*** means a food — other than a human milk fortifier or supplemented food — that

**(a)** has special religious significance and is used in religious ceremonies; or

**(b)** is an imported food

**(i)** that is not widely used by the population as a whole in Canada, and

**(ii)** for which there is no readily available substitute that is manufactured, processed, produced or packaged in Canada and that is generally accepted as being a comparable substitute; (*aliment spécial*)

***test market food*** means a food that, prior to the date of the notice of intention respecting that food referred to in subsection (5), was not sold in Canada in that form and that differs substantially from any other food sold in Canada with respect to its composition, function, state or packaging form and includes a food referred to in section B.01.054. (*produit alimentaire d'essai*)

**a)** soit un aliment ayant un caractère religieux particulier et utilisé pour les cérémonies religieuses;

**b)** soit un aliment importé dont, à la fois :

**(i)** l'usage n'est pas largement répandu chez la population du Canada en général,

**(ii)** il n'existe aucun succédané facilement accessible, qui soit fabriqué, transformé, produit ou emballé au Canada et qui soit généralement reconnu comme un succédané valable; (*specialty food*)

***collectivité locale*** désigne une cité, un territoire d'un gouvernement métropolitain, une ville, un village, une municipalité ou tout autre territoire d'un gouvernement local mais ne comprend pas une collectivité locale située dans un district bilingue établi sous le régime de la *Loi sur les langues officielles*; (*local government unit*)

***langue maternelle*** désigne la première langue qu'ont apprise dans leur enfance des personnes vivant dans une région du Canada et qu'elles comprennent encore, tel qu'il a été établi par le dernier recensement décennal qui a précédé la date à laquelle l'aliment visé au paragraphe (3) est vendu au consommateur; (*mother tongue*)

***langues officielles*** désigne la langue française et la langue anglaise; (*official languages*)

***produit alimentaire d'essai*** désigne un aliment qui, avant la date de l'avis d'intention concernant cet aliment et dont il est question au paragraphe (5), n'était pas vendu au Canada et qui diffère considérablement de tout autre aliment vendu au Canada par sa composition, sa fonction, son état ou la forme de son emballage, et comprend un aliment visé à l'article B.01.054; (*test market food*)

***produit alimentaire local*** désigne un aliment qui est fabriqué, transformé, produit ou emballé dans une collectivité locale et vendu seulement

**a)** dans la collectivité locale où il est fabriqué, transformé, produit ou emballé,

**b)** dans une ou plusieurs collectivités locales situées dans le voisinage immédiat de la collectivité où il est fabriqué, transformé, produit ou emballé, ou

**c)** dans la collectivité locale où il est fabriqué, transformé, produit ou emballé et dans une ou plusieurs collectivités locales situées dans le voisinage immédiat de ladite collectivité. (*local food*)

**(2)** Subject to subsections (9), (10) and (11), all information required by these Regulations to be shown on the label of a food shall be shown in both official languages.

**(3)** Subject to subsections (4) to (6), subsection (2) does not apply to a local food or test market food if

**(a)** it is sold in a local government unit in which one of the official languages is the mother tongue of less than 10 per cent of the total number of persons residing in the local government unit; and

**(b)** the information required by these Regulations to be shown on the label of a food is shown in the official language that is the mother tongue of at least 10 per cent of the total number of persons residing in the local government unit.

**(4)** Where one of the official languages is the mother tongue of less than 10 per cent of the total number of persons residing in a local government unit and the other official language is the mother tongue of less than 10 per cent of the total number of persons residing in the same local government unit, subsection (3) does not apply.

**(5)** Subsection (3) does not apply to a test market food unless the person who intends to conduct the test marketing of the food has, six weeks prior to conducting the test marketing, filed with the President of the Canadian Food Inspection Agency a notice of intention in a form acceptable to the President.

**(6)** A test market food shall, for the purposes of subsection (3), cease to be a test market food upon the expiration of 12 cumulative months after the date on which it was first offered for sale as a test market food but any test market food that was acquired for resale by a person, other than the person who filed the notice of intention referred to in subsection (5), before the expiration of those 12 cumulative months, shall continue to be a test market food for the purposes of subsection (3) until it is sold.

**(7)** Subsection (2) does not apply to a specialty food if the information required by these Regulations to be shown on the label thereon is shown in one of the official languages.

**(8)** Where there are one or more surfaces on the label of a food that are of at least the same size and prominence as the principal display panel, the information required by these Regulations to be shown on the principal display

**(2)** Sous réserve des paragraphes (9), (10) et (11), tous les renseignements devant être indiqués sur l'étiquette d'un aliment en vertu du présent règlement doivent l'être dans les deux langues officielles.

**(3)** Sous réserve des paragraphes (4) à (6), un produit alimentaire local ou un produit alimentaire d'essai est exempté de l'application des dispositions du paragraphe (2)

**a)** s'il est vendu dans une collectivité locale où l'une des langues officielles est la langue maternelle de moins de 10 pour cent de la population résidente de la collectivité locale; et

**b)** si les renseignements devant figurer sur l'étiquette d'un aliment aux termes du présent règlement sont indiqués dans la langue officielle qui est la langue maternelle d'au moins 10 pour cent de la population résidente de la collectivité locale.

**(4)** Lorsqu'une des langues officielles est la langue maternelle de moins de 10 pour cent de la population résidente de la collectivité locale et que l'autre langue officielle est la langue maternelle de moins de 10 pour cent de la population résidente de la même collectivité locale, le paragraphe (3) ne s'applique pas.

**(5)** Le paragraphe (3) ne s'applique pas à un produit alimentaire d'essai, sauf si la personne qui a l'intention de sonder le marché du produit a déposé, auprès du président de l'Agence canadienne d'inspection des aliments, six semaines avant de sonder le marché, un avis d'intention établi en une forme que celui-ci juge acceptable.

**(6)** Aux fins de l'application du paragraphe (3), un produit alimentaire d'essai cesse d'en être un à la fin d'une période de 12 mois après la date à laquelle il a été pour la première fois offert en vente à titre de produit d'essai, mais un produit alimentaire d'essai acheté pour la revente par une autre personne que celle qui a déposé l'avis d'intention dont il est question au paragraphe (5), avant la fin de ladite période demeure un produit d'essai aux fins du paragraphe (3) jusqu'à ce qu'il soit vendu à un consommateur.

**(7)** Un produit alimentaire spécial est exempté de l'application du paragraphe (2) si les renseignements devant figurer sur son étiquette selon ce règlement sont indiqués dans l'une des langues officielles.

**(8)** Lorsque l'étiquette d'un produit préemballé comporte une ou plusieurs surfaces qui sont de même dimension et de même importance que l'espace principal, les renseignements devant figurer dans l'espace principal, aux termes du présent règlement peuvent y figurer dans

panel may be shown in one official language if such information is shown in the other official language on one of those other surfaces.

**(9)** Subsection (2) does not apply to the identity and principal place of business of the person by or for whom the food was manufactured, processed, produced or packaged for resale if this information is shown in one of the official languages.

**(10)** Subsection (2) does not apply to the following common names if the common name appears on the principal display panel in the following manner:

Scotch Whisky
Irish Whisky
Highland Whisky
Dry Gin
Bourbon
Tennessee Whisky
Tequila
Mezcal
Rye Whisky
Crème de Menthe
Crème de Cacao
Crème de Cassis
Crème de Banane
Triple Sec
Anisette
Crème de Noyau
Brandy
Sake or Saki
Advocaat or Advokaat
Kirsch
Slivovitz
Ouzo
Cherry Brandy Liqueur
Kummel
Akvavit
Aquavit
Armagnac
Marc
Grappa
Calvados
Poire William

une langue officielle seulement s'ils figurent dans l'autre langue officielle sur l'une des autres surfaces.

**(9)** Le paragraphe (2) ne s'applique pas au nom et au principal établissement de la personne par ou pour qui l'aliment a été fabriqué, transformé, produit ou emballé pour la revente si ces renseignements sont indiqués dans l'une des langues officielles.

**(10)** Le paragraphe (2) ne s'applique pas aux noms usuels suivants si un de ceux-ci est indiqué de la manière suivante sur l'espace principal :

Scotch Whisky
Irish Whisky
Highland Whisky
Dry Gin
Bourbon
Tennessee Whisky
Tequila
Mezcal
Rye Whisky
Crème de Menthe
Crème de Cacao
Crème de Cassis
Crème de Banane
Triple Sec
Anisette
Crème de Noyau
Brandy
Sake or Saki
Advocaat or Advokaat
Kirsch
Slivovitz
Ouzo
Cherry Brandy Liqueur
Kummel
Akvavit
Aquavit
Armagnac
Marc
Grappa
Calvados
Poire William

Crème de Bleuets
Curaçao Orange
Liqueur de Fraise
Mandarinette
Prunelle de Bourgogne
Chartreuse
Pastis
Fior d'Alpe
Strega
Campari
Americano
Apricot Brandy Liqueur
Peach Brandy Liqueur
Sloe Gin
Manhattan
Martini

**(11)** Subsection (2) does not apply to the label of a shipping container destined to a commercial or industrial enterprise or an institution, if

**(a)** the shipping container and its contents are not resold as a one unit prepackaged product to a consumer at the retail level; and

**(b)** all information required by these Regulations to be shown on a label of a food is shown in one of the official languages.

SOR/79-23, s. 9; SOR/79-529, s. 4; SOR/84-300, s. 6; SOR/93-603, s. 1; SOR/95-548, s. 5; SOR/2000-184, s. 62; SOR/2016-305, s. 11; SOR/2021-57, s. 6; SOR/2022-169, s. 7.

**B.01.013 (1)** Unless specifically required by the Act or these Regulations, no reference, direct or indirect, to the Act or to these Regulations shall be made on any label of, or in any advertisement for, a food.

**(2)** Notwithstanding subsection (1), where a food complies with a standard established by these Regulations and the manufacturer of the food has substantiated, by means of the results of tests carried out before the statement is made or by other evidence that exists before the statement is made, that the food so complies, a statement that the food "complies with the standard for (naming the common name of the food in respect of which the claim is made) in the *Food and Drug Regulations*" may be made on the label of, or in an advertisement for, the food.

SOR/92-626, s. 10; SOR/95-548, s. 5(F).

Crème de Bleuets
Curaçao Orange
Liqueur de Fraise
Mandarinette
Prunelle de Bourgogne
Chartreuse
Pastis
Fior d'Alpe
Strega
Campari
Americano
Apricot Brandy Liqueur
Peach Brandy Liqueur
Slœ Gin
Manhattan
Martini

**(11)** Le paragraphe (2) ne s'applique pas à l'étiquette d'un contenant d'expédition destiné à une entreprise commerciale ou industrielle ou une institution si :

**a)** le contenant d'expédition et son contenu ne sont pas revendus comme produit préemballé individuel à un consommateur au niveau du commerce de détail; et

**b)** tous les renseignements devant être indiqués sur l'étiquette d'un aliment en vertu du présent règlement le sont dans l'une des langues officielles.

DORS/79-23, art. 9; DORS/79-529, art. 4; DORS/84-300, art. 6; DORS/93-603, art. 1; DORS/95-548, art. 5; DORS/2000-184, art. 62; DORS/2016-305, art. 11; DORS/2021-57, art. 6; DORS/2022-169, art. 7.

**B.01.013 (1)** Sauf disposition contraire de la Loi ou du présent règlement, il est interdit de faire mention, directement ou indirectement, de la Loi ou du présent règlement sur l'étiquette ou dans l'annonce d'un aliment.

**(2)** Par dérogation au paragraphe (1), l'étiquette ou l'annonce d'un aliment peut contenir une mention indiquant que l'aliment est « conforme à la norme établie dans le *Règlement sur les aliments et drogues* pour (nom usuel de l'aliment visé) », si l'aliment satisfait à la norme applicable établie par le présent règlement et si le fabricant de l'aliment le prouve à l'aide des résultats d'essais effectués avant l'inscription de la mention ou le justifie par toute autre preuve existant avant cette inscription.

DORS/92-626, art. 10; DORS/95-548, art. 5(F).

**B.01.014 (1)** The label of a food that contains aspartame must carry a statement warning individuals with phenylketonuria that the food contains phenylalanine or a statement to the effect that aspartame contains phenylalanine.

**(2)** The statement must

**(a)** be shown in bold type;

**(b)** appear, in respect of each linguistic version, immediately after the list of ingredients appearing in the same language, either on the same line as the last ingredient in the list or on the following line, without any intervening printed, written or graphic material; and

**(c)** appear on the same continuous surface as the list of ingredients and be shown in the same manner as that list is shown under subsection B.01.008.2(2).

SOR/81-617, s. 2; SOR/88-559, s. 5; SOR/2003-11, s. 6; SOR/2016-305, s. 75(F); SOR/2018-108, s. 400; SOR/2022-168, s. 9.

**B.01.015** [Repealed, SOR/2022-168, s. 9]

**B.01.016** [Repealed, SOR/2022-168, s. 9]

**B.01.017** [Repealed, SOR/2022-168, s. 9]

**B.01.018** The label of a food that contains polydextrose shall indicate the amount of polydextrose expressed in grams per serving of stated size.

SOR/93-276, s. 2; SOR/94-779, s. 1; SOR/97-512, s. 1; SOR/2003-11, s. 10; SOR/2016-305, s. 75(F).

**B.01.019** [Repealed, SOR/2022-168, s. 10]

**B.01.020** [Repealed, SOR/2022-168, s. 10]

**B.01.021 (1)** The label of a food that contains erythritol shall carry a statement indicating the amount of erythritol expressed in grams per serving of stated size unless the label carries a nutrition facts table or supplemented food facts table.

**(2)** The statement of the amount of erythritol shall be grouped together with the statement of the amount of any other sugar alcohols and the amount of polydextrose.

SOR/2004-261, s. 1; SOR/2016-305, s. 75(F); SOR/2022-169, s. 8.

**B.01.022** [Repealed, SOR/2022-168, s. 11]

**B.01.023** The label of a food that is a table-top sweetener that contains aspartame, sucralose, acesulfame-potassium or neotame must carry a statement of the sweetness

**B.01.014 (1)** L'étiquette d'un aliment qui contient de l'aspartame porte une mention à l'intention des personnes atteintes de la phénylcétonurie indiquant que l'aliment contient de la phénylalanine ou une mention indiquant que l'aspartame contient de la phénylalanine.

**(2)** Toute mention satisfait aux exigences suivantes :

**a)** elle est en caractères gras;

**b)** elle suit immédiatement, pour chaque version linguistique, la liste des ingrédients qui figure dans la même langue, sur la même ligne que le dernier ingrédient ou sur la suivante, sans qu'aucun texte écrit ou imprimé ni aucun signe graphique ne soit intercalé;

**c)** elle est présentée sur le même espace continu que la liste des ingrédients et de la même manière que cette liste, conformément au paragraphe B.01.008.2(2).

DORS/81-617, art. 2; DORS/88-559, art. 5; DORS/2003-11, art. 6; DORS/2016-305, art. 75(F); DORS/2018-108, art. 400; DORS/2022-168, art. 9.

**B.01.015** [Abrogé, DORS/2022-168, art. 9]

**B.01.016** [Abrogé, DORS/2022-168, art. 9]

**B.01.017** [Abrogé, DORS/2022-168, art. 9]

**B.01.018** L'étiquette d'un aliment qui contient du polydextrose en indique la teneur, exprimée en grammes, par portion indiquée.

DORS/93-276, art. 2; DORS/94-779, art. 1; DORS/97-512, art. 1; DORS/2003-11, art. 10; DORS/2016-305, art. 75(F).

**B.01.019** [Abrogé, DORS/2022-168, art. 10]

**B.01.020** [Abrogé, DORS/2022-168, art. 10]

**B.01.021 (1)** À moins qu'elle ne porte un tableau de la valeur nutritive ou un tableau des renseignements sur les aliments supplémentés, l'étiquette d'un aliment qui contient de l'érythritol doit porter une mention indiquant la teneur en érythritol de l'aliment, exprimée en grammes, par portion indiquée.

**(2)** La mention indiquant la teneur en érythritol et celle indiquant la teneur en tout autre polyalcool et en polydextrose doivent être regroupées.

DORS/2004-261, art. 1; DORS/2016-305, art. 75(F); DORS/2022-169, art. 8.

**B.01.022** [Abrogé, DORS/2022-168, art. 11]

**B.01.023** L'étiquette d'un aliment qui est un édulcorant de table contenant de l'aspartame, du sucralose, de l'acésulfame-potassium ou du néotame comprend une mention sur le pouvoir édulcorant d'une portion exprimée en

per serving expressed in terms of the amount of sugar required to produce an equivalent degree of sweetness.

SOR/2007-176, s. 4; SOR/2016-305, s. 75(F); SOR/2018-108, s. 400; SOR/2022-168, s. 11.

fonction de la quantité de sucre requise pour produire un degré d'édulcoration équivalent.

DORS/2007-176, art. 4; DORS/2016-305, art. 75(F); DORS/2018-108, art. 400; DORS/2022-168, art. 11.

**B.01.033 (1)** Except in the case of a formulated liquid diet, human milk fortifier or human milk substitute, it is prohibited to sell a food represented in any manner as containing hydrolyzed or partially hydrolyzed collagen, hydrolyzed or partially hydrolyzed gelatin or hydrolyzed or partially hydrolyzed casein unless the label carries the following statement on the principal display panel in the same size type used for the common name:

"CAUTION, DO NOT USE AS SOLE SOURCE OF NUTRITION".

**(2)** In this section, ***formulated liquid diet*** means a food that meets the requirements of sections B.24.101 to B.24.103.

SOR/78-65, s. 1; SOR/2021-57, s. 7.

**B.01.033 (1)** À l'exception d'une préparation pour régime liquide, d'un fortifiant pour lait humain et d'un succédané de lait humain, il est interdit de vendre un aliment représenté de quelque manière que ce soit comme contenant du collagène, de la gélatine ou de la caséine, totalement ou partiellement hydrolysés, à moins que son étiquette ne porte sur l'espace principal, en caractères de même dimension que le nom usuel, la mention :

« ATTENTION À NE PAS UTILISER COMME SOURCE UNIQUE D'ALIMENTATION ».

**(2)** On entend par ***préparation pour régime liquide*** un aliment visé aux articles B.24.101 à B.24.103.

DORS/78-65, art. 1; DORS/2021-57, art. 7.

**B.01.034** [Repealed, SOR/88-559, s. 7]

**B.01.034** [Abrogé, DORS/88-559, art. 7]

**B.01.035 (1)** Subject to subsection (8), where an irradiated food referred to in column 1 of the table to Division 26 is offered for sale as a prepackaged product, the principal display panel of the label applied to the package shall carry the symbol described in subsection (5).

**(2)** Where an irradiated food referred to in column 1 of the table to Division 26 is not a prepackaged product and is offered for sale, a sign that carries the symbol described in subsection (5) shall be displayed immediately next to the food.

**(3)** The symbol required pursuant to subsection (1) or (2) shall appear in close proximity on the principal display panel referred to in subsection (1) or on the sign referred to in subsection (2) to one of the following statements or a written statement that has the same meaning:

**(a)** "treated with radiation";

**(b)** "treated by irradiation"; or

**(c)** "irradiated".

**(4)** No person shall sell a food referred to in column 1 of the table to Division 26 that has been irradiated in the manner set out in subsection B.26.003(2) unless the requirements of subsections (1) to (3) are met.

**(5)** For the purposes of subsections (1) to (3), the symbol that indicates the irradiated food shall

**(a)** have an outer diameter

**B.01.035 (1)** Sous réserve du paragraphe (8), dans le cas d'un aliment irradié visé à la colonne 1 du tableau du titre 26 qui est un produit préemballé offert en vente, l'espace principal de l'étiquette apposée sur l'emballage doit porter le symbole prévu au paragraphe (5).

**(2)** Dans le cas d'un aliment irradié visé à la colonne 1 du tableau du titre 26, autre qu'un produit préemballé, qui est offert pour la vente, un écriteau portant le symbole prévu au paragraphe (5) doit être placé à côté de l'aliment.

**(3)** Le symbole devant, selon les paragraphes (1) ou (2), figurer sur l'espace principal de l'étiquette ou sur un écriteau doit être accompagné de l'une des mentions suivantes ou d'une mention ayant le même sens :

**a)** « traité par radiation »;

**b)** « traité par irradiation »;

**c)** « irradié ».

**(4)** Il est interdit de vendre un aliment visé à la colonne 1 du tableau du titre 26 qui a été irradié de la façon prévue au paragraphe B.26.003(2) à moins que les exigences des paragraphes (1) à (3) ne soient respectées.

**(5)** Pour l'application des paragraphes (1) à (3), le symbole désignant l'aliment irradié doit :

**a)** avoir un diamètre extérieur :

**(i)** in the case referred to in subsection (1), equal to or greater than the height of the numerical quantity prescribed by paragraph 229(1)(a) and subsections 229(2) and (3) of the *Safe Food for Canadians Regulations* for the declaration of net quantity of the package, and

**(ii)** in the case referred to in subsection (2), not less than 5 cm; and

**(b)** be in the following form:

**(6)** Notwithstanding subsection B.01.009(1), any food referred to in column 1 of the table to Division 26 that is an ingredient or component of a prepackaged product and that has been irradiated shall, if the food constitutes 10 per cent or more of the prepackaged product, be included in the list of ingredients and preceded by the statement "irradiated".

**(7)** The label attached to a shipping container that contains a food set out in column 1 of the table to Division 26 that has been subjected to the maximum absorbed dose set out in column 5 shall carry the statement that is required by subsection (3) and the statement "Do not irradiate again.".

**(8)** Where a shipping container constitutes the package of the prepackaged product, the label attached to the shipping container shall carry the statement required by subsection (7) but need not carry the symbol required by subsection (5).

**(9)** Any advertising of an irradiated food referred to in column 1 of the table to Division 26 shall identify the food as having been irradiated.

**(10)** The statements referred to in subsections (3) and (6) to (8) shall be in both official languages in accordance with subsection B.01.012(2).

SOR/89-172, s. 1; SOR/2017-16, s. 1; SOR/2018-108, s. 400.

**B.01.037** [Repealed, SOR/88-559, s. 8]

**B.01.040** [Repealed, SOR/88-559, s. 9]

**B.01.042** Where a standard for a food is prescribed in this **Part**,

**(a)** the food shall contain only the ingredients included in the standard for the food;

**(i)** dans le cas visé au paragraphe (1), égal ou supérieur à la hauteur des données numériques de la déclaration de quantité nette visée à l'alinéa 229(1)a) et les paragraphes 229(2) et (3) du *Règlement sur la salubrité des aliments au Canada*,

**(ii)** dans le cas visé au paragraphe (2), d'au moins 5 cm;

**b)** revêtir la forme suivante :

**(6)** Nonobstant le paragraphe B.01.009(1), tout aliment visé à la colonne 1 du tableau du titre 26 qui sert d'ingrédient ou de constituant dans un produit préemballé et qui a été irradié doit, s'il représente 10 pour cent ou plus de ce produit, figurer dans la liste des ingrédients avec la mention « irradié ».

**(7)** L'étiquette apposée sur le contenant d'expédition de tout aliment visé à la colonne 1 du tableau du titre 26 et irradié selon la dose absorbée maximale prévue à la colonne 5 de ce tableau doit porter la mention exigée par le paragraphe (3) ainsi que la mention « Ne pas irradier de nouveau. ».

**(8)** Dans le cas où le contenant d'expédition constitue l'emballage du produit préemballé, l'étiquette qui y est apposée doit porter les mentions visées au paragraphe (7); le symbole prévu au paragraphe (5) n'est pas obligatoire.

**(9)** Toute annonce concernant un aliment irradié visé à la colonne 1 du tableau du titre 26 doit indiquer que cet aliment a été irradié.

**(10)** Les mentions visées aux paragraphes (3) et (6) à (8) doivent figurer dans les deux langues officielles, conformément au paragraphe B.01.012(2).

DORS/89-172, art. 1; DORS/2017-16, art. 1; DORS/2018-108, art. 400.

**B.01.037** [Abrogé, DORS/88-559, art. 8]

**B.01.040** [Abrogé, DORS/88-559, art. 9]

**B.01.042** Lorsque la présente **partie** prescrit une norme pour un aliment,

**a)** l'aliment ne doit renfermer que les ingrédients nommés dans la norme pour cet aliment;

**(b)** each ingredient shall be incorporated in the food in a quantity within any limits prescribed for that ingredient; and

**(c)** if the standard includes an ingredient to be used as a food additive for a specified purpose, that ingredient shall be a food additive set out in one of the tables to section B.16.100 for use as an additive to that food for that purpose.

**B.01.043** Subject to section B.25.062, where a standard for a food is not prescribed in this Part,

**(a)** the food shall not contain any food additives except food additives set out in a table to section B.16.100 for use as additives to that food for the purpose set out in that table; and

**(b)** each such food additive shall be incorporated in the food in a quantity within any limits prescribed for that food and food additive in that table.

SOR/87-640, s. 1.

**B.01.044** Where the limit prescribed for a food additive in a table to section B.16.100 is stated to be "Good Manufacturing Practice", the amount of the food additive added to a food in manufacturing and processing shall not exceed the amount required to accomplish the purpose for which that additive is permitted to be added to that food.

**B.01.045** A food additive shall,

**(a)** where specifications are set out in this Part for that additive, meet those specifications;

**(b)** where no specifications are set out in this Part for the additive, meet the specifications for it, if any, set out in

**(i)** the *Food Chemicals Codex*, tenth edition, 2016, published by the United States Pharmacopeial Convention, Rockville, MD, United States of America, as that or any subsequent edition, including their supplements, may be amended from time to time; or

**(ii)** the *Combined Compendium of Food Additive Specifications*, prepared by the Joint FAO/WHO Expert Committee on Food Additives and published by the Food and Agriculture Organization of the United Nations, on the website of the Organization, as amended from time to time; and

**b)** chacun des ingrédients doit être incorporé dans les limites de quantités, s'il en est, fixées pour tel ingrédient; et

**c)** l'ingrédient, si la norme comprend un ingrédient qui peut s'utiliser comme additif alimentaire à une fin particulière, doit être un additif alimentaire nommé à l'un des tableaux de l'article B.16.100 comme additif alimentaire utilisable dans cet aliment et à cette fin particulière.

**B.01.043** Sous réserve de l'article B.25.062, lorsque la présente partie ne prévoit pas de norme pour un aliment :

**a)** l'aliment ne doit renfermer aucun additif alimentaire autre que les additifs alimentaires nommés à l'un des tableaux de l'article B.16.100, comme additifs utilisables dans ledit aliment aux fins précisées audit tableau; et

**b)** chacun desdits additifs alimentaires doit être incorporé dans l'aliment en quantité telle qu'il reste dans les limites, s'il en est, fixées pour cet aliment et pour cet additif alimentaire audit tableau.

DORS/87-640, art. 1.

**B.01.044** Lorsque la limite de tolérance d'un additif alimentaire à tout tableau de l'article B.16.100 est fixée par les mots « Bonnes pratiques industrielles », la quantité d'additif alimentaire, ajoutée à l'aliment en cours de fabrication et de conditionnement, ne doit pas dépasser la quantité requise pour arriver aux fins pour lesquelles l'additif est autorisé pour ledit aliment.

**B.01.045** Un additif alimentaire doit,

**a)** lorsque des spécifications sont énoncées pour cet additif dans la présente partie, répondre à ces spécifications;

**b)** lorsqu'aucune spécification n'est prévue pour cet additif dans la présente partie, mais que l'une des publications ci-après en prévoit, satisfaire à ces spécifications :

**(i)** la publication de la United States Pharmacopeial Convention, Rockville, MD, États-Unis, intitulée *Food Chemicals Codex*, dixième édition, publiée en 2016, ou toute édition subséquente — y compris leurs suppléments —, avec leurs modifications successives,

**(ii)** la publication de l'Organisation des Nations Unies pour l'alimentation et l'agriculture, préparée par le Comité mixte FAO/OMS d'experts des additifs alimentaires, et intitulée *Répertoire des normes*

**(c)** in the case of a food colour for which no specifications exist under paragraph (a) or (b), contain no more than

**(i)** 3 parts per million of arsenic, and

**(ii)** 10 parts per million of lead.

**(d)** [Repealed, SOR/2010-142, s. 1]

**(e)** [Repealed, SOR/97-512, s. 2]

**(f)** [Repealed, SOR/2016-305, s. 12]

**(g)** [Repealed, SOR/97-512, s. 2]

SOR/82-383, s. 1; SOR/91-527, s. 3; SOR/92-93, s. 1; SOR/92-551, s. 1; SOR/93-276, s. 3; SOR/94-625, s. 4; SOR/94-779, s. 2; SOR/95-172, s. 2; SOR/97-512, s. 2; SOR/2010-142, s. 1; SOR/2016-305, s. 12.

*pour les additifs alimentaires*, publiée sur le site Web de l'organisation, avec ses modifications successives;

**c)** dans le cas d'un colorant alimentaire pour lequel aucune spécification n'est prévue aux termes des alinéas a) ou b), renfermer au plus :

**(i)** trois parties par million d'arsenic,

**(ii)** dix parties par million de plomb.

**d)** [Abrogé, DORS/2010-142, art. 1]

**e)** [Abrogé, DORS/97-512, art. 2]

**f)** [Abrogé, DORS/2016-305, art. 12]

**g)** [Abrogé, DORS/97-512, art. 2]

DORS/82-383, art. 1; DORS/91-527, art. 3; DORS/92-93, art. 1; DORS/92-551, art. 1; DORS/93-276, art. 3; DORS/94-625, art. 4; DORS/94-779, art. 2; DORS/95-172, art. 2; DORS/97-512, art. 2; DORS/2010-142, art. 1; DORS/2016-305, art. 12.

**B.01.046** [Repealed, SOR/2016-74, s. 2]

**B.01.047** [Repealed, SOR/2016-74, s. 2]

**B.01.047.1 (1)** The following definitions apply in this section.

***BSE*** means Bovine Spongiform Encephalopathy. (*ESB*)

***specified risk material*** means

**(a)** the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord and dorsal root ganglia of cattle aged 30 months or older; and

**(b)** the distal ileum of cattle of all ages. (*matériel à risque spécifié*)

**(2)** No person shall sell or import for sale food that contains specified risk material.

**(3)** Subsection (2) does not apply in respect of food that originates from a country that is designated as being free from BSE in accordance with section 7 of the *Health of Animals Regulations*.

**(4)** Subsection (2) does not apply in respect of food that is packaged for sale or imported for sale before the day on which this subsection comes into force.

SOR/2003-265, s. 1.

**B.01.048 (1)** No person shall sell

**(a)** any animal intended for consumption as food if any product containing any drug listed in subsection (2) has been administered to the animal;

**B.01.046** [Abrogé, DORS/2016-74, art. 2]

**B.01.047** [Abrogé, DORS/2016-74, art. 2]

**B.01.047.1 (1)** Les définitions qui suivent s'appliquent au présent article.

***ESB*** Encéphalopathie spongiforme bovine. (*BSE*)

***matériel à risque spécifié*** S'entend de ce qui suit :

**a)** le crâne, la cervelle, les ganglions trigéminés, les yeux, les amygdales, la moelle épinière et les ganglions de la racine dorsale des bœufs âgés de 30 mois ou plus;

**b)** l'iléon distal des bœufs de tous âges. (*specified risk material*)

**(2)** Il est interdit de vendre ou d'importer pour la vente tout aliment qui contient du matériel à risque spécifié.

**(3)** Le paragraphe (2) ne s'applique pas à l'égard de l'aliment qui provient d'un pays désigné comme exempt d'ESB en conformité avec l'article 7 du *Règlement sur la santé des animaux*.

**(4)** Le paragraphe (2) ne s'applique pas à l'égard de l'aliment emballé pour la vente ou importé pour la vente avant l'entrée en vigueur du présent paragraphe.

DORS/2003-265, art. 1.

**B.01.048 (1)** Il est interdit de vendre :

**(b)** any food that is derived from an animal if any product containing a drug listed in subsection (2) has been administered to the animal; or

**(c)** any food that is derived from an animal if the food contains any residue of a drug listed in subsection (2).

**(2)** The drugs referred to in subsection (1) are

**(a)** chloramphenicol and its salts and derivatives;

**(b)** a 5-nitrofuran compound;

**(c)** clenbuterol and its salts and derivatives;

**(d)** a 5-nitroimidazole compound; and

**(e)** diethylstilbestrol and other stilbene compounds.

SOR/85-685, s. 1; SOR/87-626, s. 1; SOR/94-568, s. 1; SOR/97-510, s. 1; SOR/2003-292, s. 1; SOR/2016-74, s. 3.

**B.01.049** No person shall use, in labelling, packaging, advertising or selling a food that does not meet the requirements of the kashruth applicable to it, the word "kosher" or any letters of the Hebrew alphabet or any other word, expression, depiction, sign, symbol, mark, device or other representation that indicates or that is likely to create an impression that the food is kosher.

SOR/84-300, s. 8.

**B.01.050** A person must not use, in labelling, packaging, advertising or selling a food, the word "halal" — or any letters of the Arabic alphabet or any other word, expression, depiction, sign, symbol, mark, device or other representation that indicates or that is likely to create an impression that the food is halal — unless the name of the person or body that certified the food as halal is indicated on the label or package or in the advertisement or sale.

SOR/2014-76, s. 1.

**B.01.053** No person shall sell a product represented as a ready breakfast or instant breakfast or by any similar designation unless each serving of stated size of the product contains

**(a)** not less than 4.0 mg. iron;

**a)** des animaux qui sont destinés à être consommés comme aliments et auxquels a été administré un produit contenant une drogue mentionnée au paragraphe (2);

**b)** des aliments qui proviennent d'un animal auquel a été administré un produit contenant une drogue mentionnée au paragraphe (2);

**c)** des aliments qui proviennent d'un animal s'ils contiennent des résidus d'une drogue mentionnée au paragraphe (2).

**(2)** Les drogues visées au paragraphe (1) sont :

**a)** le chloramphénicol, ses sels et ses dérivés;

**b)** un composé de 5-nitrofurane;

**c)** le clenbutérol, ses sels et ses dérivés;

**d)** un composé de 5-nitro-imidazole;

**e)** le diéthylstilbestrol et d'autres composés de stilbène.

DORS/85-685, art. 1; DORS/87-626, art. 1; DORS/94-568, art. 1; DORS/97-510, art. 1; DORS/2003-292, art. 1; DORS/2016-74, art. 3.

**B.01.049** Il est interdit d'employer sur l'étiquette ou l'emballage, dans la réclame ou pour la vente d'un produit alimentaire qui ne répond pas aux prescriptions du « kashruth » qui s'y applique, le mot « kascher » une lettre de l'alphabet hébreu ou tout autre mot, expression, illustration, signe, symbole, marque, véhicule ou autre représentation indiquant ou risquant de donner l'impression que ce produit est « kascher ».

DORS/84-300, art. 8.

**B.01.050** Il est interdit d'employer sur l'étiquette ou l'emballage, dans la réclame ou pour la vente d'un produit alimentaire le mot « halal », une lettre de l'alphabet arabe ou tout autre mot, expression, illustration, signe, symbole, marque, véhicule ou autre représentation indiquant ou risquant de donner l'impression que ce produit est « halal », à moins d'indiquer sur l'étiquette ou l'emballage, dans la réclame ou dans le cadre de la vente, le nom de l'organisme ou de la personne qui a certifié que ce produit est « halal ».

DORS/2014-76, art. 1.

**B.01.053** Il est interdit de vendre un produit présenté comme déjeuner prêt à manger ou déjeuner instantané, ou sous toute autre appellation semblable, à moins qu'il n'y ait dans chaque portion indiquée :

**a)** au moins 4,0 mg de fer;

**(b)** Vitamin A, thiamine, riboflavin, niacin or niacinamide and Vitamin C;

**(c)** a good dietary source of protein; and

**(d)** where consumed as directed, not less than 300 calories.

SOR/2003-11, s. 13; SOR/2016-305, s. 75(F).

**B.01.054 (1)** In order to generate information in support of an amendment to the Regulations, the Minister may issue to the manufacturer or distributor of a food, where the food or the packaging, labelling or advertising of the food does not comply with the requirements of these Regulations, a Temporary Marketing Authorization Letter that authorizes the sale of the food described therein or the packaging, labelling or advertising of the food described therein for a specified period of time, within a designated area and in a specified quantity, in the manner specified in the Letter if

**(a)** the manufacturer or distributor of the food has supplied to the Minister the following information:

**(i)** the purpose for which the temporary marketing authorization of the food is required,

**(ii)** a description of the food including a sample and proposed label,

**(iii)** a description of any proposed variation from the requirements of these Regulations,

**(iv)** adequate data to show that the use of the food will not be detrimental to the health of the purchaser or user,

**(v)** the proposed quantity of the food to be sold,

**(vi)** the proposed period of time required for such sale,

**(vii)** the proposed area designated for such sale, and

**(viii)** such other data as the Minister may require; and

**(b)** the manufacturer or distributor of the food has agreed to

**(i)** describe the food on a label or in an advertisement in a manner that is not false, misleading or deceptive,

**(ii)** use such marks or statements on the label or in any advertisement as the Minister may require,

**b)** de la vitamine A, de la thiamine, de la riboflavine, de la niacine ou de la niacinamide et de la vitamine C;

**c)** une bonne source alimentaire de protéines; et

**d)** si le produit est consommé de la façon indiquée, au moins 300 calories.

DORS/2003-11, art. 13; DORS/2016-305, art. 75(F).

**B.01.054 (1)** Afin de recueillir des renseignements à l'appui d'une modification au présent règlement, le ministre peut délivrer au fabricant ou au distributeur d'un aliment, lorsque l'aliment ou l'emballage, l'étiquetage ou l'annonce de celui-ci ne sont pas conformes aux exigences du présent règlement, une lettre d'autorisation de mise en marché temporaire permettant la vente, l'emballage, l'étiquetage ou l'annonce de l'aliment décrit dans la lettre pour une période déterminée, dans une région désignée, en quantité définie et de la manière précisée dans la lettre si

**a)** le fabricant ou le distributeur lui a fourni les renseignements suivants :

**(i)** la raison pour laquelle une autorisation de mise en marché temporaire de l'aliment est requise,

**(ii)** une description de l'aliment, y compris un échantillon et un projet d'étiquette,

**(iii)** une description de toute modification proposée aux exigences du présent règlement,

**(iv)** des données suffisantes à prouver que la consommation de l'aliment ne sera pas nuisible à la santé de l'acheteur ni à celle du consommateur,

**(v)** la quantité proposée d'aliment à vendre,

**(vi)** la période projetée qui est requise pour une telle vente,

**(vii)** la région proposée qui est désignée pour une telle vente, et

**(viii)** toutes les autres données que le ministre pourrait lui demander; et

**b)** le fabricant ou le distributeur de l'aliment a consenti

**(i)** à décrire l'aliment sur une étiquette ou dans une réclame d'une manière qui ne soit ni fausse, ni trompeuse, ni mensongère,

**(ii)** à se servir sur l'étiquette ou dans toute annonce des marques ou déclarations que le ministre pourrait exiger,

**(iii)** on request, submit to the Minister results of the temporary marketing, and

**(iv)** on request, withdraw the product from sale where the Minister is of the opinion that it is in the public interest to do so.

**(2)** The Minister shall, in any Temporary Marketing Authorization Letter issued pursuant to subsection (1), set out

**(a)** the common name and description of the food to be sold;

**(b)** the name and address of the manufacturer or distributor of the food;

**(c)** the purpose for which the temporary marketing of the food is authorized;

**(d)** the quantity of the food that is authorized for sale;

**(d.1)** the type of packaging, labelling or advertising authorized in respect of the food where the Letter is intended to authorize a variation from a requirement of any provision of the Regulations respecting packaging, labelling or advertising;

**(e)** the period of time during which the food may be sold; and

**(f)** the designated area within which the food may be sold.

SOR/81-566, s. 1; SOR/85-275, s. 1; SOR/2018-69, s. 27.

**B.01.055 (1)** A manufacturer or distributor named in a Temporary Marketing Authorization Letter issued pursuant to subsection B.01.054(1) may, for the purpose set out in the Letter, sell the food in the manner authorized in the Letter and package, label or advertise that food in the manner authorized in the Letter for the period of time, within the designated area and in the quantity set out in the Letter.

**(2)** No provision of these Regulations made pursuant to paragraph 30(1)(b) of the Act applies in respect of a food or the packaging, labelling or advertising of a food for which a Temporary Marketing Authorization Letter has been issued pursuant to subsection B.01.054(1) to the extent that the food, or the packaging, labelling or advertising of the food, as authorized in the Letter, does not comply with that provision.

SOR/81-566, s. 1; SOR/85-275, s. 2; SOR/90-814, s. 4.

**B.01.056** [Repealed, SOR/2016-74, s. 4]

**B.01.060 to B.01.066** [Repealed, SOR/88-559, s. 10]

**(iii)** à faire part au ministre, sur demande, des résultats de la mise en marché temporaire, et

**(iv)** à retirer le produit du marché, sur demande, si de l'avis du ministre, il est de l'intérêt public de le faire.

**(2)** Le ministre doit, dans toute lettre d'autorisation de mise en marché temporaire délivrée conformément au paragraphe (1), préciser

**a)** le nom usuel et une description de l'aliment qui doit être vendu;

**b)** le nom et l'adresse du fabricant ou du distributeur de l'aliment;

**c)** la raison pour laquelle la mise en marché temporaire de l'aliment est autorisée;

**d)** la quantité de l'aliment dont la vente est autorisée;

**d.1)** le genre d'emballage, d'étiquetage ou d'annonce autorisé à l'égard de l'aliment lorsque la lettre a pour objet d'autoriser une modification aux exigences du règlement traitant de l'emballage, de l'étiquetage ou de l'annonce;

**e)** la période où l'aliment peut être vendu; et

**f)** la région désignée dans laquelle l'aliment peut être vendu.

DORS/81-566, art. 1; DORS/85-275, art. 1; DORS/2018-69, art. 27.

**B.01.055 (1)** Le fabricant ou le distributeur mentionné dans une lettre d'autorisation de mise en marché temporaire délivrée conformément au paragraphe B.01.054(1) peut, aux fins visées dans la lettre, vendre, emballer, étiqueter ou annoncer l'aliment pour la période déterminée, dans la région désignée, en quantité définie et de la manière autorisée dans la lettre.

**(2)** L'aliment ou l'emballage, l'étiquetage ou l'annonce d'un aliment à l'égard desquels une lettre d'autorisation de mise en marché temporaire a été délivrée en application du paragraphe B.01.054(1) sont soustraits à l'application des dispositions du présent règlement prises en vertu de l'alinéa 30(1)b) de la Loi auxquelles ils ne sont pas conformes, s'ils respectent les modalités de la lettre d'autorisation.

DORS/81-566, art. 1; DORS/85-275, art. 2; DORS/90-814, art. 4.

**B.01.056** [Abrogé, DORS/2016-74, art. 4]

**B.01.060 à B.01.066** [Abrogés, DORS/88-559, art. 10]

**B.01.070 [S].** Mixed nuts or a mixture of nuts shall consist of a mixture of nuts in which not less than five per cent by weight of each type of nuts is present in the mixture.

**B.01.071** Where a prepackaged product is a mixture of nuts, the percentage and common name of the nut that is present in the product in the greatest amount by weight shall be applied to the principal display panel of the package in close proximity to the common name of the product.

SOR/88-336, s. 3; SOR/92-626, s. 11.

**B.01.072** Notwithstanding any requirement prescribed in Part B, a food product that has been subjected to heat in the presence of a vaporized liquid solution of smoke derived from hardwood, hardwood sawdust or corn cobs may be described as "smoked".

SOR/92-626, s. 11.

**B.01.080 (1)** In this section, ***frozen*** means preserved by freezing temperature and does not include any surface freezing that may occur during holding and transportation.

**(2)** Where meat, meat by-products, poultry meat, poultry by-products or fish, or meat of any marine or fresh water animal, that has been frozen is thawed prior to sale, the words "previously frozen" shall be shown

**(a)** on the principal display panel in close proximity to the common name of the food and in letters at least as legible and conspicuous as those used in the common name;

**(b)** anywhere on the principal display panel in letters of not less than 1/4 of an inch (6.4 millimetres) in height; or

**(c)** on a sign displayed adjacent to the food in letters that are easily visible and legible to a prospective purchaser.

**(3)** Where part of a food referred to in subsection (2) has been frozen and thawed prior to sale, the words "Made from fresh and frozen portions" or "Made from fresh and frozen (naming the food)" shall be shown in the manner described in paragraph (2)(a), (b) or (c).

SOR/88-336, s. 3; SOR/2022-143, s. 13(E).

**B.01.090 (1)** No person shall offer for sale at retail any solid cut meat or solid cut poultry meat to which phosphate salts or water has been added, unless that meat or poultry meat is contained in a package and carries a label.

**B.01.070 [N].** Des noix mélangées ou un mélange de noix doivent être un mélange de noix qui comporte un pourcentage, en poids, d'au moins cinq pour cent de chaque type de noix.

**B.01.071** Pour tout produit préemballé qui est un mélange de noix, le pourcentage et le nom usuel du type de noix prédominant en poids doivent figurer sur l'espace principal de l'emballage, à proximité du nom usuel du produit.

DORS/88-336, art. 3; DORS/92-626, art. 11.

**B.01.072** Par dérogation à toute autre disposition de la partie B, peut être qualifié de « fumé » tout produit alimentaire qui a été exposé à la chaleur en présence d'une solution de fumée liquide vaporisée et tirée du bois dur, de la sciure de bois dur ou des épis de maïs.

DORS/92-626, art. 11.

**B.01.080 (1)** Dans le présent article, ***congelés*** s'entend d'un produit conservé à la température de congélation et n'inclut pas une congélation de surface qui aurait pu se produire durant la manutention et le transport.

**(2)** Lorsque de la viande ou un de ses sous-produits, de la volaille ou un de ses sous-produits, du poisson ou de la chair de tout autre animal marin ou d'eau douce qui a été congelé est décongelé avant la vente, la mention « produit décongelé » doit figurer

**a)** sur l'espace principal de l'étiquette, à proximité du nom usuel du produit, et en lettres au moins aussi lisibles et en évidence que celles du nom usuel;

**b)** n'importe où sur l'espace principal de l'étiquette en lettres d'au moins 1/4 de pouce (6,4 millimètres) de hauteur; ou

**c)** sur un écriteau placé tout près du produit alimentaire, en lettres que tout acheteur éventuel peut voir et lire facilement.

**(3)** Lorsqu'une partie d'un produit alimentaire mentionné au paragraphe (2) a été congelée et décongelée avant la vente, la mention « Provenance : parties fraîches et congelées » ou « Provenance : parties de (d') (nom du produit) fraîches et congelées » doit figurer à l'endroit précisé et comme il est indiqué à l'alinéa (2)a), b) ou c).

DORS/88-336, art. 3; DORS/2022-143, art. 13(A).

**B.01.090 (1)** Est interdite la mise en vente au détail de toute viande coupée solide ou de toute viande de volaille coupée solide à laquelle ont été ajoutés des sels de phosphate ou de l'eau, à moins que la viande ne soit contenue dans un emballage et ne porte une étiquette.

**(2)** The label referred to in subsection (1) shall contain a statement of the minimum percentage of meat protein as part of the common name of the product on the principal display panel of the package in type that is as legible and conspicuous as any other type on that display panel, and in letters that are at least one half of the size of the letters used in the common name of the product but that are not less than 1.6 mm in height.

SOR/94-262, s. 1.

**B.01.091** The label of any solid cut meat or solid cut poultry meat that has had phosphate salts or water added to it, that is not cured and that is prepackaged at retail shall contain a statement of the ingredients contained in the food in accordance with subsections B.01.008.2(1) to (5) and (7).

SOR/94-262, s. 1; SOR/2003-11, s. 14; SOR/2016-305, s. 13.

**B.01.092** Sections B.01.090 and B.01.091 do not apply in respect of side bacon, Wiltshire bacon, pork jowls, salt pork or salt beef.

SOR/94-262, s. 1.

**B.01.100 (1)** The common name of a simulated meat product or simulated poultry product shall be the common name of the meat product or poultry product that is simulated, modified by the word "simulated".

**(2)** The word "simulated" in the common name of a simulated meat product or simulated poultry product shall be shown in letters of at least the same size and prominence as those used in the remainder of the common name of that product.

**(3)** Where a simulated meat product or a simulated poultry product is not a prepackaged product, the common name of the product and the other information required by this section to be shown on the label of a simulated meat product or simulated poultry product shall be shown on a sign displayed on or adjacent to the product in letters that are legible and conspicuous to a prospective purchaser.

**(4)** The words

**(a)** "contains no meat", in the case of a simulated meat product, and

**(b)** "contains no poultry", in the case of a simulated poultry product,

shall be shown on the principal display panel of the label of a simulated meat product or simulated poultry product in close proximity to the common name and in letters of at least the same size and prominence as those shown in the common name.

**(2)** L'étiquette visée au paragraphe (1) doit inclure une mention de la teneur minimale en protéines de la viande, incorporée au nom usuel du produit sur l'espace principal de l'emballage, en caractères aussi lisibles et visibles que tous les autres caractères figurant dans le même espace et de dimension au moins égale à la moitié de la taille des lettres utilisées pour le nom usuel du produit, sans être d'une hauteur inférieure à 1,6 mm.

DORS/94-262, art. 1.

**B.01.091** L'étiquette de toute pièce de viande ou de toute pièce de viande de volaille à laquelle ont été ajoutés des sels de phosphate ou de l'eau, qui est non traitée par salaison et qui est préemballée chez le détaillant, indique les ingrédients de cet aliment conformément aux paragraphes B.01.008.2(1) à (5) et (7).

DORS/94-262, art. 1; DORS/2003-11, art. 14; DORS/2016-305, art. 13.

**B.01.092** Les articles B.01.090 et B.01.091 ne s'appliquent pas au bacon de flanc, au bacon Wiltshire, aux bajoues de porc, ni au porc et au bœuf salés.

DORS/94-262, art. 1.

**B.01.100 (1)** Le nom usuel d'un simili-produit de viande ou d'un simili-produit de volaille est formé du nom usuel du produit de viande ou de volaille dont l'apparence est imitée, auquel s'ajoute le préfixe « simili ».

**(2)** Le préfixe « simili » mentionné au paragraphe (1) doit figurer en caractères au moins aussi gros et aussi en évidence que ceux du reste du nom usuel du simili-produit.

**(3)** Lorsqu'un simili-produit de viande ou un simili-produit de volaille n'est pas un produit préemballé, doivent être indiqués, en caractères lisibles, sur une inscription placée bien en évidence sur le produit ou à proximité, le nom usuel du produit et les autres renseignements qui, aux termes du présent article, doivent figurer sur l'étiquette d'un simili-produit de viande ou d'un simili-produit de volaille.

**(4)** La mention

**a)** « sans teneur en viande », dans le cas d'un simili-produit de viande, et

**b)** « sans teneur en volaille », dans le cas d'un simili-produit de volaille,

doit figurer sur l'espace principal de l'étiquette d'un simili-produit de viande ou d'un simili-produit de volaille à proximité du nom usuel et en caractères au moins aussi gros et aussi visibles que ceux du reste du nom usuel.

**(5) to (7)** [Repealed, SOR/88-559, s. 11]

SOR/88-336, s. 3; SOR/88-559, s. 11.

**B.01.101 (1)** For the purposes of this section and section B.01.102, ***source of protein*** means any food that contains protein, but does not include spices, seasonings, flavours, artificial flavours, flavour enhancers, food additives and similar foods that contain only small amounts of protein.

**(2)** The common name of a meat product extender shall be the common name of each food in the meat product extender that is a source of protein, plus

**(a)** the word "meat", or the common name of the meat product that is to be extended, plus the word "extender"; or

**(b)** the words "extender for" plus the common name of the meat product that is to be extended.

**(3)** The common name of a poultry product extender shall be the common name of each food in the poultry product extender that is a source of protein, plus

**(a)** the word "poultry", or the common name of the poultry product that is to be extended plus the word "extender"; or

**(b)** the words "extender for" plus the common name of the poultry product that is to be extended.

**(4)** Foods that are a source of protein in the meat product extender or poultry product extender shall be shown by their common names in the common name of that meat product extender or poultry product extender

**(a)** in descending order of their proportion by weight of the meat product extender or poultry product extender; and

**(b)** in letters of at least the same size and prominence as those used in the remainder of the common name of the meat product extender or poultry product extender.

**(5) and (6)** [Repealed, SOR/88-559, s. 12]

SOR/88-559, s. 12; SOR/2022-143, s. 14.

**B.01.102 (1)** The common name of an extended meat product or an extended poultry product shall be the common name of the meat product or poultry product that is extended, modified by the common name of each of the foods that are sources of protein in the extended meat product or extended poultry product.

**(5) à (7)** [Abrogés, DORS/88-559, art. 11]

DORS/88-336, art. 3; DORS/88-559, art. 11.

**B.01.101 (1)** Aux fins du présent article et de l'article B.01.102, ***source de protéines*** s'entend de tout aliment à teneur en protéines, à l'exclusion des produits suivants : épices, assaisonnements, parfums ou arômes, parfums ou arômes artificiels, exhausteurs de goût (substances qui rehaussent le goût), additifs alimentaires et produits analogues qui ne contiennent que de petites quantités de protéines.

**(2)** Le nom usuel d'un allongeur de produit de viande est formé du mot « allongeur » suivi de « au », « à la » ou « aux », selon le cas, du nom usuel de l'aliment qui est contenu dans l'allongeur de produit de viande et qui est source de protéines et

**a)** de l'expression « pour viande »; ou

**b)** du nom usuel du produit de viande dont le volume est augmenté.

**(3)** Le nom usuel d'un allongeur de produit de volaille est formé du mot « allongeur » suivi de « au », « à la » ou « aux », selon le cas, du nom usuel de l'aliment qui est contenu dans l'allongeur de produit de volaille et qui est source de protéines et

**a)** de l'expression « pour volaille »; ou

**b)** du nom usuel du produit de volaille dont le volume est augmenté.

**(4)** Les aliments qui sont sources de protéines dans l'allongeur de produits de viande ou dans l'allongeur de produits de volaille doivent figurer dans le nom usuel de cet allongeur, où ils sont désignés par leur nom usuel,

**a)** dans l'ordre décroissant de leurs proportions, en poids, dans l'allongeur;

**b)** en caractères au moins aussi gros et aussi en évidence que ceux du reste du nom usuel de l'allongeur de produits de viande ou de volaille.

**(5) et (6)** [Abrogés, DORS/88-559, art. 12]

DORS/88-559, art. 12; DORS/2022-143, art. 14.

**B.01.102 (1)** Le nom usuel d'un produit de viande avec allongeur ou d'un produit de volaille avec allongeur est formé du nom usuel du produit de viande ou de volaille dont le volume est augmenté, auquel s'ajoute le nom

usuel de chacun des aliments qui sont sources de protéines dans le produit de viande avec allongeur ou dans le produit de volaille avec allongeur.

**(2)** Notwithstanding subsection (1),

**(a)** the word or words “meat”, “meat product”, “poultry”, “poultry meat” or “poultry meat by-product” as the case may be, may be used in the common name of an extended meat product or extended poultry product as the common name of the food therein that is a source of protein derived from a meat product or poultry product; and

**(b)** where it is an acceptable manufacturing practice for a manufacturer to omit from his meat product extender or poultry product extender any source of protein derived from a plant that is ordinarily an ingredient of that meat product extender or poultry product extender, or to substitute in whole or in part in his meat product extender or poultry product extender any source of protein derived from a plant for a source of protein that is ordinarily an ingredient of that meat product extender or poultry product extender, the word “plant” may be used in the common name of an extended meat product or extended poultry product as the common name of the food therein that is a source of protein derived from a plant.

**(2)** Par dérogation au paragraphe (1),

**a)** les mots « viande », « produit de viande », « volaille », « viande de volaille » ou « sous-produit de viande de volaille », selon le cas, peuvent être employés dans le nom usuel d’un produit de viande avec allongeur ou d’un produit de volaille avec allongeur comme étant le nom usuel de l’aliment incorporé qui est une source de protéines dérivée d’un produit de viande ou d’un produit de volaille; et

**b)** lorsque, suivant une pratique industrielle reconnue, le fabricant n’inclut pas dans l’allongeur de produit de viande ou dans l’allongeur de produit de volaille une source quelconque de protéines qui est dérivée d’une plante et qui est généralement un ingrédient de cet allongeur de produit de viande ou de cet allongeur de produit de volaille, ou qu’il remplace en tout ou en partie, dans l’allongeur de produit de viande ou dans l’allongeur de produit de volaille, une source de protéines qui est généralement un ingrédient de ce produit par une source quelconque de protéines dérivée d’une plante, le terme « plante » peut être employé dans le nom usuel d’un produit de viande avec allongeur ou d’un produit de volaille avec allongeur comme étant le nom usuel de l’aliment incorporé qui est une source de protéines dérivée d’une plante.

**(3)** Foods that are a source of protein in an extended meat product or extended poultry product shall be shown by their common names in the common name of that product

**(a)** in descending order of their proportion by weight of that product; and

**(b)** in letters of at least the same size and prominence as those used in the remainder of the common name of that product.

**(3)** Les aliments qui sont sources de protéines dans un produit de viande avec allongeur ou dans un produit de volaille avec allongeur doivent figurer dans le nom usuel de ce produit, où ils sont désignés par leur nom usuel, à la fois :

**a)** dans l’ordre décroissant de leurs proportions respectives, en poids, du produit de viande avec allongeur ou de volaille avec allongeur;

**b)** en caractères au moins aussi gros et aussi en évidence que ceux du reste du nom usuel de ce produit.

**(4)** Where an extended meat product or extended poultry product is not a prepackaged product, the common name of that product and the information required by this section to be shown on the label of an extended meat product or extended poultry product shall be shown on a sign displayed on or adjacent to that product in letters that are legible and conspicuous to a prospective purchaser.

**(4)** Lorsqu’un produit de viande avec allongeur ou un produit de volaille avec allongeur n’est pas un produit préemballé, doivent être indiqués, en caractères lisibles, sur une inscription placée bien en évidence sur le produit ou à proximité, le nom usuel du produit et les autres renseignements qui, aux termes du présent article, doivent figurer sur l’étiquette d’un produit de viande avec allongeur ou d’un produit de volaille avec allongeur.

**(5) to (7)** [Repealed, SOR/88-559, s. 13]

SOR/84-300, s. 9; SOR/88-559, s. 13; SOR/2022-143, s. 15.

**(5) à (7)** [Abrogés, DORS/88-559, art. 13]

DORS/84-300, art. 9; DORS/88-559, art. 13; DORS/2022-143, art. 15.

**B.01.103 (1)** [Repealed, SOR/2022-143, s. 16]

**(2) to (4)** [Repealed, SOR/88-559, s. 14]

SOR/88-559, s. 14; SOR/2022-143, s. 16.

**B.01.300** [Repealed, SOR/2003-11, s. 15]

**B.01.301 (1)** No person shall, on the label of or in any advertisement for a food, other than in the nutrition facts table or supplemented food facts table, if any, include a declaration of the food's energy value or the amount of a nutrient or supplemental ingredient contained in the food unless it is declared in the following manner, per serving of stated size:

**(a)** in the case of the energy value, in Calories;

**(b)** in the case of a vitamin referred to in subsection D.01.002(1) that is not one of the following vitamins, in the applicable unit set out in subsection D.01.003(1):

**(i)** beta-carotene as a form of vitamin A or retinol, including its derivatives, as a form of vitamin A, or both, if either is a supplemental ingredient, and

**(ii)** niacin, if it is a supplemental ingredient;

**(b.01)** in the case of the following vitamins, in the applicable unit set out in column 3 of the List of Permitted Supplemental Ingredients:

**(i)** beta-carotene as a form of vitamin A or retinol, including its derivatives, as a form of vitamin A, or both, if either is a supplemental ingredient, and

**(ii)** niacin, if it is a supplemental ingredient;

**(b.1)** in the case of the following mineral nutrients:

**(i)** for sodium, potassium, calcium, phosphorus, magnesium, iron, zinc, chloride, copper and manganese, in milligrams, and

**(ii)** for iodide, chromium, selenium and molybdenum, in micrograms;

**(c)** in the case of cholesterol, in milligrams;

**(d)** in the case of the mineral ion content of prepackaged water or ice, in parts per million;

**(d.1)** in the case of a supplemental ingredient other than a vitamin or mineral nutrient referred to in this subsection, in the applicable unit referred to in column 3 of the List of Permitted Supplemental Ingredients; and

**B.01.103 (1)** [Abrogé, DORS/2022-143, art. 16]

**(2) à (4)** [Abrogés, DORS/88-559, art. 14]

DORS/88-559, art. 14; DORS/2022-143, art. 16.

**B.01.300** [Abrogé, DORS/2003-11, art. 15]

**B.01.301 (1)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment, ailleurs que dans le tableau de la valeur nutritive ou dans le tableau des renseignements sur les aliments supplémentés, le cas échéant, toute indication de la valeur énergétique de l'aliment ou de sa teneur en un élément nutritif ou un ingrédient supplémentaire, à moins qu'elle ne soit exprimée de la façon ci-après, par portion indiquée :

**a)** dans le cas de la valeur énergétique, en Calories;

**b)** dans le cas d'une vitamine mentionnée au paragraphe D.01.002(1) qui n'est pas l'une des vitamines ci-après, selon l'unité applicable indiquée au paragraphe D.01.003(1) :

**(i)** la bêta-carotène qui est une forme de vitamine A ou le rétinol, y compris ses dérivés, qui est une forme de vitamine A, ou les deux, si un de ceux-ci est un ingrédient supplémentaire,

**(ii)** la niacine qui est un ingrédient supplémentaire;

**b.01)** dans le cas des vitamines ci-après, selon l'unité applicable prévue à la colonne 3 de la Liste des ingrédients supplémentaires autorisés :

**(i)** la bêta-carotène qui est une forme de vitamine A ou le rétinol, y compris ses dérivés, qui est une forme de vitamine A, ou les deux, si un de ceux-ci est un ingrédient supplémentaire,

**(ii)** la niacine qui est un ingrédient supplémentaire;

**b.1)** dans le cas des minéraux nutritifs ci-après, selon l'unité suivante :

**(i)** s'agissant du sodium, du potassium, du calcium, du phosphore, du magnésium, du fer, du zinc, du chlore, du cuivre et du manganèse, en milligrammes,

**(ii)** s'agissant de l'iode, du chrome, du sélénium et du molybdène, en microgrammes;

**c)** dans le cas du cholestérol, en milligrammes;

**d)** dans le cas de la teneur en ions minéraux de l'eau ou de la glace préemballées, en parties par million;

**(e)** in any other case, in grams.

**(1.1)** Despite subsection D.01.003(1) and for the purposes of this section, the amount in metric units of the vitamins referred to in paragraph (1)(b.01) must be determined in terms of their amount in the supplemented food in accordance with column 5 of the List of Permitted Supplemental Ingredients, as applicable.

**(2)** Despite subsection (1), a person may, on the label of or in any advertisement for a food, other than in the nutrition facts table or supplemented food facts table, if any, include a declaration of the percentage of the daily value of a nutrient contained in the food if

**(a)** in the case of a food that is not a supplemented food, the nutrient is listed in column 1 of the table to section B.01.401 or the table to section B.01.402 and the percentage of the daily value of the nutrient is required or permitted to be declared in the nutrition facts table;

**(b)** in the case of a supplemented food, the nutrient is listed in column 1 of the table to section B.29.002 or the table to section B.29.003, or referred to in column 2 of item 18 of the table to section B.29.002, and the percentage of the daily value of the nutrient is required or permitted to be declared in the supplemented food facts table; and

**(c)** the percentage of the daily value of the nutrient is declared per serving of stated size.

**(3)** A declaration referred to in subsection (1) or (2) that appears on the label of a food shall be

**(a)** in English and French; or

**(b)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the food may be shown in that language only and is shown on the label in that language.

SOR/88-559, s. 15; SOR/2003-11, s. 16; SOR/2016-305, ss. 14, 75(F); SOR/2022-169, s. 9.

**B.01.302** If the label of a multiple-serving prepackaged product indicates that the product contains or, if

**d.1)** dans le cas d'un ingrédient supplémentaire autre qu'une vitamine ou un minéral nutritif visés au présent paragraphe, selon l'unité applicable prévue à la colonne 3 de la Liste des ingrédients supplémentaires autorisés;

**e)** dans les autres cas, en grammes.

**(1.1)** Malgré le paragraphe D.01.003(1) et pour l'application du présent article, la teneur en unités métriques des vitamines visées à l'alinéa (1)b.01) est déterminée en fonction de leur teneur en l'aliment supplémenté, et, le cas échéant, conformément à la colonne 5 de la Liste des ingrédients supplémentaires autorisés.

**(2)** Malgré le paragraphe (1), est permise, sur l'étiquette ou dans l'annonce d'un aliment, ailleurs que dans le tableau de la valeur nutritive ou dans le tableau des renseignements sur les aliments supplémentés, le cas échéant, toute indication du pourcentage de la valeur quotidienne d'un élément nutritif contenu dans l'aliment, si les conditions suivantes sont réunies :

**a)** dans le cas d'un aliment autre qu'un aliment supplémenté, l'élément nutritif figure à la colonne 1 des tableaux des articles B.01.401 ou B.01.402 et le pourcentage de la valeur quotidienne de l'élément nutritif doit ou peut être déclaré dans le tableau de la valeur nutritive;

**b)** dans le cas d'un aliment supplémenté, l'élément nutritif figure à la colonne 1 des tableaux des articles B.29.002 ou B.29.003, ou est visé à la colonne 2 de l'article 18 du tableau de l'article B.29.002, et le pourcentage de la valeur quotidienne de l'élément nutritif doit ou peut être déclaré dans le tableau des renseignements sur les aliments supplémentés;

**c)** le pourcentage de la valeur quotidienne de l'élément nutritif est déclaré par portion indiquée.

**(3)** Toute indication visée aux paragraphes (1) ou (2) paraissant sur l'étiquette d'un aliment figure :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette de l'aliment aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

DORS/88-559, art. 15; DORS/2003-11, art. 16; DORS/2016-305, art. 14 et 75(F); DORS/2022-169, art. 9.

**B.01.302** Si l'étiquette d'un produit préemballé à portions multiples indique le nombre de portions que

prepared as directed in or on the package, provides a specified number of servings or portions, that information must be based on the serving of stated size set out in the nutrition facts table or supplemented food facts table, as the case may be.

SOR/2016-305, s. 15; SOR/2018-108, s. 394; SOR/2022-169, s. 10.

**B.01.303 and B.01.304** [Repealed, SOR/2003-11, s. 17]

**B.01.305 (1)** No person shall, on the label of or in any advertisement for a food, make a representation, express or implied, respecting a protein unless the food meets the conditions set out in column 2 of item 8 of the Table of Permitted Nutrient Content Statements and Claims for the subject "source of protein" set out in column 1.

**(2)** No person shall, on the label of or in any advertisement for a food, other than a supplemented food, make a representation, express or implied, respecting an amino acid unless

**(a)** the food meets the conditions set out in column 2 of item 8 of the Table of Permitted Nutrient Content Statements and Claims for the subject "source of protein" set out in column 1; and

**(b)** the label or advertisement includes a declaration of the amount of histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan and valine contained in the food, expressed in grams per serving of stated size.

**(3)** Subsections (1) and (2) do not apply in respect of

**(a)** a formulated liquid diet, human milk fortifier, human milk substitute or food represented as containing a human milk substitute;

**(b)** foods represented for use in gluten-free diets, protein restricted diets, low (naming the amino acid) diets and (naming the amino acid) free diets;

**(c)** the word "protein" when used as part of the common name of an ingredient in the list of ingredients;

**(d)** the declaration of amino acids in the list of ingredients;

**(e)** the common names that are set out in the Common Names for Ingredients and Components Document, if shown in the list of ingredients in accordance with paragraph B.01.010(3)(a);

contient le produit, ou celui qui sera obtenu si l'aliment est préparé selon les instructions fournies dans ou sur l'emballage, ce renseignement doit être déclaré sur le fondement de la portion indiquée figurant dans le tableau de la valeur nutritive ou dans le tableau des renseignements sur les aliments supplémentés du produit, selon le cas.

DORS/2016-305, art. 15; DORS/2018-108, art. 394; DORS/2022-169, art. 10.

**B.01.303 et B.01.304** [Abrogés, DORS/2003-11, art. 17]

**B.01.305 (1)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment, toute déclaration, expresse ou implicite, relativement aux protéines, à moins que l'aliment réponde aux critères mentionnés à la colonne 2 de l'article 8 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « source de protéines » visé à la colonne 1.

**(2)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment autre qu'un aliment supplémenté toute déclaration, expresse ou implicite, relativement aux acides aminés, à moins que :

**a)** l'aliment réponde aux critères mentionnés à la colonne 2 de l'article 8 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « source de protéines » visé à la colonne 1;

**b)** sa teneur en histidine, en isoleucine, en leucine, en lysine, en méthionine, en phénylalanine, en thréonine, en tryptophane et en valine soit exprimée en grammes par portion indiquée sur l'étiquette ou dans l'annonce.

**(3)** Les paragraphes (1) et (2) ne s'appliquent pas :

**a)** à une préparation pour régime liquide, à un fortifiant pour lait humain, à un succédané de lait humain ou à un aliment présenté comme contenant un succédané de lait humain;

**b)** à un aliment présenté comme étant destiné à un régime sans gluten, à teneur réduite en protéines, à faible teneur en (nom de l'acide aminé) ou sans (nom de l'acide aminé);

**c)** au mot « protéines » utilisé dans le nom usuel d'un ingrédient dans la liste d'ingrédients;

**d)** à la déclaration des acides aminés dans la liste d'ingrédients;

**(f)** the common name of a single amino acid preparation that may be sold as a food;

**(g)** any statement referred to in subsection B.01.014(1);

**(h)** a statement or claim set out in column 4 of item 7 of the Table of Permitted Nutrient Content Statements and Claims respecting the subject "low in protein" set out in column 1;

**(i)** a declaration of the amount of protein in the nutrition facts table or supplemented food facts table, as the case may be;

**(j)** a statement of the protein content of a food as required by paragraph B.24.103(c), subparagraph B.24.202(a)(ii), paragraph B.24.304(b) or B.25.057(1)(a) or subparagraph B.25.057(2)(c)(i) or (d)(i); or

**(k)** a statement that a food is not a source of protein.

**(4)** A representation referred to in subsection (1) or (2) that appears on the label of a food shall be

**(a)** in English and French; or

**(b)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the food may be shown in that language only and is shown on the label in that language.

SOR/88-559, s. 15; SOR/90-830, s. 3(F); SOR/2003-11, s. 18; SOR/2016-305, s. 75(F); SOR/2021-57, s. 8; SOR/2022-143, s. 17; SOR/2022-168, s. 12; SOR/2022-168, s. 52; SOR/2022-169, s. 11.

**B.01.306 to B.01.310** [Repealed, SOR/2003-11, s. 19]

**B.01.311 (1)** Subject to subsections (2) and (3), no person shall, on the label of or in any advertisement for a food, make a representation, express or implied, concerning the action or effect of the food's energy value or of a nutrient contained in the food.

**(2)** The label of or advertisement for a food may carry a statement or claim set out in column 1 of the table following section B.01.603.

**e)** aux noms usuels mentionnés dans le document sur les noms usuels d'ingrédients et de constituants lorsqu'ils figurent dans la liste d'ingrédients aux termes de l'alinéa B.01.010(3)a);

**f)** au nom usuel d'une préparation contenant un seul acide aminé qui peut être vendue comme aliment;

**g)** à toute mention visée au paragraphe B.01.014(1);

**h)** à toute mention ou allégation figurant à la colonne 4 de l'article 7 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « faible teneur en protéines » visé à la colonne 1;

**i)** à la déclaration de la teneur en protéines dans le tableau de la valeur nutritive ou dans le tableau des renseignements sur les aliments supplémentés, selon le cas;

**j)** à une mention de la teneur en protéines d'un aliment tel que l'exigent l'alinéa B.24.103c), le sous-alinéa B.24.202a)(ii), les alinéas B.24.304b) ou B.25.057(1)a) ou les sous-alinéas B.25.057(2)c)(i) ou d)(i);

**k)** à la déclaration selon laquelle un aliment n'est pas une source de protéines.

**(4)** Toute déclaration visée aux paragraphes (1) ou (2) paraissant sur l'étiquette d'un aliment figure :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette de l'aliment aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

DORS/88-559, art. 15; DORS/90-830, art. 3(F); DORS/2003-11, art. 18; DORS/2016-305, art. 75(F); DORS/2021-57, art. 8; DORS/2022-143, art. 17; DORS/2022-168, art. 12; DORS/2022-168, art. 52; DORS/2022-169, art. 11.

**B.01.306 à B.01.310** [Abrogés, DORS/2003-11, art. 19]

**B.01.311 (1)** Sous réserve des paragraphes (2) et (3), est interdite, sur l'étiquette ou dans l'annonce d'un aliment, toute déclaration, expresse ou implicite, concernant l'action ou les effets de la valeur énergétique de l'aliment ou de tout élément nutritif contenu dans l'aliment.

**(2)** Toute mention ou allégation figurant à la colonne 1 du tableau suivant l'article B.01.603 est permise sur l'étiquette ou dans l'annonce d'un aliment.

**(3)** Subject to section B.01.312, the label of or advertisement for a food may carry a statement or claim to the effect that the food's energy value or a nutrient contained in the food is generally recognized as an aid in maintaining the functions of the body necessary to the maintenance of good health and normal growth and development.

**(4)** If a statement or claim described in subsection (3) concerns a nutrient not listed in column 1 of the tables to sections B.01.401 and B.01.402 — or, as the case may be, not listed in column 1 of the tables to sections B.29.002 and B.29.003 and not referred to in column 2 of item 18 of the table to section B.29.002 — the amount of the nutrient contained in the food must be expressed on any part of the label in grams per serving of stated size.

**(5)** A statement or claim referred to in subsection (2) or (3) that appears on the label of a food shall be

**(a)** in English and French; or

**(b)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the food may be shown in that language only and is shown on the label in that language.

SOR/88-559, s. 15; SOR/2003-11, s. 20; SOR/2016-305, s. 75(F); SOR/2022-169, s. 12.

**B.01.312 (1)** If a statement or claim described in subsection B.01.311(3) is made on the label of or in an advertisement for a food that is not a prepackaged product or in an advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, the label or advertisement shall include a declaration, per serving of stated size, of

**(a)** the energy value, if the energy value is the subject of the statement or claim; or

**(b)** the amount of the nutrient, if a nutrient is the subject of the statement or claim.

**(1.1)** Subsection (1) does not apply if the statement or claim is made on the label of or in the advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating.

**(3)** Sous réserve de l'article B.01.312, est permise, sur l'étiquette ou dans l'annonce d'un aliment, toute mention ou allégation indiquant que la valeur énergétique de l'aliment ou un de ses éléments nutritifs est généralement reconnu comme aidant à entretenir les fonctions de l'organisme nécessaires au maintien de la santé et à la croissance et au développement normaux.

**(4)** Si une mention ou une allégation visée au paragraphe (3) porte sur un élément nutritif qui ne figure pas à la colonne 1 des tableaux des articles B.01.401 et B.01.402 — ou, selon le cas, qui ne figure pas à la colonne 1 des tableaux des articles B.29.002 et B.29.003 et qui n'est pas visé à la colonne 2 de l'article 18 du tableau de l'article B.29.002 — la teneur de l'aliment en cet élément est indiquée sur l'étiquette, exprimée en grammes par portion indiquée.

**(5)** Toute mention ou allégation visée aux paragraphes (2) ou (3) paraissant sur l'étiquette d'un aliment figure :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette de l'aliment aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

DORS/88-559, art. 15; DORS/2003-11, art. 20; DORS/2016-305, art. 75(F); DORS/2022-169, art. 12.

**B.01.312 (1)** Si une mention ou une allégation visée au paragraphe B.01.311(3) est faite sur l'étiquette ou dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, l'étiquette ou l'annonce indique les renseignements ci-après qui font l'objet de la mention ou de l'allégation, par portion indiquée :

**a)** la valeur énergétique;

**b)** la teneur en l'élément nutritif.

**(1.1)** Le paragraphe (1) ne s'applique pas si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout autre enduit protecteur.

**(2)** If the statement or claim is made in an advertisement other than a radio or television advertisement, the declaration referred to in subsection (1) shall be

**(a)** adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(b)** shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

**(3)** If the statement or claim is made in a radio advertisement or in the audio portion of a television advertisement, the declaration referred to in subsection (1) shall immediately precede or follow the statement or claim.

**(4)** If the statement or claim is made in a television advertisement, the declaration referred to in subsection (1) shall be communicated

**(a)** in the audio mode, if the statement or claim is made only in the audio portion of the advertisement or in both the audio and visual portions; or

**(b)** in the audio or visual mode, if the statement or claim is made only in the visual portion of the advertisement.

**(5)** If the declaration referred to in subsection (1) is communicated in the visual mode of a television advertisement, it shall

**(a)** appear concurrently with and for at least the same amount of time as the statement or claim;

**(b)** be adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(c)** be shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

SOR/2003-11, s. 20; SOR/2016-305, ss. 16, 75(F).

**(2)** Si une mention ou une allégation est faite dans l'annonce d'un aliment, autre qu'une annonce radiophonique ou télévisée, les renseignements visés au paragraphe (1), à la fois :

**a)** précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**b)** figurent en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

**(3)** Si une mention ou une allégation est faite dans une annonce radiophonique ou dans la composante audio d'une annonce télévisée, les renseignements visés au paragraphe (1) précèdent ou suivent immédiatement la mention ou l'allégation.

**(4)** Si une mention ou une allégation est faite dans une annonce télévisée, les renseignements visés au paragraphe (1) sont communiqués, selon le cas :

**a)** en mode audio, si la mention ou l'allégation fait partie uniquement de la composante audio de l'annonce ou, à la fois des composantes audio et visuelle de celle-ci;

**b)** en mode audio ou en mode visuel, si la mention ou l'allégation fait partie uniquement de la composante visuelle de l'annonce.

**(5)** Les renseignements visés au paragraphe (1) qui sont communiqués en mode visuel dans une annonce télévisée, à la fois :

**a)** paraissent en même temps et pendant au moins la même durée que la mention ou l'allégation;

**b)** précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**c)** figurent en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

DORS/2003-11, art. 20; DORS/2016-305, art. 16 et 75(F).

# Nutrition Symbols

## Mandatory Information

**B.01.350 (1)** Except as otherwise provided in this section, the principal display panel of a prepackaged product must carry a symbol that is set out in Schedule K.1 if

**(a)** the product, as offered for sale, contains a nutrient that is set out in column 1 of the table to this section; and

**(b)** the amount of the nutrient, calculated as a percentage of the daily value, meets or exceeds the applicable threshold set out in columns 2 to 7 of that table.

**(2)** For the purposes of subsection (1), the percentage of the daily value for the nutrient is calculated on the basis of the amount of the nutrient, by weight, per serving of stated size or per reference amount, whichever is greater.

**(3)** Despite subsection (2), if the prepackaged product requires reconstitution with water or another liquid or the addition of any other ingredient for its preparation and the reference amount applicable to the product only refers to the food in its prepared form, the percentage of the daily value for the nutrient is calculated on the basis of the amount of the nutrient, by weight, per serving of stated size.

**(4)** In the case of a prepackaged product referred to in subsection (3), the applicable threshold set out in columns 2 to 7 of the table to this section is determined on the basis of the product's serving of stated size rather than its reference amount.

**(5)** Subsection (1) does not apply to the following:

**(a)** shipping containers, unless the containers and their contents are sold as a one unit prepackaged product to a consumer at the retail level;

**(b)** prepackaged products with an available display surface of less than 15 $cm^2$;

**(c)** prepackaged individual portions of food that are intended solely to be served by a restaurant or other commercial enterprise with meals or snacks;

**(d)** ready-to-serve multiple-serving prepackaged products that are intended solely to be served in a commercial or industrial enterprise or an institution;

# Symboles nutritionnels

## Renseignements obligatoires

**B.01.350 (1)** Sauf disposition contraire du présent article, l'espace principal d'un produit préemballé porte un symbole figurant à l'annexe K.1 si les conditions ci-après sont réunies :

**a)** le produit, tel qu'il est vendu, contient un élément nutritif visé à la colonne 1 du tableau du présent article;

**b)** la teneur en cet élément nutritif, calculée en pourcentage de la valeur quotidienne, est égale ou supérieure au seuil applicable visé aux colonnes 2 à 7 de ce tableau.

**(2)** Pour l'application du paragraphe (1), le pourcentage de la valeur quotidienne de l'élément nutritif est calculé sur la base de sa teneur, en poids, par portion indiquée ou par quantité de référence, selon la plus élevée de ces quantités.

**(3)** Malgré le paragraphe (2), dans le cas d'un produit préemballé dont la préparation requiert la reconstitution avec de l'eau ou un autre liquide ou l'ajout d'un autre ingrédient et dont la quantité de référence applicable se réfère uniquement à l'aliment dans sa forme préparée, le pourcentage de la valeur quotidienne de l'élément nutritif est calculé sur la base de sa teneur, en poids, par portion indiquée.

**(4)** Le seuil visé aux colonnes 2 à 7 du tableau du présent article applicable au produit préemballé visé au paragraphe (3) est établi en fonction de sa portion indiquée et non de sa quantité de référence.

**(5)** Le paragraphe (1) ne s'applique pas :

**a)** au contenant d'expédition, sauf si ce dernier et son contenu sont vendus comme produit préemballé individuel à un consommateur au niveau du commerce de détail;

**b)** au produit préemballé dont la surface exposée disponible est de moins de 15 $cm^2$;

**c)** à la portion individuelle préemballée d'un aliment destinée uniquement à être servie avec des repas ou des casse-croûte par un restaurant ou une autre entreprise commerciale;

**d)** au produit préemballé à portions multiples, prêt à servir et destiné uniquement à être servi par une

**(e)** prepackaged products that are intended solely for use as an ingredient in the manufacture of other prepackaged products intended for sale to a consumer at the retail level or as an ingredient in the preparation of food by a commercial or industrial enterprise or an institution;

**(f)** milk, partly skimmed milk, skim milk, goat's milk, partly skimmed goat's milk, skimmed goat's milk, (naming the flavour) milk, (naming the flavour) partly skimmed milk, (naming the flavour) skim milk or cream sold in a refillable glass container;

**(g)** sweetening agents, including maple sugar and maple syrup;

**(h)** salt for table or general household use, celery salt, garlic salt, onion salt and any other seasoning salt if "salt" forms part of the common name of the food;

**(i)** fats and oils referred to in Division 9, fish and other marine fats and oils, butter, ghee and margarine and other similar substitutes for butter; or

**(j)** individual rations intended for use by military personnel engaged in operations or exercises.

**(6)** Subsection (1) does not apply, in respect of a nutrient, to the following prepackaged products if the only ingredients containing the nutrient are, in the case of saturated fat or sodium, ingredients set out in subsection (7) or, in the case of sugars, ingredients set out in subsection (8):

**(a)** whole or cut fruits or vegetables, including frozen, canned or dried fruits or vegetables;

**(b)** milk obtained from any animal, in liquid or powdered form;

**(c)** whole eggs, including liquid, frozen or dried eggs, or whole egg mixes;

**(d)** nuts, seeds or nut or seed butters in which less than 30% of the total fat content consists of saturated fat;

**(e)** vegetable oils or marine oils in which less than 30% of the total fat content consists of saturated fat;

entreprise commerciale ou industrielle ou par une institution;

**e)** au produit préemballé qui est destiné uniquement à être utilisé comme ingrédient dans la fabrication d'un autre produit préemballé destiné à être vendu au consommateur au niveau du commerce de détail ou comme ingrédient dans la préparation d'aliments par une entreprise commerciale ou industrielle ou par une institution;

**f)** au lait, au lait partiellement écrémé, au lait écrémé, au lait de chèvre, au lait de chèvre partiellement écrémé, au lait de chèvre écrémé, au lait (indication de l'arôme), au lait partiellement écrémé (indication de l'arôme), au lait écrémé (indication de l'arôme) ou à la crème, vendus dans un contenant réutilisable en verre;

**g)** à l'agent édulcorant, y compris le sucre d'érable et le sirop d'érable;

**h)** au sel de table, au sel d'usage domestique général, au sel de céleri, au sel d'ail et au sel d'oignon et tout autre sel d'assaisonnement si « sel » fait partie du nom usuel de l'aliment;

**i)** à toute graisse ou huile visée au titre 9, à toute graisse ou huile de poisson ou d'autres animaux marins, au beurre, au ghee et à la margarine et autres succédanés de beurre similaires;

**j)** à la ration individuelle destinée aux militaires en opération ou en exercice.

**(6)** Le paragraphe (1) ne s'applique pas, à l'égard d'un élément nutritif, aux produits préemballés ci-après, si les seuls ingrédients qui contiennent l'élément nutritif sont, dans le cas des gras saturés ou du sodium, ceux visés au paragraphe (7) ou, dans le cas des sucres, ceux visés au paragraphe (8) :

**a)** les fruits ou les légumes — entiers ou coupés — notamment congelés, en conserve, déshydratés ou séchés;

**b)** le lait obtenu de tout animal, sous forme liquide ou en poudre;

**c)** les œufs entiers, notamment les œufs liquides, congelés ou desséchés ou le mélange d'œuf;

**d)** les fruits à écale, les graines ou le beurre de fruits à écale ou de graines dont la teneur totale en gras est de moins de 30 % de gras saturés;

**(f)** marine and fresh water animal products referred to in Division 21 in which less than 30% of the total fat content consists of saturated fat; or

**(g)** any combination of the foods referred to in paragraphs (a) to (f).

**(7)** For the purposes of subsection (6) in relation to saturated fat and sodium, the ingredients are the following ingredients to which no saturated fat or sodium has been added:

**(a)** whole or cut fruits or vegetables, including frozen, canned or dried fruits or vegetables;

**(b)** milk obtained from any animal, in liquid or powdered form;

**(c)** whole eggs, including liquid, frozen or dried eggs, or whole egg mixes;

**(d)** nuts, seeds or nut or seed butters in which less than 30% of the total fat content consists of saturated fat;

**(e)** vegetable oils or marine oils in which less than 30% of the total fat content consists of saturated fat; and

**(f)** marine and fresh water animal products referred to in Division 21 in which less than 30% of the total fat content consists of saturated fat.

**(8)** For the purposes of subsection (6) in relation to sugars, the ingredients are the following ingredients to which no sugars have been added:

**(a)** the ingredients set out in paragraphs (7)(a), (b) and (d);

**(b)** dairy products other than those referred to in paragraph (7)(b);

**(c)** grains; and

**(d)** legumes.

**(9)** Subsection (1) does not apply, in respect of saturated fat and sugars, to prepackaged products that are cheese or yogurt – including drinkable yogurt – that are made from dairy products, kefir or buttermilk unless

**(a)** in the case of saturated fat, the product contains an ingredient, other than any of the following ingredients, that contains saturated fat:

**e)** l'huile végétale ou l'huile marine dont la teneur totale en gras est de moins de 30 % de gras saturés;

**f)** les produits d'animaux marins et d'animaux d'eau douce visés au titre 21 dont la teneur totale en gras est de moins de 30 % de gras saturés;

**g)** toute combinaison des aliments visés aux alinéas a) à f).

**(7)** Pour l'application du paragraphe (6), en ce qui concerne les gras saturés et le sodium, les ingrédients sont les ingrédients ci-après auxquels aucun gras saturé ni sodium n'a été ajouté :

**a)** les fruits ou les légumes — entiers ou coupés — notamment congelés, en conserve, déshydratés ou séchés;

**b)** le lait obtenu de tout animal, sous forme liquide ou en poudre;

**c)** les œufs entiers, notamment les œufs liquides, congelés ou desséchés ou le mélange d'œuf;

**d)** les fruits à écale, les graines ou le beurre de fruits à écale ou de graines dont la teneur totale en gras est de moins de 30 % de gras saturés;

**e)** l'huile végétale ou l'huile marine dont la teneur totale en gras est de moins de 30 % de gras saturés;

**f)** les produits d'animaux marins et d'animaux d'eau douce visés au titre 21 dont la teneur totale en gras est de moins de 30 % de gras saturés.

**(8)** Pour l'application du paragraphe (6), en ce qui concerne les sucres, les ingrédients sont les ingrédients ci-après auxquels aucun sucre n'a été ajouté :

**a)** les ingrédients visés aux alinéas (7)a), b) et d);

**b)** les produits laitiers, sauf ceux visés à l'alinéa (7)b);

**c)** les grains;

**d)** les légumineuses.

**(9)** Le paragraphe (1) ne s'applique pas, à l'égard des gras saturés et des sucres, aux produits préemballés lorsqu'il s'agit de fromage ou de yogourt — notamment le yogourt à boire — faits de produits laitiers, de kéfir ou de babeurre, sauf si :

**(i)** milk ingredients,

**(ii)** modified milk ingredients,

**(iii)** nuts or seeds in which less than 30% of the total fat content consists of saturated fat,

**(iv)** vegetable oils or marine oils in which less than 30% of the total fat content consists of saturated fat, or

**(v)** marine and fresh water animal products referred to in Division 21 in which less than 30% of the total fat content consists of saturated fat; and

**(b)** in the case of sugars, the product contains an ingredient, other than any of the following ingredients, that contains sugars or the product contains any of the following ingredients to which sugars have been added:

**(i)** whole or cut fruits or vegetables, including frozen, canned or dried fruits or vegetables,

**(ii)** dairy products,

**(iii)** grains,

**(iv)** legumes, or

**(v)** nuts or seeds.

**(10)** For the purposes of paragraphs (6)(a) and (7)(a), fruit does not include coconut.

**(11)** Subsection (1) does not apply, in respect of sodium, to prepackaged products that are cheese made from dairy products.

**(12)** For the application of subsections (9) and (11), the prepackaged products must

**(a)** have a reference amount of 30 g or 30 mL or less and contain 10% or more of the daily value for calcium per serving of stated size or per reference amount, whichever is greater; or

**(b)** have a reference amount greater than 30 g or 30 mL and contain 15% or more of the daily value for calcium per serving of stated size or per reference amount, whichever is greater.

**a)** dans le cas de gras saturés, le produit contient un ingrédient, à l'exception des ingrédients ci-après, qui contient des gras saturés :

**(i)** les substances laitières,

**(ii)** les substances laitières modifiées,

**(iii)** les fruits à écale ou les graines dont la teneur totale en gras est de moins de 30 % de gras saturés,

**(iv)** l'huile végétale ou l'huile marine dont la teneur totale en gras est de moins de 30 % de gras saturés,

**(v)** les produits d'animaux marins et d'animaux d'eau douce visés au titre 21 dont la teneur totale en gras est de moins de 30 % de gras saturés;

**b)** dans le cas de sucres, il contient un ingrédient, à l'exception des ingrédients ci-après, qui contient des sucres ou l'un de ces ingrédients auquel des sucres ont été ajoutés :

**(i)** les fruits ou les légumes — entiers ou coupés — notamment congelés, en conserve, déshydratés ou séchés,

**(ii)** les produits laitiers,

**(iii)** les grains,

**(iv)** les légumineuses,

**(v)** les fruits à écale ou les graines.

**(10)** Pour l'application des alinéas (6)a) et (7)a) les fruits ne comprennent pas la noix de coco.

**(11)** Le paragraphe (1) ne s'applique pas, à l'égard du sodium, aux produits préemballés, s'il s'agit de fromage faits de produits laitiers.

**(12)** Pour l'application des paragraphes (9) et (11), les produits préemballés sont les suivants :

**a)** ceux dont la quantité de référence est de 30 g ou 30 mL ou moins et dont le pourcentage de la valeur quotidienne pour le calcium, par portion indiquée ou par quantité de référence, selon la plus élevée de ces quantités, est de 10% ou plus;

**b)** ceux dont la quantité de référence est supérieure à 30 g ou 30 mL et dont le pourcentage de la valeur quotidienne pour le calcium, par portion indiquée ou par quantité de référence, selon la plus élevée de ces quantités, est de 15% ou plus.

**(13)** Subsection (1) does not apply to the following prepackaged products unless they are required to carry a nutrition facts table on their label:

**(a)** a beverage with an alcohol content of more than 0.5%;

**(b)** a raw single ingredient meat, meat by-product, poultry meat or poultry meat by-product that is not ground;

**(c)** a raw single ingredient marine or fresh water animal product;

**(d)** a product sold only in the retail establishment where it is prepared and processed from its ingredients, including from a pre-mix if an ingredient other than water is added to the pre-mix during the preparation and processing of the product;

**(e)** a product sold only at a road-side stand, craft show, flea market, fair, farmers' market or sugar bush by the individual who prepared and processed the product;

**(f)** an individual serving that is sold for immediate consumption and that has not been subjected to a process to extend its durable life, including special packaging;

**(g)** a product sold only in the retail establishment where it is packaged, if it is labelled by means of a sticker and has an available display surface of less than 200 $cm^2$; or

**(h)** a product with an available display surface of less than 100 $cm^2$.

**(13.01)** Subsection (1) does not apply to a prepackaged product that is a raw single ingredient meat, meat by-product, poultry meat or poultry meat by-product that is ground unless it meets any of the conditions that are set out in paragraph B.01.401(3)(a), (b) or (e).

**(13.1)** Subject to subsection (13.2), subsection (1) does not apply to a supplemented food that has an available display surface of less than 100 $cm^2$ other than a supplemented food that is referred to in paragraph B.29.018(2)(b).

**(13.2)** Subsection (1) does not apply to a supplemented food that has an available display surface of less than 100 $cm^2$, whether or not the supplemented food is referred to in paragraph B.29.018(2)(b), if the supplemented food carries a supplemented food caution identifier.

**(13)** Le paragraphe (1) ne s'applique pas aux produits préemballés ci-après sauf s'ils sont tenus de porter sur leur étiquette un tableau de la valeur nutritive :

**a)** la boisson dont la teneur en alcool est supérieure à 0,5 %;

**b)** la viande, le sous-produit de viande, la viande de volaille ou le sous-produit de viande de volaille crus, composés d'un seul ingrédient et non hachés;

**c)** le produit d'animaux marins ou d'animaux d'eau douce cru et composé d'un seul ingrédient;

**d)** le produit vendu uniquement dans l'établissement de détail où il est préparé et transformé à partir de ses ingrédients, y compris un pré-mélange si un ingrédient autre que de l'eau y est ajouté lors de la préparation et de la transformation du produit;

**e)** le produit vendu uniquement dans un éventaire routier, une exposition d'artisanat, un marché aux puces, une foire, un marché d'agriculteurs ou une érablière par l'individu qui l'a transformé et préparé;

**f)** la portion individuelle qui est vendue pour consommation immédiate et qui n'a fait l'objet d'aucun procédé pour en prolonger la durée de conservation, y compris l'utilisation d'un emballage spécial;

**g)** le produit vendu uniquement dans l'établissement de détail où il est emballé, si l'étiquette du produit est un autocollant et que la surface exposée disponible du produit est de moins de 200 $cm^2$;

**h)** le produit dont la surface exposée disponible est de moins de 100 $cm^2$.

**(13.01)** Le paragraphe (1) ne s'applique pas à un produit préemballé lorsqu'il s'agit de viande, d'un sous-produit de viande, de viande de volaille ou d'un sous-produit de viande de volaille crus, composés d'un seul ingrédient et hachés, sauf s'il répond aux critères mentionnés aux alinéas B.01.401(3)a), b) ou e).

**(13.1)** Sous réserve du paragraphe (13.2), le paragraphe (1) ne s'applique pas aux aliments supplémentés dont la surface exposée disponible est de moins de 100 $cm^2$ sauf s'ils sont visés à l'alinéa B.29.018(2)b).

**(13.2)** Le paragraphe (1) ne s'applique pas aux aliments supplémentés dont la surface exposée disponible est de moins de 100 $cm^2$, même s'ils sont visés à l'alinéa B.29.018(2)b), s'ils portent un identifiant des aliments supplémentés avec mise en garde.

**(14)** If, as a result of the application of any provision in subsections (5) to (13.2), subsection (1) does not apply to a prepackaged product or does not apply to a prepackaged product in respect of a particular nutrient, that provision prevails over any other provision in subsections (5) to (13.2) that indicates otherwise.

**(15)** Despite any other provision in this section, the label of the following prepackaged products must not carry a symbol referred to in subsection (1):

**(a)** a prepackaged product intended solely for infants six months of age or older but less than one year of age;

**(b)** a human milk fortifier;

**(c)** a human milk substitute or a food represented as containing a human milk substitute;

**(d)** a *formulated liquid diet* as defined in section B.24.001;

**(e)** a meal replacement;

**(f)** a nutritional supplement;

**(g)** a food represented for protein-restricted diets;

**(h)** a food represented for low (naming the amino acid) diets; and

**(i)** a food represented for use in a *very low energy diet* as defined in section B.24.001.

**(14)** Lorsqu'en raison de l'application de l'une des dispositions prévues aux paragraphes (5) à (13.2) le paragraphe (1) ne s'applique pas à un produit préemballé ou à un produit préemballé à l'égard d'un élément nutritif en particulier, cette disposition l'emporte sur toute autre disposition contraire aux paragraphes (5) à (13.2).

**(15)** Malgré toute autre disposition du présent article, l'étiquette des produits préemballés ci-après ne peut porter de symbole visé au paragraphe (1) :

**a)** le produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an;

**b)** le fortifiant pour lait humain;

**c)** le succédané de lait humain ou l'aliment présenté comme contenant un succédané de lait humain;

**d)** la *préparation pour régime liquide*, au sens de l'article B.24.001;

**e)** le substitut de repas;

**f)** le supplément nutritif;

**g)** l'aliment présenté comme étant destiné aux régimes à teneur réduite en protéines;

**h)** l'aliment présenté comme étant destiné aux régimes à faible teneur en (nom de l'acide aminé);

**i)** l'aliment présenté comme étant conçu pour un *régime à très faible teneur en énergie*, au sens de l'article B.24.001.

## TABLE

### Thresholds Requiring a Nutrition Symbol

| | Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|---|---|---|---|---|---|---|---|
| | | Threshold for a prepackaged product other than one referred to in columns 5 to 7 | | | Threshold for a prepackaged product intended solely for children one year of age or older, but less than four years of age | | |
| Item | Nutrient | Prepackaged product with a reference amount greater than 30 g or 30 mL, unless the product is described in column 4 | Prepackaged product with a reference amount of 30 g or 30 mL or less | Prepackaged main dish with a reference amount of 200 g or more | Prepackaged product with a reference amount greater than 30 g or 30 mL, unless the product is described in column 7 | Prepackaged product with a reference amount of 30 g or 30 mL or less | Prepackaged main dish with a reference amount of 170 g or more |
| 1 | Saturated fat | 15% of the daily value for the sum of saturated fatty acids and *trans* fatty acids set out in column 3 of Part 1 of the Table of Daily Values | 10% of the daily value for the sum of saturated fatty acids and *trans* fatty acids set out in column 3 of Part 1 of the Table of Daily Values | 30% of the daily value for the sum of saturated fatty acids and *trans* fatty acids set out in column 3 of Part 1 of the Table of Daily Values | 15% of the daily value for the sum of saturated fatty acids and *trans* fatty acids set out in column 2 of Part 1 of the Table of Daily Values | 10% of the daily value for the sum of saturated fatty acids and *trans* fatty acids set out in column 2 of Part 1 of the Table of Daily Values | 30% of the daily value for the sum of saturated fatty acids and *trans* fatty acids set out in column 2 of Part 1 of the Table of Daily Values |
| 2 | Sugars | 15% of the daily value for sugars set out in column 3 of Part 1 of the Table of Daily Values | 10% of the daily value for sugars set out in column 3 of Part 1 of the Table of Daily Values | 30% of the daily value for sugars set out in column 3 of Part 1 of the Table of Daily Values | 15% of the daily value for sugars set out in column 2 of Part 1 of the Table of Daily Values | 10% of the daily value for sugars set out in column 2 of Part 1 of the Table of Daily Values | 30% of the daily value for sugars set out in column 2 of Part 1 of the Table of Daily Values |
| 3 | Sodium | 15% of the daily value for sodium set out in column 3 of Part 1 of the Table of Daily Values | 10% of the daily value for sodium set out in column 3 of Part 1 of the Table of Daily Values | 30% of the daily value for sodium set out in column 3 of Part 1 of the Table of Daily Values | 15% of the daily value for sodium set out in column 2 of Part 1 of the Table of Daily Values | 10% of the daily value for sodium set out in column 2 of Part 1 of the Table of Daily Values | 30% of the daily value for sodium set out in column 2 of Part 1 of the Table of Daily Values |

## TABLEAU

### Seuils exigeant un symbole nutritionnel

| | Colonne 1 | Colonne 2 | Colonne 3 | Colonne 4 | Colonne 5 | Colonne 6 | Colonne 7 |
|---|---|---|---|---|---|---|---|
| | | Seuil pour produit préemballé autre que celui mentionné aux colonnes 5 à 7 | | | Seuil pour produit préemballé destiné exclusivement aux enfants âgés d'au moins un an mais de moins de quatre ans | | |
| Article | Élément nutritif | À l'exception du produit mentionné à la colonne 4, produit préemballé dont la quantité de référence est supérieure à 30 g ou 30 mL | Produit préemballé dont la quantité de référence est de 30 g ou 30 mL ou moins | Plat principal préemballé dont la quantité de référence est de 200 g ou plus | À l'exception du produit mentionné à la colonne 7, produit préemballé dont la quantité de référence est supérieure à 30 g ou 30 mL | Produit préemballé dont la quantité de référence est de 30 g ou 30 mL ou moins | Plat principal préemballé dont la quantité de référence est de 170 g ou plus |
| 1 | Gras saturés | 15 % de la valeur quotidienne de la somme des acides gras saturés et des acides gras *trans* visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 10 % de la valeur quotidienne de la somme des acides gras saturés et des acides gras *trans* visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 30 % de la valeur quotidienne de la somme des acides gras saturés et des acides gras *trans* visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 15 % de la valeur quotidienne de la somme des acides gras saturés et des acides gras *trans* visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes | 10 % de la valeur quotidienne de la somme des acides gras saturés et des acides gras *trans* visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes | 30 % de la valeur quotidienne de la somme des acides gras saturés et des acides gras *trans* visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes |
| 2 | Sucres | 15 % de la valeur quotidienne de sucres visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 10 % de la valeur quotidienne de sucres visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 30 % de la valeur quotidienne de sucres visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 15 % de la valeur quotidienne de sucres visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes | 10 % de la valeur quotidienne de sucres visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes | 30 % de la valeur quotidienne de sucres visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes |
| 3 | Sodium | 15 % de la valeur quotidienne de sodium visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 10 % de la valeur quotidienne de sodium visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 30 % de la valeur quotidienne de sodium visée à la colonne 3 de la partie 1 du Tableau des valeurs quotidiennes | 15 % de la valeur quotidienne de sodium visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes | 10 % de la valeur quotidienne de sodium visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes | 30 % de la valeur quotidienne de sodium visée à la colonne 2 de la partie 1 du Tableau des valeurs quotidiennes |

SOR/2022-168, s. 13; SOR/2022-169, s. 13.

DORS/2022-168, art. 13; DORS/2022-169, art. 13.

## Presentation of Nutrition Symbol

**B.01.351 (1)** A nutrition symbol must be displayed in black and white and must be in accordance with the applicable symbol set out in Schedule K.1.

**(2)** Subject to subsection (3), a nutrition symbol must be presented in one of the following formats:

## Présentation du symbole nutritionnel

**B.01.351 (1)** Le symbole nutritionnel est présenté en noir et blanc et conformément au symbole applicable figurant à l'annexe K.1.

**(2)** Sous réserve du paragraphe (3), le symbole nutritionnel est présenté selon l'un des modèles suivants :

**(a)** unilingual horizontal format, where two separate versions of the symbol are shown, one in English (EH) and one in French (FH); or

**(b)** bilingual horizontal format (BH), where the symbol is shown in both official languages.

**(3)** If the principal display surface is less than or equal to 450 $cm^2$ and the width of the nutrition symbol in either of the horizontal formats that could apply exceeds the width of the principal display panel, the symbol must be presented in one of the following formats:

**(a)** unilingual vertical format, where two separate versions of the symbol are shown, one in English (EV) and one in French (FV); or

**(b)** bilingual vertical format (BV), where the symbol is shown in both official languages.

**(4)** If, in accordance with subsection B.01.012(3) or (7), the information required by these Regulations may be shown on the label of a prepackaged product in English only or in French only and is shown in that language, the nutrition symbol may be displayed on the principal display panel of the product in that language only on a continuous surface of the available display surface.

**(5)** If a nutrition symbol is presented in a bilingual format, the order in which the languages appear may be reversed from the order shown in the applicable symbol set out in Schedule K.1.

SOR/2022-168, s. 13.

**B.01.352 (1)** The version of the nutrition symbol that must be carried on a prepackaged product that has a principal display surface that is within a range set out in column 1 of the table to this section and that contains a nutrient set out in column 2 in an amount that meets or exceeds the applicable threshold referred to in subsection B.01.350(1) is the version that is referred to in column 3 or 5 of the table or, if applicable, column 4 or 6 of the table.

**(2)** Despite subsection (1), a prepackaged product that has a principal display surface that is greater than 250 $cm^2$ may carry the applicable version of the nutrition symbol that is referred to in item 4, column 2, of Table 1 or 3 in the Directory of Nutrition Symbol Specifications if the product is sold only in the retail establishment where it is packaged and is labelled by means of a sticker.

**(3)** A nutrition symbol must be displayed in accordance with the applicable specifications set out in the Directory of Nutrition Symbol Specifications.

**a)** le modèle horizontal unilingue, où figurent deux versions distinctes du symbole, l'une en français (FH) et l'autre en anglais (AH);

**b)** le modèle horizontal bilingue (HB), où figure le symbole dans les deux langues officielles.

**(3)** Si la principale surface exposée est de 450 $cm^2$ ou moins et que la largeur du symbole nutritionnel qui serait applicable selon l'un ou l'autre des modèles horizontaux est supérieure à celle de l'espace principal, le symbole est présenté selon l'un des modèles suivants :

**a)** le modèle vertical unilingue, où figurent deux versions distinctes du symbole, l'une en français (FV) et l'autre en anglais (AV);

**b)** le modèle vertical bilingue (VB), où figure le symbole dans les deux langues officielles.

**(4)** Si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués aux termes du présent règlement sur l'étiquette d'un produit préemballé peuvent l'être uniquement en français ou uniquement en anglais et qu'ils y figurent dans la langue en cause, le symbole nutritionnel peut être présenté dans l'espace principal du produit dans cette langue sur tout espace continu de la surface exposée disponible.

**(5)** Lorsque le symbole nutritionnel est présenté selon le modèle bilingue, l'ordre de présentation des langues indiqué dans le symbole applicable figurant à l'annexe K.1 peut être inversé.

DORS/2022-168, art. 13.

**B.01.352 (1)** La version du symbole nutritionnel que doit porter le produit préemballé dont la principale surface exposée se situe dans la plage prévue à la colonne 1 du tableau du présent article et qui contient un élément nutritif visé à la colonne 2 de ce tableau en une teneur égale ou supérieure au seuil applicable visé au paragraphe B.01.350(1) est celle visée aux colonnes 3 ou 5 du même tableau ou, le cas échéant, aux colonnes 4 ou 6 du même tableau.

**(2)** Malgré le paragraphe (1), le produit préemballé dont la principale surface exposée est supérieure à 250 $cm^2$ peut porter la version applicable du symbole nutritionnel visée à l'article 4 des tableaux 1 ou 3 du Répertoire des spécifications des symboles nutritionnels, dans la colonne 2, si le produit est vendu uniquement dans l'établissement de détail où il est emballé et si l'étiquette est un autocollant.

**(3)** Le symbole nutritionnel doit être présenté conformément aux spécifications applicables prévues dans le Répertoire des spécifications des symboles nutritionnels.

**(4)** Despite subsection (3), a nutrition symbol may be displayed with larger dimensions than those set out in column 3 of the applicable table in the Directory of Nutrition Symbol Specifications if the symbol is enlarged in a proportional manner vertically and horizontally.

**(4)** Malgré le paragraphe (3), le symbole nutritionnel peut être de dimensions plus grandes que celles indiquées à la colonne 3 du tableau applicable du Répertoire des spécifications des symboles nutritionnels s'il est agrandi proportionnellement sur les plans vertical et horizontal.

**TABLE**

**Nutrition Symbols and Formats**

| | Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
|---|---|---|---|---|---|---|
| Item | Range of principal display surface | Nutrients that meet or exceed threshold in subsection B.01.350(1) | Nutrition symbol in unilingual horizontal format | Nutrition symbol in unilingual vertical format | Nutrition symbol in bilingual horizontal format | Nutrition symbol in bilingual vertical format |
| 1 | > 30 $cm^2$ | Saturated fat (Sat fat), sugars and sodium | 1(EH) and 1(FH) | 1(EV) and 1(FV) | 1(BH) | 1(BV) |
| | | Saturated fat (Sat fat) and sugars | 2(EH) and 2(FH) | 2(EV) and 2(FV) | 2(BH) | 2(BV) |
| | | Sugars and sodium | 3(EH) and 3(FH) | 3(EV) and 3(FV) | 3(BH) | 3(BV) |
| | | Saturated fat (Sat fat) and sodium | 4(EH) and 4(FH) | 4(EV) and 4(FV) | 4(BH) | 4(BV) |
| | | Saturated fat (Sat fat) | 5(EH) and 5(FH) | 5(EV) and 5(FV) | 5(BH) | 5(BV) |
| | | Sugars | 6(EH) and 6(FH) | 6(EV) and 6(FV) | 6(BH) | 6(BV) |
| | | Sodium | 7(EH) and 7(FH) | 7(EV) and 7(FV) | 7(BH) | 7(BV) |
| 2 | ≤ 30 $cm^2$ | Saturated fat (Sat fat), sugars and sodium | 1(EH) and 1(FH) | 1(EV) and 1(FV) | 1(BH) | 1(BV) |
| | | Saturated fat (Sat fat) and sugars | 8(EH) and 8(FH) | 8(EV) and 8(FV) | 8(BH) | 8(BV) |
| | | Sugars and sodium | 9(EH) and 9(FH) | 9(EV) and 9(FV) | 9(BH) | 9(BV) |
| | | Saturated fat (Sat fat) and sodium | 10(EH) and 10(FH) | 10(EV) and 10(FV) | 10(BH) | 10(BV) |
| | | Saturated fat (Sat fat) | 11(EH) and 11(FH) | 11(EV) and 11(FV) | 11(BH) | 11(BV) |
| | | Sugars | 12(EH) and 12(FH) | 12(EV) and 12(FV) | 12(BH) | 12(BV) |
| | | Sodium | 13(EH) and 13(FH) | 13(EV) and 13(FV) | 13(BH) | 13(BV) |

## TABLEAU

### Symboles nutritionnels et modèles

| | Colonne 1 | Colonne 2 | Colonne 3 | Colonne 4 | Colonne 5 | Colonne 6 |
|---|---|---|---|---|---|---|
| Article | Plage de la principale surface exposée | Élément nutritif égal ou supérieur au seuil prévu au paragraphe B.01.350(1) | Symbole nutritionnel du modèle horizontal unilingue | Symbole nutritionnel du modèle vertical unilingue | Symbole nutritionnel du modèle horizontal bilingue | Symbole nutritionnel du modèle vertical bilingue |
| 1 | > 30 $cm^2$ | Gras saturés (Gras sat.), sucres et sodium | 1(FH) et 1(AH) | 1(FV) et 1(AV) | 1(HB) | 1(VB) |
| | | Gras saturés (Gras sat.) et sucres | 2(FH) et 2(AH) | 2(FV) et 2(AV) | 2(HB) | 2(VB) |
| | | Sucres et sodium | 3(FH) et 3(AH) | 3(FV) et 3(AV) | 3(HB) | 3(VB) |
| | | Gras saturés (Gras sat.) et sodium | 4(FH) et 4(AH) | 4(FV) et 4(AV) | 4(HB) | 4(VB) |
| | | Gras saturés (Gras sat.) | 5(FH) et 5(AH) | 5(FV) et 5(AV) | 5(HB) | 5(VB) |
| | | Sucres | 6(FH) et 6(AH) | 6(FV) et 6(AV) | 6(HB) | 6(VB) |
| | | Sodium | 7(FH) et 7(AH) | 7(FV) et 7(AV) | 7(HB) | 7(VB) |
| 2 | ≤ 30 $cm^2$ | Gras saturés (Gras sat.), sucres et sodium | 1(FH) et 1(AH) | 1(FV) et 1(AV) | 1(HB) | 1(VB) |
| | | Gras saturés (Gras sat.) et sucres | 8(FH) et 8(AH) | 8(FV) et 8(AV) | 8(HB) | 8(VB) |
| | | Sucres et sodium | 9(FH) et 9(AH) | 9(FV) et 9(AV) | 9(HB) | 9(VB) |
| | | Gras saturés (Gras sat.) et sodium | 10(FH) et 10(AH) | 10(FV) et 10(AV) | 10(HB) | 10(VB) |
| | | Gras saturés (Gras sat.) | 11(FH) et 11(AH) | 11(FV) et 11(AV) | 11(HB) | 11(VB) |
| | | Sucres | 12(FH) et 12(AH) | 12(FV) et 12(AV) | 12(HB) | 12(VB) |
| | | Sodium | 13(FH) et 13(AH) | 13(FV) et 13(AV) | 13(HB) | 13(VB) |

SOR/2022-168, s. 13.

DORS/2022-168, art. 13.

**B.01.353 (1)** Subject to subsection (2), if a prepackaged product contains an assortment of foods and one or more of the foods requires a nutrition symbol, the nutrition symbols must be displayed in a manner that clearly indicates the applicable nutrients that are contained in each food.

**(2)** If a prepackaged product contains ingredients that are intended to be combined together or foods that are intended to be consumed together, the nutrition symbol must display the nutrients that are contained in the product as a whole.

SOR/2022-168, s. 13.

**B.01.353 (1)** Sous réserve du paragraphe (2), dans le cas d'un produit préemballé contenant un assortiment d'aliments dont au moins un requiert un symbole nutritionnel, les symboles nutritionnels sont présentés de façon à indiquer clairement les éléments nutritifs applicables contenus dans chaque aliment.

**(2)** Dans le cas d'un produit préemballé contenant des ingrédients destinés à être alliés ou des aliments destinés à être consommés ensemble, le symbole nutritionnel présente les éléments nutritifs contenus dans le produit dans son ensemble.

DORS/2022-168, art. 13.

**B.01.354** The characters and other elements of a nutrition symbol must not touch each other.

SOR/2022-168, s. 13.

## Location of Nutrition Symbol

**B.01.355 (1)** A nutrition symbol must be displayed

**(a)** in the case of a prepackaged product with a principal display panel whose height is less than its width, on the right half of the panel; and

**(b)** in the case of any other prepackaged product, on the upper half of the principal display panel.

**(2)** The nutrition symbol must be surrounded by a buffer that

**(a)** has a width that is equal to or greater than that set out in column 4 of the applicable table in the Directory of Nutrition Symbol Specifications; and

**(b)** does not contain any text or other graphic material.

**(3)** If a prepackaged product is cylindrical in shape, the outer edge of the buffer must be a minimum distance of 10% of the width of the principal display surface from the edge of the left or right side of that surface.

**(4)** If it is impossible to comply with both paragraph (1)(a) and subsection (3), the nutrition symbol may be displayed partially in the left half of the principal display panel but only to the extent necessary to comply with that subsection.

SOR/2022-168, s. 13.

**B.01.356** A nutrition symbol must be oriented in the same manner as most of the other information that appears on the principal display panel unless the panel is displayed in the vertical plane and most of the other information is not displayed parallel with the base of the package, in which case the symbol must be oriented in such a manner that the words appearing in it are parallel with the base.

SOR/2022-168, s. 13.

## Prominence of Health-related Representations

**B.01.357 (1)** If both a nutrition symbol and a health-related representation appear on the principal display panel of a prepackaged product and the representation relates to a nutrient that is referred to in the nutrition symbol,

**B.01.354** Les caractères et les autres éléments du symbole nutritionnel sont présentés de manière à ce qu'ils ne se touchent pas.

DORS/2022-168, art. 13.

## Emplacement du symbole nutritionnel

**B.01.355 (1)** Le symbole nutritionnel est présenté :

**a)** dans le cas d'un produit préemballé dont l'espace principal est moins haut que large, dans la moitié droite de l'espace principal;

**b)** dans le cas de tout autre produit préemballé, dans la moitié supérieure de l'espace principal.

**(2)** Le symbole nutritionnel est entouré d'un espace de dégagement qui satisfait aux exigences suivantes :

**a)** il a une largeur égale ou supérieure à celle prévue à la colonne 4 du tableau applicable du Répertoire des spécifications des symboles nutritionnels;

**b)** il ne contient aucun texte ni aucun autre signe graphique.

**(3)** Si un produit préemballé est de forme cylindrique, le bord extérieur de l'espace de dégagement est présenté à une distance qui représente au moins 10 % de la largeur de la principale surface exposée de l'emballage, à partir du bord des côtés gauche ou droit de cette surface.

**(4)** Dans le cas où il est impossible de se conformer à la fois aux règles prévues à l'alinéa (1)a) et au paragraphe (3), le symbole nutritionnel peut être présenté en partie dans la moitié gauche de l'espace principal dans la mesure où cela est nécessaire pour permettre l'application de ce paragraphe.

DORS/2022-168, art. 13.

**B.01.356** Le symbole nutritionnel est orienté dans le même sens que la plupart des autres renseignements figurant dans l'espace principal, sauf si l'espace principal figure sur le plan vertical et que la plupart des autres renseignements ne figurent pas parallèlement à la base de l'emballage, auquel cas il est orienté de manière à ce que les mots qui y figurent soient parallèles à la base.

DORS/2022-168, art. 13.

## Visibilité de la déclaration concernant la santé

**B.01.357 (1)** Lorsqu'un symbole nutritionnel et une déclaration concernant la santé paraissent dans l'espace principal d'un produit préemballé et que la déclaration est liée à un élément nutritif visé par le symbole nutritionnel, la déclaration satisfait aux exigences suivantes :

**(a)** the height of the upper case letters in the representation must not exceed the height of the upper case letters, excluding any accents, in the nutrition symbol, other than in the words "Health Canada" and "Santé Canada"; and

**(b)** the height of the tallest ascender of the lower case letters in the representation must not exceed the height of the tallest ascender of the lower case letters in the nutrition symbol, other than in the words "Health Canada" and "Santé Canada".

**(2)** If both a nutrition symbol and a health-related representation appear on the principal display panel of a prepackaged product and the representation does not relate to a nutrient that is referred to in the nutrition symbol,

**(a)** the height of the upper case letters in the representation must not exceed two times the height of the upper case letters, excluding any accents, in the nutrition symbol, other than in the words "Health Canada" and "Santé Canada"; and

**(b)** the height of the tallest ascender of the lower case letters in the representation must not exceed two times the height of the tallest ascender of the lower case letters in the nutrition symbol, other than in the words "Health Canada" and "Santé Canada".

**(3)** In this section, ***health-related representation*** means

**(a)** a declaration referred to in subsection B.01.301(1) or (2);

**(b)** a statement or claim referred to in subsection B.01.311(2) or (3);

**(c)** a representation referred to in any of sections B.01.503 to B.01.513;

**(d)** a statement or claim referred to in subsection B.01.601(1); or

**(e)** any other health-related statement, logo, symbol, seal of approval or mark, other than

**(i)** the brand name or product name of a prepackaged product, or

**(ii)** a statement or claim referred to in any of sections D.01.004 to D.01.007 and D.02.002 to D.02.005.

SOR/2022-168, s. 13.

**a)** la hauteur des lettres majuscules qui y paraissent ne dépasse pas celle des lettres majuscules, sauf tout accent, paraissant dans le symbole nutritionnel, à l'exception des lettres des mots « Santé Canada » et « Health Canada »;

**b)** la hauteur de la hampe ascendante la plus élevée des lettres minuscules qui y paraissent ne dépasse pas celle de la hampe ascendante la plus élevée des lettres minuscules paraissant dans le symbole nutritionnel, à l'exception des lettres des mots « Santé Canada » et « Health Canada ».

**(2)** Lorsqu'un symbole nutritionnel et une déclaration concernant la santé paraissent dans l'espace principal d'un produit préemballé et que la déclaration n'est pas liée à un élément nutritif visé par le symbole nutritionnel, la déclaration satisfait aux exigences suivantes :

**a)** la hauteur des lettres majuscules qui y paraissent ne dépasse pas le double de celle des lettres majuscules, sauf tout accent, paraissant dans le symbole nutritionnel, à l'exception des lettres des mots « Santé Canada » et « Health Canada »;

**b)** la hauteur de la hampe ascendante la plus élevée des lettres minuscules qui y paraissent ne dépasse pas le double de celle de la hampe ascendante la plus élevée des lettres minuscules paraissant dans le symbole nutritionnel, à l'exception des lettres des mots « Santé Canada » et « Health Canada ».

**(3)** Au présent article, ***déclaration concernant la santé*** s'entend, selon le cas :

**a)** de toute indication visée aux paragraphes B.01.301(1) ou (2);

**b)** de toute mention ou allégation visée aux paragraphes B.01.311(2) ou (3);

**c)** de toute déclaration visée à l'un des articles B.01.503 à B.01.513;

**d)** de toute mention ou allégation visée au paragraphe B.01.601(1);

**e)** de tout autre mention, logo, symbole, sceau d'approbation ou marque concernant la santé, sauf les suivants :

**(i)** la marque ou le nom d'un produit préemballé,

**(ii)** toute mention ou allégation visée à l'un des articles D.01.004 à D.01.007 et D.02.002 à D.02.005.

DORS/2022-168, art. 13.

### Prohibitions — Resemblance to Nutrition Symbol

**B.01.358 (1)** It is prohibited to

**(a)** label a prepackaged product with any representation, including a word, phrase, illustration, sign, mark, symbol or design, that is likely to be mistaken for a nutrition symbol; or

**(b)** advertise or sell a prepackaged product that is labelled with a representation referred to in paragraph (a).

**(2)** For the purposes of subsection (1), a representation does not include a supplemented food caution identifier.

SOR/2022-168, s. 13; SOR/2022-169, s. 14.

## Interpretation

**B.01.400 (1)** For the purpose of sections B.01.401 to B.01.603, *fat* means all fatty acids expressed as triglycerides.

**(2)** For the purpose of sections B.01.401 to B.01.603, the amount of vitamins shall be determined in accordance with section D.01.003.

SOR/2003-11, s. 20; SOR/2016-305, s. 17.

## Nutrition Labelling

### Core Information

**B.01.401 (1)** Except as otherwise provided in this section and sections B.01.402 to B.01.406 and B.01.467 to B.01.469, the label of a prepackaged product shall carry a nutrition facts table that contains only the information set out in column 1 of the table to this section, expressed using a description set out in column 2, in the unit set out in column 3 and in the manner set out in column 4.

**(1.1)** For the purpose of subsection (1), the serving of stated size set out in a nutrition facts table for a prepackaged product, as expressed in a metric unit, shall be used as the basis for determining the information appearing in the nutrition facts table in respect of the energy value and nutrient content of the product.

**(1.2)** The percentage of the daily value for a mineral nutrient shown in the nutrition facts table for a prepackaged product in accordance with subsection (1) shall be established on the basis of the amount, by weight, of the

### Interdictions — Ressemblance au symbole nutritionnel

**B.01.358 (1)** Il est interdit, relativement à un produit préemballé :

**a)** de l'étiqueter en utilisant une déclaration, y compris un mot, une expression, une illustration, un signe, une marque, un symbole ou un dessin, qui est susceptible d'être confondue avec un symbole nutritionnel;

**b)** d'en faire la publicité ou de le vendre s'il porte sur son étiquette toute déclaration visée à l'alinéa a).

**(2)** Pour l'application du paragraphe (1), la déclaration ne comprend pas l'identifiant des aliments supplémentés avec mise en garde.

DORS/2022-168, art. 13; DORS/2022-169, art. 14.

## Interprétation

**B.01.400 (1)** Pour l'application des articles B.01.401 à B.01.603, *lipides* s'entend de tous les acides gras exprimés sous forme de triglycérides.

**(2)** Pour l'application des articles B.01.401 à B.01.603, la teneur en vitamines est déterminée conformément à l'article D.01.003.

DORS/2003-11, art. 20; DORS/2016-305, art. 17.

## Étiquetage nutritionnel

### Renseignements principaux

**B.01.401 (1)** Sauf disposition contraire du présent article et des articles B.01.402 à B.01.406 et B.01.467 à B.01.469, l'étiquette de tout produit préemballé porte un tableau de la valeur nutritive indiquant exclusivement les renseignements visés à la colonne 1 du tableau du présent article, exprimés au moyen de la nomenclature indiquée dans la colonne 2, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4.

**(1.1)** Pour l'application du paragraphe (1), la portion indiquée qui est exprimée en unité métrique dans le tableau de la valeur nutritive d'un produit préemballé sert de fondement pour établir les renseignements relatifs à la valeur énergétique et aux éléments nutritifs qui figurent au tableau de la valeur nutritive du produit.

**(1.2)** Le pourcentage de la valeur quotidienne d'un minéral nutritif qui, aux termes du paragraphe (1), figure dans le tableau de la valeur nutritive d'un produit préemballé est établi sur la base de la teneur, en poids, du minéral nutritif dans le produit, par portion indiquée, une fois la teneur arrondie selon les règles d'écriture

mineral nutrient per serving of stated size for the product, rounded off in the applicable manner set out in column 4 of the table to this section.

**(2)** Subsection (1) does not apply to a prepackaged product if

**(a)** all the information set out in column 1 of the table to this section, other than in respect of item 1 ("Serving of stated size"), may be expressed as "0" in the nutrition facts table in accordance with this section;

**(b)** the product is

**(i)** a beverage with an alcohol content of more than 0.5%,

**(ii)** [Repealed, SOR/2016-305, s. 18]

**(iii)** a raw single ingredient meat, meat by-product, poultry meat or poultry meat by-product,

**(iv)** a raw single ingredient marine or fresh water animal product,

**(v)** sold only in the retail establishment where the product is prepared and processed from its ingredients, including from a pre-mix if an ingredient other than water is added to the pre-mix during the preparation and processing of the product,

**(vi)** sold only at a road-side stand, craft show, flea market, fair, farmers' market or sugar bush by the individual who prepared and processed the product,

**(vii)** an individual serving that is sold for immediate consumption and that has not been subjected to a process to extend its durable life, including special packaging, or

**(viii)** sold only in the retail establishment where the product is packaged, if the product is labelled by means of a sticker and has an available display surface of less than 200 $cm^2$; or

**(c)** the product is

**(i)** a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating,

**(ii)** a prepackaged individual portion of food that is intended solely to be served by a restaurant or other commercial enterprise with meals or snacks, or

applicables prévues à la colonne 4 du tableau du présent article.

**(2)** Le paragraphe (1) ne s'applique pas à un produit préemballé dans les cas suivants :

**a)** tous les renseignements visés à la colonne 1 du tableau du présent article, autres que l'article 1 (« portion indiquée »), peuvent être exprimés par « 0 » au tableau de la valeur nutritive conformément au présent article;

**b)** le produit est, selon le cas :

**(i)** une boisson dont la teneur en alcool est de plus de 0,5 %,

**(ii)** [Abrogé, DORS/2016-305, art. 18]

**(iii)** de la viande, un sous-produit de viande, de la viande de volaille ou un sous-produit de viande de volaille, cru et composé d'un seul ingrédient,

**(iv)** un produit d'animaux marins ou d'animaux d'eau douce cru et composé d'un seul ingrédient,

**(v)** un produit vendu uniquement dans l'établissement de détail où il est préparé et transformé à partir de ses ingrédients, y compris un pré-mélange si un ingrédient autre que de l'eau est ajouté au prémélange lors de la préparation et de la transformation du produit,

**(vi)** un produit vendu uniquement dans un éventaire routier, une exposition d'artisanat, un marché aux puces, une foire, un marché d'agriculteurs ou une érablière par l'individu qui l'a transformé et préparé,

**(vii)** une portion individuelle qui est vendue pour consommation immédiate et qui n'a fait l'objet d'aucun procédé pour en prolonger la durée de conservation, notamment l'utilisation d'un emballage spécial,

**(viii)** un produit vendu uniquement dans l'établissement de détail où il est emballé, si l'étiquette du produit est un autocollant et que la surface exposée disponible du produit est de moins de 200 $cm^2$;

**c)** le produit est, selon le cas :

**(i)** un légume frais, un fruit frais ou un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, une orange à laquelle un colorant alimentaire a été ajouté et un légume frais ou un

**(iii)** milk, partly skimmed milk, skim milk, goat's milk, partly skimmed goat's milk, skimmed goat's milk, (naming the flavour) milk, (naming the flavour) partly skimmed milk, (naming the flavour) skim milk or cream sold in a refillable glass container.

**(3)** Despite paragraphs (2)(a) and (b), subsection (1) applies to a prepackaged product if

**(a)** the product contains an added vitamin or mineral nutrient;

**(b)** a vitamin or mineral nutrient is declared as a component of one of the product's ingredients other than flour;

**(c)** [Repealed, SOR/2022-168, s. 14]

**(d)** the product is a meat, meat by-product, poultry meat or poultry meat by-product that is ground; or

**(e)** the label of the product, or any advertisement for the product that is made or placed by or on the direction of the manufacturer of the product, contains

**(i)** a reference to the energy value, a nutrient set out in column 1 of the table to this section or in column 1 of the table to section B.01.402 or a constituent of such a nutrient, other than information required by Division 12 or a reference to the common name of an ingredient in the list of ingredients for the product,

**(ii)** a representation that expressly or implicitly indicates that the product has particular nutritional or health-related properties, including any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims or column 1 of the table following section B.01.603 or referred to in section B.01.311, D.01.006 or D.02.004,

**(iii)** a health-related name, statement, logo, symbol, seal of approval or mark, or

**(iv)** the phrase "nutrition facts", "valeur nutritive" or "valeurs nutritives".

fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout autre enduit protecteur,

**(ii)** une portion individuelle préemballée d'un aliment, destinée uniquement à être servie par un restaurant ou une autre entreprise commerciale avec les repas ou casse-croûte,

**(iii)** du lait, du lait partiellement écrémé, du lait écrémé, du lait de chèvre, du lait de chèvre partiellement écrémé, du lait de chèvre écrémé, du lait (indication de l'arôme), du lait partiellement écrémé (indication de l'arôme), du lait écrémé (indication de l'arôme) ou de la crème, vendu dans un contenant réutilisable en verre.

**(3)** Malgré les alinéas (2)a) et b), le paragraphe (1) s'applique dans les cas suivants :

**a)** le produit contient une vitamine ou un minéral nutritif ajoutés;

**b)** une vitamine ou un minéral nutritif est déclaré comme constituant d'un ingrédient du produit, sauf si l'ingrédient est de la farine;

**c)** [Abrogé, DORS/2022-168, art. 14]

**d)** le produit est de la viande, un sous-produit de viande, de la viande de volaille ou un sous-produit de viande de volaille hachés;

**e)** l'étiquette du produit ou encore l'annonce faite par le fabricant du produit ou sous ses ordres comporte, selon le cas :

**(i)** une mention de la valeur énergétique, d'un élément nutritif figurant à la colonne 1 du tableau du présent article ou à la colonne 1 du tableau de l'article B.01.402 ou une mention d'un composant de l'élément nutritif, autre qu'un renseignement prévu au titre 12 ou qu'une mention du nom usuel de l'ingrédient dans la liste des ingrédients du produit,

**(ii)** une déclaration indiquant expressément ou implicitement que le produit a des propriétés particulières liées à la nutrition ou à la santé, notamment une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, à la colonne 1 du tableau suivant l'article B.01.603 ou aux articles B.01.311, D.01.006 ou D.02.004,

**(iii)** un nom, une mention, un logo, un symbole, un sceau d'approbation ou toute autre marque concernant la santé,

**(4)** Subsection (1) does not apply to a formulated liquid diet, human milk fortifier, human milk substitute, food represented as containing a human milk substitute, meal replacement, nutritional supplement, food represented for use in a very low energy diet or supplemented food.

**(5)** The label of, or an advertisement for, a formulated liquid diet, human milk fortifier, human milk substitute, food represented as containing a human milk substitute, meal replacement, nutritional supplement, food represented for use in a very low energy diet or supplemented food shall not contain a nutrition facts table or the phrase "nutrition facts", "valeur nutritive" or "valeurs nutritives".

**(6)** If, for a prepackaged product other than one intended solely for infants six months of age or older but less than one year of age, the information in respect of six or more of the energy value and nutrients referred to in column 1 of items 2 to 5 and 7 to 15 of the table to this section may be expressed as "0" in the nutrition facts table in accordance with this section, the nutrition facts table need only include the following information:

**(a)** the serving of stated size;

**(b)** the energy value;

**(c)** the amount of fat;

**(d)** the amount of carbohydrate;

**(e)** the amount of protein;

**(f)** the amount of any nutrient that is the subject of a representation referred to in subparagraph (3)(e)(ii);

**(g)** the amount of any sugar alcohol, vitamin or mineral nutrient added to the prepackaged product, other than iodide added to salt for table or general household use or fluoride added to prepackaged water or ice;

**(h)** the amount of any vitamin or mineral nutrient that is declared as a component of one of the prepackaged product's ingredients other than flour;

**(i)** the amount of any nutrient referred to in column 1 of any of items 4, 5, 7, 8, 10, 11 and 13 to 15 of the table

**(iv)** les expressions « valeur nutritive », « valeurs nutritives » ou « nutrition facts ».

**(4)** Le paragraphe (1) ne s'applique pas à la préparation pour régime liquide, au fortifiant pour lait humain, au succédané de lait humain, à l'aliment présenté comme contenant un succédané de lait humain, au substitut de repas, au supplément nutritif, à l'aliment présenté comme étant conçu pour un régime à très faible teneur en énergie ou à l'aliment supplémenté.

**(5)** L'étiquette ou l'annonce d'une préparation pour régime liquide, d'un fortifiant pour lait humain, d'un succédané de lait humain, d'un aliment présenté comme contenant un succédané de lait humain, d'un substitut de repas, d'un supplément nutritif, d'un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie ou d'un aliment supplémenté ne peut comporter un tableau de la valeur nutritive ou les expressions « valeur nutritive », « valeurs nutritives » ou « nutrition facts ».

**(6)** Si au moins six des renseignements relatifs à la valeur énergétique et aux éléments nutritifs visés à la colonne 1 des articles 2 à 5 et 7 à 15 du tableau du présent article peuvent être exprimés, conformément au présent article, par « 0 » au tableau de la valeur nutritive d'un produit préemballé, autre qu'un produit destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an, le tableau peut ne contenir que les renseignements suivants :

**a)** la portion indiquée;

**b)** la valeur énergétique;

**c)** la teneur en lipides;

**d)** la teneur en glucides;

**e)** la teneur en protéines;

**f)** la teneur en tout élément nutritif qui fait l'objet d'une déclaration visée au sous-alinéa (3)e)(ii);

**g)** la teneur en un polyalcool, en une vitamine ou en un minéral nutritif ajoutés au produit, à l'exclusion de l'iodure ajouté à du sel de table ou à du sel d'usage domestique général et du fluorure ajouté à de l'eau ou à de la glace préemballées;

**h)** la teneur en une vitamine ou en un minéral nutritif déclaré comme constituant d'un ingrédient du produit, à l'exclusion de la farine;

**i)** la teneur en tout élément nutritif visé à la colonne 1 des articles 4, 5, 7, 8, 10, 11 et 13 à 15 du tableau du

to this section that may not be expressed as "0" in the nutrition facts table; and

**(j)** the statement "Not a significant source of (naming each nutrient that is omitted from the nutrition facts table in accordance with this subsection)" or, if the prepackaged product meets the condition specified in subsection B.01.455(3), the statement "Not a significant source of other nutrients".

**(6.1)** The nutrition facts table of a single-serving prepackaged product, other than one that is a prepackaged meal, need only include the following information:

**(a)** the serving of stated size;

**(b)** the energy value;

**(c)** the amount of fat;

**(d)** the amount of carbohydrate;

**(e)** the amount of protein;

**(f)** the amount of any nutrient that is the subject of a representation referred to in subparagraph (3)(e)(ii);

**(g)** the amount of any sugar alcohol, vitamin or mineral nutrient added to the prepackaged product, other than iodide added to salt for table or general household use or fluoride added to prepackaged water or ice;

**(h)** the amount of any nutrient referred to in column 1 of item 4 or 5 of the table to this section and the sum of saturated fatty acids and *trans* fatty acids if any of the amounts or the sum may not be expressed as "0" in the nutrition facts table; and

**(i)** the amount of any nutrient referred to in column 1 of item 8 or 11 of the table to this section that may not be expressed as "0" in the nutrition facts table;

**(j)** the % Daily Value interpretative statement.

**(7)** Subsection (1) does not apply to a prepackaged product

**(a)** that is intended solely for use as an ingredient in the manufacture of other prepackaged products intended for sale to a consumer at the retail level or as an ingredient in the preparation of food by a commercial or industrial enterprise or an institution; or

présent article qui ne peut être exprimée par « 0 » au tableau de la valeur nutritive;

**j)** la mention « Source négligeable de (désignation de tout élément nutritif omis conformément au présent paragraphe) » ou, si le produit remplit les conditions du paragraphe B.01.455(3), la mention « Source négligeable d'autres éléments nutritifs ».

**(6.1)** Le tableau de la valeur nutritive d'un produit préemballé à portion individuelle autre qu'un repas préemballé peut ne contenir que les renseignements suivants :

**a)** la portion indiquée;

**b)** la valeur énergétique;

**c)** la teneur en lipides;

**d)** la teneur en glucides;

**e)** la teneur en protéines;

**f)** la teneur en tout élément nutritif qui fait l'objet d'une déclaration visée au sous-alinéa (3)e)(ii);

**g)** la teneur en un polyalcool, en une vitamine ou en un minéral nutritif ajoutés au produit, à l'exclusion de l'iodure ajouté à du sel de table ou à du sel d'usage domestique général et du fluorure ajouté à de l'eau ou à de la glace préemballées;

**h)** la teneur en tout élément nutritif visé à la colonne 1 des articles 4 et 5 du tableau du présent article et la somme des acides gras saturés et des acides gras *trans* si l'une de ces teneurs ou cette somme ne peut être exprimée par « 0 » au tableau de la valeur nutritive;

**i)** la teneur en tout élément nutritif visé à la colonne 1 des articles 8 et 11 du tableau du présent article qui ne peut être exprimée par « 0 » au tableau de la valeur nutritive;

**j)** l'énoncé interprétatif du % de la valeur quotidienne.

**(7)** Le paragraphe (1) ne s'applique pas aux produits préemballés suivants :

**a)** tout produit destiné uniquement à être utilisé comme ingrédient dans la fabrication d'autres produits préemballés destinés à être vendus au consommateur au niveau du commerce de détail ou comme ingrédient dans la préparation d'aliments par une entreprise commerciale ou industrielle ou une institution;

**(b)** that is a multiple-serving ready-to-serve prepackaged product intended solely to be served in a commercial or industrial enterprise or an institution.

**(8)** If the nutrition facts table on the label of a prepackaged product corresponds to Figure 6.5(B), 6.6(B), 6.5.1(B), 6.6.1(B), 7.3(B), 7.4(B), 7.3.1(B), 7.4.1(B), 17.2(E) and (F), 17.2.1(E) and (F), 24.1 (E) and (F) to 24.6(E) and (F), 25.1 (B) to 25.6(B), 26.1(B) to 26.4(B), 32.1(E) and (F) or 32.2(E) and (F) of the Directory of NFT Formats, the nutrition facts table is not required to show the % Daily Value interpretative statement referred to in item 16 of the table to this section.

**b)** tout produit à portion multiple prêt à servir destiné uniquement à être servi par une entreprise commerciale ou industrielle ou une institution.

**(8)** Le tableau de la valeur nutritive figurant sur l'étiquette d'un produit préemballé, s'il correspond à l'une des figures 6.5(B), 6.6(B), 6.5.1(B), 6.6.1(B), 7.3(B), 7.4(B), 7.3.1(B), 7.4.1(B), 17.2(F) et (A), 17.2.1(F) et (A), 24.1(F) et (A) à 24.6(F) et (A), 25.1(B) à 25.6(B), 26.1(B) à 26.4(B), 32.1(F) et (A) ou 32.2(F) et (A) du Répertoire des modèles de TVN, n'a pas à indiquer l'énoncé interprétatif du % de la valeur quotidienne visé à l'article 16 du tableau du présent article.

**TABLE**

**Core Information**

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 1 | Serving of stated size | "Serving Size (naming the serving size)", "Serving (naming the serving size)" or "Per (naming the serving size)" | The size is expressed<br>(a) in the case of a single-serving prepackaged product,<br>(i) per package, and<br>(ii) in grams or millilitres, in accordance with subparagraph B.01.002A(2)(a)(i) or (ii); and<br>(b) in the case of a multiple-serving prepackaged product, in the following units set out in column 3B of the Table of Reference Amounts:<br>(i) the household measure that applies to the product, and<br>(ii) the metric measure that applies to the product. | (1) The size when expressed in a metric unit is rounded off<br>(a) if it is less than 10 g or 10 mL, to the nearest multiple of 0.1 g or 0.1 mL; and<br>(b) if it is 10 g or more or 10 mL or more, to the nearest multiple of 1 g or 1 mL.<br>(2) The size when expressed as a fraction is represented by a numerator and a denominator separated by a line.<br>(3) The size shall include the word "assorted" if the information in the nutrition facts table of a prepackaged product that contains an assortment of foods is set out as a composite value. |
| 2 | Energy value | "Calories", "Total Calories" or "Calories, Total" | The value is expressed in Calories per serving of stated size. | The value is rounded off<br>(a) if it is less than 5 Calories<br>(i) if the product meets the conditions set out in column 2 of item 1 of the Table of Permitted Nutrient Content Statements and Claims for the subject" free of energy" set out in column 1, to "0" Calorie, and<br>(ii) in all other cases, to the nearest multiple of 1 Calorie;<br>(b) if it is 5 Calories or more but not more than 50 Calories, to the nearest multiple of 5 Calories; and<br>(c) if it is more than 50 Calories, to the nearest multiple of 10 Calories. |
| 3 | Amount of fat | "Fat", "Total Fat" or "Fat, Total" | The amount is expressed<br>(a) in grams per serving of stated size; and | (1) The amount is rounded off<br>(a) if it is less than 0.5 g |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | (b) as a percentage of the daily value per serving of stated size. | (i) if the product meets the conditions set out in column 2 of item 11 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of fat" set out in column 1 and the amounts of saturated fatty acids and *trans* fatty acids are declared as "0 g" in the nutrition facts table or are omitted from that table in accordance with subsection B.01.401(6) and no other fatty acids are declared in an amount greater than 0 g, to "0 g", and<br>(ii) in all other cases, to the nearest multiple of 0.1 g;<br>(b) if it is 0.5 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 g", to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 4 | Amount of saturated fatty acids | "Saturated Fat", "Saturated Fatty Acids", "Saturated" or "Saturates" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g<br>(i) if the product meets the conditions set out in column 2 of item 18 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of saturated fatty acids" set out in column 1, to "0 g", and<br>(ii) in all other cases, to the nearest multiple of 0.1 g;<br>(b) if it is 0.5 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 5 | Amount of *trans* fatty acids | "Trans Fat", "Trans Fatty Acids" or "Trans" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g<br>(i) if the product meets the conditions set out in column 2 of item 22 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of *trans* fatty acids" set out in column 1, to "0 g", and<br>(ii) in all other cases, to the nearest multiple of 0.1 g; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (b) if it is 0.5 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 6 | The sum of saturated fatty acids and *trans* fatty acids | "Saturated Fat + Trans Fat", "Saturated Fatty Acids + Trans Fatty Acids", "Saturated + Trans" or "Saturates + Trans" | The sum is expressed as a percentage of the daily value per serving of stated size. | The percentage is rounded off<br>(a) if the amounts of saturated fatty acids and *trans* fatty acids are declared as "0 g", to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 7 | Amount of cholesterol | "Cholesterol" | The amount<br>(a) is expressed in milligrams per serving of stated size; and<br>(b) may also be expressed as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if the product meets the conditions set out in column 2 of item 27 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of cholesterol" set out in column 1, to "0 mg"; and<br>(b) in all other cases, to the nearest multiple of 5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg" to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 8 | Amount of sodium | "Sodium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg<br>(i) if the product meets the conditions set out in column 2 of item 31 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of sodium or salt" set out in column 1, to "0 mg", and<br>(ii) in all other cases, to the nearest multiple of 1 mg;<br>(b) if it is 5 mg or more but not more than 140 mg, to the nearest multiple of 5 mg; and<br>(c) if it is more than 140 mg, to the nearest multiple of 10 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 9 | Amount of carbohydrate | "Carbohydrate", "Total Carbohydrate" or "Carbohydrate, Total" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 10 | Amount of fibre | "Fibre", "Fiber", "Dietary Fibre" or "Dietary Fiber" | The amount is expressed<br>(a) in grams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 g", to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 11 | Amount of sugars | "Sugars" | The amount is expressed<br>(a) in grams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 g", to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 12 | Amount of protein | "Protein" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to the nearest multiple of 0.1 g; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 13 | Amount of potassium | "Potassium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 14 | Amount of calcium | "Calcium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 15 | Amount of iron | "Iron" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 16 | % Daily Value interpretative statement | "*5% or less is a little, 15% or more is a lot" | [not applicable] | The "% Daily Value" or "% DV" subheading is followed by an asterisk in order to reference the % Daily Value interpretative statement shown in the nutrition facts table. |

## TABLEAU

### Renseignements principaux

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 1 | Portion indiquée | « Portion (portion indiquée) », « pour (portion indiquée) » ou « par (portion indiquée) » | La portion est exprimée :<br>a) s'agissant d'un produit préemballé à portion individuelle :<br>(i) par emballage,<br>(ii) en grammes ou en millilitres tel qu'il est prévu aux sous-alinéas B.01.002A(2)a)(i) et (ii);<br>b) s'agissant d'un produit préemballé à portions multiples, selon les unités ci-après indiquées à la colonne 3B du Tableau des quantités de référence :<br>(i) la mesure domestique applicable au produit,<br>(ii) la mesure métrique applicable au produit. | (1) La portion exprimée en unité métrique est arrondie :<br>a) lorsqu'elle est inférieure à 10 g ou 10 mL : au plus proche multiple de 0,1 g ou 0,1 mL;<br>b) lorsqu'elle est égale ou supérieure à 10 g ou 10 mL : au plus proche multiple de 1 g ou 1 mL.<br>(2) La portion exprimée en fraction est représentée par un numérateur et un dénominateur séparés d'une barre.<br>(3) La portion comprend le terme « assortis » lorsque le tableau de la valeur nutritive du produit préemballé qui contient un assortiment d'aliments indique les renseignements qui correspondent à une valeur composée. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 2 | Valeur énergétique | « Calories » ou « Calories totales » | La valeur est exprimée en Calories par portion indiquée. | La valeur est arrondie :<br>a) lorsqu'elle est inférieure à 5 Calories :<br>(i) si le produit répond aux critères mentionnés à la colonne 2 de l'article 1 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans énergie » visé à la colonne 1 : à 0 Calorie,<br>(ii) dans les autres cas : au plus proche multiple de 1 Calorie;<br>b) lorsqu'elle est égale ou supérieure à 5 Calories sans dépasser 50 Calories : au plus proche multiple de 5 Calories;<br>c) lorsqu'elle est supérieure à 50 Calories : au plus proche multiple de 10 Calories. |
| 3 | Teneur en lipides | « Lipides » ou « Total des lipides » | La teneur est exprimée :<br>a) en grammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g :<br>(i) si le produit répond aux critères mentionnés à la colonne 2 de l'article 11 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans lipides » visé à la colonne 1 et si les teneurs en acides gras saturés et en acides gras *trans* sont exprimées par « 0 g » au tableau de la valeur nutritive, ou sont omises de ce tableau conformément au paragraphe B.01.401(6), et qu'aucun autre acide gras n'est exprimé par une valeur supérieure à 0 g : à 0 g,<br>(ii) dans les autres cas : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 4 | Teneur en acides gras saturés | « Acides gras saturés », « Lipides saturés » ou « saturés » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g :<br>(i) si le produit répond aux critères mentionnés à la colonne 2 de l'article 18 du Tableau des mentions et des allégations |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | autorisées concernant la teneur nutritive en regard du sujet « sans acides gras saturés » visé à la colonne 1 : à 0 g,<br>(ii) dans les autres cas : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 5 | Teneur en acides gras *trans* | « Acides gras trans », « Lipides trans » ou « trans » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g :<br>(i) si le produit répond aux critères mentionnés à la colonne 2 de l'article 22 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans acides gras *trans* » visé à la colonne 1 : à 0 g,<br>(ii) dans les autres cas : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 6 | Somme des acides gras saturés et des acides gras *trans* | « Acides gras saturés + acides gras trans », « Lipides saturés + lipides trans » ou « saturés + trans » | La somme est exprimée en pourcentage de la valeur quotidienne par portion indiquée. | Le pourcentage est arrondi :<br>a) lorsque les teneurs en acides gras saturés et en acides gras *trans* déclarées sont « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 7 | Teneur en cholestérol | « Cholestérol » | La teneur :<br>a) est exprimée en milligrammes par portion indiquée;<br>b) peut aussi être exprimée en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) si le produit répond aux critères mentionnés à la colonne 2 de l'article 27 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans cholestérol » visé à la colonne 1 : à 0 mg;<br>b) dans les autres cas : au plus proche multiple de 5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 8 | Teneur en sodium | « Sodium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée; | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg :<br>(i) si le produit répond aux critères mentionnés à la colonne 2 |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | b) en pourcentage de la valeur quotidienne par portion indiquée. | de l'article 31 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans sodium ou sans sel » visé à la colonne 1 : à 0 mg,<br>(ii) dans les autres cas : au plus proche multiple de 1 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg sans dépasser 140 mg : au plus proche multiple de 5 mg;<br>c) lorsqu'elle est supérieure à 140 mg : au plus proche multiple de 10 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 9 | Teneur en glucides | « Glucides » ou « Total des glucides » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 10 | Teneur en fibres | « Fibres » ou « Fibres alimentaires » | La teneur est exprimée :<br>a) en grammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 11 | Teneur en sucres | « Sucres » | La teneur est exprimée :<br>a) en grammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 12 | Teneur en protéines | « Protéines » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : au plus proche multiple de 0,1 g; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 13 | Teneur en potassium | « Potassium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 14 | Teneur en calcium | « Calcium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 15 | Teneur en fer | « Fer » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 16 | Énoncé interprétatif du % de la valeur quotidienne | « *5 % ou moins c'est peu, 15 % ou plus c'est beaucoup » | [non-applicable] | Le sous-titre « % valeur quotidienne » ou « % VQ » est suivi d'un astérisque qui signale l'énoncé interprétatif du % de la valeur quotidienne figurant au tableau de la valeur nutritive. |

SOR/2003-11, s. 20; SOR/2007-176, s. 5; SOR/2016-305, ss. 18, 73, 75(F); SOR/2021-57, s. 9; SOR/2022-143, s. 18(E); SOR/2022-168, s. 14; SOR/2022-168, s. 52; SOR/2022-169, s. 15.

DORS/2003-11, art. 20; DORS/2007-176, art. 5; DORS/2016-305, art. 18, 73 et 75(F); DORS/2021-57, art. 9; DORS/2022-143, art. 18(A); DORS/2022-168, art. 14; DORS/2022-168, art. 52; DORS/2022-169, art. 15.

## Additional Information

**B.01.402 (1)** The nutrition facts table may also contain information set out in column 1 of the table to this section.

**(2)** If information set out in column 1 of the table to this section is included in the nutrition facts table, it shall be expressed using a description set out in column 2, in the unit set out in column 3 and in the manner set out in column 4.

**(2.1)** For the purpose of subsection (2), the serving of stated size set out in a nutrition facts table for a prepackaged product, expressed in the metric unit, shall be used as the basis for determining the information appearing in the nutrition facts table in respect of the energy value and nutrient content of the product.

**(2.2)** The percentage of the daily value for a vitamin or mineral nutrient shown in the nutrition facts table for a prepackaged product in accordance with subsection (2) shall be established on the basis of the amount, by weight, of the vitamin or mineral nutrient per serving of stated size for the product, rounded off in the applicable manner set out in column 4 of the table to this section.

**(3)** The amount of omega-6 polyunsaturated fatty acids, omega-3 polyunsaturated fatty acids and monounsaturated fatty acids shall be in the nutrition facts table if

**(a)** the amount of any of those groups of fatty acids or the amount of polyunsaturated fatty acids is in the nutrition facts table or is shown on the label of the prepackaged product or in any advertisement for the

## Renseignements complémentaires

**B.01.402 (1)** Le tableau de la valeur nutritive peut également indiquer les renseignements visés à la colonne 1 du tableau du présent article.

**(2)** Les renseignements visés à la colonne 1 du tableau du présent article qui sont présentés dans le tableau de la valeur nutritive sont exprimés au moyen de la nomenclature indiquée dans la colonne 2, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4.

**(2.1)** Pour l'application du paragraphe (2), la portion indiquée qui est exprimée en unité métrique dans le tableau de la valeur nutritive d'un produit préemballé sert de fondement pour établir les renseignements relatifs à la valeur énergétique et aux éléments nutritifs qui figurent au tableau de la valeur nutritive du produit.

**(2.2)** Le pourcentage de la valeur quotidienne d'une vitamine ou d'un minéral nutritif qui, aux termes du paragraphe (2), figure dans le tableau de la valeur nutritive d'un produit préemballé est établi sur la base de la teneur en poids de la vitamine ou du minéral nutritif dans le produit, par portion indiquée, une fois la teneur arrondie selon les règles d'écriture applicables prévues à la colonne 4 du tableau du présent article.

**(3)** Le tableau de la valeur nutritive indique la teneur en acides gras polyinsaturés oméga-6, en polyinsaturés oméga-3 et en monoinsaturés dans l'un ou l'autre des cas suivants :

**a)** la teneur en un de ces groupes d'acides gras ou la teneur en acides gras polyinsaturés est indiquée dans le tableau ou sur l'étiquette du produit préemballé ou

product that is made or placed by or on the direction of the manufacturer of the product; or

**(b)** the amount of any specific fatty acid is shown on the label of the prepackaged product or in any advertisement for the product that is made or placed by or on the direction of the manufacturer of the product.

**(4)** If the label of a prepackaged product, or any advertisement for the product that is made or placed by or on the direction of the manufacturer of the product, contains a representation, express or implied, that includes information that is set out in column 1 of the table to this section, that information shall also be in the nutrition facts table.

**(5)** [Repealed, SOR/2016-305, s. 19]

**(6)** The nutrition facts table shall show the amount of any sugar alcohol, vitamin or mineral nutrient added to the prepackaged product, except in the case of iodide added to salt for table or general household use or fluoride added to prepackaged water or ice.

**(7)** The nutrition facts table shall show the amount of any vitamin or mineral nutrient that is declared as a component of one of the prepackaged product's ingredients other than flour.

**(8)** [Repealed, SOR/2018-108, s. 395]

**(9)** If information set out in column 1 of the table to this section is included in the nutrition facts table, it shall be shown

**(a)** in English and French; or

**(b)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the product may be shown in that language only and is shown on the label in that language.

encore dans l'annonce d'un tel produit faite par le fabricant du produit ou sous ses ordres;

**b)** la teneur en un acide gras est indiquée sur l'étiquette du produit préemballé ou encore dans l'annonce d'un tel produit faite par le fabricant du produit ou sous ses ordres.

**(4)** Lorsqu'une déclaration expresse ou implicite incluant des renseignements visés à la colonne 1 du tableau du présent article est faite sur l'étiquette du produit préemballé ou encore dans l'annonce d'un tel produit faite par le fabricant du produit ou sous ses ordres, ces renseignements sont aussi mentionnés dans le tableau de la valeur nutritive.

**(5)** [Abrogé, DORS/2016-305, art. 19]

**(6)** Le tableau de la valeur nutritive du produit préemballé indique la teneur en un polyalcool, en une vitamine ou en un minéral nutritif ajoutés au produit préemballé, à l'exclusion de l'iodure ajouté à du sel de table ou d'usage domestique général et du fluorure ajouté à de l'eau ou à de la glace préemballées.

**(7)** Le tableau de la valeur nutritive de tout produit préemballé dont un ingrédient, autre que de la farine, contient une vitamine ou un minéral nutritif déclaré comme constituant de cet ingrédient en indique la teneur.

**(8)** [Abrogé, DORS/2018-108, art. 395]

**(9)** Si les renseignements visés à la colonne 1 du tableau du présent article paraissent dans le tableau de la valeur nutritive, ils figurent :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette du produit aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

**TABLE**

**Additional Information**

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 1 | Servings per package | "Servings per Container", "(number of units) per Container", "Servings per Package", "(number of units) per Package", "Servings per | The quantity is expressed in number of servings. | (1) The quantity is rounded off<br>(a) if it is less than 2, to the nearest multiple of 1;<br>(b) if it is between 2 and 5, to the nearest multiple of 0.5; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | (naming the package type)", or "(number of units) per (naming the package type)" | | (c) if it is more than 5, to the nearest multiple of 1.<br>(2) If a quantity is rounded off, it shall be preceded by the word "about".<br>(3) If the product is of a random weight, the quantity may be declared as "varied". |
| 2 | Energy value | "kilojoules" or "kJ" | The value is expressed in kilojoules per serving of stated size. | The value is rounded off to the nearest multiple of 10 kilojoules. |
| 3 and 4 | [Repealed, SOR/2016-305, s. 19] | | | |
| 5 | Amount of polyunsaturated fatty acids | "Polyunsaturated Fat", "Polyunsaturated Fatty Acids", "Polyunsaturated" or "Polyunsaturates" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 6 | Amount of omega-6 polyunsaturated fatty acids | (1) If the nutrition facts table includes the amount of polyunsaturated fatty acids: "Omega-6", "Omega-6 Polyunsaturated Fat", "Omega-6 Polyunsaturated Fatty Acids", "Omega-6 Polyunsaturates" or "Omega-6 Polyunsaturate"<br>(2) In all other cases: "Omega-6 Polyunsaturated Fat", "Omega-6 Polyunsaturated Fatty Acids", "Omega-6 Polyunsaturates" or "Omega-6 Polyunsaturated" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 7 | Amount of omega-3 polyunsaturated fatty acids | (1) If the nutrition facts table includes the amount of polyunsaturated fatty acids: "Omega-3", "Omega-3 Polyunsaturated Fat", "Omega-3 Polyunsaturated Fatty Acids", "Omega-3 Polyunsaturates" or "Omega-3 Polyunsaturated"<br>(2) In all other cases: "Omega-3 Polyunsaturated Fat", "Omega-3 Polyunsaturated Fatty Acids", "Omega-3 Polyunsaturates" or "Omega-3 Polyunsaturated" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 8 | Amount of monounsaturated fatty acids | "Monounsaturated Fat", "Monounsaturated Fatty Acids", "Monounsaturates" or "Monounsaturated" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 9 | [Repealed, SOR/2016-305, s. 19] | | | |
| 10 | Amount of soluble fibre | "Soluble Fibre" or "Soluble Fiber" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 11 | Amount of insoluble fibre | "Insoluble Fibre" or "Insoluble Fiber" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 12 | Amount of sugar alcohol | (1) If the food contains only one type of sugar alcohol: "Sugar Alcohol", "Polyol" or "(naming the sugar alcohol)"<br>(2) In all other cases: "Sugar Alcohols" or "Polyols" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 13 | Amount of starch | "Starch" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 14 | Amount of vitamin A | "Vitamin A" or "Vit A" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 µg, to "0 µg";<br>(b) if it is 5 µg or more but less than 50 µg, to the nearest multiple of 10 µg;<br>(c) if it is 50 µg or more but less than 250 µg, to the nearest multiple of 50 µg; and<br>(d) if it is 250 µg or more, to the nearest multiple of 100 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 15 | Amount of vitamin C | "Vitamin C" or "Vit C" | The amount is expressed | (1) The amount is rounded off |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | (a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (a) if it is less than 0.1 mg, to "0 mg";<br>(b) if it is 0.1 mg or more but less than 1 mg, to the nearest multiple of 0.2 mg;<br>(c) if it is 1 mg or more but less than 5 mg, to the nearest multiple of 0.5 mg; and<br>(d) if it is 5 mg or more, to the nearest multiple of 1 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 16 | Amount of vitamin D | "Vitamin D" or "Vit D" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.1 µg, to "0 µg";<br>(b) if it is 0.1 µg or more but less than 1 µg, to the nearest multiple of 0.2 µg;<br>(c) if it is 1 µg or more but less than 5 µg, to the nearest multiple of 0.5 µg; and<br>(d) if it is 5 µg or more, to the nearest multiple of 1 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 17 | Amount of vitamin E | "Vitamin E" or "Vit E" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 18 | Amount of vitamin K | "Vitamin K" or "Vit K" | The amount is expressed<br>(a) in micrograms per serving of stated size; and | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg"; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | (b) as a percentage of the daily value per serving of stated size. | (b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 19 | Amount of thiamine | "Thiamine", "Thiamin", "Thiamine (Vitamin $B_1$)", "Thiamine (Vit $B_1$)", "Thiamin (Vitamin $B_1$)" or "Thiamin (Vit $B_1$)" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 20 | Amount of riboflavin | "Riboflavin", "Riboflavin (Vitamin $B_2$)" or "Riboflavin (Vit $B_2$)" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 21 | Amount of niacin | "Niacin" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 22 | Amount of vitamin $B_6$ | "Vitamin $B_6$" or "Vit $B_6$" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 23 | Amount of folate | "Folate" | The amount is expressed<br>(a) in micrograms of dietary folate equivalents (DFE) per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 µg DFE, to "0 µg DFE";<br>(b) if it is 1 µg DFE or more but less than 10 µg DFE, to the nearest multiple of 2 µg DFE;<br>(c) if it is 10 µg DFE or more but less than 50 µg DFE, to the nearest multiple of 5 µg DFE; and<br>(d) if it is 50 µg DFE or more, to the nearest multiple of 10 µg DFE.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg DFE, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 24 | Amount of vitamin $B_{12}$ | "Vitamin $B_{12}$" or "Vit $B_{12}$" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 µg, to "0 µg";<br>(b) if it is 0.005 µg or more but less than 0.05 µg, to the nearest multiple of 0.01 µg;<br>(c) if it is 0.05 µg or more but less than 0.25 µg, to the nearest multiple of 0.025 µg; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (d) if it is 0.25 µg or more, to the nearest multiple of 0.05 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 25 | Amount of biotin | "Biotin" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 26 | Amount of pantothenic acid | "Pantothenic Acid" or "Pantothenate" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.01 mg, to "0 mg";<br>(b) if it is 0.01 mg or more but less than 0.1 mg, to the nearest multiple of 0.02 mg;<br>(c) if it is 0.1 mg or more but less than 0.5 mg, to the nearest multiple of 0.05 mg; and<br>(d) if it is 0.5 mg or more, to the nearest multiple of 0.1 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 27 | Amount of choline | "Choline" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 mg, to "0 mg";<br>(b) if it is 1 mg or more but less than 10 mg, to the nearest multiple of 2 mg;<br>(c) if it is 10 mg or more but less than 50 mg, to the nearest multiple of 5 mg; and<br>(d) if it is 50 mg or more, to the nearest multiple of 10 mg.<br>(2) The percentage is rounded off |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 28 | Amount of phosphorous | "Phosphorus" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 29 | Amount of iodide | "Iodide" or "Iodine" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 µg, to "0 µg";<br>(b) if it is 1 µg or more but less than 10 µg, to the nearest multiple of 2 µg;<br>(c) if it is 10 µg or more but less than 50 µg, to the nearest multiple of 5 µg; and<br>(d) if it is 50 µg or more, to the nearest multiple of 10 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 30 | Amount of magnesium | "Magnesium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 mg, to "0 mg";<br>(b) if it is 1 mg or more but less than 10 mg, to the nearest multiple of 2 mg;<br>(c) if it is 10 mg or more but less than 50 mg, to the nearest multiple of 5 mg; and<br>(d) if it is 50 mg or more, to the nearest multiple of 10 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 31 | Amount of zinc | "Zinc" | The amount is expressed | (1) The amount is rounded off |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | (a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 32 | Amount of selenium | "Selenium" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.1 µg, to "0 µg";<br>(b) if it is 0.1 µg or more but less than 1 µg, to the nearest multiple of 0.2 µg;<br>(c) if it is 1 µg or more but less than 5 µg, to the nearest multiple of 0.5 µg; and<br>(d) if it is 5 µg or more, to the nearest multiple of 1 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 33 | Amount of copper | "Copper" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.0015 mg, to "0 mg";<br>(b) if it is 0.0015 mg or more but less than 0.025 mg, to the nearest multiple of 0.002 mg;<br>(c) if it is 0.025 mg or more but less than 0.05 mg, to the nearest multiple of 0.005 mg; and<br>(d) if it is 0.05 mg or more, to the nearest multiple of 0.01 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 34 | Amount of manganese | "Manganese" | The amount is expressed<br>(a) in milligrams per serving of stated size; and | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg"; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | (b) as a percentage of the daily value per serving of stated size. | (b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 35 | Amount of chromium | "Chromium" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 36 | Amount of molybdenum | "Molybdenum" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 µg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 37 | Amount of chloride | "Chloride" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as 0 mg, to "0%"; and<br>(b) in all other cases, to the nearest multiple of 1%. |

## TABLEAU

### Renseignements complémentaires

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 1 | Portions par emballage | « Portions par contenant », « (nombre d'unités) par contenant », « Portions par emballage », « (nombre d'unités) par emballage », « portions par (type d'emballage) » ou « (nombre d'unités) par (type d'emballage) » | La quantité est exprimée en nombre de portions. | (1) La quantité est arrondie :<br>a) lorsqu'elle est inférieure à 2, au plus proche multiple de 1;<br>b) lorsqu'elle est égale ou supérieure à 2 sans dépasser 5 : au plus proche multiple de 0,5;<br>c) lorsqu'elle est supérieure à 5 : au plus proche multiple de 1.<br>(2) Si la quantité est arrondie, elle est précédée du mot « environ ».<br>(3) Si le poids du produit varie, la quantité peut être déclarée « variable ». |
| 2 | Valeur énergétique | « kilojoules » ou « kJ » | La valeur est exprimée en kilojoules par portion indiquée. | La valeur est arrondie au plus proche multiple de 10 kilojoules. |
| 3 et 4 | [Abrogés, DORS/2016-305, art. 19] | | | |
| 5 | Teneur en acides gras polyinsaturés | « Acides gras polyinsaturés », « Lipides polyinsaturés » ou « polyinsaturés » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 6 | Teneur en acides gras polyinsaturés oméga-6 | (1) Si le tableau de la valeur nutritive indique la teneur en acides gras polyinsaturés : « oméga-6 », « Acides gras polyinsaturés oméga-6 », « Lipides polyinsaturés oméga-6 » ou « polyinsaturés oméga-6 »<br>(2) Dans les autres cas : « Acides gras polyinsaturés oméga-6 », | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | « Lipides polyinsaturés oméga-6 » ou « polyinsaturés oméga-6 » | | |
| 7 | Teneur en acides gras polyinsaturés oméga-3 | (1) Si le tableau de la valeur nutritive indique la teneur en acides gras polyinsaturés : « oméga-3 », « Acides gras polyinsaturés oméga-3 », « Lipides polyinsaturés oméga-3 » ou « polyinsaturés oméga-3 »<br>(2) Dans les autres cas : « Acides gras polyinsaturés oméga-3 », « Lipides polyinsaturés oméga-3 » ou « polyinsaturés oméga-3 » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 8 | Teneur en acides gras monoinsaturés | « Acides gras monoinsaturés », « Lipides monoinsaturés » ou « monoinsaturés » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g, sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 9 | [Abrogé, DORS/2016-305, art. 19] | | | |
| 10 | Teneur en fibres solubles | « Fibres solubles » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 11 | Teneur en fibres insolubles | « Fibres insolubles » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 12 | Teneur en polyalcools | (1) Si l'aliment ne contient qu'un polyalcool : « Polyalcool », « Polyol » ou « (Nom du polyalcool) »;<br>(2) Dans les autres cas : « Polyalcools » ou « Polyols » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 13 | Teneur en amidon | « Amidon » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 14 | Teneur en vitamine A | « Vitamine A » ou « Vit A » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 5 µg mais moins de 50 µg : au plus proche multiple de 10 µg;<br>c) lorsqu'elle est égale ou supérieure à 50 µg mais moins de 250 µg : au plus proche multiple de 50 µg;<br>d) lorsqu'elle est égale ou supérieure à 250 µg : au plus proche multiple de 100 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 15 | Teneur en vitamine C | « Vitamine C » ou « Vit C » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,1 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,1 mg mais moins de 1 mg : au plus proche multiple de 0,2 mg;<br>c) lorsqu'elle est égale ou supérieure à 1 mg mais moins de 5 mg : au plus proche multiple de 0,5 mg;<br>d) lorsqu'elle est égale ou supérieure à 5 mg : au plus proche multiple de 1 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 16 | Teneur en vitamine D | « Vitamine D » ou « Vit D » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,1 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,1 µg mais moins de 1 µg : au plus proche multiple de 0,2 µg;<br>c) lorsqu'elle est égale ou supérieure à 1 µg mais moins de 5 µg : au plus proche multiple de 0,5 µg;<br>d) lorsqu'elle est égale ou supérieure à 5 µg : au plus proche multiple de 1 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 17 | Teneur en vitamine E | « Vitamine E » ou « Vit E » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 18 | Teneur en vitamine K | « Vitamine K » ou « Vit K » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 19 | Teneur en thiamine | « Thiamine », « Thiamine (vitamine $B_1$) » ou « Thiamine (vit $B_1$) » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi : |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 20 | Teneur en riboflavine | « Riboflavine », « Riboflavine (vitamine $B_2$) » ou « Riboflavine (vit $B_2$) » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 21 | Teneur en niacine | « Niacine » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 22 | Teneur en vitamine $B_6$ | « Vitamine $B_6$ » ou « Vit $B_6$ » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 23 | Teneur en folate | « Folate » | La teneur est exprimée :<br>a) en microgrammes d'équivalents de folate alimentaire (ÉFA) par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 µg ÉFA : à 0 µg ÉFA;<br>b) lorsqu'elle est égale ou supérieure à 1 µg ÉFA mais moins de 10 µg ÉFA : au plus proche multiple de 2 µg ÉFA;<br>c) lorsqu'elle est égale ou supérieure à 10 µg ÉFA mais moins de 50 µg ÉFA : au plus proche multiple de 5 µg ÉFA;<br>d) lorsqu'elle est égale ou supérieure à 50 µg ÉFA : au plus proche multiple de 10 µg ÉFA.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg ÉFA » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 24 | Teneur en vitamine $B_{12}$ | « Vitamine $B_{12}$ » ou « Vit $B_{12}$ » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 µg mais moins de 0,05 µg : au plus proche multiple de 0,01 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,25 µg : au plus proche multiple de 0,025 µg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 µg : au plus proche multiple de 0,05 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 25 | Teneur en biotine | « Biotine » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 26 | Teneur en acide pantothénique | « Acide pantothénique » ou « Pantothénate » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,01 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,01 mg mais moins de 0,1 mg : au plus proche multiple de 0,02 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,1 mg mais moins de 0,5 mg : au plus proche multiple de 0,05 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,5 mg : au plus proche multiple de 0,1 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 27 | Teneur en choline | « Choline » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 1 mg mais moins de 10 mg : au plus proche multiple de 2 mg;<br>c) lorsqu'elle est égale ou supérieure à 10 mg mais moins de 50 mg : au plus proche multiple de 5 mg;<br>d) lorsqu'elle est égale ou supérieure à 50 mg : au plus proche multiple de 10 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 28 | Teneur en phosphore | « Phosphore » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée; | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | b) en pourcentage de la valeur quotidienne par portion indiquée. | b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 29 | Teneur en iode | « Iodure » ou « Iode » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 1 µg mais moins de 10 µg : au plus proche multiple de 2 µg;<br>c) lorsqu'elle est égale ou supérieure à 10 µg mais moins de 50 µg : au plus proche multiple de 5 µg;<br>d) lorsqu'elle est égale ou supérieure à 50 µg : au plus proche multiple de 10 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 30 | Teneur en magnésium | « Magnésium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 1 mg mais moins de 10 mg : au plus proche multiple de 2 mg;<br>c) lorsqu'elle est égale ou supérieure à 10 mg mais moins de 50 mg : au plus proche multiple de 5 mg;<br>d) lorsqu'elle est égale ou supérieure à 50 mg : au plus proche multiple de 10 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 31 | Teneur en zinc | « Zinc » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 32 | Teneur en sélénium | « Sélénium » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,1 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,1 µg mais moins de 1 µg : au plus proche multiple de 0,2 µg;<br>c) lorsqu'elle est égale ou supérieure à 1 µg mais moins de 5 µg : au plus proche multiple de 0,5 µg;<br>d) lorsqu'elle est égale ou supérieure à 5 µg : au plus proche multiple de 1 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur, déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 33 | Teneur en cuivre | « Cuivre » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,0015 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,0015 mg mais moins de 0,025 mg : au plus proche multiple de 0,002 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,025 mg mais moins de 0,05 mg : au plus proche multiple de 0,005 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,05 mg : au plus proche multiple de 0,01 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | b) dans les autres cas : au plus proche multiple de 1 %. |
| 34 | Teneur en manganèse | « Manganèse » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 35 | Teneur en chrome | « Chrome » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 36 | Teneur en molybdène | « Molybdène » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | (2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 37 | Teneur en chlorure | « Chlorure » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |

SOR/2003-11, s. 20; err., Vol. 137, No. 5; SOR/2005-98, s. 2(F); SOR/2016-305, ss. 19, 75(F); SOR/2018-108, s. 395.

DORS/2003-11, art. 20; err., Vol. 137, nº 5; DORS/2005-98, art. 2(F); DORS/2016-305, art. 19 et 75(F); DORS/2018-108, art. 395.

## Foods for Infants Six Months of Age or Older but Less Than One Year of Age

[SOR/2016-305, s. 20]

**B.01.403 (1)** This section applies to a prepackaged product that is intended solely for infants six months of age or older but less than one year of age.

**(2)** The nutrition facts table of the prepackaged product shall not contain the percentage of the daily value of fat, fibre, sugars, cholesterol or sodium or of the sum of saturated fatty acids and *trans* fatty acids.

**(3)** The nutrition facts table of the product may omit the amount of saturated fatty acids, *trans* fatty acids and cholesterol.

**(4)** Despite subsection (3), if the amount of cholesterol is in the nutrition facts table, the amounts of saturated fatty acids and *trans* fatty acids shall also be in the nutrition facts table.

## Aliments pour bébés âgés d'au moins six mois mais de moins d'un an

[DORS/2016-305, art. 20]

**B.01.403 (1)** Le présent article s'applique à tout produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an.

**(2)** Le tableau de la valeur nutritive du produit préemballé ne peut indiquer le pourcentage de la valeur quotidienne des lipides, des fibres, des sucres, du cholestérol, du sodium ou de la somme des acides gras saturés et des acides gras *trans*.

**(3)** Les teneurs en acides gras saturés, en acides gras *trans* et en cholestérol peuvent être omises du tableau de la valeur nutritive.

**(4)** Malgré le paragraphe (3), le tableau de la valeur nutritive qui indique la teneur en cholestérol doit également indiquer la teneur en acides gras saturés et la teneur en acides gras *trans*.

**(5)** If the information in respect of five or more of the energy value and nutrients referred to in column 1 of items 2, 3 and 8 to 15 of the table to section B.01.401 may be expressed as "0" in the nutrition facts table of the prepackaged product in accordance with that section, the nutrition facts table need only include the following information:

**(a)** the serving of stated size;

**(b)** the energy value;

**(c)** the amount of fat;

**(d)** the amount of carbohydrate;

**(e)** the amount of protein;

**(f)** the amount of any nutrient that is the subject of a representation referred to in subparagraph B.01.401(3)(e)(ii);

**(g)** the amount of any sugar alcohol, vitamin or mineral nutrient added to the product, other than fluoride added to prepackaged water or ice;

**(h)** the amount of any vitamin or mineral nutrient that is declared as a component of one of the product's ingredients other than flour;

**(i)** the amount of any nutrient referred to in column 1 of any of items 8, 10 or 11 and 13 to 15 of the table to section B.01.401 that may not be expressed as "0" in the nutrition facts table;

**(j)** except in the case described in paragraph (k), the statement "Not a significant source of (naming each nutrient that is omitted from the nutrition facts table in accordance with this subsection)", but such a statement may be omitted in respect of saturated fatty acids, *trans* fatty acids and cholesterol; and

**(k)** if the product meets the condition specified in subsection B.01.462(3), the statement "Not a significant source of other nutrients" or the statement referred to in paragraph (j).

SOR/2003-11, s. 20; SOR/2016-305, ss. 21, 75(F).

**(5)** Si au moins cinq des renseignements relatifs à la valeur énergétique et aux éléments nutritifs visés à la colonne 1 des articles 2, 3 et 8 à 15 du tableau de l'article B.01.401 peuvent être exprimés, conformément à cet article, par « 0 » au tableau de la valeur nutritive du produit préemballé, le tableau peut ne contenir que les renseignements suivants :

**a)** la portion indiquée;

**b)** la valeur énergétique;

**c)** la teneur en lipides;

**d)** la teneur en glucides;

**e)** la teneur en protéines;

**f)** la teneur en tout élément nutritif qui fait l'objet d'une des déclarations visées au sous-alinéa B.01.401(3)e)(ii);

**g)** la teneur en un polyalcool, en une vitamine ou en un minéral nutritif ajoutés au produit, à l'exclusion du fluorure ajouté à de l'eau ou à de la glace préemballées;

**h)** la teneur en une vitamine ou en un minéral nutritif déclaré comme constituant d'un ingrédient du produit, à l'exclusion de la farine;

**i)** la teneur en tout élément nutritif visé à la colonne 1 des articles 8, 10, 11 et 13 à 15 du tableau de l'article B.01.401 qui ne peut être exprimée par « 0 » au tableau de la valeur nutritive;

**j)** sauf dans le cas mentionné à l'alinéa k), la mention « Source négligeable de (désignation de tout élément nutritif omis conformément au présent paragraphe) »; la mention peut toutefois être omise en ce qui concerne les acides gras saturés, les acides gras *trans* et le cholestérol;

**k)** si le produit remplit les conditions du paragraphe B.01.462(3), la mention « Source négligeable d'autres éléments nutritifs » ou la mention visée à l'alinéa j).

DORS/2003-11, art. 20; DORS/2016-305, art. 21 et 75(F).

## Food for Use in Manufacturing Other Foods

**B.01.404 (1)** Subject to section B.29.004, this section applies to a prepackaged product intended solely for use as an ingredient in the manufacture of other prepackaged products intended for sale to a consumer at the retail level or as an ingredient in the preparation of food by a commercial or industrial enterprise or an institution.

## Aliments utilisés dans la fabrication d'autres aliments

**B.01.404 (1)** Sous réserve de l'article B.29.004, le présent article s'applique à tout produit préemballé qui est destiné uniquement à être utilisé comme ingrédient dans la fabrication d'autres produits préemballés destinés à être vendus au consommateur au niveau du commerce de

**(2)** No person shall sell the product unless written nutrition information concerning the product accompanies the product when it is delivered to the purchaser.

**(3)** The nutrition information

**(a)** shall include the information that would, but for subsection B.01.401(7), be required by sections B.01.401 and B.01.402 to be included in a nutrition facts table for the product;

**(b)** may include other information that is permitted by section B.01.402 to be included in that nutrition facts table; and

**(c)** shall be expressed in accordance with sections B.01.401 and B.01.402, subject to the following modifications, namely,

**(i)** information for vitamins referred to in subsection D.01.002(1) shall be expressed in the applicable unit referred to in subsection D.01.003(1), and information for mineral nutrients referred to in paragraphs D.02.001(1)(a) to (j), (l) to (n) and (p) shall be expressed in milligrams for sodium, potassium, calcium, phosphorus, magnesium, iron, zinc, chloride, copper and manganese and in micrograms for iodide, chromium, selenium and molybdenum,

**(A)** per gram or 100 grams of the food, if the net quantity of the food is declared on the label by weight or by count, or

**(B)** per millilitre or 100 millilitres of the food, if the net quantity of the food is declared on the label by volume,

**(ii)** information for other nutrients and the energy value set out in column 1 of the table to section B.01.401 or in column 1 of the table to section B.01.402 shall be expressed in the units referred to in column 3,

**(A)** per gram or 100 grams of the food, if the net quantity of the food is declared on the label by weight or by count, or

**(B)** per millilitre or 100 millilitres of the food, if the net quantity of the food is declared on the label by volume,

détail ou comme ingrédient dans la préparation d'aliments par une entreprise commerciale ou industrielle ou par une institution.

**(2)** Il est interdit de vendre le produit préemballé à moins que des renseignements nutritionnels écrits concernant le produit l'accompagnent lors de sa livraison à l'acheteur.

**(3)** Les renseignements nutritionnels :

**a)** comprennent ceux que le tableau de la valeur nutritive indiquerait, n'eût été le paragraphe B.01.401(7), aux termes des articles B.01.401 et B.01.402;

**b)** peuvent comprendre ceux que le tableau de la valeur nutritive peut indiquer aux termes de l'article B.01.402;

**c)** sont présentés conformément aux articles B.01.401 et B.01.402, sous réserve des modifications suivantes :

**(i)** les renseignements concernant les vitamines mentionnées au paragraphe D.01.002(1) sont exprimés au moyen de l'unité applicable indiquée au paragraphe D.01.003(1) et ceux concernant les minéraux nutritifs figurant aux alinéas D.02.001(1)a) à j), l) à n) et p) sont exprimés en milligrammes pour le sodium, le potassium, le calcium, le phosphore, le magnésium, le fer, le zinc, le chlore, le cuivre et le manganèse et en microgrammes pour l'iode, le chrome, le sélénium et le molybdène,

**(A)** par gramme ou 100 grammes de l'aliment, dans le cas où la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(B)** par millilitre ou 100 millilitres de l'aliment, dans le cas où la quantité nette de l'aliment est mentionnée en volume sur l'étiquette,

**(ii)** les renseignements concernant les autres éléments nutritifs ainsi que la valeur énergétique, figurant à la colonne 1 des tableaux des articles B.01.401 ou B.01.402 sont exprimés au moyen d'une unité visée à la colonne 3 :

**(A)** par gramme ou 100 grammes de l'aliment, dans le cas où la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(B)** par millilitre ou 100 millilitres de l'aliment, dans le cas où la quantité nette de l'aliment est mentionnée en volume sur l'étiquette,

**(iii)** percentages of daily values and information on servings of stated size may be omitted, and

**(iv)** the nutrition information shall be stated with a degree of precision that corresponds to the accuracy of the analytical methodology used to produce the information.

SOR/2003-11, s. 20; SOR/2016-305, ss. 22, 73, 75(F); SOR/2022-169, s. 16.

## Foods for Enterprise or Institution

**B.01.405 (1)** This section applies to a prepackaged product, other than a supplemented food, that is a ready-to-serve multiple-serving prepackaged product intended solely to be served in a commercial or industrial enterprise or an institution.

**(2)** No person shall sell the product unless written nutrition information concerning the product accompanies the product when it is delivered to the purchaser.

**(3)** The nutrition information

**(a)** shall include the information that would, but for subsection B.01.401(7), be required by sections B.01.401 and B.01.402 to be included in a nutrition facts table for the product;

**(b)** may include other information that is permitted by section B.01.402 to be included in that nutrition facts table; and

**(c)** shall be expressed in accordance with sections B.01.401 and B.01.402.

SOR/2003-11, s. 20; SOR/2016-305, s. 23; SOR/2022-169, s. 17.

## Basis of Information

**B.01.406 (1)** Subject to subsections (2) to (8), the information in the nutrition facts table shall be set out only on the basis of the prepackaged product as offered for sale.

**(2)** If a prepackaged product contains separately packaged ingredients or foods that are intended to be consumed together, the information in the nutrition facts table shall be set out for each ingredient or food or for the entire product.

**(3)** If a prepackaged product contains an assortment of foods of the same type and the typical serving consists of only one of those foods, the information in the nutrition facts table shall be set out

**(iii)** le pourcentage de la valeur quotidienne et les renseignements concernant la portion indiquée peuvent être omis,

**(iv)** les renseignements nutritionnels sont indiqués avec un degré de précision qui correspond à la précision des méthodes analytiques utilisées pour produire ces renseignements.

DORS/2003-11, art. 20; DORS/2016-305, art. 22, 73 et 75(F); DORS/2022-169, art. 16.

## Aliments pour entreprise ou institution

**B.01.405 (1)** Le présent article s'applique à tout produit préemballé à portions multiples — autre qu'un aliment supplémenté — prêt à servir et destiné uniquement à être servi par une entreprise commerciale ou industrielle ou par une institution.

**(2)** Il est interdit de vendre le produit préemballé à moins que des renseignements nutritionnels écrits concernant le produit l'accompagnent lors de sa livraison à l'acheteur.

**(3)** Les renseignements nutritionnels :

**a)** comprennent ceux que le tableau de la valeur nutritive indiquerait, n'eût été le paragraphe B.01.401(7), aux termes des articles B.01.401 et B.01.402;

**b)** peuvent comprendre ceux que le tableau de la valeur nutritive peut indiquer en vertu de l'article B.01.402;

**c)** sont présentés conformément aux articles B.01.401 et B.01.402.

DORS/2003-11, art. 20; DORS/2016-305, art. 23; DORS/2022-169, art. 17.

## Objet des renseignements

**B.01.406 (1)** Sous réserve des paragraphes (2) à (8), le tableau de la valeur nutritive indique les renseignements uniquement en fonction du produit préemballé tel qu'il est vendu.

**(2)** Le tableau de la valeur nutritive de tout produit préemballé qui comprend des ingrédients ou des aliments emballés séparément et destinés à être consommés ensemble indique les renseignements en fonction soit de chaque ingrédient ou aliment, soit du produit dans son ensemble.

**(3)** Le tableau de la valeur nutritive de tout produit préemballé qui contient un assortiment d'aliments du même type et dont la portion typique ne comprend qu'un de ces aliments indique les renseignements en fonction :

**(a)** on the basis of each of the foods contained in the product, if the nutrition information set out in column 1 of the table to section B.01.401 for each of those foods is different; or

**(b)** on the basis of one of the foods contained in the product, if the nutrition information set out in column 1 of the table to section B.01.401 for each of those foods is the same.

**(4)** If a prepackaged product contains an assortment of foods of the same type and the typical serving consists of more than one of those foods, the information in the nutrition facts table shall be set out for each of the foods contained in the product or as a composite value.

**(5)** If a prepackaged product contains a food that is to be prepared in accordance with directions provided in or on the package or that is commonly combined with other ingredients or another food or cooked before being consumed, the nutrition facts table may also set out information for the food as prepared, in which case

**(a)** the nutrition facts table shall set out the following information for the food as prepared, namely,

**(i)** except in the case described in subparagraph (ii), the amount of the food expressed using the unit referred to in column 3 of subparagraph 1(b)(i) of the table to section B.01.401 as "about (naming the serving size)" or "about (naming the serving size) prepared" and, if applicable, in the manner specified in column 4 of subitems 1(1) and (2), and

**(ii)** if the food is commonly served combined with another food, the amount of the other food expressed using the unit referred to in column 3 of subparagraph 1(b)(i) of the table to section B.01.401,

**(iii)** the energy value, expressed using a description set out in column 2 of item 2 of the table to section B.01.401, in the unit set out in column 3 and in the manner set out in column 4, and

**(iv)** the information set out in column 1 of items 3, 6 to 8, 11 and 13 to 15 of the table to section B.01.401 and in column 1 of items 14 to 37 of the table to section B.01.402 that is declared as a percentage of the daily value in the nutrition facts table for the food as sold, expressed using a description set out in column 2, as a percentage of the daily value per serving of stated size and in the manner specified in column 4; and

**(v)** [Repealed, SOR/2016-305, s. 24]

**a)** de chaque aliment dans le produit, lorsque les renseignements nutritionnels figurant à la colonne 1 du tableau de l'article B.01.401 sont différents pour chaque aliment;

**b)** d'un aliment dans le produit, lorsque les renseignements nutritionnels figurant à la colonne 1 du tableau de l'article B.01.401 sont les mêmes pour chaque aliment.

**(4)** Le tableau de la valeur nutritive de tout produit préemballé qui contient un assortiment d'aliments du même type et dont la portion typique comprend plus d'un de ces aliments indique les renseignements qui correspondent soit à la valeur de chaque aliment, soit à une valeur composée.

**(5)** Le tableau de la valeur nutritive de tout produit préemballé contenant un aliment à préparer selon des instructions fournies dans ou sur l'emballage, ou qui est normalement combiné avec d'autres ingrédients ou aliments ou cuit avant d'être consommé, peut également indiquer les renseignements en fonction de l'aliment une fois préparé, auquel cas :

**a)** le tableau indique les renseignements ci-après en fonction de l'aliment préparé :

**(i)** sauf dans le cas visé au sous-alinéa (ii), la quantité de l'aliment exprimée en l'unité visée à la colonne 3 du sous-alinéa 1b)(i) du tableau de l'article B.01.401, soit « environ (la portion indiquée) » ou « environ (la portion indiquée) préparé », et, s'il y a lieu, au moyen des règles d'écriture indiquées dans la colonne 4 des paragraphes 1(1) et (2),

**(ii)** si l'aliment est normalement combiné avec un autre aliment, la quantité de l'autre aliment exprimée en l'unité visée à la colonne 3 du sous-alinéa 1b)(i) du tableau de l'article B.01.401,

**(iii)** la valeur énergétique exprimée au moyen de la nomenclature indiquée dans la colonne 2 de l'article 2 du tableau de l'article B.01.401, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4,

**(iv)** les renseignements visés à la colonne 1 des articles 3, 6 à 8, 11 et 13 à 15 du tableau de l'article B.01.401 et à la colonne 1 des articles 14 à 37 du tableau de l'article B.01.402 et qui sont indiqués en pourcentage de la valeur quotidienne dans le tableau de la valeur nutritive en fonction de l'aliment tel qu'il est vendu, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en pourcentage de la valeur quotidienne par portion indiquée

**(b)** the nutrition facts table may also set out the following information for the added ingredients or the other food, if it is declared in the nutrition facts table for the food as sold, namely,

**(i)** the information set out in column 1 of items 3 to 5 and 7 to 12 of the table to section B.01.401, expressed using a description set out in column 2, in milligrams for the information set out in column 1 of items 7 and 8 and in grams for the information set out in column 1 of items 3 to 5 and 9 to 12 and in the manner specified in column 4,

**(ii)** the information set out in column 1 of items 5 to 8 and 10 to 13 of the table to section B.01.402, expressed using a description set out in column 2, in grams and in the manner specified in column 4; and

**(iii)** the information set out in column 1 of item 2 of the table to section B.01.401, expressed using a description set out in column 2, in the unit set out in column 3 per serving of stated size of the food as prepared, and in the manner specified in column 4.

**(6)** Subsection (5) does not apply in respect of a prepackaged product that is intended solely for infants six months of age or older but less than one year of age.

**(7)** Subject to subsection (8), the information in the nutrition facts table may also be set out on the basis of other amounts of a food that reflect different uses or different units of measurement of a food, in which case

**(a)** the nutrition facts table shall set out the following information for each of the other amounts of food, namely,

**(i)** the amount of the food expressed in a household measure and a metric measure and in the manner specified in column 4 of subitems 1(1) and (2) of the table to section B.01.401,

**(ii)** the energy value, expressed using a description set out in column 2 of item 2 of the table to section B.01.401, in the unit set out in column 3 and in the manner set out in column 4, and

**(iii)** the information set out in column 1 of items 3, 6 to 8, 11 and 13 to 15 of the table to section

et au moyen des règles d'écriture indiquées dans la colonne 4;

**(v)** [Abrogé, DORS/2016-305, art. 24]

**b)** le tableau peut également indiquer les renseignements ci-après en fonction des ingrédients ajoutés ou de l'autre aliment, s'ils sont déclarés dans le tableau de la valeur nutritive de l'aliment tel qu'il est vendu :

**(i)** les renseignements visés à la colonne 1 des articles 3 à 5 et 7 à 12 du tableau de l'article B.01.401, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en milligrammes pour ceux visés à la colonne 1 des articles 7 et 8 et en grammes pour ceux visés à la colonne 1 des articles 3 à 5 et 9 à 12 et au moyen des règles d'écriture indiquées dans la colonne 4,

**(ii)** les renseignements visés à la colonne 1 des articles 5 à 8 et 10 à 13 du tableau de l'article B.01.402, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en grammes et au moyen des règles d'écriture indiquées dans la colonne 4,

**(iii)** les renseignements visés à la colonne 1 de l'article 2 du tableau de l'article B.01.401, exprimés au moyen de la nomenclature indiquée dans la colonne 2, de l'unité indiquée dans la colonne 3, par portion indiquée de l'aliment préparé, et au moyen des règles d'écriture indiquées dans la colonne 4.

**(6)** Le paragraphe (5) ne s'applique pas aux produits préemballés destinés exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an.

**(7)** Sous réserve du paragraphe (8), le tableau de la valeur nutritive peut aussi indiquer les renseignements en fonction d'autres quantités de l'aliment qui correspondent à différents usages ou unités de mesure de l'aliment, auquel cas :

**a)** le tableau indique les renseignements ci-après pour chacune des autres quantités de l'aliment :

**(i)** la quantité exprimée selon une mesure domestique et une mesure métrique et au moyen des règles d'écriture indiquées dans la colonne 4 du tableau de l'article B.01.401, aux paragraphes 1(1) et (2),

**(ii)** la valeur énergétique, exprimée au moyen de la nomenclature indiquée dans la colonne 2 de l'article 2 du tableau de l'article B.01.401, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4,

B.01.401 and in column 1 of items 14 to 37 of the table to section B.01.402 that is declared as a percentage of the daily value in the nutrition facts table for the first amount of food for which information is declared, expressed using a description set out in column 2, as a percentage of the daily value per serving of stated size and in the manner specified in column 4; and

**(iv)** [Repealed, SOR/2016-305, s. 24]

**(b)** [Repealed, SOR/2016-305, s. 24]

**(c)** if the nutrition facts table is set out in a version of the aggregate format specified in section B.01.459 or B.01.464, it shall also set out the following information for each of the other amounts of food, if that information is declared in the nutrition facts table for the first amount of food for which information is declared, namely,

**(i)** [Repealed, SOR/2016-305, s. 24]

**(ii)** the information set out in column 1 of items 3 to 5 and 7 to 12 of the table to section B.01.401, expressed using a description set out in column 2, in milligrams for the information set out in column 1 of items 7 and 8 and in grams for the information set out in column 1 of items 3 to 5 and 9 to 12 and in the manner specified in column 4, and

**(iii)** the information set out in column 1 of items 5 to 8 and 10 to 13 of the table to section B.01.402, expressed using a description set out in column 2, in grams and in the manner specified in column 4.

**(8)** If the nutrition facts table of a prepackaged product that is intended solely for infants six months of age or older but less than one year of age sets out information in accordance with subsection (7), it shall set out the information referred to in paragraphs (7)(a) and (c).

SOR/2003-11, s. 20; SOR/2016-305, s. 24.

[**B.01.407** to **B.01.449** reserved]

## Presentation of Nutrition Facts Table

**B.01.450 (1)** Subject to subsections (2) to (6), the nutrition facts table shall be presented in accordance with the format specified in the applicable figure in the Directory

**(iii)** les renseignements visés à la colonne 1 des articles 3, 6 à 8, 11 et 13 à 15 du tableau de l'article B.01.401 et à la colonne 1 des articles 14 à 37 du tableau de l'article B.01.402 et qui sont indiqués en pourcentage de la valeur quotidienne dans le tableau de la valeur nutritive à l'égard de la première quantité d'aliment pour laquelle des renseignements sont déclarés, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en pourcentage de la valeur quotidienne par portion indiquée et au moyen des règles d'écriture indiquées dans la colonne 4;

**(iv)** [Abrogé, DORS/2016-305, art. 24]

**b)** [Abrogé, DORS/2016-305, art. 24]

**c)** si le tableau est présenté selon l'une des versions du modèle composé prévu aux articles B.01.459 ou B.01.464, il indique également les renseignements ci-après pour chacune des autres quantités de l'aliment, s'ils sont déclarés dans le tableau de la valeur nutritive à l'égard de la première quantité d'aliment pour laquelle des renseignements sont déclarés :

**(i)** [Abrogé, DORS/2016-305, art. 24]

**(ii)** les renseignements visés à la colonne 1 des articles 3 à 5 et 7 à 12 du tableau de l'article B.01.401, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en milligrammes pour ceux visés à la colonne 1 des articles 7 et 8 et en grammes pour ceux visés à la colonne 1 des articles 3 à 5 et 9 à 12, et au moyen des règles d'écriture indiquées dans la colonne 4,

**(iii)** les renseignements visés à la colonne 1 des articles 5 à 8 et 10 à 13 du tableau de l'article B.01.402, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en grammes et au moyen des règles d'écriture indiquées dans la colonne 4.

**(8)** Le tableau de la valeur nutritive d'un produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an qui indique des renseignements conformément au paragraphe (7) indique les renseignements visés aux alinéas (7)a) et c).

DORS/2003-11, art. 20; DORS/2016-305, art. 24.

[**B.01.407** à **B.01.449** réservés]

## Présentation du tableau de la valeur nutritive

**B.01.450 (1)** Sous réserve des paragraphes (2) à (6), le tableau de la valeur nutritive est présenté selon le modèle de la figure applicable du Répertoire des modèles de

of NFT Formats, having regard to matters such as order of presentation, dimensions, spacing and the use of upper and lower case letters and bold type.

**(2)** The characters and rules in the nutrition facts table shall be displayed in a single colour that is a visual equivalent of 100% solid black type on a white background or on a uniform neutral background with a maximum 5% tint of colour.

**(3)** The characters in the nutrition facts table

**(a)** shall be displayed in a single standard sans serif font that is not decorative and in such a manner that the characters never touch each other or the rules; and

**(b)** may be displayed with larger dimensions than those specified in the applicable figure in the Directory of NFT Formats if all the characters in the table are enlarged in a uniform manner.

**(3.1)** The type size shown in parentheses for a version referred to in a table to sections B.01.454 to B.01.459 or sections B.01.461 to B.01.464 is the minimum type size that may be used in a nutrition facts table to show nutrients set out in the tables to sections B.01.401 and B.01.402 in accordance with that version.

**(4)** A rule that is specified in the applicable figure in the Directory of NFT Formats as being a 1 point rule or a 2 point rule may be displayed with larger dimensions in the nutrition facts table.

**(5)** The information in the nutrition facts table shall be in accordance with sections B.01.400 to B.01.403 and B.01.406.

**(6)** In a nutrition facts table consisting of a table in both English and French, the order of languages may be reversed from the order shown in the applicable figure in the Directory of NFT Formats.

SOR/2003-11, s. 20; SOR/2016-305, ss. 25, 74.

TVN, compte tenu notamment de l'ordre de présentation, des dimensions, des espacements et de l'emploi des majuscules, des minuscules et des caractères gras.

**(2)** Les caractères et les filets du tableau de la valeur nutritive sont monochromes et équivalent visuellement à de l'imprimerie noire en aplat de 100 % sur un fond blanc ou de couleur de teinte neutre et uniforme d'au plus 5 %.

**(3)** Les caractères dans le tableau de la valeur nutritive :

**a)** sont normalisés, sans empattement, non décoratifs et inscrits de manière à ce qu'ils ne se touchent pas et ne touchent pas les filets;

**b)** peuvent être de dimensions plus grandes que ceux indiqués dans la figure applicable du Répertoire des modèles de TVN si tous les caractères sont agrandis de façon uniforme.

**(3.1)** La taille des caractères qui est indiquée entre parenthèses pour une version prévue à un tableau des articles B.01.454 à B.01.459 et B.01.461 à B.01.464 représente la taille minimale des caractères à utiliser, dans le tableau de la valeur nutritive, pour indiquer les éléments nutritifs figurant aux tableaux des articles B.01.401 et B.01.402 conformément à cette version.

**(4)** Un filet de un ou deux points visé à la figure applicable du Répertoire des modèles de TVN peut avoir une force de corps plus grande dans le tableau de la valeur nutritive.

**(5)** Le tableau de la valeur nutritive indique les renseignements conformément aux articles B.01.400 à B.01.403 et B.01.406.

**(6)** L'ordre de la langue indiqué dans la figure applicable du Répertoire des modèles de TVN peut être inversé lorsque le tableau de la valeur nutritive est composé d'un tableau en français et en anglais.

DORS/2003-11, art. 20; DORS/2016-305, art. 25 et 74.

## Location of Nutrition Facts Table

**B.01.451 (1)** Subject to subsection (2), the nutrition facts table shall be displayed on the label of the prepackaged product

**(a)** in a table in English and a table in French on the same continuous surface of the available display surface;

**(b)** in a table in both English and French on a continuous surface of the available display surface; or

## Emplacement du tableau de la valeur nutritive

**B.01.451 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive est présenté sur l'étiquette du produit préemballé :

**a)** dans un tableau en français et un tableau en anglais sur le même espace continu de la surface exposée disponible;

**b)** dans un tableau en français et en anglais sur tout espace continu de la surface exposée disponible;

**(c)** in a table in English on a continuous surface of the available display surface and a table in French on another continuous surface of the available display surface that is of the same size and prominence as the first surface.

**(2)** If in accordance with subsection B.01.012(3) or (7) the information required by these Regulations may be shown on the label of a prepackaged product in English only or in French only and is shown in that language, the nutrition facts table may be displayed on the label of the prepackaged product in a table in that language only on a continuous surface of the available display surface.

SOR/2003-11, s. 20.

**c)** dans un tableau en français sur tout espace continu de la surface exposée disponible et un tableau en anglais sur tout autre espace continu de cette surface de même grandeur et de même importance que le premier espace.

**(2)** Si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette d'un produit préemballé aux termes du présent règlement peuvent l'être uniquement en français ou uniquement en anglais et qu'ils y figurent dans la langue en cause, le tableau de la valeur nutritive du produit peut être présenté sur l'étiquette du produit uniquement dans cette langue sur tout espace continu de la surface exposée disponible.

DORS/2003-11, art. 20.

### Orientation of Nutrition Facts Table

**B.01.452 (1)** Subject to subsection (2), the nutrition facts table shall be oriented in the same manner as other information appearing on the label of the prepackaged product.

**(2)** If a version of a nutrition facts table cannot be oriented in the same manner as other information appearing on the label of the prepackaged product, it shall be oriented in another manner if there is sufficient space to do so and the food contained in the package does not leak out and is not damaged when the package is turned over.

**(3)** Subsection (1) does not apply in respect of a nutrition facts table that is set out on the top or bottom of a prepackaged product.

SOR/2003-11, s. 20.

### Orientation du tableau de la valeur nutritive

**B.01.452 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive est orienté dans le même sens que les autres renseignements figurant sur l'étiquette du produit préemballé.

**(2)** Dans le cas où une version du tableau de la valeur nutritive ne peut être orientée dans le même sens que les autres renseignements figurant sur l'étiquette du produit préemballé, elle est orientée dans un autre sens s'il y a suffisamment d'espace et si le contenu ne fuit pas ou n'est pas endommagé lorsque l'emballage est retourné.

**(3)** Le paragraphe (1) ne s'applique pas au tableau de la valeur nutritive présenté sur le dessus ou le dessous du produit préemballé.

DORS/2003-11, art. 20.

### Application

**B.01.453 (1)** Sections B.01.454 to B.01.460 apply to prepackaged products other than those that are intended solely for infants six months of age or older but less than one year of age.

**(2)** Sections B.01.461 to B.01.465 apply to prepackaged products that are intended solely for infants six months of age or older but less than one year of age.

SOR/2003-11, s. 20; SOR/2016-305, s. 26.

### Application

**B.01.453 (1)** Les articles B.01.454 à B.01.460 s'appliquent aux produits préemballés autres que ceux destinés exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an.

**(2)** Les articles B.01.461 à B.01.465 s'appliquent aux produits préemballés destinés exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an.

DORS/2003-11, art. 20; DORS/2016-305, art. 26.

### Standard and Horizontal Formats

**B.01.454 (1)** This section applies to a prepackaged product unless any of sections B.01.455 to B.01.459 applies to the product.

### Modèles standard et horizontal

**B.01.454 (1)** Le présent article s'applique à tout produit préemballé à moins que l'un des articles B.01.455 à B.01.459 s'y applique.

**(2)** Subject to subsection (3), the nutrition facts table of the prepackaged product shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual standard format in accordance with Figure 3.5(B), 3.6(B) or 3.7(B) of the Directory of NFT Formats;

**(b)** the bilingual horizontal format in accordance with Figure 4.3(B), 4.4(B) or 4.5(B) of the Directory of NFT Formats;

**(c)** the linear format in accordance with Figures 16.1(E) and (F) or 16.2(E) and (F) of the Directory of NFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table; or

**(e)** a manner described in section B.01.466.

**(4)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included in that table.

**(5)** Despite subsections (2) and (3), if the prepackaged product is sold only in the retail establishment where the product is packaged, is labelled by means of a sticker and has an available display surface of 200 $cm^2$ or more, its nutrition facts table shall be set out in a version that is listed in column 1 of items 1 to 3 of Parts 1 to 3 of the table to this section, without regard to any condition specified in column 2.

**(6)** Despite subsections (2) and (3), if the nutrition facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in paragraph (3)(a), (b) or (c) or that is

**(2)** Sous réserve du paragraphe (3), le tableau de la valeur nutritive du produit préemballé est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une ou l'autre des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**a)** selon le modèle standard bilingue prévu aux figures 3.5(B), 3.6(B) ou 3.7(B) du Répertoire des modèles de TVN;

**b)** selon le modèle horizontal bilingue prévu aux figures 4.3(B), 4.4(B) ou 4.5(B) du Répertoire des modèles de TVN;

**c)** selon le modèle linéaire prévu aux figures 16.1(F) et (A) ou 16.2(F) et (A) du Répertoire des modèles de TVN;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.01.466.

**(4)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement.

**(5)** Malgré les paragraphes (2) et (3), si le produit préemballé, dont l'étiquette est un autocollant et dont la surface exposée disponible est de 200 $cm^2$ ou plus, est vendu uniquement dans l'établissement de détail où il est emballé, le tableau de la valeur nutritive est présenté selon l'une des versions figurant à la colonne 1 des articles 1 à 3 des parties 1 à 3 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

**(6)** Malgré les paragraphes (2) et (3), si le tableau de la valeur nutritive du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il

listed in column 1 of the table to this section, without regard to any condition specified in column 2.

## TABLE

### PART 1

### Standard Format

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 1.1(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 1.2(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 1.3(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 1.4(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 1.5(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 1.6(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

est présenté selon l'une des versions prévues aux alinéas (3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLEAU

### PARTIE 1

### Modèle standard

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 1.1(F) et (A)<br><br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 1.2(F) et (A)<br><br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 1.3(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 1.4(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 1.5(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 1.6(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

### Narrow Standard Format

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 2.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 2.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 2.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 2.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 3

### Bilingual Standard Format

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 3.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 3.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 3.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 3.4(B) | The versions in items 1 to 3 cannot be displayed in |

## PARTIE 2

### Modèle standard étroit

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 2.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 2.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 2.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 2.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 3

### Modèle standard bilingue

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 3.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 3.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 3.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| | (nutrients to be shown in a type size of not less than 6 points (condensed)) | accordance with these Regulations on 15% or less of the available display surface. |

**PART 4**

**Bilingual Horizontal Format**

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 4.1(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in Parts 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 4.2(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in Parts 1 to 3 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 27, 74.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 4 | 3.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PARTIE 4**

**Modèle horizontal bilingue**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 4.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des parties 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 4.2(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des parties 1 à 3 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 27 et 74.

## Simplified Formats

**B.01.455 (1)** This section applies to a prepackaged product if it satisfies the condition set out in subsection B.01.401(6) and its nutrition facts table includes only the information referred to in paragraphs B.01.401(6)(a) to (j).

**(2)** Subject to subsection (3), the nutrition facts table of the prepackaged product shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table containing only the information referred to in paragraphs B.01.401(6)(a) to (j) in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

## Modèles simplifiés

**B.01.455 (1)** Le présent article s'applique à tout produit préemballé qui remplit la condition du paragraphe B.01.401(6) et dont le tableau de la valeur nutritive ne contient que les renseignements visés aux alinéas B.01.401(6)a) à j).

**(2)** Sous réserve du paragraphe (3), le tableau de la valeur nutritive du produit préemballé est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** Si le tableau de la valeur nutritive qui ne contient que les renseignements visés aux alinéas B.01.401(6)a) à j) ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**(a)** the bilingual simplified standard format in accordance with Figure 6.5(B) or 6.6(B) of the Directory of NFT Formats;

**(b)** the bilingual simplified horizontal format in accordance with Figure 7.3(B) or 7.4(B) of the Directory of NFT Formats;

**(c)** the simplified linear format in accordance with Figures 17.1(E) and (F) or 17.2(E) and (F) of the Directory of NFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table; or

**(e)** a manner described in section B.01.466.

**(4)** Despite subsections (2) and (3), if the prepackaged product is sold only in the retail establishment where the product is packaged, is labelled by means of a sticker and has an available display surface of 200 $cm^2$ or more, its nutrition facts table shall be set out in a version that is listed in column 1 of items 1 to 3 of Parts 1 and 2 of the table to this section, without regard to any condition specified in column 2.

**(5)** Despite subsections (2) and (3), if the nutrition facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in paragraph (3)(a), (b) or (c) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

**a)** selon le modèle standard simplifié bilingue prévu aux figures 6.5(B) ou 6.6(B) du Répertoire des modèles de TVN;

**b)** selon le modèle horizontal simplifié bilingue prévu aux figures 7.3(B) ou 7.4(B) du Répertoire des modèles de TVN;

**c)** selon le modèle linéaire simplifié prévu aux figures 17.1(F) et (A) ou 17.2(F) et (A) du Répertoire des modèles de TVN;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.01.466.

**(4)** Malgré les paragraphes (2) et (3), si le produit préemballé, dont l'étiquette est un autocollant et dont la surface exposée disponible est de 200 $cm^2$ ou plus, est vendu uniquement dans l'établissement de détail où il est emballé, le tableau de la valeur nutritive est présenté selon l'une des versions figurant à la colonne 1 des articles 1 à 3 des parties 1 et 2 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

**(5)** Malgré les paragraphes (2) et (3), si le tableau de la valeur nutritive du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues aux alinéas (3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Simplified Standard Format

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 5.1(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 8 points) | |

## TABLEAU

### PARTIE 1

### Modèle standard simplifié

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 5.1(F) et (A)<br><br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 2 | 5.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 5.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 5.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 5.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 5.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 2 | 5.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 5.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 5.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 5.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 5.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

## Bilingual Simplified Standard Format

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 6.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 6.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 6.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PARTIE 2

## Modèle standard simplifié bilingue

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 6.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 6.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 6.3(B) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 4 | 6.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

**PART 3**

**Bilingual Simplified Horizontal Format**

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 7.1(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in Parts 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 7.2(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in Parts 1 and 2 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 28, 74.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères étroits d'au moins 7 points) | de la surface exposée disponible. |
| 4 | 6.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PARTIE 3**

**Modèle horizontal simplifié bilingue**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 7.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des parties 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 7.2(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des parties 1 et 2 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 28 et 74.

## Simplified Formats — Single-serving Prepackaged Products

**B.01.455.1 (1)** This section applies to a single-serving prepackaged product, other than one that is a prepackaged meal, whose nutrition facts table includes only the information referred to in paragraphs B.01.401(6.1)(a) to (j).

**(2)** Subject to subsection (3), the nutrition facts table of the single-serving prepackaged product shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(3)** If it is not possible to display, in accordance with these Regulations, on 15% or less of the available display surface of the single-serving prepackaged product a

## Modèles simplifiés — produits préemballés à portion individuelle

**B.01.455.1 (1)** Le présent article s'applique à tout produit préemballé à portion individuelle autre qu'un repas préemballé dont le tableau de la valeur nutritive ne contient que les renseignements visés aux alinéas B.01.401(6.1)a) à j).

**(2)** Sous réserve du paragraphe (3), le tableau de la valeur nutritive du produit préemballé à portion individuelle est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** Si le tableau de la valeur nutritive qui ne contient que les renseignements visés aux alinéas B.01.401(6.1)a) à j) ne peut être présenté conformément au présent

nutrition facts table containing only the information referred to in paragraphs B.01.401(6.1)(a) to (j) in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual simplified standard format in accordance with Figure 6.5.1(B) or 6.6.1(B) of the Directory of NFT Formats;

**(b)** the bilingual simplified horizontal format in accordance with Figure 7.3.1(B) or 7.4.1(B) of the Directory of NFT Formats;

**(c)** the simplified linear format in accordance with Figures 17.1.1(E) and (F) or 17.2.1(E) and (F) of the Directory of NFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table; or

**(e)** a manner described in section B.01.466.

**(4)** Despite subsections (2) and (3), if the single-serving prepackaged product is sold only in the retail establishment where the product is packaged, is labelled by means of a sticker and has an available display surface of 200 $cm^2$ or more, its nutrition facts table shall be set out in a version that is listed in column 1 of items 1 to 3 of Part 1 of the table to this section, without regard to any condition specified in column 2.

**(5)** Despite subsections (2) and (3), if the nutrition facts table of the single-serving prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in paragraph (3)(a), (b) or (c) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé à portion individuelle selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**a)** selon le modèle standard simplifié bilingue prévu aux figures 6.5.1(B) ou 6.6.1(B) du Répertoire des modèles de TVN;

**b)** selon le modèle horizontal simplifié bilingue prévu aux figures 7.3.1(B) ou 7.4.1(B) du Répertoire des modèles de TVN;

**c)** selon le modèle linéaire simplifié prévu aux figures 17.1.1(F) et (A) ou 17.2.1(F) et (A) du Répertoire des modèles de TVN;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.01.466.

**(4)** Malgré les paragraphes (2) et (3), si le produit préemballé à portion individuelle, dont l'étiquette est un autocollant et dont la surface exposée disponible est de 200 $cm^2$ ou plus, est vendu uniquement dans l'établissement de détail où il est emballé, le tableau de la valeur nutritive est présenté selon l'une des versions figurant à la colonne 1 des articles 1 à 3 de la partie 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

**(5)** Malgré les paragraphes (2) et (3), si le tableau de la valeur nutritive du produit préemballé à portion individuelle est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues aux alinéas (3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Bilingual Simplified Standard Format — Single-serving Prepackaged Products

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 6.1.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 6.2.1(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 6.3.1(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 6.4.1(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

### PART 2

### Bilingual Simplified Horizontal Format — Single-serving Prepackaged Products

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 7.1.1(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in Part 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 7.2.1(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in Part 1 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2016-305, s. 29.

## TABLEAU

### PARTIE 1

### Modèle standard simplifié bilingue — produits préemballés à portion individuelle

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 6.1.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 6.2.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 6.3.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 6.4.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

### PARTIE 2

### Modèle horizontal simplifié bilingue — produits préemballés à portion individuelle

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 7.1.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions de la partie 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 7.2.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions de la partie 1 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2016-305, art. 29.

## Dual Format — Foods Requiring Preparation

**B.01.456 (1)** Subject to subsection (2), if the nutrition facts table of a prepackaged product includes information referred to in subsection B.01.406(5), the nutrition facts table shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual dual format in accordance with Figure 9.5(B) or 9.6(B) of the Directory of NFT Formats; or

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table.

**(3)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included in the table, together with the information referred to in subsection B.01.406(5).

**(4)** Despite subsections (1) and (2), if the nutrition facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in paragraph (2)(a) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

## Modèle double — aliments à préparer

**B.01.456 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive de tout produit préemballé qui indique les renseignements visés au paragraphe B.01.406(5) est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** soit selon le modèle double bilingue prévu aux figures 9.5(B) ou 9.6(B) du Répertoire des modèles de TVN;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement ainsi que des renseignements visés au paragraphe B.01.406(5).

**(4)** Malgré les paragraphes (1) et (2), si le tableau de la valeur nutritive du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues à l'alinéa (2)a) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Dual Format — Foods Requiring Preparation

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 8.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 8.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 8.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 8.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 8.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 8.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

### PART 2

### Bilingual Dual Format — Foods Requiring Preparation

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 9.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |

## TABLEAU

### PARTIE 1

### Modèle double — aliments à préparer

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 8.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 8.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 8.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 8.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 8.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 8.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

### PARTIE 2

### Modèle double bilingue — aliments à préparer

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 9.1(B) | |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 2 | 9.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 9.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 9.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 30, 74.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 9.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 9.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 9.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 30 et 74.

## Aggregate Format — Different Kinds of Foods

**B.01.457 (1)** Subject to subsection (2), if the nutrition facts table of a prepackaged product includes separate information for each food or ingredient as provided in subsection B.01.406(2), paragraph B.01.406(3)(a) or subsection B.01.406(4), the nutrition facts table shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out

**(a)** in the case of a product described in subsection B.01.406(2) or (4), in

**(i)** the bilingual aggregate format in accordance with Figure 11.5(B) or 11.6(B) of the Directory of NFT Formats, or

**(ii)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table, or

## Modèle composé — différents types d'aliments

**B.01.457 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive de tout produit préemballé qui indique des renseignements distincts en fonction de chaque ingrédient ou aliment, tel qu'il est prévu au paragraphe B.01.406(2), à l'alinéa B.01.406(3)a) ou au paragraphe B.01.406(4), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** dans le cas de tout produit visé aux paragraphes B.01.406(2) ou (4) :

**(i)** soit selon le modèle composé bilingue prévu aux figures 11.5(B) ou 11.6(B) du Répertoire des modèles de TVN,

**(ii)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**(b)** in the case of a product described in paragraph B.01.406(3)(a), in

**(i)** the bilingual aggregate format in accordance with Figure 11.5(B) or 11.6(B) of the Directory of NFT Formats,

**(ii)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table, or

**(iii)** a manner described in section B.01.466.

**(3)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included for each food or ingredient for which separate information is set out in the table.

**(4)** Despite subsections (1) and (2), if the nutrition facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in subparagraph (2)(a)(i) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

# TABLE

## PART 1

### Aggregate Format — Different Kinds of Foods

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 10.1(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 10.2(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

**b)** dans le cas de tout produit visé à l'alinéa B.01.406(3)a) :

**(i)** soit selon le modèle composé bilingue prévu aux figures 11.5(B) ou 11.6(B) du Répertoire des modèles de TVN,

**(ii)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible,

**(iii)** soit d'une façon prévue à l'article B.01.466.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque ingrédient ou aliment pour lequel des renseignements distincts y sont indiqués.

**(4)** Malgré les paragraphes (1) et (2), si le tableau de la valeur nutritive du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues au sous-alinéa (2)a)(i) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

# TABLEAU

## PARTIE 1

### Modèle composé — différents types d'aliments

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 10.1(F) et (A)<br><br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 10.2(F) et (A) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 3 | 10.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 10.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 10.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 10.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères d'au moins 7 points) | de la surface exposée disponible. |
| 3 | 10.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 10.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 10.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 10.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

### Bilingual Aggregate Format — Different Kinds of Foods

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 11.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 11.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 11.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PARTIE 2

### Modèle composé bilingue — différents types d'aliments

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 11.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 11.2(B)<br>(éléments nutritifs figurant en caractères d'au moins de 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 11.3(B) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 4 | 11.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 31, 74.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères étroits d'au moins 7 points) | de la surface exposée disponible. |
| 4 | 11.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 31 et 74.

## Dual Format — Different Amounts of Food

**B.01.458 (1)** Subject to subsection (2), if the nutrition facts table of a prepackaged product includes separate information for different amounts of the food as provided in paragraph B.01.406(7)(a) without including the information referred to in paragraph B.01.406(7)(c), the nutrition facts table shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual dual format in accordance with Figure 13.5(B) or 13.6(B) of the Directory of NFT Formats; or

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table.

**(3)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included for each amount of the food for which separate information is set out in the table.

**(4)** Despite subsections (1) and (2), if the nutrition facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or

## Modèle double — différentes quantités d'aliments

**B.01.458 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive de tout produit préemballé qui indique des renseignements distincts en fonction de différentes quantités de l'aliment, tel qu'il est prévu à l'alinéa B.01.406(7)a), sans indiquer les renseignements visés au sous-alinéa B.01.406(7)c), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** soit selon le modèle double bilingue prévu aux figures 13.5(B) ou 13.6(B) du Répertoire des modèles de TVN;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque quantité d'aliment pour laquelle des renseignements distincts y sont indiqués.

**(4)** Malgré les paragraphes (1) et (2), si le tableau de la valeur nutritive du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel

on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in paragraph (2)(a) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues à l'alinéa (2)a) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

# TABLE

## PART 1

### Dual Format — Different Amounts of Food

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 12.1(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 12.2(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 12.3(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 12.4(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 12.5(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 12.6(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

# TABLEAU

## PARTIE 1

### Modèle double — différentes quantités d'aliments

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 12.1(F) et (A)<br><br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 12.2(F) et (A)<br><br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 12.3(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 12.4(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 12.5(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 12.6(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PART 2**

**Bilingual Dual Format — Different Amounts of Food**

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 13.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 13.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 13.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 13.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 32, 74.

Aggregate Format — Different Amounts of Food

**B.01.459 (1)** Subject to subsection (2), if the nutrition facts table of a prepackaged product includes separate information for different amounts of the food as provided in paragraphs B.01.406(7)(a) and (c), the nutrition facts table shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual aggregate format in accordance with Figure 15.5(B) or 15.6(B) of the Directory of NFT Formats; or

**PARTIE 2**

**Modèle double bilingue — différentes quantités d'aliments**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 13.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 13.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 13.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 13.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 32 et 74.

Modèle composé — différentes quantités d'aliments

**B.01.459 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive de tout produit préemballé qui indique des renseignements distincts en fonction de différentes quantités de l'aliment, tel qu'il est prévu aux alinéas B.01.406(7)a) et c), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** soit selon le modèle composé bilingue prévu aux figures 15.5(B) ou 15.6(B) du Répertoire des modèles de TVN;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table.

**(3)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included for each amount of the food for which separate information is set out in the table.

**(4)** Despite subsections (1) and (2), if the nutrition facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it shall be set out in a version that is described in paragraph (2)(a) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

# TABLE

**PART 1**

**Aggregate Format — Different Amounts of Food**

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 14.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 14.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 14.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4, | 14.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque quantité d'aliment pour laquelle des renseignements distincts y sont indiqués.

**(4)** Malgré les paragraphes (1) et (2), si le tableau de la valeur nutritive du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues à l'alinéa (2)a) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

# TABLEAU

**PARTIE 1**

**Modèle composé — différentes quantités d'aliments**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 14.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 14.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 14.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 14.4(F) et (A) | Les versions des articles 1 à 3 ne peuvent être présentées |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 5 | 14.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 14.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 2

## Bilingual Aggregate Format — Different Amounts of Food

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 15.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 15.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 15.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 15.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 33, 74.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères étroits d'au moins 7 points) | conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 14.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 14.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 2

## Modèle composé bilingue — différentes quantités d'aliments

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 15.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 15.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 15.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 15.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 33 et 74.

## Presentation of Additional Information

**B.01.460 (1)** If information referred to in column 1 of the table to section B.01.402 is included in a nutrition facts table that is set out in a version consisting of a table in English and a table in French or a table in English or French, that information shall be displayed

**(a)** in accordance with the order of presentation, the use of indents and the presentation of footnotes illustrated in Figures 18.1(E) and (F) of the Directory of NFT Formats; and

**(b)** in respect of matters other than those referred to in paragraph (a), in accordance with the format that is specified in the applicable figure in the Directory of NFT Formats.

**(2)** If information referred to in column 1 of the table to section B.01.402 is included in a nutrition facts table that is set out in a version consisting of a table in both English and French, that information shall be displayed

**(a)** in accordance with the order of presentation, the use of indents and the presentation of footnotes illustrated in Figure 19.1(B) of the Directory of NFT Formats; and

**(b)** in respect of matters other than those referred to in paragraph (a), in accordance with the format that is specified in the applicable figure in the Directory of NFT Formats.

**(3)** Despite paragraph (1)(a), the use of indents illustrated in Figures 18.1(E) and (F) of the Directory of NFT Formats is not applicable if information referred to in column 1 of the table to section B.01.402 is set out in the linear format referred to in paragraph B.01.454(3)(c) or the simplified linear format referred to in paragraph B.01.455(3)(c).

SOR/2003-11, s. 20; SOR/2016-305, s. 74.

## Présentation des renseignements complémentaires

**B.01.460 (1)** Les renseignements visés à la colonne 1 du tableau de l'article B.01.402 qui sont indiqués dans la version du tableau de la valeur nutritive se composant d'un tableau en anglais et d'un tableau en français ou d'un tableau en anglais ou en français sont présentés :

**a)** selon l'ordre, les retraits et les notes complémentaires indiqués aux figures 18.1(F) et (A) du Répertoire des modèles de TVN;

**b)** quant aux autres caractéristiques de présentation, selon le modèle prévu à la figure applicable du Répertoire des modèles de TVN.

**(2)** Les renseignements visés à la colonne 1 du tableau de l'article B.01.402 indiqués dans la version du tableau de la valeur nutritive se composant d'un tableau en anglais et en français sont présentés :

**a)** selon l'ordre, les retraits et les notes complémentaires indiqués à la figure 19.1(B) du Répertoire des modèles de TVN;

**b)** quant aux autres caractéristiques de présentation, selon le modèle prévu à la figure applicable du Répertoire des modèles de TVN.

**(3)** Malgré l'alinéa (1)a), les retraits indiqués aux figures 18.1(F) et (A) du Répertoire des modèles de TVN ne s'appliquent pas si les renseignements visés à la colonne 1 du tableau de l'article B.01.402 sont présentés selon le modèle linéaire visé à l'alinéa B.01.454(3)c) ou le modèle linéaire simplifié visé à l'alinéa B.01.455(3)c).

DORS/2003-11, art. 20; DORS/2016-305, art. 74.

## Standard and Horizontal Formats — Infants Six Months of Age or Older but Less Than One Year of Age

[SOR/2003-11, s. 20; err.(E), Vol. 137, No. 5; SOR/2016-305, s. 34]

**B.01.461 (1)** This section applies to a prepackaged product that is intended solely for infants six months of age or older but less than one year of age unless section B.01.462, B.01.463 or B.01.464 applies to the product.

**(2)** Subject to subsection (3), the nutrition facts table of the prepackaged product shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

## Modèles standard et horizontal — bébés âgés d'au moins six mois mais de moins d'un an

[DORS/2003-11, art. 20; err.(A), Vol. 137, no 5; DORS/2016-305, art. 34]

**B.01.461 (1)** Le présent article s'applique à tout produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an, sauf si l'un des articles B.01.462, B.01.463 et B.01.464 s'y applique.

**(2)** Sous réserve du paragraphe (3), le tableau de la valeur nutritive du produit préemballé est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual standard format in accordance with Figure 22.5(B), 22.6(B) or 22.7(B) of the Directory of NFT Formats;

**(b)** the bilingual horizontal format in accordance with Figure 23.3(B) or 23.4(B) of the Directory of NFT Formats;

**(c)** the linear format in accordance with Figures 31.1(E) and (F) or 31.2(E) and (F) of the Directory of NFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table; or

**(e)** a manner described in section B.01.466.

**(4)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included in that table.

**(3)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**a)** selon le modèle standard bilingue prévu aux figures 22.5(B), 22.6(B) ou 22.7(B) du Répertoire des modèles de TVN;

**b)** selon le modèle horizontal bilingue prévu aux figures 23.3(B) ou 23.4(B) du Répertoire des modèles de TVN;

**c)** selon le modèle linéaire prévu aux figures 31.1(F) et (A) ou 31.2(F) et (A) du Répertoire des modèles de TVN;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.01.466.

**(4)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement.

# TABLE

## PART 1

### Standard Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 20.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 20.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

# TABLEAU

## PARTIE 1

### Modèle standard — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 20.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 20.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 3 | 20.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 20.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 20.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 20.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 2

## Narrow Standard Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 21.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 21.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 21.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 21.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 3 | 20.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 20.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 20.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 20.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 2

## Modèle standard étroit — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 21.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 21.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 21.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 21.4(F) et (A) | Les versions des articles 1 à 3 ne peuvent être présentées |

## PART 3

### Bilingual Standard Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 22.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 22.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 22.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 22.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 4

### Bilingual Horizontal Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 23.1(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in Parts 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PARTIE 3

### Modèle standard bilingue — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 22.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 22.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 22.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 22.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 4

### Modèle horizontal bilingue — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 23.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des parties 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 2 | 23.2(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in Parts 1 to 3 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 35, 74.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 2 | 23.2(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des parties 1 à 3 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 35 et 74.

## Simplified Formats — Infants Six Months of Age or Older but Less Than One Year of Age

[SOR/2016-305, s. 36]

**B.01.462 (1)** This section applies to a prepackaged product that is intended solely for infants six months of age or older but less than one year of age if it satisfies the condition set out in subsection B.01.403(5) and its nutrition facts table includes only the information referred to in paragraphs B.01.403(5)(a) to (k).

**(2)** Subject to subsection (3), the nutrition facts table of the prepackaged product shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table containing only the information referred to in paragraphs B.01.403(5)(a) to (k) in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**(a)** the bilingual simplified standard format in accordance with Figure 25.5(B) or 25.6(B) of the Directory of NFT Formats;

**(b)** the bilingual simplified horizontal format in accordance with Figure 26.3(B) or 26.4(B) of the Directory of NFT Formats;

**(c)** the simplified linear format in accordance with Figures 32.1(E) and (F) or 32.2(E) and (F) of the Directory of NFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table; or

**(e)** a manner described in section B.01.466.

## Modèles simplifiés — bébés âgés d'au moins six mois mais de moins d'un an

[DORS/2016-305, art. 36]

**B.01.462 (1)** Le présent article s'applique à tout produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an qui remplit la condition du paragraphe B.01.403(5) et dont le tableau de la valeur nutritive ne contient que les renseignements visés aux alinéas B.01.403(5)a) à k).

**(2)** Sous réserve du paragraphe (3), le tableau de la valeur nutritive du produit préemballé est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** Si le tableau de la valeur nutritive qui ne contient que les renseignements visés aux alinéas B.01.403(5)a) à k) ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une ou l'autre des façons suivantes :

**a)** selon le modèle standard simplifié bilingue prévu aux figures 25.5(B) ou 25.6(B) du Répertoire des modèles de TVN;

**b)** selon le modèle horizontal simplifié bilingue prévu aux figures 26.3(B) ou 26.4(B) du Répertoire des modèles de TVN;

**c)** selon le modèle linéaire simplifié prévu aux figures 32.1(F) et (A) ou 32.2(F) et (A) du Répertoire des modèles de TVN;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.01.466.

# TABLE

## PART 1

### Simplified Standard Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 24.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 24.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 24.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 24.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 24.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 24.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 2

### Bilingual Simplified Standard Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 25.1(B) | |

# TABLEAU

## PARTIE 1

### Modèle standard simplifié — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 24.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 24.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 24.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 24.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 24.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 24.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 2

### Modèle standard simplifié bilingue — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 25.1(B) | |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| | (nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 25.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 25.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 25.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 3

### Bilingual Simplified Horizontal Format — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 26.1(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in Parts 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 26.2(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in Parts 1 and 2 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 37, 74.

### Aggregate Format — Different Kinds of Foods — Infants Six Months of Age or Older but Less Than One Year of Age

[SOR/2016-305, s. 38]

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 25.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 25.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 25.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 3

### Modèle horizontal simplifié bilingue — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 26.1(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des parties 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 26.2(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des parties 1 et 2 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 37 et 74.

### Modèle composé — différents types d'aliments — bébés âgés d'au moins six mois mais de moins d'un an

[DORS/2016-305, art. 38]

**B.01.463 (1)** Subject to subsection (2), if the nutrition facts table of a prepackaged product that is intended solely for infants six months of age or older but less than one year of age includes separate information for each food or ingredient as provided in subsection B.01.406(2), paragraph B.01.406(3)(a) or subsection B.01.406(4), the nutrition facts table shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out

**(a)** in the case of a product described in subsection B.01.406(2) or (4), in

**(i)** the bilingual aggregate format in accordance with Figure 28.5(B) or 28.6(B) of the Directory of NFT Formats, or

**(ii)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table, or

**(b)** in the case of a product described in paragraph B.01.406(3)(a), in

**(i)** the bilingual aggregate format in accordance with Figure 28.5(B) or 28.6(B) of the Directory of NFT Formats,

**(ii)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table, or

**(iii)** a manner described in section B.01.466.

**(3)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included for each food or ingredient for which separate information is set out in the table.

**B.01.463 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive de tout produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an qui indique des renseignements distincts en fonction de chaque ingrédient ou aliment, tel qu'il est prévu au paragraphe B.01.406(2), à l'alinéa B.01.406(3)a) ou au paragraphe B.01.406(4), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** dans le cas de tout produit visé aux paragraphes B.01.406(2) ou (4) :

**(i)** soit selon le modèle composé bilingue prévu aux figures 28.5(B) ou 28.6(B) du Répertoire des modèles de TVN,

**(ii)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**b)** dans le cas de tout produit visé à l'alinéa B.01.406(3)a) :

**(i)** soit selon le modèle composé bilingue prévu aux figures 28.5(B) ou 28.6(B) du Répertoire des modèles de TVN,

**(ii)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible;

**(iii)** soit d'une façon prévue à l'article B.01.466.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque ingrédient ou aliment pour lequel des renseignements distincts y sont indiqués.

# TABLE

## PART 1

### Aggregate Format — Different Kinds of Foods — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 27.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 27.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 27.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 27.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 27.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 27.6(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

# TABLEAU

## PARTIE 1

### Modèle composé — différents types d'aliments — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 27.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 27.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 27.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 27.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 27.5(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 27.6(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PART 2**

**Bilingual Aggregate Format — Different Kinds of Foods — Infants Six Months of Age or Older but Less Than One Year of Age**

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 28.1(B)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 28.2(B)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 28.3(B)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 28.4(B)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 39, 74.

## Aggregate Format — Different Amounts of Food — Infants Six Months of Age or Older but Less Than One Year of Age

[SOR/2016-305, s. 40]

**B.01.464 (1)** Subject to subsection (2), if the nutrition facts table of a prepackaged product that is intended solely for infants six months of age or older but less than one year of age includes separate information for different amounts of the food as provided in subsection B.01.406(8), the nutrition facts table shall be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a nutrition facts table in any of the versions that is listed in column 1 of the table to this section, the nutrition facts table shall be set out in

**PARTIE 2**

**Modèle composé bilingue — différents types d'aliments — bébés âgés d'au moins six mois mais de moins d'un an**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 28.1(B)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 28.2(B)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 28.3(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 28.4(B)<br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 39 et 74.

## Modèle composé — différentes quantités d'aliments — bébés âgés d'au moins six mois mais de moins d'un an

[DORS/2016-305, art. 40]

**B.01.464 (1)** Sous réserve du paragraphe (2), le tableau de la valeur nutritive de tout produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an qui indique les renseignements distincts en fonction de différentes quantités de l'aliment, tel qu'il est prévu au paragraphe B.01.406(8), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau de la valeur nutritive ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**(a)** the bilingual aggregate format in accordance with Figure 30.5(B) or 30.6(B) of the Directory of NFT Formats; or

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the nutrition facts table.

**(3)** For the purpose of this section, in determining whether a version of a nutrition facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the nutrition facts table shall include only the information that is required by these Regulations to be included for each amount of the food for which separate information is set out in the table.

# TABLE

## PART 1

### Aggregate Format — Different Amounts of Food — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 29.1(E) and (F)<br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 29.2(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 29.3(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 29.4(E) and (F)<br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 29.5(E) and (F)<br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

**a)** soit selon le modèle composé bilingue prévu aux figures 30.5(B) ou 30.6(B) du Répertoire des modèles de TVN;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau de la valeur nutritive devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau de la valeur nutritive ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque quantité d'aliment pour laquelle des renseignements distincts y sont indiqués.

# TABLEAU

## PARTIE 1

### Modèle composé — différentes quantités d'aliments — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 29.1(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 29.2(F) et (A)<br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 29.3(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 29.4(F) et (A)<br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 29.5(F) et (A) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins |

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 6 | 29.6(E) and (F)<br><br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| | (éléments nutritifs figurant en caractères étroits d'au moins 6 points) | de la surface exposée disponible. |
| 6 | 29.6(F) et (A)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

### Bilingual Aggregate Format — Different Amounts of Food — Infants Six Months of Age or Older but Less Than One Year of Age

| Item | Column 1<br>Figure in Directory of NFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 30.1(B)<br><br>(nutrients to be shown in a type size of not less than 8 points) | |
| 2 | 30.2(B)<br><br>(nutrients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 30.3(B)<br><br>(nutrients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 30.4(B)<br><br>(nutrients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2003-11, s. 20; SOR/2016-305, ss. 41, 74.

### Presentation of Additional Information — Infants Six Months of Age or Older but Less Than One Year of Age

[SOR/2016-305, s. 42]

## PARTIE 2

### Modèle composé bilingue — différentes quantités d'aliments — bébés âgés d'au moins six mois mais de moins d'un an

| Article | Colonne 1<br>Figure du Répertoire des modèles de TVN (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 30.1(B)<br><br>(éléments nutritifs figurant en caractères d'au moins 8 points) | |
| 2 | 30.2(B)<br><br>(éléments nutritifs figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 30.3(B)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 30.4(B)<br><br>(éléments nutritifs figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2003-11, art. 20; DORS/2016-305, art. 41 et 74.

### Présentation des renseignements complémentaires — bébés âgés d'au moins six mois mais de moins d'un an

[DORS/2016-305, art. 42]

**B.01.465 (1)** This section applies to a prepackaged product that is intended solely for infants six months of age or older but less than one year of age.

**(2)** If information referred to in column 1 of the table to section B.01.402 is included in a nutrition facts table that is set out in a version consisting of a table in English and a table in French or a table in English or French, that information shall be displayed

**(a)** in accordance with the order of presentation, the use of indents and the presentation of footnotes illustrated in Figures 33.1(E) and (F) of the Directory of NFT Formats; and

**(b)** in respect of matters other than those referred to in paragraph (a), in accordance with the format that is specified in the applicable figure in the Directory of NFT Formats.

**(3)** If information referred to in column 1 of the table to section B.01.402 is included in a nutrition facts table that is set out in a version consisting of a table in both English and French, that information shall be displayed

**(a)** in accordance with the order of presentation, the use of indents and the presentation of footnotes illustrated in Figure 34.1(B) of the Directory of NFT Formats; and

**(b)** in respect of matters other than those referred to in paragraph (a), in accordance with the format that is specified in the applicable figure in the Directory of NFT Formats.

**(4)** Despite paragraph (2)(a), the use of indents illustrated in Figures 33.1(E) and (F) of the Directory of NFT Formats is not applicable if information referred to in column 1 of the table to section B.01.402 is set out in the linear format referred to in paragraph B.01.461(3)(c) or the simplified linear format referred to in paragraph B.01.462(3)(c).

SOR/2003-11, s. 20; SOR/2016-305, ss. 43, 74.

**B.01.465 (1)** Le présent article s'applique à tout produit préemballé destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an.

**(2)** Les renseignements visés à la colonne 1 du tableau de l'article B.01.402 qui sont indiqués dans une version du tableau de la valeur nutritive se composant d'un tableau en anglais et d'un tableau en français ou d'un tableau en anglais ou en français, sont présentés :

**a)** selon l'ordre de présentation, les retraits et les notes complémentaires indiqués aux figures 33.1(F) et (A) du Répertoire des modèles de TVN;

**b)** quant aux autres caractéristiques de présentation, selon le modèle prévu à la figure applicable du Répertoire des modèles de TVN.

**(3)** Les renseignements visés à la colonne 1 du tableau de l'article B.01.402 qui sont indiqués dans une version du tableau de la valeur nutritive se composant d'un tableau en anglais et en français sont présentés :

**a)** selon l'ordre de présentation, les retraits et les notes complémentaires indiqués à la figure 34.1(B) du Répertoire des modèles de TVN;

**b)** quant aux autres caractéristiques de présentation, selon le modèle prévu à la figure applicable du Répertoire des modèles de TVN.

**(4)** Malgré l'alinéa (2)a), les retraits indiqués aux figures 33.1(F) et (A) du Répertoire des modèles de TVN ne s'appliquent pas si les renseignements visés à la colonne 1 du tableau de l'article B.01.402 sont présentés selon le modèle linéaire visé à l'alinéa B.01.461(3)c) ou le modèle linéaire simplifié visé à l'alinéa B.01.462(3)c).

DORS/2003-11, art. 20; DORS/2016-305, art. 43 et 74.

## Alternative Methods of Presentation

**B.01.466 (1)** Despite section A.01.016, the nutrition facts table of a prepackaged product that meets the condition specified in subsection B.01.454(3) or B.01.455(3), paragraph B.01.457(2)(b), subsection B.01.461(3) or B.01.462(3) or paragraph B.01.463(2)(b) may be set out on

**(a)** a tag attached to the package;

**(b)** a package insert;

## Autres modes de présentation

**B.01.466 (1)** Malgré l'article A.01.016, le tableau de la valeur nutritive d'un produit préemballé qui répond aux critères mentionnés aux paragraphes B.01.454(3) ou B.01.455(3), à l'alinéa B.01.457(2)b), aux paragraphes B.01.461(3) ou B.01.462(3) ou à l'alinéa B.01.463(2)b) peut être placé sur, selon le cas :

**a)** une étiquette mobile attachée à l'emballage;

**b)** une notice d'accompagnement;

**(c)** the inner side of a label;

**(d)** a fold-out label; or

**(e)** an outer sleeve, overwrap or collar.

**(2)** If the nutrition facts table is set out in a manner described in paragraph (1)(b) or (c), the outer side of the label of the package shall indicate in a type size of not less than 8 points where the nutrition facts table is located.

**(3)** If the nutrition facts table is set out in a manner described in subsection (1), it shall be set out

**(a)** in the case of a product described in subsection B.01.454(3), in a version that is described in paragraph B.01.454(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.01.454;

**(b)** in the case of a product described in subsection B.01.455(3), in a version that is described in paragraph B.01.455(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.01.455;

**(c)** in the case of a product described in paragraph B.01.457(2)(b), in a version that is described in subparagraph B.01.457(2)(b)(i) or that is listed in column 1 of the table to section B.01.457;

**(d)** in the case of a product described in subsection B.01.461(3), in a version that is described in paragraph B.01.461(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.01.461;

**(e)** in the case of a product described in subsection B.01.462(3), in a version that is described in paragraph B.01.462(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.01.462; and

**(f)** in the case of a product described in paragraph B.01.463(2)(b), in a version that is described in subparagraph B.01.463(2)(b)(i) or that is listed in column 1 of the table to section B.01.463.

SOR/2003-11, s. 20; SOR/2018-69, s. 3(F).

**c)** le verso d'une étiquette;

**d)** une étiquette dépliante;

**e)** un manchon, une surenveloppe ou un collier.

**(2)** Si le tableau de la valeur nutritive est placé conformément aux alinéas (1)b) ou c), le recto de l'étiquette en indique l'endroit en caractères d'au moins 8 points.

**(3)** Si le tableau de la valeur nutritive est placé conformément au paragraphe (1), il est présenté :

**a)** dans le cas de tout produit visé au paragraphe B.01.454(3), selon l'une des versions prévues aux alinéas B.01.454(3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.01.454;

**b)** dans le cas de tout produit visé au paragraphe B.01.455(3), selon l'une des versions prévues aux alinéas B.01.455(3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.01.455;

**c)** dans le cas de tout produit visé à l'alinéa B.01.457(2)b), selon l'une des versions prévues au sous-alinéa B.01.457(2)b)(i) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.01.457;

**d)** dans le cas de tout produit visé au paragraphe B.01.461(3), selon l'une des versions prévues aux alinéas B.01.461(3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.01.461;

**e)** dans le cas de tout produit visé au paragraphe B.01.462(3), selon l'une des versions prévues aux alinéas B.01.462(3)a), b) et c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.01.462;

**f)** dans le cas de tout produit visé à l'alinéa B.01.463(2)b), selon l'une des versions prévues au sous-alinéa B.01.463(2)b)(i) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.01.463.

DORS/2003-11, art. 20; DORS/2018-69, art. 3(F).

## Small Packages

**B.01.467 (1)** Despite section A.01.016 and subject to subsection (2), if the available display surface of a prepackaged product is less than 100 $cm^2$, the label of the product need not carry a nutrition facts table if the outer side of the label contains an indication of how a purchaser or consumer may obtain the nutrition information that would otherwise be required to be set out in a nutrition facts table on the label of the product.

## Petits emballages

**B.01.467 (1)** Malgré l'article A.01.016 et sous réserve du paragraphe (2), l'étiquette de tout produit préemballé dont la surface exposée disponible est de moins de 100 $cm^2$ peut ne pas porter le tableau de la valeur nutritive si son recto comporte des indications sur la manière dont l'acheteur ou le consommateur peut obtenir les renseignements qui devraient figurer dans le tableau.

**(2)** Subsection (1) does not apply to a prepackaged product that is

**(a)** described in paragraph B.01.401(3)(a), (b) or (e); or

**(b)** contained in a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase.

**(2.1)** However, subsection (1) applies to a prepackaged product that is referred to in subparagraph B.01.401(3)(e)(ii) and that meets the conditions set out in item 37, column 2, of the Table of Permitted Nutrient Content Statements and Claims for the subject "Free of sugars" set out in column 1 if

**(a)** the product does not contain an added vitamin or mineral nutrient;

**(b)** the energy value expressed in Calories per serving of stated size and the amount of sugar alcohols expressed in grams per serving of stated size are shown immediately after whichever of the following elements appears last on the label:

**(i)** the list of ingredients,

**(ii)** a *food allergen source, gluten source and added sulphites statement* as defined in subsection B.01.010.1(1),

**(iii)** a declaration referred to in subsection B.01.010.4(1), or

**(iv)** any statement referred to in subsection B.01.014(1); and

**(c)** any statement or claim that is set out in item 37, column 4, of the table for the subject "Free of sugars" set out in column 1 and that appears on the label is

**(i)** legibly set out on the principal display panel,

**(ii)** in lower case letters except for the first letter of each word of the statement or claim, which may be an upper case letter,

**(iii)** of at least the same size and prominence as the letters used in the numerical portion of the declaration of net quantity as required under paragraph 229(1)(a) and subsections 229(2) and (3) of the *Safe Food for Canadians Regulations*, and

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** aux produits préemballés visés aux alinéas B.01.401(3)a), b) ou e);

**b)** aux produits préemballés contenus dans un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat.

**(2.1)** Toutefois, le paragraphe (1) s'applique au produit préemballé visé au sous-alinéa B.01.401(3)e)(ii) et qui répond aux critères mentionnés à l'article 37 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, dans la colonne 2, relatifs au sujet « Sans sucres » figurant à la colonne 1, si les conditions ci-après sont réunies :

**a)** les produits préemballés ne contiennent pas de vitamines ni de minéraux nutritifs ajoutés;

**b)** la valeur énergétique exprimée en Calories par portion indiquée et la teneur en polyalcools exprimée en grammes par portion indiquée figurent immédiatement après celui des éléments ci-après qui figure en dernier sur l'étiquette :

**(i)** la liste des ingrédients,

**(ii)** la *mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés*, au sens du paragraphe B.01.010.1(1),

**(iii)** l'énoncé visé au paragraphe B.01.010.4(1),

**(iv)** toute mention visée au paragraphe B.01.014(1);

**c)** toute mention ou allégation figurant à l'article 37 du tableau, dans la colonne 4, en regard du sujet « Sans sucres » visé à la colonne 1 et figurant sur l'étiquette, à la fois :

**(i)** est lisible sur l'espace principal,

**(ii)** est en minuscules, à l'exception de la première lettre de chaque mot de la mention ou de l'allégation qui peut être majuscule,

**(iii)** est en caractères de dimensions au moins égales et aussi bien en vue que les caractères utilisés dans la portion numérique de la déclaration de la quantité nette, comme l'exigent l'alinéa 229(1)a) et les paragraphes 229(2) et (3) du *Règlement sur la salubrité des aliments au Canada*,

**(iv)** displayed in a colour contrasting with the background of the label.

**(3)** An indication referred to in subsection (1)

**(a)** shall be set out in a type size of not less than 8 points;

**(b)** shall include a postal address or a toll-free telephone number; and

**(c)** shall be

**(i)** in English and French, or

**(ii)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the product may be shown in that language only and is shown on the label in that language.

**(4)** The manufacturer of the prepackaged product shall provide the information referred to in subsection (1) to a purchaser or consumer on request

**(a)** without charge;

**(b)** in the following manner, namely,

**(i)** in the official language in which the information is requested or, if specified by the purchaser or consumer, in both official languages, or

**(ii)** in one of the official languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the product may be shown in that language only and is shown on the label in that language; and

**(c)** in the form of a nutrition facts table that is set out

**(i)** in a format, other than a horizontal format, that is specified in any of sections B.01.454 to B.01.459 or B.01.461 to B.01.464 and that would otherwise be carried on the label of the product in accordance with these Regulations, and

**(ii)** in a version of that format that is listed in column 1 of item 1 of any Part of the table to the applicable section referred to in subparagraph (i).

**(iv)** est d'une couleur faisant contraste avec le fond de l'étiquette.

**(3)** Les indications visées au paragraphe (1) répondent aux critères suivants :

**a)** elles sont présentées en caractères d'au moins 8 points;

**b)** elles comportent une adresse postale ou un numéro de téléphone sans frais;

**c)** elles figurent :

**(i)** soit en français et en anglais,

**(ii)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette du produit aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

**(4)** Le fabricant du produit préemballé fournit les renseignements visés au paragraphe (1) à l'acheteur ou au consommateur sur demande :

**a)** sans frais;

**b)** de la façon suivante :

**(i)** soit dans la langue officielle dans laquelle les renseignements sont demandés ou, à la demande de l'acheteur ou du consommateur, dans les deux langues officielles,

**(ii)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette du produit aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci;

**c)** sous forme d'un tableau de la valeur nutritive qui est présenté, à la fois :

**(i)** selon un modèle — autre qu'un modèle horizontal — qui est prévu à l'un des articles B.01.454 à B.01.459 et B.01.461 à B.01.464 et qui, autrement, figurerait sur l'étiquette du produit conformément au présent règlement,

**(ii)** selon l'une des versions de ce modèle figurant à la colonne 1 de l'article 1 de toute partie du tableau de l'article applicable visé au sous-alinéa (i).

**(5)** In this section, ***official languages*** means the English language and the French language.

SOR/2003-11, s. 20; SOR/2016-305, s. 44; SOR/2018-108, s. 400; SOR/2022-168, s. 15.

**B.01.468 (1)** Subject to subsection (2), if a prepackaged product has an available display surface of less than 100 $cm^2$ and has a nutrition facts table on its label, the nutrition facts table need only include

**(a)** the serving of stated size;

**(b)** the energy value and, subject to subsection (2), the amount of nutrients referred to in column 1 of items 2 to 15 of the table to section B.01.401 if the amount shown in the nutrition facts table may not be expressed as "0" according to the manner set out in column 4; and

**(c)** the amount of any sugar alcohol, vitamin or mineral nutrient added to the prepackaged product.

**(2)** If the label of a prepackaged product, or any advertisement for the product that is made or placed by or on the direction of the manufacturer of the product, contains a representation, express or implied, that includes information that is set out in column 1 of the table to section B.01.401 or B.01.402, that information shall also be in the nutrition facts table.

SOR/2016-305, s. 45.

**B.01.469** Despite subsection B.01.401(1), the label of a prepackaged product that has an available display surface of less than 15 $cm^2$ need not carry a nutrition facts table.

SOR/2016-305, s. 45.

[**B.01.470** to **B.01.499** reserved]

## Nutrient Content Claims

### Interpretation

**B.01.500 (1)** The following definitions apply in this section and in the Table of Permitted Nutrient Content Statements and Claims.

***combination foods*** means the category of food to which belong foods that contain as ingredients foods from more than one food group, or foods from one or more food groups mixed with foods from the category of other foods, such as pizza or lasagna. (*aliments composés*)

**(5)** Dans le présent article, ***langues officielles*** s'entend du français et de l'anglais.

DORS/2003-11, art. 20; DORS/2016-305, art. 44; DORS/2018-108, art. 400; DORS/2022-168, art. 15.

**B.01.468 (1)** Sous réserve du paragraphe (2), si un produit préemballé a une surface exposée disponible de moins de 100 $cm^2$ et porte un tableau de la valeur nutritive sur son étiquette, ce tableau peut ne contenir que les seuls renseignements suivants :

**a)** la portion indiquée;

**b)** la valeur énergétique et, sous réserve du paragraphe (2), la teneur en tout élément nutritif visé à la colonne 1 des articles 2 à 15 du tableau de l'article B.01.401 qui ne peut être exprimée par « 0 » au tableau de la valeur nutritive selon les règles d'écriture indiquées dans la colonne 4;

**c)** la teneur en un polyalcool, en une vitamine ou en un minéral nutritif ajoutés au produit.

**(2)** Lorsqu'une déclaration expresse ou implicite incluant des renseignements visés à la colonne 1 des tableaux des articles B.01.401 ou B.01.402 est faite sur l'étiquette du produit préemballé ou encore dans l'annonce d'un tel produit faite par le fabricant du produit ou sous ses ordres, ces renseignements sont aussi mentionnés dans le tableau de la valeur nutritive.

DORS/2016-305, art. 45.

**B.01.469** Malgré le paragraphe B.01.401(1), l'étiquette d'un produit préemballé dont la surface exposée disponible est de moins de 15 $cm^2$ peut ne pas porter de tableau de la valeur nutritive.

DORS/2016-305, art. 45.

[**B.01.470** à **B.01.499** réservés]

## Allégations relatives à la teneur nutritive

### Définitions

**B.01.500 (1)** Les définitions qui suivent s'appliquent au présent article et au Tableau des mentions et des allégations autorisées concernant la teneur nutritive.

***aliment de référence du même groupe alimentaire*** Aliment qui peut être substitué, dans l'alimentation, à l'aliment auquel il est comparé et qui appartient, selon le cas :

**a)** au même groupe alimentaire que l'aliment auquel il est comparé, tel que le fromage comme aliment de

***food group*** means one of the following categories of foods:

**(a)** milk products, and milk product alternatives such as fortified plant-based beverages;

**(b)** meat, poultry and fish, and alternatives such as legumes, eggs, tofu or peanut butter;

**(c)** bread and grain products; or

**(d)** vegetables and fruit. (*groupe alimentaire*)

***other foods*** means the category of food to which belong foods that are not part of any food group, including

**(a)** foods that are mostly fats, such as butter, margarine, oil or lard;

**(b)** foods that are mostly sugars, such as jam, honey, syrup or confectionery;

**(c)** snack foods, such as potato chips or pretzels;

**(d)** beverages, such as water, tea, coffee or soft drinks; and

**(e)** herbs, spices and condiments, such as pickles, mustard or ketchup. (*autres aliments*)

***reference food of the same food group*** means a food that can be substituted in the diet for the food to which it is compared and that belongs to

**(a)** the same food group as the food to which it is compared, such as cheese as a reference food for milk, or chicken as a reference food for tofu;

**(b)** the category of other foods, if the food to which it is compared also belongs to that category, such as pretzels as a reference food for potato chips; or

**(c)** the category of combination foods, if the food to which it is compared also belongs to that category, such as pizza as a reference food for lasagna. (*aliment de référence du même groupe alimentaire*)

***similar reference food*** means a food of the same type as the food to which it is compared and that has not been processed, formulated, reformulated or otherwise modified in a manner that increases or decreases the energy value or the amount of a nutrient that is the subject of the comparison, such as whole milk as a similar reference food for partly skimmed milk or regular chocolate chip cookies as a similar reference food for fat-reduced chocolate chip cookies. (*aliment de référence similaire*)

référence pour le lait, ou le poulet comme aliment de référence pour le tofu;

**b)** à la catégorie des autres aliments, si l'aliment auquel il est comparé appartient aussi à cette catégorie, tel que les bretzels comme aliment de référence pour les croustilles;

**c)** à la catégorie des aliments composés, si l'aliment auquel il est comparé appartient aussi à cette catégorie, tel que la pizza comme aliment de référence pour la lasagne. (*reference food of the same food group*)

***aliment de référence similaire*** Aliment du même type que l'aliment auquel il est comparé et qui n'a pas été transformé, formulé, reformulé ou autrement modifié de manière à augmenter ou à diminuer la valeur énergétique ou la teneur en l'élément nutritif qui fait l'objet de la comparaison, tel que le lait entier comme aliment de référence similaire pour le lait partiellement écrémé, ou les biscuits aux brisures de chocolat ordinaires comme aliment de référence similaire pour les biscuits aux brisures de chocolat à teneur réduite en matières grasses. (*similar reference food*)

***aliments composés*** Catégorie comprenant les aliments qui contiennent, comme ingrédients, des aliments appartenant à plus d'un groupe alimentaire ou appartenant à un ou plusieurs groupes alimentaires et mélangés avec des aliments provenant de la catégorie des autres aliments, tels que la pizza ou la lasagne. (*combination foods*)

***autres aliments*** Catégorie comprenant les aliments qui n'appartiennent à aucun des groupes alimentaires, notamment :

**a)** les aliments contenant surtout des matières grasses, tels que le beurre, la margarine, l'huile ou le saindoux;

**b)** les aliments contenant surtout des sucres, tels que les confitures, le miel, le sirop ou les confiseries;

**c)** les grignotines, telles que les croustilles ou les bretzels;

**d)** les boissons, telles que l'eau, le thé, le café ou les boissons gazeuses;

**e)** les fines herbes, épices et condiments, tels que les marinades, la moutarde ou le ketchup. (*other foods*)

***groupe alimentaire*** L'une des catégories d'aliments suivantes :

**(2)** The similar reference food referred to in column 3 of item 45 of the Table of Permitted Nutrient Content Statements and Claims, with respect to the subject "light in energy or fat" set out in column 1, shall have a nutrient value that is representative of foods of that type that have not been processed, formulated, reformulated or otherwise modified in a manner that increases the energy value or the amount of fat.

SOR/2003-11, s. 20; SOR/2007-302, s. 4(F); SOR/2022-168, s. 52.

## Languages

**B.01.501** The representations provided for in sections B.01.503 to B.01.513 that appear on the label of a food shall be

**(a)** in English and French; or

**(b)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the food may be shown in that language only and is shown on the label in that language.

SOR/2003-11, s. 20.

## Statements or Claims

**B.01.502 (1)** No person shall, on the label of or in any advertisement for a food, make a representation, express or implied, that characterizes the energy value of the food or the amount of a nutrient contained in the food.

**(2)** Subsection (1) does not apply to

**(a)** a representation otherwise provided for in these Regulations, including one that is in the form of a nutrition symbol;

**(b)** a representation provided for by section 273 of the *Safe Food for Canadians Regulations*;

**(c)** a representation provided for by column 1 of Table 2 to Volume 7 of the document entitled *Canadian Standards of Identity*, prepared by the Canadian Food Inspection Agency and published on its website, as amended from time to time;

**a)** les produits du lait et leurs substituts dont les boissons végétales enrichies;

**b)** la viande, la volaille et le poisson ainsi que leurs substituts, dont les légumineuses, les œufs, le tofu et le beurre d'arachide;

**c)** le pain et les produits céréaliers;

**d)** les légumes et les fruits. (*food group*)

**(2)** L'aliment de référence similaire visé à la colonne 3 de l'article 45 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « léger (énergie ou lipides) » figurant à la colonne 1 a une valeur nutritionnelle représentative d'aliments du même type qui n'ont pas été transformés, formulés, reformulés ou autrement modifiés de manière à augmenter la valeur énergétique ou la teneur en lipides.

DORS/2003-11, art. 20; DORS/2007-302, art. 4(F); DORS/2022-168, art. 52.

## Langues

**B.01.501** Les déclarations prévues aux articles B.01.503 à B.01.513 faites sur l'étiquette d'un aliment figurent :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette de l'aliment aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

DORS/2003-11, art. 20.

## Mentions ou allégations

**B.01.502 (1)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment, toute déclaration, expresse ou implicite, caractérisant la valeur énergétique de l'aliment ou sa teneur en un élément nutritif.

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** aux déclarations visées par le présent règlement, y compris celles sous forme de symbole nutritionnel;

**b)** à la déclaration prévue à l'article 273 du *Règlement sur la salubrité des aliments au Canada*;

**c)** aux déclarations prévues à la colonne 1 du tableau 2 du volume 7 du document intitulé *Normes d'identité canadiennes*, préparé par l'Agence canadienne d'inspection des aliments et publié sur son site Web, avec ses modifications successives;

**(d)** a representation that characterizes the amount of lactose in a food;

**(e)** a representation that characterizes the addition of salt to a food, other than any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims;

**(f)** a representation that characterizes the addition of sugars to a food, other than any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims;

**(g)** a representation that characterizes the amount of starch in a food, if the food is intended solely for infants six months of age or older but less than one year of age;

**(h)** the representations "defatted (naming the food)", "demineralized (naming the food)" and "high (naming the monosaccharide or disaccharide) (naming the syrup)";

**(i)** a representation that characterizes the amount of a fatty acid in a vegetable oil and forms part of its common name;

**(j)** a representation that characterizes the amount of alcohol in a beverage;

**(k)** the representation "light salted" with respect to fish; or

**(l)** the English representation "lean" with respect to a prepackaged meal represented for use in a weight reduction diet or a weight maintenance diet.

SOR/2003-11, s. 20; SOR/2018-108, s. 396; SOR/2022-143, s. 19; SOR/2022-168, s. 16; SOR/2022-168, s. 52.

**B.01.503 (1)** A person may, on the label of or in any advertisement for a food, make a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims, with respect to a subject set out in column 1, if

**(a)** the food meets the applicable conditions set out in column 2;

**(b)** the label or advertisement meets the conditions, if any, set out in column 3, in accordance with sections B.01.504 to B.01.506; and

**(c)** in the case of a food that is not a prepackaged product, or a prepackaged product for which an advertisement is not made or placed by or on the direction

**d)** aux déclarations caractérisant la teneur en lactose d'un aliment;

**e)** aux déclarations caractérisant l'adjonction de sel dans un aliment, autres que les mentions ou les allégations figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive;

**f)** aux déclarations caractérisant l'adjonction de sucres dans un aliment, autres que les mentions ou les allégations figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive;

**g)** aux déclarations caractérisant la teneur en amidon d'un aliment destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an;

**h)** aux déclarations « (nom de l'aliment) dégraissé », « (nom de l'aliment) déminéralisé », « (nom du sirop) à forte/haute teneur en (nom du monosaccharide ou du disaccharide) » et « (nom du sirop) à teneur élevée en (nom du monosaccharide ou du disaccharide) »;

**i)** aux déclarations caractérisant la teneur en un acide gras d'une huile végétale qui font partie du nom usuel de celle-ci;

**j)** aux déclarations caractérisant la teneur en alcool d'une boisson;

**k)** à la déclaration « légèrement salé » faite à l'égard du poisson;

**l)** à la déclaration anglaise « lean » faite à l'égard d'un repas préemballé présenté comme étant conçu pour un régime amaigrissant ou un régime de maintien du poids.

DORS/2003-11, art. 20; DORS/2018-108, art. 396; DORS/2022-143, art. 19; DORS/2022-168, art. 16; DORS/2022-168, art. 52.

**B.01.503 (1)** Est permise, sur l'étiquette ou dans l'annonce d'un aliment, toute mention ou toute allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard de l'un des sujets figurant à la colonne 1, si les conditions suivantes sont réunies :

**a)** l'aliment répond aux critères mentionnés à la colonne 2;

**b)** s'il y a lieu, l'étiquette ou l'annonce de l'aliment répond aux critères mentionnés à la colonne 3 conformément aux articles B.01.504 à B.01.506;

**c)** s'il s'agit d'un aliment qui n'est pas un produit préemballé ou d'un produit préemballé pour lequel une

of the manufacturer of the product, the label or advertisement includes, per serving of stated size, and in accordance with section B.01.505 or B.01.506 if applicable,

**(i)** the declaration of the energy value, if the energy value is the subject of the statement or claim, or

**(ii)** the amount of the nutrient, if a nutrient is the subject of the statement or claim.

**(1.1)** Despite subsection (1), no person shall, on the principal display panel of a prepackaged product, make a statement or claim that is set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims and that relates to a nutrient that is referred to in a nutrition symbol that appears on the panel unless it is a statement or claim respecting one of the following subjects set out in column 1:

**(a)** "reduced in saturated fatty acids", set out in item 20;

**(b)** "reduced in sodium or salt", set out in item 33; or

**(c)** "reduced in sugars", set out in item 38.

**(2)** Despite subsection (1), no person shall, on the label of or in any advertisement for a food that is intended solely for children under four years of age, make a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims unless it is a statement or claim respecting one of the following subjects set out in column 1:

**(a)** "source of protein", set out in item 8;

**(b)** "excellent source of protein", set out in item 9;

**(c)** "more protein", set out in item 10;

**(d)** "no added sodium or salt", set out in item 35; or

**(e)** "no added sugars", set out in item 40.

**(2.01)** Despite subsections (1) and (2), it is prohibited, on the label of or in any advertisement for a human milk fortifier, to make a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims.

annonce est faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, l'étiquette ou l'annonce indique, par portion indiquée et, le cas échéant, conformément aux articles B.01.505 ou B.01.506 :

**(i)** soit la valeur énergétique, si l'objet de la mention ou de l'allégation est la valeur énergétique,

**(ii)** soit la teneur en l'élément nutritif en cause, si l'objet de la mention ou de l'allégation est un élément nutritif.

**(1.1)** Malgré le paragraphe (1), est interdite, dans l'espace principal du produit préemballé, toute mention ou toute allégation figurant dans la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive liée à un élément nutritif visé par le symbole nutritionnel figurant dans cet espace, sauf si la mention ou l'allégation est faite à l'égard de l'un des sujets ci-après figurant dans la colonne 1 :

**a)** « teneur réduite en acides gras saturés » visé à l'article 20;

**b)** « teneur réduite en sodium ou en sel » visé à l'article 33;

**c)** « teneur réduite en sucres » visé à l'article 38.

**(2)** Malgré le paragraphe (1), est interdite, sur l'étiquette ou dans l'annonce d'un aliment destiné exclusivement aux enfants âgés de moins de quatre ans, toute mention ou toute allégation figurant dans la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, sauf si la mention ou l'allégation est faite à l'égard de l'un des sujets ci-après figurant dans la colonne 1 :

**a)** « source de protéines » visé à l'article 8;

**b)** « excellente source de protéines » visé à l'article 9;

**c)** « plus de protéines » visé à l'article 10;

**d)** « non additionné de sel ou de sodium » visé à l'article 35;

**e)** « non additionné de sucres » visé à l'article 40.

**(2.01)** Malgré les paragraphes (1) et (2), est interdite, sur l'étiquette ou dans l'annonce d'un fortifiant pour lait humain, toute mention ou toute allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive.

**(2.1)** The information required by paragraph (1)(c) need not be included on the label of or in any advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating, if a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims is made on the label or advertisement.

**(3)** If a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims is made on the label of or in any advertisement for a food, all the words, numbers, signs or symbols that constitute the statement or claim shall be of the same size and prominence.

**(4)** In the English version of the statements or claims, the word "fibre" may be spelled as "fiber".

SOR/2003-11, s. 20; SOR/2016-305, ss. 46, 75(F); SOR/2021-57, s. 10; SOR/2022-168, s. 17; SOR/2022-168, s. 52.

**B.01.504** If a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims is made on the label of a food, the information required under the conditions set out in column 3 shall be

**(a)** adjacent to, without any intervening printed, written or graphic material,

**(i)** the statement or claim, if the statement or claim is made only once, or

**(ii)** the most prominent statement or claim on the principal display panel or, if none appears there, the most prominent statement or claim elsewhere on the label, if the statement or claim is made more than once; and

**(b)** shown in letters of at least the same size and prominence as

**(i)** those of the statement or claim, if the statement or claim is made only once, or

**(ii)** those of the most prominent statement or claim on the principal display panel or, if none appears there, the most prominent statement or claim elsewhere on the label, if the statement or claim is made more than once.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

**(2.1)** Les renseignements requis par l'alinéa (1)c) n'ont pas à être indiqués sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout autre enduit protecteur lorsqu'une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est faite sur l'étiquette ou dans l'annonce.

**(3)** Lorsqu'une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est faite sur l'étiquette ou dans l'annonce d'un aliment, tous les mots, chiffres, signes ou symboles constituant cette mention ou allégation ont la même taille et figurent aussi bien en vue les uns que les autres.

**(4)** Dans la version anglaise des mentions ou des allégations, le terme « fibre » peut aussi s'orthographier « fiber ».

DORS/2003-11, art. 20; DORS/2016-305, art. 46 et 75(F); DORS/2021-57, art. 10; DORS/2022-168, art. 17; DORS/2022-168, art. 52.

**B.01.504** Lorsqu'une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est faite sur l'étiquette d'un aliment, les renseignements requis en vertu des critères mentionnés à la colonne 3, à la fois :

**a)** précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé :

**(i)** soit la mention ou l'allégation ne paraissant qu'une seule fois,

**(ii)** soit, si la mention ou l'allégation est répétée, celle qui est la plus en évidence sur l'espace principal ou, à défaut, celle qui est la plus en évidence ailleurs sur l'étiquette;

**b)** figurent en caractères d'une taille qui est au moins égale et aussi bien en vue que :

**(i)** ceux de la mention ou de l'allégation ne paraissant qu'une seule fois,

**(ii)** si la mention ou l'allégation est répétée, ceux de celle qui est la plus en évidence sur l'espace principal ou, à défaut, ceux de celle qui est la plus en évidence ailleurs sur l'étiquette.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

**B.01.505** If a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims is made in an advertisement for a food, other than a radio or television advertisement, the information required under the conditions set out in column 3 and, if applicable, the information required by paragraph B.01.503(1)(c), shall be

**(a)** adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(b)** shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

**B.01.506 (1)** If a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims is made in a radio or television advertisement, the information required under the conditions set out in column 3 and, if applicable, the information required by paragraph B.01.503(1)(c), shall be provided in the advertisement, except for the information required under the condition set out in paragraph (a) of column 3, in respect of the following subjects set out in column 1, which may be on the label:

**(a)** "reduced in energy", set out in item 3;

**(b)** "reduced in fat", set out in item 13;

**(c)** "reduced in saturated fatty acids", set out in item 20;

**(d)** "reduced in *trans* fatty acids", set out in item 23;

**(e)** "reduced in cholesterol", set out in item 29;

**(f)** "reduced in sodium or salt", set out in item 33;

**(g)** "lightly salted", set out in item 36;

**(h)** "reduced in sugars", set out in item 38; and

**(i)** "light in energy or fat", set out in item 45.

**(2)** Despite subsection (1), if the statement or claim is made in a radio or television advertisement that is not made or placed by or on the direction of the

**B.01.505** Si une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est faite dans l'annonce d'un aliment autre qu'une annonce radiophonique ou télévisée, les renseignements requis en vertu des critères mentionnés à la colonne 3 et, le cas échéant, les renseignements requis par l'alinéa B.01.503(1)c), à la fois :

**a)** précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**b)** figurent en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

**B.01.506 (1)** Si une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est faite dans une annonce radiophonique ou télévisée, les renseignements requis en vertu des critères mentionnés à la colonne 3 et, le cas échéant, les renseignements requis par l'alinéa B.01.503(1)c) figurent dans l'annonce, à l'exception des renseignements requis en vertu des critères mentionnés à l'alinéa a) de la colonne 3, à l'égard des sujets ci-après figurant à la colonne 1, qui peuvent être mentionnés sur l'étiquette de l'aliment :

**a)** « énergie réduite » visé à l'article 3;

**b)** « teneur réduite en lipides » visé à l'article 13;

**c)** « teneur réduite en acides gras saturés » visé à l'article 20;

**d)** « teneur réduite en acides gras *trans* » visé à l'article 23;

**e)** « teneur réduite en cholestérol » visé à l'article 29;

**f)** « teneur réduite en sodium ou en sel » visé à l'article 33;

**g)** « légèrement salé » visé à l'article 36;

**h)** « teneur réduite en sucres » visé à l'article 38;

**i)** « léger (énergie ou lipides) » visé à l'article 45.

**(2)** Malgré le paragraphe (1), si la mention ou l'allégation est faite dans une annonce radiophonique ou télévisée par une personne autre que le fabricant de l'aliment ou

manufacturer of the food, the information required under the condition set out in paragraph (a) of column 3 of the Table of Permitted Nutrient Content Statements and Claims, in respect of the subjects set out in paragraphs (1)(a) to (i), shall be provided in the advertisement.

**(3)** If the information required under the conditions set out in column 3 of the Table of Permitted Nutrient Content Statements and Claims and the information required by paragraph B.01.503(1)(c) is provided in a radio advertisement or in the audio portion of a television advertisement, that information shall immediately precede or follow the statement or claim.

**(4)** In the case of a television advertisement, the information required under the conditions set out in column 3 of the Table of Permitted Nutrient Content Statements and Claims and, if applicable, the information required by paragraph B.01.503(1)(c), shall be communicated

**(a)** in the audio mode, if the statement or claim is made only in the audio portion of the advertisement or in both the audio and visual portions; or

**(b)** in the audio or visual mode, if the statement or claim is made only in the visual portion of the advertisement.

**(5)** If the information required under the conditions set out in column 3 of the Table of Permitted Nutrient Content Statements and Claims and the information required by paragraph B.01.503(1)(c) is communicated in the visual mode of a television advertisement, it shall

**(a)** appear concurrently with and for at least the same amount of time as the statement or claim;

**(b)** be adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(c)** be shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

**B.01.507** A person may, on the label of or in any advertisement for a food, make a representation, express or

une personne agissant sous ses ordres, les renseignements requis en vertu des critères mentionnés à l'alinéa a) de la colonne 3 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive à l'égard des sujets visés aux alinéas (1)a) à i) sont mentionnés dans l'annonce.

**(3)** Si les renseignements requis en vertu des critères mentionnés à la colonne 3 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive et les renseignements requis par l'alinéa B.01.503(1)c) sont mentionnés dans une annonce radiophonique ou dans la composante audio d'une annonce télévisée, ils précèdent ou suivent immédiatement la mention ou l'allégation.

**(4)** Dans le cas d'une annonce télévisée, les renseignements requis en vertu des critères mentionnés à la colonne 3 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive et, le cas échéant, les renseignements requis par l'alinéa B.01.503(1)c) sont communiqués, selon le cas :

**a)** en mode audio, si la mention ou l'allégation fait partie uniquement de la composante audio de l'annonce ou à la fois des composantes audio et visuelle de celle-ci;

**b)** en mode audio ou en mode visuel, si la mention ou l'allégation fait partie uniquement de la composante visuelle de l'annonce.

**(5)** Les renseignements requis en vertu des critères mentionnés à la colonne 3 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive et les renseignements requis par l'alinéa B.01.503(1)c) qui sont communiqués en mode visuel dans une annonce télévisée, à la fois :

**a)** paraissent en même temps et pendant au moins la même durée que la mention ou l'allégation;

**b)** précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**c)** figurent en caractères d'une taille au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

**B.01.507** Est permise, sur l'étiquette ou dans l'annonce d'un aliment, toute déclaration, expresse ou implicite,

implied, that the food is for use in an energy-reduced diet, if a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims, in respect of any of the following subjects set out in column 1, is made on the label of or in the advertisement for the food, in accordance with section B.01.503:

**(a)** "free of energy", set out in item 1;

**(b)** "low in energy", set out in item 2;

**(c)** "reduced in energy", set out in item 3;

**(d)** "lower in energy", set out in item 4; or

**(e)** "free of sugars", set out in item 37.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

**B.01.508 (1)** A person may, on the label of or in any advertisement for a food, make a representation, express or implied, that the food is for use in a sodium-restricted diet, if a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims, in respect of any of the following subjects set out in column 1, is made on the label of or in the advertisement for the food, in accordance with section B.01.503:

**(a)** "free of sodium or salt", set out in item 31;

**(b)** "low in sodium or salt", set out in item 32;

**(c)** "reduced in sodium or salt", set out in item 33; or

**(d)** "lower in sodium or salt", set out in item 34.

**(2)** Despite subsection (1), no person shall, on the principal display panel of a prepackaged product, make a representation, express or implied, that the product is for use in a sodium-restricted diet if a nutrition symbol referring to sodium appears on the panel.

SOR/2003-11, s. 20; SOR/2022-168, s. 18; SOR/2022-168, s. 52.

**B.01.509 (1)** A person may, on the label of or in any advertisement for a food, make the statement or claim that the food is "unsweetened" if

**(a)** the food meets the conditions set out in item 40, column 2, of the Table of Permitted Nutrient Content Statements and Claims for the subject "No added sugars" set out in column 1; and

selon laquelle l'aliment est conçu pour un régime à teneur réduite en énergie si une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard de l'un des sujets ci-après figurant à la colonne 1 est faite sur l'étiquette ou dans l'annonce conformément à l'article B.01.503 :

**a)** « sans énergie » visé à l'article 1;

**b)** « peu d'énergie » visé à l'article 2;

**c)** « énergie réduite » visé à l'article 3;

**d)** « moins d'énergie » visé à l'article 4;

**e)** « sans sucres » visé à l'article 37.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

**B.01.508 (1)** Est permise, sur l'étiquette ou dans l'annonce d'un aliment, toute déclaration, expresse ou implicite, selon laquelle l'aliment est conçu pour un régime à teneur réduite en sodium si une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard de l'un des sujets ci-après figurant à la colonne 1 est faite sur l'étiquette ou dans l'annonce conformément à l'article B.01.503 :

**a)** « sans sodium ou sans sel » visé à l'article 31;

**b)** « faible teneur en sodium ou en sel » visé à l'article 32;

**c)** « teneur réduite en sodium ou en sel » visé à l'article 33;

**d)** « moins de sodium ou de sel » visé à l'article 34.

**(2)** Malgré le paragraphe (1), est interdite, dans l'espace principal d'un produit préemballé, toute déclaration, expresse ou implicite, selon laquelle le produit est conçu pour un régime à teneur réduite en sodium si un symbole nutritionnel à l'égard du sodium paraît dans cet espace.

DORS/2003-11, art. 20; DORS/2022-168, art. 18; DORS/2022-168, art. 52.

**B.01.509 (1)** Est permise, sur l'étiquette ou dans l'annonce d'un aliment, la mention ou l'allégation « non sucré » si les conditions ci-après sont réunies :

**a)** l'aliment répond aux critères mentionnés à l'article 40 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive relatifs, dans la colonne 2, au sujet « Non additionné de sucres » figurant dans la colonne 1;

**(b)** the food does not contain a sweetener referred to in section 2 of the *Marketing Authorization for Food Additives That May Be Used as Sweeteners*.

**(2)** Despite subsection (1), no person shall, on the principal display panel of a prepackaged product, make a statement or claim that the product is "unsweetened" if a nutrition symbol referring to sugars appears on the panel.

SOR/2003-11, s. 20; SOR/2022-168, s. 19.

**B.01.510** A statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims, respecting the following subjects set out in column 1, that is made on the label of or in an advertisement for a breakfast cereal with milk, shall be accompanied by an indication that it refers to 30 g of the breakfast cereal combined with 125 mL of milk:

**(a)** "source of protein", set out in item 8;

**(b)** "excellent source of protein", set out in item 9; and

**(c)** "more protein", set out in item 10.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

**B.01.511 (1)** For greater certainty and subject to subsections (2) to (4), a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims that is made on the label of or in any advertisement for a food may be preceded or followed by other words, numbers, signs or symbols, but none of those shall be interposed between the words, numbers, signs or symbols of the statement or claim.

**(2)** The words "very", "ultra" and "extra", and all other words, numbers, signs or symbols that modify the nature of a statement or claim, shall not precede or follow the statement or claim.

**(3)** A statement or claim that is made on the label of or in any advertisement for a food that has not been processed, formulated, reformulated or otherwise modified to meet the conditions set out in column 2 of the Table of Permitted Nutrient Content Statements and Claims shall not be accompanied by the brand name of the food.

**(4)** Any words, numbers, signs or symbols preceding or following the statement or claim referred to in subsection (3) shall accompany the statement or claim in such a manner that the statement or claim characterizes all foods of that type, and not only the specific food.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

**b)** il ne contient aucun des édulcorants mentionnés à l'article 2 de l'*Autorisation de mise en marché d'additifs alimentaires comme édulcorants*.

**(2)** Malgré le paragraphe (1), est interdite, dans l'espace principal d'un produit préemballé, la mention ou l'allégation selon laquelle le produit est « non sucré » si un symbole nutritionnel à l'égard des sucres paraît dans cet espace.

DORS/2003-11, art. 20; DORS/2022-168, art. 19.

**B.01.510** Toute mention ou toute allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard des sujets ci-après figurant à la colonne 1, faite sur l'étiquette ou dans l'annonce de céréales à déjeuner avec du lait, est accompagnée d'une indication que la mention ou l'allégation est faite à l'égard de 30 g de céréales à déjeuner combinées avec 125 mL de lait :

**a)** « source de protéines » visé à l'article 8;

**b)** « excellente source de protéines » visé à l'article 9;

**c)** « plus de protéines » visé à l'article 10.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

**B.01.511 (1)** Sous réserve des paragraphes (2) à (4), il est entendu que toute mention ou toute allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, faite sur l'étiquette ou dans l'annonce d'un aliment, ne peut être entrecoupée d'autres mots, chiffres, signes ou symboles, mais peut en être précédée ou suivie.

**(2)** Les mots « très », « ultra » et « extra », et tout autre mot, chiffre, signe ou symbole modifiant la nature de la mention ou de l'allégation, ne peuvent précéder ou suivre celle-ci.

**(3)** Toute mention ou toute allégation faite sur l'étiquette ou dans l'annonce d'un aliment qui n'a pas été transformé, formulé, reformulé ou autrement modifié afin de répondre aux critères mentionnés à la colonne 2 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive ne peut être accompagnée de la marque de l'aliment.

**(4)** Tout mot, chiffre, signe ou symbole qui précède ou suit la mention ou l'allégation visée au paragraphe (3) fait en sorte que la mention ou l'allégation caractérise tous les aliments du même type que l'aliment en cause et non seulement celui-ci en particulier.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

**B.01.512** If a food meets the conditions set out in column 2 of the Table of Permitted Nutrient Content Statements and Claims for more than one of the subjects set out in column 1, it is not necessary to repeat the common element of the statements or claims set out in column 4 that are used on the label of or in the advertisement for the food, and the remaining elements may be joined by means of a conjunction or punctuation, as appropriate.

SOR/2003-11, s. 20; SOR/2022-168, s. 52.

## Sensory Characteristic

**B.01.513 (1)** No person shall, on the label of or in any advertisement for a food, make the statement or claim "light" or "léger" — including any phonetic rendering of that statement or claim — respecting a sensory characteristic of the food unless the following conditions are met:

**(a)** if the statement or claim "light" or "léger" is made on the label of a food, the sensory characteristic shall be

**(i)** adjacent to, without any intervening printed, written or graphic material,

**(A)** the statement or claim, if the statement or claim is made only once, or

**(B)** the most prominent statement or claim on the principal display panel or, if none appears there, the most prominent statement or claim elsewhere on the label, if the statement or claim is made more than once, and

**(ii)** shown in letters of at least the same size and prominence as

**(A)** those of the statement or claim, if the statement or claim is made only once, or

**(B)** those of the most prominent statement or claim on the principal display panel or, if none appears there, the most prominent statement or claim elsewhere on the label, if the statement or claim is made more than once;

**(b)** if the statement or claim "light" or "léger" is made in an advertisement for a food, other than a radio or television advertisement, the sensory characteristic shall be

**(i)** adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once, and

**B.01.512** Si un aliment répond aux critères mentionnés à la colonne 2 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard de plusieurs sujets figurant à la colonne 1, la répétition de l'élément commun, dans les mentions ou les allégations figurant à la colonne 4 faites sur l'étiquette ou dans l'annonce de l'aliment, n'est pas nécessaire et les éléments dissemblables peuvent être unis au moyen d'une conjonction ou d'un signe de ponctuation, selon le cas.

DORS/2003-11, art. 20; DORS/2022-168, art. 52.

## Caractéristique organoleptique

**B.01.513 (1)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment, la mention ou l'allégation « léger » ou « light », de même que toute mention ou toute allégation ayant la même consonance que celle-ci, à l'égard d'une caractéristique organoleptique de l'aliment, à moins que les conditions suivantes soient réunies :

**a)** si la mention ou l'allégation « léger » ou « light » est faite sur l'étiquette d'un aliment, la caractéristique organoleptique, à la fois :

**(i)** précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé :

**(A)** la mention ou l'allégation ne paraissant qu'une seule fois,

**(B)** si la mention ou l'allégation est répétée, celle qui est la plus en évidence sur l'espace principal ou, à défaut, celle qui est la plus en évidence ailleurs sur l'étiquette,

**(ii)** figure en caractères d'une taille qui est au moins égale et aussi bien en vue que :

**(A)** ceux de la mention ou de l'allégation ne paraissant qu'une seule fois,

**(B)** si la mention ou l'allégation est répétée, ceux de celle qui est la plus en évidence sur l'espace principal ou, à défaut, ceux de celle qui est la plus en évidence ailleurs sur l'étiquette;

**b)** si la mention ou l'allégation « léger » ou « light » est faite dans l'annonce d'un aliment autre qu'une annonce radiophonique ou télévisée, la caractéristique organoleptique, à la fois :

**(i)** précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si une telle mention ou allégation est répétée, celle qui est la plus en évidence,

**(ii)** shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once;

**(c)** if the statement or claim "light" or "léger" is made in a radio advertisement or in the audio portion of a television advertisement, the sensory characteristic shall immediately precede or follow the statement or claim; and

**(d)** if the statement or claim "light" or "léger" is made in the visual portion of a television advertisement, the sensory characteristic shall

**(i)** appear concurrently with and for the same amount of time as the statement or claim,

**(ii)** be adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once, and

**(iii)** be shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

**(2)** Subsection (1) does not apply to the statement or claim "light" or "léger" when it is used with respect to rum.

SOR/2003-11, s. 20; err.(F), Vol. 137, No. 5; SOR/2007-176, s. 6; SOR/2016-305, s. 75(F); SOR/2018-108, s. 397; SOR/2022-168, s. 20.

[**B.01.514** to **B.01.599** reserved]

## Health Claims

### Languages

**B.01.600** A statement or claim set out in column 1 of the table following section B.01.603 that appears on the label of a food shall be

**(a)** in English and French; or

**(b)** in one of those languages, if in accordance with subsection B.01.012(3) or (7) the information that is required by these Regulations to be shown on the label of the food may be shown in that language only and is shown on the label in that language.

SOR/2003-11, s. 20.

**(ii)** figure en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence;

**c)** si la mention ou l'allégation « léger » ou « light » est faite dans une annonce radiophonique ou dans la composante audio d'une annonce télévisée, la caractéristique organoleptique précède ou suit immédiatement la mention ou l'allégation;

**d)** si la mention ou l'allégation « léger » ou « light » est faite dans la composante visuelle d'une annonce télévisée, la caractéristique organoleptique, à la fois :

**(i)** paraît en même temps et pendant la même durée que la mention ou l'allégation,

**(ii)** précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence,

**(iii)** figure en caractères d'une taille au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

**(2)** Le paragraphe (1) ne s'applique pas à la mention ou à l'allégation « léger » ou « light » faite à l'égard du rhum.

DORS/2003-11, art. 20; err.(F), Vol. 137, nº 5; DORS/2007-176, art. 6; DORS/2016-305, art. 75(F); DORS/2018-108, art. 397; DORS/2022-168, art. 20.

[**B.01.514** à **B.01.599** réservés]

## Allégations relatives à la santé

### Langues

**B.01.600** Toute mention ou allégation mentionnée à la colonne 1 du tableau suivant l'article B.01.603 faite sur l'étiquette d'un aliment figure :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément aux paragraphes B.01.012(3) ou (7), les renseignements devant être indiqués sur l'étiquette de l'aliment aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

DORS/2003-11, art. 20.

## Statements or Claims

**B.01.601 (1)** A food with a label or advertisement that carries a statement or claim set out in column 1 of the table following section B.01.603 is exempt from the provisions of the Act and its Regulations with respect to drugs, and from subsections 3(1) and (2) of the Act, if

**(a)** the food meets the applicable conditions set out in column 2;

**(b)** the label of or the advertisement for the food meets the applicable conditions set out in column 3; and

**(c)** the food is not

**(i)** intended solely for children under four years of age, or

**(ii)** a food represented for use in a very low energy diet.

**(2)** Subsection (1) does not apply to a food that comes within the definition of ***drug*** as defined in section 2 of the Act for a reason other than the fact that its label or advertisement carries a statement or claim referred to in that subsection.

**(3)** Subsection (1) applies even if the word "graisses" in the French version of the statement or claim is replaced by the word "lipides".

SOR/2003-11, s. 20; SOR/2022-168, s. 21.

**B.01.602 (1)** The information required under the conditions set out in column 3 of the table following section B.01.603 that appears in an advertisement for a food that is not a prepackaged product, or in an advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, shall,

**(a)** in the case of an advertisement, other than a radio or television advertisement, be

**(i)** adjacent to, without any intervening printed, written or graphic material, the statement or claim set out in column 1, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once, and

**(ii)** shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once;

## Mentions ou allégations

**B.01.601 (1)** L'aliment dont l'étiquette ou l'annonce comporte une mention ou allégation figurant à la colonne 1 du tableau suivant l'article B.01.603 est exempté de l'application des dispositions de la Loi et de ses règlements relatives aux drogues et des paragraphes 3(1) et (2) de la Loi, si les conditions suivantes sont réunies :

**a)** il répond aux critères applicables mentionnés à la colonne 2;

**b)** son étiquette ou annonce répond aux critères applicables mentionnés à la colonne 3;

**c)** il n'est :

**(i)** ni destiné exclusivement aux enfants âgés de moins de quatre ans,

**(ii)** ni un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie.

**(2)** Le paragraphe (1) ne s'applique pas à l'aliment qui satisfait à la définition de ***drogue***, à l'article 2 de la Loi, pour une raison autre que la présence, sur son étiquette ou annonce, d'une mention ou allégation visée à ce paragraphe.

**(3)** Le paragraphe (1) s'applique même si le terme « lipides » est substitué au terme « graisses » dans la version française de la mention ou de l'allégation.

DORS/2003-11, art. 20; DORS/2022-168, art. 21.

**B.01.602 (1)** Les renseignements requis en vertu des critères mentionnés à la colonne 3 du tableau suivant l'article B.01.603 qui figurent dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres répondent aux critères suivants :

**a)** dans le cas d'une annonce autre qu'une annonce radiophonique ou télévisée :

**(i)** d'une part, ils précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou allégation figurant à la colonne 1 ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence,

**(ii)** d'autre part, ils figurent en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est

**(b)** in the case of a radio advertisement or the audio portion of a television advertisement, immediately precede or follow the statement or claim set out in column 1; or

**(c)** in the case of a television advertisement, be communicated

**(i)** in the audio mode, if the statement or claim set out in column 1 is made only in the audio portion of the advertisement or in both the audio and visual portions, or

**(ii)** in the audio or visual mode, if the statement or claim set out in column 1 is made only in the visual portion of the advertisement.

répétée, que ceux de celle qui est la plus en évidence;

**b)** dans le cas d'une annonce radiophonique ou de la composante audio d'une annonce télévisée, ils précèdent ou suivent immédiatement la mention ou l'allégation figurant à la colonne 1;

**c)** dans le cas d'une annonce télévisée, ils sont communiqués :

**(i)** en mode audio, si la mention ou l'allégation figurant à la colonne 1 fait partie uniquement de la composante audio de l'annonce ou, à la fois, des composantes audio et visuelle de celle-ci,

**(ii)** en mode audio ou en mode visuel, si la mention ou l'allégation figurant à la colonne 1 fait partie uniquement de la composante visuelle de l'annonce.

**(2)** The information that is communicated in the visual mode of a television advertisement in accordance with subparagraph (1)(c)(ii) shall

**(a)** appear concurrently with and for at least the same amount of time as the statement or claim;

**(b)** be adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(c)** be shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

SOR/2003-11, s. 20.

**(2)** Les renseignements qui sont communiqués en mode visuel dans une annonce télévisée conformément au sous-alinéa (1)c)(ii), à la fois :

**a)** paraissent en même temps et pendant au moins la même durée que la mention ou l'allégation;

**b)** précèdent ou suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**c)** figurent en caractères d'une taille au moins égale et aussi bien en vue que ceux de la mention ou allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

DORS/2003-11, art. 20.

**B.01.603 (1)** For greater certainty, a statement or claim set out in column 1 of the table following this section that is made on the label of or in any advertisement for a food may be preceded or followed by other words, numbers, signs or symbols, but none of those shall be interposed between the words, numbers, signs or symbols of the statement or claim.

**(2)** If a food meets the conditions set out in column 2 of the table following this section for more than one item of that table, it is not necessary to repeat the common element of the statements or claims set out in column 1 that are used on the label of or in the advertisement for the food, and the remaining elements may be joined by means of a conjunction or punctuation, as appropriate.

**B.01.603 (1)** Il est entendu que toute mention ou allégation figurant à la colonne 1 du tableau suivant le présent article, faite sur l'étiquette ou dans l'annonce d'un aliment, ne peut être entrecoupée d'autres mots, chiffres, signes ou symboles, mais peut en être précédée ou suivie.

**(2)** Si un aliment répond aux critères mentionnés à la colonne 2 du tableau suivant le présent article en regard de plusieurs articles de ce tableau, la répétition de l'élément commun, dans les mentions ou les allégations figurant à la colonne 1 faites sur l'étiquette ou dans l'annonce de l'aliment, n'est pas nécessaire et les éléments dissemblables peuvent être unis au moyen d'une conjonction ou d'un signe de ponctuation, selon le cas.

## TABLE

| Item | Column 1<br>Statement or Claim | Column 2<br>Conditions — Food | Column 3<br>Conditions — Label or Advertisement |
|---|---|---|---|
| 1 | (1) "A healthy diet containing foods high in potassium and low in sodium may reduce the risk of high blood pressure, a risk factor for stroke and heart disease. (Naming the food) is sodium-free."<br><br>(2) "A healthy diet containing foods high in potassium and low in sodium may reduce the risk of high blood pressure, a risk factor for stroke and heart disease. (Naming the food) is low in sodium."<br><br>(3) "A healthy diet containing foods high in potassium and low in sodium may reduce the risk of high blood pressure, a risk factor for stroke and heart disease. (Naming the food) is a good source of potassium and is sodium-free."<br><br>(4) "A healthy diet containing foods high in potassium and low in sodium may reduce the risk of high blood pressure, a risk factor for stroke and heart disease. (Naming the food) is a good source of potassium and is low in sodium."<br><br>(5) "A healthy diet containing foods high in potassium and low in sodium may reduce the risk of high blood pressure, a risk factor for stroke and heart disease. (Naming the food) is high in potassium and is sodium-free."<br><br>(6) "A healthy diet containing foods high in potassium and low in sodium may reduce the risk of high blood pressure, a risk factor for stroke and heart disease. (Naming the food) is high in potassium and is low in sodium." | The food<br><br>(a) other than a vegetable or fruit, does not meet the conditions set out in column 2 of item 2 of the Table of Permitted Nutrient Content Statements and Claims for the subject "low in energy" set out in column 1;<br><br>(b) contains at least 10% of the weighted recommended nutrient intake of a vitamin or a mineral nutrient<br><br>(i) per reference amount and per serving of stated size, or<br><br>(ii) per serving of stated size, if the food is a prepackaged meal;<br><br>(c) meets the conditions set out in column 2 of item 19 of the Table of Permitted Nutrient Content Statements and Claims for the subject "low in saturated fatty acids" set out in column 1;<br><br>(d) contains 0.5% or less alcohol;<br><br>(e) meets the conditions set out in column 2 of item 31 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of sodium or salt" set out in column 1, if the label of or advertisement for the food carries statement or claim (1), (3) or (5) set out in column 1 of this item;<br><br>(f) meets the conditions set out in column 2 of item 32 of the Table of Permitted Nutrient Content Statements and Claims for the subject "low in sodium or salt" set out in column 1, if the label of or advertisement for the food carries statement or claim (2), (4) or (6) set out in column 1 of this item; and<br><br>(g) contains 350 mg or more of potassium, if the label of or advertisement for the food carries statement or claim (3), (4), (5) or (6) set out in column 1 of this item,<br><br>(i) per reference amount and per serving of stated size, or<br><br>(ii) per serving of stated size, if the food is a prepackaged meal. | If the statement or claim is made on the label of or in the advertisement for a food that is not a prepackaged product, or in the advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, the label or advertisement shall include the amount of sodium and potassium per serving of stated size, in accordance with section B.01.602, if applicable. However, this requirement does not apply if the statement or claim is made on the label of or in the advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating. |
| 2 | (1) "A healthy diet with adequate calcium and vitamin D, and regular physical activity, help to achieve strong bones and may reduce the risk of osteoporosis. (Naming the food) is a good source of calcium."<br><br>(2) "A healthy diet with adequate calcium and vitamin D, and regular physical activity, help to achieve strong bones | The food<br><br>(a) other than a vegetable or fruit, does not meet the conditions set out in column 2 of item 2 of the Table of Permitted Nutrient Content Statements and Claims for the subject "low in energy" set out in column 1; | (1) If the statement or claim is made on the label of a prepackaged product, or in any advertisement for the prepackaged product that is made or placed by or on the direction of the manufacturer of the product, the amount of vitamin D and phosphorus shall be included in, as the case may be, |

| Item | Column 1<br>Statement or Claim | Column 2<br>Conditions — Food | Column 3<br>Conditions — Label or Advertisement |
|---|---|---|---|
| | and may reduce the risk of osteoporosis. (Naming the food) is high in calcium."<br><br>(3) "A healthy diet with adequate calcium and vitamin D, and regular physical activity, help to achieve strong bones and may reduce the risk of osteoporosis. (Naming the food) is an excellent source of calcium."<br><br>(4) "A healthy diet with adequate calcium and vitamin D, and regular physical activity, help to achieve strong bones and may reduce the risk of osteoporosis. (Naming the food) is very high in calcium."<br><br>(5) "A healthy diet with adequate calcium and vitamin D, and regular physical activity, help to achieve strong bones and may reduce the risk of osteoporosis. (Naming the food) is an excellent source of calcium and vitamin D."<br><br>(6) "A healthy diet with adequate calcium and vitamin D, and regular physical activity, help to achieve strong bones and may reduce the risk of osteoporosis. (Naming the food) is very high in calcium and vitamin D." | (b) contains no more phosphorus, excluding that provided by phytate, than calcium;<br><br>(c) contains 0.5% or less alcohol;<br><br>(d) contains, if the label of or advertisement for the food carries statement or claim (1) or (2) set out in column 1 of this item,<br><br>(i) 200 mg or more of calcium per reference amount and per serving of stated size, or<br><br>(ii) 300 mg or more of calcium per serving of stated size, if the food is a prepackaged meal;<br><br>(e) contains, if the label of or advertisement for the food carries statement or claim (3), (4), (5) or (6) set out in column 1 of this item,<br><br>(i) 275 mg or more of calcium per reference amount and per serving of stated size, or<br><br>(ii) 400 mg or more of calcium per serving of stated size, if the food is a prepackaged meal; and<br><br>(f) contains 1.25 µg or more of vitamin D, if the label of or advertisement for the food carries statement or claim (5) or (6) set out in column 1 of this item,<br><br>(i) per reference amount and per serving of stated size, or<br><br>(ii) per serving of stated size, if the food is a prepackaged meal. | (a) the nutrition facts table in accordance with subsection B.01.402(2); or<br><br>(b) the supplemented food facts table in accordance with subsection B.29.002(1), in respect of the description referred to in column 2, the unit referred to in column 3 and the manner of expression referred to in column 4 of the table to section B.29.002, or with subsection B.29.003(3), or with both, as the case may be.<br><br>(2) If the statement or claim is made on the label of or in the advertisement for a food that is not a prepackaged product, or in the advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, the label or advertisement shall include the amount of vitamin D, calcium and phosphorus per serving of stated size, in accordance with section B.01.602, if applicable. However, this requirement does not apply if the statement or claim is made on the label of or in the advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating. |
| 3 | (1) "A healthy diet low in saturated and trans fats may reduce the risk of heart disease. (Naming the food) is free of saturated and trans fats."<br><br>(2) "A healthy diet low in saturated and trans fats may reduce the risk of heart disease. (Naming the food) is low in saturated and trans fats." | The food<br><br>(a) other than a vegetable or fruit, does not meet the conditions set out in column 2 of item 2 of the Table of Permitted Nutrient Content Statements and Claims for the subject "low in energy" set out in column 1;<br><br>(b) contains at least 10% of the weighted recommended nutrient intake of a vitamin or a mineral nutrient<br><br>(i) per reference amount and per serving of stated size, or<br><br>(ii) per serving of stated size, if the food is a prepackaged meal;<br><br>(c) contains 100 mg or less of cholesterol per 100 g of food;<br><br>(d) contains 0.5% or less alcohol;<br><br>(e) if it is a fat or an oil, meets the conditions set out in<br><br>(i) column 2 of item 25 of the Table of Permitted Nutrient Content Statements and Claims for the | If the statement or claim is made on the label of or in the advertisement for a food that is not a prepackaged product, or in the advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, the label or advertisement shall include the amount of saturated fatty acids and *trans* fatty acids per serving of stated size, in accordance with section B.01.602, if applicable. However, this requirement does not apply if the statement or claim is made on the label of or in the advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating. |

| Item | Column 1<br>Statement or Claim | Column 2<br>Conditions — Food | Column 3<br>Conditions — Label or Advertisement |
|---|---|---|---|
| | | subject "source of omega-3 polyunsaturated fatty acids" set out in column 1,<br>(ii) column 2 of item 26 of the Table of Permitted Nutrient Content Statements and Claims for the subject "source of omega-6 polyunsaturated fatty acids" set out in column 1, or<br>(iii) subparagraphs (i) and (ii);<br>(f) contains<br>(i) 480 mg or less of sodium per reference amount and per serving of stated size, and per 50 g if the reference amount is 30 g or 30 mL or less, or<br>(ii) 960 mg or less of sodium per serving of stated size, if the food is a prepackaged meal;<br>(g) meets the conditions set out in column 2 of item 18 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of saturated fatty acids" set out in column 1, if the label of or advertisement for the food carries statement or claim (1) set out in column 1 of this item; and<br>(h) meets the conditions set out in column 2 of item 19 of the Table of Permitted Nutrient Content Statements and Claims for the subject "low in saturated fatty acids" set out in column 1, if the label of or advertisement for the food carries statement or claim (2) set out in column 1 of this item. | |
| 4 | "A healthy diet rich in a variety of vegetables and fruit may help reduce the risk of some types of cancer." | The food<br>(a) is one of the following vegetables, fruits or juices and may contain only food additives that are referred to in section 2 of a marketing authorization, sweetening agents, salt, herbs, spices, seasonings and water:<br>(i) a fresh, frozen, canned or dried vegetable,<br>(ii) a fresh, frozen, canned or dried fruit,<br>(iii) a vegetable or fruit juice, or<br>(iv) a combination of the foods set out in subparagraphs (i) to (iii);<br>(b) is not one of the following:<br>(i) potatoes, yams, cassava, plantain, corn, mushrooms, mature legumes and their juices,<br>(ii) vegetables or fruit used as condiments, garnishes or | |

| Item | Column 1<br>Statement or Claim | Column 2<br>Conditions — Food | Column 3<br>Conditions — Label or Advertisement |
|---|---|---|---|
| | | flavourings, including maraschino cherries, glacé fruit, candied fruit and onion flakes,<br>(iii) jams or jam-type spreads, marmalades, preserves and jellies,<br>(iv) olives, or<br>(v) powdered vegetables or fruit; and<br>(c) contains 0.5% or less alcohol. | |
| 4.1 | "A healthy diet rich in a variety of vegetables and fruit may help reduce the risk of heart disease." | The food<br>(a) is one of the following vegetables or fruits and may contain only food additives that are referred to in section 2 of a marketing authorization, salt, herbs, spices, seasonings and water:<br>(i) a fresh, frozen, canned or dried vegetable,<br>(ii) a fresh, frozen, canned or dried fruit,<br>(iii) a vegetable juice or vegetable drink, or<br>(iv) a combination of the foods set out in any of subparagraphs (i) to (iii);<br>(b) is not one of or does not contain any of the following:<br>(i) potatoes, yams, cassava, plantain, mature legumes and their juices,<br>(ii) vegetables or fruit used as condiments, garnishes or flavourings, including maraschino cherries, glacé fruit, candied fruit and onion flakes,<br>(iii) jams or jam-type spreads, marmalades, preserves and jellies,<br>(iv) olives,<br>(v) a fruit juice or fruit drink,<br>(vi) powdered vegetables or fruit, or<br>(vii) the seed of a fruit known as a drupe, including almonds, cashews and coconuts;<br>(c) contains 0.5% or less alcohol; and<br>(d) contains less than 15% of the daily value of sodium per reference amount and per serving of stated size, and per 50 g if the reference amount is 30 g or 30 mL or less. | |
| 5 | (1) "Won't cause cavities."<br>(2) "Does not promote tooth decay." | The food is a chewing gum, hard candy or breath freshener product that | If the statement or claim is made on the label of a prepackaged product, or in any advertisement for the prepackaged |

| Item | Column 1<br>Statement or Claim | Column 2<br>Conditions — Food | Column 3<br>Conditions — Label or Advertisement |
|---|---|---|---|
| | (3) "Does not promote dental caries."<br>(4) "Non-cariogenic." | (a) contains 0.25% or less starch, dextrins, mono-, di- and oligosaccharides or other fermentable carbohydrates combined; or<br>(b) does not, if it contains more than 0.25% fermentable carbohydrates, lower plaque pH below 5.7 by bacterial fermentation during 30 minutes after consumption as measured by the indwelling plaque pH test, referred to in "Identification of Low Caries Risk Dietary Components" by T.N. Imfeld, Volume 11, Monographs in Oral Science, 1983. | product that is made or placed by or on the direction of the manufacturer of the product, the amount of sugar alcohols, if present, shall be included in, as the case may be,<br>(a) the nutrition facts table, in accordance with subsection B.01.402(2); or<br>(b) the supplemented food facts table, in accordance with subsection B.29.003(3). |

## TABLEAU

| Article | Colonne 1<br>Mention ou allégation | Colonne 2<br>Critères — aliments | Colonne 3<br>Critères — étiquette ou annonce |
|---|---|---|---|
| 1 | (1) « Une alimentation saine comprenant des aliments à teneur élevée en potassium et pauvres en sodium peut réduire le risque d'hypertension, facteur de risque d'accident cérébrovasculaire et de maladie du cœur. (Nom de l'aliment) ne contient pas de sodium. »<br>(2) « Une alimentation saine comprenant des aliments à teneur élevée en potassium et pauvres en sodium peut réduire le risque d'hypertension, facteur de risque d'accident cérébrovasculaire et de maladie du cœur. (Nom de l'aliment) est pauvre en sodium. »<br>(3) « Une alimentation saine comprenant des aliments à teneur élevée en potassium et pauvres en sodium peut réduire le risque d'hypertension, facteur de risque d'accident cérébrovasculaire et de maladie du cœur. (Nom de l'aliment) est une bonne source de potassium et ne contient pas de sodium. »<br>(4) « Une alimentation saine comprenant des aliments à teneur élevée en potassium et pauvres en sodium peut réduire le risque d'hypertension, facteur de risque d'accident cérébrovasculaire et de maladie du cœur. (Nom de l'aliment) est une bonne source de potassium et est pauvre en sodium. »<br>(5) « Une alimentation saine comprenant des aliments à teneur élevée en potassium et pauvres en sodium peut réduire le risque d'hypertension, facteur de risque d'accident cérébrovasculaire et de maladie du cœur. (Nom de l'aliment) est une source élevée de potassium et ne contient pas de sodium. »<br>(6) « Une alimentation saine comprenant des aliments à teneur élevée en potassium et pauvres en sodium peut | L'aliment :<br>a) autre qu'un légume ou un fruit, ne répond pas aux critères mentionnés à la colonne 2 de l'article 2 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « peu d'énergie » visé à la colonne 1;<br>b) contient au moins 10 % de l'apport nutritionnel recommandé pondéré d'une vitamine ou d'un minéral nutritif, selon le cas :<br>(i) par quantité de référence et portion indiquée,<br>(ii) par portion indiquée, si l'aliment est un repas préemballé;<br>c) répond aux critères mentionnés à la colonne 2 de l'article 19 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « faible teneur en acides gras saturés » visé à la colonne 1;<br>d) contient au plus 0,5 % d'alcool;<br>e) dont l'étiquette ou l'annonce comporte les mentions ou allégations (1), (3) ou (5) figurant à la colonne 1 du présent article, répond aux critères mentionnés à la colonne 2 de l'article 31 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans sodium ou sans sel » visé à la colonne 1;<br>f) dont l'étiquette ou l'annonce comporte les mentions ou allégations (2), (4) ou (6) figurant à la colonne 1 du présent article, répond aux critères mentionnés à la colonne 2 de l'article | Si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, l'étiquette ou l'annonce indique la teneur en sodium et en potassium par portion indiquée et, le cas échéant, conformément à l'article B.01.602. Toutefois, cette exigence ne s'applique pas si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout enduit protecteur. |

| Article | Colonne 1<br>Mention ou allégation | Colonne 2<br>Critères — aliments | Colonne 3<br>Critères — étiquette ou annonce |
|---|---|---|---|
| | réduire le risque d'hypertension, facteur de risque d'accident cérébrovasculaire et de maladie du cœur. (Nom de l'aliment) a une teneur élevée en potassium et est pauvre en sodium. » | 32 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « faible teneur en sodium ou en sel » visé à la colonne 1;<br>g) dont l'étiquette ou l'annonce comporte les mentions ou allégations (3), (4), (5) ou (6) figurant à la colonne 1 du présent article, contient 350 mg ou plus de potassium, selon le cas :<br>(i) par quantité de référence et portion indiquée,<br>(ii) par portion indiquée, si l'aliment est un repas préemballé. | |
| 2 | (1) « Une alimentation saine comprenant une quantité adéquate de calcium et de vitamine D et une activité physique régulière favorisent la formation d'os solides et peuvent réduire le risque d'ostéoporose. (Nom de l'aliment) est une bonne source de calcium. »<br>(2) « Une alimentation saine comprenant une quantité adéquate de calcium et de vitamine D et une activité physique régulière favorisent la formation d'os solides et peuvent réduire le risque d'ostéoporose. (Nom de l'aliment) est une source élevée de calcium. »<br>(3) « Une alimentation saine comprenant une quantité adéquate de calcium et de vitamine D et une activité physique régulière favorisent la formation d'os solides et peuvent réduire le risque d'ostéoporose. (Nom de l'aliment) est une excellente source de calcium. »<br>(4) « Une alimentation saine comprenant une quantité adéquate de calcium et de vitamine D et une activité physique régulière favorisent la formation d'os solides et peuvent réduire le risque d'ostéoporose. (Nom de l'aliment) est une source très élevée de calcium. »<br>(5) « Une alimentation saine comprenant une quantité adéquate de calcium et de vitamine D et une activité physique régulière favorisent la formation d'os solides et peuvent réduire le risque d'ostéoporose. (Nom de l'aliment) est une excellente source de calcium et de vitamine D. »<br>(6) « Une alimentation saine comprenant une quantité adéquate de calcium et de vitamine D et une activité physique régulière favorisent la formation d'os solides et peuvent réduire le risque d'ostéoporose. (Nom de | L'aliment :<br>a) autre qu'un légume ou un fruit, ne répond pas aux critères mentionnés à la colonne 2 de l'article 2 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « peu d'énergie » visé à la colonne 1;<br>b) ne contient pas plus de phosphore, à l'exclusion de celui qui est fourni par le phytate, que de calcium;<br>c) contient au plus 0,5 % d'alcool;<br>d) dont l'étiquette ou l'annonce comporte les mentions ou allégations (1) ou (2) figurant à la colonne 1 du présent article, contient, selon le cas :<br>(i) 200 mg ou plus de calcium par quantité de référence et par portion indiquée,<br>(ii) 300 mg ou plus de calcium par portion indiquée, si l'aliment est un repas préemballé;<br>e) dont l'étiquette ou l'annonce comporte les mentions ou allégations (3), (4), (5) ou (6) figurant à la colonne 1 du présent article, contient, selon le cas :<br>(i) 275 mg ou plus de calcium par quantité de référence et par portion indiquée,<br>(ii) 400 mg ou plus de calcium par portion indiquée, si l'aliment est un repas préemballé;<br>f) dont l'étiquette ou l'annonce comporte les mentions ou allégations (5) ou (6) figurant à la colonne 1 du présent article, contient 1,25 µg ou plus de vitamine D, selon le cas :<br>(i) par quantité de référence et portion indiquée,<br>(ii) par portion indiquée, si l'aliment est un repas préemballé. | (1) Si la mention ou l'allégation figure sur l'étiquette d'un produit préemballé ou encore dans l'annonce d'un tel produit faite par le fabricant du produit ou sous ses ordres, la teneur en vitamine D et en phosphore est indiquée, selon le cas :<br>a) dans le tableau de la valeur nutritive conformément au paragraphe B.01.402(2);<br>b) dans le tableau des renseignements sur les aliments supplémentés conformément au paragraphe B.29.002(1), en ce qui a trait à la nomenclature visée à la colonne 2, à l'unité visée à la colonne 3 et aux règles d'écriture visées à la colonne 4 du tableau de l'article B.29.002, ou au paragraphe B.29.003(3), ou aux deux, selon le cas.<br>(2) Si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, l'étiquette ou l'annonce indique la teneur en vitamine D, en calcium et en phosphore par portion indiquée et, le cas échéant, conformément à l'article B.01.602. Toutefois, cette exigence ne s'applique pas si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout enduit protecteur. |

| Article | Colonne 1<br>Mention ou allégation | Colonne 2<br>Critères — aliments | Colonne 3<br>Critères — étiquette ou annonce |
|---|---|---|---|
| | l'aliment) est une source très élevée de calcium et de vitamine D. » | | |
| 3 | (1) « Une alimentation saine pauvre en graisses saturées et en graisses trans peut réduire le risque de maladie du cœur. (Nom de l'aliment) ne contient pas de graisses saturées ni de graisses trans. »<br><br>(2) « Une alimentation saine pauvre en graisses saturées et en graisses trans peut réduire le risque de maladie du cœur. (Nom de l'aliment) est pauvre en graisses saturées et en graisses trans. » | L'aliment :<br><br>a) autre qu'un légume ou un fruit, ne répond pas aux critères mentionnés à la colonne 2 de l'article 2 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « peu d'énergie » visé à la colonne 1;<br><br>b) contient au moins 10 % de l'apport nutritionnel recommandé pondéré d'une vitamine ou d'un minéral nutritif, selon le cas :<br><br>(i) par quantité de référence et portion indiquée,<br><br>(ii) par portion indiquée, si l'aliment est un repas préemballé;<br><br>c) contient au plus 100 mg de cholestérol par portion de 100 g de l'aliment;<br><br>d) contient au plus 0,5 % d'alcool;<br><br>e) s'il est une graisse ou une huile, répond à l'un ou l'autre des critères suivants :<br><br>(i) ceux mentionnés à la colonne 2 de l'article 25 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « source d'acides gras polyinsaturés oméga-3 » visé à la colonne 1,<br><br>(ii) ceux mentionnés à la colonne 2 de l'article 26 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « source d'acides gras polyinsaturés oméga-6 » visé à la colonne 1,<br><br>(iii) ceux prévus aux sous-alinéas (i) et (ii);<br><br>f) contient, selon le cas :<br><br>(i) au plus 480 mg de sodium par quantité de référence, par portion indiquée et, si la quantité de référence est d'au plus 30 g ou 30 mL, par 50 g,<br><br>(ii) au plus 960 mg de sodium par portion indiquée, si l'aliment est un repas préemballé;<br><br>g) dont l'étiquette ou l'annonce comporte la mention ou l'allégation (1) figurant à la colonne 1 du présent article, répond aux critères mentionnés à la colonne 2 de l'article 18 du Tableau des mentions et des allégations | Si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, l'étiquette ou l'annonce indique la teneur en acides gras saturés et en acides gras *trans* par portion indiquée et, le cas échéant, conformément à l'article B.01.602. Toutefois, cette exigence ne s'applique pas si la mention ou l'allégation est faite sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout enduit protecteur. |

| Article | Colonne 1<br>Mention ou allégation | Colonne 2<br>Critères — aliments | Colonne 3<br>Critères — étiquette ou annonce |
|---|---|---|---|
| | | autorisées concernant la teneur nutritive en regard du sujet « sans acides gras saturés » visé à la colonne 1;<br>h) dont l'étiquette ou l'annonce comporte la mention ou l'allégation (2) figurant à la colonne 1 du présent article, répond aux critères mentionnés à la colonne 2 de l'article 19 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « faible teneur en acides gras saturés » visé à la colonne 1. | |
| 4 | « Une alimentation saine comportant une grande variété de légumes et de fruits peut aider à réduire le risque de certains types de cancer. » | L'aliment :<br>a) est un des légumes, fruits ou jus ci-après et ne peut contenir que les additifs alimentaires visés à l'article 2 d'une autorisation de mise en marché, des agents édulcorants, du sel, des fines herbes, des épices, des assaisonnements et de l'eau :<br>(i) un légume frais, congelé, en conserve ou déshydraté,<br>(ii) un fruit frais, congelé, en conserve ou sec,<br>(iii) un jus de légume ou de fruit,<br>(iv) une combinaison des aliments mentionnés aux sous-alinéas (i) à (iii);<br>b) n'est pas :<br>(i) une pomme de terre, une igname, du manioc, une banane plantain, du maïs, un champignon, une légumineuse mature ou leur jus,<br>(ii) un légume ou un fruit utilisé comme condiment, garniture ou aromatisant, notamment une cerise au marasquin, un fruit glacé ou confit ou de l'oignon en flocons,<br>(iii) une confiture ou une tartinade de type confiture, une marmelade, une conserve de fruit ou une gelée,<br>(iv) une olive;<br>(v) un légume ou fruit en poudre;<br>c) contient au plus 0,5 % d'alcool. | |
| 4.1 | « Une alimentation saine comportant une grande variété de légumes et de fruits peut aider à réduire le risque de maladie du cœur. » | L'aliment :<br>a) est l'un des légumes ou fruits ci-après et ne peut contenir que les additifs alimentaires visés à l'article 2 d'une autorisation de mise en marché, du sel, des fines herbes, des épices, des assaisonnements ou de l'eau : | |

| Article | Colonne 1<br>Mention ou allégation | Colonne 2<br>Critères — aliments | Colonne 3<br>Critères — étiquette ou annonce |
|---|---|---|---|
| | | (i) un légume frais, congelé, en conserve ou déshydraté,<br>(ii) un fruit frais, congelé, en conserve ou sec,<br>(iii) un jus de légumes ou une boisson aux légumes,<br>(iv) une combinaison quelconque des aliments mentionnés aux sous-alinéas (i) à (iii);<br>b) n'est pas ou ne contient pas l'un des aliments suivants :<br>(i) une pomme de terre, une igname, du manioc, une banane plantain, une légumineuse mature ou leur jus,<br>(ii) un légume ou un fruit utilisé comme condiment, garniture ou aromatisant, notamment une cerise au marasquin, un fruit glacé ou confit ou de l'oignon en flocons,<br>(iii) une confiture ou une tartinade de type confiture, une marmelade, une conserve de fruit ou une gelée,<br>(iv) une olive,<br>(v) un jus de fruits ou une boisson aux fruits,<br>(vi) un légume ou fruit en poudre,<br>(vii) une graine d'un fruit connu comme un drupe, notamment une amande, une noix de cajou et de la noix de coco;<br>c) contient au plus 0,5 % d'alcool;<br>d) contient moins de 15 % de la valeur quotidienne de sodium par quantité de référence, par portion indiquée et, si la quantité de référence est d'au plus 30 g ou 30 ml, par 50 g. | |
| 5 | (1) « Ne cause pas la carie dentaire. »<br>(2) « Ne favorise pas la carie dentaire. »<br>(3) « Ne favorise pas les caries dentaires. »<br>(4) « Non cariogène. » | L'aliment est une gomme à mâcher, un bonbon dur ou un rafraîchisseur d'haleine qui répond à l'un ou l'autre des critères suivants :<br>a) il ne contient, au total, pas plus de 0,25 % d'amidon, de dextrines, de monosaccharides, de disaccharides, d'oligosaccharides ou d'autres glucides fermentescibles;<br>b) il contient plus de 0,25 % de glucides fermentescibles et il ne réduit pas le pH de la plaque à moins de 5,7 par fermentation bactérienne pendant 30 minutes après avoir été consommé, le pH étant mesuré selon le test « indwelling plaque pH » décrit dans « Identification of Low Caries Risk Dietary Components », Monographs in | Si la mention ou l'allégation figure sur l'étiquette d'un produit préemballé ou encore dans l'annonce d'un tel produit faite par le fabricant du produit ou sous ses ordres, la teneur en polyalcools, s'il y en a, est indiquée, selon le cas :<br>a) dans le tableau de la valeur nutritive conformément au paragraphe B.01.402(2);<br>b) dans le tableau des renseignements sur les aliments supplémentés conformément au paragraphe B.29.003(3). |

| Article | Colonne 1<br>Mention ou allégation | Colonne 2<br>Critères — aliments | Colonne 3<br>Critères — étiquette ou annonce |
|---|---|---|---|
| | | Oral Science, T.N. Imfeld, Volume 11, 1983. | |

SOR/2003-11, s. 20; err.(F), Vol. 137, No. 5; SOR/2010-142, s. 2; SOR/2016-305, ss. 47, 48, 75(F); SOR/2022-168, s. 52; SOR/2022-169, s. 18.

DORS/2003-11, art. 20; err.(F), Vol. 137, nº 5; DORS/2010-142, art. 2; DORS/2016-305, art. 47, 48 et 75(F); DORS/2022-168, art. 52; DORS/2022-169, art. 18.

**DIVISION 2**

## Alcoholic Beverages

**B.02.001** The foods referred to in this Division are included in the term *alcoholic beverage*.

SOR/93-145, s. 3(F).

**B.02.002** In this Division,

***absolute alcohol*** means alcohol of a strength of 100 per cent; (*alcool absolu*)

***age*** means the period during which an alcoholic beverage is kept under such conditions of storage as may be necessary to develop its characteristic flavour and bouquet; (*âge*)

***alcohol*** means ethyl alcohol; (*alcool*)

***flavouring*** means, in respect of a spirit, any other spirit or wine, domestic or imported, added as a flavouring to that spirit as authorized under the *Excise Act*; (*substance aromatique*)

***grain spirit*** means an alcoholic distillate, obtained from a mash of cereal grain or cereal grain products saccharified by the diastase of malt or by other enzymes and fermented by the action of yeast or a mixture of yeast and other micro-organisms, and from which all or nearly all of the naturally occurring substances other than alcohol and water have been removed; (*esprit de grain*)

***malt spirit*** means an alcoholic distillate, obtained by pot-still distillation from a mash of cereal grain or cereal grain products saccharified by the diastase of malt and fermented by the action of yeast or a mixture of yeast and other micro-organisms; (*esprit de malt*)

***molasses spirit*** means an alcoholic distillate, obtained from sugar-cane or sugar-cane products fermented by the action of yeast or a mixture of yeast and other micro-organisms, from which all or nearly all of the naturally occurring substances other than alcohol and water have been removed; (*esprit de mélasse*)

**TITRE 2**

## Boissons alcooliques

**B.02.001** L'expression *boissons alcooliques* vise notamment les aliments mentionnés dans le présent titre.

DORS/93-145, art. 3(F).

**B.02.002** Les définitions qui suivent s'appliquent au présent titre.

***âge*** Période durant laquelle une boisson alcoolique est conservée dans les conditions d'emmagasinage nécessaires pour développer sa saveur et son bouquet caractéristiques. (*age*)

***agent édulcorant*** Le glucose-fructose, le sirop de fructose ou tout aliment qui fait l'objet d'une norme énoncée au titre 18, ou une combinaison de ces produits. (*sweetening agent*)

***alcool*** Alcool éthylique. (*alcohol*)

***alcool absolu*** Alcool à 100 pour cent. (*absolute alcohol*)

***esprit de grain*** Distillat alcoolique obtenu à partir d'un moût de céréales ou de produits de céréales saccharifié par la diastase du malt ou par d'autres enzymes et fermenté au moyen de levure ou d'un mélange de levure et d'autres micro-organismes, et dont les substances naturellement présentes, autres que l'alcool et l'eau, ont été complètement ou presque complètement éliminées. (*grain spirit*)

***esprit de malt*** Distillat alcoolique obtenu, par distillation à l'alambic chauffé à feu nu, à partir d'un moût de céréales ou de produits de céréales saccharifié par la diastase du malt et fermenté au moyen de levure ou d'un mélange de levure et d'autres micro-organismes. (*malt spirit*)

***esprit de mélasse*** Distillat alcoolique obtenu à partir de la canne à sucre ou de produits de la canne à sucre fermentés au moyen de levure ou d'un mélange de levure et d'autres micro-organismes, et dont les substances

***small wood*** means wood casks or barrels of not greater than 700 L capacity; (*petit fût*)

***sweetening agent*** means glucose-fructose, fructose syrup or any food for which a standard is provided in Division 18, or any combination thereof. (*agent édulcorant*)

SOR/84-300, s. 10; SOR/93-145, s. 4.

***petit fût*** Barrique ou baril de bois d'une capacité ne dépassant pas 700 L. (*small wood*)

***substance aromatique*** À l'égard d'un spiritueux, tout autre spiritueux ou vin, domestique ou importé, qui est ajouté comme substance aromatique en vertu de la *Loi sur l'accise*. (*flavouring*)

DORS/84-300, art. 10; DORS/93-145, art. 4.

**B.02.003** If an alcoholic beverage contains 1.1% or more alcohol by volume, the percentage by volume of alcohol present in the alcoholic beverage shall be shown on the principal display panel

**(a)** followed by the words "alcohol by volume" or the abbreviation "alc./vol." or "alc/vol"; or

**(b)** preceded by the abbreviation "alc." or "alc" and followed by the abbreviation "vol." or "vol".

SOR/88-418, s. 1; SOR/93-145, s. 5(F); SOR/2014-9, s. 1.

**B.02.003** Lorsqu'une boisson alcoolique a une teneur en alcool de 1,1 pour cent ou plus par volume, la teneur en alcool est indiquée dans l'espace principal en pourcentage, lequel :

**a)** est soit suivi de la mention « alcool en volume » ou de l'abréviation « alc./vol. » ou « alc/vol »;

**b)** est soit inséré entre les abréviations « alc. » ou « alc » et « vol. » ou « vol ».

DORS/88-418, art. 1; DORS/93-145, art. 5(F); DORS/2014-9, art. 1.

**B.02.004 (1)** No person shall sell flavoured purified alcohol in a container with a capacity of 1,000 mL or less unless it contains 25.6 mL or less of alcohol.

**(2)** Subsection (1) does not apply to flavoured purified alcohol that is sold in a glass container with a capacity of at least 750 mL.

**(3)** For the purposes of this section, ***flavoured purified alcohol*** means an alcoholic beverage

**(a)** that is obtained from an alcohol base that has been purified during the course of manufacture through a process other than distillation and from which most of the naturally occurring substances other than alcohol and water have been removed; and

**(b)** to which has been added during the course of manufacture any substance or mixture of substances that imparts flavour.

SOR/2019-147, s. 1.

**B.02.004 (1)** Il est interdit de vendre de l'alcool purifié aromatisé dans un contenant dont la capacité est d'au plus 1 000 mL, à moins que le contenant ne contienne 25,6 mL ou moins d'alcool.

**(2)** Le paragraphe (1) ne s'applique pas à l'égard de l'alcool purifié aromatisé vendu dans un contenant de verre dont la capacité est d'au moins 750 mL.

**(3)** Pour l'application du présent article, ***alcool purifié aromatisé*** s'entend d'une boisson alcoolique :

**a)** qui est obtenue à partir d'une base d'alcool qui a été purifiée en cours de fabrication par un processus autre que la distillation et dont la plupart des substances naturellement présentes, autres que l'alcool et l'eau, ont été éliminées;

**b)** à laquelle a été ajouté, en cours de fabrication, toute substance ou tout mélange de substances qui lui donne un arôme.

DORS/2019-147, art. 1.

## Whisky

**B.02.010 [S]. Whisky** or **Whiskey**, other than Malt Whisky, Scotch Whisky, Irish Whisky, Canadian Whisky, Canadian Rye Whisky, Rye Whisky, Highland Whisky, Bourbon Whisky and Tennessee Whisky,

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained from a mash

## Whisky

**B.02.010 [N].** Le **whisky** ou **whiskey**, à l'exclusion du whisky de malt, du whisky écossais, du whisky irlandais, du whisky canadien, du whisky Highland, du bourbon ou whisky bourbon et du whisky Tennessee :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu à partir

of cereal grain or cereal grain products saccharified by the diastase of malt or by other enzymes and fermented by the action of yeast or a mixture of yeast and other micro-organisms; and

**(b)** may contain caramel and flavouring.

SOR/93-145, s. 6; SOR/93-603, s. 2.

**B.02.011 and B.02.012** [Repealed, SOR/93-145, s. 7]

**B.02.013 [S]. Malt Whisky**

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of a mash of malted grain fermented by the action of yeast or a mixture of yeast and other micro-organisms;

**(b)** shall possess the aroma, taste and character generally attributed to malt whisky; and

**(c)** may contain caramel and flavouring.

SOR/93-145, s. 8.

**B.02.014 and B.02.015** [Repealed, SOR/93-145, s. 9]

**B.02.016 [S]. Scotch Whisky** shall be whisky distilled in Scotland as Scotch whisky for domestic consumption in accordance with the laws of the United Kingdom.

**B.02.017** No person shall blend or modify in any manner any Scotch whisky that is imported in bulk for the purpose of bottling and sale in Canada as Scotch whisky except by

**(a)** blending with other Scotch whisky,

**(b)** the addition of distilled or otherwise purified water to adjust to a required strength, or

**(c)** the addition of caramel.

**B.02.018 [S]. Irish Whisky** shall be whisky distilled in Northern Ireland or in the Republic of Ireland as Irish whisky for domestic consumption in accordance with the laws of Northern Ireland or the Republic of Ireland.

**B.02.019** No person shall blend or modify in any manner any Irish whisky that is imported in bulk for the purpose of bottling and sale in Canada as Irish whisky except by

**(a)** blending with other Irish whisky,

d'un moût de céréales ou de produits de céréales saccharifié par la diastase du malt ou par d'autres enzymes et fermenté au moyen de levure ou d'un mélange de levure et d'autres micro-organismes;

**b)** peut contenir du caramel et des substances aromatiques.

DORS/93-145, art. 6; DORS/93-603, art. 2.

**B.02.011 et B.02.012** [Abrogés, DORS/93-145, art. 7]

**B.02.013 [N].** Le **whisky de malt**:

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation d'un moût de grain malté qui a été fermenté au moyen de levure ou d'un mélange de levure et d'autres micro-organismes;

**b)** doit posséder l'arôme, le goût et les caractéristiques communément attribués au whisky de malt;

**c)** peut contenir du caramel et des substances aromatiques.

DORS/93-145, art. 8.

**B.02.014 et B.02.015** [Abrogés, DORS/93-145, art. 9]

**B.02.016 [N].** Le **whisky écossais** doit être du whisky qui a été distillé en Écosse comme whisky écossais pour la consommation domestique, conformément aux lois du Royaume-Uni.

**B.02.017** Est interdit tout mélange ou toute modification de whisky écossais importé en vrac aux fins d'embouteillage et de vente au Canada comme whisky écossais, sauf

**a)** le mélange avec d'autre whisky écossais;

**b)** l'addition d'eau distillée ou autrement purifiée pour porter le whisky au degré alcoolique requis; ou

**c)** l'addition de caramel.

**B.02.018 [N].** Le **whisky irlandais** doit être du whisky distillé en Irlande du Nord ou dans la République d'Irlande pour la consommation domestique, conformément aux lois de l'Irlande du Nord ou de la République d'Irlande.

**B.02.019** Est interdit tout mélange ou toute modification de whisky irlandais importé en vrac aux fins d'embouteillage et de vente au Canada comme whisky irlandais, sauf

**a)** le mélange avec d'autre whisky irlandais;

**(b)** the addition of distilled or otherwise purified water to adjust to a required strength, or

**(c)** the addition of caramel.

### B.02.020 [S]. (1) Canadian Whisky, Canadian Rye Whisky or Rye Whisky

**(a)** shall

**(i)** be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained from a mash of cereal grain or cereal grain products saccharified by the diastase of malt or by other enzymes and fermented by the action of yeast or a mixture of yeast and other micro-organisms,

**(ii)** be aged in small wood for not less than three years,

**(iii)** possess the aroma, taste and character generally attributed to Canadian whisky,

**(iv)** be manufactured in accordance with the requirements of the *Excise Act* and the regulations made thereunder,

**(v)** be mashed, distilled and aged in Canada, and

**(vi)** contain not less than 40 per cent alcohol by volume; and

**(b)** may contain caramel and flavouring.

**(2)** Subject to subsection (3), no person shall make any claim with respect to the age of Canadian whisky, other than for the period during which the whisky has been held in small wood.

**(3)** Where Canadian whisky has been aged in small wood for a period of at least three years, any period not exceeding six months during which that whisky was held in other containers may be claimed as age.

SOR/93-145, s. 10; SOR/2000-51, s. 1.

### B.02.021 [S]. Highland Whisky

**(a)** shall be a potable alcoholic beverage blended in Canada from

**(i)** not less than 25 per cent malt whisky calculated on an absolute alcohol basis, distilled in Canada or Scotland, and

**(ii)** whisky; and

**b)** l'addition d'eau distillée ou autrement purifiée pour porter le whisky au degré alcoolique requis; ou

**c)** l'addition de caramel.

### B.02.020 [N]. (1) Le whisky canadien :

**a)** doit :

**(i)** être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu à partir d'un moût de céréales ou de produits de céréales saccharifié par la diastase du malt ou par d'autres enzymes et fermenté au moyen de levure ou d'un mélange de levure et d'autres micro-organismes,

**(ii)** être vieilli en petit fût durant au moins trois ans,

**(iii)** posséder l'arôme, le goût et les caractéristiques communément attribués au whisky canadien,

**(iv)** être fabriqué conformément aux exigences de la *Loi sur l'accise* et de ses règlements d'application,

**(v)** être trempé, distillé et vieilli au Canada,

**(vi)** contenir au moins 40 pour cent d'alcool en volume;

**b)** peut contenir du caramel et des substances aromatiques.

**(2)** Sous réserve du paragraphe (3), il est interdit de faire une allégation concernant l'âge du whisky canadien, sauf pour la période durant laquelle le whisky a été conservé en petit fût.

**(3)** Dans le cas du whisky canadien vieilli en petit fût durant au moins trois ans, toute période ne dépassant pas six mois durant laquelle le whisky canadien a été conservé dans d'autres récipients peut être comptée dans l'âge allégué du whisky.

DORS/93-145, art. 10; DORS/2000-51, art. 1.

### B.02.021 [N]. Le whisky Highland :

**a)** doit être une boisson alcoolique potable mélangée au Canada à partir :

**(i)** d'une part, d'au moins 25 pour cent de whisky de malt calculé en alcool absolu distillé au Canada ou en Écosse,

**(ii)** d'autre part, de whisky;

**(b)** may, if it contains 51 per cent or more malt whisky distilled in Scotland, be labelled or advertised as containing malt whisky distilled in Scotland.

SOR/93-145, s. 10.

**B.02.022 (1)** Subject to subsection (2), no person shall label, package, sell or advertise any food as **Bourbon Whisky**, or in such a manner that it is likely to be mistaken for Bourbon whisky unless it is whisky manufactured in the United States as Bourbon whisky in accordance with the laws of the United States applicable in respect of Bourbon whisky for consumption in the United States.

**(2)** A person may modify Bourbon whisky that is imported for the purpose of bottling and sale in Canada as Bourbon whisky by the addition of distilled or otherwise purified water to adjust the Bourbon whisky to a required strength.

SOR/89-59, s. 2; SOR/93-145, s. 11(F).

**B.02.022.1 (1)** Subject to subsection (2), no person shall label, package, sell or advertise any food as **Tennessee Whisky**, or in such a manner that it is likely to be mistaken for Tennessee whisky unless it is a straight Bourbon whisky produced in the State of Tennessee and manufactured in the United States as Tennessee whisky in accordance with the laws of the United States applicable in respect of Tennessee whisky for consumption in the United States.

**(2)** A person may modify Tennessee whisky that is imported for the purpose of bottling and sale in Canada as Tennessee whisky by the addition of distilled or otherwise purified water to adjust the Tennessee whisky to a required strength.

SOR/93-603, s. 3.

**B.02.023 (1)** Subject to sections B.02.022 and B.02.022.1, no person shall sell for consumption in Canada any whisky that has not been aged for a period of at least three years in small wood.

**(2)** Nothing in subsection (1) applies in respect of flavouring contained in whisky, but no person shall sell for consumption in Canada whisky containing any flavouring, other than wine, that has not been aged for a period of at least two years in small wood.

SOR/93-145, s. 12; SOR/93-603, s. 4.

## Rum

**B.02.030 [S]. Rum**

**b)** s'il contient au moins 51 pour cent de whisky de malt distillé en Écosse, peut être étiqueté et annoncé comme contenant de ce whisky.

DORS/93-145, art. 10.

**B.02.022 (1)** Sous réserve du paragraphe (2), il est interdit d'étiqueter, d'emballer, de vendre ou d'annoncer un aliment en tant que **bourbon**, ou d'une manière qui peut laisser croire qu'il s'agit de bourbon, à moins que cet aliment ne soit du whisky fabriqué aux États-Unis en tant que bourbon conformément aux lois de ce pays applicables au bourbon préparé pour consommation à l'intérieur du pays.

**(2)** Il est permis de modifier du bourbon importé pour être embouteillé et vendu au Canada en tant que bourbon, en y ajoutant de l'eau distillée ou autrement purifiée pour ramener le bourbon au degré alcoolique requis.

DORS/89-59, art. 2; DORS/93-145, art. 11(F).

**B.02.022.1 (1)** Sous réserve du paragraphe (2), il est interdit d'étiqueter, d'emballer ou de vendre un aliment — ou d'en faire la publicité — en tant que **whisky Tennessee** ou de manière qu'il puisse être confondu avec le whisky Tennessee, à moins que cet aliment ne soit du bourbon ou whisky bourbon pur produit dans l'État du Tennessee et fabriqué aux États-Unis en tant que whisky Tennessee conformément aux lois de ce pays applicables au whisky Tennessee préparé pour consommation à l'intérieur du pays.

**(2)** Il est permis de modifier du whisky Tennessee importé pour être embouteillé et vendu au Canada en tant que whisky Tennessee, en y ajoutant de l'eau distillée ou autrement purifiée pour ramener le whisky au degré alcoolique voulu.

DORS/93-603, art. 3.

**B.02.023 (1)** Sous réserve des articles B.02.022 et B.02.022.1, il est interdit de vendre pour consommation au Canada du whisky qui n'a pas été vieilli en petit fût durant au moins trois ans.

**(2)** Le paragraphe (1) ne s'applique pas aux substances aromatiques contenues dans le whisky; toutefois, il est interdit de vendre pour consommation au Canada du whisky contenant des substances aromatiques, autres que du vin, qui n'ont pas été vieillies en petit fût durant au moins deux ans.

DORS/93-145, art. 12; DORS/93-603, art. 4.

## Rhum

**B.02.030 [N].** Le **rhum**:

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained from sugar-cane or sugar-cane products fermented by the action of yeast or a mixture of yeast and other micro-organisms;

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations; and

**(c)** if it is imported in bulk for the purpose of bottling and sale in Canada as imported rum, may only be

**(i)** modified by adding distilled or otherwise purified water to adjust the rum to the strength stated on the label applied to the container,

**(ii)** modified by adding caramel, or

**(iii)** blended with other imported rum or, in the case of rum sold as Caribbean rum, with other rum.

SOR/93-145, s. 13; SOR/2012-292, s. 1.

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu à partir de la canne à sucre ou des produits de la canne à sucre fermentés au moyen de levure ou d'un mélange de levure et d'autres micro-organismes;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes;

**c)** s'il est importé en vrac aux fins d'embouteillage et de vente au Canada comme du rhum importé, peut être seulement :

**(i)** modifié par adjonction d'eau distillée ou autrement purifiée pour ramener le rhum au degré alcoolique indiqué sur l'étiquette apposée sur le contenant,

**(ii)** modifié par adjonction de caramel,

**(iii)** mélangé avec un autre rhum importé ou, s'il s'agit d'un rhum vendu comme du rhum antillais, avec un autre rhum.

DORS/93-145, art. 13; DORS/2012-292, art. 1.

**B.02.031 (1)** No person shall sell for consumption in Canada any rum that has not been aged for a period of at least one year in small wood.

**(2)** Nothing in subsection (1) applies in respect of flavouring contained in rum, but no person shall sell for consumption in Canada rum containing any flavouring, other than wine, that has not been aged for a period of at least one year in small wood.

SOR/84-657, s. 1; SOR/93-145, s. 13.

**B.02.031 (1)** Il est interdit de vendre pour consommation au Canada du rhum qui n'a pas été vieilli en petit fût durant au moins un an.

**(2)** Le paragraphe (1) ne s'applique pas aux substances aromatiques contenues dans le rhum; toutefois, il est interdit de vendre pour consommation au Canada du rhum contenant des substances aromatiques, autres que du vin, qui n'ont pas été vieillies en petit fût durant au moins un an.

DORS/84-657, art. 1; DORS/93-145, art. 13.

**B.02.032** [Repealed, SOR/93-145, s. 14]

**B.02.033** [Repealed, SOR/2012-292, s. 2]

**B.02.034** [Repealed, SOR/2012-292, s. 2]

**B.02.032** [Abrogé, DORS/93-145, art. 14]

**B.02.033** [Abrogé, DORS/2012-292, art. 2]

**B.02.034** [Abrogé, DORS/2012-292, art. 2]

## Gin

## Gin

**B.02.040 [S]. Hollands, Hollands Gin, Geneva, Geneva Gin, Genever, Genever Gin** or **Dutch-type Gin**

**(a)** shall be a potable alcoholic beverage obtained

**B.02.040 [N].** Le **genièvre Hollands, genièvre, gin type hollandais** ou **gros gin**:

**a)** doit être une boisson alcoolique potable obtenue :

**(i)** by the redistillation of malt spirit with or over juniper berries, or by a mixture of the products of more than one such redistillation,

**(ii)** by the redistillation of a combination of malt spirit and not more than four times its volume on an absolute alcohol basis of grain spirit with or over juniper berries, or by a mixture of the products of more than one such redistillation, or

**(iii)** by the blending of malt spirit, redistilled with or over juniper berries, with not more than four times its volume on an absolute alcohol basis of grain spirit or molasses spirit, or by a mixture of the products of more than one such blending;

**(b)** may contain

**(i)** other aromatic botanical substances, added during the redistillation process, and

**(ii)** caramel;

**(c)** shall not contain more than two per cent sweetening agent;

**(d)** may be labelled or advertised as being distilled, where subparagraph (a)(i) or (ii) is complied with; and

**(e)** shall be described on the principal display panel of its label and in any advertisements as blended gin, where subparagraph (a)(iii) is complied with.

SOR/93-145, s. 15.

**B.02.041 [S]. Gin,** other than Hollands, Hollands Gin, Geneva, Geneva Gin, Genever, Genever Gin or Dutch-type Gin,

**(a)** shall be a potable alcoholic beverage obtained

**(i)** by the redistillation of alcohol from food sources with or over juniper berries, or by a mixture of the products of more than one such redistillation, or

**(ii)** by the blending of alcohol from food sources, redistilled with or over juniper berries, with alcohol from food sources or by a mixture of the products of more than one such blending;

**(b)** may contain

**(i)** other aromatic botanical substances, added during the redistillation process,

**(ii)** a sweetening agent, and

**(iii)** a flavouring preparation for the purpose of maintaining a uniform flavour profile; and

**(i)** soit par la redistillation de l'esprit de malt avec ou sur des baies de genièvre ou par le mélange des produits de plus d'une telle redistillation,

**(ii)** soit par la redistillation d'un mélange d'esprit de malt et d'au plus quatre fois le même volume d'esprit de grain en alcool absolu avec ou sur des baies de genièvre, ou par le mélange des produits de plus d'une telle redistillation,

**(iii)** soit par le mélange d'esprit de malt redistillé avec ou sur des baies de genièvre et d'au plus quatre fois le même volume d'esprit de grain ou d'esprit de mélasse en alcool absolu, ou par une combinaison de plus d'un tel mélange;

**b)** peut contenir :

**(i)** d'autres substances végétales aromatiques ajoutées pendant la redistillation,

**(ii)** du caramel;

**c)** ne peut contenir plus de deux pour cent d'agent édulcorant;

**d)** peut être étiqueté ou annoncé comme étant distillé lorsque l'un des sous-alinéas a)(i) ou (ii) est respecté;

**e)** doit être désigné comme genièvre mélangé sur l'espace principal de l'étiquette et dans la publicité lorsque le sous-alinéa a)(iii) est respecté.

DORS/93-145, art. 15.

**B.02.041 [N].** Le **gin**, à l'exclusion du genièvre Hollands, genièvre, gin type hollandais ou gros gin :

**a)** doit être une boisson alcoolique potable obtenue :

**(i)** soit par la redistillation d'alcool dérivé de matières premières alimentaires avec ou sur des baies de genièvre, ou par le mélange des produits de plus d'une telle redistillation,

**(ii)** soit par le mélange d'alcool dérivé de matières premières alimentaires redistillé avec ou sur des baies de genièvre et d'alcool dérivé de matières premières alimentaires, ou par une combinaison de plus d'un tel mélange;

**b)** peut contenir :

**(i)** d'autres substances végétales aromatiques ajoutées pendant la redistillation,

**(ii)** un agent édulcorant,

**(c)** may be labelled or advertised as Dry Gin or London Dry Gin if sweetening agents have not been added.

SOR/93-145, s. 15.

**B.02.042** [Repealed, SOR/93-145, s. 15]

**B.02.043** No person shall make any claim for age for gin but gin that has been held in suitable containers may bear a label declaration to that effect.

## Brandy

**B.02.050 [S]. Brandy**, other than Armagnac Brandy or Armagnac, Canadian Brandy, Cognac Brandy or Cognac, Dried Fruit Brandy, Fruit Brandy, Grappa, Lees Brandy and Pomace or Marc,

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of wine; and

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations.

SOR/84-300, s. 12; SOR/93-145, s. 16.

**B.02.051 [S]. Armagnac Brandy** or **Armagnac** shall be brandy manufactured in the Armagnac district of France in accordance with the laws of the French Republic for consumption in that country.

SOR/93-145, s. 16.

**B.02.052 [S]. Canadian Brandy**

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of wine that has been fermented in Canada; and

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations.

SOR/93-145, s. 16.

**(iii)** des préparations aromatisantes pour assurer un profil aromatique uniforme;

**c)** peut être étiqueté et annoncé comme Dry Gin ou London Dry Gin lorsqu'aucun agent édulcorant n'y a été ajouté.

DORS/93-145, art. 15.

**B.02.042** [Abrogé, DORS/93-145, art. 15]

**B.02.043** Est interdite toute déclaration sur l'âge du genièvre, mais dans le cas du genièvre qui a été conservé dans des récipients appropriés, l'étiquette peut porter une déclaration à cet effet.

## Eau-de-vie

**B.02.050 [N].** L'**eau-de-vie de vin** (**brandy**), à l'exclusion de l'armagnac, du brandy canadien, du brandy de fruits, du brandy de fruits secs, du brandy de lies, du cognac, de la grappa et du marc :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation du vin;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes.

DORS/84-300, art. 12; DORS/93-145, art. 16.

**B.02.051 [N].** L'**armagnac** doit être de l'eau-de-vie de vin (brandy) fabriquée dans la région d'Armagnac, en France, conformément aux lois de la République française pour la consommation en France.

DORS/93-145, art. 16.

**B.02.052 [N].** Le **brandy canadien** :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation de vin qui a été fermenté au Canada;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes.

DORS/93-145, art. 16.

**B.02.053 [S]. Cognac Brandy** or **Cognac** shall be brandy manufactured in the Cognac district of France in accordance with the laws of the French Republic for consumption in that country.

SOR/93-145, s. 16.

**B.02.053 [N].** Le **cognac** doit être de l'eau-de-vie de vin (brandy) fabriquée dans la région de Cognac, en France, conformément aux lois de la République française pour la consommation en France.

DORS/93-145, art. 16.

**B.02.054 [S]. Dried Fruit Brandy**

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained from sound dried fruit; and

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations.

SOR/93-145, s. 16.

**B.02.054 [N].** Le **brandy de fruits secs** :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu à partir de fruits secs et sains;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes.

DORS/93-145, art. 16.

**B.02.055 [S]. Fruit Brandy**

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of

**(i)** fruit wine or a mixture of fruit wines, or

**(ii)** a fermented mash of sound ripe fruit other than grapes, or a mixture of sound ripe fruits other than grapes;

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations; and

**(c)** may be described on its label as "(*naming the fruit*) brandy" if all of the fruit or fruit wine used to make the brandy originates from the named fruit.

SOR/93-145, s. 16.

**B.02.055 [N].** Le **brandy de fruits** :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation :

**(i)** soit du vin de fruit ou d'un mélange de vins de fruit,

**(ii)** soit d'un moût fermenté, ou d'un mélange, de fruits mûrs et sains autres que des raisins;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes;

**c)** peut être désigné sur l'étiquette comme « brandy de (*désignation du fruit*) » lorsque la totalité des fruits ou du vin de fruit qui ont servi à la fabrication du brandy proviennent du fruit désigné.

DORS/93-145, art. 16.

**B.02.056 [S]. Grappa**

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of the pomace from sound ripe grapes after the removal of the juice or wine; and

**(b)** may contain

**B.02.056 [N].** La **grappa** :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation du marc provenant de raisins mûrs et sains après extraction du jus ou du vin;

**b)** peut contenir :

**(i)** caramel

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations.

SOR/93-145, s. 16.

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes.

DORS/93-145, art. 16.

### B.02.057 [S]. Lees Brandy

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of the lees of wine or fruit wine;

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations; and

**(c)** may be described on its label as "(*naming the fruit*) Lees Brandy" if all of the lees used to make the brandy originate from the named fruit.

SOR/93-145, s. 16.

### B.02.057 [N]. Le **brandy de lies** :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation des lies de vin ou du vin de fruit;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes;

**c)** peut être désigné sur l'étiquette comme « brandy de lies de (*désignation du fruit*) » lorsque la totalité des lies qui ont servi à la fabrication du brandy proviennent du fruit désigné.

DORS/93-145, art. 16.

### B.02.058 [S]. Pomace or Marc

**(a)** shall be a potable alcoholic distillate, or a mixture of potable alcoholic distillates, obtained by the distillation of the skin and pulp of sound ripe fruit after the removal of the fruit juice, wine or fruit wine;

**(b)** may contain

**(i)** caramel,

**(ii)** fruit and other botanical substances, and

**(iii)** flavouring and flavouring preparations; and

**(c)** may be described on its label as "(*naming the fruit*) Pomace" or "(*naming the fruit*) Marc" if all of the skin and pulp used to make the brandy originate from the named fruit.

SOR/93-145, s. 16.

### B.02.058 [N]. Le **marc** :

**a)** doit être un distillat alcoolique potable ou un mélange de distillats alcooliques potables obtenu par la distillation de la peau et de la pulpe de fruits mûrs et sains après extraction du jus de fruit, du vin ou du vin de fruit;

**b)** peut contenir :

**(i)** du caramel,

**(ii)** des fruits et d'autres substances végétales,

**(iii)** des substances aromatiques et des préparations aromatisantes;

**c)** peut être désigné sur l'étiquette comme « marc de (*désignation du fruit*) » lorsque la totalité de la peau et de la pulpe qui ont servi à la fabrication du brandy proviennent du fruit désigné.

DORS/93-145, art. 16.

**B.02.059** No person shall blend or modify in any manner any brandy that is imported in bulk for the purpose of bottling and sale in Canada as imported brandy, except by

**(a)** blending with other imported brandy;

**B.02.059** Il est interdit de mélanger ou de modifier toute eau-de-vie de vin (brandy) importée en vrac pour être embouteillée et vendue au Canada comme eau-de-vie de vin (brandy) importée, autrement que :

**(b)** the addition of caramel; and

**(c)** the addition of distilled or otherwise purified water to adjust the brandy to a required strength.

SOR/93-145, s. 16.

**B.02.060** Where brandy is wholly distilled in a country other than Canada, the label shall indicate the country of origin.

SOR/84-300, s. 13(F); SOR/93-145, s. 16.

**B.02.061 (1)** No person shall sell any brandy that has not been aged for a period of at least one year in wooden containers or at least six months in small wood.

**(2)** Nothing in subsection (1) applies in respect of flavouring contained in brandy, but no person shall sell brandy containing any flavouring, other than wine, that has not been aged for a period of at least one year in wooden containers or at least six months in small wood.

**(3)** Nothing in subsection (1) or (2) applies in respect of brandy that meets the standards prescribed by any of sections B.02.051 to B.02.058.

**(4)** No person shall make any claim with respect to the age of brandy other than for the period during which the brandy has been held in wooden containers or in small wood.

SOR/93-145, s. 16.

## Liqueurs and Spirituous Cordials

**B.02.070 [S]. Liqueur** or **Spirituous Cordial**

**(a)** shall be a product obtained by the mixing or distillation of alcohol from food sources with or over fruits, flowers, leaves or other botanical substances or their juices or with extracts derived by the infusion, percolation or maceration of those botanical substances;

**(b)** shall have added, during the course of manufacture, a sweetening agent in an amount that is not less than 2.5 per cent of the finished product;

**(c)** shall contain not less than 23 per cent absolute alcohol by volume; and

**(d)** may contain

**a)** par mélange avec d'autres eaux-de-vie de vin (brandy) importées;

**b)** par addition de caramel;

**c)** par addition d'eau distillée ou autrement purifiée en vue de porter l'eau-de-vie de vin (brandy) au degré alcoolique requis.

DORS/93-145, art. 16.

**B.02.060** Lorsqu'une eau-de-vie de vin (brandy) est entièrement distillée dans un pays autre que le Canada, le pays d'origine doit être inscrit sur l'étiquette.

DORS/84-300, art. 13(F); DORS/93-145, art. 16.

**B.02.061 (1)** Il est interdit de vendre de l'eau-de-vie de vin (brandy) qui n'a pas été vieillie dans des récipients de bois durant au moins un an ou vieillie en petit fût durant au moins six mois.

**(2)** Le paragraphe (1) ne s'applique pas aux substances aromatiques contenues dans l'eau-de-vie de vin (brandy); toutefois, il est interdit de vendre de l'eau-de-vie de vin (brandy) contenant des substances aromatiques, autres que du vin, qui n'ont pas été vieillies dans des récipients de bois durant au moins un an ou vieillies en petit fût durant au moins six mois.

**(3)** Les paragraphes (1) et (2) ne s'appliquent pas à l'eau-de-vie de vin (brandy) qui satisfait aux normes applicables prévues aux articles B.02.051 à B.02.058.

**(4)** Il est interdit de faire toute allégation concernant l'âge de l'eau-de-vie de vin (brandy), sauf pour la période durant laquelle celle-ci a été conservée dans des récipients de bois ou conservée en petit fût.

DORS/93-145, art. 16.

## Liqueurs et cordiaux spiritueux

**B.02.070 [N].** La **liqueur** ou le **cordial spiritueux**:

**a)** doit être un produit obtenu par le mélange ou la distillation d'alcool dérivé de matières premières alimentaires avec ou sur des fruits, des fleurs, des feuilles ou d'autres substances végétales ou leurs jus, ou avec des extraits obtenus par infusion, percolation ou macération de ces substances végétales;

**b)** doit être additionné, au cours de la fabrication, d'un agent édulcorant en quantité d'au moins 2,5 pour cent du produit fini;

**c)** doit contenir au moins 23 pour cent d'alcool absolu en volume;

**d)** peut contenir :

**(i)** natural and artificial flavouring preparations, and

**(ii)** colour.

SOR/93-145, s. 16.

**(i)** des préparations aromatisantes naturelles et artificielles,

**(ii)** des colorants.

DORS/93-145, art. 16.

## Vodka

**B.02.080 [S]. (1) Vodka** shall be a potable alcoholic distillate obtained from potatoes, cereal grain or any other material of agricultural origin fermented by the action of yeast or a mixture of yeast and other micro-organisms.

**(2)** The distillate shall be treated with charcoal or other means so that the vodka is without distinctive character, aroma or taste.

**(3)** Vodka produced, in whole or in part, from material of agricultural origin other than potatoes or cereal grain, shall carry in close proximity to the common name, the statement "produced from" followed by the name of all material of agricultural origin used.

SOR/93-145, s. 16; SOR/2019-217, s. 1.

## Vodka

**B.02.080 [N]. (1)** La **vodka** doit être un distillat alcoolique potable obtenu à partir de pommes de terre, de grains de céréales ou de toute autre matière d'origine agricole fermentés au moyen de levure ou d'un mélange de levure et d'autres micro-organismes.

**(2)** Le distillat doit être traité avec du charbon de bois ou d'autres moyens, de manière à ce que la vodka soit exempte de caractère, d'arôme ou de goût distinctifs.

**(3)** La vodka produite, en tout ou en partie, à partir de matière d'origine agricole autre que des pommes de terre ou des grains de céréales doit porter, à proximité du nom usuel, la mention « produite à partir de » suivie du nom de toute matière d'origine agricole utilisée.

DORS/93-145, art. 16; DORS/2019-217, art. 1.

## Tequila

**B.02.090 (1)** Subject to subsection (2), no person shall label, package, sell or advertise any food as **Tequila**, or in such a manner that it is likely to be mistaken for Tequila unless it is Tequila manufactured in Mexico as Tequila in accordance with the laws of Mexico applicable in respect of Tequila for consumption in Mexico.

**(2)** A person may modify Tequila that is imported for the purpose of bottling and sale in Canada as Tequila by the addition of distilled or otherwise purified water to adjust the Tequila to a required strength.

SOR/93-603, s. 5.

## Tequila

**B.02.090 (1)** Sous réserve du paragraphe (2), il est interdit d'étiqueter, d'emballer ou de vendre un aliment — ou d'en faire la publicité — en tant que **Tequila** ou de manière qu'il puisse être confondu avec la tequila, à moins que cet aliment ne soit de la tequila fabriquée au Mexique en tant que tequila conformément aux lois de ce pays applicables à la tequila préparée pour consommation à l'intérieur du pays.

**(2)** Il est permis de modifier de la tequila importée pour être embouteillée et vendue au Canada en tant que tequila, en y ajoutant de l'eau distillée ou autrement purifiée pour ramener la tequila au degré alcoolique voulu.

DORS/93-603, art. 5.

## Mezcal

**B.02.091 (1)** Subject to subsection (2), no person shall label, package, sell or advertise any food as **Mezcal**, or in such a manner that it is likely to be mistaken for Mezcal unless it is Mezcal manufactured in Mexico as Mezcal in accordance with the laws of Mexico applicable in respect of Mezcal for consumption in Mexico.

**(2)** A person may modify Mezcal that is imported for the purpose of bottling and sale in Canada as Mezcal by the

## Mezcal

**B.02.091 (1)** Sous réserve du paragraphe (2), il est interdit d'étiqueter, d'emballer ou de vendre un aliment — ou d'en faire la publicité — en tant que **Mezcal** ou de manière qu'il puisse être confondu avec le mezcal, à moins que cet aliment ne soit du mezcal fabriqué au Mexique en tant que mezcal conformément aux lois de ce pays applicables au mezcal préparé pour consommation à l'intérieur du pays.

**(2)** Il est permis de modifier du mezcal importé pour être embouteillé et vendu au Canada en tant que mezcal, en y

addition of distilled or otherwise purified water to adjust the Mezcal to a required strength.

SOR/93-603, s. 6.

ajoutant de l'eau distillée ou autrement purifiée pour ramener le mezcal au degré alcoolique voulu.

DORS/93-603, art. 6.

## Wine

### B.02.100 [S]. Wine

**(a)** shall be an alcoholic beverage that is produced by the complete or partial alcoholic fermentation of fresh grapes, grape must, products derived solely from fresh grapes, or any combination of them;

**(b)** may have added to it during the course of the manufacture

**(i)** yeast,

**(ii)** concentrated grape juice,

**(iii)** dextrose, fructose, glucose or glucose solids, invert sugar, sugar, or aqueous solutions of any of them,

**(iv)** yeast foods, in accordance with Table XIV to section B.16.100,

**(v)** calcium sulphate in such quantity that the content of soluble sulphates in the finished wine shall not exceed 0.2 per cent weight by volume calculated as potassium sulphate,

**(vi)** calcium carbonate in such quantity that the content of tartaric acid in the finished wine shall not be less than 0.15 per cent weight by volume,

**(vii)** sulphurous acid, including salts thereof, in such quantity that its content in the finished wine shall not exceed

**(A)** 70 parts per million in the free state, or

**(B)** 350 parts per million in the combined state, calculated as sulphur dioxide,

**(viii)** any of the following substances:

**(A)** citric acid, fumaric acid, lactic acid, malic acid, potassium bicarbonate, potassium carbonate, potassium citrate and tartaric acid, at a maximum level of use consistent with good manufacturing practice,

**(B)** metatartaric acid at a maximum level of use of 0.01 per cent, and

## Vin

### B.02.100 [N]. Le vin

**a)** doit être une boisson alcoolique produite par la fermentation alcoolique complète ou partielle de raisins frais, de moût de raisin, de produits dérivés uniquement de raisins frais ou d'un mélange de plusieurs de ces ingrédients;

**b)** peut être additionné, en cours de fabrication,

**(i)** de levure,

**(ii)** de jus de raisin concentré,

**(iii)** de dextrose, de fructose, de glucose, de solides du glucose, de sucre, de sucre inverti ou d'une solution aqueuse de l'une ou l'autre de ces substances,

**(iv)** de nourriture pour les levures, en conformité avec le tableau XIV de l'article B.16.100,

**(v)** de sulfate de calcium en quantité telle que la teneur en sulfates solubles de vin fini ne dépasse pas 0,2 pour cent en poids par volume, calculée en sulfate de potassium,

**(vi)** de carbonate de calcium en quantité telle que la teneur en acide tartrique du vin fini ne soit pas inférieure à 0,15 pour cent en poids par volume,

**(vii)** d'anhydride sulfureux, y compris ses sels, en quantité telle que sa teneur dans le vin fini ne dépasse pas

**(A)** 70 parties par million à l'état libre, ou

**(B)** 350 parties par million à l'état combiné, calculé en anhydride sulfureux,

**(viii)** de l'une ou plusieurs des substances suivantes :

**(A)** acide citrique, acide fumarique, acide lactique, acide malique, acide tartrique, bicarbonate de potassium, carbonate de potassium et citrate de potassium, selon les limites de tolérance conformes aux bonnes pratiques industrielles,

**(B)** acide métatartrique, selon une limite de tolérance de 0,01 pour cent,

**(C)** potassium acid tartrate at a maximum level of use of 0.42 per cent,

**(ix)** amylase and pectinase at a maximum level of use consistent with good manufacturing practice,

**(x)** ascorbic acid or erythorbic acid, or their salts, at a maximum level of use consistent with good manufacturing practice,

**(xi)** antifoaming agents, in accordance with Table VIII to section B.16.100,

**(xii)** any of the following fining agents:

**(A)** activated carbon, albumen, casein, clay, diatomaceous earth, egg-white, isinglass, polyvinylpolypyrrolidone and silicon dioxide,

**(B)** acacia gum, agar, gelatin and potassium ferrocyanide, at a maximum level of use consistent with good manufacturing practice,

**(C)** tannic acid at a maximum level of use of 200 parts per million, and

**(D)** polyvinylpyrrolidone in an amount that does not exceed 2 parts per million in the finished product,

**(xiii)** caramel at a maximum level of use consistent with good manufacturing practice,

**(xiv)** brandy, fruit spirit or alcohol derived from the alcoholic fermentation of a food source distilled to not less than 94 per cent alcohol by volume,

**(xv)** any of the following substances:

**(A)** carbon dioxide and ozone at a maximum level of use consistent with good manufacturing practice, and

**(B)** oxygen,

**(xvi)** sorbic acid or salts thereof, not exceeding 500 parts per million calculated as sorbic acid,

**(xvii)** malolactic bacteria from the genera *Lactobacillus*, *Leuconostoc* and *Pediococcus*,

**(xviii)** copper sulphate in such a quantity that the content of copper in the finished product shall not exceed 0.0001 per cent,

**(xix)** nitrogen, and

**(xx)** oak chips and particles; and

**(C)** tartrate acide de potassium, selon une limite de tolérance de 0,42 pour cent,

**(ix)** d'amylase et de pectinase, selon les limites de tolérance conformes aux bonnes pratiques industrielles,

**(x)** d'acide ascorbique ou de ses sels ou d'acide érythorbique ou de ses sels, selon les limites de tolérance conformes aux bonnes pratiques industrielles,

**(xi)** d'agent antimousse, en conformité avec le tableau VIII de l'article B.16.100,

**(xii)** de l'un ou plusieurs des agents de collage suivants :

**(A)** albumine, argile, bioxyde de silicium, blanc d'œuf, caséine, charbon activé, colle de poisson, polyvinylpolypyrrolidone et terre de diatomées,

**(B)** agar-agar, ferrocyanure de potassium, gélatine et gomme arabique, selon les limites de tolérance conformes aux bonnes pratiques industrielles,

**(C)** acide tannique, selon une limite de tolérance de 200 parties par million,

**(D)** polyvinylpyrrolidone, en une quantité ne dépassant pas 2 parties par million dans le produit fini,

**(xiii)** de caramel, selon une limite de tolérance conforme aux bonnes pratiques industrielles,

**(xiv)** d'eau-de-vie de vin (brandy), d'eau-de-vie de fruits, ou d'alcool obtenu par fermentation alcoolique de substances alimentaires puis par distillation jusqu'à production d'alcool titrant au moins 94 pour cent en volume,

**(xv)** de l'une ou plusieurs des substances suivantes :

**(A)** anhydride carbonique et ozone, selon les limites de tolérance conformes aux bonnes pratiques industrielles,

**(B)** oxygène,

**(xvi)** d'acide sorbique ou de ses sels, n'excédant pas 500 parties par million, calculé en acide sorbique,

**(c)** prior to final filtration may be treated with

**(i)** a strongly acid cation exchange resin in the sodium ion form, or

**(ii)** a weakly basic anion exchange resin in the hydroxyl ion form.

SOR/78-402, s. 1; SOR/81-565, s. 1; SOR/84-300, ss. 14(F), 15(E); SOR/2006-91, s. 1; SOR/2008-142, s. 1(F); SOR/2010-143, s. 39(E); SOR/2016-74, s. 5(E).

**(xvii)** de bactéries malolactiques des genres *Lactobacillus*, *Leuconostoc* et *Pediococcus*,

**(xviii)** de sulfate de cuivre en quantité telle que la teneur en cuivre du produit fini ne dépasse pas 0,0001 pour cent,

**(xix)** d'azote,

**(xx)** de rognures et de particules de chêne;

**c)** peut, avant la dernière filtration, être traité avec

**(i)** une résine fortement acide échangeuse de cations sous forme d'ions sodium, ou

**(ii)** une résine faiblement basique échangeuse d'anions sous forme d'ions hydroxyl.

DORS/78-402, art. 1; DORS/81-565, art. 1; DORS/84-300, art. 14(F) et 15(A); DORS/2006-91, art. 1; DORS/2008-142, art. 1(F); DORS/2010-143, art. 39(A); DORS/2016-74, art. 5(A).

**B.02.101** No person shall sell wine that contains more than 0.24 per cent weight by volume of volatile acidity calculated as acetic acid, as determined by official method FO-2, *Determination of Volatile Acidity of Wine, Cider and Champagne Cider*, October 15, 1981.

SOR/82-768, s. 2; SOR/2006-91, s. 2.

**B.02.101** Est interdite la vente de vin qui contient plus de 0,24 pour cent en poids par volume d'acidité volatile, calculée en acide acétique selon la méthode officielle FO-2, *Détermination d'acidité volatile dans le vin, le cidre et le cidre champagne*, 15 octobre 1981.

DORS/82-768, art. 2; DORS/2006-91, art. 2.

**B.02.102 [S]. Fruit spirit** shall be an alcoholic distillate obtained from wine, fruit wine, grape pomace or fruit pomace.

**B.02.102 [N].** L'**eau-de-vie de fruits** doit être un distillat alcoolique obtenu du vin, du vin de fruits, de la pulpe de raisins ou de la pulpe de fruits.

**B.02.103 [S]. Fruit Wine,** or **(naming the fruit) Wine** shall be the product of the alcoholic fermentation of the juice of sound ripe fruit other than grape, and in all other respects shall meet the requirements of the standard for wine as prescribed by section B.02.100.

**B.02.103 [N].** Le **vin de fruits,** ou **vin de (désignation du fruit)** doit être un produit de la fermentation alcoolique du jus de fruits mûrs et sains autres que le raisin, et doit être conforme, en tous points, aux exigences de la norme du vin prescrite à l'article B.02.100.

**B.02.104 [S]. Vermouth** shall be wine to which has been added bitters, aromatics or other botanical substances or a flavouring preparation, and shall contain not more than 20 per cent absolute alcohol by volume.

SOR/93-145, s. 17(F).

**B.02.104 [N].** Le **vermouth** doit être du vin auquel ont été ajoutés des amers, des aromates ou autres substances végétales ou une préparation aromatisante et ne peut contenir plus de 20 pour cent d'alcool absolu en volume.

DORS/93-145, art. 17(F).

**B.02.105 [S]. Flavoured Wine, Wine Cocktail, Aperitif Wine** shall be wine to which has been added herbs, spices, other botanical substances, fruit juices or a flavouring preparation, and shall contain not more than 20 per cent absolute alcohol by volume.

**B.02.105 [N].** Le **vin aromatisé,** le **cocktail au vin** ou le **vin apéritif** est du vin additionné d'herbes, d'épices, d'autres substances végétales, de jus de fruits ou de préparations aromatisantes, et renferme au plus 20 pour cent d'alcool absolu en volume.

**B.02.105A [S]. Flavoured (naming the fruit) Wine, (naming the fruit) Wine Cocktail,** or **Aperitif (naming the fruit) Wine** shall be fruit wine, a mixture of fruit wines, or a mixture of fruit wine and wine to which has been added herbs, spices, other botanical substances, fruit juices or a flavouring preparation, and shall

**B.02.105A [N].** Le **vin aromatisé (désignation de fruit),** le **cocktail au vin (désignation du fruit)** ou le **vin apéritif (désignation du fruit)** est du vin de fruits, un mélange de vins de fruits ou un mélange de vins de fruits et de vin additionné d'herbes, d'épices, d'autres substances végétales, de jus de fruits ou de

contain not more than 20 per cent absolute alcohol by volume.

**B.02.106 [S]. Honey Wine**

**(a)** shall be the product of the alcoholic fermentation of an aqueous solution of honey; and

**(b)** may have added to it during the course of manufacture any of the following substances:

**(i)** yeast;

**(ii)** yeast foods;

**(iii)** sulphurous acid, including salts thereof, in such quantity that its content in the finished wine shall not exceed

**(A)** 70 p.p.m. in the free state, or

**(B)** 350 p.p.m. in the combined state, calculated as sulphur dioxide;

**(iv)** tartaric or citric acid;

**(v)** potassium acid tartrate;

**(vi)** natural botanical flavours;

**(vii)** fruit spirit or alcohol derived from the alcoholic fermentation of a food source distilled to not less than 94 per cent alcohol by volume;

**(viii)** caramel;

**(ix)** carbon dioxide;

**(x)** activated carbon, clay or tannic acid as fining agents; or

**(xi)** sorbic acid, and any salts thereof, calculated as sorbic acid, in a quantity such that the content of sorbic acid and its salts in the finished wine does not exceed 500 parts per million.

SOR/96-241, s. 1; SOR/2010-94, s. 9(E).

**B.02.107 [S]. May Wine** shall be wine to which has been added artificial woodruff flavouring preparation.

**B.02.108** A clear indication of the country of origin shall be shown on the principal display panel of a wine.

SOR/84-300, s. 16(E).

préparations aromatisantes, et renferme au plus 20 pour cent d'alcool absolu en volume.

**B.02.106 [N].** Le **vin de miel:**

**a)** est le produit de la fermentation alcoolique d'une solution aqueuse du miel;

**b)** peut, au cours de sa fabrication, être additionné d'une ou de plusieurs des substances suivantes :

**(i)** levure,

**(ii)** nourriture pour les levures,

**(iii)** anhydride sulfureux, y compris ses sels, en quantité telle que la teneur dans le vin fini ne dépasse pas

**(A)** 70 parties par million à l'état libre, ou

**(B)** 350 parties par million à l'état combiné, calculé en anhydride sulfureux,

**(iv)** acide tartrique ou citrique,

**(v)** tartrate acide de potassium,

**(vi)** arômes naturels, d'origine botanique,

**(vii)** eau-de-vie de fruits, ou alcool obtenu par fermentation alcoolique de substances alimentaires puis par distillation jusqu'à production d'alcool titrant au moins 94 pour cent en volume,

**(viii)** caramel,

**(ix)** gaz carbonique,

**(x)** n'importe lequel des agents de collage suivants : charbon activé, argile ou acide tannique;

**(xi)** acide sorbique, ainsi que ses sels — calculés en acide sorbique —, en quantité telle que la teneur dans le vin fini ne dépasse pas 500 parties par million.

DORS/96-241, art. 1; DORS/2010-94, art. 9(A).

**B.02.107 [N].** Le **vin de mai** doit être du vin auquel a été ajoutée une préparation aromatisante artificielle d'aspérule odorante.

**B.02.108** Le pays d'origine doit être clairement indiqué sur l'espace principal de l'étiquette d'un vin.

DORS/84-300, art. 16(A).

# Cider

## B.02.120 [S]. Cider

**(a)** shall

**(i)** be the product of the alcoholic fermentation of apple juice, and

**(ii)** contain not less than 2.5 per cent and not more than 13.0 per cent absolute alcohol by volume; and

**(b)** may have added to it during the course of manufacture

**(i)** yeast,

**(ii)** concentrated apple juice,

**(iii)** sugar, dextrose, invert sugar, glucose, glucose solids, or aqueous solutions thereof,

**(iv)** yeast foods,

**(v)** sulphurous acid, including salts thereof, in such quantity that its content in the finished cider shall not exceed

**(A)** 70 parts per million in the free state, or

**(B)** 350 parts per million in the combined state, calculated as sulphur dioxide,

**(vi)** tartaric acid and potassium tartrate,

**(vii)** citric acid,

**(viii)** lactic acid,

**(ix)** pectinase and amylase,

**(x)** ascorbic or erythorbic acid, or salts thereof,

**(xi)** any of the following fining agents:

**(A)** activated carbon,

**(B)** clay,

**(C)** diatomaceous earth,

**(D)** gelatin,

**(E)** albumen,

**(F)** sodium chloride,

**(G)** silica gel,

# Cidre

## B.02.120 [N]. Le **cidre**

**a)** doit

**(i)** être le produit de la fermentation alcoolique du jus de pomme, et

**(ii)** renfermer au moins 2,5 pour cent et au plus 13,0 pour cent d'alcool absolu en volume; et

**b)** peut, en cours de fabrication, être additionné

**(i)** de levure,

**(ii)** de jus de pomme concentré,

**(iii)** de sucre, de dextrose, de sucre inverti, de glucose, de solides de glucose ou de solutions aqueuses de n'importe lequel de ces sucres,

**(iv)** de nourriture pour les levures,

**(v)** d'acide sulfureux, y compris ses sels, en quantité telle que leur concentration dans le cidre fini ne dépasse pas

**(A)** 70 parties par million à l'état libre, ou

**(B)** 350 parties par million à l'état combiné, calculée en anhydride sulfureux,

**(vi)** d'acide tartrique et de tartrate de potassium,

**(vii)** d'acide citrique,

**(viii)** d'acide lactique,

**(ix)** de pectinase et amylase,

**(x)** d'acide ascorbique ou érythorbique ou leurs sels,

**(xi)** de n'importe lequel des agents de clarification suivants :

**(A)** le charbon activé,

**(B)** l'argile,

**(C)** la terre d'infusoires,

**(D)** la gélatine,

**(E)** l'albumine,

**(F)** le chlorure de sodium,

**(H)** casein,

**(I)** tannic acid not exceeding 200 parts per million, or

**(J)** polyvinylpyrrolidone not exceeding two parts per million in the finished product,

**(xii)** caramel,

**(xiii)** brandy, fruit spirit or alcohol derived from the alcoholic fermentation of a food source distilled to not less than 94 per cent alcohol by volume,

**(xiv)** carbon dioxide,

**(xv)** oxygen,

**(xvi)** ozone, or

**(xvii)** sorbic acid or salts thereof, not exceeding 500 parts per million, calculated as sorbic acid.

SOR/81-565, s. 2; SOR/84-300, s. 17(E).

**(G)** le gel de silice,

**(H)** la caséine,

**(I)** l'acide tannique en concentration ne dépassant pas 200 parties par million, ou

**(J)** la polyvinylpyrrolidone en concentration ne dépassant pas deux parties par million dans le produit fini,

**(xii)** de caramel,

**(xiii)** d'eau-de-vie de vin (brandy), d'eau-de-vie de fruits ou d'alcool obtenu par fermentation alcoolique de substances alimentaires puis par distillation jusqu'à production d'alcool tirant au moins 94 pour cent en volume,

**(xiv)** d'anhydride carbonique,

**(xv)** d'oxygène,

**(xvi)** d'ozone, ou

**(xvii)** d'acide sorbique ou de ses sels, en quantité d'au plus 500 parties par million, calculé en acide sorbique.

DORS/81-565, art. 2; DORS/84-300, art. 17(A).

**B.02.122 [S]. Champagne Cider** shall be cider that is impregnated with carbon dioxide under pressure by

**(a)** conducting the afterpart of the fermentation in closed vessels, or

**(b)** secondary fermentation in closed vessels with or without the addition of sugar, dextrose, invert sugar, glucose or glucose solids or aqueous solutions thereof,

and shall contain not less than seven per cent absolute alcohol by volume.

SOR/84-300, s. 18.

**B.02.122 [N].** Le **cidre champagne** doit être du cidre imprégné de gaz carbonique sous pression, en effectuant

**a)** le dernier stade de la fermentation en vase clos, ou

**b)** une fermentation secondaire en vase clos avec ou sans l'addition de sucre, de dextrose, de sucre inverti, de glucose, de solides de glucose ou de solutions aqueuses de n'importe lequel de ces sucres,

et il doit contenir au moins sept pour cent d'alcool absolu en volume.

DORS/84-300, art. 18.

**B.02.123** No person shall sell cider or champagne cider that has more than 0.2 per cent weight by volume of volatile acidity calculated as acetic acid, as determined by official method FO-2, Determination of Volatile Acidity of Wine, Cider and Champagne Cider, October 15, 1981.

SOR/82-768, s. 3.

**B.02.123** Est interdite la vente de cidre ou de cidre champagne qui possède une acidité volatile de plus de 0,2 pour cent en poids par volume, calculée en acide acétique selon la méthode officielle FO-2, Détermination d'acidité volatile dans le vin, le cidre et le cidre champagne, 15 octobre 1981.

DORS/82-768, art. 3.

## Beer

### B.02.130 [S]. (1) Beer

**(a)** shall be the product of the alcoholic fermentation by yeast, or a mixture of yeast and other

## Bière

### B.02.130 [N]. (1) La bière

**a)** doit être le produit de la fermentation alcoolique, au moyen de levure ou d'un mélange de levures et

micro-organisms, an infusion of barley or wheat malt and hops or hop extract in potable water;

**(b)** shall contain at most 4% of residual sugars; and

**(c)** may have added to it during the course of manufacture any of the following ingredients:

**(i)** cereal grain,

**(ii)** honey, maple syrup, fruit, fruit juice or any other source of carbohydrates,

**(iii)** herbs and spices,

**(iv)** salt,

**(v)** flavouring preparations,

**(vi)** pre-isomerized hop extract,

**(vii)** reduced isomerized hop extract, and

**(viii)** food additives to which a marketing authorization applies and that are set out in the *Lists of Permitted Food Additives* published on the Health Canada website.

**(2)** The name of any flavouring preparation added to a beer shall form part of the common name of the beer.

SOR/88-418, s. 2; SOR/92-92, s. 1; SOR/96-483, s. 1; SOR/2006-91, s. 3; SOR/2019-98, s. 3.

**B.02.131** [Repealed, SOR/2019-98, s. 4]

**B.02.132** The qualified common name or common name set out in column II of the table to this section shall be used in any advertisement and on the label of a beer that contains the percentage of alcohol by volume set out in column I.

**TABLE**

| Item | Column I<br>Percentage Alcohol by Volume | Column II<br>Qualified Common Name or Common Name |
|---|---|---|
| 1 | 1.1 to 2.5 | Extra Light Beer |
| 2 | 2.6 to 4.0 | Light Beer |
| 3 | 4.1 to 5.5 | Beer |
| 4 | 5.6 to 8.5 | Strong Beer |
| 5 | 8.6 or more | Extra Strong Beer |

SOR/88-418, s. 2; SOR/2019-98, s. 5.

d'autres micro-organismes, d'une infusion de malt d'orge ou de malt de blé et de houblon ou d'extrait de houblon dans de l'eau potable;

**b)** doit contenir au plus quatre pour cent de sucre résiduel;

**c)** peut, au cours de sa fabrication, être additionnée d'un ou de plusieurs des ingrédients suivants :

**(i)** grains de céréales,

**(ii)** miel, sirop d'érable, fruit, jus de fruit ou toute autre source de glucides,

**(iii)** herbes et épices,

**(iv)** sel,

**(v)** préparations aromatisantes,

**(vi)** extrait de houblon pré-isomérisé,

**(vii)** extrait de houblon isomérisé réduit,

**(viii)** additifs alimentaires visés par une autorisation de mise en marché et figurant aux *Listes des additifs alimentaires autorisés* publiées sur le site Web de Santé Canada.

**(2)** Le nom de toute préparation aromatisante ajoutée à une bière fait partie du nom usuel de cette dernière.

DORS/88-418, art. 2; DORS/92-92, art. 1; DORS/96-483, art. 1; DORS/2006-91, art. 3; DORS/2019-98, art. 3.

**B.02.131** [Abrogé, DORS/2019-98, art. 4]

**B.02.132** Les noms à employer pour désigner la bière dans la publicité qui s'y rapporte ou sur l'étiquette sont les noms usuels, avec ou sans qualificatif, selon le cas, indiqués à la colonne II du tableau du présent article, suivant la teneur en alcool par volume mentionnée à la colonne I.

**TABLEAU**

| Article | Colonne I<br>Teneur en alcool par volume | Colonne II<br>Nom usuel |
|---|---|---|
| 1 | de 1,1 à 2,5 | bière extra-légère |
| 2 | de 2,6 à 4,0 | bière légère |
| 3 | de 4,1 à 5,5 | bière |
| 4 | de 5,6 à 8,5 | bière forte |
| 5 | 8,6 et plus | bière extra-forte |

DORS/88-418, art. 2; DORS/2019-98, art. 5.

**B.02.133 [S].** In this Division, ***hop extract*** means an extract derived from hops by a process employing the solvent

**(a)** hexane, methanol, or methylene chloride in such a manner that the hop extract does not contain more than 2.2 per cent of the solvent used; or

**(b)** carbon dioxide or ethyl alcohol in an amount consistent with good manufacturing practice.

SOR/86-89, s. 1; SOR/88-418, s. 3.

**B.02.134 [S]. (1)** In this Division, ***pre-isomerized hop extract*** means an extract derived from hops by

**(a)** the use of one of the following solvents:

**(i)** hexane,

**(ii)** carbon dioxide, or

**(iii)** ethanol; and

**(b)** the subsequent isolation of the alpha acids and their conversion to isomerized alpha acids by means of diluted alkali and heat.

**(2)** For the purposes of paragraph (1)(b), the residues of hexane shall not exceed 1.5 parts per million per per cent iso-alpha acid content of the pre-isomerized hop extract.

SOR/88-418, s. 4.

**B.02.135 [S].** In this Division, ***reduced isomerized hop extract*** means

**(a)** tetrahydroisohumulones derived from hops

**(i)** by isomerization and reduction of humulones (alpha-acids) by means of hydrogen and a catalyst, or

**(ii)** by reduction of lupulones (beta-acids) by means of hydrogen and a catalyst, followed by oxidation and isomerization;

**(b)** hexahydroisohumulones derived from hops by reduction of tetrahydroisohumulones by means of sodium borohydride; and

**(c)** dihydroisohumulones derived from hops by reduction of isoalpha acids by means of sodium borohydride.

SOR/96-483, s. 2; SOR/2000-352, s. 1.

**B.02.133 [N].** Dans le présent titre, ***extrait de houblon*** désigne un extrait de cones de houblon obtenu par extraction

**a)** à l'hexane, au méthanol ou au chlorure de méthylène de telle façon que l'extrait de houblon contienne au plus 2,2 pour cent du solvant employé; ou

**b)** au dioxyde de carbone ou à l'alcool éthylique, en quantité conforme aux bonnes pratiques industrielles.

DORS/86-89, art. 1; DORS/88-418, art. 3.

**B.02.134 [N]. (1)** Dans le présent titre, ***extrait de houblon pré-isomérisé*** désigne un extrait de houblon obtenu :

**a)** par utilisation d'un des dissolvants suivants :

**(i)** l'hexane,

**(ii)** le dioxyde de carbone,

**(iii)** l'éthanol;

**b)** par isolation subséquente des acides alpha et leur conversion en acides alpha isomérisés par utilisation d'un alcali dilué et application de chaleur.

**(2)** Aux fins de l'alinéa (1)b), la quantité de résidus d'hexane dans l'extrait de houblon pré-isomérisé ne doit pas dépasser 1,5 partie par million pour chaque un pour cent d'acide iso-alpha contenu dans l'extrait.

DORS/88-418, art. 4.

**B.02.135 [N].** Dans le présent titre, ***extrait de houblon isomérisé réduit*** s'entend :

**a)** des tétrahydroisohumulones obtenues du houblon :

**(i)** soit par isomérisation et réduction des humulones (acides alpha) au moyen d'hydrogène et d'un catalyseur,

**(ii)** soit par réduction des lupulones (acides bêta) au moyen d'hydrogène et d'un catalyseur, suivie d'une oxydation et d'une isomérisation;

**b)** des hexahydroisohumulones obtenues du houblon par réduction des tétrahydroisohumulones au moyen du borohydrure de sodium;

**c)** des dihydroisohumulones obtenues du houblon par réduction des acides isoalpha au moyen du borohydrure de sodium.

DORS/96-483, art. 2; DORS/2000-352, art. 1.

**DIVISION 3**

# Baking Powder

**B.03.001** In this Division, ***acid-reacting material*** means one or any combination of

**(a)** lactic acid or its salts;

**(b)** tartaric acid or its salts;

**(c)** acid salts of phosphoric acid; and

**(d)** acid compounds of aluminum.

**B.03.002 [S]. Baking Powder** shall be a combination of sodium or potassium bicarbonate, an acid-reacting material, starch or other neutral material, may contain an anticaking agent and shall yield not less than 10 per cent of its weight of carbon dioxide, as determined by official method FO-3, *Determination of Carbon Dioxide in Baking Powder*, October 15, 1981.

SOR/82-768, s. 4; SOR/92-626, s. 12.

**TITRE 3**

# Poudre à pâte

**B.03.001** Au présent Titre, ***substance à réaction acide*** désigne l'une ou n'importe quelle association des substances suivantes :

**a)** l'acide lactique ou ses sels;

**b)** l'acide tartrique ou ses sels;

**c)** les sels acides de l'acide phosphorique; et

**d)** les composés acides de l'aluminium.

**B.03.002 [N].** La **levure artificielle** ou **poudre à pâte** est une combinaison de bicarbonate de sodium ou de potassium, d'une substance à réaction acide, d'amidon ou autre substance neutre; elle peut contenir un agent anti-agglomérant et doit dégager une quantité de gaz carbonique représentant au moins 10 pour cent de son poids, déterminée selon la méthode officielle FO-3, *Détermination de gaz carbonique dégagé par la poudre à pâte*, 15 octobre 1981.

DORS/82-768, art. 4; DORS/92-626, art. 12.

**DIVISION 4**

# Cocoa and Chocolate Products

**B.04.001** The definitions in this section apply in this Division.

***chocolate product*** means a product derived from one or more cocoa products and includes chocolate, bittersweet chocolate, semi-sweet chocolate, dark chocolate, sweet chocolate, milk chocolate and white chocolate. (*produit de chocolat*)

***cocoa product*** means a product derived from cocoa beans and includes cocoa nibs, cocoa liquor, cocoa mass, unsweetened chocolate, bitter chocolate, chocolate liquor, cocoa, low fat cocoa, cocoa powder and low fat cocoa powder. (*produit du cacao*)

***milk ingredient*** means one or any combination of

**(a)** the following products for which a standard is prescribed in this Part, namely,

**(i)** milk or whole milk,

**(ii)** skim milk,

**TITRE 4**

# Produits du cacao et produits de chocolat

**B.04.001** Les définitions qui suivent s'appliquent au présent titre.

***ingrédient édulcorant*** Un agent édulcorant ou une combinaison d'agents édulcorants, à l'exception du sucre à glacer. (*sweetening ingredient*)

***ingrédient laitier*** Un des produits suivants ou toute combinaison de ceux-ci :

**a)** les produits suivants faisant l'objet d'une norme établie dans la présente partie :

**(i)** lait ou lait entier,

**(ii)** lait écrémé,

**(iii)** lait partiellement écrémé ou en partie écrémé,

**(iv)** lait stérilisé,

**(v)** lait condensé ou lait condensé sucré,

**(vi)** lait évaporé,

**(iii)** partly skimmed milk or partially skimmed milk,

**(iv)** sterilized milk,

**(v)** condensed milk or sweetened condensed milk,

**(vi)** evaporated milk,

**(vii)** evaporated skim milk or concentrated skim milk,

**(viii)** evaporated partly skimmed milk or concentrated partly skimmed milk,

**(ix)** milk powder or whole milk powder or dry whole milk or powdered whole milk,

**(x)** skim milk powder or dry skim milk,

**(xi)** skim milk with added milk solids,

**(xii)** partly skimmed milk with added milk solids or partially skimmed milk with added milk solids,

**(xiii)** malted milk or malted milk powder,

**(xiv)** butter, and

**(xv)** cream; and

**(b)** the following products for which a standard is not prescribed by this Part, namely

**(i)** reconstituted milk or whole milk,

**(ii)** reconstituted skim milk,

**(iii)** reconstitued partly skimmed milk,

**(iv)** partly skimmed milk powder,

**(v)** buttermilk,

**(vi)** butter oil, and

**(vii)** reconstituted cream. (*ingrédient laitier*)

***sweetening ingredient*** means any one or any combination of sweetening agents, except for icing sugar. (*ingrédient édulcorant*)

SOR/97-263, s. 2.

**B.04.002 [S]. Cocoa Beans** shall be the seeds of *Theobroma cacao L.* or a closely related species.

SOR/97-263, s. 2.

**vii)** lait écrémé évaporé ou écrémé concentré,

**viii)** lait évaporé partiellement écrémé ou lait concentré partiellement écrémé,

**ix)** poudre de lait, poudre de lait entier, lait entier desséché ou lait entier en poudre,

**x)** lait écrémé en poudre, poudre de lait écrémé ou lait écrémé desséché,

**xi)** lait écrémé additionné de solides du lait,

**xii)** lait partiellement écrémé additionné de solides du lait ou lait en partie écrémé additionné de solides du lait,

**xiii)** lait malté, lait malté en poudre ou poudre de lait malté,

**xiv)** beurre,

**xv)** crème;

**b)** les produits suivants ne faisant pas l'objet d'une norme établie dans la présente partie :

**i)** lait ou lait entier reconstitué,

**ii)** lait écrémé reconstitué,

**iii)** lait partiellement écrémé reconstitué,

**iv)** lait partiellement écrémé en poudre,

**v)** babeurre,

**vi)** huile de beurre,

**vii)** crème reconstituée. (*milk ingredient*)

***produit de chocolat*** Produit dérivé d'un ou de plusieurs produits du cacao, y compris le chocolat, le chocolat miamer, le chocolat mi-sucré, le chocolat noir, le chocolat sucré, le chocolat au lait et le chocolat blanc. (*chocolate product*)

***produit du cacao*** Produit dérivé des fèves de cacao, y compris les fèves de cacao décortiquées, la liqueur de cacao, la pâte de cacao, le chocolat non sucré, le chocolat amer, la liqueur de chocolat, le cacao, le cacao faible en gras, la poudre de cacao et la poudre de cacao faible en gras. (*cocoa product*)

DORS/97-263, art. 2.

**B.04.002 [N].** Les **fèves de cacao** sont les graines de *Theobroma cacao L.* ou d'une espèce très proche.

DORS/97-263, art. 2.

**B.04.003 [S]. Cocoa Nibs** shall be the product prepared by removing the shell from cleaned cocoa beans, of which the residual shell content may not exceed 1.75 per cent by mass, calculated to an alkali free basis if the nibs or the cocoa beans from which the nibs were prepared have been processed with alkali, as determined by the method prescribed in the *Official Methods of Analysis of the Association of Official Analytical Chemists*, 12th Ed. (1975), sections 13.010 to 13.014, under the heading "Shell in Cacao Nibs — Official Final Action", published by the Association of Official Analytical Chemists, in Washington.

SOR/97-263, s. 2.

**B.04.003 [N].** Les **fèves de cacao décortiquées** sont le produit préparé par décorticage des fèves de cacao nettoyées. Leur teneur en écale résiduelle ne peut excéder 1,75 pour cent en masse — exempte d'alcali lorsque celui-ci a été utilisé pour le traitement des fèves décortiquées ou des fèves de cacao dont elles proviennent —, déterminée conformément à la méthode prévue dans la publication de l'*Association of Official Analytical Chemists*, de Washington, intitulée *Official Methods of Analysis of the Association of Official Analytical Chemists*, 12e éd. (1975), aux articles 13.010 à 13.014 sous la rubrique « Shell in Cacao Nibs — Official Final Action ».

DORS/97-263, art. 2.

**B.04.004 [S]. Cocoa Liquor, Cocoa Mass, Unsweetened Chocolate, Bitter Chocolate** or **Chocolate Liquor** shall

**(a)** be the product obtained from the mechanical disintegration of the cocoa nib with or without removal or addition of any of its constituents; and

**(b)** contain not less than 50 per cent cocoa butter.

SOR/97-263, s. 2.

**B.04.004 [N].** La **liqueur de cacao**, la **pâte de cacao**, le **chocolat non sucré**, le **chocolat amer** ou la **liqueur de chocolat** :

**a)** est le produit obtenu par la désagrégation mécanique de la fève de cacao décortiquée, avec ou sans extraction ou addition de l'un de ses constituants;

**b)** contient au moins 50 pour cent de beurre de cacao.

DORS/97-263, art. 2.

**B.04.005 (1)** Cocoa products may be processed with one or more of the following pH-adjusting or alkalizing agents:

**(a)** hydroxides of ammonia, carbonates of ammonia, bicarbonates of ammonia, hydroxides of sodium, carbonates of sodium, bicarbonates of sodium, hydroxides of potassium, carbonates of potassium or bicarbonates of potassium;

**(b)** carbonates of magnesium or hydroxides of magnesium; and

**(c)** carbonates of calcium.

**(2)** The quantity of any one pH-adjusting agent referred to in paragraphs (1)(a) to (c) shall not exceed the maximum level of use for that agent set out in column III of an item of Table X to section B.16.100.

**(3)** The total mass of the pH-adjusting agents referred to in paragraphs (1)(a) to (c) shall not be greater in neutralizing value, calculated from the respective masses of those agents, than the neutralizing value of five parts by mass of anhydrous potassium carbonate for each 100 parts by mass of cocoa product, calculated on a fat-free basis.

**(4)** Cocoa products may be processed with one or more of the following pH-adjusting or neutralizing agents, added as such or in aqueous solution:

**B.04.005 (1)** Les produits du cacao peuvent être traités au moyen de l'un ou plusieurs des rajusteurs du pH ou agents alcalinisants suivants :

**a)** hydroxydes d'ammonium, carbonates d'ammonium, bicarbonates d'ammonium, hydroxydes de sodium, carbonates de sodium, bicarbonates de sodium, hydroxydes de potassium, carbonates de potassium et bicarbonates de potassium;

**b)** carbonates de magnésium ou hydroxydes de magnésium;

**c)** carbonates de calcium.

**(2)** La quantité de tout rajusteur du pH mentionné aux alinéas (1)a) à c) ne peut dépasser les limites de tolérance prévues à la colonne III du tableau X de l'article B.16.100.

**(3)** La valeur neutralisante de l'ensemble des rajusteurs du pH visés aux alinéas (1)a) à c), calculée d'après la masse respective de chacun, ne peut dépasser la valeur neutralisante de cinq parties, en masse, de carbonate anhydre de potassium par 100 parties, en masse, de produit du cacao, sans matières grasses.

**(4)** Les produits du cacao peuvent être traités au moyen de l'un ou plusieurs des rajusteurs du pH ou agents neutralisants suivants, ajoutés tels quels ou en solution aqueuse :

**(a)** phosphoric acid;

**(b)** citric acid; and

**(c)** tartaric acid.

**(5)** The total mass of pH-adjusting agents referred to in subsection (4) shall not exceed in neutralizing value, calculated from the respective masses of those agents, the appropriate maximum levels of use set out in column III of Table X to section B.16.100.

**(6)** For the purpose of subsection (5),

**(a)** the total quantity of phosphoric acid shall not be greater than 0.5 part by mass, expressed as $P_2O_5$, for each 100 parts by mass of cocoa product, calculated on a fat-free basis; and

**(b)** the total quantity of citric acid and tartaric acid, singly or in combination, shall not be greater than 1.0 part by mass for each 100 parts by mass of cocoa product, calculated on a fat-free basis.

SOR/97-263, s. 2; SOR/2012-43, s. 1.

**B.04.006 [S]. Chocolate, Bittersweet Chocolate, Semi-sweet Chocolate** or **Dark Chocolate**

**(a)** shall be one or more of the following combined with a sweetening ingredient, namely,

**(i)** cocoa liquor,

**(ii)** cocoa liquor and cocoa butter, and

**(iii)** cocoa butter and cocoa powder;

**(b)** shall contain not less than 35 per cent total cocoa solids, of which

**(i)** not less than 18 per cent is cocoa butter, and

**(ii)** not less than 14 per cent is fat-free cocoa solids; and

**(c)** may contain

**(i)** less than 5 per cent total milk solids from milk ingredients,

**(ii)** spices,

**(iii)** flavouring preparations, other than those that imitate the flavour of chocolate or milk, to balance flavour,

**(iv)** salt, and

**a)** acide phosphorique;

**b)** acide citrique;

**c)** acide tartrique.

**(5)** La valeur neutralisante de l'ensemble des rajusteurs du pH visés au paragraphe (4), calculée d'après la masse respective de chacun, ne peut dépasser les limites de tolérance applicables prévues à la colonne III du tableau X de l'article B.16.100.

**(6)** Pour l'application du paragraphe (5) :

**a)** la quantité totale d'acide phosphorique, en masse, ne peut dépasser 0,5 partie, exprimée en $P_2O_5$, par 100 parties, en masse, du produit du cacao, calculée sans matières grasses;

**b)** la quantité totale, en masse, d'acide citrique et d'acide tartrique, seuls ou en association, ne peut dépasser 1,0 partie par 100 parties, en masse, du produit du cacao, calculée sans matières grasses.

DORS/97-263, art. 2; DORS/2012-43, art. 1.

**B.04.006 [N].** Le **chocolat**, le **chocolat mi-amer**, le **chocolat mi-sucré** ou le **chocolat noir** :

**a)** est constitué d'un ou de plusieurs des éléments suivants, en combinaison avec un ingrédient édulcorant :

**(i)** liqueur de cacao,

**(ii)** liqueur de cacao et beurre de cacao,

**(iii)** beurre de cacao et poudre de cacao;

**b)** contient au moins 35 pour cent de solides du cacao totaux dont :

**(i)** au moins 18 pour cent sont du beurre de cacao,

**(ii)** au moins 14 pour cent sont des solides du cacao dégraissés;

**c)** peut contenir :

**(i)** moins de 5 pour cent de solides du lait totaux provenant d'ingrédients laitiers,

**(ii)** des épices,

**(iii)** des préparations aromatisantes pour équilibrer la saveur, sauf celles qui imitent la saveur du chocolat ou du lait,

**(iv)** du sel,

**(v)** any of the following emulsifying agents, which singly shall not exceed the maximum level of use set out in column III of Table IV to section B.16.100, and in combination shall not exceed 1.5 per cent by mass of chocolate product, namely,

**(A)** mono-glycerides and mono- and diglycerides,

**(B)** lecithin and hydroxylated lecithin,

**(C)** ammonium salts of phosphorylated glycerides,

**(D)** polyglycerol esters of interesterified castor oil fatty acids, and

**(E)** sorbitan monostearate.

SOR/79-664, s. 2; SOR/97-263, s. 2.

**(v)** les agents émulsifiants suivants, en quantité n'excédant pas, pour chacun de ces agents, les limites de tolérance prévues à la colonne III du tableau IV de l'article B.16.100 et, pour toute combinaison de ces agents, 1,5 pour cent en masse du produit de chocolat :

**(A)** monoglycérides et mono- et diglycérides,

**(B)** lécithine et lécithine hydroxylée,

**(C)** sels d'ammonium de glycérides phosphorylés,

**(D)** esters polyglycériques d'acides gras d'huile de ricin transestérifiée,

**(E)** monostéarate de sorbitan.

DORS/79-664, art. 2; DORS/97-263, art. 2.

### B.04.007 [S]. Sweet Chocolate

**(a)** shall be one or more of the following combined with a sweetening ingredient, namely,

**(i)** cocoa liquor,

**(ii)** cocoa liquor and cocoa butter, and

**(iii)** cocoa butter and cocoa powder;

**(b)** shall contain not less than 30 per cent total cocoa solids, of which

**(i)** 18 per cent is cocoa butter, and

**(ii)** 12 per cent is fat-free cocoa solids; and

**(c)** may contain

**(i)** less than 12 per cent total milk solids from milk ingredients,

**(ii)** spices,

**(iii)** flavouring preparations, other than those that imitate the flavour of chocolate or milk, to balance flavour,

**(iv)** salt, and

**(v)** any of the following emulsifying agents, which singly shall not exceed the maximum level of use set out in column III of Table IV to section B.16.100, and in combination shall not exceed 1.5 per cent by mass of chocolate product, namely,

### B.04.007 [N]. Le **chocolat sucré** :

**a)** est constitué d'un ou de plusieurs des éléments suivants, en combinaison avec un ingrédient édulcorant :

**(i)** liqueur de cacao,

**(ii)** liqueur de cacao et beurre de cacao,

**(iii)** beurre de cacao et poudre de cacao;

**b)** contient au moins 30 pour cent de solides du cacao totaux dont :

**(i)** 18 pour cent sont du beurre de cacao,

**(ii)** 12 pour cent sont des solides du cacao dégraissés;

**c)** peut contenir :

**(i)** moins de 12 pour cent de solides du lait totaux provenant d'ingrédients laitiers,

**(ii)** des épices,

**(iii)** des préparations aromatisantes pour équilibrer la saveur, sauf celles qui imitent la saveur du chocolat ou du lait,

**(iv)** du sel,

**(v)** les agents émulsifiants suivants, en quantité n'excédant pas, pour chacun de ces agents, les limites de tolérance prévues à la colonne III du tableau IV de l'article B.16.100 et, pour toute combinaison de ces agents, 1,5 pour cent en masse du produit de chocolat :

**(A)** mono-glycerides and mono- and diglycerides,

**(B)** lecithin and hydroxylated lecithin,

**(C)** ammonium salts of phosphorylated glycerides,

**(D)** polyglycerol esters of interesterified castor oil fatty acids, and

**(E)** sorbitan monostearate.

SOR/97-263, s. 2.

### B.04.008 [S]. Milk Chocolate

**(a)** shall be one or more of the following combined with a sweetening ingredient, namely,

**(i)** cocoa liquor,

**(ii)** cocoa liquor and cocoa butter, and

**(iii)** cocoa butter and cocoa powder;

**(b)** shall contain not less than

**(i)** 25 per cent total cocoa solids, of which

**(A)** not less than 15 per cent is cocoa butter, and

**(B)** not less than 2.5 per cent is fat-free cocoa solids,

**(ii)** 12 per cent total milk solids from milk ingredients, and

**(iii)** 3.39 per cent milk fat; and

**(c)** may contain

**(i)** less than 5 per cent whey or whey products,

**(ii)** spices,

**(iii)** flavouring preparations, other than those that imitate the flavour of chocolate or milk, to balance flavour,

**(iv)** salt, and

**(v)** any of the following emulsifying agents, which singly shall not exceed the maximum level of use set out in column III of Table IV to section B.16.100, and in combination shall not exceed 1.5 per cent by mass of chocolate product, namely,

**(A)** monoglycérides et mono- et diglycérides,

**(B)** lécithine et lécithine hydroxylée,

**(C)** sels d'ammonium de glycérides phosphorylés,

**(D)** esters polyglycériques d'acides gras d'huile de ricin transestérifiée,

**(E)** monostéarate de sorbitan.

DORS/97-263, art. 2.

### B.04.008 [N]. Le **chocolat au lait** :

**a)** est constitué d'un ou de plusieurs des éléments suivants, en combinaison avec un ingrédient édulcorant :

**(i)** liqueur de cacao,

**(ii)** liqueur de cacao et beurre de cacao,

**(iii)** beurre de cacao et poudre de cacao;

**b)** contient au moins :

**(i)** 25 pour cent de solides du cacao totaux dont :

**(A)** au moins 15 pour cent sont du beurre de cacao,

**(B)** au moins 2,5 pour cent sont des solides du cacao dégraissés,

**(ii)** 12 pour cent de solides du lait totaux provenant d'ingrédients laitiers,

**(iii)** 3,39 pour cent de matières grasses du lait;

**c)** peut contenir :

**(i)** moins de 5 pour cent de petit-lait ou de produits du petit-lait,

**(ii)** des épices,

**(iii)** des préparations aromatisantes pour équilibrer la saveur, sauf celles qui imitent la saveur du chocolat ou du lait,

**(iv)** du sel,

**(A)** mono-glycerides and mono- and diglycerides,

**(B)** lecithin and hydroxylated lecithin,

**(C)** ammonium salts of phosphorylated glycerides,

**(D)** polyglycerol esters of interesterified castor oil fatty acids, and

**(E)** sorbitan monostearate.

SOR/97-263, s. 2.

**(v)** les agents émulsifiants suivants, en quantité n'excédant pas, pour chacun de ces agents, les limites de tolérance prévues à la colonne III du tableau IV de l'article B.16.100 et, pour toute combinaison de ces agents, 1,5 pour cent en masse du produit de chocolat :

**(A)** monoglycérides et mono- et diglycérides,

**(B)** lécithine et lécithine hydroxylée,

**(C)** sels d'ammonium de glycérides phosphorylés,

**(D)** esters polyglycériques d'acides gras d'huile de ricin transestérifiée,

**(E)** monostéarate de sorbitan.

DORS/97-263, art. 2.

### B.04.009 [S]. White Chocolate

**(a)** shall contain the following combined together, namely,

**(i)** not less than 20 per cent cocoa butter,

**(ii)** not less than 14 per cent total milk solids from milk ingredients, and

**(iii)** not less than 3.5 per cent milk fat; and

**(b)** may contain

**(i)** less than 5 per cent whey or whey products,

**(ii)** spices,

**(iii)** flavouring preparations, other than those that imitate the flavour of chocolate or milk, to balance flavour,

**(iv)** salt, and

**(v)** any of the following emulsifying agents, which singly shall not exceed the maximum level of use set out in column III of Table IV to section B.16.100, and in combination shall not exceed 1.5 per cent by mass of chocolate product, namely,

**(A)** mono-glycerides and mono- and diglycerides,

**(B)** lecithin and hydroxylated lecithin,

**(C)** ammonium salts of phosphorylated glycerides,

### B.04.009 [N]. Le **chocolat blanc** :

**a)** est constitué des éléments suivants :

**(i)** au moins 20 pour cent de beurre de cacao,

**(ii)** au moins 14 pour cent de solides du lait totaux provenant d'ingrédients laitiers,

**(iii)** au moins 3,5 pour cent de matières grasses du lait;

**b)** peut contenir :

**(i)** moins de 5 pour cent de petit-lait ou de produits du petit-lait,

**(ii)** des épices,

**(iii)** des préparations aromatisantes pour équilibrer la saveur, sauf celles qui imitent la saveur du chocolat ou du lait,

**(iv)** du sel,

**(v)** les agents émulsifiants suivants, en quantité n'excédant pas, pour chacun de ces agents, les limites de tolérance prévues à la colonne III du tableau IV de l'article B.16.100 et, pour toute combinaison de ces agents, 1,5 pour cent en masse du produit de chocolat :

**(A)** monoglycérides et mono- et diglycérides,

**(B)** lécithine et lécithine hydroxylée,

**(C)** sels d'ammonium de glycérides phosphorylés,

**(D)** polyglycerol esters of interesterified castor oil fatty acids, and

**(E)** sorbitan monostearate.

SOR/97-263, s. 2.

**(D)** esters polyglycériques d'acides gras d'huile de ricin transestérifiée,

**(E)** monostéarate de sorbitan.

DORS/97-263, art. 2.

### B.04.010 [S]. Cocoa or Cocoa Powder

**(a)** shall be the product that

**(i)** is obtained by pulverising the remaining material from partially defatted cocoa liquor by mechanical means, and

**(ii)** contains not less than 10 per cent cocoa butter; and

**(b)** may contain

**(i)** spices,

**(ii)** flavouring preparations, other than those that imitate the flavour of chocolate or milk, to balance flavour,

**(iii)** salt, and

**(iv)** any of the following emulsifying agents, which singly shall not exceed the maximum level of use set out in column III of Table IV to section B.16.100, and in combination shall not exceed 1.5 per cent by mass of cocoa product, namely,

**(A)** mono-glycerides and mono- and diglycerides,

**(B)** lecithin and hydroxylated lecithin, and

**(C)** ammonium salts of phosphorylated glycerides.

SOR/82-768, s. 5; SOR/97-263, s. 2.

### B.04.010 [N]. Le cacao ou la poudre de cacao :

**a)** est le produit :

**(i)** qui est obtenu par pulvérisation de ce qui reste de la liqueur de cacao qui a été partiellement dégraissée par moyen mécanique,

**(ii)** dont la teneur en beurre de cacao est d'au moins 10 pour cent;

**b)** peut contenir :

**(i)** des épices,

**(ii)** des préparations aromatisantes pour équilibrer la saveur, sauf celles qui imitent la saveur du chocolat ou du lait,

**(iii)** du sel,

**(iv)** les agents émulsifiants suivants, en quantité n'excédant pas, pour chacun de ces agents, les limites de tolérance prévues à la colonne III du tableau IV de l'article B.16.100 et, pour toute combinaison de ces agents, 1,5 pour cent en masse du produit du cacao :

**(A)** monoglycérides et mono- et diglycérides,

**(B)** lécithine et lécithine hydroxylée,

**(C)** sels d'ammonium de glycérides phosphorylés.

DORS/82-768, art. 5; DORS/97-263, art. 2.

### B.04.011 [S]. Low Fat Cocoa or Low Fat Cocoa Powder

**(a)** shall be the product that:

**(i)** is obtained by pulverising the remaining material from partially defatted cocoa liquor by mechanical means, and

**(ii)** contains less than 10 per cent cocoa butter; and

**(b)** may contain

**(i)** spices,

### B.04.011 [N]. Le cacao faible en gras ou la poudre de cacao faible en gras :

**a)** est le produit :

**(i)** qui est obtenu par pulvérisation de ce qui reste de la liqueur de cacao qui a été partiellement dégraissée par moyen mécanique,

**(ii)** dont la teneur en beurre de cacao est de moins de 10 pour cent;

**b)** peut contenir :

**(i)** des épices,

**(ii)** flavouring preparations, other than those that imitate the flavour of chocolate or milk, to balance flavour,

**(iii)** salt, and

**(iv)** any of the following emulsifying agents, which singly shall not exceed the maximum level of use set out in column III of Table IV to section B.16.100, and in combination shall not exceed 1.5 per cent by mass of cocoa product, namely,

**(A)** mono-glycerides and mono- and diglycerides,

**(B)** lecithin and hydroxylated lecithin, and

**(C)** ammonium salts of phosphorylated glycerides.

SOR/82-768, s. 6; SOR/97-263, s. 2.

**B.04.012** No person shall sell a cocoa product or a chocolate product unless it is free from bacteria of the genus *Salmonella* as determined by official method MFO-11, *Microbiological Examination of Cocoa and Chocolate*, November 30, 1981.

SOR/97-263, s. 2.

## DIVISION 5

# Coffee

**B.05.001 [S]. Green Coffee, Raw Coffee** or **Unroasted Coffee** shall be the seed of *Coffee arabica L., C. liberica Hiern*, or *C. robusta Chev.*, freed from all but a small portion of its spermoderm.

**B.05.002 [S]. Roasted Coffee** or **Coffee** shall be roasted green coffee, and shall contain not less than 10 per cent fat, and may contain not more than six per cent total ash.

**B.05.003 [S]. Decaffeinated (indicating the type of coffee)**

**(a)** shall be coffee of the type indicated, from which caffeine has been removed and that, as a result of the removal, contains not more than

**(i)** 0.1 per cent caffeine, in the case of decaffeinated raw coffee and decaffeinated coffee, or

**(ii)** 0.3 per cent caffeine, in the case of decaffeinated instant coffee; and

**(ii)** des préparations aromatisantes pour équilibrer la saveur, sauf celles qui imitent la saveur du chocolat ou du lait,

**(iii)** du sel,

**(iv)** les agents émulsifiants suivants, en quantité n'excédant pas, pour chacun de ces agents, les limites de tolérance prévues à la colonne III du tableau IV de l'article B.16.100 et, pour toute combinaison de ces agents, 1,5 pour cent en masse du produit du cacao :

**(A)** monoglycérides et mono- et diglycérides,

**(B)** lécithine et lécithine hydroxylée,

**(C)** sels d'ammonium de glycérides phosphorylés.

DORS/82-768, art. 6; DORS/97-263, art. 2.

**B.04.012** Il est interdit de vendre des produits du cacao ou des produits de chocolat, à moins qu'ils ne soient exempts de bactéries du genre *Salmonella* d'après les résultats de l'analyse selon la méthode officielle MFO-11, *Examen microbiologique du cacao et du chocolat*, du 30 novembre 1981.

DORS/97-263, art. 2.

## TITRE 5

# Café

**B.05.001 [N].** Le **café vert, café brut** ou **café non torréfié** doit être la graine de *Coffea arabica L.*, de *C. liberia Hiern* ou de *C. robusta Chev.*, presque complètement débarrassée de son spermoderme.

**B.05.002 [N].** Le **café torréfié** ou **café** doit être du café vert torréfié, doit renfermer au moins 10 pour cent de matière grasse et peut renfermer au plus six pour cent de cendres totales.

**B.05.003 [N].** Le **(indication du type de café) décaféiné** :

**a)** est le café de ce type duquel a été extraite de la caféine et qui, par suite d'une telle extraction, contient au plus :

**(i)** 0,1 pour cent de caféine, s'il s'agit de café brut décaféiné ou de café décaféiné,

**(ii)** 0,3 pour cent de caféine, s'il s'agit de café instantané décaféiné;

**(b)** may have been decaffeinated by means of extraction solvents set out in Table XV to Division 16.

SOR/90-443, s. 1.

**b)** peut avoir été décaféiné au moyen des solvants d'extraction mentionnés au tableau XV du titre 16.

DORS/90-443, art. 1.

## DIVISION 6

## Food Colours

**B.06.001** In this Division,

***diluent*** means any substance other than a synthetic colour present in a colour mixture or preparation; (*diluant*)

***dye*** means the principal dye and associated subsidiary and isomeric dyes contained in a synthetic colour; (*pigment*)

***mixture*** means a mixture of two or more synthetic colours or a mixture of one or more synthetic colours with one or more diluents; (*mélange*)

***official method FO-7*** [Repealed, SOR/2016-305, s. 49]

***official method FO-8*** [Repealed, SOR/2016-305, s. 49]

***official method FO-9*** [Repealed, SOR/2016-305, s. 49]

***official method FO-10*** [Repealed, SOR/2016-305, s. 49]

***official method FO-11*** [Repealed, SOR/2016-305, s. 49]

***official method FO-12*** [Repealed, SOR/2016-305, s. 49]

***official method FO-13*** [Repealed, SOR/2016-305, s. 49]

***official method FO-14*** [Repealed, SOR/2016-305, s. 49]

***official method FO-15*** [Repealed, SOR/2016-305, s. 49]

***preparation*** means a preparation of one or more synthetic colours containing less than three per cent dye and sold for household use; (*préparation*)

***synthetic colour*** means any organic food colour, other than caramel, that is produced by chemical synthesis and that has no counterpart in nature. (*colorant synthétique*)

SOR/80-500, s. 2; SOR/84-440, s. 1; SOR/2016-305, s. 49.

## TITRE 6

## Colorants pour aliments

**B.06.001** Dans le présent Titre,

***colorant synthétique*** Colorant alimentaire organique, autre que le caramel, qui est produit par synthèse chimique et qui n'a pas son équivalent dans la nature. (*synthetic colour*)

***diluant*** désigne une substance, autre qu'un colorant synthétique, qui est présente dans une préparation colorante ou un mélange colorant; (*diluent*)

***mélange*** désigne un mélange de deux colorants synthétiques ou plus, ou un mélange d'un ou de plusieurs colorants synthétiques avec un ou plusieurs diluants; (*mixture*)

***méthode officielle FO-7*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-8*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-9*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-10*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-11*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-12*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-13*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-14*** [Abrogée, DORS/2016-305, art. 49]

***méthode officielle FO-15*** [Abrogée, DORS/2016-305, art. 49]

***pigment*** désigne le pigment principal et tout pigment associé, isomère ou accessoire, présents dans un colorant synthétique; (*dye*)

***préparation*** désigne une préparation faite d'un ou de plusieurs colorants synthétiques, qui renferme moins de trois pour cent de pigment et est vendue pour usage domestique. (*preparation*)

DORS/80-500, art. 2; DORS/84-440, art. 1; DORS/2016-305, art. 49.

**B.06.002** No person shall sell a food, other than a synthetic colour, mixture, preparation or flavouring preparation, that contains, when prepared for consumption according to label directions, more than

**(a)** 300 parts per million of Allura Red, Amaranth, Erythrosine, Indigotine, Sunset Yellow FCF or Tartrazine or any combination of those colours unless a higher maximum level of use is specified in column III of item 3 of Table III to section B.16.100;

**(b)** 100 parts per million of Fast Green FCF or Brilliant Blue FCF or any combination of those colours;

**(c)** 300 parts per million of any combination of the synthetic colours named in paragraphs (a) and (b) within the limits set by those paragraphs; or

**(d)** 150 parts per million of Ponceau SX.

SOR/80-500, s. 2; SOR/84-440, s. 2; SOR/86-178, s. 1(F); SOR/2007-75, s. 1.

**B.06.002** Il est interdit de vendre un aliment, à l'exclusion d'un colorant synthétique, d'un mélange, d'une préparation ou d'une préparation aromatisante, qui est destiné à la consommation selon le mode d'emploi figurant sur l'étiquette et qui renferme

**a)** plus de 300 parties par million d'amaranthe, d'érythrosine, d'indigotine, de jaune soleil FCF, de rouge allura, de tartrazine ou d'un mélange de ces colorants, à moins qu'une limite de tolérance plus élevée soit indiquée dans la colonne III de l'article 3 du tableau III de l'article B.16.100;

**b)** plus de 100 parties par million de vert solide FCF, de bleu brillant FCF, ou d'un mélange de ces colorants;

**c)** plus de 300 parties par million d'un mélange des colorants synthétiques visés aux alinéas a) et b) dans les limites qui y sont prévues; ou

**d)** plus de 150 parties par million de ponceau SX.

DORS/80-500, art. 2; DORS/84-440, art. 2; DORS/86-178, art. 1(F); DORS/2007-75, art. 1.

**B.06.003** [Repealed, SOR/2016-305, s. 50]

**B.06.003** [Abrogé, DORS/2016-305, art. 50]

**B.06.004** [Repealed, SOR/2016-305, s. 50]

**B.06.004** [Abrogé, DORS/2016-305, art. 50]

**B.06.005** [Repealed, SOR/2016-305, s. 50]

**B.06.005** [Abrogé, DORS/2016-305, art. 50]

**B.06.006** [Repealed, SOR/2016-305, s. 50]

**B.06.006** [Abrogé, DORS/2016-305, art. 50]

**B.06.007** No person shall sell a preparation for use in or upon food unless

**(a)** the label carries the words "Food Colour Preparation" on its principal display panel; and

**(b)** in the case of a liquid preparation, the container has a capacity of 60 ml or less and will permit dropwise discharge only.

SOR/80-500, s. 2.

**B.06.007** Il est interdit de vendre une préparation pour aliments sans respecter les conditions suivantes :

**a)** les mots « préparation colorante pour aliments » doivent figurer dans l'espace principal de l'étiquette; et

**b)** s'il s'agit d'une préparation liquide, la capacité maximale du contenant doit être d'au plus 60 millilitres et le liquide ne doit pouvoir être versé que goutte à goutte.

DORS/80-500, art. 2.

**B.06.008** [Repealed, SOR/2016-305, s. 51]

**B.06.008** [Abrogé, DORS/2016-305, art. 51]

**B.06.009 to B.06.013** [Repealed, SOR/80-500, s. 2]

**B.06.009 à B.06.013** [Abrogés, DORS/80-500, art. 2]

**B.06.021** [Repealed, SOR/2016-305, s. 52]

**B.06.021** [Abrogé, DORS/2016-305, art. 52]

**B.06.022** [Repealed, SOR/2016-305, s. 52]

**B.06.022** [Abrogé, DORS/2016-305, art. 52]

**B.06.023** [Repealed, SOR/2016-305, s. 52]

**B.06.024** [Repealed, SOR/2016-305, s. 52]

**B.06.025** [Repealed, SOR/2016-305, s. 52]

**B.06.031** [Repealed, SOR/2016-305, s. 52]

**B.06.032** [Repealed, SOR/2016-305, s. 52]

**B.06.033** [Repealed, SOR/2016-305, s. 52]

**B.06.041** [Repealed, SOR/2016-305, s. 53]

**B.06.042** [Repealed, SOR/2016-305, s. 53]

**B.06.043 [S].** Ponceau SX shall be the disodium salt of 2-(5-sulpho-2,4-xylylazo)-1-naphthol-4-sulphonic acid, shall contain not less than 85% dye and may contain not more than

**(a)** 0.2% water insoluble matter;

**(b)** 0.2% combined ether extracts;

**(c)** 1.0% subsidiary dyes;

**(d)** 0.5% intermediates;

**(e)** 3 parts per million of arsenic; and

**(f)** 10 parts per million of lead.

SOR/82-768, s. 9; SOR/84-440, s. 3; SOR/2016-305, s. 54.

**B.06.044** [Repealed, SOR/2016-305, s. 54]

**B.06.045** [Repealed, SOR/2016-305, s. 54]

**B.06.046** [Repealed, SOR/2016-305, s. 54]

**B.06.049** [Repealed, SOR/2016-305, s. 54]

**B.06.050** [Repealed, SOR/2016-305, s. 54]

**B.06.051** [Repealed, SOR/2016-305, s. 54]

**B.06.053 [S].** Citrus Red No. 2 shall be 1-(2,5-dimethoxyphenylazo)-2-naphthol, shall contain not less than 98% dye and may contain not more than

**(a)** 0.5% volatile matter (at 100°C);

**(b)** 0.3% sulphated ash;

**(c)** 0.3% water soluble matter;

**(d)** 0.5% carbon tetrachloride insoluble matter;

**(e)** 0.05% uncombined intermediates;

**B.06.023** [Abrogé, DORS/2016-305, art. 52]

**B.06.024** [Abrogé, DORS/2016-305, art. 52]

**B.06.025** [Abrogé, DORS/2016-305, art. 52]

**B.06.031** [Abrogé, DORS/2016-305, art. 52]

**B.06.032** [Abrogé, DORS/2016-305, art. 52]

**B.06.033** [Abrogé, DORS/2016-305, art. 52]

**B.06.041** [Abrogé, DORS/2016-305, art. 53]

**B.06.042** [Abrogé, DORS/2016-305, art. 53]

**B.06.043 [N].** Le ponceau SX doit être le sel disodique de l'acide 2-(5-sulfo-2,4-xylylazo)-1-naphtol-4-sulfonique; il doit renfermer au moins 85 % de pigment et peut renfermer au plus :

**a)** 0,2 % de matière insoluble dans l'eau;

**b)** 0,2 % d'extraits d'éther réunis;

**c)** 1,0 % de pigments accessoires;

**d)** 0,5 % de composés intermédiaires;

**e)** trois parties par million d'arsenic;

**f)** dix parties par million de plomb.

DORS/82-768, art. 9; DORS/84-440, art. 3; DORS/2016-305, art. 54.

**B.06.044** [Abrogé, DORS/2016-305, art. 54]

**B.06.045** [Abrogé, DORS/2016-305, art. 54]

**B.06.046** [Abrogé, DORS/2016-305, art. 54]

**B.06.049** [Abrogé, DORS/2016-305, art. 54]

**B.06.050** [Abrogé, DORS/2016-305, art. 54]

**B.06.051** [Abrogé, DORS/2016-305, art. 54]

**B.06.053 [N].** Le rouge citrin nº 2 doit être le 1-(2,5-diméthoxyphénylazo)-2-naphtol; il doit renfermer au moins 98 % de pigment et peut renfermer au plus :

**a)** 0,5 % de matières volatiles (à 100 °C);

**b)** 0,3 % de cendres sulfatées;

**c)** 0,3 % de matière soluble dans l'eau;

**d)** 0,5 % de matière insoluble dans le tétrachlorure de carbone;

**(f)** 2.0% subsidiary dyes;

**(g)** 1 part per million of arsenic; and

**(h)** 10 parts per million of lead.

SOR/82-768, s. 12; SOR/84-440, s. 3; SOR/2016-305, s. 55.

**B.06.061** The lake of any water soluble synthetic colour that is referred to in section 2 of the *Marketing Authorization for Food Additives That May Be Used as Colouring Agents* shall be the calcium or aluminum salt of the respective colour extended on alumina.

SOR/82-1071, s. 3; SOR/84-300, s. 20; SOR/87-640, s. 2; SOR/2016-305, s. 56.

**B.06.062** [Repealed, SOR/82-768, s. 13]

## DIVISION 7

# Spices, Dressings and Seasonings

**B.07.001 [S]. Allspice** or **Pimento**, whole or ground, shall be the dried, full but unripe whole berries of *Pimenta dioica (L) Merr.* and shall contain

**(a)** not more than

**(i)** 25 per cent crude fibre,

**(ii)** 5.5 per cent total ash,

**(iii)** 0.4 per cent ash insoluble in hydrochloric acid, and

**(iv)** 12 per cent moisture; and

**(b)** not less than 2.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.002 [S]. Anise** or **Anise Seed**, whole or ground, shall be the dried fruit of *Pimpinella anisum L.* and shall contain

**(a)** not more than

**(i)** nine per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** 10 per cent moisture; and

**e)** 0,05 % de composés intermédiaires non combinés;

**f)** 2,0 % de pigments accessoires;

**g)** une partie par million d'arsenic;

**h)** dix parties par million de plomb.

DORS/82-768, art. 12; DORS/84-440, art. 3; DORS/2016-305, art. 55.

**B.06.061** La laque de tout colorant synthétique soluble dans l'eau qui est visé à l'article 2 de l'*Autorisation de mise en marché d'additifs alimentaires comme colorants* doit être le sel de calcium ou d'aluminium du colorant en cause, absorbé sur alumine.

DORS/82-1071, art. 3; DORS/84-300, art. 20; DORS/87-640, art. 2; DORS/2016-305, art. 56.

**B.06.062** [Abrogé, DORS/82-768, art. 13]

## TITRE 7

# Épices, condiments et assaisonnements

**B.07.001 [N].** Le **myrte-piment, pimenta, piment de la Jamaïque, piment des Anglais** ou **toute-épice**, entier ou moulu, doit être la baie complète et non mûrie du *Pimenta dioica (L) Merr.* et doit renfermer

**a)** au plus

**(i)** 25 pour cent de cellulose,

**(ii)** 5,5 pour cent de cendres totales,

**(iii)** 0,4 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iv)** 12 pour cent d'humidité; et

**b)** au moins 2,5 millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.002 [N].** L'**anis** ou la **graine d'anis**, entier ou moulu, doit être le fruit desséché du *Pimpinella anisum L.* et doit renfermer

**a)** au plus

**(i)** neuf pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 10 pour cent d'humidité; et

**(b)** not less than two millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.003 [S]. Basil** or **Sweet Basil**, whole or ground, shall be the dried leaves of *Ocimum basilicum L.* and shall contain

**(a)** not more than

**(i)** 15 per cent total ash,

**(ii)** two per cent ash insoluble in hydrochloric acid, and

**(iii)** nine per cent moisture; and

**(b)** not less than 0.2 millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.004 [S]. Bay Leaves** or **Laurel Leaves**, whole or ground, shall be the dried leaves of *Laurus nobilis L.* and shall contain

**(a)** not more than

**(i)** 4.5 per cent total ash,

**(ii)** 0.5 per cent ash insoluble in hydrochloric acid, and

**(iii)** seven per cent moisture; and

**(b)** not less than one millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.005 [S]. Caraway** or **Caraway Seed**, whole or ground, shall be the dried fruit of the caraway plant, *Carum carvi L.* and shall contain

**(a)** not more than

**(i)** eight per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** 11.5 per cent moisture; and

**(b)** not less than two millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.006 [S]. Cardamom** or **Cardamom Seed**, bleached or green, whole or ground, shall be the dried

**b)** au moins deux millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.003 [N].** Le **basilic** ou le **basilic odorant**, entier ou moulu, doit être la feuille desséchée de l'*Ocimum basilicum L.* et doit renfermer

**a)** au plus

**(i)** 15 pour cent de cendres totales,

**(ii)** deux pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** neuf pour cent d'humidité; et

**b)** au moins 0,2 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.004 [N].** Les **feuilles de laurier**, entières ou moulues, doivent être les feuilles desséchées du *Laurus nobilis L.* et doivent renfermer

**a)** au plus

**(i)** 4,5 pour cent de cendres totales,

**(ii)** 0,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** sept pour cent d'humidité; et

**b)** au moins un millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.005 [N].** Le **carvi** ou la **graine de carvi**, entier ou moulu, doit être le fruit desséché du carvi, *Carum carvi L.* et doit renfermer

**a)** au plus

**(i)** huit pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 11,5 pour cent d'humidité; et

**b)** au moins deux millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.006 [N].** La **cardamome** ou la **graine de cardamome**, décolorée ou verte, entière ou moulue, doit

ripe fruit of *Elettaria cardamomum Maton* and shall contain

**(a)** not more than

**(i)** eight per cent total ash,

**(ii)** three per cent ash insoluble in hydrochloric acid, and

**(iii)** 13 per cent moisture; and

**(b)** not less than three millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.007 [S]. Cayenne Pepper** or **Cayenne**, whole or ground,

**(a)** shall be the dried ripe fruit of *Capsicum frutescens L., Capsicum baccatum L.,* or other small-fruited species of Capsicum and shall contain not more than

**(i)** 1.5 per cent starch,

**(ii)** 28 per cent crude fibre,

**(iii)** 10 per cent total ash,

**(iv)** 1.5 per cent ash insoluble in hydrochloric acid, and

**(v)** 10 per cent moisture; and

**(b)** may contain silicon dioxide as an anti-caking agent in an amount not exceeding 2.0 per cent.

SOR/79-659, s. 1; SOR/84-17, s. 2.

**B.07.008 [S]. Celery Salt**

**(a)** shall be a combination of

**(i)** ground celery seed or ground dehydrated celery, and

**(ii)** salt in an amount not exceeding 75 per cent; and

**(b)** may contain silicon dioxide as an anticaking agent in an amount not exceeding 0.5 per cent.

SOR/79-659, s. 1.

**B.07.009 [S]. Celery Seed**, whole or ground, shall be the dried ripe fruit of *Apium graveolens L.* and shall contain

**(a)** not more than

être le fruit mûr et desséché de l'*Elettaria cardamomum Maton* et doit renfermer

**a)** au plus

**(i)** huit pour cent de cendres totales,

**(ii)** trois pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 13 pour cent d'humidité; et

**b)** au moins trois millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.007 [N].** Le **poivre de cayenne** ou le **cayenne**, entier ou moulu,

**a)** est le fruit mûr et desséché du *Capsicum frutescens L.*, du *Capsicum baccatum L.* ou d'autres espèces de Capsicum portant de petits fruits et doit renfermer au plus

**(i)** 1,5 pour cent d'amidon,

**(ii)** 28 pour cent de cellulose,

**(iii)** 10 pour cent de cendres totales,

**(iv)** 1,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(v)** 10 pour cent d'humidité; et

**b)** peut renfermer au plus deux pour cent de bioxyde de silicium en tant qu'agent anti-agglomérant.

DORS/79-659, art. 1; DORS/84-17, art. 2.

**B.07.008 [N].** Le **sel de céleri**

**a)** doit être un mélange

**(i)** de graines de céleri moulu ou de céleri déshydraté moulu, et

**(ii)** de sel en une quantité n'excédant pas 75 pour cent; et

**b)** peut renfermer au plus 0,5 pour cent de bioxyde de silicium comme agent anti-agglomérant.

DORS/79-659, art. 1.

**B.07.009 [N].** La **graine de céleri**, entière ou moulue, doit être la graine mûre et desséchée de l'*Apium graveolens L.* et doit renfermer

**a)** au plus

**(i)** 12 per cent total ash,

**(ii)** two per cent ash insoluble in hydrochloric acid, and

**(iii)** 10 per cent moisture; and

**(b)** not less than 1.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.010 [S]. Celery Pepper**

**(a)** shall be a combination of

**(i)** ground celery seed or ground dehydrated celery, and

**(ii)** ground black pepper in an amount not exceeding 70 per cent; and

**(b)** may contain silicon dioxide as an anticaking agent in an amount not exceeding 0.5 per cent.

SOR/79-659, s. 1.

**B.07.011 [S]. Cinnamon** or **Cassia**, whole or ground, shall be the dried bark of trees of the genus *Cinnamomum* of Species *C. burmanni Blume, C. loureirii Nees* or *C. Cassia Blume* and shall contain

**(a)** not more than

**(i)** six per cent total ash,

**(ii)** two per cent ash insoluble in hydrochloric acid, and

**(iii)** 13 per cent moisture; and

**(b)** not less than 1.2 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.012 [S]. Ceylon Cinnamon**, whole or ground, shall be cinnamon obtained exclusively from *Cinnamomum zeylanicum Nees*.

SOR/79-659, s. 1.

**B.07.013 [S]. Cloves**, whole or ground, shall be the dried unopened flower buds of *Eugenia caryophyllus (Spreng)* and shall contain

**(a)** not more than

**(i)** five per cent clove stems,

**(ii)** six per cent total ash,

**(i)** 12 pour cent de cendres totales,

**(ii)** deux pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 10 pour cent d'humidité; et

**b)** au moins 1,5 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.010 [N].** Le **poivre de céleri**

**a)** doit être un mélange

**(i)** de graines de céleri moulu ou de céleri déshydraté moulu, et

**(ii)** de poivre noir moulu en une quantité n'excédant pas 70 pour cent; et

**b)** peut renfermer au plus 0,5 pour cent de bioxyde de silicium comme agent anti-agglomérant.

DORS/79-659, art. 1.

**B.07.011 [N].** La **cannelle** ou la **cannelle bâtarde** (ou **fausse cannelle**), entière ou moulue, doit être l'écorce desséchée des arbres du genre *Cinnamomum* des espèces *C. burmanni Blume*, *C. loureirii Nees* ou *C. Cassia Blume* et doit renfermer

**a)** au plus

**(i)** six pour cent de cendres totales,

**(ii)** deux pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 13 pour cent d'humidité; et

**b)** au moins 1,2 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.012 [N].** La **cannelle de Ceylan**, entière ou moulue, doit être la cannelle obtenue exclusivement du *Cinnamomum zeylanicum Nees*.

DORS/79-659, art. 1.

**B.07.013 [N].** Le **clou de girofle**, entier ou moulu, doit être le bouton clos et desséché de la fleur de l'*Eugenia caryophyllus (Spreng)* et doit renfermer

**a)** au plus

**(i)** cinq pour cent de tiges de clou de girofle,

**(ii)** six pour cent de cendres totales,

**(iii)** 0.5 per cent ash insoluble in hydrochloric acid,

**(iv)** 10 per cent crude fibre, and

**(v)** eight per cent moisture; and

**(b)** not less than 13 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.014 [S]. Coriander** or **Coriander Seed**, whole or ground, shall be the dried fruit of *Coriandrum sativum L.* and shall contain

**(a)** not more than

**(i)** seven per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** nine per cent moisture; and

**(b)** not less than 0.3 millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.015 [S]. Cumin** or **Cumin Seed**, whole or ground, shall be the dried seeds of *Cuminum cyminum L.* and shall contain

**(a)** not more than

**(i)** 9.5 per cent total ash,

**(ii)** 1.5 per cent ash insoluble in hydrochloric acid, and

**(iii)** nine per cent moisture; and

**(b)** not less than 2.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.016 [S]. Curry Powder** shall be any combination of

**(a)** turmeric with spices and seasoning; and

**(b)** salt in an amount not exceeding five per cent.

SOR/79-659, s. 1.

**B.07.017 [S]. Dill Seed**, whole or ground, shall be the dried fruit of *Anethum graveolens L.*, or *Anethum sowa D.C.* and shall contain

**(a)** not more than

**(iii)** 0,5 pour cent de cendres insolubles dans l'acide chlorhydrique,

**(iv)** 10 pour cent de cellulose, et

**(v)** huit pour cent d'humidité; et

**b)** au moins 13 millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.014 [N].** La **coriandre** ou la **graine de coriandre**, entière ou moulue, doit être la graine desséchée du *Coriandrum sativum L.* et doit renfermer

**a)** au plus

**(i)** sept pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** neuf pour cent d'humidité; et

**b)** au moins 0,3 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.015 [N].** Le **cumin** ou la **graine de cumin**, entier ou moulu, doit être la graine desséchée du *Cuminum cyminum L.* et doit renfermer

**a)** au plus

**(i)** 9,5 pour cent de cendres totales,

**(ii)** 1,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** neuf pour cent d'humidité; et

**b)** au moins 2,5 millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.016 [N].** La **poudre de cari** doit être un mélange

**a)** de curcuma avec des épices et des condiments; et

**b)** de sel en une quantité n'excédant pas cinq pour cent.

DORS/79-659, art 1.

**B.07.017 [N].** La **graine d'aneth**, entière ou moulue, doit être la graine desséchée de l'*Anethum graveolens L.*, ou de l'*Anethum sowa D.C.* et doit renfermer

**a)** au plus

**(i)** 10 per cent total ash,

**(ii)** two per cent ash insoluble in hydrochloric acid, and

**(iii)** nine per cent moisture; and

**(b)** not less than two millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.018 [S]. Fennel** or **Fennel Seed**, whole or ground, shall be the dried ripe fruit of *Foeniculum vulgare Mill.* and shall contain

**(a)** not more than

**(i)** 10 per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** 10 per cent moisture; and

**(b)** not less than one millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.019 [S]. Fenugreek**, whole or ground, shall be the dried ripe fruit of *Trigonella foenumgraecum L.* and shall contain not more than

**(a)** five per cent total ash;

**(b)** one per cent ash insoluble in hydrochloric acid; and

**(c)** 10 per cent moisture.

SOR/79-659, s. 1.

**B.07.020 [S]. Garlic Salt**

**(a)** shall be a combination of

**(i)** powdered dehydrated garlic, and

**(ii)** salt in an amount not exceeding 75 per cent; and

**(b)** may contain one or more of the following anticaking agents in a total amount not exceeding two per cent:

calcium aluminum silicate, calcium phosphate tribasic, calcium silicate, calcium stearate, magnesium carbonate, magnesium silicate, magnesium stearate, silicone dioxide in an amount not exceeding one per cent and sodium aluminum silicate.

SOR/79-659, s. 1.

**(i)** 10 pour cent de cendres totales,

**(ii)** deux pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** neuf pour cent d'humidité; et

**b)** au moins deux millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.018 [N].** Le **fenouil** ou la **graine de fenouil**, entier ou moulu, doit être la graine mûre et desséchée du *Fœniculum vulgare Mill.* et doit renfermer

**a)** au plus

**(i)** 10 pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 10 pour cent d'humidité; et

**b)** au moins un millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.019 [N].** Le **fenugrec**, entier ou moulu, doit être la graine mûre et desséchée du *Trigonella fœnumgraecum L.* et doit renfermer au plus

**a)** cinq pour cent de cendres totales;

**b)** un pour cent de cendres insolubles dans l'acide chlorhydrique; et

**c)** 10 pour cent d'humidité.

DORS/79-659, art. 1.

**B.07.020 [N].** Le **sel d'ail**

**a)** doit être un mélange

**(i)** d'ail déshydraté en poudre, et

**(ii)** de sel en une quantité n'excédant pas 75 pour cent; et

**b)** peut renfermer les agents anti-agglomérants suivants pour une quantité totale n'excédant pas deux pour cent :

silicate double d'aluminium et de calcium, phosphate tricalcique, silicate de calcium, stéarate de

**B.07.021 [S]. Ginger** whole or ground, shall be the washed and dried or decorticated rhizome of *Zingiber officinale Roscoe* and shall contain

**(a)** not more than

**(i)** seven per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** 12.5 per cent moisture; and

**(b)** not less than 1.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.022 [S]. Mace**, whole or ground, shall be the dried arillus of *Myristica fragrans Houttyn* and shall contain

**(a)** not more than

**(i)** 3.5 per cent total ash,

**(ii)** 0.5 per cent ash insoluble in hydrochloric acid, and

**(iii)** eight per cent moisture, and

**(b)** not less than 11 millilitres volatile oil per 100 grams of spice,

and the total non-volatile extracts obtainable therefrom by

**(c)** ethyl ether, shall not be less than 20 per cent nor more than 35 per cent, and

**(d)** ethyl ether, after preliminary extraction with petroleum ether, shall not exceed five per cent.

SOR/79-659, s. 1.

**B.07.023 [S]. Marjoram**, whole or ground, shall be the dried leaves, with or without a small proportion of the flowering tops, of *Marjorana hortensis Moench* and shall contain

**(a)** not more than

calcium, carbonate de magnésium, silicate de magnésium, stéarate de magnésium, bioxyde de silicium, en une quantité n'excédant pas un pour cent et silicate double de sodium et d'aluminium.

DORS/79-659, art. 1.

**B.07.021 [N].** Le **gingembre**, entier ou moulu, doit être le rhizome lavé et desséché ou décortiqué du *Zingiber officinale Roscœ* et doit renfermer

**a)** au plus

**(i)** sept pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 12,5 pour cent d'humidité; et

**b)** au moins 1,5 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.022 [N].** Le **macis**, entier ou moulu, doit être l'arille desséchée du *Myristica fragrans Houttyn* et doit renfermer

**a)** au plus

**(i)** 3,5 pour cent de cendres totales,

**(ii)** 0,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** huit pour cent d'humidité; et

**b)** au moins 11 millilitres d'huile volatile par 100 grammes d'épice,

la somme des extraits non volatils qui pourraient en être extraits au moyen

**c)** d'éther éthylique, doit constituer de 20 pour cent à 35 pour cent du produit; et

**d)** d'éther éthylique, après extraction préliminaire avec l'éther de pétrole, doit représenter au plus cinq pour cent du produit.

DORS/79-659, art. 1.

**B.07.023 [N].** La **marjolaine**, entière ou moulue, doit être la feuille desséchée, avec ou sans une faible proportion des fleurs de la plante de la *Marjorana hortensis Mœnch* et doit renfermer

**a)** au plus

**(i)** 10 per cent stems and foreign material of plant origin,

**(ii)** 13.5 per cent total ash,

**(iii)** 4.5 per cent ash insoluble in hydrochloric acid, and

**(iv)** 10 per cent moisture; and

**(b)** not less than 0.7 millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.024 [S]. Mustard Seed** shall be the seed of *Sinapis alba, Brassica hirta Moench, Brassica juncea (L) Cosson* or *Brassica nigra* and shall contain

**(a)** not more than

**(i)** seven per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** 11 per cent moisture; and

**(b)** not less than 25 per cent non-volatile ether extract.

SOR/79-659, s. 1.

**B.07.025 [S]. Mustard, Mustard Flour** or **Ground Mustard** shall be powdered mustard seed

**(a)** made from mustard seed from which

**(i)** most of the hulls have been removed, and

**(ii)** a portion of the fixed oil may have been removed; and

**(b)** that contains not more than

**(i)** 1.5 per cent starch, and

**(ii)** eight per cent total ash, on an oil-free basis.

SOR/79-659, s. 1; SOR/2010-142, s. 3(F).

**B.07.026 [S]. Nutmeg**, whole or ground, shall be the dried seed of *Myristica fragrans Houttyn* and may, prior to grinding, have a thin coating of lime and shall contain

**(a)** not more than

**(i)** three per cent total ash,

**(i)** 10 pour cent des tiges et de matières étrangères d'origine végétale,

**(ii)** 13,5 pour cent de cendres totales,

**(iii)** 4,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iv)** 10 pour cent d'humidité; et

**b)** au moins 0,7 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.024 [N].** La **graine de moutarde** doit être la graine du *Sinapis alba*, du *Brassica hirta Mœnch*, du *Brassica juncea (L) Cosson* ou du *Brassica nigra* et doit renfermer

**a)** au plus

**(i)** sept pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 11 pour cent d'humidité; et

**b)** au moins 25 pour cent d'extrait d'éther non volatil.

DORS/79-659, art. 1.

**B.07.025 [N].** La **moutarde, farine de moutarde** ou **moutarde moulue** doit être la poudre qui provient de la graine de moutarde

**a)** de laquelle

**(i)** a été enlevée une majeure partie de la balle, et

**(ii)** peut avoir été enlevée une partie de l'huile fixe; et

**b)** qui renferme au plus

**(i)** 1,5 pour cent d'amidon, et

**(ii)** huit pour cent de cendres totales, sur la matière dégraissée.

DORS/79-659, art. 1; DORS/2010-142, art. 3(F).

**B.07.026 [N].** La **muscade**, entière ou moulue, doit être la graine desséchée du *Myristica fragrans Houttyn*, peut, avant la mouture, porter une mince couche de chaux et doit renfermer

**a)** au plus

**(i)** trois pour cent de cendres totales,

**(ii)** 0.5 per cent ash insoluble in hydrochloric acid, and

**(iii)** eight per cent moisture; and

**(b)** not less than

**(i)** 25 per cent non-volatile ether extract, and

**(ii)** 6.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**(ii)** 0,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** huit pour cent d'humidité; et

**b)** au moins

**(i)** 25 pour cent d'extrait d'éther non volatil, et

**(ii)** 6,5 millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

### B.07.027 [S]. Onion Salt

**(a)** shall be a combination of

**(i)** powdered dehydrated onion, and

**(ii)** salt in an amount not exceeding 75 per cent; and

**(b)** may contain one or more of the following anticaking agents in a total amount not exceeding two per cent:

calcium aluminum silicate, calcium phosphate tribasic, calcium silicate, calcium stearate, magnesium carbonate, magnesium silicate, magnesium stearate, silicon dioxide in an amount not exceeding one per cent and sodium aluminum silicate.

SOR/79-659, s. 1.

### B.07.027 [N]. Le **sel d'oignon**

**a)** doit être un mélange

**(i)** d'oignons déshydratés en poudre, et

**(ii)** de sel en une quantité n'excédant pas 75 pour cent; et

**b)** peut renfermer les agents anti-agglomérants suivants pour une quantité totale n'excédant pas deux pour cent :

silicate double d'aluminium et de calcium, phosphate tricalcique, silicate de calcium, stéarate de calcium, carbonate de magnésium, silicate de magnésium, stéarate de magnésium, bioxyde de silicium en une quantité n'excédant pas un pour cent et silicate double de sodium et d'aluminium.

DORS/79-659, art. 1.

**B.07.028 [S]. Oregano**, whole or ground, shall be the dried leaves of *Origanum vulgar L.* or *Origanum Spp.* and shall contain

**(a)** not more than

**(i)** 10 per cent total ash,

**(ii)** two per cent ash insoluble in hydrochloric acid, and

**(iii)** 10 per cent moisture; and

**(b)** not less than 2.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.028 [N].** L'**origan**, entier ou moulu, doit être la feuille desséchée de l'*Origanum vulgar L.* ou de l'*Origanum Spp.* et doit renfermer

**a)** au plus

**(i)** 10 pour cent de cendres totales,

**(ii)** deux pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 10 pour cent d'humidité; et

**b)** au moins 2,5 millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.029 [S]. Paprika** shall be the dried, ground ripe fruit of *Capsicum annuum L.* and

**(a)** shall contain not more than

**(i)** 23 per cent crude fibre,

**(ii)** 8.5 per cent total ash,

**B.07.029 [N].** Le **paprika** est le fruit mûr desséché et moulu du *Capsicum annuum L.* et

**a)** doit renfermer au plus

**(i)** 23 pour cent de cellulose,

**(ii)** 8,5 pour cent de cendres totales,

**(iii)** one per cent ash insoluble in hydrochloric acid, and

**(iv)** 12 per cent moisture; and

**(b)** may contain silicon dioxide as an anti-caking agent in an amount not exceeding 2.0 per cent.

SOR/79-659, s. 1; SOR/84-17, s. 3.

**B.07.030 [S]. Black Pepper** or **Peppercorn**, whole or ground, shall be the dried, immature berry of *Piper nigrum L.* and shall contain

**(a)** not more than

**(i)** seven per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** 12 per cent moisture;

**(b)** not less than

**(i)** six per cent non-volatile methylene chloride extract,

**(ii)** 30 per cent pepper starch, and

**(iii)** 2.0 millilitres volatile oil per 100 grams of spice; and

**(c)** when ground, all the parts of the berry in their normal proportions.

SOR/79-659, s. 1.

**B.07.031 [S]. White Pepper**, whole or ground, shall be the dried, mature berry of *Piper nigrum L.*, from which the outer coating is and the inner coating may be removed and shall contain

**(a)** not more than

**(i)** five per cent crude fibre,

**(ii)** 2.5 per cent total ash,

**(iii)** 0.3 per cent ash insoluble in hydrochloric acid, and

**(iv)** 15 per cent moisture; and

**(b)** not less than

**(i)** six per cent non-volatile methylene chloride extract,

**(ii)** 52 per cent pepper starch, and

**(iii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iv)** 12 pour cent d'humidité; et

**b)** peut renfermer au plus deux pour cent de bioxyde de silicium en tant qu'agent anti-agglomérant.

DORS/79-659, art. 1; DORS/84-17, art. 3.

**B.07.030 [N].** Le **poivre noir** ou le **poivre en grain**, entier ou moulu, doit être la baie non mûrie et desséchée du *Piper nigrum L.* et doit renfermer

**a)** au plus

**(i)** sept pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 12 pour cent d'humidité;

**b)** au moins

**(i)** six pour cent d'extrait de chlorure de méthylène non volatil,

**(ii)** 30 pour cent d'amidon de poivre, et

**(iii)** 2,0 millilitres d'huile volatile par 100 grammes d'épice; et

**c)** une fois moulu, les diverses parties de la baie dans leurs proportions normales.

DORS/79-659, art. 1.

**B.07.031 [N].** Le **poivre blanc**, entier ou moulu, doit être la baie mûre et desséchée du *Piper nigrum L.* débarrassée de son enveloppe extérieure et dont l'enveloppe intérieure peut être enlevée, il doit renfermer

**a)** au plus

**(i)** cinq pour cent de cellulose,

**(ii)** 2,5 pour cent de cendres totales,

**(iii)** 0,3 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iv)** 15 pour cent d'humidité; et

**b)** au moins

**(i)** six pour cent d'extrait de chlorure de méthylène non volatil,

**(ii)** 52 pour cent d'amidon de poivre, et

**(iii)** one millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.032 [S]. Poppy seed** shall be the dried seed of *Papaver somniferum L.* and shall contain

**(a)** not more than

**(i)** seven per cent total ash, and

**(ii)** one per cent ash insoluble in hydrochloric acid; and

**(b)** not less than 40 per cent non-volatile ether extract.

SOR/79-659, s. 1.

**B.07.033 [S]. Rosemary**, whole or ground, shall be the dried leaves of *Rosemarinus officinalis L.* and shall contain

**(a)** not more than

**(i)** 7.5 per cent total ash,

**(ii)** one per cent ash insoluble in hydrochloric acid, and

**(iii)** nine per cent moisture; and

**(b)** not less than 1.2 millilitres volatile oil per 100 grams of spice.

SOR/78-637, s. 1; SOR/79-659, s. 1.

**B.07.034 [S]. Sage**, whole or ground, shall be the dried leaves of the sage plant *Salvia officinalis L., Salvia triloba L.* or *Salvia lavandulaefolia Vahl.* and shall contain

**(a)** not more than

**(i)** 12 per cent stems excluding petioles and foreign material of plant origin,

**(ii)** 10 per cent total ash,

**(iii)** one per cent ash insoluble in hydrochloric acid, and

**(iv)** 10 per cent moisture; and

**(b)** not less than one millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.035 [S]. Savory**, whole or ground, shall be the dried leaves and flowering tops of *Satureja hortensis L.* or *Satureja montana L.* and shall contain

**(iii)** un millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.032 [N].** La **graine de pavot** doit être la graine desséchée du *Papaver somniferum L.* et doit renfermer

**a)** au plus

**(i)** sept pour cent de cendres totales, et

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique; et

**b)** au moins 40 pour cent d'extrait d'éther non volatil.

DORS/79-659, art. 1.

**B.07.033 [N].** Le **romarin**, entier ou moulu, doit être la feuille desséchée du *Rosemarinus officinalis L.* et doit renfermer

**a)** au plus

**(i)** 7,5 pour cent de cendres totales,

**(ii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** neuf pour cent d'humidité; et

**b)** au moins 1,2 millilitre d'huile volatile par 100 grammes d'épice.

DORS/78-637, art. 1; DORS/79-659, art. 1.

**B.07.034 [N].** La **sauge**, entière ou moulue, doit être la feuille desséchée du *Salvia officinalis L.*, du *Salvia triloba L.* ou du *Salvia lavandulaefolia Vahl.* et doit renfermer

**a)** au plus

**(i)** 12 pour cent de tiges, pétioles non compris, et de matières étrangères d'origine végétale,

**(ii)** 10 pour cent de cendres totales,

**(iii)** un pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iv)** 10 pour cent d'humidité; et

**b)** au moins un millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.035 [N].** La **sarriette**, entière ou moulue, doit être la feuille et la fleur desséchées du *Satureja hortensis L.* ou du *Satureja montana L.* et doit renfermer

**(a)** not more than

**(i)** 11 per cent total ash,

**(ii)** two per cent ash insoluble in hydrochloric acid, and

**(iii)** 14 per cent moisture; and

**(b)** not less than 0.8 millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.036 [S]. Sesame Seed** shall be the dried hulled seed of *Sesamum indicum L.* and shall contain

**(a)** not more than eight per cent moisture; and

**(b)** not less than 50 per cent non-volatile ether extract.

SOR/79-659, s. 1; SOR/2010-142, s. 4(F).

**B.07.037 [S]. Tarragon**, whole or ground, shall be the dried leaves and flowering tops of *Artemisia dracunculus L.* and shall contain

**(a)** not more than

**(i)** 15 per cent total ash,

**(ii)** 1.5 per cent ash insoluble in hydrochloric acid, and

**(iii)** 10 per cent moisture; and

**(b)** not less than 0.3 millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.038 [S]. Thyme**, whole or ground, shall be the dried leaves and flowering tops of the thyme plant *Thymus vulgaris L.* or *Thymus zygis L.* and shall contain

**(a)** not more than

**(i)** 12 per cent total ash,

**(ii)** five per cent ash insoluble in hydrochloric acid, and

**(iii)** nine per cent moisture; and

**(b)** not less than 0.9 millilitre volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**a)** au plus

**(i)** 11 pour cent de cendres totales,

**(ii)** deux pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 14 pour cent d'humidité; et

**b)** au moins 0,8 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.036 [N].** La **graine de sésame** doit être la graine à balles desséchées du *Sesamum indicum L.* et doit renfermer

**a)** au plus huit pour cent d'humidité; et

**b)** au moins 50 pour cent d'extrait d'éther non volatil.

DORS/79-659, art. 1; DORS/2010-142, art. 4(F).

**B.07.037 [N].** L'**estragon**, entier ou moulu, doit être la feuille et la fleur desséchées de l'*Artemisia dracunculus L.* et doit renfermer

**a)** au plus

**(i)** 15 pour cent de cendres totales,

**(ii)** 1,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 10 pour cent d'humidité; et

**b)** au moins 0,3 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.038 [N].** Le **thym**, entier ou moulu, doit être la feuille et la fleur desséchées du *Thymus vulgaris L.* ou du *Thymus zygis L.* et doit renfermer

**a)** au plus

**(i)** 12 pour cent de cendres totales,

**(ii)** cinq pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** neuf pour cent d'humidité; et

**b)** au moins 0,9 millilitre d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.039 [S]. Turmeric**, whole or ground, shall be the dried rhizome of *Curcuma longa L.* and shall contain

**(a)** not more than

**(i)** seven per cent total ash,

**(ii)** 1.5 per cent ash insoluble in hydrochloric acid, and

**(iii)** 10 per cent moisture; and

**(b)** not less than 3.5 millilitres volatile oil per 100 grams of spice.

SOR/79-659, s. 1.

**B.07.040 [S]. Mayonnaise, Mayonnaise Dressing** or **Mayonnaise Salad Dressing**

**(a)** shall be a combination of

**(i)** vegetable oil,

**(ii)** whole egg or egg yolk, in liquid, frozen or dried form, and

**(iii)** vinegar or lemon juice;

**(b)** may contain

**(i)** water,

**(ii)** salt,

**(iii)** a sweetening agent,

**(iv)** spice or other seasoning except turmeric or saffron,

**(v)** citric, tartaric or lactic acid, and

**(vi)** a sequestering agent; and

**(c)** shall contain not less than 65 per cent vegetable oil.

SOR/79-659, s. 1.

**B.07.041 [S]. French Dressing**

**(a)** shall be a combination of

**(i)** vegetable oil, and

**(ii)** vinegar or lemon juice;

**(b)** may contain

**(i)** water,

**B.07.039 [N].** Le **curcuma**, entier ou moulu, doit être le rhizome desséché du *Curcuma longa L.* et doit renfermer

**a)** au plus

**(i)** sept pour cent de cendres totales,

**(ii)** 1,5 pour cent de cendres insolubles dans l'acide chlorhydrique, et

**(iii)** 10 pour cent d'humidité; et

**b)** au moins 3,5 millilitres d'huile volatile par 100 grammes d'épice.

DORS/79-659, art. 1.

**B.07.040 [N].** La **mayonnaise, sauce mayonnaise** ou **sauce mayonnaise à salade**

**a)** doit être un mélange

**(i)** d'huile végétale,

**(ii)** d'œufs entiers ou de jaunes d'œufs, à l'état liquide, congelés ou desséchés, et

**(iii)** de vinaigre ou de jus de citron;

**b)** peut renfermer

**(i)** de l'eau,

**(ii)** du sel,

**(iii)** un agent édulcorant,

**(iv)** des épices ou autres condiments, excepté le curcuma et le safran,

**(v)** de l'acide citrique, tartrique ou lactique, et

**(vi)** un agent séquestrant; et

**c)** doit renfermer au moins 65 pour cent d'huile végétale.

DORS/79-659, art. 1.

**B.07.041 [N].** La **sauce française** ou **sauce vinaigrette**

**a)** doit être un mélange

**(i)** d'huile végétale, et

**(ii)** de vinaigre ou de jus de citron;

**b)** peut renfermer

**(ii)** salt,

**(iii)** a sweetening agent,

**(iv)** spice, tomato or other seasoning,

**(v)** an emulsifying agent,

**(vi)** whole egg or egg yolk, in liquid, frozen or dried form,

**(vii)** citric, tartaric or lactic acid, and

**(viii)** a sequestering agent; and

**(c)** shall contain not less than 35 per cent vegetable oil.

SOR/79-659, s. 1.

### B.07.042 [S]. Salad Dressing

**(a)** shall be a combination of

**(i)** vegetable oil,

**(ii)** whole egg or egg yolk, in liquid, frozen or dried form,

**(iii)** vinegar or lemon juice, and

**(iv)** starch, flour, rye flour or tapioca flour or any combination thereof;

**(b)** may contain

**(i)** water,

**(ii)** salt,

**(iii)** a sweetening agent,

**(iv)** spice or other seasoning,

**(v)** an emulsifying agent,

**(vi)** citric, tartaric or lactic acid, and

**(vii)** a sequestering agent; and

**(c)** shall contain not less than 35 per cent vegetable oil.

SOR/79-659, s. 1.

**(i)** de l'eau,

**(ii)** du sel,

**(iii)** un agent édulcorant,

**(iv)** des épices, des tomates ou d'autres condiments,

**(v)** un émulsif,

**(vi)** des œufs entiers ou des jaunes d'œufs, à l'état liquide, congelés ou desséchés,

**(vii)** de l'acide citrique, tartrique ou lactique, et

**(viii)** un agent séquestrant; et

**c)** doit renfermer au moins 35 pour cent d'huile végétale.

DORS/79-659, art. 1.

### B.07.042 [N]. La **sauce à salade** ou **sauce genre mayonnaise**

**a)** doit être un mélange

**(i)** d'huile végétale,

**(ii)** d'œufs entiers ou de jaunes d'œufs, à l'état liquide, congelés ou desséchés,

**(iii)** de vinaigre ou de jus de citron, et

**(iv)** d'amidon, de farine, de farine de seigle ou de tapioca, ou un mélange de ces produits;

**b)** peut renfermer

**(i)** de l'eau,

**(ii)** du sel,

**(iii)** un agent édulcorant,

**(iv)** des épices ou autres condiments,

**(v)** un émulsif,

**(vi)** de l'acide citrique, tartrique ou lactique, et

**(vii)** un agent séquestrant; et

**c)** doit renfermer au moins 35 pour cent d'huile végétale.

DORS/79-659, art. 1.

**B.07.043** No person shall sell a dressing that contains more than five per cent $C_{22}$ Monoenoic Fatty Acids calculated as a proportion of the total fatty acids contained in the dressing.

SOR/79-659, s. 1.

**B.07.043** Est interdite la vente d'une sauce d'assaisonnement qui contient plus de cinq pour cent d'acide gras monoénoïques en $C_{22}$ par rapport aux acides totaux qu'elle renferme.

DORS/79-659, art. 1.

## DIVISION 8

# Dairy Products

**B.08.001** The foods referred to in this Division are *dairy products*.

**B.08.001.1** The following definitions apply in this Division.

***milk product*** means

**(a)** with respect to butter or whey butter, any of the following products, namely,

**(i)** partly skimmed milk, skim milk, cream, buttermilk and whey cream, and

**(ii)** milk in concentrated, dried or reconstituted form and any product referred to in subparagraph (i) in concentrated, dried or reconstituted form;

**(b)** with respect to cheese, any of the following products, namely,

**(i)** partly skimmed milk, skim milk, cream, buttermilk, whey and whey cream,

**(ii)** milk in concentrated, dried, frozen or reconstituted form and any product referred to in subparagraph (i) in concentrated, dried, frozen or reconstituted form,

**(iii)** butter, butter oil and whey butter,

**(iv)** any constituent of milk — other than water — singly or in combination with other constituents of milk, and

**(v)** whey protein concentrate;

**(c)** with respect to cold-pack cheese food, cold-pack cheese food with (naming the added ingredients), cream cheese spread, cream cheese spread with (naming the added ingredients), processed cheese food, processed cheese food with (naming the added ingredients), processed cheese spread or processed cheese spread with (naming the added ingredients), any of the following products, namely,

## TITRE 8

# Produits laitiers

**B.08.001** Les aliments mentionnés dans le présent Titre sont des *produits laitiers*.

**B.08.001.1** Les définitions qui suivent s'appliquent au présent titre.

***produit du lait***

**a)** Dans le cas du beurre ou du beurre de petit-lait, l'un ou l'autre des produits suivants :

**(i)** le lait partiellement écrémé, le lait écrémé, la crème, le babeurre ou la crème de petit-lait,

**(ii)** le lait sous forme concentrée, desséchée ou reconstituée ou tout produit visé au sous-alinéa (i) sous forme concentrée, desséchée ou reconstituée;

**b)** dans le cas du fromage, l'un ou l'autre des produits suivants :

**(i)** le lait partiellement écrémé, le lait écrémé, la crème, le babeurre, le petit-lait ou la crème de petit-lait,

**(ii)** le lait sous forme concentrée, desséchée, congelée ou reconstituée ou tout produit visé au sous-alinéa (i) sous forme concentrée, desséchée, congelée ou reconstituée,

**(iii)** le beurre, l'huile de beurre et le beurre de petit-lait,

**(iv)** tout composant du lait — sauf l'eau —, pris seul ou en combinaison avec d'autres,

**(v)** le concentré protéique de petit-lait;

**c)** dans le cas du fromage à la crème à tartiner, du fromage à la crème à tartiner (avec indication des ingrédients ajoutés), du fromage fondu à tartiner, du fromage fondu à tartiner (avec indication des ingrédients ajoutés), d'une préparation de fromage conditionné à froid, d'une préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés), d'une préparation de fromage fondu ou d'une préparation de

**(i)** butter, whey butter and whey,

**(ii)** whey protein concentrate, and

**(iii)** any product referred to in subparagraph (i) in concentrated or dried form; and

**(d)** with respect to ice milk mix, ice cream mix or sherbet, any of the products referred to in subparagraph (a)(i) or (ii) or (c)(i), (ii) or (iii). (*produit du lait*)

***ultrafiltered***, in relation to milk, partly skimmed milk or skim milk, means that the milk, partly skimmed milk or skim milk has been subjected to a process in which it is passed over one or more semi-permeable membranes to partially remove water, lactose, minerals and water-soluble vitamins without altering the whey protein to casein ratio and that results in a liquid product. (*ultrafiltré*)

SOR/92-400, s. 1. SOR/97-543, s. 1(F); SOR/98-580, s. 1(F); SOR/2007-302, s. 1; SOR/2010-94, s. 2; SOR/2011-205, s. 41.

**B.08.002** Except as provided in these Regulations, a dairy product that contains a fat other than milk fat is adulterated.

**B.08.002.1** Sections B.08.003 to B.08.028 do not apply to a lacteal secretion obtained from the mammary gland of any animal other than a cow, genus *Bos*, or a product or derivative of such secretion.

SOR/85-623, s. 1.

**B.08.002.2 (1)** Subject to subsection (2), no person shall sell the normal lacteal secretion obtained from the mammary gland of the cow, genus *Bos*, or of any other animal, or sell a dairy product made with any such secretion, unless the secretion or dairy product has been pasteurized by being held at a temperature and for a period that ensure the reduction of the alkaline phosphatase activity so as to meet the tolerances specified in official method MFO-3, *Determination of Phosphatase Activity in Dairy Products*, dated November 30, 1981.

**(2)** Subsection (1) does not apply to

**(a)** cheese; or

**(b)** any food that is sold for further manufacturing or processing in order to pasteurize it in the manner described in subsection (1).

SOR/91-549, s. 1; SOR/95-499, s. 1.

fromage fondu (avec indication des ingrédients ajoutés), l'un ou l'autre des produits suivants :

**(i)** le beurre, le beurre de petit-lait et le petit-lait,

**(ii)** le concentré protéique de petit-lait,

**(iii)** tout produit visé au sous-alinéa (i) sous forme concentrée ou desséchée;

**d)** dans le cas d'un mélange à lait glacé, d'un mélange à crème glacée et du sorbet laitier, les produits visés aux sous-alinéas a)(i) ou (ii) ou c)(i), (ii) ou (iii). (*milk product*)

***ultrafiltré*** Se dit du lait, du lait partiellement écrémé ou du lait écrémé qu'on fait passer à travers une ou plusieurs membranes semi-perméables pour partiellement en soustraire l'eau, le lactose, les minéraux et les vitamines hydrosolubles sans en altérer le rapport protéines de petit-lait à la caséine et qui résulte en un produit liquide. (*ultrafiltered*)

DORS/92-400, art. 1; DORS/97-543, art. 1(F); DORS/98-580, art. 1(F); DORS/2007-302, art. 1; DORS/2010-94, art. 2; DORS/2011-205, art. 41.

**B.08.002** Sauf l'exception prévue dans le présent règlement, tout produit laitier qui contient du gras autre que du gras de lait est falsifié.

**B.08.002.1** Les articles B.08.003 à B.08.028, ne s'appliquent pas à la sécrétion lactée des glandes mammaires d'un animal autre qu'une vache, genre *Bos*, ni aux produits ou dérivés de cette sécrétion.

DORS/85-623, art. 1.

**B.08.002.2 (1)** Il est interdit de vendre la sécrétion lactée normale provenant des glandes mammaires d'une vache, genre *Bos*, ou d'un autre animal, ou tout produit laitier fabriqué à partir de cette sécrétion, à moins que la sécrétion ou le produit laitier n'aient été pasteurisés à une température et pendant une période qui assurent la réduction de l'activité de la phosphatase alcaline de façon que la limite de tolérance spécifiée dans la méthode officielle MFO-3, *Détermination de l'activité phosphatasique des produits laitiers*, en date du 30 novembre 1981, soit respectée.

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** aux fromages;

**b)** aux aliments vendus pour être soumis à d'autres étapes de fabrication ou de transformation en vue de leur pasteurisation de la façon prévue au paragraphe (1).

DORS/91-549, art. 1; DORS/95-499, art. 1.

## Milk

### B.08.003 [S]. Milk or Whole Milk

**(a)** shall be the normal lacteal secretion obtained from the mammary gland of the cow, genus *Bos*; and

**(b)** shall contain 2 µg of vitamin D per 100 mL.

SOR/95-499, s. 2; SOR/2022-168, s. 22.

### B.08.004 [S]. Skim Milk

**(a)** shall be milk that contains not more than 0.3 per cent milk fat;

**(b)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A; and

**(c)** shall contain 2 µg of vitamin D per 100 mL.

SOR/78-656, s. 1; SOR/2022-168, s. 23.

### B.08.005 [S]. Partly Skimmed Milk or Partially Skimmed Milk

**(a)** shall be derived from milk that has had its fat content reduced by mechanical separation or adjusted by the addition of cream, milk, partly skimmed milk or skim milk, either singly or in combination;

**(b)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A; and

**(c)** shall contain 2 µg of vitamin D per 100 mL.

SOR/78-656, s. 2; SOR/2022-168, s. 24.

**B.08.006 [S]. Milk Fat** or **Butter Fat** shall be the fat of cow's milk, and shall have

**(a)** a specific gravity of not less than 0.905 at a temperature of 40°,

**(b)** a tocopherol content not greater than 50 micrograms per gram, as determined by official method FO-16, Determination of Tocopherol in Milk Fat or Butter Fat, October 15, 1981,

**(c)** a Reichert-Meissl number not less than 24, and

**(d)** a Polenske number not exceeding 10 per cent of the Reichert-Meissl number and in no case shall the Polenske number exceed 3.5, and

## Lait

### B.08.003 [N]. Le lait ou lait entier

**a)** doit être la sécrétion lactée normale des glandes mammaires de la vache, genre *Bos*;

**b)** doit contenir 2 µg de vitamine D par 100 mL.

DORS/95-499, art. 2; DORS/2022-168, art. 22.

### B.08.004 [N]. Le lait écrémé

**a)** doit être un lait qui ne contient pas plus de 0,3 pour cent de gras de lait;

**b)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A; et

**c)** doit contenir 2 µg de vitamine D par 100 mL.

DORS/78-656, art. 1; DORS/2022-168, art. 23.

### B.08.005 [N]. Le lait partiellement écrémé ou en partie écrémé

**a)** doit provenir d'un lait dont la teneur en gras a été réduite par séparation mécanique ou ajustée par l'addition de crème, de lait ou de lait écrémé ou partiellement écrémé seuls ou en association;

**b)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A; et

**c)** doit contenir 2 µg de vitamine D par 100 mL.

DORS/78-656, art. 2; DORS/2022-168, art. 24.

**B.08.006 [N].** Le **gras de lait** ou **gras de beurre** doit être la matière grasse du lait de vache et doit avoir

**a)** une densité d'au moins 0,905 à la température de 40 °C,

**b)** une teneur en tocophérols d'au plus 50 microgrammes par gramme, déterminée selon la méthode officielle FO-16, Détermination de la teneur en tocophérols du gras de lait ou du gras de beurre, 15 octobre 1981,

**c)** un indice de Reichert-Meissl d'au moins 24, et

where the tocopherol content is greater than 50 micrograms per gram or the Polenske number exceeds 10 per cent of the Reichert-Meissl number, there shall be deemed to have been an addition to the milk fat of fat other than that of cow's milk.

SOR/82-768, s. 14.

**B.08.007 [S]. Sterilized Milk**

**(a) and (b)** [Repealed, SOR/97-148, s. 1]

**(c)** shall contain not less than

**(i)** 11.75 per cent milk solids, and

**(ii)** 3.25 per cent milk fat; and

**(d)** shall contain 2 µg of vitamin D per 100 mL.

SOR/97-148, s. 1; SOR/2022-168, s. 25.

**B.08.008** The percentage of milk fat contained in

**(a)** partly skimmed milk or partially skimmed milk,

**(b)** partly skimmed milk with added milk solids or partially skimmed milk with added milk solids, or

**(c)** evaporated partly skimmed milk or concentrated partly skimmed milk

shall be shown on the principal display panel followed by the words "milk fat" or the abbreviation "B.F." or "M.F.".

**B.08.009 [S]. Condensed Milk** or **Sweetened Condensed Milk** shall be milk from which water has been evaporated and to which has been added sugar, dextrose, glucose, glucose solids or lactose, or any combination thereof, may contain added vitamin D and shall contain not less than

**(a)** 28 per cent milk solids; and

**(b)** eight per cent milk fat.

**B.08.010 [S]. Evaporated Milk**

**(a)** shall be milk from which water has been evaporated;

**(b)** shall contain not less than

**(i)** 25.0 per cent milk solids, and

**d)** un indice de Polenske ne dépassant pas 10 pour cent de l'indice de Reichert-Meissl et ne dépassant 3,5 en aucun cas, et

si la teneur en tocophérols dépasse 50 microgrammes par gramme ou si l'indice de Polenske dépasse 10 pour cent de l'indice de Reichert-Meissl, le gras de lait sera censé avoir été additionné d'une matière grasse autre que celle du lait de vache.

DORS/82-768, art. 14.

**B.08.007 [N].** Le **lait stérilisé**

**a) et b)** [Abrogés, DORS/97-148, art. 1]

**c)** doit renfermer au moins

**(i)** 11,75 pour cent de solides du lait, et

**(ii)** 3,25 pour cent de gras de lait; et

**d)** doit contenir 2 µg de vitamine D par 100 mL.

DORS/97-148, art. 1; DORS/2022-168, art. 25.

**B.08.008** Le pourcentage de matière grasse du lait contenu dans

**a)** du lait partiellement écrémé ou en partie écrémé,

**b)** du lait partiellement écrémé additionné de solides du lait ou du lait en partie écrémé additionné de solides du lait, ou

**c)** du lait évaporé partiellement écrémé ou du lait concentré partiellement écrémé

doit être indiqué sur l'espace principal suivi de l'expression « matière grasse du lait » ou de l'abréviation « M.G. ».

**B.08.009 [N].** Le **lait condensé** ou **lait condensé sucré** doit être du lait dont l'eau a été évaporée et auquel on a ajouté du sucre, du dextrose, du glucose, des solides du glucose ou du lactose, ou un mélange quelconque de ces substances; il peut renfermer de la vitamine D ajoutée et doit renfermer au moins

**a)** 28 pour cent de solides du lait; et

**b)** huit pour cent de gras de lait.

**B.08.010 [N].** Le **lait évaporé**

**a)** doit être du lait dont de l'eau a été évaporée;

**b)** doit contenir au moins

**(i)** 25,0 pour cent de solides du lait,

**(ii)** 7.5 per cent milk fat;

**(c)** shall, notwithstanding sections D.01.009 to D.01.011, contain added vitamin C in such an amount that a reasonable daily intake of the milk contains not less than 60 milligrams and not more than 75 milligrams of vitamin C;

**(d)** shall contain 2 µg of vitamin D per 100 mL when reconstituted to its original volume; and

**(e)** may contain

**(i)** added disodium phosphate or sodium citrate, or both, and

**(ii)** an emulsifying agent.

SOR/78-656, s. 3; SOR/92-400, s. 2; SOR/2022-168, s. 26.

### B.08.011 [S]. Evaporated Skim Milk or Concentrated Skim Milk

**(a)** shall be milk that has been concentrated to at least one-half of its original volume by the removal of water;

**(b)** shall contain

**(i)** not more than 0.3 per cent milk fat, and

**(ii)** not less than 17.0 per cent milk solids other than fat;

**(c)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(d)** shall, notwithstanding sections D.01.009 to D.01.011, contain added vitamin C in such an amount that a reasonable daily intake of the milk contains not less than 60 milligrams and not more than 75 milligrams of vitamin C;

**(e)** shall contain 2 µg of vitamin D per 100 mL when reconstituted to its original volume; and

**(f)** may contain added disodium phosphate or sodium citrate, or both.

SOR/2022-168, s. 27.

### B.08.012 [S]. Evaporated Partly Skimmed Milk or Concentrated Partly Skimmed Milk

**(a)** shall be milk from which part of the milk fat has been removed;

**(ii)** 7,5 pour cent de matière grasse du lait;

**c)** doit, nonobstant les articles D.01.009 à D.01.011, contenir de la vitamine C ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 60 milligrammes et au plus 75 milligrammes de vitamine C;

**d)** une fois reconstitué à son volume original, doit contenir 2 µg de vitamine D par 100 mL;

**e)** peut renfermer

**(i)** du phosphate disodique ou du citrate de sodium ajoutés, ou les deux, et

**(ii)** un agent émulsifiant.

DORS/78-656, art. 3; DORS/92-400, art. 2; DORS/2022-168, art. 26.

### B.08.011 [N]. Le lait écrémé évaporé ou écrémé concentré

**a)** doit être un lait qui a été concentré à la moitié au moins de son volume primitif par déshydratation;

**b)** doit contenir

**(i)** au plus 0,3 pour cent de gras de lait, et

**(ii)** au moins 17,0 pour cent de solides du lait autres que le gras;

**c)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A;

**d)** doit, nonobstant les articles D.01.009 à D.01.011, contenir de la vitamine C en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 60 milligrammes et au plus 75 milligrammes de vitamine C;

**e)** une fois reconstitué à son volume original, doit contenir 2 µg de vitamine D par 100 mL;

**f)** peut contenir du phosphate disodique ou du citrate de sodium ajoutés, ou les deux.

DORS/2022-168, art. 27.

### B.08.012 [N]. Le lait évaporé partiellement écrémé ou lait concentré partiellement écrémé

**a)** doit être un lait dont une partie du gras a été enlevé;

**(b)** shall be concentrated to at least one-half its original volume by the removal of water;

**(c)** shall contain not less than 17.0 per cent milk solids other than fat; and

**(d)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(e)** shall, notwithstanding sections D.01.009 to D.01.011, contain added vitamin C in such an amount that a reasonable daily intake of the milk contains not less than 60 milligrams and not more than 75 milligrams of vitamin C;

**(f)** shall contain 2 µg of vitamin D per 100 mL when reconstituted to its original volume; and

**(g)** may contain

**(i)** an emulsifying agent, and

**(ii)** added disodium phosphate or sodium citrate, or both.

SOR/2022-168, s. 28.

**b)** doit être concentré à la moitié au moins de son volume primitif par déshydratation;

**c)** doit contenir au moins 17,0 pour cent de solides du lait autres que le gras;

**d)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A;

**e)** doit, nonobstant les articles D.01.009 à D.01.011, contenir de la vitamine C ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 60 milligrammes et au plus 75 milligrammes de vitamine C;

**f)** une fois reconstitué à son volume original, doit contenir 2 µg de vitamine D par 100 mL;

**g)** peut contenir

**(i)** un agent émulsifiant, et

**(ii)** du phosphate disodique ou du citrate de sodium ajoutés, ou les deux.

DORS/2022-168, art. 28.

### B.08.013 [S]. Milk Powder, Whole Milk Powder, Dry Whole Milk, or Powdered Whole Milk

**(a)** shall be dried milk;

**(b)** shall contain not less than

**(i)** 95 per cent milk solids, and

**(ii)** 26 per cent milk fat;

**(c)** shall contain 2 µg of vitamin D per 100 mL when reconstituted according to directions for use; and

**(d)** may contain the emulsifying agent lecithin in an amount not exceeding 0.5 per cent.

SOR/78-656, s. 4; SOR/83-932, s. 2; SOR/2022-168, s. 29.

### B.08.013 [N]. La **poudre de lait**, la **poudre de lait entier, lait entier desséché** ou **lait entier en poudre**

**a)** doit être du lait desséché;

**b)** doit renfermer au moins

**(i)** 95 pour cent de solides du lait, et

**(ii)** 26 pour cent de gras de lait;

**c)** une fois reconstitué selon le mode d'emploi, doit contenir 2 µg de vitamine D par 100 mL;

**d)** peut contenir l'agent émulsifiant lécithine en quantité n'excédant pas 0,5 pour cent.

DORS/78-656, art. 4; DORS/83-932, art. 2; DORS/2022-168, art. 29.

### B.08.014 [S]. Skim Milk Powder or Dry Skim Milk

**(a)** shall be dried skim milk;

**(b)** shall contain not less than 95 per cent milk solids; and

**(c)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount

### B.08.014 [N]. Le **lait écrémé en poudre**, la **poudre de lait écrémé**, ou le **lait écrémé desséché**

**a)** doivent être du lait écrémé desséché;

**b)** doivent contenir au moins 95 pour cent des solides du lait;

**c)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle

that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(d)** shall contain 2 µg of vitamin D per 100 mL when reconstituted according to directions for use; and

**(e)** may contain an anti-foaming agent.

SOR/78-656, s. 5; SOR/80-501, s. 2(F); SOR/2022-168, s. 30.

**B.08.014A** No person shall sell milk powder, whole milk powder, dry whole milk, powdered whole milk, skim milk powder or dry skim milk unless it is free from bacteria of the genus *Salmonella*, as determined by official method MFO-12, Microbiological Examination of Milk Powder, November 30, 1981.

SOR/78-656, s. 6; SOR/82-768, s. 15.

**B.08.015** No person shall sell milk, skim milk, partly skimmed milk, (naming the flavour) milk, (naming the flavour) skim milk, (naming the flavour) partly skimmed milk, skim milk with added milk solids, partly skimmed milk with added milk solids, (naming the flavour) skim milk with added milk solids, (naming the flavour) partly skimmed milk with added milk solids, condensed milk, evaporated milk, evaporated skim milk, evaporated partly skimmed milk, milk powder or skim milk powder, in which the vitamin content has been increased by either irradiation or addition unless

**(a)** in the case of the addition of vitamin D, the menstruum containing the vitamin D contributes not more than 0.01 per cent fat foreign to milk; and

**(b)** in cases where the vitamin D content is increased by irradiation, the principal display panel of the label carries the statement "Vitamin D Increased" immediately preceding or following the name of the food, without intervening written, printed or graphic matter.

SOR/88-336, s. 3.

### B.08.016 [S]. (naming the flavour) Milk

**(a)** shall be the product made from

**(i)** milk, milk powder, skim milk, skim milk powder, partly skimmed milk, evaporated milk, evaporated partly skimmed milk, evaporated skim milk or cream or any combination thereof,

**(ii)** a flavouring preparation, and

**(iii)** a sweetening agent;

qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A;

**d)** une fois reconstitué selon le mode d'emploi, doit contenir 2 µg de vitamine D par 100 mL;

**e)** peut contenir un agent anti-mousse.

DORS/78-656, art. 5; DORS/80-501, art. 2(F); DORS/2022-168, art. 30.

**B.08.014A** Est interdite la vente de poudre de lait, de poudre de lait entier, de lait entier desséché, de lait entier en poudre, de poudre de lait écrémé ou de lait écrémé desséché, à moins qu'ils ne soient, selon la méthode officielle MFO-12, Examen microbiologique de la poudre de lait, 30 novembre 1981, trouvés exempts de bactéries du genre *Salmonella*.

DORS/78-656, art. 6; DORS/82-768, art. 15.

**B.08.015** Est interdite la vente de lait, de lait écrémé, de lait partiellement écrémé, de lait (indication de l'arôme), de lait écrémé (indication de l'arôme), de lait partiellement écrémé (indication de l'arôme), de lait écrémé additionné de solides du lait, de lait partiellement écrémé additionné de solides du lait, de lait écrémé (indication de l'arôme) additionné de solides du lait, de lait partiellement écrémé (indication de l'arôme) additionné de solides du lait, de lait condensé, de lait évaporé, de lait écrémé et évaporé, de lait évaporé partiellement écrémé, de poudre de lait, ou de poudre de lait écrémé, dont la teneur en vitamines a été accrue par irradiation ou par addition, à moins que

**a)** dans le cas de l'addition de vitamine D, le dissolvant contenant ladite vitamine ne fournisse au lait au plus 0,01 pour cent de gras étranger au lait; et

**b)** dans les cas où la teneur en vitamine D est accrue par irradiation, l'espace principal de l'étiquette ne porte l'inscription « vitamine D accrue » précédant ou suivant immédiatement le nom de l'aliment sans interposition d'écrit, d'imprimé ou d'illustration.

DORS/88-336, art. 3.

### B.08.016 [N]. Le lait (indication de l'arôme)

**a)** doit être le produit fabriqué

**(i)** soit exclusivement de lait, de lait en poudre, de lait écrémé, de lait écrémé en poudre, de lait partiellement écrémé, de lait évaporé, de lait évaporé partiellement écrémé, de lait écrémé évaporé ou de crème, soit d'un mélange quelconque de ces produits,

**(ii)** d'une préparation aromatisante, et

**(b)** shall contain not less than three per cent milk fat;

**(c)** shall contain 2 µg of vitamin D per 100 mL;

**(d)** may contain salt, food colour, lactase, stabilizing agent and not more than 0.5 per cent starch; and

**(e)** may contain not more than 50,000 total aerobic bacteria per cubic centimetre, as determined by official method MFO-7, Microbiological Examination of Milk, November 30, 1981.

SOR/78-656, s. 7; SOR/82-768, s. 16; SOR/84-762, s. 1; SOR/2022-168, s. 31.

### B.08.017 [S]. (naming the flavour) Skim Milk

**(a)** shall be the product made from

**(i)** skim milk, skim milk powder or evaporated skim milk or any combination thereof,

**(ii)** a flavouring preparation, and

**(iii)** a sweetening agent;

**(b)** shall contain not more than 0.3 per cent milk fat;

**(c)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(d)** shall contain 2 µg of vitamin D per 100 mL; and

**(e)** may contain salt, food colour, lactase, stabilizing agent and not more than 0.5 per cent starch.

SOR/78-656, s. 8; SOR/84-762, s. 2; SOR/2022-168, s. 32.

### B.08.018 [S]. (naming the flavour) Partly (Partially) Skimmed Milk

**(a)** shall be the product made from

**(i)** milk, milk powder, skim milk, skim milk powder, partly skimmed milk, evaporated milk, evaporated partly skimmed milk, evaporated skim milk or cream or any combination thereof,

**(ii)** a flavouring preparation, and

**(iii)** d'un agent édulcorant;

**b)** doit renfermer au moins trois pour cent de gras de lait;

**c)** doit contenir 2 µg de vitamine D par 100 mL;

**d)** peut contenir du sel, un colorant alimentaire, de la lactase, un agent stabilisant et au plus 0,5 pour cent d'amidon; et

**e)** peut contenir au plus 50 000 bactéries aérobies totales par centimètre cube, déterminées selon la méthode officielle MFO-7, Examen microbiologique du lait, 30 novembre 1981.

DORS/78-656, art. 7; DORS/82-768, art. 16; DORS/84-762, art. 1; DORS/2022-168, art. 31.

### B.08.017 [N]. Le **lait écrémé (indication de l'arôme)**

**a)** doit être le produit fabriqué

**(i)** soit exclusivement de lait écrémé en poudre ou de lait écrémé évaporé, soit d'un mélange quelconque de ces produits,

**(ii)** d'une préparation aromatisante, et

**(iii)** d'un agent édulcorant;

**b)** doit renfermer au plus 0,3 pour cent de gras de lait; et

**c)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A;

**d)** doit contenir 2 µg de vitamine D par 100 mL;

**e)** peut contenir du sel, un colorant alimentaire, de la lactase, un agent stabilisant et au plus 0,5 pour cent d'amidon.

DORS/78-656, art. 8; DORS/84-762, art. 2; DORS/2022-168, art. 32.

### B.08.018 [N]. Le **lait partiellement écrémé (indication de l'arôme)** ou le **lait en partie écrémé (indication de l'arôme)**

**a)** doit être le produit fabriqué

**(i)** soit exclusivement de lait, de lait en poudre, de lait écrémé, de lait écrémé en poudre, de lait partiellement écrémé, de lait évaporé, de lait évaporé partiellement écrémé, de lait écrémé évaporé ou de crème, soit d'un mélange quelconque de ces produits,

**(iii)** a sweetening agent;

**(b)** shall contain more than 0.3 per cent and less than 3.0 per cent milk fat;

**(c)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(d)** shall contain 2 µg of vitamin D per 100 mL;

**(e)** may contain salt, food colour, lactase, stabilizing agent and not more than 0.5 per cent starch; and

**(f)** may contain not more than 50,000 total aerobic bacteria per cubic centimetre, as determined by official method MFO-7, Microbiological Examination of Milk, November 30, 1981.

SOR/78-656, s. 9; SOR/82-768, s. 17; SOR/84-762, s. 3; SOR/2022-168, s. 33.

### B.08.019 [S]. Skim Milk with Added Milk Solids

**(a)** shall be skim milk to which has been added skim milk powder or evaporated skim milk or both;

**(b)** shall contain not less than 10 per cent milk solids;

**(c)** shall contain not more than 0.3 per cent milk fat;

**(d)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the dairy product contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A; and

**(e)** shall contain 2 µg of vitamin D per 100 mL.

SOR/78-656, s. 10; SOR/2022-168, s. 34.

### B.08.020 [S]. Partly Skimmed Milk with Added Milk Solids or Partially Skimmed Milk with Added Milk Solids

**(a)** shall be partly skimmed milk to which has been added skim milk powder, milk powder, evaporated milk, evaporated partly skimmed milk or evaporated skim milk or any combination thereof;

**(b)** shall contain not less than 10 per cent milk solids not including fat; and

**(ii)** d'une préparation aromatisante, et

**(iii)** d'un agent édulcorant;

**b)** doit renfermer plus de 0,3 pour cent et moins de trois pour cent de gras de lait;

**c)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A;

**d)** doit contenir 2 µg de vitamine D par 100 mL;

**e)** peut contenir du sel, un colorant alimentaire, de la lactase, un agent stabilisant et au plus 0,5 pour cent d'amidon; et

**f)** peut contenir au plus 50 000 bactéries aérobies totales par centimètre cube, déterminées selon la méthode officielle MFO-7, Examen microbiologique du lait, 30 novembre 1981.

DORS/78-656, art. 9; DORS/82-768, art. 17; DORS/84-762, art. 3; DORS/2022-168, art. 33.

### B.08.019 [N]. Le lait écrémé additionné de solides du lait

**a)** doit être du lait écrémé auquel a été ajouté du lait écrémé en poudre ou du lait écrémé évaporé, ou les deux;

**b)** doit renfermer au moins 10 pour cent de solides du lait;

**c)** doit renfermer au plus 0,3 pour cent de gras de lait;

**d)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A; et

**e)** doit contenir 2 µg de vitamine D par 100 mL.

DORS/78-656, art. 10; DORS/2022-168, art. 34.

### B.08.020 [N]. Le lait partiellement écrémé additionné de solides du lait ou le lait en partie écrémé additionné de solides du lait

**a)** doit être du lait partiellement écrémé auquel a été ajouté du lait écrémé en poudre, du lait en poudre, du lait évaporé, du lait évaporé partiellement écrémé ou du lait écrémé évaporé, ou un mélange quelconque de ces produits;

**b)** doit renfermer au moins 10 pour cent de solides du lait autres que le gras; et

**(c)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A; and

**(d)** shall contain 2 µg of vitamin D per 100 mL.

SOR/2022-168, s. 35.

### B.08.021 [S]. Malted Milk or Malted Milk Powder

**(a)** shall be the product made by combining milk with the liquid separated from a mash of ground barley malt and meal;

**(b)** may have added to it, in such manner as to secure the full enzyme action of the malt extract, salt and sodium bicarbonate or potassium bicarbonate;

**(c)** may have water removed from it; and

**(d)** shall contain

**(i)** not less than 7.5 per cent milk fat, and

**(ii)** not more than 3.5 per cent moisture.

### B.08.022 [S]. (naming the flavour) Malted Milk or (naming the flavour) Malted Milk Powder

**(a)** shall be malted milk or malted milk powder containing a flavouring preparation; and

**(b)** may contain lactase.

SOR/84-762, s. 4.

### B.08.023 [S]. (naming the flavour) Skim Milk with Added Milk Solids

**(a)** shall be the product made from

**(i)** skim milk, skim milk powder, or evaporated skim milk or any combination thereof,

**(ii)** a flavouring preparation, and

**(iii)** a sweetening agent;

**(b)** shall contain not less than 10 per cent milk solids not including fat;

**(c)** shall contain not more than 0.3 per cent milk fat;

**(d)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not

**c)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A; et

**d)** doit contenir 2 µg de vitamine D par 100 mL.

DORS/2022-168, art. 35.

### B.08.021 [N]. Le lait malté, le lait malté en poudre ou la poudre de lait malté

**a)** doit être le produit fabriqué en mélangeant du lait avec le liquide séparé d'un moût de malt d'orge moulue et de farine d'orge;

**b)** peut renfermer, de manière à assurer la pleine action enzymatique, du sel et du bicarbonate de sodium ou du bicarbonate de potassium ajoutés;

**c)** peut être débarrassé d'eau; et

**d)** doit renfermer

**(i)** au moins 7,5 pour cent de gras de lait, et

**(ii)** au plus 3,5 pour cent d'humidité.

### B.08.022 [N]. Le lait malté (indication de l'arôme) ou lait malté en poudre (indication de l'arôme)

**a)** doit être du lait malté ou du lait malté en poudre qui renferme une préparation aromatisante; et

**b)** peut contenir de la lactase.

DORS/84-762, art. 4.

### B.08.023 [N]. Le lait écrémé (indication de l'arôme) additionné de solides du lait

**a)** doit être le produit fabriqué

**(i)** soit exclusivement de lait écrémé, de lait écrémé en poudre ou de lait écrémé évaporé, soit d'un mélange quelconque de ces produits,

**(ii)** d'une préparation aromatisante, et

**(iii)** d'un agent édulcorant;

**b)** doit renfermer au moins 10 pour cent de solides du lait autres que le gras;

**c)** doit renfermer au plus 0,3 pour cent de gras de lait;

**d)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle

less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(e)** shall contain 2 µg of vitamin D per 100 mL; and

**(f)** may contain salt, food colour, lactase, stabilizing agent and not more than 0.5 per cent starch.

SOR/78-656, s. 11; SOR/84-762, s. 5; SOR/2022-168, s. 36.

**B.08.024** No person shall sell milk for manufacture into dairy products if it contains more than

**(a)** two million total aerobic bacteria per millilitre, as determined by official method MFO-7, Microbiological Examination of Milk, November 30, 1981; or

**(b)** two milligrams of sediment per 16 fluid ounces, as determined by official method MFO-8, Determination of Sediment in Milk, November 30, 1981.

SOR/82-768, s. 18.

**B.08.025** No manufacturer shall purchase milk for manufacture or manufacture milk into other dairy products if he has reason to believe it does not meet the requirements of section B.08.024.

**B.08.026 [S]. (naming the flavour) Partly (Partially) Skimmed Milk with Added Milk Solids**

**(a)** shall be the product made from

**(i)** milk, milk powder, skim milk, skim milk powder, partly skimmed milk, evaporated milk, evaporated partly skimmed milk, evaporated skim milk or cream or any combination thereof,

**(ii)** a flavouring preparation, and

**(iii)** a sweetening agent;

**(b)** shall contain not less than 10 per cent milk solids not including fat;

**(c)** shall contain more than 0.3 per cent and less than 3.0 per cent milk fat;

**(d)** shall, notwithstanding sections D.01.009 and D.01.010, contain added vitamin A in such an amount that a reasonable daily intake of the milk contains not less than 1,200 International Units and not more than 2,500 International Units of vitamin A;

**(e)** shall contain 2 µg of vitamin D per 100 mL;

qu'une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de vitamine A;

**e)** doit contenir 2 µg de vitamine D par 100 mL;

**f)** peut contenir du sel, un colorant alimentaire, de la lactase, un agent stabilisant et au plus 0,5 pour cent d'amidon.

DORS/78-656, art. 11; DORS/84-762, art. 5; DORS/2022-168, art. 36.

**B.08.024** Est interdite la vente de lait aux fins de la fabrication de produits laitiers, si ce lait renferme plus de

**a)** deux millions de bactéries aérobies totales par millilitre, déterminées selon la méthode officielle MFO-7, Examen microbiologique du lait, 30 novembre 1981; ou

**b)** deux milligrammes de sédiments par 16 onces liquides, déterminés selon la méthode officielle MFO-8, Détermination de sédiments dans le lait, 30 novembre 1981.

DORS/82-768, art. 18.

**B.08.025** Il est interdit à un fabricant d'acheter du lait aux fins de fabriquer des produits laitiers, et de fabriquer d'autres produits laitiers avec du lait, si le fabricant a lieu de croire que ce lait n'est pas conforme aux dispositions de l'article B.08.024.

**B.08.026 [N].** Le **lait partiellement écrémé (indication de l'arôme)** additionné de solides du lait ou le lait en partie écrémé (indication de l'arôme) additionné de solides du lait

**a)** doit être le produit fabriqué

**(i)** soit exclusivement de lait, de lait en poudre, de lait écrémé, de lait écrémé en poudre, de lait partiellement écrémé, de lait évaporé, de lait évaporé partiellement écrémé, de lait écrémé évaporé ou de crème, soit d'un mélange quelconque de ces produits,

**(ii)** d'une préparation aromatisante, et

**(iii)** d'un agent édulcorant;

**b)** doit renfermer au moins 10 pour cent de solides du lait autres que le gras;

**c)** doit renfermer plus de 0,3 pour cent et moins de trois pour cent de gras de lait;

**d)** doit, nonobstant les articles D.01.009 et D.01.010, contenir de la vitamine A ajoutée en quantité telle

**(f)** may contain salt, food colour, lactase, stabilizing agent and not more than 0.5 per cent starch; and

**(g)** may contain not more than 50,000 total aerobic bacteria per cubic centimetre, as determined by official method MFO-7, Microbiological Examination of Milk, November 30, 1981.

SOR/78-656, s. 12; SOR/82-768, s. 19; SOR/84-300, s. 21(F); SOR/84-762, s. 6; SOR/2022-168, s. 37.

**B.08.027** Notwithstanding anything contained in these Regulations, the following dairy products that are used in or sold for the manufacture of other foods are not required to contain added vitamins: milk; partly skimmed milk; partially skimmed milk; skim milk; sterilized milk; evaporated milk; evaporated skim milk; concentrated skim milk; evaporated partly skimmed milk; concentrated partly skimmed milk; milk powder; dry whole milk; powdered whole milk; skim milk powder; dry skim milk; partly skimmed milk powder; partially skimmed milk powder; skim milk with added milk solids; partly skimmed milk with added milk solids; and partially skimmed milk with added milk solids.

SOR/78-656, s. 13.

**B.08.028 (1)** The percentage of milk fat contained in

**(a)** (naming the flavour) milk,

**(b)** (naming the flavour) partly (partially) skimmed milk,

**(c)** (naming the flavour) partly (partially) skimmed milk with added milk solids,

**(d)** cream, and

**(e)** sour cream,

shall be shown on the principal display panel followed by the words “milk fat” or the abbreviation “B.F.” or “M.F.”.

**(2)** In addition to the statement referred to in subsection (1), a person may, on the label of a food referred to in that subsection, make a declaration of the fat content of the food, expressed in grams per serving of stated size.

SOR/79-23, s. 10; SOR/88-559, s. 16; SOR/2010-94, s. 3(F); SOR/2016-305, s. 75(F).

qu’une ration quotidienne raisonnable du produit laitier contienne au moins 1 200 unités internationales et au plus 2 500 unités internationales de la vitamine A;

**e)** doit contenir 2 µg de vitamine D par 100 mL;

**f)** peut contenir du sel, un colorant alimentaire, de la lactase, un agent stabilisant et au plus 0,5 pour cent d’amidon; et

**g)** peut contenir au plus 50 000 bactéries aérobies totales par centimètre cube, déterminées selon la méthode officielle MFO-7, Examen microbiologique du lait, 30 novembre 1981.

DORS/78-656, art. 12; DORS/82-768, art. 19; DORS/84-300, art. 21(F); DORS/84-762, art. 6; DORS/2022-168, art. 37.

**B.08.027** Il n’est pas obligatoire d’ajouter des vitamines aux produits laitiers suivants qui sont utilisés ou vendus pour la fabrication d’autres produits alimentaires : lait; lait partiellement écrémé; lait en partie écrémé; lait écrémé; lait stérilisé; lait évaporé; lait écrémé évaporé; lait écrémé concentré; lait évaporé partiellement écrémé; lait concentré partiellement écrémé; la poudre de lait; lait entier desséché; lait entier en poudre; la poudre de lait écrémé; lait écrémé desséché; la poudre de lait partiellement écrémé; la poudre de lait en partie écrémé; lait écrémé additionné de solides du lait; lait partiellement écrémé additionné de solides du lait et lait en partie écrémé additionné de solides du lait.

DORS/78-656, art. 13.

**B.08.028 (1)** Doit être indiqué sur l’espace principal et être suivi de l’expression « matière grasse du lait » ou de l’abréviation « M.G. » le pourcentage de matière grasse contenue dans

**a)** le lait (nom de l’arôme);

**b)** le lait partiellement écrémé (nom de l’arôme);

**c)** le lait partiellement écrémé additionné de solides du lait (nom de l’arôme);

**d)** la crème;

**e)** la crème sure.

**(2)** En plus de la mention exigée au paragraphe (1), il peut être indiqué sur l’étiquette d’un aliment mentionné à ce paragraphe sa teneur en matières grasses exprimée en grammes par portion indiquée.

DORS/79-23, art. 10; DORS/88-559, art. 16; DORS/2010-94, art. 3(F); DORS/2016-305, art. 75(F).

## Goat's Milk

**B.08.028.1** A lacteal secretion obtained from themammary gland of any animal other than a cow, genus Bos, and a product or derivative of such secretion shall be labelled so as to identify that animal.

SOR/85-623, s. 2.

**B.08.029 (1)** No person shall sell goat's milk or goat's milk powder to which vitamin D has been added unless 100 mL of that food, when ready-to-serve, contains 2 µg of vitamin D.

**(2)** No person shall sell skimmed or partly skimmed goat's milk or skimmed or partly skimmed goat's milk powder to which vitamin A or D has been added unless 100 mL of that food, when ready-to-serve, contains both vitamin A and D in the following amounts:

**(a)** not less than 140 I.U. and not more than 300 I.U. of vitamin A; and

**(b)** 2 µg of vitamin D.

**(3)** No person shall sell evaporated goat's milk to which any of the following vitamins have been added unless 100 mL of that food, when reconstituted to its original volume, contains each of the following vitamins in the following amounts:

**(a)** not less than 7 mg and not more than 9 mg of vitamin C;

**(b)** 2 µg of vitamin D; and

**(c)** not less than 10 µg and not more than 20 µg of folic acid.

**(4)** No person shall sell evaporated partly skimmed goat's milk or evaporated skimmed goat's milk to which any of the following vitamins have been added unless 100 mL of that food, when reconstituted to its original volume, contains each of the following vitamins in the following amounts:

**(a)** not less than 140 I.U. and not more than 300 I.U. of vitamin A;

**(b)** not less than 7 mg and not more than 9 mg of vitamin C;

**(c)** 2 µg of vitamin D; and

**(d)** not less than 10 µg and not more than 20 µg of folic acid.

SOR/85-623, s. 2; SOR/2022-168, s. 38.

## Lait de chèvre

**B.08.028.1** La sécrétion lactée des glandes mammaires de tout animal autre que la vache, genre *Bos*, de même que tout produit ou dérivé de cette sécrétion doivent être étiquetés de façon qu'il soit fait mention du nom de l'animal.

DORS/85-623, art. 2.

**B.08.029 (1)** Il est interdit de vendre du lait de chèvre ou du lait de chèvre en poudre additionnés de vitamine D, à moins qu'ils ne contiennent 2 µg de vitamine D par 100 mL de l'aliment prêt à servir.

**(2)** Il est interdit de vendre du lait de chèvre partiellement écrémé, du lait de chèvre écrémé, du lait de chèvre partiellement écrémé en poudre ou du lait de chèvre écrémé en poudre additionnés de vitamine A ou D, à moins qu'ils ne contiennent, par 100 mL de l'aliment prêt à servir, ces deux vitamines dans les quantités suivantes :

**a)** au moins 140 U.I. et au plus 300 U.I. de vitamine A;

**b)** 2 µg de vitamine D.

**(3)** Il est interdit de vendre du lait de chèvre concentré additionné de toute vitamine ci-après, à moins qu'il ne contienne, par 100 mL de l'aliment reconstitué à son volume original, chacune de ces vitamines dans les quantités suivantes :

**a)** au moins 7 mg et au plus 9 mg de vitamine C;

**b)** 2 µg de vitamine D;

**c)** au moins 10 µg et au plus 20 µg d'acide folique.

**(4)** Il est interdit de vendre du lait de chèvre concentré partiellement écrémé ou du lait de chèvre concentré écrémé additionnés de toute vitamine ci-après, à moins qu'ils ne contiennent, par 100 mL de l'aliment reconstitué à son volume original, chacune de ces vitamines dans les quantités suivantes :

**a)** au moins 140 U.I. et au plus 300 U.I. de vitamine A;

**b)** au moins 7 mg et au plus 9 mg de vitamine C;

**c)** 2 µg de vitamine D;

**d)** au moins 10 µg et au plus 20 µg d'acide folique.

DORS/85-623, art. 2; DORS/2022-168, art. 38.

## Cheese

**B.08.030 (1)** In this Division, when used with respect to cheese,

***pasteurized source*** means milk, skim milk, cream, reconstituted milk powder, reconstituted skim milk powder or any combination thereof that has been pasteurized by being held at a temperature of not less than 61.6°C for a period of not less than 30 minutes, or for a time and a temperature that is equivalent thereto in phosphatase destruction, as determined by official method MFO-3, Determination of Phosphatase Activity in Dairy Products, November 30, 1981; (*matière première pasteurisée*)

***pickles and relishes*** means foods that meet the standard prescribed in section B.11.051; (*cornichons et achards*)

***stored*** means to have been kept or held at a temperature of 2°C or more for a period of 60 days or more from the date of the beginning of the manufacturing process; (*entreposé*)

***whole*** means of the original size and shape as manufactured. (*entier*)

**(2)** The word "process" may be used in the place of the word "processed" in the following common names: processed (naming the variety) cheese, processed (naming the variety) cheese with (naming the added ingredients), processed cheese food, processed cheese food with (naming the added ingredients), processed cheese spread, and processed cheese spread with (naming the added ingredients).

SOR/79-752, s. 2; SOR/82-768, s. 20; SOR/92-400, s. 3.

**B.08.031** A cheese made from milk that is the normal lacteal secretion of the mammary gland of animals other than the cow, genus *Bos*, shall

**(a)** conform to all requirements in this Division applicable to the variety; and

**(b)** be labelled to show the source of the milk on the principal display panel.

SOR/79-752, s. 2.

**B.08.032 (1)** Each of the following foods for which a standard is prescribed, namely,

**(a)** (naming the variety) cheese,

**(b)** cheddar cheese,

## Fromage

**B.08.030 (1)** Dans le présent titre, lorsqu'il s'agit de fromage,

***cornichons et achards*** désigne les aliments qui répondent à la norme prescrite à l'article B.11.051; (*pickles and relishes*)

***entier*** se dit du produit ayant conservé la grosseur et la forme primitives qu'il avait lors de sa fabrication; (*whole*)

***entreposé*** se dit du produit conservé à une température d'au moins 2 °C durant 60 jours ou plus après la date du début de la fabrication; (*stored*)

***matière première pasteurisée*** désigne le lait, le lait écrémé, la crème, le lait reconstitué à partir de sa poudre, le lait écrémé reconstitué à partir de sa poudre ou un mélange de ces produits, qui a été pasteurisé à une température d'au moins 61,6 °C durant une période minimale de 30 minutes, ou à une température et durant une période équivalentes dans le cas de la destruction de la phosphatase, déterminées selon la méthode officielle MFO-3, Détermination de l'activité phosphatasique des produits laitiers, 30 novembre 1981; (*pasteurized source*)

***produit laitier*** [Abrogée, DORS/92-400, art. 3]

**(2)** Dans le texte anglais des règlements, le mot « process » peut être utilisé au lieu du mot « processed » dans les noms usuels suivants : processed (naming the variety) cheese, processed (naming the variety) cheese with (naming the added ingredients), processed cheese food, processed cheese food with (naming the added ingredients), processed cheese spread, and processed cheese spread with (naming the added ingredients).

DORS/79-752, art. 2; DORS/82-768, art. 20; DORS/92-400, art. 3.

**B.08.031** Un fromage fabriqué avec du lait qui est le produit de la sécrétion lactée normale des glandes mammaires d'animaux autres que les vaches genre *Bos* doit

**a)** être conforme à toutes les exigences du présent titre s'appliquant à la variété; et

**b)** porter l'origine du lait sur l'espace principal de son étiquette.

DORS/79-752, art. 2.

**B.08.032 (1)** Pour chacun des aliments suivants à l'égard desquels une norme est prescrite, à savoir

**a)** le fromage (indication de la variété),

**b)** le fromage cheddar,

**(c)** cream cheese,

**(d)** whey cheese,

**(e)** (naming the variety) whey cheese,

**(f)** cream cheese with (naming the added ingredients),

**(g)** cream cheese spread,

**(h)** cream cheese spread with (naming the added ingredients),

**(i)** processed (naming the variety) cheese,

**(j)** processed (naming the variety) cheese with (naming the added ingredients),

**(k)** processed cheese food,

**(l)** processed cheese food with (naming the added ingredients),

**(m)** processed cheese spread,

**(n)** processed cheese spread with (naming the added ingredients),

**(o)** cold-pack (naming the variety) cheese,

**(p)** cold-pack (naming the variety) cheese with (naming the added ingredients),

**(q)** cold-pack cheese food, and

**(r)** cold-pack cheese food with (naming the added ingredients),

shall be labelled to show on the principal display panel a statement of the percentage of milk fat in the food followed by the words "milk fat" or the abbreviation "B.F." or "M.F.", and the percentage of moisture in the food followed by the word "moisture" or "water".

**(2)** Subject to subsection (3), no person shall make any direct or indirect reference on the label of a food referred to in subsection (1) to the milk fat content or moisture content of the food except as required by subsection (1).

**(3)** In addition to the statements referred to in subsection (1), a person may, on the label of a food referred to in that subsection, make a declaration of the fat content of the food, expressed in grams per serving of a stated size.

SOR/79-752, s. 2; SOR/88-559, s. 17; SOR/94-689, s. 2(E); SOR/2010-94, s. 8(E); SOR/2016-305, s. 75(F).

**c)** le fromage à la crème,

**d)** le fromage de petit-lait,

**e)** le fromage de petit-lait (indication de la variété),

**f)** le fromage à la crème (avec indication des ingrédients ajoutés),

**g)** le fromage à la crème à tartiner,

**h)** le fromage à la crème à tartiner (avec indication des ingrédients ajoutés),

**i)** le fromage fondu (indication de la variété),

**j)** le fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés),

**k)** une préparation de fromage fondu,

**l)** une préparation de fromage fondu (avec indication des ingrédients ajoutés),

**m)** le fromage fondu à tartiner,

**n)** le fromage fondu à tartiner (avec indication des ingrédients ajoutés),

**o)** le fromage conditionné à froid (indication de la variété),

**p)** le fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés),

**q)** une préparation de fromage conditionné à froid, et

**r)** une préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés),

il doit être indiqué, dans l'espace principal de l'étiquette, le pourcentage de matière grasse de lait suivi soit de l'expression « matière grasse de lait », soit de l'abréviation « M.G. », ainsi que le pourcentage d'humidité de l'aliment suivi soit du mot « humidité », soit du mot « eau ».

**(2)** Sous réserve du paragraphe (3), est interdite sur l'étiquette d'un aliment visé au paragraphe (1) toute mention expresse ou implicite de la teneur en matière grasse de lait ou de la teneur en humidité qui n'est pas conforme au paragraphe (1).

**(3)** En plus des mentions exigées au paragraphe (1), il peut être indiqué sur l'étiquette d'un aliment mentionné à ce paragraphe sa teneur en matières grasses exprimée en grammes par portion indiquée.

DORS/79-752, art. 2; DORS/88-559, art. 17; DORS/94-689, art. 2(A); DORS/2010-94, art. 8(A); DORS/2016-305, art. 75(F).

**B.08.033 (1) [S]. (Naming the variety) Cheese**, other than cheddar cheese, cream cheese, whey cheese, cream cheese with (naming the added ingredients), cream cheese spread, cream cheese spread with (naming the added ingredients), processed (naming the variety) cheese, processed (naming the variety) cheese with (naming the added ingredients), processed cheese food, processed cheese food with (naming the added ingredients), processed cheese spread, processed cheese spread with (naming the added ingredients), cold-pack (naming the variety) cheese, cold-pack (naming the variety) cheese with (naming the added ingredients), cold-pack cheese food, cold-pack cheese food with (naming the added ingredients), cottage cheese and creamed cottage cheese,

**(a)** shall

**(i)** be the product made by coagulating milk, milk products or a combination thereof with the aid of bacteria to form a curd and forming the curd into a homogeneous mass after draining the whey,

**(i.1)** except for feta cheese, have a casein content that is derived from milk or from ultrafiltered milk, partly skimmed milk, ultrafiltered partly skimmed milk, skim milk, ultrafiltered skim milk or cream, rather than from other milk products,that is at least the following percentage of the total protein content of the cheese, namely,

**(A)** 63 per cent in the case of Pizza Mozzarella cheese and Part Skim Pizza Mozzarella cheese,

**(B)** 83 per cent, in the case of Brick cheese, Canadian Style Brick cheese, Canadian Style Munster cheese, Colby cheese, Farmer's cheese, Jack cheese, Monterey (Monterey Jack) cheese, Mozzarella (Scamorza) cheese, Part Skim Mozzarella (Part Skim Scamorza) cheese, Part Skim Pizza cheese, Pizza cheese, Skim milk cheese and any other variety of cheese not referred to in clause (A) or (C), and

**(C)** 95 per cent, in the case of any other variety of cheese named in the table to this section,

**(i.2)** have a whey protein to casein ratio that does not exceed the whey protein to casein ratio of milk,

**(ii)** possess the physical, chemical and organoleptic properties typical for the variety,

**(iii)** where it is a cheese of variety named in the table to this section, contain no more than the maximum percentage of moisture shown in Column II thereof for that variety,

**B.08.033 (1) [N].** Le **fromage (indication de la variété)** autre que le fromage cheddar, le fromage à la crème, le fromage de petit-lait, le fromage à la crème (avec indication des ingrédients ajoutés), le fromage à la crème à tartiner, le fromage à la crème à tartiner (avec indication des ingrédients ajoutés), le fromage fondu (indication de la variété), le fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés), une préparation de fromage fondu, une préparation de fromage fondu (avec indication des ingrédients ajoutés), le fromage fondu à tartiner, le fromage fondu à tartiner (avec indication des ingrédients ajoutés), le fromage conditionné à froid (indication de la variété), le fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés), une préparation de fromage conditionné à froid, une préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés), le fromage cottage et le fromage cottage en crème,

**a)** doit

**(i)** être le produit de la coagulation, à l'aide de bactéries, de lait, de produits du lait ou d'un mélange de ceux-ci, en vue de former, après égouttement du petit-lait, une masse homogène de caillé,

**(i.1)** sauf pour le fromage Féta, avoir une teneur en caséine dérivée du lait ou du lait ultrafiltré, du lait partiellement écrémé, du lait partiellement écrémé ultrafiltré, du lait écrémé, du lait écrémé ultrafiltré ou de la crème, plutôt que de tout autre produit du lait, au moins équivalente aux pourcentages ci-après de la teneur totale en protéines du fromage :

**(A)** 63 %, dans le cas du fromage Pizza mozzarella ou Pizza mozzarella partiellement écrémé,

**(B)** 83 %, dans le cas du fromage de lait écrémé, Brick, Brick canadien, Colby, Farmer's, Jack, Monterey (Monterey Jack), Mozzarella (Scamorza), Mozzarella partiellement écrémé (Scamorza partiellement écrémé), Munster canadien, Pizza partiellement écrémé ou Pizza et des autres variétés de fromage non mentionnées aux divisions (A) ou (C),

**(C)** 95 %, dans le cas des autres variétés de fromage visées au tableau du présent article,

**(i.2)** avoir un rapport protéines de petit-lait à la caséine qui ne dépasse pas celui du lait,

**(ii)** posséder les propriétés physiques, chimiques et organoleptiques typiques de la variété,

**(iii)** s'il s'agit d'une variété de fromage nommée dans le tableau du présent article, ne pas contenir

**(iv)** where it is a cheese of a variety named in Part I of the table to this section, contain no less than the minimum percentage of milk fat shown in Column III for that variety, and

**(v)** where it is cheese of a variety named in Part II of the table to this section, contain no more than the maximum percentage of milk fat shown in Column III for that variety; and

**(b)** may contain

**(i)** salt, seasonings, condiments and spices,

**(ii)** flavouring preparations other than cheese flavouring,

**(iii)** micro-organisms to aid further ripening,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin or turmeric,

**(B)** in an amount not exceeding 35 parts per million, beta-apo-8'-carotenal, ethyl beta-apo-8'-carotenoate or a combination thereof, and

**(C)** in an amount not exceeding 0.10 parts per million, brilliant blue FCF in feta cheese only,

**(v)** calcium chloride as a firming agent in an amount not exceeding 0.02 per cent of the milk and milk products used,

**(vi)** paraffin wax as a coating in an amount consistent with good manufacturing practice,

**(vii)** where potassium nitrate, sodium nitrate or a combination thereof are used for the purpose and in the manner described in subsection (2), residues of potassium nitrate, sodium nitrate or a combination thereof in an amount not exceeding 50 parts per million,

**(viii)** wood smoke as a preservative in an amount consistent with good manufacturing practice,

**(ix)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination

plus que le pourcentage maximal d'humidité indiqué pour cette variété dans la colonne II de ce tableau,

**(iv)** s'il s'agit d'une variété de fromage nommée dans la partie I du tableau du présent article, contenir au moins le pourcentage minimal de matière grasse de lait indiqué pour cette variété dans la colonne III de ce tableau, et

**(v)** s'il s'agit d'une variété de fromage nommée dans la partie II du tableau du présent article, ne pas contenir plus que le pourcentage maximal de matière grasse de lait indiqué pour cette variété dans la colonne III de ce tableau; et

**b)** peut contenir

**(i)** du sel, des assaisonnements, des condiments et des épices,

**(ii)** des préparations aromatisantes autres que les aromatisants de fromage,

**(iii)** des micro-organismes favorisant l'affinage,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma,

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits, et

**(C)** en quantité n'excédant pas 0,10 partie par million, le bleu brillant FCF seulement dans le Feta,

**(v)** du chlorure de calcium comme agent raffermissant, en quantité n'excédant pas 0,02 pour cent du lait et des produits du lait utilisés,

**(vi)** de la cire de paraffine comme enrobage, en quantité conforme aux bonnes pratiques industrielles,

**(vii)** en quantité n'excédant pas 50 parties par million, des résidus de nitrate de potassium, de nitrate de sodium ou d'un mélange de ces produits utilisés aux fins et de la manière prévues au paragraphe (2),

**(viii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles,

thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid,

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively, or

**(D)** natamycin applied to the surface of the cheese in an amount that does not exceed 20 parts per million or, if the cheese is grated or shredded, 10 parts per million,

**(x)** in the case of grated or shredded cheese, calcium silicate, microcrystalline cellulose or cellulose, or a combination of them, as an anticaking agent, the total amount not to exceed 2.0 per cent, and

**(xi)** carbon dioxide as a pH adjusting agent in milk for cheese production, in an amount consistent with good manufacturing practice.

**(ix)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium, ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique,

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique, ou

**(D)** la natamycine appliquée à la surface du fromage, en une quantité n'excédant pas 20 parties par million ou, si le fromage est râpé fin ou en filaments, 10 parties par million,

**(x)** s'il est râpé fin ou en filaments, du silicate de calcium, de la cellulose microcristalline, de la cellulose ou un mélange de ces produits, utilisé comme agent anti-agglomérant, en quantité totale n'excédant pas 2,0 pour cent,

**(xi)** du dioxyde de carbone comme rajusteur du pH dans le lait pour la fabrication du fromage, en quantité conforme aux bonnes pratiques industrielles.

**(1.1)** A cheese of a variety set out in column I of Part I of the table to this section may contain more than the maximum percentage of moisture set out in column II and less than the minimum percentage of milk fat set out in column III if

**(a)** a statement or claim set out in column 4 of any of items 12 to 14, 16, 20, 21 and 45 of the Table of Permitted Nutrient Content Statements and Claims is shown on the label of the product as part of the common name; and

**(b)** the cheese has the characteristic flavour and texture of the named variety of cheese.

**(1.1)** Le fromage d'une variété visée à la colonne I de la partie I du tableau du présent article peut contenir plus que le pourcentage maximal d'humidité indiqué dans la colonne II et moins que le pourcentage minimal de matière grasse du lait indiqué dans la colonne III, si les conditions suivantes sont réunies :

**a)** la mention ou l'allégation figurant à la colonne 4 de l'un des articles 12 à 14, 16, 20, 21 et 45 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est indiquée sur l'étiquette du produit dans le nom usuel de celui-ci;

**b)** le fromage a la saveur et la texture caractéristiques de la variété de fromage visée.

**(1.2)** The reference to "83 per cent" in clause (1)(a)(i.1)(B) shall be read as "78 per cent", and the reference to "95 per cent" in clause (1)(a)(i.1)(C) shall be read as "90 per cent", with respect to the named variety of cheese if

**(1.2)** La mention « 83 % » dans la division (1)a)(i.1)(B) vaut mention de « 78 % » et la mention « 95 % » dans la division (1)a)(i.1)(C) vaut mention de « 90 % », dans le cas des variétés de fromage visées, si les conditions suivantes sont réunies :

**(a)** a statement or claim set out in column 4 of any of items 12 to 14, 16, 20, 21 and 45 of the Table of Permitted Nutrient Content Statements and Claims is shown on the label of the product as part of the common name; and

**(b)** the cheese has the characteristic flavour and texture of the named variety of cheese.

**(2)** Potassium nitrate, sodium nitrate or a combination thereof may be used as a preservative in cheese providing the following requirements are met:

**(a)** the amount of the salt or combination of salts does not exceed 200 parts per million of the milk and milk products used to make the cheese;

**(b)** the cheese in which the preservative is used is

**(i)** mold ripened cheese packed in a hermetically sealed container, or

**(ii)** ripened cheese

**(A)** that contains not more than 68 per cent moisture on a fat free basis, and

**(B)** during the manufacture of which the lactic acid fermentation and salting was completed more than 12 hours after coagulation of the curd by enzymes; and

**(c)** the salting is, in the case of the cheese described in subparagraph (b)(ii), applied externally as a dry salt or in the form of a brine.

**(3)** No person shall use an enzyme other than

**(a)** aminopeptidase derived from *Lactococcus lactis*, bovine rennet derived from aqueous extracts from the fourth stomach of adult bovine animals, sheep and goats, chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105), lipase derived from Animal pancreatic tissue; *Aspergillus niger* var.; *Aspergillus oryzae* var.; Edible forestomach tissue of calves, kids or lambs; *Rhizopus oryzae* var. or from *Aspergillus oryzae* (MLT-2) (pRML 787) (p3SR2); *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (*Cooney and Emerson*)); *Rhizopus niveus*, milk coagulating enzyme derived from *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (Cooney and Emerson)), from *Mucor pusillus Lindt* by pure culture fermentation process or from *Aspergillus oryzae* RET-1 (pBoel777), pepsin derived from

**a)** la mention ou l'allégation figurant à la colonne 4 de l'un des articles 12 à 14, 16, 20, 21 et 45 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est indiquée sur l'étiquette du produit dans le nom usuel de celui-ci;

**b)** le fromage a la saveur et la texture caractéristiques de la variété de fromage visée.

**(2)** Le nitrate de potassium, le nitrate de sodium ou un mélange de ces produits peuvent être utilisés comme agents de conservation dans le fromage, pourvu que

**a)** la quantité de sel ou le mélange de sels ne dépasse pas 200 parties par million du lait et des produits du lait utilisés;

**b)** le fromage soit

**(i)** du fromage affiné aux moisissures conservé dans un contenant hermétique, ou

**(ii)** du fromage affiné

**(A)** qui contient au plus 68 pour cent d'humidité à l'état dégraissé, et

**(B)** dont la fermentation lactique et la salaison ont été faites plus de 12 heures après la coagulation du caillé par enzymes; et

**c)** la salaison soit, dans le cas du fromage visé au sous-alinéa b)(ii), appliquée à l'extérieur du fromage sous forme de sel ou de saumure.

**(3)** Il est interdit d'utiliser un enzyme qui n'est pas compris parmi les suivants :

**a)** l'aminopeptidase provenant de *Lactococcus lactis*, la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105), l'enzyme coagulant le lait provenant de *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (Cooney et Emerson)), de *Mucor pusillus Lindt* par fermentation de culture pure ou de *Aspergillus oryzae* RET-1 (pBoel777), la lipase provenant de *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Rhizopus oryzae* var.; Tissus comestibles des préestomacs d'agneaux, de chevreaux ou de veaux; Tissus pancréatiques d'animaux ou de *Aspergillus oryzae* (MLT-2) (pRML 787) (p3SR2); *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (*Cooney et Emerson*)); *Rhizopus niveus*, la pepsine provenant de la muqueuse

glandular layer of porcine stomach, phospholipase derived from *Aspergillus oryzae* (pPFJo142), protease derived from *Micrococcus caseolyticus* var. or rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs, in the manufacture of any cheese to which subsection (1) applies;

**(b)** [Repealed, SOR/2010-143, s. 1]

**(c)** a milk coagulating enzyme derived from *Endothia parasitica* and enzymes described in paragraph (a), in the manufacture of Emmentaler (Emmental, Swiss) cheese, Mozzarella (Scamorza) cheese and Part Skim Mozzarella (Part Skim Scamorza) cheese;

**(d)** a milk coagulating enzyme derived from *Endothia parasitica* and enzymes described in paragraph (a), in the manufacture of Parmesan cheese and Romano cheese;

**(e)** protease derived from *Aspergillus oryzae* var., *Aspergillus niger* var. or *Bacillus subtilis* var., in the manufacture of Colby cheese; and

**(f)** lysozyme derived from egg-white.

**(3.1)** No person shall use an enzyme referred to in subsection (3) at a level of use above that consistent with good manufacturing practice.

**(4)** Where a flavouring preparation, other than a flavouring preparation that has been traditionally used in the variety, is added to a cheese as permitted in subsection (1), the words "with (naming the flavouring preparation)" shall be added to the common name on any label.

**(5)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(6)** Where a cheese is labelled as permitted in subsection (5), the word "smoked" shall be shown on the principal display panel.

glandulaire de l'estomac de porc, la phospholipase provenant de *Aspergillus oryzae* (pPFJo142), la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux, la présure de bovin provenant de l'extrait aqueux du 4e (véritable) estomac de bovins, de moutons et de chèvres adultes et la protéase provenant de *Micrococcus caseolyticus* var., dans la fabrication d'un fromage visé au paragraphe (1);

**b)** [Abrogé, DORS/2010-143, art. 1]

**c)** l'enzyme coagulant le lait provenant d'*Endothia parasitica* et les enzymes mentionnés à l'alinéa a) dans la fabrication du fromage Emmentaler (Emmenthal, suisse), du fromage Mozzarella (Scamorza) et du fromage Mozzarella partiellement écrémé (Scamorza partiellement écrémé);

**d)** l'enzyme coagulant le lait provenant d'*Endothia parasitica* et les enzymes mentionnés à l'alinéa a), dans la fabrication du fromage Parmesan et du fromage Romano;

**e)** la protéase provenant d'*Aspergillusoryzae* var., *Aspergillus niger* var. ou *Bacillus subtilis* var., dans la fabrication du fromage Colby;

**f)** le lysozyme provenant de blanc d'œuf.

**(3.1)** Il est interdit d'utiliser une enzyme visée au paragraphe (3) en quantité supérieure à celle conforme aux bonnes pratiques industrielles.

**(4)** Lorsqu'une préparation aromatisante, autre qu'une préparation aromatisante habituellement utilisée dans la variété de fromage, est ajoutée à un fromage conformément au paragraphe (1), l'expression « (avec indication de la préparation aromatisante) » doit être ajoutée au nom usuel sur l'étiquette.

**(5)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(6)** Dans les cas visés au paragraphe (5), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

## TABLE

### PART I

| Item | Column I<br>Variety of Cheese | Column II<br>Maximum percentage of moisture | Column III<br>Minimum percentage of milk fat |
|---|---|---|---|
| 1 | Asiago | 40.0 | 30.0 |
| 2 | Baby Edam | 47.0 | 21.0 |
| 3 | Baby Gouda | 45.0 | 26.0 |
| 4 | Blue | 47.0 | 27.0 |
| 5 | Butter (Butterkäse) | 46.0 | 27.0 |
| 6 | Bra | 36.0 | 26.0 |
| 7 | Brick | 42.0 | 29.0 |
| 8 | Brie | 54.0 | 23.0 |
| 9 | Caciocavallo | 45.0 | 24.0 |
| 10 | Camembert (Carré de l'est) | 56.0 | 22.0 |
| 11 | Canadian Style Brick | 42.0 | 29.0 |
| 12 | Canadian Style Munster | 46.0 | 27.0 |
| 13 | Colby | 42.0 | 29.0 |
| 14 | Danbo | 46.0 | 25.0 |
| 15 | Edam | 46.0 | 22.0 |
| 16 | Elbo | 46.0 | 25.0 |
| 17 | Emmentaler (Emmental, Swiss) | 40.0 | 27.0 |
| 18 | Esrom | 50.0 | 23.0 |
| 19 | Farmer's | 44.0 | 27.0 |
| 20 | Feta | 55.0 | 22.0 |
| 21 | Fontina | 46.0 | 27.0 |
| 22 | Fynbo | 46.0 | 25.0 |
| 23 | Gouda | 43.0 | 28.0 |
| 24 | Gournay | 55.0 | 33.0 |
| 25 | Gruyère | 38.0 | 28.0 |
| 26 | Havarti | 50.0 | 23.0 |
| 27 | Jack | 50.0 | 25.0 |
| 28 | Kasseri | 44.0 | 25.0 |
| 29 | Limburger | 50.0 | 25.0 |
| 30 | Maribo | 43.0 | 26.0 |
| 31 | Montasio | 40.0 | 28.0 |
| 32 | Monterey (Monterey Jack) | 44.0 | 28.0 |
| 33 | Mozzarella (Scamorza) | 52.0 | 20.0 |
| 34 | Muenster (Munster) | 50.0 | 25.0 |
| 35 | Neufchâtel | 60.0 | 20.0 |
| 36 | Parmesan | 32.0 | 22.0 |
| 37 | Part Skim Mozzarella (Part Skim Scamorza) | 52.0 | 15.0 |
| 38 | Part Skim Pizza | 48.0 | 15.0 |
| 38.1 | Part Skim Pizza Mozzarella | 61.0 | 11.0 |

## TABLEAU

### PARTIE I

| Article | Colonne I<br>Variété de fromage | Colonne II<br>Pourcentage maximal d'humidité | Colonne III<br>Pourcentage minimal de matière grasse du lait |
|---|---|---|---|
| 1 | Asiago | 40,0 | 30,0 |
| 2 | Petit Édam | 47,0 | 21,0 |
| 3 | Petit Gouda | 45,0 | 26,0 |
| 4 | Bleu | 47,0 | 27,0 |
| 5 | Fromage beurre (Butterkäse) | 46,0 | 27,0 |
| 6 | Bra | 36,0 | 26,0 |
| 7 | Brick | 42,0 | 29,0 |
| 8 | Brie | 54,0 | 23,0 |
| 9 | Caciocavallo | 45,0 | 24,0 |
| 10 | Camembert (Carré de l'est) | 56,0 | 22,0 |
| 11 | Brick canadien | 42,0 | 29,0 |
| 12 | Munster canadien | 46,0 | 27,0 |
| 13 | Colby | 42,0 | 29,0 |
| 14 | Danbo | 46,0 | 25,0 |
| 15 | Édam | 46,0 | 22,0 |
| 16 | Elbo | 46,0 | 25,0 |
| 17 | Emmenthal (Suisse) | 40,0 | 27,0 |
| 18 | Esrom | 50,0 | 23,0 |
| 19 | Farmer's | 44,0 | 27,0 |
| 20 | Féta | 55,0 | 22,0 |
| 21 | Fontina | 46,0 | 27,0 |
| 22 | Fynbo | 46,0 | 25,0 |
| 23 | Gouda | 43,0 | 28,0 |
| 24 | Gournay | 55,0 | 33,0 |
| 25 | Gruyère | 38,0 | 28,0 |
| 26 | Havarti | 50,0 | 23,0 |
| 27 | Jack | 50,0 | 25,0 |
| 28 | Kasseri | 44,0 | 25,0 |
| 29 | Limburger | 50,0 | 25,0 |
| 30 | Maribo | 43,0 | 26,0 |
| 31 | Montasio | 40,0 | 28,0 |
| 32 | Monterey (Monterey Jack) | 44,0 | 28,0 |
| 33 | Mozzarella (Scamorza) | 52,0 | 20,0 |
| 34 | Muenster (Munster) | 50,0 | 25,0 |
| 35 | Neufchâtel | 60,0 | 20,0 |
| 36 | Parmesan | 32,0 | 22,0 |
| 37 | Mozzarella partiellement écrémé (Scamorza partiellement écrémé) | 52,0 | 15,0 |

| Item | Column I<br>Variety of Cheese | Column II<br>Maximum percentage of moisture | Column III<br>Minimum percentage of milk fat |
|---|---|---|---|
| 39 | Pizza | 48.0 | 20.0 |
| 39.1 | Pizza Mozzarella | 58.0 | 15.0 |
| 40 | Provolone | 45.0 | 24.0 |
| 41 | Romano (Sardo) | 34.0 | 25.0 |
| 42 | St. Jorge | 40.0 | 27.0 |
| 43 | Saint-Paulin | 50.0 | 25.0 |
| 44 | Samsoë | 44.0 | 26.0 |
| 45 | Tilsiter (Tilsit) | 45.0 | 25.0 |
| 46 | Tybo | 46.0 | 25.0 |

**PART II**

| Item | Column I<br>Variety of Cheese | Column II<br>Maximum percentage of moisture | Column III<br>Maximum percentage of milk fat |
|---|---|---|---|
| 1 | Harzkase (Harzer Käse, Mainzer Käse) | 55.0 | 3.0 |
| 2 | Skim Milk | 55.0 | 7.0 |

SOR/79-752, s. 2; SOR/80-632, s. 2; SOR/82-383, ss. 2,3; SOR/82-566, s. 1; SOR/84-302, s. 1; SOR/86-89, s. 2; SOR/87-640, s. 3; SOR/88-534, s. 2; SOR/89-198, s. 1; SOR/90-469, s. 1; SOR/91-88, s. 1; SOR/92-197, s. 1; SOR/92-400, s. 4; SOR/93-477, s. 1; SOR/94-212, s. 1; SOR/94-417, s. 1; SOR/95-183, s. 1; SOR/97-191, s. 1; SOR/98-458, s. 2; SOR/2000-336, s. 1; SOR/2000-353, s. 4; SOR/2000-417, s. 2; SOR/2001-94, s. 1; SOR/2005-98, s. 7; SOR/2007-302, ss. 2, 4(F); SOR/2010-94, s. 8(E); SOR/2010-143, ss. 1, 39(E); SOR/2012-43, s. 2(F); SOR/2022-168, s. 52.

### B.08.034 (1) [S]. Cheddar Cheese

**(a)** shall

**(i)** be the product that is made by coagulating milk, milk products or a combination of those things with the aid of bacteria to form a curd and subjecting the curd to the cheddar process or any process other than the cheddar process that produces a cheese having the same physical, chemical and organoleptic properties as those of cheese produced by the cheddar process,

**(i.1)** have a casein content that is derived from milk or from ultrafiltered milk, partly skimmed milk, ultrafiltered partly skimmed milk, skim milk, ultrafiltered skim milk or cream, rather than from other milk products, that is at least 83 per cent of the total protein content of the cheese,

| Article | Colonne I<br>Variété de fromage | Colonne II<br>Pourcentage maximal d'humidité | Colonne III<br>Pourcentage minimal de matière grasse du lait |
|---|---|---|---|
| 38 | Pizza partiellement écrémé | 48,0 | 15,0 |
| 38.1 | Pizza mozzarella partiellement écrémé | 61,0 | 11,0 |
| 39 | Pizza | 48,0 | 20,0 |
| 39.1 | Pizza mozzarella | 58,0 | 15,0 |
| 40 | Provolone | 45,0 | 24,0 |
| 41 | Romano (Sardo) | 34,0 | 25,0 |
| 42 | St. Jorge | 40,0 | 27,0 |
| 43 | Saint-Paulin | 50,0 | 25,0 |
| 44 | Samsoë | 44,0 | 26,0 |
| 45 | Tilsiter (Tilsit) | 45,0 | 25,0 |
| 46 | Tybo | 46,0 | 25,0 |

**PARTIE II**

| Article | Colonne I<br>Variété de fromage | Colonne II<br>Pourcentage maximal d'humidité | Colonne III<br>Pourcentage maximal de matière grasse du lait |
|---|---|---|---|
| 1 | Harzkase (Harzer Käse, Mainzer Käse) | 55,0 | 3,0 |
| 2 | Lait écrémé | 55,0 | 7,0 |

DORS/79-752, art. 2; DORS/80-632, art. 2; DORS/82-383, art. 2 et 3; DORS/82-566, art. 1; DORS/84-302, art. 1; DORS/86-89, art. 2; DORS/87-640, art. 3; DORS/88-534, art. 2; DORS/89-198, art. 1; DORS/90-469, art. 1; DORS/91-88, art. 1; DORS/92-197, art. 1; DORS/92-400, art. 4; DORS/93-477, art. 1; DORS/94-212, art. 1; DORS/94-417, art. 1; DORS/95-183, art. 1; DORS/97-191, art. 1; DORS/98-458, art. 2; DORS/2000-336, art. 1; DORS/2000-353, art. 4; DORS/2000-417, art. 2; DORS/2001-94, art. 1; DORS/2005-98, art. 7; DORS/2007-302, art. 2 et 4(F); DORS/2010-94, art. 8(A); DORS/2010-143, art. 1 et 39(A); DORS/2012-43, art. 2(F); DORS/2022-168, art. 52.

### B.08.034 (1) [N]. Le fromage cheddar

**a)** doit

**(i)** être le produit de la coagulation — à l'aide de bactéries — du lait, de produits du lait ou d'un mélange de ceux-ci, en vue de former un caillé soumis par la suite soit au procédé cheddar, soit à tout autre procédé qui donne du fromage possédant les mêmes propriétés physiques, chimiques et organoleptiques que le fromage produit par le procédé cheddar,

**(i.1)** avoir une teneur en caséine dérivée du lait ou du lait ultrafiltré, du lait partiellement écrémé, du lait partiellement écrémé ultrafiltré, du lait écrémé, du lait écrémé ultrafiltré ou de la crème, plutôt que de tout autre produit du lait, d'au moins 83 % de la teneur totale en protéines du fromage,

**(i.2)** have a whey protein to casein ratio that does not exceed the whey protein to casein ratio of milk, and

**(ii)** contain

**(A)** not more than 39 per cent moisture, and

**(B)** not less than 31 per cent milk fat;

**(b)** may contain

**(i)** salt,

**(ii)** flavouring preparations other than cheese flavouring,

**(iii)** bacterial cultures to aid further ripening,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8'-carotenal, ethyl beta-apo-8'-carotenoate,

**(v)** calcium chloride as a firming agent in an amount not exceeding 0.02 per cent of the milk and milk products used,

**(vi)** wood smoke as a preservative in an amount consistent with good manufacturing practice,

**(vii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or a combination thereof in an amount not exceeding 2,000 parts per million calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate or a combination thereof in an amount not exceeding 3,000 parts per million calculated as sorbic acid,

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million calculated as propionic acid and sorbic acid respectively, or

**(D)** natamycin applied to the surface of the cheese in an amount that does not exceed 20 parts per million or, if the cheese is grated or shredded, 10 parts per million, and

**(i.2)** avoir un rapport protéines de petit-lait à la caséine qui ne dépasse pas celui du lait,

**(ii)** contenir

**(A)** au plus 39 pour cent d'humidité, et

**(B)** au moins 31 pour cent de matière grasse de lait, et

**b)** peut contenir

**(i)** du sel,

**(ii)** des préparations aromatisantes autres que les aromatisants de fromage,

**(iii)** des cultures bactériennes favorisant l'affinage,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** du chlorure de calcium comme agent raffermissant, en quantité n'excédant pas 0,02 pour cent du lait et des produits du lait utilisés,

**(vi)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles,

**(vii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium, ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique,

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique, ou

**(viii)** in the case of grated or shredded cheddar cheese, calcium silicate, microcrystalline cellulose or cellulose, or a combination of them, as an anti-caking agent, the total amount not to exceed 2.0 per cent; and

**(c)** shall not be labelled or advertised as cheddar cheese that has been aged unless

**(i)** it is made solely with milk, ultrafiltered milk, partly skimmed milk, ultrafiltered partly skimmed milk, skim milk, ultrafiltered skim milk or cream or a combination of those things, and

**(ii)** it has been aged for at least nine months and the period for which it has been aged is specified on the principal display panel of that label or in that advertising.

**(1.1)** Cheddar cheese may contain more than the maximum percentage of moisture set out in clause (1)(a)(ii)(A) and less than the minimum percentage of milk fat set out in clause (1)(a)(ii)(B) if

**(a)** a statement or claim set out in column 4 of any of items 12 to 14, 16, 20, 21 and 45 of the Table of Permitted Nutrient Content Statements and Claims is shown on the label of the product as part of the common name; and

**(b)** the cheese has the characteristic flavour and texture of cheddar cheese.

**(1.2)** The reference to "83 per cent" in subparagraph (1)(a)(i.1) shall be read as "78 per cent" if

**(a)** a statement or claim set out in column 4 of any of items 12 to 14, 16, 20, 21 and 45 of the Table of Permitted Nutrient Content Statements and Claims is shown on the label of the product as part of the common name; and

**(b)** the cheese has the characteristic flavour and texture of cheddar cheese.

**(2)** No person shall, in the manufacture of the cheddar cheese, use any enzyme other than

**(D)** la natamycine appliquée à la surface du fromage, en une quantité n'excédant pas 20 parties par million ou, si le fromage est râpé fin ou en filaments, 10 parties par million,

**(viii)** s'il est râpé fin ou en filaments, du silicate de calcium, de la cellulose microcristalline, de la cellulose ou un mélange de ces produits, utilisé comme agent anti-agglomérant, en quantité totale n'excédant pas 2,0 pour cent.

**c)** ne peut être étiqueté et annoncé comme étant un fromage cheddar qui a été vieilli que s'il remplit les conditions suivantes :

**(i)** il est fait uniquement de lait, de lait ultrafiltré, de lait partiellement écrémé, de lait partiellement écrémé ultrafiltré, de lait écrémé, de lait écrémé ultrafiltré, de crème ou d'un mélange de ceux-ci,

**(ii)** il a été vieilli pendant au moins neuf mois et la période pendant laquelle il a été vieilli est mentionnée sur l'espace principal de l'étiquette ou dans l'annonce.

**(1.1)** Le fromage cheddar peut contenir plus que le pourcentage maximal d'humidité prévu à la division (1)a)(ii)(A) et moins que le pourcentage minimal de matière grasse de lait prévu à la division (1)a)(ii)(B), si les conditions suivantes sont réunies :

**a)** la mention ou l'allégation figurant à la colonne 4 de l'un des articles 12 à 14, 16, 20, 21 et 45 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est indiquée sur l'étiquette du produit dans le nom usuel de celui-ci;

**b)** le fromage a la saveur et la texture caractéristiques du fromage cheddar.

**(1.2)** la mention « 83 % » au sous-alinéa (1)a)(i.1) vaut mention de « 78 % », si les conditions suivantes sont réunies :

**a)** la mention ou l'allégation figurant à la colonne 4 de l'un des articles 12 à 14, 16, 20, 21 et 45 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive est indiquée sur l'étiquette du produit dans le nom usuel de celui-ci;

**b)** le fromage a la saveur et la texture caractéristiques du fromage cheddar.

**(2)** Dans la fabrication du fromage cheddar, il est interdit d'utiliser une enzyme qui n'est pas comprise parmi les suivantes :

**(a)** aminopeptidase derived from *Lactococcus lactis*, chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105), lipase derived from Animal pancreatic tissue; *Aspergillus niger* var.; *Aspergillus oryzae* var.; Edible forestomach tissue of calves, kids or lambs; *Rhizopus oryzae* var. or from *Aspergillus oryzae* (MLT-2) (pRML 787) (p3SR2); *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (*Cooney and Emerson*)); *Rhizopus niveus*, milk coagulating enzyme derived from *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (Cooney and Emerson)), from *Mucor pusillus Lindt* by pure culture fermentation process or from *Aspergillus oryzae* RET-1 (pBoel777), pepsin derived from glandular layer of porcine stomach, phospholipase derived from *Aspergillus oryzae* (pPFJo142) or rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs;

**(b)** protease derived from *Aspergillus oryzae*; and

**(c)** lysozyme derived from egg-white.

**(2.1)** No person shall use an enzyme referred to in subsection (2) at a level of use above that consistent with good manufacturing practice.

**(3)** Where a flavouring preparation is added to a cheese as permitted in subsection (1), the words "with (naming the flavouring preparation)" shall be added to the common name in any label.

**(4)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(5)** Where a cheese is labelled as permitted in subsection (4), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/82-383, s. 4; SOR/83-617, s. 1; SOR/84-302, s. 2; SOR/84-762, s. 7; SOR/88-534, s. 3; SOR/89-244, s. 1; SOR/90-469, s. 2; SOR/91-88, s. 2; SOR/92-197, s. 2; SOR/93-477, s. 2; SOR/94-212, s. 2; SOR/95-183, s. 2; SOR/97-191, s. 2; SOR/98-458, s. 3; SOR/2000-336, s. 2; SOR/2000-417, s. 3; SOR/2005-98, s. 7; SOR/2007-302, ss. 3, 4(F); SOR/2010-143, ss. 2, 39(E); SOR/2012-43, s. 3(F); SOR/2022-168, s. 52.

### B.08.035 (1) [S]. Cream Cheese

**(a)** shall

**(i)** be the product made by coagulating cream with the aid of bacteria to form a curd and forming the curd into a homogeneous mass after draining the whey, and

**a)** l'aminopeptidase provenant de *Lactococcus lactis*, la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105), l'enzyme coagulant le lait provenant de *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (Cooney et Emerson)), de *Mucor pusillus Lindt* par fermentation de culture pure ou de *Aspergillus oryzae* RET-1 (pBoel777), la lipase provenant de *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Rhizopus oryzae* var.; Tissus comestibles des préestomacs d'agneaux, de chevreaux ou de veaux; Tissus pancréatiques d'animaux ou de *Aspergillus oryzae* (MLT-2) (pRML 787) (p3SR2); *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (*Cooney et Emerson*)); *Rhizopus niveus*, la pepsine provenant de la muqueuse glandulaire de l'estomac de porc, la phospholipase provenant de *Aspergillus oryzae* (pPFJo142) et la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux;

**b)** la protéase provenant d'*Aspergillus oryzae*;

**c)** le lysozyme provenant de blanc d'œuf.

**(2.1)** Il est interdit d'utiliser une enzyme visée au paragraphe (2) en quantité supérieure à celle conforme aux bonnes pratiques industrielles.

**(3)** Lorsqu'une préparation aromatisante est ajoutée à un fromage conformément au paragraphe (1), l'expression « (avec indication de la préparation aromatisante) » doit être ajoutée au nom usuel sur l'étiquette.

**(4)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(5)** Dans les cas visés au paragraphe (4), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/82-383, art. 4; DORS/83-617, art. 1; DORS/84-302, art. 2; DORS/84-762, art. 7; DORS/88-534, art. 3; DORS/89-244, art. 1; DORS/90-469, art. 2; DORS/91-88, art. 2; DORS/92-197, art. 2; DORS/93-477, art. 2; DORS/94-212, art. 2; DORS/95-183, art. 2; DORS/97-191, art. 2; DORS/98-458, art. 3; DORS/2000-336, art. 2; DORS/2000-417, art. 3; DORS/2005-98, art. 7; DORS/2007-302, art. 3 et 4(F); DORS/2010-143, art. 2 et 39(A); DORS/2012-43, art. 3(F); DORS/2022-168, art. 52.

### B.08.035 (1) [N]. Le **fromage à la crème**

**a)** doit

**(i)** être le produit de la coagulation de la crème à l'aide de bactéries, en vue de former, après égouttement du petit-lait, une masse homogène de caillé, et

**(ii)** contain

**(A)** not more than 55 per cent moisture, and

**(B)** not less than 30 per cent milk fat; and

**(b)** may contain

**(i)** cream added to adjust the milk fat content,

**(ii)** salt,

**(iii)** nitrogen to improve spreadability in an amount consistent with good manufacturing practice,

**(iv)** the following emulsifying, gelling, stabilizing and thickening agents:

ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or any combination thereof in an amount not exceeding 0.5 per cent, and

**(v)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** No person shall use any enzyme

**(a)** other than chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR)

**(ii)** contenir

**(A)** au plus 55 pour cent d'humidité, et

**(B)** au moins 30 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de la crème ajoutée pour modifier la teneur en matière grasse de lait,

**(ii)** du sel,

**(iii)** de l'azote pour améliorer la tartinabilité, en quantité conforme aux bonnes pratiques industrielles,

**(iv)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

en quantité ne dépassant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits, et

**(v)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Il est interdit d'utiliser un enzyme

**a)** autre que la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349

or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), pepsin derived from glandular layer of porcine stomach or rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs, in the manufacture of cream cheese; and

**(b)** at a level of use above that consistent with good manufacturing practice.

SOR/79-752, s. 2; SOR/92-197, s. 3; SOR/94-212, s. 3; SOR/95-183, s. 3; SOR/2010-143, s. 3.

### B.08.036 (1) [S]. Whey Cheese or (naming the variety) Whey Cheese

**(a)** shall be the product made by coagulating whey or concentrated whey with the aid of heat to form a curd and shaping the curd; and

**(b)** may contain

**(i)** micro-organisms to aid further ripening,

**(ii)** added milk and milk products, and

**(iii)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate, sodium hydroxide and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice.

**(2)** No person shall use, to aid coagulation of whey in the manufacture of whey cheese, a substance other than vinegar or sour whey.

SOR/79-752, s. 2; SOR/2007-302, s. 4(F); SOR/2010-142, s. 5.

### B.08.037 (1) [S]. Cream Cheese with (naming the added ingredients)

**(a)** shall

**(i)** be the product made by coagulating cream with the aid of bacteria to form a curd and forming the curd into a homogeneous mass after draining the whey, and

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from cream cheese but not in amounts so large as to change the basic nature of the product:

**(A)** cheese other than cream cheese,

(pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), la pepsine provenant de la muqueuse glandulaire de l'estomac de porc ou la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux, dans la fabrication du fromage à la crème;

**b)** en quantité supérieure à ce qui est conforme aux bonnes pratiques industrielles.

DORS/79-752, art. 2; DORS/92-197, art. 3; DORS/94-212, art. 3; DORS/95-183, art. 3; DORS/2010-143, art. 3.

### B.08.036 (1) [N]. Le **fromage de petit-lait** ou le **fromage de petit-lait (indication de la variété)**

**a)** doit être le produit de la coagulation, à l'aide d'une source de chaleur, du petit-lait ou du petit-lait concentré en vue de former un caillé auquel une forme est donnée; et

**b)** peut contenir

**(i)** des micro-organismes favorisant l'affinage,

**(ii)** du lait et des produits du lait ajoutés, et

**(iii)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, de l'acide tartrique, du bicarbonate de potassium, du bicarbonate de sodium, du carbonate de calcium, du carbonate de potassium, du carbonate de sodium et de l'hydroxyde de sodium comme rajusteurs du pH.

**(2)** Il est interdit d'utiliser, pour favoriser la coagulation du petit-lait dans la fabrication du fromage de petit-lait, une substance autre que du vinaigre ou du petit-lait sûr.

DORS/79-752, art. 2; DORS/2007-302, art. 4(F); DORS/2010-142, art. 5.

### B.08.037 (1) [N]. Le **fromage à la crème (avec indication des ingrédients ajoutés)**

**a)** doit

**(i)** être le produit de la coagulation de la crème à l'aide de bactéries, en vue de former, après égouttement du petit-lait, une masse homogène de caillé,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer du fromage à la crème, tout en conservant sa nature fondamentale, les ingrédients suivants :

**(A)** du fromage autre que du fromage à la crème,

**(B)** chocolate, condiments, flavouring preparations, seasonings or spices,

**(C)** fruits, nuts, pickles, relishes or vegetables,

**(D)** prepared or preserved meat, or

**(E)** prepared or preserved fish, and

**(iii)** contain

**(A)** not more than 60 per cent moisture, and

**(B)** not less than 26 per cent milk fat; and

**(b)** may contain

**(i)** cream added to adjust the milk fat content,

**(ii)** salt,

**(iii)** nitrogen to improve spreadability in an amount consistent with good manufacturing practice,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8'-carotenal, ethyl beta-apo-8'-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or any combination thereof in an amount not exceeding 0.5 per cent, and

**(vi)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination

**(B)** des assaisonnements, du chocolat, des condiments, des épices ou des préparations aromatisantes,

**(C)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(D)** de la viande préparée ou conservée, ou

**(E)** du poisson préparé ou conservé, et

**(iii)** contenir

**(A)** au plus 60 pour cent d'humidité, et

**(B)** au moins 26 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de la crème ajoutée pour modifier la teneur en matière grasse de lait,

**(ii)** du sel,

**(iii)** de l'azote pour améliorer la tartinabilité, en une quantité conforme aux bonnes pratiques industrielles,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

en quantité ne dépassant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits, et

**(vi)** les agents de conservation suivants :

thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** No person shall use any enzyme

**(a)** other than chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), pepsin derived from glandular layer of porcine stomach or rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs, in the manufacture of a product to which subsection (1) applies; and

**(b)** at a level of use above that consistent with good manufacturing practice.

SOR/79-752, s. 2; SOR/92-197, s. 4; SOR/94-212, s. 4; SOR/95-183, s. 4; SOR/2010-143, s. 4; SOR/2011-278, s. 2.

### B.08.038 (1) [S]. Cream Cheese Spread

**(a)** shall

**(i)** be the product made by coagulating cream with the aid of bacteria to form a curd and forming the curd into a homogeneous mass after draining the whey, and

**(ii)** contain

**(A)** added milk and milk products,

**(B)** not less than 51 per cent cream cheese,

**(C)** not more than 60 per cent moisture, and

**(D)** not less than 24 per cent milk fat; and

**(b)** may contain

**(i)** cream added to adjust the milk fat content,

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Il est interdit d'utiliser un enzyme

**a)** autre que la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), la pepsine provenant de la muqueuse glandulaire de l'estomac de porc ou la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux, dans la fabrication d'un produit visé au paragraphe (1);

**b)** en quantité supérieure à ce qui est conforme aux bonnes pratiques industrielles.

DORS/79-752, art. 2; DORS/92-197, art. 4; DORS/94-212, art. 4; DORS/95-183, art. 4; DORS/2010-143, art. 4; DORS/2011-278, art. 2.

### B.08.038 (1) [N]. Le **fromage à la crème à tartiner**

**a)** doit

**(i)** être le produit de la coagulation de la crème à l'aide de bactéries, en vue de former, après égouttement du petit-lait, une masse homogène de caillé, et

**(ii)** contenir

**(A)** du lait et des produits du lait ajoutés,

**(B)** au moins 51 pour cent de fromage à la crème,

**(C)** au plus 60 pour cent d'humidité, et

**(D)** au moins 24 pour cent de matière grasse de lait; et

**b)** peut contenir

**(ii)** salt, vinegar and sweetening agents,

**(iii)** nitrogen to improve spreadability in an amount consistent with good manufacturing practice,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent, and

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice, and

**(vii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(i)** de la crème ajoutée pour modifier la teneur en matière grasse de lait,

**(ii)** du sel, du vinaigre et des agents édulcorants,

**(iii)** de l'azote pour améliorer la tartinabilité, en quantité conforme aux bonnes pratiques industrielles,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits, et

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétophosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH, et

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** No person shall use any enzyme

**(a)** other than chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), pepsin derived from glandular layer of porcine stomach or rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs, in the manufacture of a product to which subsection (1) applies; and

**(b)** at a level of use above that consistent with good manufacturing practice.

SOR/79-752, s. 2; SOR/92-197, s. 5; SOR/94-212, s. 5; SOR/95-183, s. 5; SOR/2007-302, s. 4(F); SOR/2010-143, s. 5.

### B.08.039 (1) [S]. Cream Cheese Spread with (naming the added ingredients)

**(a)** shall

**(i)** be the product made by coagulating cream with the aid of bacteria to form a curd and forming the curd into a homogeneous mass after draining the whey,

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from cream cheese spread but not in amounts so large as to change the basic nature of the product:

**(A)** cheese other than cream cheese,

**(B)** chocolate, condiments, flavouring preparations, seasonings or spices,

**(vii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Il est interdit d'utiliser un enzyme

**a)** autre que la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), la pepsine provenant de la muqueuse glandulaire de l'estomac de porc ou la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux, dans la fabrication d'un produit visé au paragraphe (1);

**b)** en quantité supérieure à ce qui est conforme aux bonnes pratiques industrielles.

DORS/79-752, art. 2; DORS/92-197, art. 5; DORS/94-212, art. 5; DORS/95-183, art. 5; DORS/2007-302, art. 4(F); DORS/2010-143, art. 5.

### B.08.039 (1) [N]. Le fromage à la crème à tartiner (avec indication des ingrédients ajoutés)

**a)** doit

**(i)** être le produit de la coagulation de la crème à l'aide de bactéries, en vue de former une masse homogène de caillé après égouttement du petit-lait,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer du fromage à la crème à tartiner, tout en conservant sa nature fondamentale, les ingrédients ajoutés suivants :

**(A)** du fromage autre que du fromage à la crème,

**(B)** des assaisonnements, du chocolat, des condiments, des épices ou des préparations aromatisantes,

**(C)** fruits, nuts, pickles, relishes or vegetables,

**(D)** prepared or preserved meat, or

**(E)** prepared or preserved fish, and

**(iii)** contain

**(A)** added milk and milk products,

**(B)** not more than 60 per cent moisture, and

**(C)** not less than 24 per cent milk fat; and

**(b)** may contain

**(i)** cream added to adjust the milk fat content,

**(ii)** salt, vinegar and sweetening agents,

**(iii)** nitrogen to improve spreadability in an amount consistent with good manufacturing practice,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric,

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate, and

**(C)** in an amount not exceeding 1.5%, caramel,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent, and

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium

**(C)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(D)** de la viande préparée ou conservée, ou

**(E)** du poisson préparé ou conservé, et

**(iii)** contenir

**(A)** du lait et des produits du lait ajoutés,

**(B)** au plus 60 pour cent d'humidité, et

**(C)** au moins 24 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de la crème ajoutée pour modifier la teneur en matière grasse de lait,

**(ii)** du sel, du vinaigre et des agents édulcorants,

**(iii)** de l'azote pour améliorer la tartinabilité, en une quantité conforme aux bonnes pratiques industrielles,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma,

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-carothénoïque ou un mélange de ces produits,

**(C)** en quantité n'excédant pas 1,5 %, le caramel,

**(v)** les agents émulsifiants, gélatinisants, stalibisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits, et

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de

citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice, and

**(vii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** No person shall use any enzyme

**(a)** other than chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), pepsin derived from glandular layer of porcine stomach or rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs, in the manufacture of a product to which subsection (1) applies; and

**(b)** at a level of use above that consistent with good manufacturing practice.

SOR/79-752, s. 2; SOR/92-197, s. 6; SOR/94-212, s. 6; SOR/95-183, s. 6; SOR/2007-302, s. 4(F); SOR/2010-143, s. 6; SOR/2011-278, s. 3; SOR/2011-281, s. 1.

sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas de sels de phosphate, et 4,0 pour cent en tout,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH, et

**(vii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Il est interdit d'utiliser un enzyme

**a)** autre que la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), la pepsine provenant de la muqueuse glandulaire de l'estomac de porc ou la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux, dans la fabrication d'un produit visé au paragraphe (1);

**b)** en quantité supérieure à ce qui est conforme aux bonnes pratiques industrielles.

DORS/79-752, art. 2; DORS/92-197, art. 6; DORS/94-212, art. 6; DORS/95-183, art. 6; DORS/2007-302, art. 4(F); DORS/2010-143, art. 6; DORS/2011-278, art. 3; DORS/2011-281, art. 1.

**B.08.040 (1) [S]. Processed (naming the variety) Cheese**

**(a)** shall

**(i)** subject to subparagraph (ii), be the product made by comminuting and mixing the named variety or varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass with the aid of heat,

**(ii)** in the case of processed cheddar cheese, be the product made by comminuting and mixing one or more of the following:

**(A)** cheddar cheese,

**(B)** stirred curd cheese,

**(C)** granular curd cheese, or

**(D)** washed curd cheese

into a homogeneous mass with the aid of heat,

**(iii)** have, where it is made from

**(A)** one variety of cheese, in which the maximum amount of moisture permitted is less than 40 per cent, or

**(B)** two or more varieties of cheese, in which the average maximum amount of moisture permitted is less than 40 per cent,

a moisture content that does not exceed, by more than five per cent, the amount referred to in clause (A) or (B), as the case may be, and a milk fat content that is not less, by more than three per cent, than the minimum milk fat content or average minimum milk fat content permitted for that variety or those varieties, as the case may be,

**(iv)** subject to subparagraph (v), have, where it is made from

**(A)** one variety of cheese, in which the maximum amount of moisture permitted is 40 per cent or more, or

**(B)** more than one variety of cheese, in which the average maximum amount of moisture permitted is 40 per cent or more,

a moisture content that does not exceed, by more than three per cent, the amount referred to in clause (A) or (B), as the case may be, and a milk fat content that is not less, by more than two per cent,

**B.08.040 (1) [N].** Le **fromage fondu (indication de la variété)**

**a)** doit

**(i)** sous réserve du sous-alinéa (ii), être le produit du broyage et du mélange, à l'aide d'une source de chaleur, des variétés de fromage nommées, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** dans le cas du fromage cheddar fondu, être le produit du broyage et du mélange, à l'aide d'une source de chaleur, des fromages suivants en vue de former une masse homogène :

**(A)** fromage cheddar,

**(B)** fromage à caillé brassé,

**(C)** fromage à caillé granuleux, ou

**(D)** fromage à caillé lavé,

**(iii)** s'il est fait

**(A)** d'une seule variété de fromage dont le pourcentage maximal d'humidité permise est inférieur à 40 pour cent, ou

**(B)** de plusieurs variétés de fromage dont la moyenne des pourcentages maximaux d'humidité permise est inférieure à 40 pour cent,

contenir un pourcentage d'humidité non supérieur de plus de cinq pour cent au pourcentage maximal visé à la disposition (A) ou (B), selon le cas, et un pourcentage de matière grasse de lait non inférieur de plus de trois pour cent au pourcentage minimal ou à la moyenne des pourcentages minimaux permis pour cette ou ces variétés,

**(iv)** sous réserve du sous-alinéa (v), s'il est fait

**(A)** d'une seule variété de fromage dont le pourcentage maximal d'humidité permise est d'au moins 40 pour cent, ou

**(B)** de plusieurs variétés de fromage dont la moyenne des pourcentages maximaux d'humidité permise est d'au moins 40 pour cent,

contenir un pourcentage d'humidité non supérieur de plus de trois pour cent au pourcentage maximal visé à la disposition (A) ou (B), selon le cas, et un pourcentage de matière grasse de lait non inférieur

than the minimum milk fat content or average minimum milk fat content permitted for that variety or those varieties, as the case may be, and

**(v)** in the case of processed skim milk cheese, contain not more than

**(A)** 55 per cent moisture, and

**(B)** seven per cent milk fat; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** in the case of processed skim milk cheese, added skim milk powder, buttermilk powder and whey powder,

**(iv)** salt, vinegar and sweetening agents,

**(v)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(vi)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate) in an amount not exceeding 0.5 per cent,

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(C)** lecithin in an amount not exceeding 0.2 per cent, and

de plus de deux pour cent au pourcentage minimal ou à la moyenne des pourcentages minimaux permis pour cette ou ces variétés, et

**(v)** dans le cas du fromage de lait écrémé fondu, contenir au plus

**(A)** 55 pour cent d'humidité, et

**(B)** sept pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** s'il s'agit de fromage de lait écrémé fondu, du lait écrémé en poudre, du lait de beurre en poudre et du petit-lait en poudre ajoutés,

**(iv)** du sel, du vinaigre et des agents édulcorants,

**(v)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(vi)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose),

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(D)** monoglycerides, mono- and diglycerides or any combination thereof in an amount not exceeding 0.5 per cent,

**(vi.1)** calcium phosphate tribasic as an agent to improve colour, texture, consistency and spreadability, in an amount not exceeding 1 per cent,

**(vii)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(viii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(ix)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(C)** de la lécithine en quantité n'excédant pas 0,2 pour cent, et

**(D)** en quantité ne dépassant pas 0,5 pour cent, des monoglycérides et des mono- et diglycérides ou un mélange de ces produits,

**(vi.1)** du phosphate tricalcique comme agent pour améliorer la couleur, la texture, la consistance et la tartinabilité, en quantité n'excédant pas 1 pour cent,

**(vii)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium, et de l'acide tartarique comme rajusteurs du pH,

**(viii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(ix)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/91-409, s. 1; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/91-409, art. 1; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041 (1) [S]. Processed (naming the variety) Cheese with (naming the added ingredients)

**(a)** shall

### B.08.041 (1) [N]. Le fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés)

**(i)** be the product made by comminuting and mixing the named variety or varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass with the aid of heat,

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from processed (naming the variety) cheese but not in amounts so large as to change the basic nature of the product:

**(A)** flavouring preparations other than such preparations that resemble the flavour of the varieties of cheese used in the product,

**(B)** chocolate, condiments, seasonings or spices,

**(C)** fruits, nuts, pickles, relishes or vegetables,

**(D)** prepared or preserved meat, or

**(E)** prepared or preserved fish,

**(iii)** have, where it is made from

**(A)** one variety of cheese, in which the maximum amount of moisture permitted is less than 40 per cent, or

**(B)** more than one variety of cheese, in which the average maximum amount of moisture permitted is less than 40 per cent,

a moisture content that does not exceed by more than five per cent, the amount referred to in clause (A) or (B), as the case may be, and a milk fat content that is not less, by more than three per cent, than the minimum milk fat content or average minimum milk fat content permitted for that variety or those varieties, as the case may be, and

**(iv)** have, where it is made from

**(A)** one variety of cheese, in which the maximum amount of moisture permitted is 40 per cent or more, or

**(B)** more than one variety of cheese, in which the average maximum amount of moisture permitted is 40 per cent or more,

a moisture content that does not exceed, by more than three per cent, the amount referred to in clause (A) or (B), as the case may be, and a milk fat content that is not less, by more than two per cent, than the minimum milk fat content or average

**a)** doit

**(i)** être le produit du broyage et du mélange, à l'aide d'une source de chaleur, des variétés de fromage nommées, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer du fromage fondu (indication de la variété), tout en conservant la nature fondamentale, les ingrédients suivants :

**(A)** des préparations aromatisantes autres que celles qui ressemblent à l'arôme des variétés de fromage utilisées,

**(B)** des assaisonnements, du chocolat, des condiments ou des épices,

**(C)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(D)** de la viande préparée ou conservée, ou

**(E)** du poisson préparé ou conservé,

**(iii)** s'il est fait

**(A)** d'une seule variété de fromage dont le pourcentage maximal d'humidité permise est inférieur à 40 pour cent, ou

**(B)** de plusieurs variétés de fromage dont la moyenne des pourcentages maximaux d'humidité permise est inférieure à 40 pour cent,

contenir un pourcentage d'humidité non supérieur de plus de cinq pour cent au pourcentage maximal visé à la disposition (A) ou (B), selon le cas, et un pourcentage de matière grasse de lait non inférieur de plus de trois pour cent au pourcentage minimal ou à la moyenne des pourcentages minimaux permis pour cette ou ces variétés, et

**(iv)** s'il est fait

**(A)** d'une seule variété de fromage dont le pourcentage maximal d'humidité permise est d'au moins 40 pour cent, ou

**(B)** de plusieurs variétés de fromage dont la moyenne des pourcentages maximaux d'humidité permise est d'au moins 40 pour cent,

contenir un pourcentage d'humidité non supérieur de plus de trois pour cent au pourcentage maximal

minimum milk fat content permitted for that variety or those varieties, as the case may be; and

**(b)** may contain

**(i)** water added to adjust moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate) in an amount not exceeding 0.5 per cent,

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(C)** lecithin in an amount not exceeding 0.2 per cent, and

**(D)** monoglycerides, mono- and diglycerides or any combination thereof in an amount not exceeding 0.5 per cent,

**(v.1)** calcium phosphate tribasic as an agent to improve colour, texture, consistency and spreadability, in an amount not exceeding 1 per cent,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate,

visé à la disposition (A) ou (B), selon le cas, et un pourcentage de matière grasse de lait non inférieur de plus de deux pour cent au pourcentage minimal ou à la moyenne des pourcentages minimaux permis pour cette ou ces variétés; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose),

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(C)** de la lécithine en quantité n'excédant pas 0,2 pour cent, et

**(D)** en quantité ne dépassant pas 0,5 pour cent, des monoglycérides et des mono- et diglycérides ou un mélange de ces produits,

sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(v.1)** du phosphate tricalcique comme agent pour améliorer la couleur, la texture, la consistance et la tartinabilité, en quantité n'excédant pas 1 pour cent,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium, et de l'acide tartarique comme rajusteurs du pH,

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/91-409, s. 2; SOR/92-400, s. 5; SOR/2010-94, s. 4(E); SOR/2011-278, s. 4; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/91-409, art. 2; DORS/92-400, art. 5; DORS/2010-94, art. 4(A); DORS/2011-278, art. 4; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.1 (1) [S]. Processed Cheese Food

**(a)** shall

**(i)** be the product made by comminuting and mixing one or more varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass with the aid of heat, and

**(ii)** contain

### B.08.041.1 (1) [N]. Une **préparation de fromage fondu**

**a)** doit

**(i)** être le produit du broyage et du mélange, à l'aide d'une source de chaleur, d'une ou de plusieurs variétés de fromage, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène, et

**(A)** added milk or milk products,

**(B)** not less than 51 per cent cheese,

**(C)** not more than 46 per cent moisture, and

**(D)** not less than 23 per cent milk fat; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate) in an amount not exceeding 0.5 per cent,

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(C)** lecithin in an amount not exceeding 0.2 per cent, and

**(D)** monoglycerides, mono- and diglycerides or any combination thereof in an amount not exceeding 0.5 per cent,

**(v.1)** calcium phosphate tribasic as an agent to improve colour, texture, consistency and spreadability, in an amount not exceeding 1 per cent,

**(ii)** contenir

**(A)** du lait ou des produits du lait ajoutés,

**(B)** au moins 51 pour cent de fromage,

**(C)** au plus 46 pour cent d'humidité, et

**(D)** au moins 23 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou d'un mélange de ces produits.

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose),

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(C)** de la lécithine, en quantité n'excédant pas 0,2 pour cent, et

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/91-409, s. 3; SOR/92-400, s. 6; SOR/2007-302, s. 4(F); SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

### B.08.041.2 (1) [S]. Processed Cheese Food with (naming the added ingredients)

**(a)** shall

**(i)** be the product made by comminuting and mixing one or more varieties of cheese, other than

**(D)** en quantité ne dépassant pas 0,5 pour cent, des monoglycérides et des mono- et diglycérides ou un mélange de ces produits,

**(v.1)** du phosphate tricalcique comme agent pour améliorer la couleur, la texture, la consistance et la tartinabilité, en quantité n'excédant pas 1 pour cent,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH,

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, la propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, la sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/91-409, art. 3; DORS/92-400, art. 6; DORS/2007-302, art. 4(F); DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.2 (1) [N]. Une **préparation de fromage fondu (avec indication des ingrédients ajoutés)**

**a)** doit

**(i)** être le produit du broyage et du mélange, à l'aide d'une source de chaleur, d'une ou de

cream cheese, cottage cheese or whey cheese, into a homogeneous mass with the aid of heat,

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from processed cheese food but not in amounts so large as to change the basic nature of the product:

**(A)** chocolate, condiments, flavouring preparations, seasonings or spices,

**(B)** fruits, nuts, pickles, relishes or vegetables,

**(C)** prepared or preserved meat, or

**(D)** prepared or preserved fish, and

**(iii)** contain

**(A)** added milk or milk products,

**(B)** not more than 46 per cent moisture, and

**(C)** not less than 22 per cent milk fat; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8'-carotenal, ethyl beta-apo-8'-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate) in an amount not exceeding 0.5 per cent,

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium

plusieurs variétés de fromage, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer de la préparation de fromage fondu, tout en conservant sa nature fondamentale, les ingrédients suivants :

**(A)** des assaisonnements, du chocolat, des condiments, des épices ou des préparations aromatisantes,

**(B)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(C)** de la viande préparée ou conservée, ou

**(D)** du poisson préparé ou conservé, et

**(iii)** contenir

**(A)** du lait ou des produits du lait ajoutés,

**(B)** au plus 46 pour cent d'humidité, et

**(C)** au moins 22 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose),

phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(C)** lecithin in an amount not exceeding 0.2 per cent, and

**(D)** monoglycerides, mono- and diglycerides or any combination thereof in an amount not exceeding 0.5 per cent,

**(v.1)** calcium phosphate tribasic as an agent to improve colour, texture, consistency and spreadability, in an amount not exceeding 1 per cent,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(C)** de la lécithine, en quantité n'excédant pas 0,2 pour cent, et

**(D)** en quantité ne dépassant pas 0,5 pour cent, des monoglycérides et des mono- et diglycérides ou un mélange de ces produits,

**(v.1)** du phosphate tricalcique comme agent pour améliorer la couleur, la texture, la consistance et la tartinabilité, en quantité n'excédant pas 1 pour cent,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH,

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/91-409, s. 4; SOR/92-400, s. 7; SOR/2007-302, s. 4(F); SOR/2011-278, s. 5; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

### B.08.041.3 (1) [S]. Processed Cheese Spread

**(a)** shall

**(i)** be the product made by comminuting and mixing one or more varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass with the aid of heat, and

**(ii)** contain

**(A)** added milk or milk products,

**(B)** not less than 51 per cent cheese,

**(C)** not more than 60 per cent moisture, and

**(D)** not less than 20 per cent milk fat;

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8'-carotenal, ethyl beta-apo-8'-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/91-409, art. 4; DORS/92-400, art. 7; DORS/2007-302, art. 4(F); DORS/2011-278, art. 5; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.3 (1) [N]. Le fromage fondu à tartiner

**a)** doit

**(i)** être le produit du broyage et du mélange, à l'aide d'une source de chaleur, d'une ou de plusieurs variétés de fromage, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène, et

**(ii)** contenir

**(A)** du lait ou des produits du lait ajoutés,

**(B)** au moins 51 pour cent de fromage,

**(C)** au plus 60 pour cent d'humidité, et

**(D)** au moins 20 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-8po-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(A)** ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent,

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(C)** lecithin in an amount not exceeding 0.2 per cent, and

**(D)** monoglycerides, mono- and diglycerides or any combination thereof in an amount not exceeding 0.5 per cent,

**(v.1)** calcium phosphate tribasic as an agent to improve colour, texture, consistency and spreadability, in an amount not exceeding 1 per cent,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carraghénine d'ammonium, la carraghénine de calcium, la gomme de caroube (gomme de caroubier), la carraghénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carraghénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carraghénine de sodium, la gomme adragante, la gomme xanthane ou un mélange de ces produits,

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(C)** de la lécithine, en quantité n'excédant pas 0,2 pour cent, et

**(D)** en quantité ne dépassant pas 0,5 pour cent, des monoglycérides et des mono- et diglycérides ou un mélange de ces produits,

**(v.1)** du phosphate tricalcique comme agent pour améliorer la couleur, la texture, la consistance et la tartinabilité, en quantité n'excédant pas 1 pour cent,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH,

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/82-1071, s. 4; SOR/91-409, s. 5; SOR/2007-302, s. 4(F); SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

### B.08.041.4 (1) [S]. Processed Cheese Spread with (naming the added ingredients)

**(a)** shall

**(i)** be the product made by comminuting and mixing one or more varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass with the aid of heat,

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from processed cheese spread but not in amounts so large as to change the basic nature of the product:

**(A)** chocolate, condiments, flavouring preparations, seasonings or spices,

**(B)** fruits, nuts, pickles, relishes or vegetables,

**(C)** prepared or preserved meat, or

**(D)** prepared or preserved fish, and

**(iii)** contain

**(A)** added milk or milk products,

**(B)** not more than 60 per cent moisture, and

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'exédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/82-1071, art. 4; DORS/91-409, art. 5; DORS/2007-302, art. 4(F); DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.4 (1) [N]. Le **fromage fondu à tartiner (avec indication des ingrédients ajoutés)**

**a)** doit

**(i)** être le produit du broyage et du mélange, à l'aide d'une source de chaleur, d'une ou de plusieurs variétés de fromage, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer du fromage fondu à tartiner, tout en conservant sa nature fondamentale, les ingrédients suivants :

**(A)** des assaisonnements, du chocolat, des condiments, des épices ou des préparations aromatisantes,

**(B)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(C)** de la viande préparée ou conservée, ou

**(D)** du poisson préparé ou conservé, et

**(iii)** contenir

**(A)** du lait ou des produits du lait ajoutés,

**(C)** not less than 20 per cent milk fat; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent,

**(B)** calcium phosphate dibasic, potassium phosphate dibasic, sodium acid pyrophosphate, sodium aluminum phosphate, sodium hexametaphosphate, sodium phosphate dibasic, sodium phosphate monobasic, sodium phosphate tribasic, sodium pyrophosphate tetrabasic, calcium citrate, potassium citrate, sodium citrate, sodium potassium tartrate, sodium tartrate, sodium gluconate or any combination thereof in an amount, when calculated as anhydrous salts, not exceeding 3.5 per cent in the case of phosphate salts and 4.0 per cent in total,

**(C)** lecithin in an amount not exceeding 0.2 per cent, and

**(D)** monoglycerides, mono- and diglycerides or any combination thereof in an amount not exceeding 0.5 per cent,

**(v.1)** calcium phosphate tribasic as an agent to improve colour, texture, consistency and spreadability, in an amount not exceeding 1 per cent,

**(B)** au plus 60 pour cent d'humidité, et

**(C)** au moins 20 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conformant aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

**(A)** en quantité n'excédant pas 0,5 pour cent, la carraghénine d'ammonium, la carraghénine de calcium, la gomme de caroube (gomme de caroubier), la carraghénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carraghénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carraghénine de sodium, la gomme adragante, la gomme xanthane ou un mélange de ces produits,

**(B)** le phosphate de calcium dibasique, le phosphate de potassium dibasique, le pyrophosphate acide de sodium, le phosphate d'aluminium et de sodium, l'hexamétaphosphate de sodium, le phosphate disodique, le phosphate monosodique, le phosphate trisodique, le pyrophosphate tétrasodique, le citrate de calcium, le citrate de potassium, le citrate de sodium, le tartrate double de sodium et de potassium, le tartrate de sodium, le gluconate de sodium ou un mélange de ces produits, en quantité qui, calculée en sels anhydres, ne dépasse pas 3,5 pour cent, dans le cas des sels de phosphate, et 4,0 pour cent en tout,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(C)** de la lécithine, en quantité n'excédant pas 0,2 pour cent, et

**(D)** en quantité ne dépassant pas 0,5 pour cent, des monoglycérides et des mono- et diglycérides ou un mélange de ces produits,

**(v.1)** du phosphate tricalcique comme agent pour améliorer la couleur, la texture, la consistance et la tartinabilité, en quantité n'excédant pas 1 pour cent,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium, et de l'acide tartarique comme rajusteurs du pH,

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/82-1071, s. 5; SOR/91-409, s. 6; SOR/2007-302, s. 4(F); SOR/2011-278, s. 6; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/82-1071, art. 5; DORS/91-409, art. 6; DORS/2007-302, art. 4(F); DORS/2011-278, art. 6; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.5 (1) [S]. Cold-Pack (naming the variety) Cheese

**(a)** shall

### B.08.041.5 (1) [N]. Le fromage conditionné à froid (indication de la variété)

**a)** doit

**(i)** subject to subparagraph (ii), be the product made by comminuting and mixing the named variety or varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass without the aid of heat,

**(ii)** in the case of cold-pack cheddar cheese, be the product made by comminuting and mixing one or more of the following:

**(A)** cheddar cheese,

**(B)** stirred curd cheese,

**(C)** granular curd cheese, or

**(D)** washed curd cheese

into a homogeneous mass without the aid of heat,

**(iii)** contain, where it is made from

**(A)** one variety of cheese, not more moisture and not less milk fat than the maximum moisture content and minimum fat content permitted for that variety, or

**(B)** more than one variety of cheese, not more moisture and not less milk fat than the average maximum moisture content and the average minimum fat content permitted for those varieties; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(i)** sous réserve du sous-alinéa (ii), être le produit du broyage et du mélange, sans l'aide d'une source de chaleur, des variétés de fromage nommées, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** dans le cas du fromage cheddar conditionné à froid, être le produit du broyage et du mélange, sans l'aide d'une source de chaleur, des fromages suivants, en vue de former une masse homogène :

**(A)** fromage cheddar,

**(B)** fromage à caillé brassé,

**(C)** fromage à caillé granuleux, ou

**(D)** fromage à caillé lavé,

**(iii)** s'il est fait

**(A)** d'une seule variété de fromage, ne pas contenir plus d'humidité que le pourcentage maximal permis pour cette variété, et ne pas contenir moins de matière grasse de lait que le pourcentage minimal permis pour cette variété, ou

**(B)** de plusieurs variétés de fromage, ne pas contenir plus d'humidité que la moyenne des pourcentages maximaux permis pour ces variétés, et ne pas contenir moins de matière grasse de lait que la moyenne des pourcentages minimaux permis pour ces variétés; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(vi)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(vii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/92-400, s. 8; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

### B.08.041.6 (1) [S]. Cold-Pack (naming the variety) Cheese with (naming the added ingredients)

**(a)** shall

**(i)** be the product made by comminuting and mixing the named variety or varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass without the aid of heat,

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from cold-pack (naming the variety) cheese but not in amounts so large as to change the basic nature of the product:

**(v)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH,

**(vi)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(vii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/92-400, art. 8; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.6 (1) [N]. Le fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés)

**a)** doit

**(i)** être le produit du broyage et du mélange, sans l'aide d'une source de chaleur, des variétés de fromage nommées, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer du fromage conditionné à froid (indication de la variété), tout en conservant sa nature fondamentale, les ingrédients suivants :

**(A)** flavouring preparations other than such preparations that resemble the flavour of the varieties of cheese used in the product,

**(B)** chocolate, condiments, seasonings or spices,

**(C)** fruits, nuts, pickles, relishes or vegetables,

**(D)** prepared or preserved meat, or

**(E)** prepared or preserved fish, and

**(iii)** contain, where it is made from

**(A)** one variety of cheese, not more moisture and not less milk fat than the maximum moisture content and one per cent less than the minimum milk fat content permitted for that variety, or

**(B)** more than one variety of cheese, not more moisture and not less milk fat than the average maximum moisture content and one per cent less than the average minimum milk fat content permitted for those varieties; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent,

**(A)** des préparations aromatisantes autres que celles qui ressemblent à l'arôme des variétés de fromage utilisées dans le produit,

**(B)** des assaisonnements, du chocolat, des condiments ou des épices,

**(C)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(D)** de la viande préparée ou conservée, ou

**(E)** du poisson préparé ou conservé, et

**(iii)** s'il est fait

**(A)** d'une seule variété de fromage, avoir un pourcentage d'humidité non supérieur au maximum permis pour cette variété, et un pourcentage de matière grasse de lait non inférieur de plus de un pour cent au minimum permis pour cette variété, ou

**(B)** de plusieurs variétés de fromage, avoir un pourcentage d'humidité non supérieur à la moyenne des maximums permis pour ces variétés, et un pourcentage de matière grasse de lait non inférieur de plus de un pour cent à la moyenne des minimums permis pour ces variétés; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

en quantité ne dépassant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/92-400, s. 9; SOR/2010-94, s. 5(E); SOR/2011-278, s. 7; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

### B.08.041.7 (1) [S]. Cold-Pack Cheese Food

**(a)** shall

**(i)** be the product made by comminuting and mixing one or more varieties of cheese, other than

la gomme du guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH, et

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/92-400, art. 9; DORS/2010-94, art. 5(A); DORS/2011-278, art. 7; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.7 (1) [N]. Une préparation de fromage conditionné à froid

**a)** doit

**(i)** être le produit du broyage et du mélange, sans l'aide d'une source de chaleur, d'une ou de

cream cheese, cottage cheese or whey cheese, into a homogeneous mass without the aid of heat,

**(ii)** contain

**(A)** added milk or milk products,

**(B)** not less than 51 per cent cheese,

**(C)** not more than 46 per cent moisture, and

**(D)** not less than 23 per cent milk fat; and

**(b)** may contain

**(i)** water added to adjust the moisture content,

**(ii)** added milk fat,

**(iii)** salt, vinegar and sweetening agents,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

plusieurs variétés de fromage, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** contenir

**(A)** du lait ou des produits du lait ajoutés,

**(B)** au moins 51 pour cent de fromage,

**(C)** au plus 46 pour cent d'humidité, et

**(D)** au moins 23 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** du sel, du vinaigre et des agents édulcorants,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

en quantité ne dépassant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH,

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/2007-302, s. 4(F); SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

### B.08.041.8 (1) [S]. Cold-Pack Cheese Food with (naming the added ingredients)

**(a)** shall

**(i)** be the product made by comminuting and mixing one or more varieties of cheese, other than cream cheese, cottage cheese or whey cheese, into a homogeneous mass without the aid of heat,

**(ii)** contain the named added ingredients which shall be one or more of the following ingredients in amounts sufficient to differentiate the product from cold-pack cheese food but not in amounts so large as to change the basic nature of the product:

**(A)** chocolate, condiments, flavouring preparations, seasonings or spices,

**(B)** fruits, nuts, pickles, relishes or vegetables,

**(C)** prepared or preserved meat, or

**(D)** prepared or preserved fish, and

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/2007-302, art. 4(F); DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

### B.08.041.8 (1) [N]. Une préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés)

**a)** doit

**(i)** être le produit du broyage et du mélange, sans l'aide d'une source de chaleur, d'une ou de plusieurs variétés de fromage, autre que le fromage à la crème, le fromage cottage ou le fromage de petit-lait, en vue de former une masse homogène,

**(ii)** contenir, en quantité suffisante pour pouvoir se distinguer de la préparation de fromage conditionné à froid, tout en conservant sa nature fondamentale, les ingrédients suivants :

**(A)** des assaisonnements, du chocolat, des condiments, des épices ou des préparations aromatisantes,

**(B)** des achards, des cornichons, des fruits, des légumes ou des noix,

**(iii)** contain

**(A)** added milk or milk products,

**(B)** not more than 46 per cent moisture, and

**(C)** not less than 22 per cent milk fat; and

**(b)** may contain

**(i)** water added to adjust moisture content,

**(ii)** added milk fat,

**(iii)** sweetening agents, salt and vinegar,

**(iv)** one or more of the following colouring agents:

**(A)** in an amount consistent with good manufacturing practice, annatto, beta-carotene, chlorophyll, paprika, riboflavin, turmeric, and

**(B)** in an amount not exceeding 35 parts per million, either singly or in combination thereof, beta-apo-8′-carotenal, ethyl beta-apo-8′-carotenoate,

**(v)** the following emulsifying, gelling, stabilizing and thickening agents:

ammonium carrageenan, calcium carrageenan, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, Irish Moss Gelose, potassium carrageenan, propylene glycol alginate, sodium carboxymethyl cellulose (carboxymethyl cellulose, cellulose gum, sodium cellulose glycolate), sodium carrageenan, tragacanth gum, xanthan gum or a combination thereof in an amount not exceeding 0.5 per cent,

**(vi)** acetic acid, calcium carbonate, citric acid, lactic acid, malic acid, phosphoric acid, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate and tartaric acid as pH adjusting agents in an amount consistent with good manufacturing practice,

**(vii)** wood smoke as a preservative in an amount consistent with good manufacturing practice, and

**(viii)** the following preservatives:

**(A)** propionic acid, calcium propionate, sodium propionate or any combination thereof in an amount not exceeding 2,000 parts per million, calculated as propionic acid,

**(C)** de la viande préparée ou conservée, ou

**(D)** du poisson préparé ou conservé, et

**(iii)** contenir

**(A)** du lait ou des produits du lait ajoutés,

**(B)** au plus 46 pour cent d'humidité, et

**(C)** au moins 22 pour cent de matière grasse de lait; et

**b)** peut contenir

**(i)** de l'eau ajoutée pour modifier la teneur en humidité,

**(ii)** de la matière grasse de lait ajoutée,

**(iii)** des agents édulcorants, du sel et du vinaigre,

**(iv)** les colorants suivants :

**(A)** en quantité conforme aux bonnes pratiques industrielles, le rocou, le ß-carotène, la chlorophylle, le paprika, la riboflavine, le curcuma, et

**(B)** en quantité n'excédant pas 35 parties par million, le ß-apo-8′-caroténal, l'ester éthylique de l'acide ß-apo-8′-caroténoïque ou un mélange de ces produits,

**(v)** les agents émulsifiants, gélatinisants, stabilisants et épaississants qui suivent :

en quantité ne dépassant pas 0,5 pour cent, la carragénine d'ammonium, la carragénine de calcium, la gomme de caroube (fève de l'acacia vulgaire ou faux acacia), la carragénine, la gélatine, la gomme de guar, la gélose de mousse d'Irlande, la carragénine de potassium, l'alginate de propylèneglycol, la carboxyméthylcellulose sodique (carboxyméthylcellulose, gomme de cellulose, glycolate sodique de cellulose), la carragénine sodique, la gomme adragante, la gomme xanthane ou un mélange de ces produits,

**(vi)** en quantité conforme aux bonnes pratiques industrielles, de l'acide acétique, du carbonate de calcium, de l'acide citrique, de l'acide lactique, de l'acide malique, de l'acide phosphorique, du bicarbonate de potassium, du carbonate de potassium, du bicarbonate de sodium, du carbonate de sodium et de l'acide tartarique comme rajusteurs du pH,

**(B)** sorbic acid, calcium sorbate, potassium sorbate, sodium sorbate, or any combination thereof in an amount not exceeding 3,000 parts per million, calculated as sorbic acid, or

**(C)** any combination of the preservatives named in clauses (A) and (B) in an amount not exceeding 3,000 parts per million, calculated as propionic acid and sorbic acid respectively.

**(2)** Only a cheese to which wood smoke has been added as permitted in subsection (1) may be described by the term "smoked" on a label.

**(3)** Where a cheese is labelled as permitted in subsection (2), the word "smoked" shall be shown on the principal display panel.

SOR/79-752, s. 2; SOR/2007-302, s. 4(F); SOR/2011-278, s. 8; SOR/2017-18, s. 18(F); SOR/2018-69, s. 28(F).

**B.08.042** No manufacturer shall sell whole cheese that is not made from a pasteurized source unless the date of the beginning of the manufacturing process is

**(a)** marked or branded thereon within three days thereof; or

**(b)** marked on the label at the time of packaging, if the cheese is such that, because of its texture, consistency, or physical structure, such date cannot be effectively branded or marked on the cheese.

**B.08.043** No manufacturer shall sell any cheese that is not made from a pasteurized source if it has been cut into smaller portions, unless

**(a)** it has been duly stored; or

**(b)** each portion of cut cheese is marked, branded or labelled with the date of the beginning of the manufacturing process.

**(vii)** de la fumée de bois comme agent de conservation, en quantité conforme aux bonnes pratiques industrielles, et

**(viii)** les agents de conservation suivants :

**(A)** l'acide propionique, le propionate de calcium, le propionate de sodium ou un mélange de ces produits, en quantité n'excédant pas 2 000 parties par million, calculée en acide propionique,

**(B)** l'acide sorbique, le sorbate de calcium, le sorbate de potassium, le sorbate de sodium ou un mélange de ces produits, en quantité n'excédant pas 3 000 parties par million, calculée en acide sorbique, ou

**(C)** un mélange des agents de conservation visés aux dispositions (A) et (B), en quantité n'excédant pas 3 000 parties par million, calculée respectivement en acide propionique et en acide sorbique.

**(2)** L'étiquette d'un fromage ne doit porter le terme « fumé » que si de la fumée de bois a été ajoutée au fromage conformément au paragraphe (1).

**(3)** Dans les cas visés au paragraphe (2), le terme « fumé » doit paraître dans l'espace principal de l'étiquette.

DORS/79-752, art. 2; DORS/2007-302, art. 4(F); DORS/2011-278, art. 8; DORS/2017-18, art. 18(F); DORS/2018-69, art. 28(F).

**B.08.042** Est interdite à tout fabricant la vente de fromage entier qui n'a pas été fabriqué à partir d'une matière première pasteurisée, à moins que la date du début de la fabrication ne soit

**a)** marquée ou timbrée sur ledit fromage dans les trois jours; ou

**b)** marquée sur l'étiquette au moment de l'empaquetage, si ledit fromage est d'un type tel qu'il soit difficile, en raison de sa texture, de sa consistance ou de sa structure physique, d'y marquer ou timbrer ladite date.

**B.08.043** Est interdite à tout fabricant la vente de tout fromage qui n'a pas été fabriqué à partir d'une matière première pasteurisée, si ledit fromage a été subdivisé en petites portions, à moins

**a)** que ledit fromage n'ait été dûment entreposé; ou

**b)** que chaque portion du fromage découpé ne porte la date du début de sa fabrication marquée, timbrée ou imprimée.

**B.08.044 (1)** Subject to subsection (2), no person shall sell cheese, including cheese curd, that is not made from a pasteurized source unless it has been stored.

**(2)** Cheese, including cheese curd, that is not made from a pasteurized source may be used as an ingredient in any food providing such food is manufactured or processed so as to pasteurize the cheese in the manner described in the definition ***pasteurized source*** in section B.08.030(1).

SOR/78-405, s. 1; SOR/79-752, s. 3.

**B.08.045** Notwithstanding B.08.044, cheese that has not been manufactured from a pasteurized source and has not been stored but is marked or branded with the date of the beginning of the manufacturing process, may be sold to

**(a)** a wholesaler;

**(b)** a jobber; or

**(c)** in quantities of not less than 900 pounds, to a retailer.

**B.08.046** No person shall sell any whole cheese that has not been made from a pasteurized source unless there is stamped thereon the date of the beginning of the manufacturing process.

**B.08.047** Every manufacturer, wholesaler, or jobber who sells cheese not made from a pasteurized source and which has not been stored shall keep a record of

**(a)** the registered number of the cheese factory,

**(b)** the date of manufacture of the cheese,

**(c)** the vat number or vat numbers,

**(d)** the name and address of the person to whom the cheese is sold, and

**(e)** the weight sold from each vat,

for each lot of cheese sold.

**B.08.048 (1)** Subject to section B.08.054, no person shall sell cheese, including cheese curd, made from a pasteurized source if the cheese contains more than

**(a)** 100 *Escherichia coli*, or

**(b)** 100 *Staphylococcus aureus*

**B.08.044 (1)** Est interdite la vente d'un fromage, y compris le caillé de fromagerie, qui n'a pas été fabriqué à partir d'une matière première pasteurisée sauf s'il a été entreposé.

**(2)** Le fromage, y compris le caillé de fromagerie, qui n'est pas fait d'une matière première pasteurisée, peut être utilisé comme ingrédient dans un aliment si celui-ci est fabriqué ou traité de façon à pasteuriser le fromage selon la méthode prévue dans la définition de « matière première pasteurisée » au paragraphe B.08.030(1).

DORS/78-405, art. 1; DORS/79-752, art. 3.

**B.08.045** Nonobstant l'article B.08.044, le fromage qui n'a pas été fabriqué à partir d'une matière première pasteurisée et qui n'a pas été entreposé, mais qui porte marquée ou timbrée la date du début de sa fabrication, peut être vendu à

**a)** un grossiste;

**b)** un intermédiaire; ou

**c)** en quantité d'au moins 900 livres, à un détaillant.

**B.08.046** Est interdite la vente de tout fromage entier n'ayant pas été fabriqué à partir d'une matière première pasteurisée, à moins que la date du début de la fabrication ne soit timbrée sur ledit fromage.

**B.08.047** Tout fabricant, grossiste, ou intermédiaire, qui vend du fromage n'ayant pas été fabriqué à partir d'une matière première pasteurisée et qui n'a pas été entreposé, doit tenir un registre

**a)** du numéro d'inscription de la fromagerie,

**b)** de la date de fabrication dudit fromage,

**c)** du ou des numéros de cuvées,

**d)** du nom et de l'adresse de la personne à laquelle le fromage est vendu, et

**e)** du poids vendu de fromage provenant de chaque cuvée,

pour chaque lot de fromage vendu.

**B.08.048 (1)** Sous réserve de l'article B.08.054, est interdite la vente d'un fromage, y compris le caillé de fromagerie, fabriqué à partir d'une matière première pasteurisée s'il renferme plus de

**a)** 100 *Escherichia coli*, ou

**b)** 100 *Staphylococcus aureus*

per gram, as determined by official method MFO-14, Microbiological Examination of Cheese, November 30, 1983.

**(2)** No person shall sell cheese, made from an unpasteurized source if the cheese contains more than

**(a)** 500 *Escherichia coli*, or

**(b)** 1,000 *Staphylococcus aureus*

per gram, as determined by official method MFO-14, Microbiological Examination of Cheese, November 30, 1983.

SOR/78-405, s. 2; SOR/82-768, s. 21; SOR/84-17, s. 4.

### B.08.049 [S]. Whey

**(a)** shall be the product remaining after the curd has been removed from milk in the process of making cheese; and

**(b)** may contain

**(i)** catalase, in the case of liquid whey that has been treated with hydrogen peroxide,

**(ii)** lactase,

**(iii)** hydrogen peroxide, in the case of liquid whey destined for the manufacture of dried whey products,

**(iv)** benzoyl peroxide, and calcium phosphate tribasic and calcium sulphate as carriers of the benzoyl peroxide, in the case of liquid whey destined for the manufacture of dried whey products other than those for use in infant formula, and

**(v)** sodium hexametaphosphate, in the case of liquid whey destined for the manufacture of concentrated or dried whey products.

SOR/79-752, s. 4; SOR/89-555, s. 1; SOR/2010-40, s. 1; SOR/2011-282, s. 1.

**B.08.050** [Repealed, SOR/95-281, s. 1]

### B.08.051 [S]. Cottage Cheese

**(a)** shall be the product, in the form of discrete curd particles, prepared from skim milk, evaporated skim milk or skim milk powder and harmless acid-producing bacterial cultures;

**(b)** shall contain not more than 80 per cent moisture;

**(c)** may contain not more than 0.5 per cent stabilizing agent; and

par gramme, après analyse selon la méthode officielle MFO-14, « Examen microbiologique du fromage », 30 novembre 1983.

**(2)** Est interdite la vente d'un fromage fabriqué à partir d'une matière première non pasteurisée, s'il renferme plus de

**a)** 500 *Escherichia coli*, ou

**b)** 1 000 *Staphylococcus aureus*

par gramme, après analyse selon la méthode officielle MFO-14, « Examen microbiologique du fromage », 30 novembre 1983.

DORS/78-405, art. 2; DORS/82-768, art. 21; DORS/84-17, art. 4.

### B.08.049 [N]. Le **petit-lait**:

**a)** est le produit qui reste après que le caillé a été extrait du lait lors de la fabrication du fromage;

**b)** peut contenir :

**(i)** de la catalase, s'il s'agit de petit-lait liquide qui a été traité avec du peroxyde d'hydrogène,

**(ii)** de la lactase,

**(iii)** du peroxyde d'hydrogène, s'il s'agit de petit-lait liquide destiné à la fabrication de produits de petit-lait séché,

**(iv)** du peroxyde de benzoyle ainsi que du phosphate tricalcique et du sulfate de calcium, comme véhicules du peroxyde de benzoyle, s'il s'agit de petit-lait liquide destiné à la fabrication de produits de petit-lait séché autres que ceux entrant dans les préparations pour nourrissons,

**(v)** de l'hexamétaphosphate de sodium, s'il s'agit de petit-lait liquide destiné à la fabrication de produits de petit-lait concentré ou séché.

DORS/79-752, art. 4; DORS/89-555, art. 1; DORS/2010-40, art. 1; DORS/2011-282, art. 1.

**B.08.050** [Abrogé, DORS/95-281, art. 1]

### B.08.051 [N]. Le **fromage cottage**:

**a)** doit être le produit, sous forme de petits grumeaux, préparé à partir de lait écrémé, de lait écrémé évaporé ou de lait écrémé en poudre et de cultures bactériennes anodines qui produisent un acide;

**b)** doit contenir au plus 80 pour cent d'humidité;

**c)** peut contenir au plus 0,5 pour cent d'agent stabilisant;

**(d)** may contain

**(i)** milk,

**(ii)** cream,

**(iii)** milk powder,

**(iv)** rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs,

**(v)** a milk coagulating enzyme derived from *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (Cooney and Emerson)), from *Mucor pusillus Lindt* by pure culture fermentation process or from *Aspergillus oryzae* RET-1 (pBoel777), in an amount consistent with good manufacturing practice,

**(vi)** chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), in an amount consistent with good manufacturing practice,

**(vi.1)** chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105), in an amount consistent with good manufacturing practice,

**(vi.2)** pepsin derived from glandular layer of porcine stomach,

**(vii)** salt,

**(viii)** calcium chloride,

**(ix)** added lactose,

**(x)** pH adjusting agents,

**(xi)** relishes,

**(xii)** fruits,

**(xiii)** vegetables, and

**(xiv)** carbon dioxide.

SOR/81-60, s. 4; SOR/92-197, s. 7; SOR/94-212, s. 7; SOR/95-183, s. 7; SOR/98-458, s. 4; SOR/2001-94, s. 2; SOR/2005-98, s. 7; SOR/2010-143, ss. 7, 39(E).

**B.08.052 [S]. Creamed Cottage Cheese** shall be cottage cheese containing cream or a mixture of cream with milk or skim milk, or both, in such quantity that the final product shall contain

**(a)** not less than four per cent milk fat; and

**d)** peut contenir :

**(i)** du lait,

**(ii)** de la crème,

**(iii)** du lait en poudre,

**(iv)** de la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux,

**(v)** l'enzyme coagulant le lait provenant de *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (Cooney et Emerson)), de *Mucor pusillus Lindt* par fermentation de culture pure ou de *Aspergillus oryzae* RET-1 (pBoel777), en quantité conforme aux bonnes pratiques industrielles,

**(vi)** de la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), en quantité conforme aux bonnes pratiques industrielles,

**(vi.1)** de la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS 105), en quantité conforme aux bonnes pratiques industrielles,

**(vi.2)** pepsine provenant de la muqueuse glandulaire de l'estomac de porc,

**(vii)** du sel,

**(viii)** du chlorure de calcium,

**(ix)** du lactose ajouté,

**(x)** des rajusteurs de pH,

**(xi)** des achards (relish),

**(xii)** des fruits,

**(xiii)** des légumes,

**(xiv)** du dioxyde de carbone.

DORS/81-60, art. 4; DORS/92-197, art. 7; DORS/94-212, art. 7; DORS/95-183, art. 7; DORS/98-458, art. 4; DORS/2001-94, art. 2; DORS/2005-98, art. 7; DORS/2010-143, art. 7 et 39(A).

**B.08.052 [N].** Le **fromage cottage en crème** doit être du fromage cottage qui renferme de la crème, ou un mélange de crème et de lait ou de lait écrémé, ou les deux, en quantité telle que le produit fini doit renfermer

**a)** au moins quatre pour cent de gras de lait; et

**(b)** not more than 80 per cent moisture and may contain emulsifying, gelling, stabilizing and thickening agents.

**B.08.053** All dairy products used in the preparation of cottage cheese shall be from a pasteurized source.

**B.08.054** No person shall sell cottage cheese or creamed cottage cheese that contains more than 10 coliform bacteria per gram, as determined by official method MFO-4, Microbiological Examination of Cottage Cheese, November 30, 1981.

SOR/82-768, s. 22.

## Butter

### B.08.056 [S]. Butter

**(a)** shall

**(i)** be the food prepared in accordance with good manufacturing practices from milk or milk products, and

**(ii)** contain not less than 80 per cent milk fat; and

**(b)** may contain

**(i)** milk solids,

**(ii)** bacterial culture,

**(iii)** salt, and

**(iv)** food colour.

SOR/92-400, s. 10.

**B.08.057 [S]. Whey Butter** shall be butter made from whey cream.

SOR/92-400, s. 10.

## Ice Cream

### B.08.061 [S]. Ice Cream Mix

**(a)** shall be the unfrozen, pasteurized combination of cream, milk or other milk products, sweetened with sugar, liquid sugar, invert sugar, honey, dextrose, glucose, corn syrup, corn syrup solids or any combination of such sweeteners;

**(b)** may contain

**(i)** egg,

**(ii)** a flavouring preparation,

**b)** pas plus de 80 pour cent d'humidité et peut renfermer des agents émulsifiants, gélatinisants, stabilisants ou épaississants.

**B.08.053** Tout produit laitier employé dans la préparation du fromage cottage doit avoir été pasteurisé.

**B.08.054** Est interdite la vente du fromage cottage et du fromage cottage en crème dont la teneur bactérienne dépasse 10 bactéries coliformes par gramme, déterminée selon la méthode officielle MFO-4, Examen microbiologique du fromage cottage, 30 novembre 1981.

DORS/82-768, art. 22.

## Beurre

### B.08.056 [N]. Le **beurre**:

**a)** doit :

**(i)** être l'aliment préparé, conformément aux bonnes pratiques industrielles, à partir du lait ou des produits du lait,

**(ii)** contenir au moins 80 pour cent de la matière grasse du lait;

**b)** peut contenir :

**(i)** des solides du lait,

**(ii)** des cultures bactériennes,

**(iii)** du sel,

**(iv)** un colorant alimentaire.

DORS/92-400, art. 10.

**B.08.057 [N].** Le **beurre de petit-lait** doit être du beurre fabriqué de crème de petit-lait.

DORS/92-400, art. 10.

## Crème glacée

### B.08.061 [N]. Le **mélange pour crème glacée**

**a)** est un mélange pasteurisé, mais non congelé, de crème, de lait ou d'autres produits du lait, édulcoré avec du sucre, du sucre liquide, du sucre inverti, du miel, du dextrose, du glucose, du sirop de maïs, des solides du sirop de maïs ou avec un mélange de n'importe lesquels de ces édulcorants;

**b)** peut renfermer

**(i)** des œufs,

**(iii)** cocoa or chocolate syrup,

**(iv)** a food colour,

**(v)** pH adjusting agents,

**(vi)** microcrystalline cellulose or a stabilizing agent or both in an amount that will not exceed 0.5 per cent of the ice cream made from the mix,

**(vii)** a sequestering agent,

**(viii)** salt,

**(ix)** not more than one per cent added edible casein or edible caseinates; and

**(x)** propylene glycol mono fatty acid esters in an amount that will not exceed 0.35 per cent of the ice cream made from the mix and sorbitan tristearate in an amount that will not exceed 0.035 per cent of the ice cream made from the mix; and

**(c)** shall contain not less than

**(i)** 36 per cent solids, and

**(ii)** 10 per cent milk fat or, where cocoa or chocolate syrup has been added, eight per cent milk fat.

SOR/92-400, s. 11; SOR/97-543, s. 2(F); SOR/2007-75, s. 2; SOR/2007-302, s. 4(F); SOR/2010-142, s. 6(F).

### B.08.062 [S]. Ice Cream

**(a)** shall be the frozen food obtained by freezing an ice cream mix, with or without the incorporation of air;

**(b)** may contain cocoa or chocolate syrup, fruit, nuts or confections;

**(c)** shall contain not less than

**(i)** 36 per cent solids,

**(ii)** 10 per cent milk fat, or, where cocoa or chocolate syrup, fruit, nuts, or confections have been added, eight per cent milk fat, and

**(iii)** 180 grams of solids per litre of which amount not less than 50 grams shall be milk fat, or, where cocoa or chocolate syrup, fruit, nuts or confections have been added, 180 grams of solids per litre of

**(ii)** une préparation aromatisante,

**(iii)** du cacao ou du sirop de chocolat,

**(iv)** un colorant pour aliments,

**(v)** des rajusteurs de pH,

**(vi)** de la cellulose microcristalline ou un agent stabilisant, ou les deux, en quantité telle que la crème glacée, faite du mélange, n'en contiendra pas plus de 0,5 pour cent,

**(vii)** un chélateur ou agent séquestrant,

**(viii)** du sel,

**(ix)** au plus un pour cent de caséine comestible ou de caséinates comestibles ajoutés,

**(x)** des esters monoacides gras de propylèneglycol en quantité telle que la crème glacée, faite du mélange, n'en contiendra pas plus de 0,35 pour cent et du tristéarate de sorbitan en quantité telle que la crème glacée, faite du mélange, n'en contiendra pas plus de 0,035 pour cent;

**c)** doit renfermer au moins

**(i)** 36 pour cent de solides, et

**(ii)** 10 pour cent de gras de lait ou, si du cacao ou du sirop de chocolat ont été ajoutés, huit pour cent de gras de lait.

DORS/92-400, art. 11; DORS/97-543, art. 2(F); DORS/2007-75, art. 2; DORS/2007-302, art. 4(F); DORS/2010-142, art. 6(F).

### B.08.062 [N]. La **crème glacée**

**a)** est l'aliment congelé obtenu par congélation d'un mélange à crème glacée, avec ou sans incorporation d'air;

**b)** peut renfermer du cacao ou du sirop de chocolat, des fruits, des noix et des confiseries;

**c)** doit renfermer au moins

**(i)** 36 pour cent de solides,

**(ii)** 10 pour cent de gras de lait ou, si du cacao ou du sirop de chocolat, des fruits, des noix ou des confiseries ont été ajoutés, huit pour cent de gras de lait, et

**(iii)** 180 grammes de solides au litre dont au moins 50 grammes doivent être de la matière grasse du lait, ou, si du cacao ou du sirop de chocolat, des

which amount not less than 40 grams shall be milk fat; and

**(d)** shall contain not more than

**(i)** 100,000 bacteria per gram, and

**(ii)** 10 coliform organisms per gram,

as determined by official method MFO-2, Microbiological Examination of Ice Cream or Ice Milk, November 30, 1981.

SOR/82-768, s. 23; SOR/92-400, s. 12.

## Sherbet

[SOR/98-580, s. 1(F)]

### B.08.063 [S]. Sherbet

**(a)** shall be the frozen food, other than ice cream or ice milk, made from a milk product;

**(b)** may contain

**(i)** water,

**(ii)** a sweetening agent,

**(iii)** fruit or fruit juice,

**(iv)** citric or tartaric acid,

**(v)** a flavouring preparation,

**(vi)** a food colour,

**(vii)** not more than 0.75 per cent stabilizing agent,

**(viii)** a sequestering agent,

**(ix)** lactose,

**(x)** not more than 0.5 per cent microcrystalline cellulose, and

**(xi)** not more than one per cent added edible casein or edible caseinates; and

**(c)** shall contain

**(i)** not more than five per cent milk solids, including milk fat, and

**(ii)** not less than 0.35 per cent acid determined by titration and expressed as lactic acid.

SOR/92-400, s. 13; SOR/97-543, s. 3(F); SOR/98-580, s. 1(F); SOR/2007-302, s. 4(F).

fruits, des noix ou des confiseries ont été ajoutés, 180 grammes de solides au litre, dont au moins 40 grammes doivent être de la matière grasse du lait;

**d)** doit renfermer au plus

**(i)** 100 000 bactéries par gramme, et

**(ii)** 10 organismes coliformes par gramme,

déterminés selon la méthode officielle MFO-2, Examen microbiologique de la crème glacée ou du lait glacé, 30 novembre 1981.

DORS/82-768, art. 23; DORS/92-400, art. 12.

## Sorbet laitier

[DORS/98-580, art. 1(F)]

### B.08.063 [N]. Le **sorbet laitier**

**a)** doit être l'aliment congelé, autre que la crème glacée ou le lait glacé, fabriqué à partir d'un produit du lait;

**b)** peut renfermer

**(i)** de l'eau,

**(ii)** un agent édulcorant,

**(iii)** des fruits ou jus de fruits,

**(iv)** de l'acide citrique ou tartrique,

**(v)** une préparation aromatisante,

**(vi)** un colorant pour aliments,

**(vii)** au plus 0,75 pour cent d'agent stabilisant,

**(viii)** un chélateur ou agent séquestrant,

**(ix)** du lactose,

**(x)** au plus, 0,5 pour cent de cellulose microcristalline,

**(xi)** au plus un pour cent de caséine comestible ou de caséinates comestibles ajoutés;

**c)** doit renfermer

**(i)** au plus cinq pour cent de solides du lait, y compris le gras de lait, et

**(ii)** au moins 0,35 pour cent d'acide, déterminé par titration et exprimé en acide lactique.

DORS/92-400, art. 13; DORS/97-543, art. 3(F); DORS/98-580, art. 1(F); DORS/2007-302, art. 4(F).

## Ice Milk

### B.08.071 [S]. Ice Milk Mix

**(a)** shall be the unfrozen, pasteurized combination of cream, milk or other milk products, sweetened with sugar, liquid sugar, invert sugar, honey, dextrose, glucose, corn syrup, corn syrup solids or any combination of such sweeteners;

**(b)** may contain

**(i)** egg,

**(ii)** a flavouring preparation,

**(iii)** cocoa or chocolate syrup,

**(iv)** a food colour,

**(v)** a pH adjusting agent,

**(vi)** a stabilizing agent, in an amount that will not result in more than 0.5 per cent stabilizing agent in the ice milk,

**(vii)** a sequestering agent,

**(viii)** added lactose, and

**(ix)** not more than 1.5 per cent microcrystalline cellulose,

**(x)** salt, and

**(xi)** not more than one per cent added edible casein or edible caseinates; and

**(c)** shall contain

**(i)** not less than 33 per cent solids, and

**(ii)** not less than three per cent and not more than five per cent milk fat.

SOR/92-400, s. 14; SOR/97-543, s. 4(F); SOR/2007-302, s. 4(F).

### B.08.072 [S]. Ice Milk

**(a)** shall be the frozen food obtained by freezing an ice milk mix, with or without the incorporation of air;

**(b)** may contain cocoa or chocolate syrup, fruit, nuts or confections;

## Lait glacé

### B.08.071 [N]. Le **mélange pour lait glacé**

**a)** est un mélange pasteurisé, mais non congelé, de crème, de lait ou d'autres produits du lait, édulcoré avec du sucre, du sucre liquide, du sucre inverti, du miel, du dextrose, du glucose, du sirop de maïs, des solides du sirop de maïs ou avec un mélange de n'importe lesquels de ces édulcorants;

**b)** peut renfermer

**(i)** des œufs,

**(ii)** une préparation aromatisante,

**(iii)** du cacao ou du sirop de chocolat,

**(iv)** un colorant pour aliments,

**(v)** un rajusteur de pH,

**(vi)** un agent stabilisant en quantité telle que la teneur dans le lait glacé sera d'au plus 0,5 pour cent,

**(vii)** un chélateur ou agent séquestrant,

**(viii)** du lactose ajouté,

**(ix)** au plus, 1,5 pour cent de cellulose microcristalline,

**(x)** du sel,

**(xi)** au plus un pour cent de caséine comestible ou de caséinates comestibles ajoutés;

**c)** doit renfermer

**(i)** au moins 33 pour cent de solides, et

**(ii)** au moins trois pour cent et au plus cinq pour cent de gras de lait.

DORS/92-400, art. 14; DORS/97-543, art. 4(F); DORS/2007-302, art. 4(F).

### B.08.072 [N]. Le **lait glacé**

**a)** est l'aliment congelé obtenu par congélation d'un mélange à lait glacé, avec ou sans incorporation d'air;

**b)** peut renfermer du cacao ou du sirop de chocolat, des fruits, des noix et des confiseries;

**(c)** shall contain

**(i)** not less than 33 per cent solids,

**(ii)** not less than three per cent and not more than five per cent milk fat, and

**(iii)** not less than 160 grams of solids per litre of which amount not less than 14 grams shall be milk fat; and

**(d)** shall contain not more than

**(i)** 100,000 bacteria per gram, and

**(ii)** 10 coliform organisms per gram,

as determined by official method MFO-2, Microbiological Examination of Ice Cream or Ice Milk, November 30, 1981.

SOR/82-768, s. 24; SOR/92-400, s. 15.

**B.08.073** [Repealed, SOR/92-626, s. 13]

**B.08.074 (1)** The percentage of milk fat contained in

**(a)** yogurt,

**(b)** cottage cheese, and

**(c)** creamed cottage cheese,

shall be shown on the principal display panel followed by the words “milk fat” or the abbreviation “B.F.” or “M.F.”.

**(2)** In addition to the statement referred to in subsection (1), a person may, on the label of a food referred to in subsection (1), make a declaration of the fat content of the food, expressed in grams per serving of stated size.

SOR/88-559, s. 18; SOR/2016-305, s. 75(F).

## Cream

### B.08.075 [S]. Cream

**(a)** shall be the fatty liquid prepared from milk by separating the milk constituents in such a manner as to increase the milk fat content; and

**(b)** may contain

**(i)** a pH adjusting agent,

**(ii)** a stabilizing agent,

**c)** doit renfermer

**(i)** au moins 33 pour cent de solides,

**(ii)** au moins trois pour cent et au plus cinq pour cent de gras de lait, et

**(iii)** au moins 160 grammes de solides au litre, dont au moins 14 grammes doivent être de la matière grasse du lait;

**d)** doit renfermer au plus

**(i)** 100 000 bactéries par gramme, et

**(ii)** 10 organismes coliformes par gramme,

déterminés selon la méthode officielle MFO-2, Examen microbiologique de la crème glacée ou du lait glacé, 30 novembre 1981.

DORS/82-768, art. 24; DORS/92-400, art. 15.

**B.08.073** [Abrogé, DORS/92-626, art. 13]

**B.08.074 (1)** Le pourcentage de la matière grasse du lait contenu dans

**a)** le yogourt,

**b)** le fromage cottage, et

**c)** le fromage cottage en crème,

doit être indiqué sur l’espace principal et suivi de l’expression « matière grasse du lait » ou de l’abréviation « M.G. ».

**(2)** En plus de la mention exigée au paragraphe (1), il peut être indiqué sur l’étiquette d’un aliment mentionné à ce paragraphe sa teneur en matières grasses exprimée en grammes par portion indiquée.

DORS/88-559, art. 18; DORS/2016-305, art. 75(F).

## Crème

### B.08.075 [N]. La **crème**

**a)** doit être le liquide gras obtenu par séparation des éléments du lait, de manière à élever la teneur du liquide en gras de lait; et

**b)** peut contenir :

**(i)** un agent rajusteur de pH,

**(ii)** un agent stabilisant,

**(iii)** in the case of cream for whipping that has been heat-treated above 100°C, the following ingredients and food additives:

**(A)** skim milk powder in an amount not exceeding 0.25 per cent,

**(B)** glucose solids in an amount not exceeding 0.1 per cent,

**(C)** calcium sulphate in an amount not exceeding 0.005 per cent, and

**(D)** xanthan gum in an amount not exceeding 0.02 per cent, and

**(E)** [Repealed, SOR/2010-142, s. 7]

**(iv)** in the case of cream for whipping, microcrystalline cellulose in an amount not exceeding 0.2 per cent.

SOR/79-662, s. 2; SOR/82-1071, s. 6; SOR/88-419, s. 1; SOR/2010-142, s. 7.

**B.08.076 (1)** The percentage of milk fat contained in canned cream shall be shown on the principal display panel followed by the words "milk fat" or the abbreviation "B.F." or "M.F.".

**(2)** In addition to the statement referred to in subsection (1), a person may, on the label of canned cream, make a declaration of the fat content of the cream, expressed in grams per serving of stated size.

SOR/88-559, s. 19; SOR/2016-305, s. 75(F).

### B.08.077 [S]. Sour Cream

**(a)** shall be the product prepared by the souring of pasteurized cream with acid-producing bacterial culture and shall contain not less than 14 per cent milk fat; and

**(b)** may contain

**(i)** milk solids,

**(ii)** whey solids,

**(iii)** buttermilk,

**(iv)** starch in an amount not exceeding one per cent,

**(v)** salt,

**(vi)** rennet derived from aqueous extracts from the fourth stomach of calves, kids or lambs, in an

**(iii)** dans le cas de la crème à fouetter qui a été thermisée à une chaleur supérieure à 100 °C, les ingrédients et les additifs alimentaires suivants :

**(A)** du lait écrémé en poudre en quantité n'excédant pas 0,25 pour cent,

**(B)** des solides de glucose en quantité n'excédant pas 0,1 pour cent,

**(C)** du sulfate de calcium en quantité n'excédant pas 0,005 pour cent,

**(D)** de la gomme xanthane en quantité n'excédant pas 0,02 pour cent,

**(E)** [Abrogée, DORS/2010-142, art. 7]

**(iv)** dans le cas de la crème à fouetter, de la cellulose microcristalline en quantité n'excédant pas 0,2 pour cent.

DORS/79-662, art. 2; DORS/82-1071, art. 6; DORS/88-419, art. 1; DORS/2010-142, art. 7.

**B.08.076 (1)** Le pourcentage de la matière grasse du lait contenue dans la crème en conserve doit être indiqué sur l'espace principal de l'étiquette et suivi de l'expression « matière grasse du lait » ou de l'abréviation « M.G. ».

**(2)** En plus de la mention exigée au paragraphe (1), il peut être indiqué sur l'étiquette de la crème en conserve sa teneur en matières grasses exprimée en grammes par portion indiquée.

DORS/88-559, art. 19; DORS/2016-305, art. 75(F).

### B.08.077 [N]. La crème sure

**a)** est préparée à partir de crème pasteurisée surie au moyen d'une culture bactérienne productrice d'acide et doit renfermer au moins 14 pour cent de gras de lait; et

**b)** peut renfermer

**(i)** des solides de lait,

**(ii)** des solides de petit-lait,

**(iii)** du lait de beurre,

**(iv)** de l'amidon en quantité ne dépassant pas un pour cent,

**(v)** du sel,

**(vi)** de la présure provenant de l'extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou

amount consistent with good manufacturing practice,

**(vii)** the following emulsifying, gelling, stabilizing and thickening agents:

**(A)** algin, carob bean gum (locust bean gum), carrageenan, gelatin, guar gum, pectin or propylene glycol alginate or any combination thereof in an amount not exceeding 0.5 per cent,

**(B)** monoglycerides, mono- and diglycerides, or any combination thereof, in an amount not exceeding 0.3 per cent, and

**(C)** sodium phosphate dibasic in an amount not exceeding 0.05 per cent,

**(viii)** sodium citrate as a flavour precursor in an amount not exceeding 0.1 per cent,

**(ix)** a milk coagulating enzyme derived from *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (Cooney and Emerson)), from *Mucor pusillus Lindt* by pure culture fermentation process or from *Aspergillus oryzae* RET-1 (pBoel777), in an amount consistent with good manufacturing practice,

**(x)** chymosin A derived from *Escherichia coli* K-12, GE81 (pPFZ87A), in an amount consistent with good manufacturing practice, and

**(xi)** chymosin B derived from *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) or from *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105), in an amount consistent with good manufacturing practice.

SOR/78-876, s. 1; SOR/80-500, s. 3; SOR/81-60, s. 5; SOR/92-197, s. 8; SOR/94-212, s. 8; SOR/95-183, s. 8; SOR/98-458, s. 5; SOR/2005-98, s. 7; SOR/2010-143, ss. 8, 39(E).

d'agneaux, en quantité conforme aux bonnes pratiques industrielles,

**(vii)** les additifs alimentaires suivants faisant fonction d'agents émulsifiants, gélatinisants, stabilisants et épaississants :

**(A)** algine, gomme de caroube, carraghénine, gélatine, gomme de guar, pectine, alginate de propylèneglycol ou un mélange de ces substances, en quantité ne dépassant pas 0,5 pour cent,

**(B)** monoglycérides, mono et diglycérides, seuls ou combinés, en quantité ne dépassant pas 0,3 pour cent, et

**(C)** phosphate disodique en quantité ne dépassant pas 0,05 pour cent,

**(viii)** du citrate de sodium en tant que précurseur de saveur en quantité ne dépassant pas 0,1 pour cent,

**(ix)** l'enzyme coagulant le lait provenant de *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (Cooney et Emerson)), de *Mucor pusillus Lindt* par fermentation de culture pure ou de *Aspergillus oryzae* RET-1 (pBoel777), en quantité conforme aux bonnes pratiques industrielles,

**(x)** de la chymosine A provenant de *Escherichia coli* K-12, GE81 (pPFZ87A), en quantité conforme aux bonnes pratiques industrielles,

**(xi)** de la chymosine B provenant de *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR) ou de *Kluyveromyces marxianus* var *lactis*, DS1182 (pKS 105), en quantité conforme aux bonnes pratiques industrielles.

DORS/78-876, art. 1; DORS/80-500, art. 3; DORS/81-60, art. 5; DORS/92-197, art. 8; DORS/94-212, art. 8; DORS/95-183, art. 8; DORS/98-458, art. 5; DORS/2005-98, art. 7; DORS/2010-143, art. 8 et 39(A).

## DIVISION 9

# Fats and Oils

**B.09.001 [S]. Vegetable fats and oils** shall be fats and oils obtained entirely from the botanical source after which they are named, shall be dry and sweet in flavour and odour and, with the exception of olive oil, may contain emulsifying agents, Class IV preservatives, an antifoaming agent, and B-carotene in a quantity sufficient to replace that lost during processing, if such an addition is declared on the label.

SOR/85-179, s. 1.

## TITRE 9

# Graisses et huiles

**B.09.001 [N].** Les **graisses et les huiles végétales** doivent être entièrement obtenues de la source végétale d'où elles tirent leur nom et posséder une saveur et une odeur douces; elles peuvent, à l'exception de l'huile d'olive, contenir des agents émulsifiants, des agents de conservation de la catégorie IV, un agent antimousse et du carotène-B en quantité suffisante pour compenser la

**B.09.002 [S]. Animal fats and oils** shall be fats and oils obtained entirely from animals healthy at the time of slaughter, shall be dry and sweet in flavour and odour and may contain

**(a)** with the exception of milk fat and suet, Class IV preservatives; and

**(b)** with the exception of lard, milk fat and suet, an antifoaming agent.

**B.09.003 [S]. Olive Oil** or **Sweet Oil**

**(a)** shall be the oil obtained from the fruit of the olive tree (*Olea europaea L*);

**(b)** shall have a fatty acid content that is

**(i)** not less than 56.0 and not more than 83.0 per cent oleic acid,

**(ii)** not less than 7.5 and not more than 20.0 per cent palmitic acid,

**(iii)** not less than 3.5 and not more than 20.0 per cent linoleic acid,

**(iv)** not less than 0.5 and not more than 3.5 per cent stearic acid,

**(v)** not less than 0.3 and not more than 3.5 per cent palmitoleic acid,

**(vi)** not more than 1.5 per cent linolenic acid, and

**(vii)** not more than 0.05 per cent myristic acid, calculated as methyl esters;

**(c)** shall not contain more than minute amounts of arachidic acid, behenic acid, gadoleic acid or lignoceric acid;

**(d)** shall have

**(i)** a relative density of not less than 0.910 and not more than 0.916, calculated with the oil at 20°C and water at 20°C (20°C/water at 20°C),

**(ii)** a refractive index of not less than 1.4677 and not more than 1.4705, calculated using the sodium D-line as the light source and with the oil at 20°C ($n_D$20°C),

perte subie pendant le traitement, pourvu qu'une telle addition soit déclarée sur l'étiquette.

DORS/85-179, art. 1.

**B.09.002 [N].** Les **graisses et les huiles d'origine animale** doivent être entièrement obtenues d'animaux sains au moment de l'abattage, posséder une saveur et une odeur douces et peuvent contenir,

**a)** à l'exception du gras de lait et du suif, des agents de conservation de la catégorie IV; et

**b)** à l'exception du saindoux, du gras de lait et du suif, un agent antimousse.

**B.09.003 [N].** L'**huile d'olive** ou **huile douce**

**a)** doit être l'huile obtenue du fruit de l'olivier (*Olea europaea L*);

**b)** doit avoir la composition en acides gras

**(i)** d'au moins 56,0 et d'au plus 83,0 pour cent d'acide oléique,

**(ii)** d'au moins 7,5 et d'au plus 20,0 pour cent d'acide palmitique,

**(iii)** d'au moins 3,5 et d'au plus 20,0 pour cent d'acide linoléique,

**(iv)** d'au moins 0,5 et d'au plus 3,5 pour cent d'acide stéarique,

**(v)** d'au moins 0,3 et d'au plus 3,5 pour cent d'acide palmitoléique,

**(vi)** d'au plus 1,5 pour cent d'acide linolénique, et

**(vii)** d'au plus 0,05 pour cent d'acide myristique, calculé en esters méthyliques;

**c)** doit contenir en quantités minimes seulement l'acide arachidique, l'acide béhénique, l'acide gadoléique ou l'acide lignocérique;

**d)** doit avoir

**(i)** une densité relative (gravité spécifique), calculée lorsque l'huile est à 20 °C et l'eau à 20 °C (20 °C/eau à 20 °C), d'au moins 0,910 et d'au plus 0,916,

**(ii)** un indice de réfraction, lorsqu'on utilise la raie D du sodium comme source lumineuse et que l'huile d'olive est à 20 °C ($n_D$20 °C), d'au moins 1,4677 et d'au plus 1,4705,

**(iii)** an iodine value of not less than 75 and not more than 94, calculated using the Wijs test,

**(iv)** a saponification value of not less than 184 and not more than 196, expressed as milligrams of potassium hydroxide per gram of oil,

**(v)** an acid value of not more than 6.6 milligrams potassium hydroxide per gram of oil,

**(vi)** a free acidity of not more than 3.3 per cent expressed as oleic acid,

**(vii)** a peroxide value of not more than 20 milliequivalents peroxide oxygen per kilogram of oil,

**(viii)** an unsaponifiable matter content of not more than 15 grams per kilogram, and

**(ix)** a Bellier index of not more than 17;

**(e)** shall show negative results when tested for semi-siccative oil, olive-residue oil, cotton-seed oil, tea-seed oil or sesame seed oil; and

**(f)** notwithstanding section B.09.001, may contain alpha-tocopherol in a quantity sufficient to replace that lost during refining, if such an addition is declared on the label.

SOR/78-655, s. 1.

**(iii)** un indice d'iode, en utilisant l'épreuve de Wijs, d'au moins 75 et d'au plus 94,

**(iv)** un indice de saponification, exprimé en milligrammes d'hydroxyde de potassium par gramme d'huile, d'au moins 184 et d'au plus 196,

**(v)** un indice d'acidité d'au plus 6,6 mg d'hydroxyde de potassium par gramme d'huile,

**(vi)** une acidité libre d'au plus 3,3 pour cent exprimée en tant qu'acide oléique,

**(vii)** un indice de peroxyde d'au plus 20 milliéquivalents d'oxygène des peroxydes par kilogramme d'huile,

**(viii)** une teneur en substances insaponifiables d'au plus 15 g/kg, et

**(ix)** un indice de Bellier d'au plus 17;

**e)** doit donner des résultats négatifs pour les épreuves des huiles semi-siccatives, de l'huile de résidu d'olive, de l'huile de coton, de l'huile de thé et de l'huile de sésame; et

**f)** nonobstant l'article B.09.001, peut contenir de l'alphatocophérol en quantités suffisantes pour remplacer la quantité perdue au cours du raffinage, pourvu qu'une telle addition soit déclarée sur l'étiquette.

DORS/78-655, art. 1.

### B.09.004 [S]. Cotton Seed Oil

**(a)** shall be the oil of seeds of cultivated *Gossypium spp.*;

**(b)** shall have

**(i)** a relative density (20°C/water at 20°C) of not less than 0.918 and not more than 0.926,

**(ii)** a refractive index ($n_D$40°C) of not less than 1.458 and not more than 1.466,

**(iii)** a saponification value (milligrams potassium hydroxide per gram of oil) of not less than 189 and not more than 198,

**(iv)** an iodine value (Wijs) of not less than 99 and not more than 119,

**(v)** an unsaponifiable matter content of not more than 15 grams per kilogram,

**(vi)** a positive Halphen test,

### B.09.004 [N]. L'huile de coton

**a)** est l'huile des graines de l'espèce cultivée de *Gossypium*;

**b)** doit avoir

**(i)** une densité relative (20 °C/eau à 20 °C) d'au moins 0,918 et d'au plus 0,926,

**(ii)** un indice de réfraction ($n_D$40 °C) d'au moins 1,458 et d'au plus 1,466,

**(iii)** un indice de saponification (milligrammes d'hydroxyde de potassium par gramme d'huile) d'au moins 189 et d'au plus 198,

**(iv)** un indice d'iode (Wijs) d'au moins 99 et d'au plus 119,

**(v)** une teneur en substances insaponifiables d'au plus 15 grammes par kilogramme,

**(vi)** un test Halphen positif,

**(vii)** an acid value of not more than 0.6 milligram potassium hydroxide per gram of oil, and

**(viii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of oil; and

**(c)** may contain oxystearin.

**B.09.005 [S]. Cocoa Butter** shall be the fat from cocoa nibs, obtained either before or after roasting, or cocoa liquor, and shall have

**(a)** a refractive index (40°C) of not less than 1.453 and not more than 1.458;

**(b)** a saponification value of not less than 188 and not more than 202;

**(c)** an iodine value (Hanus) of not less than 32 and not more than 41; and

**(d)** an acid value of not more than five.

SOR/97-263, s. 3.

**B.09.006 [S]. Corn Oil** or **Maize Oil**

**(a)** shall be the oil of the germ or embryo of *Zea mays L.*; and

**(b)** shall have

**(i)** a relative density of (20°C/water at 20°C) of not less than 0.917 and not more than 0.925,

**(ii)** a refractive index ($n_D$40°C) of not less than 1.465 and not more than 1.468,

**(iii)** a saponification value (milligrams potassium hydroxide per gram of oil) of not less than 187 and not more than 195,

**(iv)** an iodine value (Wijs) of not less than 103 and not more than 128,

**(v)** an unsaponifiable matter content of not more than 28 grams per kilogram,

**(vi)** an acid value of not more than 0.6 milligram potassium hydroxide per gram of oil, and

**(vii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of oil.

**B.09.007 [S]. Peanut Oil** or **Arachis Oil**

**(vii)** un indice d'acidité d'au plus 0,6 milligramme d'hydroxyde de potassium par gramme d'huile, et

**(viii)** un indice de peroxyde d'au plus 10 milliéquivalents d'oxygène dégagé par kilogramme d'huile; et

**c)** peut renfermer de l'oxystéarine.

**B.09.005 [N].** Le **beurre de cacao** est la matière grasse extraite de fèves de cacao décortiquées, avant ou après torréfaction, ou de la liqueur de cacao et possède les caractéristiques suivantes :

**a)** un indice de réfraction (à 40 °C) d'au moins 1,453 et d'au plus 1,458;

**b)** un indice de saponification d'au moins 188 et d'au plus 202;

**c)** un indice d'iode (Hanus) d'au moins 32 et d'au plus 41; et

**d)** un indice d'acidité d'au plus cinq.

DORS/97-263, art. 3.

**B.09.006 [N].** L'**huile de maïs** ou **huile de blé d'inde**

**a)** est l'huile du germe ou de l'embryon de *Zea mays L.*; et

**b)** doit avoir

**(i)** une densité relative (20 °C/eau à 20 °C) d'au moins 0,917 et d'au plus 0,925,

**(ii)** un indice de réfraction ($n_D$40 °C) d'au moins 1,465 et d'au plus 1,468,

**(iii)** un indice de saponification (milligrammes d'hydroxyde de potassium par gramme d'huile) d'au moins 187 et d'au plus 195,

**(iv)** un indice d'iode (Wijs) d'au moins 103 et d'au plus 128,

**(v)** une teneur en substances insaponifiables d'au plus 28 grammes par kilogramme,

**(vi)** un indice d'acidité d'au plus 0,6 milligramme d'hydroxyde de potassium par gramme d'huile, et

**(vii)** un indice de peroxyde d'au plus 10 milliéquivalents d'oxygène dégagé par kilogramme d'huile.

**B.09.007 [N].** L'**huile d'arachide**

**(a)** shall be the oil of the seeds of *Arachis hypogaea L.*;

**(b)** shall have

**(i)** a relative density of (20°C/water at 20°C) of not less than 0.914 and not more than 0.917,

**(ii)** a refractive index ($n_D$40°C) of not less than 1.460 and not more than 1.465,

**(iii)** a saponification value (milligrams potassium hydroxide per gram of oil) of not less than 187 and not more than 196,

**(iv)** an iodine value (Wijs) of not less than 80 and not more than 106,

**(v)** an unsaponifiable matter content of not more than 10 grams per kilogram,

**(vi)** an arachidic and higher fatty acids content of not less than 48 grams per kilogram,

**(vii)** an acid value of not more than 0.6 milligram potassium hydroxide per gram of oil, and

**(viii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of oil; and

**(c)** not contain oxystearin.

SOR/84-300, s. 22(E).

**a)** est l'huile des graines d'*Arachis hypogaea L.*;

**b)** doit avoir

**(i)** une densité relative (20 °C/eau à 20 °C) d'au moins 0,914 et d'au plus 0,917,

**(ii)** un indice de réfraction ($n_D$40 °C) d'au moins 1,460 et d'au plus 1,465,

**(iii)** un indice de saponification (milligrammes d'hydroxyde de potassium par gramme d'huile) d'au moins 187 et d'au plus 196,

**(iv)** un indice d'iode (Wijs) d'au moins 80 et d'au plus 106,

**(v)** une teneur en substances insaponifiables d'au plus 10 grammes par kilogramme,

**(vi)** une proportion d'acide arachidique ou d'acides gras supérieurs, d'au moins 48 grammes par kilogramme,

**(vii)** un indice d'acidité d'au plus 0,6 milligramme d'hydroxyde de potassium par gramme d'huile, et

**(viii)** un indice de peroxyde d'au plus 10 milliéquivalents d'oxygène dégagé par kilogramme d'huile; et

**c)** peut renfermer de l'oxystéarine.

DORS/84-300, art. 22(A).

### B.09.008 [S]. Soybean Oil, Soya Bean Oil, Soja Oil or Soya Oil

**(a)** shall be the oil of the seeds of *Glycine max (L.) Merr.*;

**(b)** shall have

**(i)** a relative density of (20°C/water at 20°C) of not less than 0.919 and not more than 0.925,

**(ii)** a refractive index ($n_D$40°C) of not less than 1.466 and not more than 1.470,

**(iii)** a saponification value (milligrams potassium hydroxide per gram of oil) of not less than 189 and not more than 195,

**(iv)** an iodine value (Wijs) of not less than 120 and not more than 143,

**(v)** an unsaponifiable matter content of not more than 15 grams per kilogram,

### B.09.008 [N]. L'**huile de fève de soya,** l'**huile de soja** ou l'**huile de soya**

**a)** est l'huile des graines de *Glycine max (L.) Merr.*;

**b)** doit avoir

**(i)** une densité relative (20 °C/eau à 20 °C) d'au moins 0,919 et d'au plus 0,925,

**(ii)** un indice de réfraction ($n_D$40 °C) d'au moins 1,466 et d'au plus 1,470,

**(iii)** un indice de saponification (milligrammes d'hydroxyde de potassium par gramme d'huile) d'au moins 189 et d'au plus 195,

**(iv)** un indice d'iode (Wijs) d'au moins 120 et d'au plus 143,

**(v)** une teneur en substances insaponifiables d'au plus 15 grammes par kilogramme,

**(vi)** an acid value of not more than 0.6 milligram potassium hydroxide per gram of oil, and

**(vii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of oil; and

**(c)** may contain oxystearin.

SOR/84-300, s. 23(E).

### B.09.009 [S]. Sunflowerseed Oil or Sunflower Oil

**(a)** shall be the oil of the seeds of *Helianthus annuus L.*; and

**(b)** shall have

**(i)** a relative density of (20°C/water at 20°C) of not less than 0.918 and not more than 0.923,

**(ii)** a refractive index ($n_D$40°C) of not less than 1.467 and not more than 1.469,

**(iii)** an iodine value (Wijs) of not less than 110 and not more than 143,

**(iv)** a saponification value (milligrams potassium hydroxide per gram of oil) of not less than 188 and not more than 194,

**(v)** an unsaponifiable matter content of not more than 15 grams per kilogram,

**(vi)** an acid value of not more than 0.6 milligram potassium hydroxide per gram of oil, and

**(vii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of oil.

### B.09.009A [S]. Safflowerseed Oil or Safflower Oil

**(a)** shall be the oil of the seeds of *Carthamus tinctorius L.*;

**(b)** shall have

**(i)** a relative density of (20°C/water at 20°C) of not less than 0.922 and not more than 0.927,

**(ii)** a refractive index ($n_D$40°C) of not less than 1.467 and not more than 1.470,

**(iii)** a saponification value (milligrams potassium hydroxide per gram of oil) of not less than 186 and not more than 198,

**(iv)** an iodine value (Wijs) of not less than 135 and not more than 150,

**(vi)** un indice d'acidité d'au plus 0,6 milligramme d'hydroxyde de potassium par gramme d'huile, et

**(vii)** un indice de peroxyde d'au plus 10 milliéquivalents d'oxygène dégagé par kilogramme d'huile; et

**c)** peut renfermer de l'oxystéarine.

DORS/84-300, art. 23(A).

### B.09.009 [N]. L'**huile de graine de tournesol** ou l'**huile de tournesol**

**a)** est l'huile des graines de *Helianthus annuus L.*; et

**b)** doit avoir

**(i)** une densité relative (20 °C/eau à 20 °C) d'au moins 0,918 et d'au plus 0,923,

**(ii)** un indice de réfraction ($n_D$40 °C) d'au moins 1,467 et d'au plus 1,469,

**(iii)** un indice d'iode (Wijs) d'au moins 110 et d'au plus 143,

**(iv)** un indice de saponification (milligrammes d'hydroxyde de potassium par gramme d'huile) d'au moins 188 et d'au plus 194,

**(v)** une teneur en substances insaponifiables d'au plus 15 grammes par kilogramme,

**(vi)** un indice d'acidité d'au plus 0,6 milligramme d'hydroxyde de potassium par gramme d'huile, et

**(vii)** un indice de peroxyde d'au plus 10 milliéquivalents d'oxygène dégagé par kilogramme d'huile.

### B.09.009A [N]. L'**huile de graines de carthame** ou l'**huile de carthame**

**a)** est l'huile des graines de *Carthamus tinctorius L.*; et

**b)** doit avoir

**(i)** une densité relative (20 °C/eau à 20 °C) d'au moins 0,922 et d'au plus 0,927,

**(ii)** un indice de réfraction ($n_D$40 °C) d'au moins 1,467 et d'au plus 1,470,

**(iii)** un indice de saponification (milligrammes d'hydroxyde de potassium par gramme d'huile) d'au moins 186 et d'au plus 198,

**(v)** an unsaponifiable matter content of not more than 15 grams per kilogram,

**(vi)** an acid value of not more than 0.6 milligram potassium hydroxide per gram of oil, and

**(vii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of oil.

**B.09.010** Despite the common name set out in the Common Names for Ingredients and Components Document, if a vegetable fat or oil is an ingredient of any cooking oil, salad oil or table oil, the fat or oil shall be shown in the list of ingredients by its common name.

SOR/98-458, s. 7(F); SOR/2022-143, s. 20.

**B.09.011 [S]. Shortening**, other than butter or lard, shall be the semi-solid food prepared from fats, oils or a combination of fats and oils, may be processed by full hydrogenation and may contain

**(a)** Class IV preservatives,

**(b)** an antifoaming agent,

**(c)** stearyl monoglyceridyl citrate,

**(d)** monoglycerides or a combination of monoglycerides and diglycerides of fat forming fatty acids, the weight of the monoglycerides being not more than 10 per cent and the total weight of monoglycerides and diglycerides being not more than 20 per cent of the weight of the shortening,

**(e)** lactylated monoglycerides, or a combination of lactylated monoglycerides and diglycerides of fat forming fatty acids, the total weight being not more than eight per cent of the weight of the shortening, and

**(f)** sorbitan tristearate,

except that the total weight of the ingredients permitted under paragraphs (d) and (e) shall not be greater than 20 per cent of the weight of the shortening.

SOR/2022-168, s. 39.

**B.09.012** [Repealed, SOR/97-148, s. 2]

**B.09.013 [S]. Lard**

**(a)** shall be the rendered fat from hogs;

**(b)** shall have

**(iv)** un indice d'iode (Wijs) d'au moins 135 et d'au plus 150,

**(v)** une teneur en substances insaponifiables d'au plus 15 grammes par kilogramme,

**(vi)** un indice d'acidité d'au plus 0,6 milligramme d'hydroxyde de potassium par gramme d'huile, et

**(vii)** un indice de peroxyde d'au plus 10 milliéquivalents d'oxygène dégagé par kilogramme d'huile.

**B.09.010** Malgré le nom usuel mentionné dans le document sur les noms usuels d'ingrédients et de constituants, lorsqu'elle est un ingrédient d'huile à friture ou de table, la graisse ou l'huile végétale doit être désignée dans la liste d'ingrédients par son nom usuel.

DORS/98-458, art. 7(F); DORS/2022-143, art. 20.

**B.09.011 [N].** Le **shortening** autre que le beurre et le saindoux, est un aliment mi-solide préparé à partir de matières grasses, d'huile ou d'un mélange de matières grasses et d'huiles pouvant être soumis à une hydrogénation entière, et peut contenir les ingrédients suivants :

**a)** des agents de conservation de la catégorie IV,

**b)** un agent anti-mousse,

**c)** du monoglycéride citrate de stéaryle,

**d)** des monoglycérides, ou un mélange de monoglycérides et de diglycérides des acides gras lipogènes, le poids des monoglycérides ne dépassant pas 10 pour cent, et le poids global des monoglycérides et des diglycérides ne dépassant pas 20 pour cent du poids du shortening,

**e)** des monoglycérides lactylés, ou un mélange de monoglycérides et de diglycérides lactylés des acides gras lipogènes, le poids global ne dépassant pas huit pour cent du poids du shortening, et

**f)** tristéarate de sorbitan,

sauf que le poids global des ingrédients permis aux alinéas d) et e) ne doit pas dépasser 20 pour cent du poids du shortening.

DORS/2022-168, art. 39.

**B.09.012** [Abrogé, DORS/97-148, art. 2]

**B.09.013 [N].** Le **saindoux**

**a)** doit être la graisse fondue provenant du porc;

**b)** doit avoir

**(i)** a relative density of not less than 0.894 and not more than 0.906, calculated with the lard at 40°C and water at 20°C (40°C/water at 20°C),

**(ii)** a refractive index of not less than 1.448 and not more than 1.461, calculated using the sodium D-line as the light source and with the lard at 40°C ($n_D$40°C),

**(iii)** a titre of not less than 32°C and not more than 45°C,

**(iv)** a saponification value of not less than 192 and not more than 203, expressed as milligrams potassium hydroxide per gram of fat,

**(v)** an iodine value of not less than 45 and not more than 70, calculated using the Wijs test,

**(vi)** an unsaponifiable matter content of not more than 12 grams per kilogram,

**(vii)** an acid value of not more than 2.5 milligrams potassium hydroxide per gram of fat, and

**(viii)** a peroxide value of not more than 16 milliequivalents peroxide oxygen per kilogram of fat; and

**(c)** may contain

**(i)** lard stearine or fully hydrogenated lard,

**(ii)** a Class IV preservative, and

**(iii)** not more than one per cent of substances resulting from the rendering process, other than fatty acids and fat.

SOR/78-401, s. 1(F); SOR/84-300, s. 25(F); SOR/2022-168, s. 40.

**(i)** une densité relative (gravité spécifique) calculée lorsque le saindoux est à 40 °C et l'eau à 20 °C (40 °C/eau à 20 °C), d'au moins 0,894 et d'au plus 0,906,

**(ii)** un indice de réfraction, lorsqu'on utilise la raie D du sodium comme source lumineuse et que le saindoux est à 40 °C ($n_D$40 °C), d'au moins 1,448 et d'au plus 1,461,

**(iii)** un titrage d'au moins 32 °C et d'au plus 45 °C,

**(iv)** un indice de saponification, exprimé en milligrammes d'hydroxyde de potassium par gramme de matière grasse, d'au moins 192 et d'au plus 203,

**(v)** un indice d'iode, en utilisant l'épreuve de Wijs, d'au moins 45 et d'au plus 70,

**(vi)** une teneur en substances insaponifiables d'au plus 12 g/kg,

**(vii)** un indice d'acidité d'au plus 2,5 mg d'hydroxyde de potassium par gramme de matière grasse, et

**(viii)** un indice de peroxyde d'au plus 16 milliéquivalents d'oxygène de peroxydes par kilogramme de matière grasse; et

**c)** peut contenir

**(i)** de la stéarine de saindoux ou du saindoux entièrement hydrogéné,

**(ii)** un agent de conservation de la catégorie IV, et

**(iii)** au plus un pour cent de substances provenant de la fonte de lard, autres que les acides gras ou des matières grasses.

DORS/78-401, art. 1(F); DORS/84-300, art. 25(F); DORS/2022-168, art. 40.

**B.09.014 [S]. Leaf Lard** shall be lard that has been rendered at a moderately high temperature from the internal fat of the abdomen of the hog, excluding that adhering to the intestines, and shall have an iodine value (Hanus) of not more than 65.

**B.09.014 [N].** Le **saindoux de panne** doit être la graisse fondue à la température modérée, provenant du tissu adipeux interne de l'abdomen du porc, à l'exclusion de la graisse adhérant aux intestins, et doit avoir un indice d'iode (Hanus) d'au plus 65.

**B.09.015 [S]. Suet**

**(a)** shall be the fat taken from the region of the kidney or loin or caul fat of a beef carcass;

**(b)** shall have

**B.09.015 [N].** Le **suif**

**a)** doit être de matière grasse de l'aloyau ou de rognons, ou la graisse de la coiffe, obtenue d'une carcasse de bœuf;

**b)** doit avoir

**(i)** a relative density of not less than 0.893 and not more than 0.898, calculated with the suet at 40°C and water at 20°C (40°C/water at 20°C),

**(ii)** a refractive index of not less than 1.448 and not more than 1.460, calculated using the sodium D-line as the light source and with the suet at 40°C ($n_D$40°C),

**(iii)** a titre of not less than 42.5°C and not more than 47°C,

**(iv)** a saponification value of not less than 190 and not more than 200, expressed as milligrams of potassium hydroxide per gram of fat,

**(v)** an iodine value of not less than 32 and not more than 47, calculated using the Wijs test,

**(vi)** an unsaponifiable matter content of not more than 10 grams per kilogram,

**(vii)** an acid value of not more than 2.0 milligrams potassium hydroxide per gram of fat, and

**(viii)** a peroxide value of not more than 10 milliequivalents peroxide oxygen per kilogram of fat; and

**(c)** where sold in comminuted form, shall contain not more than three per cent cereal and one per cent salt.

SOR/78-655, s. 2(F).

**(i)** une densité relative (gravité spécifique), calculée lorsque le suif est à 40 °C et l'eau à 20 °C (40 °C/eau à 20 °C), d'au moins 0,893 et d'au plus 0,898,

**(ii)** un indice de réfraction, lorsqu'on utilise la raie D du sodium comme source lumineuse et que le suif est à 40 °C ($n_D$40 °C), d'au moins 1,448 et d'au plus 1,460,

**(iii)** un titrage d'au moins 42,5 °C et d'au plus 47 °C,

**(iv)** un indice de saponification, exprimé en milligrammes d'hydroxyde de potassium par gramme de matière grasse, d'au moins 190 et d'au plus 200,

**(v)** un indice d'iode, en utilisant l'épreuve de Wijs, d'au moins 32 et d'au plus 47,

**(vi)** une teneur en substances insaponifiables d'au plus 10 g/kg,

**(vii)** un indice d'acidité d'au plus 2 mg d'hydroxyde de potassium par gramme de matière grasse, et

**(viii)** un indice de peroxyde d'au plus 10 milliéquivalents, d'oxygène de peroxydes par kilogramme de matière grasse; et

**c)** doit renfermer au plus trois pour cent de céréales et un pour cent de sel lorsqu'il est vendu sous forme de suif haché.

DORS/78-655, art. 2(F).

### B.09.016 [S]. Margarine

**(a)** shall be a plastic or fluid emulsion of water in fats, oil or fats and oil that are not derived from milk and may have been subjected to full hydrogenation;

**(b)** shall contain

**(i)** not less than 80% fat, oil or fat and oil calculated as fat,

**(ii)** not less than 3,300 I.U. of vitamin A per 100 g, and

**(iii)** 26 µg of vitamin D per 100 g; and

**(c)** may contain

**(i)** skim milk powder, buttermilk powder or liquid buttermilk,

**(ii)** whey solids or modified whey solids,

**(iii)** protein,

### B.09.016 [N]. La margarine

**a)** est une émulsion plastique ou liquide d'eau dans de la graisse, de l'huile ou des graisses et des huiles ne provenant pas du lait et pouvant avoir été soumises à une hydrogénation entière;

**b)** doit contenir :

**(i)** au moins 80 % de graisse, d'huile ou d'une combinaison de graisse et d'huile exprimées en gras,

**(ii)** au moins 3 300 U.I. de vitamine A par 100 g,

**(iii)** 26 µg de vitamine D par 100 g;

**c)** peut renfermer :

**(i)** de la poudre de lait écrémé, du babeurre en poudre ou du babeurre liquide,

**(ii)** du petit-lait ou des solides de petit-lait modifié,

**(iii)** des protéines,

**(iv)** water,

**(v)** vitamin E, if added in such an amount that will result in the finished product containing not less than 0.6 I.U. of alpha-tocopherol per gram of linoleic acid present in the margarine,

**(vi)** a flavouring agent,

**(vii)** a sweetening agent,

**(viii)** potassium chloride and sodium chloride,

**(ix)** the following colouring agents: annatto, ß-apo-8′- carotenal, canthaxanthin, carotene, ethyl ß-apo-8′-carotenoate and turmeric, as set out in Table III to section B.16.100,

**(x)** the following emulsifying agents: lecithin, mono- and di-glycerides, mono-glycerides and sorbitan tristearate, as set out in Table IV to section B.16.100,

**(xi)** the following pH adjusting agents: citric acid, lactic acid, potassium bicarbonate, sodium bicarbonate, potassium carbonate, sodium carbonate, sodium citrate, sodium lactate, potassium citrate, potassium hydroxide, sodium hydroxide, potassium lactate, sodium potassium tartrate and tartaric acid, as set out in Table X to section B.16.100,

**(xii)** the following Class II and Class IV preservatives: ascorbyl palmitate, ascorbyl stearate, benzoic acid, butylated hydroxyanisole, butylated hydroxytoluene, calcium sorbate, citric acid esters of mono- and di-glycerides, monoglyceride citrate, monoisopropyl citrate, potassium benzoate, potassium sorbate, propyl gallate, sodium benzoate, sodium sorbate and sorbic acid, as set out in Table XI to section B.16.100, and

**(xiii)** the following sequestering agents: calcium disodium ethylenediaminetetraacetate and stearyl citrate, as set out in Table XII to section B.16.100.

SOR/81-60, s. 6; SOR/84-300, s. 26(F); SOR/93-466, s. 1; SOR/2011-235, s. 1; SOR/2022-168, s. 41.

**(iv)** de l'eau,

**(v)** de la vitamine E, si celle-ci est ajoutée en une quantité telle que le produit final contienne au moins 0,6 U.I. d'alpha-tocophérol par gramme d'acide linoléique présent dans la margarine,

**(vi)** un agent aromatisant,

**(vii)** un agent édulcorant,

**(viii)** du chlorure de potassium et du chlorure de sodium,

**(ix)** les colorants pour aliments suivants : ß-apo-8′-caroténal, canthaxanthine, carotène, curcuma, ester éthylique de l'acide ß-apo-8′-caroténoïque et rocou, visés au tableau III de l'article B.16.100,

**(x)** les émulsifs suivants : lécithine, mono- et diglycérides, monoglycérides et tristéarate de sorbitan, visés au tableau IV de l'article B.16.100,

**(xi)** les rajusteurs du pH suivants : acide citrique, acide lactique, acide tartrique, bicarbonate de potassium, bicarbonate de sodium, carbonate de potassium, carbonate de sodium, citrate de potassium, citrate de sodium, hydroxyde de potassium, hydroxyde de sodium, lactate de potassium, lactate de sodium et tartrate double de sodium et de potassium, visés au tableau X de l'article B.16.100,

**(xii)** les agents de conservation de la catégorie II et de la catégorie IV suivants : acide benzoïque, acide sorbique, benzoate de potassium, benzoate de sodium, citrate de monoglycéride, citrate de monoisopropyle, esters citriques des mono- et diglycérides, gallate de propyle, hydroxyanisole butylé, hydroxytoluène butylé, palmitate d'ascorbyle, sorbate de calcium, sorbate de potassium, sorbate de sodium et stéarate d'ascorbyle, visés au tableau XI de l'article B.16.100,

**(xiii)** les agents séquestrants suivants : citrate de stéaryle et éthylènediaminetétraacétate de calcium disodique, visés au tableau XII de l'article B.16.100.

DORS/81-60, art. 6; DORS/84-300, art. 26(F); DORS/93-466, art. 1; DORS/2011-235, art. 1; DORS/2022-168, art. 41.

### B.09.017 [S]. Calorie-Reduced Margarine

**(a)** shall conform to the standard for margarine except it shall contain not more than

**(i)** 40 per cent fat, oil or fat and oil calculated as fat, and

### B.09.017 [N]. La margarine réduite en calories

**a)** doit être conforme à la norme pour la margarine, sauf qu'elle ne doit pas renfermer plus de

**(i)** 40 pour cent de gras, d'huile ou de graisse et d'huile compté en gras,

**(ii)** 50 per cent of the calories that would be normally present in the product if it were not calorie-reduced;

**(b)** subject to paragraph (c), may contain, either singly or in combination, in an amount not exceeding 0.5 per cent,

**(i)** acacia gum,

**(ii)** agar,

**(iii)** algin,

**(iv)** carob bean gum,

**(v)** carrageenan,

**(vi)** furcelleran,

**(vii)** gellan gum,

**(viii)** guar gum,

**(ix)** karaya gum,

**(x)** propylene glycol alginate,

**(xi)** tragacanth gum, and

**(xii)** xanthan gum;

**(c)** may

**(i)** if it contains none of the ingredients mentioned in paragraph (b), contain polyglycerol esters of fatty acids in an amount not exceeding 0.2 per cent, or

**(ii)** if it contains a combination of one or more of the ingredients mentioned in paragraph (b) and polyglycerol esters of fatty acids, contain such esters in an amount not exceeding 0.2 per cent, provided that the total combination of such esters and ingredients does not exceed an amount of 0.5 per cent;

**(d)** notwithstanding subparagraph B.09.016(c)(x), may contain lecithin in an amount not exceeding 0.5 per cent; and

**(e)** may contain

**(i)** vegetable starch,

**(ii)** modified vegetable starch, and

**(iii)** maltodextrin.

SOR/94-38, s. 1; SOR/95-350, s. 1; SOR/96-160, s. 1.

**(ii)** 50 pour cent des calories qui seraient normalement présentes dans le produit s'il n'était pas réduit en calories;

**b)** sous réserve de l'alinéa c), peut renfermer l'un ou plusieurs des ingrédients suivants, en une quantité totale d'au plus 0,5 pour cent :

**(i)** de la gomme arabique,

**(ii)** de l'agar,

**(iii)** de l'algine,

**(iv)** de la gomme de caroube,

**(v)** de la carragénine,

**(vi)** du furcelleran,

**(vii)** de la gomme gellane,

**(viii)** de la gomme de guar,

**(ix)** de la gomme de sterculia,

**(x)** de l'alginate de propylèneglycol,

**(xi)** de la gomme adragante,

**(xii)** de la gomme xanthane;

**c)** peut contenir des esters polyglycéroliques d'acides gras :

**(i)** soit seuls, en une quantité d'au plus 0,2 pour cent,

**(ii)** soit en combinaison avec tout ingrédient visé à l'alinéa b), en une quantité d'au plus 0,2 pour cent pourvu que la quantité de cette combinaison de tels esters et d'ingrédients n'excède pas au total 0,5 pour cent;

**d)** malgré le sous-alinéa B.09.016c)(x), peut contenir de la lécithine en une quantité d'au plus 0,5 pour cent;

**e)** peut renfermer :

**(i)** de l'amidon végétal,

**(ii)** de l'amidon végétal modifié,

**(iii)** de la maltodextrine.

DORS/94-38, art. 1; DORS/95-350, art. 1; DORS/96-160, art. 1.

**B.09.020 and B.09.021** [Repealed, SOR/88-559, s. 20]

**B.09.022** No person shall sell cooking oil, margarine, salad oil, simulated dairy product, shortening or food that resembles margarine or shortening, if the product contains more than five per cent $C_{22}$ Monoenoic Fatty Acids calculated as a proportion of the total fatty acids contained in the product.

**DIVISION 10**

## Flavouring Preparations

**B.10.003 [S]. (naming the flavour) Extract** or **(naming the flavour) Essence** shall be a solution in ethyl alcohol, glycerol, propylene glycol or any combination of these, of sapid or odorous principles, or both, derived from the plant after which the flavouring extract or essence is named, and may contain water, a sweetening agent, food colour and a Class II preservative or Class IV preservative.

**B.10.004 [S]. Artificial (naming the flavour) Extract, Artificial (naming the flavour) Essence, Imitation (naming the flavour) Extract** or **Imitation (naming the flavour) Essence** shall be a flavouring extract or essence except that the flavouring principles shall be derived in whole, or in part, from sources other than the aromatic plant after which it is named, and if such extract or essence is defined in these Regulations, the flavouring strength of the artificial or imitation extract or essence shall be not less than that of the extract or essence.

**B.10.005 [S]. (naming the flavour) Flavour**

**(a)** shall be a preparation, other than a flavouring preparation described in section B.10.003, of sapid or odorous principles, or both, derived from the aromatic plant after which the flavour is named;

**(b)** may contain a sweetening agent, food colour, Class II preservative, thaumatin, Class IV preservative or emulsifying agent; and

**(c)** may have added to it the following liquids only:

**(i)** water,

**(ii)** any of, or any combination of, the following: benzyl alcohol; 1, 3-butylene glycol, ethyl acetate, ethyl alcohol, glycerol, glyceryl diacetate, glyceryl triacetate, glyceryl tributyrate, isopropyl alcohol, monoglycerides and diglycerides; 1, 2-propylene glycol or triethylcitrate,

**B.09.020 et B.09.021** [Abrogés, DORS/88-559, art. 20]

**B.09.022** Est interdite la vente d'huile de cuisson, de margarine, d'huile à salade, de simili-produits laitiers, de shortening, ou d'un aliment qui rappelle la margarine ou le shortening, s'ils contiennent plus de cinq pour cent d'acides gras monoénoïques en $C_{22}$ par rapport aux acides gras totaux renfermés dans le produit.

**TITRE 10**

## Préparations aromatisantes

**B.10.003 [N].** L'**extrait de (nom de l'arôme)** ou l'**essence de (nom de l'arôme)**, doit être une solution de principes sapides ou odorants, ou doués de ces deux propriétés, et extraits de la plante d'où l'extrait ou l'essence aromatique tire son nom, dans l'alcool éthylique, le glycérol, le propylène glycol, seuls ou en mélange, et peut renfermer de l'eau, un agent édulcorant, un colorant pour aliments, et un agent de conservation de la catégorie II ou de la catégorie IV.

**B.10.004 [N].** L'**extrait artificiel de (nom de l'arôme)**, l'**essence artificielle de (nom de l'arôme)**, l'**extrait imitation de (nom de l'arôme)**, l'**essence imitation de (nom de l'arôme)**, doivent être des extraits ou essences aromatiques, sauf que les principes aromatiques doivent provenir en tout ou en partie de sources autres que la plante aromatique dont ils tirent leur nom et, si ledit extrait ou essence sont définis dans le présent règlement, le pouvoir aromatisant de l'extrait ou de l'essence, artificiel ou imitation, doit être au moins égal à celui de l'extrait ou de l'essence.

**B.10.005 [N].** Une **préparation aromatisante de (nom de l'arôme)**

**a)** doit être une préparation, autre qu'une préparation aromatisante définie à l'article B.10.003, de principes sapides ou odorants, ou des deux, extraits de la plante aromatique dont la préparation tire son nom;

**b)** peut contenir un édulcorant, un colorant alimentaire, un agent de conservation de la catégorie II, du thaumatin, un agent de conservation de la catégorie IV ou un agent émulsifiant; et

**c)** ne peut contenir que les liquides ajoutés suivants :

**(i)** eau,

**(ii)** un ou un mélange quelconque des liquides suivants : 1,3-butylèneglycol, acétate d'éthyle, alcool éthylique, glycérol, diacétate de glycéryle, triacétate de glycéryle, tributyrate de glycéryle, alcool

**(iii)** edible vegetable oil, and

**(iv)** brominated vegetable oil, sucrose acetate isobutyrate or mixtures thereof, when such flavour is used in beverages containing citrus or spruce oils.

SOR/84-300, s. 27(E); SOR/86-1112, s. 1; SOR/2010-142, s. 8.

**B.10.006 [S]. Artificial (naming the flavour) Flavour** or **Imitation (naming the flavour) Flavour** shall be a flavour except that the flavouring principles may be derived in whole or in part from sources other than the aromatic plant after which it is named, and if such flavour is defined in these Regulations, the flavouring strength of the artificial or imitation flavour shall be not less than that of the flavour.

**B.10.007 [S].** Notwithstanding sections B.10.003 and B.10.005, a **(naming the fruit) Extract Naturally Fortified, (naming the fruit) Essence Naturally Fortified** or **(naming the fruit) Flavour Naturally Fortified** shall be an extract, essence or flavour derived from the named fruit to which other natural extractives have been added and 51 per cent of the flavouring strength shall be derived from the named fruit.

**B.10.008** On any label of or in any advertisement for an artificial or imitation flavouring preparation, the word "artificial", or "imitation" shall be an integral part of the name of such flavouring preparation and shall be set out in identical type and identically displayed with such name.

SOR/84-300, s. 28.

**B.10.009 [S]. Almond Essence, Almond Extract** or **Almond Flavour** shall be the essence, extract or flavour derived from the kernels of the bitter almond, apricot or peach and shall contain not less than one per cent by volume of hydrocyanic acid-free volatile oil obtained therefrom.

**B.10.010 [S]. Anise Essence, Anise Extract** or **Anise Flavour** shall be the essence, extract or flavour derived from natural or terpeneless oil of anise and shall correspond in flavouring strength to an alcoholic solution containing not less than three per cent by volume of oil of anise, the volatile oil obtained from the fruit of *Pimpinella anisum* L. or *Illicium verum* Hook.

isopropylique, monoglycérides et diglycérides; 1,2-propylèneglycol ou citrate d'éthyl,

**(iii)** huile végétale comestible, et

**(iv)** acétate isobutyrate de sucrose, huile végétale bromée ou un mélange de ces produits, si la préparation aromatisante est utilisée dans les boissons contenant des huiles d'agrumes ou d'épinette.

DORS/84-300, art. 27(A); DORS/86-1112, art. 1; DORS/2010-142, art. 8.

**B.10.006 [N].** Une **préparation aromatisante artificielle de (nom de l'arôme)** ou une **préparation aromatisante imitation de (nom de l'arôme)** doit être une préparation aromatisante, sauf que les principes aromatiques peuvent provenir en tout ou en partie de sources autres que la plante aromatique dont la préparation tire son nom et, si ladite préparation aromatisante est définie dans le présent règlement, le pouvoir aromatisant de ladite préparation aromatisante artificielle ou imitation doit être au moins égal à celui de ladite préparation aromatisante.

**B.10.007 [N].** Nonobstant les articles B.10.003 et B.10.005, un **extrait de (nom du fruit) naturellement fortifié**, une **essence de (nom du fruit) naturellement fortifiée**, une **préparation aromatisante de (nom du fruit) naturellement fortifiée** doivent être un extrait, une essence, ou une préparation aromatisante obtenus du fruit nommé, auxquels ont été ajoutés d'autres extraits naturels et dont 51 pour cent du pouvoir aromatisant doit provenir du fruit nommé.

**B.10.008** Sur toute étiquette ou dans toute réclame d'une préparation aromatisante artificielle ou d'une imitation d'une préparation aromatisante, le mot « artificiel » ou « imitation » doit faire partie intégrante du nom de ladite préparation aromatisante, être imprimé en caractères identiques à ceux dudit nom et être disposé de façon identique.

DORS/84-300, art. 28.

**B.10.009 [N].** L'**essence d'amande**, l'**extrait d'amande** et la **préparation aromatisante à l'amande**, doivent être extraits du noyau de l'amande amère, de l'abricot ou de la pêche, et doivent renfermer au moins un pour cent en volume de l'huile volatile ainsi obtenue, exempte d'acide cyanhydrique.

**B.10.010 [N].** L'**essence d'anis**, l'**extrait d'anis** et la **préparation aromatisante à l'anis**, doivent être l'essence, l'extrait ou la préparation aromatisante, préparés à partir d'huile d'anis, naturelle ou déterpénée, et leur pouvoir aromatisant doit correspondre à celui d'une solution alcoolique qui renferme au moins trois pour cent en volume d'huile d'anis, huile volatile extraite du fruit de *Pimpinella anisum* L. ou d'*Illicium Verum* Hook.

**B.10.011 [S]. Celery Seed Essence, Celery Seed Extract** or **Celery Seed Flavour** shall be the essence, extract or flavour derived from celery seed, or oil of celery seed, or terpeneless oil of celery seed and shall correspond in flavouring strength to an alcoholic solution containing not less than 0.3 per cent by volume of volatile oil of celery seed.

**B.10.012 [S]. Cassia Essence, Cassia Extract, Cassia Cinnamon Essence, Cassia Cinnamon Extract, Cassia Flavour** or **Cassia Cinnamon Flavour** shall be the essence, extract or flavour derived from natural or terpeneless oil, obtained from leaves and twigs of *Cinnamomum cassia* L. containing not less than 80 per cent cinnamic aldehyde, and shall correspond in flavouring strength to an alcoholic solution containing not less than two per cent by volume of volatile oil of cassia cinnamon.

**B.10.013 [S]. Ceylon Cinnamon Essence, Ceylon Cinnamon Extract** or **Ceylon Cinnamon Flavour** shall be the essence, extract or flavour derived from the volatile oil obtained from the bark of *Cinnamomum zeylanicum* Nees, and shall contain

**(a)** not less than two per cent by volume of oil of Ceylon cinnamon;

**(b)** not less than 65 per cent cinnamic aldehyde; and

**(c)** not more than 10 per cent eugenol.

**B.10.014 [S]. Clove Essence, Clove Extract** or **Clove Flavour** shall be the essence, extract or flavour derived from the volatile oil obtained from clove buds, and shall contain not less than two per cent by volume of oil of clove.

**B.10.015 [S]. Ginger Essence, Ginger Extract** or **Ginger Flavour** shall be the essence, extract or flavour derived from ginger and shall contain in 100 millilitres the alcohol-soluble matter from not less than 20 grams of ginger.

**B.10.016 [S]. Lemon Essence, Lemon Extract** or **Lemon Flavour** shall be the essence, extract or flavour prepared from natural or terpeneless oil of lemon or from lemon peel and shall contain not less than 0.2 per cent citral derived from oil of lemon.

**B.10.011 [N].** L'**essence de graine de céleri**, l'**extrait de graine de céleri** et la **préparation aromatisante à la graine de céleri**, doivent être l'essence, l'extrait ou la préparation aromatisante, préparés à partir de graine de céleri, huile de graine de céleri, ou huile de graine de céleri déterpénée, et leur pouvoir aromatisant doit correspondre à celui d'une solution alcoolique qui renferme au moins 0,3 pour cent en volume d'huile volatile de graine de céleri.

**B.10.012 [N].** L'**essence de fausse cannelle (ou cannelle bâtarde)**, l'**extrait de fausse cannelle** et la **préparation aromatisante à la fausse cannelle**, doivent être l'essence, l'extrait ou la préparation aromatisante, obtenus de l'huile, naturelle ou déterpénée, extraite des feuilles et des rameaux de *Cinnamomum cassia* L., doivent renfermer au moins 80 pour cent d'aldéhyde cinnamique, et leur pouvoir aromatisant doit correspondre à celui d'une solution alcoolique qui renferme au moins deux pour cent en volume d'huile volatile de fausse cannelle ou cannelle bâtarde.

**B.10.013 [N].** L'**essence de cannelle de Ceylan**, l'**extrait de cannelle de Ceylan** et la **préparation aromatisante à la cannelle de Ceylan**, doivent être l'essence, l'extrait ou la préparation aromatisante obtenue de l'huile volatile extraite de l'écorce de *Cinnamomum zeylanicum* Nees, et doivent renfermer

**a)** au moins deux pour cent en volume d'huile de cannelle de Ceylan;

**b)** au moins 65 pour cent d'aldéhyde cinnamique; et

**c)** au plus 10 pour cent d'eugénol.

**B.10.014 [N].** L'**essence de clou de girofle**, l'**extrait de clou de girofle** et la **préparation aromatisante au clou de girofle**, doivent être l'essence, l'extrait ou la préparation aromatisante obtenus de l'huile volatile extraite du bouton de girofle, et doivent renfermer au moins deux pour cent en volume d'huile de clou de girofle.

**B.10.015 [N].** L'**essence de gingembre**, l'**extrait de gingembre** et la **préparation aromatisante au gingembre**, doivent être l'essence, l'extrait ou la préparation aromatisante obtenus du gingembre, et doivent renfermer, dans 100 millilitres, les matières solubles dans l'alcool d'au moins 20 grammes de gingembre.

**B.10.016 [N].** L'**essence de citron**, l'**extrait de citron** et la **préparation aromatisante au citron**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir d'huile de citron, naturelle ou déterpénée, ou de zeste de citron, et doivent renfermer au moins 0,2 pour cent de citral dérivé de l'huile de citron.

**B.10.017 [S]. Nutmeg Essence, Nutmeg Extract** or **Nutmeg Flavour** shall be the essence, extract or flavour prepared from natural or terpeneless oil of nutmeg and shall correspond in flavouring strength to an alcoholic solution containing not less than two per cent by volume of oil of nutmeg.

**B.10.017** [N]. L'**essence de muscade**, l'**extrait de muscade** et la **préparation aromatisante à la muscade**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir d'huile de muscade, naturelle ou déterpénée, et leur pouvoir aromatisant doit correspondre à celui d'une solution alcoolique qui renferme au moins deux pour cent en volume d'huile de muscade.

**B.10.018 [S]. Orange Essence, Orange Extract** or **Orange Flavour** shall be the essence, extract or flavour prepared from sweet orange peel, oil of sweet orange or terpeneless oil of sweet orange, and shall correspond in flavouring strength to an alcoholic solution containing five per cent by volume of oil of sweet orange, the volatile oil obtained from the fresh peel of *Citrus aurantium* L., that shall have an optical rotation, at a temperature of 25°C, of not less than +95° using a tube 100 millimetres in length.

**B.10.018 [N].** L'**essence d'orange**, l'**extrait d'orange** et la **préparation aromatisante à l'orange**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de zeste d'oranges douces, d'huile d'oranges douces, ou d'huile d'oranges douces déterpénée, et leur pouvoir aromatisant doit correspondre à celui d'une solution alcoolique qui renferme cinq pour cent en volume d'huile d'oranges douces, c'est-à-dire l'huile volatile extraite du zeste frais de *Citrus auranlium* L. et ayant, dans un tube à essai de 100 millimètres de longueur, et à 25 °C, un pouvoir rotatoire de +95° au moins.

**B.10.019 [S]. Peppermint Essence, Peppermint Extract** or **Peppermint Flavour** shall be the essence, extract or flavour prepared from peppermint or oil of peppermint, obtained from the leaves and flowering tops of *Mentha piperita* L., or of *Mentha arvensis* De.C., var. *piperascens* Holmes, and shall correspond in flavouring strength to an alcoholic solution of not less than three per cent by volume of oil of peppermint, containing not less than 50 per cent free and combined menthol.

**B.10.019 [N].** L'**essence de menthe poivrée**, l'**extrait de menthe poivrée** et la **préparation aromatisante à la menthe poivrée**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de menthe poivrée ou d'huile de menthe poivrée, obtenue des feuilles et des fleurs de *Mentha piperata* L., ou de *Mentha arvensis* De. C., var *piperascens* Holmes, et leur pouvoir aromatisant doit correspondre à celui d'une solution alcoolique qui renferme au moins trois pour cent en volume d'huile de menthe poivrée, huile qui renferme au moins 50 pour cent de menthol, à l'état libre et à l'état combiné.

**B.10.020 [S]. Rose Essence, Rose Extract** or **Rose Flavour** shall be the essence, extract or flavour prepared from the volatile oil obtained from the petals of *Rosa damascena* Mill., *R. centajolia* L., or *R. moschata* Herrm, and shall contain not less than 0.4 per cent by volume of attar of rose.

**B.10.020 [N].** L'**essence de rose**, l'**extrait de rose** et la **préparation aromatisante à la rose**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de l'huile volatile obtenue des pétales de *Rosa damascena* Mill., de *R. centajolia* L., ou de *R. moschata* Herrm, et doivent renfermer au moins 0,4 pour cent en volume d'huile de rose.

**B.10.021 [S]. Savory Essence, Savory Extract** or **Savory Flavour** shall be the essence, extract or flavour prepared from savory or oil of savory and shall contain not less than 0.35 per cent by volume oil of savory.

**B.10.021 [N].** L'**essence de sarriette**, l'**extrait de sarriette** et la **préparation aromatisante à la sarriette**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de sarriette ou d'huile de sarriette, et renfermer au moins 0,35 pour cent en volume d'huile de sarriette.

**B.10.022 [S]. Spearmint Essence, Spearmint Extract** or **Spearmint Flavour** shall be the essence, extract or flavour prepared from spearmint or from oil of spearmint, obtained from the leaves and flowering tops of *Mentha spicata* L. and shall contain not less than three per cent by volume of oil of spearmint.

**B.10.022 [N].** L'**essence de menthe verte**, l'**extrait de menthe verte** et la **préparation aromatisante à la menthe verte**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de menthe verte ou d'huile de menthe verte, obtenue des feuilles et des fleurs de *Mentha spicata* L., et doivent renfermer au moins trois pour cent en volume d'huile de menthe verte.

**B.10.023 [S]. Sweet Basil Essence, Sweet Basil Extract** or **Sweet Basil Flavour** shall be the essence, extract or flavour prepared from sweet basil or from oil of sweet basil, obtained from the leaves and tops of *Ocymum basilicum* L. and shall contain not less than 0.1 per cent by volume of oil of sweet basil.

**B.10.024 [S]. Sweet Marjoram Essence, Sweet Marjoram Extract, Marjoram Essence, Marjoram Extract, Sweet Marjoram Flavour** or **Marjoram Flavour** shall be the essence, extract or flavour prepared from marjoram or from oil of marjoram and shall contain not less than one per cent by volume of oil of marjoram.

**B.10.025 [S]. Thyme Essence, Thyme Extract** or **Thyme Flavour** shall be the essence, extract or flavour prepared from thyme or from oil of thyme and shall contain not less than 0.2 per cent by volume of oil of thyme.

**B.10.026 [S]. Vanilla Extract, Vanilla Essence** or **Vanilla Flavour**

**(a)** shall be the essence, extract or flavour prepared from the vanilla bean, the dried, cured fruit of *Vanilla planifolia*, Andrews, or *Vanilla tahitensia*, J. W. Moore;

**(b)** shall contain in 100 ml, regardless of the method of extraction, at least the quantity of soluble substances in their natural proportions that are extractable, according to official method FO-17, *Extraction of Soluble Substances from Vanilla Beans*, dated September 15, 1989, from

**(i)** not less than 10 g of vanilla beans, where the beans contain 25 per cent or less moisture, and

**(ii)** not less than 7.5 g of vanilla beans on the moisture-free basis, where the beans contain more than 25 per cent moisture; and

**(c)** notwithstanding sections B.10.003 and B.10.005, shall not contain added colour.

SOR/82-768, s. 25; SOR/84-300, s. 29(F); SOR/91-149, s. 1.

**B.10.027 [S]. Wintergreen Essence, Wintergreen Extract** or **Wintergreen Flavour** shall be the essence, extract or flavour prepared from oil of wintergreen, the volatile oil distilled from the leaves of *Gaultheria procumbens* L. or from *Betula lenta* L. and shall contain not less than three per cent by volume of oil of wintergreen.

**B.10.023 [N].** L'**essence de basilic (odorant)**, l'**extrait de basilic** et la **préparation aromatisante au basilic**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de basilic ou d'huile de basilic, obtenue des feuilles et des fleurs d'*Ocymum basilicum* L., et doivent renfermer au moins 0,1 pour cent en volume de basilic odorant.

**B.10.024 [N].** L'**essence de marjolaine**, l'**extrait de marjolaine** et la **préparation aromatisante à la marjolaine**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de marjolaine ou d'huile de marjolaine et doivent renfermer au moins un pour cent en volume d'huile de marjolaine.

**B.10.025 [N].** L'**essence de thym**, l'**extrait de thym** et la **préparation aromatisante au thym**, doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de thym ou d'huile de thym, et doivent renfermer au moins 0,2 pour cent en volume d'huile de thym.

**B.10.026 [N].** L'**essence de vanille**, l'**extrait de vanille** et la **préparation aromatisante à la vanille**

**a)** doivent être l'essence, l'extrait ou la préparation aromatisante préparés à partir de la gousse de vanille, fruit desséché et traité de *Vanilla planifolia* Andrews ou de *Vanilla tahitensia* J. W. Moore;

**b)** doivent contenir par 100 ml, quelle que soit la méthode d'extraction, une quantité de substances solubles, dans leurs proportions naturelles, au moins égale à celle extraite des quantités suivantes de gousses de vanille selon la méthode officielle FO-17, *Extraction de substances solubles de gousses de vanille*, en date du 15 septembre 1989 :

**(i)** au moins 10 g de gousses de vanille, dans le cas de gousses ayant une teneur en humidité d'au plus 25 pour cent,

**(ii)** au moins 7,5 g de gousses de vanille à l'état desséché, dans le cas de gousses ayant une teneur en humidité de plus de 25 pour cent;

**c)** ne doivent pas, nonobstant les articles B.10.003 et B.10.005, renfermer de matière colorante ajoutée.

DORS/82-768, art. 25; DORS/84-300, art. 29(F); DORS/91-149, art. 1.

**B.10.027 [N].** L'**essence de gaulthérie, de thé du Canada** ou de **wintergreen**, l'**extrait de gaulthérie**, la **préparation aromatisante à la gaulthérie**, doivent être l'essence, l'extrait ou la préparation aromatisante, préparés à partir d'huile de gaulthérie, huile volatile distillée des feuilles de *Gaultheria procumbens* L. ou de *Betula lenta* L., et doivent renfermer au moins trois

## DIVISION 11

# Fruits, Vegetables, Their Products and Substitutes

[SOR/78-478, s. 1]

**B.11.001** In this Division,

***acid ingredient*** means

**(a)** citric, malic or tartaric acid,

**(b)** lemon or lime juice, or

**(c)** vinegar; (*ingrédient acide*)

***fruit juice*** means the unfermented liquid expressed from sound ripe fresh fruit, and includes any such liquid that is heat treated and chilled; (*jus de fruit*)

***sweetening ingredient*** means sugar, invert sugar, honey, dextrose, glucose or glucose solids or any combination thereof in dry or liquid form. (*ingrédient édulcorant*)

**B.11.001.1** No person shall sell any fresh fruit or vegetable that is intended to be consumed raw, except grapes, if sulphurous acid or any salt thereof has been added thereto.

SOR/87-374, s. 1.

## Vegetables

**B.11.002 [S].** Canned **(naming the vegetable)**

**(a)** shall be the product obtained by heat processing the named fresh vegetable after it has been properly prepared;

**(b)** shall be packed in hermetically sealed containers;

**(c)** may contain

**(i)** a sweetening ingredient,

**(ii)** salt,

**(iii)** water,

**(iv)** a firming agent, and

**(v)** citric acid; and

## TITRE 11

# Fruits, légumes, leurs produits et succédanés

[DORS/78-478, art. 1]

**B.11.001** Dans le présent titre,

***ingrédient acide*** désigne

**a)** l'acide citrique, malique ou tartrique,

**b)** le jus de citron ou de limette, ou

**c)** le vinaigre; (*acid ingredient*)

***ingrédient édulcorant*** désigne le sucre, le sucre inverti, le miel, le dextrose, le glucose ou les solides du glucose, ou un mélange quelconque de ces produits, à l'état sec ou liquide; (*sweetening ingredient*)

***jus de fruit*** désigne le liquide non fermenté, exprimé de fruits mûrs, sains et frais qui peut être traité par la chaleur et refroidi. (*fruit juice*)

**B.11.001.1** Est interdite la vente de fruits ou de légumes frais destinés à être consommés crus, à l'exception de raisins frais, s'ils sont additionnés d'anhydride sulfureux ou de ses sels.

DORS/87-374, art. 1.

## Légumes

**B.11.002 [N].** Le ou les (**nom du légume**) en conserve

**a)** doivent être le produit obtenu par traitement thermique du légume frais qui est nommé, après préparation appropriée;

**b)** doivent être conditionnés en récipients hermétiquement scellés;

**c)** peuvent renfermer

**(i)** un ingrédient édulcorant,

**(ii)** du sel,

**(iii)** de l'eau,

**(iv)** un agent raffermissant,

**(d)** may contain

**(i)** in the case of canned green beans and canned wax beans, pieces of green peppers, red peppers and tomato in an amount not exceeding 15 per cent of the final product, and dill seasonings and vinegar,

**(ii)** in the case of canned peas, garnishes composed of one or more of lettuce, onions, carrots, and pieces of green or red peppers in an amount not exceeding 15 per cent of the total drained vegetable ingredient, aromatic herbs, spices and seasonings, stock or juice of vegetables and aromatic herbs, calcium hydroxide in an amount not exceeding 0.01 per cent of the final product and magnesium hydroxide in an amount not exceeding 0.05 per cent of the final product,

**(iii)** in the case of

**(A)** canned asparagus, acetic acid, malic acid and tartaric acid in an amount consistent with good manufacturing practice, and

**(B)** canned white asparagus, acetic acid, ascorbic acid, malic acid and tartaric acid in an amount consistent with good manufacturing practice,

**(C)** [Repealed, SOR/2012-43, s. 4]

**(iv)** in the case of asparagus packed in glass containers or fully lined (lacquered) cans, stannous chloride in an amount not exceeding 25 parts per million, calculated as tin,

**(v)** in the case of canned legumes, other than canned green beans, canned peas and canned wax beans, calcium disodium ethylenediaminetetraacetate in an amount not exceeding 365 parts per million calculated as the anhydrous form, or disodium ethylenediaminetetraacetate in an amount not exceeding 165 parts per million, and

**(vi) to (vii)** [Repealed, SOR/2012-43, s. 4]

**(viii)** in the case of canned asparagus, canned green beans, canned wax beans and canned peas

**(A)** butter or other edible animal or vegetable fats or oils, but if butter is added it shall be not less than three per cent of the final product,

**(B)** natural or enzymatically or physically modified starches when used with butter or other edible animal or vegetable fats and oils,

**(v)** de l'acide citrique;

**d)** peuvent contenir

**(i)** pour les haricots verts en conserve et les haricots jaunes en conserve, une quantité de morceaux de poivron vert, de poivron rouge et de tomate représentant au plus 15 pour cent du produit final, ainsi que des assaisonnements à l'aneth et du vinaigre,

**(ii)** pour les pois en conserve, des garnitures composées d'un ou de plusieurs des éléments suivants : laitue, oignons, carottes, morceaux de poivron vert ou rouge, dont la quantité représente au plus 15 pour cent de l'ensemble de l'ingrédient végétal égoutté, des herbes aromatiques, des épices et des assaisonnements, du bouillon ou du jus de légumes et des herbes aromatiques, une quantité d'hydroxyde de calcium d'au plus 0,01 pour cent du produit final et une quantité d'hydroxyde de magnésium d'au plus 0,05 pour cent du produit final,

**(iii)** pour

**(A)** les asperges en conserve, une quantité d'acide acétique, d'acide malique et d'acide tartrique conforme aux bonnes pratiques industrielles,

**(B)** les asperges blanches en conserve, une quantité d'acide acétique, d'acide ascorbique, d'acide malique et d'acide tartrique conforme aux bonnes pratiques industrielles,

**(C)** [Abrogée, DORS/2012-43, art. 4]

**(iv)** pour les asperges conservées dans des contenants en verre ou des contenants métalliques vernis sur toute leur surface intérieure, une quantité de chlorure stanneux d'au plus 2,5 [25] parties par million, calculée en étain,

**(v)** pour les légumineuses en conserve, à l'exception des haricots jaunes en conserve, des haricots verts en conserve et des pois en conserve, une quantité d'éthylènediaminetétraacétate de calcium disodique d'au plus 365 parties par million, calculée sous forme anhydre, ou une quantité d'éthylènediaminetétraacétate disodique d'au plus 165 parties par million,

**(vi) à (vii)** [Abrogés, DORS/2012-43, art. 4]

**(viii)** pour les asperges en conserve, les haricots verts en conserve, les haricots jaunes en conserve et les pois en conserve,

**(C)** acacia gum, algin, carrageenan, furcelleran, guar gum and propylene glycol alginate used with butter or other edible animal or vegetable fats or oils in an amount not exceeding one per cent, singly or in any combination, of the final product, and

**(D)** characterizing sauces, seasonings or flavouring agents if it is included in the common name of the product.

SOR/79-660, s. 1; SOR/84-300, s. 30; SOR/95-435, s. 1; SOR/97-561, s. 1; SOR/2012-43, s. 4.

**(A)** une quantité de beurre représentant au moins trois pour cent du produit final, ou d'autres graisses ou huiles animales ou végétales comestibles,

**(B)** des amidons naturels ou modifiés de façon enzymatique ou physique s'ils sont utilisés avec du beurre ou d'autres graisses ou huiles animales ou végétales comestibles,

**(C)** une quantité d'un ou de plusieurs des éléments suivants : gomme de caroubier, algine, caragénine, furcelleran gomme de guar et alginate de propylèneglycol, qui, utilisée avec du beurre ou d'autres graisses ou huiles animales ou végétales comestibles, représente au plus un pour cent du produit final, et

**(D)** des sauces, des assaisonnements ou des agents aromatisants caractéristiques s'ils figurent dans le nom usuel du produit.

DORS/79-660, art. 1; DORS/84-300, art. 30; DORS/95-435, art. 1; DORS/97-561, art. 1; DORS/2012-43, art. 4.

### B.11.003 [S]. Canned **Mushrooms**

**(a)** shall be the product obtained by heat-processing properly prepared mushrooms of the cultivated type;

**(b)** shall be packed in hermetically sealed containers; and

**(c)** may contain ascorbic acid, citric acid and salt.

SOR/84-300, s. 31.

### B.11.003 [N]. Les **champignons** en conserve

**a)** doivent être le produit obtenu par traitement thermique de champignons cultivés convenablement préparés;

**b)** doivent être conditionnés en récipients hermétiquement scellés; et

**c)** peuvent contenir de l'acide ascorbique, de l'acide citrique et du sel.

DORS/84-300, art. 31.

### B.11.003A [S]. Frozen Mushrooms

**(a)** shall be the product obtained by freezing properly prepared mushrooms of the cultivated type; and

**(b)** may contain citric acid, sodium metabisulphite, sodium phosphate, dibasic, sodium sulphate and salt.

SOR/2012-43, s. 5.

### B.11.003A [N]. Les **champignons congelés**

**a)** doivent être le produit obtenu par congélation de champignons cultivés convenablement préparés; et

**b)** peuvent renfermer de l'acide citrique, du métabisulfite de sodium, du phosphate dibasique de sodium, du sulfate de sodium et du sel.

DORS/2012-43, art. 5.

**B.11.004 [S]. Frozen** (**naming the vegetable**) shall be the product obtained by freezing the named fresh vegetable after it has been prepared and subjected to a blanching treatment and may contain citric acid and added salt.

SOR/2012-43, s. 6.

**B.11.004 [N].** Le (**nom du légume**) **congelé** doit être le produit obtenu par la congélation de ce légume à l'état frais après qu'il a été préparé et soumis au blanchiment, et il peut renfermer de l'acide citrique et du sel ajouté.

DORS/2012-43, art. 6.

### B.11.005 [S]. Tomatoes or Canned Tomatoes

**(a)** shall be the product made by heat processing properly prepared fresh ripe tomatoes;

### B.11.005 [N]. Les **tomates** ou **tomates en conserve**

**(b)** may contain

**(i)** a sweetening ingredient in dry form,

**(ii)** salt,

**(iii)** a firming agent,

**(iv)** citric acid, and

**(v)** spice or other seasoning; and

**(c)** shall contain not less than 50 per cent drained tomato solids, as determined by official method FO-18, Determination of Drained Tomato Solids, October 15, 1981.

SOR/82-768, s. 26.

**a)** doivent être le produit obtenu par traitement thermique de tomates mûres, fraîches et convenablement préparées;

**b)** peuvent renfermer

**(i)** un ingrédient édulcorant à l'état sec,

**(ii)** du sel,

**(iii)** un agent raffermissant,

**(iv)** de l'acide citrique,

**(v)** des épices et autres condiments; et

**c)** doivent renfermer au moins 50 pour cent de solides de tomates égouttés, déterminé selon la méthode officielle FO-18, Détermination de solides de tomates égouttés, 15 octobre 1981.

DORS/82-768, art. 26.

**B.11.007 [S]. Tomato Juice** shall be the unconcentrated, pasteurized liquid containing a substantial portion of fine tomato pulp extracted from sound, ripe, whole tomatoes from which all stems and other portions unfit for consumption have been removed by any method that does not add water to the liquid and may contain citric acid, salt and a sweetening ingredient in dry form.

SOR/2012-43, s. 7.

**B.11.007 [N].** Le **jus de tomates** doit être le liquide, pasteurisé mais non concentré, renfermant une partie substantielle de fine pulpe de tomates, obtenu de tomates saines, mûres et entières, débarrassées des queues et des autres parties impropres à la consommation par n'importe quel procédé qui n'ajoute pas d'eau au liquide, et il peut renfermer de l'acide citrique, du sel et un ingrédient édulcorant à l'état sec.

DORS/2012-43, art. 7.

**B.11.009 [S]. Tomato Paste** shall be the product made by evaporating a portion of the water from tomatoes or sound tomato trimmings, may contain citric acid, salt and a Class II preservative and shall contain not less than 20 per cent tomato solids as determined by official method FO-19, *Determination of Tomato Solids*, October 15, 1981.

SOR/82-768, s. 27; SOR/2012-43, s. 8.

**B.11.009 [N].** La **pâte de tomates** doit être le produit obtenu par l'évaporation d'une partie de l'eau provenant de tomates ou de parures saines de tomates; elle peut renfermer de l'acide citrique, du sel et un agent de conservation de la catégorie II et doit renfermer au moins 20 pour cent de solides de tomates, déterminé selon la méthode officielle FO-19, *Détermination de solides de tomates*, 15 octobre 1981.

DORS/82-768, art. 27; DORS/2012-43, art. 8.

**B.11.010 [S]. Concentrated Tomato Paste** shall be tomato paste containing not less than 30 per cent tomato solids, as determined by official method FO-19, Determination of Tomato Solids, October 15, 1981.

SOR/82-768, s. 27.

**B.11.010 [N].** La **pâte de tomates concentrée** ou **pâte concentrée de tomates** doit être de la pâte de tomates qui renferme au moins 30 pour cent de solides de tomates, déterminé selon la méthode officielle FO-19, Détermination de solides de tomates, 15 octobre 1981.

DORS/82-768, art. 27.

**B.11.011 [S]. Tomato Pulp** shall be the heat-processed product made from sound, whole and ripe tomatoes or sound tomato trimmings, concentrated to yield a product with a specific gravity of not less than 1.050 (20°C/20°C) and may contain citric acid, salt and a Class II preservative.

SOR/2012-43, s. 9.

**B.11.011 [N].** La **pulpe de tomates** doit être le produit obtenu par traitement thermique et fait de tomates saines, mûres et entières, ou de parures saines de tomates, concentré jusqu'à l'obtention d'un produit d'une densité d'au moins 1,050 (à 20 °C/20 °C); elle peut renfermer de l'acide citrique, du sel et un agent de conservation de la catégorie II.

DORS/2012-43, art. 9.

**B.11.012 [S]. Tomato Puree** shall be the heat-processed product made from sound, whole and ripe tomatoes with the skins and seeds removed, concentrated to yield a product with a specific gravity of not less than 1.050 (20°C/20°C) and may contain citric acid, salt and a Class II preservative.

SOR/2012-43, s. 10.

**B.11.014 [S]. Tomato Catsup, Catsup** or products whose common names are variants of the word Catsup

**(a)** shall be the heat processed product made from the juice of red-ripe tomatoes or sound tomato trimmings from which skins and seeds have been removed;

**(b)** shall contain

**(i)** vinegar,

**(ii)** salt,

**(iii)** seasoning, and

**(iv)** a sweetening ingredient; and

**(c)** may contain

**(i)** a Class II preservative, and

**(ii)** food colour.

**B.11.015** [Repealed, SOR/97-151, s. 19]

**B.11.016** No person shall sell canned tomatoes, tomato juice or vegetable juice that contains mould filaments in more than 25 per cent of the microscopic fields, when examined by official method MFO-5, Examination of Canned Tomatoes, Tomato Juice and Vegetable Juice, Tomato Puree, Tomato Paste, Tomato Pulp and Tomato Catsup for Mould Filaments, November 30, 1981.

SOR/82-768, s. 28.

**B.11.017** No person shall sell tomato puree, tomato paste, tomato pulp or tomato catsup that contains mould filaments in more than 50 per cent of the microscopic fields, when examined by official method MFO-5, Examination of Canned Tomatoes, Tomato Juice and Vegetable Juice, Tomato Puree, Tomato Paste, Tomato Pulp and Tomato Catsup for Mould Filaments, November 30, 1981.

SOR/82-768, s. 28.

**B.11.012 [N].** La **purée de tomates** doit être le produit obtenu par traitement thermique et fait de tomates saines, mûres et entières, débarrassées des pelures et des graines et concentré jusqu'à l'obtention d'un produit d'une densité d'au moins 1,050 (à 20 °C/20 °C); elle peut renfermer de l'acide citrique, du sel et un agent de conservation de la catégorie II.

DORS/2012-43, art. 10.

**B.11.014 [N].** Le **catsup de tomates**, le **catsup** et les produits dont le nom usuel est une variante du mot catsup

**a)** doivent être le produit obtenu par traitement thermique du jus de tomates rouges à maturité, ou de parures saines de tomates débarrassées des pelures et des graines;

**b)** doivent renfermer

**(i)** du vinaigre,

**(ii)** du sel,

**(iii)** des condiments, et

**(iv)** un ingrédient édulcorant; et

**c)** peuvent renfermer

**(i)** un agent de conservation de la catégorie II, et

**(ii)** un colorant pour aliments.

**B.11.015** [Abrogé, DORS/97-151, art. 19]

**B.11.016** Est interdite la vente de tomates en conserve, de jus de tomates ou d'un jus de légume qui renferme des filaments de moisissures dans plus de 25 pour cent du champ microscopique, à l'examen selon la méthode officielle MFO-5, Examen de tomates en conserve, de jus de tomates et de jus de légumes, de purée de tomates, de pâte de tomates, de pulpe de tomates et de catsup de tomates pour la détermination des filaments de moisissures, 30 novembre 1981.

DORS/82-768, art. 28.

**B.11.017** Est interdite la vente de purée de tomates, de pâte de tomates, de pulpe de tomates ou de catsup de tomates qui renferme des filaments de moisissures dans plus de 50 pour cent du champ microscopique, à l'examen selon la méthode officielle MFO-5, Examen de tomates en conserve, de jus de tomates et de jus de légumes, de purée de tomates, de pâte de tomates, de

pulpe de tomates et de catsup de tomates pour la détermination des filaments de moisissures, 30 novembre 1981.

DORS/82-768, art. 28.

**B.11.025** No person shall sell potatoes, sweet potatoes or yams that have been artificially coloured.

**B.11.025** Est interdite la vente de pommes de terre, de patates (sucrées) ou patates douces, qui ont été colorées artificiellement.

**B.11.040 [S]. Beans with Pork** or **Beans and Pork** shall be the food prepared from dried beans and pork, may contain calcium disodium ethylenediaminetetraacetate, citric acid, disodium ethylenediaminetetraacetate, sauce, seasoning, spices or a sweetening agent and shall contain not less than 60 per cent drained solids as determined by official method FO-20, *Determination of Drained Solids of Beans with Pork or Beans and Pork and Beans or Vegetarian Beans*, October 15, 1981.

SOR/82-768, s. 29; SOR/2012-43, s. 11.

**B.11.040 [N].** Les **fèves au lard** doivent être l'aliment préparé avec des haricots secs et du lard; elles peuvent renfermer de l'acide citrique, un agent édulcorant, des assaisonnements, des épices, de l'éthylènediaminetétraacétate de calcium disodique, de l'éthylènediaminetétraacétate disodique et une sauce, et doivent renfermer au moins 60 pour cent de solides égouttés, déterminé selon la méthode officielle FO-20, *Détermination de solides égouttés dans le cas de fèves au lard ou fèves de régime végétarien*, 15 octobre 1981.

DORS/82-768, art. 29; DORS/2012-43, art. 11.

**B.11.041 [S]. Beans** or **Vegetarian Beans** shall be the food prepared from dried beans, may contain calcium disodium ethylenediaminetetraacetate, citric acid, disodium ethylenediaminetetraacetate, sauce, seasoning, spices or a sweetening agent and shall contain not less than 60 per cent drained solids as determined by official method FO-20, *Determination of Drained Solids of Beans with Pork or Beans and Pork and Beans or Vegetarian Beans*, October 15, 1981.

SOR/82-768, s. 29; SOR/2012-43, s. 12.

**B.11.041 [N].** Les **fèves** ou **haricots** ou les **fèves de régime végétarien** doivent être l'aliment préparé avec des haricots secs; elles peuvent renfermer de l'acide citrique, un agent édulcorant, des assaisonnements, des épices, de l'éthylènediaminetétraacétate de calcium disodique, de l'éthylènediaminetétraacétate disodique et une sauce, et doivent renfermer au moins 60 pour cent de solides égouttés, déterminé selon la méthode officielle FO-20, *Détermination de solides égouttés dans le cas de fèves au lard ou fèves de régime végétarien*, 15 octobre 1981.

DORS/82-768, art. 29; DORS/2012-43, art. 12.

**B.11.050 [S]. Olives** shall be the plain or stuffed fruit of the olive tree, and may contain

**(a)** vinegar;

**(b)** salt;

**(c)** a sweetening ingredient;

**(d)** spices;

**(e)** seasonings;

**(f)** lactic acid;

**(g)** sorbic acid or its potassium or sodium salt;

**(h)** calcium chloride;

**(i)** citric acid; and

**(j)** in the case of ripe olives, ferrous gluconate.

SOR/97-561, s. 2.

**B.11.050 [N].** Les **olives** doivent être le fruit, nature ou farci, de l'olivier, et peuvent renfermer

**a)** du vinaigre;

**b)** du sel;

**c)** un ingrédient édulcorant;

**d)** des épices;

**e)** des condiments;

**f)** de l'acide lactique;

**g)** de l'acide sorbique ou son sel de potassium ou de sodium;

**h)** du chlorure de calcium;

**i)** de l'acide citrique;

**j)** dans le cas des olives mûres, du gluconate ferreux.

DORS/97-561, art. 2.

**B.11.051 [S].** Pickles and relishes shall be the product prepared from vegetables or fruits with salt and vinegar, and may contain

**(a)** spices;

**(b)** seasonings;

**(c)** sugar, invert sugar, dextrose or glucose, in dry or liquid form;

**(d)** food colour;

**(e)** a Class II preservative;

**(f)** a firming agent;

**(g)** polyoxyethylene (20) sorbitan monooleate in an amount not exceeding 0.05 per cent;

**(h)** lactic acid;

**(h.1)** citric acid;

**(h.2)** sucralose;

**(i)** vegetable oils; and

**(j)** in the case of relishes and mustard pickles, a thickening agent.

SOR/84-300, s. 32; SOR/2012-43, s. 13; SOR/2012-104, s. 1.

## Fruits

**B.11.101 [S].** Canned **(naming the fruit)**

**(a)** shall be the product prepared by heat processing the named fresh fruit after it has been properly prepared;

**(b)** shall be packed in hermetically sealed containers;

**(c)** may contain

**(i)** a sweetening ingredient,

**(ii)** water,

**(iii)** concentrated (naming the fruit) juice, (naming the fruit) juice, (naming the fruits) juice, (naming the fruit) juice from concentrate or any combination thereof,

**(iv)** citric acid,

**(v)** acesulfame-potassium, and

**B.11.051 [N].** Les pickles, cornichons, achards (*relish*), ou marinades, doivent être le produit préparé à partir de légumes et de fruits, avec du sel et du vinaigre, et peuvent renfermer

**a)** des épices;

**b)** des condiments;

**c)** du sucre, du sucre inverti, du dextrose ou du glucose, à l'état sec ou à l'état liquide;

**d)** un colorant pour aliments;

**e)** un agent de conservation de la catégorie II;

**f)** un agent raffermissant;

**g)** du monooléate polyoxyéthylénique (20) de sorbitan, en quantité d'au plus 0,05 pour cent;

**h)** de l'acide lactique;

**h.1)** de l'acide citrique;

**h.2)** du sucralose;

**i)** des huiles végétales;

**j)** dans le cas des achards, des cornichons ou des marinades à la moutarde, un agent épaississant.

DORS/84-300, art. 32; DORS/2012-43, art. 13; DORS/2012-104, art. 1.

## Fruits

**B.11.101 [N].** Le ou les (**nom du fruit**) en conserve

**a)** doivent être le produit préparé par traitement thermique du fruit frais qui est nommé, après qu'il a été convenablement préparé;

**b)** doivent être conditionnés en récipients hermétiquement scellés;

**c)** peuvent renfermer :

**(i)** un ingrédient édulcorant,

**(ii)** de l'eau,

**(iii)** du jus de (nom du fruit), du jus de (noms des fruits), du jus de (nom du fruit) concentré, du jus de (nom du fruit) fait de concentré ou un mélange quelconque de ces produits,

**(iv)** de l'acide citrique,

**(v)** de l'acésulfame-potassium,

**(vi)** sucralose; and

**(d)** may contain

**(i)** in the case of canned pears, lactic acid, lemon juice, malic acid, mint, spice oils, spices, tartaric acid and a flavouring preparation other than that which simulates the flavour of canned pears,

**(ii)** in the case of canned apples, a firming agent,

**(iii)** in the case of canned applesauce, ascorbic acid, isoascorbic acid, malic acid, salt, spices and a flavouring preparation other than that which simulates the flavour of canned applesauce,

**(iv)** in the case of canned grapefruit, calcium chloride, calcium lactate, lemon juice, spices and a flavouring preparation other than that which simulates the flavour of canned grapefruit,

**(v)** in the case of canned mandarin oranges, ascorbic acid,

**(vi)** in the case of canned peaches, peach kernels, peach pits and spices intended for flavour development, ascorbic acid and a flavouring preparation other than that which simulates the flavour of canned peaches,

**(vii)** in the case of canned pineapple, dimethylpolysiloxane when pineapple juice is used as a packing medium, mint, spice oils, spices and a flavouring preparation other than that which simulates the flavour of canned pineapple,

**(viii)** in the case of canned plums, a flavouring preparation other than that which simulates the flavour of canned plums,

**(ix)** in the case of canned strawberries, lactic acid, malic acid or tartaric acid, and

**(x)** in the case of canned apricots, calcium chloride.

SOR/84-300, s. 33; SOR/2012-43, s. 14; SOR/2012-104, s. 2.

**B.11.102 [S].** Frozen **(naming the fruit)** shall be the product obtained by freezing the named fresh fruit after it has been properly prepared and may contain

**(a)** a sweetening ingredient;

**(vi)** du sucralose;

**d)** peuvent renfermer :

**(i)** dans le cas des poires en conserve, de l'acide lactique, de l'acide malique, de l'acide tartrique, des épices, des huiles d'épices, du jus de citron, de la menthe et une préparation aromatisante autre que celle qui simule l'arôme des poires en conserve,

**(ii)** dans le cas des pommes en conserve, un agent raffermissant,

**(iii)** dans le cas de la compote de pommes en conserve, de l'acide ascorbique, de l'acide isoascorbique, de l'acide malique, des épices, du sel et une préparation aromatisante autre que celle qui simule l'arôme de la compote de pommes en conserve,

**(iv)** dans le cas des pamplemousses en conserve, du chlorure de calcium, des épices, du jus de citron, du lactate de calcium et une préparation aromatisante autre que celle qui simule l'arôme des pamplemousses en conserve,

**(v)** dans le cas des mandarines en conserve, de l'acide ascorbique,

**(vi)** dans le cas des pêches en conserve, des épices, des graines de pêches et des noyaux de pêches pour rehausser la saveur, de l'acide ascorbique, et une préparation aromatisante autre que celle qui simule l'arôme des pêches en conserve,

**(vii)** dans le cas de l'ananas en conserve, du diméthylpolysiloxane lorsque du jus d'ananas est utilisé comme véhicule de conditionnement, des épices, des huiles d'épices, de la menthe, et une préparation aromatisante autre que celle qui simule l'arôme de l'ananas en conserve,

**(viii)** dans le cas des prunes en conserve, une préparation aromatisante autre que celle qui simule l'arôme des prunes en conserve,

**(ix)** dans le cas des fraises en conserve, de l'acide lactique, de l'acide malique ou de l'acide tartrique,

**(x)** dans le cas des abricots en conserve, du chlorure de calcium.

DORS/84-300, art. 33; DORS/2012-43, art. 14; DORS/2012-104, art. 2.

**B.11.102 [N].** Le ou les (**nom du fruit**) congelés doivent être le produit obtenu par congélation du fruit frais qui est nommé, après qu'il a été convenablement préparé, et ils peuvent renfermer

**(b)** water;

**(c)** fruit juice, fruit juice from concentrate, concentrated fruit juice or any combination thereof;

**(d)** ascorbic acid, citric acid, erythorbic acid or malic acid to prevent discolouration; and

**(e)** in the case of frozen sliced apples,

**(i)** a firming agent, and

**(ii)** sulphurous acid.

SOR/84-300, s. 34; SOR/95-436, s. 1.

**B.11.103 and B.11.104** [Repealed, SOR/79-252, s. 1]

**B.11.105** [Repealed, SOR/97-151, s. 20]

## Fruit Juices

### B.11.120 [S]. (Naming the fruit) Juice

**(a)** shall be the juice obtained from the named fruit; and

**(b)** may contain a sweetening ingredient in dry form, a Class II preservative, amylase, cellulase and pectinase.

SOR/78-402, s. 2; SOR/84-300, s. 35; SOR/90-87, s. 1; SOR/92-591, s. 2.

**B.11.121** Notwithstanding section B.11.120, the fruit juice prepared from any fruit named in any of sections B.11.123 to B.11.128A shall conform to the standard prescribed for that fruit juice in that section.

### B.11.123 [S]. Apple Juice

**(a)** shall be the fruit juice obtained from apples;

**(b)** may contain a Class II preservative, vitamin C, amylase, cellulase and pectinase;

**(c)** shall have a specific gravity of not less than 1.041 and not more than 1.065 (20°C/20°C); and

**(d)** shall contain, in 100 millilitres measured at a temperature of 20°C, not less than 0.24 gram and not more than 0.60 gram of ash of which not less than 50 per cent shall be potassium carbonate.

SOR/90-87, s. 2.

**a)** un ingrédient édulcorant;

**b)** de l'eau;

**c)** du jus de fruit, du jus de fruit préparé à partir de concentré, du jus de fruit concentré ou un mélange quelconque de ces produits;

**d)** de l'acide ascorbique, de l'acide citrique, de l'acide érythorbique ou de l'acide malique pour prévenir la décoloration;

**e)** dans le cas des pommes tranchées, congelées,

**(i)** un agent raffermissant, et

**(ii)** de l'acide sulfureux.

DORS/84-300, art. 34; DORS/95-436, art. 1.

**B.11.103 et B.11.104** [Abrogés, DORS/79-252, art. 1]

**B.11.105** [Abrogé, DORS/97-151, art. 20]

## Jus de fruits

### B.11.120 [N]. Le jus de (nom du fruit):

**a)** doit être le jus du fruit qui est nommé;

**b)** peut renfermer un ingrédient édulcorant à l'état sec, un agent de conservation de la catégorie II, de l'amylase, de la cellulase et de la pectinase.

DORS/78-402, art. 2; DORS/84-300, art. 35; DORS/90-87, art. 1; DORS/92-591, art. 2.

**B.11.121** Nonobstant l'article B.11.120, le jus de fruit préparé, à partir de n'importe quel fruit nommé dans les articles B.11.123 à B.11.128A inclusivement, doit être conforme à la norme prescrite pour ledit jus de fruit audit article.

### B.11.123 [N]. Le jus de pommes

**a)** doit être le jus de fruit exprimé des pommes;

**b)** peut contenir un agent de conservation de la catégorie II, de la vitamine C, de l'amylase, de la cellulase et de la pectinase;

**c)** doit avoir une densité d'au moins 1,041 et d'au plus 1,065 (à 20 °C/20 °C); et

**d)** doit, dans 100 millilitres mesurés à 20 °C, renfermer au moins 0,24 gramme et au plus 0,60 gramme de cendres, dont au moins 50 pour cent doit être du carbonate de potassium.

DORS/90-87, art. 2.

### B.11.124 [S]. Grape Juice

**(a)** shall be the fruit juice obtained from grapes;

**(b)** shall have a specific gravity of not less than 1.040 and not more than 1.124 (20°C/20°C);

**(c)** shall contain, before the addition of a sweetening ingredient, in 100 millilitres measured at a temperature of 20°C,

**(i)** not less than 0.20 gram and not more than 0.55 gram of ash, and

**(ii)** not less than 0.015 gram and not more than 0.070 gram of phosphoric acid calculated as phosphorous pentoxide; and

**(d)** may contain a pH-adjusting agent, a sweetening ingredient in dry form, a Class II preservative, vitamin C, amylase, cellulase and pectinase.

SOR/84-300, s. 36(E); SOR/86-1112, s. 2; SOR/90-87, s. 3.

### B.11.124 [N]. Le jus de raisin

**a)** doit être le jus de fruit obtenu de raisin frais;

**b)** doit avoir une densité d'au moins 1,040 et d'au plus 1,124 (à 20 °C/20 °C);

**c)** doit, avant que soit ajouté un ingrédient édulcorant, renfermer dans 100 millilitres mesurés à 20 °C,

**(i)** au moins 0,20 gramme et au plus 0,55 gramme de cendres, et

**(ii)** au moins 0,015 gramme et au plus 0,070 gramme d'acide phosphorique calculé en pentoxyde de phosphore; et

**d)** peut contenir un agent rajusteur du pH, un ingrédient édulcorant à l'état sec, un agent de conservation de la catégorie II, de la vitamine C, de l'amylase, de la cellulase et de la pectinase.

DORS/84-300, art. 36(A); DORS/86-1112, art. 2; DORS/90-87, art. 3.

### B.11.125 [S]. Grapefruit Juice

**(a)** shall be fruit juice obtained from clean, sound, mature grapefruit;

**(b)** shall

**(i)** contain not less than 1.15 milliequivalents of free amino acid per 100 millilitres, as determined by official method FO-21, Determination of Amino Acids in Grapefruit Juice and Orange Juice, October 15, 1981,

**(ii)** contain not less than 70 milligrams of potassium per 100 millilitres, as determined by official method FO-22, Determination of Potassium in Grapefruit Juice and Orange Juice, October 15, 1981, and

**(iii)** have an absorbance value for total polyphenolics of not less than 0.310, as determined by official method FO-23, Determination of Absorbance Value for Total Polyphenolics in Grapefruit Juice and Orange Juice, October 15, 1981;

**(c)** shall, before the addition of sugar, invert sugar, dextrose or glucose solids,

**(i)** have a Brix reading of not less than 9.3°, as determined by official method FO-24, Determination of Brix Reading for Grapefruit Juice and Orange Juice, October 15, 1981, and

### B.11.125 [N]. Le jus de pamplemousse

**a)** doit être le jus de fruit exprimé de pamplemousses propres, sains et mûrs;

**b)** doit

**(i)** renfermer au moins 1,15 milliéquivalents d'aminoacides libres pour 100 millilitres, déterminés selon la méthode officielle FO-21, Détermination d'aminoacides dans le jus de pamplemousse et le jus d'orange, 15 octobre 1981,

**(ii)** renfermer au moins 70 milligrammes de potassium pour 100 millilitres, déterminés selon la méthode officielle FO-22, Détermination de potassium dans le jus de pamplemousse et le jus d'orange, 15 octobre 1981, et

**(iii)** pour les composés-polyphénoliques totaux, avoir une densité optique d'au moins 0,310, déterminée selon la méthode officielle FO-23, Détermination de densité optique pour les composés polyphénoliques totaux du jus de pamplemousse et du jus d'orange, 15 octobre 1981;

**c)** doit, avant que soient ajoutées le sucre, le sucre inverti, le dextrose ou les solides de glucose,

**(i)** avoir un degré Brix d'au moins 9,3°, déterminé selon la méthode officielle FO-24, Détermination de degré Brix pour le jus de pamplemousse et le jus d'orange, 15 octobre 1981, et

**(ii)** contain not less than 0.7 per cent and not more than 2.1 per cent of acid by weight calculated as anhydrous citric acid, as determined by official method FO-25, Determination of Acid in Grapefruit Juice or Orange Juice, October 15, 1981; and

**(d)** may contain sugar, invert sugar, dextrose in dry form, glucose solids, a Class II preservative, amylase, cellulase and pectinase.

SOR/82-768, s. 30; SOR/90-87, s. 4.

**(ii)** renfermer au moins 0,7 pour cent et au plus 2,1 pour cent d'acide, en poids, calculé en acide citrique anhydre selon la méthode officielle FO-25, Détermination d'acide dans le jus de pamplemousse ou le jus d'orange, 15 octobre 1981; et

**d)** peut contenir du sucre, du sucre inverti, du dextrose à l'état sec, des solides de glucose, un agent de conservation de la catégorie II, de l'amylase, de la cellulase et de la pectinase.

DORS/82-768, art. 30; DORS/90-87, art. 4.

### B.11.126 [S]. Lemon Juice

**(a)** shall be the fruit juice obtained from lemons;

**(b)** shall contain, before the addition of a sweetening ingredient, in 100 millilitres measured at a temperature of 20°C, not less than

**(i)** 8.0 grams of soluble solids, as determined by official method FO-26, Determination of Soluble Solids in Lemon Juice, Lime Juice or Lime Fruit Juice, October 15, 1981, and

**(ii)** 5.0 grams of acid calculated as anhydrous citric acid, as determined by official method FO-27, Determination of Acid in Lemon Juice, Lime Juice, or Lime Fruit Juice, October 15, 1981;

**(c)** may contain stannous chloride; and

**(d)** may contain a sweetening ingredient in a dry form, a Class II preservative, amylase, cellulase and pectinase.

SOR/82-768, s. 31; SOR/90-87, s. 5.

### B.11.126 [N]. Le **jus de citron**

**a)** doit être le jus de fruit exprimé du citron;

**b)** doit, avant l'addition d'un ingrédient édulcorant, renfermer, dans 100 millilitres mesurés à 20 °C, au moins

**(i)** 8,0 grammes de solides solubles, déterminés selon la méthode officielle FO-26, Détermination de solides solubles dans le jus de citron, le jus de lime ou le jus de limette, 15 octobre 1981, et

**(ii)** 5,0 grammes d'acide, calculé en acide citrique anhydre selon la méthode officielle FO-27, Détermination d'acide dans le jus de citron, le jus de lime ou le jus de limette, 15 octobre 1981;

**c)** peut renfermer du chlorure stanneux; et

**d)** peut contenir un édulcorant à l'état sec, un agent de conservation de la catégorie II, de l'amylase, de la cellulase et de la pectinase.

DORS/82-768, art. 31; DORS/90-87, art. 5.

### B.11.127 [S]. **Lime Juice** or **Lime Fruit Juice**

**(a)** shall be the fruit juice obtained from limes;

**(b)** shall have

**(i)** a specific gravity of not less than 1.030 and not more than 1.040 (20°C/20°C),

**(ii)** its optical rotation between +0.5 and -1.5 degrees Ventzke, determined at a temperature of 20°C, using a tube 200 millimetres in length;

**(c)** shall contain, before the addition of a sweetening ingredient, in 100 millilitres measured at a temperature of 20°C, not less than

**(i)** 8.0 grams of soluble solids, as determined by official method FO-26, Determination of Soluble

### B.11.127 [N]. Le **jus de lime** ou le **jus de limette**

**a)** doit être le jus de fruit exprimé de limes;

**b)** doit avoir

**(i)** une densité d'au moins 1,030 et d'au plus 1,040 (à 20 °C/20 °C),

**(ii)** un pouvoir rotatoire entre +0,5 et -1,5 degré Ventzke déterminé à 20 °C, et dans un tube à essai de 200 millimètres de longueur;

**c)** doit, avant l'addition d'un ingrédient édulcorant, renfermer, dans 100 millilitres mesurés à 20 °C, au moins

**(i)** 8,0 grammes de solides solubles, déterminés selon la méthode officielle FO-26, Détermination de

Solids in Lemon Juice, Lime Juice or Lime Fruit Juice, October 15, 1981, and

**(ii)** 5.5 grams of acid calculated as anhydrous citric acid, as determined by official method FO-27, Determination of Acid in Lemon Juice, Lime Juice or Lime Fruit Juice, October 15, 1981;

**(d)** may contain stannous chloride; and

**(e)** may contain a sweetening ingredient in a dry form, a Class II preservative, amylase, cellulase and pectinase.

SOR/82-768, s. 32; SOR/90-87, s. 6.

### B.11.128 [S]. Orange Juice

**(a)** shall be fruit juice obtained from clean, sound, mature oranges;

**(b)** shall

**(i)** contain not less than 1.20 milliequivalents of free amino acids per 100 millilitres, as determined by official method FO-21, Determination of Amino Acids in Grapefruit Juice and Orange Juice, October 15, 1981,

**(ii)** contain not less than 115 milligrams of potassium per 100 millilitres, as determined by official method FO-22, Determination of Potassium in Grapefruit Juice and Orange Juice, October 15, 1981, and

**(iii)** have an absorbance value for total polyphenolics of not less than 0.380, as determined by official method FO-23, Determination of Absorbance Value for Total Polyphenolics in Grapefruit Juice and Orange Juice, October 15, 1981;

**(c)** shall, before the addition of sugar, invert sugar, dextrose or glucose solids,

**(i)** have a Brix reading of not less than 9.7°, as determined by official method FO-24, Determination of Brix Reading for Grapefruit Juice and Orange Juice, October 15, 1981, and

**(ii)** contain not less than 0.5 per cent and not more than 1.8 per cent of acid by weight calculated as anhydrous citric acid, as determined by official method FO-25, Determination of Acid in Grapefruit Juice or Orange Juice, October 15, 1981;

**(d)** may contain orange essences, orange oils and orange pulp adjusted in accordance with good manufacturing practice; and

solides solubles dans le jus de citron, le jus de lime ou le jus de limette, 15 octobre 1981, et

**(ii)** 5,5 grammes d'acide, calculé en acide citrique anhydre selon la méthode officielle FO-27, Détermination d'acide dans le jus de citron, le jus de lime ou le jus de limette, 15 octobre 1981;

**d)** peut renfermer du chlorure stanneux; et

**e)** peut contenir un édulcorant à l'état sec, un agent de conservation de la catégorie II, de l'amylase, de la cellulase et de la pectinase.

DORS/82-768, art. 32; DORS/90-87, art. 6.

### B.11.128 [N]. Le jus d'orange

**a)** doit être le jus de fruit exprimé d'oranges propres, saines et mûres;

**b)** doit

**(i)** renfermer au moins 1,20 milliéquivalents d'aminoacides libres pour 100 millilitres, déterminés selon la méthode officielle FO-21, Détermination d'aminoacides dans le jus de pamplemousse et le jus d'orange, 15 octobre 1981,

**(ii)** renfermer au moins 115 milligrammes de potassium pour 100 millilitres, déterminés selon la méthode officielle FO-22, Détermination de potassium dans le jus de pamplemousse et le jus d'orange, 15 octobre 1981, et

**(iii)** pour les composés polyphénoliques totaux, avoir une densité optique d'au moins 0,380, déterminée selon la méthode officielle FO-23, Détermination de densité optique pour les composés polyphénoliques totaux du jus de pamplemousse et du jus d'orange, 15 octobre 1981;

**c)** doit avant que soient ajoutés le sucre, le sucre inverti, le dextrose ou les solides de glucose,

**(i)** avoir un degré Brix d'au moins 9,7°, déterminé selon la méthode officielle FO-24, Détermination de degré Brix pour le jus de pamplemousse et le jus d'orange, 15 octobre 1981, et

**(ii)** renfermer au moins 0,5 pour cent et au plus 1,8 pour cent d'acide, en poids, calculé en acide citrique anhydre selon la méthode officielle FO-25, Détermination d'acide dans le jus de pamplemousse ou le jus d'orange, 15 octobre 1981;

**d)** peut renfermer des essences d'orange, des huiles d'orange et de la pulpe d'orange, dont la teneur est

**(e)** may contain sugar, invert sugar, dextrose in dry form, glucose solids, a Class II preservative, amylase, cellulase and pectinase.

SOR/82-768, s. 33; SOR/90-87, s. 7.

rectifiée conformément aux bonnes pratiques industrielles; et

**e)** peut contenir du sucre, du sucre inverti, du dextrose à l'état sec, des solides de glucose, un agent de conservation de la catégorie II, de l'amylase, de la cellulase et de la pectinase.

DORS/82-768, art. 33; DORS/90-87, art. 7.

### B.11.128A [S]. Pineapple Juice

**(a)** shall be the fruit juice obtained from pineapple; and

**(b)** may contain a sweetening ingredient in dry form, a Class II preservative, vitamin C, amylase, cellulase, pectinase and an antifoaming agent.

SOR/90-87, s. 8; SOR/91-90, s. 1.

### B.11.128A [N]. Le **jus d'ananas**

**a)** doit être le jus de fruit exprimé des ananas; et

**b)** peut renfermer un ingrédient édulcorant à l'état sec, un agent de conservation de la catégorie II, de la vitamine C, de l'amylase, de la cellulase, de la pectinase et un agent anti-mousse.

DORS/90-87, art. 8; DORS/91-90, art. 1.

**B.11.129 [S]. Carbonated (naming the fruit) Juice** or **Sparkling (naming the fruit) Juice** shall be the named fruit juice impregnated with carbon dioxide under pressure.

**B.11.129 [N].** Le **jus de (nom du fruit) gazeux** ou le **jus de (nom du fruit) mousseux**, doit être le jus du fruit nommé, qui a été imprégné d'anhydride carbonique sous pression.

### B.11.130 [S]. (1) Concentrated (naming the fruit) juice

**(a)** shall be fruit juice that is concentrated to at least one half of its original volume by the removal of water;

**(b)** may contain

**(i)** vitamin C,

**(ii)** food colour,

**(iii)** stannous chloride,

**(iv)** a sweetening ingredient, and

**(v)** a class II preservative; and

**(c)** may have added to it, for the purpose of adjustment in accordance with good manufacturing practice, all or any of the following, namely,

**(i)** essence, oil and pulp from the named fruit, and

**(ii)** water.

**(2)** Subparagraphs (1)(b)(i), (ii), (iii) and (v) do not apply in respect of frozen concentrated orange juice.

SOR/89-198, s. 2; SOR/91-124, s. 3.

### B.11.130 [N]. (1) Le **jus de (nom du fruit) concentré** :

**a)** doit être du jus de fruit qui est concentré à la moitié au moins de son volume original par élimination d'eau;

**b)** peut contenir :

**(i)** de la vitamine C,

**(ii)** un colorant pour aliments,

**(iii)** du chlorure stanneux,

**(iv)** un édulcorant,

**(v)** un agent de conservation de la catégorie II;

**c)** peut être additionné, à des fins de normalisation et conformément aux bonnes pratiques industrielles, de l'une ou plusieurs des substances suivantes :

**(i)** essence, huile ou pulpe du fruit désigné,

**(ii)** eau.

**(2)** Les sous-alinéas (1)b)(i), (ii), (iii) et (v) ne s'appliquent pas au jus d'orange concentré congelé.

DORS/89-198, art. 2; DORS/91-124, art. 3.

**B.11.131 [S]. (Naming the fruits) Juice** shall be a mixture of fruit juices each of which meets the standard prescribed for that fruit juice in this Division.

**B.11.131 [N].** Le **jus de (noms des fruits)** doit être un mélange de jus de fruits dont chacun est conforme à la norme prescrite pour ce jus de fruit au présent titre.

### B.11.132 [S]. Apple and (naming the fruit) Juice

**(a)** shall be a mixture of apple juice and another fruit juice, each of which meets the standard, if any, prescribed for that fruit juice in this Division; and

**(b)** may contain added vitamin C.

### B.11.133 [S]. Reconstituted (naming the fruit) Juice or (naming the fruit) Juice from Concentrate

**(a)** shall be fruit juice that has been prepared by the addition of water to fruit juice of the same name from which water has been removed;

**(b)** may contain juice of the same name, a sweetening ingredient, and natural pulp, oils and esters of the named fruit;

**(c)** shall conform to the standards for the named fruit juices as prescribed in this Division; and

**(d)** may contain, in the case of reconstituted lemon or lime juice, not more than 10 parts per million dimethylpolysiloxane.

SOR/78-637, s. 2.

### B.11.134 [S]. Apricot Nectar, Peach Nectar or Pear Nectar

**(a)** shall be the unfermented but fermentable pulpy product, intended for direct consumption, obtained by blending the total edible part of sound and ripe apricots, peaches and pears, as the case may be, concentrated or unconcentrated with water and, subject to subparagraph (e)(i), a sweetening ingredient;

**(b)** shall contain

**(i)** in the case of peach nectar and pear nectar, not less than 40 per cent by weight of the fruit or the equivalent derived from the concentrated fruit, and

**(ii)** in the case of apricot nectar, not less than 35 per cent by weight of the fruit or the equivalent derived from the concentrated fruit;

**(c)** shall contain not less than 13 per cent soluble solids by weight expressed as °Brix on the International Sucrose Scales and calculated by refractometer at 20°C and uncorrected for acidity;

### B.11.132 [N]. Le **jus de pomme** et de **(nom du fruit)**

**a)** doit être un mélange de jus de pomme et de jus d'un autre fruit, où chacun des deux est conforme aux normes prescrites pour ce jus de fruit au présent titre, s'il y a lieu; et

**b)** peut renfermer de la vitamine C ajoutée.

### B.11.133 [N]. Le **jus de (nom du fruit) reconstitué**, le **jus de concentré de (nom du fruit)** ou le **jus de (nom du fruit) fait de concentré**

**a)** doit être le jus de fruit qui a été préparé par l'adjonction d'eau au jus de fruit du même nom dont l'eau avait été enlevée;

**b)** peut renfermer du jus, de la pulpe, des huiles et des esters naturels du fruit nommé ainsi qu'un ingrédient édulcorant;

**c)** doit être conforme aux normes des jus de fruits nommés telles qu'elles sont prescrites au présent titre; et

**d)** peut renfermer, quant au jus de citron reconstitué ou du jus de lime reconstitué, au plus 10 parties par million de diméthylpolysiloxane.

DORS/78-637, art. 2.

### B.11.134 [N]. Le **nectar d'abricot**, le **nectar de pêche** ou le **nectar de poire**

**a)** doit être le produit pulpeux non fermenté mais fermentable, destiné à une consommation directe et obtenu par le mélange de toute la partie comestible de pêches, de poires ou d'abricots sains et mûrs, sous forme concentrée ou non concentrée, avec de l'eau et, sous réserve de l'alinéa e)(i), un ingrédient édulcorant;

**b)** doit être composé

**(i)** dans le cas du nectar de pêche et du nectar de poire, d'au moins 40 pour cent de fruit en poids ou de l'équivalent obtenu du concentré de fruit, et

**(ii)** dans le cas du nectar d'abricot, d'au moins 35 pour cent de fruit en poids ou de l'équivalent obtenu du concentré de fruit;

**c)** doit comprendre au moins 13 pour cent de solides solubles en poids exprimé en °Brix selon l'échelle internationale prévue pour la saccharose et calculé à l'aide d'un réfractomètre à 20 °C et non corrigé pour l'acidité;

**(d)** shall not contain more than 3 g/kg (3000 p.p.m.) of ethanol and 10 mg/kg (10 p.p.m.) of hydroxy methyl furfural; and

**(e)** may contain

**(i)** honey if no other sweetening ingredient is employed,

**(ii)** citric acid and malic acid at levels consistent with good manufacturing practice,

**(iii)** lemon juice, and

**(iv)** vitamin C.

SOR/79-660, s. 2; SOR/2010-94, s. 9(E).

**d)** doit comprendre au plus 3 g/kg (3000 p.p.m.) d'éthanol et 10 mg/kg (10 p.p.m.) de furfurol hydroxyméthylique; et

**e)** peut comprendre

**(i)** du miel si aucun autre ingrédient édulcorant n'est utilisé,

**(ii)** une quantité d'acide citrique et d'acide malique conforme aux bonnes pratiques industrielles,

**(iii)** du jus de citron, et

**(iv)** de la vitamine C.

DORS/79-660, art. 2; DORS/2010-94, art. 9(A).

## Fruit Flavoured Drinks

**B.11.150** No person shall label, package, sell or advertise a fruit flavoured drink in a manner that is likely to create an impression that the fruit flavoured drink contains vitamins or has any other nutritional value commonly associated with any fruit juice unless the following requirements are met:

**(a)** it is sold as a substitute for fruit juice or as a breakfast drink;

**(b)** it is not carbonated;

**(c)** it is not represented to be or is not commonly known as

**(i)** a soft drink, or

**(ii)** a thirst-quenching or refreshment drink; and

**(d)** notwithstanding sections D.01.009, D.01.011 and D.02.009,

**(i)** it contains vitamin C in an amount not less than 24 milligrams and not more than 48 milligrams, and

**(ii)** it contains

**(A)** where folic acid has been added, an amount of folic acid of not less than 40 micrograms and not more than 80 micrograms,

**(B)** where thiamine has been added, an amount of thiamine of not less than 0.08 milligram and not more than 0.11 milligram,

## Boissons à arôme de fruit

**B.11.150** Il est interdit d'étiqueter, d'empaqueter, de vendre ou d'annoncer une boisson à arôme de fruit de façon à créer l'impression qu'elle contient une vitamine ou présente toute autre valeur nutritive normalement attribuée à un jus de fruits à moins que les exigences suivantes ne soient respectées :

**a)** qu'elle soit vendue comme succédané d'un jus de fruits ou comme boisson pour le petit déjeuner;

**b)** qu'elle ne soit pas gazeuse;

**c)** qu'elle ne soit pas offerte ni habituellement connue comme

**(i)** une boisson gazeuse, ou

**(ii)** une boisson désaltérante ou rafraîchissante; et

**d)** qu'elle contienne, nonobstant les articles D.01.009, D.01.011 et D.02.009, lorsque la boisson est prête à servir, par 100 ml,

**(i)** de la vitamine C en quantité d'au moins 24 mg et d'au plus 48 mg, et

**(ii)**

**(A)** de l'acide folique, si ajouté, en quantité d'au moins 40 µg et d'au plus 80 µg,

**(B)** de la thiamine, si ajoutée, en quantité d'au moins 0,08 mg et d'au plus 0,11 mg,

**(C)** du fer, si ajouté, en quantité d'au moins 0,56 mg et d'au plus 0,80 mg, ou

**(C)** where iron has been added, an amount of iron of not less than 0.56 milligram and not more than 0.80 milligram, or

**(D)** where potassium has been added, an amount of potassium of not less than 100 milligrams and not more than 200 milligrams,

per 100 millilitres when the drink is ready to serve.

SOR/78-478, s. 2.

**B.11.151** No person shall label, package, sell or advertise a base, concentrate or mix that is used for making a fruit flavoured drink in a manner that is likely to create an impression that the drink made therefrom will contain vitamins or have any other nutritional value commonly associated with fruit juice unless the following requirements are met:

**(a)** the base, concentrate or mix

**(i)** is sold for the purpose of making a breakfast drink or a substitute for fruit juice,

**(ii)** is not represented to be or is not commonly known as a product that is used for making a soft drink or a thirst-quenching or refreshment drink; and

**(b)** where a drink is made therefrom as directed, the drink meets the requirements described in paragraph B.11.150(d).

SOR/78-478, s. 2.

## Jams

### B.11.201 [S]. (Naming the fruit) Jam

**(a)** shall be the product obtained by processing fruit, fruit pulp, or canned fruit, by boiling to a suitable consistency with water and a sweetening ingredient;

**(b)** shall contain not less than

**(i)** 45 per cent of the named fruit, and

**(ii)** 66 per cent water soluble solids as estimated by the refractometer;

**(c)** may contain

**(i)** such amount of added pectin, pectinous preparation, or acid ingredient as reasonably compensates for any deficiency in the natural pectin content or acidity of the named fruit,

**(ii)** a Class II preservative,

**(D)** du potassium, si ajouté, en quantité d'au moins 100 mg et d'au plus 200 mg.

DORS/78-478, art. 2.

**B.11.151** Il est interdit d'étiqueter, d'empaqueter, de vendre ou d'annoncer une base, un concentré ou un mélange pour préparer une boisson à arôme de fruit de façon à créer l'impression qu'il contient une vitamine ou qu'il présente toute autre valeur nutritive normalement attribuée à un jus de fruits à moins que les exigences suivantes ne soient respectées :

**a)** qu'une telle base, concentré ou mélange

**(i)** soit vendu pour faire une boisson pour le petit déjeuner ou un succédané de jus de fruits,

**(ii)** ne soit pas offert ni habituellement connu comme un produit pour faire une boisson gazeuse ou une boisson désaltérante ou rafraîchissante; et

**b)** que la boisson préparée à partir d'eux soit conforme aux exigences prescrites à l'alinéa B.11.150d).

DORS/78-478, art. 2.

## Confiture

### B.11.201 [N]. La **confiture de (nom du fruit)**

**a)** doit être le produit obtenu en traitant des fruits, de la pulpe de fruits ou des fruits en conserve, par ébullition jusqu'à une consistance convenable, avec de l'eau et un agent édulcorant;

**b)** doit renfermer au moins

**(i)** 45 pour cent du fruit nommé,

**(ii)** 66 pour cent de solides solubles dans l'eau, déterminés au réfractomètre;

**c)** peut renfermer

**(i)** la quantité ajoutée de pectine, de préparation pectique ou d'ingrédient acide, requise pour compenser raisonnablement toute déficience en pectine ou en acidité naturelle du fruit nommé,

**(ii)** un agent de conservation de la catégorie II,

**(iii)** a pH adjusting agent, and

**(iv)** an antifoaming agent; and

**(d)** shall not contain apple or rhubarb.

SOR/92-400, s. 16.

### B.11.202 [S]. (Naming the fruit) Jam with Pectin

**(a)** shall be the product obtained by processing fruit, fruit pulp, or canned fruit by boiling to a suitable consistency with water and a sweetening ingredient;

**(b)** shall contain

**(i)** not less than 27 per cent of the named fruit,

**(ii)** not less than 66 per cent water soluble solids as estimated by the refractometer, and

**(iii)** pectin or pectinous preparations;

**(c)** may contain

**(i)** such amount of acid ingredient as reasonably compensates for any deficiency in the natural acidity of the named fruit,

**(ii)** food colour,

**(iii)** a Class II preservative,

**(iv)** a pH adjusting agent, and

**(v)** an antifoaming agent; and

**(d)** shall not contain apple or rhubarb.

SOR/92-400, s. 17.

### B.11.203 [S]. Apple (or Rhubarb) and (naming the fruit) Jam

**(a)** shall be the product obtained by processing fruit, fruit pulp or canned fruit by boiling to a suitable consistency with water and a sweetening ingredient;

**(b)** shall contain not less than

**(i)** 12.5 per cent of the named fruit, except that where the named fruit is strawberry it shall contain not less than 15 per cent strawberries,

**(ii)** 20 per cent apple or rhubarb pulp, and

**(iii)** 66 per cent water soluble solids as estimated by the refractometer; and

**(iii)** un agent rajusteur du pH, et

**(iv)** un agent anti-mousse; et

**d)** ne doit renfermer ni pommes ni rhubarbe.

DORS/92-400, art. 16.

### B.11.202 [N]. La confiture de (nom du fruit) avec pectine

**a)** doit être le produit obtenu en traitant des fruits, de la pulpe de fruits ou des fruits en conserve, par ébullition jusqu'à une consistance convenable, avec de l'eau et un agent édulcorant;

**b)** doit renfermer

**(i)** au moins 27 pour cent du fruit nommé,

**(ii)** au moins 66 pour cent de solides solubles dans l'eau, déterminés au réfractomètre, et

**(iii)** de la pectine ou une préparation pectique;

**c)** peut renfermer

**(i)** la quantité d'ingrédient acide requise pour compenser raisonnablement toute déficience en acidité naturelle du fruit nommé,

**(ii)** un colorant pour aliments,

**(iii)** un agent de conservation de la catégorie II,

**(iv)** un agent rajusteur du pH, et

**(v)** un agent anti-mousse; et

**d)** ne doit renfermer ni pommes ni rhubarbe.

DORS/92-400, art. 17.

### B.11.203 [N]. La confiture de pommes (ou de rhubarbe) et de (nom du fruit)

**a)** doit être le produit obtenu en traitant des fruits, de la pulpe de fruits ou des fruits en conserve, par ébullition jusqu'à une consistance convenable, avec de l'eau et un agent édulcorant;

**b)** doit renfermer au moins

**(i)** 12,5 pour cent du fruit nommé, sauf que si le fruit nommé est la fraise, elle doit renfermer au moins 15 pour cent de fraises,

**(ii)** 20 pour cent de pulpe de pommes ou de rhubarbe, et

**(c)** may contain

**(i)** pectin or pectinous preparation,

**(ii)** such amount of acid ingredient as reasonably compensates for any deficiency in the natural acidity of the fruit used in its preparation,

**(iii)** food colour,

**(iv)** a Class II preservative,

**(v)** a pH adjusting agent, and

**(vi)** an antifoaming agent.

**B.11.204** [Repealed, SOR/2022-143, s. 21]

## Marmalade

**B.11.220 [S]. (Naming the citrus fruit) Marmalade** shall be the food of jelly-like consistency made from any combination of peel, pulp or juice of the named citrus fruit by boiling with water and a sweetening ingredient and shall contain not less than 65 per cent water soluble solids as estimated by the refractometer and may contain

**(a)** such amount of acid ingredient as reasonably compensates for any deficiency in the natural acidity of the named citrus fruit;

**(b)** a pH adjusting agent; and

**(c)** an antifoaming agent.

**B.11.221 [S]. (Naming the citrus fruit) Marmalade with Pectin**

**(a)** shall be the food of jelly-like consistency made from any combination of peel, pulp or juice of the named citrus fruit by boiling with water and a sweetening ingredient;

**(b)** shall contain

**(i)** not less than 27 per cent of any combination of peel, pulp or juice of the named citrus fruit,

**(ii)** not less than 65 per cent water soluble solids as estimated by the refractometer, and

**(iii)** pectin or pectinous preparation; and

**(c)** may contain

**(iii)** 66 pour cent de solides solubles dans l'eau, déterminés au réfractomètre; et

**c)** peut renfermer

**(i)** de la pectine ou une préparation pectique,

**(ii)** la quantité d'ingrédient acide requise pour compenser raisonnablement toute déficience en acidité naturelle du fruit utilisé dans la préparation,

**(iii)** un colorant pour aliments,

**(iv)** un agent de conservation de la catégorie II,

**(v)** un agent rajusteur du pH, et

**(vi)** un agent anti-mousse.

**B.11.204** [Abrogé, DORS/2022-143, art. 21]

## Marmelade

**B.11.220 [N].** La **marmelade de (nom de l'agrume)** doit être le produit alimentaire à consistance de gelée, préparé à partir de tout mélange de zeste ou d'écorce, de pulpe, et de jus de l'agrume nommé, par ébullition avec de l'eau et un agent édulcorant; elle doit renfermer au moins 65 pour cent de solides solubles dans l'eau, déterminés au réfractomètre, et peut renfermer

**a)** la quantité d'ingrédient acide requise pour compenser raisonnablement toute déficience en acidité naturelle des agrumes nommés;

**b)** un agent rajusteur du pH; et

**c)** un agent anti-mousse.

**B.11.221 [N].** La **marmelade de (nom de l'agrume) avec pectine**

**a)** doit être le produit alimentaire à consistance de gelée, préparé à partir de tout mélange de zeste ou d'écorce, de pulpe, et de jus de l'agrume nommé, par ébullition avec de l'eau et un agent édulcorant;

**b)** doit renfermer

**(i)** au moins 27 pour cent de tout mélange de zeste ou d'écorce, de pulpe et de jus de l'agrume nommé,

**(ii)** au moins 65 pour cent de solides solubles dans l'eau, déterminés au réfractomètre, et

**(iii)** de la pectine ou une préparation pectique; et

**c)** peut renfermer

**(i)** such amount of acid ingredient as reasonably compensates for any deficiency in the natural acidity of the citrus fruit used in its preparation,

**(ii)** a Class II preservative,

**(iii)** a pH adjusting agent, and

**(iv)** an antifoaming agent.

### B.11.222 [S]. Pineapple Marmalade or Fig Marmalade

**(a)** shall be the food of jelly-like consistency made from the pulp of juice of the named fruit by boiling with water and a sweetening ingredient;

**(b)** shall contain not less than

**(i)** 45 per cent of the named fruit, and

**(ii)** 65 per cent water soluble solids, as estimated by the refractometer;

**(c)** may contain such amounts of added pectin, pectinous preparation or acid ingredient as reasonably compensates for any deficiency in the natural pectin content or acidity of the named fruit;

**(d)** a pH adjusting agent; and

**(e)** an antifoaming agent.

### B.11.223 [S]. Pineapple Marmalade with Pectin or Fig Marmalade with Pectin

**(a)** shall be the food of jelly-like consistency made from the pulp and juice of the named fruit by boiling with water and a sweetening ingredient;

**(b)** shall contain

**(i)** not less than 27 per cent of the named fruit,

**(ii)** not less than 65 per cent water soluble solids as estimated by the refractometer, and

**(iii)** pectin or pectinous preparation; and

**(c)** may contain

**(i)** such amount of acid ingredient as reasonably compensates for any deficiency in the natural acidity of the named fruit,

**(ii)** food colour,

**(i)** la quantité d'ingrédient acide requise pour compenser raisonnablement toute déficience en acidité naturelle de l'agrume utilisé dans sa préparation,

**(ii)** un agent de conservation de la catégorie II,

**(iii)** un agent rajusteur du pH, et

**(iv)** un agent anti-mousse.

### B.11.222 [N]. La marmelade d'ananas et la marmelade de figues

**a)** doivent être le produit alimentaire à consistance de gelée, préparé à partir de la pulpe et du jus de fruit nommé, par ébullition avec de l'eau et un agent édulcorant;

**b)** doivent renfermer

**(i)** au moins 45 pour cent du fruit nommé, et

**(ii)** 65 pour cent de solides solubles dans l'eau, déterminés au réfractomètre;

**c)** peuvent renfermer la quantité ajoutée de pectine, de préparation pectique ou d'ingrédient acide, qui est requise pour compenser raisonnablement toute déficience en pectine naturelle ou en acidité naturelle du fruit nommé;

**d)** un agent rajusteur du pH; et

**e)** un agent anti-mousse.

### B.11.223 [N]. La marmelade d'ananas avec pectine ou la marmelade de figues avec pectine

**a)** doivent être le produit alimentaire à consistance de gelée, préparé à partir de la pulpe et du jus du fruit nommé, par ébullition avec de l'eau et un agent édulcorant;

**b)** doivent renfermer

**(i)** au moins 27 pour cent du fruit nommé,

**(ii)** au moins 65 pour cent de solides solubles dans l'eau, déterminés au réfractomètre, et

**(iii)** de la pectine ou une préparation pectique; et

**c)** peuvent renfermer

**(i)** la quantité d'ingrédient acide requise pour compenser raisonnablement toute déficience en acidité naturelle du fruit nommé,

**(iii)** a Class II preservative,

**(iv)** a pH adjusting agent, and

**(v)** an antifoaming agent.

SOR/84-300, s. 37(E).

**B.11.224 [S]. (Naming the fruit) Preserve (Conserve)** shall be the food made by processing fruit other than apple or rhubarb with a sweetening ingredient and shall contain not less than

**(a)** 45 parts by weight of the named fruit for each 55 parts by weight, on the dry basis, of a sweetening ingredient; and

**(b)** 60 per cent water-soluble solids, as estimated by the refractometer.

## Jelly

**B.11.240 [S]. (Naming the fruit) Jelly** shall be the gelatinous food, free of seeds and pulp, made from the named fruit, the juice of the named fruit or a concentrate of the juice of the named fruit, which has been boiled with water and a sweetening ingredient, shall contain not less than 62 per cent water soluble solids as estimated by the refractometer and may contain

**(a)** such amount of added pectin, pectinous preparation or acid ingredient as reasonably compensates for any deficiency of the natural pectin content or acidity of the named fruit;

**(b)** a pH adjusting agent; and

**(c)** an antifoaming agent.

**B.11.241 [S]. (Naming the fruit) Jelly with Pectin**

**(a)** shall be the gelatinous food, free of seeds and pulp, made from the named fruit, the juice of the named fruit or a concentrate of the juice of the named fruit, which has been boiled with water and a sweetening ingredient;

**(b)** shall contain

**(i)** not less than the equivalent of 32 per cent juice of the named fruit,

**(ii)** not less than 62 per cent water soluble solids, as estimated by the refractometer, and

**(iii)** pectin or pectinous preparation; and

**(ii)** un colorant pour aliments,

**(iii)** un agent de conservation de la catégorie II,

**(iv)** un agent rajusteur du pH, et

**(v)** un agent anti-mousse.

DORS/84-300, art. 37(A).

**B.11.224 [N].** Les **conserves (nom du fruit)** doivent être le produit alimentaire fabriqué en traitant des fruits autres que les pommes ou la rhubarbe avec un ingrédient édulcorant, et doivent renfermer au moins

**a)** 45 parties en poids du fruit nommé pour 55 parties en poids de la matière desséchée de l'ingrédient édulcorant; et

**b)** 60 pour cent de solides solubles dans l'eau, déterminés au réfractomètre.

## Gelée

**B.11.240 [N].** La **gelée de (nom du fruit)** doit être l'aliment gélatineux, exempt de graines et de pulpe, fabriqué avec le fruit nommé, le jus du fruit nommé, ou un concentré du jus du fruit nommé, par ébullition avec de l'eau et un agent édulcorant; elle doit renfermer au moins 62 pour cent de solides solubles dans l'eau, déterminés au réfractomètre, et elle peut renfermer

**a)** la quantité ajoutée de pectine, de préparation pectique, ou d'ingrédient acide, requise pour compenser raisonnablement toute déficience en pectine naturelle ou en acidité du fruit nommé;

**b)** un agent rajusteur du pH; et

**c)** un agent anti-mousse.

**B.11.241 [N].** La **gelée de (nom du fruit) avec pectine**

**a)** doit être l'aliment gélatineux, exempt de graines et de pulpe, fabriqué avec le fruit nommé, le jus du fruit nommé ou un concentré du jus du fruit nommé, par ébullition avec de l'eau et un agent édulcorant;

**b)** doit renfermer

**(i)** au moins l'équivalent de 32 pour cent de jus du fruit nommé,

**(ii)** au moins 62 pour cent de solides solubles dans l'eau, déterminés au réfractomètre, et

**(iii)** de la pectine ou une préparation pectique; et

**(c)** may contain

**(i)** such amount of acid ingredient as reasonably compensates for any deficiency in the natural acidity of the named fruit,

**(ii)** juice of another fruit,

**(iii)** a gelling agent,

**(iv)** food colour,

**(v)** a Class II preservative,

**(vi)** a pH adjusting agent, and

**(vii)** an antifoaming agent.

**B.11.242** The standards prescribed in these Regulations for jam and jelly do not apply to cranberry sauce, jellied cranberry, cranberry jelly, mint jelly and jellied mint.

## Mincemeat

**B.11.250 [S]. Mincemeat, Mince Meat, Mince** or **Fruit Mince**

**(a)** shall be the food prepared from

**(i)** fruit or dried fruit,

**(ii)** suet,

**(iii)** salt,

**(iv)** spices, and

**(v)** a sweetening agent; and

**(b)** may contain

**(i)** vinegar,

**(ii)** fresh, concentrated or fermented fruit juice,

**(iii)** spiritous liquor,

**(iv)** nuts,

**(v)** cooked meat,

**(vi)** a Class II preservative,

**(vii)** a thickening agent,

**(viii)** citric acid, and

**c)** peut renfermer

**(i)** la quantité d'ingrédient acide requise pour compenser raisonnablement toute déficience en acidité naturelle du fruit nommé,

**(ii)** le jus d'un autre fruit,

**(iii)** un agent gélatinisant,

**(iv)** un colorant pour aliments,

**(v)** un agent de conservation de la catégorie II,

**(vi)** un agent rajusteur du pH, et

**(vii)** un agent anti-mousse.

**B.11.242** Les normes prescrites dans le présent règlement ne s'appliquent ni à la sauce aux canneberges (ou atocas), ni à la gelée de canneberges, ni aux canneberges en gelée, ni à la gelée de menthe ni à la menthe en gelée.

## Mincemeat

**B.11.250 [N].** Le **mincemeat, mince-meat, mince** ou **fruit-mince**

**a)** doit être le produit alimentaire préparé avec

**(i)** des fruits frais ou des fruits secs,

**(ii)** du suif,

**(iii)** du sel,

**(iv)** des épices, et

**(v)** un agent édulcorant; et

**b)** peut renfermer

**(i)** du vinaigre,

**(ii)** du jus de fruits frais, concentré ou fermenté,

**(iii)** un spiritueux,

**(iv)** des noix,

**(v)** de la viande cuite,

**(vi)** un agent de conservation de la catégorie II,

**(vii)** un agent épaississant,

**(viii)** de l'acide citrique, et

**(ix)** caramel.

SOR/84-300, s. 38(F); SOR/2011-278, s. 9.

## Boiled Cider

**B.11.260 [S]. Boiled Cider** shall be the liquid expressed from whole apples, apple cores, apple trimmings or apple culls and concentrated by boiling.

**(ix)** du caramel.

DORS/84-300, art. 38(F); DORS/2011-278, art. 9.

## Cidre bouilli

**B.11.260 [N].** Le **cidre bouilli** doit être le liquide exprimé de pommes entières, de cœurs, de parures, ou de rebuts de pommes, concentré par ébullition.

**DIVISION 12**

# Prepackaged Water and Ice

[SOR/80-633, s. 1]

**B.12.001 [S].** Water represented as mineral water or spring water,

**(a)** shall be potable water obtained from an underground source but not obtained from a public community water supply;

**(b)** shall not contain any coliform bacteria, as determined by official method MFO-9, Microbiological Examination of Mineral Water, November 30, 1981;

**(c)** shall not have its composition modified through the use of any chemicals; and

**(d)** notwithstanding paragraph (c), may contain

**(i)** added carbon dioxide,

**(ii)** added fluoride, if the total fluoride ion content thereof does not exceed one part per million, and

**(iii)** added ozone.

SOR/80-633, s. 2; SOR/82-768, s. 34.

**B.12.002** The label on a container of water represented as mineral water or spring water shall carry a statement

**(a)** of the geographical location of the underground source from which it is obtained;

**(b)** of the total dissolved mineral salt content expressed in parts per million; and

**(c)** of the total fluoride ion content expressed in parts per million.

**(d)** [Repealed, SOR/2022-143, s. 22]

SOR/84-300, s. 39(F); SOR/88-336, s. 3; SOR/92-626, s. 14(F); SOR/2022-143, s. 22.

**B.12.003** [Repealed, SOR/2022-143, s. 23]

**TITRE 12**

# Eau et glace préemballées

[DORS/80-633, art. 1]

**B.12.001 [N].** Une eau dite eau minérale ou eau de source

**a)** doit être de l'eau potable obtenue d'une source souterraine et non d'un réseau de distribution publique;

**b)** ne doit contenir aucune bactérie coliforme, après analyse selon la méthode officielle MFO-9, Examen microbiologique de l'eau minérale, 30 novembre 1981;

**c)** ne doit pas être modifiée dans sa composition par l'emploi de substances chimiques; et

**d)** peut contenir, nonobstant le sous-alinéa c),

**(i)** de l'anhydride carbonique ajouté,

**(ii)** du fluorure ajouté, si la teneur totale en ion fluorure n'excède pas une partie par million, et

**(iii)** de l'ozone ajouté.

DORS/80-633, art. 2; DORS/82-768, art. 34.

**B.12.002** L'étiquette d'un récipient contenant une eau dite eau minérale ou eau de source doit indiquer :

**a)** la position géographique de la source souterraine dont provient l'eau;

**b)** la teneur totale en sels minéraux dissous, exprimée en parties par million;

**c)** la teneur totale en ion fluorure, exprimée en parties par million.

**d)** [Abrogé, DORS/2022-143, art. 22]

DORS/84-300, art. 39(F); DORS/88-336, art. 3; DORS/92-626, art. 14(F); DORS/2022-143, art. 22.

**B.12.003** [Abrogé, DORS/2022-143, art. 23]

**B.12.004** No person shall sell water in sealed containers, other than water represented as mineral water or spring water, if it contains

**(a)** any coliform bacteria, as determined by official method MFO-15, Microbiological Examination of Water in Sealed Containers (Excluding Mineral and Spring Water) and of Prepackaged Ice, November 30, 1981;

**(b)** more than 100 total aerobic bacteria per millilitre, as determined by official method MFO-15, Microbiological Examination of Water in Sealed Containers (Excluding Mineral and Spring Water) and of Prepackaged Ice, November 30, 1981;

**(c)** naturally occurring fluoride ion in an amount that exceeds its naturally occurring amount; or

**(d)** added fluoride in such an amount that the total amount therein of added and naturally occurring fluoride ion exceeds one part per million.

SOR/80-633, s. 3; SOR/82-768, s. 35.

**B.12.005 (1)** No person shall sell prepackaged ice if it contains

**(a)** any coliform bacteria, as determined by official method MFO-15, Microbiological Examination of Water in Sealed Containers (Excluding Mineral and Spring Water) and of Prepackaged Ice, November 30, 1981;

**(b)** naturally occurring fluoride ion in an amount that exceeds its naturally occurring amount; or

**(c)** added fluoride in such an amount that the total amount therein of added and naturally occurring fluoride ion exceeds one part per million.

**(2)** No person shall manufacture prepackaged ice for sale if the water from which it is made contains

**(a)** any coliform bacteria, as determined by official method MFO-15, Microbiological Examination of Water in Sealed Containers (Excluding Mineral and Spring Water) and of Prepackaged Ice, November 30, 1981;

**(b)** naturally occurring fluoride ion in an amount that exceeds its naturally occurring amount; or

**(c)** added fluoride in such an amount that the total amount therein of added and naturally occurring fluoride ion exceeds one part per million.

SOR/80-633, s. 3; SOR/82-768, s. 36.

**B.12.004** Il est interdit de vendre de l'eau en contenants scellés, à l'exclusion de l'eau minérale et de l'eau de source, qui contient

**a)** des bactéries coliformes, après analyse selon la méthode officielle MFO-15, Examen microbiologique de l'eau présentée dans des contenants hermétiques (à l'exclusion de l'eau minérale et de l'eau de source) et de la glace pré-emballée, 30 novembre 1981;

**b)** plus de 100 bactéries aérobies totales par millilitre après analyse selon la méthode officielle MFO-15, Examen microbiologique de l'eau présentée dans des contenants hermétiques (à l'exclusion de l'eau minérale et l'eau de source) et de la glace pré-emballée, 30 novembre 1981;

**c)** une quantité d'ion fluorure présent à l'état naturel qui dépasse la quantité normale; ou

**d)** une quantité de fluorure ajouté telle que la teneur totale en fluorure ajouté et en ion fluorure présent à l'état naturel dépasse une partie par million.

DORS/80-633, art. 3; DORS/82-768, art. 35.

**B.12.005 (1)** Il est interdit de vendre de la glace préemballée qui contient

**a)** des bactéries coliformes, après analyse selon la méthode officielle MFO-15, Examen microbiologique de l'eau présentée dans des contenants hermétiques (à l'exclusion de l'eau minérale et de l'eau de source) et de la glace pré-emballée, 30 novembre 1981;

**b)** une quantité d'ion fluorure présent à l'état naturel qui dépasse la quantité normale; ou

**c)** une quantité de fluorure ajouté telle que la teneur totale en fluorure ajouté et en ion fluorure présent à l'état naturel dépasse une partie par million.

**(2)** Il est interdit de fabriquer de la glace préemballée en vue de la vente, faite à partir d'eau qui contient

**a)** des bactéries coliformes, après analyse selon la méthode officielle MFO-15, Examen microbiologique de l'eau présentée dans des contenants hermétiques (à l'exclusion de l'eau minérale et de l'eau de source) et de la glace pré-emballée, 30 novembre 1981;

**b)** une quantité d'ion fluorure présent à l'état naturel qui dépasse la quantité normale; ou

**c)** une quantité de fluorure ajoutée telle que la teneur totale en fluorure ajouté et en ion fluorure présent à l'état naturel dépasse une partie par million.

DORS/80-633, art. 3; DORS/82-768, art. 36.

**B.12.006** [Repealed, SOR/2022-143, s. 24]

**B.12.007** Notwithstanding section B.01.008, when chlorine or any compounds of chlorine have been

**(a)** used in the treatment of water in sealed containers, other than water represented as mineral water or spring water, and

**(b)** subsequently removed from the water together with any chlorine and compounds of chlorine produced in the water,

chlorine or any compounds of chlorine need not be shown as ingredients on any part of the label on a sealed container of that water.

SOR/80-633, s. 3.

**B.12.008** A statement of the total fluoride ion content expressed in parts per million shall appear on the principal display panel of the label on a sealed container of water, other than water represented as mineral water or spring water and on the label on a container of prepackaged ice.

SOR/80-633, s. 3; SOR/2000-353, s. 5(E).

**B.12.009** [Repealed, SOR/2022-143, s. 25]

**B.12.006** [Abrogé, DORS/2022-143, art. 24]

**B.12.007** Nonobstant l'article B.01.008, si du chlore ou de ses composés

**a)** ont été utilisés dans le traitement de l'eau en contenants scellés, à l'exclusion de l'eau minérale et de l'eau de source, et

**b)** ont été par la suite éliminés avec tout chlore ou composé de chlore produit dans l'eau,

il n'est pas nécessaire de les déclarer dans la liste des ingrédients sur l'étiquette du contenant.

DORS/80-633, art. 3.

**B.12.008** La teneur totale en ion fluorure doit être indiquée, en parties par million, dans l'espace principal de l'étiquette de l'eau vendue en contenants scellés, à l'exclusion de l'eau minérale et de l'eau de source, ainsi que sur l'étiquette de la glace préemballée.

DORS/80-633, art. 3; DORS/2000-353, art. 5(A).

**B.12.009** [Abrogé, DORS/2022-143, art. 25]

## DIVISION 13

# Grain and Bakery Products

### B.13.001 [S]. Flour, White Flour, Enriched Flour or Enriched White Flour

**(a)** shall be the food prepared by the grinding and bolting through cloth having openings not larger than those of woven wire cloth designated "149 microns (No. 100)", of cleaned milling grades of wheat;

**(b)** shall be free from bran coat and germ to such an extent that the percentage of ash therein, before the addition of any other material permitted by this section, calculated on a moisture-free basis, does not exceed 1.20 per cent;

**(c)** shall have a moisture content of not more than 15 per cent;

**(d)** shall contain in 100 grams of flour

**(i)** 0.64 milligram of thiamine,

**(ii)** 0.40 milligram of riboflavin,

**(iii)** 5.30 milligrams of niacin or niacinamide,

## TITRE 13

# Céréales et produits de boulangerie

### B.13.001 [N]. La farine, farine blanche, farine enrichie ou farine blanche enrichie

**a)** est le produit alimentaire obtenu par mouture et blutage de blé nettoyé de qualité à farine à l'aide d'un tamis dont l'ouverture de maille ne dépasse pas celle de la toile métallique de « 149 microns (nº 100) »;

**b)** doit être débarrassée de son et de germe au point que son pourcentage de cendres, avant l'addition d'une autre matière permise par cet article, calculée sur la matière desséchée, ne dépasse pas 1,20 pour cent;

**c)** doit avoir une teneur en humidité d'au plus 15 pour cent;

**d)** doit renfermer, par 100 grammes de farine :

**(i)** 0,64 milligramme de thiamine,

**(ii)** 0,40 milligramme de riboflavine,

**(iii)** 5,30 milligrammes de niacine ou de niacinamide,

**(iv)** 0.15 milligram of folic acid, and

**(v)** 4.4 milligrams of iron;

**(e)** may contain

**(i)** malted wheat flour,

**(ii)** malted barley flour in an amount not exceeding 0.50 per cent of the weight of the flour,

**(iii)** amylase, amylase (maltogenic), asparaginase, bromelain, glucoamylase, glucose oxidase, lactase, lipase, lipoxidase, pentosanase, phospholipase, protease, pullulanase or xylanase,

**(iv)** chlorine,

**(v)** chlorine dioxide,

**(vi)** benzoyl peroxide in an amount not exceeding 150 parts by weight for each one million parts of flour, with or without not more than 900 parts by weight for each one million parts of flour of one or a mixture of two or more of calcium carbonate, calcium sulphate, dicalcium phosphate, magnesium carbonate, potassium aluminum sulphate, sodium aluminum sulphate, starch and tricalcium phosphate as carriers of the benzoyl peroxide,

**(vii)** [Repealed, SOR/94-227, s. 1]

**(viii)** ammonium persulphate in an amount not exceeding 250 parts by weight for each one million parts of flour,

**(ix)** ammonium chloride in an amount not exceeding 2,000 parts by weight for each one million parts of flour,

**(x)** acetone peroxide,

**(xi)** azodicarbonamide in an amount not exceeding 45 parts by weight for each one million parts of flour,

**(xii)** ascorbic acid in an amount not exceeding 200 parts by weight for each one million parts of flour,

**(xiii)** l-cysteine (hydrochloride) in an amount not exceeding 90 parts by weight for each one million parts of flour,

**(xiv)** monocalcium phosphate in an amount not exceeding 7,500 parts by weight for each one million parts of flour, and

**(xv)** in 100 grams of flour

**(iv)** 0,15 milligramme d'acide folique,

**(v)** 4,4 milligrammes de fer;

**e)** peut renfermer

**(i)** de la farine de blé malté,

**(ii)** de la farine d'orge malté, en quantité d'au plus 0,50 pour cent du poids de la farine,

**(iii)** de l'amylase, de l'amylase maltogène, de l'asparaginase, de la broméline, de la glucoamylase, de la glucose-oxydase, de la lactase, de la lipase, de la lipoxydase, de la pentosanase, de la phospholipase, de la protéase, de la pullulanase ou de la xylanase,

**(iv)** du chlore,

**(v)** du bioxyde de chlore,

**(vi)** du peroxyde de benzoyle, en quantité d'au plus 150 parties en poids par million de parties de farine, avec ou sans véhicule constitué d'au plus 900 parties en poids par million de parties de farine de l'une ou d'un mélange des substances suivantes : carbonate de calcium, sulfate de calcium, phosphate bicalcique, carbonate de magnésium, sulfate double d'aluminium et de potassium, sulfate double d'aluminium et de sodium, amidon et phosphate tricalcique,

**(vii)** [Abrogé, DORS/94-227, art. 1]

**(viii)** du persulfate d'ammonium, en quantité d'au plus 250 parties en poids par million de parties de farine,

**(ix)** du chlorure d'ammonium, en quantité d'au plus 2 000 parties en poids par million de parties de farine,

**(x)** du peroxyde d'acétone,

**(xi)** de l'azodicarbonamide, en quantité d'au plus 45 parties en poids par million de parties de farine,

**(xii)** de l'acide ascorbique, en quantité d'au plus 200 parties en poids par million de parties de farine,

**(xiii)** du l-cystéine (chlorhydrate), en quantité d'au plus 90 parties en poids par million de parties de farine,

**(xiv)** du phosphate monocalcique en quantité d'au plus 7 500 parties en poids par million de parties de farine, et

**(A)** 0.31 milligram of vitamin $B_6$,

**(B)** 1.3 milligrams of d-pantothenic acid, and

**(C)** 190 milligrams of magnesium; and

**(f)** may contain calcium carbonate, edible bone meal, chalk (B.P.), ground limestone or calcium sulphate in an amount that will provide in 100 grams of flour 140 milligrams of calcium.

**(g)** [Repealed, SOR/97-151, s. 21]

SOR/78-402, s. 3; SOR/78-698, s. 2; SOR/80-632, s. 3; SOR/82-383, s. 5; SOR/84-300, s. 41(E); SOR/89-145, s. 1; SOR/92-63, s. 1; SOR/92-94, s. 1; SOR/94-227, s. 1; SOR/94-689, s. 2; SOR/96-527, s. 1; SOR/97-122, s. 1; SOR/97-151, s. 21; SOR/97-558, s. 1; SOR/98-550, s. 1; SOR/2003-130, s. 1; SOR/2012-26, s. 1; SOR/2012-46, s. 1.

**B.13.002** Notwithstanding section B.13.001, flour, white flour, enriched flour or enriched white flour, used in or sold for the manufacture of gluten or starch is not required to contain added thiamine, riboflavin, niacin, folic acid or iron.

SOR/98-550, s. 2.

### B.13.003 [S]. Vitamin B White Flour (Canada Approved)

**(a)** shall be flour that has been milled in such a way as to retain a high proportion of the vitamins naturally occurring in the original wheat berry;

**(b)** shall constitute not less than 70 per cent of the wheat from which it is milled;

**(c)** shall be bolted through at least one cloth having openings not larger than those of woven wire cloth designated "149 microns (No. 100)"; and

**(d)** shall contain, on a moisture-free basis,

**(i)** in one pound an amount of the vitamin B complex that will contribute not less than 1.2 milligrams of thiamine, and

**(ii)** not more than 0.70 per cent and not less than 0.61 per cent ash.

**B.13.004** [Repealed, SOR/79-252, s. 2]

### B.13.005 [S]. Whole Wheat Flour or Entire Wheat Flour

**(a)** shall be the food prepared by the grinding and bolting of cleaned, milling grades of wheat from which

**(xv)** par 100 grammes de farine :

**(A)** 0,31 milligramme de vitamine $B_6$,

**(B)** 1,3 milligramme d'acide-d-pantothénique,

**(C)** 190 milligrammes de magnésium;

**f)** peut contenir du carbonate de calcium, de la farine d'os comestible, de la craie (B.P.), du calcaire broyé ou du sulfate de calcium, en quantité suffisante pour que 100 grammes de farine contiennent au moins 140 milligrammes de calcium.

**g)** [Abrogé, DORS/97-151, art. 21]

DORS/78-402, art. 3; DORS/78-698, art. 2; DORS/80-632, art. 3; DORS/82-383, art. 5; DORS/84-300, art. 41(A); DORS/89-145, art. 1; DORS/92-63, art. 1; DORS/92-94, art. 1; DORS/94-227, art. 1; DORS/94-689, art. 2; DORS/96-527, art. 1; DORS/97-122, art. 1; DORS/97-151, art. 21; DORS/97-558, art. 1; DORS/98-550, art. 1; DORS/2003-130, art. 1; DORS/2012-26, art. 1; DORS/2012-46, art. 1.

**B.13.002** Malgré l'article B.13.001, il n'est pas nécessaire que la farine, la farine blanche, la farine enrichie ou la farine blanche enrichie utilisée ou vendue pour la fabrication de gluten ou d'amidon renferme de la thiamine, de la riboflavine, de la niacine, de l'acide folique ou du fer ajoutés.

DORS/98-550, art. 2.

### B.13.003 [N]. La farine blanche à vitamine B (Approuvée-Canada)

**a)** doit être de la farine qui a été moulue de façon à conserver une forte proportion des vitamines naturelles du grain de blé original;

**b)** doit correspondre à un taux d'extraction d'au moins 70 pour cent du blé dont elle provient;

**c)** doit être blutée sur au moins un tamis ayant une ouverture de maille ne dépassant pas celle de la toile métallique dite 149 microns (tamis nº 100); et

**d)** doit, sur la matière desséchée, renfermer

**(i)** par livre, une quantité de complexe vitaminique B fournissant au moins 1,2 milligramme de thiamine, et

**(ii)** au plus 0,70 pour cent et au moins 0,61 pour cent de cendres.

**B.13.004** [Abrogé, DORS/79-252, art. 1]

### B.13.005 [N]. La farine de blé entier, farine de blé complet,

**a)** doit être le produit alimentaire obtenu par mouture et blutage de blé nettoyé de qualité à farine, dont une

a part of the outer bran or epidermis layer may have been separated;

**(b)** shall contain the natural constituents of the wheat berry to the extent of not less than 95 per cent of the total weight of the wheat from which it is milled;

**(c)** shall have

**(i)** an ash content, calculated on a moisture-free basis, of not less than 1.25 per cent and not more than 2.25 per cent,

**(ii)** a moisture content of not more than 15 per cent, and

**(iii)** such a degree of fineness that not less than 90 per cent bolts freely through a No. 8 (2 380 micron) sieve, and not less than 50 per cent through a No. 20 (840 micron) sieve; and

**(d)** may contain

**(i)** malted wheat flour,

**(ii)** malted barley flour in an amount not exceeding 0.50 per cent of the weight of the flour,

**(iii)** amylase, amylase (maltogenic), asparaginase, bromelain, glucoamylase, glucose oxidase, lactase, lipase, lipoxidase, pentosanase, phospholipase, protease, pullulanase or xylanase,

**(iv)** chlorine,

**(v)** chlorine dioxide,

**(vi)** benzoyl peroxide in an amount not exceeding 150 parts by weight for each one million parts of flour, with or without not more than 900 parts by weight for each one million parts of flour of one or a mixture of two or more of calcium carbonate, calcium sulphate, dicalcium phosphate, magnesium carbonate, potassium aluminum sulphate, sodium aluminum sulphate, starch and tricalcium phosphate as carriers of the benzoyl peroxide,

**(vii)** [Repealed, SOR/94-227, s. 2]

**(viii)** ammonium persulphate in an amount not exceeding 250 parts by weight for each one million parts of flour,

**(ix)** ammonium chloride in an amount not exceeding 2,000 parts by weight for each one million parts of flour,

partie de la couche externe du son ou épiderme, a été enlevée;

**b)** doit renfermer les constituants naturels du grain de blé dans la proportion d'au moins 95 pour cent du poids total du blé dont elle provient;

**c)** doit avoir

**(i)** une teneur en cendres, calculée sur la matière desséchée, d'au moins 1,25 pour cent et d'au plus 2,25 pour cent,

**(ii)** une teneur en humidité d'au plus 15 pour cent, et

**(iii)** un degré de finesse tel qu'au moins 90 pour cent passe librement au travers d'un tamis nº 8 (2 380 microns), et au moins 50 pour cent, au travers d'un tamis nº 20 (840 microns); et

**d)** peut renfermer

**(i)** de la farine de blé maltée,

**(ii)** de la farine d'orge maltée, en quantité d'au plus 0,50 pour cent du poids de la farine,

**(iii)** de l'amylase, de l'amylase maltogène, de l'asparaginase, de la broméline, de la glucoamylase, de la glucose-oxydase, de la lactase, de la lipase, de la lipoxydase, de la pentosanase, de la phospholipase, de la protéase, de la pullulanase ou de la xylanase,

**(iv)** du chlore,

**(v)** du bioxyde de chlore,

**(vi)** du peroxyde de benzoyle, en quantité d'au plus 150 parties en poids par million de parties de farine, avec ou sans véhicule constitué d'au plus 900 parties en poids par million de parties de farine de l'une ou d'un mélange des substances suivantes : carbonate de calcium, sulfate de calcium, phosphate bicalcique, carbonate de magnésium, sulfate double d'aluminium et de potassium, sulfate double d'aluminium et de sodium, amidon et phosphate tricalcique,

**(vii)** [Abrogé, DORS/94-227, art. 2]

**(viii)** du persulfate d'ammonium, en quantité d'au plus 250 parties en poids par million de parties de farine,

**(x)** azodicarbonamide in an amount not exceeding 45 parts by weight for each one million parts of flour,

**(xi)** acetone peroxide,

**(xii)** ascorbic acid in an amount not exceeding 200 parts by weight for each one million parts of flour, and

**(xiii)** l-cysteine (hydrochloride) in an amount not exceeding 90 parts by weight for each one million parts of flour.

**(e)** [Repealed, SOR/97-151, s. 22]

SOR/78-402, s. 4; SOR/80-632, s. 4; SOR/82-383, s. 6; SOR/92-63, s. 2; SOR/92-94, s. 2; SOR/94-227, s. 2; SOR/94-689, s. 2; SOR/97-122, s. 2; SOR/97-151, s. 22; SOR/97-558, s. 2; SOR/2000-184, s. 63(F); SOR/2003-130, s. 2; SOR/2012-26, s. 2; SOR/2012-46, s. 2.

**B.13.006 [S]. Graham Flour** shall be flour to which has been added part of the bran and other constituents of the wheat berry, and shall have an ash content, calculated on a moisture-free basis, of not less than 1.20 per cent and not more than 2.25 per cent.

**B.13.007 [S]. Gluten Flour** shall be the food obtained by removing from flour a part of the starch and shall not contain more than

**(a)** 10 per cent moisture, and

**(b)** 44 per cent Starch, calculated on a moisture-free basis, as determined by official method FO-28, Determination of Starch in Gluten Flour, October 15, 1981.

SOR/82-768, s. 37.

**B.13.008 [S]. Crushed Wheat** or **Coarse Ground Wheat** shall be the food prepared by so crushing cleaned wheat that 40 per cent or more passes through a No. 8 (2 380 micron) sieve and less than 50 per cent through a No. 20 (840 micron) sieve, the proportions of the natural constituents of such wheat, other than moisture, remaining unaltered and shall have

**(a)** an ash content, calculated on a moisture-free basis, of not less than 1.50 per cent and not more than 2.25 per cent; and

**(b)** a moisture content of not more than 15.5 per cent.

**B.13.009 [S]. Cracked Wheat** shall be the food prepared by so cracking or cutting cleaned wheat into angular fragments that not less than 90 per cent passes

**(ix)** du chlorure d'ammonium, en quantité d'au plus 2 000 parties en poids par million de parties de farine,

**(x)** de l'azodicarbonamide, en quantité d'au plus 45 parties en poids par million de parties de farine,

**(xi)** de peroxyde d'acétone,

**(xii)** de l'acide ascorbique, en quantité d'au plus 200 parties en poids par million de parties de farine, et

**(xiii)** du l-cystéine (chlorhydrate), en quantité d'au plus 90 parties en poids par million de parties de farine.

**e)** [Abrogé, DORS/97-151, art. 22]

DORS/78-402, art. 4; DORS/80-632, art. 4; DORS/82-383, art. 6; DORS/92-63, art. 2; DORS/92-94, art. 2; DORS/94-227, art. 2; DORS/94-689, art. 2; DORS/97-122, art. 2; DORS/97-151, art. 22; DORS/97-558, art. 2; DORS/2000-184, art. 63(F); DORS/2003-130, art. 2; DORS/2012-26, art. 2; DORS/2012-46, art. 2.

**B.13.006 [N].** La **farine Graham** doit être de la farine à laquelle a été ajoutée une partie du son et autres constituants du grain de blé, et doit avoir une teneur en cendres, calculée sur la matière desséchée, d'au moins 1,20 pour cent et d'au plus 2,25 pour cent.

**B.13.007 [N].** La **farine de gluten** doit être le produit alimentaire obtenu en enlevant de la farine une partie de l'amidon, et elle doit renfermer au plus

**a)** 10 pour cent d'humidité, et

**b)** 44 pour cent d'amidon, calculé sur la matière desséchée, selon la méthode officielle FO-28, Détermination d'amidon dans la farine de gluten, 15 octobre 1981.

DORS/82-768, art. 37.

**B.13.008 [N].** Le **blé broyé, blé de mouture grossière**, doit être le produit alimentaire préparé par mouture de blé nettoyé, de façon que 40 pour cent ou plus passe au travers d'un tamis nº 8 (2 380 microns) et moins de 50 pour cent au travers d'un tamis nº 20 (840 microns), sans modifier les proportions des constituants naturels dudit blé, à part l'humidité, et doit avoir

**a)** une teneur en cendres, calculée sur la matière desséchée, d'au moins 1,50 pour cent et d'au plus 2,25 pour cent; et

**b)** une teneur en humidité d'au plus 15,5 pour cent.

**B.13.009 [N].** Le **blé concassé** doit être le produit alimentaire obtenu par concassage ou par coupage de blé nettoyé en fragments anguleux, de sorte qu'au moins 90

through a No. 8 (2 380 micron) sieve and not more than 20 per cent through a No. 20 (840 micron) sieve, the proportions of the natural constituents of such wheat, other than moisture, remaining unaltered and shall have

**(a)** an ash content, calculated on a moisture-free basis, of not less than 1.50 per cent and not more than 2.25 per cent; and

**(b)** a moisture content of not more than 15.5 per cent.

**B.13.010 [S]. Rice** shall be the hulled or hulled and polished seed of the rice plant and, in the case of hulled and polished seeds, may be coated with magnesium silicate, talc and glucose.

SOR/78-403, s. 3.

**B.13.010.1 (1)** For the purposes of this Division, ***pre-cooked rice*** means polished rice that has been cooked in water or steam and dried in such a manner as to retain the rice grains in a porous and open-structured condition.

**(2)** Notwithstanding sections D.01.009, D.01.011 and D.02.009, no person shall sell pre-cooked rice to which a vitamin or mineral nutrient set out in Column I of an item of the table to this section has been added, either singly or in any combination, unless each 100 g of the pre-cooked rice as sold contains the added vitamin or mineral nutrient in the amount set out in Column II of that item.

**TABLE**

| Item | Column I<br>Vitamin or Mineral Nutrient | Column II<br>Amount per 100 g of Pre-cooked Rice |
|---|---|---|
| 1 | Thiamine | 0.45 mg |
| 2 | Niacin | 4.2 mg |
| 3 | Vitamin $B_6$ | 0.6 mg |
| 4 | Folic acid | 0.016 mg |
| 5 | Pantothenic acid | 1.2 mg |
| 6 | Iron | 1.6 mg |

**(3)** No person shall represent pre-cooked rice as "enriched" unless the food contains added thiamine, niacin and iron.

SOR/86-320, s. 1; SOR/98-458, s. 7(F).

**B.13.011 [S]. Corn starch** shall be starch made from maize and shall contain not less than 84% starch.

SOR/84-300, s. 42; SOR/2011-28, s. 5.

pour cent passe au travers d'un tamis nº 8 (2 380 microns) et au plus 20 pour cent au travers d'un tamis nº 20 (840 microns), sans modifier les proportions des constituants naturels dudit blé, sauf l'humidité, et doit avoir

**a)** une teneur en cendres, calculée sur la matière desséchée, d'au moins 1,50 pour cent et d'au plus 2,25 pour cent; et

**b)** une teneur en humidité d'au plus 15,5 pour cent.

**B.13.010 [N].** Le **riz** doit être le grain du riz, décortiqué, ou décortiqué et poli, et, dans le cas de grains décortiqués et polis, il peut porter un enrobage de silicate de magnésium, de talc et de glucose.

DORS/78-403, art. 3.

**B.13.010.1 (1)** Aux fins du présent titre, le terme ***riz précuit*** s'entend du riz poli qui a été cuit à l'eau ou à la vapeur et séché de façon que les grains de riz conservent leur caractère poreux et leur structure ouverte.

**(2)** Nonobstant les articles D.01.009, D.01.011 et D.02.009, il est interdit de vendre du riz précuit auquel a été ajouté une vitamine ou un minéral nutritif mentionné à la colonne I du tableau du présent article ou une combinaison de ceux-ci, en une quantité autre que celle prévue à la colonne II de ce tableau par 100 g de riz précuit.

**TABLEAU**

| Article | Colonne I<br>Vitamine ou minéral nutritif | Colonne II<br>Quantité par 100 g de riz précuit |
|---|---|---|
| 1 | Thiamine | 0,45 mg |
| 2 | Niacine | 4,2 mg |
| 3 | Vitamine $B_6$ | 0,6 mg |
| 4 | Acide folique | 0,016 mg |
| 5 | Acide pantothénique | 1,2 mg |
| 6 | Fer | 1,6 mg |

**(3)** Il est interdit de présenter du riz précuit comme étant « enrichi » à moins qu'il n'ait été additionné de thiamine, de niacine et de fer.

DORS/86-320, art. 1; DORS/98-458, art. 7(F).

**B.13.011 [N].** L'**amidon de maïs** ou la **fécule de maïs** doit être l'amidon extrait du maïs et doit contenir au moins 84 % d'amidon.

DORS/84-300, art. 42; DORS/2011-28, art. 5.

**B.13.014** For the purpose of this Division, moisture, ash and fineness shall be determined by the following applicable official methods:

**(a)** FO-29, Determination of Moisture in Grain, October 15, 1981;

**(b)** FO-30, Determination of Ash in Grain, October 15, 1981; and

**(c)** FO-31, Determination of Degree of Fineness of Grain, October 15, 1981.

SOR/82-768, s. 38.

**B.13.015 [S]. Cottonseed Flour** or similar products from cottonseed shall be derived from decorticated, defatted or partially defatted, cooked, ground cottonseed kernels and contain not more than 450 parts per million of free gossypol.

**B.13.020** In this Division, ***milk solids*** means the entire solids content from milk, partly skimmed milk or skim milk or their concentrated, dried or reconstituted form, singly or in any combination.

SOR/89-170, s. 1.

## Bread

**B.13.021 [S]. Bread** or **White Bread** shall be the food made by baking a yeast-leavened dough prepared with flour and water and may contain

**(a)** salt;

**(b)** shortening, lard, butter or margarine;

**(c)** milk or milk product;

**(d)** whole egg, egg-white; egg-yolk, (fresh, dried, or frozen);

**(e)** a sweetening agent;

**(f)** malt syrup, malt extract or malt flour;

**(g)** inactive dried yeast of the genus *Saccharomyces cerevisiae* in an amount not greater than two parts by weight for each 100 parts of flour used;

**(h)** amylase, amylase (maltogenic), asparaginase, bromelain, glucoamylase, glucose oxidase, lactase, lipase, lipoxidase, pentosanase, phospholipase, protease, pullulanase or xylanase;

**B.13.014** Aux fins du présent titre, la teneur en humidité, la teneur en cendres et le degré de finesse doivent être déterminés selon la méthode officielle applicable suivante :

**a)** FO-29, Détermination d'humidité dans les céréales, 15 octobre 1981;

**b)** FO-30, Détermination de cendres dans les céréales, 15 octobre 1981; ou

**c)** FO-31, Détermination de degré de finesse des produits de céréales, 15 octobre 1981.

DORS/82-768, art. 38.

**B.13.015 [N].** La **farine de graine de coton** ou les produits analogues à base de graine de coton seront tirés de graines décortiquées, dégraissées ou partiellement dégraissées, cuites et moulues, et ils renfermeront au plus 450 parties par million de gossypol libre.

**B.13.020** Dans le présent titre, ***solides de lait*** s'entend de la quantité totale des solides provenant du lait, du lait partiellement écrémé, du lait écrémé ou de l'un de ceux-ci sous forme concentrée, desséchée ou reconstituée, seul ou dans une combinaison quelconque.

DORS/89-170, art. 1.

## Pain

**B.13.021 [N].** Le **pain** ou **pain blanc,** doit être l'aliment fabriqué par cuisson d'une pâte à levain, préparée avec de la farine et de l'eau, et il peut renfermer

**a)** du sel;

**b)** du shortening, du saindoux, du beurre, ou de la margarine;

**c)** du lait ou un produit du lait;

**d)** des œufs, du blanc d'œuf, du jaune d'œuf (à l'état frais, en poudre ou congelé);

**e)** un agent édulcorant;

**f)** du sirop de malt, de l'extrait de malt, ou de la farine maltée;

**g)** de la levure sèche inactive de l'espèce *Saccharomyces cerevisiae*, en quantité d'au plus deux parties en poids par 100 parties de farine employée;

**(i)** subject to section B.13.029, one or more of the following in a total amount not exceeding five parts by weight per 100 parts of flour used, namely, whole wheat flour, entire wheat flour, graham flour, gluten flour, wheat meal, wheat starch, non-wheat flour, non-wheat meal or non-wheat starch, any of which may be wholly or partially dextrinized;

**(j)** other parts of the wheat berry;

**(k)** lecithin or ammonium salt of phosphorylated glyceride;

**(l)** monoglycerides and diglycerides of fat-forming fatty acids,

**(m)** ammonium chloride, ammonium sulphate, calcium carbonate, calcium lactate, diammonium phosphate, dicalcium phosphate, monoammonium phosphate or any combination thereof in an amount not greater than 0.25 parts by weight of all such additives for each 100 parts of flour used;

**(n)** monocalcium phosphate in an amount not greater than 0.75 parts by weight for each 100 parts of flour used;

**(o)** calcium peroxide, ammonium persulphate, potassium persulphate or any combination thereof in an amount not greater than 0.01 part by weight of all such additives for each 100 parts of flour used;

**(p)** acetone peroxide;

**(q)** vinegar;

**(r)** Class III preservative;

**(s)** food colour;

**(t)** calcium stearoyl-2-lactylate or sodium stearoyl-2-lactylate in an amount not greater than 0.375 parts by weight for each 100 parts of flour used;

**(u)** l-cysteine (hydrochloride) in an amount not greater than 0.009 parts by weight for each 100 parts of flour used;

**(v)** calcium sulphate in an amount not greater than 0.5 parts by weight for each 100 parts of flour used;

**(w)** sodium stearyl fumarate in an amount not greater than 0.5 parts by weight for each 100 parts of flour used;

**(x)** ascorbic acid in an amount not greater than 0.02 parts by weight for each 100 parts of flour used;

**h)** de l'amylase, de l'amylase maltogène, de l'asparaginase, de la broméline, de la glucoamylase, de la glucose-oxydase, de la lactase, de la lipase, de la lipoxydase, de la pentosanase, de la phospholipase, de la protéase, de la pullulanase ou de la xylanase;

**i)** sous réserve de l'article B.13.029, un ou plusieurs des ingrédients suivants, en quantité d'au plus cinq parties en poids par 100 parties de farine employée : farine de blé complet, farine blé entier, farine Graham, farine de gluten, farine de blé, amidon de blé, farine autre que le blé ou amidon autre que le blé, chacun pouvant être entièrement ou partiellement dextrinisé;

**j)** d'autres parties du grain de blé;

**k)** de la lécithine ou du sel d'ammonium de glycéride phosphorylé;

**l)** des monoglycérides et des diglycérides des acides gras qui entrent dans la composition des matières grasses;

**m)** du chlorure d'ammonium, du sulfate d'ammonium, du carbonate de calcium, du lactate de calcium, du phosphate diammonique, du phosphate dicalcique, du phosphate monoammonique, ou un mélange quelconque desdits, en quantité n'excédant pas, pour l'ensemble des additifs, 0,25 parties en poids par 100 parties de farine employée;

**n)** du phosphate monocalcique en quantité d'au plus 0,75 parties en poids par 100 parties de farine employée;

**o)** du peroxyde de calcium, du persulfate d'ammonium, du persulfate de potassium ou une combinaison de ces additifs, en quantité n'excédant pas, pour l'ensemble de ces additifs, 0,01 partie en poids pour 100 parties de farine employée;

**p)** du peroxyde d'acétone;

**q)** du vinaigre;

**r)** un agent de conservation de la catégorie III;

**s)** un colorant pour aliments;

**t)** du stéaroyl-2-lacylate de calcium ou stéaroyl-2-lactylate de sodium en quantité d'au plus 0,375 partie, en poids, par 100 parties de farine employée;

**u)** du l-cystéine (chlorhydrate), en quantité d'au plus 0,009 partie en poids par 100 parties de farine employée;

**(y)** lactic acid;

**(z)** azodicarbonamide in an amount not exceeding 45 parts by weight for each one million parts of flour;

**(aa)** calcium iodate, potassium iodate or any combination thereof in an amount not greater than 45 parts by weight of all such additives for each one million parts of flour;

**(bb)** acetylated tartaric acid esters of mono- and diglycerides in an amount not greater than 0.6 parts by weight for each 100 parts of flour used; and

**(cc)** guar gum.

SOR/78-402, s. 5; SOR/79-251, s. 2; SOR/82-383, ss. 7, 8; SOR/84-300, s. 43(E); SOR/92-63, s. 3; SOR/92-94, s. 3; SOR/94-227, s. 3; SOR/97-122, s. 3; SOR/97-558, s. 3; SOR/2003-130, s. 3; SOR/2007-302, s. 4(F); SOR/2011-278, s. 10; SOR/2012-26, s. 3; SOR/2012-43, s. 15(F); SOR/2012-46, s. 3.

**v)** du sulfate de calcium, en quantité d'au plus 0,5 partie en poids par 100 parties de farine employée;

**w)** du stéaryl-fumarate de sodium, en quantité d'au plus 0,5 partie en poids par 100 parties de farine employée;

**x)** de l'acide ascorbique, en quantité d'au plus 0,02 partie en poids par 100 parties de farine employée;

**y)** de l'acide lactique;

**z)** de l'azodicarbonamide en quantité d'au plus 45 parties en poids par million de parties de farine;

**aa)** de l'iodate de calcium, de l'iodate de potassium ou un mélange quelconque desdits, en quantité n'excédant pas, pour l'ensemble des additifs 45 parties en poids par million de parties de farine employée;

**bb)** des esters tartriques des mono- et diglycérides acétylés, en une quantité n'excédant pas au poids 0,6 partie par 100 parties de farine employée;

**cc)** de la gomme de guar.

DORS/78-402, art. 5; DORS/79-251, art. 2; DORS/82-383, art. 7 et 8; DORS/84-300, art. 43(A); DORS/92-63, art. 3; DORS/92-94, art. 3; DORS/94-227, art. 3; DORS/97-122, art. 3; DORS/97-558, art. 3; DORS/2003-130, art. 3; DORS/2007-302, art. 4(F); DORS/2011-278, art. 10; DORS/2012-26, art. 3; DORS/2012-43, art. 15(F); DORS/2012-46, art. 3.

### B.13.022 [S]. Enriched Bread or Enriched White Bread

**(a)** shall be bread that is baked from a dough in which enriched flour is the only wheat flour used;

**(b)** shall contain

**(i)** for each 100 parts of flour used, not less than

**(A)** two parts by weight of skim milk solids,

**(B)** four parts by weight of dried whey powder, or

**(C)** such amount of the protein product made from peas (*Pisum sativum*) or soybeans (*Glycine max*) as will provide 0.5 parts by weight of protein, and

**(ii)** in 100 grams of bread,

**(A)** 0.40 milligram of thiamine,

**(B)** 0.24 milligram of riboflavin,

**(C)** 3.3 milligrams of niacin or niacinamide,

**(D)** 0.10 milligram of folic acid, and

### B.13.022 [N]. Le pain enrichi ou le pain blanc enrichi:

**a)** doit être du pain fabriqué à partir d'une pâte dans laquelle la farine de blé enrichi est la seule farine de blé utilisée;

**b)** doit contenir :

**(i)** par 100 parties de farine employée, au moins :

**(A)** soit deux parties en poids de solides de lait écrémé,

**(B)** soit quatre parties en poids de poudre de petit-lait,

**(C)** soit la quantité d'un produit protéique à base de pois (*Pisum sativum*) ou de fèves de soja (*Glycine max*) qui donnera 0,5 partie en poids de protéine,

**(ii)** par 100 grammes de pain, au moins :

**(A)** 0,40 milligramme de thiamine,

**(B)** 0,24 milligramme de riboflavine,

**(E)** 2.76 milligrams of iron;

**(c)** may contain, in 100 grams of bread,

**(i)** 0.14 milligram of vitamin $B_6$,

**(ii)** 0.6 milligram of d-pantothenic acid,

**(iii)** 90 milligrams of magnesium, and

**(iv)** 66 milligrams of calcium; and

**(d)** where it contains not less than six parts by weight of milk solids per 100 parts of enriched flour used, may be described by the common name "milk bread".

SOR/78-698, s. 3; SOR/87-704, s. 1; SOR/89-170, s. 2; SOR/89-198, s. 3; SOR/98-550, s. 3.

**(C)** 3,3 milligrammes de niacine ou de niacinamide,

**(D)** 0,10 milligramme d'acide folique,

**(E)** 2,76 milligrammes de fer;

**c)** peut contenir par 100 grammes de pain au moins :

**(i)** 0,14 milligramme de vitamine $B_6$,

**(ii)** 0,6 milligramme d'acide d-pantothénique,

**(iii)** 90 milligrammes de magnésium,

**(iv)** 66 milligrammes de calcium;

**d)** peut être désigné par le nom usuel « pain au lait » s'il contient au moins six parties en poids de solides de lait par 100 parties de farine enrichie employée.

DORS/78-698, art. 3; DORS/87-704, art. 1; DORS/89-170, art. 2; DORS/89-198, art. 3; DORS/98-550, art. 3.

**B.13.023 and B.13.024** [Repealed, SOR/79-252, s. 3]

**B.13.025 [S]. Raisin Bread** shall be bread that contains for each 100 parts by weight of flour used not less than 50 parts by weight of seeded or seedless raisins, or raisins and currants of which not less than 35 parts shall be raisins and may contain spices or peel.

**B.13.026 [S]. (naming the percentage) Whole Wheat Bread**

**(a)** shall

**(i)** be bread in the making of which the named percentage of the flour used shall be whole wheat flour, and

**(ii)** contain not less than 60 per cent whole wheat flour in relation to the total flour used; and

**(b)** may

**(i)** contain caramel, and

**(ii)** where it contains not less than six parts by weight of milk solids per 100 parts of the total enriched flour and whole wheat flour used, be described by the common name "(naming the percentage) whole wheat milk bread".

SOR/89-170, s. 3.

**B.13.023 et B.13.024** [Abrogés, DORS/79-252, art. 1]

**B.13.025 [N].** Le **pain aux raisins** ou **pain de raisin,** doit être du pain qui renferme, par 100 parties de la farine employée, au moins 50 parties en poids de raisin sec épépiné, ou sans pépins, ou de raisin sec et de raisin de Corinthe, dont au moins 35 parties doivent être du raisin, et il peut renfermer des épices et des écorces ou zeste de fruits.

**B.13.026 [N].** Le **pain à (indication du pourcentage) de blé entier** :

**a)** doit :

**(i)** être du pain pour lequel le pourcentage indiqué de farine représente le pourcentage de farine de blé entier employée,

**(ii)** contenir au moins 60 pour cent de farine de blé entier par rapport à la quantité totale de farine employée;

**b)** peut :

**(i)** contenir du caramel,

**(ii)** être désigné par le nom usuel « pain au lait à (indication du pourcentage) de blé entier » s'il contient au moins six parties en poids de solides de lait par 100 parties de la quantité totale de farine enrichie et de farine de blé entier employées.

DORS/89-170, art. 3.

**B.13.027 [S]. Brown Bread** shall be bread coloured by the use of whole wheat flour, graham flour, bran, molasses or caramel.

**B.13.028** [Repealed, SOR/97-151, s. 23]

**B.13.029** A specialty bread may contain

**(a)** one or more of the ingredients specified in paragraph B.13.021(i) in a total amount greater than the total amount specified in that paragraph; and

**(b)** fruit, nuts, seeds and flavouring.

SOR/79-251, s. 3.

## Alimentary Paste

**B.13.051** No person shall sell macaroni, spaghetti, noodles or similar alimentary pastes, as egg macaroni, egg spaghetti, egg noodles or egg alimentary pastes, respectively, unless they contain, on the dry basis, not less than four per cent, egg-yolk solids derived from whole egg, dried egg, frozen egg or frozen egg-yolk.

**B.13.052 (1)** Notwithstanding sections D.01.009, D.01.011 and D.02.009, no person shall sell an alimentary paste to which a vitamin or a mineral nutrient set out in column I of any item of the table to this section has been added unless each 100 g of the alimentary paste contains the added vitamin or mineral nutrient in an amount not less than the minimum amount set out in column II of that item and not more than the maximum amount set out in column III of that item.

**(2)** No person shall represent an alimentary paste as "enriched" unless the alimentary paste contains added thiamine, riboflavin, niacin, folic acid and iron, in accordance with the table to this section.

**TABLE**

| Item | Column I<br>Added Vitamin or Mineral Nutrient | Column II<br>Minimum Amount per 100 g of Alimentary Paste | Column III<br>Maximum Amount per 100 g of Alimentary Paste |
|---|---|---|---|
| 1 | Thiamine | 0.63 mg | 1.50 mg |
| 2 | Riboflavin | 0.11 mg | 0.60 mg |
| 3 | Niacin | 5.90 mg | 7.50 mg |
| 4 | Folic Acid | 0.20 mg | 0.27 mg |

**B.13.027 [N].** Le **pain brun** ou **pain bis**, doit être du pain coloré au moyen de farine de blé entier, de farine graham, de son, de mélasse ou de caramel.

**B.13.028** [Abrogé, DORS/97-151, art. 23]

**B.13.029** Les pains de composition spéciale peuvent être composés

**a)** d'un ou de plusieurs ingrédients à l'alinéa B.13.021i) en quantité supérieure à celle spécifiée dans cet alinéa; et

**b)** de fruits, de noix, de graines et d'ingrédients aromatisants.

DORS/79-251, art. 3.

## Pâtes alimentaires

**B.13.051** Est interdite la vente de macaroni, de spaghetti, de nouilles et toute pâte alimentaire semblable, sous la désignation de macaroni aux œufs, spaghetti aux œufs, nouilles aux œufs, ou pâtes alimentaires aux œufs, respectivement, à moins que ces aliments ne contiennent, sur la matière desséchée, au moins quatre pour cent de solides du jaune d'œufs provenant d'œufs entiers, d'œufs séchés, d'œufs congelés ou de jaune d'œuf congelé.

**B.13.052 (1)** Par dérogation aux articles D.01.009, D.01.011 et D.02.009, il est interdit de vendre une pâte alimentaire à laquelle a été ajouté une vitamine ou un minéral nutritif énuméré à la colonne I du tableau du présent article, à moins que chaque portion de 100 g de la pâte alimentaire ne renferme au moins la quantité minimale de vitamine ou de minéral nutritif ajouté qui est prévue à la colonne II et au plus la quantité maximale prévue à la colonne III.

**(2)** Il est interdit de présenter une pâte alimentaire comme « enrichie » à moins qu'elle ne renferme une quantité ajoutée de thiamine, de riboflavine, de niacine, d'acide folique et de fer conforme au tableau du présent article.

**TABLEAU**

| Article | Colonne I<br>Vitamine ou minéral nutritif ajouté | Colonne II<br>Quantité minimale par 100 g de la pâte alimentaire | Colonne III<br>Quantité maximale par 100 g de la pâte alimentaire |
|---|---|---|---|
| 1 | Thiamine | 0,63 mg | 1,50 mg |
| 2 | Riboflavine | 0,11 mg | 0,60 mg |
| 3 | Niacine | 5,90 mg | 7,50 mg |
| 4 | Acide folique | 0,20 mg | 0,27 mg |

| Item | Column I<br>Added Vitamin or Mineral Nutrient | Column II<br>Minimum Amount per 100 g of Alimentary Paste | Column III<br>Maximum Amount per 100 g of Alimentary Paste |
|---|---|---|---|
| 5 | Pantothenic Acid | 1.00 mg | 2.00 mg |
| 6 | Vitamin $B_6$ | 0.40 mg | 0.80 mg |
| 7 | Iron | 2.90 mg | 4.30 mg |
| 8 | Magnesium | 150.00 mg | 300.00 mg |

SOR/94-37, s. 1; SOR/94-689, s. 2; SOR/96-527, s. 2; SOR/98-550, ss. 4, 5.

| Article | Colonne I<br>Vitamine ou minéral nutritif ajouté | Colonne II<br>Quantité minimale par 100 g de la pâte alimentaire | Colonne III<br>Quantité maximale par 100 g de la pâte alimentaire |
|---|---|---|---|
| 5 | Acide pantothénique | 1,00 mg | 2,00 mg |
| 6 | Vitamine $B_6$ | 0,40 mg | 0,80 mg |
| 7 | Fer | 2,90 mg | 4,30 mg |
| 8 | Magnésium | 150,00 mg | 300,00 mg |

DORS/94-37, art. 1; DORS/94-689, art. 2; DORS/96-527, art. 2; DORS/98-550, art. 4 et 5.

## Breakfast Cereal

**B.13.060** Notwithstanding sections D.01.009, D.01.011 and D.02.009, no person shall sell a breakfast cereal to which a vitamin or mineral nutrient set out in Column I of an item of the table to this section has been added, either singly or in any combination, unless each 100 g of the breakfast cereal contains the added vitamin or mineral nutrient in the amount set out in Column II of that item.

**TABLE**

| Item | Column I<br>Vitamin or Mineral Nutrient | Column II<br>Amount per 100 g of Breakfast Cereal |
|---|---|---|
| 1 | Thiamine | 2.0 mg |
| 2 | Niacin | 4.8 mg |
| 3 | Vitamin $B_6$ | 0.6 mg |
| 4 | Folic Acid | 0.06 mg |
| 5 | Pantothenic Acid | 1.6 mg |
| 6 | Magnesium | 160.0 mg |
| 7 | Iron | 13.3 mg |
| 8 | Zinc | 3.5 mg |

SOR/83-858, s. 1; SOR/89-145, s. 2; SOR/98-458, s. 7(F).

## Céréales à déjeuner

**B.13.060** Nonobstant les articles D.01.009, D.01.011 et D.02.009, il est interdit de vendre une céréale à déjeuner à laquelle ont été ajoutés un ou plusieurs des vitamines ou minéraux nutritifs énumérés à la colonne I du tableau du présent article, à moins que chaque portion de 100 g de la céréale ne renferme la quantité de vitamines ou de minéraux nutritifs ajoutés qui est prévue à la colonne II de ce tableau.

**TABLEAU**

| Article | Colonne I<br>Vitamine ou minéral nutritif | Colonne II<br>Quantité par 100 g de la céréale à déjeuner |
|---|---|---|
| 1 | Thiamine | 2,0 mg |
| 2 | Niacine | 4,8 mg |
| 3 | Vitamine $B_6$ | 0,6 mg |
| 4 | Acide folique | 0,06 mg |
| 5 | Acide pantothénique | 1,6 mg |
| 6 | Magnésium | 160,0 mg |
| 7 | Fer | 13,3 mg |
| 8 | Zinc | 3,5 mg |

DORS/83-858, art. 1; DORS/89-145, art. 2; DORS/98-458, art. 7(F).

**DIVISION 14**

# Meat, Its Preparations and Products

**B.14.001** In this Division,

***animal*** means any animal used as food, but does not include marine and fresh water animals; (*animal*)

**TITRE 14**

# Viande, préparations et produits de la viande

**B.14.001** Dans le présent titre,

***agent de remplissage*** désigne toute substance végétale, (à l'exception de la tomate et de la pulpe de betterave), le lait, les œufs, la levure, ou tout dérivé ou combinaison de ces produits qui serait acceptable comme aliment; (*filler*)

***filler*** means any vegetable material (except tomato or beetroot), milk, egg, yeast or any derivative or combination thereof that is acceptable as food. (*agent de remplissage*)

SOR/82-768, s. 39; SOR/86-875, s. 1.

**B.14.002 [S].** Meat shall be the edible part of the skeletal muscle of an animal that was healthy at the time of slaughter, or muscle that is found in the tongue, diaphragm, heart or oesophagus, and may contain accompanying and overlying fat together with the portions of bone, skin, sinew, nerve and blood vessels that normally accompany the muscle tissue and are not separated from it in the process of dressing, but does not include muscle found in the lips, snout, scalp or ears.

**B.14.003 [S].** Meat by-product shall be any edible part of an animal, other than meat, that has been derived from one or more animals that were healthy at the time of slaughter.

**B.14.004** Meat, meat by-products or preparations thereof are adulterated if any of the following substances or class of substances are present therein or have been added thereto:

**(a)** mucous membranes, any organ or portions of the genital system, black gut, spleens, udders, lungs or any other organ or portion of animal that is not commonly sold as an article of food;

**(b)** preservatives other than those provided for in this Division; or

**(c)** colour other than annatto, allura red and sunset yellow FCF, where provided for in this Division, and caramel.

SOR/92-725, s. 2; SOR/97-516, s. 2; SOR/2016-74, s. 6(F).

**B.14.005 [S]. Prepared meat** or a **prepared meat by-product** shall be any meat or any meat by-product, respectively, whether comminuted or not, to which has been added any ingredient permitted by these Regulations, or which has been preserved, placed in a hermetically-sealed container or cooked, and may contain

**(a)** a Class II preservative;

**(a.1)** in the case of prepared hams, shoulders, butts, picnics and backs, gelatin;

**(b)** in the case of partially defatted pork fatty tissue and partially defatted beef fatty tissue, a Class IV preservative;

***animal*** comprend les animaux utilisés comme aliments, mais ne comprend ni les animaux marins ni les animaux d'eau douce. (*animal*)

***remplissage*** [Abrogée, DORS/86-875, art. 1]

DORS/82-768, art. 39; DORS/86-875, art. 1.

**B.14.002 [N].** La viande doit être la portion comestible du muscle squelettique d'un animal sain au moment de l'abattage, ou du muscle que l'on trouve dans la langue, le diaphragme, le cœur ou l'œsophage; elle peut renfermer la graisse qui y adhère ou le recouvre, ainsi que les portions d'os, de peau, de tendons, de nerfs ou de vaisseaux sanguins, qui accompagnent normalement le tissu musculaire et n'en sont pas séparés au moment de l'habillage, mais ne comprend pas le muscle trouvé dans les lèvres, le groin ou le museau, la peau de la tête ou les oreilles.

**B.14.003 [N].** Les sous-produits de viande doivent être toute portion comestible d'un animal, autre que la viande, qui provient d'un ou de plusieurs animaux sains au moment de l'abattage.

**B.14.004** La viande, les sous-produits de viande ou leurs préparations sont falsifiés s'ils renferment ou si on leur a ajouté l'une des substances ou catégories de substances nommées ci-dessous :

**a)** des muqueuses, des organes ou des parties d'organes de l'appareil génital, du caecum, de la rate, du pis, des poumons, ou tout autre organe ou partie d'un animal qui ne sont pas vendus d'habitude comme article d'alimentation;

**b)** un agent de conservation autre que ceux qui sont prévus au présent titre; ou

**c)** un colorant autre que le rocou, le rouge allura et le jaune soleil FCF, visés par le présent titre, ainsi que le caramel.

DORS/92-725, art. 2; DORS/97-516, art. 2; DORS/2016-74, art. 6(F).

**B.14.005 [N].** La **viande préparée** et les **sous-produits de viande préparée** doivent être, respectivement, de la viande ou des sous-produits de viande, hachés ou non, auxquels a été ajouté tout ingrédient permis par le présent règlement, ou qui ont subi un procédé de conservation, qui ont été placés dans un contenant hermétiquement fermé ou qui ont été cuits, et peuvent renfermer :

**a)** un agent de conservation de la catégorie II;

**a.1)** dans le cas de jambons, d'épaules, de socs de porc, de jambons pique-nique et de jambons de longe préparés : de la gélatine;

**(c)** where a minimum total protein content or a minimum meat protein content is prescribed in this Division, phosphate salts that do not when calculated as sodium phosphate, dibasic, exceed the maximum level provided therefor in Table XII to section B.16.100 and that are one or more of the following phosphate salts, namely,

**(i)** sodium acid pyrophosphate,

**(ii)** sodium hexametaphosphate,

**(iii)** sodium phosphate, dibasic,

**(iv)** sodium phosphate, monobasic,

**(v)** sodium pyrophosphate, tetrabasic,

**(vi)** sodium tripolyphosphate,

**(vii)** potassium phosphate, monobasic,

**(viii)** potassium phosphate, dibasic, and

**(ix)** potassium pyrophosphate, tetrabasic; and

**(d)** in the case of vacuum-packed sliced roast beef and vacuum-packed sliced cooked ham, *Carnobacterium maltaromaticum* CB1.

SOR/94-262, s. 2; SOR/2010-264, s. 1; SOR/2011-280, s. 1.

**b)** dans le cas des tissus gras de porc ou de bœuf partiellement dégraissés : un agent de conservation de la catégorie IV;

**c)** lorsque le présent titre prescrit une teneur totale minimale en protéines ou une teneur minimale en protéines de viande, un ou plusieurs des sels de phosphate suivants, en une proportion n'excédant pas la limite de tolérance calculée en phosphate disodique conformément au tableau XII de l'article B.16.100 :

**(i)** du pyrophosphate acide de sodium,

**(ii)** de l'hexamétaphosphate de sodium,

**(iii)** du phosphate disodique,

**(iv)** du phosphate monosodique,

**(v)** du pyrophosphate tétrasodique,

**(vi)** du tripolyphosphate de sodium,

**(vii)** du phosphate monopotassique,

**(viii)** du phosphate dipotassique,

**(ix)** du pyrophosphate tétrapotassique;

**d)** dans le cas de rôtis de bœuf tranchés emballés sous vide et de jambons cuits tranchés emballés sous vide : du *Carnobacterium maltaromaticum* CB1.

DORS/94-262, art. 2; DORS/2010-264, art. 1; DORS/2011-280, art. 1.

**B.14.006** Powdered fully hydrogenated cottonseed oil may be applied as a release agent to the surface of meat, meat by-product, prepared meat, prepared meat by-product, extended meat product and simulated meat product in an amount not greater than 0.25% of the product.

SOR/2010-142, s. 59(F); SOR/2022-168, s. 42.

**B.14.006** L'huile de coton entièrement hydrogénée en poudre peut être appliquée comme agent de démoulage sur la surface de la viande, des sous-produits de viande, des viandes préparées, des sous-produits de viande préparés, des produits de viande avec allongeur et des simili-produits de viande en une quantité n'excédant pas 0,25 % du produit.

DORS/2010-142, art. 59(F); DORS/2022-168, art. 42.

**B.14.007 [S]. Meat Binder** or **(naming the meat product) Binder** shall be a filler with any combination of salt, sweetening agents, spices or other seasonings (except tomato), egg, egg albumen, and

**(a)** where sold for use in preserved meat or preserved meat by-product, may contain any of ascorbic acid, calcium ascorbate, erythorbic acid, iso-ascorbic acid, potassium nitrate, potassium nitrite, sodium ascorbate, sodium carbonate, sodium erythorbate, sodium iso-ascorbate, sodium nitrate and sodium nitrite, provided that these nitrates and nitrites, if any, are packaged separately from any spice or seasoning.

**B.14.007 [N].** Le **liant à viande** ou le **liant à (désignation du produit de viande)** est un agent de remplissage contenant une combinaison quelconque de sel, d'agents édulcorants, d'épices ou d'autres condiments (sauf la tomate), d'œufs, de blancs d'œufs, et

**a)** lorsqu'il est vendu pour servir dans les viandes conservées et dans les sous-produits de viande conservés, il peut renfermer de l'acide ascorbique, de l'acide érythorbique, de l'acide isoascorbique, de l'ascorbate de calcium, de l'ascorbate de sodium, du carbonate de sodium, de l'érythorbate de sodium, de l'iso-ascorbate de sodium, du nitrate de potassium, du nitrite de potassium, du nitrate de sodium ou du nitrite de sodium,

**(b)** where sold for use in prepared meat or meat by-product in which a gelling agent is a permitted ingredient, may contain a gelling agent;

**(c)** where sold for use in fresh, uncooked sausage, may contain artificial maple flavour; and

**(d)** may contain an anticaking agent.

SOR/80-13, s. 1; SOR/82-913, s. 1; SOR/86-875, s. 2(F); SOR/2010-143, s. 9; SOR/2017-18, s. 3(F).

**B.14.008** No person shall sell a meat binder, filler or preparations for pumping pickle, cover pickle or dry cure represented for use in meat products unless the label thereof carries directions for use that when followed will produce a food that will comply with the requirements of section B.14.030 insofar as the filler is concerned and the food will not contain food additives in excess of the maximum levels of use prescribed by these Regulations.

SOR/84-300, s. 44(E).

**B.14.009 [S].** Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product may contain

**(a)** Class I preservatives if the nitrate or nitrite salts or both are packaged separately from any spice or seasoning;

**(b)** citric acid, sodium citrate or vinegar;

**(c)** sweetening agents, including maple sugar and maple syrup;

**(d)** liquid smoke flavour, liquid smoke flavour concentrate, salt, seasonings, spices, spice extracts, spice oils or spice oleoresins;

**(e)** sodium bicarbonate, sodium hydroxide or potassium hydroxide;

**(f)** in the case of pumping pickle for cured pork, beef and lamb cuts, disodium phosphate, monosodium phosphate, sodium hexametaphosphate, sodium tripolyphosphate, tetrasodium pyrophosphate and sodium acid pyrophosphate in such amount calculated as disodium phosphate, as will result in the finished product containing not more than 0.5 per cent added phosphate;

pourvu que ces nitrates et nitrites, le cas échéant, soient emballés séparément des épices et condiments;

**b)** lorsqu'il est vendu pour servir dans la viande préparée ou dans les sous-produits de viande dans lesquels il est permis d'ajouter un agent gélatinisant, il peut renfermer un tel agent gélatinisant;

**c)** lorsque le liant est vendu pour servir dans la saucisse fraîche, crue, il peut contenir un arôme artificiel d'érable; et

**d)** peut contenir un agent anti-agglomérant.

DORS/80-13, art. 1; DORS/82-913, art. 1; DORS/86-875, art. 2(F); DORS/2010-143, art. 9; DORS/2017-18, art. 3(F).

**B.14.008** Est interdite la vente d'un liant à viande, d'un agent de remplissage ou de préparations pour marinades, saumures ou mélanges de salaison à sec, présentés comme devant servir dans les produits de viande, à moins que l'étiquette ne donne un mode d'emploi qui, s'il est suivi, produira un aliment conforme aux dispositions de l'article B.14.030 touchant l'agent de remplissage et que l'aliment ne contienne au maximum que la quantité d'additifs alimentaires correspondant aux limites de tolérance prescrites dans le présent règlement.

DORS/84-300, art. 44(A).

**B.14.009 [N].** La marinade, la saumure et le mélange de salaison à sec employés dans le marinage des viandes conservées et des sous-produits de viande conservés peuvent renfermer :

**a)** des agents de conservation de la catégorie I, si les nitrates ou les nitrites, ou les deux, d'une part, et les épices et condiments, d'autre part, sont emballés séparément;

**b)** de l'acide citrique, du citrate de sodium ou du vinaigre;

**c)** des agents édulcorants, y compris le sucre d'érable et le sirop d'érable;

**d)** un arôme de fumée liquide, un arôme de fumée liquide concentré, du sel, des assaisonnements, des épices, des extraits d'épice, des huiles d'épice ou des oléorésines d'épice;

**e)** du bicarbonate de sodium, de l'hydroxyde de sodium ou de l'hydroxyde de potassium;

**f)** dans la marinade servant à la salaison de coupes de porc, de bœuf, ou d'agneau : du phosphate disodique, du phosphate monosodique, de l'hexamétaphosphate de sodium, du tripolyphosphate de sodium, du pyrophosphate tétrasodique et du pyrophosphate acide de

**(g)** in the case of pumping pickle for cured beef cuts, enzymes, if the principal display panel of the label of the cured beef carries, immediately preceding or following the common name, the statement "Tenderized with (naming the proteolytic enzyme or enzymes)";

**(h)** in the case of dry cure, an anticaking agent or a humectant; and

**(i)** in the case of pumping pickle

**(i)** for cured pork hams, shoulders and backs, artificial maple flavour, and

**(ii)** for cured pork bellies, artificial maple flavour and an orange flavour that meets the standard prescribed in section B.10.005.

SOR/79-251, s. 4; SOR/80-13, s. 2; SOR/82-596, s. 1; SOR/88-336, s. 3; SOR/94-567, s. 1; SOR/2010-143, s. 10(F); SOR/2017-18, s. 4(F); SOR/2018-69, s. 4(F).

sodium, en telle quantité, calculée en phosphate disodique, que le produit fini renferme au plus 0,5 pour cent de phosphate ajouté;

**g)** dans le cas de marinade servant à la salaison de parties de bœufs, des enzymes, si l'espace principal de l'étiquette du bœuf salé porte, immédiatement avant ou après le nom ordinaire, la mention « Attendri par...(nom de l'enzyme ou des enzymes protéolytiques) »;

**h)** dans le cas du mélange de salaison à sec : un agent anti-agglomérant ou un agent humidifiant; et

**i)** dans le cas de la marinade servant à la salaison

**(i)** de jambon, d'épaules et de dos de porc, de l'arôme artificiel d'érable, et

**(ii)** de poitrines de porc : de l'arôme artificiel d'érable, et un arôme d'orange conforme à la norme prescrite à l'article B.10.005.

DORS/79-251, art. 4; DORS/80-13, art. 2; DORS/82-596, art. 1; DORS/88-336, art. 3; DORS/94-567, art. 1; DORS/2010-143, art. 10(F); DORS/2017-18, art. 4(F); DORS/2018-69, art. 4(F).

**B.14.010** No person shall sell as food a dead animal or any part thereof.

**B.14.011** No person shall sell as food, meat, meat by-products, preparations containing meat or meat derivatives obtained, prepared or manufactured from a dead animal.

**B.14.012** For the purpose of Sections B.14.010 and B.14.011, ***dead animal*** means a dead animal that

**(a)** was not killed for the purpose of food in accordance with commonly accepted practice of killing animals for the purpose of food, which shall include exsanguination; or

**(b)** was affected with disease at the time it was killed.

**B.14.013 and B.14.014** [Repealed, SOR/97-148, s. 3]

## Meat, Meat By-Products

**B.14.015 [S]. Regular Ground Beef** shall be beef meat processed by grinding and shall contain not more than 30 per cent beef fat, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981.

SOR/82-768, s. 40.

**B.14.010** Est interdite la vente comme aliment d'un animal mort ou de n'importe quelle partie d'un tel animal.

**B.14.011** Est interdite la vente comme aliment de la viande, des sous-produits de la viande, des préparations contenant de la viande ou des dérivés de la viande, obtenus, préparés ou fabriqués à partir d'un animal mort.

**B.14.012** Aux fins des articles B.14.010 et B.14.011, ***animal mort*** signifie un animal mort qui

**a)** n'a pas été abattu pour servir comme aliment, conformément aux pratiques acceptées couramment d'abattre les animaux pour utiliser comme aliment, et qui doit comprendre la saignée; ou

**b)** était atteint de maladie au moment de l'abattre.

**B.14.013 et B.14.014** [Abrogés, DORS/97-148, art. 3]

## Viande, sous-produits de la viande

**B.14.015 [N].** Le **bœuf haché ordinaire** doit être de la viande de bœuf hachée finement et doit contenir tout au plus 30 pour cent de gras de bœuf, déterminé selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981.

DORS/82-768, art. 40.

**B.14.015A [S]. Medium Ground Beef** shall be beef meat processed by grinding and shall contain not more than 23 per cent beef fat, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981.

SOR/82-768, s. 40.

**B.14.015B [S]. Lean Ground Beef** shall be beef meat processed by grinding and shall contain not more than 17 per cent beef fat, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981.

SOR/82-768, s. 40.

**B.14.015C** No person shall sell ground beef that contains more than 30 per cent beef fat, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981.

SOR/82-768, s. 40.

**B.14.016** No person shall sell horse-meat or horse-meat by-product, or any food containing horse-meat or horse-meat by-product unless

**(a)** it is labelled as such when offered or exposed for sale; and

**(b)** when in package form, the principal display panel of the label carries a declaration of the presence of horse-meat or of horse-meat by-product in type at least as legible and conspicuous as any other type upon such principal display panel.

SOR/88-336, s. 3.

**B.14.017** [Repealed, SOR/2003-292, s. 2]

**B.14.018 (1)** Subject to subsection (2), if a carcass of beef or veal, or a portion of a carcass of beef or veal that weighs 7 kg or more, is advertised for sale, the advertisement shall indicate

**(a)** in the case of a carcass other than an imported carcass, the grade that was assigned to the carcass under the *Safe Food for Canadians Act* or a provincial law;

**(b)** in the case of an imported beef carcass, the grade that was assigned to the carcass under the *Safe Food for Canadians Act* or a provincial law or the grade that was assigned to the carcass by a grading authority established under the laws of the country from which the carcass was imported;

**B.14.015A [N].** Le **bœuf haché mi-maigre** doit être de la viande de bœuf hachée finement et doit contenir tout au plus 23 pour cent de gras de bœuf, déterminé selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des similiproduits de viande, 15 octobre 1981.

DORS/82-768, art. 40.

**B.14.015B [N].** Le **bœuf haché maigre** doit être de la viande de bœuf hachée finement et doit contenir tout au plus 17 pour cent de gras de bœuf, déterminé selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981.

DORS/82-768, art. 40.

**B.14.015C** Est interdite la vente de bœuf haché contenant plus de 30 pour cent de gras de bœuf, déterminé selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des similiproduits de viande, 15 octobre 1981.

DORS/82-768, art. 40.

**B.14.016** Est interdite la vente de viande de cheval, de sous-produits de viande de cheval, ou de tout aliment en contenant, à moins

**a)** qu'ils ne soient étiquetés comme tels, lorsqu'ils sont offerts ou exposés en vente; et

**b)** lorsqu'ils sont sous forme d'emballages, que l'espace principal de l'étiquette ne porte une déclaration de la présence de viande de cheval ou d'un sous-produit de viande de cheval en caractères au moins aussi lisibles et aussi en évidence que n'importe quels autres caractères sur ledit espace principal.

DORS/88-336, art. 3.

**B.14.017** [Abrogé, DORS/2003-292, art. 2]

**B.14.018 (1)** Sous réserve du paragraphe (2), l'annonce pour la vente d'une carcasse de bœuf ou de veau ou d'une partie de celle-ci pesant au moins 7 kg doit indiquer :

**a)** s'il s'agit d'une carcasse autre qu'une carcasse importée, la catégorie qui a été attribuée à la carcasse en application de la *Loi sur la salubrité des aliments au Canada* ou d'une loi provinciale;

**b)** s'il s'agit d'une carcasse de bœuf importée, la catégorie qui a été attribuée à la carcasse en application de la *Loi sur la salubrité des aliments au Canada* ou d'une loi provinciale ou la catégorie qui a été attribuée à la carcasse par l'autorité responsable constituée en vertu des lois du pays d'origine;

**(c)** in the case of an imported veal carcass, the grade that was assigned to the carcass by a grading authority established under the laws of the country from which the carcass was imported; and

**(d)** in the case of a beef carcass, the yield class, if any, that was assigned to the carcass under the *Safe Food for Canadians Act*.

**(2)** Where, in the case of a carcass referred to in subsection (1), no grade has been assigned thereto as described in that subsection and the carcass or portion thereof that weighs 7 kg or more is advertised for sale, the advertisement shall clearly indicate that the carcass has not been graded.

SOR/92-626, s. 15; SOR/2003-6, s. 79; SOR/2018-108, s. 398.

**B.14.019 (1)** Where a carcass of beef, veal, pork or lamb or a portion thereof that weighs 7 kg or more is advertised for sale and a selling price is stated in the advertisement, the advertisement shall

**(a)** contain the words "price per kilogram is based on carcass weight before cutting, boning and trimming" or the words "price per kilogram is based on the weight of the meat after cutting, boning and trimming", whichever words are applicable; and

**(b)** where in addition to the selling price a charge is payable for cutting, boning, trimming, wrapping or freezing the carcass or portion thereof, indicate

**(i)** the amount of the additional charge, and

**(ii)** where the additional charge is payable on a price per unit weight basis, whether the additional charge is based on the weight of the carcass or portion thereof before or after the carcass has been cut, boned and trimmed.

**(2)** Any information required by subsection (1) to appear in an advertisement shall be located therein immediately adjacent to the selling price stated therein, without any intervening written, printed or graphic matter.

SOR/92-626, s. 15; SOR/95-548, s. 5(F).

**B.14.020 [S]. Solid cut meat** shall be

**(a)** a whole cut of meat; or

**(b)** a product consisting of pieces of meat of which at least 80 per cent weigh at least 25 g each.

SOR/94-262, s. 3.

**c)** s'il s'agit d'une carcasse de veau importée, la catégorie qui a été attribuée à la carcasse par l'autorité responsable constituée en vertu des lois du pays d'origine;

**d)** s'il s'agit d'une carcasse de bœuf, la catégorie de rendement qui a été attribuée à la carcasse, le cas échéant, en application de la *Loi sur la salubrité des aliments au Canada*.

**(2)** Si la carcasse visée au paragraphe (1) n'a fait l'objet d'aucune classification et que toute la carcasse ou partie de celle-ci pesant au moins 7 kilogrammes est annoncée pour la vente, l'annonce doit indiquer clairement que la carcasse n'a pas été classée.

DORS/92-626, art. 15; DORS/2003-6, art. 79; DORS/2018-108, art. 398.

**B.14.019 (1)** L'annonce, pour la vente, d'une carcasse de bœuf, de veau, de porc ou d'agneau ou d'une partie de celle-ci pesant au moins 7 kilogrammes qui indique le prix de vente doit :

**a)** contenir la mention « le prix au kilogramme est établi en fonction du poids de la carcasse avant le débitage, le désossage et le parage » ou la mention « le prix au kilogramme est établi en fonction du poids de la viande après le débitage, le désossage et le parage », selon le cas;

**b)** si, en sus du prix de vente, des frais sont exigibles pour le débitage, le désossage, le parage, l'emballage ou la congélation de la carcasse ou de la partie de carcasse :

**(i)** préciser le montant de ces frais,

**(ii)** lorsque ces frais sont établis d'après un prix unitaire au poids, préciser s'ils sont calculés selon le poids avant ou après le débitage, le désossage et le parage de la carcasse.

**(2)** Les renseignements exigés au paragraphe (1) doivent figurer juste à côté du prix de vente, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique soient intercalés entre les deux.

DORS/92-626, art. 15; DORS/95-548, art. 5(F).

**B.14.020 [N].** La **viande coupée solide** doit consister :

**a)** soit en une pièce de viande entière;

**b)** soit en un produit constitué de morceaux de viande dont plus de 80 pour cent pèsent au moins 25 g chacun.

DORS/94-262, art. 3.

**B.14.021 (1)** No person shall sell solid cut meat to which phosphate salts or water has been added unless

**(a)** in the case of meat, other than side bacon, Wiltshire bacon, pork jowls, salt pork and salt beef, the meat

**(i)** where cooked, contains a meat protein content of not less than 12 per cent, and

**(ii)** where uncooked, contains a meat protein content of not less than 10 per cent; and

**(b)** that meat contains, phosphate salts that do not when calculated as sodium phosphate, dibasic, exceed the maximum level provided therefor in Table XII to section B.16.100 and that are one or more of the following phosphate salts, namely,

**(i)** sodium acid pyrophosphate,

**(ii)** sodium hexametaphosphate,

**(iii)** sodium phosphate, dibasic,

**(iv)** sodium phosphate, monobasic,

**(v)** sodium pyrophosphate, tetrabasic,

**(vi)** sodium tripolyphosphate,

**(vii)** potassium phosphate, monobasic,

**(viii)** potassium phosphate, dibasic, and

**(ix)** potassium pyrophosphate, tetrabasic.

**(2)** A bone or a visible fat layer shall not be included in any calculation used to determine meat protein content for the purposes of paragraph (1)(a).

SOR/94-262, s. 3.

**B.14.022** No person shall sell mechanically tenderized beef unless

**(a)** the beef is identified as mechanically tenderized when it is offered or exposed for sale; and

**(b)** the beef has a label on it with a principal display panel that, subject to section B.01.012, includes all of the following information:

**(i)** in type at least as legible and prominent as that of the common name,

**(A)** the expression "mechanically tenderized" in the English version of the label, and

**B.14.021 (1)** Est interdite la vente de viande coupée solide à laquelle ont été ajoutés des sels de phosphate ou de l'eau, à moins que les conditions suivantes ne soient réunies :

**a)** la viande, à l'exception du bacon de flanc, du bacon Wiltshire, des bajoues de porc, et du porc et du bœuf salés, a :

**(i)** si elle est cuite, une teneur minimale en protéines de viande de 12 pour cent,

**(ii)** si elle n'est pas cuite, une teneur minimale en protéines de viande de 10 pour cent;

**b)** la viande contient un ou plusieurs des sels de phosphate suivants, en une proportion n'excédant pas la limite de tolérance calculée en phosphate disodique conformément au tableau XII de l'article B.16.100 :

**(i)** du pyrophosphate acide de sodium,

**(ii)** de l'hexamétaphosphate de sodium,

**(iii)** du phosphate disodique,

**(iv)** du phosphate monosodique,

**(v)** du pyrophosphate tétrasodique,

**(vi)** du tripolyphosphate de sodium,

**(vii)** du phosphate monopotassique,

**(viii)** du phosphate dipotassique,

**(ix)** du pyrophosphate tétrapotassique.

**(2)** Aux fins du calcul de la teneur en protéines de viande visée à l'alinéa (1)a), les os et les couches de gras visible ne doivent pas être pris en compte.

DORS/94-262, art. 3.

**B.14.022** Est interdite la vente de bœuf attendri mécaniquement à moins que les conditions ci-après ne soient réunies :

**a)** le bœuf est identifié comme tel lorsqu'il est offert ou exposé en vente;

**b)** il porte une étiquette ayant un espace principal qui, sous réserve de l'article B.01.012, contient les renseignements suivants :

**(i)** en caractères au moins aussi lisibles et en évidence que ceux du nom usuel :

**(B)** the expression "attendri mécaniquement", with any necessary grammatical modifications, in the French version of the label, and

**(ii)** in type at least as legible and prominent as that of any other information other than the common name,

**(A)** in the English version of the label,

**(I)** the message "Cook to a minimum internal temperature of 63°C (145°F).", and

**(II)** in the case of steak, the additional message "Turn steak over at least twice during cooking.", and

**(B)** in the French version of the label,

**(I)** the message "Faire cuire jusqu'à ce que la température interne atteigne au moins 63 °C (145 °F).", and

**(II)** in the case of steak, the additional message "Retourner le bifteck au moins deux fois durant la cuisson.".

SOR/2014-99, s. 2.

**(A)** pour ce qui est de la version française de l'étiquette, les mots « attendri mécaniquement », avec les adaptations nécessaires, le cas échéant,

**(B)** pour ce qui est de la version anglaise de l'étiquette, les mots « mechanically tenderized »,

**(ii)** en caractères au moins aussi lisibles et en évidence que ceux de tout autre renseignement autre que le nom usuel :

**(A)** pour ce qui est de la version française de l'étiquette, les mentions ci-après :

**(I)** « Faire cuire jusqu'à ce que la température interne atteigne au moins 63 °C (145 °F). »,

**(II)** en outre, s'agissant de bifteck, « Retourner le bifteck au moins deux fois durant la cuisson. »,

**(B)** pour ce qui est de la version anglaise de l'étiquette, les mentions ci-après :

**(I)** « Cook to a minimum internal temperature of 63°C (145°F). »,

**(II)** en outre, s'agissant de bifteck, « Turn steak over at least twice during cooking. ».

DORS/2014-99, art. 2.

## Prepared Meats, Prepared Meat By-Products

**B.14.030 (1)** Subject to subsections (2) and (3) and section B.14.030A, no person shall sell a prepared meat or prepared meat by-product with a meat protein content of less than 1.5 percentage points below the total protein requirement for that food.

**(2)** Subsection (1) does not apply to an extended meat product.

**(3)** Where gelatin is an ingredient of a prepared meat or prepared meat by-product, that gelatin shall not be included when calculating the total protein content of the prepared meat or prepared meat by-product.

SOR/78-637, s. 3; SOR/79-251, s. 5(F); SOR/80-13, s. 3; SOR/82-768, s. 41; SOR/86-875, s. 3.

**B.14.030A** For the purposes of sections B.14.030, B.14.032, B.14.033, B.14.035, B.14.074, B.14.075, B.14.076 and B.14.077, where any of the non-meat ingredients listed in paragraphs B.14.032A(a) to (g) are present in a prepared meat or prepared meat by-product in separate identifiable pieces or chunks in any amount sufficient to

## Viandes préparées, sous-produits de viande préparés

**B.14.030 (1)** Sous réserve des paragraphes (2) et (3) et de l'article B.14.030A, il est interdit de vendre de la viande préparée ou un sous-produit de viande préparée dont la teneur en protéines est de moins de 1,5 point de pourcentage inférieure à la teneur totale en protéines exigée pour cet aliment.

**(2)** Le paragraphe (1) ne s'applique pas à un produit de viande avec allongeur.

**(3)** Dans le cas où la viande préparée ou le sous-produit de viande préparée contient de la gélatine, cet ingrédient ne doit pas être pris en compte dans le calcul de la teneur totale en protéines de cet aliment.

DORS/78-637, art. 3; DORS/79-251, art. 5(F); DORS/80-13, art. 3; DORS/82-768, art. 41; DORS/86-875, art. 3.

**B.14.030A** Pour l'application des articles B.14.030, B.14.032, B.14.033, B.14.035, B.14.074, B.14.075, B.14.076 et B.14.077, dans le cas où l'un ou l'autre des ingrédients non carnés énumérés aux sous-alinéas B.14.032Aa) à g) est présent dans une viande préparée ou un sous-produit de viande préparée, en morceaux identifiables et en

differentiate those ingredients from the prepared meat or prepared meat by-product, those ingredients shall not be included when calculating the fat or protein content of the prepared meat or prepared meat by-product.

SOR/86-875, s. 3.

**B.14.031 [S]. Preserved Meat** or **Preserved Meat By-product** shall be cooked or uncooked meat or meat by-product that is salted, dried, pickled, corned, cured or smoked, may be glazed and may contain

**(a)** a Class I preservative;

**(a.1)** a Class II preservative;

**(b)** sweetening agents;

**(c)** spices and seasonings, except tomato;

**(d)** vinegar;

**(e)** alcohol;

**(f)** smoke flavouring or artificial smoke flavouring;

**(g)** in the case of cured pork hams, shoulders, backs and bellies, artificial maple flavour;

**(gg)** in the case of cured pork bellies, an added orange flavour that meets the standard prescribed in section B.10.005;

**(h)** in the case of cured pork, beef and lamb cuts prepared with the aid of pumping pickle, disodium phosphate, monosodium phosphate, sodium hexametaphosphate, sodium tripolyphosphate, tetrasodium pyrophosphate and sodium acid pyrophosphate in such amount calculated as disodium phosphate, as will result in the finished product containing not more than 0.5 per cent added phosphate;

**(i)** in the case of tocino, annatto in such amount as will result in the finished product containing not more than 0.1% annatto; and

**(j)** in the case of vacuum-packed sliced cooked ham, *Carnobacterium maltaromaticum* CB1.

SOR/79-251, s. 6; SOR/80-13, s. 4; SOR/82-596, s. 2; SOR/84-300, s. 45(E); SOR/88-336, ss. 2, 3; SOR/92-725, s. 3; SOR/97-151, s. 24; SOR/2010-264, s. 2; SOR/2011-280, s. 2; SOR/2016-305, s. 57; SOR/2017-18, s. 5(F); SOR/2018-69, s. 5(F).

**B.14.032 [S]. Sausage** or **Sausage Meat**

**(a)** shall be fresh or preserved comminuted meat;

**(b)** may be enclosed in a casing or have an edible coating;

quantité suffisante pour différencier ces ingrédients de la viande préparée ou du sous-produit de viande préparée, cet ingrédient ne doit pas être pris en compte dans le calcul de la quantité totale de gras ou de protéines.

DORS/86-875, art. 3.

**B.14.031 [N].** La **viande conservée** et les **sous-produits de viande conservés** sont faits de viande crue ou cuite ou d'un sous-produit de viande crue ou cuite, qui ont été salés, asséchés, marinés, saumurés ou fumés et peuvent être garnis d'une glace et renfermer :

**a)** un agent de conservation de la catégorie I;

**a.1)** un agent de conservation de la catégorie II;

**b)** des agents édulcorants;

**c)** des épices et des condiments, sauf la tomate;

**d)** du vinaigre;

**e)** de l'alcool;

**f)** de l'arôme de fumée ou de l'arôme artificiel de fumée;

**g)** dans le cas de jambons, d'épaules, de dos et de poitrines de porc fumés : de l'arôme artificiel d'érable;

**gg)** dans le cas des poitrines de porc de salaison : un arôme d'orange conforme à la norme prescrite à l'article B.10.005;

**h)** dans le cas des coupes de porc, de bœuf ou d'agneau de salaison préparées à l'aide de marinade, du phosphate disodique, du phosphate monosodique, de l'hexamétaphosphate de sodium, du tripolyphosphate de sodium, du pyrophosphate tétrasodique et du phyrophosphate acide de sodium, en telle quantité, calculée en phosphate disodique, que le produit fini renferme au plus 0,5 pour cent de phosphate ajouté;

**i)** dans le cas du tocino, du rocou en telle quantité que le produit fini renferme au plus 0,1 % de rocou;

**j)** dans le cas de jambons cuits tranchés emballés sous vide : du *Carnobacterium maltaromaticum* CB1.

DORS/79-251, art. 6; DORS/80-13, art. 4; DORS/82-596, art. 2; DORS/84-300, art. 45(A); DORS/88-336, art. 2 et 3; DORS/92-725, art. 3; DORS/97-151, art. 24; DORS/2010-264, art. 2; DORS/2011-280, art. 2; DORS/2016-305, art. 57; DORS/2017-18, art. 5(F); DORS/2018-69, art. 5(F).

**B.14.032 [N].** La **saucisse, chair à saucisse** ou **viande à saucisse**

**a)** est faite de viande hachée, fraîche ou conservée;

**(c)** may be dipped in vinegar, smoked, cooked or dried;

**(d)** may contain

**(i)** animal fat,

**(ii)** filler,

**(iii)** beef tripe,

**(iv)** liver,

**(v)** fresh or frozen beef and pork blood,

**(vi)** sweetening agents,

**(vii)** salt and spices,

**(viii)** seasoning, other than tomato,

**(ix)** lactic acid producing starter culture,

**(x)** meat binder,

**(xi)** beef and pork blood plasma,

**(xi.1)** a Class II preservative,

**(xii)** in the case of preserved comminuted meat, smoke flavouring or artificial smoke flavouring,

**(xiii)** if cooked

**(A)** glucono delta lactone,

**(B)** partially defatted beef fatty tissue or partially defatted pork fatty tissue, and

**(C)** a dried skim milk product, obtained from skim milk by the reduction of its calcium content and a corresponding increase in its sodium content, in an amount not exceeding three per cent of the finished food,

**(xiv)** in the case of fresh uncooked sausage, artificial maple flavour or apple powder as a flavouring ingredient,

**(xv)** in the case of dry sausage or dry sausage meat, glucono delta lactone,

**(xvi)** in the case of longaniza,

**(A)** annatto in such amount as will result in the finished product containing not more than 0.1% annatto,

**b)** peut être renfermée dans des boyaux ou avoir un enrobage comestible;

**c)** peut être mouillée de vinaigre, fumée, cuite ou asséchée;

**d)** peut renfermer

**(i)** de la graisse animale,

**(ii)** un agent de remplissage,

**(iii)** de la tripe de bœuf,

**(iv)** du foie,

**(v)** du sang de bœuf ou de porc, frais ou congelé,

**(vi)** des agents édulcorants,

**(vii)** du sel et des épices,

**(viii)** des condiments autres que la tomate,

**(ix)** un pied-de-cuve produisant de l'acide lactique,

**(x)** du liant à viande,

**(xi)** du plasma sanguin de bœuf et de porc,

**(xi.1)** un agent de conservation de la catégorie II,

**(xii)** dans le cas de la viande hachée, en conserve : de l'arôme de fumée ou de l'arôme artificiel de fumée,

**(xiii)** si elle est cuite,

**(A)** de la glucono-delta-lactone,

**(B)** des tissus gras de bœuf ou de porc partiellement dégraissés, et

**(C)** un produit de lait écrémé desséché obtenu du lait écrémé par la réduction de sa teneur en calcium et une augmentation correspondante de sa teneur en sodium, dans une proportion ne dépassant pas trois pour cent du produit fini,

**(xiv)** dans le cas de la saucisse fraîche, crue : de l'arôme artificiel d'érable, et de la poudre de pomme comme aromatisant,

**(xv)** dans le cas de la saucisse sèche ou de la chair à saucisse sèche, de la glucono-delta-lactone,

**(xvi)** dans le cas du longaniza :

**(B)** allura red in such amount as will result in the finished product containing not more than 80 parts per million allura red, and

**(C)** sunset yellow FCF in such amount as will result in the finished product containing not more than 20 parts per million sunset yellow FCF,

**(xvii)** in the case of vacuum-packed wieners, *Carnobacterium maltaromaticum* CB1, and

**(xviii)** in the case of sausage having an edible coating, calcium chloride or calcium lactate;

**(e)** shall contain, in the case of a product sold as fresh sausage, not more than 40 per cent fat, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981;

**(f)** shall have, if cooked, a total protein content of not less than 11 per cent;

**(g)** shall have, in the case of fresh uncooked sausage and fresh uncooked sausage meat, a total protein content of not less than nine per cent.

SOR/80-13, s. 5; SOR/82-768, s. 42; SOR/88-336, s. 3; SOR/92-725, s. 4; SOR/97-151, s. 25; SOR/97-516, s. 3; SOR/2010-264, s. 3; SOR/2011-280, s. 3; SOR/2012-111, s. 1; SOR/2016-305, s. 58.

**B.14.032A [S]. (naming the prepared meat** or **prepared meat by-product)** with **(naming the non-meat ingredients)** shall be prepared meat to which has been added other non-meat ingredients including

**(a)** fruit;

**(b)** vegetables;

**(c)** nuts;

**(d)** cheese or processed cheese;

**(e)** macaroni;

**(f)** pickles; or

**(g)** olives.

SOR/84-300, s. 46.

**(A)** du rocou en une quantité telle que le produit fini renferme au plus 0,1 % de rocou,

**(B)** du rouge allura en une quantité telle que le produit fini renferme au plus 80 parties par million de rouge allura,

**(C)** du jaune soleil FCF en une quantité telle que le produit fini renferme au plus 20 parties par million de jaune soleil FCF,

**(xvii)** dans le cas de la saucisse fumée emballée sous vide : du *Carnobacterium maltaromaticum* CB1,

**(xviii)** dans le cas de la saucisse avec enrobage comestible, du chlorure de calcium ou du lactate de calcium;

**e)** doit contenir, dans le cas d'un produit vendu comme saucisse fraîche, au plus 40 pour cent de matières grasses, déterminé selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981;

**f)** doit avoir, si elle est cuite, une teneur totale en protéines d'au moins 11 pour cent;

**g)** doit avoir, dans le cas de la saucisse fraîche crue et de la chair ou viande à saucisse fraîche crue, une teneur totale en protéines d'au moins neuf pour cent.

DORS/80-13, art. 5; DORS/82-768, art. 42; DORS/88-336, art. 3; DORS/92-725, art. 4; DORS/97-151, art. 25; DORS/97-516, art. 3; DORS/2010-264, art. 3; DORS/2011-280, art. 3; DORS/2012-111, art. 1; DORS/2016-305, art. 58.

**B.14.032A [N]. (Nom de la viande préparée ou du sous-produit de viande préparée)** avec **(nom des ingrédients non carnés)** doit être de la viande préparée à laquelle sont ajoutés d'autres ingrédients non carnés, notamment

**a)** des fruits;

**b)** des légumes;

**c)** des noix;

**d)** du fromage ou du fromage fondu;

**e)** du macaroni;

**f)** des cornichons; ou

**g)** des olives.

DORS/84-300, art. 46.

**B.14.032AA** Where the non-meat ingredients referred to in section B.14.032A are added to prepared meat in such a manner that they are not present in the final product in separate identifiable pieces or chunks, the final product shall meet the total protein content requirement established for (naming the prepared meat or prepared meat by-product) referred to in section B.14.032A.

SOR/86-875, s. 4.

**B.14.033 [S]. Potted Meat, Meat Paste** or **Meat Spread** shall be fresh or preserved meat that is comminuted and cooked, and may contain meat binder, salt, sweetening agents, spices, other seasonings, a gelling agent, sodium acetate and sodium diacetate and shall have a total protein content of not less than 9%.

SOR/80-13, s. 6; SOR/2011-280, s. 4; SOR/2017-18, s. 19(F).

**B.14.034 [S]. Potted Meat By-product, Meat By-product Paste or Meat By-product Spread** shall be a food that

**(a)** consists, wholly or in part, of meat by-products and conforms to the standard prescribed for potted meat; and

**(b)** in the case of liverpaste or liverwurst spread, may contain wheat germ and yeast.

SOR/78-637, s. 4; SOR/80-13, s. 7; SOR/86-875, s. 5.

**B.14.035 [S]. Meat Loaf, Meat Roll, Meat Lunch** or **Luncheon Meat** shall be fresh or preserved meat that is comminuted, cooked and pressed into shape, and may contain a dried skim milk product obtained from skim milk by the reduction of its calcium content and a corresponding increase in its sodium content, in an amount not exceeding 3% of the finished food, as well as filler, meat binder, salt, sweetening agents, glucono delta lactone, spices, other seasonings, milk, eggs, a gelling agent, sodium acetate, sodium diacetate and partially defatted beef fatty tissue or partially defatted pork fatty tissue, and shall have a total protein content of not less than 11%.

SOR/80-13, s. 8; SOR/2011-280, s. 5; SOR/2017-18, s. 19(F).

**B.14.036 [S]. Meat By-product Loaf** or **Meat and Meat By-product Loaf** shall be the food consisting, wholly or in part, of meat by-products and shall otherwise conform to the standard prescribed for meat loaf.

**B.14.032AA** Lorsque les ingrédients non carnés visés à l'article B.14.032A sont ajoutés à de la viande préparée de façon telle qu'ils ne sont pas présents en morceaux identifiables et en quantité suffisante dans le produit fini, ce dernier doit renfermer les quantités de protéines établies pour (nom de la viande préparée ou du sous-produit de viande préparée) que mentionne l'article B.14.032A.

DORS/86-875, art. 4.

**B.14.033 [N].** La **viande en pot**, le **pâté de viande** ou la **viande à tartiner** sont faits de viande fraîche ou conservée, hachée et cuite; ils peuvent renfermer un liant à viande, du sel, des agents édulcorants, des épices ou d'autres condiments, un agent gélatinisant, de l'acétate de sodium et du diacétate de sodium; leur teneur totale en protéines doit être d'au moins 9 pour cent.

DORS/80-13, art. 6; DORS/2011-280, art. 4; DORS/2017-18, art. 19(F).

**B.14.034 [N].** Les **sous-produits de viande en pot**, les **sous-produits de viande en pâte** et les **sous-produits de viande à tartiner doivent**

**a)** consister, au moins en partie, de sous-produits de viande et être conformes à la norme relative à la viande en pot; et

**b)** dans le cas du pâté de foie ou du saucisson de foie à tartiner, peuvent contenir du germe de blé et de la levure.

DORS/78-637, art. 4; DORS/80-13, art. 7; DORS/86-875, art. 5.

**B.14.035 [N].** Le **pain de viande**, la **viande en pain**, la **viande en brique** ou **en rouleau** et la **viande à lunch** sont faits de viande fraîche ou conservée, hachée, cuite et pressée; ils peuvent renfermer, dans une proportion d'au plus trois pour cent du produit fini, un produit de lait écrémé desséché obtenu du lait écrémé par la réduction de la quantité de calcium à laquelle est substituée une quantité égale de sodium, et contenir un agent de remplissage, un liant à viande, du sel, des agents édulcorants, de la glucono-delta-lactone, des épices ou d'autres condiments, du lait, des œufs, un agent gélatinisant, de l'acétate de sodium et du diacétate de sodium, des tissus gras de bœuf ou de porc partiellement dégraissés; leur teneur totale en protéines doit être d'au moins onze pour cent.

DORS/80-13, art. 8; DORS/2011-280, art. 5; DORS/2017-18, art. 19(F).

**B.14.036 [N].** Le **pain de sous-produits de viande** ou **sous-produits de viande en pain**, et le **pain de viande** et de **sous-produits de viande** ou **viande** et **sous-produits de viande en pain**, doivent être l'aliment qui consiste, en tout ou en partie, de sous-produits de viande, et être autrement conformes en tous points à la norme prescrite pour le pain de viande.

**B.14.037 (1) [S]. Headcheese**

**(a)** shall be comminuted cooked meat or comminuted cooked preserved meat,

**(b)** shall not contain

**(i)** less than 50 per cent head meat, or

**(ii)** skin, other than that naturally adherent to any pork meat used,

**(c)** may contain scalps, snouts, beef tripe, salt, spices, seasoning or an added gelling agent, and

**(d)** may contain

**(i)** a Class I preservative, and

**(ii)** a Class II preservative.

**(2)** For the purpose of subsection (1), scalps and snouts are considered to be head meat.

SOR/80-500, s. 5; SOR/2011-280, s. 6; SOR/2017-18, s. 19(F).

**B.14.038 [S]. Brawn** shall be headcheese, except that it need not contain 50 per cent head meat.

**B.14.039** [Repealed, SOR/2022-143, s. 26]

**B.14.040** Subject to section B.14.032 and sections B.14.033 to B.14.036, no person shall sell a food that consists of a mixture of ground meat and filler, ground meat by-product and filler or ground meat, ground meat by-product and filler, unless that food

**(a)** has a total protein content of not less than 13 per cent;

**(b)** has a fat content of not more than 40 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case of a mixture containing pork meat or pork meat by-product or both; and

**(c)** has a fat content of not more than 30 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case of any other meat mixture.

SOR/79-251, s. 7(F); SOR/82-768, s. 43.

**B.14.037 (1) [N].** La **tête en fromage** ou **tête fromagée**

**a)** doit être de la viande cuite hachée, ou de la viande conservée cuite et hachée,

**b)** ne doit pas renfermer

**(i)** moins de 50 pour cent de viande de tête, ni

**(ii)** aucune peau autre que celle qui adhère naturellement à la viande de porc employée,

**c)** peut renfermer la peau de la tête, du groin de porc, de la tripe de bœuf, du sel, des épices, des condiments et un agent gélatinisant ajouté, et

**d)** peut renfermer

**(i)** un agent de conservation de la catégorie I,

**(ii)** un agent de conservation de la catégorie II.

**(2)** Pour l'application du paragraphe (1), la peau de tête et le groin sont considérés comme de la viande de tête.

DORS/80-500, art. 5; DORS/2011-280, art. 6; DORS/2017-18, art. 19(F).

**B.14.038 [N].** Le **fromage de porc** ou **fromage de hure** doit être de la tête en fromage, sauf qu'il peut renfermer moins de 50 pour cent de viande de tête.

**B.14.039** [Abrogé, DORS/2022-143, art. 26]

**B.14.040** Sous réserve de l'article B.14.032 et des articles B.14.033 à B.14.036, est interdite la vente d'un aliment qui consiste en un mélange de viande hachée et d'agent de remplissage, de sous-produit de viande hachée et d'agent de remplissage ou de viande hachée, de sous-produit de viande hachée et d'agent de remplissage, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 13 pour cent;

**b)** n'ait une teneur en matières grasses d'au plus 40 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, dans le cas d'un mélange contenant de la viande de porc ou de sous-produit de porc, ou les deux; et

**c)** n'ait une teneur en matières grasses d'au plus 30 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande,

**B.14.041** Subject to section B.14.032 and sections B.14.033 to B.14.036, no person shall sell a food that consists of a mixture of ground meat and spices and seasonings, ground meat by-product and spices and seasonings, ground meat, ground meat by-product and spices and seasonings or ground meat and ground meat by-product, unless that food

**(a)** has a total protein content of not less than 16 per cent;

**(b)** has a fat content of not more than 40 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case of a mixture containing pork meat or pork meat by-product or both; and

**(c)** has a fat content of not more than 30 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case of any other meat mixture.

SOR/79-251, s. 7(F); SOR/82-768, s. 44.

**B.14.041** Sous réserve de l'article B.14.032 et des articles B.14.033 à B.14.036, est interdite la vente d'un aliment qui consiste en un mélange de viande hachée, d'épices et de condiments, de sous-produit de viande hachée, d'épices et de condiments, de viande hachée, de sous-produit de viande hachée, d'épices et de condiments, ou de viande hachée et de sous-produit de viande hachée, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 16 pour cent;

**b)** n'ait une teneur en matières grasses d'au plus 40 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, dans le cas d'un mélange contenant de la viande de porc, ou de sous-produit de porc, ou les deux; et

**c)** n'ait une teneur en matières grasses d'au plus 30 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, dans le cas de tout autre mélange de viande.

DORS/79-251, art. 7(F); DORS/82-768, art. 44.

## Meat Derivatives

**B.14.061 [S]. Edible Bone Meal** or **Edible Bone Flour** shall be the food prepared by grinding dry, defatted bones, obtained from animals healthy at the time of slaughter and shall contain

**(a)** not less than 85 per cent ash, as determined by official method FO-34, Determination of Ash in Edible Bone Meal or Edible Bone Flour, October 15, 1981.

**(b) and (c)** [Repealed, SOR/97-148, s. 4]

SOR/82-768, s. 45; SOR/97-148, s. 4.

**B.14.062 [S]. (1) Gelatin** or **Edible Gelatin**

**(a)** shall be the purified food obtained by the processing of skin, ligaments or bones of animals;

**(b)** shall contain not less than 82 per cent ash-free solids, when tested by official method FO-35, Determination of Ash-Free Solids in Gelatin, October 15, 1981;

## Dérivés de la viande

**B.14.061 [N].** La **farine d'os comestible** doit être le produit alimentaire provenant du broyage d'os secs et dégraissés d'animaux sains au moment de l'abattage, et elle doit

**a)** renfermer au moins 85 pour cent de cendres, déterminé selon la méthode officielle FO-34, Détermination de cendres dans la farine d'os comestible, 15 octobre 1981.

**b) et c)** [Abrogés, DORS/97-148, art. 4]

DORS/82-768, art. 45; DORS/97-148, art. 4.

**B.14.062 [N]. (1)** La **gélatine** ou **gélatine comestible**

**a)** est un aliment purifié, obtenu par le traitement de la peau, des ligaments ou des os d'animaux;

**b)** contient au moins 82 pour cent de solides exempts de cendres, déterminé selon la méthode officielle FO-35, Détermination de solides exempts de cendres dans la gélatine, 15 octobre 1981;

**(c)** shall be free from objectionable taste and offensive odour when 2.5 grams thereof are dissolved in 100 millilitres of warm water;

**(d)** [Repealed, SOR/97-148, s. 5]

**(e)** shall not contain any residues of hydrogen peroxide where it has been used in the course of manufacture; and

**(f)** may contain

**(i)** not more than 2.6 per cent ash on a dry basis,

**(ii)** not more than 500 parts per million of sulphurous acid, including the salts thereof, calculated as sulphur dioxide, and

**(iii)** where intended for use in the manufacture of marshmallow, sodium hexametaphosphate or sodium lauryl sulphate.

**(2)** No person shall use, in the course of manufacturing gelatin or edible gelatin,

**(a)** acidic or basic compounds other than acetic acid, ammonium hydroxide, citric acid, fumaric acid, hydrochloric acid, lime, magnesium hydroxide, phosphoric acid, sodium carbonate, sodium hydroxide, sodium sulphide, sulphuric acid, sulphurous acid or tartaric acid; or

**(b)** filtering and clarifying agents other than activated carbon, alumina, aluminum sulphate, calcium phosphate, dibasic, cellulose, diatomaceous earth, perlite, strongly acidic cation exchange resin in the hydrogen ion form or basic anion exchange resins in the chloride ion or free base ion forms.

SOR/78-401, s. 2(E); SOR/78-874, s. 1; SOR/80-501, s. 3; SOR/82-768, s. 46; SOR/97-148, s. 5.

## Meat Stews

**B.14.063** For the purposes of sections B.14.064 to B.14.068, ***stew meat*** means meat that contains when raw not more than

**(a)** 25 per cent fat, in the case of meat in meat ball stews; and

**(b)** 20 per cent fat, in the case of meat in other stews.

SOR/78-874, s. 2.

**c)** qui est exempt de goût ou d'odeur désagréable lorsque 2,5 grammes sont dissous dans 100 millilitres d'eau tiède;

**d)** [Abrogé, DORS/97-148, art. 5]

**e)** ne contient aucun résidus de peroxyde d'hydrogène lorsqu'utilisé au cours de la fabrication; et

**f)** peut contenir

**(i)** au plus 2,6 pour cent de cendres rapportées à la matière desséchée,

**(ii)** au plus 500 parties par million d'acide sulfureux, y compris ses sels, calculé en anhydride sulfureux, et

**(iii)** lorsque destinée à la fabrication de guimauves, de l'hexamétaphosphate de sodium ou du lauryl sulfate de sodium.

**(2)** Il est interdit d'utiliser, au cours de la fabrication de la gélatine ou de la gélatine comestible,

**a)** des composés acides ou basiques autres que l'acide acétique, l'hydroxyde d'ammonium, l'acide citrique, l'acide fumarique, l'acide chlorhydrique, la chaux, l'hydroxyde de magnésium, l'acide phosphorique, le carbonate de sodium, l'hydroxyde de sodium, le sulfure de sodium, l'acide sulfurique, l'acide sulfureux ou l'acide tartique; ou

**b)** des agents de filtration et de clarification autre que le charbon activé, l'alumine, le sulfate d'aluminium, le phosphate dicalcique, la cellulose, la terre de diatomées, la perlite, une résine échangeuse de cations de forte acidité sous forme d'ions hydrogènes, ou une résine échangeuse d'anions basiques sous forme d'ions de chlorure ou d'ions basiques libres.

DORS/78-401, art. 2(A); DORS/78-874, art. 1; DORS/80-501, art. 3; DORS/82-768, art. 46; DORS/97-148, art. 5.

## Ragoûts de viande

**B.14.063** Aux fins des articles B.14.064 à B.014.068, on entend par viande pour ragoûts de la viande contenant lorsque crue, au plus

**a)** 25 pour cent de gras, dans le cas de ragoût de boulettes, et

**b)** 20 pour cent de gras, dans le cas de tout autre ragoût.

DORS/78-874, art. 2.

### B.14.064 [S]. Vegetable Stew with (naming the meat)

**(a)** shall contain vegetables and the named meat in the following amounts, calculated as raw ingredients:

**(i)** 12 per cent or more stew meat, and

**(ii)** 38 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 2.

### B.14.065 [S]. (naming the meat) Stew

**(a)** shall contain vegetables and the named meat in the following amounts, calculated as raw ingredients:

**(i)** 20 per cent or more stew meat, and

**(ii)** 30 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 2.

### B.14.066 [S]. Irish Stew

**(a)** shall contain mutton, lamb or beef, singly or in any combination, and vegetables, in the following amounts, calculated as raw ingredients:

**(i)** 20 per cent or more stew meat,

**(ii)** 30 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 2.

### B.14.067 [S]. Meat Ball Stew

**(a)** shall contain vegetables and meat balls in the following amounts, calculated as raw ingredients:

**(i)** 22 per cent or more meat balls,

**(ii)** 30 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 2.

### B.14.064 [N]. Le **ragoût de légumes avec (nom de la viande)**

**a)** doit contenir des légumes et (le nom de la viande) dans les quantités suivantes, calculées et d'après les aliments crus :

**(i)** au moins 12 pour cent de viande pour ragoût, et

**(ii)** au moins 38 pour cent de légumes, et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 2.

### B.14.065 [N]. Le **ragoût de (nom de la viande)**

**a)** doit contenir des légumes et (le nom de la viande) dans les quantités suivantes, calculées d'après les aliments crus :

**(i)** au moins 20 pour cent de viande pour ragoût, et

**(ii)** au moins 30 pour cent de légumes, et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 2.

### B.14.066 [N]. Le **ragoût irlandais**

**a)** doit contenir du mouton, de l'agneau ou du bœuf, seul ou en association, et des légumes dans les quantités suivantes, calculées d'après les aliments crus :

**(i)** au moins 20 pour cent de viande pour ragoût,

**(ii)** au moins 30 pour cent de légumes, et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 2.

### B.14.067 [N]. Les **boulettes de viande avec légumes en sauce**

**a)** doivent contenir des légumes et des boulettes dans les quantités suivantes, calculées d'après les aliments crus :

**(i)** au moins 22 pour cent de boulettes de viande,

**(ii)** au moins 30 pour cent de légumes, et

**b)** peuvent contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 2.

**B.14.068 [S].** Specialty Meat Stews

**(a)** shall contain meat and vegetables in the following amounts, calculated as raw ingredients:

**(i)** 25 per cent or more stew meat,

**(ii)** 30 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 2.

## Meat Specialties

**B.14.070 [S]. Wieners and Beans** or **Wieners with Beans** shall be the food prepared from dried beans and wieners, may contain sauce, seasoning, spices and a sweetening agent and shall contain not less than 25 per cent wieners, as determined by official method FO-36, Determination of Wiener Content of Meat Specialties, October 15, 1981.

SOR/82-768, s. 47.

**B.14.071 [S]. Beans and Wieners** or **Beans with Wieners** shall be the food prepared from dried beans and wieners, may contain sauce, seasoning, spices and a sweetening agent and shall contain not less than 10 per cent wieners, as determined by official method FO-36, Determination of Wiener Content of Meat Specialties, October 15, 1981.

SOR/82-768, s. 47.

## Sale of Barbecued, Roasted or Broiled Meat or Meat By-Products

**B.14.072** No person shall sell meat or a meat by-product that has been barbecued, roasted or broiled and is ready for consumption unless the cooked meat or meat by-product

**(a)** at all times

**(i)** has a temperature of 40°F (4.4°C) or lower, or 140°F (60°C) or higher, or

**B.14.068 [N].** Le ragoût spécial de viande

**a)** doit contenir de la viande et des légumes dans les quantités suivantes, calculés d'après les aliments crus :

**(i)** au moins 25 pour cent de viande pour ragoût,

**(ii)** au moins 30 pour cent de légumes, et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 2.

## Spécialités de viande

**B.14.070 [N].** Les **saucisses fumées** (**wieners** ou **saucissons de Francfort**) avec haricots ou les saucisses aux fèves doivent être l'aliment préparé avec des haricots secs et des saucisses fumées; elles peuvent renfermer une sauce, des condiments, des épices et un agent édulcorant et doivent renfermer au moins 25 pour cent de saucisses fumées, déterminé selon la méthode officielle FO-36, Détermination de la teneur en saucisses fumées dans des spécialités de viande telles que les saucisses fumées avec haricots, 15 octobre 1981.

DORS/82-768, art. 47.

**B.14.071 [N].** Les **haricots aux saucisses fumées** ou **fèves aux saucisses fumées (haricots avec saucisses fumées,** ou **haricots avec wieners)** doivent être l'aliment préparé avec des haricots secs et des saucisses fumées; ils peuvent renfermer une sauce, des condiments, des épices et un agent édulcorant et doivent renfermer au moins 10 pour cent de saucisses fumées, déterminé selon la méthode officielle FO-36, Détermination de la teneur en saucisses fumées dans des spécialités de viande telles que les saucisses fumées avec haricots, 15 octobre 1981.

DORS/82-768, art. 47.

## Vente de viandes ou de sous-produits de la viande cuits à la broche, rôtis ou grillés

**B.14.072** Est interdite la vente de viande ou de sous-produits de la viande cuits à la broche, rôtis ou grillés et prêts à la consommation à moins que la viande ou le sous-produit de la viande cuits

**a)** n'aient constamment

**(i)** indiqué une température de 40 °F (4,4 °C) ou moins, ou de 140 °F (60 °C) ou plus, ou

**(ii)** has been stored at an ambient temperature of 40°F (4.4°C) or lower, or 140°F (60°C) or higher; and

**(b)** carries on the principal display panel of the label a statement to the effect that the food must be stored at a temperature of 40°F (4.4°C) or lower, or 140°F (60°C) or higher.

SOR/78-403, s. 4(F); SOR/88-336, s. 3.

## Meat Product Extender

**B.14.073** No person shall sell a meat product extender intended to be used in a food consisting of a mixture described in section B.14.074, B.14.075, B.14.076, B.14.077 or B.14.078, unless that extender

**(a)** has, in the rehydrated state,

**(i)** a total protein content of not less than 16 per cent, and

**(ii)** a protein rating of not less than 40, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(b)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(c)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 48.

## Extended Meat Products

**B.14.074** Subject to sections B.14.075 to B.14.079, no person shall sell a food that consists of a mixture of meat product and meat product extender, unless that food

**(a)** has a total protein content of not less than 16 per cent;

**(b)** has a fat content of not more than 25 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981; and

**(ii)** été conservés à une température ambiante de 40 °F (4,4 °C) ou moins, ou de 140 °F (60 °C) ou plus; et

**b)** ne portent, sur l'espace principal de l'étiquette, mention qu'ils doivent être conservés à une température de 40 °F (4,4 °C) ou moins, ou de 140 °F (60 °C) ou plus.

DORS/78-403, art. 4(F); DORS/88-336, art. 3.

## Allongeur de produits de viande

**B.14.073** Est interdite la vente d'un allongeur de produits de viande pour usage dans un aliment qui consiste en un mélange décrit aux articles B.14.074, B.14.075, B.14.076, B.14.077 ou B.14.078, à moins que cet allongeur

**a)** n'ait, à l'état réhydraté,

**(i)** une teneur totale en protéines d'au moins 16 pour cent, et

**(ii)** une cote protéique d'au moins 40, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**b)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs énumérés au tableau du présent Titre, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que,

**c)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités non supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 48.

## Produits de viande avec allongeur

**B.14.074** Sous réserve des articles B.14.075 à B.14.079, est interdite la vente d'un aliment qui consiste en un mélange de produit de viande et d'allongeur de produits de viande, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 16 pour cent;

**b)** n'ait une teneur en matières grasses d'au plus 25 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981; et que,

**(c)** in respect of the meat product extender, meets the requirements of paragraphs B.14.073(a) to (c).

SOR/82-768, s. 49.

**B.14.075** No person shall sell a food that consists of a mixture of meat product and meat product extender and that resembles fresh sausage, unless that food

**(a)** has a total protein content of not less than nine per cent;

**(b)** has a fat content of not more than 40 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981; and

**(c)** in respect of the meat product extender, meets the requirements of paragraphs B.14.073(a) to (c).

SOR/82-768, s. 50; SOR/84-300, s. 47(F).

**B.14.076** No person shall sell a food that consists of a mixture of meat product and meat product extender and that resembles cooked sausage, meat loaf, meat by-product loaf, meat roll, meat lunch, or luncheon meat, unless that food

**(a)** has a total protein content of not less than 11 per cent;

**(b)** has a fat content of not more than 25 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981; and

**(c)** in respect of the meat product extender, meets the requirements of paragraphs B.14.073(a) to (c).

SOR/82-768, s. 51.

**B.14.077** No person shall sell a food that consists of a mixture of meat product and meat product extender and that resembles potted meat, potted meat by-product, meat paste, meat by-product paste, meat spread, or meat by-product spread, unless that food

**(a)** has a total protein content of not less than nine per cent;

**(b)** has a fat content of not more than 30 per cent, as determined by official method FO-33, Determination

**c)** en ce qui a trait à l'allongeur de produits de viande, il ne satisfasse aux exigences des alinéas B.14.073a) à c).

DORS/82-768, art. 49.

**B.14.075** Est interdite la vente d'un aliment qui consiste en un mélange de produit de viande et d'allongeur de produits de viande et qui rappelle la saucisse fraîche, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins neuf pour cent;

**b)** n'ait une teneur en matières grasses d'au plus 40 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981; et que,

**c)** en ce qui a trait à l'allongeur de produit de viande, il ne satisfasse aux exigences des alinéas B.14.073a) à c).

DORS/82-768, art. 50; DORS/84-300, art. 47(F).

**B.14.076** Est interdite la vente d'un aliment qui consiste en un mélange de produit de viande et d'allongeur de produits de viande et qui rappelle la saucisse cuite, le pain de viande, le pain de sous-produit de viande, la viande en brique ou en rouleau ou la viande à lunch, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 11 pour cent;

**b)** n'ait une teneur en matières grasses d'au plus 25 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981; et que,

**c)** en ce qui a trait à l'allongeur de produits de viande, il ne satisfasse aux exigences des alinéas B.14.073a) à c).

DORS/82-768, art. 51.

**B.14.077** Est interdite la vente d'un aliment qui consiste en un mélange de produit de viande et d'allongeur de produits de viande et qui rappelle la viande en pot, un sous-produit de viande en pot, le pâté de viande, le pâté de sous-produit de viande, la viande à tartiner ou un sous-produit de viande à tartiner, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins neuf pour cent;

of Fat in Meat and Simulated Meat Products, October 15, 1981; and

**(c)** in respect of the meat product extender, meets the requirements of paragraphs B.14.073(a) to (c).

SOR/82-768, s. 52; SOR/84-300, s. 48(E).

**B.14.078** No person shall sell a food that consists of a mixture of meat product and meat product extender and that resembles regular ground beef, medium ground beef or lean ground beef, unless that food

**(a)** has a total protein content of not less than 16 per cent;

**(b)** has a fat content of

**(i)** not more than 30 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case where the product is represented as being regular,

**(ii)** not more than 23 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case where the product is represented as being medium, or

**(iii)** not more than 17 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case where the product is represented as being lean; and

**(c)** in respect of the meat product extender, meets the requirements of paragraphs B.14.073(a) to (c).

SOR/82-768, s. 53.

**B.14.079** No person shall sell a food that consists of a mixture of meat product, filler and meat product extender, unless that food

**(a)** has a total protein content of not less than 13 per cent;

**(b)** has a fat content of not more than 25 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981; and

**b)** n'ait une teneur en matières grasses d'au plus 30 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981; et que,

**c)** en ce qui a trait à l'allongeur de produits de viande, il ne satisfasse aux exigences des alinéas B.14.073a) à c).

DORS/82-768, art. 52; DORS/84-300, art. 48(A).

**B.14.078** Est interdite la vente d'un aliment qui consiste en un mélange de produit de viande et d'allongeur de produits de viande et qui rappelle le bœuf haché ordinaire, le bœuf haché mi-maigre ou le bœuf haché maigre, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 16 pour cent;

**b)** n'ait une teneur en matières grasses

**(i)** d'au plus 30 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, lorsque le produit est présenté comme étant ordinaire,

**(ii)** d'au plus 23 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, lorsque le produit est présenté comme étant mi-maigre, ou

**(iii)** d'au plus 17 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, lorsque le produit est présenté comme étant maigre; et que,

**c)** en ce qui a trait à l'allongeur de produit de viande, il ne rencontre les exigences des alinéas B.14.073a) à c).

DORS/82-768, art. 53.

**B.14.079** Est interdite la vente d'un aliment qui consiste en un mélange de produit de viande, d'un agent de remplissage, et d'un allongeur de produit de viande, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 13 pour cent;

**b)** n'ait une teneur en matières grasses d'au plus 25 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des

**(c)** in respect of the meat product extender, meets the requirements of paragraphs B.14.073(a) to (c).

SOR/82-768, s. 54.

## Simulated Meat Products

**B.14.085** Subject to sections B.14.086 to B.14.090 no person shall sell a simulated meat product unless that product

**(a)** has, in the rehydrated state,

**(i)** a total protein content of not less than 16 per cent,

**(ii)** a protein rating of not less than 40, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981, and

**(iii)** a fat content of not more than 25 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981;

**(b)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(c)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 55.

**B.14.086** No person shall sell a simulated meat product that resembles fresh sausage, unless that product

**(a)** has a total protein content of not less than nine per cent;

**(b)** has a protein rating of not less than 23, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** has a fat content of not more than 40 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981;

produits de viande et des simili-produits de viande, 15 octobre 1981; et que,

**c)** en ce qui a trait à l'allongeur de produit de viande, il ne rencontre les exigences des alinéas B.14.073a) à c).

DORS/82-768, art. 54.

## Simili-produits de viande

**B.14.085** Sous réserve des articles B.14.086 à B.14.090, est interdite la vente d'un simili-produit de viande, à moins que ce produit

**a)** n'ait, à l'état réhydraté,

**(i)** une teneur totale en protéines d'au moins 16 pour cent,

**(ii)** une cote protéique d'au moins 40, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981, et

**(iii)** une teneur en matières grasses d'au plus 25 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981;

**b)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et minéraux nutritifs énumérés au tableau du présent titre, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que

**c)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités non supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 55.

**B.14.086** Est interdite la vente d'un simili-produit de viande qui rappelle la saucisse fraîche à moins que ce produit

**a)** n'ait une teneur totale en protéines d'au moins neuf pour cent;

**b)** n'ait une cote protéique d'au moins 23, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** n'ait une teneur en matières grasses d'au plus 40 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des

**(d)** has, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(e)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 56.

**B.14.087** No person shall sell a simulated meat product that resembles cooked sausage, meat loaf, meat by-product loaf, meat roll, meat lunch, or luncheon meat, unless that product

**(a)** has a total protein content of not less than 11 per cent;

**(b)** has a protein rating of not less than 28, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** has a fat content of not more than 25 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981;

**(d)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(e)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 57.

**B.14.088** No person shall sell a simulated meat product that resembles potted meat, potted meat by-product, meat paste, meat by-product paste, meat spread, or meat by-product spread, unless that product

**(a)** has a total protein content of not less than nine per cent;

produits de viande et des simili-produits de viande, 15 octobre 1981;

**d)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs énumérés au tableau du présent titre, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que

**e)** lorsque des acides aminés essentiels isolés ont été ajoutés, ne contienne ces acides en quantités non supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 56.

**B.14.087** Est interdite la vente d'un simili-produit de viande qui rappelle la saucisse cuite, le pain de viande, le pain de sous-produit de viande, la viande en brique ou en rouleau ou la viande à lunch, à moins que ce produit

**a)** n'ait une teneur totale en protéines d'au moins 11 pour cent;

**b)** n'ait une cote protéique d'au moins 28, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** n'ait une teneur en matières grasses d'au plus 25 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981;

**d)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs énumérés au tableau du présent titre, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que

**e)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 57.

**B.14.088** Est interdite la vente d'un simili-produit de viande qui rappelle la viande en pot, un sous-produit de viande en pot, le pâté de viande, le pâté de sous-produit de viande, la viande à tartiner ou un sous-produit de viande à tartiner, à moins que ce produit

**a)** n'ait une teneur totale en protéines d'au moins neuf pour cent;

**(b)** has a protein rating of not less than 23, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** has a fat content of not more than 30 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981;

**(d)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each vitamin and mineral nutrient respectively; and

**(e)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 58.

**B.14.089** No person shall sell a simulated meat product that resembles regular ground beef, medium ground beef or lean ground beef, unless that product

**(a)** has a total protein content of not less than 16 per cent;

**(b)** has a protein rating of not less than 40, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** has a fat content of

**(i)** not more than 30 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case where the product is represented as being regular,

**(ii)** not more than 23 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case where the product is represented as being medium, or

**(iii)** not more than 17 per cent, as determined by official method FO-33, Determination of Fat in Meat and Simulated Meat Products, October 15, 1981, in the case where the product is represented as being lean;

**(d)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in

**b)** n'ait une cote protéique d'au moins 23, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** n'ait une teneur en matières grasses d'au plus 30 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981;

**d)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs énumérés au tableau du présent titre, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que

**e)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 58.

**B.14.089** Est interdite la vente d'un simili-produit de viande qui rappelle le bœuf haché ordinaire, le bœuf haché mi-maigre ou le bœuf haché maigre, à moins que ce produit

**a)** n'ait une teneur totale en protéines d'au moins 16 pour cent;

**b)** n'ait une cote protéique d'au moins 40, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** n'ait une teneur en matières grasses

**(i)** d'au plus 30 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, lorsque le produit est présenté comme étant ordinaire,

**(ii)** d'au plus 23 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, lorsque le produit est présenté comme étant mi-maigre, ou

**(iii)** d'au plus 17 pour cent, déterminée selon la méthode officielle FO-33, Détermination de matières grasses dans des produits de viande et des simili-produits de viande, 15 octobre 1981, lorsque le produit est présenté comme étant maigre;

Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient, respectively; and

**(e)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 59.

**B.14.090** No person shall sell a simulated meat product that resembles side bacon, unless that product

**(a)** has a total protein content of not less than 25 per cent;

**(b)** has a protein rating of not less than 20, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to this Division in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(d)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 60.

**TABLE**

| Item No. | Column I<br>Vitamin or Mineral Nutrient | Column II<br>Amount per gram of protein |
|---|---|---|
| C.1 | Copper | 4.4 micrograms |
| F.1 | Folic Acid | 0.45 microgram |
| I.1 | Iron | 0.25 milligram |
| M.1 | Magnesium | 1.1 milligrams |
| N.1 | Niacin | 0.34 milligram |
| P.1 | Pantothenic Acid | 0.04 milligram |
| P.2 | Potassium | 20 milligrams |
| P.3 | Pyridoxine | 0.02 milligram |
| R.1 | Riboflavin | 0.01 milligram |
| T.1 | Thiamine | 0.02 milligram |
| V.1 | Vitamin $B_{12}$ | 0.08 microgram |

**d)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs énumérés à la colonne I du tableau du présent titre, en quantité au moins égale à celle indiquée à la colonne II de ce tableau, pour chacune de ces vitamines et chacun de ces minéraux nutritifs; et que

**e)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides aminés en quantité non supérieure à celle qui améliore la qualité nutritive de la protéine.

DORS/82-768, art. 59.

**B.14.090** Est interdite la vente d'un simili-produit de viande qui rappelle le bacon de flanc, à moins que ce produit

**a)** n'ait une teneur totale en protéines d'au moins 25 pour cent;

**b)** n'ait une cote protéique d'au moins 20, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs énumérés au tableau du présent titre, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que

**d)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 60.

**TABLEAU**

| Article | Colonne I<br>Vitamines ou minéraux nutritifs | Colonne II<br>Quantité par gramme de protéines |
|---|---|---|
| C.1 | Cuivre | 4,4 microgrammes |
| F.1 | Acide folique | 0,45 microgramme |
| I.1 | Fer | 0,25 milligramme |
| M.1 | Magnésium | 1,1 milligramme |
| N.1 | Niacine | 0,34 milligramme |
| P.1 | Acide pantothénique | 0,04 milligramme |
| P.2 | Potassium | 20 milligrammes |
| P.3 | Pyridoxine | 0,02 milligramme |
| R.1 | Riboflavine | 0,01 milligramme |
| T.1 | Thiamine | 0,02 milligramme |

| Item No. | Column I<br>Vitamin or Mineral Nutrient | Column II<br>Amount per gram of protein |
|---|---|---|
| Z.1 ..... | Zinc ..... | 0.20 milligram |

SOR/98-458, s. 7(F).

| Article | Colonne I<br>Vitamines ou minéraux nutritifs | Colonne II<br>Quantité par gramme de protéines |
|---|---|---|
| V.1 ..... | Vitamine $B_{12}$..... | 0,08 microgramme |
| Z.1 ..... | Zinc ..... | 0,20 milligramme |

DORS/98-458, art. 7(F).

**DIVISION 15**

## Adulteration of Food

**B.15.001 (1)** A food referred to in column 2 of Part 1 of the *List of Contaminants and Other Adulterating Substances in Foods* is adulterated if the corresponding substance referred to, by name or class, in column 1 is present in or on the food.

**(2)** A food referred to in column 2 of Part 2 of the *List of Contaminants and Other Adulterating Substances in Foods* is adulterated if the corresponding substance referred to, by name or class, in column 1 is present in or on the food in an amount that exceeds the maximum level set out in column 3.

**(3)** If a substance referred to, by name or class, in column 1 in Part 2 the *List of Contaminants and Other Adulterating Substances in Foods* is present in or on the corresponding food referred to in column 2, the food is, in respect of the presence of the substance, exempt from the application of paragraph 4(1)(a) of the Act if the amount of the substance does not exceed the maximum level set out in column 3.

**(4)** Subsections (1) to (3) do not apply to a substance that is present in or on a food as

**(a)** a food additive;

**(a.1)** a supplemental ingredient;

**(b)** a pest control product as defined in subsection 2(1) of the *Pest Control Products Act* or its components or derivatives; or

**(c)** a veterinary drug or its metabolites.

SOR/78-404, s. 1; SOR/79-249, s. 1; SOR/2016-74, s. 7; SOR/2022-169, s. 19.

**B.15.002 (1)** Subject to subsection (2), a food is adulterated if

**(a)** a pest control product as defined in subsection 2(1) of the *Pest Control Products Act* or its

**TITRE 15**

## Falsification des produits alimentaires

**B.15.001 (1)** Un aliment visé à la colonne 2 de la partie 1 de la *Liste de contaminants et d'autres substances adultérantes dans les aliments* est falsifié si est présente dans l'aliment ou sur sa surface une substance dont le nom ou la catégorie figure à la colonne 1.

**(2)** Un aliment visé à la colonne 2 de la partie 2 de la *Liste de contaminants et d'autres substances adultérantes dans les aliments* est falsifié si est présente dans l'aliment ou sur sa surface une substance dont le nom ou la catégorie figure à la colonne 1 en une quantité dépassant la limite maximale prévue à la colonne 3.

**(3)** Un aliment visé à la colonne 2 de la partie 2 de la *Liste de contaminants et d'autres substances adultérantes dans les aliments* est soustrait à l'application de l'alinéa 4(1)a) de la Loi, en ce qui concerne une substance dont le nom ou la catégorie figure à la colonne 1, si la substance est présente dans l'aliment ou sur sa surface en une quantité ne dépassant pas la limite maximale prévue à la colonne 3.

**(4)** Les paragraphes (1) à (3) ne s'appliquent pas à une substance présente dans l'aliment ou sur sa surface, à titre, selon le cas :

**a)** d'additif alimentaire;

**a.1)** d'ingrédient supplémentaire;

**b)** de produit antiparasitaire au sens du paragraphe 2(1) de la *Loi sur les produits antiparasitaires*, ou d'un de ses composants ou dérivés;

**c)** d'une drogue pour usage vétérinaire ou d'un de ses métabolites.

DORS/78-404, art. 1; DORS/79-249, art. 1; DORS/2016-74, art. 7; DORS/2022-169, art. 19.

**B.15.002 (1)** Sous réserve du paragraphe (2), un aliment est falsifié dans l'un ou l'autre des cas suivants :

**a)** des produits antiparasitaires au sens du paragraphe 2(1) de la *Loi sur les produits antiparasitaires*

components or derivatives, for which no maximum residue limit has been specified under sections 9 or 10 of that Act for that food, are present in or on the food, singly or in any combination, in an amount exceeding 0.1 part per million; or

**(b)** an agricultural chemical or its components or derivatives, other than a pest control product as defined in subsection 2(1) of the *Pest Control Products Act* or its components or derivatives, are present in or on the food, singly or in any combination, in an amount exceeding 0.1 part per million.

**(2)** A food is exempt from paragraph 4(1)(d) of the Act if the following agricultural chemicals, or their components or derivatives, are the only agricultural chemicals, or components or derivatives of agricultural chemicals, that are present in or on the food, singly or in any combination:

**(a)** a fertilizer;

**(b)** an adjuvant or a carrier of an agricultural chemical;

**(c)** an inorganic bromide salt;

**(d)** silicon dioxide;

**(e)** sulphur;

**(f)** viable spores of *Bacillus thuringiensis Berliner*; or

**(g)** Kaolin.

**(3)** Subsection (2) does not apply to a food if there is present in or on the food an agricultural chemical, or a component or derivative of that agricultural chemical, referred to in that subsection that is a pest control product as defined in subsection 2(1) of the *Pest Control Products Act*, or a component or derivative of that product, in respect of which a maximum residue limit has been specified under sections 9 or 10 of that Act for that food.

**(4)** [Repealed, SOR/2008-181, s. 3]

SOR/78-404, s. 1; SOR/79-249, s. 1; SOR/81-83, s. 2; SOR/97-313, s. 2; SOR/98-98, s. 1; SOR/2005-67, s. 1; SOR/2008-181, s. 3; SOR/2008-182, s. 2.

**B.15.003** [Repealed, SOR/2016-74, s. 8]

ou leurs composants ou dérivés, pour lesquels aucune limite maximale de résidus n'a été fixée en vertu des articles 9 ou 10 de cette loi pour l'aliment, sont présents — seuls ou en combinaison — dans l'aliment ou sur sa surface en une quantité supérieure à 0,1 partie par million;

**b)** des produits chimiques agricoles ou des composants ou dérivés de ceux-ci, autres que les produits antiparasitaires au sens du paragraphe 2(1) de la *Loi sur les produits antiparasitaires* ou leurs composants ou dérivés, sont présents — seuls ou en combinaison — dans l'aliment ou sur sa surface en une quantité supérieure à 0,1 partie par million.

**(2)** L'aliment est exempté de l'application de l'alinéa 4(1)d) de la Loi si les produits chimiques agricoles ci-après ou leurs composants ou dérivés — seuls ou en combinaison — sont les seuls produits chimiques agricoles ou composants ou dérivés de ces produits présents dans l'aliment ou sur sa surface :

**a)** un produit fertilisant;

**b)** un adjuvant ou un véhicule de produit chimique agricole;

**c)** un sel de bromure inorganique;

**d)** du dioxyde de silicium;

**e)** du soufre;

**f)** des spores viables de *Bacillus thuringiensis Berliner* ou

**g)** du kaolin.

**(3)** Le paragraphe (2) ne s'applique pas à l'aliment si est présent dans celui-ci, ou sur sa surface, tout produit chimique agricole visé à ce paragraphe, ou un de ses composants ou dérivés, qui est un produit antiparasitaire au sens du paragraphe 2(1) de la *Loi sur les produits antiparasitaires* ou un de ses composants ou dérivés pour lequel une limite maximale de résidus a été fixée en vertu des articles 9 ou 10 de cette loi pour l'aliment.

**(4)** [Abrogé, DORS/2008-181, art. 3]

DORS/78-404, art. 1; DORS/79-249, art. 1; DORS/81-83, art. 2; DORS/97-313, art. 2; DORS/98-98, art. 1; DORS/2005-67, art. 1; DORS/2008-181, art. 3; DORS/2008-182, art. 2.

**B.15.003** [Abrogé, DORS/2016-74, art. 8]

## DIVISION 16

# Food Additives

**B.16.001** A quantitative statement of the amount of each additive present or directions for use that, if followed, will produce a food that will not contain such additives in excess of the maximum levels of use prescribed by these Regulations shall be shown, grouped together with the list of ingredients, of any substance or mixture of substances for use as a food additive.

**B.16.002** A request that a food additive be added to or a change made in the Tables following section B.16.100 shall be accompanied by a submission to the Minister in a form, manner and content satisfactory to him and shall include

**(a)** a description of the food additive, including its chemical name and the name under which it is proposed to be sold, its method of manufacture, its chemical and physical properties, its composition and its specifications and, where that information is not available, a detailed explanation;

**(b)** a statement of the amount of the food additive proposed for use, and the purpose for which it is proposed, together with all directions, recommendations and suggestions for use;

**(c)** where necessary, in the opinion of the Minister, an acceptable method of analysis suitable for regulatory purposes that will determine the amount of the food additive and of any substance resulting from the use of the food additive in the finished food;

**(d)** data establishing that the food additive will have the intended physical or other technical effect;

**(e)** detailed reports of tests made to establish the safety of the food additive under the conditions of use recommended;

**(f)** data to indicate the residues that may remain in or upon the finished food when the food additive is used in accordance with good manufacturing practice;

**(g)** a proposed maximum limit for residues of the food additive in or upon the finished food;

**(h)** specimens of the labelling proposed for the food additive; and

## TITRE 16

# Additifs alimentaires

**B.16.001** En ce qui concerne toute substance ou tout mélange de substances à utiliser comme additif alimentaire, l'indication, soit de la quantité de chacun des additifs présents, soit du mode d'emploi donnant comme résultat un aliment qui ne contient pas ces additifs dans une proportion supérieure aux limites de tolérance prescrites par le présent règlement, doit être groupée avec la liste d'ingrédients.

**B.16.002** Toute demande tendant à ajouter un additif alimentaire, ou à modifier de quelque façon les tableaux qui suivent l'article B.16.100 doit être accompagnée d'une présentation au ministre, dans une forme, d'une teneur et d'une manière que le ministre jugera satisfaisantes, et doit comprendre

**a)** une description de l'additif alimentaire, y compris son nom chimique et le nom sous lequel on se propose de le vendre, la méthode de fabrication qui s'y applique, ses propriétés physiques et chimiques, sa composition, et ses caractères distinctifs, ou, lorsque ces renseignements ne sont pas disponibles, une explication détaillée;

**b)** la déclaration de la quantité d'additif alimentaire que l'on projette d'utiliser, les fins proposées pour son emploi, ainsi que le détail du mode d'emploi, des recommandations et conseils quant à son usage;

**c)** lorsque de l'avis du ministre cela sera nécessaire, une méthode d'analyse acceptable qui convienne aux fins de contrôle et de réglementation, et qui permette de déterminer la quantité d'additif alimentaire et de toute autre substance résultant de son emploi, dans le produit alimentaire fini;

**d)** les données établissant que l'additif alimentaire aura l'effet physique, ou tout autre effet technique, qui est prévu;

**e)** les rapports détaillés de toutes les épreuves effectuées pour établir l'innocuité de l'additif alimentaire, dans les conditions recommandées pour son usage;

**f)** les données indiquant les quantités de résidus qui peuvent rester dans ou sur le produit alimentaire fini, lorsque l'additif est utilisé conformément aux bonnes pratiques industrielles;

**g)** une limite de tolérance proposée, pour les résidus de l'additif alimentaire dans ou sur le produit alimentaire fini;

**(i)** a sample of the food additive in the form in which it is proposed to be used in foods, a sample of the active ingredient, and, on request a sample of food containing the food additive.

SOR/2018-69, s. 27.

**h)** des échantillons des étiquettes proposées pour l'additif alimentaire; et

**i)** un échantillon de l'additif alimentaire dans la forme définitive prévue pour son usage, un échantillon de l'ingrédient actif et, sur demande, un échantillon de l'aliment qui renferme ledit additif alimentaire.

DORS/2018-69, art. 27.

**B.16.003** The Minister shall, within 90 days after the filing of a submission in accordance with section B.16.002, notify the person filing the submission whether or not it is his intention to recommend to the Governor-in-Council that the said food additive be so listed and the detail of any listing to be recommended.

**B.16.003** Dans un délai d'au plus 90 jours après avoir reçu une présentation en vertu de l'article B.16.002, le ministre doit faire savoir à la personne qui a soumis la présentation s'il a ou non l'intention de recommander au gouverneur en conseil que ledit additif soit ajouté à la liste, ainsi que le détail de cette inscription à la liste.

**B.16.004** [Repealed, SOR/97-148, s. 6]

**B.16.004** [Abrogé, DORS/97-148, art. 6]

**B.16.006** Paragraph B.01.042(c) and paragraph B.01.043(a) do not apply to spices, seasonings, flavouring preparations, essential oils, oleoresins and natural extractives.

**B.16.006** L'alinéa B.01.042c) et l'alinéa B.01.043a), ne s'appliquent pas aux épices, aux condiments, aux préparations aromatisantes, aux huiles essentielles, aux matières extractives naturelles, ni aux oléorésines.

**B.16.007** No person shall sell a food containing a food additive other than a food additive provided for in sections B.01.042, B.01.043 and B.25.062.

SOR/87-640, s. 5.

**B.16.007** Il est interdit de vendre un aliment qui contient un additif alimentaire autre que l'un de ceux visés aux articles B.01.042, B.01.043 et B.25.062.

DORS/87-640, art. 5.

**B.16.008** [Repealed, SOR/88-418, s. 5]

**B.16.008** [Abrogé, DORS/88-418, art. 5]

**B.16.100** No person shall sell any substance as a food additive unless the food additive is listed in one or more of the following Tables:

**B.16.100** Est interdite la vente de toute substance comme additif alimentaire, à moins que ledit additif ne soit nommé à l'un ou plusieurs des tableaux ci-après :

**TABLE I**

**Food Additives That May Be Used as Anticaking Agents**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| C.1 | Calcium Aluminum Silicate | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt; Onion salt | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (3) Unstandardized dry mixes | (3) Good Manufacturing Practice |
| C.2 | Calcium Phosphate tribasic | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt; Onion salt | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (3) Dry cure | (3) Good Manufacturing Practice |
| | | (4) Unstandardized dry mixes | (4) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (5) Oil soluble annatto | (5) Good Manufacturing Practice |
| | | (6) Icing sugar | (6) If used either singly or in combination with Calcium Silicate, Magnesium Carbonate, Magnesium Silicate, Magnesium Stearate, Silicon Dioxide or Sodium Aluminum Silicate the total must not exceed 1.5% |
| C.3 | Calcium Silicate | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt; Onion salt | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (3) Baking Powder | (3) 5.0% |
| | | (4) Dry cure | (4) Good Manufacturing Practice |
| | | (5) Unstandardized dry mixes | (5) Good Manufacturing Practice |
| | | (6) Icing sugar | (6) If used either singly or in combination with Calcium Phosphate tribasic, Magnesium Carbonate, Magnesium Silicate, Magnesium Stearate, Silicon Dioxide or Sodium Aluminum Silicate the total must not exceed 1.5% |
| | | (7) Meat Binder or (naming the meat product) Binder | (7) 1.0% |
| | | (8) Grated or shredded (naming the variety) cheese; Grated or shredded cheddar cheese; Unstandardized grated or shredded cheese preparations | (8) If used singly or in combination with microcrystalline cellulose or cellulose, the total amount not to exceed 2.0% |
| | | (9) Dried egg-white (dried albumen); Dried whole egg; Dried whole egg mix; Dried yolk; Dried yolk mix | (9) 2.0% |
| C.4 | Calcium Stearate | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt; Onion salt | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (3) Unstandardized dry mixes | (3) Good Manufacturing Practice |
| C.5 | Cellulose | Grated or shredded (naming the variety) cheese; Grated or shredded cheddar cheese; Unstandardized grated or shredded cheese preparations | If used singly or in combination with calcium silicate or microcrystalline cellulose, the total amount not to exceed 2.0% |
| M.1 | Magnesium Carbonate | (1) Salt (except when used in preparations of Meat and Meat By-products of Division 14) | (1) 1.0%, except in the case, of fine grained salt 2.0%, in accordance with the requirements of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt, Onion salt (except when used in preparations of Meat and Meat By-products of Division 14) | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (3) Unstandardized Dry Mixes (Except when used in preparations of Meat and Meat by-products of Division 14) | (3) Good Manufacturing Practice |
| | | (4) Icing sugar | (4) If used either singly or in combination with Calcium Phosphate tribasic, Calcium Silicate, Magnesium Silicate, Magnesium Stearate, Silicon Dioxide or Sodium Aluminum Silicate the total must not exceed 1.5% |
| M.2 | Magnesium Oxide | Unstandardized dry mixes (Except when used in preparations of Meat and Meat by-products of Division 14) | Good Manufacturing Practice |
| M.3 | Magnesium Silicate | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt; Onion salt | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (3) Unstandardized dry mixes | (3) Good Manufacturing Practice |
| | | (4) Icing sugar | (4) If used either singly or in combination with Calcium Phosphate tribasic, Calcium Silicate, Magnesium Carbonate, Magnesium Silicate, Silicon Dioxide or Sodium Aluminum Silicate the total must not exceed 1.5% |
| M.4 | Magnesium Stearate | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Garlic salt; Onion salt | (2) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (3) Unstandardized dry mixes | (3) Good Manufacturing Practice |
| | | (4) Icing sugar | (4) If used either singly or in combination with Calcium Phosphate tribasic, Calcium Silicate, Magnesium Carbonate, Magnesium Silicate, Silicon Dioxide or Sodium Aluminum Silicate the total must not exceed 1.5% |
| M.5 | Microcrystalline Cellulose | Grated or shredded (naming the variety) cheese; Grated or shredded cheddar cheese; Unstandardized grated or shredded cheese preparations | If used singly or in combination with calcium silicate or cellulose, the total amount not to exceed 2.0% |
| P.1 | Propylene Glycol | Salt | 0.035% |
| S.1 | Silicon Dioxide | (1) Garlic salt; Onion salt | (1) 1.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (2) Celery Salt; Celery Pepper | (2) 0.5% |
| | | (3) Unstandardized dry mixes | (3) Good Manufacturing Practice |
| | | (4) Icing sugar | (4) If used either singly or in combination with Calcium Phosphate tribasic, Calcium Silicate, Magnesium Carbonate, Magnesium Silicate, |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | | Magnesium Stearate or Sodium Aluminum Silicate the total must not exceed 1.5% |
| | | (5) Foods sold in tablet form | (5) Good Manufacturing Practice |
| | | (6) Cayenne Pepper; Chili pepper; Chili Powder; Paprika; Red Pepper | (6) 2.0% |
| | | (7) Salt | (7) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| S.2 | Sodium Aluminum Silicate | (1) Salt | (1) 1.0%, except in the case of fine grained salt 2.0%, in accordance with the requirement of paragraph B.17.001(1)(a) |
| | | (2) Icing sugar | (2) If used either singly or in combination with Calcium Phosphate tribasic, Calcium Silicate, Magnesium Carbonate, Magnesium Silicate, Magnesium Stearate or Silicon Dioxide the total must not exceed 1.5% |
| | | (3) Dried egg-white (dried albumen); Dried whole egg; Dried whole egg mix; Dried yolk; Dried yolk mix | (3) 2.0% |
| | | (4) Garlic salt; Onion salt | (4) 2.0% in accordance with the requirement of paragraphs B.07.020(b) and B.07.027(b) respectively |
| | | (5) Unstandardized dry mixes | (5) Good Manufacturing Practice |
| S.3 | Sodium Ferrocyanide, decahydrate | Salt | 13 p.p.m. calculated as anhydrous sodium ferrocyanide |

**TABLEAU I**

**Additifs alimentaires autorisés comme agents anti-agglomérants**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| C.1 | Silicate double d'aluminium et de calcium | (1) Sel | (1) 1,0 % sauf pour le sel à fins 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail, sel d'oignon | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.02b) respectivement. |
| | | (3) Mélanges secs non normalisés | (3) Bonnes pratiques industrielles |
| C.2 | Phosphate tricalcique | (1) Sel | (1) 1,0 %, sauf pour le sel à grains fins, 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail, sel d'oignon | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (3) Mélanges de salaison à sec | (3) Bonnes pratiques industrielles |
| | | (4) Mélanges secs non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Rocou soluble dans l'huile | (5) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (6) Sucre à glacer | (6) Si on l'emploie seul ou avec du silicate de calcium, du carbonate de magnésium, du silicate de magnésium, du stéarate de magnésium, du dioxyde de silicium ou du silicate double d'aluminium et de sodium, le total ne doit pas dépasser 1,5 % |
| C.3 | Silicate de calcium | (1) Sel | (1) 1,0 %, pour le sel à grains fins, 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail, sel d'oignon | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (3) Poudre à pâte | (3) 5,0 % |
| | | (4) Mélange de salaison à sec | (4) Bonnes pratiques industrielles |
| | | (5) Mélanges secs non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Sucre à glacer | (6) Si on l'emploie seul ou avec du phosphate tricalcique, du carbonate de magnésium, du silicate de magnésium, du stéarate de magnésium, du dioxyde de silicium ou du silicate double d'aluminium et de sodium, le total ne doit pas dépasser 1,5 % |
| | | (7) Liant à viande ou liant à (désignation du produit de viande) | (7) 1,0 % |
| | | (8) Fromage râpé fin ou en filaments (indication de la variété); fromage cheddar râpé fin ou en filaments; préparations de fromage râpé fin ou en filaments non normalisées | (8) Si on l'emploie seul ou avec la cellulose microcrystalline ou la cellulose, la quantité totale n'excédant pas 2,0 % |
| | | (9) Mélange de poudre de jaunes d'œufs; mélange de poudre d'œufs entiers; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre d'œuf entier | (9) 2,0 % |
| C.4 | Stéarate de calcium | (1) Sel | (1) 1,0 %, sauf pour le sel à grains fins 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail, sel d'oignon | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (3) Mélanges secs non normalisés | (3) Bonnes pratiques industrielles |
| C.5 | Cellulose | Fromage râpé fin ou en filaments (indication de la variété); fromage cheddar râpé fin ou en filaments; préparations de fromage râpé fin ou en filaments non normalisées | Si on l'emploie seul ou avec le silicate de calcium ou la cellulose microcristalline, la quantité totale n'excédant pas 2,0 % |
| M.1 | Carbonate de magnésium | (1) Sel (sauf si employé dans les préparations de viande et de sous-produits de viande du Titre 14) | (1) 1,0 % pour le sel à grains fins 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail, sel d'oignon (sauf si employé dans les préparations de viande et de sous-produits de viande du Titre 14) | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (3) Mélanges secs non normalisés (sauf lorsqu'il est utilisé dans les préparations de viande et de sous-produits de la viande du Titre 14) | (3) Bonnes pratiques industrielles |
| | | (4) Sucre à glacer | (4) Si on l'emploie seul ou avec du phosphate tricalcique, du silicate de calcium, du silicate de magnésium, du stéarate de magnésium, du dioxyde de silicium ou du silicate double d'aluminium et de sodium, le total ne doit pas dépasser 1,5 % |
| M.2 | Oxyde de magnésium | Mélanges secs non normalisés (sauf lorsqu'il est utilisé dans les préparations de viande et de sous-produits de la viande du Titre 14) | Bonnes pratiques industrielles |
| M.3 | Silicate de magnésium | (1) Sel | (1) 1,0 %, sauf pour le sel à grains fins 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail et d'oignon | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (3) Mélanges secs non normalisés | (3) Bonnes pratiques industrielles |
| | | (4) Sucre à glacer | (4) Si on l'emploie seul ou avec du phosphate tricalcique, du silicate de calcium, du carbonate de magnésium, du stéarate de magnésium, du dioxyde de silicium ou du silicate double d'aluminium et de sodium, le total ne doit pas dépasser 1,5 % |
| M.4 | Stéarate de magnésium | (1) Sel | (1) 1,0 %, sauf pour le sel à grains fins 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sel d'ail, sel d'oignon | (2) 2,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (3) Mélanges secs non normalisés | (3) Bonnes pratiques industrielles |
| | | (4) Sucre à glacer | (4) Si on l'emploie seul ou avec du phosphate tricalcique, du silicate de calcium, du carbonate de magnésium, du silicate de magnésium, du dioxyde de silicium ou du silicate double d'aluminium et de sodium, le total ne doit pas dépasser 1,5 % |
| M.5 | Cellulose microcristalline | Fromage râpé fin ou en filaments (indication de la variété); fromage cheddar râpé fin ou en filaments; préparations de fromage râpé fin ou en filaments non normalisées | Si on l'emploie seul ou avec le silicate de calcium ou la cellulose, la quantité totale n'excédant pas 2,0 % |
| P.1 | Propylèneglycol | Sel | 0,035 % |
| S.1 | Bioxyde de silicium | (1) Sel d'ail; sel d'oignon | (1) 1,0 % conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (2) Sel de céleri; poivre de céleri | (2) 0,5 %. |
| | | (3) Mélanges secs non normalisés | (3) Bonnes pratiques industrielles. |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| | | (4) Sucre à glacer | (4) Si on l'emploie seul ou avec du phosphate tricalcique, du silicate de calcium, du carbonate de magnésium, du silicate de magnésium, du stéarate de magnésium ou du silicate double d'aluminium et de sodium, le total ne doit pas dépasser 1,5 %. |
| | | (5) Aliments vendus sous forme de comprimés | (5) Bonnes pratiques industrielles. |
| | | (6) Poivre de cayenne; chili; assaisonnement au chili; paprika; poivre rouge | (6) 2,0 %. |
| | | (7) Sel | (7) 1,0 % (sauf pour le sel à grains fins : 2,0 %) conformément aux exigences de l'alinéa B.17.001(1)a) |
| S.2 | Silicate double d'aluminium et de sodium | (1) Sel | (1) 1,0 %, sauf pour le sel à grains fins 2,0 %, conformément aux exigences de l'alinéa B.17.001(1)a). |
| | | (2) Sucre à glacer | (2) Si on l'emploie seul ou avec du phosphate tricalcique, du silicate de calcium, du carbonate de magnésium, du silicate de magnésium, du stéarate de magnésium ou du dioxyde de silicium, le total ne doit pas dépasser 1,5 %. |
| | | (3) Mélange de poudre de jaunes d'œufs; mélange de poudre d'œufs entiers; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre d'œuf entier | (3) 2,0 % |
| | | (4) Sel d'ail, sel d'oignon | (4) 2,0 %, conformément aux exigences des alinéas B.07.020b) et B.07.027b) respectivement. |
| | | (5) Mélanges secs non normalisés | (5) Bonnes pratiques industrielles. |
| S.3 | Decahydrate ferrocyanure de sodium | Sel | 13 p.p.m. calculé en ferrocyanure de sodium anhydre |

SOR/79-662, ss. 3 to 13; SOR/82-913, s. 4; SOR/83-410, s. 2; SOR/84-17, s. 5; SOR/84-801, s. 2; SOR/86-1125, s. 1; SOR/88-534, s. 4; SOR/91-88, ss. 3, 4; SOR/93-477, ss. 3 to 5; SOR/94-689, s. 2(F); SOR/97-191, s. 3; SOR/2010-94, s. 8(E); SOR/2010-143, ss. 11, 12.

DORS/79-662, art. 3 à 13; DORS/82-913, art. 4; DORS/83-410, art. 2; DORS/84-17, art. 5; DORS/84-801, art. 2; DORS/86-1125, art. 1; DORS/88-534, art. 4; DORS/91-88, art. 3 et 4; DORS/93-477, art. 3 à 5; DORS/94-689, art. 2(F); DORS/97-191, art. 3; DORS/2010-94, art. 8(A); DORS/2010-143, art. 11 et 12.

**TABLE II**

**Food Additives That May Be Used as Bleaching, Maturing and Dough Conditioning Agents**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Acetone Peroxide | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| A.1A | [Repealed, SOR/79-660, s. 3] | | |
| A.2 | Ammonium Persulphate | (1) Flour; Whole wheat flour | (1) 250 p.p.m. |
| | | (2) Bread | (2) 100 p.p.m. of flour |
| | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| A.2A | Ascorbic Acid | (1) Bread; Flour; Whole wheat flour | (1) 200 p.p.m. of flour |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (2) Unstandardized bakery products | (2) 200 p.p.m. of flour |
| A.3 | [Repealed, SOR/79-660, s. 4] | | |
| A.3A | [Repealed, SOR/79-660, s. 4] | | |
| A.4 | Azodicarbonamide | Bread; Flour; Whole wheat flour | 45 p.p.m. of flour |
| B.1 | Benzoyl Peroxide | Flour; Whole wheat flour | 150 p.p.m. |
| C.1 | Calcium Iodate | (1) Bread | (1) 45 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) 45 p.p.m. of flour |
| C.2 | Calcium Peroxide | (1) Bread | (1) 100 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| C.3 | Calcium Stearoyl-2-Lactylate | (1) Bread | (1) 3,750 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) 3,750 p.p.m. of flour |
| | | (3) Cake mixes | (3) 0.5% of dry weight of mix |
| C.4 | Chlorine | Flour; Whole wheat flour | Good Manufacturing Practice |
| C.5 | Chlorine Dioxide | Flour; Whole wheat flour | Good Manufacturing Practice |
| C.6 | L-Cysteine Hydrochloride | (1) Bread; Flour; Whole wheat flour | (1) 90 p.p.m. |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| P.1 | [Repealed, SOR/94-227, s. 4] | | |
| P.2 | Potassium Iodate | (1) Bread | (1) 45 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) 45 p.p.m. of flour |
| P.3 | Potassium Persulphate | (1) Bread | (1) 100 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| S.1 | Sodium Stearoyl-2-Lactylate | (1) Bread | (1) 3,750 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) 3,750 p.p.m. of flour |
| | | (3) Pancakes and pancake mixes | (3) 0.3% of dry ingredient weight |
| | | (4) Waffles and waffle mixes | (4) 0.3% of dry ingredient weight |
| | | (5) Cake mixes | (5) 0.5% of dry weight of mix |
| S.2 | Sodium Stearyl Fumarate | (1) Bread | (1) 5,000 p.p.m. of flour |
| | | (2) Unstandardized bakery products | (2) 5,000 p.p.m. of flour |
| S.3 | Sodium Sulphite | Biscuit dough | 500 p.p.m. calculated as Sulphur Dioxide |

**TABLEAU II**

**Additifs alimentaires autorisés comme agents de blanchiment, de maturation, ou pour conditionner les pâtes**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Peroxyde d'acétone | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| A.1A | [Abrogé, DORS/79-660, art. 3] | | |
| A.2 | Persulfate d'ammonium | (1) Farine; farine de blé entier | (1) 250 p.p.m. |
| | | (2) Pain | (2) 100 p.p.m. de farine |
| | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| A.2A | Acide ascorbique | (1) Farine; farine de blé entier; pain | (1) 200 p.p.m. de farine |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (2) Produits de boulangerie non normalisés | (2) 200 p.p.m. de farine |
| A.3 | [Abrogé, DORS/79-660, art. 4] | | |
| A.3A | [Abrogé, DORS/79-660, art. 4] | | |
| A.4 | Azodicarbonamide | Farine; farine de blé entier; pain | 45 p.p.m. de farine |
| B.1 | Peroxyde de benzoyle | Farine; farine de blé entier | 150 p.p.m. |
| C.1 | Iodate de calcium | (1) Pain | (1) 45 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) 45 p.p.m. de farine |
| C.2 | Peroxyde de calcium | (1) Pain | (1) 100 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| C.3 | Stéaroyl-2-lactylate de calcium | (1) Pain | (1) 3 750 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) 3 750 p.p.m. de farine |
| | | (3) Mélanges à gâteaux | (3) 0,5 % du poids sec du mélange |
| C.4 | Chlore | Farine; farine de blé entier | Bonnes pratiques industrielles |
| C.5 | Bioxyde de chlore | Farine; farine de blé entier | Bonnes pratiques industrielles |
| C.6 | Chlorhydrate de L-cystéine | (1) Farine; farine de blé entier; pain | (1) 90 p.p.m. |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| P.1 | [Abrogé, DORS/94-227, art. 4] | | |
| P.2 | Iodate de potassium | (1) Pain | (1) 45 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) 45 p.p.m. de farine |
| P.3 | Persulfate de potassium | (1) Pain | (1) 100 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| S.1 | Stéaroyl-2-lactylate de sodium | (1) Pain | (1) 3 750 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) 3 750 p.p.m. de farine |
| | | (3) Crêpes et mélanges à crêpes | (3) 0,3 % du poids des ingrédients secs |
| | | (4) Gaufres et mélanges à gaufres | (4) 0,3 % du poids des ingrédients secs |
| | | (5) Mélanges à gâteaux | (5) 0,5 % du poids sec du mélange |
| S.2 | Stéaryl-fumarate de sodium | (1) Pain | (1) 5 000 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) 5 000 p.p.m. de farine |
| S.3 | Sulfite de sodium | Pâte à biscuit | 500 p.p.m., calculé en bioxyde de soufre |

SOR/79-660, ss. 3, 4; SOR/87-640, s. 6; SOR/92-591, s. 2; SOR/94-227, s. 4; SOR/94-689, s. 2(F); SOR/2005-98, ss. 3, 8(F); SOR/2010-41, s. 9(E).

DORS/79-660, art. 3 et 4; DORS/87-640, art. 6; DORS/92-591, art. 2; DORS/94-227, art. 4; DORS/94-689, art. 2(F); DORS/2005-98, art. 3; DORS/2005-98, art. 8(F); DORS/2010-41, art. 9(A).

## TABLE III

### Food Additives That May Be Used as Colouring Agents

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| 1 | Aluminum Metal<br>Alkanet<br>Annatto<br>Anthocyanins<br>Beet Red<br>Canthaxanthin<br>Carbon Black<br>Carotene<br>Charcoal<br>Chlorophyll<br>Cochineal<br>Iron Oxide<br>Orchil<br>Paprika | (1) Apple (or rhubarb) and (naming the fruit) jam; Bread; Butter; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Fish roe (caviar); Ice cream mix; Ice milk mix; Icing sugar; Liqueur; Lobster paste; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; Packaged fish and meat products that are marinated or otherwise cold-processed (Division 21); Pickles; Pineapple marmalade with pectin; Relishes; Sherbet; Smoked fish; Tomato catsup | (1) Good Manufacturing Practice |
| | Riboflavin<br>Saffron<br>Saunderswood<br>Silver Metal<br>Titanium Dioxide<br>Turmeric<br>Xanthophyll | (2) Dried whole egg; Dried yolk; Frozen whole egg; Frozen yolk; Liquid whole egg; Liquid yolk | (2) Good Manufacturing Practice in accordance with paragraphs B.22.034(b) and B.22.035(b) |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| | | (4) Vegetable fats and oils | (4) Good Manufacturing Practice in accordance with section B.09.001 |
| | | (5) Margarine | (5) Good Manufacturing Practice |
| | | (6) (naming the variety) Cheese; Cheddar cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (6) Good Manufacturing Practice in accordance with the requirements of sections B.08.033, B.08.034, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 and B.08.041.8. |
| | | (7) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (7) Good Manufacturing Practice |
| | | (8) Longaniza; Tocino | (8) 0.1% in accordance with the requirements of paragraph B.14.031(i) or subparagraph B.14.032(d)(xvi) |
| | | (9) Edible collagen film (iron oxide only) | (9) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (10) Sausage casings (annatto only) | (10) 1.0% (Residues of annatto in sausage prepared with such casings not to exceed 100 p.p.m.) |
| | | (11) Sausage casings (cochineal only) | (11) 0.75% (Residues of cochineal in sausage prepared with such casings not to exceed 75 p.p.m.) |
| 1A | ß-apo- 8′-carotenal Ethyl ß-apo- 8′-carotenoate | (1) Apple (or rhubarb) and (naming the fruit) jam; Bread; Butter; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Fish roe (caviar); Ice cream mix; Ice milk mix; Icing sugar; Liqueur; Lobster paste; Margarine; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; Pickles; Pineapple marmalade with pectin; Relishes; Sherbet; Smoked fish; Tomato catsup | (1) 35 p.p.m. |
| | | (2) Unstandardized foods | (2) 35 p.p.m. |
| | | (3) (naming the variety) Cheese; Cheddar cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (3) 35 p.p.m., in accordance with the requirements of sections B.08.033, B.08.034, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 and B.08.041.8 |
| | | (4) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (4) 35 p.p.m. |
| 2 | Caramel | (1) Ale; Apple (or rhubarb) and (naming the fruit) jam; Beer; Brandy; Bread; Brown bread; Butter; Cider; Cider vinegar; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Fish roe (caviar); Hollands gin; Honey wine; Ice cream mix; Ice milk mix; Icing sugar; Liqueur; Lobster paste; Malt liquor; Malt vinegar; Mincemeat; (naming the flavour) Milk; | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; Pickles; Pineapple marmalade with pectin; Porter; Relishes; Rum; Sherbet; Smoked fish; Stout; Tomato catsup; Whisky; Wine; Wine vinegar | |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (3) Good Manufacturing Practice |
| | | (4) Sausage casings | (4) 15% (Residues of caramel in sausage prepared with such casings not to exceed 0.15%) |
| | | (5) Cream cheese spread with (naming the added ingredients) | (5) 1.5% |
| 3 | Allura Red<br>Amaranth<br>Erythrosine<br>Indigotine<br>Sunset Yellow FCF<br>Tartrazine | (1) Apple (or rhubarb) and (naming the fruit) jam; Bread; Butter; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Fish roe (caviar); Ice cream mix; Ice milk mix; Icing sugar; Liqueur; Lobster paste; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; Pickles; Pineapple marmalade with pectin; Relishes; Sherbet; Smoked fish; Tomato catsup | (1) 300 p.p.m. singly or in combination in accordance with section B.06.002 |
| | | (2) Unstandardized foods | (2) 300 p.p.m. singly or in combination in accordance with section B.06.002 |
| | | (3) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (3) 300 p.p.m. singly or in combination in accordance with section B.26.002 |
| | | (4) Salted anchovy, salted scad and salted shrimp | (4) 125 p.p.m. in accordance with the requirements of paragraph B.21.021(d) |
| | | (5) Longaniza | (5) 80 p.p.m. allura red in accordance with the requirements of clause B.14.032(d)(xvi)(B) and 20 p.p.m. sunset yellow FCF in accordance with the requirements of clause B.14.032(d)(xvi)(C) |
| | | (6) Sausage casings (sunset yellow FCF only) | (6) 0.15% (Residues of sunset yellow FCF in sausage prepared with such casings not to exceed 15 p.p.m.) |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (7) Cheese-flavoured corn snacks (sunset yellow FCF only) | (7) 600 p.p.m. singly. If used in combination with other colours listed in column I of this item and of item 4 of this table, the maximum level of use is 300 p.p.m. in accordance with paragraph B.06.002(c) |
| 4 | Brilliant Blue FCF<br>Fast Green FCF | (1) Apple (or rhubarb) and (naming the fruit) jam; Bread; Butter; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Fish roe (caviar); Ice cream mix; Ice milk mix; Icing sugar; Liqueur; Lobster paste; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; Pickles; Pineapple marmalade with pectin; Relishes; Sherbet; Smoked fish; Tomato catsup | (1) 100 p.p.m. singly or in combination in accordance with section B.06.002 |
| | | (2) Unstandardized foods | (2) 100 p.p.m. singly or in combination in accordance with section B.06.002 |
| | | (3) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (3) 100 p.p.m. singly or in combination in accordance with section B.06.002 |
| | | (4) Feta cheese (brilliant blue FCF only) | (4) 0.10 p.p.m. |
| 5 | Citrus Red No. 2 | Skins of whole oranges | 2 p.p.m. |
| 6 | Ponceau SX | Fruit Peel; Glacé fruits; Maraschino Cherries | 150 p.p.m. |
| 7 | Gold | Alcoholic beverages | Good Manufacturing Practice |

**TABLEAU III**

**Additifs alimentaires autorisés comme colorants pour aliments**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| 1 | Aluminium métallique<br>Orcanette<br>Rocou<br>Anthocyanines<br>Rouge de betterave<br>Canthaxanthine<br>Noir actif<br>Carotène<br>Charbon de bois<br>Chlorophylle<br>Cochenille | (1) Achards (*relish*); beurre; catsup de tomates; confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liqueur; marmelade d'ananas avec | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | Oxyde de fer<br>Orseille<br>Paprika<br>Riboflavine<br>Safran<br>Bois de santal | pectine; marmelade de figues avec pectine; mélange pour crème glacée; mélange pour lait glacé; œufs de poisson (caviar); pain; pâte de homard; poisson fumé; produits de poisson ou de chair de poisson emballés, marinés ou conditionnés à froid par une autre méthode (Titre 21); sorbet laitier; sucre à glacer | |
| | Argent métallique<br>Bioxyde de titane<br>Curcuma<br>Xanthophylle | (2) Jaune d'œuf congelé; jaune d'œuf liquide; œuf entier congelé; œuf entier liquide; poudre de jaune d'œuf; poudre d'œuf entier | (2) Bonnes pratiques industrielles selon les alinéas B.22.034b) et B.22.035b) |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| | | (4) Les graisses et huiles végétales | (4) Bonnes pratiques industrielles selon l'article B.09.001 |
| | | (5) Margarine | (5) Bonnes pratiques industrielles |
| | | (6) Fromage (indication de la variété); fromage cheddar; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner, fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (6) Bonnes pratiques industrielles, conformément aux exigences des articles B.08.033, B.08.034, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7, et B.08.041.8. |
| | | (7) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (7) Bonnes pratiques industrielles |
| | | (8) Longaniza; Tocino | (8) 0,1 % conformément aux exigences de l'alinéa B.14.031i) ou du sous-alinéa B.14.032d)(xvi) |
| | | (9) Pellicule de collagène comestible (oxyde de fer seulement) | (9) Bonnes pratiques industrielles |
| | | (10) Boyaux de saucisse (rocou seulement) | (10) 1,0 % (les résidus de rocou dans les saucisses préparées avec ces boyaux ne doivent pas dépasser 100 p.p.m.) |
| | | (11) Boyaux de saucisse (cochenille seulement) | (11) 0,75 % (les résidus de cochenille dans les saucisses préparées avec ces boyaux ne doivent pas dépasser 75 p.p.m.) |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| 1A | ß-apo-8'- Caroténal Ester éthylique de l'acide ß-apo-8'-caroténoïque | (1) Achards (*relish*); beurre; catsup de tomates; confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liqueur; margarine; marmelade d'ananas avec pectine; marmelade de figues avec pectine; mélange pour crème glacée; mélange pour lait glacé; œufs de poisson (caviar); pain; pâte de homard; poisson fumé; sorbet laitier; sucre à glacer | (1) 35 p.p.m. |
| | | (2) Aliments non normalisés | (2) 35 p.p.m. |
| | | (3) Fromage (indication de la variété); fromage cheddar; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (3) 35 p.p.m., conformément aux exigences des articles B.08.033, B.08.034, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 et B.08.041.8 |
| | | (4) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (4) 35 p.p.m. |
| 2 | Caramel | (1)Achards (*relish*); ale; beurre; bière; catsup de tomates; cidre; confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; eau-de-vie de vin (brandy); gelée de (nom du fruit) avec pectine; genièvre Hollands; jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liqueur de malt; liqueur; marmelade d'ananas avec pectine; marmelade de figues avec pectine; mélange pour crème glacée; mélange pour lait glacé; mincemeat; œufs de poisson (caviar); pain; pain brun; pâte de homard; poisson fumé; porter; rhum; sorbet laitier; stout; sucre à glacer; vin; vinaigre de cidre; vinaigre de malt; vinaigre de vin; vin de miel; whisky | |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (3) Bonnes pratiques industrielles |
| | | (4) Boyaux de saucisse | (4) 15 % (les résidus de caramel dans les saucisses préparées avec ces boyaux ne doivent pas dépasser 0,15 %) |
| | | (5) Fromage à la crème à tartiner (avec indication des ingrédients ajoutés) | (5) 1,5 % |
| 3 | Rouge allura<br>Amaranthe<br>Erythrosine<br>Indigotine<br>Jaune soleil FCF<br>Tartrazine | (1) Achards (*relish*); beurre; catsup de tomates; confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liqueur; marmelade d'ananas avec pectine; marmelade de figues avec pectine; mélange pour crème glacée; mélange pour lait glacé; œufs de poisson (caviar); pain; pâte de homard; poisson fumé; sorbet laitier; sucre à glacer | (1) 300 p.p.m., isolément ou en mélange, en conformité de l'article B.06.002 |
| | | (2) Aliments non normalisés | (2) 300 p.p.m., isolément ou en mélange, en conformité de l'article B.06.002 |
| | | (3) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (3) 300 p.p.m., isolément ou en mélange, en conformité avec l'article B.06.002 |
| | | (4) Anchois salé, chinchard salé et crevette salée | (4) 125 p.p.m. conformément aux exigences de l'alinéa B.21.021d) |
| | | (5) Longaniza | (5) 80 p.p.m. de rouge allura conformément aux exigences de la |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | | division B.14.032d)(xvi)(B) et 20 p.p.m. de jaune soleil FCF conformément aux exigences de la division B.14.032d)(xvi)(C) |
| | | (6) Boyaux de saucisse (jaune soleil FCF seulement) | (6) 0,15 % (les résidus de jaune soleil FCF dans les saucisses préparées avec ces boyaux ne doivent pas dépasser 15 p.p.m.) |
| | | (7) Grignotines de maïs à saveur de fromage (jaune soleil FCF seulement) | (7) 600 p.p.m. isolément. Si combiné avec d'autres colorants nommés à la colonne I du présent article et de l'article 4 du présent tableau, la limite de tolérance permise est de 300 p.p.m. conformément à l'alinéa B.06.002c) |
| 4 | Bleu brillant FCF<br>Vert solide FCF | (1) Achards (*relish*); beurre; catsup de tomates; confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liqueur; marmelade d'ananas avec pectine; marmelade de figues avec pectine; mélange pour crème glacée; mélange pour lait glacé; œufs de poisson (caviar); pain; pâte de homard; poisson fumé; sorbet laitier; sucre à glacer | (1) 100 p.p.m., isolément ou en mélange, en conformité de l'article B.06.002 |
| | | (2) Aliments non normalisés | (2) 100 p.p.m., isolément ou en mélange, en conformité de l'article B.06.002 |
| | | (3) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (3) 100 p.p.m., isolément ou en mélange, en conformité avec l'article B.06.002 |
| | | (4) Feta (bleu brillant FCF seulement) | (4) 0,10 p.p.m. |
| 5 | Rouge citrin nº 2 | Écorce des oranges entières | 2 p.p.m. |
| 6 | Ponceau SX | Écorce de fruits; fruits glacés; cerises glacées; marasques | 150 p.p.m. |
| 7 | Or | Boissons alcooliques | Bonnes pratiques industrielles |

SOR/79-752, s. 5; SOR/80-500, s. 6; SOR/82-596, s. 3; SOR/84-440, s. 4; SOR/84-602, s. 1; SOR/89-198, ss. 6 to 10; SOR/92-725, s. 5; SOR/93-466, s. 2; SOR/94-689, s. 2(F); SOR/95-434, s. 1; SOR/95-493, s. 1; SOR/97-516, s. 4; SOR/98-580, s. 1(F); SOR/99-96, s. 1; SOR/2000-50, s. 1; SOR/2000-146, ss. 1 to 3; SOR/2007-75, s. 3; SOR/2010-94, s. 8(E); SOR/2010-143, s. 13; SOR/2011-235, s. 2(F); SOR/2011-281, s. 2; SOR/2012-43, ss. 16 to 20.

DORS/79-752, art. 5; DORS/80-500, art. 6; DORS/82-596, art. 3; DORS/84-440, art. 4; DORS/84-602, art. 1; DORS/89-198, art. 6 à 10; DORS/92-725, art. 5; DORS/93-466, art. 2; DORS/94-689, art. 2(F); DORS/95-434, art. 1; DORS/95-493, art. 1; DORS/97-516, art. 4; DORS/98-580, art. 1(F); DORS/99-96, art. 1; DORS/2000-50, art. 1; DORS/2000-146, art. 1 à 3; DORS/2007-75, art. 3; DORS/2010-94, art. 8(A); DORS/2010-143, art. 13; DORS/2011-235, art. 2(F); DORS/2011-281, art. 2; DORS/2012-43, art. 16 à 20.

**TABLE IV**

**Food Additives That May Be Used as Emulsifying, Gelling, Stabilizing and Thickening Agents**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Acacia Gum | (1) Cream; French dressing; (naming the flavour) Milk; Mustard pickles; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; Relishes; Salad dressing; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; | (1) Good Manufacturing Practice |
| | | (2) Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Calorie-reduced margarine | (5) 0.5% in accordance with the requirements of section B.09.017 |
| | | (6) Canned asparagus; Canned green beans; Canned wax beans; Canned peas | (6) 1.0% in accordance with the requirements of clause B.11.002(d)(viii)(C) |
| A.1A | Acacia Gum modified with octenyl succinic anhydride (OSA) | (1) French dressing; Icings; Salad dressing; Unstandardized dressings; Unstandardized sauces | (1) 1% |
| | | (2) Unstandardized beverages | (2) 0.1% |
| | | (3) Unstandardized flavouring preparations | (3) 0.05% |
| A.2 | Acetylated Mono-glycerides | Unstandardized foods | Good Manufacturing Practice |
| A.3 | Acetylated Tartaric Acid Esters of Mono- and Di-glycerides | (1) Bread | (1) 6,000 p.p.m. of flour |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Infant formulas based on crystalline amino acids | (3) 0.024% as consumed |
| A.4 | Agar | (1) Brawn; Canned (naming the poultry); Cream; Headcheese; Meat binder or (naming the meat product) binder where sold for use in prepared meat or prepared meat by-product in which a gelling agent is a permitted ingredient; Meat by-product loaf; Meat loaf; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jelly with pectin; Potted meat; Potted meat by-product; Prepared fish or prepared meat (Division 21); Relishes | (1) Good Manufacturing Practice |
| | | (2) Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (5) Calorie-reduced margarine | (5) 0.5% in accordance with the requirements of section B.09.017 |
| A.5 | Algin | (1) Ale; Beer; Cream; French dressing; Malt liquor; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; Porter; Relishes; Salad dressing; Stout | (1) Good Manufacturing Practice |
| | | (2) Infant formula | (2) 0.03% as consumed. If used in combination with carrageenan or guar gum or both, the total not to exceed 0.03% |
| | | (3) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (3) 0.5% |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Calorie-reduced margarine | (6) 0.5% in accordance with the requirements of section B.09.017 |
| | | (7) Sour cream | (7) 0.5% in accordance with the requirements of clause B.08.077(b)(vii)(A) |
| | | (8) Canned asparagus; Canned green beans; Canned wax beans; Canned peas | (8) 1.0% in accordance with the requirements of clause B.11.002(d)(viii)(C) |
| | | (9) Infant formula based on isolated amino acids or protein hydrolysates, or both | (9) 0.1% as consumed. If used in combination with carrageenan or guar gum or both, the total not to exceed 0.1% |
| | | (10) Lactose-free infant formula based on milk protein | (10) 0.05% as consumed. If used in combination with carrageenan or guar gum or both, the total not to exceed 0.05% |
| A.6 | Alginic Acid | Same foods as listed for Algin | Same levels as prescribed for Algin |
| A.7 | Ammonium Alginate | Same foods as listed for Algin | Same levels as prescribed for Algin |
| A.8 | Ammonium Carrageenan | Same foods as listed for Carrageenan | Same levels as prescribed for Carrageenan |
| A.9 | Ammonium Furcelleran | Same foods as listed for Furcelleran | Same levels as prescribed for Furcelleran |
| A.9A | Ammonium Salt of Phosphorylated Glyceride | (1) Bread; Cream; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; Relishes | (1) Good Manufacturing Practice |
| | | (2) Ice Cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (5) Chocolate products; Cocoa products | (5) 0.7% |
| A.10 | Arabino-galactan | Essential oils; Pie filling mixes; Pudding mixes; Unstandardized beverage bases; Unstandardized beverage mixes; Unstandardized dressings | Good Manufacturing Practice |
| B.1 | Baker's yeast Glycan | Unstandardized foods | Good Manufacturing Practice |
| C.1 | Calcium Alginate | Same foods as listed for Algin | Same levels as prescribed for Algin |
| C.2 | Calcium Carbonate | (1) Unstandardized Foods | (1) Good Manufacturing Practice |
| | | (2) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (2) Good Manufacturing Practice |
| C.3 | Calcium Carrageenan | Same foods as listed for Carrageenan | Same levels as prescribed for Carrageenan |
| C.4 | Calcium Citrate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 4.0%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.5 | Calcium Furcelleran | Same foods as listed for Furcelleran | Same levels as prescribed for Furcelleran |
| C.6 | Calcium Gluconate | Unstandardized foods | Good Manufacturing Practice |
| C.7 | Calcium Glycerophosphate | Unstandardized dessert mixes | Good Manufacturing Practice |
| C.8 | Calcium Hypophosphite | Unstandardized dessert mixes | Good Manufacturing Practice |
| C.9 | Calcium Phosphate, dibasic | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.10 | Calcium Phosphate, tribasic | Unstandardized foods | Good Manufacturing Practice |
| C.11 | Calcium Sulphate | (1) Ice cream; Ice cream mix; Ice milk; Ice milk mix | (1) 0.5% |
| | | (2) Sherbet | (2) 0.75% |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| | | (4) Creamed cottage cheese | (4) 0.05% |
| | | (5) Cream for whipping, heat-treated above 100°C | (5) 0.005% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (6) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (6) 0.06% |
| C.12 | Calcium Tartrate | Unstandardized foods | Good Manufacturing Practice |
| C.13 | Carboxymethyl Cellulose | Same foods as listed for Sodium Carboxymethyl Cellulose | Same levels as prescribed for Sodium Carboxymethyl Cellulose |
| C.14 | Carob Bean Gum | (1) Cream; French dressing; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; Relishes; Salad dressing | (1) Good Manufacturing Practice |
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Calorie-reduced margarine | (3) 0.5% in accordance with the requirements of paragraph B.09.017(b) |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Sour cream | (5) 0.5% in accordance with the requirements of clause B.08.077(b)(vii)(A) |
| | | (6) Unstandardized Foods | (6) Good Manufacturing Practice |
| | | (7) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (7) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| C.15 | Carrageenan | (1) Ale; Beer; Brawn; Canned (naming the poultry); Cream; French dressing; Headcheese; (naming the fruit) Jelly with pectin; Light beer; Malt liquor; Meat binder (when sold for use in prepared meat or prepared meat by-products in which a gelling agent is a permitted ingredient); Meat by-product loaf; Meat loaf; (naming the flavour) Milk; Mustard pickles; Porter; Potted meat; Potted meat by-product; Prepared fish or prepared meat (Division 21); Relishes; Salad dressing; (naming the flavour) Skim milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Skim milk with added milk solids; (naming the flavour) Partly skimmed milk with added milk solids; Stout | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Evaporated milk | (3) 0.015% |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Evaporated partly skimmed milk; Concentrated partly skimmed milk | (5) 0.01% |
| | | (6) Infant formula based on isolated amino acids or protein hydrolysates, or both | (6) 0.1% as consumed. If used in combination with algin or guar gum or both, the total not to exceed 0.1% |
| | | (7) Infant formula | (7) 0.03% as consumed. If used in combination with algin or guar gum or both, the total not to exceed 0.03% |
| | | (8) Unstandardized foods | (8) Good Manufacturing Practice |
| | | (9) Calorie-reduced margarine | (9) 0.5% in accordance with the requirements of section B.09.017 |
| | | (10) Sour cream | (10) 0.5%, in accordance with the requirements of clause B.08.077(b)(vii)(A) |
| | | (11) Canned asparagus; Canned green beans; Canned wax beans; Canned peas | (11) 1.0% in accordance with the requirements of clause B.11.002(d)(viii)(C) |
| | | (12) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (12) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| | | (13) Lactose-free infant formula based on milk protein | (13) 0.05% as consumed. If used in combination with algin or guar gum or both, the total not to exceed 0.05% |
| C.17 | Cellulose Gum | Same foods as listed for Sodium Carboxymethyl Cellulose | Same levels as prescribed for Sodium Carboxymethyl Cellulose |
| C.18 | Citric Acid Esters of Mono- and Di-glycerides | (1) Infant formula based on crystalline amino acids or protein hydrolysates, or both | (1) 0.155% as consumed |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| F.1 | Furcelleran | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Calorie-reduced margarine | (3) 0.5% in accordance with the requirements of section B.09.017 |
| | | (4) Canned asparagus; Canned green beans; Canned waxed beans; Canned peas | (4) 1.0% in accordance with the requirements of clause B.11.002(d)(viii)(C) |
| G.1 | Gelatin | (1) Brawn; Canned (naming the poultry); Cream; Headcheese; Meat binder or (naming the meat product) | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | binder where sold for use in prepared meat or prepared meat by-product in which a gelling agent is a permitted ingredient; Meat by-product loaf; Meat loaf; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jelly with pectin; Potted meat; Potted meat by-product; Prepared fish or prepared meat (Division 21); Prepared hams, shoulders, butts, picnics and backs; Relishes | |
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Sour cream | (4) 0.5% in accordance with the requirements of clause B.08.077(b)(vii)(A) |
| | | (5) Unstandardized Foods | (5) Good Manufacturing Practice |
| | | (6) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (6) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| G.2 | Gellan Gum | (1) Frostings; Unstandardized confectionery | (1) 0.5% |
| | | (2) Aspics; Unstandardized fruit spreads; Unstandardized processed fruit products | (2) 0.3% |
| | | (3) Calorie-reduced margarine; Reduced fat spreads | (3) 0.25% |
| | | (4) Unstandardized dairy products | (4) 0.15% |
| | | (5) Filling mixes; Fillings; French dressing; Pudding mixes; Puddings; Salad dressing; Unstandardized dressings; Unstandardized gelatins | (5) 0.1% |
| | | (6) Baking mixes; Unstandardized bakery products | (6) 0.1% of the dry mix |
| | | (7) Topping mixes; Toppings; Unstandardized sauces; Unstandardized table syrups | (7) 0.05% |
| | | (8) Unstandardized beverages | (8) 0.08% |
| | | (9) Snack foods | (9) 0.1% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| G.3 | Guar Gum | (1) Bread; Cream; French dressing; Mincemeat; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; Relishes; Salad dressing | (1) Good Manufacturing Practice |
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Infant formula | (3) 0.03% as consumed. If used in combination with algin or carrageenan or both, the total not to exceed 0.03% |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Calorie-reduced margarine | (6) 0.5% in accordance with the requirements of section B.09.017 |
| | | (7) Sour cream | (7) 0.5% in accordance with the requirements of clause B.08.077(b)(vii)(A) |
| | | (8) Canned asparagus; Canned green beans; Canned waxed beans; Canned peas | (8) 1.0% in accordance with the requirements of clause B.11.002(d)(viii)(C) |
| | | (9) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (9) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| | | (10) Infant formula based on isolated amino acids or protein hydrolysates, or both | (10) 0.1% as consumed. If used in combination with algin or carrageenan or both, the total not to exceed 0.1% |
| | | (11) Lactose-free infant formula based on milk protein | (11) 0.05% as consumed. If used in combination with algin or carrageenan or both, the total not to exceed 0.05% |
| G.4 | Gum Arabic | Same foods as listed for Acacia Gum | Same level as prescribed for Acacia Gum |
| H.1 | Hydroxylated Lecithin | (1) Chocolate products; Cocoa products | (1) 1.0% |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| H.1A | Hydroxypropyl Cellulose | Unstandardized foods | Good Manufacturing Practice |
| H.2 | Hydroxypropyl Methylcellulose | (1) French dressing; (naming the flavour) Milk; Mustard pickles; Relishes; (naming the flavour) Skim milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Skim milk with added milk solids; (naming the flavour) Partly skimmed milk with added milk solids; Salad dressing | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| I.1 | Irish Moss Gelose | Same foods as listed for Carrageenan | Same levels as prescribed for Carrageenan |
| K.1 | Karaya Gum | (1) French dressing; (naming the flavour) Milk; Mustard pickles; Relishes; (naming the flavour) Skim milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Skim milk with added milk solids; (naming the flavour) Partly skimmed milk with added milk solids; Salad dressing | (1) Good Manufacturing Practice |
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Calorie-reduced margarine | (5) 0.5% in accordance with the requirements of section B.09.017 |
| L.1 | Lactylated Mono- and Di-glycerides | (1) Shortening | (1) 8.0% (except that the total combined mono- and di-glycerides and lactylated mono- and di-glycerides must not exceed 20.0% of the shortening) |
| | | (2) Unstandardized foods | (2) 8.0% of the fat content |
| L.1A | Lactylic Esters of Fatty Acids | Unstandardized foods | Good Manufacturing Practice |
| L.2 | Lecithin | (1) Bread; Cream; (naming the flavour) Milk; Mustard pickles; Relishes; (naming the flavour) Skim milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Skim milk with added milk solids; (naming the flavour) Partly skimmed milk with added milk solids | (1) Good Manufacturing Practice |
| | | (2) Ice Cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5%, singly or in combination with other emulsifiers |
| | | (3) Infant formula | (3) 0.03% as consumed |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Margarine | (6) 0.2% |
| | | (7) Calorie-reduced margarine | (7) 0.5% |
| | | (8) Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (8) 0.2% |
| | | (9) Milk powder | (9) 0.5% |
| | | (10) Chocolate products; Cocoa products | (10) 1.0% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| L.3 | Locust Bean Gum | Same foods as listed for Carob Bean Gum | Same levels as prescribed for Carob Bean Gum |
| M.1 | Magnesium Chloride | Tofu | 0.3%, calculated as the anhydrous salt |
| M.2 | Methylcellulose | (1) Ale; Beer; French dressing; Light beer; Malt liquor; Porter; Salad dressing; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| M.3 | Methyl Ethyl Cellulose | Unstandardized foods | Good Manufacturing Practice |
| M.4 | Mono-glycerides | (1) Bread; Cream; Fish paste | (1) Good Manufacturing Practice |
| | | (2) Chocolate products; Cocoa products | (2) 1.5% |
| | | (3) Ice cream mix; Ice milk mix | (3) A total of 0.5% of stabilizing agents in accordance with subparagraphs B.08.061(b)(vi) and B.08.071(b)(vi) |
| | | (4) Creamed cottage cheese | (4) Good Manufacturing Practice |
| | | (5) Infant formula | (5) 0.25% as consumed |
| | | (6) Sausage casings | (6) 0.35% of the casing |
| | | (7) Margarine | (7) 0.5% |
| | | (8) Sherbet | (8) 0.75% |
| | | (9) Shortening | (9) 10.0% (except that the total combined mono and diglycerides and lactylated mono and diglycerides must not exceed 20.0% of the shortening) |
| | | (10) Sour Cream | (10) 0.3% |
| | | (11) Unstandardized Foods | (11) Good Manufacturing Practice |
| | | (12) Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (12) 0.5% in accordance with the requirements of sections B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| M.5 | Mono- and Di-glycerides | (1) Bread; Cream; Fish paste | (1) Good Manufacturing Practice |
| | | (2) Chocolate products; Cocoa products | (2) 1.5% |
| | | (3) Ice cream mix; Ice milk mix | (3) A total of 0.5% of stabilizing agents in accordance with subparagraphs B.08.061(b)(vi) and B.08.071(b)(vi) |
| | | (4) Cottage Cheese; Creamed Cottage Cheese | (4) Good Manufacturing Practice |
| | | (5) Infant formula | (5) 0.25% as consumed |
| | | (6) Sausage casings | (6) 0.35% of the casing |
| | | (7) Margarine | (7) 0.5% |
| | | (8) Sherbet | (8) 0.75% |
| | | (9) Shortening | (9) 10.0% (except that the total combined mono and diglycerides and lactylated mono and diglycerides must not exceed 20.0% of the shortening) |
| | | (10) Sour Cream | (10) 0.3% |
| | | (11) Unstandardized Foods | (11) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (12) Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (12) 0.5% in accordance with the requirements of sections B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| M.6 | Monosodium Salts of Phosphorylated Mono- and Diglycerides | (1) Edible vegetable oil-based cookware coating emulsions | (1) 4.0% |
| O.1 | Oat Gum | (1) Unstandardized Foods | (1) Good Manufacturing Practice |
| P.1 | Pectin | (1) Apple (or rhubarb) and (naming the fruit) Jam; Cream; Fig marmalade; Fig marmalade with pectin; French dressing; Mincemeat; Mustard pickles; (naming the citrus fruit) Marmalade with pectin; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; Pineapple marmalade; Pineapple marmalade with pectin; Relishes; Salad dressing | (1) Good Manufacturing Practice |
| | | (2) Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sour cream | (3) 0.5% in accordance with the requirement of clause B.08.077(b)(vii)(A) |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| P.1A | Polyglycerol Esters of Fatty Acids | (1) Unstandardized foods | (1) Good Manufacturing Practice |
| | | (2) Vegetable oils | (2) 0.025% |
| | | (3) Calorie-reduced margarine | (3) 0.2% in accordance with the requirements of paragraph B.09.017(c) |
| P.1B | Polyglycerol Esters of Interesterified Castor Oil Fatty Acids | (1) Chocolate products | (1) 0.5% |
| | | (2) Unstandardized chocolate flavoured confectionery coatings | (2) 0.25% |
| | | (3) Edible vegetable oil-based pan coating emulsions for use on baking pans | (3) 2.0% |
| P.2 | Polyoxyethylene (20) Sorbitan Monooleate; Polysorbate 80 | (1) Ice cream; Ice cream mix; Ice milk; Ice milk mix; Sherbet | (1) 0.1%. If Polyoxyethylene (20) sorbitan tristearate is also used, the total must not exceed 0.1% |
| | | (2) Unstandardized frozen desserts | (2) 0.1% |
| | | (3) Pickles and relishes | (3) 0.05% |
| | | (4) Unstandardized beverage bases; Unstandardized beverage mixes | (4) 0.05% of the beverage. If sorbitan monostearate is also used the total |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | | must not exceed 0.05% of the beverage |
| | | (5) Imitation dry cream mix | (5) 0.1%. If Polyoxyethylene (20) sorbitan monostearate, Polyoxyethylene (20) sorbitan tristearate or Sorbitan monostearate, either singly or in combination is also used, the total must not exceed 0.4% |
| | | (6) Whipped vegetable oil topping | (6) 0.05%. If Polyoxyethylene (20) sorbitan monostearate, Polyoxyethylene (20) sorbitan tristearate or Sorbitan monostearate, either singly or in combination is also used, the total must not exceed 0.4% |
| | | (7) Cake icing; cake icing mix | (7) 0.5% of the finished cake icing. If Polyoxyethylene (20) sorbitan monostearate, or Sorbitan monostearate, either singly or in combination is also used, the total must not exceed 0.5% of the finished cake icing |
| | | (8) Salt | (8) 10 p.p.m. |
| | | (9) Whipped cream | (9) 0.1% |
| | | (10) Breath freshener products | (10) 100 p.p.m. |
| | | (11) Creamed cottage cheese | (11) 80 p.p.m. |
| | | (12) Spice oils and spice oleoresins for use in pumping pickle employed in the curing of preserved meat or preserved meat by-product (Division 14) | (12) 0.2% of the pumping pickle |
| | | (13) Sausage casings | (13) 0.15% of the casing |
| | | (14) Liquid Smoke Flavours | (14) Good Manufacturing Practice. Residues of Polysorbate 80 must not exceed 275 p.p.m. in the finished food |
| | | (15) Vegetable oils | (15) 0.125% |
| | | (16) Annatto formulations | (16) 25% of the total colour formulation |
| | | (17) Turmeric formulations | (17) 50% of the total colour formulation |
| | | (18) Liquid smoke flavour concentrate | (18) Good Manufacturing Practice. Residues of Polysorbate 80 must not exceed 0.3% in the finished food. |
| | | (19) Unstandardized salad dressings | (19) 0.25% |
| P.3 | Polyoxyethyl ene (20) Sorbitan Monostearate; Polysorbate 60 | (1) Imitation dry cream mix; Vegetable oil creaming agent; Whipped vegetable oil topping; Vegetable oil topping mix | (1) 0.4%. If Polyoxyethylene (20) sorbitan tristearate, Sorbitan monostearate or Polyoxyethylene (20) sorbitan mono-oleate, either singly or in combination is also used, the total must not exceed 0.4%, except that in the case of whipped vegetable oil topping a combination of Polysorbate 60 and Sorbitan monostearate may be used in excess of 0.4%, if the amount of the Polysorbate 60 does not exceed |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | | 0.77% and the amount of Sorbitan monostearate does not exceed 0.27% of the whipped vegetable oil topping |
| | | (2) Cakes | (2) 0.5% on a dry weight basis. If Polyoxyethylene (20) sorbitan tristearate is also used, the total must not exceed 0.5% on a dry weight basis |
| | | (3) Cakes; Cake mixes | (3) 0.5% on a dry weight basis. If Sorbitan monostearate is also used, the total must not exceed 0.7% on a dry weight basis |
| | | (4) Unstandardized confectionery coatings and unstandardized moulded confectionery products for use as confectionery or in baking | (4) 0.5%. If any combination of Polyoxyethylene (20) Sorbitan tristearate, Sorbitan monostearate or Sorbitan tristearate are all used the total must not exceed 1.0% |
| | | (5) Cake icing; Cake icing mix | (5) 0.5% of the finished cake icing. If Sorbitan monostearate or Polyoxyethylene (20) sorbitan mono-oleate either singly or in combination is also used, the total must not exceed 0.5% of the finished cake icing |
| | | (6) Pie fillings; Puddings | (6) 0.5% on a dry weight basis |
| | | (7) Unstandardized beverage bases; Unstandardized beverage mixes | (7) 0.05% of the beverage. If Sorbitan monostearate is also used the total must not exceed 0.05% of the beverage |
| | | (8) Sour Cream Substitute | (8) 0.1% |
| | | (9) Unstandardized dressings; Unstandardized prepared canned cooking sauces | (9) 0.3% |
| | | (10) Fat base formulation for self-basting of poultry by injection | (10) 0.25% |
| | | (11) Unstandardized sandwich spreads; Unstandardized dips | (11) 0.2% |
| | | (12) Dry soup base or mix | (12) 250 p.p.m. in soup as consumed |
| | | (13) Dry batter coating mixes | (13) 0.5% of the dry mix |
| | | (14) Prepared alcoholic cocktails | (14) 120 p.p.m. in beverage as consumed |
| P.4 | Polyoxyethylene (20) Sorbitan Tristearate; Polysorbate 65 | (1) (Naming the flavour) Milk; (naming the flavour) Skim milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Skim milk with added milk solids; (naming the flavour) Partly skimmed milk with added milk solids | (1) 0.5% |
| | | (2) Ice cream; Ice cream mix; Ice milk; Ice milk mix; Sherbet | (2) 0.1%. If Polyoxyethylene (20) sorbitan mono-oleate is also used, the total must not exceed 0.1% |
| | | (3) Unstandardized frozen desserts | (3) 0.1% |
| | | (4) Cakes | (4) 0.3% on a dry weight basis. If Polyoxyethylene (20) sorbitan monostearate is also used, the total must not exceed 0.5% on a dry weight basis |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (5) Unstandardized confectionery coatings | (5) 0.5%. If any combination of Polyoxyethylene (20) sorbitan monostearate, Sorbitan monostearate, or Sorbitan tristearate are also used, the total must not exceed 1.0% |
| | | (6) Unstandardized beverage bases; Unstandardized beverage mixes | (6) 0.05% of the beverage. If Sorbitan monostearate is also used, the total must not exceed 0.05% of the beverage |
| | | (7) Imitation dry cream mix; Vegetable oil creaming agent; Whipped vegetable oil topping; Vegetable oil topping mix | (7) 0.4%. If Polyoxyethylene (20) sorbitan monostearate, Sorbitan monostearate or Polyoxyethylene (20) sorbitan mono-oleate, either singly or in combination is also used, the total must not exceed 0.4% |
| | | (8) Breath freshener products | (8) 200 p.p.m. |
| P.5 | Polyoxyethylene (8) Stearate | Unstandardized bakery products | 0.4% |
| P.6 | Potassium Alginate | Same foods as listed for Algin | Same levels as prescribed for Algin |
| P.7 | Potassium Carrageenan | Same foods as listed for Carrageenan | Same levels as prescribed for Carrageenan |
| P.8 | Potassium Chloride | Unstandardized foods | Good Manufacturing Practice |
| P.9 | Potassium Citrate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 4.0%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| P.10 | Potassium Furcelleran | Same foods as listed for Furcelleran | Same levels as prescribed for Furcelleran |
| P.11 | Potassium Phosphate, dibasic | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| P.12 | Propylene Glycol Alginate | (1) Ale; Beer; French dressing; Light beer; Malt liquor; Mustard pickles; Porter; Relishes; Salad dressing; Stout | (1) Good Manufacturing Practice |
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Calorie-reduced margarine | (5) 0.5% in accordance with the requirements of section B.09.017 |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (6) Sour cream | (6) 0.5% in accordance with the requirements of clause B.08.077(b)(vii)(A) |
| | | (7) Canned asparagus; Canned green beans; Canned wax beans; Canned peas | (7) 1.0% in accordance with the requirements of clause B.11.002(d)(viii)(C) |
| | | (8) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (8) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| P.13 | Propylene Glycol Ether of Methylcellulose | Same foods as listed for Hydroxypropyl Methylcellulose | Same levels as prescribed for Hydroxypropyl Methylcellulose |
| P.14 | Propylene Glycol Mono Fatty Acid Esters | (1) Ice cream mix | (1) 0.35% of the ice cream made from the mix |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.1 | Sodium Acid Pyrophosphate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| S.2 | Sodium Alginate | (1) Same foods as listed for Algin | (1) Same levels as prescribed for Algin |
| | | (2) Coarse crystal salt | (2) 15 p.p.m. |
| | | (3) Glaze of frozen fish | (3) Good Manufacturing Practice |
| S.2A | Sodium Aluminum Phosphate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| S.3 | Sodium Carboxymethyl Cellulose | (1) Cream; French dressing; Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; Relishes; Salad dressing | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Glaze of frozen fish | (5) Good Manufacturing Practice |
| | | (6) Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients) | (6) 0.5% |
| | | (7) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (7) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| S.4 | Sodium Carrageenan | Same foods as listed for Carrageenan | Same levels as prescribed for Carrageenan |
| S.5 | Sodium Cellulose Glycolate | Same foods as listed for Sodium Carboxymethyl Cellulose | Same levels as prescribed for Sodium Carboxymethyl Cellulose |
| S.6 | Sodium Citrate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 4.0%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Evaporated milk; evaporated skim milk or concentrated skim milk; evaporated partly skimmed milk or concentrated partly skimmed milk | (2) 0.1% singly or in combination with sodium phosphate, dibasic |
| | | (3) Ice cream; Ice cream mix; Ice milk; Ice milk mix | (3) 0.5% |
| | | (4) Sherbet | (4) 0.75% |
| S.7 | Sodium Furcelleran | Same foods as listed for Furcelleran | Same levels as prescribed for Furcelleran |
| S.8 | Sodium Gluconate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed | (1) 4.0%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | cheese spread; Processed cheese spread with (naming the added ingredients) | |
| S.9 | Sodium Hexameta-phosphate | (1) Mustard pickles; Relishes | (1) Good Manufacturing Practice |
| | | (2) Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Infant formula | (3) 0.05% as consumed |
| | | (4) Sherbet | (4) 0.75% |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (6) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (7) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (7) 0.1% |
| S.11 | Sodium Phosphate, dibasic | (1) Mustard pickles; (naming the flavour) Milk; (naming the flavour) Partly skimmed milk; (naming the flavour) Partly skimmed milk with added milk solids; (naming the flavour) Skim milk; (naming the flavour) Skim milk with added milk solids; Relishes | (1) Good Manufacturing Practice |
| | | (2) Cottage cheese; Creamed cottage cheese | (2) 0.5% |
| | | (3) Evaporated milk; evaporated skim milk or concentrated skim milk; evaporated partly skimmed milk or concentrated partly skimmed milk | (3) 0.1% singly or in combination with sodium citrate |
| | | (4) Sour cream | (4) 0.05% in accordance with the requirements of clause B.08.077(b)(vii)(C) |
| | | (5) Unstandardized Foods | (5) Good Manufacturing Practice |
| | | (6) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (6) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| S.12 | Sodium Phosphate, monobasic | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| | | variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.13 | Sodium Phosphate, tribasic | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.14 | Sodium Potassium Tartrate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 4.0%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.15 | Sodium Pyrophosphate, tetrabasic | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 3.5%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (3) 0.1% |
| S.15A | Sodium Stearoyl-2-Lac-tylate | (1) Icing and icing mixes | (1) 0.4% of dry ingredient weight |
| | | (2) Fillings and filling mixes | (2) 0.5% of dry ingredient weight |
| | | (3) Puddings and pudding mixes | (3) 0.2% of the finished product |
| | | (4) Sour cream substitutes | (4) 1.0% of dry ingredient weight |
| | | (5) Vegetable oil creaming agents | (5) 2.0% of dry ingredient weight |
| | | (6) Batter mix | (6) 0.75% of dry ingredient weight |
| | | (7) Unstandardized cream-based liquors | (7) 0.35% of the finished product |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (8) Salad dressing; French dressing | (8) 0.4% of the finished product |
| | | (9) Soups | (9) 0.2% of the finished product |
| S.16 | Sodium Tartrate | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (1) 4.0%, in accordance with the requirements of sections B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 and B.08.041.4 |
| S.16A | Sodium Tripolyphosphate | A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | 0.1% |
| S.18 | Sorbitan Monostearate | (1) Imitation dry cream mix; Vegetable oil creaming agent; Whipped vegetable oil topping; Vegetable oil topping mix | (1) 0.4%. If Polyoxyethylene (20) sorbitan tristearate, Polysorbate 60 or Polyoxyethylene (20) sorbitan mono-oleate, either singly or in combination is also used, the total must not exceed 0.4%, except that in the case of whipped vegetable oil topping a combination of Sorbitan monostearate and Polysorbate 60 may be used in excess of 0.4% if the amount of Sorbitan monostearate does not exceed 0.27% and the amount of Polysorbate 60 does not exceed 0.77% of the weight of the whipped vegetable oil topping |
| | | (2) Cake; Cake mix | (2) 0.6% on a dry weight basis. If Polyoxyethylene (20) sorbitan monostearate is also used, the total must not exceed 0.7% on a dry weight basis |
| | | (3) Unstandardized confectionery coatings and unstandardized moulded confectionery products for use as confectionery or in baking | (3) 1.0%. If any combination of Polyoxyethylene (20) sorbitan monostearate, Polyoxyethylene (20) sorbitan tristrearate or Sorbitan tristearate are also used, the total must not exceed 1.0% |
| | | (4) Cake icing; Cake icing mix | (4) 0.5% of the finished cake icing. If Polyoxyethylene (20) sorbitan mono-oleate or Polyoxyethylene (20) sorbitan monostearate, either singly or in combination is also used, the total must not exceed 0.5% of the finished cake icing |
| | | (5) Unstandardized beverage bases; Unstandardized beverage mixes | (5) 0.05% of the beverage. If Polyoxyethylene (20) sorbitan mono-oleate is also used, the total must not exceed 0.05% of the beverage. If Polyoxyethylene (20) sorbitan monostearate is also used, the total must not exceed 0.05% of the beverage. If Polyoxyethylene (20) |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | | sorbitan tristearate is also used, the total must not exceed 0.05% of the beverage |
| | | (6) Dry soup base or mix | (6) 250 p.p.m. in soup as consumed |
| | | (7) Dried yeast | (7) 1.5% (Residues of sorbitan monostearate in bread and other yeast leavened bakery products not to exceed 0.05%). |
| | | (8) Chocolate products | (8) 1.0% |
| | | (9) Puddings | (9) 0.5% |
| S.18A | Sorbitan trioleate | Sausage casings | 0.35% of the casing |
| S.18B | Sorbitan Tristearate | (1) Margarine; Shortening | (1) 1.0% |
| | | (2) Unstandardized confectionery coatings and unstandardized moulded confectionery products for use as a confectionery or in baking | (2) 1.0% If any combination of Polyoxyethylene (20) sorbitan monostearate, Polyoxyethylene (20) sorbitan tristearate or Sorbitan monostearate are also used, the total must not exceed 1.0% |
| | | (3) Ice cream mix | (3) 0.035% of the ice cream made from the mix |
| | | (4) Unstandardized frozen desserts | (4) 0.035% |
| S.19 | Stearyl Monoglyceridyl Citrate | Shortening | Good Manufacturing Practice |
| S.20 | Sucrose esters of fatty acids | (1) Carotenoid colour preparations | (1) 1.5% |
| | | (2) Unstandardized confectionery; Unstandardized confectionery coatings | (2) 0.5% |
| T.2 | [Repealed, SOR/2006-91, s. 5] | | |
| T.3 | Tragacanth Gum | (1) French dressing; Mustard pickles; Salad dressing; Relishes | (1) Good Manufacturing Practice |
| | | (2) Cottage cheese; Creamed cottage cheese; Ice cream; Ice cream mix; Ice milk; Ice milk mix | (2) 0.5% |
| | | (3) Sherbet | (3) 0.75% |
| | | (4) Lumpfish Caviar | (4) 1.0% |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Calorie-reduced margarine | (6) 0.5% in accordance with the requirements of section B.09.017 |
| | | (7) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (7) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| | | (8) Comminuted prepared fish or prepared meat, other than lumpfish caviar; Comminuted preserved fish or preserved meat (Division 21) | (8) 0.75% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| X.1 | Xanthan Gum | (1) French Dressing; Salad Dressing; Unstandardized Foods | (1) Good Manufacturing Practice |
| | | (2) Cottage Cheese; Creamed Cottage Cheese | (2) 0.5% or, if used in combination with other stabilizing agents, the total amount of the combined stabilizers shall not exceed 0.5% |
| | | (3) Calorie-reduced margarine | (3) 0.5% in accordance with the requirements of section B.09.017 |
| | | (4) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (4) 0.5%, in accordance with the requirements of sections B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 and B.08.041.8 |
| | | (5) Mustard pickles; relishes | (5) 0.1% |
| | | (6) Ice Cream Mix | (6) 0.1% or, if used in combination with microcrystalline cellulose and other stabilizers, the total amount of combined stabilizers and microcrystalline cellulose shall not exceed 0.5% |
| | | (7) Ice Milk Mix | (7) 0.1% or, if used in combination with other stabilizers, the total amount of combined stabilizers shall not exceed 0.5% |
| | | (8) Sherbet | (8) 0.1% or, if used in combination with other stabilizers, the total amount of combined stabilizers shall not exceed 0.75% |
| | | (9) Cream for whipping, heat-treated above 100°C | (9) 0.02% |

**TABLEAU IV**

**Additifs alimentaires autorisés comme émulsifs, agents gélatinisants, stabilisants ou épaississants**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Gomme arabique | (1) Achards (*relish*); cornichons à la moutarde; crème; lait (indication de l'arôme); lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; sauce à salade; sauce française | (1) Bonnes pratiques industrielles |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Margarine réduite en calories | (5) 0,5 % selon les exigences de l'article B.09.017 |
| | | (6) Asperges en conserve, haricots jaunes en conserve; haricots verts en conserve; pois en conserve | (6) 1,0 % selon les exigences de la disposition B.11.002d)(viii)(C). |
| A.1A | Gomme d'acacia modifiée avec l'anhydride octénylsuccinique (AOS) | (1) Glaces; sauce à salade; sauces d'assaisonnement non normalisées; sauces non normalisées; sauce vinaigrette | (1) 1 % |
| | | (2) Boissons non normalisées | (2) 0,1 % |
| | | (3) Préparations aromatisantes non normalisées | (3) 0,05 % |
| A.2 | Monoglycérides acétylés | Aliments non normalisés | Bonnes pratiques industrielles |
| A.3 | Esters tartriques des mono- et diglycérides acétylés | (1) Pain | (1) 6 000 p.p.m. de farine |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Préparations pour nourrissons à base d'acides aminés cristallisés | (3) 0,024 % de la préparation pour nourrissons prête à consommer |
| A.4 | Agar-agar | (1) Achards (*relish*); cornichons à la moutarde; crème; fromage de porc; gelée de (nom du fruit) avec pectine; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liant à viande ou liant à (désignation du produit de viande) lorsqu'il est vendu pour servir dans la viande préparée et dans les sous-produits de viande préparés dans lesquels il est permis d'ajouter un agent gélatinisant; (nom de la volaille) en conserve; pain de viande; poisson et viande préparés (Titre 21); sous-produits de viande en pain; sous-produits de viande en pot; tête fromagée; viande en pot | (1) Bonnes pratiques industrielles |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Margarine réduite en calories | (5) 0,5 % selon les exigences de l'article B.09.017 |
| A.5 | Algine | (1) Achards (*relish*); ale; bière; cornichons à la moutarde; crème; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liqueur de malt; porter; sauce à salade; sauce vinaigrette; stout | |
| | | (2) Préparations pour nourrissons | (2) 0,03 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi la carraghénine ou la gomme de guar, ou les deux, le total ne doit pas dépasser 0,03 % |
| | | (3) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour le lait glacé | (3) 0,5 % |
| | | (4) Sorbet laitier | (4) 0,75 % |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Margarine réduite en calories | (6) 0,5 % selon les exigences de l'article B.09.017 |
| | | (7) Crème sure | (7) 0,5 % selon les exigences de la disposition B.08.077b)(vii)(A) |
| | | (8) Asperges en conserve; haricots jaunes en conserves; haricots verts en conserves; pois en conserve | (8) 1,0 % selon les exigences de la disposition B.11.002d)(viii)(C) |
| | | (9) Préparations pour nourrissons à base d'acides aminés isolés ou d'hydrolysats de protéines, ou des deux | (9) 0,1 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi la carraghénine ou la gomme de guar, ou les deux, le total ne doit pas dépasser 0,1 % |
| | | (10) Préparations pour nourrissons sans lactose, à base de protéines du lait | (10) 0,05 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi la carraghénine ou la gomme de guar, ou les deux, le total ne doit pas dépasser 0,05 % |
| A.6 | Acide alginique | Mêmes aliments que pour l'algine | Mêmes limites de tolérance que pour l'algine |
| A.7 | Alginate d'ammonium | Mêmes aliments que pour l'algine | Mêmes limites de tolérance que pour l'algine |
| A.8 | Carraghénine ammoniacale | Mêmes aliments que pour la carragénine | Mêmes limites de tolérance que pour la carraghénine |
| A.9 | Furcelleran d'ammonium | Mêmes aliments que pour le furcelleran | Mêmes limites de tolérance que pour le furcelleran |
| A.9A | Sel d'ammonium de glycéride phosphorylé | (1) Achards (*relish*); cornichons à la moutarde; crème; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; pain | (1) Bonnes pratiques industrielles |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Produits de chocolat; produits du cacao | (5) 0,7 % |
| A.10 | Arabinogalactane | Bases pour boissons non normalisées; huiles essentielles; mélanges pour boissons non normalisés; mélanges pour garnitures à tarte; mélanges pour poudings; sauces d'assaisonnement non normalisées | Bonnes pratiques industrielles |
| B.1 | Levure de boulanger Glycan | Aliments non normalisés | Bonnes pratiques industrielles |
| C.1 | Alginate de calcium | Mêmes aliments que pour l'algine | Mêmes limites de tolérance que pour l'algine |
| C.2 | Carbonate de calcium | (1) Aliments non normalisés | (1) Bonnes pratiques industrielles |
| | | (2) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (2) Bonnes pratiques industrielles |
| C.3 | Carraghénine calcique | Mêmes aliments que pour la carraghénine | Mêmes limites de tolérance que pour la carraghénine |
| C.4 | Citrate de calcium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 4,0 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.5 | Furcelleran de calcium | Mêmes aliments que pour le furcelleran | Mêmes limites de tolérance que pour le furcelleran |
| C.6 | Gluconate de calcium | Aliments non normalisés | Bonnes pratiques industrielles |
| C.7 | Glycérophosphate de calcium | Mélanges pour desserts non normalisés | Bonnes pratiques industrielles |
| C.8 | Hypophosphite de calcium | Mélanges pour desserts non normalisés | Bonnes pratiques industrielles |
| C.9 | Phosphate bicalcique | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.10 | Phosphate tricalcique | Aliments non normalisés | Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| C.11 | Sulfate de calcium | (1) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (1) 0,5 % |
| | | (2) Sorbet laitier | (2) 0,75 % |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| | | (4) Fromage cottage en crème | (4) 0,05 % |
| | | (5) Crème à fouetter thermisée à une chaleur supérieure à 100 °C | (5) 0,005 % |
| | | (6) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (6) 0,06 % |
| C.12 | Tartrate de calcium | Aliments non normalisés | Bonnes pratiques industrielles |
| C.13 | Carboxyméthylcellulose | Mêmes aliments que pour la carboxyméthylcellulose sodique | Mêmes limites de tolérance que pour la carboxyméthylcellulose sodique |
| C.14 | Gomme de caroube | (1) Achards (*relish*); cornichons à la moutarde; crème; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; sauce à salade; sauce vinaigrette | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Margarine hypocalorique | (3) 0,5 % selon les exigences de l'alinéa B.09.017b) |
| | | (4) Sorbet laitier | (4) 0,75 % |
| | | (5) Crème sure | (5) 0,5 % selon les exigences de la disposition B.08.077b)(vii)(A) |
| | | (6) Aliments non normalisés | (6) Bonnes pratiques industrielles |
| | | (7) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (7) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |
| C.15 | Carraghénine | (1) Ale; bière; fromage de porc; (nom de la volaille) en conserve; crème; sauce vinaigrette; fromage de tête ou tête fromagée; gelée à (nom du fruit) avec pectine; bière légère; liqueur de malt; liant à viande (quand il est vendu pour servir dans les viandes ou dans les sous-produits de la viande | (1) Bonnes pratiques industrielles |

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| | | conditionnés dans lesquels un agent gélatinisant est autorisé); sous-produits de la viande en pain; pain de viande; lait (indication de l'arôme); cornichons à la moutarde; porter; viande en pot; sous-produits de la viande en pot; poisson ou viande conditionnés (Titre 21); achards (*relish*); sauce à salade; lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides de lait; lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; stout | |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Lait évaporé | (3) 0,015 % |
| | | (4) Sorbet laitier | (4) 0,75 % |
| | | (5) Lait évaporé partiellement écrémé; lait concentré partiellement écrémé | (5) 0,01 % |
| | | (6) Préparations pour nourrissons à base d'acides aminés isolés ou d'hydrolysats de protéines, ou les deux | (6) 0,1 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi l'algine ou la gomme de guar, ou les deux, le total ne doit pas dépasser 0,1 % |
| | | (7) Préparations pour nourrissons | (7) 0,03 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi l'algine ou la gomme de guar ou les deux, le total ne doit pas dépasser 0,03 % |
| | | (8) Aliments non normalisés | (8) Bonnes pratiques industrielles |
| | | (9) Margarine réduite en calories | (9) 0,5 % selon les exigences de l'article B.09.017 |
| | | (10) Crème sure | (10) 0,5 % selon les exigences de la disposition B.08.077b)(vii)(A) |
| | | (11) Asperges en conserve; haricots jaunes en conserve, haricots verts en conserve, pois en conserve | (11) 1,0 % selon les exigences de la disposition B.11.022d)(viii)(C) |
| | | (12) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (12) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |

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|---|---|---|---|
| | | (13) Préparations pour nourrissons sans lactose, à base de protéines du lait | (13) 0,05 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi l'algine ou la gomme de guar, ou les deux, le total ne doit pas dépasser 0,05 % |
| C.17 | Gomme de cellulose | Mêmes aliments que pour la carboxyméthylcellulose sodique | Mêmes limites de tolérance que pour la carboxyméthylcellulose sodique |
| C.18 | Esters citriques des mono- et diglycérides | (1) Préparations pour nourrissons à base d'acides aminés cristallisés ou d'hydrolysats de protéines, ou des deux | (1) 0,155 % de la préparation pour nourrissons prête à consommer |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| F.1 | Furcelleran | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Margarine réduite en calories | (3) 0,5 % selon les exigences de l'article B.09.017 |
| | | (4) Asperges en conserve; haricots jaunes en conserve; haricots verts en conserve; pois en conserve | (4) 1,0 % selon les exigences de la disposition B.11.002d)(viii)(C) |
| G.1 | Gélatine | (1) Achards (*relish*); cornichons à la moutarde; crème; fromage de porc; gelée de (nom du fruit) avec pectine; jambons, épaules, socs de porc, jambons pique-nique et jambons de longe préparés; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; liant à viande ou liant à (désignation du produit de viande) lorsqu'il est vendu pour servir dans la viande préparée et dans les sous-produits de viande préparés dans lesquels il est permis d'ajouter un agent gélatinisant; (nom de la volaille) en conserve; pain de viande; poisson et viande préparés (Titre 21); sous-produits de viande en pain; sous-produits de viande en pot; tête fromagée; viande en pot | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Crème sure de la disposition B.08.077b)(vii)(A) | (4) 0,5 % selon les exigences |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; | (6) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, |

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| | | fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |
| G.2 | Gomme gellan | (1) Confiseries non normalisées; produits de glaçage | (1) 0,5 % |
| | | (2) Aspics; produits de fruits transformés non normalisés; tartinades de fruits non normalisées | (2) 0,3 % |
| | | (3) Margarine réduite en calories; tartinades réduites en matière grasse | (3) 0,25 % |
| | | (4) Produits laitiers non normalisés | (4) 0,15 % |
| | | (5) Garnitures; gélatines non normalisées; mélanges pour garnitures; mélanges pour poudings; poudings; sauce à salade; sauces d'assaisonnement non normalisées; sauce vinaigrette | (5) 0,1 % |
| | | (6) Mélanges pour pâtisseries; produits de boulangerie non normalisés | (6) 0,1 % du mélange sec |
| | | (7) Glaçages; mélanges pour glaçages; sauces non normalisées; sirops de table non normalisés | (7) 0,05 % |
| | | (8) Boissons non normalisées | (8) 0,08 % |
| | | (9) Grignotines | (9) 0,1 % |
| G.3 | Gomme de guar | (1) Achards (*relish*); cornichons à la moutarde; crème; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; mincemeat; pain; sauce à salade; sauce vinaigrette | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Préparations pour nourrissons | (3) 0,03 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi l'algine ou la carragénine ou les deux, le total ne doit pas dépasser 0,03 % |
| | | (4) Sorbet laitier | (4) 0,75 % |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |

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| | | (6) Margarine réduite en calories | (6) 0,5 % selon les exigences de l'article B.09.017 |
| | | (7) Crème sure de la disposition B.08.077b)(vii)(A) | (7) 0,5 % selon les exigences |
| | | (8) Asperges en conserve; haricots jaunes en conserve; haricots verts en conserve; pois en conserve | (8) 1,0 % selon les exigences de la disposition B.11.002d)(viii)(C) |
| | | (9) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (9) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |
| | | (10) Préparations pour nourrissons à base d'acides aminés isolés ou d'hydrolysats de protéines, ou des deux | (10) 0,1 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi l'algine ou la carraghénine, ou les deux, le total ne doit pas dépasser 0,1 % |
| | | (11) Préparations pour nourrissons sans lactose, à base de protéines du lait | (11) 0,05 % de la préparation pour nourrissons prête à consommer. Si l'on emploie aussi l'algine ou la carraghénine, ou les deux, le total ne doit pas dépasser 0,05 % |
| G.4 | Gomme sénégal | Mêmes aliments que pour la gomme arabique | Mêmes limites de tolérance que pour la gomme arabique |
| H.1 | Hydroxylécithine | (1) Produits de chocolat; produits du cacao | (1) 1,0 % |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| H.1A | Hydroxypropyl cellulose | Aliments non normalisés | Bonnes pratiques industrielles |
| H.2 | Hydroxypropyl méthylcellulose | (1) Sauce vinaigrette; lait (indication de l'arôme); cornichons à la moutarde; achards (*relish*); lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; sauce à salade | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| I.1 | Gélose de mousse d'Irlande | Mêmes aliments que pour la carraghénine | Mêmes limites de tolérance que pour la carraghénine |
| K.1 | Gomme sterculia (Karaya) | (1) Sauce vinaigrette; lait (indication de l'arôme); cornichons à la moutarde; achards (*relish*); lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait écrémé | (1) Bonnes pratiques industrielles |

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| | | (indication de l'arôme) additionné de solides du lait; lait partiellement écrémé (indication de l'arôme) additionné de solides du lait | |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Margarine réduite en calories | (5) 0,5 % selon les exigences de l'article B.09.017 |
| L.1 | Mono- et diglycérides lactylés | (1) Shortening | (1) 8,0 % (sauf que le total des mono- et des diglycérides et des mono- et diglycérides lactylés, ne doit pas dépasser 20,0 % du shortening) |
| | | (2) Aliments non normalisés | (2) 8,0 % de la teneur en gras |
| L.1A | Esters lactyliques d'acides gras | Aliments non normalisés | Bonnes pratiques industrielles |
| L.2 | Lécithine | (1) Pain; crème; lait (indication de l'arôme); cornichons à la moutarde; achards (*relish*); lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait partiellement écrémé (indication de l'arôme) additionné de solides du lait | (1) Bonnes pratiques industrielles |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 %, seul ou en combinaison avec d'autres agents émulsifiants |
| | | (3) Préparations pour nourrissons | (3) 0,03 % de la préparation pour nourrissons prête à consommer |
| | | (4) Sorbet laitier | (4) 0,75 % |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Margarine | (6) 0,2 % |
| | | (7) Margarine réduite en calories | (7) 0,5 % |
| | | (8) Fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (8) 0,2 % |
| | | (9) Poudre de lait | (9) 0,5 % |
| | | (10) Produits de chocolat; produits du cacao | (10) 1,0 % |
| L.3 | Gomme de caroubier | Mêmes aliments que pour la gomme de caroube | Mêmes limites de tolérance que pour la gomme de caroube. |
| M.1 | Chlorure de magnésium | Tofu | 0,3 %, calculé en sel anhydre |

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| M.2 | Méthylcellulose | (1) Ale; bière; sauce vinaigrette; bière légère; liqueur de malt; porter; sauce à salade; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| M.3 | Cellulose méthyl-éthylique | Aliments non normalisés | Bonnes pratiques industrielles |
| M.4 | Monoglycérides | (1) Pain; crème; pâte de poisson | (1) Bonnes pratiques industrielles |
| | | (2) Produits de chocolat; produits du cacao | (2) 1,5 % |
| | | (3) Mélange pour crème glacée; mélange pour lait glacé | (3) Stabilisants dans la proportion totale de 0,5 %, conformément aux sous-alinéas B.08.061b)(vi) et B.08.071b)(vi) |
| | | (4) Fromage cottage en crème | (4) Bonnes pratiques industrielles |
| | | (5) Préparations pour nourrissons | (5) 0,25 % de la préparation pour nourrissons prête à consommer |
| | | (6) Boyaux de saucisse | (6) 0,35 % du boyau |
| | | (7) Margarine | (7) 0,5 % |
| | | (8) Sorbet laitier | (8) 0,75 % |
| | | (9) Shortening | (9) 10,0 % (sauf que le total des mono et diglycérides et des mono et diglycérides lactylés ne doit pas dépasser 20,0 % du shortening) |
| | | (10) Crème sure | (10) 0,3 % |
| | | (11) Aliments non normalisés | (11) Bonnes pratiques industrielles |
| | | (12) Fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (12) 0,5 % conformément aux exigences des articles B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| M.5 | Mono- et diglycérides | (1) Pain; crème; pâte de poisson | (1) Bonnes pratiques industrielles |
| | | (2) Produits de chocolat; produits du cacao | (2) 1,5 % |
| | | (3) Mélange pour crème glacée; mélange pour lait glacé | (3) Stabilisants dans la proportion totale de 0,5 %, conformément aux sous-alinéas B.08.061b)(vi) et B.08.071b)(vi) |
| | | (4) Fromage cottage; Fromage cottage en crème | (4) Bonnes pratiques industrielles |
| | | (5) Préparations pour nourrissons | (5) 0,25 % de la préparation pour nourrissons prête à consommer |
| | | (6) Boyaux de saucisse | (6) 0,35 % du boyau |
| | | (7) Margarine | (7) 0,5 % |
| | | (8) Sorbet laitier | (8) 0,75 % |
| | | (9) Shortening | (9) 10,0 % (sauf que le total des mono et diglycérides et des mono et diglycérides lactylés ne doit pas dépasser 20,0 % du shortening) |

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| | | (10) Crème sure | (10) 0,3 % |
| | | (11) Aliments non normalisés | (11) Bonnes pratiques industrielles |
| | | (12) Fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (12) 0,5 % conformément aux exigences des articles B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| M.6 | Sels monosodiques de mono- et diglycérides phosphorylés | (1) Émulsions à base d'huiles végétales comestibles servant d'enduits pour batterie de cuisine | (1) 4,0 % |
| O.1 | Gomme d'avoine | (1) Aliments non normalisés | (1) Bonnes pratiques industrielles |
| P.1 | Pectine | (1) Achards (*relish*); confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons à la moutarde; crème; gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; marmelade d'ananas; marmelade d'ananas avec pectine; marmelade de figues; marmelade de figues avec pectine; marmelade de (nom de l'agrume) avec pectine; mincemeat; sauce à salade; sauce vinaigrette | (1) Bonnes pratiques industrielles |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Crème sure | (3) 0,5 % conformément à la disposition B.08.077b)(vii)(A) |
| | | (4) Sorbet laitier | (4) 0,75 % |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| P.1A | Esters polyglycéroliques d'acides gras | (1) Aliments non normalisés | (1) Bonnes pratiques industrielles |
| | | (2) Huiles végétales | (2) 0,025 % |
| | | (3) Margarine réduite en calories | (3) 0,2 % conformément aux exigences de l'alinéa B.09.017c) |
| P.1B | Esters polyglycériques d'acides gras d'huile de ricin transestérifiés | (1) Produits de chocolat | (1) 0,5 % |
| | | (2) Enrobages de confiserie non normalisés à saveur de chocolat | (2) 0,25 % |
| | | (3) Émulsions à base d'huiles végétales comestibles pour enduire les moules à cuisson | (3) 2,0 % |

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| P.2 | Mono-oélate polyoxyéthylénique (20) de sorbitan Polysorbate 80 | (1) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé; sorbet laitier | (1) 0,1 %. Si l'on emploie le tristéarate polyoxyéthylénique (20) de sorbitan, le total ne doit pas dépasser 0,1 % |
| | | (2) Desserts congelés non normalisés | (2) 0,1 % |
| | | (3) Achards (*relish*) et cornichons | (3) 0,05 % |
| | | (4) Bases pour boissons non normalisées; mélanges pour boissons non normalisés | (4) 0,05 % de la boisson. Si l'on emploie aussi le monostéarate de sorbitan, le total ne doit pas dépasser 0,05 % de la boisson |
| | | (5) Mélange imitation de crème en poudre | (5) 0,1 %. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) de sorbitan, le tristéarate polyoxyéthylénique (20) de sorbitan ou le monostéarate de sorbitan, seuls ou mélangés, le total ne doit pas dépasser 0,4 % |
| | | (6) Garnitures fouettées à l'huile végétale | (6) 0,05 %. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) de sorbitan, le tristéarate polyoxyéthylénique (20) de sorbitan ou le monostéarate de sorbitan, seuls ou mélangés, le total ne doit pas dépasser 0,4 % |
| | | (7) Glaces à gâteaux; mélanges pour glaces à gâteaux | (7) 0,5 % de la glace à gâteau finie. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) de sorbitan ou le monostéarate de sorbitan, seuls ou mélangés, le total ne doit pas dépasser 0,5 % de la glace à gâteau finie |
| | | (8) Sel | (8) 10 parties par million |
| | | (9) Crème fouettée | (9) 0,1 % |
| | | (10) Rafraîchisseurs d'haleine | (10) 100 p.p.m. |
| | | (11) Fromage cottage en crème | (11) 80 p.p.m. |
| | | (12) Huiles d'épice et oléorésines d'épice utilisées dans le mélange de salaison pour mariner des viandes de salaison ou des sous-produits de viande de salaison (Titre 14) | (12) 0,2 % de la marinade |
| | | (13) Boyaux de saucisse | (13) 0,15 % de boyau |
| | | (14) Agents aromatisants à saveur de fumée | (14) Bonnes pratiques industrielles. Les résidus de polysorbate 80 ne doivent pas dépasser 275 p.p.m. dans le produit fini. |
| | | (15) Huiles végétales | (15) 0,125 % |
| | | (16) Préparations de rocou | (16) 25 % de la préparation colorante totale |
| | | (17) Préparations de curcuma | (17) 50 % de la préparation colorante totale |
| | | (18) Arômes de fumée liquide concentrés | (18) Bonne pratiques industrielles. Les résidus de polysorbate 80 ne peuvent dépasser 0,3 % dans le produit fini. |
| | | (19) Sauces à salade non normalisées | (19) 0,25 % |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| P.3 | Monostéarate polyoxyéthylénique (20) de sorbitan Polysorbate 60 | (1) Mélange imitation de crème en poudre; agents de crémage à l'huile végétale; garnitures fouettées à l'huile végétale; mélange pour garnitures à l'huile végétale | (1) 0,4 %. Si l'on emploie aussi le tristéarate polyoxyéthylénique (20) de sorbitan, le monostéarate de sorbitan, ou le mono-oléate polyoxyéthylénique (20) de sorbitan, soit séparément, soit ensemble, le total ne doit pas dépasser 0,4 %, sauf que, dans les garnitures fouettées renfermant de l'huile végétale, on peut employer une combinaison de polysorbate (60) et de monostéarate de sorbitan de plus de 0,4 %, si la proportion de polysorbate (60) ne dépasse pas 0,77 % et celle du monostéarate de sorbitan ne dépasse pas 0,27 % de la garniture fouettée renfermant de l'huile végétale |
| | | (2) Gâteaux | (2) 0,5 % du poids à l'état sec. Si l'on emploie aussi le tristéarate polyoxyéthylénique (20) de sorbitan, le total ne doit pas dépasser 0,5 % du poids sec |
| | | (3) Gâteaux; mélanges à gâteaux | (3) 0,5 % du poids à l'état sec. Si l'on emploie aussi le monostéarate de sorbitan, le total ne doit pas dépasser 0,7 % du poids à l'état sec |
| | | (4) Enrobages de confiserie non normalisés et produits de confiserie moulés non normalisés utilisés comme confiserie ou pour la cuisson | (4) 0,5 %. Si l'on emploie aussi un mélange de l'un quelconque des ingrédients suivants : tristéarate polyoxyéthymique [polyoxyéthylénique] (20) de sorbitan, monostéarate de sorbitan ou tristéarate de sorbitan, le total ne doit pas dépasser 1,0 % |
| | | (5) Glaces à gâteaux; mélange pour glaces à gâteaux | (5) 0,5 % de la glace à gâteau finie. Si l'on emploie aussi le monostéarate de sorbitan ou le mono-oléate polyoxyéthylénique (20) de sorbitan, seuls ou mélangés, le total ne doit pas dépasser 0,5 % de la glace à gâteau finie |
| | | (6) Garnitures à tarte; poudings | (6) 0,5 % du poids à l'état sec |
| | | (7) Bases pour boissons non normalisées; mélanges pour boissons non normalisés | (7) 0,05 % de la boisson. Si l'on emploie aussi le monostéarate de sorbitan, le total ne doit pas dépasser 0,05 % de la boisson |
| | | (8) Substitut de crème sure (aigre) | (8) 0,1 % |
| | | (9) Sauces cuisinées, non normalisées, en conserve; sauces d'assaisonnement non normalisées | (9) 0,3 % |
| | | (10) Base de matière grasse pour l'auto-arrosage de la volaille par injection | (10) 0,25 % |
| | | (11) Tartinades à sandwich non normalisées; trempettes non normalisées | (11) 0,2 % |
| | | (12) Bases ou mélanges secs pour soupes | (12) 250 p.p.m. dans la soupe prête à consommer |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (13) Mélange sec de pâte à frire d'enrobage | (13) 0,5 % du mélange sec |
| | | (14) Cocktails alcoolisés préparés | (14) 120 p.p.m. dans la boisson prête à consommer |
| P.4 | Polyoxyéthylène (20) Tristéarate de sorbitan; Polysorbate 65 | (1) Lait (indication de l'arôme); lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait partiellement écrémé (indication de l'arôme) additionné de solides du lait | (1) 0,5 % |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé; sorbet laitier | (2) 0,1 %. Si l'on emploie aussi le mono-oléate polyoxyéthylénique (20) de sorbitan, le total ne doit pas dépasser 0,1 % |
| | | (3) Desserts congelés non normalisés | (3) 0,1 % |
| | | (4) Gâteaux | (4) 0,3 % du poids à l'état sec. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) de sorbitan, le total ne doit pas dépasser 0,5 % du poids sec |
| | | (5) Enrobages de confiserie non normalisés | (5) 0,5 %. Si l'on emploie aussi un mélange de l'un quelconque des ingrédients suivants : monostéarate polyoxyéthylénique (20) de sorbitan, monostéarate de sorbitan ou tristéarate de sorbitan, le total ne doit pas dépasser 1,0 % |
| | | (6) Bases pour boissons non normalisées; mélanges pour boissons non normalisés | (6) 0,05 % de la boisson. Si l'on emploie aussi le monostéarate de sorbitan, le total ne doit pas dépasser 0,05 % de la boisson |
| | | (7) Mélange imitation de crème en poudre; agents de crémage à l'huile végétale; garnitures fouettées à l'huile végétale; mélange pour garniture à l'huile végétale | (7) 0,4 %. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) de sorbitan, le monostéarate de sorbitan ou le mono-oléate polyoxyéthylénique (20) de sorbitan, seuls ou mélangés, le total ne doit pas dépasser 0,4 % |
| | | (8) Rafraîchisseurs d'haleine | (8) 200 p.p.m. |
| P.5 | Stéarate polyoxyéthylénique (8) | Produits de boulangerie non normalisés | 0,4 % |
| P.6 | Alginate de potassium | Mêmes aliments que pour l'algine | Mêmes limites de tolérance que pour l'algine |
| P.7 | Carragénine potassique | Mêmes aliments que pour la carraghénine | Mêmes limites de tolérance que pour la carraghénine |
| P.8 | Chlorure de potassium | Aliments non normalisés | Bonnes pratiques industrielles |
| P.9 | Citrate de potassium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage | (1) 4,0 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | |
| P.10 | Furcelleran de potassium | Mêmes aliments que pour le furcelleran | Mêmes limites de tolérance que pour le furcelleran |
| P.11 | Phosphate dipotassique | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| P.12 | Alginate de propylèneglycol | (1) Ale; bière; sauce vinaigrette; bière légère; liqueur de malt; cornichons à la moutarde; porter; fromage fondu; fromage à la crème fondu; achards (*relish*); sauce à salade; stout | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; | (2) 0,5 % |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Margarine réduite en calories | (5) 0,5 % selon les exigences de l'article B.09.017 |
| | | (6) Crème sure | (6) 0,5 % selon les exigences de la disposition B.08.077b)(vii)(A) |
| | | (7) Asperges et conserve; haricots jaunes en conserve; haricots verts en conserve; pois en conserve | (7) 1,0 % selon les exigences de la disposition B.11.002d)(viii)(C) |
| | | (8) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (8) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |
| P.13 | Ether propylèneglycolique de méthylcellulose | Mêmes aliments que l'hydroxypropyl méthylcellulose | Mêmes limites de tolérance que pour l'hydroxypropyl méthylcellulose |
| P.14 | Esters monoacides gras de propylèneglycol | (1) Mélange pour crème glacée | (1) 0,35 % de la crème glacée faite du mélange |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| S.1 | Pyrophosphate acide de sodium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner avec (indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| S.2 | Alginate de sodium | (1) Mêmes aliments que pour l'algine | (1) Mêmes limites de tolérance que pour l'algine |
| | | (2) Gros cristaux de sel | (2) 15 p.p.m. |
| | | (3) Lustre de poisson congelé | (3) Bonnes pratiques industrielles |
| S.2A | Phosphate double d'aluminium et de sodium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner avec (indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| S.3 | Carboxyméthylcellulose sodique | (1) Achards (*relish*); cornichons à la moutarde; crème; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait; sauce à salade; sauce vinaigrette | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Lustre de poisson congelé | (5) Bonnes pratiques industrielles |
| | | (6) Fromage (indication de la variété) fondu; fromage (indication de la variété) fondu (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés) | (6) 0,5 % |
| | | (7) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec | (7) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |
| S.4 | Carraghénine sodique | Mêmes aliments que pour la carraghénine | Mêmes limites de tolérance que pour la carraghénine |
| S.5 | Glycolate sodique de cellulose | Mêmes aliments que pour la carboxyméthylcellulose sodique | Mêmes limites de tolérance que pour la carboxyméthylcellulose sodique |
| S.6 | Citrate de sodium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 4,0 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (2) Lait évaporé; lait écrémé évaporé ou lait écrémé concentré; lait évaporé partiellement écrémé ou lait concentré partiellement écrémé | (2) 0,1 % seul ou associé à du phosphate disodique |
| | | (3) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (3) 0,5 % |
| | | (4) Sorbet laitier | (4) 0,75 % |
| S.7 | Furcelleran sodique | Mêmes aliments que pour le furcelleran | Mêmes limites de tolérance que pour le furcelleran |
| S.8 | Gluconate de sodium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 4,0 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| S.9 | Hexamétaphosphate de sodium | (1) Cornichons à la moutarde; achards (*relish*); | (1) Bonnes pratiques industrielles |
| | | (2) Crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Préparations pour nourrissons | (3) 0,05 % de la préparation pour nourrissons prête à consommer |
| | | (4) Sorbet laitier | (4) 0,75 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (6) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (7) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (7) 0,1 % |
| S.11 | Phosphate disodique | (1) Achards (*relish*); cornichons à la moutarde; lait écrémé (indication de l'arôme); lait écrémé (indication de l'arôme) additionné de solides du lait; lait (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme) additionné de solides du lait | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème | (2) 0,5 % |
| | | (3) Lait évaporé; lait écrémé évaporé ou lait écrémé concentré; lait évaporé partiellement écrémé ou lait concentré partiellement écrémé | (3) 0,1 % seul ou associé à du citrate de sodium |
| | | (4) Crème sure | (4) 0,05 % selon les exigences de la disposition B.08.077b)(vii)(C) |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (6) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| S.12 | Phosphate monosodique | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.13 | Phosphate trisodique | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.14 | Tartrate double de potassium et de sodium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 4,0 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.15 | Pyrophosphate tétrasodique | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 3,5 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (3) 0,1 % |
| S.15A | Stéaroyl-2-lactylate de sodium | (1) Glaces et mélanges à glaces | (1) 0,4 % du poids des ingrédients secs |
| | | (2) Garnitures et mélanges pour garnitures | (2) 0,5 % du poids des ingrédients secs |
| | | (3) Poudings et mélanges à poudings | (3) 0,2 % du produit fini |
| | | (4) Substituts de crème sure (aigre) | (4) 1,0 % du poids des ingrédients secs |
| | | (5) Agents de crémage à l'huile végétale | (5) 2,0 % du poids des ingrédients secs |
| | | (6) Mélange de pâte à frire | (6) 0,75 % du poids des ingrédients secs |
| | | (7) Spiritueux à base de crème non normalisés | (7) 0,35 % dans le produit fini |
| | | (8) Sauce à salade; sauce vinaigrette | (8) 0,4 % du produit fini |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (9) Soupes | (9) 0,2 % du produit fini |
| S.16 | Tartrate de sodium | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (1) 4,0 %, conformément aux exigences des articles B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3 et B.08.041.4 |
| S.16A | Tripolyphosphate de sodium | Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | 0,1 % |
| S.18 | Monostéarate de sorbitan | (1) Mélange imitation de crème en poudre; agents de crémage à l'huile végétale; garnitures fouettées à l'huile végétale; mélange pour garnitures à l'huile végétale | (1) 0,4 %. Si l'on emploie aussi le tristéarate polyoxyéthylénique (20) de sorbitan, le polysorbate (60) ou le mono-oléate polyoxyéthylénique (20) de sorbitan, soit séparément, soit ensemble, le total ne doit pas dépasser 0,4 %, sauf que, dans les garnitures fouettées renfermant de l'huile végétale, on peut employer une combinaison de monostéarate de sorbitan et de polysorbate (60) de plus de 0,4 %, si la proportion de monostéarate de sorbitan ne dépasse pas 0,27 % et celle du polysorbate (60) ne dépasse pas 0,77 % du poids de la garniture fouettée renfermant de l'huile végétale |
| | | (2) Gâteaux; mélanges à gâteaux | (2) 0,6 % du poids à l'état sec. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) de sorbitan le total ne doit pas dépasser 0,7 % du poids à l'état sec |
| | | (3) Enrobages de confiserie non normalisés et produits de confiserie moulés non normalisés utilisés comme confiserie ou pour la cuisson | (3) 1,0 %. Si l'on emploie aussi un mélange de l'un quelconque des ingrédients suivants : monostéarate polyoxyéthylénique (20) de sorbitan, tristéarate polyoxyéthylénique (20) de sorbitan ou tristéarate de sorbitan, le total ne doit pas dépasser 1,0 % |
| | | (4) Glaces à gâteaux; mélanges pour glaces à gâteaux | (4) 0,5 % de la glace à gâteau finie. Si l'on emploie aussi le mono-oléate polyoxyéthylénique (20) de sorbitan ou le monostéarate polyoxyéthylénique (20) de sorbitan, seuls ou mélangés, le total ne doit pas dépasser 0,5 % de la glace à gâteau finie |
| | | (5) Bases pour boissons non normalisées; mélanges pour boissons non normalisés | (5) 0,05 % de la boisson. Si l'on emploie aussi le mono-oléate polyoxyéthylénique (20) de sorbitan, le total ne doit pas dépasser 0,05 % de la boisson. Si l'on emploie aussi le monostéarate polyoxyéthylénique (20) |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| | | | de sorbitan, le total ne doit pas dépasser 0,05 % de la boisson. Si l'on emploie aussi le tristéarate polyoxyéthylénique (20) de sorbitan, le total ne doit pas dépasser 0,05 % de la boisson |
| | | (6) Bases ou mélanges secs pour soupes | (6) 250 p.p.m. dans la soupe prête à consommer |
| | | (7) Levure sèche | (7) 1,5 % (les résidus de monostéarate de sorbitan dans le pain et les autres produits de boulangerie au levain ne doivent pas dépasser 0,05 %). |
| | | (8) Produits de chocolat | (8) 1,0 % |
| | | (9) Poudings | (9) 0,5 % |
| S.18A | Trioléate de sorbitan | Boyaux de saucisse | 0,35 % de boyau |
| S.18B | Tristéarate de sorbitan | (1) Margarine; shortening | (1) 1 % |
| | | (2) Enrobages de confiserie non normalisés et produits de confiserie moulés non normalisés utilisés comme confiserie ou pour la cuisson | (2) 1 %, si l'on emploie aussi un mélange de n'importe quel des ingrédients suivants : monostéarate polyoxyéthylénique (20) de sorbitan, tristéarate polyoxyéthylénique (20) de sorbitan ou monostéarate de sorbitan, le total ne doit pas dépasser 1 % |
| | | (3) Mélange pour crème glacée | (3) 0,035 % de la crème glacée faite du mélange |
| | | (4) Desserts congelés non normalisés | (4) 0,035 % |
| S.19 | Monoglycéryl- citrate de stéaryle | Shortening | Bonnes pratiques industrielles |
| S.20 | Esters saccharosiques d'acides gras | (1) Préparations colorantes de caroténoïdes | (1) 1,5 % |
| | | (2) Confiseries non normalisées; enrobages de confiserie non normalisés | (2) 0,5 % |
| T.2 | [Abrogé, DORS/2006-91, art. 5] | | |
| T.3 | Gomme adragante | (1) Sauce vinaigrette; cornichons à la moutarde; sauce à salade; achards (*relish*) | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème; crème glacée; mélange pour crème glacée; lait glacé; mélange pour lait glacé | (2) 0,5 % |
| | | (3) Sorbet laitier | (3) 0,75 % |
| | | (4) Caviar de lump | (4) 1,0 % |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Margarine réduite en calories | (6) 0,5 % selon les exigences de l'article B.09.017 |
| | | (7) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des | (7) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | |
| | | (8) Poisson et viande préparés déchiquetés, sauf le caviar de lompe; poisson de salaison et chair de poisson de salaison déchiquetés (Titre 21) | (8) 0,75 % |
| X.1 | Gomme xanthane | (1) Sauce vinaigrette; sauce à salade; aliments non normalisés | (1) Bonnes pratiques industrielles |
| | | (2) Fromage cottage; fromage cottage en crème | (2) 0,5 %. Si l'on emploie aussi d'autres stabilisants, le total ne doit pas dépasser 0,5 % |
| | | (3) Margarine réduite en calories | (3) 0,5 % selon les exigences de l'article B.09.017 |
| | | (4) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage (indication de la variété) conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (4) 0,5 %, conformément aux exigences des articles B.08.035, B.08.037, B.08.038, B.08.039, B.08.041.3, B.08.041.4, B.08.041.6, B.08.041.7 et B.08.041.8 |
| | | (5) Cornichons à la moutarde; achards (*relish*) | (5) 0,1 % |
| | | (6) Mélange pour crème glacée | (6) 0,1 %. Si l'on emploie aussi de la cellulose mycrocristalline et d'autres stabilisants, le total ne doit pas dépasser 0,5 % |
| | | (7) Mélange pour lait glacé | (7) 0,1 %. Si l'on emploi aussi d'autres stabilisants, le total ne doit pas dépasser 0,5 % |
| | | (8) Sorbet laitier | (8) 0,1 %. Si l'on emploie aussi d'autres stabilisants, le total ne doit pas dépasser 0,75 % |
| | | (9) Crème à fouetter thermisée à une chaleur supérieure à 100 °C | (9) 0,02 % |

SOR/78-403, ss. 5(F) to 13(F), 14 to 16, 17(F) to 21(F), 22; SOR/78-656, ss. 14, 15; SOR/78-876, s. 2; SOR/79-660, ss. 5 to 10; SOR/79-752, s. 6; SOR/80-501, s. 4; SOR/81-60, ss. 7 to 10; SOR/81-565, ss. 4, 5; SOR/81-934, ss. 2 to 6; SOR/82-383, s. 9; SOR/82-1071, ss. 9 to 16; SOR/83-932, ss. 3, 4; SOR/84-300, s. 50(E); SOR/84-602, s. 2; SOR/84-801, s. 3; SOR/85-179, ss. 2 to 4; SOR/85-623, s. 3(E); SOR/88-99, s. 3; SOR/88-419, ss. 2, 3; SOR/90-87, s. 9; SOR/91-710, s. 1; SOR/92-64, s. 1; SOR/92-93, s. 2; SOR/92-344, s. 1; SOR/93-466, ss. 3, 4; SOR/94-38, s. 2; SOR/94-567, s. 2; SOR/94-689, s. 2(F); SOR/96-160, s. 2; SOR/96-376, s. 1; SOR/96-497, s. 1; SOR/96-499, s. 1; SOR/97-29, s. 1; SOR/97-263, ss. 4 to 10; SOR/98-580, s. 1(F); SOR/2000-353, s. 7(F); SOR/2005-316, s. 1; SOR/2005-395, ss. 1 to 4, 5(F); SOR/2006-91, ss. 4, 5; SOR/2007-75, ss. 4 to 6; SOR/2007-76, ss. 1, 2; SOR/2010-41, s. 9(E); SOR/2010-94, ss. 8(E), 9(E); SOR/2010-142, ss. 9, 10(F), 11 to 13, 14(F), 15(F), 16; SOR/2011-235, ss. 3 to 6, 16(F); SOR/2011-278, ss. 11, 12(E); SOR/2012-43, ss. 21 to 25, 26(F), 27, 28; SOR/2012-104, ss. 3, 4(F), 5 to 9, 20(F); SOR/2012-106, s. 1.

DORS/78-403, art. 5(F) à 13(F), 14 à 16, 17(F) à 21(F) et 22; DORS/78-656, art. 14 et 15; DORS/78-876, art. 2; DORS/79-660, art. 5 à 10; DORS/79-752, art. 6; DORS/80-501, art. 4; DORS/81-60, art. 7 à 10; DORS/81-565, art. 4 et 5; DORS/81-934, art. 2 à 6; DORS/82-383, art. 9; DORS/82-1071, art. 9 à 16; DORS/83-932, art. 3 et 4; DORS/84-300, art. 50(A); DORS/84-602, art. 2; DORS/84-801, art. 3; DORS/85-179, art. 2 à 4; DORS/85-623, art. 3(A); DORS/88-99, art. 3; DORS/88-419, art. 2 et 3; DORS/90-87, art. 9; DORS/91-710, art. 1; DORS/92-64, art. 1; DORS/92-93, art. 2; DORS/92-344, art. 1; DORS/93-466, art. 3 et 4; DORS/94-38, art. 2; DORS/94-567, art. 2; DORS/94-689, art. 2(F); DORS/96-160, art. 2; DORS/96-376, art. 1; DORS/96-497, art. 1; DORS/96-499, art. 1; DORS/97-29, art. 1; DORS/97-263, art. 4 à 10; DORS/98-580, art. 1(F); DORS/2000-353, art. 7(F); DORS/2005-316, art. 1; DORS/2005-395, art. 1(F), 2 à 4 et 5(F); DORS/2006-91, art. 4 et 5; DORS/2007-75, art. 4 à 6; DORS/2007-76, art. 1 et 2; DORS/2010-41, art. 9(A); DORS/2010-94, art. 8(A) et 9(A); DORS/2010-142, art. 9, 10(F), 11 à 13, 14(F), 15(F) et 16; DORS/2011-235, art. 3 à 6 et 16(F); DORS/2011-278, art. 11 et 12(A); DORS/2012-43, art.

21 à 25, 26(F), 27 et 28; DORS/2012-104, art. 3, 4(F), 5 à 9 et 20(F); DORS/2012-106, art. 1.

## TABLE V

### Food Additives That May Be Used as Food Enzymes

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| A.01 | α-Acetolactate decarboxylase | *Bacillus subtilis* ToC46 (pUW235) | (1) Brewers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| A.02 | Aminopeptidase | *Lactococcus lactis* | (1) Cheddar cheese; (naming the variety) Cheese | (1) Good Manufacturing Practice |
| | | | (2) Dairy based flavouring preparations | (2) Good Manufacturing Practice |
| | | | (3) Hydrolyzed animal, milk and vegetable protein | (3) Good Manufacturing Practice |
| A.1 | Amylase | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Bacillus subtilis* var.; *Rhizopus oryzae* var.; Barley Malt | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Bread; Flour; Whole wheat flour | (2) Good Manufacturing Practice |
| | | | (3) Cider; Wine | (3) Good Manufacturing Practice |
| | | | (4) Chocolate syrups | (4) Good Manufacturing Practice |
| | | | (5) Distillers' Mash | (5) Good Manufacturing Practice |
| | | | (6) Malt-flavoured dried breakfast cereals | (6) Good Manufacturing Practice |
| | | | (7) Single-strength fruit juices | (7) Good Manufacturing Practice |
| | | | (8) Pre-cooked (instant) breakfast cereals | (8) Good Manufacturing Practice |
| | | | (9) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup) or glucose solids (dried glucose syrup) | (9) Good Manufacturing Practice |
| | | | (10) Unstandardized bakery products | (10) Good Manufacturing Practice |
| | | | (11) Plant-based beverages | (11) Good Manufacturing Practice |
| | | | (12) Infant cereal products | (12) Good Manufacturing Practice |
| | | *Aspergillus niger* STz18-9 (pHUda7) | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Starch used in the production of dextrins, dextrose, glucose (glucose syrup) or glucose solids | (3) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | | (dried glucose syrup), maltose | |
| | | *Bacillus amyloliquefaciens* EBA 20 (pUBH2); *Bacillus licheniformis*; *Bacillus licheniformis* BML 592 (pAmyAmp); *Bacillus licheniformis* BML 730 (pAmyAmp); *Bacillus licheniformis* LA 57 (pDN1981); *Bacillus licheniformis* LAT8 (pLAT3); *Bacillus licheniformis* LiH 1159 (pLiH1108); *Bacillus licheniformis* LiH 1464 (pLiH1346); *Bacillus licheniformis* PL 1303 (pPL1117); *Bacillus licheniformis* MOL2083 (pCA164-LE399) | (1) Distillers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup) or glucose solids (dried glucose syrup) | (2) Good Manufacturing Practice |
| | | | (3) Brewers' mash | (3) Good Manufacturing Practice |
| | | *Bacillus licheniformis* 3253 (plCatH-3253); *Bacillus licheniformis* 3266 (plCatH-3266ori1); *Bacillus stearothermophilus*; *Bacillus subtilis* B1.109 (pCPC800) | (1) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup) or glucose solids (dried glucose syrup) | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Brewers' Mash | (3) Good Manufacturing Practice |
| | | | (4) Bread; Flour; Whole wheat flour | (4) Good Manufacturing Practice |
| | | | (5) Unstandardized bakery products | (5) Good Manufacturing Practice |
| | | *Bacillus subtilis* B1.109 (pCPC720) (ATCC 39, 705) | (1) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup) or glucose solids (dried glucose syrup) | (1) Good Manufacturing Practice |
| A.2 | Amylase (maltogenic) | *Bacillus subtilis* BRG-1 (pBRG1); *Bacillus subtilis* DN1413 (pDN1413); *Bacillus subtilis* LFA 63 (pLFA63); *Bacillus subtilis* RB-147 (pRB147) | (1) Starch used in the production of dextrins, maltose, dextrose, glucose, (glucose syrup) or glucose solids (dried glucose syrup) | (1) Good manufacturing practice |
| | | | (2) Bread; Flour; Whole wheat flour | (2) Good manufacturing practice |
| | | | (3) Unstandardized bakery products | (3) Good manufacturing practice |
| A.3 | Asparaginase | *Aspergillus niger* ASP72; *Aspergillus oryzae* (pCaHj621/BECh2#10) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| B.1 | Bovine Rennet | Aqueous extracts from the fourth stomach of adult | Cheddar cheese; Cottage cheese; Cream cheese; | Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | bovine animals, sheep and goats | Cream cheese spread; Cream cheese spread with (naming the added ingredients); Cream cheese with (naming the added ingredients); (naming the variety) Cheese | |
| B.2 | Bromelain | The pineapples *Ananas comosus* and *Ananas bracteatus* | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Bread; Flour; Whole wheat flour | (2) Good Manufacturing Practice |
| | | | (3) Sausage casings | (3) Good Manufacturing Practice |
| | | | (4) Hydrolyzed animal, milk and vegetable protein | (4) Good Manufacturing Practice |
| | | | (5) Meat cuts | (5) Good Manufacturing Practice |
| | | | (6) Meat tenderizing preparations | (6) Good Manufacturing Practice |
| | | | (7) Pumping pickle for the curing of beef cuts | (7) Good Manufacturing Practice in accordance with paragraph B.14.009(g) |
| | | | (8) Sugar wafers, waffles, pancakes | (8) Good Manufacturing Practice |
| C.1 | Catalase | *Aspergillus niger* var.; *Micrococcus lysodeikticus*; Bovine (*Bos taurus*) liver | (1) Soft drinks | (1) Good Manufacturing Practice |
| | | | (2) Liquid egg-white (liquid albumen), liquid whole egg or liquid yolk, destined for drying | (2) Good Manufacturing Practice |
| | | | (3) Liquid whey treated with hydrogen peroxide in accordance with item H.1, Table VIII | (3) Good Manufacturing Practice |
| C.2 | Cellulase | *Aspergillus niger* var. | (1) Distillers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Liquid coffee concentrate | (2) Good Manufacturing Practice |
| | | | (3) Spice extracts; Natural flavour and colour extractives | (3) Good Manufacturing Practice |
| | | *Trichoderma reesei* QM 9414 | (1) Single-strength fruit juices | (1) Good Manufacturing Practice |
| | | | (2) Tea leaves for the production of tea solids | (2) Good Manufacturing Practice |
| C.3 | Chymosin | | | |
| | (i) Chymosin A | *Escherichia coli* K-12, GE81 (pPFZ87A) | (1) Cheddar cheese; (naming the variety) cheese; Cottage cheese; Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | | cheese spread with (naming the added ingredients); Sour cream | |
| | | | (2) Unstandardized milk-based dessert preparations | (2) Good Manufacturing Practice |
| | (ii) Chymosin B | *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR); *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105) | (1) Cheddar cheese; (naming the variety) cheese; Cottage cheese; Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Sour cream | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized milk-based dessert preparations | (2) Good Manufacturing Practice |
| F.1 | Ficin | Latex of fig tree (*Ficus* sp.) | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Sausage casings | (2) Good Manufacturing Practice |
| | | | (3) Hydrolyzed animal, milk and vegetable protein | (3) Good Manufacturing Practice |
| | | | (4) Meat cuts | (4) Good Manufacturing Practice |
| | | | (5) Meat tenderizing preparations | (5) Good Manufacturing Practice |
| | | | (6) Pumping pickle for the curing of beef cuts | (6) Good Manufacturing Practice in accordance with paragraph B.14.009(g) |
| G.1 | Glucoamylase (Amyloglucosidase; Maltase) | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Rhizopus oryzae* var. | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Bread; Flour; Whole wheat flour | (2) Good Manufacturing Practice |
| | | | (3) Chocolate syrups | (3) Good Manufacturing Practice |
| | | | (4) Distillers' Mash | (4) Good Manufacturing Practice |
| | | | (5) Pre-cooked (instant) breakfast cereals | (5) Good Manufacturing Practice |
| | | | (6) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup), or glucose solids (dried glucose syrup) | (6) Good Manufacturing Practice |
| | | | (7) Unstandardized bakery products | (7) Good Manufacturing Practice |
| | | *Aspergillus niger* STz18-9 (pHUda7) | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | | (3) Starch used in the production of dextrins, dextrose, glucose (glucose syrup) or glucose solids (dried glucose syrup), maltose | (3) Good Manufacturing Practice |
| | | *Rhizopus niveus* var. | (1) Distillers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Mash destined for vinegar manufacture | (2) Good Manufacturing Practice |
| | | *Rhizopus delemar* var.; *Multiplici sporus* | (1) Brewers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Mash destined for vinegar manufacture | (3) Good Manufacturing Practice |
| | | | (4) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup), or glucose solids (dried glucose syrup) | (4) Good Manufacturing Practice |
| G.2 | Glucanase | *Aspergillus niger* var.; *Bacillus subtilis* var. | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Corn for degermination | (2) Good Manufacturing Practice |
| | | | (3) Distillers' Mash | (3) Good Manufacturing Practice |
| | | | (4) Mash destined for vinegar manufacture | (4) Good Manufacturing Practice |
| | | | (5) Unstandardized bakery products | (5) Good Manufacturing Practice |
| | | *Humicola insolens* var. | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| G.3 | Glucose oxidase | *Aspergillus niger* var.; *Aspergillus oryzae* Mtl-72 (pHUda107) | (1) Soft drinks | (1) Good Manufacturing Practice |
| | | | (2) Liquid egg-white (liquid albumen), liquid whole egg or liquid yolk, destined for drying | (2) Good Manufacturing Practice in accordance with paragraphs B.22.034(b), B.22.035(b) and B.22.036(b) |
| | | | (3) Bread; flour; Whole wheat flour | (3) Good manufacturing practice |
| | | | (4) Unstandardized bakery products | (4) Good manufacturing practice |
| G.4 | Glucose Isomerase | *Bacillus coagulans* var.; *Streptomyces olivochromogenes* var.; *Actinoplanes missouriensis* var.; *Streptomyces olivaceus* var.; *Microbacterium arborescens* NRRL B-11022; *Streptomyces murinus* DSM | (1) Glucose (glucose syrup) to be partially or completely isomerized to fructose | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | 3252; *Streptomyces rubiginosus* ATCC No. 21,175; *Streptomyces rubiginosus* SYC 5406 (pSYC5239) | | |
| H.1 | Hemicellulase | *Bacillus subtilis* var. | (1) Distillers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Liquid coffee concentrate | (2) Good Manufacturing Practice |
| | | | (3) Mash destined for vinegar manufacture | (3) Good Manufacturing Practice |
| I.01 | Inulinase | *Aspergillus niger var. Tieghem* | Inulin | Good Manufacturing Practice |
| I.1 | Invertase | *Aspergillus japonicus* | Sucrose used in the production of fructooligosaccharides | Good Manufacturing Practice |
| | | *Saccharomyces* sp. | (1) Unstandardized soft-centred and liquid-centred confectionery | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| L.1 | Lactase | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Kluyveromyces fragilis* (*Kluyveromyces marxianus* var. *marxianus*); *Kluyveromyces lactis* (*Kluyveromyces marxianus* var. *lactis*); *Saccharomyces* sp. | (1) Lactose-reducing enzyme preparations | (1) Good Manufacturing Practice |
| | | | (2) Milk destined for use in ice cream mix | (2) Good Manufacturing Practice |
| | | | (3) Bread; Flour; whole wheat flour | (3) Good Manufacturing Practice |
| | | | (4) (naming the flavour) milk; (naming the flavour) skim milk; (naming the flavour) partly skimmed milk; (naming the flavour) malted milk; (naming the flavour) skimmed milk with added milk solids; (naming the flavour) partly skimmed milk with added milk solids | (4) Good Manufacturing Practice |
| | | Cell-free extracts from *Candida pseudotropicalis* | (1) Milk destined for use in ice cream mix | (1) Good Manufacturing Practice |
| | | | (2) Yogurt | (2) Good Manufacturing Practice |
| | | | (3) Whey | (3) Good Manufacturing Practice |
| | | | (4) (naming the flavour) milk; (naming the flavour) skim milk; (naming the flavour) partly skimmed milk; (naming the flavour) malted milk; (naming the flavour) skim milk with added milk solids; (naming the flavour) partly skimmed milk with added milk solids | (4) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| L.2 | Lipase | Animal pancreatic tissue; *Aspergillus niger* var.; *Aspergillus oryzae* var.; Edible forestomach tissue of calves, kids or lambs; *Rhizopus oryzae* var. | (1) Dairy based flavouring preparations | (1) Good Manufacturing Practice |
| | | | (2) Dried egg-white (dried albumen); Liquid egg-white ( liquid albumen) | (2) Good Manufacturing Practice |
| | | | (3) Cheddar cheese; (naming the variety) Cheese; Processed cheddar cheese | (3) Good Manufacturing Practice |
| | | | (4) Bread; Flour; Whole wheat flour | (4) Good Manufacturing Practice |
| | | | (5) Unstandardized bakery products | (5) Good Manufacturing Practice |
| | | | (6) Hydrolyzed animal, milk and vegetable protein | (6) Good Manufacturing Practice |
| | | *Aspergillus oryzae* (MLT-2) (pRML 787) (p3SR2); *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (*Cooney and Emerson*)); *Rhizopus niveus* | (1) Modified fats and oils | (1) Good Manufacturing Practice |
| | | | (2) Cheddar cheese; (naming the variety) Cheese | (2) Good Manufacturing Practice |
| | | | (3) Dairy based flavouring preparations | (3) Good Manufacturing Practice |
| | | | (4) Hydrolyzed animal, milk and vegetable protein | (4) Good Manufacturing Practice |
| | | *Aspergillus oryzae* AI-11 (pBoel 960) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| | | | (3) Modified fats and oils | (3) Good Manufacturing Practice |
| | | *Aspergillus oryzae* BECh2#3 (pCaHj559); *Aspergillus oryzae* (MStr115) (pMStr20) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| | | | (3) Modified lecithin | (3) Good Manufacturing Practice |
| | | | (4) Unstandardized egg products | (4) Good Manufacturing Practice |
| | | *Aspergillus niger* (pCaHj600/MBin118#11) | Modified fats and oils | Good Manufacturing Practice |
| | | *Penicillium camembertii* | (1) Edible fats and oils | (1) Good Manufacturing Practice |
| L.3 | Lipoxidase | Soyabean whey or meal | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| L.4 | Lysozyme | Egg-white | Cheddar cheese; (naming the variety) Cheese | Good Manufacturing Practice |
| M.1 | Milk coagulating enzyme | *Rhizomucor miehei* (Cooney and Emerson) (previous name: *Mucor miehei* (Cooney and Emerson)) or *Mucor pusillus Lindt* by pure culture fermentation process | (1) Cheddar cheese; Cottage cheese; (naming the variety) Cheese; Sour cream | (1) Good Manufacturing Practice |
| | | | (2) Dairy based flavouring preparations | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | or *Aspergillus oryzae* RET-1 (pBoel777) | (3) Hydrolyzed animal, milk and vegetable protein | (3) Good Manufacturing Practice |
| | | *Endothia parasitica* by pure culture fermentation processes | (1) Emmentaler (Emmental, Swiss) Cheese | (1) Good Manufacturing Practice |
| | | | (2) Parmesan Cheese | (2) Good Manufacturing Practice |
| | | | (3) Romano Cheese | (3) Good Manufacturing Practice |
| | | | (4) Mozzarella (Scamorza) Cheese | (4) Good Manufacturing Practice |
| | | | (5) Part Skim Mozzarella (Part Skim Scamorza) Cheese | (5) Good Manufacturing Practice |
| P.1 | Pancreatin | Pancreas of the hog (*Sus scrofa*) or ox (*Bos taurus*) | (1) Dried egg-white (dried albumen); Liquid egg-white (liquid albumen) | (1) Good Manufacturing Practice |
| | | | (2) Pre-cooked (instant) breakfast cereals | (2) Good Manufacturing Practice |
| | | | (3) Starch used in the production of dextrins, maltose, dextrose, glucose (glucose syrup), or glucose solids (dried glucose syrup) | (3) Good Manufacturing Practice |
| | | | (4) Hydrolyzed animal, milk and vegetable proteins | (4) Good Manufacturing Practice |
| P.2 | Papain | Fruit of the papaya *Carica papaya* L. (Fam. *Caricaceae*) | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Beef before slaughter | (2) Good Manufacturing Practice |
| | | | (3) Sausage casings; Water-soluble edible collagen films | (3) Good Manufacturing Practice |
| | | | (4) Hydrolyzed animal, milk and vegetable protein | (4) Good Manufacturing Practice |
| | | | (5) Meat cuts | (5) Good Manufacturing Practice |
| | | | (6) Meat tenderizing preparations | (6) Good Manufacturing Practice |
| | | | (7) Pre-cooked (instant) breakfast cereals | (7) Good Manufacturing Practice |
| | | | (8) Pumping pickle for the curing of beef cuts | (8) Good Manufacturing Practice |
| | | | (9) Unstandardized bakery products | (9) Good Manufacturing Practice |
| P.3 | Pectinase | *Aspergillus niger* var.; *Rhizopus oryzae* var. | (1) Cider; Wine | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Single-strength fruit juices | (3) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | | (4) Natural flavour and colour extractives | (4) Good Manufacturing Practice |
| | | | (5) Skins of citrus fruits destined for jam, marmalade and candied fruit production | (5) Good Manufacturing Practice |
| | | | (6) Vegetable stock for use in soups | (6) Good Manufacturing Practice |
| | | | (7) Tea leaves for the production of tea solids | (7) Good Manufacturing Practice |
| | | *Aspergillus oryzae* Km-1-1 (pA2PEI) | (1) Cider; Wine | (1) Good Manufacturing Practice |
| | | | (2) Single-strength fruit juices | (2) Good Manufacturing Practice |
| | | | (3) Unstandardized fruit and vegetable products | (3) Good Manufacturing Practice |
| P.4 | Pentosanase | *Aspergillus niger* var.; *Bacillus subtilis* var. | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Corn for degermination | (2) Good Manufacturing Practice |
| | | | (3) Distillers' Mash | (3) Good Manufacturing Practice |
| | | | (4) Mash destined for vinegar manufacture | (4) Good Manufacturing Practice |
| | | | (5) Unstandardized bakery products | (5) Good Manufacturing Practice |
| | | | (6) Bread; Flour; Whole wheat flour | (6) Good Manufacturing Practice |
| | | *Trichoderma reesei* (QM9414) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Distiller's Mash | (2) Good Manufacturing Practice |
| | | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| P.5 | Pepsin | Glandular layer of porcine stomach | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Cheddar cheese; Cottage cheese; Cream cheese; Cream cheese spread; Cream cheese spread with (naming the added ingredients); Cream cheese with (naming the added ingredients); (naming the variety) Cheese | (2) Good Manufacturing Practice |
| | | | (3) Defatted soya flour | (3) Good Manufacturing Practice |
| | | | (4) Pre-cooked (instant) breakfast cereals | (4) Good Manufacturing Practice |
| | | | (5) Hydrolyzed animal, milk and vegetable proteins | (5) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| P.5A | Phospholipase | *Streptomyces violaceoruber* | (1) Modified lecithin | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized egg products | (2) Good Manufacturing Practice |
| | | *Aspergillus oryzae* (pPFJo142) | Cheddar cheese; (naming the variety) Cheese | Good Manufacturing Practice |
| | | *Aspergillus niger* (PLA-54) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| | | | (3) Unstandardized whole egg; unstandardized egg yolk | (3) Good Manufacturing Practice |
| | | | (4) Modified lecithin | (4) Good Manufacturing Practice |
| P.6 | Protease | *Aspergillus oryzae* var.; *Aspergillus niger* var.; *Bacillus subtilis* var. | (1) Ale; Beer; Light beer; Malt liquor;Porter; Stout | (1) Good Manufacturing Practice |
| | | | (2) Bread; Flour; Whole wheat flour | (2) Good Manufacturing Practice |
| | | | (3) Dairy based flavouring preparations | (3) Good Manufacturing Practice |
| | | | (4) Distillers' Mash | (4) Good Manufacturing Practice |
| | | | (5) Sausage casings | (5) Good Manufacturing Practice |
| | | | (6) Hydrolyzed animal, milk and vegetable protein | (6) Good Manufacturing Practice |
| | | | (7) Industrial spray-dried cheese powder | (7) Good Manufacturing Practice |
| | | | (8) Meat cuts | (8) Good Manufacturing Practice |
| | | | (9) Meat tenderizing preparations | (9) Good Manufacturing Practice |
| | | | (10) Pre-cooked (instant) breakfast cereals | (10) Good Manufacturing Practice |
| | | | (11) Unstandardized bakery products | (11) Good Manufacturing Practice |
| | | | (12) Cheddar cheese; Cheddar cheese for processing (granular curd cheese; Stirred curd cheese; Washed curd cheese); Colby cheese | (12) Good Manufacturing Practice |
| | | | (13) Plant-based beverages | (13) Good Manufacturing Practice |
| | | *Micrococcus caseolyticus* var. | (1) (naming the variety) Cheese | (1) Good Manufacturing Practice |
| | | *Bacillus licheniformis* (Cx) | (1) Hydrolyzed animal, milk and vegetable protein | (1) Good Manufacturing Practice |
| P.7 | Pullulanase | *Bacillus acidopullulyticus* NCIB 11647; Bacillus | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | licheniformis SE2-Pul-int211 (pUBCDEBR A11DNSI) | (2) Starch used in the production of dextrins, dextrose, glucose (glucose syrup), glucose solids (dried glucose syrup) or fructose syrups and solids, maltose | (2) Good Manufacturing Practice |
| | | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| | | *Bacillus licheniformis* BMP 139 (pR11Amp) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Brewers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Starch used in the production of dextrins, dextrose, glucose (glucose syrup), glucose solids (dried glucose syrup) or fructose syrups and solids, maltose | (3) Good Manufacturing Practice |
| | | | (4) Unstandardized bakery products | (4) Good Manufacturing Practice |
| | | *Bacillus subtilis* B1-163 (pEB301) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Brewers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Distillers' Mash | (3) Good Manufacturing Practice |
| | | | (4) Starch used in the production of dextrins, dextrose, glucose (glucose syrup), glucose solids (dried glucose syrup) or fructose syrups and solids, maltose | (4) Good Manufacturing Practice |
| | | | (5) Unstandardized bakery products | (5) Good Manufacturing Practice |
| | | *Bacillus subtilis* RB121 (pDG268) | (1) Brewers' Mash | (1) Good Manufacturing Practice |
| | | | (2) Distillers' Mash | (2) Good Manufacturing Practice |
| | | | (3) Starch used in the production of dextrins, dextrose, glucose (glucose syrup), glucose solids (dried glucose syrup) or maltose | (3) Good Manufacturing Practice |
| R.1 | Rennet | Aqueous extracts from the fourth stomach of calves, kids or lambs | (1) Cheddar cheese; Cottage cheese; Cream cheese; Cream cheese spread; Cream cheese spread with (naming the added ingredients); Cream cheese with (naming the added ingredients); | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted Source | Column III<br>Permitted in or Upon | Column IV<br>Maximum Level of Use |
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| | | | (naming the variety) Cheese; Sour cream | |
| | | | (2) Unstandardized milk based dessert preparations | (2) Good Manufacturing Practice |
| T.01 | Transglutaminase | *Streptoverticillium mobaraense* strain S-8112 | (1) Unstandardized prepared fish products | (1) Good Manufacturing Practice |
| | | | (2) Simulated meat products | (2) Good Manufacturing Practice |
| | | | (3) Unstandardized cheese products | (3) Good Manufacturing Practice |
| | | | (4) Unstandardized processed cheese products | (4) Good Manufacturing Practice |
| | | | (5) Unstandardized cream cheese products | (5) Good Manufacturing Practice |
| | | | (6) Yogurt | (6) Good Manufacturing Practice |
| | | | (7) Unstandardized frozen dairy desserts | (7) Good Manufacturing Practice |
| T.1 | Trypsin | Pancreas of the hog (*Sus scrofa*) | (1) Hydrolyzed animal, milk and vegetable proteins | (1) Good Manufacturing Practice |
| X.1 | Xylanase | *Aspergillus oryzae* Fa 1–1 (pA2X1TI) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| | | *Aspergillus oryzae* JaL 339 (pJaL537); *Bacillus subtilis* DIDK 0115 (pUB110 OIS2) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| | | *Bacillus subtilis* CF 307 (pJHPaprE-xynAss-BS3xylanase#1) | (1) Bread; Flour; Whole wheat flour | (1) Good Manufacturing Practice |
| | | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |

**TABLEAU V**

**Additifs alimentaires autorisés comme enzymes dans les aliments**

| Article | Colonne I<br>Additifs | Colonne II<br>Source permise | Colonne III<br>Permis dans ou sur | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| A.01 | α-Acétolactate décarboxylase | *Bacillus subtilis* ToC46 (pUW235) | (1) Moût de bière | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| A.02 | Aminopeptidase | *Lactococcus lactis* | (1) Fromage cheddar; fromage (indication de la variété) | (1) Bonnes pratiques industrielles |
| | | | (2) Préparations aromatisantes à base de produits laitiers | (2) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Source permise | Permis dans ou sur | Limites de tolérance |
| | | | (3) Protéines hydrolysées d'origine animale, végétale ou provenant du lait | (3) Bonnes pratiques industrielles |
| A.1 | Amylase | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Bacillus subtilis* var.; *Rhizopus oryzae* var.; Malt d'orge | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Farine; farine de blé entier; pain | (2) Bonnes pratiques industrielles |
| | | | (3) Cidre; vin | (3) Bonnes pratiques industrielles |
| | | | (4) Sirop au chocolat | (4) Bonnes pratiques industrielles |
| | | | (5) Moût de distillerie | (5) Bonnes pratiques industrielles |
| | | | (6) Céréales à déjeuner sèches à saveur de malt | (6) Bonnes pratiques industrielles |
| | | | (7) Jus de fruits non concentrés | (7) Bonnes pratiques industrielles |
| | | | (8) Céréales à déjeuner précuites (instantanées) | (8) Bonnes pratiques industrielles |
| | | | (9) Amidon utilisé dans la production des dextrines, du maltose, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | (9) Bonnes pratiques industrielles |
| | | | (10) Produits de boulangerie non normalisés | (10) Bonnes pratiques industrielles |
| | | | (11) Boissons végétales | (11) Bonnes pratiques industrielles |
| | | | (12) Produits céréaliers pour bébés | (12) Bonnes pratiques industrielles |
| | | *Aspergillus niger* STz18-9 (pHUda7) | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Amidon utilisé dans la production des dextrines, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté), du maltose | (3) Bonnes pratiques industrielles |
| | | *Bacillus amyloliquefaciens* EBA 20 (pUBH2); *Bacillus licheniformis*; *Bacillus licheniformis* BML 592 (pAmyAmp); *Bacillus licheniformis* BML 730 (pAmyAmp); *Bacillus* | (1) Moût de distillerie | (1) Bonnes pratiques industrielles |
| | | | (2) Amidon utilisé dans la production des dextrines, du maltose, du dextrose, du glucose (sirop de glucose) ou de solides de | (2) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Source permise | Permis dans ou sur | Limites de tolérance |
| | | *licheniformis* LA 57 (pDN1981); *Bacillus licheniformis* LAT8 (pLAT3); *Bacillus licheniformis* LiH 1159 (pLiH1108); *Bacillus licheniformis* LiH 1464 (pLiH1346); *Bacillus licheniformis* PL 1303 (pPL1117); *Bacillus licheniformis* MOL2083 (pCA164-LE399) | glucose (sirop de glucose déshydraté) | |
| | | | (3) Moût de bière | (3) Bonnes pratiques industrielles |
| | | *Bacillus licheniformis* 3253 (pICatH-3253); *Bacillus licheniformis* 3266 (pICatH-3266ori1); *Bacillus stearothermophilus*; *Bacillus subtilis* B1.109 (pCPC800) | (1) Amidon utilisé dans la production des dextrines, du maltose, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Moût de bière | (3) Bonnes pratiques industrielles |
| | | | (4) Farine; farine de blé entier; pain | (4) Bonnes pratiques industrielles |
| | | | (5) Produits de boulangerie non normalisés | (5) Bonnes pratiques industrielles |
| | | *Bacillus subtilis* B1.109 (pCPC720) (ATCC 39, 705) | (1) Amidon utilisé dans la production des dextrines, du maltose, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | (1) Bonnes pratiques industrielles |
| A.2 | Amylase maltogène | *Bacillus subtilis* BRG-1 (pBRG1); *Bacillus subtilis* DN1413 (pDN1413); *Bacillus subtilis* LFA 63 (pLFA63); *Bacillus subtilis* RB-147 (pRB147) | (1) Amidon utilisé dans la production des dextrines, du maltose, du dextrose, du glucose, (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | (1) Bonnes pratiques industrielles |
| | | | (2) Farine; farine de blé entier; pain | (2) Bonnes pratiques industrielles |
| | | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| A.3 | Asparaginase | *Aspergillus niger* ASP72; *Aspergillus oryzae* (pCaHj621/BECh2#10) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| B.1 | Présure de bovin | Extrait aqueux du 4[e] (véritable) estomac de bovins, de moutons et de chèvres adultes | Fromage à la crème; fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage à la | Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Source permise | Colonne III<br>Permis dans ou sur | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | | crème (avec indication des ingrédients ajoutés); fromage cheddar; fromage cottage; fromage (indication de la variété) | |
| B.2 | Broméline | Les ananas *Ananas comosus* et *Ananas bracteatus* | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Farine; farine de blé entier; pain | (2) Bonnes pratiques industrielles |
| | | | (3) Boyaux de saucisse | (3) Bonnes pratiques industrielles |
| | | | (4) Protéine hydrolysée d'origine animale, végétale ou provenant du lait | (4) Bonnes pratiques industrielles |
| | | | (5) Pièces de viande | (5) Bonnes pratiques industrielles |
| | | | (6) Produits pour attendrir la viande | (6) Bonnes pratiques industrielles |
| | | | (7) Marinade employée dans la salaison de parties de bœuf | (7) Bonnes pratiques industrielles selon l'alinéa B.14.009g) |
| | | | (8) Gaufrettes sucrées, gaufres, crêpes | (8) Bonnes pratiques industrielles |
| C.1 | Catalase | *Aspergillus niger* var.; *Micrococcus lysodeikticus; Foie de bœuf (Bos taurus*) | (1) Boissons préparées (gazeuses et non gazeuses) | (1) Bonnes pratiques industrielles |
| | | | (2) Blanc d'œuf liquide (albumen liquide), jaune d'œuf liquide ou œuf entier liquide, destinés au séchage | (2) Bonnes pratiques industrielles |
| | | | (3) Petit-lait liquide traité au peroxyde d'hydrogène, conformément à l'article H.1, du tableau VIII | (3) Bonnes pratiques industrielles |
| C.2 | Cellulase | *Aspergillus niger* var. | (1) Moût de distillerie | (1) Bonnes pratiques industrielles |
| | | | (2) Concentré de café liquide | (2) Bonnes pratiques industrielles |
| | | | (3) Extraits d'épices; préparations aromatisantes naturelles et colorants | (3) Bonnes pratiques industrielles |
| | | *Trichoderma reesei* QM 9414 | (1) Jus de fruits non concentrés | (1) Bonnes pratiques industrielles |
| | | | (2) Feuilles de thé destinées à la production de solides de thé | (2) Bonnes pratiques industrielles |
| C.3 | Chymosine | | | |
| | (i) Chymosine A | *Escherichia coli* K-12, GE81 (pPFZ87A) | (1) Fromage cheddar; fromage (indication de la variété); fromage cottage; | (1) Bonnes pratiques industrielles |

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| | | | fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); crème sure | |
| | | | (2) Produits pour desserts à base de lait non normalisés | (2) Bonnes pratiques industrielles |
| | (ii) Chymosine B | *Aspergillus niger* var. *awamori*, GCC0349 (pGAMpR); *Kluyveromyces marxianus* var. *lactis*, DS1182 (pKS105) | (1) Fromage cheddar; fromage (indication de la variété); fromage cottage; fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); crème sure | (1) Bonnes pratiques industrielles |
| | | | (2) Produits pour desserts à base de lait non normalisés | (2) Bonnes pratiques industrielles |
| F.1 | Ficine | Latex de figuier (*Ficus* sp.) | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Boyaux de saucisse | (2) Bonnes pratiques industrielles |
| | | | (3) Protéine hydrolysée d'origine animale, végétale ou provenant du lait | (3) Bonnes pratiques industrielles |
| | | | (4) Pièces de viande | (4) Bonnes pratiques industrielles |
| | | | (5) Produits pour attendrir la viande | (5) Bonnes pratiques industrielles |
| | | | (6) Marinade employée dans la salaison de parties de bœuf | (6) Bonnes pratiques industrielles selon l'alinéa B.14.009g) |
| G.1 | Glucoamylase (Amyloglucosidase; maltase) | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Rhizopus oryzae* var. | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Farine; farine de blé entier; pain | (2) Bonnes pratiques industrielles |
| | | | (3) Sirop au chocolat | (3) Bonnes pratiques industrielles |
| | | | (4) Moût de distillerie | (4) Bonnes pratiques industrielles |
| | | | (5) Céréales à déjeuner précuites (instantanées) | (5) Bonnes pratiques industrielles |
| | | | (6) Amidon employé dans la production des dextrines, du maltose, du | (6) Bonnes pratiques industrielles |

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| | | | dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | |
| | | | (7) Produits de boulangerie non normalisés | (7) Bonnes pratiques industrielles |
| | | *Aspergillus niger* STz18-9 (pHUda7) | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Amidon utilisé dans la production des dextrines, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté), du maltose | (3) Bonnes pratiques industrielles |
| | | *Rhizopus niveus* var. | (1) Moût de distillerie | (1) Bonnes pratiques industrielles |
| | | | (2) Moût servant à la fabrication du vinaigre | (2) Bonnes pratiques industrielles |
| | | *Rhizopus delemar* var.; *Multiplici sporus* | (1) Moût de bière | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Moût servant à la fabrication du vinaigre | (3) Bonnes pratiques industrielles |
| | | | (4) Amidon employé dans la production des dextrines, du maltose, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | (4) Bonnes pratiques industrielles |
| G.2 | Glucanase | *Aspergillus niger* var.; *Bacillus subtilis* var. | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Maïs pour égrenage | (2) Bonnes pratiques industrielles |
| | | | (3) Moût de distillerie | (3) Bonnes pratiques industrielles |
| | | | (4) Moût servant à la fabrication du vinaigre | (4) Bonnes pratiques industrielles |
| | | | (5) Produits de boulangerie non normalisés | (5) Bonnes pratiques industrielles |
| | | *Humicola insolens* var. | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |

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| G.3 | Glucose-oxydase | *Aspergillus niger* var.; *Aspergillus oryzae* Mtl-72 (pHUda107) | (1) Boissons préparées (gazeuses et non gazeuses) | (1) Bonnes pratiques industrielles |
| | | | (2) Blanc d'œuf liquide (albumen liquide), jaune d'œuf liquide ou œuf entier liquide, destinés au séchage | (2) Bonnes pratiques industrielles selon les alinéas B.22.034b), B.22.035b) et B.22.036b) |
| | | | (3) Farine; farine de blé entier; pain | (3) Bonnes pratiques industrielles |
| | | | (4) Produits de boulangerie non normalisés | (4) Bonnes pratiques industrielles |
| G.4 | Glucose-isomérase | *Bacillus coagulans* var.; *Streptomyces olivochromogenes* var.; *Actinoplanes missouriensis* var.; *Streptomyces olivaceus* var.; *Microbacterium arborescens* NRRL B-11022; *Streptomyces murinus* DSM 3252; *Streptomyces rubiginosus* ATCC No. 21,175; *Streptomyces rubiginosus* SYC 5406 (pSYC5239) | (1) Glucose (sirop de glucose) à être partiellement ou complètement transformé en fructose par isomérisation | (1) Bonnes pratiques industrielles |
| H.1 | Hemicellulase | *Bacillus subtilis* var. | (1) Moût de distillerie | (1) Bonnes pratiques industrielles |
| | | | (2) Concentré de café liquide | (2) Bonnes pratiques industrielles |
| | | | (3) Moût destiné à la fabrication du vinaigre | (3) Bonnes pratiques industrielles |
| I.01 | Inulinase | *Aspergillus niger var. Tieghem* | Inuline | Bonnes pratiques industrielles |
| I.1 | Invertase | *Aspergillus japonicus* | Saccharose utilisé dans la production de fructo-oligosaccharides | Bonnes pratiques industrielles |
| | | *Saccharomyces* sp. | (1) Confiseries non normalisées avec centre mou ou liquide | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| L.1 | Lactase | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Kluyveromyces fragilis* (*Kluyveromyces Marxianus* var. *marxianus*); *Kluyveromyces lactis* (*Kluyveromyces Marxianus* var. *lactis*); *Saccharomyces* sp. | (1) Produits enzymatiques pour la réduction du lactose | (1) Bonnes pratiques industrielles |
| | | | (2) Lait destiné à la fabrication du mélange pour la crème glacée | (2) Bonnes pratiques industrielles |
| | | | (3) Farine; farine de blé entier; pain | (3) Bonnes pratiques industrielles |
| | | | (4) Lait (indication de l'arôme); lait écrémé (indication de l'arôme); lait partiellement écrémé | (4) Bonnes pratiques industrielles |

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| | | | (indication de l'arôme); lait malté (indication de l'arôme); lait écrémé additionné de solides du lait (indication de l'arôme); lait partiellement écrémé additionné de solides du lait (indication de l'arôme); | |
| | | Extraits acellulaires de *Candida pseudotropicalis* | (1) Lait destiné à la fabrication du mélange pour la crème glacée | (1) Bonnes pratiques industrielles |
| | | | (2) Yogourt | (2) Bonnes pratiques industrielles |
| | | | (3) Petit-lait | (3) Bonnes pratiques industrielles |
| | | | (4) Lait (indication de l'arôme); lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); lait malté (indication de l'arôme); lait écrémé additionné de solides du lait (indication de l'arôme); lait partiellement écrémé additionné de solides du lait (indication de l'arôme) | (4) Bonnes pratiques industrielles |
| L.2 | Lipase | *Aspergillus niger* var.; *Aspergillus oryzae* var.; *Rhizopus oryzae* var.; Tissus comestibles des préestomacs d'agneaux, de chevreaux ou de veaux; Tissus pancréatiques d'animaux | (1) Préparations aromatisantes à base de produits laitiers | (1) Bonnes pratiques industrielles |
| | | | (2) Blanc d'œuf liquide (albumen liquide); poudre de blanc d'œuf (poudre d'albumen) | (2) Bonnes pratiques industrielles |
| | | | (3) Fromage cheddar; fromage fondu cheddar; fromage (indication de la variété) | (3) Bonnes pratiques industrielles |
| | | | (4) Farine; farine de blé entier; pain | (4) Bonnes pratiques industrielles |
| | | | (5) Produits de boulangerie non normalisés | (5) Bonnes pratiques industrielles |
| | | | (6) Protéines hydrolysées d'origine animale, végétale ou provenant du lait | (6) Bonnes pratiques industrielles |
| | | *Aspergillus oryzae* (MLT-2) (pRML 787) (p3SR2); *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei (Cooney et Emerson)*); *Rhizopus niveus* | (1) Graisses et huiles modifiées | (1) Bonnes pratiques industrielles |
| | | | (2) Fromage cheddar; fromage (indication de la variété) | (2) Bonnes pratiques industrielles |

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| | | | (3) Préparations aromatisantes à base de produits laitiers | (3) Bonnes pratiques industrielles |
| | | | (4) Protéines hydrolysées d'origine animale, végétale ou provenant du lait | (4) Bonnes pratiques industrielles |
| | | *Aspergillus oryzae* AI-11 (pBoel 960) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| | | | (3) Graisses et huiles modifiées | (3) Bonnes pratiques industrielles |
| | | *Aspergillus oryzae* BECh2#3 (pCaHj559); *Aspergillus oryzae* (MStr115) (pMStr20) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| | | | (3) Lécithine modifiée | (3) Bonnes pratiques industrielles |
| | | | (4) Produits des œufs non normalisés | (4) Bonnes pratiques industrielles |
| | | *Aspergillus niger* (pCaHj600/MBin118#11) | Graisses et huiles modifiées | Bonnes pratiques industrielles |
| | | *Penicillium camembertii* | (1) Graisses et huiles comestibles | (1) Bonnes pratiques industrielles |
| L.3 | Lipoxydase | Grumeaux ou farine de fine Soja | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| L.4 | Lysozyme | Blanc d'œuf | Fromage cheddar; fromage (indication de la variété) | Bonnes pratiques industrielles |
| M.1 | Enzyme coagulant le lait | *Rhizomucor miehei* (Cooney et Emerson) (précédemment nommé *Mucor miehei* (Cooney et Emerson)) ou *Mucor pusillus Lindt* par fermentation de culture pure ou *Aspergillus oryzae* RET-1 (pBœl777) | (1) Crème sure; fromage cheddar; fromage cottage; fromage (indication de la variété) | (1) Bonnes pratiques industrielles |
| | | | (2) Préparations aromatisantes à base de produits laitiers | (2) Bonnes pratiques industrielles |
| | | | (3) Protéines hydrolysées d'origine animale, végétale ou provenant du lait | (3) Bonnes pratiques industrielles |
| | | *Endothia parasitica* par fermentation de culture pure | (1) Fromage Emmentaler (Emmental ou Suisse) | (1) Bonnes pratiques industrielles |
| | | | (2) Fromage Parmesan | (2) Bonnes pratiques industrielles |
| | | | (3) Fromage Romano | (3) Bonnes pratiques industrielles |
| | | | (4) Fromage Mozzarella (Scamorza) | (4) Bonnes pratiques industrielles |
| | | | (5) Fromage Mozzarella partiellement écrémé | (5) Bonnes pratiques industrielles |

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| | | | (Scamorza partiellement écrémé) | |
| P.1 | Pancréatine | Pancréas de porc (*Sus scrofa*) ou de bœuf (*Bos taurus*) | (1) Blanc d'œuf liquide (albumen liquide); poudre de blanc d'œuf (poudre d'albumen) | (1) Bonnes pratiques industrielles |
| | | | (2) Céréales à déjeuner précuites (instantanées) | (2) Bonnes pratiques industrielles |
| | | | (3) Amidon utilisé dans la production des dextrines, du maltose, du dextrose, du glucose (sirop de glucose) ou de solides de glucose (sirop de glucose déshydraté) | (3) Bonnes pratiques industrielles |
| | | | (4) Protéines hydrolysées d'origine animale ou végétale ou provenant du lait | (4) Bonnes pratiques industrielles |
| P.2 | Papaïne | Fruit du papayer *Carica papaya* L. (Fam. du *Caricaceae*) | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Bœuf avant l'abattage | (2) Bonnes pratiques industrielles |
| | | | (3) Boyaux de saucisse; pellicules de collagène hydrosolubles comestibles | (3) Bonnes pratiques industrielles |
| | | | (4) Protéine hydrolysée d'origine animale, végétale ou provenant du lait | (4) Bonnes pratiques industrielles |
| | | | (5) Pièces de viande | (5) Bonnes pratiques industrielles |
| | | | (6) Produits pour attendrir la viande | (6) Bonnes pratiques industrielles |
| | | | (7) Céréales à déjeuner précuites (instantanées) | (7) Bonnes pratiques industrielles |
| | | | (8) Marinade employée dans la salaison de parties de bœuf | (8) Bonnes pratiques industrielles |
| | | | (9) Produits de boulangerie non normalisés | (9) Bonnes pratiques industrielles |
| P.3 | Pectinase | *Aspergillus niger* var.; *Rhizopus oryzae* var. | (1) Cidre; vin | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Jus de fruits non concentrés | (3) Bonnes pratiques industrielles |
| | | | (4) Préparations naturelles aromatisantes et colorants | (4) Bonnes pratiques industrielles |

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| | | | (5) Pelures d'agrumes destinées à la fabrication de confiture, de marmelade et de fruits confits | (5) Bonnes pratiques industrielles |
| | | | (6) Bouillon de légume employé dans les soupes | (6) Bonnes pratiques industrielles |
| | | | (7) Feuilles de thé destinées à la production de solides de thé | (7) Bonnes pratiques industrielles |
| | | *Aspergillus oryzae* Km-1-1 (pA2PEI) | (1) Cidre; vin | (1) Bonnes pratiques industrielles |
| | | | (2) Jus de fruits non concentrés | (2) Bonnes pratiques industrielles |
| | | | (3) Produits à base de fruits et de légumes non normalisés | (3) Bonnes pratiques industrielles |
| P.4 | Pentosanase | *Aspergillus niger* var.; *Bacillus subtilis* var. | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Maïs pour égrenage | (2) Bonnes pratiques industrielles |
| | | | (3) Moût de distillerie | (3) Bonnes pratiques industrielles |
| | | | (4) Moût destiné à la fabrication du vinaigre | (4) Bonnes pratiques industrielles |
| | | | (5) Produits de boulangerie non normalisés | (5) Bonnes pratiques industrielles |
| | | | (6) Farine; farine de blé entier, pain | (6) Bonnes pratiques industrielles |
| | | *Trichoderma reesei* (QM9414) | (1) Farine; farine de blé entier, pain | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| P.5 | Pepsine | Muqueuse glandulaire de l'estomac de porc | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Fromage à la crème; fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage à la crème (avec indication des ingrédients ajoutés); fromage cheddar; fromage cottage; fromage (indication de la variété) | (2) Bonnes pratiques industrielles |
| | | | (3) Farine de soja dégraissée | (3) Bonnes pratiques industrielles |

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| | | | (4) Céréales à déjeuner précuites (instantanées) | (4) Bonnes pratiques industrielles |
| | | | (5) Protéines hydrolysées d'origine animale ou végétale ou provenant du lait | (5) Bonnes pratiques industrielles |
| P.5A | Phospholipase | *Streptomyces violaceoruber* | (1) Lécithine modifiée | (1) Bonnes pratiques industrielles |
| | | | (2) Produits des œufs non normalisés | (2) Bonnes pratiques industrielles |
| | | *Aspergillus oryzae* (pPFJo142) | Fromage cheddar; fromage (indication de la variété) | Bonnes pratiques industrielles |
| | | *Aspergillus niger* (PLA-54) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| | | | (3) Œuf entier non normalisé; jaune d'œuf non normalisé | (3) Bonnes pratiques industrielles |
| | | | (4) Lécithine modifiée | (4) Bonnes pratiques industrielles |
| P.6 | Protéase | *Aspergillus oryzae* var.; *Aspergillus niger* var.; *Bacillus subtilis* var. | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | | (2) Farine; farine de blé entier; pain | (2) Bonnes pratiques industrielles |
| | | | (3) Préparations aromatisantes à base de produits laitiers | (3) Bonnes pratiques industrielles |
| | | | (4) Moût de distillerie | (4) Bonnes pratiques industrielles |
| | | | (5) Boyaux de saucisses | (5) Bonnes pratiques industrielles |
| | | | (6) Protéines hydrolysées d'origine animale, végétale, ou provenant du lait | (6) Bonnes pratiques industrielles |
| | | | (7) Poudre de fromage de pulvérisation sèche industrielle | (7) Bonnes pratiques industrielles |
| | | | (8) Pièces de viande | (8) Bonnes pratiques industrielles |
| | | | (9) Produits pour attendrir la viande | (9) Bonnes pratiques industrielles |
| | | | (10) Céréales à déjeuner précuites (instantanées) | (10) Bonnes pratiques industrielles |
| | | | (11) Produits de boulangerie non normalisés | (11) Bonnes pratiques industrielles |
| | | | (12) Fromage cheddar; fromage cheddar destiné | (12) Bonnes pratiques industrielles |

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| | | | à la transformation (fromage à caillé brassé; fromage à caillé granuleux; fromage à caillé lavé); fromage Colby | |
| | | | (13) Boissons végétales | (13) Bonnes pratiques industrielles |
| | | *Micrococcus caseolyticus* var. | (1) Fromage (indication de la variété) | (1) Bonnes pratiques industrielles |
| | | *Bacillus licheniformis* (Cx) | (1) Protéines hydrolysées d'origine animale, végétale ou provenant du lait | (1) Bonnes pratiques industrielles |
| P.7 | Pullulanase | *Bacillus acidopullulyticus* NCIB 11647; *Bacillus licheniformis* SE2-Pul-int211 (pUBCDEBRA11DNSI) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Amidon utilisé dans la production des dextrines, du dextrose, du glucose (sirop de glucose), de solides de glucose (sirop de glucose déshydraté) ou de sirops et de solides de fructose, du maltose | (2) Bonnes pratiques industrielles |
| | | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| | | *Bacillus licheniformis* BMP 139 (pR11Amp) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de bière | (2) Bonnes pratiques industrielles |
| | | | (3) Amidon utilisé dans la production des dextrines, du dextrose, du glucose (sirop de glucose), de solides de glucose (sirop de glucose déshydraté) ou de sirops et de solides de fructose, du maltose | (3) Bonnes pratiques industrielles |
| | | | (4) Produits de boulangerie non normalisés | (4) Bonnes pratiques industrielles |
| | | *Bacillus subtilis* B1-163 (pEB301) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de bière | (2) Bonnes pratiques industrielles |
| | | | (3) Moût de distillerie | (3) Bonnes pratiques industrielles |
| | | | (4) Amidon utilisé dans la production des dextrines, du dextrose, du glucose (sirop de glucose), de solides de glucose (sirop de glucose déshydraté) ou | (4) Bonnes pratiques industrielles |

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| | | | de sirops et de solides de fructose, du maltose | |
| | | | (5) Produits de boulangerie non normalisés | (5) Bonnes pratiques industrielles |
| | | *Bacillus subtilis* RB121 (pDG268) | (1) Moût de bière | (1) Bonnes pratiques industrielles |
| | | | (2) Moût de distillerie | (2) Bonnes pratiques industrielles |
| | | | (3) Amidon utilisé dans la production des dextrines, du dextrose, du glucose (sirop de glucose), du maltose ou de solides de glucose (sirop de glucose déshydraté) | (3) Bonnes pratiques industrielles |
| R.1 | Présure | Extrait aqueux du 4e (véritable) estomac de veaux, de chevreaux ou d'agneaux | (1) Crème sure; fromage à la crème; fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage à la crème (avec indication des ingrédients ajoutés); fromage cheddar; fromage cottage; fromage (indication de la variété) | (1) Bonnes pratiques industrielles |
| | | | (2) Produits pour desserts à base de lait non normalisés | (2) Bonnes pratiques industrielles |
| T.01 | Transglutaminase | *Streptoverticillium mobaraense* souche S-8112 | (1) Produits de poisson préparé non normalisés | (1) Bonnes pratiques industrielles |
| | | | (2) Simili-produits de viande | (2) Bonnes pratiques industrielles |
| | | | (3) Produits de fromage non normalisés | (3) Bonnes pratiques industrielles |
| | | | (4) Produits de fromage fondu non normalisés | (4) Bonnes pratiques industrielles |
| | | | (5) Produits de fromage à la crème non normalisés | (5) Bonnes pratiques industrielles |
| | | | (6) Yogourt | (6) Bonnes pratiques industrielles |
| | | | (7) Desserts laitiers congelés non normalisés | (7) Bonnes pratiques industrielles |
| T.1 | Trypsine | Pancreas de porc (*Sus scrofa*) | (1) Protéines hydrolysées d'origine animale ou végétale ou provenant du lait | (1) Bonnes pratiques industrielles |
| X.1 | Xylanase | *Aspergillus oryzae* Fa 1–1 (pA2X1TI) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Source permise | Colonne III<br>Permis dans ou sur | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | *Aspergillus oryzae* JaL 339 (pJaL537); *Bacillus subtilis* DIDK 0115 (pUB110 OIS2) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| | | *Bacillus subtilis* CF 307 (pJHPaprE-xynAss-BS3xylanase#1) | (1) Farine; farine de blé entier; pain | (1) Bonnes pratiques industrielles |
| | | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |

SOR/78-402, s. 6; SOR/78-876, s. 3; SOR/79-662, ss. 14 to 17; SOR/80-501, s. 4; SOR/80-632, s. 5; SOR/81-60, s. 11; SOR/81-934, ss. 7 to 10; SOR/82-383, s. 10; SOR/82-566, s. 2; SOR/82-1071, s. 17; SOR/84-302, s. 4; SOR/84-762, ss. 8, 9; SOR/84-801, s. 4; SOR/86-89, ss. 4 to 6; SOR/86-1112, s. 4; SOR/87-254, s. 2; SOR/87-640, s. 7; SOR/88-281, s. 1; SOR/90-24, ss. 1 to 3; SOR/90-87, ss. 10 to 12; SOR/90-469, s. 3; SOR/91-124, s. 5(F); SOR/91-487, s. 1; SOR/91-691, s. 1; SOR/92-63, s. 4; SOR/92-94, s. 4; SOR/92-195, s. 1; SOR/92-197, s. 9; SOR/92-231, s. 1; SOR/92-518, s. 1; SOR/92-591, s. 2(F); SOR/94-29, s. 1; SOR/94-182, s. 1; SOR/94-212, s. 9; SOR/94-417, s. 2; SOR/94-552, s. 1; SOR/94-689, s. 2; SOR/94-712, s. 1; SOR/95-65, s. 1; SOR/95-183, s. 9; SOR/95-525, ss. 1, 2; SOR/96-375, s. 1; SOR/97-81, s. 1; SOR/97-82, s. 1; SOR/97-122, ss. 4(F), 5;SOR/97-508, ss. 1, 2; SOR/97-513, s. 1; SOR/97-558, s. 4; SOR/98-454, s. 1; SOR/98-458, ss. 6, 7(F); SOR/2000-336, ss. 3 to 5; SOR/2000-417, s. 4; SOR/2003-130, s. 4; SOR/2004-84, s. 1; SOR/2005-98, ss. 4 to 7, 8(F); SOR/2005-394, ss. 1 to 6; SOR/2007-225, s. 1; SOR/2010-41, ss. 1 to 6, 9(E); SOR/2010-42, ss. 1 to 4; SOR/2010-94, s. 8(E); SOR/2010-142, s. 17; SOR/2010-143, ss. 14 to 26; SOR/2012-26, s. 4; SOR/2012-45, s. 1; SOR/2012-46, s. 4; SOR/2012-104, ss. 10, 21.

DORS/78-402, art. 6; DORS/78-876, art. 3; DORS/79-662, art. 14 à 17; DORS/80-501, art. 4; DORS/80-632, art. 5; DORS/81-60, art. 11; DORS/81-934, art. 7 à 10; DORS/82-383, art. 10; DORS/82-566, art. 2; DORS/82-1071, art. 17; DORS/84-302, art. 4; DORS/84-762, art. 8 et 9; DORS/84-801, art. 4; DORS/86-89, art. 4 à 6; DORS/86-1112, art. 4; DORS/87-254, art. 2; DORS/87-640, art. 7; DORS/88-281, art. 1; DORS/90-24, art. 1 à 3; DORS/90-87, art. 10 à 12; DORS/90-469, art. 3; DORS/91-124, art. 5(F); DORS/91-487, art. 1; DORS/91-691, art. 1; DORS/92-63, art. 4; DORS/92-94, art. 4; DORS/92-195, art. 1; DORS/92-197, art. 9; DORS/92-231, art. 1; DORS/92-518, art. 1; DORS/92-591, art. 2(F); DORS/94-29, art. 1; DORS/94-182, art. 1; DORS/94-212, art. 9; DORS/94-417, art. 2; DORS/94-552, art. 1; DORS/94-689, art. 2; DORS/94-712, art. 1; DORS/95-65, art. 1; DORS/95-183, art. 9; DORS/95-525, art. 1 et 2; DORS/96-375, art. 1; DORS/97-81, art. 1; DORS/97-82, art. 1; DORS/97-122, art. 4(F) et 5; DORS/97-508, art. 1 et 2; DORS/97-513, art. 1; DORS/97-558, art. 4; DORS/98-454, art. 1; DORS/98-458, art. 6 et 7(F); DORS/2000-336, art. 3 à 5; DORS/2000-417, art. 4; DORS/2003-130, art. 4; DORS/2004-84, art. 1; DORS/2005-98, art. 3 à 7 et 8(F); DORS/2005-394, art. 1 à 6; DORS/2007-225, art. 1; DORS/2010-41, art. 1 à 6 et 9(A); DORS/2010-42, art. 1 à 4; DORS/2010-94, art. 8(A); DORS/2010-142, art. 17; DORS/2010-143, art. 14 à 26; DORS/2012-26, art. 4; DORS/2012-45, art. 1; DORS/2012-46, art. 4; DORS/2012-104, art. 10 et 21.

## TABLE VI

## Food Additives That May Be Used as Firming Agents

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| A.1 | Aluminum Sulphate | (1) Canned crabmeat, lobster, salmon, shrimp and tuna; Pickles and relishes | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| A.2 | Ammonium Aluminum Sulphate | (1) Pickles and relishes | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.1 | Calcium Chloride | (1) Canned apples | (1) 0.026% calculated as calcium |
| | | (2) Canned grapefruit | (2) 0.035% of the total calcium content, whether added or otherwise present |
| | | (3) (naming the variety) cheese; Cheddar cheese | (3) 0.02% of the milk and milk products used |
| | | (4) Cottage cheese | (4) Good Manufacturing Practice |
| | | (5) Glaze of frozen fish | (5) Good Manufacturing Practice |
| | | (6) Olives | (6) 1.5% of the brine |
| | | (7) Pickles and relishes | (7) 0.4% |
| | | (8) Tomatoes; Canned vegetables (naming the vegetable); Frozen apples | (8) 0.026% calculated as calcium, and in the case of canned peas 0.035% calculated as calcium |
| | | (9) Unstandardized foods | (9) Good Manufacturing Practice |
| | | (10) Canned apricots | (10) 0.022% calculated as calcium |
| C.2 | Calcium Citrate | (1) Tomatoes; Canned vegetables; Frozen apples; Frozen sliced apples | (1) 0.026% calculated as calcium |
| | | (2) Canned apples | (2) 0.026% calculated as calcium |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| C.3 | Calcium Gluconate | Unstandardized foods | Good Manufacturing Practice |
| C.3A | Calcium Lactate | (1) Canned grapefruit | (1) 0.035% of the total calcium content, whether added or otherwise present |
| | | (2) Canned peas | (2) 0.035% calculated as calcium |
| C.4 | Calcium Phosphate, dibasic | Unstandardized foods | Good Manufacturing Practice |
| C.5 | Calcium Phosphate, monobasic | (1) Tomatoes; Canned vegetables; Frozen apples | (1) 0.026% calculated as calcium |
| | | (2) Canned apples | (2) 0.026% calculated as calcium |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| C.6 | Calcium Sulphate | (1) Tomatoes; Canned vegetables; Frozen apples | (1) 0.026% calculated as calcium |
| | | (2) Canned apples | (2) 0.026% calculated as calcium |
| P.1 | Potassium Aluminum Sulphate | (1) Pickles and relishes | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.1 | Sodium Aluminum Sulphate | (1) Pickles and relishes | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |

**TABLEAU VI**

**Additifs alimentaires autorisés comme agents raffermissants**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Sulfate d'aluminium | (1) Crabe; homard; saumon; crevettes et thon en conserve; cornichons et achards (*relish*) | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| A.2 | Sulfate double d'aluminium et d'ammonium | (1) Cornichons et achards (*relish*) | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.1 | Chlorure de calcium | (1) Pommes en conserve | (1) 0,026 %, calculé en calcium |
| | | (2) Pamplemousses en conserve | (2) 0,035 % de la teneur totale en calcium, qu'il soit ajouté ou autrement présent |
| | | (3) Fromage (indication de la variété); fromage cheddar | (3) 0,02 % du lait et des produits du lait utilisés |
| | | (4) Fromage cottage | (4) Bonnes pratiques industrielles |
| | | (5) Glaçage de poisson congelé | (5) Bonnes pratiques industrielles |
| | | (6) Olives | (6) 1,5 % de la saumure |
| | | (7) Cornichons et achards (*relish*) | (7) 0,4 % |
| | | (8) Tomates; légumes en conserve (nom du légume); pommes congelées | (8) 0,026 %, calculé en calcium et, dans le cas des pois en conserve, 0,035 %, calculé en calcium |
| | | (9) Aliments non normalisés | (9) Bonnes pratiques industrielles |
| | | (10) Abricots en conserve | (10) 0,022 %, calculé en calcium |
| C.2 | Citrate de calcium | (1) Tomates; légumes en conserve; pommes congelées; pommes tranchées congelées | (1) 0,026 %, calculé en calcium |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| | | (2) Pommes en conserve | (2) 0,026 %, calculé en calcium |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| C.3 | Gluconate de calcium | Aliments non normalisés | Bonnes pratiques industrielles |
| C.3A | Lactate de calcium | (1) Pamplemousses en conserve | (1) 0,035 % de la teneur totale en calcium, qu'il soit ajouté ou autrement présent |
| | | (2) Pois en conserve | (2) 0,035 % calculé en calcium |
| C.4 | Phosphate bicalcique | Aliments non normalisés | Bonnes pratiques industrielles |
| C.5 | Phosphate monocalcique | (1) Tomates; légumes en conserve; pommes congelées | (1) 0,026 %, calculé en calcium |
| | | (2) Pommes en conserve | (2) 0,026 %, calculé en calcium |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| C.6 | Sulfate de calcium | (1) Tomates; légumes en conserve; pommes congelées | (1) 0,026 %, calculé en calcium |
| | | (2) Pommes en conserve | (2) 0,026 %, calculé en calcium |
| P.1 | Sulfate double d'aluminium et de potassium | (1) Cornichons et achards (*relish*) | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.1 | Sulfate double d'aluminium et de sodium | (1) Cornichons et achards (*relish*) | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |

SOR/78-402, s. 7; SOR/79-660, ss. 11, 12; SOR/79-752, s. 7; SOR/93-445, s. 1; SOR/94-689, s. 2(F); SOR/2007-302, s. 4(F); SOR/2010-94, s. 8(E); SOR/2012-43, ss. 29, 30.

DORS/78-402, art. 7; DORS/79-660, art. 11 et 12; DORS/79-752, art. 7; DORS/93-445, art. 1; DORS/94-689, art. 2(F); DORS/2007-302, art. 4(F); DORS/2010-94, art. 8(A); DORS/2012-43, art. 29 et 30.

**TABLE VII**

**Food Additives That May Be Used as Glazing and Polishing Agents**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Acetylated Monoglycerides | (1) Unstandardized confectionery | (1) 0.4% |
| | | (2) Frozen fish | (2) Good Manufacturing Practice |
| B.1 | Beeswax | Unstandardized confectionery | 0.4% |
| C.1 | Carnauba Wax | Unstandardized confectionery | 0.4% |
| C.2 | Candelilla Wax | Unstandardized confectionery | 0.4% |
| G.1 | Gum Arabic | Unstandardized confectionery | 0.4% |
| G.2 | Gum Benzoin | Unstandardized confectionery | 0.4% |
| M.1 | Magnesium Silicate | Unstandardized confectionery | 0.4% |
| M.2 | Mineral Oil | Unstandardized confectionery | 0.15% |
| P.1 | Petrolatum | Unstandardized confectionery | 0.15% |
| S.1 | Shellac | Cake decorations; Unstandardized confectionery | 0.4% |
| S.2 | Spermaceti Wax | Unstandardized confectionery | 0.4% |
| Z.1 | Zein | Unstandardized confectionery | 1.0% |

## TABLEAU VII

### Additifs alimentaires autorisés comme agents de satinage ou de glaçage

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| A.1 | Monoglycérides acétylés | (1) Confiseries non normalisées | (1) 0,4 % |
| | | (2) Poisson congelé | (2) Bonnes pratiques industrielles |
| B.1 | Cire d'abeilles | Confiseries non normalisées | 0,4 % |
| C.1 | Cire de carnauba | Confiseries non normalisées | 0,4 % |
| C.2 | Cire de candélilla | Confiseries non normalisées | 0,4 % |
| G.1 | Gomme arabique | Confiseries non normalisées | 0,4 % |
| G.2 | Résine de benjoin | Confiseries non normalisées | 0,4 % |
| M.1 | Silicate de magnésium | Confiseries non normalisées | 0,4 % |
| M.2 | Huile minérale | Confiseries non normalisées | 0,15 % |
| P.1 | Vaseline | Confiseries non normalisées | 0,15 % |
| S.1 | Gomme laque | Confiseries non normalisées; décorations à gâteaux | 0,4 % |
| S.2 | Spermaceti | Confiseries non normalisées | 0,4 % |
| Z.1 | Zéine | Confiseries non normalisées | 1,0 % |

SOR/94-689, s. 2(F); SOR/2010-142, ss. 18 to 29.

DORS/94-689, art. 2(F); DORS/2010-142, art. 18 à 29.

## TABLE VIII

### Miscellaneous Food Additives

| | Column I | Column II | Column III | Column IV |
|---|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Purpose of Use | Maximum Level of Use |
| A.01 | Acacia Gum | Ale; Beer; Light beer; Malt liquor; Porter; Stout; Wine | Fining agent | Good Manufacturing Practice |
| A.1 | Acetylated Monoglycerides | Unstandardized foods | Coating; Release agent | Good Manufacturing Practice |
| A.1.01 | Agar | Wine | Fining agent | Good Manufacturing Practice |
| A.1.1 | Aluminum Sulphate | Dried egg-white (dried albumen); Dried whole egg; Dried yolk; Frozen egg-white (frozen albumen); Frozen whole egg; Frozen yolk; Liquid egg-white (liquid albumen); Liquid whole egg; Liquid yolk | To stabilize albumen during pasteurization | 0.036% |
| A.2 | Ammonium Persulphate | Brewer's yeast | Antimicrobial agent | 0.1% |
| A.3 | [Repealed, SOR/93-276, s. 4] | | | |
| A.4 | [Repealed, SOR/93-276, s. 5] | | | |
| B.2 | Beeswax | Unstandardized foods | Antisticking agent | 0.4% |
| B.2.1 | Benzoyl Peroxide | Liquid whey destined for the manufacture of dried whey products other than those for use in infant formula | To decolourize | 100 p.p.m. |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| B.3 | Brominated vegetable oil | (Naming the flavour) Flavour for use in beverages containing citrus or spruce oils | Density adjusting agent | 15 p.p.m. in beverages containing citrus or spruce oils as consumed |
| B.4 | n-Butane | Edible vegetable oil-based or lecithin-based pan coatings or a mixture of both | Propellant | Good Manufacturing Practice |
| C.1 | Caffeine | Cola type beverages | To characterize the product | 200 p.p.m. in the finished product |
| C.2 | Caffeine Citrate | Cola type beverages | To characterize the product | 200 p.p.m. calculated as caffeine, in the finished product |
| C.3 | Calcium Carbonate | (1) Flour; Whole wheat flour | (1) Carrier of benzoyl peroxide | (1) 900 p.p.m., in accordance with subparagraphs B.13.001(e)(vi) and B.13.005(d)(vi) |
| | | (2) [Repealed, SOR/94-227, s. 5] | | |
| | | (3) Unstandardized confectionery | (3) Creaming and fixing agent | (3) Good Manufacturing Practice |
| | | (4) Chewing gum | (4) Filler | (4) Good Manufacturing Practice |
| | | (5) Unstandardized foods | (5) Carrier and dusting agent | (5) Good Manufacturing Practice |
| C.3.01 | Calcium Chloride | Sausage having an edible coating | To stabilize the edible coating | Good Manufacturing Practice |
| C.3A | Calcium Lactate | (1) Egg albumen (delysozymized) | (1) Restoration of functional properties | (1) Good Manufacturing Practice (Quantity of calcium added not to exceed that lost during processing) |
| | | (2) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (2) To modify texture | (2) Good Manufacturing Practice |
| | | (3) Sausage having an edible coating | (3) To stabilize the edible coating | (3) Good Manufacturing Practice |
| C.4 | Calcium Oxide | (1) Frozen crustaceans and molluscs | (1) To facilitate the removal of extraneous matter and to reduce moisture loss during cooking | (1) When used in combination with sodium chloride (salt) and sodium hydroxide in solution, calcium oxide not to exceed 30 p.p.m. |
| | | (2) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (2) To modify texture | (2) Good Manufacturing Practice |
| C.5 | Calcium Phosphate dibasic | (1) Flour; Whole wheat flour | (1) Carrier of benzoyl peroxide | (1) 900 p.p.m. in accordance with subparagraphs B.13.001(e)(vi) and B.13.005(d)(vi) |
| | | (2) [Repealed, SOR/94-227, s. 6] | | |
| C.6 | Calcium Phosphate, tribasic | (1) Flour; Whole wheat flour | (1) Carrier of benzoyl peroxide | (1) 900 p.p.m. in accordance with subparagraphs |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | | | B.13.001(e)(vi) and B.13.005(d)(vi) |
| | | (2) [Repealed, SOR/94-227, s. 7] | | |
| | | (3) Liquid whey destined for the manufacture of dried whey products other than those for use in infant formula | (3) Carrier of benzoyl peroxide | (3) 0.04% of dried whey product |
| | | (4) Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredient); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients) | (4) To improve colour, texture, consistency and spreadability | (4) 1.0% |
| C.7 | Calcium Silicate | Oil-soluble annatto | Carrier | Good Manufacturing Practice |
| C.8 | Calcium Stearate | Unstandardized confectionery | Release agent | Good Manufacturing Practice |
| C.9 | Calcium Stearoyl- 2-Lactylate | (1) Frozen egg-white (frozen albumen); Liquid egg-white (liquid albumen) | (1) Whipping agent | (1) 0.05% |
| | | (2) Dried egg-white (dried albumen) | (2) Whipping agent | (2) 0.5% |
| | | (3) Vegetable fat toppings | (3) Whipping agent | (3) 0.3% |
| | | (4) Dehydrated potatoes | (4) Conditioning agent | (4) 0.2% of dry weight |
| C.10 | Calcium Sulphate | (1) Flour, Whole wheat flour | (1) Carrier of benzoyl peroxide | (1) 900 p.p.m. in accordance with subparagraphs B.13.001(e)(vi) and B.13.005(d)(vi) |
| | | (2) [Repealed, SOR/94-227, s. 8] | | |
| | | (3) Baking powder | (3) Neutral filler | (3) Good Manufacturing Practice |
| | | (4) Liquid whey destined for the manufacture of dried whey products, other than those for use in infant formula | (4) Carrier of benzoyl peroxide | (4) 0.3% of the dried whey product |
| C.11 | Carbon Dioxide | (1) Ale; Beer; Carbonated (naming the fruit) juice; Cider; Light beer; Malt liquor; Porter; Stout; Wines; Water represented as mineral water or spring water | (1) Carbonation | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Carbonation and pressure dispensing agent | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | (3) Cottage Cheese; Creamed Cottage Cheese | (3) To extend durable life | (3) Good Manufacturing Practice |
| C.11.1 | Carboxymethyl Cellulose, cross-linked (Sodium Carboxymethyl Cellulose, cross-linked) | Table-top sweetener tablets that contain acesulfame-potassium, aspartame, erythritol, neotame or sucralose | Tablet disintegration | Good Manufacturing Practice |
| C.12 | Castor Oil | Unstandardized confectionery | Release agent | Good Manufacturing Practice |
| C.13 | [Repealed, SOR/2010-142, s. 35] | | | |
| C.13.1 | Cellulose, Powdered | (1) Batter and breading | (1) Bulking agent | (1) 1% |
| | | (2) Canapé toast | (2) Bulking agent | (2) 2% |
| | | (3) Unstandardized confectionery that meet the conditions set out in column 2 of item 3 of the table following section B.01.513 for the subject "Reduced in energy" set out in column 1 | (3) Bulking agent | (3) 25% |
| | | (4) Unstandardized edible ices | (4) Bulking agent | (4) 3% |
| | | (5) Fillings | (5) Bulking agent | (5) 0.5% |
| | | (6) Foods sold in tablet form | (6) Bulking agent | (6) 50% |
| | | (7) Icings | (7) Bulking agent | (7) 1% |
| | | (8) Seasonings | (8) Bulking agent | (8) 3% |
| | | (9) Sweet baked goods | (9) Bulking agent | (9) 8% |
| C.14A | Chloropentafluo-roethane | Unstandardized foods | Pressure dispensing and aerating agent | Good Manufacturing Practice |
| C.15 | Citric Acid | (1) Beef blood | (1) Anticoagulant | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Culture nutrient | (2) Good Manufacturing Practice |
| C.16 | Copper gluconate | Breath freshener products | To characterize the product | 50 p.p.m. |
| C.17 | Copper Sulphate | Wine | Fining agent | 0.0001%, calculated as copper, in the finished product |
| D.1 | Dimethylpolysiloxane Formulations | (1) Apple (or rhubarb) and (naming the fruit) Jam; Fats and oils; Fig marmalade; Fig marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; Pineapple marmalade; Pineapple marmalade with pectin; Reconstituted lemon juice; Reconstituted lime | (1) Antifoaming agent | (1) 10 p.p.m. of dimethylpolysiloxane |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | juice; Shortening; Skim milk powder; Wine | | |
| | | (2) Pineapple juice; Blends of pineapple juice with other fruit juices; canned pineapple (when pineapple juice is used as the packing medium) | (2) Anti-foaming agent | (2) 10 p.p.m. of dimethylpolysiloxane |
| | | (3) Surfaces that come in contact with food | (3) Release agent | (3) Good Manufacturing Practice (Residue of dimethylpolysiloxane in food not to exceed 10 p.p.m.) |
| | | (4) Unstandardized foods | (4) Antifoaming agent | (4) 10 p.p.m. of dimethylpolysiloxane |
| | | (5) Wort used in the manufacture of Ale, Beer, Light beer, Malt liquor, Porter and Stout | (5) Antifoaming agent | (5) 10 p.p.m. of dimethylpolysiloxane |
| D.3 | Dioctyl sodium sulfosuccinate | (1) Fumaric acid-acidulated dry beverage bases | (1) Wetting agent | (1) 10 p.p.m. in the finished drink |
| | | (2) Sausage casings | (2) Reduce casing breakage | (2) 200 p.p.m. of the casing |
| E.1 | Ethoxyquin | Paprika; Ground chili pepper | To promote colour retention | 100 p.p.m. |
| E.2 | [Repealed, SOR/2016-143, s. 1] | | | |
| F.1 | Ferrous Gluconate | Ripe olives | Colour retention | Good Manufacturing Practice |
| G.1 | Gelatin | Beer; Cider; Wine | Fining agent | Good Manufacturing Practice |
| G.2 | [Repealed, SOR/89-175, s. 2] | | | |
| G.2A | Glucono delta lactone | (1) Cooked sausage, Meat Loaf | (1) To accelerate colour fixing | (1) 0.5% |
| | | (2) Dry Sausage | (2) To assist in curing | (2) Good Manufacturing Practice |
| G.3 | Glycerol | (1) Meat curing compounds; Sausage casings | (1) Humectant | (1) Good Manufacturing Practice |
| | | (2) Preserved meats (Division 14) | (2) Glaze for preserved meats | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Humectant; Plasticizer | (3) Good Manufacturing Practice |
| G.4 | Glycerol ester of wood rosin | Beverages containing citrus or spruce oils | Density adjusting agent | 100 p.p.m. |
| H.1 | Hydrogen Peroxide | (1) Brewers' mash | (1) Clarification aid | (1) 135 p.p.m. in the mash |
| | | (2) Liquid whey destined for the manufacture of dried whey products | (2) To decolourize and maintain pH | (2) 100 p.p.m. (see also subitem C.1(3) of Table V) |
| | | (3) Oat hulls used in the manufacture of oat hull fibre | (3) Bleaching agent | (3) Good Manufacturing Practice |
| I | Isobutane | Edible vegetable oil-based or lecithin-based pan coatings or a mixture of both | Propellant | Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| L.1 | Lactylic Esters of Fatty Acids | Unstandardized foods | Plasticizing agent | Good Manufacturing Practice |
| L.2 | Lanolin | Chewing gum | Plasticizing agent | Good Manufacturing Practice |
| L.3 | Lecithin | (1) Surfaces that come in contact with food | (1) Release agent | (1) Good Manufacturing Practice |
| | | (2) Infant cereal products | (2) Release agent | (2) 1.75% as consumed |
| L.4 | L-Leucine | Table-top sweetener tablets that contain acesulfame-potassium, aspartame, erythritol, neotame or sucralose | Lubricant or binder in tablet manufacture | Good Manufacturing Practice |
| M.1 | Magnesium Aluminum Silicate | Chewing gum | Dusting agent | Good Manufacturing Practice |
| M.2 | Magnesium Carbonate | (1) Flour, Whole wheat flour | (1) Carrier of benzoyl peroxide | (1) 900 p.p.m. in accordance with subparagraphs B.13.001(e)(vi) and B.13.005(d)(vi) |
| | | (2) [Repealed, SOR/94-227, s. 9] | | |
| | | (3) Unstandardized confectionery | (3) Release agent | (3) Good Manufacturing Practice |
| M.2A | Magnesium Chloride | Egg albumen (delysozymized) | Restoration of functional properties | Good Manufacturing Practice (Quantity of magnesium added not to exceed that lost during processing) |
| M.3 | Magnesium Silicate | (1) Unstandardized confectionery | (1) Release agent | (1) Good Manufacturing Practice |
| | | (2) Chewing gum | (2) Dusting agent | (2) Good Manufacturing Practice |
| | | (3) Rice | (3) Coating | (3) Good Manufacturing Practice |
| M.4 | Magnesium Stearate | (1) Unstandardized confectionery | (1) Release agent | (1) Good Manufacturing Practice |
| | | (2) Foods sold in tablet form | (2) Binding agent | (2) Good Manufacturing Practice |
| M.4A | Magnesium Sulphate | Egg albumen (delysozymized) | Restoration of functional properties | Good Manufacturing Practice (Quantity of magnesium added not to exceed that lost during processing) |
| M.5A | [Repealed, SOR/93-276, s. 6] | | | |
| M.5C | Methyl Ethyl Cellulose | Unstandardized foods | Aerating agent | Good Manufacturing Practice |
| M.6 | Microcrystalline Cellulose | (1) Ice milk mix | (1) Bodying and texturizing agent | (1) 1.5% |
| | | (2) Sherbet | (2) Bodying and texturizing agent | (2) 0.5% |
| | | (3) Unstandardized foods that meet the conditions set out in column 2 of item 3 of the table following section | (3) Filler | (3) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | B.01.513 for the subject "Reduced in energy" set out in column 1 | | |
| | | (4) Whipped vegetable oil topping | (4) Bodying and texturizing agent | (4) 1.5% |
| | | (5) Unstandardized frozen desserts | (5) Bodying and texturizing agent | (5) 0.5% |
| | | (6) Unstandardized sandwich spreads; Unstandardized dips | (6) Bodying and texturizing agent | (6) 3.0% |
| | | (7) Unstandardized foods other than those unstandardized foods referred to in this item | (7) Bodying and texturizing agent | (7) 2.0% |
| | | (8) Ice cream mix | (8) Bodying and texturizing agent | (8) 0.5% or, if used in combination with stabilizing agents, the combined amount shall not exceed 0.5% of the ice cream made from the mix |
| | | (9) Table-top sweetener tablets containing aspartame | (9) Tablet disintegration | (9) 2.2% |
| | | (10) Cream for whipping | (10) Stabilizing and thickening agent | (10) 0.2% |
| | | (11) Breath freshener products | (11) Bodying and texturizing agent | (11) 9.0% |
| M.7 | Mineral Oil | (1) Bakery products; Seeded raisins; Unstandardized confectionery | (1) Release agent | (1) 0.3% in accordance with section B.01.047. If petrolatum is also used as a release agent in bakery products the total of any combination of petrolatum and mineral oil must not exceed 0.15% |
| | | (2) Fresh fruits and vegetables | (2) Coating | (2) 0.3% in accordance with section B.01.047 |
| | | (3) Sausage casings | (3) Lubricant | (3) 5% in accordance with paragraph B.01.047(e) (Residues of mineral oil in a raw sausage prepared with such casings not to exceed 200 p.p.m.; in cooked sausage, 30 p.p.m.) |
| | | (4) Salt Substitute | (4) Binding agent and protective coating | (4) 0.6% in accordance with paragraph B.01.047(h) |
| M.8 | Monoacetin | Unstandardized bakery products | Plasticizer | Good Manufacturing Practice |
| M.9 | Mono- and di-glycerides | (1) Apple (or rhubarb) and (naming the fruit) Jam; Fats and oils; Fig marmalade; Fig marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly | (1) Antifoaming agent | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | with pectin; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; Pineapple marmalade; Pineapple marmalade with pectin | | |
| | | (2) Unstandardized foods | (2) Antifoaming agent; Humectant; Release agent | (2) Good Manufacturing Practice |
| M.10 | Mono-glycerides | Unstandardized foods | Antifoaming agent; Humectant; Release agent | Good Manufacturing Practice |
| N.1 | Nitrogen | (1) Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients) | (1) To improve spreadability | (1) Good Manufacturing Practice |
| | | (2) Margarine | (2) To improve spreadability | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Pressure dispensing agent | (3) Good Manufacturing Practice |
| N.2 | Nitrous Oxide | Unstandardized foods | Pressure dispensing agent | Good Manufacturing Practice |
| O.1 | Octafluorocyclobu-tane | Unstandardized foods | Pressure dispensing and aerating agent | Good Manufacturing Practice |
| O.2 | Oxystearin | Cotton seed oil; Peanut oil; Soy bean oil | To inhibit crystal formation | 0.125% |
| O.3 | Ozone | (1) Cider | (1) Maturing agent | (1) Good Manufacturing Practice |
| | | (2) Water represented as mineral water or spring water | (2) Chemosterilant | (2) Good Manufacturing Practice |
| | | (3) Wine | (3) Maturing agent | (3) Good Manufacturing Practice |
| P.1 | Pancreas Extract | Acid producing bacterial cultures | To control bacteriophages | Good Manufacturing Practice |
| P.1A | Paraffin Wax | (1) Fresh fruits and vegetables | (1) Coating | (1) 0.3% in accordance with section B.01.047 |
| | | (2) Cheese and turnips | (2) Coating | (2) Good Manufacturing Practice in accordance with section B.01.047 |
| P.2 | Petrolatum | (1) Bakery products | (1) Release agent | (1) 0.15% in accordance with section B.01.047. If mineral oil is also used as a release agent the total of any combination of petrolatum and mineral oil must not exceed 0.15% |
| | | (2) Fresh fruits and vegetables | (2) Coating | (2) 0.3% in accordance with section B.01.047 |
| P.2A | Polyethylene glycol (molecular weight 3000-9000) | (1) Soft drinks | (1) Antifoaming agent | (1) 10 p.p.m. |
| | | (2) Table-top sweetener tablets containing aspartame | (2) Lubricant | (2) 1.0% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | (3) L-Lysine tablets | (3) Tablet binder | (3) 7.0% |
| P.2B | Polydextrose | Unstandardized foods | Bodying and texturizing agent | Good Manufacturing Practice |
| P.3 | Polyvinylpyrroli-done | (1) Ale; Beer; Cider; Light beer; Malt liquor; Porter; Stout; Wine | (1) Fining agent | (1) 2 p.p.m. in the finished product |
| | | (2) Table-top sweetener tablets containing aspartame | (2) Tablet binder | (2) 0.3% |
| | | (3) Colour lake dispersions for use in unstandardized confectionery in tablet form | (3) Viscosity reduction agent and stabilizer in colour lake dispersions | (3) Good Manufacturing Practice (Residues of polyvinyl pyroliodone not to exceed 100 p.p.m. in the finished foods) |
| P.4 | Potassium Aluminum Sulphate | Flour; Whole wheat flour | Carrier of benzoyl peroxide | 900 p.p.m., in accordance with subparagraphs B.13.001(e)(vi) and B.13.005(d)(vi) |
| P.4.1 | Potassium Ferrocyanide | Wine | Fining agent | Good Manufacturing Practice |
| P.5 | Potassium Stearate | (1) Chewing gum | (1) Plasticizing agent | (1) Good Manufacturing Practice |
| | | (2) Emulsifying preparations containing propylene glycol monoesters | (2) Stabilizing agent | (2) 2% |
| P.6 | Propane | Unstandardized foods | Pressure dispensing and aerating agent | Good Manufacturing Practice |
| P.7 | Propylene Glycol | (1) Oil-soluble annatto | (1) Solvent | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Humectant | (2) Good Manufacturing Practice |
| Q.1 | Quillaia Extract | Beverage bases; Beverage mixes; Soft drinks | Foaming Agent | Good Manufacturing Practice |
| S.1 | Saponin | Beverage bases; Beverage mixes; Soft drinks | Foaming agent | Good Manufacturing Practice |
| S.1.01 | Silicon Dioxide | Edible vegetable oil-based cookware coating emulsions | Suspending agent | 2.0% of preparation |
| S.1.1 | Sodium Acid Pyrophosphate | Frozen fish fillets; frozen minced fish; frozen lobster; frozen crab; frozen clams; frozen shrimp | To reduce processing losses and to reduce thaw drip | Used in combination with sodium tripolyphosphate and sodium pyrophosphate tetrabasic, total added pyrophosphate not to exceed 0.5% calculated as sodium phosphate, dibasic |
| S.2 | Sodium Aluminum Sulphate | Flour; Whole wheat flour | Carrier of benzoyl peroxide | 900 p.p.m. in accordance with subparagraphs B.13.001(e)(vi) and B.13.005(d)(vi) |
| S.3 | Sodium Bicarbonate | (1) Unstandardized confectionery | (1) Aerating agent | (1) Good Manufacturing Practice |
| | | (2) Salt | (2) To stabilize potassium iodide in salt | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| S.3A | Sodium Carbonate | In combination with sodium hexametophosphate for use on frozen fish fillets, frozen lobster, frozen crabs, frozen clams and frozen shrimp | To reduce thaw drip | 15% of the combination of sodium carbonate and sodium hexametaphosphate |
| S.3B | Sodium Carboxymethyl Cellulose | Sausage casings | Coating to enable peeling | 0.25% of the casing |
| S.4 | Sodium Citrate | (1) Beef blood | (1) Anticoagulant | (1) 0.5% |
| | | (2) Sour cream | (2) Flavour precursor | (2) 0.1% |
| | | (3) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (3) To modify texture | (3) Good Manufacturing Practice |
| S.5 | Sodium Ferrocyanide Decahydrate | Dendritic salt | As an adjuvant in the production of dendritic salt crystals | 13 p.p.m. calculated as anhydrous sodium ferrocyanide |
| S.6 | Sodium Hexametaphosphate | (1) Beef blood | (1) Anti-coagulant | (1) 0.2% |
| | | (2) Frozen fish fillets; frozen lobsters; frozen crab; frozen clams and frozen shrimp | (2) To reduce thaw drip | (2) 0.5% total added phosphate calculated as sodium phosphate, dibasic |
| | | (3) Gelatin intended for marshmallow compositions | (3) Whipping agent | (3) 2% |
| S.6A | Sodium Hydroxide | Frozen crustaceans and molluscs | To facilitate the removal of extraneous matter and to reduce moisture loss during cooking | When used in combination with sodium chloride (salt) and calcium oxide in solution, sodium hydroxide not to exceed 70 p.p.m. |
| S.6.1 | Sodium Lauryl Sulphate | (1) Dried egg-white (dried albumen) | (1) Whipping agent | (1) 0.1% |
| | | (2) Frozen egg-white (frozen albumen); Liquid egg-white (liquid albumen) | (2) Whipping agent | (2) 0.0125% |
| | | (3) Gelatin intended for marshmallow compositions | (3) Whipping agent | (3) 0.5% |
| S.6.2 | Sodium Potassium Copper Chlorophyllin | Breath freshener products | To characterize the product | 700 p.p.m. |
| S.7 | Sodium Phosphate, dibasic | (1) Frozen fish | (1) To prevent cracking of glaze | (1) Good Manufacturing Practice |
| | | (2) Frozen mushrooms | (2) To prevent discolouration | (2) Good Manufacturing Practice |
| S.7.1 | Sodium Pyrophosphate, tetrabasic | Frozen fish fillets; frozen minced fish; frozen lobster; frozen crab; frozen clams; frozen shrimp | To reduce processing losses and to reduce thaw drip | Used in combination with sodium tripolyphosphate and sodium acid pyrophosphate, total added phosphate not to exceed 0.5% calculated as sodium phosphate, dibasic |
| S.8 | Sodium Silicate | Canned drinking water | Corrosion inhibitor | Good Manufacturing Practice |
| S.9 | Sodium Stearate | Chewing gum | Plasticizing agent | Good Manufacturing Practice |
| S.9A | Sodium Stearoyl- 2-Lactylate | (1) Frozen egg-white (frozen albumen); Liquid egg-white (liquid albumen) | (1) Whipping agent | (1) 0.05% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | (2) Dried egg-white (dried albumen) | (2) Whipping agent | (2) 0.5% |
| | | (3) Oil toppings or topping mixes | (3) Whipping agent | (3) 0.3% |
| | | (4) Dehydrated potatoes | (4) Conditioning agent | (4) 0.2% of dry weight |
| S.9B | Sodium Sulphate | Frozen mushrooms | To prevent discolouration | Good Manufacturing Practice |
| S.9C | Sodium Sulphite | Canned flaked tuna | To prevent discolouration | 300 p.p.m. |
| S.10 | Sodium Thiosulphate | Salt | To stabilize potassium iodine in salt | Good Manufacturing Practice |
| S.11 | Sodium Tripolyphosphate | Frozen fish fillets; frozen minced fish; frozen comminuted fish; frozen lobster; frozen crab; frozen clams and frozen shrimp | To reduce processing losses and to reduce thaw drip | Used singly or in combination with sodium acid pyrophosphate and sodium pyrophosphate tetrabasic, total added phosphate not to exceed 0.5% calculated as sodium phosphate, dibasic |
| S.12 | [Repealed, SOR/93-276, s. 8] | | | |
| S.13 | Stannous Chloride | (1) Asparagus packed in glass containers or fully lined (lacquered) cans | (1) Flavour and colour stabilizer | (1) 25 p.p.m. calculated as tin |
| | | (2) Canned carbonated soft drinks; concentrated fruit juices except frozen concentrated orange juice; lemon juice; lime juice | (2) Flavour and colour stabilizer | (2) Good Manufacturing Practice |
| S.14 | Stearic Acid | (1) Unstandardized confectionery | (1) Release agent | (1) Good Manufacturing Practice |
| | | (2) Chewing gum | (2) Plasticizing agent | (2) Good Manufacturing Practice |
| | | (3) Foods sold in tablet form | (3) Release agent and lubricant | (3) Good Manufacturing Practice |
| S.15 | Sodium Methyl Sulphate | Pectin | A processing aid, the result of methylation of pectin by sulfuric acid and methyl alcohol and neutralized by sodium bicarbonate | 0.1% of pectin |
| S.15A | [Repealed, SOR/93-276, s. 9] | | | |
| S.16 | Sucrose Acetate Isobutyrate | (Naming the flavour) Flavour for use in beverages containing citrus or spruce oils | Density adjusting agent | 300 p.p.m. in beverages containing citrus or spruce oils as consumed |
| S.17 | Sulphuric Acid | Coffee beans | To improve the extraction yield of coffee solids | Good Manufacturing Practice |
| T.1 | Talc | (1) Dried split legumes; Rice | (1) Coating agent | (1) Good Manufacturing Practice |
| | | (2) Chewing gum base | (2) Filler | (2) Good Manufacturing Practice |
| | | (3) Chewing gum | (3) Dusting agent | (3) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Purpose of Use | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| T.2 | Tannic Acid | (1) Chewing gum | (1) To reduce adhesion | (1) Good Manufacturing Practice |
| | | (2) Cider; Honey wine; Wine | (2) Fining agent | (2) 200 p.p.m |
| T.2A | [Repealed, SOR/93-276, s. 10] | | | |
| T.3 | Triacetin | Cake mixes | Wetting agent | Good Manufacturing Practice |
| T.4 | Triethyl Citrate | Dried egg-white (dried albumen); Frozen egg-white (frozen albumen); Liquid egg-white (liquid albumen) | Whipping agent | 0.25% |
| X.1 | [Repealed, SOR/93-276, s. 11] | | | |

**TABLEAU VIII**

**Additifs alimentaires divers**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| A.01 | Gomme arabique | Ale; bière; bière légère; liqueur de malt; porter; stout; vin | Agent de collage | Bonnes pratiques industrielles |
| A.1 | Mono-glycérides acétylés | Aliments non normalisés | Couverture; agent de démoulage | Bonnes pratiques industrielles |
| A.1.01 | Agar-agar | Vin | Agent de collage | Bonnes pratiques industrielles |
| A.1.1 | Sulphate d'aluminium | Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide); jaune d'œuf congelé; jaune d'œuf liquide; œuf entier congelé; œuf entier liquide; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre d'œuf entier | Pour stabiliser l'albumen durant la pasteurisation | 0,036 % |
| A.2 | Persulfate d'ammoniaque | Levure de bière | Agent anti- microbien | 0,1 % |
| A.3 | [Abrogé, DORS/93-276, art. 4] | | | |
| A.4 | [Abrogé, DORS/93-276, art. 5] | | | |
| B.2 | Cire d'abeilles | Aliments non normalisés | Agent anticollant | 0,4 % |
| B.2.1 | Peroxyde de benzoyle | Petit-lait liquide destiné à la fabrication de produits de petit-lait séché autres que ceux entrant dans les préparations pour nourrissons | Décolorer | 100 p.p.m. |
| B.3 | Huile végétale bromée | Préparation aromatisante de (nom de l'arôme) pour utilisation dans les boissons contenant des huiles d'agrumes ou d'épinette | Agent modificateur de la densité | 15 p.p.m. dans les boissons contenant des huiles d'agrumes ou d'épinette sous leur forme consommable |
| B.4 | n-Butane | Enduits aux casseroles, à base d'huile végétale | Agent de propulsion | Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | comestible, de lécithine ou d'un mélange des deux | | |
| C.1 | Caféine | Breuvages de type cola | Caractéristique du produit | 200 p.p.m. dans le produit fini |
| C.2 | Citrate de caféine | Breuvages de type cola | Caractéristique du produit | 200 p.p.m., calculé en caféine, dans le produit fini |
| C.3 | Carbonate de calcium | (1) Farine; farine de blé entier | (1) Véhicule du peroxyde de benzoyle | (1) 900 p.p.m., conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| | | (2) [Abrogé, DORS/94-227, art. 5] | | |
| | | (3) Confiseries non normalisées | (3) Crémer et fixer | (3) Bonnes pratiques industrielles |
| | | (4) Gomme à mâcher | (4) Agent de remplissage | (4) Bonnes pratiques industrielles |
| | | (5) Aliments non normalisés | (5) Véhicule et agent de saupoudrage | (5) Bonnes pratiques industrielles |
| C.3.01 | Chlorure de calcium | Saucisse avec enrobage comestible | Stabiliser l'enrobage comestible | Bonnes pratiques industrielles |
| C.3A | Lactate de calcium | (1) Albumine de l'œuf (délysozymisée) | (1) Restauration des propriétés fonctionnelles | (1) Bonnes pratiques industrielles (la quantité de calcium ajoutée ne doit pas excéder celle perdue lors du processus de transformation) |
| | | (2) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (2) Modifier la texture | (2) Bonnes pratiques industrielles |
| | | (3) Saucisse avec enrobage comestible | (3) Stabiliser l'enrobage comestible | (3) Bonnes pratiques industrielles |
| C.4 | Oxyde de calcium | (1) Crustacés et mollusques congelés | (1) Faciliter l'enlèvement des matières étrangères et réduire la déperdition d'humidité pendant la cuisson | (1) Lorsque employé en combinaison avec le chlorure de sodium (sel) et l'hydroxyde de sodium en solution, l'oxyde de calcium ne doit pas dépasser 30 p.p.m. |
| | | (2) Mélange de poisson et de viande préparés visés à l'alinéa B.21.006n) | (2) Modifier la texture | (2) Bonnes pratiques industrielles |
| C.5 | Phosphate bicalcique | (1) Farine; farine de blé entier | (1) Véhicule du peroxyde de benzoyle | (1) 900 p.p.m. conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| | | (2) [Abrogé, DORS/94-227, art. 6] | | |
| C.6 | Phosphate tricalcique | (1) Farine; farine de blé entier | (1) Véhicule du peroxyde de benzoyle | (1) 900 p.p.m. conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| | | (2) [Abrogé, DORS/94-227, art. 7] | | |
| | | (3) Petit-lait liquide destiné à la fabrication de produits de petit-lait séché autres que | (3) Véhicule du peroxyde de benzoyle | (3) 0,04 % des produits de petit-lait séché |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | ceux entrant dans les préparations pour nourrissons | | |
| | | (4) Fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés) | (4) Améliorer la couleur, la texture, la consistance et la tartinabilité | (4) 1,0 % |
| C.7 | Silicate de calcium | Rocou soluble dans l'huile | Véhicule | Bonnes pratiques industrielles |
| C.8 | Stéarate de calcium | Confiseries non normalisées | Agent de démoulage | Bonnes pratiques industrielles |
| C.9 | Stéaroyl-2- lactylate de calcium | (1) Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide) | (1) Faire monter en neige | (1) 0,05 % |
| | | (2) Poudre de blanc d'œuf (poudre d'albumen) | (2) Faire monter en neige | (2) 0,5 % |
| | | (3) Garnitures de graisse végétale | (3) Faire mousser | (3) 0,3 % |
| | | (4) Pommes de terre déshydratées | (4) Agent de conditionnement | (4) 0,2 % du poids à l'état sec |
| C.10 | Sulfate de calcium | (1) Farine; farine de blé entier | (1) Véhicule du peroxyde de benzoyle | (1) 900 p.p.m. conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| | | (2) [Abrogé, DORS/94-227, art. 8] | | |
| | | (3) Poudre à pâte | (3) Remplissage neutre | (3) Bonnes pratiques industrielles |
| | | (4) Petit-lait liquide destiné à la fabrication de produits de petit-lait séché autres que ceux entrant dans les préparations pour nourrissons | (4) Véhicule du peroxyde de benzoyle | (4) 0,3 % des produits de petit-lait séché |
| C.11 | Anhydride carbonique | (1) Ale; bière; jus de (nom du fruit) gazeux; bière légère; liqueur de malt; porter; cidre; stout; vins; eau dite eau minérale ou eau de source | (1) Rendre mousseux | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Agent pulseur ou pour rendre mousseux | (2) Bonnes pratiques industrielles |
| | | (3) Fromage cottage; fromage cottage en crème | (3) Prolonger la durée de conservation | (3) Bonnes pratiques industrielles |
| C.11.1 | Carboxyméthylcellulose, réticulé | Édulcorants de table sous forme de comprimé | Désagrégation des comprimés | Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | But de l'emploi | Limites de tolérance |
| | (Carboxyméthylcellulose sodique, réticulé) | contenant de l'acésulfame-potassium, de l'aspartame, de l'érythritol, du néotame ou du sucralose | | |
| C.12 | Huile de ricin | Confiseries non normalisées | Agent de démoulage | Bonnes pratiques industrielles |
| C.13 | [Abrogé, DORS/2010-142, art. 35] | | | |
| C.13.1 | Cellulose en poudre | (1) Pâte à frire et chapelure | (1) Agent de remplissage | (1) 1 % |
| | | (2) Biscottes | (2) Agent de remplissage | (2) 2 % |
| | | (3) Confiseries non normalisées qui répondent aux critères mentionnés à la colonne 2 de l'article 3 du tableau suivant l'article B.01.513 en regard du sujet « énergie réduite » visé à la colonne 1 | (3) Agent de remplissage | (3) 25 % |
| | | (4) Glaces comestibles non normalisées | (4) Agent de remplissage | (4) 3 % |
| | | (5) Garnitures | (5) Agent de remplissage | (5) 0,5 % |
| | | (6) Aliments vendus sous forme de comprimés | (6) Agent de remplissage | (6) 50 % |
| | | (7) Glaçages | (7) Agent de remplissage | (7) 1 % |
| | | (8) Assaisonnements | (8) Agent de remplissage | (8) 3 % |
| | | (9) Produits de boulangerie sucrés | (9) Agent de remplissage | (9) 8 % |
| C.14A | Chloropentafluoréthane | Aliments non normalisés | Agent pulseur et agent d'aération | Bonnes pratiques industrielles |
| C.15 | Acide citrique | (1) Sang de bœuf | (1) Anticoagulant | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Nourrir les cultures | (2) Bonnes pratiques industrielles |
| C.16 | Gluconate de cuivre | Rafraîchisseurs d'haleine | Caractéristique du produit | 50 p.p.m. |
| C.17 | Sulfate de cuivre | Vin | Agent de collage | 0,0001 % calculé en cuivre dans le produit fini |
| D.1 | Formules à base de diméthyl-polysiloxane | (1) Confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; huiles et graisses; jus de citron reconstitué; jus de lime reconstitué; lait écrémé en poudre; marmelade d'ananas; marmelade d'ananas avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; marmelade de figues; marmelade de figues avec pectine; shortening; vin | (1) Agent antimousse | (1) 10 p.p.m. de diméthylpolysiloxane |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | (2) Jus d'ananas; Mélanges de jus d'ananas avec d'autres jus de fruits; ananas en conserve (lorsque le jus d'ananas est utilisé comme véhicule de conditionnement) | (2) Agent anti-mousse | (2) 10 p.p.m. de diméthylpolysiloxane |
| | | (3) Surfaces entrant en contact avec les aliments | (3) Agent de démoulage | (3) Bonnes pratiques industrielles. (Les résidus de diméthylpolysiloxane dans l'aliment ne doivent pas excéder 10 p.p.m.) |
| | | (4) Aliments non normalisés | (4) Agent antimousse | (4) 10 p.p.m. de diméthylpolysiloxane |
| | | (5) Moût utilisé dans la fabrication d'ale, de bière, de bière légère, de liqueur de malt, de porter et de stout | (5) Agent antimousse | (5) 10 p.p.m. de diméthylpolysiloxane |
| D.3 | Dioctyl sulfo-succinate sodique | (1) Bases sèches de boissons, acidulées à l'acide fumarique | (1) Agent humidifiant | (1) 10 p.p.m. dans la boisson finie |
| | | (2) Boyaux de saucisse | (2) Réduit la rupture du boyau | (2) 200 p.p.m. du boyau |
| E.1 | Ethoxyquin | Paprika; piment rouge moulu | Pour favoriser la conservation de la couleur | 100 p.p.m. |
| E.2 | [Abrogé, DORS/2016-143, art. 1] | | | |
| F.1 | Gluconate ferreux | Olives mûres | Fixer la couleur | Bonnes pratiques industrielles |
| G.1 | Gélatine | Bière; cidre; vin | Agent de collage | Bonnes pratiques industrielles |
| G.2 | [Abrogé, DORS/89-175, art. 2] | | | |
| G.2A | Glucono-delta-lactone | (1) Pain de viande; saucisse cuite | (1) Activer la fixation de la couleur | (1) 0,5 % |
| | | (2) Saucisse sèche | (2) Faciliter le séchage | (2) Bonnes pratiques industrielles |
| G.3 | Glycérol | (1) Mélanges de salaison des viandes; boyaux à saucisse | (1) Humidifier | (1) Bonnes pratiques industrielles |
| | | (2) Viandes de salaison (Titre 14) | (2) Glacer la surface de ces viandes | (2) Bonnes pratiques industrielles |
| | | (3) Aliments non normalisés | (3) Humidifier; lustrer | (3) Bonnes pratiques industrielles |
| G.4 | Ester glycérique de la colophane | Boissons contenant des huiles d'agrumes ou d'épinette | Agent modificateur de la densité | 100 p.p.m. |
| H.1 | Peroxyde d'hydrogène | (1) Moût de bière | (1) Adjuvant de clarification | (1) 135 p.p.m. dans le moût |
| | | (2) Petit-lait liquide destiné à la fabrication de produits de petit-lait séché | (2) Pour décolorer et maintenir le pH | (2) 100 p.p.m. (voir aussi le paragraphe C.1(3) du tableau V) |
| | | (3) Balle d'avoine utilisée dans la fabrication de fibre de balle d'avoine | (3) Agent de blanchiment | (3) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
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| Article | Additifs | Permis dans ou sur | But de l'emploi | Limites de tolérance |
| I | Isobutane | Enduits pour casseroles à base d'huile végétale comestible, de lécithine ou d'un mélange des deux | Agent de propulsion | Bonnes pratiques industrielles |
| L.1 | Esters lactyliques d'acides gras | Aliments non normalisés | Agent plastifiant | Bonnes pratiques industrielles |
| L.2 | Lanoline | Gomme à mâcher | Agent plastifiant | Bonnes pratiques industrielles |
| L.3 | Lécithine | (1) Surfaces entrant en contact avec les aliments | (1) Agent de démoulage | (1) Bonnes pratiques industrielles |
| | | (2) Produits céréaliers pour bébés | (2) Agent de démoulage | (2) 1,75 % du produit céréalier pour bébés prêt à consommer |
| L.4 | L-Leucine | Édulcorants de table sous forme de comprimé contenant de l'acésulfame-potassium, de l'aspartame, de l'érythritol, du néotame ou du sucralose | Lubrifiant ou liant utilisé dans la fabrication des comprimés | Bonnes pratiques industrielles |
| M.1 | Silicate d'aluminium et de magnésium | Gomme à mâcher | Agent de saupoudrage | Bonnes pratiques industrielles |
| M.2 | Carbonate de magnésium | (1) Farine; farine de blé entier | (1) Véhicule du peroxyde de benzoyle | (1) 900 p.p.m. conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| | | (2) [Abrogé, DORS/94-227, art. 9] | | |
| | | (3) Confiseries non normalisées | (3) Agent de démoulage | (3) Bonnes pratiques industrielles |
| M.2A | Chlorure de magnésium | Albumine de l'œuf (délysozymisée) | Restauration des propriétés fonctionnelles | Bonnes pratiques industrielles (la quantité de magnésium ajoutée ne doit pas excéder celle perdue lors du processus de transformation) |
| M.3 | Silicate de magnésium | (1) Confiseries non normalisées | (1) Agent de démoulage | (1) Bonnes pratiques industrielles |
| | | (2) Gomme à mâcher | (2) Agent de saupoudrage | (2) Bonnes pratiques industrielles |
| | | (3) Riz | (3) Enrober | (3) Bonnes pratiques industrielles |
| M.4 | Stéarate de magnésium | (1) Confiseries non normalisées | (1) Agent de démoulage | (1) Bonnes pratiques industrielles |
| | | (2) Aliments vendus sous forme de comprimés | (2) Liant | (2) Bonnes pratiques industrielles |
| M.4A | Sulfate de magnésium | Albumine de l'œuf (délysozymisée) | Restauration des propriétés fonctionnelles | Bonnes pratiques industrielles (la quantité de magnésium ajoutée ne doit pas excéder celle perdue lors du processus de transformation) |
| M.5A | [Abrogé, DORS/93-276, art. 6] | | | |
| M.5C | Cellulose méthyl-éthylique | Aliments non normalisés | Agent d'aération | Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | But de l'emploi | Limites de tolérance |
| M.6 | Cellulose microcristalline | (1) Mélange pour lait glacé | (1) Agent texturant et épaississant | (1) 1,5 % |
| | | (2) Sorbet laitier | (2) Agent texturant et épaississant | (2) 0,5 % |
| | | (3) Aliments non normalisés qui répondent aux critères mentionnés à la colonne 2 de l'article 3 du tableau suivant l'article B.01.513 en regard du sujet « énergie réduite » visé à la colonne 1 | (3) Agent de remplissage | (3) Bonnes pratiques industrielles |
| | | (4) Garniture fouettée à l'huile végétale | (4) Agent texturant et épaississant | (4) 1,5 % |
| | | (5) Desserts congelés non normalisés | (5) Agent texturant et épaississant | (5) 0,5 % |
| | | (6) Tartinades à sandwich non normalisées; trempettes non normalisées | (6) Agent texturant et épaississant | (6) 3,0 % |
| | | (7) Aliments non normalisés autres que les aliments non normalisés mentionnés au présent article | (7) Agent texturant et épaississant | (7) 2,0 % |
| | | (8) Mélange pour crème glacée | (8) Agent texturant et épaississant | (8) 0,5 % ou, s'il est employé en association avec des agents stabilisants, la quantité totale ne doit pas dépasser 0,5 % de la crème glacée faite du mélange |
| | | (9) Édulcorant de table sous forme de comprimé contenant de l'aspartame | (9) Désagrégation des comprimés | (9) 2,2 % |
| | | (10) Crème à fouetter | (10) Agent stabilisant et épaississant | (10) 0,2 % |
| | | (11) Rafraîchisseurs d'haleine | (11) Agent texturant et épaississant | (11) 9,0 % |
| M.7 | Huile minérale | (1) Confiseries non normalisées; produits de boulangerie; raisins secs épépinés | (1) Agent de démoulage | (1) 0,3 %, conformément à l'article B.01.047. Si la vaseline est également utilisée dans les produits de boulangerie, comme agent de démoulage, la quantité totale de toute combinaison de vaseline et d'huile minérale ne doit pas dépasser 0,15 % |
| | | (2) Fruits et légumes frais | (2) Badigeonner | (2) 0,3 % conformément à l'article B.01.047 |
| | | (3) Boyaux de saucisse | (3) Lubrifiant | (3) 5 % conformément à l'alinéa B.01.047e) (les résidus d'huile minérale dans les saucisses crues préparées avec ces boyaux ne doivent pas dépasser |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
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| | | | | 200 p.p.m.; dans les saucisses cuites, 30 p.p.m.) |
| | | (4) Succédané de sel | (4) Agent liant et enrobage protecteur | (4) 0,6 %, conformément à l'alinéa B.01.047h) |
| M.8 | Monoacétine | Produits de boulangerie non normalisés | Agent plastifiant | Bonnes pratiques industrielles |
| M.9 | Mono- et diglycérides | (1) Confiture de pommes (ou de rhubarde) et de (nom du fruit); huiles et graisses; marmelade de figues; marmelade de figues avec pectine; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; marmelade d'ananas; marmelade d'ananas avec pectine | (1) Agent antimousse | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Agent antimousse; humidifiant; agent de démoulage | (2) Bonnes pratiques industrielles |
| M.10 | Mono-glycérides | Aliments non normalisés | Agent antimousse; humidifiant; agent de démoulage | Bonnes pratiques industrielles |
| N.1 | Azote | (1) Fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés) | (1) Pour améliorer la tartinabilité | (1) Bonnes pratiques industrielles |
| | | (2) Margarine | (2) Pour améliorer la tartinabilité | (2) Bonnes pratiques industrielles |
| | | (3) Aliments non normalisés | (3) Agent pulseur | (3) Bonnes pratiques industrielles |
| N.2 | Oxyde d'azote | Aliments non normalisés | Agent pulseur | Bonnes pratiques industrielles |
| O.1 | Octafluoro-cyclobutane | Aliments non normalisés | Agent pulseur et agent d'aération | Bonnes pratiques industrielles |
| O.2 | Oxystéarine | Huile de graines de cotonnier; huile d'arachides; huile de soja | Empêcher la formation de cristaux | 0,125 % |
| O.3 | Ozone | (1) Cidre | (1) Agent de maturation | (1) Bonnes pratiques industrielles |
| | | (2) Eau dite eau minérale ou eau de source | (2) Stérilisant chimique | (2) Bonnes pratiques industrielles |
| | | (3) Vin | (3) Agent de maturation | (3) Bonnes pratiques industrielles |
| P.1 | Extrait de pancréas | Cultures bactériennes productrices d'acides | Pour enrayer les bactériophages | Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | But de l'emploi | Limites de tolérance |
| P.1A | Paraffine | (1) Fruits et légumes frais | (1) Enrober | (1) 0,3 % conformément à l'article B.01.047 |
| | | (2) Fromage et navets | (2) Enrober | (2) Bonnes pratiques industrielles conformément à l'article B.01.047 |
| P.2 | Vaseline | (1) Produits de boulangerie | (1) Agent de démoulage | (1) 0,15 %, conformément à l'article B.01.047. Si on utilise également une huile minérale comme agent de démoulage, la quantité totale de toute combinaison de vaseline et d'huile minérale ne doit pas dépasser 0,15 % |
| | | (2) Fruits et légumes frais | (2) Enrober | (2) 0,3 %, conformément à l'article B.01.047 |
| P.2A | Polyéthylèneglycol (gamme de poids moléculaires de 3 000 à 9 000) | (1) Boissons gazeuses | (1) Agent antimousse | (1) 10 p.p.m. |
| | | (2) Édulcorant de table sous forme de comprimé contenant de l'aspartame | (2) Lubrifiant | (2) 1,0 % |
| | | (3) Comprimés de L-lysine | (3) Agent liant pour comprimés | (3) 7,0 % |
| P.2B | Polydextrose | Aliments non normalisés | Agent texturant et épaississant | Bonnes pratiques industrielles |
| P.3 | Polyvinyl-pyrrolidone | (1) Ale; bière; bière légère; cidre; liqueur de malt; porter; stout; vin | (1) Agent de collage | (1) 2 p.p.m. dans le produit fini |
| | | (2) Édulcorant de table sous forme de comprimé contenant de l'aspartame | (2) Liant pour comprimés | (2) 0,3 % |
| | | (3) Dispersions de pigment laqué de colorant pour utilisation dans les confiseries non normalisées sous forme de comprimé | (3) Agent réducteur de la viscosité et stabilisant dans les dispersions de pigment laqué de colorant | (3) Bonnes pratiques industrielles (les résidus de polyvinylpyrrolidone ne doivent pas dépasser 100 p.p.m. dans le produit fini) |
| P.4 | Sulfate double d'aluminium et de potassium | Farine; farine de blé entier | Véhicule du peroxyde de benzoyle | 900 p.p.m., conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| P.4.1 | Ferrocyanure de potassium | Vin | Agent de collage | Bonnes pratiques industrielles |
| P.5 | Stéarate de potassium | (1) Gomme à mâcher | (1) Agent plastifiant | (1) Bonnes pratiques industrielles |
| | | (2) Préparations émulsifiantes contenant des mono-esters de propylèneglycol | (2) Agent stabilisant | (2) 2 % |
| P.6 | Propane | Aliments non normalisés | Agent pulseur et agent d'aération | Bonnes pratiques industrielles |
| P.7 | Propylène-glycol | (1) Rocou soluble dans l'huile | (1) Solvant | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Humidifiant | (2) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | But de l'emploi | Limites de tolérance |
| Q.1 | Essence de quillaja | Bases de boissons; mélanges pour boissons; liqueurs douces | Faire mousser | Bonnes pratiques industrielles |
| S.1 | Saponine | Bases de boissons; mélanges pour boissons; liqueurs douces | Faire mousser | Bonnes pratiques industrielles |
| S.1.01 | Dioxyde de silicium | Émulsions à base d'huiles végétales comestibles servant d'enduits pour batterie de cuisine | Agent de suspension | 2,0 % de la préparation |
| S.1.1 | Pyrophosphate acide de sodium | Filets de poisson congelés; poisson haché congelé; homard congelé; crabe congelé; clams congelés; crevettes congelées | Réduire les pertes dues au traitement et la formation d'exsudat lors de la décongélation | Si employé en association avec le tripolyphosphate de sodium et le pyrophosphate tétrasodique, la quantité totale de phosphate ajouté, calculé en phosphate dibasique de sodium, ne doit pas dépasser 0,5 % |
| S.2 | Sulfate d'aluminium et de sodium | Farine; farine de blé entier | Véhicule du peroxyde de benzoyle | 900 p.p.m. conformément aux sous-alinéas B.13.001e)(vi) et B.13.005d)(vi) |
| S.3 | Bicarbonate de sodium | (1) Confiseries non normalisées | (1) Agent d'aération | (1) Bonnes pratiques industrielles |
| | | (2) Sel ordinaire | (2) Stabilisant de l'iodure de potassium | (2) Bonnes pratiques industrielles |
| S.3A | Carbonate de sodium | Mélangé avec l'hexamétaphosphate de sodium, filets de poisson congelés, homard congelé, crabe congelé, clams congelés et crevettes congelées | Pour empêcher de suinter en dégelant | 15 % du mélange de carbonate de sodium et d'hexamétaphosphate de sodium |
| S.3B | Carboxyméthyl cellulose de sodium | Boyaux de saucisse | Enrobage pour faciliter l'épluchage | 0,25 % de boyaux |
| S.4 | Citrate de sodium | (1) Sang de bœuf | (1) Anticoagulant | (1) 0,5 % |
| | | (2) Crème sure | (2) Précurseur de saveur | (2) 0,1 % |
| | | (3) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (3) Modifier la texture | (3) Bonnes pratiques industrielles |
| S.5 | Décahydrate de ferrocyanure de sodium | Sel dendritique | Adjuvant dans la production de cristaux de sel dendritique | 13 p.p.m. calculé en ferrocyanure anhydre de sodium |
| S.6 | Hexamétaphosphate de sodium | (1) Sang de bœuf | (1) Anticoagulant | (1) 0,2 % |
| | | (2) Filets de poisson congelés; homards congelés; crabe congelé; clams congelés et crevettes congelées | (2) Empêcher de suinter en dégelant | (2) 0,5 % de phosphate ajouté total, calculé en phosphate dibasique de sodium |
| | | (3) Gélatine qui entre dans la composition des guimauves | (3) Agent de fouettage | (3) 2 % |
| S.6A | Hydroxyde de sodium | Crustacés et mollusques congelés | Faciliter l'enlèvement des matières étrangères et | Lorsque employé en combinaison avec le |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | But de l'emploi | Limites de tolérance |
| | | | réduire la déperdition d'humidité pendant la cuisson | chlorure de sodium (sel) et l'oxyde de calcium en solution, l'hydroxyde de sodium ne doit pas dépasser 70 p.p.m. |
| S.6.1 | Lauryl-sulfate de sodium | (1) Poudre de blanc d'œuf (poudre d'albumen) | (1) Faire monter en neige | (1) 0,1 % |
| | | (2) Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide) | (2) Faire monter en neige | (2) 0,0125 % |
| | | (3) Gélatine qui entre dans la composition des guimauves | (3) Agent de fouettage | (3) 0,5 % |
| S.6.2 | Chlorophylline de sodium, potassium et cuivre | Rafraîchisseurs d'haleine | Caractéristique du produit | 700 p.p.m. |
| S.7 | Phosphate dibasique de sodium | (1) Poisson congelé | (1) Empêcher l'éclatement de la glace | (1) Bonnes pratiques industrielles |
| | | (2) Champignons congelés | (2) Empêcher la décoloration | (2) Bonnes pratiques industrielles |
| S.7.1 | Pyrophosphate tétrasodique | Filets de poisson congelés; poisson haché congelé; homard congelé; crabe congelé; clams congelés; crevettes congelées | Réduire les pertes dues au traitement et la formation d'exsudat lors de la décongélation | Si employé en association avec le tripolyphosphate de sodium et le pyrophosphate acide de sodium, la quantité totale de phosphate ajouté, calculé en phosphate dibasique de sodium, ne doit pas dépasser 0,5 % |
| S.8 | Silicate de sodium | Eau potable en boîtes | Anticorrosif | Bonnes pratiques industrielles |
| S.9 | Stéarate de sodium | Gomme à mâcher | Agent plastifiant | Bonnes pratiques industrielles |
| S.9A | Stéaroyl-2-lactylate de sodium | (1) Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide) | (1) Faire monter en neige | (1) 0,05 % |
| | | (2) Poudre de blanc d'œuf (poudre d'albumen) | (2) Faire monter en neige | (2) 0,5 % |
| | | (3) Garnitures à l'huile ou mélanges pour garnitures | (3) Faire mousser | (3) 0,3 % |
| | | (4) Pommes de terre déshydratées | (4) Agent de conditionnement | (4) 0,2 % du poids à l'état sec |
| S.9B | Sulfate de sodium | Champignons congelés | Empêcher la décoloration | Bonnes pratiques industrielles |
| S.9C | Sulfite de sodium | Miettes de thon en conserve | Empêcher la décoloration | 300 p.p.m. |
| S.10 | Thiosulfate de sodium | Sel | Stabilisant de l'iodure de potassium | Bonnes pratiques industrielles |
| S.11 | Tripolyphosphate de sodium | Clams congelés; crabe congelé; crevettes congelées; filets de poisson congelés; homard congelé; poisson haché congelé et poisson haché menu congelé | Réduire les pertes dues au traitement et la formation d'exsudat lors de la décongélation | Si employé seul ou en association avec le pyrophosphate acide de sodium et le pyrophosphate tétrasodique, la quantité |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | | | totale de phosphate ajouté, calculé en phosphate dibasique de sodium, ne doit pas dépasser 0,5 % |
| S.12 | [Abrogé, DORS/93-276, art. 8] | | | |
| S.13 | Chlorure stanneux | (1) Asperges conservées dans des contenants en verre ou des contenants métalliques vernis sur toute leur surface intérieure | (1) Stabiliser la couleur et la saveur | (1) 25 p.p.m. calculé en étain |
| | | (2) Boissons gazeuses en boîtes; jus de citron; jus de fruit concentré sauf le jus d'orange concentré congelé; jus de lime | (2) Stabiliser la couleur et la saveur | (2) Bonnes pratiques industrielles |
| S.14 | Acide stéarique | (1) Confiseries non normalisées | (1) Agent de démoulage | (1) Bonnes pratiques industrielles |
| | | (2) Gomme à mâcher | (2) Agent plastifiant | (2) Bonnes pratiques industrielles |
| | | (3) Aliments vendus sous forme de comprimés | (3) Agent de démoulage et lubrifiant | (3) Bonnes pratiques industrielles |
| S.15 | Sulfate de méthyle et de sodium | Pectine | Aider au conditionnement, comme résultat de la méthylation de la pectine par l'action de l'acide sulfurique et de l'alcool méthylique, le bicarbonate de sodium agissant comme neutralisant | 0,1 % de pectine |
| S.15A | [Abrogé, DORS/93-276, art. 9] | | | |
| S.16 | Acétate isobutyrate de sucrose | Préparation aromatisante de (nom de l'arôme) pour utilisation dans les boissons contenant des huiles d'agrumes ou d'épinette | Agent modificateur de la densité | 300 p.p.m. dans les boissons contenant des huiles d'agrumes ou d'épinette sous leur forme consommable |
| S.17 | Acide sulfurique | Grains de café | Améliorer le rendement de l'extraction des solides de café | Bonnes pratiques industrielles |
| T.1 | Talc | (1) Légumineuses sèches et cassées; riz | (1) Enrobage | (1) Bonnes pratiques industrielles |
| | | (2) Base de gomme à mâcher | (2) Remplissage | (2) Bonnes pratiques industrielles |
| | | (3) Gomme à mâcher | (3) Agent de saupoudrage | (3) Bonnes pratiques industrielles |
| T.2 | Acide tannique | (1) Gomme à mâcher | (1) Pour diminuer l'adhérence | (1) Bonnes pratiques industrielles |
| | | (2) Cidre; vin; vin de miel | (2) Agent de collage | (2) 200 p.p.m. |
| T.2A | [Abrogé, DORS/93-276, art. 10] | | | |
| T.3 | Triacétine | Mélanges à gâteau | Agent humidifiant | Bonnes pratiques indrustrielles |
| T.4 | Triéthylcitrate | Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen | Faire monter en neige | 0,25 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>But de l'emploi | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | liquide); poudre de blanc d'œuf (poudre d'albumen) | | |
| X.1 | [Abrogé, DORS/93-276, art. 11] | | | |

SOR/78-401, s. 3; SOR/78-403, ss. 23 to 25; SOR/78-876, s. 4; SOR/79-660, s. 13; SOR/79-752, s. 8; SOR/80-632, ss. 6 to 13; SOR/81-83, s. 4; SOR/81-617, s. 3; SOR/81-934, ss. 11, 12; SOR/82-566, ss. 3, 4; SOR/82-1071, ss. 18 to 20; SOR/83-410, s. 3; SOR/83-584, s. 1; SOR/83-932, ss. 5, 6; SOR/84-17, s. 6; SOR/84-441, s. 1; SOR/84-602, s. 3; SOR/84-762, s. 10; SOR/84-801, ss. 5, 6; SOR/86-1112, s. 5; SOR/86-1125, s. 2; SOR/87-469, s. 1; SOR/87-640, s. 8; SOR/88-419, s. 4; SOR/88-534, ss. 5, 6; SOR/89-175, s. 2; SOR/89-197, s. 1; SOR/89-198, s. 11; SOR/89-555, ss. 2, 3; SOR/91-90, s. 2; SOR/91-124, ss. 6 to 9; SOR/91-149, s. 3; SOR/91-186, s. 1; SOR/91-409, s. 7; SOR/91-527, s. 4; SOR/92-229, s. 1; SOR/92-344, ss. 2 to 4; SOR/93-276, ss. 4 to 11; SOR/94-416, s. 1; SOR/94-227, ss. 5 to 10; SOR/94-689, s. 2(F); SOR/94-723, s. 1; SOR/96-260, s. 1; SOR/96-378, s. 1;SOR/97-509, s. 1; SOR/98-580, s. 1(F); SOR/99-97, s. 1; SOR/99-420, s. 11(F); SOR/2000-353, s. 8(F); SOR/2001-94, s. 3; SOR/2005-316, ss. 2(F), 3; SOR/2006-91, ss. 6 to 12; SOR/2007-75, s. 7; SOR/2010-41, s. 9(E); SOR/2010-94, s. 8(E); SOR/2010-142, ss. 30(F), 31 to 39, 40(F), 41 to 45, 46(F), 47 to 51, 59(F); SOR/2010-143, ss. 27 to 31; SOR/2011-235, s. 16(F); SOR/2011-279, s. 1; SOR/2011-282, s. 2; SOR/2012-43, s. 31(F); SOR/2012-44, ss. 1, 2; SOR/2012-105, s. 1; SOR/2012-111, ss. 2, 3; SOR/2016-143, s. 1.

DORS/78-401, art. 3; DORS/78-403, art. 23 à 25; DORS/78-876, art. 4; DORS/79-660, art. 13; DORS/79-752, art. 8; DORS/80-632, art. 6 à 13; DORS/81-83, art. 4; DORS/81-617, art. 3; DORS/81-934, art. 11 et 12; DORS/82-566, art. 3 et 4; DORS/82-1071, art. 18 à 20; DORS/83-410, art. 3; DORS/83-584, art. 1; DORS/83-932, art. 5 et 6; DORS/84-17, art. 6; DORS/84-441, art. 1; DORS/84-602, art. 3; DORS/84-762, art. 10; DORS/84-801, art. 5 et 6; DORS/86-1112, art. 5; DORS/86-1125, art. 2; DORS/87-469, art. 1; DORS/87-640, art. 8; DORS/88-419, art. 4; DORS/88-534, art. 5 et 6; DORS/89-175, art. 2; DORS/89-197, art. 1; DORS/89-198, art. 11; DORS/89-555, art. 2 et 3; DORS/91-90, art. 2; DORS/91-124, art. 6 à 9; DORS/91-149, art. 3; DORS/91-186, art. 1; DORS/91-409, art. 7; DORS/91-527, art. 4; DORS/92-229, art. 1; DORS/92-344, art. 2 à 4; DORS/93-276, art. 4 à 11; DORS/94-416, art. 1; DORS/94-227, art. 5 à 10; DORS/94-689, art. 2(F); DORS/94-723, art. 1; DORS/96-260, art. 1; DORS/96-378, art. 1; DORS/97-509, art. 1; DORS/98-580, art. 1(F); DORS/99-97, art. 1; DORS/99-420, art. 11(F); DORS/2000-353, art. 8(F); DORS/2001-94, art. 3; DORS/2005-316, art. 2(F) et 3; DORS/2006-91, art. 6 à 12; DORS/2007-75, art. 7; DORS/2010-41, art. 9(A); DORS/2010-94, art. 8(A); DORS/2010-142, art. 30(F), 31 à 39, 40(F), 41 à 45, 46(F), 47 à 51 et 59(F); DORS/2010-143, art. 27 à 31; DORS/2011-235, art. 16(F); DORS/2011-279, art. 1; DORS/2011-282, art. 2; DORS/2012-43, art. 31(F); DORS/2012-44, art. 1 et 2; DORS/2012-105, art. 1; DORS/2012-111, art. 2 et 3; DORS/2016-143, art. 1.

## TABLE IX

## Food Additives That May Be Used as Sweeteners

| Item No. | Column I<br>Additive | Column II<br>Permitted in or on | Column III<br>Maximum Level of Use |
|---|---|---|---|
| A.01 | Acesulfame-potassium | (1) Table-top sweeteners | (1) Good Manufacturing Practice |
| | | (2) Carbonated beverages | (2) 0.025% in beverages as consumed |
| | | (3) Unstandardized beverage concentrates; Unstandardized beverage mixes; Unstandardized beverages; Unstandardized dairy beverages | (3) 0.05% in beverages as consumed |
| | | (4) Filling mixes; Fillings; Topping mixes; Toppings; Unstandardized dessert mixes; Unstandardized desserts; Yogurt | (4) 0.1% in products as consumed |
| | | (5) Chewing gum; Breath freshener products | (5) 0.35% |
| | | (6) Unstandardized fruit spreads | (6) 0.1% |
| | | (7) Unstandardized salad dressings | (7) 0.05% |
| | | (8) Unstandardized confectionery | (8) 0.25% |
| | | (9) Baking mixes; Unstandardized bakery products | (9) 0.1% in products as consumed |
| | | (10) Canned (naming the fruit); Unstandardized canned fruit | (10) 0.007% |
| A.1 | Aspartame | (1) Table-top sweeteners | (1) Good Manufacturing Practice |
| | | (2) Breakfast cereals | (2) 0.5% |
| | | (3) Unstandardized beverage concentrates; Unstandardized beverage mixes; Unstandardized beverages | (3) 0.1% in beverages as consumed |
| | | (4) Filling mixes; Fillings; Topping mixes; Toppings; Unstandardized dessert mixes; Unstandardized desserts; Yogurt | (4) 0.3% in products as consumed |
| | | (5) Chewing gum; Breath freshener products | (5) 1.0% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or on | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (6) Unstandardized fruit spreads; Unstandardized purées; Unstandardized sauces; Unstandardized table syrups | (6) 0.2% |
| | | (7) Nut spreads; Peanut spreads; Unstandardized salad dressings | (7) 0.05% |
| | | (8) Unstandardized condiments | (8) 0.2% |
| | | (9) Confectionery glazes for snack foods; Sweetened seasonings or coating mixes for snack foods | (9) 0.1% |
| | | (10) Unstandardized confectionery; Unstandardized confectionery coatings | (10) 0.3% |
| A.2 | Aspartame, encapsulated to prevent degradation during baking | Baking mixes; Unstandardized bakery products | 0.4% in product as consumed |
| E.1 | Erythritol | (1) Table-top sweeteners | (1) Good Manufacturing Practice |
| | | (2) Dietetic beverages | (2) 3.5% |
| | | (3) Fat-based cream fillings and toppings | (3) 60% |
| | | (4) Dietetic cookies and wafers | (4) 7% |
| | | (5) Soft candies | (5) 40% |
| | | (6) Hard candies | (6) 50% |
| | | (7) Chewing gum | (7) 60% |
| H.1 | Hydrogenated starch hydrolysates | Unstandardized foods | Good Manufacturing Practice |
| I.1 | Isomalt | Unstandardized foods | Good Manufacturing Practice |
| L.1 | Lactitol | Unstandardized foods | Good Manufacturing Practice |
| M.1 | Maltitol | Unstandardized foods | Good Manufacturing Practice |
| M.2 | Maltitol syrup | Unstandardized foods | Good Manufacturing Practice |
| M.3 | Mannitol | Unstandardized foods | Good Manufacturing Practice |
| N.1 | Neotame | (1) Table-top sweeteners | (1) Good Manufacturing Practice |
| | | (2) Breakfast cereals | (2) 0.016% |
| | | (3) Unstandardized beverage concentrates; Unstandardized beverage mixes; Unstandardized beverages | (3) 0.003% in beverages as consumed |
| | | (4) Filling mixes; Fillings; Topping mixes; Toppings; Unstandardized dessert mixes; Unstandardized desserts; Yogurt | (4) 0.01% in products as consumed |
| | | (5) Breath freshener products; Chewing gum | (5) 0.032% |
| | | (6) Unstandardized fruit spreads; Unstandardized purées; Unstandardized sauces; Unstandardized table syrups | (6) 0.007% |
| | | (7) Nut spreads; Peanut spreads; Unstandardized salad dressings | (7) 0.002% |
| | | (8) Unstandardized condiments | (8) 0.007% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or on | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (9) Confectionery glazes for snack foods; Sweetened seasonings or coating mixes for snack foods | (9) 0.0032% |
| | | (10) Unstandardized confectionery; Unstandardized confectionery coatings | (10) 0.01% |
| | | (11) Baking mixes; Unstandardized bakery products | (11) 0.013% in products as consumed |
| S.1 | Sorbitol | (1) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (1) 6.0% |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.1.1 | Sorbitol syrup | Unstandardized foods | Good Manufacturing Practice |
| S.2 | Sucralose | (1) Table-top sweeteners | (1) Good Manufacturing Practice |
| | | (2) Breakfast cereals | (2) 0.1% |
| | | (3) Unstandardized beverage concentrates; Unstandardized beverage mixes; Unstandardized beverages; Unstandardized dairy beverages | (3) 0.025% in beverages as consumed |
| | | (4) Filling mixes; Fillings; Topping mixes; Toppings; Unstandardized dessert mixes; Unstandardized desserts; Yogurt | (4) 0.025% in products as consumed |
| | | (5) Chewing gum; Breath freshener products | (5) 0.15% |
| | | (6) Unstandardized fruit spreads | (6) 0.045% |
| | | (7) Unstandardized condiments; Unstandardized salad dressings | (7) 0.04% |
| | | (8) Confectionery glazes for snack foods; Sweetened seasonings or coating mixes for snack foods; Unstandardized confectionery; Unstandardized confectionery coatings | (8) 0.07% |
| | | (9) Baking mixes; Unstandardized bakery products | (9) 0.065% in products as consumed |
| | | (10) Unstandardized processed fruit and vegetable products, except unstandardized canned fruit | (10) 0.015% |
| | | (11) Unstandardized alcoholic beverages | (11) 0.07% |
| | | (12) Puddings; Pudding mixes | (12) 0.04% in products as consumed |
| | | (13) Unstandardized table syrups | (13) 0.15% |
| | | (14) Canned (naming the fruit); Unstandardized canned fruit | (14) 0.025% |
| | | (15) Pickles; Relishes | (15) 0.015% |
| T.1 | Thaumatin | (1) Chewing gum; Breath freshener products | (1) 500 p.p.m. |
| | | (2) Salt substitutes | (2) 400 p.p.m. |
| | | (3) (naming the flavour) Flavour referred to in section B.10.005; Unstandardized flavouring preparations | (3) 100 p.p.m. |
| X.1 | Xylitol | Unstandardized foods | Good Manufacturing Practice |

## TABLEAU IX

### Additifs alimentaires qui peuvent être utilisés comme édulcorants

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| A.01 | Acésulfame-potassium | (1) Édulcorants de table | (1) Bonnes pratiques industrielles |
| | | (2) Boissons gazéifiées | (2) 0,025 % dans les boissons, sous leur forme consommable |
| | | (3) Boissons laitières non normalisées; boissons non normalisées; concentrés de boissons non normalisés; mélanges pour boissons non normalisés | (3) 0,05 % dans les boissons, sous leur forme consommable |
| | | (4) Desserts non normalisés; garnitures; glaçages; mélanges pour desserts non normalisés; mélanges pour garnitures; mélanges pour glaçages; yogourt | (4) 0,1 % dans les produits, sous leur forme consommable |
| | | (5) Gomme à mâcher; rafraîchisseurs d'haleine | (5) 0,35 % |
| | | (6) Tartinades de fruits non normalisées | (6) 0,1 % |
| | | (7) Sauces à salade non normalisées | (7) 0,05 % |
| | | (8) Confiseries non normalisées | (8) 0,25 % |
| | | (9) Mélanges pour pâtisseries; produits de boulangerie non normalisés | (9) 0,1 % dans les produits, sous leur forme consommable |
| | | (10) Fruits en conserve non normalisés; (nom du fruit) en conserve | (10) 0,007 % |
| A.1 | Aspartame | (1) Édulcorants de table | (1) Bonnes pratiques industrielles |
| | | (2) Céréales à déjeuner | (2) 0,5 % |
| | | (3) Boissons non normalisées; concentrés de boissons non normalisés; mélanges pour boissons non normalisés | (3) 0,1 % dans les boissons, sous leur forme consommable |
| | | (4) Desserts non normalisés; garnitures; glaçages; mélanges pour desserts non normalisés; mélanges pour garnitures; mélanges pour glaçages; yogourt | (4) 0,3 % dans les produits, sous leur forme consommable |
| | | (5) Gomme à mâcher; rafraîchisseurs d'haleine | (5) 1,0 % |
| | | (6) Purées non normalisées; sauces non normalisées; sirops de table non normalisés; tartinades de fruits non normalisées | (6) 0,2 % |
| | | (7) Sauces à salade non normalisées; tartinades d'arachides; tartinades de fruits à écale | (7) 0,05 % |
| | | (8) Condiments non normalisés | (8) 0,2 % |
| | | (9) Assaisonnements sucrés ou mélanges pour enrobage des grignotines; glaçages à confiserie pour grignotines | (9) 0,1 % |
| | | (10) Confiseries non normalisées; enrobages de confiserie non normalisés | (10) 0,3 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.2 | Aspartame, en capsules, pour prévenir sa dégradation pendant la cuisson | Mélanges pour pâtisseries; produits de boulangerie non normalisés | 0,4 % dans les produits, sous leur forme consommable |
| E.1 | Érythritol | (1) Édulcorants de table | (1) Bonnes pratiques industrielles |
| | | (2) Boissons diététiques | (2) 3,5 % |
| | | (3) Garnitures et glaçages à la crème faits à base de gras | (3) 60 % |
| | | (4) Biscuits et gaufrettes diététiques | (4) 7 % |
| | | (5) Bonbons mous | (5) 40 % |
| | | (6) Bonbons durs | (6) 50 % |
| | | (7) Gomme à mâcher | (7) 60 % |
| H.1 | Hydrolysat d'amidon hydrogéné | Aliments non normalisés | Bonnes pratiques industrielles |
| I.1 | Isomalt | Aliments non normalisés | Bonnes pratiques industrielles |
| L.1 | Lactitol | Aliments non normalisés | Bonnes pratiques industrielles |
| M.1 | Maltitol | Aliments non normalisés | Bonnes pratiques industrielles |
| M.2 | Sirop de maltitol | Aliments non normalisés | Bonnes pratiques industrielles |
| M.3 | Mannitol | Aliments non normalisés | Bonnes pratiques industrielles |
| N.1 | Néotame | (1) Édulcorants de table | (1) Bonnes pratiques industrielles |
| | | (2) Céréales à déjeuner | (2) 0,016 % |
| | | (3) Boissons non normalisées; concentrés de boissons non normalisés; mélanges pour boissons non normalisés | (3) 0,003 % dans les boissons, sous leur forme consommable |
| | | (4) Desserts non normalisés; garnitures; glaçages; mélanges pour desserts non normalisés; mélanges pour garnitures; mélanges pour glaçages; yogourt | (4) 0,01 % dans les produits, sous leur forme consommable |
| | | (5) Gomme à mâcher; rafraîchisseurs d'haleine | (5) 0,032 % |
| | | (6) Purées non normalisées; sauces non normalisées; sirops de table non normalisés; tartinades de fruits non normalisées | (6) 0,007 % |
| | | (7) Sauces à salade non normalisées; tartinades d'arachides; tartinades de fruits à écale | (7) 0,002 % |
| | | (8) Condiments non normalisés | (8) 0,007 % |
| | | (9) Assaisonnements sucrés ou mélanges pour enrobage des grignotines; glaçages à confiserie pour grignotines | (9) 0,0032 % |
| | | (10) Confiseries non normalisées; enrobages de confiserie non normalisés | (10) 0,01 % |
| | | (11) Mélanges pour pâtisseries; produits de boulangerie non normalisés | (11) 0,013 % dans les produits, sous leur forme consommable |
| S.1 | Sorbitol | (1) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (1) 6,0 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.1.1 | Sirop de sorbitol | Aliments non normalisés | Bonnes pratiques industrielles |
| S.2 | Sucralose | (1) Édulcorants de table | (1) Bonnes pratiques industrielles |
| | | (2) Céréales à déjeuner | (2) 0,1 % |
| | | (3) Boissons laitières non normalisées; boissons non normalisées; concentrés de boissons non normalisés; mélanges pour boissons non normalisés | (3) 0,025 % dans les boissons, sous leur forme consommable |
| | | (4) Desserts non normalisés; garnitures; glaçages; mélanges pour desserts non normalisés; mélanges pour garnitures; mélanges pour glaçages; yogourt | (4) 0,025 % dans les produits, sous leur forme consommable |
| | | (5) Gomme à mâcher; rafraîchisseurs d'haleine | (5) 0,15 % |
| | | (6) Tartinades de fruits non normalisées | (6) 0,045 % |
| | | (7) Condiments non normalisés; sauces à salade non normalisées | (7) 0,04 % |
| | | (8) Assaisonnements sucrés ou mélanges pour enrobage des grignotines; confiseries non normalisées; enrobages de confiserie non normalisés; glaçages à confiserie pour grignotines | (8) 0,07 % |
| | | (9) Mélanges pour pâtisseries; produits de boulangerie non normalisés | (9) 0,065 % dans les produits, sous leur forme consommable |
| | | (10) Produits de fruits et de légumes transformés non normalisés, sauf les fruits en conserve non normalisés | (10) 0,015 % |
| | | (11) Boissons alcooliques non normalisées | (11) 0,07 % |
| | | (12) Poudings; mélanges pour poudings | (12) 0,04 % dans les produits, sous leur forme consommable |
| | | (13) Sirops de table non normalisés | (13) 0,15 % |
| | | (14) Fruits en conserve non normalisés; (nom du fruit) en conserve | (14) 0,025 % |
| | | (15) Achards (*relish*); cornichons | (15) 0,015 % |
| T.1 | Thaumatin | (1) Gommes à mâcher; rafraîchisseurs d'haleine | (1) 500 p.p.m. |
| | | (2) Succédanés du sel | (2) 400 p.p.m. |
| | | (3) Une préparation aromatisante de (nom de l'arôme) visée à l'article B.10.005; préparations aromatisantes non normalisées | (3) 100 p.p.m. |
| X.1 | Xylitol | Aliments non normalisés | Bonnes pratiques industrielles |

SOR/93-276, s. 12; SOR/94-625, s. 5; SOR/94-689, s. 2(F); SOR/94-779, s. 3; SOR/97-512, ss. 3, 4; SOR/2004-261, s. 2; SOR/2007-76, s. 3; SOR/2007-176, s. 7; SOR/2010-142, ss. 52 to 55; SOR/2012-104, ss. 11 to 15.

DORS/93-276, art. 12; DORS/94-625, art. 5; DORS/94-689, art. 2(F); DORS/94-779, art. 3; DORS/97-512, art. 3 et 4; DORS/2004-261, art. 2; DORS/2007-76, art. 3; DORS/2007-176, art. 7; DORS/2010-142, art. 52 à 55; DORS/2012-104, art. 11 à 15.

**TABLE X**

**Food Additives That May Be Used as pH Adjusting Agents, Acid-Reacting Materials and Water Correcting Agents**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Acetic Acid | (1) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (1) Good Manufacturing Practice |
| | | (2) Canned Asparagus | (2) Good Manufacturing Practice |
| | | (3) Gelatin | (3) Good Manufacturing Practice |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| A.2 | Adipic Acid | Unstandardized foods | Good Manufacturing Practice |
| A.3 | Ammonium Aluminum Sulphate | (1) Baking powder | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| A.4 | Ammonium Bicarbonate | (1) Cocoa products | (1) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| A.5 | Ammonium Carbonate | (1) Cocoa products | (1) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| A.6 | Ammonium Citrate, dibasic | Unstandardized foods | Good Manufacturing Practice |
| A.7 | Ammonium Citrate, monobasic | Unstandardized foods | Good Manufacturing Practice |
| A.8 | Ammonium Hydroxide | (1) Cocoa products | (1) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (2) Gelatin | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| A.9 | Ammonium Phosphate, dibasic | (1) Ale; Bacterial cultures; Baking powder; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| A.10 | Ammonium Phosphate, monobasic | (1) Ale; Bacterial cultures; Baking powder; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| | | (3) Uncultured buttermilk | (3) 0.1% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| C.1 | Calcium Acetate | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.1A | Calcium Acid Pyrophosphate | (1) Baking powder | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.2 | Calcium Carbonate | (1) Ice cream mix; Ice milk mix; Wine | (1) Good Manufacturing Practice |
| | | (2) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (2) Good Manufacturing Practice |
| | | (3) Grape juice | (3) Good Manufacturing Practice |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Cocoa products | (5) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| C.3 | Calcium Chloride | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.4 | Calcium Citrate | (1) Infant formula | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.5 | Calcium Fumarate | Unstandardized foods | Good Manufacturing Practice |
| C.6 | Calcium Gluconate | Unstandardized foods | Good Manufacturing Practice |
| C.7 | Calcium Hydroxide | (1) Ale; Beer; Ice cream mix; Ice milk mix; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Canned peas | (2) 0.01% |
| | | (3) Infant formula | (3) Good Manufacturing Practice |
| | | (4) Grape Juice | (4) Good Manufacturing Practice |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| C.8 | Calcium Lactate | (1) Baking powder | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.9 | Calcium Oxide | (1) Ale; Beer; Ice cream mix; Ice milk mix; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.10 | Calcium Phosphate, dibasic | Unstandardized foods | Good Manufacturing Practice |
| C.11 | Calcium Phosphate, monobasic | (1) Ale; Baking powder; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| C.12 | Calcium Phosphate, tribasic | Unstandardized foods | Good Manufacturing Practice |
| C.13 | Calcium Sulphate | Ale; Beer; Light beer; Malt liquor; Porter; Stout; Wine | Good Manufacturing Practice |
| C.13A | Carbon Dioxide | (Naming the variety) Cheese | Good Manufacturing Practice |
| C.14 | Citric Acid | (1) Ale; Beer; Cider; Honey wine; Malt liquor; Porter; Stout; Wine | (1) Good Manufacturing Practice |
| | | (2) Apple (or rhubarb) and (naming the fruit) jam; Apricot nectar; Beans; Beans with pork; Canned mushrooms; Canned (naming the fruit); Canned (naming the vegetable); Canned tomatoes; Concentrated tomato paste; Fig marmalade; Fig marmalade with pectin; Frozen mushrooms; Frozen (naming the fruit); Frozen (naming the vegetable); Grape juice; Mincemeat; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; Olives; Peach nectar; Pear nectar; Pickles; Pineapple marmalade; Pineapple marmalade with pectin; Relishes; Tomato juice; Tomato paste; Tomato pulp; Tomato puree | (2) Good Manufacturing Practice |
| | | (3) Canned shellfish; Canned spring mackerel; Dried egg-white (dried albumen); Dried whole egg; Dried yolk; Frozen cooked shrimp; Frozen egg-white (frozen albumen); Frozen whole egg; Frozen yolk; Gelatin; Liquid egg-white (liquid albumen); Liquid whole egg; Liquid yolk | (3) Good Manufacturing Practice |
| | | (4) Cocoa products | (4) 1.0%, singly or in combination with tartaric acid, calculated on a fat-free basis |
| | | (5) Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cottage cheese; Cream cheese spread; Cream cheese spread with (naming the added ingredients); Creamed cottage cheese; Ice cream mix; Ice milk mix; (naming the variety) Whey cheese; Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Sherbet | (5) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (6) French dressing; Margarine; Mayonnaise; Salad dressing | (6) Good Manufacturing Practice |
| | | (7) Infant formula | (7) Good Manufacturing Practice |
| | | (8) Unstandardized foods | (8) Good Manufacturing Practice |
| C.15 | Cream of Tartar | Same foods as listed for Potassium Acid Tartrate | Same levels as prescribed for Potassium Acid Tartrate |
| F.1 | Fumaric Acid | (1) Gelatin | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Wine | (3) Good Manufacturing Practice |
| G.1 | Gluconic Acid | Unstandardized foods | Good Manufacturing Practice |
| G.2 | Glucono-delta-lactone | Unstandardized foods | Good Manufacturing Practice |
| H.1 | Hydrochloric Acid | (1) Ale; Beer; Gelatin; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Infant formula | (2) Good Manufacturing Practice |
| L.1 | Lactic Acid | (1) Ale; Baking powder; Beer; Bread; Cider; Cottage cheese; Creamed cottage cheese; Dried egg-white (dried albumen); Dried whole egg; Dried yolk; French dressing; Frozen egg-white (frozen albumen); Frozen whole egg; Frozen yolk; Ice cream mix; Ice milk mix; Liquid egg-white (liquid albumen); Liquid whole egg; Liquid yolk; Malt liquor; Mayonnaise; Olives; Pickles; Porter; Relishes; Salad dressing; Sherbet; Stout | (1) Good Manufacturing Practice |
| | | (2) Canned pears; Canned strawberries | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) Good Manufacturing Practice |
| | | (4) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (4) Good Manufacturing Practice |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Wine | (6) Good Manufacturing Practice |
| M.2 | Magnesium Carbonate | (1) Cocoa products | (1) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (2) Ice cream mix; Ice milk mix | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| M.3 | Magnesium Citrate | Soft drinks | Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| M.4 | Magnesium Fumarate | Unstandardized foods | Good Manufacturing Practice |
| M.5 | Magnesium Hydroxide | (1) Canned peas | (1) 0.05% |
| | | (2) Cocoa products | (2) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (3) Gelatin; Ice cream mix; Ice milk mix | (3) Good Manufacturing Practice |
| | | (4) Bacterial cultures | (4) Good Manufacturing Practice |
| M.6 | Magnesium Oxide | Ice cream mix; Ice milk mix | Good Manufacturing Practice |
| M.6A | Magnesium Phosphate | Bacterial cultures | Good Manufacturing Practice |
| M.7 | Magnesium Sulphate | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Bacterial cultures | (2) Good Manufacturing Practice |
| M.8 | Malic Acid | (1) Apple (or rhubarb) and (naming the fruit) jam; Apricot nectar; Canned asparagus; Fig marmalade; Fig marmalade with pectin; Frozen (naming the fruit); (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; Peach nectar; Pear nectar; Pineapple marmalade; Pineapple marmalade with pectin | (1) Good Manufacturing Practice |
| | | (2) Canned applesauce; Canned pears; Canned strawberries | (2) Good Manufacturing Practice |
| | | (3) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (3) Good Manufacturing Practice |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Wine | (5) Good Manufacturing Practice |
| M.8A | Manganese Sulphate | Bacterial cultures | Good Manufacturing Practice |
| M.9 | Metatartaric Acid | Wine | 0.01% |
| P.1 | Phosphoric Acid | (1) Ale; Beer; Cottage Cheese; Creamed cottage cheese; Gelatin; Light beer; Malt liquor; Mono-glycerides and mono- and diglycerides; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Cream cheese spread; Cream cheese spread with (naming the added | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | |
| | | (3) Fish protein | (3) Good Manufacturing Practice |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Cocoa products | (5) 0.5%, expressed as $P_2O_5$, calculated on a fat-free basis |
| P.2 | Potassium Acid Tartrate | (1) Baking powder; Honey wine | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Wine | (3) 0.42% |
| P.3 | Potassium Aluminum Sulphate | (1) Ale; Baking powder; Beer; Light beer; Malt liquor; Oil-soluble annatto; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| P.4 | Potassium Bicarbonate | (1) Baking powder; Malted milk; Malted milk powder | (1) Good Manufacturing Practice |
| | | (2) Cocoa products | (2) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (3) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (3) Good Manufacturing Practice |
| | | (4) Infant formula | (4) Good Manufacturing Practice |
| | | (5) Margarine | (5) Good Manufacturing Practice |
| | | (6) Unstandardized foods | (6) Good Manufacturing Practice |
| | | (7) Wine | (7) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| P.5 | Potassium Carbonate | (1) Cocoa products | (1) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (2) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) Good Manufacturing Practice |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) A blend of prepared fish and prepared meat referred to in paragraph B.21.006(n) | (5) Good Manufacturing Practice |
| | | (6) Wine | (6) Good Manufacturing Practice |
| P.6 | Potassium Chloride | Ale; Beer; Light beer; Malt liquor; Porter; Stout | Good Manufacturing Practice |
| P.7 | Potassium Citrate | (1) Infant formula | (1) Good Manufacturing Practice |
| | | (2) Margarine | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| | | (4) Wine | (4) Good Manufacturing Practice |
| P.8 | Potassium Fumarate | Unstandardized foods | Good Manufacturing Practice |
| P.9 | Potassium Hydroxide | (1) Oil-soluble annatto | (1) 1.0% |
| | | (2) Cocoa products | (2) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (3) Ice cream mix; Ice milk mix; Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product | (3) Good Manufacturing Practice |
| | | (4) Infant formula | (4) Good Manufacturing Practice |
| | | (5) Margarine | (5) Good Manufacturing Practice |
| | | (6) Grape juice | (6) Good Manufacturing Practice |
| | | (7) Unstandardized foods | (7) Good Manufacturing Practice |
| P.9A | Potassium Lactate | Margarine | Good Manufacturing Practice |
| P.10 | Potassium Phosphate, dibasic | Unstandardized foods | Good Manufacturing Practice |
| P.11 | Potassium Sulphate | Ale; Beer; Light beer; Malt liquor; Porter; Stout | Good Manufacturing Practice |
| P.12 | Potassium Tartrate | Cider | Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| S.1 | Sodium Acetate | Unstandardized foods | Good Manufacturing Practice |
| S.2 | Sodium Acid Pyrophosphate | (1) Baking powder | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.3 | Sodium Acid Tartrate | Baking Powder | Good Manufacturing Practice |
| S.4 | Sodium Aluminum Phosphate | Unstandardized foods | Good Manufacturing Practice |
| S.5 | Sodium Aluminum Sulphate | (1) Baking powder | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.6 | Sodium Bicarbonate | (1) Apple (or rhubarb) and (naming the fruit) jam; Baking powder; Dried egg-white (dried albumen); Dried whole egg; Dried yolk; Fig marmalade; Fig marmalade with pectin; Frozen egg-white (frozen albumen); Frozen whole egg; Frozen yolk; Ice cream mix; Ice milk mix; Liquid egg-white (liquid albumen); Liquid whole egg; Liquid yolk; Malted milk powder; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; Oil-soluble annatto; Pineapple marmalade; Pineapple marmalade with pectin; Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product | (1) Good Manufacturing Practice |
| | | (2) Cocoa products | (2) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (3) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (3) Good Manufacturing Practice |
| | | (4) Infant formula | (4) Good Manufacturing Practice |
| | | (5) Margarine | (5) Good Manufacturing Practice |
| | | (6) Unstandardized foods | (6) Good Manufacturing Practice |
| S.7 | Sodium Bisulphate | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| S.8 | Sodium Carbonate | (1) Apple (or rhubarb) and (naming the fruit) jam; Dried egg-white (dried albumen); Dried whole egg; Dried yolk; Fig marmalade; Fig marmalade with pectin; Frozen egg-white (frozen albumen); Frozen whole egg; Frozen yolk; Gelatin; Ice cream mix; Ice milk mix; Liquid egg-white (liquid albumen); Liquid whole egg; Liquid yolk; Meat binder or (naming the meat product) binder where sold for use in preserved meat or preserved meat by-product; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; Pineapple marmalade; Pineapple marmalade with pectin | (1) Good Manufacturing Practice |
| | | (2) Cocoa products | (2) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (3) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (3) Good Manufacturing Practice |
| | | (4) Margarine | (4) Good Manufacturing Practice |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| S.9 | Sodium Citrate | (1) Apple (or rhubarb) and (naming the fruit) jam; Cottage cheese; Cream; Creamed cottage cheese; Ice cream mix; Ice milk mix; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; Pineapple marmalade or Fig marmalade; Pineapple marmalade with pectin or Fig marmalade with pectin; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Infant formula | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (4) Margarine | (4) Good Manufacturing Practice |
| S.12 | Sodium Fumarate | Unstandardized foods | Good Manufacturing Practice |
| S.13 | Sodium Gluconate | Unstandardized foods | Good Manufacturing Practice |
| S.14 | Sodium Hexametaphosphate | Unstandardized foods | Good Manufacturing Practice |
| S.15 | Sodium Hydroxide | (1) Cocoa products | (1) Sufficient to process the cocoa products in accordance with the requirements of section B.04.005 |
| | | (2) Gelatin; Ice cream mix; Ice milk mix; (naming the flavour) Partly skimmed milk; (naming the flavour) Skim milk; Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product | (2) Good Manufacturing Practice |
| | | (3) Infant formula | (3) Good Manufacturing Practice |
| | | (4) Margarine | (4) Good Manufacturing Practice |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) (Naming the variety) Whey cheese; Whey cheese | (6) Good Manufacturing Practice |
| S.16 | Sodium Lactate | (1) Margarine | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.17 | Sodium Phosphate, dibasic | (1) Ale; Bacterial culture; Beer; Cream; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.18 | Sodium Phosphate, monobasic | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.19 | Sodium Phosphate, tribasic | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.20 | Sodium Potassium Tartrate | (1) Apple (or rhubarb) and (naming the fruit) jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; Pineapple marmalade or Fig marmalade; Pineapple marmalade with pectin or Fig marmalade with pectin | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) Good Manufacturing Practice |
| S.21 | Sodium Pyrophosphate, tetrabasic | Unstandardized foods | Good Manufacturing Practice |
| S.22 | Sodium Tripolyphosphate | Unstandardized foods | Good Manufacturing Practice |
| S.23 | Sulphuric Acid | Ale; Beer; Light beer; Malt liquor; Porter; Stout | Good Manufacturing Practice |
| S.24 | Sulphurous Acid | Gelatin | Good Manufacturing Practice provided the finished product does not contain more than 500 p.p.m. calculated as sulphur dioxide |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| T.1 | Tartaric Acid | (1) Ale; Apple (or rhubarb) and (naming the fruit) jam; Baking powder; Beer; Cider; Canned asparagus; Fig marmalade; Fig marmalade with pectin; French dressing; Honey wine; Ice cream mix; Ice milk mix; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly; (naming the fruit) Jelly with pectin; Light beer; Malt liquor; (naming the citrus fruit) Marmalade; (naming the citrus fruit) Marmalade with pectin; Mayonnaise; Pineapple marmalade; Pineapple marmalade with pectin; Porter; Salad dressing; Sherbet; Stout; Wine | (1) Good Manufacturing Practice |
| | | (2) Canned pears; Canned strawberries | (2) Good Manufacturing Practice |
| | | (3) Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients); (naming the variety) Whey cheese | (3) Good Manufacturing Practice |
| | | (4) Margarine | (4) Good Manufacturing Practice |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Cocoa products | (6) 1%, singly or in combination with citric acid, calculated on a fat-free basis |

**TABLEAU X**

**Additifs alimentaires autorisés comme rajusteurs du pH, substances à réaction acide et agents correcteurs de l'eau**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Acide acétique | (1) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | |
| | | (2) Asperges en conserve | (2) Bonnes pratiques industrielles |
| | | (3) Gélatine | (3) Bonnes pratiques industrielles |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| A.2 | Acide adipique | Aliments non normalisés | Bonnes pratiques industrielles |
| A.3 | Sulfate double d'aluminium et d'ammonium | (1) Poudre à pâte | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| A.4 | Bicarbonate d'ammonium | (1) Produits du cacao | (1) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| A.5 | Carbonate d'ammonium | (1) Produits du cacao | (1) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| A.6 | Citrate d'ammonium dibasique | Aliments non normalisés | Bonnes pratiques industrielles |
| A.7 | Citrate d'ammonium monobasique | Aliments non normalisés | Bonnes pratiques industrielles |
| A.8 | Hydroxyde d'ammonium | (1) Produits du cacao | (1) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (2) Gélatine | (2) Bonnes pratiques industrielles |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| A.9 | Phosphate d'ammonium dibasique | (1) Ale; cultures bactériennes; poudre à pâte; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| A.10 | Phosphate d'ammonium monobasique | (1) Ale; cultures bactériennes; poudre à pâte; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Lait de beurre sans culture | (3) 0,1 % |
| C.1 | Acétate de calcium | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.1A | Pyrophosphate acide de calcium | (1) Poudre à pâte | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| C.2 | Carbonate de calcium | (1) Mélange pour crème glacée; mélange pour lait glacé; vin | (1) Bonnes pratiques industrielles |
| | | (2) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (2) Bonnes pratiques industrielles |
| | | (3) Jus de raisin | (3) Bonnes pratiques industrielles |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Produits du cacao | (5) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| C.3 | Chlorure de calcium | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.4 | Citrate de calcium | (1) Préparations pour nourrissons | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.5 | Fumarate de calcium | Aliments non normalisés | Bonnes pratiques industrielles |
| C.6 | Gluconate de calcium | Aliments non normalisés | Bonnes pratiques industrielles |
| C.7 | Hydroxyde de calcium | (1) Ale; bière; mélange pour crème glacée; mélange pour lait glacé; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Pois en conserve | (2) 0,01 % |
| | | (3) Préparations pour nourrissons | (3) Bonnes pratiques industrielles |
| | | (4) Jus de raisin | (4) Bonnes pratiques industrielles |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| C.8 | Lactate de calcium | (1) Poudre à pâte | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.9 | Oxyde de calcium | (1) Ale; bière; mélange pour crème glacée; mélange pour lait glacé; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| C.10 | Phosphate bicalcique | Aliments non normalisés | Bonnes pratiques industrielles |
| C.11 | Phosphate monocalcique | (1) Ale; poudre à pâte; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| C.12 | Phosphate tricalcique | Aliments non normalisés | Bonnes pratiques industrielles |
| C.13 | Sulfate de calcium | Ale; bière; bière légère; liqueur de malt; porter; stout; vin | Bonnes pratiques industrielles |
| C.13A | Dioxyde de carbone | Fromage (indication de la variété) | Bonnes pratiques industrielles |
| C.14 | Acide citrique | (1) Ale; bière; cidre; liqueur de malt; porter; stout; vin; vin de miel | (1) Bonnes pratiques industrielles |
| | | (2) Achards (*relish*); champignons congelés; champignons en conserve; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; fèves au lard; gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; haricots; jus de raisin; jus de tomates; marmelade d'ananas; marmelade d'ananas avec pectine; marmelade de figues; marmelade de figues avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; mincemeat; nectar d'abricot; nectar de pêche; nectar de poire; (nom du fruit) congelé; (nom du fruit) en conserve; (nom du légume) congelé; (nom du légume) en conserve; olives; pâte de tomates; pâte de tomates concentrée; pulpe de tomates; purée de tomates; tomates en conserve | (2) Bonnes pratiques industrielles |
| | | (3) Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide); crevettes cuites congelées; crustacés et mollusques en conserve; gélatine; jaune d'œuf congelé; jaune d'œuf liquide; maquereau de printemps en conserve; œuf entier congelé; œuf entier liquide; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre d'œuf entier | (3) Bonnes pratiques industrielles |
| | | (4) Produits du cacao | (4) 1,0 %, seul ou en association avec de l'acide tartrique, calculé sans matières grasses |
| | | (5) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); fromage cottage; fromage cottage en crème; fromage de petit-lait (indication de la variété); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des | (5) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | ingrédients ajoutés); mélange pour crème glacée; mélange pour lait glacé; préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); sorbet laitier | |
| | | (6) Margarine; mayonnaise; sauce à salade; sauce vinaigrette | (6) Bonnes pratiques industrielles |
| | | (7) Préparations pour nourrissons | (7) Bonnes pratiques industrielles |
| | | (8) Aliments non normalisés | (8) Bonnes pratiques industrielles |
| C.15 | Crème de tartre | Mêmes aliments que pour le tartrate acide de potassium | Mêmes limites de tolérance que pour le tartrate acide de potassium |
| F.1 | Acide fumarique | (1) Gélatine | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Vin | (3) Bonnes pratiques industrielles |
| G.1 | Acide gluconique | Aliments non normalisés | Bonnes pratiques industrielles |
| G.2 | Glucono-delta-lactone | Aliments non normalisés | Bonnes pratiques industrielles |
| H.1 | Acide chlorhydrique | (1) Ale; bière; gélatine; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Préparations pour nourrissons | (2) Bonnes pratiques industrielles |
| L.1 | Acide lactique | (1) Ale; achards (*relish*); bière; blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide); cidre; cornichons; fromage cottage; fromage cottage en crème; jaune d'œuf congelé; jaune d'œuf liquide; liqueur de malt; mayonnaise; mélange pour crème glacée; mélange pour lait glacé; œuf entier congelé; œuf entier liquide; olives; pain; porter; poudre à pâte; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre d'œuf entier; sauce à salade; sauce vinaigrette; sorbet laitier; stout | (1) Bonnes pratiques industrielles |
| | | (2) Poires en conserve; fraises en conserve | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) Bonnes pratiques industrielles |
| | | (4) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec | (4) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Vin | (6) Bonnes pratiques industrielles |
| M.2 | Carbonate de magnésium | (1) Produits du cacao | (1) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (2) Mélange pour crème glacée; mélange pour lait glacé | (2) Bonnes pratiques industrielles |
| | | (3) Aliments normalisés | (3) Bonnes pratiques industrielles |
| M.3 | Citrate de magnésium | Liqueurs douces | Bonnes pratiques industrielles |
| M.4 | Fumarate de magnésium | Aliments non normalisés | Bonnes pratiques industrielles |
| M.5 | Hydroxyde de magnésium | (1) Pois en conserve | (1) 0,05 % |
| | | (2) Produits du cacao | (2) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (3) Gélatine; mélange pour crème glacée; mélange pour lait glacé | (3) Bonnes pratiques industrielles |
| | | (4) Cultures bactériennes | (4) Bonnes pratiques industrielles |
| M.6 | Oxyde de magnésium | Mélange pour crème glacée; mélange pour lait glacé | Bonnes pratiques industrielles |
| M.6A | Phosphate de magnésium | Cultures bactériennes | Bonnes pratiques industrielles |
| M.7 | Sulfate de magnésium | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Cultures bactériennes | (2) Bonnes pratiques industrielles |
| M.8 | Acide malique | (1) Asperges en conserve; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; marmelade d'ananas; marmelade d'ananas avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; marmelade de figues; marmelade de figues avec pectine; nectar d'abricot; nectar de pêche; nectar de poire; (nom du fruit) congelé | (1) Bonnes pratiques industrielles |
| | | (2) Compote de pommes en conserve; poires en conserve; fraises en conserve | (2) Bonnes pratiques industrielles |
| | | (3) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de | (3) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Vin | (5) Bonnes pratiques industrielles |
| M.8A | Sulfate de manganèse | Cultures bactériennes | Bonnes pratiques industrielles |
| M.9 | Acide métatartrique | Vin | 0,01 % |
| P.1 | Acide phosphorique | (1) Ale; bière; bière légère; fromage cottage; fromage cottage en crème; gélatine; liqueur de malt; monoglycérides et mono- et diglycérides; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (2) Bonnes pratiques industrielles |
| | | (3) Protéines de poisson | (3) Bonnes pratiques industrielles |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Produits du cacao | (5) 0,5 %, exprimé en $P_2O_5$, calculé sans matières grasses |
| P.2 | Tartrate acide de potassium | (1) Poudre à pâte; hydromel vineux | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Vin | (3) 0,42 % |
| P.3 | Sulfate double d'aluminium et de potassium | (1) Ale; poudre à pâte; bière; bière légère; liqueur de malt; rocou soluble dans l'huile; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| P.4 | Bicarbonate de potassium | (1) Lait malté; poudre à pâte; poudre de lait malté; | (1) Bonnes pratiques industrielles |
| | | (2) Produits du cacao | (2) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (3) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (3) Bonnes pratiques industrielles |
| | | (4) Préparations pour nourrissons | (4) Bonnes pratiques industrielles |
| | | (5) Margarine | (5) Bonnes pratiques industrielles |
| | | (6) Aliments non normalisés | (6) Bonnes pratiques industrielles |
| | | (7) Vin | (7) Bonnes pratiques industrielles |
| P.5 | Carbonate de potassium | (1) Produits du cacao | (1) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (2) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) Bonnes pratiques industrielles |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (5) Mélange de poisson et de viande préparés visé à l'alinéa B.21.006n) | (5) Bonnes pratiques industrielles |
| | | (6) Vin | (6) Bonnes pratiques industrielles |
| P.6 | Chlorure de potassium | Ale; bière; bière légère; liqueur de malt; porter; stout | Bonnes pratiques industrielles |
| P.7 | Citrate de potassium | (1) Préparations pour nourrissons | (1) Bonnes pratiques industrielles |
| | | (2) Margarine | (2) Bonnes pratiques industrielles |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| | | (4) Vin | (4) Bonnes pratiques industrielles |
| P.8 | Fumarate de potassium | Aliments non normalisés | Bonnes pratiques industrielles |
| P.9 | Hydroxyde de potassium | (1) Rocou soluble dans l'huile | (1) 1,0 % |
| | | (2) Produits du cacao | (2) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (3) Marinade, saumure et mélange de salaison à sec employés dans le marinage des viandes conditionnées ou conservées et des sous-produits de viande conditionnés ou conservés; mélange pour crème glacée; mélange pour lait glacé | (3) Bonnes pratiques industrielles |
| | | (4) Préparation pour nourrissons | (4) Bonnes pratiques industrielles |
| | | (5) Margarine | (5) Bonnes pratiques industrielles |
| | | (6) Jus de raisin | (6) Bonnes pratiques industrielles |
| | | (7) Aliments non normalisés | (7) Bonnes pratiques industrielles |
| P.9A | Lactate de potassium | Margarine | Bonnes pratiques industrielles |
| P.10 | Phosphate bipotassique | Aliments non normalisés | Bonnes pratiques industrielles |
| P.11 | Sulfate de potassium | Ale; bière; bière légère; liqueur de malt; porter; boissons non alcoolisées; stout | Bonnes pratiques industrielles |
| P.12 | Tartrate de potassium | Cidre | Bonnes pratiques industrielles |
| S.1 | Acétate de sodium | Aliments non normalisés | Bonnes pratiques industrielles |
| S.2 | Pyrophosphate acide de sodium | (1) Poudre à pâte | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.3 | Tartrate acide de sodium | Poudre à pâte | Bonnes pratiques industrielles |
| S.4 | Phosphate d'aluminium et de sodium | Aliments non normalisés | Bonnes pratiques industrielles |
| S.5 | Sulfate double d'aluminium et de sodium | (1) Poudre à pâte | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.6 | Bicarbonate de sodium | (1) Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide); confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; jaune d'œuf congelé; jaune d'œuf liquide; marinade, saumure et mélange de salaison à sec employés dans le marinage des viandes conditionnées ou conservées | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | et des sous-produits de viande conditionnés ou conservés; marmelade d'ananas; marmelade d'ananas avec pectine; marmalade de figues; marmelade de figues avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; mélange pour crème glacée; mélange pour lait glacé; œuf entier congelé; œuf entier liquide; poudre à pâte; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre de lait malté; poudre d'œuf entier; rocou soluble dans l'huile | |
| | | (2) Produits du cacao | (2) En quantité suffisante pour traiter les produits du cacao conformément à l'alinéa B.04.005 |
| | | (3) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (3) Bonnes pratiques industrielles |
| | | (4) Préparations pour nourrissons | (4) Bonnes pratiques industrielles |
| | | (5) Margarine | (5) Bonnes pratiques industrielles |
| | | (6) Aliments non normalisés | (6) Bonnes pratiques industrielles |
| S.7 | Bisulfate de sodium | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| S.8 | Carbonate de sodium | (1) Blanc d'œuf congelé (albumen congelé); blanc d'œuf liquide (albumen liquide); confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); gélatine; gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; jaune d'œuf congelé; jaune d'œuf liquide; liant à viande ou liant à (désignation du produit de viande) lorsqu'il est vendu pour servir dans les viandes | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | conditionnées ou conservées et dans les sous-produits de viande conditionnés ou conservés; marmelade d'ananas; marmelade d'ananas avec pectine; marmelade de figues; marmelade de figues avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; mélange pour crème glacée; mélange pour lait glacé; œuf entier congelé; œuf entier liquide; poudre de blanc d'œuf (poudre d'albumen); poudre de jaune d'œuf; poudre d'œuf entier | |
| | | (2) Produits du cacao | (2) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (3) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (3) Bonnes pratiques industrielles |
| | | (4) Margarine | (4) Bonnes pratiques industrielles |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| S.9 | Citrate de sodium | (1) Confitures de (nom du fruit); confitures de (nom du fruit) avec pectine; confitures de pommes (ou de rhubarbe) et de (nom du fruit); crème; fromage cottage; fromage cottage à la crème; gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; marmelade d'ananas ou de figues; marmelade d'ananas ou de figues avec pectine; marmelade de (nom des agrumes); marmelade de (nom des agrumes) avec pectine; mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |
| | | (2) Préparations pour nourrissons | (2) Bonnes pratiques industrielles |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| | | (4) Margarine | (4) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| S.12 | Fumarate de sodium | Aliments non normalisés | Bonnes pratiques industrielles |
| S.13 | Gluconate de sodium | Aliments non normalisés | Bonnes pratiques industrielles |
| S.14 | Hexamétaphosphate de sodium | Aliments non normalisés | Bonnes pratiques industrielles |
| S.15 | Hydroxyde de sodium | (1) Produits du cacao | (1) En quantité suffisante pour traiter les produits du cacao conformément à l'article B.04.005 |
| | | (2) Gélatine; lait écrémé (indication de l'arôme); lait partiellement écrémé (indication de l'arôme); marinade, saumure et mélange de salaison à sec employés dans le marinage des viandes conditionnées ou conservées et des sous-produits de viande conditionnés ou conservés; mélange pour crème glacée; mélange pour lait glacé | (2) Bonnes pratiques industrielles |
| | | (3) Préparations pour nourrissons | (3) Bonnes pratiques industrielles |
| | | (4) Margarine | (4) Bonnes pratiques industrielles |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Fromage de petit-lait; fromage de petit-lait (indication de la variété) | (6) Bonnes pratiques industrielles |
| S.16 | Lactate de sodium | (1) Margarine | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.17 | Phosphate bisodique | (1) Ale; culture bactérienne; bière; crème; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.18 | Phosphate monosodique | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.19 | Phosphate trisodique | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.20 | Tartrate double de sodium et de potassium | (1) Confitures de pommes (ou de rhubarbe) et de (nom du fruit); confitures de (nom du fruit) avec pectine; gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; marmelade de (nom des agrumes); marmelade de (nom des agrumes) avec pectine; marmelade d'ananas ou de figues; marmelade d'ananas ou de figues avec pectine | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) Bonnes pratiques industrielles |
| S.21 | Pyrophosphate tétrasodique | Aliments non normalisés | Bonnes pratiques industrielles |
| S.22 | Polyphosphate trisodique | Aliments non normalisés | Bonnes pratiques industrielles |
| S.23 | Acide sulfurique | Ale; bière; bière légère; liqueur de malt; porter; stout | Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| S.24 | Acide sulfureux | Gélatine | Bonnes pratiques industrielles, pourvu que le produit fini contienne au plus 500 p.p.m. exprimées en anhydride sulfureux |
| T.1 | Acide tartrique | (1) Ale; asperges en conserve; bière; bière légère; cidre; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confitures de pommes (ou de rhubarbe) et de (nom de fruit); gelée de (nom du fruit); gelée de (nom du fruit) avec pectine; liqueur de malt; marmelade d'ananas; marmelade d'ananas avec pectine; marmelade de (nom de l'agrume); marmelade de (nom de l'agrume) avec pectine; marmelade de figues; marmelade de figues avec pectine; mayonnaise; mélange pour crème glacée; mélange pour lait glacé; porter; poudre à pâte; sauce à salade; sauce vinaigrette; sorbet laitier; stout; vin; vin de miel; | (1) Bonnes pratiques industrielles |
| | | (2) Poires en conserve; fraises en conserve | (2) Bonnes pratiques industrielles |
| | | (3) Fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés); fromage de petit-lait (indication de la variété) | (3) Bonnes pratiques industrielles |
| | | (4) Margarine | (4) Bonnes pratiques industrielles |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Produits du cacao | (6) 1,0 %, seul ou en association avec de l'acide citrique, calculé sans matières grasses |

SOR/78-874, s. 4; SOR/79-660, ss. 14 to 17; SOR/79-664, ss. 3 to 13; SOR/79-752, s. 9; SOR/80-501, s. 4; SOR/86-1112, ss. 6 to 8; SOR/92-106, s. 1; SOR/92-344, s. 5; SOR/94-689, s. 2(F); SOR/95-281, ss. 2 to 5; SOR/95-436, ss. 2, 3; SOR/97-263, ss. 11 to 25; SOR/97-561, s. 3; SOR/98-580, s. 1(F); SOR/2001-94, s. 3; SOR/2006-91, ss. 13 to 20; SOR/2007-75, s. 8; SOR/2010-41, s. 9(E); SOR/2010-94, s. 8(E); SOR/2010-142, s. 56; SOR/2010-143, ss. 32 to 36; SOR/2012-43, ss. 32 to 34, 35(F), 36; SOR/2012-103, ss. 1(F), 2.

DORS/78-874, art. 4; DORS/79-660, art. 14 à 17; DORS/79-664, art. 3 à 13; DORS/79-752, art. 9; DORS/80-501, art. 4; DORS/86-1112, art. 6 à 8; DORS/92-106, art. 1; DORS/92-344, art. 5; DORS/94-689, art. 2(F); DORS/95-281, art. 2 à 5; DORS/95-436, art. 2 et 3; DORS/97-263, art. 11 à 25; DORS/97-561, art. 3; DORS/98-580, art. 1(F); DORS/2001-94, art. 3; DORS/2006-91, art. 13 à 20; DORS/2007-75, art. 8; DORS/2010-41, art. 9(A); DORS/2010-94, art. 8(A); DORS/2010-142, art. 56; DORS/2010-143, art. 32 à 36; DORS/2012-43, art. 32 à 34, 35(F) et 36; DORS/2012-103, art. 1(F) et 2.

## TABLE XI

## TABLEAU XI

### PART I

### Food Additives That May Be Used as Class I Preservatives

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Acetic Acid | (1) Preserved fish; Preserved meat; Preserved meat by-product; Preserved poultry meat; Preserved poultry meat by-product; Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| A.2 | Ascorbic Acid | (1) Ale; Beer; Canned mushrooms; Canned tuna; Canned white asparagus; Cider; Frozen fruit; Glaze of Frozen fish; Headcheese; Light beer; Malt liquor; Meat binder for preserved meat and preserved meat by-product (Division 14 only); Porter; Preserved fish; Frozen minced fish; Frozen comminuted fish; Preserved meat; Preserved meat by-product; Preserved poultry meat; Preserved poultry meat by-product; Pumping pickle; Cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product; Stout; Wine | (1) Good Manufacturing Practice |
| | | (2) Canned applesauce | (2) If used either singly or in combination with Iso-Ascorbic Acid, the total not to exceed 150 p.p.m. |
| | | (3) Canned peaches | (3) 550 p.p.m. |
| | | (4) Unstandardized foods | (4) Good Manufacturing practice |
| | | (5) Canned mandarin oranges | (5) 400 p.p.m. |
| C.1 | Calcium Ascorbate | Same foods as listed for Ascorbic Acid | Same levels as prescribed for Ascorbic Acid |
| E.1 | Erythorbic Acid | (1) Ale; Beer; Cider; Frozen fruit; Headcheese; Light beer; Malt liquor; Meat binder for preserved meat and preserved meat by-product (Division 14 only); Porter; Preserved fish; Frozen minced fish; Frozen comminuted fish; Glaze of frozen fish; Preserved meat; Preserved meat by-product; Preserved poultry meat; Preserved poultry meat by-product; Pumping pickle; Cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product; Stout; Wine | (1) Good Manufacturing Practice |
| | | (2) Canned applesauce | (2) If used either singly or in combination with Ascorbic Acid, the total not to exceed 150 p.p.m. |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| I.1 | Iso-Ascorbic Acid | Same foods as listed for Erythorbic Acid | Same levels as prescribed for Erythorbic Acid |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| P.1 | Potassium Nitrate | (1) Meat binder for dry sausage, semi-dry sausage, preserved meat and preserved meat by-products prepared by slow cure processes (Division 14) | (1) When the meat binder is used in accordance with label instructions, whether potassium nitrate is added alone or in combination with sodium nitrate, the total amount of such nitrates thereby added to each batch of dry sausage, semi-dry sausage, preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (2) Cover pickle and dry cure employed in the curing of preserved meat and preserved meat by-products prepared by slow cure processes (Division 14) | (2) When the cover pickle or dry cure is used in accordance with label instructions, whether potassium nitrate is added alone or in combination with sodium nitrate, the total amount of such nitrates thereby added to each batch of preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (3) Dry sausage, semi-dry sausage, preserved meat and preserved meat by-products prepared by slow cure processes (Division 14) | (3) Where potassium nitrate is added alone or in combination with sodium nitrate, the total amount of such nitrates added to each batch of dry sausage, semi-dry sausage, preserved meat or preserved meat by-products shall not exceed 0.32 ounces per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (4) Ripened cheese, containing not more than 68% moisture on a fat free basis during manufacture of which the lactic acid fermentation and salting is completed later than 12 hours after coagulation of the curd by food enzymes and where the added salt is applied externally to the cheese as dry salt or in the form of brine | (4) If used singly or in combination with sodium nitrate, the total not to exceed 200 p.p.m. (based in milk). Residue in the finished cheese not to exceed 50 p.p.m. |
| | | (5) Mold ripened cheese packed in hermetically sealed containers | (5) If used singly or in combination with sodium nitrate, the total not to exceed 200 p.p.m. (based in milk). Residue in the finished cheese not to exceed 50 p.p.m. |
| P.2 | Potassium Nitrite | (1) Meat binder, pumping pickle, cover pickle and dry cure employed in the curing of preserved meat and preserved meat by-products (Division 14) | (1) When the meat binder, pumping pickle, cover pickle or dry cure is used in accordance with label instructions, whether potassium nitrite is added alone or in combination with sodium nitrite, the total amount of such nitrites thereby added to each batch of preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | | million calculated prior to any smoking, cooking or fermentation |
| | | (2) Preserved meat except side bacon and preserved meat by-products (Division 14) | (2) Where potassium nitrite is added alone or in combination with sodium nitrite, the total amount of such nitrites added to each batch of preserved meat, except side bacon or preserved meat by-products, shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (3) Side bacon | (3) Where potassium nitrite is added alone or in combination with sodium nitrite, the total amount of such nitrites added to each batch of side bacon shall not exceed 0.19 ounce per 100 pounds or 120 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (4) Preserved poultry meat and preserved poultry meat by-products (Division 22) | (4) Where potassium nitrite is added alone or in combination with sodium nitrite, the total amount of such nitrites added to each batch of preserved poultry meat or preserved poultry meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| S.1 | Sodium Ascorbate | Same foods as listed for Ascorbic Acid | Same levels as prescribed for Ascorbic Acid |
| S.2 | Sodium Erythorbate | (1) Same foods as listed for Erythorbic Acid | (1) Same levels as prescribed for Erythorbic Acid |
| | | (2) Canned clams | (2) 350 p.p.m. |
| S.3 | Sodium Iso-Ascorbate | Same foods as listed for Erythorbic Acid | Same levels as prescribed for Erythorbic Acid |
| S.4 | Sodium Nitrate | (1) Meat binder for dry sausage, semi-dry sausage, preserved meat and preserved meat by-products prepared by slow cure processes (Division 14) | (1) When the meat binder is used in accordance with label instructions, whether sodium nitrate is added alone or in combination with potassium nitrate, the total amount of such nitrates thereby added to each batch of dry sausage, semi-dry sausage, preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (2) Cover pickle and dry cure employed in the curing of preserved meat and preserved meat by-products prepared by slow cure processes (Division 14) | (2) When the cover pickle or dry cure is used in accordance with label instructions, whether sodium nitrate is added alone or in combination with potassium nitrate, the total amount of such nitrates thereby added to each batch of preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | | parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (3) Dry sausage, semi-dry sausage, preserved meat and preserved meat by-products prepared by the slow cure processes (Division 14) | (3) Where sodium nitrate is added alone or in combination with potassium nitrate, the total amount of such nitrates added to each batch of dry sausage, semi-dry sausage, preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (4) Ripened cheese, containing not more than 68% moisture on a fat free basis during manufacture of which the lactic acid fermentation and salting is completed later than 12 hours after coagulation of the curd by food enzymes and where the added salt is applied externally to the cheese as dry salt or in the form of brine | (4) If used singly or in combination with potassium nitrate, the total not to exceed 200 p.p.m. (based in milk). Residue in the finished cheese not to exceed 50 p.p.m. |
| | | (5) Mold ripened cheese packed in hermetically sealed containers | (5) If used singly or in combination with potassium nitrate, the total not to exceed 200 p.p.m. (based in milk). Residue in the finished cheese not to exceed 50 p.p.m. |
| S.5 | Sodium Nitrite | (1) Meat binder, pumping pickle, cover pickle and dry cure employed in the curing of preserved meat and preserved meat by-products (Division 14) | (1) When the meat binder, pumping pickle, cover pickle or dry cure is used in accordance with label instructions, whether sodium nitrite is added alone or in combination with potassium nitrite, the total amount of such nitrites thereby added to each batch of preserved meat or preserved meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (2) Preserved meat, except side bacon, and preserved meat by-products (Division 14) | (2) Where sodium nitrite is added alone or in combination with potassium nitrite, the total amount of such nitrites added to each batch of preserved meat, except side bacon or preserved meat by-products, shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| | | (3) Side bacon | (3) Where sodium nitrite is added alone or in combination with potassium nitrite, the total amount of such nitrites added to each batch of side bacon shall not exceed 0.19 ounce per 100 pounds or 120 parts per million, calculated prior to any smoking, cooking or fermentation |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| | | (4) Preserved poultry meat and preserved poultry meat by-products (Division 22) | (4) Where sodium nitrite is added alone or in combination with potassium nitrite, the total amount of such nitrites added to each batch of preserved poultry meat or preserved poultry meat by-products shall not exceed 0.32 ounce per 100 pounds or 200 parts per million, calculated prior to any smoking, cooking or fermentation |
| W.1 | Wood Smoke | (1) (naming the variety) Cheese; Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (1) Good Manufacturing Practice |
| | | (2) Preserved fish; Preserved meat (Divisions 14 and 21); Preserved meat by-product (Divisions 14 and 21); Preserved poultry meat; Preserved poultry meat by-product; Sausage | (2) Good Manufacturing Practice |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |

**PARTIE I**

**Additifs alimentaires autorisés comme agents de conservation de la catégorie I**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Acide acétique | (1) Poisson de salaison; viandes de salaison; sous-produits de viande de salaison; viande de volaille de salaison; sous-produits de viande de volaille de salaison; marinade; saumure et mélange de salaison à sec, employés dans l'apprêt des viandes de salaison ou des sous-produits de viande de salaison | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| A.2 | Acide ascorbique | (1) Ale; asperges blanches en conserve; bière; bière légère; champignons en conserve; cidre; fruits congelés; glaçage pour poisson congelé; tête en fromage ou tête fromagée; liant à viande pour viandes conservées et sous-produits de viande conservée (titre 14 seulement); liqueur de malt; marinade injectable; poisson déchiqueté congelé; poisson conservé; | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | poisson haché congelé; porter; saumure et mélange de salaison à sec employés dans le conditionnement des viandes ou des sous-produits de viande; sous-produits de viande conservés; sous-produits de viande de volaille conservés; stout; thon en conserve; viande conservée; viande de volaille conservée; vin | |
| | | (2) Compote de pommes en conserve | (2) S'il est utilisé seul ou en combinaison avec l'acide isoascorbique, la quantité totale n'excède pas 150 p.p.m. |
| | | (3) Pêches en conserve | (3) 550 p.p.m. |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Mandarines en conserve | (5) 400 p.p.m. |
| C.1 | Ascorbate de calcium | Mêmes aliments que pour l'acide ascorbique | Mêmes limites de tolérance que pour l'acide ascorbique |
| E.1 | Acide érythorbique | (1) Ale; bière; cidre; fruits congelés; tête en fromage ou tête fromagée; bière légère; liqueur de malt; liant à viande pour viandes de salaison et sous-produits de la viande de salaison (Titre 14 seulement); porter; poisson de salaison; poisson haché congelé; poisson déchiqueté congelé; glaçage pour poisson congelé; viande de salaison; sous-produits de la viande de salaison; viande de volaille de salaison; sous-produits de la viande de volaille de salaison; marinade; saumure et mélange de salaison à sec employés dans le conditionnement des viandes ou des sous-produits de la viande de salaison; stout; vin | (1) Bonnes pratiques industrielles |
| | | (2) Compote de pommes en conserve | (2) S'il est utilisé seul ou en combinaison avec l'acide ascorbique, la quantité totale n'excède pas 150 p.p.m. |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| I.1 | Acide isoascorbique | Mêmes aliments que pour l'acide érythorbique | Mêmes limites de tolérance que pour l'acide érythorbique |
| P.1 | Nitrate de potassium | (1) Liant à viande pour saucisse séchée; saucisse semi-séchée; viande conservée et sous-produits de viande conservée, préparés selon des méthodes de salaison lente (Titre 14) | (1) Si le liant à viande est utilisé selon le mode d'emploi donné sur l'étiquette, que le nitrate de potassium soit ajouté seul ou avec du nitrate de sodium, la quantité totale de tels nitrates ainsi ajoutée à chaque lot de saucisse séchée, de saucisse semi-séchée, de viande conservée, ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
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| | | (2) Saumure et mélange de salaison à sec employés dans le marinage des viandes conservées et des sous-produits de viande conservée, préparés selon des méthodes de salaison lente (Titre 14) | (2) Si la saumure ou le mélange de salaison à sec est utilisé selon le mode d'emploi donné sur l'étiquette, que le nitrate de potassium soit ajouté seul ou avec du nitrate de sodium, la quantité totale de tels nitrates ainsi ajouté à chaque lot de viande conservée ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (3) Saucisse séchée; saucisse semi-séchée; viande conservée et sous-produits de viande conservée, préparés selon des méthodes de salaison lente (Titre 14) | (3) Si le nitrate de potassium est ajouté seul ou avec du nitrate de sodium, la quantité totale de tels nitrates ajoutée à chaque lot de saucisse séchée, de saucisse semi-séchée, de viande conservée, ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (4) Fromage mûri, ne contenant pas plus de 68 % d'humidité calculée sur la matière non-grasse, et dans la fabrication duquel la fermentation de l'acide lactique et le salage sont complétés plus de 12 heures après la coagulation de la caillebotte par des enzymes alimentaires, et à l'extérieur duquel on applique du sel, soit à l'état sec ou sous forme de saumure | (4) S'il est utilisé seul ou avec du nitrate de sodium, le produit contiendra une quantité maximale de 200 p.p.m. (basée sur le lait). Le résidu dans le fromage fini ne devra pas excéder 50 p.p.m. |
| | | (5) Fromage mûri; moulé; empaqueté à vide | (5) S'il est utilisé seul ou avec du nitrate de sodium, le produit contiendra une quantité maximale de 200 p.p.m. (basée sur le lait). Le résidu dans le fromage fini ne devra pas excéder 50 p.p.m. |
| P.2 | Nitrite de potassium | (1) Liant à viande; marinade; saumure et mélange de salaison à sec, utilisés dans le marinage de la viande conservée et des sous-produits de viande conservée (Titre 14) | (1) Si le liant à viande, la saumure ou le mélange de salaison à sec est utilisé selon le mode d'emploi donné sur l'étiquette, que le nitrite de potassium soit ajouté seul ou avec du nitrite de sodium, la quantité totale de tels nitrites ajoutée à chaque lot de viande conservée ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (2) Viande conservée, sauf le bacon de flanc, et sous-produits de viande conservée (Titre 14) | (2) Si le nitrite de potassium est ajouté seul ou avec du nitrite de sodium, la quantité totale de tels nitrites ajoutée à chaque lot de viande conservée, sauf le bacon de flanc, ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
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| | | | que le produit ne soit fumé, cuit ou fermenté. |
| | | (3) Bacon de flanc | (3) Si le nitrite de potassium est ajouté seul ou avec du nitrite de sodium, la quantité totale de tels nitrites ajoutée à chaque lot de bacon de flanc ne doit pas excéder 0,19 once par 100 livres ou 120 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (4) Viande de volaille conservée et sous-produits de viande de volaille conservée (Titre 22) | (4) Si le nitrite de potassium est ajouté seul ou avec du nitrite de sodium, la quantité totale de tels nitrites ajouté à chaque lot de viande de volaille conservée et de sous-produits de viande de volaille conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| S.1 | Ascorbate de sodium | Mêmes aliments que pour l'acide ascorbique | Mêmes limites de tolérance que pour l'acide ascorbique |
| S.2 | Erythorbate de sodium | (1) Mêmes aliments que pour l'acide érythorbique | (1) Mêmes limites de tolérance que pour l'acide érythorbique |
| | | (2) Clams en conserve | (2) 350 p.p.m. |
| S.3 | Iso-ascorbate de sodium | Mêmes aliments que pour l'acide érythorbique | Mêmes limites de tolérance que pour l'acide érythorbique |
| S.4 | Nitrate de sodium | (1) Liant à viande pour saucisse séchée; saucisse semi-séchée; viande conservée et sous-produits de viande conservée, préparés selon des méthodes de salaison lente (Titre 14) | (1) Si le liant à viande est utilisé selon le mode d'emploi donné sur l'étiquette, que le nitrate de sodium soit ajouté seul ou avec du nitrate de potassium, la quantité totale de tels nitrates ainsi ajoutée à chaque lot de saucisse séchée, de saucisse semi-séchée, de viande conservée ou de sous-produits de viande conservée, ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (2) Saumure et mélange de salaison à sec utilisés dans le marinage de viande conservée et de sous-produits de viande conservée, préparés selon des méthodes de salaison lente (Titre 14) | (2) Si la saumure ou le mélange de salaison à sec est utilisé selon le mode d'emploi donné sur l'étiquette, que le nitrate de sodium soit ajouté seul ou avec du nitrate de potassium, la quantité totale de tels nitrates ainsi ajoutée à chaque lot de viande conservée ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (3) Saucisse séchée; saucisse semi-séchée; viande conservée et sous-produits de viande conservée, préparés selon des méthodes de salaison lente (Titre 14) | (3) Si le nitrate de sodium est ajouté seul ou avec du nitrate de potassium, la quantité totale de tels nitrates ajoutée à chaque lot de saucisse séchée, de saucisse semi-séchée, de |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
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| | | | viande conservée ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (4) Fromage mûri, ne contenant pas plus de 68 % d'humidité calculée sur la matière non-grasse, et dans la fabrication duquel la fermentation de l'acide lactique et le salage sont complétés plus de 12 heures après la coagulation de la caillebotte par des enzymes alimentaires et à l'exception duquel on applique du sel, soit à l'état sec ou sous forme de saumure | (4) S'il est utilisé seul ou avec du nitrate de potassium, le produit contiendra une quantité maximale de 200 p.p.m. (basée sur le lait). Le résidu dans le fromage fini ne devra pas excéder 50 p.p.m. |
| | | (5) Fromage mûri; moulé; empaqueté à vide | (5) S'il est utilisé seul ou avec du nitrate de potassium, le produit contiendra une quantité maximale de 200 p.p.m. (basée sur le lait). Le résidu dans le fromage fini ne devra pas excéder 50 p.p.m. |
| S.5 | Nitrite de sodium | (1) Liant à viande; marinade; saumure et mélange de salaison à sec utilisés pour le marinage de viande conservée et de sous-produits de viande conservée (Titre 14) | (1) Si le liant à viande, la marinade, la saumure ou le mélange de salaison à sec est utilisé selon le mode d'emploi donné sur l'étiquette, que le nitrite de sodium soit ajouté seul ou avec du nitrite de potassium, la quantité totale de tels nitrites ainsi ajoutée à chaque lot de viande conservée ou de sous-produits de viande conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (2) Viande conservée, sauf le bacon, et sous-produits de viande conservée (Titre 14) | (2) Si le nitrite de sodium est ajouté seul ou avec du nitrite de potassium, la quantité totale de tels nitrites ajoutée à chaque lot de viande conservée, sauf le bacon de flanc, ou de sous-produits de viande conservée, ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (3) Bacon de flanc | (3) Si le nitrite de sodium est ajouté seul ou avec du nitrite de potassium, la quantité totale de tels nitrites ajoutée à chaque lot de bacon de flanc ne doit pas excéder 0,19 once par 100 livres ou 120 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| | | (4) Viande de volaille conservée et sous-produits de viande de volaille conservée (Titre 22) | (4) Si le nitrite de sodium est ajouté seul ou avec du nitrite de potassium, la quantité totale de tels nitrites ajoutée à chaque lot de viande de volaille conservée ou de sous-produits de |

| | Colonne I | Colonne II | Colonne III |
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| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| | | | viande de volaille conservée ne doit pas excéder 0,32 once par 100 livres ou 200 parties par million, calculée avant que le produit ne soit fumé, cuit ou fermenté. |
| W.1 | Fumée de bois | (1) Fromage (indication de la variété); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (1) Bonnes pratiques industrielles |
| | | (2) Poisson conservé; viande conservée (titres 14 et 21); sous-produits de viande conservés (titres 14 et 21); viande de volaille conservée; sous-produits de viande de volaille conservés; saucisses | (2) Bonnes pratiques industrielles |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |

**PART II**

**Food Additives That May Be Used as Class II Preservatives**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| B.1 | Benzoic Acid | (1) Apple (or rhubarb) and (naming the fruit) jam; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Mincemeat; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; (naming the fruit) Juice; (naming the fruits) Juice; Packaged fish and meat products that are marinated or otherwise cold-processed (Division 21); Pickles; Pineapple marmalade with pectin; Relishes; Tomato catsup; Tomato paste; Tomato pulp; Tomato puree | (1) 1,000 p.p.m. |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21); | (2) 1,000 p.p.m. |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| | | (b) fish; and<br>(c) poultry meat and poultry meat by-product] | |
| | | (3) Margarine | (3) If used singly or in combination with Sorbic Acid, the total shall not exceed 1,000 p.p.m. |
| C.1 | Calcium Sorbate | Same foods as listed for sorbic acid | Same levels as prescribed for Sorbic Acid |
| C.2 | *Carnobacterium maltaromaticum* CB1 | (1) Vacuum-packed wieners | (1) Good Manufacturing Practice |
| | | (2) Vacuum-packed sliced roast beef in accordance with section B.14.005 | (2) Good Manufacturing Practice |
| | | (3) Vacuum-packed sliced cooked ham in accordance with section B.14.005 or B.14.031 | (3) Good Manufacturing Practice |
| | | (4) Vacuum-packed sliced cooked turkey in accordance with section B.22.006 or B.22.021 | (4) Good Manufacturing Practice |
| H.1 | 4-Hexylresorcinol | Crustaceans | Good Manufacturing Practice. Residues in the edible portion of the uncooked product not to exceed 1.0 p.p.m. |
| M.1 | Methyl-ρ-hydroxy Benzoate | (1) Apple (or rhubarb) and (naming the fruit) jam; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Mincemeat; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; (naming the fruit) Juice; (naming the fruits) Juice; Packaged fish and meat products that are marinated or otherwise cold-processed (Division 21); Pickles; Pineapple marmalade with pectin; Relishes; Tomato catsup; Tomato paste; Tomato pulp; Tomato puree | (1) 1,000 p.p.m. |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) 1,000 p.p.m. |
| M.2 | Methyl Paraben | Same foods as listed for Methyl-p-hydroxy Benzoate | Same levels as prescribed for Methyl-p-hydroxy Benzoate |
| P.1 | Potassium Benzoate | Same foods as listed for Benzoic Acid | 1,000 p.p.m. calculated as Benzoic Acid |
| P.2 | Potassium Bisulphite | Same foods as listed for Sulphurous Acid | Same levels as prescribed for Sulphurous Acid |
| P.3 | Potassium Metabisulphite | Same foods as listed for Sulphurous Acid | Same levels as prescribed for Sulphurous Acid |
| P.4 | Potassium Sorbate | Same foods as listed for Sorbic Acid | Same levels as prescribed for Sorbic Acid |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| P.5 | Propyl-p-hydroxy Benzoate | (1) Apple (or rhubarb) and (naming the fruit) jam; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Mincemeat; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; (naming the fruit) Juice; (naming the fruits) Juice; Packaged fish and meat products that are marinated or otherwise cold-processed (Division 21); Pickles; Pineapple marmalade with pectin; Relishes; Tomato catsup; Tomato paste; Tomato pulp; Tomato puree | (1) 1,000 p.p.m. |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) 1,000 p.p.m. |
| P.6 | Propyl Paraben | Same foods as listed for Propyl-p-hydroxy Benzoate | Same levels as prescribed for Propyl-p-hydroxy Benzoate |
| S.01 | Sodium Acetate | (1) Brawn; Headcheese; Meat by-product loaf; Meat loaf; Potted meat; Potted meat by-product; Prepared meat; Prepared meat by-product; Prepared poultry meat; Prepared poultry meat by-product; Preserved meat; Preserved meat by-product; Preserved poultry meat; Preserved poultry meat by-product; Sausage | (1) Good Manufacturing Practice |
| | | (2) Unstandardized preparations of<br>(a) meat and meat by-product (Division 14); and<br>(b) poultry meat and poultry meat by-product | (2) Good Manufacturing Practice |
| S.1 | Sodium Benzoate | Same foods as listed for Benzoic Acid | 1,000 p.p.m. calculated as Benzoic Acid |
| S.2 | Sodium Bisulphite | Same foods as listed for Sulphurous Acid | Same levels as prescribed for Sulphurous Acid |
| S.21 | Sodium Diacetate | (1) Brawn; Headcheese; Meat by-product loaf; Meat loaf; Potted meat; Potted meat by-product; Prepared fish or prepared meat (Division 21); Prepared meat; Prepared meat by-product; Prepared poultry meat; Prepared poultry meat by-product; Preserved fish or preserved meat (Division 21); Preserved meat; Preserved meat by-product; Preserved poultry meat; Preserved poultry meat by-product; Sausage | (1) 0.25% of final product weight |
| | | (2) Unstandardized preparations of | (2) 0.25% of final product weight |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| | | (a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product | |
| S.3 | Sodium Metabisulphite | Same foods as listed for Sulphurous Acid | Same levels as prescribed for Sulphurous Acid |
| S.4 | Sodium Salt of Methyl-ρ-hydroxy Benzoic Acid | Same foods as listed for Methyl-p-hydroxy Benzoate | 1,000 p.p.m. calculated as Methyl-p-hydroxy Benzoate |
| S.5 | Sodium Salt of Propyl-ρ-hydroxy Benzoic Acid | Same foods as listed for Propyl-p-hydroxy Benzoate | 1,000 p.p.m. calculated as Propyl-p-hydroxy Benzoate |
| S.6 | Sodium Sorbate | Same foods as listed for Sorbic Acid | Same levels as prescribed for Sorbic Acid |
| S.7 | Sodium Sulphite | Same foods as listed for Sulphurous Acid | Same levels as prescribed for Sulphurous Acid |
| S.8 | Sodium Dithionite | Same foods as listed for Sulphurous Acid | Same levels as prescribed for Sulphurous Acid |
| S.9 | Sorbic Acid | (1) Apple (or rhubarb) and (naming the fruit) jam; Cold-processed smoked and salted fish paste; Concentrated (naming the fruit) juice except frozen concentrated orange juice; Fig marmalade with pectin; Mincemeat; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; (naming the fruit) Juice; (naming the fruits) Juice; (naming the source of the glucose) Syrup; Pickles; Pineapple marmalade with pectin; Relishes; Smoked or salted dried fish; Tomato catsup; Tomato paste; Tomato pulp; Tomato puree | (1) 1,000 p.p.m. |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) 1,000 p.p.m. |
| | | (3) Olive brine | (3) 300 p.p.m. |
| | | (4) Margarine | (4) If used singly or in combination with Benzoic Acid, the total shall not exceed 1,000 p.p.m. |
| | | (5) Unstandardized salad dressings | (5) 3,350 p.p.m. |
| S.10 | Sulphurous Acid | (1) Cider; Honey wine; Wine | (1) 70 p.p.m. in the free state or 350 p.p.m. in the combined state calculated as sulphur dioxide |
| | | (2) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (2) 15 p.p.m. calculated as sulphur dioxide |
| | | (3) Apple (or rhubarb) and (naming the fruit) jam; Concentrated (naming the | (3) 500 p.p.m. calculated as sulphur dioxide |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | fruit) juice except frozen concentrated orange juice; Fancy molasses; Fig marmalade with pectin; Frozen sliced apples; Gelatin; Mincemeat; (naming the citrus fruit) Marmalade with pectin; (naming the fruit) Jam; (naming the fruit) Jam with pectin; (naming the fruit) Jelly with pectin; (naming the fruit) Juice; (naming the fruits) Juice; (naming the source of the glucose) Syrup; Pickles; Pineapple marmalade with pectin; Refiners' molasses; Relishes; Table molasses; Tomato catsup; Tomato paste; Tomato pulp; Tomato puree | |
| | | (4) Unstandardized beverages | (4) 100 p.p.m. calculated as sulphur dioxide |
| | | (5) Dried fruits and vegetables | (5) 2,500 p.p.m. calculated as sulphur dioxide |
| | | (6) Unstandardized foods [except in food recognized as a source of thiamine and except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (6) 500 p.p.m. calculated as sulphur dioxide |
| | | (7) Frozen mushrooms | (7) 90 p.p.m. calculated as sulphur dioxide |
| | | (8) Dextrose Anhydrous; Dextrose Monohydrate | (8) 20 p.p.m. calculated as sulphur dioxide |
| | | (9) Glucose or glucose syrup | (9) 40 p.p.m. except glucose or glucose syrup for the manufacture of sugar confectionery not more than 400 p.p.m. calculated as sulphur dioxide |
| | | (10) Glucose solids or dried glucose syrup | (10) 40 p.p.m. except glucose solids or dried glucose syrup for the manufacture of sugar confectionary not more than 150 p.p.m. calculated as sulphur dioxide |
| | | (11) Crustaceans | (11) Good Manufacturing Practice. Residues in the edible portion of the uncooked product not to exceed 100 p.p.m., calculated as sulphur dioxide. |

## PARTIE II

### Additifs alimentaires autorisés comme agents de conservation de la catégorie II

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| B.1 | Acide benzoïque | (1) Achards (*relish*); catsup de tomates; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée | (1) 1 000 p.p.m. |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | de (nom du fruit) avec pectine; jus de (nom du fruit); jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; jus de (noms des fruits); marmelade d'ananas avec pectine; marmelade de figues avec pectine; marmelade de (nom de l'agrume) avec pectine; mincemeat; pâte de tomates; produits de poisson ou de chair de poisson emballés, marinés ou conditionnés à froid par une autre méthode (Titre 21); pulpe de tomates; purée de tomates | |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) 1 000 p.p.m. |
| | | (3) Margarine | (3) Si utilisé seul ou en association avec de l'acide sorbique; la quantité totale ne doit pas excéder 1 000 p.p.m. |
| C.1 | Sorbate de calcium | Mêmes aliments que pour l'acide sorbique | Mêmes limites de tolérance que pour l'acide sorbique |
| C.2 | *Carnobacterium maltaromaticum* CB1 | (1) Saucisse fumée emballée sous vide | (1) Bonnes pratiques industrielles |
| | | (2) Rôti de bœuf tranché emballé sous vide conformément à l'article B.14.005 | (2) Bonnes pratiques industrielles |
| | | (3) Jambon cuit tranché emballé sous vide conformément à l'article B.14.005 ou B.14.031 | (3) Bonnes pratiques industrielles |
| | | (4) Dinde cuite tranchée emballée sous vide conformément à l'article B.22.006 ou B.22.021 | (4) Bonnes pratiques industrielles |
| H.1 | 4-Hexylrésorcine | Crustacés | Bonnes pratiques industrielles. Les résidus dans la partie comestible du produit non cuit ne doivent pas dépasser 1,0 p.p.m. |
| M.1 | Benzoate de p-hydroxyméthyle | (1) Achards (*relish*); catsup de tomates; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit); jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; jus de (noms des fruits); marmelade d'ananas avec pectine; marmelade de figues avec pectine; marmelade de (nom de l'agrume) avec pectine; mincemeat; pâte de tomates; produits de poisson ou de chair de poisson emballés, marinés ou conditionnés à froid par une autre méthode (Titre 21); pulpe de tomates; purée de tomates | (1) 1 000 p.p.m. |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) 1 000 p.p.m. |
| M.2 | Méthylparabène | Mêmes aliments que pour le benzoate de p-hydroxyméthyle | Mêmes limites de tolérance que pour le benzoate de p-hydroxyméthyle |
| P.1 | Benzoate de potassium | Mêmes aliments que pour l'acide benzoïque | 1 000 p.p.m., calculé en acide benzoïque |
| P.2 | Bisulfite de potassium | Mêmes aliments que pour l'anhydride sulfureux | Mêmes limites de tolérance que pour l'anhydride sulfureux |
| P.3 | Métabisulfite de potassium | Mêmes aliments que pour l'anhydride sulfureux | Mêmes limites de tolérance que pour l'anhydride sulfureux |
| P.4 | Sorbate de potassium | Mêmes aliments que pour l'acide sorbique | Mêmes limites de tolérance que pour l'acide sorbique |
| P.5 | Benzoate de p-hydroxypropyle | (1) Achards (*relish*); catsup de tomates; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit); jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; jus de (noms des fruits); marmelade d'ananas avec pectine; marmelade de figues avec pectine; marmelade de (nom de l'agrume) avec pectine; mincemeat; pâte de tomates; produits de poisson ou de chair de poisson emballés, marinés ou conditionnés à froid par une autre méthode (Titre 21); pulpe de tomates; purée de tomates | (1) 1 000 p.p.m. |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et de sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) 1 000 p.p.m. |
| P.6 | Propylparabène | Mêmes aliments que pour le benzoate de p-hydroxypropyle | Mêmes limites de tolérance que pour le benzoate de p-hydroxypropyle |
| S.01 | Acétate de sodium | (1) Fromage de porc; pain de viande; saucisse; sous-produits de viande conditionnés ou conservés; sous-produits de viande de volaille conditionnés ou conservés; sous-produits de viande en pain; sous-produits de viande en pot; sous-produits de viande préparés; sous-produits de viande de volaille préparés; tête fromagée; viande conditionnée ou conservée; viande de volaille | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | conditionnée ou conservée; viande de volaille préparée; viande en pot; viande préparée | |
| | | (2) Préparations non normalisées de : | (2) Bonnes pratiques industrielles |
| | | a) viande et sous-produits de viande (titre 14); | |
| | | b) viande de volaille et sous-produits de viande de volaille | |
| S.1 | Benzoate de sodium | Mêmes aliments que pour l'acide benzoïque | 1 000 p.p.m., calculé en acide benzoïque |
| S.2 | Bisulfite de sodium | Mêmes aliments que pour l'anhydride sulfureux | Mêmes limites de tolérance que pour l'anhydride sulfureux |
| S.21 | Diacétate de sodium | (1) Fromage de porc; pain de viande; poisson et viande préparés (Titre 21); poisson de salaison et chair de poisson de salaison (Titre 21); saucisse; sous-produits de viande conditionnés ou conservés; sous-produits de viande de volaille conditionnés ou conservés; sous-produits de viande en pain; sous-produits de viande en pot; sous-produits de viande préparés; sous-produits de viande de volaille préparés; tête fromagée; viande conditionnée ou conservée; viande de volaille conditionnée ou conservée; viande de volaille préparée; viande en pot; viande préparée | (1) 0,25 % du poids final du produit |
| | | (2) Préparations non normalisées de : | (2) 0,25 % du poids final du produit |
| | | a) viande et sous-produits de viande (titres 14 et 21); | |
| | | b) poisson; | |
| | | c) viande de volaille et sous-produits de viande de volaille | |
| S.3 | Métabisulfite de sodium | Mêmes aliments que pour l'anhydride sulfureux | Mêmes limites de tolérance que pour l'anhydride sulfureux |
| S.4 | Sel sodique de l'acide p-hydroxyméthyl benzoïque | Mêmes aliments que pour le benzoate de p-hydroxyméthyle | 1 000 p.p.m., calculé en benzoate de p-hydroxyméthyle |
| S.5 | Sel sodique de l'acide p-hydroxypropyl | Mêmes aliments que pour le benzoate de p-hydroxypropyle | 1 000 p.p.m., calculé en benzoate de p-hydroxypropyle |
| S.6 | Sorbate de sodium | Mêmes aliments que pour l'acide sorbique | Mêmes limites de tolérance que pour l'acide sorbique |
| S.7 | Sulfite de sodium | Mêmes aliments que pour l'anhydride sulfureux | Mêmes limites de tolérance que pour l'anhydride sulfureux |
| S.8 | Dithionite de sodium | Mêmes aliments que pour l'anhydride sulfureux | Mêmes limites de tolérance que pour l'anhydride sulfureux |
| S.9 | Acide sorbique | (1) Achards (*relish*); catsup de tomates; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gelée de (nom du fruit) avec pectine; jus de (nom du fruit); jus de (nom du fruit) concentré sauf le jus d'orange | (1) 1 000 p.p.m. |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | concentré congelé; jus de (noms des fruits); marmelade d'ananas avec pectine; marmelade de figues avec pectine; marmelade de (nom de l'agrume) avec pectine; mincemeat; pâte de poisson fumé et salé conditionnée à froid; pâte de tomates; poisson desséché, fumé ou salé; pulpe de tomates; purée de tomates; sirop (nom de la source de glucose) | |
| | | (2) Aliments non normalisés [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) 1 000 p.p.m. |
| | | (3) Saumure d'olive | (3) 300 p.p.m. |
| | | (4) Margarine | (4) Si utilisé seul ou en association avec de l'acide benzoïque, la quantité totale ne doit pas excéder 1 000 p.p.m. |
| | | (5) Sauces à salade non normalisées | (5) 3 350 p.p.m. |
| S.10 | Anhydride sulfureux | (1) Cidre; vin de miel; vin | (1) 70 p.p.m. à l'état libre, ou 350 p.p.m. en combinaison, calculé en anhydride sulfureux |
| | | (2) Ale; bière; bière légère; liqueur de malt; porter; stout | (2) 15 p.p.m., calculé en anhydride sulfureux |
| | | (3) Achards (*relish*); catsup de tomates; confiture de (nom du fruit); confiture de (nom du fruit) avec pectine; confiture de pommes (ou de rhubarbe) et de (nom du fruit); cornichons; gélatine; gelée de (nom du fruit) avec pectine; jus de (nom du fruit); jus de (nom du fruit) concentré sauf le jus d'orange concentré congelé; jus de (noms des fruits); marmelade d'ananas avec pectine; marmelade de figues avec pectine; marmelade de (nom de l'agrume) avec pectine; mélasse de raffineur; mélasse de table; mélasse qualité fantaisie; mincemeat; pâte de tomates; pommes tranchées, congelées; pulpe de tomates; purée de tomates; sirop (nom de la source de glucose) | (3) 500 p.p.m., calculé en anhydride sulfureux |
| | | (4) Boissons non normalisées | (4) 100 p.p.m., calculé en anhydride sulfureux |
| | | (5) Fruits et légumes desséchés | (5) 2 500 p.p.m., calculé en anhydride sulfureux |
| | | (6) Aliments non normalisés, [à l'exception des aliments reconnus comme sources de thiamine et des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21); | (6) 500 p.p.m., calculé en anhydride sulfureux |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | |
| | | (7) Champignons congelés | (7) 90 p.p.m, calculé en anhydride sulfureux |
| | | (8) Dextrose anhydre; monohydrate de dextrose | (8) 20 p.p.m., calculé en anhydride sulfureux |
| | | (9) Glucose ou sirop de glucose | (9) 40 p.p.m., sauf pour le glucose ou le sirop de glucose utilisés pour la fabrication des confiseries, pas plus de 400 p.p.m. calculé en anhydride sulfureux |
| | | (10) Solides de glucose ou sirop de glucose déshydraté | (10) 40 p.p.m., sauf pour les solides de glucose ou le sirop de glucose déshydraté utilisés pour la fabrication des confiseries, pas plus de 150 p.p.m. calculé en anhydride sulfureux |
| | | (11) Crustacés | (11) Bonnes pratiques industrielles. Les résidus dans la partie comestible du produit non cuit ne doivent pas dépasser 100 p.p.m., calculé en anhydride sulfureux. |

**PART III**

**Food Additives That May Be Used as Class III Preservatives**

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| C.1 | Calcium Propionate | (1) Same foods as listed for Propionic Acid | (1) 2,000 p.p.m. calculated as Propionic Acid |
| | | (2) Soft flour tortillas | (2) 4,000 p.p.m. |
| C.2 | Calcium Sorbate | Same foods as listed for Sorbic Acid | Same maximum levels of use as listed for Sorbic Acid |
| N.1 | Natamycin | (1) The surface of (naming the variety) cheese and cheddar cheese | (1) 20 p.p.m. in accordance with the requirements of sections B.08.033 and B.08.034 |
| | | (2) The surface of grated or shredded (naming the variety) cheese and grated or shredded cheddar cheese | (2) 10 p.p.m. in accordance with the requirements of sections B.08.033 and B.08.034 |
| P.1 | Potassium Sorbate | (1) Same foods as listed for Sorbic Acid | (1) Same maximum levels of use as listed for Sorbic Acid |
| | | (2) Soft flour tortillas | (2) 5,000 p.p.m. |
| P.2 | Propionic Acid | (1) Bread | (1) 2,000 p.p.m. |
| | | (2) (naming the variety) Cheese; Cheddar cheese; Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with | (2) 2,000 p.p.m. or 3,000 p.p.m., as the case may be, in accordance with the requirements of sections B.08.033, B.08.034, B.08.035, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 and B.08.041.8 |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | |
| | | (3) Unstandardized foods except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product | (3) 2,000 p.p.m. |
| S.1 | Sodium Diacetate | (1) Bread | (1) 3,000 p.p.m. |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) 3,000 p.p.m. |
| S.2 | Sodium Propionate | Same foods as listed for Propionic Acid | 2,000 p.p.m. calculated as Propionic Acid |
| S.3 | Sodium Sorbate | Same foods as listed for Sorbic Acid | Same maximum levels of use as listed for Sorbic Acid |
| S.4 | Sorbic Acid | (1) Bread | (1) 1,000 p.p.m. |
| | | (2) (naming the variety) Cheese; Cheddar cheese; Cream cheese; Cream cheese with (naming the added ingredients); Cream cheese spread; Cream cheese spread with (naming the added ingredients); Processed (naming the variety) cheese; Processed (naming the variety) cheese with (naming the added ingredients); Processed cheese food; Processed cheese food with (naming the added ingredients); Processed cheese spread; Processed cheese spread with (naming the added ingredients); Cold-pack (naming the variety) cheese; Cold-pack (naming the variety) cheese with (naming the added ingredients); Cold-pack cheese food; Cold-pack cheese food with (naming the added ingredients) | (2) 3,000 p.p.m. in accordance with the requirements of sections B.08.033, B.08.034, B.08.035, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 and B.08.041.8 |
| | | (3) Cider; Wine; Honey Wine | (3) 500 p.p.m. |
| | | (4) Unstandardized foods except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and | (4) 1,000 p.p.m. |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (c) poultry meat and poultry meat by-products | |

**PARTIE III**

**Additifs alimentaires autorisés comme agents de conservation de la catégorie III**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| C.1 | Propionate de calcium | (1) Mêmes aliments que pour l'acide propionique | (1) 2 000 p.p.m., calculé sous forme d'acide propionique |
| | | (2) Tortillas molles | (2) 4 000 p.p.m. |
| C.2 | Sorbate de calcium | Mêmes aliments que pour l'acide sorbique | Mêmes limites de tolérance que pour l'acide sorbique |
| N.1 | Natamycine | (1) La surface du fromage (indication de la variété) et du fromage cheddar | (1) 20 p.p.m., conformément aux exigences des articles B.08.033 et B.08.034 |
| | | (2) La surface du fromage râpé fin ou en filaments (indication de la variété) et du fromage cheddar râpé fin ou en filaments | (2) 10 p.p.m., conformément aux exigences des articles B.08.033 et B.08.034 |
| P.1 | Sorbate de potassium | (1) Mêmes aliments que pour l'acide sorbique | (1) Mêmes limites de tolérance que pour l'acide sorbique |
| | | (2) Tortillas molles | (2) 5 000 p.p.m. |
| P.2 | Acide propionique | (1) Pain | (1) 2 000 p.p.m. |
| | | (2) Fromage (indication de la variété); fromage cheddar; fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (2) 2 000 p.p.m. ou 3 000 p.p.m., suivant le cas, conformément aux exigences des articles B.08.033, B.08.034, B.08.035, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 et B.08.041.8 |
| | | (3) Aliments non normalisés, à l'exception des préparations non normalisées<br>a) de viande et de sous-produits de viande (titres 14 et 21);<br>b) de poisson; et | (3) 2 000 p.p.m. |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | c) de viande de volaille et de sous-produits de viande de volaille | |
| S.1 | Diacétate de sodium | (1) Pain; | (1) 3 000 p.p.m. |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) 3 000 p.p.m. |
| S.2 | Propionate de sodium | Mêmes aliments que pour l'acide propionique | 2 000 p.p.m., calculé en acide propionique |
| S.3 | Sorbate de sodium | Mêmes aliments que pour l'acide sorbique | Mêmes limites de tolérance que pour l'acide sorbique |
| S.4 | Acide sorbique | (1) Pain | (1) 1 000 p.p.m. |
| | | (2) Fromage (indication de la variété); fromage cheddar; fromage à la crème; fromage à la crème (avec indication des ingrédients ajoutés); fromage à la crème à tartiner; fromage à la crème à tartiner (avec indication des ingrédients ajoutés); fromage fondu (indication de la variété); fromage fondu (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage fondu; préparation de fromage fondu (avec indication des ingrédients ajoutés); fromage fondu à tartiner; fromage fondu à tartiner (avec indication des ingrédients ajoutés); fromage conditionné à froid (indication de la variété); fromage conditionné à froid (indication de la variété) (avec indication des ingrédients ajoutés); préparation de fromage conditionné à froid; préparation de fromage conditionné à froid (avec indication des ingrédients ajoutés) | (2) 3 000 p.p.m., conformément aux exigences des articles B.08.033, B.08.034, B.08.035, B.08.037, B.08.038, B.08.039, B.08.040, B.08.041, B.08.041.1, B.08.041.2, B.08.041.3, B.08.041.4, B.08.041.5, B.08.041.6, B.08.041.7 et B.08.041.8 |
| | | (3) Cidre; vin; vin de miel | (3) 500 p.p.m. |
| | | (4) Aliments non normalisés, à l'exception des préparations non normalisées<br>a) de viande et de sous-produits de viande (titres 14 et 21);<br>b) de poisson; et<br>c) de viande de volaille et de sous-produits de viande de volaille | (4) 1 000 p.p.m. |

## PART IV

### Food Additives That May Be Used as Class IV Preservatives

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Ascorbic Acid | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| A.2 | Ascorbyl Palmitate | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) 0.02% of the fat content. If ascorbyl stearate is also used the total must not exceed 0.02% of the fat content |
| | | (4) Infant formula | (4) 0.001% as consumed |
| A.3 | Ascorbyl Stearate | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Margarine | (2) 0.02% of the fat content. If ascorbyl palmitate is also used the total must not exceed 0.02% of the fat content |
| B.1 | Butylated Hydroxyanisole (a mixture of 2-tertiarybutyl-4-hydroxyanisole and 3-tertiarybutyl-4-hydroxyanisole) | (1) Fats and oils, lard, shortening | (1) 0.02%. If butylated hydroxytoluene, propyl gallate or tertiary butyl hydroquinone, singly or in combination, is also used, the total must not exceed 0.02% |
| | | (2) Dried breakfast cereals; Dehydrated potato products | (2) 0.005%. If butylated hydroxytoluene or propyl gallate or both are also used, the total must not exceed 0.005% |
| | | (3) Chewing gum | (3) 0.02%. If butylated hydroxytoluene or propyl gallate or both are also used, the total must not exceed 0.02% |
| | | (4) Essential oils; Citrus oil flavours; Dry flavours | (4) 0.125%. If butylated hydroxytoluene or propyl gallate or both are also used, the total must not exceed 0.125% |
| | | (5) Citrus oils | (5) 0.5%. If butylated hydroxytoluene or propyl gallate or both are also used, the total must not exceed 0.5% |
| | | (6) Partially defatted pork fatty tissue; Partially defatted beef fatty tissue | (6) 0.0065%. If butylated hydroxytoluene is also used the total must not exceed 0.0065% |
| | | (7) Vitamin A liquids for addition to food | (7) 5 mg/1,000,000 International Units |
| | | (8) Dry beverage mixes; Dry dessert and confectionery mixes | (8) 0.009% |
| | | (9) Active dry yeast | (9) 0.1% |
| | | (10) Other unstandardized foods [except unstandardized preparations of | (10) 0.02% of the fat or the oil content of the food. If butylated hydroxytoluene or propyl gallate or |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| | | (a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | both are also used, the total must not exceed 0.02% of the fat or the oil content of the food |
| | | (11) Dry Vitamin D preparations for addition to food | (11) 10 mg/1,000,000 International Units |
| | | (12) Margarine | (12) 0.01% of the fat content. If butylated hydroxytoluene or propyl gallate or both are also used the total must not exceed 0.01% of the fat content |
| | | (13) Dried cooked poultry meat | (13) 0.015% of the fat content. If propyl gallate or citric acid or both are also used, the total must not exceed 0.015% of the fat content. |
| B.2 | Butylated Hydroxytoluene (3,5-ditertiarybutyl-4-hydroxytoluene) | (1) Fats and oils, lard, shortening | (1) 0.02%. If butylated hydroxyanisole, propyl gallate or tertiary butyl hydroquinone, singly or in combination, is also used, the total must not exceed 0.02% |
| | | (2) Dried breakfast cereals; Dehydrated potato products | (2) 0.005%. If butylated hydroxyanisole or propyl gallate or both are also used, the total must not exceed 0.005% |
| | | (3) Chewing gum | (3) 0.02%. If butylated hydroxyanisole or propyl gallate or both are also used, the total must not exceed 0.02% |
| | | (4) Essential oils; Citrus oil flavours; Dry flavours | (4) 0.125%. If butylated hydroxyanisole or propyl gallate or both are also used, the total must not exceed 0.125% |
| | | (5) Citrus oils | (5) 0.5%. If butylated hydroxyanisole or propyl gallate or both are also used, the total must not exceed 0.5% |
| | | (6) Partially defatted pork fatty tissue; Partially defatted beef fatty tissue | (6) 0.0065%. If butylated hydroxyanisole is also used the total must not exceed 0.0065% |
| | | (7) Vitamin A liquids for addition to food | (7) 5 mg/1,000,000 International Units |
| | | (8) Parboiled rice | (8) 0.0035% |
| | | (9) Other unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-products (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (9) 0.02% of the fat or the oil content of the food. If butylated hydroxyanisole or propyl gallate or both are also used, the total must not exceed 0.02% of the fat or the oil content of the food |
| | | (10) Dry Vitamin D preparations for addition to food | (10) 10 mg/1,000,000 Internatinal Units |
| | | (11) Margarine | (11) 0.01% of the fat content. If butylated hydroxyanisole or propyl gallate or both are also used the total must not exceed 0.01% of the fat content |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
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| C.1 | Citric Acid | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| | | (3) Dried cooked poultry meat | (3) 0.015% of the fat content. If butylated hydroxyanisole or propyl gallate or both are also used, the total must not exceed 0.015% of the fat content. |
| C.1.01 | Citric Acid Esters of Mono- and Di-glycerides | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) 0.01% of the fat content. If monoglyceride citrate, monoisopropyl citrate or stearyl citrate, singly or in combination, is also used, the total must not exceed 0.01% of the fat content |
| C.1.1 | L-Cysteine | Nutritional supplements set out in section B.24.201 | Good Manufacturing Practice |
| C.2 | L-Cysteine Hydrochloride | Sulphite replacement formulations for prepared fruits and vegetables | Good Manufacturing Practice |
| G.1 | Gum Guaiacum | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| L.1 | Lecithin | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| L.2 | Lecithin Citrate | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| M.1 | Monoglyceride Citrate | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) 0.01% of the fat content. If citric acid esters of mono- and di-glycerides, monoisopropyl citrate or stearyl citrate, singly or in combination, is also used, the total must not exceed 0.01% of the fat content |
| M.2 | Monoisopropyl Citrate | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| | | (3) Margarine | (3) 0.01% of the fat content. If citric acid esters of mono- and di-glycerides, monoglyceride citrate or stearyl citrate, singly or in combination, is also used, the total must not exceed 0.01% of the fat content |
| P.1 | Propyl Gallate | (1) Fats and oils, lard, shortening | (1) 0.02%. If butylated hydroxyanisole, butylated hydroxytoluene or tertiary butyl hydroquinone, singly or in combination, is also used, the total must not exceed 0.02% |
| | | (2) Dried breakfast cereals; Dehydrated potato products | (2) 0.005%. If butylated hydroxyanisole or butylated hydroxytoluene or both are also used, the total must not exceed 0.005% |
| | | (3) Chewing gum | (3) 0.02%. If butylated hydroxyanisole or butylated hydroxytoluene or both are also used, the total must not exceed 0.02% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (4) Essential oils; Dry flavours | (4) 0.125%. If butylated hydroxyanisole or butylated hydroxytoluene or both are also used, the total must not exceed 0.125% |
| | | (5) Citrus oils | (5) 0.5%. If butylated hydroxyanisole or butylated hydroxytoluene or both are also used, the total must not exceed 0.5% |
| | | (6) Other unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (6) 0.02% of the fat or the oil content of the food. If butylated hydroxyanisole or butylated hydroxytoluene or both are also used, the total must not exceed 0.02% of the fat or the oil content of the food |
| | | (7) Margarine | (7) 0.01% of the fat content. If butylated hydroxyanisole or butylated hydroxytoluene or both are also used the total must not exceed 0.01% of the fat content |
| | | (8) Dried cooked poultry meat | (8) 0.015% of the fat content. If butylated hydroxyanisole or citric acid or both are also used the total must not exceed 0.015% of the fat content. |
| T.1 | Tartaric Acid | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| T.1A | Tertiary Butyl Hydroquinone | Fats and oils, lard, shortening | 0.02%. If butylated hydroxyanisole, butylated hydroxytoluene or propyl gallate, singly or in combination, is also used, the total must not exceed 0.02% |
| T.2 | Tocopherols (alpha-tocopherol; tocopherols concentrate, mixed) | (1) Fats and oils; Lard; Monoglycerides and diglycerides; Shortening | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods [except unstandardized preparations of<br>(a) meat and meat by-product (Divisions 14 and 21);<br>(b) fish; and<br>(c) poultry meat and poultry meat by-product] | (2) Good Manufacturing Practice |
| | | (3) Infant formula | (3) 0.001% as consumed |

## PARTIE IV

### Additifs alimentaires autorisés comme agents de conservation de la catégorie IV

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| A.1 | Acide ascorbique | (1) Huiles et graisses; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| A.2 | Palmitate d'ascorbyle | (1) Huiles et graisses; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) 0,02 % de la teneur en gras. Si on emploie aussi le stéarate d'ascorbyle, la quantité totale ne doit pas excéder 0,02 % de la teneur en gras |
| | | (4) Préparations pour nourrissons | (4) 0,001% de la préparation pour nourrissons prête à consommer |
| A.3 | Stéarate d'ascorbyle | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Margarine | (2) 0,02 % de la teneur en gras. Si on emploie aussi le palmitate d'ascorbyle, la quantité totale ne doit pas excéder 0,02 % de la teneur en gras |
| B.1 | Hydroxyanisole butylé (mélange de 2-tertiobutyl-4-hydroxyanisole et de 3-tertiobutyl-4-hydroxyanisole) | (1) Graisses et huiles, saindoux, shortening | (1) 0,02 %. Si on emploie aussi l'hydroxytoluène butylé, l'hydroquinone de butyle tertiaire ou le gallate de propyle, seul ou en association, la quantité totale ne doit pas dépasser 0,02 % |
| | | (2) Céréales à déjeuner sèches; produits déshydratés de pommes de terre | (2) 0,005 %. Si on emploie aussi l'hydroxytoluène butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,005 % |
| | | (3) Gomme à mâcher | (3) 0,02 %. Si on emploie aussi l'hydroxytoluène butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,02 % |
| | | (4) Huiles essentielles; essences à base d'huile d'agrumes; substances aromatiques sèches | (4) 0,125 %. Si on emploie aussi l'hydroxytoluène butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,125 % |
| | | (5) Huiles d'agrumes | (5) 0,5 %. Si on emploie aussi l'hydroxytoluène butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,5 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (6) Tissus gras de porc ou de bœuf partiellement dégraissés | (6) 0,0065 %. Si on emploie aussi l'hydroxytoluène butylé, la quantité ne doit pas en dépasser 0,0065 % |
| | | (7) Liquides renfermant de la vitamine A et devant servir d'additifs alimentaires | (7) 5 mg/1 000 000 unités internationales |
| | | (8) Mélanges secs pour boissons; mélanges secs pour desserts et confiseries | (8) 0,009 % |
| | | (9) Levure active séchée | (9) 0,1 % |
| | | (10) Autres aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (10) 0,02 % de la teneur de l'aliment en gras ou en huile. Si on emploie aussi l'hydroxytoluène butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,02 % de la teneur de l'aliment en gras ou en huile |
| | | (11) Préparations sèches de vitamine D devant être ajoutées aux aliments | (11) 10 mg/1 000 000 unités internationales |
| | | (12) Margarine | (12) 0,01 % de la teneur en gras. Si on emploie aussi l'hydroxytoluène butylé ou le gallate de propyle ou les deux, la quantité totale ne doit pas excéder 0,01 % de la teneur en gras |
| | | (13) Viande de volaille cuite et séchée | (13) 0,015 % de la teneur en gras. Si on emploie aussi le gallate de propyle ou l'acide citrique, ou les deux, la quantité totale ne doit pas excéder 0,015 % de la teneur en gras. |
| B.2 | Hydroxytoluène butylé (3,5-ditertiobutyl-4-hydroxytoluène) | (1) Graisses et huiles, saindoux, shortening | (1) 0,02 %. Si on emploie aussi l'hydroxyanisole butylé, l'hydroquinone de butyle tertiaire ou le gallate de propyle, seul ou en association, la quantité totale ne doit pas dépasser 0,02 % |
| | | (2) Céréales à déjeuner sèches; produits de pommes de terre déshydratés | (2) 0,005 %. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,005 % |
| | | (3) Gomme à mâcher | (3) 0,02 %. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,02 % |
| | | (4) Huiles essentielles; essences à base d'huiles d'agrumes; substances aromatiques sèches | (4) 0,125 %. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,125 % |
| | | (5) Huiles d'agrumes | (5) 0,5 %. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,5 % |
| | | (6) Tissus gras de porc ou de bœuf, partiellement dégraissés | (6) 0,0065 %. Si on emploie aussi l'hydroxyanisole butylé, la quantité ne doit pas en dépasser 0,0065 % |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (7) Liquides renfermant de la vitamine A et devant servir d'additifs alimentaires | (7) 5 mg/1 000 000 unités internationales |
| | | (8) Riz à demi cuit | (8) 0,0035 % |
| | | (9) Autres aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et de sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (9) 0,02 % de la teneur de l'aliment en gras ou en huile. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas dépasser 0,02 % de la teneur de l'aliment en gras ou en huile |
| | | (10) Préparations sèches de vitamine D à ajouter aux aliments | (10) 10 mg/1 000 000 unités internationales |
| | | (11) Margarine | (11) 0,01 % de la teneur en gras. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle ou les deux, la quantité totale ne doit pas excéder 0,01 % de la teneur en gras |
| C.1 | Acide citrique | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| | | (3) Viande de volaille cuite et séchée | (3) 0,015 % de la teneur en gras. Si on emploie aussi l'hydroxyanisole butylé ou le gallate de propyle, ou les deux, la quantité totale ne doit pas excéder 0,015 % de la teneur en gras. |
| C.1.01 | Esters citriques des mono- et diglycérides | (1) Graisses et huiles; monoglycérides et diglycérides; saindoux; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson;<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) 0,01 % de la teneur en gras. Si on emploie aussi le citrate de monoglycéride, le citrate de monoisopropyle ou le citrate de stéaryle, seul ou en association, la quantité totale ne doit pas dépasser 0,01 % de la teneur en gras |
| C.1.1 | L-cystéine | Suppléments nutritifs conformes à l'article B.24.201 | Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| C.2 | Chlorhydrate de L-cystéine | Formules de remplacement des sulfites pour les fruits et les légumes préparés | Bonnes pratiques industrielles |
| G.1 | Résine de gaïac | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| L.1 | Lécithine | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| L.2 | Citrate de lécithine | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| M.1 | Citrate de monoglycéride | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) 0,01 % de la teneur en gras. Si on emploie aussi le citrate de monoisopropyle, le citrate de stéaryle ou les esters citriques des mono- et diglycérides, seuls ou en association, la quantité totale ne doit pas dépasser 0,01 % de la teneur en gras |
| M.2 | Citrate de monoisopropyle | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| | | (3) Margarine | (3) 0,01 % de la teneur en gras. Si on emploie aussi le citrate de monoglycéride, le citrate de stéaryle ou les esters citriques des mono- et diglycérides, seuls ou en association, la quantité totale ne doit pas dépasser 0,01 % de la teneur en gras |
| P.1 | Gallate de propyle | (1) Graisses et huiles, saindoux, shortening | (1) 0,02 %. Si on emploie aussi l'hydroxyanisole butylé, l'hydroxytoluène butylé ou l'hydroquinone de butyle tertiaire, seul ou en association, la quantité totale ne doit pas dépasser 0,02 % |
| | | (2) Céréales à déjeuner sèches; produits déshydratés de pommes de terre | (2) 0,005 %. Si on emploie aussi l'hydroxyanisole butylé ou l'hydroxytoluène butylé, ou les deux, la quantité totale ne doit pas dépasser 0,005 % |
| | | (3) Gomme à mâcher | (3) 0,02 %. Si on emploie aussi l'hydroxyanisole butylé ou l'hydroxytoluène butylé, ou les deux, la quantité totale ne doit pas dépasser 0,02 % |
| | | (4) Huiles essentielles; substances aromatiques sèches | (4) 0,125 %. Si on emploie aussi l'hydroxyanisole butylé ou l'hydroxytoluène butylé, ou les deux, la quantité totale ne doit pas dépasser 0,125 % |
| | | (5) Huiles d'agrumes | (5) 0,5 %. Si on emploie aussi l'hydroxyanisole butylé ou l'hydroxytoluène butylé, ou les deux, la quantité totale ne doit pas dépasser 0,5 % |
| | | (6) Autres aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (6) 0,02 % de la teneur de l'aliment en gras ou en huile. Si on emploie aussi l'hydroxyanisole butylé ou l'hydroxytoluène butylé, ou les deux, la quantité totale ne doit pas dépasser 0,02 % de la teneur de l'aliment en gras ou en huile |
| | | (7) Margarine | (7) 0,01 % de la teneur en gras. Si on emploie aussi l'hydroxyanisole butylé ou l'hydroxytoluène butylé ou les deux, la quantité totale ne doit pas excéder 0,01 % de la teneur en gras |
| | | (8) Viande de volaille cuite et séchée | (8) 0,015 % de la teneur en gras. Si on emploie aussi l'hydroxyanisole butylé |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | | ou l'acide citrique, ou les deux, la quantité totale ne doit pas excéder 0,015 % de la teneur en gras. |
| T.1 | Acide tartrique | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| T.1A | Hydroquinone de butyle tertiaire | Graisses et huiles, saindoux, shortening | 0,02 %. Si on emploie aussi l'hydroxyanisole butylé, l'hydroxytoluène butylé ou le gallate de propyle, seul ou en association, la quantité totale ne doit pas dépasser 0,02 % |
| T.2 | Tocophérols (alphatocophérol; concentré de tocophérols mixtes) | (1) Graisses et huiles; saindoux; monoglycérides et diglycérides; shortening | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés, [à l'exception des préparations non normalisées de<br>a) viande et sous-produits de viande (Titres 14 et 21);<br>b) poisson; et<br>c) viande de volaille et sous-produits de viande de volaille] | (2) Bonnes pratiques industrielles |
| | | (3) Préparations pour nourrissons | (3) 0,001% de la préparation pour nourrissons prête à consommer |

SOR/79-285, ss. 1 to 4; SOR/79-660, s. 18; SOR/79-752, s. 10; SOR/80-500, s. 7; SOR/81-565, s. 6; SOR/81-934, ss. 13 to 15; SOR/82-383, s. 11; SOR/86-89, s. 7; SOR/86-1020, s. 1; SOR/87-138, ss. 1, 2; SOR/87-469, s. 2; SOR/89-198, ss. 12 to 16; SOR/91-124, ss. 10 to 12; SOR/92-226, s. 1; SOR/92-591, s. 2(F); SOR/94-689, s. 2(F); SOR/95-592, s. 1; SOR/96-241, s. 2; SOR/97-148, s. 7; SOR/97-191, s. 4; SOR/98-459, s. 1; SOR/99-289, ss. 1 to 4; SOR/2003-156, s. 1; SOR/2005-316, ss. 4 to 6; SOR/2010-94, s. 8(E); SOR/2010-141, ss. 1, 2; SOR/2010-264, s. 4; SOR/2011-235, ss. 7 to 13, 16(F); SOR/2011-280, ss. 7, 8; SOR/2012-43, ss. 37 to 42; SOR/2012-104, ss. 16(F), 17, 18.

DORS/79-285, art. 1 à 4; DORS/79-660, art. 18; DORS/79-752, art. 10; DORS/80-500, art. 7; DORS/81-565, art. 6; DORS/81-934, art. 13 à 15; DORS/82-383, art. 11; DORS/86-89, art. 7; DORS/86-1020, art. 1; DORS/87-138, art. 1 et 2; DORS/87-469, art. 2; DORS/89-198, art. 12 à 16; DORS/91-124, art. 10 à 12; DORS/92-226, art. 1; DORS/92-591, art. 2(F); DORS/94-689, art. 2(F); DORS/95-592, art. 1; DORS/96-241, art. 2; DORS/97-148, art. 7; DORS/97-191, art. 4; DORS/98-459, art. 1; DORS/99-289, art. 1 à 4; DORS/2003-156, art. 1; DORS/2005-316, art. 4 à 6; DORS/2010-94, art. 8(A); DORS/2010-141, art. 1 et 2; DORS/2010-264, art. 4; DORS/2011-235, art. 7 à 13 et 16(F); DORS/2011-280, art. 7 et 8; DORS/2012-43, art. 37 à 42; DORS/2012-104, art. 16(F), 17 et 18.

## TABLE XII

## Food Additives That May Be Used as Sequestering Agents

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| A.1 | Ammonium Citrate, dibasic | Unstandardized foods | Good Manufacturing Practice |
| A.2 | Ammonium Citrate, monobasic | Unstandardized foods | Good Manufacturing Practice |
| C.1 | Calcium Citrate | Unstandardized foods | Good Manufacturing Practice |
| C.2 | Calcium Disodium Ethylenediaminetetraacetate (Calcium Disodium EDTA) | (1) Ale; Beer; Malt liquor; Porter; Stout | (1) 25 p.p.m. calculated as the anhydrous form |
| | | (2) French dressing; Mayonnaise; Salad dressing; Unstandardized dressings; Unstandardized sauces | (2) 75 p.p.m. calculated as the anhydrous form |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (3) Potato salad; Unstandardized sandwich spreads | (3) 100 p.p.m. calculated as the anhydrous form |
| | | (4) Canned shrimp; Canned tuna | (4) 250 p.p.m. calculated as the anhydrous form |
| | | (5) Canned crabmeat; Canned lobster; Canned salmon | (5) 275 p.p.m. calculated as the anhydrous form |
| | | (6) Margarine | (6) 75 p.p.m. calculated as the anhydrous form |
| | | (7) Canned clams | (7) 340 p.p.m. calculated as the anhydrous form |
| | | (8) Beans; Beans with pork; Canned legumes except canned green beans, canned peas and canned wax beans | (8) 365 p.p.m. calculated as the anhydrous form |
| | | (9) Canned sea snails; Canned snails | (9) 300 p.p.m. calculated as the anhydrous form |
| | | (10) Ready-to-drink teas; Soft drinks | (10) 33 p.p.m. calculated as the anhydrous form |
| | | (11) Pasteurized sous-vide potatoes | (11) 100 p.p.m., singly or in combination with disodium EDTA, calculated as the anhydrous disodium EDTA form |
| C.3 | [Repealed, SOR/2012-43, s. 43] | | |
| C.4 | Calcium Phosphate, monobasic | (1) Ice cream mix; Ice milk mix; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Unstandardized dairy products | (2) Good Manufacturing Practice |
| C.5 | Calcium Phosphate, tribasic | Ice cream mix; Ice milk mix | Good Manufacturing Practice |
| C.6 | Calcium Phytate | Glazed fruit | Good Manufacturing Practice |
| C.7 | Citric Acid | (1) Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Frozen fish fillets; frozen minced fish; frozen comminuted fish | (3) 0.1% |
| D.1 | Disodium Ethylenediaminetetraacetate (Disodium EDTA) | (1) Dressing and sauces | (1) 70 p.p.m. |
| | | (2) Unstandardized sandwich spreads | (2) 90 p.p.m |
| | | (3) Beans; Beans with pork; Canned legumes except canned green beans, canned peas and canned wax beans | (3) 165 p.p.m. |
| | | (4) Dried banana products | (4) 265 p.p.m |
| | | (5) Aqueous suspensions of colour lake preparations for use in coating confectionery tablets | (5) 1% of the colour preparation |
| | | (6) Pasteurized sous-vide potatoes | (6) 100 p.p.m., singly or in combination with calcium disodium EDTA, calculated as anhydrous disodium EDTA |
| | | (7) Edible coating for sausages | (7) 80 p.p.m. in the edible coating, calculated on the basis of the whole sausage |
| D.2 | [Repealed, SOR/2012-43, s. 45] | | |
| G.1 | Glycine | Mono- and diglycerides | 0.02% |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| P.1 | Phosphoric Acid | Mono- and diglycerides | 0.02% |
| P.2 | Potassium Phosphate, monobasic | (1) Ice cream mix; Ice milk mix; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| | | (3) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (3) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| P.3 | Potassium Pyrophosphate, tetrabasic | (1) Meat tenderizers | (1) Good Manufacturing Practice |
| | | (2) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (2) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| P.4 | Potassium Phosphate, dibasic | Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| S.1 | Sodium Acid Pyrophosphate | (1) Canned seafoods | (1) Used singly or in combination with sodium hexametaphosphate or sodium tripolyphosphate, or both, total added phosphate not to exceed 0.5% calculated as sodium phosphate, dibasic |
| | | (2) Ice cream mix; Ice milk mix | (2) Good Manufacturing Practice |
| | | (3) Injection or cover solution for the curing of poultry or poultry meat | (3) Good Manufacturing Practice, and in accordance with B.22.021(e) |
| | | (4) Pumping pickle for the curing of pork, beef and lamb cuts | (4) Good Manufacturing Practice, and in accordance with B.14.009(f) and B.14.031(h) |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (6) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| S.2 | Sodium Citrate | (1) Ice cream mix; Ice milk mix; Pumping pickle, cover pickle and dry cure employed in the curing of preserved meat or preserved meat by-product; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Unstandardized foods | (2) Good Manufacturing Practice |
| S.3 | Sodium Hexametaphosphate | (1) Canned seafoods | (1) Used singly or in combination with sodium acid pyrophosphate or sodium tripolyphosphate, or both, total added phosphate not to exceed 0.5% calculated as sodium phosphate, dibasic |
| | | (2) Ice cream mix; Ice milk mix | (2) Good Manufacturing Practice |
| | | (3) Injection or cover solution for the curing of poultry or poultry meat | (3) Good Manufacturing Practice, and in accordance with B.22.021(e) |
| | | (4) Pumping pickle for the curing of pork, beef and lamb cuts | (4) Good Manufacturing Practice, and in accordance with B.14.009(f) and B.14.031(h) |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (6) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (6) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| | | (7) Liquid whey destined for the manufacture of concentrated or dried whey products | (7) 800 p.p.m. in the concentrated or dried whey products |
| S.4 | Sodium Phosphate, dibasic | (1) Ice cream mix; Ice milk mix; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Injection or cover solution for the curing of poultry or poultry meat | (2) Good Manufacturing Practice, and in accordance with B.22.021(e) |
| | | (3) Pumping pickle for the curing of pork, beef and lamb cuts | (3) Good Manufacturing Practice, and in accordance with B.14.009(f) and B.14.031(h) |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (5) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| S.5 | Sodium Phosphate, monobasic | (1) Ice cream mix; Ice milk mix; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Injection or cover solution for the curing of poultry or poultry meat | (2) Good Manufacturing Practice, and in accordance with B.22.021(e) |
| | | (3) Pumping pickle for the curing of pork, beef and lamb cuts | (3) Good Manufacturing Practice, and in accordance with B.14.009(f) and B.14.031(h) |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (5) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| S.6 | Sodium Pyrophosphate, tetrabasic | (1) Ice cream mix; Ice milk mix; Sherbet | (1) Good Manufacturing Practice |
| | | (2) Meat tenderizers | (2) Good Manufacturing Practice |
| | | (3) Injection or cover solution for the curing of poultry or poultry meat | (3) Good Manufacturing Practice, and in accordance with B.22.021(e) |
| | | (4) Pumping pickle for the curing of pork, beef and lamb cuts | (4) Good Manufacturing Practice, and in accordance with B.14.009(f) and B.14.031(h) |
| | | (5) Unstandardized foods | (5) Good Manufacturing Practice |
| | | (6) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (6) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |
| S.7 | Sodium Tripolyphosphate | (1) Injection or cover solution for the curing of poultry or poultry meat | (1) Good Manufacturing Practice, and in accordance with B.22.021(e) |
| | | (2) Meat tenderizers | (2) Good Manufacturing Practice |
| | | (3) Pumping pickle for the curing of pork, beef and lamb cuts | (3) Good Manufacturing Practice, and in accordance with B.14.009(f) and B.14.031(h) |
| | | (4) Unstandardized foods | (4) Good Manufacturing Practice |
| | | (5) Solid cut meat; prepared meat; prepared meat by-product; solid cut poultry meat; prepared poultry meat; prepared poultry meat by-product | (5) 0.5% total added phosphate, calculated as sodium phosphate, dibasic |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| | | (6) Canned seafoods | (6) Used singly or in combination with sodium acid pyrophosphate or sodium hexametaphosphate, or both, total added phosphate not to exceed 0.5% calculated as sodium phosphate, dibasic |
| S.8 | Stearyl Citrate | Margarine | 0.01% of the fat content. If citric acid esters of mono- and di-glycerides, monoglyceride citrate or monoisopropyl citrate, singly or in combination, is also used, the total must not exceed 0.01% of the fat content |

**TABLEAU XII**

**Additifs alimentaires autorisés comme chélateurs ou agents séquestrants**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Citrate diammonique | Aliments non normalisés | Bonnes pratiques industrielles |
| A.2 | Citrate monoammonique | Aliments non normalisés | Bonnes pratiques industrielles |
| C.1 | Citrate de calcium | Aliments non normalisés | Bonnes pratiques industrielles |
| C.2 | Éthylènediaminetétraacétate de calcium disodique (EDTA de calcium disodique) | (1) Ale; bière; liqueur de malt; porter; stout | (1) 25 p.p.m., calculé sous forme anhydre |
| | | (2) Mayonnaise; sauce à salade; sauces d'assaisonnement non normalisées; sauces non normalisées; sauce vinaigrette | (2) 75 p.p.m., calculé sous forme anhydre |
| | | (3) Salade de pommes de terre; tartinades à sandwich non normalisées | (3) 100 p.p.m., calculé sous forme anhydre |
| | | (4) Crevettes en conserve; thon en conserve | (4) 250 p.p.m., calculé sous forme anhydre |
| | | (5) Crabe en conserve; homard en conserve; saumon en conserve | (5) 275 p.p.m., calculé sous forme anhydre |
| | | (6) Margarine | (6) 75 p.p.m., calculé sous forme anhydre |
| | | (7) Clams en conserve | (7) 340 p.p.m., calculé sous forme anhydre |
| | | (8) Fèves; fèves au lard; légumineuses en conserve, à l'exception des haricots jaunes en conserve, des haricots verts en conserve et des pois en conserve | (8) 365 p.p.m., calculé sous forme anhydre |
| | | (9) Escargots en conserve; limaces de mer en conserve | (9) 300 p.p.m., calculé sous forme anhydre |
| | | (10) Boissons gazeuses; thés prêts à boire | (10) 33 p.p.m., calculé sous forme anhydre |
| | | (11) Pommes de terre pasteurisées sous-vide | (11) 100 p.p.m., seul ou en association avec de l'EDTA disodique, calculé sous forme d'EDTA disodique anhydre |
| C.3 | [Abrogé, DORS/2012-43, art. 43] | | |
| C.4 | Phosphate monocalcique | (1) Mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| | | (2) Produits laitiers non normalisés | (2) Bonnes pratiques industrielles |
| C.5 | Phosphate tricalcique | Mélange pour crème glacée; mélange pour lait glacé | Bonnes pratiques industrielles |
| C.6 | Phytate de calcium | Fruits glacés ou confits | Bonnes pratiques industrielles |
| C.7 | Acide citrique | (1) Marinade, saumure et mélange de salaison à sec employés dans le marinage des viandes conditionnées ou conservées et des sous-produits de viande conditionnés ou conservés | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Filets de poisson congelés; poisson haché congelé; poisson haché menu congelé | (3) 0,1 % |
| D.1 | Éthylènediaminetétraacétate disodique (EDTA disodique) | (1) Sauces et condiments | (1) 70 p.p.m. |
| | | (2) Tartinades à sandwich non normalisées | (2) 90 p.p.m. |
| | | (3) Fèves; fèves au lard; légumineuses en conserve, à l'exception des haricots jaunes en conserve, des haricots verts en conserve et des pois en conserve | (3) 165 p.p.m. |
| | | (4) Produits à base de bananes séchées | (4) 265 p.p.m. |
| | | (5) Préparation de colorant laque en suspension aqueuse pour utilisation dans l'enrobage de tablettes de confiseries | (5) 1 % de la préparation de colorant |
| | | (6) Pommes de terre pasteurisées sous-vide | (6) 100 p.p.m., seul ou en association avec l'EDTA de calcium disodique, calculé sous forme d'EDTA disodique anhydre |
| | | (7) Enrobage comestible pour les saucisses | (7) 80 p.p.m. dans l'enrobage comestible, calculé en fonction de la saucisse entière |
| D.2 | [Abrogé, DORS/2012-43, art. 45] | | |
| G.1 | Glycine | Mono- et diglycérides | 0,02 % |
| P.1 | Acide phosphorique | Mono- et diglycérides | 0,02 % |
| P.2 | Phosphate mono-potassique | (1) Mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| | | (3) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (3) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |
| P.3 | Pyrophosphate tétrapotassique | (1) Produits pour attendrir la viande | (1) Bonnes pratiques industrielles |
| | | (2) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (2) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| P.4 | Phosphate dipotassique | (1) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (1) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |
| S.1 | Pyrophosphate acide de sodium | (1) Fruits de mer en conserve | (1) Si employé seul ou en association avec le hexamétaphosphate de sodium ou le tripolyphosphate de sodium, ou les deux, la quantité totale de phosphate ajouté, calculé sous forme de phosphate dibasique de sodium, ne doit pas dépasser 0,5 % |
| | | (2) Mélange pour crème glacée; mélange pour lait glacé | (2) Bonnes pratiques industrielles |
| | | (3) Solution d'injection ou d'immersion servant à la salaison de la volaille ou de la viande de volaille | (3) Bonnes pratiques industrielles et conformément à B.22.021e) |
| | | (4) Marinade servant à la salaison de coupes de porc, de bœuf ou d'agneau | (4) Bonnes pratiques industrielles et conformément à B.14.009f) et B.14.031h) |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (6) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |
| S.2 | Citrate de sodium | (1) Marinade, saumure et mélange de salaison à sec employés dans le marinage des viandes conditionnées ou conservées et des sous-produits de viande conditionnés ou conservés; mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |
| | | (2) Aliments non normalisés | (2) Bonnes pratiques industrielles |
| S.3 | Hexamétaphosphate de sodium | (1) Fruits de mer en conserve | (1) Si employé seul ou en association avec le pyrophosphate acide de sodium ou le tripolyphosphate de sodium, ou les deux, la quantité totale de phosphate ajouté, calculé sous forme de phosphate dibasique de sodium, ne doit pas dépasser 0,5 % |
| | | (2) Mélange pour crème glacée; mélange pour lait glacé | (2) Bonnes pratiques industrielles |
| | | (3) Solution d'injection ou d'immersion servant à la salaison de la volaille ou de la viande de volaille | (3) Bonnes pratiques industrielles et conformément à B.22.021e) |
| | | (4) Marinade servant à la salaison de coupes de porc, de bœuf ou d'agneau | (4) Bonnes pratiques industrielles et conformément à B.14.009f) et B.14.031h) |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée | (6) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| | | solide; viande de volaille préparée; sous-produit de viande de volaille préparée | |
| | | (7) Petit-lait liquide destiné à la fabrication de produits de petit-lait concentré ou séché | (7) 800 p.p.m. dans les produits de petit-lait concentré ou séché |
| S.4 | Phosphate disodique | (1) Mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |
| | | (2) Solution d'injection ou d'immersion servant à la salaison de la volaille ou de la viande de volaille | (2) Bonnes pratiques industrielles et conformément à B.22.021e) |
| | | (3) Marinade servant à la salaison de coupes de porc, de bœuf ou d'agneau | (3) Bonnes pratiques industrielles et conformément à B.14.009f) et B.14.031h) |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (5) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |
| S.5 | Phosphate monosodique | (1) Mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |
| | | (2) Solution d'injection ou d'immersion servant à la salaison de la volaille ou de la viande de volaille | (2) Bonnes pratiques industrielles et conformément à B.22.021e) |
| | | (3) Marinade servant à la salaison de coupes de porc, de bœuf ou d'agneau | (3) Bonnes pratiques industrielles et conformément à B.14.009f) et B.14.031h) |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (5) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |
| S.6 | Pyrophosphate tétrasodique | (1) Mélange pour crème glacée; mélange pour lait glacé; sorbet laitier | (1) Bonnes pratiques industrielles |
| | | (2) Produits pour attendrir la viande | (2) Bonnes pratiques industrielles |
| | | (3) Solution d'injection ou d'immersion servant à la salaison de la volaille ou de la viande de volaille | (3) Bonnes pratiques industrielles et conformément à B.22.021e) |
| | | (4) Marinade servant à la salaison de coupes de porc, de bœuf ou d'agneau | (4) Bonnes pratiques industrielles et conformément à B.14.009f) et B.14.031h) |
| | | (5) Aliments non normalisés | (5) Bonnes pratiques industrielles |
| | | (6) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (6) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| S.7 | Tripolyphosphate de sodium | (1) Solution d'injection ou d'immersion servant à la salaison de la volaille ou de la viande de volaille | (1) Bonnes pratiques industrielles et conformément à B.22.021e) |
| | | (2) Produits pour attendrir la viande | (2) Bonnes pratiques industrielles |
| | | (3) Marinade servant à la salaison de coupes de porc, de bœuf ou d'agneau | (3) Bonnes pratiques industrielles et conformément à B.14.009f) et B.14.031h) |
| | | (4) Aliments non normalisés | (4) Bonnes pratiques industrielles |
| | | (5) Viande coupée solide; viande préparée; sous-produit de viande préparée; viande de volaille coupée solide; viande de volaille préparée; sous-produit de viande de volaille préparée | (5) 0,5 % en phosphates totaux ajoutés, calculés en phosphate disodique |
| | | (6) Fruits de mer en conserve | (6) Si employé seul ou en association avec le pyrophosphate acide de sodium ou le hexamétaphosphate de sodium, ou les deux, la quantité totale de phosphate ajouté, calculé sous forme de phosphate dibasique de sodium, ne doit pas dépasser 0,5 % |
| S.8 | Citrate de stéaryle | Margarine | 0,01 % de la teneur en gras. Si on emploie aussi le citrate de monoglycéride, le citrate de monoisopropyle ou les esters citriques des mono- et diglycérides, seuls ou en association, la quantité totale ne doit pas dépasser 0,01 % de la teneur en gras |

SOR/79-660, ss. 19, 20; SOR/80-501, s. 4; SOR/82-596, ss. 4 to 9; SOR/94-141, s. 1; SOR/94-262, ss. 4 to 12; SOR/94-689, s. 2; SOR/95-435, s. 2; SOR/97-30, s. 1; SOR/97-562, s. 1; SOR/580, s. 1(F); SOR/2005-316, ss. 7 to 11; SOR/2010-40, s. 2; SOR/2010-142, ss. 57, 58; SOR/2010-143, ss. 37(F), 38; SOR/2011-235, s. 14; SOR/2012-43, ss. 43 to 45; SOR/2012-104, s. 19(F); SOR/2012-112, s. 1.

DORS/79-660, art. 19 et 20; DORS/80-501, art. 4; DORS/82-596, art. 4 à 9; DORS/94-141, art. 1; DORS/94-262, art. 4 à 12; DORS/94-689, art. 2; DORS/95-435, art. 2; DORS/97-30, art. 1; DORS/97-562, art. 1; DORS/98-580, art. 1(F); DORS/2005-316, art. 7 à 11; DORS/2010-40, art. 2; DORS/2010-142, art. 57 et 58; DORS/2010-143, art. 37(F) et 38; DORS/2011-235, art. 14; DORS/2012-43, art. 43 à 45; DORS/2012-104, art. 19(F); DORS/2012-112, art. 1.

**TABLE XIII**

**Food Additives That May Be Used as Starch Modifying Agents**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Acetic Anhydride | Starch | Good Manufacturing Practice |
| A.2 | Adipic Acid | Starch | Good Manufacturing Practice |
| A.3 | Aluminum Sulphate | Starch | Good Manufacturing Practice |
| E.1 | [Repealed, SOR/2016-143, s. 2] | | |
| H.1 | Hydrochloric Acid | Starch | Good Manufacturing Practice |
| H.2 | Hydrogen Peroxide | Starch | Good Manufacturing Practice |
| M.1 | Magnesium Sulphate | Starch | 0.4% |
| N.1 | Nitric Acid | Starch | Good Manufacturing Practice |
| O.1 | Octenyl Succinic Anhydride (OSA) | Starch | Good Manufacturing Practice |
| P.1 | Peracetic Acid | Starch | Good Manufacturing Practice |
| P.2 | Phosphorus Oxychloride | Starch | Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Level of Use |
|---|---|---|---|
| P.3 | Potassium Permanganate | Starch | 50 p.p.m. of Manganese Sulphate calculated as Manganese |
| P.4 | Propylene Oxide | Starch | 25% |
| S.1 | Sodium Acetate | Starch | Good Manufacturing Practice |
| S.2 | Sodium Bicarbonate | Starch | Good Manufacturing Practice |
| S.3 | Sodium Carbonate | Starch | Good Manufacturing Practice |
| S.4 | Sodium Chlorite | Starch | Good Manufacturing Practice |
| S.5 | Sodium Hydroxide | Starch | Good Manufacturing Practice |
| S.6 | Sodium Hypochlorite | Starch | Good Manufacturing Practice |
| S.7 | Sodium Trimetaphosphate | Starch | 400 p.p.m. calculated as Phosphorus |
| S.7A | Sodium Tripolyphosphate | Starch | Total residual phosphate not to exceed 0.4% (calculated as Phosphorus) |
| S.8 | Succinic Anhydride | Starch | Good Manufacturing Practice |
| S.9 | Sulphuric Acid | Starch | Good Manufacturing Practice |

**TABLEAU XIII**

**Additifs alimentaires autorisés comme agents modifiants de l'amidon**

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Limites de tolérance |
|---|---|---|---|
| A.1 | Anhydride acétique | Amidon | Bonnes pratiques industrielles |
| A.2 | Acide adipique | Amidon | Bonnes pratiques industrielles |
| A.3 | Sulfate d'aluminium | Amidon | Bonnes pratiques industrielles |
| E.1 | [Abrogé, DORS/2016-143, art. 2] | | |
| H.1 | Acide chlorhydrique | Amidon | Bonnes pratiques industrielles |
| H.2 | Peroxyde d'hydrogène | Amidon | Bonnes pratiques industrielles |
| M.1 | Sulfate de magnésium | Amidon | 0,4 % |
| N.1 | Acide nitrique | Amidon | Bonnes pratiques industrielles |
| O.1 | Anhydride octénylsuccinique (AOS) | Amidon | Bonnes pratiques industrielles |
| P.1 | Peracide acétique | Amidon | Bonnes pratiques industrielles |
| P.2 | Oxychlorure de phosphore | Amidon | Bonnes pratiques industrielles |
| P.3 | Permanganate de potassium | Amidon | 50 p.p.m. de sulfate de manganèse calculé en manganèse |
| P.4 | Oxyde de propylène | Amidon | 25 % |
| S.1 | Acétate de sodium | Amidon | Bonnes pratiques industrielles |
| S.2 | Bicarbonate de sodium | Amidon | Bonnes pratiques industrielles |
| S.3 | Carbonate de sodium | Amidon | Bonnes pratiques industrielles |
| S.4 | Chlorite de sodium | Amidon | Bonnes pratiques industrielles |
| S.5 | Hydroxyde de sodium | Amidon | Bonnes pratiques industrielles |
| S.6 | Hypochlorite de sodium | Amidon | Bonnes pratiques industrielles |
| S.7 | Trimétaphosphate de sodium | Amidon | 400 p.p.m., calculé en phosphore |
| S.7A | Tripolyphosphate de sodium | Amidon | Phosphate résiduel total ne devant pas dépasser 0,4 % (calculé en phosphore) |
| S.8 | Anhydride succinique | Amidon | Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| S.9 | Acide sulfurique | Amidon | Bonnes pratiques industrielles |

SOR/94-689, s. 2(F); SOR/2012-106, s. 2; SOR/2016-143, s. 2.

DORS/94-689, art. 2(F); DORS/2012-106, art. 2; DORS/2016-143, art. 2.

**TABLE XIV**

**Food Additives That May Be Used as Yeast Foods**

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| A.1 | Ammonium Chloride | (1) Flour; Whole wheat flour | (1) 2,000 p.p.m. of the flour |
| | | (2) Bread | (2) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (3) Unstandardized foods | (3) Good Manufacturing Practice |
| A.2 | Ammonium Phosphate, dibasic | (1) Bread | (1) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (2) Cider; Honey wine; Wine | (2) Good Manufacturing Practice |
| | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| A.3 | Ammonium Phosphate, monobasic | (1) Bread | (1) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (2) Ale; Beer; Cider; Honey wine; Light beer; Malt liquor; Porter; Stout; Wine | (2) Good Manufacturing Practice |
| | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| A.4 | Ammonium Sulphate | (1) Bread | (1) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (2) Cider; Honey wine; Wine | (2) Good Manufacturing Practice |
| | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| C.1 | Calcium Carbonate | (1) Bread | (1) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| C.2 | Calcium Chloride | Unstandardized bakery products | Good Manufacturing Practice |
| C.3 | Calcium Citrate | Unstandardized bakery products | Good Manufacturing Practice |
| C.4 | Calcium Lactate | (1) Bread | (1) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| C.5 | Calcium Phosphate, dibasic | (1) Bread | (1) 2,500 p.p.m. of the flour. For combinations see paragraph B.13.021(m) |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| C.6 | Calcium Phosphate, monobasic | (1) Bread | (1) 7,500 p.p.m. of flour. For combinations see paragraph B.13.021(m) |
| | | (2) Flour | (2) 7,500 p.p.m. of flour |
| | | (3) Unstandardized bakery products | (3) Good Manufacturing Practice |
| C.7 | Calcium Phosphate, tribasic | Unstandardized bakery products | Good Manufacturing Practice |

| | Column I | Column II | Column III |
|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Level of Use |
| C.8 | Calcium Sulphate | (1) Bread | (1) 5,000 p.p.m. of the flour |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| F.1 | Ferrous Sulphate | Bacterial cultures | Good Manufacturing Practice |
| M.1 | Manganese Sulphate | Ale; Beer; Light beer; Malt liquor; Porter; Stout | Good Manufacturing Practice |
| P.1 | Phosphoric Acid | Ale; Beer; Light beer; Malt liquor; Porter; Stout | Good Manufacturing Practice |
| P.2 | Potassium Chloride | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| P.4 | Potassium Phosphate, dibasic | (1) Ale; Beer; Cider; Honey wine; Light beer; Malt liquor; Porter; Stout; Wine | (1) Good Manufacturing Practice |
| | | (2) Unstandardized bakery products | (2) Good Manufacturing Practice |
| P.5 | Potassium Phosphate, monobasic | Ale; Beer; Cider; Honey wine; Light beer; Malt liquor; Porter; Stout; Wine | Good Manufacturing Practice |
| S.1 | Sodium Sulphate | Unstandardized bakery products | Good Manufacturing Practice |
| U.1 | [Repealed, SOR/87-5, s. 1] | | |
| Z.1 | Zinc Sulphate | (1) Ale; Beer; Light beer; Malt liquor; Porter; Stout | (1) Good Manufacturing Practice |
| | | (2) Bacterial cultures | (2) Good Manufacturing Practice |

**TABLEAU XIV**

**Additifs alimentaires autorisés comme nourriture des levures**

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| A.1 | Chlorure d'ammonium | (1) Farine; farine de blé entier | (1) 2 000 p.p.m. de farine |
| | | (2) Pain | (2) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (3) Aliments non normalisés | (3) Bonnes pratiques industrielles |
| A.2 | Phosphate diammonique | (1) Pain | (1) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Cidre; vin de miel; vin | (2) Bonnes pratiques industrielles |
| | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| A.3 | Phosphate monoammonique | (1) Pain | (1) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Ale; bière; cidre; vin de miel; bière légère; liqueur de malt; porter; stout; vin | (2) Bonnes pratiques industrielles |
| | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| A.4 | Sulfate d'ammonium | (1) Pain | (1) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Cidre; vin de miel; vin | (2) Bonnes pratiques industrielles |
| | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Limites de tolérance |
| C.1 | Carbonate de calcium | (1) Pain | (1) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| C.2 | Chlorure de calcium | Produits de boulangerie non normalisés | Bonnes pratiques industrielles |
| C.3 | Citrate de calcium | Produits de boulangerie non normalisés | Bonnes pratiques industrielles |
| C.4 | Lactate de calcium | (1) Pain | (1) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| C.5 | Phosphate bicalcique | (1) Pain | (1) 2 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| C.6 | Phosphate monocalcique | (1) Pain | (1) 7 500 p.p.m. de farine. Pour les mélanges, voir l'alinéa B.13.021m) |
| | | (2) Farine | (2) 7 500 p.p.m. de farine |
| | | (3) Produits de boulangerie non normalisés | (3) Bonnes pratiques industrielles |
| C.7 | Phosphate tricalcique | Produits de boulangerie non normalisés | Bonnes pratiques industrielles |
| C.8 | Sulfate de calcium | (1) Pain | (1) 5 000 p.p.m. de farine |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| F.1 | Sulfate ferreux | Cultures bactériennes | Bonnes pratiques industrielles |
| M.1 | Sulfate de manganèse | Ale; bière; bière légère; liqueur de malt; porter; stout | Bonnes pratiques industrielles |
| P.1 | Acide phosphorique | Ale; bière; bière légère; liqueur de malt; porter; stout | Bonnes pratiques industrielles |
| P.2 | Chlorure de potassium | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| P.4 | Phosphate bipotassique | (1) Ale; bière; cidre; vin de miel; bière légère; liqueur de malt; porter; stout; vin | (1) Bonnes pratiques industrielles |
| | | (2) Produits de boulangerie non normalisés | (2) Bonnes pratiques industrielles |
| P.5 | Phosphate monopotassique | Ale; bière; cidre; vin de miel; bière légère; liqueur de malt; porter; stout; vin | Bonnes pratiques industrielles |
| S.1 | Sulfate de sodium | Produits de boulangerie non normalisés | Bonnes pratiques industrielles |
| U.1 | [Abrogé, DORS/87-5, art. 1] | | |
| Z.1 | Sulfate de zinc | (1) Ale; bière; bière légère; liqueur de malt; porter; stout | (1) Bonnes pratiques industrielles |
| | | (2) Cultures bactériennes | (2) Bonnes pratiques industrielles |

SOR/87-5, s. 1; SOR/94-689, s. 2(F); SOR/95-281, ss. 6, 7; SOR/2010-41, ss. 7(E), 9(E).

DORS/87-5, art. 1; DORS/94-689, art. 2(F); DORS/95-281, art. 6 et 7; DORS/2010-41, art. 7(A) et 9(A).

## TABLE XV

### Food Additives That May Be Used as Carrier or Extraction Solvents

| | Column I | Column II | Column III | Column IV |
|---|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Residue | Maximum Level of Use |
| 1 | Acetone | (1) Spice extracts; Natural extractives | (1) 30 p.p.m. | |
| | | (2) Meat and Egg Marking Inks | | (2) Good Manufacturing Practice |
| 2 | Benzyl Alcohol | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 3 | 1,3-Butylene Glycol | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 3.1 | Carbon Dioxide | (1) Green coffee beans and tea leaves for decaffeination purposes | | (1) Good Manufacturing Practice |
| | | (2) Spice extracts; Natural extractives; (naming the flavour) Flavour (Division 10); Hop extract in accordance with subparagraph B.02.130(b)(v) and paragraph B.02.133(b); Pre-isomerized hop extract in accordance with subparagraph B.02.134(1)(a)(ii) | | (2) Good Manufacturing Practice |
| | | (3) Egg Products | | (3) Good Manufacturing Practice |
| | | (4) Cocoa powder | | (4) Good Manufacturing Practice |
| 4 | Castor Oil | Oil-soluble annatto; Annatto butter colour; Annatto margarine colour | | Good Manufacturing Practice |
| 4.1 | Citric Acid Esters of Mono- and Di-glycerides | (1) Natural extractives; Spice extracts | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 5 | Ethyl Acetate | (1) Spice extracts; Natural extractives; (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| | | (3) Green coffee beans for decaffeination purposes | (3) 10 p.p.m. in both roasted and decaffeinated soluble (instant) coffee | |
| | | (4) Tea leaves for decaffeination purposes | (4) 50 p.p.m. | |
| 6 | Ethyl Alcohol (Ethanol) | (1) Spice extracts; Natural extractives; (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Residue | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| | | (3) Colour mixtures and preparations (Division 6) | | (3) Good Manufacturing Practice |
| | | (4) Meat and Egg Marking Inks | | (4) Good Manufacturing Practice |
| | | (5) Food additive preparations | | (5) Good Manufacturing Practice |
| | | (6) Hop extract in accordance with subparagraph B.02.130(b)(v) and paragraph B.02.133(b); Pre-isomerized hop extract in accordance with subparagraph B.02.134(1)(a)(iii) | | (6) Good Manufacturing Practice |
| 6.A | Ethyl alcohol denatured with methanol | Vegetable oil seed meals | 10 p.p.m. methanol | |
| 7 | [Repealed, SOR/82-406, s. 1] | | | |
| 8 | Glycerol (Glycerin) | (1) (naming the flavour) Extract; (naming the flavour) Essence; (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| | | (3) Colour mixtures and preparations (Division 6) | | (3) Good Manufacturing Practice |
| | | (4) Food additive preparations | | (4) Good Manufacturing Practice |
| 9 | Glyceryl diacetate | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 10 | Glyceryl triacetate (Triacetin) | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 11 | Glyceryl tributyrate (Tributyrin) | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 12 | Hexane | (1) Spice extracts; Natural extractives | (1) 25 p.p.m. | |
| | | (2) Hop extract in accordance with subparagraph B.02.130(b)(v) and paragraph B.02.133(a) | (2) 2.2% | |
| | | (3) Vegetable fats and oils | (3) 10 p.p.m. | |
| | | (4) Vegetable oil seed meals | (4) 10 p.p.m. | |
| | | (5) Pre-isomerized hop extract in accordance with subparagraph | (5) 1.5 p.p.m. per percent iso-alpha acid content of | |

| Item No. | Column I<br>Additive | Column II<br>Permitted in or Upon | Column III<br>Maximum Residue | Column IV<br>Maximum Level of Use |
|---|---|---|---|---|
| | | B.02.134(1)(a)(i) and subsection B.02.134(2) | the pre-isomerized hop extract | |
| 13 | Isopropyl alcohol (Isopropanol) | (1) Spice extracts; Natural extractives | (1) 50 p.p.m. | |
| | | (2) Fish protein | (2) 0.15% | |
| | | (3) (naming the flavour) Flavour (Division 10) | | (3) Good Manufacturing Practice |
| | | (4) Unstandardized flavouring preparations | | (4) Good Manufacturing Practice |
| | | (5) Meat and Egg Marking Inks | | (5) Good Manufacturing Practice |
| 14 | Methyl Alcohol (methanol) | (1) Spice extracts; Natural extractives | (1) 50 p.p.m. | |
| | | (2) Hop extract in accordance with subparagraph B.02.130(b)(v) and paragraph B.02.133(a) | (2) 2.2% | |
| | | (3) Meat and Egg Marking Inks | | (3) Good Manufacturing Practice |
| 14.1 | Methyl ethyl ketone (2-Butanone) | Spice extracts; Natural extractives | 50 p.p.m. | |
| 15 | Methylene Chloride (Dichloro-methane) | (1) Spice extracts; Natural extractives | (1) 30 p.p.m. | |
| | | (2) Hop extract in accordance with subparagraph B.02.130(b)(v) and paragraph B.02.133(a) | (2) 2.2% in hop extract | |
| | | (3) Green coffee beans and Tea leaves for decaffeination purposes | (3) 10 p.p.m. in decaffeinated roasted coffee, decaffeinated soluble (instant) coffee, decaffeinated tea leaves and decaffeinated instant tea | |
| 16 | Monoglycerides and diglycerides | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Oil-soluble annatto; Annatto butter colour; Annatto margarine colour | | (2) Good Manufacturing Practice |
| | | (3) Unstandardized flavouring preparations | | (3) Good Manufacturing Practice |
| | | (4) Food additive preparations | | (4) Good Manufacturing Practice |
| 17 | Monoglyceride citrate | (1) Spice extracts; Natural extractives | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |
| 18 | [Repealed, SOR/2016-143, s. 3] | | | |
| 19 | 1,2-Propylene glycol (1,2-propanediol) | (1) (naming the flavour) Extract; (naming the flavour) Essence; (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |

| | Column I | Column II | Column III | Column IV |
|---|---|---|---|---|
| Item No. | Additive | Permitted in or Upon | Maximum Residue | Maximum Level of Use |
| | | (2) Oil-soluble annatto; Annatto butter colour; Annatto margarine colour | | (2) Good Manufacturing Practice |
| | | (3) Unstandardized flavouring preparations | | (3) Good Manufacturing Practice |
| | | (4) Colour mixtures and preparations (Division 6) | | (4) Good Manufacturing Practice |
| | | (5) Food additive preparations | | (5) Good Manufacturing Practice |
| 20 | Propylene glycol mono-esters and diesters of fat-forming fatty acids | Oil-soluble annatto; Annatto butter colour; Annatto margarine colour | | Good Manufacturing Practice |
| 21 | Triethyl-citrate | (1) (naming the flavour) Flavour (Division 10) | | (1) Good Manufacturing Practice |
| | | (2) Unstandardized flavouring preparations | | (2) Good Manufacturing Practice |

**TABLEAU XV**

**Additifs alimentaires autorisés comme solvants de support ou d'extraction**

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Résidu maximal | Limites de tolérance |
| 1 | Acétone | (1) Extraits d'épices; extractifs naturels | (1) 30 p.p.m. | |
| | | (2) Encres à marquer la viande et les œufs | | (2) Bonnes pratiques industrielles |
| 2 | Alcool benzylique | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 3 | 1,3-Butylène- glycol | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 3.1 | Dioxyde de carbone | (1) Graines de café vertes et feuilles de thé destinées à la décaféination | | (1) Bonnes pratiques industrielles |
| | | (2) Extraits d'épices; extractifs naturels; préparation aromatisante de (nom de l'arôme) (titre 10); extrait de houblon, conformément au sous-alinéa B.02.130b)(v) et à l'alinéa B.02.133b); extrait de houblon pré-isomérisé, conformément au sous-alinéa B.02.134(1)a)(ii) | | (2) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Résidu maximal | Limites de tolérance |
| | | (3) Produits des œufs | | (3) Bonnes pratiques industrielles |
| | | (4) Poudre de cacao | | (4) Bonnes pratiques industrielles |
| 4 | Huile de ricin | Rocou soluble dans l'huile; rocou, colorant pour le beurre; rocou, colorant pour la margarine | | Bonnes pratiques industrielles |
| 4.1 | Esters citriques des mono- et diglycérides | (1) Extractifs naturels; extraits d'épices | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 5 | Acétate d'éthyle | (1) Extraits d'épices; extractifs naturels; préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| | | (3) Graines de café vertes destinées à la décaféination | (3) 10 p.p.m. dans les cafés faits de graines rôties et les cafés décaféinés solubles (instantanés) | |
| | | (4) Feuilles de thé destinées à la décaféination | (4) 50 p.p.m. | |
| 6 | Alcool éthylique (éthanol) | (1) Extraits d'épices; extractifs naturels; préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| | | (3) Mélanges colorants et préparations colorantes (Titre 6) | | (3) Bonnes pratiques industrielles |
| | | (4) Encres à marquer la viande et les œufs | | (4) Bonnes pratiques industrielles |
| | | (5) Préparations d'additifs alimentaires | | (5) Bonnes pratiques industrielles |
| | | (6) Extrait de houblon, conformément au sous-alinéa B.02.130b)(v) et à l'alinéa B.02.133b); extrait de houblon pré-isomérisé, conformément au sous-alinéa B.02.134(1)a)(iii) | | (6) Bonnes pratiques industrielles |
| 6.A | Alcool éthylique dénaturé avec méthanol | Farine de graines végétales oléagineuses | 10 p.p.m. de methanol | |
| 7 | [Abrogé, DORS/82-406, art. 1] | | | |
| 8 | Glycérol (glycérine) | (1) Extrait de (nom de l'arôme); essence de (nom de l'arôme); préparation | | (1) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Résidu maximal | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | aromatisante de (nom de l'arôme) (Titre 10) | | |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| | | (3) Mélanges colorants et préparations colorantes (Titre 6) | | (3) Bonnes pratiques industrielles |
| | | (4) Préparations d'additifs alimentaires | | (4) Bonnes pratiques industrielles |
| 9 | Diacétate de glycéryle | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 10 | Triacétate de glycéryle (triacétine) | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 11 | Tributyrate de glycéryle (tributyrine) | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 12 | Hexane | (1) Extraits d'épices; extractifs naturels | (1) 25 p.p.m. | |
| | | (2) Extrait de houblon, conformément au sous-alinéa B.02.130b)(v) et à l'alinéa B.02.133a) | (2) 2,2 % | |
| | | (3) Graisses et huiles végétales | (3) 10 p.p.m. | |
| | | (4) Farine de graines végétales oléagineuses | (4) 10 p.p.m. | |
| | | (5) Extrait de houblon pré-isomérisé, conformément au sous-alinéa B.02.134(1)a)(i) et au paragraphe B.02.134(2) | (5) 1,5 p.p.m., par rapport à la teneur, exprimée en pourcentage, d'acide iso-alpha dans l'extrait de houblon pré-isomérisé. | |
| 13 | Alcool isopropylique) (Isopropanol) | (1) Extraits d'épices; extractifs naturels | (1) 50 p.p.m. | |
| | | (2) Protéines de poisson | (2) 0,15 % | |
| | | (3) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (3) Bonnes pratiques industrielles |
| | | (4) Préparations aromatisantes non normalisées | | (4) Bonnes pratiques industrielles |

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Additifs | Permis dans ou sur | Résidu maximal | Limites de tolérance |
| | | (5) Encres à marquer la viande et les œufs | | (5) Bonnes pratiques industrielles |
| 14 | Alcool méthylique (méthanol) | (1) Extraits d'épices; extractifs naturels | (1) 50 p.p.m. | |
| | | (2) Extrait de houblon, conformément au sous-alinéa B.02.130b)(v) et à l'alinéa B.02.133a) | (2) 2,2 % | |
| | | (3) Encres à marquer la viande et les œufs | | (3) Bonnes pratiques industrielles |
| 14.1 | Méthyléthyl-cétone (2-Butanone) | Extraits d'épices; extractifs naturels | 50 p.p.m. | |
| 15 | Chlorure de méthylène (Dichloro-méthane) | (1) Extraits d'épices; extractifs naturels | (1) 30 p.p.m. | |
| | | (2) Extrait de houblon, conformément au sous-alinéa B.02.130b)(v) et à l'alinéa B.02.133a) | (2) 2,2 % dans l'extrait de houblon | |
| | | (3) Grains de café vert et feuilles de thé devant être décaféinés | (3) 10 p.p.m. dans le café décaféiné torréfié, le café soluble instantané décaféiné, les feuilles de thé décaféiné et le thé instantané décaféiné. | |
| 16 | Monoglycérides et diglycérides | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Rocou soluble dans l'huile; rocou, colorant pour le beurre; rocou, colorant pour la margarine | | (2) Bonnes pratiques industrielles |
| | | (3) Préparations aromatisantes non normalisées | | (3) Bonnes pratiques industrielles |
| | | (4) Préparations d'additifs alimentaires | | (4) Bonnes pratiques industrielles |
| 17 | Citrate de monoglycérides | (1) Extraits d'épices; extractifs naturels | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |
| 18 | [Abrogé, DORS/2016-143, art. 3] | | | |
| 19 | 1,2-Propylène-glycol (1,2-propanédiol) | (1) Extrait de (nom de l'arôme); essence de (nom de l'arôme); préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Rocou soluble dans l'huile; rocou, colorant pour le beurre; rocou, colorant pour la margarine | | (2) Bonnes pratiques industrielles |
| | | (3) Préparations aromatisantes non normalisées | | (3) Bonnes pratiques industrielles |

| Article | Colonne I<br>Additifs | Colonne II<br>Permis dans ou sur | Colonne III<br>Résidu maximal | Colonne IV<br>Limites de tolérance |
|---|---|---|---|---|
| | | (4) Mélanges colorants et préparations colorantes (Titre 6) | | (4) Bonnes pratiques industrielles |
| | | (5) Préparations d'additifs alimentaires | | (5) Bonnes pratiques industrielles |
| 20 | Mono et diesters de propylène-glycol et d'acides gras lipogènes | Rocou soluble dans l'huile; rocou, colorant pour le beurre; rocou, colorant pour la margarine | | Bonnes pratiques industrielles |
| 21 | Citrate de triéthyle | (1) Préparation aromatisante de (nom de l'arôme) (Titre 10) | | (1) Bonnes pratiques industrielles |
| | | (2) Préparations aromatisantes non normalisées | | (2) Bonnes pratiques industrielles |

SOR/78-403, ss. 26, 27; SOR/82-383, s. 12; SOR/82-406, s. 1; SOR/82-913, s. 5; SOR/82-1071, ss. 21, 22; SOR/84-541, s. 1; SOR/86-89, ss. 8, 9; SOR/86-178, ss. 4 to 7; SOR/86-1112, s. 9; SOR/90-667, s. 1; SOR/94-689, s. 2; SOR/96-259, s. 1; SOR/96-377, s. 1; SOR/2011-235, s. 15; SOR/2016-143, s. 3.

DORS/78-403, art. 26 et 27; DORS/82-383, art. 12; DORS/82-406, art. 1; DORS/82-913, art. 5; DORS/82-1071, art. 21 et 22; DORS/84-541, art. 1; DORS/86-89, art. 8 et 9; DORS/86-178, art. 4 à 7; DORS/86-1112, art. 9; DORS/90-667, art. 1; DORS/94-689, art. 2; DORS/96-259, art. 1; DORS/96-377, art. 1; DORS/2011-235, art. 15; DORS/2016-143, art. 3.

## DIVISION 17

# Salt

**B.17.001 (1) [S]. Salt**, other than crude rock salt, shall be crystalline sodium chloride and may contain

**(a)** one or more of the following anti-caking agents,

**(i)** calcium aluminum silicate, calcium phosphate tribasic, calcium silicate, calcium stearate, magnesium carbonate, magnesium silicate, magnesium stearate, silicon dioxide and sodium aluminum silicate, the total amount not to exceed one per cent and, in the case of fine grained salt, the total amount not to exceed two per cent,

**(ii)** propylene glycol in an amount not exceeding 0.035 per cent, and

**(iii)** sodium ferrocyanide decahydrate in an amount not exceeding 13 parts per million calculated as anhydrous sodium ferrocyanide;

**(b)** not more than

**(i)** 1.4 per cent, singly or in combination, of calcium sulphate or potassium chloride,

**(ii)** 13 parts per million anhydrous sodium ferrocyanide when added as sodium ferrocyanide decahydrate in the production of dendritic crystals of salt,

## TITRE 17

# Sel

**B.17.001 (1) [N].** Le **sel**, autre que le sel gemme à l'état brut, doit être du chlorure de sodium cristallisé et peut renfermer

**a)** un ou plusieurs des agents anti-agglomérants suivants :

**(i)** silicate double d'aluminium et de calcium, phosphate tricalcique, silicate de calcium, stéarate de calcium, carbonate de magnésium, silicate de magnésium, stéarate de magnésium, bioxyde de silicium et silicate double d'aluminium et de sodium, le total ne devant pas dépasser un pour cent et, dans le cas du sel à grains fins, ne devant pas dépasser deux pour cent,

**(ii)** propylèneglycol en une quantité n'excédant pas 0,035 pour cent, et

**(iii)** décahydrate de ferrocyanure de sodium, en une quantité n'excédant pas 13 parties par million, calculée en ferrocyanure de sodium anhydre;

**b)** au plus

**(i)** 1,4 pour cent, séparément ou ensemble, de sulfate de calcium ou de chlorure de potassium,

**(ii)** 13 parties par million de ferrocyanure de sodium anhydre lorsqu'il est ajouté comme

**(iii)** 10 parts per million of polyoxyethylene (20) sorbitan monooleate when used in the production of coarse crystal salt,

**(iv)** 15 parts per million of sodium alginate when used in the production of coarse crystal salt, and

**(v)** 0.1 per cent other ingredients; and

**(c)** notwithstanding paragraphs (a) and (b), the total level of sodium ferrocyanide decahydrate, whether added as an anti-caking agent or as an adjuvant in the production of dendritic salt, shall not exceed 13 parts per million, calculated as anhydrous sodium ferrocyanide.

**(2)** [Repealed, SOR/97-151, s. 26]

SOR/79-662, s. 18; SOR/86-1125, s. 3; SOR/97-151, s. 26.

**B.17.002** [Repealed, SOR/79-662, s. 18]

**B.17.003** Notwithstanding section B.17.001, salt for table or general household use shall contain 0.01 per cent potassium iodide, with or without dextrose, sodium thiosulphate or sodium bicarbonate as a stabilizer of the iodide and the presence of iodide shall be shown on the principal display panel.

## DIVISION 18

## Sweetening Agents

### B.18.001 [S]. Sugar

**(a)** shall be the food chemically known as sucrose; and

**(b)** shall contain not less than 99.8 per cent sucrose.

**B.18.002 [S]. Liquid Sugar** shall be the food obtained by dissolving sugar in water.

**B.18.003 [S]. Invert Sugar** shall be the food obtained by the partial or complete hydrolysis of sugar.

**B.18.004 [S]. Liquid Invert Sugar** shall be the food consisting of a solution of invert sugar in water.

décahydrate de ferrocyanure de sodium dans la fabrication de cristaux dendritiques de sel;

**(iii)** 10 parties par million de monooléate polyoxyéthylénique (2) de sorbitan lorsqu'il est employé dans la fabrication de gros cristaux de sel,

**(iv)** 15 parties par million d'alginate de sodium lorsqu'il est employé dans la production de gros cristaux de sel, et

**(v)** 0,1 pour cent d'autres ingrédients; et

**c)** nonobstant les alinéas a) et b), la quantité totale de décahydrate de ferrocyanure de sodium, qu'il soit ajouté à titre d'agent anti-agglomérant ou d'adjuvant dans la production de sel dendritique, ne doit pas dépasser 13 parties par million, calculée en ferrocyanure de sodium anhydre.

**(2)** [Abrogé, DORS/97-151, art. 26]

DORS/79-662, art. 18; DORS/86-1125, art. 3; DORS/97-151, art. 26.

**B.17.002** [Abrogé, DORS/79-662, art. 18]

**B.17.003** Nonobstant l'article B.17.001, le sel de table ou à usage domestique général doit contenir 0,01 pour cent d'iodure de potassium, avec ou sans dextrose, du thiosulphate de sodium ou du bicarbonate de sodium comme stabilisant de l'iodure, la présence de l'iodure devant être indiquée sur l'espace principal de l'étiquette.

## TITRE 18

## Agents édulcorants

### B.18.001 [N]. Le **sucre**

**a)** doit être le produit alimentaire connu en chimie sous le nom de sucrose ou saccharose; et

**b)** doit renfermer au moins 99,8 pour cent de saccharose.

**B.18.002 [N].** Le **sucre liquide** doit être le produit alimentaire obtenu par la dissolution du sucre dans de l'eau.

**B.18.003 [N].** Le **sucre inverti** doit être le produit alimentaire obtenu par l'hydrolyse complète ou partielle du sucre.

**B.18.004 [N].** Le **sucre inverti liquide** doit être le produit alimentaire obtenu par une solution de sucre inverti dans de l'eau.

**B.18.005 [S].** No person shall sell liquid sugar or liquid invert sugar unless the label carries a statement of the percentage of sugar or invert sugar contained therein.

**B.18.006 [S]. Icing Sugar**

**(a)** shall be powdered sugar; and

**(b)** may contain

**(i)** food colour, and

**(ii)** either not more than five per cent starch or an anticaking agent.

**B.18.007 [S]. Brown Sugar, Yellow Sugar** or **Golden Sugar**

**(a)** shall be the food obtained from the syrups originating in the sugar refining process;

**(b)** may contain not more than

**(i)** 4.5 per cent moisture, and

**(ii)** 3.5 per cent sulphate ash; and

**(c)** shall not contain less than 90 per cent sugar and invert sugar.

**B.18.008 [S]. Refined Sugar Syrup, Refiners' Syrup** or **Golden Syrup**

**(a)** shall be the food made from syrup originating in the sugar refining process;

**(b)** may be hydrolyzed; and

**(c)** shall not contain more than

**(i)** 35 per cent moisture, and

**(ii)** 2.5 per cent sulphated ash.

**B.18.009 [S]. Fancy Molasses**

**(a)** shall be the syrupy food obtained by the evaporation and partial inversion of the clarified or unclarified sugar cane juice from which sugar has not been previously extracted;

**(b)** may contain sulphurous acid or its salts; and

**(c)** shall not contain more than

**(i)** 25 per cent moisture, and

**(ii)** 3 per cent sulphated ash.

**B.18.005 [N].** Est interdite la vente de sucre liquide ou de sucre inverti liquide à moins que l'étiquette ne déclare le pourcentage de sa teneur en sucre ou en sucre inverti.

**B.18.006 [N].** Le **sucre à glacer**

**a)** doit être du sucre en poudre; et

**b)** peut renfermer

**(i)** un colorant pour aliments, et

**(ii)** soit au plus cinq pour cent d'amidon, ou un agent anti-agglomérant.

**B.18.007 [N]**. La **cassonade**, le **sucre brun** ou **sucre doré**

**a)** doit être le produit alimentaire obtenu des sirops provenant du raffinage du sucre;

**b)** peut renfermer au plus

**(i)** 4,5 pour cent d'humidité, et

**(ii)** 3,5 pour cent de cendres sulfatées; et

**c)** doit renfermer au moins 90 pour cent de sucre et de sucre inverti.

**B.18.008 [N].** Le **sirop de sucre raffiné**, le **sirop de raffineur** ou le **sirop doré**

**a)** doit être le produit alimentaire fait du sirop obtenu au cours du raffinage du sucre;

**b)** peut être hydrolysé; et

**c)** doit renfermer au plus

**(i)** 35 pour cent d'humidité, et

**(ii)** 2,5 pour cent de cendres sulfatées.

**B.18.009 [N].** La **mélasse qualité fantaisie**

**a)** doit être le produit alimentaire sirupeux obtenu par évaporation et inversion partielle du jus de la canne à sucre, clarifié ou non, et dont aucun sucre n'a été extrait auparavant;

**b)** peut renfermer de l'acide sulfureux ou ses sels;

**c)** doit contenir au plus

**(i)** 25 pour cent d'humidité, et

**(ii)** trois pour cent de cendres sulfatées.

**B.18.010 [S]. Table Molasses**

**(a)** shall be the liquid food obtained in the process of manufacturing raw or refined sugar;

**(b)** may contain sulphurous acid or its salts;

**(c)** shall not contain more than

**(i)** 25 per cent moisture, and

**(ii)** 3 per cent sulphated ash.

**B.18.011 [S]. Refiners' Molasses, Blackstrap Molasses** or **Cooking Molasses**

**(a)** shall be the residual liquid food obtained in the process of manufacturing raw or refined sugar;

**(b)** may contain sulphurous acid or its salts;

**(c)** shall not contain more than

**(i)** 25 per cent moisture, and

**(ii)** 12 per cent sulphated ash.

**B.18.015 [S]. (1)** Dextrose Anhydrous, for the purpose of Part B of these Regulations

**(a)** shall be the food chemically known as dextrose;

**(b)** shall contain not less than 99.5 per cent D-glucose on a dry basis;

**(c)** shall contain not more than 0.25 per cent sulphated ash on a dry basis;

**(d)** shall contain not less than 98 per cent total solids; and

**(e)** may contain sulphurous acid or its salts.

**(2)** Dextrose Monohydrate, for the purpose of Part B of these Regulations

**(a)** shall be the food chemically known as dextrose;

**(b)** shall contain not less than 99.5 per cent D-glucose on a dry basis;

**(c)** shall contain not more than 0.25 per cent sulphated ash on a dry basis;

**(d)** shall contain not less than 90 per cent total solids; and

**B.18.010 [N].** la **mélasse de table**

**a)** doit être le produit alimentaire liquide obtenu dans la fabrication du sucre brut ou raffiné;

**b)** peut renfermer de l'acide sulfureux ou ses sels;

**c)** doit contenir au plus

**(i)** 25 pour cent d'humidité, et

**(ii)** trois pour cent de cendres sulfatées.

**B.18.011 [N].** La **mélasse de raffineur**, la **mélasse verte** ou la **mélasse de cuisine** ou **la mélasse pour cuisson**

**a)** doit être le liquide résiduaire obtenu dans la fabrication du sucre brut ou raffiné;

**b)** peut renfermer de l'acide sulfureux ou ses sels;

**c)** doit contenir au plus

**(i)** 25 pour cent d'humidité, et

**(ii)** 12 pour cent de cendres sulfatées.

**B.18.015 [N]. (1)** Le dextrose anhydre, aux fins de la partie B du présent règlement

**a)** doit être l'aliment connu en chimie sous le nom de dextrose;

**b)** doit contenir au moins 99,5 pour cent de D-glucose sous sa forme déshydratée;

**c)** doit contenir au plus 0,25 pour cent de cendres sulfatées, calculées sur la matière desséchée;

**d)** doit renfermer au moins 98 pour cent, au total, de solides; et

**e)** peut contenir de l'acide sulfureux ou ses sels.

**(2)** Le monohydrate de dextrose, au fins de la partie B du présent règlement,

**a)** doit être l'aliment connu en chimie sous le nom de dextrose;

**b)** doit contenir au moins 99,5 pour cent de D-glucose sous sa forme déshydratée;

**c)** doit renfermer au plus 0,25 pour cent de cendres sulfatées, calculées sur la matière desséchée;

**(e)** may contain sulphurous acid or its salts.

SOR/84-300, s. 51.

**d)** doit renfermer au moins 90 pour cent, au total, de solides; et

**e)** peut contenir de l'acide sulfureux ou ses sels.

DORS/84-300, art. 51.

### B.18.016 [S]. Glucose or Glucose Syrup

**(a)** shall be the purified concentrated solution of nutritive saccharides obtained from the incomplete hydrolysis, by means of acid or enzymes, of starch or of a starch-containing substance;

**(b)** shall have a total solids content of not less than 70 per cent;

**(c)** shall have a sulphated ash content of not more than 1.0 per cent on a dry basis;

**(d)** shall have a reducing sugar content (dextrose equivalent) of not less than 20 per cent expressed as D-glucose on a dry basis; and

**(e)** may contain sulphurous acid or its salts.

SOR/78-402, s. 8.

### B.18.016 [N]. Le glucose ou sirop de glucose

**a)** doit être la solution concentrée purifiée de saccharides nutritifs obtenus par l'hydrolyse incomplète, au moyen d'un acide ou d'enzymes, de l'amidon ou d'une substance amylacée;

**b)** doit contenir au moins 70 pour cent, au total, de solides;

**c)** doit contenir au plus 1,0 pour cent de cendres sulfatées, calculées sur la matière desséchée;

**d)** doit contenir au moins 20 pour cent de sucres réducteurs (équivalent du dextrose) calculés en D-glucose sur la matière desséchée; et

**e)** peut contenir de l'acide sulfureux ou ses sels.

DORS/78-402, art. 8.

### B.18.017 [S]. Glucose Solids or Dried Glucose Syrup

**(a)** shall be glucose or glucose syrup from which the water has been partially removed;

**(b)** shall have a total solids content of not less than 93 per cent;

**(c)** shall have a sulphated ash content of not more than 1.0 per cent on a dry basis;

**(d)** shall have a reducing sugar content (dextrose equivalent) of not less than 20 per cent expressed as D-glucose, on a dry basis; and

**(e)** may contain sulphurous acid or its salts.

### B.18.017 [N]. Les solides de glucose ou sirop de glucose déshydraté

**a)** doivent être le glucose ou le sirop de glucose dont on a partiellement retiré l'eau;

**b)** doivent contenir au moins 93 pour cent, au total, de solides;

**c)** doivent contenir au plus 1,0 pour cent de cendres sulfatées, calculées sur la matière desséchée;

**d)** doivent contenir au moins 20 pour cent de sucres réducteurs (équivalent au dextrose) calculés en D-glucose sur la matière desséchée; et

**e)** peuvent contenir de l'acide sulfureux ou ses sels.

### B.18.018 [S]. (Naming the source of the glucose) Syrup

**(a)** shall be glucose;

**(b)** may contain

**(i)** a sweetening agent,

**(ii)** a flavouring preparation,

**(iii)** sorbic acid,

**(iv)** sulphurous acid or its salts,

### B.18.018 [N]. Le sirop (nom de la source de glucose)

**a)** doit être du glucose;

**b)** peut renfermer

**(i)** un agent édulcorant,

**(ii)** une préparation aromatisante,

**(iii)** de l'acide sorbique,

**(iv)** de l'acide sulfureux ou ses sels,

**(v)** salt, and

**(vi)** water; and

**(c)** shall not contain more than

**(i)** 35 per cent moisture; and

**(ii)** 3 per cent ash.

SOR/94-83, s. 1.

**(v)** du sel,

**(vi)** de l'eau;

**c)** doit renfermer au plus

**(i)** 35 pour cent d'humidité, et

**(ii)** trois pour cent de cendres.

DORS/94-83, art. 1.

### B.18.019 [S]. Lactose

**(a)** shall be the carbohydrate normally obtained from whey and may

**(i)** be anhydrous,

**(ii)** contain one molecule of water of crystalization, or

**(iii)** be a mixture of both subparagraphs (i) and (ii);

**(b)** shall not contain less than 99.0 per cent anhydrous lactose on a moisture free basis;

**(c)** shall not contain more than 0.3 per cent sulphated ash on a moisture free basis;

**(d)** shall have a weight loss of not more than 6.0 per cent on drying; and

**(e)** shall have, in a 10 per cent solution, a pH of not less than 4.5 and not more than 7.0.

### B.18.019 [N]. Le **lactose**

**a)** doit être l'hydrate de carbone normalement obtenu à partir du petit-lait et il peut

**(i)** être anhydre,

**(ii)** contenir une molécule d'eau de cristallisation, ou

**(iii)** être un mélange des deux types mentionnés aux sous-alinéas (i) et (ii);

**b)** doit contenir au moins 99,0 pour cent de lactose anhydre, sans aucune trace d'humidité;

**c)** ne doit pas contenir plus de 0,3 pour cent de cendres sulfatées sans aucune trace d'humidité;

**d)** ne doit pas subir une perte de poids de plus de 6,0 pour cent à la dessiccation; et

**e)** doit avoir, dans une solution à 10 pour cent, un pH d'au moins 4,5 et d'au plus 7,0.

## Honey

**B.18.025 [S]. Honey** shall be the food produced by honey bees and derived from

**(a)** the nectar of blossoms,

**(b)** secretions of living plants, or

**(c)** secretions on living plants,

and shall have

**(d)** a fluid, viscous or partly or wholly crystallized consistency;

**(e)** a diastase activity, determined after processing and blending, as represented by a diastase figure on the Gothe scale of not less than eight where the hydroxy-methyl-furfural content is not more than 0.004 per cent; or

## Miel

**B.18.025 [N].** Le **miel** est l'aliment produit par l'abeille et provenant

**a)** du nectar de fleurs,

**b)** de sécrétions produites par des plantes vivantes, ou

**c)** de sécrétions présentes sur des plantes vivantes,

il doit présenter les caractéristiques suivantes :

**d)** une consistance fluide, visqueuse, soit partiellement soit entièrement cristallisée;

**e)** une activité diastasique, déterminée après conditionnement et mélange, exprimée par un indice d'au moins huit sur l'échelle de Gothe, si sa teneur en hydroxyméthylfurfural ne dépasse pas 0,004 pour cent; ou

**(f)** a diastase activity, determined after processing and blending, as represented by a diastase figure on the Gothe scale of not less than three where the hydroxymethyl-furfural content is not more than 0.0015 per cent.

**B.18.026 (1)** Subject to subsection (2), honey derived mainly from nectar of blossoms shall not contain

**(a)** less than 65 per cent apparent reducing sugar, calculated as invert sugar;

**(b)** more than 20 per cent moisture;

**(c)** more than 5 per cent apparent sucrose;

**(d)** more than 0.1 per cent water insoluble solids, except that pressed honey shall contain not more than 0.5 per cent water insoluble solids;

**(e)** more than 0.6 per cent ash; and

**(f)** more than 40 milliequivalents acid per 1 000 grams.

**(2)** Honey derived mainly from the nectar of lavender, rubinia, alfalfa, or banksia menziesii shall meet the requirements of paragraphs (1)(a), (b) and (d) to (f) and shall contain not more than 10 per cent apparent sucrose.

**B.18.027** Honey derived from secretions of living plants or from secretions on living plants shall not contain

**(a)** less than 60 per cent apparent reducing sugar, calculated as invert sugar;

**(b)** more than 20 per cent moisture;

**(c)** more than 10 per cent apparent sucrose;

**(d)** more than 0.1 per cent water insoluble solids, except that pressed honey shall contain not more than 0.5 per cent water insoluble solids;

**(e)** more than 1.0 per cent ash; and

**(f)** more than 40 milliequivalents acid per 1 000 grams.

SOR/84-300, s. 52.

**f)** une activité diastasique, déterminée après conditionnement et mélange, exprimée par un indice d'au moins trois sur l'échelle de Gothe, si sa teneur en hydroxyméthylfurfural ne dépasse pas 0,0015 pour cent.

**B.18.026 (1)** Sous réserve des dispositions du paragraphe (2), le miel obtenu principalement du nectar de fleurs doit

**a)** avoir une teneur apparente en sucres réducteurs, exprimée en sucre inverti, d'au moins 65 pour cent;

**b)** avoir une teneur en eau d'au plus 20 pour cent;

**c)** avoir une teneur apparente en saccharose d'au plus cinq pour cent;

**d)** contenir au plus 0,1 pour cent d'extrait sec insoluble dans l'eau, sauf pour le miel de presse, qui ne doit pas en contenir plus de 0,5 pour cent;

**e)** contenir au plus 0,6 pour cent de cendres; et

**f)** contenir au plus 40 milliéquivalents d'acide par 1 000 grammes.

**(2)** Le miel obtenu principalement du nectar de lavande, de robinier, de luzerne ou de Banksia menziesii, doit satisfaire aux exigences des alinéas (1)a), b) et d) à f); sa teneur apparente en saccharose ne doit pas dépasser 10 pour cent.

**B.18.027** Le miel produit à partir de sécrétions provenant des plantes ou se trouvant sur les plantes doit

**a)** avoir une teneur apparente en sucres réducteurs, exprimée en sucre inverti, d'au moins 60 pour cent;

**b)** avoir une teneur en eau d'au plus 20 pour cent;

**c)** avoir une teneur apparente en saccharose d'au plus 10 pour cent;

**d)** contenir au plus 0,1 pour cent d'extrait sec insoluble dans l'eau, sauf pour le miel de presse, qui ne doit pas en contenir plus de 0,5 pour cent;

**e)** contenir au plus 1,0 pour cent de cendres; et

**f)** contenir au plus 40 milliéquivalents d'acide par 1 000 grammes.

DORS/84-300, art. 52.

## DIVISION 19

# Vinegar

**B.19.001** Vinegar shall be the liquid obtained by the acetous fermentation of an alcoholic liquid and shall contain not less than 4.1 per cent and not more than 12.3 per cent acetic acid.

SOR/92-626, s. 16; SOR/93-243, s. 2.

**B.19.002** The percentage of acetic acid by volume contained in any vinegar described in Division 19 shall be shown on the principal display panel followed by the words “acetic acid”.

**B.19.003 [S]. Wine Vinegar** shall be vinegar made from wine and may contain caramel.

**B.19.004 [S]. Spirit Vinegar, Alcohol Vinegar, White Vinegar** or **Grain Vinegar** shall be vinegar made from diluted distilled alcohol.

**B.19.005 [S]. Malt Vinegar** shall be vinegar made from an infusion of malt undistilled prior to acetous fermentation, may contain other cereals or caramel, shall be dextro-rotatory, and shall contain, in 100 millilitres measured at a temperature of 20°C, not less than

**(a)** 1.8 grams of solids, and

**(b)** 0.2 gram of ash.

**B.19.006 [S]. Cider Vinegar** or **Apple Vinegar** shall be vinegar made from the liquid expressed from whole apples, apple parts or apple culls and may contain caramel.

**B.19.007 [S]. Blended Vinegar** shall be a combination of two or more varieties of vinegar of which spirit vinegar shall contribute not more than 55 per cent of the total acetic acid.

**B.19.008** No person shall name any of the varieties of vinegar forming a blended vinegar unless the label of such blended vinegar carries a complete list of all the varieties of vinegar present, in descending order of proportionate content, based on acetic acid.

**B.19.009** The maximum limits for the acetic acid content of a vinegar described in section B.19.001 do not apply to vinegar sold only for manufacturing use if the words “For Manufacturing Use Only” are shown on the principal display panel and upon all documents pertaining to such vinegar.

## TITRE 19

# Vinaigre

**B.19.001** Le vinaigre doit être le liquide obtenu par la fermentation acétique d’un liquide alcoolique et contenir au moins 4,1 pour cent et au plus 12,3 pour cent d’acide acétique.

DORS/92-626, art. 16; DORS/93-243, art. 2.

**B.19.002** Le pourcentage du volume d’acide acétique contenu dans tout vinaigre mentionné au Titre 19 doit figurer sur l’espace principal de l’étiquette suivi de l’expression « acide acétique ».

**B.19.003 [N].** Le **vinaigre de vin** doit être du vinaigre obtenu du vin, et il peut renfermer du caramel.

**B.19.004 [N].** Le **vinaigre d’alcool, vinaigre blanc** ou **vinaigre de grain**, doit être du vinaigre obtenu d’alcool distillé et dilué.

**B.19.005 [N].** Le **vinaigre de malt** doit être du vinaigre obtenu d’une infusion de malt, non distillé avant la fermentation acétique, il peut renfermer d’autres céréales ou du caramel, il doit être dextrogyre et renfermer, dans 100 millilitres mesurés à la température de 20 °C, au moins

**a)** 1,8 gramme de solides; et

**b)** 0,2 gramme de cendres.

**B.19.006 [N].** Le **vinaigre de cidre** ou **vinaigre de pommes** doit être du vinaigre obtenu du liquide exprimé de pommes entières, de morceaux de pommes ou de rebuts de pommes, et il peut renfermer du caramel.

**B.19.007 [N].** Le **vinaigre mélangé** doit être un mélange de deux ou plusieurs variétés de vinaigre, et dans ce mélange, le vinaigre d’alcool ne doit pas fournir plus de 55 pour cent de l’acide acétique total.

**B.19.008** Il est interdit de nommer une des variétés de vinaigre entrant dans la composition d’un vinaigre mélangé, à moins que l’étiquette dudit mélange de vinaigres ne porte une liste complète des variétés de vinaigre présentes, par ordre décroissant de leurs proportions respectives, basées sur leur teneur en acide acétique.

**B.19.009** La limite maximale de la teneur en acide acétique d’un vinaigre visé à l’article B.19.001 ne s’applique pas au vinaigre vendu uniquement à des fins de fabrication si la mention « Réservé à la fabrication » ou « Aux fins de fabrication seulement » figure sur l’espace principal de l’étiquette et sur tous les documents relatifs à ce vinaigre.

## DIVISION 20

# Tea

**B.20.001 [S]. Tea** shall be the dried leaves and buds of *Thea sinensis* (L.) Sims prepared by the usual trade processes.

**B.20.002 [S]. Black Tea** shall be black tea or a blend of two or more black teas and shall contain, on the dry basis, not less than 30 per cent water-soluble extractive, as determined by official method FO-37, Determination of Water-Soluble Extractive in Tea, October 15, 1981, and not less than four per cent and not more than seven per cent total ash.

SOR/82-768, s. 61.

**B.20.003** The provisions of B.20.002 do not apply to original unblended black tea that contains, on the dry basis, not less than 25 per cent water-soluble extractive, as determined by official method FO-37, Determination of Water-Soluble Extractive in Tea, October 15, 1981, and not less than four per cent and not more than seven per cent total ash, and is packaged according to good commercial practice in the country of origin.

SOR/82-768, s. 61.

**B.20.004 [S]. Green Tea** shall contain, on the dry basis, not less than 33 per cent water-soluble extractive, as determined by official method FO-37, Determination of Water-Soluble Extractive in Tea, October 15, 1981, and not less than four per cent and not more than seven per cent total ash.

SOR/82-768, s. 61.

**B.20.005 [S]. Decaffeinated (indicating the type of tea)**

**(a)** shall be tea of the type indicated, from which caffeine has been removed and that, as a result of the removal, contains not more than 0.4 per cent caffeine; and

**(b)** may have been decaffeinated by means of extraction solvents set out in Table XV to Division 16.

SOR/90-429, s. 2.

## TITRE 20

# Thé

**B.20.001 [N].** Le **thé** doit être les feuilles et les bourgeons desséchés de *Thea sinensis* (L.) Sims, préparés selon les procédés ordinaires du commerce.

**B.20.002 [N].** Le **thé noir** doit être du thé noir ou un mélange de deux ou plusieurs thés noirs, et doit renfermer, sur la matière desséchée, au moins 30 pour cent d'extrait soluble dans l'eau, déterminé selon la méthode officielle FO-37, Détermination d'extraits solubles dans l'eau dans le thé, 15 octobre 1981, et au moins quatre pour cent et au plus sept pour cent de cendres totales.

DORS/82-768, art. 61.

**B.20.003** Les dispositions de l'article B.20.002 ne s'appliquent pas au thé noir nature non mélangé, emballé selon une bonne pratique commerciale dans le pays d'origine, et qui contient, sur la matière desséchée, au moins 25 pour cent d'extrait soluble dans l'eau, déterminé selon la méthode officielle FO-37, Détermination d'extraits solubles dans l'eau dans le thé, 15 octobre 1981, et au moins quatre pour cent et au plus sept pour cent de cendres totales.

DORS/82-768, art. 61.

**B.20.004 [N].** Le **thé vert** doit renfermer, sur la matière desséchée, au moins 33 pour cent d'extrait soluble dans l'eau, déterminé selon la méthode officielle FO-37, Détermination d'extraits solubles dans l'eau dans le thé, 15 octobre 1981, et au moins quatre pour cent et au plus sept pour cent de cendres totales.

DORS/82-768, art. 61.

**B.20.005 [N].** Le **(indication du type de thé) décaféiné** :

**a)** est le thé de ce type duquel a été extraite de la caféine et qui, par suite d'une telle extraction, contient au plus 0,4 pour cent de caféine;

**b)** peut avoir été décaféiné au moyen des solvants d'extraction mentionnés au tableau XV du titre 16.

DORS/90-429, art. 2.

## DIVISION 21

# Marine and Fresh Water Animal Products

**B.21.001** The foods referred to in this Division are included in the term *marine and fresh water animal products*.

**B.21.002** In this Division,

***filler*** means

**(a)** flour or meal prepared from grain or potato, but not from a legume,

**(b)** processed wheat flour containing not less than the equivalent of 80 per cent dextrose, as determined by official method FO-32, Determination of Fillers, Binders and Dextrose Equivalent, October 15, 1981,

**(c)** bread, biscuit or bakery products, but not those containing or made with a legume,

**(d)** milk powder, skim milk powder, buttermilk powder or whey powder, and

**(e)** starch; (*remplissage*)

***marine and fresh water animal*** includes

**(a)** fish,

**(b)** crustaceans, molluscs, other marine invertebrates,

**(c)** marine mammals, and

**(d)** frogs. (*animaux marins et animaux d'eau douce*)

SOR/82-768, s. 62.

**B.21.003 [S].** Fish shall be the clean, dressed edible portion of fish, with or without salt or seasoning, and may

**(a)** in the case of frozen fillets, contain ascorbic acid or its sodium salt, citric acid, or erythorbic acid or its sodium salt, and

**(i)** sodium tripolyphosphate, sodium hexametaphosphate or a combination of sodium tripolyphosphate, sodium acid pyrophosphate and sodium pyrophosphate tetrabasic, or

## TITRE 21

# Produits d'animaux marins et d'animaux d'eau douce

**B.21.001** Les aliments mentionnés dans le présent titre sont compris dans le terme *produits d'animaux marins et d'animaux d'eau douce*.

**B.21.002** Dans le présent titre,

***remplissage*** désigne

**a)** de la farine ou une semoule de céréales ou de pommes de terre, mais non de légumineuses,

**b)** de la farine de blé conditionnée, qui renferme au moins l'équivalent de 80 pour cent de dextrose, déterminé selon la méthode officielle FO-32, Détermination des remplissages, des liants et de l'équivalent de dextrose, 15 octobre 1981,

**c)** du pain, des biscuits ou autre produit de boulangerie, mais non des produits qui renferment une légumineuse ou sont fabriqués à base de légumineuses,

**d)** du lait en poudre, du lait écrémé en poudre, du babeurre en poudre et du petit-lait en poudre; et

**e)** de l'amidon; (*filler*)

***animaux marins et animaux d'eau douce*** comprend

**a)** le poisson,

**b)** les mollusques et crustacés, et autres invertébrés marins,

**c)** les mammifères marins, et

**d)** les grenouilles. (*marine and fresh water animal*)

DORS/82-768, art. 62.

**B.21.003 [N].** Le poisson doit consister en sa partie comestible, propre et habillée, avec ou sans sel ou condiment, et peut

**a)** dans le cas de filets congelés, contenir de l'acide ascorbique ou son sel de sodium, de l'acide citrique ou de l'acide érythorbique ou son sel de sodium, ainsi que :

**(i)** du tripolyphosphate de sodium, de l'hexamétaphosphate de sodium ou une combinaison de tripolyphosphate de sodium, de pyrophosphate acide de sodium et de pyrophosphate tétrasodique, ou

**(ii)** a mixture of sodium hexametaphosphate and sodium carbonate;

**(b)** if frozen, have a glaze consisting of water, acetylated monoglycerides, calcium chloride, sodium alginate, sodium carboxymethyl cellulose, sodium phosphate (dibasic), corn syrup, dextrose, glucose, glucose solids, ascorbic acid or its sodium salt or erythorbic acid or its sodium salt; and

**(c)** if frozen minced, contain sodium tripolyphosphate, sodium hexametaphosphate, ascorbic acid or its sodium salt, citric acid, erythorbic acid or its sodium salt, or a combination of sodium tripolyphosphate, sodium acid pyrophosphate and sodium pyrophosphate tetrabasic.

SOR/84-300, s. 53; SOR/88-534, s. 7; SOR/91-149, s. 4; SOR/97-562, s. 2; SOR/2000-353, s. 9(F); SOR/2017-18, s. 6(F).

**B.21.004 [S].** In this Division, meat shall be the clean, dressed flesh of crustaceans, molluscs, other marine invertebrates and marine mammals, whether minced or not, with or without salt or seasoning, and in the case of frozen lobster, frozen crab, frozen shrimp and frozen clams, may contain sodium tripolyphosphate or sodium hexametaphosphate or a combination of sodium 0hexametaphosphate and sodium carbonate or a combination of sodium tripolyphosphate, sodium acid pyrophosphate and sodium pyrophosphate tetrabasic.

SOR/88-534, s. 8; SOR/91-149, s. 5.

**B.21.005** Fish, except fish protein, and meat products or preparations thereof are adulterated if any of the following substances or any substance in one of the following classes is present therein or has been added thereto:

**(a)** mucous membranes, any organ or portion of the genital system, or any organ or portion of a marine or fresh water animal that is not commonly sold as an article of food;

**(b)** preservatives, other than those provided for in this Division, except

**(i)** sorbic acid or its salts in dried fish that has been smoked or salted, and in cold processed smoked and salted fish paste, and

**(ii)** benzoic acid or its salts, methyl-p-hydroxy benzoate and propyl-p-hydroxy benzoate in marinated or similar cold-processed, packaged fish and meat products; and

**(ii)** un mélange d'hexamétaphosphate de sodium et de carbonate de sodium;

**b)** s'il est congelé, être enrobé d'une glaçure se composant d'eau, de monoglycérides acétyles, de chlorure de calcium, d'alginate de sodium, de carboxyméthycellulose de sodium, de phosphate disodique, de sirop de maïs, de dextrose, de glucose, de solides du glucose, d'acide ascorbique ou de son sel de sodium, ou d'acide érythorbique ou de son sel de sodium;

**c)** s'il est haché et congelé, contenir du tripolyphosphate de sodium, de l'hexamétaphosphate de sodium, de l'acide ascorbique ou son sel de sodium, de l'acide citrique, de l'acide érythorbique ou son sel de sodium, ou une combinaison de tripolyphosphate de sodium, de pyrophosphate acide de sodium et de pyrophosphate trétrasodique.

DORS/84-300, art. 53; DORS/88-534, art. 7; DORS/91-149, art. 4; DORS/97-562, art. 2; DORS/2000-353, art. 9(F); DORS/2017-18, art. 6(F).

**B.21.004 [N].** Dans le présent titre, la « chair » doit être la chair propre et habillée des crustacés, des mollusques, des autres invertébrés marins ou des mammifères marins, hachés ou non, avec ou sans sel ou d'autres condiments, et, dans le cas du homard congelé, du crabe congelé, des crevettes congelées et des clams congelés, peut contenir du tripolyphosphate de sodium ou de l'hexamétaphosphate de sodium ou une combinaison d'hexamétaphosphate de sodium et de carbonate de sodium ou une combinaison de tripolyphosphate de sodium, de pyrophosphate acide de sodium et de pyrophosphate tétrasodique.

DORS/88-534, art. 8; DORS/91-149, art. 5.

**B.21.005** Le poisson, à l'exception des protéines de poisson, les produits de chair ou leurs préparations sont falsifiées si l'une des substances ci-après ou une substance de l'une des catégories ci-après s'y trouve ou y a été ajoutée :

**a)** muqueuses, tout organe ou toute partie de l'appareil génital, ou tout organe ou toute partie d'un animal marin ou d'un animal d'eau douce qui ne se vend par d'ordinaire comme article d'alimentation;

**b)** un agent de conservation autre que ceux qui sont prévus au présent titre, sauf

**(i)** l'acide sorbique ou ses sels, dans le poisson desséché qui a été salé ou fumé et dans la pâte de poisson fumé et salé conditionnée à froid, et

**(c)** food colour except as provided for in this Division.

SOR/2017-18, ss. 7(F), 20(F).

**B.21.006 [S].** Prepared fish or prepared meat shall be the whole or minced food prepared from fresh or preserved fish or meat respectively, may be canned or cooked, and may,

**(a)** in the case of lobster paste and fish roe (caviar), contain food colour;

**(b)** in the case of canned shellfish, canned spring mackerel and frozen cooked shrimp, contain citric acid or lemon juice;

**(c)** in the case of fish paste, contain filler, fish binder, monoglycerides or mono and diglycerides;

**(d)** in the case of canned crabmeat, lobster, salmon, shrimp and tuna, contain aluminum sulphate and calcium disodium ethylenediaminetetraacetate;

**(e)** in the case of canned tuna, contain ascorbic acid;

**(f)** in the case of canned seafoods, contain sodium acid pyrophosphate, sodium hexametaphosphate or sodium tripolyphosphate, singly, or in combination, at a maximum level of total added phosphate not to exceed 0.5%, calculated as sodium phosphate, dibasic;

**(g)** contain liquid smoke flavour or liquid smoke flavour concentrate;

**(h)** contain edible oil, vegetable broth and tomato sauce or puree;

**(i)** contain a gelling agent if the principal display panel carries the word "jellied" as an integral part of the common name;

**(j)** contain salt;

**(k)** in the case of canned clams, canned sea snails and canned snails, contain calcium disodium ethylenediaminetetraacetate;

**(l)** in the case of canned flaked tuna, contain sodium sulphite;

**(m)** in the case of lumpfish caviar, contain tragacanth gum;

**(ii)** l'acide benzoïque ou ses sels, le benzoate de p-hydroxyméthyle et le benzoate de p-hydroxypropyle, dans les produits de poisson ou de chair empaquetés, marinés ou conditionnés à froid par une autre méthode; et

**c)** un colorant pour aliments autre que ceux qui sont prévus au présent titre.

DORS/2017-18, art. 7(F) et 20(F).

**B.21.006 [N].** Le poisson et la chair préparés doivent être l'aliment entier ou haché préparé à partir du poisson ou de la chair, selon le cas, frais ou conservé; ils peuvent être cuits ou en conserve et peuvent :

**a)** dans le cas de pâte de homard et d'œufs de poisson (caviar), contenir un colorant pour aliments;

**b)** dans le cas des crevettes cuites congelées, des crustacés en conserve, des maquereaux en conserve et des mollusques en conserve, contenir de l'acide citrique ou du jus de citron;

**c)** dans le cas de pâte de poisson, contenir un remplissage, un liant à poisson, des monoglycérides ou des mono et diglycérides;

**d)** dans le cas des conserves de chair de crabe, de crevettes, de homard, de saumon et de thon, contenir de l'éthylènediaminetétraacétate de calcium disodique et du sulfate d'aluminium;

**e)** dans le cas du thon en conserve, contenir de l'acide ascorbique;

**f)** dans le cas des fruits de mer en conserve, contenir de l'hexamétaphosphate de sodium, du pyrophosphate acide de sodium ou du tripolyphosphate de sodium, seul ou en association, la quantité totale de phosphate ajouté, calculé sous forme de phosphate dibasique de sodium, ne devant pas dépasser 0,5 %;

**g)** contenir un arôme de fumée liquide ou un arôme de fumée liquide concentré;

**h)** contenir de l'huile comestible, un bouillon végétal, de la sauce tomate ou de la purée de tomates;

**i)** contenir un gélifiant (agent gélatinisant), si l'expression « en gelée » figure, comme partie intégrante du nom usuel, sur l'espace principal de l'étiquette;

**j)** contenir du sel;

**k)** dans le cas des clams en conserve, des escargots en conserve et des limaces de mer en conserve, contenir

**(n)** in the case of a blend of prepared fish and prepared meat that has the appearance and taste of the flesh of a marine or freshwater animal, contain filler, fish binder, whole egg, egg-white, egg-yolk, food colour, gelling or stabilizing agents, texture-modifying agents, natural and artificial flavouring preparations, pH-adjusting agents, sweetener and, in a proportion not exceeding two per cent of the blend, a legume;

**(o)** in the case of crustaceans, contain potassium bisulphite, potassium metabisulphite, sodium bisulphite, sodium dithionite, sodium metabisulphite, sodium sulphite or sulphurous acid;

**(p)** in the case of frozen crustaceans and molluscs, contain calcium oxide and sodium hydroxide;

**(q)** in the case of frozen pre-cooked battered or breaded fish products, contain citric acid at a level of use not exceeding 0.1 per cent;

**(r)** in the case of canned clams, contain sodium erythorbate at a level of use not exceeding 350 parts per million;

**(s)** in the case of minced products, other than lumpfish caviar, contain tragacanth gum at a level of use not exceeding 0.75 per cent; and

**(t)** contain a Class II preservative.

SOR/80-13, s. 9; SOR/81-60, s. 12; SOR/84-602, s. 4; SOR/86-1020, s. 2; SOR/89-197, s. 2; SOR/92-344, s. 6; SOR/93-276, s. 13; SOR/94-141, s. 2; SOR/94-567, s. 3; SOR/94-689, s. 2(E); SOR/97-151, s. 27; SOR/97-562, s. 3; SOR/2005-316, s. 12; SOR/2007-76, s. 4; SOR/2011-280, s. 9; SOR/2012-43, s. 46; SOR/2017-18, ss. 8, 9(F), 17; SOR/2018-69, s. 6.

de l'éthylènediaminetétraacétate de calcium disodique;

**l)** dans le cas de miettes de thon en conserve, contenir du sulfite de sodium;

**m)** dans le cas du caviar de lompe, contenir de la gomme adragante;

**n)** dans le cas d'un mélange de poisson et de chair préparés qui a l'apparence et le goût de la chair d'animaux marins ou d'animaux d'eau douce, contenir du remplissage, un liant à poisson, de l'œuf entier, du blanc d'œuf, du jaune d'œuf, un colorant alimentaire, des agents gélatinisants ou stabilisants, des agents modifiant la texture, des préparations aromatisantes naturelles, des préparations aromatisantes artificielles, des agents rajusteurs du pH, de l'édulcorant et, dans une proportion ne dépassant pas deux pour cent du mélange, des légumineuses;

**o)** dans le cas des crustacés, contenir du bisulfite de potassium, du bisulfite de sodium, du dithionite de sodium, du métabisulfite de potassium, du métabisulfite de sodium, du sulfite de sodium ou de l'anhydride sulfureux;

**p)** dans le cas des crustacés et mollusques congelés, contenir de l'oxyde de calcium et de l'hydroxyde de sodium;

**q)** dans le cas de produits congelés de poisson précuit pané, contenir de l'acide citrique en une quantité n'excédant pas la limite de tolérance de 0,1 pour cent;

**r)** dans le cas des clams en conserve, contenir de l'érythorbate de sodium en une quantité n'excédant pas la limite de tolérance de 350 parties par million;

**s)** dans le cas des produits hachés, sauf le caviar de lompe, contenir de la gomme adragante en une quantité n'excédant pas la limite de tolérance de 0,75 pour cent;

**t)** contenir un agent de conservation de la catégorie II.

DORS/80-13, art. 9; DORS/81-60, art. 12; DORS/84-602, art. 4; DORS/86-1020, art. 2; DORS/89-197, art. 2; DORS/92-344, art. 6; DORS/93-276, art. 13; DORS/94-141, art. 2; DORS/94-567, art. 3; DORS/94-689, art. 2(A); DORS/97-151, art. 27; DORS/97-562, art. 3; DORS/2005-316, art. 12; DORS/2007-76, art. 4; DORS/2011-280, art. 9; DORS/2012-43, art. 46; DORS/2017-18, art. 8, 9(F) et 17; DORS/2018-69, art. 6.

**B.21.007 [S]. Fish binder** for use in or upon prepared fish or prepared meat shall be filler with any combination of salt, sugar, dextrose, glucose, spices and other seasonings.

SOR/2017-18, s. 10(F); SOR/2018-69, s. 7(F).

**B.21.007 [N].** Le **liant à poisson** devant servir dans ou sur le poisson ou la chair préparés est du remplissage auquel on a ajouté n'importe quel mélange de sel, de sucre, de dextrose, de glucose, d'épices ou d'autres condiments.

DORS/2017-18, art. 10(F); DORS/2018-69, art. 7(F).

**B.21.008** No person shall sell filler or a fish binder represented for use in fish products either by label or in any advertisement unless the label carries adequate directions for use in accordance with the limits provided in section B.21.020.

**B.21.009** Powdered fully hydrogenated cottonseed oil may be applied as a release agent to the surface of marine and fresh water animal products in an amount not greater than 0.25% of the product.

SOR/2010-142, s. 59(F); SOR/2022-168, s. 43.

## Prepared Fish

**B.21.020** No person shall sell prepared fish or prepared meat that contains more than

**(a)** that amount of filler, fish binder or other ingredients that is represented by four per cent reducing sugars, calculated as dextrose, as determined by official method FO-32, Determination of Fillers, Binders and Dextrose Equivalent, October 15, 1981; and

**(b)** 70 per cent moisture where such prepared fish contains filler.

SOR/82-768, s. 63; SOR/2017-18, s. 20(F).

**B.21.021 [S].** Preserved fish or preserved meat shall be cooked or uncooked fish or meat that is dried, salted, pickled, cured or smoked and may contain a Class I preservative, a Class II preservative, dextrose, glucose, spices, sugar and vinegar, and

**(a)** dried fish that has been smoked or salted, and cold-processed smoked and salted fish paste may contain sorbic acid or its salts;

**(b)** smoked fish may contain food colour;

**(c)** packaged fish and meat products that are marinated or otherwise cold-processed may contain saunderswood (sandalwood), benzoic acid or its salts, methyl-p-hydroxy benzoate and propyl-p-hydroxy benzoate;

**(d)** salted anchovy, salted scad and salted shrimp may contain erythrosine in such amount as will result in the finished product containing not more than 125 parts per million of erythrosine; and

**(e)** minced products may contain tragacanth gum at a level of use not exceeding 0.75 per cent.

SOR/95-493, s. 2; SOR/97-562, s. 4(F); SOR/2007-76, s. 5; SOR/2011-280, s. 10; SOR/2017-18, ss. 11(F), 17, 20(F); SOR/2018-69, s. 8(F).

**B.21.008** Est interdite la vente de remplissage ou de liant à poisson représenté, sur l'étiquette ou dans une réclame, comme devant servir dans les produits de poisson, à moins que l'étiquette ne porte des instructions appropriées pour que l'emploi du produit soit conforme aux dispositions de l'article B.21.020.

**B.21.009** L'huile de coton entièrement hydrogénée en poudre peut être appliquée comme agent de démoulage sur la surface des produits d'animaux marins et d'animaux d'eau douce en une quantité n'excédant pas 0,25 % du produit.

DORS/2010-142, art. 59(F); DORS/2022-168, art. 43.

## Poisson préparé

**B.21.020** Est interdite la vente de poisson préparé ou de chair préparée qui renferme

**a)** plus que la quantité de remplissage, de liant à poisson, ou d'autres ingrédients, que représente quatre pour cent de sucres réducteurs, calculés en dextrose selon la méthode officielle FO-32, Détermination des remplissages, des liants et de l'équivalent de dextrose, 15 octobre 1981; et

**b)** plus de 70 pour cent d'humidité, lorsque ledit poisson préparé contient du remplissage.

DORS/82-768, art. 63; DORS/2017-18, art. 20(F).

**B.21.021 [N].** Le poisson conservé et la chair conservée sont du poisson ou de la chair, à l'état cru ou cuit, qui ont été desséchés, salés, marinés, saumurés ou fumés, et peuvent renfermer un agent de conservation de la catégorie I, un agent de conservation de la catégorie II, du dextrose, du glucose, des épices, du sucre et du vinaigre, et :

**a)** le poisson desséché qui a été salé ou fumé et la pâte de poisson fumé et salé conditionnée à froid peuvent renfermer de l'acide sorbique et ses sels;

**b)** le poisson fumé peut renfermer un colorant pour aliments;

**c)** les produits de poisson ou de chair emballés, marinés ou conditionnés à froid par une autre méthode peuvent renfermer du bois de santal, de l'acide benzoïque ou ses sels, du méthyl-p-hydroxy-bensoate et du propyl-p-hydroxy-bensoate;

**d)** l'anchois salé, le chinchard salé et la crevette salée peuvent contenir de l'érythrosine en telle quantité que le produit fini renferme au plus 125 parties par million d'érythrosine;

**e)** les produits hachés peuvent contenir de la gomme adragante en une quantité n'excédant pas la limite de tolérance de 0,75 pour cent.

DORS/95-493, art. 2; DORS/97-562, art. 4(F); DORS/2007-76, art. 5; DORS/2011-280, art. 10; DORS/2017-18, art. 11(F), 17 et 20(F); DORS/2018-69, art. 8(F).

**B.21.022 and B.21.023** [Repealed, SOR/79-252, s. 4]

**B.21.024** Notwithstanding section B.21.020 lobster paste shall not contain more than two per cent filler or fish binder.

**B.21.025** No person shall sell marine and fresh water animals, or marine and fresh water animal products, that are packed in a container that has been sealed to exclude air and that are smoked or to which liquid smoke flavour or liquid smoke flavour concentrate has been added, unless

**(a)** the container has been heat-processed after sealing at a temperature and for a time sufficient to destroy all spores of the species *Clostridium botulinum*;

**(b)** the contents of the container contain not less than nine per cent salt, as determined by official method FO-38, *Determination of Salt in Smoked Fish*, dated March 15, 1985;

**(c)** the contents of the container are customarily cooked before eating; or

**(d)** the contents of the container are frozen and the principal display panel of the label of the container carries the statement "Keep Frozen Prior to Use" in the same size type used for the common name of the contents of the container.

SOR/80-13, s. 10; SOR/82-566, s. 5; SOR/82-768, s. 64; SOR/89-198, s. 17; SOR/94-567, s. 4.

**B.21.022 et B.21.023** [Abrogés, DORS/79-252, art. 1]

**B.21.024** Nonobstant l'article B.21.020, la pâte de homard doit renfermer au plus deux pour cent de remplissage ou de liant à poisson.

**B.21.025** Il est interdit de vendre des animaux marins et des animaux d'eau douce et des produits de ces animaux, qui sont fumés ou qui renferment un arôme de fumée liquide ou un arôme de fumée liquide concentré et qui sont emballés dans un contenant hermétiquement scellé, à moins que l'une ou l'autre des conditions suivantes ne soit remplie :

**a)** le contenant a été traité, après son scellement, par chaleur à une température et pendant un temps suffisants pour détruire toutes les spores de *Clostridium botulinum*;

**b)** le contenu contient au moins neuf pour cent de sel, déterminé selon la méthode officielle FO-38 intitulée *Détermination de sel dans le poisson fumé* du 15 mars 1985;

**c)** le contenu est habituellement cuit avant la consommation;

**d)** le contenu est congelé et l'espace principal de l'étiquette du contenant porte, en caractères identiques à ceux du nom usuel du contenu, l'inscription « Garder congelé jusqu'à utilisation ».

DORS/80-13, art. 10; DORS/82-566, art. 5; DORS/82-768, art. 64; DORS/89-198, art. 17; DORS/94-567, art. 4.

**B.21.027 [S]. Fish Protein**

**(a)** shall be the food prepared by

**(i)** extracting water, fat and other soluble components through the use of isopropyl alcohol from fresh whole edible fish of the order Clupeiformes, families Clupeidae and Osmeridae and the order Gadiformes, family Gadidae, or from trimmings resulting from the filleting of such fish when eviscerated, and

**(ii)** drying and grinding the protein concentrate resulting from the operation described in subparagraph (i);

**(b)** may contain a pH adjusting agent; and

**B.21.027 [N].** Les **protéines de poisson**

**a)** constituent l'aliment préparé,

**(i)** en extrayant, à l'aide d'alcool isopropylique, l'eau, la graisse et les autres éléments solubles des poissons comestibles, entiers et frais, de l'ordre des clupéiformes, familles des clupéidés et des osméridés, et de l'ordre des gadiformes, famille des gadidés, ou des parures qui restent après avoir enlevé les filets de ces poissons éviscérés, et

**(ii)** en séchant et broyant le concentré de protéines résultant de l'opération décrite au sous-alinéa (i);

**b)** peuvent contenir un agent rectificateur du pH; et

**c)** ne doivent pas contenir

**(c)** shall not contain

**(i)** less than 75 per cent protein, which protein shall be at least equivalent to casein in protein quality, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981.

**(ii) and (iii)** [Repealed, SOR/97-148, s. 8]

SOR/82-768, s. 65; SOR/97-148, s. 8.

**(i)** moins de 75 pour cent de protéines d'une qualité non inférieure à celle de la caséine, après analyse selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981.

**(ii) et (iii)** [Abrogés, DORS/97-148, art. 8]

DORS/82-768, art. 65; DORS/97-148, art. 8.

## Froglegs

**B.21.031** No person shall sell fresh or frozen froglegs unless they are free from bacteria of the genus *Salmonella*, as determined by official method MFO-10, Microbiological Examination of Froglegs, November 30, 1981.

SOR/82-768, s. 66.

## Cuisses de grenouille

**B.21.031** Est interdite la vente de cuisses de grenouille, fraîches ou congelées, à moins qu'elles ne soient trouvées exemptes de bactéries du genre *Salmonella* selon la méthode officielle MFO-10, Examen microbiologique de cuisses de grenouille, 30 novembre 1981.

DORS/82-768, art. 66.

**DIVISION 22**

# Poultry, Poultry Meat, Their Preparations and Products

**B.22.001 [S].** Poultry shall be any bird that is commonly used as food.

**B.22.002 [S].** Poultry meat shall be the clean, dressed flesh including the heart and gizzard of eviscerated poultry that is healthy at the time of slaughter.

SOR/80-13, s. 11.

**B.22.003 [S].** Poultry meat by-product shall be the clean parts of poultry other than poultry meat commonly used as food and includes liver and skin but excludes the oesophagus, feet and head.

SOR/80-13, s. 12.

**B.22.004 [S].** Giblets shall be the heart, liver and gizzard of poultry.

**B.22.005** Poultry meat, poultry meat by-products or preparations thereof are adultered if any of the following substances or any substance in the following classes is present therein or has been added thereto:

**(a)** any organ or portion of poultry that is not commonly sold as food;

**(b)** preservatives, other than those provided for in this Division; and

**(c)** colour, other than caramel.

**TITRE 22**

# Volaille, viande de volaille, leurs préparations et leurs produits

**B.22.001 [N].** Le terme ***volaille*** désigne tout oiseau communément utilisé dans la consommation humaine.

**B.22.002 [N].** La viande de volaille est la chair propre et apprêtée, cœur et gésier compris, d'une volaille éviscérée qui était saine au moment de l'abattage.

DORS/80-13, art. 11.

**B.22.003 [N].** Les sous-produits de volaille sont les parties propres de la volaille, à l'exclusion de la viande ordinairement utilisée comme aliment, et comprennent le foie et la peau mais non l'œsophage, les pattes et la tête.

DORS/80-13, art. 12.

**B.22.004 [N].** Les abats doivent être le cœur, le foie et le gésier de la volaille.

**B.22.005** La viande de volaille, les sous-produits de viande de volaille ou leurs préparations sont falsifiés, s'ils renferment ou si l'on y a ajouté l'une des substances ci-dessous ou une substance de l'une des catégories suivantes :

**a)** tout organe ou toute partie de volaille qui ne se vend pas d'ordinaire comme partie comestible;

**b)** un agent de conservation autre que ceux qui sont prévus au présent titre; ou

**c)** un colorant autre que le caramel.

**B.22.006 [S].** **Prepared poultry meat** or a **prepared poultry meat by-product** shall be any poultry meat or any poultry meat by-product, respectively, whether comminuted or not, to which has been added any ingredient permitted by these Regulations or that has been preserved, placed in a hermetically-sealed container or cooked, and may contain

**(a)** where a minimum total protein content or minimum meat protein requirement is prescribed in this Division, phosphate salts that do not when calculated as sodium phosphate, dibasic, exceed the maximum level provided therefor in Table XII to section B.16.100 and that are one or more of the following phosphate salts, namely,

**(i)** sodium acid pyrophosphate,

**(ii)** sodium hexametaphosphate,

**(iii)** sodium phosphate, dibasic,

**(iv)** sodium phosphate, monobasic,

**(v)** sodium pyrophosphate, tetrabasic,

**(vi)** sodium tripolyphosphate,

**(vii)** potassium phosphate, monobasic,

**(viii)** potassium phosphate, dibasic, and

**(ix)** potassium pyrophosphate, tetrabasic;

**(a.1)** a Class II preservative;

**(b)** in the case of dried, cooked poultry meat, a Class IV preservative; and

**(c)** in the case of vacuum-packed sliced cooked turkey, *Carnobacterium maltaromaticum* CB1.

SOR/81-934, s. 16; SOR/94-262, s. 13; SOR/2010-264, s. 5; SOR/2011-280, s. 11.

**B.22.006 [N].** La **viande de volaille préparée** et les **sous-produits de viande de volaille préparée** doivent être, respectivement, de la viande de volaille ou des sous-produits de viande de volaille, hachés ou non, auxquels a été ajouté tout ingrédient permis par le présent règlement, ou qui ont subi un procédé de conservation, qui ont été placés dans un contenant hermétiquement fermé ou qui ont été cuits, et peuvent renfermer :

**a)** lorsque le présent titre prescrit une teneur totale minimale en protéines ou une teneur minimale en protéines de viande, un ou plusieurs des sels de phosphate suivants, en une proportion n'excédant pas la limite de tolérance calculée en phosphate disodique conformément au tableau XII de l'article B.16.100 :

**(i)** du pyrophosphate acide de sodium,

**(ii)** de l'hexamétaphosphate de sodium,

**(iii)** du phosphate disodique,

**(iv)** du phosphate monosodique,

**(v)** du pyrophosphate tétrasodique,

**(vi)** du tripolyphosphate de sodium,

**(vii)** du phosphate monopotassique,

**(viii)** du phosphate dipotassique,

**(ix)** du pyrophosphate tétrapotassique;

**a.1)** un agent de conservation de la catégorie II;

**b)** s'il s'agit de viande de volaille cuite et séchée, un agent de conservation de la catégorie IV;

**c)** s'il s'agit de dinde cuite tranchée emballée sous vide, du *Carnobacterium maltaromaticum* CB1.

DORS/81-934, art. 16; DORS/94-262, art. 13; DORS/2010-264, art. 5; DORS/2011-280, art. 11.

**B.22.008** In this Division, ***filler*** means any vegetable material (except tomato or beetroot), milk, egg, yeast, or any derivative or combination thereof that is acceptable as food.

SOR/82-768, s. 67; SOR/84-300, s. 54(E); SOR/86-875, s. 6.

**B.22.008** Dans le présent titre, ***agent de remplissage*** désigne toute matière végétale, (à l'exclusion de la tomate et de la pulpe de betterave), le lait, les œufs, la levure, ou tout dérivé ou combinaison de ces produits qui serait acceptable comme aliment.

DORS/82-768, art. 67; DORS/84-300, art. 54(A); DORS/86-875, art. 6.

**B.22.009** No person shall sell

**(a)** any poultry intended for consumption as food if any preparation having oestrogenic activity has been administered to the poultry; or

**B.22.009** Est interdite la vente

**a)** de la volaille qui est destinée à être consommée comme aliment et à laquelle a été administré un produit ayant un pouvoir œstrogène; ou

**(b)** poultry meat or poultry meat by-product that contains any residues of exogenous oestrogenic substances.

SOR/87-626, s. 2.

**B.22.010** Powdered fully hydrogenated cottonseed oil may be applied as a release agent to the surface of poultry meat, poultry meat by-product, prepared poultry meat, prepared poultry meat by-product, extended poultry product and simulated poultry product in an amount not greater than 0.25% of the product.

SOR/2010-142, s. 59(F); SOR/2022-168, s. 44.

**B.22.011 [S]. Solid cut poultry meat** shall be

**(a)** a whole cut of poultry meat; or

**(b)** a product consisting of pieces of poultry meat of which at least 80 per cent weigh at least 25 g each.

SOR/94-262, s. 14.

**B.22.012 (1)** No person shall sell solid cut poultry meat to which phosphate salts or water has been added unless

**(a)** that meat

**(i)** where cooked, contains a meat protein content of not less than 12 per cent, and

**(ii)** where uncooked, contains a meat protein content of not less than 10 per cent; and

**(b)** that meat contains, phosphate salts that do not when calculated as sodium phosphate, dibasic, exceed the maximum level provided therefor in Table XII to section B.16.100 and that are one or more of the following phosphate salts, namely,

**(i)** sodium acid pyrophosphate,

**(ii)** sodium hexametaphosphate,

**(iii)** sodium phosphate, dibasic,

**(iv)** sodium phosphate, monobasic,

**(v)** sodium pyrophosphate, tetrabasic,

**(vi)** sodium tripolyphosphate,

**(vii)** potassium phosphate, monobasic,

**(viii)** potassium phosphate, dibasic, and

**(ix)** potassium pyrophosphate, tetrabasic.

**b)** de viande de volaille ou de sous-produits de viande de volaille, renfermant quelque résidu que ce soit de substances exogènes à action œstrogène.

DORS/87-626, art. 2.

**B.22.010** L'huile de coton entièrement hydrogénée en poudre peut être appliquée comme agent de démoulage sur la surface de la viande de volaille, des sous-produits de viande de volaille, de la viande de volaille préparée, des sous-produits de viande de volaille préparés, des produits de volaille avec allongeur et des simili-produits de volaille en une quantité n'excédant pas 0,25 % du produit.

DORS/2010-142, art. 59(F); DORS/2022-168, art. 44.

**B.22.011 [N].** La **viande de volaille coupée solide** doit consister :

**a)** soit en une pièce de viande de volaille entière;

**b)** soit en un produit constitué de morceaux de viande de volaille, dont au moins 80 pour cent pèsent au moins 25 g chacun.

DORS/94-262, art. 14.

**B.22.012 (1)** Est interdite la vente de viande de volaille coupée solide à laquelle ont été ajoutés des sels de phosphate ou de l'eau, à moins que les conditions suivantes ne soient réunies :

**a)** la viande a :

**(i)** si elle est cuite, une teneur minimale en protéines de viande de 12 pour cent,

**(ii)** si elle n'est pas cuite, une teneur minimale en protéines de viande de 10 pour cent;

**b)** la viande contient un ou plusieurs des sels de phosphate suivants, en une proportion n'excédant pas la limite de tolérance calculée en phosphate disodique conformément au tableau XII de l'article B.16.100 :

**(i)** du pyrophosphate acide de sodium,

**(ii)** de l'hexamétaphosphate de sodium,

**(iii)** du phosphate disodique,

**(iv)** du phosphate monosodique,

**(v)** du pyrophosphate tétrasodique,

**(vi)** du tripolyphosphate de sodium,

**(vii)** du phosphate monopotassique,

**(viii)** du phosphate dipotassique,

**(2)** A bone or a visible fat layer shall not be included in any calculation used to determine meat protein content for the purposes of paragraph (1)(a).

SOR/94-262, s. 14.

**B.22.013** No person shall sell the whole or any part of a dressed poultry carcass that has been placed in a chilling tank containing fluids to which phosphate salts have been added.

SOR/94-262, s. 14.

## Poultry Meat Stews

**B.22.016** For the purposes of sections B.22.017 to B.22.019, ***stew poultry meat*** means cooked or uncooked poultry meat containing not more than 15 per cent fat, calculated on the weight of uncooked stew poultry meat.

SOR/78-874, s. 3; SOR/2018-69, s. 9(F).

### B.22.017 [S]. Vegetable Stew with (naming the poultry meat)

**(a)** shall contain vegetables and the named poultry meat in the following amounts:

**(i)** if uncooked, 12 per cent or more of the named stew poultry meat,

**(ii)** if cooked, 6 per cent or more of the named stew poultry meat,

**(iii)** 38 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 3.

### B.22.018 [S]. (naming the poultry meat) Stew

**(a)** shall contain vegetables and the named poultry meat in the following amounts:

**(i)** if uncooked, 20 per cent or more of the named stew poultry meat,

**(ii)** if cooked, 10 per cent or more of the named stew poultry meat,

**(iii)** 30 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 3.

**(ix)** du pyrophosphate tétrapotassique.

**(2)** Aux fins du calcul de la teneur en protéines de viande visée à l'alinéa (1)a), les os et les couches de gras visible ne doivent pas être pris en compte.

DORS/94-262, art. 14.

**B.22.013** Est interdite la vente de la volaille habillée, entière ou en morceaux, qui a été refroidie dans un réservoir refroidisseur contenant un liquide additionné de sels de phosphate.

DORS/94-262, art. 14.

## Ragoûts de poulet

**B.22.016** Aux fins des articles B.22.017 à B.22.019, ***viande de volaille pour ragoût*** s'entend de la viande de volaille cuite ou crue contenant au plus 15 % de gras, calculés d'après le poids de la viande crue.

DORS/78-874, art. 3; DORS/2018-69, art. 9(F).

### B.22.017 [N]. Le ragoût de légumes avec (nom de la viande de volaille)

**a)** doit contenir des légumes et (le nom de la viande de volaille) dans les quantités suivantes :

**(i)** si de la viande crue est utilisée, au moins 12 % de viande de volaille pour ragoût,

**(ii)** si de la viande cuite est utilisée, au moins 6 % de viande de volaille pour ragoût,

**(iii)** au moins 38 % de légumes et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 3.

### B.22.018 [N]. Le ragoût de (nom de la viande de volaille)

**a)** doit contenir des légumes et de la viande de volaille pour ragoût, dans les quantités suivantes :

**(i)** si de la viande crue est utilisée, au moins 20 % de viande de volaille pour ragoût,

**(ii)** si de la viande cuite est utilisée, au moins 10 % de viande de volaille pour ragoût,

**(iii)** au moins 30 % de légumes et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 3.

**B.22.019 [S].** Specialty Poultry Meat Stew

**(a)** shall contain poultry meat and vegetables in the following amounts:

**(i)** if uncooked, 25 per cent or more of stew poultry meat,

**(ii)** if cooked, 15 per cent or more of stew poultry meat,

**(iii)** 30 per cent or more vegetables; and

**(b)** may contain gravy, salt, seasoning and spices.

SOR/78-874, s. 3.

## Prepared Poultry Meats, Prepared Poultry Meat By-Products

**B.22.020** [Repealed, SOR/86-875, s. 7]

**B.22.021 [S].** Preserved poultry meat or poultry meat by-product shall be cooked or uncooked poultry meat or poultry meat by-product that is cured or smoked and may contain

**(a)** a Class I preservative;

**(a.1)** a Class II preservative;

**(b)** liquid smoke flavour, liquid smoke flavour concentrate or spices;

**(c)** sweetening agents;

**(d)** vinegar;

**(e)** in the case of cured poultry or poultry meat prepared by means of injection or cover solution, disodium phosphate, monosodium phosphate, sodium hexametaphosphate, sodium tripolyphosphate, tetrasodium pyrophosphate and sodium acid pyrophosphate, in such amount calculated as disodium phosphate, as will result in the finished product containing not more than 0.5 per cent added phosphate; and

**(f)** in the case of vacuum-packed sliced cooked turkey, *Carnobacterium maltaromaticum* CB1.

SOR/80-13, s. 13; SOR/82-596, s. 10; SOR/94-567, s. 5; SOR/2010-264, s. 6; SOR/2011-280, s. 12; SOR/2017-18, s. 12(F); SOR/2018-69, s. 10(F).

**B.22.019 [N].** Le ragoût spécial de viande de volaille

**a)** doit contenir de la viande de volaille et des légumes dans les quantités suivantes :

**(i)** si de la viande crue est utilisée, au moins 25 % de viande de volaille pour ragoût,

**(ii)** si de la viande cuite est utilisée, au moins 15 % de viande de volaille pour ragoût,

**(iii)** au moins 30 % de légumes et

**b)** peut contenir de la sauce, du sel, des assaisonnements et des épices.

DORS/78-874, art. 3.

## Viandes de volaille préparées, sous-produits de viande de volaille préparés

**B.22.020** [Abrogé, DORS/86-875, art. 7]

**B.22.021 [N].** La viande de volaille conservée et les sous-produits de viande de volaille conservés sont de la viande de volaille ou des sous-produits de viande de volaille crus ou cuits, qui ont été salés ou fumés et qui peuvent renfermer :

**a)** un agent de conservation de la catégorie I;

**a.1)** un agent de conservation de la catégorie II;

**b)** un arôme de fumée liquide, un arôme de fumée liquide concentré ou des épices;

**c)** des agents édulcorants;

**d)** du vinaigre;

**e)** dans le cas de la volaille et de la viande de volaille de salaison préparées à l'aide d'une solution d'injection ou d'immersion, du phosphate disodique, du phosphate monosodique, de l'hexamétaphosphate de sodium, du tripolyphosphate de sodium, du pyrophosphate tétrasodique et du pyrophosphate acide de sodium, en telle quantité calculée en phosphate disodique, que le produit fini renferme au plus 0,5 pour cent de phosphate ajouté;

**f)** dans le cas de la dinde cuite tranchée emballée sous vide, du *Carnobacterium maltaromaticum* CB1.

DORS/80-13, art. 13; DORS/82-596, art. 10; DORS/94-567, art. 5; DORS/2010-264, art. 6; DORS/2011-280, art. 12; DORS/2017-18, art. 12(F); DORS/2018-69, art. 10(F).

**B.22.022 [S].** Canned (naming the poultry) shall be prepared from poultry meat and may contain

**(a)** those bones or pieces of bones attached to the portion of the poultry meat that is being canned;

**(b)** broth;

**(c)** salt;

**(d)** seasoning;

**(e)** gelling agents; and

**(f)** small amounts of fat.

SOR/84-300, s. 55.

**B.22.023 [S].** Broth that is used in canned (naming the poultry) shall be the liquid in which the poultry meat has been cooked.

**B.22.024** [Repealed, SOR/2022-143, s. 27]

**B.22.025 [S].** Boneless (naming the poultry) shall be canned poultry meat from which the bones and skin have been removed, shall contain not less than 50 per cent of the named poultry meat, as determined by official method FO-39, Determination of Meat in Boneless Poultry, October 15, 1981, and may contain broth having a specific gravity of not less than 1.000 at a temperature of 50°C.

SOR/82-768, s. 69.

**B.22.026** No person shall sell poultry, poultry meat or poultry meat by-product that has been barbecued, roasted or broiled and is ready for consumption unless the cooked poultry, poultry meat or poultry meat by-product

**(a)** at all times

**(i)** has a temperature of 40°F (4.4°C) or lower, or 140°F (60°C) or higher, or

**(ii)** has been stored at an ambient temperature of 40°F (4.4°C) or lower, or 140°F (60°C) or higher; and

**(b)** carries on the principal display panel of the label a statement to the effect that the food must be stored at a temperature of 40°F (4.4°C) or lower, or 140°F (60°C) or higher.

SOR/78-403, s. 28(F); SOR/88-336, s. 3.

**B.22.022 [N].** La (nom de la volaille) en conserve doit être préparée avec de la viande de volaille et peut renfermer

**a)** les os ou parties d'os adhérant aux morceaux de viande de la volaille mise en conserve;

**b)** du bouillon;

**c)** du sel;

**d)** des assaisonnements;

**e)** des agents gélatinisants; et

**f)** de petites quantités de gras.

DORS/84-300, art. 55.

**B.22.023 [N].** Le bouillon utilisé dans la (nom de la volaille) en conserve doit être le liquide dans lequel on a fait cuire la viande de volaille.

**B.22.024** [Abrogé, DORS/2022-143, art. 27]

**B.22.025 [N].** La (nom de la volaille) désossée doit être de la viande de volaille en conserve, débarrassée des os et de la peau; elle doit renfermer au moins 50 pour cent de viande de la volaille nommée, déterminé selon la méthode officielle FO-39, Détermination de viande dans la volaille désossée, 15 octobre 1981, et elle peut renfermer du bouillon dont la densité est d'au moins 1,000 à la température de 50 °C.

DORS/82-768, art. 69.

**B.22.026** Est interdite la vente de volaille, de viande de volaille ou de sous-produits de viande de volaille cuits à la broche, rôtis ou grillés et prêts à la consommation à moins que la volaille, la viande de volaille ou le sous-produit de viande de volaille cuits

**a)** n'aient constamment

**(i)** indiqué une température de 40 °F (4,4 °C) ou moins, ou de 140 °F (60 °C) ou plus, ou

**(ii)** été conservés à une température ambiante de 40 °F (4,4 °C) ou moins, ou de 140 °F (60 °C) ou plus; et

**b)** ne portent, sur l'espace principal de l'étiquette, mention qu'ils doivent être conservés à une température de 40 °F (4,4 °C) ou moins, ou de 140 °F (60 °C) ou plus.

DORS/78-403, art. 28(F); DORS/88-336, art. 3.

## Poultry Product Extender

**B.22.027** No person shall sell a poultry product extender unless that extender

**(a)** has, in the rehydrated state,

**(i)** a total protein content of not less than 16 per cent; and

**(ii)** a protein rating of not less than 40, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(b)** has, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to Division 14 in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(c)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 70.

## Extended Poultry Products

**B.22.028** No person shall sell a food that consists of a mixture of poultry product and poultry product extender, unless that food

**(a)** has a total protein content of not less than 16 per cent, and

**(b)** has a protein rating of not less than 40, as determined by official method, and unless

the poultry product extender meets the requirements of paragraphs B.22.027(a) to (c).

## Simulated Poultry Products

**B.22.029** No person shall sell a simulated poultry product unless that product

**(a)** has a total protein content of not less than 16 per cent;

**(b)** has a protein rating of not less than 40, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** has a fat content of not more than 15 per cent;

## Allongeur de produits de volaille

**B.22.027** Est interdite la vente d'un allongeur de produits de volaille, à moins que cet allongeur

**a)** n'ait, à l'état réhydraté,

**(i)** une teneur totale en protéines d'au moins 16 pour cent, et

**(ii)** une cote protéique d'au moins 40, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**b)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs figurant au tableau du titre 14, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de chacun de ces minéraux nutritifs; et que

**c)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités non supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 70.

## Produits de volaille avec allongeur

**B.22.028** Est interdite la vente d'un aliment qui consiste en un mélange de produit de volaille et d'allongeur de produits de volaille, à moins que cet aliment

**a)** n'ait une teneur totale en protéines d'au moins 16 pour cent, et

**b)** n'ait une teneur en matières grasses d'au plus 15 pour cent, et que

l'allongeur de produits de volaille ne satisfasse aux exigences des alinéas B.22.027a) à c).

## Simili-produits de volaille

**B.22.029** Est interdite la vente d'un simili-produit de volaille, à moins que ce produit

**a)** n'ait une teneur totale en protéines d'au moins 16 pour cent;

**b)** n'ait une cote protéique d'au moins 40, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** n'ait une teneur en matières grasses d'au plus 15 pour cent;

**(d)** contains, notwithstanding sections D.01.009 and D.02.009, each vitamin and mineral nutrient listed in Column I of the Table to Division 14 in an amount not less than the amount shown in Column II of that Table opposite each such vitamin and mineral nutrient respectively; and

**(e)** where isolated essential amino acids have been added, contains those acids in an amount not exceeding an amount that improves the nutritional quality of the protein.

SOR/82-768, s. 71.

**d)** par dérogation aux articles D.01.009 et D.02.009, ne contienne toutes les vitamines et tous les minéraux nutritifs figurant au tableau du titre 14, à la colonne I, en quantité au moins égale à celle indiquée audit tableau, à la colonne II, au regard de chacune de ces vitamines et de ces minéraux nutritifs; et que

**e)** lorsque des acides aminés essentiels isolés ont été ajoutés, il ne contienne ces acides en quantités non supérieures aux quantités qui améliorent la qualité nutritive de la protéine.

DORS/82-768, art. 71.

## Egg Products

**B.22.032** No person shall sell any product simulating whole egg unless that product

**(a)** is made from liquid, dried or frozen egg albumen or mixtures thereof;

**(b)** has a protein rating of not less than 40, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981;

**(c)** notwithstanding sections D.01.009 and D.02.009, contains, per 100 grams on a ready-to-use basis,

**(i)** not less than

**(A)** 50 milligrams calcium,

**(B)** 2.3 milligrams iron,

**(C)** 1.5 milligrams zinc,

**(D)** 130 milligrams potassium,

**(E)** 1000 International Units Vitamin A,

**(F)** 0.10 milligram thiamine,

**(G)** 0.30 milligram riboflavin,

**(H)** 3.60 milligrams niacin,

**(I)** 1.60 milligrams pantothenic acid,

**(J)** 0.20 milligram Vitamin $B_{6'}$,

**(K)** 0.50 microgram Vitamin $B_{12'}$,

**(L)** 0.02 milligram folic acid, and

**(M)** 2.0 International Units alpha tocopherol, and

**(ii)** not more than 3 milligrams cholesterol;

## Produits des œufs

**B.22.032** Est interdite la vente d'un produit imitant l'œuf, sauf si ce produit

**a)** provient d'albumine d'œuf, en poudre, à l'état liquide ou congelé, ou d'un mélange quelconque de ces produits;

**b)** a une cote protéique d'au moins 40, déterminée selon la méthode officielle FO-1, Détermination de cote protéique, 15 octobre 1981;

**c)** nonobstant les articles D.01.009 et D.02.009, contient par 100 grammes de produits prêt à utiliser

**(i)** au moins

**(A)** 50 milligrammes de calcium,

**(B)** 2,3 milligrammes de fer,

**(C)** 1,5 milligramme de zinc,

**(D)** 130 milligrammes de potassium,

**(E)** 1 000 unités internationales de vitamine A,

**(F)** 0,10 milligramme de thiamine,

**(G)** 0,30 milligramme de riboflavine,

**(H)** 3,60 milligrammes de niacine,

**(I)** 1,60 milligramme d'acide pantothénique,

**(J)** 0,20 milligramme de vitamine $B_6'$

**(K)** 0,50 microgramme de vitamine $B_{12}'$

**(L)** 0,02 milligramme d'acide folique, et

**(M)** 2,0 unités internationales d'alpha tocophérol, et

**(d)** has a calcium to phosphorous ratio of not less than one part calcium to four parts phosphorous; and

**(e)** contains in the total fat of any fat or oil used not less than 40 per cent cis-cis methylene interrupted polyunsaturated fatty acids and not more than 20 per cent saturated fatty acids.

SOR/82-768, s. 72; SOR/84-300, s. 56.

**B.22.033** No person shall sell any egg product referred to in sections B.22.032, B.22.034, B.22.035, B.22.036 and B.22.037 for use as food unless it is free from bacteria of the genus *Salmonella*, as determined by official method MFO-6, Microbiological Examination of Egg Products and Liquid Eggs, November 30, 1981.

SOR/82-768, s. 73.

### B.22.034 [S]. Liquid Whole Egg, Dried Whole Egg or Frozen Whole Egg

**(a)** shall be the product obtained by removing the shell from wholesome fresh eggs or wholesome stored eggs, and

**(i)** in the case of dried whole egg, drying the product, or

**(ii)** in the case of frozen whole egg, freezing the product; and

**(b)** may

**(i)** contain aluminum sulphate, pH adjusting agents and the colour beta carotene,

**(ii)** in the case of liquid whole egg destined for drying, contain yeast autolysate and may be treated with hydrogen peroxide and catalase, glucose oxidase and catalase or yeast and suitable glucose fermenting bacterial culture, or

**(iii)** in the case of dried whole egg, contain anti-caking agents.

### B.22.035 [S]. Liquid Yolk, Dried Yolk or Frozen Yolk

**(a)** shall be the product obtained by removing the shell and egg-white from wholesome fresh eggs or wholesome stored eggs, and

**(i)** in the case of dried yolk, drying the product, or

**(ii)** au plus trois milligrammes de cholestérol;

**d)** contient du calcium et du phosphore dans une proportion d'au moins une partie de calcium pour quatre parties de phosphore; et

**e)** contient, dans le gras total de toute graisse ou huile utilisée, au moins 40 pour cent d'acides gras polyinsaturés à groupe cis-cis méthylène et au plus 20 pour cent d'acides gras saturés.

DORS/82-768, art. 72; DORS/84-300, art. 56.

**B.22.033** Est interdite la vente de produits des œufs visés aux articles B.22.032, B.22.034, B.22.035, B.22.036 et B.22.037, destinés à la consommation humaine, sauf s'ils sont trouvés exempts de bactéries de l'espèce *Salmonella* selon la méthode officielle MFO-6, Examen microbiologique des produits des œufs et des œufs à l'état liquide, 30 novembre 1981.

DORS/82-768, art. 73.

### B.22.034 [N]. L'**œuf entier liquide**, la **poudre d'œuf** ou l'**œuf entier congelé**

**a)** est le produit obtenu en débarrassant de leur coquille des œufs frais sains ou des œufs entreposés sains, et

**(i)** dans le cas de la poudre d'œuf entier, en la séchant, ou

**(ii)** dans le cas de l'œuf entier congelé, en le congelant; et

**b)** peut renfermer

**(i)** du sulfate d'aluminium, des agents rajusteurs de pH ou du colorant bêta-carotène,

**(ii)** dans le cas de l'œuf entier liquide destiné au séchage, de l'autolysat de levure et peut être traité avec du peroxyde d'hydrogène et de la catalase, de la glucose-oxydase et de la catalase, de la levure ou une culture bactérienne appropriée fermentant le glucose, et

**(iii)** dans le cas de la poudre d'œuf entier, des agents anti-agglomérants.

### B.22.035 [N]. Le **jaune d'œuf liquide**, la **poudre de jaune d'œuf** ou le **jaune d'œuf congelé**

**a)** est le produit obtenu en débarrassant de leur coquille et de leur blanc des œufs frais sains ou des œufs entreposés sains, et

**(ii)** in the case of frozen yolk, freezing the product, and

**(b)** may

**(i)** contain aluminum sulphate, pH adjusting agents and the colour beta carotene,

**(ii)** in the case of liquid yolk destined for drying, contain yeast autolysate and may be treated with hydrogen peroxide and catalase, glucose oxidase and catalase or yeast and suitable glucose fermenting bacterial culture, or

**(iii)** in the case of dried yolk, contain anti-caking agents.

**(i)** dans le cas de la poudre de jaune d'œuf, en la séchant, ou

**(ii)** dans le cas du jaune d'œuf congelé, en le congelant; et

**b)** peut renfermer

**(i)** du sulfate d'aluminium, des agents rajusteurs du Ph ou du colorant bêta-carotène,

**(ii)** dans le cas du jaune d'œuf liquide destiné au séchage, de l'autolysat de levure et peut être traité avec du peroxyde d'hydrogène et de la catalase, de la glucose-oxydase et de la catalase, de la levure ou une culture bactérienne appropriée fermentant le glucose, et

**(iii)** dans le cas de la poudre de jaune d'œuf, des agents anti-agglomérants.

**B.22.036 [S]. Liquid Egg-White, (Liquid Albumen), Dried Egg-White, (Dried Albumen)** or **Frozen Egg-White (Frozen Albumen)**

**(a)** shall be the product obtained by removing the shell and yolk from wholesome fresh eggs or wholesome stored eggs, and

**(i)** in the case of dried egg-white, drying the product, or

**(ii)** in the case of frozen egg-white, freezing the product; and

**(b)** may

**(i)** contain whipping agents, aluminum sulphate and pH adjusting agents,

**(ii)** in the case of liquid egg-white destined for drying, contain yeast autolysate and may be treated with hydrogen peroxide and catalase, glucose oxidase and catalase or yeast and suitable glucose fermenting bacterial culture,

**(iii)** in the case of liquid egg-white and dried egg-white, contain lipase or pancreatin, or

**(iv)** in the case of dried egg-white, contain anti-caking agents.

**B.22.036 [N].** Le **blanc d'œuf liquide (albumen liquide)**, la **poudre de blanc d'œuf (poudre d'albumen)** ou le **blanc d'œuf congelé (albumen congelé)**

**a)** est le produit obtenu en débarrassant de leur coquille et de leur jaune des œufs frais sains ou des œufs entreposés sains, et

**(i)** dans le cas de la poudre de blanc d'œuf, en la séchant, ou

**(ii)** dans le cas du blanc d'œuf congelé, en le congelant; et

**b)** peut renfermer

**(i)** des agents favorisant la montée en neige, du sulfate d'aluminium et des agents rajusteurs du Ph,

**(ii)** dans le cas du blanc d'œuf liquide destiné au séchage de l'autolysat de levure et peut être traité avec du peroxyde d'hydrogène et de la catalase, de la glucose-oxydase et de la catalase, de la levure ou une culture bactérienne appropriée fermentant le glucose,

**(iii)** dans le cas du blanc d'œuf liquide et de la poudre de blanc d'œuf, de la lipase ou de la pancréatine, et

**(iv)** dans le cas de la poudre de blanc d'œuf, des agents anti-agglomérants.

**B.22.037 [S]. Liquid Whole Egg Mix, Dried Whole Egg Mix, Frozen Whole Egg Mix, Liquid Yolk Mix, Dried Yolk Mix** or **Frozen Yolk Mix**

**(a)** shall be the product obtained by adding salt, sweetening agent or both to Liquid Whole Egg, Dried Whole Egg, Frozen Whole Egg, Liquid Yolk, Dried Yolk or Frozen Yolk; and

**(b)** may, in the case of dried whole egg mix or dried yolk mix, contain anti-caking agents.

**B.22.038 (1)** No person shall use a common name referred to in sections B.22.034 to B.22.037 for an egg product that has been subjected to a process, other than a process referred to in those sections, if that process results in a decrease in the amount of a vitamin or mineral nutrient that before processing was present in 100 g of the egg product in an amount equal to at least 10 per cent of the weighted recommended nutrient intake, unless the amount of the vitamin or mineral nutrient is restored to the amount that was present before processing.

**(2)** Notwithstanding sections D.01.009, D.01.011 and D.02.009, a person may add any vitamin or mineral nutrient referred to in column II of item 27 of the table to section D.03.002 to any egg product referred to in sections B.22.034 to B.22.037 to restore the vitamin or mineral nutrient to the amount that was present in the egg product before processing.

**(3)** In this section, ***weighted recommended nutrient intake*** has the same meaning as in subsection D.01.001(1).

SOR/96-259, s. 2.

**B.22.037 [N].** Le **mélange liquide d'œufs entier**, le **mélange de poudre d'œufs entiers**, le **mélange congelé d'œufs entiers**, le **mélange liquide de jaunes d'œufs**, le **mélange de poudre de jaunes d'œufs** ou le **mélange congelé de jaunes d'œufs**

**a)** est le produit obtenu en ajoutant du sel, des agents édulcorants, ou les deux, aux œufs entiers liquides, à la poudre d'œuf entier, aux œufs entiers congelés, aux jaunes d'œufs liquides, à la poudre de jaune d'œuf ou aux jaunes d'œufs congelés; et

**b)** dans le cas du mélange de poudre d'œufs entiers ou du mélange de poudre de jaunes d'œufs, peut renfermer des agents anti-agglomérants.

**B.22.038 (1)** Il est interdit d'utiliser un nom usuel mentionné aux articles B.22.034 à B.22.037 à l'égard d'un produit des œufs qui a fait l'objet d'un traitement non mentionné à l'un de ces articles si celui-ci a entraîné une réduction de la quantité d'une vitamine ou d'un minéral nutritif présent dans le produit en une concentration représentant, par 100 g du produit, 10 pour cent ou plus de l'apport nutritionnel recommandé pondéré, à moins que la quantité ainsi réduite n'ait été ramenée à ce qu'elle était avant le traitement.

**(2)** Malgré les articles D.01.009, D.01.011 et D.02.009, il est permis d'ajouter une vitamine ou un minéral nutritif mentionné à la colonne II de l'article 27 du tableau de l'article D.03.002 à un produit des œufs visé aux articles B.22.034 à B.22.037 afin de ramener la concentration de cette vitamine ou de ce minéral à ce qu'elle était avant le traitement.

**(3)** Pour l'application du présent article, ***apport nutritionnel recommandé pondéré*** s'entend au sens du paragraphe D.01.001(1).

DORS/96-259, art. 2.

## DIVISION 23

# Food Packaging Materials

**B.23.001** No person shall sell any food in a package that may yield to its contents any substance that may be injurious to the health of a consumer of the food.

**B.23.002** Subject to section B.23.003 no person shall sell any food in a package that has been manufactured from a polyvinyl chloride formulation containing an octyltin chemical.

## TITRE 23

# Matériaux à emballer les denrées alimentaires

**B.23.001** Est interdite la vente d'un aliment dont l'emballage peut transmettre à son contenu une substance pouvant être nuisible à la santé d'un consommateur de l'aliment.

**B.23.002** Sous réserve de l'article B.23.003, est interdite la vente d'un aliment dont l'emballage a été fabriqué à l'aide d'un chlorure de polyvinyle renfermant un produit chimique à base d'étain octylique.

**B.23.003** A person may sell food, other than milk, skim milk, partly skimmed milk, sterilized milk, malt beverages and carbonated non-alcoholic beverage products, in a package that has been manufactured from a polyvinyl chloride formulation containing any or all of the octyltin chemicals, namely, di(n-octyl)tin S,S′-bis(isooctylmercaptoacetate), di(n-octyl)tin maleate polymer and (n-octyl)tin S,S′,S″-tris(isooctylmercaptoacetate) if the proportion of such chemicals, either singly or in combination, does not exceed a total of three per cent of the resin, and the food in contact with the package contains not more than one part per million total octyltin.

SOR/81-60, s. 13; SOR/86-1125, s. 4.

**B.23.004 (1)** Di (n-octyl)tin S,S′-bis (isooctylmercaptoacetate) shall be the octyltin chemical made from di (n-octyl)tin dichloride and shall contain 15.1 to 16.4 per cent of tin and 8.1 to 8.9 per cent of mercapto sulfur.

**(2)** For the purposes of this Division, di (n-octyl)tin dichloride shall be the chemical having an organotin composition of not less than 95 per cent di (n-octyl)tin dichloride and shall contain no more than

**(a)** five per cent total of n-octyltin trichloride or tri(n-octyl)tin chloride or both;

**(b)** 0.2 per cent total of other eight (8) carbon isomeric alkyltin derivatives; and

**(c)** 0.1 per cent total of the higher and lower homologous alkyltin derivatives.

SOR/86-1125, s. 5.

**B.23.005** Di(n-octyl)tin maleate polymer shall be the octyltin chemical made from di(n-octyl)tin dichloride and shall have the formula $((C_8H_{17})_2\ SnC_4H_2O_4)n$ (where n is between 2 and 4 inclusive), and a saponification number of 225 to 255, and shall contain 25.2 to 26.6 per cent of tin.

SOR/86-1125, s. 6(F).

**B.23.006 (1)** (n-octyl)tin S,S′,S″-tris (isooctylmercaptoacetate), being an octyltin chemical having the formula $n\text{-}C_8H_{17}Sn(SCH_2CO_2C_8H_{17})_3$, shall be made from (n-octyl)tin trichloride and shall contain 13.4 to 14.8 per cent of tin and 10.9 to 11.9 per cent of mercapto sulfur.

**(2)** For the purposes of this Division, (n-octyl)tin trichloride shall be the chemical having an organotin composition of not less than 95 per cent (n-octyl)tin trichloride and shall contain not more than

**B.23.003** Est permise, sauf dans le cas du lait, du lait écrémé, du lait partiellement écrémé, du lait stérilisé, des boissons maltées et des boissons gazeuses non alcoolisées, la vente d'un aliment dont l'emballage a été fabriqué à partir de polychlorure de vinyle contenant l'un ou plusieurs des produits chimiques suivants à base d'étain octylique, soit le S,S;-bis(isooctylmercaptoacétate) de di(n-octyl)étain, le polymère maltéate de di(n-octyl)étain ou le S,S;, S :-tris(isooctylmercaptoacétate) de (n-octyl) étain, si la quantité de ce produit ou de la combinaison de ces produits ne dépasse pas trois pour cent de la quantité de résine et si l'aliment en contact avec l'emballage ne contient pas plus de une partie par million d'étain octylique total.

DORS/81-60, art. 13; DORS/86-1125, art. 4.

**B.23.004 (1)** Le S,S;-bis(isooctylmercaptoacétate) de di(n-octyl)étain est l'étain octylique obtenu à partir du bichlorure de di(n-octyl)étain et contenant au moins 15,1 et au plus 16,4 pour cent d'étain et au moins 8,1 et au plus 8,9 pour cent de soufre thiolique.

**(2)** Aux fins du présent titre, le bichlorure de di(n-octyl)étain est un organo-étain contenant au moins 95 pour cent de bichlorure de di(n-octyl)étain et au plus :

**a)** cinq pour cent de trichlorure de (n-octyl)étain ou de chlorure de tri(n-octyl)étain ou de la combinaison des deux;

**b)** 0,2 pour cent de toute combinaison d'autres alkyl-étains isomères à groupement alkyl renfermant huit atomes de carbone;

**c)** 0,1 pour cent de toute combinaison d'alkyl-étains homologues supérieurs et inférieurs.

DORS/86-1125, art. 5.

**B.23.005** Le polymère maléate de di(n-octyl)étain est l'étain octylique obtenu à partir du bichlorure de di(n-octyl)étain, dont la formule est $((C_8H_{17})_2\ SnC_4H_2O_4)n$ (dans laquelle n est d'au moins 2 et d'au plus 4), dont l'indice de saponification est d'au moins 225 et d'au plus 255, et qui contient au moins 25,2 et au plus 26,6 pour cent d'étain.

DORS/86-1125, art. 6(F).

**B.23.006 (1)** Le S,S;,S :-tris(isooctylmercaptoacétate) de (n-octyl)étain est l'étain octylique possédant la formule $n\text{-}C_8HSn(SCH_2CO_2\ C_8H_{17})_3$, qui est obtenu à partir du trichlorure de (n-octyl)étain et qui contient au moins 13,4 et au plus 14,8 pour cent d'étain et au moins 10,9 et au plus 11,9 pour cent de soufre thiolique.

**(2)** Aux fins du présent titre, le trichlorure de (n-octyl)étain est un organo-étain contenant au moins 95 pour cent de trichlorure de (n-octyl)étain et au plus :

**(a)** five per cent total of di(n-octyl)tin dichloride, tri(n-octyl)tin chloride or the higher (more than eight (8) carbons) alkyltin chlorides or any combination of the foregoing;

**(b)** 0.2 per cent total of alkyltin derivatives; and

**(c)** 0.1 per cent of the lower (less than eight carbons) homologous alkyltin derivatives.

SOR/86-1125, s. 7.

**B.23.007** No person shall sell a food in a package than may yield to its contents any amount of vinyl chloride, as determined by official method, FO-40, Determination of Vinyl Chloride in Food, October 15, 1981, in respect of that food.

SOR/82-768, s. 74.

**B.23.008** No person shall sell a food in a package that may yield to its contents any amount of acrylonitrile as determined by official method FO-41, Determination of Acrylonitrile in Food, February 16, 1982, in respect of that food.

SOR/82-541, s. 1.

**a)** cinq pour cent de bichlorure de di(n-octyl)étain, de chlorure de tri(n-octyl)étain ou de chlorures d'alkyl-étains supérieurs (à groupement alkyl renfermant plus de huit atomes de carbone) ou de toute combinaison de ceux-ci;

**b)** 0,2 pour cent de toute combinaison d'alkyl-étains;

**c)** 0,1 pour cent de toute combinaison d'alkyl-étains homologues inférieurs (à groupement alkyl renfermant moins de huit atomes de carbone).

DORS/86-1125, art. 7.

**B.23.007** Est interdite la vente d'un aliment dont l'emballage peut transmettre à son contenu une quantité de chlorure de vinyle, déterminée selon la méthode officielle FO-40, Détermination de chlorure de vinyle dans les aliments, 15 octobre 1981, pour cet aliment.

DORS/82-768, art. 74.

**B.23.008** Est interdite la vente d'un aliment dont l'emballage peut transmettre à son contenu une quantité quelconque d'acrylonitrile, telle que déterminée selon la méthode officielle FO-41, Détermination d'acrylonitrile dans les aliments (16 février 1982).

DORS/82-541, art. 1.

## DIVISION 24

## Foods for Special Dietary Use

**B.24.001** In this Division,

***expiration date*** means, in respect of a formulated liquid diet, a food represented for use in a very low-energy diet, a meal replacement or a nutritional supplement, the date

**(a)** after which the manufacturer does not recommend that it be consumed, and

**(b)** up to which it maintains its microbiological and physical stability and the nutrient content declared on the label; (*date limite d'utilisation*)

***food for special dietary use*** means food that has been specially processed or formulated to meet the particular requirements of a person

**(a)** in whom a physical or physiological condition exists as a result of a disease, disorder or injury, or

**(b)** for whom a particular effect, including but not limited to weight loss, is to be obtained by a controlled intake of foods; (*aliment à usage diététique spécial*)

## TITRE 24

## Aliments à usage diététique spécial

**B.24.001** Dans ce titre,

***aliment à usage diététique spécial*** désigne un aliment qui a été spécialement transformé ou formulé pour satisfaire les besoins alimentaires particuliers d'une personne

**a)** manifestant un état physique ou physiologique particulier suite à une maladie, une blessure ou un désordre fonctionnel, ou

**b)** chez qui l'on cherche à obtenir un résultat particulier, y compris, sans s'y limiter, une perte de poids, grâce au contrôle de sa ration alimentaire; (*food for special dietary use*)

***changement majeur*** S'entend, dans le cas d'un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie, de tout changement d'un des éléments suivants qui pourrait, selon l'expérience du fabricant ou la théorie généralement admise, avoir un effet indésirable sur les concentrations ou la disponibilité des éléments nutritifs de l'aliment ou sur l'innocuité microbiologique ou chimique de celui-ci :

***formulated liquid diet*** means a food that

**(a)** is sold for consumption in liquid form, and

**(b)** is sold or represented as a nutritionally complete diet for oral or tube feeding of a person described in paragraph (a) of the definition "food for special dietary use"; (*préparation pour régime liquide*)

***hospital*** means a facility

**(a)** that is licensed, approved or designated as a hospital by a province, in accordance with the laws of the province, to provide care or treatment to persons suffering from any form of disease or illness, or

**(b)** that is owned or operated by the government of Canada or of a province and that provides health services; (*hôpital*)

***major change*** means, in respect of a food that is represented for use in a very low energy diet, any change in any of the following, where the manufacturer's experience or generally accepted theory would predict an adverse effect on the levels or availability of nutrients in, the microbiological or chemical safety of or the safe use of the food:

**(a)** an ingredient or the amount of an ingredient in the food,

**(b)** the manufacturing process or the packaging of the food, or

**(c)** the directions for the preparation and use of the food; (*changement majeur*)

***meal replacement*** [Repealed, SOR/95-474, s. 3]

***pharmacist*** means a person who is registered and entitled under the laws of a province to practise pharmacy and who is practising pharmacy under those laws in that province; (*pharmacien*)

***physician*** means a person who is registered and entitled under the laws of a province to practise medicine and who is practicing medicine under those laws in that province; (*médecin*)

***prepackaged meal*** [Repealed, SOR/95-474, s. 3]

***target body weight*** means the anticipated body weight at the end of the weight reduction diet, as determined by the physician before the weight reduction diet begins; (*poids corporel cible*)

**a)** un ingrédient ou la quantité d'un ingrédient dans l'aliment;

**b)** le procédé de fabrication ou l'emballage de l'aliment;

**c)** le mode de préparation et le mode d'emploi de l'aliment. (*major change*)

***date limite d'utilisation*** Relativement à une préparation pour régime liquide, un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie, un substitut de repas ou un supplément nutritif, la date :

**a)** après laquelle le fabricant n'en recommande plus la consommation;

**b)** jusqu'à laquelle le produit conserve sa stabilité microbiologique et physique de même que la valeur nutritive indiquée sur l'étiquette. (*expiration date*)

***hôpital***

**a)** Établissement qui fait l'objet d'un permis délivré par une province ou qui a été approuvé ou désigné par elle à ce titre en conformité avec ses lois en vue d'assurer des soins ou des traitements aux personnes atteintes de toute forme de maladie ou d'affection;

**b)** établissement qui assure des soins de santé et qui appartient au gouvernement du Canada ou d'une province ou qui est exploité par lui. (*hospital*)

***médecin*** Personne qui, en vertu des lois d'une province, est inscrite à titre de médecin et est autorisée à pratiquer la médecine et qui exerce cette profession en vertu de ces lois dans cette province. (*physician*)

***pharmacien*** Personne qui, en vertu des lois d'une province, est inscrite à titre de pharmacien et est autorisée à exercer cette profession et qui l'exerce en vertu de ces lois dans cette province. (*pharmacist*)

***poids corporel cible*** Poids corporel visé à la fin d'un régime amaigrissant que fixe le médecin avant le début du régime. (*target body weight*)

***préparation pour régime liquide*** désigne un aliment qui

**a)** est vendu pour consommation sous forme liquide, et

**b)** est vendu ou présenté comme régime alimentaire complet pris par voie orale ou administré à la sonde

***very low energy diet*** means a diet for weight reduction that provides less than 900 kilocalories per day when followed as directed. (*régime à très faible teneur en énergie*)

SOR/78-64, s. 1; SOR/78-698, s. 4; SOR/94-35, s. 1; SOR/95-474, s. 3.

**B.24.003 (1)** No person shall label, package, sell or advertise a food in a manner likely to create an impression that it is a food for special dietary use unless the food is

**(a) to (e)** [Repealed, SOR/2003-11, s. 21]

**(f)** a formulated liquid diet that meets the requirements contained in sections B.24.101 and B.24.102;

**(f.1)** a meal replacement for special dietary use that meets the requirements contained in section B.24.200;

**(f.2)** a nutritional supplement that meets the requirements contained in section B.24.201;

**(g)** a gluten-free food that meets the requirements contained in section B.24.018;

**(h)** represented for protein-restricted diets;

**(i)** represented for low (naming the amino acid) diets; or

**(j)** a food represented for use in a very low energy diet, where the food meets the requirements contained in section B.24.303.

**(1.1)** Despite subsection (1), a person may label, package, sell or advertise a food in a manner likely to create an impression that it is a food for special dietary use if its label carries a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims, in accordance with section B.01.503, in respect of any of the following subjects set out in column 1:

**(a)** "free of energy", set out in item 1;

**(b)** "low in energy", set out in item 2;

**(c)** "free of sodium or salt", set out in item 31;

stomacale à une personne visée à l'alinéa a) de la définition d'***aliment à usage diététique spécial***; (*formulated liquid diet*)

***régime à très faible teneur en énergie*** Régime amaigrissant qui, lorsqu'il est suivi selon les indications, fournit moins de 900 kilocalories par jour. (*very low energy diet*)

***repas préemballé*** [Abrogée, DORS/95-474, art. 3]

***substitut de repas*** [Abrogée, DORS/95-474, art. 3]

DORS/78-64, art. 1; DORS/78-698, art. 4; DORS/94-35, art. 1; DORS/95-474, art. 3.

**B.24.003 (1)** Il est interdit d'étiqueter, d'emballer, de vendre ou d'annoncer un aliment de manière à donner l'impression qu'il est à usage diététique spécial, à moins que cet aliment ne soit

**a) à e)** [Abrogés, DORS/2003-11, art. 21]

**f)** une préparation pour régime liquide qui répond aux exigences des articles B.24.101 et B.24.102;

**f.1)** un substitut de repas à usage diététique spécial qui répond aux exigences de l'article B.24.200;

**f.2)** un supplément nutritif qui répond aux exigences de l'article B.24.201;

**g)** un aliment sans gluten répondant aux exigences de l'article B.24.018;

**h)** un aliment présenté comme étant destiné aux régimes à teneur réduite en protéines;

**i)** un aliment présenté comme étant destiné aux régimes à faible teneur en (nom de l'acide aminé);

**j)** un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie qui répond aux exigences mentionnées à l'article B.24.303.

**(1.1)** Malgré le paragraphe (1), il est permis d'étiqueter, d'emballer, de vendre ou d'annoncer un aliment de manière à donner l'impression qu'il est à usage diététique spécial si son étiquette comporte une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, conformément à l'article B.01.503, en regard de l'un des sujets ci-après visé à la colonne 1 :

**a)** « sans énergie », visé à l'article 1;

**b)** « peu d'énergie », visé à l'article 2;

**c)** « sans sodium ou sans sel », visé à l'article 31;

**(d)** "low in sodium or salt", set out in item 32; or

**(e)** "free of sugars", set out in item 37.

**(2)** Subsection (1) does not apply to a *human milk fortifier* or *human milk substitute* as defined in section B.25.001.

**(3)** No person shall label, package, sell or advertise a food in a manner likely to create an impression that it is for use in a weight reduction diet unless that food is

**(a)** a meal replacement that meets the compositional requirements contained in section B.24.200;

**(b)** a prepackaged meal;

**(c)** a food sold by a weight reduction clinic to clients of the clinic for use in a weight reduction program supervised by the staff of the clinic; or

**(d)** a food represented for use in a very low-energy diet that meets the compositional requirements contained in section B.24.303.

**(4)** Except as otherwise permitted by these Regulations, no person shall label, package, sell or advertise a food as "dietetic" or "diet", or use those words as part of the brand name of the food, unless its label carries a statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims, in accordance with section B.01.503, in respect of any of the following subjects set out in column 1:

**(a)** "free of energy", set out in item 1;

**(b)** "low in energy", set out in item 2;

**(c)** "reduced in energy", set out in item 3;

**(d)** "lower in energy", set out in item 4; or

**(e)** "free of sugars", set out in item 37.

SOR/78-64, s. 2; SOR/78-698, s. 5; SOR/84-334, s. 1; SOR/86-178, s. 8(E); SOR/94-35, s. 2; SOR/95-444, s. 1; SOR/95-474, s. 4; SOR/2003-11, s. 21; SOR/2021-57, s. 11; SOR/2022-168, s. 52.

**B.24.004 to B.24.014** [Repealed, SOR/2003-11, s. 22]

**B.24.015 and B.24.016** [Repealed, SOR/88-559, s. 6]

**B.24.017 (1)** Where the manufacturer of a formulated liquid diet, a meal replacement or a food represented for

**d)** « faible teneur en sodium ou en sel », visé à l'article 32;

**e)** « sans sucres », visé à l'article 37.

**(2)** Le paragraphe (1) ne s'applique pas au *fortifiant pour lait humain* et au *succédané de lait humain* au sens de l'article B.25.001.

**(3)** Il est interdit d'étiqueter, d'emballer, de vendre ou d'annoncer un aliment de manière à donner l'impression qu'il est conçu pour les régimes amaigrissants, à moins que cet aliment ne soit

**a)** un substitut de repas dont la composition répond aux exigences de l'article B.24.200;

**b)** un repas préemballé;

**c)** un aliment vendu par une clinique d'amaigrissement à ses clients pour être consommé dans le cadre d'un programme d'amaigrissement supervisé par le personnel de la clinique;

**d)** un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie et dont la composition répond aux exigences de l'article B.24.303.

**(4)** Sauf disposition contraire du présent règlement, il est interdit d'étiqueter, d'emballer, de vendre ou d'annoncer un aliment, en le présentant comme étant « diététique » ou « diète » ou d'inclure l'un ou l'autre de ces mots dans sa marque à moins que son étiquette comporte une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, conformément à l'article B.01.503, en regard de l'un des sujets ci-après visé à la colonne 1 :

**a)** « sans énergie », visé à l'article 1;

**b)** « peu d'énergie », visé à l'article 2;

**c)** « énergie réduite », visé à l'article 3;

**d)** « moins d'énergie », visé à l'article 4;

**e)** « sans sucres », visé à l'article 37.

DORS/78-64, art. 2; DORS/78-698, art. 5; DORS/84-334, art. 1; DORS/86-178, art. 8(A); DORS/94-35, art. 2; DORS/95-444, art. 1; DORS/95-474, art. 4; DORS/2003-11, art. 21; DORS/2021-57, art. 11; DORS/2022-168, art. 52.

**B.24.004 à B.24.014** [Abrogés, DORS/2003-11, art. 22]

**B.24.015 et B.24.016** [Abrogés, DORS/88-559, art. 26]

**B.24.017 (1)** Lorsque le ministre demande par écrit au fabricant d'une préparation pour régime liquide, d'un

use in a very low energy diet is requested in writing by the Minister to submit, on or before a specified day, evidence with respect to that product, the manufacturer shall make no further sales of that product after that day unless the manufacturer has submitted the evidence requested.

**(2)** If the Minister determines that the evidence submitted by a manufacturer under subsection (1) is not sufficient, he or she shall so notify the manufacturer in writing.

**(3)** Where, pursuant to subsection (2), a manufacturer is notified that the evidence with respect to a formulated liquid diet, a meal replacement or a food represented for use in a very low energy diet is not sufficient, the manufacturer shall make no further sales of that product unless the manufacturer submits further evidence and is notified in writing by the Minister that the further evidence is sufficient.

**(4)** A reference in this section to evidence with respect to a formulated liquid diet, a meal replacement or a food represented for use in a very low energy diet means evidence to establish that the food is nutritionally adequate to be used as the sole source of nutrition in meeting the nutritional needs of a person for whom it is intended, when the food is consumed in accordance with the directions for use.

SOR/78-698, s. 6; SOR/94-35, s. 3; SOR/2018-69, ss. 11, 27.

**B.24.018** It is prohibited to label, package, sell or advertise a food in a manner likely to create an impression that it is a gluten-free food if the food contains any gluten protein or modified gluten protein, including any gluten protein fraction, referred to in the definition ***gluten*** in subsection B.01.010.1(1).

SOR/95-444, s. 2; SOR/2011-28, s. 6.

**B.24.019** [Repealed, SOR/2003-11, s. 23]

## Formulated Liquid Diets

**B.24.100** No person shall advertise a formulated liquid diet to the general public.

SOR/78-64, s. 7; SOR/78-698, s. 7.

**B.24.101** No person shall sell a formulated liquid diet unless the food

**(a)** if sold ready to serve, or

**(b)** if not sold ready to serve, when diluted with water, milk, or water and milk,

substitut de repas ou d'un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie de soumettre, à une date précise ou avant celle-ci, des preuves relatives à ce produit, le fabricant doit cesser de vendre ce produit le lendemain de cette date à moins d'avoir déposé les preuves demandées.

**(2)** Si le ministre conclut que les preuves présentées par le fabricant en application du paragraphe (1) sont insuffisantes, il en avise le fabricant par écrit.

**(3)** Lorsque, aux termes du paragraphe (2), un fabricant est informé que les preuves relatives à la préparation pour régime liquide, au substitut de repas ou à l'aliment présenté comme étant conçu pour un régime à très faible teneur en énergie sont insuffisantes, il doit cesser de vendre ce produit à moins qu'il ne présente des preuves supplémentaires et que le ministre ne l'informe par écrit qu'elles sont suffisantes.

**(4)** Dans le présent article, les preuves relatives à une préparation pour régime liquide, à un substitut de repas ou à un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie s'entendent des preuves permettant d'établir que l'aliment possède les qualités nutritives voulues pour être utilisé comme source nutritive unique qui répond aux besoins nutritifs des personnes à qui il est destiné lorsqu'il est consommé suivant le mode d'emploi.

DORS/78-698, art. 6; DORS/94-35, art. 3; DORS/2018-69, art. 11 et 27.

**B.24.018** Il est interdit d'étiqueter, d'emballer ou de vendre un aliment qui contient une protéine de gluten ou une protéine de gluten modifiée, y compris toute fraction protéique de gluten, visée à la définition de ***gluten*** au paragraphe B.01.010.1(1), ou d'en faire la publicité, de manière qui puisse donner l'impression qu'il est sans gluten.

DORS/95-444, art. 2; DORS/2011-28, art. 6.

**B.24.019** [Abrogé, DORS/2003-11, art. 23]

## Préparations pour régime liquide

**B.24.100** Est interdite la publicité au grand public d'une préparation pour régime liquide.

DORS/78-64, art. 7; DORS/78-698, art. 7.

**B.24.101** Il est interdit de vendre une préparation pour régime liquide à moins que l'aliment,

**a)** s'il est vendu prêt à servir, ou

**b)** s'il n'est pas vendu prêt à servir, lorsque dilué avec de l'eau, du lait, ou les deux,

is a complete substitute for the total diet in meeting the nutritional requirements of a person.

SOR/78-64, s. 7.

**B.24.102 (1)** Subject to subsection (4), a formulated liquid diet shall contain, when ready to serve,

**(a)** either

**(i)** not less than 20 grams of protein of nutritional quality equivalent to casein, as determined by official method FO-1, Determination of Protein Rating, October 15, 1981, or

**(ii)** such an amount and quality of protein, including those proteins to which amino acids are added, that, when the quality of the protein is expressed as a fraction of the quality of casein,

**(A)** the fraction will not be less than 85/100, and

**(B)** the result obtained by multiplying the fraction by the gram weight of the protein will not be less than 20; and

**(b)** not less than one gram linoleic acid in the form of a glyceride.

**(2)** Notwithstanding sections D.01.009, D.01.011 and D.02.009, a formulated liquid diet shall contain, when ready to serve, the vitamins and minerals named in Column I of the table to this section in amounts,

**(a)** where the recommended intake of the food is 2,500 kilocalories per day or less, not less than the amounts set out in Column II and not more than the amounts, if any, set out in Column III of that table opposite those vitamins and minerals; and

**(b)** where the recommended intake of the food is greater than 2,500 kilocalories per day, not less than the amounts set out in Column IV and not more than the amounts, if any, set out in Column V of the table opposite those vitamins and minerals.

**(3)** The amounts of the nutrients specified in paragraphs (1)(a) and (b) and subsection (2) shall be calculated

**(a)** per 1,000 available kilocalories, where the recommended intake of the food is 2,500 kilocalories per day or less; and

**(b)** per 1,500 available kilocalories, where recommended intake of the food is greater than 2,500 kilocalories per day.

ne soit un succédané complet du régime total en ce qu'il satisfait aux besoins nutritionnels d'une personne.

DORS/78-64, art. 7.

**B.24.102 (1)** Sous réserve du paragraphe (4), une préparation pour régime liquide doit, lorsqu'elle est prête à servir :

**a)** contenir :

**(i)** soit au moins 20 g de protéines d'une qualité nutritive équivalente à la caséine, après analyse selon la méthode officielle FO-1, *Détermination de cote protéique*, du 15 octobre 1981,

**(ii)** soit une quantité et une qualité de protéines, y compris les protéines additionnées d'acides aminés, dont, lorsque la qualité des protéines est exprimée comme une fraction de la qualité de la caséine :

**(A)** la fraction ne sera pas inférieure à 85/100,

**(B)** le résultat de la multiplication de la fraction et du poids en grammes de la protéine ne sera pas inférieur à 20;

**b)** contenir au moins l g d'acide linoléique sous forme de glycéride.

**(2)** Par dérogation aux articles D.01.009, D.01.011 et D.02.009, une préparation pour régime liquide doit contenir, lorsqu'elle est prête à servir, les vitamines et les minéraux mentionnés dans la colonne I du tableau du présent article :

**a)** lorsque l'apport recommandé est de 2 500 kcal par jour ou moins, en quantités non inférieures à celles visées à la colonne II et non supérieures à celles visées à la colonne III;

**b)** lorsque l'apport recommandé est supérieur à 2 500 kcal par jour, en quantités non inférieures à celles visées à la colonne IV et non supérieures à celles visées à la colonne V.

**(3)** Les quantités d'éléments nutritifs visées aux alinéas (1)a) et b) et au paragraphe (2) doivent être calculées :

**a)** par 1 000 kcal disponibles, lorsque l'apport recommandé est de 2 500 kcal par jour ou moins;

**b)** par 1 500 kcal disponibles, lorsque l'apport recommandé est supérieur à 2 500 kcal par jour.

**(4)** Paragraph (1)(a) does not apply to a formulated liquid diet represented as being for a protein restricted diet or a low (named amino acid) diet.

**(4)** L'alinéa (1)a) ne s'applique pas à une préparation pour régime liquide recommandée pour un régime à teneur réduite en protéines ou à faible teneur en (nom de l'acide aminé).

**TABLE**

| | Per 1,000 available kilocalories | | Per 1,500 available kilocalories | |
|---|---|---|---|---|
| Column I | Column II | Column III | Column IV | Column V |
| *Vitamins* | *Minimum* | *Maximum* | *Minimum* | *Maximum* |
| Vitamin A | 2,000 I.U. | 5,000 I.U. | 2,000 I.U. | 3,000 I.U. |
| Vitamin D | 100 I.U. | 400 I.U. | 100 I.U. | 200 I.U. |
| Vitamin E (a-tocopherol) | 5.0 I.U. | | 5.0 I.U. | |
| Ascorbic Acid | 20 mg | | 20 mg | |
| Thiamine | 0.5 mg | | 0.6 mg | |
| Riboflavin | 0.7 mg | | 0.84 mg | |
| Niacin | 6.6 mg | | 7.9 mg | |
| Vitamin $B_6$ | 0.9 mg | | 0.9 mg | |
| Vitamin $B_{12}$ | 1.5 µg | | 1.5 µg | |
| Folic Acid | 100 µg | | 100 µg | |
| d-pantothenic Acid | 2.5 mg | | 2.5 mg | |
| *Mineral Nutrients* | | | | |
| Calcium | 400 mg | | 400 mg | |
| Phosphorus | 400 mg | | 400 mg | |
| Iron | 8 mg | | 8 mg | |
| Iodine | 50 µg | | 50 µg | |
| Magnesium | 150 mg | | 150 mg | |
| Copper | 1 mg | | 1 mg | |
| Zinc | 7 mg | | 7 mg | |

**TABLEAU**

| | Par 1 000 kcal disponibles | | Par 1 500 kcal disponibles | |
|---|---|---|---|---|
| Colonne I | Colonne II | Colonne III | Colonne IV | Colonne V |
| *Vitamines* | *Quantité minimale* | *Quantité maximale* | *Quantité minimale* | *Quantité maximale* |
| Vitamine A | 2 000 U.I. | 5 000 U.I | 2 000 U.I. | 3 000 U.I. |
| Vitamine D | 100 U.I. | 400 U.I. | 100 U.I. | 200 U.I. |
| Vitamine E (a-tocophérol) | 5 U.I. | | 5 U.I. | |
| Acide ascorbique | 20 mg | | 20 mg | |
| Thiamine | 0,5 mg | | 0,6 mg | |
| Riboflavine | 0,7 mg | | 0,84 mg | |
| Niacine | 6,6 mg | | 7,9 mg | |
| Vitamine $B_6$ | 0,9 mg | | 0,9 mg | |
| Vitamine $B_{12}$ | 1,5 µg | | 1,5 µg | |
| Acide folique | 100 µg | | 100 µg | |
| Acide d-pantothénique | 2,5 mg | | 2,5 mg | |
| *Minéraux* | | | | |
| Calcium | 400 mg | | 400 mg | |
| Phosphore | 400 mg | | 400 mg | |
| Fer | 8 mg | | 8 mg | |
| Iode | 50 µg | | 50 µg | |

| | Par 1 000 kcal disponibles | | Par 1 500 kcal disponibles | |
|---|---|---|---|---|
| Colonne I | Colonne II | Colonne III | Colonne IV | Colonne V |
| *Vitamines* | *Quantité minimale* | *Quantité maximale* | *Quantité minimale* | *Quantité maximale* |
| Magnésium | 150 mg | | 150 mg | |
| Cuivre | 1 mg | | 1 mg | |
| Zinc | 7 mg | | 7 mg | |

SOR/78-64, s. 7; SOR/78-698, s. 8; SOR/82-768, s. 75; SOR/87-640, s. 9(F); SOR/90-830, s. 6(F); SOR/2022-197, s. 5(E).

**B.24.103** The label of a formulated liquid diet shall carry the following information:

**(a)** a statement that the food is intended to be consumed orally or by tube feeding;

**(b)** a statement of the energy value of the food, expressed in Calories

**(i)** per 100 grams or per 100 millilitres of the food as offered for sale, and

**(ii)** per unit of ready-to-serve food;

**(c)** a statement of the content in the food of protein or protein equivalent, fat, linoleic acid, available carbohydrate and, where present, crude fibre, expressed in grams

**(i)** per 100 grams or per 100 millilitres of the food as offered for sale, and

**(ii)** per unit of ready-to-serve food;

**(d)** a statement of the content of vitamins and mineral nutrients that are listed in the table to section B.24.102, expressed in International Units, milligrams or micrograms

**(i)** per 100 grams or per 100 millilitres of the food as offered for sale, and

**(ii)** per unit of ready-to-serve food;

**(e)** a statement of the content of any vitamin or mineral nutrient that is not listed in the table to section B.24.102, expressed in milligrams or micrograms

**(i)** per 100 grams or per 100 millilitres of the food as offered for sale, and

**(ii)** per unit of ready-to-serve food;

**(f)** complete directions for the preparation and use of the food and for its storage after the container has been opened; and

DORS/78-64, art. 7; DORS/78-698, art. 8; DORS/82-768, art. 75; DORS/87-640, art. 9(F); DORS/90-830, art. 6(F); DORS/2022-197, art. 5(A).

**B.24.103** L'étiquette d'une préparation pour régime liquide doit porter les renseignements suivants :

**a)** une mention indiquant que l'aliment est destiné à être consommé par voie orale ou administré à la sonde stomacale;

**b)** une mention de la valeur énergétique de l'aliment, exprimée en Calories :

**(i)** par 100 grammes ou par 100 millilitres de l'aliment sous sa forme commerciale,

**(ii)** par unité de l'aliment prêt à servir;

**c)** une mention de la teneur de l'aliment en protéines ou en équivalent de protéines, en matières grasses, en acide linoléique, en glucides disponibles et, s'il y a lieu, en fibres brutes, exprimée en grammes :

**(i)** par 100 grammes ou par 100 millilitres de l'aliment sous sa forme commerciale,

**(ii)** par unité de l'aliment prêt à servir;

**d)** une mention de la teneur en vitamines et en minéraux nutritifs énumérés au tableau de l'article B.24.102, exprimée en unités internationales, en milligrammes ou en microgrammes :

**(i)** par 100 grammes ou par 100 millilitres de l'aliment sous sa forme commerciale,

**(ii)** par unité de l'aliment prêt à servir;

**e)** une mention de la teneur en une vitamine ou un minéral nutritif autres que ceux énumérés au tableau de l'article B.24.102, exprimée en milligrammes ou en microgrammes :

**(i)** par 100 grammes ou par 100 millilitres de l'aliment sous sa forme commerciale,

**(ii)** par unité de l'aliment prêt à servir;

**(g)** the expiration date of the formulated liquid diet.

SOR/78-64, s. 7; SOR/88-559, s. 27; SOR/2022-197, s. 6.

**f)** un mode complet de préparation et d'emploi, ainsi que les indications nécessaires à sa conservation après l'ouverture du contenant et

**g)** la date limite de son utilisation.

DORS/78-64, art. 7; DORS/88-559, art 27; DORS/2022-197, art. 6.

## Meal Replacements, Nutritional Supplements, Prepackaged Meals and Foods Sold by Weight Reduction Clinics

**B.24.200 (1)** No person shall sell or advertise a meal replacement unless, when in a ready-to-serve form or when prepared according to directions for use, with water, milk, partially skim milk or skim milk, or a combination thereof, it meets the following requirements:

**(a)** the meal replacement provides a minimum of 225 kcal or 945 kJ per serving;

**(b)** not less than 15 per cent and not more than 40 per cent of the energy available from the meal replacement is derived from its protein content, except that a meal replacement for use in a weight reduction diet shall derive not less than 20 per cent of its available energy from its protein content;

**(c)** subject to subsection (2), not more than 35 per cent of the energy available from the meal replacement is derived from its fat content;

**(d)** not less than 3.0 per cent of the energy available from the meal replacement is derived from linoleic acid in the form of a glyceride and not less than 0.5 per cent of the energy available from the meal replacement is derived from n-3 linolenic acid in the form of a glyceride, and the ratio of linoleic acid to n-3 linolenic acid is not less than 4 to 1 and not more than 10 to 1;

**(e)** the proteins present in the meal replacement are

**(i)** of a nutritional quality equivalent to that of casein, or

**(ii)** of a nutritional quality and in an amount sufficient to yield a result of not less than 15 per cent, or not less than 20 per cent in the case of a meal replacement for use in a weight reduction diet, when the nutritional quality of those proteins is divided by the nutritional quality of casein and multiplied by the percentage of energy available from the proteins present in the meal replacement; and

## Substituts de repas, suppléments nutritifs, repas préemballés et aliments vendus par les cliniques d'amaigrissement

**B.24.200 (1)** Il est interdit de vendre ou d'annoncer un substitut de repas à moins que, dans son état prêt à servir ou une fois préparé, selon le mode d'emploi, avec de l'eau, du lait, du lait partiellement écrémé, du lait écrémé ou une combinaison de ces produits, il ne réponde aux exigences suivantes :

**a)** il procure au moins 225 Kcal ou 945 kJ par portion;

**b)** au moins 15 pour cent et au plus 40 pour cent de l'énergie utilisable provient de sa teneur en protéines, sauf dans le cas d'un substitut de repas pour régimes amaigrissants, où au moins 20 pour cent de l'énergie utilisable provient de sa teneur en protéines;

**c)** sous réserve du paragraphe (2), au plus 35 pour cent de l'énergie utilisable provient de sa teneur en lipides;

**d)** au moins 3,0 pour cent de l'énergie utilisable provient de l'acide linoléique sous forme de glycéride et au moins 0,5 pour cent de l'énergie utilisable provient de l'acide linolénique n-3 sous forme de glycéride, et le rapport entre l'acide linoléique et l'acide linolénique n-3 est d'au moins 4 à 1 et d'au plus 10 à 1;

**e)** les protéines qu'il contient sont :

**(i)** soit d'une qualité nutritive équivalente à celle de la caséine,

**(ii)** soit de qualité nutritive et en quantité suffisantes pour donner un résultat d'au moins 15 pour cent, ou d'au moins 20 pour cent dans le cas d'un substitut de repas pour régimes amaigrissants, lorsque la qualité nutritive de ces protéines est divisée par la qualité nutritive de la caséine et ensuite multipliée par le pourcentage de l'énergie utilisable provenant de la teneur en protéines;

**f)** toute portion de celui-ci contient chacune des vitamines et chacun des minéraux nutritifs énumérés dans la colonne I du tableau du présent article, en une quantité :

**(f)** each serving of the meal replacement contains each vitamin and mineral nutrient listed in column I of the table to this section

**(i)** subject to subsection (3), in an amount not less than the minimum amount shown for that vitamin or mineral nutrient in column II of the table, and

**(ii)** subject to subsections (4) and (5), in an amount that, including overage, is not more than the maximum amount shown for that vitamin or mineral nutrient in column III of the table.

**(2)** No person shall sell or advertise a meal replacement that is represented as a replacement for all daily meals unless, when in a ready-to-serve form or when prepared according to directions for use, with water, milk, partially skim milk or skim milk, or a combination thereof, it meets the following requirements:

**(a)** not more than 30 per cent of the energy available from the meal replacement is derived from its fat content; and

**(b)** not more than 10 per cent of the energy available from the meal replacement is derived from its saturated fatty acid content.

**(3)** The minimum amount required under subparagraph (1)(f)(i) for selenium, chromium or molybdenum does not apply in respect of a meal replacement that is not represented as a replacement for all daily meals and that does not contain added selenium, chromium or molybdenum, as the case may be.

**(4)** A vitamin or mineral nutrient that is not an added ingredient in the meal replacement shall not be taken into account for the purposes of subparagraph (1)(f)(ii).

**(5)** The maximum amount shown for vitamin C in column III of the table to this section does not include overage.

**TABLE**

| Column I<br>Nutrients | Column II<br>Minimum Amount per Serving | Column III<br>Maximum Amount per Serving |
|---|---|---|
| **VITAMINS** | | |
| Vitamin A | 250 RE | 630 RE |
| Vitamin D | 1.25 µg | 2.50 µg |
| Vitamin E | 2.5 mg | 5.0 mg |
| Vitamin C | 10 mg | 20 mg |

**(i)** sous réserve du paragraphe (3), non inférieure à la quantité minimale indiquée à la colonne II,

**(ii)** sous réserve des paragraphes (4) et (5), non supérieure, compte tenu du surtitrage, à la quantité maximale indiquée à la colonne III.

**(2)** Il est interdit de vendre ou d'annoncer un substitut de repas présenté comme étant le substitut de tous les repas de la journée, à moins que, dans son état prêt à servir ou une fois préparé, selon le mode d'emploi, avec de l'eau, du lait, du lait partiellement écrémé, du lait écrémé ou une combinaison de ces produits, il ne réponde aux exigences suivantes :

**a)** au plus 30 pour cent de l'énergie utilisable provient de sa teneur en lipides;

**b)** au plus 10 pour cent de l'énergie utilisable provient de sa teneur en acides gras saturés.

**(3)** Le substitut de repas qui n'est pas présenté comme étant le substitut de tous les repas de la journée est soustrait à l'application du sous-alinéa (1)f)(i) quant à la quantité minimale de sélénium, de chrome ou de molybdène, s'il ne contient aucune quantité ajoutée de ce minéral nutritif.

**(4)** Il est fait abstraction, pour l'application du sous-alinéa (1)f)(ii), des vitamines et des minéraux nutritifs qui ne sont pas des ingrédients ajoutés dans le substitut de repas.

**(5)** La quantité maximale de vitamine C indiquée à la colonne III du tableau du présent article n'inclut pas le surtitrage.

**TABLEAU**

| Colonne I<br>Éléments nutritifs | Colonne II<br>Quantité minimale par portion | Colonne III<br>Quantité maximale par portion |
|---|---|---|
| **VITAMINES** | | |
| Vitamine A | 250 ER | 630 ER |
| Vitamine D | 1,25 µg | 2,50 µg |
| Vitamine E | 2,5 mg | 5,0 mg |
| Vitamine C | 10 mg | 20 mg |

| Column I<br>Nutrients | Column II<br>Minimum Amount per Serving | Column III<br>Maximum Amount per Serving |
|---|---|---|
| Thiamine | 300 µg | 750 µg |
| Riboflavin | 400 µg | 800 µg |
| Niacin | 6 NE | 12 NE |
| Vitamin $B_6$ | 400 µg | 750 µg |
| Vitamin $B_{12}$ | 0.25 µg | 0.75 µg |
| Folacin | 60 µg | 120 µg |
| Pantothenic acid | 1.25 mg | 2.50 mg |
| Biotin | 25 µg | 75 µg |
| **MINERAL NUTRIENTS** | | |
| Calcium | 200 mg | 400 mg |
| Phosphorus | 250 mg | 500 mg |
| Iron | 2.5 mg | 5.0 mg |
| Iodide | 40 µg | 120 µg |
| Magnesium | 60 mg | 120 mg |
| Copper | 0.5 mg | 1.0 mg |
| Zinc | 3 mg | 6 mg |
| Potassium | 375 mg | |
| Sodium | 250 mg | |
| Manganese | 1 mg | 2 mg |
| Selenium | 10 µg | 20 µg |
| Chromium | 10 µg | 20 µg |
| Molybdenum | 20 µg | 40 µg |

SOR/78-698, s. 9; SOR/80-13, s. 14; SOR/95-474, s. 5.

**B.24.201 (1)** No person shall sell or advertise a nutritional supplement that contains less than 225 kcal or 945 kJ per serving, unless it meets the following requirements:

**(a)** the nutritional supplement contains at least 150 kcal or 630 kJ per serving;

**(b)** not less than 15 per cent and no more than 40 per cent of the energy available from the nutritional supplement is derived from its protein content;

**(c)** the proteins present in the nutritional supplement are

**(i)** of a nutritional quality equivalent to that of casein, or

**(ii)** of a nutritional quality and in an amount sufficient to yield a result of not less than 15 per cent when the nutritional quality of those proteins is

| Colonne I<br>Éléments nutritifs | Colonne II<br>Quantité minimale par portion | Colonne III<br>Quantité maximale par portion |
|---|---|---|
| Thiamine | 300 µg | 750 µg |
| Riboflavine | 400 µg | 800 µg |
| Niacine | 6 EN | 12 EN |
| Vitamine $B_6$ | 400 µg | 750 µg |
| Vitamine $B_{12}$ | 0,25 µg | 0,75 µg |
| Folacine | 60 µg | 120 µg |
| Acide pantothénique | 1,25 mg | 2,50 mg |
| Biotine | 25 µg | 75 µg |
| **MINÉRAUX NUTRITIFS** | | |
| Calcium | 200 mg | 400 mg |
| Phosphore | 250 mg | 500 mg |
| Fer | 2,5 mg | 5,0 mg |
| Iode | 40 µg | 120 µg |
| Magnésium | 60 mg | 120 mg |
| Cuivre | 0,5 mg | 1,0 mg |
| Zinc | 3 mg | 6 mg |
| Potassium | 375 mg | |
| Sodium | 250 mg | |
| Manganèse | 1 mg | 2 mg |
| Sélénium | 10 µg | 20 µg |
| Chrome | 10 µg | 20 µg |
| Molybdène | 20 µg | 40 µg |

DORS/78-698, art. 9; DORS/80-13, art. 14; DORS/95-474, art. 5.

**B.24.201 (1)** Il est interdit de vendre ou d'annoncer un supplément nutritif qui contient moins de 225 Kcal ou 945 kJ par portion, à moins qu'il ne réponde aux exigences suivantes :

**a)** il contient au moins 150 Kcal ou 630 kJ par portion;

**b)** au moins 15 pour cent et au plus 40 pour cent de l'énergie utilisable provient de sa teneur en protéines;

**c)** les protéines qu'il contient sont :

**(i)** soit d'une qualité nutritive équivalente à celle de la caséine,

**(ii)** soit de qualité nutritive et en quantité suffisantes pour donner un résultat d'au moins 15 pour cent lorsque la qualité nutritive de ces protéines est divisée par la qualité nutritive de la caséine et ensuite multipliée par le pourcentage de l'énergie utilisable provenant de sa teneur en protéines;

divided by the nutritional quality of casein and multiplied by the percentage of energy available from the proteins present in the nutritional supplement; and

**(d)** the nutritional supplement contains, per 100 kcal or 420 kJ, each vitamin and mineral nutrient listed in column I of the table to this section

**(i)** subject to subsection (3), in an amount not less than the minimum amount shown for that vitamin or mineral nutrient in column II of the table, and

**(ii)** subject to subsections (4) and (5), in an amount that, including overage, is not more than the maximum amount shown for that vitamin or mineral nutrient in column III of the table.

**(2)** No person shall sell or advertise a nutritional supplement that provides 225 kcal or 945 kJ, or more, per serving unless, when in a ready-to-serve form or when prepared according to directions for use, with water, milk, partially skim milk, skim milk, or a combination thereof, it meets the following requirements:

**(a)** the nutritional supplement provides at least 225 kcal or 945 kJ per serving;

**(b)** not more than 35 per cent of the energy available from the nutritional supplement is derived from its fat content;

**(c)** not less than 3.0 per cent of the energy available from the nutritional supplement is derived from linoleic acid in the form of a glyceride and not less than 0.5 per cent of the energy available from the nutritional supplement is derived from n-3 linolenic acid in the form of a glyceride, and the ratio of linoleic acid to n-3 linolenic acid is not less than 4 to 1 and not more than 10 to 1;

**(d)** not less than 15 per cent and not more than 40 per cent of the energy available from the nutritional supplement is derived from its protein content;

**(e)** the proteins present in the nutritional supplement are

**(i)** of a nutritional quality equivalent to that of casein, or

**(ii)** of a nutritional quality and in an amount sufficient to yield a result of not less than 15 per cent when the nutritional quality of those proteins is divided by the nutritional quality of casein and multiplied by the percentage of energy available from the proteins present in the nutritional supplement; and

**d)** il contient, par 100 Kcal ou 420 kJ, chacune des vitamines et chacun des minéraux nutritifs énumérés dans la colonne I du tableau du présent article, en une quantité :

**(i)** sous réserve du paragraphe (3), non inférieure à la quantité minimale indiquée à la colonne II,

**(ii)** sous réserve des paragraphes (4) et (5), non supérieure, compte tenu du surtitrage, à la quantité maximale indiquée à la colonne III.

**(2)** Il est interdit de vendre ou d'annoncer un supplément nutritif qui procure 225 Kcal ou 945 kJ ou plus par portion, à moins que, dans son état prêt à servir ou une fois préparé, selon le mode d'emploi, avec de l'eau, du lait, du lait partiellement écrémé, du lait écrémé ou une combinaison de ces produits, il ne réponde aux exigences suivantes :

**a)** il procure au moins 225 Kcal ou 945 kJ par portion;

**b)** au plus 35 pour cent de l'énergie utilisable provient de sa teneur en lipides;

**c)** au moins 3,0 pour cent de l'énergie utilisable provient de l'acide linoléique sous forme de glycéride et au moins 0,5 pour cent de l'énergie utilisable provient de l'acide linolénique n-3 sous forme de glycéride, et le rapport entre l'acide linoléique et l'acide linolénique n-3 est d'au moins 4 à 1 et d'au plus 10 à 1;

**d)** au moins 15 pour cent et au plus 40 pour cent de l'énergie utilisable provient de sa teneur en protéines;

**e)** les protéines qu'il contient sont :

**(i)** soit d'une qualité nutritive équivalente à celle de la caséine,

**(ii)** soit de qualité nutritive et en quantité suffisantes pour donner un résultat d'au moins 15 pour cent lorsque la qualité nutritive de ces protéines est divisée par la qualité nutritive de la caséine et ensuite multipliée par le pourcentage de l'énergie utilisable provenant de sa teneur en protéines;

**f)** il contient, par 100 Kcal ou 420 kJ, chacune des vitamines et chacun des minéraux nutritifs énumérés dans la colonne I du tableau du présent article, en une quantité :

**(f)** the nutritional supplement contains, per 100 kcal or 420 kJ, each vitamin and mineral nutrient listed in column I of the table to this section

**(i)** subject to subsection (3), in an amount not less than the minimum amount shown for that vitamin or mineral nutrient in column II of the table, and

**(ii)** subject to subsections (4) and (5), in an amount that, including overage, is not more than the maximum amount shown for that vitamin or mineral nutrient in column III of the table.

**(i)** sous réserve du paragraphe (3), non inférieure à la quantité minimale indiquée à la colonne II,

**(ii)** sous réserve des paragraphes (4) et (5), non supérieure, compte tenu du surtitrage, à la quantité maximale indiquée à la colonne III.

**(3)** The minimum amount required under subparagraph (1)(d)(i) or (2)(f)(i) for selenium, chromium or molybdenum does not apply in respect of a nutritional supplement that does not contain added selenium, chromium or molybdenum, as the case may be.

**(3)** Est soustrait à l'application des sous-alinéas (1)d)(i) et (2)f)(i) quant à la quantité minimale de sélénium, de chrome ou de molybdène, le supplément nutritif qui ne contient aucune quantité ajoutée de ce minéral nutritif.

**(4)** A vitamin or mineral nutrient that is not an added ingredient in the nutritional supplement shall not be taken into account for the purposes of subparagraphs (1)(d)(ii) and (2)(f)(ii).

**(4)** Il est fait abstraction, pour l'application des sous-alinéas (1)d)(ii) et (2)f)(ii), des vitamines et des minéraux nutritifs qui ne sont pas des ingrédients ajoutés dans le supplément nutritif.

**(5)** The maximum amount shown for vitamin C in column III of the table to this section does not include overage.

**(5)** La quantité maximale de vitamine C indiquée à la colonne III du tableau du présent article n'inclut pas le surtitrage.

**TABLE**

| Column I<br>Nutrients | Column II<br>Minimum Amount per Available 100 Kcal or 420 KJ | Column III<br>Maximum Amount per Available 100 Kcal or 420 KJ |
|---|---|---|
| **VITAMINS** | | |
| Vitamin A | 100 RE | 250 RE |
| Vitamin D | 0.25 µg | 1 µg |
| Vitamin E | 1.0 mg | 2.0 mg |
| Vitamin C | 5 mg | 10 mg |
| Thiamine | 140 µg | 350 µg |
| Riboflavin | 180 µg | 360 µg |
| Niacin | 3 NE | 6 NE |
| Vitamin $B_6$ | 180 µg | 350 µg |
| Vitamin $B_{12}$ | 0.1 µg | 0.3 µg |
| Folacin | 30 µg | 60 µg |
| Pantothenic acid | 0.6 mg | 1.2 mg |
| Biotin | 12 µg | 35 µg |
| **MINERAL NUTRIENTS** | | |
| Calcium | 100 mg | 175 mg |
| Phosphorus | 100 mg | 175 mg |

**TABLEAU**

| Colonne I<br>Éléments nutritifs | Colonne II<br>Quantité minimale par 100 Kcal ou 420 kJ utilisables | Colonne III<br>Quantité maximale par 100 Kcal ou 420 kJ utilisables |
|---|---|---|
| **VITAMINES** | | |
| Vitamine A | 100 ER | 250 ER |
| Vitamine D | 0,25 µg | 1 µg |
| Vitamine E | 1,0 mg | 2,0 mg |
| Vitamine C | 5 mg | 10 mg |
| Thiamine | 140 µg | 350 µg |
| Riboflavine | 180 µg | 360 µg |
| Niacine | 3 EN | 6 EN |
| Vitamine $B_6$ | 180 µg | 350 µg |
| Vitamine $B_{12}$ | 0,1 µg | 0,3 µg |
| Folacine | 30 µg | 60 µg |
| Acide pantothénique | 0,6 mg | 1,2 mg |
| Biotine | 12 µg | 35 µg |
| **MINÉRAUX NUTRITIFS** | | |
| Calcium | 100 mg | 175 mg |
| Phosphore | 100 mg | 175 mg |

| Column I | Column II | Column III |
|---|---|---|
| Nutrients | Minimum Amount per Available 100 Kcal or 420 KJ | Maximum Amount per Available 100 Kcal or 420 KJ |
| Iron | 1.0 mg | 2.0 mg |
| Iodide | 15 µg | 45 µg |
| Magnesium | 20 mg | 40 mg |
| Copper | 0.15 mg | 0.30 mg |
| Zinc | 1.4 mg | 2.0 mg |
| Potassium | 175 mg | |
| Manganese | 0.45 mg | 0.90 mg |
| Selenium | 4 µg | 8 µg |
| Chromium | 4 µg | 8 µg |
| Molybdenum | 8 µg | 15 µg |

SOR/78-698, s. 9; SOR/95-474, s. 5.

| Colonne I | Colonne II | Colonne III |
|---|---|---|
| Éléments nutritifs | Quantité minimale par 100 Kcal ou 420 kJ utilisables | Quantité maximale par 100 Kcal ou 420 kJ utilisables |
| Fer | 1,0 mg | 2,0 mg |
| Iode | 15 µg | 45 µg |
| Magnésium | 20 mg | 40 mg |
| Cuivre | 0,15 mg | 0,30 mg |
| Zinc | 1,4 mg | 2,0 mg |
| Potassium | 175 mg | |
| Manganèse | 0,45 mg | 0,90 mg |
| Sélénium | 4 µg | 8 µg |
| Chrome | 4 µg | 8 µg |
| Molybdène | 8 µg | 15 µg |

DORS/78-698, art. 9; DORS/95-474, art. 5.

**B.24.202** The label of a meal replacement or nutritional supplement shall

**(a)** show the following information per serving of stated size and per stated quantity of food, when prepared according to the directions for use:

**(i)** the energy value of the food, expressed in Calories (Calories or Cal) and kilojoules (kilojoules or kJ),

**(ii)** the protein, fat, linoleic acid, n-3 linolenic acid, saturated fatty acid and carbohydrate contents of the food, expressed in grams,

**(iii)** the vitamin A, vitamin D, vitamin E, vitamin C, thiamin or vitamin $B_1$, riboflavin or vitamin $B_2$, niacin, vitamin $B_6$, vitamin $B_{12}$, folate and pantothenic acid or pantothenate contents of the food, expressed

**(A)** in the case of a meal replacement, as a percentage of the daily value specified in column 4 of Part 2 of the Table of Daily Values for that vitamin, and

**(B)** in the case of a nutritional supplement, in the applicable unit referred to in subsection D.01.003(1),

**(iv)** the calcium, phosphorus, iron, iodide, magnesium and zinc contents of the food, expressed

**B.24.202** L'étiquette d'un substitut de repas ou d'un supplément nutritif doit porter :

**a)** les renseignements suivants, par portion indiquée et par quantité spécifiée de l'aliment lorsque celui-ci est préparé selon le mode d'emploi :

**(i)** la valeur énergétique de l'aliment, exprimée en Calories (Calories ou Cal) et en kilojoules (kilojoules ou kJ),

**(ii)** sa teneur en protéines, en matières grasses, en acide linoléique, en acide linolénique n-3, en acides gras saturés et en glucides, exprimée en grammes,

**(iii)** sa teneur en vitamine A, en vitamine D, en vitamine E, en vitamine C, en thiamine ou vitamine $B_1$, en riboflavine ou vitamine $B_2$, en niacine, en vitamine $B_6$, en vitamine $B_{12}$, en folate et en acide pantothénique ou pantothénate, exprimée de la façon suivante :

**(A)** dans le cas du substitut de repas, en pourcentage de la valeur quotidienne qui est indiquée à la colonne 4 de la partie 2 du Tableau des valeurs quotidiennes pour ces vitamines,

**(B)** dans le cas du supplément nutritif, en l'unité applicable indiquée au paragraphe D.01.003(1),

**(iv)** sa teneur en calcium, en phosphore, en fer, en iode, en magnésium et en zinc, exprimée de la façon suivante :

**(A)** dans le cas du substitut de repas, en pourcentage de la valeur quotidienne qui est indiquée

**(A)** in the case of a meal replacement, as a percentage of the daily value specified in column 4 of Part 2 of the Table of Daily Values, and

**(B)** in the case of a nutritional supplement, in milligrams for calcium, phosphorus, iron, magnesium and zinc and in micrograms for iodide,

**(v)** the copper, potassium, sodium and manganese contents of the food, expressed in milligrams, and

**(vi)** the biotin, selenium, chromium and molybdenum contents of the food, expressed in micrograms;

**(b)** in the case of a meal replacement or a nutritional supplement to which milk, partially skim milk or skim milk is to be added, carry a statement that the nutrient content of the food has been determined taking into consideration the milk, partially skim milk or skim milk that will be added according to the directions for use;

**(c)** in the case of a meal replacement that is sold or advertised as a replacement for all daily meals in a weight reduction diet, include directions for use that would result in a daily energy intake of at least 900 kcal or 3 780 kJ;

**(d)** include the expiration date of the meal replacement or nutritional supplement;

**(e)** in the case of a meal replacement for use in a weight reduction diet, carry the statement "USEFUL IN WEIGHT REDUCTION ONLY AS PART OF AN ENERGY-REDUCED DIET / UTILE POUR PERDRE DU POIDS SEULEMENT DANS LE CADRE D'UN RÉGIME À TENEUR RÉDUITE EN ÉNERGIE" prominently displayed on the principal display panel; and

**(f)** in the case of a meal replacement for use in a weight reduction diet that is not represented as a replacement for all daily meals in a diet, include the information required under section B.24.204.

SOR/78-698, s. 9; SOR/88-559, s. 28; SOR/95-474, s. 5; SOR/2016-305, ss. 59, 75(F).

**B.24.203** The label of a prepackaged meal for use in a weight reduction diet or of a food to be sold in a weight reduction clinic shall

**(a)** [Repealed, SOR/2003-11, s. 24]

**(b)** carry the statement "USEFUL IN WEIGHT REDUCTION ONLY AS PART OF AN ENERGY-REDUCED DIET / UTILE POUR PERDRE DU POIDS SEULEMENT DANS LE CADRE D'UN RÉGIME À

à la colonne 4 de la partie 2 du Tableau des valeurs quotidiennes,

**(B)** dans le cas du supplément nutritif, en milligrammes pour le calcium, le phosphore, le fer, le magnésium et le zinc et en microgrammes pour l'iode,

**(v)** sa teneur en cuivre, en potassium, en sodium et en manganèse exprimée en milligrammes,

**(vi)** sa teneur en biotine, en sélénium, en chrome et en molybdène exprimée en microgrammes;

**b)** dans le cas du substitut de repas ou du supplément nutritif auquel il faut ajouter du lait, du lait partiellement écrémé ou du lait écrémé, une mention indiquant que la teneur nutritive de l'aliment a été établie compte tenu du lait, du lait partiellement écrémé ou du lait écrémé qui sera ajouté selon le mode d'emploi;

**c)** dans le cas du substitut de repas vendu ou annoncé comme étant le substitut de tous les repas de la journée dans un régime amaigrissant, le mode d'emploi qui assurera au consommateur un apport énergétique quotidien d'au moins 900 Kcal ou 3 780 kJ;

**d)** la date limite d'utilisation du substitut de repas ou du supplément nutritif;

**e)** dans le cas du substitut de repas pour régimes amaigrissants, la mention « UTILE POUR PERDRE DU POIDS SEULEMENT DANS LE CADRE D'UN RÉGIME À TENEUR RÉDUITE EN ÉNERGIE / USEFUL IN WEIGHT REDUCTION ONLY AS PART OF AN ENERGY-REDUCED DIET », inscrite bien en évidence dans l'espace principal de l'étiquette;

**f)** dans le cas du substitut de repas pour régimes amaigrissants qui n'est pas présenté comme étant le substitut de tous les repas de la journée, les renseignements requis à l'article B.24.204.

DORS/78-698, art. 9; DORS/88-559, art. 28; DORS/95-474, art. 5; DORS/2016-305, art. 59 et 75(F).

**B.24.203** L'étiquette d'un repas préemballé pour régimes amaigrissants ou d'un aliment destiné à être vendu dans une clinique d'amaigrissement doit porter :

**a)** [Abrogé, DORS/2003-11, art. 24]

**b)** la mention « UTILE POUR PERDRE DU POIDS SEULEMENT DANS LE CADRE D'UN RÉGIME À TENEUR RÉDUITE EN ÉNERGIE / USEFUL IN

TENEUR RÉDUITE EN ÉNERGIE" prominently displayed on the principal display panel; and

**(c)** include the information required under section B.24.204.

SOR/78-698, s. 9; SOR/88-559, s. 29; SOR/95-474, s. 5; SOR/2003-11, s. 24.

**B.24.204** The label of a prepackaged meal, or of a meal replacement other than a meal replacement represented as a replacement for all daily meals in a diet, that is packaged, sold or advertised for use in a weight reduction diet, or of a food to be sold in a weight reduction clinic, shall include, in the directions for use, a sample seven-day menu in which the prepackaged meal, meal replacement or food is used and which meets the following requirements:

**(a)** each daily meal includes a minimum of one serving, as described in *Canada's Food Guide to Healthy Eating*, published in 1992 by the Department of Supply and Services by authority of the Minister of National Health and Welfare, of one food from each of the following groups:

**(i)** milk, milk products or their alternatives,

**(ii)** meat and meat alternatives,

**(iii)** bread and grain products, and

**(iv)** vegetables and fruit;

**(b)** the daily energy intake provided for is not less than 1 200 kcal or 5 040 kJ;

**(c)** not more than 30 per cent of the total daily energy intake of the seven-day menu is derived from its fat content and not more than 10 per cent of the total daily energy intake of the menu is derived from its saturated fatty acid content;

**(d)** the mean daily intake of each nutrient listed in column I of the table to this section is not less than the amount shown in column II, in the case of a menu recommended for men, or in column III, in the case of a menu recommended for women; and

**(e)** the menu does not include any reference to vitamin or mineral supplements.

WEIGHT REDUCTION ONLY AS PART OF AN ENERGY-REDUCED DIET », inscrite bien en évidence dans l'espace principal de l'étiquette;

**c)** les renseignements requis à l'article B.24.204.

DORS/78-698, art. 9; DORS/88-559, art. 29; DORS/95-474, art. 5; DORS/2003-11, art. 24.

**B.24.204** L'étiquette du repas préemballé ou du substitut de repas, autre que le substitut de repas présenté comme étant le substitut de tous les repas de la journée, qui sont emballés, vendus ou annoncés comme étant pour des régimes amaigrissants, ou l'étiquette d'un aliment destiné à être vendu dans une clinique d'amaigrissement, doit comprendre dans le mode d'emploi un menu type de sept jours dans lequel figure le repas préemballé, le substitut de repas ou l'aliment et qui répond aux exigences suivantes :

**a)** chaque repas quotidien comprend au moins une portion, selon la description qui en est donnée dans la publication intitulée *Guide alimentaire canadien pour manger sainement*, autorisée par le ministre de la Santé nationale et du Bien-être social et publiée en 1992 par le ministère des Approvisionnements et Services, d'un aliment de chacun des groupes suivants :

**(i)** lait, produits du lait ou leurs substituts,

**(ii)** viande et substituts de viande,

**(iii)** pain et produits céréaliers,

**(iv)** légumes et fruits;

**b)** l'apport énergétique quotidien n'est pas inférieur à 1 200 Kcal ou 5 040 kJ;

**c)** au plus 30 pour cent de l'apport énergétique quotidien total provient de sa teneur en lipides et au plus 10 pour cent de l'apport énergétique quotidien total provient de sa teneur en acides gras saturés;

**d)** l'apport quotidien moyen de chacun des éléments nutritifs énumérés dans la colonne I du tableau du présent article n'est pas inférieur à la quantité indiquée à la colonne II, dans le cas d'un menu recommandé pour les hommes, ou à celle indiquée à la colonne III, dans le cas d'un menu recommandé pour les femmes;

**e)** le menu ne mentionne aucun supplément de vitamines ou de minéraux nutritifs.

**TABLE**

| Column I | Column II | Column III |
|---|---|---|
| | Mean Daily Intake | |
| Nutrients | Men | Women |
| Protein | 65 g | 55 g |
| **VITAMINS** | | |
| Vitamin A | 1000 RE | 800 RE |
| Vitamin D | 5 µg | 5 µg |
| Vitamin E | 10 mg | 7 mg |
| Vitamin C | 40 mg | 30 mg |
| Thiamin | 1 mg | 1 mg |
| Riboflavin | 1 mg | 1 mg |
| Niacin | 14 NE | 14 NE |
| Vitamin $B_6$ | 1.5 mg | 1.5 mg |
| Vitamin $B_{12}$ | 1 µg | 1 µg |
| Folacin | 230 µg | 200 µg |
| Pantothenic Acid | 5 mg | 5 mg |
| **MINERAL NUTRIENTS** | | |
| Calcium | 800 mg | 800 mg |
| Phosphorus | 1000 mg | 850 mg |
| Iron | 9 mg | 13 mg |
| Iodide | 160 µg | 160 µg |
| Magnesium | 250 mg | 210 mg |
| Copper | 2 mg | 2 mg |
| Zinc | 12 mg | 9 mg |

SOR/78-698, s. 9; SOR/95-474, s. 5.

**TABLEAU**

| Colonne I | Colonne II | Colonne III |
|---|---|---|
| | Ingestion quotidienne moyenne | |
| Éléments nutritifs | Hommes | Femmes |
| Protéines | 65 g | 55 g |
| **VITAMINES** | | |
| Vitamine A | 1000 ER | 800 ER |
| Vitamine D | 5 µg | 5 µg |
| Vitamine E | 10 mg | 7 mg |
| Vitamine C | 40 mg | 30 mg |
| Thiamine | 1 mg | 1 mg |
| Riboflavine | 1 mg | 1 mg |
| Niacine | 14 EN | 14 EN |
| Vitamine $B_6$ | 1,5 mg | 1,5 mg |
| Vitamine $B_{12}$ | 1 µg | 1 µg |
| Folacine | 230 µg | 200 µg |
| Acide pantothénique | 5 mg | 5 mg |
| **MINÉRAUX NUTRITIFS** | | |
| Calcium | 800 mg | 800 mg |
| Phosphore | 1000 mg | 850 mg |
| Fer | 9 mg | 13 mg |
| Iode | 160 µg | 160 µg |
| Magnésium | 250 mg | 210 mg |
| Cuivre | 2 mg | 2 mg |
| Zinc | 12 mg | 9 mg |

DORS/78-698, art. 9; DORS/95-474, art. 5.

**B.24.205 (1)** No person shall label, package, sell or advertise a prepackaged meal or meal replacement for use in a weight reduction diet, or a food to be sold in a weight reduction clinic, in a manner likely to create an impression that consumption of a vitamin or mineral supplement must be part of a weight reduction diet.

**(2)** No person shall, on a label of or in an advertisement for a prepackaged meal or meal replacement for use in a weight reduction diet, or a food to be sold in a weight reduction clinic, make any direct or indirect reference to a vitamin or mineral supplement.

**(3)** Every person who advertises a prepackaged meal or meal replacement for use in a weight reduction diet, or a food to be sold in a weight reduction clinic, shall include in the advertisement the statement "USEFUL IN WEIGHT REDUCTION ONLY AS PART OF AN

**B.24.205 (1)** Il est interdit d'étiqueter, d'emballer, de vendre ou d'annoncer un repas préemballé ou un substitut de repas pour régimes amaigrissants ou un aliment destiné à être vendu dans une clinique d'amaigrissement, de manière à donner l'impression que la consommation d'un supplément de vitamines ou de minéraux nutritifs doit faire partie des régimes amaigrissants.

**(2)** Il est interdit de mentionner, directement ou indirectement, un supplément de vitamines ou de minéraux nutritifs sur l'étiquette ou dans la publicité d'un repas préemballé ou d'un substitut de repas pour régimes amaigrissants ou d'un aliment destiné à être vendu dans une clinique d'amaigrissement.

**(3)** Quiconque annonce un repas préemballé ou un substitut de repas pour régimes amaigrissants ou un aliment destiné à être vendu dans une clinique d'amaigrissement doit inclure dans la publicité la mention « UTILE POUR PERDRE DU POIDS SEULEMENT DANS LE CADRE

ENERGY-REDUCED DIET / UTILE POUR PERDRE DU POIDS SEULEMENT DANS LE CADRE D'UN RÉGIME À TENEUR RÉDUITE EN ÉNERGIE".

SOR/78-698, s. 9; SOR/95-474, s. 5.

## Foods Represented for Use in Very Low Energy Diets

**B.24.300** No person shall advertise to the general public a food represented for use in a very low energy diet.

SOR/94-35, s. 4.

**B.24.301 (1)** No person shall sell, without a written order from a physician, a food represented for use in a very low energy diet.

**(2)** Notwithstanding subsection (1), a person may sell, without a written order from a physician, a food represented for use in a very low energy diet to

**(a)** a physician;

**(b)** a wholesale druggist;

**(c)** a pharmacist; or

**(d)** a hospital.

**(3)** No person other than a pharmacist shall sell to the general public a food represented for use in a very low energy diet.

SOR/94-35, s. 4.

**B.24.302** A pharmacist shall retain the written order of a physician for a food represented for use in a very low energy diet for at least two years after the date on which the order is filled.

SOR/94-35, s. 4.

**B.24.303 (1)** A food represented for use in a very low energy diet, whether ready to serve or diluted with water according to the manufacturer's directions, shall provide, per daily allowance recommended by the manufacturer

**(a)** either

**(i)** not less than 60 g of protein of a nutritional quality equivalent to that of casein, or

**(ii)** such an amount and quality of protein that, when the quality of the protein is expressed as a fraction of the quality of casein,

**(A)** the fraction is not less than 85/100, and

D'UN RÉGIME À TENEUR RÉDUITE EN ÉNERGIE / USEFUL IN WEIGHT REDUCTION ONLY AS PART OF AN ENERGY-REDUCED DIET ».

DORS/78-698, art. 9; DORS/95-474, art. 5.

## Aliments présentés comme étant conçus pour régimes à très faible teneur en énergie

**B.24.300** Il est interdit d'annoncer au grand public un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie.

DORS/94-35, art. 4.

**B.24.301 (1)** Il est interdit de vendre un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie sans ordre écrit du médecin.

**(2)** Malgré le paragraphe (1), un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie peut être vendu, sans ordre écrit du médecin :

**a)** aux médecins;

**b)** aux grossistes en médicaments;

**c)** aux pharmaciens;

**d)** aux hôpitaux.

**(3)** Seuls les pharmaciens peuvent vendre au grand public un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie.

DORS/94-35, art. 4.

**B.24.302** Le pharmacien doit conserver pendant au moins deux ans après la date d'exécution l'ordre écrit d'un médecin visant un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie.

DORS/94-35, art. 4.

**B.24.303 (1)** Un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie, qu'il soit prêt à servir ou dilué avec de l'eau selon les indications du fabricant, doit, par ration quotidienne recommandée par le fabricant :

**a)** fournir :

**(i)** soit au moins 60 g de protéines d'une qualité nutritive équivalente à celle de la caséine,

**(ii)** soit des protéines en une quantité et d'une qualité telles que, lorsque cette qualité est exprimée en fraction de la qualité de la caséine :

**(A)** cette fraction ne soit pas inférieure à 85/100,

**(B)** the product obtained by multiplying the fraction by the gram weight of the protein is not less than 60;

**(b)** each vitamin or mineral nutrient named in column I of an item of the table to this subsection, in an amount not less than the minimum amount per day set out in column II of that item; and

**(c)** any nutritive substance added to the food other than those referred to in paragraph (a) or (b), in an amount that is appropriate for the purpose of the substance in the food as determined from clinical trials.

**TABLE**

| Item | Column I<br>Vitamin or Mineral Nutrient | Column II<br>Minimum amount per day |
|---|---|---|
| 1 | Thiamine | 1.3 mg |
| 2 | Riboflavin | 1.6 mg |
| 3 | Niacin | 23 mg |
| 4 | Folacin | 0.22 mg |
| 5 | Biotin | 0.15 mg |
| 6 | Pantothenic acid | 7.0 mg |
| 7 | Vitamin $B_6$ | 1.5 mg |
| 8 | Vitamin $B_{12}$ | 0.001 mg |
| 9 | Vitamin A | 1000 RE |
| 10 | Vitamin D | 0.005 mg |
| 11 | Vitamin E | 10 mg |
| 12 | Vitamin C | 40 mg |
| 13 | Calcium | 800 mg |
| 14 | Phosphorus | 1000 mg |
| 15 | Magnesium | 250 mg |
| 16 | Iron | 13 mg |
| 17 | Iodine | 0.16 mg |
| 18 | Zinc | 12 mg |
| 19 | Copper | 2 mg |
| 20 | Manganese | 3.5 mg |
| 21 | Selenium | 0.07 mg |
| 22 | Chromium | 0.05 mg |
| 23 | Molybdenum | 0.1 mg |
| 24 | Sodium | 2000 mg |
| 25 | Potassium | 3000 mg |
| 26 | Chloride | 1500 mg |

**(2)** Notwithstanding paragraph (1)(a), a food represented for use in a very low energy diet shall be accompanied by directions for use that when followed would result in

**(B)** le produit de la fraction par le poids en grammes de la protéine ne soit pas inférieur à 60;

**b)** renfermer les vitamines et les minéraux nutritifs mentionnés dans la colonne I du tableau du présent paragraphe, en une quantité au moins égale à la quantité minimale par jour indiquée à la colonne II;

**c)** contenir toute substance nutritive, sauf celles mentionnées aux alinéas a) et b), en une quantité suffisante pour l'usage préconisé de la substance dans l'aliment, selon des essais cliniques.

**TABLEAU**

| Article | Colonne I<br>Vitamines et minéraux nutritifs | Colonne II<br>Quantité minimale par jour |
|---|---|---|
| 1 | Thiamine | 1,3 mg |
| 2 | Riboflavine | 1,6 mg |
| 3 | Niacine | 23 mg |
| 4 | Folacine | 0,22 mg |
| 5 | Biotine | 0,15 mg |
| 6 | Acide pantothénique | 7,0 mg |
| 7 | Vitamine $B_6$ | 1,5 mg |
| 8 | Vitamine $B_{12}$ | 0,001 mg |
| 9 | Vitamine A | 1000 ER |
| 10 | Vitamine D | 0,005 mg |
| 11 | Vitamine E | 10 mg |
| 12 | Vitamine C | 40 mg |
| 13 | Calcium | 800 mg |
| 14 | Phosphore | 1000 mg |
| 15 | Magnésium | 250 mg |
| 16 | Fer | 13 mg |
| 17 | Iode | 0,16 mg |
| 18 | Zinc | 12 mg |
| 19 | Cuivre | 2 mg |
| 20 | Manganèse | 3,5 mg |
| 21 | Sélénium | 0,07 mg |
| 22 | Chrome | 0,05 mg |
| 23 | Molybdène | 0,1 mg |
| 24 | Sodium | 2000 mg |
| 25 | Potassium | 3000 mg |
| 26 | Chlorure | 1500 mg |

**(2)** Malgré l'alinéa (1)a), tout aliment présenté comme étant conçu pour un régime à très faible teneur en énergie doit être accompagné d'un mode d'emploi qui, s'il est

the daily intake by a person of at least 1.2 g of protein per kilogram target body weight.

SOR/94-35, s. 4.

**B.24.304** The label of a food represented for use in a very low energy diet shall carry the following information:

**(a)** a statement of the energy value of the food, expressed in Calories (Calories or Cal) and kilojoules (kilojoules or kJ) per 100 g or 100 mL of the food as offered for sale and per unit of ready-to-serve food;

**(b)** a statement of the content in the food of protein, fat, carbohydrate and, where present, fibre expressed in grams per 100 g or 100 mL of the food as offered for sale and per unit of ready-to-serve food;

**(c)** a statement of the content in the food of all those vitamins and mineral nutrients that are listed in the table to subsection B.24.303(1) expressed in milligrams, in the case of vitamin A expressed in retinol equivalents (RE), per 100 g or 100 mL of the food as offered for sale and per unit of ready-to-serve food;

**(d)** a statement of the content in the food of any other nutritive substance added to the food in an amount described in paragraph B.24.303(1)(c), expressed in milligrams or in grams per 100 g or 100 mL of the food as offered for sale and per unit of ready-to-serve food;

**(e)** the statement "USE ONLY UNDER MEDICAL SUPERVISION" prominently displayed on the principal display panel;

**(f)** directions for use of the food, including

**(i)** a statement of the rationale for the use of the food,

**(ii)** criteria to be used for the selection of the persons to whom the food may be prescribed,

**(iii)** instructions for consultation with and evaluation of the patient and patient follow-up, and

**(iv)** a statement concerning adequate precautions and contra-indications;

**(g)** directions for the preparation of the food, and storage instructions for the food before and after the container has been opened; and

**(h)** the expiration date of the food.

SOR/94-35, s. 4.

respecté, donnera un apport quotidien d'au moins 1,2 g de protéines par kilogramme de poids corporel cible.

DORS/94-35, art. 4.

**B.24.304** L'étiquette d'un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie doit porter les renseignements suivants :

**a)** une mention de la valeur énergétique de l'aliment exprimée en Calories (Calories ou Cal) et en kilojoules (kilojoules ou kJ) par 100 g ou par 100 mL de l'aliment sous sa forme commerciale et par unité de l'aliment prêt à servir;

**b)** une mention de la teneur de l'aliment en protéines, en matières grasses, en glucides et, s'il y a lieu, en fibres, exprimée en grammes par 100 g ou par 100 mL de l'aliment sous sa forme commerciale et par unité de l'aliment prêt à servir;

**c)** une mention de la teneur de l'aliment en vitamines et en minéraux nutritifs mentionnés au tableau du paragraphe B.24.303(1) exprimée en milligrammes ou, dans le cas de la vitamine A, en équivalents de rétinol (ER), par 100 g ou par 100 mL de l'aliment sous sa forme commerciale et par unité de l'aliment prêt à servir;

**d)** une mention de la teneur de l'aliment en toute autre substance nutritive qui y est ajoutée selon la quantité prévue à l'alinéa B.24.303(1)c), exprimée en milligrammes ou en grammes par 100 g ou par 100 mL de l'aliment sous sa forme commerciale et par unité de l'aliment prêt à servir;

**e)** la mention « À UTILISER SEULEMENT SOUS SURVEILLANCE MÉDICALE » apposée bien en vue sur l'espace principal;

**f)** le mode d'emploi de l'aliment, y compris :

**(i)** un énoncé justificatif de l'emploi de l'aliment,

**(ii)** les critères de sélection des personnes auxquelles prescrire l'aliment,

**(iii)** les instructions pour la consultation, l'évaluation du patient et son suivi,

**(iv)** une mention concernant les précautions et les contre-indications voulues;

**g)** le mode de préparation de l'aliment, ainsi que les indications pour sa conservation avant et après l'ouverture du contenant;

**h)** the date limit of use of the food.

DORS/94-35, art. 4.

**B.24.305 (1)** No person shall sell or advertise for sale a food represented for use in a very low energy diet unless the manufacturer, at least 90 days before the sale or advertisement, notifies the Minister in writing of the intention to sell the food or advertise the food for sale.

**(2)** The notification referred to in subsection (1) shall be signed by the manufacturer and shall include, in respect of the food represented for use in a low energy diet, the following information:

**(a)** the name under which the food is to be sold or advertised for sale;

**(b)** the name and address of the principal place of business of the manufacturer;

**(c)** the name and address of each establishment in which the food is manufactured;

**(d)** a list of the ingredients of the food, stated quantitatively;

**(e)** the specifications for nutrient, microbiological and physical quality for each ingredient and for the food;

**(f)** details of quality control procedures respecting the testing of the ingredients and of the food;

**(g)** details of the manufacturing process and quality control procedures used throughout the process;

**(h)** the results of tests carried out to determine the expiration date of the food;

**(i)** the evidence relied on to establish that the food meets the nutritional requirements, other than energy requirements, of a person for whom it is intended, when the food is consumed in accordance with the directions for use;

**(j)** a description of the type of packaging to be used;

**(k)** directions for use;

**(l)** the written text of all labels, including package inserts, to be used in connection with the food; and

**(m)** the name and title of the person who signed the notification and the date of signature.

**B.24.305 (1)** Il est interdit de vendre ou d'annoncer en vue de la vente un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie à moins que le fabricant n'ait donné au ministre, au moins 90 jours avant la vente ou l'annonce, un avis écrit de son intention de vendre l'aliment ou de l'annoncer en vue de la vente.

**(2)** L'avis visé au paragraphe (1) est signé par le fabricant et contient, à l'égard de l'aliment présenté comme conçu pour un régime à très faible teneur en énergie, les renseignements suivants :

**a)** le nom sous lequel l'aliment sera vendu ou annoncé pour la vente;

**b)** les nom et adresse du principal établissement du fabricant;

**c)** les nom et adresse de chaque établissement où l'aliment est fabriqué;

**d)** la liste des ingrédients de l'aliment et la quantité de chacun d'eux;

**e)** les caractéristiques relatives à la qualité nutritive, microbiologique et physique des ingrédients et de l'aliment;

**f)** le détail des techniques de contrôle de la qualité appliquées aux essais des ingrédients et de l'aliment;

**g)** le détail du procédé de fabrication et des techniques de contrôle de la qualité appliquées au cours de la fabrication;

**h)** les résultats des essais effectués pour déterminer la date limite d'utilisation de l'aliment;

**i)** les preuves invoquées pour établir que l'aliment répond aux besoins nutritifs, autres que les besoins énergétiques, des personnes à qui il est destiné, lorsqu'il est consommé suivant le mode d'emploi;

**j)** une description du type d'emballage qui sera utilisé;

**k)** le mode d'emploi;

**l)** le texte des étiquettes, y compris les notices d'accompagnement, qui seront utilisées avec l'aliment;

**m)** les nom et titre du signataire de l'avis et la date de la signature.

**(3)** Notwithstanding subsection (1), a person may sell or advertise for sale a food represented for use in a very low energy diet, if the Minister, after having been notified by the manufacturer pursuant to that subsection, has informed the manufacturer in writing that the notification meets the requirements of subsection (2).

SOR/94-35, s. 4; SOR/2018-69, ss. 27, 29(F).

**B.24.306 (1)** No person shall sell or advertise for sale a food represented for use in a very low energy diet that has undergone a major change, unless the manufacturer, at least 90 days before the sale or advertisement, notifies the Minister in writing of the intention to sell or advertise for sale the food that has undergone the major change.

**(2)** The notification referred to in subsection (1) shall be signed by the manufacturer and shall include, in respect of the food represented for use in a very low energy diet that has undergone a major change, the following information:

**(a)** the name under which the food is to be sold or advertised for sale;

**(b)** the name and address of the principal place of business of the manufacturer;

**(c)** a description of the major change;

**(d)** the evidence relied on to establish that the food meets the nutritional requirements, other than energy requirements, of a person for whom it is intended, when the food is consumed in accordance with the directions for use;

**(e)** the evidence relied on to establish that the major change has no adverse effect on the food or its use;

**(f)** the written text of all labels, including package inserts, to be used in connection with the food; and

**(g)** the name and title of the person who signed the notification and the date of signature.

**(3)** Notwithstanding subsection (1), a person may sell or advertise for sale a food represented for use in a very low energy diet that has undergone a major change, if the Minister, after having been notified by the manufacturer pursuant to that subsection, has informed the manufacturer in writing that the notification meets the requirements of subsection (2).

SOR/94-35, s. 4; SOR/2018-69, ss. 27, 29(F).

**(3)** Malgré le paragraphe (1), il est permis de vendre ou d'annoncer en vue de la vente un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie si le ministre, après avoir été avisé par le fabricant conformément à ce paragraphe, informe celui-ci par écrit que l'avis satisfait aux exigences visées au paragraphe (2).

DORS/94-35, art. 4; DORS/2018-69, art. 27 et 29(F).

**B.24.306 (1)** Il est interdit de vendre ou d'annoncer en vue de la vente un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie qui a subi un changement majeur, à moins que le fabricant n'ait donné au ministre, au moins 90 jours avant la vente ou l'annonce, un avis écrit de son intention de vendre cet aliment ou de l'annoncer en vue de la vente.

**(2)** L'avis visé au paragraphe (1) est signé par le fabricant et contient, à l'égard de l'aliment présenté comme étant conçu pour un régime à très faible teneur en énergie qui a subi un changement majeur, les renseignements suivants :

**a)** le nom sous lequel l'aliment sera vendu ou annoncé en vue de la vente;

**b)** les nom et adresse du principal établissement du fabricant;

**c)** la description du changement majeur;

**d)** les preuves invoquées pour établir que l'aliment répond aux besoins nutritifs, autres que les besoins énergétiques, des personnes à qui il est destiné, lorsqu'il est consommé suivant le mode d'emploi;

**e)** les preuves invoquées pour établir que le changement majeur n'a pas d'effet indésirable sur l'aliment ou son utilisation;

**f)** le texte des étiquettes, y compris les notices d'accompagnement, qui seront utilisées avec l'aliment;

**g)** les nom et titre du signataire de l'avis et la date de la signature.

**(3)** Malgré le paragraphe (1), il est permis de vendre ou d'annoncer en vue de la vente un aliment présenté comme étant conçu pour un régime à très faible teneur en énergie qui a subi un changement majeur si le ministre, après avoir été avisé par le fabricant conformément à ce paragraphe, a informé celui-ci par écrit que l'avis satisfait aux exigences visées au paragraphe (2).

DORS/94-35, art. 4; DORS/2018-69, art. 27 et 29(F).

## DIVISION 25

## Interpretation

**B.25.001** In this Division,

***expiration date*** means, in respect of a human milk fortifier or human milk substitute, the date

**(a)** after which the manufacturer does not recommend that it be consumed, and

**(b)** up to which it maintains its microbiological and physical stability and the nutrient content declared on the label; (*date limite d'utilisation*)

***human milk fortifier*** means a food that

**(a)** includes at least one added vitamin, mineral nutrient or amino acid, and

**(b)** is labelled or advertised as intended to be added to human milk to increase its nutritional value in order to meet the particular requirements of an infant in whom a physical or physiological condition exists as a result of a disease, disorder or abnormal physical state; (*fortifiant pour lait humain*)

***human milk substitute*** means any food that is labelled or advertised

**(a)** for use as a partial or total replacement for human milk and as intended for consumption by infants, or

**(b)** for use as an ingredient in a food referred to in paragraph (a); (*succédané de lait humain*)

***infant*** means an individual who is under the age of one year; (*bébé*)

***infant food*** means a food that is labelled or advertised for consumption by infants; (*aliment pour bébés*)

***junior (naming a food)*** means the named food where it contains particles of a size to encourage chewing by infants, but may be readily swallowed by infants without chewing; (*(nom d'un aliment) pour enfants en bas âge*)

***major change*** means, in respect of a human milk fortifier or human milk substitute, any change of an ingredient, the amount of an ingredient or the processing or packaging of the human milk fortifier or human milk substitute where the manufacturer's experience or generally accepted theory would predict an adverse effect on the levels or availability of nutrients in, or the microbiological or

## TITRE 25

## Définitions

**B.25.001** Dans le présent titre,

***aliment pour bébés*** Tout aliment étiqueté ou annoncé comme pouvant être consommé par des bébés; (*infant food*)

***bébé*** Individu de moins d'un an; (*infant*)

***changement majeur*** Relativement à un fortifiant pour lait humain ou à un succédané de lait humain, un changement d'ingrédient ou de la quantité d'un ingrédient, ou la modification du traitement ou de l'emballage du fortifiant pour lait humain ou du succédané de lait humain, qui pourrait, selon l'expérience du fabricant ou la théorie généralement admise, altérer les concentrations ou compromettre la disponibilité des éléments nutritifs du fortifiant pour lait humain ou du succédané de lait humain, ou l'innocuité microbiologique ou chimique de ceux-ci; (*major change*)

***date limite d'utilisation*** Relativement à un fortifiant pour lait humain ou à un succédané de lait humain, la date, à la fois :

**a)** après laquelle le fabricant recommande de ne pas le consommer,

**b)** jusqu'à laquelle il conserve la stabilité physique et microbiologique et la valeur nutritive indiquée sur son étiquette; (*expiration date*)

***fortifiant pour lait humain*** Aliment qui, à la fois :

**a)** comprend au moins une vitamine, un minéral nutritif ou un acide aminé ajouté,

**b)** est étiqueté ou annoncé comme devant être ajouté au lait humain pour en augmenter la valeur nutritive afin de satisfaire aux besoins alimentaires particuliers d'un bébé manifestant un état physique ou physiologique particulier en raison d'une maladie, d'un désordre ou d'un état physique anormal; (*human milk fortifier*)

***(nom d'un aliment) en purée ou tamisé*** désigne l'aliment nommé qui est composé de particules d'une grosseur généralement uniforme et qui n'exige ni n'encourage la mastication avant d'être avalé par des bébés; (*strained (naming a food)*)

***(nom d'un aliment) pour enfants en bas âge*** désigne l'aliment nommé qui contient normalement des

chemical safety of, the human milk fortifier or human milk substitute; (*changement majeur*)

***new human milk substitute*** means a human milk substitute that is

**(a)** manufactured for the first time,

**(b)** sold in Canada for the first time, or

**(c)** manufactured by a person who manufactures it for the first time; (*succédané de lait humain nouveau*)

***strained (naming a food)*** means the named food where it is of a generally uniform particle size that does not require and does not encourage chewing by infants before being swallowed. (*(nom d'un aliment) en purée ou tamisé*)

SOR/78-637, s. 5; SOR/83-933, s. 1; SOR/90-174, s. 1; SOR/2021-57, s. 12.

particules d'une grosseur encourageant la mastication, mais qui peut être facilement avalé par des bébés sans être mastiqué; (*junior (naming a food)*)

***succédané de lait humain*** Tout aliment étiqueté ou annoncé comme pouvant être :

**a)** soit utilisé comme un remplacement partiel ou total du lait humain et destiné à être consommé par des bébés,

**b)** soit utilisé comme un ingrédient d'un aliment visé à l'alinéa a); (*human milk substitute*)

***succédané de lait humain nouveau*** désigne un succédané de lait humain :

**a)** soit qui est fabriqué pour la première fois,

**b)** soit qui est vendu au Canada pour la première fois,

**c)** soit qu'une personne fabrique pour la première fois. (*new human milk substitute*)

DORS/78-637, art. 5; DORS/83-933, art. 1; DORS/90-174, art. 1; DORS/2021-57, art. 12.

## Infant Foods

**B.25.002** No person shall sell or advertise for sale an infant food that is set out in Column I of an item of Table I to this Division and contains more than the amount of sodium set out in Column II of that item.

SOR/83-933, s. 1.

**B.25.003 (1)** Subject to subsection (2), no person shall sell infant food that contains

**(a)** strained fruit,

**(b)** fruit juice,

**(c)** fruit drink, or

**(d)** cereal,

if sodium chloride has been added to that food.

**(2)** Subsection (1) does not apply to strained desserts containing any of the foods mentioned in paragraphs (1)(a) to (d).

SOR/83-933, s. 1.

## Human Milk Fortifiers

**B.25.010** Subject to section B.25.013, it is prohibited to sell or advertise for sale a human milk fortifier unless the Minister has notified the manufacturer under paragraph

## Aliments pour bébés

**B.25.002** Est interdite la vente ou la publicité en vue de la vente d'un aliment pour bébés visé à la colonne I du tableau I du présent titre, si cet aliment contient plus que la quantité de sodium indiquée à la colonne II du tableau.

DORS/83-933, art. 1.

**B.25.003 (1)** Sous réserve du paragraphe (2), est interdite la vente des aliments pour bébés qui contiennent,

**a)** des fruits en purée,

**b)** des jus de fruit,

**c)** des boissons aux fruits, ou

**d)** des céréales

auxquels du chlorure de sodium a été ajouté.

**(2)** Le paragraphe (1) ne s'applique pas aux desserts en purée contenant un aliment visé aux alinéas (1)a) à d).

DORS/83-933, art. 1.

## Fortifiants pour lait humain

**B.25.010** Sous réserve de l'article B.25.013, il est interdit de vendre ou d'annoncer en vue de sa vente un fortifiant pour lait humain, à moins que le ministre n'ait informé le

B.25.012(1)(a) or (3)(a) that those activities are authorized.

SOR/2021-57, s. 13.

**B.25.011** An application to sell or advertise for sale a human milk fortifier shall be submitted by the manufacturer and signed by the manufacturer or an individual authorized to sign on their behalf and shall include the following information:

**(a)** the brand name and product name under which the human milk fortifier will be sold or advertised for sale;

**(b)** the manufacturer's name and address;

**(c)** the name and address of each establishment in which the human milk fortifier is manufactured;

**(d)** a list of all of the human milk fortifier's ingredients, stated quantitatively;

**(e)** the scientific rationale for the formulation of the human milk fortifier;

**(f)** the specifications for nutrient, microbiological and physical quality for the human milk fortifier and its ingredients;

**(g)** details of the quality control procedures respecting the testing of the human milk fortifier and its ingredients;

**(h)** details of the human milk fortifier's manufacturing process and the quality control procedures used throughout the process;

**(i)** the results of the tests carried out to determine the expiration date of the human milk fortifier;

**(j)** the evidence that establishes that the human milk fortifier is nutritionally adequate to promote acceptable growth and development in infants when consumed in accordance with the directions for use;

**(k)** a description of the type of packaging to be used for the human milk fortifier;

**(l)** directions for use for the human milk fortifier;

**(m)** the written text of all labels, including package inserts, to be used in connection with the human milk fortifier; and

**(n)** the name and title of the individual who signed the application and the date of signature.

SOR/2021-57, s. 13.

fabricant, au titre des alinéas B.25.012(1)a) ou (3)a), qu'il y est autorisé.

DORS/2021-57, art. 13.

**B.25.011** La demande d'autorisation de vendre ou d'annoncer en vue de sa vente un fortifiant pour lait humain est présentée par le fabricant et signée par celui-ci, ou par un individu autorisé à signer en son nom, et contient les renseignements suivants :

**a)** la marque et le nom du produit sous lesquels le fortifiant pour lait humain sera vendu ou annoncé en vue de sa vente;

**b)** le nom et l'adresse du fabricant;

**c)** les nom et adresse de chaque établissement où le fortifiant pour lait humain est fabriqué;

**d)** la liste des ingrédients du fortifiant pour lait humain et la quantité de chacun d'eux;

**e)** la justification scientifique de la formulation du fortifiant pour lait humain;

**f)** les caractéristiques relatives à la qualité nutritionnelle, microbiologique et physique du fortifiant pour lait humain et de ses ingrédients;

**g)** le détail des procédures de contrôle de la qualité appliquées à l'examen du fortifiant pour lait humain et de ses ingrédients;

**h)** le détail du procédé de fabrication et des procédures de contrôle de la qualité appliquées au cours de la fabrication du fortifiant pour lait humain;

**i)** les résultats des examens effectués pour déterminer la date limite d'utilisation du fortifiant pour lait humain;

**j)** les preuves établissant que le fortifiant pour lait humain a une valeur nutritive suffisante pour favoriser une croissance et un développement acceptables chez les bébés s'il est consommé conformément au mode d'emploi;

**k)** la description du type d'emballage qui sera utilisé pour le fortifiant pour lait humain;

**l)** le mode d'emploi du fortifiant pour lait humain;

**m)** le texte écrit des étiquettes, y compris les notices d'accompagnement, qui seront utilisées pour le fortifiant pour lait humain;

**n)** le nom et le titre du signataire de la demande d'autorisation et la date de la signature.

DORS/2021-57, art. 13.

**B.25.012 (1)** After having conducted an assessment of the information submitted under section B.25.011 and any other information related to the assessment of the application, the Minister shall notify the manufacturer in writing that the sale or advertisement for sale of the human milk fortifier that is the subject of the application

**(a)** is authorized if

**(i)** the application meets the requirements set out in section B.25.011, and

**(ii)** the information is sufficient to establish the safety of the human milk fortifier; or

**(b)** is not authorized, in any other case.

**(2)** If the conditions set out in paragraph (1)(a) are not satisfied, the Minister may request the manufacturer to submit in writing the additional information that is necessary to satisfy the conditions.

**(3)** After having conducted an assessment of any additional information that is submitted by the manufacturer, the Minister shall notify the manufacturer in writing that the sale or advertisement for sale of the human milk fortifier

**(a)** is authorized, if the conditions set out in paragraph (1)(a) are satisfied; or

**(b)** is not authorized, in any other case.

**(4)** Despite paragraphs (1)(a) and (3)(a), the Minister shall not authorize the sale or advertisement for sale of the human milk fortifier if the Minister has reasonable grounds to believe that any of the information that the manufacturer has submitted is false, misleading or deceptive.

SOR/2021-57, s. 13.

**B.25.013** The prohibition set out in section B.25.010 does not apply in respect of a human milk fortifier that is set out in the *List of Human Milk Fortifiers Sold in Canada as of March 25, 2021* that is published on a Government of Canada website if, on or before April 30, 2022,

**(a)** the manufacturer of the human milk fortifier submits to the Minister

**(i)** an attestation signed and dated by the manufacturer, or by an individual authorized to sign on their behalf, confirming that the human milk

**B.25.012 (1)** Après avoir fait l'examen des renseignements fournis en application de l'article B.25.011 ainsi que de tout autre renseignement relatif à l'examen de la demande, le ministre informe le fabricant, par écrit, que la vente ou l'annonce en vue de la vente du fortifiant pour lait humain visé par cette demande, selon le cas :

**a)** est autorisée si, à la fois :

**(i)** la demande satisfait aux exigences prévues à l'article B.25.011,

**(ii)** les renseignements sont suffisants pour établir l'innocuité du fortifiant pour lait humain;

**b)** n'est pas autorisée dans tout autre cas.

**(2)** Si les conditions prévues à l'alinéa (1)a) ne sont pas remplies, le ministre peut demander au fabricant de fournir, par écrit, les renseignements supplémentaires qui sont nécessaires pour les remplir.

**(3)** Après avoir fait l'examen des renseignements supplémentaires fournis par le fabricant, le ministre informe ce dernier, par écrit, que la vente ou l'annonce en vue de la vente du fortifiant pour lait humain, selon le cas :

**a)** est autorisée, si les conditions prévues à l'alinéa (1)a) sont remplies;

**b)** n'est pas autorisée dans tout autre cas.

**(4)** Malgré les alinéas (1)a) et (3)a), le ministre n'autorise pas la vente ou l'annonce en vue de la vente de ce fortifiant pour lait humain s'il a des motifs raisonnables de croire que les renseignements fournis par le fabricant sont faux, trompeurs ou mensongers.

DORS/2021-57, art. 13.

**B.25.013** L'interdiction prévue à l'article B.25.010 ne s'applique pas à un fortifiant pour lait humain figurant sur la *Liste des fortifiants pour lait humain vendus au Canada au 25 mars 2021* qui est publiée sur un site Web du gouvernement du Canada si, au plus tard le 30 avril 2022, les exigences ci-après sont remplies :

**a)** le fabricant du fortifiant pour lait humain fournit au ministre les renseignements ci-après :

**(i)** une attestation signée et datée par lui-même, ou un individu autorisé à signer en son nom, portant

fortifier has not undergone a major change since the date set out in the List in connection with the human milk fortifier, and

**(ii)** the written text of all labels, including package inserts, that will be required to be used in connection with the human milk fortifier after the second anniversary of the day on which section B.25.020 comes into force; and

**(b)** the Minister notifies the manufacturer under subsection B.25.014(1) or paragraph B.25.014(3)(a) that they are authorized to continue to sell or advertise for sale the human milk fortifier.

SOR/2021-57, s. 13.

**B.25.014 (1)** The Minister shall notify the manufacturer in writing that they are authorized to continue to sell or advertise for sale the human milk fortifier if

**(a)** the manufacturer has submitted the information referred to in paragraph B.25.013(a) in sufficient time for the Minister to assess the information before April 30, 2022; and

**(b)** the written text of the labels submitted under subparagraph B.25.013(a)(ii) satisfies the relevant requirements of these Regulations.

**(2)** If the information that is submitted is insufficient to satisfy the conditions set out in subsection (1), the Minister may request the manufacturer to submit in writing the additional information that is necessary to satisfy the conditions.

**(3)** After having conducted an assessment of any additional information that is submitted by the manufacturer, the Minister shall notify the manufacturer in writing that

**(a)** they are authorized to continue to sell or advertise for sale the human milk fortifier, if the conditions set out in subsection (1) are satisfied; or

**(b)** they are not authorized to continue to sell or advertise for sale the human milk fortifier, in any other case.

SOR/2021-57, s. 13.

**B.25.015 (1)** It is prohibited to sell or advertise for sale a human milk fortifier that has undergone a major change unless

**(a)** the manufacturer of the human milk fortifier submits to the Minister an application in accordance with subsection (2) that reflects the major change; and

que le fortifiant pour lait humain n'a pas subi de changement majeur depuis la date indiquée sur la liste en lien avec ce fortifiant pour lait humain,

**(ii)** le texte écrit des étiquettes, y compris des notices d'accompagnement, qui devront être utilisées pour le fortifiant pour lait humain après le deuxième anniversaire de l'entrée en vigueur de l'article B.25.020.

**b)** le ministre informe le fabricant, au titre du paragraphe B.25.014(1) ou de l'alinéa B.25.014(3)a), qu'il est autorisé à continuer à vendre ou à annoncer en vue de la vente son fortifiant pour lait humain.

DORS/2021-57, art. 13.

**B.25.014 (1)** Le ministre informe le fabricant, par écrit, qu'il est autorisé à continuer à vendre ou à annoncer en vue de la vente son fortifiant pour lait humain si, à la fois :

**a)** le fabricant a fourni les renseignements visés à l'alinéa B.25.013a) dans un délai suffisant pour permettre au ministre d'en faire l'examen avant le 30 avril 2022;

**b)** le texte écrit des étiquettes présenté en vertu du sous-alinéa B.25.013a)(ii) satisfait les exigences applicables du présent règlement.

**(2)** Si les renseignements fournis sont insuffisants pour remplir les conditions prévues au paragraphe (1), le ministre peut demander au fabricant de fournir, par écrit, les renseignements supplémentaires qui sont nécessaires pour les remplir.

**(3)** Après avoir fait l'examen des renseignements supplémentaires fournis par le fabricant, le ministre informe ce dernier, par écrit, selon le cas :

**a)** que celui-ci est autorisé à continuer à vendre ou à annoncer en vue de la vente son fortifiant pour lait humain si les conditions prévues au paragraphe (1) sont remplies;

**b)** que celui-ci n'est pas autorisé à continuer à vendre ou à annoncer en vue de la vente son fortifiant pour lait humain dans tout autre cas.

DORS/2021-57, art. 13.

**B.25.015 (1)** Il est interdit de vendre ou d'annoncer en vue de sa vente un fortifiant pour lait humain qui a subi un changement majeur, à moins que les conditions ci-après ne soient remplies :

**a)** le fabricant du fortifiant pour lait humain présente au ministre une demande reflétant le changement majeur conformément au paragraphe (2);

**(b)** the Minister notifies the manufacturer under paragraph B.25.016(1)(a) or (3)(a) that the sale or advertisement for sale of the human milk fortifier is authorized.

**(2)** The application shall be signed by the manufacturer or an individual authorized to sign on their behalf and shall include the following information:

**(a)** the brand name and product name under which the human milk fortifier will be sold or advertised for sale;

**(b)** the manufacturer's name and address;

**(c)** a description of, and the rationale for, the major change;

**(d)** the evidence that establishes that the human milk fortifier is nutritionally adequate to promote acceptable growth and development in infants when consumed in accordance with the directions for use;

**(e)** the evidence that establishes that the major change has had no adverse effect on the human milk fortifier;

**(f)** the written text of all labels, including package inserts, to be used in connection with the human milk fortifier; and

**(g)** the name and title of the individual who signed the application and the date of signature.

SOR/2021-57, s. 13.

**B.25.016 (1)** After having conducted an assessment of the information submitted under subsection B.25.015(2) and any other information related to the assessment of the application, the Minister shall notify the manufacturer in writing that the sale or advertisement for sale of the human milk fortifier that is the subject of the application

**(a)** is authorized if

**(i)** the application meets the requirements set out in subsection B.25.015(2), and

**(ii)** the information is sufficient to establish the safety of the human milk fortifier; or

**(b)** is not authorized, in any other case.

**(2)** If the conditions set out in paragraph (1)(a) are not satisfied, the Minister may request the manufacturer to submit in writing the additional information that is necessary to satisfy the conditions.

**b)** le ministre informe le fabricant, au titre des alinéas B.25.016(1)a) ou (3)a), que la vente ou l'annonce en vue de la vente du fortifiant pour lait humain visé par cette demande est autorisée.

**(2)** La demande est signée par le fabricant, ou un individu autorisé à signer en son nom, et contient les renseignements suivants :

**a)** la marque et le nom du produit sous lesquels le fortifiant pour lait humain sera vendu ou annoncé en vue de sa vente;

**b)** le nom et l'adresse du fabricant;

**c)** la description et la justification du changement majeur apporté au fortifiant pour lait humain;

**d)** les preuves établissant que le fortifiant pour lait humain a une valeur nutritive suffisante pour favoriser une croissance et un développement acceptables chez les bébés s'il est consommé conformément au mode d'emploi;

**e)** les preuves établissant que le changement majeur n'a pas eu d'effet préjudiciable sur le fortifiant pour lait humain;

**f)** le texte écrit des étiquettes, y compris les notices d'accompagnement, qui seront utilisées pour le fortifiant pour lait humain;

**g)** le nom et le titre du signataire de la demande et la date de la signature.

DORS/2021-57, art. 13.

**B.25.016 (1)** Après avoir fait l'examen des renseignements fournis en application du paragraphe B.25.015(2) ainsi que de tout autre renseignement relatif à l'examen de la demande, le ministre informe le fabricant, par écrit, que la vente ou l'annonce en vue de la vente du fortifiant pour lait humain visé par cette demande, selon le cas :

**a)** est autorisée si, à la fois :

**(i)** la demande satisfait aux exigences prévues au paragraphe B.25.015(2),

**(ii)** les renseignements sont suffisants pour établir l'innocuité du fortifiant pour lait humain;

**b)** n'est pas autorisée dans tout autre cas.

**(2)** Si les conditions prévues à l'alinéa (1)a) ne sont pas remplies, le ministre peut demander au fabricant de fournir, par écrit, les renseignements supplémentaires qui sont nécessaires pour les remplir.

**(3)** After having conducted an assessment of any additional information that is submitted by the manufacturer, the Minister shall notify the manufacturer in writing that the sale or advertisement for sale of the human milk fortifier

**(a)** is authorized, if the conditions set out in paragraph (1)(a) are satisfied; or

**(b)** is not authorized, in any other case.

**(4)** Despite paragraphs (1)(a) and (3)(a), the Minister shall not authorize the sale or advertisement for sale of the human milk fortifier if the Minister has reasonable grounds to believe that any of the information that the manufacturer has submitted is false, misleading or deceptive.

SOR/2021-57, s. 13.

**B.25.017** A manufacturer named in the *List of Human Milk Fortifiers Sold in Canada as of March 25, 2021* referred to in section B.25.013 is not entitled to submit an application referred to in paragraph B.25.015(1)(a) in respect of a human milk fortifier set out in the List unless the Minister has

**(a)** notified them under paragraph B.25.012(1)(a) or (3)(a) that the sale or advertisement for sale of the human milk fortifier is authorized; or

**(b)** notified them under subsection B.25.014(1) or paragraph B.25.014(3)(a) that they are authorized to continue to sell or advertise for sale the human milk fortifier.

SOR/2021-57, s. 13.

**B.25.018 (1)** If the manufacturer of a human milk fortifier is requested in writing by the Minister to submit evidence with respect to the human milk fortifier within a time limit specified by the Minister, the manufacturer shall make no further sales of the human milk fortifier — and shall not advertise it for sale — after the expiry of the time limit unless they have submitted the requested evidence.

**(2)** The time limit cannot be less than 24 hours after the request is made unless the Minister has reasonable grounds to believe that there is a serious and imminent risk of injury to human health.

**(3)** If the Minister determines that the evidence submitted by the manufacturer is insufficient, the Minister shall notify the manufacturer accordingly in writing.

**(4)** If the manufacturer is notified that the evidence with respect to the human milk fortifier is insufficient, the

**(3)** Après avoir fait l'examen des renseignements supplémentaires fournis par le fabricant, le ministre informe ce dernier, par écrit, que la vente ou l'annonce en vue de la vente du fortifiant pour lait humain, selon le cas :

**a)** est autorisée si les conditions prévues à l'alinéa (1)a) sont remplies;

**b)** n'est pas autorisée dans tout autre cas.

**(4)** Malgré les alinéas (1)a) et (3)a), le ministre n'autorise pas la vente ou l'annonce en vue de la vente de ce fortifiant pour lait humain s'il a des motifs raisonnables de croire que les renseignements fournis par le fabricant sont faux, trompeurs ou mensongers.

DORS/2021-57, art. 13.

**B.25.017** Le fabricant dont le nom figure sur la *Liste des fortifiants pour lait humain vendus au Canada au 25 mars 2021* prévue à l'article B.25.013 n'est pas autorisé à présenter une demande prévue à l'alinéa B.25.015(1)a) concernant son fortifiant pour lait humain figurant sur cette liste à moins d'avoir été informé par le ministre :

**a)** soit, au titre des alinéas B.25.012(1)a) ou (3)a), que la vente ou l'annonce en vue de sa vente est autorisée;

**b)** soit, au titre du paragraphe B.25.014(1) ou de l'alinéa B.25.014(3)a), qu'il est autorisé à continuer à le vendre ou à l'annoncer en vue de sa vente.

DORS/2021-57, art. 13.

**B.25.018 (1)** Si le ministre demande, par écrit, au fabricant du fortifiant pour lait humain de fournir des preuves concernant le fortifiant pour lait humain, le fabricant, s'il n'a pas fourni ces preuves dans le délai fixé par le ministre, doit cesser, après l'expiration de ce délai, de le vendre et de l'annoncer en vue de sa vente.

**(2)** Le délai ne peut être inférieur à vingt-quatre heures à compter du moment où la demande est faite à moins que le ministre n'ait des motifs raisonnables de croire qu'il y a un risque grave et imminent de préjudice à la santé humaine.

**(3)** Si le ministre conclut que les preuves présentées par le fabricant sont insuffisantes, il en informe le fabricant par écrit.

**(4)** Si le fabricant reçoit un avis portant que les preuves concernant le fortifiant pour lait humain sont

manufacturer shall make no further sales of the human milk fortifier – and shall not advertise it for sale — unless they submit additional evidence and are notified in writing by the Minister that the additional evidence is sufficient.

**(5)** In this section, ***evidence with respect to the human milk fortifier*** means

**(a)** evidence that establishes that the human milk fortifier is nutritionally adequate to promote acceptable growth and development in infants when consumed in accordance with the directions for use; and

**(b)** the results of tests carried out to determine the expiration date of the human milk fortifier.

SOR/2021-57, s. 13.

**B.25.019 (1)** Even if the Minister has notified the manufacturer of a human milk fortifier that the sale or advertisement for sale of the human milk fortifier is authorized, it may only be sold in the following situations:

**(a)** it is sold by the manufacturer to

**(i)** a hospital, or

**(ii)** an individual, if

**(A)** the individual has received a written order for a human milk fortifier from a physician or from a nurse practitioner or dietitian who is authorized to write the order under the laws of a province, and

**(B)** the manufacturer has received a written request from a hospital that specifies the product name and quantity of the human milk fortifier that needs to be provided to the individual; or

**(b)** it is sold by a hospital to an individual who has received a written order for a human milk fortifier from a physician or from a nurse practitioner or dietitian who is authorized to write the order under the laws of a province.

**(2)** The following definitions apply in this section.

***dietitian*** means a person who is registered and entitled under the laws of a province to practise as a dietitian and who is practising as a dietitian under those laws in that province. (*diététiste*)

***hospital*** has the same meaning as in section B.24.001. (*hôpital*)

insuffisantes, il doit en cesser la vente et l'annonce en vue de sa vente jusqu'à ce qu'il présente des preuves supplémentaires et que le ministre l'avise par écrit que ces preuves sont suffisantes.

**(5)** Pour l'application du présent article, ***preuves concernant le fortifiant pour lait humain*** désigne :

**a)** d'une part, des preuves établissant que le fortifiant pour lait humain a une valeur nutritive suffisante pour favoriser une croissance et un développement acceptables chez les bébés s'il est consommé conformément au mode d'emploi;

**b)** d'autre part, des résultats des examens effectués pour déterminer la date limite d'utilisation du fortifiant pour lait humain.

DORS/2021-57, art. 13.

**B.25.019 (1)** Malgré le fait que le ministre ait informé le fabricant que la vente ou l'annonce en vue de la vente de son fortifiant pour lait humain est autorisée, celui-ci ne peut être vendu que dans les cas suivants :

**a)** il est vendu par le fabricant, selon le cas :

**(i)** à un hôpital,

**(ii)** à un individu si, à la fois :

**(A)** cet individu a reçu un ordre écrit pour un fortifiant pour lait humain d'un médecin, ou d'un infirmier praticien ou d'un diététiste qui est autorisé à l'écrire en vertu des lois d'une province,

**(B)** le fabricant a reçu une demande écrite d'un hôpital précisant le nom du produit et la quantité de fortifiant pour lait humain qui doit être fournie à cet individu;

**b)** il est vendu par un hôpital à un individu qui a reçu un ordre écrit pour un fortifiant pour lait humain soit d'un médecin, soit d'un infirmier praticien ou d'un diététiste qui est autorisé à l'écrire en vertu des lois de la province.

**(2)** Les définitions qui suivent s'appliquent au présent article.

***diététiste*** Personne qui, d'une part, est inscrite à titre de diététiste et est autorisée à exercer cette profession en vertu des lois d'une province et, d'autre part, qui l'exerce en vertu de ces lois dans cette province; (*dietitian*)

***hôpital*** S'entend au sens de l'article B.24.001; (*hospital*)

***nurse practitioner*** has the same meaning as in section 1 of the *New Classes of Practitioners Regulations*. (*infirmier praticien*)

***physician*** has the same meaning as in section B.24.001. (*médecin*)

SOR/2021-57, s. 13.

**B.25.020 (1)** The following information is required to be displayed on the outer label of a human milk fortifier:

**(a)** a statement of the quantity, expressed in grams, of protein, fat, available carbohydrate and, where present, fibre in a quantity of human milk fortifier specified in the directions for use;

**(b)** a statement of the energy value, expressed in Calories, in a quantity of human milk fortifier specified in the directions for use;

**(c)** a statement of the quantity, expressed in milligrams, micrograms or International Units, of all vitamins, mineral nutrients and amino acids set out in item 6, Column II, of the table to section D.03.002 that are present in a quantity of human milk fortifier specified in the directions for use;

**(d)** a statement of the quantity, expressed in grams, milligrams, micrograms or International Units, of any other nutritive substance that is present in a quantity of human milk fortifier specified in the directions for use;

**(e)** directions for the storage of the human milk fortifier before and after the package has been opened;

**(f)** the directions for use for the human milk fortifier, including directions for the preparation, use and storage of the mixture of human milk fortifier and human milk;

**(g)** a statement indicating that the human milk fortifier is to be used only under medical supervision;

**(h)** the expiration date of the human milk fortifier; and

**(i)** the lot number of the human milk fortifier.

**(2)** If the human milk fortifier does not have an outer label,

***infirmier praticien*** S'entend au sens de l'article 1 du *Règlement sur les nouvelles catégories de praticiens*; (*nurse practitioner*)

***médecin*** S'entend au sens de l'article B.24.001. (*physician*)

DORS/2021-57, art. 13.

**B.25.020 (1)** L'étiquette extérieure d'un fortifiant pour lait humain porte les renseignements suivants :

**a)** une déclaration de la quantité, exprimée en grammes, de protéines, de matières grasses, de glucides disponibles et, s'il y a lieu, de fibres, pour une quantité de fortifiant pour lait humain spécifiée dans le mode d'emploi;

**b)** une déclaration de la valeur énergétique exprimée en Calories pour une quantité de fortifiant pour lait humain spécifiée dans le mode d'emploi;

**c)** une déclaration de la quantité, exprimée en milligrammes, en microgrammes ou en unités internationales, de toutes les vitamines, de tous les minéraux nutritifs et de tous les acides aminés figurant à l'article 6 du tableau de l'article D.03.002, dans la colonne II, qui sont contenus dans une quantité de fortifiant pour lait humain spécifiée dans le mode d'emploi;

**d)** une déclaration de la quantité, exprimée en grammes, en milligrammes, en microgrammes ou en unités internationales, de toute autre substance nutritive qui est contenue dans une quantité de fortifiant pour lait humain spécifiée dans le mode d'emploi;

**e)** les instructions pour la conservation du fortifiant pour lait humain avant et après l'ouverture de l'emballage;

**f)** le mode d'emploi du fortifiant pour lait humain, y compris les instructions pour la préparation, l'utilisation et la conservation du mélange du fortifiant pour lait humain et du lait humain;

**g)** une déclaration indiquant que le fortifiant pour lait humain doit être utilisé seulement sous surveillance médicale;

**h)** la date limite d'utilisation du fortifiant pour lait humain;

**i)** le numéro de lot du fortifiant pour lait humain.

**(2)** Si le fortifiant pour lait humain n'a pas d'étiquette extérieure :

**(a)** the information referred to in subsection (1) is required to be displayed on the inner label, except as otherwise provided in paragraph (b); and

**(b)** the information referred to in paragraphs (1)(e) and (f) may, despite section A.01.016, be displayed on a leaflet that is affixed or attached to the container that is in direct contact with the human milk fortifier.

**(3)** If the human milk fortifier has an outer label, the information referred to in paragraphs (1)(h) and (i) is also required to be displayed on the inner label.

SOR/2021-57, s. 13.

**B.25.021** It is prohibited, on the label of or in any advertisement for a human milk fortifier, to make any statement or claim relating to the content in the human milk fortifier of

**(a)** the percentage of the daily value of

**(i)** fat,

**(ii)** saturated fatty acids and *trans* fatty acids,

**(iii)** sodium,

**(iv)** potassium,

**(v)** sugars,

**(vi)** fibre, or

**(vii)** cholesterol; or

**(b)** the number of Calories from

**(i)** fat, or

**(ii)** saturated fatty acids and *trans* fatty acids.

SOR/2021-57, s. 13.

## Human Milk Substitutes and Food Containing Human Milk Substitutes

**B.25.045** The common name of a human milk substitute or a new human milk substitute shall be ***infant formula***. (*préparation pour nourrissons*)

SOR/90-174, s. 2.

**B.25.046 (1)** No person shall sell or advertise for sale a new human milk substitute unless the manufacturer, at least 90 days before the sale or advertisement, notifies the Minister in writing of the intention to sell or advertise for sale the new human milk substitute.

**a)** son étiquette intérieure porte les renseignements exigés au paragraphe (1), sauf indication contraire à l'alinéa b);

**b)** malgré l'article A.01.016, les renseignements exigés aux alinéas (1)e) et f) peuvent figurer dans un dépliant apposé ou attaché au récipient qui est en contact direct avec le fortifiant pour lait humain.

**(3)** Si le fortifiant pour lait humain a une étiquette extérieure, son étiquette intérieure porte également les renseignements exigés aux alinéas (1)h) et i).

DORS/2021-57, art. 13.

**B.25.021** Est interdite, sur l'étiquette ou dans l'annonce d'un fortifiant pour lait humain, toute mention ou allégation relative à son contenu portant :

**a)** soit sur le pourcentage de la valeur quotidienne :

**(i)** de lipides,

**(ii)** d'acides gras saturés et d'acides gras *trans*,

**(iii)** de sodium,

**(iv)** de potassium,

**(v)** de sucres,

**(vi)** de fibres,

**(vii)** de cholestérol;

**b)** soit sur le nombre de Calories provenant :

**(i)** des lipides,

**(ii)** des acides gras saturés et des acides gras *trans*.

DORS/2021-57, art. 13.

## Succédanés de lait humain et aliments renfermant un succédané de lait humain

**B.25.045** Le nom usuel d'un succédané de lait humain ou d'un succédané de lait humain nouveau est ***préparation pour nourrissons***. (*infant formula*)

DORS/90-174, art. 2.

**B.25.046 (1)** Il est interdit de vendre ou d'annoncer pour la vente un succédané de lait humain nouveau, à moins que le fabricant n'ait donné au ministre, au moins 90 jours avant la vente ou l'annonce de cet aliment, un avis écrit de son intention de vendre ou d'annoncer pour la vente le succédané de lait humain nouveau.

**(2)** The notification referred to in subsection (1) shall be signed and shall include, in respect of the new human milk substitute, the following information:

**(a)** the name under which it will be sold or advertised for sale;

**(b)** the name and the address of the principal place of business of the manufacturer;

**(c)** the names and addresses of each establishment in which it is manufactured;

**(d)** a list of all of its ingredients, stated quantitatively;

**(e)** the specifications for nutrient, microbiological and physical quality for the ingredients and for the new human milk substitute;

**(f)** details of quality control procedures respecting the testing of the ingredients and of the new human milk substitute;

**(g)** details of the manufacturing process and quality control procedures used throughout the process;

**(h)** the results of tests carried out to determine the expiration date of the new human milk substitute;

**(i)** the evidence relied on to establish that the new human milk substitute is nutritionally adequate to promote acceptable growth and development in infants when consumed in accordance with the directions for use;

**(j)** a description of the type of packaging to be used;

**(k)** directions for use;

**(l)** the written text of all labels, including package inserts, to be used in connection with the new human milk substitute; and

**(m)** the name and title of the person who signed the notification and the date of signature.

**(3)** Notwithstanding subsection (1), a person may sell or advertise for sale a new human milk substitute if the manufacturer has notified the Minister pursuant to subsection (1) and is informed in writing by the Minister that the notification is satisfactory.

SOR/90-174, s. 2; SOR/2018-69, ss. 27, 30(F).

**(2)** L'avis visé au paragraphe (1) est signé et contient les renseignements suivants :

**a)** le nom sous lequel le succédané de lait humain nouveau sera vendu ou annoncé pour la vente;

**b)** le nom et l'adresse du principal établissement du fabricant;

**c)** les nom et adresse de chaque établissement où le succédané de lait humain nouveau est fabriqué;

**d)** la liste des ingrédients du succédané de lait humain nouveau et de la quantité de chacun d'eux;

**e)** les caractéristiques relatives à la qualité nutritionnelle, microbiologique et physique des ingrédients et du succédané de lait humain nouveau;

**f)** le détail des techniques de contrôle de la qualité appliquées à l'examen des ingrédients et du succédané de lait humain nouveau;

**g)** le détail du procédé de fabrication et des techniques de contrôle de la qualité appliquées au cours de la fabrication du succédané de lait humain nouveau;

**h)** les résultats des examens effectués pour déterminer la date limite d'utilisation du succédané de lait humain nouveau;

**i)** les preuves établissant que le succédané de lait humain nouveau a une valeur nutritive suffisante pour favoriser une croissance et un développement acceptables chez les bébés s'il est consommé conformément au mode d'emploi;

**j)** une description du type d'emballage qui sera utilisé pour le succédané de lait humain nouveau;

**k)** le mode d'emploi du succédané de lait humain nouveau;

**l)** le texte écrit des étiquettes, y compris les notices d'accompagnement, qui seront utilisées pour le succédané de lait humain nouveau;

**m)** le nom et le titre du signataire de l'avis et la date de la signature.

**(3)** Nonobstant le paragraphe (1), il est permis de vendre ou d'annoncer pour la vente un succédané de lait humain nouveau si le fabricant en a avisé le ministre conformément au paragraphe (1) et que celui-ci l'a informé par écrit que l'avis est satisfaisant.

DORS/90-174, art. 2; DORS/2018-69, art. 27 et 30(F).

**B.25.047** Sections B.25.051 to B.25.059 apply in respect of new human milk substitutes.

SOR/90-174, s. 2; SOR/2003-11, s. 25.

**B.25.048 (1)** No person shall sell or advertise for sale a human milk substitute that has undergone a major change unless the manufacturer of the human milk substitute, at least 90 days before the sale or advertisement, notifies the Minister in writing of the intention to sell or advertise for sale the human milk substitute.

**(2)** The notification referred to in subsection (1) shall be signed and shall include, in respect of the human milk substitute, the following information:

**(a)** the name under which it will be sold or advertised for sale;

**(b)** the name and the address of the principal place of business of the manufacturer;

**(c)** a description of the major change;

**(d)** the evidence relied on to establish that the human milk substitute is nutritionally adequate to promote acceptable growth and development in infants when consumed in accordance with the directions for use;

**(e)** the evidence relied on to establish that the major change has had no adverse effect on the human milk substitute;

**(f)** the written text of all labels, including package inserts, to be used in connection with the human milk substitute; and

**(g)** the name and title of the person who signed the notification and the date of signature.

**(3)** Notwithstanding subsection (1), a person may sell or advertise for sale a human milk substitute that has undergone a major change if the manufacturer has notified the Minister pursuant to subsection (1) and is informed in writing by the Minister that the notification is satisfactory.

SOR/90-174, s. 2; SOR/2018-69, ss. 27, 30(F).

**B.25.050** [Repealed, SOR/90-174, s. 2]

**B.25.051 (1)** No person shall sell or advertise for sale a human milk substitute unless, when prepared according to directions for use, it complies with the provisions of this Division respecting human milk substitutes.

**B.25.047** Les succédanés de lait humain nouveaux sont assujettis aux exigences des articles B.25.051 à B.25.059.

DORS/90-174, art. 2; DORS/2003-11, art. 25.

**B.25.048 (1)** Il est interdit de vendre ou d'annoncer pour la vente un succédané de lait humain qui a fait l'objet d'un changement majeur, à moins que le fabricant n'ait donné au ministre, au moins 90 jours avant la vente ou l'annonce de cet aliment, un avis écrit de son intention de vendre ou d'annoncer pour la vente le succédané de lait humain.

**(2)** L'avis visé au paragraphe (1) est signé et contient les renseignements suivants :

**a)** le nom sous lequel le succédané de lait humain sera vendu ou annoncé pour la vente;

**b)** le nom et l'adresse du principal établissement du fabricant;

**c)** une description du changement majeur;

**d)** la preuve établissant que le succédané de lait humain a une valeur nutritive suffisante pour favoriser une croissance et un développement acceptables chez les bébés s'il est consommé conformément au mode d'emploi;

**e)** la preuve établissant que le changement majeur n'a pas eu d'effet préjudiciable sur le succédané de lait humain;

**f)** le texte écrit des étiquettes, y compris les notices d'accompagnement, qui seront utilisées pour le succédané de lait humain;

**g)** le nom et le titre du signataire de l'avis et la date de la signature.

**(3)** Nonobstant le paragraphe (1), il est permis de vendre ou d'annoncer pour la vente un succédané de lait humain qui a fait l'objet d'un changement majeur si le fabricant en a avisé le ministre conformément au paragraphe (1) et que celui-ci l'a informé par écrit que l'avis est satisfaisant.

DORS/90-174, art. 2; DORS/2018-69, art. 27 et 30(F).

**B.25.050** [Abrogé, DORS/90-174, art. 2]

**B.25.051 (1)** Est interdite la vente ou la publicité en vue de la vente d'un succédané de lait humain, à moins que celui-ci, préparé selon le mode d'emploi, ne soit conforme aux dispositions du présent titre concernant les succédanés de lait humain.

**(2)** No person shall sell or advertise for sale a food that is represented as containing a human milk substitute unless the human milk substitute portion of the food complies with the nutritional requirements set out in this Division for human milk substitutes.

SOR/83-933, s. 1.

**B.25.052 (1)** No person shall sell or advertise for sale a human milk substitute unless it meets the nutritional requirements of infants with normal or special dietary needs and it is of such a consistency that, when ready-to-serve, it passes freely through a nursing bottle nipple.

**(2)** No person shall sell or advertise for sale a food that is represented as containing a human milk substitute unless the human milk substitute portion of the food meets the nutritional requirements of infants with normal or special dietary needs.

SOR/78-637, s. 6; SOR/82-768, s. 76; SOR/83-933, s. 1.

**B.25.053 (1)** No person shall sell or advertise for sale a human milk substitute that requires, when prepared according to directions for use, the addition of a nutritive substance, other than water or a source of carbohydrate or both.

**(2)** No person shall sell or advertise for sale a food represented as containing a human milk substitute that requires, when prepared according to directions for use, the addition of a nutritive substance other than water.

SOR/78-637, s. 7; SOR/83-933, s. 1.

**B.25.054 (1)** Except as otherwise provided in this Division, no person shall sell or advertise for sale a human milk substitute unless it contains, when prepared according to directions for use,

**(a)** per 100 available kilocalories

**(i)** not less than 3.3 and not more than 6.0 grams of fat,

**(ii)** not less than 500 milligrams of linoleic acid in the form of a glyceride,

**(iii)** not more than 1 kilocalorie from $C_{22}$ Monoenoic Fatty Acids,

**(iv)** not less than 1.8 and not more than 4.0 grams of protein,

**(v)** not less than 1.8 grams of protein of nutritional quality equivalent to casein, or such an amount and quality of protein, including those proteins to which

**(2)** Est interdite la vente ou la publicité en vue de la vente d'un aliment présenté comme contenant un succédané de lait humain, à moins que la portion de succédané de lait humain contenue dans l'aliment ne respecte les exigences en matière de nutrition établies dans le présent titre pour les succédanés de lait humain.

DORS/83-933, art. 1.

**B.25.052 (1)** Est interdite la vente ou la publicité en vue de la vente d'un succédané de lait humain, à moins que celui-ci ne réponde aux besoins nutritionnels normaux ou particuliers des bébés et qu'il ne soit d'une consistance telle que, lorsqu'il est prêt à servir, il coule librement à travers la tétine d'un biberon.

**(2)** Est interdite la vente ou la publicité en vue de la vente d'un aliment présenté comme contenant un succédané de lait humain, à moins que la portion de succédané de lait humain contenue dans l'aliment ne réponde aux besoins nutritionnels normaux ou particuliers des bébés.

DORS/78-637, art. 6; DORS/82-768, art. 76; DORS/83-933, art. 1.

**B.25.053 (1)** Est interdite la vente ou la publicité en vue de la vente d'un succédané de lait humain qui, lorsqu'il est préparé selon le mode d'emploi, exige l'addition d'une substance nutritive autre que de l'eau, ou d'une source de glucides, ou des deux.

**(2)** Est interdite la vente ou la publicité en vue de la vente d'un aliment présenté comme contenant un succédané de lait humain qui exige, lorsqu'il est préparé selon le mode d'emploi, l'addition d'une substance nutritive autre que l'eau.

DORS/78-637, art. 7; DORS/83-933, art. 1.

**B.25.054 (1)** Sauf les exceptions prévues dans le présent titre, est interdite la vente ou la publicité en vue de la vente d'un succédané de lait humain, à moins que celui-ci, préparé selon le mode d'emploi, ne contienne :

**a)** pour 100 kilocalories utilisables,

**(i)** au moins 3,3 et au plus 6 grammes de lipides,

**(ii)** au moins 500 milligrammes d'acide linoléique sous forme de glycéride,

**(iii)** au plus un kilocalorie provenant d'acides gras monoénoïques en $C_{22}$,

**(iv)** au moins 1,8 et au plus 4 grammes de protéines,

**(v)** au moins 1,8 gramme de protéines d'une qualité nutritive équivalente à celle de la caséine, ou des protéines, y compris les protéines auxquelles des acides aminés sont ajoutés, en quantité et de

amino acids are added, that, when the quality of the protein is expressed as a fraction of the quality of casein,

**(A)** the fraction will not be less than 85/100, and

**(B)** the product obtained by multiplying the fraction by the gram weight of the protein will not be less than 1.8,

**(vi)** notwithstanding sections D.01.010, D.01.011 and D.02.009, the vitamin and mineral nutrient set out in Column I of an item of Table II to this Division in an amount not less than the amount set out in Column II of that item and not more than the amount set out in Column III of that item, and

**(vii)** not less than 12 milligrams of choline; and

**(b)** a ratio of

**(i)** alpha-tocopherol to linoleic acid of not less than 0.6 International Units to one gram,

**(ii)** calcium to phosphorus of not less than 1.2 grams to one gram and not more than 2.0 grams to one gram, and

**(iii)** vitamin $B_6$ to protein of not less than 15 micrograms to one gram.

**(2)** No person shall sell or advertise for sale a food that is represented as containing a human milk substitute unless the human milk substitute portion of the food complies with subsection (1).

SOR/78-637, s. 7; SOR/83-933, s. 1.

**B.25.055 (1)** Subparagraph B.25.054(1)(a)(i) does not apply to a human milk substitute represented as being for a fat-modified diet.

**(2)** Subparagraph B.25.054(1)(a)(iv), except that portion thereof that prescribes the maximum amount of protein, and subparagraph B.25.054(1)(a)(v) do not apply to a human milk substitute represented as being for a low (naming the amino acid) diet.

**(3)** All that portion of subparagraph B.25.054(1)(a)(vi) that prescribes the minimum amounts of vitamin D, calcium and phosphorus and subparagraph B.25.054(1)(b)(ii) do not apply to a human milk substitute represented as being for a low (naming the mineral) diet or a low vitamin D diet or both.

SOR/83-933, s. 1.

qualité telles que, lorsque la qualité de la protéine est exprimée en fraction de celle de la caséine,

**(A)** la fraction n'est pas inférieure à 85/100, et

**(B)** le produit de la multiplication de la fraction par le poids en gramme de protéine n'est pas inférieur à 1,8,

**(vi)** nonobstant les articles D.01.010, D.01.011 et D.02.009, les vitamines et minéraux nutritifs visés à la colonne I du tableau II du présent titre, en quantité non inférieure à la quantité indiquée dans la colonne II du tableau et non supérieure à la quantité indiquée dans la colonne III du tableau, et

**(vii)** au moins 12 milligrammes de choline; et

**b)** les rapports suivants :

**(i)** au moins 0,6 unité internationale d'alphatocophérol par gramme d'acide linoléique,

**(ii)** au moins 1,2 gramme et au plus 2 grammes de calcium par gramme de phosphore, et

**(iii)** au moins 15 microgrammes de vitamine $B_6$ par gramme de protéines.

**(2)** Est interdite la vente ou la publicité en vue de la vente d'un aliment présenté comme contenant un succédané de lait humain, à moins que la portion de succédané de lait humain contenue dans l'aliment ne respecte les dispositions du paragraphe (1).

DORS/78-637, art. 7; DORS/83-933, art. 1.

**B.25.055 (1)** Le sous-alinéa B.25.054(1)a)(i) ne s'applique pas au succédané de lait humain présenté comme étant utilisable dans un régime à teneur modifiée en lipides.

**(2)** Le sous-alinéa B.25.054(1)a)(iv), à l'exception de la partie qui prescrit la quantité maximale de protéines, ainsi que le sous-alinéa B.25.054(1)a)(v) ne s'appliquent pas à un succédané de lait humain présenté comme étant destiné à un régime pauvre en (nom de l'acide aminé).

**(3)** La partie du sous-alinéa B.25.054(1)a)(vi) qui prescrit les quantités minimales de vitamine D, de calcium et de phosphore, ainsi que le sous-alinéa B.25.054(1)b)(ii), ne s'appliquent pas à un succédané de lait humain présenté comme étant destiné à un régime pauvre en (nom du minéral) ou en vitamine D, ou les deux.

DORS/83-933, art. 1.

**B.25.056** No person shall sell a human milk substitute or a food that is represented as containing a human milk substitute

**(a)** that contains an added nutritive substance that is

**(i)** normally contained in human milk, and

**(ii)** not referred to in paragraph B.25.054(1)(a)

unless the amount of that substance present per 100 available kilocalories of the human milk substitute or human milk substitute portion of the food, when prepared according to directions for use, is equal to the amount thereof present per 100 available kilocalories of human milk; or

**(b)** that contains added amino acids unless

**(i)** the amino acids are required to improve the quality of the protein in the human milk substitute or human milk substitute portion of the food and are present in an amount not exceeding the minimum required for that purpose, or

**(ii)** the protein content of the human milk substitute or human milk substitute portion of the food is supplied by isolated amino acids or by protein hydrolysate, or both

and only the L forms of the amino acids have been added.

SOR/78-637, s. 8; SOR/83-933, s. 1.

**B.25.056** Est interdite la vente d'un succédané de lait humain ou d'un aliment présenté comme contenant un succédané de lait humain

**a)** auquel on a ajouté une substance nutritive

**(i)** que l'on retrouve normalement dans le lait humain, et

**(ii)** qui n'est pas mentionnée à l'alinéa B.25.054(1)a),

sauf si la quantité de cette substance présente dans 100 kilocalories utilisables du succédané de lait humain ou dans la portion de succédané de lait humain contenue dans l'aliment, préparé selon le mode d'emploi, est égale à la quantité de ladite substance présente dans 100 kilocalories utilisables de lait humain; ou

**b)** auquel on a ajouté des acides aminés, sauf

**(i)** si ces acides aminés sont nécessaires pour améliorer la qualité de la fraction protéinique du succédané de lait humain ou de la portion de succédané de lait humain contenue dans l'aliment et n'excèdent pas la quantité requise pour cette amélioration, ou

**(ii)** si la fraction protéinique du succédané de lait humain ou de la portion de succédané de lait humain contenue dans l'aliment est constituée d'acides aminés isolés ou d'un hydrolysat de protéines ou les deux, et

si seulement des acides aminés de forme L ont été ajoutés.

DORS/78-637, art. 8; DORS/83-933, art. 1.

**B.25.057 (1)** The label of a human milk substitute shall carry the following information:

**(a)** a statement of the content of protein, fat, available carbohydrate, ash and, where present, crude fibre in the food

**(i)** in grams per 100 grams or in grams per 100 millilitres of the human milk substitute as offered for sale, and

**(ii)** in grams in a stated quantity of the human milk substitute when ready-to-serve;

**(b)** a statement of the energy value expressed in

**B.25.057 (1)** L'étiquette d'un succédané de lait humain doit comporter les renseignements suivants :

**a)** une déclaration de la teneur en protéines, en matières grasses, en glucides disponibles, en cendres et, s'il y a lieu, en fibres brutes :

**(i)** en grammes par 100 grammes ou en grammes par 100 millilitres de succédané de lait humain sous sa forme commerciale, et

**(ii)** en grammes pour une quantité spécifiée de succédané de lait humain, prêt à servir;

**b)** une déclaration de la valeur énergétique

**(i)** calories per 100 grams or calories per 100 millilitres of the human milk substitute as offered for sale, and

**(ii)** calories in a stated quantity of the human milk substitute when ready-to-serve;

**(c)** a statement of the quantity of all vitamins and mineral nutrients listed in Table II to this Division

**(i)** in International Units or milligrams per 100 grams or in International Units or milligrams per 100 millilitres of the human milk substitute as offered for sale, and

**(ii)** in International Units or milligrams in a stated quantity of the human milk substitute when ready-to-serve;

**(d)** a statement of the quantity of choline and of any added nutritive substance normally contained in human milk and not referred to in paragraph B.25.054(1)(a)

**(i)** in milligrams or grams per 100 grams, or in milligrams or grams per 100 millilitres, of the human milk substitute as offered for sale, and

**(ii)** in milligrams or grams in a stated quantity of the human milk substitute when ready-to-serve;

**(e)** adequate directions for the preparation, use and storage of the human milk substitute after the container has been opened; and

**(f)** the expiration date of the human milk substitute.

**(2)** The label of a food that is represented as containing human milk substitute shall carry the following information:

**(a)** a statement on the principal display panel of the proportion of the human milk substitute contained in the food as offered for sale in close proximity to any claim regarding the presence of the human milk substitute and given equal prominence to such a claim;

**(b)** the common name of the human milk substitute in the list of ingredients to be followed by a statement of all the components contained in the human milk substitute;

**(c)** a statement of

**(i)** en calories par 100 grammes ou en calories par 100 millilitres de succédané de lait humain sous sa forme commerciale, et

**(ii)** en calories pour une quantité spécifiée de succédané de lait humain, prêt à servir;

**c)** une déclaration de la quantité de toutes les vitamines et de tous les minéraux nutritifs énumérés au tableau II du présent titre

**(i)** en unités internationales ou en milligrammes par 100 grammes, ou en unités internationales ou en milligrammes par 100 millilitres de succédané de lait humain sous sa forme commerciale, et

**(ii)** en unités internationales ou en milligrammes pour une quantité spécifiée de succédané de lait humain, prêt à servir;

**d)** une déclaration de la quantité de choline et de la quantité de toute substance nutritive ajoutée et normalement contenue dans le lait humain mais non visée à l'alinéa B.25.054(1)a),

**(i)** en milligrammes ou en grammes par 100 grammes, ou en milligrammes ou en grammes par 100 millilitres du succédané de lait humain sous sa forme commerciale, et

**(ii)** en milligrammes ou en grammes pour une quantité spécifiée de succédané de lait humain, prêt à servir;

**e)** les instructions appropriées pour la préparation, l'utilisation et la conservation du succédané de lait humain une fois le contenant ouvert; et

**f)** la date limite d'utilisation du succédané de lait humain.

**(2)** L'étiquette d'un aliment présenté comme contenant un succédané de lait humain doit fournir les renseignements suivants :

**a)** une déclaration, dans l'espace principal, de la proportion de succédané de lait humain contenue dans l'aliment sous sa forme commerciale, inscrite le plus près possible de toute déclaration concernant la présence d'un succédané de lait humain dans l'aliment, et d'une manière aussi évidente que cette déclaration;

**b)** dans la liste d'ingrédients du produit le nom usuel du succédané de lait humain, suivi d'une liste de tous les ingrédients contenus dans le succédané de lait humain;

**(i)** the content of protein, fat, available carbohydrate, ash and, where present, crude fibre contained in the human milk substitute portion of the food, expressed in grams per 100 grams or per 100 millilitres of the human milk substitute portion of the food as offered for sale,

**(ii)** the energy value of the human milk substitute portion of the food expressed in calories per 100 grams or in calories per 100 millilitres of the human milk substitute portion of the food as offered for sale,

**(iii)** the quantity of all the vitamins and mineral nutrients set out in Table II to this Division that are contained in the human milk substitute portion of the food in International Units or milligrams per 100 grams or in International Units or milligrams per 100 millilitres of the human milk substitute portion of the food as offered for sale, and

**(iv)** the quantity of choline and of any added nutritive substance normally contained in human milk and not referred to in paragraph B.25.054(1)(a) contained in the human milk substitute portion of the food in milligrams or grams per 100 grams or in milligrams or grams per 100 millilitres of the human milk substitute portion of the food as offered for sale;

**(d)** a statement of

**(i)** the content of protein, fat, available carbohydrate, ash and, where present, crude fibre in grams per 100 grams or per 100 millilitres of the food as offered for sale and in grams per stated quantity of ready-to-serve food,

**(ii)** the energy value expressed in calories per 100 grams or in calories per 100 millilitres of the food as offered for sale and in grams per a stated quantity of the food when ready-to-serve,

**(iii)** the quantity of all vitamins and mineral nutrients set out in Table II to this Division in International Units or milligrams per 100 grams or in International Units or milligrams per 100 millilitres of the food as offered for sale and in International Units or milligrams in a stated quantity of the food when ready-to-serve, and

**(iv)** the quantity of choline and of any added nutritive substance normally contained in human milk and not referred to in paragraph B.25.054(1)(a) in milligrams or grams per 100 grams or in milligrams or grams per 100 millilitres of the food as offered

**c)** une déclaration

**(i)** de la teneur en protéines, en matières grasses, en glucides disponibles, en cendres et, s'il y a lieu, en fibres brutes de la portion de succédané de lait humain que contient l'aliment, exprimée en grammes par 100 grammes ou par 100 millilitres de la portion de succédané de lait humain contenue dans l'aliment sous sa forme commerciale,

**(ii)** de la valeur énergétique de la portion de succédané de lait humain contenue dans l'aliment, exprimée en calories par 100 grammes ou en calories par 100 millilitres de la portion de succédané de lait humain contenue dans l'aliment sous sa forme commerciale,

**(iii)** de la quantité de toutes les vitamines et de tous les minéraux nutritifs indiqués au tableau II du présent titre et contenue dans la portion de succédané de lait humain que renferme l'aliment, exprimée en unités internationales ou en milligrammes par 100 grammes, ou en unités internationales ou en milligrammes par 100 millilitres de la portion de succédané de lait humain contenue dans l'aliment sous sa forme commerciales, et

**(iv)** de la quantité de choline et de la quantité de toute substance nutritive ajoutée et normalement contenue dans le lait humain mais non visée à l'alinéa B.25.054(1)a) contenues dans la portion de succédané de lait humain que renferme l'aliment, exprimées en milligrammes ou en grammes par 100 grammes, ou en milligrammes ou en grammes par 100 millilitres de la portion de succédané de lait humain contenue dans l'aliment sous sa forme commerciale;

**d)** une déclaration

**(i)** de la teneur en protéines, en matières grasses, en glucides disponibles, en cendres et, s'il y a lieu, en fibres brutes, exprimée en grammes par 100 grammes ou par 100 millilitres d'aliment sous sa forme commerciale et en grammes par quantité spécifiée de l'aliment prêt à servir,

**(ii)** de la valeur énergétique, exprimée en calories par 100 grammes ou en calories par 100 millilitres d'aliment sous sa forme commerciale et en grammes pour une quantité spécifiée de l'aliment prêt à servir,

**(iii)** de la quantité de toutes les vitamines et de tous les minéraux nutritifs indiqués au tableau II du présent titre, exprimée en unités internationales ou

for sale and in milligrams or grams in a stated quantity of the food when ready-to-serve;

**(e)** adequate directions for the preparation, use and storage of the food after the container has been opened; and

**(f)** the expiration date of the food.

SOR/83-933, s. 1; SOR/88-559, s. 30.

en milligrammes par 100 grammes, ou en unités internationales ou en milligrammes par 100 millilitres d'aliment sous sa forme commerciale, et en unités internationales ou en milligrammes pour une quantité spécifiée de l'aliment prêt à servir, et

**(iv)** de la quantité de choline et de la quantité de toute substance nutritive ajoutée et normalement contenue dans le lait humain mais non visée à l'alinéa B.25.054(1)a), exprimées en milligrammes ou en grammes par 100 grammes, ou en milligrammes ou en grammes par 100 millilitres d'aliment sous sa forme commerciale, et en milligrammes ou en grammes pour une quantité spécifiée de l'aliment prêt à servir;

**e)** les instructions appropriées pour la préparation, l'utilisation et la conservation de l'aliment une fois le contenant ouvert; et

**f)** la date limite d'utilisation de l'aliment.

DORS/83-933, art. 1; DORS/88-559, art. 30.

**B.25.058** Notwithstanding section D.02.005, no person shall make any claim with respect to the iron content of a human milk substitute except as required by paragraph B.25.057(1)(c), unless the human milk substitute contains at least one milligram of iron per 100 available kilocalories.

SOR/78-637, s. 9(F); SOR/83-933, s. 1.

**B.25.058** Nonobstant l'article D.02.005, est interdite toute allégation relative à la teneur en fer d'un succédané de lait humain, sauf de la façon prescrite à l'alinéa B.25.057(1)c), à moins que le succédané de lait humain ne contienne au moins un milligramme de fer par 100 kilocalories utilisables.

DORS/78-637, art. 9(F); DORS/83-933, art. 1.

**B.25.059** No person shall, on the label of or in any advertisement for a human milk substitute or a food represented as containing a human milk substitute, make any statement or claim relating to the content in the food of

**(a)** the percentage of the daily value of

**(i)** fat,

**(ii)** saturated fatty acids and *trans* fatty acids,

**(iii)** sodium,

**(iv)** potassium,

**(v)** sugars,

**(vi)** fibre, or

**(vii)** cholesterol; or

**(b)** the number of Calories from

**(i)** fat, or

**(ii)** saturated fatty acids and *trans* fatty acids.

SOR/2003-11, s. 26; SOR/2016-305, s. 60.

**B.25.059** Est interdite, sur l'étiquette ou dans l'annonce d'un succédané de lait humain ou d'un aliment présenté comme contenant un succédané de lait humain, toute mention ou allégation relative à son contenu portant :

**a)** soit sur le pourcentage de la valeur quotidienne :

**(i)** de lipides,

**(ii)** d'acides gras saturés et d'acides gras *trans*,

**(iii)** de sodium,

**(iv)** de potassium,

**(v)** de sucres,

**(vi)** de fibres,

**(vii)** de cholestérol;

**b)** soit sur le nombre de Calories provenant :

**(i)** des lipides,

**(ii)** des acides gras saturés et des acides gras *trans*.

DORS/2003-11, art. 26; DORS/2016-305, art. 60.

**B.25.060 (1)** Where the manufacturer of a human milk substitute or of a food that is represented as containing a human milk substitute is requested in writing by the Minister to submit on or before a specified day evidence with respect to the human milk substitute, the manufacturer shall make no further sales of that human milk substitute or food that is represented as containing human milk substitute after that day unless he has submitted the evidence requested.

**(2)** If the Minister determines that the evidence submitted by a manufacturer under subsection (1) is not sufficient, he or she shall so notify the manufacturer in writing.

**(3)** Where, pursuant to subsection (2), a manufacturer is notified that the evidence with respect to the human milk substitute is not sufficient, he shall make no further sales of that human milk substitute or of that food that is represented as containing the human milk substitute unless he submits further evidence and is notified in writing by the Minister that the further evidence is sufficient.

**(4)** In this section, ***evidence with respect to the human milk substitute*** means

**(a)** evidence that establishes that the human milk substitute is nutritionally adequate to promote acceptable growth and development in infants when consumed in accordance with the directions for use; and

**(b)** the results of tests carried out to determine the expiration date of the human milk substitute.

SOR/83-933, s. 1; SOR/88-424, s. 2; SOR/90-174, s. 3; SOR/2018-69, ss. 12, 27.

## Additional Rules

[SOR/2021-57, s. 14]

**B.25.061 (1)** Subject to subsection (2), no person shall include on the label of a food any representation respecting the consumption of the food by an infant who is less than six months of age.

**(2)** Subsection (1) does not apply in respect of a human milk fortifier, human milk substitute or new human milk substitute.

SOR/83-933, s. 1; SOR/90-174, s. 4; SOR/2021-57, s. 15.

**B.25.062 (1)** Subject to subsection (2), it is prohibited to sell an infant food if the food contains a food additive.

**(2)** Subsection (1) does not apply to

**B.25.060 (1)** Lorsque le ministre demande par écrit au fabricant de succédané de lait humain ou d'aliment présenté comme contenant ce succédané de fournir dans un délai précis des preuves concernant le succédané de lait humain, le fabricant, s'il n'a pas répondu à la demande dans le délai fixé, doit cesser, après l'expiration du délai, de vendre ce succédané ou cet aliment.

**(2)** Si le ministre conclut que les preuves présentées par le fabricant en application du paragraphe (1) sont insuffisantes, il en avise le fabricant par écrit.

**(3)** Lorsque le fabricant reçoit, en application du paragraphe (2), un avis portant que les preuves concernant le succédané de lait humain sont insuffisantes, il doit cesser la vente de ce succédané de lait humain ou des aliments présentés comme contenant ce succédané de lait humain jusqu'à ce qu'il ait présenté des preuves supplémentaires et que le ministre l'ait avisé que ces preuves sont suffisantes.

**(4)** Pour l'application du présent article, ***preuves concernant le succédané de lait humain*** désigne :

**a)** d'une part, la preuve établissant que le succédané de lait humain a une valeur nutritive suffisante pour favoriser une croissance et un développement acceptables chez les bébés s'il est consommé conformément au mode d'emploi;

**b)** d'autre part, les résultats des examens effectués pour déterminer la date limite d'utilisation du succédané de lait humain.

DORS/83-933, art. 1; DORS/88-424, art. 2; DORS/90-174, art. 3; DORS/2018-69, art. 12 et 27.

## Règles additionnelles

[DORS/2021-57, art. 14]

**B.25.061 (1)** Sous réserve du paragraphe (2), est interdite l'inscription, sur l'étiquette d'un aliment, de toute indication concernant la consommation de l'aliment par un bébé âgé de moins de six mois.

**(2)** Le paragraphe (1) ne s'applique pas aux fortifiants pour lait humain, aux succédanés de lait humain ou aux succédanés de lait humain nouveaux.

DORS/83-933, art. 1; DORS/90-174, art. 4; DORS/2021-57, art. 15.

**B.25.062 (1)** Sous réserve du paragraphe (2), est interdite la vente d'un aliment pour bébés si l'aliment contient un additif alimentaire.

**(2)** Le paragraphe (1) ne s'applique pas

**(a)** bakery products that are labelled or advertised for consumption by infants;

**(b)** the following foods that are labelled or advertised for consumption by infants and that contain ascorbic acid:

**(i)** fruit purées, and

**(ii)** cereals containing banana;

**(c)** infant cereal products that contain lecithin;

**(d)** foods that are labelled or advertised for consumption by infants and that contain citric acid;

**(e)** infant formula that contains the food additives set out in Tables IV and X to section B.16.100 for use in infant formula;

**(f)** infant formula that contains ingredients manufactured with food additives set out in Table V to section B.16.100;

**(g)** infant formula that contains concentrated or dried whey products manufactured with liquid whey to which sodium hexametaphosphate has been added;

**(h)** infant cereal products that contain amylase in accordance with Table V to section B.16.100;

**(i)** infant formula that contains ascorbyl palmitate or tocopherols; or

**(j)** infant formula that contains oils to which ascorbyl palmitate or tocopherols have been added.

SOR/83-933, s. 1; SOR/90-24, s. 4; SOR/91-149, s. 6; SOR/97-559, s. 1; SOR/2010-40, s. 3; SOR/2010-41, s. 8; SOR/2010-94, s. 6; SOR/2010-141, s. 3; SOR/2012-105, s. 2; SOR/2021-57, s. 16.

**a)** aux produits de boulangerie étiquetés ou annoncés comme pouvant être consommés par des bébés;

**b)** aux aliments ci-après qui sont étiquetés ou annoncés comme pouvant être consommés par des bébés et qui contiennent de l'acide ascorbique :

**(i)** fruits en purée,

**(ii)** céréales contenant des bananes;

**c)** aux produits céréaliers pour bébés qui contiennent de la lécithine;

**d)** aux aliments qui sont étiquetés ou annoncés comme pouvant être consommés par des bébés et qui contiennent de l'acide citrique;

**e)** aux préparations pour nourrissons qui contiennent les additifs alimentaires figurant aux tableaux IV et X de l'article B.16.100 pour utilisation dans les préparations pour nourrissons;

**f)** aux préparations pour nourrissons qui contiennent des ingrédients fabriqués avec des additifs alimentaires figurant au tableau V de l'article B.16.100;

**g)** aux préparations pour nourrissons qui contiennent des produits de petit-lait concentré ou séché fabriqués avec du petit-lait liquide auquel de l'hexamétaphosphate de sodium a été ajouté;

**h)** aux produits céréaliers pour bébés qui contiennent de l'amylase conformément au tableau V de l'article B.16.100;

**i)** aux préparations pour nourrissons qui contiennent du palmitate d'ascorbyle ou des tocophérols;

**j)** aux préparations pour nourrissons qui contiennent des huiles dans lesquelles du palmitate d'ascorbyle ou des tocophérols ont été ajoutés.

DORS/83-933, art. 1; DORS/90-24, art. 4; DORS/91-149, art. 6; DORS/97-559, art. 1; DORS/2010-40, art. 3; DORS/2010-41, art. 8; DORS/2010-94, art. 6; DORS/2010-141, art. 3; DORS/2012-105, art. 2; DORS/2021-57, art. 16.

**TABLE I**

**Sodium Content in Infant Foods**

| | Column I<br>Food | Column II<br>Total Sodium in Grams per 100 Grams of Food |
|---|---|---|
| 1 | Junior Desserts ..... | 0.10 |
| 2 | Junior Meat, Junior Meat Dinners, Junior Dinners, Junior Breakfasts . | 0.25 |

**TABLEAU I**

**Teneur en sodium des aliments pour bébés**

| | Colonne I<br>Aliments | Colonne II<br>Sodium total en grammes par 100 g de l'aliment |
|---|---|---|
| 1 | Desserts pour enfants en bas âge .. | 0,10 |

| | Column I<br>Food | Column II<br>Total Sodium in Grams per 100 Grams of Food |
|---|---|---|
| 3 | Junior Vegetables, Junior Soups ... | 0.20 |
| 4 | Strained Desserts ..... | 0.05 |
| 5 | Strained Meats, Strained Meat Dinners, Strained Dinners, Strained Breakfasts ..... | 0.15 |
| 6 | Strained Vegetables, Strained Soups ..... | 0.10 |

SOR/78-637, s. 10; SOR/83-933, s. 1.

| | Colonne I<br>Aliments | Colonne II<br>Sodium total en grammes par 100 g de l'aliment |
|---|---|---|
| 2 | Viandes pour enfants en bas âge, repas de viande pour enfants en bas âge, repas pour enfants en bas âge, petits déjeuners pour enfants en bas âge ..... | 0,25 |
| 3 | Légumes pour enfants en bas âge, soupes pour enfants en bas âge .... | 0,20 |
| 4 | Desserts en purée ..... | 0,05 |
| 5 | Viandes en purée, repas de viande en purée, repas en purée, petits déjeuners en purée ..... | 0,15 |
| 6 | Légumes en purée, soupes tamisées ..... | 0,10 |

DORS/78-637, art. 10; DORS/83-933, art. 1.

**TABLE II**

| Item No. | Column I<br>Vitamin or Mineral nutrient | Column II<br>Minimum amount per 100 available kilocalories | Column III<br>Maximum amount per 100 available kilocalories |
|---|---|---|---|
| B.1 | Biotin | 2 µg | — |
| F.1 | Folic acid | 4 µg | — |
| N.1 | Niacin | 250 µg | — |
| P.1 | d-pantothenic acid | 300 µg | — |
| R.1 | Riboflavin | 60 µg | — |
| T.1 | Thiamine | 40 µg | — |
| T.2 | Alpha-tocopherol | 0.6 I.U. | — |
| V.1 | Vitamin A | 250 I.U. | 500 I.U. |
| V.2 | Vitamin $B_6$ | 35 µg | — |
| V.3 | Vitamin $B_{12}$ | 0.15 µg | — |
| V.4 | Vitamin C | 8 mg | — |
| V.5 | Vitamin D | 40 I.U. | 80 I.U. |
| V.6 | Vitamin $K_1$ | 8 µg | — |
| C.1 | Calcium | 50 mg | — |
| C.2 | Chloride | 55 mg | 150 mg |
| C.3 | Copper | 60 µg | — |
| L.1 | Iodine | 5 µg | — |
| L.2 | Iron | 0.15 mg | — |
| M.1 | Magnesium | 6 mg | — |
| M.2 | Manganese | 5 µg | — |
| P.2 | Phosphorous | 25 mg | — |
| P.3 | Potassium | 80 mg | 200 mg |

**TABLEAU II**

| Article | Colonne I<br>Vitamine ou minéral nutritif | Colonne II<br>Quantité minimale par 100 kilocalories utilisables | Colonne III<br>Quantité maximale par 100 kilocalories utilisables |
|---|---|---|---|
| B.1 | Biotine | 2 µg | — |
| F.1 | Acide folique | 4 µg | — |
| N.1 | Niacine | 250 µg | — |
| P.1 | Acide d-pantothénique | 300 µg | — |
| R.1 | Riboflavine | 60 µg | — |
| T.1 | Thiamine | 40 µg | — |
| T.2 | Alpha-tocophérol | 0,6 U.I | — |
| V.1 | Vitamine A | 250 U.I. | 500 U.I. |
| V.2 | Vitamine $B_6$ | 35 µg | — |
| V.3 | Vitamine $B_{12}$ | 0,15 µg | — |
| V.4 | Vitamine C | 8 mg | — |
| V.5 | Vitamine D | 40 U.I. | 80 U.I. |
| V.6 | Vitamine $K_1$ | 8 µg | — |
| C.1 | Calcium | 50 mg | — |
| C.2 | Chlorure | 55 mg | 150 mg |
| C.3 | Cuivre | 60 µg | — |
| L.1 | Iode | 5 µg | — |
| L.2 | Fer | 0,15 mg | — |
| M.1 | Magnésium | 6 mg | — |
| M.2 | Manganèse | 5 µg | — |
| P.2 | Phosphore | 25 mg | — |
| P.3 | Potassium | 80 mg | 200 mg |

| Item No. | Column I<br>Vitamin or Mineral nutrient | Column II<br>Minimum amount per 100 available kilocalories | Column III<br>Maximum amount per 100 available kilocalories |
|---|---|---|---|
| S.1 | Sodium | 20 mg | 60 mg |
| Z.1 | Zinc | 0.5 mg | — |

SOR/83-933, s. 1; SOR/98-458, s. 7(F); SOR/2022-197, s. 7.

| Article | Colonne I<br>Vitamine ou minéral nutritif | Colonne II<br>Quantité minimale par 100 kilocalories utilisables | Colonne III<br>Quantité maximale par 100 kilocalories utilisables |
|---|---|---|---|
| S.1 | Sodium | 20 mg | 60 mg |
| Z.1 | Zinc | 0,5 mg | — |

DORS/83-933, art. 1; DORS/98-458, art. 7(F); DORS/2022-197, art. 7.

## DIVISION 26

# Food Irradiation

## Interpretation

[SOR/2017-16, s. 2(F)]

**B.26.001** In this Division, ***irradiation*** means treatment with ionizing radiation.

SOR/89-175, s. 3; SOR/2017-16, s. 3.

## Application

**B.26.002** This Division does not apply to foods exposed to ionizing radiation from a measuring instrument used to determine weight, estimate bulk solids, measure the total solids in liquids or perform other inspection procedures.

SOR/89-175, s. 3.

## General

**B.26.003 (1)** Subject to subsection (2), no person shall sell a food that has been irradiated.

**(2)** A food that is set out in column 1 of the table to this Division that has been irradiated may be sold if both of the following requirements are met:

**(a)** the ionizing radiation is of a type and from a source set out in column 2 for the purpose of irradiation set out in column 3; and

**(b)** the ionizing radiation that is absorbed by the food is either within the range set out in columns 4 and 5 or, if there is no minimum absorbed dose set out in column 4, is not more than the maximum absorbed dose set out in column 5.

SOR/89-175, s. 3; SOR/2017-16, s. 4.

## TITRE 26

# Irradiation des aliments

## Interprétation

[DORS/2017-16, art. 2(F)]

**B.26.001** Au présent titre, ***irradiation*** s'entend du traitement au moyen d'un rayonnement ionisant.

DORS/89-175, art. 3; DORS/2017-16, art. 3.

## Application

**B.26.002** Le présent titre ne s'applique pas aux aliments exposés à un rayonnement ionisant émis par un instrument de mesure utilisé pour déterminer le poids, évaluer la quantité des solides en vrac ou mesurer la teneur en solides d'un liquide, ou à d'autres fins d'inspection.

DORS/89-175, art. 3.

## Dispositions générales

**B.26.003 (1)** Sous réserve du paragraphe (2), il est interdit de vendre un aliment qui a été irradié.

**(2)** Il est permis de vendre un aliment qui a été irradié et qui est visé à la colonne 1 du tableau du présent titre si les exigences ci-après sont remplies :

**a)** le rayonnement ionisant est d'un type et d'une source mentionnés à la colonne 2 et a été fait pour atteindre le but de l'irradiation visé à la colonne 3;

**b)** le rayonnement ionisant absorbé par l'aliment est conforme aux doses prévues aux colonnes 4 et 5 ou, dans le cas où la colonne 4 ne prévoit aucune dose absorbée minimale, n'excède pas la dose absorbée maximale prévue à la colonne 5.

DORS/89-175, art. 3; DORS/2017-16, art. 4.

## Records

**B.26.004 (1)** A manufacturer who sells a food that has been irradiated shall keep on their premises, for at least two years after the date of the irradiation, a record that contains all of the following information:

**(a)** the name of the food that was irradiated and the quantity and lot numbers of the food;

**(b)** the purpose of the irradiation;

**(c)** the date of the irradiation;

**(d)** the dose of ionizing radiation that was absorbed by the food;

**(e)** the type and source of the ionizing radiation;

**(f)** a statement that indicates whether the food was previously irradiated and, if it was previously irradiated, the information referred to in paragraphs (a) to (e) in respect of that previous irradiation.

**(2)** A person who imports a food for sale in Canada that has been irradiated shall keep on their premises, for at least two years after the date of importation, a record of the information required by subsection (1).

SOR/89-175, s. 3; SOR/2017-16, s. 5.

## Changes to the Table

**B.26.005** A request that a food be added or a change made to the table to this Division shall be accompanied by a submission to the Minister containing the following information:

**(a)** the purpose and details of the proposed irradiation — including the type and source of the ionizing radiation — and the proposed number of treatments and the minimum and maximum absorbed doses of the ionizing radiation;

**(b)** data indicating that the minimum dose of ionizing radiation proposed to be used accomplishes the intended purpose of the irradiation and the maximum dose of ionizing radiation proposed does not exceed the amount required to accomplish the purpose of the irradiation;

**(c)** information on the nature of the dosimeter used, the frequency of the dosimetry on the food and data pertaining to the dosimetry and phantoms used to assure that the dosimetry readings reflect the dose absorbed by the food during irradiation;

## Registres

**B.26.004 (1)** Le fabricant qui vend un aliment qui a été irradié doit conserver à son établissement, pendant au moins deux ans après la date d'irradiation, un registre contenant les renseignements suivants :

**a)** le nom de l'aliment irradié ainsi que la quantité et les numéros de lot de l'aliment;

**b)** le but de l'irradiation;

**c)** la date de l'irradiation;

**d)** la dose de rayonnement ionisant absorbée par l'aliment;

**e)** le type et la source du rayonnement ionisant;

**f)** une mention indiquant si l'aliment a déjà été irradié et, dans l'affirmative, les renseignements visés aux alinéas a) à e) à l'égard de cette irradiation précédente.

**(2)** Quiconque importe, pour la vente au Canada, un aliment qui a été irradié doit conserver à son établissement, pendant au moins deux ans après la date d'importation, le registre prévu au paragraphe (1).

DORS/89-175, art. 3; DORS/2017-16, art. 5.

## Modification du tableau

**B.26.005** Toute demande visant la modification du tableau du présent titre ou l'adjonction d'un aliment à celui-ci doit être accompagnée d'une présentation au ministre contenant les renseignements suivants :

**a)** le but et le détail de l'irradiation proposée, notamment le type et la source du rayonnement ionisant, le nombre proposé de traitements et les doses minimale et maximale absorbées du rayonnement ionisant;

**b)** les données indiquant que la dose minimale du rayonnement ionisant proposé permettra d'atteindre le but visé par l'irradiation et que la dose maximale du rayonnement ionisant proposé n'excédera pas le niveau approprié à cette fin;

**c)** les renseignements sur la nature du dosimètre utilisé, la fréquence de la dosimétrie de l'aliment ainsi que des données relatives à la dosimétrie et aux fantômes utilisés afin de garantir que les relevés dosimétriques correspondent activement à la dose absorbée par l'aliment durant l'irradiation;

**d)** les données relatives aux effets, le cas échéant, dans les conditions envisagées, de l'irradiation et de

**(d)** data indicating the effects, if any, on the nutritional quality of the food, raw and ready-to-serve, under the proposed conditions of irradiation and any other processes that are combined with the irradiation;

**(e)** data establishing that the irradiated food has not been significantly altered in chemical, physical or microbiological characteristics to render the food unfit for human consumption;

**(f)** where the Minister so requests, data establishing that the proposed irradiation is safe under the conditions proposed for the irradiation;

**(g)** the recommended conditions of storage and shipment of the irradiated food including the time, temperature and packaging and a comparison of the recommended conditions for the same food that has not been irradiated;

**(h)** details of any other processes to be applied to the food prior to or after the proposed irradiation; and

**(i)** such other data as the Minister may require to establish that consumers and purchasers of the irradiated food will not be deceived or misled as to the character, value, composition, merit or safety of the irradiated food.

tout autre traitement qui y est combiné sur la qualité nutritive de l'aliment, cru et prêt à servir;

**e)** les données établissant que les caractéristiques chimiques, physiques ou microbiologiques de l'aliment irradié n'ont pas été modifiées de façon à le rendre impropre à la consommation humaine;

**f)** si le ministre le demande, les données établissant que l'irradiation proposée est sans danger dans les conditions envisagées;

**g)** les conditions recommandées pour l'emmagasinage et l'expédition de l'aliment irradié, notamment la durée, la température ainsi que l'emballage, et une comparaison avec les conditions recommandées pour le même aliment non irradié;

**h)** le détail de tout autre traitement que l'aliment doit subir avant ou après l'irradiation proposée;

**i)** toute autre donnée exigée par le ministre qui établit que le consommateur ou l'acheteur de l'aliment irradié n'est pas déçu ou trompé quant à la nature, la valeur, la composition, les avantages et la sûreté de l'aliment irradié.

**TABLE**

| | Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|---|---|---|---|---|---|
| Item | Food | Type and Source of Ionizing Radiation | Purpose of Irradiation | Minimum Absorbed Dose (kGy) | Maximum Absorbed Dose (kGy) |
| 1 | Potatoes (*Solanum tuberosum* L.) | Gamma radiation from cobalt-60 | To inhibit sprouting during storage | | 0.15 |
| 2 | Onions (*Allium cepa*) | Gamma radiation from cobalt-60 | To inhibit sprouting during storage | | 0.15 |
| 3 | Wheat, flour, whole wheat flour (*Triticum* spp.) | Gamma radiation from cobalt-60 | To control insect infestation in stored food | | 0.75 |
| 4 | Whole or ground spices and dehydrated seasoning preparations | (1) Gamma radiation from cobalt-60 | (1) To reduce microbial load | | (1) 10.0 (total overall average dose) |
| | | (2) Gamma radiation from cesium-137 | (2) To reduce microbial load | | (2) 10.0 (total overall average dose) |
| | | (3) Electrons from machine sources operated at or below 3 MeV | (3) To reduce microbial load | | (3) 10.0 (total overall average dose) |
| 5 | Fresh raw ground beef | (1) Gamma radiation from cobalt-60 | (1) To reduce microbial load, including pathogens | (1) 1.0 | (1) 4.5 |

| Item | Column 1<br>Food | Column 2<br>Type and Source of Ionizing Radiation | Column 3<br>Purpose of Irradiation | Column 4<br>Minimum Absorbed Dose (kGy) | Column 5<br>Maximum Absorbed Dose (kGy) |
|---|---|---|---|---|---|
| | | (2) Gamma radiation from cesium-137 | (2) To reduce microbial load, including pathogens | (2) 1.0 | (2) 4.5 |
| | | (3) Electrons from machine sources operated at or below 10 MeV | (3) To reduce microbial load, including pathogens | (3) 1.0 | (3) 4.5 |
| | | (4) X-rays from machine sources operated at or below one of the following: | | | |
| | | (a) 7.5 MeV when the target material is tantalum or gold; | (a) To reduce microbial load, including pathogens; | (a) 1.0 | (a) 4.5 |
| | | (b) 5 MeV in any other case. | (b) To reduce microbial load, including pathogens. | (b) 1.0 | (b) 4.5 |
| 6 | Frozen raw ground beef | (1) Gamma radiation from cobalt-60 | (1) To reduce microbial load, including pathogens | (1) 1.5 | (1) 7.0 |
| | | (2) Gamma radiation from cesium-137 | (2) To reduce microbial load, including pathogens | (2) 1.5 | (2) 7.0 |
| | | (3) Electrons from machine sources operated at or below 10 MeV | (3) To reduce microbial load, including pathogens | (3) 1.5 | (3) 7.0 |
| | | (4) X-rays from machine sources operated at or below one of the following: | | | |
| | | (a) 7.5 MeV when the target material is tantalum or gold; | (a) To reduce microbial load, including pathogens; | (a) 1.5 | (a) 7.0 |
| | | (b) 5 MeV in any other case. | (b) To reduce microbial load, including pathogens. | (b) 1.5 | (b) 7.0 |

**TABLEAU**

| Article | Colonne 1<br>Aliment | Colonne 2<br>Type et source de rayonnement ionisant | Colonne 3<br>But de l'irradiation | Colonne 4<br>Dose absorbée minimale (kGy) | Colonne 5<br>Dose absorbée maximale (kGy) |
|---|---|---|---|---|---|
| 1 | Pommes de terre (*Solanum tuberosum* L.) | Rayons gamma provenant du cobalt 60 | Inhibition de la germination durant l'emmagasinage | | 0,15 |
| 2 | Oignons (*Allium cepa*) | Rayons gamma provenant du cobalt 60 | Inhibition de la germination durant l'emmagasinage | | 0,15 |
| 3 | Blé, farine, farine de blé entier (*Triticum* spp.) | Rayons gamma provenant du cobalt 60 | Prévention de l'infestation par des insectes dans l'aliment emmagasiné | | 0,75 |

| | Colonne 1 | Colonne 2 | Colonne 3 | Colonne 4 | Colonne 5 |
|---|---|---|---|---|---|
| Article | Aliment | Type et source de rayonnement ionisant | But de l'irradiation | Dose absorbée minimale (kGy) | Dose absorbée maximale (kGy) |
| 4 | Épices entières ou moulues et assaisonnements déshydratés | (1) Rayons gamma provenant du cobalt 60 | (1) Réduction de la charge microbienne | | (1) 10,0 (dose globale moyenne totale) |
| | | (2) Rayons gamma provenant du césium 137 | (2) Réduction de la charge microbienne | | (2) 10,0 (dose globale moyenne totale) |
| | | (3) Électrons provenant d'un appareil radiogène fonctionnant à au plus 3 MeV | (3) Réduction de la charge microbienne | | (3) 10,0 (dose globale moyenne totale) |
| 5 | Bœuf haché cru frais | (1) Rayons gamma provenant du cobalt 60 | (1) Réduction de la charge microbienne, y compris les agents pathogènes | (1) 1,0 | (1) 4,5 |
| | | (2) Rayons gamma provenant du césium 137 | (2) Réduction de la charge microbienne, y compris les agents pathogènes | (2) 1,0 | (2) 4,5 |
| | | (3) Électrons provenant d'un appareil radiogène fonctionnant à au plus 10 MeV | (3) Réduction de la charge microbienne, y compris les agents pathogènes | (3) 1,0 | (3) 4,5 |
| | | (4) Rayons X provenant d'un appareil radiogène fonctionnant à au plus : | | | |
| | | a) 7,5 MeV, lorsque la matière cible est du tantale ou de l'or; | a) Réduction de la charge microbienne, y compris les agents pathogènes; | a) 1,0 | a) 4,5 |
| | | b) 5 MeV, dans les autres cas. | b) Réduction de la charge microbienne, y compris les agents pathogènes. | b) 1,0 | b) 4,5 |
| 6 | Bœuf haché cru congelé | (1) Rayons gamma provenant du cobalt 60 | (1) Réduction de la charge microbienne, y compris les agents pathogènes | (1) 1,5 | (1) 7,0 |
| | | (2) Rayons gamma provenant du césium 137 | (2) Réduction de la charge microbienne, y compris les agents pathogènes | (2) 1,5 | (2) 7,0 |
| | | (3) Électrons provenant d'un appareil radiogène fonctionnant à au plus 10 MeV | (3) Réduction de la charge microbienne, y compris les agents pathogènes | (3) 1,5 | (3) 7,0 |
| | | (4) Rayons X provenant d'un appareil radiogène fonctionnant à au plus : | | | |
| | | a) 7,5 MeV, lorsque la matière cible est du tantale ou de l'or; | a) Réduction de la charge microbienne, y compris les agents pathogènes; | a) 1,5 | a) 7,0 |
| | | b) 5 MeV, dans les autres cas. | b) Réduction de la charge microbienne, y compris les agents pathogènes. | b) 1,5 | b) 7,0 |

SOR/89-175, s. 3; SOR/98-458, s. 7(F); SOR/2017-16, ss. 6, 7; SOR/2018-69, s. 27.

DORS/89-175, art. 3; DORS/98-458, art. 7(F); DORS/2017-16, art. 6 et 7; DORS/2018-69, art. 27.

## DIVISION 27

# Low-Acid Foods Packaged in Hermetically Sealed Containers

**B.27.001** In this Division,

***commercially sterile*** means the condition obtained in a food that has been processed by the application of heat, alone or in combination with other treatments, to render the food free from viable forms of microorganisms, including spores, capable of growing in the food at temperatures at which the food is designed normally to be held during distribution and storage; (*stérilité commerciale*)

***hermetically sealed container*** means a container designed and intended to be secure against the entry of microorganisms, including spores; (*récipient hermétiquement fermé*)

***low-acid food*** means a food, other than an alcoholic beverage, where any component of the food has a pH greater than 4.6 and a water activity greater than 0.85; (*aliment peu acide*)

***refrigeration*** means exposure to a temperature of 4°C or less but does not mean frozen; (*réfrigéré*)

***shipping container*** means a receptacle, package or wrapper in which containers of food are placed for transportation; (*contenant d'expédition*)

***water activity*** means the ratio of the water vapour pressure of a food to the vapour pressure of pure water, at the same temperature and pressure. (*activité de l'eau*)

SOR/89-309, s. 1.

**B.27.002 (1)** No person shall sell a low-acid food packaged in a hermetically sealed container unless the food is commercially sterile.

**(2)** Subsection (1) does not apply in respect of a low-acid food packaged in a hermetically sealed container where

## TITRE 27

# Aliments peu acides emballés dans des récipients hermétiquement fermés

**B.27.001** Les définitions qui suivent s'appliquent au présent titre.

***activité de l'eau*** Rapport de la pression de vapeur d'eau de l'aliment à la pression de vapeur de l'eau pure à la même température et à la même pression. (*water activity*)

***aliment peu acide*** Aliment, à l'exception des boissons alcooliques, dont l'un des constituants a un pH supérieur à 4,6 et une activité de l'eau supérieure à 0,85. (*low-acid food*)

***contenant d'expédition*** Récipient, emballage ou enveloppe dans lequel les contenants d'aliments sont placés aux fins de transport. (*shipping container*)

***récipient hermétiquement fermé*** Contenant conçu pour protéger son contenu contre les microorganismes, y compris les spores. (*hermetically sealed container*)

***réfrigéré*** Le fait d'être soumis à une température de 4 °C ou moins sans qu'il y ait congélation. (*refrigeration*)

***stérilité commerciale*** État de l'aliment qui a subi un traitement thermique, seul ou en combinaison avec d'autres procédés, pour le rendre exempt de toute forme viable de microorganismes, y compris les spores, susceptibles de se développer dans l'aliment aux températures auxquelles il est destiné à être normalement soumis durant la distribution et l'entreposage. (*commercially sterile*)

DORS/89-309, art. 1.

**B.27.002 (1)** Il est interdit de vendre un aliment peu acide emballé dans un récipient hermétiquement fermé à moins que cet aliment ne soit dans un état de stérilité commerciale.

**(2)** Le paragraphe (1) ne s'applique pas aux aliments peu acides emballés dans des récipients hermétiquement fermés lorsque, selon le cas :

**(a)** the low-acid food is kept under refrigeration and the statement "Keep Refrigerated" and "Garder réfrigéré" is carried on the principal display panel of the label of its container, as well as on the label of its shipping container; or

**(b)** the low-acid food is kept frozen and the statement "Keep Frozen" and "Garder congelé" is carried on the principal display panel of the label of its container, as well as on the label of its shipping container.

**(3)** Subsection (1) does not apply in respect of tomatoes or tomato products packaged in hermetically sealed containers where the tomatoes or tomato products have a pH of 4.7 or less after heat processing.

SOR/89-309, s. 1; SOR/91-149, s. 7; SOR/2018-108, s. 399.

**B.27.003** No person shall sell a low-acid food packaged in a hermetically sealed container where the container

**(a)** is swollen;

**(b)** is not properly sealed; or

**(c)** has any defect that may adversely affect its hermetic seal.

SOR/89-309, s. 1.

**B.27.004 (1)** Where, in the opinion of the Minister, the sale of a low-acid food packaged in a hermetically sealed container may contravene section B.27.002 or B.27.003, the Minister may, by notice in writing, request that the manufacturer or importer of the food submit, on or before the date specified in the notice, evidence that establishes that the processes used to manufacture, process and package the food rendered and maintained the food commercially sterile.

**(2)** Where a manufacturer or an importer receives a notice issued pursuant to subsection (1), the manufacturer or importer shall make no further sales of the food on or after the day specified in the notice until he has submitted the evidence requested in that notice.

**(3)** Where the Minister is of the opinion that the evidence submitted by a manufacturer or importer pursuant to subsection (1) is not sufficient, the Minister shall notify the manufacturer or importer in writing that the evidence is not sufficient.

**(4)** Where, pursuant to subsection (3), a manufacturer or importer is notified that the evidence he has submitted is not sufficient, the manufacturer or importer shall make

**a)** ces aliments sont gardés réfrigérés et l'espace principal de l'étiquette du récipient et l'étiquette du contenant d'expédition portent la mention « Garder réfrigéré » et « Keep Refrigerated »;

**b)** ces aliments sont gardés congelés et l'espace principal de l'étiquette du récipient et l'étiquette du contenant d'expédition portent la mention « Garder congelé » et « Keep Frozen ».

**(3)** Le paragraphe (1) ne s'applique pas aux tomates et aux produits de tomates dont le pH est égal ou inférieur à 4,7 après le traitement thermique, qui sont emballés dans des récipients hermétiquement fermés.

DORS/89-309, art. 1; DORS/91-149, art. 7; DORS/2018-108, art. 399.

**B.27.003** Il est interdit de vendre un aliment peu acide emballé dans un récipient hermétiquement fermé qui, selon le cas :

**a)** est bombé;

**b)** n'est pas bien fermé;

**c)** comporte d'autres défauts susceptibles de compromettre l'herméticité du récipient.

DORS/89-309, art. 1.

**B.27.004 (1)** Lorsque le ministre juge que la vente d'un aliment peu acide emballé dans un récipient hermétiquement fermé risque d'être en contravention avec les articles B.27.002 ou B.27.003, il peut, par avis écrit, demander au fabricant ou à l'importateur de l'aliment de lui présenter, au plus tard à la date précisée dans l'avis, la preuve que les procédés de fabrication, de transformation et d'emballage de l'aliment permettent d'atteindre et de maintenir la stérilité commerciale.

**(2)** Le fabricant ou l'importateur qui reçoit un avis émis en application du paragraphe (1) doit cesser la vente de l'aliment à compter de la date précisée dans l'avis jusqu'à ce qu'il ait présenté la preuve demandée.

**(3)** Si le ministre juge insuffisante la preuve présentée par le fabricant ou l'importateur en application du paragraphe (1), il lui envoie un avis à cet effet.

**(4)** Le fabricant ou l'importateur qui reçoit l'avis mentionné au paragraphe (3) doit cesser immédiatement la vente de l'aliment et ce, jusqu'à ce qu'il ait présenté une autre preuve et que le ministre l'ait avisé par écrit que cette preuve est suffisante.

DORS/89-309, art. 1; DORS/2018-69, art. 27.

no further sales of the food until he submits further evidence and is notified in writing by the Minister that the further evidence is sufficient.

SOR/89-309, s. 1; SOR/2018-69, s. 27.

**B.27.005** No person shall sell a commercially sterile low-acid food packaged in a hermetically sealed container unless

**(a)** the label or container of the food bears a code or lot number that identifies, in a legible and permanent manner,

**(i)** the establishment in which the product was rendered commercially sterile, and

**(ii)** the day, month and year on which the food was rendered commercially sterile; and

**(b)** the exact meaning of each item in any code or lot number referred to in paragraph (a) is available to an inspector at the establishment or, where the food is imported, from the importer.

SOR/89-309, s. 1.

**B.27.005** Il est interdit de vendre un aliment peu acide qui est dans un état de stérilité commerciale et qui est emballé dans un récipient hermétiquement fermé, à moins que les conditions suivantes ne soient réunies :

**a)** l'étiquette ou le récipient de l'aliment porte un code ou un numéro de lot qui indique de façon permanente et lisible :

**(i)** l'établissement dans lequel le produit a atteint la stérilité commerciale,

**(ii)** le jour, le mois et l'année où l'aliment a atteint la stérilité commerciale;

**b)** un inspecteur peut obtenir à l'établissement, ou de l'importateur s'il s'agit d'un aliment importé, la signification exacte de chaque élément du code ou du numéro de lot mentionné à l'alinéa a).

DORS/89-309, art. 1.

## DIVISION 28

# Novel Foods

## Interpretation

**B.28.001** The definitions in this section apply in this Division.

***genetically modify*** means to change the heritable traits of a plant, animal or microorganism by means of intentional manipulation. (*modifier génétiquement*)

***major change*** means, in respect of a food, a change in the food that, based on the manufacturer's experience or generally accepted nutritional or food science theory, places the modified food outside the accepted limits of natural variations for that food with regard to

**(a)** the composition, structure or nutritional quality of the food or its generally recognized physiological effects;

**(b)** the manner in which the food is metabolized in the body; or

**(c)** the microbiological safety, the chemical safety or the safe use of the food. (*changement majeur*)

## TITRE 28

# Aliments nouveaux

## Définitions

**B.28.001** Les définitions qui suivent s'appliquent au présent titre.

***aliment nouveau*** L'une des substances ou l'un des aliments ci-après, autre qu'un ingrédient supplémentaire ou un aliment supplémenté :

**a)** substance, y compris un micro-organisme, qui ne présente pas d'antécédents d'innocuité comme aliment;

**b)** aliment qui a été fabriqué, préparé, conservé ou emballé au moyen d'un procédé qui :

**(i)** n'a pas été appliqué auparavant à l'aliment,

**(ii)** fait subir à l'aliment un changement majeur;

**c)** aliment dérivé d'un végétal, d'un animal ou d'un micro-organisme qui, ayant été modifié génétiquement, selon le cas :

**(i)** présente des caractères qui n'avaient pas été observés auparavant,

***novel food*** means any of the following substances and foods, other than a supplemental ingredient or supplemented food:

**(a)** a substance, including a microorganism, that does not have a history of safe use as a food;

**(b)** a food that has been manufactured, prepared, preserved or packaged by a process that

**(i)** has not been previously applied to that food, and

**(ii)** causes the food to undergo a major change; and

**(c)** a food that is derived from a plant, animal or microorganism that has been genetically modified such that

**(i)** the plant, animal or microorganism exhibits characteristics that were not previously observed in that plant, animal or microorganism,

**(ii)** the plant, animal or microorganism no longer exhibits characteristics that were previously observed in that plant, animal or microorganism, or

**(iii)** one or more characteristics of the plant, animal or microorganism no longer fall within the anticipated range for that plant, animal or microorganism. (*aliment nouveau*)

SOR/99-392, s. 1; SOR/2022-169, s. 20.

***changement majeur*** Changement apporté à un aliment à la suite duquel, selon l'expérience du fabricant ou la théorie généralement admise dans le domaine des sciences de la nutrition et de l'alimentation, les propriétés de celui-ci se situent en dehors des variations naturelles acceptables de l'aliment en ce qui a trait à l'un ou l'autre des éléments suivants :

**a)** la composition, la structure, la qualité nutritive ou les effets physiologiques généralement reconnus de l'aliment;

**b)** la manière dont l'aliment est métabolisé par le corps humain;

**c)** l'innocuité générale, microbiologique ou chimique de l'aliment. (*major change*)

***modifier génétiquement*** Manipuler intentionnellement les caractères héréditaires d'un végétal, d'un animal ou d'un micro-organisme. (*genetically modify*)

DORS/99-392, art. 1; DORS/2022-169, art. 20.

## Pre-Market Notification

**B.28.002 (1)** No person shall sell or advertise for sale a novel food unless the manufacturer or importer of the novel food

**(a)** has notified the Minister in writing of their intention to sell or advertise for sale the novel food; and

**(b)** has received a written notice from the Minister under paragraph B.28.003(1)(a) or subsection B.28.003(2).

**(2)** A notification referred to in paragraph (1)(a) shall be signed by the manufacturer or importer, or a person authorized to sign on behalf of the manufacturer or importer, and shall include the following information:

**(a)** the common name under which the novel food will be sold;

**(b)** the name and address of the principal place of business of the manufacturer and, if the address is

## Avis avant la vente

**B.28.002 (1)** Il est interdit de vendre ou d'annoncer en vue de la vente un aliment nouveau à moins que le fabricant ou l'importateur :

**a)** n'ait donné au ministre un avis écrit de son intention de vendre l'aliment nouveau ou de l'annoncer en vue de la vente;

**b)** n'ait reçu du ministre l'avis visé à l'alinéa B.28.003(1)a) ou au paragraphe B.28.003(2), selon le cas.

**(2)** L'avis visé à l'alinéa (1)a) est signé par le fabricant ou l'importateur, ou une personne autorisée à signer en son nom, et contient les renseignements suivants :

**a)** le nom commun sous lequel l'aliment nouveau sera vendu;

**b)** les nom et adresse du principal établissement du fabricant et, si l'adresse est à l'étranger, les nom et adresse du principal établissement de l'importateur;

outside Canada, the name and address of the principal place of business of the importer;

**(c)** a description of the novel food, together with

**(i)** information respecting its development,

**(ii)** details of the method by which it is manufactured, prepared, preserved, packaged and stored,

**(iii)** details of the major change, if any,

**(iv)** information respecting its intended use and directions for its preparation,

**(v)** information respecting its history of use as a food in a country other than Canada, if applicable, and

**(vi)** information relied on to establish that the novel food is safe for consumption;

**(d)** information respecting the estimated levels of consumption by consumers of the novel food;

**(e)** the text of all labels to be used in connection with the novel food; and

**(f)** the name and title of the person who signed the notification and the date of signing.

SOR/99-392, s. 1; SOR/2018-69, s. 27.

**B.28.003 (1)** Within 45 days after receiving a notification referred to in paragraph B.28.002(1)(a), the Minister shall review the information included in the notification and

**(a)** if the information establishes that the novel food is safe for consumption, notify the manufacturer or importer in writing that the information is sufficient; or

**(b)** if additional information of a scientific nature is necessary in order to assess the safety of the novel food, request in writing that the manufacturer or importer submit that information.

**(2)** Within 90 days after receiving the additional information requested under paragraph (1)(b) the Minister shall assess it and, if it establishes that the novel food is safe for consumption, notify the manufacturer or importer in writing that the information is sufficient.

SOR/99-392, s. 1; SOR/2018-69, s. 27.

**c)** la description de l'aliment nouveau, accompagnée :

**(i)** des renseignements sur son élaboration,

**(ii)** des renseignements détaillés sur son mode de fabrication, de préparation, de conservation, d'emballage et d'emmagasinage,

**(iii)** de la description du changement majeur, le cas échéant,

**(iv)** des renseignements sur son utilisation proposée et son mode de préparation,

**(v)** le cas échéant, des renseignements sur l'historique de son utilisation comme aliment dans un pays autre que le Canada,

**(vi)** de renseignements permettant d'établir son innocuité;

**d)** des renseignements sur les niveaux de consommation estimatifs chez les consommateurs de l'aliment nouveau;

**e)** le texte des étiquettes qui seront utilisées avec l'aliment nouveau;

**f)** les nom et titre du signataire de l'avis et la date de la signature.

DORS/99-392, art. 1; DORS/2018-69, art. 27.

**B.28.003 (1)** Dans les quarante-cinq jours suivant la réception de l'avis visé à l'alinéa B.28.002(1)a), le ministre examine les renseignements contenus dans l'avis et :

**a)** si les renseignements établissent l'innocuité de l'aliment nouveau, il avise par écrit le fabricant ou l'importateur que ces renseignements sont suffisants;

**b)** si d'autres renseignements sont nécessaires sur le plan scientifique afin d'évaluer l'innocuité de l'aliment nouveau, il demande par écrit au fabricant ou à l'importateur de les lui fournir.

**(2)** Dans les quatre-vingt-dix jours suivant la réception des renseignements additionnels visés à l'alinéa (1)b), le ministre les évalue et, s'ils établissent l'innocuité de l'aliment nouveau, il avise par écrit le fabricant ou l'importateur que ces renseignements sont suffisants.

DORS/99-392, art. 1; DORS/2018-69, art. 27.

**DIVISION 29**

# Supplemented Foods

## Interpretation

**B.29.001 (1)** The following definitions apply in this Division.

***Directory of SFFT Formats*** means the document entitled *Directory of Supplemented Food Facts Table Formats*, published by the Government of Canada on its website, as amended from time to time. (*Répertoire des modèles de TRAS*)

***Directory of Supplemented Food Caution Identifier Specifications*** means the document entitled *Directory of Supplemented Food Caution Identifier Specifications*, published by the Government of Canada on its website, as amended from time to time. (*Répertoire des spécifications sur l'identifiant des aliments supplémentés avec mise en garde*)

***fat*** means all fatty acids expressed as triglycerides. (*lipides*)

**(2)** For the purposes of this Division and subject to subsection (3), the amount of vitamins must be determined in accordance with section D.01.003.

**(3)** For the purposes of this Division, the amount in metric units of the following vitamins must be determined in terms of their amount in the supplemented food in accordance with column 5 of the List of Permitted Supplemental Ingredients, as applicable, and expressed in the applicable unit set out in column 3 of the List of Permitted Supplemental Ingredients:

**(a)** beta-carotene as a form of vitamin A or retinol, including its derivatives, as a form of vitamin A, or both, if either is a supplemental ingredient; and

**(b)** niacin, if it is a supplemental ingredient.

SOR/2022-169, s. 21.

## Nutrition Labelling

### Core Information

**B.29.002 (1)** Except as otherwise provided in this section and sections B.29.003 to B.29.005, B.29.018 and B.29.019, the label of a supplemented food must carry a supplemented food facts table that contains only the information set out in column 1 of the table to this section,

**TITRE 29**

# Aliments supplémentés

## Définitions et interprétation

**B.29.001 (1)** Les définitions qui suivent s'appliquent au présent titre.

***lipides*** S'entend de tous les acides gras exprimés sous forme de triglycérides. (*fat*)

***Répertoire des modèles de TRAS*** Le document intitulé *Répertoire des modèles de tableaux des renseignements sur les aliments supplémentés*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*Directory of SFFT Formats*)

***Répertoire des spécifications sur l'identifiant des aliments supplémentés avec mise en garde*** Le document intitulé *Répertoire des spécifications sur l'identifiant des aliments supplémentés avec garde*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*Directory of Supplemented Food Caution Identifier Specifications*)

**(2)** Pour l'application du présent titre et sous réserve du paragraphe (3), la teneur en vitamines est déterminée conformément à l'article D.01.003.

**(3)** Pour l'application du présent titre, la teneur, en unités métriques, des vitamines ci-après est déterminée en fonction de leur teneur en l'aliment supplémenté et, le cas échéant, conformément à la colonne 5 de la Liste des ingrédients supplémentaires autorisés, et est exprimée selon l'unité applicable prévue à la colonne 3 de cette liste :

**a)** la bêta-carotène qui est une forme de vitamine A ou le rétinol, y compris ses dérivés, qui est une forme de vitamine A, ou les deux, si un de ceux-ci est un ingrédient supplémentaire;

**b)** la niacine qui est un ingrédient supplémentaire.

DORS/2022-169, art. 21.

## Étiquetage nutritionnel

### Renseignements principaux

**B.29.002 (1)** Sauf disposition contraire du présent article et des articles B.29.003 à B.29.005, B.29.018 et B.29.019, l'étiquette de tout aliment supplémenté porte un tableau des renseignements sur les aliments supplémentés indiquant exclusivement les renseignements

expressed using a description set out in column 2, in the unit set out in column 3 and in the manner set out in column 4.

**(2)** For the purposes of subsection (1), the serving of stated size set out in the supplemented food facts table, as expressed in a metric unit, must be used as the basis for determining the information appearing in the supplemented food facts table in respect of the energy value of, and the content of nutrients and supplemental ingredients in, the supplemented food.

**(3)** Subject to subsection (8), the percentage of the daily value for a vitamin or mineral nutrient shown in the supplemented food facts table in accordance with subsection (1) must be established on the basis of the amount, by weight, of the vitamin or mineral nutrient per serving of stated size of the supplemented food, rounded off in the applicable manner set out in column 4 of the table to this section.

**(4)** If the information in respect of six or more of the energy value and nutrients referred to in column 1 of items 2 to 5 and 7 to 15 of the table to this section may be expressed as "0" in the supplemented food facts table in accordance with this section, the supplemented food facts table need only include the following information:

**(a)** the serving of stated size;

**(b)** the energy value;

**(c)** the amount of fat;

**(d)** the amount of carbohydrate;

**(e)** the amount of protein;

**(f)** the amount of any nutrient that is the subject of a representation on the label of the supplemented food, or in any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer of the supplemented food, if the representation expressly or implicitly indicates that the supplemented food has particular nutritional or health-related properties, including any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims or column 1 of the table following section B.01.603 or referred to in section B.01.311, D.01.006 or D.02.004;

**(g)** the amount of any added sugar alcohol;

**(h)** the amount of any supplemental ingredient;

visés à la colonne 1 du tableau du présent article, exprimés au moyen de la nomenclature indiquée dans la colonne 2, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4.

**(2)** Pour l'application du paragraphe (1), la portion indiquée qui est exprimée en unité métrique dans le tableau des renseignements sur les aliments supplémentés sert de fondement pour établir les renseignements relatifs à la valeur énergétique de l'aliment supplémenté et à la teneur en éléments nutritifs et en ingrédients supplémentaires qui figurent dans ce tableau.

**(3)** Sous réserve du paragraphe (8), le pourcentage de la valeur quotidienne d'une vitamine ou d'un minéral nutritif qui, aux termes du paragraphe (1), figure dans le tableau des renseignements sur les aliments supplémentés, est établi sur la base de la teneur, en poids, de l'aliment supplémenté en la vitamine ou le minéral nutritif, par portion indiquée, une fois la teneur arrondie selon les règles d'écriture applicables prévues à la colonne 4 du tableau du présent article.

**(4)** Si au moins six des renseignements relatifs à la valeur énergétique et aux éléments nutritifs visés à la colonne 1 des articles 2 à 5 et 7 à 15 du tableau du présent article peuvent être exprimés, conformément au présent article, par « 0 » dans le tableau des renseignements sur les aliments supplémentés, le tableau peut ne contenir que les renseignements suivants :

**a)** la portion indiquée;

**b)** la valeur énergétique;

**c)** la teneur en lipides;

**d)** la teneur en glucides;

**e)** la teneur en protéines;

**f)** la teneur en tout élément nutritif qui fait l'objet d'une déclaration sur l'étiquette de l'aliment supplémenté ou encore dans l'annonce faite par le fabricant de l'aliment ou sous ses ordres, si la déclaration indique expressément ou implicitement que l'aliment a des propriétés particulières liées à la nutrition ou à la santé, notamment une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, à la colonne 1 du tableau suivant l'article B.01.603 ou aux articles B.01.311, D.01.006 ou D.02.004;

**g)** la teneur en tout polyalcool ajouté;

**h)** la teneur en tout ingrédient supplémentaire;

**(i)** the amount of any vitamin or mineral nutrient that is declared as a component of an ingredient, other than flour, of the supplemented food;

**(j)** the amount of any nutrient referred to in column 1 of any of items 4, 5, 7, 8, 10, 11 and 13 to 15 of the table to this section that may not be expressed as "0" in the supplemented food facts table;

**(k)** the statement "Not a significant source of (naming each nutrient that is omitted from the supplemented food facts table in accordance with this subsection)" or, if the supplemented food meets the condition specified in subsection B.29.010(3), the statement "Not a significant source of other nutrients";

**(l)** the % Daily Value interpretative statement; and

**(m)** the "Supplemented with" interpretative statement.

**(5)** The supplemented food facts table of a supplemented food that is a single-serving prepackaged product need only include the following information:

**(a)** the serving of stated size;

**(b)** the energy value;

**(c)** the amount of fat;

**(d)** the amount of carbohydrate;

**(e)** the amount of protein;

**(f)** the amount of any nutrient that is the subject of a representation on the label of the supplemented food, or in any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer of the supplemented food, if the representation expressly or implicitly indicates that the supplemented food has particular nutritional or health-related properties, including any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims or column 1 of the table following section B.01.603 or referred to in section B.01.311, D.01.006 or D.02.004;

**(g)** the amount of any added sugar alcohol;

**(h)** the amount of any supplemental ingredient;

**(i)** the amounts of saturated fatty acids and *trans* fatty acids and the sum of saturated fatty acids and *trans* fatty acids, if any of the amounts or the sum may not

**i)** la teneur en toute vitamine ou tout minéral nutritif déclaré comme constituant d'un ingrédient — autre que la farine — de l'aliment supplémenté, ;

**j)** la teneur en tout élément nutritif visé à la colonne 1 de l'un ou l'autre des articles 4, 5, 7, 8, 10, 11 et 13 à 15 du tableau du présent article qui ne peut être exprimée par « 0 » au tableau des renseignements sur les aliments supplémentés;

**k)** la mention « Source négligeable de (désignation de tout élément nutritif omis du tableau des renseignements sur les aliments supplémentés conformément au présent paragraphe) » ou, si l'aliment supplémenté remplit la condition prévue au paragraphe B.29.010(3), la mention « Source négligeable d'autres éléments nutritifs »;

**l)** l'énoncé interprétatif du % de la valeur quotidienne;

**m)** l'énoncé interprétatif du sous-titre « Supplémenté en ».

**(5)** Le tableau des renseignements sur les aliments supplémentés d'un aliment supplémenté qui est un produit préemballé à portion individuelle peut ne contenir que les renseignements suivants :

**a)** la portion indiquée;

**b)** la valeur énergétique;

**c)** la teneur en lipides;

**d)** la teneur en glucides;

**e)** la teneur en protéines;

**f)** la teneur en tout élément nutritif qui fait l'objet d'une déclaration sur l'étiquette de l'aliment supplémenté ou encore dans l'annonce faite par le fabricant de l'aliment ou sous ses ordres, si la déclaration indique expressément ou implicitement que l'aliment a des propriétés particulières liées à la nutrition ou à la santé, notamment une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, à la colonne 1 du tableau suivant l'article B.01.603 ou aux articles B.01.311, D.01.006 ou D.02.004;

**g)** la teneur en tout polyalcool ajouté;

**h)** la teneur en tout ingrédient supplémentaire;

**i)** les teneurs en acides gras saturés et en acides gras *trans*, ainsi que la somme des acides gras saturés et des acides gras *trans*, si l'une de ces teneurs ou cette

be expressed as "0" in the supplemented food facts table;

**(j)** the amount of any nutrient referred to in column 1 of item 8 or 11 of the table to this section that may not be expressed as "0" in the supplemented food facts table;

**(k)** the % Daily Value interpretative statement; and

**(l)** the "Supplemented with" interpretative statement.

**(6)** Subsection (1) does not apply to a supplemented food intended solely for use as an ingredient in the manufacture of other supplemented foods intended for sale to a consumer at the retail level.

**(7)** If the supplemented food facts table on the label of a supplemented food corresponds to Figure 6.5(B), 6.6(B), 6.5.1(B), 6.6.1(B), 7.3(B), 7.4(B), 7.3.1(B), 7.4.1(B), 17.2(E) and (F) or 17.2.1(E) and (F) of the Directory of SFFT Formats, the supplemented food facts table is not required to show the % Daily Value interpretative statement or the "Supplemented with" interpretative statement.

**(8)** Subject to subsection (10), if a substance has been added as a supplemental ingredient, the amount referred to in item 18 of the table to this section includes the total amount of the substance in the supplemented food, unless otherwise provided in column 3 or 5 of the List of Permitted Supplemental Ingredients.

**(9)** If any amount of a nutrient referred to in column 1 of the table to this section has been added as a supplemental ingredient, the amount of the nutrient may only be expressed in the supplemented food facts table in accordance with item 18 of the table to this section.

**(10)** If a substance other than a nutrient has been added as a supplemental ingredient and the substance has one or more constituents for which a maximum amount is specified in column 3 of the List of Permitted Supplemental Ingredients, the amount of each constituent set out in the supplemented food facts table must include the total amount of the constituent in the supplemented food, unless otherwise provided in column 3 or 5 of the List of Permitted Supplemental Ingredients.

somme ne peut être exprimée par « 0 » dans le tableau des renseignements sur les aliments supplémentés;

**j)** la teneur en tout élément nutritif visé à la colonne 1 des articles 8 ou 11 du tableau du présent article qui ne peut être exprimée par « 0 » au tableau des renseignements sur les aliments supplémentés;

**k)** l'énoncé interprétatif du % de la valeur quotidienne;

**l)** l'énoncé interprétatif du sous-titre « Supplémenté en ».

**(6)** Le paragraphe (1) ne s'applique pas aux aliments supplémentés qui sont destinés uniquement à être utilisés comme ingrédients dans la fabrication d'autres aliments supplémentés destinés à être vendus au consommateur au niveau du commerce de détail.

**(7)** Le tableau des renseignements sur les aliments supplémentés figurant sur l'étiquette d'un aliment supplémenté, s'il correspond à l'une des figures 6.5(B), 6.6(B), 6.5.1(B), 6.6.1(B), 7.3(B), 7.4(B), 7.3.1(B), 7.4.1(B), 17.2(F) et (A) ou 17.2.1(F) et (A) du Répertoire des modèles de TRAS, n'a à indiquer ni l'énoncé interprétatif du % de la valeur quotidienne ni l'énoncé interprétatif du sous-titre « Supplémenté en ».

**(8)** Sous réserve du paragraphe (10), lorsqu'une substance a été ajoutée à un aliment supplémenté à titre d'ingrédient supplémentaire, la teneur de l'ingrédient supplémentaire indiquée à l'article 18 du tableau du présent article comprend la teneur totale de l'aliment en la substance, sauf selon ce que prévoient les colonnes 3 ou 5 de la Liste des ingrédients supplémentaires autorisés.

**(9)** La teneur en un élément nutritif visé à la colonne 1 du tableau du présent article dont une quantité a été ajoutée à un aliment supplémenté à titre d'ingrédient supplémentaire ne peut être exprimée dans le tableau des renseignements sur les aliments supplémentés que selon ce que prévoit l'article 18 du tableau du présent article.

**(10)** Lorsqu'une substance — autre qu'un élément nutritif — a été ajoutée à un aliment supplémenté à titre d'ingrédient supplémentaire et qu'elle a un ou plusieurs composants pour lesquels la colonne 3 de la Liste des ingrédients supplémentaires autorisés prévoit des teneurs maximales, la teneur de chacun de ces composants qui figure dans le tableau des renseignements sur les aliments supplémentés comprend la teneur totale de l'aliment en le composant, sauf selon ce que prévoient les colonnes 3 ou 5 de cette liste.

## TABLE

### Core Information

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 1 | Serving of stated size | "Serving Size (naming the serving size)", "Serving (naming the serving size)" or "Per (naming the serving size)" | The size is expressed<br>(a) in the case of a supplemented food that is a single-serving prepackaged product,<br>(i) per package, and<br>(ii) in grams or millilitres, in accordance with subparagraph B.01.002A(2)(a)(i) or (ii); and<br>(b) in the case of a supplemented food that is a multiple-serving prepackaged product, in the following units set out in column 3B of the Table of Reference Amounts:<br>(i) the household measure that applies to the supplemented food, and<br>(ii) the metric measure that applies to the supplemented food. | (1) The size if expressed in a metric unit is rounded off<br>(a) if it is less than 10 g or 10 mL, to the nearest multiple of 0.1 g or 0.1 mL; and<br>(b) if it is 10 g or more or 10 mL or more, to the nearest multiple of 1 g or 1 mL.<br>(2) The size if expressed as a fraction is represented by a numerator and a denominator separated by a line.<br>(3) The size must include the word "assorted" if the information in the supplemented food facts table of a prepackaged product containing an assortment of supplemented foods is set out as a composite value. |
| 2 | Energy value | "Calories", "Total Calories" or "Calories, Total" | The value is expressed in Calories per serving of stated size. | The value is rounded off<br>(a) if it is less than 5 Calories,<br>(i) if the supplemented food meets the conditions set out in column 2 of item 1 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of energy" set out in column 1, to "0" Calorie, and<br>(ii) in all other cases, to the nearest multiple of 1 Calorie;<br>(b) if it is 5 Calories or more but not more than 50 Calories, to the nearest multiple of 5 Calories; and<br>(c) if it is more than 50 Calories, to the nearest multiple of 10 Calories. |
| 3 | Amount of fat | "Fat", "Total Fat" or "Fat, Total" | The amount is expressed<br>(a) in grams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.5 g,<br>(i) if the supplemented food meets the conditions set out in column 2 of item 11 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of fat" set out in column 1 and the amounts of saturated fatty acids and *trans* fatty acids are declared as "0 g" in the supplemented food facts table or are omitted from that table in accordance with subsection B.29.002(4) and no other fatty acids are declared in an |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | amount greater than 0 g, to "0 g", and<br>(ii) in all other cases, to the nearest multiple of 0.1 g;<br>(b) if it is 0.5 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 g", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 4 | Amount of saturated fatty acids | "Saturated Fat", "Saturated Fatty Acids", "Saturated" or "Saturates" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g,<br>(i) if the supplemented food meets the conditions set out in column 2 of item 18 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of saturated fatty acids" set out in column 1, to "0 g", and<br>(ii) in all other cases, to the nearest multiple of 0.1 g;<br>(b) if it is 0.5 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 5 | Amount of *trans* fatty acids | "Trans Fat", "Trans Fatty Acids" or "Trans" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g,<br>(i) if the supplemented food meets the conditions set out in column 2 of item 22 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of *trans* fatty acids" set out in column 1, to "0 g", and<br>(ii) in all other cases, to the nearest multiple of 0.1 g;<br>(b) if it is 0.5 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 6 | The sum of saturated fatty acids and *trans* fatty acids | "Saturated Fat + Trans Fat", "Saturated Fatty Acids + Trans Fatty Acids", "Saturated + Trans" or "Saturates + Trans" | The sum is expressed as a percentage of the daily value per serving of stated size. | The percentage is rounded off<br>(a) if the amounts of saturated fatty acids and *trans* fatty acids are declared as "0 g", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 7 | Amount of cholesterol | "Cholesterol" | The amount<br>(a) is expressed in milligrams per serving of stated size; and<br>(b) may also be expressed as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if the supplemented food meets the conditions set out in column 2 of item 27 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of cholesterol" set out in column 1, to "0 mg"; and<br>(b) in all other cases, to the nearest multiple of 5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 8 | Amount of sodium | "Sodium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg,<br>(i) if the supplemented food meets the conditions set out in column 2 of item 31 of the Table of Permitted Nutrient Content Statements and Claims for the subject "free of sodium or salt" set out in column 1, to "0 mg", and<br>(ii) in all other cases, to the nearest multiple of 1 mg;<br>(b) if it is 5 mg or more but not more than 140 mg, to the nearest multiple of 5 mg; and<br>(c) if it is more than 140 mg, to the nearest multiple of 10 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 9 | Amount of carbohydrate | "Carbohydrate", "Total Carbohydrate" or "Carbohydrate, Total" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 10 | Amount of fibre | "Fibre", "Fiber", "Dietary Fibre" or "Dietary Fiber" | The amount is expressed<br>(a) in grams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 g", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 11 | Amount of sugars | "Sugars" | The amount is expressed<br>(a) in grams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 g", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 12 | Amount of protein | "Protein" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to the nearest multiple of 0.1 g; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 13 | Amount of potassium | "Potassium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 14 | Amount of calcium | "Calcium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 15 | Amount of iron | "Iron" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg"; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 16 | % Daily Value interpretative statement | "*5% or less is a little, 15% or more is a lot" | [not applicable] | The "% Daily Value" or "% DV" subheading is followed by an asterisk in order to reference the % Daily Value interpretative statement shown in the supplemented food facts table. |
| 17 | "Supplemented with" interpretative statement | "† Includes naturally occurring and supplemental amounts" | [not applicable] | The "Supplemented with" subheading is followed by a dagger in order to reference the "Supplemented with" interpretative statement shown in the supplemented food facts table. |
| 18 | Amount of supplemental ingredient | The supplemental ingredient is described in accordance with column 1 of the List of Permitted Supplemental Ingredients. | The amount is expressed in<br>(a) the applicable unit referred to in column 3 of the List of Permitted Supplemental Ingredients, per serving of stated size; and<br>(b) in the case of a nutrient with a daily value, as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off to the nearest whole number and expressed in the manner set out in column 3 and, if applicable, column 5 of the List of Permitted Supplemental Ingredients.<br>(2) Unless otherwise provided in column 5 of the List of Permitted Supplemental Ingredients, the percentage is rounded off<br>(a) if the amount declared in the applicable unit referred to in column 3 of the List of Permitted Supplemental Ingredients is "0", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |

## TABLEAU

### Renseignements principaux

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 1 | Portion indiquée | « Portion (portion indiquée) », « pour (portion indiquée) » ou « par (portion indiquée) » | La portion est exprimée :<br>a) s'agissant d'un aliment supplémenté qui est un produit préemballé à portion individuelle :<br>(i) par emballage,<br>(ii) en grammes ou en millilitres tel qu'il est prévu | (1) La portion exprimée en unité métrique est arrondie :<br>a) lorsqu'elle est inférieure à 10 g ou 10 ml : au plus proche multiple de 0,1 g ou 0,1 ml;<br>b) lorsqu'elle est égale ou supérieure à 10 g ou 10 ml : au plus proche multiple de 1 g ou 1 ml.<br>(2) La portion exprimée en fraction est représentée par un numérateur et un dénominateur séparés d'une barre. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | aux sous-alinéas B.01.002A(2)a)(i) et (ii);<br>b) s'agissant d'un aliment supplémenté qui est un produit préemballé à portions multiples, selon les unités ci-après indiquées à la colonne 3B du Tableau des quantités de référence :<br>(i) la mesure domestique applicable à l'aliment,<br>(ii) la mesure métrique applicable à l'aliment. | (3) La portion comprend le terme « assortis » lorsque le tableau des renseignements sur les aliments supplémentés d'un produit préemballé contenant un assortiment d'aliments supplémentés indique les renseignements qui correspondent à une valeur composée. |
| 2 | Valeur énergétique | « Calories » ou « Calories totales » | La valeur est exprimée en Calories par portion indiquée. | La valeur est arrondie :<br>a) lorsqu'elle est inférieure à 5 Calories :<br>(i) si l'aliment supplémenté répond aux critères mentionnés à la colonne 2 de l'article 1 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans énergie » visé à la colonne 1 : à 0 Calorie,<br>(ii) dans les autres cas : au plus proche multiple de 1 Calorie;<br>b) lorsqu'elle est égale ou supérieure à 5 Calories sans dépasser 50 Calories : au plus proche multiple de 5 Calories;<br>c) lorsqu'elle est supérieure à 50 Calories : au plus proche multiple de 10 Calories. |
| 3 | Teneur en lipides | « Lipides » ou « Total des lipides » | La teneur est exprimée :<br>a) en grammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g :<br>(i) si l'aliment supplémenté répond aux critères mentionnés à la colonne 2 de l'article 11 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans lipides » visé à la colonne 1 et si les teneurs en acides gras saturés et en acides gras *trans* sont exprimées par « 0 g » au tableau des renseignements sur les aliments supplémentés, ou sont omises de ce tableau conformément au paragraphe B.29.002(4), et qu'aucun autre acide gras n'est exprimé par une valeur supérieure à 0 g : à 0 g,<br>(ii) dans les autres cas : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 4 | Teneur en acides gras saturés | « Acides gras saturés », « Lipides | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | saturés » ou « saturés » | | (i) si l'aliment supplémenté répond aux critères mentionnés à la colonne 2 de l'article 18 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans acides gras saturés » visé à la colonne 1 : à 0 g,<br>(ii) dans les autres cas : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 5 | Teneur en acides gras *trans* | « Acides gras trans », « Lipides trans » ou « trans » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g :<br>(i) si l'aliment supplémenté répond aux critères mentionnés à la colonne 2 de l'article 22 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans acides gras *trans* » visé à la colonne 1 : à 0 g,<br>(ii) dans les autres cas : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 6 | Somme des acides gras saturés et des acides gras *trans* | « Acides gras saturés + acides gras trans », « Lipides saturés + lipides trans » ou « saturés + trans » | La somme est exprimée en pourcentage de la valeur quotidienne par portion indiquée. | Le pourcentage est arrondi :<br>a) lorsque les teneurs en acides gras saturés et en acides gras *trans* déclarées sont « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 7 | Teneur en cholestérol | « Cholestérol » | La teneur :<br>a) est exprimée en milligrammes par portion indiquée;<br>b) peut aussi être exprimée en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) si l'aliment supplémenté répond aux critères mentionnés à la colonne 2 de l'article 27 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans cholestérol » visé à la colonne 1 : à 0 mg;<br>b) dans les autres cas : au plus proche multiple de 5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 8 | Teneur en sodium | « Sodium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg :<br>(i) si l'aliment supplémenté répond aux critères mentionnés à la colonne 2 de l'article 31 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « sans sodium ou sans sel » visé à la colonne 1 : à 0 mg, |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | (ii) dans les autres cas : au plus proche multiple de 1 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg sans dépasser 140 mg : au plus proche multiple de 5 mg;<br>c) lorsqu'elle est supérieure à 140 mg : au plus proche multiple de 10 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 9 | Teneur en glucides | « Glucides » ou « Total des glucides » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 10 | Teneur en fibres | « Fibres » ou « Fibres alimentaires » | La teneur est exprimée :<br>a) en grammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 11 | Teneur en sucres | « Sucres » | La teneur est exprimée :<br>a) en grammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 g » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 12 | Teneur en protéines | « Protéines » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 13 | Teneur en potassium | « Potassium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | b) dans les autres cas : au plus proche multiple de 1 %. |
| 14 | Teneur en calcium | « Calcium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 15 | Teneur en fer | « Fer » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 16 | Énoncé interprétatif du % de la valeur quotidienne | « *5 % ou moins c'est peu, 15 % ou plus c'est beaucoup » | [non-applicable] | Le sous-titre « % valeur quotidienne » ou « % VQ » est suivi d'un astérisque qui signale l'énoncé interprétatif du % de la valeur quotidienne figurant dans le tableau des renseignements sur les aliments supplémentés. |
| 17 | Énoncé interprétatif du sous-titre « Supplémenté en » | « † Comprend les quantités naturelles et supplémentées » | [non-applicable] | Le sous-titre « Supplémenté en » est suivi d'une croix qui signale l'énoncé interprétatif du sous-titre « Supplémenté en » figurant dans le tableau des renseignements sur les aliments supplémentés. |
| 18 | Teneur en ingrédient supplémentaire | La nomenclature de l'ingrédient supplémentaire est décrite conformément à la colonne 1 de la Liste des ingrédients supplémentaires autorisés. | La teneur est exprimée :<br>a) selon l'unité applicable prévue à la colonne 3 de la Liste des ingrédients supplémentaires autorisés par portion indiquée;<br>b) s'il s'agit d'un élément nutritif ayant une valeur quotidienne, en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie au nombre entier le plus près et est exprimée de la manière visée à la colonne 3 et, le cas échéant, à la colonne 5, de la Liste des ingrédients supplémentaires autorisés.<br>(2) Sauf selon ce que prévoit la colonne 5 de la Liste des ingrédients supplémentaires autorisés, le pourcentage est arrondi :<br>a) lorsque la teneur déclarée selon l'unité applicable prévue à la colonne 3 de la Liste des ingrédients supplémentaires autorisés est « 0 » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |

SOR/2022-169, s. 21.

## Additional Information

**B.29.003 (1)** Subject to subsection (2), the supplemented food facts table may also contain information set out in column 1 of the table to this section.

**(2)** This section does not apply in respect of a vitamin or mineral nutrient that is set out in the supplemented food facts table in accordance with subsection B.29.002(1) if any amount of that vitamin or mineral nutrient has been added as a supplemental ingredient.

**(3)** If information set out in column 1 of the table to this section is included in the supplemented food facts table, it must be expressed using a description set out in column 2, in the unit set out in column 3 and in the manner set out in column 4.

**(4)** For the purposes of subsection (3), the serving of stated size set out in the supplemented food facts table, as expressed in a metric unit, must be used as the basis for determining the information appearing in the supplemented food facts table in respect of the energy value and nutrient content of the supplemented food.

**(5)** The percentage of the daily value for a vitamin or mineral nutrient shown in the supplemented food facts table in accordance with subsection (3) must be established on the basis of the amount, by weight, of the vitamin or mineral nutrient per serving of stated size for the supplemented food, rounded off in the applicable manner set out in column 4 of the table to this section.

**(6)** The amount of omega-6 polyunsaturated fatty acids, omega-3 polyunsaturated fatty acids and monounsaturated fatty acids must be shown in the supplemented food facts table if

**(a)** the amount of any of those groups of fatty acids or the amount of polyunsaturated fatty acids is shown in the supplemented food facts table or on the label of the supplemented food or in any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer of the supplemented food; or

**(b)** the amount of any specific fatty acid is shown on the label of the supplemented food or in any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer of the supplemented food.

DORS/2022-169, art. 21.

## Renseignements complémentaires

**B.29.003 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés peut également indiquer les renseignements visés à la colonne 1 du tableau du présent article.

**(2)** Le présent article ne s'applique pas aux vitamines et aux minéraux nutritifs qui figurent dans le tableau des renseignements sur les aliments supplémentés conformément au paragraphe B.29.002(1) et dont toute partie a été ajoutée à un aliment supplémenté à titre d'ingrédient supplémentaire.

**(3)** Les renseignements visés à la colonne 1 du tableau du présent article qui sont présentés dans le tableau des renseignements sur les aliments supplémentés sont exprimés au moyen de la nomenclature indiquée dans la colonne 2, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4.

**(4)** Pour l'application du paragraphe (3), la portion indiquée qui est exprimée en unité métrique dans le tableau des renseignements sur les aliments supplémentés sert de fondement pour établir les renseignements relatifs à la valeur énergétique de l'aliment supplémenté et à la teneur en éléments nutritifs qui figurent dans ce tableau.

**(5)** Le pourcentage de la valeur quotidienne d'une vitamine ou d'un minéral nutritif qui, aux termes du paragraphe (3), figure dans le tableau des renseignements sur les aliments supplémentés, est établi sur la base de la teneur, en poids, de l'aliment supplémenté en la vitamine ou en le minéral nutritif, par portion indiquée, une fois la teneur arrondie selon les règles d'écriture applicables prévues à la colonne 4 du tableau du présent article.

**(6)** Le tableau des renseignements sur les aliments supplémentés indique la teneur en acides gras polyinsaturés oméga-6, en polyinsaturés oméga-3 et en monoinsaturés dans l'un des cas suivants :

**a)** la teneur en un de ces groupes d'acides gras ou la teneur en acides gras polyinsaturés est indiquée dans le tableau ou sur l'étiquette de l'aliment supplémenté ou encore dans l'annonce d'un tel aliment faite par son fabricant ou sous ses ordres;

**b)** la teneur en un acide gras est indiquée sur l'étiquette de l'aliment supplémenté ou encore dans l'annonce d'un tel aliment faite par son fabricant ou sous ses ordres.

**(7)** If the label of the supplemented food, or any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer, contains a representation, express or implied, that includes information that is set out in column 1 of the table to this section, that information must also be shown in the supplemented food facts table.

**(8)** The supplemented food facts table must show the amount of any added sugar alcohol.

**(9)** The supplemented food facts table must show the amount of any vitamin or mineral nutrient that is declared as a component of an ingredient, other than flour.

**(10)** If information set out in column 1 of the table to this section is included in the supplemented food facts table, it must be shown

**(a)** in English and French; or

**(b)** in one of those languages, if, in accordance with subsection B.01.012(3), the information that is required by these Regulations to be shown on the label may be shown in that language only and is shown on the label in that language.

**(7)** Lorsqu'une déclaration expresse ou implicite incluant des renseignements visés à la colonne 1 du tableau du présent article est faite sur l'étiquette de l'aliment supplémenté ou encore dans l'annonce d'un tel aliment faite par son fabricant ou sous ses ordres, ces renseignements sont aussi indiqués dans le tableau des renseignements sur les aliments supplémentés.

**(8)** Le tableau des renseignements sur les aliments supplémentés indique la teneur en tout polyalcool ajouté.

**(9)** Le tableau des renseignements sur les aliments supplémentés indique la teneur en toute vitamine ou en tout minéral nutritif déclaré comme constituant d'un ingrédient autre que la farine.

**(10)** Si les renseignements visés à la colonne 1 du tableau du présent article paraissent dans le tableau des renseignements sur les aliments supplémentés, ils figurent :

**a)** soit en français et en anglais;

**b)** soit dans l'une de ces langues, si, conformément au paragraphe B.01.012(3), les renseignements devant être indiqués sur l'étiquette aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

**TABLE**

**Additional Information**

| | Column 1 | Column 2 | Column 3 | Column 4 |
|---|---|---|---|---|
| Item | Information | Description | Unit | Manner of expression |
| 1 | Servings per package | "Servings per Container", "(number of units) per Container", "Servings per Package", "(number of units) per Package", "Servings per (naming the package type)", or "(number of units) per (naming the package type)" | The quantity is expressed in number of servings. | (1) The quantity is rounded off<br>(a) if it is less than 2, to the nearest multiple of 1;<br>(b) if it is between 2 and 5, to the nearest multiple of 0.5; and<br>(c) if it is more than 5, to the nearest multiple of 1.<br>(2) If a quantity is rounded off, it must be preceded by the word "about".<br>(3) If the product is of a random weight, the quantity may be declared as "varied". |
| 2 | Energy value | "kilojoules" or "kJ" | The value is expressed in kilojoules per serving of stated size. | The value is rounded off to the nearest multiple of 10 kilojoules. |
| 3 | Amount of polyunsaturated fatty acids | "Polyunsaturated Fat", "Polyunsaturated Fatty Acids", "Polyunsaturated" or "Polyunsaturates" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 4 | Amount of omega-6 polyunsaturated fatty acids | (1) If the supplemented food facts table includes the amount of polyunsaturated fatty acids: "Omega-6", "Omega-6 Polyunsaturated Fat", "Omega-6 Polyunsaturated Fatty Acids", "Omega-6 Polyunsaturates" or "Omega-6 Polyunsaturated"<br>(2) In all other cases: "Omega-6 Polyunsaturated Fat", "Omega-6 Polyunsaturated Fatty Acids", "Omega-6 Polyunsaturates" or "Omega-6 Polyunsaturated" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 5 | Amount of omega-3 polyunsaturated fatty acids | (1) If the supplemented food facts table includes the amount of polyunsaturated fatty acids: "Omega-3", "Omega-3 Polyunsaturated Fat", "Omega-3 Polyunsaturated Fatty Acids", "Omega-3 Polyunsaturates" or "Omega-3 Polyunsaturated"<br>(2) In all other cases: "Omega-3 Polyunsaturated Fat", "Omega-3 Polyunsaturated Fatty Acids", "Omega-3 Polyunsaturates" or "Omega-3 Polyunsaturated" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 6 | Amount of monounsaturated fatty acids | "Monounsaturated Fat", "Monounsaturated Fatty Acids", "Monounsaturates" or "Monounsaturated" | The amount is expressed in grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 1 g, to the nearest multiple of 0.1 g;<br>(b) if it is 1 g or more but not more than 5 g, to the nearest multiple of 0.5 g; and<br>(c) if it is more than 5 g, to the nearest multiple of 1 g. |
| 7 | Amount of soluble fibre | "Soluble Fibre" or "Soluble Fiber" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 8 | Amount of insoluble fibre | "Insoluble Fibre" or "Insoluble Fiber" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 9 | Amount of sugar alcohol | (1) If the supplemented food contains only one type of sugar alcohol: "Sugar Alcohol", "Polyol" or "(naming the sugar alcohol)"<br>(2) In all other cases: "Sugar Alcohols" or "Polyols" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 10 | Amount of starch | "Starch" | The amount is expressed as grams per serving of stated size. | The amount is rounded off<br>(a) if it is less than 0.5 g, to "0 g"; and<br>(b) if it is 0.5 g or more, to the nearest multiple of 1 g. |
| 11 | Amount of vitamin A | "Vitamin A" or "Vit A" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 µg, to "0 µg";<br>(b) if it is 5 µg or more but less than 50 µg, to the nearest multiple of 10 µg;<br>(c) if it is 50 µg or more but less than 250 µg, to the nearest multiple of 50 µg; and<br>(d) if it is 250 µg or more, to the nearest multiple of 100 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 12 | Amount of vitamin C | "Vitamin C" or "Vit C" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.1 mg, to "0 mg";<br>(b) if it is 0.1 mg or more but less than 1 mg, to the nearest multiple of 0.2 mg;<br>(c) if it is 1 mg or more but less than 5 mg, to the nearest multiple of 0.5 mg; and<br>(d) if it is 5 mg or more, to the nearest multiple of 1 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 13 | Amount of vitamin D | "Vitamin D" or "Vit D" | The amount is expressed<br>(a) in micrograms per serving of stated size; and | (1) The amount is rounded off<br>(a) if it is less than 0.1 µg, to "0 µg"; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | (b) as a percentage of the daily value per serving of stated size. | (b) if it is 0.1 µg or more but less than 1 µg, to the nearest multiple of 0.2 µg;<br>(c) if it is 1 µg or more but less than 5 µg, to the nearest multiple of 0.5 µg; and<br>(d) if it is 5 µg or more, to the nearest multiple of 1 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 14 | Amount of vitamin E | "Vitamin E" or "Vit E" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 15 | Amount of vitamin K | "Vitamin K" or "Vit K" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 16 | Amount of thiamine | "Thiamine", "Thiamin", "Thiamine (Vitamin $B_1$)", "Thiamine (Vit $B_1$)", "Thiamin (Vitamin $B_1$)" or "Thiamin (Vit $B_1$)" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 17 | Amount of riboflavin | "Riboflavin", "Riboflavin (Vitamin $B_2$)" or "Riboflavin (Vit $B_2$)" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 18 | Amount of niacin | "Niacin" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 19 | Amount of vitamin $B_6$ | "Vitamin $B_6$" or "Vit $B_6$" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 20 | Amount of folate | "Folate" | The amount is expressed<br>(a) in micrograms of dietary folate equivalents (DFE) per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 µg DFE, to "0 µg DFE";<br>(b) if it is 1 µg DFE or more but less than 10 µg DFE, to the nearest multiple of 2 µg DFE;<br>(c) if it is 10 µg DFE or more but less than 50 µg DFE, to the nearest multiple of 5 µg DFE; and<br>(d) if it is 50 µg DFE or more, to the nearest multiple of 10 µg DFE.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg DFE", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 21 | Amount of vitamin $B_{12}$ | "Vitamin $B_{12}$" or "Vit $B_{12}$" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 µg, to "0 µg";<br>(b) if it is 0.005 µg or more but less than 0.05 µg, to the nearest multiple of 0.01 µg;<br>(c) if it is 0.05 µg or more but less than 0.25 µg, to the nearest multiple of 0.025 µg; and<br>(d) if it is 0.25 µg or more, to the nearest multiple of 0.05 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 22 | Amount of biotin | "Biotin" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 23 | Amount of pantothenic acid | "Pantothenic Acid" or "Pantothenate" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.01 mg, to "0 mg";<br>(b) if it is 0.01 mg or more but less than 0.1 mg, to the nearest multiple of 0.02 mg;<br>(c) if it is 0.1 mg or more but less than 0.5 mg, to the nearest multiple of 0.05 mg; and<br>(d) if it is 0.5 mg or more, to the nearest multiple of 0.1 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 24 | Amount of choline | "Choline" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 mg, to "0 mg";<br>(b) if it is 1 mg or more but less than 10 mg, to the nearest multiple of 2 mg;<br>(c) if it is 10 mg or more but less than 50 mg, to the nearest multiple of 5 mg; and<br>(d) if it is 50 mg or more, to the nearest multiple of 10 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 25 | Amount of phosphorous | "Phosphorus" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| 26 | Amount of iodide | "Iodide" or "Iodine" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 µg, to "0 µg";<br>(b) if it is 1 µg or more but less than 10 µg, to the nearest multiple of 2 µg;<br>(c) if it is 10 µg or more but less than 50 µg, to the nearest multiple of 5 µg; and<br>(d) if it is 50 µg or more, to the nearest multiple of 10 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 27 | Amount of magnesium | "Magnesium" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 1 mg, to "0 mg";<br>(b) if it is 1 mg or more but less than 10 mg, to the nearest multiple of 2 mg;<br>(c) if it is 10 mg or more but less than 50 mg, to the nearest multiple of 5 mg; and<br>(d) if it is 50 mg or more, to the nearest multiple of 10 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 28 | Amount of zinc | "Zinc" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 mg, to "0 mg";<br>(b) if it is 0.05 mg or more but less than 0.5 mg, to the nearest multiple of 0.1 mg;<br>(c) if it is 0.5 mg or more but less than 2.5 mg, to the nearest multiple of 0.25 mg; and<br>(d) if it is 2.5 mg or more, to the nearest multiple of 0.5 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 29 | Amount of selenium | "Selenium" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.1 µg, to "0 µg";<br>(b) if it is 0.1 µg or more but less than 1 µg, to the nearest multiple of 0.2 µg; |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (c) if it is 1 µg or more but less than 5 µg, to the nearest multiple of 0.5 µg; and<br>(d) if it is 5 µg or more, to the nearest multiple of 1 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 30 | Amount of copper | "Copper" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.0015 mg, to "0 mg";<br>(b) if it is 0.0015 mg or more but less than 0.025 mg, to the nearest multiple of 0.002 mg;<br>(c) if it is 0.025 mg or more but less than 0.05 mg, to the nearest multiple of 0.005 mg; and<br>(d) if it is 0.05 mg or more, to the nearest multiple of 0.01 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 31 | Amount of manganese | "Manganese" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.005 mg, to "0 mg";<br>(b) if it is 0.005 mg or more but less than 0.05 mg, to the nearest multiple of 0.01 mg;<br>(c) if it is 0.05 mg or more but less than 0.25 mg, to the nearest multiple of 0.025 mg; and<br>(d) if it is 0.25 mg or more, to the nearest multiple of 0.05 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 32 | Amount of chromium | "Chromium" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and |

| Item | Column 1<br>Information | Column 2<br>Description | Column 3<br>Unit | Column 4<br>Manner of expression |
|---|---|---|---|---|
| | | | | (d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 33 | Amount of molybdenum | "Molybdenum" | The amount is expressed<br>(a) in micrograms per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 0.05 µg, to "0 µg";<br>(b) if it is 0.05 µg or more but less than 0.5 µg, to the nearest multiple of 0.1 µg;<br>(c) if it is 0.5 µg or more but less than 2.5 µg, to the nearest multiple of 0.25 µg; and<br>(d) if it is 2.5 µg or more, to the nearest multiple of 0.5 µg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 µg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |
| 34 | Amount of chloride | "Chloride" | The amount is expressed<br>(a) in milligrams per serving of stated size; and<br>(b) as a percentage of the daily value per serving of stated size. | (1) The amount is rounded off<br>(a) if it is less than 5 mg, to "0 mg";<br>(b) if it is 5 mg or more but less than 50 mg, to the nearest multiple of 10 mg;<br>(c) if it is 50 mg or more but less than 250 mg, to the nearest multiple of 25 mg; and<br>(d) if it is 250 mg or more, to the nearest multiple of 50 mg.<br>(2) The percentage is rounded off<br>(a) if the amount is declared as "0 mg", to 0%; and<br>(b) in all other cases, to the nearest multiple of 1%. |

## TABLEAU

### Renseignements complémentaires

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| 1 | Portions par emballage | « Portions par contenant », « (nombre d'unités) par contenant », « Portions par emballage », « (nombre d'unités) par emballage », « portions par (type | La quantité est exprimée en nombre de portions. | (1) La quantité est arrondie :<br>a) lorsqu'elle est inférieure à 2, au plus proche multiple de 1;<br>b) lorsqu'elle est égale ou supérieure à 2 sans dépasser 5 : au plus proche multiple de 0,5; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | d'emballage) » ou « (nombre d'unités) par (type d'emballage) » | | c) lorsqu'elle est supérieure à 5 : au plus proche multiple de 1.<br>(2) Si la quantité est arrondie, elle est précédée du mot « environ ».<br>(3) Si le poids du produit varie, la quantité peut être déclarée « variable ». |
| 2 | Valeur énergétique | « kilojoules » ou « kJ » | La valeur est exprimée en kilojoules par portion indiquée. | La valeur est arrondie au plus proche multiple de 10 kilojoules. |
| 3 | Teneur en acides gras polyinsaturés | « Acides gras polyinsaturés », « Lipides polyinsaturés » ou « polyinsaturés » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 4 | Teneur en acides gras polyinsaturés oméga-6 | (1) Si le tableau des renseignements sur les aliments supplémentés indique la teneur en acides gras polyinsaturés : « oméga-6 », « Acides gras polyinsaturés oméga-6 », « Lipides polyinsaturés oméga-6 » ou « polyinsaturés oméga-6 »<br>(2) Dans les autres cas : « Acides gras polyinsaturés oméga-6 », « Lipides polyinsaturés oméga-6 » ou « polyinsaturés oméga-6 » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 5 | Teneur en acides gras polyinsaturés oméga-3 | (1) Si le tableau des renseignements sur les aliments supplémentés indique la teneur en acides gras polyinsaturés : « oméga-3 », « Acides gras polyinsaturés oméga-3 », « Lipides polyinsaturés oméga-3 » ou « polyinsaturés oméga-3 »<br>(2) Dans les autres cas : « Acides gras polyinsaturés oméga-3 », « Lipides polyinsaturés oméga-3 » ou « polyinsaturés oméga-3 » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g sans dépasser 5 g : au plus proche multiple de 0,5 g;<br>c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 6 | Teneur en acides gras monoinsaturés | « Acides gras monoinsaturés », « Lipides monoinsaturés » ou « monoinsaturés » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 g : au plus proche multiple de 0,1 g;<br>b) lorsqu'elle est égale ou supérieure à 1 g, sans dépasser 5 g : au plus proche multiple de 0,5 g; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | c) lorsqu'elle est supérieure à 5 g : au plus proche multiple de 1 g. |
| 7 | Teneur en fibres solubles | « Fibres solubles » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 8 | Teneur en fibres insolubles | « Fibres insolubles » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 9 | Teneur en polyalcools | (1) Si l'aliment supplémenté ne contient qu'un polyalcool : « Polyalcool », « Polyol » ou « (Nom du polyalcool) »;<br>(2) Dans les autres cas : « Polyalcools » ou « Polyols » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 10 | Teneur en amidon | « Amidon » | La teneur est exprimée en grammes par portion indiquée. | La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,5 g : à 0 g;<br>b) lorsqu'elle est égale ou supérieure à 0,5 g : au plus proche multiple de 1 g. |
| 11 | Teneur en vitamine A | « Vitamine A » ou « Vit A » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 5 µg mais moins de 50 µg : au plus proche multiple de 10 µg;<br>c) lorsqu'elle est égale ou supérieure à 50 µg mais moins de 250 µg : au plus proche multiple de 50 µg;<br>d) lorsqu'elle est égale ou supérieure à 250 µg : au plus proche multiple de 100 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 12 | Teneur en vitamine C | « Vitamine C » ou « Vit C » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée; | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,1 mg : à 0 mg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | b) en pourcentage de la valeur quotidienne par portion indiquée. | b) lorsqu'elle est égale ou supérieure à 0,1 mg mais moins de 1 mg : au plus proche multiple de 0,2 mg;<br>c) lorsqu'elle est égale ou supérieure à 1 mg mais moins de 5 mg : au plus proche multiple de 0,5 mg;<br>d) lorsqu'elle est égale ou supérieure à 5 mg : au plus proche multiple de 1 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 13 | Teneur en vitamine D | « Vitamine D » ou « Vit D » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,1 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,1 µg mais moins de 1 µg : au plus proche multiple de 0,2 µg;<br>c) lorsqu'elle est égale ou supérieure à 1 µg mais moins de 5 µg : au plus proche multiple de 0,5 µg;<br>d) lorsqu'elle est égale ou supérieure à 5 µg : au plus proche multiple de 1 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 14 | Teneur en vitamine E | « Vitamine E » ou « Vit E » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 15 | Teneur en vitamine K | « Vitamine K » ou « Vit K » | La teneur est exprimée : | (1) La teneur est arrondie : |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 16 | Teneur en thiamine | « Thiamine », « Thiamine (vitamine $B_1$) » ou « Thiamine (vit $B_1$) » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 17 | Teneur en riboflavine | « Riboflavine », « Riboflavine (vitamine $B_2$) » ou « Riboflavine (vit $B_2$) » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | b) dans les autres cas : au plus proche multiple de 1 %. |
| 18 | Teneur en niacine | « Niacine » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 19 | Teneur en vitamine $B_6$ | « Vitamine $B_6$ » ou « Vit $B_6$ » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 20 | Teneur en folate | « Folate » | La teneur est exprimée :<br>a) en microgrammes d'équivalents de folate alimentaire (ÉFA) par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 µg ÉFA : à 0 µg ÉFA;<br>b) lorsqu'elle est égale ou supérieure à 1 µg ÉFA mais moins de 10 µg ÉFA : au plus proche multiple de 2 µg ÉFA;<br>c) lorsqu'elle est égale ou supérieure à 10 µg ÉFA mais moins de 50 µg ÉFA : au plus proche multiple de 5 µg ÉFA;<br>d) lorsqu'elle est égale ou supérieure à 50 µg ÉFA : au plus proche multiple de 10 µg ÉFA. |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | | (2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg ÉFA » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 21 | Teneur en vitamine $B_{12}$ | « Vitamine $B_{12}$ » ou « Vit $B_{12}$ » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 µg mais moins de 0,05 µg : au plus proche multiple de 0,01 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,25 µg : au plus proche multiple de 0,025 µg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 µg : au plus proche multiple de 0,05 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 22 | Teneur en biotine | « Biotine » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 23 | Teneur en acide pantothénique | « Acide pantothénique » ou « Pantothénate » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,01 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,01 mg mais moins de 0,1 mg : au plus proche multiple de 0,02 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,1 mg mais moins de |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
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| | | | | 0,5 mg : au plus proche multiple de 0,05 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,5 mg : au plus proche multiple de 0,1 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 24 | Teneur en choline | « Choline » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 1 mg mais moins de 10 mg : au plus proche multiple de 2 mg;<br>c) lorsqu'elle est égale ou supérieure à 10 mg mais moins de 50 mg : au plus proche multiple de 5 mg;<br>d) lorsqu'elle est égale ou supérieure à 50 mg : au plus proche multiple de 10 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 25 | Teneur en phosphore | « Phosphore » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 26 | Teneur en iode | « Iodure » ou « Iode » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 1 µg mais moins de 10 µg : au plus proche multiple de 2 µg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
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| | | | | c) lorsqu'elle est égale ou supérieure à 10 µg mais moins de 50 µg : au plus proche multiple de 5 µg;<br>d) lorsqu'elle est égale ou supérieure à 50 µg : au plus proche multiple de 10 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 27 | Teneur en magnésium | « Magnésium » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 1 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 1 mg mais moins de 10 mg : au plus proche multiple de 2 mg;<br>c) lorsqu'elle est égale ou supérieure à 10 mg mais moins de 50 mg : au plus proche multiple de 5 mg;<br>d) lorsqu'elle est égale ou supérieure à 50 mg : au plus proche multiple de 10 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 28 | Teneur en zinc | « Zinc » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,5 mg : au plus proche multiple de 0,1 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 mg mais moins de 2,5 mg : au plus proche multiple de 0,25 mg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 mg : au plus proche multiple de 0,5 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 29 | Teneur en sélénium | « Sélénium » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée; | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,1 µg : à 0 µg; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | b) en pourcentage de la valeur quotidienne par portion indiquée. | b) lorsqu'elle est égale ou supérieure à 0,1 µg mais moins de 1 µg : au plus proche multiple de 0,2 µg;<br>c) lorsqu'elle est égale ou supérieure à 1 µg mais moins de 5 µg : au plus proche multiple de 0,5 µg;<br>d) lorsqu'elle est égale ou supérieure à 5 µg : au plus proche multiple de 1 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 30 | Teneur en cuivre | « Cuivre » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,0015 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,0015 mg mais moins de 0,025 mg : au plus proche multiple de 0,002 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,025 mg mais moins de 0,05 mg : au plus proche multiple de 0,005 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,05 mg : au plus proche multiple de 0,01 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 31 | Teneur en manganèse | « Manganèse » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,005 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 0,005 mg mais moins de 0,05 mg : au plus proche multiple de 0,01 mg;<br>c) lorsqu'elle est égale ou supérieure à 0,05 mg mais moins de 0,25 mg : au plus proche multiple de 0,025 mg;<br>d) lorsqu'elle est égale ou supérieure à 0,25 mg : au plus proche multiple de 0,05 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 32 | Teneur en chrome | « Chrome » | La teneur est exprimée : | (1) La teneur est arrondie : |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
|---|---|---|---|---|
| | | | a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 33 | Teneur en molybdène | « Molybdène » | La teneur est exprimée :<br>a) en microgrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 0,05 µg : à 0 µg;<br>b) lorsqu'elle est égale ou supérieure à 0,05 µg mais moins de 0,5 µg : au plus proche multiple de 0,1 µg;<br>c) lorsqu'elle est égale ou supérieure à 0,5 µg mais moins de 2,5 µg : au plus proche multiple de 0,25 µg;<br>d) lorsqu'elle est égale ou supérieure à 2,5 µg : au plus proche multiple de 0,5 µg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 µg » : à 0 %;<br>b) dans les autres cas : au plus proche multiple de 1 %. |
| 34 | Teneur en chlorure | « Chlorure » | La teneur est exprimée :<br>a) en milligrammes par portion indiquée;<br>b) en pourcentage de la valeur quotidienne par portion indiquée. | (1) La teneur est arrondie :<br>a) lorsqu'elle est inférieure à 5 mg : à 0 mg;<br>b) lorsqu'elle est égale ou supérieure à 5 mg mais moins de 50 mg : au plus proche multiple de 10 mg;<br>c) lorsqu'elle est égale ou supérieure à 50 mg mais moins de 250 mg : au plus proche multiple de 25 mg;<br>d) lorsqu'elle est égale ou supérieure à 250 mg : au plus proche multiple de 50 mg.<br>(2) Le pourcentage est arrondi :<br>a) lorsque la teneur déclarée est « 0 mg » : à 0 %; |

| Article | Colonne 1<br>Renseignements | Colonne 2<br>Nomenclature | Colonne 3<br>Unité | Colonne 4<br>Règles d'écriture |
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| | | | | b) dans les autres cas : au plus proche multiple de 1 %. |

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DORS/2022-169, art. 21.

## Supplemented Foods for Use in Manufacturing Other Supplemented Foods

**B.29.004 (1)** This section applies to a supplemented food intended solely for use as an ingredient in the manufacture of other supplemented foods intended for sale to a consumer at the retail level.

**(2)** It is prohibited to sell the supplemented food unless the information referred to in subsection (3) in respect of the supplemented food is provided in writing and accompanies the supplemented food when it is delivered to the purchaser.

**(3)** The information

**(a)** must include the information that would, but for subsection B.29.002(6), be required by sections B.29.002 and B.29.003 to be included in a supplemented food facts table;

**(b)** may include other information that is permitted by section B.29.003 to be included in that supplemented food facts table; and

**(c)** must be expressed in accordance with sections B.29.002 and B.29.003, subject to the following modifications, namely,

**(i)** information in respect of supplemental ingredients must be expressed according to the applicable unit referred to in column 3 of the List of Permitted Supplemental Ingredients,

**(A)** per gram or 100 g of the supplemented food, if the net quantity of the supplemented food is declared on the label by weight or by count, or

**(B)** per millilitre or 100 mL of the supplemented food, if the net quantity of the supplemented food is declared on the label by volume,

**(ii)** information — other than in respect of supplemental ingredients — for vitamins referred to in subsection D.01.002(1) must be expressed in the applicable unit referred to in subsection D.01.003(1) and for mineral nutrients referred to in paragraphs D.02.001(1)(a) to (j), (l) to (n) and (p) must be expressed in milligrams for sodium, potassium,

## Aliments supplémentés utilisés dans la fabrication d'autres aliments supplémentés

**B.29.004 (1)** Le présent article s'applique à l'aliment supplémenté qui est destiné uniquement à être utilisé comme ingrédient dans la fabrication d'autres aliments supplémentés destinés à être vendus au consommateur au niveau du commerce de détail.

**(2)** Il est interdit de vendre l'aliment supplémenté à moins que les renseignements visés au paragraphe (3) le concernant l'accompagnent sous forme écrite lors de sa livraison à l'acheteur.

**(3)** Les renseignements :

**a)** comprennent ceux que le tableau des renseignements sur les aliments supplémentés indiquerait, n'eût été le paragraphe B.29.002(6), aux termes des articles B.29.002 et B.29.003;

**b)** peuvent comprendre ceux que le tableau des renseignements sur les aliments supplémentés peut indiquer aux termes de l'article B.29.003;

**c)** sont présentés conformément aux articles B.29.002 et B.29.003, sous réserve des modifications suivantes :

**(i)** les renseignements concernant les ingrédients supplémentaires sont exprimés au moyen de l'unité applicable prévue à la colonne 3 de la Liste des ingrédients supplémentaires autorisés,

**(A)** par gramme ou 100 g de l'aliment supplémenté, dans le cas où la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(B)** par millilitre ou 100 ml de l'aliment supplémenté, dans le cas où la quantité nette de l'aliment est mentionnée en volume sur l'étiquette,

**ii)** sauf s'ils portent sur des ingrédients supplémentaires, les renseignements concernant les vitamines mentionnées au paragraphe D.01.002(1) sont exprimés au moyen de l'unité applicable indiquée au paragraphe D.01.003(1) et ceux concernant les minéraux nutritifs figurant aux alinéas D.02.001(1)a) à j), l) à n) et p) sont exprimés en milligrammes pour le

calcium, phosphorus, magnesium, iron, zinc, chloride, copper and manganese and in micrograms for iodide, chromium, selenium and molybdenum,

**(A)** per gram or 100 g of the supplemented food, if the net quantity of the supplemented food is declared on the label by weight or by count, or

**(B)** per millilitre or 100 mL of the supplemented food, if the net quantity of the supplemented food is declared on the label by volume,

**(iii)** information for other nutrients and the energy value set out in column 1 of the table to section B.29.002 or the table to section B.29.003 must be expressed in the units referred to in column 3,

**(A)** per gram or 100 g of the supplemented food, if the net quantity of the supplemented food is declared on the label by weight or by count, or

**(B)** per millilitre or 100 mL of the supplemented food, if the net quantity of the supplemented food is declared on the label by volume,

**(iv)** percentages of daily values and information on servings of stated size may be omitted, and

**(v)** the information must be stated with a degree of precision that corresponds to the accuracy of the analytical methodology used to produce the information.

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sodium, le potassium, le calcium, le phosphore, le magnésium, le fer, le zinc, le chlore, le cuivre et le manganèse et en microgrammes pour l'iode, le chrome, le sélénium et le molybdène,

**(A)** par gramme ou 100 g de l'aliment supplémenté, dans le cas où la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(B)** par millilitre ou 100 ml de l'aliment supplémenté, dans le cas où la quantité nette de l'aliment est mentionnée en volume sur l'étiquette,

**(iii)** les renseignements concernant les autres éléments nutritifs ainsi que la valeur énergétique, figurant à la colonne 1 des tableaux des articles B.29.002 ou B.29.003, sont exprimés au moyen d'une unité visée à la colonne 3 :

**(A)** par gramme ou 100 g de l'aliment supplémenté, dans le cas où la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(B)** par millilitre ou 100 ml de l'aliment supplémenté, dans le cas où la quantité nette de l'aliment est mentionnée en volume sur l'étiquette,

**(iv)** le pourcentage de la valeur quotidienne et les renseignements concernant la portion indiquée peuvent être omis,

**(v)** les renseignements sont indiqués avec un degré de précision qui correspond à la précision des méthodes analytiques utilisées pour produire ces renseignements.

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## Basis of Information

**B.29.005 (1)** Subject to subsections (2) to (5), the information in the supplemented food facts table must be set out only on the basis of the supplemented food as offered for sale.

**(2)** If a prepackaged product contains an assortment of supplemented foods of the same type and the typical serving consists of only one of those supplemented foods, the information in the supplemented food facts table must be set out

**(a)** on the basis of each of the supplemented foods contained in the prepackaged product, if the information set out in column 1 of the table to section B.29.002 for each of those supplemented foods is different; or

## Objet des renseignements

**B.29.005 (1)** Sous réserve des paragraphes (2) à (5), le tableau des renseignements sur les aliments supplémentés indique les renseignements uniquement en fonction de l'aliment supplémenté tel qu'il est vendu.

**(2)** Le tableau des renseignements sur les aliments supplémentés de tout produit préemballé contenant un assortiment d'aliments supplémentés du même type et dont la portion typique ne comprend qu'un de ces aliments indique les renseignements en fonction :

**a)** de chaque aliment supplémenté dans le produit préemballé, lorsque les renseignements figurant à la colonne 1 du tableau de l'article B.29.002 sont différents pour chaque aliment supplémenté;

**(b)** on the basis of one of the supplemented foods contained in the prepackaged product, if the information set out in column 1 of the table to section B.29.002 for each of those supplemented foods is the same.

**(3)** If a prepackaged product contains an assortment of supplemented foods of the same type and the typical serving consists of more than one of those supplemented foods, the information in the supplemented food facts table must be set out for each of the supplemented foods contained in the prepackaged product or as a composite value.

**(4)** If a supplemented food is to be prepared in accordance with directions provided in or on the package or is commonly combined with other ingredients or another food or cooked before being consumed, the supplemented food facts table may also set out information for the supplemented food as prepared, in which case

**(a)** the supplemented food facts table must set out the following information for the supplemented food as prepared, namely,

**(i)** except in the case described in subparagraph (ii), the amount of the supplemented food expressed using the unit referred to in column 3 of subparagraph 1(b)(i) of the table to section B.29.002 as "about (naming the serving size)" or "about (naming the serving size) prepared" and, if applicable, in the manner specified in column 4 of subitems 1(1) and (2),

**(ii)** if the supplemented food is commonly served combined with another food, the amount of the other food expressed using the unit referred to in column 3 of subparagraph 1(b)(i) of the table to section B.29.002,

**(iii)** the energy value, expressed using a description set out in column 2 of item 2 of the table to section B.29.002, in the unit set out in column 3 and in the manner set out in column 4,

**(iv)** the information set out in column 1 of items 3, 6 to 8, 10, 11 and 13 to 15 of the table to section B.29.002 and in column 1 of items 11 to 34 of the table to section B.29.003 that is declared as a percentage of the daily value in the supplemented food facts table for the supplemented food as sold, expressed using a description set out in column 2 of those tables, as a percentage of the daily value per serving of stated size and in the manner specified in column 4 of those tables, and

**(v)** the information referred to in column 1 of item 18 of the table to section B.29.002, expressed using

**b)** d'un aliment supplémenté dans le produit préemballé, lorsque les renseignements figurant à la colonne 1 du tableau de l'article B.29.002 sont les mêmes pour chaque aliment supplémenté.

**(3)** Le tableau des renseignements sur les aliments supplémentés de tout produit préemballé contenant un assortiment d'aliments supplémentés du même type et dont la portion typique comprend plus d'un de ces aliments indique les renseignements qui correspondent soit à la valeur de chaque aliment supplémenté, soit à une valeur composée.

**(4)** Le tableau des renseignements sur les aliments supplémentés de tout aliment supplémenté à préparer selon des instructions fournies dans ou sur l'emballage, ou qui est normalement combiné avec d'autres ingrédients ou d'autres aliments ou cuit avant d'être consommé, peut également indiquer les renseignements en fonction de l'aliment supplémenté une fois préparé, auquel cas :

**a)** le tableau indique les renseignements ci-après en fonction de l'aliment supplémenté préparé :

**(i)** sauf dans le cas visé au sous-alinéa (ii), la quantité de l'aliment supplémenté exprimée en l'unité visée à la colonne 3 du sous-alinéa 1b)(i) du tableau de l'article B.29.002, soit « environ (la portion indiquée) » ou « environ (la portion indiquée) préparé », et, s'il y a lieu, au moyen des règles d'écriture indiquées dans la colonne 4 des paragraphes 1(1) et (2),

**(ii)** si l'aliment supplémenté est normalement combiné avec un autre aliment, la quantité de l'autre aliment exprimée en l'unité visée à la colonne 3 du sous-alinéa 1b)(i) du tableau de l'article B.29.002,

**(iii)** la valeur énergétique, exprimée au moyen de la nomenclature indiquée dans la colonne 2 de l'article 2 du tableau de l'article B.29.002, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4,

**(iv)** les renseignements visés à la colonne 1 des articles 3, 6 à 8, 10, 11 et 13 à 15 du tableau de l'article B.29.002 et à la colonne 1 des articles 11 à 34 du tableau de l'article B.29.003 et qui sont indiqués en pourcentage de la valeur quotidienne dans le tableau des renseignements sur les aliments supplémentés en fonction de l'aliment supplémenté tel qu'il est vendu, exprimés au moyen de la nomenclature indiquée dans la colonne 2 de ces tableaux en pourcentage de la valeur quotidienne par portion indiquée et au moyen des règles d'écriture indiquées dans la colonne 4 de ceux-ci,

the description referred to in column 2, in the unit referred to in column 3 and in the manner referred to in column 4; and

**(b)** the supplemented food facts table may also set out the following information for the added ingredients or the other food, if it is declared in the supplemented food facts table for the supplemented food as sold, namely,

**(i)** the information set out in column 1 of items 3 to 5 and 7 to 12 of the table to section B.29.002, expressed using a description set out in column 2, in milligrams for the information set out in column 1 of items 7 and 8 and in grams for the information set out in column 1 of items 3 to 5 and 9 to 12 and in the manner specified in column 4,

**(ii)** the information set out in column 1 of items 3 to 10 of the table to section B.29.003, expressed using a description set out in column 2, in grams and in the manner specified in column 4, and

**(iii)** the information set out in column 1 of item 2 of the table to section B.29.002, expressed using a description set out in column 2, in the unit set out in column 3 per serving of stated size of the supplemented food as prepared, and in the manner specified in column 4.

**(5)** The information in the supplemented food facts table may also be set out on the basis of other amounts of the supplemented food that reflect different uses or different units of measurement of the supplemented food, in which case

**(a)** the supplemented food facts table must set out the following information for each of the other amounts of the supplemented food, namely,

**(i)** the amount of the supplemented food expressed in a household measure and a metric measure and in the manner specified in column 4 of subitems 1(1) and (2) of the table to section B.29.002,

**(ii)** the energy value, expressed using a description set out in column 2 of item 2 of the table to section B.29.002, in the unit set out in column 3 and in the manner set out in column 4,

**(iii)** the information set out in column 1 of items 3, 6 to 8, 10, 11 and 13 to 15 of the table to section

**(v)** les renseignements visés à la colonne 1 de l'article 18 du tableau de l'article B.29.002, exprimés au moyen de la nomenclature visée à la colonne 2, de l'unité visée à la colonne 3 et des règles d'écriture visées à la colonne 4;

**b)** le tableau peut également indiquer les renseignements ci-après en fonction des ingrédients ajoutés ou de l'autre aliment, s'ils sont déclarés dans le tableau des renseignements sur les aliments supplémentés de l'aliment supplémenté tel qu'il est vendu :

**(i)** les renseignements visés à la colonne 1 des articles 3 à 5 et 7 à 12 du tableau de l'article B.29.002, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en milligrammes pour ceux visés à la colonne 1 des articles 7 et 8 et en grammes pour ceux visés à la colonne 1 des articles 3 à 5 et 9 à 12 et au moyen des règles d'écriture indiquées dans la colonne 4,

**(ii)** les renseignements visés à la colonne 1 des articles 3 à 10 du tableau de l'article B.29.003, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en grammes et au moyen des règles d'écriture indiquées dans la colonne 4,

**(iii)** les renseignements visés à la colonne 1 de l'article 2 du tableau de l'article B.29.002, exprimés au moyen de la nomenclature indiquée dans la colonne 2, de l'unité indiquée dans la colonne 3, par portion indiquée de l'aliment supplémenté préparé et au moyen des règles d'écriture indiquées dans la colonne 4.

**(5)** Le tableau des renseignements sur les aliments supplémentés peut également indiquer les renseignements en fonction d'autres quantités de l'aliment supplémenté qui correspondent à différents usages ou unités de mesure de l'aliment supplémenté, auquel cas :

**a)** le tableau indique les renseignements ci-après pour chacune des autres quantités de l'aliment supplémenté :

**(i)** la quantité exprimée selon une mesure domestique et une mesure métrique et au moyen des règles d'écriture indiquées dans la colonne 4 du tableau de l'article B.29.002, aux paragraphes 1(1) et (2),

**(ii)** la valeur énergétique, exprimée au moyen de la nomenclature indiquée dans la colonne 2 de l'article 2 du tableau de l'article B.29.002, de l'unité indiquée dans la colonne 3 et des règles d'écriture indiquées dans la colonne 4,

B.29.002 and in column 1 of items 11 to 34 of the table to section B.29.003 that is declared as a percentage of the daily value in the supplemented food facts table for the first amount of the supplemented food for which information is declared, expressed using a description set out in column 2 of those tables, as a percentage of the daily value per serving of stated size and in the manner specified in column 4 of those tables, and

**(iv)** the information referred to in column 1 of item 18 of the table to section B.29.002, expressed using the description referred to in column 2, the unit referred to in column 3 and in the manner referred to in column 4; and

**(b)** if the supplemented food facts table is set out in a version of the aggregate format specified in section B.29.015, it must also set out the following information for each of the other amounts of the supplemented food, if that information is declared in the supplemented food facts table for the first amount of the supplemented food for which information is declared, namely,

**(i)** the information set out in column 1 of items 3 to 5 and 7 to 15 of the table to section B.29.002, expressed using a description set out in column 2, in milligrams for the information set out in column 1 of items 7, 8 and 13 to 15, and in grams for the information set out in column 1 of items 3 to 5 and 9 to 12 and in the manner specified in column 4, and

**(ii)** the information set out in column 1 of items 3 to 34 of the table to section B.29.003, expressed using a description set out in column 2, in micrograms for the information set out in column 1 of items 11, 13, 15, 21, 22, 26, 29, 32 and 33, in micrograms of dietary folate equivalents for the information set out in column 1 of item 20, in milligrams for the information set out in column 1 of items 12, 14, 16 to 19, 23 to 25, 27, 28, 30, 31 and 34, and in grams for the information set out in column 1 of items 3 to 10 and in the manner specified in column 4.

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**(iii)** les renseignements visés à la colonne 1 des articles 3, 6 à 8, 10, 11 et 13 à 15 du tableau de l'article B.29.002 et à la colonne 1 des articles 11 à 34 du tableau de l'article B.29.003 et qui sont indiqués en pourcentage de la valeur quotidienne dans le tableau des renseignements sur les aliments supplémentés à l'égard de la première quantité de l'aliment supplémenté pour laquelle des renseignements sont déclarés, exprimés au moyen de la nomenclature indiquée dans la colonne 2 de ces tableaux, en pourcentage de la valeur quotidienne par portion indiquée et au moyen des règles d'écriture indiquées dans la colonne 4 de ceux-ci,

**(iv)** les renseignements visés à la colonne 1 de l'article 18 du tableau de l'article B.29.002, exprimés au moyen de la nomenclature visée à la colonne 2, de l'unité visée à la colonne 3 et des règles d'écriture visées à la colonne 4;

**b)** si le tableau est présenté selon l'une des versions du modèle composé prévu à l'article B.29.015, il indique également les renseignements ci-après pour chacune des autres quantités de l'aliment supplémenté, s'ils sont déclarés dans le tableau des renseignements sur les aliments supplémentés à l'égard de la première quantité de l'aliment supplémenté pour laquelle des renseignements sont déclarés :

**(i)** les renseignements visés à la colonne 1 des articles 3 à 5 et 7 à 15 du tableau de l'article B.29.002, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en milligrammes pour ceux visés à la colonne 1 des articles 7, 8 et 13 à 15 et en grammes pour ceux visés à la colonne 1 des articles 3 à 5 et 9 à 12 et au moyen des règles d'écriture indiquées dans la colonne 4,

**(ii)** les renseignements visés à la colonne 1 des articles 3 à 34 du tableau de l'article B.29.003, exprimés au moyen de la nomenclature indiquée dans la colonne 2, en microgrammes pour ceux visés à la colonne 1 des articles 11, 13, 15, 21, 22, 26, 29, 32 et 33, en microgrammes d'équivalents de folate alimentaire pour ceux visés à la colonne 1 de l'article 20, en milligrammes pour ceux visés à la colonne 1 des articles 12, 14, 16 à 19, 23 à 25, 27, 28, 30, 31 et 34, et en grammes pour ceux visés à la colonne 1 des articles 3 à 10 et au moyen des règles d'écriture indiquées dans la colonne 4.

DORS/2022-169, art. 21.

## Presentation of Supplemented Food Facts Table

**B.29.006 (1)** Subject to subsections (2) to (7), the supplemented food facts table must be presented in accordance with the format specified in the applicable figure in the Directory of SFFT Formats, having regard to matters such as order of presentation, dimensions, spacing and the use of upper and lower case letters and bold type.

**(2)** The characters and rules in the supplemented food facts table must be displayed in a single colour that is a visual equivalent of 100% solid black type on a white background or on a uniform neutral background with a maximum 5% tint of colour.

**(3)** The characters in the supplemented food facts table

**(a)** must be displayed in a single standard sans serif font that is not decorative and in such a manner that the characters never touch each other or the rules; and

**(b)** may be displayed with larger dimensions than those specified in the applicable figure in the Directory of SFFT Formats if all the characters in the table are enlarged in a uniform manner.

**(4)** The type size shown in parentheses for a version referred to in a table to sections B.29.009 to B.29.015 is the minimum type size that may be used in a supplemented food facts table to show nutrients and supplemental ingredients set out in the tables to sections B.29.002 and B.29.003 in accordance with that version.

**(5)** A rule that is specified in the applicable figure in the Directory of SFFT Formats as being a 1 point rule or a 2 point rule may be displayed with larger dimensions in the supplemented food facts table.

**(6)** The information in the supplemented food facts table must be in accordance with subsections B.29.001(2) and (3) and sections B.29.002, B.29.003 and B.29.005.

**(7)** In a supplemented food facts table consisting of a table in both English and French, the order of languages may be reversed from the order shown in the applicable figure in the Directory of SFFT Formats.

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## Présentation du tableau des renseignements sur les aliments supplémentés

**B.29.006 (1)** Sous réserve des paragraphes (2) à (7), le tableau des renseignements sur les aliments supplémentés est présenté selon le modèle de la figure applicable du Répertoire des modèles de TRAS, compte tenu notamment de l'ordre de présentation, des dimensions, des espacements et de l'emploi des majuscules, des minuscules et des caractères gras.

**(2)** Les caractères et les filets du tableau des renseignements sur les aliments supplémentés sont monochromes et équivalent visuellement à de l'imprimerie noire en aplat de 100 % sur un fond blanc ou de couleur de teinte neutre et uniforme d'au plus 5 %.

**(3)** Les caractères dans le tableau des renseignements sur les aliments supplémentés :

**a)** figurent dans la même police, sans empattement et décoration, et sont inscrits de manière à ce qu'ils ne se touchent pas et ne touchent pas les filets;

**b)** peuvent être de dimensions plus grandes que celles indiquées dans la figure applicable du Répertoire des modèles de TRAS si tous les caractères sont agrandis de façon uniforme.

**(4)** La taille des caractères qui est indiquée entre parenthèses pour une version prévue à un tableau des articles B.29.009 à B.29.015 représente la taille minimale des caractères à utiliser, dans le tableau des renseignements sur les aliments supplémentés, pour indiquer les éléments nutritifs et les ingrédients supplémentaires figurant aux tableaux des articles B.29.002 et B.29.003 conformément à cette version.

**(5)** Un filet de un ou deux points visé à la figure applicable du Répertoire des modèles de TRAS peut avoir une force de corps plus grande dans le tableau des renseignements sur les aliments supplémentés.

**(6)** Le tableau des renseignements sur les aliments supplémentés indique les renseignements conformément aux paragraphes B.29.001(2) et (3) et aux articles B.29.002, B.29.003 et B.29.005.

**(7)** L'ordre de la langue indiqué dans la figure applicable du Répertoire des modèles de TRAS peut être inversé lorsque le tableau des renseignements sur les aliments supplémentés est composé d'un tableau en français et en anglais.

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## Location of Supplemented Food Facts Table

**B.29.007 (1)** Subject to subsection (2), the supplemented food facts table must be displayed

**(a)** in a table in English and a table in French on the same continuous surface of the available display surface;

**(b)** in a table in both English and French on a continuous surface of the available display surface; or

**(c)** in a table in English on a continuous surface of the available display surface and a table in French on another continuous surface of the available display surface that is of the same size and prominence as the first surface.

**(2)** If, in accordance with subsection B.01.012(3), the information required by these Regulations may be shown on the label of a supplemented food in English only or in French only and is shown in that language, the supplemented food facts table may be displayed on the label in a table in that language only on a continuous surface of the available display surface.

SOR/2022-169, s. 21.

## Emplacement du tableau des renseignements sur les aliments supplémentés

**B.29.007 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés est présenté :

**a)** dans un tableau en français et un tableau en anglais sur le même espace continu de la surface exposée disponible;

**b)** dans un tableau en français et en anglais sur tout espace continu de la surface exposée disponible;

**c)** dans un tableau en français sur tout espace continu de la surface exposée disponible et un tableau en anglais sur tout autre espace continu de cette surface de même grandeur et de même importance que le premier espace.

**(2)** Si, conformément au paragraphe B.01.012(3), les renseignements devant être indiqués aux termes du présent règlement sur l'étiquette d'un aliment supplémenté peuvent l'être uniquement en français ou uniquement en anglais et qu'ils y figurent dans la langue en cause, le tableau des renseignements sur les aliments supplémentés peut être présenté sur l'étiquette dans cette langue sur tout espace continu de la surface exposée disponible.

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## Orientation of Supplemented Food Facts Table

**B.29.008 (1)** Subject to subsection (2), the supplemented food facts table must be oriented in the same manner as other information appearing on the label of a supplemented food.

**(2)** If a version of a supplemented food facts table cannot be oriented in the same manner as other information appearing on the label, it must be oriented in another manner if there is sufficient space to do so and the food contained in the package does not leak out and is not damaged when the package is turned over.

**(3)** Subsection (1) does not apply in respect of a supplemented food facts table that is set out on the top or bottom of a package.

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## Orientation du tableau des renseignements sur les aliments supplémentés

**B.29.008 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés est orienté dans le même sens que les autres renseignements figurant sur l'étiquette de l'aliment supplémenté.

**(2)** Dans le cas où une version du tableau des renseignements sur les aliments supplémentés ne peut être orientée dans le même sens que les autres renseignements figurant sur l'étiquette, elle est orientée dans un autre sens s'il y a suffisamment d'espace et si l'aliment contenu dans l'emballage ne fuit pas et n'est pas endommagé lorsque l'emballage est retourné.

**(3)** Le paragraphe (1) ne s'applique pas au tableau des renseignements sur les aliments supplémentés qui est présenté sur le dessus ou le dessous de l'emballage.

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## Standard and Horizontal Formats

**B.29.009 (1)** This section applies to a supplemented food unless any of sections B.29.010 to B.29.015 applies to it.

## Modèles standard et horizontal

**B.29.009 (1)** Le présent article s'applique à tout aliment supplémenté à moins que l'un des articles B.29.010 à B.29.015 ne s'y applique.

**(2)** Subject to subsection (3), the supplemented food facts table must be set out in a version listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, a supplemented food facts table in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out in

**(a)** the bilingual standard format in accordance with Figure 3.5(B), 3.6(B) or 3.7(B) of the Directory of SFFT Formats;

**(b)** the bilingual horizontal format in accordance with Figure 4.3(B), 4.4(B) or 4.5(B) of the Directory of SFFT Formats;

**(c)** the linear format in accordance with Figures 16.1(E) and (F) or 16.2(E) and (F) of the Directory of SFFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table; or

**(e)** a manner described in section B.29.017.

**(4)** For the purposes of this section, in determining whether a version of a supplemented food facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, the supplemented food facts table must include only the information that is required by these Regulations to be included in that table.

**(5)** Despite subsections (2) and (3), if the supplemented food facts table is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in paragraph (3)(a), (b) or (c) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

**(2)** Sous réserve du paragraphe (3), le tableau des renseignements sur les aliments supplémentés est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** Si le tableau des renseignements sur les aliments supplémentés ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**a)** selon le modèle standard bilingue prévu aux figures 3.5(B), 3.6(B) ou 3.7(B) du Répertoire des modèles de TRAS;

**b)** selon le modèle horizontal bilingue prévu aux figures 4.3(B), 4.4(B) ou 4.5(B) du Répertoire des modèles de TRAS;

**c)** selon le modèle linéaire prévu aux figures 16.1(F) et (A) ou 16.2(F) et (A) du Répertoire des modèles de TRAS;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.29.017.

**(4)** Pour l'application du présent article, afin d'établir si une version du tableau des renseignements sur les aliments supplémentés ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement.

**(5)** Malgré les paragraphes (2) et (3), si le tableau des renseignements sur les aliments supplémentés est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues aux alinéas (3)a) à c) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Standard Format

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 1.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 1.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 1.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 1.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 1.5(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 1.6(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## TABLEAU

### PARTIE 1

### Modèle standard

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 1.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 1.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 1.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 1.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 1.5(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 1.6(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

### Narrow Standard Format

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 2.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 2.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 2.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 2.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 3

### Bilingual Standard Format

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 3.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 3.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PARTIE 2

### Modèle standard étroit

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 2.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 2.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 2.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 2.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 3

### Modèle standard bilingue

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 3.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 3.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 3 | 3.3(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 3.4(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

**PART 4**

**Bilingual Horizontal Format**

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 4.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in Parts 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 4.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in Parts 1 to 3 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

## Simplified Formats

**B.29.010 (1)** This section applies to a supplemented food if it satisfies the condition set out in subsection B.29.002(4) and its supplemented food facts table includes only the information referred to in paragraphs B.29.002(4)(a) to (m).

**(2)** Subject to subsection (3), the supplemented food facts table must be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 3 | 3.3(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 3.4(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PARTIE 4**

**Modèle horizontal bilingue**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 4.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des parties 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 4.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des parties 1 à 3 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Modèles simplifiés

**B.29.010 (1)** Le présent article s'applique à tout aliment supplémenté qui remplit la condition prévue au paragraphe B.29.002(4) et dont le tableau des renseignements sur les aliments supplémentés ne contient que les renseignements visés aux alinéas B.29.002(4)a) à m).

**(2)** Sous réserve du paragraphe (3), le tableau des renseignements sur les aliments supplémentés est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, a supplemented food facts table containing only the information referred to in paragraphs B.29.002(4)(a) to (m) in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out in

**(a)** the bilingual simplified standard format in accordance with Figure 6.5(B) or 6.6(B) of the Directory of SFFT Formats;

**(b)** the bilingual simplified horizontal format in accordance with Figure 7.3(B) or 7.4(B) of the Directory of SFFT Formats;

**(c)** the simplified linear format in accordance with Figures 17.1(E) and (F) or 17.2(E) and (F) of the Directory of SFFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table; or

**(e)** a manner described in section B.29.017.

**(4)** Despite subsections (2) and (3), if the supplemented food facts table is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in paragraph (3)(a), (b) or (c) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

**(3)** Si le tableau des renseignements sur les aliments supplémentés qui ne contient que les renseignements visés aux alinéas B.29.002(4)a) à m) ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**a)** selon le modèle standard simplifié bilingue prévu aux figures 6.5(B) ou 6.6(B) du Répertoire des modèles de TRAS;

**b)** selon le modèle horizontal simplifié bilingue prévu aux figures 7.3(B) ou 7.4(B) du Répertoire des modèles de TRAS;

**c)** selon le modèle linéaire simplifié prévu aux figures 17.1(F) et (A) ou 17.2(F) et (A) du Répertoire des modèles de TRAS;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.29.017.

**(4)** Malgré les paragraphes (2) et (3), si le tableau des renseignements sur les aliments supplémentés est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues aux alinéas (3)a) à c) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

## PART 1

### Simplified Standard Format

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 5.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 5.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 5.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 5.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 5.5(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 5.6(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## TABLEAU

## PARTIE 1

### Modèle standard simplifié

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 5.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 5.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 5.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 5.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 5.5(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 5.6(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

### Bilingual Simplified Standard Format

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 6.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 6.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 6.3(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 6.4(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 3

### Bilingual Simplified Horizontal Format

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 7.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in Parts 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 7.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in Parts 1 and 2 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

## PARTIE 2

### Modèle standard simplifié bilingue

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 6.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 6.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 6.3(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 6.4(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 3

### Modèle horizontal simplifié bilingue

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 7.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des parties 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 7.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des parties 1 et 2 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Simplified Formats — Supplemented Foods that are Single-serving Prepackaged Products

**B.29.011 (1)** This section applies to a supplemented food that is a single-serving prepackaged product, whose supplemented food facts table includes only the information referred to in paragraphs B.29.002(5)(a) to (l).

**(2)** Subject to subsection (3), the supplemented food facts table of the supplemented food that is a single-serving prepackaged product must be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(3)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the supplemented food that is a single-serving prepackaged product, a supplemented food facts table containing only the information referred to in paragraphs B.29.002(5)(a) to (l) in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out in

**(a)** the bilingual simplified standard format in accordance with Figure 6.5.1(B) or 6.6.1(B) of the Directory of SFFT Formats;

**(b)** the bilingual simplified horizontal format in accordance with Figure 7.3.1(B) or 7.4.1(B) of the Directory of SFFT Formats;

**(c)** the simplified linear format in accordance with Figures 17.1.1(E) and (F) or 17.2.1(E) and (F) of the Directory of SFFT Formats;

**(d)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table; or

**(e)** a manner described in section B.29.017.

**(4)** Despite subsections (2) and (3), if the supplemented food facts table of the supplemented food that is a single-serving prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in paragraph (3)(a), (b) or (c) or that is listed in

## Modèles simplifiés — aliments supplémentés étant des produits préemballés à portion individuelle

**B.29.011 (1)** Le présent article s'applique à tout aliment supplémenté qui est un produit préemballé à portion individuelle et dont le tableau des renseignements sur les aliments supplémentés ne contient que les renseignements visés aux alinéas B.29.002(5)a) à l).

**(2)** Sous réserve du paragraphe (3), le tableau des renseignements sur les aliments supplémentés de l'aliment supplémenté qui est un produit préemballé à portion individuelle est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(3)** Si le tableau des renseignements sur les aliments supplémentés qui ne contient que les renseignements visés aux alinéas B.29.002(5)a) à l) ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté qui est un produit préemballé à portion individuelle selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté de l'une des façons suivantes :

**a)** selon le modèle standard simplifié bilingue prévu aux figures 6.5.1(B) ou 6.6.1(B) du Répertoire des modèles de TRAS;

**b)** selon le modèle horizontal simplifié bilingue prévu aux figures 7.3.1(B) ou 7.4.1(B) du Répertoire des modèles de TRAS;

**c)** selon le modèle linéaire simplifié prévu aux figures 17.1.1(F) et (A) ou 17.2.1(F) et (A) du Répertoire des modèles de TRAS;

**d)** selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible;

**e)** d'une façon prévue à l'article B.29.017.

**(4)** Malgré les paragraphes (2) et (3), si le tableau des renseignements sur les aliments supplémentés de l'aliment supplémenté qui est un produit préemballé à portion individuelle est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est

column 1 of the table to this section, without regard to any condition specified in column 2.

## TABLE

### PART 1

### Bilingual Simplified Standard Format — Supplemented Foods that are Single-serving Prepackaged Products

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 6.1.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 6.2.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 6.3.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 6.4.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

présenté selon l'une des versions prévues aux alinéas (3)a) à c) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLEAU

### PARTIE 1

### Modèle standard simplifié bilingue — aliments supplémentés étant des produits préemballés à portion individuelle

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 6.1.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 6.2.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 6.3.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 6.4.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PART 2**

**Bilingual Simplified Horizontal Format — Supplemented Foods that are Single-serving Prepackaged Products**

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 7.1.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in Part 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 2 | 7.2.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in Part 1 and in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

**PARTIE 2**

**Modèle horizontal simplifié bilingue — aliments supplémentés étant des produits préemballés à portion individuelle**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 7.1.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions de la partie 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 2 | 7.2.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions de la partie 1 et de l'article 1 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Dual Format — Supplemented Foods Requiring Preparation

**B.29.012 (1)** Subject to subsection (2), if the supplemented food facts table includes information referred to in subsection B.29.005(4), the supplemented food facts table must be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, a supplemented food facts table in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out in

**(a)** the bilingual dual format in accordance with Figure 9.5(B) or 9.6(B) of the Directory of SFFT Formats; or

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table.

**(3)** For the purposes of this section, in determining whether a version of a supplemented food facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the

## Modèle double — aliments supplémentés à préparer

**B.29.012 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés qui indique les renseignements visés au paragraphe B.29.005(4) est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau des renseignements sur les aliments supplémentés ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** soit selon le modèle double bilingue prévu aux figures 9.5(B) ou 9.6(B) du Répertoire des modèles de TRAS;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau des renseignements sur les aliments supplémentés ne peut être présentée conformément au présent règlement sur 15 % ou moins de la

supplemented food, the supplemented food facts table must include only the information that is required by these Regulations to be included in the table, together with the information referred to in subsection B.29.005(4).

**(4)** Despite subsections (1) and (2), if the supplemented food facts table is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in paragraph (2)(a) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

surface exposée disponible de l'aliment supplémenté, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement ainsi que des renseignements visés au paragraphe B.29.005(4).

**(4)** Malgré les paragraphes (1) et (2), si le tableau des renseignements sur les aliments supplémentés est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues à l'alinéa (2)a) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Dual Format — Supplemented Foods Requiring Preparation

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 8.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 8.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 8.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 8.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## TABLEAU

### PARTIE 1

### Modèle double — aliments supplémentés à préparer

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 8.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 8.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 8.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 8.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 5 | 8.5(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 8.6(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PART 2

### Bilingual Dual Format — Supplemented Foods Requiring Preparation

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 9.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 9.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 9.3(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 9.4(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 5 | 8.5(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 8.6(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PARTIE 2

### Modèle double bilingue — aliments supplémentés à préparer

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 9.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 9.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 9.3(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 9.4(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Aggregate Format — Different Kinds of Supplemented Foods

**B.29.013 (1)** Subject to subsection (2), if the supplemented food facts table of a prepackaged product containing an assortment of supplemented foods includes separate information for each supplemented food as provided in paragraph B.29.005(2)(a) or subsection B.29.005(3), the supplemented food facts table must be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, a supplemented food facts table in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out

**(a)** in the case of a prepackaged product described in paragraph B.29.005(2)(a), in

**(i)** the bilingual aggregate format in accordance with Figure 11.5(B) or 11.6(B) of the Directory of SFFT Formats,

**(ii)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table, or

**(iii)** a manner described in section B.29.017; or

**(b)** in the case of a prepackaged product described in subsection B.29.005(3), in

**(i)** the bilingual aggregate format in accordance with Figure 11.5(B) or 11.6(B) of the Directory of SFFT Formats, or

**(ii)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table.

**(3)** For the purposes of this section, in determining whether a version of a supplemented food facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the prepackaged product, the supplemented food facts table must include only the information that is required by these Regulations to be included for each supplemented food for which separate information is set out in the table.

## Modèle composé — différents types d'aliments supplémentés

**B.29.013 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés de tout produit préemballé contenant un assortiment d'aliments supplémentés qui indique des renseignements distincts en fonction de chaque aliment supplémenté, tel qu'il est prévu à l'alinéa B.29.005(2)a) ou au paragraphe B.29.005(3), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau des renseignements sur les aliments supplémentés ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** dans le cas de tout produit préemballé visé à l'alinéa B.29.005(2)a) :

**(i)** soit selon le modèle composé bilingue prévu aux figures 11.5(B) ou 11.6(B) du Répertoire des modèles de TRAS,

**(ii)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible,

**(iii)** soit d'une façon prévue à l'article B.29.017;

**b)** dans le cas de tout produit préemballé visé au paragraphe B.29.005(3) :

**(i)** soit selon le modèle composé bilingue prévu aux figures 11.5(B) ou 11.6(B) du Répertoire des modèles de TRAS,

**(ii)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau des renseignements sur les aliments supplémentés ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible du produit préemballé, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque aliment supplémenté pour lequel des renseignements distincts y sont indiqués.

**(4)** Despite subsections (1) and (2), if the supplemented food facts table of the prepackaged product is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in subparagraph (2)(b)(i) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

**(4)** Malgré les paragraphes (1) et (2), si le tableau des renseignements sur les aliments supplémentés du produit préemballé est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues au sous-alinéa (2)b)(i) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Aggregate Format — Different Kinds of Supplemented Foods

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 10.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 10.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 10.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 10.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 10.5(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## TABLEAU

### PARTIE 1

### Modèle composé — différents types d'aliments supplémentés

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 10.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 10.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 10.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 10.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 10.5(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 6 | 10.6(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

**PART 2**

**Bilingual Aggregate Format — Different Kinds of Supplemented Foods**

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 11.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 11.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 11.3(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 11.4(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

## Dual Format — Different Amounts of Supplemented Food

**B.29.014 (1)** Subject to subsection (2), if the supplemented food facts table includes separate information for different amounts of the supplemented food as provided in paragraph B.29.005(5)(a) without including the information referred to in paragraph B.29.005(5)(b), the supplemented food facts table must be set out in a version

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 6 | 10.6(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PARTIE 2**

**Modèle composé bilingue — différents types d'aliments supplémentés**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 11.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 11.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins de 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 11.3(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 11.4(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Modèle double — différentes quantités d'aliments supplémentés

**B.29.014 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés qui indique des renseignements distincts en fonction de différentes quantités de l'aliment supplémenté, tel qu'il est prévu à l'alinéa B.29.005(5)a), sans indiquer les renseignements visés à l'alinéa B.29.005(5)b), est présenté selon

that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, a supplemented food facts table in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out in

**(a)** the bilingual dual format in accordance with Figure 13.5(B) or 13.6(B) of the Directory of SFFT Formats; or

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table.

**(3)** For the purposes of this section, in determining whether a version of a supplemented food facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, the supplemented food facts table must include only the information that is required by these Regulations to be included for each amount of the supplemented food for which separate information is set out in the table.

**(4)** Despite subsections (1) and (2), if the supplemented food facts table is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in paragraph (2)(a) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau des renseignements sur les aliments supplémentés ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**a)** soit selon le modèle double bilingue prévu aux figures 13.5(B) ou 13.6(B) du Répertoire des modèles de TRAS;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau des renseignements sur les aliments supplémentés ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque quantité d'aliment supplémenté pour laquelle des renseignements distincts y sont indiqués.

**(4)** Malgré les paragraphes (1) et (2), si le tableau des renseignements sur les aliments supplémentés est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues à l'alinéa (2)a) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Dual Format — Different Amounts of Supplemented Food

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 12.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 12.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 12.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 12.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 12.5(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 12.6(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## TABLEAU

### PARTIE 1

### Modèle double — différentes quantités d'aliments supplémentés

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 12.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 12.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 12.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 12.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 12.5(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 12.6(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

**PART 2**

**Bilingual Dual Format — Different Amounts of Supplemented Food**

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 13.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 13.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 3 | 13.3(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 13.4(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

**PARTIE 2**

**Modèle double bilingue — différentes quantités d'aliments supplémentés**

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 13.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |
| 2 | 13.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 13.3(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 13.4(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Aggregate Format — Different Amounts of Supplemented Food

**B.29.015 (1)** Subject to subsection (2), if the supplemented food facts table includes separate information for different amounts of the supplemented food as provided in paragraphs B.29.005(5)(a) and (b), the supplemented food facts table must be set out in a version that is listed in column 1 of the table to this section and in respect of which the condition specified in column 2 is satisfied.

**(2)** If it is not possible to display, in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, a supplemented food facts table in any of the versions that is listed in column 1 of the table to this section, the supplemented food facts table must be set out in

## Modèle composé — différentes quantités d'aliments supplémentés

**B.29.015 (1)** Sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés qui indique des renseignements distincts en fonction de différentes quantités de l'aliment supplémenté, tel qu'il est prévu aux alinéas B.29.005(5)a) et b), est présenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, si la condition prévue à la colonne 2 est remplie.

**(2)** Si le tableau des renseignements sur les aliments supplémentés ne peut être présenté conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté selon l'une des versions figurant à la colonne 1 du tableau du présent article, il est présenté :

**(a)** the bilingual aggregate format in accordance with Figure 15.5(B) or 15.6(B) of the Directory of SFFT Formats; or

**(b)** a version that is listed in column 1 of the table to this section, even though more than 15% of the available display surface would be required to display the supplemented food facts table.

**(3)** For the purposes of this section, in determining whether a version of a supplemented food facts table cannot be displayed in accordance with these Regulations on 15% or less of the available display surface of the supplemented food, the supplemented food facts table must include only the information that is required by these Regulations to be included for each amount of the supplemented food for which separate information is set out in the table.

**(4)** Despite subsections (1) and (2), if the supplemented food facts table of the supplemented food is set out on a tag attached to an ornamental container or a tag attached to a package to which a label cannot be physically applied or on which information cannot be legibly set out and easily viewed by the purchaser or consumer under the customary conditions of purchase, it must be set out in a version that is described in paragraph (2)(a) or that is listed in column 1 of the table to this section, without regard to any condition specified in column 2.

**a)** soit selon le modèle composé bilingue prévu aux figures 15.5(B) ou 15.6(B) du Répertoire des modèles de TRAS;

**b)** soit selon l'une des versions figurant à la colonne 1 du tableau du présent article, même si le tableau des renseignements sur les aliments supplémentés devrait être présenté sur plus de 15 % de la surface exposée disponible.

**(3)** Pour l'application du présent article, afin d'établir si une version du tableau des renseignements sur les aliments supplémentés ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible de l'aliment supplémenté, il n'est tenu compte, dans le tableau, que des renseignements exigés par le présent règlement pour chaque quantité d'aliment supplémenté pour laquelle des renseignements distincts y sont indiqués.

**(4)** Malgré les paragraphes (1) et (2), si le tableau des renseignements sur les aliments supplémentés est placé sur une étiquette mobile attachée à un emballage décoratif ou sur une étiquette mobile attachée à un emballage sur lequel aucune étiquette ne peut être apposée ou sur lequel les renseignements ne peuvent être indiqués lisiblement et de façon que l'acheteur ou le consommateur puisse les voir aisément dans les conditions habituelles d'achat, il est présenté selon l'une des versions prévues à l'alinéa (2)a) ou selon l'une des versions figurant à la colonne 1 du tableau du présent article, sans égard à toute condition prévue à la colonne 2.

## TABLE

### PART 1

### Aggregate Format — Different Amounts of Supplemented Food

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 14.1(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 14.2(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## TABLEAU

### PARTIE 1

### Modèle composé — différentes quantités d'aliments supplémentés

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 14.1(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 3 | 14.3(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 14.4(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 5 | 14.5(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 4 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 6 | 14.6(E) and (F)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 5 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 2 | 14.2(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 14.3(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 14.4(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 5 | 14.5(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 4 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 6 | 14.6(F) et (A)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 5 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

## PART 2

### Bilingual Aggregate Format — Different Amounts of Supplemented Food

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 1 | 15.1(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 8 points) | |
| 2 | 15.2(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points) | The version in item 1 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

## PARTIE 2

### Modèle composé bilingue — différentes quantités d'aliments supplémentés

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 1 | 15.1(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 8 points) | |

| Item | Column 1<br>Figure in Directory of SFFT Formats (Version) | Column 2<br>Condition of use |
|---|---|---|
| 3 | 15.3(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 7 points (condensed)) | The versions in items 1 and 2 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |
| 4 | 15.4(B)<br>(nutrients and supplemental ingredients to be shown in a type size of not less than 6 points (condensed)) | The versions in items 1 to 3 cannot be displayed in accordance with these Regulations on 15% or less of the available display surface. |

SOR/2022-169, s. 21.

## Presentation of Additional Information

**B.29.016 (1)** If information referred to in column 1 of the table to section B.29.003 is included in a supplemented food facts table that is set out in a version consisting of a table in English and a table in French or a table in English or French, that information must be displayed

**(a)** in accordance with the order of presentation, the use of indents and the presentation of footnotes illustrated in Figures 18.1(E) and (F) of the Directory of SFFT Formats; and

**(b)** in respect of matters other than those referred to in paragraph (a), in accordance with the format that is specified in the applicable figure in the Directory of SFFT Formats.

**(2)** If information referred to in column 1 of the table to section B.29.003 is included in a supplemented food facts table that is set out in a version consisting of a table in both English and French, that information must be displayed

**(a)** in accordance with the order of presentation, the use of indents and the presentation of footnotes illustrated in Figure 19.1(B) of the Directory of SFFT Formats; and

**(b)** in respect of matters other than those referred to in paragraph (a), in accordance with the format that is

| Article | Colonne 1<br>Figure du Répertoire des modèles de TRAS (version) | Colonne 2<br>Condition d'utilisation |
|---|---|---|
| 2 | 15.2(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères d'au moins 7 points) | La version de l'article 1 ne peut être présentée conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 3 | 15.3(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 7 points) | Les versions des articles 1 et 2 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |
| 4 | 15.4(B)<br>(éléments nutritifs et ingrédients supplémentaires figurant en caractères étroits d'au moins 6 points) | Les versions des articles 1 à 3 ne peuvent être présentées conformément au présent règlement sur 15 % ou moins de la surface exposée disponible. |

DORS/2022-169, art. 21.

## Présentation des renseignements complémentaires

**B.29.016 (1)** Les renseignements visés à la colonne 1 du tableau de l'article B.29.003 qui sont indiqués dans la version du tableau des renseignements sur les aliments supplémentés se composant d'un tableau en anglais et d'un tableau en français ou d'un tableau en anglais ou en français sont présentés :

**a)** selon l'ordre, les retraits et les notes complémentaires indiqués aux figures 18.1(F) et (A) du Répertoire des modèles de TRAS;

**b)** quant aux autres caractéristiques de présentation, selon le modèle prévu à la figure applicable du Répertoire des modèles de TRAS.

**(2)** Les renseignements visés à la colonne 1 du tableau de l'article B.29.003 indiqués dans la version du tableau des renseignements sur les aliments supplémentés se composant d'un tableau en anglais et en français sont présentés :

**a)** selon l'ordre, les retraits et les notes complémentaires indiqués à la figure 19.1(B) du Répertoire des modèles de TRAS;

**b)** quant aux autres caractéristiques de présentation, selon le modèle prévu à la figure applicable du Répertoire des modèles de TRAS.

specified in the applicable figure in the Directory of SFFT Formats.

**(3)** Despite paragraph (1)(a), the use of indents illustrated in Figures 18.1(E) and (F) of the Directory of SFFT Formats is not applicable if information referred to in column 1 of the table to section B.29.003 is set out in the linear format referred to in paragraph B.29.009(3)(c) or the simplified linear format referred to in paragraph B.29.010(3)(c).

SOR/2022-169, s. 21.

## Alternative Methods of Presentation

**B.29.017 (1)** Despite section A.01.016 and subject to subsection (2), a supplemented food facts table that meets the conditions specified in subsection B.29.009(3), B.29.010(3) or B.29.011(3) or paragraph B.29.013(2)(a) may be set out on

**(a)** a tag attached to the package;

**(b)** a package insert;

**(c)** the inner side of a label;

**(d)** a fold-out label; or

**(e)** an outer sleeve, overwrap or collar.

**(2)** The supplemented food facts table must not be set out in a manner described in paragraph (1)(b) or (c) if the label of the supplemented food is required to show a list of cautionary statements.

**(3)** If the supplemented food facts table is set out in a manner described in paragraph (1)(b) or (c), the outer side of the label of the package must indicate in a type size of not less than 8 points where the supplemented food facts table is located.

**(4)** If the supplemented food facts table is set out in a manner described in subsection (1), it must be set out

**(a)** in the case of a supplemented food described in subsection B.29.009(3), in a version that is described in paragraph B.29.009(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.29.009;

**(b)** in the case of a supplemented food described in subsection B.29.010(3), in a version that is described in paragraph B.29.010(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.29.010;

**(c)** in the case of a supplemented food described in subsection B.29.011(3), in a version that is described in

**(3)** Malgré l'alinéa (1)a), les retraits indiqués aux figures 18.1(F) et (A) du Répertoire des modèles de TRAS ne s'appliquent pas si les renseignements visés à la colonne 1 du tableau de l'article sont présentés selon le modèle linéaire visé à l'alinéa B.29.009(3)c) ou le modèle linéaire simplifié visé à l'alinéa B.29.010(3)c).

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## Autres modes de présentation

**B.29.017 (1)** Malgré l'article A.01.016 et sous réserve du paragraphe (2), le tableau des renseignements sur les aliments supplémentés qui répond aux critères mentionnés aux paragraphes B.29.009(3), B.29.010(3) ou B.29.011(3) ou à l'alinéa B.29.013(2)a) peut être placé sur, selon le cas :

**a)** une étiquette mobile attachée à l'emballage;

**b)** une notice d'accompagnement;

**c)** le verso d'une étiquette;

**d)** une étiquette dépliante;

**e)** un manchon, une surenveloppe ou un collier.

**(2)** Le tableau des renseignements sur les aliments supplémentés ne peut être placé conformément aux alinéas (1)b) ou c) si une liste des mises en garde doit figurer sur l'étiquette de l'aliment supplémenté.

**(3)** Si le tableau des renseignements sur les aliments supplémentés est placé conformément aux alinéas (1)b) ou c), le recto de l'étiquette en indique l'endroit en caractères d'au moins 8 points.

**(4)** Si le tableau des renseignements sur les aliments supplémentés est placé conformément au paragraphe (1), il est présenté :

**a)** dans le cas de tout aliment supplémenté visé au paragraphe B.29.009(3), selon l'une des versions prévues aux alinéas B.29.009(3)a) à c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.29.009;

**b)** dans le cas de tout aliment supplémenté visé au paragraphe B.29.010(3), selon l'une des versions prévues aux alinéas B.29.010(3)a) à c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.29.010;

paragraph B.29.011(3)(a), (b) or (c) or that is listed in column 1 of the table to section B.29.011; and

**(d)** in the case of a prepackaged product containing an assortment of supplemented foods described in paragraph B.29.013(2)(a), in a version that is described in subparagraph B.29.013(2)(a)(i) or that is listed in column 1 of the table to section B.29.013.

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**c)** dans le cas de tout aliment supplémenté visé au paragraphe B.29.011(3), selon l'une des versions prévues aux alinéas B.29.011(3)a) à c) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.29.011;

**d)** dans le cas de tout produit préemballé contenant un assortiment d'aliments supplémentés visé à l'alinéa B.29.013(2)a), selon l'une des versions prévues au sous-alinéa B.29.013(2)a)(i) ou selon l'une des versions figurant à la colonne 1 du tableau de l'article B.29.013.

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## Small Packages

**B.29.018 (1)** Despite section A.01.016 and subject to subsection (2), if the available display surface of a supplemented food is less than 100 $cm^2$, the label of the supplemented food need not carry a supplemented food facts table if the outer side of the label contains an indication of how a purchaser or consumer may obtain the information that would otherwise be required to be set out in a supplemented food facts table on the label of the supplemented food.

**(2)** Subsection (1) does not apply to a supplemented food

**(a)** if the label of the supplemented food is required to show a list of cautionary statements; or

**(b)** that is the subject of any of the following representations on the label of the supplemented food or in any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer of the supplemented food:

**(i)** any declaration of the supplemented food's energy value or the amount of a nutrient or supplemental ingredient contained in the supplemented food,

**(ii)** any representation that expressly or implicitly indicates that the supplemented food or any substance it contains has particular nutritional or health-related properties, including any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims or column 1 of the table following section B.01.603 or referred to in section B.01.311, D.01.006 or D.02.004, and

**(iii)** any health-related statement, name, logo, symbol, seal of approval or mark.

**(3)** Despite paragraph (2)(b), subsection (1) applies to a supplemented food that meets the conditions set out in column 2 of item 37 of the Table of Permitted Nutrient

## Petits emballages

**B.29.018 (1)** Malgré l'article A.01.016 et sous réserve du paragraphe (2), l'étiquette de tout aliment supplémenté dont la surface exposée disponible est de moins de 100 $cm^2$ peut ne pas porter le tableau des renseignements sur les aliments supplémentés si son recto comporte des indications sur la manière dont l'acheteur ou le consommateur peut obtenir les renseignements qui devraient figurer dans le tableau.

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** à l'aliment supplémenté lorsqu'une liste des mises en garde doit figurer sur son étiquette;

**b)** à l'aliment supplémenté faisant l'objet de l'une des déclarations ci-après sur son étiquette ou encore dans l'annonce faite par le fabricant de l'aliment ou sous ses ordres :

**(i)** toute indication de la valeur énergétique de l'aliment ou de sa teneur en un élément nutritif ou en un ingrédient supplémentaire,

**(ii)** toute déclaration indiquant expressément ou implicitement que l'aliment ou toute substance y étant contenue a des propriétés particulières liées à la nutrition ou à la santé, notamment une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, à la colonne 1 du tableau suivant l'article B.01.603 ou aux articles B.01.311, D.01.006 ou D.02.004,

**(iii)** toute mention, tout nom, logo, symbole ou sceau d'approbation ou toute marque concernant la santé.

**(3)** Malgré l'alinéa (2)b), le paragraphe (1) s'applique à l'aliment supplémenté qui répond aux critères mentionnés à la colonne 2 de l'article 37 du Tableau des mentions

Content Statements and Claims for the subject "Free of sugars" set out in column 1 if

**(a)** the supplemented food is not the subject of any representation referred to in paragraph (2)(b) other than

**(i)** a statement or claim set out in column 4 of item 37 of the Table of Permitted Nutrient Content Statements and Claims for the subject "Free of sugars" set out in column 1,

**(ii)** the energy value of the supplemented food expressed in Calories per serving of stated size, and

**(iii)** the amount of sugar alcohols expressed in grams per serving of stated size;

**(b)** the statement or claim set out in column 4 of item 37 of the Table of Permitted Nutrient Content Statements and Claims for the subject "Free of sugars" set out in column 1 and that appears on the label is

**(i)** legibly set out on the principal display panel,

**(ii)** in lower case letters except for the first letter of each word of the statement or claim, which may be an upper case letter,

**(iii)** of at least the same size and prominence as the letters used in the numerical portion of the declaration of net quantity as required under paragraph 229(1)(a) and subsections 229(2) and (3) of the *Safe Food for Canadians Regulations*, and

**(iv)** displayed in a colour contrasting with the background of the label;

**(c)** the energy value of the supplemented food expressed in Calories per serving of stated size and the amount of sugar alcohols expressed in grams per serving of stated size are shown immediately after whichever of the following elements appears last on the label:

**(i)** the list of ingredients,

**(ii)** a *food allergen source, gluten source and added sulphites statement* as defined in subsection B.01.010.1(1),

**(iii)** a declaration referred to in subsection B.01.010.4(1), or

**(iv)** any statement referred to in subsection B.01.014(1);

et des allégations autorisées concernant la teneur nutritive en regard du sujet « Sans sucres » figurant à la colonne 1 si les conditions ci-après sont réunies :

**a)** l'aliment supplémenté ne fait l'objet d'aucune déclaration visée à l'alinéa (2)b), autre que :

**(i)** les mentions ou les allégations figurant à la colonne 4 de l'article 37 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « Sans sucres » visé à la colonne 1,

**(ii)** la valeur énergétique de l'aliment exprimée en Calories par portion indiquée,

**(iii)** la teneur en polyalcools exprimée en grammes par portion indiquée;

**b)** toute mention ou toute allégation figurant à la colonne 4 de l'article 37 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive en regard du sujet « Sans sucres » visé à la colonne 1 et figurant sur l'étiquette, à la fois :

**(i)** est lisible sur l'espace principal,

**(ii)** est en minuscules, à l'exception de la première lettre de chaque mot de la mention ou de l'allégation qui peut être majuscule,

**(iii)** est en caractères de dimensions au moins égales et aussi bien en vue que les caractères utilisés dans la portion numérique de la déclaration de la quantité nette, comme l'exigent l'alinéa 229(1)a) et les paragraphes 229(2) et (3) du *Règlement sur la salubrité des aliments au Canada*,

**(iv)** est d'une couleur faisant contraste avec le fond de l'étiquette;

**c)** la valeur énergétique exprimée en Calories par portion indiquée et la teneur en polyalcools exprimée en grammes par portion indiquée figurent immédiatement après celui des éléments suivants qui figure en dernier sur l'étiquette :

**(i)** la liste des ingrédients,

**(ii)** la *mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés* au sens du paragraphe B.01.010.1(1),

**(iii)** l'énoncé visé au paragraphe B.01.010.4(1),

**(iv)** toute mention visée au paragraphe B.01.014(1);

**(d)** the label of the supplemented food is not required to show a list of cautionary statements.

**(4)** An indication referred to in subsection (1)

**(a)** must be set out in a type size of not less than 8 points;

**(b)** must include a postal address, website address or toll-free telephone number; and

**(c)** must be

**(i)** in English and French, or

**(ii)** in one of those languages, if, in accordance with subsection B.01.012(3), the information that is required by these Regulations to be shown on the label of the supplemented food may be shown in that language only and is shown on the label in that language.

**(5)** The manufacturer of the supplemented food must provide the information referred to in subsection (1) to a purchaser or consumer on request

**(a)** without charge;

**(b)** in the following manner, namely,

**(i)** in the official language in which the information is requested or, if specified by the purchaser or consumer, in both official languages, or

**(ii)** in one of the official languages, if, in accordance with subsection B.01.012(3), the information that is required by these Regulations to be shown on the label of the supplemented food may be shown in that language only and is shown on the label in that language; and

**(c)** in the form of a supplemented food facts table that is set out

**(i)** in a format, other than a horizontal format, that is specified in any of sections B.29.009 to B.29.015 and that would otherwise be carried on the label of the supplemented food in accordance with these Regulations, and

**(ii)** in a version of that format that is listed in column 1 of item 1 of any Part of the table to the applicable section referred to in subparagraph (i).

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**d)** l'aliment supplémenté n'en est pas un pour lequel une liste des mises en garde doit figurer sur son étiquette.

**(4)** Les indications visées au paragraphe (1) répondent aux critères suivants :

**a)** elles sont présentées en caractères d'au moins 8 points;

**b)** elles comportent une adresse postale, une adresse de site Web ou un numéro de téléphone sans frais;

**c)** elles figurent :

**(i)** soit en français et en anglais,

**(ii)** soit dans l'une de ces langues, si, conformément au paragraphe B.01.012(3), les renseignements devant être indiqués sur l'étiquette de l'aliment supplémenté aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci.

**(5)** Le fabricant de l'aliment supplémenté fournit les renseignements visés au paragraphe (1) à l'acheteur ou au consommateur sur demande :

**a)** sans frais;

**b)** de la façon suivante :

**(i)** soit dans la langue officielle dans laquelle les renseignements sont demandés ou, à la demande de l'acheteur ou du consommateur, dans les deux langues officielles,

**(ii)** soit dans l'une de ces langues, si, conformément au paragraphe B.01.012(3), les renseignements devant être indiqués sur l'étiquette de l'aliment aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans celle-ci;

**c)** sous forme d'un tableau des renseignements sur les aliments supplémentés qui est présenté, à la fois :

**(i)** selon un modèle — autre qu'un modèle horizontal — qui est prévu à l'un des articles B.29.009 à B.29.015 et qui, autrement, figurerait sur l'étiquette de l'aliment supplémenté conformément au présent règlement,

**(ii)** selon l'une des versions de ce modèle figurant à la colonne 1 de l'article 1 de toute partie du tableau de l'article applicable visé au sous-alinéa (i).

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**B.29.019** If a supplemented food has an available display surface of less than 100 $cm^2$ and has a supplemented food facts table on its label, the supplemented food facts table need only include

**(a)** the serving of stated size;

**(b)** the information referred to in column 1 of the table to section B.29.002 or the table to section B.29.003 in respect of the energy value of the supplemented food and the amount of any nutrient or supplemental ingredient that is the subject of a representation on the label of the supplemented food, or in any advertisement for the supplemented food that is made or placed by or on the direction of the manufacturer of the supplemented food, if the representation expressly or implicitly indicates that the supplemented food has particular nutritional or health-related properties, including any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims or column 1 of the table following section B.01.603 or referred to in section B.01.311, D.01.006 or D.02.004;

**(c)** the amount of any added sugar alcohol;

**(d)** the amount of any saturated fat, sugars or sodium if the amount meets or exceeds the applicable threshold set out in columns 2, 3, 5 or 6 of the table to section B.01.350; and

**(e)** the amount of any supplemental ingredient for which a cautionary statement set out in the list of cautionary statements is applicable.

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## Cautionary Statements

**B.29.020 (1)** Every applicable cautionary statement set out in column 4 of the List of Permitted Supplemental Ingredients in respect of the supplemental ingredients contained in a supplemented food must be shown

**(a)** in a list on the label of the supplemented food;

**(b)** grouped together and introduced by the title, in bold type,

**(i)** "Caution", "Caution:" or "Caution :" in the English version, and

**(ii)** "Attention", "Attention :" or "Attention:" in the French version;

**(c)** without any intervening printed, written or graphic material appearing between the title and the first cautionary statement;

**B.29.019** Si un aliment supplémenté a une surface exposée disponible de moins de 100 $cm^2$ et porte un tableau des renseignements sur les aliments supplémentés sur son étiquette, ce tableau peut ne contenir que les seuls renseignements suivants :

**a)** la portion indiquée;

**b)** les renseignements visés à la colonne 1 des tableaux des articles B.29.002 ou B.29.003 relativement à la valeur énergétique de l'aliment supplémenté et à la teneur en tout élément nutritif ou ingrédient supplémentaire faisant l'objet d'une déclaration sur l'étiquette de l'aliment ou encore dans l'annonce d'un tel aliment faite par le fabricant de l'aliment ou sous ses ordres, si la déclaration indique expressément ou implicitement que l'aliment a des propriétés particulières liées à la nutrition ou à la santé, notamment une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, à la colonne 1 du tableau suivant l'article B.01.603 ou aux articles B.01.311, D.01.006 ou D.02.004;

**c)** la teneur en tout polyalcool ajouté;

**d)** la teneur en gras saturés, en sucres ou en sodium si elle est égale ou supérieure au seuil applicable visé aux colonnes 2, 3, 5 ou 6 du tableau de l'article B.01.350;

**e)** la teneur en tout ingrédient supplémentaire pour lequel une mise en garde figurant sur la liste des mises en garde est applicable.

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## Mises en garde

**B.29.020 (1)** Toutes les mises en garde qui figurent à la colonne 4 de la Liste des ingrédients supplémentaires autorisés et qui s'appliquent aux ingrédients supplémentaires contenus dans un aliment supplémenté doivent satisfaire aux exigences suivantes :

**a)** elles figurent dans une liste figurant sur l'étiquette de l'aliment supplémenté;

**b)** elles sont regroupées et précédées du titre ci-après en caractères gras :

**(i)** « Attention », « Attention : » ou « Attention : », pour ce qui est de la version française,

**(ii)** « Caution », « Caution: » ou « Caution : » pour ce qui est de la version anglaise;

**(d)** in regular or bold type;

**(e)** in lower case letters, except that upper case letters must be used to show the first letter of each cautionary statement; and

**(f)** separated by a bullet point or comma.

**(2)** The list of cautionary statements must be shown in a manner that clearly differentiates it on the label by means of one or both of

**(a)** graphics in the form of a solid-line border around the list or one or more solid lines appearing immediately above, below or at the sides of the list that are the same colour as that of the type used to show the information referred to in subsection B.01.008.1(1); and

**(b)** a background colour that creates a contrast between the background colour of the list and the background colour used on the adjacent surface of the label, other than the surface used to display

**(i)** a list of ingredients,

**(ii)** a *food allergen source, gluten source and added sulphites statement* as defined in subsection B.01.010.1(1),

**(iii)** a declaration referred to in subsection B.01.010.4(1),

**(iv)** any statement referred to in subsection B.01.014(1),

**(v)** a nutrition facts table, or

**(vi)** a supplemented food facts table.

**(3)** The list of cautionary statements must be shown on the label without any intervening printed, written or graphic material,

**(a)** in English and French, adjacent to each linguistic version of the supplemented food facts table appearing in the same language, if there are separate English and French versions of the table;

**(b)** in English and French, adjacent to a bilingual version of the supplemented food facts table, with one linguistic version of the list following the other linguistic version; or

**c)** elles figurent sans qu'aucun texte imprimé ou écrit, ni aucun autre signe graphique ne soit intercalé entre le titre et la première mise en garde;

**d)** elles figurent en caractères ordinaires ou gras;

**e)** elles figurent en lettres minuscules, sauf pour ce qui est de la première lettre de chacune des mises en garde;

**f)** elles sont séparées entre elles par une puce ou une virgule.

**(2)** La liste des mises en garde est présentée de l'une des manières ci-après, ou des deux, de façon à ce qu'elle se démarque nettement sur l'étiquette :

**a)** elle est encadrée par une bordure ou délimitée par une ou plusieurs lignes continues tracées immédiatement au-dessus, au-dessous ou aux extrémités de la liste, qui sont de la même couleur que celle des caractères utilisés pour indiquer les renseignements visés au paragraphe B.01.008.1(1);

**b)** il y a un contraste entre la couleur de fond de la liste et la couleur de fond de la partie adjacente de l'étiquette, exception faite de la partie où figurent l'un ou l'autre des renseignements suivants :

**(i)** la liste des ingrédients,

**(ii)** la *mention des sources d'allergènes alimentaires ou de gluten et des sulfites ajoutés* au sens du paragraphe B.01.010.1(1),

**(iii)** l'énoncé visé au paragraphe B.01.010.4(1),

**(iv)** toute mention visée au paragraphe B.01.014(1),

**(v)** le tableau de la valeur nutritive,

**(vi)** le tableau des renseignements sur les aliments supplémentés.

**(3)** La liste des mises en garde précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé :

**a)** en français et en anglais celle des versions française ou anglaise du tableau des renseignements sur les aliments supplémentés auquel elle est associée, dans le cas où le tableau apparaît de façon distincte dans ces deux langues;

**b)** en français et anglais le tableau des renseignements sur les aliments supplémentés apparaissant

**(c)** in English or French, adjacent to the supplemented food facts table in the same language, if, in accordance with subsection B.01.012(3), the information required by these Regulations to be shown on the label may be shown in that language only and is shown on the label in that language.

**(4)** If the English and French versions of a list of cautionary statements appear on the label, they must be displayed on a continuous surface of the label's available display surface, but need not be on the same continuous surface of the label's available display surface.

**(5)** If the English and French versions of a list of cautionary statements appear on the same continuous surface of the label, the version that follows the other version must not begin on the same line as that on which the other version ends, unless the available display surface is less than 100 $cm^2$.

SOR/2022-169, s. 21.

## Supplemented Food Caution Identifier

### Presentation

**B.29.021 (1)** The principal display panel of a supplemented food must carry the supplemented food caution identifier that is set out in Schedule K.2 if a list of cautionary statements is shown on the label of the supplemented food.

**(2)** The supplemented food caution identifier must be displayed in black and white and must be in accordance with the identifier set out in Schedule K.2.

**(3)** Subject to subsection (4), the supplemented food caution identifier must be presented in one of the following formats:

**(a)** the unilingual standard format, where two separate versions of the identifier are shown, one in English (ES) and one in French (FS); or

**(b)** the bilingual standard format (BS), where the identifier is shown in both official languages.

**(4)** If the principal display surface is less than or equal to 450 $cm^2$ and the width of each of the versions of the supplemented food caution identifier in the unilingual standard format or the width of the identifier in the bilingual standard format exceeds the width of the principal display panel, the identifier must be presented in the

sous forme bilingue, les versions française et anglaise de la liste des mises en garde se suivant;

**c)** en français ou en anglais le tableau pouvant être fourni dans l'une de ces langues conformément au paragraphe B.01.012(3), comme les renseignements devant être indiqués sur l'étiquette aux termes du présent règlement peuvent l'être uniquement dans la langue en cause et qu'ils y figurent dans l'étiquette.

**(4)** Lorsque les versions française et anglaise de la liste des mises en garde figurent sur l'étiquette, elles sont présentées sur un espace continu de la surface exposée disponible de l'étiquette mais n'ont pas à être présentées sur le même.

**(5)** Lorsque les versions française et anglaise de la liste des mises en garde sont présentées sur un même espace continu de l'étiquette, celle des versions qui suit l'autre ne doit pas débuter sur la même ligne que celle où se termine cette autre version, sauf si la surface exposée disponible est de moins de 100 $cm^2$.

DORS/2022-169, art. 21.

## Identifiant des aliments supplémentés avec mise en garde

### Présentation

**B.29.021 (1)** L'espace principal d'un aliment supplémenté porte l'identifiant des aliments supplémentés avec mise en garde figurant à l'annexe K.2 si une liste des mises en garde figure sur son étiquette.

**(2)** L'identifiant des aliments supplémentés avec mise en garde est présenté en noir et blanc et conformément à l'identifiant figurant à l'annexe K.2.

**(3)** Sous réserve du paragraphe (4), l'identifiant des aliments supplémentés avec mise en garde est présenté selon l'un des modèles suivants :

**a)** le modèle standard unilingue, où figurent deux versions distinctes de l'identifiant, l'une en français (FS) et l'autre en anglais (AS);

**b)** le modèle standard bilingue (SB), où figure l'identifiant dans les deux langues officielles.

**(4)** Si la principale surface exposée est de 450 $cm^2$ ou moins et que la largeur de chaque version du modèle standard unilingue de l'identifiant des aliments supplémentés avec mise en garde ou la largeur du modèle standard bilingue de l'identifant est supérieure à celle de l'espace principal, l'identifiant est présenté selon le modèle

bilingual compact format (BC) in which the identifier is shown in both official languages.

**(5)** The supplemented food caution identifier must be displayed in accordance with the applicable specifications set out in the Directory of Supplemented Food Caution Identifier Specifications.

**(6)** Despite subsection (5), the supplemented food caution identifier may be displayed with larger dimensions than those set out in column 3 of the applicable table in the Directory of Supplemented Food Caution Identifier Specifications if the identifier is enlarged in a proportional manner vertically and horizontally.

**(7)** If, in accordance with subsection B.01.012(3), the information required by these Regulations may be shown on the label of a supplemented food in English only or in French only and is shown in that language, the supplemented food caution identifier may be displayed on the principal display panel of the supplemented food in that language only on a continuous surface of the available display surface.

**(8)** If the supplemented food caution identifier is presented in a bilingual format, the order in which the languages appear may be reversed from the order shown in the applicable identifier set out in Schedule K.2.

**(9)** The characters and other elements of the supplemented food caution identifier must not touch each other.

SOR/2022-169, s. 21.

compact bilingue (CB), où figure l'identifiant dans les deux langues officielles.

**(5)** L'identifiant des aliments supplémentés avec mise en garde doit être présenté conformément aux spécifications applicables prévues dans le Répertoire des spécifications sur l'identifiant des aliments supplémentés avec mise en garde.

**(6)** Malgré le paragraphe (5), l'identifiant des aliments supplémentés avec mise en garde peut être de dimensions plus grandes que celles indiquées à la colonne 3 du tableau applicable du Répertoire des spécifications sur l'identifiant des aliments supplémentés avec mise en garde s'il est agrandi proportionnellement sur les plans vertical et horizontal.

**(7)** Si, conformément au paragraphe B.01.012(3), les renseignements devant être indiqués aux termes du présent règlement sur l'étiquette d'un aliment supplémenté peuvent l'être uniquement en français ou uniquement en anglais et qu'ils y figurent dans la langue en cause, l'identifiant des aliments supplémentés avec mise en garde peut être présenté dans l'espace principal de l'aliment dans cette langue sur tout espace continu de la surface exposée disponible.

**(8)** Lorsque l'identifiant des aliments supplémentés avec mise en garde est présenté selon le modèle bilingue, l'ordre de présentation des langues indiqué dans l'identifiant applicable figurant à l'annexe K.2 peut être inversé.

**(9)** Les caractères et les autres éléments de l'identifiant des aliments supplémentés avec mise en garde sont présentés de manière à ce qu'ils ne se touchent pas.

DORS/2022-169, art. 21.

## Placement

**B.29.022 (1)** The supplemented food caution identifier must be displayed

**(a)** in the case of a supplemented food with a principal display panel whose height is less than its width, on the right half of the principal display panel; and

**(b)** in the case of any other supplemented food, on the upper half of the principal display panel.

**(2)** The supplemented food caution identifier must be surrounded by a buffer that

**(a)** has a width that is equal to or greater than that set out in column 4 of the applicable table in the Directory of Supplemented Food Caution Identifier Specifications, and

## Emplacement

**B.29.022 (1)** L'identifiant des aliments supplémentés avec mise en garde est présenté :

**a)** dans le cas d'un aliment supplémenté dont l'espace principal est moins haut que large, dans la moitié droite de l'espace principal;

**b)** dans le cas de tout autre aliment supplémenté, dans la moitié supérieure de l'espace principal.

**(2)** L'identifiant des aliments supplémentés avec mise en garde est entouré d'un espace de dégagement qui satisfait aux exigences suivantes :

**a)** il a une largeur égale ou supérieure à celle prévue à la colonne 4 du tableau applicable du Répertoire des spécifications sur l'identifiant des aliments supplémentés avec mise en garde;

**(b)** does not contain any text or other graphic material.

**(3)** If a supplemented food is cylindrical in shape, the outer edge of the buffer must be a minimum distance of 10% of the width of the principal display surface from the edge of the left or right side of that surface.

**(4)** If it is impossible to comply with both paragraph (1)(a) and subsection (3), the supplemented food caution identifier may be displayed partially in the left half of the principal display panel but only to the extent necessary to comply with that subsection.

SOR/2022-169, s. 21.

### Orientation

**B.29.023** The supplemented food caution identifier must be oriented in the same manner as most of the other information that appears on the principal display panel unless the panel is displayed in the vertical plane and most of the other information is not displayed parallel with the base of the package, in which case the identifier must be oriented in such a manner that the words appearing in it are parallel with the base.

SOR/2022-169, s. 21.

### Prohibitions

**B.29.024** It is prohibited to label a prepackaged product with a supplemented food caution identifier or sell a product that is so labelled, unless a list of cautionary statements is shown on the label.

SOR/2022-169, s. 21.

**B.29.025 (1)** It is prohibited to label a prepackaged product with any representation, including a word, phrase, illustration, sign, mark, symbol or design, that is likely to be mistaken for a supplemented food caution identifier, or sell a prepackaged product that is so labelled.

**(2)** For the purposes of subsection (1), a representation does not include a nutrition symbol.

SOR/2022-169, s. 21.

## Representations

**B.29.026 (1)** Despite anything in these Regulations, it is prohibited, on the label of or in any advertisement for a supplemented food, to make a statement or claim to the effect that a supplemental ingredient that is a nutrient

**b)** il ne contient aucun texte ni aucun autre signe graphique.

**(3)** Si un aliment supplémenté est de forme cylindrique, le bord extérieur de l'espace de dégagement est présenté à une distance qui représente au moins 10 % de la largeur de la principale surface exposée de l'emballage, à partir du bord des côtés gauche ou droit de cette surface.

**(4)** Dans le cas où il est impossible de se conformer à la fois aux règles prévues à l'alinéa (1)a) et au paragraphe (3), l'identifiant des aliments supplémentés avec mise en garde peut être présenté en partie dans la moitié gauche de l'espace principal dans la mesure où cela est nécessaire pour permettre l'application de ce paragraphe.

DORS/2022-169, art. 21.

### Orientation

**B.29.023** L'identifiant des aliments supplémentés avec mise en garde est orienté dans le même sens que la plupart des autres renseignements figurant dans l'espace principal, sauf si l'espace principal figure sur le plan vertical et que la plupart des autres renseignements ne figurent pas parallèlement à la base de l'emballage, auquel cas il est orienté de manière à ce que les mots qui y figurent soient parallèles à la base.

DORS/2022-169, art. 21.

### Interdictions

**B.29.024** Il est interdit d'étiqueter un produit préemballé au moyen d'un identifiant des aliments supplémentés avec mise en garde ou de vendre un produit ainsi étiqueté à moins qu'une liste des mises en garde ne figure sur son étiquette.

DORS/2022-169, art. 21.

**B.29.025 (1)** Il est interdit d'étiqueter un produit préemballé au moyen d'une déclaration, y compris un mot, une expression, une illustration, un signe, une marque, un symbole ou un dessin, qui est susceptible d'être confondue avec l'identifiant des aliments supplémentés avec mise en garde ou de vendre un produit ainsi étiqueté.

**(2)** Pour l'application du paragraphe (1), la déclaration ne comprend pas le symbole nutritionnel.

DORS/2022-169, art. 21.

## Déclarations

**B.29.026 (1)** Malgré toute disposition du présent règlement, sont interdites, sur l'étiquette ou dans l'annonce de tout aliment supplémenté, les mentions ou les allégations indiquant qu'un ingrédient supplémentaire qui est un

contained in the supplemented food is generally recognized as an aid in maintaining the functions of the body necessary to the maintenance of good health, if the supplemental ingredient is one for which a cautionary statement set out in the list of cautionary statements is applicable.

**(2)** However, the label of or advertisement for a supplemented food may carry such a statement or claim if it is accompanied by a statement or claim about the specific action or effect of the supplemental ingredient in maintaining the functions of the body necessary to the maintenance of good health.

**(3)** If the label of or any advertisement for the supplemented food carries a statement or claim referred to in subsection (1), that statement or claim and the statement or claim referred to in subsection (2) must,

**(a)** if made on the label of or in an advertisement, other than a radio or television advertisement, for the supplemented food,

**(i)** be adjacent to one another without any intervening printed, written or graphic material, and

**(ii)** be shown in letters of the same size and prominence;

**(b)** if made in a radio advertisement or in the audio portion of a television advertisement for the supplemented food, immediately follow one another; or

**(c)** if made in the visual portion of a television advertisement for the supplemented food,

**(i)** appear concurrently and for the same amount of time,

**(ii)** be adjacent to one another without any intervening printed, written or graphic material, and

**(iii)** be shown in letters of the same size and prominence.

SOR/2022-169, s. 21.

élément nutritif contenu dans l'aliment supplémenté est généralement reconnu comme aidant à entretenir les fonctions de l'organisme nécessaires au maintien de la santé, si l'ingrédient supplémentaire en est un pour lequel une mise en garde figurant dans la liste des mises en garde est applicable.

**(2)** Toutefois, de telles mentions ou de telles allégations sont permises sur l'étiquette ou dans l'annonce de tout aliment supplémenté si elles sont accompagnées d'une mention ou d'une allégation indiquant l'action ou les effets particuliers de l'ingrédient supplémentaire dans l'entretien des fonctions de l'organisme nécessaires au maintien de la santé.

**(3)** Lorsque les mentions ou les allégations visées au paragraphe (1) figurent sur l'étiquette ou dans l'annonce de l'aliment supplémenté, ces mentions ou allégations ainsi que celles visées au paragraphe (2) :

**a)** dans le cas où elles sont faites sur l'étiquette ou dans l'annonce, autre qu'une annonce radiophonique ou télévisée, de l'aliment supplémenté :

**(i)** se précèdent ou se suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soient intercalés entre elles,

**(ii)** figurent en caractères de même taille et aussi bien en vue;

**b)** dans le cas où elles sont faites dans une annonce radiophonique ou dans la composante audio d'une annonce télévisée de l'aliment supplémenté, se précèdent ou se suivent immédiatement;

**c)** dans le cas où elles sont faites dans la composante visuelle de l'annonce télévisée de l'aliment supplémenté :

**(i)** paraissent en même temps et pendant la même durée,

**(ii)** se précèdent ou se suivent, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soient intercalés,

**(iii)** figurent en caractères de même taille et aussi bien en vue.

DORS/2022-169, art. 21.

**B.29.027** Despite anything in these Regulations, if a supplemented food is required to show a cautionary statement that is set out in the list of cautionary statements and recommends against consumption by any individual less than 18 years of age that is part of a group identified in the cautionary statement, it is prohibited, on

**B.29.027** Malgré toute disposition du présent règlement, sont interdites, sur l'étiquette ou dans l'annonce de tout aliment supplémenté, les mentions ou les allégations indiquant qu'un élément nutritif qui y est contenu est généralement reconnu comme aidant à entretenir les fonctions de l'organisme nécessaires à la croissance et au

the label of or in any advertisement for the supplemented food, to make a statement or claim to the effect that a nutrient contained in the supplemented food is generally recognized as an aid in maintaining the functions of the body necessary to normal growth and development.

SOR/2022-169, s. 21.

développement normaux, si l'aliment supplémenté fait l'objet d'une mise en garde qui figure dans la liste des mises en garde et qui déconseille sa consommation par tout individu de moins de dix-huit ans appartenant à un groupe mentionné dans la mise en garde.

DORS/2022-169, art. 21.

**B.29.028 (1)** Despite anything in these Regulations, if the label of a supplemented food is required to carry the statement "high caffeine content" in accordance with column 5 of the List of Permitted Supplemental Ingredients, it is prohibited to make a representation, express or implied, on the label of or in any advertisement for the supplemented food with respect to any vitamin or mineral nutrient contained in the supplemented food.

**(2)** Subsection (1) does not apply in respect of a declaration of a vitamin in a list of ingredients or supplemented food facts table, or in respect of a declaration of a mineral nutrient in a list of ingredients, nutrition symbol or supplemented food facts table.

SOR/2022-169, s. 21.

**B.29.028 (1)** Malgré toute disposition du présent règlement, sont interdites, sur l'étiquette ou dans l'annonce d'un aliment supplémenté, les déclarations, expresses ou implicites, relativement à toute vitamine ou à tout minéral nutritif qui sont contenus dans l'aliment, si la mention « teneur élevée en caféine » doit figurer sur l'étiquette de l'aliment conformément à la colonne 5 de la Liste des ingrédients supplémentaires autorisés.

**(2)** Le paragraphe (1) ne s'applique pas aux indications à l'égard des vitamines figurant dans la liste des ingrédients ou dans le tableau des renseignements sur les aliments supplémentés ou aux indications à l'égard des minéraux nutritifs figurant dans la liste des ingrédients, dans les symboles nutritionnels ou dans le tableau des renseignements sur les aliments supplémentés.

DORS/2022-169, art. 21.

**B.29.029 (1)** If a list of cautionary statements is shown on the label of a supplemented food, the representations set out in subsection (2) must meet the following requirements:

**(a)** if the representation is displayed on the principal display panel,

**(i)** the height of the upper case letters in the representation must not exceed two times the height of the upper case letters, excluding any accents, in the supplemented food caution identifier, other than in the words "Health Canada" and "Santé Canada", and

**(ii)** the height of the tallest ascender of the lower case letters in the representation must not exceed two times the height of the tallest ascender of the lower case letters in the supplemented food caution identifier, other than in the words "Health Canada" and "Santé Canada"; and

**(b)** if the representation is displayed on any continuous surface, other than on the principal display panel,

**(i)** the height of the upper case letters in the representation must not exceed two times the height of the upper case letters, excluding any accents, in the cautionary statements, and

**(ii)** the height of the tallest ascender of the lower case letters in the representation must not exceed

**B.29.029 (1)** Lorsqu'une liste des mises en garde figure sur l'étiquette d'un aliment supplémenté, les déclarations visées au paragraphe (2) doivent satisfaire aux exigences suivantes :

**a)** si la déclaration figure sur l'espace principal :

**(i)** la hauteur des lettres majuscules de la déclaration ne dépasse pas le double de la hauteur des lettres majuscules, sauf tout accent, paraissant dans l'identifiant des aliments supplémentés avec mise en garde, à l'exception des lettres des mots « Santé Canada » et « Health Canada »,

**(ii)** la hauteur de la hampe ascendante la plus élevée des lettres minuscules de la déclaration ne dépasse pas le double de la hauteur des lettres majuscules paraissant dans l'identifiant des aliments supplémentés avec mise en garde, à l'exception des lettres des mots « Santé Canada » et « Health Canada »;

**b)** si la déclaration figure sur une surface continue qui n'est pas l'espace principal :

**(i)** la hauteur des lettres majuscules de la déclaration ne dépasse pas le double de la hauteur des lettres majuscules, sauf tout accent, paraissant dans les mises en garde,

**(ii)** la hauteur de la hampe ascendante la plus élevée des lettres minuscules de la déclaration ne

two times the height of the tallest ascender of the lower case letters in the cautionary statements.

**(2)** For the purposes of subsection (1), the representations are the following:

**(a)** a declaration referred to in subsection B.01.301(1) or (2);

**(b)** any representation that expressly or implicitly indicates that the supplemented food or any substance it contains has particular nutritional or health-related properties, including any statement or claim set out in column 4 of the Table of Permitted Nutrient Content Statements and Claims or column 1 of the table following section B.01.603 or referred to in section B.01.311, D.01.006 or D.02.004; and

**(c)** any health-related statement, logo, symbol, seal of approval or mark.

**(3)** This section does not apply to the brand name or product name of a supplemented food.

SOR/2022-169, s. 21.

## Adulteration and Exemptions

**B.29.030** A prepackaged product, other than a supplemented food, is adulterated if it contains a supplemented food as an ingredient.

SOR/2022-169, s. 21.

**B.29.031** A prepackaged product, other than a supplemented food, is adulterated if a substance listed in column 1 of the List of Permitted Supplemental Ingredients has been added to it other than in accordance with these Regulations.

SOR/2022-169, s. 21.

**B.29.032** A supplemented food does not have a poisonous or harmful substance in or on it for the purposes of paragraph 4(1)(a) of the Act — or is not adulterated for the purposes of paragraph 4(1)(d) of the Act — by reason only that a supplemental ingredient has been added to it.

SOR/2022-169, s. 21.

dépasse pas le double de la hauteur des lettres majuscules paraissant dans les mises en garde.

**(2)** Pour l'application du paragraphe (1), les déclarations sont les suivantes :

**a)** toute indication visée aux paragraphes B.01.301(1) ou (2);

**b)** toute déclaration indiquant expressément ou implicitement que l'aliment supplémenté ou toute substance y étant contenue a des propriétés particulières liées à la nutrition ou à la santé, notamment une mention ou une allégation figurant à la colonne 4 du Tableau des mentions et des allégations autorisées concernant la teneur nutritive, à la colonne 1 du tableau suivant l'article B.01.603 ou aux articles B.01.311, D.01.006 ou D.02.004;

**c)** toute mention, tout logo, symbole, sceau d'approbation ou toute marque concernant la santé.

**(3)** Le présent article ne s'applique pas à la marque ou au nom de produit de l'aliment supplémenté.

DORS/2022-169, art. 21.

## Falsification et exemptions

**B.29.030** Un produit préemballé, autre qu'un aliment supplémenté, est falsifié s'il contient un aliment supplémenté à titre d'ingrédient.

DORS/2022-169, art. 21.

**B.29.031** Un produit préemballé, autre qu'un aliment supplémenté, est falsifié si une substance figurant à la colonne 1 de la Liste des ingrédients supplémentaires autorisés y a été ajoutée autrement que conformément au présent règlement.

DORS/2022-169, art. 21.

**B.29.032** Un aliment supplémenté ne contient pas de substance toxique ou délétère, ou n'en est pas recouvert, pour l'application de l'alinéa 4(1)a) de la Loi ou n'est pas falsifié, pour l'application de l'alinéa 4(1)d) de cette dernière, pour la seule raison qu'un ingrédient supplémentaire y a été ajouté.

DORS/2022-169, art. 21.

# PART C

# Drugs

## DIVISION 1

## General

**C.01.001 (1)** In this Part

***acetaminophen product*** has the same meaning as in Division 9; (*produit d'acétaminophène*)

***adult standard dosage unit*** has, with reference to a drug, the same meaning as in Division 9; (*dose normale pour adultes*)

***adverse drug reaction*** means a noxious and unintended response to a drug, which occurs at doses normally used or tested for the diagnosis, treatment or prevention of a disease or the modification of an organic function; (*réaction indésirable à une drogue*)

***antibiotic*** means any drug or combination of drugs such as those named in C.01.410 to C.01.592 which is prepared from certain micro-organisms, or which formerly was prepared from micro-organisms but is now made synthetically and which possesses inhibitory action on the growth of other micro-organisms; (*antibiotique*)

***authorization holder*** [Repealed, SOR/2017-259, s. 1]

***brand name*** means, with reference to a drug, the name, whether or not including the name of any manufacturer, corporation, partnership or individual, in English or French,

**(a)** that is assigned to the drug by its manufacturer,

**(b)** under which the drug is sold or advertised, and

**(c)** that is used to distinguish the drug; (*marque nominative*)

***case report*** means a detailed record of all relevant data associated with the use of a drug in a subject; (*fiche d'observation*)

***children's standard dosage unit*** has, with reference to a drug, the same meaning as in Division 9; (*dose normale pour enfants*)

***child resistant package*** means a package that meets the requirements of subsection (2); (*emballage protège-enfants*)

# PARTIE C

# Drogues

## TITRE 1

## Dispositions générales

**C.01.001 (1)** Dans la présente partie,

***antibiotique*** désigne toute drogue ou tout mélange de drogues, tels que ceux qui figurent aux articles C.01.410 à C.01.592, lesquels sont préparés à partir de certains microorganismes, ou l'ont été antérieurement, mais sont maintenant fabriqués par synthèse, et sont doués de propriétés inhibitrices de la croissance d'autres microorganismes; (*antibiotic*)

***arrêté d'urgence IVPD*** L'*Arrêté d'urgence concernant l'importation, la vente et la publicité de drogues à utiliser relativement à la COVID-19*, pris le 16 septembre 2020 par la ministre et publié le 3 octobre 2020 dans la *Gazette du Canada*, Partie I; (*ISAD Interim Order*)

***cesser*** S'entend, à l'égard de la vente d'une drogue par le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue, du fait d'abandonner définitivement la vente de la drogue; (*discontinue*)

***COVID-19*** La maladie à coronavirus 2019; (*COVID-19*)

***cuillerée à thé*** désigne, aux fins du calcul d'une dose, un volume de cinq centimètres cubes; (*teaspoon*)

***date limite d'utilisation*** :

**a)** S'agissant d'une drogue sous forme posologique, celles des dates ci-après qui est antérieure à l'autre, indiquée au moins par l'année et le mois :

**(i)** la date jusqu'à laquelle la drogue conserve l'activité, la pureté et les propriétés physiques précisées sur l'étiquette,

**(ii)** la date après laquelle le fabricant recommande de ne plus utiliser la drogue;

**b)** s'agissant d'un ingrédient actif, celle des dates ci-après qui s'applique, indiquée au moins par l'année et le mois :

**(i)** la date de nouvelle analyse,

***common name*** means, with reference to a drug, the name in English or French by which the drug is

**(a)** commonly known, and

**(b)** designated in scientific or technical journals, other than the publications referred to in Schedule B to the Act; (*nom usuel*)

***COVID-19*** means the coronavirus disease 2019; (*COVID-19*)

***COVID-19 drug*** means a drug, other than a veterinary health product, that is manufactured, sold or represented for use in relation to COVID-19; (*drogue contre la COVID-19*)

***discontinue*** means, in respect of the sale of a drug by the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for the drug, to permanently cease the sale of the drug; (*cesser*)

***expiration date*** means

**(a)** in the case of a drug in dosage form, the earlier of the following dates, expressed at minimum as a year and month:

**(i)** the date up to and including which the drug maintains its labelled potency, purity and physical characteristics, and

**(ii)** the date after which the manufacturer recommends that the drug not be used; and

**(b)** in the case of an active ingredient, whichever of the following dates is applicable, expressed at minimum as a year and month:

**(i)** the retest date, or

**(ii)** the date after which the manufacturer recommends that the active ingredient not be used; (*date limite d'utilisation*)

***flavour*** means a non-medicinal ingredient or combination of non-medicinal ingredients added to a drug solely to produce or mask a particular taste. It does not include an ingredient or combination of ingredients that impart only a sweet taste to the drug; (*saveur*)

***fragrance*** means a non-medicinal ingredient or combination of non-medicinal ingredients added to a drug to produce or mask a particular odour; (*parfum*)

**(ii)** la date après laquelle le fabricant recommande de ne plus utiliser l'ingrédient actif; (*expiration date*)

***délai d'attente*** Intervalle entre le moment de la dernière administration d'une drogue à un animal et le moment où la concentration de tout résidu de la drogue présent dans les tissus ou les produits prélevés chez l'animal pour servir d'aliment ne présente vraisemblablement plus de risques pour la santé de l'être humain; (*withdrawal period*)

***dose normale pour adultes*** désigne, dans le cas d'une drogue, la dose prescrite au titre 9; (*adult standard dosage unit*)

***dose normale pour enfants*** désigne, dans le cas d'une drogue, la dose prescrite au titre 9; (*children's standard dosage unit*)

***drogue contre la COVID-19*** Drogue, à l'exception d'un produit de santé animale, fabriquée ou vendue en vue d'être utilisée relativement à la COVID-19 ou présentée comme pouvant l'être; (*COVID-19 drug*)

***drogue officielle*** désigne toute drogue

**a)** pour laquelle une norme est fixée dans le présent règlement, ou

**b)** pour laquelle une norme est fixée dans l'une des publications mentionnées à l'annexe B de la Loi, et non dans le présent règlement; (*official drug*)

***emballage protège-enfants*** désigne un emballage qui répond aux exigences du paragraphe (2); (*child resistant package*)

***encre pharmaceutique*** Ingrédient non médicinal ou mélange d'ingrédients non médicinaux utilisé pour imprimer des marques ou des symboles sur la drogue; (*pharmaceutical ink*)

***fiche d'observation*** Rapport détaillé renfermant les données pertinentes concernant l'utilisation d'une drogue chez un sujet; (*case report*)

***groupe d'essai*** désigne un groupe qui répond aux exigences du paragraphe (3); (*test group*)

***ingrédient non médicinal*** Substance, autre qu'une drogue pharmacologiquement active, ajoutée à la drogue au cours de la fabrication et présente dans le produit fini; (*non-medicinal ingredient*)

***immediate container*** means the receptacle that is in direct contact with a drug; (*récipient immédiat*)

***internal use*** means ingestion by mouth or application for systemic effect to any part of the body in which the drug comes into contact with mucous membrane; (*usage interne*)

***ISAD Interim Order*** means the *Interim Order Respecting the Importation, Sale and Advertising of Drugs for Use in Relation to COVID-19* made by the Minister on September 16, 2020 and published in Part I of the *Canada Gazette* on October 3, 2020; (*arrêté d'urgence IVPD*)

***List A*** means the document, entitled *List of Certain Antimicrobial Active Pharmaceutical Ingredients*, that is published by the Government of Canada on its website, as amended from time to time; (*Liste A*)

***List B*** means the document, entitled *List of Certain Veterinary Drugs Which May Be Imported But Not Sold*, that is published by the Government of Canada on its website, as amended from time to time; (*Liste B*)

***List C*** means the document, entitled *List of Veterinary Health Products,* that is published by the Government of Canada on its website, as amended from time to time; (*Liste C*)

***List D*** means the document entitled *List of Certain Non-prescription Drugs for Distribution as Samples* that is published by the Government of Canada on its website, as amended from time to time; (*Liste D*)

***non-medicinal ingredient*** means a substance — other than the pharmacologically active drug — that is added during the manufacturing process and that is present in the finished drug product; (*ingrédient non médicinal*)

***official drug*** means any drug

**(a)** for which a standard is provided in these Regulations, or

**(b)** for which no standard is provided in these Regulations but for which a standard is provided in any of the publications mentioned in Schedule B to the Act; (*drogue officielle*)

***parenteral use*** means administration of a drug by means of a hypodermic syringe, needle or other instrument through or into the skin or mucous membrane; (*usage parentéral*)

***Liste A*** Document intitulé *Liste de certains ingrédients actifs pharmaceutiques antimicrobiens* publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*List A*)

***Liste B*** Document intitulé *Liste de certaines drogues pour usage vétérinaire qui peuvent être importées mais non vendues* publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*List B*)

***Liste C*** Document intitulé *Liste des produits de santé animale* publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*List C*)

***Liste D*** Document intitulé *Liste de certaines drogues sans ordonnance pouvant être distribuées à titre d'échantillons* publié par le gouvernement du Canada sur son site Web, avec ses modifications successives; (*List D*)

***marque nominative*** Dans le cas d'une drogue, le nom en français ou en anglais, avec ou sans le nom d'un fabricant, d'une personne morale, d'une société de personnes ou d'un particulier :

**a)** qui lui a été attribué par le fabricant;

**b)** sous lequel elle est vendue ou fait l'objet de publicité;

**c)** qui sert à l'identifier; (*brand name*)

***nom propre*** désigne, à l'égard d'une drogue, le nom en anglais ou en français

**a)** attribué à ladite drogue à l'article C.01.002,

**b)** figurant en caractères gras dans le présent règlement lorsqu'il est question de ladite drogue et, lorsque la drogue est distribuée sous une forme autre que celle qui est décrite dans la présente partie, le nom de la forme sous laquelle ladite drogue est distribuée,

**c)** spécifié dans la licence canadienne, dans le cas des drogues comprises à l'annexe C ou à l'annexe D de la Loi, ou

**d)** attribué, dans l'une des publications mentionnées à l'annexe B de la Loi, dans le cas des drogues non comprises aux alinéas a), b) ou c); (*proper name*)

***nom usuel*** Dans le cas d'une drogue, le nom en français ou en anglais sous lequel elle est :

**a)** généralement connue;

***per cent*** means per cent by weight unless otherwise stated; (*pour cent*)

***pharmaceutical ink*** means a non-medicinal ingredient or combination of non-medicinal ingredients used to imprint the drug with marks or symbols; (*encre pharmaceutique*)

***pharmacist*** means a person who

**(a)** is registered or otherwise entitled under the laws of a province to practise pharmacy, and

**(b)** is practising pharmacy in that province; (*pharmacien*)

***pharmacy technician*** means a person who

**(a)** is registered or otherwise entitled under the laws of a province to practise as a pharmacy technician; and

**(b)** is practising as a pharmacy technician in that province; (*technicien en pharmacie*)

***practitioner*** means a person who

**(a)** is entitled under the laws of a province to treat patients with a prescription drug, and

**(b)** is practising their profession in that province; (*praticien*)

***prescription*** means an order given by a practitioner directing that a stated amount of any drug or mixture of drugs specified therein be dispensed for the person named in the order; (*ordonnance*)

***proper name*** means, with reference to a drug, the name in English or French

**(a)** assigned to the drug in section C.01.002,

**(b)** that appears in bold-face type for the drug in these Regulations and, where the drug is dispensed in a form other than that described in this Part, the name of the dispensing form,

**(c)** specified in the Canadian licence in the case of drugs included in Schedule C or Schedule D to the Act, or

**(d)** assigned in any of the publications mentioned in Schedule B to the Act in the case of drugs not included in paragraph (a), (b) or (c); (*nom propre*)

**b)** désignée dans des revues scientifiques ou techniques autres que les publications dont le nom figure à l'annexe B de la Loi; (*common name*)

***ordonnance*** désigne un ordre délivré par un praticien, spécifiant une quantité donnée de quelque drogue ou mélange de drogues à dispenser à la personne nommée dans ladite ordonnance; (*prescription*)

***parfum*** Ingrédient non médicinal ou mélange d'ingrédients non médicinaux ajouté à la drogue pour produire ou masquer une odeur; (*fragrance*)

***pharmacien*** Personne qui :

**a)** d'une part, est autorisée, notamment par un permis d'exercice, en vertu des lois d'une province à exercer la profession de pharmacien;

**b)** d'autre part, exerce la profession de pharmacien dans cette province; (*pharmacist*)

***pour cent*** désigne le pourcentage en poids, à moins de précision contraire; (*per cent*)

***praticien*** Personne qui :

**a)** d'une part, est autorisée en vertu des lois d'une province à traiter les patients au moyen d'une drogue sur ordonnance;

**b)** d'autre part, exerce sa profession dans cette province; (*practitioner*)

***produit d'acétaminophène*** s'entend au sens du titre 9; (*acetaminophen product*)

***produit de salicylate*** s'entend au sens du titre 9; (*salicylate product*)

***produit de santé animale*** L'une des drogues ci-après qui est sous forme posologique et qui n'est pas fabriquée, vendue ou présentée comme pouvant servir au diagnostic, au traitement, à l'atténuation ou à la prévention d'une maladie, d'un désordre, d'un état physique anormal ou de leurs symptômes :

**a)** une substance visée à la colonne I de la partie 1 de la Liste C qui correspond aux renseignements descriptifs visés aux colonnes II à V ou une combinaison de substances dont tous les ingrédients médicinaux sont des substances visées à la colonne I de la partie 1 de cette liste, si la combinaison correspond, pour chacune de ces substances, à la fois aux renseignements descriptifs visés aux colonnes II et III, et d'autre part à ceux visés aux colonnes IV et V, lesquels sont, au sein

***salicylate product*** has the same meaning as in Division 9; (*produit de salicylate*)

***serious adverse drug reaction*** means a noxious and unintended response to a drug that occurs at any dose and that requires in-patient hospitalization or prolongation of existing hospitalization, causes congenital malformation, results in persistent or significant disability or incapacity, is life-threatening or results in death; (*réaction indésirable grave à une drogue*)

***serious unexpected adverse drug reaction*** means a serious adverse drug reaction that is not identified in nature, severity or frequency in the risk information set out on the label of the drug; (*réaction indésirable grave et imprévue à une drogue*)

***teaspoon*** means, for the purpose of calculation of dosage, a volume of 5 cubic centimetres; (*cuillerée à thé*)

***test group*** means a group that meets the requirements of subsection (3); (*groupe d'essai*)

***veterinary health product*** means any of the following drugs that is in dosage form and that is not manufactured, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms:

**(a)** a substance set out in Column I of Part 1 of List C that is consistent with the descriptive information set out in Columns II to V, or any combination of any substances in which all the medicinal ingredients are substances set out in Column I of Part 1 of that list if that combination is, in respect of each of those substances, consistent with the descriptive information set out in Columns II and III and the descriptive information set out in Columns IV and V that is, within each of those columns, common to those substances;

**(b)** a homeopathic medicine set out in Column I of Part 2 of List C that is consistent with the descriptive information set out in Columns II to V, or any combination of homeopathic medicines set out in Column I of Part 2 of that list if that combination is, in respect of each of those homeopathic medicines, consistent with the descriptive information set out in Columns II and III and the descriptive information set out in Columns IV and V that is, within each of those columns, common to those homeopathic medicines; and

**(c)** a traditional medicine set out in Column I of Part 3 of List C that is consistent with the descriptive information set out in Columns II to V, or any combination of traditional medicines set out in Column I of Part 3 de chacune de ces colonnes, communs à ces substances;

**b)** un remède homéopathique visé à la colonne I de la partie 2 de la Liste C qui correspond aux renseignements descriptifs visés aux colonnes II à V ou une combinaison de remèdes homéopathiques visés à la colonne I de la partie 2 de cette liste, si la combinaison correspond, pour chacun de ces remèdes, à la fois aux renseignements descriptifs visés aux colonnes II et III, et d'autre part à ceux visés aux colonnes IV et V, lesquels sont, au sein de chacune de ces colonnes, communs à ces remèdes;

**c)** un remède traditionnel visé à la colonne I de la partie 3 de la Liste C qui correspond aux renseignements descriptifs visés aux colonnes II à V ou une combinaison de remèdes traditionnels visés à la colonne I de la partie 3 de cette liste, si la combinaison correspond, pour chacun de ces remèdes, à la fois aux renseignements descriptifs visés aux colonnes II et III, et d'autre part à ceux visés aux colonnes IV et V, lesquels sont, au sein de chacune de ces colonnes, communs à ces remèdes; (*veterinary health product*)

***réaction indésirable à une drogue*** Réaction nocive et non intentionnelle à une drogue qui survient lorsque la drogue est utilisée selon les doses normales ou selon des doses expérimentales, aux fins du diagnostic, du traitement ou de la prévention d'une maladie ou de la modification d'une fonction organique; (*adverse drug reaction*)

***réaction indésirable grave à une drogue*** Réaction nocive et non intentionnelle à une drogue qui est provoquée par toute dose de celle-ci et qui nécessite ou prolonge l'hospitalisation, entraîne une malformation congénitale ou une invalidité ou incapacité persistante ou importante, met la vie en danger ou entraîne la mort; (*serious adverse drug reaction*)

***réaction indésirable grave et imprévue à une drogue*** Réaction indésirable grave à une drogue, dont la nature, la gravité ou la fréquence n'est pas indiquée dans les mentions de risque figurant sur l'étiquette de la drogue; (*serious unexpected adverse drug reaction*)

***récipient immédiat*** Récipient qui est en contact direct avec la drogue; (*immediate container*)

***saveur*** Ingrédient non médicinal ou mélange d'ingrédients non médicinaux ajouté à la drogue pour produire ou masquer une saveur, à l'exclusion de ceux qui lui confèrent uniquement un goût sucré; (*flavour*)

***technicien en pharmacie*** Personne qui :

of that list if that combination is, in respect of each of those traditional medicines, consistent with the descriptive information set out in Columns II and III and the descriptive information set out in Columns IV and V that is, within each of those columns, common to those traditional medicines; (*produit de santé animale*)

***withdrawal period*** means the length of time between the last administration of a drug to an animal and the time when tissues or products collected from the treated animal for consumption as food contain a level of residue of the drug that would not likely cause risk to human health. (*délai d'attente*)

**(1.1)** For the purposes of the Act, *serious adverse drug reaction* has the same meaning as in subsection (1).

**(2)** A child resistant package is a package that

**(a)** when tested in accordance with an acceptable method,

**(i)** in the case of a test group comprising children, cannot be opened

**(A)** by at least 85 per cent of those children prior to a demonstration to them of the proper means of opening the package, and

**(B)** by at least 80 per cent of those children after the demonstration, and

**(ii)** in the case of a test group comprising adults

**(A)** can be opened by at least 90 per cent of those adults, and

**(B)** where the package is designed so that, once opened and reclosed, it continues to meet the requirements of subparagraph (i), can be so reclosed by at least 90 per cent of those adults; or

**(b)** complies with the requirements of one of the following standards, namely,

**(i)** Canadian Standards Association Standard CAN/CSA-Z76.1-M90, entitled *Recloseable Child-Resistant Packages*, published January 1990, as amended from time to time,

**a)** d'une part, est autorisée, notamment par un permis d'exercice, en vertu des lois d'une province à exercer la profession de technicien en pharmacie;

**b)** d'autre part, exerce la profession de technicien en pharmacie dans cette province; (*pharmacy technician*)

***titulaire de l'autorisation*** [Abrogée, DORS/2017-259, art. 1]

***usage interne*** signifie l'absorption par la bouche ou l'application, en vue d'une action fonctionnelle, à toute partie du corps dans laquelle ladite drogue vient en contact avec une muqueuse; (*internal use*)

***usage parentéral*** signifie l'administration d'une drogue au moyen d'une seringue hypodermique, d'une aiguille ou de quelque autre instrument, à travers ou dans la peau ou une muqueuse. (*parenteral use*)

**(1.1)** Pour l'application de la Loi, *réaction indésirable grave à une drogue* s'entend au sens du paragraphe (1).

**(2)** L'emballage protège-enfants est un emballage qui :

**a)** soit, lorsqu'il est soumis à un essai selon une méthode acceptable, répond aux exigences suivantes :

**(i)** dans le cas d'un groupe d'essai formé d'enfants, ne peut être ouvert :

**(A)** d'une part, par au moins 85 pour cent de ces enfants, sans démonstration préalable de la méthode d'ouverture,

**(B)** d'autre part, par au moins 80 pour cent de ces enfants, après démonstration de la méthode d'ouverture,

**(ii)** dans le cas d'un groupe d'essai formé d'adultes :

**(A)** peut être ouvert par au moins 90 pour cent de ces adultes,

**(B)** s'il s'agit d'un emballage conçu pour être refermé de façon à répondre aux exigences du sous-alinéa (i), peut être ainsi refermé par au moins 90 pour cent de ces adultes;

**b)** soit est conforme à l'une des normes suivantes :

**(i)** la norme CAN/CSA-Z76.1-M90 de l'Association canadienne de normalisation intitulée *Emballages de sécurité réutilisables pour enfants*, publiée en janvier 1990, compte tenu de ses modifications successives,

**(ii)** European Standard EN 28317:1992, entitled *Child-resistant packaging — Requirements and testing procedures for reclosable packages*, as adopted by the European Committee for Standardization on October 30, 1992, recognized by the British Standards Institution, and effective February 15, 1993 and by the Association française de normalisation, and effective December 20, 1992, and which reiterates fully the international standard ISO 8317:1989, as amended from time to time, and

**(iii)** *Code of Federal Regulations* (United States), Title 16, Section 1700.15, entitled *Poison prevention packaging standards*, as amended from time to time.

**(3)** For the purposes of this section, *test group* means

**(a)** in relation to children, a group of at least 200 children who

**(i)** are healthy and have no obvious physical or mental disability,

**(ii)** are between 42 and 51 months of age, and

**(iii)** represent evenly, within plus or minus 10 per cent, each monthly age between 42 and 51 months calculated to the nearest month; and

**(b)** in relation to adults, a group of at least 100 adults who

**(i)** are healthy and have no obvious physical or mental disability,

**(ii)** are between 18 and 45 years of age, and

**(iii)** represent evenly, within plus or minus 10 per cent, each yearly age between 18 and 45 years calculated to the nearest year.

**(4)** For the purpose of this section, an amendment from time to time to a standard referred to in paragraph (2)(b) becomes effective 18 months after the date designated by the competent authority as the effective date for the amendment.

SOR/80-543, s. 1; SOR/85-966, s. 1; SOR/86-93, s. 1; SOR/87-484, s. 1; SOR/92-654, s. 1; SOR/93-202, s. 1; SOR/95-411, s. 1; SOR/95-521, s. 1; SOR/96-399, s. 1; SOR/96-240, s. 1; SOR/97-543, s. 5; SOR/2010-105, s. 1; SOR/2013-74, s. 1; SOR/2013-122, s. 3; SOR/2016-139, s. 1; SOR/2017-76, s. 1; SOR/2017-133, s. 1; SOR/2017-259, s. 1; SOR/2020-74, s. 1; SOR/2021-45, s. 1; SOR/2021-46, s. 11(E); SOR/2022-197, s. 8; SOR/2023-247, s. 1(F).

**C.01.001A** [Repealed, SOR/98-423, s. 1]

**(ii)** la norme européenne EN 28317 : 1992 intitulée *Emballages à l'épreuve des enfants — Exigences et méthodes d'essai pour emballages refermables*, adoptée par le Comité européen de normalisation le 30 octobre 1992 et homologuée par l'Association française de normalisation le 20 décembre 1992 et par la British Standards Institution le 15 février 1993, qui reproduit intégralement la norme internationale ISO 8317 : 1989, compte tenu de ses modifications successives,

**(iii)** l'article 1700.15 intitulé *Poison prevention packaging standards*, titre 16, du *Code of Federal Regulations* des États-Unis, compte tenu de ses modifications successives.

**(3)** Pour l'application du présent article, le groupe d'essai est constitué :

**a)** dans le cas des enfants, d'au moins 200 enfants qui :

**(i)** sont en santé et ne souffrent d'aucun handicap physique ou mental apparent,

**(ii)** sont âgés de 42 à 51 mois,

**(iii)** représentent dans une égale proportion, avec une marge de plus ou moins 10 pour cent, les divers âges, exprimés en mois, de 42 à 51 mois, calculés au mois près;

**b)** dans le cas des adultes, d'au moins 100 adultes qui :

**(i)** sont en santé et ne souffrent d'aucun handicap physique ou mental apparent,

**(ii)** sont âgés de 18 à 45 ans,

**(iii)** représentent dans une égale proportion, avec une marge de plus ou moins 10 pour cent, les divers âges, exprimés en années, de 18 à 45 ans, calculés à l'année près.

**(4)** Pour l'application du présent article, les modifications successives des normes visées à l'alinéa (2)b) entrent en vigueur à l'expiration du délai de 18 mois suivant la date désignée par l'autorité compétente comme étant celle de leur entrée en vigueur.

DORS/80-543, art. 1; DORS/85-966, art. 1; DORS/86-93, art. 1; DORS/87-484, art. 1; DORS/92-654, art. 1; DORS/93-202, art. 1; DORS/95-411, art. 1; DORS/95-521, art. 1; DORS/96-399, art. 1; DORS/96-240, art. 1; DORS/97-543, art. 5; DORS/2010-105, art. 1; DORS/2013-74, art. 1; DORS/2013-122, art. 3; DORS/2016-139, art. 1; DORS/2017-76, art. 1; DORS/2017-133, art. 1; DORS/2017-259, art. 1; DORS/2020-74, art. 1; DORS/2021-45, art. 1; DORS/2021-46, art. 11(A); DORS/2022-197, art. 8; DORS/2023-247, art. 1(F).

**C.01.001A** [Abrogé, DORS/98-423, art. 1]

**C.01.002** The Proper Name of a drug shown opposite an item number in the following Table in the column headed "Chemical Names and Synonyms" shall be the name shown opposite that item number in the column headed "Proper Names".

**C.01.002** Le nom propre d'une drogue qui figure vis-à-vis d'un numéro de poste dans le tableau suivant, dans la colonne intitulée « Noms chimiques et synonymes » doit être le nom qui figure vis-à-vis dudit poste, dans la colonne intitulé « Noms Propres ».

**TABLE**

| Item No. | Proper Names | Chemical Names and Synonyms |
|---|---|---|
| A.1 | Acepromazine | 2-acetyl-10-(3-dimethylaminopropyl) iephenothiazine |
| A.2 | Acetaminophen | p-Acetaminophenol, Paracetamol, p-Hydroxyacetanilide: N-acetyl-p-aminophenol |
| A.3 | Acetanilide: Acetanilid | Acetylaminobenzene: Antifebrin: Phenylacetamide |
| A.4 | Acetylsalicylic Acid | Acetylsalicylic acid |
| A.5 | Allopurinol | 1-H-Pyrazolo [3,4-d] pyrimidin-4-ol: 4-Hydroxypyrazolo (3,4-d) pyrimidine |
| A.6 | Amantadine | 1-Adamantanamine |
| A.7 | Aminocaproic acid | 6-Aminohexanoic acid |
| A.8 | Aminopterin | N-[4-(2,4-diamino-6-pteridyl methyl) amino-benzoyl]-L-glumatic acid |
| A.9 | Aminopyrine: Amidopyrine | 1,5-dimethyl-2-phenyl-4-dimethylamino-3-pyrazolone: Dimethylaminophenazone |
| A.10 | Amitriptyline | 3-(3-Dimethylaminopropylidene)-1,2: 4,5-dibenzocyclohepta-1,4-diene |
| A.11 | Azacyclonol | α,α-diphenyl-4-piperidinecarbinol |
| B.1 | Bemegride | 3-Ethyl-3-methylglutarimide |
| B.2 | Benactyzine | Dimethylaminoethyl-1,1-diphenylglycolate |
| B.3 | Bendroflumethiazide | 3-benzyl-3,4-dihydro-6-(trifluoro- methyl)-2H-1,2,4-benzothiadiazine-7-sulfonamide-1,1-dioxide: Bendrofluazide (B.A.N.) |
| B.4 | Betahistine | 2-[2-(Methylamino)ethyl] pyridine |
| B.5 | Bethanidine | N-Benzyl-N′N″-dimethylguanidine: 1-Benzyl-2,3-dimethylguanidine |
| B.6 | Bretylium tosylate | N-2-Bromobenzyl-N-ethyl-N, N-dimethylammonium tosylate (Tosylic acid is trivial name for p-toluenesulphonic acid) |
| B.7 | Bromisoval | 2-monobromoisovalerylurea: Bromisovalum: Bromvalitone |
| C.1 | Calcium Carbimide | Calcium cyanamide |
| C.2 | Captodiamine | 4-butylthio-α-phenylbenzyl-2-dimethylaminoethylsulfide |
| C.3 | Carisoprodol | N-Isopropyl-2-methyl-2-propyl-1, 3-propanediol dicarbamate |
| C.4 | Carphenazine | 1-[10-(3[4-(2-Hydroxyethyl)-1-piperazinyl]propyl) phenothiazin-2yl]-1-propapone |
| C.5 | Cephaloridine | 7-[(2-Thienyl) acetamido]-3-(1-pyridylmethyl)-3-cephem-4-carboxylic acid betaine |
| C.6 | Chlormezanone | 2-(4-chlorophenyl)-3-methyl-4-methathiazanone-1,1-dioxide: Chlormethazone: Chlormethazanone |
| C.7 | Chloromethapyrilene | N,N-dimethyl-N′-(2-pyridyl)-N′-(5-chloro-2-thenyl)-ethylenediamine: Chlorothen |
| C.8 | Chlorphentermine | 4-Chloro-α,α-dimethylphenethylamine |

| Item No. | Proper Names | Chemical Names and Synonyms |
|---|---|---|
| C.9 | Cinchocaine | 2-butoxy-N-(2-diethylaminoethyl) cinchoninamide: Dibucaine |
| C.10 | Cinchophen | 2-phenylquinoline-4-carboxylic acid: Quinophan |
| C.11 | Clofibrate | Ethyl 2-(p-chlorophenoxy)-2-methylpropionate |
| C.12 | Clomiphene | 1-Chloro-2-[4-(2-diethylamino-ethoxy)phenyl]-1,2-diphenylethylene: 2-[p-(2-Chloro-1,2-diphenylvinyl)phenoxy] triethylamine |
| D.1 | Desipramine | 5-(3-Methylaminopropyl)-10,11-dihydro-5H-dibenz[b,f]azepine |
| D.2 | Diazepam | 7-Chloro-1,3-dihydro-1-methyl-5-phenyl-2H-1,4-benzodiazepin-2-one |
| D.3 | Diethylpropion | 1-phenyl-2-diethylaminopropanone-1 |
| D.4 | Diphenidol | 1,1-Diphenyl-4-piperidinobutan-1-ol |
| D.5 | Disulfiram | Tetraethylthiuram disulphide |
| E.1 | Ectylurea | 2-ethyl-*cis*-crotonylurea |
| E.2 | Emylcamate | 1-Ethyl-1-methylpropyl carbamate |
| E.3 | Ethacrynic Acid | [2,3-Dichloro-4-(2-methylenebutyryl) phenoxy] acetic acid: 2,3-Dichloro-4-(2-ethylacryloyl) phenoxyacetic acid |
| E.4 | Ethchlorvynol | 3-(2-chlorovinyl)-1-pentyn-3-ol |
| E.5 | Ethinamate | 1-ethynylcyclohexyl carbamate |
| E.6 | Ethionamide | 2-Ethylisonicotinthioamide |
| E.7 | Ethomoxane | 2-n-Butylaminomethyl-8-ethoxy-benzo-1,4-dioxan |
| E.8 | Ethyl Trichloramate | Ethyl n-[1-(2,2,2,-trichloro-1-hydroxyethyl)] carbamate |
| E.9 | Etryptamine | 3-(2-Aminobutyl) indole |
| E.10 | Etymemazine | 10-(3-Dimethylamino-2-methylpro-pyl)-2-ethylphenothiazine |
| F.1 | Fluphenazine | 10-{3-[4-(2-Hydroxyethyl) piperazin-1-yl] propyl}-2-tri-fluoromethylphenothiazine |
| F.2 | Furosemide | 4-Chloro-N-furfuryl-5-sulphamoylanthranilic acid: Frusemide (B.A.N.) |
| G.1 | Glyburide | 5-chloro-N-[2-[4-[[[(cyclohexylamino carbonyl]amino]sulfonyl]phenyl]ethyl]-2-methoxy benzamide: 1-4[4-[2-(5-chloro-2-methoxybenzamido)ethyl]phenyl- sulfonyl]-3-cyclohexylurea: Glibenclamide |
| H.1 | Haloperidol | 4-(4-Chlorophenyl)-1-[3-(4-fluorobenzoyl) propyl]-piperidin-4-ol: 4-[4-(p-Chlorophenyl)-4-hydro-xypiperidino]-4′-fluorobutyro-phenone |
| H.2 | Hydroxychloroquine | 7-Chloro-4[4-(N-ethyl-N-2-hydro-xyethylamino)-1-methylbutyl-amino] quinoline |
| H.3 | Hydroxyzine | 1-(p-chloro-α-phenylbenzyl)-4-(2-hydroxy ethoxyethyl) piperazine |
| I.1 | Idoxuridine | 5-Iodo-2′-deoxyuridine |
| I.2 | Imipramine | 5-(3-dimethylaminopropyl)-10,11-dihydro-5H-dibenz[b,f]azepine |
| I.3 | Indomethacin | 1-(p-Chlorobenzoyl)-5-methoxy-2-methyl-indole-3-acetic acid |
| I.4 | Iproniazid | 1-isonicotinoyl-2-isopropylhydrazine |
| I.5 | Isocarboxazid | 3-N-Benzylhydrazinocarbonyl-5-methylisoxazole |

| Item No. | Proper Names | Chemical Names and Synonyms |
|---|---|---|
| I.6 | Isoproterenol | 3,4-Dihydroxy-α-[isopropylamino) methyl] benzyl alcohol: Isoprenaline |
| L.1 | Liothyronine | L-α-Amino-3-[(4-hydroxy-3-iodophenoxy)-3,5-di-iodo-phenyl] propionic acid |
| M.1 | Mefenamic acid | N-(2,3-Xylyl)-anthranilic acid |
| M.2 | Melphalan | 4-Di-(2-chlorethyl)amino-L-phenylalanine |
| M.3 | Mepazine | 10-[(1-methyl-3-piperidyl) methyl] phenothiazine |
| M.4 | Mephenesin | 3-o-toloxy-1,2-propanediol |
| M.5 | Mephenoxalone | 5-(o-Methoxyphenoxymethyl)-2-oxazolidinone |
| M.6 | Meprobamate | 2,2-di(carbamoylmethyl) pentane |
| M.7 | Methaqualone | 2-Methyl-3-o-tolyquinazolin-4-one: 2-Methyl-3-o-tolyl-4-quinazolone |
| M.8 | Methisazone | 1-Methylindoline-2,3-dione-3-thiosemicarbazone: N-Methylisatin-ß-thiosemicarbazone |
| M.9 | Methotrimeprazine | 10-[3-(2-Methyl)dimethylamino propyl]-2-methoxyphenothiazine: Levomepromazine |
| M.10 | Methyldopa | 1-3(3,4-Dihydroxyphenyl)-2-methylalanine |
| M.11 | Methylparafynol | 3-methyl-1-pentyn-3-ol: Methylpentynol |
| M.12 | Methylphenidate | Methyl-1-phenyl-1-(2-piperidyl) acetate |
| M.13 | Methyprylon | 3,3-diethyl-5-methyl-2,4-piperidinedione |
| M.14 | Methysergide | 1-(Hydroxymethyl)propylamide of 1-methyl-d-lysergic acid |
| M.15 | Metyrapone | 2-Methyl-1,2-di(3-pyridyl)propan-1-one |
| N.1 | Nalidixic Acid | 1-Ethyl-7-methyl-4-oxo-1,8-naphthyridine-3-carboxylic acid |
| N.2 | Nialamide | 1-[2-(benzycarbamyl)ethyl]-2-isonicotinoyl-hydrazine |
| N.3 | Nortriptyline | 3-(3-Methylaminopropylidene)-1,2, 4,5-dibenzocyclohepta-1,4-diene |
| O.1 | Oxanimide | 2-ethyl-3-propyl-glycidamide |
| O.2 | Oxazepam | 7-Chloro-1,3-dihydro-3-hydroxy-5-phenyl-1,4-benzodiazepin-2-one |
| O.3 | Oxyphenbutazone | 4-n-Butyl-2-(4-hydroxyphenyl)-1-phenyl-pyrazolidine-3,5-dione |
| P.1 | Paramethadione | 3,5-dimethyl-5-ethyl-2,4-oxazolidinedione |
| P.2 | Pargyline | N-Benzyl-N-methylprop-2-ynylamine |
| P.3 | Pemoline | 2-Imino-5-phenyloxazolidin-4-one |
| P.4 | Pentazocine | 1,2,3,4,5,6-Hexahydro-8-hydroxy-6,11-dimethyl-3-(3-methylbut-2-enyl)-2,6-methano-3-benzazocine: 1,2,3,4,5,6-Hexahydro-6,11-dimethyl-3-(3-methyl-2-butenyl)-2,6-methano-3-benzazocin-8-ol |
| P.5 | Pentolinium Tartrate | NN′-Pentamethylenedi-(methylpryrrolidinium hydrogen, tartrate) |
| P.6 | Perphenazine | 2-chloro-10-{3-[1-(2-hydroxyethyl)-4-piperazinyl]propyl} phenothiazine |
| P.7 | Phacetoperane | l-1-Phenyl-1(2′-piperidyl)-1-acetoxymethane |
| P.8 | Phenacemide | (Phenylacetyl)urea |
| P.9 | Phenacetin | p-acetphenetidin: Acetphenetidin: Acetophenetidin: p-ethoxyacetanilid |
| P.10 | Phenaglycodol | 2-p-chlorophenyl-3-methyl-2,3-butanediol |

| Item No. | Proper Names | Chemical Names and Synonyms |
|---|---|---|
| P.11 | Phendimetrazine | 3,4-Dimethyl-2 Phenylmorpholine |
| P.12 | Phenelzine | 2-phenylethylhydrazine |
| P.13 | Phenformin | N′-ß-phenethylformamidinyliminourea |
| P.14 | Pheniprazine | α-Methylphenethylhydrazine |
| P.15 | Phenmetrazine | Tetrahydro-3-methyl-2-phenyl-1,4-oxazine: 3-methyl-2-phenylmorpholine |
| P.16 | Phentermine | α, α-Dimethylphenethylamine: phenyl-*tert*-butylamine |
| P.17 | Phenylindanedione | 2-phenylindane-1,3-dione |
| P.18 | Phenyltoloxamine | N,N-dimethyl-2-(α-phenyl-o-tolyloxy) ethylamine |
| P.19 | Pholedrine | p-(4-hydroxyphenyl)-isopropylmethylamine |
| P.20 | Piperliate | 1-piperidine-ethanol benzilate |
| P.21 | Pipradol | Diphenyl-2-piperidylmethanol |
| P.22 | Prochlorperazine | 2-Chloro-10-[3-(1-methyl-4-piperazinyl) propyl]phenothiazine |
| P.23 | Prodilidine | 1,2-Dimethyl-3-phenyl-3-pyrrolidinyl propionate |
| P.24 | Propranolol | 1-(Isopropylamino)-3-(1-naphthyloxy)-2-propanol |
| P.25 | Prothipendyl | 9-(3-Dimethylaminopropyl)-10-thia-1,9-diaza-anthracene |
| P.26 | Protriptyline | 7-(3-Methylaminopropyl)-1,2:5,6-dibenzocycloheptatrien: N-Methyl-5H-dibenzo [*a, d*] cycloheptene-5-propylamine |
| P.27 | Pyrazinamide | Pyrazinoic acid amide |
| R.1 | Rifampin | 3-{[(4-methyl-1-piperazinyl)imino]methyl} rifamycin SV : Rifampicin (I.N.N.) (Rifamycin SV is an antibiotic produced by *Streptomyces mediterranei*) |
| S.01 | Sodium Cromoglycate | 4H-1-Benzopyran-2-carboxylic acid, 5,5′-[(2-hydroxy-1,3-propanediyl) bis(oxy)]bis[4-oxo-,disodium salt]: Disodium 5,5′-(2-hydroxytrimethylenedioxy) bis[4-oxo-4H-1-benzopyran-2- carboxylate]: Disodium 4,4′-dioxo-5,5′-(2-hydroxytrimethylenedioxy)di (chromene-2-carboxylate): Cromolyn Sodium (USP): Disodium Cromoglycate |
| S.1 | Sulfameter | 2-(4-Aminobenzenesulphonamido)-5-methoxypyrimidine: N′-(5-methoxy-2-pyrimidinyl) sulfanilamide: Sulfamethoxydiazine (B.A.N.) |
| S.2 | Sulfamethazine | N′-(4,6-dimethyl-2- pyrimidyl)sulfanilamide: 2-(p-aminobenzenesulphonamide)-4,6-dimethylpyrimidine: sulphadimedine |
| S.3 | Sulfinpyrazone | 1,2-diphenyl-4-(2-phenylsulfinilethyl)-3,5-pyrazolidinedione |
| S.4 | Sulfisoxazole | 3,4-dimethyl-5-sulfanilamidoisoxazole: Sulphafurazole |
| T.1 | Tetracaine | 2-dimethylaminoethyl-p-n- butylaminobenzoate: Amethocaine |
| T.2 | Thiethylperazine | 2-Ethylthio-10-[3-(4- methylpiperazin-1-yl) propyl]phenothiazine |
| T.3 | Thiopropazate | 2-chloro-10-[3-[1-(2-acetoxyethyl)-4-piperazinyl] propyl]phenothiazine |
| T.4 | Thioproperazine | 2-Dimethylsulphamoyl-10-[3-(4-methylpiperazin-1-yl)-propyl]phenothiazine |

| Item No. | Proper Names | Chemical Names and Synonyms |
|---|---|---|
| T.5 | Thioridazine | 10-{2-[2-(1-methylpiperidyl)] ethyl α}-2-methylthiopheno- thiazine |
| T.6 | Tranylcypromine | *Trans d*, 1-2-phenylcyclopropyl- amine |
| T.7 | Triamterene | 2,4,7-Triamino-6-phenylpteridine |
| T.8 | Triflupromazine | 10-(3-dimethylaminopropyl)-2-trifluoromethylphenothiazine: Fluopremazine |
| T.9 | Trimeprazine | 10-(3-dimethylamino-2-methylpropyl) phenothiazine |
| T.10 | Trimethadione | 3,5,5-trimethyl-2,4-oxazolidine- dione: Troxidone |
| T.11 | Trimipramine | 5-(3-Dimethylamino-2-methylpropyl)-10,11-dihydro-5H-dibenz[b,f]azepine: 5-(3′-Dimethylamino-2′-methylpropyl)iminodibenzyl |
| T.12 | Tybamate | 2-Methyl-2-propyltrimethylene butylcarbamate carbamate: 2-(Hydroxymethyl)-2-methyl-pentyl butylcarbamate carbamate |
| V.1 | Vinblastine | An alkaloid derived from *Vinca rosea* |
| V.2 | Vincristine | An alkaloid derived from *Vinca rosea* |

**TABLEAU**

| Poste nº | Noms propres | Noms chimiques et synonymes |
|---|---|---|
| A.1 | Acépromazine | 2-acétyl-10-(3-diméthylaminopropyl) phénothiazine |
| A.2 | Acétyminophène | p-acétaminophénol, paracétamol, p-hydroxyacétanilide : N-acétyl-p aminophénol |
| A.3 | Acétanilide | Acétylaminobenzone : antifébrine : phénylacétamide |
| A.4 | Acide acétylsalicylique | Acide acétylsalicylique |
| A.5 | Allopurinol | 1-H-Pyrazolo[3,4-d] pyrimidin-4-ol : 4-Hydroxypyrazolo(3,4-d) pyrimidine |
| A.6 | Amantadine | 1-Adamantanamine |
| A.7 | Acide aminocaproïque | 6-acide aminohexanoïque |
| A.8 | Aminoptérine | N-4-(2,4-diamino-6-ptéridyl méthyl) amino-benzoyl-L-acide glutamique |
| A.9 | Aminopyrine : amidopyrine | 1,5-diméthyl-2-phényl-4-diméthylamino-3-pyrazolone : diméthylaminophénazone |
| A.10 | Amitriptyline | 3-(3-diméthylaminopropylidène)-1,2: 4,5-dibenzocycloheptа-1,4-diène |
| A.11 | Azacyclonol | α,α-diphényl-4-pipéridine carbinol |
| B.1 | Bémégride | 3-éthyl-3-méthylglutarimide |
| B.2 | Bénactyzine | Diméthylaminoéthyl-1,1-diphénylglycolate |
| B.3 | Bendrofluméthiazide | 3-benzyl-3,4-dihydro-6-(trifluorométhyl)-2H-1,2,4-benzothiadiazine-7-sulfonamide-1,1-dioxide : Bendrofluazide (B.A.N.) |
| B.4 | Bétahistine | 2-[2-(Méthylamino)éthyl]pyridine |
| B.5 | Béthanidine | N-Benzyl-N′N″-diméthylguanidine : 1-Benzyl-2,3-diméthylguanidine |
| B.6 | Brétylium (Tosylate de) | Tosylate de N-2-bromobenzyl-N-éthyl-N,N-diméthylammonium (acide tosylique est le nom vulgaire de l'acide p-toluénesulphonique) |
| B.7 | Bromisoval | 2-monobromo-isovalérylurée : bromisovalum : bromévalitone |
| C.1 | Calcium, carbimide de | Cyanamide de calcium |

| Poste nº | Noms propres | Noms chimiques et synonymes |
|---|---|---|
| C.2 | Captodiamine | Sulfure de 4-butylthio-α-phénylbenzyl-2-diméthylaminoéthyl |
| C.3 | Carisoprodol | Dicarbamate de N-isopropyl-2-méthyl-2-propyl-1,3-propanediol |
| C.4 | Carphénazine | 1-[10-(3[4-(2-hydroxyéthyl)-1-piperazinyl] propyl) phénothiazine-2yl]-1-propapone |
| C.5 | Céphaloridine | 7-[2-Thiényl)acétamido]-3-(1-pyridylméthyl)-3-céphem-4-carboxylique acide betaïne |
| C.6 | Chlormézanone | 1-bioxyde de 2-(4-chlorophényl)-3-méthyl-4-métathiazanone-1: chlorméthazanone : chorméthazone |
| C.7 | Chlorométhapyrilène | *N,N*-diméthyl-N′-(2-pyridyl)-N′-(5-chloro-2-thényl)-éthylénédiamine : chlorothène |
| C.8 | Chlorphènetermine | 4-chloro-α,α-diméthylphénéthylamine |
| C.9 | Cinchocaïne | 2-butoxy-N-(2-diéthylaminoéthyl) cinchoninamide : dibucaïne |
| C.10 | Cinchophène | Acide carboxylique de 2-phénylquinoléine-4-quinophane |
| C.11 | Clofibrate | Éthyl 2-(p-Chlorophénoxy)-2-méthylpropionate |
| C.12 | Clomiphène | 1-Chloro-2-[4(2-diéthylaminoéthoxy)phényl]-1,2-diphényléthylène : 2-[p-(2-Chloro-1,2-diphénylvinyl) phenoxy]triéthylamine |
| D.1 | Désipramine | 5-(3-méthylaminopropyl)-10,11-dihydro-5H-dibenz[b,f]azépine |
| D.2 | Diazépame | 7-chloro-1,3-dihydro-1-méthyl-5-phényl-2H-1,4-benzodiazépin-2-one |
| D.3 | Diéthylpropion | 1-phényl-2-diéthylaminopropanone-1 |
| D.4 | Diphénidol | 1,1-Diphényl-4-piperidinobutan-1-ol |
| D.5 | Disulfiram | Bisulfure de tétraéthylthiurame |
| E.1 | Ectylurée | 2-éthyl-*cis*-crotonylurée |
| E.2 | Émylcamate | Carbamate de 1-éthyl-1-méthylpropyl |
| E.3 | Éthacrynique (Acide) | [2,3-Dichloro-4-(2-méthylènebutyryl) phénoxy]acetique acide : 2,3-Dichloro-4-(2-éthylacryloyl)phénoxyacetique acide |
| E.4 | Ethchlorvynol | 3-(2-chlorovynil)-1-pentyne-3-ol |
| E.5 | Éthinamate | Carbamate de 1-éthynylcyclohexyl |
| E.6 | Éthionamide | 2-éthylisonicotinthioamide |
| E.7 | Éthomoxane | 2-n-butylaminoéthyl-8-éthoxybenzo-1,4-dioxane |
| E.8 | Éthyl (Trichloramate d') | Carbamate d'éthyl n-[1-(2,2,2-trichloro-1-hydroxyéthyl)] |
| E.9 | Étryptamine | 3-(2-aminobutyl) indole |
| E.10 | Étymémazine | 10-(3-diméthylamino-2-méthylpropyl)-2-éthylphénothiazine |
| F.1 | Fluphénazine | 10-[3-[4-(2-hydroxyéthyl)pipérazine-1-yl]propyl]-2-trifluorométhylphénothiazine |
| F.2 | Furosémide | 4-Chloro-N-furfuryl-5-sulphamoylanthranilique acide : frusemide (B.A.N.) |
| G.1 | Glyburide | [[(chloro-5 méthoxy-2 benzamido)-2 éthyl]-4 phénylsulfonyl]-1 cyclohexyl-3 urée : Glibenclamide |

| Poste nº | Noms propres | Noms chimiques et synonymes |
|---|---|---|
| H.1 | Halopéridol | 4-(4-Chlorophényl)-1-[3-(4-fluorobenzoyl) propyl]-pipéridine-4-ol :4-[4-(p-Chlorophényl)-4-hydroxypipéridino]-4′-fluorobutyrophénone |
| H.2 | Hydroxychloroquine | 7-chloro-4[4-(N-éthyl-N-2-hydroxyéthylamino)-1-méthylbutyl-amino] quinoline |
| H.3 | Hydroxyzine | 1-(p-chloro-α-phénylbenzyl)-4-(2-hydroxy éthoxyéthyl) pipérazine |
| I.1 | Idoxuridine | 5-iodo-2′-déoxyuridine |
| I.2 | Imipramine | 5-(3-diméthylaminopropyl)-10,11-dihydro-5H-dibenz[b,f]azépine |
| I.3 | Indométhacine | Acide acétique de 1-(p-chlorobenzoyl)-5-méthoxy-2-méthylindole-3 |
| I.4 | Iproniazide | 1-isonicotinoyl-2-isopropylhydrazine |
| I.5 | Isocarboxazide | 3-N-benzylhydrazinocarbonyl-5-méthylisoxazole |
| I.6 | Isoprotérénol | Alcool benzylique de 3,4-dihydroxy-α-[(isopropylamino)méthyl]:isoprénaline |
| L.1 | Liothyronine | Acide propionique de L-α-amino-3-[(4-hydroxy-3-iodophénoxy)-3,5-di-iodophényl] |
| M.1 | Méfénamique (Acide) | Acide anthranilique de N-(2,3-xylyl) |
| M.2 | Melphalan | 4-di-(2-chloréthyl)amino-L-phénylalanine |
| M.3 | Mépazine | 10-[(1-méthyl-3-pipéridyl)méthyl] phénothiazine |
| M.4 | Méphénésine | 3-o-toloxy-1,2-propanediol |
| M.5 | Méphénoxalone | 5-(o-méthoxyphénoxyméthyl)-2-oxazolidinone |
| M.6 | Méprobamate | 2,2-di(carbamoylméthyl) pentane |
| M.7 | Méthaqualone | 2-méthyl-3-o-tolyquinazoline-4-one : 2-méthyl-3-o-tolyl-4-quinazolone |
| M.8 | Méthisazone | 1-Méthylindoline-2,3-dione-3-thiosémicarbazone : N-Méthylisatin-ß-thiosémicarbazone |
| M.9 | Méthotriméprazine | 10-[3-(2-méthyl)diméthylamino propyl]-2-méthoxyphénothiazine : lévomépromazine |
| M.10 | Méthyldopa | 1-3-(3,4-dihydroxyphényl)-2-méthylalanine |
| M.11 | Méthylparafynol | 3-méthyl-1-pentyne-3-ol : méthyl-pentynol |
| M.12 | Méthylphénidate | Acétate de méthyl-1-phényl-1-(2-pipéridyl) |
| M.13 | Méthyprylon | 3,3-diéthyl-5-méthyl-2,4-pipéridinedione |
| M.14 | Méthysergide | Acide 1-méthyl-d-lysergique de 1-(hydroxyméthyl) propylamide |
| M.15 | Métyrapone | 2-méthyl-1,2-di(3-pyridyl)propane-1-one |
| N.1 | Nalidixique (Acide) | Acide carboxylique de 1-éthyl-7-méthyl-4-oxo-1,8-naphthyridine-3 |
| N.2 | Nialamide | 1-[2-(benzylcarbamyl) éthyl]-2-isonicotinoylhydrazine |
| N.3 | Nortriptyline | 3-(3-méthylaminopropylidène)-1,2:4,5-dibenzocyclohepta-1,4-diène |
| O.1 | Oxanimide | 2-éthyl-3-propyl-glycidamide |
| O.2 | Oxazépam | 7-chloro-1,3-dihydro-3-hydroxy-5-phényl-1,4-benzodiazépine-2-one |
| O.3 | Oxyphenbutazone | 4-n-butyl-2(4-hydroxyphényl)-1-phénylpyrazolidine-3,5-dione |
| P.1 | Paraméthadione | 3,5-diméthyl-5-éthyl-2,4-oxazolidinedione |
| P.2 | Pargyline | N-benzyl-N-méthylprop-2-ynylamine |

| Poste nº | Noms propres | Noms chimiques et synonymes |
|---|---|---|
| P.3 | Pémoline | 2-imino-5-phényloxazolidine-4-one |
| P.4 | Pentazocine | 1,2,3,4,5,6-Hexahydro-8-hydroxy-6,11-diméthyl-3-(3-méthylbut-2-ényl)-2,6-méthano-3-benzazocine : 1,2,3,4,5,6-Hexahydro-6,11-diméthyl-3-(3-méthyl-2-butényl)-2,6-méthano-3-benzazocine-8-ol |
| P.5 | Pentolinium (Tartrate de) | NN′-pentaméthylènedi-(tartrate d'hydrogène de méthylpyrrolidinium) |
| P.6 | Perphénazine | 2-chloro-10-[3-[1-(2-hydroxyéthyl)-4-pipérazinyl]propyl] phénothiazine |
| P.7 | Phacétopérane | l-1-phényl-1-(2′-pipéridyl)-1-acétoxyméthane |
| P.8 | Phénacémide | Phénylacétylurée |
| P.9 | Phénacétine | p-acétphénétidine :acétphénétidine : acétophénétidine :p-éthoxy-acétanilide |
| P.10 | Phènaglycodol | 2-p-chlorophényl-3-méthyl-2,3-butanediol |
| P.11 | Phènedimétrazine | 3,4-diméthyl-2 phénylmorpholine |
| P.12 | Phénelzine | 2-phényléthylhydrazine |
| P.13 | Phèneformine | N′-ß-phénéthylformamidinyliminourée |
| P.14 | Phéniprazine | α-méthylphénéthylhydrazine |
| P.15 | Phénemétrazine | Tétrahydro-3-méthyl-2-phényl-1,4-oxazine : 3-méthyl-2-phénylmorpholine |
| P.16 | Phènetermine | α,α-diméthylphénéthylamine : phényl-*tert*-butylamine |
| P.17 | Phénylindanédione | 2-phénylindane-1,3-dione |
| P.18 | Phényltoloxamine | *N,N*-diméthyl-2-(α-phényl-o-tolyloxy) éthylamine |
| P.19 | Pholédrine | p-(4-hydroxyphényl)-isopropylméthylamine |
| P.20 | Piperliate | Benzilate de 1-pipéridine-éthanol |
| P.21 | Pipradrol | Diphényl-2-pipéridylméthanol |
| P.22 | Prochlorpérazine | 2-chloro-10-[3-(1-méthyl-4-pipérazinyl)propyl]phénothiazine |
| P.23 | Prodilidine | Propionate de 1,2-diméthyl-3-phényl-3-pyrrolidinyl |
| P.24 | Propranolol | 1-(Isopropylamino)-3-(1-naphthyloxy)-2-propanol |
| P.25 | Prothipènedyl | 9-(3-diméthylaminopropyl)-10-thia-1,9-diaza-anthracène |
| P.26 | Protriptyline | 7-(3-Méthylaminopropyl)-1,2:5,6-dibenzocycloheptatrien :N-Méthyl-5H-dibenzo [a,d] cycloheptène-5-propylamine |
| P.27 | Pyrazinamide | Amide acido-pyrazinoïque |
| R.1 | Rifampin | 3-{[(4-méthyl-1-pipérazinyl)imino]méthyl} rifamycine SV :Rifampicine (I.N.N.) (Rifamycine SV, antibiotique produit par le *streptomyces mediterranei*) |
| S.01 | Cromoglicate sodique | Sel disodique de l'acide [(hydroxy-2 propanediyl-1,3) bis(oxy)]-5,5′ bis[oxo-4(4H) α-benzopyranne-carboxylique-2]:<br>(Hydroxy-2 triméthylènedioxy)-5,5′ bis[oxo-4(4H) α-benzopyranne-carboxylate-2] disodique : Dioxo-4,4′ (hydroxy-2 triméthylènedioxy)-5,5′ bis(chromène-carboxylate-2) disodique : Cromolyn sodium (USP) : Cromoglicate disodique : bis(carboxylate-2 de sodium oxo-4 chrométnyl-5 oxy)-1,3 propanol-2: |

| Poste nº | Noms propres | Noms chimiques et synonymes |
|---|---|---|
| S.1 | Sulfameter | 2-(4-Aminobenzènesulphonamido)-5-méthoxypyrimidine :N'-(5-méthoxy-2-pyrimidinyl) sulfanilamide : Sulfaméthoxydiazine (B.A.N.) |
| S.2 | Sulfaméthazine | N'-(4,6-diméthyl-2-pyrimidyl) sulfanilamide : 2-(p-aminobenzènesulfonamide)-4,6-diméthylpyrimidine :sulfadimédine |
| S.3 | Sulfinpyrazone | 1,2-diphényl-4-(2-phénylsufiniléthyl)-3,5-pyrazolidinedione |
| S.4 | Sulfisoxazole | 3,4-diméthyl-5-sulfanilamidoisoxazole : sulfafurazole |
| T.1 | Tétracaïne | 2-diméthylaminoéthyl-p-n-butylaminobenzoate :améthocaïne |
| T.2 | Thiéthylpérazine | 2-éthylthio-10-[3-(4-méthylpipérazine-1-yl)propyl] phénothiazine |
| T.3 | Thiopropazate | 2-chloro-10-[3-[1-(2-acétoxyéthyl)-4-pipérazinyl]propyl] phénothiazine |
| T.4 | Thiopropérazine | 2-diméthylsulphamoyl-10-[3-(4-méthylpipérazine-1-yl)-propyl]phénothiazine |
| T.5 | Thioridazine | 10-[2-[2-(1-méthylpipéridyl)] éthyl]-2-méthylthiophénothiazine |
| T.6 | Tranylcypromine | *Trans d*, 1-2-phénylcyclopropylamine |
| T.7 | Triamtérène | 2,4,7-triamino-6-phénylptéridine |
| T.8 | Triflupromazine | 10-(3-diméthylaminopropyl)-2-trifluorométhylphénothiazine : fluopromazine |
| T.9 | Triméprazine | 10-(3-diméthylamino-2-méthylpropyl)phénothiazine |
| T.10 | Triméthadione | 3,5,5-triméthyl-2,4-oxazolidinedione :troxidone |
| T.11 | Trimipramine | 5-(3-diméthylamino-2-méthylpropyl)-10,11-dihydro-5H-dibenz [b,f]azépine : 5-(3'-diméthylamino-2'-méthylpropyl)iminodibenzyl |
| T.12 | Tybamate | 2-méthyl-2-propyltriméthylène butylcarbamate :2-(hydroxyméthyl)-2-méthylpentyl butylcarbamate carbamate |
| V.1 | Vinblastine | Alcaloïde dérivé du *Vinca rosea* |
| V.2 | Vincristine | Alcaloïde dérivé du *Vinca rosea* |

SOR/87-565, s. 1; SOR/88-182, s. 1; SOR/88-482, s. 1(F); SOR/90-173, s. 1(F).

DORS/87-565, art. 1; DORS/88-182, art. 1(F); DORS/88-482, art. 1; DORS/90-173, art. 1(F).

**C.01.003** No person shall sell a drug that is not labelled as required by these Regulations.

SOR/80-544, s. 1.

**C.01.003** Il est interdit de vendre une drogue qui n'est pas étiquetée selon le présent règlement.

DORS/80-544, art. 1.

**C.01.004 (1)** The inner and outer labels of a drug shall show

**(a)** on the principal display panel

**(i)** the proper name, if any, of the drug which, if there is a brand name for the drug, shall immediately precede or follow the brand name in type not less than one-half the size of that of the brand name,

**(ii)** if there is no proper name, the common name of the drug,

**C.01.004 (1)** Les étiquettes intérieure et extérieure d'une drogue doivent porter

**a)** sur l'espace principal :

**(i)** le nom propre, s'il y a lieu, de la drogue inscrit immédiatement avant ou après la marque nominative de celle-ci, le cas échéant, en caractères d'une taille au moins égale à la moitié de celle des caractères de la marque nominative,

**(ii)** le nom usuel de la drogue à défaut d'un nom propre,

**(iii)** where a standard for the drug is prescribed in Division 6 of this Part, a statement that the drug is a Canadian Standard Drug, for which the abbreviation C.S.D. may be used,

**(iv)** where a standard for the drug is not prescribed in Division 6 of this Part but is contained in a publication mentioned in Schedule B to the Act, the name of the publication containing the standard used or its abbreviation as provided in Schedule B or, if a manufacturer's standard is used, a statement setting forth the fact that such a standard is used, and

**(v)** in both official languages, the notation "sterile" "stérile" if the drug is required to be sterile by these Regulations;

**(b)** on the upper left quarter of the principal display panel

**(i)** the symbol "Pr" in the case of a prescription drug, but the symbol "Pr" shall not appear on the label of any other drug,

**(ii)** the symbol "  " in a clear manner and a conspicuous colour and size, in the case of a controlled drug, other than a controlled drug contained in an agricultural implant and set out in Part III of the schedule to Part G,

**(iii)** the symbol "N" in a colour contrasting with the rest of the label or in type not less than half the size of any letters used thereon, in the case of a narcotic as defined in the Narcotic Control Regulations, and

**(iv)** in the case of a targeted substance as defined in section 1 of the *Benzodiazepines and Other Targeted Substances Regulations*, the following symbol in a colour contrasting with the rest of the label and in type not less than half the size of any other letter used on the main panel, namely,


**(c)** on any panel

**(i)** the name and address of the manufacturer of the drug,

**(ii)** the lot number of the drug,

**(iii)** si une norme est prescrite pour la drogue au titre 6 de la présente partie, une déclaration attestant que la drogue est conforme à la norme canadienne, pour laquelle l'abréviation D.N.C. peut être utilisée,

**(iv)** si une norme n'est pas prescrite pour la drogue au titre 6 de la présente partie mais figure dans une publication mentionnée à l'annexe B de la Loi, le nom de la publication qui contient cette norme, ou son abréviation donnée à l'annexe B de la Loi, ou, s'il s'agit d'une norme du fabricant, une déclaration en ce sens,

**(v)** en français et en anglais, la mention « *stérile* » « *sterile* » s'il s'agit d'une drogue dont l'état stérile est exigé par le présent règlement;

**b)** sur le quart supérieur gauche de l'espace principal :

**(i)** le symbole « Pr », s'il s'agit d'une drogue sur ordonnance, lequel symbole ne peut figurer sur l'étiquette d'aucune autre drogue,

**(ii)** le symbole «  » inscrit clairement, d'une couleur et de dimensions bien visibles, s'il s'agit d'une drogue contrôlée autre qu'une drogue contrôlée contenue dans un implant agricole et mentionnée à la partie III de l'annexe de la partie G,

**(iii)** le symbole « N » d'une couleur faisant contraste avec le reste de l'étiquette ou en caractères d'au moins la moitié de la taille de toute autre lettre utilisée sur l'étiquette, s'il s'agit d'un stupéfiant au sens du *Règlement sur les stupéfiants*,

**(iv)** s'il s'agit d'une substance ciblée au sens de l'article 1 du *Règlement sur les benzodiazépines et autres substances ciblées*, le symbole suivant, d'une couleur contrastant avec le reste de l'étiquette et en caractères d'au moins la moitié de la taille de toute autre lettre utilisée sur l'espace principal :


**c)** sur une partie quelconque :

**(i)** le nom et l'adresse du fabricant de la drogue,

**(ii)** le numéro de lot de la drogue,

**(iii)** adequate directions for use of the drug, except in the case of a drug to which section C.01.004.02 applies,

**(iv)** a quantitative list of the medicinal ingredients of the drug by their proper names or, if they have no proper names, by their common names, except in the case of a drug to which section C.01.004.02 applies,

**(v)** the expiration date of the drug, and

**(vi)** in the case of a new drug for extraordinary use in respect of which a notice of compliance has been issued under section C.08.004.01, the following statement, displayed in capital letters and in a legible manner:

"HEALTH CANADA HAS AUTHORIZED THE SALE OF THIS EXTRAORDINARY USE NEW DRUG FOR [naming purpose] BASED ON LIMITED CLINICAL TESTING IN HUMANS.

SANTÉ CANADA A AUTORISÉ LA VENTE DE CETTE DROGUE NOUVELLE POUR USAGE EXCEPTIONNEL AUX FINS DE [indication de la fin] EN SE FONDANT SUR DES ESSAIS CLINIQUES RESTREINTS CHEZ L'ÊTRE HUMAIN.".

**(1.1) to (1.5)** [Repealed, SOR/2014-158, s. 3]

**(2)** In addition to the requirements of subsection (1), the outer label of a drug shall display the following information:

**(a)** the net amount of the drug in the container in terms of weight, measure or number;

**(b)** in the case of a drug intended for parenteral use, a quantitative list of any preservatives present therein by their proper names or, if they have no proper names, by their common names; and

**(c)** in the case of a drug for human use that contains mercury or a salt or derivative thereof as a preservative, a quantitative list of all mercurial preservatives present therein by their proper names or, if they have no proper names, by their common names.

**(3)** Where the container of a drug is too small to accommodate an inner label that conforms to the requirements of these Regulations, the inner label requirements of these Regulations do not apply to the drug in that container if

**(a)** there is an outer label that complies with the labelling requirements of these Regulations; and

**(iii)** le mode d'emploi approprié de la drogue, sauf s'il s'agit d'une drogue à laquelle s'applique l'article C.01.004.02,

**(iv)** une liste quantitative des ingrédients médicinaux de la drogue, désignés par leurs noms propres ou, à défaut, par leurs noms usuels, sauf s'il s'agit d'une drogue à laquelle s'applique l'article C.01.004.02,

**(v)** la date limite d'utilisation de la drogue,

**(vi)** dans le cas d'une drogue nouvelle pour usage exceptionnel à l'égard de laquelle un avis de conformité a été délivré en application de l'article C.08.004.01, la mention suivante, inscrite en majuscules et de façon lisible :

« SANTÉ CANADA A AUTORISÉ LA VENTE DE CETTE DROGUE NOUVELLE POUR USAGE EXCEPTIONNEL AUX FINS DE [indication de la fin] EN SE FONDANT SUR DES ESSAIS CLINIQUES RESTREINTS CHEZ L'ÊTRE HUMAIN.

HEALTH CANADA HAS AUTHORIZED THE SALE OF THIS EXTRAORDINARY USE NEW DRUG FOR [naming purpose] BASED ON LIMITED CLINICAL TESTING IN HUMANS. ».

**(1.1) à (1.5)** [Abrogés, DORS/2014-158, art. 3]

**(2)** Outre les exigences du paragraphe (1), les renseignements ci-après figurent sur l'étiquette extérieure d'une drogue :

**a)** le contenu net du contenant de la drogue, en termes de poids, de volume ou de nombre;

**b)** dans le cas d'une drogue à usage parentéral, une liste quantitative de tous les agents de conservation incorporés à la drogue, désignés par leur nom propre ou, à défaut, par leur nom usuel; et

**c)** dans le cas d'une drogue pour usage humain qui contient du mercure ou l'un de ses sels ou dérivés utilisé comme agent de conservation, une liste quantitative de tous les agents de conservation mercuriels incorporés à la drogue, désignés par leur nom propre ou, à défaut, par leur nom usuel.

**(3)** Lorsque le contenant d'une drogue est trop petit pour avoir une étiquette intérieure conforme aux exigences du présent règlement, la drogue est soustraite à ces exigences d'étiquetage :

**a)** s'il y a une étiquette extérieure conforme aux dispositions d'étiquetage du présent règlement; et

**(b)** the inner label shows

**(i)** the proper name of the drug, the common name of the drug if there is no proper name or, in the case of a drug with more than one medicinal ingredient, the brand name of the drug,

**(ii)** the potency of the drug except where, in the case of a drug with more than one medicinal ingredient, the name used pursuant to subparagraph (i) for that drug is unique for a particular potency of the drug,

**(iii)** the net contents of the drug if it is not in a discrete dosage form,

**(iv)** the route of administration of the drug if other than oral,

**(v)** the lot number of the drug,

**(vi)** the name of the manufacturer of the drug,

**(vii)** the expiration date of the drug, and

**(viii)** the identification of special characteristics of the dosage form if they are not evident from the name of the drug under subparagraphs (i) or (ii).

**(4)** [Repealed, SOR/92-654, s. 2]

**(5)** This section does not apply to

**(a)** a drug sold to a drug manufacturer; or

**(b)** a drug dispensed pursuant to a prescription, if its label carries adequate directions for use and complies with the requirements of section C.01.005.

SOR/80-543, s. 2; SOR/81-334, s. 1(E); SOR/85-715, s. 2; SOR/89-229, s. 1; SOR/90-216, s. 1; SOR/90-586, s. 1; SOR/92-654, s. 2; SOR/93-202, s. 2; SOR/97-228, s. 1; SOR/97-515, s. 1; SOR/2000-219, s. 1; SOR/2001-181, s. 4; SOR/2010-105, s. 2; SOR/2011-88, s. 1; SOR/2013-122, ss. 4, 5; SOR/2014-158, s. 3; SOR/2019-170, s. 18; SOR/2023-247, s. 2.

**C.01.004.01 (1)** Every label of a drug for human use in dosage form shall display the following:

**(a)** a telephone number, email address, website address, postal address or any other information that enables communication with a contact person in Canada; and

**(b)** a statement to the effect that any injury to a person's health that is suspected of being associated with the use of the drug may be reported to the contact person.

**b)** si l'étiquette intérieure indique

**(i)** le nom propre de la drogue ou, à défaut, son nom usuel, ou la marque nominative s'il s'agit d'une drogue renfermant plus d'un ingrédient médicinal,

**(ii)** l'activité de la drogue, sauf si, dans le cas d'une drogue renfermant plus d'un ingrédient médicinal, le nom utilisé conformément au sous-alinéa (i) est unique en ce qui a trait à une activité particulière de la drogue,

**(iii)** le contenu net du récipient de la drogue, s'il ne s'agit pas d'une drogue sous une forme posologique déterminée,

**(iv)** la voie d'administration s'il ne s'agit pas de la voie orale,

**(v)** le numéro de lot de la drogue,

**(vi)** le nom du fabricant de la drogue,

**(vii)** la date limite d'utilisation de la drogue,

**(viii)** l'indication de caractéristiques spéciales de la forme posologique si elles ne sont pas manifestes d'après le nom de la drogue visé au sous-alinéa (i) ou (ii).

**(4)** [Abrogé, DORS/92-654, art. 2]

**(5)** Le présent article ne s'applique pas

**a)** à une drogue vendue à un fabricant de drogues; ni

**b)** à une drogue vendue sur ordonnance si l'étiquette de la drogue porte le mode d'emploi approprié de la drogue et est conforme à l'article C.01.005.

DORS/80-543, art. 2; DORS/81-334, art. 1(A); DORS/85-715, art. 2; DORS/89-229, art. 1; DORS/90-216, art. 1; DORS/90-586, art. 1; DORS/92-654, art. 2; DORS/93-202, art. 2; DORS/97-228, art. 1; DORS/97-515, art. 1; DORS/2000-219, art. 1; DORS/2001-181, art. 4; DORS/2010-105, art. 2; DORS/2011-88, art. 1; DORS/2013-122, art. 4 et 5; DORS/2014-158, art. 3; DORS/2019-170, art. 18; DORS/2023-247, art. 2.

**C.01.004.01 (1)** Toute étiquette d'une drogue pour usage humain sous forme posologique porte ce qui suit :

**a)** le numéro de téléphone, l'adresse électronique, l'adresse du site Web ou l'adresse postale d'une personne-ressource au Canada, ou tout autre renseignement permettant de contacter cette dernière;

**b)** une mention que tout préjudice à l'égard de la santé d'une personne soupçonné d'être lié à l'utilisation de la drogue peut être porté à l'attention de cette personne-ressource.

**(2)** Subsection (1) does not apply to

**(a)** the labels of a drug that is listed in Schedule C or D to the Act and that is in dosage form; or

**(b)** the inner and outer labels of a drug to which section C.01.004.02 applies.

SOR/2014-158, s. 4.

**C.01.004.02 (1)** In addition to the requirements of section C.01.004, the outer label of a drug for human use in dosage form shall display, either one bilingual table, placed on any panel, that contains only the following information in both English and French or one table in English and one table in French, each of which is placed on any panel, that contains only the following information:

**(a)** adequate directions for use of the drug;

**(b)** a quantitative list of the drug's medicinal ingredients by their proper names or, if they have no proper names, by their common names;

**(c)** the drug's non-medicinal ingredients listed in alphabetical order or in descending order of predominance by their proportion in the drug, preceded by words that clearly distinguish them from the medicinal ingredients; and

**(d)** the information referred to in subsection C.01.004.01(1).

**(2)** If a package is too small to accommodate an outer label that displays one bilingual table that lists all of the drug's non-medicinal ingredients or two unilingual tables, each of which lists all of the drug's non-medicinal ingredients, the list of non-medicinal ingredients shall be displayed in both English and French on a tag, tape or card that is attached to the package.

**(3)** If pharmaceutical ink, a fragrance or a flavour has been added to the drug, the following expressions may be included in the list of non-medicinal ingredients to indicate that those ingredients have been added to the drug, instead of listing them individually:

**(a)** in the case where a bilingual table referred to in subsection (1) is displayed, the expressions "flavour/saveur", "fragrance/parfum" and "pharmaceutical ink/encre pharmaceutique"; or

**(b)** in the case where two unilingual tables referred to in subsection (1) are displayed, the expressions

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** aux étiquettes d'une drogue mentionnée aux annexes C ou D de la Loi et qui est sous forme posologique;

**b)** aux étiquettes intérieure et extérieure d'une drogue à laquelle s'applique l'article C.01.004.02.

DORS/2014-158, art. 4.

**C.01.004.02 (1)** Outre les exigences de l'article C.01.004, l'étiquette extérieure d'une drogue pour usage humain sous forme posologique porte soit un tableau bilingue, placé sur un espace quelconque, qui ne présente que les renseignements ci-après en français et en anglais, soit un tableau en français et un tableau en anglais — chaque tableau étant placé sur un espace quelconque —, qui ne présentent que ces renseignements :

**a)** le mode d'emploi approprié de la drogue;

**b)** une liste quantitative des ingrédients médicinaux de la drogue, désignés par leurs noms propres ou, à défaut, par leurs noms usuels;

**c)** la liste des ingrédients non médicinaux de la drogue, par ordre alphabétique ou par ordre décroissant de leur proportion respective dans celle-ci, précédée d'une mention qui les distingue clairement des ingrédients médicinaux;

**d)** les renseignements visés au paragraphe C.01.004.01(1).

**(2)** Dans le cas où l'emballage est trop petit pour avoir une étiquette extérieure où figurent soit un tableau bilingue qui donne la liste des ingrédients non médicinaux, soit deux tableaux unilingues qui donnent cette liste, celle-ci est présentée en français et en anglais sur une étiquette mobile, un ruban ou une carte attachés à l'emballage.

**(3)** Dans le cas où une encre pharmaceutique, un parfum ou une saveur sont ajoutés à la drogue, les mentions ci-après peuvent remplacer, sur la liste des ingrédients non médicinaux, l'énumération de chacun des ingrédients en question, pour en indiquer l'ajout :

**a)** s'agissant du tableau bilingue visé au paragraphe (1), les mentions « encre pharmaceutique/pharmaceutical ink », « parfum/fragrance » ou « saveur/flavour »;

**b)** s'agissant des tableaux unilingues visés au paragraphe (1) :

**(i)** "encre pharmaceutique", "parfum" and "saveur" in the table in French, and

**(ii)** "flavour", "fragrance" and "pharmaceutical ink" in the table in English.

**(4)** If the composition of the drug varies from one lot to another with respect to its non-medicinal ingredients,

**(a)** in the case where a bilingual table referred to in subsection (1) is displayed, the table shall include a reference to all non-medicinal ingredient alternatives that may be present in the drug, preceded by the symbol "+/−" or "±" or the expression "or/ou" or "may contain/peut contenir"; or

**(b)** in the case where two unilingual tables referred to in subsection (1) are displayed,

**(i)** the table in French shall list all non-medicinal ingredient alternatives that may be present in the drug, preceded by the symbol "+/−" or "±" or the expression "ou" or "peut contenir", and

**(ii)** the table in English shall list all non-medicinal ingredient alternatives that may be present in the drug, preceded by the symbol "+/−" or "±" or the expression "or" or "may contain".

**(5)** For the purposes of paragraphs (3)(a) and (4)(a), the French terms in the expressions may appear first.

**(6)** Subsections (1) to (5) do not apply to

**(a)** prescription drugs;

**(b)** drugs that are permitted to be sold without a prescription but that are to be administered only under the supervision of a practitioner; and

**(c)** drugs that are represented as being solely for use as a disinfectant on hard non-porous surfaces.

SOR/2014-158, s. 5; SOR/2017-18, s. 23; SOR/2018-69, s. 13; SOR/2021-46, s. 5.

**C.01.004.03** In addition to the requirements of section C.01.004, the inner label of a drug to which section C.01.004.02 applies shall display on any panel

**(a)** adequate directions for use of the drug;

**(i)** pour ce qui est du tableau en français, les mentions « encre pharmaceutique », « parfum » ou « saveur »,

**(ii)** pour ce qui est du tableau en anglais, les mentions « flavour », « fragrance » ou « pharmaceutical ink ».

**(4)** Dans le cas où la composition de la drogue varie de lot en lot relativement à ses ingrédients non médicinaux :

**a)** s'agissant du tableau bilingue visé au paragraphe (1), ce tableau porte une mention de tout substitut d'ingrédient non médicinal susceptible de se trouver dans la drogue, précédée du symbole « +/− » ou « ± » ou de la mention « ou/or » ou « peut contenir/may contain »;

**b)** s'agissant des tableaux unilingues visés au paragraphe (1) :

**(i)** pour ce qui est du tableau en français, ce tableau porte une mention de tout substitut d'ingrédient non médicinal susceptible de se trouver dans la drogue, précédée du symbole « +/− » ou « ± » ou de la mention « ou » ou « peut contenir »,

**(ii)** pour ce qui est du tableau en anglais, ce tableau porte une mention de tout substitut d'ingrédient non médicinal susceptible de se trouver dans la drogue, précédée du symbole « +/− » ou « ± » ou de la mention « or » ou « may contain ».

**(5)** Pour l'application des alinéas (3)a) et (4)a), les termes anglais des mentions qui y sont prévues peuvent paraître en premier.

**(6)** Les paragraphes (1) à (5) ne s'appliquent pas :

**a)** aux drogues sur ordonnance;

**b)** aux drogues qui peuvent être vendues sans ordonnance mais à administrer uniquement sous la surveillance d'un praticien;

**c)** aux drogues qui sont présentées comme étant destinées exclusivement à la désinfection de surfaces dures non poreuses.

DORS/2014-158, art. 5; DORS/2017-18, art. 23; DORS/2018-69, art. 13; DORS/2021-46, art. 5.

**C.01.004.03** Outre les exigences de l'article C.01.004, l'étiquette intérieure d'une drogue à laquelle s'applique l'article C.01.004.02 porte, sur un espace quelconque :

**a)** le mode d'emploi approprié de la drogue;

**(b)** a quantitative list of the drug's medicinal ingredients by their proper names or, if they have no proper names, by their common names; and

**(c)** the information referred to in subsection C.01.004.01(1).

SOR/2014-158, s. 5.

**C.01.004.1 (1)** No person shall import a drug in dosage form into Canada for the purpose of sale unless they have in Canada a person who is responsible for the sale of the drug.

**(2)** No person who imports a drug in dosage form into Canada shall sell any lot or batch of the drug unless the name of the person who imports it, and the address of the principal place of business in Canada of the person responsible for its sale, appears on the inner and outer labels of the drug.

SOR/82-524, s. 1; SOR/93-475, s. 1; SOR/97-12, s. 2.

**C.01.005 (1)** The principal display panel of both the inner label and outer label of a drug in dosage form shall show the drug identification number assigned for that drug, preceded by the expression "Drug Identification Number" or "Drogue : identification numérique", or both, or the abbreviation "DIN".

**(2)** Subsection (1) does not apply to

**(a)** a drug in dosage form that is compounded by a pharmacist under a prescription or by a practitioner; or

**(b)** a drug in dosage form that is sold under a prescription if the following information appears on the drug's label:

**(i)** the drug's proper name, common name or brand name,

**(ii)** the drug's potency, and

**(iii)** the name of the drug's manufacturer.

**(3)** In this section and in sections C.01.005.1 and C.01.014, ***drug in dosage form*** means a drug in a form in which it is ready for use by the consumer without requiring any further manufacturing.

**(4) and (5)** [Repealed, SOR/81-248, s. 1]

SOR/81-248, s. 1; SOR/93-202, s. 3; SOR/98-423, s. 2; SOR/2001-181, s. 4; SOR/2017-259, s. 2; SOR/2018-69, s. 27; SOR/2018-77, s. 1.

**C.01.005.1 (1)** No pharmacist or practitioner shall sell a Class A opioid — including one that is compounded by

**b)** une liste quantitative des ingrédients médicinaux de la drogue, désignés par leurs noms propres ou, à défaut, par leurs noms usuels;

**c)** les renseignements visés au paragraphe C.01.004.01(1).

DORS/2014-158, art. 5.

**C.01.004.1 (1)** Il est interdit d'importer une drogue sous forme posologique en vue de la vente à moins qu'une personne ne soit responsable au Canada de la vente de cette drogue.

**(2)** Il est interdit à toute personne qui importe une drogue sous forme posologique de vendre un lot ou un lot de fabrication de cette drogue, à moins que son nom et l'adresse du principal établissement au Canada de la personne responsable de la vente de cette drogue ne figurent sur l'étiquette intérieure et sur l'étiquette extérieure de la drogue.

DORS/82-524, art. 1; DORS/93-475, art. 1; DORS/97-12, art. 2.

**C.01.005 (1)** L'espace principal de l'étiquette intérieure et de l'étiquette extérieure d'une drogue sous forme posologique indique l'identification numérique attribuée à la drogue, précédée de la mention « Drogue : identification numérique » ou de la mention « Drug Identification Number », ou des deux, ou de l'abréviation « DIN ».

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** à la drogue sous forme posologique préparée par un pharmacien, conformément à une ordonnance, ou par un praticien;

**b)** à la drogue sous forme posologique vendue conformément à une ordonnance si les renseignements ci-après figurent sur l'étiquette de la drogue :

**(i)** le nom propre, le nom usuel ou la marque nominative de la drogue,

**(ii)** l'activité de la drogue,

**(iii)** le nom du fabricant de la drogue.

**(3)** Au présent article et aux articles C.01.005.1 et C.01.014, ***drogue sous forme posologique*** s'entend d'une drogue prête à être utilisée par le consommateur sans devoir faire l'objet d'aucun autre processus de fabrication.

**(4) et (5)** [Abrogés, DORS/81-248, art. 1]

DORS/81-248, art. 1; DORS/93-202, art. 3; DORS/98-423, art. 2; DORS/2001-181, art. 4; DORS/2017-259, art. 2; DORS/2018-69, art. 27; DORS/2018-77, art. 1.

**C.01.005.1 (1)** Il est interdit au pharmacien et au praticien de vendre tout opioïde de catégorie A, notamment

a pharmacist under a prescription or by a practitioner — unless

**(a)** the drug's package has applied to it a warning sticker that meets the specifications set out in the source document; and

**(b)** the drug is accompanied by a patient information handout that meets the specifications set out in the source document.

**(2)** Subsection (1) does not apply in respect of the sale of a Class A opioid by a pharmacist or practitioner if

**(a)** the opioid will be, or is, administered under the supervision of a practitioner; or

**(b)** the sale is to a pharmacist or practitioner.

**(3)** The following definitions apply in this section.

***Class A opioid*** means a drug in dosage form set out in Part A of the *List of Opioids*, published by the Government of Canada on its website, as amended from time to time. (*opioïde de catégorie A*)

***source document*** means the document entitled *Information for Patients Concerning Opioids*, published by the Government of Canada on its website, as amended from time to time. (*document source*)

SOR/2018-77, s. 2.

**C.01.006** Where a package of a drug has only one label, that label shall contain all the information required by these Regulations to be shown on both the inner and the outer labels.

**C.01.007** No reference, direct or indirect, to the Act or to these Regulations shall be made upon any label of or in any advertisement for a drug unless such reference is a specific requirement of the Act or these Regulations.

**C.01.008** [Repealed, SOR/80-544, s. 2]

**C.01.009** If any Act of Parliament or any of its regulations prescribes a standard or grade for a drug and that standard or grade is given a name or designation in the Act or regulation, no person shall, on a label of or in any advertisement for that drug, use that name or designation unless the drug conforms with the standard or grade.

SOR/2017-18, s. 13.

tout opioïde de catégorie A préparé par un pharmacien, conformément à une ordonnance, ou par un praticien, sauf si les conditions suivantes sont réunies :

**a)** un autocollant d'avertissement conforme aux spécifications prévues dans le document source est apposé sur l'emballage de la drogue;

**b)** la drogue est accompagnée d'une fiche de renseignements à l'intention du patient conforme aux spécifications prévues dans le document source.

**(2)** Le paragraphe (1) ne s'applique pas à l'égard de la vente d'un opioïde de catégorie A par un pharmacien ou un praticien dans les cas suivants :

**a)** l'opioïde sera ou est administré sous la surveillance d'un praticien;

**b)** l'opioïde est vendu à un pharmacien ou à un praticien.

**(3)** Les définitions ci-après s'appliquent au présent article.

***document source*** Document intitulé *Information pour les patients concernant les opioïdes*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*source document*)

***opioïde de catégorie A*** Drogue sous forme posologique figurant dans la partie A de la *Liste des opioïdes*, publiée par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*Class A opioid*)

DORS/2018-77, art. 2.

**C.01.006** Lorsqu'un emballage d'une drogue ne porte qu'une seule étiquette, ladite étiquette doit montrer tous les renseignements que le présent règlement exige sur les étiquettes intérieure et extérieure.

**C.01.007** Aucune mention, directe ou indirecte, de la Loi ou du présent règlement ne doit figurer sur une étiquette ou dans la publicité d'une drogue, à moins que ladite mention ne soit précisément requise par la Loi ou par le présent règlement.

**C.01.008** [Abrogé, DORS/80-544, art. 2]

**C.01.009** Lorsqu'une loi fédérale ou un de ses règlements fixe une norme de composition ou de qualité pour une drogue et y donne un nom ou une désignation, il est interdit de faire figurer ce nom ou cette désignation sur l'étiquette ou dans la publicité de la drogue, à moins que celle-ci ne soit conforme à la norme de composition ou de qualité.

DORS/2017-18, art. 13.

**C.01.010** If it is necessary to provide adequate directions for the safe use of a parenteral drug or prescription drug that is used in the treatment or prevention of any disease, disorder or abnormal physical state mentioned in Schedule A.1 to the Act, the disease, disorder or abnormal physical state may be mentioned on the drug's labels, including any package insert and any document that is provided on request and that sets out supplementary information on the use of the drug, and, in that respect, the drug is exempt from subsections 3(1) and (2) of the Act.

SOR/2013-122, s. 6; SOR/2014-158, s. 6; SOR/2017-18, s. 21(F); SOR/2018-69, s. 14(F); SOR/2021-46, s. 10.

**C.01.011 (1)** A drug referred to in subsection 10(2) of the Act shall be exempt from the standard for any drug contained in any publication mentioned in Schedule B to the Act to the extent that such drug differs from that standard with respect to colour, flavour, shape and size, if such difference does not interfere with any method of assay prescribed in any such publication.

**(2)** [Repealed, SOR/93-243, s. 2]

**(3)** Where a manufacturer's standard is used for a drug, the manufacturer shall make available to the Minister, on request, details of that standard and of a method of analysis for the drug acceptable to the Minister.

**(4)** No person shall use a manufacturer's standard for a drug that provides

**(a)** a lesser degree of purity than the highest degree of purity, or

**(b)** a greater variation in potency than the least variation in potency,

provided for that drug in any publication mentioned in Schedule B to the Act.

SOR/93-243, s. 2; SOR/2018-69, ss. 31(E), 32(F).

**C.01.012** A manufacturer who makes representations on a label of a drug in oral dosage form, or in any advertisement, with respect to the site, rate or extent of release to the body of a medicinal ingredient of the drug, or the availability to the body of a medicinal ingredient of the drug, shall

**(a)** before making the representations, conduct such investigations, using an acceptable method, as may be necessary to demonstrate that the site, rate or extent of release to the body of the medicinal ingredient of the drug and the availability to the body of the medicinal ingredient of the drug, correspond to the representations; and

**C.01.010** S'il y a lieu de fournir le mode d'emploi approprié et sûr d'une drogue à usage parentéral ou d'une drogue sur ordonnance qui sert au traitement ou à la prophylaxie d'une maladie, d'un désordre ou d'un état physique anormal mentionnés à l'annexe A.1 de la Loi, les étiquettes de la drogue, notamment toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue qui est fournie sur demande, peuvent faire mention de cette maladie, de ce désordre ou de cet état, et la drogue est exemptée à cet égard de l'application des paragraphes 3(1) et (2) de la Loi.

DORS/2013-122, art. 6; DORS/2014-158, art. 6; DORS/2017-18, art. 21(F); DORS/2018-69, art. 14(F); DORS/2021-46, art. 10.

**C.01.011 (1)** Une drogue à laquelle s'applique le paragraphe 10(2) de la Loi doit être exemptée de la norme de toute drogue mentionnée dans toute publication de l'annexe B de la Loi, dans la mesure où cette drogue diffère de la norme quant à la couleur, à la saveur, à la forme et à la dimension, si ces différences ne perturbent pas toute méthode de dosage indiquée par l'une desdites publications.

**(2)** [Abrogé, DORS/93-243, art. 2]

**(3)** Lorsqu'une norme de fabricant est utilisée pour une drogue, le fabricant devra tenir à la disposition du ministre, à la demande de ce dernier, les détails relatifs à cette norme et à une méthode d'analyse de cette drogue qui soit acceptable au ministre.

**(4)** Il est interdit d'utiliser pour une drogue une norme de fabricant qui prévoit,

**a)** un degré de pureté inférieur au degré maximal de pureté,

**b)** un écart d'activité supérieur à l'écart minimal,

indiqués pour cette drogue dans les publications mentionnées à l'annexe B de la Loi.

DORS/93-243, art. 2; DORS/2018-69, art. 31(A) et 32(F).

**C.01.012** Le fabricant qui fait une déclaration sur l'étiquette d'une drogue sous forme de posologie orale, ou dans sa publicité, relativement au siège, à la vitesse ou à l'étendue de libération d'un ingrédient médicinal de la drogue dans l'organisme, ou à la disponibilité d'un ingrédient médicinal de la drogue dans l'organisme, doit :

**a)** avant de faire la déclaration, effectuer, par une méthode acceptable, les investigations qui se révèlent nécessaires pour démontrer que le siège, la vitesse ou l'étendue de libération de l'ingrédient médicinal de la drogue dans l'organisme et la disponibilité de l'ingrédient médicinal de la drogue dans l'organisme correspondent à la déclaration;

**(b)** on request submit the record of such investigations to the Minister.

SOR/89-455, s. 2; SOR/94-36, s. 1; SOR/2018-69, s. 27.

**C.01.013 (1)** Where the manufacturer of a drug is requested in writing by the Minister to submit on or before a specified day evidence with respect to a drug, the manufacturer shall make no further sales of that drug after that day unless he has submitted the evidence requested.

**(2)** If the Minister determines that the evidence submitted by a manufacturer under subsection (1) is not sufficient, he or she shall so notify the manufacturer in writing.

**(3)** Where, pursuant to subsection (2), a manufacturer is notified that the evidence with respect to a drug is not sufficient, he shall make no further sales of that drug unless he submits further evidence and is notified in writing by the Minister that that further evidence is sufficient.

**(4)** A reference in this section to evidence with respect to a drug means evidence to establish the safety of the drug under the conditions of use recommended and the effectiveness of the drug for the purposes recommended.

SOR/2018-69, ss. 15, 27.

**C.01.013.1** Section C.01.013 does not apply in respect of a veterinary health product.

SOR/2017-76, s. 2.

## Assignment and Cancellation of Drug Identification Numbers

**C.01.014 (1)** No manufacturer shall sell a drug in dosage form unless a drug identification number has been assigned for that drug and the assignment of the number has not been cancelled under section C.01.014.6.

**(2)** Subsection (1) does not apply in respect of a veterinary health product, a *study drug* as defined in section C.03.301 or a *medicated feed* as defined in subsection 1(1) of the *Feeds Regulations, 2024*.

SOR/81-248, s. 2; SOR/97-12, s. 3; SOR/2013-179, s. 1; SOR/2017-259, s. 3; SOR/2018-77, s. 3; SOR/2024-132, s. 85.

**C.01.014.1 (1)** A manufacturer of a drug may make an application for a drug identification number for that drug.

**b)** soumettre, sur demande, le dossier de telles investigations au ministre.

DORS/89-455, art. 2; DORS/94-36, art. 1; DORS/2018-69, art. 27.

**C.01.013 (1)** Lorsque le ministre demande par écrit au fabricant d'une drogue de lui fournir, à ou avant une date donnée, des preuves concernant une drogue, le fabricant doit suspendre la vente de cette drogue après cette date, à moins qu'il n'ait fourni les preuves demandées.

**(2)** Si le ministre conclut que les preuves fournies par le fabricant en application du paragraphe (1) sont insuffisantes, il en avise le fabricant par écrit.

**(3)** Lorsque, conformément au paragraphe (2), un fabricant est avisé que les preuves concernant une drogue donnée sont insuffisantes, il doit susprendre la vente de ladite drogue, à moins qu'il ne fournisse d'autres preuves et qu'il ne soit avisé par écrit par le ministre que ces autres preuves sont suffisantes.

**(4)** Dans cet article ***preuves concernant une drogue*** signifie des preuves servant à établir l'innocuité de la drogue lorsqu'elle est utilisée dans les conditions d'emploi recommandées et son efficacité pour les indications recommandées.

DORS/2018-69, art. 15 et 27.

**C.01.013.1** L'article C.01.013 ne s'applique pas à l'égard des produits de santé animale.

DORS/2017-76, art. 2.

## Attribution et annulation de l'identification numérique des drogues

**C.01.014 (1)** Il est interdit à tout fabricant de vendre une drogue sous forme posologique à laquelle une identification numérique n'a pas été attribuée ou dont l'identification numérique a été annulée en application de l'article C.01.014.6.

**(2)** Le paragraphe (1) ne s'applique pas au produit de santé animale, à la *drogue destinée à l'étude* au sens de l'article C.03.301, ou à l'*aliment médicamenté* au sens du paragraphe 1(1) du *Règlement de 2024 sur les aliments du bétail*.

DORS/81-248, art. 2; DORS/97-12, art. 3; DORS/2013-179, art. 1; DORS/2017-259, art. 3; DORS/2018-77, art. 3; DORS/2024-132, art. 85.

**C.01.014.1 (1)** Le fabricant d'une drogue peut présenter une demande d'identification numérique pour cette drogue.

**(2)** An application under subsection (1) shall be made to the Minister in writing and shall include the following information and material:

**(a)** the name of the manufacturer of the drug as it will appear on the label;

**(b)** the pharmaceutical form in which the drug is to be sold;

**(c)** in the case of any drug other than a drug described in paragraph (d), the recommended route of administration;

**(d)** in the case of a drug for disinfection in premises, the types of premises for which its use is recommended;

**(e)** a quantitative list of the medicinal ingredients contained in the drug by their proper names or, if they have no proper names, by their common names;

**(f)** the brand name under which the drug is to be sold;

**(g)** an indication of whether the drug is for human use or veterinary use;

**(h)** the name and quantity of each colouring ingredient that is not a medicinal ingredient;

**(i)** the use or purpose for which the drug is recommended;

**(j)** the recommended dosage of the drug;

**(k)** the address of the manufacturer referred to in paragraph (a) and, where the address is outside the country, the name and address of the importer of the drug;

**(l)** the name and address of any individual, firm, partnership or corporation, other than the names and addresses referred to in paragraphs (a) and (k), that will appear on the label of the drug;

**(m)** in the case of a drug for veterinary use, the written text of every label to be used in connection with the drug, including any package insert and any document that is provided on request and that sets out supplementary information on the use of the drug;

**(m.1)** in the case of a drug for human use, mock-ups of every label to be used in connection with the drug — including any package insert and any document that is provided on request and that sets out supplementary information on the use of the drug — and mock-ups of the drug's packages;

**(2)** La demande d'identification numérique est présentée au ministre par écrit et contient les renseignements et le matériel suivants :

**a)** le nom du fabricant de la drogue, tel qu'il figurera sur l'étiquette;

**b)** la forme pharmaceutique sous laquelle la drogue doit être vendue;

**c)** dans le cas d'une drogue non visée à l'alinéa d), la voie d'administration recommandée;

**d)** dans le cas d'une drogue destinée à désinfecter des locaux, le genre de locaux où il est recommandé de l'utiliser;

**e)** une liste quantitative des ingrédients médicinaux contenus dans la drogue, désignés par leur nom propre ou, à défaut de celui-ci par leur nom usuel;

**f)** la marque nominative sous laquelle la drogue doit être vendue;

**g)** une indication portant qu'il s'agit d'une drogue pour usage humain ou pour usage vétérinaire;

**h)** le nom de la quantité de chaque colorant de nature non médicinale;

**i)** l'usage ou les fins pour lesquels la drogue est recommandée;

**j)** la posologie recommandée;

**k)** l'adresse du fabricant visé à l'alinéa a) et, si cette adresse est à l'extérieur du pays, le nom et l'adresse de l'importateur de la drogue;

**l)** les nom et adresse du particulier, de l'entreprise ou de la société ou de la corporation, autres que les noms et adresses indiqués aux alinéas a) et k), qui paraîtront sur l'étiquette de la drogue;

**m)** dans le cas d'une drogue pour usage vétérinaire, le libellé de toute étiquette à utiliser relativement à la drogue, y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue qui est fournie sur demande;

**m.1)** dans le cas d'une drogue pour usage humain, des maquettes de toute étiquette à utiliser relativement à la drogue — y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue qui est fournie sur demande — ainsi que des maquettes des emballages de la drogue;

**(n)** the name and title of the person who signed the application and the date of signature; and

**(o)** in the case of a drug for human use, an assessment as to whether there is a likelihood that the drug will be mistaken for another drug for which a drug identification number has been assigned due to a resemblance between the brand name that is proposed to be used in respect of the drug and the brand name, common name or proper name of the other drug.

**(3)** In the case of a new drug, a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission or an abbreviated extraordinary use new drug submission filed under section C.08.002, C.08.002.01 or C.08.002.1 shall be regarded as an application for a drug identification number.

SOR/81-248, s. 2; SOR/93-202, s. 4; SOR/98-423, s. 3; SOR/2011-88, s. 2; SOR/2014-158, s. 7; SOR/2017-259, s. 4; SOR/2018-69, ss. 27, 33(F).

**C.01.014.2 (1)** Subject to subsection (2), if a manufacturer has provided all the information and material described in subsection C.01.014.1(2) or section C.08.002, C.08.002.01 or C.08.002.1, as the case may be, in respect of a drug, the Minister shall issue to the manufacturer a document that

**(a)** sets out

**(i)** the drug identification number assigned for the drug, preceded by the abbreviation "DIN", or

**(ii)** if there are two or more brand names for the drug, the drug identification numbers assigned by the Minister for the drug, each of which pertains to one of the brand names and is preceded by the abbreviation "DIN"; and

**(b)** contains the information referred to in paragraphs C.01.014.1(2)(a) to (f).

**(2)** The Minister may refuse to issue the document referred to in subsection (1) if he or she has reasonable grounds to believe that the product in respect of which an application referred to in section C.01.014.1 has been made

**(a)** is not a drug, or

**(b)** is a drug but its sale would cause injury to the health of the purchaser or consumer or would be a contravention of the Act or these Regulations.

**(3)** If the Minister refuses to issue the document under subsection (2), the manufacturer may submit additional

**n)** les nom et titre de la personne ayant signé la demande, ainsi que la date de signature;

**o)** dans le cas d'une drogue pour usage humain, une appréciation de la question de savoir si la drogue est susceptible d'être confondue avec une autre drogue à laquelle une identification numérique a été attribuée en raison de la ressemblance de la marque nominative dont l'utilisation est proposée pour la drogue avec la marque nominative, le nom usuel ou le nom propre de l'autre drogue.

**(3)** Dans le cas d'une drogue nouvelle, la présentation de drogue nouvelle, la présentation de drogue nouvelle pour usage exceptionnel, la présentation abrégée de drogue nouvelle ou la présentation abrégée de drogue nouvelle pour usage exceptionnel déposée en vertu des articles C.08.002, C.08.002.01 ou C.08.002.1 tient lieu de demande d'identification numérique.

DORS/81-248, art. 2; DORS/93-202, art. 4; DORS/98-423, art. 3; DORS/2011-88, art. 2; DORS/2014-158, art. 7; DORS/2017-259, art. 4; DORS/2018-69, art. 27 et 33(F).

**C.01.014.2 (1)** Sous réserve du paragraphe (2), sur réception des renseignements et du matériel visés au paragraphe C.01.014.1(2) ou aux articles C.08.002, C.08.002.01 ou C.08.002.1, selon le cas, fournis par le fabricant à l'égard d'une drogue, le ministre délivre à ce dernier un document qui :

**a)** indique :

**(i)** soit l'identification numérique attribuée à la drogue, précédée de l'abréviation « DIN »,

**(ii)** soit, si la drogue a deux marques nominatives ou plus, les identifications numériques attribuées à celle-ci par le ministre, dont chacune correspond à une marque nominative et est précédée de l'abréviation « DIN »;

**b)** comporte les renseignements visés aux alinéas C.01.014.1(2)a) à f).

**(2)** Le ministre peut refuser de délivrer le document prévu au paragraphe (1) s'il a des motifs raisonnables de croire que le produit faisant l'objet d'une demande visée à l'article C.01.014.1 :

**a)** n'est pas une drogue;

**b)** est une drogue dont la vente causerait un préjudice à la santé de l'acheteur ou du consommateur ou contreviendrait à la Loi ou au présent règlement.

**(3)** Lorsque le ministre refuse, en vertu du paragraphe (2), de délivrer le document, le fabricant peut fournir des

information or material and request the Minister to reconsider his or her decision.

**(4)** On the basis of the additional information or material submitted under subsection (3), the Minister shall reconsider the grounds on which the refusal to issue the document was made.

SOR/81-248, s. 2; SOR/92-230, s. 1; SOR/98-423, s. 4; SOR/2011-88, s. 3; SOR/2017-259, s. 5; SOR/2018-69, ss. 16, 27, 37.

**C.01.014.21 (1)** The Minister may, at any time, impose terms and conditions on a drug identification number assigned for a Class B opioid or amend those terms and conditions.

**(1.1)** The Minister may, at any time, impose terms and conditions on a drug identification number assigned for a designated COVID-19 drug, or amend those terms and conditions, if

**(a)** a notice of compliance was issued under section C.08.004 in respect of

**(i)** a new drug submission that was filed under section C.08.002 for the designated COVID-19 drug that contains the statement referred to in paragraph C.08.002(2.1)(a), or

**(ii)** a supplement to a new drug submission referred to in subparagraph (i) that was filed under section C.08.003 for the designated COVID-19 drug; or

**(b)** a notice of compliance was issued under section C.08.004 in respect of one of the following that was filed for the designated COVID-19 drug on the basis of a direct or indirect comparison to another designated COVID-19 drug referred to in paragraph (a):

**(i)** a new drug submission under section C.08.002,

**(ii)** an abbreviated new drug submission under section C.08.002.1, or

**(iii)** a supplement to a new drug submission or abbreviated new drug submission under section C.08.003.

**(2)** The Minister shall notify, in writing, the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number of any terms and conditions imposed on the drug

renseignements et du matériel supplémentaires et lui demander de reconsidérer sa décision.

**(4)** Le ministre reconsidère sa décision de refuser de délivrer le document en fonction des renseignements et du matériel supplémentaires fournis en vertu du paragraphe (3).

DORS/81-248, art. 2; DORS/92-230, art. 1; DORS/98-423, art. 4; DORS/2011-88, art. 3; DORS/2017-259, art. 5; DORS/2018-69, art. 16, 27 et 37.

**C.01.014.21 (1)** Le ministre peut, en tout temps, assortir de conditions l'identification numérique attribuée à un opioïde de catégorie B ou modifier de telles conditions.

**(1.1)** Le ministre peut, en tout temps, assortir de conditions l'identification numérique attribuée à une drogue désignée contre la COVID-19, ou modifier ces conditions dans l'un ou l'autre des cas suivants :

**a)** un avis de conformité a été délivré en vertu de l'article C.08.004 à l'égard :

**(i)** soit d'une présentation de drogue nouvelle qui a été déposée aux termes de l'article C.08.002 à l'égard de la drogue désignée contre la COVID-19 et qui contient la mention prévue à l'alinéa C.08.002(2.1)a),

**(ii)** soit d'un supplément à une telle présentation de drogue nouvelle qui a été déposé aux termes de l'article C.08.003 à l'égard de la drogue désignée contre la COVID-19;

**b)** un avis de conformité a été délivré en vertu de l'article C.08.004 à l'égard de l'un des documents ci-après si le document a été déposé à l'égard de la drogue désignée contre la COVID-19, sur la base d'une comparaison directe ou indirecte entre celle-ci et une autre drogue désignée contre la COVID-19 visée à l'alinéa a) :

**(i)** une présentation de drogue nouvelle visée à l'article C.08.002,

**(ii)** une présentation abrégée de drogue nouvelle visée à l'article C.08.002.1,

**(iii)** un supplément à une présentation de drogue nouvelle ou à une présentation abrégée de drogue nouvelle qui est déposé aux termes de l'article C.08.003.

**(2)** Il informe par écrit le fabricant à qui a été remis le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue de toute

identification number and of any amendment to those terms and conditions.

**(3)** The following definitions apply in this section.

***Class B opioid*** means a drug set out in Part B of the *List of Opioids*, published by the Government of Canada on its website, as amended from time to time. (*opioïde de catégorie B*)

***designated COVID-19 drug*** has the same meaning as in section C.08.001.1. (*drogue désignée contre la COVID-19*)

SOR/2018-77, s. 4; SOR/2021-45, s. 2.

**C.01.014.3** The manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a drug shall, within 30 days after the day on which the drug is first sold following the issuance by the Minister of the document, date and sign the document and return it to the Minister with a statement set out on it that the information it contains is correct and with an indication of the date of that first sale.

SOR/81-248, s. 2; SOR/98-423, s. 5; SOR/2014-158, s. 8; SOR/2017-259, s. 6; SOR/2018-69, s. 38.

**C.01.014.4** If the information referred to in subsection C.01.014.1(2) in respect of a drug is no longer correct owing to a change in the subject matter of the information,

**(a)** in the case of a change in the subject matter of any of the information referred to in paragraphs C.01.014.1(2)(a) to (f)

**(i)** that occurs prior to the sale of the drug, a new application shall be made, or

**(ii)** that occurs after the sale of the drug, no further sale of the drug shall be made until a new application for a drug identification number in respect of that drug is made and a number is assigned; and

**(b)** in the case of a change in the subject matter of any of the information referred to in paragraphs C.01.014.1(2)(g) to (k)

**(i)** that occurs prior to the sale of the drug, the particulars of the change shall be submitted with the return of the document referred to in section C.01.014.3, or

**(ii)** that occurs after the sale of the drug, the person to whom the drug identification number in respect of that drug was issued shall, within 30 days of the change, inform the Minister of the change.

SOR/81-248, s. 2; SOR/92-230, s. 2; SOR/98-423, s. 6; SOR/2016-139, s. 2(F); SOR/2018-69, s. 27.

condition dont il assortit l'identification numérique et de toute modification qu'il apporte à une telle condition.

**(3)** Les définitions ci-après s'appliquent au présent article.

***drogue désignée contre la COVID-19*** S'entend au sens de l'article C.08.001.1. (*designated COVID-19 drug*)

***opioïde de catégorie B*** Toute drogue figurant dans la partie B de la *Liste des opioïdes*, publiée par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*Class B opioid*)

DORS/2018-77, art. 4; DORS/2021-45, art. 2.

**C.01.014.3** Dans les trente jours suivant la date de la première vente de la drogue après que le ministre a délivré au fabricant le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue, le fabricant date et signe le document, l'annote en y incluant une déclaration portant que les renseignements qu'il contient sont exacts ainsi qu'une mention de la date de cette première vente, et le renvoie au ministre.

DORS/81-248, art. 2; DORS/98-423, art. 5; DORS/2014-158, art. 8; DORS/2017-259, art. 6; DORS/2018-69, art. 38.

**C.01.014.4** Dans le cas où les renseignements visés au paragraphe C.01.014.1(2) ne sont plus exacts :

**a)** en raison de la modification des renseignements visés aux alinéas C.01.014.1(2)a) à f) :

**(i)** qui se produit avant la mise en marché de la drogue, une nouvelle demande doit être présentée, ou

**(ii)** qui se produit après la mise en marché de la drogue, la vente doit être interrompue jusqu'à ce qu'une nouvelle demande d'identification numérique soit présentée et qu'une nouvelle identification numérique soit attribuée à l'égard de la drogue;

**b)** en raison de la modification des renseignements visés aux alinéas C.01.014.1(2)g) à k) :

**(i)** qui se produit avant la mise en marché de la drogue, tous les détails de la modification doivent être présentés en même temps que le document visé à l'article C.01.014.3, ou

**(ii)** qui se produit après la mise en marché de la drogue, la personne à qui l'identification numérique de la drogue a été attribuée doit en informer

le ministre dans les 30 jours suivant la modification.

DORS/81-248, art. 2; DORS/92-230, art. 2; DORS/98-423, art. 6; DORS/2016-139, art. 2(F); DORS/2018-69, art. 27.

**C.01.014.5 (1)** The manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a drug shall, annually before the first day of October and in a form established by the Minister, provide the Minister with a notification that is signed by them and that

**(a)** indicates whether any of the following circumstances apply in respect of the drug:

**(i)** as of the day on which the notification is sent,

**(A)** the manufacturer sells the drug in Canada, or

**(B)** the manufacturer has discontinued the sale of the drug in Canada, or

**(ii)** the manufacturer has not sold the drug in Canada for a period that is greater than 12 months and a portion of that period is covered by the notification; and

**(b)** subject to subsection (2), confirms that the information that the manufacturer previously submitted with respect to the drug under subsection C.01.014.1(2), paragraph C.01.014.4(b) or section C.08.002, C.08.002.01, C.08.002.1 or C.08.003, as the case may be, is correct as of the day on which the notification is sent.

**C.01.014.5 (1)** Le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à une drogue fournit au ministre, avant le 1er octobre de chaque année et en la forme établie par ce dernier, un avis qu'il signe et dans lequel :

**a)** il indique si l'une des circonstances ci-après s'applique à l'égard de la drogue :

**(i)** à la date d'envoi de l'avis :

**(A)** soit il vend la drogue au Canada,

**(B)** soit il a cessé la vente de la drogue au Canada,

**(ii)** il n'a pas vendu la drogue au Canada durant une période de plus de douze mois et une partie de cette période est visée par l'avis;

**b)** sous réserve du paragraphe (2), il confirme que les renseignements qu'il a présentés jusqu'alors au sujet de la drogue en application du paragraphe C.01.014.1(2), de l'alinéa C.01.014.4b) ou des articles C.08.002, C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, sont exacts à la date d'envoi de l'avis.

**(2)** If any of the information that the manufacturer submitted under a provision referred to in paragraph (1)(b) is not correct as of the day on which the notification is sent, the manufacturer shall update that information in the notification.

SOR/81-248, s. 2; SOR/2017-259, s. 7; SOR/2018-69, ss. 27, 39.

**(2)** Si l'un des renseignements qu'il a présentés en application d'une disposition visée à l'alinéa (1)b) n'est pas exact à la date d'envoi de l'avis, le fabricant met le renseignement à jour dans cet avis.

DORS/81-248, art. 2; DORS/2017-259, art. 7; DORS/2018-69, art. 27 et 39.

**C.01.014.6 (1)** The Minister shall cancel the assignment of a drug identification number for a drug if

**(a)** the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number advises under section C.01.014.7 that they discontinued the sale of the drug; or

**(c)** the Minister determines that the product for which the drug identification number has been assigned is not a drug.

**C.01.014.6 (1)** Le ministre annule l'identification numérique attribuée à une drogue dans les cas suivants :

**a)** le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique signale, en application de l'article C.01.014.7, qu'il a cessé la vente de la drogue;

**c)** le ministre conclut que le produit auquel l'identification numérique a été attribuée n'est pas une drogue.

**(2)** The Minister may cancel the assignment of a drug identification number for a drug if

**(2)** Le ministre peut annuler l'identification numérique attribuée à une drogue dans les cas suivants :

**(a)** the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number contravenes section C.01.014.5;

**(b)** the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number has been notified under section C.01.013 that the evidence that they submitted with respect to the drug is not sufficient; or

**(c)** the drug is a new drug in respect of which the notice of compliance has been suspended under section C.08.006.

**(3)** The Minister may cancel the assignment of a drug identification number for a drug if, after he or she has, under section 21.31 of the Act, ordered the holder of a therapeutic product authorization referred to in subparagraph C.01.052(1)(a)(i) or (iii) to conduct an assessment of the drug in order to provide evidence establishing that the benefits associated with the drug outweigh the risks of injury to health,

**(a)** the holder fails to comply with the order; or

**(b)** the holder complies with the order but the Minister determines that the results of the assessment are not sufficient to establish that the benefits associated with the drug outweigh the risks of injury to health.

**(4)** For greater certainty, the Minister's power to cancel the assignment of a drug identification number

**(a)** under paragraph (2)(b) is not affected by his or her power to cancel the assignment of such a number under subsection (3); and

**(b)** under subsection (3) is not affected by his or her power to cancel the assignment of such a number under paragraph (2)(b).

SOR/81-248, s. 2; SOR/2016-139, s. 3; SOR/2017-259, s. 7; SOR/2018-69, ss. 27, 39; SOR/2018-84, ss. 1, 13; SOR/2020-262, s. 1.

## Shortages of Drugs and Interruption and Discontinuation of Sale of Drugs

**C.01.014.7** The manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a drug shall, within 30 days after the day on which they discontinue the sale of the drug, submit the following information to the Minister:

**(a)** the drug identification number assigned for the drug;

**a)** le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique contrevient à l'article C.01.014.5;

**b)** le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique a été avisé, en application de l'article C.01.013, que les preuves qu'il a fournies concernant la drogue sont insuffisantes;

**c)** la drogue est une drogue nouvelle pour laquelle l'avis de conformité a été suspendu en vertu de l'article C.08.006.

**(3)** Le ministre peut annuler l'identification numérique attribuée à une drogue si, après qu'il a ordonné en vertu de l'article 21.31 de la Loi au titulaire d'une autorisation relative à un produit thérapeutique visée aux sous-alinéas C.01.052(1)a)(i) ou (iii) d'effectuer une évaluation de la drogue en vue de fournir des preuves établissant que les bénéfices liés à la drogue l'emportent sur les risques de préjudice à la santé :

**a)** le titulaire ne se conforme pas à l'ordre;

**b)** le titulaire se conforme à l'ordre, mais le ministre conclut que les résultats de l'évaluation sont insuffisants pour établir que les bénéfices liés à la drogue l'emportent sur les risques de préjudice à la santé.

**(4)** Il est entendu que le pouvoir du ministre d'annuler l'identification numérique attribuée à une drogue :

**a)** en vertu de l'alinéa (2)b) n'a pas d'incidence sur son pouvoir d'annuler une telle identification en vertu du paragraphe (3);

**b)** en vertu du paragraphe (3) n'a pas d'incidence sur son pouvoir d'annuler une telle identification en vertu de l'alinéa (2)b).

DORS/81-248, art. 2; DORS/2016-139, art. 3; DORS/2017-259, art. 7; DORS/2018-69, art. 27 et 39; DORS/2018-84, art. 1 et 13; DORS/2020-262, art. 1.

## Pénuries de drogues et interruption et cessation de la vente de drogues

**C.01.014.7** Le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à une drogue fournit au ministre, dans les trente jours suivant la cessation de la vente de cette drogue, les renseignements suivants :

**a)** l'identification numérique attribuée à la drogue;

**b)** la date à laquelle il a cessé la vente de la drogue;

**(b)** the date on which the manufacturer discontinued the sale of the drug; and

**(c)** the latest expiration date of the drug that the manufacturer sold and the lot number of that drug.

SOR/81-248, s. 2; SOR/2016-139, s. 5; SOR/2017-259, s. 8.

**C.01.014.71** If a period of 12 months has elapsed since the day on which the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a ***drug*** as defined in section C.01.014.8 last sold the drug, the manufacturer shall so notify the Minister in writing within 30 days after the day on which that period ends.

SOR/2017-259, s. 8.

**C.01.014.72** If the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a drug resumes the sale of the drug after a period of 12 months has elapsed since the day on which they last sold the drug, the manufacturer shall so notify the Minister in writing within 30 days after the day on which they resume the sale of the drug.

SOR/2017-259, s. 8.

**C.01.014.8** The following definitions apply in this section and in sections C.01.014.9 to C.01.014.14.

***drug*** means any of the following drugs for human use for which a drug identification number has been assigned:

**(a)** drugs included in Schedule I, II, III, IV or V to the *Controlled Drugs and Substances Act*;

**(b)** prescription drugs;

**(c)** drugs that are listed in Schedule C or D to the Act; and

**(d)** drugs that are permitted to be sold without a prescription but that are to be administered only under the supervision of a practitioner. (***drogue***)

***shortage***, in respect of a drug, means a situation in which the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for the drug is unable to meet the demand for the drug in Canada. (***pénurie***)

SOR/2016-139, s. 5; SOR/2017-259, s. 8; SOR/2018-69, ss. 17, 40; SOR/2021-199, s. 1.

**C.01.014.9 (1)** If a shortage of a drug exists or is likely to occur, the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for the drug shall

**c)** la date limite d'utilisation la plus tardive attribuée à la drogue qu'il a vendue et le numéro de lot de celle-ci.

DORS/81-248, art. 2; DORS/2016-139, art. 5; DORS/2017-259, art. 8.

**C.01.014.71** Si douze mois se sont écoulés depuis le jour où il a procédé à la dernière vente d'une ***drogue*** au sens de l'article C.01.014.8, le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue en avise le ministre par écrit dans les trente jours suivant la fin de cette période.

DORS/2017-259, art. 8.

**C.01.014.72** S'il recommence à vendre la drogue après que douze mois se sont écoulés depuis le jour où il a procédé à la dernière vente de la drogue, le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue en avise le ministre par écrit dans les trente jours suivant la date à laquelle il recommence à vendre la drogue.

DORS/2017-259, art. 8.

**C.01.014.8** Les définitions qui suivent s'appliquent au présent article et aux articles C.01.014.9 à C.01.014.14.

***drogue*** S'entend de l'une des drogues pour usage humain ci-après auxquelles une identification numérique a été attribuée :

**a)** les drogues inscrites aux annexes I, II, III, IV ou V de la *Loi réglementant certaines drogues et autres substances*;

**b)** les drogues sur ordonnance;

**c)** les drogues visées aux annexes C ou D de la Loi;

**d)** les drogues qui peuvent être vendues sans ordonnance mais à administrer uniquement sous la surveillance d'un praticien. (***drug***)

***pénurie*** S'entend, à l'égard d'une drogue, d'une situation où le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue est incapable de répondre à la demande pour cette drogue au Canada. (***shortage***)

DORS/2016-139, art. 5; DORS/2017-259, art. 8; DORS/2018-69, art. 17 et 40; DORS/2021-199, art. 1.

**C.01.014.9 (1)** S'il y a pénurie ou probabilité de pénurie d'une drogue, le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à la drogue affiche

post the following information in English and French on a website that is operated by a party for that purpose with whom Her Majesty in right of Canada has entered into a contract to make that information available to the public:

**(a)** the manufacturer's name and their telephone number, email address, website address, postal address or any other information that enables communication with them;

**(b)** the drug identification number assigned for the drug;

**(c)** the drug's brand name and proper name or, if it does not have a proper name, its common name;

**(d)** the proper names of the drug's medicinal ingredients or, if they do not have proper names, their common names;

**(e)** the drug's therapeutic classification according to the Anatomical Therapeutic Chemical classification system (ATC), established by the World Health Organization Collaborating Centre for Drug Statistics Methodology — namely the level 3 description of, and level 4 code for, the drug;

**(f)** the drug's strength;

**(g)** the drug's dosage form;

**(h)** the quantity of the drug contained in its package;

**(i)** the drug's route of administration;

**(j)** the date when the shortage began or is anticipated to begin;

**(k)** the anticipated date when the manufacturer will be able to meet the demand for the drug, if they can anticipate that date; and

**(l)** the actual or anticipated reason for the shortage.

**(2)** The manufacturer shall post the information

**(a)** if they anticipate that a shortage will begin in more than six months, at least six months before the day on which they anticipate it to begin;

**(b)** if they anticipate that a shortage will begin in six months or less, within five days after the day on which they anticipate it; or

**(c)** if they did not anticipate the shortage, within five days after the day on which they become aware of it.

les renseignements ci-après, en français et en anglais, sur un site Web exploité à cette fin par un contractant avec lequel Sa Majesté du chef du Canada a conclu un contrat pour rendre cette information disponible au public :

**a)** son nom, ainsi que ses numéro de téléphone, adresse électronique, adresse de site Web ou adresse postale ou tout autre renseignement permettant de communiquer avec lui;

**b)** l'identification numérique attribuée à la drogue;

**c)** la marque nominative de la drogue et son nom propre ou, à défaut, son nom usuel;

**d)** le nom propre des ingrédients médicinaux de la drogue ou, à défaut, leur nom usuel;

**e)** la classification thérapeutique de la drogue dans le système de classification anatomique, thérapeutique et chimique (ATC), établi par le Centre collaborateur de l'Organisation mondiale de la Santé pour la méthodologie sur l'établissement des statistiques concernant les produits médicamenteux, à savoir sa description de niveau 3 et son code de niveau 4;

**f)** la concentration de la drogue;

**g)** la forme posologique de la drogue;

**h)** la quantité de drogue contenue dans l'emballage;

**i)** la voie d'administration de la drogue;

**j)** la date réelle ou prévue du début de la pénurie;

**k)** la date à laquelle il est prévu que le fabricant sera capable de répondre à la demande pour la drogue, dans la mesure où ce dernier peut prévoir une telle date;

**l)** la raison réelle ou prévue de la pénurie.

**(2)** Le fabricant affiche les renseignements :

**a)** s'il prévoit que la pénurie débutera dans plus de six mois, au moins six mois avant la date à laquelle il prévoit que la pénurie débutera;

**b)** s'il prévoit que la pénurie débutera dans six mois ou moins, dans les cinq jours qui suivent la date où il établit cette prévision;

**c)** s'il n'a pas prévu la pénurie, dans les cinq jours qui suivent la date où il en constate l'existence.

**(3)** If any of the information that was posted by the manufacturer changes, they shall update that information on the website within two days after the day on which they make or become aware of the change.

**(4)** Within two days after the day on which the manufacturer is able to meet the demand for the drug, they shall post information on the website to that effect.

**(5)** This section does not apply in respect of a shortage of a drug that results from a decision by the manufacturer to discontinue its sale.

SOR/2016-139, s. 5; SOR/2017-259, s. 9; SOR/2021-199, s. 2.

**C.01.014.10 (1)** If the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a drug decides to discontinue the sale of the drug, they shall post the following information in English and French on the website referred to in subsection C.01.014.9(1):

**(a)** the manufacturer's name and their telephone number, email address, website address, postal address or any other information that enables communication with them;

**(b)** the drug identification number assigned for the drug;

**(c)** the drug's brand name and proper name or, if it does not have a proper name, its common name;

**(d)** the proper names of the drug's medicinal ingredients or, if they do not have proper names, their common names;

**(e)** the drug's therapeutic classification according to the Anatomical Therapeutic Chemical classification system (ATC), established by the World Health Organization Collaborating Centre for Drug Statistics Methodology — namely the level 3 description of, and level 4 code for, the drug;

**(f)** the drug's strength;

**(g)** the drug's dosage form;

**(h)** the quantity of the drug contained in its package;

**(i)** the drug's route of administration;

**(j)** the date on which the manufacturer will discontinue the sale of the drug; and

**(k)** the reason for the discontinuation of sale.

**(2)** The manufacturer shall post the information

**(3)** Si les renseignements affichés changent, le fabricant les met à jour sur le site Web dans les deux jours suivant la date à laquelle il fait ou constate le changement.

**(4)** Dans les deux jours suivant la date à laquelle il est capable de répondre à la demande pour la drogue, le fabricant le signale sur le site Web.

**(5)** Le présent article ne s'applique pas à l'égard de la pénurie d'une drogue qui résulte de la décision du fabricant d'en cesser la vente.

DORS/2016-139, art. 5; DORS/2017-259, art. 9; DORS/2021-199, art. 2.

**C.01.014.10 (1)** Si le fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à une drogue décide de cesser la vente de la drogue, il affiche les renseignements ci-après, en français et en anglais, sur le site Web visé au paragraphe C.01.014.9(1) :

**a)** son nom, ainsi que ses numéro de téléphone, adresse électronique, adresse de site Web ou adresse postale ou tout autre renseignement permettant de communiquer avec lui;

**b)** l'identification numérique attribuée à la drogue;

**c)** la marque nominative de la drogue et son nom propre ou, à défaut, son nom usuel;

**d)** le nom propre des ingrédients médicinaux de la drogue ou, à défaut, leur nom usuel;

**e)** la classification thérapeutique de la drogue dans le système de classification anatomique, thérapeutique et chimique (ATC), établi par le Centre collaborateur de l'Organisation mondiale de la Santé pour la méthodologie sur l'établissement des statistiques concernant les produits médicamenteux, à savoir sa description de niveau 3 et son code de niveau 4;

**f)** la concentration de la drogue;

**g)** la forme posologique de la drogue;

**h)** la quantité de drogue contenue dans l'emballage;

**i)** la voie d'administration de la drogue;

**j)** la date à laquelle le fabricant cessera la vente de la drogue;

**k)** la raison de la cessation de la vente.

**(2)** Le fabricant affiche les renseignements :

**(a)** if they decide to discontinue the sale of the drug in more than six months, at least six months before the day on which they will discontinue its sale; and

**(b)** if they decide to discontinue the sale of the drug in six months or less, within five days after the day on which that decision is made.

**(3)** If any of the information that was posted by the manufacturer changes, they shall update that information on the website within two days after the day on which they make or become aware of the change.

SOR/2016-139, s. 5; SOR/2017-259, s. 10.

**C.01.014.11** The Minister shall ensure that a hyperlink to the website referred to in subsection C.01.014.9(1) is on the Government of Canada website.

SOR/2016-139, s. 5; SOR/2017-259, s. 11.

**C.01.014.12 (1)** The Minister may request that the manufacturer to whom a document was issued under subsection C.01.014.2(1) that sets out the drug identification number assigned for a drug — or any person who holds an establishment licence in respect of a drug — provide the Minister with information that is in their control if the Minister has reasonable grounds to believe that

**(a)** there is a shortage or risk of shortage of the drug;

**(b)** the information is necessary to establish or assess

**(i)** the existence of a shortage or risk of shortage of the drug,

**(ii)** the reason for a shortage or risk of shortage of the drug,

**(iii)** the effects or potential effects on human health of a shortage of the drug, or

**(iv)** measures that could be taken to prevent or alleviate a shortage of the drug; and

**(c)** the manufacturer or licensee will not provide the information without a legal obligation to do so.

**(2)** The manufacturer or licensee shall provide the requested information electronically in a format specified by or acceptable to the Minister within the time limit specified by the Minister.

SOR/2021-199, s. 3.

**C.01.014.13** No person who holds an establishment licence shall distribute a drug for consumption or use outside Canada unless the licensee has reasonable grounds

**a)** s'il décide de cesser la vente de la drogue dans plus de six mois, au moins six mois avant la date de la cessation;

**b)** s'il décide de cesser la vente de la drogue dans six mois ou moins, dans les cinq jours qui suivent la date à laquelle il prend cette décision.

**(3)** Si les renseignements affichés changent, le fabricant les met à jour sur le site Web dans les deux jours suivant la date à laquelle il fait ou constate le changement.

DORS/2016-139, art. 5; DORS/2017-259, art. 10.

**C.01.014.11** Le ministre veille à ce qu'un hyperlien menant au site Web visé au paragraphe C.01.014.9(1) figure sur le site Web du gouvernement du Canada.

DORS/2016-139, art. 5; DORS/2017-259, art. 11.

**C.01.014.12 (1)** Le ministre peut demander au fabricant à qui a été délivré le document prévu au paragraphe C.01.014.2(1) qui indique l'identification numérique attribuée à une drogue ou au titulaire d'une licence d'établissement concernant une drogue de lui fournir les renseignements qui relèvent du fabricant ou du titulaire s'il a des motifs raisonnables de croire que les conditions ci-après sont réunies :

**a)** il y a pénurie ou risque de pénurie de la drogue;

**b)** les renseignements sont nécessaires afin d'établir ou d'évaluer, selon le cas :

**(i)** l'existence d'une pénurie ou d'un risque de pénurie de la drogue,

**(ii)** la raison d'une pénurie ou d'un risque de pénurie de la drogue,

**(iii)** les effets réels ou potentiels sur la santé humaine d'une pénurie de la drogue,

**(iv)** les mesures qui pourraient être prises afin de prévenir ou d'atténuer une pénurie de la drogue;

**c)** le fabricant ou le titulaire ne fournira les renseignements que s'il est légalement tenu de le faire.

**(2)** Le fabricant ou le titulaire transmet les renseignements au ministre par voie électronique, en la forme précisée ou jugée acceptable par ce dernier et dans le délai que celui-ci fixe.

DORS/2021-199, art. 3.

**C.01.014.13** Le titulaire d'une licence d'établissement ne peut distribuer une drogue pour consommation ou usage à l'étranger, à moins qu'il n'ait des motifs

to believe that the distribution will not cause or exacerbate a shortage of the drug.

SOR/2021-199, s. 3.

**C.01.014.14 (1)** If a person who holds an establishment licence distributes a drug for consumption or use outside Canada, the licensee shall immediately create a detailed record of the information that they relied on to determine that the distribution of the drug is not prohibited by section C.01.014.13.

**(2)** The licensee shall retain the record for at least one year after the latest expiration date of the drug that they distributed.

SOR/2021-199, s. 3.

## Tablet Disintegration Times

**C.01.015 (1)** Subject to subsection (2), no person shall sell for human use a drug in the form of a tablet that is intended to be swallowed whole unless, when tested by the official method DO-25, *Determination of the Disintegration Time of Tablets*, dated July 5, 1989,

**(a)** in the case of an uncoated tablet, the tablet disintegrates in not more than 45 minutes;

**(b)** in the case of a plain coated tablet, the tablet disintegrates in not more than 60 minutes; and

**(c)** in the case where the label of the drug indicates that the tablet carries an enteric coating or a coating designed to serve a purpose similar to that of an enteric coating, the tablet does not disintegrate when exposed for 60 minutes to simulated gastric fluid, but when it is subsequently exposed for a continuous period to simulated intestinal fluid, the tablet disintegrates in not more than 60 minutes.

**(2)** Subsection (1) does not apply in respect of a drug in the form of a tablet where

**(a)** a notice of compliance in respect of the drug in the form of a tablet has been issued under section C.08.004 or C.08.004.01;

**(b)** [Repealed, SOR/98-423, s. 7]

**(c)** a dissolution or disintegration test for the drug in the form of a tablet is prescribed in Division 6 of this Part;

raisonnables de croire que la distribution n'aura pas pour effet de causer ou d'aggraver une pénurie de la drogue.

DORS/2021-199, art. 3.

**C.01.014.14 (1)** Le titulaire d'une licence d'établissement qui distribue une drogue pour consommation ou usage à l'étranger consigne immédiatement dans un dossier, de façon détaillée, les renseignements sur lesquels il s'est fondé pour conclure que la distribution n'est pas interdite par l'article C.01.014.13.

**(2)** Le titulaire est tenu de conserver le dossier pendant au moins un an à compter de la date limite d'utilisation la plus tardive attribuée à la drogue qu'il a distribuée.

DORS/2021-199, art. 3.

## Temps de désagrégation des comprimés

**C.01.015 (1)** Sous réserve du paragraphe (2), il est interdit de vendre une drogue pour usage humain se présentant sous forme de comprimé destiné à être avalé entier, à moins qu'elle ne présente les caractéristiques de désagrégation suivantes lorsqu'elle est soumise à l'épreuve décrite dans la méthode officielle DO-25 intitulée *Détermination du temps de désagrégation des comprimés* en date du 5 juillet 1989 :

**a)** dans le cas d'un comprimé non enrobé, le comprimé soumis à l'épreuve se désagrège en au plus 45 minutes;

**b)** dans le cas d'un comprimé enrobé ordinaire, le comprimé soumis à l'épreuve se désagrège en au plus 60 minutes;

**c)** dans le cas d'un comprimé désigné sur l'étiquette comme un comprimé à enrobage entéro-soluble ou à enrobage destiné à une fin semblable, le comprimé immergé pendant 60 minutes dans du suc gastrique simulé ne se désagrège pas et, lorsqu'il est immergé dans du suc intestinal simulé, il se désagrège en au plus 60 minutes.

**(2)** Le paragraphe (1) ne s'applique pas à la drogue sous forme de comprimé lorsque, selon le cas :

**a)** un avis de conformité a été délivré à l'égard de la drogue sous forme de comprimé en application des articles C.08.004 ou C.08.004.01;

**b)** [Abrogé, DORS/98-423, art. 7]

**c)** une épreuve de dissolution ou de désagrégation est prévue pour la drogue sous forme de comprimé au titre 6 de la présente partie;

**(d)** the drug is labelled as complying with a standard contained in a publication referred to in Schedule B to the Act;

**(e)** the drug has been demonstrated by an acceptable method to be available to the body; or

**(f)** representations regarding the drug are made on its label, or in any advertisement, with respect to the site, rate or extent of release to the body of a medicinal ingredient of that drug, or the availability to the body of a medicinal ingredient of that drug.

SOR/89-429, s. 2; SOR/89-455, s. 3; SOR/94-36, s. 2; SOR/98-423, s. 7; SOR/2011-88, s. 4.

## Prohibition

**C.01.016** No manufacturer shall sell a drug unless the manufacturer complies with the conditions set out in sections C.01.017 to C.01.019.

SOR/95-521, s. 2; SOR/2011-31, s. 1.

## Serious Adverse Drug Reaction Reporting — Manufacturers

[SOR/2019-190, s. 1]

**C.01.017** The manufacturer shall submit to the Minister a report of all information relating to the following serious adverse drug reactions within 15 days after receiving or becoming aware of the information, whichever occurs first:

**(a)** any serious adverse drug reaction that has occurred in Canada with respect to the drug; and

**(b)** any serious unexpected adverse drug reaction that has occurred outside Canada with respect to the drug.

SOR/95-521, s. 2; SOR/2011-31, s. 1.

## Annual Summary Report and Case Reports

**C.01.018 (1)** The manufacturer shall prepare an annual summary report of all information relating to adverse drug reactions and serious adverse drug reactions to the drug that it received or became aware of during the previous 12 months.

**(2)** The annual summary report shall contain a concise, critical analysis of the adverse drug reactions and serious adverse drug reactions to the drug.

**d)** l'étiquette de la drogue indique que celle-ci satisfait à une norme contenue dans l'une des publications mentionnées à l'annexe B de la Loi;

**e)** il est démontré, selon une méthode acceptable, que la drogue est libérée dans l'organisme;

**f)** une déclaration est faite sur l'étiquette, ou dans toute publicité, relativement au siège, à la vitesse ou à l'étendue de libération d'un ingrédient médicinal de la drogue dans l'organisme, ou à la disponibilité de l'ingrédient médicinal de la drogue dans l'organisme.

DORS/89-429, art. 2; DORS/89-455, art. 3; DORS/94-36, art. 2; DORS/98-423, art. 7; DORS/2011-88, art. 4.

## Interdiction

**C.01.016** Il est interdit à tout fabricant de vendre une drogue, à moins qu'il se conforme aux conditions énoncées aux articles C.01.017 à C.01.019.

DORS/95-521, art. 2; DORS/2011-31, art. 1.

## Rapports sur les réactions indésirables graves à une drogue — fabricants

[DORS/2019-190, art. 1]

**C.01.017** Le fabricant, dans les quinze jours après avoir reçu communication de renseignements concernant toute réaction indésirable grave à une drogue, ou après en avoir pris connaissance, selon la première des deux éventualités à survenir, présente un rapport faisant état de ces renseignements au ministre dans les cas suivants :

**a)** il s'agit d'une réaction indésirable grave à la drogue survenue au Canada;

**b)** il s'agit d'une réaction indésirable grave et imprévue à la drogue survenue à l'extérieur du Canada.

DORS/95-521, art. 2; DORS/2011-31, art. 1.

## Rapport de synthèse annuel et fiches d'observation

**C.01.018 (1)** Le fabricant prépare un rapport de synthèse annuel sur les renseignements concernant les réactions indésirables à une drogue et les réactions indésirables graves à une drogue dont il a reçu communication ou a eu connaissance au cours des douze derniers mois.

**(2)** Le rapport de synthèse annuel comprend une analyse critique et concise des réactions indésirables à une drogue et des réactions indésirables graves à une drogue.

**(3)** In preparing the annual summary report, the manufacturer shall determine, on the basis of the analysis referred to in subsection (2), whether there has been a significant change in what is known about the risks and benefits of the drug during the period covered by the report and shall include its conclusions in this regard in the summary report.

**(4)** If, in preparing the annual summary report, the manufacturer concludes that there has been a significant change, it shall notify the Minister without delay, in writing, unless this has already been done.

**(5)** The Minister may, for the purposes of assessing the safety and effectiveness of the drug, request in writing that the manufacturer submit to the Minister one or both of the following:

**(a)** the annual summary reports;

**(b)** the case reports relating to the adverse drug reactions and serious adverse drug reactions to the drug that are known to the manufacturer.

**(6)** The Minister shall, after giving the manufacturer an opportunity to be heard, specify a period for the submission of the annual summary reports or case reports, or both, that is reasonable in the circumstances, and the manufacturer shall submit the reports within that period.

SOR/2011-31, s. 1.

**(3)** Dans le cadre de la préparation du rapport de synthèse annuel, le fabricant évalue, en se fondant sur l'analyse visée au paragraphe (2), si ce qui est connu à propos des risques et avantages associés à la drogue a changé de façon importante durant la période visée par le rapport et fait état de ses conclusions à cet égard dans son rapport.

**(4)** Lorsque, dans le cadre de la préparation du rapport de synthèse annuel, le fabricant conclut à un changement important, il en informe sans tarder le ministre par écrit, si ce n'est déjà fait.

**(5)** Afin d'évaluer l'innocuité de la drogue et son efficacité, le ministre peut demander par écrit au fabricant de lui présenter l'un ou l'autre des documents suivants, ou les deux :

**a)** les rapports de synthèse annuels;

**b)** les fiches d'observation relatives aux réactions indésirables à la drogue et aux réactions indésirables graves à la drogue qui sont connues du fabricant.

**(6)** Après avoir donné au fabricant la possibilité de se faire entendre, le ministre précise un délai raisonnable, selon les circonstances, pour la présentation des rapports de synthèse annuels ou des fiches d'observation, ou des deux. Le fabricant présente les documents dans le délai imparti.

DORS/2011-31, art. 1.

**C.01.018.1** Section C.01.018 does not apply in respect of a veterinary health product.

SOR/2017-76, s. 4.

**C.01.018.1** L'article C.01.018 ne s'applique pas à l'égard des produits de santé animale.

DORS/2017-76, art. 4.

## Issue-Related Summary Report

**C.01.019 (1)** The Minister may, for the purposes of assessing the safety and effectiveness of the drug, request in writing that the manufacturer submit to the Minister an issue-related summary report.

**(2)** The report shall contain a concise, critical analysis of the adverse drug reactions and serious adverse drug reactions to the drug, as well as case reports of all or specified adverse drug reactions and serious adverse drug reactions to the drug that are known to the manufacturer in respect of the issue that the Minister directs the manufacturer to analyze in the report.

**(3)** The Minister shall, after giving the manufacturer an opportunity to be heard, specify a period for the

## Rapport de synthèse relatif à un sujet de préoccupation

**C.01.019 (1)** Le ministre peut, aux fins d'évaluation de l'innocuité et de l'efficacité de la drogue, demander par écrit au fabricant de lui présenter un rapport de synthèse relatif à un sujet de préoccupation.

**(2)** Le rapport comprend une analyse critique et concise des réactions indésirables à la drogue et des réactions indésirables graves à la drogue, ainsi que les fiches d'observation portant sur toutes les réactions indésirables à la drogue et les réactions indésirables graves à la drogue — ou celles qui sont précisées par le ministre — qui sont connues du fabricant et qui sont associées au sujet de préoccupation que le ministre a demandé à celui-ci d'analyser dans le rapport.

**(3)** Après avoir donné au fabricant la possibilité de se faire entendre, le ministre précise un délai raisonnable,

submission of the report that is reasonable in the circumstances. The Minister may only specify a period that is less than 30 days if the Minister needs the information in the report to determine whether the drug poses a serious and imminent risk to human health.

**(4)** The manufacturer shall submit the report within the specified period.

SOR/2011-31, s. 1; SOR/2017-18, s. 14.

**C.01.019.1** Section C.01.019 does not apply in respect of a veterinary health product.

SOR/2017-76, s. 5.

## Maintenance of Records

**C.01.020 (1)** The manufacturer shall maintain records of the reports and case reports referred to in sections C.01.017 to C.01.019.

**(2)** The manufacturer shall retain the records for 25 years after the day on which they were created.

SOR/2011-31, s. 1.

## Provision of Information Under Section 21.8 of Act

**C.01.020.1 (1)** For the purposes of section 21.8 of the Act, hospitals are the prescribed health care institutions that shall provide information that is in their control to the Minister about a serious adverse drug reaction.

**(2)** The following prescribed information about a serious adverse drug reaction that is in a hospital's control shall be provided to the Minister in writing within 30 days after the day on which the serious adverse drug reaction is first documented within the hospital:

**(a)** the name of the hospital and the contact information of a representative of that hospital;

**(b)** the drug's brand name, proper name or common name;

**(c)** in the case of a drug imported under subsection C.10.001(2) or section C.10.006, the identifying code or number of the drug, if any, assigned in the country in which the drug was authorized for sale;

**(c.1)** in the case of a drug whose sale has been authorized under subsection C.11.003(1), its identifying name, code, number or mark;

selon les circonstances, pour la présentation du rapport. Ce délai ne peut être de moins de trente jours que si le ministre a besoin des renseignements contenus dans le rapport pour établir si la drogue présente un risque grave et imminent pour la santé humaine.

**(4)** Le fabricant présente le rapport dans le délai imparti.

DORS/2011-31, art. 1; DORS/2017-18, art. 14.

**C.01.019.1** L'article C.01.019 ne s'applique pas à l'égard des produits de santé animale.

DORS/2017-76, art. 5.

## Tenue de dossiers

**C.01.020 (1)** Le fabricant tient les dossiers des rapports et fiches d'observations visés aux articles C.01.017 à C.01.019.

**(2)** Il conserve les dossiers pendant vingt-cinq ans après la date de leur création.

DORS/2011-31, art. 1.

## Fourniture de renseignements en application de l'article 21.8 de la Loi

**C.01.020.1 (1)** Pour l'application de l'article 21.8 de la Loi, les hôpitaux sont les établissements de soins de santé tenus de fournir au ministre les renseignements qui relèvent d'eux concernant les réactions indésirables graves à une drogue.

**(2)** Les renseignements ci-après qui relèvent d'un hôpital concernant toute réaction indésirable grave à une drogue sont fournis au ministre par écrit dans les trente jours suivant le jour où la réaction indésirable grave à une drogue est consignée pour la première fois dans l'hôpital :

**a)** le nom de l'hôpital et les coordonnées d'une personne représentant celui-ci;

**b)** la marque nominative, le nom propre ou le nom usuel de la drogue;

**c)** s'agissant d'une drogue importée en vertu du paragraphe C.10.001(2) ou de l'article C.10.006, tout code ou numéro d'identification qui lui est attribué dans le pays où sa vente a été autorisée;

**c.1)** s'agissant d'une drogue dont la vente est autorisée en vertu du paragraphe C.11.003(1), son nom, son code, son numéro ou sa marque d'identification;

**(d)** the drug identification number assigned for the drug, if applicable;

**(e)** the patient's age and sex;

**(f)** a description of the serious adverse drug reaction;

**(g)** the date on which the serious adverse drug reaction was first documented;

**(h)** the date on which the patient first used the drug and, if applicable, the date on which the patient stopped using the drug;

**(i)** the date on which the serious adverse drug reaction first occurred and, if applicable, the date on which the patient's health was restored to its state prior to the reaction;

**(j)** any medical condition of the patient that directly relates to the serious adverse drug reaction;

**(k)** any concomitant therapeutic products used by the patient; and

**(l)** the effect of the serious adverse drug reaction on the patient's health.

**(3)** A hospital is exempt from section 21.8 of the Act in respect of the reporting of information referred to in subsection (2) if

**(a)** the hospital does not have in its control all of the information referred to in paragraphs (2)(b), (c), (e) and (f) in respect of the serious adverse drug reaction; or

**(b)** the serious adverse drug reaction relates only to any of the following drugs:

**(i)** a vaccine that was administered under a routine immunization program of a province,

**(ii)** a drug that is authorized for sale under Division 5 of this Part, or

**(iii)** a drug that was sold under subsection C.08.011(1).

**(4)** In this section, ***hospital*** means a facility

**(a)** that is licensed, approved or designated as a hospital by a province in accordance with the laws of the province to provide care or treatment to persons suffering from any form of disease or illness; or

**d)** l'identification numérique qui a été attribuée à la drogue, le cas échéant;

**e)** l'âge et le sexe du patient;

**f)** une description de la réaction indésirable grave à une drogue;

**g)** la date de la première consignation de la réaction indésirable grave à une drogue;

**h)** la date à laquelle le patient a utilisé la drogue pour la première fois et, le cas échéant, celle à laquelle il a cessé de l'utiliser;

**i)** la date à laquelle la réaction indésirable grave à une drogue s'est produite pour la première fois et, le cas échéant, celle à laquelle l'état de santé du patient antérieur à la réaction a été rétabli;

**j)** tout état pathologique du patient directement rattaché à la réaction indésirable grave à une drogue;

**k)** tout produit thérapeutique utilisé de façon concomitante par le patient;

**l)** l'effet de la réaction indésirable grave à une drogue sur la santé du patient.

**(3)** L'hôpital est exempté de l'application de l'article 21.8 de la Loi à l'égard des renseignements visés au paragraphe (2) dans les cas suivants :

**a)** les renseignements visés aux alinéas (2)b), c), e) et f) concernant la réaction indésirable grave à une drogue ne relèvent pas tous de l'hôpital;

**b)** la réaction indésirable grave à une drogue met en cause seulement l'une des drogues suivantes :

**(i)** le vaccin administré dans le cadre d'un programme provincial de vaccination systématique,

**(ii)** la drogue dont la vente est autorisée sous le régime du titre 5 de la présente partie,

**(iii)** la drogue vendue en vertu du paragraphe C.08.011(1).

**(4)** Au présent article, ***hôpital*** s'entend de l'établissement qui, selon le cas :

**a)** fait l'objet d'un permis délivré par une province ou a été approuvé ou désigné par elle à ce titre, en conformité avec ses lois, en vue d'assurer des soins ou des traitements aux personnes atteintes de toute forme de maladie ou d'affection;

**(b)** that is operated by the Government of Canada and that provides health services to in-patients.

SOR/2019-190, s. 2; SOR/2021-199, s. 4; SOR/2023-18, s. 1.

## Limits of Drug Dosage

**C.01.021** Except as provided in these Regulations, no person shall sell a drug for human use listed in the following table unless both the inner and the outer labels other than the inner label of a single dose container carry a statement of

**(a)** the quantitative content of the drug,

**(b)** the recommended single and daily adult dose designated as such, except for

**(i)** preparations solely for external use, or

**(ii)** preparations solely for children's use; and

**(c)** adequate directions for use when the drug is recommended for children which shall be either

**(i)** the statement "CHILDREN: As directed by the physician", or

**(ii)** a suitable reduced maximum single and daily dose which shall not exceed the following:

| *Age in years* | *Proportion of adult dose* |
|---|---|
| 10 - 14 | one-half |
| 5 - 9 | one-fourth |
| 2 - 4 | one-sixth |
| under 2 years | as directed by physician |

**b)** est exploité par le gouvernement du Canada et assure des soins de santé à des patients hospitalisés.

DORS/2019-190, art. 2; DORS/2021-199, art. 4; DORS/2023-18, art. 1.

## Doses limites des drogues

**C.01.021** Sauf disposition contraire du présent règlement, il est interdit de vendre pour administration humaine une drogue mentionnée au tableau ci-après, à moins qu'il ne soit indiqué sur les étiquettes intérieure et extérieure (sauf l'étiquette intérieure d'un récipient à dose simple),

**a)** la composition quantitative de ladite drogue; et

**b)** la dose simple et la dose quotidienne recommandées pour adultes et désignées comme telles, exception faite

**(i)** des préparations destinées uniquement à l'usage externe, et

**(ii)** des préparations destinées uniquement aux enfants; et

**c)** des directives convenables d'emploi, lorsque la drogue est recommandée pour les enfants, directives qui doivent soit

**(i)** consister en la déclaration : « POUR ENFANTS : selon les instructions du médecin », ou

**(ii)** fixer des doses maximums simple et quotidienne qui ne doivent pas dépasser les valeurs données ci-dessous :

| *Années d'âge* | *Proportion de la dose adulte* |
|---|---|
| 10 à 14 | la moitié |
| 5 à 9 | le quart |
| 2 à 4 | le sixième |
| Moins de 2 ans | Selon les instructions du médecins |

**TABLE**

**Table of Limits of Drug Dosage for Adults**

| Item | External Use — Maximum Limit | Internal Use — Maximum Dosage Unless otherwise stated, doses are in milligrams | |
|---|---|---|---|
| | Per cent | Single | Daily |
| Acetaminophen | — | 650 | 4.0 g |
| Acetanilide and derivatives (except N-Acetyl-ρ-amino phenol) | — | 65 | 195 |

| Item | External Use — Maximum Limit | Internal Use — Maximum Dosage Unless otherwise stated, doses are in milligrams | |
|---|---|---|---|
| | Per cent | Single | Daily |
| Acetylsalicylic Acid | — | 650 | 4.0 g |
| Aconitine, its preparations and derivatives | 0.2 | 0.1 | 0.1 |
| Adonis vernalis | — | 65 | 195 |
| Amylocaine, its salts and derivatives when sold or recommended for opthalmic use | 0.0 | 0.0 | 0.0 |
| Amylocaine Hydrochloride, except when sold or recommended for ophthalmic use | 1.0 | 0.0 | 0.0 |
| Antimony, compounds of | — | 3.3 | 13 |
| Atropine, Methylatropine, and their salts | 1.0 | 0.13 | 0.44 |
| Belladonna and its preparations, on the basis of belladonna alkaloids | 0.375 | 0.13 | 0.44 |
| Benzene (Benzol) | — | — | — |
| Benzocaine | 8.0 | 195 | 585 |
| Beta-Naphthol | — | 195 | 585 |
| Butacaine, its salts and derivatives when sold or recommended for ophthalmic use | 0.0 | 0.0 | 0.0 |
| Butacaine Sulphate, except when sold or recommended for opthalmic use | 1.0 | 0.0 | 0.0 |
| Cadexomer Iodine | 0.0 | 0.0 | 0.0 |
| Cantharides, cantharidin, and their preparations, on the basis of cantharidin, except blisters | 0.03 | 0.0 | 0.0 |
| Cantharides, blisters only | 0.2 | 0.0 | 0.0 |
| Cedar Oil | 25.0 | 0.0 | 0.0 |
| Chlorbutol (not more often than every 4 hours) | — | 325 | 975 |
| Choline Salicylate | — | 870 | 5.22 g |
| Cinchocaine Hydrochloride, except suppositories | 1.0 | 0.0 | 0.0 |
| Cinchocaine Hydrochloride, suppositories only | — | 11 | 11 |
| Colchicine and its salts | — | 0.55 | 1.65 |
| Colchicum and its preparations, on the basis of colchicine | — | 0.27 | 0.81 |
| Croton Oil | 10.0 | 0.0 | 0.0 |
| Cyproheptadine and its salts — when sold or recommended for the promotion of weight gain | — | 0.0 | 0.0 |
| Ephedrine and its salts | — | 11 | 32.5 |
| Ephedrine and its salts, sprays | 1.0 | — | — |
| Epinephrine and its salts, sprays | 1.0 | — | — |
| Gelseminine (Gelsemine) and its salts (not to be repeated within 4 hours) | — | 0.55 | 1.65 |
| Gelsemium and its preparations, on the basis of the crude drug | — | 16.2 | 48.6 |
| Hydrocyanic (Prussic) Acid as 2 per cent solution | — | 0.062 ml | 0.31 ml |
| Hydroquinone | 2.0 | — | — |
| Hyoscine (Scopolamine) and its salts | 0.5 | 0.325 | 0.975 |
| Hyoscine aminoxide hydrobromide | 0.5 | 0.325 | 0.975 |
| Hyoscyamine and its salts | — | 0.325 | 0.975 |
| Hyoscyamus and its preparations, on the basis of hyoscyamus alkaloids | — | 0.073 | 0.22 |
| Lobelia and its preparations, on the basis of the crude drug | — | 130 | 390 |

| Item | External Use | Internal Use | |
|---|---|---|---|
| | — | — | |
| | Maximum Limit | Maximum Dosage Unless otherwise stated, doses are in milligrams | |
| | Per cent | Single | Daily |
| Lobeline and its salts | — | 2.0 | 6.0 |
| Magnesium Salicylate | — | 650 | 4.0 g |
| Methyl Salicylate | 30 | — | — |
| Methylene Blue | — | 130 | 390 |
| Phenacetin | — | 650 | 1.95 g |
| Phenazone and compounds thereof | — | 325 | 975 |
| Phenol | 2.0 | 32.5 | 260 |
| Phenylpropanolamine when sold or recommended as an appetite depressent | — | 0.0 | 0.0 |
| Phosphorus | — | 0.0 | 0.0 |
| Podophyllin | 0.0 | 0.0 | 0.0 |
| Potassium Chlorate | — | 325 | 975 |
| Potassium Chlorate, gargle | 2.5 | — | — |
| Procaine and its salts | — | — | — |
| Proxymetacaine, its salts and derivatives when sold or recommended for ophthalmic use | 0.0 | 0.0 | 0.0 |
| Salicylamide | — | 975 | 2.925 g |
| Santonin | — | 65 | 130 |
| Selenium and its compounds | 2.5 | 0.0 | 0.0 |
| Sodium Chlorate | — | 325 | 975 |
| Sodium Fluoride | — | 0.1 | 0.1 |
| Sodium Salicylate | — | 650 | 4.0 g |
| Squill and its preparations, on the basis of crude drug | — | 32.5 | 97.5 |
| Stramonium and its preparations, on the basis of stramonium alkaloids | — | 0.16 | 0.65 |
| Strychnine and its salts | — | 0.0 | 0.0 |
| Tannic Acid | — | 150 | 1 000 |
| Tetracaine, its salts and derivatives when sold or recommended for ophthalmic use | 0.0 | 0.0 | 0.0 |
| Thiocyanates | 0.0 | 0.0 | 0.0 |
| Urethane | 0.0 | 0.0 | 0.0 |

**TABLEAU**

**Tableau des doses limites des drogues pour adultes**

| Drogue | Usage externe | Usage interne | |
|---|---|---|---|
| | — | — | |
| | Dose maximum | Dose maximum en milligrammes, sauf indication contraire | |
| | pour cent | Dose simple | Dose quotidienne |
| Acétaminophène | — | 650 | 4,0 g |

| Drogue | Usage externe — Dose maximum | Usage interne — Dose maximum en milligrammes, sauf indication contraire | |
|---|---|---|---|
| | pour cent | Dose simple | Dose quotidienne |
| Acétanilide et dérivés (exception faite de N-acétyl-ρ-aminophénol | — | 65 | 195 |
| Acide acétylsalicylique | — | 650 | 4,0 g |
| Acide cyanhydrique (prussique) solution à 2 pour cent | — | 0,062 ml | 0,31 ml |
| Acide tannique | — | 150 | 1 000 |
| Aconitine, ses préparations et dérivés | 0,2 | 0,1 | 0,1 |
| Adonis vernalis | — | 65 | 195 |
| Amylocaïne, ses sels et dérivés, lorsqu'ils sont vendus ou recommandés pour usage ophtalmique | 0,0 | 0,0 | 0,0 |
| Antimoine (composés d') | — | 3,3 | 13 |
| Atropine, méthylatropine, et leurs sels | 1,0 | 0,13 | 0,44 |
| Belladone et ses préparations, en alcaloïdes de la belladone | 0,375 | 0,13 | 0,44 |
| Benzène (benzol) | — | — | — |
| Benzocaïne | 8,0 | 195 | 585 |
| Bêta-naphtol | — | 195 | 585 |
| Bleu de méthylène | — | 130 | 390 |
| Bromure d'aminoxyde d'hyoscine | 0,5 | 0,325 | 0,975 |
| Butacaïne, ses sels et dérivés, lorsqu'ils sont vendus ou recommandés pour usage ophtalmique | 0,0 | 0,0 | 0,0 |
| Cadexomer lode | 0,0 | 0,0 | 0,0 |
| Cantharides, cantharidine et leurs préparations, basées sur la cantharidine, à l'exception des vésicatoires | 0,03 | 0,0 | 0,0 |
| Cantharides, vésicatoires seulement | 0,2 | 0,0 | 0,0 |
| Chlorate de potassium | — | 325 | 975 |
| Chlorate de potassium (gargarisme) | 2,5 | — | — |
| Chlorate de sodium | — | 325 | 975 |
| Chlorhydrate d'amylocaïne, sauf lorsque vendu ou recommandé pour usage ophtalmique | 1,0 | 0,0 | 0,0 |
| Chlorhydrate de cinchocaïne, à l'exception des suppositoires | 1,0 | 0,0 | 0,0 |
| Chlorhydrate de cinchocaïne (suppositoires seulement) | — | 11 | 11 |
| Chlorobutanol (à toutes les 4 heures au plus) | — | 325 | 975 |
| Colchicine et ses sels | — | 0,55 | 1,65 |
| Colchique et ses préparations, en colchicine | — | 0,27 | 0,81 |
| Cyproheptadine et ses sels, lorsqu'ils sont vendus ou recommandés pour augmenter le poids | — | 0,0 | 0,0 |
| Éphédrine et ses sels | — | 11 | 32,5 |
| Éphédrine et ses sels (vaporisations) | 1,0 | — | — |
| Épinéphrine et ses sels (vaporisations) | 1,0 | — | — |
| Gelséminine (gelsémine) et ses sels (à toutes les 4 heures au plus) | — | 0,55 | 1,65 |
| Gelsémium et ses préparations, en drogue brute | — | 16,2 | 48,6 |
| Huile de cèdre | 25,0 | 0,0 | 0,0 |
| Huile de croton | 10,0 | 0,0 | 0,0 |

| Drogue | Usage externe — Dose maximum | Usage interne — Dose maximum en milligrammes, sauf indication contraire | |
|---|---|---|---|
| | pour cent | Dose simple | Dose quotidienne |
| Hydroquinone | 2,0 | — | — |
| Hyoscine (scopolamine) et ses sels | 0,5 | 0,325 | 0,975 |
| Hyoscyamine et ses sels | — | 0,325 | 0,975 |
| Jusquiame et ses préparations, en alcaloïdes de jusquiame | — | 0,073 | 0,22 |
| Lobélie et ses préparations, en drogue brute | — | 130 | 390 |
| Lobéline et ses sels | — | 2,0 | 6,0 |
| Phénacétine | — | 650 | 1,95 g |
| Phénazone et ses composés | — | 325 | 975 |
| Phénol | 2,0 | 32,5 | 260 |
| Phénylpropanolamine, lorsqu'elle est vendue ou recommandée comme déprimant de l'appétit | — | 0,0 | 0,0 |
| Phosphore | — | 0,0 | 0,0 |
| Podophylline | 0,0 | 0,0 | 0,0 |
| Procaïne et ses sels | — | — | — |
| Proxymétacaïne, ses sels et dérivés, lorsqu'ils sont vendus ou recommandés pour usage ophtalmique | 0,0 | 0,0 | 0,0 |
| Salicylamide | — | 975 | 2,925 g |
| Santonine | — | 65 | 130 |
| Scille et ses préparations, en drogue brute | — | 32,5 | 97,5 |
| Sélénium et ses composés | 2,5 | 0,0 | 0,0 |
| Sodium (fluorure de) | — | 0,1 | 0,1 |
| Stramoïne et ses préparations, en alcaloïdes de stramoïne | — | 0,16 | 0,65 |
| Strychnine et ses sels | — | 0,0 | 0,0 |
| Sulfate de butacaïne, sauf lorsque vendu ou recommandé pour usage ophtalmique | 1,0 | 0,0 | 0,0 |
| Tétracaïne, ses sels et dérivés lorsqu'ils sont vendus ou recommandés pour usage ophtalmique | 0,0 | 0,0 | 0,0 |
| Thiocyanates | 0,0 | 0,0 | 0,0 |
| Uréthane | 0,0 | 0,0 | 0,0 |

Where drugs having similar physiological actions occur in combination, the dosage of each shall be proportionately reduced.

Accurate dosagesmay be expressed in either metric units or imperial units. If the dosage is expressed in both systems, then an approximation may be used for one expression, but such approximation must precede or follow the accurate statement by which the product will be judged and must be in brackets.

SOR/78-422, s. 1; SOR/80-544, s. 3; SOR/84-145, s. 1; SOR/85-715, s. 3; SOR/85-966, s. 2; SOR/88-94, s. 1; SOR/89-229, s. 2; SOR/89-548, s. 1.

Quand des drogues douées de propriétés physiologiques semblables sont en mélange, la dose de chacune doit être réduite proportionnellement.

Les doses exactes peuvent être exprimées en unités métriques ou en unités impériales. Si la dose est exprimée en unités des deux systèmes, l'une des données peut n'être qu'approximative, mais cette valeur approximative doit précéder ou suivre la donnée exacte d'après laquelle le produit sera jugé, et elle doit être indiquée entre parenthèses.

DORS/78-422, art. 1; DORS/80-544, art. 3; DORS/84-145, art. 1; DORS/85-715, art. 3; DORS/85-966, art. 2; DORS/88-94, art. 1; DORS/89-229, art. 2; DORS/89-548, art. 1.

**C.01.022** Notwithstanding paragraph C.01.021(b), the recommended single and daily dosage of a drug

**(a)** intended to be burned and the smoke inhaled may be increased to 10 times the oral dose, and

**(b)** intended for use as suppositories may be increased to 33 1/3 per cent in excess of the oral dose.

**C.01.024 (1)** Sections C.01.021 and C.01.022 do not apply to

**(a)** a drug sold to a drug manufacturer; or

**(b)** a drug sold on prescription.

**(2)** Paragraph C.01.021(c) does not apply to

**(a)** acetaminophen;

**(b)** acetylsalicylic acid;

**(c)** magnesium salicylate;

**(d)** sodium salicylate; or

**(e)** choline salicylate.

**(3)** Where a drug mentioned in any of paragraphs (2)(a) to (d) is recommended for children, no person shall sell the drug for human use unless both the inner and the outer labels carry a statement that it is recommended

**(a)** that the drug be used as directed by a physician; or

**(b)** that the maximum doses of the drug not exceed the amounts set out in the following table and that single doses not be administered more frequently than every four hours.

**C.01.022** Nonobstant l'alinéa C.01.021b), la dose simple et la dose quotidienne recommandées, pour une drogue

**a)** destinée à être brûlée en vue de l'inhalation des fumées, peuvent être augmentées à 10 fois la dose orale; et

**b)** présentée en suppositoires, peuvent être augmentées à 33 1/3 pour cent en excédent de la dose orale.

**C.01.024 (1)** Les articles C.01.021 et C.01.022 ne s'appliquent pas

**a)** à une drogue vendue à un fabricant de drogues; ni

**b)** à une drogue vendue sur ordonnance.

**(2)** L'alinéa C.01.021c) ne s'applique pas

**a)** à l'acétaminophène;

**b)** à l'acide acétylsalicylique;

**c)** au salicylate de magnésium;

**d)** au salicylate de sodium; ni

**e)** au salicylate de choline.

**(3)** Lorsqu'une drogue mentionnée aux alinéas (2)a) à d) est recommandée pour les enfants, il est interdit de vendre cette drogue pour administration humaine à moins qu'il ne soit indiqué sur les étiquettes intérieure et extérieure

**a)** qu'il est recommandé de prendre cette drogue « selon les instructions du médecin »; ou

**b)** qu'il est recommandé de ne pas prendre de doses supérieures à celles indiquées dans le tableau ci-après et de ne pas administrer de doses simples à moins de quatre heures d'intervalle.

**TABLE**

**Maximum Dose**

| | Column I | Column II | Column III | Column IV | Column V | Column VI | Column VII |
|---|---|---|---|---|---|---|---|
| Item | Age | Maximum Children's Dose (80 mg units) Acetaminophen Drops | Maximum Children's Dose (80 mg units) | Maximum Children's Dose (160 mg units) Acetaminophen | Maximum Adult's Dose (325 mg units) | Maximum Single Dose (mg) | Maximum Daily Dose (mg) |
| 1 | 11 to under 12 years | — | 6 | 3 | 1.5 | 480 | 2 400 |
| 2 | 9 to under 11 years | — | 5 | 2.5 | 1.25 | 400 | 2 000 |

| Item | Column I<br>Age | Column II<br>Maximum Children's Dose (80 mg units) Acetaminophen Drops | Column III<br>Maximum Children's Dose (80 mg units) | Column IV<br>Maximum Children's Dose (160 mg units) Acetaminophen | Column V<br>Maximum Adult's Dose (325 mg units) | Column VI<br>Maximum Single Dose (mg) | Column VII<br>Maximum Daily Dose (mg) |
|---|---|---|---|---|---|---|---|
| 3 | 6 to under 9 years | — | 4 | 2 | 1 | 320 | 1 600 |
| 4 | 4 to under 6 years | — | 3 | 1.5 | — | 240 | 1 200 |
| 5 | 2 to under 4 years | — | 2 | 1 | — | 160 | 800 |
| 6 | 1 to under 2 years | 1.5 or as directed by a physician | — | — | — | 120 | 600 |
| 7 | 4 months to under 1 year | 1 or as directed by a physician | — | — | — | 80 | 400 |
| 8 | 0 to under 4 months | 0.5 or as directed by a physician | — | — | — | 40 | 200 |

**TABLEAU**

**Doses maximales**

| Article | Colonne I<br>Âge | Colonne II<br>Dose maximale pour enfants en unités posologiques de 80 mg d'acétaminophène en gouttes | Colonne III<br>Dose maximale pour enfants en unités posologiques de 80 mg | Colonne IV<br>Dose maximale pour enfants en unités posologiques de 160 mg d'acétaminophène | Colonne V<br>Dose maximale pour adultes en unités posologiques de 325 mg | Colonne VI<br>Dose maximale simple (en mg) | Colonne VII<br>Dose maximale quotidienne (en mg) |
|---|---|---|---|---|---|---|---|
| 1 | 11 ans jusqu'à moins de 12 ans | — | 6 | 3 | 1,5 | 480 | 2 400 |
| 2 | 9 ans jusqu'à moins de 11 ans | — | 5 | 2,5 | 1,25 | 400 | 2 000 |
| 3 | 6 ans jusqu'à moins de 9 ans | — | 4 | 2 | 1 | 320 | 1 600 |
| 4 | 4 ans jusqu'à moins de 6 ans | — | 3 | 1,5 | — | 240 | 1 200 |
| 5 | 2 ans jusqu'à moins de 4 ans | — | 2 | 1 | — | 160 | 800 |
| 6 | 1 an jusqu'à moins de 2 ans | 1,5 ou selon les instructions du médecin | — | — | — | 120 | 600 |
| 7 | 4 mois jusqu'à moins de 1 an | 1 ou selon les instructions du médecin | — | — | — | 80 | 400 |

| | Colonne I | Colonne II | Colonne III | Colonne IV | Colonne V | Colonne VI | Colonne VII |
|---|---|---|---|---|---|---|---|
| Article | Âge | Dose maximale pour enfants en unités posologiques de 80 mg d'acétaminophène en gouttes | Dose maximale pour enfants en unités posologiques de 80 mg | Dose maximale pour enfants en unités posologiques de 160 mg d'acétaminophène | Dose maximale pour adultes en unités posologiques de 325 mg | Dose maximale simple (en mg) | Dose maximale quotidienne (en mg) |
| 8 | 0 mois jusqu'à moins de 4 mois | 0,5 ou selon les instructions du médecin | — | — | — | 40 | 200 |

**(4)** Where choline salicylate is recommended for children, no person shall sell the drug for human use unless both the inner and the outer labels carry a statement that it is recommended

**(a)** that the drug be used as directed by physician; or

**(b)** that the maximum doses of the drug not exceed the amounts set out in the following table and that single doses not be administered more frequently than every four hours.

**TABLE**

| | MAXIMUM DOSE | | |
|---|---|---|---|
| Age (Years) | Adult Dosage Units (435 mg) | Single Dose (mg) | Maximum Daily Dose (mg) |
| 11 to under 12 | 1 ½ | 660 | 3 300 |
| 9 to under 11 | 1 ¼ | 550 | 2 750 |
| 6 to under 9 | 1 | 440 | 2 200 |
| 4 to under 6 | ¾ | 330 | 1 650 |
| 2 to under 4 | ½ | 220 | 1 100 |
| Under 2 | As directed by physician | | |

SOR/84-145, s. 2; SOR/90-587, s. 1.

**C.01.025** Both the inner and the outer labels of a drug that carry a recommended single or daily dosage or a statement of concentration in excess of the limits provided by section C.01.021 shall carry a caution that the product is to be used only on the advice of a physician.

**C.01.026** The provisions of section C.01.025 do not apply to

**(a)** a drug sold on prescription, or

**(b)** the inner label of a single-dose container.

**(4)** Lorsque le salicylate de choline est recommandé pour les enfants, il est interdit de vendre cette drogue pour administration humaine à moins qu'il ne soit indiqué sur les étiquettes intérieure et extérieure

**a)** qu'il est recommandé de prendre cette drogue « selon les instructions du médecin »; ou

**b)** qu'il est recommandé de ne pas prendre de doses supérieures à celles indiquées dans le tableau ci-après et de ne pas administrer de doses simples à moins de quatre heures d'intervalle.

**TABLEAU**

| | DOSE MAXIMUM | | |
|---|---|---|---|
| Âge (Années) | Unités posologiques adultes (435 mg) | Dose simple (en mg) | Dose maximum quotidienne (en mg) |
| 11 à moins de 12 | 1 ½ | 660 | 3 300 |
| 9 à moins de 11 | 1 ¼ | 550 | 2 750 |
| 6 à moins de 9 | 1 | 440 | 2 200 |
| 4 à moins de 6 | ¾ | 330 | 1 650 |
| 2 à moins de 4 | ½ | 220 | 1 100 |
| moins de 2 ans | selon les instructions du médecin | | |

DORS/84-145, art. 2; DORS/90-587, art. 1.

**C.01.025** Les étiquettes intérieure et extérieure d'une drogue portant une dose simple ou dose quotidienne recommandée, ou la déclaration d'une concentration dépassant les limites fixées à l'article C.01.021, doivent toutes deux porter une mise en garde signalant que le produit ne doit être employé que sur le conseil d'un médecin.

**C.01.026** Les dispositions de l'article C.01.025 ne s'appliquent pas

**a)** à une drogue vendue sur ordonnance; ni

**b)** à l'étiquette intérieure d'un récipient à dose unique.

**C.01.027 (1)** Where a person advertises to the general public a drug for human use, the person shall not make any representation other than with respect to the brand name, proper name, common name, price and quantity of the drug if it

**(a)** contains a drug set out in the table to section C.01.021; and

**(b)** carries on its label

**(i)** a statement of the recommended single or daily adult dosage that results in a single or daily adult dosage of the drug referred to in paragraph (a) in excess of the maximum dosage set out in the table to section C.01.021 for that drug, or

**(ii)** a statement that shows a concentration of the drug referred to in paragraph (a) in excess of the maximum limit set out in the table to section C.01.021 for that drug.

**(2)** Subsection (1) does not apply to products containing

**(a)** acetaminophen;

**(b)** acetylsalicylic acid;

**(c)** choline salicylate;

**(d)** magnesium salicylate; or

**(e)** sodium salicylate.

**(3)** [Repealed, SOR/94-409, s. 1]

**(4)** Where a person advertises to the general public a drug for human use that contains acetylsalicylic acid, the person shall not make any representation with respect to its administration to or use by children or teenagers.

SOR/81-358, s. 1; SOR/84-145, s. 3; SOR/85-715, s. 4(F); SOR/85-966, s. 3; SOR/93-202, s. 5; SOR/93-411, s. 1; SOR/94-409, s. 1.

## Cautionary Statements and Child Resistant Packages

**C.01.028 (1)** Subject to subsection (2), the inner and outer labels of a drug that contains

**(a)** acetylsalicylic acid or any of its salts or derivatives, salicylic acid or a salt thereof, or salicylamide, where the drug is recommended for children, shall carry a cautionary statement to the effect that the drug should not be administered to a child under two years of age except on the advice of a physician;

**C.01.027 (1)** Quiconque fait la publicité auprès du grand public d'une drogue pour administration humaine doit ne faire porter cette publicité que sur la marque nominative, le nom propre, le nom usuel, le prix et la quantité s'il s'agit d'une drogue :

**a)** qui contient une drogue mentionnée au tableau de l'article C.01.021;

**b)** dont l'étiquette fait état :

**(i)** soit d'une dose recommandée pour adultes, simple ou quotidienne, qui entraîne le dépassement de la dose maximum pour adultes, simple ou quotidienne, de la drogue visée à l'alinéa a) que prévoit le tableau de l'article C.01.021,

**(ii)** soit d'une concentration de la drogue visée à l'alinéa a) qui excède la dose maximum prévue au tableau de l'article C.01.021.

**(2)** Le paragraphe (1) ne s'applique pas aux produits contenant :

**a)** de l'acétaminophène;

**b)** de l'acide acétylsalicylique;

**c)** du salicylate de choline;

**d)** du salicylate de magnésium;

**e)** du salicylate de sodium.

**(3)** [Abrogé, DORS/94-409, art. 1]

**(4)** Quiconque fait la publicité auprès du grand public d'une drogue pour administration humaine qui contient de l'acide acétylsalicylique ne doit pas faire porter cette publicité sur son administration aux enfants ou aux adolescents ou sur son utilisation par eux.

DORS/81-358, art. 1; DORS/84-145, art. 3; DORS/85-715, art. 4(F); DORS/85-966, art. 3; DORS/93-202, art. 5; DORS/93-411, art. 1; DORS/94-409, art. 1.

## Mises en garde et emballages protège-enfants

**C.01.028 (1)** Sous réserve du paragraphe (2), les étiquettes intérieure et extérieure d'une drogue qui contient l'un des ingrédients suivants :

**a)** de l'acide acétylsalicylique ou un de ses sels ou dérivés, de l'acide salicylique ou un de ses sels, ou de la salicylamide doivent porter, si la drogue est recommandée pour les enfants, une mise en garde spécifiant

**(b)** boric acid or sodium borate as a medicinal ingredient shall carry a cautionary statement to the effect that the drug should not be administered to a child under three years of age;

**(c)** hyoscine (scopolamine) or a salt thereof shall carry a cautionary statement to the effect that the drug should not be used by persons suffering from glaucoma or where it causes blurring of the vision or pressure pain within the eye;

**(d)** phenacetin, either singly or in combination with other drugs, shall carry the following cautionary statement:

"CAUTION: May be injurious if taken in large doses or for a long time. Do not exceed the recommended dose without consulting a physician."; or

**(e)** acetylsalicylic acid for internal use shall carry a cautionary statement to the effect that the drug should not be administered to or used by children or teenagers who have chicken pox or manifest flu symptoms before a physician or pharmacist is consulted about Reye's syndrome, which statement shall also refer to the fact that Reye's syndrome is a rare and serious illness.

**(2)** Subsection (1) does not apply to a drug that is

**(a)** intended for parenteral use only;

**(b)** dispensed pursuant to a prescription; or

**(c)** a prescription drug or a drug that is required to be sold under a prescription by Part G, the *Benzodiazepines and Other Targeted Substances Regulations* or the *Narcotic Control Regulations*.

SOR/86-93, s. 2; SOR/88-323, s. 2(F); SOR/93-411, s. 2; SOR/2013-122, s. 7.

**C.01.029 (1)** Subject to subsections C.01.031.2(1) and (2), the inner and outer labels of a drug

**(a)** that contains

**(i)** salicylic acid, a salt thereof or salicylamide,

**(ii)** acetylsalicylic acid, or any of its salts or derivatives,

que la drogue ne doit pas être administrée à un enfant de moins de deux ans sauf sur l'avis d'un médecin;

**b)** de l'acide borique ou du borate de sodium comme ingrédient médicinal doivent porter une mise en garde spécifiant que la drogue ne doit pas être administrée à un enfant de moins de trois ans;

**c)** de l'hyoscine (scopolamine) ou un de ses sels, doivent porter une mise en garde spécifiant que la drogue ne doit pas être employée par des personnes atteintes de glaucome, ni si elle provoque une sensation douloureuse de tension dans l'œil ou embrouille la vue;

**d)** de la phénacétine, seule ou en combinaison avec d'autres drogues, doivent porter la mise en garde suivante :

« MISE EN GARDE : Peut être dangereux à fortes doses ou pendant un temps prolongé. Ne pas dépasser la dose recommandée sans consulter un médecin. »;

**e)** de l'acide acétylsalicylique destiné à l'usage interne doivent porter une mise en garde précisant que la drogue ne doit pas être administrée aux enfants ou aux adolescents atteint de la varicelle ou ayant les symptômes de la grippe ni utilisée par eux, sauf après consultation d'un médecin ou d'un pharmacien au sujet du syndrome de Reye; la mise en garde doit également signaler que le syndrome de Reye est une maladie rare et grave.

**(2)** Le paragraphe (1) ne s'applique pas :

**a)** à une drogue destinée exclusivement à l'usage parentéral;

**b)** à une drogue délivrée sur ordonnance;

**c)** à une drogue sur ordonnance ou à une drogue qui doit être vendue conformément à une ordonnance aux termes de la partie G, du *Règlement sur les benzodiazépines et autres substances ciblées* ou du *Règlement sur les stupéfiants*.

DORS/86-93, art. 2; DORS/88-323, art. 2(F); DORS/93-411, art. 2; DORS/2013-122, art. 7.

**C.01.029 (1)** Sous réserve des paragraphes C.01.031.2(1) et (2), une mise en garde spécifiant qu'il faut conserver la drogue hors de la portée des enfants doit figurer sur les étiquettes intérieure et extérieure d'une drogue :

**a)** qui contient l'un des ingrédients suivants :

**(i)** de l'acide salicylique, un de ses sels ou de la salicylamide,

**(iii)** acetaminophen, or

**(iv)** more than five per cent alkyl salicylates,

**(a.1)** that contains nicotine or any of its salts and is a *vaping product* as defined in section 2 of the *Tobacco and Vaping Products Act* but that is not referred to in paragraph 2(b) or (c) or section 3 of the *Regulations Excluding Certain Vaping Products Regulated Under the Food and Drugs Act from the Application of the Tobacco and Vaping Products Act*, or

**(b)** that is in a package that contains

**(i)** more than the equivalent of 250 mg of elemental iron, or

**(ii)** more than the equivalent of 120 mg of fluoride ion, unless the drug is intended solely for use in dentists' offices,

shall carry a cautionary statement to the effect that the drug should be kept out of the reach of children.

**(2)** Subject to subsections C.01.031.2(1) and (2), the inner label and outer label of a drug that is in a package shall carry a cautionary statement, to the effect that there is enough drug in the package to seriously harm a child, if the package contains

**(a)** more than 1.5 g of salicylic acid or the equivalent quantity of any of its salts or salicylamide,

**(b)** more than 2 g of acetylsalicylic acid or the equivalent quantity of any of its salts or derivatives,

**(c)** more than 3.2 g of acetaminophen,

**(d)** more than the equivalent of 250 mg of elemental iron,

**(e)** more than the equivalent of 120 mg of fluoride ion, unless the drug is intended solely for use in dentists' offices, or

**(f)** in the case where the drug is a *vaping product* as defined in section 2 of the *Tobacco and Vaping Products Act* but is not referred to in paragraph 2(b) or (c) or section 3 of the *Regulations Excluding Certain Vaping Products Regulated Under the Food and Drugs Act from the Application of the Tobacco and Vaping Products Act*, 0.1 mg/ml or more of nicotine or the equivalent quantity of any of its salts.

**(3)** The cautionary statements required under subsections (1) and (2) shall be preceded by a prominently

**(ii)** de l'acide acétylsalicylique, un de ses sels ou dérivés,

**(iii)** de l'acétaminophène,

**(iv)** plus de cinq pour cent de salicylate d'alkyle;

**a.1)** qui contient de la nicotine ou l'un de ses sels et est un *produit de vapotage* au sens de l'article 2 de la *Loi sur le tabac et les produits de vapotage*, mais n'est pas visée aux alinéas 2b) ou c) ou à l'article 3 du *Règlement soustrayant certains produits de vapotage régis par la Loi sur les aliments et drogues à l'application de la Loi sur le tabac et les produits de vapotage*;

**b)** qui est dans un emballage qui renferme :

**(i)** soit plus que l'équivalent de 250 mg de fer élément,

**(ii)** soit plus que l'équivalent de 120 mg d'ion fluorure, à moins que la drogue ne soit réservée à l'usage des cabinets de dentiste.

**(2)** Sous réserve des paragraphes C.01.031.2(1) et (2), doit figurer sur l'étiquette intérieure et l'étiquette extérieure une mise en garde spécifiant que la quantité de drogue contenue dans l'emballage est suffisante pour causer un préjudice sérieux à un enfant lorsque l'emballage renferme, selon le cas :

**a)** plus de 1,5 g d'acide salicylique ou d'une quantité équivalente de l'un de ses sels ou de la salicylamide;

**b)** plus de 2,0 g d'acide acétylsalicylique ou d'une quantité équivalente de l'un de ses sels ou dérivés;

**c)** plus de 3,2 g d'acétaminophène;

**d)** plus de l'équivalent de 250 mg de fer élément;

**e)** plus que l'équivalent de 120 mg d'ion fluorure, à moins que la drogue ne soit réservée à l'usage des cabinets de dentiste;

**f)** dans le cas où la drogue est un *produit de vapotage* au sens de l'article 2 de la *Loi sur le tabac et les produits de vapotage* mais n'est pas visée aux alinéas 2b) ou c) ou à l'article 3 du *Règlement soustrayant certains produits de vapotage régis par la Loi sur les aliments et drogues à l'application de la Loi sur le tabac et les produits de vapotage*, 0,1 mg/ml de nicotine, ou une quantité équivalente de l'un de ses sels, ou plus.

**(3)** Les mises en garde exigées aux paragraphes (1) et (2) doivent être précédées d'un symbole bien en évidence de

displayed symbol that is octagonal in shape, conspicuous in colour and on a background of a contrasting colour.

SOR/86-93, s. 2; SOR/87-484, s. 2; SOR/88-323, s. 3(F); SOR/90-587, s. 2; SOR/93-468, s. 1; SOR/2018-132, s. 1.

**C.01.030** [Repealed, SOR/2003-196, s. 104]

**C.01.031 (1)** Subject to section C.01.031.2,

**(a)** no person shall sell a drug described in subsection C.01.029(1) unless

**(i)** where the drug is recommended solely for children, it is packaged in a child resistant package,

**(ii)** where the drug is not recommended solely for children, other than a drug referred to in subparagraph (iii), at least one of the sizes of packages available for sale is packaged in a child resistant package, and

**(iii)** where the drug is a vaping product referred to in paragraph C.01.029(1)(a.1), it is packaged in a child resistant package; and

**(b)** where a drug described in subsection C.01.029(1) is packaged in a package that is not a child resistant package, the outer label shall carry a statement that the drug is available in a child resistant package.

**(2)** Subsection C.01.031.2(2) and paragraph C.01.031.2(3)(a) do not apply to a drug referred to in paragraph C.01.029(1)(a.1).

SOR/86-93, s. 2; SOR/87-16, s. 1; SOR/93-468, s. 2; SOR/2018-132, s. 2.

**C.01.031.1** [Repealed, SOR/87-484, s. 3]

**C.01.031.2 (1)** Sections C.01.029 to C.01.031 do not apply to a drug that is

**(a)** a prescription drug or a drug that is required to be sold under a prescription by Part G, the *Benzodiazepines and Other Targeted Substances Regulations* or the *Narcotic Control Regulations*;

**(b)** intended for parenteral use only;

**(c)** in effervescent or powder form;

**(d)** in suppository form;

**(e)** intended for topical use, unless it is a liquid preparation containing more than five per cent alkyl salicylates;

forme octogonale et de couleur frappante sur fond de couleur contrastante.

DORS/86-93, art. 2; DORS/87-484, art. 2; DORS/88-323, art. 3(F); DORS/90-587, art. 2; DORS/93-468, art. 1; DORS/2018-132, art. 1.

**C.01.030** [Abrogé, DORS/2003-196, art. 104]

**C.01.031 (1)** Sous réserve de l'article C.01.031.2,

**a)** est interdite la vente d'une drogue mentionnée au paragraphe C.01.029(1) à moins

**(i)** qu'elle ne soit emballée dans un emballage protège-enfants lorsque la drogue est recommandée exclusivement pour les enfants,

**(ii)** qu'elle ne soit offerte dans au moins un format d'emballage protège-enfants lorsque la drogue n'est pas recommandée exclusivement pour les enfants, sauf s'il s'agit d'une drogue qui est visée au sous-alinéa (iii),

**(iii)** qu'elle ne soit emballée dans un emballage protège-enfants lorsque la drogue est un produit de vapotage visé à l'alinéa C.01.029(1)a.1);

**b)** lorsqu'une drogue mentionnée au paragraphe C.01.029(1) est emballée dans un emballage qui n'est pas un emballage protège-enfants, l'étiquette extérieure doit indiquer que la drogue est disponible dans un emballage protège-enfants.

**(2)** Le paragraphe C.01.031.2(2) et l'alinéa C.01.031.2(3)a) ne s'appliquent pas à une drogue visée à l'alinéa C.01.029(1)a.1).

DORS/86-93, art. 2; DORS/87-16, art. 1; DORS/93-468, art. 2; DORS/2018-132, art. 2.

**C.01.031.1** [Abrogé, DORS/87-484, art. 3]

**C.01.031.2 (1)** Les articles C.01.029 à C.01.031 ne s'appliquent pas à :

**a)** une drogue sur ordonnance ou une drogue qui doit être vendue conformément à une ordonnance aux termes de la partie G, du *Règlement sur les benzodiazépines et autres substances ciblées* ou du *Règlement sur les stupéfiants*;

**b)** une drogue destinée exclusivement à l'usage parentéral;

**c)** une drogue sous forme de préparation effervescente ou de poudre;

**d)** une drogue sous forme de suppositoire;

**(f)** packaged in a non-reclosable package containing not more than two adult standard dosage units per package; or

**(g)** in toothpaste form.

**(2)** Sections C.01.029 to C.01.031 do not apply to a drug that is repackaged by a pharmacist or practitioner at the time of sale.

**(3)** Section C.01.031 does not apply to a drug that is

**(a)** sold only in containers that have roll-on or spray applicators or permanently installed wick applicators;

**(b)** sold for exclusive use in animals other than household pets; or

**(c)** intended solely for use in dentists' offices, or packaged for hospital use only.

SOR/86-93, s. 2; SOR/87-484, s. 4; SOR/88-323, s. 5(F); SOR/93-468, s. 3; SOR/2013-122, s. 8.

**C.01.032** No person shall sell a corticosteroid drug for ophthalmic use unless

**(a)** the outer label or the package insert carries, as part of the directions for use, the following statements:

*"Contraindications*

Viral diseases of the cornea and conjunctiva;

Tuberculosis of the eye;

Fungal diseases of the eye;

Acute purulent untreated infections of the eye, which, like other diseases caused by micro-organisms, may be masked or enhanced by the presence of the steroid.

*Side Effects*

Extended ophthalmic use of corticosteroid drugs may cause increased intraocular pressure in certain individuals and in those diseases causing thinning of the cornea, perforation has been known to occur.";

and

**(b)** the inner label carries the statements required by paragraph (a) or instructions to see the outer label or

**e)** une drogue destinée à l'usage topique, sauf s'il s'agit d'une préparation liquide contenant plus de cinq pour cent de salicylate d'alkyle;

**f)** une drogue emballée dans un emballage non refermable contenant au plus deux doses normales pour un adulte;

**g)** une drogue sous forme de pâte dentifrice.

**(2)** Les articles C.01.029 à C.01.031 ne s'appliquent pas à une drogue qui est remballée par un pharmacien ou un praticien au moment de la vente.

**(3)** L'article C.01.031 ne s'applique pas à :

**a)** une drogue vendue seulement dans un contenant muni d'un applicateur à bille ou d'un vaporisateur ou d'un applicateur à mèche fixé en permanence;

**b)** une drogue vendue exclusivement à l'intention des animaux autres que les animaux familiers;

**c)** une drogue réservée à l'usage des cabinets de dentiste ou présentée dans un emballage destiné uniquement aux hôpitaux.

DORS/86-93, art. 2; DORS/87-484, art. 4; DORS/88-323, art. 5(F); DORS/93-468, art. 3; DORS/2013-122, art. 8.

**C.01.032** Est interdite la vente de toute drogue corticostéroïde pour usage ophtalmique, à moins

**a)** que l'étiquette extérieure ou la notice d'accompagnement ne porte, comme partie du mode d'emploi, les déclarations ci-dessous :

« *Contre-indications*

Affections virales de la cornée et des conjonctives

Tuberculose des yeux

Affections fongiques des yeux

Infections purulentes aiguës et non traitées des yeux, qui, à l'instar des autres affections causées par des micro-organismes, peuvent être masquées ou stimulées par la présence du stéroïde.

*Effets secondaires*

L'usage ophtalmique prolongé des drogues corticostéroïdes peut causer un accroissement de la pression intra-oculaire chez certains sujets et, dans les affections causant l'amincissement de la cornée, on a vu des perforations se produire; »

et

**b)** que l'étiquette intérieure ne porte les déclarations requises par l'alinéa a) ou les instructions de lire

package insert for information about contraindications and side effects.

SOR/2018-69, s. 18(F).

**C.01.033** Section C.01.032 does not apply to a corticosteroid drug that is sold by a pharmacist under a prescription.

SOR/2013-122, s. 9.

**C.01.034** No person shall disseminate to a practitioner promotional literature about corticosteroid drugs for ophthalmic use unless the statements required by paragraph C.01.032(a) are included in that literature.

**C.01.035** Sections C.01.032 and C.01.034 do not apply to a drug sold solely for veterinary use.

## Miscellaneous

**C.01.036 (1)** No manufacturer or importer shall sell

**(a)** a drug that contains phenacetin in combination with any salt or derivative of salicylic acid;

**(b)** a drug for human use that contains

**(i)** oxyphenisatin,

**(ii)** oxyphenisatin acetate, or

**(iii)** phenisatin; or

**(c)** a drug for human use that contains mercury or a salt or derivative thereof, unless the drug is

**(i)** a drug described in Schedule C or D to the Act, or

**(ii)** one of the following drugs, namely,

**(A)** an ophthalmic drug or other drug to be used in the area of the eye,

**(B)** a drug for nasal administration,

**(C)** a drug for otic administration, or

**(D)** a drug for parenteral administration that is packaged in a multi-dose container,

in which the mercury or the salt or derivative thereof is present as a preservative and the manufacturer or importer has submitted evidence to the Minister demonstrating that the only satisfactory way to

l'étiquette extérieure ou la notice d'accompagnement pour se renseigner sur les contre-indications et les effets secondaires.

DORS/2018-69, art. 18(F).

**C.01.033** L'article C.01.032 ne s'applique pas à une drogue corticostéroïde vendue par un pharmacien conformément à une ordonnance.

DORS/2013-122, art. 9.

**C.01.034** Est interdit l'envoi, à un praticien de, matières publicitaires relatives aux drogues corticostéroïdes pour usage ophtalmique à moins que les déclarations requises par l'alinéa C.01.032a) ne soient incluses dans ces matières.

**C.01.035** Les articles C.01.032 et C.01.034 ne s'appliquent pas à une drogue vendue pour l'usage vétérinaire seulement.

## Divers

**C.01.036 (1)** Il est interdit à un fabricant ou importateur de vendre

**a)** une drogue qui contient de la phénacétine associée à un sel ou à un dérivé de l'acide salicylique;

**b)** une drogue pour usage humain qui contient de l'oxyphénisatine, de l'acétate d'oxyphénisatine ou de la phénisatine; ou

**c)** une drogue pour usage humain qui contient du mercure ou l'un de ses sels ou dérivés, sauf s'il s'agit de l'une des drogues suivantes dans laquelle le mercure ou l'un de ses sels ou dérivés est utilisé comme agent de conservation et pour laquelle le fabricant ou l'importateur a soumis au ministre des preuves démontrant que l'utilisation de cet agent de conservation est le seul moyen satisfaisant d'assurer la stérilité ou la stabilité de la drogue :

**(i)** une drogue mentionnée aux annexes C ou D de la Loi,

**(ii)** l'une des drogues suivantes :

**(A)** une drogue ophtalmique ou une drogue pour usage dans la région oculaire,

**(B)** une drogue pour administration par voie nasale,

**(C)** une drogue pour administration par voie otique,

maintain the sterility or stability of the drug is to use that preservative.

**(2)** For the purpose of clause (1)(c)(ii)(A), ***area of the eye*** means the area bounded by the supraorbital and infraorbital ridges and includes the eyebrows, the skin underlying the eyebrows, the eyelids, the eyelashes, the conjunctival sac of the eye, the eyeball and the soft tissue that lies below the eye and within the infraorbital ridge.

SOR/78-423, s. 2; SOR/86-93, s. 3; SOR/89-229, s. 3; SOR/2018-69, s. 27.

**C.01.036.1** No person shall sell, or advertise for sale, nitrous oxide to the general public.

SOR/78-875, s. 1.

**C.01.037 (1)** No person shall sell to the general public a drug that is recommended solely for children if the package in which the drug is sold contains

**(a)** more than 1.92 g of salicylamide or salicylic acid or the equivalent quantity of a salt of salicylic acid;

**(b)** more than 1.92 g of acetylsalicylic acid or the equivalent quantity of a salt or derivative thereof;

**(c)** more than 3.2 g of acetaminophen in 160 mg dosage units; or

**(d)** more than 1.92 g of acetaminophen in 80 mg dosage units.

**(2)** Subsection (1) does not apply to a drug dispensed pursuant to a prescription.

SOR/86-93, s. 4; SOR/87-484, s. 5; SOR/88-323, s. 6; SOR/90-587, s. 3.

**C.01.038** A drug for human use is adulterated if it contains

**(a)** Strychnine or any of its salts;

**(b)** extracts or tinctures of

**(i)** *Strychnos nux vomica*,

**(ii)** *Strychnos Ignatii*, or

**(iii)** a *Strychnos* species containing strychnine, other than those species mentioned in subparagraphs (i) and (ii);

**(c)** Methapyrilene or any of its salts;

**(d)** Echimidine or any of its salts; or

**(e)** any of the following plant species or extracts or tinctures thereof:

**(D)** une drogue à usage parentéral emballée dans un contenant à doses multiples.

**(2)** Pour l'application de la division (1)c)(ii)(A), ***région oculaire*** désigne la région délimitée par les crêtes supraorbitale et infraorbitale et comprend les sourcils, la peau située sous les sourcils, les paupières, les cils, le sac conjonctival de l'œil, le globe oculaire et le tissu mou situé sous l'œil et à l'intérieur de la crête infraorbitale.

DORS/78-423, art. 2; DORS/86-93, art. 3; DORS/89-229, art. 3; DORS/2018-69, art. 27.

**C.01.036.1** Est interdite la vente au grand public de l'oxyde nitreux ainsi que la publicité le concernant.

DORS/78-875, art. 1.

**C.01.037 (1)** Il est interdit de vendre au grand public une drogue recommandée exclusivement pour les enfants si l'emballage qui la contient renferme :

**a)** soit plus de 1,92 g de salicylamide ou d'acide salicylique ou de la quantité équivalente de l'un des sels d'acide salicylique;

**b)** soit plus de 1,92 g d'acide acétylsalicylique ou de la quantité équivalente de l'un de ses sels ou dérivés;

**c)** soit plus de 3,2 g en unités posologiques de 160 mg d'acétaminophène;

**d)** soit plus de 1,92 g en unités posologiques de 80 mg d'acétaminophène.

**(2)** Le paragraphe (1) ne s'applique pas à une drogue délivrée sur ordonnance.

DORS/86-93, art. 4; DORS/87-484, art. 5; DORS/88-323, art. 6; DORS/90-587, art. 3.

**C.01.038** Une drogue destinée à l'usage des humains est adultérée si elle contient

**a)** de la strychnine ou l'un de ses sels;

**b)** des extraits ou des teintures de

**(i)** *Strychnos nux vomica*,

**(ii)** *Strychnos Ignatti*, ou

**(iii)** une espèce de *Strychnos* qui contient de la strychnine, autre que les espèces mentionnées aux sous-alinéas (i) et (ii),

**c)** du méthapyrilène ou l'un de ses sels;

**d)** de l'échimidine ou l'un de ses sels; ou

**e)** des plantes des espèces suivantes ou des extraits ou des teintures de :

**(i)** *Symphytum asperum*,

**(ii)** *Symphytum x uplandicum*, or

**(iii)** any other plant species containing echimidine.

SOR/79-512, s. 1; SOR/88-173, s. 1.

**C.01.039** *In vitro* diagnostic products that are or contain drugs other than drugs listed in Schedule E to the Act, and drugs listed in Schedule D to the Act that are labelled for veterinary use only, are exempt from the application of this Part.

SOR/97-12, s. 4.

**C.01.040** No manufacturer or importer shall sell a drug for human use that contains as an ingredient

**(a)** chloroform; or

**(b)** arsenic or any of its salts or derivatives, other than arsenic trioxide.

SOR/89-229, s. 4; SOR/2013-113, s. 1.

**C.01.040.1** No manufacturer shall use methyl salicylate as a medicinal ingredient in a drug for internal use in humans.

SOR/78-422, s. 2; SOR/78-801, s. 1; SOR/81-334, s. 2(F); SOR/89-176, s. 1; SOR/92-662, s. 1.

## Colouring Agents

**C.01.040.2 (1)** No manufacturer shall use a colouring agent in a drug other than a colouring agent listed in subsections (3) and (4).

**(2)** No person shall import for sale a drug that contains a colouring agent other than a colouring agent listed in subsections (3) and (4).

**(2.1)** The following definitions apply in subsections (3) to (4.1):

***C.I. (indication of the number)*** means the designation used to identify a colouring agent in the *Colour Index* published by The Society of Dyers and Colourists, as amended from time to time; (*C.I. (indication du numéro)*)

***D & C (indication of the colour and the number)*** means the designation used to identify, in accordance with the *Code of Federal Regulations* of the United States, a colouring agent that can be used in the United States in drugs and cosmetics; (*D&C (indication de la couleur et du numéro)*)

**(i)** *Symphytum asperum*,

**(ii)** *Symphytum x uplandicum*, ou

**(iii)** toute autre espèce de plante qui contient de l'échimidine.

DORS/79-512, art. 1; DORS/88-173, art. 1.

**C.01.039** Sont soustraits de l'application de la présente partie, les produits de diagnostic *in vitro* qui sont des drogues ou qui contiennent des drogues autres que celles visées à l'annexe E de la Loi ainsi que toute drogue visée à l'annexe D de la Loi dont l'étiquette porte qu'elle ne doit servir qu'en médecine vétérinaire.

DORS/97-12, art. 4.

**C.01.040** Il est interdit à tout fabricant ou importateur de vendre une drogue pour usage humain qui contient l'un des ingrédients suivants :

**a)** du chloroforme;

**b)** de l'arsenic ou l'un de ses sels ou dérivés, sauf le trioxyde d'arsenic.

DORS/89-229, art. 4; DORS/2013-113, art. 1.

**C.01.040.1** Il est interdit à tout fabricant d'utiliser du salicylate de méthyle comme ingrédient médicinal dans une drogue pour usage interne destinée aux humains.

DORS/78-422, art. 2; DORS/78-801, art. 1; DORS/81-334, art. 2(F); DORS/89-176, art. 1; DORS/92-662, art. 1.

## Colorants

**C.01.040.2 (1)** Il est interdit à un fabricant d'employer dans une drogue un colorant qui n'est pas prévu aux paragraphes (3) et (4).

**(2)** Il est interdit à quiconque d'importer à des fins de vente une drogue qui contient un colorant non prévu aux paragraphes (3) et (4).

**(2.1)** Les définitions qui suivent s'appliquent aux paragraphes (3) à (4.1) :

***C.I. (indication du numéro)*** Désignation servant à identifier un colorant selon la publication intitulée *Colour Index*, publiée par The Society of Dyers and Colourists, avec ses modifications successives. (*C.I. (indication of the number)*)

***D&C (indication de la couleur et du numéro)*** Désignation servant à identifier un colorant pouvant être utilisé aux États-Unis dans les drogues et les cosmétiques, selon le *Code of Federal Regulations* des États-Unis. (*D & C (indication of the colour and the number)*)

***FD & C (indication of the colour and the number)*** means the designation used to identify, in accordance with the *Code of Federal Regulations* of the United States, a colouring agent that can be used in the United States in food, drugs and cosmetics. (*FD&C (indication de la couleur et du numéro)*)

**(3)** The following colouring agents are permitted in drugs for internal and external use, namely,

**(a)** ACID FUCHSIN D (D & C Red No. 33; C.I. No. 17200),

ALIZARIN CYANINE GREEN F (D & C Green No. 5; C.I. No. 61570),

ALLURA RED AC (FD & C Red No. 40; C.I. No. 16035),

AMARANTH (Delisted FD & C Red No. 2; C.I. No. 16185),

ANTHOCYANIN DERIVED FROM JUICE EXPRESSED FROM FRESH EDIBLE FRUITS OR VEGETABLES,

ß-APO-8[1]-CAROTENAL (C.I. No. 40820),

BRILLIANT BLUE FCF SODIUM SALT (FD & C Blue No. 1; C.I. No. 42090),

BRILLIANT BLUE FCF AMMONIUM SALT (D & C Blue No. 4; C.I. No. 42090),

CANTHAXANTHIN (C.I. No. 40850),

CARAMEL,

CARBON BLACK (C.I. No. 77266),

CARMINE (C.I. No. 75470),

CARMOISINE (Delisted Ext. D & C Red No. 10; C.I. No. 14720),

ß-CAROTENE (C.I. No. 40800),

CHLOROPHYLL (C.I. No. 75810),

EOSIN YS ACID FORM (D & C Red No. 21; C.I. No. 45380:2),

EOSIN YS SODIUM SALT (D & C Red No. 22; C.I. No. 45380),

ERYTHROSINE (FD & C Red No. 3; C.I. No. 45430),

FAST GREEN FCF (FD & C Green No. 3; C.I. No. 42053),

FLAMING RED (D & C Red No. 36; C.I. No. 12085),

HELINDONE PINK CN (D & C Red No. 30; C.I. No. 73360),

INDIGO (D & C Blue No. 6; C.I. No. 73000),

INDIGOTINE (FD & C Blue No. 2; C.I. No. 73015),

IRON OXIDES (C.I. Nos. 77489, 77491, 77492, 77499),

***FD&C (indication de la couleur et du numéro)*** Désignation servant à identifier un colorant pouvant être utilisé aux États-Unis dans les aliments, les drogues et les cosmétiques, selon le *Code of Federal Regulations* des États-Unis. (*FD & C (indication of the colour and the number)*)

**(3)** Les colorants qui peuvent être employés dans les drogues à usage interne ou externe sont les suivants :

**a)** AMARANTE (FD&C, Rouge nº 2, radié; C.I. nº 16185),

ANTHOCYANINE PROVENANT DE JUS EXPRIMÉ DE FRUITS OU DE LÉGUMES COMESTIBLES FRAIS,

ß-APO-8′-CAROTÉNAL (C.I. nº 40820),

BLEU BRILLANT FCF, SEL D'AMMONIUM (D&C Bleu nº 4, C.I. nº 42090),

BLEU BRILLANT FCF, SEL SODIQUE (FD&C Bleu nº 1, C.I. nº 42090),

CANTHAXANTHINE (C.I. nº 40850),

CARAMEL,

CARMINE (C.I. nº 75470),

CARMOISINE (Ext. D&C Rouge nº 10, radié : C.I. nº 14720),

ß-CAROTÈNE (C.I. nº 40800),

CHLOROPHYLLE (C.I. nº 75810),

DIOXYDE DE TITANE (C.I. nº 77891),

ÉOSINE YS, FORME ACIDE (D&C Rouge nº 21; C.I. nº 45380:2),

ÉOSINE YS, SEL SODIQUE (D&C Rouge nº 22; C.I. nº 45380),

ÉRYTHROSINE (FD&C Rouge nº 3; C.I. nº 45430),

FUSCHINE ACIDE D (D&C Rouge nº 33 C.I. nº 17200),

INDIGO (D&C Bleu nº 6; C.I. nº 73000),

INDIGOTINE (FD&C Bleu nº 2; C.I. nº 73015),

JAUNE DE QUINOLÉINE WS (D&C Jaune nº 10; C.I. nº 47005),

JAUNE SOLEIL FCF (FD&C Jaune nº 6; C.I. nº 15985),

LITHOL RUBINE B, SEL DE CALCIUM (D&C Rouge nº 7, C.I. nº 15850:1),

LITHOL RUBINE B, SEL SODIQUE (D&C Rouge nº 6; C.I. nº 15850),

NOIR DE FUMÉE (C.I. nº 77266),

LITHOL RUBIN B SODIUM SALT (D & C Red No. 6; C.I. No. 15850),

LITHOL RUBIN B CALCIUM SALT (D & C Red No. 7; C.I. No. 15850:1),

PHLOXINE B ACID FORM (D & C Red No. 27; C.I. No. 45410:1),

PHLOXINE B SODIUM SALT (D & C Red No. 28; C.I. No. 45410),

PONCEAU 4R (C.I. No. 16255),

PONCEAU SX (FD & C Red No. 4; C.I. No. 14700),

QUINOLINE YELLOW WS (D & C Yellow No. 10; C.I. No. 47005),

RIBOFLAVIN,

SUNSET YELLOW FCF (FD & C Yellow No. 6; C.I. No. 15985),

TARTRAZINE (FD & C Yellow No. 5; C.I. No. 19140),

TITANIUM DIOXIDE (C.I. No. 77891);

**(b)** preparations made by extending any of the colouring agents listed in paragraph (a) on a substratum of

**(i)** alumina,

**(ii)** blanc fixe,

**(iii)** gloss white,

**(iv)** clay,

**(v)** zinc oxide,

**(vi)** talc,

**(vii)** rosin,

**(viii)** aluminum benzoate,

**(ix)** calcium carbonate, or

**(x)** any combination of the substances listed in subparagraphs (i) to (ix); and

**(c)** preparations made by extending any sodium, potassium, aluminum, barium, calcium, strontium or zirconium salt of any of the colouring agents listed in paragraph (a) on a substratum of

**(i)** alumina,

**(ii)** blanc fixe,

**(iii)** gloss white,

OXYDES DE FER (C.I. n$^{os}$ 77489, 77491, 77492 et 77499),

PHLOXINE B, FORME ACIDE (D&C Rouge n$^{o}$ 27; C.I. n$^{o}$ 45410:1),

PHLOXINE B, SEL SODIQUE (D&C Rouge n$^{o}$ 28; C.I. n$^{o}$ 45410),

PONCEAU SX (FD&C Rouge n$^{o}$ 4; C.I. n$^{o}$ 14700),

PONCEAU 4R (C.I. n$^{o}$ 16255),

RIBOFLAVINE,

ROSE HÉLINDONE CN (D&C Rouge n$^{o}$ 30; C.I. n$^{o}$ 73360),

ROUGE ALLURA AC (FD&C Rouge n$^{o}$ 40; C.I., n$^{o}$ 16035),

ROUGE FEU (D&C Rouge n$^{o}$ 36; C.I. n$^{o}$ 12085),

TARTRAZINE (FD&C Jaune n$^{o}$ 5; C.I. n$^{o}$ 19140),

VERT D'ALIZARINE CYANINE F (D&C Vert n$^{o}$ 5; C.I. n$^{o}$ 61570),

VERT SOLIDE FCF (FD&C Vert n$^{o}$ 3; C.I. n$^{o}$ 42053);

**b)** les préparations effectuées par l'addition d'un des colorants énumérés à l'alinéa a) à un substrat

**(i)** d'alumine,

**(ii)** de blanc fixe,

**(iii)** de blanc lustré,

**(iv)** d'argile,

**(v)** d'oxyde de zinc,

**(vi)** de talc,

**(vii)** de colophane,

**(viii)** de benzoate d'aluminium,

**(ix)** de carbonate de calcium, ou

**(x)** d'une combinaison des substances visées aux sous-alinéas (i) à (ix); et

**c)** les préparations effectuées par l'addition d'un sel de sodium, de potassium, d'aluminium, de baryum, de calcium, de strontium ou de zirconium d'un des colorants énumérés à l'alinéa a) à un substrat

**(i)** d'alumine,

**(ii)** de blanc fixe,

**(iv)** clay,

**(v)** zinc oxide,

**(vi)** talc,

**(vii)** rosin,

**(viii)** aluminum benzoate,

**(ix)** calcium carbonate, or

**(x)** any combination of the substances listed in subparagraphs (i) to (ix).

**(4)** The following colouring agents are permitted in drugs for external use, namely,

**(a)** ACID VIOLET 43 (Ext. D & C Violet No. 2; C.I. No. 60730),

ALIZUROL PURPLE SS (D&C Violet No. 2; C.I. No. 60725),

ANNATTO (C.I. No. 75120),

BISMUTH OXYCHLORIDE (C.I. No. 77163),

CHROMIUM HYDROXIDE GREEN (PIGMENT GREEN 18 (C.I. No. 77289)),

DEEP MAROON (D&C Red No. 34; C.I. No. 15880:1),

DIBROMOFLUORESCEIN (SOLVENT RED 72 (C.I. No. 45370:1); ORANGE No. 5 (D & C Orange No. 5)),

FERRIC FERROCYANIDE (C.I. No. 77510),

GUANINE (C.I. No. 75170),

MANGANESE VIOLET (C.I. No. 77742),

MICA (C.I. No. 77019),

ORANGE II (D&C Orange No. 4; C.I. No. 15510),

PYRANINE CONCENTRATED (D&C Green No. 8; C.I. No. 59040),

QUINIZARIN GREEN SS (D&C Green No. 6; C.I. No. 61565),

TONEY RED (D&C Red No. 17; C.I. No. 26100),

URANINE ACID FORM (D&C Yellow No. 7; C.I. No. 45350:1),

URANINE SODIUM SALT (D&C Yellow No. 8; C.I. No. 45350);

ZINC OXIDE (C.I. No. 77947);

**(iii)** de blanc lustré,

**(iv)** d'argile,

**(v)** d'oxyde de zinc,

**(vi)** de talc,

**(vii)** de colophane,

**(viii)** de benzoate d'aluminium,

**(ix)** de carbonate de calcium, ou

**(x)** d'une combinaison des substances visées aux sous-alinéas (i) à (ix).

**(4)** Les colorants suivants peuvent être employés uniquement dans les drogues à usage externe :

**a)** DIBROMOFLUORESCÉINE (ROUGE SOLVANT 72 (C.I. nº 45370:1) ORANGE nº 5 (D&C Orange nº 5)),

FERROCYANURE FERRIQUE (C.I. nº 77510),

GUANINE (C.I. nº 75170),

MARRON FONCÉ (D&C Rouge nº 34; C.I. nº 15880:1),

MICA (C.I. nº 77019),

ORANGE II (D&C Orange nº 4; C.I. nº 15510),

OXYCHLORURE DE BISMUTH (C.I. nº 77163),

OXYDE DE ZINC (C.I. nº 77947),

POURPRE D'ALIZUROL SS (D&C Violet nº 2; C.I. nº 60725),

PYRANINE CONCENTRÉE (D&C Vert nº 8; C.I. nº 59040),

ROCOU (C.I. nº 75120),

ROUGE TONEY (D&C Rouge nº 17; C.I. nº 26100),

URANINE, FORME ACIDE (D&C Jaune nº 7; C.I. nº 45350:1),

URANINE, SEL SODIQUE (D&C Jaune nº 8; C.I. nº 45350),

VERT DE QUINIZARINE SS (D&C Vert nº 6; C.I. nº 61565),

VERT D'HYDROXYDE DE CHROME (PIGMENT VERT 18 (C.I. nº 77289)),

VIOLET ACIDE 43 (Ext. D&C Violet nº 2; C.I. nº 60730),

VIOLET DE MANGANÈSE (C.I. nº 77742);

**(b)** preparations made by extending any of the colouring agents listed in paragraph (a) on a substratum of

**(i)** alumina,

**(ii)** blanc fixe,

**(iii)** gloss white,

**(iv)** clay,

**(v)** zinc oxide,

**(vi)** talc,

**(vii)** rosin,

**(viii)** aluminum benzoate,

**(ix)** calcium carbonate, or

**(x)** any combination of the substances listed in subparagraphs (i) to (ix); and

**(c)** preparations made by extending any sodium, potassium, aluminum, barium, calcium, strontium or zirconium salt of any of the colouring agents listed in paragraph (a) on a substratum of

**(i)** alumina,

**(ii)** blanc fixe,

**(iii)** gloss white,

**(iv)** clay,

**(v)** zinc oxide,

**(vi)** talc,

**(vii)** rosin,

**(viii)** aluminum benzoate,

**(ix)** calcium carbonate, or

**(x)** any combination of the substances listed in subparagraphs (i) to (ix).

**(4.1)** Despite subsection (1), no manufacturer shall use a preparation made by extending any of the following substances on a substratum of mica in a drug unless the requirements in subsection (4.3) are met:

**(a)** titanium dioxide (C.I. No. 77891);

**(b)** iron oxides (C.I. Nos. 77489, 77491, 77492, 77499); or

**b)** les préparations effectuées par l'addition d'un des colorants énumérés à l'alinéa a) à un substrat

**(i)** d'alumine,

**(ii)** de blanc fixe,

**(iii)** de blanc lustré,

**(iv)** d'argile,

**(v)** d'oxyde de zinc,

**(vi)** de talc,

**(vii)** de colophane,

**(viii)** de benzoate d'aluminium,

**(ix)** de carbonate de calcium, ou

**(x)** d'une combinaison des substances visées aux sous-alinéas (i) à (ix); et

**c)** les préparations effectuées par l'addition d'un sel de sodium, de potassium, d'aluminium, de baryum, de calcium, de strontium ou de zirconium d'un des colorants énumérés à l'alinéa a) à un substrat

**(i)** d'alumine,

**(ii)** de blanc fixe,

**(iii)** de blanc lustré,

**(iv)** d'argile,

**(v)** d'oxyde de zinc,

**(vi)** de talc,

**(vii)** de colophane,

**(viii)** de benzoate d'aluminium,

**(ix)** de carbonate de calcium, ou

**(x)** d'une combinaison des substances visées aux sous-alinéas (i) à (ix).

**(4.1)** Malgré le paragraphe (1), aucun fabricant ne peut employer dans une drogue une préparation effectuée par l'addition d'une des substances suivantes à un substrat de mica, sauf si les conditions prévues au paragraphe (4.3) sont réunies :

**a)** dioxyde de titane (C.I. nº 77891);

**(c)** a mixed oxide made from substances referred to in both paragraphs (a) and (b).

**(4.2)** Despite subsection (2), no person shall import for sale a drug that contains a preparation made by extending any of the substances referred to in paragraphs (4.1)(a) to (c) on a substratum of mica unless the requirements in subsection (4.3) are met.

**(4.3)** The requirements referred to in subsections (4.1) and (4.2) are the following:

**(a)** the drug shall be in a solid dosage form intended for oral administration or in a liquid dosage form intended for oral administration or it shall be a drug intended for external use;

**(b)** in the case where the drug is in a solid dosage form intended for oral administration, the drug shall not contain more than 3% of the preparation;

**(c)** in the case where the preparation was made using iron oxides, the preparation shall not contain more than 55% iron oxides.

**(5)** Subsections (1), (2), (4.1) and (4.2) do not apply in respect of a drug that is represented as being solely for use in the disinfection, for disease prevention, of

**(a)** medical devices;

**(b)** health care facilities; or

**(c)** premises in which food is manufactured, prepared or kept.

SOR/84-949, s. 1; SOR/86-590, s. 1(E); SOR/94-460, s. 1; SOR/95-431, s. 1; SOR/2002-369, s. 1; SOR/2005-95, s. 1; SOR/2018-248, s. 1.

## Prescription Drugs

**C.01.040.3** In deciding whether to amend the Prescription Drug List in respect of a drug, including by adding the drug to it or removing the drug from it, the Minister shall consider whether any of the following criteria apply with respect to the drug:

**(a)** supervision by a practitioner is necessary

**(i)** for the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms, in respect of which the drug is recommended for use, or

**b)** oxydes de fer (C.I. n$^{os}$ 77489, 77491, 77492, 77499);

**c)** un oxyde mixte effectué avec des substances mentionnées à la fois aux alinéas a) et b).

**(4.2)** Malgré le paragraphe (2), il est interdit d'importer en vue de la vente d'une drogue contenant une préparation effectuée par l'addition à un substrat de mica d'une des substances mentionnées aux alinéas (4.1) a) à c), sauf si les conditions prévues au paragraphe (4.3) sont réunies.

**(4.3)** Les conditions visées aux paragraphes (4.1) et (4.2) sont les suivantes :

**a)** la drogue est à usage externe ou se présente sous forme posologique solide destinée à l'administration orale ou sous forme posologique liquide destinée à l'administration orale;

**b)** s'agissant d'une drogue se présentant sous forme posologique solide destinée à l'administration orale, elle contient au plus 3 % de la préparation;

**c)** s'agissant d'une préparation effectuée avec des oxydes de fer, elle contient au plus 55 % d'oxydes de fer.

**(5)** Les paragraphes (1), (2), (4.1) et (4.2) ne s'appliquent pas à la drogue qui est présentée comme étant destinée exclusivement, aux fins de prévention des maladies, à la désinfection :

**a)** des instruments médicaux;

**b)** des établissements de soins de santé;

**c)** des locaux où sont fabriqués, préparés ou gardés des aliments.

DORS/84-949, art. 1; DORS/86-590, art. 1(A); DORS/94-460, art. 1; DORS/95-431, art. 1; DORS/2002-369, art. 1; DORS/2005-95, art. 1; DORS/2018-248, art. 1.

## Drogues sur ordonnance

**C.01.040.3** Pour décider s'il convient de modifier la Liste des drogues sur ordonnance en ce qui concerne une drogue, notamment par l'ajout ou le retrait de celle-ci, le ministre vérifie si l'un des critères ci-après s'applique à la drogue :

**a)** la surveillance d'un praticien est nécessaire :

**(i)** pour diagnostiquer, traiter, atténuer ou prévenir une maladie, un désordre ou un état physique anormal, ou leurs symptômes, à l'égard desquels l'utilisation de la drogue est recommandée,

**(ii)** to monitor a disease, disorder or abnormal physical state, or its symptoms, in respect of which the drug is recommended for use, or to monitor the use of the drug;

**(b)** the level of uncertainty respecting the drug, its use or its effects justifies supervision by a practitioner; or

**(c)** use of the drug can cause harm to human or animal health or a risk to public health and the harm or the risk can be mitigated by a practitioner's supervision.

SOR/2013-122, s. 10; SOR/2017-18, s. 21(F).

**C.01.040.4** The Minister shall consult the general public on any proposal by the Minister to remove a drug from the Prescription Drug List.

SOR/2013-122, s. 10.

**C.01.040.5** Sections C.01.040.3 and C.01.040.4 apply, with any modifications that the circumstances require, in respect of classes of drugs.

SOR/2013-122, s. 10.

**C.01.041 (1)** No person shall sell a prescription drug unless

**(a)** they are entitled under the laws of a province to dispense a prescription drug and they sell it in that province under a verbal or written prescription that they received; or

**(b)** they sell it under section C.01.043.

**(2)** In the case of a verbal prescription, the person referred to in paragraph (1)(a) or a pharmacy technician shall create a written record of the prescription that includes the following information:

**(a)** the date on which the prescription was received and, if applicable, the number of the prescription;

**(b)** the name and address of the person to whom the prescription was issued;

**(c)** the proper name, common name or brand name of the drug and its quantity;

**(d)** the person's name and the name of the practitioner who issued the prescription; and

**(e)** the directions for use provided with the prescription, whether or not the practitioner authorized it to be refilled and, if refills are authorized, the number of authorized refills.

**(ii)** pour faire le suivi d'une maladie, d'un désordre ou d'un état physique anormal, ou de leurs symptômes, à l'égard desquels l'utilisation de la drogue est recommandée, ou faire le suivi de l'utilisation de la drogue;

**b)** le degré d'incertitude que suscite la drogue, son utilisation ou ses effets justifie une telle surveillance;

**c)** l'utilisation de la drogue peut causer un préjudice pour la santé humaine ou animale, ou poser un risque pour la santé publique, que la surveillance d'un praticien peut atténuer.

DORS/2013-122, art. 10; DORS/2017-18, art. 21(F).

**C.01.040.4** Dans le cas où il se propose de retirer une drogue de la Liste des drogues sur ordonnance, le ministre consulte le grand public à ce sujet.

DORS/2013-122, art. 10.

**C.01.040.5** Les articles C.01.040.3 et C.01.040.4 s'appliquent, avec les adaptations nécessaires, à l'égard des catégories de drogues.

DORS/2013-122, art. 10.

**C.01.041 (1)** Il est interdit à quiconque de vendre une drogue sur ordonnance sauf dans les cas suivants :

**a)** la personne est autorisée en vertu des lois d'une province à délivrer une telle drogue, et elle la vend dans cette province conformément à une ordonnance écrite ou verbale qu'elle a reçue;

**b)** elle le fait en vertu de l'article C.01.043.

**(2)** Dans le cas d'une ordonnance verbale, la personne visée à l'alinéa (1)a) ou un technicien en pharmacie la consigne dans un document en précisant les renseignements suivants :

**a)** la date de réception de l'ordonnance et, le cas échéant, le numéro de celle-ci;

**b)** le nom et l'adresse de la personne visée par l'ordonnance;

**c)** le nom propre, le nom usuel ou la marque nominative de la drogue et sa quantité;

**d)** son nom et celui du praticien qui a délivré l'ordonnance;

**e)** le mode d'emploi fourni avec l'ordonnance, le fait que le praticien en autorise ou non le renouvellement et, s'il le fait, le nombre de renouvellements qu'il autorise.

**(3)** The person referred to in paragraph (1)(a) shall retain the written prescription referred to in subsection (1) or the record referred to in subsection (2) for at least two years after the day on which the prescription is filled.

SOR/78-424, s. 2; SOR/80-543, s. 3; SOR/93-202, s. 6; SOR/93-407, s. 2; SOR/2013-122, s. 11.

**C.01.041.1** Subject to paragraph C.01.041.3(2)(b), a pharmacist or pharmacy technician may transfer to another pharmacist or pharmacy technician a prescription for a prescription drug.

SOR/78-424, s. 3; SOR/2013-122, s. 11.

**C.01.041.2 (1)** Before a pharmacist sells a drug under a prescription that was transferred under section C.01.041.1, the pharmacist or a pharmacy technician shall

**(a)** create a written record of the name and address of the pharmacist or pharmacy technician who transferred the prescription and, if applicable, the number of authorized refills remaining and the date of the last refill; and

**(b)** obtain a copy of the written prescription or of the written record that was created under subsection C.01.041(2), as the case may be, or, in the case of a verbal transfer, create a written record that includes the information referred to in that subsection.

**(2)** The pharmacist shall retain the documents referred to in subsection (1) for at least two years after the day on which the prescription was filled.

SOR/78-424, s. 3; SOR/2013-122, s. 11.

**C.01.041.3 (1)** A pharmacist or a pharmacy technician who transfers a prescription under section C.01.041.1 shall indicate the date of transfer on the original of the written prescription or of the written record created under subsection C.01.041(2) or in a record kept under the name of the patient in question, as the case may be.

**(2)** When the pharmacist or pharmacy technician has transferred the prescription,

**(a)** the pharmacist shall not make any additional sales under the prescription; and

**(b)** the pharmacist or pharmacy technician shall not transfer the prescription to another pharmacist or pharmacy technician.

SOR/78-424, s. 3; SOR/2013-122, s. 11.

**C.01.041.4** [Repealed, SOR/2013-122, s. 11]

**C.01.042** A person referred to in paragraph C.01.041(1)(a) shall not refill a prescription for a prescription drug unless authorized by the practitioner and, in the case of such an authorization, they shall not refill a

**(3)** La personne visée à l'alinéa (1)a) conserve l'ordonnance écrite ou le document mentionné au paragraphe (2), selon le cas, durant une période d'au moins deux ans suivant la date d'exécution de l'ordonnance.

DORS/78-424, art. 2; DORS/80-543, art. 3; DORS/93-202, art. 6; DORS/93-407, art. 2; DORS/2013-122, art. 11.

**C.01.041.1** Sous réserve de l'alinéa C.01.041.3(2)b), le pharmacien ou le technicien en pharmacie peut transférer à un autre pharmacien ou technicien en pharmacie toute ordonnance relative à une drogue sur ordonnance.

DORS/78-424, art. 3; DORS/2013-122, art. 11.

**C.01.041.2 (1)** Avant que le pharmacien ne vende une drogue conformément à une ordonnance transférée en vertu de l'article C.01.041.1, lui-même ou le technicien en pharmacie prend les mesures suivantes :

**a)** il consigne dans un document les nom et adresse du pharmacien ou du technicien en pharmacie qui a transféré l'ordonnance ainsi que, le cas échéant, le nombre restant de renouvellements autorisés et la date du dernier renouvellement;

**b)** il obtient une copie de l'ordonnance écrite ou du document mentionné au paragraphe C.01.041(2), selon le cas, ou, en cas de transfert verbal, il établit un tel document.

**(2)** Le pharmacien conserve les documents visés au paragraphe (1) durant une période d'au moins deux ans suivant la date d'exécution de l'ordonnance.

DORS/78-424, art. 3; DORS/2013-122, art. 11.

**C.01.041.3 (1)** Le pharmacien ou le technicien en pharmacie qui transfère une ordonnance en vertu de l'article C.01.041.1 inscrit la date du transfert sur l'original de l'ordonnance écrite ou du document mentionné au paragraphe C.01.041(2), ou dans un dossier sur le patient en question, selon le cas.

**(2)** Une fois que le pharmacien ou le technicien en pharmacie a transféré l'ordonnance :

**a)** le pharmacien ne peut faire aucune autre vente au titre de cette dernière;

**b)** le pharmacien ou le technicien en pharmacie ne peut la transférer à un autre pharmacien ou technicien en pharmacie.

DORS/78-424, art. 3; DORS/2013-122, art. 11.

**C.01.041.4** [Abrogé, DORS/2013-122, art. 11]

**C.01.042** La personne visée à l'alinéa C.01.041(1)a) ne peut renouveler une ordonnance relative à une drogue

prescription more than the number of times specified by the practitioner.

SOR/78-424, s. 4; SOR/2013-122, s. 11.

**C.01.042.1** A person referred to in paragraph C.01.041(1)(a) shall indicate on the original of or on the copy of the written prescription or the written record created under subsection C.01.041(2) or in a record kept under the name of the patient in question, as the case may be,

**(a)** the date on which the prescription was filled;

**(b)** the date of each refill, if applicable;

**(c)** the quantity of drug sold when the prescription was filled and, if applicable, for each refill; and

**(d)** the name of the person who sold the drug.

SOR/2013-122, s. 11.

**C.01.043 (1)** A person may sell a prescription drug to

**(a)** a drug manufacturer;

**(b)** a practitioner;

**(c)** a wholesale druggist;

**(d)** a pharmacist; or

**(e)** the Government of Canada or the government of a province, for the use of a department or agency of that government, on receipt of a written order signed by the minister responsible for the department or by the person in charge of the agency, or by their duly authorized representative.

**(2)** If a person sells a prescription drug under paragraph (1)(e), they shall retain the written order for the drug for a period of at least two years after the day on which the drug is sold.

SOR/2013-122, s. 11.

**C.01.044** If a person advertises a prescription drug to the general public, the person shall not make any representation other than with respect to the brand name, the proper name, the common name and the price and quantity of the drug.

SOR/78-424, s. 5; SOR/93-202, s. 7; SOR/93-407, s. 3; SOR/2013-122, s. 11.

**C.01.045** No person, other than one of the following, shall import a prescription drug:

**(a)** a practitioner;

sur ordonnance à moins d'obtenir du praticien une autorisation à cet effet, auquel cas elle ne peut le faire pour un nombre de fois supérieur à celui fixé par ce dernier.

DORS/78-424, art. 4; DORS/2013-122, art. 11.

**C.01.042.1** La personne visée à l'alinéa C.01.041(1)a) inscrit sur l'original ou une copie de l'ordonnance écrite ou du document mentionné au paragraphe C.01.041(2), ou dans un dossier sur le patient en question, selon le cas :

**a)** la date d'exécution de l'ordonnance;

**b)** la date d'exécution de chaque renouvellement, le cas échéant;

**c)** la quantité de drogue vendue lors de l'exécution de l'ordonnance et, le cas échéant, lors de l'exécution de chaque renouvellement;

**d)** le nom de la personne qui vend la drogue.

DORS/2013-122, art. 11.

**C.01.043 (1)** Est permise la vente de drogues sur ordonnance aux personnes et entités suivantes :

**a)** les fabricants de drogues;

**b)** les praticiens;

**c)** les pharmaciens en gros;

**d)** les pharmaciens;

**e)** le gouvernement du Canada ou d'une province, à l'usage d'un de ses ministères ou organismes, sur réception d'une commande écrite signée par le ministre en cause ou le responsable de l'organisme, ou leur représentant dûment autorisé.

**(2)** Quiconque vend une drogue sur ordonnance en vertu de l'alinéa (1)e) doit conserver la commande écrite relative à la drogue durant une période d'au moins deux ans suivant la date de la vente.

DORS/2013-122, art. 11.

**C.01.044** Quiconque fait la publicité auprès du grand public d'une drogue sur ordonnance ne peut faire porter la publicité que sur la marque nominative, le nom propre, le nom usuel, le prix et la quantité de la drogue.

DORS/78-424, art. 5; DORS/93-202, art. 7; DORS/93-407, art. 3; DORS/2013-122, art. 11.

**C.01.045** Est interdite l'importation de drogues sur ordonnance par les personnes autres que les personnes suivantes :

**a)** les praticiens;

**(b)** a drug manufacturer;

**(c)** a wholesale druggist;

**(d)** a pharmacist; or

**(e)** a resident of a foreign country while a visitor in Canada.

SOR/93-407, s. 4; SOR/2013-122, s. 11.

**(b)** les fabricants de drogues;

**(c)** les pharmaciens en gros;

**(d)** les pharmaciens;

**(e)** les résidents d'un pays étranger, durant leur séjour au Canada.

DORS/93-407, art. 4; DORS/2013-122, art. 11.

**C.01.046** [Repealed, SOR/2013-122, s. 11]

**C.01.046** [Abrogé, DORS/2013-122, art. 11]

**C.01.047** [Repealed, SOR/80-543, s. 4]

**C.01.047** [Abrogé, DORS/80-543, art. 4]

## Distribution of Drugs as Samples

[SOR/2020-74, s. 2]

**C.01.048 (1)** If a practitioner or pharmacist has signed an order specifying the proper name or common name, the brand name and the quantity of a drug, other than the following, the person who receives the order may distribute or cause to be distributed the drug, in dosage form, as a sample to that practitioner or pharmacist if the drug meets the requirements of these Regulations:

**(a)** a *narcotic* as defined in the *Narcotic Control Regulations*;

**(b)** a *controlled drug* as defined in section G.01.001; or

**(c)** [Repealed, SOR/2020-74, s. 3]

**(d)** a *prescription drug* as defined in subsection 1(2) of the *Cannabis Regulations*.

**(1.1)** A person may distribute or cause to be distributed a prescription drug as a sample under subsection (1) only to a practitioner or pharmacist who is entitled, under the laws of the province in which they are practising, to prescribe or dispense that drug, as the case may be.

**(2)** An order referred to in subsection (1) may provide that the order be repeated at specified intervals during any period not exceeding six months.

**(3)** Despite subsection (1), a person may distribute or cause to be distributed a drug, in dosage form, as a sample to a practitioner or pharmacist without a signed order if that drug is not a prescription drug and is part of a class of drugs that is set out in column 1 of List D, and if all of the following conditions are met:

**(a)** the drug contains, as its only medicinal ingredients, one or more of those set out in column 2, each of

## Distribution de drogues à titre d'échantillons

[DORS/2020-74, art. 2]

**C.01.048 (1)** La personne qui reçoit une commande signée par un praticien ou un pharmacien peut distribuer ou faire distribuer à celui-ci, à titre d'échantillon, une drogue sous forme posologique, autre que celles mentionnées ci-après, dont le nom propre ou le nom usuel, la marque nominative et la quantité sont précisés dans la commande, si la drogue est conforme aux exigences du présent règlement :

**a)** un *stupéfiant* au sens du *Règlement sur les stupéfiants*;

**b)** une *drogue contrôlée* au sens de l'article G.01.001;

**c)** [Abrogé, DORS/2020-74, art. 3]

**d)** une *drogue sur ordonnance* au sens du paragraphe 1(2) du *Règlement sur le cannabis*.

**(1.1)** Il n'est permis, en vertu du paragraphe (1), de distribuer ou de faire distribuer une drogue sur ordonnance, à titre d'échantillon, à un praticien ou à un pharmacien que si celui-ci est autorisé à prescrire ou à dispenser la drogue en vertu des lois de la province où il exerce.

**(2)** Une commande dont il est question au paragraphe (1) peut spécifier que ladite commande sera renouvelée à intervalles y indiqués pendant une période d'au plus six mois.

**(3)** Malgré le paragraphe (1), il est permis de distribuer ou de faire distribuer à un praticien ou à un pharmacien, à titre d'échantillon, une drogue sous forme posologique qui n'est pas une drogue sur ordonnance et qui appartient à une catégorie de drogues figurant à la colonne 1 de la Liste D, sans avoir reçu au préalable une commande signée à cet égard, si les conditions suivantes sont réunies :

which corresponds to that class, in the corresponding quantity set out in column 3, and the drug is consistent with the descriptive information set out in columns 4 to 6;

**(b)** the expiration date of the drug falls on a day that is

**(i)** at least 30 days after the day on which it is distributed, if the expiration date consists of a day, month and year, or

**(ii)** in a month that follows the month in which it is distributed, if the expiration date consists only of a month and year;

**(c)** the drug meets the requirements of these Regulations.

SOR/93-202, s. 9; SOR/97-228, s. 2; SOR/2018-144, s. 366; SOR/2019-171, s. 24; SOR/2020-74, s. 3.

**C.01.049** A person who, under subsection C.01.048(1), receives an order for and distributes or causes to be distributed a drug as a sample shall

**(a)** maintain records showing

**(i)** the name, address and description of each person to whom the drug is distributed,

**(ii)** the brand name, quantity and form of the drug distributed, and

**(iii)** the date upon which each such distribution was made; and

**(b)** keep those records and all orders received for drugs in accordance with section C.01.048 for a period of not less than two years from the date upon which the distribution referred to in the records was made.

SOR/93-202, s. 10; SOR/2020-74, s. 4.

**C.01.049.1** A person may distribute or cause to be distributed a drug, in dosage form, as a sample to any consumer that is 18 years of age or older if that drug is not a prescription drug and is part of a class of drugs that is set out in column 1 of List D, and if all of the following conditions are met:

**(a)** the drug contains, as its only medicinal ingredients, one or more of those set out in column 2, each of which corresponds to that class, in the corresponding quantity set out in column 3, and the drug is consistent with the descriptive information set out in columns 4 to 6;

**a)** la drogue contient comme seuls ingrédients médicinaux un ou plusieurs de ceux visés à la colonne 2 dont la quantité figure à la colonne 3 et elle correspond aux renseignements descriptifs visés aux colonnes 4 à 6;

**b)** la date limite d'utilisation de la drogue est, selon le cas :

**(i)** si elle est indiquée par le jour, le mois et l'année, au moins trente jours après la date à laquelle la drogue a été distribuée,

**(ii)** si elle est indiquée uniquement par le mois et l'année, un mois quelconque suivant celui de la date à laquelle la drogue a été distribuée;

**c)** la drogue est conforme aux exigences du présent règlement.

DORS/93-202, art. 9; DORS/97-228, art. 2; DORS/2018-144, art. 366; DORS/2019-171, art. 24; DORS/2020-74, art. 3.

**C.01.049** La personne qui, au titre du paragraphe C.01.048(1), reçoit une commande à l'égard d'une drogue et la distribue ou la fait distribuer, à titre d'échantillon, doit :

**a)** tenir des dossiers indiquant

**(i)** le nom, l'adresse et les titres professionnels de toute personne à qui la drogue est distribuée,

**(ii)** la marque nominative, la quantité et la forme de présentation de cette drogue,

**(iii)** la date de distribution de ladite drogue; et

**b)** conserver lesdits dossiers, ainsi que toutes les commandes reçues en vertu de l'article C.01.048, pendant au moins deux ans, à compter de la date à laquelle la distribution inscrite aux dossiers a eu lieu.

DORS/93-202, art. 10; DORS/2020-74, art. 4.

**C.01.049.1** Il est permis de distribuer ou de faire distribuer aux consommateurs agés de 18 ans ou plus, à titre d'échantillon, une drogue sous forme posologique qui n'est pas une drogue sur ordonnance et qui appartient à une catégorie de drogues figurant à la colonne 1 de la Liste D, si les conditions suivantes sont réunies :

**a)** la drogue contient comme seuls ingrédients médicinaux un ou plusieurs de ceux visés à la colonne 2 dont la quantité figure à la colonne 3 et elle correspond aux renseignements descriptifs visés aux colonnes 4 à 6;

**b)** la date limite d'utilisation de la drogue est, selon le cas :

**(b)** the expiration date of the drug falls on a day that is

**(i)** at least 30 days after the day on which it is distributed, if the expiration date consists of a day, month and year, or

**(ii)** in a month that follows the month in which it is distributed, if the expiration date consists only of a month and year;

**(c)** the drug meets the requirements of these Regulations.

SOR/2020-74, s. 5.

## Information — Serious Risk of Injury to Human Health

**C.01.050 (1)** This section applies to a holder of one or more of the following therapeutic product authorizations:

**(a)** a drug identification number that has been assigned under subsection C.01.014.2(1); and

**(b)** a notice of compliance that has been issued under section C.08.004 or C.08.004.01.

**(2)** The holder of a therapeutic product authorization in respect of a drug that is part of a class of drugs set out in subsection (4) shall provide the Minister with information in respect of any serious risk of injury to human health that the holder receives or becomes aware of and that is relevant to the safety of the drug, regarding

**(a)** risks that have been communicated by any foreign regulatory authority that is set out in Part A of the *List of Foreign Regulatory Authorities for the Purposes of Section C.01.050 of the Food and Drug Regulations*, published by the Government of Canada on its website, as amended from time to time, or by any person who is authorized to manufacture or sell a drug within the jurisdiction of such an authority, and the manner of the communication;

**(b)** changes that have been made to the labelling of any drug and that have been communicated to or requested by any foreign regulatory authority that is set out in Part B of the list referred to in paragraph (a); and

**(c)** recalls, reassessments and suspensions or revocations of authorizations, including licences, in respect of any drug, that have taken place within the jurisdiction of any foreign regulatory authority that is set out in Part C of the list referred to in paragraph (a).

**(i)** si elle est indiquée par le jour, le mois et l'année, au moins trente jours après la date à laquelle la drogue a été distribuée,

**(ii)** si elle est indiquée uniquement par le mois et l'année, un mois quelconque suivant celui de la date à laquelle la drogue a été distribuée;

**c)** la drogue est conforme aux exigences du présent règlement.

DORS/2020-74, art. 5.

## Renseignements — risque grave de préjudice à la santé humaine

**C.01.050 (1)** Le présent article s'applique au titulaire de l'une des autorisations relatives à un produit thérapeutique suivantes :

**a)** l'identification numérique attribuée en application du paragraphe C.01.014.2(1);

**b)** l'avis de conformité délivré en application des articles C.08.004 ou C.08.004.01.

**(2)** Le titulaire d'une autorisation relative à un produit thérapeutique délivrée à l'égard d'une drogue appartenant à l'une des catégories mentionnées au paragraphe (4) fournit au ministre les renseignements dont il a reçu communication ou a connaissance concernant tout risque grave de préjudice à la santé humaine et se rapportant à la sécurité de la drogue en ce qui concerne :

**a)** les risques communiqués, et la façon dont ils l'ont été, par toute autorité réglementaire étrangère mentionnée dans la partie A de la *Liste des autorités réglementaires étrangères pour l'application de l'article C.01.050 du Règlement sur les aliments et drogues*, publiée par le gouvernement du Canada sur son site Web, avec ses modifications successives, ou par toute personne autorisée à fabriquer ou à vendre une drogue sur le territoire relevant de la compétence d'une telle autorité;

**b)** les changements apportés à l'étiquetage de toute drogue à la demande de toute autorité réglementaire étrangère mentionnée dans la partie B de la liste visée à l'alinéa a) ou communiqués à une telle autorité;

**c)** les rappels, les réévaluations et les suspensions ou révocations d'autorisations, notamment de licences, relativement à toute drogue, sur le territoire relevant de la compétence de toute autorité réglementaire

**(3)** The information shall be provided to the Minister within 72 hours after the holder receives or becomes aware of it, whichever occurs first.

**(4)** The classes of drugs are

**(a)** prescription drugs;

**(b)** drugs that are required to be sold under a prescription by Part G, the *Benzodiazepines and Other Targeted Substances Regulations* or the *Narcotic Control Regulations*; and

**(c)** drugs that are permitted to be sold without a prescription but that are to be administered only under the supervision of a practitioner.

**(5)** Despite subsection (2), a holder of a therapeutic product authorization who provided information in accordance with

**(a)** paragraph (2)(a) is not required to provide the same information again under that paragraph in the case where the holder receives or becomes aware of that information in respect of a foreign regulatory authority or person referred to in that paragraph; or

**(b)** paragraph (2)(b) or (c) is not required to provide the same information again under that paragraph in the case where the holder receives or becomes aware of that information in respect of a foreign regulatory authority referred to in that paragraph.

**(6)** In this section, ***foreign regulatory authority*** means a government agency or other entity outside Canada that has a legal right to control the manufacturing, use or sale of drugs within its jurisdiction and that may take enforcement action to ensure that drugs marketed within its jurisdiction comply with the applicable legal requirements.

SOR/2018-84, s. 2; SOR/2020-262, s. 2(F).

## Recalls

**C.01.051** Where a manufacturer who sells a drug in dosage form or a person who imports into and sells in Canada a drug in dosage form commences a recall of the drug, the manufacturer or importer shall forthwith submit to the Minister the following information:

étrangère mentionnée dans la partie C de la liste visée à l'alinéa a).

**(3)** Il fournit ces renseignements au ministre au plus tard soixante-douze heures après en avoir reçu communication ou en avoir eu connaissance, selon la première des deux éventualités à survenir.

**(4)** Les catégories de drogues sont les suivantes :

**a)** les drogues sur ordonnance;

**b)** les drogues qui doivent être vendues conformément à une ordonnance aux termes de la partie G, du *Règlement sur les benzodiazépines et autres substances ciblées* ou du *Règlement sur les stupéfiants*;

**c)** les drogues qui peuvent être vendues sans ordonnance, mais à administrer uniquement sous la surveillance d'un praticien.

**(5)** Malgré le paragraphe (2), le titulaire d'une autorisation relative à un produit thérapeutique qui a fourni des renseignements en application :

**a)** de l'alinéa (2)a) n'est pas tenu de fournir les mêmes renseignements de nouveau, en application de cet alinéa, dans le cas où il en a reçu communication ou en a connaissance relativement à une autorité réglementaire étrangère ou à une personne visées par cet alinéa;

**b)** des alinéas (2)b) ou c) n'est pas tenu de fournir les mêmes renseignements de nouveau, en application de ces alinéas, dans le cas où il en a reçu communication ou en a connaissance relativement à une autorité réglementaire étrangère visée par cet alinéa.

**(6)** Au présent article, ***autorité réglementaire étrangère*** s'entend de tout organisme gouvernemental ou de toute autre entité, ailleurs qu'au Canada, qui est habilité à contrôler la fabrication, l'utilisation ou la vente de drogues sur le territoire relevant de sa compétence et qui peut prendre des mesures d'exécution pour veiller à ce que les drogues qui y sont commercialisées satisfassent aux exigences légales qui s'appliquent.

DORS/2018-84, art. 2; DORS/2020-262, art. 2(F).

## Retrait du marché

**C.01.051** Un fabricant qui vend une drogue sous une forme posologique ou une personne qui importe et vend au Canada une drogue sous une forme posologique doivent, s'ils décident de retirer la drogue du marché, fournir au ministre les renseignements suivants dès le début du retrait :

**(a)** the proper name of the drug, the common name of the drug if there is no proper name, the brand name of the drug and the lot number;

**(b)** in the case of an imported drug, the names of the manufacturer and importer;

**(c)** the quantity of the drug manufactured or imported;

**(d)** the quantity of the drug distributed;

**(e)** the quantity of the drug remaining on the premises of the manufacturer or importer;

**(f)** the reasons for initiating the recall; and

**(g)** a description of any other action taken by the manufacturer or importer with respect to the recall.

SOR/82-524, s. 2; SOR/93-202, s. 11; SOR/2018-69, s. 27.

## Assessments Ordered Under Section 21.31 of the Act

**C.01.052 (1)** The Minister's power to make an order under section 21.31 of the Act in respect of a drug is subject to the following conditions:

**(a)** the person to whom the order is made shall be the holder of one or more of the following therapeutic product authorizations in respect of the drug:

**(i)** a drug identification number that has been assigned under subsection C.01.014.2(1),

**(ii)** an establishment licence that has been issued under subsection C.01A.008(1), and

**(iii)** a notice of compliance that has been issued under section C.08.004 or C.08.004.01; and

**(b)** the Minister shall have reasonable grounds to believe that

**(i)** in the case of a holder of a therapeutic product authorization referred to in subparagraph (a)(i) or (iii), the benefits or risks of injury to health associated with the drug are significantly different than they were when the authorization was issued,

**(ii)** in the case of a holder of a therapeutic product authorization referred to in subparagraph (a)(ii) who is an importer, the manner in which one or more of the following activities is conducted may present a risk of injury to health associated with the drug:

**a)** le nom propre de la drogue ou, à défaut, son nom usuel, ainsi que la marque nominative de la drogue et le numéro du lot;

**b)** dans le cas d'une drogue importée, le nom du fabricant et de l'importateur;

**c)** la quantité de la drogue fabriquée ou importée;

**d)** la quantité de la drogue distribuée;

**e)** la quantité de la drogue qui reste dans les locaux du fabricant ou de l'importateur;

**f)** les raisons qui ont motivé le retrait; et

**g)** toute autre mesure prise par le fabricant ou l'importateur relativement au retrait.

DORS/82-524, art. 2; DORS/93-202, art. 11; DORS/2018-69, art. 27.

## Évaluations ordonnées en vertu de l'article 21.31 de la Loi

**C.01.052 (1)** Le pouvoir du ministre de donner un ordre visant une drogue en vertu de l'article 21.31 de la Loi est assujetti aux conditions suivantes :

**a)** la personne à qui l'ordre est donné est titulaire de l'une des autorisations relatives à un produit thérapeutique ci-après à l'égard de la drogue :

**(i)** l'identification numérique attribuée en application du paragraphe C.01.014.2(1),

**(ii)** la licence d'établissement délivrée en application du paragraphe C.01A.008(1),

**(iii)** l'avis de conformité délivré en application des articles C.08.004 ou C.08.004.01;

**b)** le ministre a des motifs raisonnables de croire :

**(i)** s'agissant du titulaire de l'une des autorisations relatives à un produit thérapeutique visées aux sous-alinéas a)(i) ou (iii), que les bénéfices ou les risques de préjudice à la santé liés à la drogue sont considérablement différents de ce qu'ils étaient au moment où l'autorisation a été délivrée,

**(ii)** s'agissant du titulaire de l'autorisation relative à un produit thérapeutique visée au sous-alinéa a)(ii) qui est un importateur, que la façon dont l'une ou plusieurs des activités ci-après sont menées est susceptible de présenter un risque de préjudice à la santé lié à la drogue :

**(A)** *importation*, as defined in subsection C.01A.001(1), of the drug,

**(B)** *fabrication* or *packaging/labelling*, as defined in subsection C.01A.001(1), of the drug outside Canada, or

**(C)** testing of the drug outside Canada, and

**(iii)** in the case of a holder of a therapeutic product authorization referred to in subparagraph (a)(ii) who is not an importer, the manner in which an activity that is authorized under the authorization is conducted may present a risk of injury to health associated with the drug.

**(2)** The Minister shall, after examining the results of an assessment that was ordered under section 21.31 of the Act in respect of a drug,

**(a)** provide the holder of the therapeutic product authorization with the results of the examination; and

**(b)** ensure that a summary of the results of the examination, together with a description of any steps that the Minister has taken or may take as a consequence of the examination, is published on the Government of Canada website.

SOR/2018-84, s. 3; SOR/2020-262, s. 3.

## Activities Ordered Under Section 21.32 of the Act

**C.01.053** The Minister's power to make an order under section 21.32 of the Act in respect of a drug is subject to the following conditions:

**(a)** the person to whom the order is made shall be the holder of one or more of the following therapeutic product authorizations in respect of the drug:

**(i)** a drug identification number that has been assigned under subsection C.01.014.2(1),

**(ii)** an establishment licence that has been issued under subsection C.01A.008(1), and

**(iii)** a notice of compliance that has been issued under section C.08.004 or C.08.004.01;

**(b)** the Minister shall have reasonable grounds to believe that

**(i)** in the case of a holder of a therapeutic product authorization referred to in subparagraph (a)(i) or (iii), there are significant uncertainties relating to the benefits or harms associated with the drug,

**(A)** *importer* la drogue, au sens du paragraphe C.01A.001(1),

**(B)** *manufacturer* ou *emballer-étiqueter* la drogue à l'étranger, au sens du paragraphe C.01A.001(1),

**(C)** analyser la drogue à l'étranger,

**(iii)** s'agissant du titulaire de l'autorisation relative à un produit thérapeutique visée au sous-alinéa a)(ii) qui n'est pas un importateur, que la façon dont est menée une activité autorisée par l'autorisation est susceptible de présenter un risque de préjudice à la santé lié à la drogue.

**(2)** Au terme de son examen des résultats d'une évaluation visant une drogue qu'il a ordonnée en vertu de l'article 21.31 de la Loi, le ministre :

**a)** communique au titulaire de l'autorisation relative à un produit thérapeutique les résultats de l'examen;

**b)** veille à ce qu'un résumé des résultats de l'examen ainsi que la description, le cas échéant, des mesures que le ministre a prises ou peut prendre à la suite de cet examen soient publiés sur le site Web du gouvernement du Canada.

DORS/2018-84, art. 3; DORS/2020-262, art. 3.

## Activités ordonnées en vertu de l'article 21.32 de la Loi

**C.01.053** Le pouvoir du ministre de donner un ordre visant une drogue en vertu de l'article 21.32 de la Loi est assujetti aux conditions suivantes :

**a)** la personne à qui l'ordre est donné est titulaire de l'une des autorisations relatives à un produit thérapeutique ci-après à l'égard de la drogue :

**(i)** l'identification numérique attribuée en application du paragraphe C.01.014.2(1),

**(ii)** la licence d'établissement délivrée en application du paragraphe C.01A.008(1),

**(iii)** l'avis de conformité délivré en application des articles C.08.004 ou C.08.004.01;

**b)** le ministre a des motifs raisonnables de croire, à la fois :

**(i)** s'agissant du titulaire de l'une des autorisations relatives à un produit thérapeutique visées aux sous-alinéas a)(i) ou (iii), que les bénéfices ou les

**(ii)** in the case of a holder of a therapeutic product authorization referred to in subparagraph (a)(ii) who is an importer, the manner in which one or more of the following activities is conducted has introduced significant uncertainties relating to the benefits or harms associated with the drug:

**(A)** *importation*, as defined in subsection C.01A.001(1), of the drug,

**(B)** *fabrication* or *packaging/labelling*, as defined in subsection C.01A.001(1), of the drug outside Canada, or

**(C)** testing of the drug outside Canada,

**(iii)** in the case of a holder of a therapeutic product authorization referred to in subparagraph (a)(ii) who is not an importer, the manner in which an activity that is authorized under the authorization is conducted has introduced significant uncertainties relating to the benefits or harms associated with the drug,

**(iv)** the holder of the therapeutic product authorization is unable to provide the Minister with information that is sufficient to manage those uncertainties, and

**(v)** the applicable requirements of these Regulations, together with any terms and conditions that have been imposed on the authorization, do not allow for sufficient information to be obtained to manage those uncertainties; and

**(c)** the Minister shall take into account the following matters:

**(i)** whether the activities that the holder of the therapeutic product authorization will be ordered to undertake are feasible, and

**(ii)** whether there are less burdensome ways of obtaining additional information about the drug's effects on health or safety.

SOR/2018-84, s. 3; SOR/2020-262, s. 4.

**C.01.055 and C.01.056** [Repealed, SOR/82-524, s. 2]

## Limits of Variability

**C.01.061 (1)** Where the net amount of a drug in a package is not expressed on the label in terms of number of dosage units, any 10 packages of the drug selected as provided by official method DO-31, *Determination of Net Contents*, dated December 7, 1988, shall contain an

effets nocifs liés à la drogue font l'objet d'incertitudes importantes,

**(ii)** s'agissant du titulaire de l'autorisation relative à un produit thérapeutique visée au sous-alinéa a)(ii) qui est un importateur, que la façon dont l'une ou plusieurs des activités ci-après sont menées a créé des incertitudes importantes en ce qui concerne les bénéfices ou les effets nocifs liés à la drogue :

**(A)** *importer* la drogue, au sens du paragraphe C.01A.001(1),

**(B)** *manufacturer* ou *emballer-étiqueter* la drogue à l'étranger, au sens du paragraphe C.01A.001(1),

**(C)** analyser la drogue à l'étranger,

**(iii)** s'agissant du titulaire de l'autorisation relative à un produit thérapeutique visée au sous-alinéa a)(ii) qui n'est pas un importateur, que la façon dont est menée une activité autorisée par l'autorisation a créé des incertitudes importantes en ce qui concerne les bénéfices ou les effets nocifs liés à la drogue,

**(iv)** que le titulaire de l'autorisation relative à un produit thérapeutique n'est pas en mesure de fournir au ministre des renseignements suffisants pour gérer ces incertitudes,

**(v)** que les exigences applicables du présent règlement ainsi que toute condition dont l'autorisation est assortie ne permettent pas de recueillir des renseignements suffisants pour gérer ces incertitudes;

**c)** le ministre tient compte des éléments suivants :

**(i)** la faisabilité des activités qu'il ordonnera au titulaire de l'autorisation relative à un produit thérapeutique de mener,

**(ii)** l'existence de moyens moins exigeants de recueillir des renseignements supplémentaires quant aux effets de la drogue sur la santé ou la sécurité.

DORS/2018-84, art. 3; DORS/2020-262, art. 4.

**C.01.055 et C.01.056** [Abrogés, DORS/82-524, art. 2]

## Limites de variabilité

**C.01.061 (1)** Dans le cas d'une drogue dont la quantité nette contenue dans l'emballage est indiquée sur l'étiquette autrement qu'en nombre d'unités posologiques, la quantité nette moyenne, déterminée conformément à la méthode officielle DO-31 intitulée *Détermination du*

amount of the drug such that, when determined by that official method, the average of the net amounts of the drug in the 10 packages is not less than the net amount of the drug shown on the label.

**(2)** Where the net amount of a drug in a package is expressed on the label in terms of the number of dosage units, any 10 packages of the drug selected as provided by official method DO-31, *Determination of Net Contents*, dated December 7, 1988, shall contain a number of units such that, when determined by that official method,

**(a)** the average number of dosage units in the 10 packages is not less than the number of dosage units shown on the label;

**(b)** no package contains less than the number of dosage units shown on the label except as provided in the table; and

**(c)** where the drug is a controlled drug as defined in section G.01.001 or a narcotic as defined in the *Narcotic Control Regulations*, no package contains more than the number of dosage units shown on the label except as provided in the table to this section.

**TABLE**

| Item | Column I<br>Labelled Number of Dosage Units Per Package | Column II<br>Permitted Variation from the Labelled Number |
|---|---|---|
| 1 | 50 or less | 0 |
| 2 | More than 50, but less than 101 | 1 |
| 3 | 101 or more | the greater of one unit or 0.75% of the labelled number, rounded up to the next whole number |

SOR/82-429, s. 4; SOR/89-455, s. 4; SOR/97-228, s. 3; SOR/2019-171, s. 24.

**C.01.062 (1)** Subject to subsections (2) to (5), no manufacturer shall sell a drug in dosage form where the amount of any medicinal ingredient therein, determined using an acceptable method, is

**(a)** less than 90.0 per cent of the amount of the medicinal ingredient shown on the label; or

*contenu net* en date du 7 décembre 1988, pour tout groupe de 10 emballages de cette drogue choisis selon cette méthode, ne peut être inférieure à la quantité nette indiquée sur l'étiquette.

**(2)** Dans le cas d'une drogue dont la quantité nette contenue dans l'emballage est indiquée sur l'étiquette en nombre d'unités posologiques, pour tout groupe de 10 emballages de cette drogue choisis conformément à la méthode officielle DO-31 intitulée *Détermination du contenu net* en date du 7 décembre 1988, lorsque le nombre d'unités posologiques de ce groupe est déterminé selon cette méthode :

**a)** le nombre moyen d'unités posologiques pour les 10 emballages ne peut être inférieur au nombre d'unités posologiques indiqué sur l'étiquette;

**b)** aucun emballage ne peut contenir un nombre d'unités posologiques inférieur à celui indiqué sur l'étiquette, sous réserve des écarts prévus au tableau du présent article;

**c)** dans le cas d'une drogue contrôlée au sens de l'article G.01.001 ou d'un stupéfiant au sens du *Règlement sur les stupéfiants*, aucun emballage ne peut contenir un nombre d'unités posologiques supérieur à celui indiqué sur l'étiquette, sous réserve des écarts prévus au tableau du présent article.

**TABLEAU**

| Article | Colonne I<br>Nombre d'unités posologiques indiqué sur l'étiquette, par emballage | Colonne II<br>Écart admissible par rapport au nombre indiqué sur l'étiquette |
|---|---|---|
| 1 | 50 ou moins | 0 |
| 2 | Plus de 50, mais moins de 101 | 1 |
| 3 | 101 ou plus | le plus élevé des nombres suivants : une unité ou 0,75 % du nombre indiqué sur l'étiquette, arrondi au nombre entier supérieur |

DORS/82-429, art. 4; DORS/89-455, art. 4; DORS/97-228, art. 3; DORS/2019-171, art. 24.

**C.01.062 (1)** Sous réserve des paragraphes (2) à (5), le fabricant ne peut vendre une drogue sous forme posologique lorsque la quantité de tout ingrédient médicinal qu'elle contient, déterminée selon une méthode acceptable, représente :

**a)** moins de 90,0 pour cent de la quantité indiquée sur l'étiquette;

**(b)** more than 110.0 per cent of the amount of the medicinal ingredient shown on the label.

**(2)** Subject to subsection (5), where a drug in dosage form contains a medicinal ingredient that is a volatile substance of botanical origin or its synthetic equivalent, the amount of that ingredient, determined using an acceptable method, shall be

**(a)** not less than 85.0 per cent of the amount of the medicinal ingredient shown on the label; and

**(b)** not more than 120.0 per cent of the amount of the medicinal ingredient shown on the label.

**(3)** Subject to subsection (5), where a drug in capsule form contains a medicinal ingredient that is a vitamin in a fish-liver oil, no variation from the amount of the medicinal ingredient as shown on the label, determined using an acceptable method, is permitted other than that which is in accordance with the variation for that fish-liver oil as stated in any publication whose name is referred to in Schedule B to the Act.

**(4)** Subject to subsection (5), where a drug in dosage form contains a medicinal ingredient that is a vitamin, no variation from the amount of the medicinal ingredient shown on the label, determined using an acceptable method, is permitted other than the variation set out in column III or IV of an item of the table to this section opposite the vitamin set out in column I of that item for the amount of vitamin set out in column II of that item.

**(5)** Subsections (1) to (4) do not apply in respect of

**(a)** a drug for which a notice of compliance has been issued under section C.08.004 or C.08.004.01;

**(b)** [Repealed, SOR/98-423, s. 8]

**(c)** a drug for which a standard is contained in any publication whose name is referred to in Schedule B to the Act;

**(d)** a drug described in Schedule C or D to the Act or Division 6 of Part C of these Regulations; or

**(e)** a drug for which a drug identification number has been assigned under subsection C.01.014.2(1) and in respect of which

**(i)** the conditions of pharmaceutical production and quality control are suitable for controlling the

**b)** plus de 110,0 pour cent de la quantité indiquée sur l'étiquette.

**(2)** Sous réserve du paragraphe (5), lorsqu'une drogue sous forme posologique renferme un ingrédient médicinal qui est une substance volatile d'origine végétale ou son équivalent de synthèse, aucun écart par rapport à la quantité de l'ingrédient indiquée sur l'étiquette, déterminée selon une méthode acceptable, n'est permis en dehors de l'écart suivant :

**a)** au moins 85,0 pour cent de la quantité indiquée sur l'étiquette;

**b)** au plus 120,0 pour cent de la quantité indiquée sur l'étiquette.

**(3)** Sous réserve du paragraphe (5), lorsqu'une drogue sous forme de capsule renferme un ingrédient médicinal qui est une vitamine contenue dans une huile de foie de poisson, aucun écart par rapport à la quantité de l'ingrédient médicinal indiquée sur l'étiquette, déterminée selon une méthode acceptable, n'est permis, autre que l'écart précisé pour cette huile de foie de poisson dans une publication dont le nom figure à l'annexe B de la Loi.

**(4)** Sous réserve du paragraphe (5), lorsqu'une drogue sous forme posologique renferme un ingrédient médicinal qui est une vitamine, aucun écart par rapport à la quantité de l'ingrédient médicinal indiquée sur l'étiquette, déterminée selon une méthode acceptable, n'est permis, autre que l'écart précisé aux colonnes III ou IV du tableau du présent article en regard d'une vitamine figurant à la colonne I en la quantité indiquée à la colonne II.

**(5)** Les paragraphes de (1) à (4) ne s'appliquent pas à :

**a)** une drogue pour laquelle un avis de conformité a été délivré en application des articles C.08.004 ou C.08.004.01;

**b)** [Abrogé, DORS/98-423, art. 8]

**c)** une drogue pour laquelle une norme est contenue dans une publication dont le nom figure à l'annexe B de la Loi;

**d)** une drogue mentionnée aux annexes C ou D de la Loi ou au titre 6 de la partie C du présent règlement;

**e)** une drogue à laquelle une identification numérique a été attribuée aux termes du paragraphe C.01.014.2(1) et :

**(i)** dont les conditions de fabrication et de contrôle de la qualité permettent le contrôle de son identité,

identity, quality, purity, stability, safety, strength and potency of the drug,

**(ii)** all labels to be used in connection with the drug, including any package insert and any document that is provided on request and that sets out supplementary information on the use of the drug, make proper claims in respect of the drug,

**(iii)** the drug can, without undue foreseeable risk to humans, be used for the purposes and under the conditions of use recommended by the manufacturer, and

**(iv)** the drug is effective for the purposes and under the conditions of use recommended by the manufacturer.

de sa qualité, de sa pureté, de sa stabilité, de son innocuité, de sa teneur et de son activité,

**(ii)** qui possède bien les propriétés que les étiquettes, notamment toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue qui est fournie sur demande, s'y rapportant lui attribuent,

**(iii)** qui peut, sans risque prévisible excessif pour l'être humain, être utilisée aux fins et dans les conditions d'emploi recommandées par le fabricant,

**(iv)** qui est efficace aux fins et dans les conditions d'emploi recommandées par le fabricant.

**TABLE**

| | Column I | Column II | Column III | Column IV |
|---|---|---|---|---|
| Item | Vitamin | Recommended daily dose | Limits of variation when the recommended daily dose shown on label is equal to or less then amount set out in column II | Limits of variation when the recommended daily dose shown on label is greater than amount set out in column II |
| 1 | vitamin A (or as B-carotene) | 10 000 I.U. | 90.0 - 165.0 % | 90.0 - 115.0 % |
| 2 | thiamine | 4.5 mg | 90.0 - 145.0 % | 90.0 - 125.0 % |
| 3 | riboflavin | 7.5 mg | 90.0 - 125.0 % | 90.0 - 125.0 % |
| 4 | niacin or niacinamide | 45 mg | 90.0 - 125.0 % | 90.0 - 125.0 % |
| 5 | pyridoxine | 3 mg | 90.0 - 125.0 % | 90.0 - 125.0 % |
| 6 | d-pantothenic acid | 15 mg | 90.0 - 135.0 % | 90.0 - 125.0 % |
| 7 | folic acid | 0.4 mg | 90.0 - 135.0 % | 90.0 - 115.0 % |
| 8 | vitamin $B_{12}$ | 14 µg | 90.0 - 135.0 % | 90.0 - 125.0 % |
| 9 | vitamin C | 150 I.U. | 90.0 - 145.0 % | 90.0 - 125.0 % |
| 10 | vitamin D | 400 I.U. | 90.0 - 145.0 % | 90.0 - 115.0 % |
| 11 | vitamin E | 25 I.U. | 90.0 - 125.0 % | 90.0 - 125.0 % |
| 12 | vitamin K | 0.0 mg | | 90.0 - 115.0 % |
| 13 | biotin | 0.0 mg | | 90.0 - 135.0 % |

**TABLEAU**

| | Colonne I | Colonne II | Colonne III | Colonne IV |
|---|---|---|---|---|
| Article | Vitamine | Dose quotidienne recommandée | Écart admissible lorsque la dose quotidienne recommandée indiquée sur l'étiquette est égale ou inférieure à celle de la colonne II | Écart admissible lorsque la dose quotidienne recommandée indiquée sur l'étiquette est supérieure à celle de la colonne II |
| 1 | vitamine A (ou comme B-carotène) | 10 000 U.I. | 90,0 - 165,0 % | 90,0 - 115,0 % |

| Article | Colonne I<br>Vitamine | Colonne II<br>Dose quotidienne recommandée | Colonne III<br>Écart admissible lorsque la dose quotidienne recommandée indiquée sur l'étiquette est égale ou inférieure à celle de la colonne II | Colonne IV<br>Écart admissible lorsque la dose quotidienne recommandée indiquée sur l'étiquette est supérieure à celle de la colonne II |
|---|---|---|---|---|
| 2 | thiamine | 4,5 mg | 90,0 - 145,0 % | 90,0 - 125,0 % |
| 3 | riboflavine | 7,5 mg | 90,0 - 125,0 % | 90,0 - 125,0 % |
| 4 | niacine ou niacinamide | 45 mg | 90,0 - 125,0 % | 90,0 - 125,0 % |
| 5 | pyridoxine | 3 mg | 90,0 - 125,0 % | 90,0 - 125,0 % |
| 6 | acide d-pantothénique | 15 mg | 90,0 - 135,0 % | 90,0 - 125,0 % |
| 7 | acide folique | 0,4 mg | 90,0 - 135,0 % | 90,0 - 115,0 % |
| 8 | vitamine $B_{12}$ | 14 µg | 90,0 - 135,0 % | 90,0 - 125,0 % |
| 9 | vitamine C | 150 mg | 90,0 - 145,0 % | 90,0 - 125,0 % |
| 10 | vitamine D | 400 U.I. | 90,0 - 145,0 % | 90,0 - 115,0 % |
| 11 | vitamine E | 25 U.I. | 90,0 - 125,0 % | 90,0 - 125,0 % |
| 12 | vitamine K | 0,0 mg | | 90,0 - 115,0 % |
| 13 | biotine | 0,0 mg | | 90,0 - 135,0 % |

SOR/92-131, s. 1; SOR/92-591, s. 2; SOR/94-689, s. 2(E); SOR/95-530, s. 2; SOR/98-423, s. 8; SOR/2011-88, s. 5; SOR/2014-158, s. 9; SOR/2018-69, s. 19(F).

DORS/92-131, art. 1; DORS/92-591, art. 2; DORS/94-689, art. 2(A); DORS/95-530, art. 2; DORS/98-423, art. 8; DORS/2011-88, art. 5; DORS/2014-158, art. 9; DORS/2018-69, art. 19(F).

**C.01.063** [Repealed, SOR/96-399, s. 2]

**C.01.063** [Abrogé, DORS/96-399, art. 2]

**C.01.064** Where a drug is prepared for ophthalmic or parenteral use and contains a preservative ingredient, that ingredient

**(a)** shall be present only in an amount necessary to obtain the intended action and that does not pose undue risk to humans or animals; and

**(b)** shall not interfere with the therapeutic properties of the drug.

SOR/90-586, s. 2.

**C.01.064** Si une drogue est préparée pour usage ophtalmique ou usage parentéral et que l'un de ses ingrédients est un agent de conservation, cet ingrédient :

**a)** doit être limité à la quantité nécessaire pour produire l'effet prévu sans entraîner de risques indus pour les personnes ou les animaux;

**b)** ne doit pas nuire aux propriétés thérapeutiques de la drogue.

DORS/90-586, art. 2.

**C.01.065** No person shall sell a drug that is prepared for ophthalmic or parenteral use unless a representative sample of each lot of the drug in its immediate container

**(a)** is tested by an acceptable method for identity, and the drug is found to be true to its proper name, or to its common name if there is no proper name;

**C.01.065** Il est interdit de vendre une drogue préparée pour usage ophtalmique ou usage parentéral, sauf si un échantillon représentatif de chaque lot de la drogue, dans son récipient immédiat :

**a)** est soumis, selon une méthode acceptable, à une épreuve d'identité qui démontre que la drogue correspond à son nom propre, ou à défaut, à son nom usuel;

**(b)** is tested by an acceptable method for sterility, except

**(i)** for living vaccines, or

**(ii)** where the manufacturer has submitted evidence, satisfactory to the Minister to prove that processing controls ensure the sterility of the drug in its immediate container,

and the drug is found to be sterile; and

**(c)** is subjected to such further tests satisfactory to the Minister to ensure that the drug is safe to use according to directions.

SOR/86-552, s. 1; SOR/90-586, s. 3; SOR/93-202, s. 12; SOR/96-399, s. 3; SOR/2018-69, s. 27.

**C.01.066** No person shall sell a drug in aqueous solution that is prepared for parenteral use unless it has been prepared with non-pyrogenic water produced by distillation or reverse osmosis.

**C.01.067 (1)** Subject to subsection (2), no person shall sell a drug that is prepared for parenteral use unless a representative sample of each lot of the drug in its immediate container

**(a)** is tested by an acceptable method for the presence of pyrogens; and

**(b)** when so tested, is found to be non-pyrogenic.

**(2)** Subsection (1) does not apply in respect of a drug that cannot be tested for the presence of pyrogens or that is inherently pyrogenic.

SOR/81-335, s. 1; SOR/96-399, s. 4.

**C.01.068** Detailed records of the tests required by sections C.01.065 and C.01.067 shall be retained by the manufacturer for a period of at least one year after the expiration date on the label of the drug.

SOR/85-715, s. 5; SOR/92-654, s. 3.

**C.01.069** The packaging of a drug that is prepared for parenteral use shall meet the following requirements:

**(a)** the immediate container shall be of such material and construction that

**(i)** no deleterious substance is yielded to the drug,

**(ii)** it is non-reactive with the drug,

**(iii)** visual or electronic inspection of the drug is possible,

**b)** est soumis, par une méthode acceptable, à une épreuve de stérilité qui démontre que la drogue est stérile, laquelle épreuve n'est pas effectuée :

**(i)** dans le cas des vaccins vivants, ou

**(ii)** dans le cas où le fabricant présente une preuve que le ministre juge satisfaisante démontrant que les contrôles employés dans la transformation de la drogue en assurent la stérilité dans son récipient immédiat;

**c)** est soumis aux autres épreuves que le ministre juge satisfaisantes pour démontrer que la drogue est sûre à l'usage suivant le mode d'emploi.

DORS/86-552, art. 1; DORS/90-586, art. 3; DORS/93-202, art. 12; DORS/96-399, art. 3; DORS/2018-69, art. 27.

**C.01.066** Est interdite la vente des drogues en solution aqueuse, préparée pour usage parentéral, à moins qu'elles n'aient été préparées avec de l'eau apyrogène produite par distillation ou par osmose enverse.

**C.01.067 (1)** Sous réserve du paragraphe (2), il est interdit de vendre une drogue préparée pour usage parentéral, sauf si un échantillon représentatif de chaque lot de la drogue :

**a)** a été soumis, dans son récipient immédiat, à une épreuve de pyrogénicité selon une méthode acceptable;

**b)** a été trouvé apyrogène lors de l'épreuve visée à l'alinéa a).

**(2)** Le paragraphe (1) ne s'applique pas aux drogues qui ne se prêtent pas à une épreuve de pyrogénicité ni aux drogues de nature pyrogène.

DORS/81-335, art. 1; DORS/96-399, art. 4.

**C.01.068** Le fabricant doit conserver des dossiers détaillés des épreuves exigées aux articles C.01.065 et C.01.067 pendant au moins un an après la date limite d'utilisation indiquée sur l'étiquette de la drogue.

DORS/85-715, art. 5; DORS/92-654, art. 3.

**C.01.069** L'emballage d'une drogue préparée pour usage parentéral doit satisfaire aux exigences suivantes :

**a)** le récipient immédiat doit être fait d'un tel matériau et de telle façon :

**(i)** qu'il ne cède à son contenu aucune substance délétère,

**(ii)** qu'il ne présente aucune réaction au contact de la drogue,

**(iv)** protection against environmental factors that cause deterioration or contamination of the drug is provided or, where that protection cannot be provided by the immediate container, it is provided by the secondary packaging, and

**(v)** a sufficient quantity of the drug is contained to allow withdrawal of the labelled amount of the drug; and

**(b)** the immediate closures and any material coming into contact with the drug in its immediate container shall meet the requirements of subparagraphs (a)(i) and (ii).

SOR/96-399, s. 5.

**C.01.070** No person shall sell a drug that is a hypodermic tablet that does not completely dissolve in and form a clear solution with water.

## Mercuric Chloride Tablets

**C.01.071** No person shall sell mercuric chloride tablets for household use that are packaged in lots of 200 or less, unless

**(a)** such tablets are

**(i)** of an irregular or angular shape,

**(ii)** coloured blue, and

**(iii)** packed in an immediate container that is readily distinguishable by touch; and

**(b)** the principal display panel of both the inner and the outer labels carries in prominent type and in a colour contrasting to that of such labels

**(i)** the design of a skull and cross-bones, and

**(ii)** the word “Poison”.

SOR/2001-181, s. 2.

**C.01.081** [Repealed, SOR/80-544, s. 4]

**C.01.085** [Repealed, SOR/80-544, s. 5]

## Synthetic Sweeteners

**C.01.101 (1)** [Repealed, SOR/78-422, s. 3]

**(iii)** qu’il permette l’inspection visuelle ou électronique de la drogue,

**(iv)** qu’il assure une protection contre les facteurs environnementaux causant la dégradation ou la contamination ou que, s’il ne peut assurer cette protection, celle-ci soit assurée par l’emballage secondaire,

**(v)** qu’il contienne une quantité suffisante de drogue pour permettre le retrait de la quantité indiquée sur l’étiquette;

**b)** le dispositif de fermeture immédiat et tout matériau qui entre en contact avec la drogue dans son récipient immédiat doivent répondre aux exigences des sous-alinéas a)(i) et (ii).

DORS/96-399, art. 5.

**C.01.070** Est interdite la vente d’une drogue sous forme de comprimé hypodermique qui ne se dissout pas complètement dans l’eau pour y former une solution limpide.

## Comprimés de bichlorure de mercure

**C.01.071** Est interdite la vente de comprimés de bichlorure de mercure pour usage domestique, en emballages de 200 ou moins, à moins que

**a)** lesdits comprimés ne soient

**(i)** de forme irrégulière ou angulaire,

**(ii)** de couleur bleue, et

**(iii)** emballés dans un récipient immédiat facilement reconnaissable au toucher; et que

**b)** l’espace principal des étiquettes intérieure et extérieure ne porte, imprimés en caractères bien reconnaissables et d’une couleur faisant contraste avec celle desdites étiquettes,

**(i)** le dessin d’une tête de mort et de tibias croisés, et

**(ii)** le mot « Poison ».

DORS/2001-181, art. 2.

**C.01.081** [Abrogé, DORS/80-544, art. 4]

**C.01.085** [Abrogé, DORS/80-544, art. 5]

## Édulcorants synthétiques

**C.01.101 (1)** [Abrogé, DORS/78-422, art. 3]

**(2)** [Repealed, SOR/78-800, s. 1]

**(3)** [Repealed, SOR/78-422, s. 3]

**C.01.121 and C.01.122** [Repealed, SOR/80-544, s. 6]

## Aminopyrine and Dipyrone

**C.01.131** No person shall sell Aminopyrine or Dipyrone (a derivative of Aminopyrine) for oral or parenteral use, unless

**(a)** the inner label carries the statement:

"WARNING: Fatal agranulocytosis may be associated with the use of Aminopyrine and Dipyrone. It is essential that adequate blood studies be made. (See enclosed warnings and precautions)"; and

**(b)** the outer label or the package insert carries the following statements:

"WARNING: Serious and even fatal agranulocytosis is known to occur after the administration of Aminopyrine or Dipyrone. Fatal agranulocytosis has occurred after short term, intermittent and prolonged therapy with the drugs. Therefore, the use of these drugs should be as brief as possible. Bearing in mind the possibility that such reactions may occur, Aminopyrine or Dipyrone should be used only when other less potentially dangerous agents are ineffective.

PRECAUTIONS: It is essential that frequent white blood cell counts and differential counts be made during treatment with these drugs. However, it is emphasized that agranulocytosis may occur suddenly without prior warning. The drug should be discontinued at the first evidence of any alteration of the blood count or sign of agranulocytosis, and the patient should be instructed to discontinue use of the drug at the first indication of sore throat or sign of other infection in the mouth or throat (pain, swelling, tenderness, ulceration)."

SOR/2018-69, s. 34(F).

**C.01.132** No person shall disseminate to a practitioner promotional literature about Aminopyrine or Dipyrone unless the statements set out in section C.01.131 are included in such literature.

**C.01.133** The provisions of sections C.01.131 and C.01.132 do not apply to preparations containing Aminopyrine or Dipyrone that are

**(2)** [Abrogé, DORS/78-800, art. 1]

**(3)** [Abrogé, DORS/78-422, art. 3]

**C.01.121 et C.01.122** [Abrogés, DORS/80-544, art. 6]

## Aminopyrine et dipyrone

**C.01.131** Est interdite la vente de l'aminopyrine ou de la dipyrone (dérivé de l'aminopyrine) pour usage oral ou parentéral, à moins que

**a)** l'étiquette intérieure ne porte la déclaration suivante :

« MISE EN GARDE : L'agranulocytose fatale peut être associée à l'emploi de l'aminopyrine et de la dipyrone. Des congrès sanguins appropriés sont essentiels. (Voir mises en garde et précautions à l'intérieur) »; et que

**b)** l'étiquette extérieure ou la notice d'accompagnement ne portent les déclarations suivantes :

« MISE EN GARDE : Il est établi qu'une agranulocytose grave et même fatale peut survenir après l'administration de l'aminopyrine ou de la dipyrone. Une agranulocytose fatale est apparue après qu'on eut employé ces drogues pour une thérapie de courte durée, une thérapie intermittente ou une thérapie prolongée. Par conséquent, l'emploi de ces drogues devrait être d'une durée aussi brève que possible. Étant donné la possibilité de telles réactions, l'aminopyrine et la dipyrone ne devraient s'employer que lorsque des agents moins virtuellement dangereux sont inefficaces.

PRÉCAUTIONS : Il est essentiel que se fassent fréquemment des numérations de leucocytes avec formule leucocytaire durant tout traitement avec ces drogues. Toutefois, il faut remarquer que l'agranulocytose peut se produire d'une façon subite sans aucun signe avant coureur. L'emploi de la drogue devrait être interrompu au premier signe d'un changement de la formule sanguine ou d'un symptôme d'agranulocytose, et il faudrait avertir le malade d'interrompre l'emploi de la drogue au premier signe du mal de gorge ou d'une autre infection de la bouche ou de la gorge (douleur, enflure, hyperesthésie, ulcération). »

DORS/2018-69, art. 34(F).

**C.01.132** Est interdit l'envoi, à un médecin praticien, de la documentation publicitaire sur l'aminopyrine ou la dipyrone à moins que les déclarations figurant à l'article C.01.131 ne soient comprises dans cette documentation.

**C.01.133** Les dispositions des articles C.01.131 et C.01.132 ne s'appliquent pas aux préparations renfermant de l'aminopyrine ou de la dipyrone et qui sont

**(a)** dispensed by a pharmacist pursuant to a prescription; or

**(b)** sold for veterinary use only.

## Coated Potassium Salts

**C.01.134** No person shall sell coated tablets containing potassium salts, with or without thiazide diuretics, unless the inner label thereof or the package insert carries the following statement:

"WARNING: A probable association exists between the use of coated tablets containing potassium salts, with or without thiazide diuretics, and the incidence of serious small bowel ulceration. Such preparations should be used only when adequate dietary supplementation is not practical, and should be discontinued if abdominal pain, distension, nausea, vomiting or gastro-intestinal bleeding occur."

SOR/2018-69, s. 34(F).

**C.01.135** No person shall disseminate to a practitioner promotional literature about coated tablets containing potassium salts, with or without thiazide diuretics, unless the statement set out in section C.01.134 is included in such literature.

**C.01.136** The provisions of sections C.01.134 and C.01.135 do not apply to coated tablets containing potassium salts with or without thiazide diuretics that

**(a)** are sold for veterinary use only;

**(b)** are dispensed by a pharmacist pursuant to a prescription; or

**(c)** contain 100 milligrams or less of elemental potassium per tablet.

## Antibiotics

**C.01.401** Except as provided in these Regulations, an antibiotic for other than parenteral use shall, in addition to meeting the requirements of section C.01.004, carry on both the inner label and outer label the potency of the drug, expressed in terms of International Units where established or, if no International Unit has been established, in terms of units, milligrams, micrograms or fractions of a gram,

**(a)** per gram in the case of solids or viscous liquids;

**a)** dispensées par un pharmacien d'après une ordonnance; ou

**b)** vendues pour usage vétérinaire seulement.

## Sels de potassium enrobés

**C.01.134** Est interdite la vente de comprimés enrobés contenant des sels de potassium, avec ou sans diurétiques de thiazide, à moins que l'étiquette intérieure ou la notice d'accompagnement ne portent la déclaration suivante :

« MISE EN GARDE : Il existe un lien probable entre l'emploi de comprimés enrobés contenant des sels de potassium avec ou sans diurétiques de thiazide et l'incidence de l'ulcération grave de l'intestin grêle. Ces préparations ne sont à utiliser que s'il n'est pas possible de suppléer convenablement au régime alimentaire; il faut en cesser l'emploi dès qu'apparaissent des douleurs abdominales, une distension abdominale, des nausées, des vomissements ou des hémorragies gastrointestinales. »

DORS/2018-69, art. 34(F).

**C.01.135** Est interdit l'envoi, à un médecin praticien, de la documentation publicitaire sur les dragées contenant des sels de potassium avec ou sans diurétiques de thiazide, à moins que la déclaration figurant à l'article C.01.134 ne soit comprise dans cette documentation.

**C.01.136** Les dispositions des articles C.01.134 et C.01.135 ne s'appliquent pas aux dragées renfermant des sels de potassium avec ou sans diurétiques de thiazide et qui

**a)** sont vendues pour usage vétérinaire seulement;

**b)** sont dispensées par un pharmacien d'après une ordonnance; ou

**c)** renferment 100 milligrammes ou moins de potassium élémentaire par dragée.

## Antibiotiques

**C.01.401** Sauf disposition contraire du présent règlement, l'antibiotique qui n'est pas destiné à l'usage parentéral doit, en plus de satisfaire aux exigences de l'article C.01.004, porter sur l'étiquette intérieure et l'étiquette extérieure une indication de l'activité de la drogue exprimée en unités internationales si de telles unités existent ou, à défaut, en unités, milligrammes, microgrammes ou fractions de grammes :

**a)** par gramme, dans le cas des solides ou des liquides visqueux;

**(b)** per millilitre in the case of other liquids; and

**(c)** per individual dosage or dispensing form in the case of antibiotic preparations put up in individual dosage or dispensing form.

SOR/80-544, s. 7; SOR/92-654, s. 4.

**b)** par millilitre, dans le cas des autres liquides;

**c)** par dose individuelle ou forme posologique, dans le cas de préparations antibiotiques présentées en doses individuelles ou sous forme posologique.

DORS/80-544, art. 7; DORS/92-654, art. 4.

**C.01.402** [Repealed, SOR/92-654, s. 4]

**C.01.410 to C.01.412** [Repealed, SOR/80-544, s. 8]

**C.01.420 to C.01.422** [Repealed, SOR/80-544, s. 8]

**C.01.402** [Abrogé, DORS/92-654, art. 4]

**C.01.410 à C.01.412** [Abrogés, DORS/80-544, art. 8]

**C.01.420 à C.01.422** [Abrogés, DORS/80-544, art. 8]

## Chloramphenicol

**C.01.430 to C.01.432** [Repealed, SOR/80-544, s. 8]

**C.01.433** No person shall sell chloramphenicol and its salts and derivatives, for oral or parenteral use, unless

**(a)** the inner label carries a warning statement to the effect that

**(i)** bone marrow depression has been associated with the use of chloramphenicol, and

**(ii)** the enclosed warnings and precautions should be read carefully; and

**(b)** the outer label or the package insert carries the following:

**(i)** a warning statement to the effect that chloramphenicol should not be used in the treatment or prophylaxis of minor infections or where it is not indicated, as in cold, influenza, or infections of the upper respiratory tract; that there are two types of bone marrow depression associated with the use of chloramphenicol; that some degree of depression of the bone marrow is commonly seen during therapy, is dose-related and is potentially reversible; that blood studies may detect early changes and; that the other type of bone marrow depression, a sudden, delayed and usually fatal bone marrow hypoplasia that may occur without warning, is very rare, and

**(ii)** a statement of precautions to be taken to the effect that it is essential that appropriate blood studies be made during treatment with chloramphenicol and that while blood studies may detect early peripheral blood changes, such studies cannot be relied on to detect the rare and generally irreversible bone marrow depression prior to development of aplastic anemia.

SOR/2018-69, s. 35(F).

## Chloramphénicol

**C.01.430 à C.01.432** [Abrogés, DORS/80-544, art. 8]

**C.01.433** Est interdite la vente du chloramphénicol, de ses sels et dérivés, pour usage oral ou parentéral, à moins que

**a)** l'étiquette intérieure ne porte un avertissement pour faire savoir

**(i)** qu'une diminution de l'activité de la moëlle osseuse a été associée à l'emploi de chloramphénicol, et

**(ii)** qu'il y a lieu de lire attentivement les avertissements et les précautions jointes; et

**b)** l'étiquette extérieure ou la notice d'accompagnement ne portent

**(i)** un avertissement pour faire savoir que le chloramphénicol ne devrait pas être employé dans le traitement ou la prévention des infections bénignes ou lorsqu'il n'est pas indiqué, comme pour les rhumes, la grippe, ou les infections des voies respiratoires supérieures; que deux types de diminution de l'activité de la moëlle osseuse sont associés à l'emploi de chloramphénicol; qu'une certaine diminution de l'activité de la moëlle osseuse est communément constatée durant le traitement, et qu'elle est fonction de la dose et potentiellement réversible; que des analyses de sang permettent de déceler les changements précoces; que l'autre forme de diminution de l'activité de la moëlle osseuse est très rare, se traduisant par une hypoplasie de la moëlle osseuse brutale, tardive et généralement fatale qui peut survenir sans avertissement, et

**(ii)** une déclaration des précautions à prendre précisant qu'il est indispensable de faire des analyses de sang appropriées au cours du traitement par le chloramphénicol et que, bien que les analyses de sang permettent de déceler les modifications

sanguines périphériques précoces, il ne faut pas s'y fier pour déceler la forme rare et généralement irréversible de diminution de l'activité de la moëlle osseuse avant l'apparition d'une anémie aplastique.

DORS/2018-69, art. 35(F).

**C.01.434** Section C.01.433 does not apply to chloramphenicol and its salts or derivatives that are sold by a pharmacist under a prescription.

SOR/2013-122, s. 12.

**C.01.434** L'article C.01.433 ne s'applique pas au chloramphénicol, à ses sels ou à ses dérivés vendus par un pharmacien conformément à une ordonnance.

DORS/2013-122, art. 12.

**C.01.435** No person shall disseminate to a practitioner promotional literature about chloramphenicol and its salts or derivatives for oral or parenteral use unless the statements set out in paragraph C.01.433(b) are included in such literature.

**C.01.435** Est interdit l'envoi, à un médecin praticien, de la documentation publicitaire sur le chloramphénicol, ses sels ou dérivés, pour usage oral ou parentéral, à moins que les déclarations stipulées à l'alinéa C.01.433b) ne soient comprises dans cette documentation.

**C.01.436** The provisions of sections C.01.433 and C.01.435 do not apply to a drug sold solely for veterinary use.

**C.01.436** Les dispositions des articles C.01.433 et C.01.435 ne s'appliquent pas à un médicament vendu pour usage vétérinaire seulement.

**C.01.440 to C.01.442** [Repealed, SOR/80-544, s. 8]

**C.01.440 à C.01.442** [Abrogés, DORS/80-544, art. 8]

**C.01.450 to C.01.452** [Repealed, SOR/80-544, s. 8]

**C.01.450 à C.01.452** [Abrogés, DORS/80-544, art. 8]

**C.01.460 to C.01.462** [Repealed, SOR/80-544, s. 8]

**C.01.460 à C.01.462** [Abrogés, DORS/80-544, art. 8]

**C.01.470 to C.01.472** [Repealed, SOR/80-544, s. 8]

**C.01.470 à C.01.472** [Abrogés, DORS/80-544, art. 8]

**C.01.480** [Repealed, SOR/80-544, s. 8]

**C.01.480** [Abrogé, DORS/80-544, art. 8]

**C.01.490 to C.01.497** [Repealed, SOR/80-544, s. 8]

**C.01.490 à C.01.497** [Abrogés, DORS/80-544, art. 8]

**C.01.510 to C.01.513** [Repealed, SOR/80-544, s. 8]

**C.01.510 à C.01.513** [Abrogés, DORS/80-544, art. 8]

**C.01.520 to C.01.522** [Repealed, SOR/80-544, s. 8]

**C.01.520 à C.01.522** [Abrogés, DORS/80-544, art. 8]

**C.01.530 to C.01.532** [Repealed, SOR/80-544, s. 8]

**C.01.530 à C.01.532** [Abrogés, DORS/80-544, art. 8]

**C.01.540 to C.01.542** [Repealed, SOR/80-544, s. 8]

**C.01.540 à C.01.542** [Abrogés, DORS/80-544, art. 8]

**C.01.550 to C.01.552** [Repealed, SOR/80-544, s. 8]

**C.01.550 à C.01.552** [Abrogés, DORS/80-544, art. 8]

**C.01.560 to C.01.563** [Repealed, SOR/80-544, s. 8]

**C.01.560 à C.01.563** [Abrogés, DORS/80-544, art. 8]

**C.01.570 to C.01.572** [Repealed, SOR/80-544, s. 8]

**C.01.570 à C.01.572** [Abrogés, DORS/80-544, art. 8]

**C.01.580** [Repealed, SOR/80-544, s. 8]

**C.01.580** [Abrogé, DORS/80-544, art. 8]

**C.01.590 to C.01.592** [Repealed, SOR/80-544, s. 8]

**C.01.590 à C.01.592** [Abrogés, DORS/80-544, art. 8]

## Veterinary Drugs

**C.01.600** No person shall sell for veterinary use a drug listed in the Table of Limits of Drug Dosage for Adults, other than a drug in a form not suitable for human use,

## Drogues d'application vétérinaire

**C.01.600** Il est interdit de vendre pour usage vétérinaire une drogue énumérée au tableau des doses limites des drogues pour adultes, sauf une drogue présentée sous une forme impropre à l'usage humain, si les étiquettes intérieure et extérieure de cette drogue ne portent pas

unless both the inner and outer labels carry the statement "For Veterinary Use Only" or "Veterinary Use Only".

SOR/80-543, s. 5.

**C.01.601** [Repealed, SOR/93-407, s. 6]

**C.01.602** The provisions of sections C.01.401 and C.01.402 do not apply to an antibiotic in amounts less than 50 parts per million contained in an animal food.

**C.01.603** The provisions of paragraphs C.01.401 (b) and (c) and section C.01.402 do not apply to an antibiotic in amounts greater than 50 parts per million contained in an animal food.

**C.01.604** Both the inner and outer labels of a veterinary drug represented as containing a vitamin shall carry

**(a)** a statement of the amount of each vitamin present in the drug, expressed in terms of the proper name only of the vitamin in

**(i)** International Units per gram or per millilitre for vitamin A, provitamin A, vitamin D, and vitamin E,

**(ii)** milligrams per gram in the case of solids or viscous liquids, or per millilitre in the case of other liquids, for thiamine, riboflavin, niacin, niacinamide, pyridoxine, d-pantothenic acid, d-panthenol, folic acid, ascorbic acid, and vitamin K,

**(iii)** micrograms per gram in the case of solids or viscous liquids, or per millilitre in the case of other liquids, for biotin, and vitamin $B_{12}$,

**(iv)** Oral Units for vitamin $B_{12}$ with intrinsic factor concentrate, or

**(v)** for vitamin products put up in individual dosage or dispensing form, the specified units per individual dosage or dispensing form;

**(b)** except for drugs in a form not suitable for human use, the statement "For Veterinary Use Only" or "Veterinary Use Only".

SOR/80-543, s. 6.

toutes deux la mention « Pour usage vétérinaire seulement » ou « Usage vétérinaire seulement ».

DORS/80-543, art. 5.

**C.01.601** [Abrogé, DORS/93-407, art. 6]

**C.01.602** Les dispositions des articles C.01.401 et de C.01.402 ne s'appliquent pas à un antibiotique présent dans un article d'alimentation animale en quantité inférieure à 50 parties par million.

**C.01.603** Les dispositions des alinéas C.01.401b) et c), et de l'article C.01.402 ne s'appliquent pas à un antibiotique présent dans un article d'alimentation animale en quantité supérieure à 50 parties par million.

**C.01.604** Les étiquettes intérieure et extérieure d'une drogue d'application vétérinaire représentée comme contenant une vitamine doivent toutes deux porter

**a)** la déclaration de la quantité de chaque vitamine présente dans la drogue, uniquement sous le nom propre de chaque vitamine

**(i)** en unités internationales par gramme ou par millilitre, dans le cas de la vitamine A, de la provitamine A, de la vitamine D et de la vitamine E,

**(ii)** en milligrammes par gramme, dans le cas des solides ou des liquides visqueux, ou par millilitre, dans le cas des autres liquides, lorsqu'il s'agit de la thiamine, de la riboflavine, de la niacine, de la niacinamide, de la pyridoxine, de l'acide d-pantothénique, du d-panthénol, de l'acide folique, de l'acide ascorbique et de la vitamine K,

**(iii)** en microgrammes par gramme, dans le cas des solides ou des liquides visqueux, ou par millilitre, dans le cas des autres liquides, lorsqu'il s'agit de la biotine et de la vitamine $B_{12}$,

**(iv)** en unités orales, dans le cas de la vitamine $B_{12}$ avec concentré de facteur intrinsèque, ou,

**(v)** dans le cas des produits vitaminiques présentés sous forme posologique ou forme de distribution individuelle, en unités spécifiées par dose ou autre forme posologique individuelle;

**b)** sauf dans le cas des drogues présentées sous une forme qui ne convient pas à l'usage humain, la déclaration « Pour usage vétérinaire seulement » ou « Usage vétérinaire seulement ».

DORS/80-543, art. 6.

**C.01.605** An antibiotic for parenteral use that is recommended for veterinary use only shall carry on both the inner and outer labels

**(a)** the potency of the drug expressed in terms of International Units where established, or, if no International Unit has been established, in terms of units, milligrams or fractions of a gram, per gram in the case of solids or viscous liquids, per millilitre in the case of other liquids, or per individual dosage or dispensing form for antibiotic preparations put up in individual dosage or dispensing form; and

**(b)** [Repealed, SOR/92-654, s. 5]

**(c)** the statement "For Veterinary Use Only" or "Veterinary Use Only".

SOR/80-543, s. 7; SOR/92-654, s. 5.

**C.01.606** No person shall sell an antibiotic preparation for the treatment of animals, other than an antibiotic preparation that is a new drug sold pursuant to section C.08.013, unless,

**(a)** where the preparation is not to be used for lactating animals providing milk to be consumed as food, the inner and outer labels of the preparation carry a statement to that effect; or

**(b)** where the preparation may be used for lactating animals providing milk to be consumed as food,

**(i)** there has been submitted, on request, to the Minister, acceptable evidence to show the period of time, not exceeding 96 hours, that must elapse after the last treatment with the preparation in order that the milk from treated lactating animals will contain no residue of antibiotics that would cause injury to human health, and

**(ii)** the principal display panel of the outer label of the preparation, the inner label and the packaging insert, if any, describing the antibiotic preparation carry the warning **"WARNING: MILK TAKEN FROM TREATED ANIMALS DURING TREATMENT AND WITHIN … HOURS AFTER THE LATEST TREATMENT MUST NOT BE USED AS FOOD"**, where the number of hours to be inserted is determined according to evidence submitted pursuant to subparagraph (i).

SOR/88-378, s. 1; SOR/92-664, s. 2; SOR/93-467, s. 1; SOR/2018-69, s. 27.

**C.01.605** Un antibiotique d'administration parentérale, qui est recommandé uniquement pour usage vétérinaire, doit porter sur ses étiquettes intérieure et extérieure

**a)** l'activité de la drogue exprimée en unités internationales, lorsqu'il y a de telles unités établies, ou, si aucune unité internationale n'a été établie, en termes d'unités, de milligrammes ou de fractions de gramme, par gramme dans le cas des solides ou des liquides visqueux, par millilitre dans le cas des autres liquides, ou par dose individuelle ou forme posologique dans le cas de préparations antibiotiques présentées sous forme posologique ou forme de distribution individuelle;

**b)** [Abrogé, DORS/92-654, art. 5]

**c)** la déclaration « Pour usage vétérinaire seulement » ou « Usage vétérinaire seulement ».

DORS/80-543, art. 7; DORS/92-654, art. 5.

**C.01.606** Il est interdit de vendre pour le traitement des animaux une préparation d'antibiotique, autre qu'une préparation d'antibiotique qui est une drogue nouvelle vendue conformément à l'article C.08.013, à moins que les conditions suivantes ne soient remplies :

**a)** dans le cas où la préparation ne peut être administrée aux animaux en période de lactation dont le lait est destiné à être consommé comme aliment, une mention à cet effet figure sur les étiquettes intérieure et extérieure de la préparation;

**b)** dans le cas où la préparation peut être administrée aux animaux en période de lactation dont le lait est destiné à être consommé comme aliment :

**(i)** il a été soumis au ministre, sur demande, des preuves acceptables du délai ne dépassant pas 96 heures qui doit s'écouler après l'administration de la dernière dose de cette préparation pour que le lait des animaux traités ne contienne aucun résidu d'antibiotique qui soit dommageable à la santé de l'homme,

**(ii)** l'espace principal de l'étiquette extérieure de la préparation, l'étiquette intérieure et, le cas échéant, la notice jointe à l'emballage qui décrit la préparation d'antibiotique portent la mise en garde suivante : **« MISE EN GARDE : LE LAIT PROVENANT DES ANIMAUX TRAITÉS QUI EST EXTRAIT PENDANT LE TRAITEMENT ET DANS LES … HEURES APRÈS ADMINISTRATION DE LA DERNIÈRE DOSE NE DOIT PAS ÊTRE UTILISÉ COMME ALIMENT. »**, le

**C.01.606.1** No person shall sell a product intended for the prevention or treatment of foot rot of cattle if that product contains Ethylenediamine Dihydroiodide (EDDI).

SOR/90-327, s. 1.

**C.01.607** Notwithstanding subparagraph C.01.004(1)(c)(ii), the declaration of a lot number is not required on the label of an animal feeding-stuff containing a drug.

SOR/80-543, s. 8.

**C.01.608** The provisions of section C.01.604 do not apply to medicated feeds registered under the *Feeds Act*.

**C.01.609** Despite paragraph C.01.401(a), the potency of an antibiotic in amounts greater than 50 parts per million contained in a medicated feed registered under the *Feeds Act* may be declared in grams per tonne.

SOR/2018-69, s. 20; SOR/2021-46, s. 6(F).

**C.01.610** No person shall sell any substance having oestrogenic activity for administration to poultry that may be consumed as food.

**C.01.610.1** No person shall sell a drug for administration to animals that produce food or that are intended for consumption as food if that drug contains

**(a)** chloramphenicol or its salts or derivatives;

**(b)** a 5-nitrofuran compound;

**(c)** clenbuterol or its salts or derivatives;

**(d)** a 5-nitroimidazole compound; or

**(e)** diethylstilbestrol or other stilbene compounds.

SOR/85-539, s. 1; SOR/85-685, s. 2; SOR/91-546, s. 1; SOR/94-568, s. 2; SOR/97-510, s. 2; SOR/2003-292, s. 3.

**C.01.610.2** No person shall sell an antibiotic preparation containing chloramphenicol, its salts or derivatives, for administration to animals that do not produce food and that are not intended for consumption as food unless

**(a)** both the inner label and outer label of the preparation carry the words "WARNING: FEDERAL LAW

**C.01.606.1** Il est interdit de vendre tout produit contenant du dihydroiodure d'éthylènediamine (DIED) qui est destiné à la prévention ou au traitement du panaris interdigité (piétin) chez les bovins.

DORS/90-327, art. 1.

**C.01.607** Nonobstant le sous-alinéa C.01.004(1)c)(ii), la déclaration du numéro de lot n'est pas requise sur l'étiquette d'un aliment contenant une drogue et destiné aux animaux.

DORS/80-543, art. 8.

**C.01.608** Les dispositions de l'article C.01.604 ne s'appliquent pas aux aliments médicamentés du bétail, enregistrés en vertu de la *Loi relative aux aliments du bétail*.

**C.01.609** Malgré l'alinéa C.01.401a), l'activité d'un antibiotique en quantités dépassant 50 parties par million contenu dans un aliment médicamenté du bétail, enregistré en vertu de la *Loi relative aux aliments du bétail*, peut être déclarée en grammes par tonne métrique.

DORS/2018-69, art. 20; DORS/2021-46, art. 6(F).

**C.01.610** Est interdite la vente de toute substance qui possède une action œstrogène, pour administration aux volailles pouvant être consommées comme aliment.

**C.01.610.1** Il est interdit de vendre une drogue pour administration aux animaux qui produisent des aliments ou qui sont destinés à être consommés comme aliments si elle contient :

**a)** soit du chloramphénicol ou l'un de ses sels ou dérivés;

**b)** soit un composé de 5-nitrofurane;

**c)** soit du clenbutérol ou l'un de ses sels ou dérivés;

**d)** soit un composé de 5-nitro-imidazole;

**e)** soit du diéthylstilbestrol ou d'autres composés de stilbène.

DORS/85-539, art. 1; DORS/85-685, art. 2; DORS/91-546, art. 1; DORS/94-568, art. 2; DORS/97-510, art. 2; DORS/2003-292, art. 3.

**C.01.610.2** Il est interdit de vendre toute préparation d'antibiotique contenant du chloramphénicol, ou l'un de ses sels ou dérivés, pour administration aux animaux qui ne produisent pas d'aliments et qui ne sont pas destinés à être consommés comme aliments, à moins que les conditions suivantes ne soient remplies :

PROHIBITS THE ADMINISTRATION OF THIS PREPARATION TO ANIMALS THAT PRODUCE FOOD OR ANIMALS THAT ARE INTENDED FOR CONSUMPTION AS FOOD / MISE EN GARDE : EN VERTU DES LOIS FÉDÉRALES, IL EST INTERDIT D'ADMINISTRER CETTE PRÉPARATION AUX ANIMAUX QUI PRODUISENT DES ALIMENTS OU AUX ANIMAUX DESTINÉS À ÊTRE CONSOMMÉS COMME ALIMENTS";

**(b)** where the preparation is for parenteral use, the preparation contains, in the form of chloramphenicol sodium succinate, not more than one gram of chloramphenicol per vial;

**(c)** where the preparation is for ophthalmic use, the preparation contains not more than one per cent chloramphenicol; and

**(d)** where the preparation is for oral use, the preparation

**(i)** is in tablet or capsule form and contains not more than one gram of chloramphenicol per tablet or capsule, or

**(ii)** is in the form of a chloramphenicol palmitate suspension and contains not more than three grams of chloramphenicol per container.

SOR/91-546, s. 1.

**a)** l'étiquette intérieure et l'étiquette extérieure de cette préparation portent la mise en garde suivante : « MISE EN GARDE : EN VERTU DES LOIS FÉDÉRALES, IL EST INTERDIT D'ADMINISTRER CETTE PRÉPARATION AUX ANIMAUX QUI PRODUISENT DES ALIMENTS OU AUX ANIMAUX DESTINÉS À ÊTRE CONSOMMÉS COMME ALIMENTS / WARNING : FEDERAL LAW PROHIBITS THE ADMINISTRATION OF THIS PREPARATION TO ANIMALS THAT PRODUCE FOOD OR ANIMALS THAT ARE INTENDED FOR CONSUMPTION AS FOOD »;

**b)** s'il s'agit d'une préparation à usage parentéral, celle-ci contient au plus un gramme de chloramphénicol par ampoule sous forme de succinate sodique de chloramphénicol;

**c)** s'il s'agit d'une préparation pour usage ophtalmique, celle-ci contient au plus 1 pour cent de chloramphénicol;

**d)** s'il s'agit d'une préparation pour administration par voie orale, celle-ci, selon le cas :

**(i)** est sous forme de comprimé ou de capsule et contient au plus un gramme de chloramphénicol par comprimé ou capsule,

**(ii)** est sous forme de suspension de palmitate de chloramphénicol et contient au plus trois grammes de chloramphénicol par récipient.

DORS/91-546, art. 1.

**C.01.611 (1)** The Minister may, in writing, from time to time require the manufacturer of a drug recommended for administration to animals that may be consumed as food

**(a)** to file with the Minister in respect of that drug a submission describing in detail tests carried out to verify that the administration of the drug to an animal does not result in a substance named in column II of the List referred to in the *Marketing Authorization for Maximum Residue Limits for Veterinary Drugs in Foods* being present in a food set out in column III of the List, except in an amount within the maximum residue limit set out in column IV of the List in respect of the food and the substance; and

**(b)** to print on the principal display panel of the outer label, the inner label and the packaging insert, if any, that describes the drug, a warning that food derived from animals to which the drug has been administered must not be sold for human consumption unless there

**C.01.611 (1)** Le ministre peut, par écrit, exiger de temps à autre du fabricant d'une drogue recommandée pour administration aux animaux qui peuvent servir d'aliment

**a)** une présentation relative à la drogue décrivant en détail les épreuves conduites pour vérifier qu'aucune substance mentionnée à la colonne II de la Liste visée par l'*Autorisation de mise en marché – limites maximales de résidus de drogues pour usage vétérinaire dans les aliments* ne demeure dans un aliment mentionné à la colonne III, sauf dans la limite maximale de résidu prévue à la colonne IV pour cet aliment et cette substance;

**b)** l'impression, dans l'espace principal de l'étiquette extérieure, sur l'étiquette intérieure et, le cas échéant, sur la notice jointe à l'emballage qui décrit la drogue, d'une mise en garde indiquant que les aliments provenant d'animaux auxquels a été administrée cette drogue ne peuvent être vendus pour consommation humaine que s'il s'est écoulé depuis cette administration le délai que fixe le ministre en se fondant sur une

has elapsed since the administration of the drug a period of time specified by the Minister, based on a review of the available data with respect to drug residues.

étude des données connues sur les résidus de la drogue.

**(2)** No manufacturer shall sell a drug in respect of which the Minister has required a warning to be printed pursuant to paragraph (1)(b) unless the manufacturer has complied with that request.

SOR/93-467, s. 2; SOR/2016-74, s. 10; SOR/2018-69, s. 27.

**(2)** Il est interdit à tout fabricant de vendre une drogue au sujet de laquelle le ministre a exigé la mise en garde mentionnée à l'alinéa (1)b) si ledit fabricant n'a pas fait droit à ladite exigence.

DORS/93-467, art. 2; DORS/2016-74, art. 10; DORS/2018-69, art. 27.

**C.01.612 (1)** Every manufacturer or importer who sells a veterinary drug in dosage form that contains an active pharmaceutical ingredient that is set out in List A, or every person who compounds such a drug, shall, in a form established by the Minister, submit to the Minister an annual report identifying for each drug, the total quantity sold or compounded and an estimate of the quantity sold or compounded for each intended animal species.

**C.01.612 (1)** Le fabricant ou l'importateur qui vend une drogue vétérinaire sous forme posologique qui contient un ingrédient actif pharmaceutique figurant dans la Liste A ou toute personne qui prépare une telle drogue présente au ministre un rapport annuel, en la forme établie par celui-ci, indiquant, pour chaque drogue, la quantité totale vendue ou préparée, et une estimation de la quantité vendue ou préparée pour chacune des espèces animales auxquelles la drogue est destinée.

**(2)** The annual report described in subsection (1) is for a period of one calendar year and shall be submitted on or before March 31 of the year following the calendar year covered by the report, beginning with the first full calendar year after the day on which this section comes into force.

SOR/2017-76, s. 6.

**(2)** Le rapport visé au paragraphe (1) porte sur toute année civile — à commencer par la première année civile complète suivant l'entrée en vigueur du présent article — et est présenté au plus tard le 31 mars de l'année qui suit l'année civile visée par le rapport.

DORS/2017-76, art. 6.

**C.01.613 (1)** No person shall import a drug into Canada for the purpose of administering it to an animal that produces food or an animal that is intended for consumption as food if the sale of the drug in Canada would constitute a violation of the Act or these Regulations.

**C.01.613 (1)** Il est interdit d'importer des drogues dans le but de les administrer à des animaux qui produisent des aliments ou qui sont destinés à être consommés comme aliments, si la vente de telles drogues au Canada enfreindrait la Loi ou le présent règlement.

**(2)** Subsection (1) does not apply to a drug that is described in List B.

SOR/2017-76, s. 6.

**(2)** Le paragraphe (1) ne s'applique pas aux drogues décrites dans la Liste B.

DORS/2017-76, art. 6.

**C.01.614 (1)** Sections 43 to 58 of the *Natural Health Products Regulations* apply in relation to a veterinary health product, as if that product were a *natural health product* as defined in subsection 1(1) of those Regulations.

**C.01.614 (1)** Les articles 43 à 58 du *Règlement sur les produits de santé naturels* s'appliquent à l'égard des produits de santé animale comme s'ils étaient des *produits de santé naturels* au sens du paragraphe 1(1) de ce règlement.

**(2)** A veterinary health product shall display, on the principal display panel of the inner and outer label, the statement: "Veterinary Health Product / Produit de santé animale" or "Produit de santé animale / Veterinary Health Product".

**(2)** Tout produit de santé animale doit porter une étiquette sur laquelle figure, dans l'espace principal de l'étiquette intérieure et de l'étiquette extérieure, la mention « Produit de santé animale / Veterinary Health Product » ou « Veterinary Health Product / Produit de santé animale ».

**(3)** Section C.01.600 and paragraph C.01.604(b) do not apply in respect of a veterinary health product.

SOR/2017-76, s. 6.

**(3)** L'article C.01.600 et l'alinéa C.01.604b) ne s'appliquent pas à l'égard des produits de santé animale.

DORS/2017-76, art. 6.

**C.01.615 (1)** Every manufacturer or importer of a veterinary health product shall notify the Minister of the sale of that product in Canada at least 30 days before the day on which that sale is commenced.

**(2)** The notification shall be in a form established by the Minister and contain the following information:

**(a)** the name, mailing address, telephone number and email address of the manufacturer or importer;

**(b)** the brand name under which the veterinary health product is sold;

**(c)** the pharmaceutical form in which the veterinary health product is sold;

**(d)** the strength per dosage unit;

**(e)** the route of administration;

**(f)** a quantitative list of the medicinal ingredients and a qualitative list of the non-medicinal ingredients;

**(g)** the species of animal for which the veterinary health product is recommended; and

**(h)** the use or purpose for which the veterinary health product is recommended.

**(3)** A manufacturer or importer who has provided the Minister with a notification under subsection (1) shall provide the Minister with any changes to the information required under subsection (2), in a form established by the Minister, at least 30 days before the day on which the veterinary health product to which the changes relate is sold.

SOR/2017-76, s. 6.

**C.01.616** If the Minister has reasonable grounds to believe that a veterinary health product may no longer be safe, the Minister may request that the manufacturer or importer of the veterinary health product provide the Minister, within 15 days after the day on which the request is received, with information and documents demonstrating that the veterinary health product is safe.

SOR/2017-76, s. 6.

**C.01.617 (1)** The Minister may direct the manufacturer or importer to stop the sale of a veterinary health product if

**C.01.615 (1)** Le fabricant ou l'importateur d'un produit de santé animale avise le ministre de la vente du produit au Canada au moins trente jours avant le début de la vente.

**(2)** L'avis doit être présenté en la forme établie par le ministre et contenir les renseignements suivants :

**a)** les nom, adresse postale, numéro de téléphone et adresse de courriel du fabricant ou de l'importateur;

**b)** la marque nominative sous laquelle le produit de santé animale est vendu;

**c)** la forme pharmaceutique sous laquelle le produit est vendu;

**d)** la concentration du produit dans chaque unité posologique;

**e)** la voie d'administration du produit;

**f)** la liste quantitative des ingrédients médicinaux et la liste qualitative des ingrédients non médicinaux contenus dans le produit;

**g)** les espèces d'animaux auxquelles il est recommandé d'administrer le produit;

**h)** l'usage ou les fins pour lesquels le produit est recommandé.

**(3)** Le fabricant ou l'importateur qui a fourni au ministre un avis aux termes du paragraphe (1) fournit au ministre, en la forme établie par celui-ci, toute modification aux renseignements exigés au titre du paragraphe (2) au moins trente jours avant la vente du produit visé par le changement.

DORS/2017-76, art. 6.

**C.01.616** Lorsque le ministre a des motifs raisonnables de croire qu'un produit de santé animale peut ne plus être sûr, il peut demander au fabricant ou à l'importateur de lui fournir, dans les quinze jours suivant la réception de la demande, des renseignements et documents montrant l'innocuité du produit.

DORS/2017-76, art. 6.

**C.01.617 (1)** Le ministre peut ordonner au fabricant ou à l'importateur d'un produit de santé animale d'en cesser la vente dans l'un ou l'autre des cas suivants :

**a)** le fabricant ou l'importateur n'obtempère pas à la demande visée à l'article C.01.616 dans le délai imparti;

**(a)** the manufacturer or importer does not, within the required period, provide the Minister with the information and documents requested under section C.01.616;

**(b)** the information and documents provided by the manufacturer or importer in accordance with section C.01.616 do not demonstrate that the veterinary health product is safe; or

**(c)** the Minister has reasonable grounds to believe that the sale of the veterinary health product would be a violation of the Act or these Regulations.

**(2)** The Minister shall lift a direction to stop the sale of a veterinary health product if the manufacturer or importer provides the Minister with information and documents demonstrating that

**(a)** in the case of a direction to stop a sale under either paragraph (1)(a) or (b), the veterinary health product is safe;

**(b)** in the case of a direction to stop a sale under paragraph 1(c), the sale of the veterinary health product would no longer be a violation of the Act or these Regulations; or

**(c)** the situation giving rise to the direction to stop the sale of the veterinary health product did not exist.

SOR/2017-76, s. 6.

**b)** les renseignements et documents fournis par le fabricant ou l'importateur aux termes de l'article C.01.616 ne sont pas suffisants pour démontrerl'innocuité du produit;

**c)** il a des motifs raisonnables de croire que la vente du produit enfreindrait la Loi ou le présent règlement.

**(2)** Le ministre lève l'ordre de cessation de vente lorsque le fabricant ou l'importateur lui fournit les renseignements et documents établissant, selon le cas :

**a)** que le produit est sûr, dans le cas d'un ordre de cessation de vente fondé sur les alinéas (1)a) ou b);

**b)** que la vente du produit n'enfreindrait plus la Loi ou le présent règlement, dans le cas d'un ordre de cessation de vente fondé sur l'alinéa (1)c);

**c)** que la situation donnant lieu à l'ordre de cessation de vente n'a pas existé.

DORS/2017-76, art. 6.

## Contraceptive Drugs

**C.01.625** Contraceptive drugs that are manufactured, sold or represented for use in the prevention of conception and that are not prescription drugs may be advertised to the general public.

SOR/2013-122, s. 13.

## Drogues anticonceptionnelles

**C.01.625** Les drogues anticonceptionnelles qui sont fabriquées, vendues ou présentées pour la prévention de la conception et qui ne sont pas des drogues sur ordonnance peuvent faire l'objet de publicité auprès du grand public.

DORS/2013-122, art. 13.

**DIVISION 1A**

# Establishment Licences

## Interpretation

**C.01A.001 (1)** The definitions in this subsection apply in this Division and in Divisions 2 to 4.

***active ingredient*** means a drug that, when used as a raw material in the fabrication of a drug in dosage form, provides its intended effect. (*ingrédient actif*)

**TITRE 1A**

# Licence d'établissement

## Définitions et interprétation

**C.01A.001 (1)** Les définitions qui suivent s'appliquent au présent titre et aux titres 2 à 4.

***accord de reconnaissance mutuelle*** Accord international portant sur le reconnaissance mutuelle en matière de certification de la conformité aux bonnes pratiques de fabrication des drogues. (*mutual recognition agreement*)

***active pharmaceutical ingredient*** means an active ingredient that is used in the fabrication of a pharmaceutical. (*ingrédient actif pharmaceutique*)

***antimicrobial agent*** means a drug that is capable of destroying pathogenic micro-organisms and that is labelled as being for use in the disinfection of environmental surfaces or medical devices, as defined in the *Medical Devices Regulations*, that

**(a)** are not invasive devices as defined in those Regulations; and

**(b)** are intended to come into contact with intact skin only. (*agent antimicrobien*)

***batch certificate*** means a certificate issued by the fabricator of a lot or batch of a drug that is either imported within the framework of a mutual recognition agreement or referred to on the List of Non-prescription Drugs Not Subject to Certain Testing Requirements, and in which the fabricator

**(a)** identifies the master production document for the drug and certifies that the lot or batch has been fabricated, packaged/labelled and tested in accordance with the procedures described in that document;

**(b)** provides a detailed description of the drug, including

**(i)** a statement of all properties and qualities of the drug, including the identity, potency and purity of the drug, and

**(ii)** a statement of tolerances for the properties and qualities of the drug;

**(c)** identifies the analytical methods used in testing the lot or batch and provides details of the analytical results obtained;

**(d)** sets out the addresses of the buildings at which the lot or batch was fabricated, packaged/labelled and tested; and

**(e)** certifies that the lot or batch was fabricated, packaged/labelled and tested

**(i)** in the case of a drug that is imported within the framework of a mutual recognition agreement, in accordance with the good manufacturing practices of the regulatory authority that has recognized those buildings as meeting its good manufacturing practices standards, or

***agent antimicrobien*** Drogue pouvant détruire les micro-organismes pathogènes et dont l'étiquette indique qu'elle est destinée à être utilisée dans la désinfection des surfaces de l'environnement ou des instruments médicaux, au sens du *Règlement sur les instruments médicaux*, qui :

**a)** ne sont pas des instruments effractifs au sens de ce règlement;

**b)** sont destinés à entrer en contact uniquement avec une peau intacte. (*antimicrobial agent*)

***autorité réglementaire*** Organisme public ou autre entité, dans un pays participant, qui est habilité à contrôler l'utilisation ou la vente de drogues dans ce pays et qui peut prendre des mesures d'exécution pour veiller à ce que les drogues commercialisées sur le territoire relevant de sa compétence satisfassent aux exigences légales. (*regulatory authority*)

***bâtiment reconnu*** À l'égard de la manufacture, de l'emballage-étiquetage ou de l'analyse d'une drogue, bâtiment qu'une autorité réglementaire, désignée aux termes du paragraphe C.01A.019(1) à l'égard de cette activité pour cette drogue, a reconnu comme satisfaisant à ses normes de bonnes pratiques de fabrication à l'égard de cette activité pour cette drogue. (*recognized building*)

***certificat de lot*** Certificat délivré par le manufacturier d'un lot d'une drogue ou d'un lot de fabrication de celle-ci qui est, soit importée dans le cadre d'un accord de reconnaissance mutuelle, soit visée à la liste de drogues vendues sans ordonnance et non soumises à certaines analyses, et dans lequel le manufacturier :

**a)** identifie le document-type de production pour la drogue et atteste que le lot ou le lot de fabrication a été manufacturé, emballé-étiqueté et analysé conformément aux méthodes énoncées dans le document-type;

**b)** fournit une description détaillée de la drogue, y compris :

**(i)** la liste des propriétés et des qualités de la drogue, y compris l'identité, l'activité et la pureté de la drogue,

**(ii)** une indication des tolérances relatives aux propriétés et aux qualités de la drogue;

**c)** indique les méthodes d'analyse du lot ou lot de fabrication ainsi que les résultats analytiques détaillés obtenus;

**(ii)** in the case of a drug that is not imported within the framework of a mutual recognition agreement and that is referred to on the List of Non-prescription Drugs Not Subject to Certain Testing Requirements, in accordance with the requirements of Division 2. (*certificat de lot*)

***bulk process intermediate*** means an active ingredient that is used in the fabrication of either a drug of biological origin that is listed in Schedule C to the Act or a drug that is listed in Schedule D to the Act. (*produit intermédiaire en vrac*)

***class monograph*** means a document prepared by the Department of Health that

**(a)** lists the types and strengths of medicinal ingredients that may be contained in drugs of a specified class; and

**(b)** sets out labelling and other requirements that apply to those drugs. (*monographie de classe*)

***dilute drug premix*** means a drug for veterinary use that results from mixing a drug premix with a *feed*, as defined in section 2 of the *Feeds Act*, to such a level that at least 10 kg of the resulting mixture is required to medicate one tonne of *complete feed*, as defined in subsection 1(1) of the *Feeds Regulations, 2024*, with the lowest approved dosage level of the drug. (*prémélange médicamenteux dilué*)

***dosage form class*** means a parenteral, tablet, capsule, solution, suspension, aerosol, powder, suppository, medical gas or drug premix, or any other dosage form class designated by the Minister. (*classe de forme posologique*)

***drug premix*** means a drug for veterinary use to which a drug identification number has been assigned, where the directions on its label specify that it is to be mixed with feed as defined in section 2 of the *Feeds Act*. (*prémélange médicamenteux*)

***fabricate*** means to prepare and preserve a drug for the purposes of sale. (*manufacturer*)

***import*** means to import into Canada a drug for the purpose of sale. (*importer*)

***List of Non-prescription Drugs Not Subject to Certain Testing Requirements*** means the document entitled *List of Non-prescription Drugs for Which the Testing Requirements Set Out in Subsections C.02.019(1) and (2) of the Food and Drug Regulations Do Not Apply* that is published by the Government of Canada on its website,

**d)** indique les adresses des bâtiments où le lot ou le lot de fabrication a été manufacturé, emballé-étiqueté et analysé;

**e)** atteste que le lot ou le lot de fabrication a été manufacturé, emballé-étiqueté et analysé, selon le cas :

**(i)** s'agissant de la drogue importée dans le cadre d'un accord de reconnaissance mutuelle, conformément aux bonnes pratiques de fabrication de l'autorité réglementaire qui a reconnu les bâtiments comme satisfaisant à ses normes de bonnes pratiques de fabrication,

**(ii)** s'agissant de la drogue qui n'est pas importée dans le cadre d'un accord de reconnaissance mutuelle et qui est visée à la liste de drogues vendues sans ordonnance et non soumises à certaines analyses, conformément aux exigences prévues au titre 2. *(batch certificate)*

***classe de forme posologique*** S'entend des parentérales, comprimés, capsules, solutions, suspensions, aérosols, poudres, suppositoires, gaz médicaux, prémélanges médicamenteux ou de toute autre classe de forme posologique désignée par le ministre. (*dosage form class*)

***emballer-étiqueter*** Emballer une drogue dans son récipient immédiat ou apposer l'étiquette intérieure ou extérieure sur la drogue. (*package/label*)

***grossiste*** Personne, autre qu'un distributeur visé à l'article C.01A.003, qui vend une ou plusieurs des drogues ci-après autrement qu'au détail :

**a)** toute drogue sous forme posologique visée aux annexes C ou D de la Loi, toute drogue qui est une drogue sur ordonnance ou toute drogue contrôlée au sens de l'article G.01.001;

**b)** un ingrédient actif;

**c)** un stupéfiant au sens du *Règlement sur les stupéfiants*;

**d)** une drogue contenant du *cannabis* au sens du paragraphe 2(1) de la *Loi sur le cannabis*.

L'expression « vendre en gros » a un sens correspondant. (*wholesaler*)

***importer*** Importer une drogue au Canada en vue de la vente. (*import*)

***ingrédient actif*** Drogue qui, lorsqu'elle est utilisée comme matière première dans la manufacture d'une

as amended from time to time. (*Liste de drogues vendues sans ordonnance et non soumises à certaines analyses*)

***MRA country*** means a country that is a participant in a mutual recognition agreement with Canada. (*pays participant*)

***mutual recognition agreement*** means an international agreement that provides for the mutual recognition of compliance certification for good manufacturing practices for drugs. (*accord de reconnaisance mutuelle*)

***package/label*** means to put a drug in its immediate container or to affix the inner or outer label to the drug. (*emballer-étiqueter*)

***pharmaceutical*** means a drug other than a drug listed in Schedule C or D to the Act. (*produit pharmaceutique*)

***recognized building*** means, in respect of the fabrication, packaging/labelling or testing of a drug, a building that a regulatory authority that is designated under subsection C.01A.019(1) in respect of that activity for that drug has recognized as meeting its good manufacturing practices standards in respect of that activity for that drug. (*bâtiment reconnu*)

***recognized country or region*** means a country or region that is set out in the document entitled *List of Foreign Countries or Regions and Their Regulatory Authorities for the Application of Subsection C.02.019(5) of the Food and Drug Regulations*, published by the Government of Canada on its website, as amended from time to time. (*pays ou régions reconnus*)

***regulatory authority*** means a government agency or other entity in an MRA country that has a legal right to control the use or sale of drugs within that country and that may take enforcement action to ensure that drugs marketed within its jurisdiction comply with legal requirements. (*autorité réglementaire*)

***site*** [Repealed, SOR/2002-368, s. 1]

***wholesale*** [Repealed, SOR/2013-74, s. 2]

***wholesaler*** means a person who is not a distributor described in section C.01A.003 and who sells any of the following drugs other than at retail sale:

**(a)** a drug in dosage form that is listed in Schedule C or D to the Act, a drug that is a prescription drug or a controlled drug as defined in section G.01.001;

drogue sous forme posologique, lui confère les effets recherchés. (*active ingredient*)

***ingrédient actif pharmaceutique*** Ingrédient actif utilisé dans la manufacture d'un produit pharmaceutique. (*active pharmaceutical ingredient*)

***Liste de drogues vendues sans ordonnance et non soumises à certaines analyses*** Liste de drogues figurant dans le document intitulé *Liste de drogues vendues sans ordonnance pour lesquelles les analyses requises en vertu des paragraphes C.02.019(1) et (2) du Règlement sur les aliments et drogues ne s'appliquent pas*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*List of Non-prescription Drugs Not Subject to Certain Testing Requirements*)

***manufacturer*** Préparer et conserver une drogue en vue de la vente. (*fabricate*)

***monographie de classe*** Document établi par le ministère de la Santé qui :

**a)** présente la liste des types et concentrations d'ingrédients médicinaux qui peuvent être contenus dans les drogues d'une classe donnée;

**b)** énonce les exigences, notamment en matière d'étiquetage, applicables à ces drogues. (*class monograph*)

***pays ou régions reconnus*** Pays ou région figurant dans le document intitulé *Liste des pays ou régions étrangers et de leurs organismes de réglementation pour l'application du paragraphe C.02.019(5) du Règlement sur les aliments et drogues*, publié par le gouvernement du Canada sur son site Web, avec ses modifications successives. (*recognized country or region*)

***pays participant*** Pays participant à un accord de reconnaissance mutuelle avec le Canada. (*MRA country*)

***pays signataire*** [Abrogée, DORS/2002-368, art. 1]

***prémélange médicamenteux*** Drogue à usage vétérinaire qui a fait l'objet d'une identification numérique et dont l'étiquette porte qu'elle doit être combinée à un aliment au sens de l'article 2 de la *Loi relative aux aliments du bétail*. (*drug premix*)

***prémélange médicamenteux dilué*** Drogue à usage vétérinaire résultant de la combinaison d'un prémélange médicamenteux à un *aliment* , au sens de l'article 2 de la *Loi relative aux aliments du bétail*, de sorte qu'au taux le plus bas des posologies approuvées pour cette drogue, au

**(b)** an active ingredient;

**(c)** a narcotic as defined in the *Narcotic Control Regulations*; or

**(d)** a drug containing *cannabis* as defined in subsection 2(1) of the *Cannabis Act*. (*grossiste*)

**(2)** In this Division and in Division 2, *drug* does not include any of the following:

**(a)** a dilute drug premix;

**(b)** a *medicated feed* as defined in subsection 1(1) of the *Feeds Regulations, 2024*;

**(c)** an active ingredient that is for veterinary use and that is not an active pharmaceutical ingredient;

**(d)** an active pharmaceutical ingredient for veterinary use that is not required to be sold pursuant to a prescription and that is also a *natural health product* as defined in subsection 1(1) of the *Natural Health Products Regulations*;

**(e)** a drug that is used only for the purposes of an experimental study in accordance with a certificate issued under section C.08.015.

**(3)** Where the Minister designates additional dosage form classes, the Minister shall make a list of those classes available on request.

SOR/97-12, s. 5; SOR/98-7, s. 1; SOR/2000-120, s. 1; SOR/2002-368, s. 1; SOR/2004-282, s. 1; SOR/2013-74, s. 2; SOR/2013-122, s. 14; SOR/2017-76, s. 7; SOR/2018-144, s. 367; SOR/2019-171, s. 24; SOR/2020-73, s. 1; SOR/2024-132, s. 86; SOR/2024-132, s. 87.

## Application

**C.01A.002 (1)** This Division does not apply to

**(a)** wholesaling a drug premix;

**(b)** subject to subsection (3), importing or compounding, pursuant to a prescription, a drug that is not commercially available in Canada by one of the following persons:

**(i)** a pharmacist,

moins 10 kg de la combinaison soit nécessaire pour médicamenter une tonne métrique d'un *aliment complet*, au sens du paragraphe 1(1) du *Règlement de 2024 sur les aliments du bétail*. (*dilute drug premix*)

***produit intermédiaire en vrac*** Ingrédient actif utilisé dans la manufacture d'une drogue d'origine biologique visée à l'annexe C de la Loi ou d'une drogue visée à l'annexe D de la Loi. (*bulk process intermediate*)

***produit pharmaceutique*** Toute drogue non visée aux annexes C ou D de la Loi. (*pharmaceutical*)

***site*** [Abrogée, DORS/2002-368, art. 1]

***vendre en gros*** [Abrogée, DORS/2013-74, art. 2]

**(2)** Au présent titre et au titre 2, le terme *drogue* ne vise pas :

**a)** le prémélange médicamenteux dilué;

**b)** l'*aliment médicamenté* au sens du paragraphe 1(1) du *Règlement de 2024 sur les aliments du bétail*;

**c)** l'ingrédient actif pour usage vétérinaire qui n'est pas un ingrédient actif pharmaceutique;

**d)** l'ingrédient actif pharmaceutique pour usage vétérinaire qui peut être vendu sans ordonnance et qui est également un *produit de santé naturel* au sens du paragraphe 1(1) du *Règlement sur les produits de santé naturels*;

**e)** la drogue utilisée uniquement pour une étude expérimentale menée conformément au certificat délivré en vertu de l'article C.08.015.

**(3)** Lorsque le ministre désigne d'autres classes de formes posologiques, il met la liste de ces classes à la disposition de quiconque en fait la demande.

DORS/97-12, art. 5; DORS/98-7, art. 1; DORS/2000-120, art. 1; DORS/2002-368, art. 1; DORS/2004-282, art. 1; DORS/2013-74, art. 2; DORS/2013-122, art. 14; DORS/2017-76, art. 7; DORS/2018-144, art. 367; DORS/2019-171, art. 24; DORS/2020-73, art. 1; DORS/2024-132, art. 86; DORS/2024-132, art. 87.

## Application

**C.01A.002 (1)** Le présent titre ne s'applique pas dans les cas suivants :

**a)** la vente en gros d'un prémélange médicamenteux;

**b)** sous réserve du paragraphe (3), l'importation ou la préparation, conformément à une ordonnance, d'une drogue qui n'est pas disponible sur le marché canadien par les personnes suivantes :

**(ii)** a practitioner, and

**(iii)** a person who compounds a drug under the supervision of a practitioner;

**(b.1)** any activity with respect to a positron-emitting radiopharmaceutical that is used only for the purposes of a basic clinical research study described in section C.03.304;

**(c)** any activity with respect to a drug that is used only for the purposes of clinical testing in accordance with subsection C.05.006(1) or section C.08.005;

**(d)** fabricating, packaging/labelling, testing as required under Division 2, distributing as a distributer referred to in section C.01A.003, wholesaling or importing any of the following drugs for which prescriptions are not required and that are for human use in dosage form and not represented as a treatment, preventative or cure for any of the diseases, disorders or abnormal physical states set out in Schedule A.1 to the Act, namely,

**(i)** homeopathic drugs,

**(ii)** drugs that meet the requirements of a class monograph entitled "Vitamin Supplements", "Mineral Supplements", "Dietary Vitamin Supplements" or "Dietary Mineral Supplements", as the case may be, and

**(iii)** drugs that

**(A)** contain a plant, mineral or animal substance in respect of which therapeutic activity or disease prevention activity is claimed, including traditional herbal medicines, traditional Chinese medicines, ayurvedic (East Indian) medicines and traditional aboriginal (North American) medicines, and

**(B)** the medical use of which is based solely on historical and ethnological evidence from references relating to a medical system other than one based on conventional scientific standards; and

**(e)** fabricating, packaging/labelling, testing, distributing, and importing of antimicrobial agents.

**(i)** le pharmacien,

**(ii)** le praticien,

**(iii)** la personne qui prépare une drogue sous la supervision d'un praticien;

**b.1)** toute activité à l'égard d'un produit pharmaceutique radioactif émetteur de positrons destiné exclusivement à l'étude de recherche clinique fondamentale visée à l'article C.03.304;

**c)** toute activité à l'égard d'une drogue destinée exclusivement aux essais cliniques visée au paragraphe C.05.006(1) ou à l'article C.08.005;

**d)** les activités visant à manufacturer, emballer-étiqueter, analyser conformément au titre 2, distribuer à titre de distributeur visé à l'article C.01A.003, vendre en gros ou importer l'une ou l'autre des drogues suivantes vendues sans ordonnance et qui sont sous forme posologique et pour usage humain mais qui ne sont pas présentées comme traitement ou mesure préventive d'une maladie, d'un désordre ou d'un état physique anormal visés à l'annexe A.1 de la Loi ou comme moyen de guérison :

**(i)** les drogues homéopathiques,

**(ii)** les drogues conformes aux exigences de la monographie de classe intitulée, selon le cas, « Suppléments vitaminiques », « Suppléments minéraux », « Suppléments vitaminiques alimentaires » ou « Suppléments minéraux alimentaires »,

**(iii)** toute drogue qui :

**(A)** d'une part, contient une substance végétale, minérale ou animale dont les propriétés sont présentées comme étant thérapeutiques ou préventives, notamment les herbes médicinales traditionnelles, les médicaments traditionnels chinois, ayurvédiques (Indiens d'Asie) et autochtones (Amérique du Nord),

**(B)** d'autre part, dont l'utilisation à des fins médicales est appuyée seulement de preuves historiques et ethnologiques tirées d'ouvrages de références relatifs à un système de médecine autre que celui fondé sur des normes scientifiques conventionnelles;

**e)** les activités visant à manufacturer, emballer-étiqueter, analyser, distribuer ou importer un agent antimicrobien.

**(1.1)** This Division and Division 2 do not apply to a veterinary health product or an active pharmaceutical ingredient that is used in the fabrication of a veterinary health product.

**(2)** This Division and Divisions 2 to 4 do not apply to the affixing of a label to a previously labelled container.

**(3)** This Division applies to the importing, by a pharmacist, a veterinary practitioner or a person who compounds a drug under the supervision of a veterinary practitioner, of an active pharmaceutical ingredient for veterinary use that is for the purpose of compounding, pursuant to a prescription, a drug in dosage form that is not commercially available in Canada, if that ingredient is set out in List A.

SOR/97-12, s. 5; SOR/98-7, s. 2; SOR/2001/-203, s. 1; SOR/2004-282, s. 2; SOR/2012-129, s. 1; SOR/2017-76, s. 8; SOR/2021-46, s. 10.

**C.01A.003** This Division and Divisions 2 to 4 apply to the following distributors:

**(a)** a distributor of an active ingredient; and

**(b)** a distributor of a drug for which the distributor holds the drug identification number.

SOR/97-12, s. 5; SOR/2002-368, s. 2; SOR/2013-74, s. 3; SOR/2017-259, s. 12.

**C.01A.003.1** For the purposes of this Division and the provisions of Divisions 2 to 4 that are prescribed in paragraphs A.01.048(b) to (d),

**(a)** a reference to a distributor referred to in section C.01A.003 or a distributor referred to in paragraph C.01A.003(a) includes a reference to a distributor of an active ingredient that is intended for use outside Canada; and

**(b)** a reference to a distributor referred to in section C.01A.003 or a distributor referred to in paragraph C.01A.003(b) includes a reference to a distributor of a drug in dosage form that is intended for consumption or use outside Canada.

SOR/2022-100, s. 2.

## Prohibition

**C.01A.004 (1)** Subject to subsection (2), no person shall, except in accordance with an establishment licence,

**(a)** fabricate, package/label or import a drug;

**(b)** perform the tests, including examinations, required under Division 2;

**(1.1)** Le présent titre et le titre 2 ne s'appliquent pas au produit de santé animale ou à l'ingrédient actif pharmaceutique qui est utilisé dans la manufacture d'un produit de santé animale.

**(2)** Le présent titre et les titres 2 à 4 ne s'appliquent pas dans le cas de l'activité visant à apposer une étiquette sur un récipient déjà étiqueté.

**(3)** Le présent titre s'applique à l'importation, par un pharmacien, un vétérinaire ou une personne qui prépare une drogue sous la supervision d'un vétérinaire, d'un ingrédient actif pharmaceutique, pour usage vétérinaire, qui figure dans la Liste A à des fins de préparation d'une drogue sous forme posologique conformément à une ordonnance et qui n'est pas disponible sur le marché canadien.

DORS/97-12, art. 5; DORS/98-7, art. 2; DORS/2001-203, art. 1; DORS/2004-282, art. 2; DORS/2012-129, art. 1; DORS/2017-76, art. 8; DORS/2021-46, art. 10.

**C.01A.003** Le présent titre et les titres 2 à 4 s'appliquent aux distributeurs suivants :

**a)** le distributeur d'un ingrédient actif;

**b)** celui d'une drogue dont il a obtenu l'identification numérique.

DORS/97-12, art. 5; DORS/2002-368, art. 2; DORS/2013-74, art. 3; DORS/2017-259, art. 12.

**C.01A.003.1** Pour l'application du présent titre et des dispositions des titres 2 à 4 qui sont prévues aux alinéas A.01.048b) à d) :

**a)** toute mention du distributeur visé à l'article C.01A.003 ou à l'alinéa C.01A.003a) comprend celle du distributeur d'un ingrédient actif qui est destiné à l'usage à l'extérieur du Canada;

**b)** toute mention du distributeur visé à l'article C.01A.003 ou à l'alinéa C.01A.003b) comprend celle du distributeur d'une drogue sous forme posologique qui est destinée à l'usage ou à la consommation à l'extérieur du Canada.

DORS/2022-100, art. 2.

## Interdiction

**C.01A.004 (1)** Sous réserve du paragraphe (2), il est interdit, sauf conformément à une licence d'établissement :

**a)** de manufacturer, d'emballer-étiqueter et d'importer une drogue;

**b)** d'effectuer les analyses, y compris les examens, exigées au titre 2;

**(c)** distribute as a distributor referred to in section C.01A.003 a drug other than

**(i)** an active pharmaceutical ingredient, or

**(ii)** an active ingredient that is used in the fabrication of a drug that is of non-biological origin and that is listed in Schedule C to the Act; or

**(d)** wholesale a drug other than

**(i)** an active pharmaceutical ingredient, or

**(ii)** an active ingredient that is used in the fabrication of a drug that is of non-biological origin and that is listed in Schedule C to the Act.

**(2)** A person does not require an establishment licence to perform tests under Division 2 if the person holds an establishment licence as a fabricator, a packager/labeller, a distributor referred to in paragraph C.01A.003(b) or an importer.

**(3)** No person shall carry on an activity referred to in subsection (1) unless the person holds

**(a)** in respect of a *narcotic* as defined in the *Narcotic Control Regulations*, a licence for that narcotic under those Regulations;

**(b)** in respect of a *controlled drug* as defined in section G.01.001, a licence for that drug under Part G; or

**(c)** in respect of a drug containing *cannabis* as defined in subsection 2(1) of the *Cannabis Act*, a licence for that drug to conduct that activity under the *Cannabis Regulations*.

SOR/97-12, s. 5; SOR/2002-368, s. 3; SOR/2013-74, s. 4; SOR/2017-259, s. 13; SOR/2018-144, s. 368; SOR/2019-171, s. 24; SOR/2022-100, s. 3.

## Application

[SOR/2011-81, s. 1(E)]

**C.01A.005 (1)** A person who wishes to apply for an establishment licence shall submit an application to the Minister, in a form established by the Minister, that contains the following information and documents:

**(a)** the applicant's name, address and telephone number, and their facsimile number and electronic mail address, if any;

**c)** de distribuer à titre de distributeur visé à l'article C.01A.003 une drogue autre que :

**(i)** l'ingrédient actif pharmaceutique,

**(ii)** l'ingrédient actif utilisé dans la manufacture d'une drogue d'origine non biologique visée à l'annexe C de la Loi;

**d)** de vendre en gros une drogue autre que :

**(i)** l'ingrédient actif pharmaceutique,

**(ii)** l'ingrédient actif utilisé dans la manufacture d'une drogue d'origine non biologique visée à l'annexe C de la Loi.

**(2)** Une personne n'est pas tenue d'être titulaire d'une licence d'établissement pour effectuer les analyses exigées au titre 2 si elle est autorisée par une licence d'établissement à manufacturer, emballer-étiqueter, distribuer à titre de distributeur visé à l'alinéa C.01A.003b) ou importer une drogue.

**(3)** Il est interdit d'exercer une activité visée au paragraphe (1), à moins d'être titulaire de l'une ou l'autre des licences suivantes :

**a)** s'agissant d'un *stupéfiant* au sens du *Règlement sur les stupéfiants*, la licence prévue pour ce stupéfiant dans ce même règlement;

**b)** s'agissant d'une *drogue contrôlée* au sens de l'article G.01.001, la licence prévue pour cette drogue à la partie G;

**c)** s'agissant d'une drogue contenant du *cannabis* au sens du paragraphe 2(1) de la *Loi sur le cannabis*, la licence prévue pour cette drogue afin d'exercer cette activité au titre du *Règlement sur le cannabis*.

DORS/97-12, art. 5; DORS/2002-368, art. 3; DORS/2013-74, art. 4; DORS/2017-259, art. 13; DORS/2018-144, art. 368; DORS/2019-171, art. 24; DORS/2022-100, art. 3.

## Demande

[DORS/2011-81, art. 1(A)]

**C.01A.005 (1)** Toute demande de licence d'établissement est présentée au ministre, en la forme établie par celui-ci, et contient les renseignements et documents suivants :

**a)** les nom, adresse et numéro de téléphone du demandeur ainsi que, le cas échéant, son numéro de télécopieur et son adresse électronique;

**b)** les nom et numéro de téléphone d'une personne qu'il est possible de joindre en cas d'urgence ainsi que,

**(b)** the name and telephone number, and the facsimile number and electronic mail address, if any, of a person to contact in case of an emergency;

**(c)** each activity set out in Table I to section C.01A.008 for which the licence is requested;

**(d)** each category of drugs set out in Table II to section C.01A.008 for which the licence is requested;

**(e)** each dosage form class in respect of which the applicant proposes to carry out a licensed activity, and whether it will be in a sterile dosage form;

**(f)** whether the applicant proposes to carry out a licensed activity in respect of an active ingredient;

**(g)** the address of each building in Canada in which the applicant proposes to fabricate, package/label, test as required under Division 2 or store drugs, specifying for each building the activities and the categories of drugs and, for each category, the dosage form classes, if any, and whether any drug will be in a sterile form;

**(h)** the address of each building in Canada at which records will be maintained;

**(i)** whether any building referred to in paragraphs (g) and (h) is a dwelling-house;

**(j)** the drug identification number, if any, or a name that clearly identifies the drug,

**(i)** for each *narcotic* as defined in the *Narcotic Control Regulations*, each *controlled drug* as defined in section G.01.001 or each drug containing *cannabis* as defined in subsection 2(1) of the *Cannabis Act* for which the licence is requested, and

**(ii)** for each other drug within a category of drugs for which the licence is requested, unless the licence is to perform tests required under Division 2, distribute as set out in paragraph C.01A.003(a), or wholesale;

**(k)** if any of the buildings referred to in paragraph (g) have been inspected under the Act or these Regulations, the date of the last inspection;

**(l)** evidence that the applicant's buildings, equipment and proposed practices and procedures meet the applicable requirements of Divisions 2 to 4;

**(m)** in the case of an importer of a drug that is fabricated, packaged/labelled or tested in an MRA country at a recognized building,

le cas échéant, son numéro de télécopieur et son adresse électronique;

**c)** chaque activité visée par la demande et figurant au tableau I de l'article C.01A.008;

**d)** chaque catégorie de drogues visée par la demande et figurant au tableau II de l'article C.01A.008;

**e)** chaque classe de forme posologique à l'égard de laquelle le demandeur se propose d'exercer une activité visée par sa licence et une mention indiquant s'il s'agit d'une drogue sous forme posologique stérile;

**f)** une mention indiquant si le demandeur se propose d'exercer une activité visée par sa licence à l'égard d'un ingrédient actif;

**g)** l'adresse de chacun des bâtiments au Canada où le demandeur se propose de manufacturer, d'emballer-étiqueter, d'effectuer les analyses exigées au titre 2 ou d'entreposer des drogues, avec indication, pour chaque bâtiment, des activités et des catégories de drogues ainsi que, pour chaque catégorie de drogues, la classe de forme posologique, le cas échéant, et une mention indiquant s'il s'agit d'une drogue stérile;

**h)** l'adresse de chacun des bâtiments au Canada où seront conservés les dossiers;

**i)** pour tout bâtiment visé aux alinéas g) ou h), une mention indiquant s'il s'agit d'une maison d'habitation;

**j)** l'identification numérique, le cas échéant, ou le nom qui identifie clairement la drogue s'il s'agit :

**(i)** d'un *stupéfiant* au sens du *Règlement sur les stupéfiants*, d'une *drogue contrôlée* au sens de l'article G.01.001 ou d'une drogue contenant du *cannabis* au sens du paragraphe 2(1) de la *Loi sur le cannabis*, pour lequel la licence est demandée,

**(ii)** de toute autre drogue d'une catégorie visée par la demande, à moins que la licence ne vise les analyses effectuées conformément au titre 2, la distribution à titre de distributeur visé à l'alinéa C.01A.003a) ou la vente en gros;

**k)** la date de la dernière inspection des bâtiments visés à l'alinéa g), le cas échéant, effectuée aux termes de la Loi ou du présent règlement;

**l)** la preuve que les bâtiments, l'équipement et les méthodes et pratiques que le demandeur propose satisfont aux exigences applicables des titres 2 à 4;

**(i)** the name and address of each fabricator, packager/labeller and tester of the drug and the address of each building in which the drug is fabricated, packaged/labelled or tested, specifying for each building the activities and the categories of drugs and, for each category, the dosage form classes, if any, and whether any drug will be in a sterile form,

**(ii)** in respect of each activity done in an MRA country at a recognized building, the name of the regulatory authority that is designated under subsection C.01A.019(1) in respect of that activity for that drug and that has recognized that building as meeting its good manufacturing practices standards in respect of that activity for that drug, and

**(iii)** in respect of any other activities,

**(A)** a certificate from a Canadian inspector indicating that the fabricator's, packager/labeller's or tester's buildings, equipment, practices and procedures meet the applicable requirements of Divisions 2 to 4, or

**(B)** other evidence establishing that the fabricator's, packager/labeller's or tester's buildings, equipment, practices and procedures meet the applicable requirements of Divisions 2 to 4;

**(n)** in the case of any other importer, the name and address of each fabricator, packager/labeller and tester of the drugs proposed to be imported and the address of each building in which the drugs will be fabricated, packaged/labelled and tested, specifying for each building the activities and the categories of drugs and, for each category, the dosage form classes, if any, and whether any drug will be in a sterile form; and

**(o)** in the case of an importer referred to in paragraph (n),

**(i)** a certificate from a Canadian inspector indicating that the fabricator's, packager/labeller's and tester's buildings, equipment, practices and procedures meet the applicable requirements of Divisions 2 to 4, or

**(ii)** other evidence establishing that the fabricator's, packager/labeller's and tester's buildings, equipment, practices and procedures meet the applicable requirements of Divisions 2 to 4.

**m)** dans le cas de l'importateur d'une drogue qui, dans un pays participant, est manufacturée, emballée-étiquetée ou analysée dans un bâtiment reconnu :

**(i)** les nom et adresse de chaque manufacturier, emballeur-étiqueteur et analyste ainsi que l'adresse de chaque bâtiment où la drogue est manufacturée, emballée-étiquetée ou analysée, avec indication, pour chaque bâtiment, de l'activité et de la catégorie de drogues ainsi que, pour chaque catégorie de drogues, la classe de forme posologique, le cas échéant, et une mention indiquant s'il s'agit d'une drogue stérile,

**(ii)** à l'égard de chaque activité qui, dans un pays participant, est effectuée dans un bâtiment reconnu, le nom de l'autorité réglementaire désignée aux termes du paragraphe C.01A.019(1) à l'égard de cette activité pour cette drogue, qui reconnaît ce bâtiment comme satisfaisant à ses normes de bonnes pratiques de fabrication qui ont trait à cette activité pour cette drogue,

**(iii)** à l'égard des autres activités, selon le cas :

**(A)** le certificat d'un inspecteur canadien indiquant que les bâtiments, l'équipement et les méthodes et pratiques du manufacturier, de l'emballeur-étiqueteur ou de l'analyste satisfont aux exigences applicables des titres 2 à 4,

**(B)** toute autre preuve établissant que les bâtiments, l'équipement et les méthodes et pratiques du manufacturier, de l'emballeur-étiqueteur ou de l'analyste satisfont aux exigences applicables des titres 2 à 4;

**n)** dans le cas de tout autre importateur, les nom et adresse du manufacturier, de l'emballeur-étiqueteur et de l'analyste de qui il se propose d'importer la drogue, l'adresse de chaque bâtiment où elle sera manufacturée, emballée-étiquetée et analysée, avec indication, pour chaque bâtiment, de l'activité et de la catégorie de drogues ainsi que, pour chaque catégorie de drogues, la classe de forme posologique, le cas échéant, et une mention indiquant s'il s'agit d'une drogue stérile;

**o)** dans le cas de l'importateur visé à l'alinéa n), selon le cas :

**(i)** le certificat d'un inspecteur canadien indiquant que les bâtiments, l'équipement et les méthodes et pratiques du manufacturier, de l'emballeur-étiqueteur et de l'analyste satisfont aux exigences applicables des titres 2 à 4,

**(ii)** une autre preuve établissant que les bâtiments, l'équipement et les méthodes et pratiques du manufacturier, de l'emballeur-étiqueteur et de l'analyste satisfont aux exigences applicables des titres 2 à 4.

**(2)** In addition to the information and documents referred to in subsection (1), a person who submits an application for an establishment licence that relates to one or more activities set out in Table I to section C.01A.008 to be carried out in respect of a category of drugs set out in Table II to that section that includes a COVID-19 drug may include a statement to that effect in the application.

SOR/97-12, s. 5; SOR/2000-120, s. 2; SOR/2002-368, s. 4; SOR/2011-81, s. 2; SOR/2013-74, s. 5; SOR/2018-144, s. 369; SOR/2019-171, s. 24; SOR/2021-45, s. 3.

**(2)** En plus des renseignements et du matériel visés au paragraphe (1), la personne qui présente une demande de licence d'établissement qui vise l'une ou plusieurs des activités figurant au tableau I de l'article C.01A.008 et exercées à l'égard d'une catégorie de drogues figurant au tableau II de cet article qui inclut une drogue contre la COVID-19 peut inclure dans la demande une mention à cet égard.

DORS/97-12, art. 5; DORS/2000-120, art. 2; DORS/2002-368, art. 4; DORS/2011-81, art. 2; DORS/2013-74, art. 5; DORS/2018-144, art. 369; DORS/2019-171, art. 24; DORS/2021-45, art. 3.

**C.01A.006 (1)** A person who wishes to amend an establishment licence shall submit an application to the Minister, in a form established by the Minister, that contains the information and documents referred to in section C.01A.005 that relate to the amendment.

**(1.1)** In addition to the information and documents referred to in subsection (1), a person who submits an application to amend an establishment licence that relates to one or more activities set out in Table I to section C.01A.008 to be carried out in respect of a category of drugs set out in Table II to that section that includes a COVID-19 drug may include a statement to that effect in the application.

**(2)** An establishment licence must be amended where the licensee proposes

**(a)** to add an activity or category of drugs, as set out in the tables to section C.01A.008;

**(b)** in respect of a category of drugs and activity indicated in the licence, to authorize sterile dosage forms of the category;

**(c)** to add any building in Canada at which drugs are authorized to be fabricated, packaged/labelled, tested as required under Division 2 or stored, or to add, for an existing building, an authorization to fabricate, package/label, test or store a category of drugs, or sterile dosage forms of the category; and

**(d)** in addition to the matters set out in paragraphs (a) to (c), in the case of an importer,

**(i)** to add a fabricator, packager/labeller or tester of a drug,

**C.01A.006 (1)** Toute demande de modification d'une licence d'établissement est présentée au ministre, en la forme établie par celui-ci, et contient les renseignements et documents visés à l'article C.01A.005 relativement à la modification demandée.

**(1.1)** En plus des renseignements et du matériel visés au paragraphe (1), la personne qui présente une demande de modification d'une licence d'établissement qui vise l'une ou plusieurs des activités figurant au tableau I de l'article C.01A.008 et exercées à l'égard d'une catégorie de drogues figurant au tableau II de cet article qui inclut une drogue contre la COVID-19 peut inclure dans la demande une mention à cet égard.

**(2)** Une licence d'établissement doit faire l'objet d'une modification lorsque le titulaire se propose :

**a)** d'ajouter une ou plusieurs activités ou une catégorie de drogues visées aux tableaux de l'article C.01A.008;

**b)** à l'égard d'une catégorie de drogues et d'une activité visées par la licence, d'autoriser des formes posologiques stériles;

**c)** d'ajouter un ou plusieurs bâtiments au Canada où il est autorisé de manufacturer, d'emballer-étiqueter, d'analyser conformément au titre 2 ou d'entreposer une drogue ou, pour un bâtiment existant, d'ajouter l'autorisation de manufacturer, d'emballer-étiqueter, d'analyser ou d'entreposer une catégorie de drogues ou des formes posologiques stériles de celle-ci;

**d)** dans le cas de tout importateur, en plus des éléments visés aux alinéas a) à c) :

**(i)** d'ajouter le nom d'un manufacturier, emballeur-étiqueteur ou analyste,

**(ii)** to amend the name or address of a fabricator, packager/labeller or tester indicated in the licence, and

**(iii)** if the address of the buildings at which drugs are authorized to be fabricated, packaged/labelled or tested is indicated in the licence, to add additional buildings or, for an existing building, to add an authorization to fabricate, package/label or test a category of drugs, or sterile dosage forms of the category.

SOR/97-12, s. 5; SOR/2011-81, s. 3; SOR/2021-45, s. 4.

**C.01A.007 (1)** The Minister may, on receipt of an application for an establishment licence, an amendment to an establishment licence or the review of an establishment licence, require the applicant to submit further details pertaining to the information contained in the application that are necessary to enable the Minister to make a decision.

**(2)** When considering an application, the Minister may require that

**(a)** an inspection be made during normal business hours of any building referred to in paragraph C.01A.005(1)(g) or (h); and

**(b)** the applicant, if a fabricator, a packager/labeller, a person who performs tests required under Division 2, a distributor referred to in paragraph C.01A.003(b) or an importer, supply samples of any material to be used in the fabrication, packaging/labelling or testing of a drug.

SOR/97-12, s. 5; SOR/2011-81, s. 4; SOR/2021-45, s. 5(F).

## Issuance

**C.01A.008 (1)** Subject to subsection (1.1) and section C.01A.010, the Minister shall, on receipt of the information and material referred to in sections C.01A.005 to C.01A.007, issue or amend an establishment licence.

**(1.1)** The Minister shall, in determining whether he or she has received the information and material referred to in sections C.01A.005 to C.01A.007 in relation to an application referred to in subsection C.01A.005(2) or C.01A.006(1.1) that contains the statement referred to in the applicable subsection, also take into consideration the public health need related to COVID-19.

**(2)** The establishment licence shall indicate

**(a)** each activity set out in Table I to this section that is authorized and the category of drugs set out in

**(ii)** de modifier le nom ou l'adresse d'un manufacturier, emballeur-étiqueteur ou analyste indiqué dans la licence,

**(iii)** lorsque l'adresse des bâtiments où il est autorisé de manufacturer, d'emballer-étiqueter ou d'analyser une drogue est indiquée sur la licence, d'ajouter un ou plusieurs bâtiments ou, pour un bâtiment existant, d'ajouter l'autorisation de manufacturer, d'emballer-étiqueter ou d'analyser une catégorie de drogues ou des formes posologiques stériles de celle-ci.

DORS/97-12, art. 5; DORS/2011-81, art. 3; DORS/2021-45, art. 4.

**C.01A.007 (1)** Sur réception de la demande de licence d'établissement ou de modification ou d'examen d'une telle licence, le ministre peut, en vue de prendre une décision, exiger des précisions quant aux renseignements contenus dans la demande.

**(2)** Au cours de l'examen d'une demande, le ministre peut exiger :

**a)** qu'une inspection soit effectuée aux heures normales de bureau de tout bâtiment visé aux alinéas C.01A.005(1)g) ou h);

**b)** que le demandeur, s'il s'agit du manufacturier, de l'emballeur-étiqueteur, de la personne qui effectue les analyses conformément au titre 2, du distributeur visé à l'alinéa C.01A.003b) ou de l'importateur, fournisse des échantillons de tout matériau servant à manufacturer, emballer-étiqueter ou analyser une drogue.

DORS/97-12, art. 5; DORS/2011-81, art. 4; DORS/2021-45, art. 5(F).

## Délivrance

**C.01A.008 (1)** Sous réserve du paragraphe (1.1) et de l'article C.01A.010, le ministre délivre ou modifie une licence d'établissement sur réception des renseignements et du matériel visés aux articles C.01A.005 à C.01A.007.

**(1.1)** Lorsqu'il évalue s'il a reçu les renseignements et le matériel visés aux articles C.01A.005 à C.01A.007 à l'égard de la demande visée aux paragraphes C.01A.005(2) ou C.01A.006(1.1) qui contient la mention visée à celui de ces paragraphes qui s'applique, le ministre prend également en considération le besoin en matière de santé publique relatif à la COVID-19.

**(2)** La licence indique à la fois :

**a)** chacune des activités autorisées et la catégorie de drogues pour chacune d'entre elles, figurant aux

Table II to this section for which each activity is authorized, specifying for each activity and category whether sterile dosage forms are authorized;

**(b)** the address of each building in Canada at which a category of drugs set out in Table II to this section is authorized to be fabricated, packaged/labelled, tested as required under Division 2 or stored, specifying for each building which of those activities and for which category of drugs, and whether sterile dosage forms of the category are authorized; and

**(c)** in addition to the matters referred to in paragraphs (a) and (b), in the case of an importer,

**(i)** the name and address of each fabricator, packager/labeller and tester from whom the importer is authorized to obtain the drug for import, and

**(ii)** the address of each building at which the drug is authorized to be fabricated, packaged/labelled or tested, specifying for each building the activities and the category of drugs set out in Table II to this section that are authorized, and whether sterile dosage forms are authorized.

**(d)** [Repealed, SOR/2002-368, s. 5]

**(3)** The Minister may indicate in an establishment licence a period for which records shall be retained under Division 2 that, based on the safety profile of the drug or materials, is sufficient to ensure the health of the consumer.

**(4)** When issuing an establishment licence, the Minister may impose terms and conditions on the establishment licence respecting

**(a)** the tests to be performed in respect of a drug, and the equipment to be used, to ensure that the drug is not unsafe for use; and

**(b)** any other matters necessary to prevent risk to the health of consumers, including conditions under which drugs are fabricated, packaged/labelled or tested.

tableaux I et II du présent article, respectivement, et précise pour chaque activité et catégorie de drogues, si des formes posologiques stériles sont autorisées;

**b)** l'adresse de chacun des bâtiments au Canada où il est autorisé à manufacturer, à emballer-étiqueter, à analyser conformément au titre 2 ou à entreposer une catégorie de drogues figurant au tableau II du présent article et pour chacun d'eux, l'activité et la catégorie de drogues, et si des formes posologiques stériles sont autorisées;

**c)** dans le cas de tout importateur, en plus des indications visées aux alinéas a) et b) :

**(i)** les nom et adresse de chaque manufacturier, emballeur-étiqueteur et analyste auprès de qui il est autorisé à obtenir la drogue pour l'importation,

**(ii)** l'adresse de chaque bâtiment où est autorisé la manufacture, l'emballage-étiquetage ou l'analyse de la drogue avec indication, pour chacun d'eux, des activités et de la catégorie de drogues autorisées figurant au tableau II du présent article, et si des formes posologiques stériles sont autorisées.

**d)** [Abrogé, DORS/2002-368, art. 5]

**(3)** Le ministre peut indiquer dans la licence d'établissement toute période pendant laquelle les dossiers doivent être conservés sous le régime du titre 2 et qui, selon le profil de sûreté de la drogue ou des matériaux, est suffisante pour assurer la protection du consommateur.

**(4)** Lorsqu'il délivre une licence d'établissement, le ministre peut l'assortir de conditions portant sur :

**a)** les analyses à effectuer à l'égard de la drogue et l'équipement à utiliser afin que la drogue puisse être utilisée sans danger;

**b)** tout autre élément nécessaire pour prévenir le risque pour la santé des consommateurs, notamment les conditions dans lesquelles la drogue est manufacturée, emballée-étiquettée ou analysée.

**TABLE I**

| Item | Activities |
|---|---|
| 1 | Fabricate |
| 2 | Package/label |
| 3 | Perform the tests, including any examinations, required under Division 2 |

**TABLEAU I**

| Article | Activité |
|---|---|
| 1 | Manufacturer |
| 2 | Emballer-étiqueter |
| 3 | Analyser, y compris examiner, conformément au titre 2 |

| Item | Activities |
|---|---|
| **4** | Distribute as a distributor referred to in paragraph C.01A.003(a) an active ingredient other than<br>(a) an active pharmaceutical ingredient; or<br>(b) an active ingredient that is used in the fabrication of a drug that is of non-biological origin and that is listed in Schedule C to the Act |
| 5 | Distribute as a distributor referred to in paragraph C.01A.003(b) |
| 6 | Import |
| **7** | Wholesale a drug other than<br>(a) an active pharmaceutical ingredient; or<br>(b) an active ingredient that is used in the fabrication of a drug that is of non-biological origin and that is listed in Schedule C to the Act |

**TABLE II**

| Item | Categories of drugs |
|---|---|
| 1 | Pharmaceuticals |
| 1.1 | Active ingredients |
| 2 | Vaccines |
| 3 | [Repealed, SOR/2013-179, s. 2] |
| 4 | Drugs that are listed in Schedule D to the Act, other than vaccines |
| 5 | Drugs listed in Schedule C to the Act |
| 6 | Drugs that are prescription drugs, *controlled drugs* as defined in section G.01.001, *narcotics* as defined in the *Narcotic Control Regulations* and drugs containing *cannabis* as defined in subsection 2(1) of the *Cannabis Act* |
| 7 | Active pharmaceutical ingredients set out in List A that are for veterinary use |

SOR/97-12, s. 5; SOR/2000-120, s. 3; SOR/2002-368, s. 5; SOR/2013-74, s. 6; SOR/2013-122, s. 15; SOR/2013-179, s. 2; SOR/2017-76, s. 9; SOR/2017-259, s. 14; SOR/2018-144, s. 370; SOR/2019-171, s. 24; SOR/2021-45, s. 6; SOR/2021-46, s. 11(E); SOR/2022-100, s. 4.

## Annual Licence Review

**C.01A.009 (1)** The holder of an establishment licence that is not suspended shall submit an application for the review of their licence to the Minister before April 1 of each year and include with it the information and documents referrred to in section C.01A.005.

| Article | Activité |
|---|---|
| 4 | Distribuer à titre de distributeur visé à l'alinéa C.01A.003a) un ingrédient actif autre que :<br>a) l'ingrédient actif pharmaceutique<br>b) l'ingrédient actif utilisé dans la manufacture d'une drogue d'origine non biologique visée à l'annexe C de la Loi |
| 5 | Distribuer à titre de distributeur visé à l'alinéa C.01A.003b) |
| 6 | Importer |
| 7 | Vendre en gros une drogue autre que :<br>a) l'ingrédient actif pharmaceutique<br>b) l'ingrédient actif utilisé dans la manufacture d'une drogue d'origine non biologique visée à l'annexe C de la Loi |

**TABLEAU II**

| Article | Catégorie de drogues |
|---|---|
| 1 | Produit pharmaceutique |
| 1.1 | Ingrédient actif |
| 2 | Vaccin |
| 3 | [Abrogé, DORS/2013-179, art. 2] |
| 4 | Drogue, autre qu'un vaccin, visée à l'annexe D de la Loi |
| 5 | Drogue visée à l'annexe C de la Loi |
| 6 | Drogue qui est une drogue sur ordonnance, *drogue contrôlée* au sens de l'article G.01.001, *stupéfiant* au sens du *Règlement sur les stupéfiants*, et drogue contenant du *cannabis* au sens du paragraphe 2(1) de la *Loi sur le cannabis* |
| 7 | Ingrédient actif pharmaceutique figurant dans la Liste A qui est destiné à un usage vétérinaire |

DORS/97-12, art. 5; DORS/2000-120, art. 3; DORS/2002-368, art. 5; DORS/2013-74, art. 6; DORS/2013-122, art. 15; DORS/2013-179, art. 2; DORS/2017-76, art. 9; DORS/2017-259, art. 14; DORS/2018-144, art. 370; DORS/2019-171, art. 24; DORS/2021-45, art. 6; DORS/2021-46, art. 11(A); DORS/2022-100, art. 4.

## Examen annuel de la licence

**C.01A.009 (1)** Le titulaire d'une licence d'établissement qui n'est pas suspendue doit, avant le 1er avril de chaque année, présenter au ministre la demande d'examen de sa licence accompagnée des renseignements et documents visés à l'article C.01A.005.

**(2)** The Minister shall conduct an annual review of the licence on the basis of the information and documents submitted by the holder and any other relevant information in the Minister's possession.

SOR/97-12, s. 5; SOR/97-298, s. 1; SOR/2011-81, s. 5.

## Refusal to Issue

**C.01A.010 (1)** The Minister may refuse to issue or amend an establishment licence in respect of any or all matters indicated in subsection C.01A.008(2) if

**(a)** the applicant has made a false or misleading statement in relation to the application for the licence; or

**(b)** the applicant has had an establishment licence suspended in respect of the matter.

**(2)** The Minister shall refuse to issue or amend an establishment licence in respect of any or all matters indicated in subsection C.01A.008(2) if the Minister has reasonable grounds to believe that issuing or amending an establishment licence in respect of the matter would constitute a risk to the health of the consumer.

**(3)** Where the Minister refuses to issue or amend an establishment licence, the Minister shall

**(a)** notify the applicant in writing of the reasons for the refusal; and

**(b)** give the applicant an opportunity to be heard.

SOR/97-12, s. 5.

## Terms and Conditions

**C.01A.011 (1)** Every person who holds an establishment licence shall comply with

**(a)** the requirements of the establishment licence; and

**(b)** the applicable requirements of Divisions 2 to 4.

**(2)** [Repealed, SOR/2000-120, s. 4]

SOR/97-12, s. 5; SOR/2000-120, s. 4; SOR/2021-45, s. 7.

**C.01A.012 (1)** The Minister may amend the terms and conditions of an establishment licence that are imposed under subsection C.01A.008(4) if the Minister believes on reasonable grounds that an amendment is necessary to prevent risk to the health of the consumer.

**(2)** Le ministre fait un examen annuel de la licence en se fondant sur les renseignements et documents fournis par le titulaire et sur toute autre information utile qu'il a en sa possession.

DORS/97-12, art. 5; DORS/97-298, art. 1; DORS/2011-81, art. 5.

## Refus

**C.01A.010 (1)** Le ministre peut refuser de délivrer ou de modifier une licence d'établissement à l'égard de toute indication visée au paragraphe C.01A.008(2) dans les cas suivants :

**a)** le demandeur a fait une déclaration fausse ou trompeuse au sujet de sa demande de licence d'établissement;

**b)** sa licence d'établissement a été suspendue au même égard.

**(2)** Le ministre refuse de délivrer ou de modifier une licence d'établissement à l'égard de toute indication visée au paragraphe C.01A.008(2) s'il a des motifs raisonnables de croire que la délivrance ou la modification d'une telle licence constituerait un risque pour la santé des consommateurs.

**(3)** Lorsqu'il refuse de délivrer ou de modifier la licence d'établissement, le ministre :

**a)** en avise le demandeur par écrit, motifs à l'appui;

**b)** donne au demandeur la possibilité de se faire entendre.

DORS/97-12, art. 5.

## Conditions

**C.01A.011 (1)** Le titulaire d'une licence d'établissement est tenu de se conformer :

**a)** aux exigences qui y sont énoncées;

**b)** aux exigences applicables des titres 2 à 4.

**(2)** [Abrogé, DORS/2000-120, art. 4]

DORS/97-12, art. 5; DORS/2000-120, art. 4; DORS/2021-45, art. 7.

**C.01A.012 (1)** Le ministre peut modifier les conditions dont il a assorti une licence d'établissement en vertu du paragraphe C.01A.008(4) s'il a des motifs raisonnables de croire que la modification est nécessaire pour prévenir des risques pour la santé des consommateurs.

**(2)** The Minister shall give at least 15 days notice in writing to the holder of the establishment licence of the proposed amendment, the reasons for it and its effective date.

SOR/97-12, s. 5; SOR/2021-45, s. 8; SOR/2021-46, s. 11(E).

**C.01A.012.1 (1)** Despite subsection C.01A.008(4), the Minister may, at any time, including when issuing an establishment licence, impose terms and conditions on an establishment licence that is issued or amended under section C.01A.008 on the basis of an application referred to in subsection C.01A.005(2) or C.01A.006(1.1) that contains the statement referred to in the applicable subsection.

**(2)** For greater certainty, terms and conditions that may be imposed under subsection (1) are not limited to those that may be imposed under subsection C.01A.008(4).

SOR/2021-45, s. 9.

**C.01A.012.2** The Minister may, at any time, amend terms or conditions that are imposed on an establishment licence under subsection C.01A.012.1(1).

SOR/2021-45, s. 9.

## Notification

**C.01A.013** Every person who holds an establishment licence shall notify the Minister in writing within 15 days after

**(a)** there is any change to the information referred to in any of paragraphs C.01A.005(1)(a), (b) and (e) to (i); or

**(b)** an event occurs that results in their being in contravention of any of the applicable requirements of Divisions 2 to 4, where it may affect the quality, safety or efficacy of a drug fabricated, packaged/labelled, tested as required under Division 2 or stored by them.

SOR/97-12, s. 5; SOR/2017-18, s. 15; SOR/2021-45, s. 10.

**C.01A.014 (1)** No licensee shall carry on a licensed activity in respect of any category of drugs if a change referred to in subsection (2) has occurred in respect of that category, unless

**(a)** they have filed with the Minister a notice that contains sufficient information to enable the Minister to assess the safety of the drug, taking into account the change; and

**(b)** the Minister has issued to them a letter indicating that the information will be reviewed and has not, within 90 days after issuing the letter, sent them a notice indicating that the change is not acceptable.

**(2)** Le ministre donne au titulaire de la licence d'établissement un préavis écrit, d'au moins quinze jours indiquant la modification envisagée, les motifs de celle-ci et sa date d'entrée en vigueur.

DORS/97-12, art. 5; DORS/2021-45, art. 8; DORS/2021-46, art. 11(A).

**C.01A.012.1 (1)** Malgré le paragraphe C.01A.008(4), le ministre peut, à tout moment, notamment celui de la délivrance, assortir de conditions la licence d'établissement qu'il délivre ou modifie en vertu de l'article C.01A.008 en réponse à la demande visée aux paragraphes C.01A.005(2) ou C.01A.006(1.1) qui contient la mention visée à celui de ces paragraphes qui s'applique.

**(2)** Il est entendu que les conditions dont le ministre peut assortir la licence d'établissement en vertu du paragraphe (1) ne se limitent pas à celles visées au paragraphe C.01A.008(4).

DORS/2021-45, art. 9.

**C.01A.012.2** Le ministre peut, à tout moment, modifier les conditions dont il a assorti une licence d'établissement en vertu du paragraphe C.01A.012.1(1).

DORS/2021-45, art. 9.

## Avis de modification

**C.01A.013** Le titulaire d'une licence d'établissement doit aviser, par écrit, le ministre au plus tard le 15e jour suivant, selon le cas :

**a)** la modification des renseignements visés aux alinéas C.01A.005(1)a), b) et e) à i);

**b)** la survenance d'un fait susceptible d'avoir un effet sur la qualité, l'innocuité ou l'efficacité d'une drogue manufacturée, emballée-étiquetée, analysée conformément au titre 2 ou entreposée par lui qui entraîne le non-respect des exigences visées aux titres 2 à 4.

DORS/97-12, art. 5; DORS/2017-18, art. 15; DORS/2021-45, art. 10.

**C.01A.014 (1)** Il est interdit au titulaire d'une licence d'établissement d'exercer une activité visée par sa licence à l'égard d'une catégorie de drogues, si une modification visée au paragraphe (2) est apportée, sauf :

**a)** s'il a déposé auprès du ministre un avis contenant les renseignements nécessaires pour permettre à celui-ci d'évaluer l'innocuité de la drogue nouvelle compte tenu de la modification;

**b)** si le ministre lui a fait parvenir une lettre indiquant que les renseignements feront l'objet d'un examen, et qu'il ne lui a pas, dans les 90 jours suivant la date de

**(2)** Notification is required in respect of the following changes where they may affect whether a drug can be fabricated, packaged/labelled, tested or stored in accordance with the applicable requirements of Divisions 2 to 4:

**(a)** changes to the plans and specifications of a building where a drug is fabricated, packaged/labelled, tested or stored;

**(b)** changes to the equipment that is used in the fabrication, packaging/labelling or testing of a drug;

**(c)** changes to the practices or procedures; and

**(d)** in the case of an importer, other than an importer of a drug that is fabricated, packaged/labelled or tested in an MRA country at a recognized building, any change referred to in paragraphs (a) to (c) that relates to the fabricator, packager/labeller or tester of the drug being imported.

SOR/97-12, s. 5; SOR/2000-120, s. 5; SOR/2002-368, s. 6.

**C.01A.015 (1)** An importer of a drug that is fabricated, packaged/labelled or tested in an MRA country at a recognized building shall immediately notify the Minister if the fabricator, packager/labeller or tester indicated in the importer's establishment licence no longer holds a valid permit, licence or other authorization issued by the regulatory authority that recognized that building.

**(2)** The Minister shall, on receiving a notification under subsection (1), amend the importer's establishment licence by removing the name and address of that fabricator, packager/labeller or tester.

SOR/97-12, s. 5; SOR/2000-120, s. 6; SOR/2002-368, s. 7.

## Suspension

**C.01A.016 (1)** The Minister may suspend an establishment licence in respect of any or all matters indicated in subsection C.01A.008(2) if he or she has reasonable grounds to believe that

**(a)** the licensee has contravened any provision of the Act or these Regulations; or

**(b)** the licensee has made a false or misleading statement in the application for the establishment licence.

**(2)** Before suspending an establishment licence, the Minister shall consider

cette lettre, fait parvenir un avis indiquant que la modification n'est pas acceptable.

**(2)** L'avis est exigé à l'égard des modifications suivantes susceptibles d'avoir pour effet que la drogue ne soit plus manufacturée, emballée-étiquetée, analysée ou entreposée conformément aux exigences applicables des titres 2 à 4 :

**a)** toute modification des plans et des devis du bâtiment où la drogue est manufacturée, emballée-étiquetée, analysée ou entreposée;

**b)** tout changement apporté à l'équipement servant à manufacturer, emballer-étiqueter ou analyser la drogue;

**c)** toute modification des méthodes ou pratiques;

**d)** dans le cas d'un importateur autre que celui d'une drogue qui, dans un pays participant, est manufacturée, emballée-étiquetée ou analysée dans un bâtiment reconnu, tout changement visé à l'un des alinéas a) à c) ayant trait au manufacturier, à l'emballeur-étiqueteur ou à l'analyste de la drogue importée.

DORS/97-12, art. 5; DORS/2000-120, art. 5; DORS/2002-368, art. 6.

**C.01A.015 (1)** L'importateur d'une drogue qui, dans un pays participant, est manufacturée, emballée-étiquetée ou analysée dans un bâtiment reconnu doit, sans délai, aviser le ministre si le manufacturier, l'emballeur-étiqueteur ou l'analyste indiqué dans la licence d'établissement de l'importateur n'est plus titulaire du permis, de la licence ou de toute autre autorisation valide délivré par l'autorité réglementaire qui reconnaissait le bâtiment.

**(2)** Sur réception de l'avis, le ministre modifie la licence d'établissement de l'importateur en radiant les nom et adresse du manufacturier, de l'emballeur-étiqueteur ou de l'analyste visé.

DORS/97-12, art. 5; DORS/2000-120, art. 6; DORS/2002-368, art. 7.

## Suspension

**C.01A.016 (1)** Le ministre peut suspendre une licence d'établissement à l'égard de toute indication visée au paragraphe C.01A.008(2) lorsqu'il a des motifs raisonnables de croire que :

**a)** soit le titulaire de la licence a contrevenu à toute disposition de la Loi ou du présent règlement;

**b)** soit le titulaire de la licence a fait une déclaration fausse ou trompeuse dans sa demande de licence.

**(2)** Avant de suspendre une licence d'établissement, le ministre prend en compte les faits suivants :

**(a)** the licensee's history of compliance with the Act and these Regulations; and

**(b)** the risk that allowing the licence to continue in force would constitute for the health of the consumer.

**(3)** The Minister shall not suspend an establishment licence until

**(a)** the Minister has sent the licensee a written notice that sets out the reason for the proposed suspension, any corrective action required to be taken and the time within which it must be taken;

**(b)** if corrective action is required, the time set out in the notice has passed without the action having been taken; and

**(c)** the licensee has been given an opportunity to be heard in respect of the suspension.

SOR/97-12, s. 5; SOR/2018-84, s. 4; SOR/2021-46, s. 7.

**C.01A.017 (1)** The Minister may suspend an establishment licence in respect of any or all matters indicated in subsection C.01A.008(2) without giving the licensee an opportunity to be heard if it is necessary to do so to prevent a risk to the health of consumers, by giving the licensee a notice that states the reason for the suspension.

**(2)** A licensee may request of the Minister, in writing, that the suspension be reconsidered.

**(3)** The Minister shall, within 45 days after the date of receiving the request, provide the licensee with the opportunity to be heard.

SOR/97-12, s. 5; SOR/2018-84, s. 5.

**C.01A.017.1** The Minister may suspend an establishment licence in respect of any or all matters indicated in subsection C.01A.008(2) if, after the Minister has, under section 21.31 of the Act, ordered the licensee to conduct an assessment in order to provide evidence establishing that the licensee's buildings, equipment or practices and procedures, as the case may be, continue to meet the requirements referred to in paragraph C.01A.005(1)(l), subparagraph C.01A.005(1)(m)(ii) or (iii) or paragraph C.01A.005(1)(o),

**(a)** the licensee fails to comply with the order; or

**(b)** the licensee complies with the order but the Minister determines that the results of the assessment are not sufficient to establish that those requirements continue to be met.

SOR/2018-84, s. 6; SOR/2021-45, s. 11.

**a)** les antécédents du titulaire pour ce qui est de la conformité aux dispositions de la Loi ou du présent règlement;

**b)** le risque que présenterait le maintien de la licence pour la santé des consommateurs.

**(3)** Le ministre ne peut suspendre la licence d'établissement que si, à la fois :

**a)** il a envoyé au titulaire un avis écrit précisant les motifs de la suspension, et, le cas échéant, les mesures correctives qui s'imposent ainsi que le délai accordé pour les prendre;

**b)** lorsque l'avis prévoit des mesures correctives, le titulaire ne les a pas prises dans le délai prévu;

**c)** le titulaire a eu la possibilité de se faire entendre à l'égard de la suspension.

DORS/97-12, art. 5; DORS/2018-84, art. 4; DORS/2021-46, art. 7.

**C.01A.017 (1)** Le ministre peut, lorsque cela est nécessaire pour prévenir des risques pour la santé des consommateurs, suspendre une licence d'établissement à l'égard de toute indication visée au paragraphe C.01A.008(2) sans que le titulaire de la licence ait la possibilité de se faire entendre, en lui faisant parvenir un avis motivé.

**(2)** Le titulaire d'une licence d'établissement peut demander, par écrit, au ministre que la suspension soit revisée.

**(3)** Le ministre doit, dans les 45 jours suivant la date de réception de la demande, donner au titulaire la possibilité de se faire entendre.

DORS/97-12, art. 5; DORS/2018-84, art. 5.

**C.01A.017.1** Le ministre peut suspendre une licence d'établissement à l'égard de toute indication visée au paragraphe C.01A.008(2) si, après qu'il a ordonné en vertu de l'article 21.31 de la Loi au titulaire de la licence d'effectuer une évaluation en vue de fournir des preuves établissant que ses bâtiments, son équipement ou ses méthodes et pratiques, selon le cas, remplissent toujours les exigences prévues à l'alinéa C.01A.005(1)l), aux sous-alinéas C.01A.005(1)m)(ii) ou (iii) ou à l'alinéa C.01A.005(1)o) :

**a)** le titulaire ne se conforme pas à l'ordre;

**b)** le titulaire se conforme à l'ordre, mais le ministre conclut que les résultats de l'évaluation sont insuffisants pour établir que ces exigences sont toujours remplies.

DORS/2018-84, art. 6; DORS/2021-45, art. 11.

**C.01A.018** The Minister shall reinstate an establishment licence in respect of any or all matters indicated in subsection C.01A.008(2) that are the subject of the suspension if, within 12 months after the effective date of the suspension, the licensee provides the Minister with sufficient evidence demonstrating that

**(a)** the situation on which the suspension was based has been corrected; or

**(b)** the situation on which the suspension was based did not exist.

SOR/97-12, s. 5; SOR/2018-84, s. 6.

## Cancellation

**C.01A.018.1** The Minister shall cancel an establishment licence if the licensee has failed to submit an application for the review of the licence in accordance with subsection C.01A.009(1).

SOR/2011-81, s. 6; SOR/2018-84, s. 7.

**C.01A.018.2 (1)** If the Minister has suspended an establishment licence in respect of all matters indicated in subsection C.01A.008(2) and the suspension is still in effect 12 months after the effective date of the suspension, the Minister shall cancel the licence.

**(2)** If the Minister has suspended an establishment licence in respect of one or more of the matters indicated in subsection C.01A.008(2) and the suspension is still in effect 12 months after the effective date of the suspension, the Minister shall cancel the licence only in respect of the matters that are the subject of the suspension.

SOR/2018-84, s. 7.

## Designation

**C.01A.019 (1)** For the purposes of this Division and Divisions 2 to 4, a regulatory authority that is set out in column 1 of the *List of Regulatory Authorities for the Purposes of Section C.01A.019 of the Food and Drug Regulations*, published by the Government of Canada on its website, as amended from time to time, is designated in respect of the activities set out in column 3 for the drugs or category of drugs set out in column 2.

**(2)** Whole blood and its components are excluded from the drugs and categories of drugs that are set out in column 2 of the List.

**(3)** The lot release of drugs listed in Schedule D to the Act is excluded from the activity of testing set out in column 3 of the List.

SOR/97-12, s. 5; SOR/2000-120, s. 7; SOR/2002-368, s. 8; SOR/2024-136, s. 2.

**C.01A.018** Le ministre rétablit la licence d'établissement à l'égard de toute indication visée au paragraphe C.01A.008(2) qui fait l'objet de la suspension si, dans les douze mois suivant la date de prise d'effet de la suspension, le titulaire de la licence lui fournit des preuves suffisantes démontrant :

**a)** soit que le titulaire de la licence a remédié à la situation sur laquelle la suspension était fondée;

**b)** soit que la situation sur laquelle la suspension était fondée n'a pas existé.

DORS/97-12, art. 5; DORS/2018-84, art. 6.

## Annulation

**C.01A.018.1** Le ministre annule la licence d'établissement dont le titulaire omet de présenter une demande d'examen conformément au paragraphe C.01A.009(1).

DORS/2011-81, art. 6; DORS/2018-84, art. 7.

**C.01A.018.2 (1)** S'il a suspendu une licence d'établissement à l'égard de toutes les indications visées au paragraphe C.01A.008(2) et que la suspension est toujours en vigueur douze mois après la date de sa prise d'effet, le ministre annule la licence.

**(2)** S'il a suspendu une licence d'établissement à l'égard de l'une ou de plusieurs des indications visées au paragraphe C.01A.008(2) et que la suspension est toujours en vigueur douze mois après la date de sa prise d'effet, le ministre annule la licence seulement à l'égard des indications qui font l'objet de la suspension.

DORS/2018-84, art. 7.

## Désignation

**C.01A.019 (1)** Pour l'application du présent titre et des titres 2 à 4, les autorités réglementaires mentionnées à la colonne 1 de la *Liste des autorités réglementaires pour l'application de l'article C.01A.019 du Règlement sur les aliments et drogues*, publiée par le gouvernement du Canada sur son site Web, avec ses modifications successives, sont désignées à l'égard des activités visées à la colonne 3 pour les drogues et les catégories de drogues visées à la colonne 2.

**(2)** Le sang entier et ses composants sont exclus des drogues et des catégories de drogues visées à la colonne 2 de cette liste.

**(3)** La mise en circulation de lots de drogues visées à l'annexe D de la Loi est exclue de l'activité d'analyse visée à la colonne 3 de cette liste.

DORS/97-12, art. 5; DORS/2000-120, art. 7; DORS/2002-368, art. 8; DORS/2024-136, art. 2.

## DIVISION 2

# Good Manufacturing Practices

**C.02.001** [Repealed, SOR/97-12, s. 5.1]

**C.02.002** In this Division,

***drug*** [Repealed, SOR/97-12, s. 6]

***importer*** [Repealed, SOR/97-12, s. 6]

***medical gas*** means any gas or mixture of gases manufactured, sold or represented for use as a drug; (*gaz médical*)

***packaging material*** includes a label; (*matériel d'emballage*)

***produce*** [Repealed, SOR/97-12, s. 6]

***quality control department*** [Repealed, SOR/2010-95, s. 1]

***specifications*** means a detailed description of a drug, the raw material used in a drug or the packaging material for a drug and includes

**(a)** a statement of all properties and qualities of the drug, raw material or packaging material that are relevant to the manufacture, packaging and use of the drug, including the identity, potency and purity of the drug, raw material or packaging material,

**(b)** a detailed description of the methods used for testing and examining the drug, raw material or packaging material, and

**(c)** a statement of tolerances for the properties and qualities of the drug, raw material or packaging material. (*spécifications*)

SOR/82-524, s. 3; SOR/85-754, s. 1; SOR/89-174, s. 1; SOR/97-12, s. 6; SOR/2010-95, s. 1.

**C.02.002.1** This Division does not apply to fabricating, packaging/labelling, testing, storing and importing of antimicrobial agents.

SOR/2004-282, s. 3.

**C.02.002.2** In this Division,

**(a)** a reference to specifications is — in respect of a drug intended for consumption or use outside Canada,

## TITRE 2

# Bonnes pratiques de fabrication

**C.02.001** [Abrogé, DORS/97-12, art. 5.1]

**C.02.002** Dans le présent titre,

***drogue*** [Abrogée, DORS/97-12, art. 6]

***gaz médical*** désigne tout gaz ou mélange de gaz fabriqué ou vendu pour servir de drogue ou présenté comme pouvant servir de drogue; (*medical gas*)

***importateur*** [Abrogée, DORS/97-12, art. 6]

***matériel de conditionnement*** [Abrogée, DORS/89-174, art. 1]

***matériel d'emballage*** comprend une étiquette; (*packaging material*);

***produire*** [Abrogée, DORS/97-12, art. 6]

***service du contrôle de la qualité*** [Abrogée, DORS/2010-95, art. 1]

***spécifications*** s'entend de la description détaillée d'une drogue, de la matière première utilisée dans cette drogue ou du matériel d'emballage de la drogue, y compris :

**a)** la liste des propriétés et des qualités de la drogue, de la matière première ou du matériel d'emballage qui ont trait à la fabrication, à l'emballage et à l'emploi de la drogue, y compris l'identité, l'activité et la pureté de la drogue, de la matière première ou du matériel d'emballage,

**b)** une description détaillée des méthodes d'analyse et d'examen de la drogue, de la matière première ou du matériel d'emballage,

**c)** une indication des tolérances relatives aux propriétés et aux qualités de la drogue, de la matière première ou du matériel d'emballage. (*specifications*)

DORS/82-524, art. 3; DORS/85-754, art. 1; DORS/89-174, art. 1; DORS/97-12, art. 6; DORS/2010-95, art. 1.

**C.02.002.1** Le présent titre ne s'applique pas aux activités visant à manufacturer, à emballer-étiqueter, à analyser, à entreposer ou à importer un agent antimicrobien.

DORS/2004-282, art. 3.

**C.02.002.2** Dans le présent titre :

**a)** toute mention des spécifications d'une drogue destinée à la consommation ou à l'usage à l'extérieur du

the raw material used in such a drug or the packaging material for such a drug — a reference to the specifications with which the drug, raw material or packaging material is required to comply in the country in which the drug is intended to be consumed or used; and

**(b)** the definition *expiration date* in subsection C.01.001(1) does not apply in respect of a drug intended for consumption or use outside Canada.

SOR/2022-100, s. 5.

## Sale

**C.02.003** No distributor referred to in paragraph C.01A.003(b) and no importer shall sell a drug unless it has been fabricated, packaged/labelled, tested and stored in accordance with the requirements of this Division.

SOR/82-524, s. 3; SOR/97-12, s. 7; SOR/2000-120, s. 8; SOR/2010-95, s. 2(F).

**C.02.003.1** No person shall sell a drug that they have fabricated, packaged/labelled, tested or stored unless they have fabricated, packaged/labelled, tested or stored it in accordance with the requirements of this Division.

SOR/2013-74, s. 7.

**C.02.003.2 (1)** No person shall import an active ingredient into Canada for the purpose of sale unless they have in Canada a person who is responsible for its sale.

**(2)** No person who imports an active ingredient into Canada shall sell any lot or batch of it unless the following appear on its label:

**(a)** the name and civic address of the person who imports it; and

**(b)** the name and address of the principal place of business in Canada of the person who is responsible for its sale.

SOR/2013-74, s. 7.

## Use in Fabrication

**C.02.003.3** No person shall use an active ingredient in the fabrication of a drug unless it is fabricated, packaged/labelled, tested and stored in accordance with the requirements of this Division.

SOR/2013-74, s. 7.

Canada, de la matière première utilisée dans cette drogue ou du matériel d'emballage de la drogue constitue un renvoi aux spécifications auxquelles la drogue, la matière première ou le matériel d'emballage est tenu de se conformer dans le pays dans lequel la drogue est destinée à être consommée ou utilisée;

**b)** la définition de *date limite d'utilisation* au paragraphe C.01.001(1) ne s'applique pas à l'égard d'une drogue destinée à la consommation ou à l'usage à l'extérieur du Canada.

DORS/2022-100, art. 5.

## Vente

**C.02.003** Il est interdit au distributeur visé à l'alinéa C.01A.003b) et à l'importateur de vendre une drogue qui n'a pas été manufacturée, emballée-étiquetée, analysée et entreposée conformément aux exigences du présent titre.

DORS/82-524, art. 3; DORS/97-12, art. 7; DORS/2000-120, art. 8; DORS/2010-95, art. 2(F).

**C.02.003.1** Il est interdit à la personne qui manufacture, emballe-étiquette, analyse ou entrepose une drogue de la vendre à moins d'avoir effectué l'activité conformément aux exigences du présent titre.

DORS/2013-74, art. 7.

**C.02.003.2 (1)** Il est interdit d'importer un ingrédient actif en vue de le vendre à moins qu'une personne ne soit responsable au Canada de sa vente.

**(2)** Il est interdit à toute personne qui importe un ingrédient actif d'en vendre un lot ou un lot de fabrication, à moins que les renseignements suivants ne figurent sur l'étiquette :

**a)** les nom et adresse municipale de cette personne;

**b)** les nom et adresse du principal établissement au Canada de la personne responsable de la vente.

DORS/2013-74, art. 7.

## Utilisation pour la manufacture

**C.02.003.3** Il est interdit d'utiliser dans la manufacture d'une drogue tout ingrédient actif qui n'a pas été manufacturé, emballé-étiqueté, analysé et entreposé conformément aux exigences du présent titre.

DORS/2013-74, art. 7.

## Premises

**C.02.004** The premises in which a lot or batch of a drug is fabricated, packaged/labelled or stored shall be designed, constructed and maintained in a manner that

**(a)** permits the operations therein to be performed under clean, sanitary and orderly conditions;

**(b)** permits the effective cleaning of all surfaces therein; and

**(c)** prevents the contamination of the drug and the addition of extraneous material to the drug.

SOR/82-524, s. 3; SOR/97-12, s. 8; SOR/2010-95, s. 3.

## Equipment

**C.02.005** The equipment with which a lot or batch of a drug is fabricated, packaged/labelled or tested shall be designed, constructed, maintained, operated and arranged in a manner that

**(a)** permits the effective cleaning of its surfaces;

**(b)** prevents the contamination of the drug and the addition of extraneous material to the drug; and

**(c)** permits it to function in accordance with its intended use.

SOR/82-524, s. 3; SOR/97-12, s. 9.

## Personnel

**C.02.006** Every lot or batch of a drug shall be fabricated, packaged/labelled, tested and stored under the supervision of personnel who, having regard to the duties and responsibilities involved, have had such technical, academic and other training as the Minister considers satisfactory in the interests of the health of the consumer or purchaser.

SOR/82-524, s. 3; SOR/85-754, s. 2; SOR/97-12, s. 52; SOR/2018-69, s. 27.

## Sanitation

**C.02.007 (1)** Every person who fabricates or packages/labels a drug shall have a written sanitation program that shall be implemented under the supervision of qualified personnel.

**(2)** The sanitation program referred to in subsection (1) shall include

## Locaux

**C.02.004** Les locaux dans lesquels un lot ou un lot de fabrication d'une drogue est manufacturé, emballé-étiqueté ou entreposé sont conçus, construits et entretenus de manière :

**a)** à permettre l'exécution des opérations d'une façon propre, hygiénique et ordonnée;

**b)** à permettre le nettoyage efficace de toutes les surfaces qui s'y trouvent; et

**c)** à empêcher la contamination de la drogue et l'introduction de toute matière étrangère à la drogue.

DORS/82-524, art. 3; DORS/97-12, art. 8; DORS/2010-95, art. 3.

## Équipement

**C.02.005** L'équipement servant à manufacturer, emballer-étiqueter ou analyser un lot ou un lot de fabrication d'une drogue doit être conçu, fabriqué, entretenu, utilisé et disposé de façon :

**a)** à permettre le nettoyage efficace de toutes les surfaces qui s'y trouvent;

**b)** à empêcher la contamination de la drogue et l'introduction de toute matière étrangère à la drogue; et

**c)** à fonctionner selon son usage voulu.

DORS/82-524, art. 3; DORS/97-12, art. 9.

## Personnel

**C.02.006** Chaque lot ou lot de fabrication d'une drogue doit être manufacturé, emballé-étiqueté, analysé et entreposé sous la surveillance d'un personnel qui, sur le plan des fonctions et responsabilités en cause, a reçu une formation technique, une formation théorique de même qu'un autre type de formation que le ministre juge satisfaisantes dans l'intérêt de la santé du consommateur ou de l'acheteur.

DORS/82-524, art. 3; DORS/85-754, art. 2; DORS/97-12, art. 52; DORS/2018-69, art. 27.

## Hygiène

**C.02.007 (1)** La personne qui manufacture ou emballe-étiquette une drogue doit avoir un programme d'hygiène, par écrit, qui est appliqué sous la surveillance d'un personnel compétent.

**(2)** Le programme d'hygiène visé au paragraphe (1) doit comprendre :

**(a)** cleaning procedures for the premises where the drug is fabricated or packaged/labelled and for the equipment used in the fabrication or packaging/labelling; and

**(b)** instructions on the sanitary fabrication and packaging/labelling of drugs and the handling of materials used in the fabrication and packaging/labelling of drugs.

SOR/82-524, s. 3; SOR/97-12, ss. 10, 53.

**a)** les méthodes de nettoyage des locaux où la drogue est manufacturée ou emballée-étiquetée et de l'équipement servant à ces fins;

**b)** des instructions pour manufacturer et emballer-étiqueter les drogues dans des conditions hygiéniques et pour manutentionner le matériel utilisé à ces fins.

DORS/82-524, art. 3; DORS/97-12, art. 10 et 53.

**C.02.008 (1)** Every person who fabricates or packages/labels a drug shall have, in writing, minimum requirements for the health and the hygienic behaviour and clothing of personnel to ensure the clean and sanitary fabrication and packaging/labelling of the drug.

**(2)** No person shall have access to any area where a drug is exposed during its fabrication or packaging/labelling if the person

**(a)** is affected with or is a carrier of a disease in a communicable form; or

**(b)** has an open lesion on any exposed surface of the body.

SOR/82-524, s. 3; SOR/97-12, s. 11.

**C.02.008 (1)** Le manufacturier et l'emballeur-étiqueteur d'une drogue doivent avoir, par écrit, les exigences minimales relatives à la santé ainsi qu'au comportement et aux vêtements du personnel afin que la drogue soit manufacturée et emballée-étiquetée dans des conditions hygiéniques.

**(2)** L'accès à une zone où est exposée une drogue à l'étape où elle est manufacturée ou emballée-étiquetée est interdite à la personne :

**a)** qui est atteinte ou porteuse d'une maladie transmissible, ou

**b)** qui présente une plaie ouverte sur une surface exposée de son corps.

DORS/82-524, art. 3; DORS/97-12, art. 11.

## Raw Material Testing

**C.02.009 (1)** Each lot or batch of raw material shall be tested against the specifications for that raw material prior to its use in the fabrication of a drug.

**(2)** No lot or batch of raw material shall be used in the fabrication of a drug unless that lot or batch of raw material complies with the specifications for that raw material.

**(3)** Notwithstanding subsection (1), water may, prior to the completion of its tests under that subsection, be used in the fabrication of a drug.

**(4)** Where any property of a raw material is subject to change on storage, no lot or batch of that raw material shall be used in the fabrication of a drug after its storage unless the raw material is retested after an appropriate interval and complies with its specifications for that property.

**(5)** Where the specifications referred to in subsections (1), (2) and (4) are not prescribed, they shall

**(a)** be in writing;

## Analyse des matières premières

**C.02.009 (1)** Un lot ou un lot de fabrication d'une matière première doit être analysé en fonction des spécifications de cette matière première, avant d'être utilisé pour manufacturer une drogue.

**(2)** Un lot ou un lot de fabrication d'une matière première ne peut être utilisé pour manufacturer une drogue que s'il est conforme aux spécifications de cette matière première.

**(3)** Nonobstant le paragraphe (1), l'eau peut, avant la fin de l'analyse visée à ce paragraphe, être utilisée pour manufacturer une drogue.

**(4)** Si une propriété d'une matière première est susceptible de s'altérer au cours de l'entreposage, aucun lot ni lot de fabrication de cette matière ne peut être utilisé, après avoir été entreposé, pour manufacturer une drogue, à moins que la propriété n'ait été à nouveau analysée après un intervalle approprié et trouvée conforme aux spécifications établies à son égard.

**(5)** Si les spécifications visées aux paragraphes (1), (2) et (4) ne sont pas prescrites, elles doivent

**a)** être par écrit;

**(b)** be acceptable to the Minister who shall take into account the specifications contained in any publication mentioned in Schedule B to the Act; and

**(c)** be approved by the person in charge of the quality control department.

SOR/82-524, s. 3; SOR/97-12, s. 59; SOR/2018-69, s. 27.

**C.02.010 (1)** The testing referred to in section C.02.009 shall be performed on a sample taken

**(a)** after receipt of each lot or batch of raw material on the premises of the fabricator; or

**(b)** subject to subsection (2), before receipt of each lot or batch of raw material on the premises of the fabricator, if

**(i)** the fabricator

**(A)** has evidence satisfactory to the Minister to demonstrate that raw materials sold to him by the vendor of that lot or batch of raw material are consistently manufactured in accordance with and consistently comply with the specifications for those raw materials, and

**(B)** undertakes periodic complete confirmatory testing with a frequency satisfactory to the Minister, and

**(ii)** the raw material has not been transported or stored under conditions that may affect its compliance with the specifications for that raw material.

**(2)** After a lot or batch of raw material is received on the premises of the fabricator, the lot or batch of raw material shall be tested for identity.

SOR/82-524, s. 3; SOR/97-12, ss. 12, 60; SOR/2018-69, s. 27.

## Manufacturing Control

**C.02.011 (1)** Every fabricator, packager/labeller, distributor referred to in paragraph C.01A.003(b) and importer of a drug shall have written procedures prepared by qualified personnel in respect of the drug to ensure that the drug meets the specifications for that drug.

**(2)** Every person required to have written procedures referred to in subsection (1) shall ensure that each lot or batch of the drug is fabricated, packaged/labelled and tested in compliance with those procedures.

SOR/82-524, s. 3; SOR/97-12, s. 13.

**b)** être jugées acceptables par le ministre, qui tiendra compte des spécifications énoncées dans les publications visées à l'annexe B de la Loi; et

**c)** être approuvées par le responsable du service du contrôle de la qualité.

DORS/82-524, art. 3; DORS/97-12, art. 59; DORS/2018-69, art. 27.

**C.02.010 (1)** Les analyses visées à l'article C.02.009 doivent être effectuées sur un échantillon prélevé

**a)** après la réception de chaque lot ou chaque lot de fabrication de matières premières dans les locaux du manufacturier; ou

**b)** sous réserve du paragraphe (2), avant la réception de chaque lot ou chaque lot de fabrication de matières premières dans les locaux du manufacturier,

**(i)** si ce manufacturier :

**(A)** prouve, à la satisfaction du ministre, que les matières premières qui lui ont été vendues par le vendeur du lot ou du lot de fabrication sont fabriquées d'une façon constante selon les spécifications établies pour ces matières et qu'elles s'y conforment de manière constante, et

**(B)** effectue des analyses de vérification complètes à une fréquence satisfaisant le ministre, et

**(ii)** si les matières premières n'ont pas été transportées ni entreposées dans des conditions pouvant modifier leur conformité aux spécifications établies à leur égard.

**(2)** Chaque lot ou chaque lot de fabrication de matières premières reçu dans les locaux du manufacturier, doit être soumis à une analyse d'identité.

DORS/82-524, art. 3; DORS/97-12, art. 12 et 60; DORS/2018-69, art. 27.

## Contrôle de la fabrication

**C.02.011 (1)** Le manufacturier, l'emballeur-étiqueteur, le distributeur visé à l'alinéa C.01A.003b) et l'importateur doivent avoir, par écrit, les méthodes établies par un personnel compétent qui garantissent que la drogue est conforme à ses spécifications.

**(2)** Toute personne tenue d'avoir par écrit les méthodes visées au paragraphe (1) doit veiller à ce que chaque lot ou lot de fabrication soit manufacturé, emballé-étiqueté et analysé selon ces méthodes.

DORS/82-524, art. 3; DORS/97-12, art. 13.

**C.02.012 (1)** Every fabricator, packager/labeller, distributor referred to in section C.01A.003, importer and wholesaler of a drug shall maintain

**(a)** a system of control that permits complete and rapid recall of any lot or batch of the drug that is on the market; and

**(b)** a program of self-inspection.

**(2)** Every fabricator and packager/labeller and, subject to subsections (3) and (4), every distributor referred to in paragraph C.01A.003(b) and importer of a drug shall maintain a system to ensure that any lot or batch of the drug fabricated and packaged/labelled on premises other than their own is fabricated and packaged/labelled in accordance with the requirements of this Division.

**(3)** Subsection (2) does not apply to a distributor if the drug is fabricated, packaged/labelled and tested in Canada by a person who holds an establishment licence that authorizes those activities in respect of that drug.

**(4)** Subsection (2) does not apply to a distributor or importer if the drug is fabricated or packaged/labelled in an MRA country at a recognized building and both of the following requirements are met:

**(a)** the address of the building is set out in their establishment licence; and

**(b)** they retain a copy of the batch certificate for each lot or batch of the drug that they receive.

SOR/82-524, s. 3; SOR/97-12, s. 13; SOR/2000-120, s. 9; SOR/2002-368, s. 9; SOR/2013-74, s. 8.

## Quality Control Department

**C.02.013 (1)** Every fabricator, packager/labeller, wholesaler, distributor referred to in section C.01A.003 and importer of a drug shall have on their premises in Canada a quality control department that is supervised by personnel described in section C.02.006.

**(2)** Except in the case of a wholesaler or a distributor referred to in paragraph C.01A.003(a), the quality control department shall be a distinct organizational unit that functions and reports to management independently of any other functional unit, including the manufacturing, processing, packaging or sales unit.

SOR/82-524, s. 3; SOR/89-174, s. 8(F); SOR/97-12, s. 55; SOR/2000-120, s. 10; SOR/2010-95, s. 4; SOR/2013-74, s. 9.

**C.02.014 (1)** Except in the case of a wholesaler or a distributor referred to in paragraph C.01A.003(a), no lot or batch of a drug shall be made available for further use in

**C.02.012 (1)** Le manufacturier, l'emballeur-étiqueteur, le distributeur visé à l'article C.01A.003, l'importateur et le grossiste doivent tenir :

**a)** un système de contrôle qui permet le retrait rapide et complet de tout lot ou tout lot de fabrication de la drogue se trouvant sur le marché;

**b)** un programme d'auto-inspection.

**(2)** Le manufacturier, l'emballeur-étiqueteur et, sous réserve des paragraphes (3) et (4), le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue tiennent un système garantissant que tout lot ou tout lot de fabrication de la drogue manufacturé et emballé-étiqueté ailleurs que dans leurs locaux l'est conformément aux exigences du présent titre.

**(3)** Le paragraphe (2) ne s'applique pas au distributeur si la drogue est manufacturée, emballée-étiquetée et analysée au Canada par le titulaire d'une licence d'établissement autorisant ces activités à l'égard de celle-ci.

**(4)** Le paragraphe (2) ne s'applique pas au distributeur ou à l'importateur si la drogue est manufacturée ou emballée-étiquetée dans un bâtiment reconnu d'un pays participant et si les conditions ci-après sont réunies :

**a)** l'adresse du bâtiment est indiquée dans la licence d'établissement du distributeur ou de l'importateur;

**b)** pour chaque lot ou lot de fabrication de la drogue qu'il reçoit, le distributeur ou l'importateur conserve une copie du certificat de lot.

DORS/82-524, art. 3; DORS/97-12, art. 13; DORS/2000-120, art. 9; DORS/2002-368, art. 9; DORS/2013-74, art. 8.

## Service du contrôle de la qualité

**C.02.013 (1)** Le manufacturier, l'emballeur-étiqueteur, le grossiste, le distributeur visé à l'article C.01A.003 et l'importateur d'une drogue ont dans leurs locaux au Canada un service du contrôle de la qualité qui est sous la surveillance du personnel visé à l'article C.02.006.

**(2)** Sauf dans le cas du grossiste et du distributeur visé à l'alinéa C.01A.003a), le service du contrôle de la qualité est un service organisationnel distinct qui relève de la direction et fonctionne indépendamment des autres services fonctionnels, y compris les services de fabrication, de traitement, d'emballage ou des ventes.

DORS/82-524, art. 3; DORS/89-174, art. 8(F); DORS/97-12, art. 55; DORS/2000-120, art. 10; DORS/2010-95, art. 4; DORS/2013-74, art. 9.

**C.02.014 (1)** Sauf dans le cas du grossiste et du distributeur visé à l'alinéa C.01A.003a), il est interdit de rendre disponible pour utilisation ultérieure, dans le cadre d'un

fabrication or for sale unless the person in charge of the quality control department approves the sale or the further use.

**(2)** A drug that is returned to its fabricator, packager/labeller, wholesaler, distributor referred to in section C.01A.003 or importer shall not be made available for further use in fabrication or for further sale unless the person in charge of the quality control department approves the further sale or further use.

**(3)** No lot or batch of a raw material or packaging/labelling material shall be used in the fabrication or packaging/labelling of a drug unless the person in charge of the quality control department approves the use.

**(4)** No lot or batch of a drug shall be reprocessed unless the person in charge of the quality control department approves the reprocessing.

SOR/82-524, s. 3; SOR/89-174, s. 8(F); SOR/97-12, ss. 14, 55; SOR/2010-95, s. 5; SOR/2013-74, s. 9.

**C.02.015 (1)** All fabrication, packaging/labelling, testing, storage and transportation methods and procedures that may affect the quality of a drug shall be examined and approved by the person in charge of the quality control department before their implementation.

**(2)** The person in charge of the quality control department shall cause to be investigated any complaint or information that is received respecting the quality of a drug or its deficiencies or hazards and cause any necessary corrective action to be taken, in the case where the complaint or information relates to an activity over which the department exercises quality control.

**(2.1)** In the case where the complaint or information that is received does not relate to an activity over which the quality control department exercises quality control, the person in charge of the department shall forward the complaint or information to the person in charge of the quality control department that exercises quality control over that activity.

**(3)** The person in charge of the quality control department shall cause all tests or examinations required pursuant to this Division to be performed by a competent laboratory.

SOR/82-524, s. 3; SOR/97-12, s. 15; SOR/2010-95, s. 6.

processus de manufacture, tout lot ou lot de fabrication d'une drogue, ou de mettre en vente un tel lot ou lot de fabrication, sans l'approbation du responsable du service de contrôle de la qualité.

**(2)** Il est interdit au manufacturier, à l'emballeur-étiqueteur, au grossiste, au distributeur visé à l'article C.01A.003 ou à l'importateur de rendre disponible pour utilisation ultérieure, dans le cadre d'un processus de manufacture, toute drogue qui lui est retournée, ou de remettre en vente une telle drogue, sans l'approbation du responsable du service de contrôle de la qualité.

**(3)** Il est interdit d'utiliser tout lot ou lot de fabrication de matières premières ou de matériaux d'emballage-étiquetage pour manufacturer ou emballer-étiqueter une drogue sans l'approbation du responsable du service de contrôle de la qualité.

**(4)** Il est interdit de traiter de nouveau tout lot ou lot de fabrication d'une drogue sans l'approbation du responsable du service de contrôle de la qualité.

DORS/82-524, art. 3; DORS/89-174, art. 8(F); DORS/97-12, art. 14 et 55; DORS/2010-95, art. 5; DORS/2013-74, art. 9.

**C.02.015 (1)** Les méthodes et pratiques utilisées pour manufacturer, emballer-étiqueter, analyser, entreposer ou transporter une drogue qui peuvent avoir un effet sur sa qualité doivent être examinées et approuvées par le responsable du service de contrôle de la qualité avant d'être appliquées.

**(2)** Le responsable du service du contrôle de la qualité veille à ce que la plainte ou le renseignement reçu au sujet de la qualité d'une drogue — ou des défauts ou dangers qu'elle comporte — fasse l'objet d'une enquête et à ce que les mesures correctives nécessaires soient prises, dans le cas où la plainte ou le renseignement concerne une activité sur laquelle le service exerce un contrôle de la qualité.

**(2.1)** Dans le cas contraire, il l'achemine au responsable du service du contrôle de la qualité qui exerce un contrôle de la qualité sur l'activité en cause.

**(3)** Le responsable du service du contrôle de la qualité doit s'assurer que les analyses et les examens exigés dans le présent titre sont effectués par un laboratoire compétent.

DORS/82-524, art. 3; DORS/97-12, art. 15; DORS/2010-95, art. 6.

## Packaging Material Testing

**C.02.016 (1)** Each lot or batch of packaging material shall, prior to its use in the packaging of a drug, be examined or tested against the specifications for that packaging material.

**(2)** No lot or batch of packaging material shall be used in the packaging of a drug unless the lot or batch of packaging material complies with the specifications for that packaging material.

**(3)** The specifications referred to in subsections (1) and (2) shall

**(a)** be in writing;

**(b)** be acceptable to the Minister who shall take into account the specifications contained in any publication mentioned in Schedule B to the Act; and

**(c)** be approved by the person in charge of the quality control department.

SOR/82-524, s. 3; SOR/89-174, s. 8(F); SOR/2018-69, s. 27.

**C.02.017 (1)** The examination or testing referred to in section C.02.016 shall be performed on a sample taken

**(a)** after receipt of each lot or batch of packaging material on the premises of the person who packages a drug; or

**(b)** subject to subsection (2), before receipt of each lot or batch of packaging material on the premises of the person who packages a drug, if

**(i)** that person

**(A)** has evidence satisfactory to the Minister to demonstrate that packaging materials sold to him by the vendor of that lot or batch of packaging material are consistently manufactured in accordance with and consistently comply with the specifications for those packaging materials, and

**(B)** undertakes periodic complete confirmatory examination or testing with a frequency satisfactory to the Minister,

**(ii)** the packaging material has not been transported or stored under conditions that may affect its compliance with the specifications for that packaging material.

## Analyse du matériel d'emballage

**C.02.016 (1)** Un lot ou un lot de fabrication de matériel d'emballage doit, avant d'être utilisé pour l'emballage d'une drogue, faire l'objet d'examens ou d'analyses en fonction des spécifications établies pour ce matériel.

**(2)** Un lot ou un lot de fabrication de matériel d'emballage ne peut être utilisé pour l'emballage d'une drogue que s'il est conforme aux spécifications établies pour ce matériel.

**(3)** Les spécifications visées aux paragraphes (1) et (2) doivent

**a)** être par écrit;

**b)** être jugées acceptables par le ministre, qui tiendra compte des spécifications prévues dans les publications visées à l'annexe B de la Loi; et

**c)** être approuvées par le responsable du service du contrôle de la qualité.

DORS/82-524, art. 3; DORS/89-174, art. 8(F); DORS/2018-69, art. 27.

**C.02.017 (1)** Les examens ou les analyses visés à l'article C.02.016 doivent être effectués sur un échantillon prélevé

**a)** après la réception de chaque lot ou chaque lot de fabrication de matériel d'emballage dans les locaux de la personne qui emballe-étiquette une drogue; ou

**b)** sous réserve du paragraphe (2), avant la réception de chaque lot ou lot de fabrication de matériel d'emballage dans les locaux de la personne qui emballe une drogue :

**(i)** si cette personne

**(A)** prouve, à la satisfaction du ministre, que le matériel d'emballage qui lui a été vendu par le vendeur du lot ou du lot de fabrication est fabriqué d'une façon constante selon les spécifications établies pour ce matériel et qu'il s'y conforme de manière constante, et

**(B)** effectue des examens ou des analyses de vérification complets à une fréquence satisfaisant le ministre, et

**(ii)** si le matériel d'emballage n'a pas été transporté ni entreposé dans des conditions pouvant modifier sa conformité aux spécifications établies à son égard.

**(2)** After a lot or batch of packaging material is received on the premises of the person who packages a drug,

**(a)** the lot or batch of the packaging material shall be examined or tested for identity; and

**(b)** the labels shall be examined or tested in order to ensure that they comply with the specifications for those labels.

SOR/82-524, s. 3; SOR/89-174, ss. 2(F), 8(F); SOR/97-12, s. 56(F); SOR/2018-69, s. 27.

## Finished Product Testing

**C.02.018 (1)** Each lot or batch of a drug shall, before it is made available for further use in fabrication or for sale, be tested against the specifications for that drug.

**(2)** No lot or batch of a drug shall be made available for further use in fabrication or for sale unless it complies with the specifications for that drug.

**(3)** The specifications referred to in subsections (1) and (2) shall

**(a)** be in writing;

**(b)** be approved by the person in charge of the quality control department; and

**(c)** comply with the Act and these Regulations.

SOR/82-524, s. 3; SOR/2013-74, s. 10.

**C.02.019 (1)** A packager/labeller of a drug, a distributor referred to in paragraph C.01A.003(b) and an importer of a drug other than an active ingredient shall perform the finished product testing on a sample of the drug that is taken either

**(a)** after receipt of each lot or batch of the drug on their premises in Canada; or

**(b)** before receipt of each lot or batch of the drug on their premises in Canada if the following conditions are met:

**(i)** the packager/labeller, distributor or importer

**(A)** has evidence satisfactory to the Minister to demonstrate that drugs sold to them by the vendor of that lot or batch are consistently

**(2)** Sur réception d'un lot ou d'un lot de fabrication de matériel d'emballage dans les locaux de la personne qui emballe-étiquette la drogue

**a)** le lot ou le lot de fabrication de matériel d'emballage doit être soumis à un examen ou à une analyse d'identité; et

**b)** les étiquettes doivent être examinées ou analysées pour assurer leur conformité aux spécifications établies à leur égard.

DORS/82-524, art. 3; DORS/89-174, art. 2(F) et 8(F); DORS/97-12, art. 56(F); DORS/2018-69, art. 27.

## Analyse du produit fini

**C.02.018 (1)** Tout lot ou lot de fabrication d'une drogue doit, avant d'être rendu disponible pour utilisation ultérieure dans le cadre d'un processus de manufacture ou mis en vente, être analysé en fonction des spécifications établies pour cette drogue.

**(2)** Il est interdit de rendre disponible pour utilisation ultérieure dans le cadre d'un processus de manufacture, ou de mettre en vente, tout lot ou lot de fabrication d'une drogue qui n'est pas conforme aux spécifications établies pour cette drogue.

**(3)** Les spécifications visées aux paragraphes (1) et (2) doivent

**a)** être par écrit;

**b)** être approuvées par le responsable du service du contrôle de la qualité; et

**c)** être conformes à la Loi et au présent règlement.

DORS/82-524, art. 3; DORS/2013-74, art. 10.

**C.02.019 (1)** L'emballeur-étiqueteur d'une drogue, le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue autre qu'un ingrédient actif font l'analyse du produit fini sur un échantillon de la drogue prélevé :

**a)** soit après la réception au Canada, dans leurs locaux, du lot ou lot de fabrication de la drogue;

**b)** soit avant la réception du lot ou lot de fabrication dans leurs locaux, si les conditions ci-après sont réunies :

**(i)** l'emballeur-étiqueteur, le distributeur ou l'importateur :

**(A)** établit à la satisfaction du ministre que la drogue qui lui a été vendue par le vendeur du lot ou lot de fabrication a été fabriquée d'une façon

manufactured in accordance with and consistently comply with the specifications for those drugs, and

**(B)** undertakes periodic complete confirmatory testing, with a frequency satisfactory to the Minister, and

**(ii)** the drug has not been transported or stored under conditions that may affect its compliance with the specifications for that drug.

**(2)** If the packager/labeller, distributor or importer receives a lot or batch of a drug on their premises in Canada the useful life of which is more than 30 days, the lot or batch shall be tested for identity and the packager/labeller shall confirm the identity after the lot or batch is packaged/labelled.

**(3)** Subsections (1) and (2) do not apply to a distributor if the drug is fabricated, packaged/labelled and tested in Canada by a person who holds an establishment licence that authorizes that activity.

**(4)** Subsections (1) and (2) do not apply to a distributor or importer if the drug is fabricated, packaged/labelled and tested in an MRA country at a recognized building and they retain a copy of the batch certificate for each lot or batch of the drug that they receive.

**(4.1)** Subsections (1) and (2) do not apply to a distributor or importer of a COVID-19 drug if it is the subject of a written request made under section C.04.015.

**(4.2)** Subsection (1) does not apply to a packager/labeller, distributor or importer if the following conditions are met:

**(a)** the drug is a radiopharmaceutical or a *radionuclide generator*, as defined in section C.03.001, and has a useful life of no more than 30 days; and

**(b)** the packager/labeller, distributor or importer maintains evidence satisfactory to the Minister to demonstrate that

**(i)** the drug has been tested against the specifications for that drug, and

**(ii)** the drug has not been transported or stored under conditions that may affect its compliance with those specifications.

constante selon les spécifications établies pour celle-ci et qu'elle est invariablement conforme à ces spécifications,

**(B)** effectue des analyses de vérification complètes à une fréquence acceptable selon le ministre,

**(ii)** la drogue n'a pas été transportée ou entreposée dans des conditions pouvant faire en sorte qu'elle ne soit plus conforme aux spécifications établies à son égard.

**(2)** Chaque lot ou lot de fabrication d'une drogue reçu au Canada dans les locaux de l'emballeur-étiqueteur, du distributeur ou de l'importateur doit, lorsque la période de vie utile de cette drogue est de plus de 30 jours, être soumis à une analyse d'identité, celle-ci devant être confirmée par l'emballeur-étiqueteur après l'emballage-étiquetage.

**(3)** Les paragraphes (1) et (2) ne s'appliquent pas au distributeur si la drogue est manufacturée, emballée-étiquetée et analysée au Canada par le titulaire d'une licence d'établissement autorisant ces activités à l'égard de cette drogue.

**(4)** Les paragraphes (1) et (2) ne s'appliquent ni au distributeur ni à l'importateur si la drogue est manufacturée, emballée-étiquetée et analysée dans un bâtiment reconnu d'un pays participant et s'il conserve une copie du certificat de lot pour chaque lot de la drogue, ou chaque lot de fabrication de celle-ci qu'il reçoit.

**(4.1)** Les paragraphes (1) et (2) ne s'appliquent ni au distributeur ni à l'importateur d'une drogue contre la COVID-19 si celle-ci fait l'objet d'une demande écrite au titre de l'article C.04.015.

**(4.2)** Le paragraphe (1) ne s'applique ni à l'emballeur-étiqueteur, ni au distributeur, ni à l'importateur, si les conditions ci-après sont réunies :

**a)** la drogue est un produit pharmaceutique radioactif ou un *générateur de radionucléide* au sens de l'article C.03.001 et elle a une période de vie utile d'au plus trente jours;

**b)** l'emballeur-étiqueteur, le distributeur ou l'importateur, selon le cas, conserve une preuve que le ministre juge satisfaisante démontrant à la fois que :

**(i)** la drogue a été analysée en fonction des spécifications établies à son égard,

**(4.3)** Subsections (1) and (2) do not apply to a packager/labeller, distributor or importer if the following conditions are met:

**(a)** the drug is

**(i)** for human use,

**(ii)** in dosage form,

**(iii)** listed in Schedule D to the Act,

**(iv)** not a vaccine, and

**(v)** composed of genetically modified autologous human nucleated cells or is delivered to cells using an adeno-associated virus vector; and

**(b)** the packager/labeller, distributor or importer maintains evidence satisfactory to the Minister to demonstrate that

**(i)** the drug has been tested against the specifications for that drug, and

**(ii)** the drug has not been transported or stored under conditions that may affect its compliance with those specifications.

**(5)** Subsections (1) and (2) do not apply to a distributor or importer of a drug that is not a prescription drug and that is part of a class of drugs that is set out in column 1 of the List of Non-prescription Drugs Not Subject to Certain Testing Requirements if all of the following conditions are met:

**(a)** the drug contains, as its only active ingredients, one or more of those set out in column 2, each of which corresponds to that class, in the corresponding quantity set out in column 3, and the drug is consistent with the descriptive information set out in columns 4 to 6;

**(b)** the drug is

**(i)** fabricated in Canada or in a recognized country or region,

**(ii)** packaged/labelled in Canada or in a recognized country or region, and

**(iii)** tested in a recognized country or region;

**(ii)** elle n'a pas été transportée ni entreposée dans des conditions modifiant sa conformité aux spécifications établies à son égard.

**(4.3)** Les paragraphes (1) et (2) ne s'appliquent ni à l'emballeur-étiqueteur, ni au distributeur, ni à l'importateur, si les conditions ci-après sont réunies :

**a)** la drogue satisfait aux exigences suivantes :

**(i)** elle est destinée à l'usage des humains;

**(ii)** elle est sous forme posologique;

**(iii)** elle est visée à l'annexe D de la Loi;

**(iv)** elle n'est pas un vaccin;

**(v)** elle est composée de cellules humaines nucléées autologues génétiquement modifiées ou elle atteint les cellules à l'aide d'un vecteur de virus adéno-associé;

**b)** l'emballeur-étiqueteur, le distributeur ou l'importateur, selon le cas, conserve une preuve que le ministre juge satisfaisante démontrant à la fois que :

**(i)** la drogue a été analysée en fonction des spécifications établies à son égard,

**(ii)** elle n'a pas été transportée ni entreposée dans des conditions pouvant modifier sa conformité aux spécifications établies à son égard.

**(5)** Les paragraphes (1) et (2) ne s'appliquent ni au distributeur ni à l'importateur d'une drogue qui peut être vendue sans ordonnance et qui appartient à une catégorie de drogues figurant à la colonne 1 de la liste de drogues vendues sans ordonnance et non soumises à certaines analyses, si les conditions ci-après sont réunies :

**a)** la drogue contient comme seuls ingrédients actifs un ou plusieurs de ceux visés à la colonne 2 pour cette catégorie de drogues, chacun en une quantité figurant à la colonne 3, et les éléments descriptifs visés aux colonnes 4 à 6 s'appliquent à la drogue;

**b)** la drogue satisfait aux exigences suivantes :

**(i)** elle est manufacturée soit au Canada, soit dans des pays ou régions reconnus,

**(ii)** elle est emballée-étiquetée soit au Canada, soit dans des pays ou régions reconnus,

**(iii)** elle fait l'objet de l'analyse dans des pays ou régions reconnus;

**(c)** the distributor or the importer retains a copy of the batch certificate for each lot or batch of the drug that is distributed or imported, as the case may be.

**(6)** A drug that is referred to in subsection (4.2), (4.3) or (5) and that is imported may be shipped directly to a person other than the importer if the following conditions are met:

**(a)** before importing the drug, the importer receives a document that demonstrates that the drug complies with the specifications for that drug;

**(b)** the importer and the distributor have measures in place to ensure that all the requirements of these Regulations in respect of the importation of the drug are met.

SOR/82-524, s. 3; SOR/89-174, s. 8(F); SOR/97-12, ss. 16, 57; SOR/2000-120, s. 11; SOR/2002-368, s. 10; SOR/2013-74, s. 11; SOR/2018-69, s. 27; SOR/2020-73, s. 2; SOR/2021-45, s. 12; SOR/2024-136, s. 4.

## Records

**C.02.020 (1)** Every fabricator, packager/labeller, distributor referred to in paragraph C.01A.003(b) and importer shall maintain all of the following records on their premises in Canada for each drug that they fabricate, package/label, distribute or import:

**(a)** except in the case of an importer of an active pharmaceutical ingredient or an active ingredient that is used in the fabrication of a drug that is of non-biological origin and that is listed in Schedule C to the Act, master production documents for the drug;

**(b)** evidence that each lot or batch of the drug has been fabricated, packaged/labelled, tested and stored in accordance with the procedures described in the master production documents;

**(c)** evidence that the conditions under which the drug was fabricated, packaged/labelled, tested and stored are in compliance with the requirements of this Division;

**(d)** evidence that establishes the period during which the drug in the container in which it is sold or made available for further use in fabrication will meet the specifications for that drug; and

**(e)** evidence that the finished product testing referred to in section C.02.018 was carried out and the results of that testing.

**c)** le distributeur ou l'importateur de la drogue conserve une copie du certificat de lot pour chaque lot de la drogue, ou chaque lot de fabrication de celle-ci, distribuée ou importée, selon le cas.

**(6)** La drogue qui est visée aux paragraphes (4.2), (4.3) ou (5) et qui est importée peut être expédiée directement à une personne autre que l'importateur si les conditions ci-après sont réunies :

**a)** l'importateur a reçu, avant d'importer la drogue, un document démontrant que celle-ci est conforme aux spécifications établies pour la drogue;

**b)** l'importateur et le distributeur ont mis des mesures en place afin de veiller à ce que toute exigence requise par le présent règlement relativement à l'importation de la drogue soit remplie.

DORS/82-524, art. 3; DORS/89-174, art. 8(F); DORS/97-12, art. 16 et 57; DORS/2000-120, art. 11; DORS/2002-368, art. 10; DORS/2013-74, art. 11; DORS/2018-69, art. 27; DORS/2020-73, art. 2; DORS/2021-45, art. 12; DORS/2024-136, art. 4.

## Dossiers

**C.02.020 (1)** Le manufacturier, l'emballeur-étiqueteur, le distributeur visé à l'alinéa C.01A.003b) et l'importateur conservent dans leurs locaux au Canada, pour chaque drogue qu'ils fabriquent, emballent-étiquettent, distribuent ou importent :

**a)** sauf dans le cas de l'importateur d'un ingrédient actif pharmaceutique ou d'un ingrédient actif utilisé dans la manufacture d'une drogue d'origine non biologique visée à l'annexe C de la Loi, des documents-types de production de la drogue;

**b)** une preuve attestant que chaque lot ou chaque lot de fabrication de la drogue a été manufacturé, emballé-étiqueté, analysé et entreposé conformément aux méthodes énoncées dans les documents-types de production;

**c)** une preuve attestant que les conditions dans lesquelles la drogue a été manufacturée, emballée-étiquetée, analysée et entreposée sont conformes aux exigences du présent titre;

**d)** une preuve attestant la période pendant laquelle la drogue demeurera conforme aux spécifications établies à son égard dans le contenant dans lequel elle est mise en vente ou rendue disponible pour utilisation ultérieure dans le cadre du processus de manufacture;

**e)** une preuve attestant que les analyses du produit fini prévues à l'article C.02.018 ont été faites, accompagnée des résultats de celles-ci.

**(2)** Every distributor referred to in paragraph C.01A.003(b) and importer shall make available to the Minister, on request, the results of testing performed on raw materials and packaging/labelling materials for each lot or batch of a drug that it distributes or imports.

**(3)** Every fabricator shall maintain on their premises written specifications for all raw materials and adequate evidence of the testing of those raw materials referred to in section C.02.009 and of the test results.

**(4)** Every person who packages a drug shall maintain on their premises written specifications for all packaging materials and adequate evidence of the examination or testing of those materials referred to in section C.02.016 and of any test results.

**(5)** Every fabricator, packager/labeller and tester shall maintain on their premises in Canada detailed plans and specifications of each building in Canada where they fabricate, package/label or test drugs and a description of the design and construction of those buildings.

**(6)** Every fabricator, packager/labeller and tester shall maintain on their premises in Canada personnel records in respect of each person who is employed to supervise the fabrication, packaging/labelling and testing of drugs, including the person's title, responsibilities, qualifications, experience and training.

SOR/82-524, s. 3; SOR/89-174, ss. 3(F), 8(F); SOR/97-12, ss. 17, 52, 60; SOR/2013-74, s. 11; SOR/2017-259, s. 15; SOR/2018-69, s. 27.

**C.02.021 (1)** All records and evidence of the fabrication, packaging/labelling, finished product testing referred to in section C.02.018 and storage of a drug in dosage form that are required to be maintained under this Division shall be retained for one year after the expiration date of the drug unless the person's establishment licence specifies some other period.

**(2)** Subject to subsection (4), all records and evidence of the fabrication, packaging/labelling, finished product testing referred to in section C.02.018 and storage of an active ingredient that are required to be maintained under this Division shall be retained in respect of each lot or batch of the active ingredient for the following period unless the person holds an establishment licence that specifies some other period:

**(a)** in the case of an active ingredient that has a retest date, three years after the lot or batch has been completely distributed; or

**(2)** Le distributeur visé à l'alinéa C.01A.003b) et l'importateur fournissent au ministre, sur demande, les résultats des analyses des matières premières et des matériaux d'emballage-étiquetage effectuées pour chaque lot ou lot de fabrication d'une drogue qu'ils distribuent ou importent.

**(3)** Le manufacturier conserve dans ses locaux les spécifications écrites relatives à ces matières ainsi qu'une preuve satisfaisante des analyses prévues à l'article C.02.009 et les résultats de celles-ci.

**(4)** La personne qui emballe une drogue conserve dans ses locaux les spécifications écrites relatives au matériel d'emballage ainsi qu'une preuve satisfaisante des examens ou analyses prévus à l'article C.02.016 et les résultats de ceux-ci.

**(5)** Le manufacturier, l'emballeur-étiqueteur et l'analyste conservent dans leurs locaux au Canada les plans et devis détaillés de chacun des bâtiments au Canada où la drogue est manufacturée, emballée-étiquetée ou analysée ainsi qu'une description de la conception et de la construction de ces bâtiments.

**(6)** Le manufacturier, l'emballeur-étiqueteur et l'analyste conservent dans leurs locaux au Canada un dossier sur chaque membre de son personnel qui supervise les opérations visant à manufacturer, emballer-étiqueter ou analyser la drogue, notamment son titre, ses responsabilités, ses qualifications, son expérience et sa formation.

DORS/82-524, art. 3; DORS/89-174, art. 3(F) et 8(F); DORS/97-12, art. 17, 52 et 60; DORS/2013-74, art. 11; DORS/2017-259, art. 15; DORS/2018-69, art. 27.

**C.02.021 (1)** Les dossiers et les preuves exigés par le présent titre qui portent sur les opéra tions visant à manufacturer, emballer-étiqueter, analyser le produit fini aux termes de l'article C.02.018 et entreposer une drogue sous forme posologique doivent être conservés pendant un an après la date limite d'utilisation de la drogue, à moins que la licence d'établissement de l'intéressé ne prévoie une autre période.

**(2)** Sous réserve du paragraphe (4), les dossiers et les preuves exigés par le présent titre qui portent sur les opérations visant à manufacturer, emballer-étiqueter, analyser le produit fini aux termes de l'article C.02.018 et entreposer un ingrédient actif doivent être conservés, pour chaque lot ou lot de fabrication de l'ingrédient actif, pendant celle des périodes ci-après qui s'applique, à moins que la licence d'établissement de l'intéressé ne prévoie une autre période :

**a)** dans le cas d'un ingrédient actif ayant une date de nouvelle analyse, trois ans après la distribution complète du lot ou du lot de fabrication;

**(b)** in any other case, one year after the expiration date of the lot or batch.

**(3)** Subject to subsection (4), all records and evidence of the raw material testing referred to in section C.02.009 and of the testing of packaging/labelling materials that are required to be maintained under this Division shall be retained for five years after the raw materials and packaging/labelling materials were last used in the fabrication or packaging/labelling of a drug unless the person's establishment licence specifies some other period.

**(4)** If a fabricator is required to maintain records and evidence in respect of the same active ingredient under subsections (2) and (3), they shall maintain them for the longest period that is applicable.

SOR/82-524, s. 3; SOR/89-174, s. 8(F); SOR/92-654, s. 6; SOR/97-12, s. 18; SOR/2013-74, s. 11.

**C.02.022 (1)** Every wholesaler, distributor referred to in section C.01A.003 and importer of a drug in dosage form shall retain records of sale of each lot or batch of the drug, which enable them to recall the lot or batch from the market, for one year after the expiration date of that lot or batch unless their establishment licence specifies some other period.

**(2)** Every distributor of an active ingredient referred to in paragraph C.01A.003(a) and every wholesaler and importer of an active ingredient shall retain records of sale of each lot or batch of the active ingredient, which enable them to recall the lot or batch from the market, for the following period unless the person holds an establishment licence that specifies some other period:

**(a)** in the case of an active ingredient that has a retest date, three years after the lot or batch has been completely distributed; or

**(b)** in any other case, one year after the expiration date of the lot or batch.

SOR/82-524, s. 3; SOR/92-654, s. 7; SOR/97-12, s. 18; SOR/2013-74, s. 11.

**C.02.023 (1)** On receipt of a complaint or any information respecting the quality of a drug or its deficiencies or hazards, every fabricator, packager/labeller, wholesaler, distributor referred to in section C.01A.003 and importer of the drug shall make a record of the complaint or information that contains the following:

**(a)** the results of any investigation carried out under subsection C.02.015(2) and, if applicable, the corrective action taken; or

**b)** dans les autres cas, un an après la date limite d'utilisation du lot ou du lot de fabrication.

**(3)** Sous réserve du paragraphe (4), les dossiers et les preuves exigés par le présent titre au sujet de l'analyse des matières premières visée à l'article C.02.009 et des matériaux d'emballage-étiquetage doivent être conservés pendant cinq ans après leur dernière utilisation au cours des opérations visant à manufacturer ou à emballer-étiqueter la drogue à moins que la licence d'établissement de l'intéressé ne prévoie une autre période.

**(4)** Si le manufacturier doit conserver des dossiers et des preuves à l'égard d'un même ingrédient actif aux termes des paragraphes (2) et (3), il les conserve pour la plus longue période applicable.

DORS/82-524, art. 3; DORS/89-174, art. 8(F); DORS/92-654, art. 6; DORS/97-12, art. 18; DORS/2013-74, art. 11.

**C.02.022 (1)** Le grossiste, le distributeur visé à l'article C.01A.003 et l'importateur d'une drogue sous forme posologique conservent les dossiers sur la vente de chaque lot ou lot de fabrication de la drogue qui leur permettent de retirer du marché le lot ou lot de fabrication, pendant un an après sa date limite d'utilisation, à moins que la licence d'établissement de l'intéressé ne prévoie une autre période.

**(2)** Le distributeur d'un ingrédient actif visé à l'alinéa C.01A.003a) et le grossiste et l'importateur d'un ingrédient actif conservent les dossiers sur la vente de chaque lot ou lot de fabrication de l'ingrédient actif qui leur permettent de retirer du marché le lot ou lot de fabrication pendant celle des périodes ci-après qui s'applique, à moins que l'intéressé ne détienne une licence d'établissement qui prévoit une autre période :

**a)** dans le cas d'un ingrédient actif ayant une date de nouvelle analyse, trois ans après la distribution complète du lot ou du lot de fabrication;

**b)** dans les autres cas, un an après la date limite d'utilisation du lot ou du lot de fabrication.

DORS/82-524, art. 3; DORS/92-654, art. 7; DORS/97-12, art. 18; DORS/2013-74, art. 11.

**C.02.023 (1)** Sur réception d'une plainte ou de renseignements sur la qualité d'une drogue — ou sur des défauts ou dangers qu'elle comporte —, le manufacturier, l'emballeur-étiqueteur, le grossiste, le distributeur visé à l'article C.01A.003 et l'importateur de la drogue ouvrent un dossier dans lequel ils font état de la plainte ou des renseignements et consignent, selon le cas :

**a)** les résultats des enquêtes qu'ils ont menées à cet égard aux termes du paragraphe C.02.015(2) et, le cas échéant, les mesures correctives prises;

**(b)** the name and business address of the person in charge of the quality control department to whom the complaint or information was forwarded under subsection C.02.015(2.1) and the date on which it was forwarded.

**(2)** Records referred to in subsection (1) shall be retained for the following period unless the person holds an establishment licence that specifies some other period:

**(a)** in the case of a drug in dosage form, one year after the expiration date of the lot or batch of the drug; and

**(b)** in the case of an active ingredient,

**(i)** if the active ingredient has a retest date, three years after the lot or batch has been completely distributed, or

**(ii)** in any other case, one year after the expiration date of the lot or batch of the active ingredient.

SOR/82-524, s. 3; SOR/92-654, s. 7; SOR/97-12, s. 18; SOR/2010-95, s. 7; SOR/2013-74, s. 11.

**C.02.024 (1)** Every fabricator, packager/labeller, distributor referred to in section C.01A.003, importer and wholesaler shall

**(a)** maintain records of the results of the self-inspection program required by section C.02.012 and of any action taken in connection with that program; and

**(b)** retain those records for a period of at least three years.

**(2)** Every person who fabricates or packages/labels a drug shall

**(a)** maintain records on the operation of the sanitation program required to be implemented under section C.02.007; and

**(b)** retain those records for a period of at least three years.

SOR/82-524, s. 3; SOR/97-12, ss. 19, 53.

**C.02.024.1** Every distributor of an active ingredient referred to in paragraph C.01A.003(a) and every fabricator, packager/labeller, wholesaler and importer of an active ingredient shall add all of the following information to the documentation that accompanies the active ingredient, immediately after any like information that has been added by another person:

**b)** le nom et l'adresse du lieu de travail du responsable du service du contrôle de la qualité à qui la plainte ou le renseignement a été acheminé aux termes du paragraphe C.02.015(2.1) et la date de l'acheminement.

**(2)** Les dossiers visés au paragraphe (1) sont conservés pendant celle des périodes ci-après qui s'applique, à moins que l'intéressé ne détienne une licence d'établissement qui prévoit une autre période :

**a)** dans le cas d'une drogue sous forme posologique, un an après la date limite d'utilisation du lot ou du lot de fabrication de la drogue;

**b)** dans le cas d'un ingrédient actif :

**(i)** s'il a une date de nouvelle analyse, trois ans après la distribution complète du lot ou du lot de fabrication,

**(ii)** dans les autres cas, un an après la date limite d'utilisation du lot ou du lot de fabrication de l'ingrédient actif.

DORS/82-524, art. 3; DORS/92-654, art. 7; DORS/97-12, art. 18; DORS/2010-95, art. 7; DORS/2013-74, art. 11.

**C.02.024 (1)** Le manufacturier, l'emballeur-étiqueteur, le distributeur visé à l'article C.01A.003, l'importateur et le grossiste doivent :

**a)** tenir des dossiers sur les résultats du programme d'auto-inspection exigé à l'article C.02.012 et les mesures prises relativement à ce programme; et

**b)** conserver ces dossiers pendant au moins trois ans.

**(2)** La personne qui manufacture ou emballe-étiquette une drogue doit

**a)** tenir des dossiers sur l'application du programme d'hygiène exigé à l'article C.02.007; et

**b)** conserver ces dossiers pendant au moins trois ans.

DORS/82-524, art. 3; DORS/97-12, art. 19 et 53.

**C.02.024.1** Le distributeur d'un ingrédient actif visé à l'alinéa C.01A.003a) et le manufacturier, l'emballeur-étiqueteur, le grossiste et l'importateur d'un ingrédient actif inscrivent ce qui suit dans la documentation qui accompagne l'ingrédient actif, et ce, immédiatement après les renseignements de cette nature que toute autre personne y a déjà inscrits, le cas échéant :

**(a)** their establishment licence number, or if there is none, their name, address, telephone number, fax number and email address;

**(b)** an indication whether they have fabricated, packaged/labelled, wholesaled, distributed or imported the active ingredient and the date on which that activity was carried out;

**(c)** the expiration date; and

**(d)** the lot number.

SOR/2013-74, s. 12.

## Samples

**C.02.025 (1)** Every distributor referred to in paragraph C.01A.003(b) and importer of a drug in dosage form shall retain in Canada a sample of each lot or batch of the packaged/labelled drug for one year after the expiration date of the drug unless their establishment licence specifies otherwise.

**(2)** Subject to subsection (4), the fabricator of a drug in dosage form shall retain a sample of each lot or batch of raw materials used in the fabrication for two years after the materials were last used in the fabrication unless their establishment licence specifies some other period.

**(3)** Subject to subsection (4), the fabricator of an active ingredient shall retain a sample of each lot or batch of it for the following period unless their establishment licence specifies some other period:

**(a)** in the case of an active ingredient that has a retest date, three years after the lot or batch has been completely distributed; or

**(b)** in any other case, one year after the expiration date of the lot or batch.

**(4)** If a fabricator is required to maintain samples in respect of the same active ingredient under subsections (2) and (3), they shall maintain them for the longest period that is applicable.

SOR/82-524, s. 3; SOR/89-174, s. 4(F); SOR/92-654, s. 8; SOR/97-12, s. 20; SOR/2013-74, s. 13; SOR/2021-46, s. 8.

**a)** le numéro de sa licence d'établissement, s'il y a lieu, ou ses nom, adresse, numéro de téléphone ainsi que son numéro de télécopieur et son adresse électronique;

**b)** le fait qu'il a manufacturé, emballé-étiqueté, distribué, vendu en gros ou importé l'ingrédient actif, selon le cas, et la date à laquelle il a accompli cette activité;

**c)** la date limite d'utilisation;

**d)** le numéro de lot.

DORS/2013-74, art. 12.

## Échantillons

**C.02.025 (1)** Sauf disposition contraire dans leur licence d'établissement, le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue sous forme posologique conservent au Canada un échantillon de chaque lot ou lot de fabrication de la drogue emballée-étiquetée, et ce, pendant un an après la date limite d'utilisation de la drogue.

**(2)** Sous réserve du paragraphe (4), le manufacturier d'une drogue sous forme posologique conserve un échantillon de tout lot ou lot de fabrication des matières premières utilisées pour manufacturer la drogue, et ce, pendant deux ans après la dernière date d'utilisation de ces matières pour manufacturer la drogue, à moins que sa licence d'établissement ne prévoie une autre période.

**(3)** Sous réserve du paragraphe (4), le manufacturier d'un ingrédient actif conserve les échantillons de chaque lot ou lot de fabrication pendant celle des périodes ci-après qui s'applique, à moins que l'intéressé ne détienne une licence d'établissement qui prévoit une autre période :

**a)** dans le cas d'un ingrédient actif ayant une date de nouvelle analyse, trois ans après la distribution complète du lot ou du lot de fabrication;

**b)** dans les autres cas, un an après la date limite d'utilisation du lot ou du lot de fabrication.

**(4)** Si le manufacturier doit conserver les échantillons à l'égard d'un même ingrédient actif aux termes des paragraphes (2) et (3), il les conserve pour la plus longue période applicable.

DORS/82-524, art. 3; DORS/89-174, art. 4; DORS/92-654, art. 8; DORS/97-12, art. 20; DORS/2013-74, art. 13; DORS/2021-46, art. 8.

**C.02.026** The samples referred to in section C.02.025 shall be in an amount that is sufficient to determine whether the drug or raw material complies with the specifications for that drug or raw material.

SOR/82-524, s. 3.

## Stability

**C.02.027 (1)** Every distributor referred to in paragraph C.01A.003(b) and importer of a drug in dosage form shall establish the period during which each drug in the package in which it is sold will comply with the specifications for that drug.

**(2)** Every fabricator and importer of an active ingredient shall establish the period during which each drug in the package in which it is sold will comply with the specifications for that drug.

SOR/82-524, s. 3; SOR/97-12, s. 58; SOR/2013-74, s. 14.

**C.02.028 (1)** Every distributor referred to in paragraph C.01A.003(b) and importer of a drug in dosage form shall monitor, by means of a continuing program, the stability of the drug in the package in which it is sold.

**(2)** Every fabricator and importer of an active ingredient shall monitor, by means of a continuing program, the stability of the drug in the package in which it is sold.

SOR/82-524, s. 3; SOR/97-12, s. 58; SOR/2013-74, s. 14.

## Sterile Products

**C.02.029** In addition to the other requirements of this Division, a drug that is intended to be sterile shall be fabricated and packaged/labelled

**(a)** in separate and enclosed areas;

**(b)** under the supervision of personnel trained in microbiology; and

**(c)** by a method scientifically proven to ensure sterility.

SOR/82-524, s. 3; SOR/97-12, s. 21.

## Medical Gases

**C.02.030** The provisions of sections C.02.025, C.02.027 and C.02.028 do not apply to medical gases.

SOR/85-754, s. 3.

**C.02.026** Les échantillons visés à l'article C.02.025 doivent être en quantité suffisante pour permettre de déterminer si la drogue ou les matières premières sont conformes à leurs spécifications respectives.

DORS/82-524, art. 3.

## Stabilité

**C.02.027 (1)** Le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue sous forme posologique déterminent la période durant laquelle la drogue demeurera conforme à ses spécifications dans l'emballage dans lequel elle est mise en vente.

**(2)** Le manufacturier et l'importateur d'un ingrédient actif déterminent la période durant laquelle la drogue demeurera conforme à ses spécifications dans l'emballage dans lequel elle est mise en vente.

DORS/82-524, art. 3; DORS/97-12, art. 58; DORS/2013-74, art. 14.

**C.02.028 (1)** Le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue sous forme posologique surveillent, dans le cadre d'un programme permanent, la stabilité de la drogue dans l'emballage dans lequel elle est mise en vente.

**(2)** Le manufacturier et l'importateur d'un ingrédient actif surveillent, dans le cadre d'un programme permanent, la stabilité de la drogue dans l'emballage dans lequel elle est mise en vente.

DORS/82-524, art. 3; DORS/97-12, art. 58; DORS/2013-74, art. 14.

## Produits stériles

**C.02.029** Une drogue devant être stérile doit, outre les exigences énoncées dans le présent titre, être manufacturée et emballée-étiquetée :

**a)** dans des locaux distincts et clos;

**b)** sous la surveillance d'un personnel ayant reçu une formation en microbiologie; et

**c)** selon une méthode scientifiquement reconnue pour en assurer la stérilité.

DORS/82-524, art. 3; DORS/97-12, art. 21.

## Gaz médicaux

**C.02.030** Les articles C.02.025, C.02.027 et C.02.028 ne s'appliquent pas aux gaz médicaux.

DORS/85-754, art. 3.

## DIVISION 3

## Schedule C Drugs

**C.03.001** In this Division,

***drug*** means a drug that is listed in Schedule C to the Act that is in dosage form or a drug that is an active ingredient of biological origin that can be used in the preparation of a drug listed in that Schedule; (*drogue*)

***licence*** or ***Canadian licence*** [Repealed, SOR/97-12, s. 22]

***manufacturer*** [Repealed, SOR/97-12, s. 22]

***master lot*** means a quantity of a drug from which a lot is prepared for sale by subsequent dilution or mixture; (*maître-lot*)

***radionuclide generator*** means a radioactive parent and daughter

**(a)** contained in an ion-exchange column, or

**(b)** dissolved in a suitable solvent in a liquid-liquid extraction system

where the radioactive daughter is separated from its parent by

**(c)** elution from the ion exchange column, or

**(d)** a solvent extraction procedure. (*générateur de radionucléide*)

SOR/97-12, s. 22; SOR/2013-74, s. 15.

**C.03.001.1** No distributor referred to in paragraph C.01A.003(b) or importer shall sell a drug unless it has been fabricated, packaged/labelled, tested and stored in accordance with this Division.

SOR/97-12, s. 23.

**C.03.002 to C.03.005** [Repealed, SOR/97-12, s. 24]

**C.03.006** [Repealed, SOR/97-12, s. 67]

**C.03.007 to C.03.011** [Repealed, SOR/97-12, s. 26]

**C.03.012** On written request from the Minister, every fabricator, packager/labeller, tester, distributor referred to in paragraph C.01A.003(b) and importer of a drug shall submit protocols of tests together with samples of any lot or master lot of the drug before it is sold, and no person shall sell a lot of which the protocol or sample fails to meet the requirements of these Regulations.

SOR/97-12, s. 27; SOR/2018-69, s. 27.

## TITRE 3

## Drogues de l'annexe C

**C.03.001** Dans le présent titre,

***drogue*** Toute drogue sous forme posologique visée à l'annexe C de la Loi ou tout ingrédient actif d'origine biologique pouvant être utilisé dans la préparation d'une drogue visée à cette annexe. (*drug*)

***fabricant*** [Abrogée, DORS/97-12, art. 22]

***générateur de radionucléide*** désigne un dispositif contenant un élément mère radioactif et un élément de filiation,

**a)** absorbés sur une colonne échangeuse d'ions, ou

**b)** dissous dans un solvant approprié dans un appareil d'extraction liquide-liquide,

où l'élément de filiation est séparé de l'élément mère,

**c)** par élution sur la colonne échangeuse d'ions, ou

**d)** par extraction au solvant; (*radionuclide generator*)

***licence*** ou ***licence canadienne*** [Abrogée, DORS/97-12, art. 22]

***maître-lot*** désigne une certaine quantité d'une drogue, servant, par dilution ou mélange subséquents, à préparer un lot pour la vente. (*master lot*)

DORS/97-12, art. 22; DORS/2013-74, art. 15.

**C.03.001.1** Nul distributeur visé à l'alinéa C.01A.003b) ou importateur ne peut vendre une drogue, sauf si elle a été manufacturée, emballée-étiquetée, analysée et entreposée conformément au présent titre.

DORS/97-12, art. 23.

**C.03.002 à C.03.005** [Abrogés, DORS/97-12, art. 24]

**C.03.006** [Abrogé, DORS/97-12, art. 67]

**C.03.007 à C.03.011** [Abrogés, DORS/97-12, art. 26]

**C.03.012** À la demande écrite du ministre, le manufacturier, l'emballeur-étiqueteur, l'analyste, le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue doivent soumettre les protocoles des essais en même temps que des échantillons de tout lot ou maître-lot de drogue avant sa vente, et il est interdit de vendre tout lot

**C.03.013** No person shall fabricate or import a drug that is derived from animal tissue unless the tissue is obtained from a healthy animal free from infectious disease.

SOR/97-12, s. 27.

**C.03.014 (1)** Section C.01.004 does not apply to a drug.

**(2) and (3)** [Repealed, SOR/97-12, s. 28]

SOR/79-236, s. 1; SOR/93-202, s. 15; SOR/97-12, s. 28.

**C.03.015 (1)** Every package of a drug that is a prescription drug shall carry the symbol "Pr" on the upper left quarter of the principal display panel of both its inner and outer labels or, in the case of a single dose container, on the upper left quarter of its outer label.

**(2)** Subsection (1) does not apply to

**(a)** a drug sold to a drug fabricator;

**(b)** a drug sold under a prescription;

**(c)** a radiopharmaceutical as defined in section C.03.201; or

**(d)** a component or kit as defined in section C.03.205.

SOR/80-543, s. 9; SOR/97-12, s. 61; SOR/2001-181, s. 4; SOR/2013-122, s. 16.

**C.03.030 to C.03.045** [Repealed, SOR/81-335, s. 2]

## Radiopharmaceuticals

**C.03.201** In these Regulations, ***radiopharmaceutical*** means a drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons.

SOR/97-12, s. 29.

**C.03.202 (1)** Every package containing a radiopharmaceutical, other than a radionuclide generator, shall carry,

**(a)** on both the inner and the outer labels,

dont le protocole ou l'échantillon ne satisfait pas aux exigences du présent règlement.

DORS/97-12, art. 27; DORS/2018-69, art. 27.

**C.03.013** Il est interdit de manufacturer ou d'importer une drogue provenant d'un tissu animal, à moins que celui-ci ne provienne d'un animal sain et exempt de maladies contagieuses.

DORS/97-12, art. 27.

**C.03.014 (1)** L'article C.01.004 ne s'applique pas à une drogue.

**(2) et (3)** [Abrogés, DORS/97-12, art. 28]

DORS/79-236, art. 1; DORS/93-202, art. 15; DORS/97-12, art. 28.

**C.03.015 (1)** L'emballage d'une drogue qui est une drogue sur ordonnance doit porter le symbole « Pr » dans le quart supérieur gauche de l'espace principal des étiquettes intérieure et extérieure ou, dans le cas d'un récipient à dose unique, dans le quart supérieur gauche de l'étiquette extérieure.

**(2)** Le paragraphe (1) ne s'applique pas à ce qui suit :

**a)** la drogue vendue à un manufacturier de drogues;

**b)** la drogue vendue conformément à une ordonnance;

**c)** le produit pharmaceutique radioactif au sens de l'article C.03.201;

**d)** le constituant ou la trousse au sens de l'article C.03.205.

DORS/80-543, art. 9; DORS/97-12, art. 61; DORS/2001-181, art. 4; DORS/2013-122, art. 16.

**C.03.030 à C.03.045** [Abrogés, DORS/81-335, art. 2]

## Produits pharmaceutiques radioactifs

**C.03.201** Dans le présent règlement, ***produit pharmaceutique radioactif*** s'entend d'une drogue qui se caractérise par la désintégration spontanée du noyau instable accompagnée de l'émission de particules nucléaires ou de photons.

DORS/97-12, art. 29.

**C.03.202 (1)** L'emballage d'un produit pharmaceutique radioactif, sauf s'il s'agit d'un générateur de radionucléide, doit porter,

**a)** sur les étiquettes intérieure et extérieure,

**(i)** the proper name of the drug, which proper name, where there is a brand name, shall immediately precede or follow the brand name,

**(ii)** the name of the distributor referred to in paragraph C.01A.003(b),

**(iii)** the lot number, and

**(iv)** the drug identification number assigned for the radiopharmaceutical, preceded by the expression "Drug Identification Number" or "Drogue : identification numérique", or both, or the abbreviation "DIN"; and

**(b)** on the outer label

**(i)** the address of the distributor referred to in paragraph C.01A.003(b),

**(ii)** the standard that the drug professes to meet, if that standard is referred to in any publication mentioned in Schedule B to the Act,

**(iii)** a statement of the pharmaceutical form or the route of administration of the drug,

**(iv)** a statement of the recommended use and the recommended radioactivity to be administered for that use, or a reference to an accompanying package insert that shows such information,

**(v)** [Repealed, SOR/2017-259, s. 16]

**(vi)** the radiation warning symbol set out in Schedule 3 to the *Radiation Protection Regulations* and the words "RAYONNEMENT — DANGER — RADIATION",

**(vii)** the names and a statement of the amounts of any preservatives or stabilizing agents contained in the drug,

**(viii)** the names and a statement of the amounts of all other non-radioactive contents of the drug,

**(ix)** a statement of the total radioactivity content of the drug including overfill,

**(x)** a statement of the total volume of the drug including overfill, except where its contents are entirely in gaseous, capsule or lyophilized form,

**(xi)** a statement of the concentration of radioactive material in the drug expressed as

**(A)** units of radioactivity per capsule or

**(i)** le nom propre de la drogue, immédiatement avant ou après la marque nominative, le cas échéant,

**(ii)** le nom du distributeur visé à l'alinéa C.01A.003b),

**(iii)** le numéro de lot,

**(iv)** l'identification numérique attribuée au produit pharmaceutique radioactif, précédée de la mention « Drogue : identification numérique » ou de la mention « Drug Identification Number », ou des deux, ou de l'abréviation « DIN »;

**b)** sur l'étiquette extérieure

**(i)** l'adresse du distributeur visé à l'alinéa C.01A.003b),

**(ii)** la norme à laquelle est censée répondre la drogue, s'il est fait mention de cette norme dans une publication mentionnée à l'annexe B de la Loi,

**(iii)** la mention de la forme pharmaceutique ou de la voie d'administration de la drogue,

**(iv)** la mention de l'emploi recommandé et de la radioactivité qu'il est recommandé d'administrer pour ledit emploi, ou une indication renvoyant à la notice d'accompagnement où figurent les mêmes renseignements,

**(v)** [Abrogé, DORS/2017-259, art. 16]

**(vi)** le symbole de mise en garde contre les rayonnements figurant à l'annexe 3 du *Règlement sur la radioprotection* et la mention « RAYONNEMENT — DANGER — RADIATION »,

**(vii)** les noms et les quantités de tout agent de conservation ou agent stabilisant que contient la drogue,

**(viii)** les noms et les quantités de tous les autres ingrédients non radioactifs de la drogue,

**(ix)** une déclaration de la teneur totale de la drogue en radioactivité, y compris celle de l'excédent de remplissage,

**(x)** une déclaration du volume total de la drogue, y compris l'excédent de remplissage, sauf si le contenu est entièrement sous forme gazeuse, sous forme de capsule ou sous forme lyophilisée,

**(B)** units of radioactivity per unit volume,

except where the contents of the drug are entirely in gaseous or lyophilized form,

**(xii)** a statement of the specific activity of the drug expressed as units of radioactivity per unit weight of carrier present or the statement "carrier-free" or "sans entraîneur", whichever is applicable,

**(xiii)** a statement of the reference time in respect of the radioactivity values mentioned in subparagraphs (ix), (xi) and (xii), the name of the month being written or designated by letter abbreviation,

**(xiv)** a statement of the recommended useful life or the date after which the drug is not recommended for use, the name of the month being written or designated by letter abbreviation, and

**(xv)** a statement of the special storage requirements with reference to temperature and light.

**(2)** Subparagraph (1)(a)(iv) does not apply to a radiopharmaceutical that is

**(a)** compounded by a pharmacist under a prescription or by a practitioner; or

**(b)** sold under a prescription, if the radiopharmaceutical's label indicates

**(i)** its proper name, common name or brand name,

**(ii)** its potency, and

**(iii)** the name of its manufacturer.

**(3)** Subparagraph (1)(b)(viii) of this section does not apply where the information referred to in that subparagraph is shown on a package insert that accompanies the drug.

**(4)** Section C.01.005 does not apply to a radiopharmaceutical.

SOR/79-236, s. 2; SOR/93-202, s. 16; SOR/97-12, ss. 54, 58, 62; SOR/2001-203, s. 2; SOR/2012-129, s. 2; SOR/2017-259, s. 16; SOR/2018-69, s. 35(F).

**(xi)** une déclaration de la concentration de substance radioactive qui contient la drogue exprimée

**(A)** en unités de radioactivité par capsule, ou

**(B)** en unités de radioactivité par volume d'unité,

sauf si le contenu est entièrement sous forme gazeuse ou sous forme lyophilisée,

**(xii)** une déclaration de l'activité spécifique de la drogue, exprimée en unités de radioactivité par poids d'unité d'entraîneur présent ou, selon le cas, la mention « sans entraîneur » ou « carrier-free »,

**(xiii)** la mention de la période de référence à laquelle les valeurs de la radioactivité précisées aux sous-alinéas (ix), (xi) et (xii) du présent article peuvent s'appliquer (le nom du mois doit être écrit en toutes lettres ou abrégé en lettres),

**(xiv)** la mention de la vie utile recommandée ou la date après laquelle l'emploi de la drogue est déconseillé (le mois étant inscrit ou indiqué en abrégé), et

**(xv)** la mention des conditions de conservation particulières à respecter, avec indication de la température et de la lumière.

**(2)** Le sous-alinéa (1)a)(iv) ne s'applique pas au produit pharmaceutique radioactif qui remplit l'une des conditions suivantes :

**a)** il est préparé par un pharmacien, conformément à une ordonnance, ou par un praticien;

**b)** il est vendu conformément à une ordonnance et son étiquette indique :

**(i)** son nom propre, son nom usuel ou sa marque nominative,

**(ii)** son activité,

**(iii)** le nom de son fabricant.

**(3)** Le sous-alinéa (1)b)(viii) du présent article, ne s'applique pas lorsque les renseignements mentionnés dans ledit sous-alinéa figurent sur la notice d'accompagnement de la drogue.

**(4)** L'article C.01.005 ne s'applique pas aux produits pharmaceutiques radioactifs.

DORS/79-236, art. 2; DORS/93-202, art. 16; DORS/97-12, art. 54, 58 et 62; DORS/2001-203, art. 2; DORS/2012-129, art. 2; DORS/2017-259, art. 16; DORS/2018-69, art. 35(F).

**C.03.203 (1)** Every radionuclide generator shall carry on the inner label

**(a)** the proper name of the radionuclide generator, which proper name, where there is a brand name, shall immediately precede or follow the brand name;

**(b)** the name and address of the distributor referred to in paragraph C.01A.003(b);

**(c)** the lot number;

**(d)** the standard that the radionuclide generator professes to meet, if that standard is referred to in any publication mentioned in Schedule B to the Act;

**(e)** the drug identification number assigned for the radionuclide generator, preceded by the expression "Drug Identification Number" or "Drogue : identification numérique", or both, or the abbreviation "DIN";

**(f)** the radiation warning symbol set out in Schedule 3 to the *Radiation Protection Regulations* and the words "RAYONNEMENT — DANGER — RADIATION";

**(g)** a statement of the total parent radioactivity contained in the radionuclide generator;

**(h)** a statement of the hour and date at which the radioactivity value mentioned in paragraph (g) is valid, the name of the month being written or designated by letter abbreviation;

**(i)** a statement of the recommended useful life or the date after which the radionuclide generator is not recommended for use, the name of the month being written or designated by letter abbreviation;

**(j)** a statement of the recommended useful life of the drug after removal from the radionuclide generator;

**(k)** a statement of special storage requirements with reference to temperature or shielding;

**(l)** complete directions for use or a reference to an accompanying package insert that sets out such directions; and

**(m)** a statement cautioning against the dismantling of the radionuclide generator.

**(2)** Paragraphs (1)(i) and (j) of this section do not apply where the information referred to in those subparagraphs is shown on a package insert that accompanies the radionuclide generator.

**C.03.203 (1)** Un générateur de radionucléide porte sur son étiquette intérieure, à la fois :

**a)** le nom propre du générateur de radionucléide, immédiatement avant ou après la marque nominative, le cas échéant;

**b)** le nom et l'adresse du distributeur visé à l'alinéa C.01A.003b);

**c)** le numéro du lot;

**d)** la norme à laquelle le générateur de radionucléide semble se conformer si cette norme est mentionnée dans une publication visée à l'annexe B de la Loi;

**e)** l'identification numérique attribuée au générateur de radionucléide, précédée de la mention « Drogue : identification numérique » ou de la mention « Drug Identification Number », ou des deux, ou de l'abréviation « DIN »;

**f)** le symbole de mise en garde contre les rayonnements figurant à l'annexe 3 du *Règlement sur la radioprotection* et la mention « RAYONNEMENT — DANGER — RADIATION »;

**g)** la mention de la totalité de la radioactivité mère contenue dans le générateur de radionucléide;

**h)** la mention de l'heure et la date de validité de la radioactivité visée à l'alinéa g) (le mois étant inscrit ou indiqué en abrégé);

**i)** la mention de la vie utile recommandée ou de la date après laquelle l'utilisation du générateur de radionucléide est déconseillée (le mois étant inscrit ou indiqué en abrégé);

**j)** la mention de la vie utile recommandée de la drogue après son extraction du générateur de radionucléide;

**k)** la mention des exigences particulières de température ou de blindage en entrepôt;

**l)** le mode d'emploi complet ou le renvoi à une notice d'accompagnement qui indique ces renseignements;

**m)** une mise en garde contre le démontage du générateur de radionucléide.

**(2)** Les alinéas (1)i) et j) du présent article ne s'appliquent pas lorsque les renseignements qu'ils exigent apparaissent sur une notice d'accompagnement d'un générateur de radionucléide.

**(3)** Section C.01.005 does not apply to a radionuclide generator.

SOR/79-236, s. 3; SOR/93-202, s. 17; SOR/97-12, ss. 54, 58, 62; SOR/2012-129, s. 3; SOR/2017-259, s. 17; SOR/2018-69, ss. 21(F), 22(F).

**C.03.204 (1)** No person shall sell a drug that contains technetium-99m at any time during its useful life if it also contains a radionuclidic impurity set out in the monograph for Sodium Pertechnetate Tc-99m Injection referred to in the publication set out in item 8 of Schedule B to the Act, in an amount greater than that shown in the monograph.

**(2)** No person shall sell a radionuclide generator from which can be removed a drug that contains technetium-99m, at any time during the useful life of the drug, if the drug also contains a radionuclidic impurity set out in the monograph for Sodium Pertechnetate Tc-99m Injection referred to in the publication set out in item 8 of Schedule B to the Act, in an amount greater than that shown in the monograph.

SOR/97-12, s. 30; SOR/2012-129, s. 4.

## Drugs, Other than Radionuclides, Sold or Represented for Use in the Preparation of Radiopharmaceuticals

[SOR/2017-259, s. 18(F)]

**C.03.205** The following definitions apply in this section and in sections C.03.206 to C.03.209.

***component*** means

**(a)** a unit of a drug, other than a radionuclide, separately packaged in a kit; or

**(b)** an empty vial or other accessory item in a kit. (*constituant*)

***kit*** means a package that is intended to be used in the preparation of radiopharmaceuticals and that

**(a)** contains one or more separately packaged units of a drug, other than a radionuclide; and

**(b)** may contain empty vials or other accessory items. (*trousse*)

SOR/79-236, s. 4; SOR/2017-259, s. 19.

**C.03.206** Sections C.01.005 and C.04.019 do not apply to a component or kit.

SOR/79-236, s. 4.

**(3)** L'article C.01.005 ne s'applique pas aux générateurs de radionucléide.

DORS/79-236, art. 3; DORS/93-202, art. 17; DORS/97-12, art. 54, 58 et 62; DORS/2012-129, art. 3; DORS/2017-259, art. 17; DORS/2018-69, art. 21(F) et 22(F).

**C.03.204 (1)** Il est interdit de vendre une drogue contenant, à un moment de sa vie utile, du technétium-99m si elle contient aussi une impureté radionucléique figurant dans la monographie sur l'injection de Sodium pertechnétate Tc-99m mentionnée dans la publication visée à l'article 8 de l'annexe B de la Loi, en une quantité plus grande que celle figurant dans cette monographie.

**(2)** Il est interdit de vendre un générateur de radionucléides dont il est possible d'extraire une drogue contenant, à un moment de sa vie utile, du technétium-99m, si cette drogue contient aussi une impureté radionucléique figurant dans la monographie sur l'injection de Sodium pertechnétate Tc-99m mentionnée dans la publication visée à l'article 8 de l'annexe B de la Loi, en une quantité plus grande que celle figurant dans cette monographie.

DORS/97-12, art. 30; DORS/2012-129, art. 4.

## Drogues, autres que les radionucléides, vendues pour être employées dans la préparation de produits pharmaceutiques radioactifs ou représentées comme pouvant servir à cette fin

[DORS/2017-259, art. 18(F)]

**C.03.205** Les définitions qui suivent s'appliquent au présent article et aux articles C.03.206 à C.03.209.

***constituant*** S'entend :

**a)** soit d'une unité d'une drogue, autre qu'un radionucléide, emballée séparément dans une trousse;

**b)** soit d'une fiole vide ou d'un autre article accessoire dans une trousse. (*component*)

***trousse*** Emballage destiné à la préparation de produits pharmaceutiques radioactifs qui :

**a)** contient une ou plusieurs unités d'une drogue, autre qu'un radionucléide, emballées séparément;

**b)** peut contenir des fioles vides ou d'autres articles accessoires. (*kit*)

DORS/79-236, art. 4; DORS/2017-259, art. 19.

**C.03.206** Les articles C.01.005 et C.04.019 ne s'appliquent à aucun constituant ou trousse.

DORS/79-236, art. 4.

**C.03.207 (1)** Every component shall be labelled to show

**(a)** adequate identification of the component and an adequate description of its function;

**(b)** where applicable, a quantitative list of its ingredients or a reference to the label of the kit that shows such information;

**(c)** the name of the distributor referred to in paragraph C.01A.003(b);

**(d)** the lot number;

**(e)** a statement of any special storage requirements with respect to temperature and light;

**(f)** the date after which the component is not recommended for use, the name of the month being written in full or designated by letter abbreviation; and

**(g)** adequate directions for use or a reference to the accompanying package insert that shows such directions.

**(2)** The component of a kit that is intended to contain the prepared radiopharmaceutical shall be labelled to display the drug identification number assigned for the kit, preceded by the expression "Drug Identification Number" or "Drogue : identification numérique", or both, or the abbreviation "DIN".

SOR/79-236, s. 4; SOR/97-12, s. 58; SOR/2017-259, s. 20; SOR/2018-69, s. 23(F).

**C.03.208** Every kit shall be labelled to show

**(a)** its proper name;

**(b)** its brand name, if any;

**(c)** a list of its contents;

**(d)** the name and address of the distributor referred to in paragraph C.01A.003(b);

**(e)** the drug identification number assigned for the kit, preceded by the expression "Drug Identification Number" or "Drogue : identification numérique", or both, or the abbreviation "DIN";

**(f)** the lot number;

**(g)** a statement of any special storage requirements with respect to temperature and light;

**C.03.207 (1)** L'étiquette devant être apposée sur un constituant doit comprendre

**a)** son identification adéquate et une description adéquate de sa fonction;

**b)** le cas échéant, une liste quantitative de ses ingrédients ou un renvoi à l'étiquette de la trousse pour de tels renseignements;

**c)** le nom du distributeur visé à l'alinéa C.01A.003b);

**d)** le numéro de lot;

**e)** une déclaration des exigences spéciales d'entreposage quant à la température et la lumière;

**f)** la date après laquelle le constituant n'est pas recommandé pour usage, le mois étant inscrit au long ou indiqué en abrégé; et

**g)** le mode d'emploi approprié ou le renvoi à une notice d'accompagnement.

**(2)** L'étiquette devant être apposée sur le constituant d'une trousse destiné à contenir le produit pharmaceutique radioactif préparé indique l'identification numérique attribuée à la trousse, précédée de la mention « Drogue : identification numérique » ou de la mention « Drug Identification Number », ou des deux, ou de l'abréviation « DIN ».

DORS/79-236, art. 4; DORS/97-12, art. 58; DORS/2017-259, art. 20; DORS/2018-69, art. 23(F).

**C.03.208** Chaque trousse doit être étiquetée pour montrer :

**a)** son nom propre;

**b)** la marque nominative de celle-ci, le cas échéant;

**c)** une liste de son contenu;

**d)** le nom et l'adresse de son distributeur visé à l'alinéa C.01A.003b);

**e)** l'identification numérique attribuée à la trousse, précédée de la mention « Drogue : identification numérique » ou de la mention « Drug Identification Number », ou des deux, ou de l'abréviation « DIN »;

**f)** son numéro de lot;

**g)** une déclaration des exigences spéciales d'entreposage quant à la température et la lumière;

**(h)** the date after which the kit is not recommended for use, the name of the month being written in full or designated by letter abbreviation;

**(i)** where the label of a component makes reference to the label of the kit that shows information as to the ingredients of the component, a quantitative list of the ingredients of that component;

**(j)** a statement of the sterility and apyrogenicity of the components;

**(k)** adequate directions for preparing the radiopharmaceutical or a reference to the accompanying package insert that shows such directions;

**(l)** a statement of the duration of the useful life of the prepared radiopharmaceutical;

**(m)** a statement of the storage requirements for the prepared radiopharmaceutical;

**(n)** a statement of the recommended use for the prepared radiopharmaceutical and the recommended radioactivity to be administered for that use, or a reference to the accompanying package insert that shows such information; and

**(o)** a statement of the route of administration of the prepared radiopharmaceutical.

**(p)** [Repealed, SOR/2001-203, s. 3]

SOR/79-236, s. 4; SOR/93-202, s. 18; SOR/97-12, ss. 58, 62; SOR/2001-203, s. 3; SOR/2017-259, s. 21; SOR/2018-69, s. 36(F).

**C.03.209** A package insert shall be included in every kit and shall show

**(a)** the proper name and the brand name, if any, of the kit and a description of its use;

**(b)** a list of the contents of the kit;

**(c)** the name and address of the distributor referred to in paragraph C.01A.003(b) of the kit;

**(d)** identification of the radionuclides that can be used to prepare the radiopharmaceutical;

**(e)** directions for preparing the radiopharmaceutical and a statement of the storage requirements for the prepared radiopharmaceutical;

**(f)** a statement of the duration of the useful life of the prepared radiopharmaceutical;

**(g)** a description of the biological actions of the prepared radiopharmaceutical;

**h)** la date après laquelle la trousse n'est pas recommandée pour usage, le mois étant inscrit au long ou indiqué en abrégé;

**i)** une liste quantitative des ingrédients d'un constituant lorsque l'étiquette de ce constituant renvoie à l'étiquette d'une trousse qui porte des renseignements concernant ses ingrédients;

**j)** une déclaration de la stérilité et de l'apyrogénicité des composants;

**k)** le mode d'emploi approprié pour la préparation de produits pharmaceutiques radioactifs ou le renvoi, pour ces renseignements, à une notice d'accompagnement;

**l)** une déclaration de la vie utile du produit pharmaceutique radioactif préparé;

**m)** les conditions de conservation recommandées pour le produit pharmaceutique radioactif préparé;

**n)** l'usage recommandé pour le produit pharmaceutique radioactif préparé et la dose de radioactivité recommandée pour cet usage ou le renvoi, pour ces renseignements, à une notice d'accompagnement;

**o)** la voie d'administration prévue pour le produit pharmaceutique radioactif préparé.

**p)** [Abrogé, DORS/2001-203, art. 3]

DORS/79-236, art. 4; DORS/93-202, art. 18; DORS/97-12, art. 58 et 62; DORS/2001-203, art. 3; DORS/2017-259, art. 21; DORS/2018-69, art. 36(F).

**C.03.209** Chaque trousse doit contenir une notice d'accompagnement qui doit indiquer,

**a)** le nom propre et la marque nominative, le cas échéant, de la trousse et une description de son usage;

**b)** une liste de son contenu;

**c)** le nom et l'adresse de son distributeur visé à l'alinéa C.01A.003b);

**d)** l'identification des sources de radionucléides qui peuvent être utilisées pour préparer le produit pharmaceutique radioactif;

**e)** le mode de préparation du produit pharmaceutique radioactif et les conditions de sa conservation une fois préparé;

**f)** une déclaration de la durée de la vie utile du produit pharmaceutique radioactif préparé;

**(h)** indications and contraindications in respect of the prepared radiopharmaceutical;

**(i)** warnings and precautions in respect of the components and the prepared radiopharmaceutical;

**(j)** the adverse reactions, if any, associated with the prepared radiopharmaceutical;

**(k)** where applicable, the pharmacology and toxicology of the prepared radiopharmaceutical or a statement that such information is available on request;

**(l)** the radiation dosimetry in respect of the prepared radiopharmaceutical;

**(m)** a statement of the recommended use for the prepared radiopharmaceutical and the recommended radioactivity to be administered for that use;

**(n)** a statement of the route of administration of the prepared radiopharmaceutical; and

**(o)** a recommendation that the radiochemical purity and radioactivity content of the prepared radiopharmaceutical be checked prior to administration.

SOR/79-236, s. 4; SOR/93-202, s. 19; SOR/97-12, s. 58; SOR/2018-69, s. 36(F).

**g)** une description des effets biologiques du produit pharmaceutique radioactif préparé;

**h)** les indications et contre-indications du produit pharmaceutique radioactif préparé;

**i)** les mises en garde et les précautions relatives aux constituants et au produit pharmaceutique radioactif préparé;

**j)** les effets nocifs, liés, le cas échéant, au produit pharmaceutique radioactif préparé;

**k)** lorsqu'il y a lieu, la pharmacologie et la toxicologie du produit pharmaceutique radioactif préparé ou une mention indiquant que ces renseignements sont disponibles sur demande;

**l)** la dosimétrie des rayonnements pour le produit pharmaceutique radioactif préparé;

**m)** une déclaration de l'usage recommandé pour le produit pharmaceutique radioactif recommandée pour cet usage;

**n)** une déclaration de la voie d'administration prévue pour le produit pharmaceutique radioactif préparé; et

**o)** une recommandation selon laquelle la pureté radiochimique et la teneur radioactive du produit pharmaceutique radioactif préparé doivent être vérifiées avant l'administration.

DORS/79-236, art. 4; DORS/93-202, art. 19; DORS/97-12, art. 58; DORS/2018-69, art. 36(F).

## Positron-emitting Radiopharmaceuticals

### Interpretation

**C.03.301** The following definitions apply in this section and in sections C.03.302 to C.03.319.

***adverse reaction*** means an undesirable and unintended response in a study subject or other person to a study drug that is caused by the administration of any dose of the study drug. (*réaction indésirable*)

***good clinical practices*** means generally accepted clinical practices that are designed to protect the rights, safety and well-being of study subjects and other persons. (*bonnes pratiques cliniques*)

***import*** means, in respect of a study drug, to import it into Canada for sale for the purpose of a study. (*importer*)

## Produits pharmaceutiques radioactifs émetteurs de positrons

### Définitions

**C.03.301** Les définitions qui suivent s'appliquent au présent article et aux articles C.03.302 à C.03.319.

***autre personne*** Tout individu qui entre en contact physique avec un sujet de l'étude. (*other person*)

***bonnes pratiques cliniques*** Pratiques cliniques généralement reconnues visant à protéger les droits, la sécurité et le bien-être des sujets de l'étude et de toute autre personne. (*good clinical practices*)

***chercheur qualifié*** Médecin, membre en règle d'une association médicale canadienne, chargé par le promoteur de veiller au bon déroulement d'une étude dans un lieu d'étude donné et autorisé à exercer sa profession par les lois de la province où se trouve ce lieu. (*qualified investigator*)

***other person*** means an individual who comes into physical contact with a study subject. (*autre personne*)

***protocol*** means a document that describes the objectives, design, methodology, statistical considerations and organization of a study. (*protocole*)

***qualified investigator*** means the physician and member in good standing of a professional medical association in Canada to whom a sponsor gives the responsibility for the proper conduct of the study at a given study site, who is entitled to practise their profession under the laws of the province where the study site is located. (*chercheur qualifié*)

***research ethics board*** means a body described in section C.03.306. (*comité d'éthique de la recherche*)

***serious adverse reaction*** means an adverse reaction that results in any of the following consequences for the study subject or other person:

**(a)** their in-patient hospitalization or its prolongation;

**(b)** a congenital malformation;

**(c)** persistent or significant disability or incapacity;

**(d)** a life-threatening condition; or

**(e)** death. (*réaction indésirable grave*)

***serious unexpected adverse reaction*** means a serious adverse reaction that is not identified in nature, severity or frequency in the risk information set out on the label of the study drug. (*réaction indésirable grave et imprévue*)

***sponsor*** means a person who is responsible for the conduct of a study. (*promoteur*)

***study*** means a basic clinical research study that involves human subjects and that is described in sections C.03.304 and C.03.305. (*étude*)

***study drug*** means a positron-emitting radiopharmaceutical that is used in a study. (*drogue destinée à l'étude*)

***study site*** means the location where all or part of a study is conducted. (*lieu d'étude*)

SOR/2012-129, s. 5.

***comité d'éthique de la recherche*** S'entend au sens de l'article C.03.306. (*research ethics board*)

***drogue destinée à l'étude*** Produit pharmaceutique radioactif émetteur de positrons qui est utilisé dans le cadre d'une étude. (*study drug*)

***étude*** Étude de recherche clinique fondamentale portant sur des sujets humains et visée aux articles C.03.304 et C.03.305. (*study*)

***importer*** S'agissant d'une drogue destinée à l'étude, l'importer au Canada en vue d'en faire la vente pour une étude. (*import*)

***lieu d'étude*** Lieu où se déroule, en tout ou en partie, une étude. (*study site*)

***promoteur*** Personne qui est responsable de la conduite d'une étude. (*sponsor*)

***protocole*** Document qui expose les objectifs, le plan de travail, la méthodologie, les considérations statistiques et l'organisation de l'étude. (*protocol*)

***réaction indésirable*** Réaction négative et non voulue à une drogue destinée à l'étude par un sujet à l'étude ou autre personne qui est provoquée par l'administration de la drogue, quelle qu'en soit la dose. (*adverse reaction*)

***réaction indésirable grave*** Réaction indésirable qui entraîne l'une des conséquences ci-après pour un sujet de l'étude ou une autre personne :

**a)** son hospitalisation ou la prolongation de celle-ci;

**b)** une malformation congénitale;

**c)** une incapacité importante ou persistante;

**d)** la mise en danger de sa vie;

**e)** sa mort. (*serious adverse reaction*)

***réaction indésirable grave et imprévue*** Réaction indésirable grave dont la nature, la sévérité ou la fréquence ne sont pas mentionnées dans les renseignements sur les risques qui figurent sur l'étiquette d'une drogue destinée à l'étude. (*serious unexpected adverse reaction*)

DORS/2012-129, art. 5.

## Application

**C.03.302 (1)** Sections C.03.303 to C.03.319 apply to the sale and importation of study drugs.

## Champ d'application

**C.03.302 (1)** Les articles C.03.303 à C.03.319 s'appliquent à la vente et à l'importation de drogues destinées à l'étude.

**(2)** Sections C.03.001 to C.03.209 and Divisions 5 and 8 do not apply to study drugs.

**(3)** Sections C.03.303 to C.03.319 do not apply to a study drug manufactured from a bulk process intermediate that is of biological origin.

SOR/2012-129, s. 5.

## Prohibition

**C.03.303** No person shall sell or import a study drug unless all of the following requirements are met:

**(a)** the study drug is for use only in a study;

**(b)** the study drug has been previously tested in human subjects and its safety in humans has been demonstrated;

**(c)** if the study drug is to be imported, the manufacturer of the drug has a representative in Canada who is responsible for its sale;

**(d)** the sponsor is authorized under section C.03.309 to sell or import the study drug; and

**(e)** the sponsor complies with sections C.03.310 to C.03.316.

SOR/2012-129, s. 5.

## Purpose of Study

**C.03.304 (1)** The purpose of a study is to obtain data on any of the following:

**(a)** the pharmacokinetics or metabolism of the study drug;

**(b)** normal human biochemistry or physiology; or

**(c)** changes caused to human biochemistry or physiology by aging, disease or medical interventions.

**(2)** A study is not primarily intended to do any of the following:

**(a)** discover, identify or verify the pharmacodynamic effects of the study drug;

**(b)** identify adverse reactions;

**(c)** fulfil an immediate therapeutic or diagnostic purpose; or

**(2)** Les articles C.03.001 à C.03.209 et les titres 5 et 8 ne s'appliquent pas aux drogues destinées à l'étude.

**(3)** Les articles C.03.303 à C.03.319 ne s'appliquent pas aux drogues destinées à l'étude qui sont fabriquées à partir d'un produit intermédiaire en vrac d'origine biologique.

DORS/2012-129, art. 5.

## Interdiction

**C.03.303** Il est interdit de vendre ou d'importer une drogue destinée à l'étude à moins que les conditions suivantes ne soient réunies :

**a)** la drogue est destinée exclusivement à une étude;

**b)** la drogue a déjà fait l'objet d'un essai sur des sujets humains et son profil d'innocuité a été établi à l'égard de l'humain;

**c)** si la drogue doit être importée, le fabricant de celle-ci a un représentant au Canada qui sera responsable de sa vente;

**d)** le promoteur est autorisé à le faire en vertu de l'article C.03.309;

**e)** le promoteur se conforme aux articles C.03.310 à C.03.316.

DORS/2012-129, art. 5.

## Objet de l'étude

**C.03.304 (1)** L'étude a pour objet l'obtention de données, selon le cas :

**a)** sur la pharmacocinétique ou le métabolisme de la drogue destinée à l'étude;

**b)** sur la biochimie ou la physiologie normales de l'être humain;

**c)** sur l'incidence du vieillissement, de la maladie ou de traitements médicaux sur la biochimie ou la physiologie de l'être humain.

**(2)** Il est entendu que l'étude n'a pas pour objet premier :

**a)** la découverte, la détermination ou la vérification des effets pharmacodynamiques de la drogue destinée à l'étude;

**b)** la détermination des réactions indésirables;

**c)** la réalisation d'un objectif thérapeutique ou diagnostique immédiat;

**(d)** ascertain the safety or efficacy of the study drug.

SOR/2012-129, s. 5.

## Requirements

**C.03.305 (1)** A study shall meet all of the following requirements:

**(a)** before the study drug is used in the study, there is sufficient data from testing it in animals and humans to demonstrate its safety in humans;

**(b)** the amount of active ingredients or combination of active ingredients in the study drug has been shown not to cause any clinically detectable pharmacodynamic effect in humans;

**(c)** the total radiation dose incurred annually by a study subject, including from multiple administrations of the study drug, from significant contaminants or from impurities and from the use of other procedures for the purposes of the study, will be not more than 50 mSv;

**(d)** any concomitant drug used in the study has been assigned a drug identification number under subsection C.01.014.2(1) or, in the case of a concomitant drug that is a new drug, has been issued a notice of compliance under section C.08.004;

**(e)** study subjects shall be at least 18 years old and have legal capacity at the time of the study;

**(f)** female study subjects shall

**(i)** be confirmed at the outset of the study, on the basis of a pregnancy test, as not being pregnant or state in writing that they are not pregnant, and

**(ii)** be advised that if they are lactating, they are to suspend lactation for 24 hours after the administration of the study drug; and

**(g)** the study shall not involve more than 30 study subjects.

**(2)** Despite paragraph (1)(g), a study may involve more than 30 study subjects if the sponsor provides the Minister with a scientific rationale for the increase and the Minister approves it.

SOR/2012-129, s. 5.

**d)** l'établissement de l'innocuité ou de l'efficacité de la drogue destinée à l'étude.

DORS/2012-129, art. 5.

## Exigences

**C.03.305 (1)** L'étude satisfait aux critères suivants :

**a)** elle est réalisée à partir d'une drogue destinée à l'étude dont l'innocuité a été établie à l'égard de l'humain — sur la base de données suffisantes, obtenues dans le cadre d'essais effectués sur des animaux et des êtres humains — avant son utilisation dans le cadre de l'étude;

**b)** il a été établi que la quantité ou la combinaison des ingrédients actifs de la drogue destinée à l'étude ne provoquent chez les êtres humains aucun effet pharmacodynamique qui puisse être détecté sur le plan clinique;

**c)** la dose annuelle totale de rayonnement que recevra chaque sujet, notamment par suite de multiples administrations de la drogue destinée à l'étude, de l'exposition à des impuretés ou à des contaminants importants ou du recours à d'autres procédés pour les besoins de l'étude, ne dépassera pas 50 mSv;

**d)** le cas échéant, toute drogue utilisée de façon concomitante dans le cadre de l'étude s'est vu attribuer une identification numérique aux termes du paragraphe C.01.014.2(1) ou, s'agissant d'une drogue nouvelle, s'est vu délivrer un avis de conformité aux termes de l'article C.08.004;

**e)** les sujets de l'étude ont au moins dix-huit ans et possèdent la capacité juridique au moment de l'étude;

**f)** chaque sujet d'étude féminin :

**(i)** a passé un test de grossesse confirmant qu'elle n'est pas enceinte au moment où commence l'étude ou a fourni une déclaration écrite confirmant ce fait,

**(ii)** est avisée, si elle allaite au moment de l'étude, de suspendre l'allaitement pendant vingt-quatre heures après l'administration de la drogue;

**g)** l'étude porte sur au plus trente sujets.

**(2)** Malgré l'alinéa (1)g), l'étude peut porter sur plus de trente sujets d'étude si le promoteur fournit au ministre les motifs scientifiques justifiant cette augmentation et que ce dernier l'approuve.

DORS/2012-129, art. 5.

## Research Ethics Board

**C.03.306** A research ethics board has all of the following characteristics:

**(a)** its principal mandate is to approve the initiation of and to periodically review biomedical research that involves human subjects in order to protect their rights, safety and well-being;

**(b)** it has at least five members, a majority of whom are Canadian citizens or permanent residents under the *Immigration and Refugee Protection Act*, is composed of both men and women and includes at least the following:

**(i)** two members whose primary experience and expertise are in a scientific discipline, who have broad experience in the methods and areas of research to be approved and one of whom is from a medical discipline,

**(ii)** one member knowledgeable in ethics,

**(iii)** one member knowledgeable in Canadian laws relevant to the research to be approved,

**(iv)** one member whose primary experience and expertise are in a non-scientific discipline, and

**(v)** one member who is from the community or is a representative of an organization interested in the areas of research to be approved and who is not affiliated with the sponsor or with the study site; and

**(c)** it has no affiliations with the sponsor that could compromise its ability to fulfil its principal mandate, or that could be perceived to do so.

SOR/2012-129, s. 5.

## Comité d'éthique de la recherche

**C.03.306** Le comité d'éthique de la recherche a les caractéristiques suivantes :

**a)** son principal mandat est d'approuver la tenue de projets de recherche biomédicale sur des sujets humains et d'en contrôler périodiquement le déroulement afin de veiller à la protection des droits de ces derniers, ainsi qu'à leur sécurité et leur bien-être;

**b)** il est composé d'au moins cinq membres, hommes et femmes dont la majorité sont des citoyens canadiens ou des résidents permanents au sens de la *Loi sur l'immigration et la protection des réfugiés* et dont au moins :

**(i)** deux membres possèdent de l'expertise et de l'expérience principalement dans un domaine scientifique ainsi qu'une vaste expérience des méthodes et champs de recherche à approuver, l'un d'entre eux provenant d'une discipline des soins médicaux,

**(ii)** un membre possède des connaissances en matière d'éthique,

**(iii)** un membre connaît la législation canadienne applicable à la recherche à approuver,

**(iv)** un membre possède de l'expertise et de l'expérience principalement dans un domaine non scientifique,

**(v)** un membre est issu de la collectivité ou représente un organisme intéressé aux champs de recherche en cause, mais n'est lié ni au promoteur, ni au lieu d'étude;

**c)** il n'a, avec le promoteur, aucun lien susceptible de compromettre sa capacité de réaliser son principal mandat, ou d'être perçu comme pouvant la compromettre.

DORS/2012-129, art. 5.

## Application for Authorization

**C.03.307 (1)** The sponsor shall submit to the Minister an application for authorization to sell or import a study drug that contains the information set out in subsection (2) as well as sufficient information to demonstrate that all of the following criteria are met:

**(a)** the use of the study drug will not endanger the health of any study subject or other person;

## Demande d'autorisation

**C.03.307 (1)** Le promoteur présente au ministre une demande d'autorisation pour la vente ou l'importation d'une drogue destinée à l'étude qui contient les renseignements et documents visés au paragraphe (2) ainsi que ceux nécessaires pour démontrer que les critères suivants sont remplis :

**a)** l'utilisation de la drogue destinée à l'étude ne mettra pas en danger la santé d'un sujet de l'étude ni celle d'une autre personne;

**(b)** the study is not contrary to the best interests of the study subjects; and

**(c)** the objectives of the study can reasonably be achieved.

**(2)** The application shall contain all of the following information:

**(a)** the title of the study and the protocol code or identification;

**(b)** the purposes and a concise description of the study;

**(c)** the number of study subjects;

**(d)** the brand name, if any, of the study drug;

**(e)** the chemical or generic name of the active ingredients in the study drug;

**(f)** a qualitative list of the non-active ingredients of the study drug;

**(g)** the maximum mass of the study drug to be administered to each study subject;

**(h)** the radioactive dose range of the study drug, expressed in MBq or mCi;

**(i)** the effective dose or effective dose equivalent of the study drug, expressed in mSv/MBq or rem/mCi;

**(j)** the sponsor's name and civic address, its postal address if different, and its telephone number, fax number and email address;

**(k)** the manufacturer's name and civic address, its postal address if different, and its telephone number, fax number and email address;

**(l)** in the case of an application for importation, the name and civic address, the postal address if different, and the telephone number, fax number and email address of the manufacturer's representative in Canada who is responsible for the sale of the study drug;

**(m)** the name and civic address of each study site;

**(n)** for each study site, the name, civic address, telephone number, fax number and email address of the qualified investigator;

**(o)** the proposed starting date for the study at each study site, if known;

**b)** l'étude n'ira pas à l'encontre des intérêts des sujets de l'étude;

**c)** les objectifs de l'étude sont raisonnablement réalisables.

**(2)** La demande d'autorisation contient les renseignements et documents suivants :

**a)** le titre de l'étude et le code ou l'identification du protocole;

**b)** l'objectif et une brève description de l'étude;

**c)** le nombre de sujets de l'étude;

**d)** la marque nominative de la drogue destinée à l'étude, s'il y a lieu;

**e)** le nom chimique ou générique des ingrédients actifs de la drogue destinée à l'étude;

**f)** la liste qualitative des ingrédients non actifs de la drogue destinée à l'étude;

**g)** la masse maximale de la drogue destinée à l'étude qui sera administrée à chaque sujet de l'étude;

**h)** l'amplitude de la dose radioactive de la drogue destinée à l'étude, exprimée en MBq ou en mCi;

**i)** la dose efficace ou l'équivalent de dose efficace de la drogue destinée à l'étude, exprimés en mSv/MBq ou en rem/mCi;

**j)** les nom et adresse municipale du promoteur, son adresse postale si elle est différente, ainsi que ses numéro de téléphone, numéro de télécopieur et adresse électronique;

**k)** les nom et adresse municipale du fabricant, son adresse postale si elle est différente, ainsi que ses numéro de téléphone, numéro de télécopieur et adresse électronique;

**l)** dans le cas d'une demande d'importation, les nom et adresse municipale, l'adresse postale si elle est différente, ainsi que les numéro de téléphone, numéro de télécopieur et adresse électronique du représentant du fabricant au Canada qui est responsable de la vente de la drogue destinée à l'étude;

**m)** les nom et adresse municipale de chaque lieu d'étude;

**n)** pour chaque lieu d'étude, les nom, adresse municipale, numéro de téléphone, numéro de télécopieur et adresse électronique du chercheur qualifié;

**(p)** for each study site, the name, civic address, telephone number, fax number and email address of the research ethics board;

**(q)** a statement, dated and signed by the research ethics board for each study site, that certifies that it has reviewed and approved the study, the protocol and the statement of the risks and anticipated benefits arising to the health of study subjects as a result of participating in the study that is set out in the informed consent form;

**(r)** a list of any previous applications for an authorization to sell or import a drug for a study related to the current study; and

**(s)** a statement, dated and signed by the sponsor's senior medical or scientific officer in Canada and senior executive officer, that certifies both of the following:

**(i)** the study will be conducted in accordance with these Regulations, and

**(ii)** all of the information contained or referred to in the application is complete and accurate and is not false or misleading.

SOR/2012-129, s. 5.

**o)** la date projetée du début de l'étude dans chaque lieu d'étude, si elle est connue;

**p)** pour chaque lieu d'étude, les nom, adresse, numéro de téléphone, numéro de télécopieur et adresse électronique du comité d'éthique de la recherche;

**q)** une attestation, signée et datée par le comité d'éthique de la recherche de chaque lieu d'étude, portant qu'il a examiné et approuvé l'étude, le protocole et l'exposé des risques et des bénéfices escomptés pour la santé des sujets de l'étude résultant de leur participation à celle-ci qui sont indiqués dans la formule de consentement éclairé;

**r)** une liste des demandes d'autorisation, présentées antérieurement, pour la vente ou l'importation d'une drogue destinée à des études liées à l'étude faisant l'objet de la demande;

**s)** une attestation, signée et datée par le directeur médical ou scientifique du promoteur au Canada et par le premier dirigeant de celui-ci, portant que :

**(i)** l'étude sera menée conformément au présent règlement,

**(ii)** les renseignements et documents contenus dans la demande d'autorisation ou auxquels celle-ci renvoie sont exacts, complets et ne sont ni faux ni trompeurs.

DORS/2012-129, art. 5.

## Additional Information

**C.03.308** If the information submitted under section C.03.307 is insufficient to enable the Minister to determine whether the sale or importation of the study drug should be authorized, the Minister may, by notice in writing, request the sponsor to provide any additional information that is necessary to make the determination and that is relevant to the study drug, the study or the protocol, by the date specified in the notice.

SOR/2012-129, s. 5.

## Renseignements et documents complémentaires

**C.03.308** Si les renseignements et documents fournis aux termes de l'article C.03.307 ne sont pas suffisants pour lui permettre de décider si la vente ou l'importation de la drogue destinée à l'étude doit être autorisée, le ministre peut, dans un avis écrit, demander au promoteur qu'il lui fournisse, au plus tard à la date qui y est précisée, les renseignements ou documents complémentaires concernant la drogue destinée à l'étude, l'étude elle-même ou le protocole dont il a besoin pour rendre sa décision.

DORS/2012-129, art. 5.

## Authorization

**C.03.309** After examining the application and any additional information, the Minister shall authorize the sponsor to sell or import the study drug if she or he determines that the application complies with the requirements of section C.03.307, and shall send a notice of that decision to the sponsor that specifies the study

## Autorisation

**C.03.309** Après avoir examiné la demande et, le cas échéant, tout renseignement ou document complémentaire, le ministre autorise le promoteur à vendre ou à importer la drogue destinée à l'étude s'il conclut que la demande est conforme aux exigences de l'article C.03.307; il lui envoie un avis l'informant de sa décision et précisant

sites in respect of which the sale or importation are authorized.

SOR/2012-129, s. 5.

les lieux d'étude à l'égard desquels la vente ou l'importation est autorisée.

DORS/2012-129, art. 5.

## Notice

**C.03.310** The sponsor shall notify the Minister in writing of the day on which the sale or importation of the study drug is intended to start in respect of each study site, not later than 15 days before that day.

SOR/2012-129, s. 5.

## Avis

**C.03.310** Au plus tard quinze jours avant d'entreprendre, à l'égard d'un lieu d'étude donné, la vente ou l'importation de la drogue destinée à l'étude, le promoteur en avise par écrit le ministre.

DORS/2012-129, art. 5.

## Good Clinical Practices

**C.03.311** A sponsor shall ensure that each study is conducted in accordance with good clinical practices and that

**(a)** the study is scientifically sound and clearly described in its protocol;

**(b)** the study is conducted, and the study drug is used, in accordance with the protocol and with these Regulations;

**(c)** systems and procedures are implemented that assure the quality of every aspect of the study;

**(d)** at each study site, there is only one qualified investigator;

**(e)** at each study site, medical care and medical decisions, in respect of the study, are under the supervision of the qualified investigator;

**(f)** each individual who is involved in the conduct of the study is qualified by their education, training and experience to perform their respective tasks;

**(g)** before a study subject participates in the study, a copy of their signed consent form is included in the records for the study;

**(h)** the requirements respecting information and records set out in section C.03.315 are met; and

**(i)** the study drug is manufactured, handled and stored in accordance with Division 2, other than sections C.02.019, C.02.025 and C.02.026.

SOR/2012-129, s. 5.

## Bonnes pratiques cliniques

**C.03.311** Le promoteur veille à ce que l'étude soit menée conformément aux bonnes pratiques cliniques et à ce que :

**a)** l'étude soit fondée sur le plan scientifique et clairement décrite dans son protocole;

**b)** l'étude soit menée et la drogue destinée à l'étude soit utilisée en conformité avec le protocole de l'étude et le présent règlement;

**c)** des systèmes et des procédures visant à assurer la qualité de tous les aspects de l'étude soient mis en place;

**d)** il n'y ait qu'un chercheur qualifié par lieu d'étude;

**e)** dans chaque lieu d'étude, les soins médicaux et les décisions médicales se rapportant à l'étude relèvent du chercheur qualifié;

**f)** chaque individu collaborant à la conduite de l'étude soit qualifié par ses études, sa formation et son expérience pour accomplir les tâches qui lui sont confiées;

**g)** avant qu'un sujet d'étude ne participe à l'étude, une copie signée de sa formule de consentement soit mise dans les registres tenus pour l'étude;

**h)** les exigences relatives aux renseignements et registres prévues à l'article C.03.315 soient respectées;

**i)** la drogue destinée à l'étude soit fabriquée, manutentionnée et entreposée conformément au titre 2, à l'exception des articles C.02.019, C.02.025 et C.02.026.

DORS/2012-129, art. 5.

## Labelling

**C.03.312** Despite any other provision of these Regulations respecting labelling, the sponsor shall ensure that the study drug

## Étiquetage

**C.03.312** Malgré les autres dispositions du présent règlement relatives à l'étiquetage, le promoteur veille à ce que les renseignements ci-après figurent :

**(a)** bears an inner label that sets out both of the following:

**(i)** the unique batch number for the study drug, and

**(ii)** the radiation warning symbol set out in Schedule 3 to the *Radiation Protection Regulations* and the words "RAYONNEMENT — DANGER — RADIATION"; and

**(b)** is accompanied by a package insert that sets out all of the following information:

**(i)** a statement that indicates that the study drug is to be used only under the supervision of a qualified investigator,

**(ii)** the chemical or generic name of the active ingredients in the study drug,

**(iii)** the name and civic address of the manufacturer,

**(iv)** the name and civic address of the sponsor,

**(v)** the code or other identification of the protocol,

**(vi)** the warnings and precautions in respect of the use of the study drug, and

**(vii)** a list of the possible adverse reactions that are associated with the use of the study drug.

SOR/2012-129, s. 5; SOR/2018-69, s. 24(F); SOR/2021-46, s. 9(F).

**a)** sur l'étiquette intérieure de la drogue destinée à l'étude :

**(i)** son numéro de lot de fabrication unique,

**(ii)** le symbole de mise en garde contre les rayonnements figurant à l'annexe 3 du *Règlement sur la radioprotection* et la mention « RAYONNEMENT — DANGER — RADIATION »;

**b)** dans la notice d'accompagnement de la drogue destinée à l'étude :

**(i)** une mention indiquant qu'elle ne peut être utilisée que sous la surveillance d'un chercheur qualifié,

**(ii)** le nom chimique ou générique de ses ingrédients actifs,

**(iii)** les nom et adresse municipale du fabricant,

**(iv)** les nom et adresse municipale du promoteur,

**(v)** le code ou l'identification du protocole,

**(vi)** les mises en garde et précautions relatives à son utilisation,

**(vii)** la liste des réactions indésirables possibles liées à son utilisation.

DORS/2012-129, art. 5; DORS/2018-69, art. 24(F); DORS/2021-46, art. 9(F).

## Submission of Information

**C.03.313 (1)** On the Minister's written request, a sponsor shall submit, within the period specified in the request, information to establish the safety of the study drug if the Minister has reason to believe any of the following:

**(a)** the use of the study drug may endanger the health of a study subject or other person;

**(b)** the study may be contrary to the best interests of the study subjects;

**(c)** a qualified investigator is not respecting their undertaking made under paragraph C.03.315(3)(f); or

**(d)** information submitted in respect of the study drug or study is false or misleading.

## Présentation de renseignements et documents

**C.03.313 (1)** Le promoteur fournit au ministre, dans le délai précisé, tout renseignement ou document afin d'établir l'innocuité de la drogue destinée à l'étude si ce dernier lui en fait la demande par écrit alors qu'il a des raisons de croire, selon le cas :

**a)** que l'utilisation de la drogue destinée à l'étude met en danger la santé de tout sujet de l'étude ou celle de toute autre personne;

**b)** que l'étude va à l'encontre des intérêts de ses sujets;

**c)** qu'un chercheur qualifié ne respecte pas l'engagement visé à l'alinéa C.03.315(3)f);

**d)** qu'un renseignement fourni sur la drogue destinée à l'étude ou sur l'étude, selon le cas, est faux ou trompeur.

**(2)** The Minister may, by notice in writing, require the sponsor to provide the Minister with any information or records referred to in subsection C.03.315(3) to assess the safety of the study drug or the health of the study subjects or other persons, by the date specified in the notice.

SOR/2012-129, s. 5.

## Adverse Reaction Reporting

**C.03.314 (1)** During the course of a study, the sponsor shall notify the Minister of any serious adverse reaction or serious unexpected adverse reaction that occurs inside or outside Canada, within the following period:

**(a)** if the adverse reaction is fatal or life-threatening, within seven days after becoming aware of it; or

**(b)** if the adverse reaction is not fatal or life-threatening, within 15 days after becoming aware of it.

**(2)** The sponsor shall, within eight days after having notified the Minister under subsection (1), file with the Minister a complete report in respect of the adverse reaction, including an assessment of the importance and implication of the findings.

**(3)** Sections C.01.016 to C.01.020 do not apply to study drugs.

SOR/2012-129, s. 5.

## Records

**C.03.315 (1)** The sponsor shall record, handle and store all information in respect of a study in a way that allows it to be reported completely and accurately and to be interpreted and verified.

**(2)** The sponsor shall maintain complete and accurate records to establish that the study is conducted in accordance with these Regulations.

**(3)** The sponsor shall maintain all of the following records in respect of the use of the study drug in each study:

**(a)** records respecting all adverse reactions that occur inside or outside Canada, including the indications for use and the dosage form of the study drug at the time of the adverse reaction;

**(b)** written procedures for subject monitoring and for the documentation and reporting of adverse reactions;

**(2)** Le ministre peut, dans un avis écrit, exiger du promoteur qu'il lui fournisse, au plus tard à la date qui y est précisée, tout registre ou renseignement visé au paragraphe C.03.315(3), afin d'évaluer l'innocuité de la drogue destinée à l'étude ou la santé des sujets de l'étude ou celle de toute autre personne.

DORS/2012-129, art. 5.

## Rapport sur des réactions indésirables

**C.03.314 (1)** Au cours de l'étude, le promoteur informe le ministre, dans le délai ci-après, de toute réaction indésirable grave ou de toute réaction indésirable grave et imprévue, que la réaction se soit produite au Canada ou à l'étranger :

**a)** dans les sept jours suivant le moment où il en prend connaissance, lorsque cette réaction entraîne la mort ou met la vie en danger;

**b)** dans les quinze jours suivant le moment où il en prend connaissance, lorsque cette réaction n'entraîne pas la mort ni ne met la vie en danger.

**(2)** Dans les huit jours suivant la communication de tout renseignement au titre du paragraphe (1), le promoteur remet au ministre un rapport exhaustif à ce sujet, qui comprend une analyse de l'importance et des répercussions des constatations.

**(3)** Les articles C.01.016 à C.01.020 ne s'appliquent pas aux drogues destinées à une étude.

DORS/2012-129, art. 5.

## Registres

**C.03.315 (1)** Le promoteur consigne dans des registres, traite et conserve les renseignements relatifs à l'étude de façon à permettre la présentation de rapports complets et exacts sur ceux-ci ainsi que leur interprétation et leur vérification.

**(2)** Le promoteur tient des registres complets et précis afin de démontrer que l'étude est menée conformément au présent règlement.

**(3)** Le promoteur tient, pour chaque étude, des registres sur l'utilisation de la drogue destinée à l'étude qui comprennent :

**a)** un registre sur toutes les réactions indésirables, qu'elles se soient produites au Canada ou à l'étranger, ainsi que sur les indications d'utilisation et la forme posologique de la drogue destinée à l'étude au moment où ces réactions se sont produites;

**(c)** articles from scientific journals or other publications that were used in support of the safety profile of the study drug in respect of humans;

**(d)** records in respect of each study subject, including respecting their enrolment, a copy of their signed consent form and sufficient information to enable them to be identified and contacted in the event that the sale of the study drug may endanger their health or that of another person;

**(e)** records respecting the shipment, receipt, sale, return and destruction or other disposition of the study drug;

**(f)** for each study site, an undertaking, dated and signed by the qualified investigator before the start of the study, that they will

**(i)** conduct the study in accordance with good clinical practices, and

**(ii)** on discontinuance of the study by the sponsor, for any reason related to health or safety, immediately inform both the study subjects and the research ethics board of the discontinuance, provide them with the reasons for the discontinuance and advise them in writing of any potential risks to the health of study subjects or other persons;

**(g)** for each study site, a copy of the informed consent form; and

**(h)** for each study site, a copy of the certifying statement described in paragraph C.03.307(2)(q), of the protocol for the study and of the statement of the risks and anticipated benefits arising to the health of study subjects as a result of participating in the study that is set out in the informed consent form.

**(4)** The sponsor shall maintain all records for five years after the day on which the study ends.

SOR/2012-129, s. 5.

**b)** la procédure écrite à suivre en matière de surveillance des sujets de l'étude ainsi qu'en matière de documentation et de rapports sur les réactions indésirables;

**c)** les articles de revues scientifiques ou d'autres publications ayant servi à établir le profil d'innocuité de la drogue destinée à l'étude à l'égard de l'humain;

**d)** les renseignements à l'égard de chaque sujet d'étude y compris son inscription, une copie de sa formule de consentement, signée, ainsi que les renseignements permettant de l'identifier et de le joindre dans le cas où la vente de la drogue destinée à l'étude peut mettre en danger sa santé ou celle d'une autre personne;

**e)** un registre sur l'expédition, la réception, la vente, le retour et la destruction ou autre forme de disposition de la drogue destinée à l'étude;

**f)** pour chaque lieu d'étude, un engagement, signé et daté par le chercheur qualifié avant le commencement de l'étude, portant :

**(i)** qu'il mènera l'étude d'une manière conforme aux bonnes pratiques cliniques,

**(ii)** qu'en cas de cessation de l'étude par le promoteur pour des motifs de santé ou sécurité, il en informera immédiatement les sujets de l'étude et le comité d'éthique de la recherche, leur en communiquera les motifs et les avisera par écrit des risques possibles pour la santé des sujets de l'étude ou celle de toute autre personne, le cas échéant;

**g)** pour chaque lieu d'étude, un exemplaire de la formule de consentement éclairé;

**h)** pour chaque lieu d'étude, une copie de l'attestation visée à l'alinéa C.03.307(2)q), du protocole de l'étude et de l'exposé des risques et des bénéfices escomptés pour la santé des sujets de l'étude résultant de leur participation à celle-ci qui sont indiqués dans la formule de consentement éclairé.

**(4)** Le promoteur conserve les registres pendant cinq ans suivant la fin de l'étude.

DORS/2012-129, art. 5.

## Discontinuance of a Study

**C.03.316 (1)** If a sponsor discontinues a study in its entirety or at a study site, the sponsor shall notify all qualified investigators of the discontinuance as soon as possible in writing, and include in the notice the reasons for

## Cessation de l'étude

**C.03.316 (1)** Dans le cas où le promoteur met fin à l'étude — en totalité ou dans un lieu d'étude donné —, il en avise les chercheurs qualifiés, par écrit, dans les plus brefs délais, et indique dans l'avis les motifs de la cessation et, le cas échéant, les risques que l'étude présente

the discontinuance and whether the study presented any risks to the health of study subjects or other persons.

**(2)** If the discontinuance is for reasons that would affect the health or safety of study subjects or other persons, the sponsor shall notify the Minister in writing within 15 days after the discontinuance, and include in the notice the reasons for the discontinuance and whether it will have an impact on any proposed or ongoing studies in respect of the study drug in Canada by the sponsor.

SOR/2012-129, s. 5.

pour la santé des sujets de l'étude ou celle de toute autre personne.

**(2)** S'il est mis fin à l'étude pour des raisons de santé ou sécurité pouvant affecter des sujets de l'étude ou d'autres personnes, le promoteur en avise le ministre par écrit dans les quinze jours suivant la cessation de l'étude et indique dans l'avis les motifs de la cessation et l'incidence de cette cessation sur ses autres études qui sont prévues ou en cours au Canada relativement à la drogue destinée à l'étude.

DORS/2012-129, art. 5.

## Suspension

**C.03.317 (1)** The Minister shall suspend an authorization to sell or import a study drug, in its entirety or in respect of a study site, in any of the following circumstances:

**(a)** information provided by the sponsor under section C.03.307, C.03.308 or C.03.313 proves to be inaccurate or incomplete;

**(b)** the sponsor fails to provide the Minister with sufficient information to establish the safety of the study drug pursuant to a written request under section C.03.313, by the date specified in the request;

**(c)** the sponsor fails to notify the Minister of an adverse reaction or file a report in respect of an adverse reaction in accordance with section C.03.314; or

**(d)** the sponsor contravenes a provision of these Regulations or any provision of the Act in relation to the study drug.

## Suspension

**C.03.317 (1)** Le ministre suspend — en totalité ou à l'égard d'un lieu d'étude donné — l'autorisation de vendre ou d'importer la drogue destinée à l'étude dans les cas suivants :

**a)** l'un des renseignements ou documents fournis en application des articles C.03.307, C.03.308 ou C.03.313 s'avère inexact ou incomplet;

**b)** le promoteur ne fournit pas, sur demande écrite du ministre en vertu de l'article C.03.313, au plus tard à la date précisée dans celle-ci, de renseignements suffisants pour établir l'innocuité de la drogue destinée à l'étude;

**c)** le promoteur a omis d'informer le ministre des réactions indésirables visées à l'article C.03.314 ou de lui remettre un rapport à cet effet conformément à cet article;

**d)** le promoteur a contrevenu à toute disposition du présent règlement ou de la Loi relative à la drogue destinée à l'étude.

**(2)** In determining whether to suspend an authorization in its entirety or in respect of a study site, the Minister shall consider whether the reason for the suspension affects the study in its entirety or affects only a certain study site.

**(2)** Pour décider s'il suspend l'autorisation dans sa totalité ou à l'égard d'un lieu d'étude donné, le ministre vérifie si le motif de la suspension s'applique à l'étude dans sa totalité ou seulement à un lieu d'étude donné.

**(3)** Before suspending an authorization, the Minister shall send the sponsor a notice that

**(a)** specifies whether the suspension is of the study authorization in its entirety or in respect of a study site and sets out the reasons for the proposed suspension and the effective date;

**(b)** if applicable, specifies the corrective action that the sponsor must take and the period within which it must be taken; and

**(3)** Avant de suspendre l'autorisation, le ministre envoie au promoteur un préavis qui contient les précisions suivantes :

**a)** les motifs de la suspension envisagée, si elle vise la totalité de l'autorisation ou uniquement un lieu d'étude donné et sa date de prise d'effet;

**b)** son obligation de prendre les mesures correctives qui s'imposent, le cas échéant, au plus tard à la date précisée;

**(c)** gives the sponsor a reasonable opportunity to be heard in writing concerning the proposed suspension.

**(4)** Despite subsection (3), the Minister shall immediately suspend an authorization if she or he has reason to believe that it is necessary to do so to prevent injury to the health of a study subject or any other person.

**(5)** When the Minister suspends an authorization under subsection (4), the Minister must send the sponsor a notice that

**(a)** sets out the reasons for the suspension;

**(b)** if applicable, specifies the corrective action that the sponsor must take and the period within which it must be taken; and

**(c)** gives the sponsor a reasonable opportunity to be heard in writing concerning the suspension.

SOR/2012-129, s. 5.

**c)** la possibilité de présenter, dans un délai raisonnable, ses observations écrites à l'égard de la suspension envisagée.

**(4)** Malgré le paragraphe (3), s'il a des motifs raisonnables de croire que cela est nécessaire pour prévenir un préjudice à l'égard de la santé de tout sujet de l'étude ou celle de toute autre personne, le ministre suspend immédiatement l'autorisation.

**(5)** Le ministre qui suspend l'autorisation en vertu du paragraphe (4) envoie au promoteur un avis qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** son obligation de prendre les mesures correctives qui s'imposent, le cas échéant, au plus tard à la date précisée;

**c)** la possibilité de présenter, dans un délai raisonnable, ses observations écrites à l'égard de la suspension.

DORS/2012-129, art. 5.

## Reinstatement

**C.03.318 (1)** Subject to subsection (2), the Minister shall reinstate the authorization if the sponsor provides the Minister with sufficient evidence to establish that the study does not present a risk of injury to the health of study subjects or other persons, within the following periods:

**(a)** in the case of a suspension under subsection C.03.317(1), 30 days after the day on which the suspension is effective; or

**(b)** in the case of a suspension under subsection C.03.317(4), the period specified in the notice sent under subsection C.03.317(5).

**(2)** If the Minister does not reinstate any part of an authorization that was suspended, the Minister shall amend the authorization to remove that part.

SOR/2012-129, s. 5.

## Rétablissement

**C.03.318 (1)** Sous réserve du paragraphe (2), le ministre rétablit l'autorisation si le promoteur lui fournit, dans le délai ci-après, les éléments de preuve suffisants pour établir que l'étude ne présente pas de risque pour la santé des sujets à l'étude ou celle de toute autre personne :

**a)** dans le cas de la suspension prévue au paragraphe C.03.317(1), dans les trente jours suivant la date de prise d'effet de la suspension;

**b)** dans le cas de la suspension prévue au paragraphe C.03.317(4), au plus tard à la date précisée dans l'avis envoyé en vertu du paragraphe C.03.317(5).

**(2)** Le ministre supprime de l'autorisation toute partie suspendue qu'il ne rétablit pas.

DORS/2012-129, art. 5.

## Cancellation

**C.03.319 (1)** The Minister shall cancel an authorization, in its entirety or in respect of a study site, in either of the following circumstances:

**(a)** the study is discontinued in its entirety or at that study site by the sponsor under section C.03.316; or

## Annulation

**C.03.319 (1)** Le ministre annule l'autorisation — en totalité ou à l'égard d'un lieu d'étude donné — dans les cas suivants :

**a)** le promoteur a mis fin à l'étude — en totalité ou à l'égard d'un lieu d'étude donné — en vertu de l'article C.03.316;

**(b)** the sponsor fails to provide the Minister with the evidence required by subsection C.03.318(1) within the specified period.

**(2)** When the Minister cancels all or part of an authorization, she or he shall send the sponsor a notice that sets out the reasons for the cancellation and the effective date.

SOR/2012-129, s. 5.

**b)** le promoteur n'a pas fourni au ministre, dans le délai précisé, les preuves exigées aux termes du paragraphe C.03.318(1).

**(2)** S'il annule l'autorisation en totalité ou à l'égard d'un lieu donné, le ministre envoie au promoteur un avis motivé dans lequel il indique la date de prise d'effet de cette annulation.

DORS/2012-129, art. 5.

## DIVISION 4

## Schedule D Drugs

**C.04.001** In this Division,

***date of manufacture*** means

**(a)** in the case of a product for which a standard of potency exists, the date it satisfactorily passes a potency test,

**(b)** in the case of an animal product for which no standard of potency exists, the date of its removal from the animal, and

**(c)** in the case of a product other than an animal product for which no standard of potency exists, the date of cessation of growth; (*date de fabrication*)

***drug*** means a drug that is listed in Schedule D to the Act that is in dosage form or a drug that is an active ingredient that can be used in the preparation of a drug listed in that Schedule; (*drogue*)

***licence*** or ***Canadian licence*** [Repealed, SOR/97-12, s. 31]

***manufacturer*** [Repealed, SOR/97-12, s. 31]

SOR/97-12, s. 31; SOR/2013-74, s. 16.

**C.04.001.1** No distributor referred to in paragraph C.01A.003(b) or importer shall sell a drug unless it has been fabricated, packaged/labelled, tested and stored in accordance with this Division.

SOR/97-12, s. 32.

**C.04.002** This Division does not apply to a drug in oral dosage form that contains micro-organisms if the drug is recommended solely for restoring, normalizing or stabilizing the intestinal flora.

SOR/97-12, s. 33.

**C.04.003** The date of issue of a drug shall be the date on which the finished product is removed from cold storage but in any case shall be, not later than

## TITRE 4

## Drogues de l'annexe D

**C.04.001** Dans le présent titre,

***date de fabrication*** signifie

**a)** dans le cas d'un produit pour lequel il existe une norme d'activité, la date à laquelle il subit une épreuve satisfaisante d'activité,

**b)** dans le cas d'un produit animal pour lequel il n'existe pas de norme d'activité, la date de son extraction de l'animal, et

**c)** dans le cas d'un produit autre qu'un produit animal pour lequel il n'existe pas de norme d'activité, la date de cessation de la croissance; (*date of manufacture*)

***drogue*** Toute drogue sous forme posologique visée à l'annexe D de la Loi ou tout ingrédient actif pouvant être utilisé dans la préparation d'une drogue visée à cette annexe. (*drug*)

***fabricant*** [Abrogée, DORS/97-12, art. 31]

***licence*** ou ***licence canadienne*** [Abrogée, DORS/97-12, art. 31]

DORS/97-12, art. 31; DORS/2013-74, art. 16.

**C.04.001.1** Nul distributeur visé à l'alinéa C.01A.003b) ou importateur ne peut vendre une drogue, sauf si elle a été manufacturée, emballée-étiquetée, analysée et entreposée conformément au présent titre.

DORS/97-12, art. 32.

**C.04.002** Le présent titre ne s'applique pas aux drogues sous forme posologique orale qui renferment des micro-organismes si elles sont recommandées uniquement pour reconstituer, normaliser ou stabiliser la flore intestinale.

DORS/97-12, art. 33.

**C.04.003** La date de sortie d'une drogue doit être la date à laquelle le produit fini est retiré du frigorifique, mais ne doit en aucun cas dépasser

**(a)** six months after the date of manufacture for a drug that has been kept constantly at a temperature not exceeding 10°C;

**(b)** 12 months after the date of manufacture for a drug that has been kept constantly at a temperature not exceeding 5°C; or

**(c)** two years after the date of manufacture for a drug that has been kept constantly at a temperature not exceeding 0°C.

**C.04.004 to C.04.006** [Repealed, SOR/97-12, s. 34]

**C.04.007** [Repealed, SOR/97-12, s. 67]

**C.04.008 to C.04.012** [Repealed, SOR/97-12, s. 36]

**C.04.013** Every fabricator and packager/labeller shall safely segregate all work with spore-bearing, pathogenic micro-organisms and other infectious agents known to require special precautions in manipulation and shall take such care of equipment and arrangements for supervision that the possibility of contamination of other drugs is avoided.

SOR/97-12, s. 63.

**C.04.014** No person shall conduct laboratory procedures of a diagnostic nature in their premises unless those procedures are entirely segregated from the fabrication, packaging/labelling and testing of drugs.

SOR/97-12, s. 37.

**C.04.015** On written request from the Minister, every fabricator, packager/labeller, tester, distributor referred to in paragraph C.01A.003(b) and importer of a drug shall submit protocols of tests together with samples of any lot of the drug before it is sold, and no person shall sell any lot of that drug if the protocol or sample fails to meet the requirements of these Regulations.

SOR/97-12, s. 37; SOR/2018-69, s. 27.

**C.04.016** All animals from which drugs are prepared and preserved shall be

**(a)** under the direct supervision of competent medical or veterinary personnel;

**(b)** kept in quarantine by the fabricator for at least seven days before use; and

**(c)** healthy and free from infectious disease.

SOR/97-12, s. 38.

**a)** six mois après la date de fabrication, pour une drogue tenue constamment à une température ne dépassant pas 10 °C;

**b)** 12 mois après la date de fabrication, pour une drogue tenue constamment à une température ne dépassant pas 5 °C; ou

**c)** deux ans après la date de fabrication, pour une drogue tenue constamment à une température ne dépassant pas 0 °C.

**C.04.004 à C.04.006** [Abrogés, DORS/97-12, art. 34]

**C.04.007** [Abrogé, DORS/97-12, art. 67]

**C.04.008 à C.04.012** [Abrogés, DORS/97-12, art. 36]

**C.04.013** Le manufacturier et l'emballeur-étiqueteur doivent isoler toutes opérations faites avec des micro-organismes sporulés pathogènes et autres agents infectieux dont il est reconnu que la manipulation exige des précautions spéciales, et ils doivent prendre soin de l'outillage et exercer la surveillance nécessaire, de manière à exclure toute possibilité de contamination d'autres drogues.

DORS/97-12, art. 63.

**C.04.014** Il est interdit d'utiliser tout procédé de laboratoire de nature diagnostique dans un établissement à moins qu'il ne soit complètement isolé des opérations visant à manufacturer, emballer-étiqueter ou analyser des drogues.

DORS/97-12, art. 37.

**C.04.015** À la demande écrite du ministre, le manufacturier, l'emballeur-étiqueteur, l'analyste, le distributeur visé à l'alinéa C.01A.003b) et l'importateur d'une drogue doivent soumettre les protocoles des essais en même temps que les échantillons de tout lot de la drogue avant sa vente, et il est interdit de vendre tout lot dont le protocole ou un échantillon ne satisfait pas aux exigences du présent règlement.

DORS/97-12, art. 37; DORS/2018-69, art. 27.

**C.04.016** Tous les animaux qui servent à la préparation et à la conservation de certaines drogues doivent être :

**a)** sous la surveillance directe d'un personnel médical ou vétérinaire;

**b)** tenus en quarantaine par le manufacturier pendant au moins sept jours avant l'usage;

**c)** sains et exempts de maladie contagieuse.

DORS/97-12, art. 38.

**C.04.017** A fabricator shall keep necropsy records of all animals that die or are killed after having been used in the production of a drug.

SOR/97-12, s. 61.

**C.04.018** A fabricator shall immediately segregate, and report the fact to the Minister, any animal with actual or suspected vesicular stomatitis, foot and mouth disease, encephalomyelitis, infectious anaemia, glanders, anthrax, tetanus or any other serious infectious disease.

SOR/97-12, s. 61.

**C.04.019** The provisions of section C.01.004 do not apply to a drug as defined in this Division but every package of such drug shall carry

**(a)** on both the inner and the outer labels

**(i)** the proper name of the drug, which proper name, where there is a brand name, shall immediately precede or follow the brand name in type not less than one-half the size of that of the brand name,

**(ii)** the name of the distributor referred to in paragraph C.01A.003(b),

**(iii)** the potency of the drug, where applicable,

**(iv)** the recommended dose of the drug,

**(v)** the lot number,

**(vi)** the expiration date except upon the inner label of a single-dose container, and

**(vii)** adequate direction for use; and

**(b)** on the outer label

**(i)** the address of the distributor referred to in paragraph C.01A.003(b),

**(ii)** [Repealed, SOR/2013-179, s. 3]

**(iii)** the proper name, or the common name if there is no proper name, and the amount, of any preservative in the drug,

**(iv)** a statement that the drug shall be stored at a temperature of not less than 2°C and not more than 10°C, unless the Minister has received evidence demonstrating that such a statement is not required,

**(v)** a statement of the net contents in terms of weight, measure, or number, and

**C.04.017** Un manufacturier doit tenir des fiches des autopsies de tous les animaux qui meurent ou sont sacrifiés après avoir servi à la production d'une drogue.

DORS/97-12, art. 61.

**C.04.018** Un manufacturier doit immédiatement isoler tout animal reconnu ou soupçonné d'être atteint de stomatite vésiculeuse, de fièvre aphteuse, d'encéphalomyélite, d'anémie infectieuse, de la morve, du charbon, du tétanos, ou de toute autre maladie contagieuse grave, et il doit en faire rapport au ministre.

DORS/97-12, art. 61.

**C.04.019** Les dispositions de l'article C.01.004 ne s'appliquent pas à une drogue désignée dans le présent titre, mais tout emballage de ladite drogue doit porter

**a)** sur les étiquettes intérieure et extérieure,

**(i)** le nom propre de la drogue, immédiatement avant ou après la marque nominative, le cas échéant, en caractères d'une taille au moins égale à la moitié de celle des caractères de la marque nominative,

**(ii)** le nom du distributeur visé à l'alinéa C.01A.003b),

**(iii)** l'activité de la drogue, s'il y a lieu,

**(iv)** la dose recommandée de ladite drogue,

**(v)** le numéro du lot,

**(vi)** la date limite d'utilisation, sauf sur l'étiquette intérieure des récipients à dose unique, et

**(vii)** des directives appropriées d'emploi; et

**b)** sur l'étiquette extérieure

**(i)** l'adresse du distributeur visé à l'alinéa C.01A.003b),

**(ii)** [Abrogé, DORS/2013-179, art. 3]

**(iii)** le nom propre ou, à défaut, le nom usuel de tout antiseptique incorporé à la drogue, ainsi que la quantité de celui-ci,

**(iv)** une mention portant que la drogue doit être conservée à une température d'au moins 2 °C et d'au plus 10 °C, à moins qu'il n'ait été prouvé au ministre qu'une telle mention n'est pas nécessaire,

**(v)** une déclaration du contenu net, en poids, en mesure, ou en nombre,

**(vi)** in the case of a new drug for extraordinary use in respect of which a notice of compliance has been issued under section C.08.004.01, the following statement, displayed in capital letters and in a legible manner:

"HEALTH CANADA HAS AUTHORIZED THE SALE OF THIS EXTRAORDINARY USE NEW DRUG FOR [naming purpose] BASED ON LIMITED CLINICAL TESTING IN HUMANS.

SANTÉ CANADA A AUTORISÉ LA VENTE DE CETTE DROGUE NOUVELLE POUR USAGE EXCEPTIONNEL AUX FINS DE [indication de la fin] EN SE FONDANT SUR DES ESSAIS CLINIQUES RESTREINTS CHEZ L'ÊTRE HUMAIN.".

SOR/78-424, s. 7; SOR/93-202, s. 21; SOR/97-12, ss. 39, 54, 58; SOR/2011-88, s. 6; SOR/2013-179, s. 3.

**C.04.020** Except in the case of the following drugs, every package of a drug that is a prescription drug shall carry the symbol "Pr" on the upper left quarter of the principal display panel of both its inner and outer labels or, in the case of a single dose container, on the upper left quarter of its outer label:

**(a)** a drug sold to a person who holds an establishment licence; and

**(b)** a drug sold under a prescription.

SOR/80-543, s. 10; SOR/97-12, s. 40; SOR/2001-181, s. 4; SOR/2013-122, s. 17.

## Bacterial Vaccines, Products Analogous to Bacterial Vaccines

**C.04.050** Except as provided in this Division, a bacterial vaccine shall be a sterile suspension of killed cultures of bacteria, with or without the addition of other medication, and shall not include an autogenous vaccine.

**C.04.051** No person shall sell a bacterial vaccine unless the culture that has been used in its preparation has been tested by an acceptable method for identity and purity and when so tested it shall be true to name and a pure strain, and a record of the culture shall be maintained which shall include a statement of its origin, properties and characteristics.

**C.04.052** No fabricator shall use a substrate (culture medium), in the production of a bacterial vaccine, that contains any horse meat or horse serum.

SOR/97-12, s. 61.

**(vi)** dans le cas d'une drogue nouvelle pour usage exceptionnel à l'égard de laquelle un avis de conformité a été délivré en application de l'article C.08.004.01, la mention suivante, inscrite en majuscules et de façon lisible :

« SANTÉ CANADA A AUTORISÉ LA VENTE DE CETTE DROGUE NOUVELLE POUR USAGE EXCEPTIONNEL AUX FINS DE [indication de la fin] EN SE FONDANT SUR DES ESSAIS CLINIQUES RESTREINTS CHEZ L'ÊTRE HUMAIN.

HEALTH CANADA HAS AUTHORIZED THE SALE OF THIS EXTRAORDINARY USE NEW DRUG FOR [naming purpose] BASED ON LIMITED CLINICAL TESTING IN HUMANS. ».

DORS/78-424, art. 7; DORS/93-202, art. 21; DORS/97-12, art. 39, 54 et 58; DORS/2011-88, art. 6; DORS/2013-179, art. 3.

**C.04.020** Sauf dans le cas des drogues ci-après, l'emballage d'une drogue qui est une drogue sur ordonnance doit porter le symbole « Pr » dans le quart supérieur gauche de l'espace principal des étiquettes intérieure et extérieure ou, dans le cas d'un récipient à dose unique, dans le quart supérieur gauche de l'étiquette extérieure :

**a)** la drogue vendue au titulaire d'une licence d'établissement;

**b)** la drogue vendue conformément à une ordonnance.

DORS/80-543, art. 10; DORS/97-12, art. 40; DORS/2001-181, art. 4; DORS/2013-122, art. 17.

## Vaccins bactériens, produits analogues aux vaccins bactériens

**C.04.050** Sous réserve des dispositions du présent titre, un vaccin bactérien doit être une suspension stérile de cultures tuées de bactéries, avec ou sans addition d'autre médication, mais ne doit pas comprendre un vaccin autogène.

**C.04.051** Est interdite la vente d'un vaccin bactérien, à moins que la culture ayant servi à sa préparation n'ait été soumise à des essais d'identité et de pureté selon une méthode acceptable, que lesdits essais n'aient confirmé l'authenticité et la pureté de la souche, et qu'une fiche de la culture n'ait été conservée, portant une déclaration de son origine, de ses propriétés et de ses caractéristiques.

**C.04.052** Est interdit à tout manufacturier d'employer, dans la production d'un vaccin bactérien, un substrat (milieu de culture) contenant de la viande de cheval ou du sérum de cheval.

DORS/97-12, art. 61.

**C.04.053** A fabricator of a bacterial vaccine prepared from a bacterium that does not grow readily in ordinary culture media shall test its sterility in media which are specially favourable to the growth of such bacterium, and it shall be sterile.

SOR/97-12, s. 61.

**C.04.054** Except as provided in sections C.04.083, C.04.084 and C.04.090, both the inner and outer labels of every multiple-dose container and the outer label of every single-dose container of a bacterial vaccine shall carry a statement of

**(a)** the number of bacteria per millilitre, or the weight of dried substance of bacteria per millilitre,

**(b)** the number of bacteria per millilitre, or the weight of dried substance of bacteria per millilitre, of each species or immunogenic type for a vaccine that contains a number of different species or immunogenic types of bacteria,

**(c)** the exact nature and amount of any substance, other than a simple diluent, combined with such vaccine, and

**(d)** the recommended dose,

and the inner label of a single-dose container shall carry a statement that it contains only one dose.

**C.04.055** The expiration date of a bacterial vaccine shall be not later than 18 months after the date of manufacture or the date of issue.

## Typhoid Vaccine

**C.04.060** Cultures of *Salmonella typhosa* used in the preparation of typhoid vaccine shall be smooth, motile, and in the Vi form, with the following antigenic structure IX,XII,Vi; d.-.

**C.04.061** No person shall sell any lot of typhoid vaccine unless such lot has been shown to meet a test for potency made by an acceptable method.

## Pertussis Vaccine

**C.04.065** A fabricator shall, in the preparation of pertussis (whooping cough) vaccine, use only strains of *Bordetella pertussis* that meet the requirements of an antigenic test made by an acceptable method.

SOR/90-217, s. 1; SOR/97-12, s. 61.

**C.04.053** Le manufacturier d'un vaccin bactérien préparé à partir d'une bactérie qui ne croît pas facilement dans les milieux de culture ordinaires, doit lui faire subir l'essai de stérilité sur des milieux spéciaux favorables à la croissance de ladite bactérie, et ledit vaccin doit être stérile.

DORS/97-12, art. 61.

**C.04.054** Sous réserve des articles C.04.083, C.04.084 et C.04.090, les étiquettes intérieure et extérieure de tout récipient à doses multiples et l'étiquette extérieure de tout récipient à dose unique d'un vaccin bactérien doivent porter une déclaration

**a)** du nombre de bactéries par millilitre, ou du poids de substance bactérienne desséchée par millilitre,

**b)** du nombre de bactéries par millilitre, ou du poids de substance desséchée par millilitre, de chaque espèce ou type immunogène, si le vaccin contient plusieurs espèces ou types immunogènes de bactéries,

**c)** de la nature et de la quantité exactes de toute substance, autre qu'un simple diluant, combinée à un tel vaccin, et

**d)** de la dose recommandée,

et l'étiquette intérieure des récipients à dose unique doit porter la déclaration que le récipient ne contient qu'une seule dose.

**C.04.055** La date limite d'utilisation d'un vaccin bactérien ne doit pas dépasser 18 mois après la date de fabrication ou la date de sortie.

## Vaccin antityphoïdique

**C.04.060** Les cultures de *Salmonella typhosa* employées à la préparation de vaccin antityphoïdique doivent être lisses, mobiles, de la forme Vi et avoir la structure antigénique IX, XII, Vi; d.-.

**C.04.061** Est interdite la vente de tout lot de vaccin antityphoïdique, à moins que ledit lot n'ait subi un titrage satisfaisant de son activité d'après une méthode acceptable.

## Vaccin anticoquelucheux

**C.04.065** Le manufacturier ne peut employer pour la fabrication du vaccin anticoquelucheux que des souches de *Bordetella pertussis* qui satisfont aux exigences d'un essai d'antigénicité effectué d'après une méthode acceptable.

DORS/90-217, art. 1; DORS/97-12, art. 61.

**C.04.066** No person shall sell any lot of pertussis (whooping cough) vaccine unless such lot has been shown to meet a test for potency made by an acceptable method.

## B.C.G. (Bacille Calmette-Guerin) Vaccine

**C.04.070** B.C.G. vaccine shall be prepared from living B.C.G. organisms that

**(a)** have been obtained directly from a source approved by the Minister;

**(b)** are proved to be non-pathogenic by an acceptable method; and

**(c)** have a history of successful use in the production of B.C.G. vaccine.

SOR/2018-69, s. 27.

**C.04.071** No fabricator shall employ any person in the manufacture of B.C.G. vaccine unless such person

**(a)** has been and remains free from all forms of tuberculous infection,

**(b)** undergoes every six months a medical examination, that shall include an X-ray examination of the chest, for the presence of tuberculosis, such examination being made by a qualified, practising physician who shall sign a certificate of such person's freedom from tuberculosis, and such certificate shall be kept on file and be available at all times, and

**(c)** resides in a household that is at all times free from active tuberculosis,

nor shall a fabricator employ such person in any other laboratory position.

SOR/97-12, s. 61.

**C.04.072** The preparation, preservation and packaging/labelling of B.C.G. vaccine shall be conducted under the direct supervision of an experienced bacteriologist who has

**(a)** not less than three years postgraduate training in bacteriology and immunology;

**(b)** specialized in the field of bacteriology; and

**(c)** at least one year of practical experience in the manufacture of B.C.G. vaccine.

SOR/97-12, s. 41.

**C.04.066** Est interdite la vente de tout lot de vaccin anticoquelucheux, à moins que ledit lot n'ait subi un titrage satisfaisant de son activité d'après une méthode acceptable.

## Vaccin B.C.G. (Bacille Calmette-Guérin)

**C.04.070** Le vaccin B.C.G. doit être préparé à partir d'organismes B.C.G. vivants qui

**a)** ont été obtenus directement d'une source approuvée par le ministre;

**b)** sont reconnus non pathogènes par une méthode acceptable; et

**c)** ont des antécédents de succès dans la production du vaccin B.C.G.

DORS/2018-69, art. 27.

**C.04.071** Est interdit à tout manufacturier d'employer à la fabrication de vaccin B.C.G. une personne qui

**a)** n'ait été et ne demeure exempte d'infection tuberculeuse sous toutes ses formes,

**b)** ne subisse tous les six mois un examen médical, lequel doit comprendre un examen aux rayons X de la poitrine, en vue de déceler la présence de tuberculose, ledit examen devant être fait par un praticien compétent qui doit signer un certificat établissant que ladite personne est exempte de tuberculose et devant être conservé dans les dossiers et être disponible en tout temps, et

**c)** n'habite avec une famille qui est, en tout temps, exempte de tuberculose active,

il est en outre interdit à un manufacturier d'employer une telle personne à tous autres travaux de laboratoire.

DORS/97-12, art. 61.

**C.04.072** La préparation, la conservation et l'emballage-étiquetage du vaccin B.C.G. doivent être effectués sous la surveillance directe d'un bactériologiste d'expérience. De plus, ce bactériologiste doit :

**a)** avoir reçu une formation spécialisée d'au moins trois années en bactériologie et en immunologie;

**b)** s'être spécialisé dans le domaine de la bactériologie; et

**c)** posséder au moins un an d'expérience dans la fabrication du vaccin B.C.G.

DORS/97-12, art. 41.

**C.04.073** No fabricator shall permit any culture that is not a B.C.G. culture to be at any time on any premises that are used for the manufacture of B.C.G. vaccine.

SOR/97-12, s. 61.

**C.04.074** A packager/labeller shall test by an acceptable method, after filling of the final container, each lot of B.C.G. vaccine for the presence of contaminating micro-organisms and when so tested it shall be free therefrom.

SOR/97-12, s. 65.

**C.04.075** Notwithstanding section C.04.074, a fluid B.C.G. vaccine may be released for sale if no growth has appeared upon the test culture medium after an incubation of 24 hours, but if there is evidence of the presence of contaminating micro-organisms in any lot during the test period of 10 days the packager/labeller shall at once recall such lot.

SOR/97-12, s. 65.

**C.04.076** Every fabricator and packager/labeller shall determine the number of viable B.C.G. organisms in each lot of vaccine by an acceptable method and shall keep a record of the number.

SOR/97-12, s. 63.

**C.04.077** A fabricator of B.C.G. vaccine shall keep, at a temperature not exceeding 5.0°C, and for not less than six months,

**(a)** the culture on glycerine-water potato medium from which the Sauton I and Sauton II subcultures were made, and

**(b)** not less than six vials of the final product

from each lot thereof.

SOR/97-12, s. 61.

**C.04.078** Every fabricator and packager/labeller of B.C.G. vaccine shall keep, in form satisfactory to the Minister, continuous clinical records of the use of B.C.G. vaccine in humans.

SOR/97-12, s. 63.

**C.04.079** A fabricator of B.C.G. vaccine shall examine pathologically all test animals used and shall immediately report to the Minister any evidence of active, progressive tuberculosis in any such animals.

SOR/97-12, s. 61.

**C.04.080** The expiration date for B.C.G. vaccine shall be not more than

**C.04.073** Aucun manufacturier ne doit tolérer la présence, à quelque moment que ce soit, d'une culture qui n'est pas une culture de B.C.G. dans tout local où se fabrique du vaccin B.C.G.

DORS/97-12, art. 61.

**C.04.074** Un emballeur-étiqueteur doit faire subir à chaque lot de vaccin B.C.G. une épreuve par une méthode acceptable, immédiatement après le remplissage du récipient définitif, en vue de déceler la présence de micro-organismes contaminants et le vaccin doit en être exempt.

DORS/97-12, art. 65.

**C.04.075** Nonobstant l'article C.04.074, un vaccin B.C.G. liquide peut être mis en vente lorsqu'aucune croissance n'est apparue sur le milieu de culture d'épreuve après une incubation de 24 heures, mais s'il y a des signes de la présence de micro-organismes contaminants dans n'importe quel lot au cours de la période d'épreuve de 10 jours, l'emballeur-étiqueteur doit faire revenir immédiatement ledit lot.

DORS/97-12, art. 65.

**C.04.076** Le manufacturier et l'emballeur-étiqueteur doivent déterminer le nombre d'organismes B.C.G. viables dans chaque lot de vaccin par une méthode acceptable et ils doivent en tenir registre.

DORS/97-12, art. 63.

**C.04.077** Un manufacturier de vaccin B.C.G. doit conserver, à une température ne dépassant pas 5,0 °C et pendant au moins six mois,

**a)** la culture sur milieu glycériné de pomme de terre, qui a servi à faire les passages Sauton I et Sauton II, et

**b)** au moins six fioles du produit fini,

pour chaque lot dudit vaccin.

DORS/97-12, art. 61.

**C.04.078** Le manufacturier et l'emballeur-étiqueteur de vaccin B.C.G. doivent conserver, sous une forme satisfaisante pour le ministre, des fiches cliniques continues de l'emploi du vaccin B.C.G. chez l'homme.

DORS/97-12, art. 63.

**C.04.079** Un manufacturier de vaccin B.C.G. doit faire subir un examen pathologique à tous les animaux d'épreuve employés et signaler immédiatement au ministre tout indice de tuberculose active et évolutive chez lesdits animaux.

DORS/97-12, art. 61.

**C.04.080** La date limite pour l'utilisation du vaccin B.C.G. ne doit pas dépasser

**(a)** 10 days after harvesting in the case of fluid vaccine;

**(b)** 12 months after harvesting in the case of freeze dried vaccine stored at a temperature of 4°C or above; or

**(c)** 20 months after harvesting in the case of freeze dried vaccine stored at a temperature below 4°C.

**C.04.081** No person shall sell fluid B.C.G. vaccine that is not packaged in containers sealed by fusion.

**C.04.082** No inner label shall be required for fluid B.C.G. vaccine in single-dose containers.

**C.04.083** The label of fluid B.C.G. vaccine shall carry, in lieu of the statements provided in paragraphs C.04.054(a) and (b), a statement of

**(a)** the weight of bacteria per millilitre; and

**(b)** the route of administration of the vaccine.

**C.04.084** The label of freeze-dried B.C.G. vaccine shall carry, in lieu of the statements provided in paragraphs C.04.054(a) and (b), a statement of

**(a)** the amount of bacteria per vial or per dose; and

**(b)** the route of administration of the vaccine.

**C.04.085** The provisions of subparagraph C.04.019(b)(iv) do not apply to freeze-dried B.C.G. vaccine.

## Products Analogous to Bacterial Vaccines

**C.04.090** A product analogous to a bacterial vaccine shall be

**(a)** a bacterial antigen, other than a bacterial vaccine, such as a lysate, or

**(b)** an extract prepared from a bacterial culture,

and shall conform to the requirements of these Regulations for bacterial vaccines except those of paragraphs (a) and (b) of C.04.054.

**a)** 10 jours après la récolte dans le cas du vaccin liquide;

**b)** 12 mois après la récolte dans le cas du vaccin desséché à froid (lyophilisation), conservé à 4 °C ou à une température plus élevée; ou

**c)** 20 mois après la récolte dans le cas du vaccin lyophilisé conservé à une température au-dessous de 4 °C.

**C.04.081** Est interdite la vente de vaccin B.C.G. liquide qui n'est pas emballé dans des récipients scellés à la flamme.

**C.04.082** Aucune étiquette intérieure n'est requise pour le vaccin B.C.G. liquide contenu dans des récipients à dose unique.

**C.04.083** L'étiquette du vaccin B.C.G. liquide doit porter, plutôt que les déclarations prescrites aux alinéas C.04.054a) et b), une déclaration

**a)** du poids de bactéries par millilitre; et

**b)** de la voie d'administration du vaccin.

**C.04.084** L'étiquette d'un vaccin B.C.G. desséché à froid (lyophilisation) doit porter, plutôt que les déclarations prescrites aux alinéas C.04.054a) et b), une déclaration

**a)** de la quantité de bactéries par ampoule ou par dose; et

**b)** de la voie d'administration du vaccin.

**C.04.085** Les dispositions du sous-alinéa C.04.019b)(iv) ne s'appliquent pas au vaccin B.C.G. desséché à froid (lyophilisation).

## Produits analogues aux vaccins bactériens

**C.04.090** Un produit analogue à un vaccin bactérien doit être

**a)** un antigène bactérien autre qu'un vaccin bactérien, tel qu'un lysat, ou

**b)** un extrait préparé à partir d'une culture bactérienne,

et être conforme aux exigences du présent règlement relatif aux vaccins bactériens, sauf à celles des alinéas C.04.054a) et b).

**C.04.091** The expiration date of a product analogous to a bacterial vaccine shall be not later than 18 months after the date of manufacture or the date of issue, but for dried tuberculin and tuberculin containing at least 50 per cent glycerin the expiration date shall be not later than five years after the date of manufacture or the date of issue, and for all other tuberculins not more than 12 months after the date of manufacture or the date of issue.

## Virus and Rickettsial Vaccines

**C.04.100** A virus vaccine, rickettsial vaccine, shall be a suspension of, or prepared from, living or killed viruses or rickettsiae.

**C.04.101** No person shall sell a virus or a rickettsial vaccine unless the fabricator has submitted to the Minister details of the source of the strains of viruses or rickettsiae used, the method of their propagation, the method of fabrication of the vaccine, the methods employed for determining sterility, safety, identity and potency and any other tests required by these Regulations.

SOR/95-411, s. 2; SOR/97-12, s. 42.

**C.04.102** Upon written request from the Minister every fabricator and packager/labeller shall submit with respect to each lot of virus or rickettsial vaccine, when ready for sale, detailed protocols of sterility, safety, identity, potency, and of any other tests required by these Regulations.

SOR/97-12, s. 63; SOR/2018-69, s. 27.

## Smallpox Vaccine

**C.04.110** Smallpox vaccine

**(a)** shall be a virus vaccine;

**(b)** shall be the living virus of vaccinia or its derivatives obtained from

**(i)** the vesicles produced in the skin of healthy calves by inoculation of vaccinia virus,

**(ii)** specifically infected membranes of chick embryos, or

**(iii)** suitable tissue culture infected with vaccinia virus or its derivatives; and

**(c)** shall be in fluid or dried form.

SOR/2006-2, s. 1.

**C.04.091** La date limite d'utilisation d'un produit analogue à un vaccin bactérien ne doit pas dépasser 18 mois après la date de fabrication ou la date de sortie, mais dans le cas de la tuberculine desséchée et de la tuberculine contenant au moins 50 pour cent de glycérine, la date limite d'utilisation ne doit pas dépasser cinq ans après la date de fabrication ou la date de sortie, et dans le cas de toutes les autres tuberculines, elle ne doit pas dépasser 12 mois après la date de fabrication ou la date de sortie.

## Virus vaccinaux et vaccins de rickettsies

**C.04.100** Un virus vaccinal, un vaccin de rickettsies, doit être une suspension ou une préparation de virus ou de rickettsies vivants ou tués.

**C.04.101** Il est interdit de vendre un virus ou un vaccin de rickettsies à moins que le manufacturier n'ait soumis à l'approbation du ministre les détails relatifs à la source des souches des virus ou des rickettsies utilisés, à leur mode de propagation, au procédé de préparation du vaccin et aux méthodes de détermination de la stérilité, de l'innocuité, de l'identité et de l'activité et autres analyses requises par le présent règlement.

DORS/95-411, art. 2; DORS/97-12, art. 42.

**C.04.102** À la demande écrite du ministre, le manufacturier et l'emballeur-étiqueteur doivent déposer pour chaque lot de virus vaccinal ou de vaccin de rickettsies prêt pour la vente des protocoles détaillés des essais de stérilité, de sécurité, d'identité, d'activité et de tout autre essai requis par le présent règlement.

DORS/97-12, art. 63; DORS/2018-69, art. 27.

## Vaccin antivariolique

**C.04.110** Le vaccin antivariolique est conforme aux exigences suivantes :

**a)** il est un virus vaccinal;

**b)** il est le virus vivant de la vaccine ou ses dérivés tirés de l'une des sources suivantes :

**(i)** pustules produites sur la peau de veaux sains par inoculation du virus,

**(ii)** membranes d'embryons de poussins expressément infectées,

**(iii)** culture de tissu adéquate infectée par le virus ou ses dérivés;

**c)** il est de forme liquide ou desséchée.

DORS/2006-2, art. 1.

**C.04.111** Every fabricator and packager/labeller shall fabricate and package/label smallpox vaccine only in an independent unit that is isolated from all other laboratory activities, and in or about which no extraneous materials are permitted or stored.

SOR/97-12, s. 43.

**C.04.112** A fabricator shall exclude the personnel who care for the vaccine animals from horse stables and paddocks and from contact with horses while smallpox vaccine is being propagated.

SOR/97-12, s. 61.

**C.04.113** Every fabricator and packager/labeller shall dispense smallpox vaccine only in sterile glass containers that are sealed under aseptic conditions.

SOR/97-12, s. 63.

**C.04.114** Every fabricator and packager/labeller shall test smallpox vaccine to establish that it is free from

**(a)** spore-forming anaerobic micro-organisms;

**(b)** coagulase positive staphylococci;

**(c)** haemolytic streptococci; and

**(d)** any other contaminating pathogenic micro-organisms.

SOR/97-12, s. 63.

**C.04.115** Smallpox vaccine, when tested by acceptable methods,

**(a)** shall be free from extraneous micro-organisms, in the case of vaccine prepared for use by jet gun; and

**(b)** shall contain not more than 500 viable non-pathogenic bacteria per millilitre, in the case of vaccine prepared for use by the multiple pressure technique or by scarification.

**C.04.116** Smallpox vaccine must demonstrate evidence of disease prevention that is at least equivalent to that of a vaccine that

**(a)** is known to prevent human to human transmission of smallpox; and

**C.04.111** Le manufacturier et l'emballeur-étiqueteur ne peuvent manufacturer et emballer-étiqueter le vaccin antivariolique que dans une unité distincte qui est isolée de tous les autres travaux de laboratoire, et dans laquelle ou au voisinage de laquelle aucune matière étrangère n'est tolérée ni entreposée.

DORS/97-12, art. 43.

**C.04.112** Le manufacturier doit interdire au personnel préposé au soin des animaux à vaccin tout accès aux écuries et aux enclos à chevaux et tout contact avec les chevaux pendant la propagation du vaccin antivariolique.

DORS/97-12, art. 61.

**C.04.113** Le manufacturier et l'emballeur-étiqueteur ne doivent délivrer le vaccin antivariolique que dans des récipients de verre stériles et scellés dans des conditions aseptiques.

DORS/97-12, art. 63.

**C.04.114** Le manufacturier et l'emballeur-étiqueteur doivent faire subir une épreuve au vaccin antivariolique en vue d'établir l'absence

**a)** de tout micro-organisme anaérobie sporifère;

**b)** de tout staphylocoque à réaction positive de la coagulase;

**c)** de tout streptocoque hémolytique; et

**d)** de tout autre micro-organisme pathogène contagieux.

DORS/97-12, art. 63.

**C.04.115** Le vaccin antivariolique, mis à l'épreuve suivant des méthodes acceptables,

**a)** doit être exempt de tout micro-organisme étranger, s'il s'agit d'un vaccin dont l'administration se fait par injection au pistolet; et

**b)** ne doit pas contenir, par millilitre, plus de 500 bactéries non pathogènes viables, s'il s'agit d'un vaccin dont l'administration se fait suivant la méthode de pression multiple ou par scarification.

**C.04.116** Il doit être démontré que le vaccin antivariolique exerce une action préventive au moins égale à celle d'un vaccin qui remplit les conditions suivantes :

**a)** son action préventive contre la transmission de la variole entre humains est reconnue;

**b)** son activité est égale ou supérieure à $10^8$ unités infectantes par millilitre, lorsqu'elle est déterminée à

**(b)** meets the potency of equal to or greater than $10^8$ pockforming units per millilitre, as determined using chick embryo chorioallantoic membranes.

SOR/2006-2, s. 2.

**C.04.117** No person shall sell smallpox vaccine unless

**(a)** in the case of fluid vaccine, it has been stored at a temperature below -10°C;

**(b)** in the case of dried vaccine, it has been stored at a temperature below 10°C; and

**(c)** the outer label carries a statement that it shall be stored at a temperature of not more than 5°C.

SOR/97-12, s. 44.

**C.04.118** Notwithstanding the provisions of section C.04.003, the date of issue of smallpox vaccine shall be not later than

**(a)** in the case of fluid vaccine, nine months after the date of manufacture; and

**(b)** in the case of dried vaccine, 24 months after the date of manufacture.

**C.04.119** The expiration date of smallpox vaccine shall not exceed the following, unless supported by evidence of stability satisfactory to the Minister:

**(a)** in the case of fluid vaccine, 3 months after the date of issue; or

**(b)** in the case of dried vaccine, 12 months after the date of issue.

SOR/2006-2, s. 3.

**C.04.120** No inner label shall be required for smallpox vaccine in single-dose containers or when dispensed in capillary tubes.

**C.04.121** No person shall sell smallpox vaccine to which an antibiotic has been added.

## Poliomyelitis Vaccine

**C.04.122** Poliomyelitis vaccine shall be an aqueous suspension of killed poliomyelitis viruses, Types I, II, and III.

l'aide de membranes chorio-allantoïdes d'embryons de poussins.

DORS/2006-2, art. 2.

**C.04.117** Il est interdit de vendre du vaccin antivariolique, à moins que :

**a)** dans le cas du vaccin sous forme liquide, ce vaccin n'ait été conservé à une température inférieure à -10 °C;

**b)** dans le cas du vaccin desséché, il n'ait été conservé à une température inférieure à 10 °C; et

**c)** l'étiquette extérieure ne porte une déclaration disant que le vaccin doit être conservé à une température non supérieure à 5 °C.

DORS/97-12, art. 44.

**C.04.118** Nonobstant les dispositions de l'article C.04.003, la date de sortie du vaccin antivariolique ne doit pas dépasser

**a)** neuf mois depuis la date de fabrication, dans le cas du vaccin sous forme liquide;

**b)** 24 mois depuis la date de fabrication, dans le cas du vaccin sous forme desséchée.

**C.04.119** À moins qu'une preuve n'établisse la stabilité du vaccin à la satisfaction du ministre, la date limite d'utilisation du vaccin antivariolique ne peut dépasser :

**a)** dans le cas du vaccin sous forme liquide, trois mois après la date de sortie;

**b)** dans le cas du vaccin sous forme desséchée, douze mois après la date de sortie.

DORS/2006-2, art. 3.

**C.04.120** Aucune étiquette intérieure n'est requise pour le vaccin antivariolique contenu dans des récipients à dose unique ou dispensé dans des tubes capillaires.

**C.04.121** Est interdite la vente de vaccin antivariolique additionné d'un antibiotique quelconque.

## Vaccin antipoliomyélitique

**C.04.122** Le vaccin antipoliomyélitique doit être une suspension aqueuse de virus tués de poliomyélite, types I, II et III.

**C.04.123** Poliomyelitis vaccine shall be prepared in acceptable tissue culture medium from strains of poliomyelitis virus proven capable of producing vaccine of acceptable potency.

**C.04.124** Poliomyelitis vaccine in its final form shall contain not more than 0.35 milligram per millilitre of total nitrogen, nor more than one part per million of animal serum.

**C.04.125** No person shall sell poliomyelitis vaccine unless it has been tested by an acceptable method for potency and safety and when so tested it shall be safe and of acceptable potency.

**C.04.126** The outer label shall carry a statement of any antibiotic present in the vaccine.

**C.04.127** The expiration date of the poliomyelitis vaccine shall be not later than 12 months after the date of the last satisfactory potency test unless evidence, satisfactory to the Minister, is presented that a longer period is appropriate.

SOR/85-715, s. 6; SOR/2018-69, s. 27.

## Poliovirus Vaccine, Live, Oral

**C.04.128 Poliovirus Vaccine, Live, Oral** or **Poliovirus Vaccine, Live, Oral (Naming the strains)** shall be prepared from living poliomyelitis virus types I, II and III that

**(a)** have been obtained directly from a source acceptable to the Minister;

**(b)** are shown to be genetically stable by an acceptable method;

**(c)** are shown to be non-pathogenic when given orally to humans;

**(d)** are proved to be capable of multiplying in the human alimentary tract and of producing type specific neutralizing antibodies when administered orally; and

**(e)** have a history of successful use in the production of polio-virus vaccine, live, oral.

SOR/2018-69, s. 27.

**C.04.129** Poliovirus vaccine, live, oral, shall be fabricated, packaged/labelled and tested in premises separated from buildings where other products are fabricated, packaged/labelled or tested, and from buildings where control tests involving the use of cell lines or virus strains

**C.04.123** Le vaccin antipoliomyélitique doit être préparé dans un milieu de culture tissulaire acceptable, à partir de souches de virus de poliomyélite qui se sont révélées capables de produire du vaccin d'activité acceptable.

**C.04.124** Le vaccin antipoliomyélitique dans sa forme définitive, doit contenir au plus 0,35 milligramme par millilitre d'azote total, et au plus une partie par million de sérum animal.

**C.04.125** Est interdite la vente de vaccin antipoliomyélitique à moins qu'il n'ait subi une épreuve d'après une méthode acceptable pour ce qui est de l'activité et de l'innocuité et, lorsqu'il a été ainsi éprouvé, il doit être stable et posséder une activité acceptable.

**C.04.126** L'étiquette extérieure doit porter une déclaration de la présence de tout antibiotique dans le vaccin.

**C.04.127** La date limite d'utilisation du vaccin antipoliomyélitique ne doit pas dépasser 12 mois après la date de la dernière épreuve satisfaisante d'activité à moins que des preuves, jugées satisfaisantes par le ministre, ne soient présentées justifiant d'une période plus longue.

DORS/85-715, art. 6; DORS/2018-69, art. 27.

## Vaccin buccal, de poliovirus vivant

**C.04.128** Le **Vaccin buccal de poliovirus vivant** et le **Vaccin buccal de poliovirus (nom de la souche) vivant,** doivent être préparés avec des virus poliomyélitiques vivants des types I, II et III, lesquels

**a)** ont été obtenus directement d'une source acceptable par le ministre;

**b)** démontrent une stabilité génétique établie par une méthode acceptable;

**c)** sont démontrés non pathogènes lorsqu'ils sont administrés par voie buccale chez les humains;

**d)** sont prouvés capables de proliférer dans le tube digestif humain, et de produire des anticorps neutralisants de leur type spécifique lorsqu'ils sont administrés par voie buccale; et

**e)** ont été employés avec succès pendant assez longtemps dans la production de vaccin buccal contre la poliomyélite à base de virus vivants.

DORS/2018-69, art. 27.

**C.04.129** Le vaccin buccal de poliovirus vivant doit être manufacturé, emballé-étiqueté et analysé dans des locaux isolés des bâtiments où d'autres produits sont manufacturés, emballés-étiquetés ou analysés et des bâtiments où des épreuves de contrôle comprenant l'usage

not employed in the fabrication, packaging/labelling and testing of poliovirus vaccine, live, oral, are carried out.

SOR/97-12, s. 45.

**C.04.130** No fabricator shall permit the introduction of any bacterial or viral cultures other than those used in the manufacture of poliovirus vaccine, live, oral on any premises that are used for the manufacture of poliovirus vaccine, live, oral.

SOR/97-12, s. 61.

**C.04.131** Notwithstanding sections C.04.129 and C.04.130, a fabricator may manufacture other drugs in an area in which polio-virus vaccine, live, oral is manufactured at times when that vaccine is not being manufactured, if

**(a)** both prior to and following each manufacture the area is cleaned and disinfected by methods acceptable to the Minister; and

**(b)** the fabricator has received written permission from the Minister to carry out such manufacture.

SOR/97-12, s. 61; SOR/2018-69, s. 27.

**C.04.132** Poliovirus vaccine, live, oral shall be prepared only

**(a)** in a tissue culture,

**(b)** in a medium, and

**(c)** by methods

acceptable to the Minister.

SOR/2018-69, s. 27.

**C.04.133** No fabricator shall sell poliovirus vaccine, live, oral, unless he has tested each lot for extraneous micro-organisms and the vaccine is free therefrom.

SOR/97-12, s. 61.

**C.04.134** A fabricator of poliovirus vaccine, live, oral shall test, by a method acceptable to the Minister, each lot of vaccine for neurovirulence and for genetic markers and it shall meet the requirements established by the Minister.

SOR/97-12, s. 61; SOR/2018-69, s. 27.

**C.04.135** No fabricator shall employ any person in the manufacture of poliovirus vaccine, live, oral unless such person

**(a)** is free from infectious disease;

d'une lignée de cellules ou d'une souche virale n'entrant pas dans ces opérations doivent être effectuées.

DORS/97-12, art. 45.

**C.04.130** Il est interdit à tout manufacturier de permettre l'introduction de toute culture bactérienne ou virale autre que celles qui servent à la fabrication du vaccin buccal de poliovirus vivant, dans n'importe quel lieu qui sert à la fabrication du vaccin buccal de poliovirus vivant.

DORS/97-12, art. 61.

**C.04.131** Nonobstant les articles C.04.129 et C.04.130, un manufacturier peut fabriquer d'autres drogues dans un lieu qui sert, de temps à autre, à la fabrication du vaccin buccal de poliovirus vivant, lorsque ce lieu ne sert pas à la fabrication dudit vaccin, pourvu que

**a)** les lieux soient nettoyés et désinfectés par des méthodes acceptables au ministre, avant et après chaque fabrication de ce vaccin; et

**b)** le manufacturier ait reçu par écrit du ministre, la permission d'effectuer cette fabrication d'autres drogues.

DORS/97-12, art. 61; DORS/2018-69, art. 27.

**C.04.132** Le vaccin buccal de poliovirus doit être préparé uniquement

**a)** dans une culture de tissus,

**b)** dans un milieu, et

**c)** par des méthodes

jugés acceptables par le ministre.

DORS/2018-69, art. 27.

**C.04.133** Est interdite à tout manufacturier la vente de vaccin buccal de poliovirus vivant, à moins que chaque lot n'ait été éprouvé pour la présence de micro-organismes étrangers et que le vaccin n'en soit exempt.

DORS/97-12, art. 61.

**C.04.134** Un manufacturier de vaccin buccal de poliovirus vivant doit éprouver chaque lot de vaccin pour sa neurovirulence et ses traits génétiques marquants, par une méthode acceptable du ministre, et ce vaccin doit remplir les conditions exigées par le ministre.

DORS/97-12, art. 61; DORS/2018-69, art. 27.

**C.04.135** Il est interdit à un manufacturier d'employer qui que ce soit dans la fabrication du vaccin buccal de poliovirus vivant, à moins que

**a)** chaque personne en cause ne soit exempte de maladie infectieuse;

**(b)** has been vaccinated successfully against poliomyelitis by poliovirus vaccine, live, oral; and

**(c)** has been proved by periodic tests to be a non-carrier of poliomyelitis virus.

SOR/97-12, s. 61.

**C.04.136** A fabricator of poliovirus vaccine, live, oral shall not permit the entry to a building in which the vaccine is manufactured of any person who

**(a)** is not directly concerned with the manufacturing processes; or

**(b)** has been working on the same day with experimental animals or with infectious agents.

SOR/97-12, s. 61.

## Bacteriophage

**C.04.137** Bacteriophage shall be a virus preparation with specific lytic action against micro-organisms actually or potentially pathogenic.

**C.04.138** The expiration date of bacteriophage shall be not later than 12 months after the date of manufacture or the date of issue.

## Toxins, Toxoids

### Schick Test Reagents

**C.04.140** Schick test reagents for the diagnosis of susceptibility to diphtheria shall be

**(a)** diphtheria toxin for Schick test;

**(b)** Schick control; and

**(c)** diphtheria toxin for Schick test with control.

**C.04.141** Diphtheria toxin for Schick test shall be sterile diluted diphtheria toxin stabilized by an acceptable method.

**C.04.142** Schick control shall be suitably diluted

**(a)** diphtheria toxoid; or

**(b)** sterile diphtheria toxin heated at a temperature of 95°C for five minutes.

**b)** chaque personne en cause n'ait été vaccinée avec succès contre la poliomyélite par le vaccin buccal de poliovirus vivant; et

**c)** des tests périodiques ne prouvent qu'elle n'est pas « porteuse de germes » du virus de la poliomyélite.

DORS/97-12, art. 61.

**C.04.136** Un manufacturier de vaccin buccal de poliovirus vivant doit interdire l'entrée dans un immeuble où se fabrique ledit vaccin à quiconque

**a)** n'a pas directement affaire au procédé de fabrication; ou

**b)** a travaillé durant la journée avec des animaux d'expérience ou des agents infectieux.

DORS/97-12, art. 61.

## Bactériophage

**C.04.137** Un bactériophage doit être une préparation de virus douée d'une action lytique spécifique contre un ou des micro-organismes actuellement ou virtuellement pathogènes.

**C.04.138** La date limite d'utilisation d'un bactériophage ne doit pas dépasser 12 mois après la date de fabrication ou la date de délivrance.

## Toxines, anatoxines

### Réactifs de Schick

**C.04.140** Les réactifs de Schick pour le diagnostic de la réceptivité à la diphtérie doivent être

**a)** la toxine diphtérique pour la réaction de Schick;

**b)** le contrôle pour le Schick; et

**c)** la toxine diphtérique pour la réaction de Schick avec contrôle.

**C.04.141** La toxine diphtérique pour la réaction de Schick doit être de la toxine diphtérique diluée, stérile et stabilisée par une méthode acceptable.

**C.04.142** Le contrôle pour le Schick doit être une dilution convenable

**a)** d'anatoxine diphtérique; ou

**b)** de toxine diphtérique stérile chauffée à la température de 95 °C, pendant cinq minutes.

**C.04.143** The human test dose of diphtheria toxin for Schick test, when aged toxin containing a preservative is used, shall be determined by

**(a)** intracutaneous injection into normal guinea pigs in mixtures with different proportions of diphtheria antitoxin, and one test dose mixed with 1/750 or more of a unit of antitoxin must cause no local reaction but mixed with 1/1,250 or less of a unit of antitoxin must cause a definite local reaction of the type known as the "positive Schick reaction"; and

**(b)** intracutaneous injection into normal guinea pigs without admixture with antitoxin, and 1/50 of one test dose must not cause, and 1/25 of one test dose must cause, a definite local reaction of the type known as the "positive Schick reaction".

**C.04.144** The human test dose of diphtheria toxin for Schick test, when fresh toxin containing no preservative is used, shall be determined by

**(a)** intracutaneous injection into normal guinea pigs in mixtures with different proportions of diphtheria antitoxin, and one test dose mixed with 1/750 or more of a unit of antitoxin must cause no local reaction, but mixed with 1/1,500 or less of a unit of antitoxin must cause a definite local reaction of the type known as the "positive Schick reaction"; and

**(b)** intracutaneous injection into normal guinea pigs without admixture with antitoxin, and 1/100 of one test dose must not cause, and 1/50 of one test dose must cause, a definite local reaction of the type known as the "positive Schick reaction".

**C.04.145** The human test dose for the Schick control shall give a negative Schick reaction when injected intracutaneously into normal guinea pigs.

**C.04.146** No person shall sell diphtheria toxin for Schick test unless both the inner and the outer labels carry a statement of the number of human test doses it contains together with the name of any stabilizer.

**C.04.147** The expiration date of Schick test reagents for the diagnosis of susceptibility to diphtheria shall be not later than 12 months after the date of manufacture or the date of issue.

**C.04.143** Dans le cas de vieille toxine contenant un antiseptique, la dose d'épreuve pour l'homme de la réaction de Schick doit être déterminée par

**a)** injection intradermique, à des cobayes, en mélange avec diverses proportions d'antitoxine diphtérique; une dose d'épreuve mélangée avec 1/750 ou plus d'une unité d'antitoxine ne doit produire de réaction locale, mais, mélangée avec 1/1 250 ou moins d'une unité d'antitoxine, elle doit produire une réaction locale nette du type connu sous le nom de « réaction de Schick positive »; et par

**b)** injection intradermique, à des cobayes, sans mélange avec l'antitoxine; 1/50 d'une dose d'épreuve ne doit pas, mais 1/25 doit, produire une réaction locale nette du type connu sous le nom de « réaction de Schick positive ».

**C.04.144** Dans le cas de toxine fraîche ne contenant aucun antiseptique, la dose d'épreuve pour l'homme de la réaction de Schick doit être déterminée par

**a)** injection intradermique, à des cobayes, en mélange avec diverses proportions d'antitoxine diphtérique; une dose d'épreuve mélangée avec 1/750 ou plus d'une unité d'antitoxine ne doit pas produire de réaction locale, mais, mélangée avec 1/1 500 ou moins d'une unité d'antitoxine, elle doit produire une réaction locale nette du type connu sous le nom de « réaction de Schick positive »; et par

**b)** injection intradermique, à des cobayes, sans mélange avec l'antitoxine; 1/100 d'une dose d'épreuve ne doit pas, mais 1/50 doit, produire une réaction locale nette du type connu sous le nom de « réaction de Schick positive ».

**C.04.145** La dose d'épreuve pour l'homme du contrôle pour le Schick, injectée par voie intradermique à des cobayes, doit donner une réaction de Schick négative.

**C.04.146** Est interdite la vente de toxine diphtérique pour la réaction de Schick, à moins que les étiquettes intérieure et extérieure ne portent toutes deux la déclaration du nombre de doses humaines d'épreuve que contient l'emballage, ainsi que le nom de tout stabilisateur présent.

**C.04.147** La date limite d'utilisation des réactifs de Schick pour le diagnostic de la réceptivité à la diphtérie ne doit pas dépasser 12 mois après la date de fabrication ou la date de sortie.

## Diphtheria Toxoid

**C.04.160** Liquid diphtheria toxoid shall be sterile, formalized, detoxified diphtheria toxin and shall not contain more than 0.02 per cent free formaldehyde.

**C.04.161** Diphtheria toxoid alum precipitated shall be prepared from diphtheria toxoid, and shall not contain more than 15 milligrams of alum per human dose.

**C.04.162** The alum used in the preparation of diphtheria toxoid alum precipitated shall contain not less than 99.5 per cent pure potassium alum, Al $K(SO_4)_2$,$12H_2O$.

**C.04.163** No fabricator shall use a culture medium for the production of diphtheria toxin that contains horse protein or Witte peptone or that has not been freed as far as possible from any other allergenic ingredient.

SOR/97-12, s. 61.

**C.04.164** Diphtheria toxin from which diphtheria toxoid is prepared shall have a toxicity, as indicated by an L+dose, of not more than 0.20 millilitre or by an M.L.D. of not more than 0.0025 millilitre.

**C.04.165** A fabricator shall test each bulk container of diphtheria toxoid, before being dispensed into the final containers, for toxicity by an acceptable method, and it shall be non-toxic.

SOR/97-12, s. 61.

**C.04.166** No person shall sell any lot of diphtheria toxoid unless such lot has been shown to meet a test for antigenicity made by an acceptable method.

**C.04.167** A fabricator shall fill diphtheria toxoid aseptically into clear glass containers and where preservative is not added shall seal the containers by fusion.

SOR/97-12, s. 61.

**C.04.168** No person shall sell diphtheria toxoid that contains phenol.

**C.04.169** No person shall sell diphtheria toxoid unless both the inner and the outer labels carry a statement of the appropriate dose for purposes of immunization.

**C.04.170** The expiration date of diphtheria toxoid shall be not later than two years after the date of manufacture or the date of issue.

## Anatoxine diphtérique

**C.04.160** L'anatoxine diphtérique liquide doit être de la toxine diphtérique stérile, formulée et détoxifiée, et contenir au plus 0,02 pour cent de formaldéhyde libre.

**C.04.161** L'anatoxine diphtérique précipitée par l'alun doit être préparée à partir d'anatoxine diphtérique et contenir au plus 15 milligrammes d'alun par dose humaine.

**C.04.162** L'alun employé à la précipitation de l'anatoxine diphtérique précipitée par l'alun doit contenir au moins 99,5 pour cent d'alun potassique pur, Al $K(SO_4)_2$, $12H_2O$.

**C.04.163** Dans la production de la toxine diphtérique, il est interdit au manufacturier d'employer des milieux de culture qui contiennent des protéines de cheval ou de la peptone de Witte, ou qui n'ont pas été débarrassés autant que possible de tous autres ingrédients allergéniques.

DORS/97-12, art. 61.

**C.04.164** La toxine diphtérique qui sert à préparer l'anatoxine doit avoir une toxicité exprimée par une dose léthale (L+) d'au plus 0,20 millilitre ou par une dose léthale minimum (D.L.M.) d'au plus 0,0025 millilitre.

**C.04.165** Avant le remplissage des récipients définitifs, le manufacturier doit soumettre le contenu de chaque récipient-vrac d'anatoxine diphtérique à une épreuve de toxicité d'après une méthode acceptable et ce contenu ne doit pas être toxique.

DORS/97-12, art. 61.

**C.04.166** Est interdite la vente de tout lot d'anatoxine diphtérique, à moins que ledit lot n'ait subi un essai satisfaisant d'antigénicité d'après une méthode acceptable.

**C.04.167** Un manufacturier doit introduire aseptiquement l'anatoxine diphtérique dans des récipients en verre limpide et, lorsqu'il n'y a pas addition d'un antiseptique, les récipients doivent être scellés à la flamme.

DORS/97-12, art. 61.

**C.04.168** Est interdite la vente d'anatoxine diphtérique qui contient du phénol.

**C.04.169** Est interdite la vente d'anatoxine diphtérique, à moins que les étiquettes intérieure et extérieure ne portent toutes deux la déclaration de la dose immunisante.

**C.04.170** La date limite d'utilisation de l'anatoxine diphtérique ne doit pas dépasser deux ans après la date de fabrication ou la date de sortie.

## Tetanus Toxoid

**C.04.180** Liquid tetanus toxoid shall be sterile, formalized, detoxified tetanus toxin, and shall not contain more than 0.02 per cent free formaldehyde.

**C.04.181** Tetanus toxoid alum precipitated shall be prepared from tetanus toxoid, and shall not contain more than 15 milligrams of alum per human dose.

**C.04.182** The alum used in the preparation of tetanus toxoid alum precipitated shall contain not less than 99.5 per cent pure potassium alum, Al $K(SO_4)_2$, $12H_2O$.

**C.04.183** No fabricator shall use a culture medium for the production of tetanus toxin that contains horse protein or Witte peptone or that has not been freed as far as possible from any other allergenic ingredient.

SOR/97-12, s. 61.

**C.04.184** Tetanus toxin from which tetanus toxoid is prepared shall have a toxicity as indicated by an M.L.D. for the guinea pig of not more than 0.0001 millilitre.

**C.04.185** A packager/labeller shall test each bulk container of tetanus toxoid, before being dispensed into the final containers, for toxicity by an acceptable method, and it shall be non-toxic.

SOR/97-12, s. 65.

**C.04.186** No person shall sell any lot of tetanus toxoid unless such lot has been shown to meet a test for antigenicity made by an acceptable method.

**C.04.187** No person shall sell tetanus toxoid unless both the inner and the outer labels carry a statement of the appropriate dose for purposes of immunization.

**C.04.188** A fabricator shall fill tetanus toxoid aseptically into clear glass containers and where a preservative is not added shall seal the container by fusion.

SOR/97-12, s. 61.

**C.04.189** No person shall sell tetanus toxoid that contains phenol.

**C.04.190** The expiration date of tetanus toxoid shall be not later than two years after the date of manufacture or the date of issue.

## Anatoxine tétanique

**C.04.180** L'anatoxine tétanique liquide doit être de la toxine tétanique stérile, formulée et détoxifiée, et contenir au plus 0,02 pour cent de formaldéhyde libre.

**C.04.181** L'anatoxine tétanique précipitée par l'alun doit être préparée à partir de l'anatoxine tétanique et contenir au plus 15 milligrammes d'alun par dose humaine.

**C.04.182** L'alun employé à la préparation de l'anatoxine tétanique précipitée par l'alun doit contenir au moins 99,5 pour cent d'alun potassique pur, Al $K(SO_4)_2$, $12H_2O$.

**C.04.183** Dans la production de la toxine tétanique, il est interdit au manufacturier d'employer des milieux de culture qui contiennent des protéines de cheval ou de la peptone de Witte, ou qui n'ont pas été débarrassés autant que possible de tous autres ingrédients allergéniques.

DORS/97-12, art. 61.

**C.04.184** La toxine tétanique qui sert à préparer l'anatoxine tétanique doit avoir une toxicité exprimée par une dose léthale minimum (D.L.M.) d'au plus 0,0001 millilitre pour le cobaye.

**C.04.185** Avant le remplissage des récipients définitifs, l'emballeur-étiqueteur doit soumettre le contenu de chaque récipient-vrac à une épreuve de toxicité d'après une méthode acceptable et ce contenu ne doit pas être toxique.

DORS/97-12, art. 65.

**C.04.186** Est interdite la vente de tout lot d'anatoxine tétanique, à moins que ledit lot n'ait subi un essai satisfaisant d'antigénicité d'après une méthode acceptable.

**C.04.187** Est interdite la vente d'anatoxine tétanique, à moins que les étiquettes intérieure et extérieure ne portent toutes deux la déclaration de la dose immunisante.

**C.04.188** Un manufacturier doit introduire aseptiquement l'anatoxine tétanique dans des récipients en verre limpide et, lorsqu'il n'y a pas addition d'un antiseptique, les récipients doivent être scellés à la flamme.

DORS/97-12, art. 61.

**C.04.189** Est interdite la vente d'anatoxine tétanique qui contient du phénol.

**C.04.190** La date limite d'utilisation de l'anatoxine tétanique ne doit pas dépasser deux ans après la date de fabrication ou la date de sortie.

## Antitoxins, Antisera

**C.04.210** An antitoxin or antiserum shall be the serum or fraction thereof separated from the blood of animals that have been artificially immunized against the by-products or antigenic fractions of specific cultures of micro-organisms, or against specific venoms.

**C.04.211** The potency of an antitoxin or antiserum shall be determined by an acceptable method and where applicable the unit of potency shall be the International Unit.

**C.04.212** Liquid diphtheria antitoxin shall have a potency of not less than 500 International Units per millilitre.

**C.04.213** Liquid tetanus antitoxin shall have a potency of not less than 400 International Units per millilitre.

**C.04.214** A liquid antitoxin or antiserum shall contain not more than 20 per cent solids.

**C.04.215** A dried antitoxin shall be prepared from a liquid antitoxin and, when reconstituted to the original volume of the liquid antitoxin, shall have a potency not less than that prescribed for such liquid antitoxin.

**C.04.216** A dried antitoxin or antiserum shall not contain more than one per cent moisture when determined by an acceptable method.

**C.04.217** Each lot of antitoxin or antiserum shall be tested by an acceptable method for pyrogenicity and it shall be pyrogen-free, and, after filling into the final containers, for identity and it shall be true to name.

**C.04.218** No person shall sell an antitoxin or antiserum unless both the inner and the outer labels carry a statement of the species of animal used, when other than the horse, and the net contents in millilitres or the number of units in the container.

**C.04.219** In respect of antitoxins, the expiration date shall be

**(a)** for liquid antitoxins with standards of potency, not later than five years after the date of manufacture;

**(b)** for dried antitoxins with standards of potency, not later than five years after the date of manufacture;

## Antitoxines, antisérums

**C.04.210** Une antitoxine ou un antisérum doit être le sérum, ou une fraction du sérum, séparé du sang d'animaux immunisés artificiellement contre les sous-produits ou les fractions antigéniques des cultures spécifiques de micro-organismes ou contre des venins spécifiques.

**C.04.211** L'activité d'une antitoxine ou d'un antisérum doit être déterminée par une méthode acceptable et, lorsqu'il y a lieu, l'unité d'activité doit être l'unité internationale.

**C.04.212** L'antitoxine diphtérique liquide doit posséder une activité d'au moins 500 unités internationales par millilitre.

**C.04.213** L'antitoxine tétanique liquide doit posséder une activité d'au moins 400 unités internationales par millilitre.

**C.04.214** Une antitoxine ou un antisérum liquide doit contenir au plus 20 pour cent de solides.

**C.04.215** Une antitoxine desséchée doit être préparée à partir d'une antitoxine liquide et son activité, après reconstitution au volume original, ne doit pas être inférieure à celle qui est prescrite pour l'antitoxine liquide.

**C.04.216** Une antitoxine desséchée, un antisérum desséché, doit contenir au plus un pour cent d'humidité, à l'épreuve par une méthode acceptable.

**C.04.217** Chaque lot d'antitoxine ou d'antisérum doit subir l'épreuve de pyrogénéité par une méthode acceptable et il doit être exempt de pyrogènes; et, après remplissage des récipients définitifs, il doit subir l'épreuve d'identité et correspondre à son nom.

**C.04.218** Est interdite la vente d'une antitoxine ou d'un antisérum, à moins que les étiquettes intérieure et extérieure ne portent toutes deux la déclaration de l'espèce d'animal utilisée, si elle est autre que le cheval, et du contenu net en millilitres ou du nombre d'unités du récipient.

**C.04.219** En ce qui concerne les antitoxines, la date limite d'utilisation ne doit pas dépasser,

**a)** dans le cas d'antitoxines liquides soumises à des normes d'activité : cinq ans après la date de fabrication;

**b)** dans le cas d'antitoxines desséchées soumises à des normes d'activité : cinq ans après la date de fabrication;

**(c)** for liquid antioxins with no standards of potency, not later than 12 months after the date of manufacture; and

**(d)** for dried antitoxins with no standards of potency, not later than five years after the date of manufacture.

**C.04.220** In respect of antisera, the expiration date shall be

**(a)** for liquid antisera with standards of potency, not later than three years after the date of manufacture;

**(b)** for dried antisera with standards of potency, not later than five years after the date of manufacture;

**(c)** for liquid antisera with no standards of potency, not later than 12 months after the date of manufacture; and

**(d)** for dried antisera with no standards of potency, not later than five years after the date of manufacture.

## Preparations from Human Sources

**C.04.230** Preparations from human sources shall be pooled blood plasma, or pooled blood serum, or fractions of either separated by a method satisfactory to the Minister.

**C.04.231** A fabricator shall obtain human serum, or human plasma, only from a person certified by a qualified medical practitioner to be healthy.

SOR/97-12, s. 61.

**C.04.232** A fabricator shall not use a person to serve as a donor of blood, placenta, or cord who has a history of a disease transmissible by blood transfusion including syphilis, infectious hepatitis, or malaria.

SOR/97-12, s. 61.

**C.04.233** The operation of drawing blood from a donor shall be under the supervision of a qualified medical practitioner, and shall be carried out in a suitable bleeding room under the control of the fabricator.

SOR/97-12, s. 61.

**C.04.234** A fabricator shall obtain human placenta and cord used in the manufacture of preparations from human sources only from women confined in public

**c)** dans le cas d'antitoxines liquides pour lesquelles il n'y a pas de normes d'activité : 12 mois après la date de fabrication; et

**d)** dans le cas d'antitoxines desséchées pour lesquelles il n'y a pas de normes d'activité : cinq ans après la date de fabrication.

**C.04.220** En ce qui concerne les antisérums, la date limite d'utilisation ne doit pas dépasser,

**a)** dans le cas d'antisérums liquides soumis à des normes d'activité : trois ans après la date de fabrication;

**b)** dans le cas d'antisérums desséchés soumis à des normes d'activité : cinq ans après la date de fabrication;

**c)** dans le cas d'antisérums liquides pour lesquels il n'y a pas de normes d'activité : 12 mois après la date de fabrication; et

**d)** dans le cas d'antisérums desséchés pour lesquels il n'y a pas de normes d'activité : cinq ans après la date de fabrication.

## Préparations de provenance humaine

**C.04.230** Les préparations de provenance humaine doivent être du plasma sanguin ou du sérum sanguin mis en commun, ou des fractions de l'un ou de l'autre, séparés selon une méthode satisfaisante aux yeux du ministre.

**C.04.231** Un manufacturier ne doit obtenir de sérum ou de plasma humains que de personnes certifiées en bonne santé par un praticien compétent.

DORS/97-12, art. 61.

**C.04.232** Un manufacturier ne doit employer comme donneur de sang, de placenta ou de cordon, aucune personne ayant des antécédents de maladies transmissibles par la transfusion du sang, y compris la syphilis, l'hépatite infectieuse, ou le paludisme.

DORS/97-12, art. 61.

**C.04.233** Le prélèvement du sang d'un donneur doit s'effectuer sous la surveillance d'un praticien compétent et dans une salle de saignée convenable sous la direction du manufacturier.

DORS/97-12, art. 61.

**C.04.234** Un manufacturier ne doit se procurer les placentas et les cordons employés à la fabrication de préparations de provenance humaine que de femmes

hospitals, and the donor of such placenta and cord shall have been free from the toxaemias of pregnancy, and the placenta and cord shall not show gross evidence of any pathological condition.

SOR/97-12, s. 61.

accouchées dans des hôpitaux publics; les donneuses desdits placentas et cordons doivent avoir été exemptes des toxémies de la grossesse et les placentas et les cordons ne doivent présenter aucun indice macroscopique de quelque état pathologique que ce soit.

DORS/97-12, art. 61.

**C.04.235 (1)** Subject to subsections (2) and (3), dried human serum, dried human plasma or dried fractions of either shall not contain more than one per cent moisture when determined by an acceptable method.

**C.04.235 (1)** Sous réserve des paragraphes (2) et (3), le sérum humain desséché, le plasma humain desséché, ou les fractions desséchées de l'un ou de l'autre, doivent contenir au plus un pour cent d'humidité à l'épreuve par une méthode acceptable.

**(2)** Dried $Rh_o$(D) Immune Human globulin shall not contain more than three per cent moisture when determined by an acceptable method.

**(2)** L'immunoglobuline humaine $Rh_o$(D) desséchée doit contenir au plus trois pour cent d'humidité, à l'épreuve par une méthode acceptable.

**(3)** Dried Antihemophilic Factor Human shall not contain more than two per cent moisture when determined by an acceptable method.

SOR/81-334, s. 3.

**(3)** Le facteur antihémophilique (humain) desséché doit contenir au plus deux pour cent d'humidité à l'épreuve par une méthode acceptable.

DORS/81-334, art. 3.

**C.04.236** A fabricator shall provide directions or means for the removal of particles of such size as to be dangerous to the recipient from preparations from human sources that are issued in fluid form or that are reconstituted from the dried form.

SOR/97-12, s. 61.

**C.04.236** Un manufacturier doit fournir avec les préparations de provenance humaine, livrées sous forme liquide ou reconstituées à partir de la substance desséchée, des instructions ou des moyens pour l'élimination des particules d'une grosseur telle qu'elles pourraient être dangereuses pour le receveur.

DORS/97-12, art. 61.

**C.04.237** A fabricator of preparations from human sources shall maintain complete records of all donors, which records shall include the medical certificate required by section C.04.231.

SOR/97-12, s. 61.

**C.04.237** Un manufacturier de préparations de provenance humaine doit conserver des fiches complètes de tous les donneurs, y compris le certificat médical prescrit à l'article C.04.231.

DORS/97-12, art. 61.

**C.04.238** A fabricator, packager/labeller or distributor referred to in paragraph C.01A.003(b) may issue human serum or human plasma, or fractions of either of them, for prophylactic or therapeutic use in any of the following forms:

**(a)** immune human serum, which shall be serum separated from the blood of persons recovered from the disease or from persons specifically immunized against the disease for which the serum is intended as a prophylactic or therapeutic agent;

**(b)** immune human globulins, or other immune human serum fractions, which shall be prepared from immune human serum or plasma;

**(c)** normal human serum, or normal human plasma, or fractions of either of these prepared from the blood of normal individuals; and

**C.04.238** Le manufacturier, l'emballeur-étiqueteur ou le distributeur visé à l'alinéa C.01A.003b) peut délivrer du sérum ou du plasma humains, ou des fractions de l'un ou de l'autre, pour usage prophylactique ou thérapeutique, sous les formes suivantes :

**a)** immun-sérum humain, qui doit être du sérum préparé à partir du sang d'individus rétablis de la maladie que le sérum est destiné à prévenir ou à traiter, ou d'individus spécifiquement immunisés contre cette même maladie;

**b)** immuno-globulines humaines ou autres fractions d'immun-sérum humain, qui doivent être préparées à partir d'immun-sérum ou d'immun-plasma humains;

**c)** sérum humain normal ou plasma humain normal, ou fractions de l'un ou de l'autre, qui doivent être préparés à partir du sang d'individus normaux; et

**(d)** dried products prepared from any of these.

SOR/97-12, s. 46.

**C.04.239** No person shall sell a preparation from human sources unless both the inner and the outer labels clearly indicate that the preparation is derived from human sources.

**C.04.240** The expiration date for preparations from human sources issued in fluid or dried form shall be not later than five years after the date of filling the immediate container.

**C.04.241** The date of manufacture of preparations from human sources shall be the date of bleeding the donor.

**C.04.300 and C.04.301** [Repealed, SOR/81-335, s. 3]

**C.04.400** [Repealed, SOR/2013-179, s. 4]

**C.04.401** [Repealed, SOR/2013-179, s. 4]

**C.04.402** [Repealed, SOR/2013-179, s. 4]

**C.04.403** [Repealed, SOR/2013-179, s. 4]

**C.04.404** [Repealed, SOR/2013-179, s. 4]

**C.04.405** [Repealed, SOR/2013-179, s. 4]

**C.04.406** [Repealed, SOR/2013-179, s. 4]

**C.04.407** [Repealed, SOR/2013-179, s. 4]

**C.04.408** [Repealed, SOR/2013-179, s. 4]

**C.04.409** [Repealed, SOR/2013-179, s. 4]

**C.04.410** [Repealed, SOR/2013-179, s. 4]

**C.04.411** [Repealed, SOR/2013-179, s. 4]

**C.04.412** [Repealed, SOR/2013-179, s. 4]

**C.04.413** [Repealed, SOR/2013-179, s. 4]

**C.04.414** [Repealed, SOR/2013-179, s. 4]

**C.04.415** [Repealed, SOR/2013-179, s. 4]

**C.04.416** [Repealed, SOR/2013-179, s. 4]

**C.04.417** [Repealed, SOR/2013-179, s. 4]

**C.04.418** [Repealed, SOR/2013-179, s. 4]

**C.04.419** [Repealed, SOR/2013-179, s. 4]

**d)** produits desséchés préparés à partir de n'importe quelle des préparations ci-dessus.

DORS/97-12, art. 46.

**C.04.239** Est interdite la vente de toute préparation de provenance humaine, à moins que les étiquettes intérieure et extérieure ne portent toutes deux l'indication précise que la préparation est de provenance humaine.

**C.04.240** La date limite d'utilisation des préparations de provenance humaine, délivrées sous la forme liquide ou la forme desséchée, ne doit pas dépasser cinq ans après la date de remplissage du récipient immédiat.

**C.04.241** La date de fabrication des préparations de provenance humaine doit être la date de la saignée du donneur.

**C.04.300 et C.04.301** [Abrogés, DORS/81-335, art. 3]

**C.04.400** [Abrogé, DORS/2013-179, art. 4]

**C.04.401** [Abrogé, DORS/2013-179, art. 4]

**C.04.402** [Abrogé, DORS/2013-179, art. 4]

**C.04.403** [Abrogé, DORS/2013-179, art. 4]

**C.04.404** [Abrogé, DORS/2013-179, art. 4]

**C.04.405** [Abrogé, DORS/2013-179, art. 4]

**C.04.406** [Abrogé, DORS/2013-179, art. 4]

**C.04.407** [Abrogé, DORS/2013-179, art. 4]

**C.04.408** [Abrogé, DORS/2013-179, art. 4]

**C.04.409** [Abrogé, DORS/2013-179, art. 4]

**C.04.410** [Abrogé, DORS/2013-179, art. 4]

**C.04.411** [Abrogé, DORS/2013-179, art. 4]

**C.04.412** [Abrogé, DORS/2013-179, art. 4]

**C.04.413** [Abrogé, DORS/2013-179, art. 4]

**C.04.414** [Abrogé, DORS/2013-179, art. 4]

**C.04.415** [Abrogé, DORS/2013-179, art. 4]

**C.04.416** [Abrogé, DORS/2013-179, art. 4]

**C.04.417** [Abrogé, DORS/2013-179, art. 4]

**C.04.418** [Abrogé, DORS/2013-179, art. 4]

**C.04.419** [Abrogé, DORS/2013-179, art. 4]

**C.04.420** [Repealed, SOR/2013-179, s. 4]

**C.04.421** [Repealed, SOR/2013-179, s. 4]

**C.04.422** [Repealed, SOR/2013-179, s. 4]

**C.04.423** [Repealed, SOR/2013-179, s. 4]

**C.04.424** [Repealed, SOR/2006-353, s. 1]

**C.04.425** [Repealed, SOR/2006-353, s. 1]

**C.04.426** [Repealed, SOR/2006-353, s. 1]

**C.04.427** [Repealed, SOR/97-12, s. 50]

**C.04.428** [Repealed, SOR/2006-353, s. 1]

## Insulin Preparations

[SOR/82-769, s. 5]

**C.04.550 (1)** ***Insulin*** means the active principle of the pancreas that affects the metabolism of carbohydrates in the animal body and that is of value in the treatment of *diabetes mellitus*.

**(2)** The Canadian Reference Standard for insulin shall be the International Standard therefor.

**(3)** The insulin preparations described in these Regulations shall contain insulin to which may be added only such ingredients as are prescribed in these Regulations.

**(4)** The potency of an insulin preparation shall be expressed in units per cubic centimetre and each unit per cubic centimetre shall provide one International Unit of insulin per cubic centimetre.

SOR/82-769, s. 4.

**C.04.551** No person shall sell or dispense an insulin preparation that has not been stored by him continuously at a temperature between 35° and 50°F (2° and 10°C).

SOR/82-769, s. 4.

**C.04.552** The zinc-insulin crystals used in an insulin preparation shall contain, as determined by an acceptable method,

**(a)** not less than 21 International Units of insulin per milligram, and

**(b)** on the dry basis, not less than 0.30 per cent and not more than 0.90 per cent zinc.

SOR/82-769, s. 4.

**C.04.420** [Abrogé, DORS/2013-179, art. 4]

**C.04.421** [Abrogé, DORS/2013-179, art. 4]

**C.04.422** [Abrogé, DORS/2013-179, art. 4]

**C.04.423** [Abrogé, DORS/2013-179, art. 4]

**C.04.424** [Abrogé, DORS/2006-353, art. 1]

**C.04.425** [Abrogé, DORS/2006-353, art. 1]

**C.04.426** [Abrogé, DORS/2006-353, art. 1]

**C.04.427** [Abrogé, DORS/97-12, art. 50]

**C.04.428** [Abrogé, DORS/2006-353, art. 1]

## Préparations insuliniques

[DORS/82-769, art. 5]

**C.04.550 (1)** ***Insuline*** désigne le principe actif du pancréas, qui influe sur le métabolisme des hydrates de carbone dans l'organisme animal et qui est efficace dans le traitement du *diabète sucré*.

**(2)** L'étalon canadien d'insuline doit être l'étalon international d'insuline.

**(3)** Les préparations insuliniques décrites dans le présent règlement doivent renfermer de l'insuline à laquelle ne peuvent être ajoutés que les ingrédients prescrits dans le présent règlement.

**(4)** L'activité d'une préparation insulinique doit être exprimée en unités par centimètre cube et chaque unité par centimètre cube doit donner une unité internationale d'insuline par centimètre cube.

DORS/82-769, art. 4.

**C.04.551** Il est interdit de vendre ou de fournir une préparation insulinique à moins de l'avoir continuellement emmagasinée à une température comprise entre 35 °F et 50 °F (2 °C et 10 °C).

DORS/82-769, art. 4.

**C.04.552** Les cristaux d'insuline-zinc employés dans une préparation insulinique doivent renfermer, d'après une méthode acceptable,

**a)** au moins 21 unités internationales d'insuline par milligramme; et

**b)** sur la matière desséchée, au moins 0,30 pour cent et au plus 0,90 pour cent de zinc.

DORS/82-769, art. 4.

## Insulin Injection or Insulin

**C.04.553** The insulin preparation, "Insulin injection" or "Insulin" shall be a clear colourless or almost colourless sterile solution free from turbidity and insoluble matter, prepared from insulin or zinc insulin crystals, shall have a pH of not less than 2.5 or more than 3.5, or not less than 7.0 or more than 7.8 and shall contain

**(a)** weight by volume,

**(i)** not less than 0.1 per cent and not more than 0.25 per cent of either phenol or cresol, and

**(ii)** not less than 1.4 per cent and not more than 1.8 per cent glycerin; and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 7.0 milligrams of nitrogen for Insulin Injection prepared from zinc-insulin crystals, and not more than 8.5 milligrams of nitrogen for Insulin Injection other than that made from zinc-insulin crystals,

**(ii)** not less than 0.10 milligram and not more than 0.40 milligram of zinc for Insulin Injection prepared from zinc-insulin crystals, and not more than 0.40 milligram of zinc for Insulin Injection other than that made from zinc-insulin crystals, and

**(iii)** in the case of Insulin Injection other than that made from zinc-insulin crystals, not more than 1.0 milligram of ash.

SOR/82-769, s. 4; SOR/85-715, s. 7.

**C.04.554** No person shall sell Insulin Injection unless,

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres;

**(b)** the vial label indicates that each cubic centimetre has a potency equal to

**(i)** 40 International Units of insulin,

**(ii)** 80 International Units of insulin, or

**(iii)** 100 International Units of insulin; and

**(c)** each cubic centimetre thereof has an actual potency that is at least 95 per cent and does not exceed 105

## Injection insulinique ou insuline

**C.04.553** Les préparations insuliniques appelées « Injection insulinique » ou « Insuline » doivent être une solution limpide, incolore ou presque incolore, stérile, exempte de turbidité et de matières insolubles, préparée avec de l'insuline ou des cristaux d'insuline-zinc, doivent avoir un pH d'au moins 2,5 et d'au plus 3,5, ou d'au moins 7,0 et d'au plus 7,8 et doivent renfermer,

**a)** en poids par volume,

**(i)** au moins 0,1 pour cent et au plus 0,25 pour cent de phénol ou de crésol, et

**(ii)** au moins 1,4 pour cent et au plus 1,8 pour cent de glycérine; et

**b)** d'après une méthode acceptable, par 1 000 unités internationales d'insuline,

**(i)** au plus 7,0 milligrammes d'azote dans le cas de l'injection insulinique préparée avec des cristaux d'insuline-zinc et au plus 8,5 milligrammes d'azote dans le cas de l'injection insulinique autre que celle qui est faite avec des cristaux d'insuline-zinc,

**(ii)** au moins 0,10 milligramme et au plus 0,40 milligramme de zinc dans le cas de l'injection insulinique préparée avec des cristaux d'insuline-zinc et au plus 0,40 milligramme de zinc dans le cas de l'injection insulinique autre que celle faite avec des cristaux d'insuline-zinc, et

**(iii)** dans le cas de l'injection insulinique autre que celle qui est faite avec cristaux d'insuline-zinc, au plus 1,0 milligramme de cendres.

DORS/82-769, art. 4; DORS/85-715, art. 7.

**C.04.554** Il est interdit de vendre de l'injection insulinique à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes;

**b)** que l'étiquette de la fiole n'indique que chaque centimètre cube a une activité égale à

**(i)** 40 unités internationales d'insuline,

**(ii)** 80 unités internationales d'insuline, ou

**(iii)** 100 unités internationales d'insuline; et

per cent of the potency indicated on the label as determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.555 (1)** A fabricator shall not sell Insulin Injection unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of insulin or zinc-insulin crystals employed in the manufacture of Insulin Injection

**(i)** protocols of assay of its potency expressed in International Units per cubic centimetre, in the case of insulin, and in International Units per milligram, in the case of zinc-insulin crystals,

**(ii)** a report of its moisture content in percentage determined by drying to constant weight at 100°C in the case of zinc-insulin crystals,

**(iii)** a report of the ash content in the case of insulin, and

**(iv)** reports of assay of its nitrogen content in milligrams and its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the first finished lot of Insulin Injection prepared from each master lot of insulin or zinc-insulin crystals, a report on the amount of each component thereof; and

**(c)** for the first filling of the first finished lot of Insulin Injection from each master lot of insulin or zinc-insulin crystals,

**(i)** a report of assay of its nitrogen content in milligrams per 1,000 International Units of insulin,

**(ii)** a report of assay of its zinc content in milligrams per 1,000 International Units of insulin, and

**c)** que chaque centimètre cube de ladite injection n'ait une activité réelle d'au moins 95 pour cent et n'excédant pas 105 pour cent de l'activité indiquée sur l'étiquette et déterminée par une méthode acceptable.

DORS/82-769, art. 4.

**C.04.555 (1)** Le manufacturier ne doit pas vendre d'injection insulinique à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot d'insuline ou de cristaux d'insuline-zinc, ayant servi à la fabrication de l'injection insulinique,

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube, dans le cas de l'insuline, et en unités internationales par milligramme, dans le cas des cristaux d'insuline-zinc,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, dans le cas des cristaux d'insuline-zinc,

**(iii)** un rapport de la teneur en cendres, dans le cas de l'insuline, et

**(iv)** des rapports de dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard du premier lot fini d'injection insulinique préparé avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc, un rapport sur la quantité de chaque composant entrant dans ladite injection; et,

**c)** à l'égard du premier remplissage du premier lot fini d'injection insulinique préparé avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(iii)** a report on the determination of its pH.

**(iv)** [Repealed, SOR/95-203, s. 2]

SOR/82-769, s. 4; SOR/95-203, s. 2; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**C.04.556** The expiration date printed on the inner and outer labels of every package of Insulin Injection shall be a date not later than two years after the date of removal for distribution from the fabricator's place of storage.

SOR/82-769, s. 4; SOR/97-12, s. 61.

## Insulin Zinc Suspension — Rapid

**C.04.557** The insulin preparation "Insulin Zinc Suspension — Rapid" shall be a sterile suspension in a buffered aqueous medium, of insulin modified by the addition of zinc in such a way that the suspended precipitate consists of amorphous material, shall have a pH of not less than 7.0 and not more than 7.8 and shall contain,

**(a)** weight by volume,

**(i)** not less than 0.15 per cent and not more than 0.17 per cent of sodium acetate ($NaC_2H_3O_2.3H_2O$),

**(ii)** not less than 0.65 per cent and not more than 0.75 per cent of sodium chloride, and

**(iii)** not less than 0.09 per cent and not more than 0.11 per cent of methyl-p-hydroxybenzoate; and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 7.0 milligrams of nitrogen; and

**(ii)** not less than 1.2 milligrams and not more than 2.5 milligrams of zinc, of which not less than 20 per cent and not more than 65 per cent shall be in the supernatant liquid.

SOR/80-545, s. 1; SOR/82-769, s. 4; SOR/85-715, s. 8.

**C.04.558** The insulin used in the preparation of Insulin Zinc Suspension — Rapid shall be obtained from one or more master lots and shall be present in an amount

**(i)** un rapport du dosage de la teneur en azote, en milligrammes par 1 000 unités internationales d'insuline,

**(ii)** un rapport du dosage de la teneur en zinc, en milligrammes par 1 000 unités internationales d'insuline,

**(iii)** un rapport sur la détermination du pH.

**(iv)** [Abrogé, DORS/95-203, art. 2]

DORS/82-769, art. 4; DORS/95-203, art. 2; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.556** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de chaque emballage d'injection insulinique ne doit pas dépasser deux ans après la date de retrait du lieu d'entreposage du manufacturier en vue de la distribution.

DORS/82-769, art. 4; DORS/97-12, art. 61.

## Suspension d'insuline-zinc d'absorption rapide

**C.04.557** La préparation insulinique appelée « Suspension d'insuline-zinc d'absorption rapide » doit être une suspension stérile, dans un milieu aqueux tamponné, d'insuline modifiée de telle façon par addition de zinc que le précipité en suspension soit une substance amorphe, doit avoir un pH d'au moins 7,0 et d'au plus 7,8 et doit renfermer,

**a)** en poids par volume,

**(i)** au moins 0,15 pour cent et au plus 0,17 pour cent d'acétate de sodium ($NaC_2H_3O_2,3H_2O$),

**(ii)** au moins 0,65 pour cent et au plus 0,75 pour cent de chlorure de sodium, et

**(iii)** au moins 0,09 pour cent et au plus 0,11 pour cent de p-hydroxybenzoate de méthyle; et

**b)** d'après une méthode acceptable, par 1 000 unités internationales d'insuline,

**(i)** au plus 7,0 milligrammes d'azote, et

**(ii)** au moins 1,2 milligrammes et au plus 2,5 milligrammes de zinc, dont au moins 20 pour cent et au plus 65 pour cent doivent être dans le liquide surnageant.

DORS/80-545, art. 1; DORS/82-769, art. 4; DORS/85-715, art. 8.

**C.04.558** L'insuline servant à la préparation de la suspension d'insuline-zinc d'absorption rapide doit provenir d'un ou de plusieurs maîtres-lots et doit être en quantité

sufficient to provide either 40, 80 or 100 International Units of insulin in each cubic centimetre of Insulin Zinc Suspension-Rapid when the precipitate is suspended uniformly.

SOR/82-769, s. 4.

**C.04.559** The clear supernatant liquid obtained from Insulin Zinc Suspension — Rapid shall contain not more than 1.0 International Unit of Insulin per cubic centimetre when the potency of the insulin preparation is 40 units per cubic centimetre, and not more than 1.5 International Units of insulin per cubic centimetre when the potency of the insulin preparation is either 80 units or 100 units per cubic centimetre, as determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.560** No person shall sell Insulin Zinc Suspension — Rapid unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres; and

**(b)** each cubic centimetre thereof provides, when the precipitate is suspended uniformly,

**(i)** 40 International Units of insulin,

**(ii)** 80 International Units of insulin, or

**(iii)** 100 International Units of insulin.

SOR/82-769, s. 4.

**C.04.561 (1)** A fabricator shall not sell Insulin Zinc Suspension — Rapid unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

suffisante pour fournir soit 40, soit 80, soit 100 unités internationales d'insuline par centimètre cube de suspension d'insuline-zinc d'absorption rapide, quand le précipité est répandu uniformément dans la suspension.

DORS/82-769, art. 4.

**C.04.559** Le liquide surnageant obtenu de la suspension d'insuline-zinc d'absorption rapide doit renfermer au plus 1,0 unité internationale d'insuline par centimètre cube, quand l'activité de la préparation insulinique est de 40 unités par centimètre cube, et au plus 1,5 unités internationales d'insuline par centimètre cube, quand l'activité de ladite préparation est de 80 ou 100 unités par centimètre cube, d'après une méthode acceptable.

DORS/82-769, art. 4.

**C.04.560** Il est interdit de vendre une suspension d'insuline-zinc d'absorption rapide à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite suspension ne fournisse, quand le précipité est répandu uniformément dans la suspension,

**(i)** 40 unités internationales d'insuline, ou

**(ii)** 80 unités internationales d'insuline, ou

**(iii)** 100 unités internationales d'insuline.

DORS/82-769, art. 4.

**C.04.561 (1)** Le manufacturier ne doit pas vendre une suspension d'insuline-zinc d'absorption rapide à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**(a)** for each master lot of insulin or zinc-insulin crystals employed in the manufacture of Insulin Zinc Suspension — Rapid,

**(i)** protocols of assay of its potency expressed in International Units per cubic centimetre in the case of insulin, and in International Units per milligram in the case of zinc-insulin crystals,

**(ii)** a report of its moisture content in percentage determined by drying to constant weight at 100°C in the case of zinc-insulin crystals, and

**(iii)** reports of assay of its nitrogen content in milligrams and its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the first finished lot of Insulin Zinc Suspension — Rapid prepared from each master lot of insulin or zinc-insulin crystals

**(i)** a report on the amount of each component used in the preparation,

**(ii)** a report of assay of its nitrogen content per 1,000 International Units of insulin,

**(iii)** a report of assay of its zinc content per 1,000 International Units of insulin,

**(iv)** a report of the insulin content in International Units per cubic centimetre of the supernatant liquid after removal of the suspended precipitate,

**(v)** a report of assay of the zinc content of the supernatant liquid after removal of the suspended precipitate,

**(vi)** a report on the determination of its pH, and

**(vii)** a report on the microscopic appearance of the suspended precipitate; and

**(c)** for the first filling of the first finished lot of Insulin Zinc Suspension — Rapid from each master lot of insulin or zinc-insulin crystals,

**(i)** a report on the determination of its pH,

**(ii)** a report on the microscopic examination of the precipitate, and

**(iii)** a report on its identification, as determined by an acceptable method.

**(iv)** [Repealed, SOR/95-203, s. 3]

SOR/82-769, s. 4; SOR/95-203, s. 3; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**a)** à l'égard de chaque maître-lot d'insuline ou de cristaux d'insuline-zinc, ayant servi à la fabrication de la suspension d'insuline-zinc d'absorption rapide,

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube, dans le cas de l'insuline, et en unités internationales par milligramme, dans le cas des cristaux d'insuline-zinc,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, dans le cas des cristaux d'insuline-zinc, et

**(iii)** des rapports du dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard du premier lot fini de suspension d'insuline-zinc d'absorption rapide préparé avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(i)** un rapport sur la quantité de chaque composant entrant dans la préparation,

**(ii)** un rapport du dosage de la teneur en azote par 1 000 unités internationales d'insuline,

**(iii)** un rapport du dosage de la teneur en zinc par 1 000 unités internationales d'insuline,

**(iv)** un rapport de la teneur en insuline en unités internationales par centimètre cube du liquide surnageant après élimination du précipité en suspension,

**(v)** un rapport du dosage de la teneur en zinc du liquide surnageant, après élimination du précipité en suspension,

**(vi)** un rapport sur la détermination du pH, et

**(vii)** un rapport sur l'apparence au microscope du précipité en suspension; et,

**c)** à l'égard du premier remplissage du premier lot fini de suspension d'insuline-zinc d'absorption rapide préparé avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(i)** un rapport sur la détermination du pH,

**(ii)** un rapport sur l'examen du précipité au microscope,

**C.04.562** The expiration date printed on the inner and outer labels of every package of Insulin Zinc Suspension — Rapid shall be a date not later than two years after the date of filling of the immediate container.

SOR/82-769, s. 4.

## Insulin Zinc Suspension — Medium

**C.04.563** The insulin preparation "Insulin Zinc Suspension — Medium" shall be a sterile suspension, in a buffered aqueous medium, of insulin modified by the addition of zinc in such a way that the suspended precipitate consists of a mixture of crystals and amorphous material in an approximate ratio of seven parts of crystals to three parts of amorphous material, shall have a pH of not less than 7.0 and not more than 7.8 and shall contain,

**(a)** weight by volume,

**(i)** not less than 0.15 per cent and not more than 0.17 per cent of sodium acetate ($NaC_2H_3O_2.3H_2O$),

**(ii)** not less than 0.65 per cent and not more than 0.75 per cent of sodium chloride, and

**(iii)** not less than 0.09 per cent and not more than 0.11 per cent of methyl-p-hydroxybenzoate; and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 7.0 milligrams of nitrogen of which not less than 63 per cent and not more than 73 per cent shall be in the crystalline component, and

**(ii)** not less than 1.2 milligrams and not more than 2.5 milligrams of zinc, of which not less than 20 per cent and not more than 65 per cent shall be in the supernatant liquid.

SOR/80-545, s. 2; SOR/82-769, s. 4; SOR/85-715, s. 9; SOR/88-323, s. 7.

**C.04.564** The insulin used in the preparation of Insulin Zinc Suspension — Medium shall be obtained from one or more master lots and shall be present in an amount sufficient to provide either 40, 80 or 100 International

**(iii)** un rapport sur son identification faite d'après une méthode acceptable.

**(iv)** [Abrogé, DORS/95-203, art. 3]

DORS/82-769, art. 4; DORS/95-203, art. 3; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.562** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de chaque emballage de suspension d'insuline-zinc d'absorption rapide ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/82-769, art. 4.

## Suspension d'insuline-zinc d'absorption moyenne

**C.04.563** La préparation insulinique appelée « Suspension d'insuline-zinc d'absorption moyenne » doit être une suspension stérile, dans un milieu aqueux tamponné, d'insuline modifiée de telle façon par addition de zinc que le précipité en suspension soit un mélange de cristaux et de substance amorphe dans une proportion approximative de sept parties de cristaux pour trois parties de substance amorphe, doit avoir un pH d'au moins 7,0 et d'au plus 7,8 et doit renfermer,

**a)** en poids par volume,

**(i)** au moins 0,15 pour cent et au plus 0,17 pour cent d'acétate de sodium ($NaC_2H_3O_2,3H_2O$),

**(ii)** au moins 0,65 pour cent et au plus 0,75 pour cent de chlorure de sodium, et,

**(iii)** au moins 0,09 pour cent et au plus 0,11 pour cent de p-hydroxybenzoate de méthyle; et,

**b)** d'après une méthode acceptable, par 1 000 unités internationales d'insuline,

**(i)** au plus 7,0 milligrammes d'azote dont au moins 63 pour cent et au plus 73 pour cent doivent être dans le composant cristallin, et

**(ii)** au moins 1,2 milligrammes et au plus 2,5 milligrammes de zinc, dont au moins 20 pour cent et au plus 65 pour cent doivent être dans le liquide surnageant.

DORS/80-545, art. 2; DORS/82-769, art. 4; DORS/85-715, art. 9; DORS/88-323, art. 7.

**C.04.564** L'insuline servant à la préparation de la suspension d'insuline-zinc d'absorption moyenne doit provenir d'un ou de plusieurs maîtres-lots et doit être en quantité suffisante pour fournir soit 40, soit 80, soit 100 unités internationales d'insuline par centimètre cube

Units of insulin in each cubic centimetre of the preparation when the precipitate is suspended uniformly.

SOR/82-769, s. 4.

**C.04.565** The clear supernatant liquid obtained from Insulin Zinc Suspension — Medium shall contain not more than 1.0 International Unit of insulin per cubic centimetre when the potency of the insulin preparation is 40 units per cubic centimetre, and not more than 1.5 International Units of insulin per cubic centimetre when the potency of the insulin preparation is either 80 units or 100 units per cubic centimetre, as determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.566** No person shall sell Insulin Zinc Suspension-Medium unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres; and

**(b)** each cubic centimetre thereof provides, when the precipitate is suspended uniformly,

**(i)** 40 International Units of insulin,

**(ii)** 80 International Units of insulin, or

**(iii)** 100 International Units of insulin.

SOR/82-769, s. 4.

**C.04.567 (1)** A fabricator shall not sell Insulin Zinc Suspension-Medium unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of insulin or zinc-insulin crystals employed in the manufacture of Insulin Zinc Suspension-Medium,

de la préparation, quand le précipité est répandu uniformément dans la suspension.

DORS/82-769, art. 4.

**C.04.565** Le liquide limpide surnageant obtenu de la suspension d'insuline-zinc d'absorption moyenne doit renfermer au plus 1,0 unité internationale d'insuline par centimètre cube, quand l'activité de la préparation insulinique est de 40 unités par centimètre cube, et au plus 1,5 unités internationales d'insuline par centimètre cube, quand l'activité de ladite préparation est de 80 ou 100 unités par centimètre cube, d'après une méthode acceptable.

DORS/82-769, art. 4.

**C.04.566** Il est interdit de vendre une suspension d'insuline-zinc d'absorption moyenne à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite suspension ne fournisse, quand le précipité est répandu uniformément dans la suspension,

**(i)** 40 unités internationales d'insuline,

**(ii)** 80 unités internationales d'insuline, ou

**(iii)** 100 unités internationales d'insuline.

DORS/82-769, art. 4.

**C.04.567 (1)** Le manufacturier ne doit pas vendre une suspension d'insuline-zinc d'absorption moyenne à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot d'insuline ou de cristaux d'insuline-zinc ayant servi à la fabrication d'une suspension insuline-zinc d'absorption moyenne,

**(i)** protocols of assay of its potency expressed in International Units per cubic centimetre in the case of insulin, and in International Units per milligram in the case of zinc-insulin crystals,

**(ii)** a report of its moisture content in percentage determined by drying to constant weight at 100°C in the case of zinc-insulin crystals, and

**(iii)** reports of assay of its nitrogen content in milligrams and its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the first finished lot of Insulin Zinc Suspension-Medium prepared from each master lot of insulin or zinc-insulin crystals,

**(i)** a report on the amount of each component used in the preparation,

**(ii)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(iii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(iv)** a report of the insulin content, in International Units per cubic centimetre, of the supernatant liquid after removal of the suspended precipitate,

**(v)** a report on the determination of the proportion of the nitrogen in the crystalline component of the suspended precipitate,

**(vi)** a report of assay of the zinc content of the supernatant liquid after removal of the suspended precipitate,

**(vii)** a report on the determination of its pH, and

**(viii)** a report on the microscopic appearance of the suspended precipitate; and

**(c)** for the first filling of the first finished lot of Insulin Zinc Suspension — Medium from each master lot of insulin or zinc-insulin crystals,

**(i)** a report on the determination of its pH,

**(ii)** a report on the microscopic examination of the precipitate, and

**(iii)** a report on its identification as determined by an acceptable method.

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube, dans le cas de l'insuline, et en unités internationales par milligramme, dans le cas des cristaux d'insuline-zinc,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, dans le cas des cristaux d'insuline-zinc, et

**(iii)** des rapports du dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard du premier lot fini de suspension d'insuline-zinc d'absorption moyenne préparée avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(i)** un rapport sur la quantité de chaque composant entrant dans la préparation,

**(ii)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iv)** un rapport de la teneur en insuline du liquide surnageant après élimination du précipité en suspension, exprimée en unités internationales par centimètre cube,

**(v)** un rapport sur la détermination de la proportion d'azote dans le composant cristallin du précipité en suspension,

**(vi)** un rapport du dosage de la teneur en zinc du liquide surnageant après élimination du précipité en suspension,

**(vii)** un rapport sur la détermination du pH, et

**(viii)** un rapport sur l'apparence au microscope du précipité en suspension; et,

**c)** à l'égard du premier remplissage du premier lot fini de suspension d'insuline-zinc d'absorption moyenne préparé avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(i)** un rapport sur la détermination du pH,

**(iv)** [Repealed, SOR/95-203, s. 4]

SOR/82-769, s. 4; SOR/95-203, s. 4; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**C.04.568** The expiration date printed on the inner and outer labels of Insulin Zinc Suspension — Medium shall be a date not later than two years after the date of filling of the immediate container.

SOR/82-769, s. 4.

## Insulin Zinc Suspension — Prolonged

**C.04.569** The insulin preparation "Insulin Zinc Suspension — Prolonged" shall be a sterile suspension in a buffered aqueous medium of insulin modified by the addition of zinc in such a way that the suspended precipitate consists of crystals with not more than a trace of amorphous material, shall have a pH of not less than 7.0 and not more than 7.8 and shall contain

**(a)** weight by volume,

**(i)** not less than 0.15 per cent and not more than 0.17 per cent of sodium acetate ($NaC_2H_3O_2.3H_2O$),

**(ii)** not less than 0.65 per cent and not more than 0.75 per cent of sodium chloride, and

**(iii)** not less than 0.09 per cent and not more than 0.11 per cent of methyl-p-hydroxybenzoate; and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 7.0 milligrams of nitrogen, of which not less than 90 per cent shall be in the crystalline component, and

**(ii)** not less than 1.2 milligrams and not more than 2.5 milligrams of zinc, of which not less than 20 per cent and not more than 65 per cent shall be in the supernatant liquid.

SOR/80-545, s. 3; SOR/82-769, s. 4; SOR/85-715, s. 10.

**C.04.570** The insulin used in the preparation of Insulin Zinc Suspension — Prolonged shall be obtained from one or more master lots and shall be present in an amount sufficient to provide either 40, 80 or 100 International

**(ii)** un rapport sur l'examen du précipité au microscope,

**(iii)** un rapport sur son identification faite d'après une méthode acceptable.

**(iv)** [Abrogé, DORS/95-203, art. 4]

DORS/82-769, art. 4; DORS/95-203, art. 4; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.568** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de la suspension d'insuline-zinc d'absorption moyenne ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/82-769, art. 4.

## Suspension d'insuline-zinc d'absorption prolongée

**C.04.569** La préparation insulinique appelée « Suspension d'insuline-zinc d'absorption prolongée » doit être une suspension stérile, dans un milieu aqueux tamponné, d'insuline modifiée de telle façon par addition de zinc que le précipité en suspension consiste en cristaux et ne contienne au plus qu'une quantité infime de substance amorphe, doit avoir un pH d'au moins 7,0 et d'au plus 7,8 et doit renfermer,

**a)** en poids par volume,

**(i)** au moins 0,15 pour cent et au plus 0,17 pour cent d'acétate de sodium ($NaC_2H_3O_2,3H_2O$),

**(ii)** au moins 0,65 pour cent et au plus 0,75 pour cent de chlorure de sodium, et

**(iii)** au moins 0,09 pour cent et au plus 0,11 pour cent de p-hydroxybenzoate de méthyle; et,

**b)** d'après une méthode acceptable, pour 1 000 unités internationales d'insuline,

**(i)** au plus 7,0 milligrammes d'azote dont au moins 90 pour cent doivent être dans le composant cristallin, et

**(ii)** au moins 1,2 milligrammes et au plus 2,5 milligrammes de zinc, dont au moins 20 pour cent et au plus 65 pour cent doivent être dans le liquide surnageant.

DORS/80-545, art. 3; DORS/82-769, art. 4; DORS/85-715, art. 10.

**C.04.570** L'insuline servant à la préparation de la suspension d'insuline-zinc d'absorption prolongée doit provenir d'un ou de plusieurs maîtres-lots et doit être en quantité suffisante pour fournir soit 40, soit 80, soit

Units of insulin in each cubic centimetre of the preparation when the precipitate is suspended uniformly.

SOR/82-769, s. 4.

**C.04.571** The clear supernatant liquid obtained from Insulin Zinc Suspension — Prolonged shall contain not more than 1.0 International Unit of insulin per cubic centimetre when the potency of the insulin preparation is 40 units per cubic centimetre, and not more than 1.5 International Units of insulin per cubic centimetre when the potency of the insulin preparation is either 80 units or 100 units per cubic centimetre, as determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.572** No person shall sell Insulin Zinc Suspension — Prolonged unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres; and

**(b)** each cubic centimetre thereof provides, when the precipitate is suspended uniformly,

**(i)** 40 International Units of insulin,

**(ii)** 80 International Units of insulin, or

**(iii)** 100 International Units of insulin.

SOR/82-769, s. 4.

**C.04.573 (1)** A fabricator shall not sell Insulin Zinc Suspension — Prolonged unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of insulin or zinc-insulin crystals employed in the manufacture of Insulin Zinc Suspension — Prolonged,

100 unités internationales d'insuline par centimètre cube de la préparation, quand le précipité est répandu uniformément dans la suspension.

DORS/82-769, art. 4.

**C.04.571** Le liquide limpide surnageant obtenu de la suspension d'insuline-zinc d'absorption prolongée doit renfermer au plus 1,0 unité internationale d'insuline par centimètre cube, quand l'activité de la préparation insulinique est de 40 unités par centimètre cube et au plus 1,5 unités internationales d'insuline par centimètre cube, quand l'activité de ladite préparation est de 80 ou 100 unités par centimètre cube, d'après une méthode acceptable.

DORS/82-769, art. 4.

**C.04.572** Il est interdit de vendre une suspension d'insuline-zinc d'absorption prolongée à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite suspension ne fournisse, quand le précipité est répandu uniformément dans la suspension,

**(i)** 40 unités internationales d'insuline,

**(ii)** 80 unités internationales d'insuline, ou

**(iii)** 100 unités internationales d'insuline.

DORS/82-769, art. 4.

**C.04.573 (1)** Le manufacturier ne doit pas vendre une suspension d'insuline-zinc d'absorption prolongée à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot d'insuline ou de cristaux d'insuline-zinc ayant servi à la fabrication de la suspension d'insuline-zinc d'absorption prolongée,

**(i)** protocols of assay of its potency expressed in International Units per cubic centimetre in the case of insulin, and in International Units per milligram in the case of zinc-insulin crystals,

**(ii)** a report of its moisture content in percentage determined by drying to constant weight at 100°C in the case of zinc-insulin crystals, and

**(iii)** reports of assay of the nitrogen content in milligrams and of its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the first finished lot of Insulin Zinc Suspension — Prolonged prepared from each master lot of insulin or zinc-insulin crystals,

**(i)** a report on the amount of each component used in the preparation,

**(ii)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(iii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(iv)** a report of the insulin content, in International Units per cubic centimetre, of the supernatant liquid after removal of the suspended precipitate,

**(v)** a report of the determination of the proportion of the nitrogen in the crystalline component of the suspended precipitate,

**(vi)** a report of assay of the zinc content of the supernatant liquid after removal of the suspended precipitate,

**(vii)** a report on the determination of its pH, and

**(viii)** a report on the microscopic appearance of the suspended precipitate; and

**(c)** for the first filling of the first finished lot of Insulin Zinc Suspension — Prolonged from each master lot of insulin or zinc-insulin crystals,

**(i)** a report on the determination of its pH,

**(ii)** a report on the microscopic examination of the precipitate, and

**(iii)** a report on its identification as determined by an acceptable method.

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube, dans le cas de l'insuline, et en unités internationales par milligramme, dans le cas des cristaux d'insuline-zinc,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, dans le cas des cristaux d'insuline-zinc, et

**(iii)** des rapports du dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard du premier lot fini de suspension d'insuline-zinc d'absorption prolongée préparé avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(i)** un rapport sur la quantité de chaque composant entrant dans la préparation,

**(ii)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iv)** un rapport de la teneur en insuline du liquide surnageant après élimination du précipité en suspension, exprimé en unités internationales par centimètre cube,

**(v)** un rapport sur la détermination de la proportion de l'azote dans le composant cristallin du précipité en suspension,

**(vi)** un rapport du dosage de la teneur en zinc du liquide surnageant après élimination du précipité en suspension,

**(vii)** un rapport sur la détermination du pH, et

**(viii)** un rapport sur l'apparence au microscope du précipité en suspension; et,

**c)** à l'égard du premier remplissage du premier lot fini de suspension d'insuline-zinc d'absorption prolongée préparée avec chaque maître-lot d'insuline ou de cristaux d'insuline-zinc,

**(i)** un rapport sur la détermination du pH,

**(iv)** [Repealed, SOR/95-203, s. 5]

SOR/82-769, s. 4; SOR/95-203, s. 5; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**C.04.574** The expiration date printed on the inner and outer labels of every package of Insulin Zinc Suspension — Prolonged shall be a date not later than two years after the date of filling of the immediate container.

SOR/82-769, s. 4.

## Globin Insulin with Zinc

**C.04.575** The insulin preparation **"Globin Insulin with Zinc"** shall be a sterile solution of insulin modified by the addition of globin prepared from beef blood, in the form of globin hydrochloride, and zinc, shall be a clear, yellowish, or almost colourless liquid free from insoluble matter and acceptably free from turbidity, shall have a pH of not less than 3.4 and not more than 3.8 and shall contain,

**(a)** weight by volume, not less than 1.3 per cent and not more than 1.7 per cent glycerin, and either

**(i)** not less than 0.15 per cent and not more than 0.20 per cent cresol, or

**(ii)** not less than 0.20 per cent and not more than 0.26 per cent phenol, and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 15.0 milligrams of total nitrogen,

**(ii)** not less than 36.0 milligrams and not more than 40.0 milligrams of globin calculated as 6.0 times the nitrogen content of the globin, and

**(iii)** not less than 2.5 milligrams and not more than 3.5 milligrams of zinc.

SOR/82-769, s. 4.

**C.04.576** The globin hydrochloride used in the preparation of Globin Insulin with Zinc shall contain not less than 16.0 per cent and not more than 17.5 per cent nitrogen calculated on a dry, ash-free and hydrochloric acid-free basis, and its ash content shall be not more than 0.3 per cent as determined by an acceptable method.

SOR/82-769, s. 4.

**(ii)** un rapport sur l'examen du précipité au microscope,

**(iii)** un rapport sur son identification faite d'après une méthode acceptable.

**(iv)** [Abrogé, DORS/95-203, art. 5]

DORS/82-769, art. 4; DORS/95-203, art. 5; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.574** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de chaque emballage de suspension d'insuline-zinc d'absorption prolongée, ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/82-769, art. 4.

## Insuline-globine avec zinc

**C.04.575** La préparation insulinique appelée **insuline-globine avec zinc** doit être une solution stérile d'insuline modifiée par addition de globine préparée avec du sang de bœuf, sous forme de chlorhydrate de globine, et de zinc; cette préparation doit être un liquide limpide, jaunâtre ou presque incolore, exempt de matière insoluble et suffisamment exempt de turbidité, avoir un pH d'au moins 3,4 et d'au plus 3,8 et doit renfermer,

**a)** en poids par volume, au moins 1,3 pour cent et au plus 1,7 pour cent de glycérine, et,

**(i)** soit au moins 0,15 pour cent et au plus 0,20 pour cent de crésol,

**(ii)** soit au moins 0,20 pour cent et au plus 0,26 pour cent de phénol; et,

**b)** d'après une méthode acceptable, pour 1 000 unités internationales d'insuline,

**(i)** au plus 15,0 milligrammes d'azote total,

**(ii)** au moins 36,0 milligrammes et au plus 40,0 milligrammes de globine, calculée à 6,0 fois la teneur en azote de globine, et

**(iii)** au moins 2,5 milligrammes et au plus 3,5 milligrammes de zinc.

DORS/82-769, art. 4.

**C.04.576** Le chlorhydrate de globine servant à la préparation de l'insuline-globine avec zinc doit renfermer au moins 16,0 pour cent et au plus 17,5 pour cent d'azote, calculée sur la matière desséchée, exempte de cendres et d'acide chlorhydrique, et ne doit pas avoir une teneur en

**C.04.577** The insulin used in the preparation of Globin Insulin with Zinc shall be obtained from one or more master lots and shall be present in an amount sufficient to provide either 40 or 80 International Units of insulin in each cubic centimetre of the Globin Insulin with Zinc.

SOR/82-769, s. 4.

**C.04.578 (1)** The Canadian Reference Standard for Globin Insulin with Zinc shall be the standard adopted therefor by the Minister from time to time.

**(2)** Upon application of a person who holds an establishment licence, the Minister shall furnish him with a portion of the Canadian Reference Standard with directions for comparative testing.

**(3)** The testing of the biological reaction of Globin Insulin with Zinc shall be made by an acceptable method and that biological reaction shall be comparable to the biological reaction of the portion of the Canadian Reference Standard furnished by the Minister.

SOR/82-769, s. 4; SOR/97-12, s. 64; SOR/2018-69, ss. 31(E), 32(F).

**C.04.579** No person shall sell Globin Insulin with Zinc unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres; and

**(b)** each cubic centimetre thereof provides,

**(i)** 40 International Units of insulin, or

**(ii)** 80 International Units of insulin.

SOR/82-769, s. 4.

**C.04.580 (1)** A fabricator shall not sell Globin Insulin with Zinc unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

cendres de plus de 0,3 pour cent, d'après une méthode acceptable.

DORS/82-769, art. 4.

**C.04.577** L'insuline servant à la préparation de l'insuline-globine avec zinc doit provenir d'un ou de plusieurs maîtres-lots et doit être en quantité suffisante pour fournir soit 40, soit 80 unités internationales d'insuline par centimètre cube d'insuline-globine avec zinc.

DORS/82-769, art. 4.

**C.04.578 (1)** L'étalon canadien pour l'insuline-globine avec zinc doit être l'étalon adopté de temps à autre par le ministre pour ladite préparation.

**(2)** À la demande du titulaire de licence d'établissement, le ministre doit lui procurer un échantillon de l'étalon canadien et les directives nécessaires pour faire des essais comparatifs.

**(3)** L'essai de la réaction biologique de l'insuline-globine avec zinc doit être fait suivant une méthode acceptable et cette réaction biologique doit être comparable à la réaction biologique de l'échantillon et l'étalon canadien procuré par le ministre.

DORS/82-769, art. 4; DORS/97-12, art. 64; DORS/2018-69, art. 31(A) et 32(F).

**C.04.579** Il est interdit de vendre de l'insuline-globine avec zinc à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite insuline-globine ne fournisse

**(i)** 40 unités internationales d'insuline, ou

**(ii)** 80 unités internationales d'insuline.

DORS/82-769, art. 4.

**C.04.580 (1)** Le manufacturier ne doit pas vendre de l'insuline-globine avec zinc à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of insulin or zinc-insulin crystals employed in the manufacture of Globin Insulin with Zinc,

**(i)** protocols of assay of its potency expressed in International Units per cubic centimetre in the case of insulin, and in International Units per milligram in the case of zinc-insulin crystals,

**(ii)** a report of its moisture content in percentage determined by drying to constant weight at 100°C in the case of zinc-insulin crystals, and

**(iii)** reports of assay of its nitrogen content in milligrams and its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the master lot of globin hydrochloride used in the preparation of Globin Insulin with Zinc, reports of assay of

**(i)** its nitrogen content in per cent calculated on a dry, ash-free and hydrochloric acid free basis,

**(ii)** its chloride content in per cent calculated as hydrochloride, and

**(iii)** its ash content in percentage;

**(c)** for the components used in the preparation of the trial mixture of Globin Insulin with Zinc, a report on the quantity of

**(i)** insulin in grams, or in International Units,

**(ii)** zinc in grams, or in milligrams, per 1,000 International Units of insulin,

**(iii)** globin hydrochloride in grams or in milligrams, per 1,000 International Units of insulin, and

**(iv)** the volume of the preparation in cubic centimetres or litres;

**(d)** for the trial mixture of Globin Insulin with Zinc,

**(i)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(ii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot d'insuline ou de cristaux d'insuline-zinc ayant servi à la fabrication de l'insuline-globine avec zinc,

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube, dans le cas de l'insuline, et en unités internationales par milligramme, dans le cas des cristaux d'insuline-zinc,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, dans le cas des cristaux d'insuline-zinc, et

**(iii)** des rapports du dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard du maître-lot de chlorhydrate de globine ayant servi à la préparation de l'insuline-globine avec zinc, des rapports de dosage de

**(i)** la teneur en azote exprimée en pourcentage et calculée sur la matière desséchée et exempte de cendres et d'acide chlorhydrique,

**(ii)** la teneur en chlorure exprimée en pourcentage et calculée comme chlorhydrate, et

**(iii)** la teneur en cendres, exprimée en pourcentage;

**c)** à l'égard des composants ayant servi à la préparation du mélange d'essai de l'insuline-globine avec zinc, un rapport sur

**(i)** la quantité d'insuline, en grammes ou en unités internationales,

**(ii)** la quantité de zinc, en grammes ou en milligrammes, par 1 000 unités internationales d'insuline,

**(iii)** la quantité de chlorhydrate de globine, en grammes ou en milligrammes, par 1 000 unités internationales d'insuline, et

**(iv)** le volume de la préparation, en centimètres cubes ou en litres;

**d)** à l'égard du mélange d'essai de l'insuline-globine avec zinc,

**(iii)** protocols of the biological reaction showing the retardation of the insulin effect, and

**(iv)** a report on the determination of its pH;

**(e)** for the first finished lot of Globin Insulin with Zinc from each trial mixture of Globin Insulin with Zinc, a report on the amount of each component in the preparation; and

**(f)** for the first filling of the first finished lot of Globin Insulin with Zinc from each trial mixture of Globin Insulin with Zinc,

**(i)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(ii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units of insulin, and

**(iii)** a report on the determination of its pH.

**(iv)** [Repealed, SOR/95-203, s. 6]

SOR/82-769, s. 4; SOR/95-203, s. 6; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**(i)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(ii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** les protocoles de la réaction biologique montrant le retardement de l'effet insulinique, et

**(iv)** un rapport sur la détermination du pH;

**e)** à l'égard du premier lot fini d'insuline-globine avec zinc préparée avec chaque mélange d'essai de l'insuline-globine avec zinc, un rapport sur la quantité de chaque composant entrant dans la préparation; et,

**f)** à l'égard du premier remplissage du premier lot fini d'insuline-globine avec zinc préparée avec chaque mélange d'essai de l'insuline-globine avec zinc,

**(i)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(ii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** un rapport sur la détermination du pH.

**(iv)** [Abrogé, DORS/95-203, art. 6]

DORS/82-769, art. 4: DORS/95-203, art. 6; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.581** The expiration date printed on the inner and outer labels of every package of Globin Insulin with Zinc shall be a date not later than two years after the date of filling of the immediate container.

SOR/82-769, s. 4.

**C.04.581** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de chaque emballage d'insuline-globine avec zinc ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/82-769, art. 4.

## NPH Insulin or Isophane Insulin

**C.04.582** The insulin preparation "NPH Insulin" or "Isophane Insulin" shall be a sterile preparation of rod-shaped crystals containing insulin, protamine and zinc, suspended in a buffered aqueous medium, shall have a pH of not less than 7.0 and not more than 7.8 and shall contain

**(a)** weight by volume, not less than 0.15 per cent and not more than 0.25 per cent anhydrous disodium phosphate, and either

**(i)** not less than 1.4 per cent and not more than 1.8 per cent glycerin and not less than 0.15 per cent and

## Insuline NPH ou insuline isophane

**C.04.582** La préparation insulinique appelée « Insuline NPH ou insuline isophane » doit être une préparation stérile de cristaux en forme de bâtonnets renfermant de l'insuline, de la protamine et du zinc en suspension dans un milieu aqueux tamponné, doit avoir un pH d'au moins 7,0 et d'au plus 7,8 et doit renfermer,

**a)** en poids par volume, au moins 0,15 pour cent et au plus 0,25 pour cent de phosphate disodique anhydre et,

**(i)** soit au moins 1,4 pour cent et au plus 1,8 pour cent de glycérine, au moins 0,15 pour cent et au

not more than 0.17 per cent metacresol and not less than 0.06 and not more than 0.07 per cent phenol, or

**(ii)** not less than 0.40 per cent and not more than 0.45 per cent sodium chloride and not less than 0.7 per cent and not more than 0.9 per cent glycerin and not less than 0.18 per cent and not more than 0.22 per cent metacresol; and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 8.5 milligrams of nitrogen,

**(ii)** not less than 3.0 milligrams and not more than 6.0 milligrams of protamine except that the ratio of the protamine to the insulin shall be not less than the isophane ratio and shall not exceed the isophane ratio by more than 10 per cent,

**(iii)** not less than 0.16 milligram and not more than 0.40 milligram of zinc, and

**(iv)** no protease activity significant for the stability of NPH insulin.

SOR/82-769, s. 4; SOR/85-715, s. 11.

plus 0,17 pour cent de métacrésol et au moins 0,06 pour cent et au plus 0,07 pour cent de phénol,

**(ii)** soit au moins 0,40 pour cent et au plus 0,45 pour cent de chlorure de sodium, au moins 0,7 pour cent et au plus 0,9 pour cent de glycérine et au moins 0,18 pour cent et au plus 0,22 pour cent de métacrésol; et,

**b)** d'après une méthode acceptable, par 1 000 unités internationales d'insuline,

**(i)** au plus 8,5 milligrammes d'azote,

**(ii)** au moins 3,0 milligrammes et au plus 6,0 milligrammes de protamine, sous réserve que le rapport de la protamine à l'insuline ne doit pas être inférieur au rapport isophane et qu'il ne doit pas dépasser le rapport isophane de plus de 10 pour cent, et,

**(iii)** au moins 0,10 milligramme et au plus 0,40 milligramme de zinc, et

**(iv)** aucune activité protéasique importante pour la stabilité de l'insuline NPH.

DORS/82-769, art. 4; DORS/85-715, art. 11.

**C.04.583** The protamine used in preparing NPH Insulin shall be obtained from the sperm or from the mature testes of fish belonging to the family *Salmonidae*, genera *Oncorhynchus* Suckley, or *Salmo* Linne.

SOR/82-769, s. 4.

**C.04.583** La protamine servant à la préparation de l'insuline NPH doit provenir du sperme ou des testicules arrivés à maturité de poissons appartenant à la famille *Salmonidae*, genre *Oncorhynchus* Suckley ou *Salmo* Linné.

DORS/82-769, art. 4.

**C.04.584** The ***isophane ratio*** means the minimum number of milligrams of protamine required to precipitate 100 International Units of insulin and shall be determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.584** ***Rapport isophane*** signifie le nombre minimum de milligrammes de protamine requis pour précipiter 100 unités internationales d'insuline et doit être déterminé par une méthode acceptable.

DORS/82-769, art. 4.

**C.04.585** The insulin used in the preparation of NPH Insulin shall be obtained from one or more master lots and shall be present in an amount sufficient to provide either 40, 80 or 100 International Units of insulin in each cubic centimetre of the preparation when the precipitate is suspended uniformly.

SOR/82-769, s. 4.

**C.04.585** L'insuline servant à la préparation de l'insuline NPH doit provenir d'un ou de plusieurs maîtres-lots et doit être en quantité suffisante pour fournir soit 40, soit 80, soit 100 unités internationales d'insuline par centimètre cube de la préparation, quand le précipité est répandu uniformément dans la suspension.

DORS/82-769, art. 4.

**C.04.586** The clear supernatant liquid obtained from NPH insulin shall contain not more than 0.4 International Units of insulin per cubic centimetre when the potency of the insulin preparation is 40 units per cubic centimetre, not more than 0.6 International Units of insulin per cubic centimetre when the potency of the insulin preparation is 80 units per cubic centimetre and not more than 0.7 International Units of insulin per cubic centimetre when the potency of the insulin preparation is 100 units

**C.04.586** Le liquide limpide surnageant obtenu de l'insuline NPH doit renfermer au plus 0,4 unité internationale d'insuline par centimètre cube, quand l'activité de la préparation insulinique est de 40 unités par centimètre cube, au plus 0,6 unité internationale d'insuline par centimètre cube, quand l'activité de ladite préparation est de 80 unités par centimètre cube, et au plus 0,7 unité internationale d'insuline par centimètre cube, quand l'activité

per cubic centimetre, as determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.587** No person shall sell NPH Insulin unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres; and

**(b)** each cubic centimetre thereof provides,

**(i)** 40 International Units of insulin,

**(ii)** 80 International Units of insulin, or

**(iii)** 100 International Units of insulin.

SOR/82-769, s. 4.

**C.04.588 (1)** A fabricator shall not sell NPH Insulin unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of zinc-insulin crystals employed in the manufacture of NPH Insulin,

**(i)** protocols of assay of its potency in International Units per milligram,

**(ii)** a report of its moisture content in per cent determined by drying to constant weight at 100°C, and

**(iii)** reports of assay of its nitrogen content in milligrams and its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the master lot of protamine, a report of the isophane ratio for the insulin used in the preparation of the NPH Insulin;

de ladite préparation est de 100 unités par centimètre cube, d'après une méthode acceptable.

DORS/82-769, art. 4.

**C.04.587** Il est interdit de vendre de l'insuline NPH à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite insuline ne fournisse

**(i)** 40 unités internationales d'insuline,

**(ii)** 80 unités internationales d'insuline, ou

**(iii)** 100 unités internationales d'insuline.

DORS/82-769, art. 4.

**C.04.588 (1)** Le manufacturier ne doit pas vendre de l'insuline NPH à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot de cristaux d'insuline-zinc ayant servi à la fabrication de l'insuline NPH,

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par milligramme,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, et

**(iii)** des rapports du dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard du maître-lot de protamine, une déclaration du rapport isophane pour l'insuline ayant servi à la préparation de l'insuline NPH;

**(c)** for the trial mixture of NPH Insulin,

**(i)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(ii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(iii)** a report of the insulin content in International Units per cubic centimetre of the supernatant liquid after removal of the suspended precipitate,

**(iv)** a report on the determination of its pH, and

**(v)** a report on the microscopic examination of the precipitate;

**(d)** for the first finished lot of NPH Insulin from each trial mixture of NPH Insulin, a report on the amount of each component in the preparation; and

**(e)** for the first filling of the first finished lot of NPH Insulin from each trial mixture of NPH Insulin,

**(i)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(ii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(iii)** a report on the determination of its pH,

**(iv)** a report on the microscopic examination of the precipitate, and

**(v)** a report of its identification as determined by an acceptable method.

**(vi)** [Repealed, SOR/95-203, s. 7]

SOR/82-769, s. 4; SOR/95-203, s. 7; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**C.04.589** The expiration date printed on the inner and outer labels of NPH Insulin shall be a date not later than two years after the date of filling of the immediate container.

SOR/82-769, s. 4.

**c)** à l'égard du mélange d'essai d'insuline NPH,

**(i)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(ii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** un rapport de la teneur en insuline exprimée en unités internationales par centimètre cube du liquide surnageant après élimination du précipité en suspension,

**(iv)** un rapport sur la détermination du pH, et

**(v)** un rapport sur l'examen du précipité au microscope;

**d)** à l'égard du premier lot fini d'insuline NPH préparée avec chaque mélange d'essai d'insuline NPH, un rapport sur la quantité de chaque composant entrant dans la préparation; et,

**e)** à l'égard du premier remplissage du premier lot fini d'insuline NPH préparée avec chaque mélange d'essai d'insuline NPH,

**(i)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(ii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** un rapport sur la détermination du pH,

**(iv)** un rapport sur l'examen du précipité au microscope,

**(v)** un rapport sur l'identification faite d'après une méthode acceptable.

**(vi)** [Abrogé, DORS/95-203, art. 7]

DORS/82-769, art. 4; DORS/95-203, art. 7; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.589** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de l'insuline NPH ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/82-769, art. 4.

## Protamine Zinc Insulin

**C.04.590** The insulin preparation **"Protamine Zinc Insulin"** shall be a sterile white suspension in a buffered aqueous medium, containing insulin modified by the addition of protamine and zinc, shall have a pH of not less than 7.1 and not more than 7.4, and shall contain,

**(a)** weight by volume,

**(i)** not less than 0.15 per cent and not more than 0.25 per cent anhydrous disodium phosphate,

**(ii)** not less than 1.4 per cent and not more than 1.8 per cent glycerin, and

**(iii)** either not less than 0.18 per cent and not more than 0.22 per cent cresol, or not less than 0.22 per cent and not more than 0.28 per cent phenol; and

**(b)** as determined by an acceptable method, for each 1,000 International Units of insulin,

**(i)** not more than 12.5 milligrams of total nitrogen,

**(ii)** not less than 10.0 milligrams and not more than 15.0 milligrams of protamine,

**(iii)** not less than 1.7 milligrams and not more than 2.5 milligrams of zinc.

SOR/82-769, s. 4.

**C.04.591** The protamine used in the preparation of Protamine Zinc Insulin shall be obtained from the sperm or from the mature testes of fish belonging to the family *Salmonidae*, genera *Oncorhunchus* Suckley or *Salmo* Linne.

SOR/82-769, s. 4.

**C.04.592** The insulin used in the preparation of Protamine Zinc Insulin shall be obtained from one or more master lots and shall be present in an amount sufficient to provide either 40, 80 or 100 International Units of insulin in each cubic centimetre of the preparation when the precipitate is suspended uniformly.

SOR/82-769, s. 4.

**C.04.593 (1)** The Canadian Reference Standard for Protamine Zinc Insulin shall be the standard adopted therefor by the Minister from time to time.

**(2)** Upon application of a person who holds an establishment licence, the Minister shall furnish him with a portion of the Canadian Reference Standard with directions for comparative testing.

## Insuline-zinc-protamine

**C.04.590** La préparation insulinique appelée **Insuline-zinc-protamine** doit être une suspension blanche et stérile répandue dans un milieu aqueux tamponné et renfermant de l'insuline modifiée par addition de protamine et de zinc, doit avoir un pH d'au moins 7,1 et d'au plus 7,4 et doit renfermer,

**a)** en poids par volume,

**(i)** au moins 0,15 pour cent et au plus 0,25 pour cent de phosphate disodique anhydre,

**(ii)** au moins 1,4 pour cent et au plus 1,8 pour cent de glycérine, et,

**(iii)** soit au moins 0,18 pour cent et au plus 0,22 pour cent de crésol, soit au moins 0,22 pour cent et au plus 0,28 pour cent de phénol; et,

**b)** d'après une méthode acceptable, par 1 000 unités internationales d'insuline,

**(i)** au plus 12,5 milligrammes d'azote total,

**(ii)** au moins 10,0 milligrammes et au plus 15,0 milligrammes de protamine, et

**(iii)** au moins 1,7 milligramme et au plus 2,5 milligrammes de zinc.

DORS/82-769, art. 4.

**C.04.591** La protamine servant à la préparation de l'insuline-zinc-protamine doit provenir du sperme ou des testicules arrivés à maturité de poissons appartenant à la famille *Salmonidae*, genre *Oncorhynchus* Suckley, ou *Salmo* Linné.

DORS/82-769, art. 4.

**C.04.592** L'insuline servant à la préparation de l'insuline-zinc-protamine doit provenir d'un ou de plusieurs maîtres-lots et doit être en quantité suffisante pour fournir soit 40, soit 80, soit 100 unités internationales d'insuline par centimètre cube de la préparation, quand le précipité est répandu uniformément dans la suspension.

DORS/82-769, art. 4.

**C.04.593 (1)** L'étalon canadien pour l'insuline-zinc-protamine doit être l'étalon adopté de temps à autre par le ministre pour ladite préparation.

**(2)** À la demande du titulaire de licence d'établissement, le ministre doit lui procurer un échantillon de l'étalon canadien et les directives nécessaires pour faire des essais comparatifs.

**(3)** The testing of the biological reaction of Protamine Zinc Insulin shall be made by an acceptable method and that biological reaction shall be comparable to the biological reaction of the portion of the Canadian Reference Standard furnished by the Minister.

SOR/82-769, s. 4; SOR/97-12, s. 64; SOR/2018-69, ss. 31(E), 32(F).

**C.04.594** No person shall sell Protamine Zinc Insulin unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres; and

**(b)** each cubic centimetre thereof provides

**(i)** 40 International Units of insulin,

**(ii)** 80 International Units of insulin, or

**(iii)** 100 International Units of insulin.

SOR/82-769, s. 4.

**C.04.595 (1)** A fabricator shall not sell Protamine Zinc Insulin unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of insulin or zinc-insulin crystals employed in the manufacture of Protamine Zinc Insulin,

**(i)** protocols of assay of its potency in International Units per cubic centimetre in the case of insulin and in International Units per milligram in the case of zinc-insulin crystals,

**(ii)** a report on its moisture content in percentage determined by drying to constant weight at 100°C in the case of zinc-insulin crystals, and

**(3)** L'essai de la réaction biologique de l'insuline-zinc-protamine doit être faite suivant une méthode acceptable et cette réaction biologique doit être comparable à la réaction biologique de l'étalon canadien procuré par le ministre.

DORS/82-769, art. 4; DORS/97-12, art. 64; DORS/2018-69, art. 31(A) et 32(F).

**C.04.594** Il est interdit de vendre de l'insuline-zinc-protamine à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite insuline ne fournisse

**(i)** 40 unités internationales d'insuline,

**(ii)** 80 unités internationales d'insuline, ou

**(iii)** 100 unités internationales d'insuline.

DORS/82-769, art. 4.

**C.04.595 (1)** Le manufacturier ne doit pas vendre de l'insuline-zinc-protamine à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot d'insuline ou de cristaux d'insuline-zinc ayant servi à la fabrication de l'insuline-zinc-protamine,

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube, dans le cas de l'insuline, et en unités internationales par milligramme, dans le cas des cristaux d'insuline-zinc,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, et dans le cas des cristaux d'insuline-zinc, et

**(iii)** reports of assay of its nitrogen content in milligrams, and its zinc content in milligrams per 1,000 International Units of insulin;

**(b)** for the components used in the preparation of the trial mixture of Protamine Zinc Insulin, a report on the quantity of

**(i)** insulin in grams or in International Units,

**(ii)** zinc in grams or in milligrams, per 1,000 International Units of insulin,

**(iii)** protamine in grams or in milligrams, per 1,000 International Units of insulin, and

**(iv)** the volume of the preparation in cubic centimetres or litres;

**(c)** for the trial mixture of Protamine Zinc Insulin,

**(i)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units of insulin,

**(ii)** a report of assay of its zinc content in milligrams per cubic centimetre per 1,000 International Units of insulin,

**(iii)** protocols of its biological reaction showing retardation of the insulin effect, and

**(iv)** a report on the determination of its pH;

**(d)** for the first finished lot of Protamine Zinc Insulin from each trial mixture of Protamine Zinc Insulin, a report on the amount of each component in the preparation; and

**(e)** for the first filling of the first finished lot of Protamine Zinc Insulin from each trial mixture of Protamine Zinc Insulin,

**(i)** a report of assay of its nitrogen content in milligrams per cubic centimetre or per 1,000 International Units,

**(ii)** a report of assay of its zinc content in milligrams per cubic centimetre or per 1,000 International Units, and

**(iii)** a report on the determination of its pH.

**(iv)** [Repealed, SOR/95-203, s. 8]

SOR/82-769, s. 4; SOR/95-203, s. 8; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**(iii)** des rapports de dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline;

**b)** à l'égard de composants ayant servi à la préparation du mélange d'essai de l'insuline-zinc-protamine, un rapport sur

**(i)** la quantité d'insuline, en grammes ou en unités internationales,

**(ii)** la quantité de zinc, en grammes ou en milligrammes par 1 000 unités internationales d'insuline,

**(iii)** la quantité de protamine, en grammes ou en milligrammes par 1 000 unités internationales d'insuline, et

**(iv)** le volume de la préparation, en centimètres cubes ou en litres;

**c)** à l'égard du mélange d'essai de l'insuline-zinc-protamine,

**(i)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(ii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales d'insuline,

**(iii)** les protocoles de la réaction biologique montrant le retardement de l'effet insulinique, et

**(iv)** un rapport sur la détermination du pH;

**d)** à l'égard du premier lot fini d'insuline-zinc-protamine préparée avec chaque mélange d'essai d'insuline-zinc-protamine, un rapport sur la quantité de chaque composant entrant dans la préparation; et,

**e)** à l'égard du premier remplissage du premier lot fini d'insuline-zinc-protamine préparée avec chaque mélange d'essai de l'insuline-zinc-protamine,

**(i)** un rapport du dosage de la teneur en azote exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales,

**(ii)** un rapport du dosage de la teneur en zinc exprimée en milligrammes par centimètre cube ou par 1 000 unités internationales,

**(iii)** un rapport sur la détermination du pH.

**(iv)** [Abrogé, DORS/95-203, art. 8]

DORS/82-769, art. 4; DORS/95-203, art. 8; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.596** The expiration date printed on the inner and outer labels of every package of Protamine Zinc Insulin shall be a date not later than two years after the date of filling of the immediate container.

SOR/82-769, s. 4.

**C.04.596** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de chaque emballage d'insuline-zinc-protamine ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/82-769, art. 4.

## Sulphated Insulin

**C.04.597** The insulin preparation **"Sulphated Insulin"** shall be a clear or slightly turbid, colourless or almost colourless, sterile, isotonic preparation of zinc-insulin crystals chemically modified by treatment with sulphuric acid, shall have a pH of not less than 6.0 and not more than 7.0, and shall contain,

**(a)** weight by volume,

**(i)** not less than 0.6 per cent and not more than 1.0 per cent sodium chloride, and

**(ii)** not less than 0.2 per cent and not more than 0.3 per cent phenol; and

**(b)** as determined by an acceptable method,

**(i)** not more than 200 milligrams protein for each 1,000 International Units of insulin, and

**(ii)** not less than 5.5 and not more than 6.5 sulphate groups per insulin molecule.

SOR/82-769, s. 4.

## Insuline sulfurisée

**C.04.597** La préparation insulinique appelée **insuline sulfurisée** doit être une préparation isotonique limpide ou légèrement trouble, incolore ou presque incolore, stérile, faite avec des cristaux d'insuline-zinc chimiquement modifiés par l'action de l'acide sulfurique, doit avoir un pH d'au moins 6,0 et d'au plus 7,0 et doit renfermer,

**a)** en poids par volume,

**(i)** au moins 0,6 pour cent et au plus 1,0 pour cent de chlorure de sodium, et

**(ii)** au moins 0,2 pour cent et au plus 0,3 pour cent de phénol; et,

**b)** d'après une méthode acceptable,

**(i)** au plus 200 milligrammes de protéine par 1 000 unités internationales d'insuline, et

**(ii)** au moins 5,5 et au plus 6,5 groupements sulfurés par molécule d'insuline.

DORS/82-769, art. 4.

**C.04.598** The ***neutralization ratio*** means the amount of anti-beef-insulin serum required to neutralize one unit of Sulphated Insulin divided by the amount required to neutralize one unit of beef insulin, and shall be determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.598** ***Rapport de neutralisation*** signifie la quantité de sérum antiglobine de bœuf requise pour neutraliser une unité d'insuline sulfurisée divisée par la quantité requise pour neutraliser une unité d'insuline de bœuf et doit être déterminé par une méthode acceptable.

DORS/82-769, art. 4.

**C.04.599** The neutralization ratio of Sulphated Insulin shall be not less than 4 to 1.

SOR/82-769, s. 4.

**C.04.599** Le rapport de neutralisation de l'insuline sulfurisée doit être au moins de 4 à 1.

DORS/82-769, art. 4.

**C.04.600** No person shall sell Sulphated Insulin unless

**(a)** it is dispensed in a vial of approximately 10 cubic centimetre capacity that contains an excess volume sufficient to permit withdrawal of 10 cubic centimetres, and

**(b)** each cubic centimetre thereof provides 100 International Units of insulin as determined by an acceptable method.

SOR/82-769, s. 4.

**C.04.600** Il est interdit de vendre de l'insuline sulfurisée à moins

**a)** qu'elle ne soit offerte dans une fiole d'une capacité approximative de 10 centimètres cubes, laquelle doit présenter un excédent de volume permettant d'en retirer 10 centimètres cubes; et

**b)** que chaque centimètre cube de ladite insuline ne fournisse 100 unités internationales d'insuline, d'après une méthode acceptable.

DORS/82-769, art. 4.

**C.04.601 (1)** A fabricator shall not sell Sulphated Insulin unless he

**(a)** has filed with the Minister, in accordance with subsection (2), a submission relating to that preparation, in a form and having a content satisfactory to the Minister;

**(b)** has furnished the Minister with such additional information as the Minister may require; and

**(c)** has received from the Minister a notice that the information contained in the submission is in accordance with the requirements of this section.

**(2)** A submission filed pursuant to subsection (1) shall include at least,

**(a)** for each master lot of zinc-insulin crystals employed in the manufacture of Sulphated Insulin,

**(i)** protocols of assay of its potency in International Units per milligram,

**(ii)** a report of its moisture content in percentage determined by drying to constant weight at 100°C, and

**(iii)** reports of assay of its nitrogen content in milligrams and its zinc content in milligrams per 1,000 International Units of insulin; and

**(b)** for each lot of Sulphated Insulin prepared from each master lot of zinc-insulin crystals,

**(i)** a report of the amount of each component,

**(ii)** a report of the protein content in milligrams per 1,000 International Units of insulin,

**(iii)** a report on the determination of the neutralization ratio,

**(iv)** a report on the determination of the number of sulphate groups per insulin molecule,

**(v)** protocols of assay of its potency expressed as International Units per cubic centimetre, and

**(vi)** a report on the determination of its pH.

**(vii)** [Repealed, SOR/95-203, s. 9]

SOR/82-769, s. 4; SOR/95-203, s. 9; SOR/97-12, s. 61; SOR/2018-69, ss. 27, 31(E), 32(F).

**C.04.601 (1)** Le manufacturier ne doit pas vendre de l'insuline sulfurisée à moins qu'il

**a)** n'ait procuré au ministre, en conformité du paragraphe (2), une présentation relative à ladite préparation, sous une forme et dans une teneur qui soient à la satisfaction du ministre;

**b)** n'ait fourni au ministre les renseignements supplémentaires que celui-ci pourrait lui avoir demandés; et

**c)** n'ait reçu du ministre un avis portant que les renseignements contenus dans la présentation sont conformes aux exigences du présent article.

**(2)** Une présentation soumise en exécution du paragraphe (1) doit contenir au moins,

**a)** à l'égard de chaque maître-lot de cristaux d'insuline-zinc ayant servi à la fabrication de l'insuline sulfurisée,

**(i)** les protocoles du titrage de l'activité exprimée en unités internationales par milligramme,

**(ii)** un rapport de la teneur en humidité, exprimée en pourcentage et déterminée par dessiccation à poids constant à 100 °C, et

**(iii)** des rapports du dosage de la teneur en azote en milligrammes et de la teneur en zinc en milligrammes par 1 000 unités internationales d'insuline; et,

**b)** à l'égard de chaque lot d'insuline sulfurisée préparée avec chaque maître-lot de cristaux d'insuline-zinc,

**(i)** un rapport sur la quantité de chaque composant,

**(ii)** un rapport sur la teneur en protéines exprimée en milligrammes par 1 000 unités internationales d'insuline,

**(iii)** un rapport sur la détermination du rapport de neutralisation,

**(iv)** un rapport sur la détermination du nombre de groupements sulfurés par molécule d'insuline,

**(v)** les protocoles du titrage de l'activité exprimée en unités internationales par centimètre cube,

**(vi)** un rapport sur la détermination du pH.

**(vii)** [Abrogé, DORS/95-203, art. 9]

DORS/82-769, art. 4; DORS/95-203, art. 9; DORS/97-12, art. 61; DORS/2018-69, art. 27, 31(A) et 32(F).

**C.04.602** The expiration date printed on the inner and outer labels of every package of Sulphated Insulin shall be a date not later than two years after the date of filling of the immediate container.

SOR/80-545, s. 4; SOR/82-769, s. 4.

**C.04.602** La date limite d'utilisation imprimée sur les étiquettes intérieure et extérieure de chaque emballage d'insuline-sulfurisée ne doit pas dépasser deux ans après la date du remplissage du contenant immédiat.

DORS/80-545, art. 4; DORS/82-769, art. 4.

## Labelling of Insulin Preparations

[SOR/82-769, s. 8]

## Étiquetage des préparations insuliniques

[DORS/82-769, art. 8]

**C.04.650** The packager/labeller of Insulin Injection may label that insulin preparation "Insulin made from Zinc-Insulin crystals" only when it has been prepared from zinc-insulin crystals.

SOR/82-769, s. 7; SOR/97-12, s. 65.

**C.04.650** L'emballeur-étiqueteur d'injection insulinique ne peut mettre sur l'étiquette de cette préparation insulinique « Insuline faite avec des cristaux d'insuline-zinc » que si elle a été préparée avec des cristaux d'insuline-zinc.

DORS/82-769, art. 7; DORS/97-12, art. 65.

**C.04.651** The packager/labeller of an insulin preparation shall print the information required by these Regulations to appear on both the inner and outer labels of every package of that insulin preparation as set out in the Table to this section.

**C.04.651** L'emballeur-étiqueteur d'une préparation insulinique doit faire imprimer les renseignements requis par le présent règlement à la fois sur les étiquettes intérieure et extérieure de chaque emballage de cette préparation insulinique, de la façon indiquée au tableau du présent article.

**TABLE**

| Item | Column I<br>Insulin Preparation | Column II<br>Potency of Preparation | Column III<br>Special Printing Requirements for Label |
|---|---|---|---|
| 1 | Insulin Injection, not labelled as set out in item 2. | (a) 40 units per cc. | (a) black ink on yellow stock. |
| | | (b) 80 units per cc. | (b) black ink on green stock. |
| | | (c) 100 units per cc. | (c) black ink on white stock. |
| 2 | Insulin Injection, labelled "Insulin made from Zinc-Insulin crystals." | (a) 40 units per cc. | (a) red ink on grey stock. |
| | | (b) 80 units per cc. | (b) green ink on grey stock. |
| | | (c) 100 units per cc. | (c) black ink on white stock. |
| 3 | Insulin Zinc Suspension — Rapid, Insulin Zinc Suspension — Medium and Insulin Zinc Suspension — Prolonged. | (a) 40 units per cc. | (a) red ink on lavender stock plus a distinguishing mark or design. |
| | | (b) 80 units per cc. | (b) green ink on lavender stock plus a distinguishing mark or design. |
| | | (c) 100 units per cc. | (c) black ink on white stock. |
| 4 | Globin Insulin with Zinc. | (a) 40 units per cc. | (a) red ink on brown stock except that the expression "40 units per cubic centimetre" may be printed in white letters on a red background. |
| | | (b) 80 units per cc. | (b) green ink on brown stock except that the expression "80 units per cubic centimetre" may be printed in white letters on a green background. |

| Item | Column I<br>Insulin Preparation | Column II<br>Potency of Preparation | Column III<br>Special Printing Requirements for Label |
|---|---|---|---|
| 5 | NPH Insulin. | (a) 40 units per cc. | (a) red ink on blue stocks. |
| | | (b) 80 units per cc. | (b) green ink on blue stock. |
| | | (c) 100 units per cc. | (c) black ink on white stock. |
| 6 | Protamine Zinc Insulin. | (a) 40 units per cc. | (a) red ink on white stock. |
| | | (b) 80 units per cc. | (b) green ink on white stock. |
| | | (c) 100 units per cc. | (c) black ink on white stock |
| 7 | Sulphated Insulin. | 100 units per cc. | black ink on white stock plus the statement “Warning... Not for Ordinary Use... See Package Leaflet”. |

**TABLEAU**

| Poste nº | Colonne I<br>Préparation insulinique | Colonne II<br>Activité de la préparation | Colonne III<br>Nécessités d’impression pour l’étiquette |
|---|---|---|---|
| 1 | Injection insulinique non étiquetée de la façon indiquée au poste 2 | a) 40 unités par cc | a) caractères noirs sur fond jaune |
| | | b) 80 unités par cc | b) caractères noirs sur fond vert |
| | | c) 100 unités par cc | c) caractères noirs sur fond blanc |
| 2 | Injection insulinique dont l’étiquette porte : « Insuline faite avec des cristaux d’insuline... zinc » | a) 40 unités par cc | a) caractères rouges sur fond gris |
| | | b) 80 unités par cc | b) caractères verts sur fond gris |
| | | c) 100 unités par cc | c) caractères noirs sur fond blanc |
| 3 | Suspension d’insuline-zinc d’absorption rapide, suspension d’insuline-zinc d’absorption moyenne et suspension d’insuline-zinc d’absorption prolongée | a) 40 unités par cc | a) caractères rouges sur fond lavande ainsi qu’une marque ou un symbole distinctifs |
| | | b) 80 unités par cc | b) caractères verts sur fond lavande ainsi qu’une marque ou un symbole distinctifs |
| | | c) 100 unités par cc | c) caractères noirs sur fond blanc |
| 4 | Insuline-globine avec zinc | a) 40 unités par cc | a) caractères rouges sur fond brun, sauf que l’expression « 40 unités par centimètre cube » peut être imprimée en caractères blancs sur fond rouge |
| | | b) 80 unités par cc | b) caractères verts sur fond brun, sauf que l’expression « 80 unités par centimètre cube » peut être imprimée en caractères blancs sur fond vert |
| 5 | Insuline NPH | a) 40 unités par cc | a) caractères rouges sur fond bleu |
| | | b) 80 unités par cc | b) caractères verts sur fond bleu |
| | | c) 100 unités par cc | c) caractères noirs sur fond blanc |
| 6 | Insuline-zinc-protamine | a) 40 unités par cc | a) caractères rouges sur fond blanc |
| | | b) 80 unités par cc | b) caractères verts sur fond blanc |
| | | c) 100 unités par cc | c) caractères noirs sur fond blanc |

| | Colonne I | Colonne II | Colonne III |
|---|---|---|---|
| Poste nº | Préparation insulinique | Activité de la préparation | Nécessités d'impression pour l'étiquette |
| 7 | Insuline sulfurisée | 100 unités par cc | caractères noirs sur fond blanc ainsi que l'avertissement « Mise en garde... Non destiné à l'usage courant... Voir le feuillet de l'emballage » |

SOR/82-769, s. 7; SOR/97-12, s. 65.

**C.04.652** The packager/labeller of an insulin preparation shall print on the outer label of every package thereof instructions to store the preparation in a refrigerator at 35° to 50°F (2° to 10°C) and to avoid exposing it to freezing.

SOR/82-769, s. 7; SOR/97-12, s. 65.

**C.04.653** The packager/labeller of an insulin preparation that consists of a precipitate suspended in a buffered aqueous medium shall print on the inner label of every package thereof the statement "Shake Carefully".

SOR/82-769, s. 7; SOR/97-12, s. 65.

**C.04.654** The packager/labeller of an insulin preparation may, in lieu of printing adequate directions for its use on both the inner and outer labels thereof as required by subparagraph C.04.019(a)(vii), print the descriptions for use in a descriptive circular prepared in accordance with section C.04.655, but in such case he shall

**(a)** enclose a copy of the circular in the package containing the preparation; and

**(b)** state on the outer label of the package that such a circular is enclosed therein.

SOR/82-769, ss. 7, 9; SOR/97-12, s. 65.

**C.04.655** The descriptive circular referred to in section C.04.654 shall include, at least, the following information:

**(a)** a statement that

**(i)** the treatment of *diabetes mellitus* requires medical supervision and review,

**(ii)** insulin preparations should be used only as determined by a physician for each patient in the light of blood-sugar and urinary-sugar findings, and

**(iii)** the physician's instructions concerning diet, dosage, rest and exercise should be followed carefully;

DORS/82-769, art. 7; DORS/97-12, art. 65.

**C.04.652** L'emballeur-étiqueteur d'une préparation insulinique doit faire imprimer sur l'étiquette extérieure de chaque emballage de ladite préparation des directives demandant de garder celle-ci au réfrigérateur à une température comprise entre 35 ° et 50 °F (2 ° et 10 °C) et d'éviter de l'exposer à être congelée.

DORS/82-769, art. 7; DORS/97-12, art. 65.

**C.04.653** L'emballeur-étiqueteur d'une préparation insulinique qui consiste en un précipité en suspension dans un milieu aqueux tamponné doit faire imprimer sur l'étiquette intérieure de chaque emballage de ladite préparation l'avertissement « Agiter avec soin ».

DORS/82-769, art. 7; DORS/97-12, art. 65.

**C.04.654** L'emballeur-étiqueteur d'une préparation insulinique peut, au lieu de faire imprimer les directives appropriées d'emploi sur les étiquettes intérieure et extérieure de ladite préparation, comme l'exige le sous-alinéa C.04.019a)(vii), les faire imprimer dans un prospectus explicatif rédigé en conformité avec l'article C.04.655, auquel cas, il doit

**a)** inclure un exemplaire du prospectus dans l'emballage contenant la préparation; et

**b)** mentionner sur l'étiquette extérieure de l'emballage qu'une telle circulaire y est incluse.

DORS/82-769, art. 7 et 9; DORS/97-12, art. 65.

**C.04.655** Le prospectus explicatif visé à l'article C.04.654 doit contenir au moins les renseignements suivants :

**a)** un avertissement disant que

**(i)** le traitement du *diabète sucré* exige la surveillance et l'examen du médecin,

**(ii)** que les préparations insuliniques doivent être employées uniquement de la façon prescrite par le médecin à chaque malade, à la lumière des quantités de sucre trouvées dans le sang et l'urine, et

**(b)** an outline of the procedure to be followed in withdrawing the insulin preparation from the vial, including techniques for sterilization of the syringe and needle, vial-stopper and site of injection;

**(c)** a statement explaining that injections should be subcutaneous, and not intravenous or intramuscular, and a caution against successive injections in any one site;

**(d)** a statement that doses are specified in terms of *Units* of potency per cubic centimetre and that the *volume* of each dose will depend upon the potency in terms of units per cubic centimetre stated on the label of the insulin preparation and that, for these reasons, it is important that the patient understand the markings on syringes;

**(e)** a brief explanation of *hypoglycemia* together with emergency measures suitable for use by patients and those caring for patients in the event of hypoglycemic reactions;

**(f)** a statement indicating the possibility of undesirable reactions associated with illness or infection, with the omission or loss of a meal, and with a shortage of the insulin preparation;

**(g)** a statement warning against using any other type of insulin preparation than that prescribed by the physician;

**(h)** a statement that the use of a package should not be commenced after the expiration date printed on the package;

**(i)** a statement that the contents should be used as continuously as practicable and that any vial from which a part of the contents has been withdrawn should be discarded in the event of its being in disuse for several weeks' time;

**(j)** a statement stressing the importance of visiting a physician regularly and of carefully following his instructions;

**(k)** in the case of insulin preparations consisting of a clear, colourless or almost colourless solution, free from turbidity and from insoluble matter, a statement that if the contents of the vial become cloudy or turbid, use of that vial should be discontinued;

**(l)** in the case of insulin preparations consisting of a precipitate suspended in a buffered aqueous medium, a statement explaining that it is necessary to shake the vial carefully before withdrawing a dose, noting that if the contents have become lumpy or granular in

**(iii)** que les directives du médecin au sujet du régime alimentaire, de la posologie, du repos et de l'exercice doivent être suivies minutieusement;

**b)** une description de la méthode à suivre pour retirer la préparation insulinique de la fiole, y compris le mode de stérilisation de la seringue et de l'aiguille, du bouchon de la fiole et du point d'injection;

**c)** un avertissement expliquant que les injections doivent être sous-cutanées, et non pas intraveineuses ni intramusculaires, et une mise en garde contre des injections successives au même endroit;

**d)** un avertissement disant que les doses sont spécifiées en termes d'*unités* d'activité par centimètre cube et que le *volume* de chaque dose dépend de l'activité en unités par centimètre cube déclarée sur l'étiquette de la préparation insulinique et que, pour ces raisons, il importe que le malade comprenne bien la graduation des seringues;

**e)** une brève explication de l'*hypoglycémie* ainsi que des mesures d'urgence que peuvent prendre les malades et ceux qui les soignent en cas de réactions hypoglycémiques;

**f)** un avertissement sur l'apparition possible de réactions indésirables par suite de maladie ou d'infection, de l'omission d'un repas et d'un manque de la préparation insulinique;

**g)** un avertissement de n'employer aucune autre sorte de préparation insulinique que celle qui a été prescrite par le médecin;

**h)** un avertissement de ne pas commencer à se servir d'un emballage après la date limite d'utilisation imprimée sur l'emballage;

**i)** un avertissement recommandant d'employer le contenu d'une façon aussi continue que possible et de jeter toute fiole entamée qui n'a pas servi depuis plusieurs semaines;

**j)** un avertissement signalant l'importance de consulter régulièrement un médecin et de suivre fidèlement ses directives;

**k)** dans le cas de préparations insuliniques consistant en une solution limpide, incolore ou presque incolore, exempte de turbidité et matière insoluble, un avertissement disant que, si le contenu d'une fiole devient brouillé ou trouble, il faut cesser d'utiliser cette fiole;

**l)** dans le cas de préparations insuliniques consistant en un précipité en suspension dans un milieu aqueux

appearance or have formed a deposit of particles on the wall of the container, the use of that vial should be discontinued;

**(m)** instructions that the insulin preparation should be stored in a refrigerator at 35° to 50°F (2° to 10°C) and should not be exposed to freezing; and

**(n)** in the case of Sulphated Insulin, a statement explaining that this insulin preparation is not for ordinary use, but is a chemically modified insulin which may be more effective than the usual insulin preparations in certain insulin-resistant or insulin-allergic diabetic patients.

SOR/82-769, ss. 7, 10.

tamponné, un avertissement expliquant qu'il est nécessaire d'agiter la fiole avec soin avant d'en retirer une dose et signalant que, si le contenu prend une apparence grumeleuse ou granulée ou s'il s'est formé un dépôt de particules sur la paroi du contenant, il faut cesser d'utiliser cette fiole;

**m)** des directives demandant de garder la préparation insulinique au réfrigérateur à une température comprise entre 35 ° et 50 °F (2 ° et 10 °C) et de ne pas l'exposer à être congelée; et,

**n)** dans le cas de l'insuline sulfurisée, un avertissement expliquant que cette préparation insulinique n'est pas destinée à l'usage courant mais est une insuline chimiquement modifiée qui peut être plus efficace que les préparations insuliniques usuelles chez certains diabétiques résistant ou allergiques à l'insuline.

DORS/82-769, art. 7 et 10.

**C.04.656 (1)** Notwithstanding section C.04.554, a person who holds an establishment licence may sell Insulin Injection made from zinc-insulin crystals contained in vials of approximately 20 cubic centimetre capacity each of which vials

**(a)** contains an excess volume sufficient to permit withdrawal of 20 cubic centimetres, and

**(b)** provides 500 International Units of insulin per cubic centimetre,

if

**(c)** notwithstanding section C.04.651, both the inner and outer labels are printed in black ink on white stock and overprinted in narrow brown and white diagonal stripes, of which there shall be at least five but not more than 20 to each inch;

**(d)** both the inner and the outer labels carry the statement "Warning — High Potency — Not for Ordinary Use"; and

**(e)** each package contains a descriptive circular that conforms to the requirements of section C.04.655 and, in addition, includes,

**(i)** at the beginning of the circular the statement:

"Warning — This insulin preparation contains 500 International Units of insulin in each cubic centimetre. Extreme caution must be observed in the measurement of doses because inadvertent overdose may result in irreversible shock. Serious consequences may result if it is used other than under constant medical supervision. Unless specifically prescribed it should never be

**C.04.656 (1)** Nonobstant l'article C.04.554, un titulaire de licence d'établissement peut vendre de l'injection insulinique faite avec des cristaux d'insuline-zinc et offerte dans des fioles d'une capacité approximative de 20 centimètres cubes, dont chacune

**a)** contient un excédent de volume permettant d'en retirer 20 centimètres cubes, et

**b)** fournit 500 unités internationales d'insuline par centimètre cube,

si

**c)** nonobstant l'article C.04.651, les étiquettes intérieure et extérieure sont toutes deux imprimées en caractères noirs sur fond blanc et portent en surcharge d'étroites bandes diagonales brunes et blanches, en nombre d'au moins cinq et d'au plus 20 au pouce;

**d)** les étiquettes intérieure et extérieure portent toutes deux la mention « Avertissement — Activité élevée — Ne pas employer aux fins ordinaires »; et

**e)** chaque emballage contient un prospectus explicatif conforme aux exigences de l'article C.04.655 et portant de plus :

**(i)** au début du prospectus, l'avertissement :

« Mise en garde — Cette préparation insulinique contient 500 unités internationales d'insuline par centimètre cube. Mettre un soin extrême à mesurer les doses, car une dose excessive donnée par inadvertance peut provoquer un état de choc irréversible. L'employer autrement que sous la surveillance constante d'un médecin peut avoir de graves conséquences. À moins que cette

used by patients to replace use of any other insulin preparations.",

**(ii)** a statement that Insulin made from Zinc-Insulin crystals 500 International Units per cubic centimetre should not be administered intravenously, and

**(iii)** a statement giving information for the safe and effective use by physicians of the drug in insulin shock therapy and in the treatment of diabetic patients with high insulin resistance (daily requirement more than 200 International Units of insulin).

préparation ne soit spécifiquement prescrite, les malades ne devraient jamais l'employer à la place de quelque autre préparation insulinique. »,

**(ii)** un avertissement de ne pas administrer par voie intraveineuse de l'insuline faite avec des cristaux d'insuline-zinc à 500 unités internationales par centimètre cube, et

**(iii)** un exposé des renseignements nécessaires au médecin pour l'administration sûre et efficace de ladite drogue dans le traitement par choc insulinique et dans le traitement des diabétiques offrant une grande résistance à l'insuline (besoin quotidien de plus de 200 unités internationales d'insuline).

**(2)** [Repealed, SOR/95-203, s. 10]

SOR/82-769, ss. 7, 11; SOR/95-203, s. 10; SOR/97-12, s. 64.

**(2)** [Abrogé, DORS/95-203, art. 10]

DORS/82-769, art. 7 et 11; DORS/95-203, art. 10; DORS/97-12, art. 64.

## Anterior Pituitary Extracts

[SOR/82-769, s. 14]

**C.04.675** Anterior pituitary extract shall include all natural products, prepared from the anterior lobe of the pituitary gland of animals, having physiological properties associated with the hormones of the anterior pituitary gland and their proper names shall be

**(a) Adrenocorticotrophic Hormone, Corticotrophin,**

**(b) Thyrotrophic Hormone, Thyrotrophin,**

**(c) Growth Hormone Pituitary, Somatotrophin,**

**(d) Lactogenic Hormone, Prolactin,**

**(e) Gonadotrophic Hormone, Gonadotrophin,** followed by qualifying words to indicate the gonadotrophic activity associated with the extract,

and if unpurified anterior pituitary extract

**(f) Pituitary Extract Anterior Lobe** followed by qualifying words to indicate the physiological properties associated with it.

SOR/82-769, s. 13.

**C.04.676** Reference standards for anterior pituitary extract shall be

**(a)** the International Standard,

## Extraits hypophysaires (lobe antérieur)

[DORS/82-769, art. 14]

**C.04.675** L'extrait hypophysaire (lobe antérieur) doit comprendre tous les produits naturels préparés à partir du lobe antérieur de la glande hypophysaire d'animaux, et possédant des propriétés physiologiques associées aux hormones du lobe antérieur de la glande hypophysaire, et leurs noms propres doivent être

**a) Hormone adrénocorticotrope, Corticotrophine,**

**b) Hormone thyrotrope, Thyrotrophine,**

**c) Hormone pituitaire de la croissance, Somatotrophine,**

**d) Hormone lactogène, Prolactine,**

**e) Hormone gonadotrope, Gonadotrophine,** suivi de qualificatifs pour indiquer l'activité gonadotrope que possède l'extrait,

et, s'il s'agit d'extrait hypophysaire (lobe antérieur) non purifié,

**f) Extrait hypophysaire (lobe antérieur)** suivi de qualificatifs qui indiquent les propriétés physiologiques attribuées audit extrait.

DORS/82-769, art. 13.

**C.04.676** Les étalons de l'extrait hypophysaire (lobe antérieur) doivent être

**a)** l'étalon international;

**(b)** where no International Standard exists, the Canadian Reference Standard shall be that established and kept by the Minister from whom portions for comparative testing may be had upon application, and

**(c)** where neither an International Standard nor a Canadian Reference Standard exists, a provisional reference standard that shall be a suitable quantity of the product submitted by the distributor referred to in paragraph C.01A.003(b) to the Minister for checking the uniformity of the product.

SOR/82-769, s. 13; SOR/97-12, s. 58; SOR/2018-69, s. 27.

**C.04.677** Both the inner and outer labels of an anterior pituitary extract shall carry a statement of the potency in terms of the reference standard for anterior pituitary extract provided in section C.04.676 as determined by an acceptable method, except that where no reference standard for an anterior pituitary extract exists, the distributor referred to in paragraph C.01A.003(b) shall include, with every package of the anterior pituitary extract, an acceptable statement of the unit of potency and the method of assay used.

SOR/82-769, s. 13; SOR/97-12, s. 58; SOR/97-543, s. 6.

**C.04.678** No person who holds an establishment licence shall sell corticotrophic hormones for subcutaneous or intramuscular use unless the preparation has been assayed by an acceptable method involving subcutaneous injection and, where the preparation is recommended for intravenous use, the label carries specific dosage instructions for that use.

SOR/82-769, s. 13; SOR/97-12, s. 64.

**C.04.679** No person shall sell as such adrenocorticotrophic hormone, thyrotrophic hormone, growth hormone pituitary, lactogenic hormone, or gonadotrophic hormone that is not acceptable free from any anterior pituitary extract other than the one for which it is named.

SOR/82-769, s. 13.

**C.04.680** The outer label of a mixture of two or more of adrenocorticotrophic hormone, thyrotrophic hormone, growth hormone pituitary, lactogenic hormone and gonadotrophic hormone, or a mixture of any of those with pituitary extract anterior lobe, shall carry a declaration of the proper name and the amount of each component of the mixture.

SOR/82-769, s. 13; SOR/93-202, s. 22.

**C.04.681** The outer label of an anterior pituitary extract or mixture of anterior pituitary extracts shall carry a statement

**b)** dans le cas où il n'y a pas d'étalon international, l'étalon canadien qui doit être établi et conservé par le ministre, lequel peut, sur demande, en fournir des portions pour fins d'essais comparatifs; et

**c)** dans le cas où il n'y a pas d'étalon international ni d'étalon canadien, un étalon provisoire qui doit consister en une quantité appropriée du produit, soumise par le distributeur visé à l'alinéa C.01A.003b) au ministre, en vue du contrôle de l'uniformité du produit.

DORS/82-769, art. 13; DORS/97-12, art. 58; DORS/2018-69, art. 27.

**C.04.677** Les étiquettes intérieure et extérieure de l'extrait hypophysaire (lobe antérieur) doivent toutes deux porter une déclaration de l'activité en fonction de l'étalon d'extrait hypophysaire (lobe antérieur) prévu à l'article C.04.676, déterminée par une méthode acceptable; toutefois, lorsqu'il n'y a pas d'étalon pour un extrait hypophysaire de lobe antérieur, le distributeur visé à l'alinéa C.01A.003b) doit adjoindre à tout emballage d'extrait hypophysaire de lobe antérieur une déclaration acceptable de l'unité d'activité et de la méthode de dosage employées.

DORS/82-769, art. 13; DORS/97-12, art. 58; DORS/97-543, art. 6.

**C.04.678** Il est interdit à tout titulaire de licence d'établissement de vendre des hormones corticotrophiques pour injection sous-cutanée ou intramusculaire, à moins que la préparation n'ait été mise à l'épreuve par une méthode acceptable comportant une injection sous-cutanée et, si la préparation est recommandée pour usage intraveineux, à moins que l'étiquette n'indique la dose précise pour cet usage.

DORS/82-769, art. 13; DORS/97-12, art. 64.

**C.04.679** Est interdite la vente, comme telle, d'hormone adrénocorticotrope, d'hormone thyrotrope, d'hormone pituitaire de la croissance, d'hormone lactogène, ou d'hormone gonadotrope, qui ne sont pas suffisamment exemptes d'extrait hypophysaire (lobe antérieur) autre que celui d'après lequel l'hormone a été nommée.

DORS/82-769, art. 13.

**C.04.680** L'étiquette extérieure d'un mélange de deux ou plusieurs des hormones adrénocorticotrope, thyrotrope, pituitaire de la croissance, lactogène ou gonadotrope, ou d'un mélange de l'une ou plusieurs de ces hormones avec de l'extrait hypophysaire (lobe antérieur), doit porter une mention du nom propre et de la quantité de chaque composant du mélange.

DORS/82-769, art. 13; DORS/93-202, art. 22.

**C.04.681** L'étiquette extérieure d'un extrait hypophysaire (lobe antérieur) ou d'un mélange d'extraits hypophysaires (lobe antérieur) doit porter une déclaration

**(a)** showing the species of animal from which the glands used in the preparation of the anterior pituitary extract were obtained,

**(b)** that it shall be stored at refrigerator temperature, and

**(c)** that, except in the case of gonadotrophic hormones, it is to be used only on the advice or on the prescription of a physician.

SOR/82-769, s. 13.

**C.04.682** Both the inner and outer labels of adrenocorticotrophic hormone shall carry a statement indicating the route of administration, in addition to meeting the requirements of paragraphs C.04.681(a) and (b).

SOR/82-769, ss. 13, 15.

**C.04.683** The expiration date for an anterior pituitary extract or mixture of anterior pituitary extracts shall be not more than two years after the date of passing a potency test.

SOR/82-769, s. 13.

**a)** donnant le nom de l'espèce d'animal dont proviennent les glandes ayant servi à la préparation de l'extrait hypophysaire (lobe antérieur);

**b)** avertissant que le produit doit être conservé à la température du réfrigérateur; et

**c)** sauf dans le cas des hormones gonadotropes, de n'employer ce produit que sur l'avis ou l'ordonnance d'un médecin.

DORS/82-769, art. 13.

**C.04.682** Les étiquettes intérieure et extérieure d'une hormone adrénocorticotrope doivent toutes deux porter une déclaration de la voie d'administration, en plus d'être conformes aux dispositions des alinéas C.04.681a) et b).

DORS/82-769, art. 13 et 15.

**C.04.683** La date limite d'utilisation d'un extrait hypophysaire (lobe antérieur) ou d'un mélange d'extraits hypophysaires (lobe antérieur) ne doit pas dépasser deux ans après la date d'épreuve satisfaisante de son activité.

DORS/82-769, art. 13.

## DIVISION 5

# Drugs for Clinical Trials Involving Human Subjects

## Interpretation

**C.05.001** The definitions in this section apply in this Division.

***adverse drug reaction*** means any noxious and unintended response to a drug that is caused by the administration of any dose of the drug. (*réaction indésirable à une drogue*)

***adverse event*** means any adverse occurrence in the health of a clinical trial subject who is administered a drug, that may or may not be caused by the administration of the drug, and includes an adverse drug reaction. (*incident thérapeutique*)

***clinical trial*** means an investigation in respect of a drug for use in humans that involves human subjects and that is intended to discover or verify the clinical, pharmacological or pharmacodynamic effects of the drug, identify any adverse events in respect of the drug, study the absorption, distribution, metabolism and excretion of the drug, or ascertain the safety or efficacy of the drug. (*essai clinique*)

## TITRE 5

# Drogues destinées aux essais cliniques sur des sujets humains

## Définitions

**C.05.001** Les définitions qui suivent s'appliquent au présent titre.

***bonnes pratiques cliniques*** Pratiques cliniques généralement reconnues visant à assurer la protection des droits, la sûreté et le bien-être des sujets d'essai clinique et d'autres personnes ainsi que les bonnes pratiques cliniques visées à l'article C.05.010. (*good clinical practices*)

***brochure du chercheur*** Document dans lequel figurent les données précliniques et cliniques d'une drogue visées à l'alinéa C.05.005e). (*investigator's brochure*)

***chercheur qualifié*** La personne qui est responsable auprès du promoteur de la conduite de l'essai clinique à un lieu d'essai clinique, qui est habilitée à dispenser des soins de santé en vertu des lois de la province où ce lieu d'essai clinique est situé et qui est :

**a)** dans le cas d'un essai clinique portant sur une drogue destinée à être utilisée exclusivement en médecine dentaire, un médecin ou un dentiste, membre en

***drug*** means a drug for human use that is to be tested in a clinical trial. (*drogue*)

***good clinical practices*** means generally accepted clinical practices that are designed to ensure the protection of the rights, safety and well-being of clinical trial subjects and other persons, and the good clinical practices referred to in section C.05.010. (*bonnes pratiques cliniques*)

***import*** means to import a drug into Canada for the purpose of sale in a clinical trial. (*importer*)

***investigator's brochure*** means, in respect of a drug, a document containing the preclinical and clinical data on the drug that are described in paragraph C.05.005(e). (*brochure du chercheur*)

***protocol*** means a document that describes the objectives, design, methodology, statistical considerations and organization of a clinical trial. (*protocole*)

***qualified investigator*** means the person responsible to the sponsor for the conduct of the clinical trial at a clinical trial site, who is entitled to provide health care under the laws of the province where that clinical trial site is located, and who is

**(a)** in the case of a clinical trial respecting a drug to be used for dental purposes only, a physician or dentist and a member in good standing of a professional medical or dental association; and

**(b)** in any other case, a physician and a member in good standing of a professional medical association. (*chercheur qualifié*)

***research ethics board*** means a body that is not affiliated with the sponsor, and

**(a)** the principal mandate of which is to approve the initiation of, and conduct periodic reviews of, biomedical research involving human subjects in order to ensure the protection of their rights, safety and well-being; and

**(b)** that has at least five members, that has a majority of members who are Canadian citizens or permanent residents under the *Immigration and Refugee Protection Act*, that is composed of both men and women and that includes at least

**(i)** two members whose primary experience and expertise are in a scientific discipline, who have broad experience in the methods and areas of research to be approved and one of whom is from a medical règle d'une association médicale ou dentaire professionnelle;

**b)** dans tout autre cas, un médecin, membre en règle d'une association médicale professionnelle. (*qualified investigator*)

***comité d'éthique de la recherche*** Organisme, qui n'est pas lié au promoteur, ayant les caractéristiques suivantes :

**a)** son principal mandat est d'approuver la tenue de projets de recherche biomédicale sur des sujets humains et d'en contrôler périodiquement le déroulement afin d'assurer la protection des droits des sujets, ainsi que leur sûreté et leur bien-être;

**b)** il est composé d'au moins cinq membres, la majorité de ses membres sont des citoyens canadiens ou des résidents permanents au sens de la *Loi sur l'immigration et la protection des réfugiés* et il compte parmi ses membres des hommes et des femmes, dont au moins :

**(i)** deux membres possèdent de l'expertise et de l'expérience principalement dans un domaine scientifique ainsi qu'une vaste expérience des méthodes et champs de recherche à approuver, l'un d'entre eux provenant d'une discipline des soins médicaux ou, dans le cas d'un essai clinique portant sur une drogue destinée à être utilisée exclusivement en médecine dentaire, d'une discipline des soins médicaux ou dentaires,

**(ii)** un membre possède des connaissances de l'éthique,

**(iii)** un membre possède des connaissances de la législation canadienne applicable à la recherche biomédicale à approuver,

**(iv)** un membre possède de l'expertise et de l'expérience principalement dans un domaine non scientifique,

**(v)** un membre, qui n'est pas lié au promoteur ni au lieu d'essai clinique proposé, est un individu de la collectivité ou un représentant d'un organisme intéressé aux champs de recherche à approuver. (*research ethics board*)

***drogue*** Drogue pour usage humain destinée à faire l'objet d'un essai clinique. (*drug*)

***essai clinique*** Recherche sur des sujets humains dont l'objet est soit de découvrir ou de vérifier les effets cliniques, pharmacologiques ou pharmacodynamiques

discipline or, if the clinical trial is in respect of a drug to be used for dental purposes only, is from a medical or dental discipline,

**(ii)** one member knowledgeable in ethics,

**(iii)** one member knowledgeable in Canadian laws relevant to the biomedical research to be approved,

**(iv)** one member whose primary experience and expertise are in a non-scientific discipline, and

**(v)** one member who is from the community or is a representative of an organization interested in the areas of research to be approved and who is not affiliated with the sponsor or the site where the clinical trial is to be conducted. (*comité d'éthique de la recherche*)

***serious adverse drug reaction*** means an adverse drug reaction that requires in-patient hospitalization or prolongation of existing hospitalization, that causes congenital malformation, that results in persistent or significant disability or incapacity, that is life threatening or that results in death. (*réaction indésirable grave à une drogue*)

***serious unexpected adverse drug reaction*** means a serious adverse drug reaction that is not identified in nature, severity or frequency in the risk information set out in the investigator's brochure or on the label of the drug. (*réaction indésirable grave et imprévue à une drogue*)

***sponsor*** means an individual, corporate body, institution or organization that conducts a clinical trial. (*promoteur*)

SOR/2001-203, s. 4; 2001, c. 27, s. 273; SOR/2012-16, s. 1(F); SOR/2013-56, s. 1(F).

d'une drogue pour usage humain, soit de déceler les incidents thérapeutiques liés à cette drogue, soit d'en étudier l'absorption, la distribution, le métabolisme et l'élimination ou soit d'en établir l'innocuité ou l'efficacité. (*clinical trial*)

***importer*** Importer une drogue au Canada pour la vendre dans le cadre d'un essai clinique. (*import*)

***incident thérapeutique*** Événement indésirable affectant la santé d'un sujet d'essai clinique à qui une drogue a été administrée — qui peut ou non être causé par l'administration de la drogue, — y compris toute réaction indésirable à une drogue. (*adverse event*)

***promoteur*** Personne physique ou morale, établissement ou organisme qui mène un essai clinique. (*sponsor*)

***protocole*** Document qui expose les objectifs, le plan de travail, la méthodologie, les considérations statistiques et l'organisation d'un essai clinique. (*protocol*)

***réaction indésirable à une drogue*** Réaction nocive et non intentionnelle à une drogue qui est provoquée par l'administration de toute dose de celle-ci. (*adverse drug reaction*)

***réaction indésirable grave à une drogue*** Réaction indésirable à une drogue qui nécessite ou prolonge l'hospitalisation, entraîne une malformation congénitale ou une invalidité ou incapacité persistante ou importante, met la vie en danger ou entraîne la mort. (*serious adverse drug reaction*)

***réaction indésirable grave et imprévue à une drogue*** Réaction indésirable grave à une drogue dont la nature, la sévérité ou la fréquence ne sont pas mentionnées dans les renseignements sur les risques qui figurent dans la brochure du chercheur ou sur l'étiquette de la drogue. (*serious unexpected adverse drug reaction*)

DORS/2001-203, art. 4; 2001, ch. 27, art. 273; DORS/2012-16, art. 1(F); DORS/2013-56, art. 1(F).

## Application

**C.05.002 (1)** Subject to subsection (2), this Division applies to the sale or importation of drugs to be used for the purposes of clinical trials involving human subjects.

**(2)** Except for paragraph C.05.003(a), subsections C.05.006(2) and (3), paragraphs C.05.010(a) to (i), section C.05.011, subsections C.05.012(1) and (2), paragraphs C.05.012(3)(a) to (d) and (f) to (h), subsection C.05.012(4) and sections C.05.013, C.05.016 and C.05.017, this Division does not apply to the sale or importation of a drug

## Champ d'application

**C.05.002 (1)** Sous réserve du paragraphe (2), le présent titre s'applique à la vente et à l'importation d'une drogue destinée à un essai clinique sur des sujets humains.

**(2)** À l'exception de l'alinéa C.05.003a), des paragraphes C.05.006(2) et (3), des alinéas C.05.010a) à i), de l'article C.05.011, des paragraphes C.05.012(1) et (2), des alinéas C.05.012(3)a) à d) et f) à h), du paragraphe C.05.012(4) et des articles C.05.013, C.05.016 et C.05.017, le présent titre ne s'applique ni à la vente ni à l'importation d'une drogue

for the purposes of a clinical trial authorized under subsection C.05.006(2).

SOR/2001-203, s. 4.

## Prohibition

**C.05.003** Despite sections C.01.014, C.08.002, C.08.002.02 and C.08.003, no person shall sell or import a drug for the purposes of a clinical trial unless

**(a)** the person is authorized under this Division;

**(b)** the person complies with this Division and sections C.01.015, C.01.036, C.01.037 to C.01.040, C.01.040.2, C.01.064 to C.01.067, C.01.070, C.01.131, C.01.133 to C.01.136, and C.01.435; and

**(c)** if the drug is to be imported, the person has a representative in Canada who is responsible for the sale of the drug.

SOR/2001-203, s. 4; SOR/2011-88, s. 7.

## General

**C.05.004** Despite these Regulations, a sponsor may submit an application under this Division to sell or import a drug for the purposes of a clinical trial that contains a substance the sale of which is prohibited by these Regulations, if the sponsor establishes, on the basis of scientific information, that the inclusion of the substance in the drug may result in a therapeutic benefit for a human being.

SOR/2001-203, s. 4.

## Application for Authorization

**C.05.005** An application by a sponsor for authorization to sell or import a drug for the purposes of a clinical trial under this Division shall be submitted to the Minister, signed and dated by the sponsor's senior medical or scientific officer in Canada and senior executive officer and shall contain the following information and documents:

**(a)** a copy of the protocol for the clinical trial;

**(b)** a copy of the statement, as it will be set out in each informed consent form, that states the risks and anticipated benefits arising to the health of clinical trial subjects as a result of their participation in the clinical trial;

**(c)** a clinical trial attestation, signed and dated by the sponsor's senior medical or scientific officer in Canada and senior executive officer, containing

destinée à un essai clinique autorisées en vertu du paragraphe C.05.006(2).

DORS/2001-203, art. 4.

## Interdiction

**C.05.003** Malgré les articles C.01.014, C.08.002, C.08.002.02 et C.08.003, il est interdit à quiconque de vendre ou d'importer une drogue destinée à un essai clinique à moins que les conditions ci-après ne soient réunies :

**a)** il y est autorisé sous le régime du présent titre;

**b)** il se conforme au présent titre et aux articles C.01.015, C.01.036, C.01.037 à C.01.040, C.01.040.2, C.01.064 à C.01.067, C.01.070, C.01.131, C.01.133 à C.01.136 et C.01.435;

**c)** si la drogue doit être importée, il a un représentant au Canada qui est responsable de la vente de la drogue.

DORS/2001-203, art. 4; DORS/2011-88, art. 7.

## Disposition générale

**C.05.004** Malgré le présent règlement, le promoteur peut présenter une demande conformément au présent titre pour la vente ou l'importation d'une drogue destinée à un essai clinique qui contient une substance dont la vente est interdite par le présent règlement, s'il établit, sur la foi d'informations scientifiques, que l'inclusion de cette substance dans la drogue peut avoir un effet thérapeutique bénéfique pour tout être humain.

DORS/2001-203, art. 4.

## Demande d'autorisation

**C.05.005** La demande d'autorisation pour la vente ou l'importation d'une drogue destinée à un essai clinique sous le régime du présent titre est présentée au ministre par le promoteur, est signée et datée par le directeur médical ou scientifique du promoteur au Canada et par le premier dirigeant du promoteur et contient les renseignements et documents suivants :

**a)** un exemplaire du protocole de l'essai clinique;

**b)** un exemplaire de la déclaration, qui figurera dans chaque formule de consentement éclairé, exposant les risques ainsi que les bénéfices prévus pour la santé des sujets d'essai clinique résultant de leur participation à l'essai clinique;

**c)** une attestation relative à l'essai clinique, signée et datée par le directeur médical ou scientifique du

**(i)** the title of the protocol and the clinical trial number,

**(ii)** the brand name, the chemical name or the code for the drug,

**(iii)** the therapeutic and pharmacological classifications of the drug,

**(iv)** the medicinal ingredients of the drug,

**(v)** the non-medicinal ingredients of the drug,

**(vi)** the dosage form of the drug,

**(vii)** the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of the sponsor,

**(viii)** if the drug is to be imported, the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of the sponsor's representative in Canada who is responsible for the sale of the drug,

**(ix)** for each clinical trial site, the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of the qualified investigator, if known at the time of submitting the application,

**(x)** for each clinical trial site, the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of the research ethics board that approved the protocol referred to in paragraph (a) and approved an informed consent form containing the statement referred to in paragraph (b), if known at the time of submitting the application, and

**(xi)** a statement

**(A)** that the clinical trial will be conducted in accordance with good clinical practices and these Regulations, and

**(B)** that all information contained in, or referenced by, the application is complete and accurate and is not false or misleading;

**(d)** the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of any research ethics board that has previously refused to approve the protocol referred to in paragraph (a), its reasons for doing so and the date on which the refusal was given, if known at the time of submitting the application;

promoteur au Canada et par le premier dirigeant du promoteur, contenant :

**(i)** le titre du protocole et le numéro de l'essai clinique,

**(ii)** la marque nominative, le nom chimique ou le code de la drogue,

**(iii)** les catégories thérapeutique et pharmacologique de la drogue,

**(iv)** les ingrédients médicinaux de la drogue,

**(v)** les ingrédients non médicinaux de la drogue,

**(vi)** la forme posologique de la drogue,

**(vii)** le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique du promoteur,

**(viii)** si la drogue doit être importée, le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique du représentant du promoteur au Canada qui est responsable de la vente de la drogue,

**(ix)** pour chaque lieu d'essai clinique, le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique du chercheur qualifié, si ces renseignements sont connus au moment de la présentation de la demande,

**(x)** pour chaque lieu d'essai clinique, le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique du comité d'éthique de la recherche qui a approuvé le protocole visé à l'alinéa a) et une formule de consentement éclairé contenant la déclaration visée à l'alinéa b), si ces renseignements sont connus au moment de la présentation de la demande,

**(xi)** une déclaration précisant :

**(A)** que l'essai clinique sera mené conformément aux bonnes pratiques cliniques et au présent règlement,

**(B)** que les renseignements contenus dans la demande d'autorisation ou auxquels celle-ci renvoie sont exacts, complets et ne sont ni faux ni trompeurs;

**d)** si un comité d'éthique de la recherche a refusé auparavant d'approuver le protocole de l'essai clinique

**(e)** an investigator's brochure that contains the following information, namely,

**(i)** the physical, chemical and pharmaceutical properties of the drug,

**(ii)** the pharmacological aspects of the drug, including its metabolites in all animal species tested,

**(iii)** the pharmacokinetics of the drug and the drug metabolism, including the biological transformation of the drug in all animal species tested,

**(iv)** any toxicological effects in any animal species tested under a single dose study, a repeated dose study or a special study in respect of the drug,

**(v)** any results of carcinogenicity studies in any animal species tested in respect of the drug,

**(vi)** any results of clinical pharmacokinetic studies of the drug,

**(vii)** any information regarding drug safety, pharmacodynamics, efficacy and dose responses of the drug that were obtained from previous clinical trials in humans, and

**(viii)** if the drug is a radiopharmaceutical as defined in section C.03.201, information regarding directions for preparing the radiopharmaceutical, the radiation dosimetry in respect of the prepared radiopharmaceutical and a statement of the storage requirements for the prepared radiopharmaceutical;

**(f)** if the drug contains a human-sourced excipient, including any used in the placebo,

**(i)** information that indicates the human-sourced excipient has been assigned a drug identification number under subsection C.01.014.2(1) or, in the case of a new drug, issued a notice of compliance under subsection C.08.004(1), as the case may be, or

**(ii)** in any other case, sufficient information to support the identity, purity, potency, stability and safety of the human-sourced excipient;

**(g)** if the drug has not been assigned a drug identification number under subsection C.01.014.2(1) or, in the case of a new drug, a notice of compliance has not been issued under section C.08.004 or C.08.004.01, the chemistry and manufacturing information in respect of the drug, including its site of manufacture; and

visé à l'alinéa a), le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique de ce comité, ainsi que la date et les motifs du refus, si ces renseignements sont connus au moment de la présentation de la demande;

**e)** la brochure du chercheur qui contient les renseignements suivants :

**(i)** les propriétés physiques, chimiques et pharmaceutiques de la drogue,

**(ii)** les aspects pharmacologiques de la drogue, y compris ses métabolites observés chez les espèces animales testées,

**(iii)** le comportement pharmacocinétique de la drogue et le métabolisme de celle-ci, y compris la façon dont elle est transformée biologiquement chez les espèces animales testées,

**(iv)** le cas échéant, les effets toxicologiques de la drogue observés chez les espèces animales testées lors d'études à dose unique, d'études à dose répétée ou d'études spéciales,

**(v)** le cas échéant, les résultats des études de carcinogénicité chez les espèces animales testées à l'égard de la drogue,

**(vi)** le cas échéant, les résultats des études cliniques sur le comportement pharmacocinétique de la drogue,

**(vii)** le cas échéant, lorsque des essais cliniques ont déjà été menés sur des sujets humains, les renseignements suivants obtenus lors de ces essais : l'innocuité de la drogue, son comportement pharmacodynamique, son efficacité et ses doses-réponses,

**(viii)** si la drogue est un produit pharmaceutique radioactif au sens de l'article C.03.201, les renseignements sur le mode de préparation du produit ainsi que sur la dosimétrie des rayonnements pour le produit préparé et les conditions d'emmagasinage une fois préparé;

**f)** si la drogue contient un excipient d'origine humaine, y compris toute utilisation dans un placebo :

**(i)** la mention, le cas échéant, que l'excipient a fait l'objet d'une identification numérique en vertu du paragraphe C.01.014.2(1) ou, s'agissant d'une drogue nouvelle, d'un avis de conformité en vertu du paragraphe C.08.004(1),

**(h)** the proposed date for the commencement of the clinical trial at each clinical trial site, if known at the time of submitting the application.

SOR/2001-203, s. 4; SOR/2011-88, s. 8; SOR/2012-16, s. 2(F).

## Authorization

**C.05.006 (1)** Subject to subsection (3), a sponsor may sell or import a drug, other than a drug described in subsection (2), for the purposes of a clinical trial if

**(a)** the sponsor has submitted to the Minister an application in accordance with section C.05.005;

**(b)** the Minister does not, within 30 days after the date of receipt of the application, send to the sponsor a notice in respect of the drug indicating that the sponsor may not sell or import the drug for any of the following reasons:

**(i)** that the information and documents in respect of the application

**(A)** were not provided in accordance with these Regulations, or

**(B)** are insufficient to enable the Minister to assess the safety and risks of the drug or the clinical trial, or

**(ii)** that based on an assessment of the application, an assessment of any information submitted under section C.05.009 or a review of any other information, the Minister has reasonable grounds to believe that

**(A)** the use of the drug for the purposes of the clinical trial endangers the health of a clinical trial subject or other person,

**(B)** the clinical trial is contrary to the best interests of a clinical trial subject, or

**(C)** the objectives of the clinical trial will not be achieved;

**(ii)** dans tout autre cas, les renseignements justifiant l'identité, la pureté, l'activité, la stabilité et l'innocuité de l'excipient;

**g)** s'il s'agit d'une drogue à l'égard de laquelle aucune identification numérique n'a été attribuée en vertu du paragraphe C.01.014.2(1) ou s'il s'agit d'une drogue nouvelle à l'égard de laquelle aucun avis de conformité n'a été délivré en application des articles C.08.004 ou C.08.004.01, les renseignements sur la chimie et la fabrication de la drogue, y compris le lieu de fabrication;

**h)** la date projetée du début de l'essai clinique à chaque lieu d'essai clinique, si ce renseignement est connu au moment de la présentation de la demande.

DORS/2001-203, art. 4; DORS/2011-88, art. 8; DORS/2012-16, art. 2(F).

## Autorisation

**C.05.006 (1)** Sous réserve du paragraphe (3), le promoteur peut vendre ou importer une drogue destinée à un essai clinique, autre qu'une drogue visée au paragraphe (2), si les conditions suivantes sont réunies :

**a)** il a présenté au ministre une demande conformément à l'article C.05.005;

**b)** le ministre ne lui a pas envoyé, dans les trente jours suivant la date de réception de la demande, un avis lui indiquant qu'il ne peut vendre ou importer la drogue pour l'un des motifs suivants :

**(i)** les renseignements et documents à l'égard de la demande, selon le cas :

**(A)** n'ont pas été fournis conformément au présent règlement,

**(B)** ne sont pas suffisants pour permettre au ministre d'évaluer l'innocuité et les risques de la drogue ou la sûreté et les risques de l'essai clinique,

**(ii)** le ministre a des motifs raisonnables de croire, d'après l'examen de la demande ou des renseignements fournis en vertu de l'article C.05.009, ou d'après l'évaluation de tout autre renseignement, que l'une des conditions suivantes existe :

**(A)** l'utilisation de la drogue destinée à l'essai clinique met en danger la santé d'un sujet d'essai clinique ou celle d'une autre personne,

**(B)** l'essai clinique va à l'encontre de l'intérêt d'un sujet d'essai clinique,

**(c)** for each clinical trial site, the sponsor has obtained the approval of the research ethics board in respect of the protocol referred to in paragraph C.05.005(a) and in respect of an informed consent form that contains the statement referred to in paragraph C.05.005(b); and

**(d)** before the sale or importation of the drug at a clinical trial site, the sponsor submits to the Minister the information referred to in subparagraphs C.05.005(c)(ix) and (x) and paragraphs C.05.005(d) and (h), if it was not submitted in respect of that clinical trial site at the time of submitting the application.

**(2)** Subject to subsection (3), a sponsor may sell or import a drug for the purposes of a clinical trial in respect of

**(a)** a new drug that has been issued a notice of compliance under subsection C.08.004(1), if the clinical trial is in respect of a purpose or condition of use for which the notice of compliance was issued; or

**(b)** a drug, other than a new drug, that has been assigned a drug identification number under subsection C.01.014.2(1), if the clinical trial is in respect of a use or purpose for which the drug identification number was assigned.

**(3)** A sponsor may not sell or import a drug for the purposes of a clinical trial

**(a)** during the period of any suspension made under section C.05.016 or C.05.017; or

**(b)** after a cancellation made under section C.05.016 or C.05.017.

SOR/2001-203, s. 4; SOR/2012-16, s. 3(F).

## Notification

**C.05.007** If the sale or importation of a drug is authorized under this Division, the sponsor may make one or more of the following changes if the sponsor notifies the Minister in writing within 15 days after the date of the change:

**(a)** a change to the chemistry and manufacturing information that does not affect the quality or safety of the drug, other than a change for which an amendment is required by section C.05.008; and

**(C)** les objectifs de l'essai clinique ne seront pas atteints;

**c)** pour chaque lieu d'essai clinique, le promoteur a obtenu l'approbation du comité d'éthique de la recherche à l'égard du protocole visé à l'alinéa C.05.005a) et à l'égard d'une formule de consentement éclairé contenant la déclaration visée à l'alinéa C.05.005b);

**d)** avant la vente ou l'importation de la drogue à un lieu d'essai clinique, le promoteur a fourni au ministre les renseignements visés aux sous-alinéas C.05.005c)(ix) et (x) et aux alinéas C.05.005d) et h) qui n'ont pas été fournis à l'égard de ce lieu au moment de la présentation de la demande.

**(2)** Sous réserve du paragraphe (3), le promoteur peut vendre ou importer une drogue destinée à un essai clinique lorsque :

**a)** s'agissant d'une drogue nouvelle à l'égard de laquelle un avis de conformité a été délivré en vertu du paragraphe C.08.004(1), l'essai clinique porte sur les fins ou le mode d'emploi pour lesquels l'avis de conformité a été délivré;

**b)** s'agissant d'une drogue, autre qu'une drogue nouvelle, à l'égard de laquelle une identification numérique a été attribuée en vertu du paragraphe C.01.014.2(1), l'essai clinique porte sur l'usage ou les fins pour lesquels l'identification numérique a été attribuée.

**(3)** Le promoteur ne peut vendre ou importer la drogue destinée à un essai clinique :

**a)** durant la période de la suspension ordonnée en vertu des articles C.05.016 ou C.05.017;

**b)** après l'annulation ordonnée en vertu des articles C.05.016 ou C.05.017.

DORS/2001-203, art. 4; DORS/2012-16, art. 3(F).

## Notification

**C.05.007** Lorsque la vente ou l'importation d'une drogue est autorisée sous le régime du présent titre, le promoteur peut apporter un ou plusieurs des changements suivants s'il en avise le ministre par écrit dans les quinze jours suivant la date du changement :

**a)** tout changement apporté aux renseignements sur la chimie et la fabrication de la drogue qui n'a aucune incidence sur la qualité ou l'innocuité de celle-ci, autre qu'un changement pour lequel une modification est exigée par l'article C.05.008;

**(b)** a change to the protocol that does not alter the risk to the health of a clinical trial subject, other than a change for which an amendment is required by section C.05.008.

SOR/2001-203, s. 4; SOR/2012-16, s. 4(F).

## Amendment

**C.05.008 (1)** Subject to subsections (4) and (5), when the sale or importation of a drug is authorized under this Division and the sponsor proposes to make an amendment referred to in subsection (2), the sponsor may sell or import the drug for the purposes of the clinical trial in accordance with the amended authorization, if the following conditions are met:

**(a)** the sponsor has submitted to the Minister an application for amendment in accordance with subsection (3);

**(b)** the Minister does not, within 30 days after the date of receipt of the application for amendment, send to the sponsor a notice in respect of the drug indicating that the sponsor may not sell or import the drug in accordance with the amendment for any of the following reasons, namely,

**(i)** that the information and documents in respect of the application for amendment

**(A)** were not provided in accordance with these Regulations, or

**(B)** are insufficient to enable the Minister to assess the safety and risks of the drug or the clinical trial, or

**(ii)** that based on an assessment of the application for amendment, an assessment of any information submitted under section C.05.009 or a review of any other information, the Minister has reasonable grounds to believe that

**(A)** the use of the drug for the purposes of the clinical trial endangers the health of a clinical trial subject or other person,

**(B)** the clinical trial is contrary to the best interests of a clinical trial subject, or

**(C)** the objectives of the clinical trial will not be achieved;

**(c)** before the sale or importation of the drug, the sponsor submits to the Minister

**b)** tout changement apporté au protocole qui ne modifie pas le risque pour la santé d'un sujet d'essai clinique, autre qu'un changement pour lequel une modification est exigée par l'article C.05.008.

DORS/2001-203, art. 4; DORS/2012-16, art. 4(F).

## Modification

**C.05.008 (1)** Sous réserve des paragraphes (4) et (5), lorsque la vente ou l'importation d'une drogue est autorisée sous le régime du présent titre et que le promoteur envisage d'apporter l'une des modifications visées au paragraphe (2), il peut vendre ou importer la drogue destinée à un essai clinique selon l'autorisation modifiée, si les conditions suivantes sont réunies :

**a)** il a présenté au ministre une demande de modification conformément au paragraphe (3);

**b)** le ministre ne lui a pas envoyé, dans les trente jours suivant la date de réception de la demande de modification, un avis lui indiquant qu'il ne peut vendre ou importer la drogue conformément à la modification pour l'un des motifs suivants :

**(i)** les renseignements et documents à l'égard de la demande de modification, selon le cas :

**(A)** n'ont pas été fournis conformément au présent règlement,

**(B)** ne sont pas suffisants pour permettre au ministre d'évaluer l'innocuité et les risques de la drogue ou la sûreté et les risques de l'essai clinique,

**(ii)** le ministre a des motifs raisonnables de croire, d'après l'examen de la demande de modification ou des renseignements fournis en vertu de l'article C.05.009, ou d'après l'évaluation de tout autre renseignement, que l'une des conditions suivantes existe :

**(A)** l'utilisation de la drogue destinée à l'essai clinique met en danger la santé d'un sujet d'essai clinique ou celle d'une autre personne,

**(B)** l'essai clinique va à l'encontre de l'intérêt d'un sujet d'essai clinique,

**(C)** les objectifs de l'essai clinique ne seront pas atteints;

**c)** avant la vente ou l'importation de la drogue, le promoteur a fourni au ministre les renseignements et documents suivants :

**(i)** for each clinical trial site, the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of the research ethics board that approved any amended protocol submitted under paragraph (3)(a) or approved any amended statement submitted under paragraph (3)(c), and

**(ii)** the name, address and telephone number and, if applicable, the facsimile number and electronic mail address of any research ethics board that has previously refused to approve any amendment to the protocol, its reasons for doing so and the date on which the refusal was given;

**(d)** before the sale or importation of the drug, the sponsor maintains records concerning

**(i)** the information referred to in paragraph C.05.005(h), and

**(ii)** the information referred to in subparagraph C.05.005(c)(ix), if any of that information has changed since it was submitted;

**(e)** before the sale or importation of the drug in accordance with the amended authorization, the sponsor ceases to sell or import the drug in accordance with the existing authorization; and

**(f)** the sponsor conducts the clinical trial in accordance with the amended authorization.

**(2)** For the purposes of subsection (1), amendments are

**(a)** amendments to the protocol that affect the selection, monitoring or dismissal of a clinical trial subject;

**(b)** amendments to the protocol that affect the evaluation of the clinical efficacy of the drug;

**(c)** amendments to the protocol that alter the risk to the health of a clinical trial subject;

**(d)** amendments to the protocol that affect the safety evaluation of the drug;

**(e)** amendments to the protocol that extend the duration of the clinical trial; and

**(f)** amendments to the chemistry and manufacturing information that may affect the safety or quality of the drug.

**(i)** pour chaque lieu d'essai clinique, le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique du comité d'éthique de la recherche qui a approuvé tout protocole modifié présenté conformément à l'alinéa (3)a) ou toute déclaration modifiée présentée conformément à l'alinéa (3)c),

**(ii)** si un comité d'éthique de la recherche a refusé auparavant d'approuver toute modification au protocole, le nom, l'adresse, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique de ce comité, ainsi que la date et les motifs du refus;

**d)** avant la vente ou l'importation de la drogue, le promoteur tient des registres sur les renseignements suivants :

**(i)** les renseignements visés à l'alinéa C.05.005h),

**(ii)** les renseignements visés au sous-alinéa C.05.005c)(ix), s'ils ont changé depuis leur présentation;

**e)** avant la vente ou l'importation de la drogue conformément à l'autorisation modifiée, le promoteur cesse de vendre ou d'importer la drogue conformément à l'autorisation existante;

**f)** le promoteur mène l'essai clinique en conformité avec l'autorisation modifiée.

**(2)** Pour l'application du paragraphe (1), les modifications visées sont les suivantes :

**a)** une modification du protocole qui a une incidence sur la sélection, le suivi ou le renvoi d'un sujet d'essai clinique;

**b)** une modification du protocole qui a une incidence sur l'évaluation de l'efficacité clinique de la drogue;

**c)** une modification du protocole qui modifie le risque pour la santé d'un sujet d'essai clinique;

**d)** une modification du protocole qui a une incidence sur l'évaluation de l'innocuité de la drogue;

**e)** une modification du protocole qui prolonge la durée de l'essai clinique;

**f)** une modification des renseignements sur la chimie et la fabrication de la drogue qui peut avoir une incidence sur l'innocuité ou la qualité de celle-ci.

**(3)** The application for amendment referred to in subsection (1) shall contain a reference to the application submitted under section C.05.005 and shall contain the following documents and information:

**(a)** if the application is in respect of an amendment referred to in any of paragraphs (2)(a) to (e), a copy of the amended protocol that indicates the amendment, a copy of the protocol submitted under paragraph C.05.005(a), and the rationale for the amendment;

**(b)** if the application is in respect of an amendment referred to in paragraph (2)(e), a copy of the amended investigator's brochure or an addendum to the investigator's brochure that indicates the new information, including supporting toxicological studies and clinical trial safety data;

**(c)** if the application is in respect of an amendment referred to in any of paragraphs (2)(a) to (f) and, as a result of that amendment, it is necessary to amend the statement referred to in paragraph C.05.005(b), a copy of the amended statement that indicates the amendment; and

**(d)** if the application is in respect of an amendment referred to in paragraph (2)(f), a copy of the amended chemistry and manufacturing information that indicates the amendment, and the rationale for that amendment.

**(3)** La demande de modification visée au paragraphe (1) doit contenir, en plus d'un renvoi à la demande présentée en vertu de l'article C.05.005, les documents et renseignements suivants :

**a)** s'il s'agit d'une modification visée à l'un des alinéas (2)a) à e), un exemplaire du protocole modifié sur lequel les modifications sont indiquées, un exemplaire du protocole présenté conformément à l'alinéa C.05.005a) et les justifications des modifications;

**b)** s'il s'agit d'une modification visée à l'alinéa (2)e), un exemplaire de la brochure du chercheur modifiée ou un supplément à celle-ci indiquant les nouveaux renseignements, y compris les études toxicologiques à l'appui et les données sur la sûreté de l'essai clinique;

**(c)** s'il s'agit d'une modification visée à l'un des alinéas (2)a) à f), et qu'en raison de cette modification il est nécessaire de modifier la déclaration visée à l'alinéa C.05.005b), un exemplaire de la déclaration modifiée sur laquelle la modification est indiquée;

**d)** s'il s'agit d'une modification visée à l'alinéa (2)f), une copie des renseignements modifiés sur la chimie et la fabrication de la drogue indiquant les modifications ainsi que les justifications de celles-ci.

**(4)** If the sponsor is required to immediately make one or more of the amendments referred to in subsection (2) because the clinical trial or the use of the drug for the purposes of the clinical trial endangers the health of a clinical trial subject or other person, the sponsor may immediately make the amendment and shall provide the Minister with the information referred to in subsection (3) within 15 days after the date of the amendment.

**(4)** Si l'une des modifications visées au paragraphe (2) est requise sur-le-champ parce que l'utilisation de la drogue destinée à un essai clinique ou l'essai clinique met en danger la santé d'un sujet d'essai clinique ou celle d'une autre personne, le promoteur peut immédiatement apporter cette modification; il doit alors fournir au ministre les renseignements exigés au paragraphe (3) dans les quinze jours suivant la date de la modification.

**(5)** A sponsor may not sell or import a drug for the purposes of a clinical trial

**(a)** during the period of any suspension made under section C.05.016 or C.05.017; or

**(b)** after a cancellation made under section C.05.016 or C.05.017.

SOR/2001-203, s. 4; SOR/2012-16, s. 5.

**(5)** Le promoteur ne peut vendre ou importer la drogue destinée à un essai clinique :

**a)** durant la période de la suspension ordonnée en vertu des articles C.05.016 ou C.05.017;

**b)** après l'annulation ordonnée en vertu des articles C.05.016 ou C.05.017.

DORS/2001-203, art. 4; DORS/2012-16, art. 5.

## Additional Information and Samples

**C.05.009** If the information and documents submitted in respect of an application under section C.05.005 or an application for amendment under section C.05.008 are

## Renseignements complémentaires et échantillons

**C.05.009** Lorsque les renseignements et documents contenus dans la demande visée à l'article C.05.005 ou dans la demande de modification visée à l'article C.05.008

insufficient to enable the Minister to determine whether any of the reasons referred to in paragraph C.05.006(1)(b) or C.05.008(1)(b) exist, the Minister may require the sponsor to submit, within two days after receipt of the request, samples of the drug or additional information relevant to the drug or the clinical trial that are necessary to make the determination.

SOR/2001-203, s. 4; SOR/2012-16, s. 6(F).

## Sponsor's Obligations

### Good Clinical Practices

**C.05.010** Every sponsor shall ensure that a clinical trial is conducted in accordance with good clinical practices and, without limiting the generality of the foregoing, shall ensure that

**(a)** the clinical trial is scientifically sound and clearly described in a protocol;

**(b)** the clinical trial is conducted, and the drug is used, in accordance with the protocol and this Division;

**(c)** systems and procedures that assure the quality of every aspect of the clinical trial are implemented;

**(d)** for each clinical trial site, the approval of a research ethics board is obtained before the clinical trial begins at the site;

**(e)** at each clinical trial site, there is no more than one qualified investigator;

**(f)** at each clinical trial site, medical care and medical decisions, in respect of the clinical trial, are under the supervision of the qualified investigator;

**(g)** each individual involved in the conduct of the clinical trial is qualified by education, training and experience to perform his or her respective tasks;

**(h)** written informed consent, given in accordance with the applicable laws governing consent, is obtained from every person before that person participates in the clinical trial but only after that person has been informed of

**(i)** the risks and anticipated benefits to his or her health arising from participation in the clinical trial, and

**(ii)** all other aspects of the clinical trial that are necessary for that person to make the decision to participate in the clinical trial;

ne sont pas suffisants pour permettre au ministre de déterminer si l'un des motifs visés aux alinéas C.05.006(1)b) ou C.05.008(1)b) existe, le ministre peut exiger que le promoteur lui fournisse, dans les deux jours suivant la réception de la demande du ministre, les renseignements complémentaires concernant la drogue ou l'essai clinique ou les échantillons de la drogue qui lui sont nécessaires pour faire cette détermination.

DORS/2001-203, art. 4; DORS/2012-16, art. 6(F).

## Obligations du promoteur

### Bonnes pratiques cliniques

**C.05.010** Le promoteur doit veiller à ce que tout essai clinique soit mené conformément aux bonnes pratiques cliniques et, en particulier, veiller à ce que :

**a)** l'essai clinique soit fondé sur le plan scientifique et clairement décrit dans un protocole;

**b)** l'essai clinique soit mené et la drogue utilisée en conformité avec le protocole de l'essai clinique et le présent titre;

**c)** des systèmes et des procédures visant à assurer la qualité de tous les aspects de l'essai clinique soient mis en œuvre;

**d)** pour chaque lieu d'essai clinique, l'approbation d'un comité d'éthique de la recherche soit obtenue avant le début de l'essai clinique à ce lieu;

**e)** à chaque lieu d'essai clinique, il y ait au plus un chercheur qualifié;

**f)** à chaque lieu d'essai clinique, les soins de santé et les décisions médicales dans le cadre de l'essai clinique relèvent du chercheur qualifié de ce lieu;

**g)** chaque individu collaborant à la conduite de l'essai clinique soit qualifié, par ses études, sa formation et son expérience, pour accomplir les tâches qui lui sont confiées;

**h)** le consentement éclairé — donné conformément aux règles de droit régissant les consentements — soit obtenu par écrit de chaque personne avant qu'elle participe à l'essai clinique mais seulement après qu'elle a été informée de ce qui suit :

**(i)** des risques et bénéfices prévus pour sa santé résultant de sa participation à l'essai clinique,

**(i)** the requirements respecting information and records set out in section C.05.012 are met; and

**(j)** the drug is manufactured, handled and stored in accordance with the applicable good manufacturing practices referred to in Divisions 2 to 4 except sections C.02.019, C.02.025 and C.02.026.

SOR/2001-203, s. 4; SOR/2012-16, s. 7(F).

## Labelling

**C.05.011** Despite any other provision of these Regulations respecting labelling, the sponsor shall ensure that the drug bears a label that sets out the following information in both official languages:

**(a)** a statement indicating that the drug is an investigational drug to be used only by a qualified investigator;

**(b)** the name, number or identifying mark of the drug;

**(c)** the expiration date of the drug;

**(d)** the recommended storage conditions for the drug;

**(e)** the lot number of the drug;

**(f)** the name and address of the sponsor;

**(g)** the protocol code or identification; and

**(h)** if the drug is a radiopharmaceutical as defined in section C.03.201, the information required by subparagraph C.03.202(1)(b)(vi).

SOR/2001-203, s. 4; SOR/2012-16, s. 8(F).

## Records

**C.05.012 (1)** The sponsor shall record, handle and store all information in respect of a clinical trial in a way that allows its complete and accurate reporting as well as its interpretation and verification.

**(2)** The sponsor shall maintain complete and accurate records to establish that the clinical trial is conducted in accordance with good clinical practices and these Regulations.

**(ii)** de tout autre aspect de l'essai clinique nécessaire à la prise de sa décision de participer à l'essai clinique;

**i)** les exigences relatives aux renseignements et registres prévues à l'article C.05.012 soient respectées;

**j)** la drogue soit fabriquée, manutentionnée et emmagasinée conformément aux bonnes pratiques de fabrication visées aux titres 2 à 4, à l'exception des articles C.02.019, C.02.025 et C.02.026.

DORS/2001-203, art. 4; DORS/2012-16, art. 7(F).

## Étiquetage

**C.05.011** Malgré les autres dispositions du présent règlement relatives à l'étiquetage, le promoteur doit veiller à ce que la drogue porte une étiquette sur laquelle figurent, dans les deux langues officielles, les renseignements suivants :

**a)** une mention indiquant que la drogue est de nature expérimentale et ne doit être utilisée que par un chercheur qualifié;

**b)** le nom, le numéro ou la marque d'identification de la drogue;

**c)** la date limite d'utilisation de la drogue;

**d)** les conditions d'emmagasinage recommandées de la drogue;

**e)** le numéro de lot de la drogue;

**f)** les nom et adresse du promoteur;

**g)** le code ou l'identification du protocole;

**h)** si la drogue est un produit pharmaceutique radioactif au sens de l'article C.03.201, les renseignements exigés par le sous-alinéa C.03.202(1)b)(vi).

DORS/2001-203, art. 4; DORS/2012-16, art. 8(F).

## Registres

**C.05.012 (1)** Le promoteur doit consigner dans des registres, traiter et conserver les renseignements relatifs à un essai clinique de façon à permettre la présentation de rapports complets et exacts sur ceux-ci ainsi que leur interprétation et leur vérification.

**(2)** Le promoteur doit tenir des registres complets et précis afin de démontrer que l'essai clinique est mené conformément aux bonnes pratiques cliniques et au présent règlement.

**(3)** The sponsor shall maintain complete and accurate records in respect of the use of a drug in a clinical trial, including

**(a)** a copy of all versions of the investigator's brochure for the drug;

**(b)** records respecting each change made to the investigator's brochure, including the rationale for each change and documentation that supports each change;

**(c)** records respecting all adverse events in respect of the drug that have occurred inside or outside Canada, including information that specifies the indication for use and the dosage form of the drug at the time of the adverse event;

**(d)** records respecting the enrolment of clinical trial subjects, including information sufficient to enable all clinical trial subjects to be identified and contacted in the event that the sale of the drug may endanger the health of the clinical trial subjects or other persons;

**(e)** records respecting the shipment, receipt, disposition, return and destruction of the drug;

**(f)** for each clinical trial site, an undertaking from the qualified investigator that is signed and dated by the qualified investigator prior to the commencement of his or her responsibilities in respect of the clinical trial, that states that

**(i)** the qualified investigator will conduct the clinical trial in accordance with good clinical practices, and

**(ii)** the qualified investigator will immediately, on discontinuance of the clinical trial by the sponsor, in its entirety or at a clinical trial site, inform both the clinical trial subjects and the research ethics board of the discontinuance, provide them with the reasons for the discontinuance and advise them in writing of any potential risks to the health of clinical trial subjects or other persons;

**(g)** for each clinical trial site, a copy of the protocol, informed consent form and any amendment to the protocol or informed consent form that have been approved by the research ethics board for that clinical trial site; and

**(h)** for each clinical trial site, an attestation, signed and dated by the research ethics board for that clinical trial site, stating that it has reviewed and approved the protocol and informed consent form and that the board carries out its functions in a manner consistent with good clinical practices.

**(3)** Le promoteur doit tenir des registres complets et précis sur l'utilisation d'une drogue dans un essai clinique, y compris les renseignements et documents suivants :

**a)** un exemplaire de toutes les versions de la brochure du chercheur concernant la drogue;

**b)** un registre sur toutes les modifications apportées à la brochure du chercheur et les motifs de celles-ci, ainsi que les documents les justifiant;

**c)** un registre sur tous les incidents thérapeutiques liés à la drogue, survenus au Canada ou à l'étranger, ainsi que les indications de la drogue et sa forme posologique au moment où l'incident thérapeutique est survenu;

**d)** un registre sur l'inscription des sujets d'essai clinique dans lequel sont consignés les renseignements permettant d'identifier et de contacter ceux-ci si la vente de la drogue peut présenter un risque pour leur santé ou celle d'autres personnes;

**e)** un registre sur l'expédition, la réception, l'aliénation, le retour et la destruction de la drogue;

**f)** pour chaque lieu d'essai clinique, un engagement signé et daté par le chercheur qualifié, avant son entrée en fonction dans le cadre de l'essai clinique, portant :

**(i)** qu'il conduira l'essai clinique d'une manière conforme aux bonnes pratiques cliniques,

**(ii)** qu'en cas de cessation de l'essai clinique par le promoteur en totalité ou à un lieu d'essai clinique, il informera immédiatement les sujets d'essai clinique et le comité d'éthique de la recherche de la cessation et des motifs de celle-ci et les avisera par écrit des risques possibles pour la santé des sujets d'essai clinique ou celle d'autres personnes, le cas échéant;

**g)** pour chaque lieu d'essai clinique, un exemplaire de la formule de consentement éclairé et du protocole, ainsi que les modifications qui y ont été apportées, que le comité d'éthique de la recherche pour ce lieu a approuvés;

**h)** pour chaque lieu d'essai clinique, une attestation signée et datée par le comité d'éthique de la recherche pour ce lieu portant qu'il a examiné et approuvé le protocole et la formule de consentement éclairé et qu'il exerce ses activités d'une manière conforme aux bonnes pratiques cliniques.

**(4)** The sponsor shall maintain all records referred to in this Division for a period of 15 years.

SOR/2001-203, s. 4; SOR/2022-18, s. 55.

## Submission of Information and Samples

**C.05.013 (1)** The Minister shall require a sponsor to submit, within two days after receipt of the request, information concerning the drug or the clinical trial, or samples of the drug, if the Minister has reasonable grounds to believe that

**(a)** the use of the drug for the purposes of the clinical trial endangers the health of a clinical trial subject or other person;

**(b)** the clinical trial is contrary to the best interests of a clinical trial subject;

**(c)** the objectives of the clinical trial will not be achieved;

**(d)** a qualified investigator is not respecting the undertaking referred to in paragraph C.05.012(3)(f); or

**(e)** information submitted in respect of the drug or the clinical trial is false or misleading.

**(2)** The Minister may require the sponsor to submit, within seven days after receipt of the request, any information or records kept under section C.05.012, or samples of the drug, in order to assess the safety of the drug or the health of clinical trial subjects or other persons.

SOR/2001-203, s. 4; SOR/2012-16, s. 9(F).

## Serious Unexpected Adverse Drug Reaction Reporting

**C.05.014 (1)** During the course of a clinical trial, the sponsor shall inform the Minister of any serious unexpected adverse drug reaction in respect of the drug that has occurred inside or outside Canada as follows:

**(a)** if it is neither fatal nor life threatening, within 15 days after becoming aware of the information; and

**(b)** if it is fatal or life threatening, within seven days after becoming aware of the information.

**(4)** Le promoteur doit tenir les registres visés au présent titre durant quinze ans.

DORS/2001-203, art. 4; DORS/2022-18, art. 55.

## Présentation de renseignements et d'échantillons

**C.05.013 (1)** Le ministre doit exiger que le promoteur lui fournisse, dans les deux jours suivant la réception de la demande, des renseignements concernant la drogue ou l'essai clinique ou des échantillons de la drogue, s'il a des motifs raisonnables de croire que l'une des situations suivantes existe :

**a)** l'utilisation de la drogue destinée à l'essai clinique met en danger la santé d'un sujet d'essai clinique ou celle d'une autre personne;

**b)** l'essai clinique va à l'encontre de l'intérêt d'un sujet d'essai clinique;

**c)** les objectifs de l'essai clinique ne seront pas atteints;

**d)** un chercheur qualifié ne respecte pas l'engagement visé à l'alinéa C.05.012(3)f);

**e)** les renseignements fournis concernant la drogue ou l'essai clinique sont faux ou trompeurs.

**(2)** Le ministre peut exiger que le promoteur lui fournisse tout registre ou renseignement visé à l'article C.05.012 ou des échantillons de la drogue, dans les sept jours suivant la réception de la demande du ministre, afin d'évaluer l'innocuité de la drogue ou la santé d'un sujet d'essai clinique ou celle d'une autre personne.

DORS/2001-203, art. 4; DORS/2012-16, art. 9(F).

## Rapport sur les réactions indésirables graves et imprévues à la drogue

**C.05.014 (1)** Le promoteur doit, au cours d'un essai clinique, informer le ministre de toute réaction indésirable grave et imprévue à la drogue, survenue au Canada ou à l'étranger, selon le cas :

**a)** dans les quinze jours suivant le moment où il en a eu connaissance, lorsque cette réaction n'entraîne pas la mort ni ne met en danger la vie;

**b)** dans les sept jours suivant le moment où il en a eu connaissance, lorsque cette réaction entraîne la mort ou met en danger la vie.

**(2)** The sponsor shall, within eight days after having informed the Minister under paragraph (1)(b), submit to the Minister a complete report in respect of that information that includes an assessment of the importance and implication of any findings made.

**(3)** Sections C.01.016 to C.01.020 do not apply to drugs used for the purposes of a clinical trial.

SOR/2001-203, s. 4; SOR/2017-18, s. 16.

## Discontinuance of a Clinical Trial

**C.05.015 (1)** If a clinical trial is discontinued by the sponsor in its entirety or at a clinical trial site, the sponsor shall

**(a)** inform the Minister no later than 15 days after the date of the discontinuance;

**(b)** provide the Minister with the reason for the discontinuance and its impact on the proposed or ongoing clinical trials in respect of the drug conducted in Canada by the sponsor;

**(c)** as soon as possible, inform all qualified investigators of the discontinuance and of the reasons for the discontinuance, and advise them in writing of any potential risks to the health of clinical trial subjects or other persons; and

**(d)** in respect of each discontinued clinical trial site, stop the sale or importation of the drug as of the date of the discontinuance and take all reasonable measures to ensure the recovery of all unused quantities of the drug that have been sold.

**(2)** If the sponsor has discontinued the clinical trial in its entirety or at a clinical trial site, the sponsor may resume selling or importing the drug for the purposes of a clinical trial in its entirety or at a clinical trial site if, in respect of each clinical trial site where the sale or importation is to be resumed, the sponsor submits to the Minister the information referred to in subparagraphs C.05.005(c)(ix) and (x) and paragraphs C.05.005(d) and (h).

SOR/2001-203, s. 4.

## Suspension and Cancellation

**C.05.016 (1)** Subject to subsection (2), the Minister shall suspend the authorization to sell or import a drug for the purposes of a clinical trial, in its entirety or at a clinical trial site, if the Minister has reasonable grounds to believe that

**(2)** Dans les huit jours suivant la communication de l'information au ministre conformément à l'alinéa (1)b), le promoteur lui remet un rapport exhaustif à ce sujet, y compris une analyse de l'importance et des répercussions des constatations.

**(3)** Les articles C.01.016 à C.01.020 ne s'appliquent pas aux drogues destinées à un essai clinique.

DORS/2001-203, art. 4; DORS/2017-18, art. 16.

## Cessation d'un essai clinique

**C.05.015 (1)** En cas de cessation de l'essai clinique par le promoteur en totalité ou à un lieu d'essai clinique, celui-ci doit :

**a)** en aviser le ministre dans les quinze jours suivant la date de cessation;

**b)** faire connaître au ministre les motifs de la cessation et les répercussions sur ses autres essais cliniques qui sont prévus ou en cours au Canada relativement à la drogue;

**c)** informer tous les chercheurs qualifiés, le plus tôt possible, de la cessation et des motifs de cette mesure et les aviser par écrit des risques possibles pour la santé des sujets d'essai clinique ou celle d'autres personnes, le cas échéant;

**d)** à tout lieu d'essai clinique en cause, cesser la vente ou l'importation de la drogue à partir de la date de cessation et prendre des mesures raisonnables pour assurer la récupération de toute quantité inutilisée de la drogue vendue.

**(2)** En cas de cessation de l'essai clinique par le promoteur en totalité ou à un lieu d'essai clinique, celui-ci peut recommencer à vendre ou à importer la drogue destinée à un essai clinique en totalité ou à un lieu d'essai clinique, s'il fournit au ministre les renseignements visés aux sous-alinéas C.05.005c)(ix) et (x) et aux alinéas C.05.005d) et h) à l'égard de chaque lieu d'essai clinique où la vente ou l'importation recommencera.

DORS/2001-203, art. 4.

## Suspension et annulation

**C.05.016 (1)** Sous réserve du paragraphe (2), le ministre doit suspendre l'autorisation de vendre ou d'importer une drogue destinée à un essai clinique, en totalité ou à l'égard d'un lieu d'essai clinique, s'il a des motifs raisonnables de croire que l'une des situations suivantes existe :

**(a)** the sponsor has contravened these Regulations or any provisions of the Act relating to the drug;

**(b)** any information submitted in respect of the drug or clinical trial is false or misleading;

**(c)** the sponsor has failed to comply with good clinical practices; or

**(d)** the sponsor has failed to provide

**(i)** information or samples of the drug as required under section C.05.009 or C.05.013, or

**(ii)** information or a report under section C.05.014.

**(2)** Subject to section C.05.017, the Minister shall not suspend an authorization referred to in subsection (1) unless

**(a)** the Minister has sent to the sponsor a written notice of the intention to suspend the authorization that indicates whether the authorization is to be suspended in its entirety or at a clinical trial site and the reason for the intended suspension;

**(b)** the sponsor has not, within 30 days after receipt of the notice referred to in paragraph (a), provided the Minister with information or documents that demonstrate that the authorization should not be suspended on the grounds that

**(i)** the situation giving rise to the intended suspension did not exist, or

**(ii)** the situation giving rise to the intended suspension has been corrected; and

**(c)** the Minister has provided the sponsor with the opportunity to be heard in paragraph (b).

**(3)** The Minister shall suspend the authorization by sending to the sponsor a written notice of suspension of the authorization that indicates the effective date of the suspension, whether the authorization is suspended in its entirety or at a clinical trial site and the reason for the suspension.

**(4)** If the Minister has suspended an authorization under subsection (1), the Minister shall

**(a)** reinstate the authorization in its entirety or at a clinical trial site, as the case may be, if within 30 days after the effective date of the suspension the sponsor provides the Minister with information or documents

**a)** le promoteur a contrevenu au présent règlement ou à toute disposition de la Loi relative à la drogue;

**b)** les renseignements fournis à l'égard de la drogue ou de l'essai clinique sont faux ou trompeurs;

**c)** le promoteur ne s'est pas conformé aux bonnes pratiques cliniques;

**d)** le promoteur a omis :

**(i)** soit de fournir les renseignements ou les échantillons de la drogue tel qu'exigés en vertu des articles C.05.009 et C.05.013,

**(ii)** soit d'informer le ministre ou de lui remettre un rapport conformément à l'article C.05.014.

**(2)** Sous réserve de l'article C.05.017, le ministre ne peut suspendre l'autorisation visée au paragraphe (1) que si les conditions suivantes sont réunies :

**a)** il a envoyé au promoteur un avis écrit de son intention de suspendre l'autorisation, indiquant si l'autorisation est suspendue en totalité ou à l'égard d'un lieu d'essai clinique, ainsi que les motifs de la suspension projetée;

**b)** le promoteur n'a pas, dans les trente jours suivant la réception de l'avis visé à l'alinéa a), fourni au ministre les renseignements ou documents démontrant que l'autorisation ne devrait pas être suspendue pour l'un des motifs suivants :

**(i)** la situation donnant lieu à la suspension projetée n'a pas existé,

**(ii)** la situation donnant lieu à la suspension projetée a été corrigée;

**c)** le ministre a donné au promoteur la possibilité de se faire entendre conformément à l'alinéa b).

**(3)** Le ministre suspend l'autorisation en envoyant au promoteur un avis écrit de la suspension de l'autorisation indiquant si l'autorisation est suspendue en totalité ou à l'égard d'un lieu d'essai clinique, la date de prise d'effet de la suspension ainsi que les motifs de celle-ci.

**(4)** Si le ministre a suspendu une autorisation au titre du paragraphe (1), il doit :

**a)** soit rétablir l'autorisation en totalité ou à l'égard d'un lieu d'essai clinique, selon le cas, si dans les trente jours suivant la date de prise d'effet de la suspension, le promoteur lui a fourni les renseignements

that demonstrate that the situation giving rise to the suspension has been corrected; or

**(b)** cancel the authorization in its entirety or at a clinical trial site, as the case may be, if within 30 days after the effective date of the suspension the sponsor has not provided the Minister with the information or documents referred to in paragraph (a).

SOR/2001-203, s. 4; SOR/2012-16, s. 10.

**C.05.017 (1)** The Minister shall suspend an authorization to sell or import a drug for the purposes of a clinical trial, in its entirety or at a clinical trial site, before giving the sponsor an opportunity to be heard if the Minister has reasonable grounds to believe that it is necessary to do so to prevent injury to the health of a clinical trial subject or other person.

**(2)** The Minister shall suspend the authorization by sending to the sponsor a written notice of suspension of the authorization that indicates the effective date of the suspension, whether the authorization is suspended in its entirety or at a clinical trial site and the reason for the suspension.

**(3)** If the Minister has suspended an authorization under subsection (1), the Minister shall

**(a)** reinstate the authorization in its entirety or at a clinical trial site, as the case may be, if within 60 days after the effective date of the suspension the sponsor provides the Minister with information or documents that demonstrate that the situation giving rise to the suspension did not exist or that it has been corrected; or

**(b)** cancel the authorization in its entirety or at a clinical trial site, as the case may be, if within 60 days after the effective date of the suspension the sponsor has not provided the Minister with the information or documents referred to in paragraph (a).

SOR/2001-203, s. 4; SOR/2012-16, s. 11.

ou documents démontrant que la situation ayant donné lieu à la suspension a été corrigée;

**b)** soit annuler l'autorisation en totalité ou à l'égard d'un lieu d'essai clinique, selon le cas, si dans les trente jours suivant la date de prise d'effet de la suspension, le promoteur ne lui a pas fourni les renseignements ou documents visés à l'alinéa a).

DORS/2001-203, art. 4; DORS/2012-16, art. 10.

**C.05.017 (1)** Le ministre doit suspendre l'autorisation de vendre ou d'importer une drogue destinée à un essai clinique, en totalité ou à l'égard d'un lieu d'essai clinique, avant d'avoir donné au promoteur la possibilité de se faire entendre, s'il a des motifs raisonnables de croire que cela est nécessaire pour prévenir un préjudice à l'égard de la santé d'un sujet d'essai clinique ou celle d'une autre personne.

**(2)** Le ministre suspend l'autorisation en envoyant au promoteur un avis écrit de la suspension de l'autorisation indiquant si l'autorisation est suspendue en totalité ou à l'égard d'un lieu d'essai clinique, la date de prise d'effet de la suspension ainsi que les motifs de celle-ci.

**(3)** Si le ministre a suspendu une autorisation au titre du paragraphe (1), il doit :

**a)** soit rétablir l'autorisation en totalité ou à l'égard d'un lieu d'essai clinique, selon le cas, si dans les soixante jours suivant la date de prise d'effet de la suspension, le promoteur lui a fourni les renseignements ou documents démontrant que la situation ayant donné lieu à la suspension n'a pas existé ou a été corrigée;

**b)** soit annuler l'autorisation en totalité ou à l'égard d'un lieu d'essai clinique, selon le cas, si dans les soixante jours suivant la date de prise d'effet de la suspension, le promoteur ne lui a pas fourni les renseignements ou documents visés à l'alinéa a).

DORS/2001-203, art. 4; DORS/2012-16, art. 11.

## DIVISION 6

# Canadian Standard Drugs

Conjugated Estrogens
Conjugated Estrogens for Injection
Conjugated Estrogens Tablets
Digitoxin

## TITRE 6

# Normes canadiennes des drogues

Œstrogènes conjugués
Œstrogènes conjugués pour injection
Œstrogènes conjugués (comprimés d')
Digitoxine

| | |
|---|---|
| Digitoxin Tablets | Digitoxine (comprimés de) |
| Digoxin | Digoxine |
| Digoxin Elixir | Digoxine (élixir de) |
| Digoxin Injection | Digoxine (injection de) |
| Digoxin Tablets | Digoxine (comprimés de) |
| Esterified Estrogens | Œstrogènes estérifiés |
| Esterified Estrogens Tablets | Œstrogènes estérifiés (comprimés d') |
| Gelatin | Gélatine |
| Thyroid | Thyroïde |

SOR/80-544, s. 11.

DORS/80-544, art. 11.

## General

**C.06.001** In this Division,

**(a)** solubility and specific gravity shall be determined at 25°C;

**(b)** tests for identity, quantitative tests for arsenic, lead, copper, zinc, fluorine, and sulphur dioxide, and limit tests shall be made by the official methods; and

**(c)** determination of physical and chemical constants shall be carried out by acceptable methods.

## Dispositions générales

**C.06.001** Dans le présent titre,

**a)** la solubilité et la densité doivent être déterminées à 25 °C;

**b)** les essais d'identité, la détermination quantitative de l'arsenic, du plomb, du cuivre, du zinc, du fluor et de l'anhydride sulfureux, et les essais limites doivent être faits par des méthodes acceptables; et

**c)** la détermination des constantes physiques et chimiques doit être faite par des méthodes acceptables.

## Conjugated Estrogens

**C.06.002 [S]. Conjugated estrogens** shall be the drug conjugated estrogens described in The Pharmacopeia of the United States of America, XVIII (1970), except that

**(a)** the dilute assay preparation A, assay preparations A and B and equilin reagent described therein shall be prepared by official method DO-29, Conjugated Estrogens, October 15, 1981; and

**(b)** the identification test described therein shall be performed by official method DO-29, Conjugated Estrogens, October 15, 1981.

SOR/82-429, s. 5.

## Œstrogènes conjugués

**C.06.002 [N].** Les **œstrogènes conjugués** doivent être la drogue décrite dans la Pharmacopeia of the United States of America, XVIII (1970), sauf que

**a)** la solution A diluée, les solutions A et B, ainsi que le réactif de l'équiline qui y sont décrits sont préparés selon la méthode officielle DO-29, Œstrogènes conjugués, du 15 octobre 1981; et que

**b)** l'épreuve d'identité qui y est décrite est effectuée selon la méthode officielle DO-29, Œstrogènes conjugués, du 15 octobre 1981.

DORS/82-429, art. 5.

## Conjugated Estrogens for Injection

**C.06.003 [S]. Conjugated estrogens for injection** shall be the drug conjugated estrogens for injection described in The Pharmacopeia of the United States of America, XVIII (1970), except that

**(a)** the dilute assay preparation A, assay preparations A and B and equilin reagent described therein shall be

## Œstrogènes conjugués pour injection

**C.06.003 [N].** Les **œstrogènes conjugués pour injection** doivent être la drogue décrite dans la Pharmacopeia of the United States of America, XVIII (1970), sauf que

**a)** la solution A diluée, les solutions A et B, ainsi que le réactif de l'équiline qui y sont décrits sont préparés

prepared by official method DO-29, Conjugated Estrogens, October 15, 1981; and

**(b)** the identification test described therein shall be performed by official method DO-29, Conjugated Estrogens, October 15, 1981.

SOR/82-429, s. 6.

selon la méthode officielle DO-29, Œstrogènes conjugués, du 15 octobre 1981; et que

**b)** l'épreuve d'identité qui y est décrite est effectuée selon la méthode officielle DO-29, Œstrogènes conjugués, du 15 octobre 1981.

DORS/82-429, art. 6.

## Conjugated Estrogens Tablets

**C.06.004 [S]. Conjugated estrogens tablets** shall be the drug conjugated estrogens tablets described in The Pharmacopeia of the United States of America, XVIII (1970), except that

**(a)** the dilute assay preparation A, assay preparations A and B and equilin reagent described therein shall be prepared by official method DO-29, Conjugated Estrogens, October 15, 1981; and

**(b)** the identification test described therein shall be performed by official method DO-29, Conjugated Estrogens, October 15, 1981.

SOR/82-429, s. 7.

## Comprimés d'œstrogènes conjugués

**C.06.004 [N].** Les **comprimés d'œstrogènes conjugués** doivent être la drogue décrite dans la Pharmacopeia of the United States of America, XVIII (1970), sauf que

**a)** la solution A diluée, les solutions A et B, ainsi que le réactif de l'équiline qui y sont décrits sont préparés selon la méthode officielle DO-29, Œstrogènes conjugués, du 15 octobre 1981; et que

**b)** l'épreuve d'identité qui y est décrite est effectuée selon la méthode officielle DO-29, Œstrogènes conjugués, du 15 octobre 1981.

DORS/82-429, art. 7.

**C.06.100 and C.06.101** [Repealed, SOR/80-544, s. 12]

**C.06.100 et C.06.101** [Abrogés, DORS/80-544, art. 12]

## Digitoxin

**C.06.120 [S]. Digitoxin** shall be the drug digitoxin described in the Pharmacopeia of the United States of America.

## Digitoxine

**C.06.120 [N].** La **digitoxine** doit être la drogue *digitoxin* décrite dans la Pharmacopeia of the United States of America.

## Digitoxin Tablets

**C.06.121 [S]. Digitoxin tablets** shall be the drug digitoxin tablets described in the Pharmacopeia of the United States of America.

## Comprimés de digitoxine

**C.06.121 [N].** Les **comprimés de digitoxine** doivent être la drogue *digitoxin tablets* décrite dans la Pharmacopeia of the United States of America.

## Digoxin

**C.06.130 [S]. Digoxin** shall be the drug digoxin described in the Pharmacopeia of the United States of America.

## Digoxine

**C.06.130 [N].** La **digoxine** doit être la drogue *digoxin* décrite dans la Pharmacopeia of the United States of America.

## Digoxin Elixir

**C.06.131 [S]. Digoxin Elixir** shall be the drug digoxin elixir described in the Pharmacopeia of the United States of America.

## Élixir de digoxine

**C.06.131 [N].** L'**élixir de digoxine** doit être la drogue *digoxin elixir* décrite dans la Pharmacopeia of the United States of America.

## Digoxin Injection

**C.06.132 [S]. Digoxin injection** shall be the drug digoxin injection described in the Pharmacopeia of the United States of America.

## Digoxin Tablets

**C.06.133 [S]. Digoxin tablets** shall be the drug digoxin tablets described in the Pharmacopeia of the United States of America.

**C.06.140 to C.06.142** [Repealed, SOR/80-544, s. 12]

**C.06.150 to C.06.153** [Repealed, SOR/80-544, s. 12]

**C.06.154 to C.06.156** [Repealed, SOR/80-544, s. 12]

**C.06.157 to C.06.160** [Repealed, SOR/80-544, s. 12]

## Esterified Estrogens

**C.06.161 [S]. Esterified estrogens** shall be the drug esterified estrogens described in the Pharmacopeia of the United States of America.

## Esterified Estrogens Tablets

**C.06.162 [S]. Esterified estrogens tablets** shall be the drug esterified estrogens tablets described in the Pharmacopeia of the United States of America.

## Gelatin

**C.06.170** Gelatin shall be the drug gelatin described in the Pharmacopeia of the United States or the British Pharmacopeia.

**C.06.180 to C.06.183** [Repealed, SOR/80-544, s. 12]

**C.06.230 to C.06.233** [Repealed, SOR/80-544, s. 12]

**C.06.240 to C.06.242** [Repealed, SOR/80-544, s. 12]

## Thyroid

**C.06.250 Thyroid** shall be the cleaned, dried, powdered thyroid glands of domestic animals used for food, and shall contain not less than 0.17 per cent, and not more than 0.23 per cent iodine and no added iodine in either inorganic or organic form, and

**(a)** its characters are

*Description*, —

## Injection de digoxine

**C.06.132 [N].** L'**injection de digoxine** doit être la drogue *digoxin injection* décrite dans la Pharmacopeia of the United States of America.

## Comprimés de digoxine

**C.06.133 [N].** Les **comprimés de digoxine** doivent être la drogue *digoxin tablets* décrite dans la Pharmacopeia of the United States of America.

**C.06.140 à C.06.142** [Abrogés, DORS/80-544, art. 12]

**C.06.150 à C.06.153** [Abrogés, DORS/80-544, art. 12]

**C.06.154 à C.06.156** [Abrogés, DORS/80-544, art. 12]

**C.06.157 à C.06.160** [Abrogés, DORS/80-544, art. 12]

## Œstrogènes estérifiés

**C.06.161 [N].** Les **œstrogènes estérifiés** doivent être la drogue *esterified estrogens* décrite dans la *Pharmacopeia of the United States of America*.

## Comprimés d'œstrogènes estérifiés

**C.06.162 [N].** Les **comprimés d'œstrogènes estérifiés** doivent être la drogue *esterified estrogens tablets* décrite dans la *Pharmacopeia of the United States of America*.

## Gélatine

**C.06.170** La gélatine doit être la drogue gélatine décrite dans la *Pharmacopeia of the United States* ou la *British Pharmacopeia*.

**C.06.180 à C.06.183** [Abrogés, DORS/80-544, art. 12]

**C.06.230 à C.06.233** [Abrogés, DORS/80-544, art. 12]

**C.06.240 à C.06.242** [Abrogés, DORS/80-544, art. 12]

## Thyroïde

**C.06.250** La **thyroïde** doit être le produit des glandes thyroïdes nettoyées, desséchées et pulvérisées d'animaux domestiques comestibles, contenir au moins 0,17 pour cent et au plus 0,23 pour cent d'iode, sans aucune addition d'iode sous forme organique ou minérale, et

**a)** posséder les caractères suivants :

*description*, —

**(i)** *General*, — thyroid occurs as a cream-coloured, amorphous powder; the odour and taste are faint and meat-like, and

**(ii)** *Microscopical*, — when suitably mounted and examined under the microscope, thyroid shows the following: numerous smooth to striated hyaline fragments of colloids, of angular to irregular shape, that are colourless to pale yellow in water mounts, brown in *Mallory's stain* and pink in *solution of eosin*, some of these fragments containing granules, minute vacuoles, crystalloidal bodies and cells; numerous irregular fragments of follicular epithelium staining brown with *Mallory's stain*, the individual cells more or less polygonal to rounded-angular or irregularly cuboidal, often with prominent nuclei staining dark blue, their cytoplasm purplish with *Delafield's solution of haematoxylin*; slender glistening segments of capillaries of closely undulate outline; numerous slender segments of neuraxons; numerous aggregates of particles of intercellular substance and slender, mostly straight connective tissue fibres staining blue to greenish blue with a mixture of *Mallory's stain* and *solution of phosphotungstic acid*, the bundles of fibres often appearing reddish in *Mallory's stain*; few glistening fragments of blood vessels with serrated or crenated ends as viewed in water mounts; and

**(b)** the tests for its purity are

**(i)** *Inorganic iodine*, — add to one gram of thyroid 10 millilitres of a saturated solution of *zinc sulphate* in *water*, shake, allow to stand five minutes, and filter through a fritted glass filter; add to five millilitres of the filtrate 0.5 millilitre of *mucilage of starch* and four drops each of a 10 per cent w/v solution of *sodium nitrite* in *water and dilute sulphuric acid*, shaking after each addition: no blue colour is produced, and

**(ii)** *Moisture*, — thyroid loses not more than six per cent moisture.

**C.06.251** Thyroid shall be

**(a)** assayed by official method DO-26, Thyroid, October 15, 1981; and

**(i)** *généraux*, — la thyroïde se présente sous forme d'une poudre amorphe de couleur crème; elle a une légère odeur et une faible saveur de viande, et

**(ii)** *microscopiques*, — convenablement montée sur une lame et examinée au microscope, la thyroïde présente de nombreux fragments colloïdaux hyalius, lisses ou striés, de formes angulaires ou irrégulières, incolores ou jaune pâle dans l'eau, bruns dans la *solution de Mallory*, et roses dans la *solution d'éosine*; dans certains de ces fragments se trouvent des granules, des vacuoles minuscules, des corps cristalloïdes et des cellules; de nombreux fragments irréguliers d'épithélium folliculaire qui se colorent en brun par la *solution de Mallory*; les cellules individuelles sont plus ou moins polygonales, à angles arrondis ou irrégulièrement cubiques, et contenant souvent des noyaux bien marqués qui se colorent en bleu foncé tandis que le cytoplasme se colore en pourpre dans la *solution d'hématoxyline de Delafield*; des segments de capillaires chatoyants, minces, d'un profil ondulé serré; de nombreux segments minces de neuraxones; de nombreux agrégats de parcelles de substance intercellulaire et des fibres minces de tissu conjonctif, droites pour la plupart, qui se colorent en bleu ou en bleu verdâtre par un mélange de *solution de Mallory* et de *solution d'acide phosphotungstique*, les faisceaux de fibres paraissant souvent rougeâtres dans la *solution de Mallory*; quelques fragments chatoyants de vaisseaux sanguins dont les extrémités, vues dans un montage à l'eau, apparaissent crénelées ou dentées; et

**b)** satisfaire aux essais de pureté suivants :

**(i)** *iode inorganique*, — ajouter à un gramme de thyroïde 10 millilitres d'une solution *aqueuse* saturée de *sulfate de zinc*, agiter, laisser reposer cinq minutes, et passer dans un filtre de verre poreux; ajouter à cinq millilitres du filtrat 0,5 millilitre de *colle d'amidon*, plus quatre gouttes d'une solution *aqueuse* de 10 grammes par 100 millilitres de *nitrite de sodium* et quatre gouttes d'*acide sulfurique dilué*, et agiter à chaque addition : il ne doit pas se produire de couleur bleue, et

**(ii)** *humidité*, — la thyroïde perd au plus six pour cent d'humidité, à la dessiccation.

**C.06.251** La thyroïde doit être

**a)** dosée par la méthode officielle DO-26, Thyroïde, du 15 octobre 1981; et

**(b)** stored in a cool place and in a tightly-closed container.

SOR/82-429, s. 8.

**b)** conservée au frais dans des récipients hermétiquement bouchés.

DORS/82-429, art. 8.

**C.06.252** [Repealed, SOR/80-544, s. 12]

**C.06.260 to C.06.264** [Repealed, SOR/80-544, s. 12]

**C.06.270 to C.06.280** [Repealed, SOR/80-544, s. 12]

**C.06.252** [Abrogé, DORS/80-544, art. 12]

**C.06.260 à C.06.264** [Abrogés, DORS/80-544, art. 12]

**C.06.270 à C.06.280** [Abrogés, DORS/80-544, art. 12]

**DIVISION 7**

# Sale of Drugs for the Purposes of Implementing the General Council Decision

## Interpretation

**C.07.001** The definitions in this section apply in this Division.

***Commissioner of Patents*** means the Commissioner of Patents appointed under subsection 4(1) of the Patent Act. (*commissaire aux brevets*)

***General Council Decision*** has the meaning assigned by subsection 30(6) of the Act. (*décision du Conseil général*)

SOR/2005-141, s. 1.

## Application

**C.07.002** This Division applies to the sale of drugs for the purposes of implementing the General Council Decision.

SOR/2005-141, s. 1.

## Application for Authorization

**C.07.003** An application by a manufacturer for authorization to sell a drug under this Division shall be submitted to the Minister and shall contain the following information and documents:

**(a)** a statement that the manufacturer intends to file an application with the Commissioner of Patents under section 21.04 of the *Patent Act*;

**(b)** in respect of a new drug, the submission number and date of filing of the new drug submission or abbreviated new drug submission filed under section C.08.002 or C.08.002.1, respectively, and of any supplement filed under section C.08.003 in respect of the drug;

**TITRE 7**

# Vente de drogues aux fins de mise en œuvre de la décision du Conseil général

## Définitions

**C.07.001** Les définitions qui suivent s'appliquent au présent titre.

***commissaire aux brevets*** Le commissaire aux brevets nommé en vertu du paragraphe 4(1) de la *Loi sur les brevets*. (*Commissioner of Patents*)

***décision du Conseil général*** S'entend au sens du paragraphe 30(6) de la Loi. (*General Council Decision*)

DORS/2005-141, art. 1.

## Champ d'application

**C.07.002** Le présent titre s'applique à la vente de drogues aux fins de mise en œuvre de la décision du Conseil général.

DORS/2005-141, art. 1.

## Demande d'autorisation

**C.07.003** La demande d'autorisation pour la vente d'une drogue sous le régime du présent titre est présentée au ministre par le fabricant et comporte les renseignements et documents suivants :

**a)** une déclaration du fabricant portant qu'il a l'intention de présenter une demande au commissaire aux brevets aux termes de l'article 21.04 de la *Loi sur les brevets*;

**b)** dans le cas d'une drogue nouvelle, le numéro et la date de dépôt de la présentation de drogue nouvelle ou de la présentation abrégée de drogue nouvelle déposées respectivement aux termes des articles C.08.002 et C.08.002.1, ainsi que de tout supplément à l'une ou

**(c)** in respect of a drug that is not a new drug,

**(i)** the application number and date of filing of the application that has been filed under section C.01.014.1 in respect of the drug, or

**(ii)** the drug identification number, if one has been assigned in respect of the drug pursuant to section C.01.014.2;

**(d)** for a drug in a solid dosage form, the manner in which the drug is marked in accordance with paragraph C.07.008(a) and evidence that such manner does not alter the safety and efficacy of the drug;

**(e)** for a drug in a dosage form that is not solid, the manner in which the immediate container is marked in accordance with paragraph C.07.008(a); and

**(f)** a sample of the label for the drug that includes the information required by paragraph C.07.008(c).

SOR/2005-141, s. 1.

l'autre présentation déposé aux termes de l'article C.08.003;

**c)** dans le cas d'une drogue autre qu'une drogue nouvelle :

**(i)** soit le numéro et la date de dépôt de la demande d'identification numérique présentée à l'égard de la drogue aux termes de l'article C.01.014.1,

**(ii)** soit l'identification numérique attribuée à la drogue, le cas échéant, aux termes de l'article C.01.014.2;

**d)** dans le cas où la drogue se présente sous une forme posologique solide, la méthode suivie pour marquer la drogue conformément à l'alinéa C.07.008a) ainsi qu'une preuve établissant que cette méthode n'a aucune incidence sur son innocuité ou son efficacité;

**e)** dans le cas où la drogue se présente sous une forme posologique non solide, la méthode suivie pour marquer le récipient immédiat conformément à l'alinéa C.07.008a);

**f)** un échantillon de l'étiquette de la drogue, laquelle doit comporter les renseignements prévus à l'alinéa C.07.008c).

DORS/2005-141, art. 1.

## Authorization

**C.07.004** The Minister shall notify the manufacturer and the Commissioner of Patents for the purposes of paragraph 21.04(3)(b) of the *Patent Act* that the manufacturer's drug meets the requirements of the Act and these Regulations if

**(a)** the manufacturer has submitted to the Minister an application in accordance with section C.07.003 and a copy of the application filed by the manufacturer with the Commissioner of Patents under section 21.04 of the *Patent Act*;

**(b)** in respect of a new drug, an examination of the new drug submission or abbreviated new drug submission or supplement to either submission by the Minister demonstrates that the submission or supplement complies with section C.08.002, C.08.002.1 or C.08.003, as the case may be, and section C.08.005.1;

**(c)** in respect of a drug that is not a new drug, a drug identification number has been assigned pursuant to section C.01.014.2; and

## Autorisation

**C.07.004** Le ministre avise le fabricant et le commissaire aux brevets, pour l'application de l'alinéa 21.04(3)b) de la *Loi sur les brevets*, que la drogue en cause satisfait aux exigences de la Loi et du présent règlement si les conditions suivantes sont réunies :

**a)** le fabricant a présenté au ministre une demande conforme à l'article C.07.003 et il a fourni à ce dernier un exemplaire de la demande qu'il a présentée au commissaire aux brevets aux termes de l'article 21.04 de la Loi sur les brevets;

**b)** dans le cas d'une drogue nouvelle, le ministre conclut que la présentation de drogue nouvelle, la présentation abrégée de drogue nouvelle ou tout supplément à l'une ou l'autre présentation est conforme aux articles C.08.002, C.08.002.1 ou C.08.003, selon le cas, et à l'article C.08.005.1;

**c)** dans le cas d'une drogue autre qu'une drogue nouvelle, une identification numérique a été attribuée à la drogue aux termes de l'article C.01.014.2;

**(d)** the Minister is satisfied that the manufacturer and the drug comply with the Act and these Regulations.

SOR/2005-141, s. 1.

**C.07.005** Despite sections C.01.014, C.08.002 and C.08.003, a manufacturer may sell a drug under this Division if

**(a)** the Minister has notified the Commissioner of Patents for the purposes of paragraph 21.04(3)(b) of the *Patent Act* that the drug meets the requirements of the Act and these Regulations; and

**(b)** the manufacturer has received authorization under section 21.04 of the *Patent Act*.

SOR/2005-141, s. 1.

**C.07.006** Sections C.01.005 and C.01.014.1 to C.01.014.4 do not apply to new drugs sold under this Division.

SOR/2005-141, s. 1.

## Notice to Commissioner of Patents

**C.07.007** The Minister shall notify the manufacturer and the Commissioner of Patents for the purposes of paragraph 21.13(b) of the *Patent Act* in the event that the Minister is of the opinion that the manufacturer's drug authorized to be sold under this Division has ceased to meet the requirements of the Act and these Regulations.

SOR/2005-141, s. 1.

## Marking and Labelling

**C.07.008** No person shall sell a drug under this Division unless

**(a)** the drug itself permanently bears the mark "XCL", in the case of a drug in a solid dosage form, or the immediate container permanently bears the mark "XCL", in the case of a drug in a dosage form that is not solid;

**(b)** the colour of the drug itself is significantly different from the colour of the version of the drug sold in Canada, in the case of a drug in a solid dosage form; and

**(c)** the label of the drug permanently bears the mark "XCL", followed by the export tracking number assigned by the Minister under section C.07.009 and the words "FOR EXPORT UNDER THE GENERAL COUNCIL DECISION. NOT FOR SALE IN CANADA."

**d)** le ministre est convaincu que le fabricant et la drogue satisfont aux exigences de la Loi et du présent règlement.

DORS/2005-141, art. 1.

**C.07.005** Malgré les articles C.01.014, C.08.002 et C.08.003, le fabricant peut vendre une drogue sous le régime du présent titre si les conditions suivantes sont réunies :

**a)** le ministre a avisé le commissaire aux brevets, pour l'application de l'alinéa 21.04(3)b) de la *Loi sur les brevets*, que la drogue satisfait aux exigences de la Loi et du présent règlement;

**b)** le fabricant a reçu l'autorisation prévue à l'article 21.04 de la *Loi sur les brevets*.

DORS/2005-141, art. 1.

**C.07.006** Les articles C.01.005 et C.01.014.1 à C.01.014.4 ne s'appliquent pas aux drogues nouvelles vendues sous le régime du présent titre.

DORS/2005-141, art. 1.

## Avis au commissaire aux brevets

**C.07.007** Le ministre avise le fabricant et le commissaire aux brevets, pour l'application de l'alinéa 21.13b) de la *Loi sur les brevets*, s'il est d'avis que la drogue dont la vente est autorisée sous le régime du présent titre ne satisfait plus aux exigences de la Loi et du présent règlement.

DORS/2005-141, art. 1.

## Marquage et étiquetage

**C.07.008** Il est interdit de vendre une drogue sous le régime du présent titre à moins que :

**a)** la drogue elle-même ne porte de façon permanente la marque « XCL », dans le cas où elle se présente sous une forme posologique solide, ou son récipient immédiat ne porte de façon permanente la marque « XCL », dans le cas où elle se présente sous une forme posologique non solide;

**b)** la drogue elle-même ne soit d'une couleur nettement différente de la couleur de la version de la drogue vendue au Canada, dans le cas où elle se présente sous une forme posologique solide;

**c)** l'étiquette de la drogue ne porte de façon permanente la marque « XCL », le numéro de suivi d'exportation attribué par le ministre aux termes de l'article C.07.009 et la mention « POUR EXPORTATION AUX TERMES DE LA DÉCISION DU CONSEIL GÉNÉRAL.

or "POUR EXPORTATION AUX TERMES DE LA DÉCISION DU CONSEIL GÉNÉRAL. VENTE INTERDITE AU CANADA."

SOR/2005-141, s. 1.

**C.07.009** The Minister shall assign an export tracking number to each drug in respect of which the Minister has notified the Commissioner of Patents under section C.07.004.

SOR/2005-141, s. 1.

## Records

**C.07.010** The manufacturer shall, with respect to a drug authorized to be sold under this Division,

**(a)** establish and maintain records, in a manner that enables an audit to be made, respecting the information referred to in subsection C.08.007(1), and retain those records for at least seven years from the day on which they were established; and

**(b)** provide to the Minister the summaries referred to in section C.08.008.

SOR/2005-141, s. 1; SOR/2014-125, s. 1.

## Notice to Minister

**C.07.011** The manufacturer shall notify the Minister in writing not less than 15 days before commencing the manufacture of the first lot of a drug authorized to be sold under this Division and not less than 15 days before the exportation of each subsequent lot of the drug.

SOR/2005-141, s. 1.

VENTE INTERDITE AU CANADA. » ou « FOR EXPORT UNDER THE GENERAL COUNCIL DECISION. NOT FOR SALE IN CANADA. ».

DORS/2005-141, art. 1.

**C.07.009** Le ministre attribue un numéro de suivi d'exportation à la drogue à l'égard de laquelle il a avisé le commissaire aux brevets en application de l'article C.07.004.

DORS/2005-141, art. 1.

## Registre

**C.07.010** Le fabricant est tenu, à l'égard de la drogue dont la vente est autorisée sous le régime du présent titre :

**a)** d'établir et de tenir, de façon à en permettre la vérification, un registre relatif aux renseignements visés au paragraphe C.08.007(1), et de le conserver durant une période minimale de sept ans à compter de la date de son établissement;

**b)** de fournir au ministre les résumés visés à l'article C.08.008.

DORS/2005-141, art. 1; DORS/2014-125, art. 1.

## Avis au ministre

**C.07.011** Le fabricant est tenu d'aviser le ministre par écrit au moins quinze jours avant de commencer à fabriquer le premier lot de la drogue dont la vente est autorisée sous le régime du présent titre et au moins quinze jours avant l'exportation de tout lot subséquent de celle-ci.

DORS/2005-141, art. 1.

# DIVISION 8

## New Drugs

**C.08.001** For the purposes of the Act and this Division, ***new drug*** means a drug, other than a veterinary health product,

**(a)** that contains or consists of a substance, whether as an active or inactive ingredient, carrier, coating, excipient, menstruum or other component, that has not been sold as a drug in Canada for sufficient time and in sufficient quantity to establish in Canada the safety and effectiveness of that substance for use as a drug;

**(b)** that is a combination of two or more drugs, with or without other ingredients, and that has not been sold in that combination or in the proportion in which

# TITRE 8

## Drogues nouvelles

**C.08.001** Pour l'application de la Loi et du présent titre, ***drogue nouvelle*** s'entend d'une drogue, à l'exception d'un produit de santé animale :

**a)** qui est constituée d'une substance ou renferme une substance, sous forme d'ingrédient actif ou inerte, de véhicule, d'enrobage, d'excipient, de solvant ou de tout autre constituant, laquelle substance n'a pas été vendue comme drogue au Canada pendant assez longtemps et en quantité suffisante pour établir, au Canada, l'innocuité et l'efficacité de cette substance employée comme drogue;

those drugs are combined in that drug, for sufficient time and in sufficient quantity to establish in Canada the safety and effectiveness of that combination and proportion for use as a drug; or

**(c)** with respect to which the manufacturer prescribes, recommends, proposes or claims a use as a drug, or a condition of use as a drug, including dosage, route of administration or duration of action, and that has not been sold for that use or condition of use in Canada for sufficient time and in sufficient quantity to establish in Canada the safety and effectiveness of that use or condition of use of that drug.

SOR/95-172, s. 2; SOR/2017-76, s. 10.

**C.08.001.1** For the purposes of this Division,

***Canadian reference product*** means

**(a)** a drug in respect of which a notice of compliance is issued under section C.08.004 or C.08.004.01 and which is marketed in Canada by the innovator of the drug,

**(b)** a drug, acceptable to the Minister, that can be used for the purpose of demonstrating bioequivalence on the basis of pharmaceutical and, where applicable, bioavailability characteristics, where a drug in respect of which a notice of compliance has been issued under section C.08.004 or C.08.004.01 cannot be used for that purpose because it is no longer marketed in Canada, or

**(c)** a drug, acceptable to the Minister, that can be used for the purpose of demonstrating bioequivalence on the basis of pharmaceutical and, where applicable, bioavailability characteristics, in comparison to a drug referred to in paragraph (a); (*produit de référence canadien*)

***designated COVID-19 drug*** means a new drug for which the purpose and conditions of use recommended by the manufacturer relate to COVID-19; (*drogue désignée contre la COVID-19*)

***pharmaceutical equivalent*** means a new drug that, in comparison with another drug, contains identical amounts of the identical medicinal ingredients, in comparable dosage forms, but that does not necessarily contain the same non-medicinal ingredients; (*équivalent pharmaceutique*)

**b)** qui entre dans une association de deux drogues ou plus, avec ou sans autre ingrédient, qui n'a pas été vendue dans cette association particulière, ou dans les proportions de ladite association pour ces drogues particulières, pendant assez longtemps et en quantité suffisante pour établir, au Canada, l'innocuité et l'efficacité de cette association ou de ces proportions employées comme drogue; ou

**c)** pour laquelle le fabricant prescrit, recommande, propose ou déclare un usage comme drogue ou un mode d'emploi comme drogue, y compris la posologie, la voie d'administration et la durée d'action, et qui n'a pas été vendue pour cet usage ou selon ce mode d'emploi au Canada pendant assez longtemps et en quantité suffisante pour établir, au Canada, l'innocuité et l'efficacité de cet usage ou de ce mode d'emploi pour cette drogue.

DORS/95-172, art. 2; DORS/2017-76, art. 10.

**C.08.001.1** Les définitions qui suivent s'appliquent au présent titre.

***drogue désignée contre la COVID-19*** Drogue nouvelle dont les fins et le mode d'emploi recommandés par le fabricant ont trait à la COVID-19. (*designated COVID-19 drug*)

***équivalent pharmaceutique*** S'entend d'une drogue nouvelle qui, par comparaison à une autre drogue, contient les mêmes quantités d'ingrédients médicinaux identiques, sous des formes posologiques comparables, mais pas nécessairement les mêmes ingrédients non médicinaux. (*pharmaceutical equivalent*)

***produit de référence canadien*** Selon le cas :

**a)** une drogue à l'égard de laquelle un avis de conformité a été délivré en application des articles C.08.004 ou C.08.004.01 et qui est commercialisée au Canada par son innovateur;

**b)** une drogue jugée acceptable par le ministre et qui peut être utilisée pour la détermination de la bioéquivalence d'après les caractéristiques pharmaceutiques et, le cas échéant, les caractéristiques en matière de biodisponibilité, lorsqu'une drogue pour laquelle un avis de conformité a été délivré en application des articles C.08.004 ou C.08.004.01 ne peut être utilisée à cette fin parce qu'elle n'est plus commercialisée au Canada;

**c)** une drogue jugée acceptable par le ministre qui peut être utilisée pour la détermination de la bioéquivalence d'après les caractéristiques pharmaceutiques et, le cas échéant, les caractéristiques en matière de

***specifications*** means a detailed description of a new drug and of its ingredients and includes

**(a)** a statement of all properties and qualities of the ingredients that are relevant to the manufacture and use of the new drug, including the identity, potency and purity of the ingredients,

**(b)** a detailed description of the methods used for testing and examining the ingredients, and

**(c)** a statement of the tolerances associated with the properties and qualities of the ingredients. (*spécifications*)

SOR/95-411, s. 3; SOR/2011-88, s. 9; SOR/2021-45, s. 13.

**C.08.002 (1)** No person shall sell or advertise a new drug unless

**(a)** the manufacturer of the new drug has filed with the Minister a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission or an abbreviated extraordinary use new drug submission relating to the new drug that is satisfactory to the Minister;

**(b)** the Minister has issued, under section C.08.004 or C.08.004.01, a notice of compliance to the manufacturer of the new drug in respect of the submission; and

**(c)** the notice of compliance in respect of the submission has not been suspended under section C.08.006.

**(d)** [Repealed, SOR/2014-158, s. 10]

**(2)** A new drug submission shall contain sufficient information and material to enable the Minister to assess the safety and effectiveness of the new drug, including the following:

**(a)** a description of the new drug and a statement of its proper name or its common name if there is no proper name;

**(b)** a statement of the brand name of the new drug or the identifying name or code proposed for the new drug;

**(c)** a list of the ingredients of the new drug, stated quantitatively, and the specifications for each of those ingredients;

biodisponibilité, par comparaison à une drogue visée à l'alinéa a). (*Canadian reference product*)

***spécifications*** S'entend de la description détaillée d'une drogue nouvelle et de ses ingrédients, notamment :

**a)** la liste des propriétés et des qualités des ingrédients qui ont trait à la fabrication et à l'emploi de la drogue nouvelle, y compris leur identité, leur activité et leur pureté;

**b)** la description détaillée des méthodes d'analyse et d'examen des ingrédients;

**c)** la liste des tolérances relatives aux propriétés et aux qualités des ingrédients. (*specifications*)

DORS/95-411, art. 3; DORS/2011-88, art. 9; DORS/2021-45, art. 13.

**C.08.002 (1)** Il est interdit de vendre ou d'annoncer une drogue nouvelle, à moins que les conditions suivantes ne soient réunies :

**a)** le fabricant de la drogue nouvelle a, relativement à celle-ci, déposé auprès du ministre une présentation de drogue nouvelle, une présentation de drogue nouvelle pour usage exceptionnel, une présentation abrégée de drogue nouvelle ou une présentation abrégée de drogue nouvelle pour usage exceptionnel que celui-ci juge acceptable;

**b)** le ministre a délivré au fabricant de la drogue nouvelle, en application des articles C.08.004 ou C.08.004.01, un avis de conformité relativement à la présentation;

**c)** l'avis de conformité relatif à la présentation n'a pas été suspendu en vertu de l'article C.08.006.

**d)** [Abrogé, DORS/2014-158, art. 10]

**(2)** La présentation de drogue nouvelle doit contenir suffisamment de renseignements et de matériel pour permettre au ministre d'évaluer l'innocuité et l'efficacité de la drogue nouvelle, notamment :

**a)** une description de la drogue nouvelle et une mention de son nom propre ou, à défaut, de son nom usuel;

**b)** une mention de la marque nominative de la drogue nouvelle ou du nom ou code d'identification projeté pour celle-ci;

**c)** la liste quantitative des ingrédients de la drogue nouvelle et les spécifications relatives à chaque ingrédient;

**(d)** a description of the plant and equipment to be used in the manufacture, preparation and packaging of the new drug;

**(e)** details of the method of manufacture and the controls to be used in the manufacture, preparation and packaging of the new drug;

**(f)** details of the tests to be applied to control the potency, purity, stability and safety of the new drug;

**(g)** detailed reports of the tests made to establish the safety of the new drug for the purpose and under the conditions of use recommended;

**(h)** substantial evidence of the clinical effectiveness of the new drug for the purpose and under the conditions of use recommended;

**(i)** a statement of the names and qualifications of all the investigators to whom the new drug has been sold;

**(j)** in the case of a new drug for veterinary use, a draft of every label to be used in connection with the new drug, including any package insert and any document that is provided on request and that sets out supplementary information on the use of the new drug;

**(j.1)** in the case of a new drug for human use, mock-ups of every label to be used in connection with the new drug — including any package insert and any document that is provided on request and that sets out supplementary information on the use of the new drug — and mock-ups of the new drug's packages;

**(k)** a statement of all the representations to be made for the promotion of the new drug respecting

**(i)** the recommended route of administration of the new drug,

**(ii)** the proposed dosage of the new drug,

**(iii)** the claims to be made for the new drug, and

**(iv)** the contra-indications and side effects of the new drug;

**(l)** a description of the dosage form in which it is proposed that the new drug be sold;

**(m)** evidence that all test batches of the new drug used in any studies conducted in connection with the submission were manufactured and controlled in a manner that is representative of market production;

**d)** la description des installations et de l'équipement à utiliser pour la fabrication, la préparation et l'emballage de la drogue nouvelle;

**e)** des précisions sur la méthode de fabrication et les mécanismes de contrôle à appliquer pour la fabrication, la préparation et l'emballage de la drogue nouvelle;

**f)** le détail des épreuves qui doivent être effectuées pour contrôler l'activité, la pureté, la stabilité et l'innocuité de la drogue nouvelle;

**g)** les rapports détaillés des épreuves effectuées en vue d'établir l'innocuité de la drogue nouvelle, aux fins et selon le mode d'emploi recommandés;

**h)** des preuves substantielles de l'efficacité clinique de la drogue nouvelle aux fins et selon le mode d'emploi recommandés;

**i)** la déclaration des noms et titres professionnels de tous les chercheurs à qui la drogue nouvelle a été vendue;

**j)** dans le cas d'une drogue nouvelle pour usage vétérinaire, une esquisse de toute étiquette à utiliser relativement à la drogue nouvelle, y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue nouvelle qui est fournie sur demande;

**j.1)** dans le cas d'une drogue nouvelle pour usage humain, des maquettes de toute étiquette à utiliser relativement à la drogue nouvelle — y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue nouvelle qui est fournie sur demande — ainsi que des maquettes des emballages de la drogue nouvelle;

**k)** la déclaration de toutes les recommandations qui doivent être faites dans la réclame pour la drogue nouvelle, au sujet

**(i)** de la voie d'administration recommandée pour la drogue nouvelle,

**(ii)** de la posologie proposée pour la drogue nouvelle,

**(iii)** des propriétés attribuées à la drogue nouvelle,

**(iv)** des contre-indications et les effets secondaires de la drogue nouvelle;

**l)** la description de la forme posologique proposée pour la vente de la drogue nouvelle;

**(n)** in the case of a new drug intended for administration to food-producing animals, the withdrawal period of the new drug; and

**(o)** in the case of a new drug for human use other than a designated COVID-19 drug, an assessment as to whether there is a likelihood that the new drug will be mistaken for another drug for which a drug identification number has been assigned due to a resemblance between the brand name that is proposed to be used in respect of the new drug and the brand name, common name or proper name of the other drug.

**m)** les éléments de preuve établissant que les lots d'essai de la drogue nouvelle ayant servi aux études menées dans le cadre de la présentation ont été fabriqués et contrôlés d'une manière représentative de la production destinée au commerce;

**n)** dans le cas d'une drogue nouvelle destinée à être administrée à des animaux producteurs de denrées alimentaires, le délai d'attente applicable;

**o)** dans le cas d'une drogue nouvelle pour usage humain autre qu'une drogue désignée contre la COVID-19, une appréciation de la question de savoir si la drogue nouvelle est susceptible d'être confondue avec une autre drogue à laquelle une identification numérique a été attribuée en raison de la ressemblance de la marque nominative dont l'utilisation est proposée pour cette drogue nouvelle avec la marque nominative, le nom usuel ou le nom propre de l'autre drogue.

**(2.1)** A manufacturer may file, for a designated COVID-19 drug, a new drug submission that does not meet the requirements set out in paragraphs (2)(g) and (h) if the submission contains

**(a)** a statement that the submission contains evidence to establish that the requirement set out in paragraph (b) is met; and

**(b)** sufficient evidence to support the conclusion that the benefits associated with the designated COVID-19 drug outweigh the risks for the purpose and under the conditions of use recommended, with consideration given to the uncertainties relating to those benefits and risks as well as the public health need related to COVID-19.

**(2.1)** Le fabricant peut déposer, à l'égard d'une drogue désignée contre la COVID-19, une présentation de drogue nouvelle qui n'est pas conforme aux exigences prévues aux alinéas (2)g) et h) si la présentation contient à la fois :

**a)** une mention portant que la présentation contient des preuves visant à établir que l'exigence de l'alinéa b) est remplie;

**b)** des preuves suffisantes pour conclure que les avantages associés à la drogue désignée contre la COVID-19 l'emportent sur les risques associés à cette dernière en ce qui a trait aux fins et mode d'emploi recommandés, compte tenu des incertitudes à l'égard de ces avantages et de ces risques et du besoin en matière de santé publique relatif à la COVID-19.

**(2.2)** A manufacturer may file, for a designated COVID-19 drug for human use, a new drug submission that does not meet the requirements set out in paragraph (2)(j.1) if the submission contains a draft of every label to be used in connection with the designated COVID-19 drug, including any package insert and any document that is provided on request and that sets out supplementary information on the use of the designated COVID-19 drug.

**(2.2)** Le fabricant peut déposer, à l'égard d'une drogue désignée contre la COVID-19 pour usage humain, une présentation de drogue nouvelle qui n'est pas conforme aux exigences de l'alinéa (2)j.1) si la présentation contient une maquette de toute étiquette à utiliser relativement à la drogue désignée contre la COVID-19, y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue désignée contre la COVID-19 qui est fournie sur demande.

**(2.3)** If, at the time a new drug submission is filed for a designated COVID-19 drug, the manufacturer is unable to provide the Minister with information or material referred to in any of paragraphs (2)(e) to (k), (m) and (n) or in paragraph (2.1)(b) or subsection (2.2) or that information or material is incomplete, the manufacturer shall

**(2.3)** Si, au moment de déposer sa présentation de drogue nouvelle à l'égard d'une drogue désignée contre la COVID-19, le fabricant ne peut fournir au ministre les renseignements ou le matériel visés à l'un des alinéas (2)e) à k), m) et n) et à l'alinéa (2.1)b) ou au paragraphe (2.2) ou qu'il fournit ces renseignements ou ce matériel mais de façon incomplète, il fournit au ministre, au même moment, un plan précisant les modalités selon

provide the Minister, at that time, with a plan that specifies how and when the manufacturer will provide the Minister with the missing information or material.

**(2.4)** Subsections (2.1) to (2.3) apply if

**(a)** the new drug submission contains a statement that the submission is for a designated COVID-19 drug; and

**(b)** the purpose and conditions of use specified in the new drug submission in respect of the designated COVID-19 drug relate only to COVID-19 and the submission contains a statement to that effect.

**(2.5)** Subsections (2.1) to (2.3) do not apply if the manufacturer is seeking a notice of compliance for a designated COVID-19 drug on the basis of a direct or indirect comparison between the designated COVID-19 drug and another designated COVID-19 drug.

**(3)** The manufacturer of a new drug shall, at the request of the Minister, provide the Minister, where for the purposes of a new drug submission the Minister considers it necessary to assess the safety and effectiveness of the new drug, with the following information and material:

**(a)** the names and addresses of the manufacturers of each of the ingredients of the new drug and the names and addresses of the manufacturers of the new drug in the dosage form in which it is proposed that the new drug be sold;

**(b)** samples of the ingredients of the new drug;

**(c)** samples of the new drug in the dosage form in which it is proposed that the new drug be sold; and

**(d)** any additional information or material respecting the safety and effectiveness of the new drug.

SOR/85-143, s. 1; SOR/93-202, s. 24; SOR/95-411, s. 4; SOR/2011-88, s. 10; SOR/2014-158, s. 10; SOR/2017-259, s. 22; SOR/2018-69, s. 33(F); SOR/2018-84, s. 8(F); SOR/2021-45, s. 14.

**C.08.002.01 (1)** A manufacturer of a new drug may file an extraordinary use new drug submission for the new drug if

**(a)** the new drug is intended for

**(i)** emergency use in situations where persons have been exposed to a chemical, biological, radiological or nuclear substance and action is required to treat, mitigate or prevent a life-threatening or other serious disease, disorder or abnormal physical state, or

lesquelles il fournira au ministre les renseignements ou le matériel manquants.

**(2.4)** Les paragraphes (2.1) à (2.3) s'appliquent si, à la fois :

**a)** la présentation de drogue nouvelle contient une mention portant que la présentation est déposée à l'égard d'une drogue désignée contre la COVID-19;

**b)** les fins et le mode d'emploi mentionnés dans la présentation de drogue nouvelle à l'égard de la drogue désignée contre la COVID-19 ont trait uniquement à la COVID-19 et la présentation contient une mention à cet égard.

**(2.5)** Les paragraphes (2.1) à (2.3) ne s'appliquent pas lorsque le fabricant demande un avis de conformité à l'égard de la drogue désignée contre la COVID-19 sur la base d'une comparaison directe ou indirecte entre celle-ci et une autre drogue désignée contre la COVID-19.

**(3)** Le fabricant de la drogue nouvelle doit, à la demande du ministre, lui fournir, selon ce que celui-ci estime nécessaire pour évaluer l'innocuité et l'efficacité de la drogue dans le cadre de la présentation de drogue nouvelle, les renseignements et le matériel suivants :

**a)** les nom et adresse des fabricants de chaque ingrédient de la drogue nouvelle et les nom et adresse des fabricants de la drogue nouvelle sous sa forme posologique proposée pour la vente;

**b)** des échantillons des ingrédients de la drogue nouvelle;

**c)** des échantillons de la drogue nouvelle sous sa forme posologique proposée pour la vente;

**d)** tout renseignement ou matériel supplémentaire se rapportant à l'innocuité et à l'efficacité de la drogue nouvelle.

DORS/85-143, art. 1; DORS/93-202, art. 24; DORS/95-411, art. 4; DORS/2011-88, art. 10; DORS/2014-158, art. 10; DORS/2017-259, art. 22; DORS/2018-69, art. 33(F); DORS/2018-84, art. 8(F); DORS/2021-45, art. 14.

**C.08.002.01 (1)** Le fabricant d'une drogue nouvelle peut déposer à l'égard de celle-ci une présentation de drogue nouvelle pour usage exceptionnel si les conditions ci-après sont réunies :

**a)** la drogue nouvelle est destinée à être utilisée :

**(i)** en cas d'urgence, lorsqu'une personne a été exposée à une substance chimique, biologique, radiologique ou nucléaire et qu'il y a lieu d'agir pour traiter, atténuer ou prévenir une maladie, un désordre

its symptoms, that results, or is likely to result, from that exposure, or

**(ii)** preventative use in persons who are at risk of exposure to a chemical, biological, radiological or nuclear substance that is potentially lethal or permanently disabling; and

**(b)** the requirements set out in paragraphs C.08.002(2)(g) and (h) cannot be met because

**(i)** exposing human volunteers to the substance referred to in paragraph (a) would be potentially lethal or permanently disabling, and

**(ii)** the circumstances in which exposure to the substance occurs are sporadic and infrequent.

ou un état physique anormal graves — mettant notamment la vie en danger —, ou leurs symptômes, qui résultent — ou résulteraient vraisemblablement — d'une telle exposition,

**(ii)** en tant que mesure préventive chez toute personne qui pourrait être exposée à une substance chimique, biologique, radiologique ou nucléaire qui risque d'entraîner une incapacité permanente ou la mort;

**b)** il est impossible de remplir les exigences prévues aux alinéas C.08.002(2)g) et h) pour les raisons suivantes :

**(i)** l'exposition de volontaires humains à la substance visée à l'alinéa a) risque d'entraîner une incapacité permanente ou la mort,

**(ii)** les circonstances de l'exposition à la substance ne se produisent que de façon sporadique et à intervalles peu fréquents.

**(2)** Subject to subsections (3) and (5), an extraordinary use new drug submission shall contain

**(a)** an attestation, signed and dated by the senior executive officer in Canada of the manufacturer filing the submission and by the manufacturer's senior medical or scientific officer, certifying that the conditions referred to in paragraphs (1)(a) and (b) are met, together with sufficient supporting information to enable the Minister to determine that those conditions are met; and

**(b)** sufficient information and material to enable the Minister to assess the safety and effectiveness of the new drug, including the following:

**(i)** the information and material described in paragraphs C.08.002(2)(a) to (f), (i) to (m) and (o),

**(ii)** information respecting the pathophysiological mechanism for the toxicity of the chemical, biological, radiological or nuclear substance and describing the new drug's ability to treat, mitigate or prevent that mechanism,

**(iii)** detailed reports of in vitro studies respecting the toxicity and activity of the new drug in relation to the recommended purpose,

**(iv)** detailed reports of studies, in an animal species that is expected to react with a response that is predictive for humans, establishing the safety of the new drug, and providing substantial evidence of its

**(2)** Sous réserve des paragraphes (3) et (5), la présentation de drogue nouvelle pour usage exceptionnel doit contenir :

**a)** une attestation, signée et datée par le premier dirigeant au Canada du fabricant qui dépose la présentation et par son directeur médical ou scientifique, portant que les conditions prévues aux alinéas (1)a) et b) sont remplies, accompagnée de suffisamment de renseignements à l'appui pour permettre au ministre de conclure que ces conditions sont remplies;

**b)** suffisamment de renseignements et de matériel pour permettre au ministre d'évaluer l'innocuité et l'efficacité de cette drogue nouvelle, notamment :

**(i)** les renseignements et le matériel visés aux alinéas C.08.002(2)a) à f), i) à m) et o),

**(ii)** des renseignements concernant le processus pathophysiologique de la toxicité de la substance chimique, biologique, radiologique ou nucléaire et décrivant la capacité de la drogue nouvelle de traiter, d'atténuer ou de prévenir ce processus,

**(iii)** des rapports détaillés d'études *in vitro* effectuées relativement à la toxicité et à l'activité de la drogue nouvelle, aux fins recommandées,

**(iv)** des rapports détaillés d'études, effectuées sur une espèce animale dont les réactions devraient permettre de prédire celles chez l'être humain, établissant l'innocuité de la drogue nouvelle et fournissant des preuves substantielles de ses effets

effect, when used for the purpose and under the conditions of use recommended,

**(v)** information confirming that the end point of animal studies is clearly related to the desired benefit in humans,

**(vi)** information demonstrating that there is a sufficient understanding of the pharmacokinetics and pharmacodynamics of the new drug in animals and in humans to enable inferences to be drawn in respect of humans so as to allow for the selection of an effective dose in humans,

**(vii)** information respecting the safety of the new drug in humans, including detailed reports of clinical trials, if any, establishing the safety of the new drug,

**(viii)** information, if any, respecting the effectiveness of the new drug in humans for the purpose or under the conditions of use recommended,

**(ix)** a plan for monitoring and establishing the safety and effectiveness of the new drug under the conditions of use recommended that includes procedures for gathering and analyzing data, and

**(x)** any available assessment reports regarding the new drug prepared by regulatory authorities in countries other than Canada.

**(3)** Reports referred to in subparagraph (2)(b)(iii) or information referred to in subparagraph (2)(b)(vi) may be omitted if the extraordinary use new drug submission includes a detailed scientific explanation as to why the reports are or the information is not available.

**(4)** Any information or material that is necessary to enable the Minister to assess the safety and effectiveness of the new drug shall, at the request of the Minister, be added to the extraordinary use new drug submission, including

**(a)** the names and addresses of the manufacturers of each of the ingredients of the new drug and the names and addresses of the manufacturers of the new drug in the dosage form in which it is proposed to be sold;

**(b)** samples of the ingredients of the new drug;

**(c)** samples of the new drug in the dosage form in which it is proposed to be sold; and

**(d)** any information omitted by virtue of subsection (3).

lorsqu'elle est utilisée aux fins et selon le mode d'emploi recommandés,

**(v)** des renseignements confirmant que le résultat d'études sur les animaux est clairement relié aux avantages recherchés chez l'être humain,

**(vi)** des renseignements indiquant une connaissance suffisante de la pharmacocinétique et de la pharmacodynamie de la drogue nouvelle chez l'animal et l'être humain pour en tirer des conclusions permettant de déterminer une dose thérapeutique chez l'être humain,

**(vii)** des renseignements concernant l'innocuité de la drogue nouvelle chez l'être humain, notamment des rapports détaillés de tout essai clinique établissant l'innocuité de la drogue nouvelle,

**(viii)** tout renseignement concernant l'efficacité de la drogue nouvelle chez l'être humain aux fins et selon le mode d'emploi recommandés,

**(ix)** un plan visant à surveiller et à établir l'innocuité et l'efficacité de la drogue nouvelle aux fins et selon le mode d'emploi recommandés, qui contient les procédures de collecte et d'analyse des données,

**(x)** tout rapport d'évaluation disponible concernant la drogue nouvelle, préparé par toute autorité réglementaire dans tout pays autre que le Canada.

**(3)** Il n'est pas nécessaire de fournir les rapports visés au sous-alinéa (2)b)(iii) ou les renseignements visés au sous-alinéa (2)b)(vi) si la présentation de drogue nouvelle pour usage exceptionnel contient une explication scientifique détaillée de la raison pour laquelle ils ne sont pas disponibles.

**(4)** Tout renseignement ou matériel nécessaire pour permettre au ministre d'évaluer l'innocuité et l'efficacité de la drogue nouvelle doit être ajouté, à la demande du ministre, à la présentation de drogue nouvelle pour usage exceptionnel, notamment :

**a)** les nom et adresse des fabricants de chaque ingrédient de la drogue nouvelle ainsi que ceux des fabricants de la drogue nouvelle sous la forme posologique proposée pour la vente;

**b)** des échantillons des ingrédients de la drogue nouvelle;

**c)** des échantillons de la drogue nouvelle sous la forme posologique proposée pour la vente;

**(5)** If an extraordinary use new drug submission is in respect of a new purpose for a new drug for which a notice of compliance has been issued under section C.08.004, the information and material referred to in subparagraph (2)(b)(i) may be omitted unless any of it is different from that which was originally submitted.

SOR/2011-88, s. 11; SOR/2014-158, s. 11.

**C.08.002.02** Despite sections C.08.002 and C.08.003, no manufacturer or importer shall sell a new drug for extraordinary use in respect of which a notice of compliance has been issued under section C.08.004.01 except to

**(a)** the Government of Canada or the government of a province for the use of a department or agency of that government, on receipt of a written order signed by the minister responsible for the department or by the person in charge of the agency, or by their duly authorized representative; or

**(b)** a municipal government, or an institution of such a government, on receipt of a written order signed by a senior official of the government or institution or by his or her duly authorized representative.

SOR/2011-88, s. 11.

**C.08.002.1 (1)** A manufacturer of a new drug may file an abbreviated new drug submission or an abbreviated extraordinary use new drug submission for the new drug where, in comparison with a Canadian reference product,

**(a)** the new drug is the pharmaceutical equivalent of the Canadian reference product;

**(b)** the new drug is bioequivalent with the Canadian reference product, based on the pharmaceutical and, where the Minister considers it necessary, bioavailability characteristics;

**(c)** the route of administration of the new drug is the same as that of the Canadian reference product; and

**(d)** the conditions of use for the new drug fall within the conditions of use for the Canadian reference product.

**(2)** An abbreviated new drug submission or an abbreviated extraordinary use new drug submission shall contain sufficient information and material to enable the Minister to assess the safety and effectiveness of the new drug, including the following:

**d)** tout renseignement qui n'a pas été fourni au titre du paragraphe (3).

**(5)** Si la présentation de drogue nouvelle pour usage exceptionnel vise une fin nouvelle d'une drogue nouvelle à l'égard de laquelle un avis de conformité a été délivré en application de l'article C.08.004, il n'est pas nécessaire de fournir les renseignements et le matériel visés au sous-alinéa (2)b)(i) à moins qu'ils ne diffèrent de ceux fournis à l'origine.

DORS/2011-88, art. 11; DORS/2014-158, art. 11.

**C.08.002.02** Malgré les articles C.08.002 et C.08.003, il est interdit au fabricant et à l'importateur de vendre une drogue nouvelle pour usage exceptionnel à l'égard de laquelle un avis de conformité a été délivré en application de l'article C.08.004.01, sauf :

**a)** au gouvernement du Canada ou à celui d'une province, à l'usage d'un de ses ministères ou organismes, sur réception d'une commande écrite signée par le ministre en cause ou le responsable de l'organisme, ou leur représentant dûment autorisé;

**b)** à une administration municipale ou un de ses organismes, sur réception d'une commande écrite signée par un cadre supérieur de l'administration ou de l'organisme, ou son représentant dûment autorisé.

DORS/2011-88, art. 11.

**C.08.002.1 (1)** Le fabricant d'une drogue nouvelle peut déposer à l'égard de celle-ci une présentation abrégée de drogue nouvelle ou une présentation abrégée de drogue nouvelle pour usage exceptionnel si, par comparaison à un produit de référence canadien :

**a)** la drogue nouvelle est un équivalent pharmaceutique du produit de référence canadien;

**b)** elle est bioéquivalente au produit de référence canadien d'après les caractéristiques pharmaceutiques et, si le ministre l'estime nécessaire, d'après les caractéristiques en matière de biodisponibilité;

**c)** la voie d'administration de la drogue nouvelle est identique à celle du produit de référence canadien;

**d)** les conditions thérapeutiques relatives à la drogue nouvelle figurent parmi celles qui s'appliquent au produit de référence canadien.

**(2)** La présentation abrégée de drogue nouvelle ou la présentation abrégée de drogue nouvelle pour usage exceptionnel doit contenir suffisamment de renseignements et de matériel pour permettre au ministre d'évaluer l'innocuité et l'efficacité de la drogue nouvelle, notamment :

**(a)** the information and material described in

**(i)** paragraphs C.08.002(2)(a) to (f), (j) to (l) and (o), in the case of an abbreviated new drug submission, and

**(ii)** paragraphs C.08.002(2)(a) to (f), (j) to (l) and (o), and subparagraphs C.08.002.01(2)(b)(ix) and (x), in the case of an abbreviated extraordinary use new drug submission;

**(b)** information identifying the Canadian reference product used in any comparative studies conducted in connection with the submission;

**(c)** evidence from the comparative studies conducted in connection with the submission that the new drug is

**(i)** the pharmaceutical equivalent of the Canadian reference product, and

**(ii)** where the Minister considers it necessary on the basis of the pharmaceutical and, where applicable, bioavailability characteristics of the new drug, bioequivalent with the Canadian reference product as demonstrated using bioavailability studies, pharmacodynamic studies or clinical studies;

**(d)** evidence that all test batches of the new drug used in any studies conducted in connection with the submission were manufactured and controlled in a manner that is representative of market production; and

**(e)** for a drug intended for administration to food-producing animals, sufficient information to confirm that the withdrawal period is identical to that of the Canadian reference product.

**(3)** The manufacturer of a new drug shall, at the request of the Minister, provide the Minister, where for the purposes of an abbreviated new drug submission or an abbreviated extraordinary use new drug submission the Minister considers it necessary to assess the safety and effectiveness of the new drug, with the following information and material:

**(a)** the names and addresses of the manufacturers of each of the ingredients of the new drug and the names and addresses of the manufacturers of the new drug in the dosage form in which it is proposed that the new drug be sold;

**(b)** samples of the ingredients of the new drug;

**a)** les renseignements et le matériel visés :

**(i)** aux alinéas C.08.002(2)a) à f), j) à l) et o), dans le cas d'une présentation abrégée de drogue nouvelle,

**(ii)** aux alinéas C.08.002(2)a) à f), j) à l) et o) et aux sous-alinéas C.08.002.01(2)b)(ix) et (x), dans le cas d'une présentation abrégée de drogue nouvelle pour usage exceptionnel;

**b)** les renseignements permettant d'identifier le produit de référence canadien utilisé pour les études comparatives menées dans le cadre de la présentation;

**c)** les éléments de preuve, provenant des études comparatives menées dans le cadre de la présentation, établissant que la drogue nouvelle :

**(i)** d'une part, est un équivalent pharmaceutique du produit de référence canadien,

**(ii)** d'autre part, si le ministre l'estime nécessaire d'après les caractéristiques pharmaceutiques et, le cas échéant, d'après les caractéristiques en matière de biodisponibilité de celle-ci, est bioéquivalente au produit de référence canadien selon les résultats des études en matière de biodisponibilité, des études pharmacodynamiques ou des études cliniques;

**d)** les éléments de preuve établissant que les lots d'essai de la drogue nouvelle ayant servi aux études menées dans le cadre de la présentation ont été fabriqués et contrôlés d'une manière représentative de la production destinée au commerce;

**e)** dans le cas d'une drogue destinée à être administrée à des animaux producteurs de denrées alimentaires, les renseignements permettant de confirmer que le délai d'attente est identique à celui du produit de référence canadien.

**(3)** Le fabricant de la drogue nouvelle doit, à la demande du ministre, lui fournir, selon ce que celui-ci estime nécessaire pour évaluer l'innocuité et l'efficacité de la drogue dans le cadre de la présentation abrégée de drogue nouvelle ou de la présentation abrégée de drogue nouvelle pour usage exceptionnel, les renseignements et le matériel suivants :

**a)** les nom et adresse des fabricants de chaque ingrédient de la drogue nouvelle et les nom et adresse des fabricants de la drogue nouvelle sous sa forme posologique proposée pour la vente;

**b)** des échantillons des ingrédients de la drogue nouvelle;

**(c)** samples of the new drug in the dosage form in which it is proposed that the new drug be sold; and

**(d)** any additional information or material respecting the safety and effectiveness of the new drug.

**(4)** For the purposes of this section, in the case of an abbreviated new drug submission, a new drug for extraordinary use in respect of which a notice of compliance has been issued under section C.08.004.01 is not a Canadian reference product.

SOR/95-411, s. 5; SOR/2011-88, s. 12; SOR/2014-158, s. 12.

**C.08.003 (1)** Despite section C.08.002, no person shall sell a new drug in respect of which a notice of compliance has been issued to the manufacturer of that new drug and has not been suspended under section C.08.006, if any of the matters specified in subsection (2) are significantly different from the information or material contained in the new drug submission, extraordinary use new drug submission, abbreviated new drug submission or abbreviated extraordinary use new drug submission, unless

**(a)** the manufacturer of the new drug has filed with the Minister a supplement to that submission;

**(b)** the Minister has issued a notice of compliance to the manufacturer of the new drug in respect of the supplement; and

**(c)** the notice of compliance in respect of the supplement has not been suspended under section C.08.006.

**(d)** [Repealed, SOR/2014-158, s. 13]

**(2)** The matters specified for the purposes of subsection (1), in relation to the new drug, are the following:

**(a)** the description of the new drug;

**(b)** the brand name of the new drug or the identifying name or code proposed for the new drug;

**(c)** the specifications of the ingredients of the new drug;

**(d)** the plant and equipment used in manufacturing, preparation and packaging the new drug;

**(e)** the method of manufacture and the controls used in manufacturing, preparation and packaging the new drug;

**(f)** the tests applied to control the potency, purity, stability and safety of the new drug;

**c)** des échantillons de la drogue nouvelle sous sa forme posologique proposée pour la vente;

**d)** tout renseignement ou matériel supplémentaire se rapportant à l'innocuité et à l'efficacité de la drogue nouvelle.

**(4)** Pour l'application du présent article, dans le cas d'une présentation abrégée de drogue nouvelle, la drogue nouvelle pour usage exceptionnel à l'égard de laquelle un avis de conformité a été délivré en application de l'article C.08.004.01 n'est pas un produit de référence canadien.

DORS/95-411, art. 5; DORS/2011-88, art. 12; DORS/2014-158, art. 12.

**C.08.003 (1)** Malgré l'article C.08.002, il est interdit de vendre une drogue nouvelle à l'égard de laquelle un avis de conformité a été délivré à son fabricant et n'a pas été suspendu en vertu de l'article C.08.006 lorsqu'un des éléments visés au paragraphe (2) diffère sensiblement des renseignements ou du matériel contenus dans la présentation de drogue nouvelle, la présentation de drogue nouvelle pour usage exceptionnel, la présentation abrégée de drogue nouvelle ou la présentation abrégée de drogue nouvelle pour usage exceptionnel, à moins que les conditions ci-après ne soient réunies :

**a)** le fabricant de la drogue nouvelle a déposé auprès du ministre un supplément à la présentation;

**b)** le ministre a délivré au fabricant un avis de conformité relativement au supplément;

**c)** l'avis de conformité relatif au supplément n'a pas été suspendu en vertu de l'article C.08.006.

**d)** [Abrogé, DORS/2014-158, art. 13]

**(2)** Pour l'application du paragraphe (1), les éléments ayant trait à la drogue nouvelle sont les suivants :

**a)** sa description;

**b)** sa marque nominative ou le nom ou code sous lequel il est proposé de l'identifier;

**c)** les spécifications de ses ingrédients;

**d)** les installations et l'équipement à utiliser pour sa fabrication, sa préparation et son emballage;

**e)** la méthode de fabrication et les mécanismes de contrôle à appliquer pour sa fabrication, sa préparation et son emballage;

**f)** les analyses effectuées pour contrôler son activité, sa pureté, sa stabilité et son innocuité;

**(g)** the labels used in connection with the new drug;

**(g.1)** in the case of a new drug for human use, its packages;

**(h)** the representations made with regard to the new drug respecting

**(i)** the recommended route of administration of the new drug,

**(ii)** the dosage of the new drug,

**(iii)** the claims made for the new drug,

**(iv)** the contra-indications and side effects of the new drug, and

**(v)** the withdrawal period of the new drug; and

**(i)** the dosage form in which it is proposed that the new drug be sold.

**(3)** A supplement to a submission referred to in subsection (1), with respect to the matters that are significantly different from those contained in the submission, shall contain sufficient information and material to enable the Minister to assess the safety and effectiveness of the new drug in relation to those matters.

**(3.1)** A supplement to a submission referred to in subsection (1) shall contain, as the case may be,

**(a)** if, due to a matter specified in subsection (2) — other than the brand name of a new drug for human use — that the supplement concerns, it is necessary to modify a new drug's labels:

**(i)** in the case of a new drug for veterinary use, a draft of every label to be used in connection with the new drug, including any package insert and any document that is provided on request and that sets out supplementary information on the use of the new drug, or

**(ii)** in the case of a new drug for human use, mock-ups of every label to be used in connection with the new drug — including any package insert and any document that is provided on request and that sets out supplementary information on the use of the new drug — and mock-ups of the new drug's packages; or

**(b)** if the supplement concerns the brand name of a new drug for human use:

**g)** les étiquettes à utiliser pour la drogue nouvelle;

**g.1)** dans le cas d'une drogue nouvelle pour usage humain, les emballages de celle-ci;

**h)** les observations faites relativement :

**(i)** à la voie d'administration recommandée pour la drogue nouvelle,

**(ii)** à sa posologie,

**(iii)** aux propriétés qui lui sont attribuées,

**(iv)** à ses contre-indications et à ses effets secondaires,

**(v)** au délai d'attente applicable à celle-ci;

**i)** sa forme posologique proposée pour la vente.

**(3)** Le supplément à toute présentation visée au paragraphe (1) contient, à l'égard des éléments qui diffèrent sensiblement de ce qui figure dans la présentation, suffisamment de renseignements et de matériel pour permettre au ministre d'évaluer l'innocuité et l'efficacité de la drogue nouvelle relativement à ces éléments.

**(3.1)** Le supplément à toute présentation visée au paragraphe (1) contient, selon le cas, ce qui suit :

**a)** si, en raison de l'élément visé au paragraphe (2) — autre que la marque nominative d'une drogue nouvelle pour usage humain — sur lequel porte le supplément, il est nécessaire de modifier les étiquettes de la drogue nouvelle :

**(i)** dans le cas d'une drogue nouvelle pour usage vétérinaire, une esquisse de toute étiquette à utiliser relativement à la drogue nouvelle, y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue nouvelle qui est fournie sur demande,

**(ii)** dans le cas d'une drogue nouvelle pour usage humain, des maquettes de toute étiquette à utiliser relativement à la drogue nouvelle — y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue nouvelle qui est fournie sur demande — ainsi que des maquettes des emballages de la drogue nouvelle;

**b)** si le supplément porte sur la marque nominative d'une drogue nouvelle pour usage humain :

**(i)** an assessment as to whether there is a likelihood that the new drug will be mistaken for another drug for which a drug identification number has been assigned due to a resemblance between the brand name that is proposed to be used in respect of the new drug and the brand name, common name or proper name of the other drug, and

**(ii)** mock-ups of every label to be used in connection with the new drug — including any package insert and any document that is provided on request and that sets out supplementary information on the use of the new drug — and mock-ups of the new drug's packages.

**(4)** If a supplement to an extraordinary use new drug submission or an abbreviated extraordinary use new drug submission concerns a matter specified in subparagraph (2)(h)(iii), the supplement shall contain the attestation and supporting information referred to in paragraph C.08.002.01(2)(a).

SOR/85-143, s. 2; SOR/93-202, s. 25; SOR/95-411, s. 6; SOR/2011-88, s. 13; SOR/2014-158, s. 13; SOR/2017-259, s. 23; SOR/2018-69, s. 33(F); SOR/2018-84, s. 9(F).

**C.08.003.01 (1)** The following definitions apply in this section.

***submission*** means

**(a)** a new drug submission that is filed under section C.08.002;

**(b)** an extraordinary use new drug submission that is filed under section C.08.002.01;

**(c)** an abbreviated new drug submission that is filed under section C.08.002.1; or

**(d)** an abbreviated extraordinary use new drug submission that is filed under section C.08.002.1. (*présentation*)

***supplement*** means a supplement to a submission that is filed under section C.08.003. (*supplément*)

**(2)** Despite sections C.08.002, C.08.002.01, C.08.002.1 and C.08.003 and subject to subsection (3), the manufacturer of a new drug is not permitted to file a submission or supplement for the new drug on the basis of a direct or indirect comparison to any new drug in respect of which an authorization was issued under the ISAD Interim Order.

**(3)** Subsection (2) does not prevent the manufacturer of a new drug from filing a submission or supplement for

**(i)** une appréciation de la question de savoir si la drogue nouvelle est susceptible d'être confondue avec une autre drogue à laquelle une identification numérique a été attribuée en raison de la ressemblance de la marque nominative dont l'utilisation est proposée pour cette drogue nouvelle avec la marque nominative, le nom usuel ou le nom propre de l'autre drogue,

**(ii)** des maquettes de toute étiquette à utiliser relativement à la drogue nouvelle — y compris toute notice d'accompagnement et toute documentation supplémentaire sur l'emploi de la drogue nouvelle qui est fournie sur demande — ainsi que des maquettes des emballages de la drogue nouvelle.

**(4)** S'il porte sur un élément visé au sous-alinéa (2)h)(iii), le supplément à une présentation de drogue nouvelle pour usage exceptionnel ou à une présentation abrégée de drogue nouvelle pour usage exceptionnel contient l'attestation et les renseignements à l'appui prévus à l'alinéa C.08.002.01(2)a).

DORS/85-143, art. 2; DORS/93-202, art. 25; DORS/95-411, art. 6; DORS/2011-88, art. 13; DORS/2014-158, art. 13; DORS/2017-259, art. 23; DORS/2018-69, art. 33(F); DORS/2018-84, art. 9(F).

**C.08.003.01 (1)** Les définitions ci-après s'appliquent au présent article.

***présentation***

**a)** toute présentation de drogue nouvelle déposée en application de l'article C.08.002;

**b)** toute présentation de drogue nouvelle pour usage exceptionnel déposée en application de l'article C.08.002.01;

**c)** toute présentation abrégée de drogue nouvelle déposée en application de l'article C.08.002.1;

**d)** toute présentation abrégée de drogue nouvelle pour usage exceptionnel déposée en application de l'article C.08.002.1. (*submission*)

***supplément*** Supplément à une présentation déposé en application de l'article C.08.003. (*supplement*)

**(2)** Malgré les articles C.08.002, C.08.002.01, C.08.002.1 et C.08.003 et sous réserve du paragraphe (3), le fabricant d'une drogue nouvelle ne peut déposer une présentation ou un supplément à l'égard de la drogue nouvelle sur la base d'une comparaison directe ou indirecte entre celle-ci et toute drogue nouvelle qui a fait l'objet d'une autorisation délivrée en vertu de l'arrêté d'urgence IVPD.

**(3)** Le paragraphe (2) n'empêche pas le fabricant d'une drogue nouvelle de déposer une présentation ou un

the new drug on the basis of a direct or indirect comparison to another new drug in respect of which an authorization was issued under the ISAD Interim Order if

**(a)** a notice of compliance is issued under section C.08.004 or C.08.004.01 in respect of a submission or supplement for that other new drug; and

**(b)** the comparison is in respect of the matters that were approved by the notice of compliance.

SOR/2021-45, s. 15.

**C.08.003.1** In examining a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission, an abbreviated extraordinary use new drug submission or a supplement to any of those submissions, the Minister may examine any information or material filed with the Minister by any person pursuant to Division 5 or section C.08.002, C.08.002.01, C.08.002.1, C.08.003, C.08.005 or C.08.005.1 to establish the safety and effectiveness of the new drug for which the submission or supplement has been filed.

SOR/95-411, s. 6; SOR/2001-203, s. 5; SOR/2011-88, s. 14.

**C.08.004 (1)** Subject to section C.08.004.1, the Minister shall, after completing an examination of a new drug submission or abbreviated new drug submission or a supplement to either submission,

**(a)** if that submission or supplement complies with section C.08.002, C.08.002.1 or C.08.003, as the case may be, and section C.08.005.1, issue a notice of compliance; or

**(b)** if that submission or supplement does not comply with section C.08.002, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1, issue a notice to the manufacturer to that effect.

**(2)** If a new drug submission or an abbreviated new drug submission or a supplement to either submission does not comply with section C.08.002, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1, the manufacturer who filed the submission or supplement may amend the submission or supplement by filing additional information or material within 90 days after the day on which the Minister issues a notice to the manufacturer under paragraph C.08.004(1)(b) or within any longer period specified by the Minister.

supplément à l'égard de la drogue nouvelle sur la base d'une comparaison directe ou indirecte entre celle-ci et une autre drogue nouvelle qui a fait l'objet d'une autorisation délivrée en vertu de l'arrêté d'urgence IVPD si, à la fois :

**a)** un avis de conformité est délivré en vertu des articles C.08.004 ou C.08.004.01 relativement à une présentation ou à un supplément pour cette autre drogue nouvelle;

**b)** la comparaison concerne les éléments approuvés par l'avis de conformité.

DORS/2021-45, art. 15.

**C.08.003.1** Le ministre peut, dans le cadre de son examen d'une présentation de drogue nouvelle, d'une présentation de drogue nouvelle pour usage exceptionnel, d'une présentation abrégée de drogue nouvelle, d'une présentation abrégée de drogue nouvelle pour usage exceptionnel ou d'un supplément à l'une de ces présentations, examiner les renseignements ou le matériel que lui présente toute personne, en vertu du titre 5 ou des articles C.08.002, C.08.002.01, C.08.002.1, C.08.003, C.08.005 ou C.08.005.1, pour déterminer l'innocuité et l'efficacité de la drogue nouvelle visée par la présentation ou le supplément.

DORS/95-411, art. 6; DORS/2001-203, art. 5; DORS/2011-88, art. 14.

**C.08.004 (1)** Sous réserve de l'article C.08.004.1, après avoir terminé l'examen d'une présentation de drogue nouvelle, d'une présentation abrégée de drogue nouvelle ou d'un supplément à l'une de ces présentations, le ministre :

**a)** si la présentation ou le supplément est conforme aux articles C.08.002, C.08.002.1 ou C.08.003, selon le cas, et à l'article C.08.005.1, délivre un avis de conformité;

**b)** si la présentation ou le supplément n'est pas conforme aux articles C.08.002, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1, délivre un avis à cet effet au fabricant.

**(2)** Le fabricant qui a déposé une présentation de drogue nouvelle, une présentation abrégée de drogue nouvelle ou un supplément à l'une de ces présentations non conformes aux articles C.08.002, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1, peut modifier la présentation ou le supplément en déposant des renseignements ou du matériel supplémentaires dans les quatre-vingt-dix jours suivant la date à laquelle le ministre lui délivre un avis en application de l'alinéa C.08.004(1)b) ou dans tout délai plus long imparti par le ministre.

**(3)** Subject to section C.08.004.1, the Minister shall, after completing an examination of any additional information or material filed in respect of a new drug submission or an abbreviated new drug submission or a supplement to either submission,

**(a)** if that submission or supplement complies with section C.08.002, C.08.002.1 or C.08.003, as the case may be, and section C.08.005.1, issue a notice of compliance; or

**(b)** if that submission or supplement does not comply with section C.08.002, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1, issue a notice to the manufacturer to that effect.

**(4)** A notice of compliance issued in respect of a new drug on the basis of information and material contained in a submission filed pursuant to section C.08.002.1 shall state the name of the Canadian reference product referred to in the submission and shall constitute a declaration of equivalence for that new drug.

SOR/84-267, ss. 1 to 3; SOR/85-143, s. 3; SOR/86-1009, s. 1; SOR/86-1101, s. 1; SOR/88-42, s. 1; SOR/88-257, s. 1; SOR/95-411, s. 6; SOR/2019-62, s. 1.

**C.08.004.01 (1)** Subject to section C.08.004.1, the Minister shall, after completing an examination of an extraordinary use new drug submission or an abbreviated extraordinary use new drug submission or a supplement to either submission,

**(a)** if that submission or supplement complies with section C.08.002.01, C.08.002.1 or C.08.003, as the case may be, and section C.08.005.1, issue a notice of compliance; or

**(b)** if that submission or supplement does not comply with section C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1, issue a notice to the manufacturer to that effect.

**(2)** If an extraordinary use new drug submission or an abbreviated extraordinary use new drug submission or a supplement to either submission does not comply with section C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1, the manufacturer who filed the submission or supplement may amend the submission or supplement by filing additional information or material within 90 days after the day on which the Minister issues a notice to the manufacturer under paragraph C.08.004.01(1)(b) or within any longer period specified by the Minister.

**(3)** Subject to section C.08.004.1, the Minister shall, after completing an examination of any additional information

**(3)** Sous réserve de l'article C.08.004.1, après avoir terminé l'examen des renseignements et du matériel supplémentaires déposés relativement à une présentation de drogue nouvelle, à une présentation abrégée de drogue nouvelle ou à un supplément à l'une de ces présentations, le ministre :

**a)** si la présentation ou le supplément est conforme aux articles C.08.002, C.08.002.1 ou C.08.003, selon le cas, et à l'article C.08.005.1, délivre un avis de conformité;

**b)** si la présentation ou le supplément n'est pas conforme aux articles C.08.002, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1, délivre un avis à cet effet au fabricant.

**(4)** L'avis de conformité délivré à l'égard d'une drogue nouvelle d'après les renseignements et le matériel contenus dans la présentation déposée conformément à l'article C.08.002.1 indique le nom du produit de référence canadien mentionné dans la présentation et constitue la déclaration d'équivalence de cette drogue.

DORS/84-267, art. 1 à 3; DORS/85-143, art. 3; DORS/86-1009, art. 1; DORS/86-1101, art. 1; DORS/88-42, art. 1; DORS/88-257, art. 1; DORS/95-411, art. 6; DORS/2019-62, art. 1.

**C.08.004.01 (1)** Sous réserve de l'article C.08.004.1, après avoir terminé l'examen d'une présentation de drogue nouvelle pour usage exceptionnel, d'une présentation abrégée de drogue nouvelle pour usage exceptionnel ou d'un supplément à l'une de ces présentations, le ministre :

**a)** si la présentation ou le supplément est conforme aux articles C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, et à l'article C.08.005.1, délivre un avis de conformité;

**b)** si la présentation ou le supplément n'est pas conforme aux articles C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1, délivre un avis à cet effet au fabricant.

**(2)** Le fabricant qui a déposé une présentation de drogue nouvelle pour usage exceptionnel, une présentation abrégée de drogue nouvelle pour usage exceptionnel ou un supplément à l'une de ces présentations non conformes aux articles C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1, peut modifier la présentation ou le supplément en déposant des renseignements ou du matériel supplémentaires dans les quatre-vingt-dix jours suivant la date à laquelle le ministre lui délivre un avis en application de l'alinéa C.08.004.01(1)b) ou dans tout délai plus long imparti par le ministre.

**(3)** Sous réserve de l'article C.08.004.1, après avoir terminé l'examen des renseignements et du matériel

or material filed in respect of an extraordinary use new drug submission or an abbreviated extraordinary use new drug submission or a supplement to either submission,

**(a)** if that submission or supplement complies with section C.08.002.01, C.08.002.1 or C.08.003, as the case may be, and section C.08.005.1, issue a notice of compliance; or

**(b)** if that submission or supplement does not comply with section C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1, issue a notice to the manufacturer to that effect.

**(4)** A notice of compliance issued in respect of a new drug for extraordinary use on the basis of information and material contained in a submission filed pursuant to section C.08.002.1 shall state the name of the Canadian reference product referred to in the submission and shall constitute a declaration of equivalence for that new drug.

SOR/2011-88, s. 15; SOR/2019-62, s. 2.

**C.08.004.1 (1)** The following definitions apply in this section.

***abbreviated new drug submission*** includes an abbreviated extraordinary use new drug submission. (*présentation abrégée de drogue nouvelle*)

***innovative drug*** means a drug that contains a medicinal ingredient not previously approved in a drug by the Minister and that is not a variation of a previously approved medicinal ingredient such as a salt, ester, enantiomer, solvate or polymorph. (*drogue innovante*)

***new drug submission*** includes an extraordinary use new drug submission. (*présentation de drogue nouvelle*)

***pediatric populations*** means the following groups: premature babies born before the 37th week of gestation; full-term babies from 0 to 27 days of age; and all children from 28 days to 2 years of age, 2 years plus 1 day to 11 years of age and 11 years plus 1 day to 18 years of age. (*population pédiatrique*)

**(1.1)** For the purposes of the definition *innovative drug* in subsection (1), a medicinal ingredient is not considered to be approved in a drug by reason of the Minister having issued or amended an authorization under the

supplémentaires déposés relativement à une présentation de drogue nouvelle pour usage exceptionnel, à une présentation abrégée de drogue nouvelle pour usage exceptionnel ou à un supplément à l'une de ces présentations, le ministre :

**a)** si la présentation ou le supplément est conforme aux articles C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, et à l'article C.08.005.1, délivre un avis de conformité;

**b)** si la présentation ou le supplément n'est pas conforme aux articles C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1, délivre un avis à cet effet au fabricant.

**(4)** L'avis de conformité délivré à l'égard d'une drogue nouvelle pour usage exceptionnel d'après les renseignements et le matériel contenus dans la présentation déposée aux termes de l'article C.08.002.1 indique le nom du produit de référence canadien mentionné dans la présentation et constitue la déclaration d'équivalence de cette drogue.

DORS/2011-88, art. 15; DORS/2019-62, art. 2.

**C.08.004.1 (1)** Les définitions qui suivent s'appliquent au présent article.

***drogue innovante*** S'entend de toute drogue qui contient un ingrédient médicinal non déjà approuvé dans une drogue par le ministre et qui ne constitue pas une variante d'un ingrédient médicinal déjà approuvé tel un changement de sel, d'ester, d'énantiomère, de solvate ou de polymorphe. (*innovative drug*)

***population pédiatrique*** S'entend de chacun des groupes suivants : les bébés prématurés nés avant la 37e semaine de gestation, les bébés menés à terme et âgés de 0 à 27 jours, tous les enfants âgés de 28 jours à deux ans, ceux âgés de deux ans et un jour à 11 ans et ceux âgés de 11 ans et un jour à 18 ans. (*pediatric populations*)

***présentation abrégée de drogue nouvelle*** S'entend également d'une présentation abrégée de drogue nouvelle pour usage exceptionnel. (*abbreviated new drug submission*)

***présentation de drogue nouvelle*** S'entend également d'une présentation de drogue nouvelle pour usage exceptionnel. (*new drug submission*)

**(1.1)** Pour l'application de la définition de *drogue innovante* au paragraphe (1), un ingrédient médicinal n'est pas considéré comme étant approuvé dans une drogue du fait que le ministre a délivré ou modifié, en vertu de

ISAD Interim Order in respect of a COVID-19 drug that contains the medicinal ingredient.

**(2)** The purpose of this section is to implement Articles 20.48 and 20.49 of the Agreement between Canada, the United States of America and the United Mexican States, as defined in the definition *Agreement* in section 2 of the *Canada–United States–Mexico Agreement Implementation Act*, and paragraph 3 of Article 39 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the Agreement Establishing the World Trade Organization, as defined in the definition *Agreement* in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

**(3)** If a manufacturer seeks a notice of compliance for a new drug on the basis of a direct or indirect comparison between the new drug and an innovative drug,

**(a)** the manufacturer may not file a new drug submission, a supplement to a new drug submission, an abbreviated new drug submission or a supplement to an abbreviated new drug submission in respect of the new drug before the end of a period of six years after the day on which the first notice of compliance was issued to the innovator in respect of the innovative drug; and

**(b)** the Minister shall not approve that submission or supplement and shall not issue a notice of compliance in respect of the new drug before the end of a period of eight years after the day on which the first notice of compliance was issued to the innovator in respect of the innovative drug.

**(4)** The period specified in paragraph (3)(b) is lengthened to eight years and six months if

**(a)** the innovator provides the Minister with the description and results of clinical trials relating to the use of the innovative drug in relevant pediatric populations in its first new drug submission for the innovative drug or in any supplement to that submission that is filed within five years after the issuance of the first notice of compliance for that innovative drug; and

**(b)** before the end of a period of six years after the day on which the first notice of compliance was issued to the innovator in respect of the innovative drug, the Minister determines that the clinical trials were designed and conducted for the purpose of increasing knowledge of the use of the innovative drug in those pediatric populations and this knowledge would thereby provide a health benefit to members of those populations.

l'arrêté d'urgence IVPD, une autorisation à l'égard d'une drogue contre la COVID-19 qui le contient.

**(2)** L'objet du présent article est de mettre en œuvre les articles 20.48 et 20.49 de l'Accord entre le Canada, les États-Unis d'Amérique et les États-Unis du Mexique, au sens de *Accord* à l'article 2 de la *Loi de mise en œuvre de l'Accord Canada–États-Unis–Mexique*, et le paragraphe 3 de l'article 39 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce figurant à l'annexe 1C de l'Accord instituant l'Organisation mondiale du commerce, au sens de *Accord* au paragraphe 2(1) de la *Loi de mise en œuvre de l'Accord sur l'Organisation mondiale du commerce*.

**(3)** Lorsque le fabricant demande la délivrance d'un avis de conformité pour une drogue nouvelle sur la base d'une comparaison directe ou indirecte entre celle-ci et la drogue innovante :

**a)** le fabricant ne peut déposer pour cette drogue nouvelle de présentation de drogue nouvelle, de présentation abrégée de drogue nouvelle ou de supplément à l'une de ces présentations avant l'expiration d'un délai de six ans suivant la date à laquelle le premier avis de conformité a été délivré à l'innovateur pour la drogue innovante;

**b)** le ministre ne peut approuver une telle présentation ou un tel supplément et ne peut délivrer d'avis de conformité pour cette nouvelle drogue avant l'expiration d'un délai de huit ans suivant la date à laquelle le premier avis de conformité a été délivré à l'innovateur pour la drogue innovante.

**(4)** Le délai prévu à l'alinéa (3)b) est porté à huit ans et six mois si, à la fois :

**a)** l'innovateur fournit au ministre la description et les résultats des essais cliniques concernant l'utilisation de la drogue innovante dans les populations pédiatriques concernées dans sa première présentation de drogue nouvelle à l'égard de la drogue innovante ou dans tout supplément à une telle présentation déposé au cours des cinq années suivant la délivrance du premier avis de conformité à l'égard de cette drogue innovante;

**b)** le ministre conclut, avant l'expiration du délai de six ans qui suit la date à laquelle le premier avis de conformité a été délivré à l'innovateur pour la drogue innovante, que les essais cliniques ont été conçus et menés en vue d'élargir les connaissances sur l'utilisation de cette drogue dans les populations pédiatriques visées et que ces connaissances se traduiraient par des avantages pour la santé des membres de celles-ci.

**(5)** Subsection (3) does not apply if the innovative drug is not being marketed in Canada.

**(6)** Paragraph (3)(a) does not apply to a manufacturer if the innovator consents to the filing of a new drug submission, a supplement to a new drug submission, an abbreviated new drug submission or a supplement to an abbreviated new drug submission by the manufacturer before the end of the period of six years specified in that paragraph.

**(7)** Paragraph (3)(a) does not apply to a manufacturer if the manufacturer files an application for authorization to sell its new drug under section C.07.003.

**(8)** Paragraph (3)(b) does not apply to a manufacturer if the innovator consents to the issuance of a notice of compliance to the manufacturer before the end of the period of eight years specified in that paragraph or of eight years and six months specified in subsection (4).

**(9)** The Minister shall maintain a register of innovative drugs that includes information relating to the matters specified in subsections (3) and (4).

SOR/95-411, s. 6; SOR/2006-241, s. 1; SOR/2011-88, s. 16; SOR/2014-124, s. 1; SOR/2020-74, s. 6; SOR/2021-45, s. 16.

**C.08.005 (1)** Subject to subsection (1.1) and notwithstanding sections C.08.002 and C.08.003, a manufacturer of a new drug may sell it to a qualified investigator to be used solely for the purpose of clinical testing to obtain evidence with respect to the safety, dosage and effectiveness of that new drug, when the following conditions are met:

**(a)** before the sale, the manufacturer has filed with the Minister, in compliance with section C.08.005.1, a preclinical submission containing information and material respecting

**(i)** the brand name of the new drug or the identifying name or code proposed for the new drug,

**(ii)** the chemical structure or other specific identification of the composition of the new drug,

**(iii)** the source of the new drug,

**(iv)** a detailed protocol of the clinical testing,

**(v)** the results of investigations made to support the clinical use of the new drug,

**(vi)** the contra-indications and precautions known in respect of the new drug and the suggested treatment of overdosage of the new drug,

**(5)** Le paragraphe (3) ne s'applique pas si la drogue innovante n'est pas commercialisée au Canada.

**(6)** L'alinéa (3)a) ne s'applique pas au fabricant dans le cas où l'innovateur consent à ce qu'il dépose une présentation de drogue nouvelle, une présentation abrégée de drogue nouvelle ou un supplément à l'une de ces présentations avant l'expiration du délai de six ans prévu à cet alinéa.

**(7)** L'alinéa (3)a) ne s'applique pas au fabricant s'il dépose une demande d'autorisation pour vendre cette drogue nouvelle aux termes de l'article C.07.003.

**(8)** L'alinéa (3)b) ne s'applique pas au fabricant dans le cas où l'innovateur consent à ce que lui soit délivré un avis de conformité avant l'expiration du délai de huit ans prévu à cet alinéa ou de huit ans et six mois prévu au paragraphe (4).

**(9)** Le ministre tient un registre des drogues innovantes, lequel contient les renseignements relatifs à l'application des paragraphes (3) et (4).

DORS/95-411, art. 6; DORS/2006-241, art. 1; DORS/2011-88, art. 16; DORS/2014-124, art. 1; DORS/2020-74, art. 6; DORS/2021-45, art. 16.

**C.08.005 (1)** Sous réserve du paragraphe (1.1) et par dérogation aux articles C.08.002 et C.08.003, le fabricant d'une drogue nouvelle peut vendre celle-ci à un chercheur qualifié à la seule fin d'effectuer un essai clinique pour obtenir des preuves sur l'innocuité, la posologie et l'efficacité de la drogue nouvelle, si les conditions suivantes sont réunies :

**a)** le fabricant a, avant la vente, déposé auprès du ministre, conformément à l'article C.08.005.1, une présentation préclinique contenant des renseignements et du matériel se rapportant à ce qui suit :

**(i)** la marque nominative de la drogue nouvelle ou le nom ou code d'identification projeté pour celle-ci,

**(ii)** la structure chimique ou tout autre détail spécifique qui permet de déterminer la composition de la drogue nouvelle,

**(iii)** la provenance de la drogue nouvelle,

**(iv)** un protocole détaillé de l'essai clinique,

**(v)** les résultats des recherches effectuées pour motiver l'usage clinique de la drogue nouvelle,

**(vi)** les contre-indications et les précautions connues relativement à la drogue nouvelle, ainsi

**(vii)** all ingredients of the new drug, stated quantitatively,

**(viii)** the methods, equipment, plant and controls used in the manufacture, processing and packaging of the new drug,

**(ix)** the tests applied to control the potency, purity and safety of the new drug, and

**(x)** the names and qualifications of all investigators to whom the drug is to be sold and the names of all institutions in which the clinical testing is to be carried out;

**(b)** the Minister has not, within 60 days after the date of receipt of the preclinical submission, sent by registered mail to the manufacturer a notice in respect of that new drug indicating that the preclinical submission is not satisfactory;

**(c)** all inner labels and outer labels used in conjunction with the sale of the new drug to qualified investigators carry the statements

**(i)** "Investigational Drug" or "Drogue de recherche", and

**(ii)** "To Be Used By Qualified Investigators Only" or "Réservée uniquement à l'usage de chercheurs compétents";

**(d)** before the sale, the manufacturer ascertains that every qualified investigator to whom the new drug is to be sold

**(i)** has the facilities for the clinical testing to be conducted by the investigator, and

**(ii)** has received the information and material referred to in subparagraphs (a)(i) to (vi); and

**(e)** every qualified investigator to whom the new drug is to be sold has agreed in writing with the manufacturer that the investigator will

**(i)** not use the new drug or permit it to be used other than for clinical testing,

**(ii)** not permit the new drug to be used by any person other than the investigator except under the investigator's direction,

**(iii)** report immediately to that manufacturer and, if so required by the Minister, report to the Minister all serious adverse reactions encountered during the clinical testing, and

que le traitement recommandé en cas d'absorption de dose excessive,

**(vii)** tous les ingrédients de la drogue nouvelle, déclarés sous forme quantitative,

**(viii)** l'usine, les méthodes, l'outillage et les contrôles utilisés pour la fabrication, le conditionnement et l'empaquetage de la drogue nouvelle,

**(ix)** les essais effectués en vue de contrôler l'activité, la pureté et l'innocuité de la drogue nouvelle,

**(x)** les noms et les titres et compétences de tous les chercheurs auxquels la drogue doit être vendue, ainsi que les noms de tous les établissements où l'essai clinique doit avoir lieu;

**b)** dans les 60 jours suivant la date de réception de la présentation préclinique, le ministre n'a pas fait parvenir au fabricant, par courrier recommandé, un avis indiquant que la présentation de drogue nouvelle n'est pas satisfaisante;

**c)** toutes les étiquettes intérieures et extérieures utilisées relativement à la vente de la drogue nouvelle portent les mentions suivantes :

**(i)** « Drogue de recherche » ou « Investigational Drug »,

**(ii)** « Réservé uniquement à l'usage de chercheurs compétents » ou « To Be Used By Qualified Investigators Only »;

**d)** le fabricant, avant la vente, vérifie que tout chercheur compétent à qui il est censé vendre la drogue nouvelle :

**(i)** dispose des installations voulues pour l'essai clinique qu'il doit effectuer,

**(ii)** a reçu les renseignements et la documentation visés aux sous-alinéas a)(i) à (vi);

**e)** tout chercheur compétent à qui la drogue nouvelle doit être vendue a convenu par écrit avec le fabricant qu'il :

**(i)** n'utilisera pas la drogue nouvelle ou ne permettra pas son utilisation à d'autres fins que l'essai clinique,

**(ii)** ne permettra pas l'usage de la drogue nouvelle par une personne autre que lui-même, sauf sous sa direction,

**(iv)** account to the manufacturer for all quantities of the new drug received, where so requested by the manufacturer.

**(iii)** signalera immédiatement au fabricant, ainsi qu'au ministre si celui-ci le lui demande, tout ce qui touche les réactions indésirables importantes qui auront été observées pendant l'essai clinique,

**(iv)** rendra compte au fabricant, sur demande de celui-ci, de toutes les quantités de drogue nouvelle qu'il aura reçues.

**(1.1)** This section applies only in respect of a new drug for veterinary use.

**(2)** Notwithstanding subsection (1), no manufacturer shall sell a new drug to a qualified investigator unless that manufacturer has, in respect of all previous sales of that new drug to any qualified investigator,

**(a)** kept accurate records of the distribution of that new drug and of the results of the clinical testing and has made those records available to the Minister for inspection on the request of the Minister; and

**(b)** immediately reported to the Minister all information he has obtained with respect to serious adverse reactions.

**(3)** The Minister may notify the manufacturer of a new drug that sales of that new drug to qualified investigators are prohibited if, in the opinion of the Minister, it is in the interest of public health to do so.

**(4)** Notwithstanding subsection (1), no manufacturer shall sell a new drug to a qualified investigator if the Minister has notified the manufacturer of that drug that such sales are prohibited.

**(5)** Paragraph (1)(c) does not apply to a radiopharmaceutical as defined in section C.03.201 or to a component or kit as defined in section C.03.205.

SOR/79-236, s. 5; SOR/85-143, s. 4; SOR/87-511, s. 1; SOR/93-202, s. 26; SOR/95-411, s. 7; SOR/2001-203, s. 6; SOR/2018-69, s. 27.

**(1.1)** Le présent article ne s'applique qu'aux drogues nouvelles pour usage vétérinaire.

**(2)** Nonobstant le paragraphe (1) ci-dessus, il est interdit à tout fabricant de vendre une drogue nouvelle à un chercheur compétent, à moins que, au sujet de toutes les ventes préalables de cette drogue nouvelle à n'importe quel chercheur compétent, le fabricant n'ait

**a)** tenu des registres exacts de la distribution de cette drogue nouvelle et des résultats des épreuves cliniques, et présenté lesdits registres à l'inspection, à la demande du ministre; et

**b)** rapporté immédiatement au ministre tous les renseignements obtenus par lui-même au sujet de réactions fâcheuses importantes.

**(3)** Le ministre peut aviser le fabricant d'une drogue nouvelle que la vente de cette drogue nouvelle aux chercheurs compétents est interdite si, de l'avis du ministre, cette mesure est dans l'intérêt de la santé publique.

**(4)** Nonobstant le paragraphe (1) ci-dessus, il est interdit à un fabricant de vendre une drogue nouvelle à un chercheur compétent si le ministre a avisé ce fabricant que la vente de ladite drogue est interdite.

**(5)** L'alinéa (1)c) ne s'applique pas aux produits pharmaceutiques radioactifs définis à l'article C.03.201, ni aux constituants ni aux trousses définis à l'article C.03.205.

DORS/79-236, art. 5; DORS/85-143, art. 4; DORS/87-511, art. 1; DORS/93-202, art. 26; DORS/95-411, art. 7; DORS/2001-203, art. 6; DORS/2018-69, art. 27.

**C.08.005.1 (1)** Every manufacturer who files a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission, an abbreviated extraordinary use new drug submission, a supplement to any of those submissions or a submission for the clinical testing of a new drug for veterinary use shall, in addition to any information and material that is required under section C.08.002, C.08.002.01, C.08.002.1, C.08.003 or C.08.005, include in the submission or supplement

**(a)** [Repealed, SOR/2018-84, s. 10]

**C.08.005.1 (1)** Le fabricant qui dépose une présentation de drogue nouvelle, une présentation de drogue nouvelle pour usage exceptionnel, une présentation abrégée de drogue nouvelle, une présentation abrégée de drogue nouvelle pour usage exceptionnel, un supplément à l'une de ces présentations ou une présentation pour l'essai clinique d'une drogue nouvelle pour usage vétérinaire doit, en plus des renseignements et du matériel exigés aux articles C.08.002, C.08.002.01, C.08.002.1, C.08.003 et C.08.005, y inclure :

**a)** [Abrogé, DORS/2018-84, art. 10]

**(b)** a sectional report in respect of each human, animal and *in vitro* study included in the submission or supplement;

**(c)** a comprehensive summary of each human, animal and *in vitro* study referred to or included in the submission or supplement; and

**(d)** a submission certificate in respect of all information and material contained in the submission or supplement and any additional information or material filed to amend the submission or supplement.

**(2)** A sectional report referred to in paragraph (1)(b) shall include

**(a)** a summary of each study included in the submission or supplement;

**(b)** a summary of any additional information or material filed to amend the submission or supplement; and

**(c)** where raw data is available to the manufacturer in respect of a study,

**(i)** a summary of the data,

**(ii)** a cross-referencing of the data to the relevant portions of the sectional report,

**(iii)** a description of the conditions under which the experiments from which the data were obtained were conducted,

**(iv)** the details of the data treatment process, and

**(v)** the results and conclusions of the study.

**(3)** The comprehensive summary referred to in paragraph (1)(c) shall include a summary of the methods used, results obtained and conclusions arrived at in respect of all studies referred to or included in the submission or supplement and shall be cross-referenced to the relevant portions of the sectional reports.

**(4)** The submission certificate referred to in paragraph (1)(d) shall

**(a)** certify that all information and material included in the submission or supplement and any additional information or material filed to amend the submission or supplement are accurate and complete, and that the sectional reports and the comprehensive summary correctly represent the information and material

**b)** un résumé de section pour chaque étude sur l'homme, sur l'animal et *in vitro* comprise dans la présentation ou le supplément;

**c)** une synthèse globale de chaque étude sur l'homme, sur l'animal et *in vitro* qui est comprise dans la présentation ou le supplément ou à laquelle il est fait renvoi;

**d)** une attestation concernant les renseignements et le matériel que contient la présentation ou le supplément, ainsi que les renseignements ou le matériel supplémentaires déposés, le cas échéant, aux fins de la modification de la présentation ou du supplément.

**(2)** Le résumé de section visé à l'alinéa (1)b) doit comprendre :

**a)** un résumé de chaque étude comprise dans la présentation ou le supplément;

**b)** un sommaire des renseignements ou du matériel supplémentaires déposés, le cas échéant, aux fins de la modification de la présentation ou du supplément;

**c)** lorsque le fabricant dispose des données brutes d'une étude :

**(i)** un sommaire de ces données,

**(ii)** les renvois aux parties pertinentes du résumé de section,

**(iii)** la description des conditions dans lesquelles se sont déroulées les expériences desquelles les données ont été obtenues,

**(iv)** les détails du mode de traitement des données,

**(v)** les résultats et les conclusions de l'étude.

**(3)** La synthèse globale visée à l'alinéa (1)c) doit comprendre un sommaire des méthodes utilisées, des résultats obtenus et des conclusions émises pour les études qui sont comprises dans la présentation ou le supplément ou auxquelles il est fait renvoi, et doit indiquer les renvois aux parties pertinentes des résumés de sections.

**(4)** L'attestation visée à l'alinéa (1)d) doit :

**a)** attester que les renseignements et le matériel compris dans la présentation ou le supplément et tout renseignement ou matériel supplémentaire déposé aux fins de la modification de la présentation ou du supplément sont exacts et complets, et que les résumés de sections et la synthèse globale représentent fidèlement les renseignements et le matériel qui sont compris

referred to or included in the submission or supplement; and

**(b)** be signed and dated by

**(i)** the senior executive officer in Canada of the manufacturer filing the submission or supplement, and

**(ii)** the senior medical or scientific officer of the manufacturer.

**(5)** [Repealed, SOR/2018-84, s. 10]

**(6)** Every manufacturer who has filed a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission, an abbreviated extraordinary use new drug submission, a supplement to any of those submissions or a submission for the clinical testing of a new drug for veterinary use and who has any relating clinical case reports or raw data that were not included in the submission or supplement shall keep those reports or data and shall, within 30 days after receiving a written request from the Minister, submit them to the Minister.

SOR/85-143, s. 5; SOR/92-543, s. 1; SOR/94-689, s. 2(F); SOR/95-411, s. 8; SOR/2001-203, s. 7; SOR/2011-88, s. 17; SOR/2018-84, s. 10.

**C.08.006 (1)** For the purposes of subsection (2), evidence or new information obtained by the Minister includes any information or material filed by any person under Division 5 or section C.08.002, C.08.002.01, C.08.002.1, C.08.003, C.08.005 or C.08.005.1.

**(2)** The Minister may, by notice to a manufacturer, suspend, for a definite or indefinite period, a notice of compliance issued to that manufacturer in respect of a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission, an abbreviated extraordinary use new drug submission or a supplement to any of those submissions if the Minister considers

**(a)** that the drug is not safe for the use represented in the submission or supplement, as shown by evidence obtained from

**(i)** clinical or other experience not reported in the submission or supplement or not available to the Minister at the time the notice of compliance was issued, or

**(ii)** tests by new methods or tests by methods not reasonably applicable at the time the notice of compliance was issued;

dans la présentation ou le supplément ou auxquels il est fait renvoi;

**b)** être datée et signée à la fois par :

**(i)** le premier dirigeant au Canada du fabricant qui dépose la présentation ou le supplément,

**(ii)** le directeur médical ou scientifique du fabricant.

**(5)** [Abrogé, DORS/2018-84, art. 10]

**(6)** Le fabricant qui a déposé une présentation de drogue nouvelle, une présentation de drogue nouvelle pour usage exceptionnel, une présentation abrégée de drogue nouvelle, une présentation abrégée de drogue nouvelle pour usage exceptionnel, un supplément à l'une de ces présentations ou une présentation pour l'essai clinique d'une drogue nouvelle pour usage vétérinaire sans y inclure les fiches d'observations cliniques ou les données brutes y ayant trait doit conserver ces fiches ou ces données et les soumettre au ministre, s'il en fait la demande par écrit, dans les trente jours suivant la réception de celle-ci.

DORS/85-143, art. 5; DORS/92-543, art. 1; DORS/94-689, art. 2(F); DORS/95-411, art. 8; DORS/2001-203, art. 7; DORS/2011-88, art. 17; DORS/2018-84, art. 10.

**C.08.006 (1)** Pour l'application du paragraphe (2), les éléments de preuve ou les nouveaux renseignements obtenus par le ministre comprennent les renseignements et le matériel que lui présente toute personne au titre du titre 5 ou des articles C.08.002, C.08.002.01, C.08.002.1, C.08.003, C.08.005 ou C.08.005.1.

**(2)** Le ministre peut suspendre, pour une période déterminée ou indéterminée, l'avis de conformité délivré à un fabricant à l'égard d'une présentation de drogue nouvelle, d'une présentation de drogue nouvelle pour usage exceptionnel, d'une présentation abrégée de drogue nouvelle, d'une présentation abrégée de drogue nouvelle pour usage exceptionnel ou d'un supplément à l'une de ces présentations, en envoyant au fabricant une notification indiquant que cette mesure est nécessaire, s'il estime :

**a)** que la drogue n'est pas sans danger aux fins spécifiées dans la présentation ou le supplément, en s'appuyant sur des éléments de preuve obtenus :

**(i)** soit d'essais cliniques ou autres expériences qui ne sont pas signalés dans la présentation ou le supplément ou qui ne lui étaient accessibles au moment de la délivrance de l'avis de conformité,

**(b)** that, upon the basis of new information obtained after the issuance of the notice of compliance, there is lack of substantial evidence that the drug will have the effect it is represented to have under the conditions of use prescribed, recommended or proposed by the manufacturer;

**(c)** that the submission or supplement contained an untrue statement of material fact;

**(d)** that the manufacturer has failed to establish a system for maintaining required records or has repeatedly or deliberately failed to maintain such records;

**(e)** that, on the basis of new information obtained after the issuance of the notice of compliance, the methods, equipment, plant and controls used in the manufacturing, processing and packaging of the drug are inadequate to assure and preserve the identity, strength, quality or purity of the new drug;

**(f)** that, on the basis of new information obtained after the issuance of the notice of compliance, the labelling of the drug is false or misleading or incomplete in any particular and that this defect was not corrected by the manufacturer upon receipt of a written notice from the Minister specifying the respect in which the labelling is false or misleading or incomplete; or

**(g)** that, in the case of a new drug for extraordinary use, the manufacturer has not adhered to the plan referred to in subparagraph C.08.002.01(2)(b)(ix).

**(ii)** soit d'analyses par de nouvelles méthodes ou par des méthodes qui ne pouvaient vraisemblablement s'appliquer au moment de la délivrance de l'avis de conformité;

**b)** que, d'après de nouveaux renseignements obtenus après la délivrance de l'avis de conformité, il n'y a pas assez de preuves substantielles que la drogue aura l'effet qui lui est attribué, dans les conditions d'usage prescrites, recommandées ou proposées par le fabricant;

**c)** que la présentation ou le supplément renfermait une fausse déclaration touchant un fait substantiel;

**d)** que le fabricant n'a pas établi un système pour tenir les registres exigés, ou qu'il a manqué, à plusieurs reprises, ou délibérément, de tenir lesdits registres;

**e)** que, d'après des renseignements nouveaux obtenus après la délivrance de l'avis de conformité, les méthodes, l'outillage, l'usine ou les contrôles employés pour la fabrication, le conditionnement ou l'empaquetage de la drogue, ne suffisent pas à assurer ou à conserver l'identité, la force, la qualité ou la pureté de la drogue nouvelle;

**f)** que, d'après des renseignements nouveaux obtenus après la délivrance de l'avis de conformité, l'étiquette de la drogue est fausse, trompeuse ou incomplète sous quelque rapport que ce soit, et que le fabricant n'a pas rectifié ce défaut après que le ministre l'en a informé par écrit, en spécifiant l'aspect particulier de l'étiquette qui est faux, trompeur ou incomplet; ou

**g)** dans le cas d'une drogue nouvelle pour usage exceptionnel, que le fabricant n'a pas suivi le plan visé au sous-alinéa C.08.002.01(2)b)(ix).

**(3)** The Minister may, by notice to a manufacturer, suspend for a definite or indefinite period a notice of compliance issued to that manufacturer in respect of a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission, an abbreviated extraordinary use new drug submission or a supplement to any of those submissions if, after the Minister has, under section 21.31 of the Act, ordered the holder of a therapeutic product authorization referred to in subparagraph C.01.052(1)(a)(iii) to conduct an assessment of the new drug in order to provide evidence establishing that the benefits associated with the drug outweigh the risks of injury to health,

**(a)** the holder fails to comply with the order; or

**(b)** the holder complies with the order but the Minister determines that the results of the assessment are

**(3)** Le ministre peut suspendre, pour une période déterminée ou indéterminée, l'avis de conformité délivré à un fabricant à l'égard d'une présentation de drogue nouvelle, d'une présentation de drogue nouvelle pour usage exceptionnel, d'une présentation abrégée de drogue nouvelle, d'une présentation abrégée de drogue nouvelle pour usage exceptionnel ou d'un supplément à l'une de ces présentations en envoyant au fabricant une notification indiquant que cette mesure est nécessaire si, après qu'il a ordonné en vertu de l'article 21.31 de la Loi au titulaire d'une autorisation relative à un produit thérapeutique visée au sous-alinéa C.01.052(1)a)(iii) d'effectuer une évaluation de la drogue nouvelle en vue de fournir des preuves établissant que les bénéfices liés à la drogue l'emportent sur les risques de préjudice à la santé :

**a)** le titulaire ne se conforme pas à l'ordre;

not sufficient to establish that the benefits associated with the drug outweigh the risks of injury to health.

SOR/95-411, s. 9; SOR/2001-203, s. 8; SOR/2011-88, s. 18; SOR/2018-69, s. 27; SOR/2018-84, s. 11; SOR/2020-262, s. 5.

**C.08.007 (1)** Where a manufacturer has received a notice of compliance issued in respect of a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission, an abbreviated extraordinary use new drug submission or a supplement to any of those submissions, the manufacturer shall establish and maintain records, in a manner that enables an audit to be made, respecting

**(a)** animal or clinical experience, studies, investigations and tests conducted by the manufacturer or reported to him by any person concerning that new drug;

**(b)** reports from the scientific literature or the bibliography therefrom that are available to him concerning that new drug;

**(c)** experience, investigations, studies and tests involving the chemical or physical properties or any other properties of that new drug;

**(d)** any substitution of another substance for that new drug or any mixing of another substance with that new drug;

**(e)** any error in the labelling of that new drug or in the use of the labels designed for that new drug;

**(f)** any bacteriological or any significant chemical or physical or other change or deterioration in any lot of that new drug;

**(g)** any failure of one or more distributed lots of the new drug to meet the specifications established for that new drug in the submission or supplement; and

**(h)** any unusual failure in efficacy of that new drug.

**(i)** [Repealed, SOR/95-521, s. 3]

**(1.1)** The manufacturer shall retain the records respecting the information referred to in subsection (1) for at

**b)** le titulaire se conforme à l'ordre, mais le ministre conclut que les résultats de l'évaluation sont insuffisants pour établir que les bénéfices liés à la drogue l'emportent sur les risques de préjudice à la santé.

DORS/95-411, art. 9; DORS/2001-203, art. 8; DORS/2011-88, art. 18; DORS/2018-69, art. 27; DORS/2018-84, art. 11; DORS/2020-262, art. 5.

**C.08.007 (1)** Lorsqu'un fabricant a reçu un avis de conformité à l'égard d'une présentation de drogue nouvelle, d'une présentation de drogue nouvelle pour usage exceptionnel, d'une présentation abrégée de drogue nouvelle, d'une présentation abrégée de drogue nouvelle pour usage exceptionnel ou d'un supplément à l'une de ces présentations, il doit établir et tenir, de façon à en permettre la vérification, des registres concernant ce qui suit :

**a)** les expériences animales et les épreuves cliniques, les études, recherches et tests, effectués par le fabricant ou qui lui sont rapportés par toute autre personne, au sujet de cette drogue nouvelle;

**b)** les rapports publiés dans la documentation scientifique, ou la bibliographie scientifique dont il dispose, au sujet de cette drogue nouvelle;

**c)** les expériences, recherches, études et tests, au sujet des propriétés physiques ou chimiques, ou de toute autre propriété de cette drogue nouvelle;

**d)** toute substitution d'une autre substance pour cette drogue nouvelle, et tout mélange d'une autre substance avec cette drogue nouvelle;

**e)** toute erreur dans l'étiquetage de cette drogue nouvelle, ou dans l'usage des étiquettes destinées à cette drogue nouvelle;

**f)** toute modification ou détérioration importante de nature physique ou chimique, tout changement au point de vue bactériologique, et toute autre modification ou détérioration, dans n'importe quel lot de cette drogue nouvelle;

**g)** toute occasion où un ou plusieurs lots distribués de cette drogue nouvelle n'étaient pas conformes aux spécifications établies dans la présentation ou le supplément;

**h)** tout cas inhabituel où la drogue nouvelle ne produit pas l'effet prévu.

**i)** [Abrogé, DORS/95-521, art. 3]

**(1.1)** Le fabricant conserve tout registre relatif aux renseignements visés au paragraphe (1) durant une période

least seven years from the day on which they were established.

**(2)** A manufacturer or importer who sells a new drug for extraordinary use in accordance with section C.08.002.02 shall retain the written order for at least 15 years from the day on which the order was filled.

SOR/95-411, s. 10; SOR/95-521, s. 3; SOR/2011-88, s. 19; SOR/2014-125, s. 2.

**C.08.008** No manufacturer shall sell a new drug unless the manufacturer has, with respect to all the manufacturer's previous sales of that new drug, furnished to the Minister

**(a)** a summary of a record respecting any information referred to in paragraphs C.08.007(1)(a) to (c), on receipt of a request from the Minister for the summary;

**(b)** a summary of a record respecting any information referred to in paragraph C.08.007(1)(d) to (f), immediately on the manufacturer establishing the record; and

**(c)** a summary of a record respecting any information referred to in paragraph C.08.007(1)(g) or (h), within 15 days after the day on which the manufacturer established the record.

SOR/95-411, s. 11; SOR/95-521, s. 4; SOR/2014-125, s. 3; SOR/2018-84, s. 12.

**C.08.008.1** Where a manufacturer has received a notice of compliance issued in respect of an extraordinary use new drug submission, an abbreviated extraordinary use new drug submission or a supplement to either of those submissions, the manufacturer

**(a)** shall adhere to the plan referred to in subparagraph C.08.002.01(2)(b)(ix); and

**(b)** shall, before the first day of October in each year and whenever requested to do so by the Minister for the purposes of assessing the safety and effectiveness of the drug to which the notice of compliance relates, provide a report on the use of the drug, including a critical analysis of any available updated information respecting the drug's safety and effectiveness.

SOR/2011-88, s. 20.

**C.08.009 (1)** Where the Minister has decided

**(a)** to notify the manufacturer of a new drug for veterinary use that the sale of that drug to qualified investigators is prohibited, or

**(b)** to suspend a notice of compliance issued under section C.08.004 or C.08.004.01,

minimale de sept ans à compter de la date de son établissement;

**(2)** Le fabricant ou l'importateur qui vend une drogue nouvelle pour usage exceptionnel conformément à l'article C.08.002.02 doit conserver la commande écrite durant une période minimale de quinze ans à partir de l'exécution de la commande.

DORS/95-411, art. 10; DORS/95-521, art. 3; DORS/2011-88, art. 19; DORS/2014-125, art. 2.

**C.08.008** Il est interdit au fabricant de vendre une drogue nouvelle à moins que, à l'égard de ses ventes antérieures de cette drogue, il n'ait fourni au ministre :

**a)** le résumé d'un registre relatif à tout renseignement visé aux alinéas C.08.007(1)a) à c), sur réception d'une demande du ministre à cet effet;

**b)** le résumé d'un registre relatif à tout renseignement visé aux alinéas C.08.007(1)d) à f), dès son établissement par le fabricant;

**c)** le résumé d'un registre relatif à tout renseignement visé aux alinéas C.08.007(1)g) ou h), dans les quinze jours suivant la date de son établissement par le fabricant.

DORS/95-411, art. 11; DORS/95-521, art. 4; DORS/2014-125, art. 3; DORS/2018-84, art. 12.

**C.08.008.1** Lorsqu'un fabricant a reçu un avis de conformité à l'égard d'une présentation de drogue nouvelle pour usage exceptionnel, d'une présentation abrégée de drogue nouvelle pour usage exceptionnel ou d'un supplément à l'une de ces présentations, il doit :

**a)** suivre le plan visé au sous-alinéa C.08.002.01(2)b)(ix);

**b)** fournir au ministre, avant le 1er octobre de chaque année et lorsque celui-ci lui en fait la demande afin d'évaluer l'innocuité et l'efficacité de la drogue visée par l'avis de conformité, un rapport sur son utilisation, y compris une analyse critique des renseignements à jour disponibles concernant son innocuité et son efficacité.

DORS/2011-88, art. 20.

**C.08.009 (1)** Lorsque le ministre a décidé

**a)** de notifier le fabricant d'une drogue nouvelle pour usage vétérinaire que la vente de cette drogue aux chercheurs qualifiés est interdite, ou

**b)** de suspendre l'avis de conformité délivré en application des articles C.08.004 ou C.08.004.01,

the manufacturer, if dissatisfied with that decision, may require the Minister to provide him with the reasons for the decision.

**(2)** Where the manufacturer has received the reasons for a decision of the Minister pursuant to subsection (1), he may require the Minister to refer that decision to a New Drug Committee and thereupon shall provide the Minister with a statement of the reasons for his dissatisfaction and any information and material upon which he relies in support of those reasons.

**(3)** Where the Minister has been required to refer a decision to a New Drug Committee pursuant to subsection (2), he shall appoint a member of the New Drug Committee, the dissatisfied manufacturer shall appoint a member of the New Drug Committee and the two members so appointed shall appoint a third member of the New Drug Committee who shall be chairman, or, if they are unable to do so within a reasonable time, the Minister shall appoint a third member of the New Drug Committee who shall be chairman.

**(4)** Any person who is in the full-time employment of the Department or in the full-time employment of the dissatisfied manufacturer shall not be appointed a member of a New Drug Committee.

**(4.1)** A member of a New Drug Committee shall, on appointment, sign an undertaking not to disclose or use any information, material, data, evidence or representations considered pursuant to subsection (6).

**(5)** The Minister shall pay the reasonable fees and costs incurred by the member of the New Drug Committee appointed by the Minister, and the dissatisfied manufacturer shall pay the reasonable fees and costs incurred by the member appointed by the dissatisfied manufacturer, and the Minister and the dissatisfied manufacturer shall each pay half of the reasonable fees and costs incurred by the chairman.

**(6)** The New Drug Committee formed pursuant to subsection (3) shall consider the reasons for the decision of the Minister, the reasons for the dissatisfaction of the dissatisfied manufacturer and any information or material in support of the reasons of the Minister or the dissatisfied manufacturer and may consider other evidence, material, information or representations.

**(7)** The New Drug Committee formed pursuant to subsection (3) shall report its findings and recommendations to the Minister.

le fabricant peut s'il n'est pas satisfait de cette décision, demander au ministre de lui fournir les raisons de ladite décision.

**(2)** Lorsque ledit fabricant a reçu les raisons de la décison du ministre par application du paragraphe (1), il peut demander au ministre de déférer cette décision à un Comité des drogues nouvelles et, sur ce, il doit fournir au ministre une déclaration des motifs de son insatisfaction, ainsi que tout renseignement et tout matériel à l'appui de ses motifs.

**(3)** Lorsque le ministre a été prié de déférer une décision à un Comité des drogues nouvelles par application du paragraphe (2), il doit nommer un membre au Comité des drogues nouvelles, le fabricant insatisfait doit nommer un membre au Comité des drogues nouvelles, et les deux membres ainsi nommés doivent, ensemble, nommer au Comité des drogues nouvelles, un troisième membre qui sera président du Comité, ou si ces deux membres ne peuvent le faire dans un délai raisonnable, le ministre doit nommer au Comité des drogues nouvelles, un troisième membre qui sera président du Comité.

**(4)** Aucune personne qui est employée à temps complet par le ministère, ou employée à temps complet par le fabricant non satisfait, ne sera nommée membre d'un Comité des drogues nouvelles.

**(4.1)** Chaque membre nommé à un Comité des drogues nouvelles est tenu de signer l'engagement de ne pas communiquer ni utiliser les renseignements, matériel, données, preuves et observations considérés en vertu du paragraphe (6).

**(5)** Le ministre doit payer des honoraires et des frais raisonnables au membre du Comité des drogues nouvelles nommé par le ministre, et le fabricant non satisfait doit payer des honoraires et des frais raisonnables au membre qu'il aura lui-même nommé au comité des drogues nouvelles, et le ministre et le fabricant insatisfait paieront, à parts égales, des honoraires et des frais raisonnables au président de ce comité.

**(6)** Le Comité des drogues nouvelles formé en application du paragraphe (3) doit peser les motifs de la décision du ministre, les motifs de l'insatisfaction du fabricant et tout renseignement ou matériel à l'appui de la décision du ministre ou de l'insatisfaction du fabricant et peut prendre en considération d'autres preuves, matériel, renseignements ou observations.

**(7)** Le Comité des drogues nouvelles formé par application du paragraphe (3), doit faire rapport au ministre de ses constatations et de ses recommandations.

**(7.1)** No member of a New Drug Committee shall disclose or use any information, material, data, evidence or representations considered pursuant to subsection (6).

**(8)** Where the Minister has received the findings and recommendations of a New Drug Committee, he may reconsider the decision to which those findings and recommendations relate.

SOR/95-411, s. 12; SOR/2001-203, s. 9; SOR/2011-88, s. 21.

## Pre-positioning of Designated COVID-19 Drugs

**C.08.009.01** The following definitions apply in sections C.08.009.03 to C.08.009.05.

***Chief Public Health Officer*** means the Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*. (*administrateur en chef de la santé publique*)

***foreign regulatory authority*** means a government agency or other entity outside Canada that has a legal right to control the manufacturing, use or sale of drugs within its jurisdiction and that may take enforcement action to ensure that drugs marketed within its jurisdiction comply with the applicable legal requirements. (*autorité réglementaire étrangère*)

SOR/2021-45, s. 17.

**C.08.009.02** Sections C.08.009.03 to C.08.009.05 apply in respect of a designated COVID-19 drug if the following conditions are met:

**(a)** a notice of compliance has not been issued under section C.08.004 or C.08.004.01 in respect of the designated COVID-19 drug; and

**(b)** Her Majesty in right of Canada has entered into a contract for the procurement of the designated COVID-19 drug.

SOR/2021-45, s. 17.

**C.08.009.03 (1)** The holder of an establishment licence may import a designated COVID-19 drug if the following conditions are met:

**(a)** the Chief Public Health Officer provides the Minister with

**(i)** information indicating that

**(7.1)** Les membres d'un Comité des drogues nouvelles ne peuvent divulguer ni utiliser les renseignements, matériel, données, preuves et observations considérés en vertu du paragraphe (6).

**(8)** Lorsque le ministre a reçu les constatations et recommandations du Comité des drogues nouvelles, il peut revenir sur la décision qui fait l'objet de ces constatations et recommandations.

DORS/95-411, art. 12; DORS/2001-203, art. 9; DORS/2011-88, art. 21.

## Prépositionnement de drogues désignées contre la COVID-19

**C.08.009.01** Les définitions suivantes s'appliquent aux articles C.08.009.03 à C.08.009.05.

***administrateur en chef de la santé publique*** s'entend de l'administrateur en chef de la santé publique nommé en vertu du paragraphe 6(1) de la *Loi sur l'Agence de la santé publique du Canada*. (*Chief Public Health Officer*)

***autorité réglementaire étrangère*** Tout organisme gouvernemental ou toute autre entité, ailleurs qu'au Canada, qui est habilité à contrôler la fabrication, l'utilisation ou la vente de drogues dans le territoire relevant de sa compétence et qui peut prendre des mesures d'exécution pour veiller à ce que les drogues qui y sont commercialisées satisfassent aux exigences légales qui s'appliquent. (*foreign regulatory authority*)

DORS/2021-45, art. 17.

**C.08.009.02** Les articles C.08.009.03 à C.08.009.05 s'appliquent à l'égard de la drogue désignée contre la COVID-19 si les conditions suivantes sont réunies :

**a)** aucun avis de conformité n'a été délivré à son égard en vertu de l'article C.08.004 ou C.08.004.01;

**b)** Sa Majesté du chef du Canada a conclu un contrat en vue de son acquisition.

DORS/2021-45, art. 17.

**C.08.009.03 (1)** Le titulaire d'une licence d'établissement peut importer une drogue désignée contre la COVID-19 si les conditions suivantes sont réunies :

**a)** l'administrateur en chef de la santé publique fournit au ministre :

**(i)** de l'information selon laquelle :

**(A)** the designated COVID-19 drug is the subject of a new drug submission that was filed under section C.08.002, or

**(B)** an application has been submitted to a foreign regulatory authority to authorize the sale of the designated COVID-19 drug,

**(ii)** the name of the designated COVID-19 drug and a description of it,

**(iii)** the name and contact information of the designated COVID-19 drug's manufacturer,

**(iv)** information specifying the quantity of the designated COVID-19 drug to be imported,

**(v)** the name and contact information of any holder of an establishment licence who is proposed to be an importer of the designated COVID-19 drug, and

**(vi)** the civic address of the place where the designated COVID-19 drug will be stored after importation;

**(b)** the holder provides the Minister with

**(i)** the name and contact information of each fabricator, packager/labeller and tester of the designated COVID-19 drug and the civic address of each building at which the designated COVID-19 drug will be fabricated, packaged/labelled or tested, specifying for each building

**(A)** the activities referred to in Table I to section C.01A.008 that apply to the designated COVID-19 drug,

**(B)** the categories referred to in Table II to that section that apply to the designated COVID-19 drug, and

**(C)** for each category, the dosage form classes, if any, and whether the designated COVID-19 drug will be in a sterile form, and

**(ii)** a certificate from an inspector indicating that each fabricator's, packager/labeller's and tester's buildings, equipment, practices and procedures meet the applicable requirements of Divisions 2 to 4 or, alternatively, other evidence establishing that those requirements are met; and

**(c)** the holder is one of those specified in the information that the Chief Public Health Officer provides under subparagraph (a)(v).

**(A)** ou bien la drogue désignée contre la COVID-19 fait l'objet d'une présentation de drogue nouvelle déposée en application de l'article C.08.002,

**(B)** ou bien une demande d'autorisation de vente a été présentée à une autorité réglementaire étrangère à l'égard de la drogue désignée contre la COVID-19,

**(ii)** le nom et la description de la drogue désignée contre la COVID-19,

**(iii)** les nom et coordonnées du fabricant de la drogue désignée contre la COVID-19,

**(iv)** de l'information quant à la quantité de la drogue désignée contre la COVID-19 à importer,

**(v)** les nom et coordonnées de tout titulaire de licence d'établissement envisagé pour l'importation de la drogue désignée contre la COVID-19,

**(vi)** l'adresse municipale du lieu où la drogue désignée contre la COVID-19 sera entreposée après l'importation;

**b)** le titulaire de licence fournit au ministre :

**(i)** les nom et coordonnées de chaque manufacturier, emballeur-étiqueteur et analyste de la drogue désignée contre la COVID-19 et l'adresse municipale de chaque bâtiment où celle-ci sera manufacturée, emballée-étiquetée ou analysée, avec indication, pour chaque bâtiment, de ce qui suit :

**(A)** les activités mentionnées au tableau I de l'article C.01A.008 qui s'appliquent à la drogue désignée contre la COVID-19,

**(B)** les catégories mentionnées au tableau II de cet article qui s'appliquent à la drogue désignée contre la COVID-19,

**(C)** pour chacune de ces catégories, la classe de forme posologique, le cas échéant, et une mention indiquant s'il s'agit d'une drogue stérile,

**(ii)** le certificat d'un inspecteur indiquant que les bâtiments, l'équipement et les méthodes et pratiques de chaque manufacturier, emballeur-étiqueteur et analyste satisfont aux exigences applicables des titres 2 à 4 ou, à défaut, toute autre preuve établissant qu'il est satisfait à ces exigences;

**c)** le titulaire de licence est l'un de ceux que l'administrateur en chef de la santé publique mentionne dans

**(2)** Paragraph (1)(b) does not apply to the holder of an establishment licence in respect of a building referred to in subparagraph (1)(b)(i) if

**(a)** the building is listed in the licence; and

**(b)** the information referred to in clauses (1)(b)(i)(A) to (C) that the holder submitted in respect of the building in their application for the licence under section C.01A.005 or in an application to amend the licence under section C.01A.006, has not changed.

**(3)** If the conditions set out in subsection (1) are met, the Minister shall send a letter to the Chief Public Health Officer to that effect.

SOR/2021-45, s. 17.

**C.08.009.04** Sections A.01.040 and C.01.004.1, subsection C.01A.004(1), section C.01A.006 and Divisions 2 to 4, other than the following provisions, do not apply in respect of the importation, under section C.08.009.03, of a designated COVID-19 drug by the holder of an establishment licence:

**(a)** sections C.02.003.1, C.02.004 and C.02.006, as they apply to the storage of the designated COVID-19 drug by the holder;

**(b)** subsection C.02.012(1);

**(c)** sections C.02.013 and C.02.014;

**(d)** section C.02.015, as it applies to the storage and transportation of the designated COVID-19 drug by the holder;

**(e)** subsection C.02.021(1), as it applies to the storage of the designated COVID-19 drug by the holder;

**(f)** subsection C.02.022(1);

**(g)** section C.02.023;

**(h)** subsection C.02.024(1);

**(i)** section C.03.013; and

**(j)** section C.04.001.1, as it applies to the storage of the designated COVID-19 drug by the holder.

SOR/2021-45, s. 17.

les renseignements fournis en aux termes du sous-alinéa a)(v).

**(2)** L'alinéa (1)b) ne s'applique pas au titulaire de licence d'établissement à l'égard de tout bâtiment visé au sous-alinéa (1)b)(i) si les conditions suivantes sont réunies :

**a)** le bâtiment figure sur la licence;

**b)** les renseignements visés aux divisions (1)b)(i)(A) à (C) que le titulaire a fournis à l'égard du bâtiment dans la demande de licence présentée conformément à l'article C.01A.005 ou dans toute demande de modification de la licence qu'il a présentée conformément à l'article C.01A.006, demeurent inchangés.

**(3)** Lorsque les conditions prévues au paragraphe (1) sont remplies, le ministre fait parvenir à l'administrateur en chef de la santé publique une lettre à cet égard.

DORS/2021-45, art. 17.

**C.08.009.04** Les articles A.01.040 et C.01.004.1, le paragraphe C.01A.004(1), l'article C.01A.006 et, à l'exception des dispositions ci-après, les titres 2 à 4 ne s'appliquent pas à l'égard de l'importation, en vertu de l'article C.08.009.03, d'une drogue désignée contre la COVID-19 par le titulaire d'une licence d'établissement :

**a)** les articles C.02.003.1, C.02.004 et C.02.006, en ce qui a trait à l'entreposage de la drogue désignée contre la COVID-19 par le titulaire de licence;

**b)** le paragraphe C.02.012(1);

**c)** les articles C.02.013 et C.02.014;

**d)** l'article C.02.015, en ce qui a trait à l'entreposage et au transport de la drogue désignée contre la COVID-19 par le titulaire de licence;

**e)** le paragraphe C.02.021(1), en ce qui a trait à l'entreposage de la drogue désignée contre la COVID-19 par le titulaire de licence;

**f)** le paragraphe C.02.022(1);

**g)** l'article C.02.023;

**h)** le paragraphe C.02.024(1);

**i)** l'article C.03.013;

**j)** l'article C.04.001.1, en ce qui a trait à l'entreposage de la drogue désignée contre la COVID-19 par le titulaire de licence.

DORS/2021-45, art. 17.

**C.08.009.05** Despite anything in these Regulations, the holder of an establishment licence may distribute a designated COVID-19 drug that they have imported under section C.08.009.03 if the following conditions are met:

**(a)** the Chief Public Health Officer provides the Minister with the name of the designated COVID-19 drug and the civic address of the place where it will be stored after the distribution; and

**(b)** the designated COVID-19 drug is distributed to a person who will store it at that place.

SOR/2021-45, s. 17.

## Disclosure of Information in Respect of Clinical Trials

**C.08.009.1 (1)** In sections C.08.009.2 and C.08.009.3, ***information in respect of a clinical trial*** means information in respect of a *clinical trial*, within the meaning of section C.05.001, that is contained in a new drug submission, an extraordinary use new drug submission, an abbreviated new drug submission or an abbreviated extraordinary use new drug submission for a new drug for human use filed under section C.08.002, C.08.002.01 or C.08.002.1 or in a supplement to any of those submissions filed under section C.08.003.

**(2)** For greater certainty, the definition *information in respect of a clinical trial* includes information that is contained in a submission or supplement referred to in that definition and that is in respect of clinical testing involving human subjects in regards to which an application was filed under this Division before September 1, 2001.

SOR/2019-62, s. 3.

**C.08.009.2 (1)** Information in respect of a clinical trial that is confidential business information ceases to be confidential business information when one of the following circumstances occurs with respect to the submission or supplement:

**(a)** the Minister issues a notice of compliance under section C.08.004 or C.08.004.01;

**(b)** in the case where the Minister issues a notice to the manufacturer under paragraph C.08.004(1)(b) or C.08.004.01(1)(b) and the manufacturer does not amend the submission or supplement under subsection C.08.004(2) or C.08.004.01(2), the applicable period referred to in the relevant subsection expires;

**C.08.009.05** Malgré toute disposition du présent règlement, le titulaire d'une licence d'établissement peut distribuer une drogue contre la COVID-19 qu'il a importée en vertu de l'article C.08.009.03 si les conditions suivantes sont réunies :

**a)** l'administrateur en chef de la santé publique fournit au ministre le nom de la drogue désignée contre la COVID-19 et l'adresse municipale du lieu où elle sera entreposée après la distribution;

**b)** la drogue désignée contre la COVID-19 est distribuée à une personne qui l'entreposera dans ce lieu.

DORS/2021-45, art. 17.

## Communication de renseignements relatifs à des essais cliniques

**C.08.009.1 (1)** Aux articles C.08.009.2 et C.08.009.3, ***renseignements relatifs à un essai clinique*** s'entend des renseignements relatifs à un *essai clinique*, au sens de l'article C.05.001, qui sont contenus dans une présentation de drogue nouvelle, une présentation de drogue nouvelle pour usage exceptionnel, une présentation abrégée de drogue nouvelle ou une présentation abrégée de drogue nouvelle pour usage exceptionnel déposées à l'égard d'une drogue nouvelle pour usage humain aux termes des articles C.08.002, C.08.002.01 ou C.08.002.1 ou dans un supplément à l'une de ces présentations déposé aux termes de l'article C.08.003.

**(2)** Il est entendu que la définition de *renseignements relatifs à un essai clinique* vise notamment les renseignements qui sont contenus dans une présentation ou un supplément visés dans cette définition et qui sont relatifs à un essai clinique sur des sujets humains relativement auquel une demande a été déposée en application du présent titre avant le 1er septembre 2001.

DORS/2019-62, art. 3.

**C.08.009.2 (1)** Les renseignements relatifs à un essai clinique qui sont des renseignements commerciaux confidentiels cessent d'être des renseignements commerciaux confidentiels au moment où l'une des circonstances ci-après survient relativement à la présentation ou au supplément :

**a)** le ministre délivre un avis de conformité en application des articles C.08.004 ou C.08.004.01;

**b)** dans le cas où le ministre délivre un avis au fabricant, en application des alinéas C.08.004(1)b) ou C.08.004.01(1)b), et que le fabricant ne modifie pas la présentation ou le supplément en vertu des paragraphes C.08.004(2) ou C.08.004.01(2), celui des délais visés au paragraphe pertinent qui s'applique expire;

**(c)** the Minister issues a notice to the manufacturer under paragraph C.08.004(3)(b) or C.08.004.01(3)(b).

**(2)** Subsection (1) does not apply to information in respect of a clinical trial that

**(a)** was not used by the manufacturer in the submission or supplement to support the proposed conditions of use for the new drug or the purpose for which the new drug is recommended; or

**(b)** describes tests, methods or assays that are used exclusively by the manufacturer.

SOR/2019-62, s. 3.

**C.08.009.3** The Minister may disclose, without notifying the person to whose business or affairs the information relates or obtaining their consent, any information in respect of a clinical trial that has ceased to be confidential business information.

SOR/2019-62, s. 3.

## Sale of New Drug for Emergency Treatment

[SOR/2020-212, s. 1(F)]

**C.08.010 (1)** The Minister may issue a letter of authorization to a manufacturer of a new drug authorizing the sale of a specified quantity of the new drug for human or veterinary use to a practitioner, for use in the emergency treatment of an animal or a person under the care of that practitioner, if

**(a)** the practitioner provides the following information to the Minister:

**(i)** the name of the new drug and details concerning the medical emergency for which the new drug is required,

**(ii)** the quantity of the new drug that is required,

**(iii)** subject to subsection (2), the information in the possession of the practitioner in respect of the use, safety and efficacy of the new drug,

**(iv)** the name and the civic address of the person to whom the new drug is to be shipped, and

**(v)** any other information the Minister may request to enable the Minister to determine whether to issue the letter of authorization;

**(b)** the practitioner agrees to

**(i)** provide a report to the manufacturer of the new drug and to the Minister describing the results

**c)** le ministre délivre un avis au fabricant, en application des alinéas C.08.004(3)b) ou C.08.004.01(3)b).

**(2)** Le paragraphe (1) ne s'applique pas aux renseignements relatifs à un essai clinique suivants :

**a)** ceux que le fabricant n'a pas utilisés dans la présentation ou le supplément pour étayer le mode d'emploi proposé de la nouvelle drogue ou les fins pour lesquelles celle-ci est recommandée;

**b)** ceux qui décrivent les tests, méthodes et essais utilisés exclusivement par le fabricant.

DORS/2019-62, art. 3.

**C.08.009.3** Le ministre peut communiquer les renseignements relatifs à un essai clinique qui se rapportent à l'entreprise d'une personne ou à ses activités et qui ont cessé d'être des renseignements commerciaux confidentiels, et ce sans obtenir son consentement et sans l'aviser.

DORS/2019-62, art. 3.

## Vente d'une drogue nouvelle pour soins d'urgence

[DORS/2020-212, art. 1(F)]

**C.08.010 (1)** Le ministre peut, si les conditions ci-après sont réunies, délivrer au fabricant d'une drogue nouvelle une lettre d'autorisation permettant la vente à un praticien, pour usage humain ou vétérinaire, d'une quantité déterminée de cette drogue afin que le praticien puisse prodiguer des soins d'urgence à un animal ou à une personne qu'il traite à titre professionnel :

**a)** le praticien fournit au ministre les renseignements suivants :

**(i)** le nom de la drogue nouvelle et des précisions concernant l'urgence médicale pour laquelle la drogue est requise,

**(ii)** la quantité de la nouvelle drogue qui est requise,

**(iii)** sous réserve du paragraphe (2), les renseignements qu'il possède concernant l'usage, l'innocuité et l'efficacité de la drogue nouvelle,

**(iv)** le nom et l'adresse municipale de la personne à qui la drogue nouvelle doit être expédiée,

**(v)** tout autre renseignement que le ministre peut demander pour lui permettre de décider s'il convient de délivrer la lettre d'autorisation;

**b)** le praticien consent :

obtained following the use of the new drug to address the medical emergency, including information respecting any adverse drug reactions observed by the practitioner, and

**(ii)** account to the Minister, on request, for all quantities of the new drug received;

**(c)** in the case of a new drug for human use, the person referred to in subparagraph (a)(iv) is a practitioner or a pharmacist; and

**(d)** in the case of a new drug for veterinary use, the person referred to in subparagraph (a)(iv) is a practitioner, a pharmacist or a person who may sell a medicated feed pursuant to section C.08.012.

**(2)** Subparagraph (1)(a)(iii) does not apply if the following conditions are met:

**(a)** the sale of the new drug has been authorized under subsection (1) to address the same medical emergency on at least one previous occasion;

**(b)** the European Medicines Agency or the United States Food and Drug Administration has authorized the sale of the new drug without terms or conditions, for the same use in its jurisdiction; and

**(c)** the Minister has not cancelled the assignment of a drug identification number for the new drug under paragraph C.01.014.6(2)(b) or (c) or subsection C.01.014.6(3).

**(3)** [Repealed, SOR/2021-271, s. 4]

**(4)** The letter of authorization must contain the following information:

**(a)** the name of the practitioner to whom the new drug may be sold;

**(b)** the name and the civic address of the person to whom the new drug may be shipped;

**(c)** the name of the new drug and the medical emergency in respect of which it may be sold; and

**(d)** the quantity of the new drug that may be sold to the practitioner to address the medical emergency.

**(5)** For the purposes of this section, the practitioner is not required to know the identity of the animal or the

**(i)** à fournir au fabricant de la drogue nouvelle et au ministre un rapport sur les résultats obtenus à la suite de l'utilisation de la drogue pour traiter l'urgence médicale, notamment les renseignements concernant toute réaction indésirable à la drogue qu'il aura observée,

**(ii)** à rendre compte au ministre, sur demande, de toutes les quantités de la drogue nouvelle reçue;

**c)** dans le cas d'une drogue nouvelle pour usage humain, la personne visée au sous-alinéa a)(iv) est un praticien ou un pharmacien;

**d)** dans le cas d'une drogue nouvelle pour usage vétérinaire, la personne visée au sous-alinéa a)(iv) est un praticien, un pharmacien ou une personne autorisée à vendre un aliment médicamenté en vertu de l'article C.08.012.

**(2)** Le sous-alinéa (1)a)(iii) ne s'applique pas si les conditions suivantes sont réunies :

**a)** la vente de la drogue nouvelle a été autorisée à au moins une reprise en vertu du paragraphe (1) pour traiter la même urgence médicale;

**b)** l'Agence européenne des médicaments ou le Secrétariat américain aux produits alimentaires et pharmaceutiques aux États-Unis a autorisé la vente de la drogue nouvelle, sans conditions, pour le même usage et dans le territoire relevant de sa compétence;

**c)** le ministre n'a pas, en vertu des alinéas C.01.014.6(2)b) ou c) ou du paragraphe C.01.014.6(3), annulé l'identification numérique attribuée à la drogue nouvelle.

**(3)** [Abrogé, DORS/2021-271, art. 4]

**(4)** La lettre d'autorisation délivrée contient :

**a)** le nom du praticien auquel la drogue nouvelle peut être vendue;

**b)** le nom et l'adresse municipale de la personne à qui la drogue nouvelle peut être expédiée;

**c)** le nom de la drogue nouvelle et l'urgence médicale pour laquelle la drogue nouvelle peut être vendue;

**d)** la quantité de la drogue nouvelle qui peut être vendue au praticien pour traiter l'urgence médicale.

**(5)** Pour l'application du présent article, le praticien n'a pas à connaître l'identité de l'animal ou de la personne

person under the care of that practitioner at the time the letter of authorization is issued.

SOR/2013-172, s. 11; SOR/2018-69, ss. 31(E), 32(F); SOR/2020-212, s. 2; SOR/2021-271, s. 4.

**C.08.011 (1)** Despite section C.08.002, the manufacturer may sell a new drug in accordance with a letter of authorization issued under subsection C.08.010(1).

**(2)** In the case of the sale under subsection (1) of a new drug for veterinary use that contains an active pharmaceutical ingredient set out in List A and that was not imported under section C.08.011.2, an annual report identifying the total quantity of the new drug that was sold, including an estimate of the quantity sold in respect of each animal species for which the drug is intended, must be submitted to the Minister by the manufacturer, if the new drug was present in Canada at the time of sale, otherwise by the practitioner.

**(3)** The sale of a new drug made in accordance with subsection (1) is exempt from the provisions of the Act and these Regulations other than this section.

**(4)** The annual report described in subsection (2) is for a period of one calendar year and must be submitted on or before March 31 of the year following the calendar year covered by the report, beginning with the first full calendar year during which the drug is first sold.

SOR/2020-212, s. 2; SOR/2023-247, s. 3.

**C.08.011.1 (1)** The Minister may issue a letter of authorization to the manufacturer of a new drug authorizing the holder of an establishment licence to import a specified quantity of the new drug for human or veterinary use, if the following conditions are met:

**(a)** the manufacturer provides the following information to the Minister:

**(i)** the name of the new drug and details concerning the medical emergency for which the new drug will be imported,

**(ii)** the quantity of the new drug to be imported,

**(iii)** the name of the holder of an establishment licence who will import the new drug,

**(iv)** the civic address of the facility where the new drug is to be stored in Canada, and

qu'il traite à titre professionnel au moment de la délivrance de la lettre d'autorisation.

DORS/2013-172, art. 11; DORS/2018-69, art. 31(A) et 32(F); DORS/2020-212, art. 2; DORS/2021-271, art. 4.

**C.08.011 (1)** Malgré l'article C.08.002, le fabricant peut vendre une drogue nouvelle conformément à une lettre d'autorisation délivrée en vertu du paragraphe C.08.010(1).

**(2)** En cas de vente faite en conformité avec le paragraphe (1) d'une drogue nouvelle pour usage vétérinaire qui contient un ingrédient actif pharmaceutique figurant dans la Liste A et qui n'a pas été importée en vertu de l'article C.08.011.2, un rapport annuel indiquant la quantité totale de la drogue ayant été vendue et, pour chacune des espèces animales auxquelles la drogue est destinée, une estimation de la quantité vendue de celle-ci, est présenté au ministre par le fabricant, dans le cas où la drogue nouvelle se trouvait au Canada au moment de la vente, ou dans le cas contraire, par le praticien.

**(3)** La vente d'une drogue nouvelle faite en conformité avec le paragraphe (1) est exemptée de l'application de la Loi et du présent règlement, à l'exception du présent article.

**(4)** Le rapport visé au paragraphe (2) porte sur toute année civile — à commencer par la première année civile complète pendant laquelle la drogue a été vendue pour la première fois — et est présenté au plus tard le 31 mars de l'année civile qui suit celle qui est visée par le rapport.

DORS/2020-212, art. 2; DORS/2023-247, art. 3.

**C.08.011.1 (1)** Le ministre peut, si les conditions ci-après sont réunies, délivrer au fabricant d'une drogue nouvelle une lettre d'autorisation permettant au titulaire d'une licence d'établissement d'importer, pour usage humain ou vétérinaire, une quantité déterminée de cette drogue :

**a)** le fabricant fournit au ministre les renseignements suivants :

**(i)** le nom de la drogue nouvelle et des précisions concernant l'urgence médicale pour laquelle la drogue nouvelle sera importée,

**(ii)** la quantité de la drogue nouvelle qui sera importée,

**(iii)** le nom du titulaire d'une licence d'établissement qui l'importera,

**(iv)** l'adresse municipale du lieu où la drogue nouvelle sera entreposée au Canada,

**(v)** any other information the Minister may request to enable the Minister to determine whether to issue the letter of authorization;

**(b)** the establishment licence authorizes the importation of a new drug in the same category as the one to be imported; and

**(c)** the quantity that is to be imported does not exceed the amount that the Minister determines is likely to be required to address the medical emergency.

**(2)** [Repealed, SOR/2021-271, s. 5]

**(3)** The letter of authorization must contain the following information:

**(a)** the name of the new drug and the medical emergency in respect of which the letter is issued;

**(b)** the quantity of the new drug that may be imported to address the medical emergency;

**(c)** the name of the holder of an establishment licence who is authorized to import the new drug; and

**(d)** the civic address of the facility where the new drug is to be stored in Canada.

SOR/2020-212, s. 2; SOR/2021-271, s. 5; SOR/2023-247, s. 4(E).

**C.08.011.2 (1)** Despite subsection C.01A.004(1), the holder of an establishment licence may import a new drug in accordance with a letter issued under subsection C.08.011.1(1).

**(2)** Section C.01A.006 and Divisions 2 to 4, except for the following provisions, do not apply to the importation of a new drug referred to in the letter of authorization:

**(a)** sections C.02.003.1 and C.02.004, as they apply to the storage of the new drug by the holder of an establishment licence;

**(b)** section C.02.006, as it applies to the storage of the new drug by the holder of an establishment licence;

**(c)** subsection C.02.012(1);

**(d)** sections C.02.013 and C.02.014;

**(e)** section C.02.015, as it applies to the storage and transportation of the new drug by the holder of an establishment licence;

**(f)** subsection C.02.021(1), as it applies to the storage of the new drug by the holder of an establishment licence;

**(v)** tout autre renseignement que le ministre peut demander pour lui permettre de décider s'il convient de délivrer la lettre d'autorisation;

**b)** la licence d'établissement du titulaire autorise l'importation d'une drogue nouvelle de même catégorie que celle à importer;

**c)** la quantité qui sera importée n'excède pas celle que le ministre juge vraisemblablement nécessaire pour traiter l'urgence médicale.

**(2)** [Abrogé, DORS/2021-271, art. 5]

**(3)** La lettre d'autorisation contient :

**a)** le nom de la drogue nouvelle et l'urgence médicale pour laquelle la lettre est délivrée;

**b)** la quantité de la drogue nouvelle qui peut être importée pour traiter l'urgence médicale;

**c)** le nom du titulaire d'une licence d'établissement qui est autorisé à importer la drogue nouvelle;

**d)** l'adresse municipale du lieu où la nouvelle drogue sera entreposée au Canada.

DORS/2020-212, art. 2; DORS/2021-271, art. 5; DORS/2023-247, art. 4(A).

**C.08.011.2 (1)** Malgré le paragraphe C.01A.004(1), le titulaire d'une licence d'établissement peut importer une drogue nouvelle conformément à la lettre d'autorisation délivrée en vertu du paragraphe C.08.011.1(1).

**(2)** L'article C.01A.006 et, à l'exception des dispositions ci-après, les titres 2 à 4 ne s'appliquent pas à l'égard de l'importation de la drogue nouvelle visée par la lettre d'autorisation délivrée :

**a)** les articles C.02.003.1 et C.02.004, en ce qui a trait à l'entreposage de la drogue nouvelle par le titulaire d'une licence d'établissement;

**b)** l'article C.02.006, en ce qui a trait à l'entreposage de la drogue nouvelle par le titulaire d'une licence d'établissement;

**c)** le paragraphe C.02.012(1);

**d)** les articles C.02.013 et C.02.014;

**e)** l'article C.02.015, en ce qui a trait à l'entreposage et au transport de la drogue nouvelle par le titulaire d'une licence d'établissement;

**(g)** subsection C.02.022(1);

**(h)** section C.02.023;

**(i)** subsection C.02.024(1);

**(j)** section C.03.013; and

**(k)** section C.04.001.1, as it applies to the storage of the new drug by the holder of an establishment licence.

SOR/2020-212, s. 2.

**f)** le paragraphe C.02.021(1), en ce qui a trait à l'entreposage de la drogue nouvelle par le titulaire d'une licence d'établissement;

**g)** le paragraphe C.02.022(1);

**h)** l'article C.02.023;

**i)** le paragraphe C.02.024(1);

**j)** l'article C.03.013;

**k)** l'article C.04.001.1, en ce qui a trait à l'entreposage de la drogue nouvelle par le titulaire d'une licence d'établissement.

DORS/2020-212, art. 2.

**C.08.011.3 (1)** Despite section C.08.002, the holder of an establishment licence who imports a new drug under section C.08.011.2 may distribute a new drug in accordance with a letter of authorization issued under subsection C.08.010(1).

**(2)** The holder of an establishment licence who distributes to a practitioner, in accordance with subsection (1), a new drug for veterinary use that contains an active pharmaceutical ingredient set out in List A must submit to the Minister an annual report identifying the total quantity of the new drug that was distributed, including an estimate of the quantity distributed in respect of each animal species for which the drug is intended.

**(3)** The distribution of a new drug made in accordance with subsection (1) is exempt from the provisions of the Act and these Regulations other than this section.

**(4)** The annual report described in subsection (2) is for a period of one calendar year and must be submitted on or before March 31 of the year following the calendar year covered by the report, beginning with the first full calendar year during which the drug is first distributed.

SOR/2020-212, s. 2; SOR/2023-247, s. 5.

**C.08.011.3 (1)** Malgré l'article C.08.002, le titulaire d'une licence d'établissement qui importe une drogue nouvelle en vertu de l'article C.08.011.2 peut la distribuer conformément à une lettre d'autorisation délivrée en vertu du paragraphe C.08.010(1).

**(2)** Le titulaire d'une licence d'établissement qui distribue en conformité avec le paragraphe (1) au praticien une drogue nouvelle pour usage vétérinaire qui contient un ingrédient actif pharmaceutique figurant dans la Liste A présente au ministre un rapport annuel indiquant la quantité totale de la drogue nouvelle ayant été distribuée, et pour chacune des espèces animales auxquelles la drogue est destinée, une estimation de la quantité distribuée de celle-ci.

**(3)** La distribution d'une drogue nouvelle faite en conformité avec le paragraphe (1) est exemptée de l'application de la Loi et du présent règlement, à l'exception du présent article.

**(4)** Le rapport visé au paragraphe (2) porte sur toute année civile — à commencer par la première année civile complète pendant laquelle la drogue a été distribuée pour la première fois — et est présenté au plus tard le 31 mars de l'année civile qui suit celle qui est visée par le rapport.

DORS/2020-212, art. 2; DORS/2023-247, art. 5.

## Sale of Medicated Feeds

**C.08.012 (1)** Notwithstanding anything in this Division, a person may sell, pursuant to a written prescription of a veterinary practitioner, a medicated feed if

**(a)** as regards the drug or drugs used as the medicating ingredient of the medicated feed,

**(i)** the Minister has assigned a drug identification number pursuant to section C.01.014.2, or

## Vente d'aliments médicamentés

**C.08.012 (1)** Nonobstant toute autre disposition du présent titre, il est permis de vendre, aux termes d'une ordonnance écrite d'un vétérinaire, un aliment médicamenté si

**a)** quant à la drogue ou aux drogues utilisées comme substances médicatrices dans l'aliment médicamenté :

**(i)** soit le ministre leur a attribué une identification numérique conformément à l'article C.01.014.2,

**(ii)** the sale is permitted by section C.08.005, C.08.011 or C.08.013;

**(b)** the medicated feed is for the treatment of animals under the direct care of the veterinary practitioner who signed the prescription;

**(c)** the medicated feed is for therapeutic purposes only; and

**(d)** the written prescription contains the following information:

**(i)** the name and address of the person named on the prescription as the person for whom the medicated feed is to be mixed,

**(ii)** the species, production type and age or weight of the animals to be treated with the medicated feed,

**(iii)** the type and amount of medicated feed to be mixed,

**(iv)** the proper name, or the common name if there is no proper name, of the drug or each of the drugs, as the case may be, to be used as medicating ingredients in the preparation of the medicated feed, and the dosage levels of those medicating ingredients,

**(v)** any special mixing instructions, and

**(vi)** labelling instructions including

**(A)** feeding instructions,

**(B)** a warning statement respecting the withdrawal period to be observed following the use of the medicated feed, and

**(C)** where applicable, cautions with respect to animal health or to the handling or storage of the medicated feed.

**(2)** For the purposes of this section, ***medicated feed*** has the same meaning as in the *Feeds Regulations, 2024*.

SOR/80-741, s. 1; SOR/92-130, s. 1; SOR/93-202, s. 27; SOR/2018-69, s. 27; SOR/2024-132, s. 88.

**ii)** soit leur vente est permise aux termes des articles C.08.005, C.08.011 ou C.08.013;

**b)** l'aliment médicamenté est destiné au traitement d'animaux directement soumis aux soins du vétérinaire ayant signé l'ordonnance;

**c)** l'aliment médicamenté n'est prévu qu'à des fins thérapeutiques; et

**d)** l'ordonnance écrite renferme les renseignements suivants :

**(i)** le nom et l'adresse de la personne désignée dans l'ordonnance comme celle pour qui l'aliment médicamenté est préparé,

**(ii)** l'espèce, le type de production et l'âge ou le poids des animaux qui seront traités avec l'aliment médicamenté,

**(iii)** le genre et la quantité d'aliment médicamenté à préparer,

**(iv)** le nom propre ou, à défaut, le nom usuel de la drogue ou de chacune des drogues, selon le cas, à être utilisées comme substances médicamenteuses dans la préparation de l'aliment médicamenté, ainsi que la posologie de ces substances,

**(v)** toute instruction spéciale pour la préparation, et

**(vi)** les instructions d'étiquetage, y compris

**(A)** les instructions d'alimentation,

**(B)** une mise en garde concernant la période de retrait à observer après l'utilisation de l'aliment médicamenté, et

**(C)** le cas échéant, les précautions à prendre à l'égard de la santé de l'animal ou de la manipulation ou de l'entreposage de l'aliment médicamenté.

**(2)** Au présent article, ***aliment médicamenté*** s'entend au sens du *Règlement de 2024 sur les aliments du bétail*.

DORS/80-741, art. 1; DORS/92-130, art. 1; DORS/93-202, art. 27; DORS/2018-69, art. 27; DORS/2024-132, art. 88.

## Experimental Studies

### Conditions of Sale

**C.08.013 (1)** Notwithstanding anything in this Division, a person may sell a new drug proposed for use in

## Études expérimentales

### Conditions de vente

**C.08.013 (1)** Nonobstant toute autre disposition du présent titre, il est permis de vendre à un expert en

animals to an experimental studies investigator in a quantity specified by the Minister for the purpose of conducting an experimental study in animals if

**(a)** the experimental studies investigator has been issued an experimental studies certificate pursuant to subsection C.08.015(1) and the certificate has not been suspended or cancelled pursuant to section C.08.018; and

**(b)** the drug is labelled in accordance with subsection C.08.016(1).

**(2)** For the purposes of this section and sections C.08.014 to C.08.018,

***experimental studies certificate*** means a certificate issued pursuant to subsection C.08.015(1); (*certificat d'études expérimentales*)

***experimental studies investigator*** means a person named as the investigator in an experimental studies certificate; (*expert en études expérimentales*)

***experimental study*** means a limited test of a new drug in animals carried out by an experimental studies investigator. (*étude expérimentale*)

SOR/81-333, s. 1; SOR/2018-69, s. 27.

## Experimental Studies Certificate

**C.08.014 (1)** For the purpose of obtaining an experimental studies certificate, an applicant shall submit to the Minister, in writing, the following information and material:

**(a)** the brand name of the new drug or the identifying name or code proposed for the new drug;

**(b)** the objectives and an outline of the proposed experimental study of the new drug;

**(c)** the species, number and production type of animals in respect of which the new drug is to be administered;

**(d)** the name and address of the manufacturer of the new drug;

**(e)** the address of the premises in which the experimental study is to be conducted;

**(f)** a description of the facilities to be used to conduct the experimental study;

**(g)** the name, address and qualifications of the proposed experimental studies investigator;

études expérimentales, une quantité spécifiée par le ministre, de drogues nouvelles d'application vétérinaire destinées à l'exécution d'une étude expérimentale chez l'animal si,

**a)** l'expert en études expérimentales a reçu un certificat d'études expérimentales selon le paragraphe C.08.015(1) et si le certificat n'a pas été suspendu ou annulé selon l'article C.08.018; et

**b)** la drogue est étiquetée conformément au paragraphe C.08.016(1).

**(2)** Aux fins des articles C.08.013 à C.08.018,

***certificat d'études expérimentales*** désigne un certificat délivré selon le paragraphe C.08.015(1);

***expert en études expérimentales*** désigne la personne visée dans un certificat d'études expérimentales;

***étude expérimentale*** désigne un test limité effectué par un expert en études expérimentales sur des animaux auxquels on a administré une drogue nouvelle.

DORS/81-333, art. 1; DORS/2018-69, art. 27.

## Certificat d'études expérimentales

**C.08.014 (1)** Afin d'obtenir un certificat d'études expérimentales, un requérant doit présenter au ministre, par écrit, les renseignements et pièces suivants :

**a)** la marque nominative de la drogue nouvelle ou le nom ou code d'identification projeté pour celle-ci;

**b)** les objectifs et le protocole du projet d'étude expérimentale de la drogue nouvelle;

**c)** l'espèce, le nombre et le type de production des animaux auxquels la nouvelle drogue doit être administrée;

**d)** le nom et l'adresse du fabricant de la drogue nouvelle;

**e)** l'adresse de l'établissement où l'étude expérimentale doit être effectuée;

**f)** une description des installations devant servir à l'étude expérimentale;

**g)** le nom, l'adresse et les qualifications de l'expert en études expérimentales proposé;

**(h)** the chemical structure, if known, and the relevant compositional characteristics of the new drug;

**(i)** the proposed quantity of the new drug to be used for the experimental study;

**(j)** the results of any toxicological or pharmacological studies that may have been conducted with the new drug;

**(k)** the written agreement referred to in subsection (2); and

**(l)** such other information and material as the Minister may require.

**(2)** Where a food-producing animal is involved in an experimental study, the applicant referred to in subsection (1) shall, for the purposes of obtaining an experimental studies certificate, obtain from the owner of the animals, or from a person authorized by the owner, a written agreement not to sell the animal or any products from it without prior authorization from the experimental studies investigator.

**(3)** The Minister may request the manufacturer of a new drug to submit to him samples of the new drug or of any ingredient of the drug and, in satisfactory form and manner, any other information that the Minister requests and where such samples or information are not submitted, the Minister may refuse to issue an experimental studies certificate.

SOR/81-333, s. 1; SOR/93-202, s. 28; SOR/2018-69, s. 27.

**C.08.015 (1)** Where, on receipt of the information and material submitted pursuant to section C.08.014, the Minister has determined that

**(a)** the applicant is qualified as an experimental studies investigator for the purposes of the proposed experimental study,

**(b)** the facilities for the conduct of the experimental study are adequate for the purposes of the proposed experimental study, and

**(c)** the proposed experimental study can be conducted without undue foreseeable risk to humans or animals,

the Minister shall issue an experimental studies certificate for the purposes of the proposed experimental study and shall specify therein the quantity of the new drug that may be sold to the experimental studies investigator.

**h)** la structure chimique, si elle est connue, et les caractéristiques pertinentes de la composition de la drogue nouvelle;

**i)** la quantité de drogue nouvelle que l'on se propose d'utiliser au cours de l'étude expérimentale;

**j)** les résultats de toutes les études toxicologiques ou pharmacologiques qui ont été conduites avec la drogue nouvelle;

**k)** l'engagement écrit mentionné au paragraphe (2); et

**l)** tous autres renseignements et pièces que le ministre exige.

**(2)** Lorsque des animaux de boucherie doivent servir d'une manière quelconque dans une étude expérimentale, le requérant mentionné au paragraphe (1) doit, afin d'obtenir un certificat d'études expérimentales, obtenir un engagement écrit du propriétaire desdits animaux, ou d'une personne autorisée par lui, de ne pas vendre ces animaux ou tout produit en dérivant, sans obtenir au préalable une autorisation de l'expert en études expérimentales.

**(3)** Le ministre peut demander au fabricant d'une drogue nouvelle qu'il lui fournisse des échantillons de ladite drogue, ou de l'un quelconque de ses ingrédients, sous une forme et d'une manière satisfaisantes, et tout autre renseignement que le ministre demande. Si le ministre ne reçoit pas les échantillons et les renseignements voulus, il peut refuser de délivrer le certificat d'études expérimentales demandé.

DORS/81-333, art. 1; DORS/93-202, art. 28; DORS/2018-69, art. 27.

**C.08.015 (1)** Lorsque, à la réception des renseignements et pièces fournis selon l'article C.08.014, le ministre a conclu que :

**a)** le requérant a les qualifications voulues pour les fins de l'étude expérimentale envisagée,

**b)** les installations destinées à servir à l'étude expérimentale envisagée sont appropriées, et

**c)** l'étude expérimentale peut être effectuée sans risque indu et prévisible pour l'homme ou l'animal,

le ministre doit délivrer le certificat d'études expérimentales pour la conduite de l'étude expérimentale envisagée et doit y préciser la quantité de la drogue nouvelle qui peut être vendue à l'expert en études expérimentales.

**(2)** If, on receipt of the information and material submitted under section C.08.014, the Minister determines that the requirements of paragraphs (1)(a), (b) and (c) have not been met, the Minister shall refuse to issue an experimental studies certificate.

SOR/81-333, s. 1; SOR/2018-69, ss. 25, 27; SOR/2022-197, s. 9; SOR/2023-247, s. 6.

**(2)** Lorsque, à la réception des renseignements et pièces fournis aux termes de l'article C.08.014, le ministre conclut que les exigences des alinéas (1)a), b) et c) n'ont pas été satisfaites, il refuse de délivrer le certificat d'études expérimentales.

DORS/81-333, art. 1; DORS/2018-69, art. 25 et 27; DORS/2022-197, art. 9; DORS/2023-247, art. 6.

## Labelling

**C.08.016 (1)** The label of a new drug that is sold pursuant to section C.08.013 shall show

**(a)** the brand name of the new drug or the identifying name or code proposed for the new drug;

**(b)** a warning statement to the effect that the drug is for use only in an experimental study in animals;

**(c)** the lot number of the drug;

**(d)** the name and address of the manufacturer of the drug; and

**(e)** the name of the person to whom the drug has been supplied.

**(2)** Sections C.01.004, C.01.005 and C.01.014 do not apply to a drug that is sold pursuant to section C.08.013 and labelled in accordance with subsection (1).

SOR/81-333, s. 1; SOR/88-378, s. 2; SOR/93-202, s. 29.

## Étiquetage

**C.08.016 (1)** L'étiquette d'une drogue nouvelle, vendue selon l'article C.08.013, doit porter :

**a)** la marque nominative de la drogue nouvelle ou le nom ou code d'identification projeté pour celle-ci;

**b)** une mise en garde indiquant que ladite drogue ne doit être utilisée que pour les études expérimentales effectuées sur les animaux;

**c)** le numéro de lot;

**d)** le nom et l'adresse du fabricant; et

**e)** le nom de la personne à qui la drogue à été fournie.

**(2)** Les articles C.01.004, C.01.005 et C.01.014 ne s'appliquent pas à une drogue qui est vendue selon l'article C.08.013 et étiquetée conformément au paragraphe (1).

DORS/81-333, art. 1; DORS/88-378, art. 2; DORS/93-202, art. 29.

## Conditions of Experimental Study

**C.08.017** An experimental studies investigator shall

**(a)** use the new drug only in accordance with the outline of the experimental study;

**(b)** report immediately to the Minister all serious adverse drug reactions associated with the use of the new drug;

**(c)** report promptly to the Minister, on request, the results of the experimental study;

**(d)** return to the manufacturer, on request, all quantities of the new drug not used in the experimental study;

**(e)** maintain all records of the experimental study for a period of at least two years after the conclusion of the study and, on request, make such records available to the Minister;

**(f)** report promptly to the Minister any known disposition of animals involved in the study or of any

## Conditions applicables aux études expérimentales

**C.08.017** Un expert en études expérimentales doit

**a)** utiliser la drogue nouvelle conformément au protocole de l'étude expérimentale;

**b)** signaler immédiatement au ministre toute réaction indésirable grave liée à l'utilisation de la drogue nouvelle;

**c)** communiquer rapidement au ministre, sur demande, les résultats de l'étude expérimentale;

**d)** retourner au fabricant, sur demande, toute quantité de la drogue nouvelle non utilisée dans l'étude expérimentale;

**e)** conserver tous les dossiers de l'étude expérimentale pendant au moins deux ans suivant la fin de l'étude, et, sur demande, les mettre à la disposition du ministre;

**f)** signaler rapidement au ministre tout cas où l'on a disposé, contrairement aux termes de l'engagement

products from the animals that is contrary to the terms of the agreement referred to in subsection C.08.014(2); and

**(g)** account to the Minister, on request, for all quantities of the new drug received by him.

SOR/81-333, s. 1; SOR/2001-203, s. 10; SOR/2018-69, s. 27.

### Suspension or Cancellation of Experimental Studies Certificate

**C.08.018 (1)** If the Minister determines that it is necessary in order to safeguard animal health or public health or to promote public safety, he or she may suspend for a definite or indefinite period or cancel an experimental studies certificate.

**(2)** Without limiting the generality of subsection (1), the Minister may suspend or cancel an experimental studies certificate if

**(a)** the information and material submitted pursuant to section C.08.014 contains an untrue statement or contains any omission concerning the properties of the drug that were known or ought reasonably to have been known to the manufacturer or the experimental studies investigator;

**(b)** the labelling of the new drug is, at any time, false, misleading, deceptive or incomplete;

**(c)** the qualifications of the experimental studies investigator prove to be inadequate;

**(d)** there is evidence that the experimental studies investigator has not complied with the conditions referred to in section C.08.017; or

**(e)** an action of the manufacturer in respect of the new drug has resulted in his conviction for a violation of section C.08.002.

SOR/81-333, s. 1; SOR/2018-69, ss. 26, 27.

mentionné au paragraphe C.08.014(2), d'animaux servant d'une manière quelconque dans une étude expérimentale, ou de leurs produits; et

**g)** rendre compte au ministre, sur demande, de toutes les quantités de la drogue nouvelle qu'il aura reçues.

DORS/81-333, art. 1; DORS/2001-203, art. 10; DORS/2018-69, art. 27.

### Suspension ou annulation du certificat d'études expérimentales

**C.08.018 (1)** Lorsque le ministre conclut qu'il est nécessaire de sauvegarder la santé de l'animal ou la santé publique ou d'assurer la sécurité publique, il peut suspendre un certificat d'études expérimentales pour une période définie ou indéfinie, ou encore l'annuler.

**(2)** Sans restreindre la portée générale du paragraphe (1), le ministre peut suspendre ou annuler un certificat d'études expérimentales si

**a)** les renseignements et pièces fournis selon l'article C.08.014 comportent une fausse déclaration ou une omission concernant les propriétés de la drogue nouvelle, qui sont connues du fabricant ou de l'expert en études expérimentales, ou qui auraient raisonnablement dû l'être;

**b)** l'étiquetage de la drogue nouvelle est, à n'importe quel moment, faux, mensonger, trompeur ou incomplet;

**c)** l'expert en études expérimentales n'a pas les qualifications voulues;

**d)** il existe des preuves que l'expert en études expérimentales n'a pas satisfait aux conditions mentionnées à l'article C.08.017; ou

**e)** une activité du fabricant, relative à la drogue nouvelle, a entraîné la condamnation dudit fabricant pour infraction à l'article C.08.002.

DORS/81-333, art. 1; DORS/2018-69, art. 26 et 27.

## DIVISION 9

## Non-prescription Drugs

**C.09.001** This Division does not apply to

**(a)** a drug that is required by these Regulations or the *Narcotic Control Regulations* to be sold only on prescription; or

## TITRE 9

## Médicaments vendus sans ordonnance

**C.09.001** Le présent titre ne s'applique pas

**a)** à une drogue qui doit être vendue sur ordonnance aux termes du présent règlement ou du *Règlement sur les stupéfiants*; ni

**(b)** a drug for use exclusively in animals.

SOR/84-145, s. 4.

**b)** à une drogue destinée exclusivement aux animaux.

DORS/84-145, art. 4.

## Analgesics

### General

**C.09.010** No manufacturer or importer shall, after June 30, 1986, sell a drug for analgesia that contains a combination of

**(a)** a salt or derivative of salicylic acid with another salt or derivative of salicylic acid or with salicylamide; or

**(b)** acetaminophen with a salt or derivative of salicylic acid or with salicylamide.

SOR/84-145, s. 4.

**C.09.011** Each label of a drug that is intended for internal use and contains acetaminophen, salicylic acid or a salt or derivative thereof shall, after June 30, 1986, carry a caution

**(a)** to consult a physician if the underlying condition requires continued use for more than five days; and

**(b)** that it is hazardous to exceed the maximum recommended dose unless advised by a physician.

SOR/84-145, s. 4; SOR/86-589, s. 1.

**C.09.012** Each label of a drug that is intended for internal use and contains salicylic acid or a salt or derivative thereof shall after June 30, 1986, carry a warning statement to consult a physician before taking the drug during the last three months of pregnancy or when nursing.

SOR/84-145, s. 4.

## Acetaminophen

**C.09.020 (1)** The adult standard dosage unit of acetaminophen shall be 325 mg.

**(2)** The children's standard dosage units of acetaminophen shall be 80 mg or 160 mg.

SOR/84-145, s. 4; SOR/90-587, s. 4.

**C.09.021 (1)** In this Division, ***acetaminophen product*** means a drug that contains

**(a)** acetaminophen as a single medicinal ingredient; or

**(b)** acetaminophen in combination with caffeine.

## Analgésiques

### Dispositions générales

**C.09.010** Après le 30 juin 1986, il est interdit à un fabricant ou à un importateur de vendre un produit analgésique renfermant une combinaison

**a)** d'un sel ou dérivé de l'acide salicylique et d'un autre sel ou dérivé de l'acide salicylique ou du salicylamide; ou

**b)** de l'acétaminophène et d'un sel ou dérivé de l'acide salicylique ou du salicylamide.

DORS/84-145, art. 4.

**C.09.011** Après le 30 juin 1986, l'étiquette d'une drogue renfermant de l'acétaminophène, de l'acide salicylique ou l'un de ses sels ou dérivés et destinée à l'usage interne doit porter une mise en garde indiquant :

**a)** qu'un médecin doit être consulté si l'état pathologique sous-jacent persiste pendant plus de cinq jours; et

**b)** qu'il est dangereux de dépasser la dose maximum recommandée sans l'autorisation d'un médecin.

DORS/84-145, art. 4; DORS/86-589, art. 1.

**C.09.012** Après le 30 juin 1986, l'étiquette d'une drogue renfermant de l'acide salicylique ou l'un de ses sels ou dérivés et destinée à l'usage interne doit porter un avertissement indiquant qu'il ne faut pas utiliser la drogue pendant les trois derniers mois de la grossesse et au cours de l'allaitement sans avoir consulté un médecin.

DORS/84-145, art. 4.

## Acétaminophène

**C.09.020 (1)** La dose normale d'acétaminophène est, pour les adultes, de 325 mg.

**(2)** La dose normale pour enfants d'acétaminophène est de 80 mg ou 160 mg en unités posologiques.

DORS/84-145, art. 4; DORS/90-587, art. 4.

**C.09.021 (1)** Dans le présent titre, le terme ***produit d'acétaminophène*** désigne une drogue renfermant

**a)** de l'acétaminophène comme seul ingrédient médicinal; ou

**b)** de l'acétaminophène combiné avec de la caféine.

**(2)** No manufacturer or importer shall sell an acetaminophen product unless it meets the requirements of this Division.

**(3)** [Repealed, SOR/90-587, s. 5]

SOR/84-145, s. 4; SOR/90-587, s. 5.

**C.09.022 (1)** Subject to subsections (2) to (4), an acetaminophen product sold in the form of a tablet, capsule or other solid dosage form intended for oral administration shall contain one adult standard dosage unit of acetaminophen per individual dosage form.

**(2)** An acetaminophen product in the form of a tablet, capsule or other solid dosage form intended for oral administration may contain 500 mg of acetaminophen per individual dosage form if it has a label that states that it is not a standard dosage unit product.

**(3)** An acetaminophen product sold in the form of a tablet, capsule or other solid dosage form that is intended for oral administration may contain 325 mg of acetaminophen for immediate release and another 325 mg for subsequent release, if it has a label that states that it is not a standard dosage unit product.

**(4)** An acetaminophen product sold in the form of a tablet, capsule or other solid dosage form that is intended for oral administration and that is specially recommended for children shall contain one children's standard dosage unit of acetaminophen per individual dosage form.

**(5)** An acetaminophen product in the form of a liquid that is intended to be taken as drops and that is specially recommended for children shall contain one children's standard dosage unit of acetaminophen per millilitre of the product.

**(6)** A package of an acetaminophen product described in subsection (5) shall be accompanied by a measuring device capable of accurately delivering 0.5 mL of the product.

**(7)** An acetaminophen product in the form of a liquid that is not intended to be taken as drops and that is specially recommended for children shall contain one children's standard dosage unit per teaspoon of the product.

**(8)** An acetaminophen product in the form of a liquid shall contain one adult standard dosage unit of acetaminophen per teaspoon of the product.

SOR/84-145, s. 4; SOR/85-966, s. 4; SOR/86-954, s. 1; SOR/99-441, s. 1.

**(2)** Il est interdit à un fabricant ou à un importateur de vendre un produit d'acétaminophène qui n'est pas conforme aux exigences du présent titre.

**(3)** [Abrogé, DORS/90-587, art. 5]

DORS/84-145, art. 4; DORS/90-587, art. 5.

**C.09.022 (1)** Sous réserve des paragraphes (2) à (4), un produit d'acétaminophène vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale doit renfermer une seule dose normale, pour adultes, d'acétaminophène, dans chaque forme posologique individuelle.

**(2)** Un produit d'acétaminophène vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale peut renfermer 500 mg d'acétaminophène dans chaque forme posologique individuelle, s'il porte une étiquette indiquant qu'il ne s'agit pas d'un produit à dose normale.

**(3)** Un produit d'acétaminophène vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale peut renfermer 325 mg d'acétaminophène à libération immédiate et 325 mg d'acétaminophène à libération subséquente, s'il porte une étiquette indiquant qu'il ne s'agit pas d'un produit à dose normale.

**(4)** Un produit d'acétaminophène vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale et qui est spécialement recommandé pour les enfants doit renfermer une dose normale, pour enfants, d'acétaminophène, dans chaque forme posologique individuelle.

**(5)** Un produit d'acétaminophène de forme liquide qui est destiné à être administré en gouttes et qui est spécialement recommandé pour les enfants doit renfermer une dose normale, pour enfants, d'acétaminophène, dans chaque millilitre.

**(6)** L'emballage d'un produit visé au paragraphe (5) doit être accompagné d'un instrument de mesure capable de contenir exactement 0,5 mL du produit.

**(7)** Un produit d'acétaminophène de forme liquide qui n'est pas destiné à être administré en gouttes et qui est spécialement recommandé pour les enfants doit renfermer une dose normale, pour enfants, d'acétaminophène, dans chaque cuillerée à thé.

**(8)** Un produit d'acétaminophène de forme liquide doit renfermer une dose normale, pour adultes, d'acétaminophène, dans chaque cuillerée à thé.

DORS/84-145, art. 4; DORS/85-966, art. 4; DORS/86-954, art. 1; DORS/99-441, art. 1.

## Salicylates

**C.09.030 (1)** The adult standard dosage unit of a salicylate shall be

**(a)** in the case of acetylsalicylic acid, sodium salicylate and magnesium salicylate, 325 mg; and

**(b)** in the case of choline salicylate, 435 mg.

**(2)** The children's standard dosage unit of a salicylate shall be

**(a)** in the case of acetylsalicylic acid, sodium salicylate and magnesium salicylate, 80 mg; and

**(b)** in the case of choline salicylate, 110 mg.

SOR/84-145, s. 4.

**C.09.031 (1)** In this Division, ***salicylate product*** means a drug that contains

**(a)** a salt or derivative of salicylic acid as a single medicinal ingredient;

**(b)** a salt or derivative of salicylic acid in combination with caffeine;

**(c)** a salt or derivative of salicylic acid in combination with one or more buffering agents or antacids; or

**(d)** a salt or derivative of salicylic acid in combination with caffeine and one or more buffering agents or antacids.

**(2)** No manufacturer or importer shall sell a salicylate product after June 30, 1986 unless it meets the requirements of this Division.

**(3)** No manufacturer or importer shall, until June 30, 1986, sell a salicylate product in a dosage unit other than one mentioned in this Division, unless the salicylate product was legally available for sale in Canada on February 1, 1984.

SOR/84-145, s. 4; SOR/85-966, s. 5(E).

**C.09.032 (1)** Subject to subsections (2) and (3) and section C.09.035, a salicylate product in the form of a tablet, capsule or other solid dosage form intended for oral administration shall contain one adult standard dosage unit of a salicylate per individual dosage form.

## Salicylates

**C.09.030 (1)** La dose normale d'un salicylate est, pour les adultes,

**a)** de 325 mg, dans le cas de l'acide acétylsalicylique, du salicylate de sodium et du salicylate de magnésium; et

**b)** de 435 mg, dans le cas du salicylate de choline.

**(2)** La dose normale d'un salicylate est, pour les enfants,

**a)** de 80 mg, dans le cas de l'acide acétylsalicylique, du salicylate de sodium et du salicylate de magnésium; et

**b)** de 110 mg, dans le cas du salicylate de choline.

DORS/84-145, art. 4.

**C.09.031 (1)** Dans le présent titre, ***produit de salicylate*** désigne une drogue renfermant

**a)** un sel ou un dérivé de l'acide salicylique comme seul ingrédient médicinal;

**b)** un sel ou un dérivé de l'acide salicylique combiné avec de la caféine;

**c)** un sel ou un dérivé de l'acide salicylique combiné avec un ou plusieurs agents de tamponnage ou antiacides; ou

**d)** un sel ou un dérivé de l'acide salicylique combiné avec de la caféine et un ou plusieurs agents de tamponnage ou antiacides.

**(2)** Après le 30 juin 1986, il est interdit à un fabricant ou à un importateur de vendre un produit de salicylate qui n'est pas conforme aux exigences du présent titre.

**(3)** Jusqu'au 30 juin 1986, il est interdit à un fabricant ou à un importateur de vendre un produit de salicylate en doses autres que celles prévues dans le présent titre, à moins que ledit produit ne fût légalement disponible au Canada le 1er février 1984.

DORS/84-145, art. 4; DORS/85-966, art. 5(A).

**C.09.032 (1)** Sous réserve des paragraphes (2) et (3) et de l'article C.09.035, un produit de salicylate vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale doit renfermer une seule dose normale pour adultes d'un salicylate, dans chaque forme posologique individuelle.

**(2)** A salicylate product in the form of a tablet, capsule or other solid dosage form intended for oral administration may contain

**(a)** 500 mg of acetylsalicylic acid, sodium salicylate or magnesium salicylate, or

**(b)** 670 mg of choline salicylate

per individual dosage form if it has a label that states that it is not a standard dosage unit product.

**(3)** A salicylate product in the form of a tablet, capsule or other solid dosage form intended for oral administration may contain

**(a)** two adult standard dosage units of a salicylate per individual dosage form if the label of the salicylate product states that each individual dosage form contains two adult standard dosage units; and

**(b)** three adult standard dosage units of a salicylate per individual dosage form if the label of the salicylate product states that each individual dosage form contains three adult standard dosage units.

SOR/84-145, s. 4; SOR/85-966, s. 6.

**C.09.033 (1)** Subject to subsection (2), a salicylate product in the form of a liquid shall contain one adult standard dosage unit of a salicylate per teaspoon.

**(2)** A salicylate product in the form of a liquid may contain

**(a)** two adult standard dosage units of a salicylate per teaspoon if the label of the salicylate product states that each teaspoon of the product contains two adult standard dosage units; and

**(b)** three adult standard dosage units of a salicylate per teaspoon if the label of the salicylate product states that each teaspoon of the product contains three adult standard dosage units.

SOR/84-145, s. 4.

**C.09.034** A salicylate product that is claimed to be buffered shall provide at least 1.9 milliequivalents of acid neutralizing capacity per adult standard dosage unit of a salicylate.

SOR/84-145, s. 4.

**(2)** Un produit de salicylate vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale peut renfermer

**a)** 500 mg d'acide acétylsalicylique, de salicylate de sodium, ou de salicylate de magnésium, ou

**b)** 670 mg de salicylate de choline

dans chaque forme posologique individuelle, s'il porte une étiquette indiquant qu'il [ne] s'agit pas d'un produit à dose normale.

**(3)** Un produit de salicylate vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale, peut renfermer dans chaque forme posologique individuelle

**a)** deux doses normales, pour adultes, d'un salicylate, s'il porte une étiquette indiquant que chaque forme posologique individuelle renferme deux doses normales pour adultes; ou

**b)** trois doses normales, pour adultes, d'un salicylate, s'il porte une étiquette indiquant que chaque forme posologique individuelle renferme trois doses normales pour adultes.

DORS/84-145, art. 4; DORS/85-966, art. 6.

**C.09.033 (1)** Sous réserve du paragraphe (2), un produit de salicylate de forme liquide doit renfermer une dose normale, pour adultes, d'un salicylate, dans chaque cuillerée à thé.

**(2)** Un produit de salicylate de forme liquide peut renfermer dans chaque cuillerée à thé

**a)** deux doses normales, pour adultes, d'un salicylate, s'il porte une étiquette indiquant que chaque cuillerée à thé renferme deux doses normales pour adultes; ou

**b)** trois doses normales, pour adultes, d'un salicylate, s'il porte une étiquette indiquant que chaque cuillerée à thé renferme trois doses normales pour adultes.

DORS/84-145, art. 4.

**C.09.034** Un produit de salicylate dit tamponné doit être capable de neutraliser au moins 1,9 milliéquivalents d'acide par dose normale, pour adultes, d'un salicylate.

DORS/84-145, art. 4.

**C.09.035** A salicylate product in the form of a tablet, capsule or other solid dosage form intended for oral administration and that is specially recommended for children shall contain one children's standard dosage unit of a salicylate per individual dosage form.

SOR/84-145, s. 4.

**C.09.035** Un produit de salicylate vendu sous forme de comprimé ou de capsule ou sous une autre forme posologique solide destinée à l'administration orale et qui est spécialement recommandé pour les enfants doit renfermer une seule dose normale, pour enfants, d'un salicylate, dans chaque forme posologique individuelle.

DORS/84-145, art. 4.

## DIVISION 10

# Access to Drugs in Exceptional Circumstances

**C.10.001 (1)** The following definitions apply in this section and in section C.10.002.

***foreign regulatory authority*** means a government agency or other entity outside Canada that has a legal right to control the manufacturing, use or sale of drugs within its jurisdiction. (*autorité réglementaire étrangère*)

***public health official*** means

**(a)** the Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*;

**(b)** the Chief Medical Officer of Health, or equivalent, of a province;

**(c)** the Surgeon General of the Canadian Armed Forces; or

**(d)** the Chief Medical Officer of Public Health for the Department of Indigenous Services. (*responsable de la santé publique*)

**(2)** Despite sections A.01.040 and C.01.004.1, any person who holds an establishment licence that authorizes the importation of a drug may import a drug for which a notice of compliance has not been issued under section C.08.004 or C.08.004.01, or for which a drug identification number has not been assigned under subsection C.01.014.2(1), if the following conditions are met:

**(a)** a public health official has, within the past year, notified the Minister in writing of

**(i)** an urgent public health need for the immediate use of the drug within their jurisdiction, and

**(ii)** the intended use or purpose of the drug;

## TITRE 10

# Accès à des drogues — circonstances exceptionnelles

**C.10.001 (1)** Les définitions qui suivent s'appliquent au présent article et à l'article C.10.002.

***autorité réglementaire étrangère*** Tout organisme gouvernemental ou toute autre entité, ailleurs qu'au Canada, qui est habilité à contrôler la fabrication, l'utilisation ou la vente de drogues sur le territoire relevant de sa compétence. (*foreign regulatory authority*)

***responsable de la santé publique*** L'une ou l'autre des personnes suivantes :

**a)** l'administrateur en chef de la santé publique nommé en application du paragraphe 6(1) de la *Loi sur l'Agence de la santé publique du Canada*;

**b)** le médecin hygiéniste en chef d'une province ou toute personne exerçant une fonction équivalente;

**c)** le médecin général des Forces armées canadiennes;

**d)** le médecin en chef de la santé publique du ministère des Services aux Autochtones. (*public health official*)

**(2)** Malgré les articles A.01.040 et C.01.004.1, le titulaire d'une licence d'établissement autorisant l'importation d'une drogue peut, si les conditions ci-après sont réunies, importer une drogue à laquelle aucune identification numérique n'a été attribuée en application du paragraphe C.01.014.2(1) ou à l'égard de laquelle aucun avis de conformité n'a été délivré en application des articles C.08.004 ou C.08.004.01 :

**a)** un responsable de la santé publique a, au cours de la dernière année, avisé le ministre par écrit :

**(i)** de l'existence d'un besoin urgent en matière de santé publique pour un usage immédiat de la drogue dans le ressort du responsable,

**(b)** the drug is authorized by a foreign regulatory authority in the United States, Switzerland or the European Union to be sold for the same use or purpose as that described under subparagraph (a)(ii);

**(c)** the drug is in the same category as the category for which the licence was issued;

**(d)** the drug is imported directly from the country in which it is authorized to be sold by the foreign regulatory authority; and

**(e)** the drug is one for which the following information is set out in the *List of Drugs for an Urgent Public Health Need* that is published by the Government of Canada on its website, as amended from time to time:

**(i)** brand name,

**(ii)** medicinal ingredients,

**(iii)** dosage form,

**(iv)** strength,

**(v)** route of administration, and

**(vi)** identifying code or number, if any, assigned in the country in which the drug was authorized for sale.

**(3)** Sections C.01A.006 and C.01A.007 do not apply in respect of the importation of a drug under subsection (2).

**(4)** For greater certainty, a licensee may, despite subsection C.01A.004(1), import a drug under subsection (2) without having their licence amended under section C.01A.006.

**(5)** Divisions 2 to 4, other than the following provisions, do not apply to the importation of a drug under subsection (2):

**(a)** sections C.02.003.1 and C.02.004 as they apply to the storage of the drug by the licensee;

**(b)** section C.02.006;

**(c)** subsection C.02.012(1);

**(d)** sections C.02.013 and C.02.014;

**(ii)** de l'usage ou des fins auxquels la drogue est destinée;

**b)** la vente de la drogue est autorisée par une autorité réglementaire étrangère relevant des États-Unis, de la Suisse ou de l'Union européenne pour être utilisée pour le même usage ou aux mêmes fins que ceux visés au sous-alinéa a)(ii);

**c)** la drogue fait partie de la même catégorie que celle visée par la licence;

**d)** la drogue est importée directement du pays dans lequel sa vente a été autorisée par l'autorité réglementaire étrangère en cause;

**e)** les renseignements ci-après concernant la drogue figurent dans la *Liste des drogues utilisées pour des besoins urgents en matière de santé publique*, publiée par le gouvernement du Canada sur son site Web, avec ses modifications successives :

**(i)** la marque nominative,

**(ii)** les ingrédients médicinaux,

**(iii)** la forme posologique,

**(iv)** la concentration,

**(v)** la voie d'administration,

**(vi)** tout code ou numéro d'identification qui lui est attribué dans le pays où sa vente a été autorisée.

**(3)** Les articles C.01A.006 et C.01A.007 ne s'appliquent pas à l'égard de l'importation d'une drogue effectuée en vertu du paragraphe (2).

**(4)** Il est entendu que, malgré le paragraphe C.01A.004(1), le titulaire peut importer une drogue en vertu du paragraphe (2) sans avoir fait modifier sa licence au titre de l'article C.01A.006.

**(5)** Les titres 2 à 4, à l'exception des dispositions ci-après, ne s'appliquent pas à l'égard de l'importation d'une drogue effectuée en vertu du paragraphe (2) :

**a)** les articles C.02.003.1 et C.02.004 en ce qui a trait à l'entreposage de la drogue par le titulaire;

**b)** l'article C.02.006;

**c)** le paragraphe C.02.012(1);

**d)** les articles C.02.013 et C.02.014;

**(e)** section C.02.015 as it applies to the storage and transportation of the drug by the licensee;

**(f)** subsection C.02.021(1) as it applies to the storage of the drug by the licensee;

**(g)** subsection C.02.022(1);

**(h)** section C.02.023;

**(i)** subsections C.02.024(1) and C.02.025(1);

**(j)** section C.03.013; and

**(k)** section C.04.001.1 as it applies to the storage of the drug by the licensee.

SOR/2017-133, s. 2; SOR/2023-18, s. 2.

**C.10.002 (1)** A sale of a drug that is imported under subsection C.10.001(2) is exempt from the provisions of these Regulations only if the drug is sold to a person within the jurisdiction of a public health official who has notified the Minister as described in paragraph C.10.001(2)(a), for use in respect of the same urgent public health need for which it was imported.

**(2)** Any person who wholesales such a drug must hold an establishment licence to wholesale a drug in the same category and despite subsection (1), the following provisions apply in respect of the wholesale:

**(a)** sections C.02.003.1 and C.02.004 as they apply to the storage of the drug by the licensee;

**(b)** section C.02.006 as it applies to the storage of the drug by the licensee;

**(c)** subsection C.02.012(1);

**(d)** section C.02.013;

**(d.1)** section C.02.014;

**(e)** section C.02.015 as it applies to the storage and transportation of the drug by the licensee;

**(e.1)** subsection C.02.021(1) as it applies to storage;

**(f)** subsection C.02.022(1);

**(f.1)** [Repealed, SOR/2023-247, s. 7]

**(g)** section C.02.023; and

**(h)** subsection C.02.024(1).

SOR/2017-133, s. 2; SOR/2022-197, s. 10; SOR/2023-247, s. 7.

**e)** l'article C.02.015 en ce qui a trait à l'entreposage et au transport de la drogue par le titulaire;

**f)** le paragraphe C.02.021(1) en ce qui a trait à l'entreposage de la drogue par le titulaire;

**g)** le paragraphe C.02.022(1);

**h)** l'article C.02.023;

**i)** les paragraphes C.02.024(1) et C.02.025(1);

**j)** l'article C.03.013;

**k)** l'article C.04.001.1 en ce qui a trait à l'entreposage de la drogue par le titulaire.

DORS/2017-133, art. 2; DORS/2023-18, art. 2.

**C.10.002 (1)** La vente d'une drogue qui est importée en vertu du paragraphe C.10.001(2) est exemptée de l'application des dispositions du présent règlement seulement si la drogue est vendue à une personne qui se trouve dans le ressort d'un responsable de la santé publique qui a avisé le ministre conformément à l'alinéa C.10.001(2)a), pour qu'elle soit utilisée à l'égard du même besoin urgent en matière de santé publique que celui pour lequel elle a été importée.

**(2)** Toute personne qui vend en gros une telle drogue doit détenir une licence d'établissement pour la vente en gros d'une drogue de même catégorie et, malgré le paragraphe (1), les dispositions ci-après s'appliquent à l'égard de cette vente en gros :

**a)** les articles C.02.003.1 et C.02.004 en ce qui a trait à l'entreposage de la drogue par le titulaire;

**b)** l'article C.02.006 en ce qui a trait à l'entreposage de la drogue par le titulaire;

**c)** le paragraphe C.02.012(1);

**d)** l'article C.02.013;

**d.1)** l'article C.02.014;

**e)** l'article C.02.015 en ce qui a trait à l'entreposage et au transport de la drogue par le titulaire;

**e.1)** le paragraphe C.02.021(1) en ce qui a trait à l'entreposage;

**f)** le paragraphe C.02.022(1);

**f.1)** [Abrogé, DORS/2023-247, art. 7]

**g)** l'article C.02.023;

**h)** le paragraphe C.02.024(1).

DORS/2017-133, art. 2; DORS/2022-197, art. 10; DORS/2023-247, art. 7.

**C.10.003** Every licensee who imports a drug under subsection C.10.001(2) must notify the Minister within 15 days after the day on which it is imported by providing the following information:

**(a)** the name, title and contact information of the person who imported the drug;

**(b)** the brand name of the drug;

**(c)** the medicinal ingredients, strength, dosage form and route of administration of the drug and any identifying code or number assigned to it in the country in which it was authorized for sale;

**(d)** the name of the country from which the drug was imported; and

**(e)** the total quantity of the drug imported.

SOR/2017-133, s. 2; SOR/2023-18, s. 3.

**C.10.003** Le titulaire qui importe une drogue en vertu du paragraphe C.10.001(2) en avise le ministre dans les quinze jours suivant l'importation en lui fournissant les renseignements suivants :

**a)** les nom, titre et coordonnées de la personne qui a importé la drogue;

**b)** la marque nominative de la drogue;

**c)** les ingrédients médicinaux de la drogue, sa concentration, sa forme posologique, la voie d'administration et tout code ou numéro d'identification qui lui a été attribué dans le pays où sa vente a été autorisée;

**d)** le nom du pays duquel la drogue a été importée;

**e)** la quantité totale de la drogue ayant été importée.

DORS/2017-133, art. 2; DORS/2023-18, art. 3.

**C.10.004 (1)** The following definitions apply in this section and in sections C.10.005 to C.10.011.

***designated drug*** means a drug that is set out in the *List of Drugs for Exceptional Importation and Sale*. (*drogue désignée*)

***drug*** means any of the following drugs for human use:

**(a)** drugs included in Schedule I, II, III, IV or V to the *Controlled Drugs and Substances Act*;

**(b)** prescription drugs;

**(c)** drugs that are listed in Schedule C or D to the Act; and

**(d)** drugs that are permitted to be sold without a prescription but that are to be administered only under the supervision of a practitioner. (*drogue*)

***foreign regulatory authority*** has the same meaning as in subsection C.10.001(1). (*autorité réglementaire étrangère*)

***List of Drugs for Exceptional Importation and Sale*** means the *List of Drugs for Exceptional Importation and Sale* that is published by the Government of Canada on its website, as amended from time to time. (*Liste des drogues destinées aux importations et aux ventes exceptionnelles*)

**C.10.004 (1)** Les définitions qui suivent s'appliquent au présent article et aux articles C.10.005 à C.10.011.

***autorité réglementaire étrangère*** S'entend au sens du paragraphe C.10.001(1). (*foreign regulatory authority*)

***drogue*** S'entend de l'une des drogues pour usage humain ci-après :

**a)** les drogues inscrites aux annexes I, II, III, IV ou V de la *Loi réglementant certaines drogues et autres substances*;

**b)** les drogues sur ordonnance;

**c)** les drogues visées aux annexes C ou D de la Loi;

**d)** les drogues qui peuvent être vendues sans ordonnance, mais à administrer uniquement sous la surveillance d'un praticien. (*drug*)

***drogue désignée*** Drogue figurant sur la *Liste des drogues destinées aux importations et aux ventes exceptionnelles*. (*designated drug*)

***Liste des drogues destinées aux importations et aux ventes exceptionnelles*** La *Liste des drogues destinées aux importations et aux ventes exceptionnelles*, avec ses modifications successives, publiée par le gouvernement du Canada sur son site Web. (*List of Drugs for Exceptional Importation and Sale*)

**(2)** In sections C.10.006 and C.10.009, *batch certificate*, *fabricate*, *MRA country*, *package/label* and *recognized building* have the same meanings as in subsection C.01A.001(1).

SOR/2021-199, s. 5.

**C.10.005 (1)** The Minister may add a drug to the *List of Drugs for Exceptional Importation and Sale* only if the Minister has reasonable grounds to believe that

**(a)** there is a shortage or risk of shortage of another drug for which a notice of compliance has been issued under section C.08.004 or C.08.004.01 or for which a drug identification number has been assigned under subsection C.01.014.2(1); and

**(b)** the drug to be added to that list can be substituted for the drug referred to in paragraph (a).

**(2)** In subsection (1), *shortage* has the same meaning as in section C.01.014.8.

SOR/2021-199, s. 5.

**C.10.006 (1)** A person who holds an establishment licence that authorizes the importation of a drug may import a designated drug if the following conditions are met:

**(a)** the licensee provides the Minister, electronically in a format specified by or acceptable to the Minister and not later than the third business day before the day on which the designated drug is imported, with a notification that contains the following information:

**(i)** the licensee's name and contact information,

**(ii)** the name and contact information of each fabricator, packager/labeller and tester of the designated drug and the address of each building in which it is fabricated, packaged/labelled or tested,

**(iii)** in respect of the designated drug,

**(A)** its brand name,

**(B)** its medicinal ingredients,

**(C)** its dosage form,

**(D)** its strength,

**(E)** its route of administration,

**(2)** Aux articles C.10.006 et C.10.009, *bâtiment reconnu*, *certificat de lot*, *emballer-étiqueter*, *manufacturer* et *pays participant* s'entendent au sens du paragraphe C.01A.001(1).

DORS/2021-199, art. 5.

**C.10.005 (1)** Le ministre ne peut ajouter une drogue à la *Liste des drogues destinées aux importations et aux ventes exceptionnelles* que s'il a des motifs raisonnables de croire que les conditions ci-après sont réunies :

**a)** il y a pénurie ou risque de pénurie d'une autre drogue à l'égard de laquelle un avis de conformité a été délivré en application des articles C.08.004 ou C.08.004.01 ou à laquelle un numéro d'identification a été attribué en application du paragraphe C.01.014.2(1);

**b)** la drogue qu'il envisage d'ajouter à cette liste peut remplacer la drogue visée à l'alinéa a).

**(2)** Au paragraphe (1), *pénurie* s'entend au sens de l'article C.01.014.8.

DORS/2021-199, art. 5.

**C.10.006 (1)** Le titulaire d'une licence d'établissement autorisant l'importation d'une drogue peut importer une drogue désignée si les conditions ci-après sont réunies :

**a)** il fournit au ministre, par voie électronique, en la forme précisée ou jugée acceptable par celui-ci et au plus tard le troisième jour ouvrable précédant la date de l'importation de la drogue désignée, un avis contenant les renseignements suivants :

**(i)** ses nom et coordonnées,

**(ii)** les nom et coordonnées de chaque manufacturier, emballeur-étiqueteur et analyste de la drogue désignée et l'adresse de chaque bâtiment où celle-ci est manufacturée, emballée-étiquetée ou analysée,

**(iii)** à l'égard de la drogue désignée :

**(A)** la marque nominative,

**(B)** les ingrédients médicinaux,

**(C)** la forme posologique,

**(D)** la concentration,

**(E)** la voie d'administration,

**(F)** tout code ou numéro d'identification qui lui est attribué dans le pays où sa vente est autorisée,

**(F)** its identifying code or number, if any, assigned in the country in which it is authorized for sale, and

**(G)** a detailed description of its conditions of use,

**(iv)** the intended port of entry into Canada,

**(v)** the estimated date of arrival of the shipment of the designated drug, and

**(vi)** the total quantity of the designated drug that is intended to be imported on the date referred to in subparagraph (v);

**(b)** the designated drug is authorized to be sold by a foreign regulatory authority within its jurisdiction;

**(c)** the designated drug is in the same category as the category for which the establishment licence was issued;

**(d)** the following information is set out in the *List of Drugs for Exceptional Importation and Sale* in respect of the designated drug:

**(i)** the licensee's name,

**(ii)** the information referred to in clauses (a)(iii)(A) to (F),

**(iii)** the name of the foreign regulatory authority referred to in paragraph (b), and

**(iv)** the date after which it may no longer be imported;

**(e)** the lot number of the designated drug is set out in the list referred to in paragraph (d), if applicable;

**(f)** the total quantity of the designated drug that the licensee imports does not exceed the maximum limit specified in the list referred to in paragraph (d) in respect of the drug, if applicable;

**(g)** the designated drug is imported on or before the date referred to in subparagraph (d)(iv); and

**(h)** the licensee has prepared a plan that specifies the measures to be taken in order for the licensee to comply with section C.10.011.

**(2)** In subsection (1), ***business day*** means a day other than

**(a)** a Saturday; or

**(G)** une description détaillée de son mode d'emploi,

**(iv)** le point d'entrée prévu au Canada,

**(v)** la date d'arrivée prévue de la cargaison de la drogue désignée,

**(vi)** la quantité totale de la drogue désignée devant être importée à la date visée au sous-alinéa (v);

**b)** la vente de la drogue désignée est autorisée par une autorité réglementaire étrangère sur le territoire relevant de sa compétence;

**c)** la drogue désignée appartient à la même catégorie de drogues que celle pour laquelle la licence d'établissement a été délivrée;

**d)** les renseignements ci-après concernant la drogue désignée figurent sur la *Liste des drogues destinées aux importations et aux ventes exceptionnelles* :

**(i)** le nom du titulaire,

**(ii)** les renseignements visés aux divisions a)(iii)(A) à (F),

**(iii)** le nom de l'autorité réglementaire étrangère visée à l'alinéa b),

**(iv)** la date après laquelle elle ne peut plus être importée;

**e)** le numéro de lot de la drogue désignée figure sur la liste visée à l'alinéa d), le cas échéant;

**f)** la quantité totale de la drogue désignée que le titulaire importe n'excède pas la limite maximale figurant sur la liste visée à l'alinéa d) à l'égard de cette drogue, le cas échéant;

**g)** la drogue désignée est importée à la date visée au sous-alinéa d)(iv) ou avant cette date;

**h)** le titulaire a établi un plan qui prévoit les mesures envisagées pour se conformer aux exigences de l'article C.10.011.

**(2)** Au paragraphe (1), ***jour ouvrable*** désigne un jour autre que :

**a)** le samedi;

**(b)** a Sunday or other holiday.

SOR/2021-199, s. 5.

**C.10.007** Sections A.01.040, A.01.044 and C.01.004.1 do not apply in respect of the importation, under section C.10.006, of a designated drug by a person who holds an establishment licence.

SOR/2021-199, s. 5.

**C.10.008 (1)** Subject to sections C.10.009 and C.10.010, a sale of a designated drug that is imported under section C.10.006 is exempt from the following provisions:

**(a)** sections A.01.015, A.01.017 and A.01.051; and

**(b)** the provisions of Part C other than

**(i)** sections C.01.016, C.01.017, C.01.019 to C.01.020.1, C.01.040.3 to C.01.049.1 and C.01.051,

**(ii)** the provisions of Divisions 1A and 2, and

**(iii)** this section and sections C.10.009 to C.10.011.

**(2)** For greater certainty, for the purposes of section C.01.016, the manufacturer of a designated drug is required to comply only with the requirements set out in sections C.01.017 and C.01.019 in respect of the drug.

**(3)** Subsections (1) and (2) cease to apply in respect of the sale of a designated drug on its expiration date.

SOR/2021-199, s. 5.

**C.10.009 (1)** Section C.02.019 does not apply to a person who holds an establishment licence in respect of a designated drug that they import under section C.10.006.

**(2)** The licensee shall perform the finished product testing on a sample of the designated drug that is taken either

**(a)** after receipt of each lot or batch of the designated drug on their premises in Canada; or

**(b)** before receipt of each lot or batch of the designated drug on their premises in Canada if the following conditions are met:

**(i)** the licensee has evidence satisfactory to the Minister to demonstrate that lots or batches of the designated drug sold to them by the vendor of the

**b)** le dimanche ou un autre jour férié.

DORS/2021-199, art. 5.

**C.10.007** Les articles A.01.040, A.01.044 et C.01.004.1 ne s'appliquent pas à l'égard de l'importation d'une drogue désignée, en vertu de l'article C.10.006, par le titulaire d'une licence d'établissement.

DORS/2021-199, art. 5.

**C.10.008 (1)** Sous réserve des articles C.10.009 et C.10.010, la vente d'une drogue désignée qui est importée en vertu de l'article C.10.006 est exemptée de l'application des dispositions suivantes :

**a)** les articles A.01.015, A.01.017 et A.01.051;

**b)** les dispositions de la partie C, à l'exception :

**(i)** des articles C.01.016, C.01.017, C.01.019 à C.01.020.1, C.01.040.3 à C.01.049.1 et C.01.051,

**(ii)** des dispositions des titres 1A et 2,

**(iii)** du présent article et des articles C.10.009 à C.10.011.

**(2)** Pour l'application de l'article C.01.016, il est entendu que le fabricant d'une drogue désignée n'est tenu de se conformer qu'aux exigences prévues aux articles C.01.017 et C.01.019 à l'égard de la drogue.

**(3)** Les paragraphes (1) et (2) cessent de s'appliquer à l'égard de la vente d'une drogue désignée à la date limite d'utilisation de celle-ci.

DORS/2021-199, art. 5.

**C.10.009 (1)** L'article C.02.019 ne s'applique pas au titulaire d'une licence d'établissement à l'égard d'une drogue désignée qu'il importe en vertu de l'article C.10.006.

**(2)** Le titulaire fait l'analyse du produit fini sur un échantillon de la drogue désignée prélevé :

**a)** soit après la réception de chaque lot ou lot de fabrication de la drogue désignée dans ses locaux au Canada;

**b)** soit avant la réception de chaque lot ou lot de fabrication de la drogue désignée dans ses locaux au Canada, si les conditions ci-après sont réunies :

**(i)** il établit, à la satisfaction du ministre, que les lots ou les lots de fabrication de la drogue désignée qui lui ont été vendus par le vendeur du lot ou du lot de fabrication ont été fabriqués d'une façon constante selon les spécifications établies pour cette

lot or batch are consistently manufactured in accordance with and consistently comply with the specifications for that drug, and

**(ii)** the designated drug has not been transported or stored under conditions that may affect its compliance with the specifications for that drug.

**(3)** In subsection (2), a reference to specifications is a reference to the specifications with which the designated drug is required to comply within the jurisdiction of the foreign regulatory authority referred to in paragraph C.10.006(1)(b).

**(4)** If the licensee receives on their premises in Canada a lot or batch of a designated drug whose useful life is more than 30 days, they shall visually inspect the lot or batch to confirm the identity of the product.

**(5)** Subsections (2) and (4) do not apply to the licensee if the designated drug is fabricated, packaged/labelled and tested in an MRA country at a recognized building and the following conditions are met:

**(a)** the address of the building is set out in their establishment licence; and

**(b)** they retain a copy of the batch certificate for each lot or batch of the designated drug that they receive for at least one year after the expiration date of the lot or batch.

**(6)** In this section, *specifications* has the same meaning as in section C.02.002.

SOR/2021-199, s. 5.

**C.10.010 (1)** A person who holds an establishment license and who imports a designated drug under section C.10.006 is required to comply with paragraphs C.02.020(1)(a), (b) and (d) in respect of the drug but is not required to maintain the records referred to in those paragraphs on their premises in Canada.

**(2)** The Minister may request that the licensee provide to the Minister any of the records referred to in paragraphs C.02.020(1)(a), (b) or (d) in respect of the designated drug.

**(3)** The licensee shall provide the requested records electronically in a format specified by or acceptable to the Minister within the time limit specified by the Minister.

SOR/2021-199, s. 5.

drogue et qu'ils y sont conformes de manière constante,

**(ii)** la drogue désignée n'a pas été transportée ou entreposée dans des conditions pouvant faire en sorte qu'elle ne soit plus conforme aux spécifications établies à son égard.

**(3)** Toute mention des spécifications au paragraphe (2) vaut mention des spécifications auxquelles la drogue désignée doit être conforme dans le territoire relevant de la compétence de l'autorité réglementaire étrangère visée à l'alinéa C.10.006(1)b).

**(4)** Chaque lot ou lot de fabrication d'une drogue désignée que le titulaire reçoit dans ses locaux au Canada doit, lorsque la période de vie utile de cette drogue est de plus de trente jours, faire l'objet d'une inspection visuelle par celui-ci pour confirmer l'identité du produit.

**(5)** Les paragraphes (2) et (4) ne s'appliquent pas au titulaire si la drogue désignée est manufacturée, emballée-étiquetée et analysée dans un bâtiment reconnu d'un pays participant et si les conditions ci-après sont réunies :

**a)** l'adresse du bâtiment est indiquée dans la licence d'établissement du titulaire;

**b)** le titulaire conserve une copie du certificat de lot qu'il reçoit pour chaque lot ou lot de fabrication de la drogue désignée pendant au moins un an après la date limite d'utilisation du lot ou du lot de fabrication.

**(6)** Au présent article, *spécifications* s'entend au sens de l'article C.02.002.

DORS/2021-199, art. 5.

**C.10.010 (1)** Le titulaire d'une licence d'établissement qui importe une drogue désignée en vertu de l'article C.10.006 se conforme aux alinéas C.02.020(1)a), b) et d) à l'égard de cette drogue, mais n'a pas à conserver les dossiers visés à ces alinéas dans ses locaux au Canada.

**(2)** Le ministre peut demander au titulaire de lui fournir les dossiers visés aux alinéas C.02.020(1)a), b) et d) à l'égard de la drogue désignée.

**(3)** Le titulaire transmet les dossiers au ministre par voie électronique, en la forme précisée ou jugée acceptable par ce dernier et dans le délai que celui-ci fixe.

DORS/2021-199, art. 5.

**C.10.011 (1)** A person who holds an establishment licence shall not sell a designated drug that they imported under section C.10.006 unless they ensure that the information referred to in clause C.10.006(1)(a)(iii)(G) is available in English and French and in a manner that permits the safe use of the drug.

**(2)** The licensee shall ensure that the information is available in accordance with subsection (1) until at least the end of the day on the latest expiration date of the designated drug that they imported.

SOR/2021-199, s. 5.

**C.10.011 (1)** Le titulaire d'une licence d'établissement ne peut vendre une drogue désignée qu'il a importée en vertu de l'article C.10.006 à moins de veiller à ce que les renseignements visés à la division C.10.006(1)a)(iii)(G) soient disponibles en français et en anglais de façon à permettre l'utilisation sécuritaire de la drogue.

**(2)** Le titulaire veille à ce que les renseignements soient disponibles conformément au paragraphe (1) au moins jusqu'à la fin de la journée à la date limite d'utilisation la plus tardive attribuée à la drogue désignée qu'il a importée.

DORS/2021-199, art. 5.

## DIVISION 11

# Public or Canadian Armed Forces Health Emergencies — Drugs for Immediate Use or Stockpiling

**C.11.001 (1)** The following definitions apply in this Division.

***foreign regulatory authority*** has the same meaning as in subsection C.10.001(1). (*autorité réglementaire étrangère*)

***initial public health official*** means the public health official named in an authorization issued under subsection C.11.003(1). (*responsable de la santé publique initial*)

***public health official*** means

**(a)** the Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*;

**(b)** the Chief Medical Officer of Health, or equivalent, of a province;

**(c)** the Medical Officer of Health, or equivalent, of a municipality;

**(d)** the Surgeon General of the Canadian Armed Forces; or

**(e)** the Chief Medical Officer of Public Health for the Department of Indigenous Services. (*responsable de la santé publique*)

## TITRE 11

# Urgences en matière de santé touchant le public ou les Forces armées canadiennes — usage immédiat ou mise en réserve de drogues

**C.11.001 (1)** Les définitions qui suivent s'appliquent au présent titre.

***autorité réglementaire étrangère*** S'entend au sens du paragraphe C.10.001(1). (*foreign regulatory authority*)

***responsable de la santé publique*** L'une des personnes suivantes :

**a)** l'administrateur en chef de la santé publique nommé en application du paragraphe 6(1) de la *Loi sur l'Agence de la santé publique du Canada*;

**b)** le médecin hygiéniste en chef d'une province ou toute personne exerçant une fonction équivalente;

**c)** le médecin hygiéniste d'une municipalité ou toute personne exerçant une fonction équivalente;

**d)** le médecin général des Forces armées canadiennes;

**e)** le médecin en chef de la santé publique du ministère des Services aux Autochtones. (*public health official*)

***responsable de la santé publique initial*** Le responsable de la santé publique nommé dans l'autorisation délivrée en vertu du paragraphe C.11.003(1). (*initial public health official*)

***subsequent public health official*** means any public health official, other than the initial public health official, who obtains the quantity of a drug, or a portion of the quantity, that is specified in an authorization issued under subsection C.11.003(1). (*responsable de la santé publique subséquent*)

***responsable de la santé publique subséquent*** Se dit de tout responsable de la santé publique, autre que le responsable de la santé publique initial, qui obtient la quantité d'une drogue précisée dans l'autorisation délivrée en vertu du paragraphe C.11.003(1), ou une partie de cette quantité. (*subsequent public health official*)

**(2)** This Division applies to a drug for human use in dosage form for which a drug identification number has not been assigned under subsection C.01.014.2(1) or for which a notice of compliance has not been issued under section C.08.004 or C.08.004.01, including drugs that have ceased to be considered to be natural health products by virtue of subsection 103.15(2) of the *Natural Health Products Regulations*.

SOR/2023-18, s. 4.

**(2)** Le présent titre s'applique à toute drogue pour usage humain sous forme posologique à laquelle aucune identification numérique n'a été attribuée en application du paragraphe C.01.014.2(1) ou à l'égard de laquelle aucun avis de conformité n'a été délivré en application des articles C.08.004 ou C.08.004.01, y compris les drogues qui ont cessé d'être considérées comme des produits de santé naturels en vertu du paragraphe 103.15(2) du *Règlement sur les produits de santé naturels*.

DORS/2023-18, art. 4.

**C.11.002 (1)** In order to address an actual, imminent or potential emergency, event or incident affecting public health or the health of members of the Canadian Armed Forces, a public health official may, on application to the Minister, obtain an authorization that permits a drug manufacturer to sell a specified quantity of a drug to the public health official, for immediate use or stockpiling or both.

**C.11.002 (1)** Pour parer à une urgence, à un événement ou à un incident réels, imminents ou éventuels en matière de santé publique ou touchant la santé des membres des Forces armées canadiennes, le responsable de la santé publique peut, sur demande au ministre, obtenir une autorisation permettant au fabricant d'une drogue de lui en vendre une quantité déterminée pour usage immédiat, mise en réserve ou les deux.

**(2)** The application must

**(2)** La demande contient ce qui suit :

**(a)** set out the name of the public health official and include information setting out how they may be contacted at any time;

**a)** le nom du responsable de la santé publique et les coordonnées permettant de communiquer avec lui en tout temps;

**(b)** set out the name of the manufacturer and include information setting out how they may be contacted at any time;

**b)** le nom du fabricant et les coordonnées permettant de communiquer avec lui en tout temps;

**(c)** describe the emergency, event or incident;

**c)** une description de l'urgence, de l'événement ou de l'incident;

**(d)** state whether the drug is for immediate use or stockpiling or both;

**d)** une mention indiquant si la drogue est requise pour usage immédiat, mise en réserve ou les deux;

**(e)** describe the use of the drug that is intended to address the emergency, event or incident;

**e)** une description de l'usage auquel la drogue est destinée pour parer à l'urgence, à l'événement ou à l'incident;

**(f)** set out the civic address of the place to which the drug is to be shipped by the manufacturer;

**f)** l'adresse municipale du lieu où la drogue sera expédiée par le fabricant;

**(g)** set out the following information about the drug:

**g)** à l'égard de la drogue, les précisions suivantes :

**(i)** its brand name, if any, and either its proper name, common name and chemical name or its identifying name, code, number or mark,

**(i)** sa marque nominative, le cas échéant, et soit son nom propre, son nom usuel ainsi que son nom chimique, soit son nom, code, numéro ou marque d'identification,

**(ii)** its medicinal ingredients,

**(ii)** ses ingrédients médicinaux,

**(iii)** its strength,

**(iv)** its dosage form,

**(v)** the recommended dosage for the use described under paragraph (e),

**(vi)** its recommended route of administration,

**(vii)** the indications that have been approved by any foreign regulatory authority, if applicable,

**(viii)** its contraindications,

**(ix)** a summary of its safety profile, and

**(x)** the recommended storage conditions for the drug;

**(h)** specify the quantity of the drug required to address the emergency, event or incident;

**(i)** include a statement by the public health official, accompanied by supporting information or documents, attesting that

**(i)** there is an actual, imminent or potential emergency, event or incident affecting public health or the health of the members of the Canadian Armed Forces that is likely to result, in humans, in a serious or life-threatening disease, disorder or abnormal physical state,

**(ii)** immediate action is or would likely be required to diagnose, treat, mitigate or prevent the disease, disorder or abnormal physical state or its symptoms,

**(iii)** conventional therapies, if any, have failed, are unsuitable or are unavailable in Canada at the time the application is made, and

**(iv)** the known and potential benefits associated with the use of the drug described under paragraph (e) outweigh the known and potential risks associated with that use;

**(j)** include any information or document available to the public health official concerning the safety, efficacy and quality of the drug in respect of the use described under paragraph (e), including information published in a medical or scientific journal; and

**(k)** set out the following information, if known by the public health official:

**(iii)** sa concentration,

**(iv)** sa forme posologique,

**(v)** la posologie recommandée pour l'usage précisé en application de l'alinéa e),

**(vi)** la voie d'administration recommandée,

**(vii)** les indications approuvées par toute autorité réglementaire étrangère, le cas échéant,

**(viii)** toute contre-indication,

**(ix)** le résumé de son profil d'innocuité,

**(x)** les conditions d'entreposage recommandées ;

**h)** une mention indiquant la quantité de drogue requise pour parer à l'urgence, à l'événement ou à l'incident;

**i)** une déclaration du responsable de la santé publique, avec renseignements et documents à l'appui, attestant les faits suivants :

**(i)** il existe une urgence, un événement ou un incident réels, imminents ou éventuels en matière de santé publique ou touchant la santé des membres des Forces armées canadiennes qui peut vraisemblablement causer chez l'humain une maladie, un désordre ou un état physique anormal grave ou mettant la vie en danger,

**(ii)** une mesure immédiate est requise — ou risque vraisemblablement de l'être, — pour diagnostiquer, traiter, atténuer ou prévenir la maladie, le désordre ou l'état physique anormal ou leurs symptômes,

**(iii)** les traitements conventionnels, le cas échéant, ont échoué, ne conviennent pas ou ne sont pas disponibles au Canada au moment où la demande est présentée,

**(iv)** les bénéfices connus et potentiels liés à l'usage précisé en application de l'alinéa e) l'emportent sur les risques connus et potentiels liés à cet usage;

**j)** tout renseignement ou document dont dispose le responsable de la santé publique concernant l'innocuité, l'efficacité et la qualité de la drogue au regard de l'usage précisé en application de l'alinéa e), notamment tout renseignement publié dans une revue médicale ou scientifique;

**k)** les renseignements ci-après, s'ils sont connus du responsable de la santé publique :

**(i)** the names of the foreign regulatory authorities that have authorized the sale of the drug in their jurisdictions for the same use as that described under paragraph (e),

**(ii)** the names of the foreign regulatory authorities that have received an application for authorization to sell the drug in their jurisdictions for the use described under paragraph (e) but that have not yet made a decision in respect of that application at the time the public health official makes the application under subsection (1), and

**(iii)** the names of the foreign regulatory authorities that have refused to authorize the sale of the drug in their jurisdictions for any use, as well as the reason for the refusal.

**(3)** The public health official must provide the Minister with any additional information or document that the Minister determines is necessary for the purpose of reviewing the application, by the date specified by the Minister.

SOR/2023-18, s. 4.

**C.11.003 (1)** The Minister may, after review of the application, issue an authorization to a manufacturer authorizing the sale of a specified quantity of the drug to the public health official for the use described in the application.

**(2)** In reviewing the application, the Minister must consider whether there is an alternative mechanism that would address the emergency, event or incident.

**(3)** The authorization must

**(a)** set out the date of issue;

**(b)** set out the name and contact information of the public health official;

**(c)** set out the name and contact information of the manufacturer;

**(d)** describe the emergency, event or incident;

**(e)** state whether the drug is for immediate use or stockpiling or both;

**(f)** describe the use for which the sale of the drug is authorized in order to address the emergency, event or incident;

**(i)** le nom des autorités réglementaires étrangères ayant autorisé la vente de la drogue sur le territoire relevant de leur compétence pour le même usage que celui précisé en application de l'alinéa e),

**(ii)** le nom des autorités réglementaires étrangères ayant reçu une demande d'autorisation de vente de la drogue sur le territoire relevant de leur compétence pour le même usage que celui précisé en application de l'alinéa e), mais n'ayant pas encore rendu leur décision à l'égard de cette demande au moment de la présentation de la demande au titre du paragraphe (1) par le responsable de la santé publique,

**(iii)** le nom des autorités réglementaires étrangères ayant refusé, d'autoriser la vente de la drogue sur le territoire relevant de leur compétence, à l'égard de tout usage, ainsi que les motifs du refus.

**(3)** Le responsable de la santé publique fournit au ministre, au plus tard à la date précisée par ce dernier, tout document ou renseignement additionnel que ce dernier juge nécessaire pour l'examen de la demande.

DORS/2023-18, art. 4.

**C.11.003 (1)** Le ministre peut, au terme de l'examen de la demande, délivrer au fabricant une autorisation permettant à celui-ci de vendre au responsable de la santé publique une quantité déterminée de la drogue pour les usages précisés dans la demande.

**(2)** Lors de l'examen de la demande, le ministre tient compte de l'existence d'un autre mécanisme pour parer à l'urgence, à l'événement ou à l'incident.

**(3)** L'autorisation contient les renseignements suivants :

**a)** la date de délivrance;

**b)** les nom et coordonnées du responsable de la santé publique;

**c)** les nom et coordonnées du fabricant;

**d)** une description de l'urgence, de l'événement ou de l'incident;

**e)** une mention indiquant si la drogue est requise pour usage immédiat, mise en réserve ou les deux;

**f)** une description de l'usage pour lequel la vente de la drogue est autorisée pour parer à l'urgence, à l'événement ou à l'incident;

**(g)** set out the civic address of the place to which the drug is to be shipped by the manufacturer;

**(h)** set out the following information about the drug:

**(i)** its brand name, if any, and either its proper name, common name and chemical name or its identifying name, code, number or mark,

**(ii)** its medicinal ingredients,

**(iii)** its strength,

**(iv)** its dosage form,

**(v)** its recommended dosage and route of administration, and

**(vi)** its recommended storage conditions; and

**(i)** specify the quantity of the drug that may be sold.

SOR/2023-18, s. 4.

**C.11.004** The initial public health official must notify the Minister, in writing, of any change to the information provided under paragraph C.11.002(2)(g), subparagraph C.11.002(2)(i)(iv), paragraph C.11.002(2)(j) or subsection C.11.002(3), within 30 days after the day on which they become aware of the change.

SOR/2023-18, s. 4.

**C.11.005 (1)** Subject to subsection C.11.008(2), these Regulations, other than sections A.01.010, A.01.014 and A.01.045, subsections C.01.001(1) and (1.1) and this Division, do not apply to a drug that is sold in accordance with an authorization.

**(2)** In the case of a drug described in Schedule C or D of the Act, a drug that is sold in accordance with an authorization is exempt from the application of section 12 of the Act.

SOR/2023-18, s. 4.

**C.11.006 (1)** The initial public health official must ensure that the drug bears a label or is accompanied by a document that clearly sets out the following information in English and French:

**(a)** the name and civic address of the drug's manufacturer;

**(b)** a statement that the Minister has authorized the sale of the drug to address the emergency, event or incident described in the authorization;

**g)** l'adresse municipale du lieu où la drogue sera expédiée par le fabricant;

**h)** à l'égard de la drogue, les précisions suivantes :

**(i)** sa marque nominative, le cas échéant, et soit son nom propre, son nom usuel ainsi que son nom chimique, soit son nom, code, numéro ou marque d'identification,

**(ii)** ses ingrédients médicinaux,

**(iii)** sa concentration,

**(iv)** sa forme posologique,

**(v)** la posologie et la voie d'administration recommandées,

**(vi)** les conditions d'entreposage recommandées;

**i)** la quantité de drogue pouvant être vendue.

DORS/2023-18, art. 4.

**C.11.004** Le responsable de la santé publique initial avise le ministre, par écrit, de tout changement aux renseignements fournis en application de l'alinéa C.11.002(2)g), du sous-alinéa C.11.002(2)i)(iv), de l'alinéa C.11.002(2)j) ou du paragraphe C.11.002(3), dans les trente jours suivant le moment où il en a pris connaissance.

DORS/2023-18, art. 4.

**C.11.005 (1)** Sous réserve de l'application du paragraphe C.11.008(2), le présent règlement ne s'applique pas à la drogue vendue conformément à une autorisation, à l'exception du présent titre, des articles A.01.010, A.01.014 et A.01.045, et des paragraphes C.01.001(1) et (1.1).

**(2)** Dans le cas d'une drogue mentionnée aux annexes C ou D de la Loi, la drogue vendue conformément à une autorisation est exemptée de l'application de l'article 12 de la Loi.

DORS/2023-18, art. 4.

**C.11.006 (1)** Le responsable de la santé publique initial veille à ce que la drogue porte une étiquette ou soit accompagnée d'une documentation où figurent clairement les renseignements ci-après, en français et en anglais :

**a)** les nom et adresse municipale du fabricant de la drogue;

**b)** une mention indiquant que le ministre a autorisé la vente de la drogue pour parer à l'urgence, à l'événement ou à l'incident précisé dans l'autorisation;

**(c)** a statement that the drug is to be used only for the use described in the authorization;

**(d)** the drug's brand name, if any, and either its proper name, common name and chemical name or its identifying name, code, number or mark;

**(e)** the drug's medicinal ingredients;

**(f)** the drug's strength;

**(g)** the drug's dosage form;

**(h)** the drug's recommended dosage and route of administration;

**(i)** the drug's lot number, if known;

**(j)** all warnings and precautions in respect of the use of the drug, if any;

**(k)** the drug's expiration date, or, if there is no expiration date, the stability testing date or the date on which the drug should be retested, as specified by the manufacturer;

**(l)** the drug's recommended storage conditions; and

**(m)** the net contents of the drug's container, in terms of the weight, volume, size or number of units of the drug in the container.

**(2)** Any subsequent public health official must ensure that the drug bears the label or is accompanied by the document.

**(3)** If the initial public health official becomes aware of a change to any of the information referred to in paragraph (1)(a), (h), (j), (k) or (l), they must

**(a)** ensure that the information on the drug's label or in the accompanying document is updated; and

**(b)** notify of the change, in writing and without delay, any person to whom they have sold any quantity of the drug.

**(4)** If the person notified under paragraph (3)(b) is a subsequent public health official, they must notify of the change, in writing and without delay, any person to whom they have sold any quantity of the drug.

**(5)** Any person who is notified under paragraph (3)(b) or subsection (4) must ensure that the updated information

**c)** une mention indiquant que la drogue ne peut servir qu'à l'usage précisé dans l'autorisation;

**d)** la marque nominative de la drogue, le cas échéant, et soit son nom propre, son nom usuel ainsi que son nom chimique, soit son nom, code, numéro ou marque d'identification;

**e)** les ingrédients médicinaux de la drogue;

**f)** la concentration de la drogue;

**g)** la forme posologique de la drogue;

**h)** la posologie et la voie d'administration recommandées de la drogue;

**i)** le numéro de lot de la drogue, s'il est connu;

**j)** toute mise en garde ou précaution relative à l'usage de la drogue, le cas échéant;

**k)** la date limite d'utilisation de la drogue ou, à défaut, la date de l'essai de stabilité ou la date à laquelle la drogue devrait faire l'objet d'un essai subséquent, selon ce qui est précisé par le fabricant;

**l)** les conditions d'entreposage recommandées de la drogue;

**m)** le contenu net du contenant de la drogue, exprimé en poids, en volume, en taille ou en nombre d'unités de la drogue qui s'y trouve.

**(2)** Tout responsable de la santé publique subséquent veille à ce que la drogue porte l'étiquette ou soit accompagnée de la documentation.

**(3)** S'il prend connaissance de tout changement aux renseignements visés aux alinéas (1)a), h), j), k) ou l), le responsable de la santé publique initial prend les mesures suivantes :

**a)** il veille à la mise à jour des renseignements figurant sur l'étiquette de la drogue ou dans la documentation qui l'accompagne;

**b)** il avise du changement, par écrit et sans délai, toute personne à qui il a vendu toute quantité de la drogue.

**(4)** Si la personne qui est avisée en application de l'alinéa (3)b) est un responsable de la santé publique subséquent, elle avise du changement, par écrit et sans délai, toute personne à qui elle a vendu toute quantité de la drogue.

**(5)** La personne avisée en application de l'alinéa (3)b) ou du paragraphe (4) veille à ce que les renseignements mis

accompanies, in writing, any quantity of the drug that remains in their possession.

SOR/2023-18, s. 4.

**C.11.007 (1)** In addition to the information required under subsection C.11.006(1), the initial public health official or any subsequent public health official, as the case may be, must make the following information available to the following persons, in writing, in English and French:

**(a)** to the persons to whom the drug is administered and the persons who administer the drug, the known and potential benefits and risks associated with the use for which the sale of the drug is authorized, the recommended duration of use, if any, of the drug and instructions on how to report serious adverse drug reactions; and

**(b)** to the persons who administer the drug, the information referred to in paragraphs C.11.002(2)(a), (b) and (e) and subparagraphs C.11.002(2)(g)(v), (vii) and (viii), if that information is not set out on the drug's label or accompanying document.

**(2)** If the initial public health official becomes aware of a change to any of the information referred to in subsection (1), they must, in writing and without delay, notify the relevant persons of the change.

SOR/2023-18, s. 4.

**C.11.008 (1)** If the initial public health official is a person referred to in paragraph (d) of the definition *public health official* in subsection C.11.001(1), they must submit a written report to the Minister in respect of any serious adverse drug reaction to the drug, and include in the report the information referred to in paragraphs C.01.020.1(2)(b) to (l), no later than the 30th day after the day on which they become aware of the reaction.

**(2)** If the initial public health official is a person referred to in any of paragraphs (a) to (c) or (e) of the definition *public health official* in subsection C.11.001(1), the written report is not required and section C.01.020.1 applies in respect of the provision of information relating to serious adverse drug reactions.

SOR/2023-18, s. 4.

**C.11.009 (1)** The initial public health official must monitor the response to the drug in the emergency, event or incident — including monitoring information they receive relating to serious adverse drug reactions — and must take reasonable steps to obtain information on that response.

à jour accompagnent, par écrit, toute quantité de la drogue demeurant en sa possession.

DORS/2023-18, art. 4.

**C.11.007 (1)** Outre les renseignements visés au paragraphe C.11.006(1), le responsable de la santé publique initial ou tout responsable de la santé publique subséquent, selon le cas, met à la disposition des personnes ci-après, par écrit, en français et en anglais, les renseignements suivants :

**a)** s'agissant des personnes à qui la drogue est administrée et de celles qui l'administrent, les bénéfices et les risques connus et potentiels liés à l'usage pour lequel la vente de la drogue est autorisée, la durée d'utilisation recommandée de la drogue, le cas échéant, et les indications faisant état de la marche à suivre en cas de réaction indésirable grave à une drogue;

**b)** s'agissant des personnes qui administrent la drogue, les renseignements visés aux alinéas C.11.002(2)a), b) et e) et aux sous-alinéas C.11.002(2)g)(v), (vii) et (viii), s'ils ne figurent pas sur l'étiquette de la drogue ou dans la documentation qui l'accompagne.

**(2)** S'il prend connaissance d'un changement aux renseignements visés au paragraphe (1), le responsable de la santé publique initial avise du changement, par écrit et sans délai, les intéressés.

DORS/2023-18, art. 4.

**C.11.008 (1)** Si le responsable de la santé publique initial est une personne visée à l'alinéa d) de la définition de *responsable de la santé publique* au paragraphe C.11.001(1), il fournit au ministre un rapport écrit faisant état, relativement à la drogue, de toute réaction indésirable grave à une drogue au plus tard trente jours après la date à laquelle il en a pris connaissance, en y incluant les renseignements visés aux alinéas C.01.020.1(2)b) à l).

**(2)** Si le responsable de la santé publique initial est une personne visée à l'un des alinéas a) à c) ou e) de la définition de *responsable de la santé publique* au paragraphe C.11.001(1), le rapport n'est pas exigé et l'article C.01.020.1 s'applique relativement à la fourniture de renseignements portant sur toute réaction indésirable grave à une drogue.

DORS/2023-18, art. 4.

**C.11.009 (1)** Le responsable de la santé publique initial surveille la réaction à la drogue lors de l'urgence, de l'événement ou de l'incident, y compris la surveillance de renseignements qu'il reçoit relativement aux réactions indésirables graves à une drogue, et prend des mesures

**(2)** The initial public health official must, on request of the Minister, submit a written report to the Minister on the monitoring of the response to the drug in the emergency, event or incident during the time period specified by the Minister, as well as on any corrective measures taken as a result of the monitoring.

SOR/2023-18, s. 4.

**C.11.010 (1)** The initial public health official must maintain all information about the sale and use of the drug in a way that allows them to submit the information, notices and reports referred to in sections C.11.004 and C.11.008 and subsection C.11.009(2).

**(2)** The initial public health official and any subsequent public health official must maintain all information about the sale and use of the drug in a way that allows them to communicate with persons to whom the drug has been administered if the health of those persons may be endangered by its use.

SOR/2023-18, s. 4.

**C.11.011** The initial public health official or any subsequent public health official, as the case may be, must retain the information, notices and reports referred to in sections C.11.004 and C.11.008, subsection C.11.009(2) and section C.11.010, as applicable, for 15 years after the end of the period to which the information, notices and reports relate.

SOR/2023-18, s. 4.

**C.11.012** The initial public health official must account to the Minister for any unused quantity of stockpiled drug remaining in their possession at the end of the preceding calendar year by the January 30 that follows the first full calendar year during which the drug is stockpiled and then by January 30 of each subsequent year.

SOR/2023-18, s. 4.

**C.11.013 (1)** The Minister may cancel an authorization if the Minister has reasonable grounds to believe that the drug presents a serious or imminent risk of injury to human health.

**(2)** If the Minister cancels an authorization, the initial public health official must, without delay, notify of the cancellation any person to whom they have directly distributed any quantity of the drug.

**(3)** These Regulations apply to any unused quantity of the drug as of the day on which the cancellation takes effect.

SOR/2023-18, s. 4.

raisonnables pour obtenir des renseignements qui portent sur cette réaction.

**(2)** Il fournit au ministre, sur demande, un rapport écrit concernant la surveillance de la réaction à la drogue lors de l'urgence, de l'événement ou de l'incident pendant la période précisée par celui-ci, et y inclus toute mesure corrective qui a été prise à la suite de cette surveillance.

DORS/2023-18, art. 4.

**C.11.010 (1)** Le responsable de la santé publique initial conserve tout renseignement concernant la vente et l'usage de la drogue de manière à ce qu'il puisse fournir les renseignements, les avis et les rapports visés aux articles C.11.004 et C.11.008 et au paragraphe C.11.009(2).

**(2)** Le responsable de la santé publique initial et tout responsable de la santé publique subséquent conservent tout renseignement concernant la vente et l'usage de la drogue de manière à ce qu'ils puissent communiquer avec les personnes auxquelles elle a été administrée, dans le cas où son usage peut mettre en danger leur santé.

DORS/2023-18, art. 4.

**C.11.011** Le responsable de la santé publique initial ou tout responsable de la santé publique subséquent, selon le cas, conserve les renseignements, avis et rapports visés aux articles C.11.004 et C.11.008, au paragraphe C.11.009(2) et à l'article C.11.010, selon le cas, pendant une période de quinze ans suivant la fin de la période à laquelle ils se rapportent.

DORS/2023-18, art. 4.

**C.11.012** Au plus tard le 30 janvier suivant la première année civile complète pendant laquelle la drogue a été mise en réserve et au plus tard le 30 janvier de chaque année suivante, le responsable de la santé publique initial rend compte au ministre de la quantité de toute drogue mise en réserve qui demeure inutilisée et en sa possession à la fin de l'année civile précédente.

DORS/2023-18, art. 4.

**C.11.013 (1)** Le ministre peut annuler l'autorisation s'il a des motifs raisonnables de croire que la drogue présente un risque grave ou imminent de préjudice à la santé humaine.

**(2)** Le cas échéant, le responsable de la santé publique initial avise, sans délai, toute personne à qui il a directement distribué toute quantité de la drogue de l'annulation.

**(3)** Le présent règlement s'applique à toute quantité inutilisée de la drogue dès la date de prise d'effet de l'annulation.

DORS/2023-18, art. 4.

**C.11.014 (1)** The Minister may issue an authorization that permits an initial public health official who is a person referred to in paragraph (a), (d) or (e) of the definition *public health official* in subsection C.11.001(1) to sell a specified quantity of a stockpiled drug to a practitioner for use in the emergency treatment of a person under the care of that practitioner, if

**(a)** the manufacturer of the drug has been issued a letter of authorization under subsection C.08.010(1) that authorizes the sale of a specified quantity of the drug to that practitioner for the emergency treatment of that person; and

**(b)** the use of the drug specified in the letter of authorization is the same as the use described in the authorization issued to the manufacturer under subsection C.11.003(1).

**(2)** This Division, other than this section, does not apply to a drug sold in accordance with an authorization issued under subsection (1).

SOR/2023-18, s. 4.

**C.11.014 (1)** Si les conditions ci-après sont réunies, le ministre peut délivrer une autorisation permettant au responsable de la santé publique initial qui est une personne visée aux alinéas a), d) ou e) de la définition de *responsable de la santé publique* au paragraphe C.11.001(1) de vendre à un praticien une quantité déterminée d'une drogue qui a été mise en réserve afin que celui-ci puisse prodiguer des soins d'urgence à une personne qu'il traite à titre professionnel :

**a)** le fabricant de la drogue a reçu du ministre une lettre d'autorisation permettant la vente d'une quantité déterminée de cette drogue au praticien afin qu'il puisse prodiguer des soins d'urgence à cette personne, conformément au paragraphe C.08.010(1);

**b)** l'usage de la drogue pour laquelle la lettre d'autorisation a été délivrée est le même que celui pour lequel l'autorisation a été délivrée à celui-ci en vertu du paragraphe C.11.003(1).

**(2)** Le présent titre, à l'exception du présent article, ne s'applique pas à la drogue vendue conformément à l'autorisation visée au paragraphe (1).

DORS/2023-18, art. 4.

## PART D

# Vitamins, Minerals and Amino Acids

**D.01.001 (1)** In this Part,

***advertise*** means to advertise to the general public; (*faire de la publicité*)

***brand name*** means, with reference to a drug, the name, whether or not including the name of any manufacturer, corporation, partnership or individual, in English or French,

**(a)** that is assigned to the drug by its manufacturer,

**(b)** under which the drug is sold or advertised, and

**(c)** that is used to distinguish the drug; (*marque nominative*)

***common name*** means, with reference to a salt or derivative of a vitamin, the name in English or French by which the salt or derivative is

**(a)** commonly known, and

## PARTIE D

# Vitamines, minéraux et acides aminés

**D.01.001 (1)** Dans la présente partie,

***aliment supplémenté*** S'entend au sens de l'article B.01.001; (*supplemented food*)

***apport nutritionnel recommandé pondéré*** Quantité d'une vitamine ou d'un minéral nutritif indiquée au tableau II du titre 1 et au tableau II du titre 2; (*weighted recommended nutrient intake*)

***apport quotidien recommandé*** [Abrogée, DORS/2016-305, art. 61]

***faire de la publicité*** signifie faire de la publicité auprès du grand public; (*advertise*)

***fortifiant pour lait humain*** S'entend au sens de l'article B.25.001; (*human milk fortifier*)

***ingrédient supplémentaire*** S'entend au sens de l'article B.01.001; (*supplemental ingredient*)

***marque nominative*** Dans le cas d'une drogue, le nom en français ou en anglais, avec ou sans le nom d'un

**(b)** designated in scientific or technical journals; (*nom usuel*)

***human milk fortifier*** has the same meaning as in section B.25.001; (*fortifiant pour lait humain*)

***human milk substitute*** has the same meaning as in section B.25.001; (*succédané de lait humain*)

***prepackaged product*** means any food that is contained in a package in the manner in which it is ordinarily sold to, or used or purchased by, a person; (*produit préemballé*)

***reasonable daily intake***, in respect of a food named in an item in Column I of Schedule K, means the amount of that food set out in Column II of that item; (*ration quotidienne normale*)

***recommended daily intake*** [Repealed, SOR/2016-305, s. 61]

***supplemental ingredient*** has the same meaning as in section B.01.001; (*ingrédient supplémentaire*)

***supplemented food*** has the same meaning as in section B.01.001; (*aliment supplémenté*)

***supplemented food facts table*** has the same meaning as in subsection B.01.001(1); (*tableau des renseignements sur les aliments supplémentés*)

***Table of Daily Values*** has the same meaning as in subsection B.01.001(1); (*Tableau des valeurs quotidiennes*)

***Table of Reference Amounts*** has the same meaning as in subsection B.01.001(1); (*Tableau des quantités de référence*)

***testimonial***, with respect to a food or drug that is represented as containing a vitamin, mineral nutrient or mineral, means any dramatized or undramatized pictorial, written or oral representation as to the result that is, has been or may be produced by the addition to a person's diet of that vitamin, mineral nutrient or mineral, as the case may be; (*témoignage*)

***weighted recommended nutrient intake*** means, in respect of a vitamin or mineral nutrient, the amount of the vitamin or mineral nutrient set out in Table II to Division 1 and Table II to Division 2. (*apport nutritionnel recommandé pondéré*)

**(2)** For the purposes of this Part, a serving of stated size of a food shall be

fabricant, d'une personne morale, d'une société de personnes ou d'un particulier :

**a)** qui lui a été attribué par le fabricant;

**b)** sous lequel elle est vendue ou fait l'objet de publicité;

**c)** qui sert à l'identifier; (*brand name*)

***nom usuel*** Dans le cas d'un sel ou d'un dérivé d'une vitamine, le nom en français ou en anglais sous lequel il est :

**a)** généralement connu;

**b)** désigné dans des revues scientifiques ou techniques; (*common name*)

***produit préemballé*** désigne un aliment contenu dans un emballage qui est celui dans lequel l'aliment est normalement vendu, utilisé ou acheté; (*prepackaged product*)

***ration quotidienne normale***, lorsqu'il s'agit d'une substance alimentaire dont le nom figure à l'un des articles de l'annexe K à la colonne I, signifie la quantité de cette substance alimentaire précisée à la colonne II en regard de cet article; (*reasonable daily intake*)

***succédané de lait humain*** S'entend au sens de l'article B.25.001; (*human milk substitute*)

***Tableau des quantités de référence*** S'entend au sens du paragraphe B.01.001(1); (*Table of Reference Amounts*)

***tableau des renseignements sur les aliments supplémentés*** S'entend au sens du paragraphe B.01.001(1); (*supplemented food facts table*)

***Tableau des valeurs quotidiennes*** S'entend au sens du paragraphe B.01.001(1); (*Table of Daily Values*)

***témoignage***, lorsqu'il s'agit d'un aliment ou d'une drogue présentée comme contenant une vitamine, un minéral nutritif ou un minéral, signifie n'importe quelle présentation orale, écrite ou en images, dramatisée ou non, quant à l'effet que produit, a produit ou peut produire l'addition, au régime alimentaire d'une personne, de cette vitamine, de ce minéral nutritif ou de ce minéral, selon le cas. (*testimonial*)

**(2)** Pour l'application de la présente partie, la portion indiquée d'un aliment est :

**(a)** based on the food as offered for sale;

**(b)** in either of the following cases, the net quantity of the food in the package:

**(i)** if the quantity of food in the package can reasonably be consumed by one person at a single eating occasion, or

**(ii)** if the package contains less than 200% of the reference amount for the food; and

**(c)** in all other cases, the amount indicated for the food according to the criteria set out in column 3A of the Table of Reference Amounts.

**(3)** A serving of stated size of a food shall be expressed as follows:

**(a)** in the case of a single-serving prepackaged product to which paragraph (2)(b) applies, per package and using the following units:

**(i)** in grams, if the net quantity of the food is shown on the label by weight or by count, and

**(ii)** in millilitres, if the net quantity of the food is shown on the label by volume; and

**(b)** in the case of a multiple-serving prepackaged product to which paragraph (2)(c) applies, according to the following units set out in column 3B of the Table of Reference Amounts and according to the manner set out in that column:

**(i)** the household measure that applies to the product, and

**(ii)** the metric measure that applies to the product.

SOR/88-559, s. 31; SOR/93-202, s. 31; SOR/96-259, s. 3; SOR/2003-11, s. 27; SOR/2016-305, s. 61; SOR/2021-57, s. 17; SOR/2022-169, s. 22.

**D.01.001.1 (1)** The daily value of a vitamin or mineral nutrient set out in column 1 of Part 2 of the Table of Daily Values is, in respect of a food, the quantity

**(a)** set out in column 2, if the food is intended solely for infants six months of age or older but less than one year of age;

**(b)** set out in column 3, if the food is intended for infants six months of age or older but less than one year of age or for children one year of age or older but less than four years of age, and

**(c)** set out in column 4, in any other case.

**a)** établie en fonction de l'aliment tel qu'il est vendu;

**b)** dans l'un ou l'autre des cas ci-après, la quantité nette de l'aliment dans l'emballage lorsque :

**(i)** cette quantité peut être raisonnablement consommée par une personne en une seule fois,

**(ii)** l'emballage contient moins de 200 % de la quantité de référence de l'aliment;

**c)** dans les autres cas, la quantité établie selon les critères énoncés à la colonne 3A du Tableau des quantités de référence pour cet aliment.

**(3)** La portion indiquée d'un aliment est exprimée de la façon suivante :

**a)** dans le cas d'un produit préemballé à portion individuelle auquel l'alinéa (2)b) s'applique, par emballage et selon les unités suivantes :

**(i)** en grammes, lorsque la quantité nette de l'aliment est mentionnée en poids ou en nombre sur l'étiquette,

**(ii)** en millilitres, lorsque la quantité nette de l'aliment est mentionnée en volume sur l'étiquette;

**b)** dans le cas d'un produit préemballé à portions multiples auquel l'alinéa (2)c) s'applique, selon les unités ci-après indiquées à la colonne 3B du Tableau des quantités de référence et de la manière dont elles y sont présentées :

**(i)** la mesure domestique applicable au produit,

**(ii)** la mesure métrique applicable au produit.

DORS/88-559, art. 31; DORS/93-202, art. 31; DORS/96-259, art. 3; DORS/2003-11, art. 27; DORS/2016-305, art. 61; DORS/2021-57, art. 17; DORS/2022-169, art. 22.

**D.01.001.1 (1)** La valeur quotidienne d'une vitamine ou d'un minéral nutritif figurant à la colonne 1 de la partie 2 du Tableau des valeurs quotidiennes est, à l'égard d'un aliment, la quantité de vitamine ou de minéral nutritif figurant :

**a)** à la colonne 2, dans le cas d'un aliment destiné exclusivement aux bébés âgés d'au moins six mois mais de moins d'un an;

**b)** à la colonne 3, dans le cas d'un aliment destiné aux bébés âgés d'au moins six mois mais de moins d'un an ou aux enfants âgés d'au moins un an mais de moins de quatre ans;

**c)** à la colonne 4, dans les autres cas.

**(2)** Subsection (1) does not apply if the food is

**(a)** a human milk fortifier; or

**(b)** a human milk substitute intended solely for infants less than six months of age.

SOR/2016-305, s. 62; SOR/2021-57, s. 18.

**D.01.001.2** If both a *nutrition symbol*, as defined in subsection B.01.001(1), and a statement or claim referred to in any of sections D.01.004 to D.01.007 and D.02.002 to D.02.005 appear on the principal display panel of a prepackaged product,

**(a)** the height of the upper case letters in the statement or claim must not exceed two times the height of the upper case letters, excluding any accents, in the nutrition symbol, other than in the words "Health Canada" and "Santé Canada"; and

**(b)** the height of the tallest ascender of the lower case letters in the statement or claim must not exceed two times the height of the tallest ascender of the lower case letters in the nutrition symbol, other than in the words "Health Canada" and "Santé Canada".

SOR/2022-168, s. 45.

**(2)** Le paragraphe (1) ne s'applique pas si l'aliment est :

**a)** soit un fortifiant pour lait humain;

**b)** soit un succédané de lait humain destiné exclusivement aux bébés âgés de moins de six mois.

DORS/2016-305, art. 62; DORS/2021-57, art. 18.

**D.01.001.2** Lorsqu'un *symbole nutritionnel*, au sens du paragraphe B.01.001(1), et une mention ou une allégation visée à l'un des articles D.01.004 à D.01.007 et D.02.002 à D.02.005 paraissent dans l'espace principal d'un produit préemballé, la mention ou l'allégation satisfait aux exigences suivantes :

**a)** la hauteur des lettres majuscules qui y paraissent ne dépasse pas le double de celle des lettres majuscules, sauf tout accent, paraissant dans le symbole nutritionnel, à l'exception des lettres des mots « Santé Canada » et « Health Canada »;

**b)** la hauteur de la hampe ascendante la plus élevée des lettres minuscules qui y paraissent ne dépasse pas le double de celle de la hampe ascendante la plus élevée des lettres minuscules paraissant dans le symbole nutritionnel, à l'exception des lettres des mots « Santé Canada » et « Health Canada ».

DORS/2022-168, art. 45.

## DIVISION 1

# Vitamins in Foods

**D.01.002 (1)** In this Division, ***vitamin*** means any of the following vitamins:

**(a)** vitamin A;

**(b)** vitamin D;

**(c)** vitamin E;

**(d)** vitamin K;

**(e)** vitamin C;

**(f)** thiamin, thiamine or vitamin $B_1$;

**(g)** riboflavin or vitamin $B_2$;

**(h)** niacin;

**(i)** vitamin $B_6$;

**(j)** folacin or folate;

## TITRE 1

# Vitamines dans les aliments

**D.01.002 (1)** Dans le présent titre, ***vitamine*** désigne l'une des vitamines suivantes :

**a)** vitamine A;

**b)** vitamine D;

**c)** vitamine E;

**d)** vitamine K;

**e)** vitamine C;

**f)** thiamine ou vitamine $B_1$;

**g)** riboflavine ou vitamine $B_2$;

**h)** niacine;

**i)** vitamine $B_6$;

**j)** folacine ou folate;

**(k)** vitamin $B_{12}$;

**(l)** pantothenic acid or pantothenate;

**(m)** biotin; and

**(n)** choline. (*vitamine*)

**(2)** For the purposes of this Division, no expression, other than an expression set out in subsection (1), shall be used to declare the vitamin content of a food.

**(3)** This Division applies only in respect of foods represented as containing a vitamin for use in human nutrition.

SOR/88-559, s. 32; SOR/2003-11, s. 28; SOR/2016-305, s. 63.

**D.01.003 (1)** For the purposes of these Regulations, the vitamin content of a food — other than a formulated liquid diet, human milk fortifier, human milk substitute or food represented as containing a human milk substitute — shall be determined

**(a)** in the case of vitamin A, in terms of the content of retinol and its derivatives and beta-carotene, calculated on the basis of micrograms of retinol activity equivalents (RAE) and expressed in micrograms on the basis of the following relationships:

**(i)** 1 RAE = 1 microgram of retinol, and

**(ii)** 1 RAE = 12 micrograms of beta-carotene;

**(b)** in the case of vitamin D, in terms of the content of cholecalciferol and ergocalciferol, expressed in micrograms;

**(c)** in the case of vitamin E, in terms of the content of d-alpha-tocopherol and dl-alpha-tocopherol and their derivatives, expressed in milligrams on the basis of the following relationships:

**(i)** one milligram d-alpha-tocopherol = one milligram vitamin E, and

**(ii)** one milligram dl-alpha-tocopherol = 0.74 milligram vitamin E;

**(d)** in the case of vitamin K, in terms of the content of phylloquinone and menaquinones, expressed in micrograms;

**(e)** in the case of vitamin C, in terms of the content of L-ascorbic acid and L-dehydroascorbic acid and their derivatives, calculated in milligram equivalents of L-ascorbic acid and expressed in milligrams;

**k)** vitamine $B_{12}$;

**l)** acide pantothénique ou pantothénate;

**m)** biotine;

**n)** choline. (*vitamin*)

**(2)** Pour l'application du présent titre, il est interdit d'utiliser des désignations autres que celles prévues au paragraphe (1) pour la déclaration de la teneur en vitamines d'un aliment.

**(3)** Le présent titre ne s'applique qu'aux aliments présentés comme contenant une vitamine destinée à être utilisée dans l'alimentation humaine.

DORS/88-559, art. 32; DORS/2003-11, art. 28; DORS/2016-305, art. 63.

**D.01.003 (1)** Pour l'application du présent règlement, la teneur en vitamines d'un aliment, autre qu'une préparation pour régime liquide, un fortifiant pour lait humain, un succédané de lait humain ou un aliment présenté comme contenant un succédané de lait humain, doit être déterminée :

**a)** dans le cas de la vitamine A, en fonction de la teneur en rétinol et ses dérivés et en bêta-carotène, calculée en microgrammes d'équivalents d'activité de rétinol (ÉAR), et exprimée en microgrammes selon les équivalences suivantes :

**(i)** 1 ÉAR = 1 microgramme de rétinol,

**(ii)** 1 ÉAR = 12 microgrammes de bêta-carotène;

**b)** dans le cas de la vitamine D, en fonction de la teneur en cholécalciférol et en ergocalciférol, exprimée en microgrammes;

**c)** dans le cas de la vitamine E, en fonction de la teneur en d-alpha-tocophérol et en dl-alpha-tocophérol et leurs dérivés, exprimée en milligrammes selon les équivalences suivantes :

**(i)** 1 milligramme de d-alpha-tocophérol = 1 milligramme de vitamine E,

**(ii)** 1 milligramme de dl-alpha-tocophérol = 0,74 milligramme de vitamine E;

**d)** dans le cas de la vitamine K, en fonction de la teneur en phylloquinone et en ménaquinones, exprimée en microgrammes;

**e)** dans le cas de la vitamine C, en fonction de la teneur en acide L-ascorbique et en acide L-déhydroascorbique et leurs dérivés, calculée en milligrammes

**(f)** in the case of thiamin, thiamine or vitamin $B_1$, and its derivatives, in terms of the content of thiamin, expressed in milligrams;

**(g)** in the case of riboflavin or vitamin $B_2$ and its derivatives, in terms of the content of riboflavin, expressed in milligrams;

**(h)** in the case of niacin, in terms of the content of niacin and its derivatives, calculated in milligrams of nicotinic acid, plus the content of tryptophan, calculated in milligrams and divided by 60, with the total niacin equivalents (NE) expressed in milligrams;

**(i)** in the case of vitamin $B_6$, in terms of the content of pyridoxine, pyridoxal and pyridoxamine and their derivatives, calculated in milligram equivalents of pyridoxine and expressed in milligrams;

**(j)** in the case of folate, in terms of the content of folic acid (pteroylmonoglutamic acid) and related compounds exhibiting the biological activity of folic acid, calculated on the basis of micrograms of dietary folate equivalents (DFE) and expressed in micrograms on the basis of the following relationships:

**(i)** 1 DFE = 1 µg food folate, and

**(ii)** 1 DFE = 0.6 µg folic acid from food with added folic acid;

**(k)** in the case of vitamin $B_{12}$, in terms of the content of cyanocobalamin and related compounds exhibiting the biological activity of cyanocobalamin, calculated in microgram equivalents of cyanocobalamin and expressed in micrograms;

**(l)** in the case of pantothenic acid or pantothenate, in terms of the content of d-pantothenic acid, expressed in milligrams;

**(m)** in the case of biotin, in terms of the content of biotin, expressed in micrograms; and

**(n)** in the case of choline, in terms of the content of choline, expressed in milligrams.

**(2)** For the purpose of paragraph (1)(h), the content of tryptophan may be calculated

**(a)** where the protein originates from a food that contains protein from more than one source or from a

**f)** dans le cas de la thiamine ou vitamine $B_1$ et ses dérivés, en fonction de la teneur en thiamine, exprimée en milligrammes;

**g)** dans le cas de la riboflavine ou vitamine $B_2$ et ses dérivés, en fonction de la teneur en riboflavine, exprimée en milligrammes;

**h)** dans le cas de la niacine, en fonction de la teneur en niacine et ses dérivés, calculée en milligrammes d'acide nicotinique, plus la teneur en tryptophane, calculée en milligrammes et divisée par 60, le total en équivalent niacine (ÉN) étant exprimé en milligrammes;

**i)** dans le cas de la vitamine $B_6$, en fonction de la teneur en pyridoxine, en pyridoxal et en pyridoxamine et leurs dérivés, calculée en milligrammes d'équivalents de pyridoxine et exprimée en milligrammes;

**j)** dans le cas de la folacine ou folate, en fonction de la teneur en acide folique (acide ptéroylmonoglutamique) et ses composés apparentés présentant l'activité biologique de l'acide folique, calculée en microgrammes d'équivalents de folate alimentaire (ÉFA) et exprimée en microgrammes selon les équivalences suivantes :

**(i)** 1 ÉFA = 1 µg de folate alimentaire,

**(ii)** 1 ÉFA = 0,6 µg d'acide folique provenant d'aliments auxquels de l'acide folique a été ajouté;

**k)** dans le cas de la vitamine $B_{12}$, en fonction de la teneur en cyanocobalamine et ses composés apparentés présentant l'activité biologique de la cyanocobalamine, calculée en microgrammes d'équivalents de cyanocobalamine et exprimée en microgrammes;

**l)** dans le cas de l'acide pantothénique ou pantothénate, en fonction de la teneur en acide d-pantothénique, exprimée en milligrammes;

**m)** dans le cas de la biotine, en fonction de la teneur en biotine, exprimée en microgrammes;

**n)** dans le cas de la choline, en fonction de la teneur en choline, exprimée en milligrammes.

**(2)** Pour l'application de l'alinéa (1)h), la teneur en tryptophane peut être calculée comme étant équivalente à :

**a)** 1,1 pour cent des protéines, lorsque celles-ci proviennent d'un aliment contenant des protéines de plus

source other than milk, meat, poultry, fish or eggs, as constituting 1.1 per cent of the protein;

**(b)** where the protein originates from milk, meat, poultry or fish, as constituting 1.3 per cent of the protein; and

**(c)** where the protein originates from eggs, as constituting 1.5 per cent of the protein.

SOR/88-559, s. 32; SOR/90-830, s. 7; SOR/2016-305, s. 64; SOR/2021-57, s. 19; SOR/2022-197, s. 11.

**D.01.004 (1)** It is prohibited, on the label of or in any advertisement for a food — other than a formulated liquid diet, human milk fortifier, human milk substitute or food represented as containing a human milk substitute — to make a statement or claim concerning the vitamin content of the food unless

**(a)** the vitamin is set out in column 1 of Part 2 of the Table of Daily Values;

**(b)** the percentage of the daily value of the vitamin, per serving of stated size, is 5% or more; and

**(c)** the vitamin content is declared on the label or in the advertisement as a percentage of the daily value, per serving of stated size.

**(1.1)** The condition set out in paragraph (1)(c) need not be met if the statement or claim described in subsection (1) is made on a label of or in any advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating.

**(2)** If a statement or claim described in subsection (1) is made in an advertisement for a food that is not a prepackaged product or in an advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, the percentage of the daily value, per serving of stated size, shall,

**(a)** in the case of an advertisement, other than a radio or television advertisement, be

**(i)** adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once, and

d'une source ou d'une source autre que le lait, la viande, la volaille, le poisson ou les œufs;

**b)** 1,3 pour cent des protéines, lorsque celles-ci proviennent du lait, de la viande, de la volaille ou du poisson;

**c)** 1,5 pour cent des protéines, lorsque celles-ci proviennent des œufs.

DORS/88-559, art. 32; DORS/90-830, art. 7; DORS/2016-305, art. 64; DORS/2021-57, art. 19; DORS/2022-197, art. 11.

**D.01.004 (1)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment, autre qu'une préparation pour régime liquide, un fortifiant pour lait humain, un succédané de lait humain ou un aliment présenté comme contenant un succédané de lait humain, toute mention ou allégation relative à sa teneur en une vitamine, à moins que les conditions suivantes ne soient réunies :

**a)** il s'agit d'une vitamine figurant à la colonne 1 de la partie 2 du Tableau des valeurs quotidiennes;

**b)** le pourcentage de la valeur quotidienne pour cette vitamine, par portion indiquée, est de 5 % ou plus;

**c)** la teneur en cette vitamine est indiquée, sur l'étiquette ou dans l'annonce, en pourcentage de la valeur quotidienne, par portion indiquée.

**(1.1)** La condition visée à l'alinéa (1)c) n'a pas à être remplie si la mention ou l'allégation visée au paragraphe (1) est faite sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout autre enduit protecteur.

**(2)** Si la mention ou l'allégation visée au paragraphe (1) est faite dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, le pourcentage de la valeur quotidienne, par portion indiquée, répond aux critères suivants :

**a)** dans le cas d'une annonce autre qu'une annonce radiophonique ou télévisée :

**(i)** d'une part, il précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence,

**(ii)** shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once;

**(b)** in the case of a radio advertisement or the audio portion of a television advertisement, immediately precede or follow the statement or claim; or

**(c)** in the case of a television advertisement, be communicated

**(i)** in the audio mode, if the statement or claim is made only in the audio portion of the advertisement or in both the audio and visual portions, or

**(ii)** in the audio or visual mode, if the statement or claim is made only in the visual portion of the advertisement.

**(3)** The percentage of the daily value, per serving of stated size, that is communicated in the visual mode of a television advertisement in accordance with subparagraph (2)(c)(ii) shall

**(a)** appear concurrently with and for at least the same amount of time as the statement or claim;

**(b)** be adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(c)** be shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

**(4)** Paragraph (1)(b) does not apply in respect of a declaration of the vitamin content in a nutrition facts table or supplemented food facts table.

**(5)** Paragraph (1)(c) does not apply to a declaration of the biotin content as required by subparagraph B.24.202(a)(vi).

SOR/84-300, s. 57(E); SOR/88-559, s. 32; SOR/90-830, s. 8; SOR/96-259, s. 9; SOR/2003-11, s. 29; SOR/2016-305, ss. 65, 75(F); SOR/2021-57, s. 20; SOR/2022-169, s. 23.

**D.01.005** [Repealed, SOR/2003-11, s. 29]

**D.01.006** No person shall, on the label of or in any advertisement for a food, make any claim concerning the

**(ii)** d'autre part, il figure en caractères d'une taille au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence;

**b)** dans le cas d'une annonce radiophonique ou de la composante audio d'une annonce télévisée, il précède ou suit immédiatement la mention ou l'allégation;

**c)** dans le cas d'une annonce télévisée, il est communiqué :

**(i)** en mode audio, si la mention ou l'allégation fait partie uniquement de la composante audio de l'annonce ou, à la fois, des composantes audio et visuelle de celle-ci,

**(ii)** en mode audio ou en mode visuel, si la mention ou l'allégation fait partie uniquement de la composante visuelle de l'annonce.

**(3)** Le pourcentage de la valeur quotidienne, par portion indiquée, qui est communiqué en mode visuel dans une annonce télévisée conformément au sous-alinéa (2)c)(ii), à la fois :

**a)** paraît en même temps et pendant au moins la même durée que la mention ou l'allégation;

**b)** précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**c)** figure en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

**(4)** L'alinéa (1)b) ne s'applique pas à l'indication de la teneur en une vitamine dans tout tableau de la valeur nutritive ou tout tableau des renseignements sur les aliments supplémentés.

**(5)** L'alinéa (1)c) ne s'applique pas à l'indication de la teneur en biotine exigée par le sous-alinéa B.24.202a)(vi).

DORS/84-300, art. 57(A); DORS/88-559, art. 32; DORS/90-830, art. 8; DORS/96-259, art. 9; DORS/2003-11, art. 29; DORS/2016-305, art. 65 et 75(F); DORS/2021-57, art. 20; DORS/2022-169, art. 23.

**D.01.005** [Abrogé, DORS/2003-11, art. 29]

**D.01.006** Est interdite sur l'étiquette ou dans les annonces d'un aliment toute allégation concernant l'action

action or effects of a vitamin contained in the food, except to the effect that the vitamin

**(a)** is a factor in the maintenance of good health; and

**(b)** is generally recognized as an aid in maintaining the functions of the body necessary to the maintenance of good health and normal growth and development.

SOR/88-559, s. 32.

**D.01.007 (1)** If a component of an ingredient of a prepackaged product set out in the table to subsection B.01.009(1) is a vitamin, no person shall, on the label of or in any advertisement for the prepackaged product, make a statement or claim concerning the vitamin as a component of that ingredient unless

**(a)** despite subsection B.01.008.2(6), the vitamin is declared by its common name, and that common name is shown in parentheses immediately after the ingredient in respect of which it is a component, except that if a source of a food allergen or gluten is required by paragraph B.01.010.1(8)(a) to be shown immediately after that ingredient, the common name of the vitamin is instead shown immediately after that source; and

**(b)** all components of the ingredient are declared.

**(2)** Paragraph (1)(b) does not apply to flour used as an ingredient in the manufacture of a prepackaged product referred to in subsection (1).

SOR/84-300, s. 59(E); SOR/88-559, s. 32; SOR/2003-11, s. 30; SOR/2011-28, s. 7; SOR/2016-305, s. 66.

**D.01.008 (1)** Sections D.01.009, D.01.010 and D.01.011 do not apply to a human milk fortifier.

**(2)** Sections D.01.009 and D.01.011 do not apply to a supplemented food.

SOR/2021-57, s. 21; SOR/2022-169, s. 24.

**D.01.009** Subject to section D.01.010, no person shall sell a food to which any of the following vitamins have been added unless a reasonable daily intake of that food by a person would result in the daily intake by such person of that vitamin in an amount not less than,

**(a)** in the case of vitamin A, 1,600 International Units;

**(b)** in the case of thiamine, 0.6 milligram;

**(c)** in the case of riboflavin, 1.0 milligram;

**(d)** in the case of niacin or niacinamide, six milligrams;

ou les effets d'une vitamine que contient l'aliment, sauf celle indiquant que la vitamine :

**a)** contribue au maintien de la santé;

**b)** est généralement reconnue comme aidant à entretenir les fonctions de l'organisme nécessaires au maintien de la santé et à la croissance et au développement normaux.

DORS/88-559, art. 32.

**D.01.007 (1)** Si un constituant d'un ingrédient d'un produit préemballé mentionné au tableau du paragraphe B.01.009(1) est une vitamine, est interdite, sur l'étiquette ou dans l'annonce de ce produit préemballé, toute mention ou allégation selon laquelle la vitamine est un constituant de cet ingrédient, à moins que les conditions suivantes soient réunies :

**a)** malgré le paragraphe B.01.008.2(6), la vitamine est désignée par son nom usuel, lequel figure entre parenthèses immédiatement après l'ingrédient dont la vitamine est un constituant; cependant, dans le cas où, en application de l'alinéa B.01.010.1(8)a), une source d'allergène alimentaire ou de gluten doit figurer immédiatement après l'ingrédient, le nom usuel de la vitamine doit plutôt figurer immédiatement après cette source;

**b)** tous les constituants de l'ingrédient sont indiqués.

**(2)** L'alinéa (1)b) ne s'applique pas à la farine utilisée comme ingrédient dans la fabrication de tout produit préemballé visé au paragraphe (1).

DORS/84-300, art. 59(A); DORS/88-559, art. 32; DORS/2003-11, art. 30; DORS/2011-28, art. 7; DORS/2016-305, art. 66.

**D.01.008 (1)** Les articles D.01.009, D.01.010 et D.01.011 ne s'appliquent pas aux fortifiants pour lait humain.

**(2)** Les articles D.01.009 et D.01.011 ne s'appliquent pas aux aliments supplémentés.

DORS/2021-57, art. 21; DORS/2022-169, art. 24.

**D.01.009** Sous réserve de l'article D.01.010, il est interdit de vendre un aliment auquel l'une des vitamines ci-après a été ajoutée, à moins qu'une ration quotidienne normale de cet aliment n'apporte à une personne qui la consomme la quantité ci-après de cette vitamine :

**a)** dans le cas de la vitamine A, au moins 1 600 unités internationales;

**b)** dans le cas de la thiamine, au moins 0,6 milligramme;

**c)** dans le cas de la riboflavine, au moins un milligramme;

**(e)** in the case of ascorbic acid, 20 milligrams; and

**(f)** in the case of vitamin D, 300 International Units.

SOR/2022-168, s. 46.

**d)** dans le cas de la niacine ou de la niacinamide, au moins six milligrammes;

**e)** dans le cas de l'acide ascorbique, au moins 20 milligrammes; et

**f)** dans le cas de la vitamine D, au moins 300 unités internationales.

DORS/2022-168, art. 46.

**D.01.010** Where a food to which any of the following vitamins have been added is represented as being solely for use in the feeding of children under two years of age, no person shall sell such food unless a reasonable daily intake of that food by a child under two years of age would result in the daily intake by the child of that vitamin in an amount not less than,

**(a)** in the case of vitamin A, 1,000 International Units;

**(b)** in the case of thiamine, 0.4 milligram;

**(c)** in the case of riboflavin, 0.6 milligram;

**(d)** in the case of niacin or niacinamide, four milligrams;

**(e)** in the case of pyridoxine, 0.6 milligram;

**(f)** in the case of ascorbic acid, 20 milligrams;

**(g)** in the case of vitamin D, 300 International Units; and

**(h)** in the case of vitamin E, five International Units.

SOR/2022-168, s. 47.

**D.01.010** Lorsqu'un aliment auquel a été ajoutée l'une des vitamines ci-après est présenté comme étant destiné exclusivement à l'alimentation des enfants de moins de deux ans, il est interdit de vendre un tel aliment à moins qu'une ration quotidienne normale de cet aliment n'apporte à un enfant de moins de deux ans qui la consomme la quantité ci-après de cette vitamine :

**a)** dans le cas de la vitamine A, au moins 1 000 unités internationales;

**b)** dans le cas de la thiamine, au moins 0,4 milligramme;

**c)** dans le cas de la riboflavine, au moins 0,6 milligramme;

**d)** dans le cas de la niacine ou de la niacinamide, au moins quatre milligrammes;

**e)** dans le cas de la pyridoxine, au moins 0,6 milligramme;

**f)** dans le cas de l'acide ascorbique, au moins 20 milligrammes;

**g)** dans le cas de la vitamine D, au moins 300 unités internationales; et

**h)** dans le cas de la vitamine E, au moins cinq unités internationales.

DORS/2022-168, art. 47.

**D.01.011** No person shall sell a food to which any of the following vitamins have been added if a reasonable daily intake of that food by a person would result in the daily intake by such person of that vitamin in an amount more than,

**(a)** in the case of vitamin A, 2,500 International Units;

**(b)** in the case of thiamine, two milligrams;

**(c)** in the case of riboflavin, three milligrams;

**(d)** in the case of niacin or niacinamide, 20 milligrams;

**D.01.011** Il est interdit de vendre un aliment auquel l'une des vitamines ci-après a été ajoutée si une ration quotidienne normale de cet aliment apporte à une personne qui la consomme la quantité ci-après de cette vitamine :

**a)** dans le cas de la vitamine A, plus de 2 500 unités internationales;

**b)** dans le cas de la thiamine, plus de deux milligrammes;

**c)** dans le cas de la riboflavine, plus de trois milligrammes;

**(e)** in the case of pyridoxine, 1.5 milligrams;

**(f)** in the case of ascorbic acid, 60 milligrams;

**(g)** in the case of vitamin D, 400 International Units; and

**(h)** in the case of vitamin E, 15 International Units.

SOR/2022-168, s. 48.

**d)** dans le cas de la niacine ou de la niacinamide, plus de 20 milligrammes;

**e)** dans le cas de la pyridoxine, plus de 1,5 milligramme;

**f)** dans le cas de l'acide ascorbique, plus de 60 milligrammes;

**g)** dans le cas de la vitamine D, plus de 400 unités internationales; et

**h)** dans le cas de la vitamine E, plus de 15 unités internationales.

DORS/2022-168, art. 48.

**D.01.011.1** Sections D.01.009, D.01.010 and D.01.011 do not apply in respect of vitamin D in

**(a)** a food for which a standard is set out in Division 8 of Part B if the standard requires that the food contain vitamin D; or

**(b)** margarine or calorie-reduced margarine.

SOR/2022-168, s. 49.

**D.01.011.1** Les articles D.01.009, D.01.010 et D.01.011 ne s'appliquent pas en ce qui concerne la vitamine D contenue dans les aliments suivants :

**a)** l'aliment pour lequel le titre 8 de la partie B prévoit une norme, si celle-ci prévoit qu'il doit contenir de la vitamine D;

**b)** la margarine ou la margarine réduite en calories.

DORS/2022-168, art. 49.

**D.01.012** No person shall, in advertising a food that is represented as containing a vitamin or on a label of such food,

**(a)** give any assurance or guarantee of any kind with respect to the result that may be, has been or will be obtained by the addition of the vitamin to a person's diet; or

**(b)** refer to, reproduce or quote any testimonial.

**D.01.012** Il est interdit, dans la publicité faite au sujet d'un aliment présenté comme contenant une vitamine ou sur l'étiquette d'un tel aliment,

**a)** de donner quelque garantie que ce soit quant à l'effet que peut produire, qu'a produit ou que produira l'addition de la vitamine au régime d'une personne; ou

**b)** de mentionner, reproduire ou citer un témoignage quelconque.

**D.01.013** [Repealed, SOR/2003-11, s. 31]

**D.01.013** [Abrogé, DORS/2003-11, art. 31]

# TABLE I

[Repealed, SOR/2016-305, s. 67]

# TABLEAU I

[Abrogé, DORS/2016-305, art. 67)

**TABLE II**

**Weighted Recommended Nutrient Intake**

| Item | Column I<br>Vitamin | Column II<br>Units | Column III<br>Amount |
|---|---|---|---|
| 1 | Biotin | micrograms | 90 |
| 2 | Folacin | micrograms | 195 |
| 3 | Niacin | niacin equivalents | 16 |

| Item | Column I<br>Vitamin | Column II<br>Units | Column III<br>Amount |
|---|---|---|---|
| 4 | Pantothenic Acid | milligrams | 5.0 |
| 5 | Riboflavin | milligrams | 1.2 |
| 6 | Thiamine | milligrams | 1.0 |
| 7 | Vitamin A | retinol equivalents | 870 |
| 8 | Vitamin $B_6$ | milligrams | 1.0 |
| 9 | Vitamin $B_{12}$ | micrograms | 1.0 |
| 10 | Vitamin C | milligrams | 34 |
| 11 | Vitamin D | micrograms | 3.0 |
| 12 | Vitamin E | milligrams | 7.0 |

**TABLEAU II**

**Apport nutritionnel recommandé pondéré**

| Article | Colonne I<br>Vitamine | Colonne II<br>Unités | Colonne III<br>Quantité |
|---|---|---|---|
| 1 | Biotine | microgrammes | 90 |
| 2 | Folacine | microgrammes | 195 |
| 3 | Niacine | équivalents de niacine | 16 |
| 4 | Acide pantothénique | milligrammes | 5,0 |
| 5 | Riboflavine | milligrammes | 1,2 |
| 6 | Thiamine | milligrammes | 1,0 |
| 7 | Vitamine A | équivalents de rétinol | 870 |
| 8 | Vitamine $B_6$ | milligrammes | 1,0 |
| 9 | Vitamine $B_{12}$ | microgrammes | 1,0 |
| 10 | Vitamine C | milligrammes | 34 |
| 11 | Vitamine D | microgrammes | 3,0 |
| 12 | Vitamine E | milligrammes | 7,0 |

SOR/96-259, s. 5.

DORS/96-259, art. 5.

**DIVISION 2**

## Mineral Nutrients in Foods

**D.02.001 (1)** In this Division, ***mineral nutrient*** means any of the following chemical elements, whether alone or

**TITRE 2**

## Minéraux nutritifs dans les aliments

**D.02.001 (1)** Dans le présent titre, ***minéral nutritif*** désigne l'un des éléments chimiques suivants, soit seul, soit

in a compound with one or more other chemical elements:

**(a)** sodium;

**(b)** potassium;

**(c)** calcium;

**(d)** phosphorus;

**(e)** magnesium;

**(f)** iron;

**(g)** zinc;

**(h)** iodide;

**(i)** chloride;

**(j)** copper;

**(k)** fluoride;

**(l)** manganese;

**(m)** chromium;

**(n)** selenium;

**(o)** cobalt;

**(p)** molybdenum;

**(q)** tin;

**(r)** vanadium;

**(s)** silicon; and

**(t)** nickel. (*minéral nutritif*)

**(2)** This Division applies only in respect of foods that are represented as containing a mineral nutrient for use in human nutrition.

SOR/88-559, s. 34; SOR/90-830, s. 9(F).

**D.02.002 (1)** It is prohibited, on the label of or in any advertisement for a food — other than salt for table or general household use containing added iodide, prepackaged water and ice, a formulated liquid diet, human milk fortifier, human milk substitute or food represented as containing a human milk substitute — to make a statement or claim concerning the mineral nutrient content of the food unless

en combinaison avec un ou plusieurs autres éléments chimiques :

**a)** sodium;

**b)** potassium;

**c)** calcium;

**d)** phosphore;

**e)** magnésium;

**f)** fer;

**g)** zinc;

**h)** iode;

**i)** chlore;

**j)** cuivre;

**k)** fluor;

**l)** manganèse;

**m)** chrome;

**n)** sélénium;

**o)** cobalt;

**p)** molybdène;

**q)** étain;

**r)** vanadium;

**s)** silicium;

**t)** nickel. (*mineral nutrient*)

**(2)** Le présent titre ne s'applique qu'aux aliments présentés comme contenant un minéral nutritif destiné à être utilisé dans l'alimentation humaine.

DORS/88-559, art. 34; DORS/90-830, art. 9(F).

**D.02.002 (1)** Est interdite, sur l'étiquette ou dans l'annonce d'un aliment, autre que du sel de table ou d'usage domestique général contenant de l'iodure ajouté, de l'eau ou de la glace préemballées, une préparation pour régime liquide, un fortifiant pour lait humain, un succédané de lait humain ou un aliment présenté comme contenant un succédané de lait humain, toute mention ou allégation relative à sa teneur en un minéral nutritif, à moins que les conditions suivantes ne soient réunies :

**(a)** the mineral nutrient is set out in column 1 of Part 2 of the Table of Daily Values;

**(b)** the percentage of the daily value of the mineral nutrient, per serving of stated size, is 5% or more; and

**(c)** the mineral nutrient content is declared on the label or in the advertisement as a percentage of the daily value, per serving of stated size.

**(1.1)** The condition set out in paragraph (1)(c) need not be met if the statement or claim described in subsection (1) is made on a label of or in any advertisement for a fresh vegetable or fruit or any combination of fresh vegetables or fruits without any added ingredients, an orange with added food colour or a fresh vegetable or fruit coated with mineral oil, paraffin wax, petrolatum or any other protective coating.

**(2)** If a statement or claim described in subsection (1) is made in an advertisement for a food that is not a prepackaged product or in an advertisement for a prepackaged product that is not made or placed by or on the direction of the manufacturer of the product, the percentage of the daily value, per serving of stated size, shall,

**(a)** in the case of an advertisement, other than a radio or television advertisement, be

**(i)** adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once, and

**(ii)** shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once;

**(b)** in the case of a radio advertisement or the audio portion of a television advertisement, immediately precede or follow the statement or claim; or

**(c)** in the case of a television advertisement, be communicated

**(i)** in the audio mode, if the statement or claim is made only in the audio portion of the advertisement or in both the audio and visual portions, or

**(ii)** in the audio or visual mode, if the statement or claim is made only in the visual portion of the advertisement.

**a)** il s'agit d'un minéral nutritif figurant à la colonne 1 de la partie 2 du Tableau des valeurs quotidiennes;

**b)** le pourcentage de la valeur quotidienne pour ce minéral nutritif, par portion indiquée, est de 5 % ou plus;

**c)** la teneur en ce minéral nutritif est indiquée, sur l'étiquette ou dans l'annonce, en pourcentage de la valeur quotidienne, par portion indiquée.

**(1.1)** La condition visée à l'alinéa (1)c) n'a pas à être remplie si la mention ou l'allégation visée au paragraphe (1) est faite sur l'étiquette ou dans l'annonce d'un légume frais, d'un fruit frais ou d'un mélange quelconque de légumes frais ou de fruits frais sans ingrédient ajouté, d'une orange à laquelle un colorant alimentaire a été ajouté et d'un légume frais ou d'un fruit frais enrobé d'huile minérale, de paraffine, de vaseline ou de tout autre enduit protecteur.

**(2)** Si la mention ou l'allégation visée au paragraphe (1) est faite dans l'annonce d'un aliment qui n'est pas un produit préemballé ou dans l'annonce d'un produit préemballé faite par une personne autre que le fabricant du produit ou une personne agissant sous ses ordres, le pourcentage de la valeur quotidienne, par portion indiquée, répond aux critères suivants :

**a)** dans le cas d'une annonce autre qu'une annonce radiophonique ou télévisée :

**(i)** d'une part, il précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence,

**(ii)** d'autre part, il figure en caractères d'une taille au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence;

**b)** dans le cas d'une annonce radiophonique ou de la composante audio d'une annonce télévisée, il précède ou suit immédiatement la mention ou l'allégation;

**c)** dans le cas d'une annonce télévisée, il est communiqué :

**(i)** en mode audio, si la mention ou l'allégation fait partie uniquement de la composante audio de l'annonce ou, à la fois, des composantes audio et visuelle de celle-ci,

**(3)** The percentage of the daily value, per serving of stated size, that is communicated in the visual mode of a television advertisement in accordance with subparagraph (2)(c)(ii) shall

**(a)** appear concurrently with and for at least the same amount of time as the statement or claim;

**(b)** be adjacent to, without any intervening printed, written or graphic material, the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once; and

**(c)** be shown in letters of at least the same size and prominence as those of the statement or claim, if the statement or claim is made only once, or the most prominent statement or claim, if the statement or claim is made more than once.

**(4)** Subsection (1) does not apply to a statement or claim made in respect of the sodium or potassium content.

**(5)** Paragraphs (1)(a) and (c) do not apply in respect of a declaration of the total fluoride ion content as required by sections B.12.002 and B.12.008.

**(6)** Paragraph (1)(b) does not apply in respect of a declaration of the mineral nutrient content in a nutrition facts table or supplemented food facts table.

**(7)** Paragraph (1)(c) does not apply in respect of a declaration of the chromium, copper, manganese, molybdenum and selenium content as required by subparagraph B.24.202(a)(v).

SOR/84-300, s. 60(E); SOR/88-559, s. 34; SOR/90-830, s. 10; SOR/96-259, s. 9; SOR/2003-11, s. 34; SOR/2016-305, ss. 68, 75(F); SOR/2021-57, s. 22; SOR/2022-169, s. 25.

**D.02.003** [Repealed, SOR/2003-11, s. 34]

**D.02.004** No person shall, on the label of or in any advertisement for a food, make any claim concerning the action or effects of a mineral nutrient contained in the food, except to the effect that the mineral nutrient

**(a)** is a factor in the maintenance of good health; and

**(b)** is generally recognized as an aid in maintaining the functions of the body necessary to the maintenance of good health and normal growth and development.

SOR/84-300, s. 61(E); SOR/88-559, s. 34.

**(ii)** en mode audio ou en mode visuel, si la mention ou l'allégation fait partie uniquement de la composante visuelle de l'annonce.

**(3)** Le pourcentage de la valeur quotidienne, par portion indiquée, qui est communiqué en mode visuel dans une annonce télévisée conformément au sous-alinéa (2)c)(ii), à la fois :

**a)** paraît en même temps et pendant au moins la même durée que la mention ou l'allégation;

**b)** précède ou suit, sans qu'aucun texte imprimé ou écrit ni aucun signe graphique ne soit intercalé, la mention ou allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, celle qui est la plus en évidence;

**c)** figure en caractères d'une taille qui est au moins égale et aussi bien en vue que ceux de la mention ou de l'allégation ne paraissant qu'une seule fois ou, si la mention ou l'allégation est répétée, que ceux de celle qui est la plus en évidence.

**(4)** Le paragraphe (1) ne s'applique pas aux mentions et allégations relatives à la teneur en sodium ou en potassium.

**(5)** Les alinéas (1)a) et c) ne s'appliquent pas à l'indication de la teneur totale en ion fluorure exigée par les articles B.12.002 et B.12.008.

**(6)** L'alinéa (1)b) ne s'applique pas à l'indication de la teneur en un minéral nutritif dans tout tableau de la valeur nutritive ou tout tableau des renseignements sur les aliments supplémentés.

**(7)** L'alinéa (1)c) ne s'applique pas à l'indication de la teneur en chrome, en cuivre, en manganèse, en molybdène et en sélénium exigée par le sous-alinéa B.24.202a)(v).

DORS/84-300, art. 60(A); DORS/88-559, art. 34; DORS/90-830, art. 10; DORS/96-259, art. 9; DORS/2003-11, art. 34; DORS/2016-305, art. 68 et 75(F); DORS/2021-57, art. 22; DORS/2022-169, art. 25.

**D.02.003** [Abrogé, DORS/2003-11, art. 34]

**D.02.004** Est interdite sur l'étiquette ou dans les annonces d'un aliment toute allégation concernant l'action ou les effets d'un minéral nutritif que contient l'aliment, sauf celle indiquant que le minéral nutritif :

**a)** contribue au maintien de la santé;

**b)** est généralement reconnu comme aidant à entretenir les fonctions de l'organisme nécessaires au maintien de la santé et à la croissance et au développement normaux.

DORS/84-300, art. 61(A); DORS/88-559, art. 34.

**D.02.005 (1)** If a component of an ingredient of a prepackaged product set out in the table to subsection B.01.009(1) is a mineral nutrient, no person shall, on the label of or in any advertisement for the prepackaged product, make a statement or claim concerning the mineral nutrient as a component of that ingredient unless

**(a)** despite subsection B.01.008.2(6), the mineral nutrient is declared by its common name, and that common name is shown in parentheses immediately after the ingredient in respect of which it is a component, except that if a source of a food allergen or gluten is required by paragraph B.01.010.1(8)(a) to be shown immediately after that ingredient, the common name of the mineral nutrient is instead shown immediately after that source; and

**(b)** all components of the ingredient are declared.

**(2)** Paragraph (1)(b) does not apply to flour used as an ingredient in the manufacture of a prepackaged product referred to in subsection (1).

SOR/88-559, s. 34; SOR/2003-11, s. 35; SOR/2011-28, s. 8; SOR/2016-305, s. 69.

**D.02.006** [Repealed, SOR/2003-11, s. 35]

**D.02.007** [Repealed, SOR/88-559, s. 34]

**D.02.008** No person shall, in advertising a food that is represented as containing a mineral nutrient or on a label of such food,

**(a)** give any assurance or guarantee of any kind with respect to the result that may be, has been or will be obtained by the addition of the mineral nutrient to a person's diet; or

**(b)** refer to, reproduce or quote any testimonial.

**D.02.009 (1)** No person shall sell a food to which any of the following mineral nutrients have been added unless a reasonable daily intake of that food by a person would result in the daily intake by such person of that mineral nutrient in an amount not less than,

**(a)** in the case of calcium, 300 milligrams;

**(b)** in the case of phosphorus, 300 milligrams;

**(c)** in the case of iron, four milligrams; and

**(d)** in the case of iodine, 0.10 milligram.

**D.02.005 (1)** Si un constituant d'un ingrédient de tout produit préemballé mentionné au tableau du paragraphe B.01.009(1) est un minéral nutritif, est interdite, sur l'étiquette ou dans l'annonce de ce produit préemballé, toute mention ou allégation à l'égard du minéral nutritif comme constituant de cet ingrédient, à moins que les conditions suivantes soient réunies :

**a)** malgré le paragraphe B.01.008.2(6), le minéral nutritif est désigné par son nom usuel lequel figure entre parenthèses immédiatement après l'ingrédient dont le minéral nutritif est un constituant; cependant, dans le cas où, en application de l'alinéa B.01.010.1(8)a), une source d'allergène alimentaire ou de gluten doit figurer immédiatement après l'ingrédient, le nom usuel du minéral nutritif doit plutôt figurer immédiatement après cette source;

**b)** tous les constituants de l'ingrédient sont indiqués.

**(2)** L'alinéa (1)b) ne s'applique pas à la farine utilisée comme ingrédient dans la fabrication d'un produit préemballé visé au paragraphe (1).

DORS/88-559, art. 34; DORS/2003-11, art. 35; DORS/2011-28, art. 8; DORS/2016-305, art. 69.

**D.02.006** [Abrogé, DORS/2003-11, art. 35]

**D.02.007** [Abrogé, DORS/88-599, art. 34]

**D.02.008** Il est interdit, dans la publicité faite au sujet d'un aliment présenté comme contenant un minéral nutritif ou sur l'étiquette d'un tel aliment,

**a)** de donner quelque garantie que ce soit quant à l'effet que peut produire, qu'a produit ou que produira l'addition de ce minéral nutritif au régime d'une personne; ou

**b)** de mentionner, reproduire ou citer un témoignage quelconque.

**D.02.009 (1)** Il est interdit de vendre un aliment auquel l'un des minéraux nutritifs ci-après a été ajouté à moins qu'une ration quotidienne normale de cet aliment n'apporte à une personne qui la consomme la quantité ci-après de ce minéral nutritif :

**a)** dans le cas du calcium, au moins 300 milligrammes;

**b)** dans le cas du phosphore, au moins 300 milligrammes;

**c)** dans le cas du fer, au moins quatre milligrammes; et

**d)** dans le cas de l'iode, au moins 0,10 milligramme.

**(2)** Subsection (1) does not apply to a human milk fortifier or a supplemented food.

SOR/2021-57, s. 23; SOR/2022-168, s. 50; SOR/2022-169, s. 26.

**D.02.010 (1)** No person shall sell elemental iron powder for use in foods as a source of iron as a mineral nutrient unless

**(a)** subject to paragraph (b), the powder meets the specifications for

**(i)** Iron, Carbonyl,

**(ii)** Iron, Electrolytic, or

**(iii)** Iron, Reduced,

as set out in the *Food Chemicals Codex, Third Edition, 1981*, published by the National Academy of Sciences of the United States of America; and

**(b)** in the case of Iron, Reduced, 100 per cent by weight of the particles pass through a 100 mesh sieve and at least 95 per cent by weight of the particles pass through a 325 mesh sieve.

**(2)** No person shall sell a food to which elemental iron powder has been added as a source of iron as a mineral nutrient unless the powder meets the requirements referred to in paragraphs (1)(a) and (b).

SOR/84-303, s. 1.

**D.02.011** No person shall sell a food to which sodium iron pyrophosphate has been added as a source of iron as a mineral nutrient unless

**(a)** the bioavailability of the iron in the food is not less than 50 per cent of the bioavailability of ferrous sulphate as determined by official method FO-42, *Determination of Bioavailability of Iron*, December 15, 1982; and

**(b)** that person retains documentary evidence showing that the bioavailability of the iron in the food has been determined by the official method referred to in paragraph (a) and, on request by the Minister, submits such evidence to the Minister.

SOR/84-303, s. 1; SOR/2018-69, s. 27.

**(2)** Le paragraphe (1) ne s'applique pas aux fortifiants pour lait humain et aux aliments supplémentés.

DORS/2021-57, art. 23; DORS/2022-168, art. 50; DORS/2022-169, art. 26.

**D.02.010 (1)** Il est interdit de vendre de la poudre de fer élémentaire pour usage dans les aliments en tant que source du minéral nutritif fer, à moins,

**a)** sous réserve de l'alinéa b), que cette poudre ne soit conforme aux spécifications

**(i)** du carbonyle de fer,

**(ii)** du fer sous forme électrolytique, ou

**(iii)** du fer sous forme réduite

précisées dans le *Food Chemicals Codex*, troisième édition, 1981, publié par le *National Academy of Sciences* des États-Unis; et

**b)** dans le cas du fer sous forme réduite, que 100 pour cent, en poids, des particules de poudre ne parviennent à passer par un tamis de 100 mailles et qu'au moins 95 pour cent, en poids, des particules de poudre ne parviennent à passer par un tamis de 325 mailles.

**(2)** Il est interdit de vendre un aliment auquel a été ajoutée une poudre de fer élémentaire en tant que source du minéral nutritif fer, à moins que cette poudre ne soit conforme aux exigences des alinéas (1)a) et b).

DORS/84-303, art. 1.

**D.02.011** Il est interdit à toute personne de vendre un aliment auquel a été ajouté du pyrophosphate de sodium et de fer en tant que source du minéral nutritif fer, à moins

**a)** que la biodisponibilité du fer dans l'aliment ne soit au moins égale à 50 pour cent de la biodisponibilité du sulfate ferreux, déterminée selon la méthode officielle FO-42, *Détermination de la biodisponibilité du fer*, 15 décembre 1982; et

**b)** que cette personne ne possède une preuve documentaire établissant que la biodisponibilité du fer dans l'aliment a été déterminée selon la méthode visée à l'alinéa a), et ne fournisse cette preuve au ministre s'il en fait la demande.

DORS/84-303, art. 1; DORS/2018-69, art. 27.

# TABLE I

[Repealed, SOR/2016-305, s. 70]

# TABLEAU I

[Abrogé, DORS/2016-305, art. 70]

**TABLE II**

**Weighted Recommended Nutrient Intake**

| Item | Column I<br>Mineral Nutrient | Column II<br>Units | Column III<br>Amount |
|---|---|---|---|
| 1 | Calcium | milligrams | 780 |
| 2 | Iodide | micrograms | 155 |
| 3 | Iron | milligrams | 10 |
| 4 | Phosphorus | milligrams | 885 |
| 5 | Magnesium | milligrams | 210 |
| 6 | Zinc | milligrams | 10 |

**TABLEAU II**

**Apport nutritionnel recommandé pondéré**

| Article | Colonne I<br>Minéral nutritif | Colonne II<br>Unités | Colonne III<br>Quantité |
|---|---|---|---|
| 1 | Calcium | milligrammes | 780 |
| 2 | Iode | microgrammes | 155 |
| 3 | Fer | milligrammes | 10 |
| 4 | Phosphore | milligrammes | 885 |
| 5 | Magnésium | milligrammes | 210 |
| 6 | Zinc | milligrammes | 10 |

SOR/96-259, s. 7.

DORS/96-259, art. 7.

**DIVISION 3**

## Addition of Vitamins, Mineral Nutrients or Amino Acids to Foods

**D.03.001 (1)** In this Division, the expressions ***vitamin*** and ***mineral nutrient*** have the same meaning as in Divisions 1 and 2.

**TITRE 3**

## Addition de vitamines, de minéraux nutritifs ou d'acides aminés aux aliments

**D.03.001 (1)** Dans le présent titre, les expressions ***vitamine*** et ***minéral nutritif*** ont le même sens que dans les titres 1 et 2 respectivement.

**(2)** This Division applies only in respect of foods that are represented as containing a vitamin, mineral nutrient or amino acid for use in human nutrition.

SOR/88-559, s. 35.

**(2)** Le présent titre ne s'applique qu'aux aliments présentés comme contenant une vitamine, un minéral nutritif ou un acide aminé destiné à être utilisé dans l'alimentation humaine.

DORS/88-559, art. 35.

**D.03.002 (1)** Subject to section D.03.003, no person shall sell a food, other than a supplemented food, to which a vitamin, mineral nutrient or amino acid has been added unless the food is listed in Column I of the Table to this section and the vitamin, mineral nutrient or amino acid, as the case may be, is listed opposite that food in Column II.

**D.03.002 (1)** Sous réserve de l'article D.03.003, il est interdit de vendre un aliment — autre qu'un aliment supplémenté — auquel une vitamine, un minéral nutritif ou un acide aminé a été ajouté, à moins que cet aliment ne figure à la colonne I du tableau du présent article et à moins que la vitamine, le minéral nutritif ou l'acide aminé, selon le cas, ne figure dans la colonne II dudit tableau en regard du nom de l'aliment.

**(2)** No milk or milk product or derivative listed in Column I of the Table to this section applies to the lacteal secretion obtained from the mammary gland of any animal other than a cow, genus *Bos*, or a product or derivative of such secretion unless that animal is identified therein.

**(2)** Sauf mention du contraire, le lait ou les produits ou dérivés du lait visés à la colonne I du tableau du présent article proviennent de la vache, genre *Bos*.

**TABLE**

| | Column I | Column II |
|---|---|---|
| | Food | Vitamin, Mineral Nutrient or Amino Acid |
| 1 | Breakfast cereals | Thiamine, niacin, vitamin $B_6$, folic acid, pantothenic acid, magnesium, iron and zinc. |
| 2 | Fruit nectars, vegetable drinks, bases and mixes for vegetable drinks and a mixture of vegetable juices | Vitamin C. |
| 2.1 | Fruit flavoured drinks that meet all the requirements of section B.11.150 | Vitamin C, folic acid, thiamine, iron, potassium. |
| 2.2 | Bases, concentrates and mixes that are used for making fruit flavoured drinks and that meet all the requirements of section B.11.151 | Vitamin C, folic acid, thiamine, iron, potassium. |
| 3 | Infant cereal products | Thiamine, riboflavin, niacin or niacinamide, calcium, phosphorus, iron, iodine. |
| 4 | Margarine and other similar substitutes for butter | Vitamin A, Vitamin D, alpha-tocopherol |
| 5 | Alimentary pastes | Thiamine, riboflavin, niacin or niacinamide, folic acid, pantothenic acid, vitamin $B_6$, iron, magnesium |
| 6 | Human milk fortifiers, infant formulas and formulated liquid diets | Amino acids — alanine, arginine, aspartic acid, cystine, glutamic acid, glycine, histidine, hydroxyproline, isoleucine, leucine, lysine, methionine, phenylalanine, proline, serine, taurine, threonine, tryptophan, tyrosine, valine;<br>Minerals — calcium, chloride, chromium, copper, iodide, iron, magnesium, manganese, molybdenum, phosphorus, potassium, selenium, sodium, zinc;<br>Vitamins — alpha-tocopherol, biotin, choline, d-pantothenic acid, folic acid, niacin, riboflavin, thiamin, vitamin A, vitamin $B_6$, vitamin $B_{12}$, vitamin C, vitamin D, vitamin K. |

| | Column I | Column II |
|---|---|---|
| | Food | Vitamin, Mineral Nutrient or Amino Acid |
| 6.1 | Foods represented for use in a very low energy diet | Vitamins — alpha-tocopherol, biotin, d-pantothenic acid, folic acid, niacin, riboflavin, thiamine, vitamin A, vitamin $B_6$, vitamin $B_{12}$, vitamin C, vitamin D, vitamin K<br>Minerals — calcium, chloride, chromium, copper, iodine, iron, magnesium, manganese, molybdenum, phosphorus, potassium, selenium, sodium, zinc |
| 7 | Flavoured beverage mixes and bases recommended for addition to milk | Vitamin A, thiamine, niacin or niacinamide, vitamin C, iron. |
| 8 | Simulated meat products, simulated poultry meat products, meat product extenders and poultry product extenders | Thiamine, riboflavin, niacin, pyridoxine, d-pantothenic acid, folic acid, vitamin $B_{12}$, iron, magnesium, potassium, zinc, copper, histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan, valine. |
| 9 | Meal replacements and nutritional supplements | Vitamins — alpha-tocopherol, biotin, d-pantothenic acid, folic acid, niacin, riboflavin, thiamine, vitamin A, vitamin $B_6$, vitamin $B_{12}$, vitamin C, vitamin D<br>Minerals — calcium, chloride, chromium, copper, iodine, iron, magnesium, manganese, molybdenum, phosphorus, potassium, selenium, sodium, zinc |
| 9.1 | Ready breakfast, instant breakfast and other similar breakfast replacement foods however described | Vitamin A, thiamine, riboflavin, niacin or niacinamide, vitamin C, iron |
| 10 | Condensed milk, milk, milk powder, sterilized milk, (naming the flavour) milk | Vitamin D. |
| 11 | Skim milk with added milk solids, partly skimmed milk with added milk solids, (naming the flavour) skim milk, (naming the flavour) partly skimmed milk, (naming the flavour) skim milk with added milk solids, (naming the flavour) partly skimmed milk with added milk solids, skim milk, partly skimmed milk, skim milk powder | Vitamin A, vitamin D. |
| 12 | Evaporated milk | Vitamin C, vitamin D. |
| 13 | Evaporated skim milk, concentrated skim milk, evaporated partly skimmed milk, concentrated partly skimmed milk | Vitamin A, vitamin C, vitamin D. |
| 14 | Apple juice, reconstituted apple juice, grape juice, reconstituted grape juice, pineapple juice, reconstituted pineapple juice, apple and (naming the fruit) juice as described in section B.11.132, concentrated fruit juice except frozen concentrated orange juice | Vitamin C. |
| 15 | Flour, White Flour, Enriched Flour or Enriched White Flour | Thiamine, riboflavin, niacin, vitamin $B_6$, folic acid, d-pantothenic acid, calcium, iron, magnesium. |
| 16 | [Repealed, SOR/94-689, s. 2] | |
| 17 | Table salt, table salt substitutes | Iodine. |
| 18 | Dehydrated potatoes | Vitamin C. |
| 19 | Products simulating whole egg | Vitamin A, thiamine, riboflavin, niacin or niacinamide, vitamin $B_6$, d-pantothenic acid, folic acid, vitamin $B_{12}$, alphatocopherol, calcium, iron, zinc, potassium. |
| 20 | [Repealed, SOR/90-830, s. 11] | |
| 21 | Goat's milk, goat's milk powder | Vitamin D |

| | Column I | Column II |
|---|---|---|
| | Food | Vitamin, Mineral Nutrient or Amino Acid |
| 22 | Partly skimmed goat's milk, skimmed goat's milk, partly skimmed goat's milk powder, skimmed goat's milk powder | Vitamins A and D |
| 23 | Evaporated goat's milk | Vitamins C, D, folic acid |
| 24 | Evaporated partly skimmed goat's milk, evaporated skimmed goat's milk | Vitamins A, C, D, folic acid |
| 25 | Pre-cooked rice as defined in subsection B.13.010.1(1) | Thiamine, niacin, vitamin $B_6$, folic acid, pantothenic acid, iron |
| 26 | Mineral water, spring water, water in sealed containers, prepackaged ice | Fluorine |
| 27 | Liquid whole egg, dried whole egg, frozen whole egg, liquid yolk, dried yolk, frozen yolk, liquid egg-white, (liquid albumen), dried egg-white (dried albumen), frozen egg-white (frozen albumen), liquid whole egg mix, dried whole egg mix, frozen whole egg mix, liquid yolk mix, dried yolk mix, frozen yolk mix | Vitamin A, Vitamin D, Vitamin E, thiamine, riboflavin, niacin, vitamin $B_6$, folacin, vitamin $B_{12}$, pantothenic acid, calcium, phosphorus, magnesium, potassium, iron, zinc |

**TABLEAU**

| | Colonne I | Colonne II |
|---|---|---|
| | Aliment | Vitamine, minéral nutritif ou acide aminé |
| 1 | Céréales à déjeuner | Thiamine, niacine vitamine $B_6$, acide folique, acide pantothénique, magnésium, fer et zinc |
| 2 | Nectars de fruits, boissons aux légumes, bases et mélanges pour boissons aux légumes et mélanges de jus de légumes | Vitamine C |
| 2.1 | Boissons à arôme de fruit qui répondent aux exigences de l'article B.11.150 | Vitamines C, acide folique, thiamine, fer, potassium |
| 2.2 | Bases, concentrés et mélanges pour préparer les boissons à arôme de fruit qui répondent aux exigences de l'article B.11.151 | Vitamine C, acide folique, thiamine, fer, potassium |
| 3 | Produits céréaliers pour bébés | Thiamine, riboflavine, niacine ou niacinamide, calcium, phosphore, fer, iode |
| 4 | Margarine et autres succédanés similaires du beurre | Vitamine A, vitamine D, alphatocophérol |
| 5 | Pâtes alimentaires | Thiamine, riboflavine, niacine ou niacinamide, acide folique, acide pantothénique, vitamine $B_6$, fer, magnésium |
| 6 | Fortifiants pour lait humain, préparations pour nourrissons et préparations pour régime liquide | Acides aminés — acide aspartique, acide glutamique, alanine, arginine, cystine, glycine, histidine, hydroxyproline, isoleucine, leucine, lysine, méthionine, phénylalanine, proline, sérine, taurine, thréonine, tryptophane, tyrosine, valine;<br>Minéraux — calcium, chlorure, chrome, cuivre, iode, fer, magnésium, manganèse, molybdène, phosphore, potassium, sélénium, sodium, zinc;<br>Vitamines — acide folique, acide d-pantothénique, alpha-tocophérol, biotine, choline, niacine, riboflavine, thiamine, vitamine A, vitamine $B_6$, vitamine $B_{12}$, vitamine C, vitamine D, vitamine K. |

| | Colonne I | Colonne II |
|---|---|---|
| | Aliment | Vitamine, minéral nutritif ou acide aminé |
| 6.1 | Aliments présentés comme étant conçus pour régimes à très faible teneur en énergie | Vitamines — acide d-pantothénique, acide folique, alpha-tocophérol, biotine, niacine, riboflavine, thiamine, vitamine A, vitamine $B_6$, vitamine $B_{12}$, vitamine C, vitamine D, vitamine K<br>Minéraux — calcium, chlorure, chrome, cuivre, fer, iode, magnésium, manganèse, molybdène, phosphore, potassium, sélénium, sodium, zinc |
| 7 | Mélanges et bases aromatisés qu'il est recommandé d'ajouter au lait | Vitamine A, thiamine, niacine ou niacinamide, vitamine C, fer |
| 8 | Simili-produits de viande, simili-produits de volaille, allongeurs de produits de viande et allongeurs de produits de volaille | Thiamine, riboflavine, niacine, pyridoxine, acide d-pantothénique, acide folique, vitamine $B_{12}$, fer, magnésium, potassium, zinc, cuivre, histidine, isoleucine, leucine, lysine, méthionine, phénylalanine, thréonine, tryptophane, valine. |
| 9 | Substituts de repas et suppléments nutritifs | Vitamines — acide folique, acide d-pantothénique, alpha-tocophérol, biotine, niacine, riboflavine, thiamine, vitamine A, vitamine $B_6$, vitamine $B_{12}$, vitamine C, vitamine D<br>Minéraux — calcium, chlorure, chrome, cuivre, fer, iode, magnésium, manganèse, molybdène, phosphore, potassium, sélénium, sodium, zinc |
| 9.1 | Déjeuner tout prêt, déjeuner instantané et autres aliments semblables de remplacement quelle qu'en soit la description | fer, niacine ou niacinamide, riboflavine, thiamine, vitamine A, vitamine C |
| 10 | Lait condensé, lait, poudre de lait, lait stérilisé, lait (indication de l'arôme) | Vitamine D |
| 11 | Lait écrémé additionné de solides du lait, lait partiellement écrémé additionné de solides du lait, lait écrémé (indication de l'arôme), lait partiellement écrémé (indication de l'arôme), lait écrémé à (indication de l'arôme) additionné de solides de lait, lait partiellement écrémé à (indication de l'arôme) additionné de solides du lait, lait écrémé, lait partiellement écrémé, poudre de lait écrémé | Vitamine A, vitamine D |
| 12 | Lait évaporé | Vitamine C, vitamine D |
| 13 | Lait écrémé évaporé, lait écrémé concentré, lait partiellement écrémé évaporé, lait partiellement écrémé concentré | Vitamine A, vitamine C, vitamine D |
| 14 | Jus de pomme, jus de pomme reconstitué, jus de raisin, jus de raisin reconstitué, jus d'ananas, jus d'ananas reconstitué, jus de pomme et de (nom du fruit) visé à l'article B.11.132, jus de fruit concentré sauf le jus d'orange concentré congelé | Vitamine C |
| 15 | Farine, farine blanche, farine enrichie ou farine blanche enrichie | Thiamine, riboflavine, niacine, vitamine $B_6$, acide folique, acide d-pantothénique, calcium, fer, magnésium |
| 16 | [Abrogé, DORS/94-689, art. 2] | |
| 17 | Sel de table, succédanés du sel de table | Iode |
| 18 | Pommes de terre déshydratées | Vitamine C |
| 19 | Produits imitant l'œuf entier | Vitamine A, thiamine, riboflavine, niacine ou niacinamide, vitamine $B_6$, acide d-pantothénique, acide folique, vitamine $B_{12}$, alphatocophérol, calcium, fer, zinc, potassium |
| 20 | [Abrogé, DORS/90-830, art. 11] | |

| | Colonne I | Colonne II |
|---|---|---|
| | Aliment | Vitamine, minéral nutritif ou acide aminé |
| 21 | Lait de chèvre, lait de chèvre en poudre | vitamine D |
| 22 | Lait de chèvre partiellement écrémé, lait de chèvre écrémé, lait de chèvre partiellement écrémé en poudre, lait de chèvre écrémé en poudre | vitamines A et D |
| 23 | Lait de chèvre concentré | vitamines C, D, acide folique |
| 24 | Lait de chèvre concentré partiellement écrémé, lait de chèvre concentré écrémé | vitamines A, C, D, acide folique |
| 25 | Riz précuit, au sens du paragraphe B.13.010.1(1) | Thiamine, niacine, vitamine $B_6$, acide folique, acide pantothénique, fer |
| 26 | Eau minérale, eau de source, eau en contenants scellés, glace pré-emballée | Fluor |
| 27 | Œuf entier liquide, poudre d'œuf entier, œuf entier congelé, jaune d'œuf liquide, poudre de jaune d'œuf, jaune d'œuf congelé, blanc d'œuf liquide (albumen liquide), poudre de blanc d'œuf (poudre d'albumen), blanc d'œuf congelé (albumen congelé), mélange liquide d'œufs entiers, mélange de poudre d'œufs entiers, mélange congelé d'œufs entiers, mélange liquide de jaunes d'œufs, mélange de poudre de jaunes d'œufs, mélange congelé de jaunes d'œufs | Vitamine A, vitamine D, vitamine E, thiamine, riboflavine, niacine, vitamine $B_6$, folacine, vitamine $B_{12}$, acide pantothénique, calcium, phosphore, magnésium, potassium, fer, zinc |

SOR/78-64, s. 8; SOR/78-403, s. 29; SOR/78-478, s. 3; SOR/78-637, s. 11(E); SOR/78-698, s. 10; SOR/79-6, s. 1; SOR/81-60, s. 14; SOR/83-858, s. 2; SOR/84-300, s. 62; SOR/85-623, s. 4; SOR/86-320, s. 2; SOR/87-640, s. 10; SOR/88-559, s. 36; SOR/89-145, s. 3; SOR/89-198, s. 18; SOR/90-830, s. 11; SOR/94-35, s. 5; SOR/94-689, s. 2; SOR/95-474, s. 6; SOR/96-259, s. 8; SOR/2010-143, s. 39(E); SOR/2021-57, s. 24; SOR/2022-169, s. 27.

DORS/78-64, art. 8; DORS/78-403, art. 29; DORS/78-478, art. 3; DORS/78-637, art. 11(A); DORS/78-698, art. 10; DORS/79-6, art. 1; DORS/81-60, art. 14; DORS/83-858, art. 2; DORS/84-300, art. 62; DORS/85-623, art. 4; DORS/86-320, art. 2; DORS/87-640, art. 10; DORS/88-559, art. 36; DORS/89-145, art. 3; DORS/89-198, art. 18; DORS/90-830, art. 11; DORS/94-35, art. 5; DORS/94-689, art. 2; DORS/95-474, art. 6; DORS/96-259, art. 8; DORS/2010-143, art. 39(A); DORS/2021-57, art. 24; DORS/2022-169, art. 27.

**D.03.003** Section D.03.002 does not apply to a food, other than a supplemented food, if all of the following conditions are met:

**(a)** the food is

**(i)** a gluten-free food referred to in paragraph B.24.003(1)(g), or

**(ii)** represented for a special dietary use referred to in paragraph B.24.003(1)(h) or (i);

**(b)** no standard is prescribed in these Regulations for the food; and

**(c)** the food is not advertised.

SOR/78-64, s. 9; SOR/84-334, s. 2; SOR/90-830, s. 12; SOR/95-444, s. 3; SOR/2022-169, s. 28.

**D.03.003** L'article D.03.002 ne s'applique pas à l'aliment — autre qu'un aliment supplémenté — qui répond aux exigences suivantes :

**a)** l'aliment est :

**(i)** soit un aliment sans gluten visé à l'alinéa B.24.003(1)g),

**(ii)** soit présenté comme étant destiné à un usage diététique spécial visé aux alinéas B.24.003(1)h) ou i);

**b)** il n'y a pas de normes applicables dans ce règlement pour l'aliment;

**c)** l'aliment n'est pas annoncé.

DORS/78-64, art. 9; DORS/84-334, art. 2; DORS/90-830, art. 12; DORS/95-444, art. 3; DORS/2022-169, art. 28.

## DIVISION 4

[Repealed, SOR/2003-196, s. 105]

## TITRE 4

[Abrogé, DORS/2003-196, art. 105]

**DIVISION 5**

## Minerals in Drugs

**D.05.001 to D.05.007** [Repealed, SOR/2003-196, s. 106]

**D.05.008 (1)** Subject to subsection (2), no person shall sell a drug containing fluorine if the largest recommended daily dosage of that drug as shown on the label thereof would, if consumed by a person, result in a daily intake by that person of more than one milligram of fluoride ion.

**(2)** Subsection (1) does not apply to a drug sold by prescription.

SOR/81-196, s. 2.

**D.05.009** Where a drug contains fluorine, both the inner and outer labels of the drug shall carry a cautionary statement that, if the drug is used in an area where the drinking water has a natural fluorine content in excess of 0.7 parts of fluoride ion per million parts of water or is artificially fluoridated, mottling of the tooth enamel of a user of the drug may result.

**D.05.010** [Repealed, SOR/2003-196, s. 107]

**TITRE 5**

## Minéraux dans les drogues

**D.05.001 à D.05.007** [Abrogés, DORS/2003-196, art. 106]

**D.05.008 (1)** Sous réserve du paragraphe (2), il est interdit de vendre une drogue contenant du fluor si la plus forte dose quotidienne recommandée sur l'étiquette résulte en l'ingestion par une personne de plus d'un milligramme d'ion fluor.

**(2)** Le paragraphe (1) ne s'applique pas à une drogue vendue sur ordonnance.

DORS/81-196, art. 2.

**D.05.009** Lorsqu'une drogue contient du fluor, les étiquettes intérieure et extérieure de la drogue doivent porter une mise en garde précisant que, si la drogue est utilisée dans une région où l'eau potable naturelle a une teneur en fluor supérieure à 0,7 partie d'ion fluor par million de parties d'eau ou est fluorurée par des moyens artificiels, il peut s'ensuivre une tacheture de l'émail des dents chez l'usager de la drogue.

**D.05.010** [Abrogé, DORS/2003-196, art. 107]

**PART E**

## Cyclamate Sweeteners

[SOR/2016-74, s. 11]

**E.01.001 (1)** In this Part, ***cyclamate sweetener*** means any of the following substances sold as a sweetener:

**(a)** cyclohexyl sulfamic acid or any of its salts; and

**(b)** any substance containing cyclohexyl sulfamic acid or any of its salts.

**(2)** Part B does not apply to any cyclamate sweetener.

SOR/78-422, s. 4; SOR/2016-74, s. 12.

## Sale

**E.01.002** No person shall sell a cyclamate sweetener that is not labelled as required by this Part.

SOR/78-422, s. 4; SOR/2016-74, s. 13.

**PARTIE E**

## Édulcorants au cyclamate

[DORS/2016-74, art. 11]

**E.01.001 (1)** Dans la présente partie, ***édulcorant au cyclamate*** désigne l'acide cyclohexylsulfamique ou l'un de ses sels, ainsi qu'une substance en contenant, vendus comme édulcorants.

**(2)** La partie B ne s'applique pas aux édulcorants au cyclamate.

DORS/78-422, art. 4; DORS/2016-74, art. 12.

## Vente

**E.01.002** Il est interdit de vendre un édulcorant au cyclamate qui n'est pas étiqueté comme l'exige la présente partie.

DORS/78-422, art. 4; DORS/2016-74, art. 13.

## Advertising

**E.01.003** No person shall, in advertising a cyclamate sweetener to the general public, make any representation other than with respect to the name, price and quantity of the sweetener.

SOR/78-422, s. 4; SOR/2016-74, s. 14.

## Labelling

**E.01.004** Every cyclamate sweetener shall be labelled to state that it should be used only on the advice of a physician.

SOR/78-422, s. 4; SOR/2016-74, s. 15.

**E.01.005** Every cyclamate sweetener shall be labelled to show

**(a)** its energy value expressed, in calories, per teaspoon, drop, tablet or other measure used in the directions for use and per 100 grams or 100 millilitres; and

**(b)** a list of all its ingredients and, in the case of cyclohexyl sulfamic acid or any of its salts or a carbohydrate, its quantity.

SOR/78-422, s. 4; SOR/2016-74, s. 16.

## Publicité

**E.01.003** Dans la publicité destinée au grand public relativement aux édulcorants au cyclamate, seuls le nom, le prix et la quantité de l'édulcorant peuvent être annoncés.

DORS/78-422, art. 4; DORS/2016-74, art. 14.

## Étiquetage

**E.01.004** Tout édulcorant au cyclamate porte, sur l'étiquette, une mise en garde précisant qu'il ne doit être utilisé que sur avis d'un médecin.

DORS/78-422, art. 4; DORS/2016-74, art. 15.

**E.01.005** Tout édulcorant au cyclamate porte sur l'étiquette :

**a)** sa valeur énergétique exprimée en calories par cuillerée à thé, comprimé, goutte ou autre, selon le mode d'emploi, et par 100 grammes ou 100 millilitres;

**b)** la liste de tous ses ingrédients et, le cas échéant, les quantités présentes d'acide cyclohexylsulfamique, de ses sels et de glucides.

DORS/78-422, art. 4; DORS/2016-74, art. 16.

**PART G**

# Controlled Drugs

**DIVISION 1**

## General

### Definitions

**Definitions**

**G.01.001** The following definitions apply in this Part.

***Act*** means the *Controlled Drugs and Substances Act*. (*Loi*)

***advertisement*** includes any representation by any means whatever for the purpose of promoting, directly or indirectly, the sale or other disposal of a controlled drug. (*publicité*)

***competent authority*** means a public authority of a foreign country that is authorized under the laws of the country to approve the importation or exportation of controlled drugs into or from the country. (*autorité compétente*)

**PARTIE G**

# Drogues contrôlées

**TITRE 1**

## Dispositions générales

### Définitions

**Définitions**

**G.01.001** Les définitions qui suivent s'appliquent à la présente partie.

***autorité compétente*** Organisme public d'un pays étranger qui est habilité, au titre des lois du pays, à consentir à l'importation ou à l'exportation de drogues contrôlées. (*competent authority*)

***composé*** Vise notamment les préparations. (*compound*)

***destruction*** S'agissant d'une drogue contrôlée, le fait de l'altérer ou de la dénaturer au point d'en rendre la consommation impossible ou improbable. (*destroy*)

***compound*** includes a preparation. (*composé*)

***controlled drug*** means

**(a)** a controlled substance set out in the schedule to this Part; or

**(b)** in respect of a midwife, nurse practitioner or podiatrist, a controlled substance set out in the schedule to this Part that the midwife, nurse practitioner or podiatrist may prescribe, possess or conduct an activity with, in accordance with sections 3 and 4 of the *New Classes of Practitioners Regulations*. (*drogue contrôlée*)

***designated criminal offence*** means

**(a)** an offence involving the financing of terrorism against any of sections 83.02 to 83.04 of the *Criminal Code*;

**(b)** an offence involving fraud against any of sections 380 to 382 of the *Criminal Code*;

**(c)** the offence of laundering proceeds of crime against section 462.31 of the *Criminal Code*;

**(d)** an offence involving a criminal organization against any of sections 467.11 to 467.13 of the *Criminal Code*; or

**(e)** a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in any of paragraphs (a) to (d). (*infraction désignée en matière criminelle*)

***destroy***, in respect of a controlled drug, means to alter or denature it to such an extent that its consumption is rendered impossible or improbable. (*destruction*)

***hospital*** means a facility that is

**(a)** licensed, approved or designated by a province in accordance with the laws of the province to provide care or treatment to persons or animals suffering from any form of disease or illness; or

**(b)** owned or operated by the Government of Canada or the government of a province and that provides health services. (*hôpital*)

***international obligation*** means an obligation in respect of a controlled drug set out in a convention, treaty or other multilateral or bilateral instrument that Canada has ratified or to which Canada adheres. (*obligation internationale*)

***Directive en matière de sécurité*** La *Directive sur les exigences en matière de sécurité physique pour les substances désignées et les drogues contenant du cannabis*, avec ses modifications successives, publiée par le gouvernement du Canada sur son site Web. (*Security Directive*)

***distributeur autorisé*** Titulaire d'une licence délivrée au titre de l'article G.02.007. (*licensed dealer*)

***drogue contrôlée*** S'entend de l'une des substances suivantes :

**a)** toute substance désignée qui est visée à l'annexe de la présente partie;

**b)** s'agissant d'une sage-femme, d'un infirmier praticien ou d'un podiatre, toute substance désignée qui est visée à l'annexe de la présente partie et que ce praticien peut, au titre des articles 3 et 4 du *Règlement sur les nouvelles catégories de praticiens*, prescrire ou avoir en sa possession ou relativement à laquelle il peut, au titre de ces articles, se livrer à toute autre opération. (*controlled drug*)

***emballage*** Vise notamment toute chose dans laquelle une drogue contrôlée est, en tout ou en partie, contenue, placée ou empaquetée. (*package*)

***étiquette*** S'entend au sens de l'article 2 de la *Loi sur les aliments et drogues*. (*label*)

***hôpital*** L'établissement, selon le cas :

**a)** qui peut, au titre d'une licence, d'une autorisation ou d'une désignation délivrée par une province sous le régime de ses lois, fournir des soins ou des traitements aux personnes ou aux animaux atteints d'une maladie ou d'une affection;

**b)** qui fournit des services de santé et qui soit appartient au gouvernement du Canada ou au gouvernement d'une province, soit est exploité par lui. (*hospital*)

***infirmier praticien*** S'entend au sens de l'article 1 du *Règlement sur les nouvelles catégories de praticiens*. (*nurse practitioner*)

***infraction désignée en matière criminelle*** S'entend des infractions suivantes :

**a)** infraction relative au financement du terrorisme visée aux articles 83.02 à 83.04 du *Code criminel*;

**b)** infraction de fraude visée à l'un des articles 380 à 382 du *Code criminel*;

***label*** has the same meaning as in section 2 of the *Food and Drugs Act*. (*étiquette*)

***licensed dealer*** means the holder of a licence issued under section G.02.007. (*distributeur autorisé*)

***midwife*** has the same meaning as in section 1 of the *New Classes of Practitioners Regulations*. (*sage-femme*)

***nurse practitioner*** has the same meaning as in section 1 of the *New Classes of Practitioners Regulations*. (*infirmier praticien*)

***package*** includes anything in which a controlled drug is wholly or partly contained, placed or packed. (*emballage*)

***pharmacist*** means a person who is entitled under the laws of a province to practise pharmacy and who is practising pharmacy in that province. (*pharmacien*)

***podiatrist*** has the same meaning as in section 1 of the *New Classes of Practitioners Regulations*. (*podiatre*)

***preparation*** means a drug that contains a controlled drug and an active medicinal ingredient in a recognized therapeutic dose, other than a controlled drug. (*préparation*)

***prescription*** means an authorization given by a practitioner that a stated amount of a controlled drug be dispensed for the person named in it or the animal identified in it (*ordonnance*)

***qualified person in charge*** means the individual designated under subsection G.02.004(1). (*responsable qualifié*)

***Security Directive*** means the *Directive on Physical Security Requirements for Controlled Substances and Drugs Containing Cannabis*, as amended from time to time and published by the Government of Canada on its website. (*Directive en matière de sécurité*)

***senior person in charge*** means the individual designated under section G.02.003. (*responsable principal*)

***test kit*** means a kit

**(a)** that contains a controlled drug and a reagent system or buffering agent;

**(b)** that is used during the course of a chemical or analytical procedure to test for the presence or quantity of a controlled drug for a medical, laboratory,

**c)** infraction de recyclage des produits de la criminalité visée à l'article 462.31 du *Code criminel*;

**d)** infraction relative à une organisation criminelle visée à l'un des articles 467.11 à 467.13 du *Code criminel*;

**e)** tentative ou complot en vue de commettre une infraction visée aux alinéas a) à d), complicité après le fait à son égard ou fait de conseiller de la commettre. (*designated criminal offence*)

***Loi*** La *Loi réglementant certaines drogues et autres substances*. (*Act*)

***nécessaire d'essai*** Nécessaire qui a les caractéristiques suivantes :

**a)** il contient d'une part une drogue contrôlée et d'autre part un réactif ou une substance tampon;

**b)** il est utilisé dans un processus chimique ou analytique de dépistage ou de quantification d'une drogue contrôlée à des fins médicales, industrielles, éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi;

**c)** son contenu n'est pas destiné à être consommé par une personne ou un animal, ni à leur être administré, et il n'est pas susceptible de l'être. (*test kit*)

***obligation internationale*** Toute obligation relative à une drogue contrôlée prévue par une convention, un traité ou un autre instrument multilatéral ou bilatéral que le Canada a ratifié ou auquel il adhère. (*international obligation*)

***ordonnance*** À l'égard d'une drogue contrôlée, l'autorisation d'un praticien d'en dispenser une quantité déterminée pour la personne qui y est nommée ou pour l'animal qui y est identifié. (*prescription*)

***pharmacien*** Personne qui est autorisée en vertu des lois d'une province à exercer la profession de pharmacien et qui l'y exerce. (*pharmacist*)

***podiatre*** S'entend au sens de l'article 1 du *Règlement sur les nouvelles catégories de praticiens*. (*podiatrist*)

***préparation*** Drogue qui contient d'une part une drogue contrôlée et d'autre part un ingrédient actif de nature médicinale en dose thérapeutique reconnue qui n'est pas une drogue contrôlée. (*preparation*)

industrial, educational, law administration or enforcement, or research purpose; and

**(c)** the contents of which are not intended or likely to be consumed by, or administered to, a person or an animal. (*nécessaire d'essai*)

SOR/78-220, s. 1; SOR/85-550, s. 1; SOR/86-91, s. 1; SOR/90-261, s. 1(F); SOR/92-386, s. 1; SOR/97-228, s. 7; SOR/97-515, s. 2; SOR/2003-135, s. 2; SOR/2004-238, s. 1; SOR/2012-230, s. 6; SOR/2018-147, s. 29; SOR/2019-171, s. 1.

***publicité*** S'entend notamment de la présentation, par tout moyen, d'une drogue contrôlée en vue d'en promouvoir directement ou indirectement la disposition, notamment par vente. (*advertisement*)

***responsable principal*** L'individu désigné en application de l'article G.02.003. (*senior person in charge*)

***responsable qualifié*** L'individu désigné en application du paragraphe G.02.004(1). (*qualified person in charge*)

***sage-femme*** S'entend au sens de l'article 1 du *Règlement sur les nouvelles catégories de praticiens*. (*midwife*)

DORS/78-220, art. 1; DORS/85-550, art. 1; DORS/86-91, art. 1; DORS/90-261, art. 1(F); DORS/92-386, art. 1; DORS/97-228, art. 7; DORS/97-515, art. 2; DORS/2003-135, art. 2; DORS/2004-238, art. 1; DORS/2012-230, art. 6; DORS/2018-147, art. 29; DORS/2019-171, art. 1.

## Application

### Agricultural implants

**G.01.002 (1)** The Act and this Part do not apply in respect of a controlled drug that is contained in an agricultural implant and set out in Part III of the schedule to this Part, but nothing in this section exempts such a drug from the requirements of Part C.

### Definition of *agricultural implant*

**(2)** In this section, ***agricultural implant*** means a product that is presented in a form suitable to allow sustained release of an active ingredient over a certain period of time and that is intended for insertion under the skin of a food-producing animal for the purpose of increasing weight gain and improving feed efficiency.

SOR/97-515, s. 3; SOR/99-125, s. 1; SOR/2003-34, s. 1; SOR/2003-413, s. 1; SOR/2018-69, ss. 67, 68; SOR/2019-171, s. 1.

**G.01.002.1** [Repealed, SOR/2019-171, s. 1]

### Member of police force

**G.01.003** A member of a police force or a person acting under their direction and control who, in respect of the conduct of the member or person, is exempt from the application of subsection 4(2) or section 5, 6 or 7 of the Act by virtue of the *Controlled Drugs and Substances Act (Police Enforcement) Regulations* is, in respect of that conduct, exempt from the application of this Part.

SOR/80-543, s. 11; SOR/2004-238, s. 2(F); SOR/2019-171, s. 1.

## Application

### Implants agricoles

**G.01.002 (1)** La Loi et la présente partie ne s'appliquent pas aux drogues contrôlées contenues dans des implants agricoles et mentionnées à la partie III de l'annexe de la présente partie. Le présent article n'a toutefois pas pour effet d'exempter ces drogues de l'application de la partie C.

### Définition de *implant agricole*

**(2)** Dans le présent article, ***implant agricole*** s'entend d'un produit qui est présenté sous une forme permettant la libération prolongée d'un ingrédient actif dans un délai donné et qui est destiné à être inséré sous la peau d'un animal producteur de denrées alimentaires aux fins de l'accroissement du gain pondéral et de l'indice de consommation.

DORS/97-515, art. 3; DORS/99-125, art. 1; DORS/2003-34, art. 1; DORS/2003-413, art. 1; DORS/2018-69, art. 67 et 68; DORS/2019-171, art. 1.

**G.01.002.1** [Abrogé, DORS/2019-171, art. 1]

### Membre d'un corps policier

**G.01.003** Le membre d'un corps policier ou la personne agissant sous son autorité et sa supervision qui, à l'égard de l'une de ses activités, est soustrait à l'application du paragraphe 4(2) ou des articles 5, 6, ou 7 de la Loi en vertu du *Règlement sur l'exécution policière de la Loi réglementant certaines drogues et autres substances* est, à l'égard de cette activité, soustrait à l'application de la présente partie.

DORS/80-543, art. 11; DORS/2004-238, art. 2(F); DORS/2019-171, art. 1.

### Application of Parts C and D

**G.01.004** Except as otherwise provided in this Part, it is prohibited to sell or provide a controlled drug or a preparation that does not comply with all provisions of Parts C and D that are applicable to it.

SOR/92-386, s. 2; SOR/97-228, s. 8; SOR/2019-171, s. 1.

## Possession

### Authorized persons

**G.01.005 (1)** A person is authorized to possess a controlled drug set out in any of items 1 to 3, 8 to 10, 12 to 14, 16 and 17 of Part I of the schedule to this Part if the person has obtained the controlled drug in accordance with these Regulations, in the course of activities conducted in connection with the administration or enforcement of an Act or regulation, or from a person who is exempt under section 56 of the Act from the application of subsection 5(1) of the Act with respect to that controlled drug, and the person

**(a)** requires the controlled drug for their business or profession and is

**(i)** a licensed dealer,

**(ii)** a pharmacist, or

**(iii)** a practitioner who is registered and entitled to practise in the province in which they possess that drug;

**(b)** is a practitioner who is registered and entitled to practise in a province other than the province in which they have that possession for emergency medical purposes only;

**(c)** is a hospital employee or a practitioner in a hospital;

**(d)** has obtained the controlled drug for their own use

**(i)** from a practitioner, or

**(ii)** in accordance with a prescription that was not issued or obtained in contravention of these Regulations;

**(e)** is a practitioner of medicine who received the controlled drug under subsection G.06.003(1) or (2) and their possession is for the purpose of providing or delivering it to a person referred to in subsection G.06.003(3);

### Application des parties C et D

**G.01.004** Sauf disposition contraire de la présente partie, il est interdit de vendre ou de fournir une drogue contrôlée ou une préparation qui n'est pas conforme à toutes les dispositions des parties C et D qui s'y appliquent.

DORS/92-386, art. 2; DORS/97-228, art. 8; DORS/2019-171, art. 1.

## Possession

### Personnes autorisées

**G.01.005 (1)** Toute personne est autorisée à avoir en sa possession une drogue contrôlée mentionnée à l'un des articles 1 à 3, 8 à 10, 12 à 14, 16 et 17 de la partie I de l'annexe de la présente partie si elle l'obtient soit en vertu du présent règlement, soit lors d'une activité se rapportant à l'application ou à l'exécution d'une loi ou d'un règlement, soit d'une personne bénéficiant d'une exemption accordée en vertu de l'article 56 de la Loi relativement à l'application du paragraphe 5(1) de la Loi à cette drogue, et si elle remplit l'une des conditions suivantes :

**a)** elle a besoin de la drogue contrôlée pour son entreprise ou sa profession et est :

**(i)** soit un distributeur autorisé,

**(ii)** soit un pharmacien,

**(iii)** soit un praticien inscrit et autorisé à exercer dans la province où il a la drogue en sa possession;

**b)** elle est un praticien inscrit et autorisé à exercer dans une province autre que la province où elle a la drogue contrôlée en sa possession seulement pour des urgences médicales;

**c)** elle est un employé d'un hôpital ou un praticien y exerçant;

**d)** elle obtient la drogue contrôlée pour son utilisation personnelle de l'une des façons suivantes :

**(i)** d'un praticien,

**(ii)** en vertu d'une ordonnance qui n'a pas été faite ou obtenue en contravention du présent règlement;

**e)** elle est un médecin qui a reçu la drogue contrôlée au titre des paragraphes G.06.003(1) ou (2) et qui l'a en sa possession pour la fournir ou la livrer à l'une des personnes visées au paragraphe G.06.003(3);

**f)** elle est un mandataire d'un médecin qui a reçu la drogue contrôlée au titre du paragraphe G.06.003(1) et

**(f)** is an agent or mandatary of a practitioner of medicine who received the controlled drug under subsection G.06.003(1) and their possession is for the purpose of providing or delivering it to a person referred to in subsection G.06.003(2);

**(g)** is employed as an inspector, a member of the Royal Canadian Mounted Police, a police constable, a peace officer or a member of the technical or scientific staff of the Government of Canada, the government of a province or a university in Canada and their possession is in connection with that employment;

**(h)** is not a practitioner of medicine referred to in paragraph (e) or an agent or mandatary referred to in paragraph (f), is exempted under section 56 of the Act with respect to possession of that controlled drug and their possession is for a purpose set out in the exemption; or

**(i)** is the Minister.

**Agent or mandatary**

**(2)** A person is authorized to possess a controlled drug referred to in subsection (1) if the person is acting as the agent or mandatary of any person who is authorized to possess it in accordance with any of paragraphs (1)(a) to (e), (h) and (i).

**Agent or mandatary — person referred to in paragraph (1)(g)**

**(3)** A person is authorized to possess a controlled drug referred to in subsection (1) if they

**(a)** are acting as the agent or mandatary of a person who they have reasonable grounds to believe is a person referred to in paragraph (1)(g); and

**(b)** possess the controlled drug for the purpose of assisting that person in the administration or enforcement of an Act or a regulation.

SOR/2019-171, s. 1.

## Test Kits

**Authorized activities**

**G.01.006** A person may sell, possess or otherwise deal in a test kit if the following conditions are met:

**(a)** a registration number has been issued for the test kit under section G.01.008 and has not been cancelled under section G.01.009;

**(b)** the test kit bears, on its external surface,

qui l'a en sa possession pour la fournir ou la livrer à l'une des personnes visées au paragraphe G.06.003(2);

**g)** elle est employée à titre d'inspecteur, de membre de la Gendarmerie royale du Canada, d'agent de police, d'agent de la paix ou de membre du personnel technique ou scientifique du gouvernement du Canada, du gouvernement d'une province ou d'une université au Canada et elle a la drogue contrôlée en sa possession dans le cadre de ses fonctions;

**h)** elle n'est pas un médecin visé à l'alinéa e) ni un mandataire visé à l'alinéa f), elle bénéficie d'une exemption relative à la possession de la drogue contrôlée et accordée en vertu de l'article 56 de la Loi et elle en a la possession aux fins énoncées dans l'exemption;

**i)** elle est le ministre.

**Mandataires**

**(2)** Toute personne est autorisée à avoir une drogue contrôlée visée au paragraphe (1) en sa possession si elle agit comme mandataire d'une personne autorisée à en avoir la possession au titre de l'un des alinéas (1)a) à e), h) et i).

**Mandataires — personne visée à l'alinéa (1)g)**

**(3)** Toute personne est autorisée à avoir une drogue contrôlée visée au paragraphe (1) en sa possession si les conditions ci-après sont réunies :

**a)** elle agit comme mandataire d'une personne dont elle a des motifs raisonnables de croire que celle-ci est une personne visée à l'alinéa (1)g);

**b)** la possession de la drogue contrôlée a pour but d'aider la personne dont elle est mandataire dans l'application ou l'exécution d'une loi ou d'un règlement.

DORS/2019-171, art. 1.

## Nécessaires d'essai

**Opérations autorisées**

**G.01.006** Toute personne peut vendre un nécessaire d'essai, en avoir un en sa possession ou effectuer toute autre opération relative à celui-ci si les conditions ci-après sont remplies :

**a)** un numéro d'enregistrement a été attribué au nécessaire d'essai au titre de l'article G.01.008 et n'a pas été annulé en application de l'article G.01.009;

**(i)** the name of the manufacturer,

**(ii)** the trade name or trademark, and

**(iii)** the registration number; and

**(c)** the test kit will be used for a medical, laboratory, industrial, educational, law administration or enforcement, or research purpose.

SOR/2019-171, s. 1.

**b)** le nécessaire d'essai porte, sur sa surface extérieure, les renseignements suivants :

**(i)** le nom du fabricant,

**(ii)** le nom commercial ou la marque de commerce,

**(iii)** le numéro d'enregistrement;

**c)** le nécessaire d'essai sera utilisé à des fins médicales, industrielles ou éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi.

DORS/2019-171, art. 1.

### Application for registration number

**G.01.007 (1)** The manufacturer of a test kit may obtain a registration number for it by submitting to the Minister an application containing

**(a)** a detailed description of the design and construction of the test kit;

**(b)** a detailed description of the controlled drug and other substances, if any, contained in the test kit, including the qualitative and quantitative composition of each component; and

**(c)** a description of the proposed use of the test kit.

### Numéro d'enregistrement — demande

**G.01.007 (1)** Le fabricant d'un nécessaire d'essai peut obtenir un numéro d'enregistrement en présentant au ministre une demande qui contient les renseignements suivants :

**a)** une description détaillée de la conception et de la fabrication du nécessaire d'essai;

**b)** une description détaillée de la drogue contrôlée et, le cas échéant, des autres substances que contient le nécessaire d'essai, ainsi que la description qualitative et quantitative de chacun des composants;

**c)** une description de l'utilisation à laquelle est destiné le nécessaire d'essai.

### Signature and attestation

**(2)** The application must

**(a)** be signed and dated by the person authorized by the applicant for that purpose; and

**(b)** include an attestation by that person that all of the information submitted in support of the application is correct and complete to the best of their knowledge.

### Signature et attestation

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par la personne autorisée à cette fin par le demandeur;

**b)** elle comprend une attestation de celle-ci portant qu'à sa connaissance, tous les renseignements fournis à l'appui de la demande sont exacts et complets.

### Additional information or document

**(3)** The applicant must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 1.

### Renseignements et documents complémentaires

**(3)** Le demandeur fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande du numéro d'enregistrement.

DORS/2019-171, art. 1.

### Issuance of registration number

**G.01.008** On completion of the review of the application for a registration number, the Minister must issue a registration number for the test kit, preceded by the letters "TK", if the Minister determines that the test kit will only be used for a medical, laboratory, industrial,

### Numéro d'enregistrement — attribution

**G.01.008** Le ministre, au terme de l'examen de la demande de numéro d'enregistrement, attribue un numéro d'enregistrement précédé des lettres « TK » au nécessaire d'essai s'il établit que ce dernier satisfait à l'une des exigences ci-après et sera utilisé seulement à des fins

educational, law administration or enforcement, or research purpose and that it contains

**(a)** a controlled drug and an adulterating or denaturing agent that are combined in such a manner and in such a quantity, proportion or concentration that the preparation or mixture has no significant drug abuse potential; or

**(b)** such small quantities or concentrations of any controlled drug as to have no significant drug abuse potential.

SOR/2019-171, s. 1.

médicales, industrielles ou éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi :

**a)** il contient une drogue contrôlée et un agent d'adultération ou un dénaturant, mélangés de telle manière et en quantités, proportions ou concentrations telles que la préparation ou le mélange ne présente pas un risque notable de toxicomanie;

**b)** il contient des quantités ou des concentrations d'une drogue contrôlée si infimes qu'il ne présente pas un risque notable de toxicomanie.

DORS/2019-171, art. 1.

#### Cancellation of registration number

**G.01.009** The Minister must cancel the registration number for a test kit if

**(a)** the test kit is removed from the market by the manufacturer;

**(b)** the Minister has reasonable grounds to believe that the test kit is used or is likely to be used for any purpose other than a medical, laboratory, industrial, educational, law administration or enforcement, or research purpose; or

**(c)** the Minister has reasonable grounds to believe that the cancellation is necessary to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use.

SOR/2019-171, s. 1.

#### Numéro d'enregistrement — annulation

**G.01.009** Le ministre annule le numéro d'enregistrement d'un nécessaire d'essai dans les cas suivants :

**a)** le fabricant retire le nécessaire d'essai du marché;

**b)** le ministre a des motifs raisonnables de croire que le nécessaire d'essai n'est pas utilisé à des fins médicales, industrielles ou éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi, ou qu'il est susceptible de ne pas l'être;

**c)** le ministre a des motifs raisonnables de croire que l'annulation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites.

DORS/2019-171, art. 1.

**G.01.010** [Repealed, SOR/2019-171, s. 1]

**G.01.010** [Abrogé, DORS/2019-171, art. 1]

## DIVISION 2

# Licensed Dealers

## Authorized Activities

#### General

**G.02.001 (1)** A licensed dealer may produce, assemble, sell, provide, transport, send, deliver, import or export a controlled drug if they comply with this Part and the terms and conditions of their dealer's licence and any permit issued under this Part.

#### Qualified person in charge present

**(2)** A licensed dealer may conduct an activity in relation to a controlled drug at their site only if the qualified

## TITRE 2

# Distributeurs autorisés

## Opérations autorisées

#### Général

**G.02.001 (1)** Le distributeur autorisé peut produire, assembler, vendre, fournir, transporter, expédier, livrer, importer ou exporter une drogue contrôlée s'il se conforme à la présente partie ainsi qu'aux conditions de sa licence de distributeur autorisé et de tout permis délivré en vertu de la présente partie.

#### Présence d'un responsable qualifié

**(2)** Le distributeur autorisé ne peut effectuer à son installation une opération relative à une drogue contrôlée

person in charge or an alternate qualified person in charge is present at the site.

**Permit — import and export**

**(3)** A licensed dealer must obtain a permit to import or export a controlled drug.

**Possession for export**

**(4)** A licensed dealer may possess a controlled drug for the purpose of exporting it if they have obtained it in accordance with this Part.

SOR/2004-238, s. 3; SOR/2019-171, s. 1.

**G.02.001.1** [Repealed, SOR/2019-171, s. 1]

**G.02.001.2** [Repealed, SOR/2019-171, s. 1]

## Dealer's Licences

### Preliminary Requirements

**Eligible persons**

**G.02.002** The following persons may apply for a dealer's licence:

**(a)** an individual who ordinarily resides in Canada;

**(b)** a corporation that has its head office in Canada or operates a branch office in Canada; or

**(c)** the holder of a position that includes responsibility for controlled drugs on behalf of the Government of Canada, the government of a province, a police force, a hospital or a university in Canada.

SOR/2019-171, s. 1.

**G.02.002.1** [Repealed, SOR/2019-171, s. 1]

**Senior person in charge**

**G.02.003** An applicant for a dealer's licence must designate only one individual as the senior person in charge, who has overall responsibility for management of the activities with respect to controlled drugs that are specified in the licence application. The applicant may designate themself if the applicant is an individual.

SOR/2004-238, s. 4; SOR/2010-222, s. 2; SOR/2012-230, s. 8; SOR/2014-260, ss. 1, 16(F); SOR/2019-171, s. 1.

**G.02.003.1** [Repealed, SOR/2019-171, s. 1]

**G.02.003.2** [Repealed, SOR/2019-171, s. 1]

**G.02.003.3** [Repealed, SOR/2019-171, s. 1]

**G.02.003.4** [Repealed, SOR/2019-171, s. 1]

que si le responsable qualifié ou un responsable qualifié suppléant est présent à l'installation.

**Permis — importation et exportation**

**(3)** Le distributeur autorisé est tenu d'obtenir un permis pour importer ou exporter une drogue contrôlée.

**Possession à des fins d'exportation**

**(4)** Le distributeur autorisé peut avoir en sa possession une drogue contrôlée en vue de son exportation s'il l'a obtenue conformément à la présente partie.

DORS/2004-238, art. 3; DORS/2019-171, art. 1.

**G.02.001.1** [Abrogé, DORS/2019-171, art. 1]

**G.02.001.2** [Abrogé, DORS/2019-171, art. 1]

## Licences de distributeur autorisé

### Exigences préalables

**Personnes admissibles**

**G.02.002** Les personnes ci-après peuvent demander une licence de distributeur autorisé :

**a)** l'individu qui réside de façon habituelle au Canada;

**b)** la personne morale qui a son siège social au Canada ou qui y exploite une succursale;

**c)** le titulaire d'un poste qui est responsable des questions relatives aux drogues contrôlées pour le compte du gouvernement du Canada ou d'un gouvernement provincial, d'un service de police, d'un hôpital ou d'une université au Canada.

DORS/2019-171, art. 1.

**G.02.002.1** [Abrogé, DORS/2019-171, art. 1]

**Responsable principal**

**G.02.003** La personne qui demande une licence de distributeur autorisé désigne un seul individu à titre de responsable principal, le demandeur pouvant se désigner lui-même s'il est un individu, qui est responsable de la gestion de l'ensemble des opérations relatives aux drogues contrôlées précisées dans la demande de licence.

DORS/2004-238, art. 4; DORS/2010-222, art. 2; DORS/2012-230, art. 8; DORS/2014-260, art. 1 et 16(F); DORS/2019-171, art. 1.

**G.02.003.1** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.2** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.3** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.4** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.5** [Repealed, SOR/2019-171, s. 1]

**G.02.003.6** [Repealed, SOR/2019-171, s. 1]

**G.02.003.7** [Repealed, SOR/2019-171, s. 1]

**G.02.003.8** [Repealed, SOR/2019-171, s. 1]

**G.02.003.9** [Repealed, SOR/2019-171, s. 1]

**G.02.003.91** [Repealed, SOR/2019-171, s. 1]

**G.02.003.5** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.6** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.7** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.8** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.9** [Abrogé, DORS/2019-171, art. 1]

**G.02.003.91** [Abrogé, DORS/2019-171, art. 1]

### Qualified person in charge

**G.02.004 (1)** An applicant for a dealer's licence must designate only one individual as the qualified person in charge, who is responsible for supervising the activities with respect to controlled drugs that are specified in the licence application and for ensuring that those activities comply with this Part. The applicant may designate themself if the applicant is an individual.

### Alternate qualified person in charge

**(2)** An applicant for a dealer's licence may designate an individual as an alternate qualified person in charge, who is authorized to replace the qualified person in charge when that person is absent. The applicant may designate themself if the applicant is an individual.

### Qualifications

**(3)** Only an individual who meets the following requirements may be designated as a qualified person in charge or an alternate qualified person in charge:

**(a)** they work at the site specified in the dealer's licence;

**(b)** they

**(i)** are a person entitled or, if applicable, registered and entitled by a provincial professional licensing authority or a professional association in Canada and entitled to practise a profession that is relevant to their duties, such as pharmacist, practitioner, pharmacy technician or laboratory technician,

**(ii)** hold a diploma, certificate or credential awarded by a post-secondary educational institution in Canada in a field or occupation that is relevant to their duties, such as pharmacy, medicine, dentistry, veterinary medicine, pharmacology, chemistry, biology, pharmacy technician, laboratory technician, pharmaceutical regulatory affairs or supply chain management or security, or

**(iii)** hold a diploma, certificate or credential that is awarded by a foreign educational institution in a

### Responsable qualifié

**G.02.004 (1)** La personne qui demande une licence de distributeur autorisé désigne un seul individu à titre de responsable qualifié, le demandeur pouvant se désigner lui-même s'il est un individu, qui est à la fois responsable de superviser les opérations relatives aux drogues contrôlées précisées dans la demande de licence et de veiller à la conformité de ces opérations avec la présente partie.

### Responsable qualifié suppléant

**(2)** La personne qui demande une licence de distributeur autorisé peut désigner un individu à titre de responsable qualifié suppléant, le demandeur pouvant se désigner lui-même s'il est un individu, qui est autorisé à remplacer le responsable qualifié lorsque celui-ci est absent.

### Qualifications

**(3)** Seul l'individu qui satisfait aux exigences ci-après peut être désigné à titre de responsable qualifié ou de responsable qualifié suppléant :

**a)** il travaille à l'installation précisée dans la licence de distributeur autorisé;

**b)** il est :

**(i)** soit une personne autorisée ou, le cas échéant, inscrite et autorisée, par une autorité provinciale attributive de licences en matière d'activités professionnelles ou par une association professionnelle au Canada, à exercer sa profession dans un domaine lié à ses fonctions, notamment celle de pharmacien, de praticien, de technicien en pharmacie ou de technicien de laboratoire,

**(ii)** soit titulaire d'un diplôme, d'un certificat ou d'une attestation décerné par un établissement d'enseignement postsecondaire au Canada dans un domaine qui est lié à ses fonctions, notamment la pharmacie, la médecine, la dentisterie, la médecine vétérinaire, la pharmacologie, la chimie, la biologie, la réglementation pharmaceutique, la sécurité ou la

field or occupation referred to in subparagraph (ii) and hold

**(A)** an *equivalency assessment* as defined in subsection 73(1) of the *Immigration and Refugee Protection Regulations*, or

**(B)** an equivalency assessment issued by an organization or institution that is responsible for issuing equivalency assessments and is recognized by a province;

**(c)** they have sufficient knowledge of and experience with the use and handling of the controlled drugs specified in the dealer's licence to properly carry out their duties; and

**(d)** they have sufficient knowledge of the provisions of the Act and this Part that are applicable to the activities specified in the dealer's licence to properly carry out their duties.

gestion des chaînes d'approvisionnement, les techniques en pharmacie ou les techniques de laboratoire,

**(iii)** soit titulaire d'un diplôme, d'un certificat ou d'une attestation décerné par un établissement d'enseignement étranger dans l'un des domaines visés au sous-alinéa (ii) et titulaire de l'une des attestations suivantes :

**(A)** une *attestation d'équivalence*, au sens du paragraphe 73(1) du *Règlement sur l'immigration et la protection des réfugiés*,

**(B)** une attestation d'équivalence délivrée par une institution ou une organisation chargée de faire de telles attestations et reconnue par une province;

**c)** il possède des connaissances et une expérience relatives à l'utilisation et à la manutention des drogues contrôlées précisées dans la licence de distributeur autorisé qui sont suffisantes pour lui permettre de bien exercer ses fonctions;

**d)** il possède une connaissance suffisante des dispositions de la Loi et de la présente partie s'appliquant aux opérations précisées dans la licence de distributeur autorisé pour lui permettre de bien exercer ses fonctions.

**Exception**

**(4)** An applicant for a dealer's licence may designate an individual who does not meet any of the requirements of paragraph (3)(b) as a qualified person in charge or an alternate qualified person in charge if

**(a)** no other individual working at the site meets those requirements;

**(b)** those requirements are not necessary for the activities specified in the licence; and

**(c)** the individual has sufficient knowledge — acquired from a combination of education, training or work experience — to properly carry out their duties.

SOR/2004-238, s. 4; SOR/2019-171, s. 1.

**Exception**

**(4)** La personne qui demande une licence de distributeur autorisé peut désigner à titre de responsable qualifié ou de responsable qualifié suppléant un individu qui ne satisfait à aucune des exigences prévues à l'alinéa (3)b) si les conditions ci-après sont réunies :

**a)** aucun autre individu travaillant à l'installation ne satisfait à l'une de ces exigences;

**b)** ces exigences ne sont pas nécessaires pour effectuer les opérations précisées dans la licence;

**c)** l'individu possède des connaissances suffisantes acquises par la combinaison de ses études, de sa formation ou de son expérience de travail pour lui permettre de bien exercer ses fonctions.

DORS/2004-238, art. 4; DORS/2019-171, art. 1.

**Ineligibility**

**G.02.005** An individual is not eligible to be a senior person in charge, a qualified person in charge or an alternate qualified person in charge if, during the 10 years before the day on which the dealer's licence application is submitted,

**Inadmissibilité**

**G.02.005** Ne peut être désigné à titre de responsable principal, de responsable qualifié ou de responsable qualifié suppléant l'individu qui, dans les dix années précédant la date de présentation de la demande de licence de distributeur autorisé :

**(a)** in respect of a designated substance offence or a designated criminal offence or a *designated offence* as defined in subsection 2(1) of the *Cannabis Act*, the individual

**(i)** was convicted as an adult, or

**(ii)** was a *young person* who received an *adult sentence*, as those terms are defined in subsection 2(1) of the *Youth Criminal Justice Act*; or

**(b)** in respect of an offence committed outside Canada that, if committed in Canada, would have constituted a designated substance offence or a designated criminal offence or a *designated offence* as defined in subsection 2(1) of the *Cannabis Act*,

**(i)** the individual was convicted as an adult, or

**(ii)** if they committed the offence when they were at least 14 years old but less than 18 years old, the person received a sentence that was longer than the maximum *youth sentence*, as that term is defined in subsection 2(1) of the *Youth Criminal Justice Act*, that could have been imposed under that Act for such an offence.

SOR/2019-171, s. 1.

**a)** à l'égard d'une infraction désignée, d'une infraction désignée en matière criminelle ou d'une *infraction désignée*, au sens du paragraphe 2(1) de la *Loi sur le cannabis* :

**(i)** soit a été condamné en tant qu'adulte,

**(ii)** soit s'est vu imposer en tant qu'*adolescent*, au sens du paragraphe 2(1) de la *Loi sur le système de justice pénale pour les adolescents*, une *peine applicable aux adultes*, au sens de ce paragraphe;

**b)** à l'égard d'une infraction commise dans un pays étranger qui, si elle avait été commise au Canada, aurait constitué une infraction désignée, une infraction désignée en matière criminelle ou une *infraction désignée*, au sens du paragraphe 2(1) de la *Loi sur le cannabis* :

**(i)** soit a été condamné en tant qu'adulte,

**(ii)** soit s'est vu imposer, pour une infraction commise alors qu'il avait au moins quatorze ans et moins de dix-huit ans, une peine plus longue que la peine maximale prévue par la *peine spécifique*, au sens du paragraphe 2(1) de la *Loi sur le système de justice pénale pour les adolescents* pour une telle infraction.

DORS/2019-171, art. 1.

## Issuance of Licence

### Application

**G.02.006 (1)** A person who intends to conduct an activity referred to in section G.02.001 must obtain a dealer's licence for each site at which they intend to conduct activities by submitting an application to the Minister that contains the following information:

**(a)** if the licence is requested by

**(i)** an individual, the individual's name,

**(ii)** a corporation, its corporate name and any other name registered with a province, under which it intends to conduct the activities specified in its dealer's licence or by which it intends to identify itself, and

**(iii)** the holder of a position described in paragraph G.02.002(c), the applicant's name and the title of the position;

**(b)** the municipal address, telephone number and, if applicable, the email address of the proposed site and,

## Délivrance d'une licence

### Demande

**G.02.006 (1)** La personne qui prévoit d'effectuer l'une des opérations visées à l'article G.02.001 doit obtenir une licence de distributeur autorisé pour chaque installation où elle prévoit d'effectuer celle-ci en présentant au ministre une demande qui contient les renseignements suivants :

**a)** les précisions ci-après à l'égard de la personne qui demande la licence :

**(i)** s'agissant d'un individu, son nom,

**(ii)** s'agissant d'une personne morale, sa dénomination sociale et toute autre dénomination enregistrée dans une province sous laquelle elle entend s'identifier ou effectuer les opérations précisées dans la licence,

**(iii)** s'agissant du titulaire d'un poste visé à l'alinéa G.02.002c), son nom et le titre de son poste;

**b)** l'adresse municipale, le numéro de téléphone et, le cas échéant, l'adresse électronique de l'installation de

if different from the municipal address, its mailing address;

**(c)** the name, date of birth, telephone number and email address of the proposed senior person in charge;

**(d)** with respect to each of the proposed qualified person in charge and any proposed alternate qualified person in charge,

**(i)** their name, date of birth, telephone number and email address,

**(ii)** the title of their position at the site,

**(iii)** the name and title of the position of their immediate supervisor at the site,

**(iv)** if applicable, their profession they practise that is relevant to their duties, the name of the province that authorizes them to practise it and their authorization number, and

**(v)** their education, training and work experience that are relevant to their duties;

**(e)** the activities that are to be conducted and the controlled drugs in respect of which each of the activities is to be conducted;

**(f)** if the licence is requested to manufacture or assemble a product or compound that contains a controlled drug, other than a test kit, a list that includes, for each product or compound,

**(i)** the brand name of the product or the name of the compound,

**(ii)** the drug identification number that is assigned to the product under section C.01.014.2, if any,

**(iii)** the name of the controlled drug in the product or compound,

**(iv)** the strength per unit of the controlled drug in it, the number of units per package and the number of packages,

**(v)** if it is to be manufactured or assembled by or for another licensed dealer under a custom order, the name, municipal address and dealer's licence number of the other licensed dealer, and

**(vi)** if the applicant's name appears on the label of the product or compound, a copy of the inner label;

même que, si elle diffère de l'adresse municipale, son adresse postale;

**c)** les nom, numéro de téléphone et adresse électronique du responsable principal proposé ainsi que sa date de naissance;

**d)** à l'égard du responsable qualifié et de tout responsable qualifié suppléant proposés :

**(i)** leurs nom, numéro de téléphone et adresse électronique ainsi que leur date de naissance,

**(ii)** le titre de leur poste à l'installation,

**(iii)** les nom et titre du poste de leur supérieur immédiat à l'installation,

**(iv)** le cas échéant, la profession exercée qui est liée à leurs fonctions, le nom de la province les autorisant à l'exercer et le numéro de cette autorisation,

**(v)** leurs études, formation et expérience de travail liées à l'exercice de leurs fonctions;

**e)** les opérations proposées et les drogues contrôlées visées par chacune de celles-ci;

**f)** si la demande vise la fabrication ou l'assemblage d'un produit ou d'un composé contenant une drogue contrôlée, sauf si elle vise la fabrication ou l'assemblage d'un nécessaire d'essai, une liste qui contient les précisions ci-après pour chaque produit ou composé :

**(i)** la marque nominative du produit ou le nom du composé,

**(ii)** l'identification numérique qui a été attribuée au produit aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** le nom de la drogue contrôlée qu'il contient,

**(iv)** la concentration de la drogue contrôlée qu'il contient dans chacune de ses unités, le nombre d'unités contenues dans son emballage et le nombre d'emballages,

**(v)** s'il est fabriqué ou assemblé sur mesure aux termes d'une commande spéciale pour un autre distributeur autorisé ou s'il l'est par un distributeur autorisé différent, les nom, adresse municipale et numéro de licence de celui-ci,

**(vi)** si le nom du demandeur figure sur l'étiquette du produit ou du composé, une copie de l'étiquette intérieure;

**(g)** if the licence is requested in order to produce a controlled drug other than a product or compound that contains a controlled drug,

**(i)** the name of the controlled drug,

**(ii)** the quantity that the applicant expects to produce under their licence and the period during which that quantity would be produced, and

**(iii)** if it is to be produced for another licensed dealer under a custom order, the name, municipal address and licence number of the other licensed dealer;

**(h)** if the licence is requested for an activity that is not described in paragraph (f) or (g), the name of the controlled drug for which the activity is to be conducted and the purpose of the activity;

**(i)** a detailed description of the security measures in place at the site, determined in accordance with the Security Directive; and

**(j)** a detailed description of the method for recording information that the applicant proposes to use for the purpose of section G.02.071.

**g)** si la demande vise la production d'une drogue contrôlée, exception faite des produits ou composés contenant une drogue contrôlée, les précisions ci-après concernant cette drogue :

**(i)** son nom,

**(ii)** la quantité que le demandeur prévoit de produire en vertu de la licence et la période prévue pour la production,

**(iii)** si elle est produite sur mesure aux termes d'une commande spéciale pour un autre distributeur autorisé, les nom, adresse municipale et numéro de licence de celui-ci;

**h)** si la demande vise une opération qui n'est pas visée par les alinéas f) et g), le nom de la drogue contrôlée qui fera l'objet de l'opération et le but de cette dernière;

**i)** la description détaillée des mesures de sécurité mises en place à l'installation et établies conformément à la Directive en matière de sécurité;

**j)** la description détaillée de la méthode de consignation des renseignements que le demandeur prévoit d'utiliser en application de l'article G.02.071.

**Documents**

**(2)** An application for a dealer's licence must be accompanied by the following documents:

**(a)** if the applicant is a corporation, a copy of

**(i)** the certificate of incorporation or other constituting instrument, and

**(ii)** any document filed with the province in which its site is located that states its corporate name and any other name registered with the province under which the applicant intends to conduct the activities specified in its dealer's licence or by which it intends to identify itself;

**(b)** individual declarations signed and dated by each of the proposed senior person in charge, and qualified person in charge and any proposed alternate qualified person in charge, attesting that the person is not ineligible for a reason specified in section G.02.005;

**(c)** a document issued by a Canadian police force in relation to each person referred to in paragraph (b), indicating whether, during the 10 years before the day on which the application is submitted, the person was convicted as specified in subparagraph G.02.005(a)(i)

**Documents**

**(2)** La demande est accompagnée des documents suivants :

**a)** dans le cas où le demandeur est une personne morale :

**(i)** une copie de son certificat de constitution ou de tout autre acte constitutif,

**(ii)** une copie de tout document déposé auprès de la province où se trouve son installation et qui indique sa dénomination sociale et tout autre nom enregistré dans la province sous lequel elle entend s'identifier ou effectuer les opérations précisées dans la licence;

**b)** les déclarations individuelles signées et datées par le responsable principal, le responsable qualifié et tout responsable qualifié suppléant proposés attestant que le signataire n'est pas visé par l'article G.02.005;

**c)** à l'égard de chaque personne visée à l'alinéa b), un document délivré par un corps policier canadien précisant si, au cours des dix années précédant la présentation de la demande, elle a fait l'objet d'une condamnation visée au sous-alinéa G.02.005a)(i) ou s'est vu imposer une peine visée au sous-alinéa G.02.005a)(ii);

or received a sentence as specified in subparagraph G.02.005(a)(ii);

**(d)** if any of the persons referred to in paragraph (b) has ordinarily resided in a country other than Canada during the 10 years before the day on which the application is submitted, a document issued by a police force of that country indicating whether in that period that person was convicted as specified in subparagraph G.02.005(b)(i) or received a sentence as specified in subparagraph G.02.005(b)(ii);

**(e)** declaration, signed and dated by the proposed senior person in charge, attesting that the proposed qualified person in charge and any proposed alternate qualified person in charge have the knowledge and experience required under paragraphs G.02.004(3)(c) and (d); and

**(f)** if the proposed qualified person in charge or any proposed alternate qualified person in charge does not meet the requirement of subparagraph G.02.004(3)(b)(i), either

**(i)** a copy of the person's diploma, certificate or credential referred to in subparagraph G.02.004(3)(b)(ii) or (iii), or

**(ii)** a detailed description of the education, training and work experience that is required under paragraph G.02.004(4)(c), together with supporting evidence, such as a copy of a course transcript or an attestation by the person who provided the training.

**d)** à l'égard de chaque personne visée à l'alinéa b) qui a résidé de façon habituelle dans un pays étranger au cours des dix années précédant la présentation de la demande, un document délivré par un corps policier de ce pays précisant si elle a fait l'objet d'une condamnation visée au sous-alinéa G.02.005b)(i) ou s'est vu imposer une peine visée au sous-alinéa G.02.005b)(ii) dans ce pays au cours de cette période;

**e)** une déclaration, signée et datée par le responsable principal, attestant que le responsable qualifié et tout responsable qualifié suppléant proposés ont les connaissances et l'expérience exigées aux alinéas G.02.004(3)c) et d);

**f)** dans le cas où le responsable qualifié ou tout responsable qualifié suppléant proposé ne satisfait pas à l'exigence visée au sous-alinéa G.02.004(3)b)(i) :

**(i)** une copie du diplôme, du certificat ou de l'attestation visé aux sous-alinéas G.02.004(3)b)(ii) ou (iii),

**(ii)** une description détaillée des études, de la formation et de l'expérience de travail visées à l'alinéa G.02.004(4)c), accompagnée de pièces justificatives telle une copie des relevés de notes ou de l'attestation faite par la personne qui a donné la formation.

**Signature and attestation**

**(3)** The application must

**(a)** be signed and dated by the proposed senior person in charge; and

**(b)** include an attestation by that person that

**(i)** all information and documents submitted in support of the application are correct and complete to the best of their knowledge, and

**(ii)** they have the authority to bind the applicant.

**Signature et attestation**

**(3)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable principal proposé;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets,

**(ii)** il est habilité à lier le demandeur.

**Additional information and documents**

**(4)** The applicant must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the

**Renseignements et documents complémentaires**

**(4)** Le demandeur fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge

Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 1.

### Issuance

**G.02.007** Subject to section G.02.009, on completion of the review of the licence application, the Minister must issue a dealer's licence, with or without terms and conditions, that contains

**(a)** the licence number;

**(b)** the name of the licensed dealer, their corporate name or the title of the position they hold;

**(c)** the activities that are authorized and the names of the controlled drugs in respect of which each activity may be conducted;

**(d)** the municipal address of the site at which the dealer may conduct the authorized activities;

**(e)** the security level at the site, determined in accordance with the Security Directive;

**(f)** the effective date of the licence;

**(g)** the expiry date of the licence, which must be not later than three years after its effective date;

**(h)** any terms and conditions that the Minister has reasonable grounds to believe are necessary to

**(i)** ensure that an international obligation is respected,

**(ii)** ensure conformity with the requirements associated with the security level that is referred to in paragraph (e), or

**(iii)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use; and

**(i)** if the licensed dealer produces a controlled drug, the quantity that they may produce and the authorized production period.

SOR/2019-171, s. 1.

### Validity

**G.02.008** A dealer's licence is valid until the expiry date set out in the licence or, if it is earlier, the date of the suspension or revocation of the licence under section G.02.027 or G.02.028.

SOR/2019-171, s. 1.

nécessaire pour compléter l'examen de la demande de licence.

DORS/2019-171, art. 1.

### Délivrance

**G.02.007** Le ministre, au terme de l'examen de la demande de licence et sous réserve de l'article G.02.009, délivre une licence de distributeur autorisé, avec ou sans conditions, qui contient les renseignements suivants :

**a)** le numéro de la licence;

**b)** le nom du distributeur, sa dénomination sociale ou le titre de son poste;

**c)** les opérations autorisées et le nom des drogues contrôlées visées par chacune de celles-ci;

**d)** l'adresse municipale de l'installation où le distributeur peut effectuer les opérations autorisées;

**e)** le niveau de sécurité applicable à l'installation, établi conformément à la Directive en matière de sécurité;

**f)** la date de prise d'effet de la licence;

**g)** la date d'expiration de la licence, qui ne peut être postérieure à la troisième année suivant sa date de prise d'effet;

**h)** toute condition que le ministre estime nécessaire, sur le fondement de motifs raisonnables, pour atteindre l'une des fins suivantes :

**(i)** le respect d'une obligation internationale,

**(ii)** la conformité aux exigences associées au niveau de sécurité visé à l'alinéa e),

**(iii)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites;

**i)** si le distributeur produit une drogue contrôlée, la quantité qu'il peut produire et la période de production autorisée.

DORS/2019-171, art. 1.

### Validité

**G.02.008** La licence de distributeur autorisé est valide jusqu'à la date d'expiration qui y est indiquée ou, si elle est antérieure, jusqu'à la date de sa suspension ou de sa révocation au titre des articles G.02.027 ou G.02.028.

DORS/2019-171, art. 1.

### Refusal

**G.02.009 (1)** The Minister must refuse to issue a dealer's licence if

**(a)** the applicant may not apply for a licence under section G.02.002;

**(b)** during the 10 years before the day on which the licence application is submitted, the applicant has contravened

**(i)** a provision of the Act, the *Cannabis Act* or their regulations, or

**(ii)** a term or condition of a licence or permit issued to the applicant under any regulations made under the Act or issued to the applicant under the *Cannabis Act* or its regulations;

**(c)** during the 10 years before the day on which the application is submitted, the proposed senior person in charge or qualified person in charge or any proposed alternate qualified person in charge was convicted as specified in subparagraph G.02.005(a)(i) or (b)(i) or received a sentence as specified in subparagraph G.02.005(a)(ii) or (b)(ii);

**(d)** an activity for which the licence is requested would contravene an international obligation;

**(e)** the applicant does not have in place at the site the security measures set out in the Security Directive in respect of an activity for which the licence is requested;

**(f)** the method referred to in paragraph G.02.006(1)(j) does not permit the recording of information as required under section G.02.071;

**(g)** the applicant has not complied with the requirements of subsection G.02.006(4) or the information and documents that they have provided are not sufficient to complete the review of the licence application;

**(h)** the Minister has reasonable grounds to believe that the applicant has submitted false or misleading information or false or falsified documents in or in support of the licence application;

**(i)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the applicant has been involved in the diversion of a controlled drug to an illicit market or use or has been involved in an activity that contravened an international obligation; or

### Refus

**G.02.009 (1)** Le ministre refuse de délivrer une licence de distributeur autorisé dans les cas suivants :

**a)** le demandeur ne peut pas demander une licence en vertu de l'article G.02.002;

**b)** le demandeur a contrevenu, dans les dix années précédant la présentation de la demande de licence :

**(i)** soit à une disposition de la Loi, de la *Loi sur le cannabis* ou de leurs règlements,

**(ii)** soit à une condition d'une licence ou d'un permis qui lui a été délivré en vertu d'un règlement pris en vertu de la Loi ou qui lui a été délivré en vertu de la *Loi sur le cannabis* ou de ses règlements;

**c)** dans les dix années précédant la présentation de la demande de licence, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant proposé a fait l'objet d'une condamnation visée aux sous-alinéas G.02.005a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas G.02.005a)(ii) ou b)(ii);

**d)** l'une des opérations pour lesquelles la licence est demandée entraînerait la violation d'une obligation internationale;

**e)** le demandeur n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard d'une opération pour laquelle il demande la licence;

**f)** la méthode visée à l'alinéa G.02.006(1)j) ne permet pas la consignation des renseignements conformément à l'article G.02.071;

**g)** soit le demandeur ne s'est pas conformé aux exigences prévues au paragraphe G.02.006(4), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de licence;

**h)** le ministre a des motifs raisonnables de croire que le demandeur a fourni, dans sa demande de licence ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**i)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le demandeur a participé au détournement d'une drogue contrôlée vers un marché ou un usage illicites ou qu'il a participé à des opérations qui ont entraîné la violation d'une obligation internationale;

**(j)** the Minister has reasonable grounds to believe that the issuance of the licence would likely create a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

**Exceptions**

**(2)** The Minister must not refuse to issue a licence under paragraph (1)(b) or (h) if the applicant meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use:

**(a)** the applicant does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the applicant has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Notice**

**(3)** Before refusing to issue a licence, the Minister must send the applicant a notice that sets out the Minister's reasons and gives the applicant an opportunity to be heard.

SOR/2019-171, s. 1.

**j)** le ministre a des motifs raisonnables de croire que la délivrance de la licence risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)b) ou h), refuser de délivrer la licence si le demandeur remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites :

**a)** le demandeur n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Préavis**

**(3)** Le ministre, avant de refuser de délivrer la licence, envoie au demandeur un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

## Renewal of Licence

**Application**

**G.02.010 (1)** To apply to renew a dealer's licence, a licensed dealer must submit to the Minister an application that contains the information and documents referred to in subsections G.02.006(1) and (2).

**Signature and attestation**

**(2)** The application must

**(a)** be signed and dated by the senior person in charge of the site specified in the application; and

**(b)** include an attestation by that person that

**(i)** all of the information and documents submitted in support of the application are correct and complete to the best of their knowledge, and

**(ii)** they have the authority to bind the licensed dealer.

## Renouvellement de la licence

**Demande**

**G.02.010 (1)** Le distributeur autorisé présente au ministre, pour obtenir le renouvellement de sa licence de distributeur autorisé, une demande qui contient les renseignements et documents visés aux paragraphes G.02.006(1) et (2).

**Signature et attestation**

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable principal de l'installation précisée dans la demande;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets,

**(ii)** il est habilité à lier le distributeur autorisé.

### Additional information and documents

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 1.

### Renewal

**G.02.011 (1)** Subject to section G.02.013, on completion of the review of the renewal application, the Minister must issue a renewed dealer's licence that contains the information specified in section G.02.007.

### Terms and conditions

**(2)** When renewing a dealer's licence, the Minister may, if he or she has reasonable grounds to believe that it is necessary to do so, add a term or condition to it or modify or delete one in order to

**(a)** ensure that an international obligation is respected;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence or the new level required as a result of the licence renewal; or

**(c)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

SOR/2004-238, s. 5; SOR/2010-222, s. 7; SOR/2019-171, s. 1.

**G.02.011.1** [Repealed, SOR/2019-171, s. 1]

**G.02.011.2** [Repealed, SOR/2019-171, s. 1]

### Validity

**G.02.012** A renewed dealer's licence is valid until the expiry date set out in the licence or, if it is earlier, the date of the suspension or revocation of the licence under section G.02.027 or G.02.028.

SOR/2004-238, s. 5; SOR/2019-171, s. 1.

### Refusal

**G.02.013 (1)** The Minister must refuse to renew a dealer's licence if

**(a)** the licensed dealer may no longer apply for a licence under section G.02.002;

**(b)** during the 10 years before the day on which the renewal application is submitted, the licensed dealer has contravened

### Renseignements et documents complémentaires

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de renouvellement.

DORS/2019-171, art. 1.

### Renouvellement

**G.02.011 (1)** Le ministre, au terme de l'examen de la demande de renouvellement et sous réserve de l'article G.02.013, renouvelle la licence de distributeur autorisé, qui contient les renseignements visés à l'article G.02.007.

### Conditions

**(2)** Le ministre peut, lorsqu'il renouvelle la licence du distributeur autorisé, ajouter toute condition à la licence, en modifier les conditions ou supprimer l'une de celles-ci s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence ou à tout nouveau niveau qui s'impose à la suite du renouvellement;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

DORS/2004-238, art. 5; DORS/2010-222, art. 7; DORS/2019-171, art. 1.

**G.02.011.1** [Abrogé, DORS/2019-171, art. 1]

**G.02.011.2** [Abrogé, DORS/2019-171, art. 1]

### Validité

**G.02.012** La licence de distributeur autorisé renouvelée est valide jusqu'à la date d'expiration qui y est indiquée ou, si elle est antérieure, jusqu'à la date de sa suspension ou de sa révocation au titre des articles G.02.027 ou G.02.028.

DORS/2004-238, art. 5; DORS/2019-171, art. 1.

### Refus

**G.02.013 (1)** Le ministre refuse de renouveler la licence de distributeur autorisé dans les cas suivants :

**a)** le distributeur autorisé ne peut plus demander une licence en vertu de l'article G.02.002;

**b)** le distributeur autorisé a contrevenu, dans les dix années précédant la présentation de la demande de renouvellement :

**(i)** a provision of the Act, the *Cannabis Act* or their Regulations, or

**(ii)** a term or condition of a licence or permit issued to the dealer under a regulation made under the Act or issued to the dealer under the *Cannabis Act* or its regulations;

**(c)** during the 10 years before the day on which the renewal application is submitted, the proposed senior person in charge or qualified person in charge or any proposed alternate qualified person in charge was convicted as specified in subparagraph G.02.005(a)(i) or (b)(i) or received a sentence as specified in subparagraph G.02.005(a)(ii) or (b)(ii);

**(d)** an activity for which the renewal is requested would contravene an international obligation;

**(e)** the licensed dealer does not have in place at the site the security measures set out in the Security Directive in respect of an activity for which the renewal is requested;

**(f)** the method referred to in paragraph G.02.006(1)(j) does not permit the recording of information as required by section G.02.071;

**(g)** the licensed dealer has not complied with the requirements of subsection G.02.010(3) or the information or documents that they have provided are not sufficient to complete the review of the renewal application;

**(h)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the renewal application;

**(i)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a controlled drug to an illicit market or use or has been involved in an activity that contravened an international obligation; or

**(j)** the Minister has reasonable grounds to believe that the renewal of the licence would likely create a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

**(i)** soit à une disposition de la Loi, de la *Loi sur le cannabis* ou de leurs règlements,

**(ii)** soit à une condition d'une licence ou d'un permis qui lui a été délivré en vertu d'un règlement pris en vertu de la Loi ou qui lui a été délivré en vertu de la *Loi sur le cannabis* ou de ses règlements;

**c)** dans les dix années précédant la présentation de la demande de renouvellement, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant proposé a fait l'objet d'une condamnation visée aux sous-alinéas G.02.005a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas G.02.005a)(ii) ou b)(ii);

**d)** l'une des opérations pour lesquelles le renouvellement est demandé entraînerait la violation d'une obligation internationale;

**e)** le distributeur autorisé n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard d'une opération pour laquelle il demande le renouvellement;

**f)** la méthode visée à l'alinéa G.02.006(1)j) ne permet pas la consignation des renseignements conformément à l'article G.02.071;

**g)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe G.02.010(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de renouvellement;

**h)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de renouvellement ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**i)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue contrôlée vers un marché ou un usage illicites ou qu'il a participé à des opérations qui ont entraîné la violation d'une obligation internationale;

**j)** le ministre a des motifs raisonnables de croire que le renouvellement de la licence risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

**Exceptions**

**(2)** The Minister must not refuse to renew a licence under paragraph (1)(b) or (h) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Notice**

**(3)** Before refusing to renew a licence, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

## Amendment of Licence

**Application**

**G.02.014 (1)** Before making a change affecting any information referred to in section G.02.007 that is contained in their dealer's licence, a licensed dealer must submit to the Minister an application to amend the licence that contains a description of the proposed amendment, as well as the information and documents referred to in section G.02.006 that are relevant to the proposed amendment.

**Signature and attestation**

**(2)** The application must

**(a)** be signed and dated by the senior person in charge of the site specified in the application; and

**(b)** include an attestation by that person that

**(i)** all of the information and documents submitted in support of the application are correct and complete to the best of their knowledge, and

**(ii)** they have the authority to bind the licensed dealer.

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect,

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)b) ou h), refuser de renouveler la licence si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Préavis**

**(3)** Le ministre, avant de refuser de renouveler la licence, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

## Modification de la licence

**Demande**

**G.02.014 (1)** Le distributeur autorisé présente au ministre, avant d'apporter un changement ayant une incidence sur tout renseignement visé à l'article G.02.007 figurant sur sa licence de distributeur autorisé, une demande de modification de sa licence qui contient la description du changement prévu ainsi que les renseignements et documents pertinents visés à l'article G.02.006.

**Signature et attestation**

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable principal de l'installation précisée dans la demande;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets,

**(ii)** il est habilité à lier le distributeur autorisé.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci

provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/78-427, s. 1; SOR/97-228, s. 10; SOR/2004-238, s. 6; SOR/2010-222, s. 8(E); SOR/2019-171, s. 1.

### Amendment

**G.02.015 (1)** Subject to section G.02.017, on completion of the review of the amendment application, the Minister must amend the dealer's licence.

### Terms and conditions

**(2)** When amending a dealer's licence, the Minister may, if he or she has reasonable grounds to believe that it is necessary to do so, add a term or condition to it or modify or delete one in order to

**(a)** ensure that an international obligation is respected;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence or the new level required as a result of the amendment; or

**(c)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

SOR/78-427, s. 2; SOR/2004-238, s. 7; SOR/2010-222, s. 9; SOR/2019-171, s. 1.

### Validity

**G.02.016** An amended dealer's licence is valid until the expiry date set out in the licence or, if it is earlier, the date of the suspension or revocation of the licence under section G.02.027 or G.02.028.

SOR/2019-171, s. 1.

### Refusal

**G.02.017 (1)** The Minister must refuse to amend a dealer's licence if

**(a)** an activity for which the licence amendment is requested would contravene an international obligation;

**(b)** the licensed dealer does not have in place at the site the security measures set out in the Security Directive in respect of an activity for which the licence amendment is requested;

**(c)** the method referred to in paragraph G.02.006(1)(j) does not permit the recording of information as required by section G.02.071;

à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de modification.

DORS/78-427, art. 1; DORS/97-228, art. 10; DORS/2004-238, art. 6; DORS/2010-222, art. 8(A); DORS/2019-171, art. 1.

### Modification

**G.02.015 (1)** Le ministre, au terme de l'examen de la demande de modification et sous réserve de l'article G.02.017, modifie la licence de distributeur autorisé.

### Conditions

**(2)** Le ministre peut, lorsqu'il modifie la licence du distributeur autorisé, ajouter toute condition à la licence, en modifier les conditions ou supprimer l'une de celles-ci s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence ou à tout nouveau niveau qui s'impose à la suite de la modification;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

DORS/78-427, art. 2; DORS/2004-238, art. 7; DORS/2010-222, art. 9; DORS/2019-171, art. 1.

### Validité

**G.02.016** La licence de distributeur autorisé modifiée est valide jusqu'à la date d'expiration qui y est indiquée ou, si elle est antérieure, jusqu'à la date de sa suspension ou de sa révocation au titre des articles G.02.027 ou G.02.028.

DORS/2019-171, art. 1.

### Refus

**G.02.017 (1)** Le ministre refuse de modifier la licence de distributeur autorisé dans les cas suivants :

**a)** l'une des opérations pour lesquelles la modification est demandée entraînerait la violation d'une obligation internationale;

**b)** le distributeur autorisé n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard d'une opération pour laquelle il demande la modification;

**c)** la méthode visée à l'alinéa G.02.006(1)j) ne permet pas la consignation des renseignements conformément à l'article G.02.071;

**(d)** the licensed dealer has not complied with the requirements of subsection G.02.014(3) or the information or documents that they have provided are not sufficient to complete the review of the amendment application;

**(e)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the amendment application; or

**(f)** the Minister has reasonable grounds to believe that the amendment of the licence would likely create a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

**d)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe G.02.014(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de modification;

**e)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de modification ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**f)** le ministre a des motifs raisonnables de croire que la modification de la licence risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

**Exceptions**

**(2)** The Minister must not refuse to amend a licence under paragraph (1)(e) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Exceptions**

**(2)** Le ministre ne peut, dans le cas visé à l'alinéa (1)e), refuser de modifier la licence si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Notice**

**(3)** Before refusing to amend a licence, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

**Préavis**

**(3)** Le ministre, avant de refuser de modifier la licence, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

## Changes Requiring Prior Approval by Minister

## Changements exigeant une approbation préalable du ministre

**Application**

**G.02.018 (1)** A licensed dealer must obtain the Minister's approval before making any of the following changes by submitting a written request to the Minister:

**(a)** a change affecting the security measures at the site specified in the dealer's licence;

**(b)** the replacement of the senior person in charge;

**Demande**

**G.02.018 (1)** Le distributeur autorisé doit obtenir l'approbation du ministre, en lui présentant une demande écrite, avant de procéder à l'un des changements suivants :

**a)** toute modification ayant une incidence sur les mesures de sécurité mises en place à l'installation précisée dans sa licence;

**(c)** the replacement of the qualified person in charge; or

**(d)** the replacement or addition of an alternate qualified person in charge.

**b)** le remplacement du responsable principal;

**c)** le remplacement du responsable qualifié;

**d)** le remplacement ou l'adjonction de tout responsable qualifié suppléant.

**Information and documents**

**(2)** The licensed dealer must provide the Minister with the following with respect to a change referred to in subsection (1):

**(a)** in the case of a change affecting the security measures in place at the site specified in the dealer's licence;

**(b)** in the case of the senior person in charge,

**(i)** the information specified in paragraph G.02.006(1)(c), and

**(ii)** the declaration specified in paragraph G.02.006(2)(b) and the documents specified in paragraphs G.02.006(2)(c) and (d); and

**(c)** in the case of the qualified person in charge or an alternate qualified person in charge,

**(i)** the information specified in paragraph G.02.006(1)(d), and

**(ii)** the declarations specified in paragraphs G.02.006(2)(b) and (e) and the documents specified in paragraphs G.02.006(2)(c), (d) and (f).

**Renseignements et documents**

**(2)** Le distributeur autorisé fournit au ministre, pour tout changement visé au paragraphe (1), ce qui suit :

**a)** les précisions concernant la modification ayant une incidence sur les mesures de sécurité mises en place à l'installation précisée dans sa licence;

**b)** s'agissant du responsable principal :

**(i)** les renseignements visés à l'alinéa G.02.006(1)c),

**(ii)** la déclaration visée à l'alinéa G.02.006(2)b) et les documents visés aux alinéas G.02.006(2)c) et d);

**c)** s'agissant du responsable qualifié ou d'un responsable qualifié suppléant :

**(i)** les renseignements visés à l'alinéa G.02.006(1)d),

**(ii)** les déclarations visées aux alinéas G.02.006(2)b) et e) ainsi que les documents visés aux alinéas G.02.006(2)c), d) et f).

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2004-238, s. 8; SOR/2010-222, s. 10; SOR/2019-171, s. 1.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande d'approbation.

DORS/2004-238, art. 8; DORS/2010-222, art. 10; DORS/2019-171, art. 1.

**Approval**

**G.02.019 (1)** Subject to section G.02.020, on completion of the review of the application for approval of the change, the Minister must approve the change.

**Approbation**

**G.02.019 (1)** Le ministre, au terme de l'examen de la demande d'approbation et sous réserve de l'article G.02.020, approuve le changement.

**Terms and conditions**

**(2)** When approving a change, the Minister may, if he or she has reasonable grounds to believe that it is necessary to do so, add a term or condition to the licence or modify or delete one in order to

**(a)** ensure that an international obligation is respected;

**Conditions**

**(2)** Le ministre peut, lorsqu'il approuve le changement, ajouter toute condition à la licence de distributeur autorisé, en modifier les conditions ou supprimer l'une de celles-ci s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence; or

**(c)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

SOR/88-482, s. 2(F); SOR/2019-171, s. 1.

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

DORS/88-482, art. 2(F); DORS/2019-171, art. 1.

### Refusal

**G.02.020 (1)** The Minister must refuse to approve the change if

**(a)** during the 10 years before the day on which the application for approval of the change is submitted, the proposed senior person in charge or qualified person in charge or any proposed alternate qualified person in charge was convicted as specified in subparagraph G.02.005(a)(i) or (b)(i) or received a sentence as specified in subparagraph G.02.005(a)(ii) or (b)(ii);

**(b)** the licensed dealer has not complied with the requirements of subsection G.02.018(3) or the information or documents that they have provided are not sufficient to complete the review of the application for approval of the change;

**(c)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the application for approval of the change; or

**(d)** the Minister has reasonable grounds to believe that the change would likely create a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

### Refus

**G.02.020 (1)** Le ministre refuse d'approuver le changement dans les cas suivants :

**a)** dans les dix années précédant la présentation de la demande d'approbation de changement, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant proposé a fait l'objet d'une condamnation visée aux sous-alinéas G.02.005a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas G.02.005a)(ii) ou b)(ii);

**b)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe G.02.018(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande d'approbation de changement;

**c)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande d'approbation de changement ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**d)** le ministre a des motifs raisonnables de croire que le changement risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Exception

**(2)** The Minister must not refuse to approve a change under paragraph (1)(c) if the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use.

### Exceptions

**(2)** Le ministre ne peut, dans le cas visé à l'alinéa (1)c), refuser d'approuver le changement si le distributeur autorisé a pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements ou a signé un engagement à cet effet, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Notice

**(3)** Before refusing to approve a change, the Minister must send the licensed dealer a notice that sets out the

### Préavis

**(3)** Le ministre, avant de refuser d'approuver le changement, envoie au distributeur autorisé un préavis motivé

Minister's reasons and gives the dealer an opportunity to be heard in respect of them.

SOR/2019-171, s. 1.

## Changes Requiring Notice to Minister

### Prior notice

**G.02.021 (1)** A licensed dealer must notify the Minister in writing before

**(a)** making or assembling a product or compound that is not set out in the most recent version of the list referred to in paragraph G.02.006(1)(f) that has been submitted to the Minister; or

**(b)** making a change to a product or compound that is set out in the list, if the change affects any of the information that has previously been submitted.

### Information and list

**(2)** The notice must contain the information referred to in paragraph G.02.006(1)(f) that is necessary to update the list and be accompanied by the revised version of the list.

SOR/2019-171, s. 1.

### Notice — five days

**G.02.022** A licensed dealer must notify the Minister in writing within five days after a person ceases to act as the qualified person in charge or an alternate qualified person in charge.

SOR/2019-171, s. 1.

### Notice — 10 days

**G.02.023 (1)** A licensed dealer must notify the Minister in writing within 10 days after one of the following changes occurs:

**(a)** a person ceases to act as the senior person in charge; or

**(b)** the licensed dealer ceases to manufacture or assemble a product or compound that is set out in the most recent version of the list referred to in paragraph G.02.006(1)(f) has been submitted to the Minister.

### Information and list

**(2)** A notice submitted under paragraph (1)(b) must specify which information referred to in paragraph G.02.006(1)(f) is being changed and be accompanied by the revised version of the list.

SOR/2019-171, s. 1.

l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

## Changements exigeant un avis au ministre

### Avis préalable

**G.02.021 (1)** Le distributeur autorisé avise le ministre par écrit avant de faire l'un des changements suivants :

**a)** la fabrication ou l'assemblage d'un produit ou d'un composé qui ne figure pas sur la plus récente version de la liste visée à l'alinéa G.02.006(1)f) qui a été présentée au ministre;

**b)** la modification d'un produit ou d'un composé qui figure sur cette liste, si la modification a une incidence sur les renseignements déjà fournis à son égard.

### Renseignements et liste

**(2)** L'avis contient les précisions visées à l'alinéa G.02.006(1)f) qui sont nécessaires pour mettre à jour la liste et est accompagné de la version révisée de celle-ci.

DORS/2019-171, art. 1.

### Avis — cinq jours

**G.02.022** Le distributeur autorisé avise le ministre par écrit du fait que le responsable qualifié ou tout responsable qualifié suppléant cesse d'exercer cette fonction dans les cinq jours suivant la cessation.

DORS/2019-171, art. 1.

### Avis — dix jours

**G.02.023 (1)** Le distributeur autorisé avise le ministre par écrit de l'un des changements ci-après dans les dix jours suivant celui-ci :

**a)** le responsable principal visé par sa licence cesse d'exercer cette fonction;

**b)** le distributeur autorisé cesse de fabriquer ou d'assembler un produit ou un composé qui figure sur la plus récente version de la liste visée à l'alinéa G.02.006(1)f) qui a été présentée au ministre.

### Renseignements et liste

**(2)** L'avis prévu à l'alinéa (1)b) contient les précisions visées à l'alinéa G.02.006(1)f) qui font l'objet du changement et est accompagné de la version révisée de la liste.

DORS/2019-171, art. 1.

### Notice of cessation of activities

**G.02.024 (1)** A licensed dealer that intends to cease conducting activities at their site — whether on or before the expiry of their licence — must notify the Minister in writing to that effect at least 30 days before ceasing those activities.

### Content of notice

**(2)** The notice must be signed and dated by the senior person in charge and contain the following information:

**(a)** the expected date of the cessation of activities at the site;

**(b)** a description of the manner in which any remaining controlled drugs on the site as of that date will be disposed of by the licensed dealer, including

**(i)** if some or all of them will be sold or provided to another licensed dealer that will be conducting activities at the same site, the name of that dealer,

**(ii)** if some or all of them will be sold or provided to another licensed dealer that will not be conducting activities at the same site, the name of that dealer and the municipal address of their site, and

**(iii)** if some or all of them will be destroyed, the date on which and the municipal address of the location at which the destruction is to take place;

**(c)** the municipal address of the location at which the licensed dealer's documents will be kept after activities have ceased; and

**(d)** the name, municipal address, telephone number and, if applicable, the email address of a person who the Minister may contact for further information after activities have ceased.

### Update

**(3)** After having ceased to conduct the activities, the licensed dealer must submit to the Minister a detailed update of the information referred to in subsection (2) if it differs from what was set out in the notice. The update must be signed and dated by the senior person in charge.

SOR/78-220, s. 3; SOR/85-550, s. 2; SOR/99-125, s. 2; SOR/2004-238, s. 9; SOR/2010-222, s. 11; SOR/2012-230, s. 9; SOR/2019-171, s. 1.

**G.02.024.1** [Repealed, SOR/2019-171, s. 1]

**G.02.024.2** [Repealed, SOR/2019-171, s. 1]

### Avis — cessation des opérations

**G.02.024 (1)** Le distributeur autorisé qui entend cesser les opérations à son installation avant l'expiration de sa licence ou à l'expiration de celle-ci en avise le ministre par écrit au moins trente jours avant la cessation.

### Contenu de l'avis

**(2)** L'avis est signé et daté par le responsable principal et contient les renseignements suivants :

**a)** la date prévue de la cessation des opérations à l'installation;

**b)** la description de la façon dont le distributeur autorisé disposera de la totalité des drogues contrôlées restant à l'installation à cette date, notamment les précisions suivantes :

**(i)** dans le cas où elles seront en tout ou en partie vendues ou fournies à un autre distributeur autorisé qui effectuera des opérations à la même installation, le nom de celui-ci,

**(ii)** dans le cas où elles seront en tout ou en partie vendues ou fournies à un autre distributeur autorisé qui n'effectuera pas d'opérations à la même installation, le nom de celui-ci et l'adresse municipale de son installation,

**(iii)** dans le cas où elles seront en tout ou en partie détruites, la date de la destruction et l'adresse municipale du lieu de la destruction;

**c)** l'adresse municipale du lieu où les documents du distributeur autorisé seront conservés après la cessation des opérations;

**d)** les nom, adresse municipale, numéro de téléphone et, le cas échéant, l'adresse électronique de la personne que le ministre pourra contacter après la cessation des opérations pour obtenir plus amples renseignements.

### Mise à jour

**(3)** Une fois que les opérations ont cessé, le distributeur autorisé présente au ministre une mise à jour détaillée, signée et datée par le responsable principal, des renseignements visés au paragraphe (2), s'ils diffèrent de ceux indiqués sur l'avis.

DORS/78-220, art. 3; DORS/85-550, art. 2; DORS/99-125, art. 2; DORS/2004-238, art. 9; DORS/2010-222, art. 11; DORS/2012-230, art. 9; DORS/2019-171, art. 1.

**G.02.024.1** [Abrogé, DORS/2019-171, art. 1]

**G.02.024.2** [Abrogé, DORS/2019-171, art. 1]

## Changes to Terms and Conditions of Licence

### Addition of or modification to term or condition

**G.02.025 (1)** The Minister may, at any time other than the issuance, renewal or amendment of a dealer's licence, add a term or condition to it or modify one if the Minister has reasonable grounds to believe that it is necessary to do so to

**(a)** ensure that an international obligation is respected;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence; or

**(c)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

### Notice

**(2)** Before adding a term or condition to a licence or modifying one, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

### Urgent circumstances

**(3)** Despite subsection (2), the Minister may add a term or condition to a licence or modify one without prior notice if the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use.

### Urgent circumstances — notice

**(4)** The addition or modification of a term or condition that is made under subsection (3) takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the addition or modification;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

SOR/78-220, s. 4; SOR/78-427, s. 4; SOR/85-550, s. 3; SOR/88-482, s. 3(F); SOR/90-261, s. 2(F); SOR/97-228, s. 11; SOR/2004-238, s. 11; SOR/2010-222, s. 12; SOR/2012-230, s. 10; SOR/2014-260, ss. 6(E), 14(F); SOR/2019-171, s. 1.

### Deletion of term or condition

**G.02.026 (1)** The Minister may delete a term or condition of a dealer's licence that the Minister determines is no longer necessary.

## Changement des conditions de la licence

### Ajout ou modification de conditions

**G.02.025 (1)** Le ministre peut, à un moment autre que celui de la délivrance, du renouvellement ou de la modification de la licence du distributeur autorisé, ajouter toute condition à la licence ou en modifier les conditions s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Préavis

**(2)** Le ministre, avant d'ajouter une condition à la licence ou d'en modifier les conditions, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

### Urgence

**(3)** Malgré le paragraphe (2), le ministre peut ajouter toute condition à la licence ou en modifier les conditions sans préavis s'il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Urgence — avis

**(4)** L'ajout ou la modification d'une condition en vertu du paragraphe (3) prend effet dès que le ministre envoie au distributeur autorisé un avis à cet égard qui contient les précisions suivantes :

**a)** les motifs de l'ajout ou de la modification;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

DORS/78-220, art. 4; DORS/78-427, art. 4; DORS/85-550, art. 3; DORS/88-482, art. 3(F); DORS/90-261, art. 2(F); DORS/97-228, art. 11; DORS/2004-238, art. 11; DORS/2010-222, art. 12; DORS/2012-230, art. 10; DORS/2014-260, art. 6(A) et 14(F); DORS/2019-171, art. 1.

### Suppression d'une condition

**G.02.026 (1)** Le ministre peut supprimer toute condition qu'il ne juge plus nécessaire de la licence de distributeur autorisé.

**Notice**

**(2)** The deletion takes effect as soon as the Minister sends the licensed dealer a notice to that effect.

SOR/2004-238, s. 12; SOR/2010-222, s. 13(F); SOR/2014-260, s. 7; SOR/2019-171, s. 1.

## Suspension and Revocation of Licence

**Suspension**

**G.02.027 (1)** The Minister must suspend a dealer's licence without prior notice if the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use.

**Notice**

**(2)** The suspension takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the suspension;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

**Reinstatement of licence**

**(3)** The Minister must reinstate the licence if the Minister has reasonable grounds to believe that the suspension is no longer necessary.

SOR/2019-171, s. 1.

**Revocation**

**G.02.028 (1)** Subject to subsection (2), the Minister must revoke a dealer's licence if

**(a)** the licensed dealer may no longer apply for a licence under section G.02.002;

**(b)** the licensed dealer requests the Minister to do so or informs the Minister of the loss or theft of the licence or the actual or potential unauthorized use of the licence;

**(c)** the licensed dealer ceases to conduct activities at their site before the expiry of their licence;

**(d)** the licensed dealer does not take the corrective measures specified in an undertaking or notice;

**(e)** the licensed dealer has contravened

**Avis**

**(2)** La suppression prend effet dès que le ministre envoie un avis de suppression au distributeur autorisé.

DORS/2004-238, art. 12; DORS/2010-222, art. 13(F); DORS/2014-260, art. 7; DORS/2019-171, art. 1.

## Suspension et révocation de la licence

**Suspension**

**G.02.027 (1)** Le ministre suspend sans préavis la licence d'un distributeur autorisé s'il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites.

**Avis**

**(2)** La suspension prend effet dès que le ministre envoie au distributeur autorisé un avis de suspension qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

**Rétablissement de la licence**

**(3)** Le ministre rétablit la licence s'il a des motifs raisonnables de croire que la suspension n'est plus nécessaire.

DORS/2019-171, art. 1.

**Révocation**

**G.02.028 (1)** Le ministre, sous réserve du paragraphe (2), révoque la licence de distributeur autorisé dans les cas suivants :

**a)** le distributeur autorisé ne peut plus demander une licence en vertu de l'article G.02.002;

**b)** le distributeur autorisé lui en fait la demande ou l'informe de la perte, du vol ou de toute utilisation non autorisée de la licence, que celle-ci soit réelle ou potentielle;

**c)** le distributeur autorisé cesse ses opérations à son installation avant l'expiration de sa licence;

**d)** le distributeur autorisé ne prend pas les mesures correctives précisées dans un engagement ou un avis;

**e)** le distributeur autorisé a contrevenu :

**(i)** a provision of the Act, the *Cannabis Act* or their regulations, or

**(ii)** a term or condition of a licence or permit issued to the dealer under a regulation made under the Act or issued to the dealer under the *Cannabis Act* or its regulations;

**(f)** during the 10 years before the day on which the licence is revoked, the senior person in charge, the qualified person in charge or any alternate qualified person in charge was convicted as specified in subparagraph G.02.005(a)(i) or (b)(i) or received a sentence as specified in subparagraph G.02.005(a)(ii) or (b)(ii);

**(g)** the Minister has reasonable grounds to believe that the licensed dealer submitted false or misleading information or false or falsified documents in or in support of an application relating to the licence; or

**(h)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a controlled drug to an illicit market or use.

**(i)** soit à une disposition de la Loi, de la *Loi sur le cannabis* ou de leurs règlements,

**(ii)** soit à une condition d'une licence ou d'un permis qui lui a été délivré en vertu d'un règlement pris en vertu de la Loi ou qui lui a été délivré en vertu de la *Loi sur le cannabis* ou de ses règlements;

**f)** dans les dix années précédant la révocation, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant a fait l'objet d'une condamnation visée aux sous-alinéas G.02.005a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas G.02.005a)(ii) ou b)(ii);

**g)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans toute demande relative à la licence ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**h)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Exceptions

**(2)** The Minister must not revoke a dealer's licence for a ground set out in paragraph (1)(e) or (g) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

### Exceptions

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)e) ou g), révoquer la licence si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que la révocation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

### Notice

**(3)** Before revoking a licence, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

### Préavis

**(3)** Le ministre, avant de révoquer la licence, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

### Return of licence

**G.02.029** The licensed dealer must return the original of the licence to the Minister within 15 days after the effective date of the revocation.

SOR/2019-171, s. 1.

## Import Permits

### Application

**G.02.030 (1)** A licensed dealer must submit to the Minister, before each importation of a controlled drug, an application for an import permit that contains the following information:

**(a)** their name, municipal address and dealer's licence number;

**(b)** with respect to the controlled drug to be imported,

**(i)** its name, as specified in the dealer's licence,

**(ii)** if it is a salt, the name of the salt,

**(iii)** its quantity, and

**(iv)** in the case of a raw material, its purity and its anhydrous content;

**(c)** if the controlled drug is contained in a product to be imported,

**(i)** the brand name of the product,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the controlled drug in the product, the number of units per package and the number of packages;

**(d)** the name and municipal address, in the country of export, of the exporter from whom the controlled drug is being obtained;

**(e)** the name of the customs office where the importation is anticipated; and

**(f)** each proposed mode of transportation and any proposed country of transit or transhipment.

### Signature and attestation

**(2)** The application must

### Retour de la licence

**G.02.029** Le distributeur autorisé retourne au ministre l'original de la licence dans les quinze jours suivant la date de prise d'effet de la révocation.

DORS/2019-171, art. 1.

## Permis d'importation

### Demande

**G.02.030 (1)** Le distributeur autorisé présente au ministre, pour chaque importation prévue de drogues contrôlées, une demande de permis d'importation qui contient les renseignements suivants :

**a)** ses nom, adresse municipale et numéro de licence de distributeur autorisé;

**b)** les précisions ci-après concernant la drogue contrôlée qu'il prévoit d'importer :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité,

**(iv)** s'agissant d'une matière première, son degré de pureté et son contenu anhydre;

**c)** si la drogue contrôlée est contenue dans un produit qu'il prévoit d'importer, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue contrôlée qu'il contient dans chacune de ses unités, le nombre d'unités contenues dans son emballage et le nombre d'emballages;

**d)** les nom et adresse municipale, dans le pays d'exportation, de l'exportateur duquel il obtient la drogue contrôlée;

**e)** le nom du bureau de douane où est prévue l'importation;

**f)** les modes de transport prévus et chaque pays de transit ou de transbordement prévu.

### Signature et attestation

**(2)** La demande satisfait aux exigences suivantes :

**(a)** be signed and dated by the qualified person in charge or an alternate qualified person in charge; and

**(b)** include an attestation by that person that all of the information submitted in support of the application is correct and complete to the best of their knowledge.

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 1.

**Issuance**

**G.02.031** Subject to section G.02.034, on completion of the review of the import permit application, the Minister must issue to the licensed dealer an import permit that contains

**(a)** the permit number;

**(b)** the information set out in subsection G.02.030(1);

**(c)** the effective date of the permit;

**(d)** the expiry date of the permit, being the earlier of

**(i)** a date specified by the Minister that is not more than 180 days after its effective date, and

**(ii)** the expiry date of the dealer's licence; and

**(e)** any terms and conditions that the Minister has reasonable grounds to believe are necessary to

**(i)** ensure that an international obligation is respected, or

**(ii)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

SOR/2019-171, s. 1.

**Validity**

**G.02.032** An import permit is valid until the earliest of

**(a)** the expiry date set out in the permit,

**a)** elle est signée et datée par le responsable qualifié ou un responsable qualifié suppléant;

**b)** elle comprend une attestation de celui-ci portant qu'à sa connaissance, tous les renseignements fournis à l'appui de la demande sont exacts et complets.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de permis d'importation.

DORS/2019-171, art. 1.

**Délivrance**

**G.02.031** Le ministre, au terme de l'examen de la demande de permis d'importation et sous réserve de l'article G.02.034, délivre au distributeur autorisé un permis d'importation qui contient les renseignements suivants :

**a)** le numéro du permis;

**b)** les renseignements visés au paragraphe G.02.030(1);

**c)** la date de prise d'effet du permis;

**d)** la date d'expiration du permis, qui correspond à celle des dates ci-après qui est antérieure aux autres :

**(i)** la date précisée par le ministre, qui ne peut être postérieure au cent quatre-vingtième jour suivant sa date de prise d'effet,

**(ii)** la date d'expiration de la licence du distributeur autorisé;

**e)** toute condition que le ministre estime nécessaire, sur le fondement de motifs raisonnables, pour atteindre l'une des fins suivantes :

**(i)** le respect d'une obligation internationale,

**(ii)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

DORS/2019-171, art. 1.

**Validité**

**G.02.032** Le permis d'importation est valide jusqu'à celle des dates ci-après qui est antérieure aux autres :

**a)** la date d'expiration qui y est indiquée;

**(b)** the date of the suspension or revocation of the permit under section G.02.037 or G.02.038,

**(c)** the date of the suspension or revocation of the dealer's licence under section G.02.027 or G.02.028, and

**(d)** the date of the suspension or revocation of the export permit that applies to the controlled drug to be imported and that is issued by the competent authority in the country of export.

SOR/2019-171, s. 1.

**b)** la date de sa suspension ou de sa révocation au titre des articles G.02.037 ou G.02.038;

**c)** la date de suspension ou de révocation, au titre des articles G.02.027 ou G.02.028, de la licence du distributeur autorisé;

**d)** la date de suspension ou de révocation du permis d'exportation délivré par l'autorité compétente du pays d'exportation à l'égard de la drogue contrôlée à importer.

DORS/2019-171, art. 1.

### Return of permit

**G.02.033** If an import permit expires, the licensed dealer must return the original of the permit to the Minister within 15 days after its expiry.

SOR/2019-171, s. 1.

### Retour du permis

**G.02.033** Le distributeur autorisé dont le permis d'importation expire retourne l'original de celui-ci au ministre dans les quinze jours suivant la date d'expiration.

DORS/2019-171, art. 1.

### Refusal

**G.02.034 (1)** The Minister must refuse to issue an import permit if

**(a)** the licensed dealer is not authorized by their dealer's licence to import the relevant controlled drug or their licence will expire before the date of importation;

**(b)** the Minister has reasonable grounds to believe that the importation would contravene an international obligation;

**(c)** the licensed dealer does not have in place at the site the security measures set out in the Security Directive in respect of the importation;

**(d)** the licensed dealer has not complied with the requirements of subsection G.02.030(3) or the information or documents that they have provided are not sufficient to complete the review of the permit application;

**(e)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the permit application;

**(f)** the licensed dealer has been notified that their application to renew or amend their licence will be refused;

**(g)** the Minister has reasonable grounds to believe that the importation would contravene the laws of the country of export or any country of transit or transhipment; or

### Refus

**G.02.034 (1)** Le ministre refuse de délivrer un permis d'importation dans les cas suivants :

**a)** la licence du distributeur autorisé ne l'autorise pas à importer la drogue contrôlée visée ou elle expirera avant la date d'importation;

**b)** le ministre a des motifs raisonnables de croire que l'importation entraînerait la violation d'une obligation internationale;

**c)** le distributeur autorisé n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard de l'importation;

**d)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe G.02.030(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de permis;

**e)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**f)** le distributeur autorisé a été avisé que la demande de renouvellement de sa licence de distributeur autorisé ou la demande de modification de celle-ci sera refusée;

**g)** le ministre a des motifs raisonnables de croire que l'importation contreviendrait aux règles de droit du pays d'exportation, de tout pays de transit ou de tout pays de transbordement;

**(h)** the Minister has reasonable grounds to believe that the issuance of the permit would likely create a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

**h)** le ministre a des motifs raisonnables de croire que la délivrance du permis risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Notice

**(2)** Before refusing to issue the import permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

### Préavis

**(2)** Le ministre, avant de refuser de délivrer le permis d'importation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

### Providing copy of permit

**G.02.035** The holder of an import permit must provide a copy of the permit to the customs office at the time of importation.

SOR/2019-171, s. 1.

### Production d'une copie du permis

**G.02.035** Le titulaire du permis d'importation en produit une copie au bureau de douane lors de l'importation.

DORS/2019-171, art. 1.

### Declaration

**G.02.036** The holder of an import permit must provide the Minister, within 15 days after the day of release of the controlled drug specified in the permit in accordance with the *Customs Act*, with a declaration that contains the following information:

**(a)** their name and the numbers of their dealer's licence and the import permit that applies to the controlled drug;

**(b)** with respect to the controlled drug,

**(i)** its name, as set out in the dealer's licence,

**(ii)** if it is a salt, the name of the salt, and

**(iii)** its quantity;

**(c)** if the controlled drug is contained in a product that they have imported,

**(i)** the brand name of the product,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the controlled drug in the product, the number of units per package and the number of packages; and

**(d)** the name of the customs office from which the controlled drug was released and the date of the release.

SOR/2019-171, s. 1.

### Déclaration

**G.02.036** Le titulaire du permis d'importation fournit au ministre, dans les quinze jours suivant la date du dédouanement de la drogue contrôlée visée par le permis conformément à la *Loi sur les douanes*, une déclaration comprenant les renseignements suivants :

**a)** son nom ainsi que les numéros de sa licence de distributeur autorisé et de son permis d'importation relatifs à la drogue contrôlée;

**b)** les précisions ci-après concernant la drogue contrôlée :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité;

**c)** si la drogue contrôlée est contenue dans un produit qu'il a importé, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue contrôlée qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** le nom du bureau de douane où a eu lieu le dédouanement et la date de celui-ci.

DORS/2019-171, art. 1.

### Suspension

**G.02.037 (1)** The Minister must suspend an import permit without prior notice if

**(a)** the dealer's licence is suspended;

**(b)** the Minister has reasonable grounds to believe that the suspension is necessary to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use; or

**(c)** the importation would contravene the laws of the country of export or any country of transit or transhipment.

### Notice

**(2)** The suspension takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the suspension;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

### Reinstatement of permit

**(3)** The Minister must reinstate the import permit if the Minister has reasonable grounds to believe that the suspension is no longer necessary.

SOR/2019-171, s. 1.

### Revocation

**G.02.038 (1)** Subject to subsection (2), the Minister must revoke an import permit if

**(a)** the licensed dealer requests the Minister to do so or informs the Minister of the loss or theft of the permit or the actual or potential unauthorized use of the permit;

**(b)** the licensed dealer does not carry out the corrective measures specified by the Minister under paragraph G.02.037(2)(c) by the specified date;

**(c)** the licensed dealer has contravened a term or condition of the permit;

**(d)** the Minister has reasonable grounds to believe that the licensed dealer submitted false or misleading

### Suspension

**G.02.037 (1)** Le ministre suspend sans préavis le permis d'importation dans les cas suivants :

**a)** la licence du distributeur autorisé est suspendue;

**b)** il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites;

**c)** l'importation contreviendrait aux règles de droit du pays d'exportation, de tout pays de transit ou de tout pays de transbordement.

### Avis

**(2)** La suspension prend effet dès que le ministre envoie au distributeur autorisé un avis de suspension qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

### Rétablissement du permis

**(3)** Le ministre rétablit le permis d'importation s'il a des motifs raisonnables de croire que la suspension n'est plus nécessaire.

DORS/2019-171, art. 1.

### Révocation

**G.02.038 (1)** Le ministre, sous réserve du paragraphe (2), révoque le permis d'importation dans les cas suivants :

**a)** le distributeur autorisé lui en fait la demande ou l'informe de la perte, du vol ou de toute utilisation non autorisée du permis, que celle-ci soit réelle ou potentielle;

**b)** le distributeur autorisé ne prend pas les mesures correctives précisées par le ministre en vertu de l'alinéa G.02.037(2)c) dans le délai imparti;

**c)** le distributeur autorisé a contrevenu à une condition de son permis;

information or false or falsified documents in or in support of the application for the permit;

**(e)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a controlled drug to an illicit market or use; or

**(f)** the dealer's licence has been revoked.

**d)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**e)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue contrôlée vers un marché ou un usage illicites;

**f)** la licence du distributeur autorisé a été révoquée.

**Exceptions**

**(2)** The Minister must not revoke an import permit for a ground set out in paragraph (1)(d) or G.02.028(1)(e) or (g) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)d) ou G.02.028(1)e) ou g), révoquer le permis d'importation si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que la révocation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Notice**

**(3)** Before revoking an import permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

**Préavis**

**(3)** Le ministre, avant de révoquer le permis d'importation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

**Return of permit**

**G.02.039** If an import permit is revoked, the licensed dealer must return the original of the permit to the Minister within 15 days after the effective date of the revocation.

SOR/2019-171, s. 1.

**Retour du permis**

**G.02.039** Le distributeur autorisé retourne au ministre l'original du permis d'importation dans les quinze jours suivant la date de prise d'effet de la révocation.

DORS/2019-171, art. 1.

## Export Permits

**Application**

**G.02.040 (1)** A licensed dealer must submit to the Minister, before each exportation of a controlled drug, an application for an export permit that contains the following information and document:

## Permis d'exportation

**Demande**

**G.02.040 (1)** Le distributeur autorisé présente au ministre, pour chaque exportation prévue de drogues contrôlées, une demande de permis d'exportation qui contient les renseignements et documents suivants :

**(a)** their name, municipal address and dealer's licence number;

**(b)** with respect to the controlled drug to be exported,

**(i)** its name, as specified in the dealer's licence,

**(ii)** if it is a salt, the name of the salt,

**(iii)** its quantity, and

**(iv)** in the case of a raw material, its purity and its anhydrous content;

**(c)** if the controlled drug is contained in a product to be exported,

**(i)** the brand name of the product,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the controlled drug in the product, the number of units per package and the number of packages;

**(d)** the name and municipal address of the importer in the country of final destination;

**(e)** the name of the customs office where the exportation is anticipated;

**(f)** each proposed mode of transportation and any proposed country of transit or transhipment; and

**(g)** a copy of the import permit issued by the competent authority in the country of final destination that sets out the name of the importer and the municipal address of their site in that country.

**Signature and attestation**

**(2)** The application must

**(a)** be signed and dated by the qualified person in charge or an alternate qualified person in charge; and

**(b)** include an attestation by that person that, to the best of their knowledge,

**(i)** the exportation does not contravene the laws of the country of final destination or any country of transit or transhipment, and

**a)** ses nom, adresse municipale et numéro de licence de distributeur autorisé;

**b)** les précisions ci-après concernant la drogue contrôlée qu'il prévoit d'exporter :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité,

**(iv)** s'agissant d'une matière première, son degré de pureté et son contenu anhydre;

**c)** si la drogue contrôlée est contenue dans un produit qu'il prévoit d'exporter, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue contrôlée qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** les nom et adresse municipale, dans le pays de destination finale, de l'importateur;

**e)** le nom du bureau de douane où est prévue l'exportation;

**f)** les modes de transport prévus et chaque pays de transit ou de transbordement prévu;

**g)** une copie du permis d'importation délivré par l'autorité compétente du pays de destination finale précisant le nom de l'importateur et l'adresse municipale de son installation située dans ce pays.

**Signature et attestation**

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable qualifié ou un responsable qualifié suppléant;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, l'exportation prévue ne contrevient à aucune règle de droit du pays de destination finale, de tout pays de transit ou de tout pays de transbordement,

**(ii)** all of the information and documents submitted in support of the application are correct and complete.

**(ii)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets.

### Additional information and documents

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 1.

### Renseignements et documents complémentaires

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de permis d'exportation.

DORS/2019-171, art. 1.

### Issuance

**G.02.041** Subject to section G.02.044, on completion of the review of the export permit application, the Minister must issue to the licensed dealer an export permit that contains

**(a)** the permit number;

**(b)** the information set out in paragraphs G.02.040(1)(a) to (f);

**(c)** the effective date of the permit;

**(d)** the expiry date of the permit, being the earliest of

**(i)** a date specified by the Minister that is not more than 180 days after its effective date,

**(ii)** the expiry date of the dealer's licence, and

**(iii)** the expiry date of the import permit issued by the competent authority in the country of final destination; and

**(e)** any terms and conditions that the Minister has reasonable grounds to believe are necessary to

**(i)** ensure that an international obligation is respected, or

**(ii)** reduce a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

SOR/2019-171, s. 1.

### Délivrance

**G.02.041** Le ministre, au terme de l'examen de la demande de permis d'exportation et sous réserve de l'article G.02.044, délivre au distributeur autorisé un permis d'exportation qui contient les renseignements suivants :

**a)** le numéro du permis;

**b)** les renseignements visés aux alinéas G.02.040(1)a) à f);

**c)** la date de prise d'effet du permis;

**d)** la date d'expiration du permis, qui correspond à celle des dates ci-après qui est antérieure aux autres :

**(i)** la date précisée par le ministre, qui ne peut être postérieure au cent quatre-vingtième jour suivant sa date de prise d'effet,

**(ii)** la date d'expiration de la licence du distributeur autorisé,

**(iii)** la date d'expiration du permis d'importation délivré par l'autorité compétente du pays de destination finale;

**e)** toute condition que le ministre estime nécessaire, sur le fondement de motifs raisonnables, pour atteindre l'une des fins suivantes :

**(i)** le respect d'une obligation internationale,

**(ii)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

DORS/2019-171, art. 1.

### Validity

**G.02.042** An export permit is valid until the earliest of

**(a)** the expiry date set out in the permit,

### Validité

**G.02.042** Le permis d'exportation est valide jusqu'à celle des dates ci-après qui est antérieure aux autres :

**a)** la date d'expiration qui y est indiquée;

**(b)** the date of the suspension or revocation of the permit under section G.02.047 or G.02.048,

**(c)** the date of the suspension or revocation of the dealer's licence under section G.02.027 or G.02.028, and

**(d)** the date of the expiry, suspension or revocation of the import permit that applies to the controlled drug to be exported and that is issued by the competent authority in the country of final destination.

SOR/2019-171, s. 1.

**b)** la date de sa suspension ou de sa révocation au titre des articles G.02.047 ou G.02.048;

**c)** la date de suspension ou de révocation, au titre des articles G.02.027 ou G.02.028, de la licence du distributeur autorisé;

**d)** la date d'expiration, de suspension ou de révocation du permis d'importation délivré par l'autorité compétente du pays de destination finale à l'égard de la drogue contrôlée à exporter.

DORS/2019-171, art. 1.

### Return of permit

**G.02.043** If an export permit expires, the licensed dealer must return the original of the permit to the Minister within 15 days after its expiry.

SOR/2019-171, s. 1.

### Retour du permis

**G.02.043** Le distributeur autorisé dont le permis d'exportation expire retourne l'original de celui-ci au ministre dans les quinze jours suivant la date d'expiration.

DORS/2019-171, art. 1.

### Refusal

**G.02.044 (1)** The Minister must refuse to issue an export permit if

**(a)** the licensed dealer is not authorized by their dealer's licence to export the relevant controlled drug or their dealer's licence will expire before the date of export;

**(b)** the Minister has reasonable grounds to believe that the exportation would contravene an international obligation;

**(c)** the licensed dealer has not complied with the requirements of subsection G.02.040(3) or the information or documents that they have provided are not sufficient to complete the review of the permit application;

**(d)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the permit application;

**(e)** the licensed dealer has been notified that their application to renew or amend their licence will be refused;

**(f)** the Minister has reasonable grounds to believe that the exportation would not be in conformity with the import permit issued by the competent authority of the country of final destination;

**(g)** the Minister has reasonable grounds to believe that the exportation would contravene the laws of the country of final destination or any country of transit or transhipment; or

### Refus

**G.02.044 (1)** Le ministre refuse de délivrer un permis d'exportation dans les cas suivants :

**a)** la licence du distributeur autorisé ne l'autorise pas à exporter la drogue contrôlée visée ou elle expirera avant la date d'exportation;

**b)** le ministre a des motifs raisonnables de croire que l'exportation entraînerait la violation d'une obligation internationale;

**c)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe G.02.040(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de permis;

**d)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**e)** le distributeur autorisé a été avisé que la demande de renouvellement de sa licence de distributeur autorisé ou la demande de modification de celle-ci sera refusée;

**f)** le ministre a des motifs raisonnables de croire que l'exportation ne serait pas conforme au permis d'importation délivré par l'autorité compétente du pays de destination finale;

**g)** le ministre a des motifs raisonnables de croire que l'exportation contreviendrait aux règles de droit du pays de destination finale, de tout pays de transit ou de tout pays de transbordement;

**(h)** the Minister has reasonable grounds to believe that the issuance of the permit would likely create a risk to public health or safety, including the risk of a controlled drug being diverted to an illicit market or use.

**h)** le ministre a des motifs raisonnables de croire que la délivrance du permis risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue contrôlée vers un marché ou un usage illicites.

### Notice

**(2)** Before refusing to issue the export permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

### Préavis

**(2)** Le ministre, avant de refuser de délivrer le permis d'exportation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

### Providing copy of permit

**G.02.045** The holder of an export permit must provide a copy of the permit to the customs office at the time of exportation.

SOR/2019-171, s. 1.

### Production d'une copie du permis

**G.02.045** Le titulaire du permis d'exportation en produit une copie au bureau de douane lors de l'exportation.

DORS/2019-171, art. 1.

### Declaration

**G.02.046** The holder of an export permit must provide the Minister, within 15 days after the day of export of the controlled drug specified in the permit, with a declaration that contains the following information:

**(a)** their name and the numbers of their dealer's licence and the export permit that applies to the controlled drug;

**(b)** with respect to the controlled drug,

**(i)** its name, as specified in the dealer's licence,

**(ii)** if it is a salt, the name of the salt, and

**(iii)** its quantity;

**(c)** if the controlled drug is contained in a product that they have exported,

**(i)** the brand name of the product,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the controlled drug in the product, the number of units per package and the number of packages; and

**(d)** the name of the customs office from which the controlled drug was exported and the date of export.

SOR/2019-171, s. 1.

### Déclaration

**G.02.046** Le titulaire du permis d'exportation fournit au ministre, dans les quinze jours suivant la date d'exportation de la drogue contrôlée visée par le permis, une déclaration comprenant les renseignements suivants :

**a)** son nom ainsi que les numéros de sa licence de distributeur autorisé et du permis d'exportation relatifs à la drogue contrôlée;

**b)** les précisions ci-après concernant la drogue contrôlée :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité;

**c)** si la drogue contrôlée est contenue dans un produit qu'il a exporté, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue contrôlée qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** le nom du bureau de douane où a eu lieu l'exportation et la date de celle-ci.

DORS/2019-171, art. 1.

### Suspension

**G.02.047 (1)** The Minister must suspend an export permit without prior notice if

**(a)** the dealer's licence is suspended;

**(b)** the Minister has reasonable grounds to believe that the suspension is necessary to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use; or

**(c)** the exportation would contravene the laws of the country of final destination or any country of transit or transhipment.

### Notice

**(2)** The suspension takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the suspension;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

### Reinstatement of permit

**(3)** The Minister must reinstate the export permit if the Minister has reasonable grounds to believe that the suspension is no longer necessary.

SOR/2019-171, s. 1.

### Revocation

**G.02.048 (1)** Subject to subsection (2), the Minister must revoke an export permit if

**(a)** the licensed dealer requests the Minister to do so or informs the Minister of the loss or theft of the permit or the actual or potential unauthorized use of the permit;

**(b)** the licensed dealer does not carry out the corrective measures specified by the Minister under paragraph G.02.047(2)(c) by the specified date;

**(c)** the licensed dealer has contravened a term or condition of the permit;

**(d)** the Minister has reasonable grounds to believe that the licensed dealer submitted false or misleading information or false or falsified documents in or in support of the application for the permit;

### Suspension

**G.02.047 (1)** Le ministre suspend sans préavis le permis d'exportation dans les cas suivants :

**a)** la licence du distributeur autorisé est suspendue;

**b)** il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites;

**c)** l'exportation contreviendrait aux règles de droit du pays de destination finale, de tout pays de transit ou de tout pays de transbordement.

### Avis

**(2)** La suspension prend effet dès que le ministre envoie au distributeur autorisé un avis de suspension qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

### Rétablissement du permis

**(3)** Le ministre rétablit le permis d'exportation s'il a des motifs raisonnables de croire que la suspension n'est plus nécessaire.

DORS/2019-171, art. 1.

### Révocation

**G.02.048 (1)** Le ministre, sous réserve du paragraphe (2), révoque le permis d'exportation dans les cas suivants :

**a)** le distributeur autorisé lui en fait la demande ou l'informe de la perte, du vol ou de toute utilisation non autorisée du permis, que celle-ci soit réelle ou potentielle;

**b)** le distributeur autorisé ne prend pas les mesures correctives précisées par le ministre en vertu de l'alinéa G.02.047(2)c) dans le délai imparti;

**c)** le distributeur autorisé a contrevenu à une condition de son permis;

**d)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**(e)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a controlled drug to an illicit market or use; or

**(f)** the dealer's licence has been revoked.

**e)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue contrôlée vers un marché ou un usage illicites;

**f)** la licence du distributeur autorisé a été révoquée.

### Exceptions

**(2)** The Minister must not revoke an export permit for a ground set out in paragraph (1)(d) or G.02.028(1)(e) or (g) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a controlled drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

### Exceptions

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)d) ou G.02.028(1)e) ou g), révoquer le permis d'exportation si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que la révocation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue contrôlée vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

### Notice

**(3)** Before revoking an export permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 1.

### Préavis

**(3)** Le ministre, avant de révoquer le permis d'exportation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 1.

### Return of permit

**G.02.049** If an export permit is revoked, the licensed dealer must return the original of the permit to the Minister within 15 days after the effective date of the revocation.

SOR/2019-171, s. 1.

### Retour du permis

**G.02.049** Le distributeur autorisé retourne au ministre l'original du permis d'exportation dans les quinze jours suivant la date de prise d'effet de la révocation.

DORS/2019-171, art. 1.

## Identification

### Name

**G.02.050** A licensed dealer must include their name, as set out in their dealer's licence, on all the means by which they identify themself in regard to their activities in relation to controlled drugs, including labels, orders, shipping documents, invoices and advertising

SOR/2019-171, s. 1.

## Identification

### Nom

**G.02.050** Le distributeur autorisé veille à ce que son nom, tel qu'il apparaît sur sa licence, figure sur tout ce qu'il utilise pour s'identifier lors de ses opérations à l'égard des drogues contrôlées, notamment les étiquettes, les bons de commande, les documents d'expédition, les factures et les publicités.

DORS/2019-171, art. 1.

## Sale of Controlled Drugs

### Sale to another licensed dealer

**G.02.051** A licensed dealer may sell or provide a controlled drug to another licensed dealer.

SOR/2019-171, s. 1.

### Sale to pharmacist

**G.02.052 (1)** Subject to subsection (2), a licensed dealer may sell or provide a controlled drug to a pharmacist.

### Exception — pharmacist named in notice

**(2)** A licensed dealer must not sell or provide to a pharmacist named in a notice issued under section G.03.017.2 the controlled drugs referred to in the notice unless the dealer has received a notice of retraction issued under section G.03.017.3.

SOR/2019-171, s. 1.

### Sale to practitioner

**G.02.053 (1)** Subject to subsection (2), a licensed dealer may sell or provide a controlled drug to a practitioner.

### Exception — practitioner named in notice

**(2)** A licensed dealer must not sell or provide to a practitioner who is named in a notice issued under section G.04.004.2 the controlled drugs referred to in the notice, unless the dealer has received a notice of retraction issued under section G.04.004.3.

SOR/2019-171, s. 1.

### Provision to hospital employee

**G.02.054** A licensed dealer may provide a controlled drug to a hospital employee.

SOR/2019-171, s. 1.

### Sale to exempted person

**G.02.055** A licensed dealer may sell or provide a controlled drug to a person who is exempted under section 56 of the Act with respect to the possession of that drug.

SOR/2019-171, s. 1.

### Sale to Minister

**G.02.056** A licensed dealer may sell or provide a drug to the Minister.

SOR/2019-171, s. 1.

## Vente de drogues contrôlées

### Vente à un autre distributeur autorisé

**G.02.051** Le distributeur autorisé peut vendre ou fournir une drogue contrôlée à un autre distributeur autorisé.

DORS/2019-171, art. 1.

### Vente à un pharmacien

**G.02.052 (1)** Le distributeur autorisé peut, sous réserve du paragraphe (2), vendre ou fournir une drogue contrôlée à un pharmacien.

### Exception — pharmacien nommé dans un avis

**(2)** Le distributeur autorisé ne peut vendre ou fournir à un pharmacien nommé dans un avis donné conformément à l'article G.03.017.2 les drogues contrôlées visées par l'avis, sauf s'il reçoit l'avis de rétractation visé à l'article G.03.017.3.

DORS/2019-171, art. 1.

### Vente à un praticien

**G.02.053 (1)** Le distributeur autorisé peut, sous réserve du paragraphe (2), vendre ou fournir une drogue contrôlée à un praticien.

### Exceptions — praticien nommé dans un avis

**(2)** Le distributeur autorisé ne peut vendre ou fournir à un praticien nommé dans un avis donné conformément à l'article G.04.004.2 les drogues contrôlées visées par l'avis, sauf s'il reçoit l'avis de rétractation visé à l'article G.04.004.3.

DORS/2019-171, art. 1.

### Fourniture à un employé d'un hôpital

**G.02.054** Le distributeur autorisé peut fournir une drogue contrôlée à l'employé d'un hôpital.

DORS/2019-171, art. 1.

### Vente à une personne exemptée

**G.02.055** Le distributeur autorisé peut vendre ou fournir une drogue contrôlée à une personne qui bénéficie d'une exemption relative à la possession de cette drogue et accordée en vertu de l'article 56 de la Loi.

DORS/2019-171, art. 1.

### Vente au ministre

**G.02.056** Le distributeur autorisé peut vendre ou fournir une drogue contrôlée au ministre.

DORS/2019-171, art. 1.

### Written order

**G.02.057** A licensed dealer may sell or provide a controlled drug under any of sections G.02.051 to G.02.055 if

**(a)** the dealer has received a written order that specifies the name and quantity of the drug to be supplied and is signed and dated

**(i)** in the case of a drug to be provided to a hospital employee or a practitioner in a hospital, by the pharmacist in charge of the hospital's pharmacy or by a practitioner authorized by the person in charge of the hospital to sign the order, and

**(ii)** in any other case, by the person to whom the drug is to be sold or provided; and

**(b)** the dealer has verified the signature, if it is unknown to them.

SOR/2019-171, s. 1.

### Verbal order

**G.02.058 (1)** A licensed dealer may sell or provide a controlled drug listed in Part II or III of the schedule to this Part if

**(a)** the dealer has received a verbal order that specifies the name and quantity of the drug to be supplied; and

**(b)** in the case of the provision of the drug to a hospital employee or a practitioner in a hospital, the order has been placed by the pharmacist in charge of the hospital's pharmacy or by a practitioner authorized by the person in charge of the hospital to place the order.

### Receipt

**(2)** A licensed dealer that has received a verbal order from a pharmacist or practitioner must, within five working days after filling the order, obtain and keep a receipt that includes

**(a)** the signature of the pharmacist or practitioner who received the controlled drug;

**(b)** the date on which the pharmacist or practitioner received the controlled drug; and

**(c)** the name and quantity of the controlled drug.

### Commande écrite

**G.02.057** Le distributeur autorisé peut vendre ou fournir une drogue contrôlée en vertu des articles G.02.051 à G.02.055 si les conditions ci-après sont remplies :

**a)** il reçoit une commande écrite qui précise le nom et la quantité de la drogue contrôlée commandée et qui est signée et datée conformément à ce qui suit :

**(i)** si la drogue contrôlée doit être fournie à un employé d'un hôpital ou à un praticien exerçant dans un hôpital, par le pharmacien responsable de la pharmacie de l'hôpital ou par un praticien autorisé à signer la commande par le responsable de l'hôpital,

**(ii)** dans tout autre cas, par la personne à qui est vendue ou fournie la drogue contrôlée;

**b)** il vérifie la signature s'il ne la reconnaît pas.

DORS/2019-171, art. 1.

### Commande verbale

**G.02.058 (1)** Le distributeur autorisé peut vendre ou fournir une drogue contrôlée mentionnée aux parties II ou III de l'annexe de la présente partie si les conditions ci-après sont remplies :

**a)** il reçoit une commande verbale qui précise le nom et la quantité de la drogue contrôlée commandée;

**b)** si la drogue contrôlée doit être fournie à un employé d'un hôpital ou à un praticien exerçant dans un hôpital, la commande a été faite par le pharmacien responsable de la pharmacie de l'hôpital ou par un praticien autorisé à faire la commande par le responsable de l'hôpital.

### Reçu

**(2)** Le distributeur autorisé qui reçoit une commande verbale d'un pharmacien ou d'un praticien doit obtenir, dans les cinq jours ouvrables suivant l'exécution de la commande, un reçu qu'il conserve et qui satisfait aux exigences suivantes :

**a)** il est signé par le pharmacien ou le praticien qui a reçu la drogue contrôlée;

**b)** il précise la date de la réception de la drogue contrôlée par celui-ci;

**c)** il précise le nom ainsi que la quantité de la drogue contrôlée.

#### No further sale without receipt

**(3)** If the licensed dealer has not obtained the receipt within five working days, the dealer must not sell or provide a controlled drug to the pharmacist or practitioner in accordance with a further verbal order received from them until after obtaining the receipt.

SOR/2019-171, s. 1.

#### Anticipated multiple sales

**G.02.059 (1)** A licensed dealer may sell or provide a controlled drug more than once in respect of one order if the order indicates

**(a)** the number of sales or provisions, not exceeding four;

**(b)** the specific quantity for each sale or provision; and

**(c)** the intervals between each sale or provision.

#### Multiple sales — insufficient stock

**(2)** A licensed dealer may sell or provide a controlled drug more than once in respect of one order if, at the time of receipt of the order, the dealer temporarily does not have in stock the quantity of the drug ordered, in which case the dealer may sell or provide against the order the quantity of the drug that the dealer has available and deliver the balance later.

SOR/2019-171, s. 1.

## Packaging and Transportation

#### Packaging — sale and provision

**G.02.060 (1)** A licensed dealer that sells or provides a controlled drug must securely package it in its immediate container, which must be sealed in such a manner that the container cannot be opened without breaking the seal.

#### Packaging — transport and export

**(2)** A licensed dealer that transports or exports a controlled drug must ensure that its package is sealed in such a manner that the package cannot be opened without breaking the seal.

#### Exception

**(3)** Subsection (1) does not apply to a test kit that contains a controlled drug and that has a registration number.

SOR/2019-171, s. 1.

#### Interdiction de vente ultérieure sans reçu

**(3)** Le distributeur autorisé qui n'obtient pas le reçu dans les cinq jours ouvrables ne peut, à la réception d'une autre commande verbale du pharmacien ou du praticien, lui vendre ou fournir une autre drogue contrôlée jusqu'à ce qu'il obtienne ce reçu.

DORS/2019-171, art. 1.

#### Ventes multiples prévues

**G.02.059 (1)** Le distributeur autorisé peut vendre ou fournir une drogue contrôlée plus d'une fois à l'égard de la même commande si la commande précise les renseignements suivants :

**a)** le nombre de ventes ou de fournitures, celui-ci ne dépassant pas quatre;

**b)** la quantité précise pour chaque vente ou fourniture;

**c)** les intervalles entre chacune d'elles.

#### Ventes multiples — quantité disponible insuffisante

**(2)** Le distributeur autorisé qui, lorsqu'il reçoit la commande, ne dispose pas temporairement de toute la quantité de la drogue contrôlée demandée peut vendre ou fournir la quantité de la drogue dont il dispose alors et livrer le reste par la suite.

DORS/2019-171, art. 1.

## Emballage et transport

#### Emballage — vente et fourniture

**G.02.060 (1)** Le distributeur autorisé qui vend ou fournit une drogue contrôlée l'emballe solidement dans un contenant immédiat qui est scellé de telle manière qu'il est impossible de l'ouvrir sans briser le sceau.

#### Emballage — transport et exportation

**(2)** Le distributeur autorisé qui transporte ou exporte une drogue contrôlée veille à ce que son emballage soit scellé de telle manière qu'il est impossible de l'ouvrir sans briser le sceau.

#### Exception

**(3)** Le paragraphe (1) ne s'applique pas au nécessaire d'essai qui contient une drogue contrôlée et auquel un numéro d'enregistrement a été attribué.

DORS/2019-171, art. 1.

### Transport

**G.02.061 (1)** A licensed dealer must, in taking delivery of a controlled drug that they have imported or in making delivery of a controlled drug,

**(a)** take any measures that are necessary to ensure the security of the drug while it is being transported;

**(b)** subject to subsection (2), use a method of transportation that permits an accurate record to be kept of all handling of the drug as well as the signatures of every person handling it until it is delivered to the consignee;

**(c)** in the case of an imported drug, transport it directly to the site specified in their licence after it is released under the *Customs Act*; and

**(d)** in the case of a drug to be exported, transport it directly from the site specified in their licence to the customs office where it will be exported.

### Exception

**(2)** A licensed dealer may have a preparation transported by a common carrier.

SOR/2019-171, s. 1.

## Thefts, Losses and Suspicious Transactions

### Protective measures

**G.02.062** A licensed dealer must take any measures that are necessary to ensure the security of any controlled drug in their possession and any licence or permit in their possession.

SOR/2019-171, s. 1.

### Theft or loss — licence and permit

**G.02.063** A licensed dealer that becomes aware of a theft or loss of their licence or permit must provide a written report to the Minister within 72 hours after becoming aware of it.

SOR/2019-171, s. 1.

### Theft or unexplainable loss — controlled drug

**G.02.064** A licensed dealer that becomes aware of a theft of a controlled drug or of a loss of a controlled drug that cannot be explained on the basis of normally accepted business activities must

### Transport

**G.02.061 (1)** Le distributeur autorisé qui prend livraison d'une drogue contrôlée qu'il a importée ou qui fait la livraison d'une drogue contrôlée satisfait aux exigences suivantes :

**a)** il prend les mesures nécessaires pour veiller à la sécurité de la drogue contrôlée durant son transport;

**b)** il utilise un moyen de transport qui permet, sous réserve du paragraphe (2), de consigner fidèlement toute manutention de la drogue contrôlée ainsi que la signature de toute personne ayant effectué cette manutention pendant la durée du transport, jusqu'à sa livraison au destinataire;

**c)** s'agissant d'une drogue contrôlée importée, il la transporte, après son dédouanement en vertu de la *Loi sur les douanes*, directement à l'installation précisée dans sa licence;

**d)** s'agissant d'une drogue contrôlée qui doit être exportée, il la transporte directement de l'installation précisée dans sa licence au bureau de douane d'où la drogue sera exportée.

### Exception

**(2)** Le distributeur autorisé peut faire transporter une préparation par un voiturier public.

DORS/2019-171, art. 1.

## Pertes, vols et transactions douteuses

### Mesures de protection

**G.02.062** Le distributeur autorisé prend toute mesure nécessaire pour veiller à la sécurité des drogues contrôlées, des licences et des permis qui sont en sa possession.

DORS/2019-171, art. 1.

### Pertes et vols — licences et permis

**G.02.063** Le distributeur autorisé qui prend connaissance de la perte ou du vol de sa licence ou de son permis fournit un rapport écrit au ministre dans les soixante-douze heures suivantes.

DORS/2019-171, art. 1.

### Pertes inexplicables et vols — drogues contrôlées

**G.02.064** Le distributeur autorisé qui prend connaissance d'une perte de drogues contrôlées ne pouvant pas s'expliquer dans le cadre des pratiques d'opération normalement acceptées ou d'un vol de drogues contrôlées se conforme aux exigences suivantes :

**(a)** provide a written report to a member of a police force within 24 hours after becoming aware of the theft or loss; and

**(b)** provide a written report to the Minister within 72 hours after becoming aware of the theft or loss and include a confirmation that the report required under paragraph (a) has been provided.

SOR/2019-171, s. 1.

**a)** il fournit un rapport écrit à un membre d'un corps policier dans les vingt-quatre heures suivantes;

**b)** il fournit un rapport écrit au ministre dans les soixante-douze heures suivantes et lui confirme que le rapport prévu à l'alinéa a) a été fourni.

DORS/2019-171, art. 1.

### Suspicious transaction

**G.02.065 (1)** A licensed dealer must provide a written report containing the following information to the Minister within 72 hours after becoming aware of a transaction occurring in the course of their activities that they have reasonable grounds to suspect may be related to the diversion of a controlled drug to an illicit market or use:

**(a)** their name, municipal address, telephone number and, if the licensed dealer is a corporation, the position held by the individual making the report;

**(b)** the name and municipal address of the other party to the transaction;

**(c)** details of the transaction, including its date and time, its type, the name and quantity of the controlled drug and, in the case of a product or compound, the quantity of every controlled drug that it contains;

**(d)** in the case of a product that contains the controlled drug, other than a test kit, the drug identification number that is assigned to the product under section C.01.014.2; and

**(e)** a detailed description of the reasons for those suspicions.

### Transactions douteuses

**G.02.065 (1)** Le distributeur autorisé qui prend connaissance d'une transaction effectuée au cours de ses opérations à l'égard de laquelle il a des motifs raisonnables de soupçonner qu'elle pourrait être liée au détournement d'une drogue contrôlée vers un marché ou un usage illicites fournit au ministre, au plus tard soixante-douze heures après en avoir pris connaissance, un rapport écrit contenant les renseignements suivants :

**a)** ses nom, adresse municipale et numéro de téléphone ainsi que, si le distributeur autorisé est une personne morale, le poste de l'individu ayant fait le rapport;

**b)** les nom et adresse municipale de l'autre partie à la transaction;

**c)** les détails de la transaction, notamment ses date et heure, son type, le nom de la drogue contrôlée, la quantité en cause et, s'agissant d'un produit ou d'un composé, la quantité de toute drogue contrôlée qu'il contient;

**d)** exception faite d'un nécessaire d'essai, l'identification numérique qui a été attribuée au produit contenant la drogue contrôlée aux termes de l'article C.01.014.2, s'il y a lieu;

**e)** une description détaillée des motifs de ses soupçons.

### Good faith

**(2)** No civil proceedings lie against a licensed dealer for having provided the report in good faith.

### Bonne foi

**(2)** Le distributeur autorisé ne peut faire l'objet d'une poursuite civile pour avoir fourni ce rapport de bonne foi.

### Non-disclosure

**(3)** A licensed dealer must not disclose that they have provided the report or disclose details of it, with the intent to prejudice a criminal investigation, whether or not a criminal investigation has begun.

SOR/2019-171, s. 1.

### Non-divulgation

**(3)** Le distributeur autorisé ne peut, dans l'intention de nuire à une enquête criminelle en cours ou à venir, révéler qu'il a fourni le rapport ou en dévoiler les détails.

DORS/2019-171, art. 1.

### Partial protection against self-incrimination

**G.02.066** A report made under any of sections G.02.063 to G.02.065, or any evidence derived from it, is not to be used or received to incriminate the licensed dealer in any criminal proceeding against them other than a prosecution under section 132, 136 or 137 of the *Criminal Code*.

SOR/2019-171, s. 1.

### Protection partielle contre l'auto-incrimination

**G.02.066** Ni le rapport fourni en application de l'un des articles G.02.063 à G.02.065 ni aucune preuve qui en provient ne peuvent être utilisés ou admis pour incriminer le distributeur autorisé dans le cadre de poursuites criminelles intentées contre lui, sauf s'il s'agit de poursuites intentées en vertu des articles 132, 136 ou 137 du *Code criminel*.

DORS/2019-171, art. 1.

## Destruction of Controlled Drugs

### Destruction at site

**G.02.067** A licensed dealer that intends to destroy a controlled drug at the site specified in their licence must ensure that the following conditions are met:

**(a)** the licensed dealer obtains the prior approval of the Minister;

**(b)** the destruction occurs in the presence of two of the following persons, at least one of whom must be a person referred to in subparagraph (i):

**(i)** the senior person in charge, the qualified person in charge or an alternate qualified person in charge, and

**(ii)** a person who works for or provides services to the licensed dealer and holds a senior position;

**(c)** the destruction is carried out in accordance with a method that complies with all federal, provincial and municipal environmental protection legislation applicable to the place of destruction; and

**(d)** as soon as the destruction is completed, the person who carried out the destruction and each of the two persons referred to in paragraph (b) who were present at the destruction sign and date a joint declaration attesting that the controlled drug was completely destroyed, to which each signatory must add their name in printed letters.

SOR/2019-171, s. 1.

## Destruction de drogues contrôlées

### Destruction à l'installation

**G.02.067** Le distributeur autorisé qui prévoit de détruire une drogue contrôlée à l'installation précisée dans sa licence veille à ce que les conditions ci-après soient remplies :

**a)** il obtient au préalable l'approbation du ministre;

**b)** la destruction est effectuée en présence de deux personnes parmi les suivantes, dont au moins une est visée au sous-alinéa (i) :

**(i)** le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant,

**(ii)** une personne qui travaille pour le distributeur autorisé ou qui lui fournit des services et qui occupe un poste de niveau supérieur;

**c)** la destruction est effectuée selon une méthode conforme à la législation fédérale, provinciale et municipale sur la protection de l'environnement applicable au lieu de destruction;

**d)** dès la destruction terminée, la personne qui l'a effectuée et les deux personnes visées à l'alinéa b) qui étaient présentes font une déclaration commune signée et datée qui atteste que la drogue contrôlée a été complètement détruite, chaque signataire ajoutant à la déclaration son nom en lettres moulées.

DORS/2019-171, art. 1.

### Destruction elsewhere than at site

**G.02.068** A licensed dealer that intends to destroy a controlled drug elsewhere than at the site specified in their licence must ensure that the following conditions are met:

**(a)** the licensed dealer obtains the prior approval of the Minister;

### Destruction ailleurs qu'à l'installation

**G.02.068** Le distributeur autorisé qui prévoit de détruire une drogue contrôlée ailleurs qu'à l'installation précisée dans sa licence veille à ce que les conditions ci-après soient remplies :

**a)** il obtient au préalable l'approbation du ministre;

**b)** il prend les mesures nécessaires pour veiller à la sécurité de la drogue contrôlée durant son transport afin

**(b)** the licensed dealer takes any measures that are necessary to ensure the security of the controlled drug while it is being transported in order to prevent its diversion to an illicit market or use;

**(c)** the destruction is carried out by a person working for a business that specializes in the destruction of dangerous goods and in the presence of another person working for that business;

**(d)** the destruction is carried out in accordance with a method that complies with all federal, provincial and municipal environmental protection legislation applicable to the place of destruction; and

**(e)** as soon as the destruction is completed, the person who carried out the destruction provides the licensed dealer with a dated declaration attesting that the controlled drug was completely destroyed and containing

**(i)** the municipal address of the place of destruction,

**(ii)** the name and quantity of the controlled drug and, if applicable, the brand name and quantity of the product containing it or the name and quantity of the compound containing it,

**(iii)** the method of destruction,

**(iv)** the date of destruction, and

**(v)** the names in printed letters and signatures of that person and the other person who was present at the destruction.

SOR/2019-171, s. 1.

de prévenir le détournement de celle-ci vers un marché ou un usage illicites;

**c)** la destruction est effectuée par une personne travaillant pour une entreprise spécialisée dans la destruction de marchandises dangereuses et en présence d'une autre personne travaillant pour cette entreprise;

**d)** la destruction est effectuée selon une méthode conforme à la législation fédérale, provinciale et municipale sur la protection de l'environnement applicable au lieu de destruction;

**e)** dès la destruction terminée, la personne qui l'a effectuée fournit au distributeur autorisé une déclaration datée qui atteste que la drogue contrôlée a été complètement détruite et qui contient les renseignements suivants :

**(i)** l'adresse municipale du lieu où la destruction a été effectuée,

**(ii)** le nom et la quantité de la drogue contrôlée et, le cas échéant, la marque nominative et la quantité du produit qui en contenait ou le nom et la quantité du composé qui en contenait,

**(iii)** la méthode de destruction,

**(iv)** la date de la destruction,

**(v)** les nom en lettres moulées et signature de cette personne ainsi que de l'autre personne présente lors de la destruction.

DORS/2019-171, art. 1.

### Application for prior approval

**G.02.069 (1)** A licensed dealer must submit to the Minister an application that contains the following information in order to obtain the Minister's prior approval to destroy a controlled drug:

**(a)** their name, municipal address and dealer's licence number;

**(b)** the proposed date of destruction;

**(c)** the municipal address of the place of destruction;

**(d)** a brief description of the method of destruction;

**(e)** if the destruction is to be carried out at the site specified in the dealer's licence, the names of the persons proposed for the purpose of paragraph G.02.067(b) and information establishing that they meet the conditions of that paragraph;

### Demande d'approbation préalable

**G.02.069 (1)** Le distributeur autorisé présente au ministre une demande qui contient les renseignements ci-après afin d'obtenir une approbation préalable à la destruction d'une drogue contrôlée :

**a)** ses nom, adresse municipale et numéro de licence de distributeur autorisé;

**b)** la date prévue de la destruction;

**c)** l'adresse municipale du lieu où la destruction sera effectuée;

**d)** une brève description de la méthode de destruction;

**e)** si la destruction doit être effectuée à l'installation précisée dans sa licence, le nom des personnes proposées pour l'application de l'alinéa G.02.067b) et des

**(f)** the name of the controlled drug and, if applicable, the brand name of the product containing it or the name of the compound containing it; and

**(g)** the form and quantity of the controlled drug or the product or compound containing it and, if applicable, the strength per unit of the controlled drug in the product or compound, the number of units per package and the number of packages.

**Signature and attestation**

**(2)** The application must

**(a)** be signed and dated by the qualified person in charge or an alternate qualified person in charge; and

**(b)** include an attestation by that person that

**(i)** the proposed method of destruction complies with all federal, provincial and municipal environmental protection legislation applicable to the place of destruction, and

**(ii)** all of the information submitted in support of the application is correct and complete to the best of the signatory's knowledge.

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 1.

**Approval**

**G.02.070** On completion of the review of the approval application, the Minister must approve the destruction of the controlled drug unless

**(a)** in the case of a destruction that is to be carried out at the site specified in the dealer's licence, the persons proposed for the purpose of paragraph G.02.067(b) do not meet the conditions of that paragraph;

**(b)** the Minister has reasonable grounds to believe that the controlled drug would not be destroyed;

**(c)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the approval application;

renseignements établissant que celles-ci remplissent les conditions visées à cet alinéa;

**f)** le nom de la drogue contrôlée et, le cas échéant, la marque nominative du produit qui en contient ou le nom du composé qui en contient;

**g)** la forme et la quantité soit de la drogue contrôlée, soit du produit ou du composé qui en contient et, le cas échéant, la concentration de la drogue contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages.

**Signature et attestation**

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable qualifié ou tout responsable qualifié suppléant;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** la méthode de destruction prévue est conforme à la législation fédérale, provinciale et municipale sur la protection de l'environnement applicable au lieu de destruction,

**(ii)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande d'approbation.

DORS/2019-171, art. 1.

**Approbation**

**G.02.070** Le ministre, au terme de l'examen de la demande d'approbation, approuve la destruction de la drogue contrôlée, sauf dans les cas suivants :

**a)** si la destruction doit être effectuée à l'installation précisée dans la licence du distributeur autorisé, les personnes proposées pour l'application de l'alinéa G.02.067b) ne remplissent pas les conditions visées à cet alinéa;

**b)** le ministre a des motifs raisonnables de croire que la drogue contrôlée ne serait pas détruite;

**c)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande d'approbation ou à l'appui de celle-ci, des

**(d)** the controlled drug or a portion of it is required for the purposes of a criminal or administrative investigation or a preliminary inquiry, trial or other proceeding under any Act or its regulations; or

**(e)** the Minister has reasonable grounds to believe that the approval would likely create a risk to public health or safety, including the risk of the controlled drug being diverted to an illicit market or use.

SOR/2019-171, s. 1.

## Documents

### Method of recording information

**G.02.071** A licensed dealer must record any information that they are required to record under this Part using a method that permits an audit of it to be made at any time.

SOR/2019-171, s. 1.

### Information — general

**G.02.072** A licensed dealer must record the following information:

**(a)** the name, form and quantity of any controlled drug that the dealer orders, the name of the person who placed the order on the dealer's behalf and the date of the order;

**(b)** the name, form and quantity of any controlled drug that the dealer receives, the name and municipal address of the person who sold or provided it and the date on which it was received;

**(c)** in the case of a controlled drug that the dealer sells or provides,

**(i)** the brand name of the product or the name of the compound containing the controlled drug and the name of the controlled drug,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any,

**(iii)** the form and quantity of the controlled drug and, if applicable, the strength per unit of the controlled drug in the product or compound, the number of units per package and the number of packages,

renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**d)** la drogue contrôlée est, en tout ou en partie, nécessaire dans le cadre d'une enquête criminelle, administrative ou préliminaire, d'un procès ou d'une autre procédure engagée sous le régime d'une loi ou de ses règlements;

**e)** le ministre a des motifs raisonnables de croire que l'approbation risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement de la drogue contrôlée vers un marché ou un usage illicites.

DORS/2019-171, art. 1.

## Documents

### Méthode de consignation

**G.02.071** Le distributeur autorisé qui consigne des renseignements en application de la présente partie le fait selon une méthode qui en permet la vérification à tout moment.

DORS/2019-171, art. 1.

### Renseignements généraux

**G.02.072** Le distributeur autorisé consigne les renseignements suivants :

**a)** le nom, la forme et la quantité de toute drogue contrôlée qu'il commande, le nom de la personne qui fait la commande pour son compte et la date de la commande;

**b)** le nom, la forme et la quantité de toute drogue contrôlée qu'il reçoit ainsi que les nom et adresse municipale de la personne qui la lui a vendue ou fournie et la date de réception;

**c)** s'agissant d'une drogue contrôlée qu'il vend ou fournit, les précisions ci-après la concernant :

**(i)** la marque nominative du produit ou le nom du composé contenant la drogue contrôlée et le nom de celle-ci,

**(ii)** l'identification numérique qui a été attribuée au produit aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la forme et la quantité de la drogue contrôlée et, le cas échéant, la concentration de la drogue contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages,

**(iv)** the name and municipal address of the person to whom it was sold or provided, and

**(v)** the date on which it was sold or provided;

**(d)** the name, form and quantity of any controlled drug that the dealer manufactures or assembles and the date on which it was placed in stock and, if applicable, the strength per unit of the controlled drug in the product or compound, the number of units per package and the number of packages;

**(e)** the name and quantity of any controlled drug that the dealer uses in the manufacturing or assembling of a product or compound, as well as the brand name and quantity of the product or the name and quantity of the compound, and the date on which the product or compound was placed in stock;

**(f)** the name, form and quantity of any controlled drug in stock at the end of each month;

**(g)** the name, form and quantity of any controlled drug that the dealer delivers, transports or sends, the name and municipal address of the consignee and the date on which it was delivered, transported or sent;

**(h)** the name, form and quantity of any controlled drug that the dealer imports, the date on which it was imported, the name and municipal address of the exporter, the country of exportation and any country of transit or transhipment; and

**(i)** the name, form and quantity of any controlled drug that the dealer exports, the date on which it was exported, the name and municipal address of the importer, the country of final destination and any country of transit or transhipment.

SOR/2019-171, s. 1.

**(iv)** les nom et adresse municipale de la personne à laquelle il l'a vendue ou fournie,

**(v)** la date de la vente ou de la fourniture;

**d)** le nom, la forme et la quantité de toute drogue contrôlée qu'il fabrique ou assemble ainsi que sa date d'entreposage et, le cas échéant, la concentration de la drogue contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages;

**e)** d'une part, le nom et la quantité de toute drogue contrôlée qu'il utilise dans la fabrication ou l'assemblage d'un produit ou d'un composé et, d'autre part, la marque nominative et la quantité de ce produit ou le nom et la quantité de ce composé ainsi que la date d'entreposage;

**f)** le nom, la forme et la quantité de toute drogue contrôlée entreposée à la fin de chaque mois;

**g)** le nom, la forme et la quantité de toute drogue contrôlée qu'il livre, transporte ou expédie, les nom et adresse municipale du destinataire ainsi que la date de la livraison, du transport ou de l'expédition;

**h)** le nom, la forme et la quantité de toute drogue contrôlée qu'il importe, la date de l'importation, les nom et adresse municipale de l'exportateur ainsi que le nom du pays d'exportation et de tout pays de transit ou de transbordement;

**i)** le nom, la forme et la quantité de toute drogue contrôlée qu'il exporte, la date de l'exportation, les noms et adresse municipale de l'importateur ainsi que le nom du pays de destination finale et de tout pays de transit ou de transbordement.

DORS/2019-171, art. 1.

### Verbal order

**G.02.073** A licensed dealer that receives a verbal order for a controlled drug listed in Part II or III of the schedule to this Part and sells or provides it to a pharmacist, practitioner or hospital employee must immediately record

**(a)** the name of the person who placed the order;

**(b)** the date on which the order was received; and

**(c)** the name of the person recording the order.

SOR/2019-171, s. 1.

### Commandes verbales

**G.02.073** Le distributeur autorisé qui reçoit une commande verbale pour une drogue contrôlée mentionnée aux parties II ou III de l'annexe de la présente partie et qui vend ou fournit cette drogue à un pharmacien, à un praticien ou à un employé d'un hôpital consigne immédiatement les renseignements suivants :

**a)** le nom de la personne qui a fait la commande;

**b)** la date à laquelle il a reçu la commande;

**c)** le nom de la personne qui consigne la commande.

DORS/2019-171, art. 1.

### Explainable loss of controlled drug

**G.02.074** A licensed dealer that becomes aware of a loss of a controlled drug that can be explained on the basis of normally accepted business activities must record the following information:

**(a)** the name of the lost controlled drug and, if applicable, the brand name of the product or the name of the compound containing it;

**(b)** the form and quantity of the controlled drug and, if applicable, the form of the product or compound containing it, the strength per unit of the controlled drug in the product or compound, the number of units per package and the number of packages;

**(c)** the date on which the dealer became aware of the loss; and

**(d)** the explanation for the loss.

SOR/2019-171, s. 1.

### Destruction

**G.02.075** A licensed dealer must record the following information concerning any controlled drug that they destroy at the site specified in their licence:

**(a)** the municipal address of the place of destruction;

**(b)** the name, form and quantity of the controlled drug and, if applicable, the brand name and quantity of the product containing the drug or the name and quantity of the compound containing the drug;

**(c)** the method of destruction; and

**(d)** the date of destruction.

SOR/2019-171, s. 1.

### Annual report

**G.02.076 (1)** Subject to subsections (2) and (3), a licensed dealer must provide to the Minister, within three months after the end of each calendar year, an annual report that contains

**(a)** the name, form and total quantity of each controlled drug that they receive, produce, sell, provide, import, export or destroy during the calendar year, as well as the name and total quantity of each controlled drug that they use to manufacture or assemble a product or compound;

**(b)** the name, form and quantity of each controlled drug in physical inventory taken at the site specified in their licence at the end of the calendar year; and

### Pertes explicables de drogues contrôlées

**G.02.074** Le distributeur autorisé qui prend connaissance d'une perte de drogues contrôlées pouvant s'expliquer dans le cadre des pratiques d'opération normalement acceptées consigne les renseignements suivants :

**a)** le nom de chaque drogue contrôlée perdue et, le cas échéant, la marque nominative du produit ou le nom du composé qui en contenait;

**b)** la forme et la quantité de cette drogue contrôlée et, le cas échéant, la forme du produit ou du composé qui en contenait, la concentration de la drogue contrôlée contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages;

**c)** la date à laquelle il a pris connaissance de la perte;

**d)** l'explication de la perte.

DORS/2019-171, art. 1.

### Destruction

**G.02.075** Le distributeur autorisé consigne les renseignements ci-après concernant toute drogue contrôlée qu'il a détruite à l'installation précisée dans sa licence :

**a)** l'adresse municipale du lieu où la destruction a été effectuée;

**b)** le nom, la forme et la quantité de la drogue contrôlée et, le cas échéant, la marque nominative et la quantité du produit qui en contenait ou le nom et la quantité du composé qui en contenait;

**c)** la méthode de destruction;

**d)** la date de la destruction.

DORS/2019-171, art. 1.

### Rapport annuel

**G.02.076 (1)** Le distributeur autorisé fournit au ministre, sous réserve des paragraphes (2) et (3), un rapport annuel contenant les renseignements ci-après dans les trois mois suivant la fin de chaque année civile :

**a)** le nom, la forme et la quantité totale de chaque drogue contrôlée qu'il a reçue, produite, vendue, fournie, importée, exportée ou détruite au cours de l'année civile ainsi que le nom et la quantité totale de chaque drogue contrôlée utilisée pour la fabrication ou l'assemblage d'un produit ou d'un composé;

**b)** le nom, la forme et la quantité de chaque drogue contrôlée selon l'inventaire physique établi à la fin de l'année civile à l'installation précisée dans la licence;

**(c)** the name, form and quantity of any controlled drug that has been lost or stolen in the course of conducting activities during the calendar year.

**c)** le nom, la forme et la quantité de chaque drogue contrôlée perdue ou volée lors des opérations effectuées au cours de l'année civile.

**Non-renewal or revocation within first three months**

**(2)** If a licensed dealer's licence expires without being renewed or is revoked during the first three months of a calendar year, the dealer must provide to the Minister

**(a)** within three months after the end of the preceding calendar year, the annual report in respect of that year; and

**(b)** within three months after the expiry or revocation, a report in respect of the portion of the current calendar year during which the licence was valid that contains the information referred to in subsection (1), in which the quantity in physical inventory is to be calculated as of the date of expiry or revocation.

**Non-renouvellement ou révocation dans les trois premiers mois**

**(2)** Le distributeur autorisé dont la licence expire sans être renouvelée ou est révoquée dans les trois premiers mois d'une année civile fournit au ministre les rapports ci-après dans les délais suivants :

**a)** dans les trois mois suivant la fin de l'année civile précédente, le rapport annuel pour celle-ci;

**b)** dans les trois mois suivant l'expiration ou la révocation, un rapport pour la période de l'année civile courante durant laquelle la licence était valide contenant les renseignements visés au paragraphe (1), la quantité devant être évaluée selon l'inventaire physique établi à la date d'expiration ou de révocation.

**Non-renewal or revocation after third month**

**(3)** If a licensed dealer's licence expires without being renewed or is revoked after the first three months of a calendar year, the dealer must provide to the Minister, within three months after the expiry or revocation, a report in respect of the portion of the calendar year during which the licence was valid that contains the information referred to in subsection (1) for that period, in which the quantity in physical inventory is to be calculated as of the date of expiry or revocation.

SOR/2019-171, s. 1.

**Non-renouvellement ou révocation après le troisième mois**

**(3)** Le distributeur autorisé dont la licence expire sans être renouvelée ou est révoquée après le troisième mois d'une année civile fournit au ministre, dans les trois mois suivant l'expiration ou la révocation, un rapport pour la période de l'année civile durant lesquels la licence était valide contenant les renseignements visés au paragraphe (1), la quantité devant être évaluée selon l'inventaire physique établi à la date d'expiration ou de révocation.

DORS/2019-171, art. 1.

**Retention period**

**G.02.077** A licensed dealer and a former licensed dealer must keep any document containing the information that they are required to record under this Part, including every declaration and a copy of every report, for a period of two years following the day on which the last record is recorded in the document and in a manner that permits an audit of the document to be made at any time.

SOR/2019-171, s. 1.

**Période de conservation**

**G.02.077** Le distributeur autorisé et l'ancien titulaire d'une licence de distributeur autorisé conservent tout document comprenant les renseignements consignés en application de la présente partie, notamment chaque déclaration ainsi qu'une copie de chaque rapport, pendant une période de deux ans suivant la date de la dernière consignation et selon une méthode qui permet la vérification du document à tout moment.

DORS/2019-171, art. 1.

**Location**

**G.02.078** The documents must be kept

**(a)** in the case of a licensed dealer, at the site specified in their licence; and

**(b)** in the case of a former licensed dealer, at a location in Canada.

SOR/2019-171, s. 1.

**Lieu**

**G.02.078** Les documents sont conservés aux lieux suivants :

**a)** s'agissant d'un distributeur autorisé, à l'installation précisée dans sa licence;

**b)** s'agissant d'un ancien distributeur autorisé, en un lieu au Canada.

DORS/2019-171, art. 1.

#### Quality of documents

**G.02.079** The documents must be complete and readily retrievable and the information in them must be legible and indelible.

SOR/2019-171, s. 1.

#### Caractéristiques des documents

**G.02.079** Les documents sont complets ainsi que facilement accessibles et les renseignements qui y figurent sont lisibles et indélébiles.

DORS/2019-171, art. 1.

## DIVISION 3

# Pharmacists

[SOR/2019-171, s. 2(F)]

## Record of Controlled Drugs Received

[SOR/2019-171, s. 2]

#### General information

**G.03.001 (1)** A pharmacist, on receipt of a controlled drug from a licensed dealer or from another pharmacist, shall keep a record of the name and quantity of the controlled drug received by them, the name and address of the person who sold or provided it and the date it was received.

#### Record

**(2)** The record of information referred to in subsection (1) shall be kept

**(a)** in a manner that permits an audit to be made; and

**(b)** subject to subsection (3), in a book, register or similar record maintained exclusively for controlled drugs.

#### Exception

**(3)** The record of information referred to in subsection (1) may, with respect to a controlled drug listed in Part II or III of the schedule to this Part, be kept in a form other than that specified in paragraph (2)(b).

SOR/78-427, s. 5; SOR/85-550, s. 4; SOR/86-91, s. 2(F); SOR/90-261, s. 3(F); SOR/97-228, s. 12; SOR/2004-238, s. 13; SOR/2010-222, s. 14(E).

## Sale of Controlled Drugs

[SOR/2019-171, s. 3]

#### No sale without prescription

**G.03.002** No pharmacist shall, except as otherwise provided in this Part, sell or provide a controlled drug to any person unless the pharmacist has first been provided with a prescription for it, and

**(a)** if the prescription is in writing, it has been signed and dated by the practitioner issuing the same and the

## TITRE 3

# Pharmaciens

[DORS/2019-171, art. 2(F)]

## Consignation de drogues contrôlées reçues

[DORS/2019-171, art. 2]

#### Renseignements généraux

**G.03.001 (1)** Sur réception d'une drogue contrôlée provenant d'un distributeur autorisé ou d'un autre pharmacien, le pharmacien consigne le nom et la quantité de la drogue contrôlée reçue, les nom et adresse de celui qui la lui a vendue ou fournie et la date de réception.

#### Dossier

**(2)** Les renseignements visés au paragraphe (1) doivent être conservés

**a)** de manière à en permettre la vérification; et

**b)** sous réserve du paragraphe (3), dans un cahier, un registre ou un autre dossier semblable réservé exclusivement aux drogues contrôlées.

#### Exception

**(3)** Les renseignements visés au paragraphe (1) peuvent, dans le cas d'une drogue contrôlée mentionnée aux parties II ou III de l'annexe de la présente partie, être conservés sous une forme autre que celle précisée à l'alinéa (2)b).

DORS/78-427, art. 5; DORS/85-550, art. 4; DORS/86-91, art. 2(F); DORS/90-261, art. 3(F); DORS/97-228, art. 12; DORS/2004-238, art. 13; DORS/2010-222, art. 14(A).

## Vente de drogues contrôlées

[DORS/2019-171, art. 3]

#### Interdiction de vente sans ordonnance

**G.03.002** Il est interdit à tout pharmacien, sous réserve des autres dispositions de la présente partie, de vendre ou de fournir une drogue contrôlée à qui que ce soit, à moins d'avoir reçu au préalable une ordonnance à cet effet et d'avoir pris à son égard les mesures suivantes :

signature of the practitioner where not known to the pharmacist, has been verified by him; or

**(b)** if the prescription is given verbally, the pharmacist has taken reasonable precaution to satisfy himself that the person giving the prescription is a practitioner.

SOR/2004-238, s. 14.

**a)** si l'ordonnance est écrite, s'assurer qu'elle est signée et datée par le praticien dont elle émane et vérifier lui-même toute signature qu'il ne connaît pas;

**b)** si l'ordonnance est verbale, prendre les précautions raisonnables pour s'assurer que la personne la prescrivant est bien un praticien.

DORS/2004-238, art. 14.

### Prohibition — pharmacist or practitioner named in notice

**G.03.002.1** Subject to section G.03.002.2 and notwithstanding sections G.03.002, G.03.003 and G.03.005, no pharmacist shall

**(a)** sell or provide a controlled drug, other than a preparation, to a pharmacist named in a notice given by the Minister under section G.03.017.2;

**(b)** sell or provide a preparation to a pharmacist named in a notice given by the Minister under section G.03.017.2;

**(c)** dispense, sell or provide a controlled drug, other than a preparation, to, or pursuant to a prescription or order given by, a practitioner named in a notice given by the Minister under section G.04.004.2; or

**(d)** dispense, sell or provide a preparation to a practitioner or pursuant to a prescription or order given by a practitioner named in a notice given by the Minister under section G.04.004.2.

SOR/2003-135, ss. 7, 8; SOR/2004-238, s. 15; SOR/2019-171, s. 4(F).

### Interdiction — pharmacien ou praticien nommé dans un avis

**G.03.002.1** Sous réserve de l'article G.03.002.2 et nonobstant les articles G.03.002, G.03.003 et G.03.005, il est interdit à un pharmacien de

**a)** vendre ou fournir une drogue contrôlée, autre qu'une préparation, à un pharmacien nommé dans un avis communiqué par le ministre selon l'article G.03.017.2;

**b)** vendre ou fournir une préparation à un pharmacien nommé dans un avis communiqué par le ministre selon l'article G.03.017.2;

**c)** dispenser, vendre ou fournir une drogue contrôlée autre qu'une préparation, soit à un praticien, soit en vertu d'une ordonnance ou d'une commande faite par un praticien nommé dans un avis communiqué par le ministre en application de l'article G.04.004.2;

**d)** dispenser, vendre ou fournir une préparation soit à un praticien, soit en vertu d'une ordonnance ou d'une commande faite par un praticien nommé dans un avis communiqué par le ministre en application de l'article G.04.004.2.

DORS/2003-135, art. 7 et 8; DORS/2004-238, art. 15; DORS/2019-171, art. 4(F).

### Exception — notice of retraction

**G.03.002.2** Section G.03.002.1 does not apply to a pharmacist to whom the Minister has issued a notice of retraction of the notice

**(a)** under section G.03.017.3, in respect of a pharmacist named in a notice issued by the Minister under section G.03.017.2; or

**(b)** under section G.04.004.3, in respect of a practitioner named in a notice issued by the Minister under section G.04.004.2.

SOR/2003-135, s. 4.

### Exception — avis de rétractation

**G.03.002.2** L'article G.03.002.1 ne s'applique pas au pharmacien auquel le ministre a donné un avis de rétractation de l'avis :

**a)** selon l'article G.03.017.3, à l'égard de tout pharmacien nommé dans un avis donné par le ministre selon l'article G.03.017.2;

**b)** selon l'article G.04.004.3, à l'égard de tout praticien nommé dans un avis donné par le ministre selon l'article G.04.004.2.

DORS/2003-135, art. 4.

### Sale to practitioner – order

**G.03.003 (1)** A pharmacist may sell or provide a controlled drug to a practitioner for use in their practice

### Vente à un praticien — commande

**G.03.003 (1)** Le pharmacien peut vendre ou fournir une drogue contrôlée à un praticien pour l'usage de sa pratique professionnelle dans l'une des circonstances suivantes :

**(a)** upon a written order, signed and dated by that practitioner, that has been verified if the signature of the practitioner is unknown to the pharmacist; or

**(b)** upon a verbal order specifying the name and quantity of the drug if the pharmacist has taken reasonable precautions to satisfy themself that the person making the order is a practitioner.

**(2)** [Repealed, SOR/2019-171, s. 5]

SOR/85-550, s. 5; SOR/2004-238, s. 16; SOR/2012-230, s. 11; SOR/2019-171, s. 5.

**a)** sur réception d'une commande écrite, signée et datée par le praticien, pourvu qu'il vérifie la signature du praticien si elle lui est inconnue;

**b)** sur réception d'une commande verbale, précisant le nom et la quantité de la drogue, s'il prend les moyens raisonnables pour s'assurer que la personne qui fait la commande est un praticien.

**(2)** [Abrogé, DORS/2019-171, art. 5]

DORS/85-550, art. 5; DORS/2004-238, art. 16; DORS/2012-230, art. 11; DORS/2019-171, art. 5.

### Prescription file

**G.03.004** A pharmacist shall, in respect of controlled drugs sold or provided to a practitioner under section G.03.003, keep in a special prescription file a record showing the date, the name and address of the practitioner, and the quantity and kind of controlled drug sold or provided.

SOR/2004-238, s. 17.

### Registre des ordonnances

**G.03.004** Tout pharmacien doit, à l'égard des drogues contrôlées vendues ou fournies à un praticien en vertu de l'article G.03.003, tenir un registre spécial des ordonnances, où seront consignés la date de l'ordonnance, les nom et adresse du praticien et la nature et la quantité de la drogue contrôlée vendue ou fournie.

DORS/2004-238, art. 17.

### Provision to hospital

**G.03.005** A pharmacist may provide a controlled drug to a hospital employee or to a practitioner in a hospital on receipt of a written order signed and dated by the pharmacist in charge of the hospital's pharmacy or by a practitioner authorized by the person in charge of the hospital to sign the order, if the signature of that pharmacist or practitioner is known to the pharmacist or, if unknown, has been verified by the pharmacist.

SOR/85-550, s. 6; SOR/2004-238, s. 18(E); SOR/2019-171, s. 6.

### Fourniture à un hôpital

**G.03.005** Le pharmacien peut, à la réception d'une commande écrite datée et signée par le pharmacien responsable de la pharmacie d'un l'hôpital ou par un praticien autorisé à signer la commande par le responsable de l'hôpital, fournir une drogue contrôlée à l'employé d'un hôpital ou à un praticien exerçant dans l'hôpital si le pharmacien reconnaît la signature du pharmacien responsable ou du praticien ou, dans le cas contraire, qu'il l'a vérifiée.

DORS/85-550, art. 6; DORS/2004-238, art. 18(A); DORS/2019-171, art. 6.

### Refilling prescription

**G.03.006** A pharmacist shall not refill a prescription for a controlled drug unless

**(a)** the practitioner, at the time that he issued the prescription, directed in writing, in the case of a controlled drug listed in Part I of the schedule to this Part, or directed in writing or orally, in the case of a controlled drug listed in Part II or III of the schedule to this Part, that the prescription be refilled, the number of times that it may be refilled and the dates for or the intervals between refills; and

**(b)** the pharmacist keeps a record of each refilling of a prescription.

SOR/78-427, s. 6; SOR/97-228, s. 13.

### Renouvellement de l'ordonnance

**G.03.006** Il est interdit à un pharmacien de remplir de nouveau une ordonnance pour une drogue contrôlée, à moins

**a)** que le praticien, au moment où il l'a prescrite, n'ait indiqué, par écrit dans le cas d'une drogue contrôlée mentionnée à la partie I de l'annexe de la présente partie, et par écrit ou verbalement dans le cas d'une drogue contrôlée mentionnée aux parties II ou III de cette annexe, que cette ordonnance est renouvelable pour un certain nombre de fois à des dates ou des intervalles précis;

**b)** que le pharmacien ne consigne au registre chaque renouvellement d'une ordonnance.

DORS/78-427, art. 6; DORS/97-228, art. 13.

# Records

### Written order or prescription

**G.03.007** If, in accordance with a written order or prescription, a pharmacist dispenses a controlled drug listed in Part I of the schedule to this Part, other than a preparation, the pharmacist must immediately enter in a book, register or similar record maintained for such purposes

**(a)** their name or initials;

**(b)** the name, initials and municipal address of the practitioner who issued the order or prescription;

**(c)** the name and municipal address of the person named in the order or prescription;

**(d)** the name, form and quantity of the controlled drug dispensed;

**(e)** the date on which the controlled drug was dispensed; and

**(f)** the number assigned to the order or prescription.

SOR/78-427, s. 7; SOR/81-359, s. 1(F); SOR/97-228, s. 14; SOR/2004-238; s. 19; SOR/2019-171, s. 7.

### Verbal order or prescription

**G.03.008** A pharmacist must, before dispensing a controlled drug in accordance with a verbal order or prescription, make a written record of it that sets out

**(a)** their name or initials;

**(b)** the name, initials and municipal address of the practitioner who issued the order or prescription;

**(c)** the name and municipal address of the person named in the order or prescription;

**(d)** the name, form and quantity of the controlled drug;

**(e)** the directions for use given with the order or prescription;

**(f)** the date on which the controlled drug was dispensed; and

**(g)** the number assigned to the order or prescription.

SOR/85-550, s. 7; SOR/2004-238, s. 20; SOR/2019-171, s. 7.

### File by date and number

**G.03.009** A pharmacist must maintain a special prescription file in which are filed, in sequence as to date and number, all written orders and prescriptions for

# Dossiers

### Commandes et ordonnances écrites

**G.03.007** Le pharmacien qui, conformément à une commande ou à une ordonnance écrites, dispense une drogue contrôlée mentionnée à la partie I de l'annexe de la présente partie, autre qu'une préparation, consigne immédiatement les renseignements ci-après dans un cahier, un registre ou un autre dossier réservé à cette fin :

**a)** ses nom ou initiales;

**b)** les nom, initiales et adresse municipale du praticien qui a fait la commande ou l'ordonnance;

**c)** les nom et adresse municipale de la personne nommée dans la commande ou l'ordonnance;

**d)** le nom, la forme et la quantité de la drogue contrôlée;

**e)** la date à laquelle il dispense la drogue;

**f)** le numéro attribué à la commande ou l'ordonnance.

DORS/78-427, art. 7; DORS/81-359, art. 1(F); DORS/97-228, art. 14; DORS/2004-238, art. 19; DORS/2019-171, art. 7.

### Commandes et ordonnances verbales

**G.03.008** Le pharmacien consigne les renseignements ci-après dans un document écrit avant de dispenser une drogue contrôlée conformément à une commande ou une ordonnance verbales :

**a)** ses nom ou initiales;

**b)** les nom, initiales et adresse municipale du praticien qui a fait la commande ou l'ordonnance;

**c)** les nom et adresse municipale de la personne nommée dans l'ordonnance;

**d)** le nom, la forme et la quantité de la drogue contrôlée;

**e)** le mode d'emploi indiqué dans la commande ou l'ordonnance;

**f)** la date à laquelle il dispense la drogue contrôlée;

**g)** le numéro attribué à la commande ou à l'ordonnance.

DORS/85-550, art. 7; DORS/2004-238, art. 20; DORS/2019-171, art. 7.

### Classement par ordre chronologique et numérique

**G.03.009** Le pharmacien tient un dossier spécial pour les ordonnances de drogues contrôlées dans lequel sont conservées, par ordre chronologique et numérique,

controlled drugs that they have dispensed and the written record of all controlled drugs that they have dispensed in accordance with a verbal order or prescription.

SOR/2019-171, s. 7.

chaque commande et ordonnance écrites relativement aux drogues contrôlées qu'il a dispensées ainsi que chaque document écrit comprenant les renseignements consignés relativement aux drogues contrôlées qu'il a dispensées conformément à une commande ou à une ordonnance verbales.

DORS/2019-171, art. 7.

**Retention period**

**G.03.010** A pharmacist shall retain in his possession for a period of at least two years, any records which he is required to keep by this Part.

**Période de conservation**

**G.03.010** Tout pharmacien doit conserver en sa possession durant au moins deux ans, tous les dossiers et registres dont la tenue est exigée par la présente partie.

## General Obligations of Pharmacist

[SOR/2019-171, s. 8]

## Obligations générales du pharmacien

[DORS/2019-171, art. 8]

**Providing information and assisting inspector**

**G.03.011** A pharmacist shall

**(a)** furnish such information respecting the dealings of the pharmacist in any controlled drug in such form and at such times as the Minister may require;

**(b)** make available and produce to an inspector upon request his special prescription file together with any books, records or documents which he is required to keep;

**(c)** permit an inspector to make copies of or to take extracts from such files, books, records or documents; and

**(d)** permit an inspector to check all stocks of controlled drugs on his premises.

**Fourniture de renseignements et assistance à l'inspecteur**

**G.03.011** Tout pharmacien doit

**a)** fournir tout renseignement relatif aux transactions dudit pharmacien à l'égard de toute drogue contrôlée, dans la manière et au moment que peut fixer le ministre;

**b)** présenter à un inspecteur, sur demande, son registre spécial des ordonnances, ainsi que tout autre cahier, registre ou document qu'il est obligé de tenir;

**c)** permettre à l'inspecteur de prendre copie ou de noter des extraits de tous lesdits cahiers, registres, dossiers ou documents; et

**d)** permettre à l'inspecteur de vérifier tous les stocks de drogues contrôlées dans son établissement.

**Loss or theft — protective measures**

**G.03.012** A pharmacist shall take all reasonable steps that are necessary to protect controlled drugs on his premises or under his control against loss or theft.

SOR/85-550, s. 8.

**Pertes et vols — mesures de protection**

**G.03.012** Le pharmacien doit prendre toutes les mesures raisonnables qui sont nécessaires pour protéger contre la perte et le vol les drogues contrôlées qui se trouvent dans son établissement ou dont il a la garde.

DORS/85-550, art. 8.

**Loss or theft — report**

**G.03.013** A pharmacist shall report to the Minister any loss or theft of a controlled drug within 10 days of his discovery thereof.

**Pertes et vols — avis**

**G.03.013** Tout pharmacien doit signaler au ministre toute perte ou tout vol d'une drogue contrôlée, 10 jours au plus après en avoir fait la découverte.

## Return, Sale and Transfer

[SOR/2019-171, s. 9]

## Retour, vente et transfert

[DORS/2019-171, art. 9]

### Written order

**G.03.014** A pharmacist may, upon receiving a written order for a controlled drug signed and dated by

**(a)** the licensed dealer who sold or provided that drug to them, return that drug to that licensed dealer;

**(b)** another pharmacist, sell or provide any quantity of that drug to that other pharmacist that is specified in the order as being required for emergency purposes;

**(c)** the Minister, sell or provide to the Minister any quantity of that drug, specified in the order, that is required by the Minister in connection with his or her duties; and

**(d)** a person exempted under section 56 of the Act with respect to that controlled drug, sell or provide to that person any quantity of that drug that is specified in the order.

SOR/81-359, s. 2; SOR/85-550, s. 9; SOR/99-125, s. 3; SOR/2004-238, s. 21; SOR/2014-260, s. 8(E); SOR/2018-69, s. 65; SOR/2019-171, s. 10.

### Commandes écrites

**G.03.014** Le pharmacien peut, lorsqu'il reçoit une commande écrite pour une drogue contrôlée, signée et datée

**a)** par le distributeur autorisé qui lui a vendu ou fourni la drogue, lui retourner cette drogue;

**b)** par un autre pharmacien, lui vendre ou lui fournir la quantité de drogue demandée pour une urgence;

**c)** par le ministre, lui vendre ou lui fournir la quantité de drogue, précisée dans la commande, dont il a besoin dans l'exercice de ses fonctions;

**d)** par une personne qui bénéficie d'une exemption relative à cette drogue et accordée en vertu de l'article 56 de la Loi, lui vendre ou lui fournir la quantité précisée dans la commande.

DORS/81-359, art. 2; DORS/85-550, art. 9; DORS/99-125, art. 3; DORS/2004-238, art. 21; DORS/2014-260, art. 8(A); DORS/2018-69, art. 65; DORS/2019-171, art. 10.

### Record

**G.03.015** A pharmacist shall immediately after receiving, selling or providing a controlled drug under paragraph G.03.014(b) or (c) or subsection G.05.003(4) enter the details of the transaction in a book, register or other record maintained for the purpose of recording such transactions.

SOR/85-550, s. 10; SOR/2004-238, s. 22.

### Dossier

**G.03.015** Le pharmacien, immédiatement après avoir reçu, vendu ou fourni une drogue contrôlée conformément aux alinéas G.03.014b) ou c) ou au paragraphe G.05.003(4), consigne les détails de la transaction dans un cahier, un registre ou tout autre dossier approprié.

DORS/85-550, art. 10; DORS/2004-238, art. 22.

### Notice to Minister

**G.03.016** A pharmacist shall forthwith after removing, transporting or transferring a controlled drug from his place of business to any other place of business operated by him notify the Minister, setting out the details.

### Avis au ministre

**G.03.016** Un pharmacien doit, immédiatement après avoir retiré, transporté ou transféré une drogue contrôlée de son établissement d'affaires à tout autre établissement d'affaires exploité par lui-même, avertir le ministre en précisant les détails.

## Communication of Information by Minister to Licensing Authority

## Renseignements fournis par le ministre aux autorités attributives de licences

### Contraventions by pharmacist

**G.03.017** The Minister must provide in writing any factual information about a pharmacist that has been obtained under the Act or this Part to the provincial professional licensing authority that is responsible for the authorization of the person to practise their profession

**(a)** in the province in which the pharmacist is or was entitled to practise if

**(i)** the authority submits to the Minister a written request that sets out the pharmacist's name and

### Contraventions par le pharmacien

**G.03.017** Le ministre fournit par écrit les renseignements factuels sur un pharmacien qui ont été obtenus sous le régime de la Loi ou de la présente partie à une autorité provinciale attributive de licences en matière d'activités professionnelles qui est responsable d'autoriser les personnes à exercer leur profession dans les cas suivants :

**a)** s'agissant de l'autorité d'une province où le pharmacien est ou était autorisé à exercer :

address, a description of the information being requested and a statement that the information is required for the purpose of assisting a lawful investigation by the authority, or

**(ii)** the Minister has reasonable grounds to believe that the pharmacist has

**(A)** contravened a rule of conduct established by the authority,

**(B)** been convicted of a designated substance offence, or

**(C)** contravened this Part; or

**(b)** in a province in which the pharmacist is not entitled to practise, if the authority submits to the Minister

**(i)** a written request that sets out the pharmacist's name and address and a description of the information being requested, and

**(ii)** a document that shows that

**(A)** the pharmacist has applied to that authority to practise in that province, or

**(B)** the authority has reasonable grounds to believe that the pharmacist is practising in that province without being authorized to do so.

SOR/86-881, s. 1; SOR/97-228, s. 15; SOR/2003-135, s. 5; SOR/2010-222, s. 15; SOR/2019-171, s. 11.

**(i)** soit l'autorité soumet au ministre une demande écrite qui précise les nom et adresse du pharmacien, la nature des renseignements demandés et une déclaration portant que les renseignements sont nécessaires pour l'aider à mener une enquête licite,

**(ii)** soit le ministre a des motifs raisonnables de croire à l'existence de l'un des faits ci-après concernant le pharmacien :

**(A)** il a contrevenu à une règle de conduite établie par l'autorité,

**(B)** il a été condamné pour une infraction désignée,

**(C)** il a contrevenu à la présente partie;

**b)** s'agissant de l'autorité d'une province où le pharmacien n'est pas autorisé à exercer, l'autorité soumet au ministre les documents suivants :

**(i)** une demande écrite qui précise les nom et adresse du pharmacien ainsi que la nature des renseignements demandés,

**(ii)** un document qui démontre :

**(A)** soit que le pharmacien a demandé à l'autorité l'autorisation d'exercer dans cette province,

**(B)** soit que l'autorité a des motifs raisonnables de croire que le pharmacien exerce dans cette province sans autorisation.

DORS/86-881, art. 1; DORS/97-228, art. 15; DORS/2003-135, art. 5; DORS/2010-222, art. 15; DORS/2019-171, art. 11.

## Notice of Prohibition of Sale

### Request by pharmacist

**G.03.017.1** A pharmacist may make a written request to the Minister to send to the persons and authorities specified in subsection G.03.017.2(3) a notice, issued under section G.03.017.2, advising them that recipients of the notice must not sell or provide a controlled drug other than a preparation, a preparation, or both, to that pharmacist.

SOR/2003-135, s. 5.

### Notice by Minister

**G.03.017.2 (1)** In the circumstances described in subsection (2), the Minister must send a notice to the persons and authorities specified in subsection (3) advising them that pharmacists practising in the notified pharmacies and licensed dealers must not sell or provide to the

## Avis d'interdiction de vente

### Demande du pharmacien

**G.03.017.1** Tout pharmacien peut demander par écrit au ministre d'envoyer aux personnes et aux autorités visées au paragraphe G.03.017.2(3) un avis, émis conformément à l'article G.03.017.2, les informant que ne doivent pas lui être vendu ou fourni toute drogue contrôlée autre qu'une préparation, toute préparation, ou les deux.

DORS/2003-135, art. 5.

### Avis par le ministre

**G.03.017.2 (1)** Le ministre envoie, dans les cas prévus au paragraphe (2), un avis aux destinataires visés au paragraphe (3) les informant que les pharmaciens qui exercent dans les pharmacies ayant reçu l'avis et les distributeurs autorisés ne peuvent pas vendre ou fournir de

pharmacist named in the notice a controlled drug other than a preparation or a preparation.

**Circumstances requiring a notice**

**(2)** The notice must be sent if the pharmacist named in the notice has

**(a)** made a request to the Minister in accordance with section G.03.017.1 to send the notice;

**(b)** contravened a rule of conduct established by the provincial professional licensing authority of the province in which the pharmacist is practising and the authority has requested the Minister in writing to send the notice; or

**(c)** been convicted of a designated substance offence or of a contravention of this Part.

**Recipients**

**(3)** The notice must be sent to

**(a)** all licensed dealers;

**(b)** all pharmacies within the province in which the pharmacist named in the notice is entitled to practice and is practising;

**(c)** the provincial professional licensing authority of the province in which the pharmacist named in the notice is entitled to practise;

**(d)** all pharmacies in an adjacent province in which an order from the pharmacist named in the notice may be filled; and

**(e)** any provincial professional licensing authority in another province that has requested the Minister in writing to send the notice.

**Other circumstances**

**(4)** The Minister may send the notice described in subsection (1) to the persons and authorities specified in subsection (3) if the Minister has taken the measures specified in subsection (5) and has reasonable grounds to believe that the pharmacist named in the notice

**(a)** has contravened a provision of the Act or this Part;

**(b)** has, on more than one occasion, self-administered a controlled drug, other than a preparation, contrary to accepted pharmaceutical practice;

drogues contrôlées autres que des préparations ou de préparations au pharmacien nommé dans l'avis.

**Cas exigeant l'avis**

**(2)** Les cas exigeant l'avis sont les suivants :

**a)** le pharmacien nommé dans l'avis en fait la demande au ministre en vertu de l'article G.03.017.1;

**b)** il a contrevenu à une règle de conduite établie par l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où il exerce et l'autorité a demandé au ministre par écrit d'envoyer l'avis;

**c)** il a été condamné pour une infraction désignée ou pour une contravention au présent règlement.

**Destinataires**

**(3)** Les destinataires de l'avis sont les suivants :

**a)** tous les distributeurs autorisés;

**b)** les pharmacies de la province où le pharmacien nommé dans l'avis, d'une part, est autorisé en vertu des lois de celle-ci à exercer sa profession et, d'autre part, l'y exerce;

**c)** l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où le pharmacien nommé dans l'avis est autorisé à exercer;

**d)** les pharmacies d'une province adjacente qui pourraient exécuter une commande faite par le pharmacien nommé dans l'avis;

**e)** l'autorité provinciale attributive de licences en matière d'activités professionnelles d'une autre province qui en a fait la demande par écrit au ministre.

**Autres cas**

**(4)** Le ministre peut envoyer l'avis visé au paragraphe (1) au destinataire visé au paragraphe (3) s'il a pris les mesures prévues au paragraphe (5) et s'il a des motifs raisonnables de croire que le pharmacien nommé dans l'avis se trouve dans l'un des cas suivants :

**a)** il a contrevenu à une disposition de la Loi ou du présent règlement;

**b)** il s'est administré à plus d'une reprise une drogue contrôlée autre qu'une préparation obtenue d'une façon non conforme aux pratiques pharmaceutiques reconnues;

**(c)** has, on more than one occasion, self-administered a preparation, contrary to accepted pharmaceutical practice;

**(d)** has, on more than one occasion, provided or administered a controlled drug, other than a preparation, to a person who is a spouse, common-law partner, parent or child of the pharmacist, including a child adopted in fact, contrary to accepted pharmaceutical practice;

**(e)** has, on more than one occasion, provided or administered a preparation to a person who is a spouse, common-law partner, parent or child of the pharmacist, including a child adopted in fact, contrary to accepted pharmaceutical practice; or

**(f)** is unable to account for the quantity of controlled drug for which the pharmacist was responsible under this Part.

**Measures before sending notice**

**(5)** The measures that must be taken before sending the notice are that the Minister has

**(a)** consulted with the provincial professional licensing authority of the province in which the pharmacist to whom the notice relates is entitled to practise;

**(b)** given that pharmacist an opportunity to be heard; and

**(c)** considered

**(i)** the compliance history of the pharmacist in respect of the Act and its regulations, and

**(ii)** whether the actions of the pharmacist pose a risk to public health or safety, including the risk of the controlled drug being diverted to an illicit market or use.

SOR/2003-135, s. 5; SOR/2010-222, ss. 16, 35(F); SOR/2019-171, s. 12.

**Notice of retraction**

**G.03.017.3** The Minister must provide the licensed dealers, pharmacies and provincial professional licensing authorities who were sent a notice under subsection G.03.017.2(1) with a notice of retraction of that notice if

**(a)** in the circumstance described in paragraph G.03.017.2(2)(a), the requirements set out in subparagraphs (b)(i) and (ii) have been met and one year has elapsed since the notice was sent by the Minister; or

**c)** il s'est administré à plus d'une reprise une préparation obtenue d'une façon non conforme aux pratiques pharmaceutiques reconnues;

**d)** il a, à plus d'une reprise, fourni ou administré une drogue contrôlée autre qu'une préparation à son époux ou conjoint de fait, à son père, à sa mère ou à son enfant, y compris un enfant adopté de fait, d'une façon non conforme aux pratiques pharmaceutiques reconnues;

**e)** il a, à plus d'une reprise, il a fourni ou administré une préparation à son époux ou conjoint de fait, à son père, à sa mère ou à son enfant, y compris un enfant adopté de fait, d'une façon non conforme aux pratiques pharmaceutiques reconnues;

**f)** il est dans l'impossibilité de rendre compte de la quantité d'une drogue contrôlée dont il avait la responsabilité en application de la présente partie.

**Mesures préalables**

**(5)** Les mesures que le ministre doit prendre avant d'envoyer un avis sont les suivantes :

**a)** consulter l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où le pharmacien est autorisé à exercer;

**b)** donner au pharmacien l'occasion de présenter ses observations à cet égard;

**c)** prendre en considération les éléments suivants :

**(i)** les antécédents du pharmacien quant au respect de la Loi et de ses règlements,

**(ii)** la question de savoir si la conduite du pharmacien représente un risque d'atteinte à la santé ou à la sécurité publiques, notamment un risque de détournement de la drogue contrôlée vers un marché ou un usage illicites.

DORS/2003-135, art. 5; DORS/2010-222, art. 16 et 35(F); DORS/2019-171, art. 12.

**Avis de rétractation**

**G.03.017.3** Le ministre envoie à tous les destinataires d'un avis visé au paragraphe G.03.017.2(1) un avis de rétractation de l'avis d'interdiction si les exigences ci-après sont respectées, selon le cas :

**a)** dans le cas visé à l'alinéa G.03.017.2(2)a), les conditions prévues aux sous-alinéas b)(i) et (ii) sont remplies et il s'est écoulé un an depuis l'envoi de l'avis d'interdiction;

**(b)** in a circumstance described in any of paragraphs G.03.017.2(2)(b) and (c) and (4)(a) to (f), the pharmacist named in the notice has

**(i)** requested in writing that a retraction of the notice be sent, and

**(ii)** provided a letter from the provincial professional licensing authority of the province in which the pharmacist is entitled to practise, in which the authority consents to the retraction of the notice.

SOR/2003-135, s. 5; SOR/2010-222, s. 17; SOR/2019-171, s. 12.

**G.03.017.4 and G.03.017.5** [Repealed, SOR/2003-135, s. 5]

## DIVISION 4

# Practitioners

## Administration of Designated Drugs and Other Controlled Drugs

### Restriction

**G.04.001 (1)** Subject to subsections (2) and (3) and to an exemption granted under section 56 of the Act with respect to the administration of the controlled drug specified in the exemption, a practitioner must not administer a controlled drug to any person or animal.

### Conditions

**(2)** A practitioner may administer a controlled drug, other than a designated drug, to a person or to an animal, if

**(a)** that person or animal is under their professional treatment; and

**(b)** the controlled drug is required for the condition for which that person or animal is receiving treatment.

### Purposes

**(3)** A practitioner of medicine, dentistry or veterinary medicine or a nurse practitioner may administer a designated drug to a person or animal who is under their professional treatment if the designated drug is for the treatment of any of the following conditions:

**(a)** in the case of persons,

**(i)** narcolepsy,

**b)** dans les cas visés aux alinéas G.03.017.2(2)b) et c) et (4)a) à f), le pharmacien nommé dans l'avis a satisfait aux exigences suivantes :

**(i)** il lui a demandé par écrit d'envoyer un avis de rétractation de l'avis,

**(ii)** il lui a fourni une lettre de l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où il est autorisé à exercer, dans laquelle l'autorité accepte la rétractation de l'avis d'interdiction.

DORS/2003-135, art. 5; DORS/2010-222, art. 17; DORS/2019-171, art. 12.

**G.03.017.4 et G.03.017.5** [Abrogés, DORS/2003-135, art. 5]

## TITRE 4

# Praticiens

## Administration de drogues désignées et autres drogues contrôlées

### Restriction

**G.04.001 (1)** Le praticien ne peut, sous réserve des paragraphes (2) et (3) ainsi que d'une exemption relative à l'administration de la drogue contrôlée que l'exemption précise et accordée en vertu de l'article 56 de la Loi, administrer une drogue contrôlée à une personne ou à un animal.

### Conditions

**(2)** Le praticien peut administrer à une personne ou à un animal une drogue contrôlée, autre qu'une drogue désignée, si les conditions ci-après sont remplies :

**a)** le praticien traite la personne ou l'animal à titre professionnel;

**b)** la drogue contrôlée est nécessaire pour traiter l'état de la personne ou de l'animal.

### Fins visées

**(3)** Le médecin, le dentiste, le vétérinaire ou l'infirmier praticien peut administrer une drogue désignée à une personne ou à un animal qu'il traite à titre professionnel si la drogue est destinée au traitement de l'un des états suivants :

**a)** s'agissant d'une personne :

**(i)** la narcolepsie,

**(ii)** hyperkinetic disorders in children,

**(iii)** epilepsy,

**(iv)** parkinsonism, or

**(v)** hypotensive states associated with anesthesia; or

**(b)** in the case of animals, depression of cardiac and respiratory centres.

**Definitions**

**(4)** The following definitions apply in this section.

***administer*** includes to prescribe, sell or provide a drug. (*administrer*)

***designated drug*** means any of the following controlled drugs:

**(a)** amphetamine and its salts;

**(b)** benzphetamine and its salts;

**(c)** methamphetamine and its salts;

**(d)** phenmetrazine and its salts; or

**(e)** phendimetrazine and its salts. (*drogue désignée*)

SOR/99-125, s. 4; SOR/2004-238, s. 23; SOR/2012-230, s. 12; SOR/2019-171, s. 13.

## Records

**Record of controlled drugs sold or provided**

**G.04.002 (1)** A practitioner who sells or provides a controlled drug to a person for self-administration or for administration to an animal shall, whether or not the practitioner charges for the drug, keep a record showing the name and quantity of the controlled drug sold or provided, the name and address of the person to whom it was sold or provided and the date on which it was sold or provided if the quantity of the controlled drug exceeds

**(a)** three times the maximum daily dosage recommended by the manufacturer or assembler of the controlled drug; or

**(b)** three times the generally recognized maximum daily therapeutic dosage for that controlled drug if the manufacturer or assembler has not recommended a maximum daily dosage.

**(ii)** les troubles hypercinétiques chez l'enfant,

**(iii)** l'épilepsie,

**(iv)** le syndrome parkinsonien,

**(v)** l'hypotension liée à l'anesthésie;

**b)** s'agissant d'un animal, la dépression des centres cardiaques et respiratoires.

**Définitions**

**(4)** Les définitions qui suivent s'appliquent au présent article.

***administrer*** Est assimilé au fait d'administrer une drogue celui de la prescrire, de la vendre ou de la fournir. (*administer*)

***drogue désignée*** S'entend des drogues contrôlées suivantes :

**a)** amphétamine et ses sels;

**b)** benzphétamine et ses sels;

**c)** méthamphétamine et ses sels;

**d)** phenmétrazine et ses sels;

**e)** phendimétrazine et ses sels. (*designated drug*)

DORS/99-125, art. 4; DORS/2004-238, art. 23; DORS/2012-230, art. 12; DORS/2019-171, art. 13.

## Documents

**Registre des drogues contrôlées vendues et fournies**

**G.04.002 (1)** Tout praticien qui vend ou fournit à une personne une drogue contrôlée qu'elle s'administrera à elle-même ou qu'elle administrera à un animal, qu'il la facture ou non, consigne le nom et la quantité de la drogue contrôlée vendue ou fournie, les nom et adresse de la personne à laquelle elle l'a été et la date de la transaction, s'il s'agit d'une quantité :

**a)** supérieure à trois fois la dose quotidienne maximale recommandée par le fabricant ou l'assembleur de cette drogue contrôlée;

**b)** supérieure à trois fois la dose thérapeutique quotidienne maximale généralement admise pour cette drogue contrôlée, si le fabricant ou l'assembleur n'a pas spécifié de dose quotidienne maximale.

**Accessibility of record**

**(2)** A practitioner who is required by this section to keep a record shall keep the record in a place, form and manner that will permit an inspector readily to examine and obtain information from it.

SOR/88-482, s. 4(F); SOR/2004-238, s. 24; SOR/2019-171, s. 14.

## General Obligations of Practitioner

[SOR/2019-171, s. 15]

**Requirements**

**G.04.002A** A practitioner shall

**(a)** furnish to the Minister on request such information respecting

**(i)** the use by the practitioner of controlled drugs received — including the administering, selling or providing of the drugs to a person — , and

**(ii)** the prescriptions for controlled drugs issued by the practitioner,

as the Minister may require;

**(b)** produce to an inspector on request any records that these Regulations require the practitioner to keep;

**(c)** permit an inspector to make copies of such records or to take extracts therefrom;

**(d)** permit an inspector to check all stocks of controlled drugs on the practitioner's premises;

**(e)** retain in his possession for at least two years any record that these Regulations require him to keep;

**(f)** take adequate steps to protect controlled drugs in his possession from loss or theft; and

**(g)** report to the Minister any loss or theft of a controlled drug within 10 days of the practitioner's discovery of the loss or theft.

SOR/2004-238, s. 25.

**G.04.003** [Repealed, SOR/2010-222, s. 18]

**Accessibilité au registre**

**(2)** Tout praticien qui est requis, par le présent article, de tenir un registre doit garder le registre en un endroit et le tenir sous une forme et d'une manière qui permettent à un inspecteur de l'examiner et d'y trouver des renseignements avec facilité.

DORS/88-482, art. 4(F); DORS/2004-238, art. 24; DORS/2019-171, art. 14.

## Obligations générales du praticien

[DORS/2019-171, art. 15]

**Exigences**

**G.04.002A** Tout praticien doit

**a)** fournir au ministre, sur demande, tout renseignement concernant

**(i)** l'usage que ce praticien fait des drogues contrôlées qu'il reçoit — y compris les cas où il les administre, les vend ou les fournit à une personne,

**(ii)** les ordonnances de drogues contrôlées que délivre ce praticien,

selon que peut l'exiger le ministre;

**b)** présenter à un inspecteur, sur demande, tout registre que ce praticien est requis de tenir en vertu du présent règlement;

**c)** permettre à un inspecteur de prendre copie de ces registres ou de noter des extraits desdits registres;

**d)** permettre à un inspecteur de vérifier tous les stocks de drogues contrôlées dans les locaux de ce praticien;

**e)** conserver en sa possession durant au moins deux ans tout registre qu'il est requis de tenir en vertu du présent règlement;

**f)** prendre les mesures appropriées pour protéger les drogues contrôlées qu'il a en sa possession contre la perte ou le vol; et

**g)** signaler au ministre tout vol ou perte d'une drogue contrôlée au plus tard 10 jours après avoir constaté un tel vol ou une telle perte.

DORS/2004-238, art. 25.

**G.04.003** [Abrogé, DORS/2010-222, art. 18]

# Communication of Information by Minister to Licensing Authority

### Contraventions by practitioner

**G.04.004** The Minister must provide in writing any factual information about a practitioner that has been obtained under the Act or this Part to the provincial professional licensing authority responsible for the registration and authorization of the person to practise their profession

**(a)** in the province in which the practitioner is or was registered and entitled to practise if

**(i)** the authority submits to the Minister a written request that sets out the practitioner's name and address, a description of the information being requested and a statement that the information is required for the purpose of assisting a lawful investigation by the authority, or

**(ii)** the Minister has reasonable grounds to believe that the practitioner has

**(A)** contravened a rule of conduct established by the authority,

**(B)** been convicted of a designated substance offence, or

**(C)** contravened this Part; or

**(b)** in a province in which the practitioner is not registered and entitled to practise, if the authority submits to the Minister

**(i)** a written request that sets out the practitioner's name and address and a description of the information being requested, and

**(ii)** a document that shows that

**(A)** the practitioner has applied to that authority to practise in that province, or

**(B)** the authority has reasonable grounds to believe that the practitioner is practising in that province without being authorized to do so.

SOR/86-881, s. 2; SOR/97-228, s. 17; SOR/2003-135, s. 6; SOR/2010-222, s. 19; SOR/2019-171, s. 16.

# Renseignements fournis par le ministre aux autorités attributives de licences

### Contraventions par le praticien

**G.04.004** Le ministre fournit par écrit les renseignements factuels sur un praticien qui ont été obtenus sous le régime de la Loi ou de la présente partie à une autorité provinciale attributive de licences en matière d'activités professionnelles qui est responsable d'inscrire les personnes et de les autoriser à exercer leur profession dans les cas suivants :

**a)** s'agissant de l'autorité d'une province où le praticien est ou était inscrit et autorisé à exercer :

**(i)** soit l'autorité soumet au ministre une demande écrite qui précise les nom et adresse du praticien, la nature des renseignements demandés et une déclaration portant que les renseignements sont nécessaires pour l'aider à mener une enquête licite,

**(ii)** soit le ministre a des motifs raisonnables de croire à l'existence de l'un des faits ci-après concernant le praticien :

**(A)** il a contrevenu à une règle de conduite établie par l'autorité,

**(B)** il a été condamné pour une infraction désignée,

**(C)** il a contrevenu à la présente partie;

**b)** s'agissant de l'autorité d'une province où le praticien n'est pas inscrit ni autorisé à exercer, l'autorité soumet au ministre les documents suivants :

**(i)** une demande écrite qui précise les nom et adresse du praticien ainsi que la nature des renseignements demandés,

**(ii)** un document qui démontre :

**(A)** soit que le praticien a demandé à cette autorité l'autorisation d'exercer dans cette province,

**(B)** soit que cette autorité a des motifs raisonnables de croire que le praticien exerce dans cette province sans autorisation.

DORS/86-881, art. 2; DORS/97-228, art. 17; DORS/2003-135, art. 6; DORS/2010-222, art. 19; DORS/2019-171, art. 16.

# Notice of Prohibition of Sale

### Request by practitioner

**G.04.004.1** A practitioner may make a written request to the Minister to send to licensed dealers and pharmacies a notice, issued under section G.04.004.2, advising them of one or more of the following requirements:

**(a)** recipients of the notice must not sell or provide a controlled drug, other than a preparation, to that practitioner;

**(b)** recipients of the notice must not sell or provide a preparation to that practitioner;

**(c)** pharmacists practising in the notified pharmacies must not fill a prescription or order for a controlled drug, other than a preparation, from that practitioner; and

**(d)** pharmacists practising in the notified pharmacies must not fill a prescription or order for a preparation from that practitioner.

SOR/2003-135, s. 6.

### Notice by Minister

**G.04.004.2 (1)** In the circumstances described in subsection (2), the Minister must send a notice to the persons and authorities specified in subsection (3) advising them that

**(a)** pharmacists practising in the notified pharmacies and licensed dealers must not sell or provide to the practitioner named in the notice a controlled drug other than a preparation or a preparation;

**(b)** pharmacists practising in the notified pharmacies must not fill a prescription or order from the practitioner named in the notice for a controlled drug other than a preparation or a preparation; or

**(c)** the prohibitions in both paragraphs (a) and (b) apply with respect to the practitioner named in the notice.

### Circumstances requiring a notice

**(2)** The notice must be sent if the practitioner named in the notice has

**(a)** made a request to the Minister in accordance with section G.04.004.1 to send the notice;

**(b)** contravened a rule of conduct established by the provincial professional licensing authority of the

# Avis d'interdiction de vente

### Demande du praticien

**G.04.004.1** Tout praticien peut demander par écrit au ministre d'envoyer aux pharmacies et aux distributeurs autorisés un avis, émis conformément à l'article G.04.004.2, les informant de tout ou partie des exigences suivantes :

**a)** aucune drogue contrôlée, autre qu'une préparation, ne doit lui être vendue ou fournie par un destinataire de cet avis;

**b)** aucune préparation ne doit lui être vendue ou fournie par un destinataire de cet avis;

**c)** aucune de ses ordonnances ou commandes de drogue contrôlée, autre qu'une préparation, ne doit être remplie par des pharmaciens exerçant dans les pharmacies ayant reçu l'avis;

**d)** aucune de ses ordonnances ou commandes de préparation ne doit être remplie par des pharmaciens exerçant dans les pharmacies ayant reçu l'avis.

DORS/2003-135, art. 6.

### Avis par le ministre

**G.04.004.2 (1)** Le ministre envoie, dans les cas prévus au paragraphe (2), l'un des avis ci-après aux destinataires visés au paragraphe (3) :

**a)** soit que les pharmaciens qui exercent dans les pharmacies ayant reçu l'avis et les distributeurs autorisés ne peuvent pas vendre ou fournir de drogues contrôlées autres que des préparations ou de préparations au praticien nommé dans l'avis;

**b)** soit que les pharmaciens qui exercent dans les pharmacies ayant reçu l'avis ne peuvent pas exécuter les commandes ou les ordonnances de drogues contrôlées autres que des préparations ou de préparations faites par le praticien nommé dans l'avis;

**c)** soit que les interdictions prévues aux alinéas a) et b) s'appliquent concurremment relativement au praticien nommé dans l'avis.

### Cas exigeant l'avis

**(2)** Les cas exigeant l'avis sont les suivants :

**a)** le praticien nommé dans l'avis en fait la demande au ministre en vertu de l'article G.04.004.1;

**b)** il a contrevenu à une règle de conduite établie par l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où il exerce

province in which the practitioner is practising and the authority has requested the Minister in writing to issue the notice; or

**(c)** been convicted of a designated substance offence or of a contravention of this Part.

**Recipients**

**(3)** The notice must be sent to

**(a)** all licensed dealers;

**(b)** all pharmacies within the province in which the practitioner named in the notice is registeredand entitled to practice and is practising;

**(c)** the provincial professional licensing authority of the province in which the practitioner named in the notice is registered and entitled to practise;

**(d)** all pharmacies in an adjacent province in which a prescription or order from the practitioner named in the notice may be filled; and

**(e)** any provincial professional licensing authority in another province that has requested the Minister in writing to send the notice; and

**Other circumstances**

**(4)** The Minister may send the notice described in subsection (1) to the persons and authorities specified in subsection (3) if the Minister has taken the measures specified in subsection (5) and has reasonable grounds to believe that the practitioner named in the notice

**(a)** has contravened a provision of the Act or this Part;

**(b)** has, on more than one occasion, self-administered a controlled drug, other than a preparation, under a self-directed prescription or order or, in the absence of a prescription or order, contrary to accepted professional practice;

**(c)** has, on more than one occasion, self-administered a preparation, under a self-directed prescription or order or, in the absence of a prescription or order, contrary to accepted professional practice;

**(d)** has, on more than one occasion, prescribed, provided or administered a controlled drug, other than a preparation, to a person who is a spouse, common-law partner, parent or child of the practitioner, including a child adopted in fact, contrary to accepted professional practice;

et l'autorité a demandé au ministre par écrit d'envoyer l'avis;

**c)** il a été condamné pour une infraction désignée ou pour une contravention à la présente partie.

**Destinataires**

**(3)** Les destinataires de l'avis sont les suivants :

**a)** tous les distributeurs autorisés;

**b)** les pharmacies de la province où le praticien nommé dans l'avis, d'une part, est inscrit et autorisé en vertu des lois de celle-ci à exercer sa profession et, d'autre part, l'y exerce;

**c)** l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où le praticien nommé dans l'avis est inscrit et autorisé à exercer;

**d)** les pharmacies d'une province adjacente qui pourraient exécuter une commande ou une ordonnance faites par le praticien nommé dans l'avis;

**e)** l'autorité provinciale attributive de licences en matière d'activités professionnelles d'une autre province qui en a fait la demande par écrit au ministre.

**Autres cas**

**(4)** Le ministre peut envoyer l'avis visé au paragraphe (1) au destinataire visé au paragraphe (3) s'il a pris les mesures prévues au paragraphe (5) et s'il a des motifs raisonnables de croire que le praticien nommé dans l'avis se trouve dans l'un des cas suivants :

**a)** il a contrevenu à une disposition de la Loi ou du présent règlement;

**b)** il s'est administré à plus d'une reprise une drogue contrôlée, autre qu'une préparation, obtenue sur commande ou ordonnance faites par lui ou, à défaut de commande ou d'ordonnance, d'une façon non conforme aux pratiques professionnelles reconnues;

**c)** il s'est administré à plus d'une reprise une préparation obtenue sur commande ou ordonnance faites par lui ou, à défaut de commande ou d'ordonnance, d'une façon non conforme aux pratiques professionnelles reconnues;

**d)** il a, à plus d'une reprise, fait une ordonnance pour une drogue contrôlée autre qu'une préparation, l'a fournie ou l'a administrée à son époux ou conjoint de fait, à son père, à sa mère ou à son enfant, y compris

**(e)** has, on more than one occasion, prescribed, provided or administered a preparation to a person who is a spouse, common-law partner, parent or child of the practitioner, including a child adopted in fact, contrary to accepted professional; or

**(f)** is unable to account for the quantity of controlled drug for which the practitioner was responsible under this Part.

**Measures before sending notice**

**(5)** The measures that must be taken before sending the notice are that the Minister has

**(a)** consulted with the provincial professional licensing authority of the province in which the practitioner to whom the notice relates is registered and entitled to practise;

**(b)** given that practitioner an opportunity to be heard

**(c)** considered

**(i)** the compliance history of the practitioner in respect of the Act and its regulations, and

**(ii)** whether the actions of the practitioner pose a risk to public health or safety, including the risk of the controlled drug being diverted to an illicit market or use.

SOR/2003-135, s. 6; SOR/2010-222, ss. 20, 35(F); SOR/2019-171, s. 17.

**Notice of retraction**

**G.04.004.3** The Minister must provide the licensed dealers, pharmacies and provincial professional licensing authorities who were sent a notice under subsection G.04.004.2(1) with a notice of retraction of that notice if

**(a)** in the circumstance described in paragraph G.04.004.2(2)(a), the requirements set out in subparagraphs (b)(i) and (ii) have been met and one year has elapsed since the notice was sent by the Minister; or

**(b)** in a circumstance described in any of paragraphs G.04.004.2(2)(b) and (c) and (4)(a) to (f), the practitioner named in the notice has

**(i)** requested in writing that a retraction of the notice be sent, and

un enfant adopté de fait, d'une façon non conforme aux pratiques professionnelles reconnues;

**e)** il a, à plus d'une reprise, fait une ordonnance pour une préparation, l'a fournie ou l'a administrée à son époux ou conjoint de fait, à son père, à sa mère ou à son enfant, y compris un enfant adopté de fait, d'une façon non conforme aux pratiques professionnelles reconnues;

**f)** il est dans l'impossibilité de rendre compte de la quantité d'une drogue contrôlée dont avait la responsabilité en application de la présente partie.

**Mesures préalables**

**(5)** Les mesures que le ministre doit prendre avant d'envoyer un avis sont les suivantes :

**a)** consulter l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où le praticien est inscrit et autorisé à exercer;

**b)** donner au praticien l'occasion de présenter ses observations à cet égard;

**c)** prendre en considération les éléments suivants :

**(i)** les antécédents du praticien quant au respect de la Loi et de ses règlements,

**(ii)** la question de savoir si la conduite du praticien représente un risque d'atteinte à la santé ou à la sécurité publiques, notamment un risque de détournement de la drogue contrôlée vers un marché ou un usage illicites.

DORS/2003-135, art. 6; DORS/2010-222, art. 20 et 35(F); DORS/2019-171, art. 17.

**Avis de rétractation**

**G.04.004.3** Le ministre envoie à tous les destinataires d'un avis visé au paragraphe G.04.004.2(1) un avis de rétractation de l'avis d'interdiction si les exigences ci-après sont respectées, selon le cas :

**a)** dans le cas visé à l'alinéa G.04.004.2(2)a), les conditions prévues aux sous-alinéas b)(i) et (ii) sont remplies et il s'est écoulé un an depuis l'envoi de l'avis d'interdiction;

**b)** dans les cas visés aux alinéas G.04.004.2(2)b) et c) et (4)a) à f), le praticien nommé dans l'avis satisfait aux exigences suivantes :

**(i)** il lui a demandé par écrit d'envoyer un avis de rétractation de l'avis,

**(ii)** provided a letter from the provincial professional licensing authority of the province in which the practitioner is registered and entitled to practise, in which the authority consents to the retraction of the notice.

SOR/88-482, s. 5(F); SOR/2003-135, s. 6; SOR/2010-222, s. 21; SOR/2019-171, s. 17.

**(ii)** il lui a fourni une lettre de l'autorité provinciale attributive de licences en matière d'activités professionnelles de la province où il est inscrit et autorisé à exercer, dans laquelle l'autorité accepte la rétractation de l'avis d'interdiction.

DORS/88-482, art. 5(F); DORS/2003-135, art. 6; DORS/2010-222, art. 21; DORS/2019-171, art. 17.

**G.04.004.4 and G.04.004.5** [Repealed, SOR/2003-135, s. 6]

**G.04.004.4 et G.04.004.5** [Abrogés, DORS/2003-135, art. 6]

## DIVISION 5

# Hospitals

### Record — controlled drugs

**G.05.001 (1)** A person who is in charge of a hospital shall keep or cause to be kept a record of the following information:

**(a)** the name and quantity of any controlled drug received for the hospital by a hospital employee or a practitioner in the hospital;

**(b)** the name and address of the person from whom any controlled drug was received and the date on which it was received;

**(c)** the name and quantity of any controlled drug used in the making or assembling of a product or compound containing that controlled drug, the name and quantity of the product or compound made or assembled and the date on which the product or compound was placed in stock;

**(c.1)** the name and quantity of any controlled drug produced and the date on which it was placed in stock;

**(d)** the name of the patient for whom a controlled drug was dispensed;

**(e)** the name of the practitioner ordering or prescribing a controlled drug; and

**(f)** the date on which a controlled drug was ordered or prescribed and the form and quantity thereof.

### Record keeping

**(2)** Subject to subsections (3) and (4), the record of information referred to in subsection (1) shall be kept

**(a)** in a manner that permits an audit to be made;

**(b)** in a book, register or similar record maintained exclusively for controlled drugs; and

## TITRE 5

# Hôpitaux

### Registre des drogues contrôlées

**G.05.001 (1)** Le responsable d'un hôpital doit tenir ou faire tenir un registre indiquant les renseignements suivants :

**a)** le nom et la quantité de toute drogue contrôlée reçue, au nom de l'hôpital, par un employé de cet hôpital ou un praticien exerçant dans cet hôpital;

**b)** le nom et l'adresse du fournisseur, ainsi que la date de réception;

**c)** le nom et la quantité de toute drogue contrôlée employée dans la fabrication ou l'assemblage d'un produit ou d'un composé qui contient cette drogue, le nom et la quantité du produit ou du composé fabriqué ou assemblé et la date à laquelle ce produit ou ce composé a été stocké;

**c.1)** le nom et la quantité de toute drogue contrôlée produite et la date à laquelle elle a été stockée;

**d)** le nom du malade pour lequel cette drogue a été dispensée;

**e)** le nom du praticien qui la commande ou la prescrit; et

**f)** la date à laquelle une drogue contrôlée est commandée ou prescrite, ainsi que la forme et la quantité concernées.

### Tenue du registre

**(2)** Sous réserve des paragraphes (3) et (4), le registre visé au paragraphe (1) doit :

**a)** être tenu de façon à en permettre la vérification;

**b)** se présenter sous forme de cahier, de livre ou d'un autre document semblable réservé aux drogues contrôlées;

**(c)** for a period of at least two years.

**Exception — preparation**

**(3)** The information referred to in paragraphs (1)(d) to (f) may, with respect to a preparation, be kept in a form other than that specified in paragraph (2)(b).

**Exception — Part II or III of schedule**

**(4)** The information referred to in subsection (1) may, with respect to a controlled drug listed in Part II or III of the schedule to this Part, be kept in a form other than that specified in paragraph (2)(b).

SOR/78-427, s. 8; SOR/85-550, s. 11; SOR/88-482, s. 6; SOR/97-228, s. 18; SOR/2004-238, s. 27; SOR/2019-171, s. 18(F).

**Providing information and assisting inspector**

**G.05.002** A person who is in charge of a hospital shall

**(a)** furnish such information respecting the use of controlled drugs therein, in such form and at such times as the Minister may require;

**(b)** produce to an inspector any books, records or documents required by these Regulations to be kept;

**(c)** permit an inspector to make copies thereof or take extracts from such books, records and documents; and

**(d)** permit an inspector to check all stocks of controlled drugs in the hospital.

SOR/2019-171, s. 25(F).

**Selling, providing or administering controlled drug**

**G.05.003 (1)** No person in charge of a hospital shall permit a controlled drug to be sold, provided or administered except in accordance with this section.

**Prescription or written order**

**(2)** On receipt of a prescription or a written order signed and dated by a practitioner, the person in charge of a hospital may permit a controlled drug to be administered to a person or an animal under treatment as an in-patient or out-patient of the hospital, or to be sold or provided to the person or to the person in charge of the animal.

**Emergency — other hospital**

**(3)** Subject to subsection (6), the person in charge of a hospital may permit a controlled drug to be provided, for

**c)** être conservé pendant au moins deux ans.

**Exception — préparations**

**(3)** Dans le cas d'une préparation, un registre autre que celui décrit à l'alinéa (2)b) peut être utilisé pour l'inscription des renseignements visés aux alinéas (1)d) à f).

**Exception — parties II ou III de l'annexe**

**(4)** Les renseignements visés au paragraphe (1) peuvent, dans le cas d'une drogue contrôlée mentionnée aux parties II ou III de l'annexe de la présente partie, être conservés sous une forme autre que celle précisée à l'alinéa (2)b).

DORS/78-427, art. 8; DORS/85-550, art. 11; DORS/88-482, art. 6; DORS/97-228, art. 18; DORS/2004-238, art. 27; DORS/2019-171, art. 18(F).

**Fourniture de renseignements et assistance à l'inspecteur**

**G.05.002** Le responsable d'un hôpital doit

**a)** fournir tout renseignement relatif à l'emploi des drogues contrôlées dans ledit hôpital, dans la forme et au moment que peut fixer le ministre;

**b)** présenter à un inspecteur tous les cahiers, dossiers, registres ou documents que le présent règlement exige de tenir;

**c)** permettre à un inspecteur de prendre copie ou de noter des extraits desdits cahiers, registres ou documents; et

**d)** permettre à un inspecteur de vérifier tous les stocks de drogues contrôlées dans ledit hôpital.

DORS/2019-171, art. 25(F).

**Administration, vente et fourniture de drogues contrôlées**

**G.05.003 (1)** Il est interdit au responsable d'un hôpital de permettre qu'une drogue contrôlée soit administrée, vendue ou fournie si ce n'est en conformité avec le présent article.

**Commandes écrites ou ordonnances**

**(2)** Le responsable d'un hôpital peut permettre qu'une drogue contrôlée soit administrée à la personne ou à l'animal qui reçoit un traitement comme patient hospitalisé ou externe de cet hôpital, ou soit vendue ou fournie à cette personne ou au responsable de l'animal, sur réception d'une ordonnance ou d'une commande écrite, signée et datée par un praticien.

**Urgence — autre hôpital**

**(3)** Sous réserve du paragraphe (6), le responsable d'un hôpital peut permettre qu'une drogue contrôlée soit

emergency purposes, to a hospital employee or a practitioner in another hospital on receipt of a written order signed and dated by a pharmacist in the other hospital or a practitioner authorized by the person in charge of the other hospital to sign the order.

fournie pour une urgence à un employé d'un autre hôpital ou à un praticien exerçant dans un autre hôpital, sur réception d'une commande écrite, signée et datée par le pharmacien de l'autre hôpital ou par le praticien autorisé par le responsable de l'autre hôpital à signer une telle commande.

#### Emergency — pharmacist

**(4)** Subject to subsection (6), the person in charge of a hospital may permit a controlled drug to be sold or provided, for emergency purposes, to a pharmacist on receipt of a written order signed and dated by the pharmacist.

#### Urgence — pharmacien

**(4)** Sous réserve du paragraphe (6), le responsable d'un hôpital peut permettre qu'une drogue contrôlée soit vendue ou fournie à un pharmacien pour une urgence, sur réception d'une commande écrite, signée et datée par ce pharmacien.

#### Research purposes

**(5)** The person in charge of a hospital may permit a controlled drug to be provided to a person employed in a research laboratory in that hospital for the purpose of research.

#### Recherche

**(5)** Le responsable d'un hôpital peut permettre qu'une drogue contrôlée soit fournie, à des fins de recherches, à un employé d'un laboratoire de recherche de cet hôpital.

#### Signature

**(6)** No person in charge of a hospital shall permit a controlled drug to be sold or provided under subsection (3) or (4) unless the signature of the pharmacist in the other hospital or of the practitioner authorized by the person in charge of the other hospital to sign an order is known to the person who sells or provides the controlled drug or has been verified.

SOR/85-550, s. 12; SOR/88-482, s. 7; SOR/2004-238, s. 28; SOR/2010-222, s. 22(F); SOR/2019-171, s. 19(F); SOR/2019-171, s. 25(F).

#### Signature

**(6)** Il est interdit au responsable d'un hôpital de permettre que la drogue contrôlée soit vendue ou fournie en vertu des paragraphes (3) ou (4) à moins que la personne qui vend ou fournit la drogue contrôlée vérifie la signature, lorsqu'elle ne la reconnaît pas, du pharmacien de l'autre hôpital ou du praticien autorisé à signer une commande par le responsable de l'autre hôpital.

DORS/85-550, art. 12; DORS/88-482, art. 7; DORS/2004-238, art. 28; DORS/2010-222, art. 22(F); DORS/2019-171, art. 19(F); DORS/2019-171, art. 25(F).

#### Loss or theft

**G.05.004** A person who is in charge of a hospital shall take all steps necessary to protect controlled drugs in the hospital against loss or theft and shall report to the Minister any loss or theft of a controlled drug within 10 days of his discovery thereof.

SOR/78-427, s. 9.

#### Pertes et vols

**G.05.004** Le responsable d'un hôpital doit prendre toutes les mesures nécessaires pour empêcher, dans son établissement, la perte ou le vol de drogues contrôlées et doit signaler au ministre toute perte ou tout vol dans les 10 jours en suivant la découverte.

DORS/78-427, art. 9.

### DIVISION 6

## General

### TITRE 6

## Dispositions générales

#### Labelling — drug dispensed in accordance with prescription

**G.06.001** In the case of a controlled drug that is dispensed by a pharmacist in accordance with a prescription, section C.01.004 does not apply but the label of the package in which the controlled drug is contained must include the following:

**(a)** the name and municipal address of the pharmacy or pharmacist;

#### Étiquetage — drogue dispensée conformément à une ordonnance

**G.06.001** L'article C.01.004 ne s'applique pas à la drogue contrôlée dispensée par un pharmacien conformément à une ordonnance, mais les renseignements ci-après doivent figurer sur l'étiquette de l'emballage de la drogue contrôlée :

**a)** les nom et adresse municipale de la pharmacie ou du pharmacien;

**(b)** the date and number of the prescription;

**(c)** the name of the person for whom the controlled drug is dispensed;

**(d)** the name of the practitioner;

**(e)** directions for use; and

**(f)** any other information that the prescription requires be shown on the label.

SOR/99-125, s. 5; SOR/2004-238, s. 29; SOR/2018-69, ss. 67, 69; SOR/2019-171, s. 20.

**b)** la date et le numéro de l'ordonnance;

**c)** le nom de la personne pour laquelle la drogue contrôlée est dispensée;

**d)** le nom du praticien;

**e)** le mode d'emploi;

**f)** tout autre renseignement devant figurer, conformément à l'ordonnance, sur l'étiquette.

DORS/99-125, art. 5; DORS/2004-238, art. 29; DORS/2018-69, art. 67 et 69; DORS/2019-171, art. 20.

### Labelling — test kit

**G.06.002** Section C.01.004 does not apply to a test kit that contains a controlled drug and that has a registration number.

SOR/85-550, s. 13; SOR/88-482, s. 8(F); SOR/99-125, s. 6; SOR/2019-171, s. 20.

### Étiquetage — nécessaire d'essai

**G.06.002** L'article C.01.004 ne s'applique pas au nécessaire d'essai qui contient une drogue contrôlée et auquel un numéro d'enregistrement a été attribué.

DORS/85-550, art. 13; DORS/88-482, art. 8(F); DORS/99-125, art. 6; DORS/2019-171, art. 20.

**G.06.002.1** [Repealed, SOR/2019-171, s. 20]

**G.06.002.2** [Repealed, SOR/2019-171, s. 20]

**G.06.002.3** [Repealed, SOR/2019-171, s. 20]

**G.06.002.4** [Repealed, SOR/2019-171, s. 20]

**G.06.002.1** [Abrogé, DORS/2019-171, art. 20]

**G.06.002.2** [Abrogé, DORS/2019-171, art. 20]

**G.06.002.3** [Abrogé, DORS/2019-171, art. 20]

**G.06.002.4** [Abrogé, DORS/2019-171, art. 20]

### Identification or analysis of controlled drug

**G.06.003 (1)** Despite anything in this Part, a person may, for the purpose of identification or analysis of a controlled drug, provide or deliver the drug to

**(a)** a practitioner of medicine; or

**(b)** an agent or mandatary of a practitioner of medicine, if the agent or mandatary is exempted under section 56 of the Act with respect to the possession of that drug for that purpose.

### Identification ou analyse de drogues contrôlées

**G.06.003 (1)** Toute personne peut, malgré toute disposition de la présente partie, fournir ou livrer une drogue contrôlée à des fins d'identification ou d'analyse aux personnes suivantes :

**a)** le médecin;

**b)** le mandataire d'un médecin, si le mandataire bénéficie d'une exemption relative à la possession de cette drogue à ces fins et accordée en vertu de l'article 56 de la Loi.

### Agent or mandatary of practitioner of medicine

**(2)** An agent or mandatary of a practitioner of medicine who receives the controlled drug must immediately provide or deliver it to

**(a)** the practitioner; or

**(b)** the Minister.

### Mandataire d'un médecin

**(2)** Le mandataire d'un médecin qui reçoit la drogue contrôlée la fournit ou la livre immédiatement à l'une des personnes suivantes :

**a)** le médecin;

**b)** le ministre.

### Practitioner of medicine

**(3)** A practitioner of medicine who receives the controlled drug must immediately provide or deliver it

**(a)** for the purpose of its identification or analysis, to a person exempted under section 56 of the Act with

### Médecin

**(3)** Le médecin qui reçoit la drogue contrôlée la fournit ou la livre immédiatement à l'une des personnes suivantes :

respect to the possession of that drug for that purpose; or

**(b)** to the Minister.

SOR/2019-171, s. 20.

**a)** la personne qui bénéficie d'une exemption relative à la possession de cette drogue à ces fins et accordée en vertu de l'article 56 de la Loi si la drogue lui est fournie ou livrée à des fins d'identification ou d'analyse;

**b)** le ministre.

DORS/2019-171, art. 20.

### Advertising

**G.06.004** It is prohibited to

**(a)** advertise a controlled drug to the general public; or

**(b)** publish any written advertisement respecting a controlled drug unless that advertisement displays the following symbol in a clear and conspicuous colour and size in the upper left quarter of its first page:

SOR/2019-171, s. 20.

### Publicité

**G.06.004** Il est interdit, à l'égard d'une drogue contrôlée :

**a)** d'en faire la publicité auprès du grand public;

**b)** d'en faire la publicité par écrit, sauf si le symbole ci-après figure de façon bien visible, par sa couleur et sa taille, sur le quart supérieur gauche de la première page de la publicité :

DORS/2019-171, art. 20.

### Record keeping — specific cases

**G.06.005** Every person who is exempted under section 56 of the Act with respect to the possession or administration of a controlled drug and every practitioner of medicine who has received a controlled drug under subsection G.06.003(1) or (2) and every agent or mandatary of a practitioner of medicine who has received a controlled drug under subsection G.06.003(1) must

**(a)** keep a record of the following information for a two-year period beginning on the day on which the record is made:

**(i)** the name and quantity of any controlled drug purchased or received by them and the date on which it was purchased or received,

**(ii)** the name and address of the person from whom the controlled drug was purchased or received, and

**(iii)** details of the use of the controlled drug;

**(b)** provide any information respecting those controlled drugs that the Minister may require; and

**(c)** permit access to the records required to be kept by this Part.

SOR/2019-171, s. 20.

### Conservation des documents — cas spécifiques

**G.06.005** La personne qui bénéficie d'une exemption relative à la possession ou à l'administration d'une drogue contrôlée et accordée en vertu de l'article 56 de la Loi ainsi le médecin qui a reçu une drogue contrôlée en vertu des paragraphes G.06.003(1) ou (2) et le mandataire d'un médecin qui a reçu une drogue contrôlée en vertu du paragraphe G.06.003(1) doivent satisfaire aux exigences suivantes :

**a)** ils consignent dans un registre les renseignements ci-après et les conservent pendant une période de deux ans suivant la date de leur consignation :

**(i)** le nom et la quantité de toute drogue contrôlée achetée ou reçue ainsi que la date d'acquisition ou la date de la réception,

**(ii)** les nom et adresse de la personne de qui ils ont acheté et de qui ils ont reçu la drogue contrôlée,

**(iii)** les précisions concernant l'utilisation de la drogue contrôlée;

**b)** ils fournissent au ministre tout renseignement que celui-ci exige à l'égard de la drogue contrôlée;

**c)** ils donnent accès aux registres dont la tenue est requise par la présente partie.

DORS/2019-171, art. 20.

### Communication of information by Minister to nursing statutory body

**G.06.006 (1)** The Minister may provide to a nursing statutory body any information concerning any member of that body that has been obtained under this Part, the Act or the *Food and Drugs Act*.

### Non-application

**(2)** Subsection (1) does not apply to a nurse practitioner.

### Definitions

**(3)** The following definitions apply in this section.

***member*** means any person who is authorized by a nursing statutory body to practice nursing. (*membre*)

***nursing statutory body*** means any provincial professional licensing authority that, in accordance with the laws of that province, authorizes a person to practise nursing. (*organisme régissant la profession d'infirmier*)

SOR/2019-171, s. 20.

### Notification of application for order of restoration

**G.06.007 (1)** For the purpose of subsection 24(1) of the Act, notification of an application for an order of restoration must be given in writing to the Attorney General by registered mail and be mailed not less than 15 days before the date on which the application is to be made to a justice.

### Content of notification

**(2)** The notification must specify

**(a)** the name of the justice to whom the application is to be made;

**(b)** the time and place at which the application is to be heard;

**(c)** details concerning the controlled drug or other thing in respect of which the application is to be made; and

**(d)** the evidence on which the applicant intends to rely to establish that they are entitled to possession of the controlled drug or other thing referred to in paragraph (c).

SOR/2019-171, s. 20.

**G.07.001** [Repealed, SOR/2019-171, s. 20]

### Renseignements fournis par le ministre à un organisme régissant la profession d'infirmier

**G.06.006 (1)** Le ministre peut fournir à un organisme régissant la profession d'infirmier tout renseignement concernant un de ses membres qui a été obtenu sous le régime de la présente partie, de la Loi ou de la *Loi sur les aliments et drogues*.

### Non-application

**(2)** Le paragraphe (1) ne s'applique pas aux infirmiers praticiens.

### Définitions

**(3)** Les définitions qui suivent s'appliquent au présent article.

***membre*** Personne autorisée par un organisme régissant la profession d'infirmier à exercer la profession d'infirmier. (*member*)

***organisme régissant la profession d'infirmier*** Autorité provinciale attributive de licences en matière d'activités professionnelles qui, en vertu des lois d'une province, autorise des personnes à exercer la profession d'infirmier. (*nursing statutory body*)

DORS/2019-171, art. 20.

### Préavis de la demande d'ordonnance de restitution

**G.06.007 (1)** Pour l'application du paragraphe 24(1) de la Loi, le préavis de la demande d'ordonnance de restitution qui est donné au procureur général est présenté par écrit et est mis à la poste sous pli recommandé au moins quinze jours avant la date à laquelle la demande sera présentée au juge de paix.

### Contenu du préavis

**(2)** Le préavis contient les renseignements suivants :

**a)** le nom du juge de paix à qui la demande sera présentée;

**b)** le lieu et l'heure de l'audition de la demande;

**c)** les précisions concernant la drogue contrôlée ou toute autre chose faisant l'objet de la demande;

**d)** les éléments de preuve que le demandeur prévoit de présenter pour établir qu'il a le droit de posséder la drogue contrôlée ou l'autre chose visée à l'alinéa c).

DORS/2019-171, art. 20.

**G.07.001** [Abrogé, DORS/2019-171, art. 20]

**G.07.002** [Repealed, SOR/2019-171, s. 20]

## SCHEDULE

(Sections G.01.001 and G.01.002, subsections G.01.005(1) and G.02.058(1), section G.02.073, subsection G.03.001(3), paragraph G.03.006(a), section G.03.007 and subsection G.05.001(4))

### PART I

1 Amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues, excluding those substances set out in item 1 of Part I of the schedule to Part J but including:

- (1) amphetamine (α-methylbenzeneethanamine)
- (2) methamphetamine (N,α-dimethylbenzeneethanamine)
- (3) Benzphetamine (N-benzyl-N,α-dimethylbenzeneethanamine)

2 Methylphenidate (methyl 2-phenyl-2-(piperidin-2-yl)acetate), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues, including:

- (1) Ethylphenidate (ethyl 2-phenyl-2-(piperidin-2-yl)acetate)
- (2) Isopropylphenidate (isopropyl 2-phenyl-2-(piperidin-2-yl)acetate)
- (3) Propylphenidate (propyl 2-phenyl-2-(piperidin-2-yl)acetate)
- (4) 3,4-Dichloromethylphenidate (methyl 2-(3,4-dichlorophenyl)-2-(piperidin-2-yl)acetate)
- (5) 4-Methylmethylphenidate (methyl 2-(4-methylphenyl)-2-(piperidin-2-yl)acetate)
- (6) 4-Fluoromethylphenidate (methyl 2-(4-fluorophenyl)-2-(piperidin-2-yl)acetate)
- (7) Methylnaphthidate (methyl 2-(naphthalen-2-yl)-2-(piperidin-2-yl)acetate)
- (8) Ethylnaphthidate (ethyl 2-(naphthalen-2-yl)-2-(piperidin-2-yl)acetate)

3 Methaqualone (2-methyl-3-(2-methylphenyl)-4(3H)quinazolinone) and any salt thereof

4 Phendimetrazine (d-3,4-dimethyl-2-phenylmorpholine) and any salt thereof

5 Phenmetrazine (3-methyl-2-phenylmorpholine) and any salt thereof

**G.07.002** [Abrogé, DORS/2019-171, art. 20]

## ANNEXE

(articles G.01.001 et G.01.002, paragraphes G.01.005(1) et G.02.058(1), article G.02.073, paragraphe G.03.001(3), alinéa G.03.006a), article G.03.007 et paragraphe G.05.001(4))

### PARTIE I

1 Les amphétamines, leurs sels, dérivés, isomères et analogues, ainsi que les sels de leurs dérivés, isomères et analogues, sauf ceux mentionnés à l'article 1 de la partie I de l'annexe de la partie J. Sont compris :

- (1) amphétamine (α-méthylbenzèneéthanamine)
- (2) méthamphétamine (N,α-diméthylbenzèneéthanamine)
- (3) benzphétamine (N-benzyl N,α-diméthylbenzèneéthanamine)

2 Méthylphénidate (méthyl 2-phényl-2-(pipéridin-2-yl)acétate), ses sels, dérivés, isomères et analogues, ainsi que les sels de ses dérivés, isomères et analogues, notamment :

- (1) Éthylphénidate (éthyl 2-phényl-2-(pipéridin-2-yl)acétate)
- (2) Isopropylphénidate (isopropyl 2-phényl-2-(pipéridin-2-yl)acétate)
- (3) Propylphénidate (propyl 2-phényl-2-(pipéridin-2-yl)acétate)
- (4) 3,4-Dichlorométhylphénidate (méthyl 2-(3,4-dichlorophényl)-2-(pipéridin-2-yl)acétate)
- (5) 4-Méthylméthylphénidate (méthyl 2-(4-méthylphényl)-2-(pipéridin-2-yl)acétate)
- (6) 4-Fluorométhylphénidate (méthyl 2-(4-fluorophényl)-2-(pipéridin-2-yl)acétate)
- (7) Méthylnaphthidate (méthyl 2-(naphthalén-2-yl)-2-(pipéridin-2-yl)acétate)
- (8) Éthylnaphthidate (éthyl 2-(naphthalén-2-yl)-2-(pipéridin-2-yl)acétate)

3 Méthaqualone (méthyl-2 (méthyl-2 phényl)-3(3H)-quinazolinone-4) et ses sels

4 Phendimétrazine (d-diméthyl-3,4 phényl-2 morpholine) et ses sels

5 Phenmétrazine (méthyl-3 phényl-2 morpholine) et ses sels

6 Pentobarbital (acide éthyl-5 (méthyl-1 butyl)-5 barbiturique)

6 Pentobarbital (5-ethyl-5-(1-methylbutyl)barbituric acid)

7 Secobarbital (5-allyl-5-(1-methylbutyl)barbituric acid)

8 4-hydroxybutanoic acid (GHB) and any salt thereof

9 Aminorex (5-phenyl-4,5-dihydro-1,3-oxazol-2-amine), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues, including

(1) 4-Methylaminorex (4-methyl-5-phenyl-4,5-dihydro-1,3-oxazol-2-amine)

(2) 4,4′-Dimethylaminorex (4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine)

10 Fenetylline (d,l-3,7-dihydro-1,3-dimethyl-7-(2-[(1-methyl-2-phenethyl)amino]ethyl)-1H-purine-2,6-dione) and any salt thereof

11 Glutethimide (2-ethyl-2-phenylglutarimide)

12 Lefetamine ((-)-N,N-dimethyl-α-phenylbenzeneethanamine), its salts, derivatives and isomers and salts of derivatives and isomers

13 Mecloqualone (2-methyl-3-(2-chlorophenyl)-4(3H)-quinazolinone) and any salt thereof

14 Mesocarb (3-(α-methylphenethyl)-N-(phenylcarbamoyl)sydnone imine) and any salt thereof

15 Pemoline (2-amino-5-phenyl-oxazolin-4-one) and any salt thereof

16 Zipeprol (4-(2-methoxy-2-phenylethyl)-α-(methoxyphenylmethyl)-1-piperazineethanol) and any salt thereof

17 Amineptine (7-[(10,11-dihydro-5H-dibenzo[a,d]cyclohepten-5-yl)amino]heptanoic acid) and any salt thereof

## PART II

1 Barbiturates, their salts and derivatives, excluding the substances set out in items 6 and 7 of Part I of this schedule, as well as barbituric acid (2,4,6(1H,3H,5H)-pyrimidinetrione) and its salts and 1,3-dimethylbarbituric acid (1,3-dimethyl-2,4,6(1H,3H,5H)-pyrimidinetrione) and its salts, but including

(1) Allobarbital (5,5-diallylbarbituric acid)

(2) Alphenal (5-allyl-5-phenylbarbituric acid)

7 Sécobarbital (acide allyl-5 (méthyl-1 butyl)-5 barbiturique)

8 Acide hydroxy-4 butanoïque et ses sels

9 Aminorex (phényl-5 dihydro-4,5 oxazol-1,3 amine-2), ses sels, dérivés, isomères et analogues, ainsi que les sels de ses dérivés, isomères et analogues, notamment :

(1) Méthyl-4 aminorex (méthyl-4 phényl-5 dihydro-4,5 oxazol-1,3 amine-2)

(2) Diméthyl-4,4′ aminorex (méthyl-4 (méthyl-4 phényl)-5 dihydro-4,5 oxazol-1,3 amine-2)

10 Fénétylline (d,l-dihydro-3,7 diméthyl-1,3 [[(méthyl-1 phényl-2 éthyl)amino]-2 éthyl]-7 1H-purinedione-2,6) et ses sels

11 Glutéthimide (éthyl-2 phényl-2 glutarimide)

12 Léfétamine ((-)-N,N-diméthyl-α-phénylbenzèneéthanamine), ses sels, dérivés et isomères, ainsi que les sels de ses dérivés et isomères

13 Mécloqualone (méthyl-2(chloro-2 phényl)-3 (3H)-quinazolinone-4) et ses sels

14 Mésocarbe ((α-méthylphénéthyl)-3 N-(phénylcarbamoyl)sydnone imine) et ses sels

15 Pémoline (amino-2 phényl-5 oxazolinone-4) et ses sels

16 Zipéprol ((méthoxy-2 phényl-2 éthyl)-4 α-(méthoxyphénylméthyl)-1-pipérazineéthanol) et ses sels

17 Amineptine [(dihydro-10,11 5H-dibenzo[a,d]cycloheptenyl-5)amino]-7 heptanoïque et ses sels

## PARTIE II

1 Barbituriques, ainsi que leurs sels et dérivés, sauf ceux mentionnés aux articles 6 et 7 de la partie I de la présente annexe ainsi que l'acide barbiturique ((1H,3H,5H)-pyrimidinetrione-2,4,6) et ses sels et l'acide 1,3-diméthylbarbiturique (1,3-diméthyl-2,4,6(1H,3H,5H)-pyrimidinetrione) et ses sels. Sont compris :

(1) allobarbital (acide diallyl-5,5 barbiturique)

(3) Amobarbital (5-ethyl-5-(3-methylbutyl)barbituric acid)

(4) Aprobarbital (5-allyl-5-isopropylbarbituric acid)

(5) Barbital (5,5-diethylbarbituric acid)

(6) [Repealed, SOR/2017-12, s. 1]

(7) Butabarbital (5-sec-butyl-5-ethylbarbituric acid)

(8) Butalbital (5-allyl-5-isobutylbarbituric acid)

(9) Butallylonal (5-(2-bromoallyl)-5-sec-butylbarbituric acid)

(10) Butethal (5-butyl-5-ethylbarbituric acid)

(11) Cyclobarbital (5-(1-cyclohexen-1-yl)-5-ethylbarbituric acid)

(12) Cyclopal (5-allyl-5-(2-cyclopenten-1-yl)barbituric acid)

(13) Heptabarbital (5-(1-cyclohepten-1-yl)-5-ethylbarbituric acid)

(14) Hexethal (5-ethyl-5-hexylbarbituric acid)

(15) Hexobarbital (5-(1-cyclohexen-1-yl)-1,5-dimethylbarbituric acid)

(16) Mephobarbital (5-ethyl-1-methyl-5-phenylbarbituric acid)

(17) Methabarbital (5,5-diethyl-1-methylbarbituric acid)

(18) Methylphenobarbital (5-ethyl-1-methyl-5-phenylbarbituric acid)

(19) Propallylonal (5-(2-bromoallyl)-5-isopropyl-barbituric acid)

(20) Phenobarbital (5-ethyl-5-phenylbarbituric acid)

(21) Probarbital (5-ethyl-5-isopropylbarbituric acid)

(22) Phenylmethylbarbituric Acid (5-methyl-5-phenylbarbituric acid)

(23) Sigmodal(5-(2-bromoallyl)-5-(1-methylbutyl)- barbituric acid)

(24) Talbutal (5-allyl-5-sec-butylbarbituric acid)

(25) Vinbarbital (5-ethyl-5-(1-methyl-1-butenyl)barbituric acid)

(26) Vinylbital (5-(1-methylbutyl)-5-vinylbarbituric acid)

2 Thiobarbiturates, their salts and derivatives, including:

(1) Thialbarbital (5-allyl-5-(2-cyclohexen-1-yl)-2-thiobarbituric acid)

(2) alphénal (acide allyl-5 phényl-5 barbiturique)

(3) amobarbital (acide éthyl-5 (méthyl-3 butyl)-5 barbiturique)

(4) aprobarbital (acide allyl-5 isopropyl-5 barbiturique)

(5) barbital (acide diéthyl-5,5 barbiturique)

(6) [Abrogé, DORS/2017-12, art. 1]

(7) butabarbital (acide sec-butyl-5 éthyl-5 barbiturique)

(8) butalbital (acide allyl-5 isobutyl-5 barbiturique)

(9) butallylonal (acide (bromo-2 allyl)-5 sec-butyl-5 barbiturique)

(10) butéthal (acide butyl-5 éthyl-5 barbiturique)

(11) cyclobarbital (acide (cyclohexène-1 yl-1)-5 éthyl-5 barbiturique)

(12) cyclopal (acide allyl-5 (cyclopentène-2 yl-1)-5 barbiturique)

(13) heptabarbital (acide (cycloheptène-1 yl-1)-5 éthyl-5 barbiturique)

(14) hexéthal (acide éthyl-5 hexyl-5 barbiturique)

(15) hexobarbital (acide (cyclohexène-1 yl-1)-5 diméthyl-1,5 barbiturique)

(16) méphobarbital (acide éthyl-5 méthyl-1 phényl-5 barbiturique)

(17) méthabarbital (acide diéthyl-5,5 méthyl-1 barbiturique)

(18) méthylphénobarbital (acide éthyl-5 méthyl-1 phényl-5 barbiturique)

(19) propallylonal (acide (bromo-2 allyl)-5 isopropyl-5 barbiturique)

(20) phénobarbital (acide éthyl-5 phényl-5 barbiturique)

(21) probarbital (acide éthyl-5 isopropyl-5 barbiturique)

(22) acide phénylméthylbarbiturique (acide méthyl-5 phényl-5 barbiturique)

(23) sigmodal (acide (bromo-2 allyl)-5 (méthyl-1 butyl)-5 barbiturique)

(24) talbutal (acide allyl-5 sec-butyl-5 barbiturique)

(25) vinbarbital (acide éthyl-5 (méthyl-1 butényl-1)-5 barbiturique)

(2) Thiamylal (5-allyl-5-(1-methylbutyl)-2-thiobarbituric acid)

(3) Thiobarbituric Acid (2-thiobarbituric acid)

(4) Thiopental(5-ethyl-5-(1-methylbutyl)-2-thiobarbituric acid)

3 Chlorphentermine (1-(p-chlorophenyl)-2-methyl-2-aminopropane) and any salt thereof

4 Diethylpropion (2-(diethylamino)propiophenone) and any salt thereof

5 Phentermine (α,α-dimethylbenzeneethanamine) and any salt thereof

6 Butorphanol (1-N-cyclobutylmethyl-3,14-dihydroxymorphinan) and its salts

7 Nalbuphine (N-cyclobutylmethyl-4,5-epoxy-morphinan-3,6,14-triol) and any salt thereof

8 Pyrovalerone (4′-methyl-2-(1-pyrrolidinyl)valerophenone) and any salt thereof

(26) vinylbital (acide (méthyl-1 butyl)-5 vinyl-5 barbiturique)

2 Thiobarbituriques, ainsi que leurs sels et dérivés, notamment :

(1) thialbarbital (acide allyl-5 (cyclohexène-2 yl-1)-5 thio-2 barbiturique)

(2) thiamylal (acide allyl-5 (méthyl-1 butyl)-5 thio-2 barbiturique)

(3) acide thiobarbiturique (acide thio-2 barbiturique)

(4) thiopental (acide éthyl-5 (méthyl-1 butyl)-5 thio-2 barbiturique)

3 Chlorphentermine ((p-chlorophényl)-1 méthyl-2 amino-2 propane) et ses sels

4 Diéthylpropion ((diéthylamino)-2 propiophenone) et ses sels

5 Phentermine (α,α-diméthylbenzèneéthanamine) et ses sels

6 Butorphanol (1-N-cyclobutylméthyl dihydroxy-3,14 morphinane) et ses sels

7 Nalbuphine (N-cyclobutylméthyl époxy-4,5 morphinanetriol-3,6,14) et ses sels

8 Pyrovalérone (méthyl-4′(pyrrolidinyl-1)-2 valérophénone) et ses sels

## PART III

1 Anabolic steroids and their derivatives, including:

(1) Androisoxazole (17ß-hydroxy-17α-methylandrostano[3,2-c]isoxazole)

(2) Androstanolone (17ß-hydroxy-5α-androstan-3-one)

(3) Androstenediol (androst-5-ene-3ß,17ß-diol)

(4) Bolandiol (estr-4-ene-3b,17ß-diol)

(5) Bolasterone (17ß-hydroxy-7α,17-dimethylandrost-4-en-3-one)

(6) Bolazine (17ß-hydroxy-2α-methyl-5α-androstan-3-one azine)

(7) Boldenone (17ß-hydroxyandrosta-1,4-dien-3-one)

(8) Bolenol (19-nor-17α-pregn-5-en-17-ol)

(9) Calusterone (17ß-hydroxy-7b,17-dimethylandrost-4-en-3-one)

(10) Clostebol (4-chloro-17ß-hydroxyandrost-4-en-3-one)

## PARTIE III

1 Stéroïdes anabolisants et leurs dérivés, notamment :

(1) androisoxazole (hydroxy-17ß méthyl-17α androstano[3,2-c]isoxazole)

(2) androstanolone (hydroxy-17ß 5α-androstanone-3)

(3) androstènediol (androstène-5 diol-3ß,17ß)

(4) bolandiol (estrène-4 diol-3ß,17ß)

(5) bolastérone (hydroxy-17ß diméthyl-7α,17 androstène-4 one-3)

(6) bolazine (hydroxy-17ß méthyl-2α 5α-androstanone-3 azine)

(7) boldénone (hydroxy-17ß androstadiène-1,4 one-3)

(8) bolénol (nor-19 17α-prégnène-5 ol-17)

(9) calustérone (hydroxy-17ß diméthyl-7ß,17 androstène-4 one-3)

(10) clostébol (chloro-4 hydroxy-17ß androstène-4 one-3)

(11) Drostanolone (17ß-hydroxy-2α-methyl-5α-androstan-3-one)

(12) Enestebol (4,17ß-dihydroxy-17-methylandrosta-1,4-dien-3-one)

(13) Epitiostanol (2α, 3α-epithio-5α-androstan-17ß-ol)

(14) Ethylestrenol (19-nor-17α-pregn-4-en-17-ol)

(15) 4-Hydroxy-19-nor testosterone

(16) Fluoxymesterone (9-fluoro-11ß,17ß-dihydroxy — 17-methylandrost-4-en-3-one)

(17) Formebolone (11α,17ß-dihydroxy-17-methyl-3-oxoandrosta-1,4-dien-2-carboxaldehyde)

(18) Furazabol (17-methyl-5α-androstano[2,3-c]furazan-17ß-ol)

(19) Mebolazine (17ß-hydroxy-2α,17-dimethyl-5α-androstan-3-one azine)

(20) Mesabolone (17ß-[(1-methoxycyclohexyl)oxy]-5α-androst-1-en-3-one)

(21) Mesterolone (17ß-hydroxy-1α-methyl-5α-androstan-3-one)

(22) Metandienone (17ß-hydroxy-17-methylandrosta-1,4-dien-3-one)

(23) Metenolone (17ß-hydroxy-1-methyl-5α-androst-1-en-3-one)

(24) Methandriol (17α-methylandrost-5-ene-3ß,17ß-diol)

(25) Methyltestosterone (17ß-hydroxy-17-methyl-androst-4-en-3-one)

(26) Metribolone (17ß-hydroxy-17-methylestra-4,9,11-trien-3-one)

(27) Mibolerone (17ß-hydroxy-7α,17-dimethylestr-4-en-3-one)

(28) Nandrolone (17ß-hydroxyestr-4-en-3-one)

(29) Norboletone (13-ethyl-17ß-hydroxy-18,19-dinorpregn-4-en-3-one)

(30) Norclostebol (4-chloro-17ß-hydroxyestr-4-en-3-one)

(31) Norethandrolone (17α-ethyl-17ß-hydroxyestr-4-en-3-one)

(32) Oxabolone (4,17ß-dihydroxyestr-4-en-3-one)

(33) Oxandrolone (17ß-hydroxy-17-methyl-2-oxa-5α-androstan-3-one)

(34) Oxymesterone (4,17ß-dihydroxy-17-methylandrost-4-en-3-one)

(11) drostanolone (hydroxy-17ß méthyl-2α 5α-androstanone-3)

(12) énestébol (dihydroxy-4,17ß méthyl-17 androstadiène-1,4 one-3)

(13) épitiostanol (épithio-2α,3α 5α-androstanol-17ß)

(14) éthylestrénol (nor-19 17α-prégnène-4 ol-17)

(15) hydroxy-4 nor-19 testostérone

(16) fluoxymestérone (fluoro-9 dihydroxy-11ß,17ß méthyl-17 androstène-4 one-3)

(17) formébolone (dihydroxy-11α,17ß méthyl-17 oxo-3 androstadiène-1,4 carboxaldéhyde-2)

(18) furazabol (méthyl-17 5α-androstano[2,3-c]furazanol-17ß)

(19) mébolazine (hydroxy-17ß diméthyl-2α,17 5α-androstanone-3 azine)

(20) mésabolone ([(méthoxy-1 cyclohexyl) oxy]-17ß 5α-androstène-1 one-3)

(21) mestérolone (hydroxy-17ß méthyl-1α 5α-androstanone-3)

(22) métandiénone (hydroxy-17ß méthyl-17 androstadiène-1,4 one-3)

(23) méténolone (hydroxy-17ß méthyl-1 5α-androstène-1 one-3)

(24) méthandriol (méthyl-17α androstène-5 diol-3ß,17ß)

(25) méthyltestostérone (hydroxy-17ß méthyl-17 androstène-4 one-3)

(26) métribolone (hydroxy-17ß méthyl-17 estratriène-4,9,11 one-3)

(27) mibolérone (hydroxy-17ß diméthyl-7α,17 estrène-4 one-3)

(28) nandrolone (hydroxy-17ß estrène-4 one-3)

(29) norbolétone (éthyl-13 hydroxy-17ß dinor-18,19 prégnène-4 one-3)

(30) norclostébol (chloro-4 hydroxy-17ß estrène-4 one-3)

(31) noréthandrolone (éthyl-17α hydroxy-17ß estrène-4 one-3)

(32) oxabolone (dihydroxy-4,17ß estrène-4 one-3)

(33) oxandrolone (hydroxy-17ß méthyl-17 oxa-2 5α-androstanone-3)

(34) oxymestérone (dihydroxy-4,17ß méthyl-17 androstène-4 one-3)

(35) Oxymetholone (17ß-hydroxy-2-(hydroxymethylene)-17-methyl-5α-androstan-3-one)

(36) Prasterone (3ß-hydroxyandrost-5-en-17-one)

(37) Quinbolone (17ß-(1-cyclopenten-1-yloxy)androsta-1,4-dien-3-one)

(38) Stanozolol (17ß-hydroxy-17-methyl-5α-androstano[3,2-c]pyrazole)

(39) Stenbolone (17ß-hydroxy-2-methyl-5α-androst-1-en-3-one)

(40) Testosterone (17ß-hydroxyandrost-4-en-3-one)

(41) Tibolone ((7α,17α)-17-hydroxy-7-methyl-19-norpregn-5(10)en-20-yn-3-one)

(42) Tiomesterone (1α,7α-bis(acetylthio)-17ß-hydroxy-17-methylandrost-4-en-3-one)

(43) Trenbolone (17ß-hydroxyestra-4,9,11-trien-3-one)

2 Zeranol (3,4,5,6,7,8,9,10,11,12-decahydro-7,14,16-trihydroxy-3-methyl-1H-2-benzoxacyclotetradecin-1-one)

SOR/78-427, s. 10; SOR/79-753, s. 1; SOR/81-84, s. 1; SOR/85-550, s. 14(F); SOR/86-678, s. 1; SOR/89-381, s. 1; SOR/92-386, s. 3; SOR/97-228, s. 21; SOR/99-425, s. 1; SOR/2003-34, ss. 2, 3; SOR/2003-413, s. 2; SOR/2015-210, s. 1; SOR/2016-106, s. 1; SOR/2017-12, ss. 1, 2(E); SOR/2017-43, s. 1; SOR/2017-250, s. 1; SOR/2019-171, s. 21.

(35) oxymétholone (hydroxy-17ß (hydroxyméthylène)-2 méthyl-17 5α-androstanone-3)

(36) prastérone (hydroxy-3ß androstène-5 one-17)

(37) quinbolone ((cyclopentènyl-1 oxy-1)-17ß androstadiène-1,4 one-3)

(38) stanozolol (hydroxy-17ß méthyl-17 5α-androstano[3,2-c]pyrazole)

(39) stenbolone (hydroxy-17ß méthyl-2 5α-androstène-1 one-3)

(40) testostérone (hydroxy-17ß androstène-4 one-3)

(41) tibolone (hydroxy-17 méthyl-7α nor-19 17α-prégnène-5(10) yne-20 one-3)

(42) tiomestérone (bis(acétylthio)-1α,7α hydroxy-17ß méthyl-17 androstène-4 one-3)

(43) trenbolone (hydroxy-17ßestratriène-4,9,11 one-3)

2 Zéranol (trihydroxy-7,14,16 méthyl-3 décahydro-3,4,5,6,- 7,8,9,10,11,12 1H-benzoxa-2 cyclotétradécinone-1)

DORS/78-427, art. 10; DORS/79-753, art. 1; DORS/81-84, art. 1; DORS/85-550, art. 14(F); DORS/86-678, art. 1; DORS/89-381, art. 1; DORS/92-386, art. 3; DORS/97-228, art. 21; DORS/99-425, art. 1; DORS/2003-34, art. 2 et 3; DORS/2003-413, art. 2; DORS/2015-210, art. 1; DORS/2016-106, art. 1; DORS/2017-12, art. 1, 2(A); DORS/2017-43, art. 1; DORS/2017-250, art. 1; DORS/2019-171, art. 21.

**PART J**

# Restricted Drugs

## Definitions

### Definitions

**J.01.001** The following definitions apply in this Part.

***Act*** means the *Controlled Drugs and Substances Act*. (*Loi*)

***competent authority*** means a public authority of a foreign country that is authorized under the laws of the country to approve the importation or exportation of restricted drugs into or from the country. (*autorité compétente*)

***compound*** includes a preparation. (*composé*)

***designated criminal offence*** means

**PARTIE J**

# Drogues d'usage restreint

## Définitions

### Définitions

**J.01.001** Les définitions qui suivent s'appliquent la présente partie.

***autorité compétente*** Organisme public d'un pays étranger qui est habilité, au titre des lois du pays, à consentir à l'importation ou à l'exportation de drogues d'usage restreint. (*competent authority*)

***chercheur compétent*** Personne ci-après autorisée par le ministre, en vertu du paragraphe J.01.059(4), à utiliser et à posséder une drogue d'usage restreint :

**a)** celle qui est employée par un établissement ou qui y est associée;

**(a)** an offence involving the financing of terrorism against any of sections 83.02 to 83.04 of the *Criminal Code*;

**(b)** an offence involving fraud against any of sections 380 to 382 of the *Criminal Code*;

**(c)** the offence of laundering proceeds of crime against section 462.31 of the *Criminal Code*;

**(d)** an offence involving a criminal organization against any of sections 467.11 to 467.13 of the *Criminal Code*; or

**(e)** a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in any of paragraphs (a) to (d). (*infraction désignée en matière criminelle*)

***destroy***, in respect of a restricted drug, means to alter or denature it to such an extent that its consumption is rendered impossible or improbable. (*destruction*)

***hospital*** means a facility that is

**(a)** licensed, approved or designated by a province in accordance with the laws of the province to provide care or treatment to persons or animals suffering from any form of disease or illness; or

**(b)** owned or operated by the Government of Canada or the government of a province and that provides health services. (*hôpital*)

***institution*** means any institution engaged in research on drugs and includes a hospital, a university in Canada or a department or agency of the Government of Canada or of a government of a province or any part of them. (*établissement*)

***international obligation*** means an obligation in respect of a restricted drug set out in a convention, treaty or other multilateral or bilateral instrument that Canada has ratified or to which Canada adheres. (*obligation internationale*)

***label*** has the same meaning as in section 2 of the *Food and Drugs Act*. (*étiquette*)

***licensed dealer*** means the holder of a licence issued under section J.01.015. (*distributeur autorisé*)

***package*** includes anything in which a restricted drug is wholly or partly contained, placed or packed. (*emballage*)

**b)** celle qui fait des essais cliniques ou de la recherche en laboratoire à l'égard de cette drogue à un établissement. (*qualified investigator*)

***composé*** Vise notamment les préparations. (*compound*)

***destruction*** S'agissant d'une drogue d'usage restreint, le fait de l'altérer ou de la dénaturer au point d'en rendre la consommation impossible ou improbable. (*destroy*)

***Directive en matière de sécurité*** La *Directive sur les exigences en matière de sécurité physique pour les substances désignées et les drogues contenant du cannabis*, avec ses modifications successives, publiée par le gouvernement du Canada sur son site Web. (*Security Directive*)

***distributeur autorisé*** Titulaire d'une licence délivrée au titre de l'article J.01.015. (*licensed dealer*)

***drogue d'usage restreint*** S'entend des substances désignées qui sont visées à l'annexe de la présente partie. (*restricted drug*)

***emballage*** Vise notamment toute chose dans laquelle une drogue d'usage restreint est, en tout ou en partie, contenue, placée ou empaquetée. (*package*)

***établissement*** Établissement qui fait de la recherche sur les drogues, y compris l'hôpital, l'université au Canada, le ministère ou l'organisme du gouvernement du Canada ou du gouvernement d'une province ou une partie quelconque de ceux-ci. (*institution*)

***étiquette*** S'entend au sens de l'article 2 de la *Loi sur les aliments et drogues*. (*label*)

***hôpital*** L'établissement, selon le cas :

**a)** qui peut, au titre d'une licence, d'une autorisation ou d'une désignation délivrée par une province sous le régime de ses lois, fournir des soins ou des traitements aux personnes ou aux animaux atteints d'une maladie ou d'une affection;

**b)** qui fournit des services de santé et qui soit appartient au gouvernement du Canada ou au gouvernement d'une province, soit est exploité par lui. (*hospital*)

***infraction désignée en matière criminelle*** S'entend des infractions suivantes :

**a)** infraction relative au financement du terrorisme visée à l'un des articles 83.02 à 83.04 du *Code criminel*;

***pharmacist*** [Repealed, SOR/2021-271, s. 1]

***prescription*** [Repealed, SOR/2021-271, s. 1]

***proper name***, in respect of a restricted drug, means the name in English or French that

**(a)** is assigned to the drug in section C.01.002;

**(b)** appears in bold face type for the drug in these Regulations and, if the drug is dispensed in a form other than that described in Part C, the name of the dispensing form; or

**(c)** is assigned in any of the publications mentioned in Schedule B to the *Food and Drugs Act* in the case of a drug not included in paragraph (a) or (b). (*nom propre*)

***qualified investigator*** means, in respect of a restricted drug, a person whose use and possession of that drug are authorized by the Minister under subsection J.01.059(4) and who is

**(a)** employed by or connected with an institution; or

**(b)** engaged in clinical testing or laboratory research in an institution in respect of that drug. (*chercheur compétent*)

***qualified person in charge*** means the individual designated under subsection J.01.012(1). (*responsable qualifié*)

***restricted drug*** means a controlled substance that is set out in the schedule to this Part. (*drogue d'usage restreint*)

***Security Directive*** means the *Directive on Physical Security Requirements for Controlled Substances and Drugs Containing Cannabis*, as amended from time to time and published by the Government of Canada on its website. (*Directive en matière de sécurité*)

***senior person in charge*** means the individual designated under section J.01.011. (*responsable principal*)

***test kit*** means a kit

**(a)** that contains a restricted drug and a reagent system or buffering agent;

**(b)** that is used during the course of a chemical or analytical procedure to test for the presence or quantity of a restricted drug for a medical, laboratory, industrial, educational, law administration or enforcement, or research purpose; and

**b)** infraction de fraude visée à l'un des articles 380 à 382 du *Code criminel*;

**c)** infraction de recyclage des produits de la criminalité visée à l'article 462.31 du *Code criminel*;

**d)** infraction relative à une organisation criminelle visée à l'un des articles 467.11 à 467.13 du *Code criminel*;

**e)** tentative ou complot en vue de commettre une infraction visée à l'un des alinéas a) à d), complicité après le fait à son égard ou fait de conseiller de la commettre. (*designated criminal offence*)

***Loi*** La *Loi réglementant certaines drogues et autres substances*. (*Act*)

***nécessaire d'essai*** Nécessaire qui a les caractéristiques suivantes :

**a)** il contient d'une part une drogue d'usage restreint et d'autre part un réactif ou une substance tampon;

**b)** il est utilisé dans un processus chimique ou analytique de dépistage ou de quantification d'une drogue d'usage restreint à des fins médicales, industrielles, éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi;

**c)** son contenu n'est pas destiné à être consommé par une personne ou un animal, ni à leur être administré, et il n'est pas susceptible de l'être. (*test kit*)

***nom propre*** S'agissant d'une drogue d'usage restreint, l'un des noms français ou anglais suivants :

**a)** celui figurant à l'article C.01.002;

**b)** celui figurant en caractères gras dans le présent règlement et celui de toute forme autre que celle visée à la partie C sous laquelle la drogue est dispensée;

**c)** s'agissant d'une drogue non visée aux alinéas a) ou b), celui figurant dans l'une des publications mentionnées à l'annexe B de la *Loi sur les aliments et drogues*. (*proper name*)

***obligation internationale*** Toute obligation relative à une drogue d'usage restreint prévue par une convention, un traité ou un autre instrument multilatéral ou bilatéral que le Canada a ratifié ou auquel il adhère. (*international obligation*)

***ordonnance*** [Abrogée, DORS/2021-271, art. 1]

***pharmacien*** [Abrogée, DORS/2021-271, art. 1]

**(c)** the contents of which are not intended or likely to be consumed by, or administered to, a person or an animal. (*nécessaire d'essai*)

SOR/97-228, s. 22; SOR/2004-238, s. 31; SOR/2013-172, s. 1; SOR/2019-171, s. 22; SOR/2021-271, s. 1.

***responsable principal*** L'individu désigné en application de l'article J.01.011. (*senior person in charge*)

***responsable qualifié*** L'individu désigné en application du paragraphe J.01.012(1). (*qualified person in charge*)

DORS/97-228, art. 22; DORS/2004-238, art. 31; DORS/2013-172, art. 1; DORS/2019-171, art. 22; DORS/2021-271, art. 1.

# General

### Temporary accelerated scheduling

**J.01.002 (1)** The Minister may, by order, add to column 1 of Part III of the schedule to this Part any item or portion of an item listed in Schedule V to the Act for a period referred to in column 2 that is the same as that listed in Schedule V for that item.

### Deletion

**(2)** The Minister may, by order, delete any item or portion of an item from column 1 of Part III of the schedule to this Part.

### Deletion — Schedule V to Act

**(3)** An item or portion of an item listed in Part III of the schedule to this Part is deemed to be deleted on the day on which it is no longer listed in Schedule V to the Act.

SOR/97-228, s. 23; SOR/99-125, s. 7; SOR/2010-222, s. 23; SOR/2015-210, s. 2; SOR/2018-85, s. 1; SOR/2019-171, s. 22.

### Non-application — member of police force

**J.01.003** A member of a police force or a person acting under their direction and control who, in respect of the conduct of the member or person, is exempt from the application of subsection 4(2) or section 5, 6 or 7 of the Act by virtue of the *Controlled Drugs and Substances Act (Police Enforcement) Regulations* is, in respect of that conduct, exempt from the application of this Part.

SOR/2004-238, s. 32; SOR/2019-171, s. 22.

**J.01.003.1** [Repealed, SOR/2019-171, s. 22]

**J.01.003.2** [Repealed, SOR/2019-171, s. 22]

# Possession

### Authorized persons

**J.01.004 (1)** The following persons are authorized to possess a restricted drug listed in Part I of the schedule to this Part:

**(a)** a licensed dealer;

# Dispositions générales

### Inscription accélérée temporaire

**J.01.002 (1)** Le ministre peut, par arrêté, ajouter à la colonne 1 de la partie III de l'annexe de la présente partie tout ou partie d'un article qui figure à l'annexe V de la Loi pour la période prévue à la colonne 2 correspondant à la même période que celle inscrite à l'annexe V pour cet article.

### Abrogation

**(2)** Le ministre peut, par arrêté, supprimer de la colonne 1 de la partie III de l'annexe de la présente partie tout ou partie d'un article qui y figure.

### Abrogation à l'annexe V de la Loi

**(3)** Tout ou partie d'un article figurant à la partie III de l'annexe à la présente partie est réputé en être supprimé le jour où il n'est plus inscrit à l'annexe V de la Loi.

DORS/97-228, art. 23; DORS/99-125, art. 7; DORS/2010-222, art. 23; DORS/2015-210, art. 2; DORS/2018-85, art. 1; DORS/2019-171, art. 22.

### Non-application — membre d'un corps policier

**J.01.003** Le membre d'un corps policier ou la personne agissant sous son autorité et sa supervision qui, à l'égard de l'une de ses activités, est soustrait à l'application du paragraphe 4(2) ou des articles 5, 6 ou 7 de la Loi, en vertu du *Règlement sur l'exécution policière de la Loi réglementant certaines drogues et autres substances* est, à l'égard de cette activité, soustrait à l'application de la présente partie.

DORS/2004-238, art. 32; DORS/2019-171, art. 22.

**J.01.003.1** [Abrogé, DORS/2019-171, art. 22]

**J.01.003.2** [Abrogé, DORS/2019-171, art. 22]

# Possession

### Personnes autorisées

**J.01.004 (1)** Les personnes ci-après sont autorisées à avoir en leur possession une drogue d'usage restreint mentionnée à la partie I de l'annexe de la présente partie :

**a)** le distributeur autorisé;

**(b)** a qualified investigator who possesses the drug for the purpose of conducting clinical testing or laboratory research in an institution;

**(c)** an inspector, member of the Royal Canadian Mounted Police, police constable, peace officer, member of the technical or scientific staff of the Government of Canada, the government of a province or a university in Canada who possesses the drug in connection with their employment;

**(d)** a person exempted under section 56 of the Act with respect to the possession of that drug; and

**(e)** the Minister.

**Agent or mandatary**

**(2)** A person is authorized to possess a restricted drug listed in Part I of the schedule to this Part if they are acting as the agent or mandatary of a person referred to in paragraph (1)(a), (b), (d) or (e).

**Agent or mandatary — person referred to in paragraph (1)(c)**

**(3)** A person is authorized to possess a restricted drug listed in Part I of the schedule to this Part if they

**(a)** are acting as the agent or mandatary of a person who they have reasonable grounds to believe is a person referred to in paragraph (1)(c); and

**(b)** possess the restricted drug for the purpose of assisting that person in the administration or enforcement of an Act or regulation.

SOR/2019-171, s. 22; SOR/2021-271, s. 2.

**J.01.004.1** [Repealed, SOR/2019-171, s. 22]

## Test Kits

**Authorized activities**

**J.01.005** A person may sell, possess or otherwise deal in a test kit if the following conditions are met:

**(a)** a registration number has been issued for the test kit under section J.01.007 and has not been cancelled under section J.01.008;

**(b)** the test kit bears, on its external surface,

**(i)** the name of the manufacturer,

**b)** le chercheur compétent qui l'a en sa possession dans le but de faire des essais cliniques ou de la recherche en laboratoire à un établissement;

**c)** l'inspecteur, le membre de la Gendarmerie royale du Canada, l'agent de police, l'agent de la paix ou le membre du personnel technique ou scientifique du gouvernement du Canada, du gouvernement d'une province ou d'une université au Canada qui la possède dans le cadre de ses fonctions;

**d)** la personne qui bénéficie d'une exemption relative à la possession de cette drogue et accordée en vertu de l'article 56 de la Loi;

**e)** le ministre.

**Mandataires**

**(2)** Toute personne est autorisée à avoir en sa possession une drogue d'usage restreint mentionnée à la partie I de l'annexe de la présente partie si elle agit comme mandataire d'une personne visée aux alinéas (1)a), b), d) ou e).

**Mandataires — personne visée à l'alinéa (1)c)**

**(3)** Toute personne est autorisée à avoir en sa possession une drogue d'usage restreint mentionnée à la partie I de l'annexe de la présente partie si les conditions ci-après sont réunies :

**a)** elle agit comme mandataire d'une personne dont elle a des motifs raisonnables de croire que celle-ci est visée à l'alinéa (1)c);

**b)** la possession de la drogue a pour but d'aider la personne dont elle est mandataire dans l'application ou l'exécution d'une loi ou d'un règlement.

DORS/2019-171, art. 22; DORS/2021-271, art. 2.

**J.01.004.1** [Abrogé, DORS/2019-171, art. 22]

## Nécessaires d'essai

**Opérations autorisées**

**J.01.005** Toute personne peut vendre un nécessaire d'essai, en avoir un en sa possession ou effectuer toute autre opération relative à celui-ci si les conditions ci-après sont remplies :

**a)** un numéro d'enregistrement a été attribué au nécessaire d'essai au titre de l'article J.01.007 et n'a pas été annulé en application de l'article J.01.008;

**b)** le nécessaire d'essai porte, sur sa surface extérieure, les renseignements suivants :

**(ii)** the trade name or trademark, and

**(iii)** the registration number; and

**(c)** the test kit will be used for a medical, laboratory, industrial, educational, law administration or enforcement, or research purpose.

SOR/2019-171, s. 22.

**(i)** le nom du fabricant,

**(ii)** le nom commercial ou la marque de commerce,

**(iii)** le numéro d'enregistrement;

**c)** le nécessaire d'essai sera utilisé à des fins médicales, industrielles ou éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi.

DORS/2019-171, art. 22.

### Application for registration number

**J.01.006 (1)** The manufacturer of a test kit may obtain a registration number for it by submitting to the Minister an application containing

**(a)** a detailed description of the design and construction of the test kit;

**(b)** a detailed description of the restricted drug and other substances, if any, contained in the test kit, including the qualitative and quantitative composition of each component; and

**(c)** a description of the proposed use of the test kit.

### Numéro d'enregistrement — demande

**J.01.006 (1)** Le fabricant d'un nécessaire d'essai peut obtenir un numéro d'enregistrement en présentant au ministre une demande qui contient les renseignements suivants :

**a)** une description détaillée de la conception et de la fabrication du nécessaire d'essai;

**b)** une description détaillée de la drogue d'usage restreint et, le cas échéant, des autres substances que contient le nécessaire d'essai, ainsi que la description qualitative et quantitative de chacun des composants;

**c)** une description de l'utilisation à laquelle est destiné le nécessaire d'essai.

### Signature and attestation

**(2)** The application must

**(a)** be signed and dated by the person authorized by the applicant for that purpose; and

**(b)** include an attestation by that person that all of the information submitted in support of the application is correct and complete to the best of their knowledge.

### Signature et attestation

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par la personne autorisée à cette fin par le demandeur;

**b)** elle comprend une attestation de celle-ci portant qu'à sa connaissance, tous les renseignements fournis à l'appui de la demande sont exacts et complets.

### Additional information or document

**(3)** The applicant must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

### Renseignements et documents complémentaires

**(3)** Le demandeur fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande du numéro d'enregistrement.

DORS/2019-171, art. 22.

### Issuance of registration number

**J.01.007** On completion of the review of the application for a registration number, the Minister must issue a registration number for the test kit, preceded by the letters "TK", if the Minister determines that the test kit will only be used for a medical, laboratory, industrial, educational, law administration or enforcement, or research purpose and that it contains

### Numéro d'enregistrement — attribution

**J.01.007** Le ministre, au terme de l'examen de la demande de numéro d'enregistrement, attribue un numéro d'enregistrement précédé des lettres « TK » au nécessaire

**(a)** a restricted drug and an adulterating or denaturing agent that are combined in such a manner and in such a quantity, proportion or concentration that the preparation or mixture has no significant drug abuse potential; or

**(b)** such small quantities or concentrations of any restricted drug as to have no significant drug abuse potential.

SOR/2004-238, s. 33; SOR/2010-222, s. 25; SOR/2014-260, ss. 9, 16(F); SOR/2019-171, s. 22.

d'essai s'il établit que ce dernier satisfait à l'une des exigences ci-après et sera utilisé seulement à des fins médicales, industrielles ou éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi :

**a)** il contient une drogue d'usage restreint et un agent d'adultération ou un dénaturant, mélangés de telle manière et en quantités, proportions ou concentrations telles que la préparation ou le mélange ne présente pas un risque notable de toxicomanie;

**b)** il contient des quantités ou des concentrations d'une drogue d'usage restreint si infimes qu'il ne présente pas un risque notable de toxicomanie.

DORS/2004-238, art. 33; DORS/2010-222, art. 25; DORS/2014-260, art. 9 et 16(F); DORS/2019-171, art. 22.

**J.01.007.1** [Repealed, SOR/2019-171, s. 22]

**J.01.007.2** [Repealed, SOR/2019-171, s. 22]

**J.01.007.3** [Repealed, SOR/2019-171, s. 22]

**J.01.007.4** [Repealed, SOR/2019-171, s. 22]

**J.01.007.5** [Repealed, SOR/2019-171, s. 22]

**J.01.007.6** [Repealed, SOR/2019-171, s. 22]

**J.01.007.7** [Repealed, SOR/2019-171, s. 22]

**J.01.007.8** [Repealed, SOR/2019-171, s. 22]

**J.01.007.9** [Repealed, SOR/2019-171, s. 22]

**J.01.007.91** [Repealed, SOR/2019-171, s. 22]

**J.01.007.1** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.2** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.3** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.4** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.5** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.6** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.7** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.8** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.9** [Abrogé, DORS/2019-171, art. 22]

**J.01.007.91** [Abrogé, DORS/2019-171, art. 22]

### Cancellation of registration number

**J.01.008** The Minister must cancel the registration number for a test kit if

**(a)** the test kit is removed from the market by the manufacturer;

**(b)** the Minister has reasonable grounds to believe that the test kit is used or is likely to be used for any purpose other than a medical, laboratory, industrial, educational, law administration or enforcement, or research purpose; or

**(c)** the Minister has reasonable grounds to believe that the cancellation is necessary to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use.

SOR/2019-171, s. 22.

### Numéro d'enregistrement — annulation

**J.01.008** Le ministre annule le numéro d'enregistrement d'un nécessaire d'essai dans les cas suivants :

**a)** le fabricant retire le nécessaire d'essai du marché;

**b)** le ministre a des motifs raisonnables de croire que le nécessaire d'essai n'est pas utilisé à des fins médicales, industrielles ou éducatives, pour des travaux de laboratoire ou de recherche ou pour l'application ou l'exécution de la loi, ou qu'il est susceptible de ne pas l'être;

**c)** le ministre a des motifs raisonnables de croire que l'annulation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

DORS/2019-171, art. 22.

# Licensed Dealers

## Authorized Activities

### General

**J.01.009 (1)** A licensed dealer may produce, assemble, sell, provide, transport, send, deliver, import or export a restricted drug if they comply with this Part and the terms and conditions of their dealer's licence and any permit issued under this Part.

### Qualified person in charge present

**(2)** A licensed dealer may conduct an activity in relation to a restricted drug at their site only if the qualified person in charge or an alternate qualified person in charge is present at the site.

### Permit — import and export

**(3)** A licensed dealer must obtain a permit to import or export a restricted drug.

### Possession for export

**(4)** A licensed dealer may possess a restricted drug for the purpose of exporting it if they have obtained it in accordance with this Part.

SOR/2019-171, s. 22.

## Dealer's Licences

### Preliminary Requirements

### Eligible persons

**J.01.010** The following persons may apply for a dealer's licence:

**(a)** an individual who ordinarily resides in Canada;

**(b)** a corporation that has its head office in Canada or operates a branch office in Canada; or

**(c)** the holder of a position that includes responsibility for restricted drugs on behalf of the Government of Canada or of a government of a province, a police force, a hospital or a university in Canada.

SOR/2019-171, s. 22.

### Senior person in charge

**J.01.011** An applicant for a dealer's licence must designate only one individual as the senior person in charge, who has overall responsibility for management of the activities with respect to restricted drugs that are specified

# Distributeurs autorisés

## Opérations autorisées

### Exigences générales

**J.01.009 (1)** Le distributeur autorisé peut produire, assembler, vendre, fournir, transporter, expédier, livrer, importer ou exporter une drogue d'usage restreint s'il se conforme à la présente partie ainsi qu'aux conditions de sa licence de distributeur autorisé et de tout permis délivré en vertu de la présente partie.

### Présence d'un responsable qualifié

**(2)** Le distributeur autorisé ne peut effectuer à son installation une opération relative à une drogue d'usage restreint que si le responsable qualifié ou un responsable qualifié suppléant est présent à l'installation.

### Permis — importation et exportation

**(3)** Le distributeur autorisé est tenu d'obtenir un permis pour importer ou exporter une drogue d'usage restreint.

### Possession à des fins d'exportation

**(4)** Le distributeur autorisé peut avoir en sa possession une drogue d'usage restreint en vue de son exportation s'il l'a obtenue conformément à la présente partie.

DORS/2019-171, art. 22.

## Licences de distributeur autorisé

### Exigences préalables

### Personnes admissibles

**J.01.010** Les personnes ci-après peuvent demander une licence de distributeur autorisé :

**a)** l'individu qui réside de façon habituelle au Canada;

**b)** la personne morale qui a son siège social au Canada ou qui y exploite une succursale;

**c)** le titulaire d'un poste qui est responsable des questions relatives aux drogues d'usage restreint pour le compte du gouvernement du Canada ou d'un gouvernement provincial, d'un service de police, d'un hôpital ou d'une université au Canada.

DORS/2019-171, art. 22.

### Responsable principal

**J.01.011** La personne qui demande une licence de distributeur autorisé désigne un seul individu à titre de responsable principal, le demandeur pouvant se désigner lui-même s'il est un individu, qui est responsable de la

in the licence application. The applicant may designate themself if the applicant is an individual.

SOR/2004-238, s. 34; SOR/2019-171, s. 22.

gestion de l'ensemble des opérations relatives aux drogues d'usage restreint précisées dans la demande de licence.

DORS/2004-238, art. 34; DORS/2019-171, art. 22.

### Qualified person in charge

**J.01.012 (1)** An applicant for a dealer's licence must designate only one individual as the qualified person in charge, who is responsible for supervising the activities with respect to restricted drugs that are specified in the licence application and for ensuring that those activities comply with this Part. The applicant may designate themself if the applicant is an individual.

### Alternate qualified person in charge

**(2)** An applicant for a dealer's licence may designate an individual as an alternate qualified person in charge, who is authorized to replace the qualified person in charge when that person is absent. The applicant may designate themself if the applicant is an individual.

### Qualifications

**(3)** Only an individual who meets the following requirements may be designated as a qualified person in charge or an alternate qualified person in charge:

**(a)** they work at the site specified in the dealer's licence;

**(b)** they

**(i)** are a person entitled or, if applicable, registered and entitled by a provincial professional licensing authority or a professional association in Canada and entitled to practise a profession that is relevant to their duties, such as pharmacist, practitioner, pharmacy technician or laboratory technician,

**(ii)** hold a diploma, certificate or credential awarded by a post-secondary educational institution in Canada in a field or occupation that is relevant to their duties, such as pharmacy, medicine, dentistry, veterinary medicine, pharmacology, chemistry, biology, pharmacy technician, laboratory technician, pharmaceutical regulatory affairs or supply chain management or security, or

**(iii)** hold a diploma, certificate or credential that is awarded by a foreign educational institution in a field or occupation referred to in subparagraph (ii) and hold

### Responsable qualifié

**J.01.012 (1)** La personne qui demande une licence de distributeur autorisé désigne un seul individu à titre de responsable qualifié, le demandeur pouvant se désigner lui-même s'il est un individu, qui est à la fois responsable de superviser les opérations relatives aux drogues d'usage restreint précisées dans la demande de licence et de veiller à la conformité de ces opérations avec la présente partie.

### Responsable qualifié suppléant

**(2)** La personne qui demande une licence de distributeur autorisé peut désigner un individu à titre de responsable qualifié suppléant, le demandeur pouvant se désigner lui-même s'il est un individu, qui est autorisé à remplacer le responsable qualifié lorsque celui-ci est absent.

### Qualifications

**(3)** Seul l'individu qui satisfait aux exigences ci-après peut être désigné à titre de responsable qualifié ou de responsable qualifié suppléant :

**a)** il travaille à l'installation précisée dans la licence de distributeur autorisé;

**b)** il est :

**(i)** soit une personne autorisée ou, le cas échéant, inscrite et autorisée, par une autorité provinciale attributive de licences en matière d'activités professionnelles ou par une association professionnelle au Canada, à exercer sa profession dans un domaine lié à ses fonctions, notamment celle de pharmacien, de praticien, de technicien en pharmacie ou de technicien de laboratoire,

**(ii)** soit titulaire d'un diplôme, d'un certificat ou d'une attestation décerné par un établissement d'enseignement postsecondaire au Canada dans un domaine qui est lié à ses fonctions, notamment la pharmacie, la médecine, la dentisterie, la médecine vétérinaire, la pharmacologie, la chimie, la biologie, la réglementation pharmaceutique, la sécurité ou la gestion des chaînes d'approvisionnement, les techniques en pharmacie ou les techniques de laboratoire,

**(iii)** soit titulaire d'un diplôme, d'un certificat ou d'une attestation décerné par un établissement d'enseignement étranger dans l'un des domaines

**(A)** an *equivalency assessment* as defined in subsection 73(1) of the *Immigration and Refugee Protection Regulations*, or

**(B)** an equivalency assessment issued by an organization or institution that is responsible for issuing equivalency assessments and is recognized by a province;

**(c)** they have sufficient knowledge of and experience with the use and handling of the restricted drugs specified in the dealer's licence to properly carry out their duties; and

**(d)** they have sufficient knowledge of the provisions of the Act and this Part that are applicable to the activities specified in the dealer's licence to properly carry out their duties.

**Exception**

**(4)** An applicant for a dealer's licence may designate an individual who does not meet any of the requirements of paragraph (3)(b) as a qualified person in charge or an alternate qualified person in charge if

**(a)** no other individual working at the site meets those requirements;

**(b)** those requirements are not necessary for the activities specified in the licence; and

**(c)** the individual has sufficient knowledge — acquired from a combination of education, training or work experience — to properly carry out their duties.

SOR/2004-238, s. 34; SOR/2010-222, s. 30; SOR/2019-171, s. 22.

**J.01.012.1** [Repealed, SOR/2019-171, s. 22]

**J.01.012.2** [Repealed, SOR/2019-171, s. 22]

**Ineligibility**

**J.01.013** An individual is not eligible to be a senior person in charge, a qualified person in charge or an alternate qualified person in charge if, during the 10 years before the day on which the dealer's licence application is submitted,

**(a)** in respect of a designated substance offence or a designated criminal offence or a *designated offence*

visés au sous-alinéa (ii) et titulaire de l'une des attestations suivantes :

**(A)** une *attestation d'équivalence*, au sens du paragraphe 73(1) du *Règlement sur l'immigration et la protection des réfugiés*,

**(B)** une attestation d'équivalence délivrée par une institution ou une organisation chargée de faire des attestations d'équivalences et reconnue par une province;

**c)** il possède des connaissances et une expérience relatives à l'utilisation et à la manutention des drogues d'usage restreint précisées dans la licence de distributeur autorisé qui sont suffisantes pour lui permettre de bien exercer ses fonctions;

**d)** il possède une connaissance suffisante des dispositions de la Loi et de la présente partie s'appliquant aux opérations précisées dans la licence de distributeur autorisé pour lui permettre de bien exercer ses fonctions.

**Exception**

**(4)** La personne qui demande une licence de distributeur autorisé peut désigner à titre de responsable qualifié ou de responsable qualifié suppléant un individu qui ne satisfait à aucune des exigences prévues à l'alinéa (3)b) si les conditions ci-après sont réunies :

**a)** aucun autre individu travaillant à l'installation ne satisfait à l'une de ces exigences;

**b)** ces exigences ne sont pas nécessaires pour effectuer les opérations précisées dans par la licence;

**c)** l'individu possède des connaissances suffisantes acquises par la combinaison de ses études, de sa formation et de son expérience de travail pour lui permettre de bien exercer ses fonctions.

DORS/2004-238, art. 34; DORS/2010-222, art. 30; DORS/2019-171, art. 22.

**J.01.012.1** [Abrogé, DORS/2019-171, art. 22]

**J.01.012.2** [Abrogé, DORS/2019-171, art. 22]

**Inadmissibilité**

**J.01.013** Ne peut être désigné à titre de responsable principal, de responsable qualifié ou de responsable qualifié suppléant l'individu qui, dans les dix années précédant la date de présentation de la demande de licence de distributeur autorisé :

**a)** à l'égard d'une infraction désignée, d'une infraction désignée en matière criminelle ou d'une *infraction*

as defined in subsection 2(1) of the *Cannabis Act*, the individual

**(i)** was convicted as an adult, or

**(ii)** was a *young person* who received an *adult sentence*, as those terms are defined in subsection 2(1) of the *Youth Criminal Justice Act*; or

**(b)** in respect of an offence committed outside Canada that, if committed in Canada, would have constituted a designated substance offence or a designated criminal offence or a *designated offence* as defined in subsection 2(1) of the *Cannabis Act*,

**(i)** the individual was convicted as an adult, or

**(ii)** if they committed the offence when they were at least 14 years old but less than 18 years old, the individual received a sentence that was longer than the maximum *youth sentence*, as that term is defined in subsection 2(1) of the *Youth Criminal Justice Act*, that could have been imposed under that Act for such an offence.

SOR/2004-238, s. 34; SOR/2019-171, s. 22.

*désignée* au sens du paragraphe 2(1) de la *Loi sur le cannabis* :

**(i)** soit a été condamné en tant qu'adulte,

**(ii)** soit s'est vu imposer en tant qu'*adolescent*, au sens du paragraphe 2(1) de la *Loi sur le système de justice pénale pour les adolescents*, une *peine applicable aux adultes*, au sens de ce paragraphe;

**b)** à l'égard d'une infraction commise dans un pays étranger qui, si elle avait été commise au Canada, aurait constitué une infraction désignée, une infraction désignée en matière criminelle ou une *infraction désignée* au sens du paragraphe 2(1) de la *Loi sur le cannabis* :

**(i)** soit a été condamné en tant qu'adulte,

**(ii)** soit s'est vu imposer, pour une infraction commise alors qu'il avait au moins quatorze ans et moins de dix-huit ans, une peine plus longue que la peine maximale prévue par la *peine spécifique*, au sens du paragraphe 2(1) de la *Loi sur le système de justice pénale pour les adolescents* pour une telle infraction.

DORS/2004-238, art. 34; DORS/2019-171, art. 22.

## Issuance of Licence

### Application

**J.01.014 (1)** A person who intends to conduct an activity referred to in section J.01.009 must obtain a dealer's licence for each site at which they intend to conduct activities by submitting an application to the Minister that contains the following information:

**(a)** if the licence is requested by

**(i)** an individual, the individual's name,

**(ii)** a corporation, its corporate name and any other name registered with a province under which it intends to conduct the activities specified in its dealer's licence or by which it intends to identify itself, and

**(iii)** the holder of a position mentioned in paragraph J.01.010(c), the applicant's name and the title of the position;

**(b)** the municipal address, telephone number and, if applicable, the email address of the proposed site and, if different from the municipal address, its mailing address;

## Délivrance d'une licence

### Demande

**J.01.014 (1)** La personne qui prévoit d'effectuer l'une des opérations visées à l'article J.01.009 doit obtenir une licence de distributeur autorisé pour chaque installation où elle prévoit d'effectuer celle-ci en présentant au ministre une demande qui contient les renseignements suivants :

**a)** les précisions ci-après à l'égard de la personne qui demande la licence :

**(i)** s'agissant d'un individu, son nom,

**(ii)** s'agissant d'une personne morale, sa dénomination sociale et tout autre nom enregistré dans une province sous lequel elle entend s'identifier ou effectuer les opérations précisées dans la licence,

**(iii)** s'agissant du titulaire d'un poste visé à l'alinéa J.01.010c), son nom et le titre de son poste;

**b)** l'adresse municipale, le numéro de téléphone et, le cas échéant, l'adresse électronique de l'installation de même que, si elle diffère de l'adresse municipale, son adresse postale;

**(c)** the name, date of birth, telephone number and email address of the proposed senior person in charge;

**(d)** with respect to each of the proposed qualified person in charge and any proposed alternate qualified person in charge,

**(i)** their name, date of birth, telephone number and email address,

**(ii)** the title of their position at the site,

**(iii)** the name and title of the position of their immediate supervisor at the site,

**(iv)** if applicable, the profession they practise that is relevant to their duties, the name of the province that authorizes them to practise it and their authorization number, and

**(v)** their education, training and work experience that are relevant to their duties;

**(e)** the activities that are to be conducted and the restricted drugs in respect of which each of the activities is to be conducted;

**(f)** if the licence is requested to manufacture or assemble a product or compound that contains a restricted drug, other than a test kit, a list that includes, for each product or compound,

**(i)** the brand name of the product or the name of the compound,

**(ii)** the name of the restricted drug in the product or compound,

**(iii)** the strength per unit of the restricted drug in it, the number of units per package and the number of packages,

**(iv)** if it is to be manufactured or assembled by or for another licensed dealer under a custom order, the name, municipal address and dealer's licence number of the other licensed dealer, and

**(v)** if the applicant's name appears on the label of the product or compound, a copy of the inner label;

**(g)** if the licence is requested in order to produce a restricted drug other than a product or compound that contains a restricted drug,

**(i)** the name of the restricted drug,

**c)** les nom, numéro de téléphone et adresse électronique du responsable principal proposé ainsi que sa date de naissance;

**d)** à l'égard du responsable qualifié et de tout responsable qualifié suppléant proposés :

**(i)** leurs nom, numéro de téléphone et adresse électronique ainsi que leur date de naissance,

**(ii)** le titre de leur poste à l'installation,

**(iii)** les nom et titre du poste de leur supérieur immédiat à l'installation,

**(iv)** le cas échéant, la profession exercée qui est liée à leurs fonctions, le nom de la province les autorisant à l'exercer et le numéro de cette autorisation,

**(v)** leurs études, formation et expérience de travail liées à l'exercice de leurs fonctions;

**e)** les opérations proposées et les drogues d'usage restreint visées par chacune de celles-ci;

**f)** si la demande vise la fabrication ou l'assemblage d'un produit ou d'un composé contenant une drogue d'usage restreint, sauf si elle vise la fabrication ou l'assemblage d'un nécessaire d'essai, une liste qui contient les précisions ci-après pour chaque produit ou composé :

**(i)** la marque nominative du produit ou le nom du composé,

**(ii)** le nom de la drogue d'usage restreint qu'il contient,

**(iii)** la concentration de la drogue d'usage restreint qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages,

**(iv)** s'il est fabriqué ou assemblé sur mesure aux termes d'une commande spéciale pour un autre distributeur autorisé ou s'il l'est par un distributeur autorisé différent, les nom, adresse municipale et numéro de licence de celui-ci,

**(v)** si le nom du demandeur figure sur l'étiquette du produit ou du composé, une copie de l'étiquette intérieure;

**g)** si la demande vise la production d'une drogue d'usage restreint, exception faite des produits ou composés contenant une drogue d'usage restreint, les précisions ci-après concernant cette drogue :

**(ii)** the quantity that the applicant expects to produce under their licence and the period during which that quantity would be produced, and

**(iii)** if it is to be produced for another licensed dealer under a custom order, the name, municipal address and licence number of the other licensed dealer;

**(h)** if the licence is requested for an activity that is not described in paragraph (f) or (g), the name of the restricted drug for which the activity is to be conducted and the purpose of the activity;

**(i)** a detailed description of the security measures in place at the site, determined in accordance with the Security Directive; and

**(j)** a detailed description of the method for recording information that the applicant proposes to use for the purpose of section J.01.075.

**Documents**

**(2)** An application for a dealer's licence must be accompanied by the following documents:

**(a)** if the applicant is a corporation, a copy of

**(i)** the certificate of incorporation or other constituting instrument, and

**(ii)** any document filed with the province in which its site is located that states its corporate name and any other name registered with the province under which the applicant intends to conduct the activities specified in its dealer's licence or by which it intends to identify itself;

**(b)** individual declarations signed and dated by each of the proposed senior person in charge, and qualified person in charge and any proposed alternate qualified person in charge, attesting that the person is not ineligible for a reason specified in section J.01.013;

**(c)** a document issued by a Canadian police force in relation to each person referred to in paragraph (b), indicating whether, during the 10 years before the day on which the application is submitted, the person was convicted as specified in subparagraph J.01.013(a)(i) or received a sentence as specified in subparagraph J.01.013(a)(ii);

**(d)** if any of the persons referred to in paragraph (b) has ordinarily resided in a country other than Canada during the 10 years before the day on which the

**(i)** son nom,

**(ii)** la quantité que le demandeur prévoit de produire en vertu de la licence et la période prévue pour la production,

**(iii)** si elle est produite sur mesure aux termes d'une commande spéciale pour un autre distributeur autorisé, les nom, adresse municipale et numéro de licence de celui-ci;

**h)** si la demande vise une opération qui n'est pas visée par les alinéas f) et g), le nom de la drogue d'usage restreint qui fera l'objet de l'opération et le but de cette dernière;

**i)** la description détaillée des mesures de sécurité mises en place à l'installation et établies conformément à la Directive en matière de sécurité;

**j)** la description détaillée de la méthode de consignation des renseignements que le demandeur prévoit d'utiliser en application de l'article J.01.075.

**Documents**

**(2)** La demande est accompagnée des documents suivants :

**a)** dans le cas où le demandeur est une personne morale :

**(i)** une copie de son certificat de constitution ou de tout autre acte constitutif,

**(ii)** une copie de tout document déposé auprès de la province où se trouve son installation et qui indique sa dénomination sociale et tout autre nom enregistré dans la province sous lequel elle entend s'identifier ou effectuer les opérations précisées dans la licence;

**b)** les déclarations individuelles signées et datées par le responsable principal, le responsable qualifié et tout responsable qualifié suppléant proposés attestant que le signataire n'est pas visé par l'article J.01.013;

**c)** à l'égard de chaque personne visée à l'alinéa b), un document délivré par un corps policier canadien précisant si, au cours des dix années précédant la présentation de la demande, elle a fait l'objet d'une condamnation visée au sous-alinéa J.01.013a)(i) ou s'est vu imposer une peine visée au sous-alinéa J.01.013a)(ii);

**d)** à l'égard de chaque personne visée à l'alinéa b) qui a résidé de façon habituelle dans un pays étranger au cours des dix années précédant la présentation de la demande, un document délivré par un corps policier

application is submitted, a document issued by a police force of that country indicating whether in that period that person was convicted as specified in subparagraph J.01.013(b)(i) or received a sentence as specified in subparagraph J.01.013(b)(ii);

**(e)** declaration, signed and dated by the proposed senior person in charge, attesting that the proposed qualified person in charge and any proposed alternate qualified person in charge have the knowledge and experience required under paragraphs J.01.012(3)(c) and (d); and

**(f)** if the proposed qualified person in charge or any proposed alternate qualified person in charge does not meet the requirement of subparagraph J.01.012(3)(b)(i), either

**(i)** a copy of the person's diploma, certificate or credential referred to in subparagraph J.01.012(3)(b)(ii) or (iii), or

**(ii)** a detailed description of the education, training and work experience that is required under paragraph J.01.012(4)(c), together with supporting evidence, such as a copy of a course transcript or an attestation by the person who provided the training.

de ce pays précisant si elle a fait l'objet d'une condamnation visée au sous-alinéa J.01.013b)(i) ou s'est vu imposer une peine visée au sous-alinéa J.01.013b)(ii) dans ce pays au cours de cette période;

**e)** une déclaration, signée et datée par le responsable principal, attestant que le responsable qualifié et tout responsable qualifié suppléant proposés ont les connaissances et l'expérience exigées aux alinéas J.01.012(3)c) et d);

**f)** dans le cas où le responsable qualifié ou tout responsable qualifié suppléant proposé ne satisfait pas à l'exigence visée au sous-alinéa J.01.012(3)b)(i) :

**(i)** une copie du diplôme, du certificat ou de l'attestation visé aux sous-alinéas J.01.012(3)b)(ii) ou (iii),

**(ii)** une description détaillée des études, de la formation et de l'expérience de travail visées à l'alinéa J.01.012(4)c), accompagnée de pièces justificatives telle une copie des relevés de notes ou de l'attestation faite par la personne qui a dispensé la formation.

**Signature and attestation**

**(3)** The application must

**(a)** be signed and dated by the proposed senior person in charge; and

**(b)** include an attestation by that person that

**(i)** all information and documents submitted in support of the application are correct and complete to the best of their knowledge, and

**(ii)** they have the authority to bind the applicant.

**Signature et attestation**

**(3)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable principal proposé;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets,

**(ii)** il est habilité à lier le demandeur.

**Additional information and documents**

**(4)** The applicant must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

**Renseignements et documents complémentaires**

**(4)** Le demandeur fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de licence.

DORS/2019-171, art. 22.

### Issuance

**J.01.015** Subject to section J.01.017, on completion of the review of the licence application, the Minister must issue a dealer's licence, with or without terms and conditions, that contains

**(a)** the licence number;

**(b)** the name of the licensed dealer, their corporate name or the title of the position they hold;

**(c)** the activities that are authorized and the names of the restricted drugs in respect of which each activity may be conducted;

**(d)** the municipal address of the site at which the dealer may conduct the authorized activities;

**(e)** the security level at the site, determined in accordance with the Security Directive;

**(f)** the effective date of the licence;

**(g)** the expiry date of the licence, which must be not later than three years after its effective date;

**(h)** any terms and conditions that the Minister has reasonable grounds to believe are necessary to

**(i)** ensure that an international obligation is respected,

**(ii)** ensure conformity with the requirements associated with the security level that is referred to in paragraph (e), or

**(iii)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use; and

**(i)** if the licensed dealer produces a restricted drug, the quantity that they may produce and the authorized production period.

SOR/2019-171, s. 22.

### Délivrance

**J.01.015** Le ministre, au terme de l'examen de la demande de licence et sous réserve de l'article J.01.017, délivre une licence de distributeur autorisé, avec ou sans conditions, qui contient les renseignements suivants :

**a)** le numéro de la licence;

**b)** le nom du distributeur, sa dénomination sociale ou le titre de son poste;

**c)** les opérations autorisées et le nom des drogues d'usage restreint visées par chacune de celles-ci;

**d)** l'adresse municipale de l'installation où le distributeur peut effectuer les opérations autorisées;

**e)** le niveau de sécurité applicable à l'installation, établi conformément à la Directive en matière de sécurité;

**f)** la date de prise d'effet de la licence;

**g)** la date d'expiration de la licence, qui ne peut être postérieure à la troisième année suivant sa date de prise d'effet;

**h)** toute condition que le ministre estime nécessaire, sur le fondement de motifs raisonnables, pour atteindre l'une des fins suivantes :

**(i)** le respect d'une obligation internationale,

**(ii)** la conformité aux exigences associées au niveau de sécurité visé à l'alinéa e),

**(iii)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites;

**i)** si le distributeur produit une drogue d'usage restreint, la quantité qu'il peut produire et la période de production autorisée.

DORS/2019-171, art. 22.

### Validity

**J.01.016** A dealer's licence is valid until the expiry date set out in the licence or, if it is earlier, the date of the suspension or revocation of the licence under section J.01.035 or J.01.036.

SOR/2019-171, s. 22.

### Validité

**J.01.016** La licence de distributeur autorisé est valide jusqu'à la date d'expiration qui y est indiquée ou, si elle est antérieure, jusqu'à la date de sa suspension ou de sa révocation au titre des articles J.01.035 ou J.01.036.

DORS/2019-171, art. 22.

### Refusal

**J.01.017 (1)** The Minister must refuse to issue a dealer's licence if

### Refus

**J.01.017 (1)** Le ministre refuse de délivrer une licence de distributeur autorisé dans les cas suivants :

**(a)** the applicant may not apply for a licence under section J.01.010;

**(b)** during the 10 years before the day on which the licence application is submitted, the applicant has contravened

**(i)** a provision of the Act, the *Cannabis Act* or their regulations, or

**(ii)** a term or condition of a licence or permit issued to the applicant under any regulations made under the Act or issued to the applicant under the *Cannabis Act* or its regulations;

**(c)** during the 10 years before the day on which the licence application is submitted the proposed senior person in charge or qualified person in charge or any proposed alternate qualified person in charge was convicted as specified in subparagraph J.01.013(a)(i) or (b)(i) or received a sentence as specified in subparagraph J.01.013(a)(ii) or (b)(ii);

**(d)** an activity for which the licence is requested would contravene an international obligation;

**(e)** the applicant does not have in place at the site the security measures set out in the Security Directive in respect of an activity for which the licence is requested;

**(f)** the method referred to in paragraph J.01.014(1)(j) does not permit the recording of information as required under section J.01.075;

**(g)** the applicant has not complied with the requirements of subsection J.01.014(4) or the information and documents that they have provided are not sufficient to complete the review of the licence application;

**(h)** the Minister has reasonable grounds to believe that the applicant has submitted false or misleading information or false or falsified documents in or in support of the licence application;

**(i)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the applicant has been involved in the diversion of a restricted drug to an illicit market or use or has been involved in an activity that contravened an international obligation; or

**(j)** the Minister has reasonable grounds to believe that the issuance of the licence would likely create a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

**a)** le demandeur ne peut pas demander une licence en vertu de l'article J.01.010;

**b)** le demandeur a contrevenu, dans les dix années précédant la présentation de la demande de licence :

**(i)** soit à une disposition de la Loi, de la *Loi sur le cannabis* ou de leurs règlements,

**(ii)** soit à une condition d'une licence ou d'un permis qui lui a été délivré en vertu d'un règlement pris en vertu de la Loi ou qui lui a été délivré en vertu de la *Loi sur le cannabis* ou de ses règlements;

**c)** dans les dix années précédant la présentation de la demande de licence, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant proposé a fait l'objet d'une condamnation visée aux sous-alinéas J.01.013a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas J.01.013a)(ii) ou b)(ii);

**d)** l'une des opérations pour lesquelles la licence est demandée entraînerait la violation d'une obligation internationale;

**e)** le demandeur n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard d'une opération pour laquelle il demande la licence;

**f)** la méthode visée à l'alinéa J.01.014(1)j) ne permet pas la consignation des renseignements conformément à l'article J.01.075;

**g)** soit le demandeur ne s'est pas conformé aux exigences prévues au paragraphe J.01.014(4), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de licence;

**h)** le ministre a des motifs raisonnables de croire que le demandeur a fourni, dans sa demande de licence ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**i)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le demandeur a participé au détournement d'une drogue d'usage restreint vers un marché ou un usage illicites ou qu'il a participé à des opérations qui ont entraîné la violation d'une obligation internationale;

**Exceptions**

**(2)** The Minister must not refuse to issue a licence under paragraph (1)(b) or (h) if the applicant meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use:

**(a)** the applicant does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the applicant has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Notice**

**(3)** Before refusing to issue a licence, the Minister must send the applicant a notice that sets out the Minister's reasons and gives the applicant an opportunity to be heard.

SOR/2019-171, s. 22.

**j)** le ministre a des motifs raisonnables de croire que la délivrance de la licence risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)b) ou h), refuser de délivrer la licence si le demandeur remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites :

**a)** le demandeur n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Préavis**

**(3)** Le ministre, avant de refuser de délivrer la licence, envoie au demandeur un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 22.

## Renewal of Licence

**Application**

**J.01.018 (1)** To apply to renew a dealer's licence, a licensed dealer must submit to the Minister an application that contains the information and documents referred to in subsections J.01.014(1) and (2).

**Signature and attestation**

**(2)** The application must

**(a)** be signed and dated by the senior person in charge of the site specified in the application; and

**(b)** include an attestation by that person that

**(i)** all of the information and documents submitted in support of the application are correct and complete to the best of their knowledge, and

**(ii)** they have the authority to bind the licensed dealer.

## Renouvellement de la licence

**Demande**

**J.01.018 (1)** Le distributeur autorisé présente au ministre, pour obtenir le renouvellement de sa licence de distributeur autorisé, une demande qui contient les renseignements et documents visés aux paragraphes J.01.014(1) et (2).

**Signature et attestation**

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable principal de l'installation précisée dans la demande;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets,

**(ii)** il est habilité à lier le distributeur autorisé.

### Additional information and documents

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

### Renewal

**J.01.019 (1)** Subject to section J.01.021, on completion of the review of the renewal application, the Minister must issue a renewed dealer's licence that contains the information specified in section J.01.015.

### Terms and conditions

**(2)** When renewing a dealer's licence, the Minister may, if he or she has reasonable grounds to believe that it is necessary to do so, add a term or condition to it or modify or delete one in order to

**(a)** ensure that an international obligation is respected;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence or the new level required as a result of the licence renewal; or

**(c)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

SOR/2019-171, s. 22.

### Validity

**J.01.020** A renewed dealer's licence is valid until the expiry date set out in the licence or, if it is earlier, the date of the suspension or revocation of the licence under section J.01.035 or J.01.036.

SOR/2019-171, s. 22.

### Refusal

**J.01.021 (1)** The Minister must refuse to renew a dealer's licence if

**(a)** the licensed dealer may no longer apply for a licence under section J.01.010;

**(b)** during the 10 years before the day on which the renewal application is submitted, the licensed dealer has contravened

**(i)** a provision of the Act, the *Cannabis Act* or their Regulations, or

### Renseignements et documents complémentaires

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de renouvellement.

DORS/2019-171, art. 22.

### Renouvellement

**J.01.019 (1)** Le ministre, au terme de l'examen de la demande de renouvellement et sous réserve de l'article J.01.021, renouvelle la licence de distributeur autorisé, qui contient les renseignements visés à l'article J.01.015.

### Conditions

**(2)** Le ministre peut, lorsqu'il renouvelle la licence du distributeur autorisé, ajouter toute condition à la licence, en modifier les conditions ou supprimer l'une de celles-ci s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence ou à tout nouveau niveau qui s'impose à la suite du renouvellement;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

DORS/2019-171, art. 22.

### Validité

**J.01.020** La licence de distributeur autorisé renouvelée est valide jusqu'à la date d'expiration qui y est indiquée ou, si elle est antérieure, jusqu'à la date de sa suspension ou de sa révocation au titre des articles J.01.035 ou J.01.036.

DORS/2019-171, art. 22.

### Refus

**J.01.021 (1)** Le ministre refuse de renouveler la licence de distributeur autorisé dans les cas suivants :

**a)** le distributeur autorisé ne peut plus demander une licence en vertu de l'article J.01.010;

**b)** le distributeur autorisé a contrevenu, dans les dix années précédant la présentation de la demande de renouvellement :

**(i)** soit à une disposition de la Loi, de la *Loi sur le cannabis* ou de leurs règlements,

**(ii)** a term or condition of a licence or permit issued to the dealer under a regulation made under the Act or issued to the dealer under the *Cannabis Act* or its regulations;

**(c)** during the 10 years before the day on which the renewal application is submitted, the proposed senior person in charge or qualified person in charge or any proposed alternate qualified person in charge was convicted as specified in subparagraph J.01.013(a)(i) or (b)(i) or received a sentence as specified in subparagraph J.01.013(a)(ii) or (b)(ii);

**(d)** an activity for which the renewal is requested would contravene an international obligation;

**(e)** the licensed dealer does not have in place at the site the security measures set out in the Security Directive in respect of an activity for which the renewal is requested;

**(f)** the method referred to in paragraph J.01.014(1)(j) does not permit the recording of information as required under section J.01.075;

**(g)** the licensed dealer has not complied with the requirements of subsection J.01.018(3) or the information or documents that they have provided are not sufficient to complete the review of the renewal application;

**(h)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the renewal application;

**(i)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a restricted drug to an illicit market or use or has been involved in an activity that contravened an international obligation; or

**(j)** the Minister has reasonable grounds to believe that the renewal of the licence would likely create a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

**(ii)** soit à une condition d'une licence ou d'un permis qui lui a été délivré en vertu d'un règlement pris en vertu de la Loi ou qui lui a été délivré en vertu de la *Loi sur le cannabis* ou de ses règlements;

**c)** dans les dix années précédant la présentation de la demande de renouvellement, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant proposé a fait l'objet d'une condamnation visée aux sous-alinéas J.01.013a)(i), ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas J.01.013a)(ii) ou b)(ii);

**d)** l'une des opérations pour lesquelles le renouvellement est demandé entraînerait la violation d'une obligation internationale;

**e)** le distributeur autorisé n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard d'une opération pour laquelle il demande le renouvellement;

**f)** la méthode visée à l'alinéa J.01.014(1)j) ne permet pas la consignation des renseignements conformément à l'article J.01.075;

**g)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe J.01.018(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de renouvellement;

**h)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de renouvellement ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**i)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue d'usage restreint vers un marché ou un usage illicites ou qu'il a participé à des opérations qui ont entraîné la violation d'une obligation internationale;

**j)** le ministre a des motifs raisonnables de croire que le renouvellement de la licence risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

**Exceptions**

**(2)** The Minister must not refuse to renew a licence under paragraph (1)(b) or (h) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Notice**

**(3)** Before refusing to renew a licence, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/85-550, s. 15; SOR/2019-171, s. 22.

## Amendment of Licence

**Application**

**J.01.022 (1)** Before making a change affecting any information referred to in section J.01.015 that is contained in their dealer's licence, a licensed dealer must submit to the Minister an application to amend the licence that contains a description of the proposed amendment, as well as the information and documents referred to in section J.01.014 that are relevant to the proposed amendment.

**Signature and attestation**

**(2)** The application must

**(a)** be signed and dated by the senior person in charge of the site specified in the application; and

**(b)** include an attestation by that person that

**(i)** all of the information and documents submitted in support of the application are correct and complete to the best of their knowledge, and

**(ii)** they have the authority to bind the licensed dealer.

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect,

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)b) ou h), refuser de renouveler la licence si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Préavis**

**(3)** Le ministre, avant de refuser de renouveler la licence, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/85-550, art. 15; DORS/2019-171, art. 22.

## Modification de la licence

**Demande**

**J.01.022 (1)** Le distributeur autorisé présente au ministre, avant d'apporter un changement ayant une incidence sur tout renseignement visé à l'article J.01.015 figurant sur sa licence de distributeur autorisé, une demande de modification de sa licence qui contient la description du changement prévu ainsi que les renseignements et documents pertinents visés à l'article J.01.014.

**Signature et attestation**

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable principal de l'installation précisée dans la demande;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets,

**(ii)** il est habilité à lier le distributeur autorisé.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci

provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

### Amendment

**J.01.023 (1)** Subject to section J.01.025, on completion of the review of the amendment application, the Minister must amend the dealer's licence.

### Terms and conditions

**(2)** When amending a dealer's licence, the Minister may, if he or she has reasonable grounds to believe that it is necessary to do so, add a term or condition to it or modify or delete one in order to

**(a)** ensure that an international obligation is respected;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence or the new level required as a result of the amendment; or

**(c)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

SOR/2004-238, s. 35; SOR/2010-222, s. 31(F); SOR/2019-171, s. 22.

### Validity

**J.01.024** An amended dealer's licence is valid until the expiry date set out in the licence or, if it is earlier, the date of the suspension or revocation of the licence under section J.01.035 or J.01.036.

SOR/2019-171, s. 22.

### Refusal

**J.01.025 (1)** The Minister must refuse to amend a dealer's licence if

**(a)** an activity for which the licence amendment is requested would contravene an international obligation;

**(b)** the licensed dealer does not have in place at the site the security measures set out in the Security Directive in respect of an activity for which the licence amendment is requested;

**(c)** the method referred to in paragraph J.01.014(1)(j) does not permit the recording of information as required by section J.01.075;

**(d)** the licensed dealer has not complied with the requirements of subsection J.01.022(3) or the

à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de modification.

DORS/2019-171, art. 22.

### Modification

**J.01.023 (1)** Le ministre, au terme de l'examen de la demande de modification et sous réserve de l'article J.01.025, modifie la licence de distributeur autorisé.

### Conditions

**(2)** Le ministre peut, lorsqu'il modifie la licence du distributeur autorisé, ajouter toute condition à la licence, en modifier les conditions ou supprimer l'une de celles-ci s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence ou à tout nouveau niveau qui s'impose à la suite de la modification;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

DORS/2004-238, art. 35; DORS/2010-222, art. 31(F); DORS/2019-171, art. 22.

### Validité

**J.01.024** La licence de distributeur autorisé modifiée est valide jusqu'à la date d'expiration qui y est indiquée ou, si elle est antérieure, jusqu'à la date de sa suspension ou de sa révocation au titre des articles J.01.035 ou J.01.036.

DORS/2019-171, art. 22.

### Refus

**J.01.025 (1)** Le ministre refuse de modifier la licence de distributeur autorisé dans les cas suivants :

**a)** l'une des opérations pour lesquelles la modification est demandée entraînerait la violation d'une obligation internationale;

**b)** le distributeur autorisé n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard d'une opération pour laquelle il demande la modification;

**c)** la méthode visée à l'alinéa J.01.014(1)j) ne permet pas la consignation des renseignements conformément à l'article J.01.075;

information or documents that they have provided are not sufficient to complete the review of the amendment application;

**(e)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the amendment application; or

**(f)** the Minister has reasonable grounds to believe that the amendment of the licence would likely create a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

**d)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe J.01.022(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de modification;

**e)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de modification ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**f)** le ministre a des motifs raisonnables de croire que la modification de la licence risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

**Exceptions**

**(2)** The Minister must not refuse to amend a licence under paragraph (1)(e) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Exception**

**(2)** Le ministre ne peut, dans le cas visé à l'alinéa (1)e), refuser de modifier la licence si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Notice**

**(3)** Before refusing to amend a licence, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2004-238, s. 36; SOR/2010-222, s. 32; SOR/2019-171, s. 22.

**Préavis**

**(3)** Le ministre, avant de refuser de modifier la licence, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2004-238, art. 36; DORS/2010-222, art. 32; DORS/2019-171, art. 22.

## Changes Requiring Prior Approval by Minister

## Changements exigeant une approbation préalable du ministre

**Application**

**J.01.026 (1)** A licensed dealer must obtain the Minister's approval before making any of the following changes by submitting a written application to the Minister:

**(a)** a change affecting the security measures in place at the site specified in the dealer's licence;

**(b)** the replacement of the senior person in charge;

**Demande**

**J.01.026 (1)** Le distributeur autorisé doit obtenir l'approbation du ministre, en lui présentant une demande écrite, avant de procéder à l'un des changements suivants :

**a)** toute modification ayant une incidence sur les mesures de sécurité mises en place à l'installation précisée dans sa licence;

**(c)** the replacement of the qualified person in charge; or

**(d)** the replacement or addition of an alternate qualified person in charge.

**b)** le remplacement du responsable principal;

**c)** le remplacement du responsable qualifié;

**d)** le remplacement ou l'adjonction de tout responsable qualifié suppléant.

**Information and documents**

**(2)** The licensed dealer must provide the Minister with the following with respect to a change referred to in subsection (1):

**(a)** in the case of a change affecting the security measures in place at the site specified in the dealer's licence, details of the change;

**(b)** in the case of the senior person in charge,

**(i)** the information specified in paragraph J.01.014(1)(c), and

**(ii)** the declaration specified in paragraph J.01.014(2)(b) and the documents specified in paragraphs J.01.014(2)(c) and (d); and

**(c)** in the case of the qualified person in charge or an alternate qualified person in charge,

**(i)** the information specified in paragraph J.01.014(1)(d), and

**(ii)** the declarations specified in paragraphs J.01.014(2)(b) and (e) and the documents specified in paragraphs J.01.014(2)(c), (d) and (f).

**Renseignements et documents**

**(2)** Le distributeur autorisé fournit au ministre, pour tout changement visé au paragraphe (1), ce qui suit :

**a)** les précisions concernant la modification ayant une incidence sur les mesures de sécurité mises en place à l'installation précisée dans sa licence;

**b)** s'agissant du responsable principal :

**(i)** les renseignements visés à l'alinéa J.01.014(1)c),

**(ii)** la déclaration visée à l'alinéa J.01.014(2)b) et les documents visés aux alinéas J.01.014(2)c) et d);

**c)** s'agissant du responsable qualifié ou d'un responsable qualifié suppléant :

**(i)** les renseignements visés à l'alinéa J.01.014(1)d),

**(ii)** les déclarations visées aux alinéas J.01.014(2)b) et e) ainsi que les documents visés aux alinéas J.01.014(2)c), d) et f).

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2004-238, s. 37; SOR/2019-171, s. 22.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande d'approbation de changement.

DORS/2004-238, art. 37; DORS/2019-171, art. 22.

**Approval**

**J.01.027 (1)** Subject to section J.01.028, on completion of the review of the application for approval of the change, the Minister must approve the change.

**Approbation**

**J.01.027 (1)** Le ministre, au terme de l'examen de la demande d'approbation de changement et sous réserve de l'article J.01.028, approuve le changement.

**Terms and conditions**

**(2)** When approving a change, the Minister may, if he or she has reasonable grounds to believe that it is necessary to do so, add a term or condition to the licence or modify or delete one in order to

**(a)** ensure that an international obligation is respected;

**Conditions**

**(2)** Le ministre peut, lorsqu'il approuve le changement, ajouter toute condition à la licence de distributeur autorisé, en modifier les conditions ou supprimer l'une de celles-ci s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence; or

**(c)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

SOR/2004-238, s. 38; SOR/2010-222, s. 33; SOR/2019-171, s. 22.

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

DORS/2004-238, art. 38; DORS/2010-222, art. 33; DORS/2019-171, art. 22.

### Refusal

**J.01.028 (1)** The Minister must refuse to approve the change if

**(a)** during the 10 years before the day on which the application for approval of the change is submitted, the proposed senior person in charge or qualified person in charge or any proposed alternate qualified person in charge was convicted as specified in subpa/ragraph J.01.013(a)(i) or (b)(i) or received a sentence as specified in subparagraph J.01.0013(a)(ii) or (b)(ii);

**(b)** the licensed dealer has not complied with the requirements of subsection J.01.026(3) or the information or documents that they have provided are not sufficient to complete the review of the application for approval of the change;

**(c)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the application for approval of the change; or

**(d)** the Minister has reasonable grounds to believe that the change would likely create a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

### Refus

**J.01.028 (1)** Le ministre refuse d'approuver le changement dans les cas suivants :

**a)** dans les dix années précédant la présentation de la demande d'approbation de changement, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant proposé a fait l'objet d'une condamnation visée aux sous-alinéas J.01.013a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas J.01.013a)(ii) ou b)(ii);

**b)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe J.01.026(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande d'approbation de changement;

**c)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande d'approbation de changement ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**d)** le ministre a des motifs raisonnables de croire que le changement risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Exception

**(2)** The Minister must not refuse to approve a change under paragraph (1)(c) if the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use.

### Exception

**(2)** Le ministre ne peut, dans le cas visé à l'alinéa (1)c), refuser d'approuver le changement si le distributeur autorisé a pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements ou a signé un engagement à cet effet, sauf s'il a des motifs raisonnables de croire que le refus est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Notice

**(3)** Before refusing to approve a change, the Minister must send the licensed dealer a notice that sets out the

### Préavis

**(3)** Le ministre, avant de refuser d'approuver le changement, envoie au distributeur autorisé un préavis motivé

Minister's reasons and gives the dealer an opportunity to be heard in respect of them.

SOR/2015-210, s. 3; SOR/2018-85, s. 2; SOR/2019-171, s. 22.

l'informant qu'il peut présenter ses observations à cet égard.

DORS/2015-210, art. 3; DORS/2018-85, art. 2; DORS/2019-171, art. 22.

## Changes Requiring Notice to Minister

### Prior notice

**J.01.029 (1)** A licensed dealer must notify the Minister in writing before

**(a)** making or assembling a product or compound that is not set out in the most recent version of the list referred to in paragraph J.01.014(1)(f) that has been submitted to the Minister; or

**(b)** making a change to a product or compound that is set out in the list, if the change affects any of the information that has previously been submitted.

### Information and list

**(2)** The notice must contain the information referred to in paragraph J.01.014(1)(f) that is necessary to update the list and be accompanied by the revised version of the list.

SOR/2019-171, s. 22.

### Notice — five days

**J.01.030** A licensed dealer must notify the Minister in writing within five days after a person ceases to act as the qualified person in charge or an alternate qualified person in charge.

SOR/2019-171, s. 22.

### Notice — 10 days

**J.01.031 (1)** A licensed dealer must notify the Minister in writing within 10 days after one of the following changes occurs:

**(a)** a person ceases to act as the senior person in charge; or

**(b)** the licensed dealer ceases to manufacture or assemble a product or compound that is set out in the most recent version of the list referred to in paragraph J.01.014(1)(f) that has been submitted to the Minister.

### Information and list

**(2)** A notice submitted under paragraph (1)(b) must specify which information referred to in paragraph J.01.014(1)(f) is being changed and be accompanied by the revised version of the list.

SOR/2019-171, s. 22.

## Changements exigeant un avis au ministre

### Avis préalable

**J.01.029 (1)** Le distributeur autorisé avise le ministre par écrit de faire avant l'un des changements suivants :

**a)** la fabrication ou l'assemblage d'un produit ou d'un composé qui ne figure pas sur la plus récente version de la liste visée à l'alinéa J.01.014(1)f) qui a été présentée au ministre;

**b)** la modification d'un produit ou d'un composé qui figure sur cette liste, si la modification a une incidence sur les renseignements déjà fournis à son égard.

### Renseignements et liste

**(2)** L'avis contient les précisions visées à l'alinéa J.01.014(1)f) qui sont nécessaires pour mettre à jour la liste et est accompagné de la version révisée de celle-ci.

DORS/2019-171, art. 22.

### Avis — cinq jours

**J.01.030** Le distributeur autorisé avise le ministre par écrit du fait que le responsable qualifié ou tout responsable qualifié suppléant cesse d'exercer cette fonction dans les cinq jours suivant la cessation.

DORS/2019-171, art. 22.

### Avis — dix jours

**J.01.031 (1)** Le distributeur autorisé avise le ministre par écrit de l'un des changements ci-après dans les dix jours suivant celui-ci :

**a)** le responsable principal cesse d'exercer cette fonction;

**b)** le distributeur autorisé cesse de fabriquer ou d'assembler un produit ou un composé qui figure sur la plus récente version de la liste visée à l'alinéa J.01.014(1)f) qui a été présentée au ministre.

### Renseignements et liste

**(2)** L'avis prévu à l'alinéa (1)b) contient les précisions visées à l'alinéa J.01.014(1)f) qui font l'objet du changement et est accompagné de la version révisée de la liste.

DORS/2019-171, art. 22.

### Notice of cessation of activities

**J.01.032 (1)** A licensed dealer that intends to cease conducting activities at their site — whether on or before the expiry of their licence — must notify the Minister in writing to that effect at least 30 days before ceasing those activities.

### Content of notice

**(2)** The notice must be signed and dated by the senior person in charge and contain the following information:

**(a)** the expected date of the cessation of activities at the site;

**(b)** a description of the manner in which any remaining restricted drugs on the site as of that date will be disposed of by the licensed dealer, including

**(i)** if some or all of them will be sold or provided to another licensed dealer that will be conducting activities at the same site, the name of that dealer,

**(ii)** if some or all of them will be sold or provided to another licensed dealer that will not be conducting activities at the same site, the name of that dealer and the municipal address of their site, and

**(iii)** if some or all of them will be destroyed, the date on which and the municipal address of the location at which the destruction is to take place;

**(c)** the municipal address of the location at which the licensed dealer's documents will be kept after activities have ceased; and

**(d)** the name, municipal address, telephone number and, if applicable, the email address of a person who the Minister may contact for further information after activities have ceased.

### Update

**(3)** After having ceased to conduct the activities, the licensed dealer must submit to the Minister a detailed update of the information referred to in subsection (2) if it differs from what was set out in the notice. The update must be signed and dated by the senior person in charge.

SOR/2004-238, s. 39; SOR/2019-171, s. 22.

**J.01.032.1** [Repealed, SOR/2019-171, s. 22]

### Avis — cessation des opérations

**J.01.032 (1)** Le distributeur autorisé qui entend cesser les opérations à son installation avant l'expiration de sa licence ou à l'expiration de celle-ci en avise le ministre par écrit au moins trente jours avant la cessation.

### Contenu de l'avis

**(2)** L'avis est signé et daté par le responsable principal et contient les renseignements suivants :

**a)** la date prévue de la cessation des opérations à l'installation;

**b)** la description de la façon dont le distributeur autorisé disposera de la totalité des drogues d'usage restreint restant à l'installation à cette date, notamment les précisions suivantes :

**(i)** dans le cas où elles seront en tout ou en partie vendues ou fournies à un autre distributeur autorisé qui effectuera des opérations à la même installation, le nom de celui-ci,

**(ii)** dans le cas où elles seront en tout ou en partie vendues ou fournies à un autre distributeur autorisé qui n'effectuera pas d'opérations à la même installation, le nom de celui-ci et l'adresse municipale de son installation,

**(iii)** dans le cas où elles seront en tout ou en partie détruites, la date de la destruction et l'adresse municipale du lieu de la destruction;

**c)** l'adresse municipale du lieu où les documents du distributeur autorisé seront conservés après la cessation des opérations;

**d)** les nom, adresse municipale, numéro de téléphone et, le cas échéant, l'adresse électronique de la personne que le ministre pourra contacter après la cessation des opérations pour obtenir plus amples renseignements.

### Mise à jour

**(3)** Une fois que les opérations ont cessé, le distributeur autorisé présente au ministre une mise à jour détaillée, signée et datée par le responsable principal, des renseignements visés au paragraphe (2), s'ils diffèrent de ceux indiqués sur l'avis.

DORS/2004-238, art. 39; DORS/2019-171, art. 22.

**J.01.032.1** [Abrogé, DORS/2019-171, art. 22]

## Changes to Terms and Conditions of Licence

### Addition of or modification to term or condition

**J.01.033 (1)** The Minister may, at any time other than at the issuance, renewal or amendment of a dealer's licence, add a term or condition to it or modify one if the Minister has reasonable grounds to believe that it is necessary to do so to

**(a)** ensure that an international obligation is respected;

**(b)** ensure conformity with the requirements associated with the security level specified in the licence; or

**(c)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

### Notice

**(2)** Before adding a term or condition to a licence or modifying one, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

### Urgent circumstances

**(3)** Despite subsection (2), the Minister may add a term or condition to a licence or modify one without prior notice if the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use.

### Urgent circumstances — notice

**(4)** The addition or modification of a term or condition that is made under subsection (3) takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the addition or modification;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

SOR/99-125, s. 8; SOR/2004-238, s. 40; SOR/2018-69, ss. 67, 69; SOR/2019-171, s. 22.

**J.01.033.1** [Repealed, SOR/2019-171, s. 22]

**J.01.033.2** [Repealed, SOR/2019-171, s. 22]

**J.01.033.3** [Repealed, SOR/2019-171, s. 22]

## Changement des conditions de la licence

### Ajout ou modification de conditions

**J.01.033 (1)** Le ministre peut, à un moment autre que celui de la délivrance, du renouvellement ou de la modification de la licence du distributeur autorisé, ajouter toute condition à la licence ou en modifier les conditions s'il a des motifs raisonnables de le croire nécessaire pour atteindre l'une des fins suivantes :

**a)** le respect d'une obligation internationale;

**b)** la conformité aux exigences associées au niveau de sécurité précisé dans la licence;

**c)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Préavis

**(2)** Le ministre, avant d'ajouter une condition à la licence ou d'en modifier les conditions, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

### Urgence

**(3)** Malgré le paragraphe (2), le ministre peut ajouter toute condition à la licence ou en modifier les conditions sans préavis s'il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Urgence — avis

**(4)** L'ajout ou la modification d'une condition en vertu du paragraphe (3) prend effet dès que le ministre envoie au distributeur autorisé un avis à cet égard qui contient les précisions suivantes :

**a)** les motifs de l'ajout ou de la modification;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

DORS/99-125, art. 8; DORS/2004-238, art. 40; DORS/2018-69, art. 67 et 69; DORS/2019-171, art. 22.

**J.01.033.1** [Abrogé, DORS/2019-171, art. 22]

**J.01.033.2** [Abrogé, DORS/2019-171, art. 22]

**J.01.033.3** [Abrogé, DORS/2019-171, art. 22]

**J.01.033.4** [Repealed, SOR/2019-171, s. 22]

### Deletion of term or condition

**J.01.034 (1)** The Minister may delete a term or condition of a dealer's licence that the Minister determines is no longer necessary.

### Notice

**(2)** The deletion takes effect as soon as the Minister sends the licensed dealer a notice to that effect.

SOR/2019-171, s. 22.

## Suspension and Revocation of Licence

### Suspension

**J.01.035 (1)** The Minister must suspend a dealer's licence without prior notice if the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use.

### Notice

**(2)** The suspension takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the suspension;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

### Reinstatement of licence

**(3)** The Minister must reinstate the licence if the Minister has reasonable grounds to believe that the suspension is no longer necessary.

SOR/97-228, s. 24; SOR/2019-171, s. 22.

### Revocation

**J.01.036 (1)** Subject to subsection (2), the Minister must revoke a dealer's licence if

**(a)** the licensed dealer may no longer apply for a licence under section J.01.010;

**(b)** the licensed dealer requests the Minister to do so or informs the Minister of the loss or theft of the licence or the actual or potential unauthorized use of the licence;

**J.01.033.4** [Abrogé, DORS/2019-171, art. 22]

### Suppression d'une condition

**J.01.034 (1)** Le ministre peut supprimer toute condition qu'il ne juge plus nécessaire de la licence de distributeur autorisé.

### Avis

**(2)** La suppression prend effet dès que le ministre envoie un avis de suppression au distributeur autorisé.

DORS/2019-171, art. 22.

## Suspension et révocation de la licence

### Suspension

**J.01.035 (1)** Le ministre suspend sans préavis la licence d'un distributeur autorisé s'il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Avis

**(2)** La suspension prend effet dès que le ministre envoie au distributeur autorisé un avis de suspension qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

### Rétablissement de la licence

**(3)** Le ministre rétablit la licence s'il a des motifs raisonnables de croire que la suspension n'est plus nécessaire.

DORS/97-228, art. 24; DORS/2019-171, art. 22.

### Révocation

**J.01.036 (1)** Le ministre, sous réserve du paragraphe (2), révoque la licence de distributeur autorisé dans les cas suivants :

**a)** le distributeur autorisé ne peut plus demander une licence en vertu de l'article J.01.010;

**b)** le distributeur autorisé lui en fait la demande ou l'informe de la perte, du vol ou de toute utilisation non autorisée de la licence, que celle-ci soit réelle ou potentielle;

**(c)** the licensed dealer ceases to conduct activities at their site before the expiry of their licence;

**(d)** the licensed dealer does not take the corrective measures specified in an undertaking or notice;

**(e)** the licensed dealer has contravened

**(i)** a provision of the Act, the *Cannabis Act* or their regulations, or

**(ii)** a term or condition of a licence or permit issued to the dealer under a regulation made under the Act or issued to the dealer under the *Cannabis Act* or its regulations;

**(f)** during the 10 years before the day on which the licence is revoked, the senior person in charge, the qualified person in charge or any alternate qualified person in charge was convicted as specified in subparagraph J.01.013(a)(i) or (b)(i) or received a sentence as specified in subparagraph J.01.013(a)(ii) or (b)(ii);

**(g)** the Minister has reasonable grounds to believe that the licensed dealer submitted false or misleading information or false or falsified documents in or in support of an application relating to the licence; or

**(h)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a restricted drug to an illicit market or use.

**Exceptions**

**(2)** The Minister must not revoke a dealer's licence for a ground set out in paragraph (1)(e) or (g) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**c)** le distributeur autorisé cesse ses opérations à son installation avant l'expiration de sa licence;

**d)** le distributeur autorisé ne prend pas les mesures correctives précisées dans un engagement ou un avis;

**e)** le distributeur autorisé a contrevenu :

**(i)** soit à une disposition de la Loi, de la *Loi sur le cannabis* ou de leurs règlements,

**(ii)** soit à une condition d'une licence ou d'un permis qui lui a été délivré en vertu d'un règlement pris en vertu de la Loi ou qui lui a été délivré en vertu de la *Loi sur le cannabis* ou de ses règlements;

**f)** dans les dix années précédant la révocation, le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant a fait l'objet d'une condamnation visée aux sous-alinéas J.01.013a)(i) ou b)(i) ou s'est vu imposer une peine visée aux sous-alinéas J.01.013a)(ii) ou b)(ii);

**g)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans toute demande relative à la licence ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**h)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)e) ou g), révoquer la licence si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que la révocation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

### Notice

**(3)** Before revoking a licence, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/97-228, s. 25; SOR/2019-171, s. 22.

### Return of licence

**J.01.037** The licensed dealer must return the original of the licence to the Minister within 15 days after the effective date of the revocation.

SOR/2018-85, s. 3; SOR/2019-171, s. 22.

## Import Permits

### Application

**J.01.038 (1)** A licensed dealer must submit to the Minister, before each importation of a restricted drug, an application for an import permit that contains the following information:

**(a)** their name, municipal address and dealer's licence number;

**(b)** with respect to the restricted drug to be imported,

**(i)** its name, as specified in the dealer's licence,

**(ii)** if it is a salt, the name of the salt,

**(iii)** its quantity, and

**(iv)** in the case of a raw material, its purity and its anhydrous content;

**(c)** if the restricted drug is contained in a product to be imported,

**(i)** the brand name of the product,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the restricted drug in the product, the number of units per package and the number of packages;

**(d)** the name and municipal address, in the country of export, of the exporter from whom the restricted drug is being obtained;

**(e)** the name of the customs office where the importation is anticipated; and

**(f)** each proposed mode of transportation and any proposed country of transit or transhipment.

### Préavis

**(3)** Le ministre, avant de révoquer la licence, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/97-228, art. 25; DORS/2019-171, art. 22.

### Retour de la licence

**J.01.037** Le distributeur autorisé retourne au ministre l'original de la licence dans les quinze jours suivant la date de prise d'effet de la révocation.

DORS/2018-85, art. 3; DORS/2019-171, art. 22.

## Permis d'importation

### Demande

**J.01.038 (1)** Le distributeur autorisé présente au ministre, pour chaque importation prévue de drogues d'usage restreint, une demande de permis d'importation qui contient les renseignements suivants :

**a)** ses nom, adresse municipale et numéro de licence de distributeur autorisé;

**b)** les précisions ci-après concernant la drogue d'usage restreint qu'il prévoit d'importer :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité,

**(iv)** s'agissant d'une matière première, son degré de pureté et son contenu anhydre;

**c)** si la drogue d'usage restreint est contenue dans un produit qu'il prévoit d'importer, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue d'usage restreint qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** les nom et adresse municipale, dans le pays d'exportation, de l'exportateur duquel il obtient la drogue d'usage restreint;

**e)** le nom du bureau de douane où est prévue l'importation;

**f)** les modes de transport prévus et chaque pays de transit ou de transbordement prévu.

### Signature and attestation

**(2)** The application must

**(a)** be signed and dated by the qualified person in charge or an alternate qualified person in charge; and

**(b)** include an attestation by that person that all of the information submitted in support of the application is correct and complete to the best of their knowledge.

### Additional information and documents

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

### Issuance

**J.01.039** Subject to section J.01.042, on completion of the review of the import permit application, the Minister must issue to the licensed dealer an import permit that contains

**(a)** the permit number;

**(b)** the information set out in subsection J.01.038(1);

**(c)** the effective date of the permit;

**(d)** the expiry date of the permit, being the earlier of

**(i)** a date specified by the Minister that is not more than 180 days after its effective date, and

**(ii)** the expiry date of the dealer's licence; and

**(e)** any terms and conditions that the Minister has reasonable grounds to believe are necessary to

**(i)** ensure that an international obligation is respected, or

**(ii)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

SOR/2019-171, s. 22.

### Signature et attestation

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable qualifié ou un responsable qualifié suppléant;

**b)** elle comprend une attestation de celui-ci portant qu'à sa connaissance tous les renseignements fournis à l'appui de la demande sont exacts et complets.

### Renseignements et documents complémentaires

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de permis d'importation.

DORS/2019-171, art. 22.

### Délivrance

**J.01.039** Le ministre, au terme de l'examen de la demande de permis d'importation et sous réserve de l'article J.01.042, délivre au distributeur autorisé un permis d'importation qui contient les renseignements suivants :

**a)** le numéro du permis;

**b)** les renseignements visés au paragraphe J.01.038(1);

**c)** la date de prise d'effet du permis;

**d)** la date d'expiration du permis, qui correspond à celle des dates ci-après qui est antérieure aux autres :

**(i)** la date précisée par le ministre, qui ne peut être postérieure au cent quatre-vingtième jour suivant sa date de prise d'effet,

**(ii)** la date d'expiration de la licence du distributeur autorisé;

**e)** toute condition que le ministre estime nécessaire, sur le fondement de motifs raisonnables, pour atteindre l'une des fins suivantes :

**(i)** le respect d'une obligation internationale,

**(ii)** la réduction d'un risque d'atteinte à la sécurité ou à la santé publiques, notamment le risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

DORS/2019-171, art. 22.

### Validity

**J.01.040** An import permit is valid until the earliest of

**(a)** the expiry date set out in the permit,

**(b)** the date of the suspension or revocation of the permit under section J.01.045 or J.01.046,

**(c)** the date of the suspension or revocation of the dealer's licence under section J.01.035 or J.01.036, and

**(d)** the date of the suspension or revocation of the export permit that applies to the restricted drug to be imported and that is issued by the competent authority in the country of export.

SOR/2019-171, s. 22.

### Return of permit

**J.01.041** If an import permit expires, the licensed dealer must return the original of the permit to the Minister within 15 days after its expiry.

SOR/2019-171, s. 22.

### Refusal

**J.01.042 (1)** The Minister must refuse to issue an import permit if

**(a)** the licensed dealer is not authorized by their dealer's licence to import the relevant restricted drug or their licence will expire before the date of importation;

**(b)** the Minister has reasonable grounds to believe that the importation would contravene an international obligation;

**(c)** the licensed dealer does not have in place at the site the security measures set out in the Security Directive in respect of the importation;

**(d)** the licensed dealer has not complied with the requirements of subsection J.01.038(3) or the information or documents that they have provided are not sufficient to complete the review of the permit application;

**(e)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the permit application;

**(f)** the licensed dealer has been notified that their application to renew or amend their licence will be refused;

### Validité

**J.01.040** Le permis d'importation est valide jusqu'à celle des dates ci-après qui est antérieure aux autres :

**a)** la date d'expiration qui y est indiquée;

**b)** la date de sa suspension ou de sa révocation, au titre des articles J.01.045 ou J.01.046;

**c)** la date de suspension ou de révocation, au titre des articles J.01.035 ou J.01.036, de la licence du distributeur autorisé;

**d)** la date de suspension ou de révocation du permis d'exportation délivré par l'autorité compétente du pays d'exportation à l'égard de la drogue d'usage restreint à importer.

DORS/2019-171, art. 22.

### Retour du permis

**J.01.041** Le distributeur autorisé dont le permis d'importation expire retourne l'original de celui-ci au ministre dans les quinze jours suivant la date d'expiration.

DORS/2019-171, art. 22.

### Refus

**J.01.042 (1)** Le ministre refuse de délivrer un permis d'importation dans les cas suivants :

**a)** la licence du distributeur autorisé ne l'autorise pas à importer la drogue d'usage restreint visée ou elle expirera avant la date d'importation;

**b)** le ministre a des motifs raisonnables de croire que l'importation entraînerait la violation d'une obligation internationale;

**c)** le distributeur autorisé n'a pas mis en place à l'installation les mesures de sécurité prévues dans la Directive en matière de sécurité à l'égard de l'importation;

**d)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe J.01.038(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de permis;

**e)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**(g)** the Minister has reasonable grounds to believe that the importation would contravene the laws of the country of export or any country of transit or transhipment; or

**(h)** the Minister has reasonable grounds to believe that the issuance of the permit would likely create a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

**f)** le distributeur autorisé a été avisé que la demande de renouvellement de sa licence de distributeur autorisé ou la demande de modification de celle-ci sera refusée;

**g)** le ministre a des motifs raisonnables de croire que l'importation contreviendrait aux règles de droit du pays d'exportation, de tout pays de transit ou de tout pays de transbordement;

**h)** le ministre a des motifs raisonnables de croire que la délivrance du permis risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Notice

**(2)** Before refusing to issue the import permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 22.

### Préavis

**(2)** Le ministre, avant de refuser de délivrer le permis d'importation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 22.

### Providing copy of permit

**J.01.043** The holder of an import permit must provide a copy of the permit to the customs office at the time of importation.

SOR/2019-171, s. 22.

### Production d'une copie du permis

**J.01.043** Le titulaire du permis d'importation en produit une copie au bureau de douane lors de l'importation.

DORS/2019-171, art. 22.

### Declaration

**J.01.044** The holder of an import permit must provide the Minister, within 15 days after the day of release of the restricted drug specified in the permit in accordance with the *Customs Act*, with a declaration that contains the following information:

**(a)** their name and the numbers of their dealer's licence and the import permit that applies to the restricted drug;

**(b)** with respect to the restricted drug,

**(i)** its name, as set out in the dealer's licence,

**(ii)** if it is a salt, the name of the salt, and

**(iii)** its quantity;

**(c)** if the restricted drug is contained in a product that they have imported,

**(i)** the brand name of the product,

### Déclaration

**J.01.044** Le titulaire du permis d'importation fournit au ministre, dans les quinze jours suivant la date du dédouanement de la drogue d'usage restreint visée par le permis conformément à la *Loi sur les douanes*, une déclaration comprenant les renseignements suivants :

**a)** son nom ainsi que les numéros de sa licence de distributeur autorisé et de son permis d'importation relatifs à la drogue d'usage restreint;

**b)** les précisions ci-après concernant la drogue d'usage restreint :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité;

**c)** si la drogue d'usage restreint est contenue dans un produit qu'il a importé, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the restricted drug in the product, the number of units per package and the number of packages; and

**(d)** the name of the customs office from which the restricted drug was released and the date of the release.

SOR/2019-171, s. 22.

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue d'usage restreint qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** le nom du bureau de douane où a eu lieu le dédouanement et la date de celui-ci.

DORS/2019-171, art. 22.

### Suspension

**J.01.045 (1)** The Minister must suspend an import permit without prior notice if

**(a)** the dealer's licence is suspended;

**(b)** the Minister has reasonable grounds to believe that the suspension is necessary to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use; or

**(c)** the importation would contravene the laws of the country of export or any country of transit or transhipment.

### Suspension

**J.01.045 (1)** Le ministre suspend sans préavis le permis d'importation dans les cas suivants :

**a)** la licence du distributeur autorisé est suspendue;

**b)** il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites;

**c)** l'importation contreviendrait aux règles de droit du pays d'exportation, de tout pays de transit ou de tout pays de transbordement.

### Notice

**(2)** The suspension takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the suspension;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

### Avis

**(2)** La suspension prend effet dès que le ministre envoie au distributeur autorisé un avis de suspension qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

### Reinstatement of permit

**(3)** The Minister must reinstate the import permit if the Minister has reasonable grounds to believe that the suspension is no longer necessary.

SOR/2019-171, s. 22.

### Rétablissement du permis

**(3)** Le ministre rétablit le permis d'importation s'il a des motifs raisonnables de croire que la suspension n'est plus nécessaire.

DORS/2019-171, art. 22.

### Revocation

**J.01.046 (1)** Subject to subsection (2), the Minister must revoke an import permit if

**(a)** the licensed dealer requests the Minister to do so or informs the Minister of the loss or theft of the permit or the actual or potential unauthorized use of the permit;

### Révocation

**J.01.046 (1)** Le ministre, sous réserve du paragraphe (2), révoque le permis d'importation dans les cas suivants :

**a)** le distributeur autorisé lui en fait la demande ou l'informe de la perte, du vol ou de toute utilisation non autorisée du permis, que celle-ci soit réelle ou potentielle;

**(b)** the licensed dealer does not carry out the corrective measures specified by the Minister under paragraph J.01.045(2)(c) by the specified date;

**(c)** the licensed dealer has contravened a term or condition of the permit;

**(d)** the Minister has reasonable grounds to believe that the licensed dealer submitted false or misleading information or false or falsified documents in or in support of the application for the permit;

**(e)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a restricted drug to an illicit market or use; or

**(f)** the dealer's licence has been revoked.

**b)** le distributeur autorisé ne prend pas les mesures correctives précisées par le ministre en vertu de l'alinéa J.01.045(2)c) dans le délai imparti;

**c)** le distributeur autorisé a contrevenu à une condition de son permis;

**d)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**e)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue d'usage restreint vers un marché ou un usage illicites;

**f)** la licence du distributeur autorisé a été révoquée.

**Exceptions**

**(2)** The Minister must not revoke an import permit for a ground set out in paragraph (1)(d) or J.01.036(1)(e) or (g) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)d) ou J.01.036(1)e) ou g), révoquer le permis d'importation si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que la révocation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites :

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Notice**

**(3)** Before revoking an import permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 22.

**Préavis**

**(3)** Le ministre, avant de révoquer le permis d'importation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 22.

**Return of permit**

**J.01.047** If an import permit is revoked, the licensed dealer must return the original of the permit to the Minister within 15 days after the effective date of the revocation.

SOR/2019-171, s. 22.

**Retour du permis**

**J.01.047** Le distributeur autorisé retourne au ministre l'original du permis d'importation dans les quinze jours suivant la date de prise d'effet de la révocation.

DORS/2019-171, art. 22.

## Export Permits

### Application

**J.01.048 (1)** A licensed dealer must submit to the Minister, before each exportation of a restricted drug, an application for an export permit that contains the following information and document:

**(a)** their name, municipal address and dealer's licence number;

**(b)** with respect to the restricted drug to be exported,

**(i)** its name, as specified in the dealer's licence,

**(ii)** if it is a salt, the name of the salt,

**(iii)** its quantity, and

**(iv)** in the case of a raw material, its purity and its anhydrous content;

**(c)** if the restricted drug is contained in a product to be exported,

**(i)** the brand name of the product,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the restricted drug in the product, the number of units per package and the number of packages;

**(d)** the name and municipal address of the importer in the country of final destination;

**(e)** the name of the customs office where the exportation is anticipated;

**(f)** each proposed mode of transportation and any proposed country of transit or transhipment; and

**(g)** a copy of the import permit issued by the competent authority in the country of final destination that sets out the name of the importer and the municipal address of their site in that country.

### Signature and attestation

**(2)** The application must

**(a)** be signed and dated by the qualified person in charge or an alternate qualified person in charge; and

## Permis d'exportation

### Demande

**J.01.048 (1)** Le distributeur autorisé présente au ministre, pour chaque exportation prévue de drogues d'usage restreint, une demande de permis d'exportation qui contient les renseignements et documents suivants :

**a)** ses nom, adresse municipale et numéro de licence de distributeur autorisé;

**b)** les précisions ci-après concernant la drogue d'usage restreint qu'il prévoit d'exporter :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité,

**(iv)** s'agissant d'une matière première, son degré de pureté et son contenu anhydre;

**c)** si la drogue d'usage restreint est contenue dans un produit qu'il prévoit d'exporter, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue d'usage restreint qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** les nom et adresse municipale, dans le pays de destination finale, de l'importateur;

**e)** le nom du bureau de douane où est prévue l'exportation;

**f)** les modes de transport prévus et chaque pays de transit ou de transbordement prévu;

**g)** une copie du permis d'importation délivré par l'autorité compétente du pays de destination finale précisant le nom de l'importateur et l'adresse municipale de son installation située dans ce pays.

### Signature et attestation

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable qualifié ou un responsable qualifié suppléant;

**(b)** include an attestation by that person that, to the best of their knowledge,

**(i)** the exportation does not contravene the laws of the country of final destination or any country of transit or transhipment, and

**(ii)** all of the information and documents submitted in support of the application are correct and complete.

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

**(i)** à sa connaissance, l'exportation prévue ne contrevient à aucune règle de droit du pays de destination finale, de tout pays de transit ou de tout pays de transbordement,

**(ii)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets.

### Additional information and documents

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

### Renseignements et documents complémentaires

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande de permis d'exportation.

DORS/2019-171, art. 22.

### Issuance

**J.01.049** Subject to section J.01.052, on completion of the review of the export permit application, the Minister must issue to the licensed dealer an export permit that contains

**(a)** the permit number;

**(b)** the information set out in paragraphs J.01.048(1)(a) to (f);

**(c)** the effective date of the permit;

**(d)** the expiry date of the permit, being the earliest of

**(i)** a date specified by the Minister that is not more than 180 days after its effective date,

**(ii)** the expiry date of the dealer's licence, and

**(iii)** the expiry date of the import permit issued by the competent authority in the country of final destination; and

**(e)** any terms and conditions that the Minister has reasonable grounds to believe are necessary to

**(i)** ensure that an international obligation is respected, or

**(ii)** reduce a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

SOR/2019-171, s. 22.

### Délivrance

**J.01.049** Le ministre, au terme de l'examen de la demande de permis d'exportation et sous réserve de l'article J.01.052, délivre au distributeur autorisé un permis d'exportation qui contient les renseignements suivants :

**a)** le numéro du permis;

**b)** les renseignements visés aux alinéas J.01.048(1)a) à f);

**c)** la date de prise d'effet du permis;

**d)** la date d'expiration du permis, qui correspond à celle des dates ci-après qui est antérieure aux autres :

**(i)** la date précisée par le ministre, qui ne peut être postérieure au cent quatre-vingtième jour suivant sa date de prise d'effet,

**(ii)** la date d'expiration de la licence du distributeur autorisé,

**(iii)** la date d'expiration du permis d'importation délivré par l'autorité compétente du pays de destination finale;

**e)** toute condition que le ministre estime nécessaire, sur le fondement de motifs raisonnables, pour atteindre l'une des fins suivantes :

**(i)** le respect d'une obligation internationale,

**(ii)** the reduction of a risk of harm to public safety or health, including the risk of diversion of a restricted drug to a market or use that is illicit.

DORS/2019-171, art. 22.

### Validity

**J.01.050** An export permit is valid until the earliest of

**(a)** the expiry date set out in the permit,

**(b)** the date of the suspension or revocation of the permit under section J.01.055 or J.01.056,

**(c)** the date of the suspension or revocation of the dealer's licence under section J.01.035 or J.01.036, and

**(d)** the date of the expiry, suspension or revocation of the import permit that applies to the restricted drug to be exported and that is issued by the competent authority in the country of final destination.

SOR/2019-171, s. 22.

### Validité

**J.01.050** Le permis d'exportation est valide jusqu'à celle des dates ci-après qui est antérieure aux autres :

**a)** la date d'expiration qui y est indiquée;

**b)** la date de sa suspension ou de sa révocation au titre des articles J.01.055 ou J.01.056;

**c)** la date de suspension ou de révocation, au titre des articles J.01.035 ou J.01.036, de la licence du distributeur autorisé;

**d)** la date d'expiration, de suspension ou de révocation du permis d'importation délivré par l'autorité compétente du pays de destination finale à l'égard de la drogue d'usage restreint à exporter.

DORS/2019-171, art. 22.

### Return of permit

**J.01.051** If an export permit expires, the licensed dealer must return the original of the permit to the Minister within 15 days after its expiry.

SOR/2019-171, s. 22.

### Retour du permis

**J.01.051** Le distributeur autorisé dont le permis d'exportation expire retourne l'original de celui-ci au ministre dans les quinze jours suivant la date d'expiration.

DORS/2019-171, art. 22.

### Refusal

**J.01.052 (1)** The Minister must refuse to issue an export permit if

**(a)** the licensed dealer is not authorized by their dealer's licence to export the relevant restricted drug or their dealer's licence will expire before the date of export;

**(b)** the Minister has reasonable grounds to believe that the exportation would contravene an international obligation;

**(c)** the licensed dealer has not complied with the requirements of subsection J.01.048(3) or the information or documents that they have provided are not sufficient to complete the review of the permit application;

**(d)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the permit application;

### Refus

**J.01.052 (1)** Le ministre refuse de délivrer un permis d'exportation dans les cas suivants :

**a)** la licence du distributeur autorisé ne l'autorise pas à exporter la drogue d'usage restreint visée ou elle expirera avant la date d'exportation;

**b)** le ministre a des motifs raisonnables de croire que l'exportation entraînerait la violation d'une obligation internationale;

**c)** soit le distributeur autorisé ne s'est pas conformé aux exigences prévues au paragraphe J.01.048(3), soit il s'y est conformé, mais les renseignements ou documents fournis sont insuffisants pour terminer l'examen de la demande de permis;

**d)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**e)** le distributeur autorisé a été avisé que la demande de renouvellement de sa licence de distributeur

**(e)** the licensed dealer has been notified that their application to renew or amend their licence will be refused;

**(f)** the Minister has reasonable grounds to believe that the exportation would not be in conformity with the import permit issued by the competent authority of the country of final destination;

**(g)** the Minister has reasonable grounds to believe that the exportation would contravene the laws of the country of final destination or any country of transit or transhipment; or

**(h)** the Minister has reasonable grounds to believe that the issuance of the permit would likely create a risk to public health or safety, including the risk of a restricted drug being diverted to an illicit market or use.

### Notice

**(2)** Before refusing to issue the export permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 22.

### Providing copy of permit

**J.01.053** The holder of an export permit must provide a copy of the permit to the customs office at the time of exportation.

SOR/2019-171, s. 22.

### Declaration

**J.01.054** The holder of an export permit must provide the Minister, within 15 days after the day of export of the restricted drug specified in the permit, with a declaration that contains the following information:

**(a)** their name and the numbers of their dealer's licence and the export permit that applies to the restricted drug;

**(b)** with respect to the restricted drug,

**(i)** its name, as specified in the dealer's licence,

**(ii)** if it is a salt, the name of the salt, and

**(iii)** its quantity;

**(c)** if the restricted drug is contained in a product that they have exported,

**(i)** the brand name of the product,

autorisé ou la demande de modification de celle-ci sera refusée;

**f)** le ministre a des motifs raisonnables de croire que l'exportation ne serait pas conforme au permis d'importation délivré par l'autorité compétente du pays de destination finale;

**g)** le ministre a des motifs raisonnables de croire que l'exportation contreviendrait aux règles de droit du pays de destination finale, de tout pays de transit ou de tout pays de transbordement;

**h)** le ministre a des motifs raisonnables de croire que la délivrance du permis risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement d'une drogue d'usage restreint vers un marché ou un usage illicites.

### Préavis

**(2)** Le ministre, avant de refuser de délivrer le permis d'exportation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 22.

### Production d'une copie du permis

**J.01.053** Le titulaire du permis d'exportation en produit une copie au bureau de douane lors de l'exportation.

DORS/2019-171, art. 22.

### Déclaration

**J.01.054** Le titulaire du permis d'exportation fournit au ministre, dans les quinze jours suivant la date d'exportation de la drogue d'usage restreint visée par le permis, une déclaration comprenant les renseignements suivants :

**a)** son nom ainsi que les numéros de sa licence de distributeur autorisé et du permis d'exportation relatifs à la drogue d'usage restreint;

**b)** les précisions ci-après concernant la drogue d'usage restreint :

**(i)** son nom, tel qu'il figure sur la licence de distributeur autorisé,

**(ii)** s'agissant d'un sel, son nom,

**(iii)** sa quantité;

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any, and

**(iii)** the strength per unit of the restricted drug in the product, the number of units per package and the number of packages; and

**(d)** the name of the customs office from which the restricted drug was exported and the date of export.

SOR/2019-171, s. 22.

**c)** si la drogue d'usage restreint est contenue dans un produit qu'il a exporté, les précisions ci-après concernant ce produit :

**(i)** sa marque nominative,

**(ii)** l'identification numérique qui lui a été attribuée aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la concentration de la drogue d'usage restreint qu'il contient dans chacune de ses unités, le nombre d'unités par emballage et le nombre d'emballages;

**d)** le nom du bureau de douane où a eu lieu l'exportation et la date de celle-ci.

DORS/2019-171, art. 22.

### Suspension

**J.01.055 (1)** The Minister must suspend an export permit without prior notice if

**(a)** the dealer's licence is suspended;

**(b)** the Minister has reasonable grounds to believe that the suspension is necessary to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use; or

**(c)** the exportation would contravene the laws of the country of final destination or any country of transit or transhipment.

### Suspension

**J.01.055 (1)** Le ministre suspend sans préavis le permis d'exportation dans les cas suivants :

**a)** la licence du distributeur autorisé est suspendue;

**b)** il a des motifs raisonnables de le croire nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites;

**c)** l'exportation contreviendrait aux règles de droit du pays de destination finale, de tout pays de transit ou de tout pays de transbordement.

### Notice

**(2)** The suspension takes effect as soon as the Minister sends the licensed dealer a notice that

**(a)** sets out the reasons for the suspension;

**(b)** gives the dealer an opportunity to be heard; and

**(c)** if applicable, specifies the corrective measures that must be carried out and the date by which they must be carried out.

### Avis

**(2)** La suspension prend effet dès que le ministre envoie au distributeur autorisé un avis de suspension qui contient les précisions suivantes :

**a)** les motifs de la suspension;

**b)** le fait que le distributeur autorisé a la possibilité de présenter ses observations à cet égard;

**c)** les mesures correctives à prendre et le délai accordé à cette fin, s'il y a lieu.

### Reinstatement of permit

**(3)** The Minister must reinstate the export permit if the Minister has reasonable grounds to believe that the suspension is no longer necessary.

SOR/2019-171, s. 22.

### Rétablissement du permis

**(3)** Le ministre rétablit le permis d'exportation s'il a des motifs raisonnables de croire que la suspension n'est plus nécessaire.

DORS/2019-171, art. 22.

### Revocation

**J.01.056 (1)** Subject to subsection (2), the Minister must revoke an export permit if

### Révocation

**J.01.056 (1)** Le ministre, sous réserve du paragraphe (2), révoque le permis d'exportation dans les cas suivants :

**(a)** the licensed dealer requests the Minister to do so or informs the Minister of the loss or theft of the permit or the actual or potential unauthorized use of the permit;

**(b)** the licensed dealer does not carry out the corrective measures specified by the Minister under paragraph J.01.055(2)(c) by the specified date;

**(c)** the licensed dealer has contravened a term or condition of the permit;

**(d)** the Minister has reasonable grounds to believe that the licensed dealer submitted false or misleading information or false or falsified documents in or in support of the application for the permit;

**(e)** information received from a competent authority or the United Nations gives the Minister reasonable grounds to believe that the licensed dealer has been involved in the diversion of a restricted drug to an illicit market or use; or

**(f)** the dealer's licence has been revoked.

**Exceptions**

**(2)** The Minister must not revoke an export permit for a ground set out in paragraph (1)(d) or J.01.036(1)(e) or (g) if the licensed dealer meets the following conditions, unless the Minister has reasonable grounds to believe that it is necessary to do so to protect public health or safety, including to prevent a restricted drug from being diverted to an illicit market or use:

**(a)** the licensed dealer does not have a history of non-compliance with the Act, the *Cannabis Act* or their regulations; and

**(b)** the licensed dealer has carried out, or signed an undertaking to carry out, the necessary corrective measures to ensure compliance with the Act, the *Cannabis Act* and their regulations.

**Notice**

**(3)** Before revoking an export permit, the Minister must send the licensed dealer a notice that sets out the Minister's reasons and gives the dealer an opportunity to be heard.

SOR/2019-171, s. 22.

**a)** le distributeur autorisé lui en fait la demande ou l'informe de la perte, du vol ou de toute utilisation non autorisée du permis, que celle-ci soit réelle ou potentielle;

**b)** le distributeur autorisé ne prend pas les mesures correctives précisées par le ministre en vertu de l'alinéa J.01.055(2)c) dans le délai imparti;

**c)** le distributeur autorisé a contrevenu à une condition de son permis;

**d)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande de permis ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**e)** le ministre a des motifs raisonnables de croire, sur le fondement de renseignements reçus d'une autorité compétente ou de l'Organisation des Nations Unies, que le distributeur autorisé a participé au détournement d'une drogue d'usage restreint vers un marché ou un usage illicites;

**f)** la licence du distributeur autorisé a été révoquée.

**Exceptions**

**(2)** Le ministre ne peut, dans les cas visés aux alinéas (1)d) ou J.01.036(1)e) ou g), révoquer le permis d'exportation si le distributeur autorisé remplit les conditions ci-après, sauf s'il a des motifs raisonnables de croire que la révocation est nécessaire pour protéger la sécurité ou la santé publiques, notamment pour prévenir le détournement d'une drogue d'usage restreint vers un marché ou un usage illicites;

**a)** le distributeur autorisé n'a pas d'antécédents de contravention à la Loi, à la *Loi sur le cannabis* ou à leurs règlements;

**b)** il a soit pris les mesures correctives nécessaires pour veiller à respecter la Loi, la *Loi sur le cannabis* et leurs règlements, soit signé un engagement à cet effet.

**Préavis**

**(3)** Le ministre, avant de révoquer le permis d'exportation, envoie au distributeur autorisé un préavis motivé l'informant qu'il peut présenter ses observations à cet égard.

DORS/2019-171, art. 22.

#### Return of permit

**J.01.057** If an export permit is revoked, the licensed dealer must return the original of the permit to the Minister within 15 days after the effective date of the revocation.

SOR/2019-171, s. 22.

## Identification

#### Name

**J.01.058** A licensed dealer must include their name, as set out in their dealer's licence, on all the means by which they identify themself in regard to their activities in relation to restricted drugs, including labels, orders, shipping documents, invoices and advertising.

SOR/2019-171, s. 22.

## Sale of Restricted Drugs

#### Sale to institution

**J.01.059 (1)** Despite section C.08.002 and subject to subsections (3) and (4), a licensed dealer may sell a restricted drug to an institution for one of the following purposes if the institution submits to the dealer or the Minister an application to purchase the drug and the Minister issues a prior written authorization for the sale:

**(a)** clinical testing in the institution by qualified investigators for the purpose of determining the hazards and efficacy of the drug; or

**(b)** laboratory research in the institution by qualified investigators.

#### Content of application

**(2)** The application must contain the following information:

**(a)** the name and the municipal address of the institution;

**(b)** the names and qualifications of the qualified investigators;

**(c)** the name, form, quantity and strength per unit of the restricted drug being requested;

**(d)** details of the proposed use of the drug; and

**(e)** the name and municipal address of the licensed dealer from whom the institution proposes to purchase the drug.

#### Retour du permis

**J.01.057** Le distributeur autorisé retourne au ministre l'original du permis d'exportation dans les quinze jours suivant la date de prise d'effet de la révocation.

DORS/2019-171, art. 22.

## Identification

#### Nom

**J.01.058** Le distributeur autorisé veille à ce que son nom, tel qu'il apparaît sur sa licence, figure sur tout ce qu'il utilise pour s'identifier lors de ses opérations à l'égard des drogues d'usage restreint, notamment les étiquettes, les bons de commande, les documents d'expédition, les factures et les publicités.

DORS/2019-171, art. 22.

## Vente de drogues d'usage restreint

#### Vente à un établissement

**J.01.059 (1)** Le distributeur autorisé peut, malgré l'article C.08.002 et sous réserve des paragraphes (3) et (4), vendre à un établissement une drogue d'usage restreint à l'une des fins ci-après si celui-ci présente au distributeur ou au ministre une demande à cet effet et que le ministre délivre une autorisation écrite avant la vente :

**a)** la tenue à l'établissement d'essais cliniques à l'égard de la drogue d'usage restreint par des chercheurs compétents dans le but d'en déterminer les dangers et l'efficacité;

**b)** la recherche en laboratoire à l'établissement par des chercheurs compétents.

#### Contenu de la demande

**(2)** La demande contient les renseignements suivants :

**a)** les nom et adresse municipale de l'établissement;

**b)** les noms et qualifications des chercheurs compétents;

**c)** le nom, la forme et la quantité de la drogue d'usage restreint ainsi que la concentration de la drogue contenue dans chaque unité;

**d)** les précisions concernant l'utilisation prévue de la drogue d'usage restreint;

**e)** les nom et adresse municipale du distributeur autorisé prévu pour l'achat de la drogue d'usage restreint.

**Application to licensed dealer**

**(3)** If the institution submits the application to the licensed dealer, the dealer must provide a copy of it to the Minister.

**Authorization by Minister**

**(4)** After reviewing the application received from the institution or the copy of it received from the licensed dealer, the Minister may, subject to any terms and conditions that the Minister has reasonable grounds to believe are necessary, authorize in writing

**(a)** the sale by the licensed dealer to the institution of the restricted drug applied for in the form, quantity and strength per unit specified by the Minister; and

**(b)** the possession of the restricted drug by qualified investigators for clinical testing of the drug in the institution for the purpose of determining its hazards and efficacy or to conduct laboratory research with the drug in the institution.

**Authorized use only**

**(5)** The institution must use the restricted drug only in accordance with the written authorization.

SOR/2019-171, s. 22.

**Sale to Minister**

**J.01.060** A licensed dealer may sell or provide a restricted drug to the Minister.

SOR/2019-171, s. 22.

**Provision for identification or analysis**

**J.01.061 (1)** Despite anything in this Part, a person may, for the purpose of identification or analysis of a restricted drug, provide or deliver it to

**(a)** a practitioner of medicine; or

**(b)** an agent or mandatary of a practitioner of medicine, if the agent or mandatary has been exempted under section 56 of the Act with respect to the possession of that restricted drug for that purpose.

**Agent or mandatary of practitioner of medicine**

**(2)** An agent or mandatary of a practitioner of medicine who receives the restricted drug must immediately provide or deliver it to

**(a)** the practitioner; or

**Demande présentée au distributeur autorisé**

**(3)** Le distributeur autorisé qui reçoit la demande de l'établissement en fournit une copie au ministre.

**Autorisation par le ministre**

**(4)** Le ministre, s'il reçoit la demande de l'établissement ou une copie de celle-ci du distributeur autorisé, peut, au terme de l'examen de la demande et sous réserve de toute condition qu'il estime nécessaire sur le fondement de motifs raisonnables, délivrer une autorisation écrite pour l'une des fins suivantes :

**a)** la vente à l'établissement par le distributeur autorisé de la drogue d'usage restreint demandée, en la forme, quantité et concentration dans chaque unité qu'il précise;

**b)** la possession de la drogue d'usage restreint par des chercheurs compétents pour leur permettre de faire à l'établissement soit des essais cliniques à l'égard de celle-ci dans le but d'en déterminer les dangers et l'efficacité, soit de la recherche en laboratoire.

**Utilisation limitée**

**(5)** L'établissement ne peut utiliser la drogue d'usage restreint que conformément à l'autorisation écrite.

DORS/2019-171, art. 22.

**Vente au ministre**

**J.01.060** Le distributeur autorisé peut vendre ou fournir une drogue d'usage restreint au ministre.

DORS/2019-171, art. 22.

**Fourniture à des fins d'identification ou d'analyse**

**J.01.061 (1)** Toute personne peut, malgré toute disposition de la présente partie, fournir ou livrer une drogue d'usage restreint à des fins d'identification ou d'analyse aux personnes suivantes :

**a)** le médecin;

**b)** le mandataire d'un médecin, si le mandataire bénéficie d'une exemption relative à la possession de cette drogue à ces fins et accordée en vertu de l'article 56 de la Loi.

**Mandataire d'un médecin**

**(2)** Le mandataire d'un médecin qui reçoit la drogue d'usage restreint la fournit ou la livre immédiatement à l'une des personnes suivantes :

**a)** le médecin;

**(b)** the Minister.

**Practitioner of medicine**

**(3)** A practitioner of medicine who receives the restricted drug must immediately provide or deliver it

**(a)** for the purpose of its identification or analysis, to a person exempted under section 56 of the Act with respect to the possession of that restricted drug for that purpose; or

**(b)** to the Minister.

SOR/2019-171, s. 22.

## Packaging, Labelling and Transportation

**Packaging — sale and provision**

**J.01.062 (1)** A licensed dealer that sells or provides a restricted drug must securely package it in its immediate container, which must be sealed in such a manner that the container cannot be opened without breaking the seal.

**Packaging — transport and export**

**(2)** A licensed dealer that transports or exports a restricted drug must ensure that its package is sealed in such a manner that the package cannot be opened without breaking the seal.

**Exception**

**(3)** Subsection (1) does not apply to a test kit that contains a restricted drug and that has a registration number.

SOR/2019-171, s. 22.

**Labelling**

**J.01.063 (1)** A licensed dealer that sells or provides a restricted drug must ensure that its package is labelled so that its inner and outer labels show

**(a)** the proper name or, if there is no proper name, the name of the drug;

**(b)** the net contents of the package;

**(c)** the unit strength of the drug and the number of units per package, if applicable;

**(d)** the lot number of the drug;

**(e)** the expression "Restricted Drug"; and

**b)** le ministre.

**Médecin**

**(3)** Le médecin qui reçoit la drogue d'usage restreint la fournit ou la livre immédiatement à l'une des personnes suivantes :

**a)** la personne qui bénéficie d'une exemption relative à la possession de cette drogue à ces fins et accordée en vertu de l'article 56 de la Loi si la drogue lui est fournie ou livrée à des fins d'identification ou d'analyse;

**b)** le ministre.

DORS/2019-171, art. 22.

## Emballage, étiquetage et transport

**Emballage — vente et fourniture**

**J.01.062 (1)** Le distributeur autorisé qui vend ou fournit une drogue d'usage restreint l'emballe solidement dans un contenant immédiat qui est scellé de telle manière qu'il est impossible de l'ouvrir sans briser le sceau.

**Emballage — transport et exportation**

**(2)** Le distributeur autorisé qui transporte ou exporte une drogue d'usage restreint veille à ce que son emballage soit scellé de telle manière qu'il est impossible de l'ouvrir sans briser le sceau.

**Exception**

**(3)** Le paragraphe (1) ne s'applique pas au nécessaire d'essai qui contient une drogue d'usage restreint et auquel un numéro d'enregistrement a été attribué.

DORS/2019-171, art. 22.

**Étiquetage**

**J.01.063 (1)** Le distributeur autorisé qui vend ou fournit une drogue d'usage restreint veille à ce que l'emballage de la drogue d'usage restreint porte des étiquettes intérieure et extérieure sur lesquelles figurent les renseignements suivants :

**a)** le nom propre ou, à défaut, le nom de la drogue;

**b)** la quantité nette du contenu de l'emballage;

**c)** la concentration de la drogue d'usage restreint contenue dans chaque unité et le nombre d'unités par emballage, le cas échéant;

**d)** le numéro de lot de la drogue;

**(f)** the name and municipal address of the manufacturer or assembler of the drug.

**Exception**

**(2)** Subsection (1) does not apply to a test kit that contains a restricted drug and that has a registration number.

**Non-application**

**(3)** The labelling requirements set out in section C.01.004 do not apply to a restricted drug.

SOR/2019-171, s. 22.

**Transport**

**J.01.064** A licensed dealer must, in taking delivery of a restricted drug that they have imported or in making delivery of a restricted drug,

**(a)** take any measures that are necessary to ensure the security of the drug while it is being transported;

**(b)** use a method of transportation that permits an accurate record to be kept of all handling of the drug as well as of the signatures of every person handling it until it is delivered to the consignee;

**(c)** in the case of an imported drug, transport it directly to the site specified in their licence after it is released under the *Customs Act*; and

**(d)** in the case of a drug to be exported, transport it directly from the site specified in their licence to the customs office where it will be exported.

SOR/2019-171, s. 22.

## Thefts, Losses and Suspicious Transactions

**Protective measures — licences and permits**

**J.01.065** A licensed dealer must take any measures that are necessary to ensure the security of any licence or permit in their possession.

SOR/2019-171, s. 22.

**e)** la mention « Drogue d'usage restreint »;

**f)** les nom et adresse municipale du fabricant ou de l'assembleur de la drogue.

**Exception**

**(2)** Le paragraphe (1) ne s'applique pas au nécessaire d'essai qui contient une drogue d'usage restreint et auquel un numéro d'enregistrement a été attribué.

**Non-application**

**(3)** Les exigences concernant l'étiquetage prévues à l'article C.01.004 ne s'appliquent pas aux drogues d'usage restreint.

DORS/2019-171, art. 22.

**Transport**

**J.01.064** Le distributeur autorisé qui prend livraison d'une drogue d'usage restreint qu'il a importée ou qui fait la livraison d'une drogue d'usage restreint satisfait aux exigences suivantes :

**a)** il prend les mesures nécessaires pour veiller à la sécurité de la drogue d'usage restreint durant son transport;

**b)** il utilise un moyen de transport qui permet de consigner fidèlement toute manutention de la drogue d'usage restreint ainsi que la signature de toute personne ayant effectué cette manutention pendant la durée du transport, jusqu'à sa livraison au destinataire;

**c)** s'agissant d'une drogue d'usage restreint importée, il la transporte, après son dédouanement en vertu de la *Loi sur les douanes*, directement à l'installation précisée dans sa licence;

**d)** s'agissant d'une drogue d'usage restreint qui doit être exportée, il la transporte directement de l'installation précisée dans sa licence au bureau de douane d'où la drogue sera exportée.

DORS/2019-171, art. 22.

## Pertes, vols et transactions douteuses

**Mesures de protection — licences et permis**

**J.01.065** Le distributeur autorisé prend toute mesure nécessaire pour veiller à la sécurité des licences et des permis qui sont en sa possession.

DORS/2019-171, art. 22.

### Protective measures — restricted drugs

**J.01.066** The following persons must take any measures that are necessary to ensure the security of any restricted drugs in their possession:

**(a)** a licensed dealer;

**(b)** an institution;

**(c)** a qualified investigator who possesses the restricted drug for the purpose of clinical testing or laboratory research in an institution; and

**(d)** a person exempted under section 56 of the Act with respect to the possession of the restricted drug.

SOR/2019-171, s. 22.

### Theft or loss — licences and permits

**J.01.067** A licensed dealer that becomes aware of a theft or loss of their licence or permit must provide a written report to the Minister within 72 hours after becoming aware of it.

SOR/2019-171, s. 22.

### Theft or loss — restricted drugs

**J.01.068 (1)** Subject to subsection (2), any person referred to in section J.01.066 who becomes aware of a theft or loss of a restricted drug must

**(a)** provide a written report to a member of a police force within 24 hours after becoming aware of the theft or loss; and

**(b)** provide a written report to the Minister within 72 hours after becoming aware of the theft or loss and include a confirmation that the report required under paragraph (a) has been provided.

### Explainable loss — licensed dealer

**(2)** Subsection (1) does not apply to a licensed dealer that becomes aware of a loss of a restricted drug that can be explained on the basis of normally accepted business activities.

SOR/2019-171, s. 22.

### Suspicious transaction

**J.01.069 (1)** A licensed dealer must provide a written report containing the following information to the Minister within 72 hours after becoming aware of a transaction occurring in the course of their activities that they have reasonable grounds to suspect may be related to the diversion of a restricted drug to an illicit market or use:

### Mesures de protection — drogues d'usage restreint

**J.01.066** Les personnes ci-après prennent toute mesure nécessaire pour veiller à la sécurité des drogues d'usage restreint qui sont en leur possession :

**a)** le distributeur autorisé;

**b)** l'établissement;

**c)** le chercheur compétent qui les a en sa possession dans le but de faire des essais cliniques ou de la recherche en laboratoire à un établissement;

**d)** la personne qui bénéficie d'une exemption relative à la possession de ces drogues d'usage restreint et accordée en vertu de l'article 56 de la Loi.

DORS/2019-171, art. 22.

### Pertes et vols — licences et permis

**J.01.067** Le distributeur autorisé qui prend connaissance de la perte ou du vol de sa licence ou de son permis fournit un rapport écrit au ministre dans les soixante-douze heures suivantes.

DORS/2019-171, art. 22.

### Pertes et vols — drogues d'usage restreint

**J.01.068 (1)** Toute personne visée à l'article J.01.066 qui prend connaissance de la perte ou du vol de drogues d'usage restreint se conforme, sous réserve du paragraphe (2), aux exigences suivantes :

**a)** elle fournit un rapport écrit à un membre d'un corps policier dans les vingt-quatre heures suivantes;

**b)** elle fournit un rapport écrit au ministre dans les soixante-douze heures suivantes et lui confirme que le rapport prévu à l'alinéa a) a été fourni.

### Pertes explicables — distributeurs autorisés

**(2)** Le paragraphe (1) ne s'applique pas au distributeur autorisé qui prend connaissance d'une perte de drogues d'usage restreint pouvant s'expliquer dans le cadre des pratiques d'opération normalement acceptées.

DORS/2019-171, art. 22.

### Transactions douteuses

**J.01.069 (1)** Le distributeur autorisé qui prend connaissance d'une transaction effectuée au cours de ses opérations à l'égard de laquelle il a des motifs raisonnables de soupçonner qu'elle pourrait être liée au détournement d'une drogue d'usage restreint vers un marché ou un usage illicites fournit au ministre, au plus tard soixante-douze heures après en avoir pris connaissance, un rapport écrit contenant les renseignements suivants :

**(a)** their name, municipal address, telephone number and, if the licensed dealer is a corporation, the position held by the individual making the report;

**(b)** the name and municipal address of the other party to the transaction;

**(c)** details of the transaction, including its date and time, its type, the name and quantity of the restricted drug and, in the case of a product or compound, the quantity of every restricted drug that it contains;

**(d)** in the case of a product that contains the restricted drug, other than a test kit, the drug identification number that is assigned to the product under section C.01.014.2, if any; and

**(e)** a detailed description of the reasons for those suspicions.

**a)** ses nom, adresse municipale et numéro de téléphone ainsi que, si le distributeur autorisé est une personne morale, le poste de l'individu ayant fait le rapport;

**b)** les nom et adresse municipale de l'autre partie à la transaction;

**c)** les détails de la transaction, notamment ses date et heure, son type, le nom de la drogue d'usage restreint, la quantité en cause et, s'agissant d'un produit ou d'un composé, la quantité de toute drogue d'usage restreint qu'il contient;

**d)** exception faite d'un nécessaire d'essai, l'identification numérique qui a été attribuée au produit contenant la drogue d'usage restreint aux termes de l'article C.01.014.2, s'il y a lieu;

**e)** une description détaillée des motifs de ses soupçons.

**Good faith**

**(2)** No civil proceedings lie against a licensed dealer for having provided the report in good faith.

**Bonne foi**

**(2)** Le distributeur autorisé ne peut faire l'objet d'une poursuite civile pour avoir fourni ce rapport de bonne foi.

**Non-disclosure**

**(3)** A licensed dealer must not disclose that they have provided the report or disclose details of it, with the intent to prejudice a criminal investigation, whether or not a criminal investigation has begun.

SOR/2019-171, s. 22.

**Non-divulgation**

**(3)** Le distributeur autorisé ne peut, dans l'intention de nuire à une enquête criminelle en cours ou à venir, révéler qu'il a fourni le rapport ou en dévoiler les détails.

DORS/2019-171, art. 22.

**Partial protection against self-incrimination**

**J.01.070** A report made under any of sections J.01.067 to J.01.069, or any evidence derived from it, is not to be used or received to incriminate the licensed dealer in any criminal proceeding against them other than a prosecution under section 132, 136 or 137 of the *Criminal Code*.

SOR/2019-171, s. 22.

**Protection partielle contre l'auto-incrimination**

**J.01.070** Ni le rapport fourni en application de l'un des articles J.01.067 à J.01.069 ni aucune preuve qui en provient ne peuvent être utilisés ou admis pour incriminer le distributeur autorisé dans le cadre de poursuites criminelles intentées contre lui, sauf s'il s'agit de poursuites intentées en vertu des articles 132, 136 ou 137 du *Code criminel*.

DORS/2019-171, art. 22.

## Destruction of Restricted Drugs

## Destruction de drogues d'usage restreint

**Destruction at site**

**J.01.071** A licensed dealer that intends to destroy a restricted drug at the site specified in their licence must ensure that the following conditions are met:

**(a)** the licensed dealer obtains the prior approval of the Minister;

**Destruction à l'installation**

**J.01.071** Le distributeur autorisé qui prévoit de détruire une drogue d'usage restreint à l'installation précisée dans sa licence veille à ce que les conditions ci-après soient remplies :

**a)** il obtient au préalable l'approbation du ministre;

**(b)** the destruction occurs in the presence of two of the following persons, at least one of whom must be a person referred to in subparagraph (i):

**(i)** the senior person in charge, the qualified person in charge or an alternate qualified person in charge, and

**(ii)** a person who works for or provides services to the licensed dealer and holds a senior position;

**(c)** the destruction is carried out in accordance with a method that complies with all federal, provincial and municipal environmental protection legislation applicable to the place of destruction; and

**(d)** as soon as the destruction is completed, the person who carried out the destruction and each of the two persons referred to in paragraph (b) who were present at the destruction sign and date a joint declaration attesting that the restricted drug was completely destroyed, to which each signatory must add their name in printed letters.

SOR/2019-171, s. 22.

**b)** la destruction est effectuée en présence de deux personnes parmi les suivantes, dont au moins une est visée au sous-alinéa (i) :

**(i)** le responsable principal, le responsable qualifié ou tout responsable qualifié suppléant,

**(ii)** une personne qui travaille pour le distributeur autorisé ou qui lui fournit des services et qui occupe un poste de niveau supérieur;

**c)** la destruction est effectuée selon une méthode conforme à la législation fédérale, provinciale et municipale sur la protection de l'environnement applicable au lieu de destruction;

**d)** dès la destruction terminée, la personne qui l'a effectuée et les deux personnes visées à l'alinéa b) qui étaient présentes font une déclaration commune signée et datée qui atteste que la drogue d'usage restreint a été complètement détruite, chaque signataire ajoutant à la déclaration son nom en lettres moulées.

DORS/2019-171, art. 22.

### Destruction elsewhere than at site

**J.01.072** A licensed dealer that intends to destroy a restricted drug elsewhere than at the site specified in their licence must ensure that the following conditions are met:

**(a)** the licensed dealer obtains the prior approval of the Minister;

**(b)** the licensed dealer takes any measures that are necessary to ensure the security of the restricted drug while it is being transported in order to prevent its diversion to an illicit market or use;

**(c)** the destruction is carried out by a person working for a business that specializes in the destruction of dangerous goods and in the presence of another person working for that business;

**(d)** the destruction is carried out in accordance with a method that complies with all federal, provincial and municipal environmental protection legislation applicable to the place of destruction; and

**(e)** as soon as the destruction is completed, the person who carried out the destruction provides the licensed dealer with a dated declaration attesting that the restricted drug was completely destroyed and containing

**(i)** the municipal address of the place of destruction,

### Destruction ailleurs qu'à l'installation

**J.01.072** Le distributeur autorisé qui prévoit de détruire une drogue d'usage restreint ailleurs qu'à l'installation précisée dans sa licence veille à ce que les conditions ci-après soient remplies :

**a)** il obtient au préalable l'approbation du ministre;

**b)** il prend les mesures nécessaires pour veiller à la sécurité de la drogue d'usage restreint durant son transport afin de prévenir le détournement de celle-ci vers un marché ou un usage illicites;

**c)** la destruction est effectuée par une personne travaillant pour une entreprise spécialisée dans la destruction de marchandises dangereuses et en présence d'une autre personne travaillant pour cette entreprise;

**d)** la destruction est effectuée selon une méthode conforme à la législation fédérale, provinciale et municipale sur la protection de l'environnement applicable au lieu de destruction;

**e)** dès la destruction terminée, la personne qui l'a effectuée fournit au distributeur autorisé une déclaration datée qui atteste que la drogue d'usage restreint a été complètement détruite et qui contient les renseignements suivants :

**(i)** l'adresse municipale du lieu où la destruction a été effectuée,

**(ii)** the name and quantity of the restricted drug and, if applicable, the brand name and quantity of the product containing it or the name and quantity of the compound containing it,

**(iii)** the method of destruction,

**(iv)** the date of destruction, and

**(v)** the names in printed letters and signatures of that person and the other person who was present at the destruction.

SOR/2019-171, s. 22.

**(ii)** le nom et la quantité de la drogue d'usage restreint et, le cas échéant, la marque nominative et la quantité du produit qui en contenait ou le nom et la quantité du composé qui en contenait,

**(iii)** la méthode de destruction,

**(iv)** la date de la destruction,

**(v)** les nom en lettres moulées et signature de cette personne ainsi que de l'autre personne présente lors de la destruction.

DORS/2019-171, art. 22.

### Application for prior approval

**J.01.073 (1)** A licensed dealer must submit to the Minister an application that contains the following information in order to obtain the Minister's prior approval to destroy a restricted drug:

**(a)** their name, municipal address and dealer's licence number;

**(b)** the proposed date of destruction;

**(c)** the municipal address of the place of destruction;

**(d)** a brief description of the method of destruction;

**(e)** if the destruction is to be carried out at the site specified in the dealer's licence, the names of the persons proposed for the purpose of paragraph J.01.071(b) and information establishing that they meet the conditions of that paragraph;

**(f)** the name of the restricted drug and, if applicable, the brand name of the product containing it or the name of the compound containing it; and

**(g)** the form and quantity of the restricted drug or the product or compound containing it and if applicable, the strength per unit of the restricted drug in the product or compound, the number of units per package and the number of packages.

### Demande d'approbation préalable

**J.01.073 (1)** Le distributeur autorisé présente au ministre une demande qui contient les renseignements ci-après afin d'obtenir l'approbation préalable de la destruction d'une drogue d'usage restreint :

**a)** ses nom, adresse municipale et numéro de licence de distributeur autorisé;

**b)** la date prévue de la destruction;

**c)** l'adresse municipale du lieu où la destruction sera effectuée;

**d)** une brève description de la méthode de destruction;

**e)** si la destruction doit être effectuée à l'installation précisée dans sa licence, le nom des personnes proposées pour l'application de l'alinéa J.01.071b) et des renseignements établissant que celles-ci remplissent les conditions visées à cet alinéa;

**f)** le nom de la drogue d'usage restreint et, le cas échéant, la marque nominative du produit qui en contient ou le nom du composé qui en contient;

**g)** la forme et la quantité soit de la drogue d'usage restreint, soit du produit ou du composé qui en contient et, le cas échéant, la concentration de la drogue contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages.

### Signature and attestation

**(2)** The application must

**(a)** be signed and dated by the qualified person in charge or an alternate qualified person in charge; and

**(b)** include an attestation by that person that

**(i)** the proposed method of destruction complies with all federal, provincial and municipal

### Signature et attestation

**(2)** La demande satisfait aux exigences suivantes :

**a)** elle est signée et datée par le responsable qualifié ou un responsable qualifié suppléant;

**b)** elle comprend une attestation de celui-ci portant sur les faits suivants :

environmental protection legislation applicable to the place of destruction, and

**(ii)** all of the information submitted in support of the application is correct and complete to the best of the signatory's knowledge.

**(i)** la méthode de destruction prévue est conforme à la législation fédérale, provinciale et municipale sur la protection de l'environnement applicable au lieu de destruction,

**(ii)** à sa connaissance, tous les renseignements et documents fournis à l'appui de la demande sont exacts et complets.

**Additional information and documents**

**(3)** The licensed dealer must, not later than the date specified in the Minister's written request to that effect, provide the Minister with any information or document that the Minister determines is necessary to complete the review of the application.

SOR/2019-171, s. 22.

**Renseignements et documents complémentaires**

**(3)** Le distributeur autorisé fournit au ministre, au plus tard à la date précisée dans la demande écrite de celui-ci à cet effet, tout renseignement ou document que le ministre juge nécessaire pour compléter l'examen de la demande d'approbation.

DORS/2019-171, art. 22.

**Approval**

**J.01.074** On completion of the review of the application for approval, the Minister must approve the destruction of the restricted drug unless

**(a)** in the case of a destruction that is to be carried out at the site specified in the dealer's licence, the persons proposed for the purpose of paragraph J.01.071(b) do not meet the conditions of that paragraph;

**(b)** the Minister has reasonable grounds to believe that the restricted drug would not be destroyed;

**(c)** the Minister has reasonable grounds to believe that the licensed dealer has submitted false or misleading information or false or falsified documents in or in support of the approval application;

**(d)** the restricted drug or a portion of it is required for the purposes of a criminal or administrative investigation or a preliminary inquiry, trial or other proceeding under any Act or its regulations; or

**(e)** the Minister has reasonable grounds to believe that the approval would likely create a risk to public health or safety, including the risk of the restricted drug being diverted to an illicit market or use.

SOR/2019-171, s. 22.

**Approbation**

**J.01.074** Le ministre, au terme de l'examen de la demande d'approbation, approuve la destruction de la drogue d'usage restreint, sauf dans les cas suivants :

**a)** si la destruction doit être effectuée à l'installation précisée dans la licence du distributeur autorisé, les personnes proposées pour l'application de l'alinéa J.01.071b) ne remplissent pas les conditions visées à cet alinéa;

**b)** le ministre a des motifs raisonnables de croire que la drogue d'usage restreint ne serait pas détruite;

**c)** le ministre a des motifs raisonnables de croire que le distributeur autorisé a fourni, dans sa demande d'approbation ou à l'appui de celle-ci, des renseignements faux ou trompeurs ou des documents faux ou falsifiés;

**d)** la drogue d'usage restreint est, en tout ou en partie, nécessaire dans le cadre d'une enquête criminelle, administrative ou préliminaire, d'un procès ou d'une autre procédure engagée sous le régime d'une loi ou de ses règlements;

**e)** le ministre a des motifs raisonnables de croire que l'approbation risquerait vraisemblablement de porter atteinte à la sécurité ou à la santé publiques, notamment en raison du risque de détournement de la drogue d'usage restreint vers un marché ou un usage illicites.

DORS/2019-171, art. 22.

# Documents

## Licensed Dealers

### Method of recording information

**J.01.075** A licensed dealer must record any information that they are required to record under this Part using a method that permits an audit of it to be made at any time.

SOR/2019-171, s. 22.

### Information — general

**J.01.076** A licensed dealer must record the following information:

**(a)** the name, form and quantity of any restricted drug that the dealer orders, the name of the person who placed the order on the dealer's behalf and the date of the order;

**(b)** the name, form and quantity of any restricted drug that the dealer receives, the name and municipal address of the person who sold or provided it and the date on which it was received;

**(c)** in the case of a restricted drug that the dealer sells or provides,

**(i)** the brand name of the product or the name of the compound containing the restricted drug and the name of the restricted drug,

**(ii)** the drug identification number that has been assigned to the product under section C.01.014.2, if any,

**(iii)** the form and quantity of the restricted drug and, if applicable, the strength per unit of the restricted drug in the product or compound, the number of units per package and the number of packages,

**(iv)** the name and municipal address of the person to whom it was sold or provided, and

**(v)** the date on which it was sold or provided;

**(d)** the name, form and quantity of any restricted drug that the dealer manufactures or assembles and the date on which it was placed in stock and, if applicable, the strength per unit of the restricted drug in the product or compound, the number of units per package and the number of packages;

# Documents

## Distributeurs autorisés

### Méthode de consignation

**J.01.075** Le distributeur autorisé qui consigne des renseignements en application de la présente partie le fait selon une méthode qui en permet la vérification à tout moment.

DORS/2019-171, art. 22.

### Renseignements généraux

**J.01.076** Le distributeur autorisé consigne les renseignements suivants :

**a)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il commande, le nom de la personne qui fait la commande pour son compte et la date de la commande;

**b)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il reçoit ainsi que les nom et adresse municipale de la personne qui la lui a vendue ou fournie et la date de réception;

**c)** s'agissant d'une drogue d'usage restreint qu'il vend ou fournit, les précisions ci-après la concernant :

**(i)** la marque nominative du produit ou le nom du composé contenant la drogue d'usage restreint et le nom de celle-ci,

**(ii)** l'identification numérique qui a été attribuée au produit aux termes de l'article C.01.014.2, s'il y a lieu,

**(iii)** la forme et la quantité de la drogue d'usage restreint et, le cas échéant, la concentration de la drogue contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages,

**(iv)** les nom et adresse municipale de la personne à laquelle il l'a vendue ou fournie,

**(v)** la date de la vente ou de la fourniture;

**d)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il fabrique ou assemble ainsi que sa date d'entreposage et, le cas échéant, la concentration de la drogue contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages;

**e)** d'une part, le nom et la quantité de toute drogue d'usage restreint qu'il utilise dans la fabrication ou l'assemblage d'un produit ou d'un composé et, d'autre

**(e)** the name and quantity of any restricted drug that the dealer uses in the manufacturing or assembling of a product or compound, as well as the brand name and quantity of the product or the name and quantity of the compound, and the date on which the product or compound was placed in stock;

**(f)** the name, form and quantity of any restricted drug in stock at the end of each month;

**(g)** the name, form and quantity of any restricted drug that the dealer delivers, transports or sends, the name and municipal address of the consignee and the date on which it was delivered, transported or sent;

**(h)** the name, form and quantity of any restricted drug imported, the date on which it was that the dealer imports, the name and municipal address of the exporter, the country of exportation and any country of transit or transhipment; and

**(i)** the name, form and quantity of any restricted drug that the dealer exports, the date on which it was exported, the name and municipal address of the importer, the country of final destination and any country of transit or transhipment.

SOR/2019-171, s. 22.

part, la marque nominative et la quantité de ce produit ou le nom et la quantité de ce composé ainsi que la date d'entreposage;

**f)** le nom, la forme et la quantité de toute drogue d'usage restreint entreposée à la fin de chaque mois;

**g)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il livre, transporte ou expédie, les nom et adresse municipale du destinataire ainsi que la date de la livraison, du transport ou de l'expédition;

**h)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il importe, la date de l'importation, les nom et adresse municipale de l'exportateur ainsi que le nom du pays d'exportation et de tout pays de transit ou de transbordement;

**i)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il exporte, la date de l'exportation, les noms et adresse municipale de l'importateur ainsi que le nom du pays de destination finale et de tout pays de transit ou de transbordement.

DORS/2019-171, art. 22.

### Explainable loss of restricted drug

**J.01.077** A licensed dealer that becomes aware of a loss of a restricted drug that can be explained on the basis of normally accepted business activities must record the following information:

**(a)** the name of the lost restricted drug and, if applicable, the brand name of the product or the name of the compound containing it;

**(b)** the form and quantity of the restricted drug and, if applicable, the form of the product or compound containing it, the strength per unit of the restricted drug in the product or compound, the number of units per package and the number of packages;

**(c)** the date on which the dealer became aware of the loss; and

**(d)** the explanation for the loss.

SOR/2019-171, s. 22.

### Pertes explicables de drogues d'usage restreint

**J.01.077** Le distributeur autorisé qui prend connaissance d'une perte de drogues d'usage restreint pouvant s'expliquer dans le cadre des pratiques d'opération normalement acceptées consigne les renseignements suivants :

**a)** le nom de chaque drogue d'usage restreint perdue et, le cas échéant, la marque nominative du produit ou le nom du composé qui en contenait;

**b)** la forme et la quantité de cette drogue d'usage restreint et, le cas échéant, la forme du produit ou du composé qui en contenait, la concentration de la drogue d'usage restreint contenue dans chaque unité, le nombre d'unités par emballage et le nombre d'emballages;

**c)** la date à laquelle il a pris connaissance de la perte;

**d)** l'explication de la perte.

DORS/2019-171, art. 22.

### Destruction

**J.01.078** A licensed dealer must record the following information concerning any restricted drug that they destroy at the site specified in their licence:

### Destruction

**J.01.078** Le distributeur autorisé consigne les renseignements ci-après concernant toute drogue d'usage restreint qu'il a détruite à l'installation précisée dans sa licence :

**(a)** the municipal address of the place of destruction;

**(b)** the name, form and quantity of the restricted drug and, if applicable, the brand name and quantity of the product containing the drug or the name and quantity of the compound containing the drug;

**(c)** the method of destruction; and

**(d)** the date of destruction.

SOR/2019-171, s. 22.

**a)** l'adresse municipale du lieu où la destruction a été effectuée;

**b)** le nom, la forme et la quantité de la drogue d'usage restreint et, le cas échéant, la marque nominative et la quantité du produit qui en contenait ou le nom et la quantité du composé qui en contenait;

**c)** la méthode de destruction;

**d)** la date de la destruction.

DORS/2019-171, art. 22.

### Annual report

**J.01.079 (1)** Subject to subsections (2) and (3), a licensed dealer must provide to the Minister, within three months after the end of each calendar year, an annual report that contains

**(a)** the name, form and total quantity of each restricted drug that they receive, produce, sell, provide, import, export or destroy during the calendar year, as well as the name and total quantity of each restricted drug that they use to manufacture or assemble a product or compound;

**(b)** the name, form and quantity of each restricted drug in physical inventory taken at the site specified in their licence at the end of the calendar year; and

**(c)** the name, form and quantity of any restricted drug that has been lost in the course of conducting activities during the calendar year.

### Rapport annuel

**J.01.079 (1)** Le distributeur autorisé fournit au ministre, sous réserve des paragraphes (2) et (3), un rapport annuel contenant les renseignements ci-après dans les trois mois suivant la fin de chaque année civile :

**a)** le nom, la forme et la quantité totale de chaque drogue d'usage restreint qu'il a reçue, produite, vendue, fournie, importée, exportée ou détruite au cours de l'année civile ainsi que le nom et la quantité totale de chaque drogue d'usage restreint utilisée pour la fabrication ou l'assemblage d'un produit ou d'un composé;

**b)** le nom, la forme et la quantité de chaque drogue d'usage restreint selon l'inventaire physique établi à la fin de l'année civile à l'installation précisée dans la licence;

**c)** le nom, la forme et la quantité de chaque drogue d'usage restreint perdue ou volée lors des opérations effectuées au cours de l'année civile.

### Non-renewal or revocation within first three months

**(2)** If a licensed dealer's licence expires without being renewed or is revoked during the first three months of a calendar year, the dealer must provide to the Minister

**(a)** within three months after the end of the preceding calendar year, the annual report in respect of that year; and

**(b)** within three months after the expiry or revocation, a report in respect of the portion of the current calendar year during which the licence was valid that contains the information referred to in subsection (1), in which the quantity in physical inventory is to be calculated as of the date of expiry or revocation.

### Non-renouvellement ou révocation dans les trois premiers mois

**(2)** Le distributeur autorisé dont la licence expire sans être renouvelée ou est révoquée dans les trois premiers mois d'une année civile fournit au ministre les rapports ci-après dans les délais suivants :

**a)** dans les trois mois suivant la fin de l'année civile précédente, le rapport annuel pour celle-ci;

**b)** dans les trois mois suivant l'expiration ou la révocation, un rapport pour la période de l'année civile courante durant lesquels la licence était valide contenant les renseignements visés au paragraphe (1), la quantité devant être évaluée selon l'inventaire physique établi à la date d'expiration ou de révocation.

#### Non-renewal or revocation after third month

**(3)** If a licensed dealer's licence expires without being renewed or is revoked after the first three months of a calendar year, the dealer must provide to the Minister, within three months after the expiry or revocation, a report in respect of the portion of the calendar year during which the licence was valid that contains the information referred to in subsection (1) for that period, in which the quantity in physical inventory is to be calculated as of the date of expiry or revocation.

SOR/2019-171, s. 22.

## Institutions

#### Method of recording information

**J.01.080** An institution must record any information that it is required to record under this Part using a method that permits an audit of the information to be made at any time.

SOR/2019-171, s. 22.

#### Information

**J.01.081** An institution must record the following information:

**(a)** the name and quantity of any restricted drug that the institution orders, the name of the person who placed the order on the institution's behalf and the date of the order;

**(b)** the name and quantity of any restricted drug that the institution receives as well as the name and municipal address of the licensed dealer that sold or provided it and the date on which it was received;

**(c)** details of the use of restricted drugs in the institution;

**(d)** the names and qualifications of every person who makes use of a restricted drug in the institution; and

**(e)** all clinical data with respect to the use of every restricted drug received by the institution.

SOR/2019-171, s. 22.

#### Non-renouvellement ou révocation après le troisième mois

**(3)** Le distributeur autorisé dont la licence expire sans être renouvelée ou est révoquée après le troisième mois d'une année civile fournit au ministre, dans les trois mois suivant l'expiration ou la révocation, un rapport pour la période de l'année civile durant lesquels la licence était valide contenant les renseignements visés au paragraphe (1), la quantité devant être évaluée selon l'inventaire physique établi à la date d'expiration ou de révocation.

DORS/2019-171, art. 22.

## Établissements

#### Méthode de consignation

**J.01.080** L'établissement qui consigne des renseignements en application de la présente partie le fait selon une méthode qui en permet la vérification à tout moment.

DORS/2019-171, art. 22.

#### Renseignements

**J.01.081** L'établissement consigne les renseignements suivants :

**a)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il commande, le nom de la personne qui fait la commande pour son compte et la date de la commande;

**b)** le nom, la forme et la quantité de toute drogue d'usage restreint qu'il reçoit ainsi que les nom et adresse municipale du distributeur autorisé qui la lui a vendue ou fournie et la date de réception;

**c)** les précisions concernant l'utilisation de toute drogue d'usage restreint dans l'établissement;

**d)** les nom et qualifications des personnes utilisant toute drogue d'usage restreint dans l'établissement;

**e)** les données cliniques concernant l'utilisation de toute drogue d'usage restreint reçue par l'établissement.

DORS/2019-171, art. 22.

## Drug Received for Identification and Analysis

### Method of recording information

**J.01.082** A person who records information in accordance with section J.01.083 must do so using a method that permits an audit of the information to be made at any time.

SOR/2019-171, s. 22.

### Information

**J.01.083** A person who receives a restricted drug in accordance with section J.01.061 must record the following information:

**(a)** the name and quantity of the restricted drug, as well as the name and municipal address of the person who provided it to them and the date on which it was received;

**(b)** details regarding the identification or analysis of the restricted drug; and

**(c)** the names of the persons who handled the restricted drug during the process of identifying or analyzing it.

SOR/2019-171, s. 22.

## Record Keeping

### Retention period

**J.01.084** A licensed dealer, a former licensed dealer, an institution and a person referred to in section J.01.083 must keep any document containing the information that they are required to record under this Part, including every declaration and a copy of every report, for a period of two years following the day on which the last record is recorded in the document and in a manner that permits an audit of the document to be made at any time.

SOR/2019-171, s. 22.

### Location

**J.01.085** The documents must be kept

**(a)** in the case of a licensed dealer, at the site specified in their licence;

**(b)** in the case of an institution, at the institution;

**(c)** in the case of a person referred to in section J.01.083, at a location in Canada; and

## Drogues reçues à des fins d'identification ou d'analyse

### Méthode de consignation

**J.01.082** La personne qui consigne des renseignements en application de l'article J.01.083 le fait selon une méthode qui en permet la vérification à tout moment.

DORS/2019-171, art. 22.

### Renseignements

**J.01.083** La personne qui reçoit une drogue d'usage restreint conformément à l'article J.01.061 consigne les renseignements suivants :

**a)** le nom, la forme et la quantité de la drogue d'usage restreint ainsi que les nom et adresse municipale de la personne qui la lui a fournie et la date de réception;

**b)** les précisions concernant l'identification ou l'analyse de la drogue d'usage restreint;

**c)** le nom des personnes qui ont manipulé la drogue d'usage restreint lors du processus d'identification ou d'analyse de la drogue.

DORS/2019-171, art. 22.

## Conservation des documents

### Période de conservation

**J.01.084** Le distributeur autorisé, l'ancien titulaire d'une licence de distributeur autorisé, l'établissement et la personne visée à l'article J.01.083 conservent tout document comprenant les renseignements consignés en application de la présente partie, notamment chaque déclaration ainsi qu'une copie de chaque rapport, pendant une période de deux ans suivant la date de la dernière consignation et selon une méthode qui permet la vérification du document à tout moment.

DORS/2019-171, art. 22.

### Lieu

**J.01.085** Les documents sont conservés aux lieux suivants :

**a)** s'agissant d'un distributeur, à l'installation précisée dans sa licence;

**b)** s'agissant d'un établissement, à l'établissement;

**c)** s'agissant d'une personne visée à l'article J.01.083, en un lieu au Canada;

**(d)** in the case of a former licensed dealer, at a location in Canada.

SOR/2019-171, s. 22.

**(d)** s'agissant d'un ancien titulaire d'une licence de distributeur autorisé, en un lieu au Canada.

DORS/2019-171, art. 22.

### Quality of documents

**J.01.086** The documents must be complete and readily retrievable and the information in them must be legible and indelible.

SOR/2019-171, s. 22.

### Caractéristiques des documents

**J.01.086** Les documents sont complets ainsi que facilement accessibles et les renseignements qui y figurent sont lisibles et indélébiles.

DORS/2019-171, art. 22.

## Notification of Application for Order of Restoration

### Written notification

**J.01.087 (1)** For the purpose of subsection 24(1) of the Act, notification of an application for an order of restoration must be given in writing to the Attorney General by registered mail and be mailed at least 15 days before the date on which the application is to be made to a justice.

### Content of notification

**(2)** The notification must specify

**(a)** the name of the justice to whom the application is to be made;

**(b)** the time and place at which the application is to be heard;

**(c)** details concerning the restricted drug or other thing in respect of which the application is to be made; and

**(d)** the evidence on which the applicant intends to rely to establish that they are entitled to possession of the restricted drug or other thing referred to in paragraph (c).

SOR/2019-171, s. 22.

## Préavis de la demande d'ordonnance de restitution

### Préavis écrit

**J.01.087 (1)** Pour l'application du paragraphe 24(1) de la Loi, le préavis de la demande d'ordonnance de restitution qui est donné au procureur général est présenté par écrit et est mis à la poste sous pli recommandé au moins quinze jours avant la date à laquelle la demande sera présentée au juge de paix.

### Contenu du préavis

**(2)** Le préavis contient les renseignements suivants :

**a)** le nom du juge de paix à qui la demande sera présentée;

**b)** le lieu et l'heure de l'audition de la demande;

**c)** les précisions concernant la drogue d'usage restreint ou toute autre chose faisant l'objet de la demande;

**d)** les éléments de preuve que le demandeur prévoit de présenter pour établir qu'il a le droit de posséder la drogue d'usage restreint ou l'autre chose visée à l'alinéa c).

DORS/2019-171, art. 22.

## SCHEDULE

(Sections J.01.001, J.01.002 and J.01.004)

## ANNEXE

(articles J.01.001, J.01.002 et J.01.004)

### PART I

1 The following amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues:

(1) N-ethylamphetamine (N-ethyl-α-methylbenzeneethanamine)

### PARTIE I

1 Les amphétamines suivants, leurs sels, dérivés, isomères et analogues, ainsi que les sels de leurs dérivés, isomères et analogues :

(1) N-éthylamphétamine (N-éthyl α-méthylbenzèneéthanamine)

(2) 4-methyl-2,5-dimethoxyamphetamine (STP) (2,5-dimethoxy-4,α-dimethylbenzeneethanamine)

(3) 3,4-methylenedioxyamphetamine (MDA) (α-methyl-1,3-benzodioxole-5-ethanamine)

(4) 2,5-dimethoxyamphetamine(2,5-dimethoxy-α-methylbenzeneethanamine)

(5) 4-methoxyamphetamine (4-methoxy-α-methylbenzeneethanamine)

(6) 2,4,5-trimethoxyamphetamine (2,4,5-trimethoxy-α-methylbenzeneethanamine)

(7) N-methyl-3,4-methylenedioxyamphetamine (N,α-dimethyl-1,3-benzodioxole-5-ethanamine)

(8) 4-ethoxy-2,5-dimethoxyamphetamine (4-ethoxy-2,5-dimethoxy-α-methylbenzeneethanamine)

(9) 5-methoxy-3,4-methylenedioxyamphetamine (7-methoxy-α-methyl-1,3-benzodioxole-5-ethanamine)

(10) N,N-dimethyl-3,4-methylenedioxyamphetamine (N,N, α-trimethyl-1,3-benzodioxole-5-ethanamine)

(11) N-ethyl-3,4-methylenedioxyamphetamine (N-ethyl-α-methyl-1,3-benzodioxole-5-ethanamine)

(12) 4-ethyl-2,5-dimethoxyamphetamine (DOET) (4-ethyl-2,5-dimethoxy-α-methylbenzeneethanamine)

(13) 4-bromo-2,5-dimethoxyamphetamine (4-bromo-2,5-dimethoxy-α-methylbenzeneethanamine)

(14) 4-chloro-2,5-dimethoxyamphetamine (4-chloro-2,5-dimethoxy-α-methylbenzeneethanamine)

(15) 4-ethoxyamphetamine (4-ethoxy-α-methyl-benzeneethanamine)

(16) N-Propyl-3,4-methylenedioxyamphetamine (α-methyl-N-propyl-1,3-benzodioxole-5-ethanamine)

(17) N-hydroxy-3,4-methylenedioxyamphetamine (N-[α-methyl-3,4-(methylenedioxy)phenethyl]hydroxylamine)

(18) 3,4,5-trimethoxyamphetamine (3,4,5-trimethoxy-α-methylbenzeneethanamine)

2 Lysergic acid diethylamide (LSD) (N,N-diethyllysergamide) and any salt thereof

(2) méthyl-4 diméthoxy-2,5 amphétamine (STP) (diméthoxy-2,5 4,α-diméthylbenzèneéthanamine)

(3) méthylènedioxy-3,4 amphétamine (MDA) (α-méthyl benzodioxole-1,3 éthanamine-5)

(4) diméthoxy-2,5 amphétamine (diméthoxy-2,5α-méthylbenzèneéthanamine)

(5) méthoxy-4 amphétamine (méthoxy-4 α-méthylbenzèneéthanamine)

(6) triméthoxy-2,4,5 amphétamine (triméthoxy-2,4,5 α-méthylbenzèneéthanamine)

(7) N-méthyl méthylènedioxy-3,4 amphétamine (N,α-diméthyl benzodioxole-1,3 éthanamine-5)

(8) éthoxy-4 diméthoxy-2,5 amphétamine (éthoxy-4 diméthoxy-2,5 α-méthylbenzèneéthanamine)

(9) méthoxy-5 méthylènedioxy-3,4 amphétamine (N,α-diméthyl benzodioxole-1,3 éthanamine-5)

(10) N,N-diméthyl méthylènedioxy-3,4 amphétamine (N,N, α-triméthyl benzodioxole-1,3 éthanamine-5)

(11) N-éthyl méthylènedioxy-3,4 amphétamine (N-éthyl α-méthyl benzodioxole-1,3 éthanamine-5)

(12) éthyl-4 diméthoxy-2,5 amphétamine (DŒT) (éthyl-4 diméthoxy-2,5α-méthylbenzèneéthanamine)

(13) bromo-4 diméthoxy-2,5 amphétamine (bromo-4 diméthoxy-2,5 α-méthylbenzèneéthanamine)

(14) chloro-4 diméthoxy-2,5 amphétamine (chloro-4 diméthoxy-2,5 α-méthylbenzèneéthanamine)

(15) éthoxy-4 amphétamine (éthoxy-4 α-méthylbenzèneéthanamine)

(16) N-propyl méthylènedioxy-3,4 amphétamine (α-méthyl N-propyl benzodioxole-1,3 éthanamine)

(17) N-hydroxy méthylènedioxy-3,4 amphétamine (N-[α-méthyl (méthylènedioxy)-3,4 phénéthyl]hydroxylamine)

(18) triméthoxy-3,4,5 amphétamine (triméthoxy-3,4,5 α-méthylbenzèneéthanamine)

3 N,N-Diethyltryptamine (DET) (3-[(2-diethylamino)ethyl]indole) and any salt thereof

4 N,N-Dimethyltryptamine (DMT) (3-[(2-dimethylamino)ethyl]indole) and any salt thereof

5 N-Methyl-3-piperidyl benzilate (LBJ) (3-[(hydroxydiphenylacetyl)oxy]-1-methylpiperidine) and any salt thereof

6 Harmaline (4,9-dihydro-7-methoxy-1-methyl-3H-pyrido(3,4-b)indole) and any salt thereof

7 Harmalol (4,9-dihydro-1-methyl-3H-pyrido(3,4-ß)indol-7-ol) and any salt thereof

8 Psilocin (3-[2-(dimethylamino)ethyl]-4-hydroxyindole) and any salt thereof

9 Psilocybin (3-[2-(dimethylamino)ethyl]-4-phosphoryloxyindole) and any salt thereof

10 N-(1-phenylcyclohexyl)ethylamine (PCE) and any salt thereof

11 1-[1-(2-Thienyl)cyclohexyl]piperidine (TCP) and any salt thereof

12 1-Phenyl-N-propylcyclohexanamine and any salt thereof

13 Mescaline (3,4,5-trimethoxybenzeneethanamine) and any salt thereof, but not peyote (lophophora)

14 [Repealed, SOR/2017-250, s. 2]

15 2-Methylamino-1-phenyl-1-propanone and any salt thereof

16 1-[1-(Phenylmethyl)cyclohexyl]piperidine and any salt thereof

17 1-[1-(4-Methylphenyl)cyclohexyl]piperidine and any salt thereof

18 Etryptamine (3-(2-aminobutyl)indole) and any salt thereof

19 Rolicyclidine (1-(1-phenylcyclohexyl) pyrrolidine) and any salt thereof

20 Benzylpiperazine [BZP], namely 1-benzylpiperazine and its salts, isomers and salts of isomers

21 Trifluoromethylphenylpiperazine [TFMPP], namely 1-(3-trifluoromethylphenyl)piperazine and its salts, isomers and salts of isomers

22 Methylenedioxypyrovalerone (MDPV), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues

23 Cathinone ((-)-α-aminopropiophenone) and its salts

2 Diéthylamide de l'acide lysergique (LSD) (N,N-diéthyl-lysergamide) et ses sels

3 N,N-Diéthyltryptamine (DET) ((diéthylamino-2 éthyl)-3 indole) et ses sels

4 N,N-Diméthyltryptamine (DMT) ((diméthylamino-2 éthyl)-3 indole) et ses sels

5 N-Méthyl pipéridyl-3 benzilate (LBJ) ([(hydroxy-diphénylacétyl)oxy]-3 méthyl-1 pipéridine) et ses sels

6 Harmaline (dihydro-4,9 méthoxy-7 méthyl-1 3H-pyrido(3,4-ß) indole) et ses sels

7 Harmalol (dihydro-4,9 hydroxy-7 méthyl-1 3H-pyrido(3,4-b) indole) et ses sels

8 Psilocine ((diméthylamino-2 éthyl)-3 hydroxy-4 indole) et ses sels

9 Psilocybine ((diméthylamino-2 éthyl)-3 phosphoryloxy-4 indole) et ses sels

10 N-(Phényl-1 cyclohexyl) éthylamine (PCE) et ses sels

11 [(Thiényl-2)-1 cyclohexyl]-1 pipéridine (TCP) et ses sels

12 Phényl-1 N-propylcyclohexanamine et ses sels

13 Mescaline (triméthoxy-3,4,5 benzèneéthanamine) et ses sels, sauf le peyote (lophophora)

14 [Abrogé, DORS/2017-250, art. 2]

15 Méthylamino-2 phényl-1 propanone-1 et ses sels

16 [Cyclohexyl (phénylméthyl)-1] pipéridine-1 et ses sels

17 [Cyclohexyl (méthyl-4 phényl)-1] pipéridine-1 et ses sels

18 Étryptamine ((amino-2 butyl)-3 indole) et ses sels

19 Rolicyclidine ((phényl-1 cyclohexyl)-1 pyrrolidine) et ses sels

20 Benzylpipérazine [BZP], à savoir 1-benzylpipérazine et ses sels, isomères et sels d'isomères

21 Trifluorométhylphénylpipérazine [TFMPP], à savoir 1-(3-trifluorométhylphényl)pipérazine et ses sels, isomères et sels d'isomères

22 Méthylènedioxypyrovalérone (MDPV), ses sels, dérivés, isomères et analogues, ainsi que les sels de ses dérivés, isomères et analogues

23 Cathinone (*l*-α-aminopropiophénone) et ses sels

24 Les 2C-phénéthylamines, leurs sels, dérivés et isomères, ainsi que les sels de leurs dérivés et

24 2C-phenethylamines and their salts, derivatives, isomers and salts of derivatives and isomers that correspond to the following chemical description:

any substance that has a 1-amino-2-phenylethane structure substituted at the 2′ and 5′ or 2′ and 6′ positions of the benzene ring by an alkoxy or haloalkoxy group, or substituted at two adjacent carbon atoms of the benzene ring which results in the formation of a furan, dihydrofuran, pyran, dihydropyran or methylenedioxy group — whether or not further substituted on the benzene ring to any extent, whether or not substituted at the amino group by one or two, or a combination of, methyl, ethyl, propyl, isopropyl, hydroxyl, benzyl (or benzyl substituted to any extent) or benzylene (or benzylene substituted to any extent) groups and whether or not substituted at the 2-ethyl (beta carbon) position by a hydroxyl, oxo or alkoxy group — and its salts and derivatives and salts of derivatives, including

(1) 4-bromo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25B-NBOMe)

(2) 4-chloro-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25C-NBOMe)

(3) 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe)

(4) 4-bromo-2,5-dimethoxybenzeneethanamine (2C-B)

25 AH-7921 (1-(3,4-dichlorobenzamidomethyl)cyclohexyldimethylamine), its salts, isomers and salts of isomers

26 MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues, including

(1) Diphenidine (DEP) (1-(1,2-diphenylethyl)piperidine)

(2) Methoxphenidine (2-MeO-Diphenidine, MXP) (1-[1-(2-methoxyphenyl)-2-phenylethyl]piperidine)

(3) Ephenidine (NEDPA, EPE) (N-ethyl-1,2-diphenylethylamine)

(4) Isophenidine (NPDPA) (N-isopropyl-1,2-diphenylethylamine)

but not including

isomères, qui répondent à la description chimique suivante :

toute substance ayant une structure 1-amino-2-phényléthane substituée en positions 2′ et 5′ ou 2′ et 6′ du cycle benzénique par un groupe alcoxy ou halogénoalcoxy, ou substituée à deux atomes de carbone adjacents du cycle benzénique de façon à entraîner la formation d'un groupe furane, dihydrofurane, pyrane, dihydropyrane ou méthylènedioxy — qu'il y ait ou non davantage de substitution sur le cycle benzénique dans quelque mesure que ce soit, qu'il y ait ou non substitution au groupe amino par un ou deux groupes méthyle, éthyle, propyle, isopropyle, hydroxyle, benzyle (ou benzyle substitué dans quelque mesure que ce soit) ou benzylène (ou benzylène substitué dans quelque mesure que ce soit) ou par une combinaison de ceux-ci, et qu'il y ait ou non substitution en position 2-éthyle (carbone bêta) par un groupe hydroxyle, oxo ou alcoxy —, les sels et dérivés de cette substance ainsi que les sels de ses dérivés, notamment :

(1) 4-bromo-2,5-diméthoxy-N-(2-méthoxybenzyle)phénéthylamine (25B-NBOMe)

(2) 4-chloro-2,5-diméthoxy-N-(2-méthoxybenzyle)phénéthylamine (25C-NBOMe)

(3) 4-iodo-2,5-diméthoxy-N-(2-méthoxybenzyle)phénéthylamine (25I-NBOMe)

(4) 4-bromo-2,5-diméthoxybenzèneéthanamine (2C-B)

25 AH-7921 ((dichloro-3,4 benzamide méthyl)-1 cyclohexyl diméthylamine), ses sels et isomères, ainsi que les sels de ses isomères

26 MT-45 (cyclohexyl-1(diphényl-1,2 éthyl)-4 pipérazine), ses sels, dérivés, isomères et analogues, ainsi que les sels de ses dérivés, isomères et analogues, notamment :

(1) diphénidine (DEP) (1-(1,2-diphényléthyl)pipéridine)

(2) méthoxphénidine (2-MeO-Diphénidine, MXP) (1- [1-(2-méthoxyphényl)-2-phényléthyl] pipéridine)

(3) éphénidine (NEDPA, EPE) (N-éthyl-1,2-diphényléthylamine)

(4) isophénidine (NPDPA) (N-isopropyl-1,2-diphényléthylamine)

mais non compris :

(5) Lefetamine ((-)-N,N-dimethyl-α-phenylbenzeneethanamine), its salts, derivatives and isomers and salts of derivatives and isomers

27 W-18 (4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]benzenesulfonamide), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues

28 U-47700 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide), its salts, derivatives, isomers and analogues, and salts of derivatives, isomers and analogues, including

(1) Bromadoline (4-bromo-N-(2-(dimethylamino)cyclohexyl)benzamide)

(2) U-47109 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)benzamide)

(3) U-48520 (4-chloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide)

(4) U-50211 (N-(2-(dimethylamino)cyclohexyl)-4-hydroxy-N-methylbenzamide)

(5) U-77891 (3,4-dibromo-N-methyl-N-(1-methyl-1-azaspiro[4.5]decan-6-yl)benzamide)

(5) léfétamine ((-)-N,N-diméthyl-α-phénylbenzèneéthanamine), ses sels, dérivés et isomères, ainsi que les sels de ses dérivés et isomères

27 W-18 (4-chloro-N-[1- [2- (4-nitrophényl) éthyl] -2-pipéridinylidène] benzènesulfonamide), ses sels, dérivés, isomères et analogues, ainsi que les sels de ses dérivés, isomères et analogues

28 U-47700 (3,4-dichloro-N-(2-(diméthylamino)cyclohexyl)-N-méthylbenzamide) et ses sels, isomères, dérivés et analogues, ainsi que les sels de ses isomères, dérivés et analogues, notamment :

(1) Bromadoline (4-bromo-N-(2-(diméthylamino)cyclohexyl)benzamide)

(2) U-47109 (3,4-dichloro-N-(2-(diméthylamino)cyclohexyl)benzamide)

(3) U-48520 (4-chloro-N-(2-(diméthylamino)cyclohexyl)-N-méthylbenzamide)

(4) U-50211 (N-(2-(diméthylamino)cyclohexyl)-4-hydroxy-N-méthylbenzamide)

(5) U-77891 (3,4-dibromo-N-méthyl-N-(1-méthyl-1-azaspiro[4.5]déc-6-yl)benzamide)

## PART II

1 *Salvia divinorum* (*S. divinorum*), its preparations and derivatives, including

(1) Salvinorin A ((2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acetyloxy)-2-(3-furanyl)dodecahydro-6a,10b-dimethyl-4,10-dioxo-2H-naphtho[2,1-c]pyran-7-carboxylic acid methyl ester)

2 *Catha edulis* Forsk, its preparations, derivatives, alkaloids and salts, including

(1) Cathine (*d*-threo-2-amino-1-hydroxy-1-phenylpropane)

but not including

(2) Cathinone ((-)-α-aminopropiophenone) and its salts

## PARTIE II

1 *Salvia divinorum* (*S. divinorum*), ses préparations et dérivés, notamment :

(1) Salvinorine A (ester méthylique de l'acide (2S,4aR,6aR,7R,9S,10aS,10bR)-9-(acétyloxy)-2-(3-furanyl)dodécahydro-6a,10b-diméthyl-4,10-dioxo-2Hnaphto[2,1-c]pyran-7-carboxylique)

2 *Catha edulis* Forsk, ses préparations, dérivés, alcaloïdes et sels, notamment :

(1) cathine (*d*-thréo-amino-2 hydroxy-1 phényl-1 propane)

mais non compris :

(2) cathinone (*l*-α-aminopropiophénone) et ses sels

## PART III

| Item | Column 1<br>Substance | Column 2<br>Period |
|---|---|---|

SOR/97-228, s. 25; SOR/2003-34, ss. 4, 5; SOR/2012-65, s. 1; SOR/2012-177, s. 1; SOR/2013-172, s. 2; SOR/2015-210, ss. 4 to 6; SOR/2016-72, s. 1; SOR/2016-106, s. 2; SOR/2016-239, s. 1; SOR/2017-12, ss. 3, 4; SOR/2017-250, s. 2; SOR/2017-278, s. 1; SOR/2018-69, s. 66; SOR/2018-85, s. 4; SOR/2019-171, s. 23.

## PARTIE III

| Article | Colonne 1<br>Substance | Colonne 2<br>Période |
|---|---|---|

DORS/97-228, art. 25; DORS/2003-34, art. 4 et 5; DORS/2012-65, art. 1; DORS/2012-177, art. 1; DORS/2013-172, art. 2; DORS/2015-210, art. 4 à 6; DORS/2016-72, art. 1; DORS/2016-106, art. 2; DORS/2016-239, art. 1; DORS/2017-12, art. 3 et 4; DORS/2017-250, art. 2; DORS/2017-278, art. 1; DORS/2018-69, art. 66; DORS/2018-85, art. 4; DORS/2019-171, art. 23.

## SCHEDULE F

[Repealed, SOR/2013-122, s. 18]

## ANNEXE F

[Abrogée, DORS/2013-122, art. 18]

**SCHEDULE K**

# Reasonable Daily Intake for Various Foods

| Item No. | Column I<br>Name and Description | | Column II<br>R.D.I. |
|---|---|---|---|
| 1 | Alimentary Pastes, dry | 3.0 oz. | 85 g |
| 2 | Bacon (side) simulated meat product that resembles side bacon, (cooked) | 1.0 oz. | 28 g |
| 3 | Beverage Bases and Mixes, Flavoured, for Addition to Milk (ready to serve) | 16.0 fl.oz. | 454 ml |
| 4 | Bread, 5 slices | 5.3 oz. | 150 g |
| 5 | Butter | 2.0 oz. | 57 g |
| 6 | Buttermilk | 30.0 fl.oz. | 852 ml |
| 7 | Cereals, Breakfast or Infant | 1.0 oz. | 28 g |
| 8 | Cereals, puffed | 0.5 oz. | 14 g |
| 9 | Cheese (other than Cottage Cheese) | 2.0 oz. | 57 g |
| 10 | Cheese, Cottage | 3.5 oz. | 100 g |
| 11 | Condensed Milk | 15.0 fl.oz. | 426 ml |
| 12 | Cream, whipping | 2.0 oz. | 57 g |
| 13 | Egg, yolk-replaced egg | 3.5 oz. | 100 g |
| 14 | Evaporated Milk, Evaporated Skim Milk, Evaporated Partly Skimmed Milk | 15.0 fl.oz.<br>30.0 fl.oz.<br>(reconstituted to original volume) | 852 ml |
| 15 | Fish, Shell Fish | 3.5 oz. | 100 g |
| 16 | Fruits, dried | 2.0 oz. | 57 g |
| 17 | Fruits, (other than banana, lemon, lime, watermelon) | 3.5 oz. | 100 g |
| 18 | Fruits, Banana | 5.3 oz. | 150 g |
| 19 | Fruits, Lemon | 1.8 oz. | 50 g |
| 20 | Fruits, Lime | 1.8 oz. | 50 g |
| 21 | Fruits, Watermelon | 7.0 oz. | 200 g |
| 22 | Fruit Drinks, Fruit Nectars (ready to serve) | 4.0 fl.oz. | 114 ml |
| 23 | Fruit Drink Bases, Mixes and Concentrates (ready to serve) | 4.0 fl.oz. | 114 ml |
| 24 | Fruit Juices (other than lemon juice and lime juice) | 4.0 fl.oz. | 114 ml |
| 25 | Fruit Juices, Lemon | 1.0 fl.oz. | 28 ml |
| 26 | Fruit Juices, Lime | 1.0 fl.oz. | 28 ml |
| 27 | Ice Cream, Ice Milk | 3.5 oz. | 100 g |
| 28 | Infant Formulas, Prepared (ready to serve) | As directed by Label | |
| 29 | Instant Breakfast, Ready Breakfast (ready to serve) | As directed by Label | |
| 30 | Margarine | 2.0 oz. | 57 g |
| 31 | Meat Products | 3.5 oz. | 100 g |
| 32 | Meat Product Extenders | 3.5 oz. | 100 g |
| 33 | Extended Meat Products | 3.5 oz. | 100 g |
| 34 | Milk, whole | 30.0 fl.oz. | 852 ml |
| 35 | Milk Powder (reconstituted and ready to serve) | 30.0 fl.oz. | 852 ml |
| 36 | (naming the flavour) Milk | 30.0 fl.oz. | 852 ml |
| 37 | Molasses | 1.5 oz. | 43 g |

| Item No. | Column I<br>Name and Description | | Column II<br>R.D.I. |
|---|---|---|---|
| 38 | Nuts | 1.0 oz. | 28 g |
| 39 | Peanut Butter | 1.0 oz. | 28 g |
| 40 | Poultry Products | 3.5 oz. | 100 g |
| 41 | Extended Poultry Products | 3.5 oz. | 100 g |
| 42 | Poultry Product Extenders | 3.5 oz. | 100 g |
| 43 | Simulated Meat Products excluding a simulated meat product that resembles side bacon | 3.5 oz. | 100 g |
| 44 | Simulated Poultry Products | 3.5 oz. | 100 g |
| 45 | Skim Milk, Partly Skimmed Milk | 30.0 fl.oz. | 852 ml |
| 46 | (naming the flavour) Skim Milk, (naming the flavour) Partly Skimmed Milk | 30.0 fl.oz. | 852 ml |
| 47 | Skim Milk Powder, Partly Skimmed Milk Powder (reconstituted and ready to serve) | 30.0 fl.oz. | 852 ml |
| 48 | Skim Milk with Added Milk Solids, Partly Skimmed Milk with Added Milk Solids | 30.0 fl.oz. | 852 ml |
| 49 | (naming the flavour) Skim Milk with Added Milk Solids, (naming the flavour) Partly Skimmed Milk with Added Milk Solids | 30.0 fl.oz. | 852 ml |
| 50 | Soup (ready to serve) | 7.0 fl.oz. | 200 ml |
| 51 | Sterilized Milk | 30.0 fl.oz. | 852 ml |
| 52 | Vegetable Juices | 4.0 fl.oz. | 114 ml |
| 53 | Vegetable Drinks | 4.0 fl.oz. | 114 ml |
| 54 | Vegetable Drink Concentrates, Mixes and Bases (ready to serve) | 4.0 fl.oz. | 114 ml |
| 55 | Vegetable (other than baked beans and cooked potatoes) | 3.5 oz. | 100 g |
| 56 | Vegetables, baked beans | 8.5 oz. | 250 g |
| 57 | Vegetables, cooked potatoes | 7.0 oz. | 200 g |
| 58 | Yeast | 0.5 oz. | 14 g |
| 59 | Yogurt, plain | 5.0 oz. | 150 g |

SOR/78-64, s. 10; SOR/84-300, s. 63(E).

**APPENDICES I AND II**

[Repealed, SOR/81-935, s. 2]

**APPENDIX III**

# Forms

## Export Certificate

(Under section 37 of the *Food and Drugs Act*)

The undersigned exporter hereby certifies that the (description of article)

_____

packaged and labelled as follows: _____

and marked in distinct overprinting with the word "Export"

1 is manufactured or prepared in Canada,

2 is not manufactured or sold for consumption or use in Canada, and

3 the packages and the contents of those packages do not contravene any known requirement of the law of _____ to which it is or is about to be consigned.
(name of country or countries)

Dated at _____ the _____ day of _____ 20 .

Canada : In the matter of an Export Certificate under the *Food and Drugs Act*,
Province of _____

To Wit : I, _____
of the _____ of _____
in the _____ of _____

do solemnly declare:

1 that I am the "Exporter" issuing the certificate above set out and have a knowledge of the matters and facts herein declared to by me,

or

I am the _____ of _____
_____
the "Exporter" issuing the certificate above set out and have a knowledge of the matters and facts herein declared to by me (describe position of declarant as the agent of the "Exporter" in case of a Corporation issuing the certificate),

2 that the information set out in the said certificate is true,

3 that all information relevant to the purpose of the said certificate is set out herein and no information relevant thereto has knowingly been withheld.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of *The Canada Evidence Act*.

Declared before me at _____ this _____
day of _____ 20 .

_____ _____
A Commissioner for Taking Oaths

SOR/80-318, s. 2; SOR/2022-100, s. 6; SOR/2022-100, s. 7; SOR/2022-100, s. 8; SOR/2022-100, s. 9.

## ANNEXE K

# Ration quotidienne normale de diverses substances alimentaires

| | Colonne I | | Colonne II |
|---|---|---|---|
| Poste nº | Nom et description | | R.Q.N. |
| 1 | Pâtes alimentaires, sèches | 3,0 oz | 85 g |
| 2 | Bacon (de flanc), simili-produit de viande qui rappelle le bacon de flanc (cuit) | 1,0 oz | 28 g |
| 3 | Base et mélanges aromatisés, pour boissons, pour ajouter au lait (prêts à servir) | 16,0 oz liq | 454 ml |
| 4 | Pain, 5 tranches | 5,3 oz | 150 g |
| 5 | Beurre | 2,0 oz | 57 g |
| 6 | Lait de beurre | 30,0 oz liq | 852 ml |
| 7 | Céréales, à déjeuner ou pour nourrissons | 1,0 oz | 28 g |
| 8 | Céréales, soufflées | 0,5 oz | 14 g |
| 9 | Fromage (autre que le fromage cottage) | 2,0 oz | 57 g |
| 10 | Fromage cottage | 3,5 oz | 100 g |
| 11 | Lait condensé | 15,0 oz liq | 426 ml |
| 12 | Crème à fouetter | 2,0 oz | 57 g |
| 13 | Œuf, jaune d'œuf substitué | 3,5 oz | 100 g |
| 14 | Lait évaporé, lait écrémé évaporé, lait partiellement écrémé évaporé | 30,0 oz liq (reconstitué à son volume original) | 852 ml |
| 15 | Poisson, coquillages | 3,5 oz | 100 g |
| 16 | Fruits secs | 2,0 oz | 57 g |
| 17 | Fruits (sauf bananes, citrons, limes, melons d'eau) | 3,5 oz | 100 g |
| 18 | Fruits, bananes | 5,3 oz | 150 g |
| 19 | Fruits, citrons | 1,8 oz | 50 g |
| 20 | Fruits, limes | 1,8 oz | 50 g |
| 21 | Fruits, melons d'eau | 7,0 oz | 200 g |
| 22 | Boissons aux fruits, nectars de fruits (prêts à servir) | 4,0 oz liq | 114 ml |
| 23 | Bases, mélanges et concentrés pour boissons aux fruits (prêts à servir) | 4,0 oz liq | 114 ml |
| 24 | Jus de fruit (sauf jus de citron et jus de lime) | 4,0 oz liq | 114 ml |
| 25 | Jus de fruit, citron | 1,0 oz liq | 28 ml |
| 26 | Jus de fruit, lime | 1,0 oz liq | 28 ml |
| 27 | Crème glacée, lait glacé | 3,5 oz | 100 g |
| 28 | Préparations pour nourrissons (prêtes à servir) | Selon le mode d'emploi inscrit sur l'étiquette | |
| 29 | Déjeuner instantané, déjeuner prêt à servir | Selon le mode d'emploi inscrit sur l'étiquette | |
| 30 | Margarine | 2,0 oz | 57 g |
| 31 | Produits de viande | 3,5 oz | 100 g |
| 32 | Allongeurs de produits de viande | 3,5 oz | 100 g |
| 33 | Produits de viande avec allongeur | 3,5 oz | 100 g |
| 34 | Lait entier | 30,0 oz liq | 852 ml |
| 35 | Lait en poudre (reconstitué et prêt à servir) | 30,0 oz liq | 852 ml |

| | Colonne I | | Colonne II |
|---|---|---|---|
| Poste nº | Nom et description | | R.Q.N. |
| 36 | Lait (nom de l'arôme) | 30,0 oz liq | 852 ml |
| 37 | Mélasse | 1,5 oz | 43 g |
| 38 | Noix | 1,0 oz | 28 g |
| 39 | Beurre d'arachide | 1,0 oz | 28 g |
| 40 | Produits de volaille | 3,5 oz | 100 g |
| 41 | Produits de volaille avec allongeur | 3,5 oz | 100 g |
| 42 | Allongeurs de produits de volaille | 3,5 oz | 100 g |
| 43 | Simili-produits de viande, sauf les simili-produits de viande qui rappellent le bacon de flanc | 3,5 oz | 100 g |
| 44 | Simili-produits de volaille | 3,5 oz | 100 g |
| 45 | Lait écrémé, lait partiellement écrémé | 30,0 oz liq | 852 ml |
| 46 | Lait écrémé (nom de l'arôme), lait partiellement écrémé (nom de l'arôme) | 30,0 oz liq | 852 ml |
| 47 | Lait écrémé en poudre, lait partiellement écrémé en poudre (reconstitués et prêts à servir) | 30,0 oz liq | 852 ml |
| 48 | Lait écrémé additionné d'extrait sec du lait, lait partiellement écrémé additionné d'extrait sec du lait | 30,0 oz liq | 852 ml |
| 49 | Lait écrémé additionné d'extrait sec du lait (nom de l'arôme), lait partiellement écrémé additionné d'extrait sec du lait (nom de l'arôme) | 30,0 oz liq | 852 ml |
| 50 | Soupe (prête à servir) | 7,0 oz liq | 200 ml |
| 51 | Lait stérilisé | 30,0 oz liq | 852 ml |
| 52 | Jus de légumes | 4,0 oz liq | 114 ml |
| 53 | Boissons aux légumes | 4,0 oz liq | 114 ml |
| 54 | Concentrés, mélanges et bases pour boissons aux légumes (prêts à servir) | 4,0 oz liq | 114 ml |
| 55 | Légumes (autres que fèves au four et pommes de terre cuites) | 3,5 oz | 100 g |
| 56 | Légumes, fèves au four | 8,5 oz | 250 g |
| 57 | Légumes, pommes de terre cuites | 7,0 oz | 200 g |
| 58 | Levure | 0,5 oz | 14 g |
| 59 | Yogourt, nature | 5,0 oz | 150 g |

DORS/78-64, art. 10; DORS/84-300, art. 63(A).

**APPENDICES I ET II**

[Abrogés, DORS/81-935, art. 2]

**APPENDICE III**

# Formules

## Certificat d'exportation

(En vertu de l'article 37 de la *Loi sur les aliments et drogues*)

L'exportateur soussigné certifie par les présentes que (description de l'article)

_____

emballé et étiqueté comme suit : _____

et portant distinctement imprimé le mot « Exportation »,

1 est fabriqué ou préparé au Canada,

2 n'est pas fabriqué ou vendu pour la consommation ou l'usage au Canada, et

3 que l'emballage et son contenu n'enfreignent aucune règle de droit connue de _____ au(x)quel(s) ils
(nom du ou des pays)

sont destinés.

Fait à _____ le _____ 20 .

Canada : En ce qui a trait à un certificat d'exportation délivré en vertu de la *Loi des aliments et drogues,*

Province _____

EN FOI DE QUOI : Je, _____

de _____ de _____

dans _____ de _____

déclare solennellement :

1 que je suis l'« exportateur » délivrant le présent certificat et que je suis au courant des renseignements que j'ai ai [sic] déclarés

ou

que je suis _____ de _____

_____

l'« exportateur » délivrant le présent certificat et que je suis au courant des renseignements que j'y ai déclarés (si l'exportateur est une société commerciale, indiquer que le déclarant est l'agent de l'« exportateur »),

2 que les renseignements donnés dans ledit certificat sont véridiques,

3 que tous les renseignements pertinents y sont consignés et qu'aucun renseignement utile n'a été omis sciemment.

Et je fais la présente déclaration solennelle la croyant vraie et sachant qu'elle a la même valeur que si elle était faite sous serment et en vertu de la *Loi sur la preuve au Canada*.

Déclaration faite en ma présence à _____

le _____ _____ 20 .

_____ _____

Commissaire à l'assermentation

DORS/80-318, art. 2; DORS/2022-100, art. 6; DORS/2022-100, art. 7; DORS/2022-100, art. 8; DORS/2022-100, art. 9.

**SCHEDULE K.1**

(Subsections B.01.350(1) and B.01.351(1) and (5))

# Nutrition Symbols and Formats

## Unilingual Horizontal Format

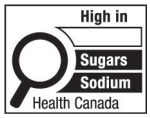
**1(EH)**


**1(FH)**

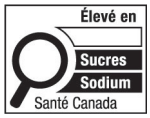

**2(EH)**


**2(FH)**


**3(EH)**




**3(FH)**




**4(EH)**


**4(FH)**


**5(EH)**


**5(FH)**


**6(EH)**


**6(FH)**


**7(EH)**


**7(FH)**


**ANNEXE K.1**

(paragraphes B.01.350(1), B.01.351(1) et (5))

# Symboles nutritionnels et modèles

## Modèle horizontal unilingue

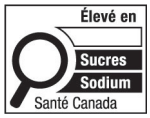
**1(FH)**


**1(AH)**

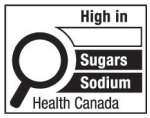

**2(FH)**


**2(AH)**


**3(FH)**




**3(AH)**




**4(FH)**


**4(AH)**


**5(FH)**


**5(AH)**


**6(FH)**


**6(AH)**


**7(FH)**


**7(AH)**

**8(EH)**


**8(FH)**


**8(FH)**


**8(AH)**


**9(EH)**


**9(FH)**


**9(FH)**


**9(AH)**


**10(EH)**


**10(FH)**


**10(FH)**


**10(AH)**


**11(EH)**


**11(FH)**


**11(FH)**


**11(AH)**


**12(EH)**


**12(FH)**


**12(FH)**


**12(AH)**


**13(EH)**


**13(FH)**


**13(FH)**


**13(AH)**


## Unilingual Vertical Format

## Modèle vertical unilingue

**1(EV)**


**1(FV)**


**1(FV)**


**1(AV)**

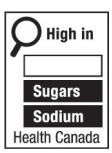

**2(EV)**


**2(FV)**


**2(FV)**


**2(AV)**

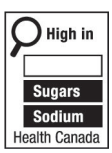

**3(EV)**




**3(FV)**


**3(FV)**


**3(AV)**



**4(EV)**


**4(FV)**


**4(FV)**


**4(AV)**


**5(EV)**


**5(FV)**


**5(FV)**


**5(AV)**


**6(EV)**


**6(FV)**


**6(FV)**


**6(AV)**


**7(EV)**


**7(FV)**


**7(FV)**


**7(AV)**


**8(EV)**


**8(FV)**


**8(FV)**


**8(AV)**


**9(EV)**


**9(FV)**


**9(FV)**


**9(AV)**


**10(EV)**


**10(FV)**


**10(FV)**


**10(AV)**


**11(EV)**


**11(FV)**


**11(FV)**


**11(AV)**

**12(EV)**


**12(FV)**


**13(EV)**


**13(FV)**


**12(FV)**


**12(AV)**


**13(FV)**

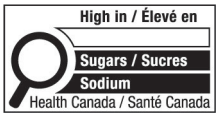

**13(AV)**


## Bilingual Horizontal Format

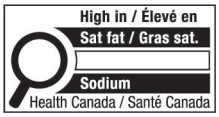
**1(BH)**


**2(BH)**


**3(BH)**

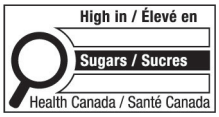



**4(BH)**

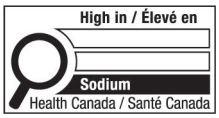



**5(BH)**


**6(BH)**




**7(BH)**

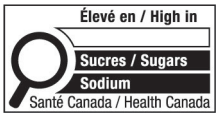



## Modèle horizontal bilingue

**1(HB)**


**2(HB)**

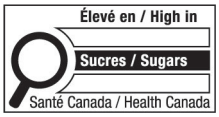

**3(HB)**




**4(HB)**


**5(HB)**


**6(HB)**

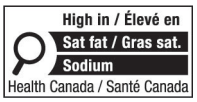



**7(HB)**

**8(BH)**


**9(BH)**


**10(BH)**



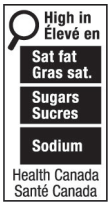

**11(BH)**


**12(BH)**


**13(BH)**


## Bilingual Vertical Format

**1(BV)**




**2(BV)**


**8(HB)**


**9(HB)**


**10(HB)**

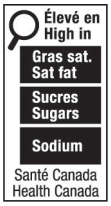

**11(HB)**


**12(HB)**


**13(HB)**

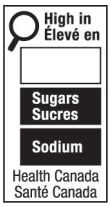

## Modèle vertical bilingue

**1(VB)**

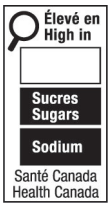



**2(VB)**

**3(BV)**



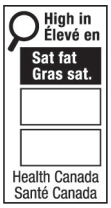

**3(VB)**



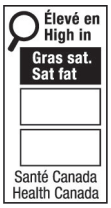

**4(BV)**


**4(VB)**

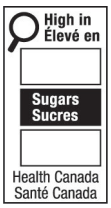

**5(BV)**




**5(VB)**

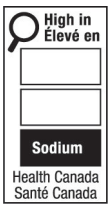



**6(BV)**

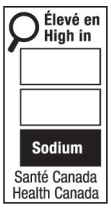



**6(VB)**


**7(BV)**




**7(VB)**




**8(BV)**


**8(VB)**

**9(BV)**


**10(BV)**


**11(BV)**


**12(BV)**


**13(BV)**


SOR/2022-168, s. 51.

**9(VB)**


**10(VB)**


**11(VB)**


**12(VB)**


**13(VB)**


DORS/2022-168, art. 51.

**SCHEDULE K.2**

(Subsections B.29.021(1), (2) and (8))

# Supplemented Food Caution Identifier Formats

## Unilingual Standard Format

**ES**


**FS**


## Bilingual Standard Format

**BS**


## Bilingual Compact Format

**BC**


SOR/2022-169, s. 29.

**ANNEXE K.2**

(paragraphes B.29.021(1), (2) et (8))

# Modèles — identifiant des aliments supplémentés avec mise en garde

## Modèle standard unilingue

**FS**


**AS**


## Modèle standard bilingue

**SB**


## Modèle compact bilingue

**CB**


DORS/2022-169, art. 29.

## SCHEDULE L

[Repealed, SOR/2016-305, s. 71]

## ANNEXE L

[Abrogée, DORS/2016-305, art. 71]

## SCHEDULE M

[Repealed, SOR/2016-305, s. 71]

## ANNEXE M

[Abrogée, DORS/2016-305, art. 71]

# RELATED PROVISIONS

— SOR/97-12, s. 66

**66** Packages of drugs that are labelled in accordance with Part C of the *Food and Drug Regulations*, as those Regulations read on December 31, 1996, are not required to comply with the labelling requirements in these Regulations until January 1, 1999.

— SOR/98-423, s. 10

**10** For the purposes of sections 11 to 13, ***Director*** has the same meaning as in section A.01.010 of the *Food and Drugs Regulations*.

— SOR/98-423, s. 11

**11** Despite sections 1 and 7 to 9, if a numbered certificate of registration has been issued in respect of a drug but a drug identification number has not been assigned under section C.01.014.2 of the *Food and Drug Regulations*, as amended by section 4 of these Regulations, or under section 12 of these Regulations, then section C.01.001A, paragraphs C.01.015(2)(b) and C.01.062(5)(b) and Division 10 and the schedule and the table to Division 10 of Part C of the *Food and Drug Regulations*, as they read immediately before the coming into force of these Regulations, remain in force in respect of that drug until October 1, 1998, except to the extent that they require information that is not required by those provisions as amended by these Regulations.

— SOR/98-423, s. 12

**12 (1)** Despite these Regulations and subject to subsection (3), if the conditions set out in subsection (2) are satisfied, the Director shall, until October 1, 1998, provide to a manufacturer or importer referred to in paragraph (2)( c),

**(a)** if the information referred to in section C.01.014.3 of the *Food and Drug Regulations* as amended by section 5 of these Regulations has not been submitted in respect of the drug, the document referred to in subsection C.01.014.2(1) of the *Food and Drug Regulations*, as amended by section 4 of these Regulations; or

**(b)** in any other case,

**(i)** a drug identification number for the drug preceded by the letters “DIN”, or

**(ii)** where there are two or more brand names for the drug, the drug identification numbers assigned

# DISPOSITIONS CONNEXES

— DORS/97-12, art. 66

**66** L’emballage des drogues étiquetées conformément à la partie C du *Règlement sur les aliments et drogues*, dans sa version au 31 décembre 1996, est, jusqu’au 1er janvier 1999, soustrait à l’application des exigences d’étiquetage du présent règlement.

— DORS/98-423, art. 10

**10** Pour l’application des articles 11 à 13, ***Directeur*** s’entend au sens de l’article A.01.010 du *Règlement sur les aliments et drogues*.

— DORS/98-423, art. 11

**11** Malgré les articles 1 et 7 à 9, ainsi que l’article C.01.001A, les alinéas C.01.015(2)b) et C.01.062(5)b), le titre 10 de la partie C ainsi que l’annexe et le tableau de ce titre du *Règlement sur les aliments et drogues*, dans leur version antérieure à l’entrée en vigueur du présent règlement, continuent de s’appliquer jusqu’au 1er octobre 1998 — à l’exception de leurs exigences relatives aux renseignements qui ne figurent pas dans leur version modifiée par le présent règlement — aux drogues qui font l’objet d’un certificat d’inscription numéroté mais auxquelles une identification numérique n’a pas été attribuée aux termes de l’article C.01.014.2 du *Règlement sur les aliments et drogues* édicté par l’article 4 du présent règlement, ou aux termes de l’article 12 du présent règlement.

— DORS/98-423, art. 12

**12 (1)** Malgré les autres dispositions du présent règlement et sous réserve du paragraphe (3), jusqu’au 1er octobre 1998, le Directeur, lorsque les conditions du paragraphe (2) sont remplies, fournit au fabricant ou à l’importateur visé à l’alinéa (2)c) :

**a)** dans le cas où les renseignements visés à l’article C.01.014.3 du *Règlement sur les aliments et drogues* édicté par l’article 5 du présent règlement n’ont pas été présentés à l’égard de la drogue, le document prévu au paragraphe C.01.014.2(1) du *Règlement sur les aliments et drogues* édicté par l’article 4 du présent règlement;

**b)** dans les autres cas :

**(i)** soit l’identification numérique attribuée à la drogue, précédée de l’abréviation « DIN »,

by the Director for the drug, each of which pertains to one of the brand names and is preceded by the letters "DIN".

**(2)** The conditions referred to in subsection (1) are:

**(a)** a numbered certificate of registration has been issued for the drug under subsection C.10.004(1) of the *Food and Drug Regulations* as it read before the coming into force of these Regulations;

**(b)** the numbered certificate of registration has not been cancelled under section C.10.008 of the *Food and Drug Regulations* as it read immediately before the coming into force of these Regulations; and

**(c)** prior to September 1, 1998, the manufacturer or importer has submitted to the Director

**(i)** the name of the drug for which a drug identification number is to be issued, and

**(ii)** the information referred to in subsection C.01.014.1(2) of the *Food and Drug Regulations*.

**(3)** If more than one numbered certificate of registration has been issued for a drug on the sole basis of a difference in colour, flavour or fragrance, a single drug identification number shall be assigned in respect of the drug.

— SOR/98-423, s. 13

**13** Despite section 4 of these Regulations and subject to section C.10.005 of the *Food and Drug Regulations* as that section read immediately before the coming into force of these Regulations, the Director may, until September 30, 1998, issue a numbered certificate of registration, if

**(a)** the manufacturer expressly requests that a numbered certificate of registration be issued for the drug; and

**(b)** its application was accepted by the Director for review before the coming into force of these Regulations.

— SOR/98-423, s. 14

**14** Despite section 2, a manufacturer may, until September 30, 2000, label a drug with the label that was in use on September 30, 1998.

**(ii)** soit, si la drogue a deux marques nominatives ou plus, les identifications numériques attribuées à celle-ci par le Directeur, dont chacune correspond à une marque nominative et est précédée de l'abréviation « DIN ».

**(2)** Les conditions visées au paragraphe (1) sont les suivantes :

**a)** un certificat d'inscription numéroté a été délivré à l'égard de la drogue conformément au paragraphe C.10.004(1) du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur du présent règlement;

**b)** le certificat d'inscription numéroté n'a pas été annulé selon l'article C.10.008 du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur du présent règlement;

**c)** le fabricant ou l'importateur de la drogue a fourni au Directeur, avant le 1er septembre 1998 :

**(i)** le nom de la drogue à laquelle une identification numérique est destinée,

**(ii)** les renseignements visés au paragraphe C.01.014.1(2) du *Règlement sur les aliments et drogues*.

**(3)** Si une drogue fait l'objet de plus d'un certificat d'inscription numéroté en raison uniquement d'une différence de couleur, d'aromatisant ou de parfum, une seule identification numérique lui est attribuée.

— DORS/98-423, art. 13

**13** Malgré l'article 4 du présent règlement et sous réserve de l'article C.10.005 du *Règlement sur les aliments et drogues* dans sa version antérieure à l'entrée en vigueur du présent règlement, le Directeur peut, jusqu'au 30 septembre 1998, délivrer un certificat d'inscription numéroté à l'égard d'une drogue, au fabricant :

**a)** d'une part, qui précise qu'il souhaite qu'un certificat d'inscription numéroté à l'égard de cette drogue lui soit délivré;

**b)** d'autre part, dont la demande a été acceptée pour étude, par le Directeur, avant l'entrée en vigueur du présent règlement.

— DORS/98-423, art. 14

**14** Malgré l'article 2, le fabricant peut, jusqu'au 30 septembre 2000, apposer sur une drogue la même étiquette que celle-ci portait le 30 septembre 1998.

— SOR/2001-203, s. 11

**11** An application concerning the sale of a drug for human use for the purposes of a clinical trial that is received under Division 8 of the *Food and Drug Regulations* before September 1, 2001 is subject to those Regulations and any procedures established under those Regulations as they read at the time the application was received.

— SOR/2003-11, s. 38

**38 (1)** The following definitions apply in this section.

***former Regulations*** means the *Food and Drug Regulations* as they read immediately before the day on which these Regulations come into force. (*règlement antérieur*)

***manufacturer*** has the same meaning as in section A.01.010 of the *Food and Drug Regulations*. (*fabricant*)

***prepackaged product*** has the same meaning as in section B.01.001 of the *Food and Drug Regulations*. (*produit préemballé*)

**(2)** Despite sections 1 to 37 and subject to subsection (3), the former Regulations continue to apply to a prepackaged product that is labelled in accordance with the former Regulations until the day that is three years after the day on which these Regulations come into force, unless the label of the product, or any advertisement for the product that is made or placed by or on the direction of the manufacturer of the product, contains

**(a)** a statement or claim set out in column 4 of any of items 15, 16 and 22 to 26 of the table following section B.01.513 of the *Food and Drug Regulations*, as enacted by section 20 of these Regulations;

**(b)** a statement or claim set out in column 1 of the table following section B.01.603 of the *Food and Drug Regulations*, as enacted by section 20 of these Regulations; or

**(c)** the expression "nutrition facts", "valeur nutritive" or "valeurs nutritives".

**(3)** In applying subsection (2) to a prepackaged product that is sold by a manufacturer who had gross revenues from sales in Canada of food of less than $1,000,000 for the 12-month period immediately prior to the day on which these Regulations come into force, the reference to "three years" in that subsection shall be read as a reference to "five years".

— DORS/2001-203, art. 11

**11** Toute demande concernant la vente d'une drogue pour usage humain destinée à un essai clinique qui est reçue conformément au titre 8 du *Règlement sur les aliments et drogues* avant le 1er septembre 2001 est assujettie à ce règlement, y compris les procédures établies sous son régime, dans sa version en vigueur au moment de la réception de la demande.

— DORS/2003-11, art. 38

**38 (1)** Les définitions qui suivent s'appliquent au présent article.

***fabricant*** S'entend au sens de l'article A.01.010 du *Règlement sur les aliments et drogues*. (*manufacturer*)

***produit préemballé*** S'entend au sens de l'article B.01.001 du *Règlement sur les aliments et drogues*. (*prepackaged product*)

***règlement antérieur*** Le *Règlement sur les aliments et drogues* dans sa version antérieure à l'entrée en vigueur du présent règlement. (*former Regulations*)

**(2)** Malgré les articles 1 à 37 et sous réserve du paragraphe (3), le règlement antérieur continue de s'appliquer au produit préemballé qui est étiqueté conformément à ce règlement, jusqu'à l'expiration d'une période de trois ans suivant l'entrée en vigueur du présent règlement, sauf si l'étiquette du produit ou encore l'annonce faite par le fabricant du produit ou sous ses ordres comporte :

**a)** soit une mention ou allégation figurant à la colonne 4 des articles 15 ou 16 ou de l'un des articles 22 à 26 du tableau suivant l'article B.01.513 du *Règlement sur les aliments et drogues*, édicté par l'article 20 du présent règlement;

**b)** soit une mention ou allégation figurant à la colonne 1 du tableau suivant l'article B.01.603 du *Règlement sur les aliments et drogues*, édicté par l'article 20 du présent règlement;

**c)** soit les expressions « valeur nutritive », « valeurs nutritives » ou « nutrition facts ».

**(3)** La mention de « trois ans » au paragraphe (2) vaut mention de « cinq ans » pour l'application de ce paragraphe à l'égard du produit préemballé vendu par un fabricant dont le revenu brut tiré des ventes d'aliments au Canada est inférieur à 1 000 000 $ pour la période de douze mois précédant l'entrée en vigueur du présent règlement.

— SOR/2006-241, s. 2

**2** Section C.08.004.1 of the *Food and Drug Regulations*, as it read immediately before the coming into force of these Regulations, applies to a drug in respect of which a notice of compliance was issued before June 17, 2006.

— SOR/2007-302, s. 12

**12** Sections 1 to 6 and 11 of these Regulations do not apply to cheese that is made before these Regulations come into force.

— SOR/2013-74, s. 17

**17 (1)** Every person who, on the day on which these Regulations come into force, fabricates, packages/labels, tests or imports an active pharmaceutical ingredient may continue to do so without an establishment licence if they submit an application for a licence under section C.01A.005 of the *Food and Drug Regulations* within three months after that day.

**(2)** Subsection (1) applies until the determination of the licence application under section C.01A.008 or C.01A.010 of the *Food and Drug Regulations*.

— SOR/2013-74, s. 18, as amended by SOR/2013-178, s. 125

**18** The *Food and Drug Regulations*, as they read immediately before the coming into force of these Regulations, continue to apply in respect of whole blood and blood components until the day before the day on which subsection 3(2) of the *Blood Regulations* comes into force.

— SOR/2013-172, s. 12

**12** If, on the day on which these Regulations come into force, the Director has not yet issued a letter of authorization under subsection C.08.010(1) of the *Food and Drug Regulations* in response to a request that was made by a practitioner before that day, subsection C.08.010(1.1) of those Regulations, as enacted by section 11, applies in respect of the request.

— SOR/2013-172, s. 13

**13** For the purpose of paragraph 11(2)(a) of the *Statutory Instruments Act*, these Regulations apply before they are published in the *Canada Gazette*.

— DORS/2006-241, art. 2

**2** L'article C.08.004.1 du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur du présent règlement, s'applique à l'égard de la drogue pour laquelle un avis de conformité a été délivré avant le 17 juin 2006.

— DORS/2007-302, art. 12

**12** Les articles 1 à 6 et 11 ne s'appliquent pas dans le cas de fromages qui sont produits avant la date d'entrée en vigueur du présent règlement.

— DORS/2013-74, art. 17

**17 (1)** La personne qui, à la date d'entrée en vigueur du présent règlement, manufacture, emballe-étiquette, analyse ou importe un ingrédient actif pharmaceutique peut continuer à exercer l'activité à l'égard de cette drogue sans être titulaire d'une licence d'établissement si elle présente une demande de licence à cet effet, conformément à l'article C.01A.005 du *Règlement sur les aliments et drogues*, dans les trois mois suivant cette date.

**(2)** Le paragraphe (1) s'applique jusqu'à la prise de la décision relative à la demande de licence aux termes des articles C.01A.008 ou C.01A.010 du *Règlement sur les aliments et drogues*.

— DORS/2013-74, art. 18, modifié par DORS/2013-178, art. 125

**18** Le *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur du présent règlement, continue de s'appliquer à l'égard du sang entier et de ses composants jusqu'à l'entrée en vigueur du paragraphe 3(2) du *Règlement sur le sang*.

— DORS/2013-172, art. 12

**12** Si, à la date d'entrée en vigueur du présent règlement, le Directeur général n'a pas fourni une lettre d'autorisation aux termes du paragraphe C.08.010(1) du *Règlement sur les aliments et drogues* en réponse à une demande d'un praticien présentée avant cette date, le paragraphe C.08.010(1.1) du même règlement, édicté par l'article 11 du présent règlement, s'applique à la demande.

— DORS/2013-172, art. 13

**13** Pour l'application de l'alinéa 11(2)a) de la *Loi sur les textes réglementaires*, le présent règlement prend effet avant sa publication dans la *Gazette du Canada*.

— SOR/2014-158, s. 14

**14** The following definitions apply in sections 15 to 32:

***submission*** means any of the following:

**(a)** a new drug submission that is filed under section C.08.002 of the *Food and Drug Regulations*;

**(b)** an extraordinary use new drug submission that is filed under section C.08.002.01 of those Regulations;

**(c)** an abbreviated new drug submission that is filed under section C.08.002.1 of those Regulations; or

**(d)** an abbreviated extraordinary use new drug submission that is filed under section C.08.002.1 of those Regulations. (*présentation*)

***supplement*** means a supplement to a submission that is filed under section C.08.003 of the *Food and Drug Regulations*. (*supplément*)

— DORS/2014-158, art. 14

**14** Les définitions qui suivent s'appliquent aux articles 15 à 32 :

***présentation*** S'entend de l'une des présentations suivantes :

**a)** toute présentation de drogue nouvelle déposée en application de l'article C.08.002 du *Règlement sur les aliments et drogues*;

**b)** toute présentation de drogue nouvelle pour usage exceptionnel déposée en application de l'article C.08.002.01 de ce règlement;

**c)** toute présentation abrégée de drogue nouvelle déposée en application de l'article C.08.002.1 du même règlement;

**d)** toute présentation abrégée de drogue nouvelle pour usage exceptionnel déposée en application de l'article C.08.002.1 du même règlement. (*submission*)

***supplément*** Tout supplément à une présentation déposé en application de l'article C.08.003 du *Règlement sur les aliments et drogues*. (*supplement*)

— SOR/2014-158, s. 15

**15** Subsection C.01.014.1(2) of the *Food and Drug Regulations*, as it read immediately before the day on which section 1 comes into force, applies to an application for a drug identification number that is made under subsection C.01.014.1(1) of those Regulations before the day on which section 1 comes into force.

— DORS/2014-158, art. 15

**15** Le paragraphe C.01.014.1(2) du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique à toute demande d'identification numérique présentée au titre du paragraphe C.01.014.1(1) de ce règlement avant l'entrée en vigueur de l'article 1.

— SOR/2014-158, s. 16

**16** Subsection C.08.002(2), subparagraph C.08.002.01(2)(b)(i) or paragraph C.08.002.1(2)(a) of the *Food and Drug Regulations*, as the case may be, as the applicable provision read immediately before the day on which section 1 comes into force, applies to a submission that is filed before the day on which section 1 comes into force.

— DORS/2014-158, art. 16

**16** Le paragraphe C.08.002(2), le sous-alinéa C.08.002.01(2)b)(i) ou l'alinéa C.08.002.1(2)a), selon le cas, du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique à la présentation déposée avant l'entrée en vigueur de l'article 1.

— SOR/2014-158, s. 17

**17** Section C.08.003 of the *Food and Drug Regulations*, as it read immediately before the day on which section 1 comes into force, applies to a supplement that is filed before the day on which section 1 comes into force.

— DORS/2014-158, art. 17

**17** L'article C.08.003 du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique au supplément déposé avant l'entrée en vigueur de l'article 1.

— SOR/2014-158, s. 18

**18** If a document referred to in subsection C.01.014.2(1) of the *Food and Drug Regulations* is issued for a drug in respect of an application referred to in section 15 or a submission referred to in section 16, section C.01.014.3 of those Regulations, as it read immediately before the day on which section 1 comes into force, applies in respect of the drug.

— SOR/2014-158, s. 19

**19** If a notice of compliance is issued under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations* for a drug in respect of a submission referred to in section 16, paragraph C.08.002(1)(d) of those Regulations, as it read immediately before the day on which section 1 comes into force, applies in respect of the drug.

— SOR/2014-158, s. 20

**20** If a notice of compliance is issued under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations*, for a drug in respect of a supplement referred to in section 17, paragraph C.08.003(1)(d) of those Regulations, as it read immediately before the day on which section 1 comes into force, applies in respect of the drug.

— SOR/2014-158, s. 21

**21** In sections 22 to 32, ***drug*** means a drug for human use in dosage form other than a drug that belongs to one of the following classes:

**(a)** prescription drugs; or

**(b)** drugs that are permitted to be sold without a prescription but that are administered only under the supervision of a practitioner.

— SOR/2014-158, s. 22

**22** Section A.01.016 of the *Food and Drug Regulations*, as it read immediately before the day on which section 1 comes into force, applies in respect of a drug during the period that begins on the day on which section 1 comes into force and that ends immediately before the day on which section 3 comes into force.

— DORS/2014-158, art. 18

**18** Dans le cas où le document prévu au paragraphe C.01.014.2(1) du *Règlement sur les aliments et drogues* est remis à l'égard d'une drogue qui fait l'objet de la demande visée à l'article 15 ou de la présentation visée à l'article 16, l'article C.01.014.3 de ce règlement, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique en ce qui concerne la drogue en question.

— DORS/2014-158, art. 19

**19** Dans le cas où un avis de conformité est délivré à l'égard d'une drogue en application des articles C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues* relativement à une présentation visée à l'article 16, l'alinéa C.08.002(1)d) de ce règlement, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique en ce qui concerne la drogue en question.

— DORS/2014-158, art. 20

**20** Dans le cas où un avis de conformité est délivré à l'égard d'une drogue en application des articles C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues* relativement à un supplément visé à l'article 17, l'alinéa C.08.003(1)d) de ce règlement, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique en ce qui concerne la drogue en question.

— DORS/2014-158, art. 21

**21** Pour l'application des articles 22 à 32, ***drogue*** s'entend de toute drogue pour usage humain sous forme posologique autre qu'une drogue qui appartient à l'une des catégories suivantes :

**a)** les drogues sur ordonnance;

**b)** les drogues qui peuvent être vendues sans ordonnance mais qui sont administrées uniquement sous la surveillance d'un praticien.

— DORS/2014-158, art. 22

**22** L'article A.01.016 du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique à une drogue durant la période qui commence à l'entrée en vigueur de l'article 1 et qui se termine à l'entrée en vigueur de l'article 3.

— SOR/2014-158, s. 23

**23** Section A.01.017 of the *Food and Drug Regulations*, as enacted by section 2, and section C.01.004.01 of those Regulations, as enacted by subsection 4(1), do not apply in respect of a drug during the period that begins on the day on which section 1 comes into force and that ends immediately before the day on which section 3 comes into force.

— DORS/2014-158, art. 23

**23** L'article A.01.017 du *Règlement sur les aliments et drogues*, édicté par l'article 2, et l'article C.01.004.01 de ce règlement, édicté par le paragraphe 4(1), ne s'appliquent pas à une drogue durant la période qui commence à l'entrée en vigueur de l'article 1 et qui se termine à l'entrée en vigueur de l'article 3.

— SOR/2014-158, s. 24

**24** Paragraph C.01.014.1(2)(m) of the *Food and Drug Regulations*, as it read immediately before the day on which section 1 comes into force, applies to an application for a drug identification number in respect of a drug that is made under subsection C.01.014.1(1) of those Regulations during the period that begins on the day on which section 1 comes into force and that ends immediately before the day on which section 3 comes into force.

— DORS/2014-158, art. 24

**24** L'alinéa C.01.014.1(2)m) du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique à toute demande d'identification numérique présentée en vertu du paragraphe C.01.014.1(1) de ce règlement relativement à une drogue durant la période qui commence à l'entrée en vigueur de l'article 1 et qui se termine à l'entrée en vigueur de l'article 3.

— SOR/2014-158, s. 25

**25** Paragraph C.08.002(2)(j) of the *Food and Drug Regulations*, as it read immediately before the day on which section 1 comes into force, applies to a submission in respect of a drug that is filed during the period that begins on the day on which section 1 comes into force and that ends immediately before the day on which section 3 comes into force.

— DORS/2014-158, art. 25

**25** L'alinéa C.08.002(2)j) du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique à la présentation déposée relativement à une drogue durant la période qui commence à l'entrée en vigueur de l'article 1 et qui se termine à l'entrée en vigueur de l'article 3.

— SOR/2014-158, s. 26

**26** If a document referred to in subsection C.01.014.2(1) of the *Food and Drug Regulations* is issued for a drug in respect of an application referred to in section 24 or a submission referred to in section 25, section C.01.014.3 of those Regulations, as it read immediately before the day on which section 1 comes into force, applies in respect of the drug.

— DORS/2014-158, art. 26

**26** Dans le cas où le document prévu au paragraphe C.01.014.2(1) du *Règlement sur les aliments et drogues* est remis à l'égard d'une drogue qui fait l'objet de la demande visée à l'article 24 ou de la présentation visée à l'article 25, l'article C.01.014.3 de ce règlement, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique en ce qui concerne la drogue en question.

— SOR/2014-158, s. 27

**27** If a notice of compliance is issued under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations* for a drug in respect of a submission referred to in section 25, paragraph C.08.002(1)(d) of those Regulations, as it read immediately before the day on which section 1 comes into force, applies in respect of the drug.

— DORS/2014-158, art. 27

**27** Dans le cas où un avis de conformité est délivré à l'égard d'une drogue en application des articles C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues* relativement à une présentation visée à l'article 25, l'alinéa C.08.002(1)d) de ce règlement, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique en ce qui concerne la drogue en question.

— SOR/2014-158, s. 28

**28** If a notice of compliance is issued under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations* for a drug in respect of a supplement that is filed

— DORS/2014-158, art. 28

**28** Dans le cas où un avis de conformité est délivré à l'égard d'une drogue en application des articles C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues*

during the period that begins on the day on which section 1 comes into force and that ends immediately before the day on which section 3 comes into force, paragraph C.08.003(1)(d) of those Regulations, as it read immediately before the day on which section 1 comes into force, applies in respect of the drug.

relativement à un supplément déposé durant la période qui commence à l'entrée en vigueur de l'article 1 et qui se termine à l'entrée en vigueur de l'article 3, l'alinéa C.08.003(1)d) de ce règlement, dans sa version antérieure à l'entrée en vigueur de l'article 1, s'applique en ce qui concerne la drogue en question.

— SOR/2014-158, s. 29

— DORS/2014-158, art. 29

**29** Paragraphs C.01.014.1(2)(m.1) and (o) of the *Food and Drug Regulations*, as enacted by subsection 7(3), do not apply to an application referred to in section 24.

**29** Les alinéas C.01.014.1(2)m.1) et o) du *Règlement sur les aliments et drogues*, édictés par le paragraphe 7(3), ne s'appliquent pas à la demande visée à l'article 24.

— SOR/2014-158, s. 30

— DORS/2014-158, art. 30

**30** Paragraphs C.08.002(2)(j.1) and (o) of the *Food and Drug Regulations*, as enacted by subsections 10(3) and (5) respectively, do not apply to a submission referred to in section 25.

**30** Les alinéas C.08.002(2)j.1) et o) du *Règlement sur les aliments et drogues*, édictés par les paragraphes 10(3) et (5) respectivement, ne s'appliquent pas à la présentation visée à l'article 25.

— SOR/2014-158, s. 31

— DORS/2014-158, art. 31

**31** If a notice of compliance is issued under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations* for a drug, paragraph C.08.003(2)(g.1) of those Regulations, as enacted by subsection 13(3), does not apply in respect of the drug during the period that begins on the day on which section 1 comes into force and that ends immediately before the day on which section 3 comes into force.

**31** Dans le cas où un avis de conformité est délivré à l'égard d'une drogue en application des articles C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues*, l'alinéa C.08.003(2)g.1) de ce règlement, édicté par le paragraphe 13(3), ne s'applique pas en ce qui concerne la drogue durant la période qui commence à l'entrée en vigueur de l'article 1 et qui se termine à l'entrée en vigueur de l'article 3.

— SOR/2014-158, s. 32

— DORS/2014-158, art. 32

**32** Subsection C.08.003(3.1) of the *Food and Drug Regulations*, as enacted by subsection 13(4), does not apply to a supplement referred to in section 28.

**32** Le paragraphe C.08.003(3.1) du *Règlement sur les aliments et drogues*, édicté par le paragraphe 13(4), ne s'applique pas au supplément visé à l'article 28.

— SOR/2016-74, s. 17

— DORS/2016-74, art. 17

**17 (1)** In this section,

***former Regulations*** means the *Food and Drug Regulations* as they read immediately before the day on which these Regulations come into force. (*règlement antérieur*)

***saccharin sweetener*** means a saccharin sweetener as defined in subsection E.01.001(1) of the former Regulations. (*édulcorant à la saccharine*)

**17 (1)** Les définitions qui suivent s'appliquent au présent article.

***édulcorant à la saccharine*** s'entend au sens du paragraphe E.01.001(1) du règlement antérieur. (*saccharin sweetener*)

***règlement antérieur*** Le *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur du présent règlement. (*former Regulations*)

**(2)** Despite sections 11 to 16, if, on the day immediately before the day on which these Regulations come into force, a saccharin sweetener was sold in accordance with Part E of the former Regulations, the sale of the sweetener may continue in accordance with Part E of the former

**(2)** Malgré les articles 11 à 16, si, le jour précédant la date d'entrée en vigueur du présent règlement, un édulcorant à la saccharine était vendu en conformité avec la partie E du règlement antérieur, la vente d'un tel édulcorant peut se poursuivre conformément à la partie E du

Regulations for a period of one year beginning on the day on which these Regulations come into force.

— SOR/2016-305, s. 76

**76 (1)** The following definitions apply in this section.

***former Regulations*** means the provisions of the *Food and Drug Regulations* that are amended or repealed by these Regulations — other than those that are amended or repealed by any of sections 12 or 49 to 56 — as they read immediately before the day on which these Regulations come into force. (*règlement antérieur*)

***prepackaged product*** has the same meaning as in subsection B.01.001(1) of the *Food and Drug Regulations*. (*produit préemballé*)

**(2)** Despite these Regulations, a prepackaged product may be labelled in accordance with the former Regulations or these Regulations until the day that is five years after the day on which these Regulations come into force.

— SOR/2017-76, s. 11

**11 (1)** In this section, *fabricate*, *package/label*, *import* and *active pharmaceutical ingredient* have the same meaning as in subsection C.01A.001(1) of the *Food and Drug Regulations*.

**(2)** Every person who, on or before the day on which section 7, subsections 8(1) and (3) and section 9 of these Regulations come into force, fabricates, packages/labels, tests or imports an active pharmaceutical ingredient for veterinary use may continue to do so without an establishment licence if they submit an application for a licence under section C.01A.005 of the *Food and Drug Regulations* within 14 months after that day.

**(3)** Subsection (2) applies until the determination of the licence application is made under section C.01A.008 or C.01A.010 of the *Food and Drug Regulations*.

— SOR/2017-259, s. 24

**24** In sections 25 and 26, ***drug*** means a drug that is listed in Schedule C to the *Food and Drugs Act*, that is in dosage form and that was available for sale in Canada before the day on which these Regulations come into force.

règlement antérieur pour une période d'un an à compter de la date d'entrée en vigueur du présent règlement.

— DORS/2016-305, art. 76

**76 (1)** Les définitions qui suivent s'appliquent au présent article.

***produit préemballé*** S'entend au sens du paragraphe B.01.001(1) du *Règlement sur les aliments et drogues*. (*prepackaged product*)

***règlement antérieur*** S'entend des dispositions du *Règlement sur les aliments et drogues* qui sont modifiées ou abrogées par le présent règlement — à l'exception de celles qui sont modifiées ou abrogées par l'un des articles 12 ou 49 à 56 — dans leur version antérieure à l'entrée en vigueur du présent règlement. (*former Regulations*)

**(2)** Malgré le présent règlement, un produit préemballé peut être étiqueté conformément au règlement antérieur ou au présent règlement jusqu'à l'expiration d'une période de cinq ans suivant l'entrée en vigueur du présent règlement.

— DORS/2017-76, art. 11

**11 (1)** Au présent article, *manufacturer*, *emballer-étiqueter*, *importer* et *ingrédient actif pharmaceutique* s'entendent au sens du paragraphe C.01A.001(1) du *Règlement sur les aliments et drogues*.

**(2)** Toute personne qui, à la date d'entrée en vigueur de l'article 7, des paragraphes 8(1) et (3) et de l'article 9 du présent règlement ou avant celle-ci, manufacture, emballe-étiquette, analyse ou importe un ingrédient actif pharmaceutique pour usage vétérinaire peut continuer à exercer l'activité à l'égard de cet ingrédient sans être titulaire d'une licence d'établissement s'il présente une demande de licence à cet effet, conformément à l'article C.01A.005 du *Règlement sur les aliments et drogues* dans les quatorze mois suivant cette date.

**(3)** Le paragraphe (2) s'applique jusqu'à la prise de la décision relative à la demande de licence aux termes des articles C.01A.008 ou C.01A.010 du *Règlement sur les aliments et drogues*.

— DORS/2017-259, art. 24

**24** Aux articles 25 et 26, ***drogue*** s'entend d'une drogue sous forme posologique visée à l'annexe C de la *Loi sur les aliments et drogues* disponible à la vente au Canada avant l'entrée en vigueur du présent règlement.

— SOR/2017-259, s. 25

**25 (1)** Despite these Regulations, if the labels of a drug display information in accordance with one of the following provisions of the *Food and Drug Regulations*, as they read immediately before the day on which these Regulations come into force, that provision continues to apply in respect of the drug:

**(a)** subsection C.03.202(1);

**(b)** subsection C.03.203(1); or

**(c)** section C.03.208.

**(2)** Subsection (1) ceases to apply in respect of a drug

**(a)** if an application for a drug identification number for the drug is made under subsection C.01.014.1(1) of the *Food and Drug Regulations* within six months after the day on which these Regulations come into force,

**(i)** in the case of a *kit* as defined in section C.03.205 of the *Food and Drug Regulations*, 24 months after the day on which the final decision on the application is made, and

**(ii)** in the case of any other drug, 12 months after the day on which the final decision on the application is made; and

**(b)** if an application for a drug identification number for the drug is not made under subsection C.01.014.1(1) of the *Food and Drug Regulations* within six months after the day on which these Regulations come into force,

**(i)** in the case of a *kit* as defined in section C.03.205 of the *Food and Drug Regulations*, 30 months after the day on which these Regulations come into force, and

**(ii)** in the case of any other drug, 18 months after the day on which these Regulations come into force.

— DORS/2017-259, art. 25

**25 (1)** Malgré le présent règlement, si les étiquettes d'une drogue contiennent les renseignements prévus à l'une des dispositions ci-après du *Règlement sur les aliments et drogues* dans sa version antérieure à l'entrée en vigueur du présent règlement, cette disposition continue de s'appliquer à l'égard de la drogue :

**a)** le paragraphe C.03.202(1);

**b)** le paragraphe C.03.203(1);

**c)** l'article C.03.208.

**(2)** Le paragraphe (1) cesse de s'appliquer à l'égard d'une drogue :

**a)** dans le cas où une demande d'identification numérique est présentée en vertu du paragraphe C.01.014.1(1) du *Règlement sur les aliments et drogues* à l'égard de la drogue au plus tard six mois après l'entrée en vigueur du présent règlement :

**(i)** s'agissant d'une *trousse* au sens de l'article C.03.205 du *Règlement sur les aliments et drogues*, à l'expiration d'une période de vingt-quatre mois après la date à laquelle la décision définitive est prise à l'égard de la demande,

**(ii)** s'agissant de toute autre drogue, à l'expiration d'une période de douze mois après la date à laquelle la décision définitive est prise à l'égard de la demande;

**b)** dans le cas où une demande d'identification numérique n'est pas présentée en vertu du paragraphe C.01.014.1(1) du *Règlement sur les aliments et drogues* à l'égard de la drogue au plus tard six mois après l'entrée en vigueur du présent règlement :

**(i)** s'agissant d'une *trousse* au sens de l'article C.03.205 du *Règlement sur les aliments et drogues*, à l'expiration d'une période de trente mois après l'entrée en vigueur du présent règlement,

**(ii)** s'agissant de toute autre drogue, à l'expiration d'une période de dix-huit mois après l'entrée en vigueur du présent règlement.

— SOR/2017-259, s. 26

**26 (1)** Despite these Regulations, subsection C.01.014(2) of the *Food and Drug Regulations*, as it read immediately before the day on which these Regulations come into force, continues to apply in respect of a drug.

— DORS/2017-259, art. 26

**26 (1)** Malgré le présent règlement, le paragraphe C.01.014(2) du *Règlement sur les aliments et drogues*, dans sa version antérieure à l'entrée en vigueur du présent règlement, continue de s'appliquer à l'égard de toute drogue.

**(2)** Subsection (1) ceases to apply in respect of a drug

**(a)** if an application for a drug identification number for the drug is made under subsection C.01.014.1(1) of the *Food and Drug Regulations* within six months after the day on which these Regulations come into force and a document referred to in subsection C.01.014.2(1) of the *Food and Drug Regulations* is issued in respect of the drug, on the day on which the document is issued;

**(b)** if an application for a drug identification number for the drug is made under subsection C.01.014.1(1) of the *Food and Drug Regulations* within six months after the day on which these Regulations come into force and the final decision on the application is a refusal to issue a document referred to in subsection C.01.014.2(1) of the *Food and Drug Regulations* in respect of the drug,

**(i)** in the case of a ***kit*** as defined in section C.03.205 of the *Food and Drug Regulations*, 24 months after the day on which the final decision is made, and

**(ii)** in the case of any other drug, 12 months after the day on which the final decision is made; and

**(c)** in the cases referred to in paragraph 25(2)(b), at the end of the period referred to in subparagraph 25(2)(b)(i) or (ii), as the case may be.

**(2)** Le paragraphe (1) cesse de s'appliquer à l'égard d'une drogue :

**a)** dans le cas où une demande d'identification numérique est présentée en vertu du paragraphe C.01.014.1(1) du *Règlement sur les aliments et drogues* à l'égard de la drogue au plus tard six mois après l'entrée en vigueur du présent règlement et que le document prévu au paragraphe C.01.014.2(1) du *Règlement sur les aliments et drogues* est délivré à l'égard de la drogue, à la date de délivrance du document;

**b)** dans le cas où une demande d'identification numérique est présentée en vertu du paragraphe C.01.014.1(1) du *Règlement sur les aliments et drogues* à l'égard de la drogue au plus tard six mois après l'entrée en vigueur du présent règlement et que la décision définitive prise à l'égard de la demande est le refus de délivrer le document prévu au paragraphe C.01.014.2(1) du *Règlement sur les aliments et drogues* :

**(i)** s'agissant d'une ***trousse*** au sens de l'article C.03.205 du *Règlement sur les aliments et drogues*, à l'expiration d'une période de vingt-quatre mois après la date de la prise de la décision,

**(ii)** s'agissant de toute autre drogue, à l'expiration d'une période de douze mois après la date de la prise de la décision;

**c)** dans les cas visés à l'alinéa 25(2)b), à l'expiration du délai prévu aux sous-alinéas 25(2)b)(i) ou (ii), selon le cas.

— SOR/2019-62, s. 4

— DORS/2019-62, art. 4

**4** In sections 5 and 6, ***information in respect of a clinical trial*** has the same meaning as in section C.08.009.1 of the *Food and Drug Regulations*.

**4** Aux articles 5 et 6, ***renseignements relatifs à un essai clinique*** s'entend au sens de l'article C.08.009.1 du *Règlement sur les aliments et drogues*.

— SOR/2019-62, s. 5

— DORS/2019-62, art. 5

**5** Despite subsection C.08.009.2(1) of the *Food and Drug Regulations*, information in respect of a clinical trial that is confidential business information and that is contained in a submission or supplement with respect to which one of the following circumstances occurred before the day on which these Regulations come into force ceases to be confidential business information on the day on which these Regulations come into force:

**(a)** the Minister issued a notice of compliance under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations*;

**5** Malgré le paragraphe C.08.009.2(1) du *Règlement sur les aliments et drogues*, les renseignements relatifs à un essai clinique qui sont des renseignements commerciaux confidentiels et qui sont contenus dans une présentation ou un supplément relativement auxquels l'une des circonstances ci-après est survenue avant la date d'entrée en vigueur du présent règlement cessent d'être des renseignements commerciaux confidentiels à la date d'entrée en vigueur du présent règlement :

**(b)** the Minister, after having notified the manufacturer under paragraph C.08.004(1)(b) or C.08.004.01(1)(b) of the *Food and Drug Regulations* that the submission or supplement did not comply with section C.08.002, C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1 of those Regulations, issued a notice to the manufacturer, in view of the omission by the manufacturer to amend the submission or supplement, that indicated that the submission or supplement was considered to have been withdrawn;

**(c)** the Minister notified the manufacturer under paragraph C.08.004(3)(b) or C.08.004.01(3)(b) of the *Food and Drug Regulations* that the submission or supplement did not comply with section C.08.002, C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1 of those Regulations.

**a)** le ministre a délivré un avis de conformité en application des articles C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues*;

**b)** le ministre, ayant informé le fabricant, en application des alinéas C.08.004(1)b) ou C.08.004.01(1)b) du *Règlement sur les aliments et drogues*, que la présentation ou le supplément n'était pas conforme aux articles C.08.002, C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1 de ce règlement, a délivré un avis au fabricant informant ce dernier que la présentation ou le supplément était considéré comme ayant été retiré vu l'omission du fabricant de modifier la présentation ou le supplément;

**c)** le ministre a informé le fabricant, en application des alinéas C.08.004(3)b) ou C.08.004.01(3)b) du *Règlement sur les aliments et drogues*, que la présentation ou le supplément n'était pas conforme aux articles C.08.002, C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1 de ce règlement.

— SOR/2019-62, s. 6

— DORS/2019-62, art. 6

**6 (1)** This section applies to information in respect of a clinical trial that is confidential business information and that is contained in a submission or supplement

**(a)** that was filed within 90 days before the day on which these Regulations come into force; and

**(b)** with respect to which the Minister notified the manufacturer under paragraph C.08.004(1)(b) or C.08.004.01(b) of the *Food and Drug Regulations* before the day on which these Regulations come into force that the submission or supplement did not comply with section C.08.002, C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1 of the *Food and Drug Regulations*.

**6 (1)** Le présent article s'applique aux renseignements relatifs à un essai clinique qui sont des renseignements commerciaux confidentiels et qui sont contenus dans une présentation ou un supplément :

**a)** déposés par le fabricant dans les quatre-vingt-dix jours précédant l'entrée en vigueur du présent règlement;

**b)** relativement auxquels le ministre a informé le fabricant, en application des alinéas C.08.004(1)b) ou C.08.004.01(1)b) du *Règlement sur les aliments et drogues*, avant la date d'entrée en vigueur du présent règlement, que la présentation ou le supplément n'était pas conforme aux articles C.08.002, C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1 du *Règlement sur les aliments et drogues*.

**(2)** Despite subsection C.08.009.2(1) of the *Food and Drug Regulations*, information in respect of a clinical trial that is contained in a submission or supplement ceases to be confidential business information upon the expiry of whichever of the following periods applies if the manufacturer does not amend the submission or supplement within that period:

**(a)** 90 days after the day on which these Regulations come into force; or

**(b)** any longer period specified by the Minister.

**(2)** Malgré le paragraphe C.08.009.2(1) du *Règlement sur les aliments et drogues*, les renseignements relatifs à un essai clinique qui sont contenus dans une présentation ou un supplément cessent d'être des renseignements commerciaux confidentiels à l'expiration du délai ci-après qui s'applique si le fabricant ne modifie pas la présentation ou le supplément dans ce délai :

**a)** quatre-vingt-dix jours suivant la date à laquelle le présent règlement entre en vigueur;

**b)** tout délai plus long imparti par le ministre.

— SOR/2019-62, s. 7

**7** Sections 5 and 6 do not apply to information referred to in subsection C.08.009.2(2) of the *Food and Drug Regulations*.

— SOR/2019-98, s. 6

**6** Despite these Regulations, beer may, until December 13, 2022, be sold in accordance with the *Food and Drug Regulations*, as they read immediately before the day on which these Regulations come into force.

— SOR/2019-217, s. 2

**2** Despite these Regulations, vodka may, until December 13, 2022, be sold in accordance with the *Food and Drug Regulations*, as they read immediately before the day on which these Regulations come into force.

— SOR/2021-45, s. 18

**18 (1)** The following definitions apply in this section and in sections 19 to 30:

***authorization*** means an authorization that was issued under the ISAD Interim Order in respect of a new drug on the basis of

**(a)** an application submitted under section 3 of the ISAD Interim Order other than an application that was submitted on the basis of a direct or indirect comparison of the new drug to another drug; or

**(b)** an application submitted under section 4 of the ISAD Interim Order. (*autorisation*)

***supplement*** means a supplement to a new drug submission that is filed under section C.08.003 of the *Food and Drug Regulations*. (*supplément*)

**(2)** Unless the context otherwise requires, words and expressions used in this section and in sections 19 to 30 have the meanings assigned by the *Food and Drug Regulations*.

— SOR/2021-45, s. 19

**19 (1)** Despite subsection 2(1) of the ISAD Interim Order, the manufacturer of a new drug who is the holder of an authorization in respect of the new drug may file a new drug submission under section C.08.002 of the *Food and Drug Regulations*, or a supplement, for the new drug and subsection C.01.014.1(3) and Division 8 of Part C of those Regulations apply in respect of the submission or supplement.

— DORS/2019-62, art. 7

**7** Les articles 5 et 6 ne s'appliquent pas aux renseignements visés au paragraphe C.08.009.2(2) du *Règlement sur les aliments et drogues*.

— DORS/2019-98, art. 6

**6** Malgré le présent règlement, la bière peut être vendue, jusqu'au 13 décembre 2022, conformément au *Règlement sur les aliments et drogues* dans sa version antérieure à la date d'entrée en vigueur du présent règlement.

— DORS/2019-217, art. 2

**2** Malgré le présent règlement, la vodka peut être vendue, jusqu'au 13 décembre 2022, conformément au *Règlement sur les aliments et drogues* dans sa version antérieure à la date d'entrée en vigueur du présent règlement.

— DORS/2021-45, art. 18

**18 (1)** Les définitions qui suivent s'appliquent au présent article et aux articles 19 à 30 .

***autorisation*** Autorisation délivrée en vertu de l'arrêté d'urgence IVPD à l'égard d'une drogue nouvelle en réponse :

**a)** ou bien à une demande présentée au titre de l'article 3 de l'arrêté d'urgence IVPD qui n'est pas présentée sur la base d'une comparaison directe ou indirecte entre la drogue nouvelle et une autre drogue;

**b)** ou bien à une demande présentée au titre de l'article 4 de l'arrêté d'urgence IVPD. (*authorization*)

***supplément*** Supplément à une présentation de drogue nouvelle déposé aux termes de l'article C.08.003 du *Règlement sur les aliments et drogues*. (*supplement*)

**(2)** Sauf indication contraire du contexte, les termes utilisés dans le présent article et dans les articles 19 à 30 s'entendent au sens du *Règlement sur les aliments et drogues*.

— DORS/2021-45, art. 19

**19 (1)** Malgré le paragraphe 2(1) de l'arrêté d'urgence IVPD, le fabricant d'une drogue contre la COVID-19 qui est titulaire d'une autorisation à l'égard de la drogue nouvelle peut déposer à l'égard de la drogue nouvelle une présentation de drogue nouvelle en application de l'article C.08.002 du *Règlement sur les aliments et drogues* ou un supplément et le paragraphe C.01.014.1(3) et le

**(2)** The authorization is revoked if the manufacturer does not file a new drug submission under section C.08.002 of the *Food and Drug Regulations*, or a supplement, for the new drug within one of the following periods, as applicable:

**(a)** in the case of an authorization that was issued before the day on which this section comes into force, 90 days after the day on which this section comes into force; or

**(b)** in the case of an authorization that is issued on or after the day on which this section comes into force, 90 days after the day on which the authorization is issued.

**(3)** If the manufacturer files a new drug submission under section C.08.002 of the *Food and Drug Regulations*, or a supplement, for the new drug within the applicable period set out in paragraph (2)(a) or (b), the authorization is revoked when one of the following circumstances occurs:

**(a)** the Minister issues a notice of compliance under section C.08.004 of those Regulations in respect of the submission or supplement;

**(b)** if the Minister issues a notice to the manufacturer under paragraph C.08.004(1)(b) of those Regulations in respect of the submission or supplement and the manufacturer does not amend the submission or supplement in accordance with subsection C.08.004(2) of those Regulations, the period referred to in subsection C.08.004(2) expires;

**(c)** the Minister issues a notice to the manufacturer under paragraph C.08.004(3)(b) of those Regulations in respect of the submission or supplement.

— SOR/2021-45, s. 20

**20** The *Food and Drug Regulations* — other than the following provisions — do not apply to a new drug in respect of which an authorization was issued to the manufacturer of the new drug if, immediately before the day on which this section comes into force, the authorization was neither suspended nor revoked:

**(a)** sections A.01.014, A.01.015, A.01.022 to A.01.043, A.01.050, A.01.051 and A.01.060.1 to A.01.068;

**(b)** sections C.01.004 to C.01.011, C.01.014.9, C.01.014.10, C.01.017 and C.01.019, subsection

titre 8 de la partie C du même règlement s'appliquent à l'égard de la présentation ou du supplément.

**(2)** L'autorisation est révoquée si le fabricant ne dépose pas, à l'égard de la drogue nouvelle, une présentation de drogue nouvelle en application de l'article C.08.002 du *Règlement sur les aliments et drogues* ou un supplément, selon le cas, dans celui des délais suivants qui s'applique :

**a)** s'agissant d'une autorisation délivrée avant l'entrée en vigueur du présent article, au plus tard quatre-vingt-dix jours après la date d'entrée en vigueur du présent article;

**b)** s'agissant d'une autorisation délivrée à la date d'entrée en vigueur du présent article ou après cette date, au plus tard quatre-vingt-dix jours après la date de délivrance de l'autorisation.

**(3)** Si le fabricant dépose à l'égard de la drogue nouvelle, une présentation de drogue nouvelle en application de l'article C.08.002 du *Règlement sur les aliments et drogues* ou un supplément dans l'un des délais visés aux alinéas (2)a) et b), l'autorisation est révoquée au moment où, selon le cas :

**a)** le ministre délivre, relativement à la présentation ou au supplément, un avis de conformité en vertu de l'article C.08.004 de ce règlement;

**b)** dans le cas où le ministre délivre, relativement à la présentation ou au supplément, un avis au fabricant en application de l'alinéa C.08.004(1)b) de ce règlement, et le fabricant ne modifie pas la présentation ou le supplément conformément au paragraphe C.08.004(2) de ce règlement, le délai visé à ce paragraphe expire;

**c)** le ministre délivre, relativement à la présentation ou au supplément, un avis au fabricant en vertu de l'alinéa C.08.004(3)b) de ce règlement.

— DORS/2021-45, art. 20

**20** Le *Règlement sur les aliments et drogues* — à l'exception des dispositions ci-après — ne s'applique pas à une drogue nouvelle à l'égard de laquelle une autorisation a été délivrée au fabricant de la drogue nouvelle si l'autorisation n'était pas suspendue ou révoquée à la date d'entrée en vigueur du présent article :

**a)** les articles A.01.014, A.01.015, A.01.022 à A.01.043, A.01.050, A.01.051 et A.01.060.1 à A.01.068;

**b)** les articles C.01.004 à C.01.011, C.01.014.9, C.01.014.10, C.01.017 et C.01.019, le paragraphe

C.01.020(1) and sections C.01.020.1, C.01.040.3 to C.01.053, C.01.064 to C.01.069 and C.01.401;

**(c)** the provisions of Divisions 1A and 2 of Part C;

**(d)** sections C.03.202, C.03.203 and C.03.206 to C.03.209; and

**(e)** sections C.04.013 to C.04.016, C.04.019 and C.04.020.

C.01.020(1) et les articles C.01.020.1, C.01.040.3 à C.01.053, C.01.064 à C.01.069 et C.01.401;

**c)** les dispositions du titre 1A et du titre 2 de la partie C;

**d)** les articles C.03.202, C.03.203 et C.03.206 à C.03.209;

**e)** les articles C.04.013 à C.04.016, C.04.019 et C.04.020.

— SOR/2021-45, s. 21

— DORS/2021-45, art. 21

**21 (1)** The drug identification number that was assigned under subsection 7(1) of the ISAD Interim Order in relation to a new drug that is referred to in section 20 continues to be assigned for the distinct combination of dosage form, strength and route of administration of the new drug.

**(2)** A reference in Divisions 1 and 1A of Part C of the *Food and Drug Regulations* — other than in sections C.01.050, C.01.052, C.01.053 and C.01A.003 — to a drug identification number is deemed to include a reference to the drug identification number that is referred to in subsection (1).

**(3)** A reference in section C.01A.003 of the *Food and Drug Regulations* to a distributor who holds a drug identification number is deemed to include a reference to the manufacturer who is referred to in section 20.

**21 (1)** L'identification numérique attribuée en vertu du paragraphe 7(1) de l'arrêté d'urgence IVPD à l'égard d'une drogue nouvelle visée à l'article 20 demeure attribuée à la combinaison distincte de forme posologique, de concentration et de voie d'administration de la drogue nouvelle.

**(2)** La mention d'une identification numérique aux titres 1 et 1A de la partie C du *Règlement sur les aliments et drogues*, à l'exception des articles C.01.050, C.01.052, C.01.053 et de l'article C.01A.003, vaut également mention de l'identification numérique visée au paragraphe (1).

**(3)** La mention du distributeur ayant obtenu une identification numérique à l'article C.01A.003 du *Règlement sur les aliments et drogues* vaut également mention du fabricant visé à l'article 20.

— SOR/2021-45, s. 22

— DORS/2021-45, art. 22

**22** The manufacturer who is referred to in section 20 shall, within 15 days after the day on which the new drug is first sold in Canada, notify the Minister, in writing, of the date of that first sale, unless the manufacturer has already done so under section 8 of the ISAD Interim Order.

**22** Le fabricant visé à l'article 20 doit, dans les quinze jours suivant la date de la première vente de la drogue nouvelle au Canada, notifier par écrit cette date au ministre, à moins qu'il ne l'ait déjà fait en application de l'article 8 de l'arrêté d'urgence IVPD.

— SOR/2021-45, s. 23

— DORS/2021-45, art. 23

**23** The manufacturer who is referred to in section 20 shall, within 15 days after the day on which the manufacturer permanently discontinues the sale in Canada of the new drug, notify the Minister, in writing, of the date on which the sale was permanently discontinued, unless the manufacturer has already done so under section 9 of the ISAD Interim order.

**23** Le fabricant visé à l'article 20 doit, dans les quinze jours suivant la date à laquelle il cesse définitivement de vendre la drogue nouvelle au Canada, notifier par écrit cette date au ministre, à moins qu'il ne l'ait déjà fait en application de l'article 9 de l'arrêté d'urgence IVPD.

— SOR/2021-45, s. 24

— DORS/2021-45, art. 24

**24** Despite the definition *drug* in section C.01.014.8 of the *Food and Drug Regulations*, sections C.01.014.9 and

**24** Malgré la définition de *drogue* à l'article C.01.014.8 du *Règlement sur les aliments et drogues*, les articles

C.01.014.10 of those Regulations apply, with any necessary modifications, to the manufacturer who is referred to in section 20 in respect of the new drug.

— SOR/2021-45, s. 25

**25 (1)** Subject to subsection (2), sections 20 to 24 cease to apply to a new drug that is referred to in section 20 90 days after the day on which this section comes into force.

**(2)** If the manufacturer who is referred to in section 20 files, for the new drug, a new drug submission under section C.08.002 of the *Food and Drug Regulations* or a supplement, within the period referred to in subsection (1) or has filed such a submission or supplement before the day on which this section comes into force, sections 20 to 24 cease to apply to the new drug when one of the circumstances referred to in paragraphs 19(3)(a) to (c) occurs.

— SOR/2021-45, s. 26

**26 (1)** Despite subsection 1(3) of the ISAD Interim Order, for the purposes of the definition *innovative drug* in subsection C.08.004.1(1) of the *Food and Drug Regulations*, a medicinal ingredient is not considered to be approved in a drug by reason of the Minister having issued or amended an authorization under the ISAD Interim Order in respect of a COVID-19 drug that contains the medicinal ingredient.

**(2)** Subsection (1) ceases to apply on the day on which the ISAD Interim Order ceases to have effect.

— SOR/2021-45, s. 27

**27 (1)** Any terms and conditions of an establishment licence — other than those that are imposed by the Minister under the ISAD Interim Order — are deemed to be imposed by the Minister under subsection C.01A.008(4) of the *Food and Drug Regulations*.

**(2)** Any terms and conditions of an establishment licence that are imposed by the Minister under the ISAD Interim Order are deemed to be imposed by the Minister under section C.01A.012.1 of the *Food and Drug Regulations*.

— SOR/2021-45, s. 28

**28 (1)** Despite subsection 26(1) of the ISAD Interim Order, any establishment licence that is referred to in that subsection is not cancelled immediately before the ISAD Interim Order ceases to have effect if the holder of the establishment licence notifies the Minister in writing,

C.01.014.9 et C.01.014.10 du même règlement s'appliquent, avec les adaptations nécessaires, au fabricant visé à l'article 20 relativement à la drogue nouvelle.

— DORS/2021-45, art. 25

**25 (1)** Sous réserve du paragraphe (2), les articles 20 à 24 cessent de s'appliquer à une drogue nouvelle visée à l'article 20 à l'expiration d'une période de quatre-vingt-dix jours suivant la date à laquelle le présent article entre en vigueur.

**(2)** Si le fabricant visé à l'article 20 dépose, à l'égard de la drogue nouvelle, une présentation de drogue nouvelle en application de l'article C.08.002 du *Règlement sur les aliments et drogues*, ou un supplément avant l'expiration de la période visée au paragraphe (1) — ou a déposé cette présentation ou ce supplément avant le jour où le présent article entre en vigueur —, les articles 20 à 24 cessent de s'appliquer à la drogue nouvelle lorsque survient l'un des cas visés aux alinéas 19(3)a) à c).

— DORS/2021-45, art. 26

**26 (1)** Malgré le paragraphe 1(3) de l'arrêté d'urgence IVPD, pour l'application de la définition de *drogue innovante* au paragraphe C.08.004.1(1) du *Règlement sur les aliments et drogues*, un ingrédient médicinal n'est pas considéré comme étant approuvé dans une drogue du fait que le ministre a délivré ou modifié, en vertu de l'arrêté d'urgence IVPD, une autorisation à l'égard d'une drogue contre la COVID-19 qui le contient.

**(2)** Le paragraphe (1) cesse de s'appliquer à la date à laquelle l'arrêté d'urgence IVPD cesse d'avoir effet.

— DORS/2021-45, art. 27

**27 (1)** La licence d'établissement que le ministre assortit de conditions — à l'exception de celles dont il l'assortit au titre de l'arrêté d'urgence IVPD — est réputée assortie de conditions au titre du paragraphe C.01A.008(4) du *Règlement sur les aliments et drogues*.

**(2)** La licence d'établissement que le ministre assortit de conditions au titre de l'arrêté d'urgence IVPD est réputée être assortie de conditions au titre de l'article C.01A.012.1 du *Règlement sur les aliments et drogues*.

— DORS/2021-45, art. 28

**28 (1)** Malgré le paragraphe 26(1) de l'arrêté d'urgence IVPD, la licence d'établissement visée à ce paragraphe n'est pas annulée immédiatement avant que l'arrêté d'urgence cesse d'avoir effet si, avant la date à laquelle l'arrêté d'urgence IVPD cesse d'avoir effet, le titulaire de la

before the day on which the ISAD Interim Order ceases to have effect, of their intention to continue to conduct activities in respect of the COVID-19 drug under the establishment licence.

**(2)** Despite subsection 26(2) of the ISAD Interim Order, any amendment that is referred to in that subsection to an establishment licence continues to have effect after the ISAD Interim Order ceases to have effect if the holder of the establishment licence notifies the Minister in writing, before the day on which the ISAD Interim Order ceases to have effect, of their intention to continue to conduct activities in respect of the COVID-19 drug under the amended establishment licence.

— SOR/2021-45, s. 29

**29** Information and material in respect of a designated COVID-19 drug that were provided under paragraphs 28(1)(a) and (b) or 30(a) of the ISAD Interim Order are deemed to have been provided under, as the case may be, paragraphs C.08.009.03(1)(a) and (b) or C.08.009.05(a) of the *Food and Drug Regulations*.

— SOR/2021-45, s. 30

**30** Section C.08.009.05 of the *Food and Drug Regulations* applies, with any necessary modifications, in respect of a designated COVID-19 drug that was imported under section 28 of the ISAD Interim Order.

— SOR/2021-57, s. 25

**25 (1)** In this section, ***new Regulations*** means the *Food and Drug Regulations* as they read on the day on which these Regulations come into force.

**(2)** A *human milk fortifier*, as defined in section B.25.001 of the new Regulations, that is set out in the *List of Human Milk Fortifiers Sold in Canada as of March 25, 2021* that is published on a Government of Canada website does not need to be labelled in accordance with the new Regulations if it is labelled in the same way as it was labelled immediately before the day on which these Regulations come into force.

**(3)** Subsections (1) and (2) cease to have effect on the second anniversary of the day on which these Regulations come into force.

— SOR/2021-199, s. 9

**9** A person who holds an establishment licence and who created a record in accordance with the *Interim Order Respecting Drug Shortages (Safeguarding the Drug Supply)*, made by the Minister of Health on November

licence d'établissement notifie par écrit au ministre son intention de poursuivre les activités en lien avec la drogue contre la COVID-19 en vertu de la licence d'établissement.

**(2)** Malgré le paragraphe 26(2) de l'arrêté d'urgence IVPD, toute modification visée à ce paragraphe qui est apportée à une licence d'établissement continue d'avoir effet après que l'arrêté d'urgence IVPD cesse d'avoir effet si, avant la date à laquelle l'arrêté d'urgence cesse d'avoir effet, le titulaire de la licence d'établissement notifie par écrit au ministre son intention de poursuivre les activités en lien avec la drogue contre la COVID-19 en vertu de la licence d'établissement modifiée.

— DORS/2021-45, art. 29

**29** Les renseignements et le matériel qui ont été fournis à l'égard d'une drogue désignée contre la COVID-19 aux termes des alinéas 28(1)a) et b) ou 30a) de l'arrêté d'urgence IVPD sont réputés avoir été fournis, selon le cas, aux termes des alinéas C.08.009.03(1)a) et b) ou C.08.009.05a) du *Règlement sur les aliments et drogues*.

— DORS/2021-45, art. 30

**30** L'article C.08.009.05 du *Règlement sur les aliments et drogues* s'applique, avec les adaptations nécessaires, à la drogue désignée contre la COVID-19 importée en vertu de l'article 28 de l'arrêté d'urgence IVPD.

— DORS/2021-57, art. 25

**25 (1)** Au présent article, ***nouveau règlement*** s'entend du *Règlement sur les aliments et drogues* dans sa version à l'entrée en vigueur du présent règlement.

**(2)** Un *fortifiant pour lait humain*, au sens de l'article B.25.001 du nouveau règlement, figurant sur la *Liste des fortifiants pour lait humain vendus au Canada au 25 mars 2021* qui est publiée sur un site Web du gouvernement du Canada n'a pas à être étiqueté conformément au nouveau règlement s'il est étiqueté de la même manière qu'il l'était immédiatement avant la date d'entrée en vigueur du présent règlement.

**(3)** Les paragraphes (1) et (2) cessent d'avoir effet au deuxième anniversaire de l'entrée en vigueur du présent règlement.

— DORS/2021-199, art. 9

**9** Le titulaire d'une licence d'établissement qui a consigné dans un dossier des renseignements en application de l'*Arrêté d'urgence sur les pénuries de drogues (protection de l'approvisionnement en drogues)*, pris par la

27, 2020 and published in Part I of the *Canada Gazette* on December 12, 2020, must retain the record in accordance with subsection C.01.014.14(2) of the *Food and Drug Regulations*.

ministre de la Santé le 27 novembre 2020 et publié dans la Partie I de la *Gazette du Canada* le 12 décembre 2020, conserve le dossier conformément au paragraphe C.01.014.14(2) du *Règlement sur les aliments et drogues*.

— SOR/2021-199, s. 10

— DORS/2021-199, art. 10

**10 (1)** In this section and in sections 11 to 15, ***Exceptional Importation and Shortages Interim Order No. 2*** means the *Interim Order No. 2 Respecting Drugs, Medical Devices and Foods for a Special Dietary Purpose in Relation to COVID-19*, made by the Minister of Health on March 1, 2021 and published in Part I of the *Canada Gazette* on March 20, 2021.

**10 (1)** Au présent article et aux articles 11 à 15, ***Arrêté d'urgence n° 2 sur les importations exceptionnelles et les pénuries*** s'entend de l'*Arrêté d'urgence n° 2 concernant les drogues, les instruments médicaux et les aliments à des fins diététiques spéciales dans le cadre de la COVID-19*, pris par la ministre de la Santé le 1er mars 2021 et publié dans la Partie I de la *Gazette du Canada* le 20 mars 2021.

**(2)** In sections 11 to 15, *designated biocide*, *designated drug*, *designated food for a special dietary purpose*, *designated hand sanitizer* and *designated medical device* have the same meaning as in the Exceptional Importation and Shortages Interim Order No. 2.

**(2)** Aux articles 11 à 15, *aliment à des fins diététiques spéciales désigné*, *biocide désigné*, *désinfectant pour les mains désigné*, *drogue désignée* et *instrument médical désigné* s'entendent au sens de l'Arrêté d'urgence n° 2 sur les importations exceptionnelles et les pénuries.

— SOR/2021-199, s. 11

— DORS/2021-199, art. 11

**11 (1)** Section C.10.008 of the *Food and Drug Regulations* applies in respect of a designated drug that was imported under the Exceptional Importation and Shortages Interim Order No. 2.

**11 (1)** L'article C.10.008 du *Règlement sur les aliments et drogues* s'applique à l'égard de la drogue désignée importée en vertu de l'Arrêté d'urgence n° 2 sur les importations exceptionnelles et les pénuries.

**(2)** Sections C.10.009 to C.10.011 of those Regulations apply to a person that holds an establishment licence in respect of a designated drug that they imported under that Interim Order.

**(2)** Les articles C.10.009 à C.10.011 de ce même règlement s'appliquent au titulaire d'une licence d'établissement à l'égard de la drogue désignée qu'il importe en vertu de cet arrêté d'urgence.

— SOR/2021-199, s. 12

— DORS/2021-199, art. 12

**12 (1)** Subject to subsection (2), subsections C.10.008(1) and (2) of the *Food and Drug Regulations* apply in respect of a designated biocide that was imported under the Exceptional Importation and Shortages Interim Order No. 2.

**12 (1)** Sous réserve du paragraphe (2), les paragraphes C.10.008(1) et (2) du *Règlement sur les aliments et drogues* s'appliquent à l'égard du biocide désigné importé en vertu de l'Arrêté d'urgence n° 2 sur les importations exceptionnelles et les pénuries.

**(2)** For the purposes of subsection (1), that subsection C.10.008(1) is to be read without reference to

**(a)** sections A.01.015 and A.01.017 in paragraph C.10.008(1)(a);

**(b)** sections C.01.040.3 to C.01.049.1 in subparagraph C.10.008(1)(b)(i);

**(c)** subparagraph C.10.008(1)(b)(ii); and

**(d)** sections C.10.009 to C.10.011 in subparagraph C.10.008(1)(b)(iii).

**(2)** Pour l'application du paragraphe (1), ce même paragraphe C.10.008(1) s'applique sans égard aux dispositions suivantes :

**a)** à l'alinéa C.10.008(1)a), les articles A.01.015 et A.01.017;

**b)** au sous-alinéa C.10.008(1)b)(i), les articles C.01.040.3 à C.01.049.1;

**c)** le sous-alinéa C.10.008(1)b)(ii);

**(3)** Subsection (1) ceases to apply on December 31, 2022 in respect of the sale of a designated biocide, other than at retail sale, that was imported under the Exceptional Importation and Shortages Interim Order No. 2.

**(4)** An importer must not sell a designated biocide that they imported under that Interim Order unless they ensure that the information referred to in paragraph 12(2)(d) of that Interim Order is available in English and French and in a manner that permits the safe use of the biocide.

**(5)** The importer must ensure that the information is available in accordance with subsection (4) until at least the expiration of the period that corresponds to the useful life of whichever of the designated biocides that they imported has the latest useful life.

— SOR/2021-199, s. 14

**14 (1)** Sections A.01.014 and A.01.016 of the *Food and Drug Regulations*, the provisions of Part B of those Regulations — other than sections B.24.100 and B.24.300 — and the provisions of Part D of those Regulations do not apply in respect of the sale of a designated food for a special dietary purpose that was imported under the Exceptional Importation and Shortages Interim Order No. 2.

**(2)** A sale of a designated food for a special dietary purpose that was imported under the Interim Order is exempt from paragraphs 4(1)(a) and (d) of the *Food and Drugs Act* in respect of the use or presence of any of the substances or materials referred to in paragraphs 24(2)(a) to (g) of that Interim Order.

**(3)** Subsections (1) and (2) cease to apply in respect of the sale of a designated food for a special dietary purpose on the food's expiration date.

**(4)** An importer must not sell a designated food for a special dietary purpose that they imported under the Exceptional Importation and Shortages Interim Order No. 2 No. 2 unless they ensure that the information referred to in subparagraphs 25(2)(e)(ii) to (vii) of that Interim Order is available in English and French and in a manner that permits the safe preparation and use of the food.

**(5)** The importer shall ensure that the information is available in accordance with subsection (4) until at least the end of the day on the latest expiration date of the

**d)** au sous-alinéa C.10.008(1)b)(iii), les articles C.10.009 à C.10.011.

**(3)** Le paragraphe (1) cesse d'avoir effet le 31 décembre 2022 à l'égard de la vente, autre qu'une vente au détail, d'un biocide désigné importé en vertu de l'Arrêté d'urgence n°2 sur les importations exceptionnelles et les pénuries.

**(4)** L'importateur d'un biocide désigné importé en vertu de cet arrêté d'urgence ne peut vendre le biocide à moins qu'il ne veille à ce que les renseignements visés à l'alinéa 12(2)d) de cet arrêté d'urgence ne soient disponibles en français et en anglais de façon à permettre l'utilisation sécuritaire du biocide.

**(5)** L'importateur veille à ce que les renseignements soient disponibles conformément au paragraphe (4) au moins jusqu'à l'expiration de la durée de vie utile de celui des biocides désignés qu'il a importés dont l'expiration de la durée de vie utile est la plus tardive.

— DORS/2021-199, art. 14

**14 (1)** Les articles A.01.014 et A.01.016, les dispositions de la partie B — à l'exception des articles B.24.100 et B.24.300 — et les dispositions de la partie D du *Règlement sur les aliments et drogues* ne s'appliquent pas à l'égard de la vente d'un aliment à des fins diététiques spéciales désigné importé en vertu de l'Arrêté d'urgence n° 2 sur les importations exceptionnelles et les pénuries.

**(2)** La vente d'un aliment à des fins diététiques spéciales désigné importé en vertu de cet arrêté d'urgence est exempté de l'application des alinéas 4(1)a) et d) de la *Loi sur les aliments et drogues* en ce qui a trait à la présence et à l'utilisation de substances ou de matériaux visés aux alinéas 24(2)a) à g) de cet arrêté d'urgence.

**(3)** Les paragraphes (1) et (2) cessent d'avoir effet à l'égard de la vente d'un aliment à des fins diététiques spéciales désigné à la date limite d'utilisation de cet aliment.

**(4)** L'importateur d'un aliment à des fins diététiques spéciales désigné importé en vertu de l'Arrêté d'urgence n° 2 sur les importations exceptionnelles et les pénuries ne peut vendre l'aliment à moins qu'il ne veille à ce que les renseignements visés aux sous-alinéas 25(2)e)(ii) à (vii) de cet arrêté d'urgence soient disponibles en français et en anglais de façon à permettre la préparation et l'utilisation sécuritaires de l'aliment.

**(5)** L'importateur veille à ce que les renseignements soient disponibles conformément au paragraphe (4) au moins jusqu'à la fin de la journée à la date limite

designated food for a special dietary purpose that they imported.

**(6)** In this section, *expiration date* has the same meaning as in section B.25.001 of the *Food and Drug Regulations*.

— SOR/2021-199, s. 15

**15** A person who, immediately before the Exceptional Importation and Shortages Interim Order No. 2 ceased to have effect, was permitted, under subsection 30(2) of that Interim Order, to conduct an activity in respect of a designated hand sanitizer may continue to do so without holding an establishment licence that authorizes them to do so until the earliest of

**(a)** the occurrence of one of the circumstances referred to in paragraphs 30(2)(a) to (c) of that Interim Order, and

**(b)** September 1, 2023.

— SOR/2022-100, s. 10

**10 (1)** Unless the context requires otherwise, words and expressions used in this section have the same meaning as in subsection C.01A.001(1) of the *Food and Drug Regulations*.

**(2)** Subject to subsection (3), during the three-month period that begins on the day on which these Regulations come into force, a drug that has, until that day, been exempt, under subsection 37(1) of the Act, from the provisions prescribed in section A.01.048 of the *Food and Drug Regulations* and that continues to meet the conditions set out in subsection 37(1)

**(a)** may, despite section C.01A.004 of those Regulations, continue to be fabricated, packaged/labelled, tested, distributed or wholesaled by a person that conducted the activity before that day and that does not hold an establishment licence that authorizes the activity in respect of the drug; and

**(b)** is exempt from the provisions of Divisions 2 to 4 of Part C of those Regulations that are prescribed in section A.01.048.

**(3)** If, before the end of the three-month period, a person referred to in paragraph (2)(a) submits — in accordance with section C.01A.005 or C.01A.006 of the *Food and Drug Regulations* — an application for, or to amend, an establishment licence to authorize the activity that they have been conducting in respect of the drug, the person is, in respect of the activity, exempt from the requirement

d'utilisation la plus tardive attribuée à l'aliment pour des fins diététiques spéciales désigné qu'il a importé.

**(6)** Au présent article, *date limite d'utilisation* s'entend au sens de l'article B.25.001 du *Règlement sur les aliments et drogues*.

— DORS/2021-199, art. 15

**15** La personne qui, immédiatement avant que l'Arrêté d'urgence nº 2 sur les importations exceptionnelles et les pénuries ne cesse d'avoir effet, était autorisée par le paragraphe 30(2) de cet arrêté d'urgence à poursuivre l'exercice d'une activité à l'égard d'un désinfectant pour les mains désigné peut continuer à exercer l'activité sans être titulaire d'une licence d'établissement l'y autorisant jusqu'au premier des moments suivants à survenir :

**a)** le moment où survient l'un des événements visés aux alinéas 30(2)a) à c) de cet arrêté d'urgence;

**b)** le 1er septembre 2023.

— DORS/2022-100, art. 10

**10 (1)** Sauf indication contraire, les termes utilisés au présent article s'entendent au sens du paragraphe C.01A.001(1) du *Règlement sur les aliments et drogues*.

**(2)** Sous réserve du paragraphe (3), durant la période de trois mois commençant à la date d'entrée en vigueur du présent règlement, la drogue qui, jusqu'à cette date, était exemptée de l'application des dispositions prévues à l'article A.01.048 du *Règlement sur les aliments et drogues*, en vertu du paragraphe 37(1) de la Loi, et qui continue de satisfaire aux exigences de ce paragraphe, à la fois :

**a)** peut continuer, malgré l'article C.01A.004 de ce même règlement, à être manufacturée, emballée-étiquetée, analysée, distribuée ou vendue en gros par la personne qui exerçait cette activité avant cette date et qui ne détient pas une licence d'établissement l'y autorisant;

**b)** est exemptée de l'application des dispositions des titres 2 à 4 de la Partie C de ce même règlement qui sont prévues à l'article A.01.048.

**(3)** Si, avant l'expiration de la période de trois mois, la personne visée à l'alinéa (2)a) présente au ministre de la Santé une demande de licence d'établissement ou une demande de modification d'une licence d'établissement conformément à l'article C.01A.005 ou C.01A.006 du *Règlement sur les aliments et drogues* afin d'être autorisée à exercer l'activité, cette personne, en ce qui a trait à cette

to hold an establishment licence and from the provisions referred to in paragraph (2)(b) until the Minister of Health

**(a)** issues the licence or amends it to authorize the activity; or

**(b)** notifies the person, after giving them the opportunity to be heard, that the licence will not be issued or amended.

**(4)** The exemptions referred to in subsection (3) cease to apply if the person withdraws the application.

— SOR/2022-168, s. 53

**53 (1)** The following definitions apply in this section.

***former Regulations*** means the *Food and Drug Regulations* as they read immediately before the day on which these Regulations come into force. (*ancien règlement*)

***prepackaged product*** has the same meaning as in subsection B.01.001(1) of the *Food and Drug Regulations*. (*produit préemballé*)

**(2)** A prepackaged product is not required to be labelled in accordance with the following provisions of the *Food and Drug Regulations* if the product is labelled in accordance with the former Regulations and no change has been made to the label of the product to bring the product into compliance with any of the following provisions:

**(a)** sections B.01.350 to B.01.358;

**(b)** subsection B.01.503(1.1);

**(c)** subsection B.01.508(2);

**(d)** subsection B.01.509(2); and

**(e)** section D.01.001.2.

**(3)** A prepackaged product is not required to be labelled in accordance with the following provisions of the *Food and Drug Regulations* if it is labelled in accordance with the former Regulations and no change has been made to the label of the product to bring the product into compliance with any of the following provisions:

**(a)** subsections B.01.008.1(1), (3) and (4);

**(b)** paragraph B.01.008.2(2)(b);

**(c)** subsection B.01.010.3(1);

activité, est exemptée de l'obligation de détenir une licence d'établissement et de l'application des dispositions visées à l'alinéa (2)b) jusqu'à ce que le ministre, selon le cas :

**a)** lui délivre la licence d'établissement ou la modifie afin d'autoriser l'activité;

**b)** l'informe que la licence d'établissement ne sera pas délivrée ou modifiée, après lui avoir donné la possibilité de se faire entendre.

**(4)** Les exemptions visées au paragraphe (3) cessent de s'appliquer si la personne retire sa demande.

— DORS/2022-168, art. 53

**53 (1)** Les définitions qui suivent s'appliquent au présent article.

***ancien règlement*** Le *Règlement sur les aliments et drogues*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement. (*former Regulations*)

***produit préemballé*** S'entend au sens du paragraphe B.01.001(1) du *Règlement sur les aliments et drogues*. (*prepackaged product*)

**(2)** Il n'est pas nécessaire que les produits préemballés soient étiquetés conformément aux dispositions ci-après du *Règlement sur les aliments et drogues* s'ils sont étiquetés conformément à l'ancien règlement et si aucun changement n'a été apporté à leur étiquette afin de les rendre conformes à l'une de ces dispositions :

**a)** les articles B.01.350 à B.01.358;

**b)** le paragraphe B.01.503(1.1);

**c)** le paragraphe B.01.508(2);

**d)** le paragraphe B.01.509(2);

**e)** l'article D.01.001.2.

**(3)** Il n'est pas nécessaire que les produits préemballés soient étiquetés conformément aux dispositions ci-après du *Règlement sur les aliments et drogues* s'ils sont étiquetés conformément à l'ancien règlement et si aucun changement n'a été apporté à leur étiquette afin de les rendre conformes à l'une de ces dispositions :

**a)** les paragraphes B.01.008.1(1), (3) et (4);

**b)** l'alinéa B.01.008.2(2)b);

**c)** le paragraphe B.01.010.3(1);

**(d)** section B.01.010.4;

**(e)** section B.01.014;

**(f)** section B.01.023;

**(g)** paragraph B.01.305(3)(g); and

**(h)** section B.01.467.

**(4)** A prepackaged product is not required to be labelled in accordance with the following provisions of the *Food and Drug Regulations* if it is labelled in accordance with the former Regulations and no change has been made to the label of the product to bring the product into compliance with any of the following provisions:

**(a)** subsection B.01.305(1) and paragraphs B.01.305(2)(a) and (3)(h);

**(b)** subparagraph B.01.401(3)(e)(ii) and items 2 to 5, 7, 8 and 16 of the table to section B.01.401;

**(c)** section B.01.500;

**(d)** sections B.01.502 to B.01.507;

**(e)** subsection B.01.508(1);

**(f)** subsection B.01.509(1);

**(g)** sections B.01.510 to B.01.512;

**(h)** subparagraph B.01.601(1)(c)(i);

**(i)** items 1 to 3 of the table following section B.01.603;

**(j)** paragraphs B.08.033(1.1)(a) and (1.2)(a);

**(k)** paragraphs B.08.034(1.1)(a) and (1.2)(a); and

**(l)** subsections B.24.003(1.1) and (4).

**(5)** A food to which any of the following provisions of the *Food and Drug Regulations* applies is not required to contain an amount of vitamin D that complies with the requirement set out in the provision if the food contains an amount of vitamin D that complies with the requirement set out in the provision of the former Regulations:

**(a)** paragraph B.08.003(b);

**(b)** paragraph B.08.004(c);

**(c)** paragraph B.08.005(c);

**(d)** paragraph B.08.007(d);

**d)** l'article B.01.010.4;

**e)** l'article B.01.014;

**f)** l'article B.01.023;

**g)** l'alinéa B.01.305(3)g);

**h)** l'article B.01.467.

**(4)** Il n'est pas nécessaire que les produits préemballés soient étiquetés conformément aux dispositions ci-après du *Règlement sur les aliments et drogues* s'ils sont étiquetés conformément à l'ancien règlement et si aucun changement n'a été apporté à leur étiquette afin de les rendre conformes à l'une de ces dispositions :

**a)** le paragraphe B.01.305(1) et les alinéas B.01.305(2)a) et (3)h);

**b)** le sous-alinéa B.01.401(3)e)(ii) et les articles 2 à 5, 7, 8 et 16 du tableau de l'article B.01.401;

**c)** l'article B.01.500;

**d)** les articles B.01.502 à B.01.507;

**e)** le paragraphe B.01.508(1);

**f)** le paragraphe B.01.509(1);

**g)** les articles B.01.510 à B.01.512;

**h)** le sous-alinéa B.01.601(1)c)(i);

**i)** les articles 1 à 3 du tableau suivant l'article B.01.603;

**j)** les alinéas B.08.033(1.1)a) et (1.2)a);

**k)** les alinéas B.08.034(1.1)a) et (1.2)a);

**l)** les paragraphes B.24.003(1.1) et (4).

**(5)** Il n'est pas nécessaire que les aliments visés par l'une des dispositions ci-après du *Règlement sur les aliments et drogues* contiennent la quantité de vitamine D nécessaire pour satisfaire aux exigences prévues à cette disposition si la quantité qu'ils contiennent satisfait aux exigences prévues à cette disposition de l'ancien règlement :

**a)** l'alinéa B.08.003b);

**b)** l'alinéa B.08.004c);

**c)** l'alinéa B.08.005c);

**d)** l'alinéa B.08.007d);

**(e)** paragraph B.08.010(d);

**(f)** paragraph B.08.011(e);

**(g)** paragraph B.08.012(f);

**(h)** paragraph B.08.013(c);

**(i)** paragraph B.08.014(d);

**(j)** paragraph B.08.016(c);

**(k)** paragraph B.08.017(d);

**(l)** paragraph B.08.018(d);

**(m)** paragraph B.08.019(e);

**(n)** paragraph B.08.020(d);

**(o)** paragraph B.08.023(e);

**(p)** paragraph B.08.026(e); and

**(q)** subparagraph B.09.016(b)(iii), including as it applies to calorie-reduced margarine.

**(6)** For the purposes of the prohibitions set out in section B.08.029 of the *Food and Drug Regulations*, a food is not required to contain the amount of vitamin D set out in the applicable subsection of that section if the food contains an amount of vitamin D that falls within the range set out in the subsection of the former Regulations.

**(7)** This section ceases to have effect on December 31, 2025.

— SOR/2022-169, s. 31

**31 (1)** The following definitions apply in this section and sections 32 to 36.

***Threshold Levels for Cautionary Statements and Other Conditions of Use*** means the document entitled *Threshold Levels for Cautionary Statements and Other Conditions of Use*, published by the Government of Canada on its website, as it reads on the day on which these Regulations come into force. (*Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation*)

***TMAL Lists*** means one or more of the following lists, published by the Government of Canada on its website, as they read on the day on which these Regulations come into force:

**(a)** the *List of beverages, beverage mixes and concentrates*;

**e)** l'alinéa B.08.010d);

**f)** l'alinéa B.08.011e);

**g)** l'alinéa B.08.012f);

**h)** l'alinéa B.08.013c);

**i)** l'alinéa B.08.014d);

**j)** l'alinéa B.08.016c);

**k)** l'alinéa B.08.017d);

**l)** l'alinéa B.08.018d);

**m)** l'alinéa B.08.019e);

**n)** l'alinéa B.08.020d);

**o)** l'alinéa B.08.023e);

**p)** l'alinéa B.08.026e);

**q)** le sous-alinéa B.09.016b)(iii), y compris à l'égard de la margarine réduite en calories.

**(6)** Pour l'application des interdictions prévues à l'article B.08.029 du *Règlement sur les aliments et drogues*, il n'est pas nécessaire que les aliments contiennent la quantité de vitamine D prévue au paragraphe applicable de cet article si la quantité qu'ils contiennent est dans les limites prévues à ce paragraphe de l'ancien règlement.

**(7)** Le présent article cesse d'avoir effet le 31 décembre 2025.

— DORS/2022-169, art. 31

**31 (1)** Les définitions qui suivent s'appliquent au présent article et aux articles 32 à 36.

***Listes LAMT*** L'une ou plusieurs des listes ci-après, publiées par le gouvernement du Canada sur son site Web, dans leur version en vigueur à la date d'entrée en vigueur du présent règlement :

**a)** la *Liste des boissons, des préparations pour boisson et des concentrés de boisson*;

**b)** la *Liste des boissons énergisantes contenant de la caféine*;

**c)** la *Liste des aliments traditionnels*. (*TMAL Lists*)

***Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation*** Le document intitulé *Seuils maximaux relatifs aux mises en garde et autres*

**(b)** the *List of caffeinated energy drinks*; and

**(c)** the *List of conventional foods*. (*Listes LAMT*)

**(2)** Unless the context requires otherwise, words and expressions used in this section and sections 32 to 36 have the same meaning as in the *Food and Drugs Act* and the *Food and Drug Regulations*.

— SOR/2022-169, s. 32

**32 (1)** Subject to section 35, the manufacturer of a food for which a Temporary Marketing Authorization Letter was issued under subsection B.01.054(1) of the *Food and Drug Regulations* and for which a Temporary Marketing Authorization number is set out in the TMAL Lists is exempt from the application of the *Food and Drug Regulations* in respect of the food if the following conditions are met:

**(a)** when the Letter expired, the food was not the subject of an outstanding request that it be withdrawn from the market; and

**(b)** since the expiration of the Letter,

**(i)** subject to subsection (2), the manufacturer has complied with the *Food and Drug Regulations*, as they read immediately before the day on which these Regulations come into force, except any provision set out in Appendix 1 to the Letter with which the food does not need to comply,

**(ii)** the manufacturer has complied with the following conditions set out in Appendix 1 to the Letter, as applicable:

**(A)** there are no marks, statements, labels or advertisements, including product sampling, that promote the food for consumption by children or by pregnant or breastfeeding women,

**(B)** the food contains the substances referred to in Appendix 2 to the Letter in the amounts set out in that Appendix,

**(C)** the statements set out in Appendix 1 to the Letter, or statements with equivalent meaning, are shown on the label of the food,

**(D)** no claims are made on the label of the food relating to physical performance or health benefits of the food, and

*conditions d'utilisation*, publié par le gouvernement du Canada sur son site Web, dans sa version en vigueur à la date d'entrée en vigueur du présent règlement. (*Threshold Levels for Cautionary Statements and Other Conditions of Use*)

**(2)** Sauf indication contraire du contexte, les termes utilisés au présent article et aux articles 32 à 36 s'entendent au sens de la *Loi sur les aliments et drogues* et du *Règlement sur les aliments et drogues*.

— DORS/2022-169, art. 32

**32 (1)** Sous réserve de l'article 35, le fabricant d'un aliment à qui a été délivrée une lettre d'autorisation de mise en marché temporaire en vertu du paragraphe B.01.054(1) du *Règlement sur les aliments et drogues* dont le numéro d'autorisation de mise en marché temporaire figure dans les Listes LAMT est exempté de l'application du *Règlement sur les aliments et drogues* à l'égard de cet aliment si les conditions ci-après ont réunies :

**a)** à l'expiration de la lettre, l'aliment ne faisait pas l'objet d'une demande visant à le retirer du marché;

**b)** depuis l'expiration de la lettre :

**(i)** sous réserve du paragraphe (2), le fabricant s'est conformé au *Règlement sur les aliments et drogues*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement, à l'exception de toute disposition qui figure à l'annexe 1 de la lettre à laquelle l'aliment n'a pas à se conformer,

**(ii)** le fabricant a respecté les conditions ci-après qui figurent à l'annexe 1 de la lettre, le cas échéant :

**(A)** aucun signal ni aucune déclaration, étiquette ou annonce, y compris aucune distribution d'échantillons de produits, ne fait la promotion de l'aliment aux fins de la consommation par les enfants ou par les femmes qui sont enceintes ou qui allaitent,

**(B)** l'aliment contient les substances précisées à l'annexe 2 de la lettre, et ce, en les teneurs qui y figurent,

**(C)** les énoncés qui figurent à l'annexe 1 de la lettre — ou les énoncés de signification équivalente — figurent sur l'étiquette de l'aliment,

**(D)** il n'y a pas d'allégations sur l'étiquette de l'aliment faisant référence à sa performance physique ou à ses bienfaits pour la santé,

**(E)** the conditions set out in Appendix 3 to the Letter are complied with, and

**(iii)** no substance set out in column 1 of the List of Permitted Supplemental Ingredients has been added to the food, with the exception of a substance

**(A)** set out in Appendix 2 to the Letter, or

**(B)** used as a food additive to which a marketing authorization applies.

**(2)** The manufacturer may, in respect of the food referred to in subsection (1), comply with the provisions of the *Food and Drug Regulations* that were amended by sections 1 to 11, 13 to 48, and 57 to 75 of the *Regulations Amending the Food and Drug Regulations (Nutrition Labelling, Other Labelling Provisions and Food Colours)*, as they read on December 13, 2016.

— SOR/2022-169, s. 33

**33 (1)** Subject to section 35, if a manufacturer of a food has submitted a request for a Temporary Marketing Authorization Letter for the food before the day on which these Regulations come into force and a Temporary Marketing Authorization Letter has not been issued under subsection B.01.054(1) of the *Food and Drug Regulations* before that day, the manufacturer is exempt from the application of the *Food and Drug Regulations* in respect of the food if the following conditions are met:

**(a)** the Minister notifies the manufacturer, in accordance with subsection (2), that the sale of the food is authorized;

**(b)** subject to subsections (3) and (4), the manufacturer complies with the *Food and Drug Regulations* as they read immediately before the day on which these Regulations come into force;

**(c)** no substance set out in column 1 of the List of Permitted Supplemental Ingredients has been added to the food, with the exception of a substance

**(i)** contained in the food in the amount specified in the request in response to which the Minister has issued a notice referred to in paragraph (a), or

**(ii)** used as a food additive to which a marketing authorization applies;

**(E)** les conditions qui figurent à l'annexe 3 de la lettre sont respectées,

**(iii)** aucune des substances qui figurent à la colonne 1 de la Liste des ingrédients supplémentaires autorisés n'a été ajoutée à l'aliment, à l'exception des substances suivantes :

**(A)** une substance qui figure à l'annexe 2 de la lettre,

**(B)** une substance qui est utilisée comme un additif alimentaire visé par une autorisation de mise en marché.

**(2)** Le fabricant peut se conformer aux dispositions du *Règlement sur les aliments et drogues* qui ont été modifiées par les articles 1 à 11, 13 à 48 et 57 à 75 du *Règlement modifiant le Règlement sur les aliments et drogues (étiquetage nutritionnel, autres dispositions d'étiquetage et colorants alimentaires)*, dans leur version au 13 décembre 2016, relativement à l'aliment visé au paragraphe (1).

— DORS/2022-169, art. 33

**33 (1)** Sous réserve de l'article 35, le fabricant d'un aliment qui a présenté une demande de lettre d'autorisation de mise en marché temporaire à l'égard de l'aliment avant la date d'entrée en vigueur du présent règlement, mais à qui n'a pas été délivrée, avant cette date, une telle lettre en vertu du paragraphe B.01.054(1) du *Règlement sur les aliments et drogues*, est exempté de l'application du *Règlement sur les aliments et drogues* à l'égard de cet aliment si les conditions ci-après sont réunies :

**a)** le ministre l'informe, en application du paragraphe (2), que la vente de l'aliment est autorisée;

**b)** sous réserve des paragraphes (3) et (4), il se conforme au *Règlement sur les aliments et drogues*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement;

**c)** aucune des substances qui figurent à la colonne 1 de la Liste des ingrédients supplémentaires autorisés n'a été ajoutée à l'aliment, à l'exception des substances suivantes :

**(i)** une substance contenue dans l'aliment en la teneur précisée dans la demande à l'égard de laquelle le ministre a délivré la notification visée à l'alinéa a),

**(ii)** une substance utilisée comme un additif alimentaire visé par une autorisation de mise en marché;

**(d)** with respect to a food, other than a food referred to in paragraphs (f) and (g), if a substance set out in column 1 of the table to Part I of the Threshold Levels for Cautionary Statements and Other Conditions of Use has been added to the food — other than as a food additive to which a marketing authorization applies — and the total amount of that substance contained in the food is equal to or above the thresholds set out in columns 2 to 6 of the table for that substance, the label of the food carries the applicable cautionary statements set out in the headings to columns 2 to 6 of that table or statements with equivalent meaning;

**(e)** if the cautionary statement "Not intended for children", "For adults only" or "If you are pregnant or breastfeeding consult a Health Care Practitioner prior to use", or a statement with equivalent meaning, appears on the label of the food, there are no marks, statements, labels or advertisements, including product sampling, that promote the food for consumption by children or by pregnant or breastfeeding women, as the case may be;

**(f)** with respect to a food that is a beverage that contains added caffeine and has a total amount of caffeine of more than 200 parts per million, the label of the food carries the following cautionary statements or statements with equivalent meaning:

**(i)** if a substance set out in column 1 of the table to Part I of the Threshold Levels for Cautionary Statements and Other Conditions of Use has been added to the food — other than as a food additive to which a marketing authorization applies — and the total amount of that substance contained in the food is equal to or above the threshold level set out in column 8 for that substance, the applicable cautionary statement set out in the heading to column 8 of that table or a statement with equivalent meaning, and

**(ii)** the cautionary statements set out in the headings to columns 2 to 4 of the table to Part II of the Threshold Levels for Cautionary Statements and Other Conditions of Use or statements with equivalent meaning;

**(g)** with respect to a food that contains added caffeine, other than a food referred to in paragraph (f), the label of that food carries the following cautionary statements or statements with equivalent meaning:

**(i)** if a substance set out in column 1 of the table to Part I of the Threshold Levels for Cautionary Statements and Other Conditions of Use has been added to the food — other than as a food additive to which a marketing authorization applies — and the total

**d)** dans le cas où une substance — utilisée autrement que comme un additif alimentaire visé par une autorisation de mise en marché — qui figure à la colonne 1 du tableau de la partie I des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation a été ajoutée à l'aliment, lequel n'est pas visé aux alinéas f) et g), les mises en garde applicables qui figurent dans les titres des colonnes 2 à 6 de ce tableau — ou les énoncés de signification équivalente — figurent sur l'étiquette de l'aliment si la teneur totale de l'aliment en cette substance égale ou excède les seuils maximaux figurant aux colonnes 2 à 6 de ce tableau relativement à la substance;

**e)** si l'une des mises en garde « Non destiné aux enfants », « Pour adultes seulement » ou « Si vous êtes enceinte ou que vous allaitez, consultez un professionnel de la santé avant d'utiliser » — ou des énoncés de signification équivalente — figure sur l'étiquette de l'aliment, si aucune marque, déclaration, étiquette ou annonce, y compris aucune distribution d'échantillons, ne peut faire la promotion de l'aliment aux fins de la consommation par les enfants ou par les femmes qui sont enceintes ou qui allaitent, selon le cas;

**f)** s'agissant d'un aliment qui est une boisson à laquelle de la caféine a été ajoutée et dont la teneur totale en caféine est supérieure à 200 parties par million, les mises en garde ci-après — ou les énoncés de signification équivalente — figurent sur l'étiquette de l'aliment :

**(i)** la mise en garde applicable qui figure dans le titre de la colonne 8 du tableau de la partie I des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation — ou les énoncés de signification équivalente —, si une substance — utilisée autrement que comme un additif alimentaire visé par une autorisation de mise en marché — qui figure à la colonne 1 de ce tableau a été ajoutée à l'aliment et que la teneur totale de l'aliment en cette substance égale ou excède le seuil maximal figurant à la colonne 8 de ce tableau,

**(ii)** les mises en garde qui figurent dans les titres des colonnes 2 à 4 du tableau de la partie II des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation, ou les énoncés de signification équivalente;

**g)** s'agissant d'un aliment auquel de la caféine a été ajoutée et qui n'est pas un aliment visé à l'alinéa f), les mises en garde ci-après — ou les énoncés de signification équivalente — figurent sur l'étiquette de l'aliment :

amount of that substance contained in the food is equal to or above the thresholds set out in columns 2 to 6 for that substance, the applicable cautionary statements set out in the headings to columns 2 to 6 of that table or statements with equivalent meaning, and

**(ii)** if the total amount of caffeine contained in the food is equal to or above the thresholds set out in columns 2 to 4 of the table to Part II of the Threshold Levels for Cautionary Statements and Other Conditions of Use for the food category set out in column 1 to which the food belongs, the applicable cautionary statements set out in the headings to columns 2 to 4 of the table to Part II or statements with equivalent meaning;

**(h)** with respect to a food referred to in paragraph (f) or (g), the manufacturer complies with the conditions of use set out in column 6 of the table to Part II of the Threshold Levels for Cautionary Statements and Other Conditions of Use for the food category set out in column 1 to which the food belongs; and

**(i)** if the cautionary statement "Not recommended for children, pregnant or breastfeeding women and individuals sensitive to caffeine", or a statement with equivalent meaning, appears on the label of the food, there are no marks, statements, labels or advertisements, including product sampling, that promote the food for consumption by children or by pregnant or breastfeeding women.

**(2)** The Minister must provide written notification to the manufacturer that the sale of the food is authorized if

**(a)** the manufacturer submits to the Minister

**(i)** the information referred to in subparagraphs B.01.054(1)(a)(i) to (vii) of the *Food and Drug Regulations* as they read immediately before the day on which these Regulations come into force, and

**(ii)** any other information requested by the Minister to assess the information referred to in subparagraph (i); and

**(i)** les mises en garde applicables qui figurent dans les titres des colonnes 2 à 6 du tableau de la partie I des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation — ou les énoncés de signification équivalente —, si une substance — utilisée autrement que comme un additif alimentaire visé par une autorisation de mise en marché — qui figure à la colonne 1 de ce tableau a été ajoutée à l'aliment et que la teneur totale de l'aliment en cette substance égale ou excède les seuils maximaux figurant aux colonnes 2 à 6 de ce tableau,

**(ii)** les mises en garde applicables qui figurent dans les titres des colonnes 2 à 4 du tableau de la partie II des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation — ou les énoncés de signification équivalente —, si la teneur totale de l'aliment en caféine égale ou excède les seuils maximaux figurant aux colonnes 2 à 4 de ce tableau à l'égard de la catégorie d'aliments qui figure à la colonne 1 de ce tableau à laquelle l'aliment appartient;

**h)** s'agissant d'un aliment visé aux alinéas f) ou g), le fabricant se conforme aux conditions d'utilisation qui figurent à la colonne 6 du tableau de la partie II des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation à l'égard de la catégorie d'aliments qui figure à la colonne 1 de ce tableau à laquelle l'aliment appartient;

**i)** si la mise en garde « Non recommandé pour les enfants, les femmes qui sont enceintes ou qui allaitent et les personnes sensibles à la caféine » — ou les énoncés de signification équivalente — figurent sur l'étiquette de l'aliment, aucune marque, déclaration, étiquette ou annonce, y compris aucune distribution d'échantillons, ne fait la promotion de l'aliment aux fins de la consommation par les enfants ou par les femmes qui sont enceintes ou qui allaitent.

**(2)** Le ministre informe le fabricant, par écrit, que la vente de l'aliment est autorisée si :

**a)** le fabricant fournit au ministre les renseignements suivants :

**(i)** les renseignements visés aux sous-alinéas B.01.054(1)a)(i) à (vii) du *Règlement sur les aliments et drogues*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement,

**(ii)** tout renseignement supplémentaire que le ministre lui demande pour pouvoir évaluer les renseignements visés au sous-alinéa (i);

**(b)** the food belongs to a food category set out in column 1 of the List of Permitted Supplemented Food Categories;

**(c)** in the case where a substance set out in column 1 of the table to Part I to the Threshold Levels for Cautionary Statements and Other Conditions of Use has been added to the food, the total amount of that substance contained in the food does not exceed the maximum daily level set out in column 7 or 9 of Part I of the table for that substance; and

**(d)** in the case where caffeine has been added to the food, the total amount of caffeine contained in the food does not exceed the maximum level per serving set out in column 5 of the table to Part II to the Threshold Levels for Cautionary Statements and Other Conditions of Use for the food category to which the food belongs.

**(3)** The manufacturer need not, in respect of the food referred to in subsection (1), comply with the following provisions of the *Food and Drug Regulations* as they read immediately before the day on which these Regulations come into force:

**(a)** section B.01.043,

**(i)** in respect of caffeine that has been added to the food for a use other than a use set out in columns 2 to 4 of item C.1 of the *List of Permitted Food Additives with Other Accepted Uses*, published by the Government of Canada on its website, as amended from time to time, or

**(ii)** in respect of an extraction solvent that has been used in the manufacturing of an extract that has been added to the food other than as a flavouring;

**(b)** section B.01.045, in respect of caffeine that has been added to the food and that does not meet the specifications set out in the *Food Chemicals Codex*, tenth edition, 2016, published by the United States Pharmacopeial Convention, Rockville, MD, United States of America, as that or any subsequent edition, including their supplements, may be amended from time to time;

**(c)** section D.01.009;

**(d)** section D.01.011;

**(e)** section D.02.009; or

**(f)** section D.03.002.

**b)** l'aliment appartient à une catégorie d'aliments figurant à la colonne 1 de la Liste des catégories autorisées d'aliments supplémentés;

**c)** dans le cas où une substance qui figure à la colonne 1 du tableau de la partie I des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation a été ajoutée à l'aliment, la teneur totale de l'aliment en cette substance n'excède pas la teneur maximale par jour qui figure aux colonnes 7 ou 9 de la partie I du tableau la concernant;

**d)** dans le cas où de la caféine a été ajoutée à l'aliment, la teneur totale de l'aliment en caféine n'excède pas la teneur maximale par portion qui figure à la colonne 5 du tableau de la partie II des Seuils maximaux relatifs aux mises en garde et autres conditions d'utilisation à l'égard de la catégorie d'aliments à laquelle l'aliment appartient.

**(3)** Le fabricant n'est pas tenu de se conformer aux dispositions ci-après du *Règlement sur les aliments et drogues*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement relativement à l'aliment visé au paragraphe (1) :

**a)** l'article B.01.043, selon le cas :

**(i)** à l'égard de la caféine qui a été ajoutée à l'aliment pour une utilisation autre qu'une utilisation qui figure à l'article C.1 des colonnes 2 à 4 de la *Liste des additifs alimentaires autorisés ayant d'autres utilisations acceptées*, publiée par le gouvernement du Canada sur son site Web, avec ses modifications successives,

**(ii)** à l'égard d'un solvant d'extraction qui a été utilisé dans la fabrication d'un extrait qui a été ajouté à l'aliment autrement qu'à titre de substance aromatique;

**b)** l'article B.01.045, à l'égard de la caféine qui a été ajoutée à l'aliment et qui ne satisfait pas aux spécifications qui figurent dans la publication de la United States Pharmacopeial Convention, Rockville, MD, États-Unis, intitulée *Food Chemicals Codex*, dixième édition, publiée en 2016, ou dans toute édition subséquente — y compris leurs suppléments —, avec leurs modifications successives;

**c)** l'article D.01.009;

**d)** l'article D.01.011;

**e)** l'article D.02.009;

**f)** l'article D.03.002.

**(4)** The manufacturer may, in respect of the food referred to in subsection (1), comply with the provisions of the *Food and Drug Regulations* that were amended by sections 1 to 11, 13 to 48 and 57 to 75 of the *Regulations Amending the Food and Drug Regulations (Nutrition Labelling, Other Labelling Provisions and Food Colours)*, as they read on December 13, 2016.

**(5)** For greater certainty, the notification referred to in paragraph (1)(a) cannot be a Temporary Marketing Authorization Letter issued under subsection B.01.054(1) of the *Food and Drug Regulations*.

— SOR/2022-169, s. 34

**34** A manufacturer that is exempted under section 32(1) or subsection 33(1) is also exempt from the application of paragraphs 4(1)(a) and (d) of the *Food and Drugs Act* in respect only of a substance set out in column 1 of the List of Permitted Supplemental Ingredients that has been added to the food.

— SOR/2022-169, s. 35

**35** A manufacturer is not exempted under subsection 32(1) or subsection 33(1) in respect of the food referred to in subsection 32(1) or subsection 33(1), as the case may be, if the Minister notifies the manufacturer, in writing, that the Minister has reasonable grounds to believe that the use of the food is detrimental to the health of the consumer.

— SOR/2022-169, s. 36

**36** Sections 32 to 35 cease to have effect on December 31, 2025.

**(4)** Le fabricant peut se conformer aux dispositions du *Règlement sur les aliments et drogues* qui ont été modifiées par les articles 1 à 11, 13 à 48 et 57 à 75 du *Règlement modifiant le Règlement sur les aliments et drogues (étiquetage nutritionnel, autres dispositions d'étiquetage et colorants alimentaires)*, dans leur version au 13 décembre 2016, relativement à l'aliment visé au paragraphe (1).

**(5)** Il est entendu que la notification visée à l'alinéa (1)a) ne peut être une lettre d'autorisation de mise en marché temporaire délivrée en vertu du paragraphe B.01.054(1) du *Règlement sur les aliments et drogues*.

— DORS/2022-169, art. 34

**34** Le fabricant qui bénéficie de l'exemption prévue au paragraphe 32(1) ou de celle prévue au paragraphe 33(1) est aussi exempté de l'application des alinéas 4(1)a) et d) de la *Loi sur les aliments et drogues* en ce qui concerne seulement la substance qui figure à la colonne 1 de la Liste des ingrédients supplémentaires autorisés qui a été ajoutée à l'aliment.

— DORS/2022-169, art. 35

**35** Le fabricant ne bénéficie pas de l'exemption prévue au paragraphe 32(1) ou à celle prévue au paragraphe 33(1) relativement à l'aliment visé au paragraphe 32(1) ou à celui visé au paragraphe 33(1), selon le cas, si le ministre l'informe, par écrit, qu'il a des motifs raisonnables de croire que la consommation de l'aliment est nuisible à la santé du consommateur.

— DORS/2022-169, art. 36

**36** Les articles 32 à 35 cessent d'avoir effet le 31 décembre 2025.

# AMENDMENTS NOT IN FORCE

— SOR/2024-110, s. 76

**76 The *Food and Drug Regulations*[1] are amended by adding the following after section A.01.068:**

## Non-application

**A.01.069** These Regulations do not apply to a drug referred to in paragraph (b) or (c) of the definition *biocide* in subsection 1(1) of the *Biocides Regulations*.

— SOR/2024-110, s. 77

**77 Subsection C.01.004.02(6) of the Regulations is amended by adding "and" at the end of paragraph (a), by striking out "and" at the end of paragraph (b) and by repealing paragraph (c).**

— SOR/2024-110, s. 78

**78 Paragraphs C.01.014.1(2)(c) and (d) of the Regulations are replaced by the following:**

**(c)** the recommended route of administration;

— SOR/2024-110, s. 79

**79 Subsection C.01.040.2(5) of the Regulations is repealed.**

— SOR/2024-110, s. 80

**80 The definition *antimicrobial agent* in subsection C.01A.001(1) of the Regulations is repealed.**

— SOR/2024-110, s. 81

**81 Subsection C.01A.002(1) of the Regulations is amended by adding "and" at the end of paragraph (c), by striking out "and" at the end of paragraph (d) and by repealing paragraph (e).**

— SOR/2024-110, s. 82

**82 Section C.02.002.1 of the Regulations is repealed.**

[1] C.R.C., c. 870

# MODIFICATIONS NON EN VIGUEUR

— DORS/2024-110, art. 76

**76 Le *Règlement sur les aliments et drogues*[1] est modifié par adjonction, après l'article A.01.068, de ce qui suit :**

## Non-application

**A.01.069** Le présent règlement ne s'applique pas à une drogue visée aux alinéas b) ou c) de la définition de *biocide* au paragraphe 1(1) du *Règlement sur les biocides*.

— DORS/2024-110, art. 77

**77 L'alinéa C.01.004.02(6)c) du même règlement est abrogé.**

— DORS/2024-110, art. 78

**78 Les alinéas C.01.014.1(2)c) et d) du même règlement sont remplacés par ce qui suit :**

**c)** la voie d'administration recommandée;

— DORS/2024-110, art. 79

**79 Le paragraphe C.01.040.2(5) du même règlement est abrogé.**

— DORS/2024-110, art. 80

**80 La définition de *agent antimicrobien*, au paragraphe C.01A.001(1) du même règlement, est abrogée.**

— DORS/2024-110, art. 81

**81 L'alinéa C.01A.002(1)e) du même règlement est abrogé.**

— DORS/2024-110, art. 82

**82 L'article C.02.002.1 du même règlement est abrogé.**

[1] C.R.C., ch. 870

— SOR/2024-136, s. 1

**1 Section C.01.051 of the *Food and Drug Regulations*[1] and the heading before it are replaced by the following:**

## Recall Reporting

**C.01.051 (1)** If a manufacturer who sells a drug in dosage form or an active ingredient or a person who imports into and sells a drug in dosage form or an active ingredient in Canada decides to recall any of those drugs without being ordered to do so by the Minister, the manufacturer or importer shall, within 24 hours after making the decision, provide the Minister with the following information in writing:

**(a)** the drug's proper name or the common name, if there is no proper name;

**(b)** an indication as to whether the drug is a drug in dosage form or an active ingredient;

**(c)** in the case of a drug in dosage form,

**(i)** the brand name,

**(ii)** the drug identification number assigned under subsection C.01.014.2(1),

**(iii)** the dosage form,

**(iv)** the strength,

**(v)** the names of the persons in Canada, other than consumers that purchased the drug at the retail level, to whom the drug was sold by the manufacturer or importer and the quantity sold to each of the named persons, and

**(vi)** an assessment of the effect that the recall may have on the manufacturer's or importer's ability to meet demand for the drug in Canada;

**(d)** the lot numbers of the drug;

**(e)** the dates of fabrication of the drug;

**(f)** the expiration dates of the drug;

**(g)** the quantity of the drug that was fabricated in Canada;

**(h)** the quantity of the drug that was imported;

[1] C.R.C., c. 870

— DORS/2024-136, art. 1

**1 L'article C.01.051 du *Règlement sur les aliments et drogues*[1] et l'intertitre le précédant sont remplacés par ce qui suit :**

## Rapports sur les rappels

**C.01.051 (1)** Lorsque le fabricant qui vend une drogue sous forme posologique ou un ingrédient actif ou la personne qui importe et vend au Canada une telle drogue ou un tel ingrédient décide d'en faire le rappel sans que le ministre le lui ait ordonné, il fournit par écrit au ministre les renseignements ci-après dans les vingt-quatre heures après avoir pris la décision de faire le rappel :

**a)** le nom propre de la drogue ou, à défaut, son nom usuel;

**b)** une mention indiquant s'il s'agit d'une drogue sous forme posologique ou d'un ingrédient actif;

**c)** dans le cas d'une drogue sous forme posologique :

**(i)** la marque nominative,

**(ii)** l'identification numérique attribuée en application du paragraphe C.01.014.2(1),

**(iii)** la forme posologique,

**(iv)** la concentration,

**(v)** le nom des personnes au Canada à qui le fabricant ou l'importateur a vendu la drogue, autres que les consommateurs qui l'ont achetée au détail, ainsi que la quantité de la drogue qu'il a vendue à chacune d'elles,

**(vi)** une évaluation des effets que le rappel pourrait avoir sur la capacité du fabricant ou de l'importateur de répondre à la demande pour la drogue au Canada;

**d)** les numéros de lot de la drogue;

**e)** les dates de manufacture de la drogue;

**f)** les dates limites d'utilisation de la drogue;

**g)** la quantité de la drogue qui a été manufacturée au Canada;

**h)** la quantité de la drogue qui a été importée;

[1] C.R.C., ch. 870

**(i)** the quantity of the drug that the manufacturer or importer sold to persons in Canada and the period during which it was sold;

**(j)** the quantity of the drug that the manufacturer or importer exported, as well as the quantity exported, by country;

**(k)** the quantity of the drug in Canada that is in the possession or control of the manufacturer or importer;

**(l)** an assessment of the risk of injury to human health posed by the drug, including because of a failure of its effectiveness;

**(m)** the names and civic addresses of the manufacturer and fabricator of the drug and of any importers of the drug;

**(n)** the name and contact information of the individual who is responsible for the recall;

**(o)** the expected dates for the start and completion of the recall; and

**(p)** the reasons for the recall and the date on which and manner in which the situation that prompted the recall was discovered.

**(2)** The manufacturer or importer shall

**(a)** before starting the recall, provide the Minister with a copy of any communications that the manufacturer or importer intends to use in connection with the start of the recall; and

**(b)** after starting the recall, provide the Minister, on request and within the time specified by the Minister, with a copy of any additional communications that the manufacturer or importer uses, or intends to use, in connection with the recall.

**(3)** The manufacturer or importer shall, within 72 hours after making the decision to recall the drug, provide the Minister with the following information in writing:

**(a)** the strategy for conducting the recall, including the time and manner in which the Minister will be informed of the progress of the recall; and

**(b)** a description of the measures that are intended to be taken to prevent a recurrence of the situation that prompted the recall.

**i)** la quantité de la drogue que le fabricant ou l'importateur a vendue à des personnes au Canada et la période durant laquelle il la leur a vendue;

**j)** la quantité de la drogue que le fabricant ou l'importateur a exportée ainsi que la répartition, par pays, de cette quantité;

**k)** la quantité de la drogue se trouvant au Canada que le fabricant ou l'importateur a en sa possession ou dont il a charge;

**l)** une évaluation du risque de préjudice à la santé humaine que la drogue présente, notamment en raison de tout manque d'efficacité de celle-ci;

**m)** les nom et adresse municipale du fabricant, du manufacturier et de tout importateur de la drogue;

**n)** les nom et coordonnées de l'individu responsable du rappel;

**o)** les dates prévues du lancement et de la fin du rappel;

**p)** les motifs du rappel ainsi que la date à laquelle la situation à l'origine du rappel a été décelée et la façon dont elle l'a été.

**(2)** Le fabricant ou l'importateur fournit au ministre :

**a)** avant de lancer le rappel, une copie de tout communiqué qu'il entend utiliser relativement au lancement du rappel;

**b)** après avoir lancé le rappel, sur demande et dans le délai précisé par le ministre, une copie de tout communiqué additionnel qu'il utilise ou qu'il entend utiliser relativement au rappel.

**(3)** Le fabricant ou l'importateur fournit au ministre, par écrit, les renseignements ci-après dans les soixante-douze heures après avoir pris la décision de faire le rappel :

**a)** le plan d'action à suivre pour faire le rappel, notamment les modalités — de temps ou autres — selon lesquelles le ministre sera informé du déroulement du rappel;

**b)** la description des mesures projetées pour éviter que la situation à l'origine du rappel ne se reproduise.

**(4)** The manufacturer or importer shall, within 30 days after completing the recall, provide the Minister with the following information in writing:

**(a)** the results of the recall; and

**(b)** a description of the measures that have been or will be taken to prevent a recurrence of the situation that prompted the recall.

**(5)** In this section and in section C.01.051.1, *active ingredient* and *fabricate* have the same meaning as in subsection C.01A.001(1).

**C.01.051.1 (1)** A person who is ordered by the Minister under section 21.3 of the Act to recall a drug in dosage form, or an active ingredient, shall provide the Minister with the following information in the time and manner specified by the Minister:

**(a)** the quantity of the drug that has been sold by the person at the retail level to consumers in Canada;

**(b)** if the person has sold the drug to persons in Canada other than consumers referred to in paragraph (a),

**(i)** the names of those persons and the quantity that has been sold to each of them, and

**(ii)** the period during which the drug was sold to those persons;

**(c)** the quantity of the drug that the person has exported from Canada, as well as the quantity exported by country;

**(d)** the quantity of the drug in Canada that is in the possession or control of the person;

**(e)** the name, title and contact information of an individual from whom the Minister may obtain additional information concerning the recall;

**(f)** the strategy for conducting the recall;

**(g)** any other information that the Minister has reasonable grounds to believe is necessary to mitigate the risk of injury to human health; and

**(h)** if the person is in a position to prevent a recurrence of the situation that prompted the recall, a description of the measures that they intend to take to prevent a recurrence.

**(4)** Le fabricant ou l'importateur fournit au ministre, par écrit, les renseignements ci-après dans les trente jours suivant la fin du rappel :

**a)** les résultats du rappel;

**b)** la description des mesures qui ont été prises ou qui le seront pour éviter que la situation à l'origine du rappel ne se reproduise.

**(5)** Au présent article et à l'article C.01.051.1, *ingrédient actif* et *manufacturer* s'entendent au sens du paragraphe C.01A.001(1).

**C.01.051.1 (1)** La personne à qui le ministre ordonne de faire le rappel en vertu de l'article 21.3 de la Loi d'une drogue sous forme posologique ou d'un ingrédient actif lui fournit les renseignements ci-après selon les modalités — de temps ou autres — qu'il précise :

**a)** la quantité de la drogue qu'elle a vendue au détail à des consommateurs au Canada;

**b)** dans le cas où elle a vendu la drogue à des personnes au Canada autres que les consommateurs visés à l'alinéa a) :

**(i)** le nom de ces personnes et la quantité qu'elle a vendue à chacune d'elles,

**(ii)** la période durant laquelle elle la leur a vendue;

**c)** la quantité de la drogue qu'elle a exportée du Canada ainsi que la répartition, par pays, de cette quantité;

**d)** la quantité de la drogue se trouvant au Canada qu'elle a en sa possession ou dont elle a la charge;

**e)** les nom, titre et coordonnées d'un individu à qui le ministre peut s'adresser pour obtenir des renseignements supplémentaires au sujet du rappel;

**f)** le plan d'action à suivre pour faire le rappel;

**g)** tout autre renseignement que le ministre a des motifs raisonnables de croire nécessaire pour atténuer le risque de préjudice à la santé humaine;

**h)** dans le cas où la personne est en mesure d'éviter que la situation à l'origine du rappel ne se reproduise, la description des mesures qu'elle entend prendre à cet effet.

**(2)** The person shall notify the Minister without delay of any change to the information referred to in paragraph (1)(e).

**(3)** The person shall

**(a)** before starting the recall, provide the Minister with a copy of any communications that the person intends to use in connection with the start of the recall; and

**(b)** after starting the recall, provide the Minister with, on request and within the time specified by the Minister, a copy of any additional communications that the person uses, or intends to use, in connection with the recall.

**(4)** The person shall notify the Minister in writing, within 24 hours, of the start and completion of the recall.

**(5)** The person shall, within 30 days after completing the recall, provide the Minister with the following information in writing:

**(a)** the results of the recall; and

**(b)** if the person is in a position to prevent a recurrence of the situation that prompted the recall, a description of the measures that they have taken or will take to prevent a recurrence.

— SOR/2024-136, s. 3

**3 Paragraph C.02.012(1)(a) of the French version of the Regulations is replaced by the following:**

**a)** un système de contrôle qui permet le rappel rapide et complet de tout lot ou tout lot de fabrication de la drogue se trouvant sur le marché;

— SOR/2024-136, s. 5

**5 (1) Subsection C.02.022(1) of the French version of the Regulations is replaced by the following:**

**C.02.022 (1)** Le grossiste, le distributeur visé à l'article C.01A.003 et l'importateur d'une drogue sous forme posologique conservent les dossiers sur la vente de chaque lot ou lot de fabrication de la drogue pendant un an après sa date limite d'utilisation afin de pouvoir en faire le rappel, à moins que la licence d'établissement de l'intéressé ne prévoie une autre période.

**(2)** Elle avise sans délai le ministre de tout changement des renseignements visés à l'alinéa (1)e).

**(3)** Elle fournit au ministre :

**a)** avant de lancer le rappel, une copie de tout communiqué qu'elle entend utiliser relativement au lancement du rappel;

**b)** après avoir lancé le rappel, sur demande et dans le délai précisé par le ministre, une copie de tout communiqué additionnel qu'elle utilise ou qu'elle entend utiliser relativement au rappel.

**(4)** Elle notifie au ministre, par écrit, dans les vingt-quatre heures, le lancement du rappel ainsi que la fin de ce dernier.

**(5)** Elle fournit au ministre, par écrit, les renseignements ci-après dans les trente jours suivant la fin du rappel :

**a)** les résultats du rappel;

**b)** dans le cas où la personne est en mesure d'éviter que la situation à l'origine du rappel ne se reproduise, la description des mesures qu'elle a prises ou qu'elle prendra à cet effet.

— DORS/2024-136, art. 3

**3 L'alinéa C.02.012(1)a) de la version française du même règlement est remplacé par ce qui suit :**

**a)** un système de contrôle qui permet le rappel rapide et complet de tout lot ou tout lot de fabrication de la drogue se trouvant sur le marché;

— DORS/2024-136, art. 5

**5 (1) Le paragraphe C.02.022(1) de la version française du même règlement est remplacé par ce qui suit :**

**C.02.022 (1)** Le grossiste, le distributeur visé à l'article C.01A.003 et l'importateur d'une drogue sous forme posologique conservent les dossiers sur la vente de chaque lot ou lot de fabrication de la drogue pendant un an après sa date limite d'utilisation afin de pouvoir en faire le rappel, à moins que la licence d'établissement de l'intéressé ne prévoie une autre période.

**(2) The portion of subsection C.02.022(2) of the French version of the Regulations before paragraph (a) is replaced by the following:**

**(2)** Le distributeur d'un ingrédient actif visé à l'alinéa C.01A.003a) et le grossiste et l'importateur d'un ingrédient actif conservent les dossiers sur la vente de chaque lot ou lot de fabrication de l'ingrédient actif pendant celle des périodes ci-après qui s'applique afin de pouvoir en faire le rappel, à moins que l'intéressé ne détienne une licence d'établissement qui prévoit une autre période :

**(2) Le passage du paragraphe C.02.022(2) de la version française du même règlement précédant l'alinéa a) est remplacé par ce qui suit :**

**(2)** Le distributeur d'un ingrédient actif visé à l'alinéa C.01A.003a) et le grossiste et l'importateur d'un ingrédient actif conservent les dossiers sur la vente de chaque lot ou lot de fabrication de l'ingrédient actif pendant celle des périodes ci-après qui s'applique afin de pouvoir en faire le rappel, à moins que l'intéressé ne détienne une licence d'établissement qui prévoit une autre période :

# 36

CANADA

CONSOLIDATION

CODIFICATION

# Patented Medicines (Notice of Compliance) Regulations

# Règlement sur les médicaments brevetés (avis de conformité)

SOR/93-133

DORS/93-133

Current to June 19, 2024

Last amended on September 21, 2017

À jour au 19 juin 2024

Dernière modification le 21 septembre 2017

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

**Published consolidation is evidence**

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

**Inconsistencies in regulations**

**(3)** In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

**Codifications comme élément de preuve**

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

**Incompatibilité — règlements**

**(3)** Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

This consolidation is current to June 19, 2024. The last amendments came into force on September 21, 2017. Any amendments that were not in force as of June 19, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

## NOTE

Cette codification est à jour au 19 juin 2024. Les dernières modifications sont entrées en vigueur le 21 septembre 2017. Toutes modifications qui n'étaient pas en vigueur au 19 juin 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

## TABLE OF PROVISIONS

**Regulations Respecting a Notice of Compliance Pertaining to Patented Medicines**



## TABLE ANALYTIQUE

**Règlement concernant les avis de conformité portant sur les médicaments brevetés**

Registration
SOR/93-133 March 12, 1993

PATENT ACT

**Patented Medicines (Notice of Compliance) Regulations**

P.C. 1993-502 March 12, 1993

His Excellency the Governor General in Council, on the recommendation of the Minister of Consumer and Corporate Affairs, pursuant to subsection 55.2(4)* of the *Patent Act*, is pleased hereby to make the annexed Regulations respecting a notice of compliance pertaining to patented medicines.

Enregistrement
DORS/93-133 Le 12 mars 1993

LOI SUR LES BREVETS

**Règlement sur les médicaments brevetés (avis de conformité)**

C.P. 1993-502 Le 12 mars 1993

Sur recommandation du ministre de la Consommation et des Affaires commerciales et en vertu du paragraphe 55.2(4)* de la *Loi sur les brevets*, il plaît à Son Excellence le Gouverneur général en conseil de prendre le Règlement concernant les avis de conformité portant sur les médicaments brevetés, ci-après.

* S.C. 1993, c. 2, s. 4

* L.C. 1993, ch. 2, art. 4

**Regulations Respecting a Notice of Compliance Pertaining to Patented Medicines**

**Règlement concernant les avis de conformité portant sur les médicaments brevetés**

# Short Title

**1** These Regulations may be cited as the *Patented Medicines (Notice of Compliance) Regulations*.

# Interpretation

[SOR/2015-169, s. 1(F)]

**2 (1)** In these Regulations,

***claim for the dosage form*** means a claim for a delivery system for administering a medicinal ingredient in a drug or a formulation of a drug that includes within its scope that medicinal ingredient or formulation; (*revendication de la forme posologique*)

***claim for the formulation*** means a claim for a mixture that is composed of medicinal and non-medicinal ingredients, that is contained in a drug and that is administered to a patient in a particular dosage form; (*revendication de la formulation*)

***claim for the medicinal ingredient*** includes a claim in the patent for the medicinal ingredient, whether chemical or biological in nature, when prepared or produced by the methods or processes of manufacture particularly described and claimed in the patent, or by their obvious chemical equivalents, and also includes a claim for different polymorphs of the medicinal ingredient, but does not include different chemical forms of the medicinal ingredient; (*revendication de l'ingrédient médicinal*)

***claim for the medicine itself*** [Repealed, SOR/2006-242, s. 1]

***claim for the use of the medicinal ingredient*** means a claim for the use of the medicinal ingredient for the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or its symptoms; (*revendication de l'utilisation de l'ingrédient médicinal*)

***claim for the use of the medicine*** [Repealed, SOR/2006-242, s. 1]

***court*** [Repealed, SOR/2017-166, s. 1]

***expire*** means

# Titre abrégé

**1** *Règlement sur les médicaments brevetés (avis de conformité)*.

# Définitions et interprétation

[DORS/2015-169, art. 1(F)]

**2 (1)** Les définitions qui suivent s'appliquent au présent règlement.

***avis de conformité*** Avis délivré au titre de l'article C.08.004 ou C.08.004.01 du *Règlement sur les aliments et drogues*. (*notice of compliance*)

***expiré***

**a)** S'agissant d'un brevet, un brevet qui est expiré, qui est périmé ou qui a pris fin par l'effet d'une loi;

**b)** s'agissant d'un certificat de protection supplémentaire, un certificat de protection supplémentaire qui est expiré ou qui a pris fin par l'effet d'une loi. (*expire*)

***liste de brevets*** Liste présentée aux termes du paragraphe 4(1). (*patent list*)

***médicament*** [Abrogée, DORS/2006-242, art. 1]

***ministre*** Le ministre de la Santé. (*Minister*)

***première personne*** La personne visée au paragraphe 4(1). (*first person*)

***registre*** Le registre tenu par le ministre conformément au paragraphe 3(2). (*register*)

***revendication de la forme posologique*** Revendication à l'égard d'un mécanisme de libération permettant d'administrer l'ingrédient médicinal d'une drogue ou la formulation de celle-ci, dont la portée comprend cet ingrédient médicinal ou cette formulation. (*claim for the dosage form*)

***revendication de la formulation*** Revendication à l'égard d'un mélange formé d'ingrédients médicinaux et non médicinaux qui est contenu dans une drogue et est

**(a)** in relation to a patent, expire, lapse or terminate by operation of law; and

**(b)** in relation to a certificate of supplementary protection, expire or terminate by operation of law; (*expiré*)

***first person*** means the person referred to in subsection 4(1); (*première personne*)

***medicine*** [Repealed, SOR/2006-242, s. 1]

***Minister*** means the Minister of Health; (*ministre*)

***notice of compliance*** means a notice issued under section C.08.004 or C.08.004.01 of the *Food and Drug Regulations*; (*avis de conformité*)

***patent list*** means a list submitted under subsection 4(1); (*liste de brevets*)

***register*** means the register maintained by the Minister in accordance with subsection 3(2); (*registre*)

***second person*** means the person referred to in subsection 5(1) or (2) who files a submission or supplement referred to in those subsections. (*seconde personne*)

**(2)** For the purposes of the definition *claim for the formulation* in subsection (1), the claim for the formulation need not specify the non-medicinal ingredients contained in the drug.

**(3)** In these Regulations, a reference to the owner of a patent includes the owner of a patent set out in a certificate of supplementary protection.

SOR/98-166, s. 1; SOR/99-379, s. 1; SOR/2006-242, s. 1; err. (E), Vol. 140, No. 23; SOR/2008-211, s. 1; SOR/2011-89, s. 1; SOR/2015-169, s. 2; SOR/2017-166, s. 1.

administré à un patient sous une forme posologique donnée. (*claim for the formulation*)

***revendication de l'ingrédient médicinal*** S'entend, d'une part, d'une revendication, dans le brevet, de l'ingrédient médicinal — chimique ou biologique — préparé ou produit selon les modes ou procédés de fabrication décrits en détail et revendiqués dans le brevet ou selon leurs équivalents chimiques manifestes, et, d'autre part, d'une revendication pour différents polymorphes de celui-ci, à l'exclusion de ses différentes formes chimiques. (*claim for the medicinal ingredient*)

***revendication de l'utilisation de l'ingrédient médicinal*** Revendication de l'utilisation de l'ingrédient médicinal aux fins du diagnostic, du traitement, de l'atténuation ou de la prévention d'une maladie, d'un désordre, d'un état physique anormal, ou de leurs symptômes. (*claim for the use of the medicinal ingredient*)

***revendication pour le médicament en soi*** [Abrogée, DORS/2006-242, art. 1]

***revendication pour l'utilisation du médicament*** [Abrogée, DORS/2006-242, art. 1]

***seconde personne*** La personne visée aux paragraphes 5(1) ou (2) qui dépose la présentation ou le supplément qui y sont prévus. (*second person*)

***tribunal*** [Abrogée, DORS/2017-166, art. 1]

**(2)** Pour l'application de la définition de *revendication de la formulation* au paragraphe (1), il n'est pas impératif que la revendication de la formulation précise les ingrédients non médicinaux contenus dans la drogue.

**(3)** Dans le présent règlement, toute mention du propriétaire d'un brevet comprend le propriétaire d'un brevet mentionné dans un certificat de protection supplémentaire.

DORS/98-166, art. 1; DORS/99-379, art. 1; DORS/2006-242, art. 1; err. (A), Vol. 140, Nº. 23; DORS/2008-211, art. 1; DORS/2011-89, art. 1; DORS/2015-169, art. 2; DORS/2017-166, art. 1.

# Register and Patent List

**3 (1)** The following definitions apply in this section and in section 4.

***identification number*** means a number, preceded by the letters "DIN", that is assigned for a drug in accordance with subsection C.01.014.2(1) of the *Food and Drug Regulations*. (*identification numérique*)

# Registre et liste de brevets

**3 (1)** Les définitions qui suivent s'appliquent au présent article et à l'article 4.

***identification numérique*** Nombre, précédé des lettres « DIN », attribué à une drogue conformément au paragraphe C.01.014.2(1) du *Règlement sur les aliments et drogues*. (*identification number*)

***new drug submission*** means a new drug submission or an extraordinary use new drug submission as those terms are used in Division 8 of Part C of the *Food and Drug Regulations*, but excludes such a submission that is based solely on the change of name of the manufacturer. (*présentation de drogue nouvelle*)

***supplement to a new drug submission*** means a supplement to a new drug submission or a supplement to an extraordinary use new drug submission as those terms are used in Division 8 of Part C of the *Food and Drug Regulations*, but excludes such a supplement that is based solely on one or more of the matters mentioned in any of paragraphs C.08.003(2)(b) and (d) to (g) and subparagraphs C.08.003(2)(h)(iv) and (v) of those Regulations. (*supplément à une présentation de drogue nouvelle*)

**(2)** The Minister shall maintain a register of patents that have been submitted for addition to the register and certificates of supplementary protection in which any of those patents are set out

**(a)** by adding any patent on a patent list or certificate of supplementary protection that meets the requirements for addition to the register;

**(b)** by refusing to add any patent or certificate of supplementary protection that does not meet the requirements for addition to the register;

**(c)** by deleting any patent or certificate of supplementary protection

**(i)** that was added to the register due to an administrative error,

**(ii)** that has, under subsection 60(1) or 125(1) of the *Patent Act*, been declared to be invalid or void,

**(iii)** that has, under subsection 6.07(1), been declared to be ineligible for inclusion on the register, or

**(iv)** the deletion of which was requested by the first person in respect of the patent list that includes that patent;

**(d)** by deleting, in respect of a new drug submission or a supplement to a new drug submission, any patent that has expired, unless a certificate of supplementary protection in which the patent is set out is included on the register in respect of that submission or supplement; and

***présentation de drogue nouvelle*** S'entend au sens de *présentation de drogue nouvelle* ou de *présentation de drogue nouvelle pour usage exceptionnel* au titre 8 de la partie C du *Règlement sur les aliments et drogues*, à l'exclusion de la présentation qui vise uniquement le changement de nom du fabricant. (*new drug submission*)

***supplément à une présentation de drogue nouvelle*** S'entend au sens de *supplément à une présentation de drogue nouvelle* ou de *supplément à une présentation de drogue nouvelle pour usage exceptionnel* au titre 8 de la partie C du *Règlement sur les aliments et drogues*, à l'exclusion du supplément qui porte uniquement sur l'un ou l'autre des éléments visés à l'un ou plusieurs des alinéas C.08.003(2)b) et d) à g) et des sous-alinéas C.08.003(2)h)(iv) et (v) du même règlement. (*supplement to a new drug submission*)

**(2)** Le ministre tient un registre des brevets qui ont été présentés pour adjonction au registre et des certificats de protection supplémentaire qui mentionnent ces brevets. À cette fin, le ministre :

**a)** ajoute au registre tout brevet inscrit sur une liste de brevets et tout certificat de protection supplémentaire qui sont conformes aux exigences pour adjonction au registre;

**b)** refuse d'ajouter au registre tout brevet et tout certificat de protection supplémentaire qui ne sont pas conformes aux exigences pour adjonction au registre;

**c)** supprime du registre tout brevet ou tout certificat de protection supplémentaire :

**(i)** qui y a été ajouté à la suite d'une erreur administrative,

**(ii)** qui a été déclaré invalide ou nul aux termes des paragraphes 60(1) ou 125(1) de la *Loi sur les brevets*,

**(iii)** qui a été déclaré inadmissible à l'inscription au registre au titre du paragraphe 6.07(1),

**(iv)** qui fait l'objet d'une demande de suppression par la première personne à l'égard de la liste de brevets qui comprend ce brevet;

**d)** supprime, à l'égard d'une présentation de drogue nouvelle ou d'un supplément à une présentation de drogue nouvelle, tout brevet qui est expiré, sauf si un certificat de protection supplémentaire mentionnant ce brevet est inscrit au registre à l'égard de cette présentation ou de ce supplément;

**(e)** by deleting any certificate of supplementary protection that has expired.

**(2.1)** The Minister is not permitted to make a deletion referred to in subparagraph (2)(c)(iii) based on a decision by the Federal Court before the later of the day on which the period for appealing that decision to the Federal Court of Appeal ends and the day on which any appeal of that decision to the Federal Court of Appeal is discontinued or dismissed.

**(2.2)** The Minister shall add any patent or certificate of supplementary protection to the register that has been deleted under subparagraph (2)(c)(ii) or (iii) based on a decision that subsequently is reversed or set aside on appeal.

**(2.3)** The Minister may review the register to determine whether any patents or certificates of supplementary protection do not meet the requirements for inclusion on the register and, if the Minister conducts that review, shall delete any patent or certificate of supplementary protection that is determined not to meet those requirements.

**(3)** If a patent is listed on the register in respect of a new drug submission or supplement to a new drug submission for a drug for which the identification number has been cancelled under paragraph C.01.014.6(1)(a) of the *Food and Drug Regulations*, the Minister shall delete the patent from the register 90 days after the date of cancellation.

**(4)** Subsection (3) does not apply if the identification number is cancelled under paragraph C.01.014.6(1)(a) of the *Food and Drug Regulations* because of a change in manufacturer.

**(5)** If, after an identification number is cancelled under paragraph C.01.014.6(1)(a) of the *Food and Drug Regulations*, an identification number is assigned for the same drug, the Minister shall add to the register the patent that was deleted under subsection (3) when the Minister receives the document required by section C.01.014.3 of the *Food and Drug Regulations* in respect of the drug.

**(6)** The register shall be open to public inspection during business hours.

**(7)** No patent on a patent list or certificate of supplementary protection shall be added to the register until after the Minister has issued a notice of compliance in respect of the new drug submission or the supplement to a new drug submission, as the case may be, to which the patent or certificate of supplementary protection relates.

**e)** supprime tout certificat de protection supplémentaire qui est expiré.

**(2.1)** Le ministre ne peut faire la suppression visée au sous-alinéa (2)c)(iii) sur le fondement d'une décision de la Cour fédérale avant la date à laquelle se termine la période pour porter en appel cette décision à la Cour d'appel fédérale ou, si elle est postérieure, la date à laquelle tout appel de cette décision à la Cour d'appel fédérale a été abandonné ou rejeté.

**(2.2)** Le ministre rajoute au registre tout brevet ou tout certificat de protection supplémentaire qu'il avait supprimé en application des sous-alinéas (2)c)(ii) ou (iii) sur le fondement d'une décision qui a été subséquemment renversée ou annulée en appel.

**(2.3)** Le ministre peut examiner le registre pour établir si des brevets ou des certificats de protection supplémentaire ne sont pas conformes aux exigences d'inscription au registre; le cas échéant, il supprime tout brevet ou tout certificat de protection supplémentaire qu'il établit être non conforme.

**(3)** Dans le cas où un brevet est lié à une présentation de drogue nouvelle ou un supplément à une présentation de drogue nouvelle pour une drogue dont l'identification numérique a été annulée en vertu de l'alinéa C.01.014.6(1)a) du *Règlement sur les aliments et drogues*, le ministre supprime le brevet du registre quatre-vingt-dix jours après la date de l'annulation.

**(4)** Le paragraphe (3) ne s'applique pas si l'identification numérique a été annulée en vertu de l'alinéa C.01.014.6(1)a) du *Règlement sur les aliments et drogues* du fait d'un changement de fabricant.

**(5)** Si, après que l'identification numérique a été annulée en vertu de l'alinéa C.01.014.6(1)a) du *Règlement sur les aliments et drogues*, une identification numérique est attribuée à l'égard de la même drogue, le ministre ajoute au registre le brevet qui en a été supprimé aux termes du paragraphe (3) lorsqu'il reçoit le document exigé par l'article C.01.014.3 du *Règlement sur les aliments et drogues* à l'égard de cette drogue.

**(6)** Le registre est mis à la disposition du public durant les heures de bureau.

**(7)** Aucun brevet inscrit sur une liste de brevets ni aucun certificat de protection supplémentaire n'est ajouté au registre avant que le ministre n'ait délivré d'avis de conformité à l'égard de la présentation de drogue nouvelle ou du supplément à une présentation de drogue nouvelle, selon le cas, auquel le brevet ou le certificat de protection supplémentaire se rattache.

**(8)** For the purpose of determining whether a patent or certificate of supplementary protection is to be added to or deleted from the register, the Minister may consult with officers or employees of the Patent Office.

SOR/98-166, s. 2; SOR/2006-242, s. 2; SOR/2011-89, s. 2; SOR/2017-166, s. 2.

**3.1 (1)** The Minister shall not delete from the register a patent on a patent list that was submitted before June 17, 2006, unless

**(a)** the patent has expired;

**(b)** a court has, under subsection 60(1) of the *Patent Act*, declared that the patent is invalid or void;

**(c)** the identification number assigned to the drug in respect of which the patent is listed is cancelled under paragraph C.01.014.6(1)(a) of the *Food and Drug Regulations*; or

**(d)** the first person in respect of that patent list requests the Minister to delete the patent.

**(2)** The Minister shall not refuse to add to the register a patent on a patent list that was submitted before June 17, 2006 solely on the basis that the patent is not relevant to the submission for a notice of compliance to which the patent list relates.

SOR/2008-211, s. 2; SOR/2017-166, s. 3.

**3.2** [Repealed, SOR/2017-166, s. 4]

**4 (1)** A first person who files or who has filed a new drug submission or a supplement to a new drug submission may submit to the Minister a patent list in relation to the submission or supplement for addition to the register.

**(1.1)** The patent list may include a patent whose term under section 44 of the *Patent Act*, without taking into account section 46 of that Act, has expired and that is set out in a certificate of supplementary protection that has taken effect.

**(2)** A patent on a patent list in relation to a new drug submission is eligible to be added to the register if the patent contains

**(a)** a claim for the medicinal ingredient and the medicinal ingredient has been approved through the issuance of a notice of compliance in respect of the submission;

**(8)** Pour établir s'il doit ajouter au registre ou supprimer de celui-ci un brevet ou un certificat de protection supplémentaire, le ministre peut consulter le personnel du Bureau des brevets.

DORS/98-166, art. 2; DORS/2006-242, art. 2; DORS/2011-89, art. 2; DORS/2017-166, art. 2.

**3.1 (1)** Le ministre ne peut supprimer du registre un brevet inscrit sur une liste de brevets présentée avant le 17 juin 2006, sauf dans les cas suivants :

**a)** le brevet est expiré;

**b)** le tribunal a déclaré que le brevet est invalide ou nul aux termes du paragraphe 60(1) de la *Loi sur les brevets*;

**c)** l'identification numérique attribuée à la drogue à l'égard de laquelle le brevet est inscrit au registre est annulée aux termes de l'alinéa C.01.014.6(1)a) du *Règlement sur les aliments et drogues*;

**d)** la première personne à l'égard de la liste de brevets demande au ministre de supprimer le brevet.

**(2)** Il ne peut refuser d'ajouter au registre un brevet inscrit sur une liste de brevets présentée avant le 17 juin 2006 pour la seule raison que celui-ci n'est pas pertinent quant à la demande d'avis de conformité à laquelle se rapporte la liste.

DORS/2008-211, art. 2; DORS/2017-166, art. 3.

**3.2** [Abrogé, DORS/2017-166, art. 4]

**4 (1)** La première personne qui dépose ou a déposé la présentation de drogue nouvelle ou le supplément à une présentation de drogue nouvelle peut présenter au ministre, pour adjonction au registre, une liste de brevets qui se rattache à la présentation ou au supplément.

**(1.1)** La liste de brevets peut comprendre un brevet qui est périmé en application de l'article 44 de la *Loi sur les brevets* — compte non tenu de l'article 46 de cette loi — et qui est mentionné dans un certificat de protection supplémentaire ayant pris effet.

**(2)** Est admissible à l'adjonction au registre tout brevet, inscrit sur une liste de brevets, qui se rattache à la présentation de drogue nouvelle, s'il contient, selon le cas :

**a)** une revendication de l'ingrédient médicinal, l'ingrédient médicinal ayant été approuvé par la délivrance d'un avis de conformité à l'égard de la présentation;

**(b)** a claim for the formulation that contains the medicinal ingredient and the formulation has been approved through the issuance of a notice of compliance in respect of the submission;

**(c)** a claim for the dosage form and the dosage form has been approved through the issuance of a notice of compliance in respect of the submission; or

**(d)** a claim for the use of the medicinal ingredient, and the use has been approved through the issuance of a notice of compliance in respect of the submission.

**(2.1)** The following rules apply when determining the eligibility of a patent to be added to the register under subsection (2):

**(a)** for the purposes of paragraph (2)(a), a patent that contains a claim for the medicinal ingredient is eligible even if the submission includes, in addition to the medicinal ingredient claimed in the patent, other medicinal ingredients;

**(b)** for the purposes of paragraph (2)(b), a patent that contains a claim for the formulation is eligible if the submission includes the non-medicinal ingredients specified in the claim, if any are specified, even if the submission contains any additional non-medicinal ingredients; and

**(c)** for the purposes of paragraph (2)(d), a patent that contains a claim for the use of the medicinal ingredient is eligible if the submission includes the use claimed in the patent, even if

**(i)** the submission includes additional medicinal ingredients,

**(ii)** the submission includes other additional uses of the medicinal ingredient, or

**(iii)** the use that is included in the submission requires the use of the medicinal ingredient in combination with another drug.

**(3)** A patent on a patent list in relation to a supplement to a new drug submission is eligible to be added to the register if the supplement is for a change in formulation, a change in dosage form or a change in use of the medicinal ingredient, and

**(a)** in the case of a change in formulation, the patent contains a claim for the changed formulation that has

**b)** une revendication de la formulation contenant l'ingrédient médicinal, la formulation ayant été approuvée par la délivrance d'un avis de conformité à l'égard de la présentation;

**c)** une revendication de la forme posologique, la forme posologique ayant été approuvée par la délivrance d'un avis de conformité à l'égard de la présentation;

**d)** une revendication de l'utilisation de l'ingrédient médicinal, l'utilisation ayant été approuvée par la délivrance d'un avis de conformité à l'égard de la présentation.

**(2.1)** Les règles ci-après s'appliquent au moment de la détermination de l'admissibilité des brevets pour leur adjonction au registre aux termes du paragraphe (2) :

**a)** pour l'application de l'alinéa (2)a), un brevet qui contient la revendication de l'ingrédient médicinal est admissible même si la présentation comprend, en plus de l'ingrédient médicinal revendiqué dans le brevet, d'autres ingrédients médicinaux;

**b)** pour l'application de l'alinéa (2)b), un brevet qui contient la revendication de la formulation est admissible si la présentation comprend les ingrédients non médicinaux précisés dans la revendication — si des ingrédients non médicinaux y sont précisés —, même si la présentation contient des ingrédients non médicinaux additionnels;

**c)** pour l'application de l'alinéa (2)d), un brevet qui contient la revendication de l'utilisation de l'ingrédient médicinal est admissible si la présentation comprend l'utilisation revendiquée dans le brevet, même si :

**(i)** la présentation comprend l'utilisation d'ingrédients médicinaux additionnels,

**(ii)** la présentation comprend d'autres utilisations,

**(iii)** l'utilisation comprise dans la présentation requiert l'utilisation de l'ingrédient médicinal en conjonction avec une autre drogue.

**(3)** Est admissible à l'adjonction au registre tout brevet, inscrit sur une liste de brevets, qui se rattache au supplément à une présentation de drogue nouvelle visant une modification de la formulation, une modification de la forme posologique ou une modification de l'utilisation de l'ingrédient médicinal, s'il contient, selon le cas :

**a)** dans le cas d'une modification de formulation, une revendication de la formulation modifiée, la

been approved through the issuance of a notice of compliance in respect of the supplement;

**(b)** in the case of a change in dosage form, the patent contains a claim for the changed dosage form that has been approved through the issuance of a notice of compliance in respect of the supplement; or

**(c)** in the case of a change in use of the medicinal ingredient, the patent contains a claim for the changed use of the medicinal ingredient that has been approved through the issuance of a notice of compliance in respect of the supplement.

**(3.1)** A certificate of supplementary protection is eligible to be added to the register in respect of a new drug submission or a supplement to a new drug submission if

**(a)** the patent that is set out in the certificate of supplementary protection is included on the register in respect of that submission or supplement; and

**(b)** the submission or supplement relates to a drug with respect to which the certificate of supplementary protection grants rights, privileges and liberties referred to in section 115 of the *Patent Act*.

**(4)** A patent list shall contain the following:

**(a)** an identification of the new drug submission or the supplement to a new drug submission to which the list relates;

**(b)** the medicinal ingredient, brand name, dosage form, strength, route of administration and use set out in the new drug submission or the supplement to a new drug submission to which the list relates;

**(c)** for each patent on the list, the patent number, the filing date of the patent application in Canada, the date of grant of the patent and the date on which the term limited for the duration of the patent will expire under section 44 or 45 of the *Patent Act*;

**(d)** for each patent on the list, a statement that the first person who filed the new drug submission or the supplement to a new drug submission to which the list relates

**(i)** is the owner of the patent,

**(ii)** has an exclusive licence to the patent or to a certificate of supplementary protection in which that patent is set out, or

formulation ayant été approuvée par la délivrance d'un avis de conformité à l'égard du supplément;

**b)** dans le cas d'une modification de la forme posologique, une revendication de la forme posologique modifiée, la forme posologique ayant été approuvée par la délivrance d'un avis de conformité à l'égard du supplément;

**c)** dans le cas d'une modification d'utilisation de l'ingrédient médicinal, une revendication de l'utilisation modifiée de l'ingrédient médicinal, l'utilisation ayant été approuvée par la délivrance d'un avis de conformité à l'égard du supplément.

**(3.1)** Est admissible à l'adjonction au registre, à l'égard d'une présentation de drogue nouvelle ou d'un supplément à une présentation de drogue nouvelle, tout certificat de protection supplémentaire si, à la fois :

**a)** le brevet mentionné dans le certificat de protection supplémentaire est inscrit au registre à l'égard de cette présentation ou de ce supplément;

**b)** cette présentation ou ce supplément vise une drogue à l'égard de laquelle le certificat de protection supplémentaire confère des droits, facultés et privilèges visés par l'article 115 de la *Loi sur les brevets*.

**(4)** La liste de brevets comprend :

**a)** l'identification de la présentation de drogue nouvelle ou du supplément à la présentation de drogue nouvelle qui s'y rattachent;

**b)** l'ingrédient médicinal, la marque nominative, la forme posologique, la concentration, la voie d'administration et l'utilisation prévus à la présentation ou au supplément qui s'y rattachent;

**c)** à l'égard de chaque brevet qui y est inscrit, le numéro de brevet, la date de dépôt de la demande de brevet au Canada, la date de délivrance de celui-ci et la date d'expiration du brevet aux termes des articles 44 ou 45 de la *Loi sur les brevets*;

**d)** à l'égard de chaque brevet qui y est inscrit, une déclaration portant que la première personne qui a déposé la présentation de drogue nouvelle ou le supplément à une présentation de drogue nouvelle qui s'y rattache :

**(i)** soit en est le propriétaire,

**(ii)** soit en détient la licence exclusive ou détient une telle licence à l'égard d'un certificat de protection supplémentaire qui mentionne ce brevet,

**(iii)** has obtained the consent of the owner of the patent to its inclusion on the list;

**(e)** the address in Canada for service, on the first person, of a notice of allegation referred to in paragraph 5(3)(a) or the name and address in Canada of another person on whom service may be made with the same effect as if service were made on the first person; and

**(f)** a certification by the first person that the information submitted under this subsection is accurate and that each patent on the list meets the eligibility requirements of subsection (2) or (3).

**(5)** Subject to subsection (6), a first person who submits a patent list must do so at the time the person files the new drug submission or the supplement to a new drug submission to which the patent list relates.

**(6)** A first person may, after the date of filing of a new drug submission or a supplement to a new drug submission, and within 30 days after the issuance of a patent that was issued on the basis of an application that has a filing date in Canada that precedes the date of filing of the submission or supplement, submit a patent list, including the information referred to in subsection (4), in relation to the submission or supplement.

**(7)** A first person who has submitted a patent list must keep the information on the list up to date but, in so doing, may not add a patent to the list.

**(8)** The Minister shall insert on the patent list the date of filing and submission number of the new drug submission or the supplement to a new drug submission in relation to which the list was submitted.

SOR/98-166, s. 3; SOR/2006-242, s. 2; err. (E), Vol. 140, No. 23; SOR/2015-169, s. 4; SOR/2017-166, s. 5.

**4.1 (1)** In this section, ***supplement to the new drug submission*** means a supplement to a new drug submission or a supplement to an extraordinary use new drug submission as those terms are used in Division 8 of Part C of the *Food and Drug Regulations*.

**(2)** A first person who submits a patent list in relation to a new drug submission referred to in subsection 4(2) may, if the list is added to the register, resubmit the same list in relation to a supplement to the new drug submission, but may not submit a new patent list in relation to a supplement except in accordance with subsection 4(3).

SOR/2006-242, s. 2; SOR/2011-89, s. 3.

**iii)** soit a obtenu le consentement du propriétaire pour l'inscrire sur la liste;

**e)** l'adresse au Canada de la première personne aux fins de signification de l'avis d'allégation visé à l'alinéa 5(3)a) ou les nom et adresse au Canada d'une autre personne qui peut en recevoir signification comme s'il s'agissait de la première personne elle-même;

**f)** une attestation de la première personne portant que les renseignements fournis aux termes du présent paragraphe sont exacts et que chaque brevet qui y est inscrit est conforme aux conditions d'admissibilité prévues aux paragraphes (2) ou (3).

**(5)** Sous réserve du paragraphe (6), la première personne qui présente une liste de brevets doit le faire au moment du dépôt de la présentation de drogue nouvelle ou du supplément à une présentation de drogue nouvelle qui s'y rattachent.

**(6)** La première personne peut, après la date de dépôt de la présentation de drogue nouvelle ou du supplément à une présentation de drogue nouvelle et dans les trente jours suivant la délivrance d'un brevet faite au titre d'une demande de brevet dont la date de dépôt au Canada est antérieure à celle de la présentation ou du supplément, présenter une liste de brevets, à l'égard de cette présentation ou de ce supplément, qui contient les renseignements visés au paragraphe (4).

**(7)** La première personne qui a présenté une liste de brevets doit tenir à jour les renseignements y figurant, mais ne peut toutefois y ajouter de brevets.

**(8)** Le ministre inscrit sur la liste de brevets la date de dépôt et le numéro de la présentation de drogue nouvelle ou du supplément à une présentation de drogue nouvelle qui se rattache à la liste présentée.

DORS/98-166, art. 3; DORS/2006-242, art. 2; err. (A), Vol. 140, Nº. 23; DORS/2015-169, art. 4; DORS/2017-166, art. 5.

**4.1 (1)** Au présent article, ***supplément à une présentation de drogue nouvelle*** s'entend au sens de supplément à une présentation de drogue nouvelle ou supplément à une présentation de drogue nouvelle pour usage exceptionnel au titre 8 de la partie C du *Règlement sur les aliments et drogues*.

**(2)** La première personne qui présente une liste de brevets se rattachant à la présentation de drogue nouvelle visée au paragraphe 4(2) peut, si cette liste est ajoutée au registre, la présenter de nouveau à l'égard de tout supplément à cette présentation de drogue nouvelle; elle ne peut toutefois présenter de nouvelle liste se rattachant à

un supplément donné qu'en conformité avec le paragraphe 4(3).

DORS/2006-242, art. 2; DORS/2011-89, art. 3.

**5 (1)** If a second person files a submission for a notice of compliance in respect of a drug and the submission directly or indirectly compares the drug with, or makes reference to, another drug marketed in Canada under a notice of compliance issued to a first person and in respect of which a patent list has been submitted, the second person shall include in the submission the required statements or allegations set out in subsection (2.1).

**5 (1)** Dans le cas où la seconde personne dépose une présentation pour un avis de conformité à l'égard d'une drogue, laquelle présentation, directement ou indirectement, compare celle-ci à une autre drogue commercialisée sur le marché canadien aux termes d'un avis de conformité délivré à la première personne et à l'égard de laquelle une liste de brevets a été présentée — ou y fait renvoi —, cette seconde personne inclut dans sa présentation les déclarations ou allégations visées au paragraphe (2.1).

**(2)** If a second person files a supplement to a submission referred to in subsection (1) seeking a notice of compliance for a change in formulation, a change in dosage form or a change in use of the medicinal ingredient and the supplement directly or indirectly compares the drug for which the supplement is filed with, or makes reference to, another drug that has been marketed in Canada under a notice of compliance issued to a first person and in respect of which a patent list has been submitted, the second person shall include in the supplement the required statements or allegations set out in subsection (2.1).

**(2)** Dans le cas où la seconde personne dépose un supplément à la présentation visée au paragraphe (1), en vue d'obtenir un avis de conformité à l'égard d'une modification de la formulation, d'une modification de la forme posologique ou d'une modification de l'utilisation de l'ingrédient médicinal, lequel supplément, directement ou indirectement, compare la drogue pour laquelle le supplément est déposé à une autre drogue commercialisée sur le marché canadien aux termes de l'avis de conformité délivré à la première personne et à l'égard duquel une liste de brevets a été présentée — ou y fait renvoi —, cette seconde personne inclut dans son supplément les déclarations ou allégations visées au paragraphe (2.1).

**(2.1)** The statements or allegations required for the submission or the supplement, as the case may be, are — with respect to each patent included on the register in respect of the other drug and with respect to each certificate of supplementary protection in which the patent is set out and that is included on the register in respect of the other drug — the following:

**(a)** a statement that the owner of that patent has consented to the making, constructing, using or selling in Canada of the drug for which the submission or supplement is filed by the second person;

**(b)** a statement that the second person accepts that the notice of compliance will not issue until that patent or certificate of supplementary protection, as the case may be, expires; or

**(c)** an allegation that

**(i)** the statement made by the first person under paragraph 4(4)(d) is false,

**(ii)** that patent or certificate of supplementary protection is invalid or void,

**(iii)** that patent or certificate of supplementary protection is ineligible for inclusion on the register,

**(2.1)** Les déclarations ou allégations exigées pour la présentation ou le supplément, selon le cas, à l'égard de chaque brevet inscrit au registre pour l'autre drogue — et à l'égard de chaque certificat de protection supplémentaire qui mentionne le brevet et qui est inscrit au registre pour cette autre drogue — sont les suivantes :

**a)** soit une déclaration portant que le propriétaire du brevet a consenti à la fabrication, à la construction, à l'exploitation ou à la vente au Canada de la drogue à l'égard de laquelle la présentation ou le supplément a été déposé par la seconde personne;

**b)** soit une déclaration portant que la seconde personne accepte que l'avis de conformité ne soit pas délivré avant l'expiration du brevet ou du certificat de protection supplémentaire, selon le cas;

**c)** soit toute allégation portant que :

**(i)** la déclaration faite par la première personne en application de l'alinéa 4(4)d) est fausse,

**(ii)** le brevet ou le certificat de protection supplémentaire est invalide ou nul,

**(iii)** le brevet ou le certificat de protection supplémentaire est inadmissible à l'inscription au registre,

**(iv)** that patent or certificate of supplementary protection would not be infringed by the second person making, constructing, using or selling the drug for which the submission or the supplement is filed,

**(v)** that patent or certificate of supplementary protection has expired, or

**(vi)** in the case of a certificate of supplementary protection, that certificate of supplementary protection cannot take effect.

**(3)** A second person who makes an allegation referred to in paragraph (2.1)(c) shall

**(a)** serve on the first person a notice of allegation relating to the submission or supplement filed under subsection (1) or (2) on or after its date of filing;

**(b)** include in the notice of allegation

**(i)** a description of the medicinal ingredient, dosage form, strength, route of administration and use of the drug in respect of which the submission or supplement has been filed, and

**(ii)** a statement of the legal and factual basis for the allegation, which statement must be detailed in the case of an allegation that the patent or certificate of supplementary protection is invalid or void;

**(c)** serve the following documents with the notice:

**(i)** a certification by the Minister of the date of filing of the submission or supplement,

**(ii)** a document setting out the second person's address for service for the purpose of any action that may be brought against them under subsection 6(1), along with the names of and contact information for their anticipated solicitors of record if that action is brought,

**(iii)** a searchable electronic copy of the portions of the submission or supplement that are under the control of the second person and relevant to determine if any patent or certificate of supplementary protection referred to in the allegation would be infringed, and

**(iv)** if the second person is alleging that the patent or certificate of supplementary protection is invalid or void, an electronic copy of any document — along with an electronic copy of it in English or French if available — on which the person is relying in support of the allegation;

**(iv)** en fabriquant, construisant, exploitant ou vendant la drogue pour laquelle la présentation ou le supplément est déposé, la seconde personne ne contreferait pas le brevet ou le certificat de protection supplémentaire,

**(v)** le brevet ou le certificat de protection supplémentaire est expiré,

**(vi)** dans le cas d'un certificat de protection supplémentaire, celui-ci ne peut pas prendre effet.

**(3)** La seconde personne qui inclut une allégation visée à l'alinéa (2.1)c) est tenue de prendre les mesures suivantes :

**a)** signifier à la première personne un avis de l'allégation à l'égard de la présentation ou du supplément déposé en vertu des paragraphes (1) ou (2), à la date de son dépôt ou à toute date postérieure;

**b)** insérer dans l'avis de l'allégation :

**(i)** une description de l'ingrédient médicinal, de la forme posologique, de la concentration, de la voie d'administration et de l'utilisation de la drogue visée par la présentation ou le supplément,

**(ii)** un énoncé du fondement juridique et factuel de l'allégation, lequel énoncé est détaillé dans le cas d'une allégation portant que le brevet ou le certificat de protection supplémentaire est invalide ou nul.

**c)** signifier, avec l'avis, les documents suivants :

**(i)** une attestation par le ministre de la date du dépôt de la présentation ou du supplément,

**(ii)** un document indiquant l'adresse de la seconde personne aux fins de signification dans le cas où une action serait intentée contre elle en vertu du paragraphe 6(1), ainsi que les noms et les coordonnées des avocats qui seraient inscrits au dossier dans un tel cas,

**(iii)** une copie électronique — pouvant faire l'objet de recherches — de toute partie de la présentation ou du supplément qui est sous le contrôle de la seconde personne et qui est pertinente pour établir si un brevet ou un certificat de protection supplémentaire visé par l'allégation serait contrefait,

**(iv)** si la seconde personne allègue que le brevet ou le certificat de protection supplémentaire est invalide ou nul, une copie électronique — ainsi qu'une copie électronique en français ou en anglais si une

**(d)** provide, without delay, to the first person any portion of a submission or supplement referred to in subparagraph (c)(iii) that is changed on or before the later of the 45th day after the day on which the notice of allegation is served and the day of the disposition of any action that has been brought under subsection 6(1); and

**(e)** provide to the Minister proof of service of the documents referred to in paragraphs (a) and (b), along with a copy of the notice of allegation.

**(3.1)** A second person who makes an allegation that the patent or certificate of supplementary protection is invalid or void may, when the notice of allegation is served, request

**(a)** the name of and contact information for any inventor who might have information relevant to the allegation, along with an indication as to whether that inventor is an employee of the first person or of the patent owner; and

**(b)** any laboratory notebook, research report or other document that may be relevant to determine whether a particular property, advantage, or use asserted by the second person to be part of the invention was established as of the filing date of the application for the patent, if the second person identifies the specific allegation in the notice of allegation that is relevant to the request and the portion of the patent in which that property, advantage or use is set out.

**(3.2)** A document referred to in paragraph (3.1)(b) must be provided in a searchable electronic format but, if it is not available in that format, in an electronic format. In addition, if the document provided is not already in English or French, it must also be provided, if available, in English or French and be in a searchable electronic format but, if it is not available in that format, in an electronic format.

**(3.3)** Within five days after the day on which the first person is served with any notice or document under subsection (3), they shall forward a copy of it, along with any request made under subsection (3.1) when the notice was served and an indication of the date of the service,

**(a)** to the owner of each patent in respect of which an allegation is made in that notice; and

telle copie est disponible — de tout document à l'appui de son allégation;

**d)** transmettre à la première personne, dans les plus brefs délais, toute partie de la présentation ou du supplément visée au sous-alinéa c)(iii) qui est modifiée au plus tard le quarante-cinquième jour suivant la date de signification de l'avis d'allégation ou, si elle est postérieure à ce jour, à la date à laquelle toute action intentée en vertu du paragraphe 6(1) est réglée;

**e)** transmettre au ministre la preuve de la signification des documents visés aux alinéas a) et b), ainsi qu'une copie de l'avis d'allégation.

**(3.1)** La seconde personne qui allègue que le brevet ou le certificat de protection supplémentaire est invalide ou nul peut demander les renseignements ou documents suivants au moment de la signification de l'avis d'allégation :

**a)** le nom et les coordonnées de tout inventeur qui pourrait avoir des renseignements pertinents quant à l'allégation, ainsi qu'une indication précisant si cet inventeur est un employé de la première personne ou du propriétaire du brevet;

**b)** tout carnet de laboratoire, rapport de recherche ou autre document pouvant être pertinent pour établir si une propriété, un avantage ou une utilisation spécifique que la seconde personne affirme faire partie de l'invention était établi à la date du dépôt de la demande de brevet, si la seconde personne identifie l'allégation spécifique dans l'avis d'allégation qui est pertinente à l'égard de la demande, ainsi que la partie du brevet qui mentionne cette propriété, cet avantage ou cette utilisation.

**(3.2)** Tout document visé à l'alinéa (3.1)b) est fourni sous une forme électronique pouvant faire l'objet de recherches ou, si une telle forme n'est pas disponible, sous une forme électronique. De plus, si le document fourni n'est ni en français ni en anglais, il est également fourni en français ou en anglais, s'il est disponible dans l'une ou l'autre de ces deux langues, sous une forme électronique pouvant faire l'objet de recherches ou, si une telle forme n'est pas disponible, sous une forme électronique.

**(3.3)** Au plus tard cinq jours après la date à laquelle elle a reçu signification de tout avis d'allégation ou document visé au paragraphe (3), la première personne transmet une copie de celui-ci, ainsi que toute demande faite en vertu du paragraphe (3.1) au moment de la signification de l'avis d'allégation, avec une mention de la date de signification, aux personnes suivantes :

**(b)** to the owner of a patent that is set out in each certificate of supplementary protection in respect of which an allegation is made in that notice.

**(3.4)** The first person shall, without delay, notify the second person that they forwarded the copy under subsection (3.3) and, if they are owner of any patent referred to in that subsection, that they are its owner.

**(3.5)** The second person may impose on the first person referred to in paragraph (3)(a) and any owner of a patent to whom a document is forwarded under subsection (3.3) any reasonable rules for maintaining the confidentiality of any portion of a submission or supplement referred to in subparagraph (3)(c)(iii).

**(3.6)** Those confidentiality rules are binding and enforceable by the Federal Court, which may award any remedy that it considers just if they are not respected.

**(3.7)** On motion of the first person or of the owner of the patent — or on its own initiative after giving an opportunity to be heard to that first person, that owner and the second person — the Federal Court may set aside or vary any or all of those confidentiality rules in any manner that it considers just.

**(3.8)** A second person who is, under subparagraph (3)(c)(iii) or paragraph (3)(d), required to serve or provide a document may — if there is reason to believe that the intended recipient of the document is not in Canada — refuse to do so unless that recipient attorns to the jurisdiction of the Federal Court with respect to the confidentiality of the information set out in the document.

**(3.9)** A second person who is, under subparagraph (3)(c)(iii) or paragraph (3)(d), required to serve or provide a document to a first person referred to in paragraph (3)(a) may — if there is reason to believe that the first person is required to forward the document to the owner of a patent who is not in Canada — require that the first person forward it only if that owner attorns to the jurisdiction of the Federal Court with respect to the confidentiality of the information set out in the document.

**(4)** A second person is not required to comply with

**(a)** subsection (1) in respect of a patent, or a certificate of supplementary protection that sets out the

**a)** le propriétaire de chaque brevet à l'égard duquel une allégation est faite dans cet avis;

**b)** le propriétaire d'un brevet qui est mentionné dans chaque certificat de protection supplémentaire à l'égard duquel une allégation est faite dans cet avis.

**(3.4)** Dans les plus brefs délais, la première personne avise la seconde personne de la transmission faite en application du paragraphe (3.3) et, si elle est le propriétaire d'un brevet visé à ce paragraphe, elle avise la seconde personne de ce fait.

**(3.5)** La seconde personne peut imposer à la première personne visée à l'alinéa (3)a) et à tout propriétaire d'un brevet à qui un document est transmis en application du paragraphe (3.3) toutes règles raisonnables visant à assurer la confidentialité de toute partie de la présentation ou du supplément visée au sous-alinéa (3)c)(iii).

**(3.6)** Ces règles de confidentialité ont force obligatoire et sont exécutoires devant la Cour fédérale, laquelle peut accorder toute réparation qu'elle considère comme juste si elles ne sont pas respectées.

**(3.7)** Sur requête de la première personne ou du propriétaire du brevet — ou de sa propre initiative, après avoir donné l'occasion d'être entendus à cette première personne, à ce propriétaire et à la seconde personne — la Cour fédérale peut annuler ou modifier toute règle de confidentialité de la manière qu'elle considère comme juste.

**(3.8)** Si elle a des raisons de croire que le destinataire visé ne réside pas au Canada, la seconde personne qui doit signifier ou transmettre un document en application du sous-alinéa (3)c)(iii) ou de l'alinéa (3)d) peut refuser de le faire, sauf si ce destinataire reconnaît la compétence de la Cour fédérale pour régler toute question relative à la confidentialité des renseignements figurant dans le document.

**(3.9)** Si elle a des raisons de croire que la première personne visée à l'alinéa (3)a) doit transmettre le document au propriétaire d'un brevet qui ne réside pas au Canada, la seconde personne qui doit signifier ou transmettre un document en application du sous-alinéa (3)c)(iii) ou de l'alinéa (3)d) à cette première personne peut exiger de celle-ci qu'elle transmette le document à ce propriétaire seulement si celui-ci reconnaît la compétence de la Cour fédérale pour régler toute question relative à la confidentialité des renseignements figurant dans le document.

**(4)** La seconde personne n'est pas tenue de se conformer :

patent, that is added to the register in respect of the other drug on or after the date of filing of the submission referred to in that subsection, including one added under subsection 3(2.2) or (5); and

**(b)** subsection (2) in respect of a patent, or a certificate of supplementary protection that sets out the patent, that is added to the register in respect of the other drug on or after the date of filing of the supplement referred to in that subsection, including one added under subsection 3(2.2) or (5).

**(5)** For the purposes of subsections (3) and (4), if subsection (1) or (2) applies to a submission or supplement referred to in paragraph C.07.003(b) of the *Food and Drug Regulations*, if the drug to which the comparison or reference is made is an innovative drug within the meaning of subsection C.08.004.1(1) of those Regulations and if the date of filing of the submission or supplement is less than six years from the day on which the first notice of compliance was issued in respect of the innovative drug, the deemed date of filing of the submission or supplement is six years after the date of issuance of the notice of compliance.

**(6)** A second person who has served a notice of allegation on a first person under paragraph (3)(a) shall retract the notice of allegation and serve notice of the retraction on the first person within 90 days after either of the following dates:

**(a)** the date on which the Minister notifies the second person under paragraph C.08.004(3)(b) or C.08.004.01(3)(b), as the case may be, of the *Food and Drug Regulations* of their non-compliance with the requirements of section C.08.002, C.08.002.01, C.08.002.1 or C.08.003, as the case may be, or section C.08.005.1 of those Regulations; or

**(b)** the date of the cancellation by the second person of the submission or supplement to which the allegation relates.

**(6.1)** Within five days after the day on which the first person is served under subsection (6), they shall, if they are not the owner of any patent to which the notice of allegation relates, forward to the owner of that patent a copy of the notice of retraction.

**(7)** A person who brings an action under subsection 6(1) in response to a notice of allegation shall, if the notice is retracted in accordance with subsection (6), file without delay a notice of discontinuance.

SOR/98-166, ss. 4, 9; SOR/99-379, s. 2; SOR/2006-242, s. 2; err. (E), Vol. 140, No. 23; SOR/2011-89, s. 4; SOR/2017-166, s. 6.

**a)** au paragraphe (1) en ce qui concerne tout brevet, ou tout certificat de protection supplémentaire qui mentionne le brevet, ajouté au registre à l'égard de l'autre drogue — y compris celui ajouté en application des paragraphes 3(2.2) ou (5) — à compter de la date de dépôt de la présentation visée au paragraphe (1);

**b)** au paragraphe (2) en ce qui concerne tout brevet, ou tout certificat de protection supplémentaire qui mentionne le brevet, ajouté au registre à l'égard de l'autre drogue — y compris celui ajouté en application des paragraphes 3(2.2) ou (5) — à compter de la date de dépôt du supplément visé au paragraphe (2).

**(5)** Pour l'application des paragraphes (3) et (4), si les paragraphes (1) ou (2) s'appliquent à l'égard d'une présentation ou d'un supplément à une telle présentation visés à l'alinéa C.07.003b) du *Règlement sur les aliments et drogues* et que la drogue faisant l'objet de la comparaison ou du renvoi est une drogue innovante, au sens du paragraphe C.08.004.1(1) du même règlement, et si la date de dépôt de la présentation ou du supplément est de moins de six ans après la date de délivrance du premier avis de conformité à l'égard de cette drogue innovante, la date de dépôt est réputée être la date qui suit de six ans celle de la délivrance.

**(6)** La seconde personne qui a signifié l'avis d'allégation à la première personne en vertu de l'alinéa (3)a) doit retirer celui-ci et signifier un avis du retrait à la première personne dans les quatre-vingt-dix jours qui suivent :

**a)** soit la date à laquelle le ministre a informé la seconde personne, aux termes de l'alinéa C.08.004(3)b) ou C.08.004.01(3)b), selon le cas, du *Règlement sur les aliments et drogues*, de sa non-conformité aux articles C.08.002, C.08.002.01, C.08.002.1 ou C.08.003, selon le cas, ou à l'article C.08.005.1 du même règlement;

**b)** soit la date de l'annulation par la seconde personne de sa présentation ou de son supplément faisant l'objet de l'allégation.

**(6.1)** Au plus tard cinq jours après la date à laquelle elle a reçu la signification faite en application du paragraphe (6), la première personne qui n'est pas propriétaire d'un brevet visé par l'avis d'allégation transmet une copie de l'avis du retrait au propriétaire du brevet.

**(7)** Lorsqu'un avis d'allégation est retiré en application du paragraphe (6), la personne qui a intenté une action en vertu du paragraphe 6(1) en réponse à cet avis dépose dans les plus brefs délais un avis de désistement.

DORS/98-166, art. 4 et 9; DORS/99-379, art. 2; DORS/2006-242, art. 2; err. (A), Vol. 140, Nº. 23; DORS/2011-89, art. 4; DORS/2017-166, art. 6.

# Right of Action

**6 (1)** The first person or an owner of a patent who receives a notice of allegation referred to in paragraph 5(3)(a) may, within 45 days after the day on which the first person is served with the notice, bring an action against the second person in the Federal Court for a declaration that the making, constructing, using or selling of a drug in accordance with the submission or supplement referred to in subsection 5(1) or (2) would infringe any patent or certificate of supplementary protection that is the subject of an allegation set out in that notice.

**(2)** If the person who brings an action under subsection (1) is not the owner of each patent — or of a patent that is set out in each certificate of supplementary protection — that is the subject of the action, the owner of each of those patents shall be or be made a party to the action.

**(3)** The second person may bring a counterclaim for a declaration

**(a)** under subsection 60(1) or (2) of the *Patent Act* in respect of any patent claim asserted in the action brought under subsection (1); or

**(b)** under 125(1) or (2) of that Act in respect of any claim, asserted in the action brought under subsection (1), in the patent set out in the certificate of supplementary protection in question in that action.

**(4)** If the Federal Court makes a declaration referred to in subsection (1), it may order any other remedy that is available under the *Patent Act*, or at law or in equity, in respect of infringement of a patent or a certificate of supplementary protection.

SOR/98-166, ss. 5, 9; SOR/99-379, s. 3; SOR/2006-242, s. 3; err. (E), Vol. 140, No. 23; SOR/2008-211, s. 3; SOR/2017-166, s. 7.

**6.01** No action, other than one brought under subsection 6(1), may be brought against the second person for infringement of a patent or a certificate of supplementary protection that is the subject of a notice of allegation served under paragraph 5(3)(a) in relation to the making, constructing, using or selling of a drug in accordance with the submission or supplement referred to in subsection 5(1) or (2) unless the first person or the owner of the patent did not, within the 45-day period referred to in

# Droits d'action

**6 (1)** La première personne ou le propriétaire d'un brevet qui reçoit un avis d'allégation en application de l'alinéa 5(3)a) peut, au plus tard quarante-cinq jours après la date à laquelle la première personne a reçu signification de l'avis, intenter une action contre la seconde personne devant la Cour fédérale afin d'obtenir une déclaration portant que la fabrication, la construction, l'exploitation ou la vente d'une drogue, conformément à la présentation ou au supplément visé aux paragraphes 5(1) ou (2), contreferait tout brevet ou tout certificat de protection supplémentaire visé par une allégation faite dans cet avis.

**(2)** Lorsque la personne qui intente l'action en vertu du paragraphe (1) n'est pas le propriétaire de chaque brevet — ou du brevet mentionné dans chaque certificat de protection supplémentaire — visé par cette action, le propriétaire de chacun de ces brevets est, ou est constitué, partie à l'action.

**(3)** La seconde personne peut faire une demande reconventionnelle afin d'obtenir une déclaration :

**a)** soit au titre des paragraphes 60(1) ou (2) de la *Loi sur les brevets* à l'égard de toute revendication se rapportant à un brevet faite dans le cadre de l'action intentée en vertu du paragraphe (1);

**b)** soit au titre des paragraphes 125(1) ou (2) de la même loi, à l'égard de toute revendication, faite dans le cadre de l'action intentée en vertu du paragraphe (1), se rapportant au brevet mentionné dans le certificat de protection supplémentaire en cause dans cette action.

**(4)** Si la Cour fédérale fait la déclaration visée au paragraphe (1), elle peut ordonner toute autre réparation sous le régime de la *Loi sur les brevets,* ou en vertu de toute autre règle de droit, relativement à la contrefaçon d'un brevet ou d'un certificat de protection supplémentaire.

DORS/98-166, art. 5 et 9; DORS/99-379, art. 3; DORS/2006-242, art. 3; err. (A), Vol. 140, Nº. 23; DORS/2008-211, art. 3; DORS/2017-166, art. 7.

**6.01** Aucune autre action qu'une action intentée en vertu du paragraphe 6(1) ne peut être intentée contre la seconde personne pour la contrefaçon d'un brevet ou d'un certificat de protection supplémentaire visé par un avis d'allégation signifié en application de l'alinéa 5(3)a) relativement à la fabrication, à la construction, à l'exploitation ou à la vente d'une drogue conformément à la présentation ou au supplément visé aux paragraphes 5(1) ou (2), sauf si la première personne ou le propriétaire du brevet n'avait pas, dans la période de quarante-cinq jours

subsection 6(1), have a reasonable basis for bringing an action under that subsection.

SOR/2017-166, s. 7.

**6.02** No action may be joined to a given action brought under subsection 6(1) during any period during which the Minister shall not issue a notice of compliance because of paragraph 7(1)(d) other than

**(a)** another action brought under that subsection in relation to the submission or supplement in that given action; and

**(b)** an action brought in relation to a certificate of supplementary protection that is added to the register after the filing of the submission or supplement in that given action, if the patent that is set out in that certificate of supplementary protection is at issue in that given action.

SOR/2017-166, s. 7.

**6.03 (1)** If a second person makes a request under subsection 5(3.1), the person who brings the action must serve on the second person at the same time as their statement of claim,

**(a)** a document setting out the information referred to in paragraph (3.1)(a) and the documents referred to in paragraph (3.1)(b);

**(b)** a document setting out an explanation of the steps that have been and are being taken to locate that information or those documents, along with a statement that they will be provided as soon as feasible; or

**(c)** a document setting out the reasons for not providing them, if applicable.

**(2)** The person bringing the action may impose on the second person any reasonable rules for maintaining the confidentiality of the information set out in any document provided under paragraph (1)(a).

**(3)** Those confidentiality rules are binding and enforceable by the Federal Court, which may award any remedy that it considers just if they are not respected.

**(4)** On motion of the second person or on its own initiative, after giving an opportunity to be heard to the parties to the action, the Federal Court may set aside or vary any or all of those confidentiality rules in any manner that it considers just.

**(5)** Any person who is, under paragraph (1)(a), required to provide a document may — if there is reason to believe that the intended recipient of the document is not in

prévue au paragraphe 6(1), de motifs raisonnables pour intenter une action en vertu de ce paragraphe.

DORS/2017-166, art. 7.

**6.02** Aucune action ne peut être réunie à une action donnée intentée en vertu du paragraphe 6(1) durant la période pendant laquelle le ministre ne peut délivrer d'avis de conformité en raison de l'alinéa 7(1)d), sauf :

**a)** une autre action intentée en vertu de ce paragraphe relativement à la présentation ou au supplément visé dans cette action donnée;

**b)** toute action relative à un certificat de protection supplémentaire ajouté au registre après le dépôt de la présentation ou du supplément visé dans cette action donnée, si le brevet mentionné dans ce certificat de protection supplémentaire est en cause dans cette action donnée.

DORS/2017-166, art. 7.

**6.03 (1)** Si une seconde personne fait une demande en vertu du paragraphe 5(3.1), la personne qui intente l'action signifie à la seconde personne, en même temps que l'acte introductif d'instance :

**a)** soit un document indiquant les renseignements visés à l'alinéa 5(3.1)a) et les documents visés à l'alinéa 5(3.1)b);

**b)** soit un document expliquant les mesures qui ont été prises et qui sont prises pour repérer ces renseignements et ces documents, ainsi qu'une déclaration portant qu'ils seront fournis aussitôt que possible;

**c)** soit un document expliquant les raisons pour lesquelles ils ne seront pas fournis, le cas échéant.

**(2)** La personne qui intente l'action peut imposer à la seconde personne toutes règles raisonnables visant à assurer la confidentialité des renseignements figurant dans les documents fournis en application de l'alinéa (1)a).

**(3)** Ces règles de confidentialité ont force obligatoire et sont exécutoires devant la Cour fédérale, laquelle peut accorder toute réparation qu'elle considère comme juste si elles ne sont pas respectées.

**(4)** Sur requête de la seconde personne ou de sa propre initiative, après avoir donné l'occasion d'être entendues aux parties à l'action, la Cour fédérale peut annuler ou modifier toute règle de confidentialité de la manière qu'elle considère comme juste.

**(5)** Si elle a des raisons de croire que le destinataire visé ne réside pas au Canada, la personne qui doit fournir un document en application de l'alinéa (1)a) peut refuser de

Canada — refuse to provide it unless the recipient attorns to the jurisdiction of the Federal Court with respect to the confidentiality of the information set out in the document.

SOR/2017-166, s. 7.

**6.04 (1)** On the motion of a first person or owner of a patent who is a party to an action brought under subsection 6(1) or a counterclaim brought under subsection 6(3), the Federal Court may, at any time during the proceeding, order that the second person produce any portion of the submission or supplement that is relevant to determine if any patent or certificate of supplementary protection at issue would be infringed and any such portion that is changed.

**(2)** On the motion of a second person who is party to an action brought under subsection 6(1) or a counterclaim brought under subsection 6(3), the Federal Court may, at any time during the proceeding, order that the first person or owner of a patent produce a document setting out any information referred to in paragraph 5(3.1)(a) or any laboratory notebook, research report or other document that may be relevant to determine whether a particular property, advantage, or use asserted by the second person to be part of the invention was established as of the filing date of the application for the patent.

**(3)** The information set out in any document produced under subsection (1) or (2) shall be treated confidentially by the Federal Court subject to any conditions that it considers just.

SOR/2017-166, s. 7.

**6.05** The Minister shall, on the request of any party, verify that any portion of a submission or supplement that is referred to in subparagraph 5(3)(c)(iii) or paragraph 5(3)(d) or produced as a result of an order made under subsection 6.04(1) corresponds to the submission or supplement filed.

SOR/2017-166, s. 7.

**6.06** On the request, made by way of a motion, of a person who imposed rules referred to in subsection 5(3.5) or 6.03(2) for maintaining the confidentiality of the information set out in any document, the Federal Court shall treat that information confidentially subject to any conditions that it considers just.

SOR/2017-166, s. 7.

**6.07 (1)** In an action brought under subsection 6(1), the Federal Court may, on the motion of the second person, declare that a patent or certificate of supplementary protection is ineligible for inclusion on the register.

le fournir, sauf si le destinataire reconnaît la compétence de la Cour fédérale pour régler toute question relative à la confidentialité des renseignements figurant dans le document.

DORS/2017-166, art. 7.

**6.04 (1)** Sur requête de la première personne ou du propriétaire d'un brevet qui est partie à l'action intentée en vertu du paragraphe 6(1) ou qui est partie à la demande reconventionnelle faite en vertu du paragraphe 6(3), la Cour fédérale peut, au cours de l'instance, ordonner que la seconde personne produise toute partie de la présentation ou du supplément qui est pertinente pour établir si un brevet ou un certificat de protection supplémentaire en cause serait contrefait ainsi que toute telle partie qui est modifiée.

**(2)** Sur requête de la seconde personne qui est partie à l'action intentée en vertu du paragraphe 6(1) ou qui est partie à la demande reconventionnelle faite en vertu du paragraphe 6(3), la Cour fédérale peut, au cours de l'instance, ordonner que la première personne ou le propriétaire d'un brevet produise un document indiquant tout renseignement visé à l'alinéa 5(3.1)a) ou tout carnet de laboratoire, rapport de recherche ou autre document pouvant être pertinent pour établir si une propriété, un avantage ou une utilisation spécifique que la seconde personne affirme faire partie de l'invention était établi à la date du dépôt de la demande de brevet.

**(3)** Les renseignements figurant dans tout document produit au titre du paragraphe (1) sont traités confidentiellement par la Cour fédérale sous réserve des conditions qu'elle considère comme justes.

DORS/2017-166, art. 7.

**6.05** Sur demande d'une partie à l'instance, le ministre vérifie si toute partie d'une présentation ou d'un supplément visée au sous-alinéa 5(3)c)(iii) ou à l'alinéa 5(3)d) ou produite conformément à une ordonnance rendue en vertu du paragraphe 6.04(1) correspond à la partie de la présentation ou du supplément déposée.

DORS/2017-166, art. 7.

**6.06** Sur demande, présentée par voie de requête, de toute personne qui a imposé des règles en vertu des paragraphes 5(3.5) ou 6.03(2) visant à assurer la confidentialité des renseignements figurant dans un document, la Cour fédérale traite ces renseignements confidentiellement, sous réserve des conditions qu'elle considère comme justes.

DORS/2017-166, art. 7.

**6.07 (1)** Lors de l'action intentée en vertu du paragraphe 6(1), la Cour fédérale peut, sur requête de la seconde personne, déclarer qu'un brevet ou un certificat de

**(2)** The Minister may intervene as of right in the motion and make representations and call evidence that are relevant to any issue in the motion or to the factors that the Federal Court is entitled to take into consideration in determining the issue. The Minister may intervene as of right in any appeal arising from the decision made on the motion, whether the Minister intervened at the Federal Court or not.

**(3)** The Federal Court shall not, in whole or in part, dismiss the action solely on the basis that a patent or certificate of supplementary protection is ineligible for inclusion on the register.

**(4)** Subsection (1) does not apply in respect of a patent on a patent list that was submitted before June 17, 2006.

SOR/2017-166, s. 7.

**6.08** An action brought under subsection 6(1) may, on the motion of a second person, be dismissed, in whole or in part, on the ground that it is redundant, scandalous, frivolous or vexatious or is otherwise an abuse of process in respect of one or more patents or certificates of supplementary protection.

SOR/2017-166, s. 7.

**6.09** Every first person, second person and owner of a patent shall act diligently in carrying out their obligations under these Regulations and shall reasonably cooperate in expediting any action brought under subsection 6(1) or a counterclaim brought under subsection 6(3) to which they are a party.

SOR/2017-166, s. 7.

**6.1 (1)** An action brought under subsection 6(1) shall be a specially managed proceeding in accordance with the *Federal Courts Rules*.

**(2)** The case management judge who is assigned the specially managed proceeding shall conduct a case management conference as soon as feasible after the 10th day after proof of service of the statement of claim in the action is filed.

SOR/2017-166, s. 7.

**6.11 (1)** Any interlocutory order made in an action brought under subsection 6(1) or a counterclaim brought under subsection 6(3), including one that, in whole or in part, disposes of the action or counterclaim, may be appealed to the Federal Court of Appeal, with leave of that Court, and not to the Federal Court.

protection supplémentaire est inadmissible à l'inscription au registre.

**(2)** Le ministre peut intervenir de plein droit dans la requête et présenter des observations et soumettre tout élément de preuve pertinents à l'égard de toute question soulevée dans la requête ou de tout facteur que la Cour fédérale est en droit d'examiner pour régler cette question. Le ministre peut intervenir de plein droit dans tout appel découlant de la décision rendue sur la requête, qu'il y soit intervenu ou non.

**(3)** La Cour fédérale ne peut rejeter l'action, en tout ou en partie, pour la seule raison qu'un brevet ou un certificat de protection supplémentaire est inadmissible à l'inscription au registre.

**(4)** Le paragraphe (1) ne s'applique pas à l'égard d'un brevet inscrit sur une liste de brevets présentée avant le 17 juin 2006.

DORS/2017-166, art. 7.

**6.08** Toute action intentée en vertu du paragraphe 6(1) peut, sur requête de la seconde personne, être rejetée en tout ou en partie au motif qu'elle est inutile, scandaleuse, frivole ou vexatoire ou qu'elle constitue par ailleurs un abus de procédure à l'égard d'un ou de plusieurs brevets ou certificats de protection supplémentaire.

DORS/2017-166, art. 7.

**6.09** Les premières personnes, secondes personnes et propriétaires de brevets sont tenus d'agir avec diligence en remplissant les obligations qui leur incombent au titre du présent règlement et, s'ils sont parties à une action intentée en vertu du paragraphe 6(1) ou à une demande reconventionnelle faite en vertu du paragraphe 6(3), de collaborer de façon raisonnable au règlement expéditif de celle-ci.

DORS/2017-166, art. 7.

**6.1 (1)** Toute action intentée en vertu du paragraphe 6(1) est gérée à titre d'instance à gestion spéciale conformément aux *Règles des Cours fédérales*.

**(2)** Le juge responsable de la gestion de l'instance tient une conférence de gestion d'instance, aussitôt que possible après le dixième jour qui suit le dépôt de la preuve de signification de l'acte introductif de cette instance.

DORS/2017-166, art. 7.

**6.11 (1)** Toute ordonnance interlocutoire rendue lors d'une action intentée en vertu du paragraphe 6(1) ou lors d'une demande reconventionnelle faite en vertu du paragraphe 6(3), y compris toute ordonnance ayant statué, en tout ou en partie, sur l'action ou la demande, peut être portée en appel auprès de la Cour d'appel fédérale, avec

**(2)** The motion for leave to appeal shall be filed no later than 10 days after the day on which that interlocutory order is made.

SOR/2017-166, s. 7.

**6.12 (1)** In an action brought under subsection 6(1) or a counterclaim brought under subsection 6(3), the Federal Court may make any order in respect of costs, including on a solicitor-and-client basis, in accordance with the *Federal Courts Rules*.

**(2)** In addition to any other factor that the Federal Court may take into account in making an order in respect of costs, it may consider

**(a)** the diligence with which the parties have pursued the action;

**(b)** the extent to which they have reasonably cooperated in expediting the action;

**(c)** the certification of a patent list that includes a patent that should not have been included under section 4; and

**(d)** the failure of the first person to keep a patent list up to date in accordance with subsection 4(7).

SOR/2017-166, s. 7.

**6.13** The person who brings an action under subsection 6(1) shall provide to the Minister, as soon as feasible, a copy of the following documents in relation to the action:

**(a)** the statement of claim, including any amendments to it;

**(b)** any order made under subsection 6.04(1) or 7(8);

**(c)** any declaration referred to in subsection 6(1) or (3) or 6.07(1);

**(d)** the notice of motion and the motion record in respect of any motion referred to in subsection 6.07(1);

**(e)** any document discontinuing or dismissing the action, in whole or in part;

**(f)** any notice of appeal, including a motion or application for leave to appeal, in relation to any document referred to in paragraph (b), (c) or (e); and

l'autorisation de celle-ci, et non auprès de la Cour fédérale.

**(2)** La requête en autorisation d'appeler est déposée au plus tard dix jours après la date à laquelle l'ordonnance interlocutoire est rendue.

DORS/2017-166, art. 7.

**6.12 (1)** La Cour fédérale peut, lors de l'action intentée en vertu du paragraphe 6(1) ou lors de la demande reconventionnelle faite en vertu du paragraphe 6(3), rendre toute ordonnance relative aux dépens, notamment sur une base avocat-client, conformément aux *Règles des Cours fédérales*.

**(2)** Lorsque la Cour fédérale rend une ordonnance relative aux dépens, elle peut notamment tenir compte des facteurs suivants :

**a)** la diligence des parties à poursuivre l'action;

**b)** la mesure dans laquelle elles ont collaboré de façon raisonnable à son règlement expéditif;

**c)** l'attestation d'une liste de brevets comprenant un brevet qui n'aurait pas dû y être inscrit aux termes de l'article 4;

**d)** le fait que la première personne n'a pas tenu à jour une liste de brevets conformément au paragraphe 4(7).

DORS/2017-166, art. 7.

**6.13** La personne qui intente une action en vertu du paragraphe 6(1) fournit au ministre, aussitôt que possible, une copie des documents ci-après liés à cette action :

**a)** l'acte introductif d'instance, y compris toute modification apportée à celui-ci;

**b)** toute ordonnance rendue au titre des paragraphes 6.04(1) ou 7(8);

**c)** toute déclaration visée aux paragraphes 6(1) ou (3) ou 6.07 (1);

**d)** l'avis de requête et le dossier de requête liés à toute requête visée au paragraphe 6.07(1);

**e)** tout document portant que l'action, en tout ou en partie, a fait l'objet d'un désistement ou a été rejetée;

**f)** tout avis d'appel, y compris toute requête en autorisation d'appeler ou toute demande en autorisation d'appel, à l'égard de tout document visé aux alinéas b), c) ou e);

**(g)** any judgment or order in an appeal, or a motion or application for leave to appeal, in relation to any document referred to in paragraph (b), (c) or (e).

SOR/2017-166, s. 7.

**g)** tout jugement ou toute ordonnance rendu en appel, ou toute requête en autorisation d'appeler ou toute demande en autorisation d'appel, à l'égard de tout document visé aux alinéas b), c) ou e).

DORS/2017-166, art. 7.

# Notice of Compliance

**7 (1)** The Minister shall not issue a notice of compliance to a second person before the latest of

**(a)** the day after the expiry of all of the patents and certificates of supplementary protection in respect of which the second person is required to make a statement or allegation under subsection 5(1) or (2) and that are not the subject of an allegation;

**(b)** the day on which the second person complies with paragraph 5(3)(e);

**(c)** the 46th day after the day on which a notice of allegation under paragraph 5(3)(a) is served;

**(d)** the day after the expiry of the 24-month period that begins on the day on which an action is brought under subsection 6(1);

**(e)** the day after the expiry of all of the patents and certificates of supplementary protection in respect of which a declaration of infringement has been made in an action brought under subsection 6(1); and

**(f)** the day after the expiry of all of the certificates of supplementary protection, other than any that were held not to be infringed in an action referred to in paragraph (e), that

**(i)** set out a patent referred to in paragraph (a) or (e),

**(ii)** are not the subject of a statement or allegation made under subsection 5(1) or (2), and

**(iii)** are included on the register in respect of the same submission or supplement as the patent.

**(2)** Subsection (1) does not apply in respect of a patent or a certificate of supplementary protection if the Minister has been provided with evidence from the owner of the patent of their consent to the making, constructing, using or selling of the drug in Canada by the second person.

# Avis de conformité

**7 (1)** Le ministre ne peut délivrer d'avis de conformité à la seconde personne avant le dernier en date des jours suivants :

**a)** le lendemain du premier jour où sont expirés tous les brevets et certificats de protection supplémentaire à l'égard desquels la seconde personne est tenue de faire une déclaration ou une allégation en application des paragraphes 5(1) ou (2) et qui ne font pas l'objet d'une allégation;

**b)** le jour où la seconde personne se conforme à l'alinéa 5(3)e);

**c)** le quarante-sixième jour après la date de signification de l'avis d'allégation visé à l'alinéa 5(3)a);

**d)** le lendemain du dernier jour de la période de vingt-quatre mois qui commence à la date à laquelle une action a été intentée en vertu du paragraphe 6(1);

**e)** le lendemain du premier jour où sont expirés tous les brevets et les certificats de protection supplémentaire faisant l'objet d'une déclaration de contrefaçon faite dans une action intentée en vertu du paragraphe 6(1);

**f)** le lendemain du premier jour où sont expirés tous les certificats de protection supplémentaire — autres que ceux qui ont été tenus non contrefaits dans une action visée à l'alinéa e) — qui, à la fois :

**(i)** mentionnent un brevet visé aux alinéas a) ou e),

**(ii)** ne font pas l'objet d'une déclaration ou d'une allégation faite en application des paragraphes 5(1) ou (2),

**(iii)** sont inscrits au registre à l'égard de la même présentation ou du même supplément que le brevet.

**(2)** Le paragraphe (1) ne s'applique pas à l'égard d'un brevet ou d'un certificat de protection supplémentaire si le ministre a reçu la preuve du propriétaire du brevet qu'il consent à ce que la seconde personne fabrique, construise, exploite ou vende la drogue au Canada.

**(3)** Paragraphs (1)(a) to (d) do not apply in respect of a patent or certificate of supplementary protection if it is deleted from the register under any of paragraphs 3(2)(c) to (e) or subsection 3(2.3) or (3).

**(4)** Paragraph (1)(d) does not apply in respect of a patent or a certificate of supplementary protection that has been declared in the action referred to in that paragraph by the Federal Court to be ineligible for inclusion on the register.

**(5)** Paragraph (1)(d) does not apply if

**(a)** the action referred to in that paragraph is discontinued or dismissed; or

**(b)** each of the parties who brings an action referred to in subsection 6(1) in relation to a given notice of allegation provides, when they bring the action, a notice to the second person and the Minister that they renounce the application of that paragraph.

**(6)** A party may make the renouncement referred to in paragraph (5)(b) without prejudice to their right to proceed with the action or any other action for patent infringement or their entitlement to any remedy from the Federal Court or another court.

**(7)** A second person, or a first person or owner of a patent who receives a notice of allegation, shall, on request of the Minister, provide to the Minister without delay any information or document that the Minister requires to maintain the register in accordance with subsection 3(2), to determine the latest of the days referred to in subsection (1) and to determine whether any of subsections (2) to (5) apply.

**(8)** As long as the Federal Court has not made a declaration referred to in subsection 6(1), it may shorten or extend the 24-month period referred to in paragraph (1)(d) if it finds that a party has not acted diligently in carrying out their obligations under these Regulations or has not reasonably cooperated in expediting the action.

SOR/98-166, ss. 6, 9; SOR/2006-242, s. 4; SOR/2010-212, s. 1; SOR/2017-166, s. 8.

**8 (1)** A second person may apply to the Federal Court or another superior court of competent jurisdiction for an order requiring all plaintiffs in an action brought under subsection 6(1) to compensate the second person for the loss referred to in subsection (2).

**(3)** Les alinéas (1)a) à d) ne s'appliquent pas à l'égard d'un brevet ou d'un certificat de protection supplémentaire s'il est supprimé du registre en application de l'un ou l'autre des alinéas 3(2)c) à e) ou des paragraphes 3(2.3) ou (3).

**(4)** L'alinéa (1)d) ne s'applique pas à l'égard d'un brevet ou d'un certificat de protection supplémentaire qui a été déclaré par la Cour fédérale inadmissible à l'inscription au registre dans l'action visée à cet alinéa.

**(5)** L'alinéa (1)d) ne s'applique pas dans les cas suivants :

**a)** l'action visée à cet alinéa a fait l'objet d'un désistement ou a été rejetée;

**b)** chacune des parties qui intentent une action en vertu du paragraphe 6(1) à l'égard d'un avis d'allégation envoie un avis à la seconde personne et au ministre, au moment où elle intente l'action, portant qu'elle renonce à l'application de cet alinéa.

**(6)** Le renoncement donné par une partie au titre de l'alinéa (5)b) ne porte pas atteinte à son droit de poursuivre son action ou toute autre action en contrefaçon d'un brevet ou d'obtenir toute réparation de la part de la Cour fédérale ou d'un autre tribunal.

**(7)** La seconde personne, ou la première personne ou le propriétaire d'un brevet qui reçoit un avis d'allégation, fournit dans les plus brefs délais au ministre, à sa demande, tout renseignement ou document qu'il exige pour tenir le registre conformément au paragraphe 3(2), pour déterminer le dernier en date des jours mentionnés au paragraphe (1) et pour statuer sur l'application des paragraphes (2) à (5).

**(8)** Lorsque la Cour fédérale n'a pas encore fait la déclaration visée au paragraphe 6(1), elle peut abréger ou prolonger la période de vingt-quatre mois visée à l'alinéa (1)d) si elle conclut qu'une partie n'a pas agi avec diligence en remplissant les obligations qui lui incombent au titre du présent règlement ou qu'elle n'a pas collaboré de façon raisonnable au règlement expéditif de l'action.

DORS/98-166, art. 6 et 9; DORS/2006-242, art. 4; DORS/2010-212, art. 1; DORS/2017-166, art. 8.

**8 (1)** La seconde personne peut demander à la Cour fédérale ou à toute autre cour supérieure compétente de rendre une ordonnance enjoignant à tous les plaignants dans l'action intentée en vertu du paragraphe 6(1) de lui verser une indemnité pour la perte visée au paragraphe (2).

**(2)** Subject to subsection (3), if an action brought under subsection 6(1) is discontinued or dismissed or if a declaration referred to in subsection 6(1) is reversed on appeal, all plaintiffs in the action are jointly and severally, or solidarily, liable to the second person for any loss suffered after the later of the day on which the notice of allegation was served, the service of which allowed that action to be brought, and of the day, as certified by the Minister, on which a notice of compliance would have been issued in the absence of these Regulations.

**(3)** The Federal Court or the other superior court may specify another day for the purpose of subsection (2) if it concludes that the other day is more appropriate, including being more appropriate because the certified day was, by the operation of *An Act to amend the Patent Act and the Food and Drugs Act (The Jean Chrétien Pledge to Africa)*, chapter 23 of the Statutes of Canada, 2004, earlier than it would otherwise have been.

**(4)** Subsections (1) to (3) do not apply if paragraph 7(1)(d) has no application because its application has been renounced under paragraph 7(5)(b).

**(5)** If the Federal Court or the other superior court orders a second person to be compensated for a loss referred to in subsection (2), the court may, in respect of that loss, make any order for relief by way of damages that the circumstances require.

**(6)** In assessing the amount of compensation — including any apportionment of that amount between the plaintiffs who are liable under subsection (2) — the court shall take into account all matters that it considers relevant to the assessment of the amount or the apportionment, including any conduct of the parties that contributed to delay the disposition of the action.

**(7)** No action or proceeding lies against Her Majesty in right of Canada in respect of any loss referred to in subsection (2).

SOR/98-166, ss. 8, 9; SOR/2006-242, s. 5; SOR/2010-212, s. 2(F); SOR/2017-166, s. 8.

**8.1** A person who files a submission for a notice of compliance or a supplement to a submission for a notice of compliance in respect of a drug and who has reasonable grounds to believe that the making, constructing, using or selling of the drug might be alleged to infringe a patent or a certificate of supplementary protection is, if the submission or supplement directly or indirectly compares the drug with, or makes reference to, another drug marketed in Canada, an interested person

**(a)** for the purpose of subsection 60(1) of the *Patent Act* with respect to bringing an action for a declaration

**(2)** Sous réserve du paragraphe (3), si l'action intentée en vertu du paragraphe 6(1) fait l'objet d'un désistement ou est rejetée, ou si la déclaration visée au paragraphe 6(1) est renversée lors d'un appel, tous les plaignants sont responsables solidairement envers la seconde personne de toute perte subie après la date de signification de l'avis d'allégation, laquelle signification a permis que cette action soit intentée ou, si elle est postérieure, la date, attestée par le ministre, à laquelle un avis de conformité aurait été délivré n'eût été le présent règlement.

**(3)** La Cour fédérale ou l'autre cour supérieure peut préciser une autre date pour l'application du paragraphe (2) si elle conclut que cette autre date est plus appropriée, notamment parce que la date attestée a été devancée par l'application de la *Loi modifiant la Loi sur les brevets et la Loi sur les aliments et drogues (engagement de Jean Chrétien envers l'Afrique)*, chapitre 23 des Lois du Canada (2004).

**(4)** Les paragraphes (1) à (3) ne s'appliquent pas si l'alinéa 7(1)d) n'a pas d'application parce qu'il y a eu renoncement à son application en vertu de l'alinéa 7(5)b).

**(5)** Lorsque la Cour fédérale ou l'autre cour supérieure ordonne que la seconde personne soit indemnisée pour la perte visée au paragraphe (2), elle peut rendre toute ordonnance qu'elle juge indiquée pour accorder réparation par recouvrement de dommages-intérêts à l'égard de cette perte.

**(6)** Pour déterminer le montant de l'indemnité à accorder — y compris la répartition de ce montant entre les plaignants qui sont responsables en vertu du paragraphe (2) —, la Cour fédérale ou l'autre cour supérieure tient compte des facteurs qu'elle juge pertinents à cette fin, y compris, le cas échéant, la conduite de toute partie qui a contribué à retarder le règlement de l'action.

**(7)** Il ne peut être intenté d'action ni d'autre procédure contre Sa Majesté du chef du Canada à l'égard de toute perte visée au paragraphe (2).

DORS/98-166, art. 8 et 9; DORS/2006-242, art. 5; DORS/2010-212, art. 2(F); DORS/2017-166, art. 8.

**8.1** La personne qui dépose une présentation ou un supplément à une présentation pour un avis de conformité à l'égard d'une drogue et qui a un motif raisonnable de croire que la fabrication, la construction, l'exploitation ou la vente de celle-ci pourrait faire l'objet d'une allégation de contrefaçon d'un brevet ou d'un certificat de protection supplémentaire est, si la présentation ou le supplément, directement ou indirectement, compare cette drogue à une autre drogue commercialisée sur le marché canadien — ou y fait renvoi —, un intéressé :

that the patent or any claim in the patent is invalid or void; or

**(b)** for the purpose of subsection 125(1) of that Act with respect to bringing an action for a declaration that the certificate of supplementary protection or any claim in the patent set out in it is invalid or void.

SOR/2017-166, s. 8.

**8.2** On receipt of a notice of allegation relating to a submission or supplement, a first person or owner of a patent may, under subsection 54(1) or 124(1) of the *Patent Act*, bring an action for infringement of a patent or certificate of supplementary protection — other than one that is the subject of an allegation set out in that notice — that could result from the making, constructing, using or selling of the drug in accordance with the submission or supplement.

SOR/2017-166, s. 8.

## Service

**9 (1)** Service of any document referred to in these Regulations shall be effected personally or by registered mail.

**(2)** Service by registered mail shall be deemed to be effected on the addressee five days after mailing.

**a)** pour l'application du paragraphe 60(1) de la *Loi sur les brevets*, pour ce qui est d'intenter une action afin d'obtenir une déclaration portant que le brevet ou toute revendication se rapportant au brevet est invalide ou nul;

**b)** pour l'application du paragraphe 125(1) de la même loi, pour ce qui est d'intenter une action afin d'obtenir une déclaration portant que le certificat de protection supplémentaire ou toute revendication se rapportant au brevet qu'il mentionne est invalide ou nul.

DORS/2017-166, art. 8.

**8.2** Sur réception d'un avis d'allégation à l'égard d'une présentation ou d'un supplément, la première personne ou le propriétaire d'un brevet peut, en vertu des paragraphes 54(1) ou 124(1) de la *Loi sur les brevets*, intenter une action en contrefaçon d'un brevet ou d'un certificat de protection supplémentaire — autre qu'un brevet ou un certificat de protection supplémentaire visé par une allégation faite dans cet avis — à l'égard de la contrefaçon qui pourrait résulter de la fabrication, de la construction, de l'exploitation ou de la vente de la drogue conformément à la présentation ou au supplément.

DORS/2017-166, art. 8.

## Signification

**9 (1)** La signification de tout document prévu dans le présent règlement doit être faite à personne ou par courrier recommandé.

**(2)** La signification par courrier recommandé est réputée être effectuée le cinquième jour suivant sa mise à la poste.

# RELATED PROVISIONS

— SOR/2006-242, s. 6

**6** Section 4 of the *Patented Medicines (Notice of Compliance) Regulations*, as enacted by section 2 of these Regulations, does not apply to patents on a patent list submitted prior to June 17, 2006.

— SOR/2006-242, s. 7

**7 (1)** Subsection 5(1) of the *Patented Medicines (Notice of Compliance) Regulations*, as enacted by section 2 of these Regulations, applies to a second person who has filed a submission referred to in subsection 5(1) prior to the coming into force of these Regulations and the date of filing of the submission is deemed to be the date of the coming into force of these Regulations.

**(2)** Subsection 5(2) of the *Patented Medicines (Notice of Compliance) Regulations*, as enacted by section 2 of these Regulations, applies to a second person who has filed a supplement to a submission referred to in subsection 5(2) prior to the coming into force of these Regulations and the date of filing of the supplement is deemed to be the date of the coming into force of these Regulations.

— SOR/2006-242, s. 8

**8** Subsection 8(4) of the *Patented Medicines (Notice of Compliance) Regulations*, as enacted by subsection 5(2) of these Regulations, does not apply to an action commenced under section 8 of the *Patented Medicines (Notice of Compliance) Regulations* prior to the coming into force of these Regulations.

— SOR/2017-166, s. 9

**9 (1)** The *Patented Medicines (Notice of Compliance) Regulations*, as they read immediately before the day on which these Regulations come into force, continue to apply in respect of any matter that relates to a notice of allegation served on a first person before that day.

**(2)** For greater certainty, sections 6 to 8 of the *Regulations Amending the Patented Medicines (Notice of Compliance) Regulations*, SOR/2006-242, continue to apply in respect of the provisions set out in those sections.

# DISPOSITIONS CONNEXES

— DORS/2006-242, art. 6

**6** L'article 4 du *Règlement sur les médicaments brevetés (avis de conformité)*, édicté par l'article 2 du présent règlement, ne s'applique pas aux brevets inscrits sur la liste de brevets présentée avant le 17 juin 2006.

— DORS/2006-242, art. 7

**7 (1)** Le paragraphe 5(1) du *Règlement sur les médicaments brevetés (avis de conformité)*, édicté par l'article 2 du présent règlement, s'applique à toute seconde personne qui a déposé la présentation visée à ce paragraphe avant l'entrée en vigueur du présent règlement, et la date de dépôt de cette présentation est réputée être la date d'entrée en vigueur du présent règlement.

**(2)** Le paragraphe 5(2) du *Règlement sur les médicaments brevetés (avis de conformité)*, édicté par l'article 2 du présent règlement, s'applique à toute seconde personne qui a déposé le supplément à une présentation visé à ce paragraphe avant l'entrée en vigueur du présent règlement, et la date de dépôt de ce supplément est réputée être la date d'entrée en vigueur du présent règlement.

— DORS/2006-242, art. 8

**8** Le paragraphe 8(4) du *Règlement sur les médicaments brevetés (avis de conformité)*, édicté par le paragraphe 5(2) du présent règlement, ne s'applique pas à l'action intentée en vertu de l'article 8 du *Règlement sur les médicaments brevetés (avis de conformité)* avant la date d'entrée en vigueur du présent règlement.

— DORS/2017-166, art. 9

**9 (1)** Le *Règlement sur les médicaments brevetés (avis de conformité)*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement, continue de s'appliquer à l'égard de toute question relative à un avis d'allégation signifié à une première personne avant cette date.

**(2)** Il est entendu que les articles 6 à 8 du *Règlement modifiant le Règlement sur les médicaments brevetés (avis de conformité)*, DORS/2006-242, continuent de s'appliquer aux dispositions mentionnées à ces articles.

File No. CT-2024-006

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the Competition Act, R.S.C. 1985, c. C-34 (the"**Act**");

**AND IN THE MATTER OF** an application by JAMP Pharma Corporation for an order pursuant to section 103.1 of the Act granting leave to bring an application under section 79 of the Act;

**AND IN THE MATTER OF** an application by JAMP Pharma Corporation for an order pursuant to section 79 of the Act;

**BETWEEN:**

**JAMP PHARMA CORPORATION**

Applicant

– and –

**JANSSEN INC.**

Respondent

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**BOOK OF AUTHORITIES OF THE APPLICANT**
**(Pursuant to s. 103.1 of the *Competition Act*)**

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